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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AA80

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems; Delay of Implementation Date

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule delays from February 27, 2002 until October 1, 2002 the implementation date of the final rule entitled Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems, which was published in the **Federal Register** on December 29, 2000, 65 FR 83248, and became effective on April 28, 2001. The rule strengthens vendor management in retail food delivery systems by establishing mandatory selection criteria, training requirements, criteria to be used to identify high-risk vendors, and monitoring requirements, including compliance investigations. The new implementation date of October 1, 2002 provides State agencies additional time to implement the rule, promotes more effective and efficient implementation of the new requirements, and corresponds with the beginning of the Federal fiscal year.

DATES: This rule is effective November 19, 2001. State agencies must fully implement the provisions of the WIC Food Delivery Systems final rule no later than October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Supplemental Food Programs Division, Food and Nutrition Service, 3101 Park Center Drive, Room 522, Alexandria, Virginia 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2001, the Department published a proposed rule at 66 FR 40152 that would delay the implementation date of the WIC Food Delivery Systems final rule from February 27, 2002 to October 1, 2002. A total of nine comment letters were received during the comment period, which ended on September 4, 2001. All nine comment letters generally supported the delay of the implementation date. Whereas one commenter suggested further delaying the implementation date until September 30, 2003, another commenter indicated that it would not support delaying the implementation beyond the proposed date of October 1, 2002. We considered the proposed changes to its implementation date and concluded that the proposed date of October 1, 2002 is the most appropriate. Therefore, based on the comments received, and for the reasons cited in the proposed rule, the Department has decided to delay the implementation date of the WIC Food Delivery Systems final rule until October 1, 2002, as proposed. The Department has given all comments careful consideration in the development of this final rule and would like to thank all commenters who responded to the proposal.

For the reasons set forth in the above paragraph, the WIC Food Delivery Systems final rule, published December 29, 2000, at 65 FR 83248, is amended to extend the final date for implementation from February 27, 2002 to October 1, 2002.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Acting Administrator of the Food and Nutrition Service (FNS) has certified that this rule will not have a significant economic impact on a substantial number of small entities. While procedures in this rulemaking will affect State and local agencies that administer the WIC Program, any economic effect will not be significant.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The WIC Program is listed in the Catalog of Federal Domestic Assistance under 10.557. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notice (48 FR 29115), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act of 1995

This final rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The existing recordkeeping and reporting requirements, which were approved by OMB under control number 0584–0045, will not change as a result of this rule.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict

with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** section of the preamble. Prior to any judicial challenge to the application of the provisions of this final rule, all applicable administrative procedures must be exhausted.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure; Civil rights, Food assistance programs, Food and Nutrition Service, Food donations, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Reporting and recordkeeping requirements, Public assistance programs, WIC, Women.

Dated: October 12, 2001.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 01–26194 Filed 10–17–01; 8:45 am]

BILLING CODE 3410–30–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, Extensions of Credit by Federal Reserve Banks to reflect its approval of a decrease in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

DATES: The amendments to part 201 (Regulation A) were effective October 2, 2001. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board, at (202) 452–3259, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, *et al.*, of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit for up to 30 days. In decreasing the basic discount rate from 2.5 percent to 2.0 percent, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The 50-basis-point decrease in the discount rate was associated with a similar decrease in the federal funds rate approved by the Federal Open Market Committee (FOMC) and announced at the same time.

In a joint press release announcing these actions, the FOMC and the Board of Governors stated that the terrorist attacks have significantly heightened uncertainty in an economy that was already weak. Business and household spending as a consequence are being further dampened. Nonetheless, the long-term prospects for productivity growth and the economy remain favorable and should become evident once the unusual forces restraining demand abate. The Committee continues to believe that, against the background of its long-run goals of price stability and sustainable economic growth and of the information currently available, the risks continue to be weighted mainly toward conditions that may generate economic weakness in the foreseeable future.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering price stability and sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12.CFR part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	2.0	October 2, 2001.
New York	2.0	October 2, 2001.
Philadelphia	2.0	October 4, 2001.
Cleveland	2.0	October 2, 2001.
Richmond	2.0	October 2, 2001.
Atlanta	2.0	October 2, 2001.
Chicago	2.0	October 2, 2001.
St. Louis	2.0	October 3, 2001.
Minneapolis	2.0	October 3, 2001.
Kansas City	2.0	October 2, 2001.
Dallas	2.0	October 2, 2001.
San Francisco	2.0	October 2, 2001.

By order of the Board of Governors of the Federal Reserve System, October 12, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–26198 Filed 10–17–01; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–129]

RIN 2115–AA97

Security Zone; Selfridge Army National Guard Base, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published a final rule on September 24, 2001, creating a security zone surrounding the waters off of Selfridge Air National Guard Base in Michigan. The original parameters of that zone extended one half mile from the shore, between the Hall Road launch ramp and the entrance to Mac and Rays Marina, and the rule had no expiration date. In the interest of small businesses within that zone, COTP Detroit has readjusted the northern boundary to allow these businesses to continue to operate, and an expiration date has been inserted into the rule. The security zone is needed to protect the Selfridge area from terrorist threats.

DATES: This correction becomes effective October 10, 2001. 33 CFR 165.T09–998 published September 24, 2001 (66 FR 48796), as corrected in this document, is now effective only through June 15, 2002.

FOR FURTHER INFORMATION CONTACT: ENS Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, (313) 568–9580.

Background and Purpose

The Coast Guard published a final rule in the **Federal Register** on September 24, 2001, (66 FR 48795), to create a security zone in response to the September 11, 2001 terrorist attacks on the United States. We are changing the location of the northern boundary of the security Zone and the duration of rule.

Need for Correction

Since publication, Captain of the Port Detroit has learned that a more southerly boundary would help facilitate local business owners. This readjustment in no ways compromises the intent of the original security zone. The regulation was published in response to the terrorist's attacks on the World Trade Center and the Pentagon on September 11, 2001. The security zone is intended to protect the life, property, and national security of U.S. citizens. These factors were considered along with the impact on local business in reestablishing the boundaries and effective period of this security zone.

Correction of Publication

In rule FR Doc. 01–23712 published on September 24, 2001, make the following corrections. On page 48796, in the second column, on lines 37–39, remove the phrase "one half mile from shore between the Hall Road Launch Ramp and the entrance to Mac and Rays Marina" and add, in its place, the phrase ", starting at 42°37.8′ N, 082°49.1′ W; eastward one half mile from shore at42°37.8′ N, 082°48.45′ W; south to 42°37.2′ N, 082°48.45′ W; then southeast to 42°36.8′ N, 082°47.2′ W; then southwest to Mac and Rays Marina at 42°36.4′ N, 082°47.9′ W; and then following the shoreline back to the starting point. These coordinates are based upon North American Datum 1983"; and on lines 41–42, remove the phrase "becomes effective at 2 p.m. September 11, 2001" and add, in its place, the phase "is effective from September 11, 2001 through June 15, 2002".

Dated: October 10, 2001.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit, Detroit, MI.

[FR Doc. 01–26153 Filed 10–17–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4157; FRL–7080–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_x RACT Determinations for the Allegheny Ludlum Corporation's Brackenridge Facility in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for the Allegheny Ludlum Corporation's Brackenridge facility, a major source of volatile organic compounds (VOC) and nitrogen oxides (NO_x) located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving this revision to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 2, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink (215) 814–2104 or by e-mail at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1997, PADEP submitted revisions to the Pennsylvania SIP which establish and imposes RACT for several sources of NO_X and VOCs. This rulemaking pertains only to the RACT determination made for the Allegheny Ludlum Corporation's Brackenridge facility, a major source of VOC and NO_X located in the Pittsburgh area. The RACT determinations submitted on July 1, 1997 for other sources are or have been the subject of separate rulemakings. The submittal for the Allegheny Ludlum Corporation's Brackenridge facility consists of Plan Approval Order and Agreement upon Consent (CO) No. 260 in which RACT has been established and imposed by the Allegheny County Health Department (ACHD). The PADEP submitted CO No. 260 on behalf of the ACHD as a SIP revision.

On August 9, 2001, EPA published a direct final rule (66 FR 41789) and a companion notice of proposed rulemaking (66 FR 41822) to approve this SIP revision. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 20, 2001 (66 FR 48349), we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 9, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 41822). This is that subsequent final rule. A description of the RACT determination made for Allegheny Ludlum Corporation's Brackenridge facility was provided in the August 9, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on twenty proposed rules published by EPA in the **Federal Register** between August 6 and August 24, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Pittsburgh area. PennFuture's letter includes general comments and comments specific to EPA's proposals for certain sources. A summary of those comments and EPA's responses germane to this rulemaking are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas*, 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of* NO_X and VOCs, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that "* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On August 24, 2001 (66 FR 44578), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Pittsburgh area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Pittsburgh-Beaver area or (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt).*

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for only three sources located in the Pittsburgh area, namely for Duquesne Light's Elrama, Phillips and Brunot Island stations. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour "are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to "numeric emission limitations" under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Pittsburgh area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Pittsburgh area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options" (September 1993) and "Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options" (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)].

This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the "automatic" selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish "bright line" or "cook-book" approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions," March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to "all source categories." PennFuture notes that EPA later objected to the $1500 per ton methodology as "not generically acceptable to EPA" [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a Federal Register notice that a "dollar per ton threshold" is "inconsistent with the definition of RACT" [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. The commenter states that PennFuture's review of several of the current DEP evaluations indicate that the Commonwealth applied this standard and provides the examples of Duquesne Light—Elrama (auxiliary boiler); Allegheny Ludlum—Washington (formerly Jessop Steel). PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other "bright line" approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions." March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton " Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an "automatic" rejection of a control technology as RACT for a source."

In no instance, including that for Duquesne Light—Elrama (auxiliary boiler) and Allegheny Ludlum—Washington (formerly Jessop Steel), has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC (63 FR at 23669), that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that "Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT." (62 FR at 43961). EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability (63 FR at 23670). Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the SIP revision submitted by PADEP on behalf of ACHD to establish and require VOC and NO_X RACT for the Allegheny Ludlum Corporation's Brackenridge facility. EPA is approving Pennsylvania's SIP submittal for the Allegheny Ludlum Corporation's Brackenridge facility because CO No. 260 establishes and imposes RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations and also imposes record-keeping, monitoring, and testing requirements sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for one named source.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth's source-specific RACT requirements to control VOC and NO_X from the Allegheny Ludlum Corporation's Brackenridge facility may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(159) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(159) Revision pertaining to VOC and NO_X RACT for the Allegheny Ludlum Corporation, Brackenridge facility, submitted by the Pennsylvania Department of Environmental Protection on July 1, 1997.

(i) *Incorporation by reference.*

(A) Letter submitted on July 1, 1997 by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations.

(B) Consent Order No. 260, effective December 19, 1996, for the Allegheny Ludlum Corporation, Brackenridge facility, except for conditions 1.8 and 2.5.

(ii) *Additional materials.* Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determination for the source listed in paragraph (c)(159)(i)(B) of this section.

* * * * *

[FR Doc. 01–25578 Filed 10–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4158; FRL–7080–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Two Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for two major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 2, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink, (215) 814–2104, or by e-mail at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1997 and April 9, 1999, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several major sources of VOC and/or NO_X. This rulemaking pertains to the Kosmos Cement Company and the Armstrong Cement & Supply Company. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's SIP submittals consist of enforcement order (EO) 208 issued by the Allegheny County Health Department (ACHD) to the Kosmos Cement Company and operating permit (OP) 10–028 issued by PADEP to the Armstrong Cement & Supply Company which impose VOC and/or NO_X RACT requirements for each source. These two sources are located in the Pittsburgh area.

On August 9, 2001, EPA published a direct final rule (66 FR 41793) and a companion notice of proposed rulemaking (66 FR 41823) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 20, 2001 (66 FR 48349), we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 9, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 42823). This is that subsequent final rule. A description of the RACT determination made for each source was provided in the August 9, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on twenty proposed rules published by EPA in the **Federal Register** between August 6 and August 24, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Pittsburgh area. PennFuture's letter includes general comments and comments specific to EPA's proposals for certain sources. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas*, 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs*, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and

approval of case-by case RACT determinations by the DEP. Rather, EPA stated that "* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On August 24, 2001 (66 FR 44578), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Pittsburgh area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Pittsburgh-Beaver area or (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for only three sources located in the Pittsburgh area, namely for Duquesne Light's Elrama, Phillips and Brunot Island stations. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour "are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States" (63 FR 13789, 13791 (1998)) and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to "numeric emission limitations" under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Pittsburgh area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Pittsburgh area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options" (September 1993) and "Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options" (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the "automatic" selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish "bright line" or "cook-book" approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions," March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to "all source categories." PennFuture notes that EPA later objected to the $1500 per ton methodology as "not generically acceptable to EPA" [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a "dollar per ton threshold" is "inconsistent with the definition of RACT" [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. The commenter states that PennFuture's review of several of the current DEP evaluations indicate that the Commonwealth applied this standard and provides the examples of Duquesne Light—Elrama (auxiliary boiler); Allegheny Ludlum—Washington (formerly Jessop Steel). PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other "bright line" approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking (63 FR 13789) clearly indicates that the Commonwealth's document, "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions," March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking (63 FR 13789), in addition to the correspondence cited by PennFuture,

also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton " Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an "automatic" rejection of a control technology as RACT for a source."

In no instance, including that for Duquesne Light—Elrama (auxiliary boiler) and Allegheny Ludlum—Washington (formerly Jessop Steel), has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or Federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition to* any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC (63 FR at 23669), that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that "Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT." (62 FR at 43961). EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability (63 FR at 23670). Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for the Kosmos Cement Company and the Armstrong Cement & Supply Company. EPA is approving these RACT SIP submittals because ACHD and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The ACHD and PADEP has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for two named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth's source-specific RACT requirements to control VOC and/or NO_X from the Kosmos Cement Company and the Armstrong Cement & Supply Company located in the Pittsburgh -Beaver Valley nonattainment area of Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(160) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(160) Revisions pertaining to NO_X and/or VOC RACT for major sources, located in the Pittsburgh-Beaver Valley ozone nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on July 1, 1997, and April 9, 1999.

(i) Incorporation by reference.

(A) Letters dated July 1, 1997 and April 9, 1999, submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations.

(B) The following sources' Enforcement Order (EO) or Operating Permit (OP):

(*1*) Kosmos Cement Company, EO 208, effective December 19, 1996, except for condition 2.5.

(*2*) Armstrong Cement & Supply Company, OP 10–028, effective March 31, 1999.

(ii) Additional materials. Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(160)(i)(B) of this section.

[FR Doc. 01–25736 Filed 10–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4160; FRL–7081–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC RACT Determinations for Three Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for three major sources of volatile organic compounds (VOC). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 2, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink, (215) 814–2104 or by e-mail at *spink.marcia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1997, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several major sources of VOC and/or NO_X. This rulemaking pertains to three of those sources. The remaining sources are or have been the subject of separate rulemakings. The submittals consist of a plan approval and agreement upon consent order (Consent Order or CO) for each source issued by the Allegheny County Health Department (ACHD). The COs were submitted as SIP revisions by PADEP on behalf of ACHD. These three sources are located in the Pittsburgh area and consist of IDL, Incorporated; Oakmont Pharmaceutical, Inc.; and U.S. Air, Inc.

On August 10, 2001, EPA published a direct final rule (66 FR 42133) and a companion notice of proposed rulemaking (66 FR 42186) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 20, 2001 (66 FR 48348), we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 10, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 42186). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 10, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on twenty proposed rules published by EPA in the **Federal Register** between August 6 and August 24, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Pittsburgh area. PennFuture's letter includes general comments and comments specific to EPA's proposals for certain sources. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas*, 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs*, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements*. Under subsection 129.92, that proposal is to include, among other information: (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that "* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On August 24, 2001 (66 FR 44578), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Pittsburgh area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Pittsburgh-Beaver area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for only three sources located in the Pittsburgh area, namely for Duquesne Light's Elrama, Phillips and Brunot Island stations. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour "are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States" [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to "numeric emission limitations" under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each

RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Pittsburgh area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Pittsburgh area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options' (September 1993) and "Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options" (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the "automatic" selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish "bright line" or "cook-book" approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions," March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to "all source categories." PennFuture notes that EPA later objected to the $1500 per ton methodology as "not generically acceptable to EPA" [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a "dollar per ton threshold" is "inconsistent with the definition of RACT" [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. The commenter states that PennFuture's review of several of the current DEP evaluations indicate that the Commonwealth applied this standard and provides the examples of Duquesne Light'Elrama (auxiliary boiler); Allegheny Ludlum—Washington (formerly Jessop Steel). PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other "bright line" approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions." March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton "Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an "automatic" rejection of a control technology as RACT for a source."

In no instance, including that for Duquesne Light—Elrama (auxiliary boiler) and Allegheny Ludlum—Washington (formerly Jessop Steel), has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal

emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that "Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT." [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC RACT for three major sources located in the Pittsburgh area. EPA is approving these RACT SIP submittals because ACHD has established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The ACHD has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for three named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving source-specific RACT requirements to control VOC from IDL, OPI and USAir located in the Pittsburgh-Beaver Valley area of Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(162) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(162) Revisions pertaining to VOC RACT for IDL, Incorporated; Oakmont Pharmaceutical, Inc.; and USAir, Inc. located in the Pittsburgh-Beaver Valley ozone nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on July 1, 1997.

(i) Incorporation by reference.

(A) Letter submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC RACT determinations dated July 1, 1997.

(B) Plan Approval and Agreement Upon Consent Orders (COs) for the following sources:

(*1*) IDL, Incorporated, CO 225, effective July 18, 1996, except for condition 2.5.

(*2*) Oakmont Pharmaceutical, Inc., CO 252, effective December 19, 1996, except for condition 2.5.

(*3*) U.S. Air, Inc., CO 255, effective January 14, 1997, except for condition 2.5.

(ii) Additional materials. Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations submitted for the sources listed in paragraph (c)(162)(i)(B) of this section.

[FR Doc. 01–25729 Filed 10–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA101/178–4159; FRL–7083–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Four Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for four major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 2, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, (215) 814–2104, or by e-mail at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 6, 1995, September 13, 1996, and July 1, 1997, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several major sources of VOC and/or NO_X. This final rulemaking pertains to four of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of Plan Approvals (PAs) issued by PADEP and Plan Approvals and Agreement Upon Consent Orders (COs) issued by the Allegheny County Health Department (ACHD). These PAs and COs impose VOC and/or NO_X RACT requirements for each source. These sources are all located in the Pittsburgh area and consist of: Duquesne Light Company-Brunot Island Power Station; Duquesne Light Company-Cheswick Power Station; Duquesne Light Company—Elrama Plant; and the Pennsylvania Electric Company—Keystone Generating Station.

On August 10, 2001, EPA published a direct final rule (66 FR 42128) and a companion notice of proposed rulemaking (66 FR 42186) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 20, 2001 (66 FR 48348), we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 10, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 42186). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 10, 2001 direct final rule and will not be restated here.

The direct final rule (66 FR 42128) and companion notice of proposed rulemaking (66 FR 42186) pertained five major sources. In addition to proposing to approve RACT for Duquesne Light Company—Brunot Island Power Station; Duquesne Light Company—Cheswick Power Station; Duquesne Light Company—Elrama Plant; and the Pennsylvania Electric Company—Keystone Generating Station; EPA also proposed to approve RACT for Duquesne Light Company—Phillips Power Station. Phillips Station has ceased operations, and thus EPA is not approving a source-specific RACT determination for this facility. On April 15, 1999, Duquesne Light Company Inc.

entered into a Consent Order and Agreement with the Commonwealth of Pennsylvania, Department of Environmental Protection regarding NO_X Allowances for its five power stations located in Pennsylvania. Paragraph 4 on page 5 of that Consent Order states that the emission reductions resulting from the curtailment of operations at the Phillips Station are not eligible to be used to generate ERCs and cannot be used as creditable emission reductions in any NSR applicability determination (a process referred to as netting). The Pennsylvania DEP has submitted this signed and dated Consent Order and Agreement to EPA and it has been placed in Administrative Record for this final rulemaking. This Consent Order and Agreement makes approval of any NO_X RACT determination for the installations and operations at Phillips Station moot. If Duquesne (or any subsequent owner/operator) were to apply to recommence operations at Phillips Station, that restart would be subject to the Pennsylvania's SIP's applicable approved NSR program as though it were a new source. Under Pennsylvania's SIP-approved NSR program, the controls required of any such new source would, at a minimum, have to meet Best Available Technology (BAT) which must be at least as stringent as RACT.

II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on twenty proposed rules published by EPA in the **Federal Register** between August 6 and August 24, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Pittsburgh area. PennFuture's letter includes general comments and comments specific to EPA's RACT approvals for certain sources. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA responses are provided at II.A.–G. of this document.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum (Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)), PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information, (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that "* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On August 24, 2001 (66 FR 44578), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Pittsburgh area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Pittsburgh-Beaver area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by-case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt).*

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for only three sources located in the Pittsburgh area, namely for Duquesne Light's Elrama, Phillips and Brunot Island stations. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour "are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States" (63 FR 13789, 13791 (1998)) and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by-case RACT submissions, EPA has not demonstrated that these large boilers are subject to "numeric emission limitations" under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa. Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Pittsburgh area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Pittsburgh area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options' (September 1993) and "Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options" (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act (182(b)(2)(C)). This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 (182(b)(2)(A)). The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November

15, 1990 (182(b)(2)(B)). EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. *Comment:* PennFuture cites EPA correspondence (letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993) to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the "automatic" selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish "bright line" or "cook-book" approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions," March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to "all source categories." PennFuture notes that EPA later objected to the $1500 per ton methodology as "not generically acceptable to EPA" (letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997) and further stated in a **Federal Register** document that a "dollar per ton threshold" is "inconsistent with the definition of RACT" (62 FR 43134, 37–38 (1997)).

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. The commenter states that PennFuture's review of several of the current DEP evaluations indicate that the Commonwealth applied this standard and provides the examples of Duquesne Light—Elrama (auxiliary boiler); Allegheny Ludlum—Washington (formerly Jessop Steel). PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other "bright line" approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking (63 FR 13789) clearly indicates that the Commonwealth's document, "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions." March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking (63 FR 13789), in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA (letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997) stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton "* * * Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an "automatic" rejection of a control technology as RACT for a source."

In no instance, including that for Duquesne Light—Elrama (auxiliary boiler) and Allegheny Ludlum—Washington (formerly Jessop Steel), has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant (62 FR 43959 (1997); 63 FR 23668 (1998)) and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. (62 FR at 43961). Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC (63 FR at 23669), that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that "Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT." (62 FR at 43961). EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability (63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

G. Comment: PennFuture submitted comments specific to the case-by-case RACT determinations for three sources located in the Pittsburgh area, namely for Duquesne Light's Elrama, Phillips and Brunot Island Stations.

(1) Elrama Station—PennFuture comments that under Pennsylvania law, presumptive RACT for a coal-fired combustion unit with a rated heat input equal to or greater than 100 million Btu/hour is the installation and operation of low NO_X burners with separate overfire air (LNB-SOFA). 25 Pa.Code 129.93(b)(1), and that the Duquesne Light—Elrama Station has four boiler units subject to this standard. PennFuture cites intra-agency correspondence between EPA staff which states that the RACT proposal fails to demonstrate that the burner modification and the new design burners will result in emission reductions that are equivalent to conventional low NO_X burners. (Memo, Kelly Bunker, EPA, to David Campbell, EPA, November 25, 1997, p. 2) PennFuture's comment also acknowledges DEP correspondence which did provide its justification as to why the emission controls at Units 1–3 at Elrama are functionally equivalent to LNB–SOFA. (Letter Krishnan Ramamurthy, DEP, to David Campbell, EPA, May 13, 1998.) PennFuture asserts,

nonetheless, that DEP did not conduct a case-by-case RACT analysis and did not demonstrate that the emission rate for these burners would be equivalent to LNB–SOFA. Lastly, PennFuture cites current emissions data from EPA (see Table B1 of EPA's Emissions Scorecard 2000) suggesting that other large coal-burners in Pennsylvania that have applied LNB–SOFA are achieving significantly lower emissions rates for NO_X than Elrama Station.

Response: Subsection 129.93, entitled *Presumptive RACT emission limitations*, states at 129.93(a) that the owner or operator of a major NO_X emitting facility, may *elect* to comply with the presumptive RACT limitations of 129.93 as an alternative to developing and implementing a RACT emission limitation on case-by-case basis. For Elrama Station, Duquesne Light opted to submit a RACT proposal pursuant to the Subsections 129.91 and 129.92 rather than comply with the presumptive RACT requirements of 129.93. There is no requirement that its RACT proposal or the DEP's analysis conducted under 129.91 and 129.92 demonstrate that 0.5lbs of NO_X per MMBtu emission rate is equivalent to LNB–SOFA. Nonetheless, and as noted by PennFuture, the SIP submission does include DEP correspondence which does provide its justification as to why the emission controls at Units 1–3 at Elrama are functionally equivalent to LNB–SOFA. (Letter Krishnan Ramamurthy, DEP, to David Campbell, EPA, May 13, 1998.) EPA has reviewed the RACT proposal done by Duquesne Light, the analysis of that proposal by DEP, and finds that given the age, configuration and design of the specific boilers; the required installation of low NO_X burning systems, the associated modifications and the emission rate of 0.5lbs of NO_X per MMBtu imposed as NO_X RACT for the Elrama Station is approvable.

In its comments, PennFuture compares the 0.5 lbs of NO_X per MMBtu NO_X allowable emission rate imposed by the Commonwealth as RACT on the Elrama station (to be complied with by May 1995) to the current actual emissions data from other large coal burners in Pennsylvania (found in EPA's Emissions Scorecard in 2000). This direct comparison of Elrama's allowable RACT emission rate imposed for compliance by May of 1995 to actual year 2000 emissions data of other large coal burning sources in Pennsylvania is not an appropriate criterion by which to judge the approvability of that RACT allowable emission rate. Such a comparison fails to recognize that as of May 1999, such large coal burning sources in Pennsylvania have been subject to additional "post-RACT requirements" to reduce seasonal NO_X emissions under the NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the Ozone Transport Region (OTR). That rule's compliance date is May 1999. That regulation was approved as a SIP revision on June 6, 2000 (65 FR 35842). The current (and year 2000) actual emissions data from large coal burning sources in Pennsylvania reflect compliance with 25 Pa Code Chapters 121 and 123—not just RACT.

The Duquesne Light Company's Elrama Plant is also subject to additional requirements to reduce NO_X found at 25 PA Code Chapters 121, 123 and 145. Nothing in the approval of the case-by-case NO_X RACT determination for Elrama in any way relieves the facility from the applicable requirements of SIP-approved 25 PA Code Chapters 121, 123 and 145.

(2) Phillips Station—PennFuture comments that the DEP RACT evaluation for Duquesne Light—Phillips station takes the same approach as for Elrama, this time approving "low NO_X burning systems" with a high emission rate of .72 pounds per million Btu. PennFuture contends that although DEP reports that the four boilers are unusually configured, they are still large boilers subject to presumptive RACT of LNB-SOFA. PennFuture asserts that the source and DEP offer no demonstration that the approved emission rate is equivalent to that obtained by presumptive RACT. Finally PennFuture contends that EPA specifically rejected an emission rate of .72 pounds per million Btu for a coal-fired unit as "too high" and failing the RACT standard at the Penn Power—Newcastle plant. (62 FR 43959, 43961 (1997); 63 FR 23668 (1998)). For these reasons, PennFuture comments that EPA should disapprove the RACT proposal for Duquesne Light—Phillips station.

Response: Phillips Station has ceased operations, and thus EPA is not approving a source-specific RACT determination for this facility. On April 15, 1999, Duquesne Light Company Inc. entered into a Consent Order and Agreement with the Commonwealth of Pennsylvania, Department of Environmental Protection regarding NO_X Allowances for its five power stations located in Pennsylvania. Paragraph 4 on page 5 of that Consent Order states that the emission reductions resulting from the curtailment of operations at the Phillips Station are not eligible to be used to generate ERCs and cannot be used as creditable emission reductions in any NSR applicability determination (a process referred to as netting). The Pennsylvania DEP has submitted this signed and dated Consent Order and Agreement to EPA as an alternative to the case-by-case RACT SIP submission for Phillips Station and it has been placed in Administrative Record for this final rulemaking. This Consent Order and Agreement makes approval of any NO_X RACT determination for the installations and operations at Phillips Station moot. If Duquesne (or any subsequent owner/operator) were to apply to recommence operations at Phillips Station, that restart would be subject to the Pennsylvania's SIP's applicable approved NSR program as though it were a new source. Under Pennsylvania's SIP-approved NSR program, the controls required of any such new source would, at a minimum, have to meet Best Available Technology (BAT) which must be at least as stringent as RACT.

(3) Brunot Island Station (now owned by Orion Power Midwest, L.P.)—PennFuture comments that in its RACT determination for the Brunot Island plant's six units subject to NO_X RACT requirements (Units 2A, 2B, and 3, which have a potential to emit NO_X of over 3,300 tons per year each), DEP chose to bifurcate the technology review, analyzing operation and controls separately for the combined cycle combustion (CCC) and simple cycle combustion (SCC) modes. PennFuture asserts that DEP's approach improperly assumes that Brunot Island would have to make separate capital investments to apply control technology (in this case, wet injection) to the CCC and SCC modes. Considering these technologies in isolation, DEP concluded that wet injection is cost effective for CCC mode (while concluding that wet injection plus selective catalytic reduction would be cost prohibitive) and that wet injection was cost prohibitive for SCC mode at a maximum annual capacity of 23%. However, in practice, only one capital expenditure for wet injection would be required for this technology to reduce emissions during operation in either mode. Therefore, DEP should have evaluated either one capital expenditure as producing emission benefits in both modes, or only the marginal operating costs associated with wet injection during the SCC mode. PennFuture contends, therefore, that EPA must not approve the NO_X RACT determination for the Brunot Island plant submitted by DEP. Instead, EPA should require that DEP submit a RACT determination that properly considers the actual costs of applying wet injection to both operating modes.

Response: Pursuant to PennFuture's comment, EPA has re-reviewed the source-specific RACT determination for the Brunot Island Station and has conferred with both the Allegheny County Health Department (ACHD) and the Pennsylvania DEP. On March 5, 2001, the ACHD issued a Prevention of Significant Deterioration (PSD) Installation Permit to Orion Power Midwest, L.P. for its Major Modification of the Brunot Island Station (ACHD Permit 0056). The modification to Brunot Island consists of an increase in the capacity factor to 100% for the existing simple cycle combustion turbines, 2A, 2B, and 3 and the installation of three heat recovery steam generators (HRSGs). Under Permit 0056, only natural gas shall be combusted in the modified combustion turbines and their associated HRSGs, and these units will only operate in combined cycle mode. Fuel oil will no longer be used in these units. The required control device is water injection selective catalytic reduction (SCR). Each unit is limited to 11.8 lbs/hr of NO_X (based on a rolling 3-hr average) and to 51.7 tons per year. Total facility emissions from Units 2A, 2B and 3 shall not exceed 34.4 lbs of NO_X/hr (based on a rolling 3-hr average) and 156 tons per year. In all instances the permit defines a year as any 12 consecutive months.

Under Section V. 7 entitled, Additional Requirements, of Permit 0056 (pp 23 and 23), conditions related to the period of time prior to the modified units operating in the combined cycle mode are imposed. EPA believes that those requirements are RACT, and their requirements apply until the modified units are operating in combined cycle mode. Those requirements include a condition which states that Units 2A, 2B and 3 may combust natural gas in simple cycle mode during the time period commencing with first operation on natural gas and ending with first operation in combined cycle mode with a restriction that NO_X emissions not exceed 239.0 lbs/hr from each unit and 131.0 tons per year from all three units combined. A year is defined as any 12 consecutive months. The 239.0 lbs/hr restriction on each boiler represents a 70 percent reduction from its former 3,300 tons per year potential to emit. The 131.0 tons per year combined annual limit for all three boilers represents a 98.7 percent reduction from their combined former 9,900 tons per year potential to emit. Another condition states that Units 2A, 2B and 3 shall not operate in simple cycle mode on natural gas without controls after January 1, 2003, unless a revised RACT plan is approved. Any such revised plan would have to submitted to EPA for approval as a SIP revision. Another condition states that anytime after start-up of Unit 2A, 2B or 3 in combined cycle mode, that Unit shall not operate in simple cycle mode.

ACHD Permit 0056 has been submitted to EPA as part of the NO_X RACT SIP submittal for Brunot Island including the documentation that a public comment period and public hearing were conducted on the proposed PSD permit. The Major Modification Prevention of Significant Deterioration (PSD) Installation Permit issued to Orion Power Midwest, L.P. for its Major Modification of the Brunot Island Station, ACHD Permit 0056, on March 5, 2001 has been placed in the Administrative Record for this SIP revision and is being approved as part of the SIP. Therefore, the federally enforceable and applicable requirements governing emissions of NO_X from the Brunot Island Station are those imposed in permit 0056 issued on March 5, 2001 which EPA is approving as RACT for this source. As of the March 5, 2001 issuance of permit 0056 for Brunot Island, any ERCs generated would have to be surplus to the limits imposed in that permit.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and NO_X RACT for four major of sources located in the Pittsburgh area. EPA is approving these RACT SIP submittals because the ACHD and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The ACHD and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply. This rule does not impose an information collection burden under the provisions

of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for four named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth's source-specific RACT requirements to control VOC and NO_x from four power plants in the Pittsburgh area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(161) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(161) Revisions pertaining to NO_x and/or VOC RACT for major sources, located in the Pittsburgh-Beaver Valley ozone nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on January 6, 1995, September 13, 1996, and July 1, 1997.

(i) *Incorporation by reference.*

(A) Letters from the Pennsylvania Department of Environmental Protection dated January 6, 1995, September 13, 1996, and July 1, 1997, transmitting source-specific VOC and/or NO_x RACT determinations.

(B) The following companies' Plan Approvals (PA), or Consent Orders (CO):

(*1*) Duquesne Light Company's Cheswick Power Station, CO 217, effective March 8, 1996, except for condition 2.5.

(*2*) Duquesne Light Company's Elrama Plant, PA 63–000–014, effective December 29, 1994.

(*3*) Pennsylvania Electric Company's Keystone Generating Station, PA 03–000–027, effective December 29, 1994.

(ii) *Additional materials.*

(A) The federally enforceable Major Modification PSD Permit, ACHD Permit #0056, issued on March 5, 2001 to Orion Power Midwest L.P. for its Brunot Island Power Station (formerly owned by Duquesne Light Company).

(B) The Consent Order and Agreement, dated April 15, 1999, between the Commonwealth of Pennsylvania, Department of Environmental Protection and Duquesne Light Company, INC., regarding NO_x Allowances, which states that the emission reductions resulting from the curtailment of operations at the Phillips Station prior to April 15, 1999 are not eligible to be used to generate emission reduction credits (ERCs) and cannot be used as creditable emission reductions in any New Source Review (NSR) applicability determination.

(C) Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(161)(i)(B) of this section.

* * * * *

[FR Doc. 01–26263 Filed 10–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[ME–063–7012a; A–1–FRL–7085–5]

Clean Air Act Final Approval of Operating Permits Program; State of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to fully approve the Operating Permits Program of the State of Maine (program). Maine submitted its program for the purpose of complying with Clean Air Act (the Act) requirements for a state to develop a program to issue operating permits to all major stationary and certain other sources. EPA granted source category-limited interim approval to Maine's operating permit program on February 21, 1997. On September 28, 2001, EPA received Maine's revisions to its program that address the issues described in EPA's interim approval.

DATES: This direct final rule is effective on December 17, 2001 without further notice, unless EPA receives adverse comment by November 19, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Steve Rapp, Unit Manager, Air Permits Program Unit, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the state submittal and other supporting documentation relevant to this action, are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA—New England, One Congress Street, 11th floor, Boston, MA Region I.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, (617) 918–1657.

SUPPLEMENTARY INFORMATION:

I. Why Was Maine Required To Develop an Operating Permit Program?

Title V of the Clean Air Act (the Act), as amended (42 U.S.C. 7401 and 7661 *et seq.*), requires all states to develop an operating permit program and submit it to EPA for approval. EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and, if necessary, withdraw approval of state operating permit programs. See 57 FR 32250 (July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70.

Title V directs states to develop programs for issuing operating permits to all major stationary sources and to certain other sources. EPA's program review occurs pursuant to section 502 of the Act (42 U.S.C. 7661a) and the Part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program either partial or interim approval. See 40 CFR 70.4(d). EPA granted the State of Maine final interim approval of its program on February 21, 1997 (see 62 FR 7978), which became effective on March 24, 1997.

II. What Did Maine Submit To Meet the Title V Requirements?

Maine submitted a Title V operating permit program on October 23, 1995. In addition to regulations (Chapter 140 of the Department of Environmental Protection Regulations), the program submittal included a legal opinion from the Attorney General of Maine stating that the laws of the State provide adequate legal authority to carry out all aspects of the program, and a description of how the State would implement the program. The submittal additionally contained evidence of proper adoption of the program regulations, application and permit forms, and a permit fee demonstration. This program, including the operating permit regulations, substantially met the requirements of part 70.

III. What Was EPA's Action on Maine's 1995 Submittal?

EPA deemed the program administratively complete in a letter to the state dated December 29, 1995. On September 19, 1996, EPA proposed to grant interim approval to Maine's submittal. After responding to comments, EPA granted interim approval to Maine's submittal on February 21, 1997. In the notice granting interim approval, EPA stated that there were several areas of Maine's program regulations that would need to be amended in order for EPA to grant full approval of the state's program. EPA has been working closely with the state and has determined that the state has made all necessary rule changes for full approval. The following section contains details regarding the areas of Maine's regulations which the state changed to address EPA's interim approval issues.

IV. What Were EPA's Interim Approval Issues and Where Has Maine Amended its Regulation To Address the Interim Approval Issues?

1. Forty CFR 70.4(b)(12)(i) requires states to allow for facilities to make changes as required by Section 502(b)(10) of the Act, "Section 502(b)(10) changes" as defined in Part 70, with just a seven day notice. Chapter 140, section 8 and the relevant definitions in Chapter 100, sections 39 and 113 of the State's rule, adequately addresses the relevant sections of 40 CFR 70.4(b)(12) governing "Section 502(b)(10) changes."

2. Forty CFR 70.7(e)(2)(iv) requires the state to process minor permit modifications within 90 days of the state's receipt of the application. Chapter 140, section 9.B.2. requires the state to process "Part 70 Minor Change" within 90 days.

3. Forty CFR 70.7(e)(2)(iii) and 70.7(e)(2)(iv) require the state to notify EPA and affected states when a source applies for a minor permit modification. States are also required to give EPA 45 days to review any minor permit modification. Previously, Maine allowed sources to revise their permits though a procedure called "Part 70 Minor Revision" contained in Chapter 140, section 7, without EPA or affected state review of the modification. In its new rule, Maine has limited these "Part 70 Minor Revision" provisions so that they apply only to "state-only requirements." Chapter 140, section 7(A). Therefore, these minor revision procedures will not affect any permit terms used to implement applicable requirements under the Act.

4. Part 70 does not provide a state the option to write a permit condition that would allow a source, under limited circumstances, to continue to emit up to the previous licensed level for up to 24 months after the license is amended. In Chapter 140, Maine amended section 5(B)(6)(j) to limit this provision to "state requirements." EPA understands that Maine's intent is to limit the availability of these extended compliance schedules to those permit terms that are required only under state law. Therefore, these extended compliance schedules will not be available for any applicable requirement in the permit required under the Act.

5. Part 70 allows states to develop lists of activities that are considered insignificant and can be exempted from permits and permit applications, provided such activities are not needed to determine the applicability of or to impose an applicable requirement or evaluate the annual permit fee. See 40 CFR 70.5(c). Chapter 140, appendix B, contains the list of activities in Maine that were exempted from the program. This Appendix allowed an activity that emitted up to 4 tons of hazardous air pollutants (HAPs) to be listed as insignificant. EPA disagreed that such an activity could be considered insignificant. Therefore, Maine has amended Appendix B by lowering the HAPs threshold to one ton per year of total HAPs for any emission unit or activity. Chapter 140, appendix B, section B(1)(c). Maine also clarified in appendix B that exempt activities cannot emit more than the state's own thresholds for HAPs, which can be significantly less than one ton per year. Chapter 140, appendix B, sections B(1)(d) and C.

On February 21, 1997 (62 FR 7978), EPA proposed to add a sixth interim approval condition requiring the state to remove six activities from its list of insignificant activities. Even though EPA never finalized this issue as an interim approval condition, Maine has either removed or clarified the activities on the list of insignificant activities to address EPA's concerns. Specifically, Maine has removed the activities formerly listed as paper forming (1995 version of chapter 140, appendix B, section A(117)); vacuum system exhaust (1995 version of chapter 140, appendix B, section A(118)); and stock cleaning and pressurized pulp washing (1995 version of chapter 140, appendix B, section A(121)). Maine also limited the exemption for the following activities to include only emission units not subject to the pulp and paper MACT standards: Ssewer manholes, junction boxes, sumps, and lift stations associated with wastewater treatment (2001 version of chapter 140, appendix B, section A(97)); and broke beaters, repulpers, pulp and repulping tanks, stock chests and bulk pulp handling (2001 version of chapter 140, appendix B, section A(84)). The activity described formerly as "liquor clarifier and storage tanks and associated pumping, piping, and handling" (1995 version of chapter 140, appendix B, section A(114)) has been limited to clarifiers, storage tanks and associated pumping, piping, and handling for white liquor (2001 version of chapter 140, appendix B, section (88)). White liquor handling is currently unregulated by the pulp and paper MACT standard. EPA has determined that the state has either eliminated or appropriately limited the exemptions

we proposed to list as interim approval issues.

V. What Action Is EPA Taking Today?

EPA is taking final action to fully approve the State's operating permit program because the State of Maine's program now fulfills the requirements of part 70. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. In the proposed rules section of this **Federal Register** publication, however, EPA is publishing a separate document that will serve as the proposal to grant full approval should relevant adverse comments be filed. This action will be effective December 17, 2001 unless the Agency receives relevant adverse comments by November 19, 2001.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. EPA will address all public comments it receives in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If EPA receives no such comments, the public is advised that this action will be effective on December 17, 2001.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2001. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 6, 2001.

Robert W. Varney,

Regional Administrator, EPA New England.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by revising the entry for Maine to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Maine	(b) [Reserved]
(a) Department of Environmental Protection: submitted on October 23, 1995; source-category limited interim approval effective on March 24, 1997; full approval effective December 17, 2001.	

* * * * *

[FR Doc. 01–26099 Filed 10–17–01; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 66, No. 202
Thursday, October 18, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13, 61, 119, 125, 135, and 142

[Docket No. FAA–2001–10047; Notice No. 01–11]

RIN 2120–AH06

Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment periods for an NPRM that was published on July 18, 2001. In that document, the FAA proposed to update and revise the regulations governing operations by aircraft in fractional ownership programs. This extension is a result of several requests to extend the comment period to the proposal.

EFFECTIVE DATE: Comments must be received on or before November 16, 2001.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–2001–10047, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address; *http://dms.dot.gov* at any time. Commenters who wish to file comments electronically, should follow the instructions on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Katherine Hakala Perfetti, Flight Standards Service (AFS–200), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 267–3760; or e-mail: *kakatherine.perfetti@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we received, as well as report summarizing each substantive public contact with FAA personnel concerning this proposal rulemaking. The docket is available for inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed date if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On July 18, 2001, the Federal Aviation Administration (FAA) issued Notice No. 01–08, Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations (66 FR 37520, 7/18/2001). This notice provided for a 90-day comment period. Comments pertaining to the document were to be received on or before October 16, 2001.

Several petitioners have requested an extension of the comment period. An individual petitioner requested a nine-month extension by letter dated July 15, 2001. The National Air Transportation Association and the National Business Aviation Association, by letters dated October 1 and October 3, 2001, respectively, requested the FAA to extend the comment period for Notice No. 01–08 for 30 days. By letter dated October 3, 2001, the National Transportation Safety Board requested a 90-day extension. The three recent requests cited the national security events that occurred on September 11, 2001 to support their requests for an extension. The petitioners mentioned that the recent events demanded a significant diversion of resources, making it difficult to provide well-developed, thoughtful comments on the proposed regulation. These events also raised safety issued that may need to be addressed during the comment period.

The FAA acknowledges that the tragic events of September 11 have required the nation's attention and concurs with the petitioners' requests that it is appropriate to extend the comment period on Notice No. 01–08. The need for additional time for thoughtful comment must be balanced against the need to proceed expeditiously with a rulemaking that will maintain a high standard of safety for the fractional aircraft ownership industry. The FAA believes an additional 30 days would be adequate for the petitioners to provide meaningful comment to Notice No. 01–08. This will also allow commenters who may have anticipated an extension in the comment periods to submit their comments by a certain date. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with § 11.47 of Title 14, Code of Federal Regulations, the FAA has reviewed the requests for extension of the comment period to Notice No. 01–08. These petitioners have shown a substantive interest in the proposed rule and good cause for the extension. The FAA also have determined that an extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 01–08 is extended until November 16, 2001.

Issued in Washington, DC, October 10, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

[FR Doc. 01–26226 Filed 10–17–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL–071–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposes revisions to and additions of regulations concerning valid existing rights. Alabama intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Alabama program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., c.d.t., November 19, 2001. If requested, we will hold a public hearing on the amendment on November 13, 2001. We will accept requests to speak at the hearing until 4 p.m., c.d.t. on November 2, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Arthur W. Abbs, Director, Birmingham Field Office, at the address listed below.

You may review copies of the Alabama program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office.

Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282.

Alabama Surface Mining Commission, 1811 Second Avenue, P.O. Box 2390, Jasper, Alabama 35502–2390, Telephone (205) 221–4130.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290–7282. Internet: *aabbs@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program on May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 20, 1982, **Federal Register** (47 FR 22062). You can find later actions on the Alabama program at 30 CFR 901.15 and 901.16.

II. Description of the Proposed Amendment

By letter dated August 29, 2001 (Administrative Record No. AL–0647), Alabama sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Alabama sent the amendment in response to our letter dated August 23, 2000 (Administrative Record No. AL–0644), that we sent to Alabama under 30 CFR 732.17(c). Alabama proposes to amend the Alabama Surface Mining Commission (ASMC) Rules. Below is a summary of the changes proposed by Alabama. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES.**

A. 880–X–2A–.06, Definitions

Alabama proposes to add a definition for "significant recreational, timber, economic, or other values incompatible with surface coal mining operations." Alabama also proposes to revise its definition of "valid existing rights."

B. 880–X–7B–.06, Areas Where Surface Coal Mining Operations Are Prohibited or Limited

Alabama proposes to revise the language in this section to describe the lands where surface coal mining operations may not be conducted, except as provided under 880–X–7B–.11 and 880–X–7B–.07.

C. 880–X–7B–.07, Exception for Existing Operations

Alabama proposes to revise the language in this section to describe those surface coal mining operations that the provisions of 880–X–7B–.06 do not apply.

D. 880–X–7B–.08, Procedures for Compatibility Finding for Surface Coal Mining Operations on Federal Lands in National Forests

Alabama proposes to add this new section to describe the procedures an applicant for a surface coal mining operation permit and the regulatory authority must follow when an applicant intends to claim the exception provided in 880–X–7B–.06(b) to conduct surface coal mining operations on Federal lands within a national forest.

E. 880–X–7B–.09, Procedures for Relocating or Closing a Public Road or Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road

Alabama proposes to add this new section to describe the procedures an applicant for a surface coal mining operation permit and the regulatory authority must follow when an applicant proposes to relocate or close a public road, or conduct surface coal mining operations with 100 feet, measured horizontally, of the outside right-of-way line of a public road.

F. 880–X–7B–.10, Procedures for Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of an Occupied Dwelling

Alabama proposes to add this new section to describe the procedures applicants for surface coal mining operation permits must follow when they propose to conduct surface coal mining operations within 300 feet, measured horizontally, of any occupied dwelling.

G. 880–X–7B–.11, Submission and Processing of Requests for Valid Rights Determinations

Alabama proposes to add this new section to describe the procedures applicants for surface coal mining operation permits must follow when requesting a valid existing rights determination. This section also describes the procedures the regulatory authority will follow when making a valid existing rights determination.

H. 880–X–7B–.12, Regulatory Authority Obligations at Time of Permit Application Review

Alabama proposes to add this new section to describe the procedures the regulatory authority must follow when it receives an administratively complete application for a permit for a surface coal mining operation, or an administratively complete application for revision of the boundaries of a surface coal mining operation permit.

I. 880–X–8C–.05, Exploration: General Requirements for Removal of More Than 250 Tons and Disturbance of More Than One-Half Acre or on Lands Designated Unsuitable for Surface Mining Operations

Section 880–X–8C–.05 requires any person who intends to conduct coal exploration outside a permit area to apply for a permit. Alabama proposes to add new paragraph 880–X–8C–.05(1)(g) to require applicants for a coal exploration permit to submit, as part of their permit application, a demonstration that, for those lands listed at 880–X–7B–.06, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. Furthermore, applicants must provide documentation that they have consulted with the owner of the feature causing the land to come under the protection of 880–X–7B–.06, as well as the regulatory authority with primary jurisdiction over the feature, when applicable.

J. 880–X–8C–.06, Applications: Approval or Disapproval of Exploration of More Than 250 Tons

Section 880–X–8C–.06 describes the procedures the regulatory authority must follow when it receives an application for a coal exploration permit. Alabama proposes to add new paragraph 880–X–8C–.06(2)(e) to require the regulatory authority to find, prior to approving a coal exploration permit, that the applicant has demonstrated that, for those lands listed at 880–X–7B–.06, the exploration and reclamation described in the application minimizes interference with the values for which those lands were designated as unsuitable for surface coal mining operations. Furthermore, the regulatory authority must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of 880–X–7B–.06, as well as the regulatory authority with primary jurisdiction over the feature, to comment on whether the finding is appropriate.

K. 880–X–8D–.08, Relationship to Areas Designated Unsuitable for Mining

Alabama proposes to revise the language in paragraph 880–X–8D–.08(3) to require those applicants for surface coal mining operation permits that propose to conduct surface coal mining operations within 100 feet of a public road or within 300 feet of an occupied dwelling to meet the requirements of 880–X–7B–.09 or 800–X–7B–.10, respectively.

L. 800–X–8F–.14, Protection of Public Parks and Historic Places

Alabama proposes to revise the language in paragraph 880–X–8F–.14(1)(b) to read as follows:

> (b) If a person has valid existing rights, as determined under Rule 880–X–7B–.11 of these regulations, or if joint regulatory authority approval is to be obtained under Rule 880–X–7B–.12(d) of these regulations, to minimize adverse impacts.

M. 880–X–8I–.15, Relocation or Use of Public Roads

Alabama proposes to revise the reference in the introductory language of this section from "880–X–7B–.07(4)" to "880–X–7B–.09."

N. 880–X–8K–.05, Public Participation in Permit Processing

Alabama proposes to revise the reference in paragraph 880–X–8K–.05(1)(a)5 from "880–X–7B–.07(4)" to "880–X–7B–.09."

O. 880–X–8K–.10, Review of Permit Applications

Alabama proposes to remove the phrase "and section 880–X–7B–.07" from the language found in paragraph 880–X–8K–.10(3)(c)2.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Alabama program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. AL–071–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Birmingham Field Office at (205) 290–7282.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Birmingham Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on November 2, 2001. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at the public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

If you are disabled and need a special accommodation to attend a public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of this section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866, and because it is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5. U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 2001.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 01–26269 Filed 10–17–01; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[ME–063–7012b; A–1–FRL–7085–6]

Clean Air Act Final Approval of Operating Permits Program; State of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to fully approve the Operating Permits Program for the State of Maine (program) for the purpose of complying with Federal requirements. The program requires the state to issue operating permits to all major stationary sources and certain other sources. In the Final Rules Section of this **Federal Register**, EPA is approving the state's program submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no relevant adverse comments in response to this action, the Agency contemplates no further activity. If EPA receives adverse comments, EPA will withdraw the direct final rule and the Agency will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before November 19, 2001.

ADDRESSES: Comments may be mailed to Steven A. Rapp, Unit Manager, Air Permits Program Unit, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the state submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England Regional Office, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, (617) 918–1657.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: October 6, 2001.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 01–26100 Filed 10–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AZ056–OPP; FRL–7086–6]

Clean Air Act Proposed Full Approval of Operating Permit Programs; Maricopa County Environmental Services Department, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Maricopa County Environmental Services Department (Maricopa or District) operating permit program. The Maricopa operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to the Maricopa operating permit program on October 30, 1996 (61 FR 55910). The District has revised its program to satisfy the conditions of the interim approval and this action proposes approval of those revisions and certain other revisions made since interim approval was granted. EPA is proposing full approval of the Maricopa operating permits program based on the revisions submitted on September 7, 2001.

DATES: Comments on the program revisions discussed in this proposed action must be received in writing by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Acting Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. You can inspect copies of Maricopa's submittal and other supporting documentation relevant to this action during normal business hours at the Air Division of EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. You may also see copies of the submitted title V program at the following location:

Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1252 or *vagenas.ginger@epa.gov*.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

I. What is the operating permit program?
II. What is EPA's proposed action?
III. What are the program changes that EPA is approving?
IV. What is the effect of this proposed action?

I. What Is the Operating Permit Program?

The CAA Amendments of 1990 required all District and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve compliance by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the national ambient air quality standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "serious," major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

II. What Is EPA's Proposed Action?

Because the operating permit program originally submitted by Maricopa substantially, but not fully, met the

criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval to the program in a rulemaking published on October 30, 1996 (61 FR 55910). The interim approval notice described the conditions that had to be met in order for the Maricopa program to receive full approval. Today's **Federal Register** notice describes the changes Maricopa has made to its operating permit program to correct conditions and obtain full approval.

EPA is proposing full approval of the operating permits program submitted by Maricopa based on the revisions submitted on September 7, 2001. These revisions satisfactorily address the program deficiencies identified in EPA's October 30, 1996 rulemaking. *See* 61 FR 55910. EPA is also proposing to approve, as a title V operating permit program revision, certain additional changes to the rules that have been made since Maricopa was granted interim approval. The interim approval issues, Maricopa's corrections, and the additional changes EPA is proposing to approve are described below under the section entitled, "What are the program changes that EPA is approving?"

III. What Are the Program Changes That EPA Is Approving?

A. Corrections to Interim Approval Issues

In its October 30, 1996 rulemaking, EPA made full approval of Maricopa's operating permit programs contingent upon the correction of a number of interim approval issues. Each issue, along with the District's correction, is described below.

1. Rule deficiency: Maricopa's definition of "Building, Structure, Facility, or Installation" includes the caveat that, "[p]roperties shall not be considered contiguous if they are connected only by property upon which is located equipment utilized solely in transmission of electrical energy." This language, which is linked to the District's definition of stationary source, is not consistent with the stationary source definition in § 70.2. In order to correct this deficiency, EPA required that the district delete the language from Regulation I, Rule 100, section 224 (the definition of "Building, Structure, Facility, or Installation").

Rule change: The "Building, Structure, Facility, or Installation" definition has been revised to correct the deficiency. The definition now reads: "All the pollutant-emitting equipment and activities that belong to the same industrial grouping, that are located on one or more contiguous or adjacent properties, and that are under the control of the same person or persons under common control, except the activities of any vessel. Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" as described in the "Standard Industrial Classification Manual, 1987."

2. Rule deficiency: Regulation I, Rule 100, section 251.2 (part of the definition of "major source") did not clearly require that fugitive emissions of HAPs be included when determining a source's potential to emit. In order to correct the deficiency, the definition needed to be revised so that it would be clear that fugitive emissions of HAPs must be considered in determining whether the source is major for purposes of both the 10 ton per year and 25 ton per year HAP major source thresholds. See 40 CFR 70.2.

Rule change: The definition of major source has been revised to correct the deficiency. It now defines a major source under section 112 of the CAA to include, "for pollutants other than radionuclides, any stationary source that emits, or has the potential to emit, in the aggregate *and including fugitive emissions*, 10 tons per year or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the CAA, 25 tons per year of any combination of such hazardous air pollutants * * *. " (Emphasis added.)

3. Rule deficiency: Part 70 requires that certain records must be retained for five years. See § 70.6(a)(3)(ii)(B). In order to ensure this provision is implemented, EPA required that Regulation I, Rule 100, section 505 be revised to clarify that for title V sources, records of all required monitoring data and support information must be retained for a period of five years, as provided in Regulation II, Rule 210, section 302.1(d)(2).

Rule change: Maricopa has resolved this issue by amending Regulation I, Rule 100, section 505 to require that "[i]nformation and records required by applicable requirements and copies of summarizing reports recorded by the owner and/or operator and submitted to the Control Officer shall be retained by the owner and/or operator for 5 years after the date on which the information is recorded or the report is submitted. Non-title V sources may retain such information, records, and reports for less than 5 years, if otherwise allowed by these rules."

4. Rule deficiency: In order to ensure that the permits are available to the public, EPA required that Maricopa revise Regulation I, Rule 100, section 506 to clarify that for title V sources, all permits, including all elements of permit content specified in Rule 210, section 302, shall be available to the public, as provided in Regulation II, Rule 200, section 411.1. See § 70.4(b)(3)(viii).

Rule change: Regulation I, Rule 100 now specifies under section 402.1 that "[t]he Control Officer shall make all permits, including all elements required to be in the permit under rule 210 (Title V Permit Provisions) of these rules and Rule 220 (Non-Title V Permit Provisions) of these rules, available to the public."

5. Rule deficiency: In its interim approval, EPA noted that Maricopa's provisions regarding applicability needed to be clarified. In order to correct these deficiencies, EPA required that Maricopa revise Regulation II, Rule 200, section 312.2 to define when sources become subject to the requirements of Title V. In addition, EPA required that the District revise section 312.5 to require existing sources that do not hold a valid installation or operating permit to submit an application within 12 months of becoming subject to the requirements of title V.

Rule change: Maricopa added a new section 312.2 to Regulation II, Rule 200. The rule now reads, "[f]ollowing November 29, 1996, the effective date of the Environmental Protection Agency's (EPA's) final interim approval of Maricopa County's Title V permit program, a source becomes subject to the requirements of the Title V permit program, when the source meets the applicability requirements as provided in this rule." Regulation II, Rule 200, section 312.5(c) has been amended to require that "[a]ll sources in existence on the date these rules become effective and not holding a valid installation permit and/or a valid operating permit issued by the Control Officer, which have not applied for a Title V permit pursuant to these rules, shall submit to the Control Officer a title V permit application no more than 12 months after becoming subject to title V permit requirements."

6. Rule deficiency: In its initial program, Maricopa's Regulation II, Rule 210, section 301.5(g) allowed any emissions source, equipment, or item listed under Regulation II, Rule 200, section 303.4(c) to be treated as "insignificant." That is, applicants were not required to provide emissions data regarding the items listed under 303.4(c). Part 70 does allow certain equipment to be treated in this manner, but requires that the list be part of the approved title V program (§ 70.5(c)) and

that the permitting authority submit a demonstration that the activities are truly insignificant. See § 70.4(b)(2). Maricopa's failure to provide a demonstration that the activities listed in Regulation II, Rule 200, section 303.4(c) are insignificant was identified by EPA as an interim approval issue. EPA noted that Maricopa could correct the deficiency by removing from the list any activities that are subject to a unit-specific applicable requirement or by adding emissions cut-offs or size limitations to ensure that the listed activities are below any applicability thresholds for applicable requirements.

Rule changes: To correct the deficiency, Maricopa has submitted a demonstration and made changes to the following rules: (1) Regulation I, Rule 100, section 200.58; (2) Regulation II, Rule 200, section 308.1; (3) Regulation II, Rule 210, section 301.4(h); and (4) appendix D.

The first change is the addition of a definition of insignificant activity at Regulation I, Rule 100 section 200.58. It specifies that in order to be treated as an insignificant activity, an activity, process, or emissions unit cannot emit more than two tons per year of a regulated air pollutant, one-half ton per year of a hazardous air pollutant, and may not be subject to a source-specific applicable requirement. In addition, the activity must either be listed in appendix D or approved by the District and EPA as meeting the criteria for treatment as an insignificant activity.

The second change, at Regulation II, Rule 200, section 308.1, sets out how insignificant activities may be addressed in applications. Insignificant activities may be listed and generally grouped, and detailed information about the activities need not be supplied. It also provides that in its application a source may request that certain activities be treated as insignificant. Finally, it includes a caveat that, notwithstanding the provisions of the rules regarding insignificant activities, the following types of information may not be omitted from any application: information needed to determine the applicability of or to impose any requirement; information needed to determine the compliance status of the source; or information needed to determine the amount of fees the source must pay.

The third change, at Regulation II, Rule 210, section 301.4(h), occurs in the District's provisions regarding permit application processing procedures. It requires that, to be complete, an application must include a listing of insignificant activities.

The fourth change is the inclusion of appendix D, which is a list of activities that the District has determined may be treated as insignificant in accordance with the criteria set out in the definition of insignificant activity in Regulation I, Rule 100. It also reiterates the provisions of Regulation II, Rule 200, section 308.1 that require the applicant provide all information necessary to determine the applicability of requirements, to determine compliance, and to impose fees. The District included in its submittal a demonstration that the listed activities qualify for treatment as insignificant.

7. Rule deficiency: Section 70.6(a)(8) requires that title V permits contain a provision that "no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit." Regulation II, Rule 210, section 302.1(j) included this exact provision but also included a sentence that negated this provision. EPA required that Maricopa either delete or revise the negating sentence to make the rule consistent with part 70.

Rule change: The problematic sentence has been deleted from the District's rule.

8. Rule deficiency: Section 70.4(b)(12) allows sources to make changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit. The District's rules provided for such permit conditions but did not restrict the allowable changes to those that are not modifications under title I of the Act and those that do not exceed the emissions allowable under the permit. Maricopa was required to revise Regulation II, Rule 210, section 302.1(n) to add these conditions. In addition, EPA required that Maricopa revise this provision to specify that the notice required by sections 403.4 and 403.5 will also describe how the increases and decreases in emissions will comply with the terms and conditions of the permit. See § 70.4(b)(12).

Rule change: Regulation II, Rule 210, section 302.1(n) has been revised to correct the deficiency by including the following language: "Changes made under this subsection shall not include modifications under any provision of title I of the Act and may not exceed emissions allowable under the permit. The terms and conditions shall include notice that (1) conforms to subsection 403.4 and subsection 403.5 of this rule and (2) describes how the increases or decreases in emission will comply with the terms and conditions of the permit."

9. Rule deficiency: Maricopa's Regulation II, Rule 210, section 404.1(e) provided that equipment removal that does not result in an increase in emissions could be processed as an administrative permit amendment. Equipment removal, even if it does not result in an increase in emissions, is not similar to the types of changes that EPA has included in the part 70 definition of "administrative permit amendment." In some cases removal of equipment, such as monitoring equipment, will require processing as a significant permit revision. In other situations removal of equipment may qualify for processing as a minor permit revision or possibly for treatment under the operational flexibility provisions. See §§ 70.7(d) and 70.7(e)(4). In order to correct the deficiency, EPA required that Maricopa remove this provision from the list of changes that may be processed as administrative amendments.

Rule change: Section 404.1(e) of Regulation II, Rule 210 has been deleted.

10. Rule deficiency: The following language was included in Maricopa's Regulation II, Rule 210, section 405.1(c) as an exception to the prohibition against allowing case-by-case determinations to be processed as minor permit revisions:

"* * * other than a determination of RACT pursuant to Rule 241, Section 302 of these rules * * *."

The definition of RACT in section 272 of Rule 100 states that, "RACT for a particular facility, other than a facility subject to Regulation III, is determined on a case-by-case basis * * *" Rule 241 is not in Regulation III, so RACT determinations made pursuant to this rule are done so on a case-by-case basis. Excepting RACT determinations from the prohibition against processing case-by-case determinations through the minor permit revision process violates the requirement of § 70.7(e)(2)(i)(A)(3). To correct this deficiency, EPA required that exception for case-by-case RACT determinations be deleted from the rule.

Rule change: The specified language has been deleted.

11. Rule deficiency: Section 70.7(h)(1) requires that permitting authorities provide public notice of certain types of permit actions. In addition to requiring newspaper notices and mailing list notification, part 70 includes a requirement that notice be provided "by other means if necessary to assure adequate notice to the affected public." Because Maricopa's rules lacked such a provision, EPA required that the District revise Regulation II, Rule 210, section 408 to include it.

Rule change: Section 408.3(c) has been added. It requires that "[t]he Control Officer shall give notice by any other means if necessary to assure adequate notice to the affected public."

B. Other Changes

The rules the District has submitted for EPA approval incorporate extensive changes other than those necessary to correct interim approval deficiencies. Because of time constraints, we have limited our review to those sections that include interim approval issues. In this action EPA is, where possible, proposing to approve as a title V operating permit program revision additional program changes that are included in sections that were revised to correct interim approval issues or are relied upon or cross-referenced by those sections. EPA is not taking action on rules or sections that are not listed in Table 1, below.

One of these changes requires special explanation. Paragraph (c) of Maricopa's definition of major source lists source categories that must count fugitives. Maricopa revised subparagraph xxvii to read: "All other stationary source categories regulated by a standard promulgated as of August 7, 1980 under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category." Emphasis added. The addition of this 1980 cutoff date restricts the types of sources that are required to count fugitives towards the major source threshold, which is inconsistent with the current version of part 70. EPA has, however, proposed a revision to part 70's major source definition that will incorporate the 1980 cutoff date. See 60 FR 45530 (August 31, 1995). We are therefore proposing to approve the District's definition of major source contingent upon EPA finalization of revisions to 40 CFR part 70 that will make the change approvable. If EPA does not finalize the changes to part 70 described above, Maricopa's major source definition will conflict with the operative version of part 70 and we will be unable to approve it. The remedy to one of Maricopa's interim approval issues (described above under III.A.2) resides within that same definition, so if we are barred from approving Maricopa's new major source definition because of the 1980 date, we will be unable to grant full approval to Maricopa's title V program. As a result, Maricopa would lose its authority to implement its title V operating permits program on December 1, 2001, and part 71 would be in effect.

Maricopa made a number of additional changes to the rules that implement their part 70 program, many of which were non-substantive (e.g., recodifications) or apply only to non-title V sources. A general description of the more substantive changes we are proposing to approve follows. For more detail on the all of the changes, refer to the technical support document.

Maricopa added new provisions to its rules that address the concept of trivial activities. EPA's title V implementation guidance document, "White Paper for Streamlined Development of Part 70 Permit Applications," (July 10, 1995) explains that the inherent flexibility in § 70.5(c) "encompasses the idea that certain activities are clearly trivial (i.e., emissions units and activities with specific applicable requirements and with extremely small emissions) can be omitted from the application even if they are not included on a list of insignificant activities approved in a State's part 70 program pursuant to § 70.5(c)." Maricopa's treatment of trivial activities matches that of EPA's guidance. EPA is therefore proposing to approve the District's provisions regarding trivial activities.

In addition to the change that corrects an interim approval issue related to public availability of information (described above under II.A.4), Maricopa has made other changes to its provisions that pertain to the confidentiality of records and has amended the definition of trade secret. The revised confidentiality of information procedures, in conjunction with the revised definition of trade secret, include the following key elements: (1) The presumption is that information is public unless a source notifies the Control Officer in writing that it is making a claim of confidentiality; (2) information cannot be withheld from the Control Officer; and (3) emissions information cannot be considered confidential. EPA finds these additional changes to Maricopa's confidentiality provisions and to the definition of trade secret to be consistent with § 70.4(b)(3)(viii) and therefore approvable.

The emergency provisions that implement § 70.6(g) have been modified by the District to include a requirement that in the event of an emergency a source must notify the Control Officer by telephone as soon as possible. The rule did not previously require telephone notification, and this change ensures that the District will be notified more promptly than would have been the case under the older version of the rule.

Maricopa has also added language that clarifies that sources must obtain an air quality permit before beginning to construct. Because Maricopa's title V and preconstruction permitting programs are merged into a unitary permitting system, this approach is consistent with part 70.

IV. What Is the Effect of This Proposed Action?

Maricopa has adopted and submitted rule changes and requested program revisions that address the issues identified in EPA's interim approval and are described above. The rules proposed for approval today listed in Table 1.

TABLE 1

Rule No.	Rule title and specific sections proposed for approval	Adoption date
Regulation I, Rule 100	General Provisions and Definitions— • The following provisions from § 200 Definitions: § 200.26 "Building, Structure, Facility, or Installation" § 200.58 "Insignificant Activity" § 200.60 "Major Source" § 200.107 "Trade Secret" § 200.108 "Trivial Activity" • § 402, Confidentiality of Information • § 500 Monitoring of Records	8/22/01
Regulation I, Rule 130	Emergency Provisions	7/26/00
Regulation II Rule 200	Permit Requirements • § 308—Standards for Applications • § 312—Transition from Installation and Operating Permit Program to Unitary Permit Program	8/22/01

TABLE 1—Continued

Rule No.	Rule title and specific sections proposed for approval	Adoption date
Regulation II, Rule 210	Title V Permit Provisions • § 301.4(h) • § 302.1(j) • § 302.1(n) • § 404—Administrative Permit Amendments • § 405.1 • § 408—Public Participation	2/7/01
Appendix D	List of Insignificant Activities	8/22/01
Appendix E	List of Trivial Activities	8/22/01

As noted above, Maricopa has adopted and submitted the required changes and has fulfilled the conditions of the interim approval granted on October 30, 1996 (61 FR 55910). EPA is therefore proposing full approval of the Maricopa operating permit program, contingent on EPA finalizing its proposed change to the part 70 definition of major source.

Request for Public Comments

EPA requests comments on the program revisions discussed in this proposed action. Copies of the Maricopa submittal and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 19, 2001.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves District law as meeting federal requirements and imposes no additional requirements beyond those imposed by District law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under District law and does not impose any additional enforceable duties beyond that required by District law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the Districts, on the relationship between the national government and the Districts, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under District law, and does not alter the relationship or the distribution of power and responsibilities between the District and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing District operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve District programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the District to use voluntary consensus standards (VCS), EPA has no authority to disapprove a District operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program , to use VCS in place of a District program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 5, 2001.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26264 Filed 10–17–01; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 66, No. 202
Thursday, October 18, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and should be made subject to the provisions of the Packers and Stockyards Act (Act), 1921, as amended (7 U.S.C. 181 *et seq.*).

KY–177 Mayfield Auction Barn, Mayfield, Kentucky
SC–159 Hendrix Horse Auction, Hartsville, South Carolina

Pursuant to the authority under section 302 of the Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Office of Policy/Litigation Support, Grain Inspection, Packers and Stockyards Administration, Room 1521, South Building, U.S. Department of Agriculture, Washington, DC 20250–3646, by November 2, 2001.

All written submissions made pursuant to this notice will be made available for public inspection in the Office of the Director of the Office of Policy/Litigation Support during normal business hours.

Done at Washington, DC this 23rd day of August 2001.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 01–26271 Filed 10–17–01; 8:45 am]

BILLING CODE 3410–EN–U

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 8 p.m. on November 15, 2001, at the Crowne Plaza Birmingham, 2101 Fifth Avenue North, Birmingham, Alabama 35203. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 11, 2001.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 01–26221 Filed 10–17–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 4 p.m. and adjourn at 7 p.m. on November 1, 2001, at the Arlington Resort Hotel and Spa, 239 Central Avenue, Hot Springs, Arkansas 71902. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 11, 2001.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 01–26222 Filed 10–17–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 7 p.m. and adjourn at 8:30 p.m. on Tuesday, October 30, 2001, at the Best Western Billings, 5610 Frontage Road, Billings, Montana 59101. The purpose of the meeting is to review the recent statewide and local developments regarding education and civil rights issues in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 11, 2001.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 01–26220 Filed 10–17–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 10:30 a.m. and recess at 12 p.m., on Friday, November 16, 2001, at the Sheraton Four Points, 1450 So. Hilton Drive, St. George, Utah 84770, to review regional and statewide civil rights issues, and discuss format and procedures for conducting a community forum. The Advisory Committee will reconvene for a community forum at 1:45 p.m. and adjourn at 6:30 p.m. to hear presentations from representatives of local, state, and federal agencies concerning services they provide to the minority community.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 11, 2001.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 01–26223 Filed 10–17–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on Friday, November 2, 2001, at the Blue Cross/Blue Shield of Vermont, Third Floor Conference Room, 1 East Road, Berlin, Vermont 05601. The Committee will hold a planning meeting to review its draft project proposal, discuss future coordination with educational leaders, and plan its next project activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 11, 2001.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 01–26224 Filed 10–17–01; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–836]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Live Processed Blue Mussels From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 18, 2001.

FOR FURTHER INFORMATION CONTACT: Zev Primor at (202) 482–4114, Maisha Cryor at (202) 482–5831 or Paige Rivas at (202) 482–0651, AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that live processed blue mussels from Canada are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on April 6, 2001.[1] *See Notice of Initiation of Antidumping Investigation: Live Processed Blue Mussels From Canada*, 66 FR 18227 (April 6, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On April 25, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Canada of mussels. *See Mussels From Canada*, 66 FR 85 (May 2, 2001).

On May 8, 2001, in response to comments from interested parties pertaining the scope of the investigation, the Department issued a memorandum outlining the modifications to the scope language. *See* Memorandum to Tom Futtner "Live Processed Blue Mussels from Canada: Modification to the Scope of the Subject Merchandise Following Comments from Interested Parties" (May 8, 2001) on file in the Central Records Unit (CRU), room B–099 of the main Department of Commerce Building.

Also on May 8, 2001, the Department issued Section A of the antidumping questionnaire to Confederation Cove Mussel Co., Ltd. (Confederation Cove), PEI Mussel King, Inc. (Mussel King), Prince Edward Aqua Farms, Inc., (Prince Edward), and Atlantic Aqua Farms, Inc., (Atlantic Aqua). On May 18, 2001, the Department issued Sections B and C of the antidumping questionnaire to the four respondents.

On June 29, 2001, the petitioner requested a postponement of the preliminary determination in this investigation. On July 30, 2001, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until October 9, 2001. *See Live Processed Blue Mussels From Canada: Extension of Time Limit for Preliminary Determination of Antidumping Duty Investigation*, 66 FR 146 (July 30, 2001). Although the deadline for this preliminary determination was originally October 9, 2001, in light of the events of September 11, 2001 and the subsequent closure of the Federal Government for reasons of security, the time frame for issuing this preliminary determination has been extended by two days.

[1] The petitioner in this investigation is Great Eastern Mussel Farms, Inc.

Period of Investigation (POI)

The POI is April 1, 2000, through March 31, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 2000).

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On October 9, 2001, Confederation Cove and Atlantic Aqua requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Confederation Cove and Atlantic Aqua also included a request to extend the provisional measures to not more than 135 days after the publication of the preliminary determination. Accordingly, since we have made an affirmative preliminary determination, and the requesting parties account for a significant proportion of exports of the subject merchandise, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Scope of Investigation

Imports covered by the investigation are shipments of live processed blue mussels from Canada. Included in the scope are fresh, live, processed blue mussels (mytilus edulis). Processing may include, but is not limited to, purging, grading, debearding, picking, inspecting and packing. Processed mussels are mussels that are: (1) Free of sand or grit, broken product, defective product and beards (byssus threads); (2) uniform in size; and (3) packed or ready for packing. Mussels that meet the aforementioned characteristics, regardless of the methods used to achieve these characteristics, are covered by this investigation. The live processed blue mussels subject to this investigation are currently classifiable under subheading 0307.31.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, the Department's written description of the scope of this investigation remains dispositive.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the POI, which we obtained from queries of U.S. Customs data under the HTS number that corresponds to the subject merchandise, we found that sixty producers/exporters may have exported mussels to the United States during the POI. Due to limited resources we determined that we could investigate only the four largest producers/exporters, accounting for more than 50 percent of total exports to the United States. *See* memorandum regarding Selection of Respondents for the Antidumping Investigation of Live Processed Blue Mussels from Canada (May 1, 2001) on file in the CRU. Therefore, we designated Atlantic Aqua, Prince Edward, Confederation Cove, and Mussel King as mandatory respondents and sent them the antidumping questionnaire.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Canada during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied upon package type and, in the case of one respondent also size, to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product or constructed value (CV). Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Fair Value Comparisons

During the POI, U.S. sales by the Canadian respondents were both export price (EP) and constructed export price (CEP) sales. To determine whether sales of mussels from Canada were made in the United States at LTFV, we compared EP and CEP to the normal value (NV), as described in the EP, CEP, and NV sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs and compared these to weighted-average home market prices during the POI.

Date of Sale

For home market and U.S. sales, the four respondents reported the date of invoice as the most appropriate date of sale. These respondents stated that the invoice date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order confirmation date and invoice/shipment date. The Department is preliminarily using the dates of sale reported by each respondent (*i.e.*, date of invoice), as this is our preferred methodology. The Department uses invoice date under 19 CFR 351.401(i) unless there is sufficient evidence that material terms of sale initially set at some earlier date were not subject to change. However, we intend to fully examine establishment of material terms of sale at verification, and we will incorporate our findings, as appropriate, in our analysis for the final determination.

Export Price

For Mussel King, Atlantic Aqua, Prince Edward and a portion of Confederation Cove's sales, we used EP for the price to the United States, in accordance with section 772(a) of the Act, because the four respondents reported that they sold the merchandise directly to unaffiliated U.S. customers or sold the merchandise to unaffiliated trading companies, with knowledge that these companies in turn sold the merchandise to U.S. customers, and constructed export price was not otherwise warranted for these transactions. For Mussel King, Atlantic Aqua, Prince Edward and Confederation Cove, we calculated EP using the packed prices charged to the first unaffiliated customer in the United States (the starting price). We deducted

from the starting price, where applicable, amounts for discounts, rebates, billing adjustments (Mussel King reported warranty expense which we are treating as a billing adjustment, *see* Calculation Memorandum of the Preliminary Results for the Less-Than-Fair-Value Investigation of PEI Mussel King Inc., (Mussel King) (October 11, 2001) in file in the CRU), and movement expenses in accordance with section 772(c)(2)(A) of the Act. In this case, movement expenses include foreign inland freight, international freight, foreign and U.S. brokerage and handling charges, insurance, U.S. duties, U.S. inland freight and U.S. warehousing. In the instant investigation, no additions to EP were warranted under section 772(c)(1) of the Act.

CEP

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For purposes of this investigation, Confederation Cove has classified a portion of its sales as CEP sales. For Confederation Cove, we calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, brokerage and handling, international freight, and U.S. warehousing. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit expenses, repacking) and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We recalculated Confederation Cove's reported U.S. freight expense by reallocating the freight expense over the quantity of subject merchandise sold during the POI. *See* Calculation Memorandum of the Preliminary Results for the Less-Than-Fair Value Investigation of Confederation Cove Mussel Co. Ltd., (October 11, 2001) on file in the CRU. In the instant investigation, no additions to CEP were warranted under section 772(c)(1) of the Act.

NV

A. Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or has sufficient aggregate value, if quantity is inappropriate) and that there is no particular market situation in the home market that prevents a proper comparison with the EP transaction. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. For this investigation, we found that all four respondents each had a viable home market for mussels. Thus, the home market is the appropriate comparison market in this investigation, and we used the respondents' submitted home market sales data for purposes of calculating NV. In deriving NV, we made adjustments as detailed in the "Calculation of NV Based on Home Market Prices" and "Calculation of NV Based on CV," sections below.

B. Affiliated-Party Transactions and Arm's-Length Test

If an exporter or producer sells the subject merchandise to an affiliated party, the Department may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the subject merchandise to a person who is not affiliated with the seller (*i.e.*, arm's length price). *See* section 773(a)(1)(B)(i) of the Act and 19 CFR 351.403(c).

Mussel King, Prince Edward, and Atlantic Aqua reported that they only sold mussels in the home market to unaffiliated customers. Therefore, the Department's arm's-length test is inapplicable with regard to their home market sales. Confederation Cove reported that it sold mussels in the home market to affiliated customers. We applied the arm's-length test to Confederation Cove's affiliated party sales by comparing these sales to sales of identical merchandise by Confederation Cove to unaffiliated home market customers. If the affiliated party sales satisfied the arm's-length test, we used the sales in our analysis. Sales to affiliated customers in the home market which were not made at arm's-length prices were excluded from our analysis because we consider such sales to be outside the ordinary course of trade. *See* section 773(a)(1)(B)(i) of the Act. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all discounts and rebates, movement charges, direct selling expenses, and home market packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's-length. *See* 19 CFR 351.403(c) and *Antidumping Duties; Countervailing Duties; Final Rule* 62 FR 27296, 27355 (The Preamble) (May 19, 1997).

C. Cost of Production (COP) Analysis

On July 6 and July 12, 2001, the petitioner alleged that sales of mussels in the home market were made at prices below the fully absorbed COP with regard to Prince Edward and Atlantic Aqua, respectively. On July 19, 2001, the petitioner alleged that sales of mussels in the home market were made at prices below the fully absorbed COP with regard to both Mussel King and Confederation Cove. Accordingly, the petitioner requested that the Department conduct company-specific sales-below-COP investigations. Based upon the comparison of adjusted prices for the foreign like product to COP, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of mussels produced in Canada were made at prices below the COP with regard to all four respondents. As a result, the Department has conducted an investigation to determine whether the four respondents made sales in the home market at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below. *See* Memorandum to Holly A. Kuga "Petitioner's Allegation of Sales Below the Cost of Production for Atlantic Aqua Farms, Inc., (Aug. 15, 2001); Memorandum to Holly A. Kuga "Petitioner's Allegation of Sales Below the Cost of Production for Prince Edward Aqua Farms (Aug. 15, 2001); Memorandum to Holly A. Kuga "Petitioner's Allegation of Sales Below the Cost of Production for Confederation Cove Mussel Co., Ltd., (Aug. 15, 2001); Memorandum to Holly A. Kuga "Petitioner's Allegation of Sales Below the Cost of Production for PEI Mussel King (Aug. 15, 2001), all on file in the CRU.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for each respondent based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses, including interest expenses. We relied on the COP data submitted by Confederation Cove, Mussel King, Prince Edward, and Atlantic Aqua in their cost questionnaire responses.

2. Test of Home Market Sales Prices

On a model-specific basis, we compared the reported COP to the home market prices, less any applicable discounts and rebates, movement charges, selling expenses, commissions, and packing. We then compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product during the POI were at prices less than the COP, we do not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities" within an extended period of time. Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determine such sales to have been made in "substantial quantities" within an extended period of time in accordance with sections 773(b)(2)(B) and 773(b)(2)(C) of the Act. In such cases, because we compared prices to POI average costs, we also determine that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of Mussel King's and Confederation Cove's home market sales, within an extended period of time, were at prices less than the COP, in accordance with section 773(b)(1)(A) of the Act. We, therefore, excluded these sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. With respect to Atlantic Aqua's and Prince Edward's home market sales, we determined that less than 20 percent of their sales within an extended period of time were made at prices less than the COP. We, therefore, retained all home market sales for these two respondents and used them as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of NV Based on Home Market Prices

We based home market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted, where applicable, the starting price for discounts and rebates. We made adjustments for any differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act by deducting direct selling expenses incurred for home market sales (credit expense), and adding U.S. direct selling expenses. We also made adjustments, pursuant to 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). Finally, we made a CEP offset adjustment to the NV for indirect selling expenses pursuant to section 773(a)(7)(B) of the Act as discussed in the Level of Trade/CEP Offset section below. No other adjustments to NV were claimed or allowed.

E. Calculation of NV Based on CV

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. In the instant case, because NV can be based on home market sales, NV has not been calculated based on CV.

F. Level of Trade (LOT)/CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transactions as appropriate. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Act.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Industrial Nitrocellulose From the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review*, 65 FR 6148, 6151 (February 8, 2000).

We obtained information from the respondents about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying LOTs for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments. In identifying LOTs for CEP, we considered the selling functions reflected in the CEP, after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. In this investigation, none of the respondents requested a LOT adjustment. However, Confederation Cove requested a CEP offset.

With regard to home market sales, Confederation Cove reported that its sales were made to four categories of home market customers (distributors, retailers, processors and end users) through two channels of distribution. For both channels, Confederation Cove performed similar selling functions for all its home market customers (packaging, negotiating terms of sale, issuing invoices, preparing product for shipment, and processing orders). Because channels of distribution do not qualify as separate LOTs when the

selling functions performed for each customer class are sufficiently similar, we determined that there is a single LOT for home market sales. See the memorandum entitled Live Processed Blue Mussels from Canada: Level-of-Trade Analysis, dated October 11, 2001, (*LOT Memorandum*). For its U.S. market sales, Confederation Cove reported that it made EP and CEP sales of subject merchandise to three types of customers (distributors, retailers and restaurants) through two channels of distribution. The two channels are as follows: (1) Sales from Confederation Cove directly to unaffiliated U.S. distributors (*i.e.* Confederation Cove's EP sales); and (2) sales from Confederation Coves to its U.S. affiliate, who then resold the merchandise to unaffiliated distributors, retailers and restaurants (*i.e.* Confederation Cove's CEP sales). Further, it indicated that for both EP and CEP sales, it performed certain types of selling functions (packaging, negotiation of sales terms, preparing product for shipment, issuing invoices and processing orders) to varying degrees for each channel of distribution. We examined the types of selling functions provided in each of the two U.S. market channels of distribution, and determined, based upon the selling functions performed, that EP sales and CEP sales are made at two different LOTs, specifically, LOT1 (the LOT for EP sales) for EP sales, and at a less remote stage of distribution, LOT2 (the LOT for CEP sales), for CEP sales. *See* LOT Memorandum. We then compared LOT1 to the home market LOT and found that EP sales are provided at the same LOT as home market sales. Thus, no LOT adjustment is warranted for EP sales. We also compared LOT2 to the home market and found that CEP sales are provided at a different LOT than home market transactions. Specifically, we examined the selling functions performed by Confederation Cove for its U.S. CEP sales (as adjusted under section 772(d) of the Act)) and determined that they are at a different LOT than its home market sales because the company's CEP transactions were at a less advanced stage of distribution. Therefore, we have preliminarily found that Confederation Cove's home-market sales occurred at a different and more advanced LOT than its CEP sales to the United States. Because we compared CEP sales to home market sales which were at a more advanced LOT, we examined whether a LOT adjustment may be appropriate. In this case, Confederation Cove only sold at one LOT in the home market. Therefore, there is no basis upon which to demonstrate a pattern of consistent price differences between LOTs based on sales of subject merchandise. Further, we do not have information which would allow us to examine pricing patterns based on Confederation Cove's sales of other products and there is no other record information on which such a LOT analysis could be based. Because the data available do not provide an appropriate basis for making a LOT adjustment and the LOT in the home market is at a more advanced stage of distribution than the LOT of the CEP sales, a CEP offset is appropriate. Thus, we made a CEP-offset adjustment to HM sales in accordance with section 773(a)(7)(B) of the Act for comparison to Confederation Cove's CEP sales. In accordance with section 773(a)(7)(B) of the Act, we calculated the CEP offset as the lesser of the following: (1) the indirect selling expenses incurred for the home-market sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP. See LOT Memorandum.

Mussel King reported that it made EP sales of subject merchandise to a single type of customer through a single channel of distribution in the U.S. market. Further, Mussel King indicated that it performed certain types of selling functions (freight and delivery arrangements, promotional services, and customer claim/returned product support) for the U.S. customers. Because there is only one type of customer, a single channel of distribution, and the same selling functions are performed for every customer, we preliminarily determine that there is a single level of trade with respect to Mussel King's EP sales. Because we found that home market sales of subject merchandise are made to a single type of customer through a single channel of distribution with identical selling functions and intensity as those provided in the U.S. market, we preliminarily determined that Mussel King's EP sales are provided at the same LOT as its home market sales. Thus, no LOT adjustment is warranted, and we have not made a LOT adjustment for Mussel King's sales.

Atlantic Aqua and Prince Edward reported that they sold subject merchandise to three different types of customers (distributor, retail and end user) in the home market. Further, they indicated that, for each of the reported channels of distribution, they provided the same types of selling functions (price negotiation, sales calls, interactions with customers, inventory maintenance, freight, and delivery) at the same levels of intensity. Since all types of customers received the same selling functions, at the same levels of intensity, we determine, preliminarily, that there is a single LOT in the home market with respect to Atlantic Aqua and Prince Edward. With regard to U.S. EP sales, both Atlantic Aqua and Prince Edward reported that their sales were made to the same type of customers and through the same channels of distribution as sales made in the home market (*e.g.*, distributor, retail and end user). Further, both companies indicated that the selling functions for the U.S. customers are very similar to those provided for the home market customers (*e.g.*, price negotiation, sales calls, interactions with customers, inventory maintenance, freight, and delivery). As a result, we preliminarily determine that there is a single level of trade for both companies for U.S. EP sales. Further, because the selling functions, offered by both companies, are very similar in nature and intensity in both the U.S. and the home markets, we have, preliminarily, found that both Atlantic Aqua's and Prince Edward's EP sales are provided at the same LOT as their home market sales. Thus, no LOT adjustment is warranted, and we have not made a LOT adjustment for Atlantic Aqua's and Prince Edward's sales.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

All Others Rate

Section 735(c)(5)(A) of the Act provides for the use of an "all others" rate, which is applied to non-investigated firms. See SAA at 873. This section states that the all others rate shall generally be an amount equal to the weighted average of the weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins based entirely upon the facts available. Therefore, we have preliminarily assigned to all other exporters of Canadian mussels, a margin that is the weighted average of the margins calculated for the respondents, excluding the zero margins.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of mussels from Canada, except for exports by Atlantic Aqua and Mussel King, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Because the estimated weighted-average dumping margins for Atlantic Aqua and Mussel King are zeros, we are not directing the Customs Service to suspend liquidation of entries of these companies from Canada. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the dumping margin, as indicated in the chart below.

These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
Atlantic Aqua Farms, Inc.	0.00
Confederation Cove, Inc.	4.70
Prince Edward Aqua Farms, Inc.	3.48
PEI Mussel King, Inc.	0.00
All Others	4.33

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

For the investigation of live processed mussels from Canada, case briefs for this investigation must be submitted no later than one week after the issuance of the last verification reports. The Department will notify the parties accordingly. Rebuttal briefs must be filed within five business days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several companies, the Department may schedule a single hearing to encompass all those companies. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of live processed mussels from Canada no later than 135 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: October 11, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–26290 Filed 10–17–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management, Federal Consistency Appeal by John T. Keegan From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Evidence of death of appellant and request for information.

By letter dated October 26, 1999, John T. Keegan filed with the Secretary of Commerce a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA). The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to Appellant's consistency certification for a permit to install 50 helix-screw anchor moorings at Guania Bay, Guanica, Puerto Rico. The CZMA provides that a timely objection by a state precludes any federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA or "necessary in the interest of security." Section 307(c)(3)(A). On January 23, 2001, Mr. Keegan filed with the Secretary a brief supporting the appeal. The PRPB filed a reply brief on February 23, 2001. The Secretary published a **Federal Register** notice and request for comments on March 20, 2001.

The Department of Commerce has received information indicating that John T. Keegan died on May 30, 2001. The Secretary new invites any persons or entities who believe they have some right to continue the consistency appeal in the place of John T. Keegan or any entity in which he might have had an interest, to make their position known to the National Oceanic and Atmospheric Administration. Those persons who believe they have some rights in this particular appeal, as heirs, interest or assigns or otherwise representing John T. Keegan or any company or business of John T. Keegan, should send their views in writing, no later than 30 days from the date of this Notice, to Suzanne Bass, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, 301–713–2967.

Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.

Dated: September 28, 2001.

Craig O'Connor,

Acting General Counsel.

[FR Doc. 01–26285 Filed 10–17–01; 8:45 am]

BILLING CODE 3510–08–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, November 2, 2001.

PLACE: 155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 01–26411 Filed 10–16–01; 1:02 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, November 9, 2001.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 01–26412 Filed 10–16–01; 1:02 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, November 16, 2001.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 01–26413 Filed 10–16–01; 1:02 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, November 23, 2001.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 01–26414 Filed 10–16–01; 1:02 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, November 30, 2001.

PLACE: 1155 21st St., NW., Washington, DC 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 01–26415 Filed 10–16–01; 1:02 pm]
BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–1]

Chemetron Corporation, Chemetron Investments, Inc., Sunbeam Corporation, Sprinkler Corporation of Milwaukee, Inc., and Grucon Corporation; Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a complaint under the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceeding (16 CFR part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaints which it issues. Published below is a Complaint in the matter of Chemetron Corporation, Chemetron Investments, Inc., Sunbeam Corporation, Sprinkler Corporation of Milwaukee, Inc., and Grucon Corporation.

SUPPLEMENTARY INFORMATION: The text of the complaint appears below.

Dated: October 15, 2001.

Todd A. Stevenson,
Acting Secretory.

Consumer Product Safety Commission

[CPSC Docket No.: 02–1]

In the matter of Chemetron Corporation, f/k/a Chemetron Investments, Inc. and Chemetron Investments, Inc., f/k/a Chemetron Corporation and Sunbeam Corporation and Sprinkler Corporation of Milwaukee, Inc., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. and Grucon Corporation; *Complaint*

Nature of Proceedings

1. This is an administrative proceeding pursuant to section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2064, for public notification and remedial action to protect the public from a substantial product hazard presented by failure of the Star ME–1 fire sprinkler manufactured from 1977 to 1995. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the United States Consumer Product Safety Commission, 16 CFR part 1025.

Jurisdiction

2. This proceeding is instituted pursuant to the authority contained in section 15(c), (d), and (f) of the CPSA, 15 U.S.C. 2064(c), (d), and (f).

Parties

3. Complaint Counsel is the staff of the Legal Division of the Office of Compliance of the United States Consumer Product Safety Commission ("Commission"), and independent regulatory commission established by section 4 of the CPSA, 15 U.S.C. 2053.

4. Respondent Chemetron Corporation ("CC"), formerly and also known as "Chemetron Investments, Inc." and formerly doing business as "Star Sprinkler," is a Delaware corporation, with its principal place of business at 2381 Executive Center Drive, Boca Raton, Florida 33431. CC manufactured the Star ME–1 from in or about 1976 to in or about 1982.

5. Respondent Chemetron Investments, Inc. ("CI"), formerly and also known as "Chemetron Corporation," is a Delaware corporation, with its principal place of business at 2381 Executive Center Drive, Boca Raton, Florida 33431.

6. Respondent Sunbeam Corporation ("Sunbeam") is a Delaware corporation, with its principal place of business at 2381 Executive Center Drive, Boca Raton, Florida 33431. Under an Asset Purchase Agreement dated September 28, 1990, Sunbeam acquired the stock and assets of CC and CI. CC and CI have been and are Sunbeam subsidiaries. By virtue of the Asset Purchase Agreement and Sunbeam's stock and assets acquisition of CC and CI, Sunbeam assumed CC's and CI's liabilities for the Star ME–I relief sought herein.

7. Respondent Sprinkler Corporation of Milwaukee, Inc., formerly known as "Star Sprinkler Corporation" and "Grunau Sprinkler Manufacturing Company, Inc." ("SCM"), is a Wisconsin corporation with its last known principal place of business at 307 West Layton Avenue, Milwaukee, Wisconsin 53207. SCM manufactured the Star ME–1 from in or about 1983 through in or about early 1996.

8. Respondent Grucon Corporation ("Grucon") is Delaware corporation with its principal place of business at 1100 West Anderson Court, Oak Creek, Wisconsin 53154. From 1983 to the present, Grucon owned and operated SCM under a variety of names. Grucon and SCM have engaged in actions disregarding corporate form and identities, and/or they have failed to take actions to property maintain corporate form and identities. These actions, failures, and related effects include, but are not limited to, the following: common business interests, common control and management, SCM's dependence on Grucon, SCM's absence of assets or employees, SCM's undercapitalization, SCM's board of directors resolution to temporarily pay down the credit lines and debt obligations of Grucon and other Grucon subsidies with proceeds to SCM's assets sale, SCM's board of directors resolution to pay to Grucon proceeds to SCM 's assets sale, SCM's failure to make corporate filings, and/or Grucon's guarantees on behalf of SCM.

9. There was and/or is such unity of interest and ownership between SCM and Grucon that the purported separate personalities of the corporations did not and/or do not exist. Given the compelling public interest at stake in effectuating the relief sought herein, and SCM's reported lack of assets with which to fund such relief, adherence to the fiction of the separate corporate existences of SCM and Grucon would promote injustice and/or inequitable consequences.

10. Each of the Respondents was and/or is a "manufacturer" and/or a "distributor" as those terms are defined in section 3(a)(4) and (5) of the CPSA, 15 U.S.C. 2052(a)(4) and (5).

Consumer Product

11. The Star ME–1 fire sprinkler is a dry fire sprinkler manufactured under the "Star" brand name that was labeled and sold as model "ME–1" in various sizes, temperature ratings, finishes, and installation positions ("Star ME–1"). The Star ME–1 is intended to suppress and/or extinguish fire.

12. The Star ME–1 is an article produced and distributed for the personal use, consumption, and/or enjoyment of a consumer in or around a household or residence, in recreation, or otherwise. The Star ME–1 is used in, among other places, day care centers, nursing homes, and health care facilities. The Star ME–1 is a "consumer product" that was "distributed in commerce," as those terms are defined in section 3(a)(1) and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (11).

Defect

13. The Star ME–1 is intended to operate in accordance with applicable industry standards and building code requirements. The Star ME–1 is intended to operate when the temperature to which it is exposed reaches a particular level, at which point a thermal sensing element at the exposed end of the sprinkler should melt, and water would flow through and discharge from the sprinkler.

14. As a result of inadequate design and/or manufacturing, the Star ME–1 has failed and is likely to fail to operate as intended in fires.

15. The inadequate design and/or manufacturing of the Star ME–1 constitutes a "defect" as that term is used in section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

Substantial Risk of Injury and Substantial Product Hazard

16. From 1977 through 1995, Respondents manufactured and/or distributed approximately 700,000 Star ME–1's.

17. Star ME–1's are likely to fail to operate as intended in a fire. Failure of the Star ME–1 to operate as intended in a fire creates a likelihood the fire will grow and spread, exposing consumers to the risk of serious injury and death.

18. The defect in the Star ME–1 manufactured from 1977 through 1995 creates a "substantial risk of injury to the public" within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

19. The Star ME–1 manufactured from 1977 through 1995 constitutes a "substantial product hazard" as that term is defined and used in section 15(a)(2), (c), and (d) of the CPSA, 15 U.S.C. 2064(a)(2), (c), and (d).

Relief Sought

Wherefore, in the public interest, Complaint Counsel requests that the Commission:

A. Determine that the Star ME–1 manufactured from 1977 through 1995 was distributed in commerce and presents a "substantial product hazard" within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

B. Determine under section 15(c) of the CPSA, 15 U.S.C. 2064(c), that public notification is required to protect the public adequately from the substantial product hazard presented by the Star ME–1 manufactured from 1977 through 1995, and order that the respondents:

1. Give prompt public notice of the defect in the Star ME–1 manufactured from 1977 through 1995, the risk of injury and the hazard to the public, and the remedies available to remove the risk of injury and hazard;

2. Mail such notice to each person who is or has been a manufacturer, distributor, or retailer of the Star ME–1;

3. Mail such notice to each person to whom the Respondents know the Star ME–1 manufactured from 1977 through 1995 was delivered or sold; and

4. Include in such notice a complete description of the risk and hazard presented, a warning that the Star ME–1 manufactured from 1977 through 1995 must be replaced immediately, clear instructions informing consumers of the means by which to avail themselves of any and all remedies ordered by the Commission, and such other information as the Commission may order.

C. Determine that action under section 15(d) of the CPSA, 15 U.S.C. 2064(d), is in the public interest and order Respondents:

1. To elect to repair the defect in all the Star ME–1's manufactured from 1977 through 1995 so they will operate as intended and required and not present a risk of injury and hazard to the public; to replace all the Star ME–1's manufactured from 1977 through 1995 with a like or equivalent product that does not contain the defect, operates as

intended and required, and will not present a risk of injury and hazard to the public; or to refund to consumers the purchase price of the Star ME–1's manufactured from 1977 through 1995;

2. To make no charge to consumers and to reimburse them for any foreseeable expenses incurred in availing themselves of any remedy provided under any Commission Order issued in this matter;

3. To reimburse distributors, dealers, contractors, and installers for expenses in connection with carrying out any Commission Order issued in this matter;

4. To submit a plan satisfactory to the Commission for taking action under C(1) through (3) above;

5. To submit monthly reports documenting progress of the corrective action program;

6. For a period of five (5) years after entry of a Final Order in this matter, to keep records of all actions taken to comply with C(1) through (5) above, and to supply those records to the Commission, upon request, for the purpose of monitoring compliance with the Final Order;

7. To notify the Commission at least 60 days prior to any change in the Respondents' business (such as incorporation, dissolution, assignment, sale, or petition for bankruptcy) that results in, or is intended to result in, the emergence of successor ownership, the creation or dissolution of subsidiaries, going out of business, or any other change that might affect compliance with any Order issued by the Commission in this matter; and

8. To take such other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA.

Issued by Order of the Commission.
Alan H. Schoem,

Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission, (301) 504–0621.
Eric L. Stone,
Director, Legal Division, Office of Compliance.
Seth B. Popkin,
Complaint Counsel, Office of Compliance, 4330 East West Highway, Room 613, Bethesda, Maryland 20814, (301) 504–0626, ext. 1358.

[FR Doc. 01–26287 Filed 10–17–01; 8:45 am]
BILLING CODE 6350–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2002 Mental Health Rate Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of updated mental health per diem rates.

SUMMARY: This notice provides for the updating of hospital-specific per diem rates for high volume providers and regional per diem rates for low volume providers; the updated cap per diem for high volume providers; the beneficiary per diem cost-share amount for low volume providers for FY 2002 under the TRICARE Mental Health Per Diem Payment System; and the updated per diem rates for both full-day and half-day TRICARE Partial Hospitalization Programs for fiscal year 2002.

EFFECTIVE DATE: The fiscal year 2002 rates contained in this notice are effective for services occurring on or after October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Office of Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3742.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on September 6, 1988, (53 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on July 1, 1993, (58 FR 35–400) set forth maximum per diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each Federal fiscal year.

As stated in the final rules, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. For fiscal year 2002, Medicare has recommended a rate of increase of 3.3 percent for hospitals and units excluded from the prospective payment system. TRICARE will adopt this update factor for FY 2002 as the final update factor. Hospitals and units with hospital-specific rates (hospitals and units with high TRICARE volume) and regional specific rates for psychiatric hospitals and units with low TRICARE volume will have their TRICARE rates for FY 2001 updated by 3.3 percent for FY 2002. Partial hospitalization rates for full day and half day programs will also be updated by 3.3 percent for FY 2002. The cap amount for high volume hospitals and units will also be updated by the 3.3 percent for FY 2002. The beneficiary cost-share for low volume hospitals and units will also be updated by the 3.3 percent for FY 2002.

Consistent with Medicare, the wage portion of the regional rate subject to the area wageadjustment will remain at 71.553 percent for FY 2002. The following reflect an update of 3.3 percent.

REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW TRICARE VOLUME

United States census region	Rate@
Northeast:	
New England	$578
Mid-Atlantic	555
Midwest:	
East North Central	479
West North Central	452
South:	
South Atlantic	572
East South Central	619
West South Central	522
West:	
Mountain	521
Pacific	614
@Wage portion of the rate, subject to the area wage adjustment (in percent)	71.553

Beneficiary Cost-Share: Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $154 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 2001

Cap Amount: Updated cap amount for hospitals and units with high TRICARE volume is $725 per day for FY 2002.

The following reflect an update of 3.3 percent for FY 2002.

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS FY 2002

United States census region	Full-day rate (6 hours or more)	Half-day rate (3–5 hours)
Northeast:		
New England (ME, NH, VT, MA, RI, CT)	$232	$175
Mid-Atlantic (NY, NJ, PA)	250	188
Midwest:		
East North Central (OH, IN, IL, MI, WI)	220	165
West North Central (MN, IA, MO, ND, SD, NE, KS)	220	165
South:		
South Atlantic (DE, MD, DC, VA, WV, NC, SC, GA, FL)	239	179
East South Central (KY, TN, AL, MS)	257	193
West South Central (AR, LA, TX, OK)	257	193
West:		
Mountain (MT, ID, WY, CO, NM, AZ, UT, NV)	260	195
Pacific (WA, OR, CA, AK, HI)	254	191

The above rates are effective for services rendered on or after October 1, 2001.

Dated: October 12, 2001.
L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–26239 Filed 10–12–01; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Acquisition University, Department of Defense.

ACTION: Board of Visitors Meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held in the Executive Conference Room, Building 202, Ft. Belvoir, Virginia on Wednesday October 31, 2001 from 0900 until 1500. The purpose of this meeting is to report back to the BoV on continuing items of interest. This meeting is in lieu of the meeting originally scheduled for Wednesday September 19, 2001, which DAU postponed in light of events that took place September 11, 2001.

The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mr. John Michel at 703–805–4575.

Dated: October 12, 2001.
L.M. Bynum,
Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–26238 Filed 10–17–01; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Draft Programmatic Environmental Impact Statement (PEIS) for Army Transformation

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of the Draft PEIS for Army Transformation.

The PEIS details the environmental concerns which may affect various aspects of Army Transformation including, but not limited to: unit location; materiel acquisition and testing; training areas; range requirements; and strategic deployment.

DATES: The comment period for the Draft PEIS will end 45 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain a copy of the PEIS write to Headquarters, Department of the Army, Attn: DAMO–FMF (Mr. Jim Lucas), 400 Army Pentagon, Washington, DC 20310–0400.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Lucas, Headquarters, Department of the Army, ATTN: ODCSOPS (DAMO–FMF), 400 Army Pentagon, Washington, DC 20310–0400 or at (703) 602–9794.

SUPPLEMENTARY INFORMATION: The prospect of a rapidly changing and more turbulent, unpredictable, global security environment underscores the need for a high level of U.S. defense preparedness. To meet the challenges of a wider range of threats and a more complex set of operating environments, the U.S. will require an Army capable of rapid response and dominance across the entire spectrum of operations in joint, interagency, and multinational configurations. Today's Army force structure and supporting systems were designed for a different era and enemy. They lack the capability to operate optimally across the full range of likely future operations. The Army's superb heavy forces are unequalled in their ability to gain and hold terrain in the most intense, direct fire combat imaginable; and, once deployed, are the decisive element in major theater wars. The current heavy forces, however, are challenged to get to contingencies where we have not laid the deployment groundwork; and once deployed, these forces have a large logistical footprint. On the other hand, the Army's current light forces can strike quickly but lack survivability; lethality and tactical mobility once inserted. Therefore, to meet the defense challenges of the future and provide the National Command Authority the decisive land power forces necessary to support the National Security Strategy and National Military Strategy, the Secretary of the Army and the Chief of Staff of the Army have articulated a clear Army Vision

that includes transforming the most respected Army in the world into a strategically responsive force that is dominant across the full spectrum of operations.

The Army proposes to implement transformation as rapidly as possible, while continually maintaining the warfighting readiness of its operational forces, improving its installations and business practices, and taking care of its people. The proposed program of Army Transformation would be the mechanism used to integrate and synchronize the implementation of the Army Vision. To validate early transformation concepts, an Initial Force of two brigade combat teams at Fort Lewis, Washington, is receiving off-the-shelf equipment to support evaluation and refinement of new doctrinal organizational and operational concepts. An Interim Force of six to eight brigade combat teams will follow in the future. The Interim Force would be a transition force—one that seeks the Objective Force state of the art technology, but leverages today's technology together with modernized legacy forces as a bridge to the future. The Objective Force would be the force that achieves our transformation objective. It would be a future force that would be a strategically responsive Army capable of dominating at every point across the full spectrum of operations and rapidly transitioning across mission requirements without loss of momentum. It would be able to operate as an integral member of joint, multinational, interagency teams and would be dominant against the asymmetric application of conventional, unconventional, and weapons of mass destruction threat capabilities.

The PEIS complies with the National Environmental Policy Act (NEPA) of 1969. Implementation of the Army Transformation, as envisioned, will be a major undertaking entailing a series of changes in equipment, force structure and training practices. As changes are proposed for specific sites and for equipment acquisition and testing, there will likely be a range of adverse and beneficial effects on the environment. The PEIS informs the public, regulators, concerned groups and Army decision-makers about potential environmental concerns that should be factored into all aspects of Army Transition. Additionally, the PEIS provides all stakeholders with an opportunity to present their views to Army decision-makers.

Alternatives: (1) No Action Alternative—whereby Army Transformation would not be implemented and needed changes to Army equipment, force structure and training practices would be separately analyzed on a piecemeal basis; and (2) Action Alternative—whereby Army Transformation, as envisioned by Army decision-makers, would be implemented to better meet present and future national security requirements and fulfill the Army Vision.

Significant issues: The PEIS addresses issues including noise, impacts to wetlands and riparian areas, soil erosion, air and water quality, endangered species, and cultural resources.

Comments received as a result of the NOA will be used to assist the Army in identifying potential impacts to the quality of human and natural environments. Individuals or organizations may participate in this process by mailing written comments or by facsimile through the Army Homepage web site www.army.mil/a-z.htm, and scrolling to "Programmatic Environmental Impact Statement."

Dated: October 10, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 01–26309 Filed 10–17–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7 (a)(I)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. patent number 5,607,979 issued March 4, 1997 entitled "Topical Skin Protectants" to DFB Pharmaceuticals, Inc. with its principal place of business at 3909 Hulen Street, Fort Worth, Texas 76107. The exclusive field of use will be the prevention or treatment of contact and allergic dermatitis, as well as dermatitis or wounds caused by incontinence.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, on or before November 2, 2001. Written objections are to be filed with the Command Judge Advocate, U.S. Army Medical Research and Materiel Command, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–26191 Filed 10–17–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Prospective Grant of an Exclusive License

AGENCY: U.S. Army Soldier and Biological Chemical Command (SBCCOM), DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with the provisions of 15 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(I), SBCCOM hereby gives notice that it is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Provisional Patent Application Number 60/298,858, filed 6/15/01, entitled, "Photovoltaic Cell" to University of Massachusetts, Lowell having a place of business in Lowell, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or e-mail *Robert.rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted, unless within fifteen (15) days from the date of this published Notice, SBCCOM receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The following Patent Number, Title and Issue date is provided:

Provisional Patent Application Number: 60/298,858.

Title: Photovoltaic Cell.

Filing Date: June 15, 2001.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–26193 Filed 10–17–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 105(h) of the Estuary Restoration Act of 2000, (Title I, Public Law 106–457), announcement is made of the forthcoming meeting of the Estuary Habitat Restoration Council. The meeting is open to the public.

DATES: The meeting will be held from 10:30 a.m. to 12:30 p.m. on Friday, October 26, 2001.

ADDRESSES: The meeting will be in room 3M60/70, 441 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC (202) 512–6668.

SUPPLEMENTARY INFORMATION: The Estuary Habitat Restoration Council consists of representatives of five agencies. These are the National Oceanic and Atmospheric Administration (NOAA), Environmental Protection Agency, U.S. Fish and Wildlife Service, Department of Agriculture, and Army. Among the duties of the Council is development of a national estuary restoration strategy designed in part to meet the goal of restoring one million acres by 2010. At this first meeting of the Council, procedural matters will be decided, and a framework for conducting Council business will be established.

Current security measures require that persons interested in attending the meeting must pre-register with us before 2 p.m. October 24, 2001. Please contact Ellen Cummings at 202–761–4558 to pre-register. The public should enter on the "G" Street side of the GAO building. All attendees are required to show photo identification and must be escorted to the meeting room by Corps personnel. Attendee's bags and other possessions are subject to being searched. All attendees arriving between one-half hour before and one-half hour after 10:30 a.m. will be escorted to the hearing. Those that are not pre-registered and/or arriving later than the allotted time will be unable to attend the public hearing.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–26192 Filed 10–17–01; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 17, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 12, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Reading Excellence Act: School and Classroom Implementation and Impact Study.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 4,090.

Burden Hours: 3,192.

Abstract: The Reading Excellence Act School and Classroom Implementation and Impact Study (REA–SCII) is a six-year study to learn about the implementation and impact of the REA legislation on instructional practice in reading and on student reading achievement. The study has three components: (1) A large-scale study in which survey data are collected from teachers, principals, and district staff from a nationally-representative random sample of 400 REA schools; and (2) an in-depth study of a subset of 60 schools in which we will collect data from classroom observation as well as measures of student reading; and (3) in-depth case studies in ten REA-funded schools in which we will collect data from classroom observation, teacher interviews, and focus groups.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her Internet address *Jackie.Montague@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–26206 Filed 10–17–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 19, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Cristal Thomas, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *CAThomas@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 12, 2001.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Revision.
Title: Student Aid Report.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 16,807,154.
Burden Hours: 4,462,468.
Abstract: The Student Aid Report (SAR) is used to notify all applicants of their eligibility to receive Federal student aid for postsecondary education. The form is submitted by the applicant to the institution of their choice.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Student Financial Assistance Programs

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.
Title: Federal Perkins/NDSL Loan Assignment Form (JS)
Frequency: On occasion.
Affected Public: Not-for-profit institutions (primary), Individuals or household (primary), Businesses or other for-profit.
Reporting and Recordkeeping Hour Burden:
Responses: 21262.
Burden Hours: 10631.
Abstract: This form is used to collect pertinent data regarding defaulted student loans from institutions participating in the Federal Perkins Loan Program. The ED Form 553 serves as the transmittal document in the assignment of such defaulted loans to the Federal government for collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–26303 Filed 10–17–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management

Site Recommendation Consideration Process—Extended Hours for Las Vegas Science Center

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of extended hours for receiving comments on site recommendation consideration for Yucca Mountain.

SUMMARY: The Department of Energy (the Department) has announced in a separate **Federal Register** notice published on October 2, 2001, that its Las Vegas Science Center will be used to receive public comments on the possible recommendation of the Yucca Mountain Site in Nevada for development as a spent nuclear fuel and high-level radioactive waste geologic repository. This notice announces that the Las Vegas Science Center will have extended hours to receive comments on October 19, the last day of the public comment period.

DATES: Starting on September 26, 2001, and continuing through October 19, 2001, the Las Vegas Science Center will be open from 10 a.m. to 6 p.m. Tuesday through Friday, and on Saturdays, from 10 a.m. to 4 p.m. Hours will be extended on Friday, October 19 to accommodate those wishing to comment; the hours will be from 10 a.m. to Midnight.

ADDRESSES: The location for the Science Center in Las Vegas is 4101–B Meadows Lane.

Written comments may also be addressed to Carol Hanlon, U.S. Department of Energy, Yucca Mountain Site Characterization Office (M/S #205), P.O. Box 30307, North Las Vegas, Nevada, 89036–0307.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, (M/S #025), P.O. Box 30307, North Las Vegas, Nevada 89036–0307, 1–800–967–3477.

SUPPLEMENTARY INFORMATION: In the August 21, 2001, **Federal Register** Notice (66 FR 43850–43851), the Department announced the scheduling of public hearings in Las Vegas, Nevada on September 5, 2001, in Amargosa Valley, Nevada on September 12, 2001, and in Pahrump, Nevada on September 13, 2001. The Department decided to postpone the latter two hearings in light of the recent terrorist attacks on the United States. In a notice published on September 27, 2001 (66 FR 49372–49373), the latter two hearings were rescheduled to October 10 and October 12, 2001, in Amargosa Valley, Nevada and Pahrump, Nevada respectively.

For those members of the public who do not participate in these public hearings, the Department is providing an additional opportunity to submit comments at the Las Vegas Science Center, prior to the end of the comment period, on the possible recommendation of the Yucca Mountain Site for development as a spent nuclear fuel and high-level radioactive waste repository. A Department official and court reporter will be available to provide project information and receive public testimony from anyone wishing to provide official comments. All comments will be considered as part of the official public record. Written testimony may also be submitted as part of the official record. Posters and relevant information materials on the Yucca Mountain project will also be available at the Science Center.

Citizens are encouraged to reserve time slots to offer testimony by calling 1–800–967–3477. Oral testimony will be limited to 10 minutes in order to provide proper consideration to all individuals wishing to testify. Citizens are encouraged to arrive no later than 15 minutes prior to their scheduled testimony time; citizens arriving after their timeslot has passed will be accommodated to the extent possible. Walk-in testimony will be accepted as the schedule permits, with priority given to those who have reserved time in advance. Individuals who visit the Las Vegas Science Center to provide testimony will do so in the FOIA (Freedom of Information Act) Reading Room.

In addition, citizens can visit DOE Science Centers located in Pahrump, Nevada, and Beatty, Nevada, to submit written comments until the close of the comment period. Comments can also be submitted via e-mail through the web site at www.ymp.gov.

Additional information on the comment process at the Science Centers and on the Civilian Radioactive Waste Management program may be obtained at the Yucca Mountain Web site at *www.ymp.gov* or by calling 1–800–967–3477.

Issued in Washington, DC on October 15, 2001.

Lake H. Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 01–26306 Filed 10–17–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–4–000]

American National Power, Inc. v. KeySpan Generation, Inc., Long Island Power Authority, and Long Island Lighting Company d/b/a/ LIPA.; Notice of Complaint

October 12, 2001.

Take notice that on October 11, 2001, American National Power, Inc. filed its Complaint Requesting Fast Track Processing with the Federal Energy Regulatory Commission. In its Complaint, American National Power, Inc. requests that the Commission find certain provisions of Rate Schedule No. 1 of KeySpan Generation, Inc. to be unjust and unreasonable because those contract provisions have caused the Long Island Power Authority to engage in anticompetitive conduct directed at American National Power, Inc. and other developers of new generation on Long Island. The relief requested by American National Power, Inc. in its Complaint includes the reformation of these anticompetitive contract provisions.

American National Power, Inc. has requested Fast Track Processing of its Complaint pursuant to Section 206(h) of the Commission's Rules of Practice and Procedure, 18 CFR 385.206(h).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 31, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before October 31, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26253 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–3–000]

Duquesne Light Company; Notice of Application

October 12, 2001.

Take notice that on October 4, 2001, Duquesne Light Company filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, to issue not more than $400,000,000 of promissory notes and commercial paper and other evidences of indebtedness from time to time with a final maturity date of not later than October 31, 2004.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 22, 2001. Protests will be considered by the

Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26252 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–18–000]

Enbridge Pipelines (Midla) Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 12, 2001.

Take notice that on October 8, 2001, Enbridge Pipelines (Midla) Inc., formerly Mid Louisiana Gas Company, (Midla) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to be made effective October 1, 2001:

First Revised Sheet No. 27
First Revised Sheet No. 28
First Revised Sheet No. 33
First Revised Sheet No. 38
First Revised Sheet No. 44
First Revised Sheet No. 49

Midla states that the purpose of the filing is to reflect its current fuel reimbursement percentage as approved by the Commission in its Order dated September 19, 2001 in FERC Docket No. RP01–512–000. Midla further states that, at the time it filed its FERC Gas Tariff, Fourth Revised Volume No. 1 on September 7, 2001, to reflect a name change in FERC Docket No. GT01–30–000, the Commission had not accepted Mid Louisiana Gas Company's proposed modification to its fuel reimbursement provisions, therefore that filing did not reflect those modifications. Midla also states that it is not proposing any changes to its FERC Gas Tariff, Fourth Revised Volume No. 1, other than those already approved in FERC Docket No. RP01–512–000.

Midla states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26241 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–4–000]

Northwest Pipeline Corporation; Notice of Application

October 12, 2001.

Take notice that on October 3, 2001 Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, 84158, filed in Docket No. CP02–4–000, an application, pursuant to Sections 7(c) and 7(b) of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's regulations for a certificate of public convenience and necessity to construct and operate mainline loop and compression facilities (referred to as the Evergreen Expansion Project) and for permission and approval to abandon certain compression facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call (202)208–2222 for assistance).

Specifically, Northwest requests:

(1) A certificate of public convenience and necessity authorizing Northwest to construct and operate: (a) Approximately 27.79 miles of 36-inch mainline loop in four segments in Skagit, King and Pierce Counties, Washington and 83,500 horsepower compression facilities (67,150 ISO horsepower net increase plus 16,350 horsepower replacement compression) at five existing stations in Whatcom, Skagit, Snohomish, Pierce and Lewis Counties, Washington to expand south flow capacity in the Sumas, Washington to Chehalis, Washington corridor ("Sumas-Chehalis Corridor") by up to approximately 220,514 Dth/d to help provide 276,625 Dth/d of long-term, incremental firm transportation service under Rate Schedule TF–1, commencing June 1, 2003; (b) compression facilities (24,430 ISO horsepower increase) at five existing stations in Clark, Skamania, Klickitat and Benton Counties, Washington to expand north flow capacity in the Plymouth, Washington to Washougal, Washington corridor ("Columbia Gorge Corridor") by approximately 57,000 Dth/d to replace approximately 54,000 Dth/d of north flow design day displacement capacity required for existing long-term Rate Schedule TF–1 service and reduce the operational flow order ("OFO") risks for existing firm services through that corridor; and (c) associated system enhancement facilities for existing shippers in the Sumas-Chehalis Corridor, consisting of the required lowering of an existing segment of partially exposed mainline loop at a stream crossing, the required overhaul replacements of two existing turbines, tie-ins of two existing laterals to the new loops, and modification of an existing mainline valve manifold for north flow operation optionality at one of the compressor stations;

(2) Permission and approval to abandon 16,350 horsepower compression facilities that will be replaced by the proposed new facilities and to abandon 54,000 Dth/d of existing Rate Schedule TF–1 north flow design day displacement capacity in the Columbia Gorge Corridor that will be replaced by the proposed additional physical capacity;

(3) Approval of levelized, incremental 15-year and 25-year term transportation rates, and associated incremental compressor fuel reimbursement provisions and factors, for 276,625 Dth/d of incremental Rate Schedule TF–1 service in the Sumas-Chehalis Corridor;

(4) An up-front determination that the portions of the Evergreen Expansion Project that are designed to benefit existing customers, rather than the new incremental transportation shippers, will qualify for rolled-in rate treatment; and

(5) Approval of the proposed regulatory asset accounting treatment for the differences between book depreciation for the proposed incrementally-priced facilities and the depreciation component of the proposed levelized incremental transportation rates.

As a result of an open season for new firm service in the Sumas-Chehalis Corridor, Northwest states it entered into long-term transportation agreements under Rate Schedule TF–1 with five shippers ("Evergreen Shippers"), for a total of 276,625 Dth/d of capacity from Sumas, commencing June 1, 2003, with a primary 15-year term for 186,625 Dth/d and a primary 25-year term for 90,000 Dth/d, with primary delivery points at mainline interconnects with new delivery laterals that are independently being built to connect new and planned gas-fired power plants to Northwest's system in Washington.

Northwest states that the proposed facilities will provide up to approximately 220,514 Dth/d of incremental south flow capacity in the Sumas-Chehalis Corridor. The remainder of the capacity required to serve the new long-term shippers will be provided by 14,789 Dth/d of existing "long-term" Sumas to Wyoming capacity that will be relinquished as a result of the open season, plus 41,322 Dth/d of existing available capacity from Sumas that Northwest has been marketing on a short-term basis.

Further, Northwest states it has agreed, pursuant to a settlement agreement between Northwest and most of its major customers, to build facilities to reduce its north flow design day displacement capacity reliance through the Columbia Gorge Corridor and the customers have agreed to support rolled-in rate treatment for the approximately 87% portion of such facilities that is not allocable to the Evergreen Shippers. Northwest plans to complete the proposed facilities by June 1, 2003 in the Sumas-Chehalis Corridor and by November 1, 2003 in the Columbia Gorge Corridor. Northwest requests that the Commission issue a preliminary determination on non-environmental issues by April 2002 and a final order in this proceeding by no later than July 2002.

Northwest states that the estimated total cost of the proposed facilities is approximately $239.8 million, comprised of $197.4 million for the Sumas-Chehalis Corridor facilities ($194.0 million for incremental service plus $3.4 million for existing system reliability/flexibility enhancements) and $42.4 million for the Columbia Gorge Corridor facilities ($5.2 million allocable to the incremental shippers plus $37.2 million for existing system displacement capacity replacement).

On a 100% load factor basis and exclusive of surcharges and fuel, Northwest's proposed initial incremental rates for the 15-year service are $0.41656 per Dth for the June through October 2003 period and $0.42721 per Dth thereafter, and the proposed incremental rates for the 25-year service are $0.39794 per Dth for the first period and $0.40795 per Dth thereafter. These rates include a $0.03 per Dth volumetric charge, with a reservation charge for the remainder. The initial incremental compressor fuel in-kind reimbursement factor for the Evergreen Shippers is proposed to be 2.15%, plus the then applicable system lost and unaccounted for gas factor.

The portions of the project that are designed to benefit existing customers by reducing displacement reliance, mitigating associated OFO exposure, and enhancing existing service flexibility and reliability are proposed to be treated on a rolled-in basis consistent with Commission policy. The illustrative first year, rolled-in rate impact is approximately $0.00879 per Dth for Columbia Gorge Corridor facilities and approximately $0.00077 per Dth for Sumas-Chehalis Corridor facilities.

Any questions regarding this application should be directed to Mr. Gary Kotter, Manager, Certificates, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158–0900 or call (801) 584–7117.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 2, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this

proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–26255 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95–168–006]

Sea Robin Pipeline Company; Notice of Informal Settlement Conference

October 12, 2001.

Take notice that an informal settlement conference in this proceeding will be convened on Thursday, October 18, 2001 at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Thomas J. Burgess at 208–2058.

David P. Boergers,

Secretary.

[FR Doc. 01–26256 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–17–000 and CP00–65–005]

Tennessee Gas Pipeline Company; Notice of Compliance Filing and Associated Tariff Filing

October 12, 2001.

Take notice that on October 4, 2001, Tennessee Gas Pipeline Company (Tennessee) hereby tenders for filings as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets identified in Appendix A of the filing, with an effective date of November 3, 2001.

Tennessee states that the filing is being made in compliance with the Commission's February 23, 2001 "Order Issuing Certificates and Authorizing Abandonment" and April 23, 2001 "Order on Rehearing and Clarification in Docket Nos. CP00–65–000, *et al.*

Tennessee states that the purpose of this filing is to implement the recourse rates authorized by the Orders and to establish a new firm rate schedule applicable to incrementally priced lateral facilities in response to, and in compliance with, the service conditions placed on the Stagecoach Lateral by the Orders.

Tennessee states that copies of the filing has been mailed to each of its customers and affected state regulatory commissions and to each of the parties that intervened in the certificate docket referenced above.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26242 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–035]

TransColorado Gas Transmission Company; Notice of Compliance Filing

October 12, 2001.

Take notice that on October 4, 2001,TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Thirty-Fifth Revised Sheet No. 21, Twenty-Fifth Revised Sheet No. 22 and Eighth Revised Sheet No. 22A, to be effective October 4, 2001.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000, and acceptance.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect a new negotiated-rate contract and the deletion of two expired contracts.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26243 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–006]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

October 12, 2001.

Take notice that on October 1, 2001 Transcontinental Gas Pipeline Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) copies of the executed service agreements that contain a negotiated rate under Rate Schedule FT applicable to Phase 1 of the MarketLink Expansion Project between Transco and various MarketLink customers.

Transco states that the purpose of the instant filing is to comply with filing requirements specified in the Commission's Order issued December 13, 2000, "Order Amending Certificate and Denying Request for Stay" which required Transco, among other things, to file, not less than 30 days nor more than 60 days prior to the commencement of service on Phase 1 of the MarketLink Project, the negotiated rate agreements or tariff sheets reflecting the essential elements of its negotiated rate agreements. The effective date of these negotiated rate agreements is November 1, 2001.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 17, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26244 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–4–000]

UtiliCorp United Inc.; Notice of Filing

October 12, 2001.

Take notice that on October 4, 2001, UtiliCorp United Inc. (Applicant) filed with the Federal Energy Regulatory Commission (Commission), an application seeking an order under Section 204(a) of the Federal Power Act authorizing the Applicant to issue (1) up to and including 15,000,000 shares of common stock, (2) up to and including $500,000,000 of debt securities in one or more public offerings. Applicant also requests an exemption from the Commission's competitive bidding and negotiated placement requirements as it relates to the shares of common stock to be issued.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 22, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26251 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–1–000, et al.]

Mattco Funding, Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

October 11, 2001.

Take notice that the following filings have been made with the Commission:

1. Mattco Funding, Limited Partnership

[Docket No. EG02–1–000]

Take notice that on October 3, 2001, Mattco Funding, Limited Partnership (Mattco), Four World Financial Center, New York, New York 10080, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

The Application seeks a determination that Mattco qualifies for Exempt Wholesale Generator status. Mattco is a Delaware limited partnership that will own, but not operate a gas-fired combined cycle cogeneration facility rated at approximately 525 MW capacity. The facility will be used for the generation of electricity exclusively for sale at wholesale.

Copies of this application have been served upon the Securities and Exchange Commission and the Indiana Utility Regulatory Commission.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Caithness Operating Company, LLC

[Docket No. EG02–2–000]

Take notice that on October 4, 2001, Caithness Operating Company, LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

Applicant states that it will operate the following eligible facilities: the Sun-

Peak Facility, a 222 megawatt gas-fired peaking facility located in Las Vegas, Nevada; (ii) the Beowawe Geothermal Facility, a 16.6 megawatt geothermal power plant located in Beowawe, Nevada; (iii) the Dixie Valley Geothermal Facility, a 58 megawatt small power production facility, located at Dixie Valley, Nevada and (iv) the Steamboat Geothermal facility, a 13 megawatt geothermal power production facility located in Washoe County, Nevada.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. PPL Electric Utilities Corporation

[Docket No. EL02–3–000]

On October 5, 2001, PPL Electric Utilities Corporation filed with the Federal Energy Regulatory Commission (Commission) a Petition for Declaratory Order Regarding Repurchase of Common Stock.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26202 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX02–1–000, et al.]

Pinnacle West Capital Corporation, et al.; Electric Rate and Corporate Regulation Filings

October 12, 2001.

Take notice that the following filings have been made with the Commission:

1. Pinnacle West Capital Corporation

[Docket No. TX02–1–000]

Take notice that on October 9, 2001, Pinnacle West Capital Corporation (PWCC), P.O. Box 53999, Phoenix, Arizona 85072–3999, filed with the Federal Energy Regulatory Commission (Commission), an application requesting that the Commission order Electrical District No. Three of the County of Pinal and the State of Arizona (ED–3) to provide transmission services pursuant to Section 211 of the Federal Power Act.

PWCC requests firm network transmission service over ED–3's electric transmission and distribution system of the same character and nature as the service that Arizona Public Service Company (APS) has previously received from ED–3, pursuant to a lease agreement. PWCC requests sufficient transmission capacity to meet APS' loads served using the ED–3 system. PWCC proposes that this transmission service commence on October 9, 2001.

Comment date: October 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. DukeSolutions, Inc.

[Docket No. ER98–3813–007]

Take notice that on October 9, 2001, DukeSolutions tendered for filing with the Federal Energy Regulatory Commission (Commission) a summary of triennial market analysis report in compliance with the Commission's Order issued September 17, 1998.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Westmoreland—LG&E Partners

[Docket No. ER01–537–001]

Take notice that on October 2, 2001, Westmoreland—LG&E Partners (WLP) notified the Federal Energy Regulatory Commission (Commission) that it has relinquished its QF status.

Comment date: October 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER01–2534–002]

Take notice that on October 9, 2001, the New England Power Pool (NEPOOL) Participants Committee tendered for filing with the Federal Energy Regulatory Commission (Commission) a Substitute 2nd Revised Sheet No. 1169 of NewEngland Power Pool FERC Electric Rate Schedule No. 6, and a black line showing the correction. The amendment corrects the date through which a specific contract is exempt from changes to the treatment of Installed Capability (ICAP) transactions NEPOOL has proposed in this docket.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. ISO New England Inc.

[Docket No. ER01–2559–001]

Take notice that on October 9, 2001, ISO New England (the ISO) has tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing pursuant to the Commission's Order of September 7, 2001, on rejected material as discussed in the Order.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. NRG Audrain Generating LLC

[Docket No. ER01–2969–001]

Take notice that on October 3, 2001, NRG Audrain Generating LLC (NRG Audrain) filed with the Federal Energy Regulatory Commission (Commission) a Notice of Succession informing the Commission that the name Duke Energy Audrain, LLC has been changed to NRG Audrain.

Comment date: October 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Xcel Energy Services Inc.

[Docket No. ER02–29–000]

Take notice that on October 3, 2001, Xcel Energy Services Inc. (XES), on behalf of Southwestern Public Service (SPS), submitted for filing with the Federal Energy Regulatory Commission (Commission) an Interconnection Agreement between SPS and Llano Estacado Wind, LP.

SPS requests that the Commission accept the agreement effective March 2, 2001, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: October 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Longhorn Power, LP,

[Docket No. ER02–30–000]

Take notice that on October 3, 2001, Longhorn Power, LP (Longhorn)tendered for filing with the Federal Energy Regulatory Commission (Commission) acceptance of Longhorn Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Longhorn intends to engage in wholesale electric power and energy purchases and sales as a marketer. Longhorn is not in the business of generating or transmitting electric power. Longhorn is a Limited Partnership and has no corporate affiliates.

Comment date: October 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Alliant Energy Corporate Services, Inc.

[Docket No. ER02–31–000]

Take notice that on October 4, 2001, Alliant Energy Corporate Services, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreements with Exelon Generation Company, LLC Exelon establishing Exelon as a Short-Term Firm and Non-Firm Point-to-Point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. Open Access Transmission Tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of September 17, 2001, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER02–32–000]

Take notice that on October 3, 2001, the California Independent System Operator Corporation, (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Meter Service Agreement for ISO Metered Entities between the ISO and CalPeak Power—Enterprise, LLC for acceptance by the Commission. The ISO states that this filing has been served on CalPeak Power—Enterprise, LLC and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made September 26, 2001.

Comment date: October 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket No. ER02–33–000]

Take notice that on October 3, 2001, the California Independent System Operator Corporation, (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Participating Generator Agreement between the ISO and CalPeak Power—Enterprise, LLC for acceptance by the Commission. The ISO states that this filing has been served on CalPeak Power—Enterprise, LLC and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective September 26, 2001.

Comment date: October 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. California Independent System Operator Corporation

[Docket No. ER02–34–000]

Take notice that on October 3, 2001, the California Independent System Operator Corporation, (ISO) , tendered for filing with the Federal Energy Regulatory Commission (Commission) a Meter Service Agreement for ISO Metered Entities between the ISO and CalPeak Power—Border LLC for acceptance by the Commission.

The ISO states that this filing has been served on CalPeak Power—Border LLC and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective September 27, 2001.

Comment date: October 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER02–35–000]

Take notice that on October 3, 2001, the California Independent System Operator Corporation, (ISO) , tendered for filing with the Federal Energy Regulatory Commission (Commission) a Participating Generator Agreement between the ISO and CalPeak Power—Border LLC for acceptance by the Commission.

The ISO states that this filing has been served on CalPeak Power—Border LLC and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective September 27, 2001.

Comment date: October 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER02–36–000]

Take notice that on October 3, 2001, New England Power Company (NEP) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Second Revised Service Agreement No. 10 (Service Agreement) between NEP and Littleton Electric Light Department for network integration transmission service under NEP's open access transmission tariff—New England Power Company, FERC Electric Tariff, Second Revised Volume No. 9. This Service Agreement is a fully executed version of First Revised Service Agreement No. 10, that was filed unexecuted on August 8, 2001, in Docket No. ER01–2802–000. On October 9, 2001, NEP also submitted the Network Operating Agreement as part of NEP's October 3, 2001 filing where it submitted a second revised Service Agreement No. 10 between NEP and Littleton. No other changes have been made to the Service Agreement and the terms remain the same as originally filed on August 8, 2001.

NEP states that a copy of this filing has been served upon the Department of Telecommunications and Energy of the Commonwealth of Massachusetts and parties to the agreement.

Comment date: October 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Green Mountain Power Corporation

[Docket No. ER02–37–000]

Take notice that on October 3, 2001, Green Mountain Power Corporation (Green Mountain) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service

Agreement for sale of power to Connecticut Energy Cooperative pursuant to its Wholesale Market-Based Rate Power Sales Tariff and a Confirmation Letter thereunder dated September 20, 2001 for a long-term sale of Unit Firm Energy from its Searsburg Windpower Facility. Green Mountain is proposing to make the Service Agreement and accompanying Confirmation Letter effective as of October 1, 2001.

Comment date: October 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Energy Merchants, LLC

[Docket No. ER02–38–000]

Take notice that on October 3, 2001, Duke Energy Merchants, LLC (DEM) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of its Market-Based Rate Schedule, Rate Schedule FERC No. 1.

DEM requests an effective date for cancellation of October 4, 2001.

Comment date: October 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Attala Energy Company, LLC

[Docket No. ER02–40–000]

Take notice that on October 4, 2001, Attala Energy Company, LLC (Attala) submitted for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, an application for authorization to make sales, as a power marketer, of capacity, energy, and certain Ancillary Services at market-based rates; to reassign transmission capacity; and to resell firm transmission rights (FTRs).

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. NorthWestern Energy Marketing, LLC

[Docket No. ER02–41–000]

On October 4, 2001, NorthWestern Energy Marketing, LLC, a limited liability corporation organized under the laws of the State of Delaware, filed with the Federal Energy Regulatory Commission (Commission), under Section 205 of the Federal Power Act (FPA), an application requesting that the Commission (1) accept for filing its proposed market-based FERC Rate Schedule No. 1; (2) grant blanket authority to make market-based wholesale sales of capacity and energy under the FERC Rate Schedule No. 1; (3) grant authority to sell ancillary services at market-based rates; and (4) grant such waivers and blanket authorizations as the Commission has granted in the past to other nonfranchised entities with market-based rate authority.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Reliant Energy Aurora, LP; Reliant Energy Coolwater, LLC; Reliant Energy Desert Basin, LLC; Reliant Energy Ellwood, LLC; Reliant Energy Etiwanda, LLC; Reliant Energy Indian River, LLC; Reliant Energy Mandalay, LLC; Reliant Energy Maryland Holdings, LLC; Reliant Energy Mid-Atlantic Power Holdings, LLC; Reliant Energy New Jersey Holdings, LLC; Reliant Energy Ormond Beach, LLC; Reliant Energy Osceola, LLC; Reliant Energy Services, Inc.; Reliant Energy Shelby County, LP; and El Dorado Energy, LLC

[Docket No. ER02–39–000]

Take notice that on October 4, 2001, Reliant Energy Aurora, LP, Reliant Energy Coolwater, LLC, Reliant Energy Desert Basin, LLC, Reliant Energy Ellwood, LLC, Reliant Energy Etiwanda, LLC, Reliant Energy Indian River, LLC, Reliant Energy Mandalay, LLC, Reliant Energy Maryland Holdings, LLC, Reliant Energy Mid-Atlantic Power Holdings, LLC, Reliant Energy New Jersey Holdings, LLC, Reliant Energy Ormond Beach, LLC, Reliant Energy Osceola, LLC, Reliant Energy Services, Inc., Reliant Energy Shelby County, LP and El Dorado Energy, LLC (collectively, the Reliant Affiliates) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d (1994), and Part 35 of the Commission's Regulations, 18 CFR 35 (2001), revisions to their market-based rate tariffs to prohibit transactions with the franchised utility affiliate of their proposed merger partner, Orion Power Holdings, Inc., while the proposed transaction is pending.

The Reliant Affiliates request waiver of the prior notice requirements of Section 35.3 of the Commission's regulations, 18 CFR 35.3 (1999), to permit their filing to become effective September 27, 2001.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. GWF Energy LLC

[Docket No. ER02–42–000]

Take notice that on October 4, 2001, GWF Energy LLC (GWF) filed with the Federal Energy Regulatory Commission (Commission), a long-term power sales agreement between GWF and the California Department of Water Resources (the Agreement). Confidential treatment is being sought for the Agreement.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. PPL Brunner Island, LLC

[Docket No. EG01–125–000]

Take notice that on October 10, 2001, PPL Brunner Island, LLC (PPL Brunner Island) tendered for filing a Second Amended Request for Redetermination of Exempt Wholesale Generator Status. This request amends an Amended Request for Redetermination of Exempt Wholesale Generator Status originally filed by PPL Brunner Island on August 21, 2001.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26201 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2541–035]

Cascade Power Company; Notice of Availability of Environmental Assessment

October 12, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application dated April 2, 2001, requesting the Commission's authorization to surrender the license for the existing Cascade Power Project, located on the Little River near the town of Brevard in Transylvania County, North Carolina, and has prepared an Environmental Assessment (EA) for the proposed and alternative actions.

Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Any comments on the EA should be filed within 30 days from the date of this notice and should be addressed to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Cascade Power Project, No. 2541–035" to the first page of your comments. All timely filed comments will be considered in the Commission order addressing the proposed license surrender.

For further information, please contact Jim Haimes, staff environmental protection specialist, at (202) 219–2780 or at his E-mail address: *james.haimes@ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 01–26248 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2901–008 and Project No. 2902–009]

Nekoosa Packaging Corporation; Notice of Availability of Final Environmental Assessment

October 12, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Big Island Hydroelectric Project and the Holcomb Rock Hydroelectric Project, located on the James River in Bedford and Amherst Counties, Virginia, and has prepared a Final Environmental Assessment (FEA) for the project. No federal lands or Indian reservations are occupied by project works or located within the project boundary.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The FEA may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 01–26247 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 12, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12114–000.

c. *Date filed:* September 4, 2001.

d. *Applicant:* Big Rock Power Partners.

e. *Name and Location of Project:* The Old Campbell Project would be located on Old Campbell (AKA Madden) Creek in Humboldt County, California. The project would be located within the Six Rivers National Forest administered by the U.S. Forest Service.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Patrick Shannon, P.O. Box 1275, 42042 Highway 299, Willow Creek, California 95573.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the project number (P–12114–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) a proposed 40-foot-long, 10-foot-high concrete diversion dam, (2) a proposed 2,500-foot-long, 48-inch-diameter steel penstock, (3) a proposed powerhouse containing two generating units having a total installed capacity of 3 MW, (4) a proposed one-mile-long, 12-kV transmission line, and (5) appurtenant facilities. The project would have an annual generation of 8.4 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public

inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–26246 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures In Preparing a License Application

October 12, 2001.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Filing:* Request to use alternative procedures to prepare a new license application.

b. *Project No.:* 2219–013.

c. *Date filed:* September 26, 2001.

d. *Applicant:* Garkane Power Association Inc.

e. *Name of Project:* Boulder Creek Hydroelectric Project.

f. *Location:* On Boulder Creek, in Garfield County, approximately 100 miles east of Cedar City, in the Boulder Mountains, in a remote area of south-central Utah. The Project occupies 36.86 acres of federal lands within the Dixie National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Garkane Power Association, Mike Avant, Engineering Manager, 1802 South 175 East, Kanab, UT 84741 or Jones & DeMille Engineering, John Spedlove, Project Manager, 1440 South Pipe Lane, Richfield, UT 84701 (435) 896–8266.

i. *FERC Contact:* Dianne E. Rodman at (202) 219–2830; e-mail *Dianne.Rodman@ferc.fed.us.*

j. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call202–208–2222 for assistance).

k. Deadline for Comments: 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site *(http://www.ferc.gov)* under the "e-Filing" link.

l. The existing project consists of: A rock-fill diversion dam on the West Fork of Boulder Creek, having a rolled earth filled core and a maximum height of approximately 24 feet; two ungated spillways; diversion gate facilities; a buried 27-inch diameter conduit 17,600 feet long to a penstock forebay formed by an earth-fill dam 25 feet high and 34 feet long with an ogee concrete spillway on the East Fork of Boulder Creek; a concrete gravity dam about 4 feet high and 45 feet in length located near the toe of the West Fork diversion dam; a recovery pond; a pumphouse containing a 3 horsepower (hp) pump; an 8-inch diameter steel pipe about 60 feet long from the pumphouse and connecting with the buried 27-inch diameter conduit; 22,200 feet of 34 to 30-inch steel penstock; a powerhouse containing three 1975-hp impulse turbines operating under a static head of 1,527 feet, connected to three 1,400-kilowatt (kW) generators; an afterbay reregulating pool with gates and ditches to return water to water-right owners; access roads; a return ditch to Boulder Creek; a switchyard; a 69-kilovolt (kV) transmission line extending 28 miles to a substation at Escalante and a 69-kV line 23 miles long between the Escalante and Henrieville substations; and other appurtenant structures and equipment. There are no proposed changes to the project facilities.

m. Garkane Power Association (Garkane Power) has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. Garkane Power has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. Garkane Power has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on Garkane Power's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. Garkane Power will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Garkane Power has met with federal and state resources agencies, NGOs, elected officials, flood control and downstream interests, environmental groups, business and economic development organizations, the boating industry, and members of the public regarding the Boulder Creek Project. Garkane Power intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by April 30, 2005.

David P. Boergers,

Secretary.

[FR Doc. 01–26249 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request to Use Alternative Procedures In Preparing a License Application

October 12, 2001.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Filing:* Request to use alternative procedures to prepare a new license application.

b. *Project No.:* 632–008

c. *Date filed:* September 26, 2001.

d. *Applicant:* City of Monroe.

e. *Name of Project:* Lower Monroe Hydroelectric Project.

f. *Location:* On Monroe Creek near the City of Monroe in Sevier County, Utah. The project occupies 6.69 acres of federal lands within Fishlake National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jones & DeMille Engineering, Darin Robinson, Engineer, 1440 South Pipe Lane, Richfield, UT 84701 (435) 896–8266.

i. *FERC Contact:* Dianne E. Rodman at (202) 219–2830; e-mail *Dianne.Rodman@ferc.fed.us.*

j. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

k. *Deadline for Comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site *(http://www.ferc.gov)* under the "e-Filing" link.

l. The existing project consists of: (1) a 3-foot-high and 13-foot-long concrete overflow-type diversion dam topped with 3-foot-high flashboards; (2) a concrete intake structure with a trash rack and a 21-inch diameter cast iron pipeline 100 feet long; (3) a 4,405-foot-long welded steel penstock of which 24 feet is 20-inch diameter pipe and 4,381 feet is 16-inch diameter pipe; (4) a powerhouse containing a Pelton wheel connected to a generator rated at 100-kilowatts (kW); (5) a 2.4-kilovolt (kV), 3-phase generator lead and a transmission line approximately 3,570 feet long; and (6) appurtenant facilities. There are no proposed changes to the project facilities.

m. The City of Monroe (Monroe City) has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. Monroe City has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. Monroe City has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on Monroe City's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. Monroe City will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Monroe City has met with federal and state resources agencies, NGOs, elected officials, flood control and downstream interests, environmental groups, business and economic development organizations, the boating industry, and members of the public regarding the Lower Monroe Project. Monroe City intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by February 14, 2004.

David P. Boergers,

Secretary.

[FR Doc. 01–26250 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–68–000]

Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council; Notice of Technical Conference Concerning West-Wide Price Mitigation for the Winter Season and Procedures for Seeking Participation

October 12, 2001.

Take notice that the Commission is convening a technical conference to be held on Monday, October 29, 2001, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Technical Conference will commence at 1 p.m. and will be open to all interested persons. On June 19, 2001, the Commission prescribed price mitigation for California spot markets and markets throughout the West.[1] In that order, the Commission also invited interested parties to file with the Commission comments and proposals for the purpose of revisiting the mitigation methodology for future periods, if necessary. This technical conference will address possible modifications to the current West-wide price mitigation methodology for the winter season.

As a starting point for discussions at the conference, and based on the comments that were filed, possible modifications to the current price mitigation methodology include the following: (1) Eliminate the 10 percent adder for sales into California; and (2) require the California Independent System Operator to not only recalculate the price for spot market transactions when there is a Stage 1 reserve deficiency, but also recalculate the price when the average of the three gas indices increase by 10 percent above the level last used for calculating the mitigated price (*i.e.*, 66 cents based on the current average of $6.64/MMBtu).

Persons wishing to speak at the conference must submit a request to make a statement in the above-captioned dockets. The request should be submitted by e-mail to David Boergers at *david.boergers@ferc.fed.us* (include Docket No. EL01–68–000 in the subject heading of the e-mail), and should be followed up, at the same time, with a letter to the Secretary of the Commission. The request should clearly specify the name of the person desiring to speak, his or her title and affiliation, and the party or parties the speaker represents. There will be limited opportunity to participate via teleconferencing. Persons wanting to participate in this manner should specify their interest in their request to speak. In addition, the request should include a telephone number for notifying the speaker. The request should also include a brief summary of the issue or issues the speaker wishes to address, not to exceed one page. All e-mail requests must be submitted on or before Wednesday, October 17, 2001.

The number of persons desiring to speak at the conference may exceed the time available. Thus, interested persons are encouraged to join with other persons with similar interests. Based on the requests to participate, panels of speakers will be specified. The Secretary will issue a notice listing the speakers and panels for the conference.

In addition, all interested persons are invited to submit written comments on matters addressed at the conference. These comments should be submitted on or before November 9, 2001, in the above-captioned proceedings. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to *rimsmaster@ferc.fed.us.*

Comments related to this proceeding may be filed either in paper format or electronically. Those filing electronically do not need to make a paper filing.

For paper filings, the original and 14 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. EL01–68–000.

Comments filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the comments, access the Commission's website at *www.ferc.gov* and click on "Make An E-Filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us.* Comments should not be submitted to the e-mail address.

The conference will be transcribed. Those interested in obtaining transcripts need to contact ACE Federal Reporters, at 202–347–3700.

The Capitol Connection will broadcast the conference via the Internet and by phone. To find out more about The Capitol Connection's live Internet and phone bridge, contact David Reininger or Julia Morelli at 703–993–3100 or go to *www.capitolconnection.gmu.edu.*

Live and archived audio of the conference will also be available for a fee via National Narrowcast Network. Live audio is available by telephone at 202–966–2211 and by subscription on the Web at *www.hearing.com.* The Web audio will be archived and available for listening after the event is completed. Billing is based on listening time.

Anyone interested in purchasing videotapes of the conference should call VISCOM at 703–715–7999.

Questions about the conference program should be directed to: Camilla Ng, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–208–0706, camilla.ng@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 01–26254 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

[1] See San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 95 FERC ¶61,418 at 62,570 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–9–001]

Reporting of Natural Gas Sales to California Market

Issued October 11, 2001.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying rehearing of the Commission's July 25, 2001 order, 66 FR 40245 (August 2, 2001), imposing certain reporting requirements on natural gas sellers and transporters serving the California market.

DATES: The reporting requirement covers activity for the six months from August 1, 2001, to January 31, 2002, and the first report is due October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Jacob Silverman, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–2078.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

Order on Rehearing

Issued October 11, 2001.

On July 25, 2001, the Commission issued an order (July 25 order) imposing a reporting requirement on natural gas sellers and transporters serving the California market.[1] The specific information to be collected was set forth in a series of questions included as an appendix to the order. The Commission concluded that it has the authority to request the information in order for the Commission to understand why the disparity in the price of natural gas between the price in California and the remainder of the country had occurred, and was continuing. The information is to be submitted monthly for the six-month period covering August 1, 2001, through January 31, 2002, with the report due 30 days after the end of each month.[2] Requests for rehearing or clarification were filed by a number of parties.

The Commission denies rehearing. The reporting requirement is in the public interest, since the information is necessary for the Commission to better understand how the California natural gas market operates so the Commission can determine whether there is anything else the Commission can do to protect California consumers. Without the information the Commission can not determine whether it has authority to meaningfully address the problem of disparate prices in the California natural gas market. Further, the information is necessary for the Commission to advise Congress as to whether it should change the existing regulatory framework under which the Commission now operates. The Commission also denies the requests for clarification.

Background

On May 18, 2001, the Commission issued an order (the May 18 order) proposing to impose a reporting requirement on natural gas sellers and transporters serving the California market, and requested comments on the proposal.[3] The order discussed the Commission's concern about a sharp increase in the price of natural gas sold in the California market, which exceeded the increase in other markets, including those markets supplied by the same producing areas.[4] The May 18 order stated that the information should assist the Commission in carrying out its regulatory responsibilities in a number of ways. First, it would help the Commission determine what part of the problem, if any, is within the scope of its jurisdiction by enabling the Commission to determine what percentage of the volumes sold into the California market is domestically produced gas sold by marketers affiliated with pipelines[5] and LDCs in sales for resales, which are the only sales of natural gas now being made that the Commission has jurisdiction to regulate. The information would also give the Commission an accurate picture of the overall average gas costs being incurred by all purchasers of natural gas moving into the California market. The Commission also stated that the information would enable it to determine the extent to which the cost of interstate transportation, which is subject to the Commission's jurisdiction, affects the price of gas at the California border.

The specific information to be collected was set forth in a series of questions included as an appendix to the May 18 order. Twenty-nine responses were filed to the May 18 order. Some commenters who supported the proposal also sought to broaden the scope of information gathered. Other commenters raised a number of issues, such as the extent of the Commission's authority to collect the information, the period in which the information is to be collected, and the confidential treatment of certain information, particularly the data on individual transactions. In addition, some commenters urged clarification of a number of the questions.

The July 25 order concluded that under NGA sections 14[6] and 16 the Commission has the authority to request the information from entities that may not be natural gas companies subject to the Commission's NGA section 1 jurisdiction.[7] In addition to the reasons discussed in the May 18 order, the Commission pointed out that the information being sought would be relevant in determining the effect of legislative proposals addressing the California energy situation in the current session of Congress.[8]

Moreover, the Commission stated that it was also concerned about the operation of the California natural gas market because gas-fired electric generators in California help to establish the market clearing price for electric generation pursuant to the bidding system used by the California Independent System Operator. On June 19, 2001, the Commission issued an

[1] 96 FERC ¶61,119 (2001).

[2] On September 17, 2001, the Office of Management and Budget (OMB) approved the information collection, and assigned it OMB No: 1902–0187. The order stated that the Commission intended to seek an extension of the reporting requirement, upon approval by OMB, through September 30, 2002, to coincide with the end date of the Commission's mitigation plan regarding wholesale electricity prices in California and the West. See San Diego Gas & Electric Company, *et al.*, 95 FERC ¶61,418 (2001), *reh'g pending.*

[3] 95 FERC ¶61,262 (2001).

[4] The May 18 order stated that the Commission's legal authority to take actions that would affect those prices is limited by the existing statutory framework, specifically the Natural Gas Policy Act of 1978, and the Natural Gas Wellhead Decontrol Act of 1989. As a result, the only sales of natural gas that the Commission currently has jurisdiction to regulate are sales for resale of domestic gas by pipelines, LDCs, or their affiliates.

[5] For the most part, interstate pipelines no longer sell natural gas.

[6] Section 14(a) provides:

The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provision of [the NGA] or any rule, regulation, or order hereunder, or to aid in the enforcement of the provisions of this act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation to the Congress.

[7] Moreover, with respect to concerns over confidentiality, the order found that the specific information gas sellers are required to report concerning sales transactions is exempt from disclosure under the Freedom of Information Act (FOIA). In addition, in response to the comments received, certain of the proposed questions were modified.

[8] [See *e.g.* S. 764, and H.R. 1974 which would instruct the Commission to require natural gas sellers of bundled sales to the California market to disclose the commodity portion and the transportation portion of the sale price.

order establishing price mitigation for the California power markets.[9] Under that mitigation plan, generators' price bids during reserve emergencies must reflect the marginal cost of obtaining natural gas used for generation in the California ISO's single price auctions. The ISO's clearing price will act as a maximum price for spot sales outside the ISO's single price auctions, which are bilateral sales in California and the rest of the WSCC. That number is derived using an average of the mid-point of the monthly bid-week prices at certain reported California natural gas market price points. Thus, the price for electric power would be dependent, to some extent, on the price of natural gas at certain California market points.

Under these circumstances, not only was the Commission's NGA section 14 and 16 authority applicable, but the Commission found that Section 311 of the Federal Power Act (FPA)[10] also applies. That section authorizes the Commission, "as a basis for recommending legislation," to request information "regarding the generation * * * of electric energy, however produced * * * whether or not subject to the jurisdiction of the Commission * * *" As a result the Commission has the authority to "investigate nonjurisdictional sales of nonjurisdictional companies."[11] The FPA section 311 authority includes authorization to secure information concerning "the cost of generation." Since natural gas is used in many generating plants to produce the electricity, the cost of natural gas is obviously a crucial element in any investigation of the cost of generating electricity. Thus, in the current situation, FPA section 311 is another basis for the Commission's authority to issue the reporting requirement.

Requests for rehearing or clarification were filed by e prime, Inc, Tractebel Energy Marketing, Inc. (TEMI), and Enron North America and Enron Energy Services (Enron). The Public Utilities Commission of the State of California (CPUC), and Southern California Gas Company and San Diego Gas & Electric Company (collectively Sempra Utilities) filed requests for clarification.

[9] *See* San Diego Gas & Electric Co. *et al.*, 95 FERC ¶61,418 (2001) (*San Diego*), establishing a price mitigation plan for Western States Coordinating Council (WSSC) area, including California.

[10] 16 U.S.C. § 825j. That section provides, in part, that "the Commission is authorized and directed to conduct investigations regarding * * * electric energy, however produced, throughout the United States, * * * whether or not subject to the jurisdiction of the Commission. * * *"

[11] Continental Oil Co. v. FPC, 549 F.2d 31 at 34 (5th Cir. 1975).

Discussion

1. For the Purpose of the Reporting Requirement the Commission Has the Authority To Require Reports From Entities Not Subject to Its Jurisdiction

The requests for rehearing objected to the requirement that non-jurisdictional entities report information regarding non-jurisdictional transactions to the Commission. They contend that there is no basis to permit the Commission to collect data from entities that are not subject to the Commission's jurisdiction under the Natural Gas Act.

TEMI also argues that even if the Commission declines to grant rehearing, it should exclude from the reporting requirement those entities whose gas sale volumes could not have a material effect on gas prices in the California market. It asserts that the order should be limited to entities whose volumes exceed 1 billion cubic feet per month of physical volumes in the California market. E prime, Inc. contends that since the Commission cannot require the information it seeks from those not subject to its jurisdiction, information from the limited universe of persons concerning the limited number of sales transactions over which the Commission does have jurisdiction, will not aid the Commission in its search for a solution to the California problem, so the rulemaking should be rescinded in its entirety.

The July 25 order explained that NGA sections 14 and 16, and FPA section 311 provide the Commission's authority to require all entities selling gas in the California market, including non-jurisdictional entities, to file the report. The order explained that because of the disparity in the price between California and the rest of the country, the Commission needs the information to carry out its statutory responsibilities. Thus, contrary to e prime, which asserts that the Commission has not explained why it needs the information, the July 25 order has an extensive discussion on this very point.[12]

Without repeating the discussion in the July 25 order as to why the Commission needs the information, suffice it to say that without the information from non-jurisdictional parties, the Commission can not determine whether it has authority to meaningfully address the disparity in price of natural gas in the California market. Further, the information is necessary for the Commission to advise Congress as to whether it should change the existing regulatory framework under which the Commission now operates.

[12] 96 FERC at 61,464–66.

There is no merit in e prime's contention that NGA section 14 cannot be a basis for the Commission's order here because that section cannot expand the Commission's jurisdiction over persons or transactions excluded by Congress, citing *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498. In that case, the Commission sought to enjoin the company, a regulated entity, from transferring property from which gas was being produced. The Court held that such action was outside the Commission's jurisdiction because it involved the "production and gathering" of gas, an activity specifically excluded from the Commission's jurisdiction under NGA section 1(b). However, the Court noted that in support of its position, the Commission relied on a number of sections of the NGA, one of which was Section 14(b). The Court stated:

> Section 14 (b) * * * comes closest to supporting the Commissions' argument, *but that confers only power to obtain information* (emphasis added).[13]

That is exactly what is at issue here, the Commission's authority to obtain information relevant to carrying out its statutory responsibilities. Contrary to e prime's contention, the Commission's action is not a fishing expedition, but has been taken "for the purpose of investigating a specific problem that is a matter of urgent concern both to it and the Congress."[14]

Similarly, TEMI's argument that case law conflicts with the Commission's position is unconvincing.[15] The cases TEMI cites found that the Commission has authority to require natural gas companies to submit information both as to jurisdictional and non-jurisdictional matters. It does not follow from that, as TEMI argues, that the Commission has no authority to require non-jurisdictional entities to submit information. In fact, in *Superior Oil*, cited by TEMI, at issue was the Commission's order requiring natural gas companies to file information concerning their exploration and development related expenditures, as well as those of their affiliates, including affiliates not themselves natural gas companies. Petitioners contended the Commission had exceeded its statutory power to the extent the order applied to affiliates not natural gas companies. The Court

[13] 337 U.S. at 505–06.

[14] 96 FERC at 61,464.

[15] TEMI cites Continental Oil v. FPC, 519 F.2d 31, 34 (5th Cir. 1975); Union Oil v. FPC, 542 F.2d 1036 (9th Cir. 1976), and Superior Oil Co. v FERC, 563 F2d 191 (5th Cir. 1977).

upheld the Commission because the information as to affiliates was necessary to ensure that the Commission could determine the true cost of production of interstate sales of the regulated gas. Moreover, the Court stated that "[O]ther sections of the Act," such as section 14(a):

> while falling short of specifically empowering the FPC to gather from affiliates the information sought by Form 64, support the view that *the [Commission's] investigatory powers are broad and are not limited by the constraints which Congress* has placed on the regulatory and rate-setting jurisdiction of the [Commission](emphasis added).[16]

Here, the Commission relies upon NGA sections 14 and 16, and FPA section 311, for its authority to act here with respect to the specific problem being addressed.

With regard to the Commission's authority under FPA section 311, the July 25 order explained that in light of the Commission's electric mitigation order; *supra*, n 2., it is essential that the Commission understands the operation of the natural gas market in California because the price of natural gas is an element in determining the cost of generating electricity. To argue, as does TEMI, that the price of natural gas is like "any subject matter that could possibly affect the cost of electricity generation"[17] fails to recognize the crucial role natural gas plays in determining the price of electricity under the mitigators plan. Under the mitigation plan generators' price bids during reserve emergencies must reflect the marginal cost for each generator by using a proxy which is to be determined by "averag[ing] the mid-point of the monthly bid-week prices * * * for three spot market prices reported for California."[18]

This clearly falls within the scope of FPA section 311 which authorizes "investigations regarding the generation, transmission, distribution, and sale of electrical energy, however produced, throughout the United States * * * whether or not subject to the jurisdiction of the Commission. * * * "That section also expressly authorizes the Commission to secure information concerning "the cost of generation." Moreover, to understand the operation of natural gas market in California, the Commission must have information from all participants in that market. Thus, the Commission will not limit the reporting requirement to only the larger participants in that market, as TEMI has requested.

[16] 563 F.2d at 198.

[17] 95 FERC at 62,560–61.

[18] San Diego, 95 FERC at 62,560–61.

2. Other Issues Raised in the Rehearing Requests Are Without Merit

Enron takes a different position than the others seeking rehearing. It argues that:

> the situation does not present an adequate legal basis for the imposition of the burden of formal reporting requirements on all parties; rather, the burden should only be imposed on parties and at such times as is reasonably necessary to investigate specific matters. The formalized and generally applicable reporting requirements adopted go far beyond that scope.[19]

However, the experience in the past year supports the need for the information requested. The Commission is seeking information covering a limited time period. It is needed to address a specific problem in the California natural gas market to enable the Commission to determine whether it can take any meaningful action with respect to that problem, and, if not, whether Congress should consider changes in the regulatory framework.

Enron contends that based upon its experience in responding to similar data requests, the Commission underestimated the burden of the reporting requirement set forth in the July 25 order, and seems to imply that this is a basis for not complying. The Commission can only make an average projection of that burden. The fact that Enron believes the burden will exceed that estimate provides no grounds for rescinding the reporting requirement.

In addition, Enron argues that the reporting requirements were based on a business method that does not reflect how Enron manages its business. Specifically Enron asserts that the reporting requirement seeks daily pricing and volume information for gas transportation and purchase contracts "associated with the sales contracts" for gas physically delivered to California, and Enron does not have daily information about its sales, nor does it have purchase contracts that relate to specific sales contracts because its business is managed on an aggregated basis. It argues that to associate purchases to sales would be an "arbitrary after the-fact-determination." Instead, Enron asks that the Commission should "clarify that sellers of natural gas need to file information that they have that is responsive to the questions, but that they do not have to create data to respond to these questions when that data does not otherwise exist."[20]

Question 2 to natural gas sellers requires them to provide, on a daily basis, certain information for each contract under which they sold gas that was physically delivered at points on the California border or in California. Question 3 requires sellers to identify separately the transportation and gas commodity components for each of the sales contracts identified in Question 2. Question 4 requires sellers to provide certain information on a daily basis "for each of your gas purchase contracts associated with the sales contracts you identified in response to Question 2."

Enron reads Questions 3 and 4 as requiring gas sellers to match specific contracts under which it purchases transportation service and natural gas with particular gas sales contracts on a daily basis. Enron suggests that it cannot do this, primarily because its business is managed on an aggregated basis. It does not "'back-to-back' its sales with specific packages of gas or of transportation it purchases."[21] Therefore, it asserts, any association of purchase and transportation contracts with particular sales contracts would be purely arbitrary. Enron also states any association of transportation and sales contracts with its sales contracts on a daily basis is complicated by the fact that it does not have daily information about most of its sales, since they are done on a monthly billing cycle basis.

Questions 3 and 4 as adopted by the Commission do not require sellers to make arbitrary associations of the sellers' transportation and gas purchases with particular sales contracts. Rather, those questions can, and should, be answered in a manner consistent with the way the particular gas seller does business. For example, if a seller, such as Enron, operates its business on an aggregated basis without attributing purchases under any particular purchase contract to sales under any particular sales contract, then all the contracts under which it purchases gas each day during a particular month supply the gas sold under all its sales contracts during that month, whether in California or elsewhere. In effect, the purchases under each of the seller's gas purchase contracts must be considered to have been pro-rated among each of the seller's sales contracts, including both the California sales contracts identified in response to Question 2 and any other sales contracts that the seller might have. In such circumstances, the seller should report the information requested in Question 4 as to all its gas purchase contracts, since a pro-rated portion of the gas purchased under each gas purchase contract supplies the gas sold under each California sales

[19] Rehearing request at 2.

[20] Rehearing request at 5.

[21] Rehearing request at 4.

contract.[22] In response to Question 4(d) concerning the daily volumes purchased, the seller would report a pro rata share of the volumes purchased under that contract equal to the pro rata share that the seller's California sales represent of its overall sales.[23]

To the extent that Enron is contending that it should only be required to report aggregated information concerning its gas purchase contracts, the Commission finds that limiting the reported information in such a manner would be unacceptable. First, the individual contract-by-contract information is necessary to verify the aggregated data. Second, the information about the terms of each seller's gas purchase contracts is necessary for the Commission to understand how the California gas market works and thus what actions, if any, the Commission should take within its jurisdiction, or recommend that Congress take. For example, while spot prices of natural gas at the California border and, to a somewhat lesser extent, in producing basins have been very volatile, the Commission does not know to what extent sellers must pay spot prices for the gas they sell in California. The information required in response to Question 4 about the terms of the seller's gas purchase contracts and whether the price in those purchase contracts is fixed or indexed, will enable the Commission to determine this.

Question 3 to gas sellers requires them to identify separately the transportation component and the gas commodity component of the price in their sales contracts identified in response to Question 2. The July 25 order stated that if the sales contract only includes an overall price, then the seller shall report the transportation cost it incurred in moving the gas from the point where it purchased the gas to the point where it sold the gas, and how it determined that amount. If a seller operates its business on an aggregated basis, it still must maintain particular transportation contracts for the purpose of delivering gas to California. Therefore, to the extent its California sales contracts do not separately identify the transportation and gas commodity components of the sales price, then it should pro-rate the costs incurred under its transportation contracts used for delivering gas to California among the gas sales contracts identified in response to Question 2.

Finally, Enron asserts that the filing deadline should be extended from 30 to 45 days after the end of each month. It argues that the current filing deadline creates additional problems because it "tends to be the busiest time for the personnel in gas accounting who will have to prepare the reports."[24]

We note that Enron was the only party seeking such an extension. Moreover, we fail to understand how the filing of the report thirty days after the month in which the activity occurred imposes too difficult a burden on gas accountants. The report due on October 1, 2001, is for the activity that occurred during August. The information for that activity would be processed, and compiled in September, and the filing would be made by October 1. Accordingly, we deny that request.

The Commission recognized, as e prime argues, that some of the information to be furnished might include highly confidential, sensitive marketing information. However, the order gave protection to such information, so that argument as a grounds for not furnishing the information is baseless.

3. Requests for Clarification

CPUC requests that all the information furnished to the Commission should be given to CPUC as well.[25] Although the CPUC has regulatory authority in California, we do not believe that that alone is a sufficient basis for granting its request. Certain of the information will not be entitled to confidential treatment, and will be available to all, including the CPUC. However, the July 25 order found that individual sales or purchase contracts, which include sensitive price data will be exempt from public disclosure. We will not make exceptions to this ruling because, by assurance of confidential treatment, parties will have no basis for not complying.

Moreover, the purpose in seeking the information is to enable the Commission to understand the operation of the market for gas sales into California, not to investigate the conduct of particular participants in that market. First, the information would help the Commission to determine what part of the problem, if any, is within the scope of its jurisdiction, and enable it to determine the extent to which the cost of interstate transportation, which is subject to the Commission's jurisdiction, affects the price of gas at the California border. In addition, the information being sought would be relevant in determining whether Congress should consider changes in the regulatory framework. None of these purposes would be aided by giving to the CPUC the confidential data concerning individual sales or purchase contracts.

Sempra requests that the Commission clarify that the "sellers and transporters of natural gas serving the California market" required to provide data include LDCs and utilities upstream of California that are interconnected with or served by interstate pipelines ultimately serving the California markets. Sempra argues that it is impossible for the Commission to gain a comprehensive understanding of the pricing disparity between California and the rest of the nation unless, at a minimum, it obtains data on capacity utilization by entities upstream of California.

The Commission denies the request. Not only is the request so broad and ambiguous that it is difficult to understand what it covers, but the Commission is satisfied that the questions in their present form will furnish the Commission with the necessary information.

The Commission orders:

(A) The requests for rehearing are denied.

(B) The requests for clarification are denied.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 01–26240 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

[22] Question 4 requires the following information concerning gas purchase contracts:

a. The purchase contract's identification number;

b. The pipeline upstream of the point of delivery; and the pipeline downstream of the point of delivery;

c. The term of the purchase contract (beginning and ending dates);

d. The daily volumes (on a MMBtu basis) purchased;

e. The price paid;

f. Whether the price is fixed or indexed (identify the index).

g. Identify the entity from whom the responder purchased the gas; and,

h. Identify the point where responder took title to the gas.

[23] If a seller does make gas purchases to supply particular gas sales contracts, then the only purchase contracts it need report in response to Question 4 are those purchase contracts which supply the gas sales contracts it identified in response to Question 2. The Commission has requested daily information, because market conditions change on a daily basis, and there can be significant changes in at least the spot price of gas from day to day.

[24] Rehearing request at 5.

[25] Sempra Energy Trading Corp. (SET) moved to respond to the CPUC's request, and that good cause exists to accept the answer since it had no opportunity to respond to CPUC's initial request. SET objects to the CPUC's request, and points out that the CPUC is a litigant in many ongoing Commission proceedings, so it should not have access to the confidential data furnished.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

October 12, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

EXEMPT

1. CP01–176–000	10–3–01	Laura Turner.
2. Project No. 2175, et al	10–9–01	Hon. Ron W. Goode.
3. CP01–45–000	10–9–01	David Swearington.
4. Project Nos. 10865–000 and 11495–000	10–10–01	Carol Gleichman.
5. Project No. 2016–000	10–10–01	Allyson Brooks (signature page).

David P. Boergers,

Secretary.

[FR Doc. 01–26245 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL02–1–000]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell; Treatment of Previously Public Documents; Statement of Policy on Treatment of Previously Public Documents

Issued October 11, 2001.

The September 11, 2001 terrorist attacks on America have prompted the Commission to reconsider its treatment of certain documents that have previously been made available to the public through the Commission's Internet site, the Records and Information Management System (RIMS), and the Public Reference Room. For the time being, the Commission will no longer make available to the public through these means documents, such as oversized maps, that detail the specifications of energy facilities licensed or certificated under Part I of the Federal Power Act, 16 U.S.C. 791a, *et seq.*, and Section 7(c) of the Natural Gas Act, 15 U.S.C. 717f(c), respectively. Rather, anyone requesting such documents must follow the procedures set forth in 18 CFR 388.108 (Requests for Commission records not available through the Public Reference Room (FOIA Requests)).

The Commission does not know how long this process will stay in place, and directs staff to report on its impact on agency business in 90 days. In the meantime, staff is also directed to make every effort to respond timely to legitimate requests for documents that have been made available to the public previously but that are no longer available through the means noted above.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 01–26200 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7086–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Compliance Assurance Monitoring Program Information Collection Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Compliance Assurance Monitoring Program, 40 CFR part 64, OMB Control Number 2060–0376, expiration date September 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 19, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1663.03 and OMB Control No. 2060–0376, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by E-Mail at auby.susan@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1663.03. For technical questions about the ICR contact Barrett Parker at (919)–541–5635.

SUPPLEMENTARY INFORMATION:

Title

Compliance Assurance Monitoring Program, OMB Control Number 2060–0376, EPA ICR Number 1663.03, expiration date September 30, 2001. This is a request for extension of a currently approved collection.

Abstract

The Clean Air Act contains several provisions directing us to require owners or operators to conduct monitoring and to certify that they are complying with applicable requirements. These provisions are set forth in both title V (operating permits provisions) and section 114 of title I (enforcement provisions) of the Act. Title V directs us to implement monitoring certification requirements through the operating permits program. Section 504(b) of the Act allows us to prescribe by rule, methods and procedures for determining compliance and states that continuous emission monitoring systems need not be required if other methods or procedures provide sufficiently reliable and timely information for determining compliance. Under section 504(c), each operating permit must "set forth inspection, entry, monitoring, compliance, certification, and reporting requirements to assure compliance with the permit terms and conditions." Section 114(a)(3) requires us to promulgate rules on enhanced monitoring and compliance certifications. Section 114(a)(1) of the Act provides additional authority concerning monitoring, reporting, and recordkeeping requirements. That section provides the Administrator with the authority to require any owner or operator of a source to install and operate monitoring systems and to record the resulting monitoring data. Regulations to implement these authorities were promulgated at 62 FR 54900 (October 22, 1997). In accordance with section 503(e) of the Act, monitoring information to be submitted by source owners and operators as part of their monitoring reports and compliance certifications shall be available to the public, except as entitled to protection from disclosure as allowed in section 114(c) of the Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 26, 2001, (66 FR 20987); no comments were received.

Burden Statement

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 43 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owner/operators of Title V sources, CAM Rule.

Estimated Number of Respondents: 2,020.

Frequency of Response: On occasion, Semi-annually.

Estimated Total Annual Hour Burden: 172,698.

Estimated Total Annualized Capital, O&M Cost Burden: $9,699,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1663.03 and OMB Control No. 2060–0376 in any correspondence.

Dated: September 26, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–26266 Filed 10–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7085–2]

Notice of Availability of the Draft Guidance on Demonstrating Compliance With the Land Disposal Restrictions Alternative Soil Treatment Standards, and the Draft Interpretative Memorandum on the Stabilization of Organic-Bearing Hazardous Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice, request for comments.

SUMMARY: The intent of this notice is to announce the availability for public comment of two draft documents. The first document is titled "Guidance on Demonstrating Compliance With the Land Disposal Restrictions Alternative Soil Treatment Standards." The second document is titled "Interpretative Memorandum on the Stabilization of Organic-Bearing Hazardous Wastes." By making these documents available for review and comment, we hope to encourage greater involvement by states, industry, and the public.

DATES: To make sure we consider your comments on these documents, we must receive them by December 3, 2001.

ADDRESSES: If you wish to comment on the draft "Guidance on Demonstrating Compliance With the Land Disposal Restrictions Alternative Soil Treatment Standards," you must submit an original and two copies of the comments referencing Docket No. F–2001–DRG1–FFFFF. If you wish to comment on the draft "Interpretative Memorandum on the Stabilization of Organic-Bearing Hazardous Wastes," you must submit an original and two copies of the comments referencing Docket No. F–2001–DRG2–FFFFF. If using regular U.S. Postal Service mail to: RCRA Docket Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. If using special delivery, such as overnight express service, send to: RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia 22202. Hand deliveries of comments should be made to the Arlington, VA address above. You may also submit comments electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.epa.gov*. You should identify comments in electronic format with the appropriate docket number. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters and any type of encryption. If you do not submit comments electronically, EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow us to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. We emphasize that submission of diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of the CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

The Agency urges commenters submitting data in support of their views to include data evidence that appropriate quality assurance/quality control [1] (QA/QC) procedures were followed in generating the data. Data that the Agency cannot verify through QA/QC documentation may be given less consideration or disregarded in developing the final documents.

You may view public comments and supporting materials in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. To review docket materials, the public must make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. Each docket index and notice is available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing these materials.

[1] For guidance as to how to do so, see Final Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology; USEPA, October 23, 1991.

FOR FURTHER INFORMATION CONTACT: For general information or to obtain copies of the draft documents, contact the RCRA Hotline at (800) 424–9346 (toll-free) or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For information on specific aspects of the draft "Guidance on Demonstrating Compliance With the Land Disposal Restrictions Alternative Soil Treatment Standards," contact Rhonda Minnick, Office of Solid Waste (5302W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Rhonda Minnick may be reached at 703–308–8771, *minnick.rhonda@epa.gov*. For specific information on specific aspects of the draft "Interpretative Memorandum on the Stabilization of Organic-Bearing Hazardous Wastes," contact Rita Chow, Office of Solid Waste (5302W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Rita Chow may be reached at 703–308–6158, *chow.rita@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Availability of Draft Documents on Internet

Please follow these instructions to access the draft documents from the World Wide Web (WWW): (1) For the draft "Guidance on Demonstrating Compliance With the Land Disposal Restrictions Alternative Soil Treatment Standards," type *http://www.epa.gov/* and (2) For the draft "Interpretative Memorandum on the Stabilization of Organic-Bearing Hazardous Wastes," type *http://www.epa.gov/*.

II. Guidance on Demonstrating Compliance With the Land Disposal Restrictions Alternative Soil Treatment Standards

A. What Are the Land Disposal Restrictions (LDR) Alternative Soil Treatment Standards?

The Agency promulgated alternative LDR treatment standards for hazardous soil in the Phase IV rule, published May 26, 1998 (63 FR 28556 and 40 CFR 268.49). The LDR treatment standards apply to soils contaminated with hazardous wastes which are excavated and will be land disposed. Under the LDR regulations, you may elect to meet either the alternative soil treatment standards at 40 CFR 268.49, or the more generic treatment standards at 40 CFR 268.40. The alternative treatment standards require that such hazardous soil be treated to reduce concentrations of hazardous constituents by 90 percent, or to meet the hazardous constituent concentrations that are 10 times the Universal Treatment Standard (UTS) found at 40 CFR 268.48, whichever is greater.

B. What Is Included in the Draft Guidance Document?

The interim guidance discusses the alternative treatment standards and why they were developed. It then presents step-by-step guidance on statistical and non-statistical approaches that can help you measure compliance with the alternative soil treatment standards.

C. Can the Draft Guidance Be Used Now?

We are requesting comment on the guidance before it is finalized. However, since the document provides guidance regarding existing rules, and does not impose any regulatory requirements, it may be referred to for assistance in how to apply those underlying rules.

III. Interpretative Memorandum on the Stabilization of Organic-Bearing Hazardous Wastes

A. What Is the Purpose of This Draft Interpretative Memorandum?

The use of stabilization for organic-bearing hazardous wastes to comply with Land Disposal Restrictions (LDR) has been of interest to the regulated community. This draft interpretative memorandum discusses circumstances where stabilization of hazardous organic constituents may be a permissible form of treatment, where it may be classified as impermissible dilution under the LDR program, and describes factors to consider when making these evaluations.

B. Request for Comment

The Agency is requesting comment on this draft interpretative memorandum prior to being finalized. Specifically, the Agency is seeking comment on the need for this interpretative memorandum, additional situations and factors where stabilization may be inappropriate, as well as appropriate for organic-bearing hazardous wastes, and treatment performance data on cases where stabilization was used to treat organic-bearing hazardous wastes.

The guidance document is not a binding regulation, and any decisions regarding legality of organic stabilization activities must still be

justified on a case-by-case basis, not merely by reference to the guidance document. Within these constraints, persons are free to consult the interpretive memorandum as an aid in addressing issues regarding legality under existing rules of organic stabilization activities.

Dated: October 4, 2001.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 01–26087 Filed 10–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7086–5]

Clean Water Act Class II: Proposed Consent Agreement and Opportunity To Comment Regarding the South Eastt Regional Reclamation Authority ("S.E.R.R.A.") Proceeding Under Clean Water Act Section 309(g)(I), (2)(B) and 40 CFR 22.13(b)

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice.

SUMMARY: EPA is providing notice of a proposed Complaint/Consent Agreement for alleged violations of the Clean Water Act ("Act"). EPA is also providing notice of opportunity to comment on the proposed Complaint/Consent Agreement.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who violates section 405 of the Clean Water Act, 33 U.S.C. 1345, may be assessed a penalty in a "Class II" administrative penalty proceeding.

Class II proceedings under section 309(g) are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 CFR part 22 ("Consolidated Rules"), published at 64 FR 40138, 40177 (July 23, 1999). The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order under 40 CFR 22.13(b) and 22.45(b) is forty (40) days after publication of this notice.

On September 28, 2001 EPA filed with Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391, the following Complaint/Consent Agreement:

In the Matter of South East Regional Reclamation Authority (S.E.R.R.A.), Docket No. CWA–9–2001–0004.

For the alleged violations set forth in the Complaint/Consent Agreement, Respondent S.E.R.R.A. agrees to pay to the United States a civil penalty of $72,000 (seventy-two thousand dollars) for violations of section 405 of the Act, 33 U.S.C. 1345, for the preparation and application of improperly treated sewage sludge.

Procedures by which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II penalty is forty (40) days after issuance of public notice in a proceeding pursuant to section 309(g)(1) of the Act and 40 CFR 22.13(b) and 22.45(b).

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint/Consent Agreement or other documents filed in this proceeding comment upon the proposal assessment, or otherwise participate in the proceeding should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by S.E.R.R.A. is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to forty (40) days after the date of publication of this notice.

Dated: September 28, 2001.

Mike Schultz,

Director, Water Division.

[FR Doc. 01–26267 Filed 10–17–01; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 01–2393]

Renewal of North American Numbering Council Charter

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 15, 2001, the Commission released a public notice announcing GSA approves renewal of North American Numbering Council charter through October 4, 2003. The intended effect of this action is to make the public aware of the renewal of the North American Numbering Council charter through October 4, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–2320 or *dblue@fcc.gov*. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW, Room 6–A207, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: October 15, 2001.

The GSA has renewed the charter of the North American Numbering Council (Council) through October 4, 2003. The Council will continue to advise the Federal Communications Commission (Commission) on rapidly evolving and competitively significant numbering issues facing the telecommunications industry.

In October 1995, the Commission established the North American Numbering Council, a Federal advisory committee created pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988), to advise the Commission on issues related to North American Numbering Plan (NANP) administration in the United States, including local number portability administration issues. The original charter of the Council was effective on October 5, 1995, establishing an initial two-year term. The first amended charter was effective on October 5, 1997, renewing the term of the Council for an additional two years. The second amended charter was effective on October 5, 1999, renewing the term of the Council for an additional two years.

Since the last charter renewal, the Council has provided the Commission with critically important recommendations regarding numbering issues. During the term of the prior amended charter, the Council made recommendations on issues which included: (1) Thousands-block number pooling procedures and administrator; (2) cost for the COCUS replacement tool used to collect number utilization and forecast data; (3) Industry Numbering Committee (INC) NANP Expansion Assumptions; (4) NANPA electronic file transfer capability for receiving utilization and forecast data; (5) secondary definitions for numbering categories; (6) number administration auditor technical requirements; (7) thousands-block number pooling administrator technical requirements; (8) fees for reserved numbers; and (9) wireless number portability technical, operational and implementation requirements.

The Council is currently considering and formulating recommendations on other important numbering-related issues that will require work beyond the term of the present charter. The term of the Council's third amended charter begins October 5, 2001 and runs through October 4, 2003.

The value of this federal advisory committee to the telecommunications industry and to the American public cannot be overstated. Numbers are the means by which consumers gain access to, and reap the benefits of, the public switched telephone network. The Council's recommendations to the Commission will facilitate fair and efficient numbering administration in the United States, and will ensure that numbering resources are available to all telecommunications service providers on a fair and equitable basis, consistent with the requirements of the Telecommunications Act of 1996.

Federal Communications Commission.

Diane Griffin Harmon,

Acting Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 01–26372 Filed 10–17–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 96–197]

RIN 3060–AG53

Newspaper/Radio Cross-Ownership Waiver Policy

AGENCY: Federal Communications Commission.

ACTION: Notice; termination of proceeding.

SUMMARY: The Commission terminates this proceeding because it has initiated a new rulemaking proceeding that considers broader issues that subsume those raised in the proceeding being terminated.

DATES: The Commission terminates MM Docket No. 96–197 effective October 18, 2001.

FOR FURTHER INFORMATION CONTACT: Eric J. Bash, (202) 418–2130 or *ebash@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Commission began this proceeding in 1996 when it released a Notice of Inquiry (*NOI*) 61 FR 53694 (October 15, 1996) in MM Docket No. 96–197. The *NOI* asked whether the Commission should change its policies regarding waiver of the newspaper/broadcast cross-ownership rule for newspaper/radio combinations. The Commission now has released a Notice of Proposed Rulemaking (*NPRM*), 66 FR 50991 (October 5, 2001), that asks whether the Commission should eliminate or modify the newspaper/broadcast cross-ownership rule. As a result, the *NPRM* seeks comment not just on whether the Commission should change its waiver policies for newspaper/radio combinations, but also on whether the Commission should change its rule and/or waiver policies for newspaper/radio and newspaper/television combinations. The issues raised in the *NPRM* therefore subsume those raised in the *NOI*. As a result, the Commission terminates the *NOI* proceeding. In doing so, the Commission recognizes that it has, in a handful of cases, waived the newspaper/broadcast cross-ownership rule, subject to the outcome of the *NOI*. All such waivers will now be subject to the outcome of the *NPRM*.

Ordering Clauses: The Commission terminates MM Docket No. 96–197.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26175 Filed 10–17–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, October 23, 2001 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, October 25, 2001, Meeting Open to the Public.

This meeting has been cancelled.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–26464 Filed 10–16–01; 2:59 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 1, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Abdula Family Limited Partnership, Fred Abdula Revocable Trust, Anna Marie Abdula Revocable Trust, Fred Abdula, and Anna Abdula, all of Waukegan, Illinois; to retain voting shares of Northern States Financial Corporation, Waukegan, Illinois, and thereby indirectly retain voting shares of Bank of Waukegan, Waukegan, Illinois.

Board of Governors of the Federal Reserve System, October 12, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–26195 Filed 10–17–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 13, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Home Federal Bancorp, Seymour, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Home Federal Savings Bank, Seymour, Indiana.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Banks, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Plains Financial Corporation, Des Plaines, Illinois, and thereby indirectly acquire voting shares of PlainsBank of Illinois, National Association, Des Plaines, Illinois.

Board of Governors of the Federal Reserve System, October 12, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–26196 Filed 10–17–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 21, 2001

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 21, 2001. Subsequently, that domestic policy directive was amended at a telephone conference meeting held on September 17, 2001.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with reducing the federal funds rate to an average of around 3-1/2 percent.

On September 17, 2001, the Committee reduced the intended federal funds rate by a further 1/2 percentage point to an average of around 3 percent.

By order of the Federal Open Market Committee, October 12, 2001.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 01–26304 Field 10–17–01; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0121]

Submission for OMB Review; Comment Request Entitled Contractor's Report of Sales

AGENCY: General Services Administration (GSA).

ACTION: Notice of request for public comments regarding extensino of an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor's Report of Sales. A request for public comments was published at 66 FR 37233, July 17, 2001. No comments were received.

DATES: Comments must be submitted on or before November 19, 2001.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Ed Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration, Regulatory Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Acquisition Policy Division, GSA (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0121, concerning Contractor's Report of Sale. The information is used primarily by contracting officers to estimate requirements for the subsequent year, evaluate the effectiveness of a schedule, negotiate better prices based on volume and for special reports.

B. Annual Report Burden

Number of Respondents: 9,214.
Total Annual Responses: 184,280.
Percentage of these responses collected electronically: 100.
Average hours per response: .0083 hrs.
Total Burden Hours: 1530.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–121, Contractor's Report of Sales, in all correspondence.

Dated: October 11, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–26291 Filed 10–17–01; 8:45 am]

BILLING CODE 6820–34–M

[1] Copies of the Minutes of the Federal Open Market Committee meeting of August 21, 2001, which include the domestic policy directive issued at that meeting and the subsequent amendment, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0080]

Submission for OMB Review; Comment Request Entitled Contract Financing

AGENCY: General Services Administration (GSA).

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Contract Financing. A request for public comments was published at 66 FR 36789, July 13, 2001. No comments were received.

DATES: Comments may be submitted on or before November 19, 2001.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0080, concerning Contract Financing. This clause at 552.232–79 in the GSA Acquisition Manual requires building services contractors to submit a release of claims before final payment is made. GSA Form 1142, Release of Claims, is the vehicle for this release and standardizes information, that eliminates the necessity for contractors to prepare their own release of claims.

B. Annual Reporting Burden.

Respondents: 2,000.
Annual Responses: 2,000.
Average Hours Per Response: .1.
Burden Hours: 200.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0080, Contract Financing, in all correspondence.

Dated: October 11, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–26292 Filed 10–17–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0007]

Submission for OMB Review; Comment Request Entitled Contractor's Qualifications and Financial Information

AGENCY: Office of the Chief Financial Officer (B), GSA.

ACTION: Notice of request for public comments regarding extension of a currently approved OMB clearance (3090–0007).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Contractor's Qualifications and Financial Information. A request for public comments was published at 66 FR 41029, August 6, 2001. No comments were received.

DATES: Comments may be submitted on or before November 19, 2001.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street NW., Room 4035 Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Michael J. Kosar, Office of the Chief Financial Officer, GSA (202) 501–2029.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Service Administration is requesting the Office of Management and Budget (OMB) to extend information collection, 3090–0007, concerning Contractor's Qualifications and Financial Information. This form is used to determine the financial capability of prospective contractors as to whether they meet the financial responsibility standards in accordance with the Federal Acquisition Regulation (FAR) and the General Services Administration Acquisition Regulation (GSAR).

B. Annual Reporting Burden

Respondents: 2,306.
Annual responses: 2,767.
Average hours per response: 2.5.
Burden hours: 6,917.

Copy of Proposal

A copy of this proposal may be obtained from the General Service Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0007, Contractor's Qualifications and Financial Information, in all correspondence.

Dated: October 11, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–26293 Filed 10–17–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0027]

Submission for OMB Review; Comment Request Entitled GSAR, Part 542, Contract Administration, and Part 546, Quality Assurance

AGENCY: Acquisition Policy, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning GSAR, Part 542, Contract Administration, and Part 546, Quality Assurance. A request for public comments was published at 66 FR 37232, July 17, 2001. No comments were received.

DATES: Comments may be submitted on or before November 19, 2001.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden,

should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0027, concerning GSAR, Part 542, Contract Administration, and Part 546, Quality Assurance. Under certain contracts, because of reliance on contractor inspection in lieu of Government inspection, GSA's Federal Supply Service (FSS) requires documention from its contractors to effectively monitor contractor performance and ensure that it will be able to take timely action should that performance be deficient.

B. Annual Reporting Burden

Respondents: 4604.
Annual Responses: 116,869.
Burden Hours: 7830.

Obtaining Copies of Proposals:

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0027, GSAR, Part 542, Contract Administration, and Part 546, Quality Assurance, in all correspondence.

Dated: October 11, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–26294 Filed 10–17–01; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–249]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Hospice Cost Report and Supporting Regulations in 42 CFR 413.20, and 413.24; *Form No.:* CMS–R–0249 (OMB# 0938–0758); *Use:* Medicare certified hospice programs must file an annual cost report with CMS. This report contains information on overhead costs, assets, depreciation, and compensation which will be used for hospice rate evaluations.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 1,720; *Total Annual Responses:* 1,720; *Total Annual Hours:* 302,720.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards Attention: Dawn Willinghan, CMS–R–249, Room N2–14–26 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 10, 2001.

John P. Burke III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 01–26286 Filed 10–17–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 7, 2001, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6758, e-mail: PerezT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will consider the safety and efficacy of a new drug application (NDA) 50–710, Pfizer, Inc., for 1-day and 3-day dosing regimens of azithromycin suspension for the treatment of otitis media.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 30, 2001. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 30, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 11, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–26276 Filed 10–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The National Cancer Institute Information Service Comprehensive Evaluation

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The National Cancer Institute Cancer Information Service Comprehensive Evaluation. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The NCI Office of Communications has dedicated resources to the Cancer Information Service Branch to conduct an independent, scientifically designed and implemented evaluation of the Cancer Information Service (CIS), an NCI program that serves as a national resource for information and education about cancer. The study will assess the extend to which the program has been implemented and the impact and outcomes of the program in affecting the public and CIS partners. Partners are national, state, and regional organizations that collaborate with CIS.

For this study, four separate data collection efforts will be conducted: (1) The National User Survey, a survey of a sample of CIS Information Service users; (2) The National Partner Survey, a survey of a sample of CIS networking, education program, and program development partners; (3) The Case Study Partner Survey in-depth interviews with selected partners; and (4) The Case Study Audience Survey, a survey of audiences served by selected partners. The National User Survey, The National Partner Survey, and The Case Study Partner Survey will be collected using telephone interviews. The Case Study Audience Survey will be collected using self-administered paper and pencil surveys of target audiences. The findings will form the basis of annual reports on evaluation findings. These reports will provide assistance in improving the programs, products, and services of CIS. *Frequency of Response:* One time only with the exception of the Case Study Incidence Survey which includes a pre and post survey. *Affected Public:* Organizations, individuals and households. *Type of Respondents:* Adults using CIS services and CIS partners. The annual reporting burden is as follows:

TABLE 1.—RESPONDENT AND BURDEN ESTIMATE

Type of respondents	Estimated number of respondents	Estimated number of responses of per respondent	Average burden hours per response	Estimated total burden hours requested	Estimated annualized burden (over 3 years)
The National User Survey					
Screener respondent	625	1	0.08	50	17
CIS users	1875	1	0.42	788	263
The National Partner Survey					
CIS partners	1000	1	0.75	750	250
The Case Study Partner Survey					
CIS partners	24	1	0.75	18	6
The Case Study Audience Survey					
Event audience	1200	2	0.25	600	200
Total	4724		0.45	2206	736

The annualized cost to respondents is estimated at: $7,592. There are no Capital Cost to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Madeline La Porta, Project Officer for Evaluation, Cancer Information Service

Branch, National Cancer Institute, 6116 Executive Boulevard, MSC 8322, Bethesda, Maryland 20892–8322, telephone (301) 594–8025, fax (301) 402–0555.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before December 17, 2001.

Dated: October 9, 2001.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 01–26218 Filed 10–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Alternative Medicine; Federal Assistance to the Thomas Jefferson University Hospital Center for Integrative Medicine

ACTION: Notice of grant award.

SUMMARY: The National Center for Complementary and Alternative Medicine (NCCAM), National Institutes of Health (NIH), awarded a grant for $500,000 in fiscal year (FY) 2001 to Thomas Jefferson University Hospital in Philadelphia, PA. The grant provides federal assistance to support the Center for Integrative Medicine. The award was made from funds appropriated under Public Law 106–544 (Health and Human Services Appropriation Act for FY 2001).

Availability of Funds: Total costs of $500,000 were made available for obligation to support this project for a single project/budget period beginning in FY 2001, from September 30, 2001 to August 31, 2002.

Other Award Information: This is intended to be a one-time program.

FOR FURTHER INFORMATION CONTACT: Victoria C. Carper, MPA Grants Management Officer, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd. Bethesda, MD 20892; telephone 301–594–9102.

Dated: September 9, 2001.

Yvonne Maddox,

Acting Deputy Director, National Institutes of Health.

[FR Doc. 01–26219 Filed 10–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Information Resources For Radiation Science.

Date: November 8, 2001.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: 6116 Executive Boulevard, 8th Floor, Room 8146, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405, 301/496–7987.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 11, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26213 Filed 10–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–B(J3).

Date: November 7, 2001.

Time: 9 AM to 10 AM.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892, 301/594–8898.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–5(J3).

Date: November 15, 2001.

Time: 2 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Francisco O. Calvo, PhD., Chief, Review Branch, DEA, NIDDK, Room 752, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8897.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26207 Filed 10–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: November 7, 2001.

Time: 8 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Stanley C. Oaks, Jr., PhD., Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26208 Filed 10–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, September 19, 2001, 7 p.m. September 20, 2001, 5 p.m. Hallmark Inn, 110 F Street, Davis, CA, 95616 which was published in the **Federal Register** on September 19, 2001, 66 FR 48266.

The meeting will now be held October 23–24 at the same location and time. The meeting is closed to the public.

Dated: October 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26209 Filed 10–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: October 29, 2001.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102. *jsherril@mail.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 5, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102, *jsherril@mail.nih.gov*

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 13, 2001.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Harry J. Haigler, PhD, Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov*

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 19, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102, *jsherril@mail.nih.gov*

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 19, 2001.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov*

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 28, 2001.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research

Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26211 Filed 10–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Prevention and Epidemiology Alcohol Research Special Emphasis Panel.

Date: October 26, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26212 Filed 10–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 19, 2001.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter J. Sheridan, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov*

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 20, 2001.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 11, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26214 Filed 10–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Program Project.

Date: November 29, 2001.

Time: 9:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M St., NW., Washington, DC 20037.

Contact Person: Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, Msc 9547, Bethesda, MD 20892–9547, (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.78, Drug Abuse National Research Programs, National Institutes of Health, HHS)

Dated: October 11, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26215 Filed 10–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Research Dissemination to the Entertainment Communities".

Date: October 24, 2001.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: October 11, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26216 Filed 10–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 11–12, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Michael H. Chaitin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26210 Filed 10–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Analogs of Thalidomide as Potential Angiogenesis Inhibitors"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Application S/N 60/271,941, entitled "Analogs of Thalidomide as Potential Angiogenesis Inhibitors," filed on February 27, 2001, to Celgene Corporation of Warren, NJ.

The prospective exclusive license territory will be worldwide and the field of use may be therapeutics for the treatment of oncology and inflammatory diseases.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before December 17, 2001 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Matthew B. Kiser, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804. Telephone: (301) 496–7056, X224; Facsimile (301) 402–0220; E-mail kiserm@od.nih.gov.

SUPPLEMENTARY INFORMATION: U.S. Patent Application S/N 60/271,941 discloses several novel thalidomide analogs that mimic the effects of the "active" thalidomide. The compounds show enhanced potency in the inhibition of angiogenesis without the undesirable effects of administration of thalidomide.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 4, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–26217 Filed 10–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: Tom Szafranski, Troy, OH, PRT–048293.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species

Applicant: Jorge L. Del Rosal, Coral Gables, FL, PRT–048245.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Dirk Arthur & Jan Giacinto, Las Vegas, NV, PRT–704301.

The applicants request the re-issuance of their permit to export, re-export and re-import tigers (*Panthera tigris*), African leopards (*Panther pardus*), and jaguars (*Panthera onca*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Pablo Quinones, Pelham, AL, PRT–045849.

The applicant request a permit to export live captive born Swinhoe's pheasants (*Lophura swinhoii*), Humes bartail pheasants (*Syrmaticus humiae*). Mikado pheasants (*Syrmaticus mikado*), Elliot's pheasants (*Syrmaticus ellioti*) to Quito, Ecuador for scientific research purposes and to enhance the survival of the species through propagation.

Applicant: U.S. Geological Survey, National Wildlife Health Center, Madison, WI, PRT–048370.

The applicant requests a permit to import multiple shipments of biological samples from wild, captive-held, and captive-born endangered species for the purpose of scientific research. No animals can be intentionally killed for the purpose of collecting specimens. Any invasively collected samples can only be collected by trained personnel. This notification covers activities conducted by the applicant over a period of 5 years.

Applicant: Mary K. Gonder & John F. Oates, Department of Anthropology, Hunter College—City University of New York, New York, NY, PRT–810330.

The applicant requests a permit to import hair samples from wild chimpanzees (*Pan troglodytes*) collected from their sleeping nests and hair and skin sections collected from preserved zoo and museum specimens in Nigeria and Cameroon. In addition, the applicant requests to import hair samples from wild gorillas (*Gorilla gorilla*) collected from sleeping nests in Nigeria, for the purpose of scientific research. This notification covers activities conducted by the applicant over a period of 5 years.

Applicant: The Denver Zoo, Denver, CO PRT–045329.

The applicant requests a permit to conduct interstate commerce by paying a management fee to the Dickerson Zoo, Springfield, MO, for successful breeding of their female captive held Asian elephant (*Elaphus maximus*) as recommended by the American Zoological Association's Species Survival Coordinator, for the purpose of enhancement of survival of the species.

Applicant: Hawthorn Corporation, Grayslake, IL, PRT–843874.

The applicant requests the re-issuance of the permit to re-export and re-import tigers (*Panthera tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: September 21, 2001.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–26237 Filed 10–17–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permit for Marine Mammals

On June 15, 2001, a notice was published in the **Federal Register** (66 FR 32635), that an application had been filed with the Fish and Wildlife Service by Richard T, Adams for a permit (PRT–043591) to import one polar bear (*Ursus maritimus*), taken from the Norwegian Bay population, Canada for personal use.

Notice is hereby given that on September 7, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

Dated: September 21, 2001.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–26236 Filed 10–17–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Consultation Meetings With Interested Parties on Preparing Contract Regulations Governing the Use of the Authority in 25 U.S.C. 47, as Amended (aka the Buy Indian Act)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is given that the Bureau of Indian Affairs will conduct three consultation meetings to receive oral comments on the content of rules being prepared to govern the award and administration of acquisitions made under the authority of 25 U.S.C. 47, as amended (aka the Buy Indian Act).

DATES: The consultation meeting dates are:

1. October 25, 2001, Oklahoma City, Oklahoma.
2. November 8, 2001, Scottsdale, Arizona.
3. November 15, 2001, Portland, Oregon.

All meetings will begin at 1 p.m. and continue until 4:30 p.m. or until all meeting participants have had an opportunity to make comments.

Attendees are requested to provide written notice of their intent to attend a specific meeting to the contact person listed in **FOR FURTHER INFORMATION CONTACT** section.

ADDRESSES: The meeting locations are:

1. Oklahoma City—Westin, One North Broadway, Oklahoma City, OK.
2. Scottsdale—Doubletree La Posada, 4949 East Lincoln Drive, Scottsdale, AZ.
3. Portland—Doubletree Columbia River, 1401 N. Hayden Island Drive, Portland, OR.

FOR FURTHER INFORMATION CONTACT: Peter Markey, Procurement Analyst, Bureau of Indian Affairs, Division of Acquisition and Property Management, 2051 Mercator Drive, Reston, Virginia 20191; Telephone: (703) 390–6479.

SUPPLEMENTARY INFORMATION: The meetings will provide interested parties an opportunity to comment on the key points expected to be included in the Buy Indian Act regulations. The regulations will not govern self-determination or self-governance agreements made with Indian tribal governments. The regulations will govern the set-aside process for the award of contracts with Indian economic enterprises that are at least 51 percent Indian owned or are tribally owned economic enterprises. If not tribally owned, one or more Indian owners must be involved in the daily business management of the enterprise. The majority of profits must accrue to the Indian owners or, if the contractor is a nonprofit organization, the majority of the board of directors must be members of federally recognized tribes.

The attendees at the meetings will be briefed on the key points planned for inclusion in the regulations and questions and comments will be received at the meetings. After the consultation meetings, draft regulations will be published in the **Federal Register** and written comments will be received. The regulations are intended to provide a regulatory basis for the policy followed by the Bureau of Indian Affairs when contracting with Indian economic enterprises on a preferential basis.

This notice is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: October 10, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–26225 Filed 10–17–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Sixty-Day Notice of Intention To Request Clearance of Data Collection; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's (NPS') intention to request an extension of a currently approved collection. Specifically five information collections will be carried out pursuant to the Government Performance and Results Act and the NPS Strategic Plan. All of the proposed information collections are surveys of customer satisfaction with certain NPS programs and types of assistance. NPS' National Center for Recreation and Conservation (NCRC) will conduct surveys of the clients of three recreation and conservation assistance programs to assess client satisfaction with the services received and to identify needed program improvements. The NPS goal in conducting these surveys is to use the information to identify areas of strength and weakness in its recreation and conservation assistance programs, to provide an information base for improving those programs, and to provide a required performance measurement (Goal IIIb2 of the 2000 National Park Service Strategic Plan) under the Government Performance and Results Act.

NPS' National Center for Cultural Resources (NCCR) proposes to continue to collect information on customer satisfaction with historic preservation technical assistance, training, and educational materials that NPS provides to its partners including the general public. The NPS goal in collecting this information is to provide an information base for maintaining a high level of performance in those programs and to provide a required performance measurement (Goal IIIa3) of the 2000 National Park Service Strategic Plan that NPS promulgated under the Government Performance and Results Act.

Estimated numbers of:

	Responses	Burden hours
NPS Partnership Programs GPRA Information Collections	1,984	205.65

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for all five information collections. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

DATES: Public comments will be accepted on or before December 17, 2001.

Send Comments To: Beth Porter—Voice: 202–565–1187, e-mail: *Beth_Porter@nps.gov* information regarding the surveys related to Recreation and Conservation Assistance customer satisfaction, or John Renaud—Voice: 202–343–1059, e-mail: *John_Renaud@nps.gov* regarding the collection of data related to historic preservation technical customer satisfaction.

FOR FURTHER INFORMATION CONTACT: Contact Beth Porter—Voice: 202–565–1187, e-mail: *Beth_Porter@nps.gov*—for further information regarding the surveys related to Recreation and Conservation Assistance customer satisfaction. Contact John Renaud—Voice: 202–343–1059, e-mail: *John_Renaud@nps.gov*—for further information regarding the collection of data related to historic preservation technical customer satisfaction.

SUPPLEMENTARY INFORMATION: *Titles:* National Park Service Partnership Programs' GPRA Information Collections; Recreation and Conservation Assistance Customer Satisfaction Survey, Historic Preservation Technical Assistance Customer Satisfaction Questionnaires, and Historic Preservation Technical Assistance Training (etc.) Customer Satisfaction Questionnaires.

Bureau Form Number: None.

OMB Number: 1024–0226.

Expiration Date: To be requested.

Type of request: Extension of a currently approved collection.

Description of need: The Government Performance and Results Act requires Federal agencies to prepare annual performance reports documenting the progress made toward achieving long-term goals. The National Park Service needs the information in the proposed collections to assess the annual progress being made toward meeting Long-term Goals IIIa3, and IIIb2 of the National Park Service Strategic Plan of 2000. The information sought is not collected elsewhere by the Federal Government. The proposed information collections impose no data collection or record keeping burden on the potential respondents. Responding to the proposed collections is voluntary and is based on data that the respondents already collected and/or personal opinion. The National Park Service needs information to help evaluate and improve its recreation and conservation assistance programs and its historic preservation and technical assistance programs.

Automated data collection and statistical sampling: NPS will collect information using two data collection procedures, mail survey and an on-line format. Respondents will be chosen using two procedures: For the NCRC programs, a census of all cooperating partners and organizations will be used. For the NCCR programs, a systematic random sampling procedure will be used. NCCR respondents will be drawn from a list of those persons who received NPS historic technical assistance information publications, attended a workshop, conference, or participated in an on-line course.

Description of respondents: The type of respondents will vary depending upon the information collection.

For the Recreation and Conservation Assistance Customer Satisfaction Surveys, the potential respondents will be all contact persons of all principal cooperating organizations and agencies which have received substantial assistance from any of the three participating programs during the prior Fiscal Year (October 1 through September 30).

For the Historic Preservation Technical Assistance Customer Satisfaction Questionnaires, respondents will be drawn from a list of those persons who received NPS historic technical assistance publication, hard copy or on-line and those who attended a training workshop, conference, or participated in an on-line course during the prior Fiscal year (October 1 through September 30).

Estimated average number of respondents: 1,984. See the chart below for a breakdown by each information collection.

Estimated average number of responses: 1,234. See the chart below for a breakdown by each information collection.

Estimated average burden hours per response: 10 minutes. See the chart below for a breakdown by each information collection.

Frequency of Response: Various. For the Historic Preservation Publications and Technical Assistance Customer Satisfaction Questionnaires, the frequency of response is one time per publication or technical assistance event.

Estimated annual reporting burden: 205.65 hours. See the chart below for a breakdown by each information collection.

Estimated number of:

Avg. time per response in total information collection	Respondents	Responses	Minutes	Hours
Rivers, Trails and Conservation Assistance Program	200	200	10	33.33
Federal Lands to Parks Program	80	80	10	13.33
Wild and Scenic Rivers Coordination Program	4	4	10	.66
Subtotal	284	284	10	47.32
Historic Preservation Technical Assistance Publications Customer Satisfaction	1,500	750	10	125.00
Historic Preservation Technical Assistance Training (etc.) Customer Satisfaction	200	200	10	33.33
Subtotal	1,700	950	NA	158.33
Grand Total	1,984	1,234	NA	205.65

August 3, 2001.

Leonard E. Stowe,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 01–26257 Filed 10–17–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Public Law 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below.

DATES: The Advisory Council will conduct its annual meeting November 7, 2001. The meeting will begin at 10 a.m. and recess at 1 p.m.; it will reconvene briefly the following day at about 1 p.m.

To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting. If you want to make an oral statement, written notice must be provided to David Trueman at the address listed below at least 5 days prior to the meeting. Any written comments received will be provided to the Advisory Council members at the meeting.

Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting, in person or by mail.

ADDRESSES: The meeting will be held in Conference Room B of the Arizona Department of Water Resources Building, 500 North Third Street, Phoenix, Arizona.

Send written comments and requests to make oral presentations to David Trueman, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102; faxogram (801) 524–5499; e-mail at: *drueman@uc.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: David Trueman, telephone (801) 524–3753.

SUPPLEMENTARY INFORMATION: The meeting of the Council is open to the public. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting. See the **DATES** and **ADDRESSES** sections above for information on how to submit written comments and/or make oral statements. Any written comments received will be provided to the Advisory Council members at the meeting.

Agenda

The purpose of the meeting will be to discuss the accomplishments of Federal agencies and make recommendations on future activities to control salinity. Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Department of the Interior, the Department of Agriculture, and the Environmental Protection Agency will each present a progress report had a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities and the content of their report.

Public Disclosure Statement

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or business, available for public disclosure in their entirety.

Dated: October 4, 2001.

John W. Keys III,

Commissioner, Bureau of Reclamation.

[FR Doc. 01–26307 Filed 10–17–01; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Realty Action—Competitive Bulk Sale of Federal Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of realty action, competitive bulk sale of federal land.

SUMMARY: The tracts of land described below have been identified for sale and transfer out of Federal ownership under the Public Law 105–277 Title X-Canyon Ferry Reservoir, Montana Act of October 22, 1998, as amended November 29, 1999, and October 27, 2000. The purpose of this notice is to solicit letters of interest from parties wishing to bid on and to purchase 265 recreation home sites at Canyon Ferry Reservoir, Montana.

DATES: For a period of 90 days from the publication of this notice in the **Federal Register**, interested parties may request notification of future sale dates, and may request a copy of the bid package from the Montana Area Office, Bureau of Reclamation.

ADDRESSES: Address all requests concerning this notice to Montana Area Office, Bureau of Reclamation, Attention: Susan Stiles, Realty Specialist, P.O. Box 30137, Billings, MT 59107–0137.

FOR FURTHER INFORMATION CONTACT: Susan Stiles at (406) 247–7316.

SUPPLEMENTARY INFORMATION: The subject property is located along the north half of the east and west shores of Canyon Ferry Reservoir, about 20 miles east of Helena, Montana. The property is described as cabin site Lots 1 through 36, Lots 38 through 266, and drainfield and septic site lots D–1 through D–8, Sections 2, 11, 12, 13, 15, 22, 23, 26, Township 10 North, Range 1 West, P.M., Canyon Ferry Reservoir, Lewis and Clark County, Montana, comprising approximately 163.73 acres, more or less. The Bureau of Reclamation currently leases these lots out for seasonal cabin site use to private parties.

On October 21, 1998, Title X of Public Law 105–277, The Canyon Ferry Reservoir, Montana Act, required that the Secretary of Interior sell, for the appraised fair market value, 265 cabin sites located at Canyon Ferry Reservoir to private parties. It is anticipated that the appraisal of the cabin sites will be completed by the end of 2001, and that the Bureau of Reclamation will offer the cabin sites for sale in Spring 2002. Interested parties will be informed of the exact sale dates once they have been established.

As required by the Canyon Ferry Reservoir, Montana Act, the cabin sites will initially be offered as an entire block of land to the highest bidder, which requires a prospective buyer to purchase all 265 cabin sites at not less than their appraised fair market value. In addition to the sale price, the purchaser will also be required to reimburse the Bureau of Reclamation for

all its administrative costs in connection with the sale process. Included in the bid package, interested parties will receive instructions in how to submit their sealed bids to the Bureau of Reclamation, the amount of the minimum bid required (appraised value), an estimate of the administrative costs to be paid, along with other pertinent sales information.

Pursuant to the Canyon Ferry Reservoir, Montana Act, the Canyon Ferry Recreation Association (CFRA) shall have the right to match the highest bid and purchase the properties at a price equal to the amount of the highest bid. If CFRA does not match the highest bid, then the Canyon Ferry Reservoir, Montana Act requires that the cabin sites be sold to the high bidder. The purchaser is then required by the Canyon Ferry Reservoir, Montana Act to give each cabin site lessee an option either to purchase their cabin site at its appraised fair market value, or to continue leasing their cabin site from the purchaser up through August 2014. As a condition to the bulk sale, it will be the sole responsibility of the successful bidder to negotiate the sale or lease of the individual tracts to the current lessees.

In the event there is not a qualified high bidder, then Reclamation will offer to sell the cabin sites to the current lessees at their fair market value, at a later date as determined by the Bureau of Reclamation. The Bureau of Reclamation may at any time during the course of the sale, accept or reject any and all offers, or remove any land or interest in land from the sale at its sole discretion.

Resource clearances consistent with the National Environment Policy Act requirements have been completed. An Environmental Assessment pertaining to the proposed sale is available upon request from the Montana Area Office. The patent and quitclaim deed issued for the land sold will be subject to easement or rights-of-way existing or of record in favor of the public or third parties, as well as the condition set forth in the Canyon Ferry Reservoir, Montana Act, and mineral and other reservations by the United States.

Easements granted—The purchaser(s) will be granted easements for: (A) Vehicular access to each lot, (B) access to and use of 1 dock per lot, and (C) access to and use of all boathouses, ramps, retaining walls, and other improvements for which access is provided in the leases as of the date of enactment of the Canyon Ferry Reservoir, Montana Act.

Improvements—Each cabin site is encumbered with a cabin or home, and may include other structures such as sheds, garages, boathouses, fences, retaining walls, wells, and septic systems. These improvements are privately owned by the current lessees and therefore not included in the fair market value of the property and they are not included in this sale. The United States and the Bureau of Reclamation, hereby absolves itself of any responsibility or liability of any nature whatsoever in connection with said improvements which are owned by the current lessees.

Dated: October 3, 2001.

Susan Kelly,

Area Manager, Montana Area Office, Bureau of Reclamation.

[FR Doc. 01–26308 Filed 10–17–01; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lawrence C. Agee, M.D.; Revocation of Registration

On January 25, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Lawrence C. Agee, M.D., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, BA0922903, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal or modification of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Agee is not licensed in California, the jurisdiction in which he practices. The order also notified Dr. Agee that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

The OTSC was sent to Dr. Agee at his DEA registered premises in Auburn, California. Subsequently, on February 16, 2001, the letter was returned by the U.S. Postal Service, marked "attempted, not known" and "not at this address."

The DEA Sacramento District Office then contacted the California Medical Board and obtained its address of record for Dr. Agee in Rocklin, California. The OTSC was then sent by certified mail to Dr. Agee at this address. On April 18, 2001, this second letter was also returned to DEA, marked "not deliverable as addressed," and "unable to forward," and "moved left no address."

DEA has received no further information regarding the whereabouts of Dr. Agee, nor any information from anyone purporting to represent him in this matter. Therefore, the Administrator, finding that (1) 30 days having passed since the attempted delivery of the Order to Show Cause at Dr. Agee's last known address, and (2) no request for a hearing having been received, concludes that Dr. Agee is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e), and 1301.46 (2001).

The Administrator finds as follows: Dr. Agee currently possesses DEA Certificate of Registration BA0922903, issued to him in California. By Decision and Order effective October 11, 2000, the Medical Board of California adopted the Proposed Decision of the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, that Dr. Agee's Physician and Surgeon Certificate be suspended for an indefinite period. Therefore, the Administrator concludes that Dr. Agee is not currently licensed or authorized to handle controlled substances in California.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50,570 (2000); Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that Dr. Agee is not authorized to practice medicine in California, and therefore, the Administrator infers that Dr. Agee is also not authorized to handle controlled substances in California, the State in which he holds his DEA Certificate of Registration.

Accordingly, the Administrator of the Drug Enforcement Administration pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration BA0922903 previously issued to . Lawrence C. Agee, M.D., be, and it hereby is, revoked. The Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26189 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kiran Bhatt, M.D., Revocation of Registration

On May 21, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Kiran Bhatt, M.D., notifying her of an opportunity to show cause as why the DEA should not revoke her DEA Certificate of Registration, BB2541628, pursuant to 21 U.S.C. 824(a)(3), and to deny any pending applications for renewal of her registration, pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Bhatt was not authorized by the State of California to handle controlled substances. The order also notified Dr. Bhatt that should not request for hearing be filed within 30 days, her right to a hearing would be deemed waived.

The OTSC was sent to Dr. Bhatt at her DEA registered premises to Palo Alto, California. A postal delivery receipt was signed May (day illegible), 2001, on behalf of Dr. Bhatt, indicating the OTSC was received. To date, no response has been received from Dr. Bhatt nor anyone purporting to represent her.

Therefore, the Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Bhatt is deemed to have waived her right to a hearing. Following a complete review of the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e), and 1301.46 (2001).

The Administrator finds as follows. Dr. Bhatt currently possesses DEA Certificate of Registration BB254168, issued to her in California. By Decision and Order dated December 15, 1998, Medical Board of California, Division of Medical Quality, Department of Consumer Affairs, State of California adopted the Proposed Decision of the Administrative Law Judge revoking Dr. Bhatt's physician and Surgeon's Certificate. The Proposed Decision found, *inter alia*, that Dr. Bhatt's ability to practice medicine safely is impaired because she is mentally ill, and further that Dr. Bhatt refuses to seek or to receive psychiatric care. The Proposed Decision further found Dr. Bhatt's condition such that without treatment, she poses a substantial risk to the safety and welfare of her patients. The investigative file contains no evidence that Dr. Bhatt's medical license has been reinstated or otherwise renewed.

Therefore, the Administrator concludes that Dr. Bhatt is not currently licensed or authorized to handle controlled substances in California.

The DEA does not have the authority pursuant to the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50,570 (2000); Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that Dr. Bhatt is not authorized to practice medicine in California, and therefore, the Administrator infers that Dr. Bhatt is also not authorized to handle controlled substances in California, the State in which she holds her DEA Certificate of Registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration BB2541628, previously issued to Kiran Bhatt, M.D., be, and it hereby is, revoked. The Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26187 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Iliana M. Cabeza, D.D.S.; Revocation of Registration

On June 26, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Iliana M. Cabeza, D.D.S., (Respondent) notifying her of an opportunity to show cause as to why the DEA should not revoke her DEA Certificate of Registration AC2230338, pursuant to 21 U.S.C. 824(a)(2), and (4), and deny any pending applications for renewal of this registration, pursuant to 21 U.S.C. § 823(f), for the reasons that Respondent entered a plea of guilty to Conspiracy to Possess with Intent to Distribute Cocaine, a Schedule II substance; and that the Florida Department of Health ordered the immediate suspension of the Respondent's state license to practice dentistry. By letter dated August 1, 2000, Respondent, through counsel, requested a hearing in this matter.

On August 14, 2000, Administrative Law Judge Gail A. Randall issued an order for Prehearing Statements. On August 31, 2000, the Government filed a motion seeking summary disposition, arguing that Respondent is no longer authorized to handle controlled substances in the State of Florida, where Respondent's DEA Certificate of Registration states she conducts her business. The Government attached to its motion a copy of an Order of Emergency Suspension of License, issued by the Florida Department of Health; a copy of Respondent's DEA Certificate of Registration with an expiration date of August 31, 2002; and a sworn statement from the Chief of the Registration Unit of DEA, certifying the Certificate's authenticity.

By an Order dated September 1, 2000, Judge Randall stayed the proceedings pending the resolution of the Government's motion, and she allowed the Respondent until September 12, 2000, to respond to the Government's motion. The Respondent did not file a response by this deadline. Rather, on October 13, 2000, the Respondent filed an Unopposed Motion for Enlargement of Time, asserting that the parties were attempting to resolve the matter. Although the motion was untimely filed, Judge Randall accepted it, and by order dated October 17, 2000, she allowed Respondent until November 20, 2000, to respond to the Government's Motion for Summary Disposition. As of this date, the investigative file contains no response from Response nor anyone purporting to represent her.

The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50570 (2000); Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to practice dentistry in Florida, and therefore, the Administrator infers that Respondent is also not authorized to handle controlled substances in Florida, where she practices, according to the address listed on her DEA Certificate of Registration. The Administrator finds that Judge Randall allowed Respondent ample time to refute the Government's evidence, and that Respondent has submitted no evidence or assertions to the contrary. Thus, there is no genuine issue of material fact concerning Respondent's lack of authorization to practice dentistry in Florida or to handle controlled substances in that state.

The Administrator concurs with Judge Randall's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. See Michael G. Dolin, M.D., 65 FR 5661 (2000); Jesus R. Juarez, M.D., 62 FR 14945 (1997); see also Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom. *Kirk v Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders the DEA Certificate of Registration AC2230338, issued to Iliana M. Cabeza, D.D.S., be, and it hereby is, revoked; and that any pending applications for the renewal or modification of said Certificate be denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26184 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Muttaiya Darmarajah, M.D.; Revocation of Registration

On May 29, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Muttaiya Darmarajah, M.D., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, AD3082702, pursuant to 21 U.S.C. 824(a)(3), and to deny any pending applications for renewal of such registration, pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Darmarajah was not authorized by the State of Florida to handle controlled substances. The order also notified Dr. Darmarajah that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

The OTSC was sent to Dr. Darmarajah at his DEA registered premises in Panama City, Florida. A postal delivery receipt was signed June 11, 2001, on behalf of Dr. Darmarajah, indicating the OTSC was received. To date, no response has been received from Dr. Darmarajah nor anyone purporting to represent him.

Therefore, the Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Darmarajah is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e), and 1301.46.

The Administrator finds as follows. Dr. Darmarajah currently possesses DEA Certificate of Registration AD3082702, issued to him in Florida. By Final Order of the Board of Medicine, State of Florida, dated September 5, 2000, Dr. Darmarajah's license to practice medicine in the State of Florida was revoked. The revocation was based upon a State of Florida Department of Health Administrative Complaint alleging that Dr. Darmarajah pleaded guilty on or about May 14, 1998 in the United States District Court for the Northern District of Florida to knowingly and willfully charging the Civilian Health and Medical Program of the Uniformed Services and Medicare for false and fraudulent claims for reimbursement of health care services, in violation of 18 U.S.C. 287, and also of filing a false and fraudulent tax return, in violation of 26 U.S.C. 7201. As a result, Dr. Darmarajah was sentenced to 15 months in Federal prison and $929,599.43 in restitution. The investigative file contains no evidence that Dr. Darmarajah's medical license has been reinstated or otherwise renewed.

Therefore, the Administrator concludes that Dr. Darmarajah is not currently licensed or authorized to handle controlled substances in Florida.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50570 (2000); Romeo J. Perez, M.D. 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that Dr. Darmarajah is not authorized to practice medicine in Florida, and therefore, the Administrator infers that Dr. Darmarajah is also not authorized to handle controlled substances in Florida, the State in which he holds his DEA Certificate of Registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration AD3082702, previously issued to Muttaiya Darmarajah, M.D., be, and it hereby is, revoked. The Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on October 10, 2001, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Robert Walker, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, D.C. 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Muttaiya Darmarajah, M.D., 2638 East 40th Street, Panama City, Florida 32405.

Karen C. Grant.

[FR Doc. 01–26188 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Michael W. Dietz, D.D.S; Denial of Application

On July 24, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Michael Wayne Dietz, D.D.S., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not deny his application dated June 21, 1999, for registration as a practitioner, pursuant to 21 U.S.C. 823(f), on the grounds that such registration would be inconsistent with the public interest. The order also notified Respondent that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

By letter dated August 21, 2000, the Respondent, acting *pro se*, requested a hearing in this matter. On September 7, 2000, Administrative Law Judge Gail A. Randall issued an Order for Prehearing Statements, and also mailed a letter to Respondent informing him of his right to representation in these proceedings, attaching a copy of 21 CFR 1316.50 (2000) to her letter.

On September 11, 2000, Judge Randall timely received the Government's Prehearing Statement. By letter dated September 21, 2000, the Respondent requested an extension of three months from his October 19, 2000, filing date to retain counsel and to address documents mentioned in the Government's Prehearing Statement. Judge Randall stayed these proceedings in an Order, issued October 2, 2000, and allowed the Government an opportunity to respond to the Respondent's request.

On October 3, 2000, Judge Randall received the Government's Objection to Request for Extension. On October 6, 2000, Judge Randall issued an Order that extended Respondent's filing date and directed the Respondent to file a prehearing statement on or before November 9, 2000. The Order included a warning that no further extensions in this matter would be granted absent extraordinary circumstances. There is no evidence in the investigative file that Respondent responded in any fashion to Judge Randall's October 6, 2000, Order.

The Administrator of the Drug Enforcement Administration, having completely reviewed the investigative file in this matter, hereby issues his final order without a hearing, pursuant to 21 CFR 1301.43(d) and 1301.46 (2001).

When a party fails to file a prehearing statement, that failure is deemed a waiver of that party's right to a hearing. See Bill Loyd Drug, 64 FR 1823 (1999). Upon a finding of a waiver by the Administrative Law Judge, the record is transmitted to the Deputy Administrator's office for entry of a final order based upon the investigative file. *See* id *See* also 21 CFR 1301.43(e) (2001).

In the instant matter, the Respondent received the Order for Prehearing Statements, as evidenced by his request for an extension of time. Moreover, the Respondent had ample time to respond, especially considering that an extension of more than one month was granted by Judge Randall. To date, Respondent has offered no submissions or explanations for his failure to continue his action. The Administrator concurs with Judge Randall's conclusion that the Respondent has waived his right to a hearing, and that this matter is now properly before the Administrator for the entry of his final order without a hearing, pursuant to the authority cited above.

The Administrator finds as follows. By Order dated May 15, 1999, and published at 64 FR 15805, the then-Deputy Administrator revoked Dr. Dietz's DEA Certificate of Registration, based on his lack of state authorization to practice dentistry. The investigative file reveals that Respondent's license to practice dentistry was revoked by Order of the Tennessee Board of Dentistry (Board) dated May 27, 1998, based upon unprofessional conduct, personal misuse of controlled substances, and dispensing, prescribing, or otherwise distributing controlled substances not in the course of professional practice. Respondent was also assessed civil penalties in the amount of $4,000, and was required to contract with and maintain the advocacy of the Concerned Dentists Committee, and to seek treatment and rehabilitation for his drug addiction. By Order dated May 13, 1999, the Board reinstated Respondent's license to practice dentistry. Conditions of this reinstatement were that Respondent maintain the contract with the Concerned Dentists Committee, and be on probation for five years. Respondent applied for a new DEA Certificate of Registration by application dated June 21, 1999.

The Board was subsequently notified on January 14, 2000, by the Concerned Dentists Committee that Respondent had tested positive for cocaine, and had refused treatment. A hearing before the Board was scheduled to determine what action should be taken with regard to Respondent's state dentistry license. Respondent subsequently entered treatment, which postponed the hearing and resulted in his license to practice dentistry being suspended indefinitely.

Thereafter, in a Notice of Charges and Memorandum of Assessment of Civil Penalty (Notice) dated March 20, 2000, the Board proposed a penalty of $1,000 for Respondent's violation of his probation, and set the matter for hearing on May 11, 2000. The Notice also informed Respondent that the issues to be considered would include "whether the proposed civil penalty shall be affirmed or whether a different type and amount of civil penalty is justified and assessable and/or whether the Respondent's license shall be revoked, suspended or otherwise disciplined."

Pursuant to 21 U.S.C. 823(f), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See* Henry J. Schwartz, Jr., M.D., 54 FR 16422 (DEA 1989).

The Administrator has reviewed the five factors, and finds that factors (2), (3), (4), and (5) are most relevant to the instant matter.

Specifically, the Administrator finds with regard to factor two that Respondent was convicted of two felony violations of unlawfully distributing a controlled substance, and further that his state dentistry license was revoked

based *inter alia* on his personal misuse of controlled substances; and therefore concludes that Respondent clearly mishandled controlled substances in the past, and failed to comply with laws relating to controlled substances. *See* Robert A. Leslie, 64 FR 25908 (1999). Respondent apparently continues to mishandle controlled substances, as evidenced by the January 14, 2000, report of the Concerned Dentists Committee to the Board regarding Respondent's testing positive for cocaine use, in violation of his probation.

With regard to factor three, the investigative file reveals Respondent was convicted on or about January 6, 1999, in the Criminal/Circuit Court of Putnam County, Tennessee, of two felony violations of unlawfully distributing the Schedule II controlled substance cocaine. Respondent was sentenced to five years imprisonment, with all but ninety days suspended.

With regard to factor four, the Administrator finds that the investigative file reveals Respondent tested positive for the use of cocaine, as set forth in the January 14, 2000, report from the Concerned Dentists Committee to the Board, in violation of his probation. The Administrator therefore finds that Respondent continues to violate State and federal laws relating to controlled substances.

With regard to factor five, the Administrator finds that the investigative file reveals substantial evidence that Respondent is a self-abuser, in that he ingests controlled substances for no legitimate medical reason. This is evidenced not only by the January 14, 2000, report set forth in factor four above, but also by evidence that Respondent's license to practice dentistry was revoked by the Board by Order dated May 27, 1998, for *inter alia* personal misuse of controlled substances. This pattern of self-abuse does not bode well for the health and safety of Respondent's patients, nor for Respondent's future compliance with State and Federal laws and regulations relating to controlled substances.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant Respondent's application.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Michael Wayne Dietz, D.D.S., be, and it hereby is, denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26178 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–39–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

William Echandy-Ochoa, M.D.; Revocation of Registration

The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC), dated June 26, 2000, by certified mail to William Echandy-Ochoa, M.D., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not evoke his DEA Certificate of Registration BE4263206, pursuant to 21 U.S.C. 824(a)(2) and (3), and deny any pending applications for renewal or modification of this registration, pursuant to 21 U.S.C. 823(f). The OTSC stated that Respondent's license to practice medicine in the jurisdiction in which Respondent practices, Puerto Rico, was revoked, and that Respondent had been convicted, in Puerto Rico, of a felony related to the distribution of controlled substances. By letter dated July 19, 2000, Respondent, through counsel, requested a hearing in this matter.

On August 9, 2000, Administrative Law Judge Gail A. Randall issued an Order for Prehearing Statements. On August 10, 2000, the Government filed a Request for Stay of Proceedings and Motion for Summary Disposition. On August 14, 2000, Judge Randall issued an Order allowing Respondent until August 29, 2000, to respond to the Government's motion, and stayed the proceeding pending the resolution of the Government's motion. Following some procedural confusion, the Respondent on October 10, 2000, filed a Motion to Withdraw Allegations to the Honorable Administration, admitting that his license to practice medicine in Puerto Rico was revoked, and requesting that summary disposition be entered in favor of the Government. Judge Randall rendered her Opinion and Recommended Ruling on October 16, 2000, recommending that Respondent's DEA registration be revoked, and any pending renewal applications be denied. On November 21, 2000, Judge Randall transmitted the record of these proceedings to the Office of the Deputy Administrator.

The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 823(f) and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Saihb S. Halil, M.D., 64 FR 33319 (1999) (noting the rule in a matter involving a registration for Puerto Rico); Diodo Leduc, d/b/a Farmacia Leduc, 51 FR 12751 (1986) and cases cited therein; see also Graham Travers Schuler, M.D., 65 50570 (2000); Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

In the instant case, the Administrator finds the Respondent affirmatively concedes that, currently, he is not authorized to handle controlled substances in Puerto Rico, and there is no evidence in the record that Respondent maintained a medical practice anywhere else. Furthermore, Respondent affirmatively requests that the Government's Motion for Summary Disposition be granted. Thus, there is no genuine issue of material fact; in fact, there is no dispute at all.

The Administrator concurs with Judge Randall's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. See Michael G. Dolin, M.D., 65 FR 5661 (2000); Jesus R. Juarez, M.D., 62 FR 14945 (1997); see also Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom. *Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BE4263206, issued to William Echandy-Ochoa, M.D., be, and it hereby is, revoked; and that any pending applications for the renewal or modification of said Certificate be denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26183 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jack's Sales, Inc.; Denial of Application

On September 5, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Jack's Sales, Inc. (Respondent), proposing to deny its application for a DEA Certificate of Registration as a distributor of list I chemicals pursuant to 21 U.S.C. 823(h) on the grounds that on June 12, 2000, the California Department of Justice, Bureau of Narcotic Enforcement (BNE), denied Respondent's application for a Precursor Business Permit. On October 12, 2000, Respondent filed a request for a hearing on the issue raised in the OTSC.

On October 18, 2000, the Government filed a motion seeking summary disposition, arguing that Respondent is not authorized to distribute or otherwise to handle listed chemicals in California, the jurisdiction in which it proposes to conduct business.

On October 23, 2000, Administrative Law Judge Mary Ellen Bittner issued a Memorandum to Counsel granting Respondent until November 7, 2000, to file a response to the Government's motion. Respondent timely filed a response, asserting, in substance, that the BNE denied its application for a Precursor Business Permit on the basis of information provided to BNE by DEA; that Respondent had appealed the denial; that counsel for Respondent had spoken with a member of the BNE staff who said there would be a meeting within the next ten days to discuss respondent's appeal; and that this proceeding should be stayed pending the outcome of Respondent's BNE appeal.

The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

Loss of state authority to engage in the distribution of list I chemicals is grounds to revoke a distributor's registration pursuant to 21 U.S.C. 824(a)(3). While the Controlled Substances Act does not specify that state licensure is a condition precedent to registration as a distributor of list I chemicals, it is well-settled that the Administrator may apply the bases for revoking a registration pursuant to 21 U.S.C. 824(a) to the denial of applications pursuant to 21 U.S.C. 823. See Anthony D. Funches, 64 FR 14268 (1999). Accordingly, DEA consistently has held that a person may not hold a DEA registration if that person is without appropriate authority pursuant to the laws of the state where he or she conducts business. See Anne Lazar Thorn, 62 FR 12847 (1997); Bobby Watts, M.D., 53 FR 11919 (1988); Robert F. Witek, D.D.S., 52 FR 47770 (1987); Wingfield Drugs, Inc., 52 FR 27070 (1987).

In the instant case, Respondent does not deny that it is not currently authorized to handle list I chemicals in the State of California, the jurisdiction where it conducts business. The Government attached to its motion a copy of a letter dated June 12, 2000, from the BNE to Respondent, denying Respondent's Precursor Business Permit, together with a copy of the applicable provision of the California Health and Safety Code governing permits and the application procedure.

The DEA does not have the statutory authority pursuant ot the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she conducts business. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50570 (2000); Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to handle list I chemicals in California, where it conducts business. The Administrator finds that Judge Bittner has allowed Respondent ample time to refute the Government's evidence, and that Respondent has submitted no evidence or assertions to the contrary. Thus, there is no genuine issue of material fact concerning Respondent's lack of authorization to handle list I chemicals in the state where it conducts business.

The Administrator concurs with Judge Bittner's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. See Michael G. Dolin, M.D., 65 FR 5661 (2000); Jesus R. Juarez, M.D., 62 FR 14945 (1997); see also Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom. *Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration as a distributor of list I chemicals submitted by Jack's Sales, Inc., be, and it hereby is, denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchison,

Administrator.

[FR Doc. 01–26177 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Carla Johnson, M.D.; Denial of Application

On March 21, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Carla M. Johnson, M.D., (Respondent) notifying her of an opportunity to show cause as to why the DEA should not deny her application for DEA registration, pursuant to 21 U.S.C. 823(f), for reason that Respondent's registration would be inconsistent with the public interest. On May 8, 2000, Respondent filed a request for a hearing in this matter.

On August 10, 2000, the Government filed a Motion for Summary Disposition, asserting that Respondent is not currently authorized to handle controlled substances in the state in which she seeks a DEA Certificate of Registration, and attached a copy of an opinion from the Louisiana State Medical Board dated July 12, 2000, suspending Respondent's license to practice medicine in that State. On August 14, 2000, Administrative Law Judge Mary Ellen Bittner issued a memorandum to Counsel granting Respondent until August 29, 2000, to file a response to the Government's motion. As of this date, Respondent has failed to respond to the Government's motion.

The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50570 (2000); Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to practice medicine in Louisiana, and therefore, the Administrator infers that Respondent is also not authorized to handle controlled substances in Louisiana, the State in which she seeks to obtain a DEA registration. The Administrator finds that Judge Bittner allowed Respondent ample time to refute the Government's evidence, and that Respondent has submitted no evidence or assertions to the contrary. Thus, there is no genuine issue of material fact concerning Respondent's lack of authorization to practice medicine in Louisiana or to handle controlled substances in that State.

The Administrator concurs with Judge Bittner's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaning less tasks. See Michael G. Dolin, M.D., 65 FR 5661 (2001); Jesus R. Juarez, M.D., 62 FR 14945 (1997); see also Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom. *Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Carla M. Johnson, M.D., be, and it hereby is, denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26176 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

George Samuel Kouns, D.O.; Revocation of Registration

On April 28, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an amended Order to Show Cause (OTSC) by certified mail to George Samuel Kouns, D.O., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, AK8923496, pursuant to 21 U.S.C. 823(f) and 21 U.S.C. 824(a) (2), (3), and (4), on the grounds that Dr. Kouns is no longer authorized to handle controlled substances in Indiana, the State in which Dr. Kouns is currently registered with DEA. The amended OTSC also stated that Dr. Kouns' request to modify his registration address from Indiana to Alabama should be denied pursuant to 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4), because Dr. Kouns is not authorized to handle controlled substances in Alabama. The amended OTSC also alleged that Dr. Kouns' DEA registration should be revoked and his request for modification denied because on March 23, 1998, he was convicted of a felony relating to controlled substances in the Union County Circuit Court of the State of Indiana. The amended OTSC also notified Dr. Kouns that should not request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

On May 2, 2000, the amended OTSC was sent to Dr. Kouns at the address at which he sought to have his DEA registration modified, and also to his last known address in Alabama. Subsequently, DEA received a postal receipt dated May 26, 2000, and signed on behalf of Dr. Kouns, indicating the amended OTSC was received.

DEA has received no request for a hearing nor other response from Dr. Kouns nor anyone purporting to represent him in this matter. Therefore, the Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Kouns is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 9d) and (e), and 1301.46.

The Administrator finds as follows. Dr. Kouns currently possesses DEA Certificate of Registration AK8923496, issued to him in Indiana. On or about March 23, 1998, pursuant to a plea agreement Dr. Kouns pleaded guilty to 15 felony counts of Issuing Unlawful Prescriptions, including controlled substance prescriptions. Also pursuant to the plea agreement, Dr. Kouns agreed to (1) pay a $5,000 fine and (2) to not practice medicine in Indiana, to surrender any licensure to practice medicine in Indiana, and not to reapply for medical licensure in Indiana. By Order dated May 12, 1998, the Union County Circuit Court sentenced Dr. Kouns to 15 consecutive years in prison, which term was suspended, and placed Dr. Kouns on probation for 15 years.

Based on the felony convictions, the Indiana Medical Licensing Board revoked Dr. Kouns license to practice medicine in Indiana by Order dated August 31, 1998. On or about September 18, 1998, the Controlled Substance Advisory Committee and the Indiana Board of Pharmacy issued a Final Order denying Dr. Kouns' application for a controlled substances registration. There is no evidence in the investigative file indicating that Dr. Kouns has regained authority to handle controlled substances in the State of Indiana.

The Administrator further finds that on or about January 14, 1999, the Alabama Medical Licensure Commission issued an Order revoking Dr. Kouns' license to practice medicine in the State of Alabama based upon (1) Dr. Kouns' controlled substances-related felonies in the State of Indiana, and (2) the subsequent disciplinary action taken against Dr. Kouns by the Indiana State authorities. There is no evidence in the file indicating that Dr. Kouns has regained authority to handle controlled substances in the State of Alabama.

In addition, the Administrator finds substantial evidence in the investigative file that Dr. Kouns' license to practice medicine in Ohio expired September 30, 1998, due to non-payment of renewal fees, and as of this date, there is no evidence in the investigative file to conclude that his Ohio medical license has been reinstated.

Therefore, the Administrator concludes that Dr. Kouns is not currently licensed or authorized to handle controlled substances in either Alabama, Indiana, or Ohio.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50,570 (2000); Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D, 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that Dr. Kouns is not authorized to practice medicine or to handle controlled substances in Indiana, the jurisdiction where Dr. Kouns' DEA Certificate of Registration is issued, nor to practice medicine in Alabama, the jurisdiction where Dr. Kouns seeks to have his DEA Certificate of Registration modified, nor in Ohio, where his State medical license has expired. Therefore, the Administrator concludes that Dr. Kouns is also not authorized to handle controlled substances in Alabama, Indiana, or Ohio.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration AK8923496 previously issued to George Samuel Kouns, D.O., be, and it hereby is, revoked. The Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26190 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jerry Clifton Lingle, M.D.; Revocation of Registration

On October 10, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Jerry Clifton Lingle, M.D., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, BL1508285, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Lingle was not authorized by the State of Florida to handle controlled substances. The order also notified Dr. Lingle that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

The OTSC was sent to Dr. Lingle at his DEA registered premises in Fort Lauderdale, Florida. A postal delivery receipt was signed October 28, 2000, on behalf of Dr. Lingle, indicating the OTSC was received. To date, no response has been received from Dr. Lingle nor anyone purporting to represent him.

Therefore, the Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Lingle is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e), and 1301.46.

The Administrator finds as follows. Dr. Lingle currently possesses DEA Certificate of Registration BL1508285, issued to him in Florida. By Order of Emergency Suspension of License, dated June 9, 1999, the State of Florida, Department of Health, suspended Dr. Lingle's medical license, finding that "Dr. Lingle's continued practice as a physician constitutes an immediate and serious danger to the health, safety and welfare of the public[.]" The investigative file contains no evidence that the Emergency Suspension of Dr. Lingle's medical license has been lifted.

Therefore, the Administrator concludes that Dr. Lingle is not currently licensed or authorized to handle controlled substances in Florida.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50570 (2000); Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D. 58 FR 51104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that Dr. Lingle is not authorized to practice medicine in Florida, and therefore, the Administrator infers that Dr. Lingle is also not authorized to handle controlled substances in Florida, the State in which he holds his DEA Certificate of Registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration BL1508285, previously issued to Jerry Clifton Lingle, M.D., be, and it hereby is, revoked. The Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26186 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Trudy J. Nelson, MD; Revocation of Registration

On June 12, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Trudy J. Nelson, MD, notifying her of an opportunity to show cause as to why the DEA should not revoke her DEA Certificate of Registration, BN0504894, pursuant to 21 U.S.C. 824(a)(1), 824(a)(2), 824(a)(3) and 924(a)(4) and deny any pending applications for renewal, pursuant to 21 U.S.C. 823(f). The OTSC also notified Dr. Nelson that should no request for hearing be filed within 30 days, her right a hearing would be deemed waived.

The OTSC was sent to Dr. Nelson's registered location in Sidney, Ohio, and also to another location at Marysville, Ohio. The Sidney, Ohio mailing was returned, unclaimed. The Marysville, Ohio mailing was received June 20, 2000, by individual signing on behalf of Dr. Nelson, as indicated by the signed postal return receipt. To date, no response has been received from Dr. Nelson nor anyone purporting to represent her.

Therefore, the Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Nelson is deemed to have waived her right to a hearing. Following a complete review of the investigative file in this matter, the Administrator now enters his final order

without a hearing pursuant to 21 CFR 1301.43(d) and (e), and 1301.46.

The Administrator finds as follows. Pursuant to an investigation conducted by DEA in conjunction with the Sidney, Ohio, Police Department, the Ohio Bureau of Criminal Investigation, the Piqua, Ohio, Police Department, the State of Ohio Pharmacy Board, and the State of Ohio Taxation Department, Dr. Nelson was found to have engaged in a substantial amount of allegedly criminal activity during the period between October 1994 and June 1999. Relevant to the instant matter are her illicit activities relating to controlled substances.

As a result of the investigation, on or about December 28, 1999, in the Court of Common Pleas in Shelby County, Ohio, Dr. Nelson pleaded guilty to one felony count of Attempted Corrupting Another With Drugs; three felony counts of Trafficking in Drugs; and one felony count of Theft of Drugs. Dr. Nelson was sentenced to serve six years incarceration. On January 12, 2000, the State Medical Board of Ohio issued a Notice of Immediate Suspension and Opportunity for Hearing, informing Dr. Nelson *inter alia* that her license to practice medicine and surgery in Ohio was immediately suspended.

Pursuant to 21 U.S.C. 824(a), "A registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant—(1) has materially falsified any application filed pursuant to or required by this subchapter * * *; (2) has been convicted of a felony under this subchapter of subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance in this subchapter as a controlled substance * * *"

In addition, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Administrator may revoke a DEA Certificate of Registration and deny any pending applications for renewal of such registration if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwartz, Jr., MD, 54 FR 16422 (DEA 1989).

Pursuant to 21 U.S.C. 824(a)(1), the Administrator may revoke a DEA Certificate of Registration upon a finding that the registrant has materially falsified an application for registration. The investigative file reveals that, in January 1994, the Complaint Committee of the West Virginia Board of Medicine issued a complaint that alleged that Dr. Nelson renewed her State license to practice medicine and surgery by fraudulent misrepresentation and making a false statement in connection with a licensure application. In lieu of further proceedings, effective April 15, 1994, the West Virginia Board of Medicine accepted the surrender of Dr. Nelson's license to practice medicine and surgery in that State. Additionally, as a result of a falsification of a 1991 registration application for medical licensure in the State of Ohio, on June 6, 1994, Dr. Nelson entered into a Consent Agreement with the State Medical Board of Ohio (Ohio Board) wherein her Ohio State medical license was suspended for an indefinite period of time. Dr. Nelson subsequently entered into a second Consent Agreement with the Ohio Board on August 10, 1994, in response to the Ohio Board's learning of the April 1994 surrender of Dr. Nelson's West Virginia medical license. Pursuant to this second Consent Agreement, Dr. Nelson's Ohio State medical license was again suspended for an indefinite period, and probationary terms were imposed when the license was reinstated.

On October 31, 1994, and again on September 10, 1997, Dr. Nelson executed applications for DEA Certifications of Registration. In response to liability question 2(b) on each application, that states: "Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?" Dr. Nelson checked the box marked "no."

The Administrator finds that Dr. Nelson knew that her responses on her 1994 and 1997 DEA applications were false. Dr. Nelson had been forced to surrender her West Virginia medical license in April 1994; her Ohio medical license was suspended pursuant to Consent Agreement in June and then again in August 1994; and she executed the first of the DEA registration renewal applications at issue less than two months later. Answers to the liability questions are always material because DEA relies on the answers to these questions to determine whether it is necessary to conduct an investigation prior to granting an application. See Bobby Watts, MD, 58 FR 46995, (1993); Ezzat E. Majd Pour, MD, 55 FR 47547 (1990). Therefore, grounds exist to revoke Dr. Nelson's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(1).

Pursuant to 21 U.S.C. 824(a)(2), the Administrator may revoke a DEA Certificate of Registration upon a finding that a registrant has been convicted of a felony under the law of any State. The investigative file clearly shows that Dr. Nelson pleaded guilty on or about December 28, 1999, in the Court of Common Pleas in Shelby County, Ohio, to one felony count of Attempted Corrupting Another With Drugs; three felony counts of Trafficking in Drugs; and one felony count of Theft of Drugs. Dr. Nelson was sentenced to serve six years incarceration. Therefore, grounds exist to revoke Dr. Nelson's registration pursuant to 21 U.S.C. 824(a)(2).

Pursuant to 21 U.S.C. 823(f) and 824(a)(f), the Administrator may revoke a DEA Certificate of Registration and deny any pending applications for renewal if he determines that the continued registration would be inconsistent with the public interest. Regarding the public interest analysis pursuant to 21 U.S.C. 823(f), the Administrator has reviewed the five factors, and finds that factors (2), (3), (4), and (5) are most relevant to the instant matter.

Specifically, the Administrator finds with regard to factors two and four that Dr. Nelson pleaded guilty to five felony violations on or about December 28, 1999, in the Court of Common Pleas in Shelby County, Ohio, including one felony count of Attempted Corrupting Another With Drugs; three felony counts of Trafficking in Drugs; and one felony count of Theft of Drugs; and was sentenced to serve six years incarceration. The Administrator therefore concludes that Dr. Nelson clearly has mishandled controlled substances in the past, and failed to comply with laws relating to controlled substances. See Robert A. Leslie, 64 FR 25908 (1999).

With regard to factor three, as previously set forth, Dr. Nelson pleaded guilty on or about December 28, 1999, in the Court of Common Pleas in Shelby County, Ohio, to one felony count of Attempted Corrupting Another With Drugs; three felony counts of Trafficking in Drugs; and one felony count of Theft of Drugs; and was sentenced to serve six years incarceration.

With regard to factor five, the Administrator finds especially egregious in this matter that Dr. Nelson's array of convictions include one that is especially heinous in light of her purported role as medical healer: her guilty plea to the crime of Attempted Corrupting Another With Drugs. The Administrator finds that the investigative file contains evidence that Dr. Nelson abused her DEA Registration by knowingly feeding and encouraging the addiction of at least one of her patients, and that she subsequently used that patient's minor son as an excuse and a conduit to continue to feed that patient's addiction. Such conduct on the part of a medical professional is as vile as it is disgraceful, and the Administrator denounces such conduct in the strongest possible terms.

The Administrator therefore concludes that it would be inconsistent with the pubic interest to continue Dr. Nelson's registration, and therefore grounds exist to revoke her DEA registration pursuant to 21 U.S.C. 824(a)(4).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration, BN0504894, previously issued to Trudy J. Nelson, M.D., be, and it hereby is, revoked, and any pending applications for renewal or modification of said registration be, and they hereby are, denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26179 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

William Peterson, M.D.; Revocation of Registration

On October 31, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to show Cause (OTSC) by certified mail to William Peterson, M.D., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration AP1632810, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of this registration, pursuant to 21 U.S.C. 824(a)(4) and 823(f), for the reasons that Respondent's license to practice medicine in the jurisdiction in which Respondent practices, North Carolina, was suspended by the North Carolina Medical Board (Board). The Order to Show Cause further alleged that the Board made a finding that, on numerous occasions, the Respondent prescribed controlled substances to individuals for no legitimate medical reason.

By letter filed November 16, 2000, Respondent, *pro se*, requested a hearing in this matter.

On November 22, 2000, Administrative Law Judge Gail A. Randall issued an order for Prehearing Statements. Judge Randall also mailed a letter to Respondent, informing him of his right to representation at his own expense, and enclosed therein a copy of the regulation explaining that right, 21 CFR 1316.50 (2000). On December 13, 2000, the Government filed a motion seeking summary disposition, arguing that Respondent's license to practice medicine, and therefore, to handle controlled substances in the jurisdiction of his DEA registration, was suspended. Since the Government has not received any information that the suspension has been lifted, the Government asserts that the Respondent's registration cannot be maintained.

The Government attached to its motion a sworn Certificate of Registration Status, signed by the Chief of the Registration Unit of the DEA and certifying the Certificate's authenticity; a copy of Respondent's DEA Certificate of Registration, AP1632810, currently assigned to the Respondent in North Carolina, with an expiration date of March 31, 2002; and a Notice of Charges and a copy of an Order of Summary Suspension of License, both of which are signed by the President of the Board and dated August 2, 1999.

By an Order dated December 13, 2000, Judge Randall stayed the proceedings pending the resolution of the Government's motion, and she allowed the Respondent until January 3, 2000, to respond to the Government's motion. No response has been received as of this date.

The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. §§ 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50,570 (2000); Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to practice medicine in North Carolina, and therefore, the Administrator infers that Respondent is also not authorized to handle controlled substances in North Carolina, where he conducts his business, according to the address listed on his DEA Certificate of Registration. The Administrator finds that Judge Randall allowed Respondent ample time to refute the Government's evidence, and that Respondent has submitted no evidence or assertions to the contrary. Thus, there is no genuine issue of material fact concerning Respondent's lack of authorization to practice medicine in North Carolina or to handle controlled substances in that State.

The Administrator concurs with Judge Randall's finding that it is well settled that when there is no question of material fact involved, there is no need for plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. See Michael G. Dolin, M.D., 65 FR 5661 (2000); Jesus R. Juarez, M.D., 62 FR 14945 (1997); *see also Philip E. Kirk, M.D.*, 48 FR 32887 (1983), aff'd sub nom. Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him

by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AP1632810, issued to William Peterson, M.D., be, and it hereby is, revoked; and that any pending applications for the renewal or modification of said Certificate be denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26181 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lionel Resnick, M.D.; Revocation of Registration

The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC), dated February 6, 2001, by certified mail to Lionel Resnick, M.D., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration AR9599309, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal or modification of this registration, pursuant to 21 U.S.C. 823(f). The OTSC alleged that Respondent's license to practice medicine in the jurisdiction in which Respondent practices, the State of Florida, was suspended effective October 19, 1999, by the Florida Department of Health based upon Respondent's convictions of eighteen felony counts of mail fraud, in violation of 18 U.S.C. 1341, by the United States District Court, Southern District of Florida. By letter filed March 21, 2001, Respondent requested a hearing in this matter.

On April 2, 2001, the Government filed a Motion for *inter alia* Summary Disposition, on the grounds that Respondent is not currently authorized to handle controlled substances in the jurisdiction in which he is currently registered with DEA. On April 3, 2001, Administrative Law Judge Mary Ellen Bittner issued a Memorandum to Counsel and Order allowing Respondent until April 24, 2001, to respond to the Government's motions, and holding a previously-issued Order for Prehearing Statements in abeyance pending a ruling on the Government's motions.

The Government attached to its Motion a copy of an Administrative Complaint issued by the Department of Health, State of Florida, and signed by the Secretary and Chief Medical Attorney for the Board of Medicine, and also a document from the Florida Department of Health, Health Licensee Information website, dated July 21, 2000, indicating Respondent's license status as suspended. In light of these attachments, the Government asserts that Respondent does not have a valid license to practice medicine or to handle controlled substances in Florida, the jurisdiction of his practice as indicated on his DEA Certificate of Registration. As of this date, the investigative file contains no response from Respondent nor anyone purporting to represent him.

Judge Bittner rendered her Opinion and Recommended Ruling on May 16, 2001, recommending that Respondent's DEA registration be revoked, and any pending applications for renewal or modification be denied. On June 18, 2001, Judge Bittner transmitted the record of these proceedings to the Office of the Deputy Administrator.

The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 823(f) and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50570 (2000); Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to practice medicine in Florida, and therefore, the Administrator concluded that Respondent is also not authorized to handle controlled substances in Florida, where he conducts business, according to the address listed on his DEA Certificate of Registration. The Administrator finds that Judge Bittner allowed Respondent ample time to refute the Government's evidence, and that Respondent has submitted no evidence or assertions to the contrary. Thus, there is no genuine issue of material fact concerning Respondent's lack of authorization to practice medicine in Florida or to handle controlled substances in that State.

The Administrator concurs with Judge Bittner's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. See Michael G. Dolin, M.D., 65 FR 5661 (2000); Jesus R. Juarez, M.D., 62 FR 14945 (1997); see also Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom. *Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AR 9599309, issued to Lionel Resnick, M.D., be, and it hereby is, revoked; and that any pending applications for the renewal or modification of said Certificate be denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26182 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

In the Matter of James Jay Rodriguez, M.D.; Revocation of Registration

On or about October 31, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to James Jay Rodriguez, M.D., 156 South Second Street, Selmer, Tennessee 38375, notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, BR4717370, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of said registration, pursuant to 21 U.S.C. 824(a)(4) and 823(f), for the reason that, on December 20, 1999, the Tennessee Department of Health, Board of Medical Examiners (Board) issued an Order of Summary Suspension of License with respect to his state license to practice medicine. The order also notified Dr. Rodriguez that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received at Dr. Rodriguez's address November 24, 2000, as indicated by the signed postal return receipt. To date, no response has been received from Dr. Rodriguez nor anyone purporting to represent him.

Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Rodriguez is deemed to have waived his right to a hearing. Following a complete review of the investigate file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46 (2001).

The Administrator finds as follows. In a hearing on December 17, 1999, the Tennessee Department of Health, Board of Medical Examiners (Board), found *inter alia* that Dr. Rodriguez entered the Tennessee Medical Foundation on September 23, 1993, for the treatment of drug addiction; that Dr. Rodriguez left treatment March 4, 1994, against medical advice; that on June 1, 1994, the State Volunteer Insurance Company refused to renew Dr. Rodriguez's insurance, stating that he was a high risk because of his ongoing problems with alcohol; that in May 1998 Dr. Rodriguez wrote a letter to DEA requesting that this agency revoke this Schedule II privileges, stating that it was "difficult" for him to distinguish which patients were actually in pain and which were not in pain and in actual need of medications; that on July 16, 1999, Dr. Rodriguez was arrested on the charge of DUI, and the subsequent toxicology report indicated a blood alcohol level of .10% and trace amounts of phentermine, diazepam, nordiazepam, dihydrocodeinone, and trazodon; that on December 9, 1999, Tennessee State investigators interviewed Dr. Rodriguez at his office, and discovered him to be excessively physically nervous and mentally confused. The investigators further observed Dr. Rodriguez's office was in disarray, with large quantities of drugs observe, but not records available regarding the dispensing of drugs. The investigators found a similar state of disarray at Dr. Rodriguez's home. The Board concluded that the state investigators produced evidence of dangerous drugs with addictive effects, along with an open drug safe and a lack of records documenting the dispensing of such drug safe and a lack of records documenting the dispensing of such drugs. The Board specifically concluded that Dr. Rodriguez used dangerous drugs with addictive effects for his own addictions, as well as those of his patients.

As a result of these findings, the Board summarily suspended Dr. Rodriguez's license to practice medicine in Tennessee. The investigative file contains no evidence that Dr. Rodriguez's license has been reinstated. Therefore, the Administrator concludes that Dr. Rodriguez is not currently authorized to practice medicine in Tennessee, the State in which he maintains his DEA Certificate of Registration.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50570 (2000); Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that Dr. Rodriguez is not authorized to practice medicine in Tennessee, and therefore, the Administrator infers that Dr. Rodriguez is also not authorized to handle controlled substances in Tennessee, the State in which he holds his DEA Certificate of Registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration BR4717370, previously issued to James Jay Rodriguez, M.D., be, and it hereby is, revoked. The Administrator hereby further orders that any pending applications for renewal or modification of said registration be and hereby are, denied. This order is effective November 16, 2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26185 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John Arthur Thomassen, D.D.S.; Revocation of Registration

The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC), dated February 6, 2001, by certified mail to John Arthur Thomassen, D.D.S., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration BT0666000, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of this registration, pursuant to 21 U.S.C. 823(f), for the reason that Respondent's license to practice medicine in the jurisdiction in which Respondent practices, California, was revoked.

By letter filed March 9, 2001, Respondent, through counsel, requested a hearing in this matter.

On March 12, 2001, administrative Law Judge Gail A. Randall issued an Order for Prehearing Statements. On March 15, 2001, the Government filed a motion seeking summary disposition, arguing that Respondent's license to practice medicine, and therefore, to handle controlled substances in the jurisdiction of his registration, was revoked.

The Government attached to its motion a copy of the Proposed Decision, rendered by Administrative Law Judge Hoover, *In the Matter of the Supplemental Accusation and Petition to Revoke Probation Against John Arthur Thomassen, D.D.S.*, case number 01–97–1208, dated March 22, 2000. Judge Hoover proposed revocation of the Respondent's probation and state license. The Government also attached the Decision of the Dental Board of California, Department of Consumer Affairs, State of California (Board), *In the Matter of the Supplemental Accusation and Petition to Revoke Probation Against John Arthur Thomassen, D.D.S.*, case number 01–97–1208, dated April 3, 2000. The Board adapted the Administrative Law Judge's decision as its own, to take effect on May 3, 2000.

In light of these attachments, the Government argues that Respondent does not have a valid license to practice dentistry or to handle controlled substances in the jurisdiction indicated on his DEA Certificate of Registration.

By an Order dated March 16, 2000, Judge Randall *inter alia* stayed the proceedings pending the resolution of the Government's motion, and she allowed the Respondent until April 6, 2001, to respond to the Government's motion. No response has been received from Respondent as of this date.

The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50570 (2000); Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to practice dentistry in California, and therefore, the Administrator infers that Respondent is also not authorized to handle controlled substances in California, where he conducts his business, according to the address listed on his DEA Certificate of Registration. The Administrator finds that Judge Randall allowed Respondent ample time to refute the Government's evidence, and that Respondent has submitted no evidence or assertions to the contrary. Thus, there is no genuine issue of material fact concerning Respondent's lack of authorization to practice dentistry in California or to handle controlled substances in that State.

The Administrator concurs with Judge Randall's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. See Michael G. Dolin, M.D., 65 FR 5661 (2000); Jesus R. Juarez, M.D., 62 FR 14945 (1997); see also Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom. *Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BT0666000, issued to John Arthur Thomassen, D.D.S., be, and it hereby is, revoked; and that any pending applications for the renewal or modifications of said Certificate be denied. This order is effective November 19, k2001.

Dated: October 10, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26180 Filed 10–17–01; 8:45 am]

BILLING CODE 4410–09–M

MERIT SYSTEMS PROTECTION BOARD

Sunshine Act Notice

Notice: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552(b)), notice is hereby given that the Merit Systems Protection Board will hold a partially closed meeting on Thursday, October 18, 2001, at 2 p.m., in the Board's conference room at 1615 M Street, NW., 6th Floor, Washington, DC 20419. In calling the meeting, the Board determined that Board business required its consideration of the agenda items on less than seven days' notice to that public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the first agenda item in a meeting open to public interest did not require consideration of the first agenda item in a meeting open to public observation; and that the second agenda item could be considered in a closed meeting by authority of subsection (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(10)).

Matters Considered:

(1) Briefing of Board members on Senior Managers' retreat;

(2) Case processing issues.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Shannon McCarthy or Matthew Shannon, Office of the Clerk of the Board, (202) 653–7200.

Dated: October 15, 2001.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 01–26471 Filed 10–16–01; 3:14 pm]

BILLING CODE 7400–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice [01–127]]

Agency Information Collection Activities; Proposed Collections

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). This information collection provides records of accountability, responsibility, transfer, location, and disposition of radioactive materials.

DATES: All comments should be submitted on or before December 17, 2001.

ADDRESSES: All comments should be addressed to Ms. Sue McDonald, Mail Code GP2, Lyndon B. Johnson Space Center, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Radioactive Material Transfer Receipt.

OMB Number: 2700–0007.

Type of review: Extension.

Need and Uses: NASA Johnson Space Center is required by Federal law to keep records of the receipt, transfer, and disposal of radioactive items and information on accountability, responsibility, transfer, disposition, and location.

Affected Public: Business or other for-profit, Federal Government, State, local or tribal government.

Number of Respondents: 25.

Responses Per Respondent: 2.

Annual Responses: 50.

Hours Per Request: approx. ½ hr.

Annual Burden Hours: 29.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26258 Filed 10–17–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request, Reconsideration of the Library Services & Technology Act (LSTA) Annual Report Process

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection

instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed reconsideration of the LSTA Annual Report process.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 17, 2001.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

ADDRESSES: Send comments to: Barbara G. Smith, Technology Officer, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Ms. Smith can be reached on Telephone: 202–606–5254; Fax: 202–606–1077 or at bmsith@imls.gov

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Pub. L. 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

Agency: Institute of Museum and Library Services.

Title: Reconsideration of the Library Services & Technology Act (LSTA) Annual Report Process.

OMB Number n/a.

Frequency: One time.

Affected Public: State Library Administrative Agencies for the States and U.S. Territories.

Number of Respondents: 125.

Estimated Time Per Respondent: one hour.

Total Burden Hours: 125 hours.

Total Annualized capital/startup costs: zero.

Total Annual costs: $3,650.00.

CONTACT: Mamie Bittner, Director of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–4648.

Dated: September 19, 2001.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 01–26312 Filed 10–17–01; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336, and 50–423]

Dominion Nuclear Connecticut, Inc., Millstone Nuclear Power Station, Units 1, 2, and 3; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating Licenses Nos. DPR–21, DPR–65, and NPF–49 for the Millstone Nuclear Power Station, Units 1, 2, and 3 (Millstone) to the extent held by Dominion Nuclear Connecticut, Inc. (Dominion Nuclear). The indirect transfer would result from the establishment of an intermediary parent company that will indirectly own Dominion Nuclear.

Dominion Nuclear is a wholly owned, indirect subsidiary of Dominion Energy, Inc., which is a wholly owned, direct subsidiary of Dominion Resources, Inc., the ultimate parent of Dominion Nuclear. According to Dominion Nuclear's application dated August 17, 2001, Dominion Energy Holdings, Inc., will become an intermediary, indirect parent company of Dominion Nuclear. Specifically, Dominion Energy Holdings, Inc., will become a direct wholly owned subsidiary of Dominion Resources, Inc., and the new direct parent of Dominion Energy Inc., which at the same time will be converted to Dominion Energy, LLC. No physical changes to the Millstone facility or operational changes are being proposed in the application. The two other licensees for Millstone Unit 3, Central Vermont Public Service Corporation and Massachusetts Municipal Wholesale Electric Company, which hold minority ownership interests in Unit 3, are not involved in the restructuring action affecting Dominion Nuclear.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction that will effectuate the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By November 7, 2001, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385 (tel: 860–444–5316; fax: 860–444–4278; e-mail: *lillian_cuoco@dom.com*); the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by November 19, 2001, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated August 17, 2001, available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 12th day of October 2001.

For the Nuclear Regulatory Commission.

John Harrison,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–26279 Filed 10–17–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Operations, Inc., River Bend Station, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Entergy Operations, Inc. (the licensee) for operation of River Bend Station, Unit 1 (RBS), located in West Feliciana Parish, Louisiana.

The proposed amendment would revise the RBS Technical Specifications (TSs) limit for spent fuel storage to allow storage of up to 3,104 fuel assemblies.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change revises the Technical Specification administrative limit for spent fuel storage to allow storage of up to 3,104 bundles to accommodate a full core offload. The current licensing basis analysis demonstrates that spent fuel pool temperatures will remain below the spent fuel pool design limitations assuming a full core offload is required early in an operating cycle. There are no changes being made to the storage pool structure, the pool water level, the storage racks, the cooling system, or to fuel storage arrays as currently described in the Updated Safety Analysis Report (USAR). The decay heat loads for the proposed storage capacity have been previously evaluated and are not increased by the proposed change. Therefore, there is no affect on spent fuel reactivity control, shielding, or cooling capability. The fuel handling accident analysis as presented in the USAR is also not affected by the proposed change.

Therefore, the proposed change does not result in a significant increase in the probability or the consequences of previously evaluated accidents.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previous analyzed.

The proposed change only affects the allowed quantity of spent fuel stored in the existing fuel racks located in the fuel building spent fuel pool. The fuel arrangement in this storage pool has previously been analyzed for criticality control, the effects of a fuel handling accident, and for the decay heat loads caused by both normal and abnormal conditions. The proposed change does not involve a physical alteration of the plant or a change in the methods of spent fuel pool storage or cooling. Therefore, the proposed change does not introduce the possibility of a new accident precursor or result in creating the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change is considered to be an administrative change to the fuel storage capacity limitations. The fuel arrangement in this storage pool has previously been analyzed for criticality control, the effects of a fuel handling accident, and for the decay heat loads caused by both normal and abnormal conditions. These analyses are not impacted by the proposed change. The proposed TS limits on spent fuel pool storage capacity will continue to maintain pool temperatures to less than those allowed by the Standard Review Plan (SRP), NUREG–0800. Therefore, the change remains within the current licensing basis margins and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 19, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html*. Persons who have problems in accessing the document should contact the Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Wise, Carter, Child, and Caraway, P.O. Box 651, Jackson, MS 39205, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for license amendments falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid

hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application for amendment dated April 19, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 12th day of October, 2001.

For the Nuclear Regulatory Commission.

Robert E. Moody,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–26281 Filed 10–17–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–336 AND 50–423]

Dominion Nuclear Connecticut, Inc., et al., Millstone Nuclear Power Station, Unit Nos. 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Title 10 of the Code of Federal Regulations (10 CFR part 50) for Facility Operating License Nos. DPR–65 and NPF–49, issued to Dominion Nuclear Connecticut, Inc. (the licensee), for operation of the Millstone Nuclear Power Station, Unit Nos. 2 (MP2) and 3 (MP3), located in Waterford, Connecticut. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would incorporate a change in the MP2 and MP3 Technical Specifications (TSs) to clarify the qualifications standards of the reactor operator and senior reactor operator.

The proposed action is in accordance with the licensee's application dated August 9, 2001.

The Need for the Proposed Action

The proposed action modifies the MP2 and MP3 TSs to avoid confusion between the qualification standards of the facility staff, who are qualified to American National Standards Institute (ANSI) N18.1–1971/Regulatory Guide (RG) 1.8 Revision 0, and the operators who will be qualified to the education and experience guidelines outlined by National Academy for Nuclear Training ACAD 00–003 "Guidelines for Initial Training and Qualification of Licensed Operators."

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the amendment and its implementation would provide an adequate clarification of the qualification standards.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for MP2 and MP3, dated June 1973 and December 1984 respectively.

Agencies and Persons Consulted

In accordance with its stated policy, on September 12, 2001, the staff consulted with the Connecticut State official, Michael Firsick of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 9, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 12th day of October 2001.

For the Nuclear Regulatory Commission.

Victor Nerses,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–26278 Filed 10–17–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1748, Draft Report]

Environmental Review Guidance for Licensing Actions Associated With NMSS Programs; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing, for public comment, the availability of a draft document "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs" (NUREG–1748). This document provides guidance for the planning and implementation of National Environmental Policy Act requirements for all non-reactor facilities, e.g., those which fabricate nuclear fuel, dispose high-level radioactive waste, fabricate sources, etc. The guidance is intended for NRC staff, licensees/applicants, and the public. The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing the document is available to the NRC staff. This document is being issued for interim use and comment. The NRC will review public comments received on the draft document. Suggested changes will be incorporated, where appropriate, in response to those comments.

DATES: Comments received by September 30, 2002, will be considered. Comments received after that date will be considered to the extent practical.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rules Review and Directives Branch, Mail Stop T6-D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may also be sent electronically to *nmssnepa@nrc.gov*.

NUREG–1748 is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically from the ADAMS Public Library component on the NRC Web Site, *http://www.nrc.gov* (the Electronic Reading Room).

A free single copy of NUREG–1748 will be made available to interested parties until the supply is exhausted. Such copies may be requested by writing to the U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001 or submitting an e-mail to *distribution@nrc.gov*. NUREG–1748 is available on the World Wide Web at *http://www.nrc.gov/NRC/NUREGS/SR1748/index.html*.

FOR FURTHER INFORMATION CONTACT: Either of the following: Matt Blevins, U.S. Nuclear Regulatory Commission, Mail Stop T7–J8, Washington, DC 20555, Phone Number: (301) 415–7684, Email: *mxb6@nrc.gov*; or Melanie Wong, U.S. Nuclear Regulatory Commission, Mail Stop T7–J8, Washington, DC 20555, Phone Number: (301) 415–6262, Email: *mcw@nrc.gov*. Please email comments to *nmssnepa@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The National Environmental Policy Act (NEPA) of 1969 requires Federal agencies, as part of their decision-making process, to consider the environmental impacts of actions under their jurisdiction. Both the Council on Environmental Quality (CEQ) and the U.S. Nuclear Regulatory Commission (NRC) have promulgated regulations to implement NEPA requirements. CEQ regulations are contained in the Code of Federal Regulations (CFR) at 40 CFR parts 1500 to 1508, and NRC requirements are provided in 10 CFR part 51.

To ensure consistent treatment of NEPA requirements throughout the NRC Office of Nuclear Material Safety and Safeguards (NMSS), the Environmental and Performance Assessment Branch (EPAB) has produced a guidance document (NUREG–1748) which provides general procedures for determining the level of NEPA review and documentation required for the environmental review of licensing actions undertaken by the Office of Nuclear Material Safety and Safeguards (NMSS). Such licensing actions encompass fuel cycle, spent nuclear fuel storage, radioactive waste disposal, uranium recovery, decommissioning, and other nuclear materials sites. Divisions within NMSS and their regional counterparts may have supplemental guidance that is specific to facilities they regulate. Although the main focus of this guidance is the NRC staff's environmental review process, the guidance also contains related information which applicants and licensees may find useful. Chapter 1 provides a summary and overview of the guidance. This chapter briefly discusses whether an applicant or licensee's request is a categorical exclusion or whether the staff needs to prepare an environmental assessment (EA) or environmental impact statement (EIS), early planning for an EA or EIS and describes methods of using previous environmental analyses related to the proposed action. Chapter 2 discusses categorical exclusions and the basis of their use. Chapter 3 discusses the EA process, including preparation and content of the EA, agencies to be consulted, and preparation of the Finding of No Significant Impact. Chapter 4 discusses the process of preparing an EIS, from developing a project plan, through scoping, consultations and public meetings, to preparing the Record of Decision. Chapter 5 discusses the content of the EIS, and Chapter 6 discusses environmental information that should be considered by applicants and licensees in preparing environmental reports.

Commentors are encouraged to submit their written comments to the addresses listed above. To ensure efficient and complete comment resolution, commentors are requested to reference the page number and the line number of

the document to which the comment applies.

Dated at Rockville, Maryland, this 11th day of October, 2001.

For the Nuclear Regulatory Commission.

Thomas H. Essig,

Chief, Environmental and Performance Assessment Branch, Division of Waste Management, NMSS.

[FR Doc. 01–26277 Filed 10–17–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Radionuclide Transport in the Environment: Draft Research Program Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

Background: The U.S. Nuclear Regulatory Commission's (NRC) Office of Nuclear Regulatory Research is preparing a research program plan on radionuclide transport in the environment and is seeking public comments on the plan. The radionuclide transport research program is intended to provide data and computational tools to assess the effect on public health and safety and the environment from nuclear materials that may enter the environment from NRC–licensed activities. The technical issues examined include source-term characterization; the effectiveness of engineered and natural containment systems surrounding the radioactive material; multi-phase flow of water, including episodic infiltration, into and through the environment; the transport of radioactive material through the geosphere; the transport of radioactive material through the biosphere; and estimating exposures of members of the public to radiation from these materials. Results from the radionuclide transport research program are intended to be generically applicable to NRC licensing activities including the decommissioning of facilities, disposal of uranium mill tailings, low-level radioactive waste disposal, and high-level radioactive waste disposal. This plan will present the basis for the radionuclide transport research program, describe the key elements of the program, describe how research priorities are set, and present a list of proposed research projects.

Solicitation of Comments: The NRC seeks comments on the plan and is especially interested in comments on the research topics proposed in Chapter 5. Suggestions for new research not specified in Chapter 5 are welcome.

Comment Period: The NRC will consider all written comments received before November 30, 2001. Comments received after November 30, 2001, will be considered if time permits. Comments should be addressed to the contact listed below.

Availability: An electronic version of the plan is available in Adobe Portable Document Format at *http://www.nrc.gov/RES/nrc.html* and can be read with Adobe Acrobat Reader software, available at no cost from *http://www.adobe.com.* Hard and electronic copies are available from the contact listed below.

CONTACT: Dr. John D. Randall, Mail Stop T9F31, US Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD 20852, telephone (301) 415–6192, e-mail *jdr@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of October 2001.

For the Nuclear Regulatory Commission.

Cheryl A. Trottier,

Chief, Radiotion Protection, Environmental Risk and Waste Management Branch, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 01–26280 Filed 10–17–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25209; 812–12594]

American International Group, et al.; Notice of Application

October 12, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit certain series of registered open-end management investment companies to acquire all of the assets and liabilities of certain corresponding series of another registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: American International Group, Inc. ("AIG"), North American Funds ("NA Trust"), SunAmerica Equity Funds ("Equity Trust"), SunAmerica Income Funds ("Income Trust"), SunAmerica Money Market Funds, Inc. ("Money Market Corp."), SunAmerica Style Select Series, Inc. ("Style Select Series"), SunAmerica Strategic Investment Series, Inc. ("Strategic Investment Series"), The Variable Annuity Life Insurance Company ("VALIC"), American General Corporation ("American General"), and Sun America Asset Management Corp. (SAAMCo).

Filing Dates: The application was filed on August 9, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 6, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Margery K. Neale, Esq., Shearman & Sterling, 599 Lexington Avenue, New York, New York 10022–6069.

FOR FURTHER INFORMATION CONTACT: Lidian Pereira, Senior Counsel, at (202) 942–0524 or Mary Kay Frech, Branch Chief, at (202) 952–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. NA Trust, a business trust organized under the laws of the Commonwealth of Massachusetts, is registered under the Act as an open-end management investment company. NA Trust offers twenty-four series ("NA Funds"), seventeen of which are involved in the proposed transactions for which exemptive relief is sought,

and are collectively referred to as the "Acquired Funds."[1]

2. Equity Trust and Income Trust, each a business trust organized under the laws of the Commonwealth of Massachusetts, are registered under the Act as open-end management investment companies. Equity Trust will have seven series at the time of the proposed transactions, three of which are involved in the proposed transactions. Income Trust will have six series at the time of the proposed transactions, four of which are involved in the proposed transactions. Money Market Corp., Style Select Series and Strategic Investment Series, each a corporation organized under the laws of the State of Maryland, are registered under the Act as open-end management investment companies. Money Market Corp. will have two series at the time of the proposed transactions, one of which is involved in the proposed transactions. Style Select Series will have thirteen series at the time of the proposed transactions, two of which are involved in the proposed transactions. Strategic Investment Series will have seven series at the time of the proposed transactions, five of which are involved in the proposed transactions. The series of Equity Trust, Income Trust, Money Market Corp., Style Select Series, and Strategic Investment Series are collectively referred to as the "SunAmerica Funds." The fifteen SunAmerica Funds involved in the proposed transactions are collectively referred to as the "Acquiring Funds" (the Acquiring Funds and the Acquired Funds together, the "Funds").[2] Nine of the Acquiring Funds are newly organized series which were created to facilitate the proposed transactions ("Shells").[3]

3. American General is a general business corporation and successor to American General Insurance Company, an insurance company incorporated under the laws of the State of Texas. American General Asset Management Corp. ("AGAM"), an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), serves as the investment adviser to the NA Trust, and is wholly owned subsidiary of American General. American General's employee pension plan, the American General Retirement Plan ("Affiliated Plan") owns 5% (and in some cases 25%) or more of the outstanding voting securities of certain Acquired Funds. The Affiliated Plan holds the securities in a fiduciary capacity and does not have a direct economic interest in the shares. VALIC, an investment adviser registered under the Advisers Act, is a stock life insurance company that is an indirect wholly owned subsidiary of American General. VALIC owns 5% (and in some cases 25%) or more of the outstanding voting securities of twelve of the Acquired Funds. On August 29, 2001, AIG acquired American General and, as a result, American General, VALIC and AGAM became direct or indirect wholly owned subsidiaries of AIG.

4. SAAMCo, a corporation organized under the laws of the State of Delaware, is an indirect wholly owned subsidiary of AIG. SAAMCo is an investment adviser registered under the Advisers Act and serves as the investment adviser to the SunAmerica Funds. SAAMCo will own all of the outstanding voting securities of the Shells.

5. On August 2, 2001 and August 23, 2001, the board of trustees of the NA Trust (the "NA Board") and the board of directors/trustees of the SunAmerica Funds (together with the NA Board, the "Boards"), respectively, including in each case a majority of the directors/trustees who are not "interested persons," as defined in section 2(a)(19) of the Act (the "Independent Trustees"), approved agreements and plans of reorganization (each, a "Plan" and collectively, the "Plans") for the Funds. Under the Plans, each Acquiring Fund will acquire all of the assets and liabilities of the corresponding Acquired Fund in exchange for shares of designated classes of the Acquiring Fund (each, a "Reorganization" and collectively, the "Reorganizations"). The shares of the respective class of the Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the corresponding class of the Acquired Fund's shares determined as of the close of regular trading on the New York Stock Exchange on the closing date of each Reorganization (each a "Closing Date"), currently anticipated to occur on or about November 9, 2001. The net asset value of the Acquiring Funds and the value of the assets of the Acquired Funds will be determined according to the Acquired and Acquiring Funds' current prospectuses and statements of additional information. Upon consummation of the Reorganizations, each Acquired Fund will be liquidated by the distribution of the corresponding Acquiring Fund's shares pro rata to the shareholders of record of the Acquired Fund.

6. Applicants state that the investment objectives and policies of each Acquired Fund are generally similar to those of its corresponding Acquiring Fund. Applicants state that the rights and obligations of each class of shares of the Acquired Funds are similar to those of the corresponding class of shares of the Acquiring Funds. For purposes of calculating the contingent deferred sales charges on shares of an Acquired Fund that currently have a deferred sales charge, the amount of time a shareholder held shares of the Acquired Fund will be added to the amount of time the shareholder holds shares of the applicable Acquiring Fund. No sales charges will be imposed in connection with the Reorganizations. AIG or an affiliated person of AIG (but not the Funds) will bear the costs associated with the Reorganizations.

7. Each Board, including a majority of the Independent Trustees, determined that the participation of each Fund in the respective Reorganization was in the best interests of the Fund and its shareholders, and that the interests of the shareholders of the Fund would not be diluted as a result of the Reorganization. In approving the Reorganizations, the Boards considered various factors, including: (a) The terms and conditions of the Reorganization; (b) the effect of the Reorganizations on

[1] International Equity Portfolio of SunAmerica Style Select Series will be reorganizing into the newly created Shell, International Equity Fund of Equity Trust, and is also referred to as an "Acquired Fund."

[2] The Acquired Funds and the corresponding Acquiring Funds are: (i) The Balanced Fund and Equity Trust; Balanced Assets Fund; (ii) Mid Cap Growth Fund and Equity Trust; Growth Opportunities Fund; (iii) Global Equity Fund and Equity Trust; International Equity Fund; (iv) International Equity Fund and Equity Trust; International Equity Fund; (v) International Small Cap Fund and Equity Trust; International Equity Fund; (vi) Core Bond Fund and Income Trust; Core Bond fund; (vii) High Yield Bond Fund and Income Trust High Yield Bond Fund; (viii) Municipal Bond Fund and Income Trust: Tax Exempt Insured Fund; (ix) Strategic Income Fund and Income Trust: Strategic Bond Fund; (x) Municipal Money Market Fund and Money Market Corp.; Municipal Money market Fund; (xi) Small Cap Growth Fund and Style Select Series; Small Cap Growth Portfolio; (xii) Mid Cap Value Fund and Style Select Series; Multi-Cap Value Portfolio; (xiii) Science and Technology Fund and Strategic Investment Series; Science & Technology Fund; (xiv) Stock Index Fund and Strategic Investment Series; Stock Index Fund; (xv) Aggressive Growth LifeStyle Fund and Strategic Investment Series: Aggressive Growth LifeStage Fund; (XVI) Conservative Growth LifeStyle Fund and Strategic Investment Series; Conservative Growth LifeStage Fund; (xvii) Moderate Growth Lifestyle Fund and Strategic Investment Series: Moderate Growth LifeStage Fund; and (xviii) Style Select: International Equity Portfolio and Equity Trust: International Equity Fund.

[3] The Shells are Equity Trust: International Equity Fund; Income Trust: Core Bond Fund; Style Select Series: Small Cap Growth Portfolio; Strategic Investment Series: Stock Index Fund, Science & Technology Fund, Aggressive Growth LifeStage Fund, Moderate Growth LifeStage Fund, and Conservative Growth LifeStage Fund; and Money Market Corp.: Municipal Money Market Fund.

the Acquired Funds' shareholders and the value of their interests; (c) the fact that the Reorganizations would likely provide economies of scale over time that could reduce some Fund expenses; (d) the fact that AIG or an affiliated person thereof will bear the expenses relating to the Reorganizations; (e) the anticipated tax-free nature of the Reorganizations; and (f) the investment experience, expertise and resources of SAAMCo.

8. The Reorganizations are subject to a number of conditions precedent, including: (a) The shareholders of each Acquired Fund will have approved the Reorganization; (b) the Funds will have received opinions of counsel concerning the tax-free nature of each Reorganization; and (c) applicants will have received exemptive relief from the Commission to permit the Reorganizations. Each Plan may be terminated prior to the Closing Date by the mutual agreement of the Boards on behalf of the Acquiring Funds and the Acquired Funds. Applicants agree not to make any material changes to the Plans that affect the application without prior Commission approval.

9. A registration statement on Form N–14 with respect to each Reorganization, containing a prospectus/proxy statement, was filed with the Commission on August 17, 2001, and became effective on October 3, 2001. Solicitation materials related to the Reorganizations were mailed to shareholders of the Acquired Funds on or about October 5, 2001. A special meeting of shareholders of each Acquired Fund is scheduled to be held on November 7, 2001.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and, thus, the Reorganizations may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants believe that rule 17a–8 may not be available in connection with the Reorganizations because certain of the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. Applicants state that because the Affiliated Plan and VALIC each own 5% or more (and in some cases more than 25%) of the outstanding voting securities of certain Acquired Funds, those Funds may be deemed to be affiliated persons of an affiliated person (AIG) of the Acquiring Fund to which they propose to sell their assets. Applicants state that because SAAMCo will own all of the outstanding voting securities of the Shells, those Acquiring Funds may be deemed to be affiliated persons of an affiliated person (AIG) of the Acquired Funds from which the Acquiring Funds propose to purchase assets in connection with the Reorganizations.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to complete the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state that the terms of the proposed Reorganizations are fair and reasonable and do not involve overreaching. Applicants also state that the Boards, including a majority of the Independent Trustees, have determined that the participation of the Funds in the Reorganizations is in the best interests of each Fund and that such participation will not dilute the interests of the existing shareholders of each Fund. In addition, applicants state that the Reorganizations will be on the basis of the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26273 Filed 10–17–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44922; File No. SR–PCX–2001–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Synchronization of Member Organization Business Clocks

October 11, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on June 18, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 9, 2001, the Exchange amended its proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to adopt a new rule requiring all PCX member organizations to synchronize their business clocks. The text of the proposed rule change is as follows:

Time Synchronization

Rule 6.20(a) Each Member Organization must synchronize, within a time frame established by the Exchange, the business clocks that it uses for the purpose of recording the date and time of any event that must be recorded pursuant to the Rules of the Exchange. Member Organizations may use any time provider source. Each Member Organizations must, however, ensure thot the business clocks it uses on the Exchange are accurate to within a three-second[s] tolerance of the National Institute of Standards and Technology Atomic Clock in Boulder Colorado ("NIST Clock") or the United States Naval Observatory Master Clock in Washington D.C. ("USNO Master Clock"). This tolerance includes all of the following:

(1) The difference between the NIST/USNO standard and a time provider's clock;

(2) transmission delay from the source; and

(3) the amount of drift of the Member Organization's business clock. For purposes of this Rule, "business clocks" mean Member Organization proprietary system clocks. Member Organizations must set forth in their written supervisory procedures, required by PCX Rule 4.25, the manner in which synchronization of business clocks will be conducted, documented and maintain.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to ensure that all member organization business clocks, used for purposes of recording order or trade data to the Exchange, are synchronized to a single time designated by the PCX, and that member organizations adopt such procedures as may be necessary to maintain such synchronization during each trading day. The adoption of the proposed rule would also assist the PCX in fulfilling one of the undertakings contained in the order issued by the SEC relating to the PCX's regulatory responsibilities.[4] Pursuant to the SEC Order, the PCX agreed to undertake to design and implement an audit trail sufficient to enable the Exchange to reconstruct markets promptly, conduct efficient surveillance and enforce its rules. As part of this undertaking, the PCX must work to provide for market-wide synchronization of clocks utilized in connection with the audit trail.

The PCX believes that the reliability and usefulness of any audit trail depends on the ability of the Exchange to require that the business clocks of member organizations be appropriately synchronized. The determination of whether members have complied with various rules and standards to which they are subject, including, among others, best execution obligations, compliance with the obligation to honor firms quotes, and prohibitions on frontrunning customer orders, depends critically on establishing with reasonable confidence the time at which order information is received. Time synchronization, therefore, becomes a necessary and integral part of the PCX audit trail system.

Proposed Rule 6.20 provides that each member organization must synchronize, within a time frame to be established by the Exchange, the business clocks that it uses for the purpose of recording the date and time of any event that must be recorded pursuant to the Rules of the Exchange. Although member organizations may use any time provider source, each member organization must ensure that the business clocks it uses on the Exchange are accurate to within three seconds of the National Institute of Standards and Technology Atomic Clock in Boulder Colorado or the United States Naval Observatory Master Clock in Washington, DC.

It is important to note that the obligation to maintain the synchronization of business clocks will be ongoing. Therefore, pursuant to PCX Rule 4.25, member organizations must set forth in their written supervisory procedures the manner in which synchronization of business clocks will be conducted, documented and maintained. The PCX will carefully review member organizations' compliance with these requirements given the importance of accurate time recordation to the audit trail system.

The PCX proposes to implement the requirements of this rule in two phases. In the first phase, the proposed schedule contemplates that the requirements of the rule would apply to all orders that are received electronically, or captured in electronic form promptly after receipt, as of January 2, 2002. In the second phase, the proposed implementation schedule would apply the requirements of the proposed rule to all other types of orders as of September 11, 2002.[5]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Hassan Abedi, Attorney, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 5, 2001 ("Amendment No. 1"). Amendment No. 1 expanded the proposed rule language to further define the three-second tolerance.

[4] *See* In the Matter of Certain Activities of Options Exchanges, Securities Exchange Act Release No. 37538 (September 11, 2000); Administrative Proceeding File No. 3–10282 ("SEC Order").

[5] This date is consistent with the schedule set forth in the SEC Order for completion of PCX obligations with respect to this undertaking.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2001–24 and should be submitted by November 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26199 Filed 10–17–01; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3818]

30-Day Notice of Proposed Information Collection: Evaluation of DOS-Sponsored Educational and Cultural Exchange Programs (Formerly USIA-Sponsored Educational and Cultural Exchange Activities; USIA Participant Survey Questionnaire #3116–0199) OMB Control #1405–0118

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection, OMB Control #1405–0118.

Originating Office: Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation (ECA/P).

Title of Information Collection: Evaluation of DOS-sponsored Educational and Cultural Exchange Programs.

Frequency: Information is collected on a per evaluation project basis.

Form Number: N/A [Multiple survey questionnaires may be used for evaluation projects, on a one-time, per-project basis.]

Respondents: U.S. and foreign applicants, current grantee exchange visitor participants (J–1 visa) and alumni of the Bureau of Educational and Cultural Affairs' exchange programs, program administrators, domestic and foreign partner organizations, domestic and foreign hosts of exchange visitor participants, and other similar types of respondents associated with the Bureau's exchange programs.

Estimated Number of Respondents: 1,938.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 1,938 (3,877 total annual responses × 30 minutes).

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from the U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, 301 4th Street, SW (SA–44), Room 357, Washington, DC 20547, or by telephone at (202) 619–5307. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: August 15, 2001.

David Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 01–26311 Filed 10–17–01; 8:45 am]

BILLING CODE 4710–05–P

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3816]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: FREEDOM Support Act Undergraduate Program

SUMMARY: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the FREEDOM Support Act Undergraduate Program. Public and private non-profit organizations meeting the provisions described in IRS regulations 26 CFR 1.501(c)(2)–1 through 1.501(c)(21)–2 may submit proposals to administer the placement, monitoring, evaluation, follow-on, and alumni activities for the FY 2002 FREEDOM Support Act Undergraduate Program. Proposals should include provisions for the recruitment and selection of FY 2003 participants. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition.

Program Information

The FREEDOM Support Act Undergraduate Program (herein referred to as the FSAU Program) provides scholarships for one-year, non-degree study at U.S. institutes of higher education to outstanding students of the New Independent States (NIS). Scholarships are available in the fields of agriculture, American studies, business, computer science, economics, education, environmental management, international relations, journalism and mass communication, political science, and sociology. Scholarships are granted to students who have completed at least one year of study at an accredited university in their home countries. Students must be citizens of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan. FSAU participants will be enrolled in one-year, non-degree programs at both four-year colleges and universities, and community colleges. Students will enhance their academic education with participation in community service and an internship. Interested organizations should read the entire **Federal Register** announcement for all information prior to preparing a proposal. Programs must comply with J–1 Visa regulations. Please refer to the Solicitation Package for further information. Awards will begin on or about May 30, 2002.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire program. The level of funding for FY 2002 is uncertain, but is anticipated to be approximately $8,500,000. Based on this figure, applicant organizations should submit a budget which will fund no fewer than 335 participants. ECA anticipates awarding one or more grants under this competition. Applicant organizations are encouraged, through cost sharing and other methods, to provide for as many scholarships as possible based on approximated funding. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions. ECA grant guidelines state that organizations with less than four years experience in conducting international exchange programs are limited to $60,000 in Bureau funding. It is anticipated that the grant or grants awarded under this competition will well exceed $60,000. Therefore, organizations with less than four years experience per above, are not eligible under this competition.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/EUR–02–03.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Exchange Programs, ECA/A/E/EUR, Room 246, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Phone: 202–205–0525; Fax: 202–260–7985, *sgovatsk@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Manager Sondra Govatski on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, December 21, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR–02–03, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to Public Affairs Sections at US Embassies for review, with the goal of reducing the time it takes to get embassies' comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Affairs Sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Development and Management

Proposals should exhibit originality, substance, precision, innovation, and relevance to Bureau mission. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should also include creative ways to involve students in their U.S. communities.

3. Support of Diversity

Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity, and should include a strategy

for achieving diverse applicant pools for both students and host institutions.

4. Institution's Record/Ability

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. Alumni Tracking and Follow-On

Proposals should provide a plan for effective tracking of participants after the completion of the program. Proposals should include a plan for continued follow-on activity which insures that ECA supported programs are not isolated events.

6. Project Evaluation

Proposals should include a plan to evaluate the program's success, both during and after the program. ECA recommends that the proposal include a draft survey questionnaire or other technique, plus a description of methodologies that can be used to link outcomes to original project objectives. Award-receiving organizations will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

7. Cost-Effectiveness and Cost Sharing

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through FREEDOM Support Act legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 11, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–26121 Filed 10–17–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3817]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Fulbright American Studies Institutes for Foreign University Faculty

NOTICE: Request for Grant Proposals (RFGPs).

SUMMARY: The Study of the U.S. Branch, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for five (5) assistance awards. Public and private non-profit organizations meeting the provisions described in IRS regulations 26 CFR 1.501(c)(2)–1 through 1.501(c)(21)–2 may apply to develop and implement one of the following five post-graduate level American Studies programs designed for multinational groups of 18 to 30 experienced foreign university faculty and educators:

A. Religion in the United States
B. U.S. Foreign Policy: Foundations and Formulation
C. Contemporary American Literature
D. Immigration and Ethnicity: The American Experience
E. American Studies for Foreign Secondary School Educators

These programs are intended to provide participants with a deeper understanding of American life and institutions, past and present, in order to strengthen curricula and to improve the quality of teaching about the United States at universities abroad. Programs should therefore be designed to elucidate the topic or theme of the Institute as well as American civilization as a whole.

Programs are six weeks in length and will be conducted during the Summer of 2002.

The Bureau is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: Political science, international relations, law, history, sociology, literature, American studies, and/or other disciplines or sub-disciplines related to the program theme.

It is the Bureau's intention to fund one institute in each of the above five thematic areas, subject to the number and quality of proposals received and the availability of funding.

Applicant institutions must demonstrate expertise in conducting post-graduate programs for foreign educators, and *must hove a minimum of four years experience in conducting international exchange programs.* Bureau guidelines stipulate that grants to organizations with less than four years experience in conducting international exchanges are limited to $60,000. As it is expected that the budget for these programs will exceed $60,000, organizations that can not demonstrate at least four years experience will not be eligible to apply under this competition.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above. Staff escorts traveling under the cooperative agreement must have demonstrated qualifications for this service. Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

Program Information

Overview and Objectives

Fulbright American Studies Institutes are intended to offer foreign scholars and teachers whose professional work focuses on the United States the opportunity to deepen their understanding of American institutions and culture. Their ultimate goal is to strengthen curricula and to improve the quality of teaching about the U.S. in universities abroad.

Programs should be six weeks in length and must include an academic residency segment of at least four weeks duration at a U.S. college or university campus (or other appropriate location). A study tour segment of not more than two weeks should also be planned and should directly complement the academic residency segment; the study tour should include visits to one or two additional regions of the United States.

All institutes should be designed as intensive, academically rigorous seminars intended for an experienced group of fellow scholars from outside the United States. The institutes should be organized through an integrated series of lectures, readings, seminar discussions, regional travel, site visits, and they should also include some opportunity for limited but well-directed independent research.

Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. Within the limits of their thematic focus and organizing framework, Institute programs should also be designed to:

1. Provide participants with a survey of contemporary scholarship within the institute's governing academic discipline, delineating the current scholarly debate within the field. In this regard, the seminar should indicate how prevailing academic practice in the discipline represents both a continuation of and a departure from past scholarly trends and practices. A variety of scholarly viewpoints should be included;

2. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content if appropriate;

3. Give participants a multi-dimensional view of U.S. society and institutions that includes a broad and balanced range of perspectives. Where possible, programs should therefore include the views not only of scholars, cultural critics and public intellectuals, but also those of other professionals outside the university such as government officials, journalists and others who can substantively contribute to the topics at issue; and,

4. Insure access to library and material resources that will enable grantees to continue their research, study and curriculum development upon returning to their home institutions.

Program Descriptions

A. Religion in the United States

This Institute is intended to provide foreign university faculty with an opportunity to increase their understanding of American civilization through an examination of the American religious experience. Employing a multi-disciplinary approach, the program should explore both the historical and contemporary relationship between church and state in the United States; examine the ways in which religious thought and practice has influenced and been influenced by the development of American democracy; examine the intersections of religion and politics in the UnitedStates in such areas as elections, public policy, and foreign policy; and explore the sociology and demography of religion in the United States today, including a survey of the varieties of contemporary religious belief.

B. U.S. Foreign Policy: Foundations and Formulation

This program should examine the domestic institutional foundations—political, social, economic and cultural—of U.S. foreign policy with particular attention to the Post-Cold War era. Principal themes, critical policy debates, and contemporary issues in U.S. foreign policy should be examined in light of the history of U.S. international relations since World War II and within the larger framework of U.S. diplomatic history as a whole. An overarching goal of the program is to illuminate the relationships between U.S. policies and the political, social and economic forces in the United States that constitute the domestic institutional context in which such policies are debated, formulated and executed. The program should be structured to give attention to U.S. policy both globally and in particular geographic areas.

C. Contemporary American Literature

This program should focus on recent American literature and criticism. Its purpose is twofold: first, to explore contemporary American writers and writing in a variety of genres; second, to suggest how the themes explored in those works reflect larger currents within contemporary American society and culture. The program should explore the diversity of the American literary landscape, examining how major contemporary writers, schools and movements reflect the traditions of the American literary canon and, at the same time, represent a departure from that tradition, establishing new directions for American literature.

D. Immigration and Ethnicity: The American Experience

This program should examine the role that immigration and ethnicity have played in defining the nature of the American experience. The program should examine the history of immigration to the United States and explore the impact that various periods of immigration have had on the development of America's political, social, and cultural values and institutions. Throughout the program, the focus on immigrant groups and America's ethnic diversity should serve to illustrate the dynamism of the American experience, viewed both as a whole and as the sum of its diverse ethnic, religious and cultural parts.

E. American Studies for Foreign Secondary School Educators

This Fulbright American Studies Institute should provide a multinational group of up to 30 experienced foreign secondary school educators with a deeper understanding of U.S. society and culture, past and present. The institute should be organized around a central theme or themes in U.S. civilization and should have a strong contemporary component. Through a combination of traditional, multi-disciplinary and interdisciplinary approaches, program content should be imaginatively integrated in order to elucidate the history and evolution of U.S. institutions and values, broadly defined. The program should also serve to illuminate the contemporary political, social, and economic debates in American society. The program's ultimate goal is to promote the development and improvement of courses and teaching about the U.S. at secondary schools and teacher training institutions abroad.

Program Dates

Ideally, the programs should be 44 days in length (including participant arrival and departure days) and should begin in mid to late June, 2002. However, the Bureau is willing to consider other program dates, based on the needs of the host institution.

Participants

As specified in the guidelines in the solicitation package, programs should be designed for groups of either 18 or 30 highly-motivated and experienced foreign university faculty and teacher trainers who are interested in

participating in an intensive seminar on aspects of U.S. civilization as a means to develop or improve courses and teaching about the United States at their home institutions.

Most participants can be expected to come from educational institutions where the study of the U.S. is relatively well developed. Thus, while they may not have in-depth knowledge of the particular institute program theme, most will have had some experience in teaching about the United States. Many will have had sustained professional contact with American scholars and American scholarship, and some may have had substantial prior experience studying in the United States. Participants will be drawn from all regions of the world and will be fluent in the English language.

Participants will be nominated by Fulbright Commissions and by U.S. Embassies abroad. Nominations will be reviewed by the Study of the U.S. Branch. Final selection of grantees will be made by the Fulbright Foreign Scholarship Board.

Program Guidelines

While the conception and structure of the institute program is the responsibility of the organizers, it is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and, how each session relates to the overall institute theme. The syllabus must therefore indicate the subject matter for each lecture or panel discussion, confirm or provisionally identify proposed lecturers and discussants, and clearly show how assigned readings will support each session. A calendar of all activities for the program must also be included. Overall, proposals will be reviewed on the basis of their fullness, coherence, clarity, and attention to detail.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Budget Guidelines

Based on groups of 18 participants, the total Bureau-funded budget (program and administrative) for programs one, two, three and four above should be approximately $182,000, and Bureau-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $54,000. Based on a group of 30 participants, the total Bureau-funded budget (program and administrative) for program five above should be approximately $255,000, and Bureau-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $57,000.

Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the "POGI" in the Solicitation Package for complete institute budget guidelines and formatting instructions.

Announcement Name and Number: All communications with the Bureau concerning this announcement should refer to the following titles and reference numbers:

Religion in the United States (ECA/A/E/USS–02–01A–Bate)
U.S. Foreign Policy: Foundations and Formulation (ECA/A/E/USS–02–01B–Bate)
Contemporary American Literature ECA/A/E/USS–02–01C–Taylor)
Immigration and Ethnicity: The American Experience (ECA/A/E/USS–02–01D–Taylor)
American Studies for Foreign Secondary School Educator (ECA/A/E/USS–02–01E–Emerson)

FOR FURTHER INFORMATION CONTACT: To request a Solicitation Package containing more detailed program information, award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact:

U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Academic Exchange Programs, Study of the U.S. Branch, State Annex 44, ECA/A/E/USS—Room 252/301 4th Street, SW., Washington, DC 20547, Attention: Richard Taylor.

Telephone number: (202) 619–4557.
Fax number: (202) 619–6790.
Internet address: rtaylor@pd.state.gov.

Please specify Senior Program Officer Richard Taylor on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals.

Once the RFGP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/*. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington DC time on Friday, January 11, 2002. Faxed documents will NOT be accepted, nor will documents postmarked January 11, 2002 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and 13 copies of the complete application should be sent to:

U.S. Department of State, Bureau of Educational and Cultural Affairs, Reference: (insert appropriate reference number from above, e.g. ECA/A/E/USS–02–01x–xxxxxx) Program Management Staff, ECA/EX/PM, Room 534, State Annex 44, 301 4th Street, SW., Washington, DC 20547.

Applicants should also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5"diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office. Eligible proposals will then be forwarded to panels of senior Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Advisor or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. More weight will be given to items one and two, and all remaining criteria will be evaluated equally.

1. Overall Quality

Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject discipline of each institute. Program elements should be coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. Program Planning and Administration

Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment. Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented.

3. Institutional Capacity

Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of the participants.

4. Support for Diversity

Substantive support of the bureau's policy on diversity should be demonstrated. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. Experience

Proposals should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. Evaluation and Follow-Up

A plan for evaluating activities during the Institute and at its conclusion should be included. Proposals should discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Cost Effectiveness

Proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support.

Overhead and administrative components, including salaries and honoraria, should be kept as low as possible.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * *.and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of this RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal Bureau procedures.

Dated: October 11, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–26122 Filed 10–17–01; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3815]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: U.S.-Based Training Program (USBT)

SUMMARY: The Educational Information and Resources Branch of the Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the U.S. Based Training Program for Overseas Educational Advisers and logistical support for the annual meeting of the Department's Regional Educational Advising Coordinators (REACs). Public and private non-profit organizations meeting the provisions described in IRS regulations 26 CFR 1.501(c)(2)–1 through 1.501(c)(21)–2 may submit proposals to develop two

training programs for Department of State-affiliated overseas advisers to take place in spring and fall 2002. The basic function of an overseas educational adviser is to provide accurate, objective information to foreign audiences on U.S. study opportunities at accredited academic institutions, and to guide students and professionals in selecting a program appropriate to their needs. USBT participants will be drawn from educational advisers working at Department of State-affiliated overseas educational advising centers. Each training program is intended for approximately fourteen participants. The program must be approximately three weeks in duration and must include workshops on advising issues of concern, visits to a variety of U.S. academic institutions outside of the Washington, DC metropolitan area and attendance at a national or regional NAFSA: Association of International Educators Conference or similar professional development opportunity. The Bureau anticipates awarding up to $310,000 to one organization to administer this program.

Program Information

Overview

The USBT program's objectives are twofold: To strengthen and develop the skills of overseas educational advisers; and to build a corps of knowledgeable advisers who are skilled trainers and can advance the field of educational advising in their home countries with new and current expertise, techniques and knowledge of applicable technology.

Each component of the training program should be designed to provide detailed, hands-on learning in areas such as facilitating access to U.S. higher education, communicating cross-culturally, and managing an advising center. Special attention should be given to the use of technology, both as a necessary advising skill, and as a potential tool to develop new and creative advising approaches. Similarly, a significant emphasis should be placed on outreach, partnership and cost-sharing strategies and skills development. The logistical support sought for the annual Regional Educational Advising Coordinators (REAC) meeting includes making lodging and other arrangements for up to eight REACs and Educational Information and Resources Branch (ECA/A/S/A) program staff for one week of consultations in Washington, DC immediately before or after the 2002 NAFSA Conference. REACs provide training and needs assessment and serve as the chief resource to the centers in their region on advising and other educational issues. In addition, REACs serve as liaisons between advising centers and U.S. colleges, universities, professional associations and other organizations involved in international educational exchange.

Guidelines

1. Participants

For the purposes of this RFGP, eligible advisers are defined as those who are currently working at a State Department-affiliated Center and who have demonstrated the skills associated with the four major components of overseas educational advising: (1) Basic knowledge of the U.S. and home country educational systems; (2) basic knowledge of the application process for individuals to enroll in U.S. higher educational institutions; (3) demonstrated educational advising and cross-cultural communication skills; and (4) demonstrated office management skills as they relate to an overseas advising center. In addition, each participant must demonstrate leadership and a commitment to the profession. Approximately fourteen participants are expected for each training program. Participants will be selected by the ECA/A/S/A based on nominations from overseas posts.

2. Program Design

The Bureau invites organizations to submit creative and flexible program plans which can be tailored, in close consultation with ECA/A/S/A, to the selected advisers' individual needs. However, the proposal should still include an overall project framework which identifies objectives, an implementation plan and measurable, expected outcomes.

Possible topics to incorporate in the program include: Degree equivalency and accreditation; international student admissions; financial aid; standardized testing; ESL programs; immigration and visa issues; fields of study; cultural adjustment; U.S. societal diversity; specialized Internet usage; distance learning; proposal writing; fundraising; public relations and marketing; determining appropriate fees for advising services for students and others, given each host country's environment; trends in advising center cost sharing and training and management of volunteer staff.

3. Timing/Program Phases

The program should include attendance at, and active participation in, an appropriate national or regional conference where workshops and seminars address issues of current interest to international educators and overseas advisers and where the opportunity to brainstorm and to share information plays an important part. Advisers should have opportunities to present and/or participate in panels and pre-conference/conference workshops. In addition, the program should include internship experiences and visits to a four-year public university, a private college or university, a community college, an Historically Black College or University (HBCU) or other minority-serving institution, and a graduate or research institution. Ideally, advisers should visit campuses while classes are in session to optimize their experience through interaction with students.

4. Logistics

The grantee organization will be responsible for arrangements associated with this program. These include organizing a coherent progression of activities, providing international and domestic travel arrangements for all advisers, making lodging and local transportation arrangements, orienting and debriefing advisers, preparing any necessary support material, and recruiting host campuses. The organization should work with host campuses and experts in the field of higher education and overseas advising to achieve maximum program effectiveness, by providing participants with hands-on applications and training and direct involvement in the administration of practices and policies in institutions of higher education.

5. Evaluation/Follow-Up

The proposal must include a detailed evaluation and follow-up plan. Special emphasis should be given to designing a program which incorporates outcome measurement strategies that assess its ultimate effectiveness.

6. Visa/Insurance/Tax Requirements

The program must comply with applicable visa regulations.

Participant health and accident insurance will be provided to the overseas advisers by the Bureau; the recipient organization will be responsible for enrolling participants in the Bureau's insurance program and providing any necessary assistance should medical care be needed. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

7. Printed Materials

Drafts of all printed materials developed for this program should be submitted to ECA/A/S/A for review and approval. All official documents should highlight the U.S. government's role as program sponsor and funding source. The Bureau requires that it receive the copyright use and be allowed to distribute this material as it sees fit.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. The Bureau anticipates awarding one grant in the amount of $310,000 to support program and administrative costs required to implement this program. Therefore, organizations with less than four years of experience in conducting international exchange programs are ineligible to apply for this grant. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) Salaries and fringe benefits; travel and per diem;

(2) Other direct costs, inclusive of rent, utilities, etc.;

(3) Indirect expenses (except against participant program expenses), auditing costs;

(4) Participant program costs; *i.e.*, international/domestic travel, per diem, conference attendance. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Programs must comply with visa regulations. Please refer to Solicitation Package for further information.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–02–05.

FOR FURTHER INFORMATION CONTACT: The Educational Information and Resources Branch, ECA/A/S/A, room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, phone: 202–260–6936, fax: 202–401–1433 to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Dorothy Mora on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, November 16, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–02–05, Program Management, ECA/EX/PM, Room 534 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries."

Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Idea

Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program Planning

Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability To Achieve Program Objectives

Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of

information and establishment of long-term institutional and individual linkages.

5. Support of Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-On Activities

Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. Project Evaluation

Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-Effectiveness

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-Sharing

Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 5, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 01–26120 Filed 10–17–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–81]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments or petitions received must identify the petition docket number involved and must be received on or before November 7, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza, 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive information that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on October 12, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–10787.
Petitioner: Gulfstream Aerospace Corporation.
Section of 14 CFR Affected: 14 CFR 25.807.

Description of Relief Sought: To allow the petitioner to install two Gulfstream 26-inch horizontal by 19-inch vertical oval overwing emergency exists in lieu of a Type III overwing exit on the right side of the new Gulfstream GV–SP aircraft.

[FR Doc. 01–26205 Filed 10–15–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a petition seeking relief from a specified requirement of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 7, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 11, 2001.

Donald P. Bryne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–9672.
Petitioner: Hangar 10, Inc.
Section of 14 CFR Affected: 14 CFR 119.3.
Description of Relief Sought: To permit Hangar 10 to operate certain Convair-Liner 340 airplanes in all-cargo service under 14 CFR part 135 with a maximum payload greater than 7,500 pounds, rather than under part 121.

[FR Doc. 01–26228 Filed 10–17–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–80]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 12, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10283 (previously Docket No. 24041).
Petitioner: Butler Aircraft Co.
Section of 14 CFR Affected: 14 CFR 91.529(a)(1).
Description of Relief Sought/Disposition: To permit Butler to operate its McDonnell Douglas DC–6 and DC–7 airplanes without a flight engineer during flightcrew training, ferry operations, and test flights that are conducted to prepare for firefighting operations carried out under 14 CFR part 137.
Grant, 10/02/2001, Exemption No. 2989K

Docket No.: FAA–2001–9782 (previously Docket No. 23358).
Petitioner: Clarke Environmental Mosquito Management, Inc.
Section of 14 CFR Affected: 14 CFR 91.313(d).
Description of Relief Sought/Disposition: To permit CEMM to carry passengers in its Bell 47G–4A and 47G–3B–1 helicopters and its Piper PA23 Aztec 250 airplane, certificated in the restricted category, while performing aerial-site survey flights.
Grant, 10/02/2001, Exemption No. 6701B

Docket No.: FAA–2001–9811 (previously Docket No. 27372).
Petitioner: Camera Work, Inc. dba Fly BVI, Ltd.
Section of 14 CFR Affected: 14 CFR 61.89(a)(5).
Description of Relief Sought/Disposition: To permit Fly BVI student pilots to fly between Tortola, British Virgin Islands, and the airports of the U.S. Virgin Islands and Puerto Rico while fulfilling the cross-country requirements for a private pilot certificate.
Grant, 10/02/2001, Exemption No. 5796D

Docket No.: FAA–2001–10356.
Petitioner: United States Army Special Operations Command, 160th Special Operations Aviation Regiment.
Section of 14 CFR Affected: 14 CFR 91.177(a)(2) and 91.179(b)(1).
Description of Relief Sought/Disposition: To permit properly equipped USASOC aircraft to conduct low-level operations without complying with en route minimum altitudes for flight under instrument flight rules (IFR) or direction of flight requirements for IFR en route segment in uncontrolled airspace.

Grant, 09/29/2001, Exemption No. 7631

[FR Doc. 01–26229 Filed 10–17–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on October 24–25, 2001, starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805; Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

October 24:

- Opening Plenary Session (Welcome and Introductory Remarks, Review Summary of Previous Meeting)
- Plenary Review of Program Management Committee Actions (Documents and Terms of Reference)
- Working Group 3, Voice Data Link (VDL)–3 Principles of Operation

October 25:

- Working Group 3, VDL–3 Principles of Operation
- Closing Plenary Session (Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 9, 2001.

FAA Special Assistant,

RTCA Advisory Committee.

[FR Doc. 01–26227 Filed 10–17–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In August 2001, there were seven applications approved. Additionally, 10 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: County of Emmet, Pellston, Michigan.
Application Number: 01–09–C–00–PLN.
Application Type: Impose and Use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $709,567.
Earliest Charge Effective Date: June 1, 2002.
Estimated Charge Expiration Date: July 1, 2011.
Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Pellston Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Rehabilitate runway lighting.
Design for terminal expansion.
PFC application.
Wildlife study.
Terminal building expansion.
Perimeter road environmental assessment.
Aircraft apron expansion.
Parking lot renovation.
Brief Description of Projects Approved for Use:
Land acquisition.
Acquire sweeper.
Acquire snow blower.
Rehabilitate aircraft parking ramp.
Rehabilitate airport entrance road.
Replace snow removal equipment—plow truck
Brief Description of Project Approved for Collection: Aircraft deicing equipment.
Decision Date: August 7, 2001.
For Further Information Contact: Arlene B. Draper, Detroit Airports District Office, (734) 487–7282.

Public Agency: City of St. George, Utah.
Application Number: 01–02–U–00–SGU.
Application Type: Use PFC revenue.
PFC Level: $3.00.
Total PFC Revenue to be Used in This Decision: $330,000.
Charge Effective Date: May 1, 1998.
Charge Expiration Date: September 1, 2002.
Class of Air Carriers not Required to Collect PFC's: No change from previous decision.
Brief Description of Projects Approved for Use:
Runway rehabilitation.
Terminal parking expansion.
Decision Date: August 9, 2001.
For Further Information Contact: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of North Bend, Oregon.
Application Number: 01–05–C–00–OTH.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $342,500.
Earliest Charge Effective Date: May 1, 2003.
Estimated Charge Expiration Date: August 1, 2006.
Class of Air Carriers Not Required to Collect PFC's: Nonscheduled air taxi/commercial operator utilizing aircraft having a seating capacity of less than 20 passengers.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at North Bend Municipal Airport.
Brief Description of Projects Approved for Collection and Use:
Rehabilitation of runway 13/31.

Acquisition of aircraft rescue and firefighting truck.
Master plan.
Rehabilitation of runway 4/22.
Brief Description of Project Approved For Use: Runway 13/31 safety area improvements project.
Decision Date: August 14, 2001.
For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Charlottesville-Albermarle Airport Authority, Charlottesville, Virginia.
Application Number: 01–14–C–00–CHO.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $220,000.
Earliest Charge Effective Date: June 1, 2004.
Estimated Charge Expiration Date: January 1, 2005.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Charlotteville-Albermarle Airport.
Brief Description of Projects Approved for Collection and Use:
Extend runway 3 safety area, phase III.
PFC project administration fees and annual administrative costs.
Air carrier terminal refurbishment (design), phase II.
Acquire snow removal equipment carrier vehicle.
Decision Date: August 15, 2001.
For Further Information Contact: Arthur Winder, Washington Airports District Office, (703) 661–1363.

Public Agency: County of Dane, Madison, Wisconsin.
Application Number: 01–05–CC–00–MSN.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $46,656,115.
Earliest Charge Effective Date: December 1, 2006.
Estimated Charge Expiration Date: March 1, 2014.
Classes of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Dane County Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Reconstruct taxiway E at east ramp.
Terminal expansion.
Terminal apron expansion and utility relocations.
Airfield storm water study and storm water improvements.
Decision Date: August 20, 2001.
For Further Information Contact: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: City and Bureau of Juneau, Alaska.
Application Number: 01–05–C–00–JNU.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $650,000.
Earliest Charge Effective Date: January 1, 2002.
Estimated Charge Expiration Date: August 1, 2002.
Classes of Air Carriers not Required to Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Acquire snow removal equipment—sand truck.
Acquire snow removal equipment—snow blower replacement.
Decision Date: August 27, 2001.
For Further Information Contact: Debbie Roth, Alaska Region Airports Division, (907) 271–5443.

Public Agency: City of San Antonio, Texas.
Application Number: 01–01–C–00–SAT.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $102,524,363.
Earliest Charge Effective Date: November 1, 2001.
Estimated Charge Expiration Date: November 1, 2009.
Classes of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators operating under Part 135 and filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at San Antonio International Airport.
Brief Description of Projects Approved for Collection:
Residential noise attenuation.
Construct aircraft rescue and firefighting training facility.
Construct three high-speed taxiways.
Extend runway 21 and associated development.
Construct concourse B.
Construct concourse B access road.
Brief Description of Projects Approved for Collection and Use:
Construct runway 30L holding apron.
Modify wash rack apron.
Replace remain-overnight apron.
Rehabilitate terminals 1 and 2.
Reconstruct perimeter road.
Brief Description of Withdrawn Project: Environmental assessment and clean up.
Determination: This project was withdrawn from the application in the public agency's letter dated June 17, 2001. Therefore, the FAA did not rule on this project in this decision.
Decision Date: August 29, 2001.
For Further Information Contact: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

AMENDMENTS TO PFC APPROVALS

Amendment No., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–02–HVN New Haven, CT.	07/02/01	$1,108,060	$983,636	04/01/98	04/01/98
*99–03–C–01–RDM Redmond, OR.	08/17/01	1,021,900	1,548,420	04/01/04	06/01/03
99–02–C–01–GRB	08/22/01	2,768,496	3,028,496	12/01/01	03/01/02

AMENDMENTS TO PFC APPROVALS—Continued

Amendment No., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
Green Bay, WI.					
01–03–C–01–JNU	08/24/01	310,551	371,748	12/01/01	01/01/02
Juneau, AK.					
*01–05–C–01–ABE	08/24/01	2,807,572	2,807,572	06/01/03	12/01/02
Allentown, PA.					
98–02–C–03–JAN	08/27/01	3,172,931	3,672,931	10/01/02	01/01/03
Jackson, MS.					
98–03–C–01–SJT	08/27/01	946,651	921,993	07/01/06	05/01/06
San Angelo, TX.					
*94–01–C–04–MLI	08/29/01	5,717,553	5,772,762	11/01/08	07/01/06
Moline, IL.					
*98–02–C–02–MLI	08/29/01	5,197,984	5,192,924	07/01/09	07/01/09
Moline, IL.					
*99–03–C–01–MLI	08/29/01	6,658,796	9,507,531	07/01/23	07/01/16
Moline, IL.					

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Redmond, OR and Allentown, PA this change is effective on November 1, 2001. For Moline, IL this change is effective on January 1, 2002.

Issued in Washington, DC, on October 11, 2001.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 01–26313 Filed 10–17–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on February 28, 2001 [66 FR 12829–12831].

DATES: Comments must be submitted on or before November 19, 2001.

FOR FURTHER INFORMATION CONTACT: Walter Culbreath at the National Highway Traffic Safety Administration, Office of Administration (NAD–40), 202–366–1566. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Generic Clearance for Customer Surveys.

OMB Number: 2127–0579.

Type of Request: Extension of a currently approved information collection.

Abstract: Executive Order 12862, mandates that agencies survey their customers to identify the kind and quality of services they want and their level of satisfaction with existing services. Other requirements include the Governmental Performance and Results Act (GPRA) of 1993 which promotes a new focus on results, service quality, and customer satisfaction. NHTSA will use surveys of the public and other external stakeholders to gather data as one input to decision-making on how to better meet the goal of improving safety on the nation's highways. The data gathered on public expectations, NHTSA's products and services, along with specific information on motor vehicle crash related issues, will be used by the agency to better structure its processes and products, forecast safety trends and achieve the agency's goals.

Affected Public: Individuals or households are primary survey respondents. Businesses or other-for profit, not-for-profit institutions, Federal agencies, and State, local or tribal governments or other possible survey respondents.

Estimated Total Annual Burden: 13,468.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 5, 2001.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–26232 Filed 10–17–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on January 22, 2001 [66 FR 6756–6757].

DATES: Comments must be submitted on or before November 19, 2001.

FOR FURTHER INFORMATION CONTACT: J.J. Liu at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NTS–31), 202–366–4923. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR 571.218, Motorcycle Helmets (Labeling).

OMB Number: 2127–0518.

Type of Request: Extension of a currently approved collection.

Abstract: NHTSA requires labeling information to ensure that helmet owners have important safety information. The information currently provided on the helmet from the labels includes the manufacture's name or identification, model, size, month and year or manufacture, shell and liner construction of the helmet. The owners will also receive important information on caring for the helmet from the labels. Finally, the DOT symbol signifies the manufactures's certification that the helmet meets all the requirements in the standard. Labeling is necessary for NHTSA to identify the helmet, particularly, if the helmet failed the compliance test.

Affected Public: Business of other for profit organizations.

Estimated Total Annual Burden: 5,333.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 5, 2001.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–26230 Filed 10–17–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on May 8, 2001 [66 FR 23315].

DATES: Comments must be submitted on or before November 19, 2001.

FOR FURTHER INFORMATION CONTACT: Joseph Scott at the National Highway Traffic Safety Administration (NHTSA), Office of Crash Avoidance Standards, 202–366–8525. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Brake Hose Manufacturers Identification.

OMB Number: 2127–0052.

Type of Request: Extension of a currently approved collection.

Abstract: Under the authority of the National Highway Traffic and Motor Vehicle Safety Act of 1966, as amended, Title 15 United States Code 1932, Section 103, authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS). The Act mandates that in issuing any FMVSS, the agency is to consider whether the standard is reasonable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed. Using this authority, Standard 106, Brake Hoses, was issued. This standard specifies labeling and performance requirements for all motor vehicle brake hose assemblers, brake hose and brake hose end fittings manufacturers for automotive vehicles. These entities must register their identification marks with NHTSA to comply with this standard.

Affected Public: Business of other for profit organizations.

Estimated Total Annual Burden: 30.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW, Washington, D.C. 20503, Attention NHTSA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 5, 2001.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–26231 Filed 10–17–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for

review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on May 1, 2001 [66 FR 21814].

DATES: Comments must be submitted on or before November 19, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Mazyck at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–32), 202–366–0846. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR part 542, Procedures for Selecting Lines to be Covered by the Theft Prevention Standard.

OMB Number: 2127–0539.

Type of Request: Extension of a currently approved information collection.

Abstract: The Anti-Car Act of 1992 amended the Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98–547) and requires this collection of information. One component of the theft prevention legislation required the Secretary of Transportation (delegated to the National Highway Traffic Safety Administration) to promulgate a theft prevention standard for the designation of high-theft vehicle lines. Provisions delineating the information collection requirements include section 33104, which requires NHTSA to promulgate a rule for the identification of major component parts for vehicles having or expected to have a theft rate above the median rate for all new passenger motor vehicles (cars, MPV's, and light-duty trucks) sold in the United States, as well as with major component parts that are interchangeable with those having high-theft-rates.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden: 640.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW, Washington, D.C. 20503, Attention NHTSA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 5, 2001.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–26233 Filed 10–17–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 170)]

Union Pacific Railroad Company—Abandonment—In Polk County, IA

On September 28, 2001, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) an application for permission to abandon a line of railroad known as the Bell Avenue Industrial Lead extending from milepost 221.1 near SE 18th Street to milepost 217.38 near SW 30th Street, a distance of 3.72 miles, in Des Moines, Polk County, IA. The line includes the Des Moines Station and traverses United States Postal Service zip codes 50309, 50314, 50315, 50316, 50317, and 50321. No agency exists at the Des Moines Station.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment (case-in-chief) was filed with the application.

This line of railroad has appeared on UP's system diagram map in category 1 since February 14, 2001.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment, or protests (including the protestant's entire opposition case), by November 13, 2001. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) and any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by November 13, 2001. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27). Applicant's reply to any opposition statements and its response to trail use requests must be filed by November 27, 2001. *See* 49 CFR 1152.26(a).

Persons opposing the abandonment who wish to participate actively and fully in the process should file a protest. Persons who oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25. Persons interested only in seeking public use or trail use conditions should also file comments.

In addition, a commenting party or protestant may provide: (i) An offer of financial assistance (OFA) for continued rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner); (ii) recommended provisions for protection of the interests of employees; (iii) a request for a public use condition under 49 U.S.C. 10905; and (iv) a statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 170) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, #1920, Chicago, IL 60606. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: October 12, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–26282 Filed 10–17–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 11, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

DATES: Written comments should be received on or before November 19, 2001 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1318.

Regulation Project Number: REG–209545–92 NPRM (formerly INTL–18–92).

Type of Review: Extension.

Title: Earnings and Profits of Foreign Corporations.

Description: Application of the proposed regulations may result in accounting method changes which ordinarily require the filing of Form 3115. However, the proposed regulations waive this filing requirement if certain conditions are met, with the net result that no burdens are imposed.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1464.

Regulation Project Number: IA–44–94 Final.

Type of Review: Extension.

Title: Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions.

Description: The regulation provides guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of $250 or more, and the disclosure requirements for quid pro quo contributions of $75 or more. These regulations will affect donee organizations and individuals and entities that make payments to donee organizations.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 1,750,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 8 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,975,000.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 01–26260 Filed 10–17–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 11, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

DATES: Written comments should be received on or before November 19, 2001 to be assured of consideration.

Financial Crimes Enforcement Network

OMB Number: 1506–0013.

Form Number: TD F 90–22.55.

Type of Review: Extension.

Title: Registration of Money Services Businesses.

Description: 31 U.S.C. 5330 (and implementing regulations under 31 CFR 103.41(a),(b), and (d)) require money services businesses ("MSBs") to register with the Department of the Treasury and maintain a current list of agents. The registration and agent list requirements will enable Treasury to locate MSBs, educate them about their reporting and recordkeeping requirements of the Bank Secrecy Act, and ensure that MSBs comply with those requirements.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 8,500.

Estimated Burden Hours Per Respondent/Recordkeeping: 45 minutes.

Frequency of Response: Biennially.

Estimated Total Reporting/Recordkeeping Burden: 1,106,374 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New

Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–26261 Filed 10–17–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 11, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 19, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0710.

Form Number: IRS Forms 5500, 5500–C/R and Schedules (1998 Version).

Type of Review: Extension.

Title: Annual Return/Report of Employee Benefit Plan, Return/Report of Employee Benefit Plan and Associated Schedules.

Description: Forms 5500 and 5500–C/R are annual information returns filed by Employee Benefit Plans. The IRS uses this information to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 25,000.

Estimated Burden Hours Per Respondent/Recordkeeper: Varies.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 775,726 hours.

OMB Number: 1545–1083.

Regulation Project Number: INTL–399–88 Final.

Type of Review: Extension.

Title: Treatment of Dual Consolidated Losses.

Description: Section 1503(d) denies use of the losses of one domestic corporation by another affiliated domestic corporation where the loss corporation is also subject to the income tax of another country. The regulation allows an affiliate to make use of the loss if the loss has not been used in the foreign group, to take the loss into income upon future use of the loss in the foreign country. The regulation also requires separate accounting for a dual consolidated loss where the dual resident corporation files a consolidated return.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 3 hours, 14 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,620 hours.

OMB Number: 1545–1339.

Regulation Project Number: IA–33–92 Final.

Type of Review: Extension.

Title: Information Reporting for Reimbursements of Interest on Qualified Mortgages.

Description: To encourage compliance with the tax laws relating to the mortgage interest deduction, the regulations require the reporting on Form 1098 of reimbursements of interest overcharged in a prior year. Only businesses that receive mortgage interest in the course of that business are affected by this reporting requirement.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1 hour.

OMB Number: 1545–1384.

Form Number: IRS Form 3911.

Type of Review: Extension.

Title: Taxpayer Statement Regarding Refund.

Description: If taxpayer inquires about their nonreceipt of refund (or lost or stolen refund) and the refund has been issued, the information and taxpayer signature are needed to begin tracing action.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 520,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 43,160 hours.

OMB Number: 1545–1463.

Form Number: IRS Form 4996.

Type of Review: Extension.

Title: Electronic/Magnetic Media Filing Transmittal for Wage and Withholding Tax Returns.

Description: Form 4996 allows reporting agents to identify tax returns submitted on magnetic tapes or electronic transmissions. The reporting agent's signature is the signature of the "composite return" as required by Internal Revenue Regulations 31.6011(a)–8. Reporting agents are persons or organizations that submit tax returns or Federal tax deposits on magnetic tape or via telecommunications.

Respondents: Individuals or households.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 170 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–26262 Filed 10–17–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 932]

Appointment of Individuals To Serve as Members of the Performance Review Board (PRB); Senior Executive Service

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Performance Review Board for the Bureau of Alcohol, Tobacco and Firearms (ATF) for the rating period beginning October 1, 2000, and ending September 30, 2001. This notice effects changes in the membership of the ATF PRB previously appointed November 14, 2000 (65 FR 68170).

The names and titles of the ATF PRB members are as follows:

John J. Manfreda, Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury;

John Dooher, Director, Washington Office, Federal Law Enforcement Training Center, Department of the Treasury;

William F. Riley, Director, Office of Planning, United States Customs Service, Department of the Treasury.

FOR FURTHER INFORMATION CONTACT: Dennis Snyder, Personnel Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927–8610.

Bradley A. Buckles,

Director.

[FR Doc. 01–26270 Filed 10–17–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions prior to giving its final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before December 17, 2001.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Written comments should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1–5, Attention: 1557–0081, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. Comments will be available for inspection and photocopying at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. Appointments for inspection of comments may be made by calling (202) 874–5043.

Board: Written comments should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, submitted by electronic mail to *regs.comments@federalreserve.gov*, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m., except as provided in section 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [Fax number: (202) 898–3838; Internet address: *comments@fdic.gov*]. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Draft copies of the proposed revisions to the Call Report forms may be requested from any of the agency clearance officers whose names appear below.

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Mary M. West, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to revise the following currently approved collections of information:

Report Title: Consolidated Reports of Condition and Income.

Form Numbers: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

For OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 2,200 national banks.

Estimated Time per Response: 42.02 burden hours.

Estimated Total Annual Burden: 369,786 burden hours.

For Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 978 state member banks.

Estimated Time per Response: 48.00 burden hours.

Estimated Total Annual Burden: 187,776 burden hours.

For FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,640 insured state nonmember banks.

Estimated Time per Response: 32.63 burden hours.

Estimated Total Annual Burden: 736,053 burden hours.

The estimated time per response is an average which varies by agency because of differences in the composition of the banks under each agency's supervision (e.g., size distribution of banks, types of activities in which they are engaged, and number of banks with foreign

offices). The time per response for a bank is estimated to range from 15 to 550 hours, depending on individual circumstances.

General Description of Report

This information collection is mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). Except for selected items, this information collection is not given confidential treatment. Small businesses (i.e., small banks) are affected.

Abstract

Banks file Call Reports with the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of reporting banks and the industry as a whole. In addition, Call Reports provide the most current statistical data available for evaluating bank corporate applications such as mergers, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. Call Reports are also used to calculate all banks' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Actions

I. Overview

The agencies are requesting comment on several proposed revisions to the Call Report that will significantly enhance the usefulness of the report to the agencies, particularly from a supervisory perspective, and on certain revisions that should help simplify the completion of the report. Although the agencies implemented a substantial number of revisions to the Call Report in 2001, the agencies' ongoing review of their data needs for safety and soundness and other public purposes and other developments have indicated that further refinements to the information collected in the Call Report should be made in 2002. The proposed revisions include:

- Separating the existing balance sheet (Schedule RC) items for federal funds sold and securities resale agreements and for federal funds purchased and securities repurchase agreements into two asset and two liability items and adding a new item to Schedule RC–M, Memoranda, for the amount of overnight Federal Home Loan Bank advances included in federal funds purchased;
- Adding new items for:
- The fair value of credit derivatives to Schedule RC–L, Derivatives and Off-Balance Sheet Items;
- Year-to-date merchant credit card sales volume for acquiring banks and for agent banks with risk to Schedule RC–L; and
- Loans and leases held for sale that are past due 30–89 days, past due 90 days or more, and in nonaccrual status to the past due and nonaccrual schedule (Schedule RC–N);
- Breaking down the existing items for past due and nonaccrual closed-end 1–4 family residential mortgages in Schedule RC–N and for the charge-offs and recoveries of such mortgages in Schedule RI–B, part I, into separate items for first lien and junior lien mortgages;
- Revising the manner in which banks report on the estimated amount of their uninsured deposits in the deposit insurance assessments schedule (Schedule RC–O) and, for banks with foreign offices, modifying the scope of the existing items for the number and amount of deposit accounts in domestic offices to include accounts in insured branches in Puerto Rico and U.S. territories and possessions;
- Inserting a subtotal in the Tier 1 capital computation in Schedule RC–R, Regulatory Capital, to facilitate the calculation of certain disallowed assets and adding a new item to the schedule in which banks with financial subsidiaries would report the adjustment they must make to Tier 1 capital for their investment in these subsidiaries;
- Splitting the existing income statement (Schedule RI) item for intangible asset amortization expense into separate items for impairment losses on goodwill and for the amortization expense and impairment losses on other intangible assets on account of a new accounting standard; and
- Simplifying the disclosure of write-downs arising from transfers of loans to the held-for-sale account in the changes in allowance for loan and lease losses schedule (Schedule RI–B, part II).

Type of Review: Revision of a currently approved collection.

The proposed revisions to the Call Report have been approved for publication by the FFIEC. The agencies would implement these proposed Call Report changes as of the March 31, 2002, report date. Nonetheless, as is customary for Call Report changes, banks are advised that, for the March 31, 2002, report date only, reasonable estimates may be provided for any new or revised item for which the requested information is not readily available. The specific wording of the captions for the new and revised Call Report items and the numbering of these items in the report forms should be regarded as preliminary.

II. Discussion of Proposed Revisions

A. Federal Funds Transactions and Resale/Repurchase Agreements

On the Call Report balance sheet (Schedule RC), the agencies are proposing to separate the reporting of federal funds sold from securities purchased under agreements to resell (current item 3) and Federal funds purchased from securities sold under agreements to repurchase (current item 14). The revised balance sheet would have separate asset and liability items for federal funds transactions (items 3.a and 14.a) and for other securities resale/repurchase agreements (items 3.b. and 14.b).[1] In addition, the agencies would add a new item to Schedule RC–M—Memoranda, in which banks would report the amount of overnight Federal Home Loan Bank (FHLB) advances (i.e., maturing in one business day) included in federal funds purchased on the balance sheet. All reporting of these transactions on the Call Report balance sheet would continue to be on a gross basis (i.e., without netting), except to the extent permitted under FASB Interpretation No. 41.

From 1988 until March 31, 1997, banks reported their Federal funds transactions separately from their resale/repurchase agreements on the Call Report balance sheet. These items were combined in 1997 in conjunction with the agencies' adoption of generally accepted accounting principles (GAAP) as the reporting basis for recognition and measurement purposes in the Call Report. The combining took place because Federal funds sold/purchased and securities resale/repurchase agreements are shown as single asset/liability categories on the illustrative consolidated financial statements in the Audit and Accounting Guide—Banks and Savings Institutions, published by the American Institute of Certified Public Accountants (AICPA), and on the Securities and Exchange Commission's bank holding company balance sheet format in Article 9 of Regulation S–X (17 CFR 210.9–03). However, the agencies have reconsidered the current method of presentation for these assets and liabilities in the Call Report balance sheet and, for the reasons discussed

[1] Federal funds transactions include securities resale/repurchase agreements involving the receipt of immediately available funds that mature in one business day or roll over under a continuing contract.

below, have concluded that they should return to the pre-1997 method.

As banks have increased their reliance on nondeposit funding sources, the importance of liquidity and collateral management—and the potential for serious liquidity stress—has increased. Federal funds purchased and securities repurchase agreements frequently make up a large portion of banks' nondeposit funding sources and these short-term instruments often play a critical role in a bank's asset-liability management strategies and its response to liquidity pressures. Many federal funds transactions are unsecured, whereas all resale/repurchase agreements and overnight FHLB advances are secured; moreover, the terms for resale/repurchase agreements are longer than those for federal funds transactions.

Currently, nearly 90 percent of all commercial banks report that they have "Federal funds sold and securities purchased under agreements to resell" and approximately one third of all commercial banks report that they have "Federal funds purchased and securities sold under agreements to repurchase." Current Call Reports also show that one quarter of all commercial banks have both these assets and liabilities. Frequently, resale and repurchase agreements are linked, meaning that a bank has purchased securities under agreements to resell and at the same time has sold the same securities under agreements to repurchase. Thus, separate reporting of federal funds transactions and resale/repurchase agreements, combined with information about overnight FHLB advances, will allow the agencies to more effectively monitor and understand individual bank funding sources, asset-liability management, and liquidity risk. Under the proposed new reporting, the agencies will also improve their ability to identify banks that have significant changes to their asset-liability management strategies or liquidity risk positions between examinations.

In addition, because repurchase agreements and FHLB advances are always secured, receiverships must use the collateral to satisfy these claims prior to meeting the FDIC's claims when banks fail. A large volume of secured claims can materially increase the FDIC's loss rate. Therefore, the addition of these liability items will improve the FDIC's estimates of its potential loss exposure, both for individual troubled institutions [2] and in the aggregate. More accurate loss estimates for individual failing banks could produce better-informed decisions in selecting winning bidders at resolution and more accurate loss estimates on the insurance funds' financial statements. More accurate data at the aggregate level could improve the FDIC's analysis of its overall risk exposure and more informed analysis of potential changes to its deposit insurance pricing or risk abatement strategies.

Currently, overnight FHLB advances are reported only as part of "Federal funds purchased and securities sold under agreements to repurchase" on the Call Report balance sheet (item 14). Under the proposed revision described above, these overnight advances will continue to be reported as part of federal funds purchased in balance sheet item 14.a. All other FHLB advances are reported on the balance sheet as part of "Other borrowed money" (item 16), with a breakdown on these advances by remaining maturity reported in Schedule RC–M, items 5.a.(1) through 5.a.(3). However, the agencies understand that the amount of overnight FHLB borrowings is a substantial portion of the total FHLB advances made to all banks, but the amount of these advances cannot at present be determined from the Call Report. The proposed new Schedule RC–M item will enable the agencies to determine the total amount of FHLB borrowings at each institution, thereby improving their ability to monitor and understand individual bank funding sources, asset-liability management, and liquidity.

B. Fair Value of Credit Derivatives

The notional amounts of credit derivatives have been reported on the Call Report since 1997. These amounts are reported separately for contracts where the reporting bank is the guarantor (Schedule RC–L, item 7.a) and for contracts where the bank is the beneficiary (Schedule RC–L, item 7.b). However, there are no disclosures on the Call Report for the fair value of these contracts. In contrast, banks disclose both the notional amounts and fair values of four other types of derivatives in Schedule RC–L: interest rate contracts, foreign exchange contracts, equity derivative contracts, and commodity and other contracts. Gross positive and gross negative fair values are reported for each of these four types of derivatives, with separate values provided for contracts held for trading and for contracts held for purposes other than trading.

The notional amount outstanding of credit derivatives at banks has increased more than sixfold since 1997 (from $55 billion to $352 billion). This growth is largely the result of the use of credit derivatives as a risk management tool. In this regard, notional amounts are useful as an overall indicator of volume of derivative markets. However, notional amounts do not reveal the credit or market risk to which banks are exposed from derivative contracts. Therefore, the agencies propose to add four new items to Schedule RC–L, Derivatives and Off-Balance Sheet Items, to capture the gross positive and gross negative fair values of credit derivatives where the bank is the guarantor (items 7.a.(1) and (2)) and where the bank is the beneficiary (items 7.b.(1) and (2)).

The addition of these items should result in minimal additional reporting burden for the small number of banks with credit derivatives because the Financial Accounting Standards Board (FASB) requires the fair value of credit derivatives to be reported or disclosed in financial statements. FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities, requires certain credit derivatives to be reported as assets or liabilities on the balance sheet at their fair value. The remaining credit derivatives are financial instruments, the fair value of which must be disclosed in accordance with FASB Statement No. 107, Disclosures About Fair Value of Financial Instruments, in financial statements prepared in accordance with GAAP.

The two new proposed Schedule RC–L items would enable the agencies to better determine the risk of credit derivatives at each institution, thereby improving their ability to monitor and understand individual trading and hedging strategies. In addition, these items will increase transparency in financial reporting and further align the Call Report with GAAP and financial statement disclosures.

C. Merchant Credit Card Sales Volume

The agencies are proposing to add two items to Schedule RC–L, Derivatives and Off-Balance Sheet Items, in which data on year-to-date merchant credit card sales volume would be collected. One item would be applicable to acquiring banks, *i.e.*, banks that contract with merchants for the settlement of credit card transactions. Acquiring banks can contract directly with a merchant or indirectly through an agent bank or another third-party organization to process a merchant's credit card transactions. The other item would be completed by agent banks with risk, *i.e.*, banks that arrange for an acquiring bank to process a merchant's credit card

[2] These items would not yield improvements for individual institution estimates where the FDIC has access to timely data on secured credits directly from the institution.

transactions and, in effect, guarantee that merchant's transactions.

In general, merchant processing activities involve the gathering of sales information from merchants, obtaining authorization for sales transactions, collecting funds from the card-issuing banks, and crediting the merchants' accounts for their sales. The off-balance sheet risk associated with merchant processing can be significant as evidenced by a recent bank failure resulting from poor risk management of merchant processing activity. For an acquiring bank and an agent bank with risk, the primary risks associated with the merchant acquirer business are credit risk and transaction risk, although liquidity and reputation risks are also present. With respect to credit risk, an acquiring bank and an agent bank with risk both rely on the creditworthiness of the merchant to pay chargebacks. Chargebacks can result, for example, from a customer's dispute of a transaction (*e.g.*, the customer never received the merchandise) or from an invalid transaction (*i.e.*, a transaction with an improper authorization). Chargebacks are a recurring element in the merchant processing business, and a merchant must be financially capable to pay for them. However, when the merchant is unable or unwilling to pay, merchant chargebacks become a credit exposure to the acquiring bank. If a merchant's transactions have been guaranteed by an agent bank with risk or another third party, the acquiring bank will look to this guarantor for reimbursement. If a merchant does not honor its chargebacks, the acquiring bank or the agent bank with risk, if one is associated with the merchant, will incur losses.

Because sales volume is a risk indicator, the proposed new items for sales volume represent information that acquiring banks and agent banks with risk should be monitoring internally as part of their risk management process. Institutions that are required to report sales data to the credit card associations of which they are members should measure sales volume in the same manner for Call Report purposes. These new items will enable the agencies to identify and monitor institutions that are involved in the credit card merchant acquirer business, the volume of sales transactions being processed or guaranteed, particularly in relation to an institution's capital, significant changes in sales volume at individual institutions, and new entrants to the business. The agencies' examiners will use this information during their pre-examination planning process as they seek to identify potential high risk areas within a bank and to determine appropriate examination staffing. It is estimated that there are approximately 2,000 banks with off-balance sheet credit exposure from merchant sales transactions.

D. Past Due and Nonaccrual Information on Loans and Leases Held for Sale

Currently the category-by-category breakdown of a bank's loans and leases that are past due or in nonaccrual status in Call Report Schedule RC–N includes loans and leases held for sale together with loans and leases that the bank has the intent and ability to hold for the foreseeable future or until maturity or payoff (loans held for investment). The agencies propose to add new Memorandum item 5, "Loans and leases held for sale (included in Schedule RC–N, items 1 through 8, above)," to specifically break out such loans and leases that are past due 30 through 89 days and still accruing, past due 90 days or more and still accruing, or in nonaccrual status. Existing Memorandum item 5 on past due derivative contracts would be renumbered as Memorandum item 6.

Selling loans, in whole or in part, has become an increasingly important portfolio risk management tool for institutions seeking to manage concentrations, change risk profiles, improve returns, and generate liquidity. In 1991, the agencies began collecting information on the carrying value of all loans and leases that are held for sale, currently reported on Schedule RC, Balance Sheet, item 4.a. Since 1996, the aggregate amount of banks' loans and leases held for sale has increased nearly 250 percent (from $44 billion to $153 billion). Separately disclosing the repayment performance of held-for-sale loans will enable the agencies to better understand the quality of loans in banks' held-for-sale portfolios and held-for-investment portfolios. It will also give an indication of banks' held-for-sale strategies over time. In addition, because loans held for sale are carried on the balance sheet at the lower of cost or fair value and loan loss allowances are not established for these loans, the proposed Memorandum items will ensure that the relationship between banks' loan loss allowances for loans held for investment and the volume of such loans that are in past due or nonaccrual status can be readily ascertained.

E. First and Junior Lien 1–4 Family Residential Mortgages: Past Due and Nonaccrual Loans, Charge-offs, and Recoveries

The agencies are proposing to revise Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, to collect the amount of closed-end loans secured by first mortgages on 1–4 family residential properties (in domestic offices) that are past due 30 days or more or in nonaccrual status separately from past due and nonaccrual closed-end loans secured by junior liens on such properties (in domestic offices). A similar change would be made to the reporting of first and junior lien 1–4 family residential mortgages (in domestic offices) in Schedule RI–B, part I, Charge-offs and Recoveries on Loans and Leases. Currently, these two types of residential mortgage loans are combined for purposes of reporting past due and nonaccrual loan data as well as year-to-date charge-offs and recoveries. The revised reporting structure for residential mortgage loans in Schedule RC–N, item 1.c.(2), and Schedule RI–B, part I, item 1.c.(2), will then parallel the reporting for these types of loans (in domestic offices) in Schedule RC–C, part I—Loans and Leases, item 1.c.(2)(a) and (b).

Over the past several years, there has been an enormous growth in home equity lending, which includes closed-end loans secured by junior liens on 1–4 family residential properties as well as open-end loans secured by 1–4 family residential properties (home equity lines of credit), which are generally junior liens. From March 1996 to March 2001, closed-end junior liens at commercial banks grew by over 70 percent to $106 billion while open-end loans increased by nearly 66 percent to $130 billion. Both types of home equity lending grew by around one third over the past two years. Currently, over 80 percent of all commercial banks have closed-end junior liens in their loan portfolios and almost 60 percent have open-end loans under home equity lines of credit. The percentage of closed-end 1–4 family residential mortgages (junior liens and first liens combined) that are 30 days or more past due or in nonaccrual status has increased 18 percent from March 1999 to March 2001. However, because closed-end first and junior lien residential mortgage loans are reported on a combined basis in Schedules RC–N and RI–B, part I, differences in the delinquency and loss rates for these two different types of closed-end residential mortgages cannot be discerned at present. Therefore, this proposed change will permit the agencies to monitor the performance of home equity lending in the form of closed-end junior lien 1–4 family residential loans in the same manner as they currently do for revolving, open-end 1–4 family residential loans.

F. Reporting Uninsured Deposits

The FDIC relies on Call Report information to estimate the amount of insured and uninsured deposits in banks. The FDIC uses estimates of insured deposits to determine the reserve ratios of the deposit insurance funds. The reserve ratios are measured against the funds' "designated reserve ratio," as defined in the Federal Deposit Insurance Act (FDI Act), in determining assessment rates to be paid by insured institutions. Thus, having accurate information on insured deposits is critical to managing the insurance funds and assessing deposit insurance premiums. In this regard, Section 7(a)(9) of the FDI Act, which was originally added by Section 141 of the FDIC Improvement Act of 1991, directs the FDIC to

> take such action as may be necessary to insure that—(A) each insured depository institution maintains; and (B) the Corporation receives on a regular basis from such institution, information on the total amount of all insured deposits, preferred deposits, and uninsured deposits at the institution. In prescribing reporting and other requirements for the collection of actual and accurate information * * *, the Corporation shall minimize the regulatory reporting burden imposed upon insured depository institutions that are well capitalized * * * while taking into account the benefit of the information to the Corporation, including the use of the information to enable the Corporation to more accurately determine the total amount of insured deposits in each insured depository institution.

In order to improve compliance with this statutory requirement while also considering its guidance on reporting burden, the agencies are proposing to revise Schedule RC–O, Memorandum item 2, "Estimated amount of uninsured deposits of the bank." As revised, Memorandum item 2 would no longer ask whether the reporting bank, in essence, can estimate its uninsured deposits and, if so, to report this estimate. Instead, each bank would be required to report the estimated uninsured portion of its deposits, subject to certain criteria that are discussed below. In this regard, the following paragraphs first explain the reasons for proposing this revision, the intent of which is to take advantage of banks' automated systems to the extent that they are in place.

The FDIC's initial approach for implementing Section 7(a)(9) of the FDI Act was through the addition of Memorandum items 2.a and 2.b to Schedule RC–O in March 1993. In Memorandum item 2.a, each bank is asked whether it has "a method or procedure for determining a better estimate of uninsured deposits than" the so-called "simple estimate" of uninsured deposits (in domestic offices). The simple estimate of uninsured deposits is derived by multiplying the number of deposit accounts of more than $100,000 (reported in Schedule RC–O, Memorandum item 1.b.(2)) by $100,000 and subtracting the result from the amount of deposit accounts of more than $100,000 (reported in Schedule RC–O, Memorandum item 1.b.(1)). If a bank answers Memorandum item 2.a affirmatively, thereby reporting that it has a method or procedure for better estimating uninsured deposits, the bank is directed to report this estimate in Schedule RC–O, Memorandum item 2.b. The estimate of insured deposits is then the difference between total deposits (in domestic offices) and estimated uninsured deposits.

In the year-end 2000 Call Report, only 157 of the nearly 8,600 banks reported that they have a "better estimate" of uninsured deposits. With such a small percentage of institutions reporting a better estimate, this has raised concerns about the accuracy of the aggregate insured deposit estimate for banks that the FDIC has had to derive primarily from simple estimates.

The simple estimate overstates a bank's insured deposits (in domestic offices) when a single depositor holds multiple accounts in the same capacity at the bank and these accounts in the aggregate exceed $100,000. In contrast, the simple estimate understates a bank's insured deposits when multiple parties participate in the ownership of a single account of more than $100,000 or when there is "pass-through" coverage on an account of more than $100,000 that is owned by multiple depositors. Consequently, the "simple estimate" may either overstate or understate the amount of a bank's insured deposits (in domestic offices).

Furthermore, on the FFIEC 031 report form for banks with foreign offices, the Schedule RC–O Memorandum items for the number and amount of deposit accounts and the better estimate of uninsured deposits cover only domestic offices. However, domestic offices exclude insured branches in Puerto Rico and U.S. territories and possessions, which are considered foreign offices for Call Report purposes. As a result, even the simple estimate of uninsured deposits does not consider the deposits in these insured branches, an omission that biases the simple estimate toward understatement.

Brokered deposits are another area of concern with respect to the accuracy of the simple estimate of uninsured deposits. In this regard, the number of banks with brokered deposits is increasing and the amount of brokered deposits is also increasing. From year-end 1998 through March 31, 2001, the volume of brokered deposits at banks more than tripled to over $217 billion while the number of banks reporting brokered deposits grew from more than 1,200 to over 1,450. Brokered deposits issued in amounts over $100,000 and participated out by the broker in shares of $100,000 or less, which receive the benefit of "pass-through" deposit insurance coverage and which banks are currently required to report in Schedule RC-E, Memorandum item 1.c.(2), are not always captured in the "simple estimate" of insured deposits. A number of banks with a significant amount of these insured brokered deposits do not report the "better estimate." Thus, insured deposits may be significantly underestimated for these banks. Furthermore, other banks with large amounts of brokered deposits have reported the "better estimate" of uninsured deposits in some quarters but not in others. This inconsistent reporting can result in volatile estimates of insured deposits.

The FDIC's regulations on deposit insurance coverage (12 CFR part 330) explain that, in general, in determining the amount of deposit insurance available to a depositor, there is a presumption that deposited funds are actually owned in the manner indicated on an institution's "deposit account records." Furthermore, in order for the FDIC to recognize a claim for insurance coverage based on a fiduciary relationship, including one that provides a basis for additional insurance coverage on a "pass-through" basis, either the relationship must be expressly disclosed in the institution's "deposit account records" or the titling of the deposit account (together with the underlying records) must indicate the existence of the fiduciary relationship. Such relationships include, but are not limited to, relationships involving a trustee, agent, nominee, guardian, executor, or custodian.

In addition, the FDIC's deposit insurance regulations state that deposits of an employee benefit plan or of any eligible deferred compensation plan are insured on a "pass-through" basis, in the amount of up to $100,000 for the non-contingent interest of each plan participant, provided, in general, that

the institution meets each applicable regulatory capital standard at the time the deposit is accepted. In this regard, these regulations require each institution, upon request, to provide a written notice to any depositor of employee benefit plan funds that discloses the institution's capital ratios and its prompt corrective action capital category and whether, in the institution's judgment, employee benefit plan deposits made at the time the information is requested would be eligible for "pass-through" insurance coverage. Furthermore, whenever an account comprised of employee benefit plan funds is opened, an institution must provide a similar written notice to the depositor. In addition, whenever employee benefit plan deposits at an institution would no longer be eligible for "pass-through" insurance coverage, the institution must notify all existing depositors of employee benefit plan funds in writing that new, rolled-over or renewed deposits of employee benefit plan funds will not be eligible for such coverage. For both fiduciary accounts and employee benefit plan deposits with balances over $100,000 that would be eligible for "pass-through" coverage, the simple estimate tends to overstate the amount of uninsured deposits.

A number of banks offer benefit-responsive "depository institution investment contracts," which are reported as deposit liabilities on the Call Report balance sheet but, in accordance with Section 11(a)(8) of the FDI Act (12 U.S.C. 1821(a)(8)), are not eligible for deposit insurance. Banks with such investment contracts outstanding must report the amount of these contracts in Schedule RC–O, item 10. However, for banks that do not report their "better estimate" of uninsured deposits, the "simple estimate" of their uninsured deposits would improperly treat at least a portion of these investment contracts as insured.

Because of the concerns discussed above, the agencies are proposing to revise Schedule RC–O, Memorandum item 2, "Estimated amount of uninsured deposits of the bank," in order to improve compliance with Section 7(a)(9) of the FDI Act while taking its reporting burden provision into account. Rather than asking whether each bank can determine a "better estimate" of uninsured deposits and, if so, to report its "better estimate," Memorandum item 2 would be recaptioned "Uninsured deposits" and revised to require each bank to report the estimated uninsured portion of its deposits. The intent of this proposed revision is to take advantage of banks' in-place automated systems. However, the agencies also recognize that most banks will not have, in automated form, the key information needed to fully identify all deposits that are at least in part uninsured. As a consequence, the reporting of "Uninsured deposits" in revised Memorandum item 2 would be subject to the following criteria.

First, because a bank with brokered deposits currently reports both the total amount of such deposits and the amount that is fully insured in Schedule RC–E, each bank with brokered deposits would be required to use the information already developed for completing the Schedule RC–E brokered deposit items to determine its best estimate of the uninsured portion of its brokered deposits. Second, if a bank has deposits of $100,000 or more whose existence is based on a fiduciary relationship, a relationship that must be evident from the deposit account titles or records in order for additional insurance coverage to be available on a "pass-through" basis, the bank would be required to diligently use available data to make its best estimate of the uninsured portion of these deposits. Similarly, when a bank has deposits of an employee benefit plan or an eligible deferred compensation plan that are insured on a "pass-through" basis, the eligibility (and discontinuance of eligibility) for which is subject to written notification requirements, the bank would also be required to diligently use available data to make its best estimate of the uninsured portion of these deposits.

Next, for a bank whose deposits include benefit-responsive "depository institution investment contracts," the amount of which the bank must already disclose in Schedule RC–O, the bank must ensure that it includes the entire amount of these contracts in its estimated amount of uninsured deposits. Finally, for all other deposits, each bank should make a reasonable estimate of the portion that is uninsured using the data available from its information systems. This reasonable estimate should include deposits in excess of the deposit insurance limit that the bank has collateralized by pledging assets, such as deposits of states and political subdivisions in the U.S. (sometimes referred to as municipal deposits). Furthermore, if the bank has automated systems in place that can identify jointly owned accounts and estimate the insurance coverage of these deposits, then the reasonable estimate reported in revised Memorandum item 2 should reflect the higher level of insurance afforded such accounts. Similarly, if the bank's systems can classify accounts by deposit owner and ownership capacity and aggregate a depositor's multiple accounts to determine the extent of insurance coverage, the amount of uninsured deposits the bank reports should incorporate this information.

In addition, on the FFIEC 031 report form for banks with foreign offices, the scope of the Schedule RC–O Memorandum items for the number and amount of deposit accounts (Memorandum items 1.a.(1), 1.a.(2), 1.b.(1), and 1.b.(2)) and revised Memorandum item 2 on estimated uninsured deposits would be expanded to cover both "domestic offices" and insured branches in Puerto Rico and U.S. territories and possessions. This would mean that, as revised, the sum of Schedule RC–O, Memorandum items 1.a.(1) and 1.b.(1), must equal Schedule RC, item 13.a, "Deposits in domestic offices," plus the amount of deposits in insured branches reported in Schedule RC–O, items 5.a and 5.b.

This proposed revision to the reporting of uninsured deposits should limit reporting burden by focusing on those types of deposits for which the underlying data is currently compiled for Call Report or other purposes. To the extent that an institution uses automated systems to comply with the FDIC's existing rules on, or notice requirements associated with, "pass-through" insurance coverage, that information should be used in the estimate. An institution would also be expected to take advantage of automated information it possesses about common ownership and ownership capacities of deposit accounts to develop a reasonable estimate of the uninsured portion of its deposits.

While it is anticipated that most institutions will rely on automated systems to produce most or all of the data needed to complete revised Schedule RC–O, Memorandum item 2, some institutions may also choose to use non-automated information such as paper files or less formal knowledge of their depositors to provide reasonable estimates of appropriate portions of their uninsured deposits. An institution's use of such non-automated sources of information is considered appropriate unless errors associated with their use contribute significantly to an overall error in the FDIC's estimate of the amount of insured deposits in the banking system. The agencies also recognize that the capabilities of institutions' information systems to provide an estimate of their uninsured deposits will differ at any point in time and may improve over time.

G. Regulatory Capital Calculations

In items 1 through 11 of Schedule RC–R, Regulatory Capital, banks report their computation of Tier 1 capital. Items 8 and 9 are used to disclose any disallowed servicing assets and purchased credit card relationships and any disallowed deferred tax assets, respectively. These disallowed amounts are calculated, in part, by reference to a subtotal of Tier 1 capital components. The instructions for Schedule RC–R explain how this subtotal should be derived by adding and subtracting, as appropriate, amounts reported in items 1 through 7 of Schedule RC–R, but the amount of the subtotal is not directly reported in the schedule itself. To help ensure that banks are using the proper subtotal when determining whether they have any disallowed amounts, existing items 8 and 9 will be renumbered as items 9.a and 9.b and item 8 will become the subtotal of items 1 through 7 (i.e., the sum of items 1 and 6, less items 2, 3, 4, 5, and 7). For banks using commercially available Call Report software to complete their reports, the software should automatically calculate the correct subtotal and include it in new item 8.

Under the Gramm-Leach-Bliley Act of 1999, banks that have financial subsidiaries must deconsolidate these subsidiaries and deduct their aggregate outstanding equity investment in them from capital and assets when calculating their regulatory capital ratios. Banks with financial subsidiaries currently use items 28 through 30 of Schedule RC–R to report the amount of their adjustments to total risk-based capital, risk-weighted assets, and average total assets. These adjustments enter into the calculation of the three capital ratios reported in items 31 through 33: the Tier 1 leverage ratio, the Tier 1 risk-based capital ratio, and the tofal risk-based capital ratio. However, although two of these ratios use Tier 1 capital in the numerator, banks with financial subsidiaries do not report the adjustment that must be made to Tier 1 capital for these subsidiaries. In particular, if a bank's financial subsidiaries have been consolidated for accounting and reporting purposes (including the Call Report balance sheet), the computation of Tier 1 capital in items 1 through 11 of Schedule RC–R may include amounts attributable to financial subsidiaries. For example, item 7 could include goodwill on the books of financial subsidiaries. Thus, banks with financial subsidiaries would complete proposed new item 28.a to report the amount by which the Tier 1 capital figure reported in item 11 of Schedule RC–R must be adjusted to eliminate those amounts included in Tier 1 capital that are associated with the financial subsidiaries. Existing item 28, "Adjustment to total risk-based capital" would be renumbered as item 28.b.

H. Goodwill and Other Intangible Assets

On July 20, 2001, the FASB issued Statement No. 142, Goodwill and Other Intangible Assets, which, in general, is effective for fiscal years beginning after December 15, 2001. Under this standard, goodwill will no longer be amortized, but will be tested for impairment on an annual basis and between annual tests in certain circumstances. Other intangible assets will be tested for impairment in accordance with the standard and some of these intangibles must be amortized. Statement No. 142 also states that "goodwill impairment losses shall be presented as a separate line item in the income statement before the subtotal income from continuing operations (or similar caption) unless a goodwill impairment loss is associated with a discontinued operation."

Banks must adopt Statement No. 142 for Call Report purposes upon its effective date based on their fiscal year. At present, banks report the amortization expense of intangible assets, including goodwill amortization, in item 7.c of the Call Report income statement (Schedule RI). In response to the accounting and reporting changes mandated by Statement No. 142, the agencies are proposing to replace existing item 7.c with two items: item 7.c.(1), "Goodwill impairment losses," [3] and item 7.c.(2), "Amortization expense and impairment losses for other intangible assets." Along with appropriate revisions to the Call Report instructions (e.g., goodwill should not be amortized), this change will conform the reporting of amortization expense and impairment losses for intangibles in the Call Report to the provisions of Statement No. 142.

Statement No. 142 will not apply to goodwill and intangible assets acquired in combinations between two or more institutions with a mutual form ownership until the FASB issues interpretive guidance related to the application of the purchase method to such transactions. Until this interpretive guidance is issued and takes effect, goodwill and intangible assets acquired in combinations of mutual institutions will continue to be accounted for in accordance with existing accounting standards. However, for income statement presentation purposes, mutual institutions should report goodwill amortization expense and any impairment losses in new item 7.c.(1) and the amortization expense and any impairment losses on other intangible assets in new item 7.c.(2).

I. Write-Downs on Loans Transferred to the Held-for-Sale Account

On March 26, 2001, the agencies issued Interagency Guidance on Certain Loans Held for Sale to provide instruction about the appropriate accounting and reporting treatment for certain loans that are sold directly from the loan portfolio or transferred to a held-for-sale (HFS) account. The guidance applies when:

- An institution decides to sell loans that were not originated or otherwise acquired with the intent to sell, and
- The fair value of those loans has declined for any reason other than a change in the general market level of interest or foreign exchange rates.

One element of the guidance reminds institutions to appropriately report reductions in the value of loans transferred to held for sale through a write-down of the recorded investment to fair value upon transfer. The guidance explains that this write-down should be reported as a charge-off in Schedule RI–B, part I, Charge-offs and Recoveries on Loans and Leases. In Schedule RI–B, part II, Changes in Allowance for Loan and Lease Losses, the corresponding reduction in the allowance should be reported as an "Adjustment" to the allowance in item 5. Because each type of "Adjustment" reported in part II, item 5, must be disclosed and described in item 6 of Schedule RI–E, Explanations, the guidance also states that write-downs included in part II, item 5, should be disclosed in Schedule RI–E and described as "Write-downs arising from transfers of loans to HFS." A preprinted caption to that effect was inserted in Schedule RI–E, item 6.a, in the June 30, 2001, Call Report forms.

To simplify the reporting of these write-downs, the agencies are proposing to move the disclosure now made in Schedule RI–E, item 6.a, directly into Schedule RI–B, part II, item 5, "Adjustments." This item would be modified by creating item 5.a, "LESS: Write-downs arising from transfers of loans to the held-for-sale account," and item 5.b, "Other adjustments." As a result, going forward, only those amounts included in item 5.b, "Other adjustments," would need to be

[3] A goodwill impairment loss associated with a discontinued operation would be included (on a net-of-tax basis) in Schedule RI, item 11, "Extraordinary items and other adjustments, net of income taxes."

disclosed and described in Schedule RI–E, item 6.

III. Other Issues

The AICPA is currently finalizing a Statement of Position (SOP), Accounting for Certain Purchased Loans or Debt Securities, following the FASB's nonobjection to its issuance subject to certain changes being made. The agencies understand that the provisions of this SOP would be effective for loans acquired in fiscal years beginning after June 15, 2002, with early application permitted. The SOP will change the accounting for loans purchased with credit quality concerns and will prohibit an institution from carrying over allowances for loan losses associated with purchased loans. The agencies invite comments on (i) how the reporting of information in the Call Report about loans and the loan loss allowance, e.g., loan delinquencies and charge-offs, should be revised and (ii) what types of new information should be collected in response to the expected issuance of this SOP.

IV. Request for Comment

The agencies request comment on all aspects of the proposed revisions discussed above. In addition, comments are invited on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Dated: October 9, 2001.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, October 10, 2001.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 9th day of October, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–26284 Filed 10–17–01; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

Corrections

Federal Register
Vol. 66, No. 202
Thursday, October 18, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

Correction

In notice document 01–25341 beginning on page 51647 in the issue of Wednesday, October 10, 2001, make the following correction:

On page 51648, in the first column, in the **DATES:** section, in the third line "December 10, 2001" should read "November 9, 2001".

[FR Doc. C1–25341 Filed 10–17–01; 8:45 am]

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Federal Register

Thursday,
October 18, 2001

Part II

Department of the Treasury

Customs Service

Privacy Act of 1974, as Amended: System of Records; Notice

DEPARTMENT OF THE TREASURY

Customs Service

Privacy Act of 1974, as Amended: System of Records

AGENCY: U. S. Customs Service, Treasury.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the United States Customs Service, Treasury, is publishing its Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, the United States Customs Service (Customs) has completed a review of its Privacy Act systems of records notices to identify minor changes that will more accurately describe these records.

The changes throughout the document are editorial in nature and consist principally of changes to system locations and system manager addresses.

The following systems of records have been added to the Customs inventory of Privacy Act notices since September 30, 1998:

(Published December 1, 1998, at 63 FR 66232)

CS.286—Electronic Job Application Processing System (Published April 24, 2001, at 66 FR 20717.

The following system of records has been removed from Customs inventory of Privacy Act systems:

CS.078—Disclosure of Information File (Published December 3, 1999 at 64 FR 67966)

CS.172—Parking Permits File (Published December 14, 2000, at 65 FR 78263).

Systems Covered by This Notice: This notice covers all systems of records adopted by the Bureau up to August 30, 2001.

The systems notices are reprinted in their entirety following the Table of Contents.

Dated: September 26, 2001.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

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CS.001—Acceptable Level of Competence, Negative Determination
CS.002—Accident Reports
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CS.021—Arrest/Seizure/Search Report and Notice of Penalty File
CS.022—Attorney Case File
CS.030—Bankrupt Parties-In-Interest
CS.031—Bills Issued Files
CS.032—Biographical Files (Headquarters)
CS.040—Carrier File
CS.041—Cartmen or Lightermen
CS.042—Case and Complaint File
CS.043—Case Files (Associate Chief Counsel—Gulf Customs Management Center
CS.044—Certificates of Clearance
CS.045—Claims Act File
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CS.083—Employee Relations Case Files
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CS.098—Fines, Penalties and Forfeitures Records
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CS.105—Former Employees
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CS.133—Justice Department Case File
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CS.137—List of Vessel Agents Employees
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CS.144—Mail Protest File
CS.148—Military Personnel and Civilian Employees' Claims Act File
CS.151—Motor Vehicle Accident Reports
CS.156—Narcotics Violator File
CS.159—Notification of Personnel Management Division—When an Employee is placed under investigation by the Office of Internal Affairs
CS.162—Organization (Customs) and Automated Position Management System (COAPMS)
CS.163—Outside Employment Requests
CS.165—Overtime Earnings
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CS.196—Preclearance Costs
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CS.208—Restoration of Forfeited Annual Leave Cases
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CS.213—Seized Asset and Case Tracking System (SEACATS)
CS.214—Seizure File
CS.215—Seizure Report File
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CS.227—Temporary Importation under Bond (TIB) Defaulter Control System
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CS.238—Training and Career Individual Development Plans
CS.239—Training Records
CS.244—Treasury Enforcement Communications System
CS.249—Uniform Allowance-Unit Record
CS.251—Unscheduled Overtime Report
CS.252—Valuables Shipped under Government Losses in Shipment Act
CS.258—Violator's Case Files
CS.260—Warehouse Proprietor Files
CS.262—Warnings to Importers in Lieu of Penalty
CS.268—Military Personnel and Civilian Employees' Claim Act File
CS.269—Accounts Payable Voucher File
CS.270—Background—Record File on Non-Customs Employees
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CS.274—Importers, Brokers, Carriers, Individuals and Sureties Master File
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CS.285—Automated Index to Central Investigative Files
CS.286—Electronic Job Application Processing System
Appendix A—US Customs Service

Customs Service

(CS) Treasury/CS .001

SYSTEM NAME:

Acceptable Level of Competence, Negative Determination-Treasury/ Customs.

SYSTEM LOCATION:

Located in Customs Headquarters Offices and in each Customs Management Center, Port, SAC, and appropriate post of duty.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: ANY EMPLOYEE OF U.S. CUSTOMS SERVICE, WHO RECEIVES A NEGATIVE DETERMINATION REGARDING ACCEPTABLE LEVEL OF COMPETENCE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, social security number, position description, grade, and correspondence containing specific reasons for negative determination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and stored in locked file cabinets.

RETRIEVABILITY:

The records are filed by the individual's name.

SAFEGUARDS:

Stored in locked cabinets.

RETENTION AND DISPOSAL:

Records are retained until the employee leaves the Customs Service.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor and Employee Relations Division, Office of Human Resources, Customs Headquarters, or Labor and Employee Relations Office, Customs Management Center Headquarters, or appropriate managerial official in employee's, SAC, port or post of duty offices.

NOTIFICATION PROCEDURE:

Correspondence with systems manager.

RECORD ACCESS PROCEDURES:

Correspondence with systems manager.

CONTESTING RECORD PROCEDURES:

Correspondence with systems manager.

RECORD SOURCE CATEGORIES:

Information is furnished by the employee, employee's supervisor and the Merit Systems Protection Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. (See 31 CFR 1.36.)

Treasury/CS .002

SYSTEM NAME:

Accident Reports—Treasury/Customs.

SYSTEM LOCATION:

Field Mission Support, U. S. Customs Service, 555 Battery Street, Rm. 326, San Francisco, CA 94111.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee who has had an accident on Government property or in an official vehicle since 1973.

CATEGORIES OF RECORDS IN THE SYSTEM:

Standard Government forms dealing with accidents and personal injuries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended. Executive Order 11807 and Section 19 of Occupational Health & Safety Act of 1970; 5 U.S.C. 8101–8150, 8191–8193.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to employee's beneficiary in event of death following the accident or injury or to employee's agent in case of disability; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case folder is maintained in an unlocked drawer in chronological order by date.

RETRIEVABILITY:

Each case is identified by employee name and date of accident.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Logistics Management Division within the Southeast Region Headquarters Building. During non-working hours the room in which the metal container is located is locked.

RETENTION AND DISPOSAL:

Accident Record files are retained in accordance with the Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Management Program Technician, Field Mission Support, U. S. Customs Service, 555 Battery Street, San Francisco, CA 94111.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information originates with employees who have been injured and/

or have been involved in accidents during the exercise of their official duties. Also included are witness reports and statements, the employees' supervisors' statements and doctors' reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .005

SYSTEM NAME:

Accounts Receivable—Treasury/Customs.

SYSTEM LOCATION:

Financial Management Division, National Finance Center, U.S. Customs Service, 6026 Lakeside Blvd., Indianapolis, IN 46278; U.S. Customs Service, Financial Management Division, Increase and Refund Section, 6 World Trade Center, New York, NY 10048; Financial Management Division, U.S. Customs Service, 423 Canal Street, New Orleans, LA 70130.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons owing money for Customs duties and services and money owed to persons for overpayment of excessive duties and services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and documentation of telephone calls with debtors and creditors or their representatives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in file folders which are contained in an unlocked metal file cabinet.

RETRIEVABILITY:

The file is retrieved by the name of the individual which is kept in alphabetical order within the work area of the Collection Section.

SAFEGUARDS:

The files are located within an office that is locked during non-working hours. The building is guarded by uniformed security police and only authorized persons are permitted entry to the building.

RETENTION AND DISPOSAL:

The file is retained until collection or refund is effected and two (2) years thereafter, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Customs Management Center, U.S. Customs Service, 6 World Trade Center, New York, NY 10048; Financial Management Division, U.S. Customs Service, Gulf Customs Management Center, 423 Canal Street, New Orleans, LA 70130.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in the system is obtained from data gathered from the automated billing system and ports of entry.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .009

SYSTEM NAME:

Acting Customs Inspector (Excepted)—Treasury/Customs.

SYSTEM LOCATION:

Director, East Texas Customs Management Center, 2323 South Shepherd Drive, Suite 1200, Houston, TX 77019; Office of the Port Director, San Diego, CA; Offices of the Port Directors, San Ysidro, CA; Calexico, CA; Tecate, CA; Andrade, CA; San Diego Barge Office; U.S. Customhouse, P.O. Box 111, Port Director's Office, St. Albans, VT 05478.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or members of other Federal agencies who are designated by the Port Directors as Customs Inspectors (Excepted).

CATEGORIES OF RECORDS IN THE SYSTEM:

System has name, social security number, rank or grade and duty station of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

CF 55 forms kept in manila folders in file cabinet.

RETRIEVABILITY:

Filed alphabetically.

SAFEGUARDS:

During non-working hours the offices and/or buildings in which records are located are locked.

RETENTION AND DISPOSAL:

Until individual transfers or designation is canceled. Form is then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, East Texas Customs Management Center, 2323 South Shepherd Drive, Suite 1200, Houston, TX 77019; Port Directors within the San Diego Customs District (see appendix A); Port Director, U.S. Customs Service, St. Albans, VT 05478, Port Director, 1, LaPontilla St. Room 203, San Juan, PR 00901.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual and his or her agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .021

SYSTEM NAME:

Arrest/Seizure/Search Report and Notice of Penalty File—Treasury/Customs.

SYSTEM LOCATION:

Port Director, United States Customs Service, P.O. Box 1641, Honolulu, HI 96806.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are suspected of attempting to smuggle, or have smuggled, merchandise or contraband into the United States; individuals who have undervalued merchandise upon entry into the United States; vessels and aircraft which have been found to be in violation of Customs laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individuals, vessels, aircraft; identifying factors; nature of violation or suspected violation; circumstances surrounding violation or suspected violation; date and place of violation or suspected violation; and on-site disposition actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each report is assigned a case number and filed accordingly in a locked, metal file located in the Office of Investigations.

RETRIEVABILITY:

Each report is identified in a manual alphabetical card file by the name of the individual, vessel or aircraft.

SAFEGUARDS:

In addition to being stored in a locked metal cabinet, these records are located in a locked room, the keys of which are controlled and issued only to authorized personnel.

RETENTION AND DISPOSAL:

These records are retained for one year (1) or until action has been completed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Investigations, U.S. Customs Service, Post Office Box 1641, Honolulu, HI 96806.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .022

SYSTEM NAME:

Attorney Case File—Treasury/Customs.

SYSTEM LOCATION:

The Chief Counsel, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229; Office of the Associate Chief Counsel of each Region (for addresses see "Customs Management Center Directors" section, appendix A). Assistant Chief Counsel, Charleston, SC; Assistant Chief Counsel, San Diego, CA; Assistant Chief Counsel, Seattle, WA; Assistant Chief Counsel, 9400 Viscount Drive, Suite 102, El Paso, TX 79925; Resident Counsel, U.S. Customs Service Academy, Building 67–FLETC, Glynco, GA 31524; Assistant Chief Counsel (CIT), U.S. Customs Service, Room 258, 26 Federal Plaza, New York, NY 10007; Assistant Chief Counsel (NFC), National Logistics Finance Center, U.S. Customs Service, P.O. Box 68914, Indianapolis, IN 46278.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are subject of adverse actions, equal employment opportunity complaints, unfair labor practice complaints, and grievances; individuals who are the subject of Customs license or other administrative revocation or suspension proceedings; individuals who are the subject of or have requested legal advice from the various offices; individuals requesting access to information pursuant to any statute, regulation, directive, or policy to disclose such information, including individuals who are the subject of a Federal or state administrative or judicial subpoena; individuals who have filed or may file claims under the various Federal claims acts; individuals who are parties in litigation with the United States government or subunits or employees or officers thereof, in matters which affect or involve the United States Customs Service; individuals who are seeking relief from fines and penalties and forfeitures assessed for violations of the law and regulations administered by Customs; individuals who have outstanding Customs bills submitted for collection; and individuals who have challenged contracting decisions of the agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of a computer database containing information designed to allow the system manager to track matters which have come into his or her office. The categories of records maintained in the file folders which are indexed by computer system are personnel actions; administrative revocation or suspension proceedings; intra-agency or inter-agency memoranda, reports of investigation, and other documents relating to the request for legal advice; claims and cases in administrative and judicial litigation; requests, information, records, documents, internal Customs Service memoranda, or memoranda from other agencies and related materials regarding the disclosure of information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended; 28 U.S.C. 2672, *et seq.;* 28 CFR 14.1, *et seq.;* 31 CFR 3.1, *et seq.;* 31 U.S.C. 3701 *et seq.;* 31 CFR part 4; 5 U.S.C. 552, 31 CFR part 1, Reorganization Plan No. 1 of 1965; Government employee laws found in Title 5 of the United States Code; government contracting laws found in Titles 31, 40, and 41 of the United States Code; and the Customs laws and regulations found in Title 19 of the United States Code and Code of Federal Regulations, respectively.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau' s hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The computerized indices are maintained in computer data base. Each file is maintained in a numbered file folder which is filed in an unlocked drawer in the responsible attorney's office, a metal file cabinet, or a storage room at the local system manager's location.

RETRIEVABILITY:

Through the use of the computer located at the local system manager's location, each file is retrievable by name, number and title.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel. During non-working hours the rooms in which the files are located are locked. During working hours, the rooms in which the files are located are under control of the staff of the local systems manager.

RETENTION AND DISPOSAL:

The file folders are retained in accordance with the Federal Records Retention Manual.

SYSTEM MANAGER(S) AND ADDRESS:

See systems location above.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates from the subject individual, U.S. Customs employees, Reports of Investigation, Customs penalty case files, other government agencies, parties involved in administrative and judicial litigation, administrative proceedings regarding disciplinary action taken against Customs Service employees, Equal Opportunity complaints, unfair labor practice complaints, parties involved in administrative revocation or suspension proceedings, individuals or employees requesting legal advice, and from the parties requesting disclosure of information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .030

SYSTEM NAME:

Bankrupt Parties-in-Interest—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Service, Director, National Finance Center, PO Box 68907, Indianapolis, Indiana 46268.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals indebted to U.S. Customs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Listed by name, address, port of service, bill number, and dollar amount of delinquent receivables.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 89–508, the "Federal Claims Collection Act of 1966;" 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cases are maintained in file folders at work site.

RETRIEVABILITY:

Alphabetical order by name.

SAFEGUARDS:

These cases are placed in locked cabinets during non-working hours. The building is guarded by uniformed security police.

RETENTION AND DISPOSAL:

As satisfaction is received, cases are closed. Records are maintained per Records Control Manual FIS–4 No. 124.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Customs, National Finance Center, 6026 Lakeside Boulevard, Indianapolis, IN 46268.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The source of information is obtained from individuals, bankruptcy courts, Customhouse brokers, and sureties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .031

SYSTEM NAME:

Bills Issued Files—Treasury/Customs.

SYSTEM LOCATION:

Director, U.S. Customs, National Finance Center, P.O. Box 68907.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom bills have been issued.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence received from or sent to individuals in relation to bills issued by the United States Customs Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency" s or the bureau" s hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency" s functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Individual alphabetical file folders in file cabinet.

RETRIEVABILITY:

Access by name of individual.

SAFEGUARDS:

The file cabinet is maintained in the offices of the Director, National Finance Center. During non-working hours the room/building in which the file is located is locked. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Correspondence is maintained for a period of three (3) years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Customs, National Finance Center, PO Box 68907, Indianapolis, Indiana 46268.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information consists of copies of letters or memoranda issued to or received from individuals. Records of phone calls and copies of documents related to the individual's transaction.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .032

SYSTEM NAME:

Biographical Files (Headquarters)—Treasury/Customs.

SYSTEM LOCATION:

Public Information Division, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, and the Customs Management Center Public Information offices located at the addresses listed in Customs appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

General biographical records are maintained on all Customs employees for news release and public information purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

General biographical information including home address, date and place of birth, educational background, work experience, honors and awards, hobbies, and other information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained in file cabinets in the Public Information Division at Customs Headquarters.

RETRIEVABILITY:

File folders are identified by the name of the person and are filed in alphabetical order.

SAFEGUARDS:

The office in which the records are located is locked during non-working hours and the building is guarded by uniformed guards.

RETENTION AND DISPOSAL:

Files are retained during the individual's tenure as an employee of the Customs Service, after which the files are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Public Information Division, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The individual involved, Customs personnel officers and co-workers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .040

SYSTEM NAME:

Carrier File—Treasury/Customs.

SYSTEM LOCATION:

Located in the Office of the Area Port Director, Terminal Island, San Pedro, CA; Office of the Port Director, San Diego, CA; Office of the Port Director, Los Angeles International Airport, Los Angeles, CA; Office of the Port Director, Terrace and International Streets, Nogales, AZ 85621; San Ysidro, CA; Tecate, CA; Calexico, CA; Andrade, CA; San Diego Barge Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers or owners, employees, associates of Customs Bonded Carriers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, social security number, place of birth and other information relating to Officers, Associates, employees, etc., of Bonded Carriers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended, and the Customs Regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folder in file cabinet.

RETRIEVABILITY:

Filed by name of company or individual.

SAFEGUARDS:

Building locked during non-working hours.

RETENTION AND DISPOSAL:

Records retained until obsolete, then destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Customs Management Center Director and Service Port Directors, within the San Diego Customs District; Area Port Director, Terminal Island, San Pedro, CA; Area Port Director, Los Angeles International Airport;and Port Director, U.S. Customhouse, Nogales, AZ 85621. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Customs Bonded Carriers' employees and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .041

SYSTEM NAME:

Cartmen or Lightermen—Treasury/Customs.

SYSTEM LOCATION:

Customs ports and Customs Management Centers. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and firms who have applied for or hold a license as a bonded cartman or lighterman and individuals employed by cartman or lightermen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Internal Customs Service memoranda and related materials regarding applications for licenses and identification cards, reports of investigations for approving these licenses and identification cards and card files showing outstanding identification cards and their location. Files also include fingerprint cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information in these records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in this system is contained in a metal file cabinet in the office maintaining the system, or on magnetic disc.

RETRIEVABILITY:

Each case file is identified in a manual alphabetical card file by the name of the licensed cartman or lighterman and in the alphabetical file folder by the name of the licensed cartman or lighterman. Each employee's record is filed in a manual alphabetical card file cross-referenced with company names.

SAFEGUARDS:

The file is placed in a metal file cabinet at the work site. At locations where work is not performed on a 24-hour basis the work area is locked and only authorized persons are permitted in the building.

RETENTION AND DISPOSAL:

Files are reviewed at least once a year at which time canceled I.D. cards may be removed. Closed CF 3078's may also be removed, but normally are held for approximately three years in case a new application is received from the same company or transferred to another company after a new investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Area Port Directors and Customs Management Center Directors. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .042

SYSTEM NAME:

Case and Complaint File—Treasury/Customs.

SYSTEM LOCATION:

Office of Associate Chief Counsel (Chicago), U.S. Customs Service, 610 S. Canal St., 7th floor, Chicago, IL 60607.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual initiating a court case or against whom a court case is brought; any individual involved in a personnel action, either initiating a grievance, discrimination complaint, or unfair labor practice complaint against the U.S. Customs Service or against whom a disciplinary or other adverse action is initiated; claimants or potential claimants under the Federal Tort Claim Act; individuals involved in accidents with U.S. Customs Service employees; U.S. Customs Service employees involved in accidents; persons seeking relief from fines, penalties and forfeitures and restoration of proceeds from the sale of seized and forfeited property; requesters under the Freedom of Information Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The System contains the individual's name, the type of case, the uniform filing guide number, the Associate Chief Counsel's office file number, by whom the matter was referred, the district where the action originated, if applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each alphabetical card is inserted in a metal file drawer.

RETRIEVABILITY:

Each card is identified alphabetically by the individual's name described in Category of Individual and the filing is alphabetically used by last name.

SAFEGUARDS:

The metal filing drawer containing the alphabetical cards described above is maintained within the area assigned to the Office of Associate Chief Counsel (Chicago), U.S. Customs Service, 610 S. Canal St., 7th floor, Chicago, IL 60607. During non-working hours, the room in which the metal filing drawer is located is locked and access to the building is controlled at all times by uniformed guards with a check-in system for employees. Only employees of the Associate Chief Counsel's office and authorized building personnel have keys to the building.

RETENTION AND DISPOSAL:

These files are retained until there is no longer space available for them within the metal filing drawer at which time the oldest cards for closed files will be transferred to the storage area within the confines of the office. The storage area is a large area containing cardboard boxes and metal storage cabinets, unable to be locked.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel (Chicago), U.S. Customs Service, 610 S. Canal St., 7th floor, Chicago, IL 60607.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained on these cards originates with the initiation of any action by an individual which is channeled through the Assistant Chief Counsel's office. Additional information is identifying information for locating the particular case file relating to the court case, personnel action, tort claim, relief petition, or request under the Freedom of Information Act.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .043

SYSTEM NAME:

Case Files (Associate Chief Counsel—Gulf Customs Management Center)—Treasury/Customs.

SYSTEM LOCATION:

The system is located at 423 Canal Street, New Orleans, LA 70130; Associate Chief Counsel—Gulf Customs Management Center, United States Customs Service.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) The first category of individuals on whom records are maintained in the system includes employees who have filed adverse actions, equal employment opportunity complaints, and grievances within the Gulf Region; employees who have filed tort claims under the Military Personnel and Civilian Employees Act; employees of the Associate Chief Counsel's staff with regard to travel, training, evaluations, and other related personnel records; and applications for employment submitted to the Office of the Associate Chief Counsel by prospective employees. (2) The second category of individuals on whom records are maintained in the system includes those individuals not employed by the agency who have filed equal employment opportunity complaints; tort claims under the Federal Tort Claims Act; tort claims filed under the Small Claims Act; individuals who have outstanding Customs bills submitted for collection; individuals, corporations, partnerships, and proprietorships who have filed supplemental petitions on fines, penalties, and forfeitures within the Gulf Region; files relating to individuals, corporations, partnerships, and proprietorships upon whom criminal case reports are prepared pending litigation and prosecution for violation of 19 U.S.C. 1305, 18 U.S.C. 542, 18 U.S.C. 545, 18 U.S.C. 549, 18 U.S.C. 1001, 18 U.S.C. 496, and 18 U.S.C. 371; on individuals, corporations, partnerships, and proprietorships who have filed supplemental petitions submitted in civil and technical violations for 19 U.S.C. 1592, 19 U.S.C. 1453, 19 U.S.C. 1448, 19 U.S.C. 1584, irregular deliveries, shortages and overages; and miscellaneous civil and technical violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records maintained in the system are personnel actions; tort claims; collection efforts; supplemental petitions for fines, penalties, and forfeitures cases in the Gulf Region; criminal case reports for pending litigation and prosecution of cases in the Gulf Region; supplemental petitions for civil and technical violations committed within the Gulf Region; and employment applications for positions in the Office of the Associate Chief Counsel, Gulf Region.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency;s functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are currently maintained in alphabetical file folders which are filed in two steel filing cabinets in the Office of the Assistant Chief Counsel (New Orleans), and they are maintained under lock and key outside the ordinary business hours.

RETRIEVABILITY:

Records maintained by the Office of the Assistant Chief Counsel (New Orleans), are retrievable by identifying the character of the record (i.e., adverse action, grievance, tort claim, criminal case), then by comparable statute or regulation, and then alphabetically by name and identifier. In addition, each case file is similarly identified on the alphabetical file folder within the steel filing cabinet.

SAFEGUARDS:

The steel filing cabinets described above are maintained within the area assigned to the Office of the Assistant Chief Counsel (New Orleans), 423 Canal Street, New Orleans, LA 70130. During non-working hours the room in which the locked steel cabinets are located is locked, and access to the building is controlled at all times by uniformed guards. The policies and practices of the Office of the Assistant Chief Counsel regarding access controls are that only members of the staff of the Office of the Assistant Chief Counsel have access to the records maintained by the office.

RETENTION AND DISPOSAL:

Individual records are placed into a file of closed cases by category as stated above, and within each category by name. The oldest closed cases are forwarded to the Federal Records Center in accordance with the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

The agency official responsible for the system of records maintained by the Office of the Assistant Chief Counsel is the Assistant Chief Counsel (New Orleans), 423 Canal Street, New Orleans, LA 70130.

NOTIFICATION PROCEDURE:

See appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The categories of sources of records in this system are the individual himself and files compiled by the United States Customs Services by using employers, other government agency resources, financial institutions, educational institutions attended, and previous employers. Additional information in these files is also derived from reports of investigation regarding the enforcement of civil or criminal statutes, administrative proceedings regarding disciplinary action taken against

Customs Service employees, equal opportunity complaints, investigations of tort claims, the processing of interoffice memoranda information requested under the Freedom of Information Act, and the investigation regarding the collection of debts due the Government.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .044

SYSTEM NAME:

Certificates of Clearance—Treasury/Customs.

SYSTEM LOCATION:

North Atlantic Customs Management Center, 10 Causeway Street, Boston, MA 02222.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the North Atlantic Region, Boston, MA, who have transferred, retired or resigned.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documented detailed information on an "in-house" prepared form indicating that the employee has returned all Government property in his/her personal possession and that the employee has cleared all debts owing to Customs such as unearned uniform allowances and travel advances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in file folders by Port and name of employee in a metal file cabinet in the work area of the Payment Section.

RETRIEVABILITY:

The file is retrievable by Port and name of employee.

SAFEGUARDS:

The file is located within an office that is locked during non-working hours. The building is guarded by uniformed security police and only authorized persons are permitted entry to the building.

RETENTION AND DISPOSAL:

The files are kept for 10 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, North Atlantic Customs Management Center, 10 Causeway Street, Boston, MA 02222.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in the system originates at the District where the individual is employed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .045

SYSTEM NAME:

Claims Act File—Treasury/Customs.

SYSTEM LOCATION:

Office of the Associate Chief Counsel (Los Angeles), U.S. Customs Service, One World Trade Center, Suite 741, P.O. Box 32709, Long Beach, CA 90832.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Customs employees who have filed, or may file claims under the Military Personnel and Civilian Employees' Claim Act of 1964 for damage to or loss of personal property incident to their service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the administrative handling of the claim and documents submitted by the claimant in support of the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 240–243; 31 CFR part 4; Treasury Department Administrative Circular No. 131, August 19, 1965.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted numerically in a file folder which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file is identified numerically in the file folder within the metal container by the name of the person who has filed or may file a claim.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Office of the Associate Chief Counsel within the New Federal Building. During non-working hours the room in which the metal container is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

These files are retained indefinitely or until there is no longer any space available for them within the metal container, at which time the oldest closed files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel (Los Angeles), U.S. Customs Service, One World Trade Center, Suite 741, PO Box 32709, Long Beach, CA 90832.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with a Treasury Department Form No. 3079, Civilian Employee Claim For Loss or Damage to Personal Property, which is completed and filed with the Customs Service by the claimant. Additional information contained in these files may be separately provided by the claimant or by the claimant's supervisor. Where a

claim is not filed, the information is limited to the investigative reports of damage to or loss of personal property of a Customs employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .046

SYSTEM NAME:

Claims Case File—Treasury/Customs.

SYSTEM LOCATION:

Assistant Chief Counsel (Boston), 10 Causeway Street, Boston, MA 02222; Office of the Assistant Chief Counsel (San Francisco), 555 Battery Street, San Francisco, CA 94111; Office of the Associate Chief Counsel (Houston), U.S. Customs Service, 2323 South Shepherd Drive, Suite 1246, Houston, TX 77019.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parties who have filed claims for damage or injury against the Government, or against whom the Government has a claim for damage or injury in matters which affect or involve the U.S. Customs Service; private individuals or Government employees who are involved in the incident which gave rise to the claim.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports relative to the circumstances of the claim (including accident reports provided by Customs personnel, agents' investigative reports, correspondence between Customs and the claimant or his representative); reports relative to an individual's ability to pay a claim for damages.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 2672 *et seq.*; 28 CFR part 14; 31 CFR part 3; 5 U.S.C. 301; Reorganization Plan No. 1 of 1950; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in file folders.

RETRIEVABILITY:

Records indexed by name of individual making a claim or against whom a claim is made, cross-referenced file with name of Government employee, if any, involved.

SAFEGUARDS:

Open case files maintained in file cabinets with access by Assistant Chief Counsel and his staff only; closed case files maintained in locked cabinet with keys retained by Assistant Chief Counsel and staff only.

RETENTION AND DISPOSAL:

Retained until there is no longer any space available within metal cabinets, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Counsel (Boston), 10 Causeway Street, Boston, MA 02222; Office of the Assistant Chief Counsel (San Francisco), 555 Battery Street, San Francisco, CA 94111; Office of the Associate Chief Counsel (Houston), U.S. Customs Service, 2323 South Shepherd Drive, Suite 1246, Houston, TX 77019.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files is received from U.S. Customs employees, reports of investigation, credit checks, private individuals involved in the claims, other Government agencies and other individuals with pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .050

SYSTEM NAME:

Community Leader Survey—Treasury/Customs.

SYSTEM LOCATION:

Equal Employment Opportunity Officer, U.S. Customs Service, East Texas Customs Management Center, 2323 South Shepherd Drive., Suite 1200, Houston, TX 77019.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The names, titles, and organization of persons who may be construed to be occupying a community leadership role and who may be in a position to furnish information or have some influence in regard to the equal employment opportunity program area.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of a card index of the names, titles, and organization of community leaders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An alphabetical card listing filed in a metal file cabinet.

RETRIEVABILITY:

Listed and filed alphabetically.

SAFEGUARDS:

The metal file cabinet described above is maintained within the area assigned to the Equal Employment Opportunity Officer. During non-working hours this office area is locked and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

To be useful, this information file must be kept current. Non-current files will be destroyed locally.

SYSTEM MANAGER(S) AND ADDRESS:

Equal Employment Opportunity Officer, U.S. Customs Service, East Texas Customs Management Center, 2323 South Shepherd Drive., Suite 1200, Houston, TX 77019.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information included in these files is developed from local agencies (city, county, state, and Federal) and from local civic organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .053

SYSTEM NAME:

Confidential Source Identification File—Treasury/Customs.

SYSTEM LOCATION:

Components of this system are located in the Office of Investigations, U.S. Customs Service Headquarters, and the Office of Internal Affairs, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (sources) supplying confidential information to the U.S. Customs Service, Office of Investigations and Office of Internal Affairs.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains some or all of the following information: name (actual or assumed), source (identifying) number, date number assigned, address, citizenship, occupational information, date and place of birth, physical description, photograph, miscellaneous identifying number such as social security number, driver's license number, FBI number, passport number, Customs Form 4621 documenting information received from confidential source, amount and date of monetary payment made to source for information supplied, criminal record, copy of driver's license, and copy of alien registration card.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended; 19 U.S.C. 1619; and 18 U.S.C. Chapter 27.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in locked cabinets. Access during working hours is limited to authorized personnel.

RETRIEVABILITY:

Office of Investigations and Office of Internal Affairs—The name of each source is filed in both alphabetical order and by location of the submitting office.

SAFEGUARDS:

In addition to being stored in secure metal cabinets with government approved locks, the files are located in closely watched rooms of the Office of Investigations and the Office of Internal Affairs. Personnel maintaining the files are selected for their reliability, among other qualities, and afforded access only after having been cleared by a full field investigation. During non-working hours the rooms in which the records are located are locked and access to the building is controlled by uniformed security guards.

RETENTION AND DISPOSAL:

The Office of Investigations destroys a file when it no longer has any utility by either shredding or burning; the Office of Internal Affairs reviews files annually for relevance and necessity, and when a file no longer has any utility, it is destroyed either by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Investigations, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, for those components of the system maintained by the Office of Investigations; Director, Office of Internal Affairs, (Integrity Management), U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and for those components of the system maintained by the Office of Internal Affairs.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual. (See 5 U.S.C. 552a (e)(4)(G) and (f)(1).)

RECORD ACCESS PROCEDURES:

This system of records may not be accessed under the Privacy Act for the purpose of inspection.

CONTESTING RECORD PROCEDURES:

Since this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual and those records, if any, cannot be inspected, the system may not be accessed under the Privacy Act for the purpose of contesting the content of the record.

RECORD SOURCE CATEGORIES:

This system contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). (See 31 CFR 1.36.)

Treasury/CS .054

SYSTEM NAME:

Confidential Statements of Employment and Financial Interests—Treasury/Customs.

SYSTEM LOCATION:

Located in each Assistant Commissioner Office, Headquarters, and Customs Management Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Covered individuals to be determined by agency, in accordance with 5 CFR part 2634.

CATEGORIES OF RECORDS IN THE SYSTEM:

Form OGE–450 Executive Branch Confidential Financial Disclosure Report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in locked safe.

RETENTION AND DISPOSAL:

Maintained for 6 years for any covered position. Records are destroyed two (2) years after the employee leaves the position, or two (2) years after leaving the agency, whichever is earlier.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner (Internal Affairs) and Directors, Customs Management Centers.

NOTIFICATION PROCEDURE:

Write to systems manager.

RECORD ACCESS PROCEDURES:

Write to systems manager.

CONTESTING RECORD PROCEDURES:

Write to systems manager.

RECORD SOURCE CATEGORIES:

Individuals required to submit Form OGE–450.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .056

SYSTEM NAME:

Congressional and Public Correspondence File—Treasury/Customs.

SYSTEM LOCATION:

Office of Field Operations (Administrative Staff), U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those persons sending letters of inquiry or complaint concerning Customs activities and procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence, the agency's reply, and related materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence records are maintained in file folders and on a computer system.

RETRIEVABILITY:

Correspondence records are identified by the name of the person making inquiry or complaint. They are retrievable by name.

SAFEGUARDS:

Access to the records is granted only to authorized Customs personnel. During non-working hours the room in which the records are located is locked and access to the building is controlled by uniformed security police.

RETENTION AND DISPOSAL:

The records are maintained from two to five years and then destroyed or retired to the Federal Records Center as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Workforce Effectiveness and Development Staff, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Correspondence and related records and materials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .057

SYSTEM NAME:

Container Station Operator Files—Treasury/Customs.

SYSTEM LOCATION:

Office of Process Owner, Passenger Operations Div., Office of Field Operations, U.S. Customs, 1300 Pennsylvania Avenue, NW., Washington, DC 20229; Director, Mid-America Customs Management Center, Chicago, IL (see Customs appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past container station operators and employees that require an investigation and related information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Report of investigations, application and approval or denial of bond to act as container station operator and other Customs Service memoranda. Names, addresses, social security numbers, and dates and places of birth of persons employed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended; Customs Regulations, part 19.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and stored in file cabinets in each Port Director's office within the Mid-America Customs Management Center, Chicago, IL.

RETRIEVABILITY:

Each file is identified by the name of the container station operator.

SAFEGUARDS:

The file cabinets are maintained within the area assigned to the Port Director. During non-working hours, the room and/or building in which the file cabinet is located is locked.

RETENTION AND DISPOSAL:

These files are disposed of in accordance with the Treasury Records Control Manual. Employee name data retained for period of employment with container station operator.

SYSTEM MANAGER(S) AND ADDRESS:

Process Owner, Office of Field Operations, U.S. Customs, 1300 Pennsylvania Avenue, NW., Washington, DC 20229; Director, each Port within the Mid-America Customs Management Center, Chicago, IL. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this file originates from the individual applicant for container station operator bond, from reports of investigation and other Customs memoranda.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .058

SYSTEM NAME:

Cooperating Individual Files—Treasury/Customs.

SYSTEM LOCATION:

These files are located in field and local Customs Office of Investigations Offices within the United States. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons providing confidential information to the U.S. Customs Service Office of Investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include: Assumed names; actual names; code numbers; addresses; telephone numbers; physical descriptions; miscellaneous identifying numbers such as social security numbers, driver's license number, etc., date individual's record was established; amount and date of reward paid for information supplied.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All files and indices relating to cooperating individuals are stored in metal file cabinets secured with combination locks in a government secured building.

RETRIEVABILITY:

The name of each cooperating individual is filed in alphabetical order by assumed name and by actual name. The indices are maintained in the same alphabetical order and are also cross-referenced by the Office of Investigations alphanumeric code number. All other identifying data is used for verification of identity rather than method of retrieval.

SAFEGUARDS:

In addition to being stored in secure metal cabinets with government approved locks, the metal files are kept locked when not in use and located in a closely watched room of the Office of Investigations. Personnel maintaining the files are selected for their reliability among other qualities, and they are afforded access only after having been cleared by a full field investigation. The files are given the same treatment as material classified as Secret. During duty hours, Office of Investigations personnel maintain visual control and during off-duty hours the area containing the files is locked.

RETENTION AND DISPOSAL:

Retention periods have been established for records contained in the file in accordance with the Treasury Records Control Manual. When a file no longer has any utility, it is destroyed either by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Commissioner (Investigations); the Special Agent in Charge in regional SAC Offices; and the Resident Agent in Charge in sub-offices of the Special Agent in Charge. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .061

SYSTEM NAME:

Court Case File—Treasury/Customs.

SYSTEM LOCATION:

Office of the Associate Chief Counsel, One World Trade Center, Suite 741, P.O. Box 32709, Los Angeles, CA 90832; Office of the Assistant Chief Counsel, 555 Battery Street, San Francisco, CA 94111; Office of the Associate Chief Counsel, Mid-America Customs Management Center, 55 E. Monroe Street, Room 1417, Chicago, IL 60603; Office of the Assistant Chief Counsel, 1000 Second Avenue, Suite 2200, Seattle, Washington 98104.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are parties in litigation with the United States Government or subunits or employees or officers thereof, in matters which affect or involve the United States Customs Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Court documents with exhibits, reports of investigations, internal Customs Service memoranda summarizing or relating to the matter in controversy and other background information relating to the subject matter or origin of the litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 2676, 19 U.S.C. 1603, 5 U.S.C. 301; E.O. 6166; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in a numerical file folder which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file is identified by the name of the person against whom the Government has initiated the litigation, or by the name of the person who initiated the litigation against the Government.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Office of the Associate Chief Counsel. During non-working hours the room in which the metal container is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

These files are retained until there is no longer any space available for them within the metal container, at which time the oldest closed files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel, One World Trade Center, Suite 741, P.O. Box 32709, Los Angeles, CA 90832; Assistant Chief Counsel, 555 Battery Street, San Francisco, CA 94111; Associate Chief Counsel, Mid-America Customs Management Center, 55 E. Monroe Street, Room 1417, Chicago, IL 60603; Office of the Assistant Chief Counsel, U.S. Customs Service 1000 Second Avenue, Suite 2200, Seattle, Washington 98104.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with a request by the Port Director to the appropriate United States Attorney that he institutes suitable judicial action to enforce the forfeiture of merchandise and vehicles, or the value thereof, which had been imported or used in violation of the Customs laws, and upon which final administrative action has taken place. Information in this file also originates with the filing of a complaint by a private person against the Government, and by the filing of a complaint by the Government against private persons or former employees to enforce the collection of debts due the Government. Information in the files is also derived from reports of investigation regarding the enforcement of civil or criminal statutes and denial of tort claims.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .064

SYSTEM NAME:

Credit Card File—Treasury/Customs.

SYSTEM LOCATION:

National Logistics Center, U.S. Customs Service, Fleet and Property Management Section, 6026 Lakeside Blvd. Indianapolis, IN 46278.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Headquarters Customs Service employees to whom national gasoline credit cards have been issued.

CATEGORIES OF RECORDS IN THE SYSTEM:

Credit card numbers, names, and signatures of employees to whom credit cards have been issued, and the date of issuance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Alphabetically by name or by credit card number.

RETRIEVABILITY:

A portion of the index cards are identified by the name of the person to whom the credit card was issued in the case of credit cards which have been permanently assigned to higher level Customs Service officers and such index cards are filed alphabetically. The remainder of the index cards relate to credit cards which are issued to Customs Service officers or employees on a one-transaction basis, and these index cards are filed by the applicable credit card number.

SAFEGUARDS:

Index cards are maintained and stored in a secured room with limited accessibility. The building is guarded by uniformed security police, and only authorized persons are permitted in the building.

RETENTION AND DISPOSAL:

Index cards filed alphabetically by name are filed during the period that the officials named thereon are in possession of the credit cards, and then these index cards are retained (for audit purposes) when the officials are no longer in possession of the credit cards. Index cards are filed by office titles and contain receipt signatures.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Headquarters Services Division, Office of Logistics Management, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from Customs Service records and is also furnished by the officers or employees to whom the credit cards have been issued.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .069

SYSTEM NAME:

Customs Brokers File—Treasury/Customs.

SYSTEM LOCATION:

Office of the Chief Counsel, Broker Compliance and Evaluation Branch, Office of Trade Operations; U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and Customs Management Centers and Service Ports.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Licensed customs brokers, employees of customs brokers, individuals or firms who have applied for a broker's license.

CATEGORIES OF RECORDS IN THE SYSTEM:

Internal Customs Service memoranda and related material regarding proposed administrative disciplinary action against customs brokers for violation of the regulations governing the conduct of their business; broker applications and related material; notification of change of business address, organization, name, or location of business records; status reports; requests for written approval to employ persons who have been convicted of a felony.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

19 U.S.C. 1641; 19 CFR part 111; 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in an alphabetical file folder which is filed in drawers that are capable of being locked and are locked at the close of business. Some records are in a separate room which is locked at other than official hours. File cards covering individual customhouse brokers, corporations, partnerships and trade names are in files not capable of being locked, but the entire area is locked at night.

RETRIEVABILITY:

Each case file is identified in a manual alphabetical card file by the name and in the alphabetical file folder within the metal container by the name of the customs broker or employees of customs brokers.

SAFEGUARDS:

The files described above are maintained in Customs Service Buildings. During non-working hours the room in which the files are located is locked, and access to the building is controlled after business hours by electronic access and alarm systems and during business hours access is controlled at all times by a U.S. Customs Service employee.

RETENTION AND DISPOSAL:

Broker files and records of broker's employees are kept indefinitely. They are periodically updated and removed to an inactive file, as necessary.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel; Director, Field Operations Division, Office of Trade Operations, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Directors, Customs Management Centers, and Port Directors.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates from audits of or investigations into the conduct of customhouse brokers' businesses, applications for licenses, references as to character, court records, and local credit reporting services, as well as reports, notifications, and other

applications filed by brokers pursuant to statutory and regulatory requirements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .077

SYSTEM NAME:

Disciplinary Action, Grievance and Appeal Case Files—Treasury/Customs.

SYSTEM LOCATION:

Located in the Office of Human Resources, Customs Headquarters, and in each Customs Management Centers, SAC, Port, and appropriate post of duty offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customs employees on whom disciplinary action is pending or has occurred, and employees who have filed grievances and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on such action as leave restriction letters, reprimands, suspensions, adverse actions, etc., and grievance and appeals by employees. Copies of correspondence, management requests for assistance, evidentiary materials on which action is contemplated, proposed or taken, regulatory material, examiners' reports, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency"s or the bureau"s hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in manila folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in a locked file.

RETENTION AND DISPOSAL:

Grievance records are maintained for 3 years; discipline and adverse action records are maintained for four years; and appeals are maintained for 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor and Employee Relations Division, Office of Human Resources, Customs Headquarters, or Customs Management Centers Labor and Employee Relations Office, or appropriate managerial official in employee' s port or post of duty.

NOTIFICATION PROCEDURE:

Write to system manager.

RECORD ACCESS PROCEDURE:

Request from system manager.

CONTESTING RECORD PROCEDURES:

Write to the system manager.

RECORD SOURCE CATEGORIES:

Supervisors and supervisory records and notes; evidentiary materials supporting planned, proposed, or accomplished actions; grievance letters submitted by employee, grievance examiner, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .081

SYSTEM NAME:

Dock Passes—Treasury/Customs.

SYSTEM LOCATION:

Port Director, U.S. Customs Service, P.O. Box 1641, Honolulu, HI 96806.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consulate staff members, brokers, private individuals, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Form lists following information: pass number; port; date of issue; name of individual; organizational affiliation; expiration date of pass; and vessel name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3 × 5 card box, looseleaf binder.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Building locked during non-working hours. Retention and disposal: Retained until expiration.

SYSTEM MANAGER(S) AND ADDRESS:

Port Director, U.S. Customs Service, 228 Federal Building, 335 Merchant Street, Honolulu, HI 96806.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Individual applicants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .083

SYSTEM NAME:

Employee Relations Case Files—Treasury/Customs.

SYSTEM LOCATION:

Office of Human Resources, U.S. Customs Service, Washington, DC 20229, and in each Headquarters, Customs Management Centers, Port, SAC, and appropriate post of duty offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records maintained on the benefit aspects of employment such as, workers' and unemployment compensation, leave, health and life insurance, retirement, suggestions, awards, etc. and employees who have requested assistance with these programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of initiating correspondence and Customs correspondence and any forms submitted by or completed on behalf of the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in a locked file.

RETENTION AND DISPOSAL:

Maintained for period of time employee remains with Customs. Records destroyed upon separation of employee.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor and Employee Relations Division, Office of Human Resources, U.S. Customs Service, Washington, DC 20229, Customs Management Center, Labor and Employee Relations Office, and in SAC, Port and appropriate post of duty offices.

NOTIFICATION PROCEDURE:

Write to systems manager—providing your name and social security account number.

RECORD ACCESS PROCEDURES:

Write to systems manager.

CONTESTING RECORD PROCEDURES:

Write to systems manager.

RECORD SOURCE CATEGORIES:

Individuals and offices depending on the problem.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .096

SYSTEM NAME:

Fines, Penalties and Forfeiture Control and Information Retrieval System—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Service, Office of Trade Operations, Fines, Penalties and Forfeiture Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and each Customs Service Port, Fines, Penalties and Forfeitures Office in the United States and Puerto Rico.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and/or businesses who have been fined, penalized or have forfeited merchandise because of violations of Customs and/or related laws or breaches of bond conditions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual and business names, address, personal identifying numbers, date and type of violation, parties entitled to legal notice or who are legally liable, case information, bond and petition information, and actions (administrative) taken by U.S. Customs. Also included are actions taken by violator prior to the disposition of the penalty or liquidated damage case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency' s or the bureau' s hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Hard copy Customs Form 5955a (Notice of Liquidated Damages Incurred and Demand for payment) and Customs Form 151 Search/Arrest/Seizure Report.

RETRIEVABILITY:

Case number.

SAFEGUARDS:

All inquiries are made by officers with a full field background investigation on a "need-to-know" basis only. Procedural and physical safeguards are utilized such as accountability and receipt records, guards patrolling the area, restricted access and alarm protection systems, special communications security, etc.

RETENTION AND DISPOSAL:

A maximum of 11 years. Erasure of disc/tapes and shredding and/or burning of hard copy Customs Form 5955a.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Trade Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 and the Area Port Directors of Customs for each Customs Port in the United States and Puerto Rico.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Customs Form 5955a (Notice of Penalty or Liquidated Damages Incurred and Demand for Payment) and CF 151 (Search/Arrest/Seizure Report) prepared by Customs employees at the time and place where the violation has occurred.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .098

SYSTEM NAME:

Fines, Penalties and Forfeitures Records—Treasury/Customs

SYSTEM LOCATION:

Customs Fines, Penalties and Forfeitures offices, Customs Ports. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and firms who have been administratively charged with violations of Customs laws and regulations and other laws and regulations enforced by the Customs Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Entry documentation, notices, investigative reports, memoranda, petitions, recommendations, referrals and dispositions of fines, penalties and forfeiture cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended. 19 U.S.C. 66, 1618, 1624; 19 CFR parts 171 and 172.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, in connection with criminal law proceedings; (3) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in folders in locked file cabinets and safes and in the automated FP&F module in the Automated Commercial System (ACS).

RETRIEVABILITY:

The records are filed either by numerical sequence using year and port code, name of individual and/or company, with a cross reference available through ACS.

SAFEGUARDS:

During non-working hours, the records are maintained in locked file cabinets, locked buildings and buildings guarded by uniform guards or security detection devices.

RETENTION AND DISPOSAL:

The records are retained for one to three years after which they are either destroyed or forwarded to the Federal Records Center. Automated records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Area Port Directors of Customs (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information and representations supplied by importers, brokers and other agents pursuant to the entry and processing of merchandise or in the clearing of individuals or baggage through Customs. Information also includes information gathered pursuant to Customs investigations of suspected or actual violations of Customs and related laws and regulations and recommendations and information supplied by other agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .099

SYSTEM NAME:

Fines, Penalties, and Forfeiture Files (Supplemental Petitions)—Treasury/Customs.

SYSTEM LOCATION:

Office of the Assistant Chief Counsel, 555 Battery Street, San Francisco, CA 94111; Office of Associate Chief Counsel, One World Trade Center, Suite 741, P.O. Box 32709, Long Beach, CA 90832–2709; Office of the Associate Chief Counsel, U.S. Customs Service, 55 E. Monroe Street, Room 1417, Chicago, IL 60603; Office of the Assistant Chief Counsel, 1000 Second Avenue, Suite 2200, Seattle, WA 98104–1049; Fines, Penalties and Forfeitures Office, Laredo, TX, and National Seizure and Penalties Office (NSPO), U.S. Customs, Hemisphere Center, Newark, NJ.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed supplemental petitions for relief from fines, penalties and forfeitures assessed for violations of the laws and regulations administered by Customs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Petitions and supplemental petitions and other documents filed by the individual; reports of investigation concerning the fine, penalty or forfeiture; and documents relating to the internal review and consideration of the request for relief and decision thereon.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 19 U.S.C. 1618; 19 CFR parts 171 and 172; Treasury Department Order No. 165, Revised, as amended; Reorganization Plan No. 1 of 1965.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to the Department of Justice or an individual United States Attorney to assist that Department or United States Attorney when suit is filed by the Government in civil prosecution of the fine, penalty or forfeiture; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency' s or the bureau' s hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course or presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in a numerical file folder which is filed in an unlocked drawer within a metal file cabinet.

RETRIEVABILITY:

Each case file is identified in a manual alphabetical card file by the name of the petitioner and in the numerical file folder within the metal file cabinet by the name of the petitioner.

SAFEGUARDS:

The metal file cabinet described above is maintained within the area assigned to the Office of the Regional Counsel within the Federal Building. During non-working hours the room in which the metal file cabinet is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

Supplemental petition files are retained until there is no longer any space available for them within the metal file cabinet, at which time the oldest files may be transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Counsel, 555 Battery Street, San Francisco, CA 94111; Associate Chief Counsel, One World Trade Center, Suite 741, PO Box 32709, Long Beach, CA 90832–2709; Associate Chief Counsel, Room 1417, U.S. Customs Service, 55 E. Monroe Street, Chicago, IL 60603; Assistant Chief Counsel, 1000 Second Avenue, Suite 2200, Seattle, WA 98104–1049; and NSPO, U.S. Customs, Hemisphere Center, Newark, NJ.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information contained in these files is obtained from the individual petitioning for relief and from the Port Director of Customs within whose jurisdiction the fine, penalty or forfeiture action lies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .100

SYSTEM NAME:

Fines, Penalties and Forfeiture Records (Headquarters)—Treasury/ Customs.

SYSTEM LOCATION:

Penalties Branch, International Trade Compliance Division, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 and Fines, Penalties, and Forfeiture Offices at each Customs Port in the United States and Puerto Rico.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on persons who have been administratively charged with violating Customs and related laws and regulations and on persons who have applied for awards of compensation under 19 U.S.C. 1619 based on their having provided original information on violations of Customs, navigation or other laws enforced by Customs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Entry documentation, notices, investigative and other reports, memoranda of information received, petitions, recommendations, referrals and dispositions of fines, and penalties cases and applications for awards of compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended; 19 U.S.C. 66, 1618, 1624; 19 CFR parts 171 and 172.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS NAD THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are kept in file cabinets in the office and central file room of the International Trade Compliance Division at U.S. Customs Service Headquarters and in the storage facilities for the Fines, Penalties and Forfeitures Office in each Customs Management Center.

RETRIEVABILITY:

The records are filed chronologically with a case number given to each file.

SAFEGUARDS:

The records are maintained in the U.S. Customs Service Headquarters building which is guarded by security police. During non-working hours, the central file room is locked and the building is guarded by security police. Records are maintained in each Customs Service District buildings.

RETENTION AND DISPOSAL:

The records are generally retained for five years after closing of the case. The records are then forwarded to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Penalties Branch, International Trade Compliance Division, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and each Fines, Penalties and Forfeitures Officer for the United States Customs Service Ports.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information and representations supplied by importers, brokers and other agents pursuant to the entry and processing of merchandise or in the clearing of individuals or baggage through Customs. Records also includes information gathered pursuant to Customs investigations of suspected or actual violations of Customs and related laws and regulations and recommendations and information supplied by other agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .105

SYSTEM NAME:

Former Employees—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Laboratory, Suite 1429, 630 Sansome Street, San Francisco, CA 94111.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All past employees of the Customs Laboratory.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains copies of personnel action notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and stored in a metal file cabinet.

RETRIEVABILITY:

The record is filed alphabetically by name.

SAFEGUARDS:

The file is stored in a metal file cabinet in a private inner office of a government building protected by 24-hour guard service with limited access. The file is only used on a "need-to-know" basis and only by the laboratory employees.

RETENTION AND DISPOSAL:

Retained in Accordance with the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Laboratory Director, U.S. Customs Laboratory, Suite 1429, 630 Sansome Street, San Francisco, CA 94111.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information contained in personnel action files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .109

SYSTEM NAME:

Handicapped Employee File—Treasury/Customs.

SYSTEM LOCATION:

Human Resources Division, Mid-America Customs Management Center, 55 East Monroe Street, Suite 1501, Chicago, IL 60603.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees identified as handicapped.

CATEGORIES OF RECORDS IN THE SYSTEM:

Indicates employee's home and organizational location and various physical and mental handicaps, infirmities and conditions. Also shows veteran's preference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

List.

RETRIEVABILITY:

Lists employees alphabetically by district.

SAFEGUARDS:

None at present and none required.

RETENTION AND DISPOSAL:

Employee's name removed from list at time of termination.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Data furnished by employee and employee's physician.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .122

SYSTEM NAME:

Information Received File—Treasury/Customs.

SYSTEM LOCATION:

District Division, Room 200, United States Customhouse, La Marina, Old San Juan, PR 00901; Office of the Special Agent In Charge, 423 Canal St, New Orleans, LA 70130; Office of the Port Director, 880 Front Street, San Diego, CA 92318; Offices of the Port Directors, San Ysidro, CA., Tecate, CA., Calexico, CA., Andrade, CA; San Diego Barge Office, Offices of the Special Agent In Charge, San Diego, CA., San Ysidro, CA., Calexico, CA., Tecate, CA; Los Angeles Region. Office of the Port Director, 423 Canal St., New Orleans, LA 70130; Special Agent In Charge, Room 213, International Trade Center, 250 N. Water Street, Mobile, AL 36602; Intelligence Support Staff (Pacific Region), Room 7514, 300 N. Los Angeles Street, Los Angeles, CA 90053; Special Agent In Charge, 300 Ferry Street, Terminal Island, San Pedro, CA 90731; Resident Agent in Charge, Office of Investigations, P. O. Box 1385, Nogales, AZ 85621; Special Agent In Charge, Room 7N–FB–05, 301 W. Congress, Tucson, AZ 85701.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons in whom Customs and/or other government agencies are interested from a law-enforcement and/or security point of view.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, alias, date of birth or age, personal data, addresses, home and business telephone number, occupation, background information, associations, license number and registration number of vehicle, vessel and/or aircraft, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are kept in a locked metal cabinet.

RETRIEVABILITY:

Records are filed within a metal file.

SAFEGUARDS:

The files are located within an office that is locked during non-working hours. The building is guarded by a central alarm system which is monitored by local law enforcement agencies, and only authorized persons are permitted in the building.

RETENTION AND DISPOSAL:

Files are retained for a period of three (3) years after which they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Special Agent In Charge, United States Custom Service, Room 200, La Marina, Old San Juan, PR 00901; Special Agent In Charge, 423 Canal St., New Orleans, LA 70130; Chief, Air Branch, U.S. Customs Service, Bldg. 240, Homestead Air Force Base, Homestead, FL 33039; Regional Agent In Charge, 423 Canal St., New Orleans, LA 70130; Directors, Customs Management Centers, Port Directors, and Directors within the San Diego Customs District: Intelligence Support Staff (Pacific Region), Room 7514, 300 N. Los Angeles Street, Los Angeles, CA 90053; Special Agent In Charge, 300 Ferry Street, Terminal Island, San Pedro, CA 90731; Resident Agent in Charge of Enforcement, P.O. Box 1385, Nogales, AZ 85621; Special Agent in Charge, Room 7N–FB–05, 301 W. Congress, Tucson, AZ 85701 (see Customs appendix A).

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .123

SYSTEM NAME:

Injury Notice—Treasury/Customs.

SYSTEM LOCATION:

Director, Gulf Customs Management Center, 423 Canal Street, New Orleans, LA 70130; Port Director, 423 Canal Street, New Orleans, LA 70130; Port Director, 150 N. Royal, Mobile, Alabama 36602; Special Agent-in-Charge, 108 Decatur St., New Orleans, LA 70150; Special Agent-in-Charge, 951 Government St., Mobile, AL 36604.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who sustain an injury in performance of duty as an employee of U.S. Customs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, home address, organization, place of injury, date and hour of injury, dependents, occupation, cause of injury, nature of injury, statement of witness, supervisor's report of injury.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 19 and 24 of the Occupational Safety and Health Act of 1970; 84 Statute 1609, 1614, 29 U.S.C. 668, 673 and the provisions of Executive Order 11807.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to the Department of Labor for that agency's official use; (2) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (3) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in this system is contained on CA forms. The CA forms are filed in folders, alphabetically, and placed in a metal file cabinet.

RETRIEVABILITY:

Each CA form is identified by the name of the injured employee and filed alphabetically in a folder.

SAFEGUARDS:

The binder is placed within a metal file container located within an office that is locked during non-working hours. The building is guarded by uniformed security personnel and only authorized persons are permitted in the building.

RETENTION AND DISPOSAL:

Notice of injury reports are maintained in the employee's OPF and disposed of in accordance with the Treasury Records Control Manual. Copies maintained by the systems manager are maintained at location for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Commissioner, 423 Canal Street, New Orleans, LA 70130; Port Director, 423 Canal St., New Orleans, LA 70130; Port Director, 150 N. Royal St., Mobile, Alabama 36602; Special Agent-in-Charge, 108 Decatur St., New Orleans, LA 70130; Special Agent-in-Charge, 951 Government St., Mobile, Alabama 36604.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system originates with and consists solely of information supplied by the injured employee, his supervisor, appropriate witness and attending physician on CA forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .125

SYSTEM NAME:

Intelligence Log—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Air Branch, Bldg. 240 PM–TUM, Homestead Air Force Base, Homestead, FL 33030.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are believed to be involved in activities which constitute, or may develop into, possible violation of Customs and related laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Internal Customs Service memoranda and related materials regarding the activities of individuals, vessels, or aircraft believed to be involved in acts which are contrary to Customs and related laws.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The intelligence log is maintained within a security area.

RETRIEVABILITY:

A manual, master card index, is maintained for the entire system. This index includes name and/or numerical identifier.

SAFEGUARDS:

The information files and master card index are located within an office which is locked during non-working hours. The building is guarded by U.S. Air Force Military Police and only authorized persons are permitted in the building.

RETENTION AND DISPOSAL:

These files are retained until such time that it has been determined that there is no longer a need for their existence, at which time the oldest files are destroyed under Customs supervision.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Air Branch, U.S. Customs, PM–TUM Bld 240, Homestead Air Force Base, Homestead, FL 33039.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .127

SYSTEM NAME:

Internal Affairs Records System—Treasury/Customs

SYSTEM LOCATION:

Security Programs Division, Office of Internal Affairs, 1300 Pennsylvania Avenue, NW., Room 8.4.D, Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past employees; contractor applicants/employees; and applicants for positions that require an investigation; and others that are principals or non-principals in an investigation or integrity issue.

CATEGORIES OF RECORDS IN THE SYSTEM:

Background investigations, integrity investigations, and photographic images.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order Number 165, revised, as amended.

PURPOSES:

To maintain all records on applicants, employees, contractors, and contractor applicants relating to investigations conducted by Internal Affairs, and to support personnel and administrative programs of the Customs Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Investigative records are maintained in computers, as well as in file folders, in metal security cabinets secured by government approved three-position combination locks, and in a mobile filing system within a secured area that is alarmed with motion detectors.

RETRIEVABILITY:

These records are indexed by name and/or numerical identifier in a manual filing system and/or computerized system.

SAFEGUARDS:

In addition to being stored in secured metal containers with government approved combination locks, mobile filing system, etc., the containers are located in a locked, alarmed room, the keys of which are controlled and issued to the custodians of the files. The security specialists and administrative personnel who maintain the files are selected for their experience and afforded access only after having been cleared by a full-field background investigation and granted appropriate security clearances for critical sensitive positions. Those departmental officials who may occasionally be granted access consistent with their positions to employ and concur in the granting of security clearances have also been investigated prior to filling critical-sensitive positions.

RETENTION AND DISPOSAL:

The file records are maintained as long as the subject of the investigation is employed by the U.S. Customs Service and then for 1 year after the subject terminates employment. The files are then transferred to the Federal Records Center for retention. After transfer, records are retained by the Federal Records Center for the following period of time and then destroyed: Background Investigations—15 years; Conduct and Special Inquiry Investigations—25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security Programs Division, Office of Internal Affairs, 1300 Pennsylvania Avenue, NW., Room 8.4.D, Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A (31 CFR part 1, subpart C).

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Sources of information are: Employers; educational institutions; police; government agencies; credit bureaus; references; neighborhood checks; confidential sources; medical sources; personal interviews; photographic images, military, financial, citizenship, birth and tax records; and the applicant's, employee's or contractor's personal history and application forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4), (G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5). (See 31 CFR 1.36.)

Treasury/CS .129

SYSTEM NAME:

Investigations Record System—Treasury/Customs.

SYSTEM LOCATION:

All Office of Investigations offices located in the United States and within each Office of Investigations office located in a foreign country. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on individuals who may bear some necessary relevance to investigations conducted within the scope of authority of the Office of Investigations, United States Customs Service. The categories include but are not limited to: (1) Known violators of U.S. Customs laws; (2) Convicted violators of U.S. Customs and/or drug laws in the U.S. and foreign countries; (3) Fugitives with outstanding warrants, Federal or State; (4) Suspect violators of U.S. Customs or other related laws; (5) Victims of violations of the U.S. Customs or related laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

The subject records may contain any identifying or other relevant information on subject individuals which might relate to the following categories of investigations: Smuggling, Diamonds & Jewelry; Smuggling, Liquor; Smuggling, Narcotics; Smuggling, All Other; Prohibited Importations; Navigation, Airplane and Vehicle Violations; Neutrality Violations; Illegal Exports. Baggage Declaration Violations; Customhouse Brokers and Customs Attorneys; Applications for Licenses; Theft, Loss, Damage and Shortage; Irregular Deliveries; All Other Criminal Cases; Currency Violations. Organized Crime; Personnel Derelictions; Other Departments, Bureaus and Agencies; Federal Tort Claims; Personnel Background Investigations. Undervaluation and False Invoicing; Petitions for Relief; Drawback; Marking of Merchandise; Customs Bonds; Customs Procedures; Collections of Duties and Penalties; Trademarks and Copyrights; Foreign Repairs to Vessels and Aircraft. Classification; Market Value; Dumping; Countervailing Duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended; 19

U.S.C. 2072; Title 19, United States Code; Title 18, United States Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in both hard copy files and on microfiche which are placed in locked metal containers.

RETRIEVABILITY:

The record system is indexed on 3 x 5 file cards by the individual's name and/or identification number and by the investigative case numbers to which the information relates. The hard copy and microfiche records are retrieved by means of the investigative case numbers.

SAFEGUARDS:

All records are held in steel cabinets and are maintained according to the requirements of the United States Customs Records Manual and the United States Customs Security Manual. Access is limited by visual controls and/or a lock system. During normal working hours, files are either attended by responsible Office of Investigations employees or the file area is restricted. The office in which the records are located is locked during non-working hours and the building is patrolled by uniformed security guards.

RETENTION AND DISPOSAL:

The index cards, the hard copies and microfiche records are retained in accordance with standard Customs Service record retention and disposal procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Investigations, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC, 20229.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual. (*See* 5 U.S.C. 552a (e)(4)(G) and (f)(1).)

RECORD ACCESS PROCEDURES:

This system of records may not be accessed under the Privacy Act for the purpose of inspection.

CONTESTING RECORD PROCEDURES:

Since this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual and those records, if any; cannot be inspected, the system may not be accessed under the Privacy Act for the purpose of contesting the content of the record.

RECORD SOURCE CATEGORIES:

This system contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). (See 31 CFR 1.36.)

Treasury/CS .133

SYSTEM NAME:

Justice Department Case File—Treasury/Customs.

SYSTEM LOCATION:

Office of the Chief Counsel, U.S. Customs Service Headquarters, 1300 Pennsylvania Ave., NW., Washington, DC, 20229. Office of the Assistant Chief Counsel, U. S Customs Service, 10 Causeway Street, Boston, MA 02222.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are parties in litigation with the United States Government or subunits or employees or officers thereof, in matters which affect or involve the United States Customs Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Litigation report requests and responses thereto, reports of investigations, internal Customs Service memoranda summarizing or relating to the matter in controversy and other background information relating to the subject matter or origin of the litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 507; 19 U.S.C. 1603; 5 U.S.C. 301; E.O. 6166; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to the Department of Justice or directly to United States Attorneys upon request to assist in representing the interests of the Government, the agency or officer or employee involved in the litigation, or to other agencies involved in the same or similar litigation; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to the news media in accordance with guidelines contained in

28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in file folder which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file is identified in the file folder within the metal container.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Office of the Counsel. During non-working hours the room in which the metal container is located is locked.

RETENTION AND DISPOSAL:

The files are retained until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC, 20229; Assistant Chief Counsel, 10 Causeway Street, Boston, MA 02222.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with the request from an appropriate customs official, the Department of Justice or directly from a United States Attorney or other Government agency or officer which results in a communication regarding the particular case. Information in this file is also derived from reports of investigation regarding the enforcement of civil or criminal statutes or regulations, administrative proceedings or any matter affecting or involving the United States Customs Service or its officers or employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .136

SYSTEM NAME:

All Liquidated Damage, Penalty, and Seizure Cases; Prior Violators—Treasury/Customs.

SYSTEM LOCATION:

Office of the Director, Fines and Penalties Office, U.S. Customs Service, 10 Causeway Street, Boston, MA 02109; Office of the Director, Fines and Penalties Office, U.S. Customs Service, P.O. Box 1490, St. Albans, VT 05478; and Fines, Penalties and Forfeitures Office, Laredo, TX 78044.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prior violators of Customs Laws: e.g. Customhouse brokers, individual TIB violators, liquidated damage cases, penalty cases, and seizure cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and case number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on 3 x 5 index cards and in file folders.

RETRIEVABILITY:

Alphabetically; by name.

SAFEGUARDS:

In file cabinet in locked room when not in use.

RETENTION AND DISPOSAL:

Boston District files are kept for two years and then destroyed on site. St. Albans District files are kept for five (5) years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Fines and Penalties Officer, U.S. Customhouse, Boston, MA 02109. Fines and Penalties Officer, Post Office and Customhouse Building, St. Albans, VT 05478; and Fines and Penalties Officer, Laredo, TX 78044.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information is received from the individual at the time the violation occurs and from penalty notices which are issued in the Penalties section. Also, the Office of Investigations provides any information developed during its investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .137

SYSTEM NAME:

List of Vessel Agents Employees—Treasury/U.S. Customs.

SYSTEM LOCATION:

Office of Director, Mid-America Customs Management Center, Chicago, IL (see Customs appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons employed by Vessel agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, Social Security numbers, and dates and places of birth of persons employed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in

response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Open file.

RETRIEVABILITY:

Alphabetical listing of employees by vessel agent name.

SAFEGUARDS:

The file described is maintained in the Office of the Director, Mid-America Customs Management Center, Chicago, IL. During non-working hours the room/building in which the file is located is locked. Access limited to authorized Customs personnel.

RETENTION AND DISPOSAL:

Employee name retained for period of employment with vessel agent agency.

SYSTEM MANAGER(S) AND ADDRESS:

Director, as appropriate, Mid-America Customs Management Center, Chicago, IL (see Location above).

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Submission of data by importing carrier or his agent.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .138

SYSTEM NAME:

Litigation Issue Files—Treasury/Customs.

SYSTEM LOCATION:

Office of Assistant Chief Counsel, Customs Court Litigation, Second Floor, 26 Federal Plaza, New York, NY 10007.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parties in litigation before the United States Customs Court (or subunits or employees or officers thereof), and other individuals with knowledge of the issues in controversy, e.g., trade witnesses, foreign or domestic manufacturers, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Litigation report requests and responses thereto, reports of investigations, internal Customs Service memoranda summarizing or relating to the matter in controversy and other background information relating to the subject matter or origin of the litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

19 U.S.C. 1514–1516; 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to the Department of Justice upon request to assist that Department in representing the interests of the Government, or agency involved in the litigation; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relates to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each issue file is inserted in a numerical file folder (according to issue) which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each issue filed is cross-indexed in the following card files: (a) By name of party—plaintiff; (b) by issue; and, (c) by titles of decided cases.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Office of the Assistant Chief Counsel within the Federal Building. At all times the room in which the metal container is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

These files are retained until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Counsel, Customs Court Litigation, Second Floor, 26 Federal Plaza, New York, NY 10007.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with the receipt of protest reports (based on information supplied by the subject individuals or by their authorized agents or attorneys) from the various Ports of Entry and/or litigation report requests from the Department of Justice which results in a written report to that Department regarding the facts of the particular case.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4), (G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). (See 31 CFR 1.36.)

Treasury/CS .144

SYSTEM NAME:

Mail Protest File—Treasury/Customs.

SYSTEM LOCATION:

Foreign Mail Branch, 1751 NW 79th Avenue, Miami, FL 33166; Port Director of Customs, P.O. Box 17423, Washington, DC 20041; 300 2nd Ave., South Great Falls, MT 59405; P.O. Box 1641, Honolulu, HI 96806; 1000 2nd Ave., suite 2100, Seattle, WA 98104–1049; U.S. Customs Mail Facility, Room 416, 1675—7th Street, Oakland, California 94615.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed formal protest of the amount of duty assessed against mail parcels.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, invoices, and other pertinent documents pertaining to protests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders within a metal file cabinet.

RETRIEVABILITY:

Records are retrievable by name or protest number.

SAFEGUARDS:

Access is limited to appropriate personnel and the office is locked during non-working hours.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Port Director of Customs, 1751 NW 79th Avenue, Miami, FL 33166; PO Box 17423, Washington, DC 20041; 405 W. Fourth Ave., Anchorage, AK 99501; 300 2nd Ave. South, Great Falls, MT 59405; 335 Merchant, Honolulu, HI 96813; 511 NW. Broadway, Portland, OR 97209; 555 Battery Street, San Francisco, CA 94126; 1000 2nd Ave., Suite 2100, Seattle, WA 98104–1049.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Source of information is from the sender, the addressee, the Customs value records, and the manufacturer of the item.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .148

SYSTEM NAME:

Military Personnel and Civilian Employees' Claims Act File—Treasury/Customs.

SYSTEM LOCATION:

Office of the Chief Counsel, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229; Office of the Assistant Chief Counsel, Room 125, U.S. Customhouse, 40 S. Gay Street, Baltimore, MD 21202; Associate Chief Counsel, U.S. Customs Service, 6 World Trade Center, New York, NY 10048.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons filing claims under the Military Personnel and Civilian Employees' Claims Act of 1964.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the administrative handling of the claim and documents submitted by the claimant in support of the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 240–243; 5 U.S.C. 301; 31 CFR part 4; Treasury Department Administrative Circular No. 131, August 19, 1965; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted alphabetically in a file folder which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file is identified in a manual alphabetical card file by the name of the person who filed the claim and alphabetically in the file folder within the metal container by the name of the person who filed the claim.

SAFEGUARDS:

The metal container described above is maintained within the Customs Service Building. During non-working hours the room in which the metal container is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

These files are retained until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229; Assistant Counsel, U.S. Customhouse, 40 S. Gay Street, Baltimore, MD 21202; Associate Counsel, U.S. Customs Service, 6 World Trade Center, New York, NY 10048.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with the Treasury Department Form No. 3079, Civilian Employee Claim For Loss or Damage to Personal Property, which is completed and filed with the Customs Service by the claimant. Additional information contained in these files may be separately provided by the claimant or by the claimant's supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .151

SYSTEM NAME:

Motor Vehicle Accident Reports—Treasury/Customs.

SYSTEM LOCATION:

National Finance Center, U.S. Customs Service, 6026 Lakeside Blvd., Indianapolis, IN 46278.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Customs employees involved in automobile accident while on official duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, home address, telephone number, age, title, date of accident, place of accident, make, year, license number of vehicles, description of accident, information on driver of other vehicle.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Administrative Circular No. 131, dated August 19, 1965, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in an alphabetical file folder which is filed in an unlocked drawer in a metal file cabinet.

RETRIEVABILITY:

Each case file is in a file folder designated by the name of the Customs employee involved in the automobile accident.

SAFEGUARDS:

The metal file cabinet described above is maintained within the area assigned to the Regional Safety Coordinator within the office of the Customs Management Center. Access to the building during non-working hours is controlled.

RETENTION AND DISPOSAL:

Files are maintained at location for two years and then transferred to the Federal Records Center where they are retained for four years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Finance Center, U.S. Customs Service, 6026 Lakeside Blvd., Indianapolis, IN 46278.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in these files originates from the employee involved in the automobile accidents, police report and report of investigation conducted by the Office of Internal Affairs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .156

SYSTEM NAME:

Narcotic Violator File—Treasury/Customs.

SYSTEM LOCATION:

Fines, Penalties and Forfeitures Office, East Great Lakes Customs Management Center, 4455 Genessee St., Buffalo, NY 14225.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been found in possession of any controlled substance within the Buffalo District.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetized cross reference of violators' names and the associated case numbers assigned to these individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Open card file (3 x 5) is kept in metal flip file.

RETRIEVABILITY:

Narcotic violator files are cross-referenced by a 3 x 5 alphabetized card which contains both name and case number.

SAFEGUARDS:

Open card file kept in the Fines, Penalties and Forfeitures Office which is locked after working hours. During working hours, a staff person is always in the office. The building is under 24 hour guard.

RETENTION AND DISPOSAL:

File system has a purge date of two years after which cross reference cards are destroyed and case numbered file is no longer accessible by name of the individual.

SYSTEM MANAGER(S) AND ADDRESS:

Director, East Great Lakes Customs Management Center, 4455 Genessee St., Buffalo, NY 14225.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in these files is obtained from Search/Arrest and Seizure Reports transmitted to the Fines, Penalties and Forfeitures Office by ports and stations within the area.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .159

SYSTEM NAME:

Notification of Personnel Management Division when an employee is placed under investigation by the Office of Internal Affairs—Treasury/Customs.

SYSTEM LOCATION:

Human Resources Division, East Texas Customs Management Center, 2323 S. Shepherd St., Suite 1200, Houston, TX 77019.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customs employees who are suspected of misconduct.

CATEGORIES OF RECORDS IN THE SYSTEM:

A written or telephonic notification made by the Office of Internal Affairs that an investigation has been opened on an individual employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Notifications provided by the Office of Internal Affairs are maintained in a file folder and stored in a metal security cabinet equipped with a lock.

RETRIEVABILITY:

The file contains the name of the employee; therefore, Retrievability is by the individual's name.

SAFEGUARDS:

A metal container, described above, is maintained within the area assigned to Personnel Management. During non-working hours the room in which the metal container is kept is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

The name file is retained until notification has been received that the investigation has been canceled or on receipt of a report of investigation from the Office of Internal Affairs.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, East Texas Customs Management Center, 2323 S. Shepherd St., Suite 1200, Houston, TX 77019.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The only source of notification that an employee has been placed under investigation is the Regional Director, Internal Affairs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4), (G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). (See 31 CFR 1.36.)

Treasury/CS .162

SYSTEM NAME:

Organization (Customs) and Automated Position Management System (COAPMS)—Treasury/Customs.

SYSTEM LOCATION:

Chief Financial Officer, U.S. Customs Service, Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Customs employees by organizational entity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Position control number and other personnel data such as social security number, date of birth, name, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape.

RETRIEVABILITY:

Records are indexed by organizational segment, code, position control number, and name.

SAFEGUARDS:

Limited access.

RETENTION AND DISPOSAL:

Records are maintained on magnetic tape until employee separation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, U.S. Customs Service, Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

COAPMS is composed of four basic inputs—CF–105—Position Change Form—presently prepared by the Headquarters Personnel Branch and operating offices: Post of Duty Codes-established by the Accounting Division; Ceilings-established by the Budget Division; and CF–112–a Request for PPBS Code and Standard Abbreviation of Position. In addition to these four sources, the IRS payroll tape has many inputs—1150, 1125, 50, 52, union dues, etc., and Accounting tape K from IRS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .163

SYSTEM NAME:

Outside Employment Requests—Treasury/Customs.

SYSTEM LOCATION:

Located in Headquarters and Customs Management Centers and/or appropriate Port or post of duty office of employee making request.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees engaged in outside employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Outside employment request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

CF–3031 kept in manila folder.

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Locked file cabinet or limited access offices.

RETENTION AND DISPOSAL:

Until disengagement from outside employment or employee separation.

SYSTEM MANAGER(S) AND ADDRESS:

Appropriate managerial official in each headquarters, Customs Management Centers, SAC, port of employee.

NOTIFICATION PROCEDURE:

Write to System Manager, provide your name and social security number.

RECORD ACCESS PROCEDURES:

Write to System Manager.

CONTESTING RECORD PROCEDURES:

Write to System Manager, specify changes you are requesting and provide your name and social security number.

RECORD SOURCE CATEGORIES:

Employee submission of Form CF–3031.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .165

SYSTEM NAME:

Overtime Earnings—Treasury/Customs.

SYSTEM LOCATION:

Passenger Processing Port of San Francisco, San Francisco International Airport, P.O. Box 251867, San Francisco, CA 94125–1867; Los Angeles International Airport, 1099 S. LaCienega Blvd., Los Angeles, CA 90045; Port Director, 300 S. Ferry Street, Terminal Island, San Pedro, CA 90731; Port Director, 9 North Grande Ave., Nogales, AZ 85620; Customs Management Center Director, 4740 N. Oracle Rd., Suite 310, Tucson, AZ 85705; San Diego Barge Office; Offices of the Port Directors: San Ysidro, CA; Andrade, CA; Calexico, CA; Douglas, AZ; Las Vegas, NV; Lochiel, AZ; Lukeville, AZ; Naco, AZ; Oxnard, CA; Phoenix, AZ; San Luis Obispo, CA; San Luis, AZ; Sasabe, AZ; Tecate, CA; Tucson, AZ; Pembina, ND; Detroit, MI; Minneapolis, MN; Cleveland, OH; St. Louis, MO; Duluth, MN; Milwaukee, WI; Office of the Supervisory Warehouse Officer, U.S. Customhouse, Room 103, 2nd and Chestnut Streets, Philadelphia, PA 19106; Port Director, U.S. Customs Service, 40 S. Gay St., Baltimore, MD 21202–2004; Port Director, U.S. Customs Service, 111 West Huron Street, Buffalo, NY 14202; Port Director, U.S. Customs Service, 127 North Water Street, Ogdenburg, NY 13669; Port Director, U.S. Customs Service, 312 Fore Street, Box 4688, Portland, ME 04112; Port Director, U.S. Customs Service, 49 Pavilion Avenue, Providence, RI 02905; Port Director, U.S. Customs Service, PO Box 1490, St. Albans, VT 05478; Port Director, U.S. Customs Service, 10 Causeway Street, Boston, MA 02222; U.S. Customs Service, Honolulu International Airport, Honolulu, HI 96816, and maintained at each individual port within the south Texas Customs Management Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inspection and Control employees participating in overtime assignments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and the total current monetary earnings computed to the nearest dollar.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored on government internal control personal computer data disks and the information on earnings is updated on a daily basis.

RETRIEVABILITY:

The individual's name appears alphabetically.

SAFEGUARDS:

The room where the records are kept is locked at other than regular working hours. Passwords are required for access to records.

RETENTION AND DISPOSAL:

The information on each employee constantly changes and is maintained as long as the employee is working in the overtime system.

SYSTEM MANAGER(S) AND ADDRESSES:

Supervisory Customs Inspector, Station 1, U.S. Customs Service, 555 Battery Street, Room 111, San Francisco, CA 94125; Director, (Airport), Los Angeles International Airport, 1109 S. LaCienega Blvd., Los Angeles, CA 90045; Port Director, 300 S. Ferry Street, Terminal Island, San Pedro, CA 90731; Port Director, 9 North Grande Ave., Nogales, AZ 85620; Customs Management Center Director, 4740 N. Oracle Rd., Suite 310, Tucson, AZ 85705; San Diego Barge Office; Port Directors: San Ysidro, CA; Andrade, CA; Calexico, CA; Douglas, AZ; Las Vegas, NV; Lochiel, AZ; Lukeville, AZ; Naco, AZ; Oxnard, CA; Phoenix, AZ; San Luis Obispo, CA; San Luis, AZ; Sasabe, AZ; Tecate, CA; Tucson, AZ; Directors: Chicago, IL; Pembina, ND; Detroit, MI; Minneapolis, MN; Cleveland, OH; St. Louis, MO; Duluth, MN; Milwaukee, WI. Port Director of Customs, 77 SE 5th Street, Miami, FL 33131; Port Director of Customs, U.S. Customhouse, 2nd and Chestnut Streets, Philadelphia, PA 19106; Port Director of Customs, U.S. Customs Service. Honolulu, HI 96819.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORDS ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORDS PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information is obtained from actual overtime earnings made by each employee in the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .170

SYSTEM NAME:

Overtime Reports—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Service, Office of Investigations, South Central Region, RDI, 423 Canal Street, New Orleans, LA 70130; SAC, 423 Canal Street, New Orleans, LA 70130; RA, 1719 West End Building, Room 303, Nashville, TN 37203, and each port within the South Texas Customs Management Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All special agents in region certified to receive premium compensation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Numbers of hours worked by special agents over and above the normal 40-hour week.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These forms are maintained in file folders in a locked cabinet.

RETRIEVABILITY:

Files are kept in alphabetical order.

SAFEGUARDS:

During non-working hours the rooms in which the above described containers are located are locked.

RETENTION AND DISPOSAL:

These files are destroyed three years after special agent leaves agency or office.

SYSTEM MANAGER(S) AND ADDRESS:

Resident Agent, U.S. Customs Service, 6125 Interstate, Bay 11, Shreveport, LA 71109; Resident Agent in Charge, c/o Drug Enforcement Agency, Little Rock, AR 72211; Resident Agent, Hoover Building, Ste. 216B, 8312 Florida Boulevard, Baton Rouge, LA 70806; Resident Agent, 1 Government Plaza, Rm. 423, 2909 13th Street, Gulfport, MS 39501; Resident Agent in Charge, U.S. Customs Service, U.S. Federal Building, Ste. 230, Jackson, MS 39269; Resident Agent in Charge, Station 1, Box 10182, Houma, LA 70363–5990; Resident Agent in Charge, 101 E. Cypress Street, Ste. 106, Lafayette, LA 70502; Resident Agent, 811 Bayou Pines Blvd., Lake Charles, LA 70601; Resident Agent, 811 Bayou Pines Blvd., Lake Charles, LA 70601; New Orleans Aviation Branch, P.O. Box 980, Belle Chasse, LA 70037.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with, and consists solely of information supplied by employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .171

SYSTEM NAME:

Pacific Basin Reporting Network.

SYSTEM LOCATION:

Office of the Special Agent in Charge, U.S. Customs Service, 300 Ala Moana Boulevard, Room 7238, Honolulu, Hawaii 96813.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on masters, operators, pilots, crew members and passengers of vessels and aircraft traveling in or through the Pacific Basin. The Pacific Basin area includes the countries of northeast Asia, southeast Asia, the Pacific islands (both independent and non-independent), Australia, New Zealand, United States, Canada and Mexico.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records included information pertaining to individuals, aircraft and vessels reporting; vessel/aircraft name and registration numbers; description of vessels and aircraft; departure and arrival information; and destination locations. Information about individuals includes name, date of birth, place of birth, physical description, nationality, passport number, address and occupation.

AUTHORITY FOR MAINTENANCE OF THIS SYSTEM:

19 U.S.C. 1433, 1459, and 162; 49 U.S.C. App. 1590.

PURPOSE(S):

The purpose of the Pacific Basin Reporting Network is to implement a law enforcement data base containing records with identifying and other relevant information on vessels, aircraft and individuals traveling in or through the Pacific basin area, and where appropriate to disclose this information to other domestic and foreign agencies which have an interest in this information.

ROUTINE USES OF RECORDS MAINTAINED IN THIS SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal agencies and to state, local/territorial or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation or order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil

discovery, litigation, or settlement negotiations, or in response to a subpoena, where relevant or potentially relevant to the proceedings, or in connections with criminal law proceedings; (3) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; and (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on tape, magnetic disc and hard copy.

RETRIEVABITY:

By name (individual, master or pilot); unique identifiers (date of birth, passport number, aircraft/vessel registration number); date, place of destination; port of registry; or vessel description.

SAFEGUARDS:

All officials accessing to the system of records have had a full field background check as required and access data on a need-to-know basis only. Procedural and physical safeguards are utilized such as accountability, receipt records and specialized communications security. The data system has an internal mechanism designed to restrict access to authorized officials. Hard-copy records are held in steel cabinets and are maintained according to the requirements of the U.S. Customs Reports Manual and Customs Security Manual. Access is limited by visual controls and/or lock system. During normal working hours, files are attended by responsible officials; they are locked during non-working hours and the building is patrolled by uniformed security guards.

RETENTION AND DISPOSAL:

The records are periodically updated to reflect changes and maintained as long as needed, then shredded and destroyed.

SYSTEM MANAGER AND ADDRESS:

Office of Special Agent in Charge, U.S. Customs Service, 300 Ala Moana Boulevard, Room 7238, Honolulu, Hawaii 96813.

NOTIFICATION PROCEDURE:

Pursuant to 5 U.S.C. 552a(j)(2), and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORDS SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5) and (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). (See 31 CFR 1.36.)

Treasury/CS .186

SYSTEM NAME:

Personnel Search—Treasury/Customs.

SYSTEM LOCATION:

Office of Investigations, 423 Canal Street, New Orleans, LA 70130; Special Agent in Charge, 951 Government Street, Suite 700, Mobile, AL 36604. U.S. Customs Service, Honolulu International Airport, Honolulu, HI 96810; Ports of Entry, Nogales, AZ.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals indicating unlawful or suspicious activity that might result in a Customs violation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, phone number, place of business, physical description, associates, vessel, automobile, or aircraft identified with make, year, license number and registration of vehicles, area of activity, method of operation and other relevant and necessary information on individuals suspected of activity contrary to law.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in standard Customs file folders in locked metal cabinets.

RETRIEVABILITY:

Records are indexed by identifying file number and manually retrieved.

SAFEGUARDS:

File maintained in locked metal file cabinet, the keys of which are controlled by the custodian of the files. Those departmental officials who may occasionally be granted access, consistent with their positions, have been cleared by a full background investigation and granted appropriate security clearance for critical sensitive positions. During non-working hours, the room housing the metal cabinets is locked.

RETENTION AND DISPOSAL:

Negative Search Reports are destroyed after a five year period. Method of disposal is shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Investigations, U.S. Customs Service,423 Canal Street, New Orleans, LA 70130; Port Directors, as applicable, in Mid-America Customs Management Center, Chicago, IL; Port Director of Customs, U.S. Customs Service, Honolulu, HI 96819; Port Directors at the various ports of entry in the Nogales, AZ.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system originates with, and consists solely of, information supplied by the individual being searched and the patrol officer doing the search.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). (See 31 CFR 1.36.)

Treasury/CS .190

SYSTEM NAME:

Personnel Case File—Treasury/Customs

SYSTEM LOCATION:

Office of the Chief Counsel, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229; Office of the Associate Chief Counsel, U.S. Customs Service, Mid-America, 610 S. Canal St., Chicago, IL 60607; Associate Chief Counsel of Customs, 6 World Trade Center, New York, NY, 10048; Office of Assistant Chief Counsel, 555 Battery St., San Francisco, CA 94111; Associate Chief Counsel, 2323 S. Shepherd St., Houston, TX 77019.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Customs Service employees against whom disciplinary action has been proposed or taken, who have filed grievances, and who have filed complaints under the Equal Opportunity (EO) Program, in most cases where administrative proceedings have been instituted.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigation into alleged employee misconduct, internal Customs Service memoranda recommending disciplinary action, documents relating to the institution or conduct of disciplinary proceedings, documents relating to the filing and administrative disposition of formal and informal grievances and documents relating to the filing and administrative disposition of EO complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code; 5 U.S.C. 301; Title 5 Code of Federal Regulations; Treasury Departmental Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to the Office of Personnel Management (OPM) in connection with administrative hearings and to the Department of Justice in connection with court proceedings resulting from appeals from decisions rendered at the administrative level; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted alphabetically in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file id identified in a manual alphabetical card file by name of the person, and each case file is similarly identified in alphabetical order within the metal container.

SAFEGUARDS:

The metal container described above is maintained within the Customs Service building. During non-working hours, the room in which the metal container is located is locked. Access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

These files are retained until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229; Associate Chief Counsel of Customs, U.S. Customs Service, Mid-America, 610 S. Canal St., Chicago, IL 60607; Associate Chief Counsel of Customs, New York, NY, 10048; Assistant Chief Counsel, 555 Battery St., San Francisco, CA 94111.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORDS SOURCE CATEGORIES:

The information contained in these files results from investigation into alleged misconduct on the part of Customs Service employees, recommendations from appropriate Customs Service field personnel that disciplinary proceedings be instituted against Customs Service employees, the filing of EO complaints by Customs Service employees, the statements of Customs Service employees including the employees who are directly affected by the administrative proceedings, and statements or other information provided by private non-governmental individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .193

SYSTEM NAME:

Operating Personnel Folder Files—Treasury/Customs.

SYSTEM LOCATION:

Files are located in Headquarters, Customs Management Centers, SACs, Area Ports and other post of duty offices throughout the Customs Service depending upon post of duty of employee. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customs employees, present.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to the appropriate Personnel offices, records are also maintained by district, port, or other post of duty management on personnel matters such as, but not limited to name, Social Security number, awards, letters of appreciation, promotions, step increases, memoranda, forms and materials related to hiring, address, pay, transfer and separation, service time, salary, phone, education, society memberships, publications, skills, chronological work history, position descriptions, reports of discussions held with employee regarding performance, copies of letters written to employee concerning performance, overtime hours, seniority status, leave, overtime earnings, productivity, locator card information, and related employment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used: (1) To disclose to the public for employment and salary verification upon request. (2) To disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation. (3) To disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit. (4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings. (5) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114. (6) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, and/or on index cards, ledgers, and computer disc.

RETRIEVABILITY:

Records are indexed by name, or Social Security number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in secured rooms with limited access.

RETENTION AND DISPOSAL:

When the employee leaves the Customs Service through transfer or other separation, the file will immediately be forwarded to the office maintaining the Official Personnel Folder. There it will be screened to insure that it contains no documents that should be permanently filed in the Official Personnel Folder other than exact duplicates of papers already so filed. The file and its contents will then be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Program Management Officers at Headquarters, local Management Program Officers (MPOs) in Customs Management Centers and SAC offices, or managerial official in appropriate posts of duty of employee. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from employee, from personnel actions as noted in official personnel folders, and from supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .196

SYSTEM NAME:

Preclearance Costs—Treasury/Customs.

SYSTEM LOCATION:

Customs Management Center, 10 Causeway Street, Boston, MA 02222.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Customs Inspectors and Foreign Service employees of North Central Region, who are stationed at Toronto and Montreal, Canada.

CATEGORIES OF RECORDS IN THE SYSTEM:

Salaries, living allowances and benefits paid to employees who are stationed at Toronto and Montreal, Canada.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in a file folder within two metal file cabinets in the work area of the Budget Section.

RETRIEVABILITY:

The file is identified as the "Pre-clearance Record" which contains the names of all employees listed in alphabetical order with corresponding costs associated with each employee.

SAFEGUARDS:

The file is located within an office that is locked during non-working hours. The building is guarded by uniformed security police and only authorized persons are permitted entry to the building.

RETENTION AND DISPOSAL:

The files are kept for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Customs Management Center, 10 Causeway Street, Boston, MA 02222.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in the system is obtained from the Bi-weekly Comprehensive Payroll Listing, Treasury Form 2979, supplied by the Payroll Data Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .197

SYSTEM NAME:

Private Aircraft/Vessel Inspection Reporting System—Treasury/Customs.

SYSTEM LOCATION:

Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Names of pilots and vessel masters arriving in the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and personal identifiers of pilots, vessel masters, and owners of vessels with appropriate registration and/or documentation numbers and characteristics, and arrival dates at port of entry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic disc and tape storage; microfiche.

RETRIEVABILITY:

By individual name, private aircraft/vessel registration number; vessel name.

SAFEGUARDS:

All inquiries are made by officers with full field background investigation on a "need-to-know" basis only. Procedural and physical safeguards are utilized such as accountability and receipt records, guards patrolling the area, restricted access and alarm protection systems, special communications security, etc.

RETENTION AND DISPOSAL:

Customs Form 178 (Private Aircraft Inspection Report) is destroyed after entry into data system.

SYSTEM MANAGER(S) AND ADDRESS:

Process Owner, Passenger Operations Division, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Proposed Customs Form 178 (Private Aircraft Inspection Report) which will be prepared by Customs officers, unnumbered forms prepared by vessel masters or owners who report their arrival to a United States port of entry, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3). (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). (See 31 CFR 1.36.)

Treasury/CS .201

SYSTEM NAME:

Property File-Non-Expendable-Treasury/Customs.

SYSTEM LOCATION:

Offices of each Port within the Mid-America Customs Management Center (see Customs appendix A.); Office of Logistics Management, U.S. Customs Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229; Office of the Director, Customs Management Center, San Diego, CA; Offices of the Port Directors: San Ysidro, CA; Tecate, CA; Calexico, CA; Andrade, CA; San Diego Barge Office, and the Offices of the Customs Patrol Division, San Diego, CA; San Ysidro, CA; Calexico, CA; Tecate, CA; Port Directors Office, Entry Control Section (see Customs appendix A.); United States Customs Service, PO Box 1641, Honolulu, HI 96806; Federal Building, Room 198, 511 NW. Broadway, Portland, OR 97209; Management Program Specialist, U.S. Customs Service, 555 Battery Street, Room 329, San Francisco, CA 94126.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees issued non-expendable property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Receipts for badges, cap insignias, bonded warehouse keys, identification cards, Government driver's licenses, firearms and other non-expendable property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Locked file cabinet.

RETRIEVABILITY:

Folders identified by individual's name.

SAFEGUARDS:

During non-working hours the room/building in which the file is located is locked. Access limited to authorized Customs personnel.

RETENTION AND DISPOSAL:

Until employee separates/transfers. Transfer to National Personnel Records Center (NPRC), (CPR), St. Louis, MO, thirty days after employee is separated.

SYSTEM MANAGER(S) AND ADDRESS:

Port Directors in Mid-America Region; Director, Office of Logistics Management, U.S. Customs Service, Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC, 20229; Customs Management Center Directors, Port Directors, and Division Directors within the San Diego Customs District (see Customs appendix A.); Chief, Headquarters Support Branch, Logistics Management Division, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229; Local Property Officer, Room 228, Federal Building, Entry Control Section, 335 Merchant Street, Honolulu, HI 96813; Director, Federal Building, Room 198, 511 NW. Broadway, Portland, OR 97209; Administrative Officer, U.S. Customs Service, 555 Battery Street, Room 327, San Francisco, CA 94111.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system consists of receipts of employees receiving non-expendable property.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .206

SYSTEM NAME:

Regulatory Audits of Customhouse Brokers—Treasury/Customs.

SYSTEM LOCATION:

Office of Regulatory Audit, United States Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and at each of the field offices of Regulatory Audit (see Customs appendix A for addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons licensed to do business pursuant to 19 U.S.C. 1641.

CATEGORIES OF RECORDS IN THE SYSTEM:

Audit reports of customs broker accounts and records; correspondence regarding such reports; Congressional inquiries concerning customs brokers and disposition made of such inquiries; names of officers of customs broker firms, license numbers and dates issued and district covered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

19 U.S.C. 1641; 19 CFR part 111. 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each custom broker permanent file is inserted in alphabetical order by name of the firm in an unlocked drawer within a metal file cabinet located in one or more regulatory audit offices. Each customs broker work paper file is similarly stored, but maintained in numerical order by audit report number.

RETRIEVABILITY:

Each broker permanent file is readily retrievable when the name is given, while the workpaper file is retrievable after obtaining the audit report file number from within the permanent file.

SAFEGUARDS:

The files described above are maintained within the respective regulatory audit offices. During non-working hours, the offices in which the files are located are locked.

RETENTION AND DISPOSAL:

Customhouse broker files are generally retained in each office at least three years, after which they are placed in General Service Administration long-term archival storage.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Regulatory Audit, United States Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and the Regional Directors, Regulatory Audit at each of the regional offices (see Customs appendix A for addresses).

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates in connection with customs broker audits conducted by the regional regulatory audit staffs. The audits may be supplemented with information furnished by the Office of the Regional Counsel, Office of Enforcement, and the Office of Regulations and Rulings. These audits include examinations of brokers business records, including data maintained in support of client customs business.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .207

SYSTEM NAME:

Reimbursable Assignment/Workticket System-Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customs Service employees who perform reimbursable services and parties in interest for whom reimbursable services are performed.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security number or importer of record number assigned by the Customs Service, listings of reimbursable overtime assignments of Customs employees, bills and refund checks issued to parties in interest, travel expenses incurred by Customs employees in connection with the reimbursable services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

19 U.S.C. 261, 267, and 1451; 19 CFR 24.16 and 24.17; 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in this system is contained in a computerized system utilizing magnetic tape storage techniques.

RETRIEVABILITY:

The information in this system is retrieved by the individual's Social Security number or by the individual's importer of record number.

SAFEGUARDS:

Procedural and physical safeguards are utilized such as accountability and receipt access, guards patrolling the area, restricted access and alarm systems.

RETENTION AND DISPOSAL:

The records in this system are retained in accordance with the requirements of the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Field Operations, U.S. Customs Service Headquarters, 1300 Pennsylvania Ave, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system originates with the receipt of a request for reimbursable services from the party in interest. In addition, information in this system is derived from Customs Form 5106 (Notification of Importer's Number/Application for Importer's Number) which is filed with the Customs Service by the importer, and from Customs Form 6082 (Work Ticket) which is filed by the Customs Inspector who performed the reimbursable services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .208

SYSTEM NAME:

Restoration of Forfeited Annual Leave Cases—Treasury/Customs.

SYSTEM LOCATION:

Located in U.S. Customs Service, National Finance Center, Indianapolis, Indiana, and Mission support Office of each Customs Management Center. (see Customs appendix A for addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the U.S. Customs Service who have applied for restoration of forfeited annual leave.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee applications for restoration of leave. Management decisions on employee applications for restoration of leave. Applicable regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in manila folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in locked files.

RETENTION AND DISPOSAL:

Records are retained in accordance with the requirements of the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Mission Support Officer in each Customs Management Center, and the Director, National Finance Center, Indianapolis, Indiana.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Evidential materials supporting employee applications for restoration of forfeited annual leave. Evidential materials supporting management decisions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .209

SYSTEM NAME:

Resumes of Professional Artists—Treasury/Customs.

SYSTEM LOCATION:

Area Director, New York Seaport Area, 6 World Trade Center, New York, NY 10048.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Professional Artists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Artist's name and professional art background.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Alphabetical listing.

SAFEGUARDS:

Filing cabinet, office locked at end of day.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with the requirements of the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Area Director New York Seaport Area, 6 World Trade Center, New York, NY 10048.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Resume information provided by artist.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .211

SYSTEM NAME:

Sanction List—Treasury/Customs.

SYSTEM LOCATION:

Director, U.S. Customs, National Finance Center, P.O. Box 68907, Indianapolis, Indiana 46228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are indebted to the United States Government for bills that are unpaid and past due.

CATEGORIES OF RECORDS IN THE SYSTEM:

Listing is issued weekly showing individual's name and address plus number and amount of unpaid and past due bills.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each sanction list is stored in a file drawer in an unlocked file cabinet.

RETRIEVABILITY:

Each sanction list is identified by month and year of issuance.

SAFEGUARDS:

The file cabinet described above is maintained within the area assigned in the Customs Office. During non-working hours the room and/or building in which the file cabinet is located is locked.

RETENTION AND DISPOSAL:

Retained in Customs Office for minimum of one year. Disposal in accordance with Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Customs, National Finance Center, P.O. Box 68907, Indianapolis, Indiana 46022.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this listing is secured from CF 6084 Bill Form issued to each individual and correspondence files maintained for individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .212

SYSTEM NAME:

Search/Arrest/Seizure Report—Treasury/Customs.

SYSTEM LOCATION:

Office of Investigations, Offices of the U.S. Customs Service. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have or may have violated a law of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, alias, date of birth, age, personal data, addresses, home and business telephone numbers, occupation, background information, associations, license number and registration number of vehicle, vessel and/or aircraft, mode of entry of individual or contraband, fingerprints, pictures, declaration forms, cash receipts, receipt for seized goods, all other forms pertinent to the case, such as Notice to Master, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statue, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency"s functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case is placed in a folder which is filed in numerical order according to the assigned case file number. These files are kept in a locked metal cabinet.

RETRIEVABILITY:

The above-mentioned case file numbers are cross-indexed by name to such numbers, and cards are filed alphabetically within a metal file box.

SAFEGUARDS:

The metal file cabinet and the metal file box are located within an office that is locked during non-working hours.

RETENTION AND DISPOSAL:

These cases are retained for a period of three years after which they are destroyed together with related index cards.

SYSTEM MANAGER(S) AND ADDRESS:

Special Agent in Charge. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/Customs .213

SYSTEM NAME:

Seized Asset and Case Tracking System (SEACATS).

SYSTEM LOCATION:

Office of Information and Technology, U.S. Customs Service, 1300 Pennsylvania Ave. NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Owners, claimants, and other interested parties to seized property; (2) those who have been administratively or criminally charged with violations of Customs laws and regulations, and other laws and regulations enforced by the Customs Service, U.S. Secret Service, Bureau of Alcohol, Tobacco and Firearms, and the Internal Revenue Service; (3) purchasers of forfeited property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes records containing information related to property that was forfeited or seized by the U.S. Customs Service, the U.S. Secret Service, the Bureau of Alcohol, Tobacco and Firearms, such as: (1) Individual and business names, (2) phone numbers, (3) identifying numbers, (4) dates, (5) types of violations, (6) parties entitled to legal notice, (7) parties who are legally liable, (8) case information pertaining to violation, (9) bond information, (10) entry documentation, (11) petitions and supplemental petitions, (12) reports of investigation concerning the fine, penalty or forfeiture, (13) information related to internal review and consideration of request for relief, (14) offer information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended. 19 U.S.C. 66, 1618, 1624; 19 CFR parts 171 and 172.

PURPOSE(S):

The purpose is to provide Customs and the Treasury Executive Office of Asset Forfeiture with a comprehensive system for tracking seized and forfeited property, penalties, and liquidated damages from case initiation to final resolution.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations, or in response to a subpoena, in connection with criminal law proceedings; (3) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relates to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media.

RETRIEVABILITY:

By identification codes, name, phone number, identifying number, and date and type of violation.

SAFEGUARDS:

Access to the computer area is controlled by a security pass arrangement and personnel not connected with the operation of the computer are prohibited from entering. At ports of processing, terminal rooms are under close supervision during working hours and locked after the close of business. Users gain access to the system by unique identification code and password. Access is on a need-to-know basis only. Passwords are changed frequently to enhance security.

RETENTION AND DISPOSAL:

Files are periodically updated to reflect changes and are disposed of in accordance with the requirements of the National Archives and Records Administration's record retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Information and Technology, U.S. Customs Service, 1300 Pennsylvania Ave. NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual. (See 5 U.S.C. 552a (e)(4)(G) and (f)(1).)

RECORD ACCESS PROCEDURES:

This system of records may not be accessed under the Privacy Act for the purpose of inspection.

CONTESTING RECORD PROCEDURES:

Since this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual and those records, if any, cannot be inspected, the system may not be accessed under the Privacy Act for the purpose of contesting the content of the record.

RECORD SOURCE CATEGORIES:

This system of records is exempt from the Privacy Act provision which requires that record source categories be reported. (See "Exemptions Claimed for the System," below.)

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4) (G), (H) and (I), (e)(5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). (See 31 CFR 1.36.)

Treasury/CS .214

SYSTEM NAME:

Seizure File—Treasury/Customs.

SYSTEM LOCATION:

Special Agent in Charge, Room 508, U.S. Customs Service, 6 World Trade Center, New York, NY 10048.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Ship masters, ship crew members, longshoremen, vessels, private aircraft, private vessels, individuals from whom seizures have been made, or upon whom Memoranda of Information Received and Reports of Investigation have been written.

CATEGORIES OF RECORDS IN THE SYSTEM:

Memoranda of Information Received and reports of Investigation which are reports from law enforcement agencies of suspects or arrests. Reports of Seizures by Customs, other information indicating violators or suspected violators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila files within metal file cabinets.

RETRIEVABILITY:

Alphabetical; for aircraft or car by number; by seizure number; by name of individual.

SAFEGUARDS:

Room has a 24-hour guard and is locked.

RETENTION AND DISPOSAL:

Seizure files are maintained for three years after final disposition. Memoranda of Information Received are maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Patrol Division, U.S. Customs Service, 6 World Trade Center, New York, NY 10048.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .215

SYSTEM NAME:

Seizure Report File—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Mail Facility, Room 416, 1675–7th Street, Oakland, CA 94615.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom prohibited merchandise is addressed.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, property description, estimated foreign value, duty, domestic value, circumstances of seizure, sender, section of law violated, delivery to San Francisco seizure clerk.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statue, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in this system is contained on Customs Form 6051 Custody Receipt for Retained or Seized Property and Customs Form 151–Search/Arrest/Seizure Report. These forms are placed within file folders which are located in a metal file cabinet.

RETRIEVABILITY:

Each Seizure Report and Custody Receipt (stapled together) are identified by the name of the person to which the seized items are addressed and the names are filed by seizure number by fiscal year.

SAFEGUARDS:

The file folders are placed within a metal cabinet which is located within an office that is locked during non-working hours. The building is guarded by uniformed security police and only authorized persons are permitted in the building.

RETENTION AND DISPOSAL:

Last three fiscal years records are kept in a file cabinet in the office.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Mail Branch. See location above.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system originates with and consists of information obtained from mail shipments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .224

SYSTEM NAME:

Suspect Persons Index-Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Officers located at the following addresses: 300 2nd Avenue, So., Great Falls, MT 59405; 555 Battery Street, San Francisco, CA 94111; 1000 2nd Ave., Suite 2100, Seattle, WA 98104.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons suspected of violation of Customs Laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and related file number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statue, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in folders and stored in metal file cabinet.

RETRIEVABILITY:

The office and building are locked during non-working hours.

SAFEGUARDS:

Alphabetical by use of cross index.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Port Directors of Customs. See location above.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .226

SYSTEM NAME:

Television System—Treasury/Customs.

SYSTEM LOCATION:

Office of Port Directors at ports of entry.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons involved in incidents related to a secondary search and subsequent disturbance while entering the United States from Mexico.

CATEGORIES OF RECORDS IN THE SYSTEM:

An audio-video cassette recording of persons being escorted into, as well as inside, the secondary offices of the Customs area of the Port of Entry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended, and the Customs Regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Audio-video cassette.

RETRIEVABILITY:

By subject's name, date, and time.

SAFEGUARDS:

Cassettes are under control of Port Director and released only to the courts when subpoenaed or when requested to be reviewed by subject and his attorney.

RETENTION AND DISPOSAL:

All cassettes with incidents are retained for six months. Those on which some action may be taken are retained for one year or close of the case. Cassettes are reusable. Therefore, erasure occurs when new recording takes place.

SYSTEM MANAGER(S) AND ADDRESS:

Port Directors offices.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

Audio-video recording of persons being escorted into the Customs area.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .227

SYSTEM NAME:

Temporary Importation Under Bond (TIB) Defaulter Control System—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Service, Office of Investigations, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been denied T.I.B. privileges because of failure to pay outstanding liquidated damages.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, personal identifying numbers and characteristics, address, company and case description, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Magnetic disc and tape storage; (2) Hard Copy; (3) Microfiche files.

RETRIEVABILITY:

Indexing is by violator name.

SAFEGUARDS:

All inquiries are made by officers with full field background investigations on a "need to know" basis only. Procedural and physical safeguards are utilized such as accountability and receipt records, guards patrolling the area, restricted access and alarm protection systems, special communications security, etc.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with the requirements of the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Investigations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

Customs officers completing Customs Form 164 (TECS–TIB Defaulter Control).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .232

SYSTEM NAME:

Tort Claims Act File—Treasury/Customs.

SYSTEM LOCATION:

Office of the Associate Chief Counsel, U. S. Customs Service, One World Trade Center, Suite 740, Long Beach, CA 90831; Associate Chief Counsel of Customs, 6 World Trade Center, New York, NY 10048; Office of the Associate Chief Counsel, U.S. Customs Service (Chicago), 610 South Canal St., Chicago, IL 60607; Office of Associate Chief Counsel (Houston), 2323 South Shepherd Drive., Houston, TX 77019; Office of the Chief Counsel, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW, Washington, DC 20229; Office of Assistant Chief Counsel, 555 Battery Street, San Francisco, CA 94126; and Office of Assistant Chief Counsel, 1000 Second Avenue, Suite 2200, Seattle, WA 98104.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Private persons who have filed or may file claims under the Federal Tort Claims Act for property damage or personal injury allegedly caused by a wrongful or negligent act or omission on the part of a Customs Service employee while acting within the scope of his employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of Investigation regarding accidents involving Customs employees, documents relating to the administrative handling of the claims filed thereon, and documents submitted by the claimant in support of the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 2672, *et seq;* 28 CFR 14.1, *et seq;* 31 CFR 3.1, *et seq;* Treasury Department Administrative Circular No. 131, dated August 19, 1965.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in a numerical file folder which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file is identified in the numerical file folder within the metal container by the name of the person who has filed or may file a claim.

SAFEGUARDS:

During non-working hours the room in which the metal container is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

Tort claim files are retained until there is no longer any space available for them within the metal container, at which time the oldest closed files are transferred to the Federal Records Centers.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel, U. S. Customs Service, One World Trade Center, Suite 741, Long Beach, CA 90832; Associate Chief Counsel, U.S. Customs Service, 6 World Trade Center, New York, NY 10048; Associate Chief Counsel of Customs, 610 South Canal St., Chicago, IL 60607; Associate Chief Counsel, 2323 South Shepherd Drive., Suite 1246, Houston, TX 77019; Chief Counsel, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW, Washington, DC 20229; Office of Assistant Chief Counsel, 555 Battery Street, San Francisco, CA 94126; and Office of Assistant Chief Counsel, 1000 Second Ave., Suite 2200, Seattle, WA 98104–1049.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with a Standard Form 95 (Claim for Damage or Injury) which is completed and filed with the Customs Service by the claimant. Using these forms as a basis, investigations are conducted by authorized Customs Service investigative personnel in order to determine the facts surrounding the claims. During these investigations information may be elicited from Customs Service employees, private persons, or any other parties who may have information regarding the facts surrounding the claims. When a claim is not filed, the information is limited to the investigative reports of the property damage or personal injury.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .234

SYSTEM NAME:

Tort Claims Act File—Treasury/Customs.

SYSTEM LOCATION:

Offices of the Director, Customs Management Center, Mid-America, Chicago, IL, Ports, and South Texas Customs Management Center. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals presenting claims of damage to personal property resulting from Customs activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Written damage claims supported by estimates, bills, claim forms and internal Customs Service memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 CFR part 3; 5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used: to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Filed in cabinets in the Port Directors offices.

RETRIEVABILITY:

Folders filed in alphabetical sequence.

SAFEGUARDS:

File cabinets are located within the area assigned in the Customs office. During non-working hours the room in which the cabinets are located is locked.

RETENTION AND DISPOSAL:

Retained in Port Directors offices for three years then transferred to the Federal Records Centers for seven years and three months prior to destruction.

SYSTEM MANAGER(S) AND ADDRESS:

Port Director as appropriate in the Mid-America Customs Management Center, Chicago, IL. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

The information in this system originates with a written claim submitted by the claimant, as well as information supplied on Standard Form 95 and internal Customs memoranda.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .238

SYSTEM NAME:

Training and Career Individual Development Plans—Treasury/Customs.

SYSTEM LOCATION:

Located at the Mission Support Office at each Customs Management Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All U.S. Customs employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are maintained on training or other development activities completed and/or planned for individual employees, whether for programs such as Executive Development or Upward Mobility, or other special emphasis development programs. Records also include such things as, but not limited to skills, abilities, education, experience, career plans and goals, and other related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are located in file folders, and/or official personnel folder, and in electronic media.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in locked file or office.

RETENTION AND DISPOSAL:

Records are retained until separation or until employee is no longer part of a special emphasis program.

SYSTEM MANAGER(S) AND ADDRESS:

Mission Support Officer at each Customs Management Center.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

Information is obtained from the employee and supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .239

SYSTEM NAME:

Training Records—Treasury/Customs.

SYSTEM LOCATION:

Scheduling Office, U.S. Customs Service Academy, FLETC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customs employees who have completed training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Standard Form 182, Request, Authorization, Agreement and Certification of training. Selected information also recorded in individuals permit record, and a copy of the form is filed in the individual's official personnel folder.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on file cards, on training forms, or on discs.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in a locked file or room, or with limited access.

RETENTION AND DISPOSAL:

Records are maintained for up to three years after employee separates from the Service.

SYSTEM MANAGER(S) AND ADDRESS:

National Director of Training, U. S. Customs SVC Academy, FLETC

NOTIFICATION PROCEDURE:

U. S. Customs Service Academy, Building 70—FLETC, Glynco, GA 31524

RECORD ACCESS PROCEDURES:

U. S. Customs Service Academy, Building 70—FLETC, Glynco, GA 31524

CONTESTING RECORD PROCEDURES:

U. S. Customs Service, Director, Office of Human Resources, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

RECORD SOURCE CATEGORIES:

Information for this file is obtained from supervisors, managers, instructors, educational institutions, and/or training facilities such as the Office of Personnel Management, Department of the Treasury, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .244

SYSTEM NAME:

Treasury Enforcement Communications System (TECS)—Treasury/Customs.

SYSTEM LOCATION:

Office of Investigations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Violators or suspected violators of U.S. Customs or related laws (some of whom have been apprehended by Customs officers); (2) Individuals who are suspected of, or who have been arrested for, thefts from international commerce; (3) Convicted violators of U.S. Customs and/or drug laws in the United States and foreign countries; (4) Fugitives with outstanding warrants—Federal or state; (5) Victims of U.S. Customs law violations; (6) Owners, operators and/or passengers of vehicles, vessels or aircraft traveling across U.S. borders; (7) Individuals participating in financial transactions reported under the Bank Secrecy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Every possible type of information from a variety of Federal, state and local sources, which contributes to effective law enforcement may be maintained in this system of records. Records include but are not limited to records pertaining to known violators, wanted persons, lookouts (temporary and permanent), reference information, regulatory and compliance data. Information about individuals includes but is not limited to name, alias, date of birth, address, physical description, various identification numbers (i.e., seizure number), details and circumstances of a search, arrest, or seizure, case information such as merchandise and values, methods of theft, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (6) provide passenger archive information and other TECS data relevant to the National Center for Missing and Exploited Children (NCMEC) investigation through Department of the Treasury law enforcement officers to personnel of the NCMEC to assist in investigations of missing or exploited children.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic disc and tape, laser optical disks, microfiche, and hard copy.

RETRIEVABILITY:

By name; unique identifiers, address, or in association with an enforcement report or other system document.

SAFEGUARDS:

(1) All officers making inquiries have had a full field background investigation and are given information on a "need-to-know" basis only. (2) Procedural and physical safeguards are utilized such as accountability and receipt records, guards patrolling the area, restricted access and alarm protection systems, special communications security, etc.

RETENTION AND DISPOSAL:

Review is accomplished by Customs officers each time a record is retrieved and on periodic basis to see if it should be retained or modified. Since both temporary and permanent records are maintained, period of retention will vary with type of record entered. The records are disposed of by erasure of magnetic tape or disc, and by shredding and/or burning of hard copy documents.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Investigations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual. (See 5 U.S.C. 552a (e)(4)(G) and (f)(1).)

RECORD ACCESS PROCEDURES:

This system of records may not be accessed under the Privacy Act for the purpose of inspection.

CONTESTING RECORD PROCEDURES:

Since this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual and those records, if any, cannot be inspected, the system may not be accessed under the Privacy Act for the purpose of contesting the content of the record.

RECORD SOURCE CATEGORIES:

This system contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). (See 31 CFR 1.36.)

Treasury/CS .249

SYSTEM NAME:

Uniform Allowances—Unit Record—Treasury/Customs.

SYSTEM LOCATION:

Financial Management Office, 99 SE First Street, Miami, FL 33131; Management Services Branch, Administration Division, Port Director,

San Juan, PR 00903; Financial Management Division, U.S. Customs Service, 10 Causeway St., Room 801, Boston, MA 02222.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Customs Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name—Record of Uniform Allowance Payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in an unlocked drawer within a metal file cabinet.

RETRIEVABILITY:

Alphabet by name. Appropriation Accounting Document Number.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Financial Management Division within the Customs Service Building. During non-working hours the room in which the metal container is located is locked and access to the building is controlled by uniformed guards.

RETENTION AND DISPOSAL:

These files are retained as prescribed by GAO Regulations or until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Centers.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Financial Management, 99 SE First Street, Miami, FL 33131; Port Director, U.S. Customs Service, Room 203, Old San Juan, PR 00903; Director, Financial Management Division, U.S. Customs Service, 10 Causeway St., Room 801, Boston, MA 02222.

NOTIFICATION PROCEDURE:

See Customs Appendix A.

RECORD ACCESS PROCEDURES:

See Customs Appendix A.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

From memoranda received from Ports. Data transcribed from Payment Vouchers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .251

SYSTEM NAME:

Unscheduled Overtime Report (Customs Form 31)—Treasury/Customs.

SYSTEM LOCATION:

Director, Office of Operations, 6 World Trade Center, Room 508, New York, NY 10048.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Special Agents assigned to the office of Regional Director of Investigations authorized to receive unscheduled overtime remuneration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customs Form 31 enumerates the nature of overtime performed, the number of hours and the date on which the overtime was performed and the case number of investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in this system is contained on CF 31, the forms are contained within a file folder and are placed in a metal file cabinet.

RETRIEVABILITY:

By name.

SAFEGUARDS:

The file cabinet is maintained within the area assigned to the Director of Investigations, New York, within the Customhouse. During non-working hours the complex in which the file is located is locked and access to the building is controlled at all times by uniform guards.

RETENTION AND DISPOSAL:

The forms are destroyed after three (3) years.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Director of Investigations. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system originates from the Special Agent who performs the unscheduled overtime.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .252

SYSTEM NAME:

Valuables Shipped Under the Government Losses in Shipment Act—Treasury/Customs.

SYSTEM LOCATION:

Director, Customs Management Center, 610 S. Canal Street, Chicago, IL 60607.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customs employees collecting and transmitting funds to cashier for deposit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee, collection document serial numbers, amount of collection.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 300.30, Customs Accounting Manual; 5 U.S.C. 134f; 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to those officers and employees of the Customs Service and the Department of the Treasury who have a need for the records in the performance of their duties; (2) disclose records as required in administration of the Freedom of Information Act (5 U.S.C. 552).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Filed in folders with the individual's name appearing at the top thereof in a file cabinet.

RETRIEVABILITY:

Each record folder is filed by name of individual.

SAFEGUARDS:

The cabinet described above is maintained within the area assigned in the Customs office. During non-working hours the area in which the cabinet is located is secured.

RETENTION AND DISPOSAL:

Retained for three years and then forwarded to FRC for seven years retention.

SYSTEM MANAGER(S) AND ADDRESS:

Port Director, as appropriate, in the Mid-America Customs Management Center, Chicago, IL 60607.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Data submitted by individual Customs employee involved.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .258

SYSTEM NAME:

Violator's Case Files—Treasury/Customs.

SYSTEM LOCATION:

Port Director of Customs, U.S. Customs Service, 50 South Main St., Suite 10012, St. Albans, VT 05478.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in smuggling, filing false invoices, documents or statements, violators of Customs bonds, or any violation of Customs laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and address, Social Security number and physical description; alias, occupation, type of violation, previous record, driver's license, passport number, notes from inspectors involved, and any other supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and 3 x 5 index cards.

RETRIEVABILITY:

Filed by case number.

SAFEGUARDS:

Files are under the supervision of Fines, Penalties and Forfeitures Officer from 8 a.m. to 5 p.m., Monday through Friday. All other hours, office remains locked.

RETENTION AND DISPOSAL:

Files are maintained in the office of the Fines, Penalties, and Forfeitures Officer for a period of five years or six years. At the conclusion of this period, they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Port Director, U.S. Customs Service, St. Albans, VT 05478.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .260

SYSTEM NAME:

Warehouse Proprietor Files-Treasury/Customs.

SYSTEM LOCATION:

Mid-America Customs Management Center, 610 S. Canal St., Suite 900, Chicago, IL 60607.(See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past warehouse proprietors and employees that require an investigation and related information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Report of investigations, application and approval or denial of bond to act as warehouse proprietor and other Customs Service Memoranda. Names, addresses, Social Security numbers, and dates and places of birth of persons employed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Customs Regulations, part 19, 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential

violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and stored in file cabinets in each Port Director's office within the Mid-America Customs Management Center, Chicago, IL 60607.

RETRIEVABILITY:

Each file is identified by the name of the warehouse proprietor.

SAFEGUARDS:

The file cabinets are maintained within the area assigned to the District Director. During non-working hours the room and/or building in which the file cabinet is located is locked.

RETENTION AND DISPOSAL:

Employee name data retained for period of employment with warehouse proprietor.

SYSTEM MANAGER(S) AND ADDRESS:

Port Director, as appropriate, in the Mid-America Customs Management Center, Chicago, IL 60607. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this file originates from the individual applicant for warehouse proprietor's bond, from reports of investigation, and other Customs Memoranda.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .262

SYSTEM NAME:

Warnings to Importers in lieu of Penalty—Treasury/Customs.

SYSTEM LOCATION:

Located in the Office of the Director, Customs Management Center, 610 S. Canal St., Suite 900, San Diego, CA 92101; Offices of the Port Directors, U.S. Border Station, San Ysidro, CA 92073; PO Box 189, Tecate, CA 92080; PO Box 632, Calexico, CA 92231; 235 Andrade Road, Winterhaven, CA 92283; Andrade, CA; San Diego Barge Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and firms in violation of Customs's laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Brief record of violation and warning.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on 5 x 7 cards.

RETRIEVABILITY:

Alphabetically indexed.

SAFEGUARDS:

Not accessible to other than Customs officers.

RETENTION AND DISPOSAL:

The records are disposed of in accordance with the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Port Directors, and Directors within the Customs Management Center/ Southern California Customs District. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Customs Officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .268

SYSTEM NAME:

Military Personnel and Civilian Employees' Claims Act File—Treasury/ Customs.

SYSTEM LOCATION:

Office of the Associate Chief Counsel, U. S. Customs Service, 2323 South Shepherd Drive, Houston, TX 77019.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Customs employees filing claims under the Military Personnel and Civilian Employees' Claims Act of 1964.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the administrative handling of the claim and documents submitted by the claimant in support of the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 240–243; 31 CFR part 4; Treasury Department Administrative Circular No. 131, August 19, 1965; 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted alphabetically in a file folder which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file is identified alphabetically in the file folder within the metal container by the name of the person who filed the claim.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Office of the Regional Counsel (12th floor), 500 Dallas Street, Houston, TX 77002. During non-working hours the room in which the metal container is located is locked, and access to the building is controlled at all times by uniformed security guards provided by the lessor.

RETENTION AND DISPOSAL:

These files are retained until closed at which time the closed files are transferred to the Director, Logistics Management Division, Office of the Director, East Texas Customs Management Center, Houston, TX, for ultimate transportation to the Federal Record Center.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel, U. S. Customs Service, 2323 South Shepherd Drive., Houston, TX 77019.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with the Treasury Department Form No. 3079, Civilian Employee Claim For Loss or Damage to Personal Property, which is completed and filed with the Customs Service by the claimant. Additional information contained in these files may be separately provided by the claimant or by the claimant's supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .269

SYSTEM NAME:

Accounts Payable Voucher File—Treasury/Customs.

SYSTEM LOCATION:

Financial Management Division, U.S. Customs Service, Gulf Customs Management Center, 423 Canal Street, New Orleans, LA 70130.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All South Central Region personnel to whom travel and other disbursements are made. All individuals who provide goods and services to the South Central Region.

CATEGORIES OF RECORDS IN THE SYSTEM:

Invoices and travel/other vouchers and supporting disbursements schedules.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders in unlocked file cabinets.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Usage limited to Regional personnel; cabinets are located in rooms which are locked during non-working hours.

RETENTION AND DISPOSAL:

In accordance with Records Control Manual; records are disposed of when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management Division, U.S. Customs Service, Gulf Customs Management Center, 423 Canal Street, New Orleans, LA 70130.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Invoices and travel/other vouchers submitted by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .270

SYSTEM NAME:

Background—Record File of Non-Customs Employees—Treasury/ Customs.

SYSTEM LOCATION:

Office of Internal Affairs, U.S. Customs Service, 1300 Pennsylvania Ave. NW Washington, D.C.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past non-Customs personnel requiring a background investigation to be granted a permit to conduct Customs business.

CATEGORIES OF RECORDS IN THE SYSTEM:

Report of background investigations, names, addresses, Social Security numbers and date and place of birth, etc. of non-Customs employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or

the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and stored in file cabinets in the Director's office. Records are also maintained in computer format in ports providing internal aircraft arrival/departure services.

RETRIEVABILITY:

Each file is identified by the name of the non-Customs employee.

SAFEGUARDS:

The file cabinets are maintained within the area assigned to the Director. During non-working hours the room and/or building in which the file cabinet is located is locked. Computer format are maintained in locked access areas within each respective district and/or port office.

RETENTION AND DISPOSAL:

Employee name data is retained during the period the non-Customs employee requires admittance to restricted areas.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Security Division, Office of Internal Affairs, Customs Headquarters. (For addresses see Customs Service appendix A).

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this file originates from the individual non-Customs employee granted a permit to conduct Custom's business and from reports of background investigation which include interviews of Customs personnel and private parties and from other Customs internal documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). (See 31 CFR 1.36.)

Treasury/CS .271

SYSTEM NAME:

Cargo Security Record System—Treasury/Customs.

SYSTEM LOCATION:

Director, Customs Management Center, 423 Canal Street, New Orleans, LA 70130; Port Director, PO Box 2748, Mobile, AL 36601.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Drivers of motor vehicles or licensed cartmen and lightermen; properties and operators of each class of Customs bonded warehouse and their employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on drivers of motor vehicles contain information relating to personal statistical data, physical characteristics, history of past employment, previous five years residences, alias (if any), citizenship, military records, criminal record other than traffic violations, use of narcotic drugs, and photograph. Name of operator of bonded warehouse and employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder with Customs Form 3078, Customs Form 73, Photographs, and correspondence; For bonded warehouses, file folder contains Customs Form 3581 and names, addresses, and Social Security number of all employees; all stored in metal file cabinet. Alphabetical list of current I.D. cards issued on drivers retained in file folder and stored in desk drawer.

RETRIEVABILITY:

By individual name or corporate name.

SAFEGUARDS:

Locked metal file cabinet and desk drawer of customs employee; building secured after hours.

RETENTION AND DISPOSAL:

Information on drivers is retained in an active file until revoked or canceled. After revocation or cancellation, the information folder is placed in an inactive file for a period of five years, after which time the records are disposed of in accordance with the General Services Administration Records Disposal Manual. Information on proprietor bonded warehouse operators and employees is retained on file until Customs bonded operations cease and are discontinued, then are maintained in an inactive file for a period of three years. Final disposition is in accordance with the GSA Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Customs Management Center, 423 Canal Street, New Orleans, LA 70130; Port Director, PO Box 2748, Mobile, AL 36601.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information is obtained from applicant (individual or corporation) and from reports of investigation on drivers obtained from Regional Director, Investigations, U.S. Customs Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). (See 31 CFR 1.36.)

Treasury/CS .272

SYSTEM NAME:

Currency Declaration File (Customs Form 4790)—Treasury/Customs.

SYSTEM LOCATION:

Law Enforcement Systems Division, U.S. Customs Service, PO Box 85145, San Diego, CA 92138 (for addresses of Port Directors, see Customs appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals departing from or entering the country who filed IRS Form 4790.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identifying number, birth date, address, citizenship, visa date and place, immigration alien number, kinds and amounts of monetary instruments, address in the United States or abroad, passport number and country, and arrival or departure information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 1101; 5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Form 4790 is maintained in a file folder or binder in an initial file cabinet. Information is stored chronologically in TECS II.

RETRIEVABILITY:

They are indexed and filed by name and date in the folder or binder. They can be retrieved by computer and printed.

SAFEGUARDS:

The office and building are locked during non-working hours. Electronic data is limited to persons cleared for access to the data.

RETENTION AND DISPOSAL:

The records are retained from one to five years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Port Directors of Customs.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information on the Customs Form 4790 originates from the individual or Customs agent reporting the bringing in or taking out of currency or monetary instruments exceeding 10,000 dollars.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .274

SYSTEM NAME:

Importers, Brokers, Carriers, Individuals and Sureties Master Files—Treasury/Customs.

SYSTEM LOCATION:

Office of Financial Management, 909 SE First Avenue, Miami, FL 33131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Brokers, Importers, Individuals, Carriers, and Sureties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of correspondence incoming and outgoing, copies of bonds, entries, bills, data center listings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in an unlocked drawer within a metal file cabinet.

RETRIEVABILITY:

Alphabetical by name appearing on correspondence.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Financial Management Division within the Customs Service Building. During non-working hours the room in which the metal container is located is locked.

RETENTION AND DISPOSAL:

These files are retained until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Financial Management, 909 SE First Avenue, Miami, FL 33131.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Correspondence, Customs Service Data Center and Ports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .278

SYSTEM NAME:

Automated Commercial System (ACS)—Treasury/Customs.

SYSTEM LOCATION:

The Computer is located in Newington, Virginia. Computer terminals are located at Customhouses and ports throughout the United States and at U.S. Customs Headquarters, Washington DC (For addresses of Customhouses, see Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Customs Service employees and individuals involved in the import trade.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system data base is comprised of commodity and merchandise processing information relating to Customs administration of trade laws. The following system files may contain information about U.S. Customs Services employees and/or individuals/

companies involved in the import trade. (1) ACS Security Files: Contains randomly established five-digit identification codes assigned to Customs Service employees authorized to use the system. The file consists of the names and social security number of all Customs Service employees using the remote terminals to input information into the system. (2) Importer/Broker/Consignee Bond Files and FP and F Violator-Protest files: Records consist of importer of record number, importer name and address, type of importation bond, expiration date, surety code, violation statistics and protest information. The importer of record number is used as the method of accessing the files. The number is assigned by any one of three code formats according to availability and the following hierarchy. The first choice is the IRS Employer Identification Number (EIN). The vast majority of importers have the EIN because of the business necessity of it. The second alternative is the Social Security number (SSN). The third alternative is a Customs-assigned number. This file is referenced during entry processing to verify that the individual or company making entry is authorized to import and is properly bonded. (3) Entry Files: A record consists of a three-digit Customs—assigned Customhouse broker or importer number (non-SSN) and the name and address. The file is referenced during entry processing to validate the entry file code and is used to direct system output to the broker or importer. (4) Corporate Surety Power of Attorney and Bond Files: The data consists of names of agents who are authorized to write a Customs bond and their SSN, a three-digit surety code (non-SSN) assigned by the Customs Accounting Division, the surety name and Customs bond information. (5) Liquidator File: A record consists of a Customs-assigned three-digit liquidator identification (non-SSN) and a Customs employee's name. The employee's liquidator code is input into the system as a means of maintaining quality control and an audit trail on entries liquidated. (6) Foreign Manufacturer/Shipper File: The file contains an identification code constructed using a formula based on name and address, manufacturer name and address reported by importers and brokers on Customs entry forms or electronic formats. Carrier Files: This file consists of carrier names and codes (non SSN) which are 4 characters—Standard Carrier Agent Code (SCA) for vessel carriers and 2 or 3 character—International Air Transport Association (IATA) for air carriers. This code is used to validate data input to the manifest and entry processing systems and to direct system output to the carrier.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

19 U.S.C. 66, 1448, 1481, 1483, 1484, 1505, and 1624.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to the Bureau of the Census by providing magnetic tapes containing foreign trade data; (2) disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic Media.

RETRIEVABILITY:

By identification codes and/or name.

SAFEGUARDS:

Access to computer area is controlled by a security pass arrangement and personnel not connected with the operation of the computer are prohibited from entering. The building security is protected by a uniformed guard. At the ports of processing, terminal rooms are under close supervision during working hours and locked after close of business. The system security officer issues a unique private five digit identification code to each authorized user. Access to the Customs computer from other than system terminals is controlled through a security software package. Users must input a unique identification code and password during the terminal log-in procedure to gain access to the system. The password is not printed or displayed at the port of processing. The system validates the user ID by transaction type, thereby limiting a system user's access to information on a "need-to-know" basis. A listing of identification codes of authorized users can be printed only by request of the security officer. The passwords are changed periodically to enhance security.

RETENTION AND DISPOSAL:

Files are periodically updated to reflect changes, etc., and are disposed of in accordance with the requirements of the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Automated Systems, Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, is responsible for all data maintained in the files.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The system data base contains data received on authorized Customs forms or electronic formats from individuals and/or companies incidental to the conduct of foreign trade and required by the Customs Service in administering the tariff laws and regulations of the United States.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .284

SYSTEM NAME:

Personnel Verification System (PVS)–Treasury/Customs.

SYSTEM LOCATION:

Office of Information and Technical Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and Regional Offices of the U.S. Customs Service. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authorized Customs personnel and non-Customs personnel who have received authorization to use the Regional Communications Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual identifiers including but not limited to name, office address, home address, office telephone number, home telephone number, badge number, Social Security number, radio call sign, page number, organization, and unit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Alphabetic or numerical listings or card files; (2) microfiche; (3) magnetic disc and tapes; (4) other electronic storage media.

RETRIEVABILITY:

By name, call sign, paging number, Social Security number, badge number, organizational code.

SAFEGUARDS:

Records are located in controlled access areas with alarm protection systems. Offices are staffed twenty-four hours a day, seven days a week.

RETENTION AND DISPOSAL:

Records are maintained in the system until such time as the individual is no longer authorized usage of the Regional Communications Center. Disposal is by erasure of disc/tapes, shredding and/or burning of listings or card files, and burning of microfiche.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Information and Technical Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The sources include but are not limited to (1) the individual to whom the record relates; (2) internal Customs Service records; (3) Personnel Verification Sheet.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/CS .285

SYSTEM NAME:

Automated Index to Central Investigative Files—Treasury/Customs.

SYSTEM LOCATION:

Office of Investigations, U.S. Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Known violators of U.S. Customs laws. (2) Convicted violators of U.S. Customs and/or drug laws in the United States and foreign countries. (3) Suspected violators of U.S. Customs or other related laws. (4) Private yacht masters and pilots arriving in the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

A listing of Memoranda of Information Received, Reports of Investigations; Search/Arrest/Seizure Reports, Penalties, and Forfeitures, reports required by Private Aircraft Reporting System, reports required by the Private Yacht Reporting System, reports on vessel violations. Reports relating to an individual, various other correspondence (letter, memoranda, etc.), which related to an individual in the Treasury Enforcement Communications System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Treasury Department Order No. 165, Revised, as amended. Authority for the collection and maintenance of the report included in the system is: 19 U.S.C. 1603; 19 U.S.C. 1431; 19 U.S.C. 66; 31 CFR part 103.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic disc and tape, microfiche.

RETRIEVABILITY:

Name, personal identification numbers, Customs case number, document's central file number.

SAFEGUARDS:

(1) All Central Files users must have a full field background investigation. (2) The "need to know" principle applies. (3) Procedural and physical safeguards are utilized such as accountability and

receipt records, guard patrolling restricted areas, alarm protection systems, special communication security. (4) Access is limited to all Office of Investigations terminals and all Law Enforcement Systems Division Headquarters and Newington, VA terminals.

RETENTION AND DISPOSAL:

Records will be maintained in the Automated Index to Central Enforcement files for as long as the associated document or microfiche is retained. Records will be destroyed by erasure of the magnetic disc and by burning the microfiche.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Investigations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual. (See 5 U.S.C. 552a (e)(4)(G) and (f)(1).)

RECORD ACCESS PROCEDURES:

This system of records may not be accessed under the Privacy Act for the purpose of inspection.

CONTESTING RECORD PROCEDURES:

Since this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual and those records, if any, cannot be inspected, the system may not be accessed under the Privacy Act for the purpose of contesting the content of the record.

RECORD SOURCE CATEGORIES:

This system contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). (See 31 CFR 1.36.)

Treasury/CS .286

SYSTEM NAME:

Electronic Job Application Processing System—Treasury/Customs.

SYSTEM LOCATION:

Located in U.S. Customs Headquarters Offices, 1300 Pennsylvania Avenue, NW, Washington DC. 20229 and at contractor's premises (contact the system administrator for the contractor address).

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Individuals applying for job vacancies within the United States Customs Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Vacancy announcements, applications, applicant resumes, certificates of eligibles, rating information, test data, interview results and answers to Knowledge, Skill and Ability questions. Applicant data includes but is not limited to, name, address, social security number (SSN) and date of birth (DOB).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

PURPOSE(S):

The purpose of this electronic system of records is to more efficiently acquire, process, rate and rank job applicants for positions with the U.S. Customs Service. This system should result in positions being filled more quickly with the most qualified applicant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSE OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation of civil or criminal law or regulation; (2) Disclose information to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information relevant to the requesting agency's or the Customs Service's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant or other benefit; (3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings; (4) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to an investigation; (5) Disclose information to an agency contractor for the purpose of compiling, organizing, analyzing, programming, utilizing or otherwise refining records subject to the same limitations applicable to officers and employees of the U.S. Customs Service under the Privacy Act; (6) Provide information to the National Archives and Records Administration for use in records management inspections conducted under authority of 44 U.S.C. 2904 and 2908; (7) Disclose information to officials of the Merit Systems Protection Board, the Office of the Special Counsel, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, or the Office of Personnel Management when requested in performance of their authorized duties; (8) Disclose information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains, and (9) provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media.

RETRIEVABILITY:

Records are indexed by name and Social Security Number.

SAFEGUARDS:

Records are accessed through Internet firewalls by authorized Customs employees through IRE Virtual Private Network (VPN) and a secure connection. The host servers are protected by controlled access procedures, which includes card key entry control and cipher locks.

RETENTION AND DISPOSAL:

Merit promotion case files are maintained for two years after the closing date of the announcement, or the final disposition of appeals, whichever is later in accordance with National Archives and Records Administration GRS–1.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Staffing Policy, Office of Human Resources, U.S. Customs Service, 1300 Pennsylvania Ave., NW., Washington, DC. 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURE:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Customs appendix A.

RECORD SOURCE CATEGORIES:

Job applicants, and present and past employers, and other federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix A—U. S. Customs Service

I. Notification, Record Access and Amendment Procedures

Notification and Record Access Procedures: Requests by an individual to be notified if the system of records contains records pertaining to him and requesting access to the records shall be in writing with envelope and letter clearly marked "Privacy Act Request" and directed to the Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, Rm. 3.4A, Ronald Reagan Bldg., 1300 Pennsylvania Avenue, NW, Washington, DC 20229, or to the Customs Management Center Director of the region in which the records are located (see addresses below).

The request may be presented in person between the hours of 9 a.m. and 4:30 p.m. Where the request is presented in person, the requester shall present adequate identification to establish his identity, and a comparison of his signature and those in the records may be made where the records contain the signature of the person to whom the records pertain. If an individual is unable to provide the requisite documents for identification purposes, he may be required to make a signed statement asserting identity and stipulating that he understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of not more than $5,000.

Where the request is made in writing, it shall be accompanied by a notarized statement executed by the requester asserting identity and stipulating that he understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of not more than $5,000. A comparison of his signature and those in the records may be made where the records contain the signature of the person to whom the records pertain.

Amendment Procedures: Requests by an individual contesting the context of a record within a system of records shall be in writing with the envelope and letter clearly marked "Privacy Act Amendment" and directed to the Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, or to the Director of the Customs Management Center of the region in which the records are located. (See addresses below.)

II. Location

Addresses of Headquarters, U.S. Customs Service, Customs Management Centers, Regional Directors (Internal Affairs), Port Directors of Customs, and Customs Office of Enforcement field offices:

Headquarters U.S. Customs Service: 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

Customs Management Centers

Arizona—4740 North Oracle Road, Suite 310, Tucson, AZ 85705, (520) 670–5900.

Caribbean Area—#1 La Puntilla St., Room 203, San Juan PR 00901, (787) 729–6950.

East Great Lakes—4455 Genesee St., Buffalo, NY 14225, (716) 626–0400.

East Texas—2323 S. Shepherd St., Suite 1200, Houston, TX 77019, (713) 313–2843.

Gulf—423 Canal St., Room 337, New Orleans, LA 70130, (504) 670–2404.

Mid-America—610 S. Canal St. Suite 900, Chicago, IL 60607, (312) 353–4733.

Mid Atlantic—103 S. Gay St., Suite 208, Baltimore, MD 21202, (410) 962–6200.

Mid Pacific—33 New Montgomery St., Suite 1601, San Francisco, CA 94105, (415) 744–1530,

New York—6 World Trade Center, Room 716, New York, NY 10048, (212) 466–4444.

North Atlantic—10 Causeway St., Room 801, Boston, MA 02222, (617) 565–6210.

North Florida—1624 E. Seventh Ave., Suite 301, Tampa, FL 33605, (813) 228–2381.

North Pacific—90332 N.E. Alderwood Rd., Portland, OR 97220, (503) 326–7625.

Northwest Great Plains—1000 Second Ave., Suite 2000, Seattle, WA 98104, (206) 553–6944.

South Atlantic—1691 Phoenix Blvd., Suite 270, College Park, GA 30349, (770) 994–2306

South Florida—909 SE First Ave. Suite 980, Miami, FL 33131, (305) 536–6600.

South Pacific—One World Trade Center, Suite 705, Long Beach, CA 90831 (562) 980–3100.

South Texas—PO Box 3130, Laredo, TX 78044, (956) 718–4161

Southern California—610 W. Ash St., Suite 1200, San Diego, CA 92101, (619) 557–5455.

West Great Lakes—613 Abbott St., 3rd Floor, Detroit, MI 48226, (313) 226–2955.

West Texas/New Mexico—9400 Viscount Blvd., Suite 104, El Paso, TX 79925, (915) 540–5800.

Office of Internal Affairs Field Offices

Regional Director (Internal Affairs), 10 Causeway Street, Boston, MA 02110.

Resident Agent in Charge (Internal Affairs), 6 World Trade Center, New York, N.Y. 10048.

Resident Agent in Charge (Internal Affairs), 1000 Bricknell Avenue, Miami, FL 33101.

Resident Agent in Charge (Internal Affairs), 423 Canal Street, New Orleans, LA 70112.

Special Agent in Charge (Internal Affairs), 2323 S. Shepherd Street, Houston, TX 77002.

Resident Agent in Charge (Internal Affairs), 610 S. Canal Street, Chicago, IL. 60603.

Special Agent in Charge (Internal Affairs), One World Trade Center, Long Beach, CA 90815

Customs Service/Area Ports Offices

Anchorage: 605 West Fourth Avenue, Room 205, Anchorage, AK 99501 (907) 271–2675.

Atlanta: 700 Doug Davis Drive, Atlanta, GA 30354 (404) 763–7020.

Baltimore: 40 S. Gay St, Baltimore, MD 21202 (410) 962–2666.

Baton Rouge: 5353 Essen Lane, Baton Rouge, LA 70809 (504) 389–0261.

Blaine: 9901 Pacific Highway, Blaine, WA 98230 (360) 332–5771.

Boston: 10 Causeway Street, Boston, MA 02222–1059 (617) 565–6147.

Buffalo: 111 West Huron Street, Buffalo, NY 14202–2378 (716) 551–4373.

Calais: 1 Main Street, Calais, ME 04619 (207) 454–3621.

Calexico: PO Box 632, Calexico, CA 92231 (619) 357–7310.

Champlain: 198 West Service Road, Champlain, NY 12919–8314 (518) 298–8347.

Charleston: 200 East Bay Street, Charleston, SC 29401 (803) 727–4296.

Charlotte: 1801–K Cross Beam Drive, Charlotte, NC 28217 (704) 329–6101.

Charlotte/Amalie: Main Post Ofc-Sugar Estate, St. Thomas, VI 00801 (809) 774–2911.

Chicago: 610 South Canal Street, Chicago, IL 60607 (312) 353–6100.

Christiansted: Church Street PO Box 249, Christianstedt/ St.Croix, VI 00820 (809) 773–1490.

Cleveland: 55 Erieview Plaza, 6th Floor, Cleveland, OH 44114. (216) 891–3804

Dallas/Ft. Worth: PO Box 619050, DFW Airport, TX 75261–4818 (972) 574–2170.

Denver: 4735 Oakland Street, Denver, CO 80239 (303) 361–0715.

Derby Line: Interstate 91, Derby Line, VT 05830 (802) 873–3489.

Detroit: 477 Michigan Avenue, Detroit, MI 48226 (313) 226–3178.

Douglas: 1st Street & Pan American Avenue, Douglas, AZ 85607 (602) 364–8486.

Duluth: 515 West 1 St Street, Duluth, MN 55802–1390 (218) 720–5201.

El Paso: 9400 Viscount Boulevard, El Paso, TX 79925 (915) 540–5800.

Grand Rapids: 6450 Air Cargo Dr., Grand Rapids, MI 49512 (616) 456–2515.

Great Falls: 21 Third St., N., Suite 201, Great Falls, MT 59401 (406) 453–7631.

Greenville/Spartanburg: 150-A West Phillips Road, Greer, SC 29650 (864) 877–8006.

Harrisburg: Harrisburg International Airport, Bldg 135, Middletown, PA 17057–5035 (717) 782–4510.

Hartford: 135 High Street, Hartford, CT 06103 (203) 240–4306.

Highgate Springs: 480 Welcome Center Rd., Swanton, VT 05488 (802) 868–2778.

Honolulu: 1001 Bishop St., Suite 2500, Pacific Tower Bldg. Honolulu, HI 968813 (808) 522–8060.

Houlton: RR 3, Box 5300, Houlton, ME 04730 (207) 532–2131.

Houston/Galveston: 3549 San Edigo, Suite 700, Houston, TX 27055 (713) 985–6712.

Jacksonville: 2831 Talleyrand Avenue, Jacksonville, FL 32206 (904) 232–3476.

Kansas City: 2701 Rockcreek Parkway, N. Kansas City, Mo 64116 (816) 374–6424.

Laredo/Columbia: PO Box 3130, Laredo, TX 78044 (210) 726–2267.

Los Angeles: 300 South Ferry Street, Room 1001, Terminal Island, CA 90731 (310) 514–6001.

Los Angeles Airport Area: 300 South Ferry Street, Terminal Island, CA 90731 (310) 514–6029.
Los Angeles/Long Beach Seaport Area: 300 South Ferry Street, Terminal Island, CA 90731 (310) 514–6002.
Louisville: 601 West Broadway, Room 43, Louisville, KY 40202 (502) 582–5186.
Miami Airport: 6601 Northwest 25th Street, Miami, FL 33222–5280 (305) 869–2800.
Miami Seaport: 1500 Port Blvd, Miami, FL 33132 (305) 536–5261.
Milwaukee: PO Box 37260, Milwaukee, WI 53237–0260 (414) 571–2860.
Minneapolis: 330 2nd Ave. South, Suite 560, Minneapolis, MN 55401 (612) 348–1690.
Mobile: 150 North Royal Street, Mobile, AL 36602 (205) 441–5106.
Nashville: 322 Knapp Blvd., Suite 160, Nashville, TN 31277–0008 (615) 736–5861.
New Orleans: 423 Canal Street, New Orleans, LA 70130 (504) 589–6353.
New York: 6 World Trade Center, New York, NY 10048 (212) 466–4444.
New York-JFK Area: Bldg #77, Jamaica, NY 11430 (718) 553–1542.
New York-NY/Newark Area: Hemisphere Center, Rm 200, Rts. 1 & 9 South, Newark, NJ 07114 (201) 645–3760.
Nogales: 9 North Grand Avenue, Nogales, AZ 85621 (520) 287–1410.
Norfolk: 200 Granby Street, Norfolk, VA 23510 (804) 441–3400.
Ogdensburg: 127 N. Water Street, Ogdensburg, NY 13669 (315) 393–0660.
Orlando: 5390 Bear Road, Orlando, FL 32827 (407) 825–4301.
Oroville: 33643 Hwy 97, Oroville, WA 98844 (509) 476–2955.
Pembina: 112 West Stoutsman, Pembina, ND 58271 (701) 825–6201.
Philadelphia: 2nd & Chestnut Streets, Room 102, Philadelphia, PA 19106 (215) 597–4605.
Phoenix: 1315 S. 27th Street, Phoenix, AZ 85034 (602) 379–3516.
Otay Mesa: 9777 via De La Amistad, San Diego, CA 92173 (619) 661–3305.
Port Huron: 526 Water Street, Room 301, Port Huron, MI 48060 (810) 985–7125.
Portland, ME: 312 Fore Street, Portland, ME 04112 (207)780–3326.
Portland, OR: PO Box 55580, Portland, OR 97238 (503) 326–2865.
Providence: 49 Pavilion Avenue, Providence, RI 02905 (401) 941–6326.
Raleigh/Durham: 120 Southcenter Court, Suite 500, Morrisville, NC 27560 (919) 467–3552.
Richmond: 4501 Williamsburg Rd., Suite G, Richmond, VA 23231 (804) 226–9675.
San Antonio: 9800 Airport Boulevard, Room 1103, San Antonio, TX 78216 (210) 821–6965.
San Diego: 610 West Ash Street, San Diego, CA 92188 (619) 557–6758.
San Francisco: 555 Battery Street, San Francisco, CA 94111 (415) 744–7700.
San Juan: #1 La Puntilla, San Juan, PR 00901 (809) 729–6965.
San Luis: PO Box H, San Luis, AZ 85349 (602) 627–8854.
Sault Ste. Marie: International Bridge Plaza, Sault Ste Marie, MI 49783 (906) 632–7221.
Savannah: 1 East Bay Street, Savannah, GA 31401 (912) 447–9400.
Seattle: 1000 2nd Avenue, Seattle, WA 98104–1049 (206) 553–0770.
Seattle Airport: SEA-TAC International Airport, Seattle, WA 98158 (206) 553–7960.
Seattle Waterfront: S. Novada St., Suite 100, Seattle, WA 98134 (206) 553–1581.
San Ysidro: 720 E. San Ysidro Blvd., San Ysidro, CA 92073 (619) 662–7201.
St. Albans: PO Box 1490, St. Albans, VT 05478 (802) 524–7352.
St. Louis: 4477 Woodson Road, Suite 100, St. Louis, MO 63134–3716 (314) 428–2662.
Syracuse: 4034 S. Service Road, Hancock International Airport, Syracuse, NY 13212 (315) 455–8446.
Tacoma: 2202 Tacoma Rd., Tacoma, WA 98421 (206) 593–6336.
Tampa: 1624 E. 7th Ave., Tampa, FL 33607 (813) 228–2381.
Tucson: 7150 South Tucson Boulevard, Tucson, AZ 85706 (520) 670–6461.
Washington, DC: PO Box 17423, Washington, DC 20041 (703) 318–5900.
Wilmington: 1 Virginia Avenue, Wilmington, NC 28401 (919) 815–4601.

Customs Investigations Field Offices

Special Agent in Charge, Room 801, 10 Causeway Street, Boston, MA 02222.
Resident Agent in Charge, P.O. Box 368, Derby Line, Vermont, 05830.
Resident Agent in Charge, P.O. Box 400, Houlton, Maine 04730.
Resident Agent in Charge, P.O. Box 4688 (DTS), Portland, Maine 04112.
Resident Agent in Charge, Federal Building, Suite 318, 150 Court Street, New Haven, CT 06510.
Resident Agent in Charge, P.O. Box 68, Rouses Point, New York 12979.
Special Agent in Charge, 40 South Gay Street, Room 424, Baltimore, Maryland 21202.
Resident Agent in Charge, Second and Chestnut Street, Room 200, Philadelphia, PA 19106.
Resident Agent in Charge, Room 826, Federal Building 1000 Liberty Avenue, Pittsburgh, PA 15222.
Special Agent in Charge, 6 World Trade Center, Room 716, New York, N.Y. 10048
Deputy Special Agent in Charge, JFK International Airport, Building 75, 2nd Floor, Jamaica, N.Y. 11430.
Resident Agent in Charge, Airport International Plaza, Suite 400, Routes 1 and 9 South, Newark, N.J. 07114.
Resident Agent in Charge, Leo O'Brien Federal Building, North Pearl Street, Room 746, Albany, N.Y. 12207.
Resident Agent in Charge, 575 Johnson Avenue, 2nd floor, Bohemia, New York 11716.
Special Agent in Charge, 423 Canal Street, Room 337, New Orleans, LA 70130.
Resident Agent in Charge 8312 Florida Boulevard, Suite 216B, Baton Rouge, LA 70806.
Resident Agent in Charge, Air Investigations, P.O. Box 980, Belle Chase, LA 70037.
Resident Agent in Charge, 600 Beacon Parkway West, Suite 725, Birmingham, AL 35209.
Resident Agent in Charge, P.O. Box 700, Dauphin Island, AL 36528.
Resident Agent in Charge, Security Building, Room 600, 2301 14th Street, Gulfport, MS 39501.
Resident Agent in Charge, Station 1, P.O. Box 10182, Houma, LA 70363.
Resident Agent in Charge, 100 West Capitol Street, Suite 1418, Jackson, MS 39269.
Resident Agent in Charge, 825 Kaliste Saloom, Brandywine, II, Suite 200, Lafayette, LA 70508.
Resident Agent, 811 Bayou Pines Drive, Lake Charles, LA 70601.
Resident Agent in Charge, 10825 Financial Parkway, Suite 321, Little Rock, AR 72211.
Resident Agent in Charge, 951 Government Street, Suite 700, Mobile, AL 36604.
Resident Agent in Charge, 4721 Trousdale Drive, Suite 216, Nashville, TN 37220.
Resident Agent in Charge, 610 Texas Street, Suite 610, Shreveport, LA 71101.
Special Agent in Charge, 4141 N. Saur, Houston Parkway, East, Houston, TX 77032.
Resident Agent in Charge, 421 Cold Avenue, SW, Albuquerque, NM 87103.
Resident Agent in Charge, P.O. Box 9640, Alpine, TX 79830.
Resident Agent in Charge, P.O. Box 99, Austin, TX 78767.
Resident Agent in Charge, P.O. Box 4500, Brownsville, TX 78521.
Resident Agent in Charge, P.O. Box 2159, Corpus Christi, TX 78403.
Resident Agent in Charge, 400 South Record Street, Suite 800, Dallas TX 75242.
Resident Agent in Charge, P.O. Box 1169, Del Rio, TX 78841.
Resident Agent in Charge, P.O. Box 1818, Deming NM 88030.
Resident Agent in Charge, P.O. Box 1076, Douglas, AZ 86508.
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Federal Register

Thursday,
October 18, 2001

Part III

Environmental Protection Agency

40 CFR Part 9, 122, 123, 124, and 130 Effective Date of Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulations; and Revision of the Date for State Submission of the 2002 List of Impaired Waters; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 130

[WH–FRL–7086–1]

RIN 2040–AD79

Effective Date of Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulations; and Revision of the Date for State Submission of the 2002 List of Impaired Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action establishes April 30, 2003 as the effective date of the revisions to EPA's Total Maximum Daily Load (TMDL) and National Pollutant Discharge Elimination System Program (NPDES) regulations published in the **Federal Register** on July 13, 2000. The July 2000 rule amends and clarifies existing regulations implementing section 303(d) of the Clean Water Act (CWA), which requires States to identify waters that are not meeting State water quality standards and to establish pollutant budgets, called TMDLs, to restore the quality of those waters. The rule also lays out specific time frames under which EPA will assure that lists of waters not meeting water quality standards (the 303(d) lists) and TMDLs are completed as scheduled, and that necessary point and nonpoint source controls are implemented to meet TMDLs.

In addition, today's action amends 40 CFR 130.7(d)(1), currently in effect, to revise the date on which States are required to submit the next list of impaired waters from April 1, 2002 to October 1, 2002. This new date will provide States who wish to do so the time to incorporate some or all of the recommendations suggested by EPA in a forthcoming guidance entitled: 2002 Integrated Water Quality Monitoring and Assessment Report Guidance, which is currently undergoing a final review.

DATES: The July 2000 rule amending 40 CFR parts 9,122,123,124 and 130 published on July 13, 2000 at 65 FR 43586 is effective on April 30, 2003. The amendment to 40 CFR 130.7(d)(1) made by this rule is effective November 19, 2001. This action is considered issued for purposes of judicial review as of 1 p.m. Eastern Daylight Time, on November 1, 2001 as provided in § 23.2.

ADDRESSES: The complete administrative record for the final rule has been established under docket number W–98–31–III TMDL, and includes supporting documentation as well as printed, paper versions of electronic comments. The docket is available for inspection from 9 a.m. to 4 p.m. Eastern Time, Monday through Friday excluding legal holidays at the Water Docket; EB 57; U.S. EPA; 401 M Street, SW., Washington, DC 20460. For access to docket materials, please call (202) 260–3027 between 9 a.m. and 4 p.m. An electronic version of this final rule will be available via the Internet at: *http://www.epa.gov/owow/tmdl/defer/*

FOR FURTHER INFORMATION CONTACT: For information about today's final rule, contact: Francoise M. Brasier, U.S. EPA Office or Wetlands, Oceans and Watersheds (4503F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, phone (202) 401–4078.

SUPPLEMENTARY INFORMATION:

A. Authority

Clean Water Act sections 106, 205(g), 205(j), 208, 301, 302, 303, 305, 308, 319, 402, 501 502, and 603; 33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1311, 1312, 1313, 1315, 1318, 1329, 1342, 1361, 1362, and 1373.

B. Entities Potentially Regulated by the Proposed Rule

TABLE OF POTENTIALLY REGULATED ENTITIES

Category	Examples of potentially regulated entities
Governments	States, Territories and Tribes with CWA responsibilities

The table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated by this action. To determine whether you may be regulated by this action, you should carefully examine the applicability criteria in § 130.20 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to you, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. Explanation of Today's Action

I. Background

On August 9, 2001, EPA proposed to take two actions regarding the TMDL program. First, EPA proposed to delay by 18 months the effective date of a rule published in the **Federal Register** on July 13, 2000, which amends existing regulations governing the TMDL program. The July 2000 rule generated considerable controversy, as expressed in letters, testimony, public meetings, Congressional action, and litigation. Congress prohibited EPA from implementing the final rule through a spending prohibition attached to an FY2000 appropriations bill, which prohibited EPA from using funds made available for FY2000 and FY2001 "to make a final determination on or implement" the July 2000 TMDL rule. Cognizant of this spending prohibition, in the preamble to the July 2000 rule, EPA said that the July 2000 rule was not effective "until 30 days after the date that Congress allows EPA to implement this regulation" and that EPA would publish notice of the effective date in the **Federal Register**. Second, EPA proposed to revise its currently effective regulations to postpone the date by which States are required to submit the next section 303(d) list of impaired waters from April 1, 2002 to October 1, 2002. This delay was intended to provide time for EPA to issue guidance incorporating some of the National Research Council's (NRC) recommendations regarding the methodology used to develop the 303(d) lists and the content of these lists.

Based on concerns expressed by many interested organizations and in light of a recent report from the National Research Council (NRC), entitled "Assessing the TMDL Approach to Water Quality Management," which recommends changes to the TMDL program, EPA believes that it is important at this time to re-consider some of the choices made in the July 2000 rule, while continuing to operate the program under the 1985 TMDL regulations, as amended in 1992. A delay of the effective date would allow the Agency to solicit and carefully consider suggestions on how to structure the TMDL program to be effective and flexible and to ensure that it leads to workable solutions that will meet the Clean Water Act goals of restoring impaired waters. In addition, EPA believes that its decision voluntarily to reconsider the July 2000 rule may result in revisions to the rule that would resolve at least some of the issues raised in pending litigation in the D.C. Circuit Court of Appeals. Instead of expending resources in lengthy litigation, EPA believes it can speed up the process of putting in place a more workable program, while building a foundation of trust among stakeholders in the basic process for restoring impaired waters. Once this foundation is soundly built, it is far more likely that diverse stakeholders will be able to agree on plans for restoring water quality and far more likely that these important plans will be implemented.

II. Response to Comments and Final Decisions

Effective Date of the Final Regulations

EPA received approximately 100 separate comment letters and 85 duplicate postcards regarding its proposal to delay the effective date of the July 2000 rule. A majority of individual commenters supported EPA's action noting the controversy generated by the rule, the issues raised in recent lawsuits challenging the July 2000 rule, and the need to reevaluate the flexibility, practicality and scope of the rule. Other commenters, however, expressed concerns that postponing the effective date of the July 2000 rule would significantly impede progress towards cleaning up the nation's impaired waters. EPA does not agree with these commenters that an 18-month delay of the effective date of the July 2000 rule will significantly slow down the pace at which impaired waters are restored. In recent years, EPA and the States have made great strides in implementing the existing 303(d) program to list impaired waters and develop and implement TMDLs. States have substantially improved their TMDL programs while the Agency has provided the States with significant increases in technical and financial support to expand and strengthen all elements of their programs. EPA and the States also are cooperatively undertaking workshops around the country to present successful approaches to developing and implementing TMDLs. Much of this progress is driven by TMDL litigation. To date, environmental groups have filed legal actions in 38 States. Over 20 of these lawsuits have resulted in court orders or consent decrees under which EPA is required to establish TMDLs if the State fails to do so pursuant to specific schedules. The pace of TMDL establishment has increased greatly over the last few years with almost twice as many TMDLs approved or established by EPA in 2001 as in 2000.

Current court orders and consent decrees require EPA to establish (if the States do not) approximately 2000 TMDLs in the next 18 to 24 months. These requirements are in place independently of any separate requirements in the July 2000 rule. Accordingly, EPA does not believe that an 18-month delay in the July 2000 rule's effective date will in any significant way slow the development of TMDLs.

Some commenters opposed to the delay of the effective date of the July 2000 rule expressed concerns that TMDLs established during that delay might not include implementation plans, which they see as an essential component of the July 2000 rule. It is true that, absent a requirement to include an implementation plan as part of a TMDL as required by the July 2000 rule, States may not develop implementation plans for all TMDLs. However, section 130.37 of the July 2000 rule provided that EPA could approve a TMDL without an implementation plan during a 9-month transition period following the effective date of the July 2000 rule. Accordingly, for one half of the 18-month delay period, implementation plans would not have been required for TMDL approval. Moreover, EPA is working in other ways to ensure that management measures reflecting load allocations in TMDLs are undertaken. For example, EPA issued a guidance on September 13, 2001 entitled "Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2002 and Subsequent Years" available at *http://www.epa.gov/owow/nps/Section319/fy2002.html*, which provides for a more concentrated focus on the implementation of TMDLs related to nonpoint source pollution for FY 2003 and beyond. Finally, even under the currently effective TMDL regulations, States may submit and some, such as California, Virginia, Washington and Oregon, have been submitting implementation plans along with TMDLs.

Some commenters who agreed that EPA should delay the effective date of the rule suggested that EPA should do so for longer than 18 months. EPA disagrees. EPA believes that 18 months should be a sufficient time to reconsider the controversial elements of the July 2000 rule that have already been the subject of significant comments and dialogue. Other commenters who agreed with EPA also submitted comments regarding the requirements which EPA should consider including in a new rule. EPA will consider these recommendations as it reevaluates the July 2000 rule. Several commenters also suggested that EPA should provide the public a detailed schedule for issuance of a new rule including information on planned public outreach and the internal Agency decision process. On October 9, 2001, EPA announced a series of outreach meetings and has posted information regarding these meetings on the internet. EPA also intends to post discussion guides and meeting summaries on the internet. In addition, EPA will, to the best of its ability, meet and share information with stakeholders as it develops any revisions to the July 2000 rule.

EPA is committed to structuring a flexible, effective TMDL program that States, Territories and authorized Tribes can support and implement. EPA believes that, given its decision to reconsider the July 2000 rule and to do so in an expeditious manner, it would be undesirable to have the July 2000 rule go into effect now for a relatively short time. This is especially so given that the rule's requirements would not be mandatory for another nine months (65 FR 43635). The Agency believes that by delaying the effective date of the July 2000 rule until April 30, 2003, it will be better able to reconsider the rule and address concerns expressed about it by a wide range of stakeholders. The Agency hopes to be able to narrow the differences among the diverse stakeholders interested in or are affected by the TMDL rules such that a framework is established under which TMDLs will actually be implemented in a timely and cost-effective manner.

Therefore, after carefully considering all the comments received on delaying the effective date of the July 2000 rule, EPA is promulgating a final action today that establishes April 30, 2003 as the effective date of the TMDL rule published in the **Federal Register** on July 13, 2000 (65 FR 43586). EPA believes that this delay of the effective date is the minimum necessary for the Agency to be able to conduct a meaningful consultation with the public, analyze recommendations of various stakeholders, reconcile concerns about the scope, complexity, and cost of the TMDL program, and structure a flexible yet effective solution to meet Clean Water Act goals of restoring the nation's impaired waters. During this delay, the program will continue to operate under the 1985 TMDL regulations, as amended in 1992 at 40 CFR part 130, and EPA and the States and Territories will continue to develop TMDLs to work towards cleaning up the nation's waters and meeting water quality standards.

Revisions to the Due Date of the Next List of Impaired Waters

EPA received approximately 60 separate comments and 85 duplicate postcards regarding its proposal to revise the date on which States are required to submit the next section 303(d) list of impaired waters from April 1, 2002 to October 1, 2002. A substantial number of individual commenters agreed with the Agency's proposal and its rationale. However, several commenters disagreed. A few commenters stated that the Agency should not allow any more time for States to develop the next list. In their view, an April 2002 list already represents a two-year delay because EPA had earlier eliminated the requirement for States to submit a list to EPA on April 1, 2000. They also disagreed with EPA's rationale that new guidance was needed before States should be required to submit a new list. They argued any guidance issued at this time would have to follow the current regulations and could not incorporate some of the recommendations of the NRC. They, therefore, believed that existing guidance was sufficient to produce the 2002 list. EPA agrees that any guidance it issues at this point must be based on current regulations and it is not EPA's intent to change these existing regulations by guidance. However, EPA believes that within the context of the current regulations, there is sufficient flexibility to issue guidance that it believes could significantly improve some States' lists. EPA has drafted a guidance entitled "2002 Integrated Water Quality Monitoring and Assessment Report Guidance" which will be released shortly. EPA believes that States should be given additional time to review and incorporate some of the elements of the guidance in their next list if they so wish. For that reason, EPA continues to believe that a relatively brief 6-month delay of the 303(d) lists' due date is warranted.

Some commenters believed that the Agency should postpone the next 303(d) list until after the new rule is in place. They argued that development of a new rule would introduce substantial uncertainty while the States are developing their listing methodologies and their next lists pursuant to a rule and guidance that may be substantially changed soon after the 2002 lists are submitted. EPA continues to believe, however, that it is important for a new list to be produced in 2002. EPA believes that it is important to update States' 1998 lists to reflect current information to maintain the credibility of the TMDL program. EPA is aware of concerns expressed by some point source dischargers about the impact of being located on a listed stream. EPA believes that its upcoming guidance should help ensure that the 2002 section 303(d) lists more accurately identify currently impaired waters than earlier lists.

Some commenters stated their concerns that, if the 2002 list deadline is moved to October, the report required under section 305(b) of the CWA and the list required under section 303(d) would be due at different times. These commenters asked that the Agency also delay the date of the section 305(b) report. However, the due date of the section 305 (b) report is a statutory requirement and EPA cannot change it by regulation or guidance. The Agency can take steps however, to ensure that States that choose to submit a 305(b) report on October 1, 2002 do not suffer any adverse consequences. EPA will review its agreements with States regarding distribution of grants under section 106 of the CWA to make sure that receipt of grant funds are not contingent upon completion of a section 305 (b) report on April 1, 2002.

EPA received only one comment on its proposal to retain the April 1, 2002 listing requirement if a court order or consent decree or commitment in a settlement agreement expressly requires EPA to take action related to the State's 2002 list prior to October 1, 2002. When EPA published the proposal, EPA stated that it believed that this provision would only apply to the State of Georgia. The commenter expressed concern that, notwithstanding a consent decree, it was inequitable to require Georgia to meet the existing April 2002 deadline. The commenter noted that, if Georgia was required to submit its 2002 list prior to issuance of EPA's 2002 listing guidance, parts of the Georgia list may be invalidated.

EPA believes that the commenter's concerns can be addressed while requiring Georgia to submit its 2002 list in April 2002. EPA continues to believe that a State should be required to submit a 2002 list by April 1, 2002, in order to enable EPA to meet a commitment embodied in a court order, consent decree, or settlement agreement expressly requiring EPA to take action related to the State's 2002 list prior to October 1, 2002. Since this provision only applies to the State of Georgia, EPA will work with Georgia to ensure that the list it submits to EPA by April 1, 2002, meets the requirements of the Clean Water Act and EPA's currently effective regulations. In addition, EPA anticipates issuing guidance on the 2002 lists shortly so that Georgia will have the benefit of that guidance at least several months before the date it is required to submit its 2002 list. Finally, the listing guidance will not and cannot impose any binding requirements on the States, separate and apart from the statutory and regulatory requirements.

After careful review of all comments, EPA continues to believe that briefly delaying the due date of the next section 303(d) list is an appropriate step that will give the States that wish to do so time to adopt some or all of the recommendations of EPA's new guidance. EPA is aware that some States are well underway in their development of a 2002 section 303(d) list which they intended to submit on April 1, 2002. EPA will review and approve or disapprove a State list within 30 days as required by the CWA regardless of when it is submitted. EPA's decision to approve or disapprove such a list will be based on the statutory requirements at section 303(d) and EPA's regulations at 40 CFR 130.7.

III. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, (October 4, 1993)), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" and as such, has not been submitted to OMB for review.

B. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866.

C. Unfunded Mandates Reform Act (UMRA) of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or Tribal government or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA. For the same reason, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any requirement on anyone. Thus, there are no costs associated with this action . Therefore, today's rule is not subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action does not impose any requirements on anyone and does not voluntarily request information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any requirements on anyone, including small entities.

F. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not impose any new technical standards.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in executive Order 13132. It merely delays

the effective date of the July 2000 rule and the due date of the April 2002 lists. Thus, Executive Order 13132 does not apply to this rule.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

This rule establishes a relatively short delay in the effective date of the July 2000 TMDL Rule and the due date of the April 1, 2002 lists. Because these delays are relatively brief (18 months and six months, respectively) EPA does not believe this rule will have "substantial direct effects" on Tribes or the relationship or distribution of power between Tribes and the Federal Government. As discussed earlier in the preamble, during the 18-month period before the July 2000 rule becomes effective, TMDLs will continue to be developed pursuant to the regulations in effect at section 130.7. Moreover, EPA does not believe that a 6-month delay in submission of the 2000 lists will slow the pace of TMDL development given the number of waters on existing lists and the many court orders and schedules directing TMDL development. Thus, Executive Order 13175 does not apply to this rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The July 2000 rule amending 40 CFR parts 9, 122, 123, 124 and 130 published on July 13, 2000 at 65 FR 43586 is effective on April 30, 2003. The amendment to 40 CFR 130.7(d)(1) is effective November 19, 2001.

J. Executive Order 12866—Plain Language Considerations

Executive Order 12866 requires each agency to write all rules in plain language. EPA invited public comment in the proposed rule on how to make this rule easier to understand including addressing concerns regarding organization of material, clear presentation of technical terms and concepts, and alternative formats to facilitate better understanding of the Agency's action. The Agency received only one comment on this issue requesting that the rule be clearly written. The Agency has addressed this concern by reducing the amount of technical jargon in this notice, by organizing the material in a straightforward, understandable format, and by clearly discussing each of the requirements of this rule. By doing so the Agency has met the plain language requirements of Executive Order 12866.

K. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use", 66 FR 28355 (May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 123

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Hazardous substances, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 130

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 12, 2001.

Christine T. Whitman,

Administrator.

PARTS 9, 122, 123, 124 AND 130—EFFECTIVE DATE AND REVISIONS

For the reasons stated in the preamble, EPA is establishing April 30, 2003 as the effective date of the amendments to 40 CFR parts 9, 122, 123, 124 and 130 published July 13, 2000 (65 FR 43586).

For the reasons stated in the preamble, EPA is amending 40 CFR part 130 as follows:

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

1. The authority citation for part 130 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 130.7, currently in effect, is amended by adding a new sentence after the fourth sentence in paragraph (d)(1) to read as follows:

§ 130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.

* * * * *

(d) * * * (1) * * * For the year 2002 submission, a State must submit a list required under paragraph (b) of this section by October 1, 2002, unless a court order, consent decree or commitment in a settlement agreement expressly requires EPA to take an action related to that State's 2002 list prior to October 1, 2002, in which case, the State must submit a list by April 1, 2002. * * *

* * * * *

[FR Doc. 01–26265 Filed 10–17–01; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
October 18, 2001

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52

Federal Acquisition Regulation; Payments Under Fixed-Price Construction Contracts; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 2001–012]

RIN 9000–AJ22

Federal Acquisition Regulation; Payments Under Fixed-Price Construction Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify in the certification language of the clause entitled Payments under Fixed-Price Construction Contracts that all payments due to subcontractors and suppliers have been made by the prime contractor from previous progress payments received from the Government.

DATES: Interested parties should submit comments in writing on or before December 17, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: *farcase.2001–012@gsa.gov*.

Please submit comments only and cite FAR case 2001–012 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Jeremy Olson, Procurement Analyst, at (202) 501–3221. Please cite FAR case 2001–012.

SUPPLEMENTARY INFORMATION

A. Background

In 1988, Congress passed the Prompt Payment Act Amendments, in part to ensure that subcontractors and suppliers were being promptly paid by the prime contractors. 31 U.S.C. 3903(b)(1)(B)(ii) requires the contractor to certify, with each progress payment request, that payments to subcontractors and suppliers have been made from previous payments received under the contracts. This certification language is reflected in paragraph (c) of FAR 52.232–5, Payments under Fixed-Price Construction Contracts.

An ambiguity in FAR 52.232–5 surfaced as a result of a decision issued on April 2, 1999, by the United States Court of Appeals for the Sixth Circuit in *United States* vs. *Gatewood*, 173 F.3d 983 (6th Cir. 1999). The Court concluded that certifying that the prime contractor has made payments to subcontractors and suppliers is not the same as certifying that the prime contractor has made all payments due to subcontractors and suppliers.

The Government's intention has always been that all payments due to subcontractors and suppliers be covered by this certification. Accordingly, the rule amends FAR 52.232–5 to clarify the Government's intent.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold, and, therefore, do not have the progress payment type of financing. In addition, this change is a clarification of existing policy, rather than the addition of new policy. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001–012), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: October 10, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 52.232–5 by revising the date of the clause and paragraph (c)(2) to read as follows:

52.232–5 Payments under Fixed-Price Construction Contracts.

* * * * *

Payments Under Fixed-Price Construction Contracts (Date)

* * * * *

(c) * * *

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

* * * * *

[FR Doc. 01–26009 Filed 10–17–01; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Thursday,
October 18, 2001

Part V

Department of Housing and Urban Development

24 CFR Part 3500

Real Estate Settlement Procedures Act Statement of Policy 2001–1: Clarification of Statement of Policy 1999–1 Regarding Lender Payments to Mortgage Brokers, and Guidance Concerning Unearned Fees Under Section 8(b); Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR–4714–N–01]

RIN 2502–AH74

Real Estate Settlement Procedures Act Statement of Policy 2001–1: Clarification of Statement of Policy 1999–1 Regarding Lender Payments to Mortgage Brokers, and Guidance Concerning Unearned Fees Under Section 8(b)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Statement of Policy 2001–1.

SUMMARY: This Statement of Policy is being issued to eliminate any ambiguity concerning the Department's position with respect to those lender payments to mortgage brokers characterized as yield spread premiums and to overcharges by settlement service providers as a result of questions raised by two recent court decisions, *Culpepper* v. *Irwin Mortgage Corp.* and *Echevarria* v. *Chicago Title and Trust Co.*, respectively. In issuing this Statement of Policy, the Department clarifies its interpretation of Section 8 of the Real Estate Settlement Procedures Act (RESPA) in Statement of Policy 1999–1 Regarding Lender Payments to Mortgage Brokers (the 1999 Statement of Policy), and reiterates its long-standing interpretation of Section 8(b)'s prohibitions. *Culpepper* v. *Irwin Mortgage Corp.* involved the payment of yield spread premiums from lenders to mortgage brokers. *Echevarria* v. *Chicago Title and Trust Co.* involved the applicability of Section 8(b) to a settlement service provider that overcharged a borrower for the service of another settlement service provider, and then retained the amount of the overcharge.

Today's Statement of Policy reiterates the Department's position that yield spread premiums are not per se legal or illegal, and clarifies the test for the legality of such payments set forth in HUD's 1999 Statement of Policy. As stated there, HUD's position that lender payments to mortgage brokers are not illegal per se does not imply, however, that yield spread premiums are legal in individual cases or classes of transactions. The legality of yield spread premiums turns on the application of HUD's test in the 1999 Statement of Policy as clarified today.

The Department also reiterates its long-standing position that it may violate Section 8(b) and HUD's implementing regulations: (1) For two or more persons to split a fee for settlement services, any portion of which is unearned; or (2) for one settlement service provider to mark-up the cost of the services performed or goods provided by another settlement service provider without providing additional actual, necessary, and distinct services, goods, or facilities to justify the additional charge; or (3) for one settlement service provider to charge the consumer a fee where no, nominal, or duplicative work is done, or the fee is in excess of the reasonable value of goods or facilities provided or the services actually performed.

This Statement of Policy also reiterates the importance of disclosure so that borrowers can choose the best loan for themselves, and it describes disclosures HUD considers best practices. The Secretary is also announcing that he intends to make full use of his regulatory authority to establish clear requirements for disclosure of mortgage broker fees and to improve the settlement process for lenders, mortgage brokers, and consumers.

EFFECTIVE DATE: October 18, 2001.

FOR FURTHER INFORMATION CONTACT: Ivy M. Jackson, Acting Director, RESPA/ILS Division, Room 9156, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0502, or (for legal questions) Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, Room 9262, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 708–3137 (these are not toll-free numbers). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

General Background

The Department is issuing this Statement of Policy in accordance with 5 U.S.C. 552 as a formal pronouncement of its interpretation of relevant statutory and regulatory provisions. Section 19(a) (12 U.S.C. 2617(a)) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601–2617) (RESPA) specifically authorizes the Secretary "to prescribe such rules and regulations [and] to make such interpretations * * * as may be necessary to achieve the purposes of [RESPA]."

Section 8(a) of RESPA prohibits any person from giving and any person from accepting "any fee, kickback, or thing of value pursuant to an agreement or understanding, oral or otherwise" that real estate settlement service business shall be referred to any person. See 12 U.S.C. 2607(a). Section 8(b) prohibits anyone from giving or accepting "any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service * * * other than for services actually performed." 12 U.S.C. 2607(b). Section 8(c) of RESPA provides, "Nothing in [Section 8] shall be construed as prohibiting * * * (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed * * *" 12 U.S.C. 2607(c)(2). RESPA also requires the disclosure of settlement costs to consumers at the time of or soon after a borrower applies for a loan and again at the time of real estate settlement. 12 U.S.C. 2603–4. RESPA's requirements apply to transactions involving a "federally related mortgage loan" as that term is defined at 12 U.S.C. 2602(1).

I. Lender Payments to Mortgage Brokers

The Conference Report on the Department's 1999 Appropriations Act directed HUD to address the issue of lender payments to mortgage brokers under RESPA. The Conference Report stated that "Congress never intended payments by lenders to mortgage brokers for goods or facilities actually furnished or for services actually performed to be violations of [Sections 8](a) or (b) (12 U.S.C. sec. 2607) in its enactment of RESPA." H. Rep. 105–769, at 260. As also directed by Congress, HUD worked with industry groups, federal agencies, consumer groups and other interested parties in collectively producing the 1999 Statement of Policy issued on March 1, 1999. 64 FR 10080. Interested members of the public are urged to consult the 1999 Statement of Policy for a more detailed discussion of the background on lender payments to brokers addressed in today's Statement.

HUD's 1999 Statement of Policy established a two-part test for determining the legality of lender payments to mortgage brokers for table funded transactions and intermediary transactions under RESPA: (1) Whether goods or facilities were actually furnished or services were actually performed for the compensation paid and; (2) whether the payments are reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed. In applying this test, HUD believes that total compensation should be scrutinized to assure that it is reasonably related to the goods, facilities, or services furnished or performed to determine whether it is legal under RESPA. In the determination of whether payments from lenders to mortgage brokers are permissible under Section 8 of RESPA, the threshold question is whether there were goods or facilities actually furnished or services actually performed for the total compensation paid to the mortgage broker. Where a lender payment to a mortgage broker comprises a portion of total broker compensation, the amount of the payment is not, under the HUD test, scrutinized separately and apart from total broker compensation.

Since HUD issued its 1999 Statement of Policy, most courts have held that yield spread premiums from lenders to mortgage brokers are legal provided that such payments meet the test for legality articulated in the 1999 Statement of Policy and otherwise comport with RESPA. However, in a recent decision, *Culpepper* v. *Irwin Mortgage Corp.*, 253 F.3d 1324 (11th Cir. 2001), the Court of Appeals for the Eleventh Circuit upheld certification of a class in a case alleging that yield spread premiums violated Section 8 of RESPA where the defendant lender, pursuant to a prior understanding with mortgage brokers, paid yield spread premiums to the brokers based solely on the brokers' delivery of above par interest rate loans. The court concluded that a jury could find that yield spread premiums were illegal kickbacks or referral fees under RESPA where the lender's payments were based exclusively on interest rate differentials reflected on rate sheets, and the lender had no knowledge of what services, if any, the broker performed. The court described HUD's 1999 Statement of Policy as "ambiguous." *Id.* at 1327. Accordingly, and because courts have now rendered conflicting decisions, HUD has an obligation to clarify its position and issues this Statement today to provide such clarification and certainty to lenders, brokers, and consumers.

Because this clarification focuses on the legality of lender payments to mortgage brokers in transactions subject to RESPA, the coverage of this statement is restricted to payments to mortgage brokers in table funded and intermediary broker transactions. Lender payments to mortgage brokers where mortgage brokers initially fund the loan and then sell the loan after settlement are outside the coverage of this statement as exempt from RESPA under the secondary market exception.

II. Disclosure

Besides establishing the two-part test for determining the legality of yield spread premiums, the 1999 Statement of Policy discussed the importance of disclosure in permitting borrowers to choose the best loan for themselves. The mortgage transaction is complicated, and most people engage in such transactions relatively infrequently, compared to the other purchases they make. In some instances, borrowers have paid very large origination costs, either up front fees, yield spread premiums, or both, which they might have been able to avoid with timely disclosure. Timely disclosure would permit them to shop for preferable origination costs and mortgage terms and to agree to those costs and terms that meet their needs. The Department therefore is issuing a clarification of the importance of disclosure, with a description of disclosures that it considers to be best practices.

In this Statement of Policy, the Secretary is announcing that he intends to make full use of his regulatory authority as expeditiously as possible to provide clear requirements and guidance prospectively regarding disclosure of mortgage broker fees and, more broadly, to improve the mortgage settlement process so that homebuyers and homeowners are better served. Pending the promulgation of such a rule, the Secretary asks the industry to adopt new disclosure requirements to promote competition and to better serve consumers.

III. Unearned Fees

The 1999 Statement of Policy also touched upon another area of recurring questions under Section 8 of RESPA: the legality of payments that are in excess of the reasonable value of the goods or facilities provided or services performed. See 64 FR 10082–3.

Since RESPA was enacted, HUD has consistently interpreted Section 8(b) and HUD's RESPA regulations to prohibit settlement service providers from charging unearned fees, as occurred in *Echevarria* v. *Chicago Title & Trust Co.*, 256 F.3d 623 (7th Cir. 2001). Such an interpretation is consistent with Congress's finding, when enacting RESPA, that consumers need protection from unnecessarily high settlement costs. Through this Statement of Policy, HUD makes clear that Section 8(b) prohibits any person from giving or accepting any fees other than payments for goods and facilities provided or services actually performed. Payments that are unearned fees occur in, but are not limited to, cases where: (1) Two or more persons split a fee for settlement services, any portion of which is unearned; or (2) one settlement service provider marks-up the cost of the services performed or goods provided by another settlement service provider without providing additional actual, necessary, and distinct services, goods, or facilities to justify the additional charge; or (3) one settlement service provider charges the consumer a fee where no, nominal, or duplicative work is done, or the fee is in excess of the reasonable value of goods or facilities provided or the services actually performed.

In a July 5, 2001 decision, the Court of Appeals for the Seventh Circuit concluded that unearned fees must be passed from one settlement provider to another in order for such fees to violate Section 8(b). Accordingly, the court held that a settlement service provider did not violate Section 8(b) when, in billing a borrower, it added an overcharge to another provider's fees and retained the additional charge without providing any additional goods, facilities or services. *Echevarria* v. *Chicago Title & Trust Co.* Other courts have held that two or more parties must split or share a fee in order for a violation of Section 8(b) to occur. Still other courts have stated, however, that a single provider can violate Section 8(b). Because the courts are now divided, HUD is issuing this Statement of Policy to reiterate its interpretation of Section 8(b).

The Court of Appeals for the Seventh Circuit rendered its conclusion in *Echevarria* "absent a formal commitment by HUD to an opposing position. * * *" *Id.* at 630. In issuing this Statement of Policy pursuant to Section 19(a), HUD reiterates its position on unearned fees under Section 8(b) of RESPA, which HUD regards as long standing.

IV. Statement of Policy 2001–1

To give guidance to interested members of the real estate settlement industry and the general public on the application of RESPA and its implementing regulations, the Secretary hereby issues the following Statement of Policy. The interpretations embodied in this Statement of Policy are issued pursuant to Section 19(a) of RESPA. 12 U.S.C. 2617(a).

Part A. Mortgage Broker Fees

Yield Spread Premiums

One of the primary barriers to homeownership and homeowners' ability to refinance and lower their housing costs is the up front cash needed to obtain a mortgage. The closing costs and origination fees associated with a mortgage loan are a significant component of these up front

cash requirements. Borrowers may choose to pay these fees out of pocket, or to pay the origination fees, and possibly all the closing fees, by financing them; *i.e.*, adding the amount of such fees to the principal balance of their mortgage loan. The latter approach, however, is not available to those whose loan-to-value ratio has already reached the maximum permitted by the lender. For those without the available cash, who are at the maximum loan-to-value ratio, or who simply choose to do so, there is a third option. This third option is a yield spread premium.

Yield spread premiums permit homebuyers to pay some or all of the up front settlement costs over the life of the mortgage through a higher interest rate. Because the mortgage carries a higher interest rate, the lender is able to sell it to an investor at a higher price. In turn, the lender pays the broker an amount reflective of this price difference. The payment allows the broker to recoup the up front costs incurred on the borrower's behalf in originating the loan. Payments from lenders to brokers based on the rates of borrowers' loans are characterized as "indirect" fees and are referred to as yield spread premiums.[1]

A yield spread premium is calculated based upon the difference between the interest rate at which the broker originates the loan and the par, or market, rate offered by a lender. The Department believes, and industry and consumers agree, that a yield spread premium can be a useful means to pay some or all of a borrower's settlement costs. In these cases, lender payments reduce the up front cash requirements to borrowers. In some cases, borrowers are able to obtain loans without paying any up front cash for the services required in connection with the origination of the loan. Instead, the fees for these services are financed through a higher interest rate on the loan. The yield spread premium thus can be a legitimate tool to assist the borrower. The availability of this option fosters homeownership.

HUD has recognized the utility of yield spread premiums in regulations issued prior to the 1999 Statement of Policy. In a final rule concerning "Deregulation of Mortgagor Income Requirements," HUD indicated that up front costs could be lowered by yield spread premiums.54 FR 38646 (September 20, 1989).

In a 1992 rule concerning RESPA, HUD specifically listed yield spread premiums as an example of fees that must be disclosed. The example was codified as Illustrations of Requirements of RESPA, Fact Situations 5 and 13 in Appendix B to 24 CFR part 3500. (See also Instructions at Appendix A to 24 CFR part 3500 for Completing HUD–1 and HUD–1A Settlement Statements.) HUD did not by these examples mean that yield spread premiums were *per se* legal, but HUD also did not mean that yield spread premiums were *per se* illegal.

HUD also recognizes, however, that in some cases less scrupulous brokers and lenders take advantage of the complexity of the settlement transaction and use yield spread premiums as a way to enhance the profitability of mortgage transactions without offering the borrower lower up front fees. In these cases, yield spread premiums serve to increase the borrower's interest rate and the broker's overall compensation, without lowering up front cash requirements for the borrower. As set forth in this Statement of Policy, such uses of yield spread premiums may result in total compensation in excess of what is reasonably related to the total value of the origination services provided by the broker, and fail to comply with the second part of HUD's two-part test as enunciated in the 1999 Statement of Policy, and with Section 8.

The 1999 Statement of Policy's Test for Legality

The Department restates its position that yield spread premiums are not per se illegal. HUD also reiterates that this statement "does not imply * * * that yield spread premiums are legal in individual cases or classes of transactions." 64 FR 10084. The legality of any yield spread premium can only be evaluated in the context of the test HUD established and the specific factual circumstances applicable to each transaction in which a yield spread premium is used.

The 1999 Statement of Policy established a two-part test for determining whether lender payments to mortgage brokers are legal under RESPA. In applying Section 8 and HUD's regulations, the 1999 Statement of Policy stated:

> In transactions where lenders make payments to mortgage brokers, HUD does not consider such payments (*i.e.*, yield spread premiums or any other class of named payments) to be illegal *per se*. HUD does not view the name of the payment as the appropriate issue under RESPA. HUD's position that lender payments to mortgage brokers are not illegal *per se* does not imply, however, that yield spread premiums are legal in individual cases or classes of transactions. The fees in cases and classes of transactions are illegal if they violate the prohibitions of Section 8 of RESPA.
>
> In determining whether a payment from a lender to a mortgage broker is permissible under Section 8 of RESPA, the first question is whether goods or facilities were actually furnished or services were actually performed for the compensation paid. The fact that goods or facilities have been actually furnished or that services have been actually performed by the mortgage broker does not by itself make the payment legal. The second question is whether the payments are reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed.
>
> In applying this test, HUD believes that total compensation should be scrutinized to assure that it is reasonably related to goods, facilities, or services furnished or performed to determine whether it is legal under RESPA. Total compensation to a broker includes direct origination and other fees paid by the borrower, indirect fees, including those that are derived from the interest rate paid by the borrower, or a combination of some or all. The Department considers that higher interest rates alone cannot justify higher total fees to mortgage brokers. All fees will be scrutinized as part of total compensation to determine that total compensation is reasonably related to the goods or facilities actually furnished or services actually performed. HUD believes that total compensation should be carefully considered in relation to price structures and practices in similar transactions and in similar markets. 64 FR 10084.

Culpepper

The need for further clarification of HUD's position, as set forth in the 1999 Statement of Policy, on the treatment of lender payments to mortgage brokers under Section 8 of RESPA (12 U.S.C. 2607), is evident from the recent decision of the Court of Appeals for the Eleventh Circuit in *Culpepper*.

In upholding class certification in *Culpepper*, the court only applied the first part of the HUD test, and then further narrowed its examination of whether the lender's yield spread payments were "for services" by focusing exclusively on the presumed intent of the lender in making the payments. The crux of the court's decision is that Section 8 liability for the payment of unlawful referral fees could be established under the first part of the HUD test alone, based on the facts that the lender's payments to mortgage brokers were calculated solely on the difference between the par interest rate and the higher rate at which the mortgage brokers delivered loans, and that the lender had no knowledge of what services, if any, the brokers had performed.

HUD was not a party to the case and disagrees with the judicial interpretation regarding Section 8 of RESPA and the 1999 Statement of Policy.

[1] Indirect fees from lenders are also known as "back funded payments," "overages," or "servicing release premiums."

Clarification of the HUD Test

It is HUD's position that where compensable services are performed, the 1999 Statement of Policy requires application of both parts of the HUD test before a determination can be made regarding the legality of a lender payment to a mortgage broker.

1. *The First Part of the HUD Test:* Under the first part of HUD's test, the total compensation to a mortgage broker, of which a yield spread premium may be a component or the entire amount, must be for goods or facilities provided or services performed. HUD's position is that in order to discern whether a yield spread premium was for goods, facilities or services under the first part of the HUD test, it is necessary to look at each transaction individually, including examining all of the goods or facilities provided or services performed by the broker in the transaction, whether the goods, facilities or services are paid for by the borrower, the lender, or partly by both.

- It is HUD's position that neither Section 8(a) of RESPA nor the 1999 Statement of Policy supports the conclusion that a yield spread premium can be presumed to be a referral fee based solely upon the fact that the lender pays the broker a yield spread premium that is based upon a rate sheet, or because the lender does not have specific knowledge of what services the broker has performed. HUD considers the latter situation to be rare. The common industry practice is that lenders follow underwriting standards that demand a review of originations and that therefore lenders typically know that brokers have performed the services required to meet those standards.

Yield spread premiums are by definition derived from the interest rate. HUD believes that a rate sheet is merely a mechanism for displaying the yield spread premium, and does not indicate whether a particular yield spread premium is a payment for goods and facilities actually furnished or services actually performed under the HUD test. Whether or not a yield spread premium is legal or illegal cannot be determined by the use of a rate sheet, but by how HUD's test applies to the transaction involved.

Section 8 prohibits the giving and accepting of fees, kickbacks, or things of value for the referral of settlement services and also unearned fees. It is therefore prudent for a lender to take action so as to ensure that brokers are performing compensable services and receiving only compensation that, in total, is reasonable for those services provided. As stated, however, in the 1999 Statement of Policy:

> The Department recognizes that some of the goods or facilities actually furnished or services actually performed by the broker in originating a loan are "for" the lender and other goods or facilities actually furnished or services actually performed are "for" the borrower. HUD does not believe that it is necessary or even feasible to identify or allocate which facilities, goods or services are performed or provided for the lender, for the borrower, or as a function of State or Federal law. All services, goods and facilities inure to the benefit of both the borrower and the lender in the sense that they make the loan transaction possible. * * * 64 FR 10086.

The 1999 Statement of Policy provided a list of compensable loan origination services originally developed by HUD in a response to an inquiry from the Independent Bankers Association of America (IBAA), which HUD considers relevant in evaluating mortgage broker services. In analyzing each transaction to determine if services are performed HUD believes the 1999 Statement of Policy should be used as a guide. As stated there, the IBAA list is not exhaustive, and while technology is changing the process of performing settlement services, HUD believes that the list is still a generally accurate description of settlement services. Compensation for these services may be paid either by the borrower or by the lender, or partly by both. Compensable services for the first part of the test do not include referrals or no, nominal, or duplicative work.

2. *Reasonableness of Broker Fees:* The second part of HUD's test requires that total compensation to the mortgage broker be reasonably related to the total set of goods or facilities actually furnished or services performed.

The 1999 Statement of Policy said in part:

> The Department considers that higher interest rates alone cannot justify higher total fees to mortgage brokers. All fees will be scrutinized as part of total compensation to determine that total compensation is reasonably related to the goods or facilities actually furnished or services actually performed. 64 FR 10084.

Accordingly, the Department believes that the second part of the test is applied by determining whether a mortgage broker's total compensation is reasonable. Total compensation includes fees paid by a borrower and any yield spread premium paid by a lender, not simply the yield spread premium alone. Yield spread premiums serve to allow the borrower a lower up front cash payment in return for a higher interest rate, while allowing the broker to recoup the total costs of originating the loan. Total compensation to the broker must be reasonably related to the total value of goods or facilities provided or services performed by the broker. Simply delivering a loan with a higher interest rate is not a compensable service. The Department affirms the 1999 Statement of Policy's position on this matter for purposes of RESPA enforcement.

The 1999 Statement also said:

> In analyzing whether a particular payment or fee bears a reasonable relationship to the value of the goods or facilities actually furnished or services actually performed, HUD believes that payments must be commensurate with the amount normally charged for similar services, goods or facilities. This analysis requires careful consideration of fees paid in relation to price structures and practices in similar transactions and in similar markets. If the payment or a portion thereof bears no reasonable relationship to the market value of the goods, facilities or services provided, the excess over the market rate may be used as evidence of a compensated referral or an unearned fee in violation of Section 8(a) or (b) of RESPA. 64 FR 10086.

The 1999 Statement of Policy also stated:

> The level of services mortgage brokers provide in particular transactions depends on the level of difficulty involved in qualifying applicants for particular loan programs. For example, applicants have differences in credit ratings, employment status, levels of debt, or experience that will translate into various degrees of effort required for processing a loan. Also, the mortgage broker may be required to perform various levels of services under different servicing or processing arrangements with wholesale lenders. 64 FR 10081.

In evaluating mortgage broker fees for enforcement purposes, HUD will consider these factors as relevant in assessing the reasonableness of mortgage broker compensation, as well as comparing total compensation for loans of similar size and similar characteristics within similar geographic markets.

Also, while the Department continues to believe that comparison to prices in similar markets is generally a key factor in determining whether a mortgage broker's total compensation is reasonable, it is also true that in less competitive markets comparisons to the prices charged by other similarly situated providers may not, standing alone, provide a useful measure. As a general principle, HUD believes that in evaluating the reasonableness of broker compensation in less competitive markets, consideration of price structures from a wider range of

providers may be warranted to reach a meaningful conclusion.

Part B. Providing Meaningful Information to Borrowers

In addition to addressing the legality of yield spread premiums in the 1999 Statement of Policy, HUD emphasized the importance of disclosing broker fees, including yield spread premiums.

There is no requirement under existing law that consumers be fully informed of the broker's services and compensation prior to the GFE. Nevertheless, HUD believes that the broker should provide the consumer with information about the broker's services and compensation, and agreement by the consumer to the arrangement should occur as early as possible in the process. 64 FR 10087.

HUD continues to believe that disclosure is extremely important, and that many of the concerns expressed by borrowers over yield spread premiums can be addressed by disclosing yield spread premiums, borrower compensation to the broker, and the terms of the mortgage loan, so that the borrower may evaluate and choose among alternative loan options.

In the 1999 Statement of Policy, HUD stated:

* * * HUD believes that for the market to work effectively, borrowers should be afforded a meaningful opportunity to select the most appropriate product and determine what price they are willing to pay for the loan based on disclosures which provide clear and understandable information.

The Department reiterates its long-standing view that disclosure alone does not make illegal fees legal under RESPA. On the other hand, while under current law, pre-application disclosure to the consumer is not required, HUD believes that fuller information provided at the earliest possible moment in the shopping process would increase consumer satisfaction and reduce the possibility of misunderstanding. 64 FR 10087.

HUD currently requires the disclosure of yield spread premiums on the Good Faith Estimate and the HUD–1. The 1999 Statement of Policy said:

The Department has always indicated that any fees charged in settlement transactions should be clearly disclosed so that the consumer can understand the nature and recipient of the payment. Code-like abbreviations like 'YSP to DBG, POC', for instance, have been noted. [Footnote omitted.] Also the Department has seen examples on the GFE and/or the settlement statement where the identity and/or purposes of the fees are not clearly disclosed.

The Department considers unclear and confusing disclosures to be contrary to the statute's and the regulation's purposes of making RESPA-covered transactions understandable to the consumer. At a minimum, all fees to the mortgage broker are to be clearly labeled and properly estimated on the GFE. On the settlement statement, the name of the recipient of the fee (in this case, the mortgage broker) is to be clearly labeled and listed, and the fee received from a lender is to be clearly labeled and listed in the interest of clarity. 64 FR 10086–10087.

While the disclosure on the GFE and HUD–1 is required, the Department is aware and has stated that the current GFE/HUD–1 disclosure framework is often insufficient to adequately inform consumers about yield spread premiums and other lender paid fees to brokers. Under the current rules, the GFE need not be provided until after the consumer has applied for a mortgage and may have paid a significant fee, and the HUD–1 is only given at closing. Because of this, HUD has in recent years sought to foster a more consumer beneficial approach to disclosure regarding yield spread premiums through successive rulemaking efforts. This history is discussed more fully in the 1999 Statement of Policy.[2]

Representatives of the mortgage industry have said that since the 1999 Statement of Policy, many brokers provide borrowers a disclosure describing the function of mortgage brokers and stating that a mortgage broker may receive a fee in the transaction from the lender. While the 1999 Statement of Policy commended the National Association of Mortgage Brokers and the Mortgage Bankers Association of America for strongly suggesting such a disclosure to their respective memberships, the Statement of Policy added:

Although this statement of policy does not mandate disclosures beyond those currently required by RESPA and Regulation X, the most effective approach to disclosure would allow a prospective borrower to properly evaluate the nature of the services and all costs for a broker transaction, and to agree to such services and costs before applying for a loan. Under such an approach, the broker would make the borrower aware of whether the broker is or is not serving as the consumer's agent to shop for a loan, and the total compensation to be paid to the mortgage broker, including the amounts of each of the fees making up the compensation. 64 FR 10087.

In HUD's view, meaningful disclosure includes many types of information: what services a mortgage broker will perform, the amount of the broker's total compensation for performing those services (including any yield spread premium paid by the lender), and whether or not the broker has an agency or fiduciary relationship with the borrower. The disclosure should also make the borrower aware that he or she may pay higher up front costs for a mortgage with a lower interest rate, or conversely pay a higher interest rate in return for lower up front costs, and should identify the specific trade-off between the amount of the increase in the borrower's monthly payment (and also the increase in the interest rate) and the amount by which up front costs are reduced. HUD believes that disclosure of this information, and written acknowledgment by the borrower that he or she has received the information, should be provided early in the transaction. Such disclosure facilitates comparison shopping by the borrower, to choose the best combination of up front costs and mortgage terms from his or her individual standpoint. HUD regards full disclosure and written acknowledgment by the borrower, at the earliest possible time, as a best practice.

Yield spread premiums are currently required to be listed in the "800" series of the HUD–1 form, listing "Items Payable in Connection with Loan." This existing practice, however, does not disclose the purpose of the yield spread premium, which is to lower up front cost to borrowers. To achieve this end it has been suggested to the Department that the yield spread premium should be reported as a credit to the borrower in the "200" series, among the "Amounts Paid by or in Behalf of Borrowers." The homebuyer or homeowner could then see that the yield spread premium is reducing closing costs, and also see the extent of the reduction.

HUD believes that improved early disclosure regarding mortgage broker compensation and the entry of yield spread premiums as credits to borrowers on the GFE and the HUD–1 settlement statement are both useful and complementary forms of disclosure. The Department believes that used together these methods of disclosure offer greater assurance that lender payments to mortgage brokers serve borrowers' best interests.

While the 1999 Policy Statement and IV. Part A. of this Statement only cover certain lender payments to mortgage brokers, as described above, HUD also believes that similar information on the trade-off between lower up front costs and higher interest rates and monthly payments should be disclosed to borrowers on all mortgage loan originations, not merely those originated by brokers. HUD is aware that while yield spread premiums are not used in loans originated by lenders, lenders are able to offer loans with low or no up front costs required at closing by charging higher interest rates and recouping the costs by selling the loans into the secondary market for a price representing the difference between the interest rate on the loan and the par, or market, interest rate. Sale of such a loan achieves the same purpose as the yield spread premium does on a loan originated by a broker. The Department strongly believes that all lenders and brokers should provide the level of consumer disclosure that the purposes of RESPA intend and that fair business practices demand. As indicated in the 1999 Statement of Policy, HUD emphasizes that fuller information provided as early as possible in the shopping process would increase consumer satisfaction and reduce the possibility of misunderstanding. In the future, full and early disclosures are factors that the Department would weigh favorably in exercising its enforcement discretion in cases involving mortgage broker fees. Nevertheless, the Department also again makes clear that disclosure alone does not make illegal fees legal under RESPA. The Department will scrutinize all relevant information in making enforcement decisions, including whether transactions evidence practices that may be illegal.

Part C. Section 8(b) Unearned Fees

A. Background

RESPA was enacted in 1974 to provide consumers "greater and more timely information on the nature of the costs of the [real estate] settlement process" and to protect consumers from "unnecessarily high settlement charges caused by certain abusive practices * * *" 12 U.S.C. 2601.

Since RESPA was enacted, HUD has interpreted Section 8(b) as prohibiting any person from giving or accepting any unearned fees, i.e., charges or payments for real estate settlement services other than for goods or facilities provided or services performed. Payments that are unearned fees for settlement services occur in, but are not limited to, cases where: (1) Two or more persons split a fee for settlement services, any portion of which is unearned; or (2) one settlement service provider marks-up the cost of the services performed or goods provided by another settlement service provider without providing additional actual, necessary, and distinct services, goods, or facilities to justify the additional charge; or (3) one settlement service provider charges the consumer a fee where no, nominal, or duplicative work is done, or the fee is in excess of the reasonable value of goods or facilities provided or the services actually performed.

In the first situation, two settlement service providers split or share a fee charged to a consumer and at least part, if not all, of at least one provider's share of the fee is unearned. In the second situation, a settlement service provider charges a fee to a consumer for another provider's services that is higher than the actual price of such services, and keeps the difference without performing any actual, necessary, and distinct services to justify the additional charge. In the third situation, one settlement service provider charges a fee to a consumer where no work is done or the fee exceeds the reasonable value of the services performed by that provider, and for this reason the fee or any portion thereof for which services are not performed is unearned.

HUD regards all of these situations as legally indistinguishable, in that they involve payments for settlement services where all or a portion of the fees are unearned and, thus, are violative of the statute. HUD, therefore, specifically interprets Section 8(b) as not being limited to situations where at least two persons split or share an unearned fee for the provision to be violated.

As already indicated in this Statement of Policy, meaningful disclosure of all charges and fees is essential under RESPA. Such disclosures help protect consumers from paying unearned or duplicate fees. However, as noted above, in the 1999 Statement of Policy the Department reiterated "its long-standing view that disclosure alone does not make illegal fees legal under RESPA." 64 FR 10087.

B. HUD's Guidance and Regulations

HUD guidance and regulations have consistently interpreted Section 8 as prohibiting all unearned fees. In 1976, HUD issued a Settlement Costs Booklet that provided that "[i] t is also illegal to charge or accept a fee or part of a fee where no service has actually been performed." 41 FR 20289 (May 17, 1976). Between 1976 and 1992, HUD indicated in informal opinions that unearned fees occur where there are excessive fees charged, regardless of the number of settlement service providers involved.[3]

In the preamble to HUD's 1992 final rule revising Regulation X (57 FR 49600 (November 2, 1992)), HUD stated: "Section 8 of RESPA (12 U.S.C. 2607) prohibits kickbacks for referral of business incident to or part of a settlement service and also prohibits the splitting of a charge for a settlement service, other than for services actually performed (i.e., no payment of unearned fees)." 57 FR 49600 (November 2, 1992).

HUD's regulations, published on November 2, 1992, implement Section 8(b). Section 3500.14(c)[4] provides:

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally-related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this Section. The source of the payment does not determine whether or not a service is compensable. Nor may the prohibitions of this part be avoided by creating an arrangement wherein the purchaser of services splits the fee.

24 CFR 3500.14(g)(2) states in part:

The Department may investigate high prices to see if they are the result of a referral fee or a split of a fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. These facts may be used as evidence of a violation of Section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation.

24 CFR 3500.14(g)(3) provides in part:

When a person in a position to refer settlement service business * * * receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person.

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[2] In both the HUD/Federal Reserve Board Report on RESPA/TILA Reform, 1998, and the HUD/Treasury Report on Curbing Predatory Home Mortgage Lending, 2000, the agencies recommended earlier disclosures to facilitate shopping and lower settlement costs.

[3] *See* e.g., Old Informal Opinion (6), August 16, 1976 and Old Informal Opinion (65), April 4, 1980; Barron and Berenson, *Federal Regulation of Real Estate and Mortgage Lending*, (4th Ed.1998). On November 2, 1992 (57 F.R. 49600), when HUD issued revisions to its RESPA regulations, it withdrew all of its informal counsel opinions and staff interpretations issued before that date. The 1992 rule provided, however, that courts and administrative agencies could use HUD's previous opinions to determine the validity of conduct occurring under the previous version of Regulation X. *See* 24 CFR 3500.4(c).

[4] The heading to 24 CFR 3500.14 is titled "Prohibition against kickbacks and unearned fees." However, the heading of subsection (c) is titled "split of charges," and the preamble to the November 1992 rule states "[s]ection 8 of RESPA (12 U.S.C. 2607) prohibits kickbacks for referral of business incident to or part of a settlement service and also prohibits the splitting of a charge for a settlement service, other than for services actually performed (i.e., no payment of unearned fees)." 57 FR 49600 (November 2, 1992). The rule headings and preamble text are a generalized description of Section 8 that is more developed in the actual regulation text. As discussed in Section D of this Statement of Policy, HUD believes that the actual text of the rules, as amended in 1992, makes clear that Section 8(b)'s prohibitions against unearned fees apply even when only one settlement service provider is involved.

In Appendix B to the HUD RESPA regulations, HUD provides illustrations of the requirements of RESPA. Comment 3 states in part:

The payment of a commission or portion of the * * * premium * * * or receipt of a portion of the payment * * * where no substantial services are being performed * * * is a violation of Section 8 of RESPA. It makes no difference whether the payment comes from [the settlement service provider] or the purchaser. The amount of the payment must bear a reasonable relationship to the services rendered. Here [the real estate broker in the example] is being compensated for a referral of business to [the title company].

In 1996, in the preamble to the final rule on the Withdrawal of Employer/Employee and Computer Loan Origination Systems Exemptions [5] (61 FR 29238 (June 7, 1996)), HUD reiterated its interpretation of Section 8(b) of RESPA as follows:

HUD believes that Section 8(b) of the statute and the legislative history make clear that no person is allowed to receive 'any portion' of charges for settlement services, except for services actually performed. The provisions of Section 8(b) could apply in a number of situations: (1) where one settlement service provider receives an unearned fee from another provider; (2) where one settlement service provider charges the consumer for third-party services and retains an unearned fee from the payment received; or (3) where one settlement service provider accepts a portion of a charge (including 100% of the charge) for other than services actually performed. The interpretation urged [by the commenters to the proposed rule published on July 21, 1994], that a single settlement service provider can charge unearned or excessive fees so long as the fees are not shared with another, is an unnecessarily restrictive interpretation of a statute designed to reduce unnecessary costs to consumers. The Secretary, charged by statute with interpreting RESPA, interprets Section 8(b) to mean that two persons are not required for the provision to be violated. 61 FR 29249.

The latest revision to the Settlement Costs Booklet for consumers, issued in 1997, also provides "[i]t is also illegal for anyone to accept a fee or part of a fee for services if that person has not actually performed settlement services for the fee." 62 FR 31998 (June 11, 1997).

Further, HUD has provided information to the public and the mortgage industry in the "Frequently Asked Questions" section of its RESPA Web site, located at <*http://www.hud.gov/fha/sfh/res/resindus.html*>. Question 25 states:

Can a lender collect from the borrower an appraisal fee of $200, listing the fee as such on the HUD–1, yet pay an independent appraiser $175 and collect the $25 difference?

The answer reads:

No, the lender may only collect $175 as the actual charge. It is a violation of Section 8(b) for any person to accept a split of a fee where services are not performed.

In 1999, by letter submitted at the request of the Superior Court of California, Los Angeles County, in the case of *Brown* v. *Washington Mutual Bank* (Case No. BC192874), HUD provided the following response to a specific question posed by the court on lender "markups" of another settlement service provider's fees:

A lender that purchases third party vendor services for purposes of closing a federally related mortgage loan may not, under RESPA, mark up the third party vendor fees for purposes of making a profit. HUD has consistently advised that where lenders or others charge consumers marked-up prices for services performed by the third party providers without performing additional services, such charges constitute "splits of fees" or "unearned fees" in violation of Section 8(b) of RESPA.

HUD noted in its letter to the court that the response reflected the Department's long-standing position.

C. Recent Cases

Notwithstanding HUD's regulations and other guidance, the Court of Appeals for the Seventh Circuit held, in *Echevarria* v. *Chicago Title and Trust Co.*, 256 F.3d 623 (7th Cir. 2001), that Section 8(b) was not violated where a title company, without performing any additional services, charged the plaintiffs more money than was required by the recorder's office to record a deed and the title company then retained the difference. The court reasoned that plaintiffs "failed to plead facts tending to show that Chicago Title illegally shared fees with the Cook County Recorder. The Cook County Recorder received no more than its regular recording fees and it did not give to or arrange for Chicago Title to receive an unearned portion of these fees. The County Recorder has not engaged in the third party involvement necessary to state a claim under [RESPA § 8(b)]." Id. at 626. The court in essence concluded that unearned fees must be passed from one settlement provider to another in order for such fees to violate Section 8(b).

Earlier, in *Willis* v. *Quality Mortgage USA, Inc.*, 5 F. Supp. 2d 1306 (M.D. Ala. 1998), cited by the Seventh Circuit in support of its conclusion, the district court concluded that 24 CFR 3500.14(c), "[w]hen read as a whole," prohibits payments for which no services are performed "only if those payments are split with another party." Id. at 1309. The *Willis* court held that there must be a split of a charge between a settlement service provider and a third party to establish a violation Section 8(b). The court also concluded that 24 CFR 3500.14(g)(3) only applied when there was a payment from a lender to a broker, or vice versa. The payment from a borrower to a mortgage lender could not be the basis for a violation of 24 CFR 3500.14(g)(3) and Section 8(b).

HUD was not a party to the cases and disagrees with these judicial interpretations of Section 8(b) which it regards as inconsistent with HUD's regulations and HUD's long-standing interpretations of Section 8(b).

D. Unearned Fees Under Section 8(b)

This Statement of Policy reaffirms HUD's existing, long-standing interpretation of Section 8(b) of RESPA. Sections 8(a) and (b) of RESPA contain distinct prohibitions. Section 8(a) prohibits the giving or acceptance of any payment pursuant to an agreement or understanding for the referral of settlement service business involving a federally related mortgage loan; it is intended to eliminate kickbacks or compensated referral arrangements among settlement service providers. Section 8(b) prohibits the giving or accepting of any portion, split, or percentage of any charge other than for goods or facilities provided or services performed; it is intended to eliminate unearned fees. Such fees are contrary to the Congressional finding when enacting RESPA that consumers need protection from unnecessarily high settlement charges. 12 U.S.C. 2601(a).

It is HUD's position that Section 8(b) proscribes the acceptance of any portion or part of a charge other than for services actually performed. Inasmuch as Section 8(b)'s proscription against "any portion, split, or percentage" of an unearned charge for settlement services is written in the disjunctive, the prohibition is not limited to a split. In HUD's view, Section 8(b) forbids the paying or accepting of any portion or percentage of a settlement service—including up to 100%—that is unearned, whether the entire charge is divided or split among more than one person or entity or is retained by a single person. Simply put, given that Section 8(b) proscribes unearned portions or percentages as well as splits, HUD does not regard the provision as restricting only fee splitting among settlement service providers. Further, since Section 8(b) on its face prohibits the giving or accepting of an unearned fee by any person, and 24 CFR 3500.14(c) speaks of a charge by "a person," it is also incorrect to conclude that the Section 8(b) proscription covers only payments or charges among settlement service providers.[6]

A settlement service provider may not levy an additional charge upon a borrower for another settlement service provider's services without providing additional services that are bona fide and justify the increased charge. Accordingly, a settlement service provider may not mark-up the cost of another provider's services without providing additional settlement services; such payment must be for services that are actual, necessary and distinct services provided to justify the charge. 24 CFR 3500.14(g)(3).[7] The HUD regulation implementing Section 8(b) states: "[a] charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this Section." 24 CFR 3500.14 (c).

The regulations also make clear that a charge by a single service provider where little or no services are performed is an unearned fee that is prohibited by the statute. 24 CFR 3000.14(c). A single service provider is also prohibited from charging a duplicative fee. Further, a single service provider cannot serve in two capacities, e.g., a title agent and closing attorney, and be paid twice for the same service. The fee the service provider would be receiving in this case is duplicative under 24 CFR 3000.14(c) and not necessary and distinct under 24 CFR 3000.14(g)(3). Clearly, in all of these instances, the source of the payment—whether from consumers, other settlement service providers, or other third parties—is not relevant in determining whether the fee is earned or unearned because ultimately, all settlement payments come directly or indirectly from the consumer. See 24 CFR 3500.14(c). Therefore, a single settlement service provider violates Section 8(b) whenever it receives an unearned fee.

A single service provider also may be liable under Section 8(b) when it charges a fee that exceeds the reasonable value of goods, facilities, or services provided. HUD's regulations as noted state: "If the payment of a thing of value bears no relationship to the goods or services provided, then the excess is not for services or goods actually performed or provided." 24 CFR 3500.14(g)(2). Section 8(c)(2) only allows "the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or services actually performed," i.e., permitting only that compensation which is reasonably related to the goods or facilities provided or services performed. Compensation that is unreasonable is unearned under Section 8(b) and is not bona fide under Section 8(c)(2).

The Secretary, therefore, interprets Section 8(b) of RESPA to prohibit all unearned fees, including, but not limited to, cases where: (1) Two or more persons split a fee for settlement services, any portion of which is unearned; or (2) one settlement service provider marks-up the cost of the services performed or goods provided by another settlement service provider without providing additional actual, necessary, and distinct services, goods, or facilities to justify the additional charge; or (3) one service provider charges the consumer a fee where no, nominal, or duplicative work is done, or the fee is in excess of the reasonable value of goods or facilities provided or the services actually performed.

V. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has reviewed this Statement of Policy in accordance with Executive Order 12866, (captioned "Regulatory Planning and Review"). OMB determined that this Statement of Policy is a "significant regulatory action" as defined in Section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes to the Statement of Policy resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Dated: October 15, 2001.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

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[5] This final rule was delayed by legislation, but the Department implemented portions of the final rule that were not affected by the legislative delay on November 15, 1996. 61 FR 58472 (November 15, 1996).

[6] HUD is, of course, unlikely to direct any enforcement actions against consumers for the payment of unearned fees, because a consumer's intent is to make payment for services, not an unearned fee.

[7] HUD notes that some lenders have charged an additional fee merely for "reviewing" another settlement service provider's services. HUD does not regard such "review" as constituting an actual, necessary, or distinct additional service permissible under HUD's regulations.

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Federal Register

Thursday,
October 18, 2001

Part VI

The President

Executive Order 13231—Critical Infrastructure Protection in the Information Age

Federal Register
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Thursday, October 18, 2001

Presidential Documents

Title 3—

The President

Executive Order 13231 of October 16, 2001

Critical Infrastructure Protection in the Information Age

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure protection of information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems, in the information age, it is hereby ordered as follows:

Section 1. *Policy.*

(a) The information technology revolution has changed the way business is transacted, government operates, and national defense is conducted. Those three functions now depend on an interdependent network of critical information infrastructures. The protection program authorized by this order shall consist of continuous efforts to secure information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems. Protection of these systems is essential to the telecommunications, energy, financial services, manufacturing, water, transportation, health care, and emergency services sectors.

(b) It is the policy of the United States to protect against disruption of the operation of information systems for critical infrastructure and thereby help to protect the people, economy, essential human and government services, and national security of the United States, and to ensure that any disruptions that occur are infrequent, of minimal duration, and manageable, and cause the least damage possible. The implementation of this policy shall include a voluntary public-private partnership, involving corporate and nongovernmental organizations.

Sec. 2. *Scope.* To achieve this policy, there shall be a senior executive branch board to coordinate and have cognizance of Federal efforts and programs that relate to protection of information systems and involve:

(a) cooperation with and protection of private sector critical infrastructure, State and local governments' critical infrastructure, and supporting programs in corporate and academic organizations;

(b) protection of Federal departments' and agencies' critical infrastructure; and

(c) related national security programs.

Sec. 3. *Establishment.* I hereby establish the "President's Critical Infrastructure Protection Board" (the "Board").

Sec. 4. *Continuing Authorities.* This order does not alter the existing authorities or roles of United States Government departments and agencies. Authorities set forth in 44 U.S.C. Chapter 35, and other applicable law, provide senior officials with responsibility for the security of Federal Government information systems.

(a) *Executive Branch Information Systems Security.* The Director of the Office of Management and Budget (OMB) has the responsibility to develop and oversee the implementation of government-wide policies, principles, standards, and guidelines for the security of information systems that support the executive branch departments and agencies, except those noted in section 4(b) of this order. The Director of OMB shall advise the President and the appropriate department or agency head when there is a critical deficiency in the security practices within the purview of this section in an executive branch department or agency. The Board shall assist and support the Director

of OMB in this function and shall be reasonably cognizant of programs related to security of department and agency information systems.

(b) *National Security Information Systems.* The Secretary of Defense and the Director of Central Intelligence (DCI) shall have responsibility to oversee, develop, and ensure implementation of policies, principles, standards, and guidelines for the security of information systems that support the operations under their respective control. In consultation with the Assistant to the President for National Security Affairs and the affected departments and agencies, the Secretary of Defense and the DCI shall develop policies, principles, standards, and guidelines for the security of national security information systems that support the operations of other executive branch departments and agencies with national security information.

(i) Policies, principles, standards, and guidelines developed under this subsection may require more stringent protection than those developed in accordance with subsection 4(a) of this order.

(ii) The Assistant to the President for National Security Affairs shall advise the President and the appropriate department or agency head when there is a critical deficiency in the security practices of a department or agency within the purview of this section. The Board, or one of its standing or ad hoc committees, shall be reasonably cognizant of programs to provide security and continuity to national security information systems.

(c) *Additional Responsibilities: The Heads of Executive Branch Departments and Agencies.* The heads of executive branch departments and agencies are responsible and accountable for providing and maintaining adequate levels of security for information systems, including emergency preparedness communications systems, for programs under their control. Heads of such departments and agencies shall ensure the development and, within available appropriations, funding of programs that adequately address these mission areas. Cost-effective security shall be built into and made an integral part of government information systems, especially those critical systems that support the national security and other essential government programs. Additionally, security should enable, and not unnecessarily impede, department and agency business operations.

Sec. 5. *Board Responsibilities.* Consistent with the responsibilities noted in section 4 of this order, the Board shall recommend policies and coordinate programs for protecting information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems. Among its activities to implement these responsibilities, the Board shall:

(a) *Outreach to the Private Sector and State and Local Governments.* In consultation with affected executive branch departments and agencies, coordinate outreach to and consultation with the private sector, including corporations that own, operate, develop, and equip information, telecommunications, transportation, energy, water, health care, and financial services, on protection of information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems; and coordinate outreach to State and local governments, as well as communities and representatives from academia and other relevant elements of society.

(i) When requested to do so, assist in the development of voluntary standards and best practices in a manner consistent with 15 U.S.C. Chapter. 7;

(ii) Consult with potentially affected communities, including the legal, auditing, financial, and insurance communities, to the extent permitted by law, to determine areas of mutual concern; and

(iii) Coordinate the activities of senior liaison officers appointed by the Attorney General, the Secretaries of Energy, Commerce, Transportation, the Treasury, and Health and Human Services, and the Director of the Federal Emergency Management Agency for outreach on critical infrastructure protection issues with private sector organizations within the areas of concern to these departments and agencies. In these and other related functions, the Board shall work in coordination with the Critical Infrastructure Assurance Office (CIAO) and the National Institute of Standards and Technology of the Department of Commerce, the National Infrastructure Protection Center (NIPC), and the National Communications System (NCS).

(b) *Information Sharing.* Work with industry, State and local governments, and nongovernmental organizations to ensure that systems are created and well managed to share threat warning, analysis, and recovery information among government network operation centers, information sharing and analysis centers established on a voluntary basis by industry, and other related operations centers. In this and other related functions, the Board shall work in coordination with the NCS, the Federal Computer Incident Response Center, the NIPC, and other departments and agencies, as appropriate.

(c) *Incident Coordination and Crisis Response.* Coordinate programs and policies for responding to information systems security incidents that threaten information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems. In this function, the Department of Justice, through the NIPC and the Manager of the NCS and other departments and agencies, as appropriate, shall work in coordination with the Board.

(d) *Recruitment, Retention, and Training Executive Branch Security Professionals.* In consultation with executive branch departments and agencies, coordinate programs to ensure that government employees with responsibilities for protecting information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems, are adequately trained and evaluated. In this function, the Office of Personnel Management shall work in coordination with the Board, as appropriate.

(e) *Research and Development.* Coordinate with the Director of the Office of Science and Technology Policy (OSTP) on a program of Federal Government research and development for protection of information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems, and ensure coordination of government activities in this field with corporations, universities, Federally funded research centers, and national laboratories. In this function, the Board shall work in coordination with the National Science Foundation, the Defense Advanced Research Projects Agency, and with other departments and agencies, as appropriate.

(f) *Law Enforcement Coordination with National Security Components.* Promote programs against cyber crime and assist Federal law enforcement agencies in gaining necessary cooperation from executive branch departments and agencies. Support Federal law enforcement agencies' investigation of illegal activities involving information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems, and support coordination by these agencies with other departments and agencies with responsibilities to defend the Nation's security. In this function, the Board shall work in coordination with the Department of Justice, through the NIPC, and the Department of the Treasury, through the Secret Service, and with other departments and agencies, as appropriate.

(g) *International Information Infrastructure Protection.* Support the Department of State's coordination of United States Government programs for international cooperation covering international information infrastructure protection issues.

(h) *Legislation.* In accordance with OMB circular A–19, advise departments and agencies, the Director of OMB, and the Assistant to the President for Legislative Affairs on legislation relating to protection of information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems.

(i) *Coordination with Office of Homeland Security.* Carry out those functions relating to protection of and recovery from attacks against information systems for critical infrastructure, including emergency preparedness communications, that were assigned to the Office of Homeland Security by Executive Order 13228 of October 8, 2001. The Assistant to the President for Homeland Security, in coordination with the Assistant to the President for National Security Affairs, shall be responsible for defining the responsibilities of the Board in coordinating efforts to protect physical assets that support information systems.

Sec. 6. *Membership.* (a) Members of the Board shall be drawn from the executive branch departments, agencies, and offices listed below; in addition, concerned Federal departments and agencies may participate in the activities of appropriate committees of the Board. The Board shall be led by a Chair and Vice Chair, designated by the President. Its other members shall be the following senior officials or their designees:

(i) Secretary of State;

(ii) Secretary of the Treasury;

(iii) Secretary of Defense;

(iv) Attorney General;

(v) Secretary of Commerce;

(vi) Secretary of Health and Human Services;

(vii) Secretary of Transportation;

(viii) Secretary of Energy;

(ix) Director of Central Intelligence;

(x) Chairman of the Joint Chiefs of Staff;

(xi) Director of the Federal Emergency Management Agency;

(xii) Administrator of General Services;

(xiii) Director of the Office of Management and Budget;

(xiv) Director of the Office of Science and Technology Policy;

(xv) Chief of Staff to the Vice President;

(xvi) Director of the National Economic Council;

(xvii) Assistant to the President for National Security Affairs;

(xviii) Assistant to the President for Homeland Security;

(xix) Chief of Staff to the President; and

(xx) Such other executive branch officials as the President may designate.

Members of the Board and their designees shall be full-time or permanent part-time officers or employees of the Federal Government.

(b) In addition, the following officials shall serve as members of the Board and shall form the Board's Coordination Committee:

(i) Director, Critical Infrastructure Assurance Office, Department of Commerce;
(ii) Manager, National Communications System;
(iii) Vice Chair, Chief Information Officers' (CIO) Council;
(iv) Information Assurance Director, National Security Agency;
(v) Deputy Director of Central Intelligence for Community Management; and
(vi) Director, National Infrastructure Protection Center, Federal Bureau of Investigation, Department of Justice.

(c) The Chairman of the Federal Communications Commission may appoint a representative to the Board.

Sec. 7. *Chair.* (a) The Chair also shall be the Special Advisor to the President for Cyberspace Security. Executive branch departments and agencies shall make all reasonable efforts to keep the Chair fully informed in a timely manner, and to the greatest extent permitted by law, of all programs and issues within the purview of the Board. The Chair, in consultation with the Board, shall call and preside at meetings of the Board and set the agenda for the Board. The Chair, in consultation with the Board, may propose policies and programs to appropriate officials to ensure the protection of the Nation's information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems. To ensure full coordination between the responsibilities of the National Security Council (NSC) and the Office of Homeland Security, the Chair shall report to both the Assistant to the President for National Security Affairs and to the Assistant to the President for Homeland Security. The Chair shall coordinate with the Assistant to the President for Economic Policy on issues relating to private sector systems and economic effects and with the Director of OMB on issues relating to budgets and the security of computer networks addressed in subsection 4(a) of this order.

(b) The Chair shall be assisted by an appropriately sized staff within the White House Office. In addition, heads of executive branch departments and agencies are authorized, to the extent permitted by law, to detail or assign personnel of such departments and agencies to the Board's staff upon request of the Chair, subject to the approval of the Chief of Staff to the President. Members of the Board's staff with responsibilities relating to national security information systems, communications, and information warfare may, with respect to those responsibilities, also work at the direction of the Assistant to the President for National Security Affairs.

Sec. 8. *Standing Committees.* (a) The Board may establish standing and ad hoc committees as appropriate. Representation on standing committees shall not be limited to those departments and agencies on the Board, but may include representatives of other concerned executive branch departments and agencies.

(b) Chairs of standing and ad hoc committees shall report fully and regularly on the activities of the committees to the Board, which shall ensure that the committees are well coordinated with each other.

(c) There are established the following standing committees:

(i) *Private Sector and State and Local Government Outreach*, chaired by the designee of the Secretary of Commerce, to work in coordination with the designee of the Chairman of the National Economic Council.

(ii) *Executive Branch Information Systems Security*, chaired by the designee of the Director of OMB. The committee shall assist OMB in fulfilling its responsibilities under 44 U.S.C. Chapter 35 and other applicable law.

(iii) *National Security Systems.* The National Security Telecommunications and Information Systems Security Committee, as established by and consistent with NSD–42 and chaired by the Department of Defense, shall serve as a Board standing committee, and be redesignated the Committee on National Security Systems.

(iv) *Incident Response Coordination*, co-chaired by the designees of the Attorney General and the Secretary of Defense.

(v) *Research and Development*, chaired by a designee of the Director of OSTP.

(vi) *National Security and Emergency Preparedness Communications.* The NCS Committee of Principals is renamed the Board's Committee for National Security and Emergency Preparedness Communications. The reporting functions established above for standing committees are in addition to the functions set forth in Executive Order 12472 of April 3, 1984, and do not alter any function or role set forth therein.

(vii) *Physical Security*, co-chaired by the designees of the Secretary of Defense and the Attorney General, to coordinate programs to ensure the physical security of information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems. The standing committee shall coordinate its work with the Office of Homeland Security and shall work closely with the Physical Security Working Group of the Records Access and Information Security Policy Coordinating Committee to ensure coordination of efforts.

(viii) *Infrastructure Interdependencies*, co-chaired by the designees of the Secretaries of Transportation and Energy, to coordinate programs to assess the unique risks, threats, and vulnerabilities associated with the interdependency of information systems for critical infrastructures, including the development of effective models, simulations, and other analytic tools and cost-effective technologies in this area.

(ix) *International Affairs*, chaired by a designee of the Secretary of State, to support Department of State coordination of United States Government programs for international cooperation covering international information infrastructure issues.

(x) *Financial and Banking Information Infrastructure*, chaired by a designee of the Secretary of the Treasury and including representatives of the banking and financial institution regulatory agencies.

(xi) *Other Committees.* Such other standing committees as may be established by the Board.

(d) *Subcommittees.* The chair of each standing committee may form necessary subcommittees with organizational representation as determined by the Chair.

(e) *Streamlining.* The Board shall develop procedures that specify the manner in which it or a subordinate committee will perform the responsibilities previously assigned to the Policy Coordinating Committee. The Board, in coordination with the Director of OSTP, shall review the functions of the Joint Telecommunications Resources Board, established under Executive Order 12472, and make recommendations about its future role.

Sec. 9. *Planning and Budget.* (a) The Board, on a periodic basis, shall propose a National Plan or plans for subjects within its purview. The Board, in coordination with the Office of Homeland Security, also shall make recommendations to OMB on those portions of executive branch department and agency budgets that fall within the Board's purview, after review of relevant program requirements and resources.

(b) The Office of Administration within the Executive Office of the President shall provide the Board with such personnel, funding, and administrative support, to the extent permitted by law and subject to the availability of appropriations, as directed by the Chief of Staff to carry out the provisions of this order. Only those funds that are available for the Office of Homeland Security, established by Executive Order 13228, shall be available for such purposes. To the extent permitted by law and as appropriate, agencies represented on the Board also may provide administrative support for the Board. The National Security Agency shall ensure that the Board's information and communications systems are appropriately secured.

(c) The Board may annually request the National Science Foundation, Department of Energy, Department of Transportation, Environmental Protection Agency, Department of Commerce, Department of Defense, and the Intelligence Community, as that term is defined in Executive Order 12333 of December 4, 1981, to include in their budget requests to OMB funding for demonstration projects and research to support the Board's activities.

Sec. 10. *Presidential Advisory Panels.* The Chair shall work closely with panels of senior experts from outside of the government that advise the President, in particular: the President's National Security Telecommunications Advisory Committee (NSTAC) created by Executive Order 12382 of September 13, 1982, as amended, and the National Infrastructure Advisory Council (NIAC or Council) created by this Executive Order. The Chair and Vice Chair of these two panels also may meet with the Board, as appropriate and to the extent permitted by law, to provide a private sector perspective.

(a) *NSTAC.* The NSTAC provides the President advice on the security and continuity of communications systems essential for national security and emergency preparedness.

(b) *NIAC.* There is hereby established the National Infrastructure Advisory Council, which shall provide the President advice on the security of information systems for critical infrastructure supporting other sectors of the economy: banking and finance, transportation, energy, manufacturing, and emergency government services. The NIAC shall be composed of not more than 30 members appointed by the President. The members of the NIAC shall be selected from the private sector, academia, and State and local government. Members of the NIAC shall have expertise relevant to the functions of the NIAC and generally shall be selected from industry Chief Executive Officers (and equivalently ranked leaders in other organizations) with responsibilities for the security of information infrastructure supporting the critical sectors of the economy, including banking and finance, transportation, energy, communications, and emergency government services. Members shall not be full-time officials or employees of the executive branch of the Federal Government.

(i) The President shall designate a Chair and Vice Chair from among the members of the NIAC.

(ii) The Chair of the Board established by this order will serve as the Executive Director of the NIAC.

(c) *NIAC Functions.* The NIAC will meet periodically to:

(i) enhance the partnership of the public and private sectors in protecting information systems for critical infrastructures and provide reports on this issue to the President, as appropriate;

(ii) propose and develop ways to encourage private industry to perform periodic risk assessments of critical information and telecommunications systems;

(iii) monitor the development of private sector Information Sharing and Analysis Centers (ISACs) and provide recommendations to the Board on how these organizations can best foster improved cooperation among the ISACs, the NIPC, and other Federal Government entities;

(iv) report to the President through the Board, which shall ensure appropriate coordination with the Assistant to the President for Economic Policy under the terms of this order; and

(v) advise lead agencies with critical infrastructure responsibilities, sector coordinators, the NIPC, the ISACs, and the Board.

(d) *Administration of the NIAC.*

(i) The NIAC may hold hearings, conduct inquiries, and establish subcommittees, as appropriate.

(ii) Upon the request of the Chair, and to the extent permitted by law, the heads of the executive branch departments and agencies shall provide the Council with information and advice relating to its functions.

(iii) Senior Federal Government officials may participate in the meetings of the NIAC, as appropriate.

(iv) Members shall serve without compensation for their work on the Council. However, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Federal Government service (5 U.S.C. 5701–5707).

(v) To the extent permitted by law, and subject to the availability of appropriations, the Department of Commerce, through the CIAO, shall provide the NIAC with administrative services, staff, and other support services and such funds as may be necessary for the performance of the NIAC's functions.

(e) *General Provisions.*

(i) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the NIAC, the functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Department of Commerce in accordance with the guidelines and procedures established by the Administrator of General Services.

(ii) The Council shall terminate 2 years from the date of this order, unless extended by the President prior to that date.

(iii) Executive Order 13130 of July 14, 1999, is hereby revoked.

Sec. 11. *National Communications System.* Changes in technology are causing the convergence of much of telephony, data relay, and internet communications networks into an interconnected network of networks. The NCS and its National Coordinating Center shall support use of telephony, converged information, voice networks, and next generation networks for emergency preparedness and national security communications functions assigned to them in Executive Order 12472. All authorities and assignments of responsibilities to departments and agencies in that order, including the role of the Manager of NCS, remain unchanged except as explicitly modified by this order.

Sec. 12. *Counter-intelligence.* The Board shall coordinate its activities with those of the Office of the Counter-intelligence Executive to address the threat to programs within the Board's purview from hostile foreign intelligence services.

Sec. 13. *Classification Authority.* I hereby delegate to the Chair the authority to classify information originally as Top Secret, in accordance with Executive Order 12958 of April 17, 1995, as amended, or any successor Executive Order.

Sec. 14. *General Provisions.* (a) Nothing in this order shall supersede any requirement made by or under law.

(b) This order does not create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies or other entities, its officers or employees, or any other person.

THE WHITE HOUSE,
October 16, 2001.

[FR Doc. 01–26509
Filed 10–17–01; 10:32 am]
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To designate the Federal building and United States courthouse located at 121 West Spring Street in New Albany, Indiana, as the "Lee H. Hamilton Federal Building and United States Courthouse". (Oct. 15, 2001; 115 Stat. 262)

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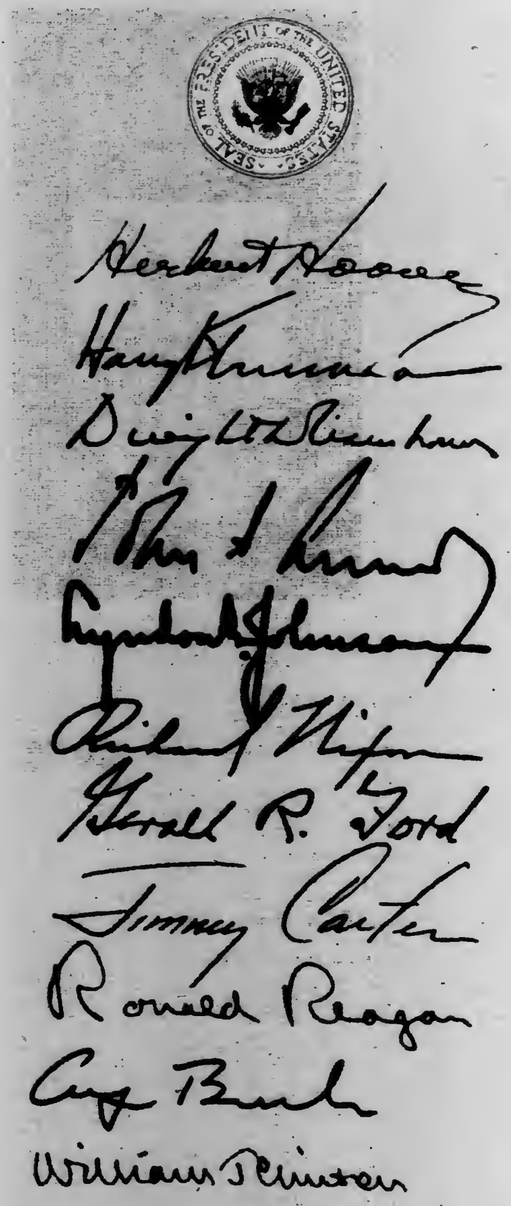
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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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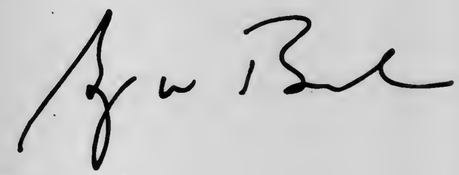
Title 3—

The President

Notice of October 16, 2001

Continuation of Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

On October 21, 1995, by Executive Order 12978, the President declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia, and the unparalleled violence, corruption, and harm such actions cause in the United States and abroad. The order blocks all property and interests in property that are in the United States or within the possession or control of United States persons or foreign persons listed in an annex to the order, as well as of foreign persons determined to play a significant role in international narcotics trafficking centered in Colombia. The order similarly blocks all property and interests in property of foreign persons determined to materially assist in, or provide financial or technological support for, or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order, or persons determined to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the order. The order also prohibits any transaction or dealing by United States persons or within the United States in such property or interests in property. Because the actions of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and to cause unparalleled violence, corruption, and harm in the United States and abroad, the national emergency declared on October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 2001. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency for 1 year with respect to significant narcotics traffickers centered in Colombia. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
October 16, 2001.

[FR Doc. 01–26536
Filed 10–18–01; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 66, No. 203
Friday, October 19, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–00–23]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the merger of Fairmont-Fair Bluff, North Carolina and Loris, South Carolina, to become the consolidated market of Fairmont-Fair Bluff-Loris. A mail referendum was conducted during the period of June 4–8, 2001, among tobacco growers who sold tobacco on these markets in 2000 to determine producer approval/disapproval of the designation of these markets as one consolidated market. Therefore, for the 2001 and succeeding flue-cured marketing seasons, the Fairmont-Fair Bluff, North Carolina and Loris, South Carolina, tobacco markets shall be designated as Fairmont-Fair Bluff-Loris. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: October 22, 2001.

FOR FURTHER INFORMATION CONTACT: William O. Coats, Associate Deputy Administrator, Tobacco Programs, Agricultural Marketing Service, United States Department of Agriculture, Stop 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280; telephone number (202) 205–0508.

SUPPLEMENTARY INFORMATION: A notice was published in the May 2, 2001, issue of the **Federal Register** (66 FR 21888) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Fairmont-Fair Bluff or Loris during the 2000 season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Fairmont-Fair Bluff and Loris, would be designated as a flue-cured tobacco auction market and receive mandatory Federal grading of tobacco sold at auction for the 2001 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in, Tabor City, North Carolina, on November 9, 2000, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the June 4–8, 2001, referendum were mailed to 935 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 213 responses: 168 eligible producers voted in favor of the consolidation; 16 eligible producers voted against the consolidation; and 29 ballots were determined to be invalid.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The final rule will not exempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $500,000, and small agricultural service firms are defined as those whose annual receipts are less that $3,500,000. There are approximately 190 tobacco warehouses and approximately 30,000 producers. This action will not substantially affect the normal movement of the commodity in the marketplace. It has been determined that this action will not have a significant impact on a substantial number of small entities.

It is hereby found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2001 flue-cured marketing season will begin about July 24 and this action is needed as soon as possible to establish the sales schedule for the season.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

Subpart D—Order of Designation of Tobacco Markets

1. The authority citation for 7 CFR part 29, Subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732, as amended, by Sec. 157(a)(1), 95 Stat. 374 (7 U.S.C. 511d).

2. In § 29.8001, the table is amended by adding a new entry (qqq) to read as follows:

§ 29.8001 Designation of tobacco markets.

* * * * *

DESIGNATED TOBACCO MARKETS

Territory	Types of tobacco	Auction markets	Order of designation	Citation
(qqq) North Carolina, South Carolina.	Flue-Cured	Fairmont-Fair Bluff-Loris	October 22, 2001	66 FR 53076.

Dated: October 12, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 01–26393 Filed 10–18–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Forage Seeding Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulation which was published Wednesday, August 15, 2001 (66 FR 42729–42730). The regulation pertains to the Forage Seeding Crop Provisions for 2003 and subsequent crop years.

EFFECTIVE DATE: This rule is effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Arden Routh, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Kansas City, MO, 64133, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction was to provide policy changes to better meet the needs of the insured.

Need for Correction

As published, the final regulations contained an error which may prove to be misleading and is in need of correcting. The final rule for the Forage Seeding Crop Provisions did not contain language in section 13(b) that "Acreage that is harvested and not reseeded," will be included as acreage with an established stand.

Correction of Publication

Accordingly, the publication on August 15, 2001, of the final regulation at 66 FR 42729–42730 is corrected as follows:

PART 457—[CORRECTED]

§ 457.151 [Corrected]

On page 42730, in the third column in § 457.151, the crop provisions section 13(b) is corrected to read as follows:

* * * * *

(b) The acres with an established stand will include:

(1) Acreage that has at least 75 percent of a normal stand;

(2) Acreage abandoned or put to another use without our prior written consent;

(3) Acreage damaged solely by an uninsured cause; or

(4) Acreage that is harvested and not reseeded.

* * * * *

Signed in Washington, DC, on October 15, 2001.

Phyllis W. Honor,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 01–26396 Filed 10–18–01; 8:45 am]

BILLING CODE 3410–08–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1113]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the low reserve tranche and the reserve requirement exemption for 2002, and announces the annual indexing of the deposit reporting cutoff level that will be effective beginning in September 2002. The amendments decrease the amount of transaction accounts subject to a reserve requirement ratio of three percent in 2002, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $42.8 million to $41.3 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board is increasing from $5.5 million to $5.7 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent in 2002. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reservable liabilities exemption adjustment. The Board is also increasing the deposit cutoff level that is used in conjunction with the reservable liabilities exemption to determine the frequency of deposit reporting from $101.0 million to $106.9 million for nonexempt depository institutions. (Nonexempt institutions are those with total reservable liabilities exceeding the amount exempted from reserve requirements.) Thus, beginning in September 2002, nonexempt institutions with total deposits of $106.9 million or more will be required to report weekly while nonexempt institutions with total deposits less than $106.9 million may report quarterly, in both cases on form FR 2900. Exempt institutions with at least $5.7 million in total deposits may report annually on form FR 2910a.

DATES: *Effective date:* November 19, 2001.

Compliance dates: For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, November 27, 2001, and the corresponding reserve maintenance period that begins Thursday, December 27, 2001. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 18, 2001, and the corresponding reserve maintenance period that begins Thursday, January 17, 2002. For all depository institutions, the deposit cutoff level will be used to screen institutions in the second quarter of 2002 to determine the reporting frequency for the twelve month period that begins in September 2002.

FOR FURTHER INFORMATION CONTACT: Heatherun Allison, Counsel (202/452–3565), Legal Division, or June O'Brien, Economist (202/452–3790), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, please call 202/263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The required reserve ratio applicable to transaction account balances exceeding the low reserve tranche is 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The adjustment in the tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche on net transaction accounts is $42.8 million. Net transaction accounts of all depository institutions decreased by 4.3 percent (from $619.3 billion to $592.8 billion) from June 30, 2000, to June 30, 2001. In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR part 204) to decrease the low reserve tranche for transaction accounts for 2002 by $1.5 million to $41.3 million.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for the low reserve tranche on net transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increase from one year to the next. The percentage increase in the exemption is to be 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions increased by 5.1 percent (from $2,200.0 billion to $2,313.1 billion) from June 30, 2000, to June 30, 2001. Consequently, the reservable liabilities exemption amount for 2002 under section 19(b)(11)(B) will be increased by $0.2 million from $5.5 million to $5.7 million.[1]

The effect of the application of section 19(b) of the Federal Reserve Act to the change in the total net transaction accounts and the change in the total reservable liabilities from June 30, 2000, to June 30, 2001, is to decrease the low reserve tranche to $41.3 million, to apply a zero percent reserve requirement on the first $5.7 million of net transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

For institutions that report weekly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective for the fourteen-day reserve computation period beginning Tuesday, November 27, 2001, and for the corresponding fourteen-day reserve maintenance period beginning Thursday, December 27, 2001. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective for the seven-day computation period beginning Tuesday, December 18, 2001, and for the corresponding seven-day reserve maintenance period beginning Thursday, January 17, 2002.

In order to reduce the reporting burden for small institutions, the Board has established deposit reporting cutoff levels to determine deposit reporting frequency. In July 2000, the Board specified that the annual percentage increase in the nonexempt deposit cutoff be set equal to 80 percent of the growth rate of total deposits at all depository institutions over the one-year period ending on the most recent June 30.

From June 30, 2000, to June 30, 2001, total deposits increased 7.3 percent, from $5,216.0 billion to $5,596.6 billion. Accordingly, the nonexempt deposit cutoff level will increase by $5.9 million from $101.0 million in 2001 to $106.9 million in 2002. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from $5.5 million to $5.7 million. Under the deposit reporting system, institutions are screened during each year to determine their reporting category beginning in the September of that year. Hence, the cutoff level would be used in the 2002 deposit report screening process and new deposit reporting panels will be implemented in September 2002.

Thus, effective in September 2002, all U.S. branches and agencies of foreign banks and Edge and agreement corporations, regardless of size, and other institutions with total reservable liabilities exceeding $5.7 million (nonexempt institutions) and with total deposits at or above $106.9 million would be required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (form FR 2900). Nonexempt institutions with total deposits below $106.9 million could file the FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or IBFs would continue to be required to file the Report of Certain Eurocurrency Transactions (forms FR 2950/FR 2951) at the same frequency as they file the form FR 2900. Institutions with reservable liabilities at or below the exemption amount of $5.7 million (exempt institutions) and with at least $5.7 million in total deposits would be required to file the Annual Report of Total Deposits and Reservable Liabilities (form FR 2910a). Institutions with total deposits below the exemption level of $5.7 million would be excused from reporting if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or overstates the deductions allowed in computing required reserve balances.

Notice. The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. In addition, the reservable liabilities exemption adjustment and the increases for reporting purposes in the deposit cutoff levels reduce regulatory burdens on depository institutions, and the low reserve tranche adjustment will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $41.3 million. Accordingly, the Board finds good cause for determining, and so determines, that

[1] Consistent with Board practice, the tranche and exemption emounts have been rounded to the nearest $0.1 million.

notice in accordance with 12 U.S.C. 552(b) is unnecessary.

Regulatory Flexibility Analysis

The Board certifies that these amendments will not have a substantial economic impact on small depository institutions.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Section 204.9 is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement [1]
Net transaction accounts:	
$0 to $41.3 million	3 percent of amount.
Over $41.3 million	$1,239,000 plus 10 percent of amount over $41.3 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

[1] Before deducting the adjustment to be made by the paragraph (b) of this section.

(b) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a) of this section not in excess of $5.7 million determined in accordance with § 204.3(a)(3).

By order of the Board of Governors of the Federal Reserve System, October 12, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–26197 Filed 10–18–01; 8:45 am]

BILLING CODE 6210–01–P

EMERGENCY STEEL GUARANTEE LOAN BOARD

13 CFR Part 400

RIN 3003–ZA00

Emergency Steel Guarantee Loan Program; Third-party Enhancement of Guarantees; Refinancing and Transfer Restrictions

AGENCY: Emergency Steel Guarantee Loan Board.

ACTION: Final rule.

SUMMARY: The Emergency Steel Guarantee Loan Board (Board) is amending the regulations governing the Emergency Steel Guarantee Loan Program (Program). These changes are meant to provide for supplemental guarantees by third parties and to change restrictions on refinancing existing credit and on loan guarantee transfers by Lenders. The intent of these changes is to increase participation in the Program by lenders.

DATES: This rule is effective October 19, 2001.

FOR FURTHER INFORMATION CONTACT: Marguerite S. Owen, General Counsel, Emergency Steel Guarantee Loan Board, 1099—14th Street, NW., Suite 2600 East, Washington, DC 20005, (202) 219–0584.

SUPPLEMENTARY INFORMATION: On October 27, 1999, the Board published a final rule codifying at Chapter 4, Title 13, Code of Federal Regulations (CFR), regulations implementing the Program, as established in Chapter 1 of Public Law 106–51, the Emergency Steel Loan Guarantee Act of 1999 (64 FR 57932). Since those initial regulations were published the Board has made a number of changes to the regulations meant to conform the regulations to the Guarantee Agreement between the government and the lender, to allow for participations in unguaranteed tranches of loans guaranteed under the Program, to harmonize certain program requirements with commercial lending practices, streamline program operation, open a second period for the submission of applications and allow for certain delegations of authority. Today the Board is making additional changes designed to align Program administration with legal requirements and to increase participation by lenders in the Program. Section 400.106 is being revised to reflect the fact that the Program's evaluation process is no longer competitive and hence the concept of ex parte communications is no longer applicable. As revised, the rule prohibits only communications not on the public record between a member of the Board and an interested party, in order to avoid a situation where one member of the Board receives or conveys information concerning a pending application that is not available to other members of the Board. Section 400.205 is being modified to reflect that the Board has extended the deadline for applications from April 2, 2001 to August 31, 2001. With respect to increasing lender participation, a new § 400.215 is added to allow for supplemental guarantees by third parties, including state and local governments and related provisions are being modified to reflect that change. Section 400.210 is being modified to allow for transfers of interests in guaranteed loans to Eligible Lenders without prior Board approval. Section 400.201 is being amended to allow refinancing of the applicant lender's existing credit if the applicant's risk exposure is at least substantially equivalent.

Public Law 106–51 has a requirement that the Board take into account the prospective earning power of the Borrower together with the nature and character of the security pledged in making a determination that there is a reasonable assurance of repayment of the loan sought to be guaranteed. The Program's regulations, at § 400.207, currently describe the Board's assessment of the nature and character of the security pledged for a loan, but do not address the Board's review of the prospective earning power of the Borrower. However, in compliance with the law, the Board has always evaluated the Borrower's prospective earning power in making a determination whether there is a reasonable assurance of repayment of the loan sought to be guaranteed. This rule will amend the Board's regulations to make clear that the Board does assess a Borrower's prospective earning power in making such a determination. In particular, the rule makes clear that an essential and necessary criterion of the Board's evaluation of the application will be the commitment of the Borrower to undertake steps to eliminate or reduce economically unviable capacity.

On June 5, 2001, President Bush announced a three-pronged steel initiative aimed at addressing the current problems of the U.S. steel industry, eliminating inefficient excess capacity globally and restoring market forces to world steel trade. A key component of this initiative is the restructuring and rationalization of the steel industry, both at home and abroad, with a particular focus on reducing or eliminating economically unviable steelmaking capacity. The Board's evaluation of the prospective earning power of a Borrower is in compliance with the President's initiative and seeks to further its goals by reviewing restructuring efforts aimed at the reduction or elimination of economically unviable capacity in making a determination whether to approve a Loan Guarantee.

Administrative Law Requirements

Executive Order 12866

This final rule has been determined not to be significant for purposes of Executive Order 12866.

Administrative Procedure Act

This rule is exempt from the rulemaking requirements contained in 5 U.S.C. 553 pursuant to authority contained in 5 U.S.C. 553(a)(2) as it involves a matter relating to loans. As such, prior notice and an opportunity for public comment and a delay in effective date otherwise required under 5 U.S.C. 553 are inapplicable to this rule.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Intergovernmental Review

No intergovernmental consultations with State and local officials are required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Summary Impact Statement.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 13 CFR Part 400

Administrative practice and procedure, Loan programs-steel, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

Daniel J. Rooney,

Executive Secretary, Emergency Steel Guarantee Loan Board.

For the reasons set forth in the preamble, 13 CFR part 400 is amended as follows:

PART 400—EMERGENCY STEEL GUARANTEE LOAN PROGRAM

1. The authority citation of part 400 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 252 (15 U.S.C. 1841 note); Pub. L. 106–102, 113 Stat. 1338.

1a. Section 400.2 is amended by redesignating paragraphs (h) through (l) as paragraphs (i) through (m), adding new paragraphs (h), (n) and (o), and revising paragraph (a) and newly redesignated paragraphs (j) and (l), to read as follows:

§ 400.2 Definitions.

(a) *Act* means the Emergency Steel Loan Guarantee Act of 1999, Chapter 1 of Public Law 106–51 (113 Stat. 252), as amended.

* * * * *

(h) *Guaranteed Portion* means the portion of the principal of a loan that is subject to the Guarantee.

* * * * *

(j) *Loan Documents* mean the loan agreement and all other instruments, and all documentation between the Lender and the Borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of the loan. It includes any agreement and other documents relating to a Supplemental Guarantee. Loan Documents may not be modified without the prior written approval of the Board.

* * * * *

(l) *Security* means all property, real or personal, required by the provisions of the Guarantee or by the Loan Documents to secure repayment of any indebtedness of the Borrower under the Loan Documents or Guarantee. It does not include a Supplemental Guarantee.

* * * * *

(n) *Supplemental Guarantee* means a guarantee provided by one or more third parties, public or private, of part of the Unguaranteed Portion of a guaranteed loan.

(o) *Unguaranteed Portion* means the portion of the principal of a loan that is not covered by the Guarantee.

2. Section 400.106 is revised to read as follows:

§ 400.106 Ex parte communications.

Oral or written communication, not on the public record, between any member of the Board and any party or parties interested in any matter pending before the Board concerning the substance of that matter is prohibited.

3. Section 400.201 is amended by revising paragraphs (c) and (d) to read as follows:

§ 400.201 Eligible Lender.

* * * * *

(c) Status as a Lender under paragraph (a) of this section does not assure that the Board will issue the Guarantee sought, or otherwise preclude the Board from declining to issue a Guarantee. In addition to evaluating an application pursuant to § 400.207, in making a determination to issue a Guarantee to a Lender, the Board will assess:

(1) The Agent Lender's level of regulatory capital, in the case of banking institutions, or net worth, in the case of investment institutions;

(2) Whether the Agent Lender possesses the ability to administer the loan, as required by § 400.211(b), including its experience with loans to steel companies;

(3) The scope, volume and duration of the Agent Lender's activity in administering loans;

(4) The performance of the Agent Lender's loan portfolio, including its current delinquency rate;

(5) The Agent Lender's loss rate as a percentage of loan amounts for its current fiscal year; and

(6) Any other matter the Board deems material to its assessment of the Agent Lender.

(d) A proposed loan for the purpose, in whole or in part, of refinancing existing credit provided by the Agent will not be approved unless the Board is satisfied that the Agent retains at least a substantially equivalent level of risk as a result of the refinancing.

4. Section 400.203 is revised to read as follows:

§ 400.203 Guarantee percentage.

A guarantee issued by the Board may not exceed 85 percent of the amount of the principal of a loan to a Qualified Steel Company. Subject to the provisions of this part, one or more third parties, public or private, may guarantee repayment of part of the Unguaranteed Portion of a loan guaranteed by the Board.

5. Section 400.204 is amended by revising paragraphs (c)(2)(i) and (c)(3) to read as follows:

§ 400.204 Loan terms.

* * * * *

(c) * * *

(2) * * *

(i) A fully perfected and enforceable security interest and/or lien, with first priority over conflicting security interests or other liens in all property acquired, improved or derived from the loan funds;

* * * * *

(3) The entire loan will be secured by the same Security with equal lien priority for the Guaranteed Portion and the Unguaranteed Portion of the loan. The Unguaranteed Portion of the loan will neither be paid first nor given any preference over the Guaranteed Portion. A Supplemental Guarantor shall not have a security interest, direct or indirect, in any asset of the Borrower or any affiliate thereof other than the Security.

* * * * *

6. Section 400.205 is amended by revising paragraph (a), by removing "and" at the end of paragraph (b)(10), by removing the period at the end of paragraph (b)(11) and adding "; and" in its place, and by adding a new paragraph (b)(12) to read as follows:

§ 400.205 Application process.

(a) *Application process.* An original application and three copies must be received by the Board no later than 5 p.m. EST, August 31, 2001 in the Board's offices at 1099—14th Street, NW, Suite 2600 East, Washington, DC 20005. Applications which have been provided to a delivery service with "delivery guaranteed" before 5 p.m. on August 31, 2001 will be accepted for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed in this section guaranteed prior to the closing date and time. A postmark is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

(b) * * *

(12) A description of any Supplemental Guarantee(s) that will apply to the Unguaranteed Portion of the loan.

* * * * *

7. Section 400.207 is amended by revising paragraph (b)(1) to read as follows:

§ 400.207 Application evaluation.

* * * * *

(b) * * *

(1) The ability of the Borrower to repay the loan by the date specified in the Loan Document, which shall be no later than December 31, 2005. Evaluation of this factor will consider the prospective earning power of the Borrower. An essential and necessary element of the Board's evaluation of whether this criterion is satisfied is whether the applicant has committed to undertake significant efforts to eliminate or reduce economically unviable capacity;

* * * * *

8. Section 400.208 is amended by revising paragraph (a)(3) to read as follows:

§ 400.208 Issuance of the Guarantee.

(a) * * *

(3) The Board's receipt of the Loan Documents and any related instruments, in form and substance satisfactory to the Board, and the Guarantee, all properly executed by the Lender, Borrower, and any other required party other than the Board; and

* * * * *

9. Section 400.210 is revised to read as follows:

§ 400.210 Assignment or transfer of loans.

(a) Neither the Loan Documents nor the Guarantee of the Board may be modified, in whole or in part, without the prior written approval of the Board.

(b) Upon notice to the Board and a certification by the assignor that the assignee is an Eligible Lender, and subject to the provisions of paragraphs (c) and (d) of this section and other provisions of this part, a Lender may assign or transfer its interest in the loan including the Loan documents and the Guarantee to a party that qualifies as an Eligible Lender pursuant to § 400.201. Any other assignment or transfer will require the prior written approval of the Board.

(c) The provisions of paragraph (b) of this section shall not apply to transfers which occur by operation of law.

(d) The Agent must hold and may not assign or transfer an interest in a loan guaranteed under the Program equal to at least the lesser of $25 million or fifteen percent of the aggregate amount of the loan. In addition, the Agent must hold and may not assign or transfer an interest the Unguaranteed Portion of the loan equal to at least the minimum amount of the loan required to be held by the Agent under the preceding sentence multiplied by the percentage of the loan represented by the Unguaranteed Portion. A non-Agent Lender must hold and may not assign or transfer an interest in the Unguaranteed Portion of the loan representing no less than five percent of such Lender's total interest in the loan; provided, that a non-Agent Lender may transfer its interest in the Unguaranteed Portion after payment of the Guaranteed Portion has been made under the Guarantee.

10. Section 400.215 is added to read as follows:

§ 400.215 Supplemental Guarantees.

The Board will allow the structure of a guaranteed loan to include one or more Supplemental Guarantees that cover the Unguaranteed Portion of the loan; provided that:

(a) There shall be no Supplemental Guarantee with respect to the Unguaranteed Portion required to be held by the Agent pursuant to § 400.210(c);

(b) The Loan Documents relating to any Supplemental Guarantee shall be acceptable in form and substance to the Board; and

(c) In approving the issuance of a Guarantee, the Board may impose any conditions with respect to Supplemental Guarantee(s) relating to the loan that it considers appropriate.

[FR Doc. 01–26337 Filed 10–16–01; 10:41 am]

BILLING CODE 1310–FP–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–19–AD; Amendment 39–12471; AD 2001–21–01]

RIN 2120–AA64

Airworthiness Directives; Dornier Luftfahrt GmbH Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Dornier Luftfahrt GmbH (Dornier) Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes. This AD requires you to repetitively inspect the horizontal stabilizer skin and ribs for damage and cracks and repair any damaged skin or cracked ribs. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect and correct damage and fatigue cracks in the horizontal stabilizer skin and ribs. This condition could cause in-flight separation of the horizontal stabilizer skin with consequent loss of control of the airplane.

DATES: This AD becomes effective on November 30, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 30, 2001.

ADDRESSES: You may get the service information referenced in this AD from Fairchild/Dornier, Customer Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (011) 49 8153 300; facsimile: (011) 49 8153 304463. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–19–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Dornier Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes. The LBA reports two occurrences of cracks found around the riveted joints of the leading edge skin and ribs of the horizontal stabilizer during an inspection. The LBA reports that the cracks are caused by corrosion and material fatigue.

What Is the Potential Impact if FAA Took No Action?

If this condition is not detected and corrected, in-flight separation of the horizontal stabilizer skin could result with consequent loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Dornier Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 21, 2001 (66 FR 43815). The NPRM proposed to require you to inspect the horizontal stabilizer ribs for cracks; inspect the horizontal stabilizer skin for cracks and damage around the riveted joints; repair or replace any cracked ribs; and repair any damaged skin.

Is There a Modification I Can Incorporate Instead of Repetitively Inspecting the Horizontal Stabilizer Structure?

The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by repetitive inspections or other special procedures. With this in mind, we will continue to work with Dornier in collecting information and in performing fatigue analysis to determine whether a future design change may be necessary.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 14 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × $60 per hour = $240	No parts required for the inspection	$240	$240 × 14 = $3,360

We have no method of determining the number of repetitive inspections each owner/operator will incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

We have no method of determining the number of repairs or replacements each owner/operator will incur over the life of each of the affected airplanes based on the results of the inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of this AD will be to accomplish the initial inspection "within the next 100 hours time-in-service (TIS) after the effective date of this AD", repetitive inspections at "intervals not to exceed 100 hours TIS", and any necessary repairs or replacements "prior to further flight after the inspection."

Why Is the Initial Inspection Compliance Time of the German AD Different From the Initial Inspection Compliance Time in This AD?

The German AD requires (on Dornier Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212

airplanes registered in Germany) the initial inspection within the next 10 flight hours. This is the compliance time specified in the service information. We do not have justification to require the initial inspection within 10 flight hours. We use a compliance time such as this when we have identified an urgent safety of flight situation. We believe that 100 hours TIS will give the owners/operators of the affected airplanes enough time to have the initial inspection and repairs and/or replacements accomplished without compromising the safety of the airplanes.

By accomplishing both the initial inspection and replacement at the same time, the owners/operators of the affected airplanes only have their airplanes out of service once instead of twice.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2001–21–01 Dornier Luftfahrt GMBH: Amendment 39–12471; Docket No. 2001–CE–19–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
228–100 ...	7003 through 7116, 7167 and 7168.
228–101 ...	7003 through 7116, 7167 and 7168.
228–200 ...	All serial numbers beginning with 8002.
228–201 ...	All serial numbers beginning with 8002.
228–202 ...	All serial numbers beginning with 8002.
228–212 ...	All serial numbers beginning with 8002.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage and fatigue cracks in the horizontal stabilizer skin and ribs. This condition could cause in-flight separation of the horizontal stabilizer skin with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To addreess this problem, you must accomplish the following:

Actions	Compliance	Procedures
Perform the following inspections: ..... (i) Inspect, using a boroscope (or equivalent), the horizontal stabilizer ribs for cracks. (ii) Inspect the horizontal stabilizer skin for damage (cracks and/or loose rivets). (2) Repair or replace any cracked rib and repair any damage to he horizontal stabilizer skin found during any inspection required in paragraph (d)(1) of this AD. (3) Report any cracks or damage found during the initial inspections required in paragraph (d)(1)(i) and (d)(1)(ii) of this AD to Fairchild/Dornier Customer Support, through the FAA. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.	Within the next 100 hours time-in-service (TIS) after November 30, 2001 (the effective date of this AD), and thereafter at intervals not-to-exceed 100 hours TIS. Prior to further flight after the inspection required in paragraph (d)(1) of this AD. Prior to further flight after the applicable inspection required in paragraph (d)(1) of this AD, or within 10 days after November 30, 2001 (the effective date of this AD), whichever occurs later.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild/Dornier Service Bulletin No. SB–228–234, dated October 13, 2000, and the applicable aircraft maintenance manual. In accordance with the applicable structural repair manual. In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild/Dornier Service Bulletin No. SB–228–234, dated October 13, 2000. Fill out the compliance form. Send it to Fair/Dornier at the address specified in paragraph (h) of this AD and send a copy to FAA at the address in paragraph (f) of this AD.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Fairchild/Dornier Service Bulletin No. SB–228–234, dated October 13, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Fairchild/Dornier, Customer Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on November 30, 2001.

Note 2: The subject of this AD is addressed in German AD Number 2001–045, dated January 26, 2001.

Issued in Kansas City, Missouri, on October 9, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26001 Filed 10–18–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–39–AD; Amendment 39–12472; AD 2001–21–02]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) TPE331–8, –10N, and –12B Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) TPE331–8, –10N, and –12B turboprop engines with certain electronic engine controls (EEC's) installed. This AD requires revising the Emergency and Normal Procedures section of the applicable Airplane Flight Manual (AFM) until the existing EEC's are replaced. This amendment is prompted by a report of an engine experiencing an uncommanded full power increase during an approach while both engine power levers were at the flight idle gate. The actions specified in this AD are intended to minimize exposure to flight and ground operations that could lead to the loss of control of the airplane due to asymmetric thrust and an uncommanded torque increase.

DATES: Effective November 19, 2001.

Comments for inclusion in the Rules Docket must be received on or before December 18, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–39–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The temporary revisions referenced in this AD may be obtained from Cessna Propeller Aircraft Customer Service, P.O. Box 7706, Wichita, Kansas, 67277; telephone: (316) 517–5800, fax: (316) 517–7271.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5246; fax (562) 627–5210. Contact Bob Adamson, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita KS 67209; telephone (316) 946–4145; fax (316) 946–4407 with any questions and comments regarding AFM procedures pertaining to this AD.

SUPPLEMENTARY INFORMATION: In September 1999, a TPE331–10N turboprop engine experienced an uncommanded increase to full power during an approach while both engine power levers were at the flight idle gate. The pilot aborted the approach and re-established power symmetry by applying full power to the opposite engine. After reverting to manual mode, the pilot made a safe landing. Based on engine-propeller stand testing of certain engine control configurations, and a review of prior field reports of uncommanded torque or fuel increases, the FAA has determined that uncommanded torque may peak to 150% within 5 seconds of an initial torque acceleration. In addition, the number of uncommanded engine accelerations in service have been gradually increasing. Nine events of uncommanded power increases have occurred, in varying degrees of severity, within the past 17 years. This condition, if not corrected, could result in loss of control of the airplane due to asymmetric thrust from an uncommanded power increase.

Actions Required by This AD

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD requires a temporary revision to the Emergency and Normal Procedures section of the applicable FAA Approved AFM for each applicable engine installation in a multi-engine airplane. The temporary AFM revision provides procedures for minimizing asymmetric thrust resulting from uncommanded power increases in flight and on ground. The temporary AFM revision is effective for an individual multi-engine airplane until the existing EEC for each engine is replaced with a redesigned and reworked EEC. These AFM changes have been coordinated with the FAA Certification Office responsible for the certification of the airplanes involved.

The rework and testing of the EEC can only be accomplished at Honeywell's Repair Station in Tucson, Arizona, whose repair capacity and rate-of-repair is limited. The FAA has determined that the July 23, 2003 date was the earliest date to complete the rework and testing of all 775 existing EEC's. This determination assumes that the operator act expeditiously and coordinate this EEC repair with the Honeywell Repair Station.

Finding That Immediate Adoption Is Necessary

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are

invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–39–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This amendment does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–21–02 Honeywell International Inc.: Amendment 39–12472. Docket 2000–NE–39–AD.

Applicability

This airworthiness directive (AD) is applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) TPE331–8, –10N, and –12B turboprop engines with electronic engine controls (EEC's) part numbers (P/N's) 2101322–1, –4, –11, –12, –13, –14, –15 or –16 installed. These engines are installed on but not limited to Cessna Aircraft Company Model 441 Conquest airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner or operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To minimize exposure to flight and ground operations that could lead to the loss of control of the airplane due to asymmetric thrust and an uncommanded torque increase, do the following:

Amending of the Airplane Flight Manual

(a) Within 30 days after the effective date of this AD, amend the applicable FAA Approved Cessna Airplane Flight Manual (AFM) Emergency Procedures and Normal Procedures Section to provide interim emergency procedures to flight crews, by inserting the Temporary Revisions specified in the following table:

TEMPORARY REVISIONS BY AIRPLANE MODEL AND SERIAL NUMBER (SN) AND AFM AFFECTED

Airplane model and serial No. (SN)	AFM affected	Temporary revision
(1) Cessna Model 441; SN's 441–0001 through 441–0172.	D1561–14–13PH through Revision 14, dated January 9, 1998. D1561–14TR9 dated April 11, 2001. D1586–11–13PH through Revision 11, dated January 9, 1998.	D1561–14TR2 through D1561–14, dated 14TR8 dated November 20, 2000 D1586–11TR2 through D1586–11TR5 dated November 20, 2000. D1586–11TR7 and D1586–11TR8 dated November 20, 2000. D1586–11TR9 dated March 7, 2001. D1586–11TR10 dated April 11, 2001.
(2) Cessna Model 441; SN's 441–0173 and higher.		

(b) Owners or operators of airplanes that have been modified by supplemental type certificate, where the AFM conflicts with the TR's specified in (a)(1) and (a)(2) of this AD, must contact Los Angeles Aircraft Certification Office (LAACO) to have their AFM's reviewed and approved.

Replacement of Electronic Engine Controls

(c) Replace all existing EEC's P/N's 2101322–1, –4, –11, –12, –13, –14, –15 and –16 with serviceable EECs before August 31, 2003.

(d) Information regarding the replacement of existing EEC's is available in Honeywell Alert Service Bulletins TPE331–A76–0035 dated July 23, 2001, TPE331–A76–0036 dated July 23, 2001, and TPE331–A76–0037 dated July 23, 2001.

Removal of Temporary Revisions

(e) When all EEC's have been replaced in the airplane with serviceable EEC's, remove the applicable Temporary Revisions, specified in the preceding table, from the airplane flight manual.

Definitions

(f) For the purposes of the AD, a serviceable EEC is an EEC with a P/N that is not specified in this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, LAACO. Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Effective Date of This AD

(h) This amendment becomes effective on November 19, 2001.

Issued in Burlington, Massachusetts, on October 12, 2001.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–26323 Filed 10–18–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30275; Amdt. No. 2075]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format mate their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of this SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC, on October 12, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; AND § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC NO.	Subject
09/26/01	WA	SEATTLE	SEATTLE-TACOMA INTL	1/0489	ILS RWY 34L, ORIG...
09/26/01	WA	SEATTLE	SEATTLE-TACOMA INTL	1/0490	ILS RWY 34R, ORIG...
09/26/01	PA	PITTSBURGH	PITTSBURGH INTL	1/0493	CONVERGING ILS RWY 28R, AMDT 2
09/26/01	PA	PITTSBURGH	PITTSBURGH INTL	1/0495	CONVERGING ILS RWY 32, AMDT 3A...
09/27/01	WA	SEATTLE	SEATTLE-TACOMA INTL	1/0553	RNAV (GPS) RWY 34L, ORIG...
09/28/01	FL	ST. PETERSBURG-CLEARWATER.	ST. PETERSBURG-CLEARWATER INTL.	1/0584	VOR RWY 4, ORIG...
10/01/01	OK	HOBART	HOBART MUNI	1/0739	GPS RWY 17, ORIG–A...
10/01/01	OK	HOBART	HOBART MUNI	1/0743	GPS RWY 35, ORIG–A...
10/01/01	OK	HOBART	HOBART MUNI	1/0753	VOR RWY 35, AMDT 8A...
10/02/01	WA	TACOMA	TACOMA NARROWS	1/0776	NDB RWY 35, AMDT 7...
10/02/01	FL	SARASOTA/BRADENTON.	SARASOTA/BRADENTON INTL	1/0786	ILS RWY 32, AMDT 4B...
10/02/01	FL	SARASOTA/BRADENTON.	SARASOTA/BRADENTON INTL	1/0787	ILS RWY 14, AMDT 3A...
10/03/01	CT	BRIDGEPORT	IGOR I SIKORSKY MEMORIAL	1/0855	ILS RWY 6, AMDT 9...
10/03/01	NH	KEENE	DILLANT-HOPKINS	1/0864	VOR RWY 2, AMDT 12...
10/03/01	NH	KEENE	DILLANT-HOPKINS	1/0866	ILS RWY 2, AMDT 2A...
10/03/01	AZ	PHOENIX	PHOENIX SKY HARBOR INTL	1/0869	ILW RWY 26, ORIG...
10/04/01	PA	PHILADELPHIA	PHILADELPHIA INTL	1/0887	ILS RWY 26, AMDT 2...
10/04/01	PA	PHILADELPHIA	PHILADELPHIA INTL	1/0888	ILS PRM RWY 27L, AMDT 1...
10/04/01	PA	PHILADELPHIA	PHILADELPHIA INTL	1/0889	ILS PRM RWY 26, AMDT 1...
10/04/01	IA	DUBUQUE	DUBUQUE REGIONAL	1/0895	LOC/DME BC RWY 13, AMDT 5A...
10/04/01	IA	DUBUQUE	DUBUQUE REGIONAL	1/0896	VOR OR GPS RWY 13, AMDT 9...
10/04/01	IA	DUBUQUE	DUBUQUE REGIONAL	1/0897	VOR RWY 31, AMDT 11C...
10/04/01	IA	DUBUQUE	DUBUQUE REGIONAL	1/0898	NDB OR GPS RWY 31, AMDT 8C...
10/04/01	IA	DUBUQUE	DUBUQUE REGIONAL	1/0899	LOC RWY 31, ORIG...
10/04/01	IA	DUBUQUE	DUBUQUE REGIONAL	1/0900	ILS RWY 36, ORIG...
10/04/01	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	1/0906	CONVERGING ILS RWY 17R, AMDT 6A...
10/04/01	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	1/0908	CONVERGING ILS RWY 35L, AMDT 1D...
10/04/01	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	1/0909	ILS RWY 17R, AMDT 20A...
10/04/01	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	1/0910	ILS RWY 35L, AMDT 2C...
10/04/01	TX	FORT WORTH	FORT WORTH ALLIANCE	1/0914	ILS RWY 34R, AMDT 4A...
10/04/01	TX	FORT WORTH	FORT WORTH ALLIANCE	1/0915	ILS RWY 16L (CAT I, II, III) AMDT 5A...
10/04/01	IL	VANDALIA	VANDALIA MUNI	1/0938	VOR RWY 18, AMDT 11...
10/04/01	ME	BANGOR	BANGOR INTL	1/0968	ILS RWY 33, AMDT 10A...
10/04/01	GA	ATLANTA	FULTON COUNTY AIRPORT-BROWN FIELD.	1/0969	NDB OR GPS RWY 8, AMDT 2A...
10/04/01	GA	ATLANTA	FULTON COUNTY AIRPORT-BROWN FIELD.	1/0970	ILS RWY 8, AMDT 15F...
10/08/01	MN	GRANITE FALLS	GRANITE FALLS MUNI/LENZEN-ROE MEMORIAL FLD.	1/1008	GPS RWY 34, ORIG...
10/08/01	MN	GRANITE FALLS	GRANITE FALLS MUNI/LENZEN-ROE MEMORIAL FLD.	1/1009	VOR/DME RWY 34, ORIG...

FDC date	State	City	Airport	FDC NO.	Subject
10/09/01	UT	HEBER CITY	HEBER CITY MUNI-RUSS MCDONALD FIELD.	1/1092	RNAV (GPS)–A, ORIG...
10/09/01	MI	HANCOCK	HOUGHTON-COUNTY MEMORIAL	1/1095	ILS RWY 31, AMDT 13...
10/09/01	MI	HANCOCK	HOUGHTON COUNTY MEMORIAL	1/1096	NDB OR GPS RWY 31, AMDT 11A...
10/09/01	IA	DUBUQUE	DUBUQUE REGIONAL	1/1118	VOR OR GPS RWY 36, AMDT 5C...

[FR Doc. 01–26459 Filed 10–18–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30274; Amdt. No. 2074]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4 and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action to immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on October 12, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective November 1, 2001*

Lafayette, GA, Barwick Lafayette, RNAV (GPS) RWY 2, Orig
Lafayette, GA, Barwick Lafayette, RNAV (GPS) RWY 20, Orig
Detroit, MI, Detroit Metropolitan Wayne County, ILS RWY 4L, Orig
Detroit, MI, Detroit Metropolitan Wayne County, ILS RWY 22R, Orig
Duluth, MN, Duluth Intl, ILS RWY 9, Amdt 20
Missoula, MT, Missoula Intl, RNAV (GPS) RWY 11, Orig
Missoula, MT, Missoula Intl, GPS RWY 11, Orig, CANCELLED
Manchester, NH, Manchester, ILS RWY 6, Orig
Waco, TX, McGregor Executive, RNAV (GPS) RWY 17, Orig
Waco, TX, McGregor Executive, RNAV (GPS) RWY 35, Orig
Waco, TX, McGregor Executive, GPS RWY 17, Orig-A, CANCELLED
Waco, TX, McGregor Executive, GPS RWY 35, Amdt 1, CANCELLED

** * * Effective November 29, 2001*

Indiana, PA, Indiana County/Jimmy Stewart Field, GPS RWY 10, Orig, CANCELLED
Philadelphia, PA, Northeast Philadelphia, VOR OR GPS RWY 6, Amdt 11

** * * Effective December 27, 2001*

Sand Point, AK, Sand Point, MLS RWY 13, Orig, CANCELLED
Clearwater, FL, Clearwater Air Park, RNAV (GPS) RWY 16, Orig, CANCELLED
Annapolis, MD, Lee, RNAV (GPS) RWY 30, Orig
Harbor Springs, MI, Harbor Springs, RNAV (GPS) RWY 28, Amdt 1
Poplar, MT, Poplar, RNAV (GPS) RWY 9, AMDT 1
Amarillo, TX, Amarillo Intl, RNAV (GPS) RWY 4, Orig
Amarillo, TX, Amarillo Intl, RNAV (GPS) RWY 22, Orig
Amarillo, TX, Amarillo Intl, GPS RWY 4, Amdt 1, CANCELLED
Amarillo, TX, Amarillo Intl, GPS RWY 22, Amdt 1, CANCELLED
San Antonio, TX, San Antonio Intl, VOR–A, Amdt 5, CANCELLED
San Antonio, TX, San Antonio Intl, RADAR–1, Amdt 25, CANCELLED

Note: The FAA published the following procedure in Docket No. 30264, Amdt No. 2065 to Part 97 of the Federal Aviation Regulations (Vol 66, FR No. 164, Page 44302; dated Thursday, August 23, 2001) under section 97.23 effective October 4, 2001, which is hereby amended to read as follows: New York, NY, John F. Kennedy Intl, VOR/DME RWY 31L, Amdt 13, CANCELLED.

Note: The FAA published the following procedures in Docket No. 30272, Amdt No. 2072 to Part 97 of the Federal Aviation Regulations (Vol 66, FR No. 194, Page 50824 dated Friday, October 5, 2001) under sections 97.23 and 97.33 effective November 1, 2001 which are hereby amended to be effective November 29, 2001: Stafford VA, Stafford Regional, VOR RWY 33, Orig. Stafford, VA, Stafford Regional, RNAV (GPS) RWY 33, Orig.

[FR Doc. 01–26458 Filed 10–18–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 76N–052G]

RIN 0910–AA01

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Partial Final Rule for Combination Drug Products Containing a Bronchodilator; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of September 27, 2001 (66 FR 49276). The document issued a final rule establishing that cough-cold combination drug products containing any oral bronchodilator active ingredient in combination with any analgesic(s) or analgesic-antipyretic(s), anticholinergic, antihistamine, oral antitussive, or stimulant active ingredient are not generally recognized as safe and effective and are misbranded for over-the-counter (OTC) use. The document published with two inadvertent errors. This document corrects those errors.

DATES: This rule is effective October 19, 2001.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–24127, appearing on page 49276 in the **Federal Register** of Thursday, September 27, 2001, the following corrections are made:

1. On page 49276, in the second column, in the third line, "Food and Drug Administration." is corrected to read "Food and Drug Administration".

2. On page 49276, in the second column, in the fourth line, "21 CFR part 341" is corrected to read "21 CFR part 310".

Dated: October 9, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy

[FR Doc. 01–26315 Filed 10–18–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–018]

Drawbridge Operation Regulation; Inner Harbor Navigation Canal, LA; Correction

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations; correction.

SUMMARY: The Coast Guard published a document in the **Federal Register** of July 23, 2001, concerning a temporary deviation from the regulation governing the operation of the Florida Avenue bascule span drawbridge across the Inner Harbor Navigation Canal, mile 1.7 at New Orleans, Orleans Parish, Louisiana. This temporary deviation was issued to allow for replacement of the damaged fender system. The work has been rescheduled and the dates have changed from those which were previously published.

DATES: The effective date of the notice of temporary deviation from regulations published July 23, 2001 (66 FR 38155) is corrected to be from 6:45 a.m. on Monday, October 29, 2001, until 6:45 p.m. on Monday, November 19, 2001.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

Correction

In the **Federal Register** of July 23, 2001, in FR Doc. 01–18245 on page 38155 in the first column: 1. Correct the second sentence of the **SUMMARY** caption to read:

This deviation allows the draw of the Florida Avenue bascule span drawbridge to remain closed to navigation daily from 6:45 a.m. until 12:15 p.m. and from 1:15 p.m. until 6:45 p.m. from October 29, 2001 through November 19, 2001.

2. In the second column of page 38155, correct the first sentence of the second paragraph of the **SUPPLEMENTARY INFORMATION** caption to read:

This deviation allows the draw of the Florida Avenue bascule span drawbridge to remain closed to navigation daily from 6:45 a.m. until 12:15 p.m. and from 1:15 p.m. until 6:45 p.m. from October 29, 2001 through November 19, 2001.

Dated: October 5, 2001.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 01–26162 Filed 10–18–01; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 20

Global Express Mail

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service will offer a 5 percent discount off of regular postage for all Global Express Mail™ shipments paid through the shipping site at *www.usps.com*. The discount will apply only to the basic portion of Global Express Mail published rates. It would not apply to pick-up service charges, additional merchandise insurance coverage fees, or shipments made under an International Customized Mail agreement.

EFFECTIVE DATE: November 1, 2001.

ADDRESSES: Written comments should be sent to the Manager, International Marketing, International Business, U.S. Postal Service, 1735 N. Lynn Street, Arlington, VA 22209–6020.

Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in International Business, 2nd Floor, 1735 N. Lynn Street, Arlington, VA 22209–6020.

FOR FURTHER INFORMATION CONTACT: Angus MacInnes, (703) 292–3601

SUPPLEMENTARY INFORMATION: The Postal Service is establishing changes in conditions for certain mailing categories to automatically reduce every payment transaction by 5 percent for all Global Express Mail purchased at basic published prices and paid on the shipping site at *www.usps.com*. The discount will be deducted from each piece paid for through the Web site. The discount will be offered on postage only; it does not apply to pickup fees, any special fees, or postage for shipments made under an International Customized Mail agreement.

The Postal Service established the shipping site at *www.usps.com* to offer an online capability for customers to be able to prepare, ship, and pay for service shipments. Payment will be made using an online postage capability. Global Express Mail will be included in the services that are offered through this Web site. The discount is similar to the ones that are offered for Global Express Guaranteed shipments that are made through the same Web site and for Global Express Mail shipments that are paid for through an Express Mail Corporate Account.

As required under the Postal Reorganization Act, these changes will result in conditions of mailing that do not apportion the costs of the service, so the overall value of the service to users is fair and reasonable, and not unduly or unreasonably discriminatory or preferential.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advanced notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), interested parties are invited to submit written data, views, or comments regarding this interim rule to the address above.

List of Subjects in 39 CFR Part 20

Foreign relations, international postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408

2. The *International Mail Manual* (IMM) is amended to incorporate the following changes:

International Mail Manual (IMM)

* * * * *

2 Conditions for Mailing

* * * * *

220 Global Express Mail

* * * * *

222 Postage

* * * * *

[Add new 222.13 as follows:]

222.13 Online Rates—General

Discounted rates apply to Global Express Mail (EMS) customers who prepare and pay for Global Express Mail shipments online using the shipping site at *www.usps.com*.

222.131 Eligibility for Online Discounts

To be eligible for discounts for purchasing Global Express Mail online, customers must register via the shipping site at *www.usps.com*. Registration is accomplished by selecting the designated icon on the web site and following the accompanying instructions. This one-time registration will establish a shipping record and a customer history. To be eligible for online discounts, customers must prepare their shipping labels and pay for their shipments online using a credit card. The following credit cards are accepted for payment online: American Express, Diner's Club, Discover, MasterCard, and Visa.

222.132 Online Discounts

Global Express Mail published rates will be reduced by 5 percent for all payments made through the shipping site at *www.usps.com*. The discount applies only to the postage portion of Global Express Mail rates. It does not apply to the pickup service charge, additional merchandise insurance coverage fees, or shipments made under an International Customized Mail agreement.

222.2 Payment of Postage

222.21 Methods of Payment

[Revise 222.21 to read as follows:]

Global Express Mail items may be paid by postage stamps, postage validation imprinter (PVI) labels, postage meter stamps, information based indicia (IBI), or through the use of an Express Mail corporate account.

* * * * *

224 Preparation Requirements

224.1 Preparation by Sender

[*Revise item a to read as follows:*]

a. Complete the "From" and "To" portion of Label 11–B, Express Mail Post Office to Addressee, or online label for each piece of mail and affix the completed label to each piece.

* * * * *

224.2 Preparation by Acceptance Employee

* * * * *

[*Revise item d to read as follows:*]

d. Give the Customer Receipt copy to the mailer and retain the Finance Copy. Peel off the backing of the remaining portion and affix it to the item. For online shipments, customer receipts are not necessary; for non-IRT and POS offices, record the required Finance information on the special form provided for this purpose.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–26444 Filed 10–18–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4154; FRL–7083–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for Two Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania (Pennsylvania). The revisions impose reasonably available control technology (RACT) on two major sources of nitrogen oxides (NO_X) located in the Pittsburgh-Beaver Valley area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on November 5, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink (215) 814–2104 or by e-mail at *spink.marcia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 18, 2000, EPA published a direct final rule approving RACT determinations submitted by the Pennsylvania Department of Environmental Protection (PADEP) for twenty-six major sources of NO_X and/or volatile organic compounds (VOC) and a companion notice of proposed rulemaking (65 FR 20788). We received adverse comments on the direct final rule and a request for an extension of the comment period. We had indicated in our April 18, 2001 direct final rulemaking that if we received adverse comments, we would withdraw the direct final rule and address all public comments in a subsequent final rule based on the proposed rule (65 FR 20788). On June 19, 2000 (65 FR 38168), EPA published a withdrawal notice in the **Federal Register** informing the public that the direct final rule did not take effect. On June 19, 2000 (65 FR 38169), we also published a notice providing an extension of the comment period and making corrections to our original proposed rule. This final rule pertains to two of the twenty-six sources which were included in the April 18, 2001 rulemaking, namely Allegheny Ludlum Steel Corporations's Vandergrift Plant located in Westmoreland County and INDSPEC Chemical Corporation's Petrolia Plant located in Butler County. The remaining twenty-four sources will be the subject of separate rulemakings.

II. Summary of the SIP Revisions

On March 21, 1996, December 7, 1998 and April 9, 1999, the PADEP submitted NO_X RACT determinations for Allegheny Ludlum Steel Corporations's Vandergrift Plant located in Westmoreland County and INDSPEC Chemical Corporation's Petrolia Plant located in Butler County to EPA as SIP revisions. On April 18, 2001 (65 FR 20788), EPA proposed to approve these SIP revisions. Brief descriptions of the RACT requirements imposed for these sources are provided at II. A and B.

A. Allegheny Ludlum Steel Corporations's Vandergrift Plant

This is a major NO_X facility as defined in 25 Pa. Code Chapter 121, section 121.1 of Pennsylvania's SIP approved regulations. Therefore the facility is subject to the RACT requirements of Chapter 129, section 129.91 of Pennsylvania's SIP approved regulations. The facility submitted a RACT proposal in accordance with the SIP-approved requirements section 129.92. Boiler's #1 and #2 are combustion units with a rated input equal to or greater than 20MMBtu/hr but less than 50MMBtu/hr. Allegheny Ludlum elected to comply with the SIP-approved presumptive RACT requirements applicable to such size boilers found at section 129.93(b)(2). The PADEP cited to these requirements in Condition 4 of RACT Operating Permit No. 65–000–137 issued to Allegheny Ludlum Steel Corporations's Vandergrift Plant. The two remaining sources at the facility that require a RACT analysis are the No. 90 line anneal furnace used to anneal stresses introduced during rolling operations, and the associated pickling line process where steel is submerged in a an acid bath which dissolves and removes oxidized metal and other materials from the surface of the steel. Brief descriptions of the RACT requirements imposed by PADEP are provide below. The RACT plan proposal submitted by Allegheny County Ludlum on March 17, 1994 and PADEP's Review of the RACT Application, dated June 22, 1995, detail the technical and economic analyses performed to rank control technology options in accordance with 25 Pa Code 129.92. Those documents, among others generated by PADEP, are included in the docket for this rulemaking.

The 90 line furnace is capable of annealing steel at temperatures ranging from 1350 degrees to 2200 degree F. Control technology options were analyzed and ranked by Allegheny Ludlum for the 90 line furnace including: (1) Selective catalytic reduction (SCR) and Low NO_X Burners (LNB); (2) SCR only; (3) LNB and flue gas recirculation (FGR); and FGR alone. The costs per ton of NO_X removed calculated to $9285/ton for SCR and LNB; $8958/ton for SCR; $9160/ton for LNB and FGR; and $3349/ton for FGR. The pickling line uses a nitric acid/hydrofluoric acid bath and is currently employing absorption and chemical reaction technology. Several control options were evaluated for this source. An oxidation/absorption system with chemical reaction and 85% control efficiency was evaluated and found to have a total cost effectiveness of $4807/ton reduced. A hydrogen peroxide injection system was also investigated. This system was found to have a 75% control efficiency at a cost effectiveness of $3767/ton. Both SCR an selective non-catalytic reduction (SNCR) were evaluated. These were deemed to be technologically infeasible due to the low operating temperature of the needed scrubber. Therefore, the PADEP concluded no additional controls, beyond those already employed, were required as RACT for the 90 anneal line furnace and the pickling line. The PADEP did impose maximum annual NO_X emissions from each unit to be met over every consecutive 12 month period in RACT Permit No. 65–000–137. The No. 90 A& P line furnace is limited to 25.9 tons/year, the No. 90 A&P line scrubber to 103.0 tons/year, Boilers #1 and #2 to 14.3 tons/year each; and the Roller Hearth Line to 10.6 tons/year. RACT Permit No. 65–000–137 also requires that Allegheny Ludlum comply with the record keeping requirements of SIP-approved 25 Pa Code Chapter 129, section 129.95.

B. INDSPEC Chemical Corporation's Petrolia Plant

On December 7, 1995, PADEP issued a RACT approval, Permit Number: PA 10–021, to INDSPEC Chemical Corporation's Petrolia Plant located in Butler County. On October 19, 1998, PADEP issued an amended RACT approval to this facility retaining the same Permit Number: PA 10–021. The permit was issued to INDSPEC Chemical Corporation (INDSPEC) for achieving compliance with the SIP-approved provisions of 25 Pa Code Section 129.91 through 129.95. The facility and PADEP submitted extensive RACT analyses in accordance with the SIP-approved provisions of 129.91 and 129.92. These analyses are included in docket for this rulemaking. Boiler #3 has been removed from service completely. The PADEP has determined that were it to have remained in service after May 31, 1995, RACT would have been that it be operated and maintained in accordance with manufacturer's recommendations and with good air pollution control practices. For boilers #4, #5, and #7 which by design or by de-rates imposed in enforceable permit conditions, INDSPEC has elected to comply with the SIP-approved presumptive RACT requirements of 129.93. The PADEP has determined that RACT for Boiler #8 is that it be operated and maintained in accordance with manufacturer's recommendations and with good air pollution control practices. Boiler #9 had been permitted under 25 Pa Code Chapter 127, and had installed low NO_X burners as Best Available Technology (BAT). BAT is the control technology requirement imposed on new sources and modifications not otherwise subject to Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) under the SIP-approved new source review program. The PADEP reaffirmed the 1993 BAT requirement as RACT. In addition, the PADEP has imposed the following emission NO_X emission limitations under condition 8 of Permit No. PA 10–021:

Boiler #3—0.51 lbs/MMBtu, 25.5 lbs/hr, 111.7 tons/year
Boiler #7—0.14 lbs/MMBtu, 8.4 lbs/hr, 15.6 tons/year
Boiler #8—0.51 lbs/MMBtu, 60.2 lbs/hr, 263.6 tons/year
Boiler #9—0.11 lbs/MMBtu, 22 lbs/hr, 96.4 tons/yr

The ton/yr limits must be met on a 12 month rolling basis. Boiler #7 shall not burn more than 223 mmcf of natural gas per year (also based on a 12 month rolling total). INDSPEC must install, operate and maintain continuous emission monitoring systems in accordance with 25 Pa Code Chapter 139 and 40 CFR Part 60, Subpart Db. INDSPEC must monitor and record the amount of steam produced, the pressure at which it is produced, the boiler efficiency and the heat input to boilers #4 and #5 to insure compliance with their de-rated heat input capacity of 49.5 MMBtu/hr.

As RACT for VOC, the PADEP has imposed condition 6 in Permit No. PA 10–021 to require that INDSPEC install combination flame arrester conservation vents on its four ether feed tanks, T–869, T–870, T–1085, and T–1086. Condition 7 of Permit No. PA 10–021 requires that the VOC emissions from these tanks shall be reduced by 96.5%.

Permit No. PA 10–021 also requires that stack tests be performed in accordance with Chapter 139 to of the approved-SIP regulations to demonstrate compliance with the emission limits imposed in condition 7 (for the 96.5% percent reduction in VOCs) and condition 8 (for the #7 boiler). The combustion units rated greater than 100 MMBtu shall be stack tested to comply with the requirements of 129.91. Permit No. PA 10–021 also requires INDSPEC to comply with the record keeping requirements of 129.95.

On April 18, 2000 EPA proposed to approve these RACT determinations (65 FR 20788) because the PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The PADEP has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

II. Summary of Public Comments Received and EPA's Responses

EPA received comments on its April 18, 2000 proposal to approve Pennsylvania's RACT SIP submittals for twenty six—six sources from Citizens for Pennsylvania's Future (PennFuture), and from a concerned citizen. The comments that are germane to the RACT determinations for Allegheny Ludlum Steel Corporations's Vandergrift Plant and INDSPEC Chemical Corporation's Petrolia Plant are summarized below. EPA's responses are provided after each comment.

A. Comment: PennFuture comments that EPA should require that each RACT submittal include "effective and enforceable numerical emission limits" as a condition for approval. Additionally, PennFuture requests that EPA only approve limits that are no higher than the best emission rate actually achieved after the application of RACT, adjusted only to reflect legally and technically valid averaging times and deviations. PennFuture contends that such an approach will ensure maximum environmental benefits and minimize the opportunity for sources to generate spurious emission reduction credits (ERCs) against limits that exceed emission levels actually achieved following the application of RACT. Lastly PennFuture comments that EPA should describe the RACT determinations in its rulemaking notices published in the **Federal Register** rather than simply citing to technical support documents and other materials available in docket of the rulemaking.

Response: While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks

and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (See *http://www.epa.gov/ttn/catc/dir1/ctg.txt*). That said, the RACT determinations made by PADEP for Allegheny Ludlum Steel Corporations's Vandergrift Plant and INDSPEC Chemical Corporation's Petrolia Plant include both SIP-approved presumptive RACT requirements and numerical emission rates.

With regard to the criteria EPA uses to determine whether to approve or disapprove RACT SIP revisions submitted by PADEP pursuant to 25 Pa Code Chapter 129.91–129.95, we look to the provisions of those SIP-approved regulations and to the requirements of the Clean Air Act and relevant EPA guidance. On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs*, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements*. Under subsection 129.92, that proposal is to include the following information: (1) A list each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision. The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that "* * *RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

EPA reviews the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA first reviews a SIP submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT, respectively. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then we may add additional EPA-generated analyses to the record. Thus, EPA does not believe it would be appropriate to only approve limits that are no higher than the best emission rate actually achieved after the application of RACT, adjusted only to reflect legally and technically valid averaging times and deviations.

EPA does note that an approved RACT emission limitation alone does not constitute the baseline against which ERCs may be generated. There are many other factors that must be considered in the calculation of eligible ERCs under Pennsylvania's approved SIP regulations governing the creation ERCs. Moreover, the scenario posed in PennFuture's comment would not create eligible ERC's under the Commonwealth approved SIP regulations. Under the Commonwealth's regulations pertaining to ERCs, found at 25 Pa. Code Chapter 127, sections 127.206 through 127.210 (approved by the EPA at 62 FR 64722 on December 9, 1997), sources cannot obtain ERCs if they find that their RACT controls result in lower emissions than allowed by their specified RACT limits.

While EPA believes that Federal rulemaking procedures allow for the format and procedures used in its April 18, 2000 rulemaking notices, we have nonetheless described the RACT determinations made for Allegheny Ludlum Steel Corporations's Vandergrift Plant located in Westmoreland County and INDSPEC Chemical Corporation's Petrolia Plant in this document.

B. Comment: A private citizen expresses concern that the RACT requirements for INDSPEC Chemical Corporation's #8 and #3 boilers might not be sufficiently stringent. He believes that at if this was the case, the Company might be able to claim excessive amounts of emission reduction credits (ERCs). With respect to Boiler #8, the citizen was concerned that the Commonwealth had established a RACT emissions limit based upon this boiler operating as a coal-fired unit and not as a gas-fired unit. He points out that the Company had, in 1994, converted Boiler #8 to gas-firing, resulting in significant reductions in NO_X emissions. In particular, he questions the conclusion that the cost effectiveness of the conversion was $5,500 per ton of NO_X removed. He contends that INDSPEC's motivations for the conversion from coal to gas may have been driven based on economic considerations citing that perhaps the boiler was too costly to maintain on coal, or perhaps the company was faced with the prospect of adding other emissions controls. He contends that by converting to gas, the company derives savings on personnel, maintenance on fuel handling and burning equipment, wear and tear on the boiler and maintenance on air pollution control equipment. With respect to Boiler #3, the citizen is also concerned that the Commonwealth might have established a RACT emissions limit which was too high. He notes the boiler had been shutdown and that the Commonwealth had established a RACT emissions limit for the boiler using an emissions factor. He maintains that the emissions limit should have been based on CEM or EPA-reference method data. He also maintains that EPA must assure that ERCs are based on the lower of actual or allowable emissions. The citizen concludes by saying that the entire steam generating plant should be capped such that prior actual emissions are discounted for the generation of ERCs, after RACT has been implemented; and that the implementation of RACT should not be allowed to create ERCs, only reductions beyond RACT are allowed for ERC creation.

Response: EPA concurs with the Commonwealth's analyses that the cost of removing NO_X by converting Boiler #8 to gas firing, at $5,500 per ton of NO_X removed, is higher than the cost which has typically considered to be reasonable when determining RACT controls. The Commonwealth has set out objective requirements for all subject facilities to make a case-by-case RACT proposals in sections 129.91, 129.92, and 129.93 and EPA has approved them as part of the SIP. Trying to ascertain other motives that INDSPEC may have had for the conversion and then taking into account the types of cost savings which the citizen identified is not consistent with an objective approach toward determining RACT.

Given that Boiler #3 was shutdown in 1992, and the absence of any available CEM or EPA-reference method emissions data, EPA believes that the Commonwealth's decision to establish a RACT limit for this boiler based on an emissions factor was reasonable. With respect to the citizen's concerns regarding the possibility of the Company obtaining excessive ERCs, again EPA notes that the Commonwealth's SIP-approved regulations pertaining to ERC generation and creation, found at 25 Pa. Code Chapter 127, sections 127.206 through 127.210, contain provisions which would prevent the granting of excess ERCs. The regulations require all ERCs to be surplus, permanent, quantified, and Federally enforceable. Moreover, under the Pennsylvania SIP, ERCs must also meet the offset requirements of the Commonwealth's new source review program. The calculation of eligible ERCs under the Pennsylvania SIP does not allow for "only on paper credits." Under 25 Pa. Code Chapter 127, sections 127.206 through 127.210 such calculations take into account the generating source's actual operating history and only actual emission reductions are creditable.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for Allegheny Ludlum Steel Corporations's Vandergrift Plant located in Westmoreland County and INDSPEC Chemical Corporation's Petrolia Plant located in Butler County. EPA is approving these RACT SIP submittals because PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The PADEP has also imposed record keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for two named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for Allegheny Ludlum Steel Corporations's Vandergrift Plant located in Westmoreland County and INDSPEC Chemical Corporation's Petrolia Plant located in Butler County may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(186) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(186) Revisions to the Pennsylvania Regulations. Chapter 129.91 pertaining to NO_X RACT, submitted on March 21, 1996, December 7, 1998 and April 9, 1999.

(i) *Incorporation by reference.*

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific NO_X RACT determinations in the form of plan approvals or operating permits on March 21, 1996, December 7, 1998 and April 9, 1999.

(B) Plan approvals (PA), and Operating permits (OP) for the following sources:

(*1*) Allegheny Ludlum Steel Corporation, Westmoreland County, OP 65–000–137, effective May 17, 1999, except for the expiration date.

(*2*) INDSPEC Chemical Corporation, Butler County, PA 10–021, as amended and effective on October 19, 1998 except for Condition 4.

(ii) *Additional materials.* Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations submitted for the sources listed in paragraph (c)(186)(i)(B) of this section.

[FR Doc. 01–26405 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA175–4179; FRL–7079–6]

Approval and Promulgation of Air Quality Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Pennsylvania; Redesignation of Pittsburgh-Beaver Valley Ozone Nonattainment Area to Attainment and Approval of Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Pittsburgh-Beaver Valley moderate ozone nonattainment area (the Pittsburgh area) has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by its extended attainment date. The Pittsburgh area is comprised of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties. This determination is based on three years of complete, quality-assured, ambient air quality monitoring data for the 1998 to 2000 ozone seasons that demonstrate that the ozone NAAQS has been attained in the area, and the most recent data which shows that the area is continuing to attain. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements along with certain other related requirements of Part D of Title 1 of the Clean Air Act (the Act), are not applicable to the Pittsburgh area. EPA is also approving the Commonwealth of Pennsylvania's Department of Environmental Protection (PADEP) request to redesignate the Pittsburgh area to attainment of the 1-hour ozone NAAQS. The Commonwealth's formal request was dated May 21, 2001. In approving this redesignation request, EPA is also approving as a revision to the Pennsylvania State Implementation Plan (SIP), the Commonwealth's plan for maintaining the 1-hour ozone standard for the next 10 years. EPA is also approving the 1990 base year emission inventory for nitrous oxides (NO_X). EPA is converting the limited approval of Pennsylvania's New Source Review (NSR) program to full approval throughout the Commonwealth with the exception of the 5-county Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area where it will retain its limited approval status until that area has an approved attainment demonstration for the 1-hour ozone standard.

EFFECTIVE DATE: This final rule is effective on November 19, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Jill Webster, (215) 814–2033, or by e-mail at *Webster.Jill@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 10, 2001 (66 FR 1925), EPA published a determination of attainment for the Pittsburgh area. This notice of proposed rulemaking (NPR) also proposed a determination that certain requirements of the Act were no longer applicable. On May 30, 2001 (66 FR 29270), EPA published another NPR for the Commonwealth of Pennsylvania. This May 30, 2001, NPR proposed to redesignate the Pittsburgh area to attainment of the 1-hour ozone standard. EPA also proposed to approve the maintenance plan that the Commonwealth submitted as a revision to the Pennsylvania SIP. EPA proposed these actions in parallel with the Commonwealth's process for amending the SIP. No substantial changes were made to the plan during the Commonwealth's adoption process and the Commonwealth formally submitted its adopted SIP on May 21, 2001.

On May 30, 2001 (66 FR 29270) EPA also proposed approval of the 1990 NO_X base year inventory and, to convert the limited approval of the Pennsylvania NSR program to full approval for the entire Commonwealth, with the exception of the Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area. This document is organized as follows:

I. What is the background for these actions?
II. What comments did we receive and what are our responses?
III. What actions are we taking?
IV. Why are we taking this action to redesignate the area?
V. What are the effects of redesignation to attainment of the 1-hour NAAQS?
VI. Administrative Requirements.

I. What Is the Background for These Actions?

The history for these actions have been set forth in the proposed rulemakings published May 30, 2001 (66 FR 29270) and January 10, 2001 (66 FR 1925).

II. What Comments Did We Receive and What Are Our Responses?

We received letters containing adverse comments from 2 commenters and 1 letter in support of our proposal of January 10, 2001. For our May 30, 2001 proposal, we received 5 letters opposed to our actions and 1 letter in support. Comments in support of the rulemaking action are not summarized below. The adverse comments and EPA's response to them are provided below.

A. Comments Related to Whether the Area Has a Fully Approved Plan

We received comments from several parties who assert that pursuant to 107(d)(3)(E)(ii) of the Clean Air Act, EPA cannot redesignate an area to attainment unless EPA "has fully approved the applicable implementation plan for the area." They contend that EPA has yet to fully approve the applicable implementation plan for the Pittsburgh area. The commenters maintain that, among other things, EPA has yet to fully approve the moderate area ozone SIP for this area by failing to have fully approved the following specific SIP elements required by the Clean Air Act:

(1) An Attainment Determination and Attainment Demonstration

Comment: Several commenters assert that the Act required moderate area SIP submittals to include an attainment demonstration based on modeling or other analytical method determined by EPA to be at least as effective. The commenters contend that EPA has not approved an attainment demonstration for Pittsburgh, nor has the state submitted an approvable attainment demonstration. The commenters also claim that EPA's proposal to waive requirements of section 172(c)(1) and 182(b)(1) of the Act concerning submission of the ozone attainment demonstration, reasonable further progress (RFP) demonstration and reasonably available control measures and section 172(c)(9) concerning contingency measures, is without justification. They also contend that EPA has no authority to waive these requirements. One commenter questions why EPA makes no mention of the attainment demonstration adopted December 29, 1997 by the Commonwealth and asserts that EPA's proposal to waive the requirements of section 172(c), section 182(b)(1), and section 172(c)(9) have no effect since EPA has not redesignated the area.

Response: On January 10, 2001 (66 FR 1925), EPA proposed that the Pittsburgh area had attained the standard based on 1998–2000 monitoring data. With this finding, EPA also proposed that certain requirements, including an attainment demonstration, were no longer applicable as the area had attained the standard. EPA has explained at length in other actions its rationale for the reasonableness of this interpretation of the Act and incorporates those explanation by reference. See (61 FR 20458) (Cleveland-Akron-Lorain, Ohio May 7, 1996); (60 FR 36723) (July 18, 1995) Salt Lake and Davis Counties, Utah); (60 FR 37366) (July 20, 1995), (61 FR 31832–31833) (June 21, 1996) (Grand Rapids, MI), (65 FR 37879) (June 19, 2000) Cincinnati-Hamilton, Ohio and Kentucky. The United States Court of appeals for the Tenth Circuit has upheld EPA's interpretation. *Sierra Club* v. *EPA*, 99 F. 3d 1551 (10th Cir. 1996).

EPA reiterates the position set forth in its prior rulemaking actions and in the January 10, 2001 (66 FR 1925) proposed rulemaking for the Pittsburgh area. Subpart 2 of part D of Title I of the Act contains various air quality planning and SIP submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret the provisions regarding Reasonable Further Progress (RFP) and attainment demonstrations, along with other certain other related provisions, not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA interprets the general provisions of subpart 1 of part D of Title I (sections 171 and 172) not to require the submission of SIP revisions concerning RFP, attainment demonstrations or section 172 (c)(9) contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Area Meeting the Ozone National Ambient Air Quality Standard," dated May 10, 1995, EPA believes it is appropriate to interpret the more specific attainment demonstration and related provisions of subpart 2 in the same manner. See *Sierra Club* v. *EPA*, 99 F. 3d. 1551 (10th Cir. 1996).

The attainment demonstration requirements of section 182(b)(1) requires that the plan provide for "such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA." If an area has, in fact, monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached" (57 FR 13564). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of section 172(c)(9) of the Act. EPA has previously interpreted the contingency measure requirements of section 172(c)(9) as no longer being applicable once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date" (57 FR 13564).

The state must continue to operate an appropriate network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in EPA's AIRS) for the Pittsburgh moderate ozone nonattainment area from the 1998 to 2000 ozone seasons. Monitoring data for the 2001 ozone season shows that the area continues to attain the 1-hour ozone NAAQS. On the basis of this review, EPA had determined that the area has attained the 1-hour ozone standard during the 1998–2000 period (and has continued to do so, to date, in 2001), and therefore is not required to submit an attainment demonstration and a section 172(c)(9) contingency measure plan, nor does it need any other measures to attain the 1-hour ozone standard.

EPA does not need to evaluate the attainment demonstration that the Commonwealth has previously adopted, because it is not necessary for this action, and is no longer a requirement for the Pittsburgh area, because the area has attained the 1-hour ozone NAAQS.

It is also important to note that the Commonwealth has a fully approved 15 percent plan for the Pittsburgh area. (66 FR 17634) (April 3, 2001).

(2) An "All Reasonably Available Control Measures" (RACM) Analysis

Comment: One commenter asserts that EPA has not approved a demonstration that the SIP provided for implementation of all reasonably available control measures as expeditiously as practicable, 42 U.S.C. 7502(c)(1), nor has the state met this requirement for Pittsburgh. The commenter states that EPA has no authority to waive this requirement, which is in addition to the requirement to demonstrate timely attainment.

Response: No additional RACM controls beyond what are already required in the SIP are necessary for redesignation to attainment. The General Preamble, April 16, 1992 (57 FR 13560), explains that section 172 (c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM as expeditiously as practicable. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement those measures that are reasonably available and necessary to attain as expeditiously as practicable. Because attainment has been achieved, no additional measures are needed to provide for attainment.

The suspension of the attainment demonstration requirements pursuant to our determination of attainment include the section 172(c)(1) RACM requirements as well. The General Preamble treats the RACM requirements as a "component" of an area's attainment demonstration. Thus, the suspension of the attainment demonstration requirement pursuant to our determination of attainment applies to the RACM requirement, since it is a component of the attainment demonstration.

(3) Reasonably Available Control Technology (RACT)

Comment: Several commenters state that the Act explicitly requires that the SIP mandate RACT for all VOC sources within the nonattainment area, including each category of VOC sources covered by Control Technique Guideline (CTG) documents. 42 U.S.C. 7502(c), 7511a (b)(2). The commenters point out that EPA concedes that the requirement to fully approve the RACT SIP has not been met as of the date of the redesignation proposal.

Several commenters state that the Commonwealth has not adopted source category RACT rules for all CTG categories including: aerospace, synthetic organic compound manufacturing, reactor and distillations processes, shipbuilding, wood furniture, large petroleum dry cleaners, air oxidation processes in synthetic organic chemical manufacturing industries, equipment leaks from natural/gas gasoline processing plants, and a number of others. One commenter postulates that EPA will suggest that it will require source specific RACT for all sources within each category before finalizing the redesignation proposal and the commenter asserts that this approach circumvents the mandate to adopt RACT for each category of VOC sources covered by CTG documents. This commenter goes on to say the these category RACTs were to have been adopted and complied with years ago and EPA cannot retroactively deem the SIP to be in compliance with part D.

Several commenters assert that if EPA intends to grant the state's redesignation request based on potential future EPA approvals of state RACT determinations, then it will deprive the public of the opportunity to offer fully informed comment as to whether the plan as a whole meets all of the applicable requirements of section 110 and part D of the Act, as well as the appropriateness of their inclusion in the redesignation.

Response: The Pittsburgh area has satisfied all applicable ozone requirements and has a fully approved ozone SIP. In acting upon a redesignation request, EPA may rely on any prior SIP approvals plus any additional approvals it may perform in conjunction with acting on the redesignation. EPA has already taken final action to approve all required SIP elements or is approving them in conjunction with this final action on the redesignation. Therefore, the Pittsburgh area has a fully approved SIP. See "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992, page 3. The Calcagni memorandum allows for approval of SIP elements and redesignation to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. See (61 FR 20458) (Cleveland-Akron-Lorain, Ohio May 7, 1996); (60 FR 37366) (July 20, 1995), (61 FR 31832–31833((June 21, 1996) (Grand Rapids, MI).

In our proposed redesignation on May 30, 2001, we stated that we would not take final action to redesignate Pittsburgh until it had taken all actions necessary for EPA to convert the limited approval of the generic RACT regulation to a full approval for the Pittsburgh area. Since our proposal, EPA has taken final action approving the source-specific SIP revisions submitted by the Commonwealth for all the sources located in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties. On August 24, 2001, EPA proposed to convert the limited approval of the Commonwealth's NO_x and VOC RACT regulation to full approval in the Pittsburgh area. EPA has taken final action on that proposal and converted the limited approval of the Commonwealth's NO_x and VOC RACT regulation to full approval. The Commonwealth has met the requirements of the Act's RACT provisions for the Pittsburgh area.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This requirement, referred to as the non-CTG VOC RACT requirement, clearly does not require category-specific RACT rules. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement (including the requirements for CTG RACT) to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for individual sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

While EPA believes that the Commonwealth was not obligated to impose RACT via the adoption of VOC source category rules for the reasons provided above, nonetheless, EPA has approved the Commonwealth's VOC source category rules for aerospace (June 25, 2001, 66 FR 33645) and for wood furniture (July 20, 2001, 66 FR 37908).

In a letter from the PADEP (then the Pennsylvania Department of Environmental Resources), dated April 19, 1993, the Commonwealth made negative declarations for the CTG source categories of large petroleum dry cleaners, and equipment leaks from natural gas/gasoline processing plants. The Commonwealth made a negative declaration on September 28, 2001 for point source shipbuilding emissions in the counties of Armstrong, Butler, Beaver, Fayette, Washington, and Westmoreland. The Allegheny County Health Department (ACHD) made a negative declaration on September 27, 2001, for subject shipbuilding sources in Allegheny County.

The public has had opportunity to comment on three occasions on the generic RACT rule. In addition, EPA provided comment periods for its approval of each source specific rule, as well as for each of the category rules. Furthermore, EPA recently published approval notices for all remaining case specific RACT determinations for sources located in the Pittsburgh area and the public did indeed exercise their right to comment on those proposed actions. EPA disagrees that the public has not had adequate opportunity to offer fully informed comment as to whether the plan submitted by the Commonwealth meets all of the applicable requirements of section 110 and part D of the Act. The public has had ample opportunity to comment on the RACT regulations adopted by the Commonwealth, and EPA is entitled to rely on these previously-approved rules in determining that the State has a SIP that meets those applicable requirements. See *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989 (6th Cir. 1998).

EPA disagrees with the commenter that it is "retroactively" deeming that the State has complied with the RACT requirements of the Act. With respect to many of these source-specific rules, the source has been subject to and complying with the requirements for an extended period of time. Simply because EPA is only now taking action on those rules does not mean that the State or the source failed to meet the statutory RACT obligation. Finally, to the extent that the State and/or the source is late in meeting the statutory RACT obligation, EPA does not believe that Congress intended that such an area could never be redesignated to attainment, as the commenter appears to suggest. At this point, the best such an area can do is to meet the requirement as quickly as possible—the area cannot retroactively comply. Thus, EPA believes that Congress intended that once such an area complied with the statutory requirements—as is the case with Pittsburgh—the area may be redesignated.

(4) New Source Review (NSR)

Comment: We received several comments regarding NSR and its approval into the SIP. The commenters assert that the Act explicitly requires the SIP to include a preconstruction permit program for new sources and modifications within the nonattainment area. (42 U.S.C. section 7410(a)(2)(C), 7502(c)(4)&(5), 7503, 7511a(a)(2)(C), (b)(5)). The commenters assert that the NSR program should not be approved without an approved attainment demonstration in the Pittsburgh area. One commenter also asserts that EPA cannot approve the Commonwealth's rule without first promulgating "Alternative 2" of the federal NSR rule revision. This commenter also asserts that approval of the Commonwealth's NSR program is in conflict with section 184 of the Act, because the Commonwealth's NSR rule does not require the same offset credit restrictions in the marginal and attainment areas as required by section 184 of the Act. One of the commenters also contends that the NSR program's conditional approval status has expired and should already have been converted to a disapproval. This commenter also asserts that the EPA-required restrictions on shutdown credit are lacking in the program.

Response: As indicated, pursuant to EPA's issuance of an attainment determination for the Pittsburgh area, an approved attainment demonstration is no longer an applicable requirement. EPA has, however, now fully approved the NSR program for the Pittsburgh area. On May 2, 1997, EPA proposed to grant limited approval of Pennsylvania's NSR program (62 FR 24060). On December 9, 1997 (62 FR 64722) EPA published its final rule granting limited approval of Pennsylvania's NSR program and incorporated 25 Pa. Code of Regulations, Chapter 127, Subchapter E, Subsections 127.201 through 127.217, inclusive, by reference into the Pennsylvania SIP. (See 40 CFR part 52 at 52.2020(c)(107).) The proposed and final actions provided a detailed description of how the Commonwealth's NSR regulations satisfy the requirements of sections 172, 173, 182 and 184 of the Act. As explained in section I. C. of the May 2, 1997 notice of proposed rulemaking (62 FR 24061), under section 184 of the Act, the preconstruction permitting requirements applicable to moderate ozone nonattainment areas apply to ozone attainment areas and to marginal and moderate ozone nonattainment areas in the Commonwealth because Pennsylvania is located in the Ozone Transport Region (OTR). Section II. A. of the May 2, 1997 proposal (62 FR 24062) explicitly states that Pennsylvania's NSR requirements for moderate ozone nonattainment areas apply throughout Pennsylvania with the exception of the Philadelphia severe ozone nonattainment area. Subsections 127.203, 127.208, and 127. 210 of the Commonwealth's SIP-approved regulations, in particular, satisfy section 184 of the Act by imposing the same offset-related requirements to attainment, and marginal nonattainment areas of the Commonwealth as those applicable to moderate ozone nonattainment areas.

On December 9, 1997, when EPA approved Pennsylvania's NSR regulations into the SIP, its sole reason for granting limited approval, rather than full approval, of Pennsylvania's NSR regulations was that they do not contain certain restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets. These restrictions apply in nonattainment areas without an approved attainment demonstration (see 40 CFR part 51.165(a)(ii)(C)). (The submittal and approval of an attainment demonstration is not required by the Act for ozone nonattainment areas classified as marginal, nor is it required in areas designated as attainment for ozone.) As

EPA is, by this action, approving the attainment determination for the Pittsburgh area proposed on January 10, 2001 (66 FR 1925), approval of an attainment demonstration is not a requirement for the Pittsburgh area. Pursuant to EPA's determination of attainment, an attainment demonstration is no longer required, and thus similarly, an approved ozone attainment demonstration is no longer required under the NSR provisions for ozone. Since the premise of 40 CFR 51.165(a)(ii)(C)(1), that an attainment demonstration is required, does not exist, EPA concludes that the regulation should be interpreted so as not to require an approved attainment demonstration where no attainment demonstration is required. Therefore, EPA has determined that it is appropriate, at this time, to grant full approval of the Commonwealth's NSR regulations as they apply throughout the Commonwealth with the exception of the five-county Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area. That area is the only portion of the Commonwealth where the approval of an attainment demonstration is still required. EPA intends to take rulemaking action to grant full approval of the Commonwealth's NSR regulations in the five-county Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area at such time as that area has an approved attainment demonstration.

It should be noted that when EPA proposed to remove the limited nature of its approval of the Commonwealth's NSR program on May 30, 2001, it clearly was not taking action to re-approve Pennsylvania's entire NSR program. Therefore, not only does EPA disagree with the comments that the Commonwealth's NSR regulations fail to satisfy the Act and the current Federal NSR-related requirements for nonattainment areas found at 40 CFR Subpart I, EPA does not believe that such comments are timely.

Because Pennsylvania's NSR regulations satisfy the current federal NSR-related requirements for nonattainment areas found at 40 CFR Subpart I, EPA disagrees with the comment that it cannot grant approval of the Commonwealth's NSR without first promulgating "Alternative 2" of the proposed revisions to the federal NSR rules. The commenter's reference to Alternative 2 refers to language in the July 23, 1996 NSR rulemaking proposal which has not been finalized, and therefore the Agency believes that it is not currently an applicable NSR requirement.

EPA did not grant the Commonwealth's NSR program a conditional approval, and, therefore disagrees with the comment that any conditional approval has expired and should have been converted to a disapproval.

Even if the NSR program for Pittsburgh were not fully approved the area would still qualify for redesignation, since EPA has previously interpreted the Clean Air Act as not requiring a fully approved NSR program for redesignation of an area subject to the section 184 transport requirements. EPA has set forth its rationale for its interpretation that NSR and other section 184 ozone transport requirements are inapplicable for redesignation purposes in its proposed and final rulemakings on Reading, Pennsylvania. See 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826–24834 (May 7, 1997), which are incorporated herein by reference.

(5) Conformity

Comment: Several commenters asserted that the SIP does not include fully approved transportation conformity procedures that comply with Part D of the Act under section 176, and that EPA has no authority to waive this requirement for SIPs. One commenter argues that the Commonwealth is still obligated to submit such procedures and the fact that federal procedures apply does not excuse failure to adopt conformity procedures as required by the statute. The commenter contends that the Act allows redesignation to attainment only when EPA has fully approved the SIP and the state has met all requirements applicable to the area under section 110 and Part D.

Response: The Commonwealth of Pennsylvania has met the statutory requirement for submitting approvable general conformity procedures. EPA approved the Pennsylvania general conformity rules effective September 29, 1997 (62 FR 50870).

Section 176(c) provides that state conformity revisions must be consistent with Federal conformity regulations that the CAA requires EPA to promulgate. The Federal general conformity regulations were finalized on November 30, 1993, and the Federal transportation conformity regulations were finalized on November 24, 1993. The Federal general conformity regulations have remained the same since that time, but the Federal transportation conformity regulations have been amended several times since 1993.

The Federal transportation conformity regulations were amended on August 15, 1997 (40 CFR parts 51 and 93 Transportation Conformity Rule Amendments: Flexibility and Streamlining). Conformity regulations needed to be revised again, due to the March 2, 1999 court decision, *Environmental Defense Fund* v. *EPA*, 167 F. 3d 641 (D.C. Cir. 1999). Pennsylvania submitted transportation conformity rules on November 21, 1994, but EPA has not acted upon the rules and the rules must be revised to be consistent with the amendments EPA made consistent with the court rulings in *EDF.* v. *EPA, supra.*

EPA believes, however, that it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is two-fold. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Clean Air Act continues to apply to areas after redesignation to attainment, since these areas would be subject to a Section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of federally approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See, for example, Grand Rapids redesignation at 61 FR 31835–31836 (June 21, 1996) and the Cincinnati redesignation at 65 FR 37879, 37885–37886 (June 19, 2000). EPA has explained its rationale and applied this interpretation in numerous redesignation actions. See, Tampa, Florida and Cleveland-Akron-Lorain redesignations (60 FR 52748) (December 7, 1995), and (61 FR 20458) (May 7, 1996), respectively. Consequently, EPA may approve the ozone redesignation request for the Pittsburgh area notwithstanding the lack of a fully approved conformity SIP. The United States Court of Appeals for the sixth Circuit has recently upheld EPA's interpretation in *Wall* v. *Environmental Protection Agency*, no. 00–4010, slip. op. at 21–24 (6th Cir. Sept. 11, 2001). The Court upheld EPA's determination that "failure to submit a revision * * * that meets the part D transportation-conformity submissions requirements is not a basis to deny" redesignation to attainment. *Id.* at 24.

(6) Approval of the NO_X SIP Call

Comment: A commenter states that the SIP must include provisions to prohibit emissions that will contribute significantly to nonattainment in, or interfere with maintenance by any other State under 42 U.S.C. section 7410(a)(2)(D)(I). The commenter asserts that EPA has specifically determined that emissions from Pennsylvania contribute significantly to ozone nonattainment in downwind states and has issued a SIP call to require additional NO_X controls in the Pennsylvania SIP to address this problem. The commenter asserts that EPA has not fully approved the state's rule to meet the SIP call requirements, thus the SIP is not yet fully approved.

Response: EPA believes that submissions under the NO_X SIP call should not be considered applicable requirements for purposes of evaluating a redesignation request. That said, EPA has fully approved the Commonwealth's NO_X SIP call rule on August 21, 2001 (66 FR 43795) as meeting the portion of the SIP call rule that were not remanded by the Court in *Michigan* v. *EPA*, 213 F. 3d. 663 (D.C. Cir. 2000).

The NO_X SIP call requirements are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the requirements that are the relevant measures to evaluate in reviewing a redesignation request. The NO_X SIP call submittal requirements continue to apply to the States regardless of the designation of any one particular area in these States.

Thus, we do not agree that the NO_X SIP call submission should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176) (October 10, 1996), (62 FR 24826) (May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458) (May 7, 1996); and Tampa, Florida final rulemaking at (60 FR 62748, 62741) (December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR 37890) (June 19, 2000).

(7) Photochemical Grid Modeling and Favorable Meteorology

Comment: The commenter asserts that neither the states nor EPA have shown that air quality improvements are due to permanent and enforceable emission reductions, as required by 42 U.S.C. 7407(d)(3)(E)(iii). The commenter takes issue with the finding that this criteria is met because, although the Commonwealth has adopted measures that have produced some emission reductions, the commenter believes that EPA has not demonstrated that these reductions are responsible for the area's improved air quality or the absence of violations. The commenter claims that the only way to reliably make such a showing would be through photochemical grid modeling. The commenter states that no such modeling is presented or discussed in this proposal and that given the complex chemistry and meteorology of ozone formation, the combination of NO_X and VOC emission reductions that might be attributable to the cited measures could just as easily lead to increases in ozone concentrations. The lack of violations in 1998–2000, the commenter states, could just as well be due to weather patterns or changes in transport of ozone precursors. Without modeling to determine the actual impact of adopted and enforceable controls, the commenter finds EPA's claim that the area has attained the NAAQS, to be speculative.

Another commenter asserted the area was aided in attainment by a 2000 ozone season in which there were no temperatures which exceeded 90 degrees Fahrenheit.

Response: As provided in longstanding EPA policies, we believe that photochemical grid modeling is not necessary to show that the improvement in air quality is due to permanent and enforceable emissions reductions. See General Preamble for the Interpretation of Title I of the CAA Amendments of 1990, (57 FR 13496) (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992); "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992; "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993; and "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993. Our policies provide that an area may meet this requirement by showing how its ozone precursor emissions changed due to permanent and enforceable emissions reductions from when the area was not monitoring attainment of the 1-hour ozone NAAQS to when it reached attainment. See the rational set forth in the Cincinnati redesignation (65 FR 37879, 37886–37889) (June 19, 2000). The sixth Circuit has recently upheld EPA's interpretation in *Wall* v. *EPA, supra*, slip. op at 16–20.

Reductions in ozone precursor (VOC and NO_X) emissions have brought many areas across the country into attainment. EPA has approved many ozone redesignations showing decreases in ozone precursor emissions resulting in attainment of the ozone standard. See redesignations for Charleston (59 FR 30326, June 13, 1994; 59 FR 45985, September 6, 1994), Greenbrier County (60 FR 39857, August 4, 1995), Parkersburg (59 FR 29977, June 10, 1994); (59 FR 45978, September 6, 1994), Jacksonville/Duval County (60 FR 41, January 3, 1995), Miami/Southeast Florida (60 FR 10325, February 24, 1995), Tampa (60 FR 62748, December 7, 1995), Lexington (60 FR 47089, September 11, 1995), Owensboro (58 FR 47391, September 9, 1993), Indianapolis (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), South Bend-Elkhart (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), Evansville (62 FR 12137, March 14, 1997; 62 FR 64725, December 9, 1997), Canton (61 FR 3319, January 31, 1996), Youngstown-Warren (61 FR 3319, January 31, 1996), Cleveland-Akron-Lorain (60 FR 31433, June 15, 1995; 61 FR 20458, May 7, 1996), Clinton County (60 FR 22337, May 5, 1995; 61 FR 11560, March 21, 1996), Columbus (61 FR 3591, February 1, 1996), Kewaunee County (61 FR 29508, June 11, 1996; 61 FR 43668, August 26, 1996), Walworth County (61 FR 28541, June 5, 1996; 61 FR 43668, August 26, 1996), Point Coupee Parish (61 FR 37833, July 22, 1996; 62 FR 648, January 6, 1997), and Monterey Bay (62 FR 2597, January 7, 1997). Most of the areas that have been redesignated to attainment for the 1-hour ozone standard have continued to attain it. Areas that are not maintaining the 1-hour ozone standard have a maintenance plan to bring them back into attainment.

Reductions in ozone precursor emissions have been shown in photochemical grid modeling to reduce

ambient ozone concentrations in areas across the country. Between 1990 and 1999 area-wide VOC and NO_X emissions in the Pittsburgh area decreased by 16% and 30%, respectively. These emissions reductions are due to point source reductions such as RACT, additional NO_X controls, 111(d) plans and National Emission Standards for Hazardous Air Pollutants (NESHAPS) which reduce VOCs, Prevention of Significant Deterioration (PSD), and NSR. Additional controls are implemented for the following categories: Automobile refinish coatings, consumer products, architectural and industrial maintenance coatings, wood furniture coatings, aircraft surface coating, marine surface coatings, metal furniture coatings, municipal solid waste landfills, treatment storage and disposal facilities, and Stage II vapor recovery. Several programs are implemented to reduce highway vehicle emissions, such as the Federal Motor Vehicle Control Program (FMVCP), a Pittsburgh-specific summertime gasoline 7.8 psi volatility limit, and enhanced Inspection and Maintenance (I/M). Nonroad source programs include Federal rules for large and small compression-ignition engines, small spark-ignition engines, and recreation spark-ignition marine engines.

Ozone air quality monitoring data show that the design value changed from 0.149 parts per million (during the 1987–1989 time period) to 0.123 parts per million (during the 1998–2000 time period). The number of expected exceedances declined from 7.0 days per year during 1987–1989 to 1.0 days per year during 1998–2000. This shows that reductions in ozone concentrations correspond to the reduction in ozone precursors emissions in the area.

The commenter claims that the combination of NO_X and VOC emissions reductions could just as easily have led to increases in ozone. However, the actual monitoring data collected in the area shows that ambient ozone concentrations have dropped when this combination of ozone precursor reductions occurred. In other metropolitan areas, other levels of VOC and NO_X reductions have also resulted in attainment. See areas listed above in first part of this response. The Pittsburgh area's decrease in ozone levels is consistent with what other areas have experienced. The commenter has not provided data showing that decreases in ozone precursor emissions have led to higher levels of ozone.

The commenter claims that the lack of violations during 1998–2000 could be due to weather patterns or changes in transport of ozone precursors, but does not point to any evidence to support this conclusion. We use a three year period of air quality to account for changes in weather conditions that can occur from year to year. Weather condition may have a substantial effect on ozone concentrations, both in terms of increasing ozone and decreasing ozone. However, this effect is not controllable and EPA uses a three year average to account for changes in meteorology. In the case of the Pittsburgh area, the fact that from 1999 to today the area continues to be in attainment of the ozone standard increases our confidence that weather is not a controlling factor in the area's attainment. Furthermore, during the weeks of August 5th and August 12th of 2001, the Pittsburgh area experienced multi-day meteorological episodes in which the temperatures exceeded 90 degrees, and the ambient ozone levels stayed well below the standard at each monitor.

(8) Use of Accurate and Current Emission Inventory

Comment: One Commenter questions whether the Commonwealth used current and accurate emissions inventories in the analysis to determine maintenance of the 1-hour *NAAQS*.

Response: The Commonwealth used current and accurate emissions inventories. The Commonwealth uses the 1999 emissions inventory as a base year emissions inventory for demonstrating that emissions during the 10 year maintenance period will stay below attainment year levels. The 1999 inventory is the appropriate inventory to be used to demonstrate maintenance of the NAAQS, because the 1999 inventory is a representation of emission levels during the time the area has attained the NAAQS. EPA converted the conditional approval of the Commonwealth's 1990 base year VOC inventory to full approval on April 3, 2001 (66 FR 17634). On May 30, 2001 EPA proposed to approve the 1990 NO_X base year inventory. EPA did not received comments specific to the 1990 NO_X base year inventory and today is fully approving the Commonwealth's base year NO_X inventory. These 1990 base year NO_X and VOC emissions inventories are approved for use in projecting current inventories and out year inventories.

B. Comments Related to the Maintenance Plan

Comment: A commenter asserts that the plan does not demonstrate maintenance for ten years as required by sections 107(d)(3)(E)(iv) and 175A of the Clean Air Act. The commenter says that EPA proposes to find maintenance not on the basis of modeling, as required by the CAA, but on the presumption that the area will always be in attainment if emissions remain at or below estimated 1999 levels. The commenter asserts that such a presumption is not rationally supportable, pointing out that the area violated the NAAQS in the 1997–1999 period. Therefore, the commenter reasons, holding emissions to 1999 levels does not assure attainment. The commenter states that, even assuming the emission reductions predicted by the states for 1999 and subsequent years, there is no technical analysis in the record demonstrating that those emission levels will assure maintenance. The commenter contends that such a demonstration requires photochemical grid modeling that accounts for the kinds of weather conditions and transport impacts experienced on appropriately chosen design days. According to the commenter, until EPA approves such a modeling demonstration, it cannot approve the maintenance plan.

The commenter states that the history of this nonattainment area shows that EPA cannot rationally assume that emission levels correlate with ozone levels in a linear or consistent fashion; the area has gone in and out of attainment over the past 10 years while local emission were supposedly declining. The commenter asserts that there is no reason to believe that the state's attainment inventory approach toward projecting future maintenance is any more reliable now than it was in 1993. The commenter states that the state itself asserts that the area cannot maintain compliance with the standard solely through local reductions and will only be able to maintain the NAAQS through reductions from Ohio and West Virginia.

Response: We believe that the monitoring shows that the current level of emissions is adequate to keep the area in attainment. The following table summarizes the number of expected exceedances at each monitor in the area for 1974 to 2000 for each three year period. A monitor has to measure more than 1.0 average expected exceedances over a three year period to cause a violation of the 1-hour ozone standard (Expected exceedances take into account actual monitored exceedances and account for days where there is missing data or the data was invalidated.) See 40 CFR 50.9 and Appendix H. The table shows that the number of exceedances have decreased from what was monitored in the late 1970's.

TABLE 1.—1-HOUR OZONE NAAQS EXPECTED EXCEEDANCES IN THE PITTSBURGH AREA FROM 1974 TO 2000

Year	Design monitor	Average expected exceedances per year
1974–1976 ..	Baden	6.5
1975–1977 ..	Beaver Falls ...	5.7
1976–1978 ..	Beaver Falls ...	13.2
1977–1979 ..	Beaver Falls ...	11.7
1978–1980 ..	Lawrenceville	9.2
1979–1981 ..	Lawrenceville	6.1
1980–1982 ..	Lawrenceville	3.4
1981–1983 ..	Brackenridge ..	4.4
1982–1984 ..	Brackenridge ..	2.9
1983–1985 ..	Brackenridge ..	2.4
1984–1986 ..	Midland	0.8
1985–1987 ..	Brackenridge ..	1.7
1986–1988 ..	Brackenridge ..	6.6
1987–1989 ..	Brackenridge ..	7.0
1988–1990 ..	Brackenridge ..	5.6
1989–1991 ..	Lawrenceville	0.7
1990–1992 ..	Lawrenceville	0.3
1991–1993 ..	Harrison Township.	0.7
1992–1994 ..	Harrison Township.	0.7
1993–1995 ..	Harrison Township.	3.0
1994–1996 ..	Harrison Township.	2.7
1995–1997 ..	Harrison Township.	3.3
1996–1998 ..	Charleroi	1.0
1997–1999 ..	Penn Hills	1.3
1998–2000 ..	Charleroi	1.0

The area has monitored attainment for the three year period from 1998–2000 and continues to monitor attainment in 2001. This demonstrates that the current level of emissions is adequate to keep the area in attainment during weather conditions as in past years associated with higher levels of ozone. In addition, the Act does not presume that the area will always be in attainment. The Act provides that if the area were to violate the 1-hour ozone standard, then the contingency measures in the maintenance plan would be triggered. This would reduce the ozone precursor emissions and bring the area back into attainment.

Our policy allows areas to prepare an attainment emissions inventory corresponding to the period when the area monitored attainment. It also allows areas to project maintenance by showing that future emissions will stay below the attainment emissions inventory. See "Use of Actual Emission in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993. The attainment inventory estimates 1999 emissions, which is within the 1998–2000 time period of attainment. Emissions are projected to remain below this level for the next 10 years.

Holding emissions at or below the level of the attainment inventory is adequate to reasonably assure continued maintenance of the 1-hour ozone standard. Reductions in ozone precursor emissions have been shown in photochemical grid modeling to reduce ambient ozone concentrations in areas across the country. Photochemical grid modeling is not needed to show that the area has attained or will maintain the standard. The air quality will be maintained by keeping below the attainment emissions level, continuing to monitor ozone levels, and having maintenance plan contingency measures available. Reductions in ozone precursor emissions have brought many areas across the country into attainment.

Many of the ozone areas for which EPA has approved ozone redesignations have used an emissions inventory approach to demonstrate maintenance. The majority of areas have continued to maintain the 1-hour ozone standard using that approach. See redesignations cited in the response provided at II. A (7) of this document. See also discussion at (65 FR 37887–37889) (June 19, 2000) Cincinnati-Hamilton, and *Wall* v. *EPA*, supra, at 16–20. Emissions inventories can be used to project maintenance of the 1-hour ozone standard. As previously stated, if the attainment level of emissions is not adequate to protect against a violation and the area monitors a violation, then the contingency measures in the maintenance plan would be triggered to bring the area back into attainment. There are ozone monitors located in the Pittsburgh area to ensure that the area's air quality remains below the level set by the 1-hour ozone standard.

The comment that EPA should not assume that "emission levels correlate with ozone levels in some sort of linear or consistent fashion" is in effect a recommendation that future maintenance be tested assuming meteorological conditions that are more conducive to ozone formation than the conditions that have prevailed in 1998 to 2000. No factor other than meteorological conditions is known to introduce an inconsistency between ozone and emissions. The commenter protests that the area has not submitted a maintenance demonstration based on ozone modeling, and implicitly urges that the modeling assume 1997-type conditions, or worse. However, if a prospective maintenance demonstration were performed with an ozone photochemical model following EPA guidance, the modeling would be allowed to use episode days from the 1998–2000 period, not 1997. It is highly likely, if not certain, that the outcome would be a conclusion that attainment will be preserved through the required 10-year period. EPA believes this modeling guidance is reasonable and appropriate.

In response to the commenter's assertion that the Commonwealth does not believe that it can maintain the NAAQS without reductions from upwind states such as Ohio and West Virginia, both EPA and the Commonwealth recognize the importance of the full implementation of the NO_X SIP call to provide additional air quality benefit to the Pittsburgh area. Furthermore, as the D.C. Circuit has largely upheld the NO_X SIP call, it is eminently reasonable to expect that the reductions in states upwind of Pittsburgh will occur.

C. Comments Related to the Enforceability and Permanence of Control Measures

(1) *Comment:* Several commenters express doubts that certain of the programs relied upon in the maintenance plan will remain permanent and enforceable in the Commonwealth and asserts that EPA simply assumes that the measures relied on for continued and future emissions reductions will continue to be implemented. Related comments express concerns over the permanence of the enhanced I/M and NSR programs.

Response: The Act requires the area to have a fully approved SIP and to have met all of the applicable requirements of the Act. The area's SIP satisfies these requirements as described in EPA's proposed rulemaking published on May 30, 2001 (66 FR 29270). The measures that the Commonwealth is relying on to maintain the 1-hour ozone standard have been approved into the SIP and are state and Federally enforceable. The state must continue to implement these measures as provided for in the Federally approved SIP. Furthermore, the Act does not require a separate level of enforcement for a maintenance plan as a prerequisite to redesignation. The enforcement program approved for and applicable to the SIP as a whole also applies to the maintenance plan. See discussion in the Cincinnati redesignation (65 FR 37879, 37881–37882), and sixth Circuit decision in *Wall* v. *EPA*, supra, at 20–21, upholding EPA's interpretation of the requirement.

All of the control measures which the Commonwealth relied upon to generate the 1999 and future emission levels, inventories are SIP-approved measures,

including the enhanced I/M and NSR programs. These programs have been legally adopted by the Commonwealth and EPA has approved them into the Pennsylvania SIP. EPA cannot withhold its approval of the maintenance plan submitted by the Commonwealth because of concerns that Pennsylvania may, at some future time, either submit a SIP revision to amend or remove a program, or that the Commonwealth may fail to implement these programs in the Pittsburgh area. The Federally approved SIP requirements remain in place, and enforceable until such time as EPA takes action to approve SIP revisions to amend or remove them. This can only be done via Federal rulemaking, which includes procedures for public comment and review. In addition, if the state fails to implement the approved SIP, Section 179 provides for EPA to impose sanctions.

EPA has recently promulgated rules for On-Board Diagnostics (OBD) testing provisions for 1996 and newer vehicles in existing I/M programs. The Commonwealth's currently approved enhanced I/M SIP requires Pennsylvania to implement OBD as part of its I/M program in the Pittsburgh area in accordance with the Federal rule. Any changes the Commonwealth makes with respect to the I/M program must ensure an equivalent level of emission reductions as is currently credited. Again, any changes made to the Federally approved and enforceable program would need to go through Pennsylvania's formal regulatory adoption process and EPA's SIP approval process, ensuring ample public participation opportunity.

Likewise, any changes to the Commonwealth's SIP-approved NSR program would need to go through Pennsylvania's formal regulatory adoption process and EPA's SIP approval process, ensuring ample public participation opportunity. In order to be approvable, any such changes would have to ensure that the construction of major new sources and major modifications in the Pittsburgh area would not interfere with the approved maintenance plan.

Furthermore, any changes made by the Commonwealth to SIP approved measures would require EPA approval in accordance with section 110 (l) of the Act.

(2) Comment: We received a comment asserting that the maintenance plan is not approvable because it lacks enforcement programs and commitments of resources as required by the Act 42 U.S.C. § 7410(a)(2)(E).

Response: EPA disagrees with the commenter's assertion that states must provide such information with each SIP revision. *See Wall* v. *EPA, supra.* Although Clean Air Act sections 110(a)(2)(E) and 110(a)(2)(C) do contain these provisions, section 110(a)(2)(H) is the statutory provision which governs requirements for individual plan revisions which States may be required to submit from time to time. There are no cross-references in section 7410(a)(2)(H) to either 7410(a)(2)(E) or 7410(a)(2)(C). Therefore, EPA concludes that Congress did not intend to require States to submit an analysis of adequate funding and enforcement with each subsequent and individual SIP revision submitted under the authority of section 110(a)(2)(H). Once EPA approves a State's SIP as meeting section 110(a)(2), EPA is not required to reevaluate that SIP for each new revision to the plan to meet additional requirements in later sections of the Act. The Commonwealth of Pennsylvania had previously received approval of its 110(a)(2) SIPs. See discussion in the Cincinnati redesignation of this issue (65 FR 37879, 37881–37882) (June 19, 2000). The sixth circuit has upheld EPA's interpretation in *Wall* v. *EPA, supra,* at 20–21.

In a final rulemaking action published on February 26, 1985 (50 FR 7772, 7776), EPA approved Pennsylvania's financial and manpower resource commitments, after having proposed approval of these commitments on February 3, 1983 (48 FR 5096, 5101). This approval action reaffirmed EPA's May 20, 1980 (45 FR 33607) approval of these resource commitments for the Pittsburgh area portion of the Pennsylvania ozone nonattainment SIP.

Neither this commenter nor any other person has submitted substantive comments that would lead EPA to separately analyze whether it should call on Pennsylvania to revise its section 110(a)(2) SIPs regarding enforcement and funding.

D. Comments Related to Contingency Measures

(1) Comment: Several commenters assert that the maintenance plan lacks adequate contingency provisions including a plan for the schedule of adoption, description of measures, or quantification of reductions of the measures to be implemented should the area violate the standard. One commenter also asserts that the plan does not contain adequate provisions to adopt additional measures should inventory tracking indicate that a future violation is possible. The commenter states that future inventory analyses indicating possible violations should trigger the contingency measures. Commenters state that the plan makes no showing that the model VOC rules currently under consideration for the Philadelphia nonattainment area will assure correction of any violations in the Pittsburgh area and that these measures are only under consideration. One commenter states that the VOC measures referenced by the Commonwealth provide no estimation of reductions that would be achieved in Pittsburgh should these measures be adopted and that adoption of these measure could take up to two years.

One commenter asserts that the maintenance plan submitted by the Commonwealth does not contain a mandatory commitment to implement all ozone-control measures in the SIP prior to redesignation. The commenter contends that this commitment is required, regardless of whether or not the state is currently implementing all measures and EPA does not have the discretion to approve the maintenance plan without this commitment.

Response: EPA disagrees that the Commonwealth's maintenance plan for the Pittsburgh area lacks adequate contingency provisions should the area violate the standard. Page 43 of the maintenance plan specifically states that if a violation occurs, the Commonwealth will adopt additional emission reductions, as expeditiously as practicable, in accordance with the Pennsylvania Air Pollution Control Act to return the area to attainment with the health-based one-hour ozone standard. Page 44 of the maintenance plan clearly states that its contingency plan measures include four of the model rules currently being considered as additional measures for the Philadelphia ozone nonattainment area. The plan specifically states that these VOC model rules have the potential to reduce emissions from specific types of sources and source operations, namely consumer products, portable fuel containers, Architectural and Industrial Maintenance (AIM) coatings and solvent cleaning operations. The Commonwealth has provided to EPA estimations of reductions in VOC emissions that would be achieved by adoption of these contingency measures in the seven-county Pittsburgh area. This information has been added to the docket for this final rule.

The Commonwealth has also supplied information that sets forth the schedule for adoption of regulations under the Pennsylvania Air Pollution Control Act, and that information has been placed in the docket of this final action. The schedule indicates that Pennsylvania would move to adopt and implement contingency measures within 12 to 24 months of a violation. The Commonwealth has also stated that the contingency measures would be implemented in accordance with the requirement of section 175A(d) of the Clean Air Act that they "promptly correct any violation." As stated in the September 4, 1992 Calcagni memorandum, "For purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered." In light of the language of the maintenance plan, the supplemental information supplied by the Commonwealth, existing EPA guidance and actions regarding contingency measures in other redesignations, and the absence of any suggestion to the contrary from the Commonwealth, EPA is construing the Pittsburgh maintenance plan as embodying a commitment to adopt and implement contingency measures within 12 to 24 months of a violation. The provisions regarding the study and possible choice of contingency measures in the event of an exceedance or increase in the emissions inventory provide further assurance that air quality problems that might occur after redesignation will be promptly corrected.

In the event of a monitored exceedance or if periodic emission inventory updates reveal a greater than 10-percent increase in ozone precursor emissions, the maintenance plan requires the Commonwealth to evaluate whether additional emission controls are needed to prevent a future 1-hour ozone NAAQS violation. EPA views this commitment to be adequate and enforceable. This approach is consistent with the September 4, 1992 Calcagni memorandum, which states that the maintenance plan should "identify specific indicators, or triggers, which will be used to determine when the contingency measure need to be implemented. * * * The indicators would allow the State to take early action to address potential violations of the NAAQS before they occur." See September 4, 1992, Calcagni memo, p. 12. Pennsylvania's plan addresses this requirement by identifying two occurrences that trigger a study to evaluate whether further emission control measures should be implemented. This will allow the Commonwealth to take early action to address future potential violations. It requires the Commonwealth to fully evaluate the current air quality status and control status of the area, and determine if, and what level of, action should be implemented to prevent further air quality deterioration.

As to the comment regarding implementation of SIP measures as contingency measures, EPA does not believe that a further commitment is needed from the Commonwealth to implement as contingency measures all ozone control measures in the SIP prior to redesignation. Section 175(A)(d) requires that "[s]uch provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State Implementation plan for the area before redesignation of the area as an attainment area." There are no measures in the Pennsylvania SIP to which the section 7505(d) commitment language could apply since the Commonwealth has not sought to drop any measures from the portion of the SIP that is being implemented. All measures that are either already implemented or scheduled to be implemented, e.g., the NOX SIP call, are still in the SIP and are required to be implemented. There is thus no need for the state to commit to further implementation in light of the fact that it is required to continue to implement all measures contained in its SIP. Since the section 7505(d) requirement to implement all measure is being satisfied, there is no requirement for an additional commitment. The State could not make any change in implementation of these control measures after redesignation without EPA approval of a SIP revision. Such a revision would have to meet the requirements of section 110(l) which requires that the revision could not interfere with any applicable requirement. Under these circumstances EPA considers that the requirement of section 7505(d) is satisfied.

With respect to the NO_X SIP call, which has an implementation deadline in the Commonwealth in 2003, EPA disagrees that this SIP element is necessary for redesignation (see comment(6)), and therefore no additional commitment is needed from the Commonwealth regarding this SIP element.

(2) Comment: A commenter asserts that Stage II vapor recovery, auto refinishing, consumer products, and AIM are listed as contingency measures and this is double counting.

Response: Stage II, auto refinishing, consumer products and AIM are state and Federal programs currently implemented in the Pittsburgh area. These programs have assisted in bringing the area into attainment and will continue help the area maintain the ozone NAAQS and are not listed as or considered to be contingency measures. There is no "double counting".

E. Comments Related to the Monitoring Data and the Monitoring Network

(1) Comment: We received comments asserting that the three years of data that should be analyzed for demonstration of attainment are 1994–1996. We also received a comment asking if the Pittsburgh-Beaver Valley 1999 and 2000 ozone data had been quality assured.

Response: EPA is taking action to approve a determination of attainment and a redesignation request and maintenance plan for the Pittsburgh area. The three years of violation free data upon which the determination of attainment is based, which the Commonwealth submitted to satisfy the applicable criteria for its redesignation request, is the ozone data for the 1998, 1999, and 2000 ozone seasons. EPA policy is to consider at the most recent 3 year period to determine attainment. The ozone data for the 1998, 1999, and 2000 ozone seasons from the 14 ozone monitoring stations in the Pittsburgh-Beaver Valley Area have been quality assured. All data were contained in the EPA AIRS Air Quality Subsystem (AQS) by December 4, 2000. All data in AIRS is quality assured prior to submittal to AIRS, as required by 40 CFR 58.35(d).

(2) Comment: We received comments expressing concern about the removal from service of the Penn Hills station during June 2001. The comments assign significance to the two exceedances that this station detected in 1999. One comment points out that the station had previously had monitored violations of the one hour NAAQS. Related comments express concern about the adequacy of the ozone network operated by PADEP and the Allegheny County Health Department (ACHD) in the Pittsburgh-Beaver Valley Area and state that there should not be a change or substitution of any monitor until attainment has been achieved.

Response: Since the early 1980's the network in the area has satisfied the minimum federal requirements for the number of stations and types of stations as set forth at 40 CFR part 58. At a minimum, a network must have two stations in each urban area with population greater than 200,000. 40 CFR part 58, Appendix D, § 3.4. The original Pittsburgh-Beaver Valley network consisted of four stations in Allegheny County and two stations each in Washington County and Beaver County.

EPA regulations contemplate that the monitoring network may change over

time, regardless of whether or not an area is currently designated as attainment. In an effort to improve the overall quality of data from the Pittsburgh-Beaver Valley area, the network has grown over time from the original eight to thirteen stations. This growth was carried out in accordance with state and federal law through a process of annual network reviews by the PADEP and the Allegheny County Health Department (ACHD) as required by 40 CFR 58.20(d). EPA participated in these reviews and network changes, as required by 40 CFR 58.21. EPA also approved the annual network designs in accordance 40 CFR 58.25. Past annual reviews identified potential data needs of the Pittsburgh-Beaver Valley network. In order to address these potential data needs, the network has expanded to its current size of thirteen stations. During this time, one of the original monitoring stations, Penn Hills, was retired from service, and six new stations were added, for a net growth of five stations during the 1990's.

The Penn Hills station was removed from service because of the limited value of the data collected there since it was established in the early 1980's. Significantly, this station has not shown a violation of the ozone standard since 1982. Furthermore, the net addition of five monitors to the Pittsburgh-Beaver Valley network during the 1990's provides monitoring coverage over an area than is inclusive of the area previously monitored by Penn Hills. This resulted in the Penn Hills site capturing data redundant of data collected at other monitors. Specifically, exceedances at the Penn Hills monitor were captured at other stations. For example, since 1987, all unhealthy days detected at Penn Hills, except for June 19, 1995, were captured by the Brackenridge station (or the Harrison station which replaced Brackenridge in 1990). On June 19, 1995, when the Penn Hills station identified ozone exceedances, the Lawrenceville station, and the Murryville station, also showed exceedances. The two days of exceedances in 1999 detected at Penn Hills were captured by three other stations, Harrison, Lawrenceville, and Greensburg. Therefore, the closing of the Penn Hills station will result in no loss of data.

(3) Comment: We received a comment expressing concern that the Penn Hills station ozone data and the South Fayette station ozone data are no longer reported on the Pennsylvania Department of Environmental Protection (PADEP) web page.

Response: The PADEP web site does not list the Penn Hills station because that station was taken out of service in June 2001. (See the comment and response provided at E.(2)) The commenter found no data for South Fayette, because no exceedances were detected at this operating station as of the date of the commenter's letter. There are no statutory or regulatory requirements that PADEP make its ozone data available on the Internet. However, in service to the citizens of the Commonwealth, it is PADEP's practice to provide daily information on its web page indicating those monitoring locations where exceedances of the 1-hour and/or 8-hour ozone standards have occurred (cautioning that this information is not based upon data that has been validated). If PADEP continues with its current practice, ozone data from the South Fayette monitor will be reported on the PADEP web site if this monitor ever exceeds the ozone standards.

(4) Comment: Several commenters expressed doubt that the area had attained the standard and suggested that violations in 2001 were imminent. One commenter asserts that the fact that the area had violated the 8-hour standard does not speak well of its being redesignated.

Response: The quality assured ozone data for 1998, 1999 and 2000 indicate that the Pittsburgh area has attained of the 1-hour NAAQS. Moreover, the preliminary data for the 2001 ozone season indicate, to date, continued attainment of the 1-hour standard. EPA does not believe that violations of the 1-hour standard are imminent in the Pittsburgh area.

The Pittsburgh area's status with respect to the 8-hour ozone standard is not germane to the approval of the redesignation request and maintenance plan for the 1-hour ozone standard.

III. What Actions Are We Taking?

We are determining that the Pittsburgh-Beaver Valley moderate ozone nonattainment area has attained the NAAQS for ozone. The Pittsburgh area includes the Pennsylvania counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements (section 172(c)(1)), along with certain other related requirements, of part D of Title 1 of the Act, specifically the section 172(c)(9) contingency measure requirement, the section 182(b)(1) attainment demonstration requirement are not applicable to the Pittsburgh area.

We are approving the redesignation of the Pittsburgh area to attainment of the 1-hour ozone standard and we are approving the section 175A maintenance plan as a revision to the Pennsylvania SIP. By approving the Pittsburgh area maintenance plan, EPA is also approving the Motor Vehicle Emissions Budgets contained in the plan as adequate for maintenance of the ozone NAAQS and for transportation conformity purposes. These Motor Vehicle Emissions Budgets are 109.65 tons/day of VOC for 1999, 98.22 tons/day of VOC for 2007, and 102 tons/day of VOC for 2011; for NO_X the Motor Vehicle emissions budgets are 171.05 tons/day for 1999, 129.12 tons/day for 2007, and 115.02 tons/day for 2011.

We are converting the limited approval of the NSR program in the Commonwealth to full approval everywhere in the Commonwealth with the exception of the Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area.

We are approving the 1990 NO_X base year emissions inventory for the Pittsburgh area.

IV. Why Are We Taking This Action To Redesignate the Area?

We are making a determination that the area has attained the 1-hour ozone standard. EPA is basing this determination upon three years of complete, quality-assured, ambient air monitoring data for the 1998–2000 ozone seasons that demonstrate that the ozone NAAQS has been attained in the entire Pittsburgh area. Preliminary data for the 2001 ozone season also indicates that the area continues in attainment. EPA believes that it is reasonable to interpret provisions regarding attainment demonstrations, along with certain other related provisions, not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS is demonstrated with three consecutive years of complete, quality assured, air quality monitoring data). See May 10, 1995, memorandum from John Seitz, and *Sierra Club* v. *EPA*, 99 F.3.d 1551 (10th Cir. 1996).

We are approving the maintenance plan as a revision to the SIP because it meets the requirements of section 175A and 107(d). We are also redesignating the area because three years of ambient air monitoring data demonstrate that the ozone NAAQS has been attained, the area has continued in attainment and the area has satisfied all other requirements for redesignation.

V. What Are the Effects of Redesignation to Attainment of the 1-Hour NAAQS?

These actions determine that the area attained the 1-hour ozone standard and that the requirements of section 172(c)(1) and 182(b)(1) concerning the submission of the ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures for reasonable further progress (RFP) or attainment are not applicable to the area.

The redesignation changes the official designation of the Pennsylvania counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland from nonattainment to attainment for the 1-hour ozone standard. It also approves a SIP revision that puts into place a plan for maintaining the 1-hour ozone standard for the next 10 years. This plan includes contingency measures to correct any future violations of the 1-hour ozone standard. By approving the maintenance plan, EPA is also approving the mobile source emissions budgets included in the plan for purposes of transportation conformity.

VI. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This action also redesignates an area to attainment, an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This action also redesignates an area to attainment. The redesignation merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Additionally, redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, to redesignate the Pittsburgh area to attainment of the 1-hour ozone NAAQS, approve a 10-year maintenance plan, convert the New Source Review program to full approval, approve the NO_X base year inventory, and approve Motor Vehicle Emissions Budgets, may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607 (b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Hydrocarbons, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: October 3, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(188) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(188) Revisions to the Pennsylvania Regulations including a 10-year ozone maintenance plan for the Pittsburgh-Beaver Valley area, submitted on May 21, 2001 by the Pennsylvania Department of Environmental Protection.

(i) *Incorporation by reference.*

(A) Letter dated May 21, 2001 submitted by the Pennsylvania Department of Environmental Protection transmitting the maintenance plan for Pittsburgh-Beaver Valley Area.

(B) The Pittsburgh-Beaver Valley Area ozone maintenance plan submitted by the Pennsylvania Department of Environmental Protection, effective May 15, 2001. This plan establishes motor vehicle emissions budgets for VOCs of 109.65 tons/day for 1999, 98.22 tons/day for 2007, and 102 tons/day for 2011. This plan also establishes motor vehicle emissions budgets for NO_X of 171.05 tons/day for 1999, 129.12 tons/day for 2007, and 115.02 tons/day for 2011.

(ii) *Additional material.* Remainder of State Submittal pertaining to the revision listed in paragraph (c)(188)(i) of this action.

3. Section 52.2036 is amended by revising the section heading and by adding paragraph (m) to read as follows:

§ 52.2036 1990 base year emission inventory.

* * * * *

(m) EPA approves the 1990 NO_X base year emission inventory for the Pittsburgh-Beaver Valley area, submitted by the Pennsylvania Department of Environmental Protection on March 22, 1996 and supplemented on February 18, 1997.

§ 52.2037 [Amended]

4. In § 52.2037 remove and reserve paragraph (b)(1).

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In § 81.339, the table for Ozone (1-Hour Standard) is amended by revising the entry for the "Pittsburgh-Beaver Valley Area" to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Pittsburgh-Beaver Valley Area:				
Allegheny County	October 19, 2001	Attainment		
Armstrong County	October 19, 2001	Attainment		
Beaver County	October 19, 2001	Attainment		
Butler County	October 19, 2001	Attainment		
Fayette County	October 19, 2001	Attainment		
Washington County	October 19, 2001	Attainment		
Westmoreland County	October 19, 2001	Attainment		

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

[FR Doc. 01–26093 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 81

[CA058–FOA; FRL–7087–1]

Clean Air Act Finding of Attainment; California-Imperial Valley Planning Area; Particulate Matter of 10 Microns or Less (PM–10)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to find that the State of California has established to EPA's satisfaction that the Imperial Valley Planning Area (Imperial County), a PM–10 moderate nonattainment area, would have attained the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM–10) by the applicable Clean Air Act (CAA or the Act) attainment date, December 31, 1994, but for emissions emanating from outside the United States, i.e., Mexico. As a result of this final action, Imperial County will not be subject to a finding of failure to attain and reclassification to serious at this time and will remain a moderate PM–10 nonattainment area.

EFFECTIVE DATE: This action is effective on November 19, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region 9 office during normal business hours. U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, California 94105.

Electronic Availability: This document is also available as an electronic file on EPA's Region 9 Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Doris Lo, U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1287, lo.doris@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Imperial County is a moderate PM–10 nonattainment area located on the California border with Mexico, with a December 31, 1994 attainment deadline. Under CAA section 188(b)(2)(A), moderate PM–10 nonattainment areas must be reclassified as serious by operation of law after the statutory attainment date if the Administrator finds that the area has failed to attain the NAAQS. However, CAA section 179(B)(d) provides that any area that establishes to the satisfaction of EPA that it would have attained the PM–10 NAAQS by the applicable attainment date but for emissions emanating from outside the United States shall not be subject to the provisions of CAA section 182(b).

Imperial County and the California Air Resources Board submitted evidence that the County would have attained the PM–10 NAAQS but for transport from Mexico. The primary information prepared by the Imperial County Air Pollution Control District (ICAPCD) is "Imperial County PM–10 Attainment Demonstration" (hereafter referred to as the "179B(d) demonstration") which was transmitted to EPA by the California Air Resources Board (CARB) on July 18, 2001 letter from Michael P. Kenny, Executive Officer, CARB, to Ms. Laura Yoshii, Acting Regional Administrator, EPA Region 9).

Pursuant to CAA section 188(b)(2)(B) of the Act, EPA must publish a notice in the **Federal Register** identifying those areas that failed to attain the standard and reclassifying the areas to serious. On August 6, 2001, EPA issued two alternative proposals:

(1) To find that the State of California had established to EPA's satisfaction that Imperial County, a PM–10 moderate nonattainment area, would have attained the NAAQS PM–10 by the applicable Clean Air Act attainment date, December 31, 1994, but for emissions emanating from outside the United States, i.e., Mexico.

(2) Alternatively, to find that Imperial County did not attain the PM–10 NAAQS by its CAA mandated attainment date. This proposed finding was based on monitored air quality data for the PM–10 NAAQS during the years 1992–1994. A final action would result in a reclassification to serious PM–10 nonattainment for Imperial County.

These proposed alternative actions were published in a **Federal Register** notice (66 FR 42187) on August 10, 2001 (proposed rule or notice of proposed rulemaking, NPR). The 30-day public comment period ended on September 10, 2001. EPA requested public comments on both proposals and received ten comment letters from the following:

- Sierra Club/EarthJustice Legal Defense Fund (David S. Baron, Attorney)
- Imperial County Air Pollution Control District (Stephen L. Birdsall, Air Pollution Control Officer)
- Congressman Duncan Hunter, U.S. House of Representatives, Washington, D.C. 20515–0552
- Imperial Valley Vegetable Growers Association (Lauren S. Grizzle, Executive Director)
- Imperial County Farm Bureau (Lauren S. Grizzle, Executive Director)
- California Farm Bureau Federation (Cynthia L. Cory, Director, Environmental Affairs)
- Mar Vista Farms, Inc. (Michael B. Cox, President)
- Nisei Farmers League (Manuel Cunha, Jr., President)
- California Cotton Ginners and Growers Association (Roger A. Isom, Vice President & Director of Technical Services)
- Granite Construction Company (Jeff Mercer, Area manager)

All of the commenters supported EPA's proposed finding of attainment pursuant to section 179B(d) of the CAA, except for the Sierra Club/EarthJustice Legal Defense Fund (Sierra Club).

While the Sierra Club raises some important issues, EPA was aware of these issues prior to the proposed rulemaking and has not been convinced by Sierra Club that the State's 179B(d) demonstration is inadequate and that the finding of nonattainment and reclassification to serious should be finalized. Thus, EPA is finalizing its action to find that the State of California has established that Imperial County would have attained the NAAQS for PM–10 by the applicable CAA attainment date, December 31, 1994, but for emissions emanating from Mexico. Today's rulemaking provides EPA's responses to public comments and finalizes EPA's proposed action.

II. Public Comments and EPA Responses

A. Sierra Club/EarthJustice Legal Defense Fund (David S. Baron, Attorney)

Comments were submitted by the EarthJustice Legal Defense Fund on behalf of the Sierra Club. In general, the Sierra Club opposes our proposed finding of attainment and asserts that the 179B(d) demonstration does not adequately demonstrate attainment but for the emissions emananting from Mexico. The Sierra Club believes we must finalize our proposed finding of nonattainment and reclassification to serious PM–10 nonattainment for Imperial County.

1. CAA Requires Modeling

The Sierra Club's first group of comments address the need for a modeling demonstration. The Sierra Club asserts that air quality modeling is a requirement under CAA Section 179B(d) and that in order to qualify for a 179B(d) waiver, the state must make a showing that is the equivalent of an attainment demonstration which the Act and EPA's own regulations and guidelines require to be based on air quality modeling. The Sierra Club then discusses how the State's air quality modeling does not adequately demonstrate attainment of the 24-hour and annual PM–10 NAAQS due to deficiencies with the modeling inventory and modeling assumptions which are summarized in EPA's responses below.

EPA's response: EPA disagrees with the Sierra Club that a CAA Section 179(B)(d) waiver must be based on air quality modeling. CAA section 179B(d) does not require air quality modeling for PM–10 nonattainment areas at international borders, and EPA's guidance relating to serious PM–10 nonattainment areas suggests modeling as one of five methods that may be used to determine attainment but for international transport.[1] In issuing guidance on CAA section 179(B), EPA considered it appropriate to grant states more flexibility in making the "but-for" attainment determination for border areas due to the special difficulties that can be encountered at these areas.

For example, it may be particularly difficult for States to acquire the necessary input data for a valid modeling analysis, including monitored meteorological and air quality data, accurate speciated emissions inventories with temporal and spatial breakdown, and information on day-specific emissions, when such data must be collected in areas outside of the U.S. The acquisition of such data is

[1] EPA's guidance appears in "State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998, August 16, 1994. The guidance lists 5 types of information that could be used to qualify for treatment under section 179B, and provides that "States may use one or more of these types of information or other techniques, depending on their feasibility and applicability, to evaluate the impact of emissions emanating from outside the U.S. on the nonattainment area." The General Preamble goes on to note that "the first 3 examples do not require the State to obtain information from a foreign country." Only the fifth method employs modeling. 59 FR 42001. As discussed in the proposed action, the State submitted information addressing each of the 5 methods. 66 FR 42189–90.

resource intensive both in terms of money and expert staff time, and the exercise may consume years of preparatory work and then require additional time and expense for quality assurance and data preparation and analysis. In cases where the critical modeling input data are not available or are incomplete or inaccurate, EPA believes that Congress could not have intended to disallow areas from presenting, and EPA from approving, non-modeling evidence of "attainment but for transport."

Although modeling input data were recognized to be sparse, the State's 179B(d) demonstration did attempt to address each of the 5 allowable approaches specified in the General Preamble, including an air quality modeling "but-for" attainment demonstration for both the annual and 24-hour PM–10 NAAQS.

As discussed in the proposed rule, EPA did not base the proposed finding of attainment for the 24-hour PM–10 NAAQS on the State's air quality modeling demonstration. The sensitivity of the 24-hour PM–10 NAAQS to the modeling inputs, coupled with the lack of model validation, led EPA to conclude that, unlike the annual PM–10 NAAQS, the air quality modeling could not be relied upon for the 24-hour PM–10 NAAQS attainment demonstration. Instead, EPA based its finding of attainment for the 24-hour PM–10 NAAQS on the State's analysis of monitoring sites, meteorological conditions (which involves an analysis of spatial plots, wind roses and back trajectories) and inventory estimates for both sides of the border. EPA believes that these are valid alternative methods for determining attainment but for international transport (see General Preamble at 59 FR 42001).

For the annual PM–10 NAAQS, model performance assessment also raises issues, although these concerns are less than for the 24-hour NAAQS because day-specific modeling inputs and predictions are not needed. Moreover, to determine whether or not Imperial County would have attained the annual PM–10 NAAQS but for international transport does not require modeling precision, due to the fact that the annual arithmetic mean concentrations for 1992–1994 are only slightly above the annual PM–10 NAAQS (51 μg/m³ at Brawley and 56 μg/m³ at Calexico Dichot-Grant Street). All that is required of the model in support of a "but for" demonstration is evidence that at least a small portion of the monitored concentrations was due to transport of pollution from Mexico.

2. Adequacy of the State's Emissions Inventory Input to the Modeling

The Sierra Club comments that the State's modeling inventory is insufficient because it was not developed for PM–10 modeling, does not reflect peak PM–10 levels, is not a "current" and "accurate" inventory, and does not contain data on actual PM–10 emissions, but is based on the SCOS inventory which is adjusted with invalid assumptions (i.e., percentage of TSP that is PM–10 and correlation of PM–10 emissions to population).

EPA Response: While the modeling inventory for Imperial County was not developed specifically for PM–10 modeling, it does include PM–10 emissions and represents the best available inventory at this time. As discussed in EPA's Technical Support Document (TSD) for the proposed rule, the modeling inventory was derived from the Southern California Ozone Study (SCOS) modeling inventory for a typical summer day. Seasonal adjustments were made to the inventory, and the inventory was scaled, based on population changes, for the years 1992 to 1994. The use of this modeling inventory to represent average annual PM–10 concentrations is an acceptable approach, but the use of this modeling inventory to represent peak PM–10 days is less reliable because emissions of PM–10 are likely to be higher than the seasonal average on peak days. In other words, this inventory is more reliable for the determining attainment of the annual PM–10 NAAQS than for the 24-hour PM–10 NAAQS.

EPA does not agree that the modeling inventory is insufficient because it is based on the SCOS inventory and adjustments made to that inventory (i.e., percentage of TSP that is PM–10 and correlation of PM–10 emissions to population). As discussed above, the modeling inventory developed is the best available inventory and information at this time. In order to develop a modeling inventory for Imperial County, the State took the SCOS modeling inventory and made adjustments to reflect the PM–10 emissions in Imperial county. For example, the SCOS inventory included emissions of total suspended particulates (TSP). PM–10 is a subset of TSP. In order to to adjust for the SCOS inventory for PM–10 emissions, the State used an adjustment factor of 1.93 which is based on a comparison of the 1997 SCOS inventory to Imperial County's 1995 PM–10 emissions inventory (best available PM–10 inventory). The State also adjusted the inventory for changes in the population since the "vast majority of PM–10 emission in Imperial County are from area sources such as unpaved roads, paved roads and agriculture." [2] While these may not be the most precise adjustment techniques for the Imperial County PM–10 modeling inventory, EPA believes these adjustments are reasonable for the annual PM–10 NAAQS.

In general, there are many uncertainties in developing PM–10 inventories. This is partly due to intrinsic variability, but also because socioeconomic surrogate data and location-specific data needed to build a spatially and temporally resolved inventory is sometimes not available. However, EPA believes that the fugitive PM–10 emission estimates and the modeling that uses them are an adequate basis for this action. The State is continuously improving and updating inventory information. The inventory used in the State's demonstration represents the best available PM–10 inventory for the 1992–1994 timeframe.

3. Background Concentration in the Model

The Sierra Club comments that there is no basis for using the annual background concentration of 25 μg/m³ and that it is "the product of pure speculation."

EPA Response: The background concentration level was based on a frequency distribution analysis of measured PM–10 concentrations at monitors in the Imperial County and Mexicali from 1992 to 2000.[3] EPA believes the 25 μg/m³ background concentration level is a conservative level.

4. Secondary Particles in the Model

The Sierra Club comments that the State's modeling demonstration includes no analysis for secondary particle formation.

EPA Response: While there is no specific discussion of secondary particulates in EPA's proposed rule (66 FR 42187), the analysis provided by the state did account for the formation of secondary particulates. See Imperial County PM10 Attainment Demonstration, Chapter III.B, page 4. In addition the Imperial Valley/Mexicali Cross Border PM–10 Transport Study (Transport Study) provides a filter analysis which indicates that secondary particulates are measured in the range of 2 to 4 μg/m³ for secondary ammonium sulfates and 2 to 3 μg/m³ for secondary ammonium nitrates (Transport Study, Summary and Conclusion, page 9–5) and are thus a small portion of the particulate matter in Imperial County.

[2] See the State's 179B(d) demonstration (Chapter III.B. Modeling Emissions Inventory) for more detailed information on the how the State's modeling inventory was developed.

[3] See the State's 179B(d) demonstration (Chapter III.D. Background Concentrations) for more information.

5. Proof That Mexico Emissions Impact U.S. Monitors and Adequacy of Alternative Demonstration

The Sierra Club asserts that the state has failed to demonstrate that PM–10 violations in Imperial County are actually being caused by emissions from Mexico and that, even if air quality modeling was not required, the state's "alternative" 179B(d) demonstration (i.e., based on analysis of wind patterns and population densities) is grossly inadequate. The Sierra Club believes that the State's analysis of wind patterns and population densities does not show that any quantifiable amount of particulates traveled to the U.S. monitors, let alone any amount that would contribute to nonattainment and that there is nothing in the record relating to an actual amount of PM–10 emissions traveling from Mexico to Imperial County. Also, the Sierra Club states that the Imperial Valley/Mexicali Cross Border PM–10 Transport Study (Transport Study), which indicates that international transport is not always the cause of PM–10 violations, were not refuted and are more reliable than the more recent analysis by the state which the Sierra Club claims to be speculative. Finally, the Sierra Club asserts that there is no analysis of the PM–10 transport to Imperial County's border from places other than Mexico (i.e., on the U.S. side).

EPA's response: The State's 179B(d) demonstration, which includes a detailed analysis of spatial plots, wind roses and back trajectories for each of the PM–10 exceedance days during 1992–1994, provides the best qualitative analysis of the emissions from Mexico possible for the Imperial County area for the period in question. Filter analyses often can provide more specificity on where the monitoring emissions are coming from but, since the types of PM–10 sources are similar on both sides of the border, analysis of the Imperial County samples would not show what portion of the catch originated on the Mexican side of the border.[4]

The Sierra Club suggests that the analyses found in the State's 179B(d) demonstration prove nothing about whether or not emissions from Mexico are impacting U.S. monitors. EPA believes that given the available information, the State has made a good argument that Imperial County is being impacted by Mexico emissions. Additional activities (tracer studies, air monitoring studies, establishment of more meteorology stations at border) could have been conducted, but it is not now possible to create information from new studies for the 1992–1994 timeframe. Thus, EPA believes that the State's 179B(d) analysis of spatial plots, wind roses and back trajectories provides the best determination of PM–10 emissions transport from Mexico.

EPA does not have to refute the Transport Study results in order to make this finding of attainment but for international transport. As discussed in the proposed rule, the additional windfield analyses (Attachment 2 to EPA's TSD, Additional windroses and windfields for January 25, 1993) provided a more detailed analysis, supplementing information from the Transport Study.[5] The Transport Study is simply an effort to collect air quality data on exceedance days and analyze the data based on wind direction and speed, and the study is thus very similar to the analyses found in the State's demonstration. The Transport Study indicates that several of the exceedance days appear to have stagnant wind conditions (1/19/93, 1/25/93, 7/7/94, 10/17/94 and 12/16/94), but the State's demonstration uses more meteorological data and finds evidence that transport from Mexico is likely even with the stagnant conditions at the surface. For each of the exceedances, the State's analysis took into account additional information not included in the Transport Study. This information included: (a) The number of hours with southerly wind directions that have the potential to carry emissions from Mexico into Imperial County; (b) the back trajectories and back trajectories based on upper-air synoptic wind data, which show the existence of much higher winds from the south that are decoupled from the surface stagnant conditions, and (c) the windroses developed for all meteorological stations, suggesting that emissions from Mexico likely contributed to the concentrations measured at Brawley. Based on this additional information and the further analyses, the State concluded that Imperial County would not have violated the PM–10 NAAQS but for transport from Mexico. In weighing the "but-for" evidence, EPA also considered it important to consider the relatively low level of the 24-hour exceedances (162 μg/m³), 175 μg/m³, 165 μg/m³, 159 μg/m³, and 153 μg/m³). EPA concedes that information is not available to determine with confidence the exact quantity of PM–10 coming from Mexico, but EPA continues to believe that the State has diligently collected and analyzed available evidence and has successfully demonstrated for each of the exceedance days the probability that Imperial County would not have violated the NAAQS but for the emissions emanating from Mexico.

Finally, EPA believes that there were insufficient data to support a modeling assessment of the potential for long range transport from the South coast or other California areas to Mexico and back again to Imperial. The Sierra Club presents no evidence that there is transport from U.S. sources outside of Imperial County. Even if evidence existed that the Imperial County monitors were being impacted by long range transport from within the U.S., such evidence would not invalidate the State's demonstration that Imperial County would have attained the NAAQS but for emissions emanating from Mexico.

6. Emissions Inventories

The Sierra Club asserts that the comparison of emissions inventories between Imperial and Mexicali is inadequate due to the uncertainty in the Mexicali inventory, that the Mexicali inventory has not been analyzed for transportability of particles and that the emissions inventory for Imperial County has never been approved by EPA, and thus cannot be used to support a "but-for" finding.

EPA's response: The comparison of Imperial and Mexicali emissions was intended to provide support for the attainment finding. EPA agrees that there is uncertainty in the Mexicali inventory, however, EPA also believes it is useful to examine all available data for this attainment finding. Even if the Mexicali emissions were one-half of 257, as suggested by the Sierra Club, the emissions in the city of Mexicali (200 square miles) would be about half of the emissions in all of Imperial County (4060 square miles), but the emissions density in Mexicali would still be much

[4] As discussed in the proposed rule, the 1992–1993 Imperial Valley/Mexicali Cross Border PM–10 Transport Study (Final Report, January 30, 1997) includes an analysis of the particles collected in areas within Imperial County where violations have been recorded. This sample analysis determined that geological dust (70–90%), motor vehicle exhaust (10–15%) and vegetative burning (10%) account for the highest contribution to PM–10 concentrations. These are the predominant emissions sources on both sides of the border. Thus, the filter analysis by itself could not be used to determine the extent to which violations might result from international transport.

[5] See Attachment 2 to EPA's TSD, Additional windroses and windfields for January 25, 1993.

greater than in Imperial County. As far as determining the transportability of emissions from Mexicali, as discussed above and in the proposed rule, filter analyses have been examined for the border area and provided some information on the particles characteristics. Finally, as discussed above, the emission inventories used in the State's 179B(d) demonstration are the most current and best available. EPA plans to take action on the inventories when they are submitted as part of the State Implementation Plan (SIP) for Imperial County.

7. Post-1994 Exceedances

The Sierra Club asserts that the 179B(d) determination is inadequate because it fails to consider the post-1994 exceedances. The Sierra Club states that the post-1994 exceedances are numerous, in some cases extreme, and relevant to the attainment but for international transport determination.

EPA's response: EPA believes that the post-1994 exceedances are irrelevant to the determinations at issue. The statutory attainment date for the Imperial County PM–10 moderate nonattainment area is December 31, 1994. EPA believes the State's 179B(d) demonstration adequately demonstrates attainment by examining the air quality data from 1992–1994. If this demonstration is adequate, reclassification to serious is not required. Section 188(b)(2) provides that: "Within 6 months following the applicable attainment date for a PM–10 nonattainment area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date * * *" the area shall be reclassified. While the second sentence of section 188(b)(2) contains the language quoted by the commentor "is not in attainment after the applicable attainment date," it is clear that in the context of the first sentence of the provision, which is the sentence that establishes the duty to make an attainment determination, the duty is to "determine whether the area attained the standard by that date (referring to the phrase "applicable attainment date" in the opening clause of the sentence)." Thus, EPA's duty is to determine whether the area attained by its attainment date and the language in the second sentence regarding a finding after the attainment date may reasonably be interpreted as referring to the date the finding is made, which would necessarily be after the attainment date, not to the date used in the determination as the benchmark for determining attainment. The question of whether an area should be reclassified is considered along with whether an area has achieved attainment by the attainment date. Thus, the air quality data from the years 1992–1994 are the relevant data for determining whether Imperial County should be reclassified to serious.

8. SIP Requirements

Finally, the Sierra Club asserts that a 179B(d) waiver cannot be granted unless all moderate area SIP requirements (e.g., RACM, RACT, New Source Review, etc.) are being met.

EPA's response: As discussed in the EPA's proposal, this rulemaking does not address the SIP requirements for Imperial County but only the question of whether or not the State has established that Imperial County attained the NAAQS by December 31, 1994, but for international transport. CAA section 179B(d) states that "any State that establishes to the satisfaction of the Administrator * * * that such State has attained the national ambient air quality standard for [PM–10] by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be submit to the provisions of section 7512(b)(2) * * *" which requires reclassification upon failure to attain. This provision does not require a SIP submittal in order for the waiver to be granted. EPA is currently working with the Imperial County Air Pollution Control District and the California Air Resources Board on developing an approvable State Implementation Plan for Imperial County. A draft of this plan was issued for public review in July 2001.

B. Other Comments Supporting EPA's Final Action

Besides the Sierra Club, all of the commentors support EPA's finding of attainment but for international transport and are extremely opposed to the finding of nonattainment and reclassification to a serious PM–10 nonattainment area. Commentors discussed the overwhelming pollution problem coming from Mexico, the measures their industries have taken to reduce pollution and that it would be unfair to impose additional controls on sources in Imperial County. The Imperial County Air Pollution Control District also provided additional technical analysis supporting the methods used in the State's 179B(d) demonstration.

III. Summary of Final Action

EPA's proposed rule (66 FR 42187) discusses how the State's 179B(d) demonstration is based on a competently collected and examined set of the relevant available information, and reaches a reasoned conclusion that each of the 1992–94 exceedances, which are only slightly above the NAAQS, would likely not have occurred without pollutant transport from Mexico.

In summary, EPA continues to believe that CAA section 179B(d) does not mandate a modeling demonstration, and that the State has provided evidence sufficient to show that, but for international transport of PM–10, Imperial County would have attained the annual and 24-hour PM–10 NAAQS by the December 31, 1994 deadline.

IV. Administrative Requirements

A. Executive Order 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, (1) have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that the final finding of attainment pursuant to CAA section 179B(d) would result in none of the effects identified in section 3(f). A finding of attainment under section 179B(d) of the CAA does not impose any additional requirements on an area. This actions does not, in-and-of-itself, impose any new requirements on any sectors of the economy.

B. Executive Order 13211

The final finding of attainment under CAA 179B(d) is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 (May 22, 2001)) because it is not a significant regulatory actions under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The final finding of attainment under CAA 179B(d) is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, "Federalism," and 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

The final finding of attainment will not have substantial direct effects on California, on the relationship between the national government and California, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As stated above, a finding of attainment under section 179B(d) of the CAA does not impose any additional requirements on an area. This action does not, in-and-of-itself, impose any new requirements on any sectors of the economy. Thus, the requirements of section 6 of the Executive Order do not apply to this final action.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The final finding of attainment under CAA 179B(d) does not have tribal implications. For the reasons discussed above, the final action will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

As discussed above, the final finding of attainment under CAA 179B(d) does not impose additional requirements on small entities. Therefore, I certify that this final action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

With respect to EPA's final finding of attainment under CAA 179B(d), EPA notes that this actions in-and-of itself establishes no new requirements. Furthermore, EPA is not directly establishing any regulatory requirements that may significantly impact or uniquely affect small governments, including tribal governments. Thus, EPA is not obligated to develop under section 203 of UMRA a small government agency plan.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's final action because they do not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 9, 2001.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26406 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7515]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Administrator for Federal Insurance and Mitigation Administration reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator for Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Florida: Duval	City of Jacksonville.	August 8, 2001; August 15, 2001; *Financial News and Daily Record.*	The Honorable John A. Delaney, Mayor of the City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	August 1, 2001	120077D&E
Georgia: Gwinnett	Unincorporated Areas.	August 23, 2001; August 30, 2001; *Gwinnett Daily Post.*	Mr. Wayne Hill, Chairman of the Gwinnett County Board of Commissioners, Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia 30045.	November 29, 2001	130322D
Kentucky: Whitley	City of Williamsburg.	August 17, 2001; August 24, 2001; *Times Tribune.*	The Honorable Bill Nighbert, Mayor of the City of Williamsburg, P.O. Box 119, Williamsburg, Kentucky 40769.	August 10, 2001	210228D
Maine: York	Town of Alfred	September 27, 2001; October 4, 2001; *The Sanford News.*	Mr. Perley Yeaton, Chairperson of the Board of Selectmen for the Town of Alfred, P.O. Box 667, Alfred, Maine 04001.	September 19, 2001	230191C
Mississippi: Madison.	City of Ridgeland	May 17, 2001; May 24, 2001; *Madison County Journal.*	The Honorable Gene F. McGee, Mayor of the City of Ridgeland, P.O. Box 217, Ridgeland, Mississippi 39158.	May 10, 2001	280110 D
North Carolina: Wake	Town of Cary	August 2, 2001; August 9, 2001; *The Cary News.*	The Honorable Glenn D. Lang, Mayor of the Town of Cary, 318 North Academy Street, P.O. Box 8005, Cary, North Carolina 27512.	July 26, 2001	370238D
Dare	Unincorporated Areas.	August 23, 2001; August 30, 2001; *Coastland Times.*	Mr. Moncie L. Daniels, Chairman of the Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 27954.	August 16, 2001	375348E
Wake	Town of Garner	July 18, 2001; July 25, 2001; *The News and Observer.*	Ms. Mary Lou Rand, Town Manager, P.O. Box 446, 900 Seventh Avenue, Garner, North Carolina 27529.	July 11, 2001	370240 D
Gaston	City of Gastonia	August 29, 2001; September 5, 2001; *The Gaston Gazette.*	Mayor of the City of Gastonia, P.O. Box 1748, 181 South Street, Gastonia, North Carolina 28053–1748.	December 5, 2001	370100D
Wake	City of Raleigh	July 18, 2001; July 25, 2001; *The News and Observer.*	The Honorable Paul Y. Coble, Mayor of the City of Raleigh, P.O. Box 590, 222 West Hargett Street, Raleigh, North Carolina 27602.	July 11, 2001	370243 D
Wake	Unincorporated Areas.	July 18, 2001; July 25, 2001; *The News and Observer.*	Mr. David Cooke, Wake County Manager, Suite 1100, 337 South Salisbury Street, Raleigh, North Carolina 27602.	July 11, 2001	370368 D
Ohio: Warren	City of Mason	September 5, 2001; September 12, 2001; *Pulse-Journal.*	The Honorable John McCurley, Mayor of the City of Mason, 202 West Main Street, Mason, Ohio 45040.	August 30, 2001	390559C
South Carolina: Lexington	City of Columbia	August 20, 2001; August 27, 2001; *The State.*	The Honorable Robert D. Cole, Mayor of the City of Columbia, P.O. Box 147, Columbia, South Carolina 29201.	August 13, 2001	450172D
Lexington	Unincorporated Areas.	August 20, 2001; August 27, 2001; *The State.*	Mr. Bruce Rucker, Lexington County Council Chairman, 212 South Lake Drive, Lexington, South Carolina 29072.	August 13, 2001	450129D
Tennessee: Sullivan.	Town of Kingsport.	August 23, 2001; August 30, 2001; *Kingsport Times.*	The Honorable Jeanette Blazier, Mayor of the City of Kingsport, 225 West Center Street, City Hall, Kingsport, Tennessee 37660–4237.	August 16, 2001	470184D
Virginia: Rockingham.	Unincorporated Areas.	September 21, 2001; *Daily News Record.*	Mr. Pablo Cuevas, Chairman of the Board of Supervisors, Rockingham County P.O. Box 1252 Harrisonburg, Virginia 22801.	October 12, 2001	510133B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: October 9, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–26424 Filed 10–18–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Final rule.

SUMMARY: Modified Base (1–percent-annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps ((FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Hazard Mapping and Risk Assessment Division, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of the final determinations of modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Administrator, Federal Insurance and Mitigation Administration, has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612 Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arkansas: Washington (FEMA Docket No. 7602).	City of Springdale	April 20, 2001, April 27, 2001, *The Morning News of Northwest Arkansas.*	The Honorable Jerre Van Hoose, Mayor, City of Springdale, 201 Spring Street, Springdale, Arkansas 72764.	July 27, 2001	050219
Oklahoma: (FEMA Docket No. 7602).	City of Edmond	May 17, 2001, May 24, 2001, *The Edmond Sun.*	The Honorable Bob Rudkin, Mayor, City of Edmond, P. O. Box 202, Edmond, Oklahoma 73083.	August 23, 2001 ..	400252

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Oklahoma: Pottawatomie (FEMA Docket No. 7602).	City of Shawnee ...	April 20, 2001, April 27, 2001, *The Shawnee News-Star.*	The Honorable Chris Harden, Mayor, City of Shawnee, P.O. Box 1448, Shawnee, Oklahoma 74802.	July 27, 2001	400178
Texas: Dallas and Collin (FEMA Docket No. 7602).	City of Garland	April 12, 2001, April 19, 2001, *Garland News.*	The Honorable Jim Spence, Mayor, City of Garland, 200 North 5th Street, P.O. Box 469002, Garland, Texas 76042–9002.	July 19, 2001	485471
Texas: Tarrant and Ellis (FEMA Docket No. 7602).	City of Grand Prairie.	April 19, 2001, April 26, 2001, *Arlington Morning News,.*	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, P.O. Box 534045, Grand Prairie, Texas 75053–4045.	March 29, 2001	485472
Texas: Harris (FEMA Docket No. 7604).	Unincorporated Areas.	May 18, 2001, May 25, 2001, *Houston Chronicle.*	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	August 9, 2001	480287

(Catalog of Federal Domestic Assistance No. 83.100."Flood Insurance")

Dated: October 3, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–26426 Filed 10–18–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–P–7606]

Changes In Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Administrator for Federal Insurance and Mitigation Administration reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Hazard Mapping and Risk Assessment Division, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform.

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq. Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Pope	City of Russellville	August 21, 2001, August 28, 2001, *The Courier.*	The Honorable Raye Turner, Mayor, City of Russellville, P. O. Box 428, Russellville, Arkansas 72801.	July 30, 2001	050178
Illinois:					
Lake	Village of Lake Zurich.	August 16, 2001, August 23, 2001, *Lake Zurich Courier.*	The Honorable James Krischke, Mayor, Village of Lake Zurich, 70 East Main Street, Lake Zurich, Illinois 60047.	July 18, 2001	170376
Will	Unincorporated Areas.	July 24, 2001, July 31, 2001, *The Chicago Sun-Times.*	Mr. Joseph L. Mikan, County Executive, Will County, 302 North Chicago Street, Joliet, Illinois 60432.	October 30, 2001	170695
Indiana: Howard ...	Unincorporated Areas.	July 20, 2001, July 27, 2001, *Kokomo Tribune.*	Mr. John Harbaugh, President, Howard County, Board of Commissioners, 230 North Main, Kokomo, Indiana 46901.	June 27, 2001	180414
Iowa: Black Hawk	City of Cedar Falls	July 24, 2001, July 31, 2001, *Waterloo Cedar Falls Courier.*	The Honorable Jon Crews, Mayor, City of Cedar Falls, 220 Clay Street, Cedar Falls, Iowa 50613.	June 22, 2001	190017
Missouri: Marion ...	Unincorporated Areas.	August 1, 2001, August 8, 2001, *Palmyra Spectator.*	Mr. Lyndon Bode, Presiding Commissioner, Marion County, 100 South Main. Street, Palmyra, Missouri 63461.	July 9, 2001	290222
Nebraska: Lancaster.	City of Lincoln	April 19, 2001, April 26, 2001, *Lincoln Journal Star.*	The Honorable Don Wesely, Mayor, City of Lincoln, 555 South 10th Street, Room 208, Lincoln, Nebraska 68508.	March 13, 2001	315273
Ohio: Summit	City of Twinsburg	August 9, 2001, August 16, 2001, *The Twinsburg Bulletin.*	The Honorable Katherine Procop, Mayor, City of Twinsburg, 10075 Ravenna Road, Twinsburg, Ohio 44087.	November 15, 2001.	390534
Oklahoma: Jefferson.	City of Waurika	July 5, 2001, July 12, 2001, *Waurika News-Democrat.*	The Honorable Biff Eck, Mayor, City of Waurika, 122 South Main, Waurika, Oklahoma 73573.	October 11, 2001	400076
Texas:					
Tarrant	City of Haltom City	July 24, 2001, July 31, 2001, *Fort Worth Star-Telegram.*	Mr. Joel A. Guerrero, Floodplain Administrator, City of Haltom City, 5024 Broadway Avenue, Haltom City, Texas 76117.	October 30, 2001	480599
Harris	Unincorporated Areas.	August 16, 2001, August 23, 2001, *Houston Chronicle.*	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	November 22, 2001.	480287
Harris	Unincorporated Areas.	August 21, 2001, August 28, 2001, *Houston Chronicle.*	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	November 27, 2001.	480287
Harris	City of Houston	August 21, 2001, August 28, 2001, *Houston Chronicle.*	The Honorable Lee P. Brown, Mayor, City of Houston, P. O. Box 1562, Houston, Texas 77251–1562.	November 27, 2001.	480296
Denton	Town of Little Elm	July 12, 2001, July 19, 2001, *Deonton Record-Chronicle.*	The Honorable Jim Pelley, Mayor, Town of Little Elm, P. O. Box 129, Little Elm, Texas 75068.	October 18, 2001	481152
Tarrant	City of North Richland Hills.	July 24, 2001, July 31, 2001, *Fort Worth Star-Telegram.*	The Honorable Charles Scoma, Mayor, City of North Richland Hills, P. O. Box 820609, North Richland Hills, Texas 76182.	October 30, 2001	480607
Tarrant	City of North Richland Hills.	August 23, 2001, August 30, 2001, *Fort Worth Star-Telegram.*	The Honorable Charles Scoma, Mayor, City of North Richland Hills, P. O. Box 820609, North Richland Hills, Texas 76182.	July 31, 2001	480607

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tarrant	City of Richland Hills.	July 24, 2001, July 31, 2001, *Fort Worth Star-Telegram.*	Mr. John W. Cherry, P.E., Director, Dept. of Public Works, City of Richland Hills, 6700 Rena Drive, Richland Hills, Texas 76118.	October 30, 2001	480608
Tarrant	City of Southlake ..	August 3, 2001, August 10, 2001, *Fort Worth Star-Telegram.*	The Honorable Rick Stacy, Mayor, City of Southlake, 1400 Main Street, Suite 270, Southlake, Texas 76092.	November 9, 2001	480612
Harris	City of Tomball	July 25, 2001, August 1, 2001, *Tomball Magnolia Tribune.*	The Honorable Hap Harrington, Mayor, City of Tomball, 401 West Market Street, Tomball, Texas 77375–4645.	October 31, 2001	480315

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: October 3, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–26425 Filed 10–18–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform.

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
FLORIDA	
Daytona Beach (City), Volusia County (FEMA Docket No. 7311)	
Atlantic Ocean:	
Approximately 450 feet northeast of the intersection of Harvey Avenue and Ocean Avenue South	*10
Approximately 300 feet east of the intersection of Hartford Avenue and Atlantic Avenue North	*13
Intracoastal Waterway:	
Approximately 500 feet west of the intersection of Glenview Boulevard and Halifax Avenue North	*5
Approximately 700 feet east of the intersection of San Juan Avenue and North Beach Street	*8
B–19 Canal Tributary No. 7:	
At confluence with B–19 Canal	*30
Approximately 150 feet upstream of Beville Road/State Route 400	*30
B–19 Canal:	
Approximately 1,100 feet upstream of the confluence of B–19 Canal Tributary No. 3 with B–19 Canal	*29
Approximately 100 feet upstream of State Route 400	*30
Tomoka River:	
Approximately 0.8 mile downstream of Eleventh Street	*14
Approximately 400 feet downstream of Interstate 4	*25
Maps available for inspection at Daytona Beach Public Works Complex, Engineering Department, 950 Bellevue Avenue, Daytona Beach, Florida.	
Daytona Beach Shores (City), Volusia County (FEMA Docket No. 7311)	
Atlantic Ocean:	
Approximately 400 feet east of the intersection of Ridge Road and Atlantic Avenue South	*10
Approximately 500 feet east of the intersection of Van Avenue and Atlantic Avenue South	*12
Intracoastal Waterway:	
Approximately 400 feet west of the intersection of Richards Lane and Peninsula Drive South	*6
At the intersection of Demott Street and Peninsula Drive South	*6
Maps available for inspection at the City of Daytona Beach Shores City Hall, Building Division, 3050 South Atlantic Avenue, Daytona Beach, Florida.	
Edgewater (City), Volusia County (FEMA Docket No. 7311)	
Indian River North/Intracoastal Waterway:	
Just on the Easterly side of the intersection of Boston Road and Riverside Drive	*7
Approximately 100 feet east of the intersection of Knapp Avenue and Riverside Drive South	*9
Maps available for inspection at the City of Edgewater Planning Department, 104 North Riverside Drive, Edgewater, Florida.	
Holly Hill (City), Volusia County (FEMA Docket No. 7311)	
Intracoastal Waterway:	
At the intersection of High Street and Burleigh Avenue	*6
Approximately 100 feet east of the intersection of 15th Place and Riverside Drive	*7
Maps available for inspection at the Holly Hill City Hall, 1065 Ridgewood Avenue, Holly Hill, Florida.	
New Smyrna Beach (City), Volusia County (FEMA Docket No. 7311)	
Atlantic Ocean:	
Approximately 400 feet east of the intersection of 3rd Avenue East and Atlantic Avenue South	*10
Approximately 0.8 mile north of the intersection of Peninsula Avenue North and Ocean Drive	*12
Indian River North/Intracoastal Waterway:	
At the intersection of Ocean Drive and Peninsula Avenue North	*7
Approximately 1,500 feet east of the intersection of Conrad Drive and Redland Drive	*9
Maps available for inspection at the New Smyrna City Hall, 210 Sams Avenue, New Smyrna Beach, Florida.	
Oak Hill (City), Volusia County (FEMA Docket No. 7311)	
Atlantic Ocean:	
Approximately 120 feet east of the intersection of State Route A1A and Volusia County/Oak Hill corporate limits	*11
Approximately 500 feet from the southern Volusia County/Oak Hill corporate limits along State Route A1A north, then approximately 350 feet east	*12
Indian River North/Intracoastal Waterway:	
Approximately 1,500 feet southwest of the intersection of South Street and State Route A1A in Volusia County	*6
Approximately 500 feet east of the intersection of Cheyenne Drive and Golden Bay Boulevard	*8
Maps available for inspection at the Oak Hill City Hall, 234 South U.S. Highway 1, Oak Hill, Florida.	
Ormond Beach (City), Volusia County (FEMA Docket No. 7311)	
Atlantic Ocean:	
Approximately 350 feet east of the intersection of Ann Rustin Drive and Ocean Shore Boulevard	*10
Approximately 600 feet east of the intersection of Harvard Drive and Florence Street	*12
Halifax River/Intracoastal Waterway:	
At the intersection of John Anderson Drive and St. Mark Circle	*4
Approximately 100 feet east of the intersection of Seville Street and Beach Street South	*7
Approximately 200 feet west of intersection of John Anderson Drive and Buckingham Drive	*4
Tomoka River:	
Approximately 1.1 miles downstream of confluence of Thompson Creek	*5
Approximately 1,500 feet upstream of State Route 40	*10
Misner Branch:	
At confluence with Tomoka River	*8
Approximately 100 feet upstream of Handy Avenue	*15
Little Tomoka River:	
At confluence with Tomoka River	*10
At State Route 40	*28
Groover Branch:	
At confluence with Tomoka River approximately 1,300 feet downstream of Tymber Run Road	*20
Approximately 340 feet upstream of Tymber Creek Road North	*10
Thompson Creek:	
Approximately 470 feet downstream of U.S. Route 1 North	*7
Approximately 0.45 mile upstream of Tomoka Avenue	*8

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at Ormond Beach City Hall, Planning Department, 22 South Beach Street, Room 104, Ormond Beach Florida.	
Ponce Inlet (Town), Volusia County (FEMA Docket No. 7311)	
Atlantic Ocean:	
Approximately 300 feet east of the intersection of Old Carriage Road and Atlantic Avenue South	*10
Approximately 750 feet east of the Beach Street and Atlantic Avenue South intersection	*12
Intracoastal Waterway:	
At the intersection of Maura Court and Peninsula Drive South	*7
Approximately 2,500 feet south of the intersection of Beach and Sailfish Drive	*9
Maps available for inspection at the Ponce Inlet Town Hall, 4680 South Peninsula Drive, Ponce Inlet, Florida.	
Port Orange (City), Volusia County (FEMA Docket No. 7311)	
B–19 Canal:	
Approximately 300 feet upstream of confluence with Spruce Creek	*5
Approximately 150 feet downstream of the confluence of B–19 Canal Tributary No. 5 with B–19 Canal	*29
B–19 Canal Tributary No. 2:	
At the confluence with B–19 Canal	*28
Approximately 1,500 feet upstream of confluence with B–19 Canal	*28
Intracoastal Waterway:	
At the intersection of Riverview Lane and Simpson Avenue	*6
At the intersection of Portobello Drive and Riverside Drive	*9
Maps available for inspection at the Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida.	
South Daytona (City), Volusia County (FEMA Docket No. 7311)	
Intracoastal Waterway:	
At the intersection of Sea Isle Circle and Palmetto Avenue	*6
Approximately 600 feet east of the intersection of Venture Drive and U.S. Route 1 (Ridgewood Avenue South)	*8
Approximately 125 feet southwest of the intersection of Reed Canal Road and Ridgewood Avenue South/U.S. Route 1	*6
Volusia County (Unincorporated Areas) (FEMA Docket No. 7311)	
Atlantic Ocean:	
Approximately 350 feet east of the intersection of Plaza Drive and Ocean Shore Boulevard	*10
Approximately 300 feet southeast of the intersection of Kingfish Avenue and Atlantic Avenue South	*12
Approximately 500 feet southeast of intersection of Ocean Shore Boulevard and northern county boundary	*12
Halifax River/Intracoastal Waterway:	
Approximately 100 feet southwest of the intersection of John Anderson Drive and Highridge Road	*4
Approximately 2,750 feet west of intersection of Cardinal Boulevard and Major Street	*9
Indian River North/Intracoastal Waterway:	
Approximately 1,000 feet east of intersection of Pelican Place and Riverside Drive	*7
Approximately 50 feet west of the intersection of Trout Avenue and Atlantic Avenue	*6
Groover Branch:	
Approximately 1,250 feet upstream of Tymber Run	*10
Approximately 340 feet upstream of Tymber Creek Road North	*20
Tomoka River:	
Approximately 1.17 miles downstream of confluence of Thompson Creek	*5
Approximately 0.96 mile upstream of U.S. Route 92	*25
Little Tomoka River:	
At confluence with Tomoka River, approximately 1,850 feet downstream of Main Trail Road	*10
Approximately 200 feet upstream of State Route 40	*30
B–19 Canal:	
At the confluence of B–19 Canal Tributary No. 2	*28
Approximately 550 feet northeast of the confluence of B–19 Canal Tributary No. 3 with B–19 Canal	*29
Crescent Lake:	
Approximately 6,000 feet northeast of the intersection of Ducan Road and Raulerson Road No. 7	*7
Approximately 2.84 miles northeast of the intersection of Ducan Road and Raulerson Road No. 7	*7
B–19 Canal Tributary No. 2:	
Approximately 50 feet upstream of confluence with B–19 Canal	*28
Approximately 650 feet upstream of confluence with B–19 Canal	*28
Maps available for inspection at the Volusia County Emergency Operations Center, 49 Keyton Drive, Daytona, Florida.	
MAINE	
Bangor (City), Penobscot County (FEMA Docket No. D–7510)	
Penobscot River:	
At downstream corporate limits	*16
At upstream corporate limits	*25
Penjajawoc Stream:	
At Mount Hope Avenue	*45
Approximately 0.31 mile upstream of Stillwater Avenue	*107
Kenduskeag Stream:	
At confluence with Penobscot River	*18
Approximately 0.64 mile upstream of confluence with Penobscot River	*18
Maps available for inspection at the Bangor City Hall, 73 Harlow Street, Bangor, Maine.	
NEW JERSEY	
Bernards (Township), Somerset County (FEMA Docket No. D–7504)	
Passaic River:	
Approximately 1.6 miles downstream of Passaic Valley Road	*214
Approximately 100 feet downstream of the upstream corporate limits	*303
Dead River:	
At the downstream corporate limits	*214
Approximately 0.78 mile upstream of the downstream corporate limits	*216
Maps available for inspection at the Bernards Township Hall, Engineer's Office, 277 South Maple Avenue, Bernards, New Jersey.	
Millburn (Township), Essex County (FEMA Docket No. D–7506)	
Passaic River:	
Approximately 2,550 feet upstream of downstream corporate limits	*177
Approximately 200 feet downstream of Main Street	*179

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Millburn Township Hall, 375 Millburn Avenue, Millburn, New Jersey.	
PENNSYLVANIA	
Avondale (Borough), Chester County (FEMA Docket No. D–7502)	
East Branch White Clay Creek:	
Approximately 330 feet downstream of State Route 41	*271
Approximately 1,060 feet upstream of 3rd Avenue	*280
Maps available for inspection at the Avondale Borough Hall, 110 Palmroy Avenue, Avondale, Pennsylvania.	
Caln (Township), Chester County (FEMA Docket No. D–7502)	
East Branch Brandywine Creek:	
Approximately 900 feet downstream of State Route 282	*241
Approximately 1,100 feet upstream of U.S. Route 30	*253
Maps available for inspection at the Caln Municipal Building, Department of Engineering and Code Enforcement, 253 Municipal Drive, Thorndale, Pennsylvania.	
Coatesville (City), Chester County (FEMA Docket No. D–7502)	
West Branch Brandywine Creek:	
Approximately 2,800 feet downstream of Business Route 30	*307
Just downstream of Kings Highway	*362
Maps available for inspection at the Coatesville City Hall, Codes Department, 1 City Hall Place, Coatesville, Pennsylvania.	
Downingtown (Borough), Chester County (FEMA Docket No. D–7502)	
East Branch Brandywine Creek:	
Approximately 3,000 feet upstream of U.S. Route 322	*232
Approximately 700 feet upstream of U.S. Route 30	*253
Maps available for inspection at the Downingtown Borough Hall, 4 West Lancaster Avenue, Downingtown, Pennsylvania.	
East Bradford (Township), Chester County (FEMA Docket No. D–7502)	
East Branch Brandywine Creek:	
Approximately 450 feet downstream of Route 842	*187
Approximately 1,250 feet downstream of U.S. Route 322 (second crossing)	*224
West Branch Brandywine Creek:	
Approximately 200 feet upstream of confluence with Brandywine Creek	*187
Approximately 4,200 feet upstream of State Road 842 (Wawaset Road)	*195
Maps available for inspection at the East Bradford Township Hall, 666 Copeland Road, West Chester, Pennsylvania.	
East Brandywine (Township), Chester County (FEMA Docket No. D–7502)	
East Branch Brandywine Creek:	
Approximately 1,162 feet upstream of U.S. Route 30	*253
Approximately 3,500 feet upstream of Lyndell Road	*338
Maps available for inspection at the East Brandywine Township Office, 1214 Horseshoe Pike, Downingtown, Pennsylvania.	
East Caln (Township), Chester County (FEMA Docket No. D–7502)	
East Branch Brandywine Creek:	
Approximately 1,125 feet downstream of U.S. Route 322 (second crossing)	*224
Approximately 2,350 feet downstream of Dowlin Forge Road	*260
Maps available for inspection at the East Caln Township Hall, 110 Bell Tavern Road, Downingtown, Pennsylvania.	
East Fallowfield (Township), Chester County (FEMA Docket No. D–7502)	
West Branch Brandywine Creek:	
Approximately 500 feet downstream of State Route 3062 (Strasburg Road)	*252
Approximately 375 feet downstream of CONRAIL Railroad bridge	*272
Maps available for inspection at the East Fallowfield Township Hall, 2264 Strasburg Road, East Fallowfield, Pennsylvania.	
Honey Brook (Township), Chester County (FEMA Docket No. D–7502)	
East Branch Brandywine Creek:	
Just upstream of South Creek or Chestnut Tree Road	*558
Approximately 2,920 feet upstream of Suplee Road	*597
Maps available for inspection at the Honey Brook Township Building, 495 Suplee Road, Honey Brook, Pennsylvania.	
London Grove (Township), Chester County (FEMA Docket No. D–7502)	
East Branch White Clay Creek:	
Approximately 1,080 feet upstream of Third Avenue	*279
Approximately 1,440 feet upstream of Third Avenue	*280
Maps available for inspection at the London Grove Township Hall, 372 Rosehill Road, Suite 100, West Grove, Pennsylvania.	
Modena (Borough), Chester County (FEMA Docket No. D–7502)	
West Branch Brandywine Creek:	
Approximately 500 feet downstream of Luria Railroad Bridge (CONRAIL)	*272
Approximately 4,200 feet downstream of First Avenue	*283
Maps available for inspection at the Modena Borough Hall, North Brandywine Avenue, Modena, Pennsylvania.	
New Garden (Township), Chester County (FEMA Docket No. D–7502)	
East Branch White Clay Creek:	
Approximately 1,080 feet upstream of Third Avenue	*279
Approximately 1,440 feet upstream of Third Avenue	*280
Maps available for inspection at the New Garden Township Building, 8934 Gap Newport Pike, Landenburg, Pennsylvania.	
Newlin (Township), Chester County (FEMA Docket No. D–7502)	
West Branch Brandywine Creek:	
Approximately 800 feet upstream of State Route 3027 (Northbrook Road)	*202
Approximately 500 feet downstream of State Route 3062 (Strasburg Road)	*252
Maps available for inspection at Yerkey's Associates, 1444 Phoenixville Pike, West Chester, Pennsylvania.	
Pocopson (Township), Chester County (FEMA Docket No. D–7502)	
West Branch Brandywine Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 200 feet upstream of confluence with Brandywine Creek	*187
Approximately 2,500 feet upstream of State Route 3027 (Northbrook Road)	*203
Maps available for inspection at the Pocopson Township Hall, 740 Denton Hollow Road, West Chester, Pennsylvania.	
South Coatesville (Borough), Chester County (FEMA Docket No. D–7502)	
West Branch Brandywine:	
Approximately 0.89 mile downstream of First Avenue	*281
Approximately 0.71 mile upstream of First Avenue	*305
Maps available for inspection at the South Coatesville Borough Hall, 136 Modena Road, South Coatesville, Pennsylvania.	
Upper Uwchlan (Township), Chester County (FEMA Docket No. D–7502)	
East Branch Brandywine Creek:	
Approximately 600 feet downstream of Dorlan Hill Road	*281
Approximately 3,500 feet upstream of Lyndell Road	*338
Maps available for inspection at the Upper Uwchlan Township Building, 140 Pottstown Pike, Chester Springs, Pennsylvania.	
Uwchlan (Township), Chester County (FEMA Docket No. D–7502)	
East Branch Brandywine Creek:	
Approximately 2,350 feet downstream of Dowlin Forge Road	*260
Approximately 600 feet downstream of Dorlan Hill Road	*281
Maps available for inspection at the Uwchlan Township Hall, 715 North Ship Road, Exton, Pennsylvania.	
Valley (Township), Chester County (FEMA Docket No. D–7502)	
West Branch Brandywine Creek:	
Approximately 3,300 feet downstream Business Route 30 (Lincoln Highway)	*305
Approximately 1,050 feet upstream from Valley Station Drive	*341
Maps available for inspection at the Valley Township Building, 890 West Lincoln Highway, Coatesville, Pennsylvania.	
Wallace (Township), Chester County (FEMA Docket No. D–7502)	
East Branch Brandywine Creek:	
Approximately 3,500 feet upstream of Lyndell Road	*338
Approximately 6,000 feet downstream of North Manor Road	*481
Maps available for inspection at the Wallace Township Building, 451 Fairview Road, Glen Moore, Pennsylvania.	
West Bradford (Township), Chester County (FEMA Docket No. D–7502)	
West Branch Brandywine Creek:	
Approximately 4,200 feet upstream of State Road 842	*195
Approximately 800 feet upstream of State Route 3027 (Northbrook Road)	*202
East Branch Brandywine Creek:	
Approximately 5,100 feet downstream of U.S. Route 322 (First one)	*205
Approximately 3,000 feet upstream of U.S. Route 322 (Second one)	*232
Maps available for inspection at the West Bradford Township Hall, 1385 Campus Drive, Downingtown, Pennsylvania.	
West Brandywine (Township), Chester County (FEMA Docket No. D–7502)	
West Branch Brandywine Creek:	
Approximately 150 feet upstream of Kings Highway (State Route 340)	*365
Approximately 600 feet upstream of Kings Highway	*367
Maps available for inspection at the West Brandywine Township Hall, 199 LaFayette Road, Coatesville, Pennsylvania.	
West Caln (Township), Chester County (FEMA Docket No. D–7502)	
West Branch Brandywine Creek:	
Approximately 150 feet upstream of Kings Highway (State Route 340)	*365
Approximately 600 feet upstream of Kings Highway	*367
Maps available for inspection at the West Caln Township Hall, 721 Kings Highway, Wagontown, Pennsylvania.	
West Nantmeal (Township), Chester County (FEMA Docket No. D–7502)	
East Branch Brandywine Creek:	
Approximately 1.14 miles downstream of North Manor Road	*481
Just downstream of Chestnut Tree Road	*558
Maps available for inspection at the West Nantmeal Township Hall, 455 North Manor Road, Elverson, Pennsylvania.	
TENNESSEE	
Selmer (City), McNairy County (FEMA Docket No. D–7512)	
Cypress Creek:	
Approximately 1,700 feet downstream of South Fourth Street	*433
Approximately 1,855 feet upstream of Purdy Road	*444
Crooked Creek:	
At the confluence with Cypress Creek	*439
Approximately 0.5 mile upstream of Highschool Road	*459
Maps available for inspection at the City Hall, 144 North Second Street, Selmer, Tennessee.	
VERMONT	
Woodstock (Town and Village), Windsor County (FEMA Docket No. D–7510)	
Ottauquechee River:	
Approximately 550 feet upstream of U.S. Route 4	*697
At the upstream corporate limits	*812
Maps available for inspection at Town Hall, 31 The Green, Woodstock, Vermont.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: October 9, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–26429 Filed 10–18–01; 8:45 am]

BILLING CODE 6718–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980212037–8142–02; I.D. 012798A]

RIN 0648–AJ87

Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Donation Program; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains a correction to the final rule for the Halibut Donation Program that was published in the **Federal Register** on June 12, 1998.

DATES: Effective October 19, 2001.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: A final rule was published in the **Federal Register** on 63 FR 32144 (June 12, 1998) to authorize the distribution of Pacific halibut taken as bycatch in the specified groundfish trawl fisheries off Alaska to economically disadvantaged individuals through tax-exempt organizations selected by NMFS to be the authorized distributors.

An error was made by inadvertently omitting a word revision at § 679.26 (b)(1)(vi) from "salmon" to read "fish."

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Accordingly, 50 CFR part 679 is corrected by making the following correcting amendment:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 3631 *et seq.*

§ 679.26 [Corrected]

2. In § 679.26 (b)(1)(vi), remove the word "salmon" and replace it with the word "fish."

Dated: October 15, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26451 Filed 10–18–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 203
Friday, October 19, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–093–1]

Mediterranean Fruit Fly; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding a portion of Los Angeles County, CA, to the list of quarantined areas and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: This interim rule was effective October 15, 2001. We invite you to comment on this docket. We will consider all comments that we receive by December 18, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–093–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 01–093–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations contained in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States. Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of Medfly has occurred in the Hyde Park area of Los Angeles County, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately four-and-one-half miles from the detection sites. The boundary lines may vary due to factors such as the location of Medfly host material, the location of transportation centers such as bus stations and airports, the patterns of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78–3 by adding a portion of Los Angeles County, CA, to the list of quarantined areas. The new quarantined area is described in the rule portion of this document.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Medfly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the effects of this interim rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this interim rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in

determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

This interim rule amends the Medfly regulations by adding a portion of Los Angeles County, CA, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Medfly into noninfested areas of the United States.

This rule restricts the interstate movement of regulated articles from the newly quarantined area. The portion of Los Angeles County, CA, subject to quarantine under this rule is a predominantly residential area with many apartment buildings. Available information indicates that there are no entities in the quarantined area that sell, process, handle, or move regulated articles. Such entities would include fruit sellers, nurseries, growers, packinghouses, certified farmer's markets, and swapmeets.

The alternative to this interim rule was to make no changes in the regulations. After consideration, we rejected this alternative because if no action was taken, the Medfly would spread to noninfested areas of the continental United States.

This interim rule contains no information collection or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that the implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health or the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppq/hydepkea.pdf.*

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.78–3, paragraph (c) is revised to read as follows:

§ 301.78–3 Quarantined Areas.

* * * * *

(c) The areas described below are designated as quarantined areas:

California

Los Angeles County. That portion of the county in the Hyde Park area bounded by a line beginning at the intersection of La Brea Avenue and Interstate Highway 10; then east along Interstate Highway 10 to Alameda Street; then south along Alameda Street to Washington Boulevard; then east along Washington Boulevard to Sante Fe Avenue; then south along Sante Fe Avenue to Truba Avenue; then south along Truba Avenue to Tweedy Boulevard; then west along Tweedy Boulevard to Alameda Street; then south along Alameda Street to 103rd Street; then west along 103rd Street to Wilmington Avenue; then south along Wilmington Avenue to Interstate Highway 105; then west along Interstate Highway 105 to Hawthorne Boulevard; then north along Hawthorne Boulevard to La Brea Avenue; then north along La Brea Avenue to the point of beginning.

Done in Washington, DC, this 15th day of October 2001 .

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–26329 Filed 10–18–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–01–05]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in 1999. These adjustments are required by the Beef Promotion and Research Order (Order) and would result in a decrease in Board membership from 110 to 108, effective with the Secretary's appointments for terms beginning early in the year 2003.

DATES: Comments must be received by December 18, 2001.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627–S: Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251.

Comments will be available for public inspection during regular business hours at the above office in Room 2627-South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, on 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988, the Regulatory Flexibility Act, and the Paperwork Reduction Act

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866. This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the January 26, 2001, issue of "Cattle," the Department's National Agricultural Statistics Service (NASS) estimates that in 2000 the number of cattle operations in the United States totaled about 1.1 million. The majority of these operations subject to the Order, 7 CFR 1260.101 *et seq.*, are considered small businesses under the criteria established by the Small Business Administration.

The proposed rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory and cattle and beef imports. This action would adjust representation on the Board, established under the Act. The adjustments are required by the Order and would result in a decrease in Board membership from 110 to 108.

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 *et seq.*) and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted by certified producer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to the Secretary modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993 before the Board was increased to 111 members in 1996. The Board was decreased to 110 members in 1999 and will be decreased to 108 members with appointments for terms effective early in 2003.

The current Board representation by States or units has been based on an average of the January 1, 1996, 1997, and 1998 inventory of cattle in the various States as reported by NASS of the Department. Current importer representation has been based on a combined total average of the 1995, 1996, and 1997 live cattle imports as published by the Foreign Agricultural Service of the Department and the average of the 1995, 1996, and 1997 live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were approved by the Board at its August 9, 2001, meeting. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 1998, to January 1, 2001. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 1999, 2000, and 2001 Department cattle inventory numbers would best reflect the number of cattle in each State or unit since publication of the 1999 reapportionment rule.

The Board reviewed the February 28, 2001, Department's Economic Research Service circular, "Livestock, Dairy and Poultry Situation and Outlook," to determine proper importer representation. The Board recommended the use of a combined total of the average of the 1998, 1999, and 2000 cattle import data and the average of the 1998, 1999, and 2000 live animal equivalents for imported beef products. The method used to calculate the total number of live cattle equivalents was the same as that used in the previous reapportionment of the Board. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its August 9, 2001, meeting to be consistent with the procedures used for domestic representation.

The Board's recommended reapportionment plan would decrease the number of representatives on the Board from 110 to 108. Five States—Alabama, Illinois, Kentucky, New York, and Wisconsin—lose one member each; two States and one unit—New Mexico, Wyoming, and Importer unit—gain one member each. In addition, because South Carolina no longer has sufficient cattle inventory to qualify for a position on the Board independently, the Board proposes that South Carolina be merged with Georgia, a contiguous State that has only one member, to form a Southeast unit. The combined cattle inventory of South Carolina and Georgia would entitle the Southeast unit to two members on the Board, thus enabling both States to be represented. The States and units affected by the reapportionment plan and the current and proposed member representation per unit are as follows: (Units are listed with the State makeup recommended by the Board.)

States	Current representation	Proposed representation
1 Alabama	2	1
2. Illinois	2	1
3. Kentucky	3	2
4. New Mexico	1	2
5. New York	2	1
6. Wisconsin	4	3
7. Wyoming	1	2
8. Importer unit	7	8
9. Southeast unit		
South Carolina		2
Georgia	1	
	1	

The 2001 nomination and appointment process was in progress while the Board was developing its recommendations. Thus, the Board reapportionment as proposed by this rulemaking would be effective, if adopted, with 2002 nominations and appointments that will be effective early in the year 2003.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that 7 CFR part 1260 be amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

2. In § 1260.141, paragraph (a) and the table immediately following it, are revised to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2002 Board nominations and the associated appointments effective early in the year 2003, the United States shall be divided into 39 geographical units and 1 unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/unit	(1,000 head)	Directors
1. Alabama	1,440	1
2. Arizona	833	1
3. Arkansas	1,823	2
4. California	5,117	5
5. Colorado	3,167	3
6. Florida	1,820	2
7. Idaho	1,940	2
8. Illinois	1,497	1
9. Indiana	953	1
10. Iowa	3,683	4
11. Kansas	6,617	7
12. Kentucky	2,303	2
13. Louisiana	887	1
14. Michigan	1,013	1
15. Minnesota	2,533	3
16. Mississippi	1,100	1
17. Missouri	4,333	4
18. Montana	2,583	3
19. Nebraska	6,650	7
20. Nevada	517	1
21. New Mexico	1,617	2
22. New York	1,433	1
23. North Carolina	957	1
24. North Dakota	1,927	2
25. Ohio	1,237	1
26. Oklahoma	5,183	5
27. Oregon	1,447	1
28. Pennsylvania	1,653	2
29. South Dakota	3,950	4
30. Tennessee	2,167	2
31. Texas	13,900	14
32. Utah	903	1
33. Virginia	1,650	2
34. Wisconsin	3,383	3
35. Wyoming	1,563	2
36. Northwest		1
Alaska	11	
Hawaii	162	

CATTLE AND CALVES [1]—Continued

State/unit	(1,000 head)	Directors
Washington	1,187	
Total	1,408	
37. Northeast		1
Connecticut	65	
Delaware	28	
Maine	99	
Massachusetts	55	
New Hampshire	45	
New Jersey	50	
Rhode Island	6	
Vermont	300	
Total		647
38. Mid-Atlantic		1
District of Columbia	0	
Maryland	243	
West Virginia	420	
Total	663	
39. Southeast		2
Georgia	1,293	
South Carolina	463	
Total	1,756	
40. Importer [2]	7,654	8

[1] 1999, 2000, and 2001 average of January 1 cattle inventory data.
[2] 1998, 1999, and 2000 average of annual import data.

* * * * *

Dated: October 12, 2001.
Kenneth C. Clayton,
Associate Administrator, Agricultural Marketing Service.
[FR Doc. 01–26395 Filed 10–18–01; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–99–20]

Amendment to the Beef Promotion and Research Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Beef Promotion and Research Rules and Regulations (Rules and Regulations) established under the Beef Promotion and Research Act of 1985 (Act) to provide the opportunity for a producer to pay the $1-per-head assessment to the Qualified State Beef Council (QSBC) located in the producer's State of residence prior to sale, subject to certain conditions.

DATES: Written comments must be received by December 18, 2001. Written comments on the information collection requirements must be received on or before December 18, 2001.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627–S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. State that your comments refer to Docket No. LS–99–20.

Pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), also send comments regarding the merits of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection and recordkeeping under the PRA should also be sent to the Desk Officer for Agriculture, Offices of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch on 202/720–1115 or fax 202/720–1125.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988, the Regulatory Flexibility Act, and the Paperwork Reduction Act

The Department of Agriculture (Department) is proposing this rule in conformance with Executive Order 12866. This rule has been determined not to be significant and, therefore, has not been reviewed by OMB.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), the Administrator of AMS has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

The Department's National Agricultural Statistics Service estimates that in calendar year 2000 the number of cattle operations in the United States totaled approximately 1.1 million, including feedlot operations. There are also 45 QSBCs in the United States. The majority of these operations are considered small businesses under the criteria established by the Small Business Administration.

The proposed rule imposes no significant burden on the industry as it merely gives producers the opportunity to voluntarily pay the $1-per-head assessment on cattle of their own production prior to sale and to remit the assessments to the QSBC located in the producer's State of residence.

The impact on QSBCs would be a redistribution of an estimated maximum of one-half million dollars of the $40 million currently retained annually in total by the 45 QSBCs. The agency estimates that up to 6 million head or 20 percent of the approximately 30 million head of steers and heifers slaughtered annually are sold for slaughter under retained ownership. The agency also estimates that assessments on up to one-sixth of the cattle (1 million head) would be paid in advance to QSBCs. If the $1 assessment were paid in advance to QSBCs on these cattle, the QSBCs' 50 percent share of up to $1 million in assessments or as much as $500,000 would be redistributed among the QSBCs.

The major cattle feeding States of Texas, Nebraska, Kansas, Colorado, and Oklahoma could reasonably be expected to account for up to 80 percent of the $500,000 in reduced revenue to QSBCs annually. These States collect an average of $8 million annually and retain one-half that amount or $4 million. Assuming that the revenue to each of these five States available for State directed programs was reduced by an average of $80,000, it would represent a 2-percent decrease in the average revenue available for State directed programs in these States.

The remaining 40 QSBCs have annual State budgets that average about $500,000. An estimated net increase in annual income for these States, as a result of the advance payment of assessments, could average up to $10,000 per State representing a 2-percent increase.

Producers wishing to direct payment of assessments to the QSBC in the producers' State of residence when cattle are sent to another State for feeding under retained ownership would complete a form which would be provided to affected parties including the QSBC, the feedlot, and the packer or the collecting person.

Copies of the completed "Certification of Producer Directed Payment of Cattle Assessments" form shall be maintained on file by the producer, the QSBC or the Board, the feedlot operator, and the purchaser of the cattle for 2 years.

We estimate the average cost of the reporting burden per respondent would be $16 annually.

We estimate the total average cost of the recordkeeper burden per recordkeeper would be $8 annually.

The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities.

In compliance with OMB regulations [5 CFR part 1320] which implements PRA, the information collection requirements contained in this proposed rule are being submitted for OMB approval.

Title: Certification of Producer Directed Payment of Assessments.

OMB Number: 0581–New collection.
Expiration Date of Approval: 3 years from date of approval.
Type of Request: Approval of new information collection.
Abstract: The Act provides for a program of promotion, research, consumer information, and industry information funded by assessments paid by beef producers each time cattle are sold and by importers of cattle and beef products upon importation.

Assessments on cattle and beef imports are collected by the U.S. Customs Service at the rate of $1 per head or the equivalent. An assessment of $1 per head is due from the producer each time a producer sells cattle in the United States. The assessment is to be collected by the purchaser or other "collecting person" as provided in the rules and regulations. The producer assessments are then remitted to QSBCs in 45 States and to the Cattlemen's Beef Promotion and Research Board (Board) in the remaining States. QSBCs retain one-half of the $1 assessment for use in State directed programs and forward the other half to the Board.

Currently, QSBCs in the traditional cattle feeding States (e.g., Texas, Kansas, Nebraska, Oklahoma, and Colorado) collect and retain assessments on cattle sold that are owned by producers residing in other States. This benefits QSBCs in the States that have large numbers of cattle in feedlots owned by producers residing in other States. Some producers retain ownership of cattle and transport them to one of the cattle feeding States. To provide producers with more flexibility and to provide the opportunity for a more equitable distribution of assessment funds to States based on cattle ownership, the proposed "Certification of Producer Directed Payment of Cattle Assessments" form would be made available for use by producers who want the QSBC located in their States of residence to receive assessment funds rather than the QSBC in the State where the cattle are fed.

1. Certification of Producer Directed Payment of Assessments.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .20 hour per response.

Respondents: Producers wishing to direct payment of assessments to the QSBC in the producers' State of residence when cattle are sent to another State for feeding under retained ownership would use the form.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 800 hours.

Total cost: $16,000.

2. Maintenance of records: 2 years.

Estimate of Burden: The public recordkeeping burden for keeping this document is estimated to average .10 hour per recordkeeper.

Recordkeepers: Producers, QSBCs, feedlot operators, and purchasers.

Estimated Number of Recordkeepers: 1,260.

Estimated Total Recordkeeping Hours: 504 hours.

Estimated Total Cost: $10,080.

The total average cost of the estimated annual reporting burden per respondent would be: $16.00.

The total average cost of the recordkeeping burden per recordkeeper would be: $8.00.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments concerning the information collection and recordkeeping requirements contained in this action should reference the Docket Number LS–99–20, together with the date and page number of this issue of the **Federal Register**. Comments may be sent to Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627–S; Livestock and Seed Program, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251; telephone: 202/720–1115 or Fax: 202/720–1125. All comments received will be available for public inspection during regular business hours at the above address. Comments also should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This proposed rule would amend the rules and regulations published in the **Federal Register** on February 26, 1988 (53 FR 5749) (7 CFR § 1260.301 to § 1260.315). These regulations further define the requirements of the Beef Promotion and Research Order (Order) (51 FR 21632) (7 CFR § 1260.101 to § 1260.217) under the Beef Promotion and Research Act of 1985 (Act), 7 U.S.C. 2901–2911.

Background and Proposed Change

The Act authorizes the establishment of a national beef promotion and research program. The final Order establishing a beef promotion and research program was published in the **Federal Register** on July 18, 1986, (51 FR 21632) and assessments began on October 1, 1986. The program is administered by the Board which is composed of 110 cattle producers and importers. The program is funded by a $1-per-head assessment on producer marketings of cattle in the United States and an equivalent amount on imported cattle, beef, and beef products. In 45 States, QSBCs receive the $1-per-head of cattle assessment remitted under the program and retain up to half of the $1 for State-directed programs and remit the remainder to the Board. The Board receives all import assessments and all producer assessments in the five States with relatively small cattle numbers that do not have QSBCs. In 2000, the 45 QSBCs received a total of about $80 million in assessments. QSBCs retained about $40 million and remitted approximately $40 million to the Board.

The domestic assessment, due each time cattle are sold by a producer, is collected by the buyer or "collecting person" and remitted to the Board or QSBC. The term "producer" is defined as follows: "means any person who owns or acquires ownership of cattle; provided, however, that a person shall not be considered a producer within the meaning of this subpart if (a) the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee; or (b) the person (1) acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third-party, (2) resold such cattle no later than 10 days from the date on which the person acquired ownership, and (3) certified, as required by regulations prescribed by the Board and approved by the Secretary, that the requirements of this provision have been satisfied."

When cattle are sold within 10 days of purchase by a person who is not a producer under the above definition, the collecting person is not required to collect the $1 assessment from the person (seller), if the seller provides the collecting person with a Statement of Certification of Non-Producer Status on a form approved by the Board and the Secretary. The person claiming non-producer status must submit to the collecting person a Statement of Certification of Non-Producer Status "at the time of sale" in lieu of paying the assessment.

In a similar fashion this proposed modification to the regulations to permit producer directed payment of assessments would result in the collecting person, at the time of sale, collecting a document certifying the assessment had been paid in advance by the producer.

It is believed that this producer directed payment option would be used by producers of a relatively small share of all cattle sold. It would apply only to cattle of a producer's own production transported to another State under retained ownership for feeding prior to sale as slaughter cattle. Utilizing this option would permit a producer who retains ownership of cattle to ensure that the QSBC located in the State where the producer resides receives the $1 checkoff rather than the QSBC in the State in which the cattle are located when sold. This could increase checkoff revenue for many QSBCs such as those located in the southeastern United States that currently do not receive revenue from cattle owned and sold by producers residing in the southeastern States who use feedlots in States such as Texas, Kansas, Nebraska, Oklahoma, and Colorado to finish cattle before selling the cattle to packers.

Since States retain one-half of the $1-per-head checkoff for use in State directed programs, providing producers with the flexibility and the opportunity to direct payment of the assessment to their home State likely would increase revenue in many States such as Florida, Georgia, Alabama, and Mississippi with limited feedlot capacity.

The Department estimates that a maximum of $500,000 of the total $40 million currently retained annually by the 45 QSBCs would be redirected to States that currently do not receive revenue from cattle owned and sold by their producers. Approximately 6 million head, or 20 percent, of the estimated 30 million head of steers and heifers slaughtered annually are sold for slaughter under retained ownership. The Department estimates that assessments on up to one-sixth of the cattle (1 million head) would be paid in advance under this proposal to QSBCs.

The major cattle feeding States of Texas, Nebraska, Kansas, Colorado, and Oklahoma could reasonably be expected to account for up to 80 percent of the $500,000 in reduced revenue to QSBCs annually. These States collect an average of $8 million annually and retain one-half that amount or $4 million. Assuming that the revenue to each of these five States available for State directed programs was reduced by an average of $80,000, it would represent a 2-percent decrease in the average revenue available for State directed programs in these States.

The remaining 40 QSBCs have annual State budgets that average about $500,000. An estimated net increase in annual income for these States, as a result of the advance payment of assessments, could average up to $10,000 per State representing a 2-percent increase.

Producers desiring to direct payment of assessments could do so subject to the requirements of a new paragraph § 1260.311(f) which would read as follows:

"(f)(1) A producer who transports, prior to sale, cattle of that producer's own production to another State, may elect to make a directed payment of the $1-per-head assessment in advance to the QSBC in the State in which the producer resides, or to the Board if there is no QSBC in such State, provided that the producer fulfills the requirements set forth below:

(i) transports the cattle under retained ownership to a feedlot or similar location, and the cattle remain at such location, prior to sale, for a period not less than 30 days; and

(ii) the producer, at the time of transport, signs a Certification of Producer Directed Payment of Cattle Assessments form indicating that the assessment has been paid in advance. A copy of the certification form establishing the payment of the assessment shall be sent by the producer with the assessment when remitted to the QSBC or the Board. The producer also shall send a copy of the certification form to the feedlot operator at the time the cattle are delivered. A copy of the certification form also shall be given to the purchaser of the cattle by the feedlot operator at the time of sale.

(2) The certification form will include the following information:

1. Producer's Name.
2. Producer's social security number or Tax I.D. number.
3. Producer's address (street address or P.O. Box, city, State, and zip code).
4. Signature of Producer.
5. Producer's State of residence.
6. Number of cattle shipped to out of State feedyard under retained ownership.
7. Date cattle shipped.
8. State where cattle will be on feed.
9. Name of feedyard.
10. Address of feedyard.

(3) For those cattle for which the assessment has been producer directed and paid in advance pursuant to subparagraph (1) above, the purchaser of the cattle shall not be required to collect and remit the assessment, but shall maintain on file a copy of the Certification of Producer Directed Payment of Cattle Assessments form completed and signed by the producer who originally transported the cattle under retained ownership.

(4) For those cattle for which the assessment has been producer directed and paid in advance pursuant to subparagraph (1) above, copies of the completed Certification of Producer Directed Payment of Cattle Assessments form shall be maintained on file by the producer, the QSBC or the Board, the feedlot operator, and the purchaser of the cattle for 2 years."

List of Subjects in 7 CFR Part 1260

Advertising, Agricultural research, Imports, Marketing agreements, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that title 7 of the CFR part 1260 be amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation of part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

2. Paragraph (a) of § 1260.311 is revised to read as follows:

§ 1260.311 Collecting persons for purposes of collection of assessments.

* * * * *

(a) Except as provided in paragraphs (b), (c), and (f) of this section, each person making payment to a producer for cattle purchased in the United States shall collect from the producer an assessment at the rate of $1 per head of cattle purchased and shall be responsible for remitting assessments to the QSBC or the Board as provided in § 1260.312. The collecting person shall collect the assessment at the time the collecting person makes payment or any credit to the producer's account for the cattle purchased. The person paying the producer shall give the producer a receipt indicating payment of the assessment.

* * * * *

3. Paragraph (c) of § 1260.311 is revised to read as follows:

* * * * *

(c) In the States listed below there exists a requirement that cattle be brand inspected by State authorized inspectors prior to sale. In addition, when cattle

are sold in the sales transactions listed below in those States, these State authorized inspectors are authorized to, and shall, except as provided for in paragraph (f) of this section, collect assessments due as a result of the sale of cattle. In those transactions in which inspectors are responsible for collecting assessments, the person paying the producer shall not be responsible for the collection and remittance of such assessments. The following chart identifies the party responsible for collecting and remitting assessments in these States:

States	Sales through auction market	Sales to a slaughter/ packer	Sales to a feedlot	Sales to an order buyer/ dealer	Country sales [1]
Arizona	CP	CP	CP	B	B
California	CP	CP	B	B–CP	B
Colorado	CP	B	B	B	B
Idaho	CP	CP	B	B	B
Montana	CP	B	B	B	B
Nebraska	CP	CP	B–CP	B–CP	B–CP
Oregon	CP	B–CP	B	B	B
New Mexico	CP	B–CP	B–CP	B–CP	B–CP
Utah	CP	B–CP	B	B	B
Washington	CP	CP	B	B–CP	B
Wyoming	CP	B	B	B	B

Key:
B—Brand inspector has responsibility to collect and remit assessments due.
CP—The person paying the producer shall be the collecting person and has responsibility to collect and remit the assessments due.
B–CP—Brand inspector has responsibility to collect; however, when there has not been a physical brand inspection the person paying the producer shall be the collecting person and has the responsibility to collect and remit assessments due.
[1] For the purpose of this subpart, the term "country sales" shall include any sales not conducted at an auction or livestock market and which is not a sale to a slaughter/packer, feedlot, or order buyer or dealer.

* * * * *

4. A new paragraph (f) of § 1260.311 is added to read as follows:

(f)(1) A producer who transports, prior to sale, cattle of that producer's own production to another State, may elect to make a directed payment of the $1-per-head assessment in advance to the QSBC in the State in which the producer resides, or to the Board if there is no QSBC in such State, provided that the producer fulfills the requirements set forth below:

(i) transports the cattle under retained ownership to a feedlot or similar location, and the cattle remain at such location, prior to sale, for a period not less than 30 days; and

(ii) the producer, at the time of transport, signs a Certification of Producer Directed Payment of Cattle Assessments form indicating that the assessment has been paid in advance. A copy of the certification form establishing the payment of the assessment shall be sent by the producer with the assessment when remitted to the QSBC or the Board. The producer also shall send a copy of the certification form to the feedlot operator at the time the cattle are delivered. A copy of the certification form also shall be given to the purchaser of the cattle by the feedlot operator at the time of sale.

(2) The certification form will include the following information:

1. Producer's Name.
2. Producer's social security number or Tax I.D. number.
3. Producer's address (street address or P.O. Box, city, State, and zip code).
4. Signature of Producer.
5. Producer's State of residence.
6. Number of cattle shipped to out of State feedyard under retained ownership.
7. Date cattle shipped.
8. State where cattle will be on feed.
9. Name of feedyard.
10. Address of feedyard.

(3) For those cattle for which the assessment has been producer directed and paid in advance pursuant to paragraph (f)(1) of this section, the purchaser of the cattle shall not be required to collect and remit the assessment, but shall maintain on file a copy of the Certification of Producer Directed Payment of Cattle Assessments form completed and signed by the producer who originally transported the cattle under retained ownership.

(4) For those cattle for which the assessment has been producer directed and paid in advance pursuant to paragraph (f)(1) of this section, copies of the completed Certification of Producer Directed Payment of Cattle Assessments form shall be maintained on file by the producer, the QSBC or the Board, the feedlot operator, and the purchaser of the cattle for 2 years.

Dated: October 12, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 01–26394 Filed 10–18–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 852

RIN 1901–AA90

Guidelines for Physicians Panel Determinations on Worker Requests for Assistance in Filing for State Workers' Compensation Benefits

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking; announcement of public hearing.

SUMMARY: This document announces a public hearing to be held on October 25, 2001, in order to obtain comments regarding a notice of proposed rulemaking published in the **Federal Register** on September 7, 2001. This is the second public hearing held on this proposed rulemaking. The first hearing was held on October 10, 2001, at the Forrestal Building in Washington, D.C. Testimony submitted at that hearing can be found at the Office of Advocacy website: www.eh.doe.gov/advocacy. Testimony submitted at the October 25 hearing will also be made available at this website.

DATES: Oral views, data, and arguments may be presented at the public hearing, beginning at 4 p.m. on October 25, 2001. DOE must receive requests to speak at the public hearing and a fax of your statements no later than 4 p.m., October 24, 2001. DOE is requesting that speakers bring four (4) copies of their written comments and prepared statements for the public hearing.

ADDRESSES: Those wishing to speak should contact Judy Keating at 202–586–7551, and fax a copy of their statements to Ms. Keating at 202–586–6010 in advance of the meeting (no later than 4 p.m. October 24, 2001). DOE requests that speakers bring four (4) copies of their statements to distribute to the media and the public. Speakers who have not preregistered will be allowed to speak once all registered speakers are heard. The meeting will not conclude until all those wishing to speak are heard.

The hearing will begin at 4 p.m. at the Radisson Hotel Cincinnati Airport (adjacent to the Cincinnati-Northern Kentucky International Airport in Hebron, Kentucky). You can find more information concerning public participation in this rulemaking proceeding in Section IV, "Opportunity for Public Comment," of the previously published notice of proposed rulemaking (66 FR 46742).

Written comments can continue to be addressed to Ms. Loretta Young, Office of Advocacy, EH–8, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, "PHYSICIAN PANEL RULE COMMENTS." The deadline for receiving written comments is November 8, 2001.

FOR FURTHER INFORMATION CONTACT: Judy Keating, Office of Advocacy, EH–8, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585; (202) 586–7551; fax: 202–586–6010; e-mail: *judy.keating@eh.doe.gov.*

Issued in Washington, DC, on October 17, 2001.

Steven Cary,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 01–26510 Filed 10–17–01; 12:29 pm]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–20–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. CFM56–5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to CFM International, S.A. (CMFI) CFM56–5 series turbofan engines. This proposal would require replacement of the magnetic drain plug on certain part number (P/N) air turbine engine starters manufactured by Honeywell Engines & Systems. This proposal is prompted by three instances of uncontained air turbine engine starter failures, resulting in cowl damage. The actions specified by the proposed AD are intended to prevent uncontained failure of the starter and possible damage to the airplane.

DATES: Comments must be received by December 18, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–20–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov.* Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from Honeywell Engines & Systems, Technical Publications Department, 111 South 34th Street, Phoenix, Arizona 85034; telephone (602) 365–5535, fax (602) 365–5577.This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–20–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–20–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA has received three reports of uncontained failures of air turbine starters that resulted in cowl damage. A number of air turbine starters have been damaged by running without oil. Investigations of the incidents have shown that over torque of the magnetic drain plug, P/N 572–510–9004, can result in the failure of the plug, which can allow oil to drain from the starter housing. Failure of the plug may not be immediately evident when it is over torqued. Replacement of the existing magnetic drain plug, P/N 572–510–9004, with a new redesigned magnetic drain plug, P/N 572–8510–9152, would reduce the potential for oil loss from the turbine starter if the plug is inadvertently over torqued, and would prevent uncontained failure of the starter due to loss of oil and possible damage to the airplane.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Honeywell Service Bulletin 3505582–80–1706, dated March 8, 2000, that describes procedures for replacing magnetic drain plugs, P/N 572–510–9004 and packings, P/N S9413–555, with new redesigned drain plugs P/N 572–8510–9152, and packings, P/N S3225–905; and re-

marking the air turbine engine starter with a new P/N.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other CFMI CFM56–5 series turbofan engines of the same type design, with Honeywell Engines & Systems air turbine engine starters, P/N's 3505582–2, 3505582–3, 3505582–4, 3505582–12, 3505582–14, 3505582–15, 3505582–22, and 3505582–23, installed, the proposed AD would require the following actions within 500 cycles-in-service after the effective date of the proposed AD:

- Replacement of magnetic drain plug, P/N 572–510–9004, with a new redesigned magnetic drain plug, P/N 572–8510–9152.
- Replacement of packing, P/N 39413–555, with packing, P/N S3225–905.
- Re-marking of the air turbine engine starter after replacement of the magnetic drain plug.

Cost Analysis

The FAA estimates that about 512 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 0.1 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $787 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $406,016.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

CFM International, S.A.: Docket No. 2001–NE–20–AD.

Applicability

This airworthiness directive (AD) is applicable to CFM International, S.A. CFM56–5 series turbofan engines with Honeywell Engines & Systems air turbine engine starters, part numbers (P/N's) 3505582–2, 3505582–3, 3505582–4, 3505582–12, 3505582–14, 3505582–15, 3505582–22, and 3505582–23 installed. These engines are installed on, but not limited to Airbus Industries A318, A319, A320, A321 and A340 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required within 500 cycles-in-service after the effective date of this AD, unless already done.

To prevent uncontained failure of the starter due to loss of oil and possible damage to the airplane, do the following:

(a) Replace the magnetic drain plug, P/N 572–510–9004, with a new redesigned magnetic drain plug P/N 752–8510–9152; replace the packing P/N S3225–905, with packing P/N 39413–555, and remark the air turbine engine starter in accordance with paragraphs 2.A. through 2. C. of the Accomplishment Instructions of Honeywell Service Bulletin 3505582–80–1706, dated March 8, 2000.

(b) Replenish the air turbine starter.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Special Flight Permits

(d) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on October 11, 2001.

Donald E. Plouffe,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–26325 Filed 10–18–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2001–10286; Airspace Docket No. 01–AEA–11]

RIN 2120–AA66

Proposed Amendment of Restricted Area R–5201, Fort Drum, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the designated altitudes for Restricted Area R–5201 (R–5201), Fort Drum, NY, by designating the ceiling of the airspace at 23,000 feet mean sea level (MSL) on a year-round basis. Currently, the upper altitude limit for the restricted area changes between 23,000 feet MSL from April 1 through September 30; and 20,000 feet MSL, from October 1 through March 31. Increased training requirements at Fort Drum have resulted in a regular need for restricted airspace up to 23,000 feet MSL throughout the year. This proposed modification would not change the current boundaries, time of designation, or activities conducted in R–5201.

DATES: Comments must be received on or before December 3, 2001.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation; Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket numbers FAA–2001–10286/Airspace Docket No. 01–AEA–11 at the beginning of your comments.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Nos. FAA–2001–10286/Airspace Docket No. 01–AEA–11." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to: Moira D. Keane, Environmental Specialist, FAA, Eastern Regional Air Traffic Division, 1 Aviation Plaza, Jamaica, NY 11434. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661) using a modem and suitable communications software.

Internet users may reach the FAA's web page at *http://www.faa.gov* or the **Federal Register**'s web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may also obtain a copy of this NPRM by submitting a request to the FAA, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Background

Restricted airspace at Fort Drum, NY, dates back to at least the 1960's. The current designated altitudes for the restricted area were based on past use of the installation as a National Guard facility which had primarily seasonal training requirements. The higher altitude designated for the period April 1 through September 30 reflected increased use of the restricted area by reserve components during annual summer training periods. In 1985, an U.S. Army unit, the 10th Mountain Division, was activated at Fort Drum with a full time, year-round training requirement. In addition, over the years, use of R–5201 has increased by U.S. Air Force units. The reduction of R–5201's upper limit to 20,000 feet MSL during the period October 1 through March 31 has increasingly become a limiting factor to the year-round training needs at Fort Drum.

The Proposal

The FAA is considering an amendment to 14 CFR part 73 to amend the designated altitudes of R–5201 Fort Drum, NY. Specifically, this action proposes to change the designated altitudes for R–5201 from "Surface to 23,000 feet MSL, April 1 through September 30; surface to 20,000 feet MSL, October 1 through March 31" to "Surface to 23,000 feet MSL." This proposal would delete the seasonal changes to the upper altitude limit and establish 23,000 feet MSL as the upper altitude limit on a year-round basis. The 20,000 feet MSL limit adversely affects training at Fort Drum and requires units to alter their training profiles when 23,000 feet is not available. This is disruptive to training continuity and precludes the most cost-effective accomplishment of training activities. The U.S. Army has proposed this modification to better accommodate existing and forecast training requirements at Fort Drum. This action would not change the current boundaries, time of designation, or activities conducted within R–5201. Thus, as under the current rule, the restricted area's designated altitude remains 23,000 feet MSL at all times between April 1 and September 30. Under the proposed rule, the restricted area's designated altitude would change from 20,000 feet MSL to 23,000 feet MSL for the October 1 to March 31 period. Because the time of designation is not being amended, between October 1 and March 31, the restricted area would continue to be in effect only between 0600 and 1800 local time, unless a Notice to Airmen is issued 48 hours in advance; and it would continue to be in effect continuously between April 1 and September 30.

Section 73.52 of 14 CFR part 73 was republished in FAA Order 7400.8J, dated September 20, 2001.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to the appropriate environmental analysis in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.52 [Amended]

2. § 73.52 is amended as follows:

* * * * *

R–5201 Fort Drum, NY [Amended]

By removing "Designated altitudes. Surface to 23,000 feet MSL, April 1 though September 30; surface to 20,000 feet MSL, October 1 through March 31" and substituting "Designated altitudes. Surface to 23,000 feet MSL" in its place.

* * * * *

Issued in Washington, DC on October 12, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–26462 Filed 10–18–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–019]

Standards for Business Practices of Interstate Natural Gas Pipelines

October 12, 2001.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend its regulations governing standards for conducting business practices with interstate natural gas pipelines to require that interstate pipelines permit releasing shippers to recall released capacity and renominate that recalled capacity at any of the scheduling opportunities provided by interstate pipelines. The proposed rule is designed to synchronize the Commission's regulation of recalled capacity with its standards for intra-day nominations and to provide releasing shippers with increased flexibility in structuring capacity release transactions.

DATES: Comments are due November 19, 2001.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283.

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507.

SUPPLEMENTARY INFORMATION:

Standards for Business Practices of Interstate Natural Gas Pipelines

[Docket Nos. RM96–1–019]

Regulation of Short-Term Natural Gas Transportation Services;

[Docket No. RM98–10–008]

Regulation of Interstate Natural Gas Transportation Services

[Docket No. RM98–12–008]

The Federal Energy Regulatory Commission (Commission) proposes to amend § 284.12(c)(1)(ii) of its open access regulations to require that interstate pipelines permit releasing shippers to recall released capacity and renominate that recalled capacity at any of the scheduling opportunities provided by interstate pipelines. The proposed rule is intended to create more flexibility for firm capacity holders on interstate pipelines by synchronizing the Commission's regulation of recalled capacity with its standards for intra-day nominations. The proposed rule is intended to benefit the public by providing firm capacity holders with increased flexibility in structuring capacity release transactions that will result in enhanced competition across the interstate pipeline grid.

I. Background

In Order No. 636, the Commission adopted regulations permitting shippers (releasing shippers) to release their capacity to other shippers (replacement shippers).[1] Under these regulations, releasing shippers were permitted to "release their capacity in whole or in part, on a permanent or short-term basis, without restriction on the terms and conditions of the release."[2] The regulation permits releasing shippers to impose terms on a release transaction under which the releasing shipper reserves the right to recall that capacity to use the capacity itself. As an example, a shipper might include a recall condition in the event that temperature drops below a pre-determined level.[3]

In July 1996, in Order No. 587,[4] the Commission incorporated by reference consensus standards approved by the Gas Industry Standards Board (GISB) designed to standardize business practices and communication protocols of interstate pipelines in order to create a more integrated and efficient pipeline grid. GISB is a private, consensus standards developer composed of members from all segments of the natural gas industry.

One aspect of GISB's standards adopted in Order No. 587 covered capacity release transactions. Of relevance here, two standards, 5.3.6 and 5.3.7, apply to recalls of capacity release transactions.

Standard 5.3.6: If the releasing shipper wishes to recall capacity to be effective for a gas day, the notice should be provided to the transportation service provider and the acquiring shipper no later than 8 A.M. Central Clock Time on nomination day.[5]
Standard 5.3.7: There should be no partial day recalls of capacity. Transportation service providers should support the function of reputting by releasing shippers.[6]

In this context, a partial day recall refers to a recall condition that applies only to part of gas day, rather than the full gas day.[7]

In 1996, when GISB first adopted these standards, GISB's standards provided for one nomination, at 11:30 a.m. CCT[8] for the next gas day and only one intra-day nomination at an indeterminate time. In order to create a more standardized intra-day nomination schedule,[9] GISB amended its standards to provide for three standardized intra-day nomination opportunities: an Evening nomination at 6 p.m. CCT to take effect on the next gas day, an Intra-Day 1 nomination at 10 a.m. CCT to take effect at 5 p.m. CCT on the same gas day, and an Intra-Day 2 nomination at 5 p.m. CCT to take effect at 9 p.m. CCT on the same gas day.[10] GISB, however, has not amended its capacity release-recall standards to take into account its adoption of these standardized intra-day nomination opportunities.

In Order No. 637, the Commission adopted § 284.12(c)(1)(ii) of its regulations which requires interstate pipelines to "permit shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity."[11] The purpose of this regulatory change was to permit capacity release transactions to take place on an intra-day basis so that released capacity can compete with pipeline capacity on a comparable basis.[12] The adoption of § 284.12(c)(1)(ii) now permits shippers to acquire released capacity at any intra-day nomination opportunity and to nominate coincident with their acquisition of capacity.[13]

On February 1, 2001, GISB filed a report with the Commission, in Docket No. RM98–10–000, concerning its development of standards regarding partial day recalls of capacity. According to GISB, some members believed that partial day recalls fell within the purview of the scheduling equality requirements of Order No. 637, while others did not. Other members, GISB asserts, believe that partial day recalls are a valid business practice, irrespective of whether this practice is required by Order No. 637. Due to these disagreements, GISB reports it has been unable to reach consensus on how to proceed.

On March 16, 2001, AGA filed, in Docket Nos. RM98–10–008 and RM98–12–008,[14] a "Reply to February 1, 2001, Gas Industry Standards Board Report and Petition for Clarification and Directive from FERC Regarding Requirement for Capacity Release Scheduling Equality." AGA argues that the Commission should require pipelines to allow partial day recalls as part of their compliance with § 284.12(c)(1)(ii). Ten comments to AGA's request were filed.[15]

II. Discussion

The Commission is proposing to revise § 284.12(c)(1)(ii) of its regulations to require pipelines to permit recalls of capacity at each nomination opportunity. Specifically, the Commission is proposing to require pipelines to permit shippers to recall released capacity and renominate such recalled capacity at each nomination opportunity provided by the pipeline according to the notice and bumping provisions applicable to interruptible shippers.[16]

This proposal will enable releasing shippers to coordinate recalls of capacity release transactions and renominations of that capacity with the current intra-day nomination cycle. Under this proposal, recall rights would operate according to the same timelines that now apply to interruptible transportation.

This proposal is intended to ensure that the regulations relating to capacity release recalls remain consistent with the original intent of the Commission's capacity release regulations by providing releasing shippers with the flexibility to structure capacity release transactions that best fit their business needs. The proposal also seeks to foster greater competition for pipeline capacity by creating parity between scheduling of capacity release transactions and scheduling of pipeline interruptible service. By enabling releasing shippers to recall and renominate capacity quickly, they will have greater incentive to release capacity, providing capacity purchasers with an alternative to purchasing pipeline interruptible service. At the same time, this proposal will provide replacement shippers whose capacity is recalled the same advance notice and

[1] 18 CFR 284.8 (2001).

[2] 18 CFR 284.8(b).

[3] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,939, at 30,418 (Apr. 8, 1992).

[4] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038 (Jul. 17, 1996).

[5] 18 CFR 284.12(b)(1)(v) (2001), Capacity Release Related Standard 5.3.6.

[6] 18 CFR 284.12(b)(1)(v) (2001), Capacity Release Related Standard 5.3.7.

[7] Under the GISB standards, a gas day runs from 9 a.m. central clock time (CCT) on Day 1 to 9 a.m. CCT the next day (Day 2). 18 CFR 284.12(b)(1)(i), Nominations Related Standards 1.3.1.

[8] CCT refers to Central Clock Time, which includes an adjustment for day light savings time. *See* 18 CFR § 284.12(b)(1)(i), Nominations Related Standards 1.3.1.

[9] *See* Order No. 587–C, 62 FR at 10687, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,050, at 30,585 (rejecting a proposed GISB intra-day nomination standard for being vague and non-standardized and providing additional time for GISB to develop a standardized intra-day nomination schedule).

[10] 18 CFR 284.12(b)(1)(i) (2001), Nominations Related Standard 1.3.2.

[11] 18 CFR 284.12(c)(1)(ii) (2001).

[12] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156, 101–58–60 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091, at 31,297 (Feb. 9, 2000).

[13] Prior to Order No. 637, GISB's existing capacity release nomination standards had not been amended to reflect the intra-day nomination standards. Thus, prior to Order No. 637, a shipper acquiring released capacity had to acquire the capacity and notify the pipeline by 9 a.m. CCT to nominate at 11:30 a.m. CCT for the next gas day and could not avail itself of any intra-day nomination opportunities for the current gas day.

[14] Because the Commission is issuing this NOPR on the issues raised in the AGA filing, Docket Nos. RM98–10–008 and RM98–12–008 are being terminated.

[15] Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities (ConEd), Delmarva Power & Light Company (Delmarva), Duke Energy Gas Transmission (Algonquin Gas Transmission Company, East Tennessee Natural Gas Co., Egan Hub Partners, L.P., and Texas Eastern Transmission, L.P.) (DEGT), Dynegy Marketing and Trade (Dynegy), El Paso Pipeline Companies (El Paso), Enron Interstate Pipelines (Enron), Interstate Natural Gas Association of America (INGAA), Keyspan Delivery Companies (Keyspan), Natural Gas Supply Association (NGSA), Public Service Commission of the State of New York (PSCNY).

[16] The Commission also is proposing to rescind the incorporation by reference of GISB standard 5.3.6 (which requires notice of capacity release recalls by 8 a.m. CCT) and the first sentence of GISB Standard 5.3.7 (which prohibits partial day recalls of capacity). The Commission is retaining the portion of Standard 5.3.7 that requires transportation service providers to "support the function of reputting by releasing shippers." Reputting refers to the ability of a releasing shipper to include a condition in a release under which it can recall capacity when needed and, after the recall has ended, the capacity will revert (be reputted) to the replacement shipper, without the need for a new release.

protection from bumping as is provided to interruptible shippers under the Commission's regulations.

The Commission has placed great reliance on GISB's development of consensus standards, because the industry is the most knowledgeable about how it operates and it is the industry that must operate under these standards.[17] However, when GISB has been unable to reach consensus on issues concerning Commission policy, the Commission has resolved the policy dispute so that the standards development process can continue.[18]

A consensus of GISB's membership adopted its current standards for capacity release recalls when GISB's standards provided for only one nomination a day, at 11:30 a.m. CCT and a single non-standardized intra-day nomination . But the circumstances under which the recall standards were developed have markedly changed as the number of nomination opportunities have now expanded to four nomination opportunities. At the same time, it is apparent that the consensus supporting GISB's existing recall standards no longer exists, and GISB itself has recognized that it can no longer make progress in resolving this issue. In these circumstances, the Commission must resolve the policy question regarding partial day recalls.

In Order No. 636, the Commission established the capacity release mechanism to create competition with pipeline firm and interruptible transportation.[19] One of the fundamental tenets of the Commission's capacity release regulations is that releasing shippers have the opportunity to establish any recall conditions for their capacity. Section 284.8(b) expressly permits shippers to "release their capacity in whole or in part, on a permanent or short-term basis, *without restriction on the terms and conditions of the release.*"[20] In Order No. 636–A, the Commission recognized that "a releasing shipper may include terms and conditions, such as recall rights, that will ensure it has adequate peak day capacity."[21] Thus, all recall conditions, including partial day recalls are consistent with the Commission's regulations. Moreover, in Order No. 637, the Commission sought to create greater scheduling parity between capacity release transactions and pipeline services by enabling capacity release transactions to take place on an intra-day basis at each of the four scheduling opportunities.[22] While this regulatory change enables shippers to release capacity at any nomination opportunity, the existing GISB recall standards do not permit releasing shippers to take full advantage of the intra-day nomination opportunities by recalling the capacity and renominating that capacity at each of the four scheduling opportunities. Allowing partial day recalls is, therefore, consistent with the overall regulatory changes promulgated in Order No. 637.

Permitting partial day recalls will add flexibility to shippers' rights and will better enable releasing shippers to offer released capacity that competes with the pipelines' interruptible service. The current GISB standards inhibit the ability of releasing shippers to release capacity because of their inability to quickly reclaim capacity when they require it for their own use. For example, under the current GISB standards, a releasing shipper that meets the 8 a.m. CCT notification time is unable to recall its capacity and submit a timely nomination for the next gas day at the 6 p.m. CCT Evening Nomination cycle. Moreover, a shipper that misses the 8 a.m. CCT recall notification time will miss four nomination opportunities and will be unable to have its volume flow until 48 hours after it submits the recall notification.[23]

As a result of such lengthy delays, releasing shippers may not be able to use their recall rights as effectively as possible to ensure that they can retain adequate peak day capacity for their own needs. The delay in rescheduling recalled capacity also can have an adverse competitive impact on the market by reducing the amount of capacity available for release. As AGA points out, if an LDC is a provider of last resort under a state unbundling initiative and is given notice that insufficient supply is being delivered to its city-gate, the LDC will need to recall released capacity for later in the same day or, at least, for the next day. If a partial day recall right is not provided, a releasing shipper with supplier-of-last-resort obligations will be reluctant to release capacity at all since it will not be able to recall that capacity when it is needed. In that event, shippers seeking capacity will have fewer alternatives to purchasing pipeline interruptible service.

Under the Commission's proposal, the releasing shipper would be able to recall and renominate its capacity in accordance with the current nomination and scheduling timelines. For example, the shipper could notify the pipeline of its recall and renomination at the 10 a.m. CCT Intra-Day 1 nomination cycle and submit a new nomination that will become effective at 5 p.m. CCT on the same day. In processing recalls and renominations, the pipeline would follow the applicable GISB nomination standard (standard 1.3.2) in terms of providing notice to the bumped replacement shipper.

The replacement shipper also will receive the same protection against loss of service as do interruptible shippers. In Order No. 587–G, the Commission determined that interruptible shippers could be bumped by firm intra-day nominations at the first three nomination opportunities, but could not be bumped at the third intra-day nomination opportunity (5 p.m. CCT nomination, with scheduled volumes by 9 p.m. CCT). The Commission provided this protection against bumping to provide stability in the nomination system, so that shippers can be confident by late afternoon that they will receive their scheduled flows.[24] This rationale seems to apply equally to replacement shippers so that they would not have to monitor the status of their nominations after 5 p.m. CCT.

In their comments on AGA's March 16, 2001 filing, the pipelines (INGAA, DEGT, El Paso Pipeline Companies, Enron) are not opposed to some revision of the GISB standards to liberalize the recall conditions. They maintain that allowing partial day recalls requires resolution of a number of issues such as notification of the replacement shipper that its capacity is being recalled, operational provisions to ensure that the recalled party does not continue to flow gas, billing issues regarding the use of capacity for part of a day, and scheduling and nomination issues.

The Commission's proposal here is designed so as not to cause operational problems for pipelines. Some pipelines already have implemented partial day recall provisions on their systems.[25] Partial day recalls should not adversely affect scheduling procedures, since under the Commission's proposal, recalls will take place under the same nomination timeline currently used for nominating and scheduling firm and interruptible service, including bumping of interruptible service. Order No. 637 already requires pipelines to implement procedures to allocate capacity and potential imbalances and penalties associated with partial day releases, so the same procedures can be used for partial day recalls.[26]

In their comments on AGA's March 16, 2001 filing, NGSA and Dynegy oppose partial day recalls. They maintain that flowing or partial day recalls undermine system reliability, because they may shut in production or result in scheduling problems, overruns, penalties, or operational flow orders. They claim that if capacity is recalled, the replacement shippers (whose capacity is recalled) may be unable to obtain replacement capacity within the same day. They further contend that flowing day recalls may undermine competition. They assert that if flowing day recalls become the default method of doing business, such recall rights will result in lowering the value of released capacity. As a consequence, they maintain, shippers may be left with no alternative other than purchasing capacity from the pipeline.

As discussed above, the use of partial day recalls should create no additional scheduling problems since recalls will be scheduled according to the existing scheduling requirements. In effect, releasing shippers using partial day recalls are creating another form of interruptible transportation to compete with pipeline interruptible capacity and shippers purchasing recallable capacity should be subject to the same scheduling rules that apply to interruptible transportation. Partial day recalls will be no more likely to result in shut-in production than interruptible transactions that are subject to being bumped under the current standards.

As discussed earlier, permitting partial day recalls should not reduce competition, as Dynegy and NGSA assert, but should enhance competition as capacity that previously was not released because of concerns about recall rights becomes available as an alternative to pipeline interruptible service. Dynegy and NGSA appear to assume that if partial day recalls are not permitted, shippers will nonetheless release the same amount of capacity. However, as AGA points out, if LDCs or other shippers need to recall capacity to ensure their own peak day capacity, they may be reluctant to release capacity at all without some assurance of the ability to recall. Since Order No. 636, the Commission has proceeded under the assumption that the best way to improve access to capacity is to provide flexibility for releasing shippers to establish the terms and conditions of releases. While including partial day recalls may make some capacity releases less valuable to replacement shippers, as Dynegy and NGSA assert, the replacement shippers will know the terms of releases upfront and can determine whether to purchase that capacity or seek more reliable capacity, and can take the recall conditions into account in determining how much the capacity is worth.

III. Notice of Use of Voluntary Consensus Standards

Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that federal agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation containing a standard identifying whether a voluntary consensus standard or a government-unique standard is being proposed. In this NOPR, the Commission is proposing to issue its own regulation, because the existing GISB standard has not been revised to take into account changed circumstances, there is no longer consensus supporting this standard, and the existing standard fails to reflect Commission policy.

IV. Information Collection Statement

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimate includes the costs of modifying, preparing and submitting tariff changes to reflect compliance with the Commission's proposed regulation to require pipelines to permit shippers to recall released capacity and renominate such recalled capacity at each nomination opportunity provided by the pipeline. Adoption of the proposed regulation will not place additional burdens on pipelines, because the regulation will require pipelines to use existing nomination procedures and protocols. The one-time tariff filing will not result in on-going costs.

Public Reporting Burden: (Estimated Annual Burden).

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–545	93	1	38	3,534

Total Annual Hours for Collection (Reporting and Recordkeeping, (if appropriate)) = 3,534.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:

[17] Order No. 587, 61 FR at 39057 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038, at 30,059 (resolving dispute over bumping of interruptible service by firm service).

[18] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30–668–72 (Apr. 16, 1998).

[19] Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶30,950, at 30,556 (Aug. 3, 1992) ("competition between pipeline capacity and released capacity helps ensure that customers pay only the competitive price for the available capacity").

[20] 18 CFR 284.8(b) (emphasis added).

[21] Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,558 (Aug. 3, 1992).

[22] 18 CFR 284.12(c)(1)(ii) (2001) (permitting shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity).

[23] A releasing shipper that misses the 8 a.m. CCT notification time cannot renominate that capacity until 11:30 a.m. CCT the next day, a nomination under which gas will not flow until 9 a.m. CCT the day after.

[24] Order No. 587–G, 63 FR at 20078, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30,671–72 (Apr. 16, 1998).

[25] *See* Dominion Transmission, Inc., 95 FERC ¶ 61,316 (2001); National Fuel Gas Supply Corporation, 96 FERC ¶61,182 (2001).

[26] While the pipeline should propose reasonable default procedures for allocating capacity, imbalances, and penalties among releasing and replacement shippers, releasing shippers also may deviate from the default provision by including in their notices of release differing provisions for allocating capacity, imbalances, and penalties between them and the replacement shipper. *See* Texas Gas Transmission Corporation, 89 FERC ¶61,096, at 61,274 (1999) (releasing shippers can revise pipeline default provisions by including different allocation methodologies in their release notices).

	FERC–545
Annualized Capital/Startup Costs	$198,857
Annualized Costs (Operations & Maintenance)	0
Total Annualized Costs	198,857

Total Annualized costs for all respondents: $198,857.

OMB regulations[27] require OMB to approve certain information collection requirements imposed by agency rule. Respondents subject to the filing requirements of this proposed rule shall not be penalized for failing to respond to these collections of information unless the collection(s) of information display a valid OMB control No(s). These proposed reporting requirements if adopted, will be mandatory. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal).

Action: Proposed collection.

OMB Control No.: 1902–0154.

Respondents: Business or other for profit, (Interstate natural gas pipelines (Not applicable to small business.)).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of Information: This proposed rule, if implemented, would require pipelines to permit shippers to recall release capacity and renominate such recalled capacity at each nomination opportunity provided by the pipeline. This requirement is necessary to increase the efficiency of the pipeline grid.

The information collection requirements of this proposed rule will be reported directly to the industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act to monitor activities of the natural gas industry to ensure its competitiveness and to assure the improved efficiency of the industry's operations. The Commission's Office of Markets, Tariffs and Rates will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process. Internal Review: The Commission has reviewed the requirements pertaining to business practices and electronic communication with natural gas interstate pipelines and made a determination that the proposed revisions are necessary to establish a more efficient and integrated pipeline grid. Requiring such information ensures both a common means of communication and common business practices which provide participants engaged in transactions with interstate pipelines with timely information and uniform business procedures across multiple pipelines. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, e-mail: *michael.miller@ferc.fed.us*].

Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7318, fax: (202) 395–7285].

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[28] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[29] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[30] Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[31] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments may be filed either in paper format or electronically. Those filing electronically do not need to make a paper filing.

For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426 and should refer to Docket No. RM96–1–019.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *www.ferc.gov* and click on "Make An E-Filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filing is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the e-mail address.

All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to *rimsmaster@ferc.fed.us*.

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's homepage (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's homepage on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Documents & Filing link. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Documents & Filing link. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Web site during normal business hours from our Help line at (202) 208–2222 (e-mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (e-mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Web site are available. User assistance is also available.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

The Commission Orders

Docket Nos. RM98–10–008 and RM98–12–008 are terminated.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. Section 284.12 is amended as follows:

a. Paragraph (b)(1)(v) is revised.

b. The heading of paragraph (c)(1)(ii) is revised, and the text of paragraph of (c)(1)(ii) is designated as (c)(1)(ii)(A).

c. Paragraph (c)(1)(ii)(B) is added.

The revised and added text reads as follows:

§ 284.12 Standards for pipeline business operations and communications.

* * * * *

(b) * * *

(1) * * *

(v) Capacity Release Related Standards (Version 1.4, August 31, 1999), with the exception of Standard 5.3.6 and the first sentence of Standard 5.3.7.

* * * * *

(c) * * *

(1) * * *

(ii) Capacity release scheduling.

(A) * * *

(B) A pipeline must permit shippers to recall released capacity and renominate such recalled capacity at each nomination opportunity provided by the pipeline according to the notice and bumping provisions applicable to interruptible shippers.

* * * * *

[FR Doc. 01–26328 Filed 10–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK37

Acceptable Evidence From Foreign Countries

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulation concerning evidence that is received from foreign countries. The intended effect of this amendment is to present the existing regulation in plain language.

DATES: Comments must be received on or before December 18, 2001.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK37." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7228. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: VA proposes to rewrite 38 CFR 3.202 in plain language. The current regulation, located in subpart A of part 3, discusses when and how evidence from foreign countries must be authenticated. VA proposes to create new § 3.2420 to restate the current regulation. The proposed section would be located in Subpart D, Universal Adjudication Rules That Apply to Benefit Claims Governed by part 3 of this Title.

Paragraph (a) of proposed § 3.2420 states when authentication of the signature of officials of foreign countries is required and who may provide authentication. This is a restatement of the first sentence of paragraph (a) of current § 3.202.

Paragraph (b) of proposed § 3.2420 addresses who may authenticate signatures of foreign government officials when the authentication called for in paragraph (a) of this section is not available. This is a restatement of the last sentence of paragraph (a) and the text of paragraphs (a)(1) and (a)(2) of current § 3.202. We have eliminated the requirement that only the "nearest" United States Consular Officer may certify that the signature of an official of a foreign country has been investigated and found to be authentic. We believe that requirement is unnecessarily narrow and can be broadened without diminishing the integrity of VA's

[27] 5 CFR 1320.11.

[28] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[29] 18 CFR 380.4.

[30] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[31] 5 U.S.C. 601–612.

programs. We have, therefore, amended this provision to allow a United States Consular Officer from another country to authenticate the signature.

Paragraph (c) of proposed § 3.2420 lists categories of evidence from foreign countries that do not require authentication of signature. This is a restatement of paragraph (b) of current § 3.202.

Paragraph (d) of proposed § 3.2420 explains that photocopies of original documents are acceptable to VA when they are genuine and free from alteration. This is a restatement of paragraph (c) of current § 3.202.

This rulemaking reflects VA's goal of making government more responsive, accessible, and comprehensible to the public. The Plain Language Regulations Project was developed as a long-term comprehensive project to reorganize and rewrite in plain language the adjudication regulations in part 3 of title 38, Code of Federal Regulations. This proposed rule is one of a series of proposed revisions to those regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies assess anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule does not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(B), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The catalog of Federal Domestic Assistance Program numbers for this proposal are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, 64.100, and 64.127. 1

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: October 11, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.202 [Removed]

2. § 3.202 is removed.

Subpart D—Universal Adjudication Rules that Apply to Benefit Claims Governed by Part 3 of This Title

3. The authority citation for part 3, subpart D continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

4. § 3.2420 is added under the undesignated center heading "EVIDENCE REQUIREMENTS" to read as follows:

Evidence Requirements

§ 3.2420 Evidence from foreign countries.

(a) *Authentication of signature.* When the signature on an affidavit or other document signed under oath is authenticated by a government official of a foreign country, the signature of that official must in turn be authenticated by either:

(1) A United States Consular Officer in that jurisdiction, or

(2) The State Department (See § 3.108).

(b) *When there is no United States Consular Officer in that country.* If there is no United States Consular Officer in that country, the government official's signature may be authenticated by either:

(1) A consular agent of a friendly government whose signature and seal can be verified by the State Department, or

(2) A United States Consular Officer in another country who certifies that the signature was investigated and is authentic.

(c) *Authentication of signature not required.* Authentication of signature is not required for the following types of evidence:

(1) Documents approved by the Deputy Minister of Veterans Affairs, Department of Veterans Affairs, Ottawa, Canada,

(2) Documents that have the signature and seal of an officer authorized to administer oaths for general purposes,

(3) Documents signed before a VA employee authorized to administer oaths,

(4) Affidavits prepared in the Republic of the Philippines that are certified by a VA representative who is located there and has authority to administer oaths,

(5) Copies of public or church records from any foreign country used to establish birth, adoption, marriage, annulment, divorce, or death, if:

(i) The records have the signature and seal of the custodian of such records, and

(ii) There is no conflicting evidence on file, or

(6) Copies of public or church records from England, Scotland, Wales, or Northern Ireland used to establish birth, marriage, or death, when:

(i) The records have the signature or seal or stamp of the custodian of such records, and

(ii) There is no conflicting evidence on file.

(d) *Photocopies of documents acceptable.* Photocopies of original documents described in this section are acceptable to establish birth, death, marriage or relationship if VA is satisfied that they are genuine and free from alteration.

(Authority: 22 U.S.C. 4221; 38 U.S.C. 5712)

[FR Doc. 01–26382 Filed 10–18–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 055–OPP; FRL–7086–7]

Clean Air Act Proposed Full Approval of Operating Permit Program; Bay Area Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to approve the operating permit program of the Bay Area Air Quality Management District ("Bay Area" or "District"). The Bay Area operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdictions. EPA granted interim approval to the Bay Area operating permit program on June 23, 1995 but listed certain deficiencies in the program preventing full approval. Bay Area has revised its program to correct the deficiencies of the interim approval and this action proposes full approval of those revisions. The District has also made other revisions to its program since interim approval was granted and EPA is also proposing to approve most of those revisions in this action.

DATES: Comments on this proposed rule must be received in writing by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Acting Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. Attention: David Wampler. You can inspect copies of the Bay Area's submittals, and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105.

You may also see copies of the District's submitted operating permits program at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

The Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109–7799.

An electronic copy of Bay Area's operating permit program (Regulation 2, Rule 6) rules may be available via the Internet at *http://www.arb.ca.gov/drdb/ba/cur.htm*. However, the version of District Regulation 2, Rule 6 at the above internet address may be different from the version submitted to EPA for approval. Readers are cautioned to verify that the adoption date of Regulation 2, Rule 6 listed is the same as the rule submitted to EPA for approval. The official submittal is available only at the three addresses listed above.

FOR FURTHER INFORMATION CONTACT: David Wampler, EPA Region IX, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1256 or *wampler.david@epa.gov*.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

I. What Is the Operating Permit Program?
II. What Is Being Addressed in this Document?
III. Impact of Today's Proposed Full Approval on the District's SIP-Approved Federally-Enforceable State Operating Permits Program
IV. Are There Other Issues with the Program?
V. What Are the Program Changes That EPA Is Proposing to Approve?
VI. What Is Involved in this Proposed Action?
VII. Discussion on the Revision to the Definition of Potential to Emit
VIII. Public Comments

I. What Is the Operating Permit Program?

The CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One goal of the operating permit program is to improve compliance by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

II. What Is Being Addressed in This Document?

Bay Area submitted, via the California Air Resources Board (CARB) its initial operating permits program to EPA on March 23, 1995. Because the Bay Area's operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval of the program, and conditioned full approval on the District revising its program to correct the deficiencies. The interim approval notice published on June 23, 1995 [60 FR 32606], described the program deficiencies and revisions that had to be made in order for the Bay Area's program to receive full approval. Since that time, the Bay Area has revised, and the California Air Resources Board, on behalf of the Bay Area, has submitted a revision to the Bay Area's operating permit program; this revision was submitted May 30, 2001. This **Federal Register** notice describes the changes that have been made to the Bay Area operating permit program as submitted on May 30, 2001, and the basis for EPA proposing full approval of the program.

III. Impact of Today's Proposed Full Approval on the District's SIP-Approved Federally-Enforceable State Operating Permits Program

Concurrent with our action on June 23, 1995 to grant final interim approval to the Bay Area's title V program, EPA granted, pursuant to 40 CFR part 52, final approval to the District's Federally-Enforceable State Operating Permit Program (FESOP) which is contained in portions of Regulation 2, Rule 6, and the District's Manual of Procedures, Volume II, Part 3 (MOP) thereby incorporating the FESOP into the California SIP. In the process of correcting cited deficiencies in its operating permit program, the District also revised language in Regulation 2, Rule 6 related to its FESOP rule. Even though this proposed rulemaking action discusses the District's FESOP program, today's proposed approval is for part 70 purposes only. EPA is not proposing to approve, for SIP purposes under 40 CFR part 52, those portions of Regulation 2 Rule 6 that involve the FESOP program. We can only take action on the Regulation 2, Rule 6 for SIP purposes only after the State submits it to us.

IV. Are There Other Issues With the Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits

programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

EPA received a comment letter from one organization on what they believe to be deficiencies with respect to Title V programs in California. EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** notice published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

V. What Are the Program Changes That EPA Is Proposing To Approve?

As discussed in the June 23, 1995 [60 FR 32606] rulemaking, full approval of the Bay Area operating permit program was made contingent upon satisfaction of the following conditions:

Issue (1): Bay Area was required to provide a demonstration that each activity on its insignificant activities list is truly insignificant and is not likely to be subject to an applicable requirement. Alternatively, the District may establish emissions level cut-offs, in which activities emitting below the cut-offs would qualify as insignificant. In the latter case, the District must demonstrate that the cut-off emissions levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements. In addition, Bay Area must revise Regulation 2, Rule 6 to state that activities needed to determine the applicability of, or impose applicable requirements on, the facility may not qualify as insignificant activities. (§§ 70.5(c) and 70.4(b))

Rule Change: Instead of demonstrating that each activity on the Bay Area's insignificant activity list is truly insignificant, the District corrected this deficiency by establishing significant source emissions cut-offs below which activities would be insignificant. To implement this correction, the District amended Regulation 2, Rule 6, section 239 to define "significant source" as a source that has a potential to emit of more than 2 tons per year of any regulated air pollutant, or more than 400 lbs per year of any hazardous air pollutant. In addition, the application content section of rule 2–6–405 requires operating permit applications to identify and describe each permitted source at the facility and each source or other activity that is exempt from the requirements to obtain a permit or excluded from District rules or regulations under Regulation 2, Rule 1. Furthermore, all part 70 permit applications are required to contain a list of all applicable requirements that apply to each source (Rule 2–6–405.5). Finally, Section 2.1.2 of the Manual of Procedures ("MOP") requires applications to include other information necessary to implement and enforce other applicable requirements or determine the applicability of any such requirement on any source (whether permitted, exempt, or excluded) or any other activity.

Issue (2): Bay Area was required to include a term consistent with the Part 70 definition of "applicable requirement," and use that term consistently in rules 2–6–409.1, 2–6–409.2 and throughout the regulation.

Rule Change: The District corrected this deficiency by revising the definition of "applicable requirement" at 2–6–202 to include a reference to the federal definition of "applicable requirement" as defined in 40 CFR 70.2. They have also added the term to 2–6–409.1 and 409.2.

Issue (3): Bay Area rule 2–6–409 was required to be revised to ensure that permit terms and conditions assure compliance with all applicable requirements (§ 70.7(a)(1)(iv)) and that permits contain emission limitations and standards (§ 70.6(a)(1)) and compliance certification requirements (§ 70.6(c)(1)) that assure compliance with all applicable requirements. Prior to being revised, the rule only required the District's operating permits to include requirements for testing, monitoring, reporting, and recordkeeping sufficient to assure compliance with the terms and conditions of the permit and the applicable requirements themselves.

Rule Changes: The District corrected this deficiency by revising the permit content section of Rule 2–6–409, to: (1) Require that all applicable requirements be included in the permit; and (2) add requirements to the compliance schedule section of permit content requirements (see 2–6–409.10.3). Furthermore, Rule 2–6–409.7 already required that the permit contain a statement that the owner or operator must comply with all permit conditions and limitations set forth in the permit. These additions will ensure that the permits contain all necessary requirements to assure compliance with applicable requirements.

Issue (4): Bay Area was required to show that certifications signed by the responsible official affirmatively state that they are based on truth, accuracy, and completeness, and that the certifications be based on information and belief formed after reasonable inquiry. Bay Area needed to revise Rules 2–6–405.9, 2–6–502, and the MOP (Sections 4.5 and 4.7), and any other certification provisions to ensure that both elements are explicitly required. (§ 70.5(d))

Rule Change: The District corrected this deficiency by revising several parts of the rule. First, the District added the following to the permit content section at 409.20: "A certification requirement for all documents submitted pursuant to a major facility review permit. For applications, compliance certifications, and reports, the certification shall state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. The certifications shall be signed by a responsible official for the facility." Second, the District revised the application content requirements at Rule 2–6–405.9 to state that applications must contain: "A compliance certification by a responsible official of the facility that the application forms and all accompanying reports and other required compliance certifications are true, accurate, and complete based on information and belief formed after reasonable inquiry; and* * *." Third, the District revised the Monitoring and Records section at Rule 2–6–502 to state that: "A responsible official shall certify that all such reports are true, accurate, and complete based on information and belief formed after reasonable inquiry." Finally, the MOP Sections 4.5 and 4.7, were revised to include these provisions and section 2–6–426 was added and requires compliance certifications consistent with Part 70. (See § 70.5(d)).

Issue (5): Bay Area was required to revise Regulation 2–6 to define and require notice to affected states. Alternatively, Bay Area could have made a commitment to: (1) Initiate rule revisions upon being notified by EPA of an application by an affected tribe for state status, and (2) provide affected state notice to tribes upon their filing for state status (i.e., prior to Bay Area's adopting affected state notice rules). (§§ 70.2 and 70.8(b)

Rule Change: The District corrected this deficiency by adding the term "Affected State" at Rule 2–6–242 to provide: "A State whose air quality may be affected by a facility and that is contiguous to the State of California or a state that is within 50 miles of a permitted source within the District." In addition, the District added notification requirements for affected states consistent with 40 CFR 70.8(b)(1) to Rule 2–6–412. The District also revised Rule 2–6–412.6, consistent with 40 CFR 70.8(b)(2), to require written notification to EPA and affected states of any refusal to accept all recommendations from an affected state received during the public comment period for a draft permit.

Issue (6): The District was required to eliminate the phrase "but not limited to" from the definition of "administrative permit amendment." (§ 70.7(d)(1)(iv))

Rule Change: The District corrected this deficiency by revising the definition at 2–6–201 to eliminate the problematic phrase.

Issue (7): The District was required to revise Rule 2–6–404.3 to limit the universe of significant permit modification applications due 12 months after commencing operations to only those applications for revisions pursuant to section 112(g) and title I, parts C and D of the Act that are not prohibited by an existing operating permit. Except in the above circumstances, a source is not allowed to operate the proposed change until the permitting authority has revised the source's operating permit. (§ 70.5(a)(1)(ii)).

Rule Change: Bay Area corrected this deficiency by revising Rule 2–6–404.3 to be consistent with federal regulations at 40 CFR Part 70. The definition now reads: "An application for a significant permit revision shall be submitted by the applicant prior to commencing an operation associated with a significant permit revision. Where an existing federally enforceable major facility review permit condition would prohibit such change in operation, the responsible official must request preconstruction review and obtain a major facility review permit revision before commencing the change."

Issue (8): Bay Area was required to eliminate the extended review period from the minor permit modification procedures at Rule 2–6–414.2 because it is inconsistent with Rules 2–6–410.2 and 40 CFR 70.7(e)(2)(iv).

Rule Change: The District corrected this deficiency by revising Rule 2–6–414.2 to read: "The APCO shall act on the proposed minor revision within 15 days after the end of EPA's 45-day review period or within 90 days of receipt of the permit application whichever is later." This is now consistent with part 70 and 2–6–410.2.

Issue (9): The District was required to revise 2–6–412.1 to include notice "by other means if necessary to assure adequate notice to the affected public." (§ 70.7(h)(1)) Rule Change: The District corrected this deficiency by adding the suggested language to Rule 2–6–412.1.

Issue (10): Bay Area was required to add a provision to the MOP (section 4.1) to state that only alternative emission control plans (AECPs) that have been approved into the SIP may be incorporated into the federally enforceable portion of the permit. (§ 70.6(a)(1)(iii))

Rule Change: The District has not revised the MOP as specified in our final interim approval. However, the District has corrected this deficiency by stating in a letter dated July 7, 2000 that there are no general AECP provisions in District rules. The only specific AECP provisions in the District rules are contained in the District coating rules, all of which have been SIP approved. Therefore, it is not possible for non-SIP-approved AECP provisions to be incorporated into the federally enforceable portion of an operating permit. Further, the language in the MOP is not inconsistent with federal regulations at Part 70, which is silent on how the District must treat AECPs. EPA understands that the District will identify only SIP-approved AECP provisions, as federally enforceable in operating permits.

Issue (11): Bay Area was required to add emissions trading provisions consistent with 40 CFR 70.6(a)(10), which requires that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval.

Rule Change: The District corrected this deficiency by revising Rule 2–6–306—"Emissions Trading" to be consistent with 40 CFR Part 70 as follows: "The APCO shall allow emissions trading within a facility that has a major facility review permit in accordance with the procedures and restrictions set forth in Rule 2–6–418. This provision shall not apply to the phase II acid rain portion of any facility subject to this Rule."

Issue (12): Bay Area was required to add a requirement to Regulation 2–6 that any document required by an operating permit must be certified by a responsible official. (§ 70.6(c)(1))

Rule Change: The District has added the required language at the end of Rule 2–6–409.20 which now states, "[t]he certifications shall be signed by a responsible official for the facility."

Issue (13): Bay Area was required to revise Rule 2–6–224 and Rule 2–6–409.10 to specify that all progress reports must include: (1) Dates when activities, milestones, or compliance required in the schedule of compliance were achieved; and (2) an explanation of why any dates in the schedule of compliance were not or will not be met and any preventive or corrective measures adopted. (§ 70.6(c)(4)(i and ii))

Rule Change: Bay Area responded and revised Section 2–6–409.10 to include a requirement that compliance plans must include deadlines for achieving each item in the plan, and a requirement that progress reports must be submitted every 6 months. Also, Section 409.10.3 now includes the statement that, "[p]rogress reports shall contain the dates by which each item in the plan was achieved, and an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventative or corrective measure adopted." No changes have been made or are necessary to District Rule 2–6–224 because such changes would be redundant with the changes already made in 2–6–409.

Issue (14): Bay Area was required to revise Section 4.5 of the MOP and add a provision to Rule 2–6–409 to require that compliance certifications be submitted more frequently than annually if specified in an underlying applicable requirement. (§ 70.6(c)(4))

Rule Change: The District corrected this deficiency by adding new Section 2–6–409.17 that requires permits to include, "a requirement for annual compliance certifications, unless compliance certifications are required more frequently than annually in an applicable requirement or by the APCO."

Issue (15): At the time of the interim approval, Bay Area indicated in its program description that it intended to process new units that do not affect any federally enforceable permit condition as "off-permit" (see Section II, p. 21 and Staff Report, pp. 3–4). Bay Area was required to submit a letter revising its

program description to indicate that it will not process new units as "off-permit" or it could have revised its rule to include the part 70 off-permit provisions as defined in federal regulations at 40 CFR 70.4(b)(14) and 70.4(b)(15).

Rule Change: Bay Area corrected this deficiency by providing a letter to Jack Broadbent, Director, Region IX, Air Division, dated May 24, 2001, from the Bay Area APCO, Ellen Garvey that stated: "The District has decided not to incorporate the 'off-permit' provisions into its current program submittal." Therefore, no off-permit changes will be allowed under the Bay Area program.

Issue (16): Bay Area was required to revise 2–6–222 defining "regulated air pollutant" to be consistent with the Federal definition (§ 70.2) and include pollutants subject to any requirement established under section 112 of the Act, including sections 112(g), (j), and (r).

Rule Change: The District corrected this deficiency by revising the definition of regulated air pollutant at Rule 2–6–222.5 to state, "* * * any pollutant that is subject to any standard or requirement promulgated under Section 112 of the Clean Air Act, including sections 112(g), (j) and (r)."

Issue (17): One of EPA's conditions for full title V program approval was the California Legislature's revision of the Health and Safety Code to eliminate the provision that exempts "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals" from the requirement to obtain a permit. *See* California Health and Safety Code section 42310(e). Even though the local Districts have, in many cases, removed the title V exemption for agricultural sources from their own rules, the Health and Safety Code has not been revised to eliminate this provision.

In evaluating the impact of the Health and Safety Code exemption, EPA believes there are a couple of key factors to consider. First, many post-harvest activities are not covered by the exemption and, thus, are still subject to title V permitting. For example, according to the California Air Resources Board (CARB), the Health and Safety Code exemption does not include activities such as milling and crushing, or canning or cotton ginning operations. Activities such as these are subject to review under the State's title V programs. *See* letter from Michael P. Kenny, Executive Officer, California Air Resources Board, to Jack Broadbent, Director, Air Division, U.S. EPA Region 9, dated September 19, 2001. In addition, since the granting of interim approval, the EPA has discovered that, in general, there is not a reliable or complete inventory of emissions associated with agricultural operations in California that are subject to the exemption. Although further research on this issue is needed, many sources with activities covered by the exemption may not have emission levels that would subject them to title V, and the State and/or individual Districts may be able to demonstrate that none of the sources that are exempt under the State law are subject to title V.

Based, in part, on these factors, EPA has tentatively concluded that requiring the immediate commencement of title V permitting of the limited types of agricultural activities presently subject to the exemption, without a better understanding of the sources and their emissions, would not be an appropriate utilization of limited local, state and federal resources. As a result, despite the State of California's failure to eliminate the agricultural permitting exemption, EPA is proposing to grant full approval to local Air District operating permit programs and allow a deferral of title V permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a further brief period, not to exceed three years. During the deferral period, we expect to develop the program infrastructure and experience necessary for effective implementation of the title V permitting program to this limited category of sources.

EPA believes it is appropriate to defer permitting for this limited category of agricultural sources because the currently available techniques for determining emissions inventories and for monitoring emissions (e.g., from irrigation pumps and feeding operations) are problematic and will be dramatically enhanced by several efforts currently being undertaken with the cooperation and participation of the operators and agricultural organizations, as well as EPA, other federal agencies, and the State and local air pollution agencies. For example, the National Academy of Sciences is undertaking a study addressing emissions from animal feeding operations. Their report is due next year. In addition, EPA's Office of Air and Radiation is working with the U.S. Department of Agriculture to better address the impact of agricultural operations on air quality. We consider the effort to evaluate the existing science, improve on assessment tools, collect additional data, remove any remaining legal obstacles, and issue any necessary guidance within the three year deferral time frame to be ambitious. We welcome comments on other areas that might also warrant study, as well as ways that this work might be done more quickly.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, voluntary emission reduction strategies. At the end of this period, EPA will, taking into consideration the results of these studies, make a determination as to how the title V operating permit program will be implemented for any potential major agricultural stationary sources.

Rule Change: In addition to the statutory exemption in the Health and Safety Code, Bay Area's regulations contained an exemption; however, the District has since revised its regulations to allow for permitting once state law provides for it. Specifically, Regulation 1, Section 110 and Regulation 2, Rule 1 were revised to allow for permitting pursuant to the California Health and Safety Code.

VI. What Is Involved in This Proposed Action?

The Bay Area has corrected the deficiencies cited in the interim approval on June 23, 1995 [60 FR 32606]. Thus, EPA is proposing full approval of the Bay Area operating permit program. In addition, Bay Area has made other changes to its operating permit program since we granted interim approval. These changes were not required by EPA to correct interim approval deficiencies cited in our June 23, 1995 **Federal Register**. EPA has reviewed the additional changes and proposes to approve most of the changes. Table 1a and 1b, respectively, list which rule and MOP subsections we are proposing to approve.

EPA is not acting on some changes that the District made to its rules; these changes were not required to correct interim approval issues and may not be approvable. See Table 2 below for a list of the rule (and MOP) sections of Bay Area's program on which EPA is not taking action. Please refer to the TSD for additional information on the basis for our decision to either approve or not act on those other changes. If a section is not listed in any of the tables below, it means that there has been no change to that section since interim approval.

TABLE 1A.—APPROVABLE RULE SUBSECTIONS THAT HAVE BEEN CHANGED SINCE INTERIM APPROVAL

Approvable rule section and name	Adoption date
2–6–101, Description	5/2/01
2–6–114, Exemption, Non-Road Engines	10/20/99
2–6–201, Administrative Permit Amendment	10/20/99
2–6–202, Applicable Requirements	5/2/01
2–6–204, Designated Facility	10/20/99
2–6–206, Facility	5/2/01
2–6–207, Federally Enforceable	5/2/01
2–6–211, Independent Power-Production Facility	5/2/01
2–6–212, Major Facility	10/20/99
2–6–215, Minor Permit Revision	10/20/99
2–6–217, Phase II Acid Rain Facility	5/2/01
2–6–218, Potential to Emit (see discussion below and in the TSD)	10/20/99
2–6–219, Preconstruction Permit or Review	10/20/99
2–6–222, Regulated Air Pollutant	5/2/01
2–6–226, Significant Permit Revision	10/20/99
2–6–229, Subject Solid Waste Incinerator Facility	10/2099
2–6–230, Synthetic Minor Facility	10/20/99
2–6–231, Synthetic Minor Operating Permit	10/20/99
2–6–232, Synthetic Minor Operating Permit Revision	10/20/99
2–6–233, Permit Shield	5/2/01
2–6–235, Actual Emissions	5/2/01
2–6–236, Modified Source or Facility	5/2/01
2–6–237, Potential to Emit Demonstration	10/20/99
2–6–238, Process Statement	10/20/99
2–6–239, Significant Source	10/20/99
2–6–240, State Implementation Plan	10/20/99
2–6–241, 12-month Period	10/20/99
2–6–242, Affected State	5/2/01
2–6–243, Final Action	5/2/01
2–6–244, CFR	5/2/01
2–6–303, Major Facility Review Requirement for Subject Solid Waste Incinerator Facilities	10/20/99
2–6–304 and 2–6–302: Major Facility Review Requirements for Designated Facilities: and Major Facility Review for Phase II Acid Rain Facilities:	10/20/99
2–6–306, Emissions Trading	5/2/01
2–6–307, Non-compliance, Major Facility Review	10/20/99
2–6–310, Synthetic Minor Operating Permit Requirement	10/20/99
2–6–311, Non-compliance, Synthetic Minor Facilities	5/2/01
2–6–312, Major Facility Review, Smaller Facilities	5/2/01
2–6–314, Revocation	5/2/01
2–6–401, Facilities Affected (Deleted 10/20/99)	10/20/99
2–6–403, Application for Major Facility Review Permit, Permit Renewal, or Permit Revision	2/1/95
2–6–404, Timely Application for Major Facility Review Permit	10/20/99
2–6–405, Complete Application for a Major Facility Review Permit	5/2/01
2–6–406, Application for Minor Permit Revision	10/20/99
2–6–407, Application Shield	10/20/99
2–6–408, Completeness Determination	10/20/99
2–6–409, Permit Content	5/2/01
2–6–410, Final Action for Initial Permit Issuance, Five-Year Renewal, Reopenings, and Revisions	10/20/99
2–6–411, Reports to EPA and Public Petitions for Major Facility Review Permits	5/2/01
2–6–412, Public Participation, Major Facility Review Permit Issuance	5/2/01
2–6–413, Administrative Permit Amendment Procedures	10/20/99
2–6–414.2 and 414.3, Minor Permit Revision Procedures. (Note: EPA is not acting on subsection 414.1. See table 2, below)	5/2/01
2–6–416, Term for Major Facility Review	5/2/01
2–6–418, Emissions Trading Procedures	5/2/01
2–6–420, Application for a Synthetic Minor Operating Permit	5/2/01
2–6–421, Timely Application for a Synthetic Minor Operating Permit	5/2/01
2–6–422, Complete Application for a Synthetic Minor Operating Permit	10/20/99
2–6–423, District Procedures for Synthetic Minor Operating Permits	5/2/01
2–6–424, Applicability	10/20/99
2–6–425, Facility List	10/20/99
2–6–426, Compliance Certification Procedures	5/2/01
2–6–502, Monitoring Reports, Major Facility Review Permit	5/2/01
2–6–503, Monitoring	5/2/01

TABLE 1B.—APPROVABLE MANUAL OF PROCEDURES (MOP) SUBSECTIONS THAT HAVE BEEN CHANGED SINCE INTERIM APPROVAL

Approvable Manual of Procedures Section Number and Title Adoption Date was May 2, 2001
1. Introduction (every paragraph except the second)
2. Applications:
2.1 Major Facility Review Permits
2.2 Synthetic Minor Operating Permits
2.3 Potential to Emit Demonstrations
3. Fees
4. Permit Content:
4.1 Applicable Requirements
4.2 Permit Duration
4.3 Terms and Conditions for Reasonably Anticipated Operating Scenarios
4.4 Terms and Conditions for Emissions Trading
4.5 Compliance
4.6 Monitoring Requirements
4.7 Recordkeeping and Reporting Requirements
4.8 Emergency Provisions
4.9 Acid Rain Provisions
4.10 Severability Clause
4.11 Standard Conditions to Implement EPA Title V Regulations and 40 CFR 70
4.12 Requirement to Pay Fees
4.13 Provisions Regarding the Federal Enforceability of Conditions
4.14 Inspection and Entry Requirements
4.15 Requirements for Compliance Certification
4.16 Permit Shield
5. Trade Secret and Availability of Information
6. Public Participation & EPA Review:
6.1 Major Facility Review Permits
6.2 Synthetic Minor Operating Permits
6.3 Appeals and Objections
7. District Permitting Procedures:
7.1 Major Facility Review Permits (all paragraphs except the three paragraphs that precede the last paragraph in the section)
7.2 Synthetic Minor Operating Permits
8. Title IV: Applicability

TABLE 2.—LIST OF RULE AND MOP SECTIONS THAT EPA IS NOT ACTING ON AS PART OF TODAY'S PROPOSED APPROVAL

Rule or MOP section and title	Adoption date
2–6–113, Exemption, Registered Portable Engines	10/20/99
2–6–234, Program Effective Date	10/20/99
2–6–313, Denial, Failure to Comply	5/2/01
2–6–414.1, Minor Permit Revision Procedures	5/2/01
MOP—Section 1—Introduction Only the second paragraph regarding the Program Effective Date	5/2/01
MOP—Section 7.1—Major Facility Review Permits. Only the three paragraphs that precede the last paragraph in section 7.1	5/2/01

VII. Discussion on the Revision to the Definition of Potential To Emit

Although not required to make the change for full approval, the District has revised its definition of "Potential to Emit" (2–6–218) ("PTE") and the discussion of it in the MOP (page 3–2). The revised language no longer requires that permit limits be only "federally enforceable." The definition now allows a permit limitation or the effect it would have on emissions, to be "enforceable by the District or EPA." Although Bay Area's definition is different from the current definition in 40 CFR 70.2, litigation has occurred since we granted interim approval to Bay Area's rule that has affected EPA's consideration of this issue. In *Clean Air Implementation Project* v. *EPA*, No. 96–1224 (D.C. Cir. June 28, 1996), the court remanded and vacated the requirement for federal enforceability for potential to emit limits under part 70. Therefore, even though part 70 has not been revised it should be read to mean, "federally enforceable or legally and practicably enforceable by a state or local air pollution control agency." [1]

EPA proposes to approve this revision because the Bay Area rule is consistent with the current meaning of potential to emit as described above in the court's interpretation. EPA has issued several guidance memoranda that discuss how the court rulings affect the definition of potential to emit under CAA § 112, New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs, and title V.[2] In particular, the

[1] *See* also, *Notional Mining Association (NMA)* v. *EPA*, 59 f.3d 1351 (D.C. Cir. July 21, 1995) (Title III) and *Chemical Manufacturing Ass'n (CMA)* v. *EPA*, No. 89–1514 (D.C. Cir. Sept. 15, 1995) (Title I).

[2] *See*, e.g., January 22, 1996, memorandum entitled, "Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit" from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement to EPA Regional Offices; January 31, 1996 paper to the Members of the Subcommittee on Permit, New Source Review and Toxics Integration from Steve Herman, OECA, and Mary Nichols, Assistant Administrator of Air and Radiation; and the August 27, 1996 Memorandum entitled, "Extension of January 25, 1995 Potential to Emit Transition Policy" from John Seitz, Director, OAQPS and Robert Van Heuvelen, Director, Office of Regulatory Enforcement.

memoranda reiterate the Agency's earlier requirements for practicable enforceability for purposes of effectively limiting a source's potential to emit.[3] For example, practicable enforceability for a source-specific permit means that the permit's provisions must, at a minimum: (1) Be technically accurate and identify which portions of the source are subject to the limitation; (2) specify the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); (3) be independently enforceable and describe the method to determine compliance including appropriate monitoring, recordkeeping and reporting; (4) be permanent; and (5) include a legal obligation to comply with the limit.

EPA will rely on Bay Area implementing this new definition in a manner that is consistent with the court's decisions and EPA policies. In addition, EPA wants to be certain that absent federal and citizen's enforceability, Bay Area's enforcement program still provides sufficient incentive for sources to comply with permit limits. This proposal provides notice to Bay Area about our expectations for ensuring the permit limits they impose are enforceable as a practical matter (i.e., practicably enforceable) and that its enforcement program will still provide sufficient compliance incentive. In the future, if Bay Area does not implement the new definition consistent with our guidance, and/or has not established a sufficient compliance incentive absent Federal and citizen's enforceability, EPA could find that the District has failed to administer or enforce its program and may take action to notify the District of such a finding as authorized by § 70.10(b)(1).

VIII. Public Comments

EPA requests comments on the program revisions discussed in this proposed action. Copies of the Bay Area submittal and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 19, 2001.

[3] *See*, e.g., June 13, 1989 Memorandum entitled, "Guidance on Limiting Potential to Emit in New Source Permitting, from Terrell F. Hunt, Associate Enforcement Counsel, OECA, and John Seitz, Director, OAQPS, to EPA Regional Offices." This guidance is still the most comprehensive statement from EPA on this subject. Further guidance was provided on January 25, 1995 in a memorandum entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, ORE to Regional Air Directors. Also please refer to the EPA Region 7 database at *http://www.epa.gov/region07/programs/artd/oir/policy/policy.htm* for more information.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program , to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative Practice and Procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 11, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26407 Filed 10–18–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 049–OPP; FRL–7087–5]

Clean Air Act Proposed Full Approval of Operating Permit Program; San Diego County Air Pollution Control District, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the operating permit program of the San Diego County Air Pollution Control District ("San Diego" or "District"). The San Diego operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to the San Diego operating permit program on December 7, 1995 but listed conditions that San Diego's program would be required to meet for full approval. San Diego has revised its program to satisfy the conditions of the interim approval. Thus, this action proposes full approval of the San Diego operating permit program as a result of those revisions.

DATES: Comments on the program full approval discussed in this proposed action must be received in writing by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Acting Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. You can inspect copies of the San Diego's submittals, and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

You may also see copies of the submitted Title V program at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

The San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, California 92123–1096.

An electronic copy of SDCAPCD's title V rule, Regulation XIV may be available via the Internet at *http://www.arb.ca.gov/drdb/sd/cur.htm*. However, the version of District Regulation XIV at the above internet address may be different from the version submitted to EPA for approval. Readers are cautioned to verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval. The official submittal is available only at the three addresses listed above.

FOR FURTHER INFORMATION CONTACT: David Wampler, EPA Region IX, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1256.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

I. What Is the Operating Permit Program?
II. What Is Being Addressed in this Document?
III. Are There Other Issues with the Program?
IV. What Are the Program Changes That EPA Is Proposing to Approve?
V. What Is Involved in this Proposed Action?

I. What Is the Operating Permit Program?

The CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain Federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "serious," major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

II. What Is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the District revising its program to correct any deficiencies. Because the San Diego operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to its program in a rulemaking published on December 7, 1995 (60 FR 62753). The interim approval notice described the conditions that had to be met in order for the San Diego program to receive full approval. Since that time, the California Air Resources Board, on behalf of the San Diego has submitted one revision to the San Diego's interimly approved operating permit program; this revision is dated June 4, 2001. This **Federal Register** notice describes the changes that have been made to the San Diego operating permit program since interim approval was granted.

III. Are There Other Issues With the Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

EPA received a comment letter from one organization on what they believe to be deficiencies with respect to Title V programs in California. EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** notice published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

IV. What Are the Program Changes That EPA Is Proposing To Approve?

As explained in the December 7, 1995 [60 FR 62753] rulemaking, full approval of the San Diego operating permit program required satisfaction of the following conditions:

Issue (1): One of EPA's conditions for full title V program approval was the California Legislature's revision of the Health and Safety Code to eliminate the provision that exempts "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals" from the requirement to obtain a permit. *See* California Health and Safety Code section 42310(e). Even though the local Districts have, in many cases, removed the title V exemption for agricultural sources from their own rules, the Health and Safety Code has not been revised to eliminate this provision.

In evaluating the impact of the Health and Safety Code exemption, EPA believes there are a couple of key factors to consider. First, many post-harvest activities are not covered by the exemption and, thus, are still subject to title V permitting. For example, according to the California Air Resources Board (CARB), the Health and Safety Code exemption does not include activities such as milling and crushing, or canning or cotton ginning operations. Activities such as these are subject to review under the State's title V programs. *See* letter from Michael P. Kenny, Executive Officer, California Air Resources Board, to Jack Broadbent, Director, Air Division, U.S. EPA Region 9, dated September 19, 2001. In addition, since the granting of interim approval, the EPA has discovered that, in general, there is not a reliable or complete inventory of emissions associated with agricultural operations in California that are subject to the exemption. Although further research on this issue is needed, many sources with activities covered by the exemption may not have emission levels that would subject them to title V, and the State and/or individual Districts may be able to demonstrate that none of the sources that are exempt under the State law are subject to title V.

Based, in part, on these factors, EPA has tentatively concluded that requiring the immediate commencement of title V permitting of the limited types of agricultural activities presently subject to the exemption, without a better understanding of the sources and their emissions, would not be an appropriate utilization of limited local, state and federal resources. As a result, despite the State of California's failure to eliminate the agricultural permitting exemption, EPA is proposing to grant full approval to local Air District operating permit programs and allow a deferral of title V permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a further brief period, not to exceed three years. During the deferral period, we expect to develop the program infrastructure and experience necessary for effective implementation of the title V permitting program to this limited category of sources.

EPA believes it is appropriate to defer permitting for this limited category of agricultural sources because the currently available techniques for determining emissions inventories and for monitoring emissions (e.g., from irrigation pumps and feeding operations) are problematic and will be dramatically enhanced by several efforts currently being undertaken with the cooperation and participation of the operators and agricultural organizations, as well as EPA, other Federal agencies, and the State and local air pollution agencies. For example, the National Academy of Sciences is undertaking a study addressing emissions from animal feeding operations. Their report is due next year. In addition, EPA's Office of Air and Radiation is working with the U.S. Department of Agriculture to better address the impact of agricultural operations on air quality. We consider the effort to evaluate the existing science, improve on assessment tools, collect additional data, remove any remaining legal obstacles, and issue any necessary guidance within the three year deferral time frame to be ambitious. We welcome comments on other areas that might also warrant study, as well as ways that this work might be done more quickly.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, voluntary emission reduction strategies. At the end of this period, EPA will, taking into consideration the results of these studies, make a determination as to how the title V operating permit program will be implemented for any potential major agricultural stationary sources.

Rule or Program Change: San Diego amended its program to require agricultural operations to obtain Title V operating permits when state law is revised.

Issue (2): San Diego was required to revise Rule 1401(c)(43) definition of "Significant Permit Modification," to be consistent with Part 70 which requires that any significant change in monitoring permit terms or conditions be processed as a significant permit modification.

Rule Change: San Diego met this condition by amending the definition of "significant permit modification" at Regulation XIV, Rule 1401(c)(44) to include a "significant change in existing monitoring permit terms or conditions or relaxation to monitoring, recordkeeping, or reporting requirements; or * * *" See 40 CFR 70.7(e)(4).

Issue (3): San Diego was required to define affected state or, because of its cooperative agreement with Native American Tribes, EPA would accept a commitment from San Diego to: (1) Initiate rule revisions upon notification from EPA that an affected tribe has applied for state status; and (2) provide affected state notice to tribes upon a tribe's filing for state status, that is, prior to the District's adoption of affected state notice rules. See 40 CFR 70.2 and 70.8(b)(1).

Rule Change: San Diego met this requirement by revising its rule to define affected state at Rule 1401(c)(5) to mean: "any state that: (i) Is contiguous with California and whose air quality may be affected by a permit action, or (ii) is within 50 miles of the source for which a permit action is being proposed. For purposes of this rule affected state includes any federally recognized Eligible Indian Tribe." In addition, Rule 1415 was amended to require affected states be notified by the APCO at least 45 days prior to issuance of a five year initial permit to operate, a revised permit resulting from an application for significant modification or renewal of such a permit.

Issue (4): San Diego was required to revise Rule 1410(h)(7), paragraph 2 to require permit reopening procedures for any inactive status permit that is modified to reflect new applicable requirements upon being converted to

active status if there are 3 years or more remaining on the term of its 5-year permit. See 40 CFR 70.7(f)(1)(i).

Rule Change: San Diego met this condition by deleting, in its entirety, subsection (7) of rule 1410. The rule, therefore, no longer allows inactive status permits to be reactivated.

Issue (5): San Diego was required to remove any activities from the District's list of insignificant activities that are subject to a unit-specific applicable requirement and adjust/add size cut-offs to ensure that the listed activities are truly insignificant. See 40 CFR 70.4(b)(2) and 70.5(c).

Rule Change: San Diego met this condition by revising its list of insignificant activities to remove activities (or impose size limits on units) that were subject to any unit-specific applicable requirements (e.g., refrigeration units are now limited to a charge of less than 50 pounds of a Class I or II ozone depleting compound). San Diego also included a justification as to why certain emission units are included in the insignificant activities list. San Diego's justification relied on district emission factors and expected operations from the subject emission units and/or included the analysis that was conducted in 1999 by a workgroup, including staff from the ARB, EPA Region 9 and CAPCOA, who developed a model list of insignificant activities. San Diego also removed language in the introduction to Appendix A to no longer allow insignificant activities to be exempt from the permit requirements of Regulation XIV.

Issue (6): San Diego was required to remove the reference to Rules 1410 (j) and (k) in Rule 1410(i).[1] This reference to minor and significant permit modifications in the provisions for administrative permit amendments could have be read to be inconsistent with the definition of "significant permit modification" (Rule 1401(c)(43)), which correctly defaulted unspecified changes to the significant permit modification process. In addition, EPA required the District to remove the word "include" from the phrase, "These shall include the following" in the administrative permit amendment section (Rule 1410(i)). See 40 CFR 70.7(d).

Rule Change: San Diego met this condition by revising Rule 1410 (i) to remove the reference to subsections (j) and (k) and to remove the phrase that included the word, "include."

[1] A typographical error exists in our December 7, 1995 FR in which we referred to Rule 1410 as Rule 1401.

Issue (7): The District must revise either the definition of "federally mandated new source review" or the definition of "federally enforceable requirement" to clearly include minor new source review as an applicable requirement under title V.

Rule Change: San Diego met this requirement by revising Rule 1401(c)(20) to now define Federally Mandated New Source Review (NSR) as "* * * new source review that would be required by the approved State Implementation Plan (SIP)."

V. What Is Involved in This Proposed Action?

The EPA proposes full approval of the operating permits program submitted by San Diego County based on the revisions submitted on June 4, 2001 which satisfactorily address the program deficiencies identified in EPA's December 7,1995 Interim Approval Rulemaking. See 60 FR 62794. In addition, the District has revised and submitted as part of its revised program, changes to two forms:

- Form 1401–J1—Monitoring Report and Compliance Certification; and
- Form 1401–J2—Deviation Report.

EPA is not acting on these forms as part of this action because they were not required to revise these forms for full approval and the forms may not be consistent with the reporting requirements at 70.6(c)(5) [compliance certifications] and 70.6 (a)(3)(iii) [semi-annual monitoring reports and deviation reports].

Request for Public Comment

EPA requests comments on the program revisions discussed in this proposed action. Copies of the San Diego submittal and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 19, 2001.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program , to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 11, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26408 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 050–OPP; FRL–7087–6]

Clean Air Act Full Approval of Operating Permit Program; San Joaquin Valley Unified Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to fully approve the operating permit program for the San Joaquin Valley Unified Air Pollution Control District ("San Joaquin" or "District"). The District's operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to the District's operating permit program on April 24, 1996. This action proposes approval of revisions to the District's permit program that were submitted to satisfy the conditions for full approval.

DATES: Comments on the program revisions discussed in this proposed action must be received in writing by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. You can inspect copies of the District's submittal, and other supporting documentation relevant to this action, during normal business hours at the EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105.

You may also see copies of the submitted Title V program at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

The San Joaquin Valley Pollution Control District, 1990 E. Gettysburg Avenue, Fresno, CA 93726–0244

FOR FURTHER INFORMATION CONTACT: Ed Pike, EPA Region IX, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1211 or pike.ed@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information on today's rulemaking:

What is the operating permit program?
What rules were submitted for full approval?
How do the program changes qualify for full approval?
Are there other issues with the program?

What Is the Operating Permit Program?

The CAA Amendments of 1990 require all State and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include (but are not limited to) those that have the potential to emit: (1) 50 tons per year or more of volatile organic compounds or nitrogen oxides (NO_X) in a serious non-attainment; (2) 70 tons per year of particulate matter (PM_{10}) in a PM_{10} non-attainment area; (3) 10 tons per year of any single Hazardous Air Pollutant (as defined under section 112 of the CAA); or (4) 25 tons per year or more of a combination of Hazardous Air Pollutants (HAPs).

What Rules Were Submitted for Full Approval?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the State or local permitting agency revising its program to correct the deficiencies. Because the San Joaquin operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to each program in a rulemaking published on April 24, 1996 [61 FR 18083]. The interim approval notice described the conditions that had to be met in order for the San Joaquin program to receive full approval.

In response, San Joaquin adopted revisions to three permitting regulations on June 21, 2001. The first is District Rule 2520, Federally Mandated Operating Permits, which is the District's part 70 permitting rule. The District also made revisions to the elements of District Rule 2201, New and Modified Source Review, that contain part 70 requirements allowing a source to obtain a modification under Rule 2201 that also satisfies part 70 requirements. District Rule 2020, Exemptions, was also revised. The California Air Resources Board, on behalf of the District submitted these revised regulations and other program revisions on July 3, 2001. This **Federal Register** notice describes the changes that have been made to the San Joaquin operating permit program since interim approval was granted and how the revised program meets the conditions for full approval.

How Do the Program Changes Qualify for Full Approval?

EPA's April 24, 1996 rulemaking required that San Joaquin make a number of changes to the program to qualify for full approval. EPA is proposing to fully approve the revised program submitted to EPA on July 3, 2001. This revised program contains the following changes to address the interim approval requirements (for more information, please see the Technical Support Document):

Issue #1

In order for San Joaquin's program to receive full approval (and to avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit. (See major source definition in 40 CFR 70.2 and applicability under 40 CFR 70.3)

Rule or Program Change

One of EPA's conditions for full title V program approval was the California Legislature's revision of the Health and Safety Code to eliminate the provision that exempts "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals" from the requirement to obtain a permit. *See* California Health and Safety Code section 42310(e). Even though the local Districts have, in many cases, removed the title V exemption for agricultural sources from their own rules, the Health and Safety Code has not been revised to eliminate this provision.

In evaluating the impact of the Health and Safety Code exemption, EPA believes there are a couple of key factors to consider. First, many post-harvest activities are not covered by the exemption and, thus, are still subject to title V permitting. For example, according to the California Air Resources Board (CARB), the Health and Safety Code exemption does not include activities such as milling and crushing, or canning or cotton ginning operations. Activities such as these are subject to review under the State's title V programs. *See* letter from Michael P. Kenny, Executive Officer, California Air Resources Board, to Jack Broadbent, Director, Air Division, U.S. EPA Region 9, dated September 19, 2001. In addition, since the granting of interim approval, the EPA has discovered that, in general, there is not a reliable or complete inventory of emissions associated with agricultural operations in California that are subject to the exemption. Although further research on this issue is needed, many sources with activities covered by the exemption may not have emission levels that would subject them to title V, and the State and/or individual Districts may be able to demonstrate that none of the sources that are exempt under the State law are subject to title V.

Based, in part, on these factors, EPA has tentatively concluded that requiring the immediate commencement of title V permitting of the limited types of agricultural activities presently subject to the exemption, without a better understanding of the sources and their emissions, would not be an appropriate utilization of limited local, state and federal resources. As a result, despite the State of California's failure to eliminate the agricultural permitting exemption, EPA is proposing to grant full approval to local Air District operating permit programs and allow a deferral of title V permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a further brief period, not to exceed three years. During the deferral period, we expect to develop the program infrastructure and experience necessary for effective implementation of the title V permitting program to this limited category of sources.

EPA believes it is appropriate to defer permitting for this limited category of agricultural sources because the currently available techniques for determining emissions inventories and for monitoring emissions (e.g., from irrigation pumps and feeding operations) are problematic and will be dramatically enhanced by several efforts currently being undertaken with the cooperation and participation of the operators and agricultural organizations, as well as EPA, other federal agencies, and the State and local air pollution agencies. For example, the National Academy of Sciences is undertaking a study addressing emissions from animal feeding operations. Their report is due next year. In addition, EPA's Office of Air and Radiation is working with the U.S. Department of Agriculture to better address the impact of agricultural operations on air quality. We consider the effort to evaluate the existing science, improve on assessment tools, collect additional data, remove any remaining legal obstacles, and issue any necessary guidance within the three year deferral time frame to be ambitious. We welcome comments on other areas that might also warrant study, as well as ways that this work might be done more quickly.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, voluntary emission reduction strategies. At the end of this period, EPA will, taking into consideration the results of these studies, make a determination as to how the title V operating permit program will be implemented for any potential major agricultural stationary sources.

Issue #2

Revise the applicability language in Rule 2520 section 2.2 and the definitions of Major Air Toxics Source (Rule 2520 section 3.18) and Major Source (Rule 2520 section 3.19) to be consistent with the Act and Part 70 to cover sources that emit at major source thresholds. (See 40 CFR 70.2, definition of "Major Source")

Rule or Program Change: The District has amended the applicability language in Rule 2520 section 2.2, Rule 2520 section 3.18, and Rule 2520 section 3.19 to include sources with actual emissions at or above the major source thresholds, rather than just sources with the potential to emit at the major source thresholds.

Issue #3

Limit the exemption for non-major sources in Rule 2520 section 4.1 so that it does not exempt non-major sources that EPA determines, upon promulgation of a section 111 or 112 standard, must obtain Title V permits. (See 40 CFR 70.3)

Rule or Program Change: The District has amended the language in Rule 2520 section 4.1 to limit the exemption for non-major sources in Rule 2520 section 4.1 so that it does not exempt non-major sources that EPA determines, upon promulgation of a section 111 or 112 standard, must obtain Title V permits. Any source that falls into one or more of the source categories listed under section 4.1 cannot be exempted from the requirements to obtain a title V permit, even if it is not a major source.

Issue #4

Revise Rule 2520 section 7.1.3.2 to eliminate the requirement that fugitive emission estimates need only be submitted in the application if the source is in a source category identified in the major source definition in 40 CFR 70.2. (See 40 CFR 70.5(c))

Rule or Program Change: The District amended the language in Rule 2520 Section 7.1.3.2 to eliminate the requirement that fugitive emissions estimates need only be submitted in the application if the source is in a source category identified in the major source definition in 40 CFR 70.2. The District also added fugitive emissions to the list of emissions-related information that must be submitted with permit applications in section 7.1.3.1.

Issue #5

Revise Rule 2520 to provide that unless the District requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. (See 40 CFR 70.5(a)(2) and 70.7(a)(4))

Rule or Program Change: The District revised section 11.6.1 of District Rule 2520 to assure that "Unless the APCO requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete."

Issue #6

Revise Rule 2520 sections 11.1.4.2 and 11.3.1.1 and Rule 2201 5.3.1.1.1 to include notice "by any other means if necessary to assure adequate notice to the affected public." (See 40 CFR 70.7(h)(1))

Rule or Program Change: The District revised the language in sections 11.1.4.2 and 11.3.1.1 of Rule 2520 and section 5.3.1.1.1 of Rule 2201 (which has been administratively renumbered as section 5.9.1.1 of Rule 2201) to include notice by any other means if necessary to assure adequate notice to the affected public.

Issue #7

Revise Rule 2520's permit issuance procedures to provide for notifying EPA and affected states in writing of any refusal to accept all recommendations for the proposed permit submitted by an affected state during the public/affected state review period. (See 40 CFR 70.8(b)(2))

Rule or Program Change: Language has been added to section 11.3.1.3 of Rule 2520 requiring the District to notify EPA and affected states in writing of any refusal to accept all recommendations for the proposed permit that an affected state submitted during the public/affected state review period.

Issue #8

Either delete section 11.7.5 in Rule 2520 and section 5.3.1.8.5 in Rule 2201, which purport to limit the grounds upon which EPA may object to a permit to compliance with applicable requirements, or revise them to be fully consistent with 40 CFR 70.8 (c).

Rule or Program Change: The District resolved this issue by revising section 11.7.5 of Rule 2520 and section 5.3.1.8.5 (which has been administratively renumbered as section 5.9.1.9.4) of Rule 2201 to be consistent with 40 CFR part 70 as follows: "EPA objection shall be limited to compliance with applicable requirements and the requirements of 40 CFR part 70."

Issue #9

Revise Rule 2520 section 2.4 to clarify that the phrase in section 2.4 that "only the affected emissions units within the stationary source shall be subject to part 70 permitting requirements" applies only to stationary sources that are also area sources. (See 40 CFR 70.3(c))

Rule or Program Change: Section 2.4 was revised to read "For stationary sources, which are subject to Rule 2520 solely as a result of Section 2.4, only the emissions units within the stationary source that are subject to the section 111 or 112 standard or requirement shall be subject to the Part 70 permitting requirements."

Issue #10

Revise Rule 2520 section 8.1 to provide that each model general permit and model general permit template will be subject to public, affected state, and EPA review consistent with initial issuance at least once every 5 years. (See 40 CFR 70.4(b)(3)(iii) and 70.7(c)(1))

Rule or Program Change: Section 8.1 of Rule 2520 was revised to provide that each model general permit and model general permit template will be subject to public, affected state, and EPA review consistent with initial issuance at least once every 5 years.

Issue #11:

Revise Rule 2520 Section 8.1 to provide that any permit for a solid waste incinerator unit that has a permit term of more than 5 years shall be subject to review, including public notice and comment, at least once every 5 years. (See 40 CFR 70.4(b)(3)(iii) and (iv) and 70.7(c))

Rule or Program Change: Section 8.1 of Rule 2520 was revised to provide that any permit for a solid waste incinerator unit that has a permit term of more than 5 years shall be subject to review, including public notice and comment, at least once every 5 years.

Issue #12

Revise Rule 2520 section 13.2.3 to state that the permit shield will only apply to requirements addressed in the permit. Section 504(f) of the Act and 40 CFR § 70.6(f) are both clear that the permit shield only extends to requirements that are addressed in the permit. EPA will not consider a source to be shielded for failure to comply with an applicable requirement if that applicable requirement is addressed only in the written reviews (such as a permit evaluation) supporting permit issuance and not in the permit.

Rule or Program Change: Rule 2520 section 13.2.3 was revised to read, "The permit shield applies only to requirements that are either identified and included by the District in the permit, or are requirements that the District, in acting on the application, determines in writing are not applicable to the source. In cases where the District determines that a requirement is not applicable to the source and provides a permit shield, the permit shall include the determination or a concise summary of the determination."

Issue #13

Revise Rule 2520 section 9.12 to require that the permit contain terms and conditions for the trading of emissions increases and decreases to the extent that any applicable requirement provides for such trading without case by case approval. The District may limit transfers of emission reduction credits in accordance with District Rules 2201 and 2301. (See 40 CFR 70.6(a)(10))

Rule or Program Change: The language in section 9.11 (the corresponding section after a numbering correction) of Rule 2520 was revised to require that the permit contain terms and conditions for the trading of emissions increases and decreases to the extent that any applicable requirement provides for such trading without case by case approval.

Issue #14

Revise Rule 2520 section 9.0 (permit content) to include the 40 CFR § 70.6(c)(3) requirement for schedules of compliance for applicable requirements for which the source is in compliance or that will become effective during the permit term.

Rule or Program Change: A new section (Section 9.14) was added to Rule 2520. This section includes the 40 CFR § 70.6(c)(3) requirement for schedules of compliance for applicable requirements for which the source is in compliance or that will become effective during the permit term.

Issue #15

Revise Rule 2520 to treat changes made under the Prevention of Significant Deterioration (PSD) provisions of the Act in the same manner as "Title I modifications" as that term is defined in Rule 2520 and Rule 2201. (See 40 CFR 70.7 and 70.4(b)(12))

Rule or Program Change: Sections 3.20.4.1, 3.20.5, 6.4.1.3, and 6.4.4.5 of

Rule 2520 were revised to treat changes made under the Prevention of Significant Deterioration (PSD) provisions of the Act in the same manner as "Title I modifications" as that term is defined in Rule 2520 and Rule 2201.

Issue #16

Revise Rule 2520 to state that notwithstanding permit shield provisions, if a source that is operating under a general permit or general permit template is later determined not to qualify for the terms and conditions of that general permit or template, then the source is subject to enforcement action for operation without a part 70 permit. (See 40 CFR 70.6(d))

Rule or Program Change: Section 13.2.4 was added to Rule 2520 to state that "Notwithstanding these permit shield provisions, if a source that is operating under a general permit or general permit template is later determined not to qualify for the terms and conditions of that general permit or template, then the source is subject to enforcement action for operation without a part 70 permit."

Summary: As noted earlier, EPA is proposing to fully approve San Joaquin's revised operating permit program based on the revisions submitted to EPA on July 3, 2001.

Are There Other Issues With the Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

EPA received a comment letter from one person on what they believe to be deficiencies with respect to Title V programs in California. EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** notice published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

Request for Public Comment

EPA requests comments on the program revisions discussed in this proposed action. Copies of the District's submittal and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 19, 2001.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 11, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26409 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA048–OPP; FRL–7087–7]

Clean Air Act Proposed Full Approval of Operating Permit Program; Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the operating permit program of the Santa Barbara Air Pollution Control District ("Santa Barbara" or "District"). The District operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdictions. EPA granted interim approval to the Santa Barbara operating permit program on November 1, 1995 but listed certain deficiencies in the program preventing full approval. Santa Barbara has revised its program to correct the deficiencies of the interim approval and this action proposes full approval of those revisions. The District has also made other revisions to its program since interim approval was granted and EPA is also proposing to approve those revisions in this action.

DATES: Written comments must be received by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Acting Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. You can inspect copies of the District's submittals, and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. You may also see copies of the submitted Title V program at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814. Santa Barbara County Air Pollution Control District: 26 Castilian Drive B–23, Goleta, CA 93117.

You may also review the District rules by retrieving them from the California Air Resources Board (ARB) website. If you review rules on the website be sure the adoption date on the electronic version matches that of the rule for which EPA proposes approval. The location of the District rules is at *http://arbis.arb.ca.gov/drdb/ven/cur.htm.*

FOR FURTHER INFORMATION CONTACT: Robert Baker, EPA Region IX, at (415) 744–1258 (*Baker.Robert@epa.gov*).

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
Are there other issues with the program?
What are the program changes that EPA is proposing to approve?
What is involved in this proposed action?

What Is the Operating Permit Program?

The Clean Air Act Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the Clean Air Act (CAA). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year or more of any single hazardous air pollutant (HAP) listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the non-attainment classification. For example, in ozone non-attainment areas classified as "serious," major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

What Is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct the deficiencies. Because the District's operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the District's program on November 1, 1995. This **Federal Register** notice describes the changes that the District's has made to its operating permit program (Rules 1301, 1303, 1304 and 370) since interim approval was granted.

Are There Other Issues With the Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

EPA received a comment letter from one organization on what they believe to be deficiencies with respect to Title V programs in California. EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** notice published on

December 11, 2000 (65 FR 77376), EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commentor in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

What Are the Program Changes That EPA Is Proposing To Approve?

As discussed above, EPA granted final interim approval on November 1, 1995 (60 FR 55460) to the District's title V program. As stipulated in that rulemaking, full approval of the District operating permit program was made contingent upon satisfaction of certain conditions. In response to EPA's interim approval action, the District revised its operating permit program (Rules 1301, 1303, 1304 and 370) to remove the deficiencies identified by EPA. The District made its revised rule available to public review and comments. It also held a workshop on September 27, 2000. On January 18, 2001, the District adopted the revisions. The revised program was submitted to EPA on April 5, 2001. We have included below a discussion of each of the interim approval deficiencies, the conditions for correction, and a summary of how the District has corrected the deficiency. The Technical Support Document (TSD) for this action includes the District's submittal and more details of the revisions made. In the discussion here, each of the EPA cited deficiencies identified in the July 10, 1995 **Federal Register** notice (see 59 FR 60104) that proposed the interim approval is listed followed by a brief description of the District's revisions to its operating permit program to remove these deficiencies.

Changes Required for Full Program Approval

Issue a. Variances: Rule 1305.G(1) had to be revised to read "The terms and conditions of any variance or abatement order that would prescribe a compliance schedule shall be incorporated into the permit as a compliance schedule, to the extent required by Part 70 rules."

District's Response to Issue a. After reviewing District Rule 1305.G(1) EPA has determined that the rule already incorporates all of the above language and that no further revision of the rule is required.

Issue b. Permit Content: Rule 1303.D.1.f., permit content requirements, had to be revised to provide adequate specificity with regard to the applicable recordkeeping requirements. See § 70.6(a)(3)(ii)(A) and (B).

District's response to Issue b. The District incorporated all of the above requirements in Rule 1303.D.1.f.

Issue c. Insignificant Activities: The District had to provide a demonstration that activities that are exempt from permitting under Rule XIII, (pursuant to Rule 202, the District's permit exemption list) are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, Rule XIII may restrict the exemptions to activities that are not likely to be subject to an applicable requirement and emit less than District-established emission levels. The District would have to establish separate emission levels for HAP and for other regulated pollutants and demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements. See § 70.4(b)(2).

Additionally, Rule XIII had to be revised to require that insignificant activities that are exempted because of size or production rate be listed in the permit application. See § 70.5(c). See 1302.D.1.f., Definition of Insignificant Activities.

Additionally, Rule 1301 definition of "Insignificant Activities" had to be revised deleting the last sentence, which contradicts the requirement that applications may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required. See § 70.5(c).

District's response to Issue c. The District deleted the current definition of "Insignificant Activities" and added: "Insignificant emission levels" means the emission levels from any emission unit, that for regulated air pollutants excluding Hazardous Air Pollutants, are less than 2 tons per year potential to emit, and less than 0.5 tons per year potential to emit of any Hazardous Air Pollutants regulated under Section 112(g) of the Clean Air Act.

The District also deleted the last sentence in the definition of "Insignificant Activities" and added: "Insignificant Activities mean activities whose emissions do not exceed insignificant emission levels". Activities exempted because of size, emission levels, or production rate shall be listed in the permit application.

Issue d. Definition of Administrative Permit Amendment: The District had to revise Rule 1301, definition of "Administrative Permit Amendment" Part 6. Santa Barbara had to define by rule what "other changes" will be determined to be administrative permit amendments. In order for "other changes" to qualify as an administrative permit amendment, the specific changes must be approved by the Administrator as part of the part 70 program. See § 70.7(d)(1)(iv).

District's response to Issue d. The District deleted part 6 of the definition of "Administrative Permit Amendment" which would have allowed the Control Officer and the USEPA to incorporate "other changes" into a permit as an Administrative Permit Amendment.

Issue e. Operational Flexibility Notification: Rule 1304.E.2 and E.3 had to be revised to incorporate a requirement that sources notify EPA of changes made under the operational flexibility provisions. See § 70.4(b)(12).

District's response to Issue e. The District added to the second paragraph of 1303.E.2: "The owner or operator shall also provide written notification to USEPA of emission trades made, a minimum of seven days in advance."

The District also added to the first paragraph of 1303.E.3: "The owner or operator shall also provide written notification to USEPA, a minimum of seven days in advance, of express permit conditions contravened."

Issue f. Public Notification Requirement: The District had to revise Rule 1304.D.6 to include notice "by other means if necessary to assure adequate notice to the affected public." See § 70.7(h)(1).

District's response to Issue f. The District added to the first paragraph of 1304.D.6: "Notice shall be provided by other means if necessary to assure adequate notice to the affected public."

Issue g. Significant Changes to Monitoring Requirements: Rule 1301, definition of "Minor Permit Modification" part (4) had to be revised to read "The modification does not involve any relaxation of any existing reporting or recordkeeping requirements in the permit, or any significant changes to existing monitoring requirements in the permit." See §§ 70.7(e)(2)(i)(2) and 70.7(e)(4)(i).

District's response to Issue g. The District revised the definition of "Minor Permit Modification" part 4 of 1301.C to add the exact language cited above.

Issue h. Form of Applicable Requirement: The District rule did not require the identification of any difference in form from the applicable requirement upon which the term or condition is based. Regulation XIII had to be revised to include this requirement. This requirement is included in the Standard Permit Format. See § 70.6(a)(1)(i).

District's response to Issue h. The District added text to Rule 1303.D.1. to require that each Part 70 permit include elements that describe the origin of and authority for each permit term and condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

Issue i. Applicable Requirement Trading: The District had to add emissions trading provisions to Rule 1301 consistent with § 70.6(a)(10), which require that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval.

District's response to Issue i. The District revised Rule 1301.D.1.s. and added all of the required provisions consistent with § 70.6(a)(10).

Issue j. Prompt Reporting of Deviations: Santa Barbara had not defined "prompt" in their program with respect to reporting of all deviations. Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Santa Barbara's requirement for reporting of deviations was limited to deviations due to emergency upset conditions. Under part 70, deviations include, but are not limited to, upset conditions. In our final interim approval, we provided Santa Barbara three options to correct this deficiency. Santa Barbara had to revise rule 1303.D.1.g to be consistent with the more inclusive part 70 requirement.

District's response to issue j. The District revised Rules 1303.D.1.g. and h. to require the reporting of all permit deviations within 7 days after discovery of the violation.

Issue k. Exemptions: The District had to delete Rule 1301.B.4. Section 70.3(b) requires that major sources, affected sources (acid rain sources), and solid waste incinerators regulated pursuant to section 129(e) of the CAA may not be exempted from the program. Although Section 129(g)(1)(3) of the CAA exempts solid waste incineration units subject to Section 3005 of the Solid Waste Disposal Act, part 70 does not exempt these units. Any solid waste incineration unit that meets the definition of "major source" under part 70 would be subject to the requirement to obtain a part 70 permit regardless of the unit's applicability under Section 129.

District's response to issue k. The District deleted Rule 1301.B.4. which exempted solid waste incineration units from the operating permit program.

Issue l. Recordkeeping for off-permit changes: Santa Barbara's rule did not require that the permittee keep records describing off-permit changes and the emissions resulting from these changes. Santa Barbara's rule had to be revised to be consistent with the requirements of § 70.4(b)(14)(iv).

District's response to issue l. Under the District's rules, a source is required to obtain an Authority to Construct or minor modification for all changes at a Part 70 source. The application for the Authority to Construct describes the changes and the emissions resulting from the change.

Issue m. Definition of Title I Modifications and Significant Part 70 Permit Modifications: Rule 1301 defined "modification" to include all modifications under 40 CFR part 60. However, the definitions of "title I (or major) modification" and "significant part 70 permit modification" did not clearly define all modifications under part 60 as title I modifications and did not clearly ensure that they will be treated as significant permit modifications. In order to receive full approval, Santa Barbara had to clarify the definitions of "title I (or major) modification" and "significant part 70 permit modification" to include all modifications under 40 CFR part 60.

District response to issue m. The District revised the definitions of "Significant Part 70 Permit Modification" and "Title I (or Major) Modification" in Rule 1301.C. by adding clarifing language that these modifications include all modifications under 40 CFR Part 60.

Issue n. Reporting of an Emergency: In order to obtain an affirmative defense in an emergency, Santa Barbara required in Rule 1303.F.d., among other things, that the permittee submit a description of the emergency within 4 days of the emergency. Santa Barbara had to revise 1303.F.d. to require submittal of notice of emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency, to be consistent with § 70.6(g)(3)(iv) and in order to maintain the affirmative defense of emergency.

District response to issue n. The District revised Rule 1303.F.4. to require the permittee to submit a description of the emergency and all mitigating and corrective actions taken to the District within two (2) working days of the emergency.

Agricultural Operations

One of EPA's conditions for full title V program approval was the California Legislature's revision of the Health and Safety Code to eliminate the provision that exempts "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals" from the requirement to obtain a permit. *See* California Health and Safety Code section 42310(e). Even though the local Districts have, in many cases, removed the title V exemption for agricultural sources from their own rules, the Health and Safety Code has not been revised to eliminate this provision.

In evaluating the impact of the Health and Safety Code exemption, EPA believes there are a couple of key factors to consider. First, many post-harvest activities are not covered by the exemption and, thus, are still subject to title V permitting. For example, according to the California Air Resources Board (CARB), the Health and Safety Code exemption does not include activities such as milling and crushing, or canning or cotton ginning operations. Activities such as these are subject to review under the State's title V programs. *See* letter from Michael P. Kenny, Executive Officer, California Air Resources Board, to Jack Broadbent, Director, Air Division, U.S. EPA Region 9, dated September 19, 2001. In addition, since the granting of interim approval, the EPA has discovered that, in general, there is not a reliable or complete inventory of emissions associated with agricultural operations in California that are subject to the exemption. Although further research on this issue is needed, many sources with activities covered by the exemption may not have emission levels that would subject them to title V, and the State and/or individual Districts may be able to demonstrate that none of the sources that are exempt under the State law are subject to title V.

Based, in part, on these factors, EPA has tentatively concluded that requiring the immediate commencement of title V permitting of the limited types of agricultural activities presently subject to the exemption, without a better understanding of the sources and their emissions, would not be an appropriate utilization of limited local, state and federal resources. As a result, despite the State of California's failure to eliminate the agricultural permitting exemption, EPA is proposing to grant full approval to local Air District operating permit programs and allow a

deferral of title V permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a further brief period, not to exceed three years. During the deferral period, we expect to develop the program infrastructure and experience necessary for effective implementation of the title V permitting program to this limited category of sources.

EPA believes it is appropriate to defer permitting for this limited category of agricultural sources because the currently available techniques for determining emissions inventories and for monitoring emissions (e.g., from irrigation pumps and feeding operations) are problematic and will be dramatically enhanced by several efforts currently being undertaken with the cooperation and participation of the operators and agricultural organizations, as well as EPA, other Federal agencies, and the State and local air pollution agencies. For example, the National Academy of Sciences is undertaking a study addressing emissions from animal feeding operations. Their report is due next year. In addition, EPA's Office of Air and Radiation is working with the U.S. Department of Agriculture to better address the impact of agricultural operations on air quality. We consider the effort to evaluate the existing science, improve on assessment tools, collect additional data, remove any remaining legal obstacles, and issue any necessary guidance within the three year deferral time frame to be ambitious. We welcome comments on other areas that might also warrant study, as well as ways that this work might be done more quickly.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, voluntary emission reduction strategies. At the end of this period, EPA will, taking into consideration the results of these studies, make a determination as to how the title V operating permit program will be implemented for any potential major agricultural stationary sources.

Other Changes

In addition to addressing interim approval deficiencies, the District has also adopted additional changes to its operating permit program. EPA has reviewed these changes and has determined that they are approvable. We have listed these other changes below.

Rule 1301.C. and Rule 370

The District revised the definitions of "Part 70 Source" and "Major Source of Regulated Air Pollutants (excluding Hazardous Air Pollutants)" to reflect the redesignation of attainment status.

Rule 1303.D.1.c.i. and Rule 1304.D.1.a.v.

The District revised its rules to allow for permit terms of less than five years.

What Is Involved in This Proposed Action?

Today, we are proposing to fully approve the District's revised operating permit program (Rules 1301, 1303, 1304 and 370). We have determined that the revisions made by the District removes the deficiencies identified by us in 1995. In addition, the District has made other changes to its operating permit program that are unrelated to the changes made to correct interim approval deficiencies. EPA is also proposing to approve these changes. We will make our final decision on our proposal after considering public comments submitted during the 30-day period from this publication date.

Request for Public Comment

EPA requests comments on the program revisions discussed in this proposed action. Copies of the California submittals and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 19, 2001.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program , to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 11, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26410 Filed 10–18–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 044–OPP; FRL–7087–8]

Clean Air Act Proposed Full Approval of Operating Permit Program; San Luis Obispo County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to fully approve the operating permit program of the San Luis Obispo County Air Pollution Control District (District). The program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction.

On November 1, 1995, EPA granted interim approval to the District's operating permit program (60 FR 55460). The District has revised its operating permit program (Rule 216) to satisfy the conditions of the interim approval and this action proposes approval of these revisions made since the interim approval was granted. In addition, EPA proposes to approve two other changes that were made by the District but were not required to correct an interim approval issue.

DATES: Written comments must be received by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Acting Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. You can inspect copies of the District's submittals, and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. You may also see copies of the submitted Title V program at the following locations:

- California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.
- San Luis Obispo County Air Pollution Control District: 3433 Roberto Court, San Luis Obispo, CA 93401.

You may review all the District rules by retrieving them from the California Air Resources Board (ARB) Web site. The location of the District rules on the ARB Web site is *http://arbis.arb.ca.gov/drdb/slo/cur.htm.*

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region IX, at (415) 744–1259 (*rios.gerardo@epa.gov*) or Nahid Zoueshtiagh at (415) 744–1261.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. District's Operating Permit Program

A. What Is the Operating Permit Program?

Title V of the Clean Air Act Amendments of 1990 required all State and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the Clean Air Act (CAA). One goal of the operating permit program is to improve compliance by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year or more of any single hazardous air pollutant (HAP) listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the National Ambient Air Quality Standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the non-attainment classification.

San Luis Obispo County is classified as an attainment area for all NAAQS.

B. What Is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the State revising its program to correct any deficiencies. Because the District's operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the District's program on November 1, 1995 (60 FR 55460).

This **Federal Register** notice describes the changes that the District has made to its Rule 216 (District's Operating Permit Program) since interim approval was granted. The District also revised its Rule 201 (Equipment Not Requiring a Permit) to correct one of the deficiency issues. Our notice also describes the change to this rule.

C. Are There Other Issues With the Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001, (65 FR 32035). The action was subsequently challenged by the Sierra Club and the

New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

EPA received a letter from one organization who commented on what they believe to be deficiencies with respect to Title V programs in California. We are not taking any actions on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** notice published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

D. What Are the Program Changes That EPA Is Proposing To Approve?

As discussed above, EPA granted final interim approval on November 1, 1995 (60 FR 55460) to the San Luis Obispo County Air Pollution Control District's ("District") Title V program. As stipulated in that rulemakings, full approval of the District operating permit program was made contingent upon satisfaction of certain conditions. In response to EPA's interim approval action, the District made major revisions to its Rule 216 (Operating Permit Program), and some revisions to its Rule 201 (Equipment not Requiring a Permit) to remove the deficiencies identified by EPA. The District made its revised rule available to public review and comment, and held a hearing on its proposed action on March 28, 2001. After adoption on March 28, 2001, these revised rules were submitted to EPA via the California Air Resources Board (CARB) on May 18, 2001. We have included below a discussion of each interim approval deficiency issue (as enumerated and explained in our 1995 proposed and final actions on the District's operating permits program (see 60 FR 45685 and 60 FR 55460)), our conditions for correction, followed by a summary of how the District has corrected the deficiency. The Technical Support Document (TSD) for this action includes the District's submittal and details on the revisions made.

Issue 1. In our 1995 action, we identified two problematic items related to dealing with insignificant activities in the District's Operating Permits Program. These identified items were in the District's Rule 201 (Equipment not Requiring a Permit). The District was required to remove any activities from the District's list of insignificant activities that are subject to a unit-specific applicable requirement. (Reference 40 CFR 70.4(b)(2) and 70.5(c)).

District's Response to Issue 1. The District corrected this deficiency by amending its Rule 201.M to require a permit for any comfort air conditioning and refrigerant unit that contains more than 50 pounds of refrigerant. The District also added a new section to Rule 201.A about agricultural equipment. The revised rule now states that a Federal Title V Permit shall always be required for any source that is subject to District Rule 216, Federal Part 70 Permits, including agricultural sources as allowed for in the California Health and Safety Code. With this addition, the District will not need to revise its operating permit rule should California law change on exempting agricultural equipment.

Issue 2. The District was required to revise the definitions of "Minor Part 70 Permit Modification" in Rule 216 C.13, to ensure that significant changes to existing monitoring permit terms or conditions, rather than just relaxations of existing monitoring terms, are processed as significant permit modifications. (Reference: 40 CFR 70.7(e)(4)).

District's Response to Issue 2. The District revised Rule 216.C.15.d. to state that minor modifications do not involve any significant change to any existing federally-enforceable monitoring term or condition or involve any relaxation of reporting or recordkeeping requirements in the Part 70 Permit.

Issue 3. The District was required to revise Rule 216 J.1.b. to include notice "by other means if necessary to assure adequate notice to the affected public."(Reference 40 CFR 70.7(h)(1)).

District's Response to Issue 3. The District added 216.J.1.b.3 to address EPA's concerns. The revised rule now requires that any notice of a preliminary decision shall be provided by other means if necessary to assure adequate notice to the affected public.

Issue 4. San Luis Obispo County was required revise Rule 216 H.1.a.4. and L.1.e. to further limit the types of significant permit modifications that may be operated prior to receiving a final part 70 permit revision to only those modifications that are subject to section 112(g) or required to have a permit under Title I, parts C and D of the CAA and that are not otherwise prohibited by an existing part 70 permit. (Reference 40 CFR 70.5(a)(1)(ii)).

District's Response to Issue 4. The District made several changes to correct the deficiency issues. Several parts of Section H of Rule 216 were revised to clarify the timing for implementing various types of modification requests. These changes are as follows.

- Significant Part 70 Permit Actions—APCO must take final action to approve the application before the source may be operated pursuant to the modification (Rule 216.H.1.a.4).
- Minor Part 70 Permit Modifications—APCO must take final action to approve the application before the source may be operated pursuant to the modification (Rule 216.H.3.a).
- Non-Federal Minor Changes—a source requesting a non-federal minor change to its Part 70 Permit must submit an application for a modified Part 70 Permit to the District, with a copy to the EPA (Rule 216.H.4.a).

In addition Section L was revised as follows:

- Rule 216.L requires that when a complete application to modify a Part 70 Permit has been submitted, the stationary source must be operated in compliance with all applicable conditions on its Part 70 Permit, except as allowed under "Administrative Part 70 Permit Amendment", and all applicable conditions on an Authority to Construct for the modification issued pursuant to Rule 202 (Permits), and Rule 218 (Federal Requirements for Hazardous Air Pollutants), until the Part 70 Permit is revised or the modification is denied.
- Section 216.L.1.e. clarifies the requirements by stating that the protection granted by Subsections L.1.a through c for a significant Part 70 Permit modification shall not be applicable where a federally-enforceable condition of an existing Part 70 Permit would prohibit the modification of a source corresponding to the significant Part 70 Permit modification. In this case, the source shall obtain such modification to the source's Part 70 Permit prior to commencing operation of the modified portion of the source.

Issue 5. The District was required to revise Rule 216 to establish a binding requirement that the Part 70 Permit Format will be included in all part 70 permits or revise Rule 216 to fully address all part 70 permit content requirements within the Rule. (Reference 40 CFR 70.6).

District's Response to Issue 5. The District significantly revised its Rule 216.F to ensure that each Part 70 Permit conforms to an EPA approved format and includes EPA's required elements. The revised Rule 216.F now requires more specific information instead of referencing to an approved format. For example it requires that Part 70 permit include the following elements:

- Monitoring requirements that assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.
- Requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.
- Detailed records of required monitoring information.

Other revisions to Rule 216.F include:

- A new provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.
- Specifying "prompt" reporting requirements as a verbal report as soon as reasonably possible, but in any case within four (4) hours after the deviation's detection, followed by a written report within 10 calendar days of having corrected the deviation.
- Clarify requirements for inspection and entry to facilities.

In addition the District revised its Rule 216.G to:

- Require applicants to include EPA in their notification when they are permitted to operate under an emissions cap that allows them to trade emissions within the emissions cap with 30 calendar days written notification. If the District objects to the emissions trade, the source, the District, and the EPA shall attach each such notice to their copy of the relevant permit.
- Include EPA in notification requirements under operational flexibility.

Issue 6. The District was required to revise Rule 216 to define and provide for giving notice to and responding to comments from affected States. Alternatively, San Luis Obispo could have made a commitment to: (1) Initiate rule revisions upon being notified by EPA of an application by a tribe for State status, and (2) provide affected State notice to tribes upon their filing for State status (i.e., prior to revising Rule 216 to incorporate affected State notice procedures). (Reference 40 CFR 70.2, 70.7(e)(2)(iii), and 70.8(b)).

District's Response to Issue 6. The District revised Rule 216.C.3 to define "Affected State" as:

(a) Whose air quality may be affected by the issuance, modification, or re-issuance of a Part 70 permit and that is contiguous to the State of California; or

(b) That is within 50 miles of the permitted source.

The District also revised Rule Section 2 of 216.J.2.b (Minor Part 70 Permit Modifications) and 216.J.2.c (Significant Part 70 Permit Actions) to provide that the APCO shall provide, to the EPA and any affected State, written notification of any refusal by the District to accept all recommendations that an "affected" State submitted for the Part 70 permit. The notice shall include the District's reasons for not accepting such recommendations.

Issue 7. The District was required to revise the rule to limit the exemption in Rule 216 D.4 for solid waste incineration units required to obtain a permit pursuant to section 3005 of the Solid Waste Disposal Act to those units that are not a major source. Section 70.3(b) states that all major sources, affected sources (acid rain sources), and solid waste incinerators regulated pursuant to section 129(e) of the CAA may not be exempted from Title V permitting. Although section 129(g)(1) of the CAA exempts solid waste incineration units subject to section 3005 of the Solid Waste Disposal Act from regulation under section 129, these units are still subject to Title V and part 70 if they are also major sources. (Reference: 40 CFR 70.3(a)(1)).

District's Response to Issue 7. The District deleted its Rule 216.D.4, therefore removing any exemptions from permitting of solid waste incineration units subject to Section 3005 of the Solid Waste Disposal Act.

Issue 8. San Luis Obispo County was required to revise Rule 216 H.4. to require that the permittee keep records describing non-federal minor changes (e.g., off-permit changes) and the emissions resulting from these changes. (Reference: 40 CFR 70.4(b)(14)(iv)).

District's Response to Issue 8. The District responded that while the District's original program submittal envisioned allowing off-permit non-federal minor changes, such actions were not allowed under the actual program that was implemented. In fact, any source subject to an applicable requirement in the District must first notify the District. For example, the District Rule 202 requires that an application be filed and approved before a non-federal minor change can be made, and failing to do so is a misdemeanor under California law and subject to fines and penalties. In sum, the District does not and will not allow off-permit changes. We agree with the District that the issue is moot because the District's revised Rule 216 has now clarified its procedure for various types of permit modification requests. In correcting our deficiency issue 4, the District has also responded to issue 8 and addressed our concerns resulting from the description of off-permit changes in the original program submittal.

Issue 9. One of EPA's conditions for full title V program approval was the California Legislature's revision of the Health and Safety Code to eliminate the provision that exempts "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals' from the requirement to obtain a permit. *See* California Health and Safety Code section 42310(e). Even though the local Districts have, in many cases, removed the title V exemption for agricultural sources from their own rules, the Health and Safety Code has not been revised to eliminate this provision.

In evaluating the impact of the Health and Safety Code exemption, EPA believes there are a couple of key factors to consider. First, many post-harvest activities are not covered by the exemption and, thus, are still subject to title V permitting. For example, according to the California Air Resources Board (CARB), the Health and Safety Code exemption does not include activities such as milling and crushing, or canning or cotton ginning operations. Activities such as these are subject to review under the State's title V programs. *See* letter from Michael P. Kenny, Executive Officer, California Air Resources Board, to Jack Broadbent, Director, Air Division, U.S. EPA Region 9, dated September 19, 2001. In addition, since the granting of interim approval, the EPA has discovered that, in general, there is not a reliable or complete inventory of emissions associated with agricultural operations in California that are subject to the exemption. Although further research on this issue is needed, many sources with activities covered by the exemption may not have emission levels that would subject them to title V, and the State and/or individual Districts may be able to demonstrate that none of the sources that are exempt under the State law are subject to title V.

Based, in part, on these factors, EPA has tentatively concluded that requiring the immediate commencement of title V

permitting of the limited types of agricultural activities presently subject to the exemption, without a better understanding of the sources and their emissions, would not be an appropriate utilization of limited local, state and federal resources. As a result, despite the State of California's failure to eliminate the agricultural permitting exemption, EPA is proposing to grant full approval to local Air District operating permit programs and allow a deferral of title V permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a further brief period, not to exceed three years. During the deferral period, we expect to develop the program infrastructure and experience necessary for effective implementation of the title V permitting program to this limited category of sources.

EPA believes it is appropriate to defer permitting for this limited category of agricultural sources because the currently available techniques for determining emissions inventories and for monitoring emissions (e.g., from irrigation pumps and feeding operations) are problematic and will be dramatically enhanced by several efforts currently being undertaken with the cooperation and participation of the operators and agricultural organizations, as well as EPA, other federal agencies, and the State and local air pollution agencies. For example, the National Academy of Sciences is undertaking a study addressing emissions from animal feeding operations. Their report is due next year. In addition, EPA's Office of Air and Radiation is working with the U.S. Department of Agriculture to better address the impact of agricultural operations on air quality. We consider the effort to evaluate the existing science, improve on assessment tools, collect additional data, remove any remaining legal obstacles, and issue any necessary guidance within the three year deferral time frame to be ambitious. We welcome comments on other areas that might also warrant study, as well as ways that this work might be done more quickly.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, voluntary emission reduction strategies. At the end of this period, EPA will, taking into consideration the results of these studies, make a determination as to how the title V operating permit program will be implemented for any potential major agricultural stationary sources.

Other District Revisions

In addition to the changes necessary to correct interim approval issues, the District made two other changes to its rule that we propose to approve as part of today's action. First, the District expanded Section A of its Rule 216 to allow the District's program to be suspended during any time period in which a 40 CFR Part 71 operating permit program is being administered. The two exceptions to this are when EPA objects to a permit or when EPA and the District agree, via a delegation agreement, to not suspend all or part of the District's rules. In the latter case, the delegation agreement would describe the terms, conditions and scope of the District's authority for implementing Part 71. This is approvable because it clarifies how the District's program will be administered during time periods where Part 71 is in place.

Second, the District added a statement to its definition of potential to emit ("PTE") at Rule 216.C.18 to state that limiting conditions must be legally and practicably enforceable by EPA and citizens or by the District. The last paragraph of Rule 216.C.18 (previously Rule 216.C.6) now reads as follows:

> The potential to emit for an emissions unit is the maximum quantity of each air pollutant that may be emitted by the emissions unit, based on the emissions unit's physical and operational design. Physical and operational design shall include limitations that restrict emissions, such as hours of operation and type or amount of material combusted, stored or processed, provided such limitations are legally and practicably enforceable by EPA and citizens or by the District.

We propose to approve this revision because even though the new definition is not consistent with Part 70, it is consistent with the new meaning of potential to emit at 40 CFR § 70.2 as established by a 1996 court decision. In *Clean Air Implementotion Project* v. *EPA*, No. 96–1224 (D.C. Cir. June 28, 1996), the court remanded and vacated the requirement for federal enforceability for potential to emit limits under part 70. Therefore, even though part 70 has not been revised, it should be read to mean, "federally enforceable or legally and practicably enforceable by a state or local air pollution control agency."[1]

EPA has issued several guidance memoranda that discuss how the court rulings affect the definition of potential to emit under CAA § 112, New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs, and title V.[2] In particular, the memoranda reiterate the Agency's earlier requirements for practicable enforceability for purposes of effectively limiting a source's potential to emit.[3] For example, practicable enforceability for a source-specific permit means that the permit's provisions must, at a minimum: (1) Be technically accurate and identify which portions of the source are subject to the limitation; (2) specify the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); (3) be independently enforceable and describe the method to determine compliance including appropriate monitoring, recordkeeping and reporting; (4) be permanent; and (5) include a legal obligation to comply with the limit. EPA will rely on San Luis Obispo County implementing this new definition in a manner that is consistent with the court's decisions and EPA policies. In addition, EPA wants to be certain that absent federal and citizen's enforceability, San Luis Obispo County's enforcement program still provides sufficient incentive for sources to comply with permit limits. This proposed rulemaking serves as notice to San Luis Obispo County about our expectations for ensuring the permit limits they impose are enforceable as a practical matter (i.e., practicably enforceable) and that its enforcement program will still provide sufficient compliance incentive. In the future, if San Luis Obispo County does not implement the new definition consistent with our guidance, and/or has not established a sufficient compliance incentive absent Federal and citizen's enforceability, EPA could find that the District has failed to administer or enforce its program and may take action to notify the District of such a finding as authorized by 40 CFR 70.10(b)(1).

[1] See also, *Nationul Mining Association (NMA)* v. *EPA*, 59 F.3d 1351 (D.C. Cir. July 21, 1995) (Title III) and *Chemical Manufacturing Ass'n (CMA)* v. *EPA*, No. 89–1514 (D.C. Cir. Sept. 15 1995) (Title I).

[2] *See*, e.g., January 22, 1996, Memorandum entitled, "Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit" from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement to EPA Regional Offices; January 31, 1996 paper to the Members of the Subcommittee on Permit, New Source Review and Toxics Integration from Steve Herman, OECA, and Mary Nichols, Assistant Administrator of Air and Radiation; and the August 27, 1996 Memorandum entitled, "Extension of January 25, 1995 Potential to Emit Transition Policy" from John Seitz, Director, OAQPS and Robert Van Heuvelen, Director, Office of Regulatory Enforcement.

[3] *See*, e.g., June 13, 1989 Memorandum entitled, "Guidance on Limiting Potential to Emit in new Source Permitting, from Terrell F. Hunt, Associate Enforcement Counsel, OECA, and John Seitz, Director, OAQPS, to EPA Regional Offices. This guidance is still the most comprehensive statement from EPA on this subject. Further guidance was provided on January 25, 1995 in a memorandum entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, ORE to Regional Air Directors. Also please refer to the EPA Region 7 database at *http://www.epa.gov/region07/programs/artd/air/policy/policy.htm for more information.*

E. What Is Involved in This Action?

We have determined that the District has addressed our specific concerns identified as interim approval issues. Therefore, we are now proposing to fully approve the District's Operating Permit Program. We are also proposing to approve two additional changes that were made beyond those necessary to correct interim approval issues.

II. Request for Public Comment

EPA requests comments on the program revisions discussed in this proposed action. Copies of the District submittal and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 19, 2001.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS). EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 11, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26419 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 046–OPP; FRL–7087–3]

Clean Air Act Proposed Full Approval of Operating Permit Program; Mojave Desert Air Quality Management District, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to fully approve the operating permit program of the Mojave Desert Air Quality Management District ("Mojave" or "District"). The Mojave operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to the Mojave operating permit program on February 5, 1996, but listed conditions that Mojave's program would be required to meet for full approval. Mojave has revised its program to satisfy the conditions of the interim approval Thus, this action proposes full approval of the Mojave operating permit program as a result of those revisions.

DATES: Comments on the proposed full approval discussed in this proposed action must be received in writing by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Acting Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. You can inspect copies of Mojave's submittals, and other supporting documentation relevant to

this action, during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105.

You may also see copies of the submitted operating permit program at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

The Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392.

A electronic copy of Mojave's operating permit program rules may be available via the Internet at *http://www.arb.ca.gov/drdb/moj/cur.htm*. However, the online version of these rules may be different from the version submitted to EPA for approval. Readers are cautioned to verify that the amended dates of the rules listed are the same as those for the rules submitted to EPA for approval (June 4, 2001). The official submittal is available only at the three addresses listed above.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, EPA Region IX, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1238 or kohn.roger@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
Are there other issues with the program?
What are the program changes that EPA is proposing to approve?
What is involved in this proposed action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "severe," major sources include those with the potential of emitting 25 tons per year or more of volatile organic compounds or nitrogen oxides. Part of Mojave is located in an area designated as severe nonattainment for ozone. Hence, the potential to emit threshold for major sources in that area is 25 tons per year or more of volatile organic compounds or nitrogen oxides.

What Is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct the deficiencies. Because the Mojave operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to its program in a rulemaking published on February 5, 1996 (61 FR 4217). The interim approval rulemaking incorporated by reference the conditions described in the July 3, 1995 (60 FR 34488) proposed rulemaking for interim approval that had to be met in order for the Mojave program to receive full approval. On June 4, 2001, the California Air Resources Board, on behalf of Mojave, submitted the District's revised operating permit program that contains the needed changes for full approval identified in the interim approval rulemaking. This document describes these changes.

Are There Other Issues With the Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** document.

EPA received a comment letter from one person on what he believes to be deficiencies with respect to Title V programs in California. EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** document published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

What Are the Program Changes That EPA Is Proposing To Approve?

As stipulated in the February 5, 1996 (61 FR 4217) rulemaking, full approval of the Mojave operating permit program was made contingent upon satisfaction of the following conditions:

(1) Mojave must revise Rule 1203(G)(3)(g), which prohibits the permit shield from applying to administrative permit amendments and significant permit modifications, to include a reference to minor permit modifications as well. In accordance with 40 CFR 70.7(e)(2)(vi), the permit shield cannot apply to minor permit modifications, and the rule must state this clearly.

The District revised Rule 1203(G)(3)(g) to prohibit the permit shield from applying to minor permit modifications as well.

(2) Mojave must add a provision for sending the final permit to EPA, in accordance with 40 CFR 70.8(a)(1). Mojave's Rule 1203(B)(1)(c) only provides for sending the proposed permit to EPA.

The District added provision 1203(B)(1)(e) to specifically require that the final permit be provided to EPA.

(3) Mojave must adopt Rule 1210 (Acid Rain Provisions of Federal Operating Permits), in accordance with 40 CFR 70.4(b)(11)(iv).

The District adopted Rule 1210 on June 28, 1995.

(4) Mojave must amend Rule 1206(A)(1)(a)(i), which provides that no reopening is required if the effective date of the additional applicable requirement is later than the date on which the permit is due to expire. However, if the original permit or any of its terms and conditions are extended pursuant to 40 CFR 70.4(b)(10), the permit must be reopened to include a new applicable requirement, and a statement must be made to this effect in Mojave's rule, in accordance with 40 CFR. 70.7(f)(1)(i).

The District added a provision Rule 1206(A)(1)(a)(i) to require the permit to be reopened if a new applicable requirement's effective date falls during an extension of a Title V permit's expiration date pursuant to Rule 1202(E)(2).

(5) Mojave must clarify in Rule 1203(G)(3)(b) that the permit shield shall not limit liability for violations which occurred prior to or at the time of the issuance of the federal operating permit. This is so that violations which are continuing at the time of permit issuance will not be shielded from potential enforcement action, in accordance with 40 CFR 70.6(f)(3)(ii).

The District modified Rule 1203(G)(3)(b) to clarify that the permit shield would not limit liability for violations which occurred prior to or which were ongoing at the time of the issuance of the Federal Operating Permit.

(6) In accordance with 40 CFR 70.5(c), Mojave must provide a demonstration that activities that are exempt from part 70 permitting are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, Mojave may restrict the exemptions (including any director's discretion provisions) to activities that are not likely to be subject to an applicable requirement and emit less than District-established emission levels. The District should establish separate emission levels for HAPs and for other regulated pollutants and demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements.

Instead of demonstrating that each activity on Mojave's insignificant activity list is truly insignificant, the District elected to establish significant source emissions level cut-offs below which activities would presumably be insignificant. To implement this, the District amended Rule 219(D)(1)(a) to lower the cut-off threshold from five to two tons per year of any regulated air pollutant or 10% of the applicable threshold for determination of a major facility, whichever is less. For a Hazardous Air Pollutant (HAP), the cut-off threshold is any de minimis level promulgated pursuant to CAA section 112(g), any significance level defined in 40 CFR 52.21(b)(23)(i), or 0.5 ton per year of any such HAP, whichever is less.

(7) Mojave must add the word "and" at the end of sections (b) and (c) in Rule 219(B)(2), in order to clarify that the four gatekeepers must all apply in order for equipment to be exempt from getting a federal operating permit, in accordance with 40 CFR 70.5(c).

The District made the required change to Rule 219(B)(2).

(8) Mojave must add to Rule 1203(D)(1)(e)(i) a reference to the requirement for the clear identification of all deviations with respect to reporting, in accordance with 40 CFR 70.6(a)(3)(iii)(A).

The District modified Rule 1203(D)(1)(e) to require the identification of all instances of deviations in monitoring reports.

(9) Mojave must add to Rule 1203(D)(1)(e)(ii) a reference to the requirement to specify the probable cause and corrective actions or preventive measures taken with regard to reporting a deviation, in accordance with 40 CFR 70.6(a)(3)(iii)(B).

The District modified Rule 1203(D)(1)(e)(ii) to require prompt and adequate reporting pursuant to requirements in Rule 430, which specify that cause and corrective actions must be identified in reporting deviations .

(10) In addition to the District-specific issues arising from Mojave's program submittal and locally adopted regulations, California state law currently exempts agricultural production sources from permit requirements. In order for this program to receive full approval (and avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

One of EPA's conditions for full title V program approval was the California Legislature's revision of the Health and Safety Code to eliminate the provision that exempts "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals" from the requirement to obtain a permit. *See* California Health and Safety Code section 42310(e). Even though the local Districts have, in many cases, removed the title V exemption for agricultural sources from their own rules, the Health and Safety Code has not been revised to eliminate this provision.

In evaluating the impact of the Health and Safety Code exemption, EPA believes there are a couple of key factors to consider. First, many post-harvest activities are not covered by the exemption and, thus, are still subject to title V permitting. For example, according to the California Air Resources Board (CARB), the Health and Safety Code exemption does not include activities such as milling and crushing, or canning or cotton ginning operations. Activities such as these are subject to review under the State's title V programs. *See* letter from Michael P. Kenny, Executive Officer, California Air Resources Board, to Jack Broadbent, Director, Air Division, U.S. EPA Region 9, dated September 19, 2001. In addition, since the granting of interim approval, the EPA has discovered that, in general, there is not a reliable or complete inventory of emissions associated with agricultural operations in California that are subject to the exemption. Although further research on this issue is needed, many sources with activities covered by the exemption may not have emission levels that would subject them to title V, and the State and/or individual Districts may be able to demonstrate that none of the sources that are exempt under the State law are subject to title V.

Based, in part, on these factors, EPA has tentatively concluded that requiring the immediate commencement of title V permitting of the limited types of agricultural activities presently subject to the exemption, without a better understanding of the sources and their emissions, would not be an appropriate utilization of limited local, state and federal resources. As a result, despite the State of California's failure to eliminate the agricultural permitting exemption, EPA is proposing to grant full approval to local Air District operating permit programs and allow a deferral of title V permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a further brief period, not to exceed three years. During the deferral period, we expect to develop the program infrastructure and experience necessary for effective implementation of the title V permitting program to this limited category of sources.

EPA believes it is appropriate to defer permitting for this limited category of agricultural sources because the currently available techniques for determining emissions inventories and for monitoring emissions (e.g., from irrigation pumps and feeding operations) are problematic and will be dramatically enhanced by several efforts currently being undertaken with the cooperation and participation of the operators and agricultural organizations, as well as EPA, other federal agencies, and the State and local air pollution agencies. For example, the National Academy of Sciences is undertaking a study addressing emissions from animal feeding operations. Their report is due next year. In addition, EPA's Office of Air and Radiation is working with the U.S. Department of Agriculture to better address the impact of agricultural operations on air quality. We consider the effort to evaluate the existing science, improve on assessment tools, collect additional data, remove any remaining legal obstacles, and issue any necessary guidance within the three year deferral time frame to be ambitious. We welcome comments on other areas that might also warrant study, as well as ways that this work might be done more quickly.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, voluntary emission reduction strategies. At the end of this period, EPA will, taking into consideration the results of these studies, make a determination as to how the title V operating permit program will be implemented for any potential major agricultural stationary sources.

What Is Involved in This Proposed Action?

The EPA proposes full approval of the operating permits program submitted by Mojave based on the revisions submitted on June 4, 2001, which satisfactorily address the program deficiencies identified in EPA's February 5, 1996 Interim Approval Rulemaking. See 61 FR 4217.

Request for Public Comment

EPA requests comments on the program revisions discussed in this proposed action. Copies of the MDAQMD submittal and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 19, 2001.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program , to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 Note) do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 11, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26417 Filed 10–18–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA051–OPP; FRL–7087–2]

Clean Air Act Proposed Full Approval of Operating Permit Program; Sacramento Metropolitan Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to fully approve Rule 207 (Title V—Federal Operating Permit Program) and the District requirements for permit applications ("List and Criteria") which are part of the operating permit program of the Sacramento Metropolitan Air Quality Management District ("Sacramento" or "District"). The District operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdictions. EPA granted interim approval to the District operating permit program on August 4, 1995, but listed certain deficiencies in the program preventing full approval. The District has revised Rule 207 and the "List and Criteria" to correct the deficiencies of the interim approval and this action proposes full approval of those revisions.

DATES: Comments on this proposed rule must be received in writing by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105 (Attention: Mark Sims). You can inspect copies of the Sacramento submittals, and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. You may also see copies of the District's submitted operating permit program at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

The Sacramento Air Quality Management District, 777 12th Street, 3rd Floor, Sacramento, California, 95814–1908.

An electronic copy of Sacramento's operating permit program (rules 201, 207, and List and Criteria) may be available via the Internet at *http://www.arb.ca.gov/drdb/sac/cur.htm*. However, the versions of District rule 207 and the List and Criteria at the above internet address may be different from the versions submitted to EPA for approval. Readers are cautioned to verify that the adoption date of rule 207 and the List and Criteria listed is the same date as the rule 207 and List and Criteria submitted to EPA for approval. The official submittal is available only at the three addresses listed above.

FOR FURTHER INFORMATION CONTACT: Mark Sims, EPA Region IX, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1229 or *sims.mark@epa.gov*.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
Are there other issues with the program?
What are the program changes that EPA is approving?
What is involved in this proposed action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. A goal of the operating permit program is to improve compliance by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "severe," major sources include those with the potential of emitting 25 tons per year or more of volatile organic compounds or nitrogen oxides. EPA has classified the Sacramento Metropolitan Area as a severe nonattainment area for ozone (40 CFR 81.305).

What Is Being Addressed in This Document?

The California Air Resources Board submitted an administratively complete permitting program on behalf of the District on August 1, 1994. Because the District's operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval of the program, and conditioned full approval on the District revising its program to correct the deficiencies. Thus, EPA granted interim approval to the District's program in a rulemaking published on August 4, 1995 (60 FR 39862). The interim approval notice described the program deficiencies and revisions that had to be made in order for the District program to receive full approval. Since that time, the District has revised and the California Air Resources Board, on behalf of the District, has submitted a revision to the District's operating permit program by letter dated June 1, 2001. This **Federal Register** document describes the changes that have been made to the Sacramento operating permit program as submitted on June 1, 2001, and the basis for EPA proposing full approval of the program.

Are There Other Issues With the Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a document in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or

implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** document.

EPA received a comment letter from one organization on what they believe to be deficiencies with respect to Title V programs in California. EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** document published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

What Are the Program Changes That EPA Is Approving?

As discussed in the August 4, 1995 (60 FR 39862) rulemaking, full approval of the Sacramento operating permit program was made contingent upon satisfaction of the following conditions:

Issue (1): One of EPA's conditions for full title V program approval was the California Legislature's revision of the Health and Safety Code to eliminate the provision that exempts "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals" from the requirement to obtain a permit. *See* California Health and Safety Code section 42310(e). Even though the local Districts have, in many cases, removed the title V exemption for agricultural sources from their own rules, the Health and Safety Code has not been revised to eliminate this provision.

In evaluating the impact of the Health and Safety Code exemption, EPA believes there are a couple of key factors to consider. First, many post-harvest activities are not covered by the exemption and, thus, are still subject to title V permitting. For example, according to the California Air Resources Board (CARB), the Health and Safety Code exemption does not include activities such as milling and crushing, or canning or cotton ginning operations. Activities such as these are subject to review under the State's title V programs. *See* letter from Michael P. Kenny, Executive Officer, California Air Resources Board, to Jack Broadbent, Director, Air Division, U.S. EPA Region 9, dated September 19, 2001. In addition, since the granting of interim approval, the EPA has discovered that, in general, there is not a reliable or complete inventory of emissions associated with agricultural operations in California that are subject to the exemption. Although further research on this issue is needed, many sources with activities covered by the exemption may not have emission levels that would subject them to title V, and the State and/or individual Districts may be able to demonstrate that none of the sources that are exempt under the State law are subject to title V.

Based, in part, on these factors, EPA has tentatively concluded that requiring the immediate commencement of title V permitting of the limited types of agricultural activities presently subject to the exemption, without a better understanding of the sources and their emissions, would not be an appropriate utilization of limited local, state and federal resources. As a result, despite the State of California's failure to eliminate the agricultural permitting exemption, EPA is proposing to grant full approval to local Air District operating permit programs and allow a deferral of title V permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a further brief period, not to exceed three years. During the deferral period, we expect to develop the program infrastructure and experience necessary for effective implementation of the title V permitting program to this limited category of sources.

EPA believes it is appropriate to defer permitting for this limited category of agricultural sources because the currently available techniques for determining emissions inventories and for monitoring emissions (e.g., from irrigation pumps and feeding operations) are problematic and will be dramatically enhanced by several efforts currently being undertaken with the cooperation and participation of the operators and agricultural organizations, as well as EPA, other federal agencies, and the State and local air pollution agencies. For example, the National Academy of Sciences is undertaking a study addressing emissions from animal feeding operations. Their report is due next year. In addition, EPA's Office of Air and Radiation is working with the U.S. Department of Agriculture to better address the impact of agricultural operations on air quality. We consider the effort to evaluate the existing science, improve on assessment tools, collect additional data, remove any remaining legal obstacles, and issue any necessary guidance within the three year deferral time frame to be ambitious. We welcome comments on other areas that might also warrant study, as well as ways that this work might be done more quickly.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, voluntary emission reduction strategies. At the end of this period, EPA will, taking into consideration the results of these studies, make a determination as to how the title V operating permit program will be implemented for any potential major agricultural stationary sources.

Issue (2): The District was required to revise its insignificant activities permit exemption list or submit information or criteria justifying these exemptions. (40 CFR 70.5(c)).

Rule or Program Change: The District corrected this deficiency by revising its List and Criteria to incorporate the insignificant activities developed by the EPA–ARB–CAPCOA Insignificant Activities Workgroup. The District included justifications for each of the identified activities. The District also revised the List and Criteria in order to clarify that insignificant emission units are not exempt from Title V.

Issue (3): The District's limits on operational flexibility were not as explicitly restrictive as the limits contained in 40 CFR 70.4(b)(12) concerning Title I modifications.

Rule or Program Change: The District corrected this deficiency by revising Rule 207, section 308.3.b., to not allow owners and operators to make operational changes that are significant Title V permit or Title I modifications.

Issue (4): The District was required to change its rule to adopt appropriate permit issuance deadlines for sources that were initially deferred from the program due to their actual emissions but did not obtain federally enforceable limits on their potential to emit.

Rule or Program Change: The District corrected this deficiency by revising Rule 207, section 301.1, to require owners and operators of stationary sources with a potential to emit at or above major source trigger levels but with actual emissions below levels stated in section 301 to submit complete Title V permit applications by no later than June 30, 2001.

Issue (5): The District was required to add emissions trading provisions to the rule consistent with 40 CFR 70.6(a)(10). The permit content section of the rule must allow provisions for trading within the facility where an applicable requirement provides for trading increases and decreases without case-by-case approval.

Rule or Program Change: The District did not make any rule changes to address this deficiency. However, the District believes that Rule 207 contains the necessary language to ensure permits will include terms and conditions to allow emissions trading without case-by-case approval if allowed by an applicable requirement. EPA now agrees that Rule 207 contains language consistent with 40 CFR 70.6(a)(10). See Rule 207, section 308.

Issue (6): The District rule was to explicitly require that the permit include fugitive emissions in the same manner as stack emissions (40 CFR 70.3(d)).

Rule or Program Change: The District corrected this deficiency by revising Rule 207, section 305.1, to require that fugitive emissions shall be included in the Title V permit in the same manner as stack emissions. The District also revised its List and Criteria to require sources to characterize fugitive emissions in the Title V permit application.

Issue (7): The District rule was required to state that the District will provide public notice by means other than newspaper notice and a mailing list when necessary to ensure that adequate notice is given (40 CFR 70.7(h)).

Rule or Program Change: The District corrected this deficiency by revising Rule 207, section 403.1, to match the language in 40 CFR 70.7(h). The rule now requires for public notice that notice also be given by other means such as the District Website, community groups, and public meetings when necessary to ensure that adequate notice is given.

What Is Involved in This Proposed Action?

Sacramento has corrected the deficiencies cited in the interim approval on August 4, 1995 (60 FR 39862), and EPA proposes full approval the Sacramento operating permit program Rule 207. Sacramento made two additional changes to Rule 207 that were not necessary to correct interim approval issues. EPA is acting to approve a rule change concerning potential to emit and is not acting on a rule change concerning the effective date of the rule.

EPA proposes to approve a revision to the Rule 207, Section 226, definition of "potential to emit." The District revised the definition of potential to emit to state that limitations on the physical or operational design capacity, including emissions control devices and limitations on hours of operation, may be considered only if such limitations are federally enforceable *or legally and practicably enforceable by the District* (emphasis added). This change is consistent with litigation affecting EPA's consideration of the potential to emit issue. In *Clean Air Implementation Project* v. *EPA*, No. 96–1224 (D.C. Cir. June 28, 1996), the court remanded and vacated the requirement for federal enforceability for potential to emit limits under part 70. Even though part 70 has not been revised it should be read to mean, "federally enforceable or legally and practicably enforceable by a state or local air pollution control agency."[1]

EPA proposes to approve this revision because Sacramento's rule is consistent with the current meaning of potential to emit at 40 CFR 70.2. EPA has issued several guidance memoranda that discuss how the court rulings affect the definition of potential to emit under CAA section 112, New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs, and title V.[2] In particular, the memoranda reiterate the Agency's earlier requirements for practicable enforceability for purposes of effectively limiting a source's potential to emit.[3] For example, practicable enforceability for a source-specific permit means that the permit's provisions must, at a minimum: (1) Be technically accurate and identify which portions of the source are subject to the limitation; (2) specify the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); (3) be independently enforceable and describe the method to determine compliance including appropriate monitoring, recordkeeping and reporting; (4) be permanent; and (5) include a legal obligation to comply with the limit.

EPA will rely on Sacramento implementing this new definition in a manner that is consistent with the court's decisions and EPA policies. In addition, EPA wants to be certain that absent federal and citizen's enforceability, Sacramento's enforcement program still provides sufficient incentive for sources to comply with permit limits. This proposal provides notice to Sacramento on our expectations for ensuring the permit limits they impose are enforceable as a practical matter (i.e., practicably enforceable) and that its enforcement program will still provide sufficient compliance incentive. In the future, if Sacramento does not implement the new definition consistent with our guidance, and/or has not established a sufficient compliance incentive absent Federal and citizen's enforceability, EPA could find that the District has failed to administer or enforce its program and may take action to notify the District of such a finding as authorized by 40 CFR 70.10(b)(1).

Sacramento deleted the effective date provision of Rule 207 which stated that the rule becomes effective on the date it is approved by EPA. EPA is currently evaluating the approvability of this change to Rule 207. Because EPA has not yet determined whether this change is approvable under the requirements of 40 CFR part 70, and since this change was not required by EPA for Sacramento to receive full program approval, EPA is taking no action on this change at this time.

Request for Public Comment

EPA requests comments on the program revisions discussed in this proposed action. Copies of the Sacramento submittal and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region IX office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the

[1] See also, *National Mining Association (NMA)* v. *EPA*, 59 F. 3d 1351 (D.C. Cir. July 21, 1995) (Title III) and *Chemical Manufacturing Ass'n (CMA)* v. *EPA*, No. 89–1514 (D.C. Cir. Sept. 15, 1995) (Title I).

[2] See, e.g., January 22, 1996, Memorandum entitled, "Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit" from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement to EPA Regional Offices; January 31, 1996 paper to the Members of the Subcommittee on Permit, New Source Review and Toxics Integration from Steve Herman, OECA, and Mary Nichols, Assistant Administrator of Air and Radiation; and the August 27, 1996 Memorandum entitled, "Extension of January 25, 1995 Potential to Emit Transition Policy" from John Seitz, Director, OAQPS and Robert Van Heuvelen, Director, Office of Regulatory Enforcement.

[3] See, e.g., June 13, 1989 Memorandum entitled, "Guidance on Limiting Potential to Emit in new Source Permitting, from Terrell F. Hunt, Associate Enforcement Counsel, OECA, and John Seitz, Director, OAQPS, to EPA Regional Offices. This guidance is still the most comprehensive statement from EPA on this subject. Further guidance was provided on January 25, 1995 in a memorandum entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, director, ORE to Regional Air Directors. Also please refer to the EPA Region 7 database at *http://www.epa.gov/region07/programs/artd/air/policy/policy.htm* for more information.

docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 19, 2001.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves State law as meeting federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), because it proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 on May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 11, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26418 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA052–OPP; FRL–7086–8]

Clean Air Act Proposed Full Approval of Operating Permit Program; South Coast Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve certain revisions of Rule 3000 (General), Rule 3002 (Requirements), Rule 3004 (Permit Types and Content), and Rule 3005 (Permit Revisions), which are part of the operating permit program of the South Coast Air Quality Management District ("South Coast" or "District"). The District operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdictions. EPA granted interim approval to the District operating permit program on August 29, 1996, but listed certain deficiencies in the program preventing full approval. The District has revised Rules 3000, 3002, 3004, and 3005 to correct the deficiencies of the interim approval and this action proposes full approval of those revisions. South Coast has made other changes to its part 70 program since EPA granted interim approval to the program. EPA is not taking action on these other changes at this time.

DATES: Comments on this proposed rule must be received in writing by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. You can inspect copies of the South Coast submittals, and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. You may also see copies of the District's submitted operating permit program at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

The South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California 91765–4182.

An electronic copy of South Coast's operating permit program (Regulation XXX, rules 3000–3007, Title V Permits) may be available via the Internet at *http://www.arb.ca.gov/drdb/sc/cur.htm*. However, the versions of District rules 3000, 3002, 3004, and 3005 may be different from the versions submitted to EPA for approval. Readers are cautioned to verify that the adoption dates of rules 3000, 3002, 3004, and 3005 are the same dates as the rules submitted to EPA for approval. The official submittal is available only at the three addresses listed above.

FOR FURTHER INFORMATION CONTACT: Mark Sims, EPA Region IX, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1229 or *sims.mark@epa.gov*.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
Are there other issues with the program?
What are the program changes that EPA is approving?
What is involved in this proposed action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. A goal of the operating permit program is to improve compliance by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "extreme," major sources include those with the potential of emitting 10 tons per year or more of volatile organic compounds or nitrogen oxides. EPA has classified the South Coast Air Basin as an extreme nonattainment area for ozone and a serious nonattainment area for PM_{10} (70 ton per year major source threshold). (See 40 CFR 81.305).

What Is Being Addressed In This Document?

The California Air Resources Board submitted to EPA the District's title V program on December 27, 1993, except for the District permit application forms, which were submitted on March 6, 1995. On March 30, 1995, EPA deemed the District's operating permit program to be administratively complete. Because the District's operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval of the program, and conditioned full approval on the District revising its program to correct the deficiencies. Thus, EPA granted interim approval to the District's program in a rulemaking published on August 29, 1996 (61 FR 45330). The interim approval notice described the program deficiencies and revisions that had to be made in order for the District program to receive full approval. Since that time, the District has revised and the California Air Resources Board, on behalf of the District, has submitted revisions to the District's operating permit program on August 2, 2001, and October 2, 2001. This **Federal Register** notice describes the changes that South Coast has made to its operating permit program to correct interim approval deficiencies, and the basis for EPA proposing full approval of these changes. EPA is not taking action on other rule changes made since interim approval.

Are There Other Issues With The Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a document in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** document.

EPA received a comment letter from one organization on what they believe to be deficiencies with respect to Title V programs in California. EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** document published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

What Are the Program Changes That EPA Is Approving?

As discussed in the August 29, 1996 (61 FR 45330) rulemaking, full approval of the South Coast operating permit program was made contingent upon satisfaction of the following conditions:

Issue (1): One of EPA's conditions for full title V program approval was the California Legislature's revision of the Health and Safety Code to eliminate the provision that exempts "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals" from the requirement to obtain a permit. *See* California Health and Safety Code section 42310(e). Even though the local Districts have, in many cases, removed the title V exemption for agricultural sources from their own rules, the Health and Safety Code has not been revised to eliminate this provision.

In evaluating the impact of the Health and Safety Code exemption, EPA believes there are a couple of key factors to consider. First, many post-harvest activities are not covered by the exemption and, thus, are still subject to title V permitting. For example, according to the California Air Resources Board (CARB), the Health and Safety Code exemption does not include activities such as milling and crushing, or canning or cotton ginning operations. Activities such as these are subject to review under the State's title V programs. *See* letter from Michael P. Kenny, Executive Officer, California Air Resources Board, to Jack Broadbent.

Director, Air Division, U.S. EPA Region 9, dated September 19, 2001. In addition, since the granting of interim approval, the EPA has discovered that, in general, there is not a reliable or complete inventory of emissions associated with agricultural operations in California that are subject to the exemption. Although further research on this issue is needed, many sources with activities covered by the exemption may not have emission levels that would subject them to title V, and the State and/or individual Districts may be able to demonstrate that none of the sources that are exempt under the State law are subject to title V.

Based, in part, on these factors, EPA has tentatively concluded that requiring the immediate commencement of title V permitting of the limited types of agricultural activities presently subject to the exemption, without a better understanding of the sources and their emissions, would not be an appropriate utilization of limited local, state and federal resources. As a result, despite the State of California's failure to eliminate the agricultural permitting exemption, EPA is proposing to grant full approval to local Air District operating permit programs and allow a deferral of title V permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a further brief period, not to exceed three years. During the deferral period, we expect to develop the program infrastructure and experience necessary for effective implementation of the title V permitting program to this limited category of sources.

EPA believes it is appropriate to defer permitting for this limited category of agricultural sources because the currently available techniques for determining emissions inventories and for monitoring emissions (e.g., from irrigation pumps and feeding operations) are problematic and will be dramatically enhanced by several efforts currently being undertaken with the cooperation and participation of the operators and agricultural organizations, as well as EPA, other federal agencies, and the State and local air pollution agencies. For example, the National Academy of Sciences is undertaking a study addressing emissions from animal feeding operations. Their report is due next year. In addition, EPA's Office of Air and Radiation is working with the U.S. Department of Agriculture to better address the impact of agricultural operations on air quality. We consider the effort to evaluate the existing science, improve on assessment tools, collect additional data, remove any remaining legal obstacles, and issue any necessary guidance within the three year deferral time frame to be ambitious. We welcome comments on other areas that might also warrant study, as well as ways that this work might be done more quickly.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, voluntary emission reduction strategies. At the end of this period, EPA will, taking into consideration the results of these studies, make a determination as to how the title V operating permit program will be implemented for any potential major agricultural stationary sources.

Issue (2): The District was required to revise its insignificant activities permit exemption list or submit information or criteria justifying these exemptions. (40 CFR 70.5(c)).

Rule or Program Change: In 1998, the District revised its Technical Guidance Document by deleting the List of Insignificant Activities. The District now requires Title V permit applicants to list all equipment claimed as exempt from New Source Review permit requirements (per Rule 219). The District created Form 500–B, List of Exempt Equipment, for this purpose. EPA interprets this list of "exempt" equipment to apply only to New Source Review requirements. Any equipment exempt from permitting per Rule 219 is not exempt from the Title V permit program, is subject to all applicable requirements, and must be listed in the Title V permit along with all applicable requirements.

Issue (3): The District was required to revise its minor permit modification procedures to not allow significant permit modifications to be processed as minor permit modifications. (40 CFR 70.7(e)(2)(i)(3),(4), and (4)(A).)

Rule or Program Change: The District revised Rules 3000(b)(12) and 3005(c) to correct this deficiency. Rule 3005(c) now allows minor permit revision procedures to be used only for permit revisions described in Rule 3000(b)(12), and does not allow modifications which result in emission increases up to the higher "*de minimis*" emission thresholds contained in Rule 3000(b)(6) to be processed as minor permit revisions. The District made the following three revisions to correct the deficiencies specifically cited in the 1996 **Federal Register** document:

(1) The District added to Rule 3000(b)(12)—Minor Permit Revision—sections (viii) and (ix) that allow minor permit revisions for NSPS and NESHAP sources provided that the source "is not an installation of a new permit unit subject to an NSPS pursuant to 40 CFR part 60, or a NESHAP pursuant to 40 CFR part 61 or 63; and is not a modification or reconstruction of an existing permit unit, resulting in new or additional NSPS requirements pursuant to 40 CFR part 60, or new or additional NESHAP requirements pursuant to 40 CFR part 61 or 63;"

(2) The District revised Rule 3005(c) to refer to a minor permit revision definition consistent with 40 CFR part 70, and does not allow revisions that trigger other regulatory requirements such as New Source Review. In addition, Rule 3005(d), Group Processing Procedures for Multiple Minor Permit Revisions, only allows minor permit revisions if emissions from such changes are collectively below 5 tons per year of criteria pollutants; and

(3) District Rule 3000(b)(12)(vii) only allows minor permit revisions for any Title V permit revision that does not establish or change a permit condition that a facility has assumed to avoid an applicable requirement.

Issue (4): Initial implementation of the District program did not include all Title V sources and the District received source category limited interim approval. The District's regulation, however, included language that expanded the applicability of the program three years after the program effective date, and ensured that all Title V sources will be permitted within five years of full, partial, or interim approval by EPA of the District Title V program. Although EPA considered this "phase-in" to be an interim approval issue, no change to the regulation is required to resolve the issue.

Rule or Program Change: No rule revision was necessary to correct this deficiency, since the phase-in period ended in February 2000 and the issue is now moot. All known Title V sources have by this time submitted Title V permit applications as required by Rules 3001(b) and 3003(a)(3).

Issue (5): The District was required to amend Rule 3005(d), Group Processing Procedures for Multiple Minor Permit Revisions, to delete reference to Rule 3000(b)(6), the District's higher de minimis significant permit revision levels when instructing an applicant of its responsibilities.

Rule or Program Change: To correct this deficiency, the District revised Rule 3005(c)(1), Minor Permit Revisions Applicability, to delete the reference to the higher de minimis significant permit revision levels contained in Rule 3000(b)(6). Rule 3005(d)(1) now clearly states that group processing procedures for multiple minor permit revision applications are only valid for emissions collectively below 5 tons per year. Although still referencing Rule 3000(b)(6), Rule 3005(d)(2) now has no bearing on whether applications subject to group processing provisions qualify as minor permit revisions.

Issue (6): The District was required to amend Rule 3004(a)(4)(C) to conform with part 70 language. The rule required that the permit include periodic monitoring or recordkeeping representative of the source's compliance for the terms of the permit" rather than "with the terms of the permit." 40 CFR 70.6(a)(3)(i)(B).

Rule or Program Change: To correct this deficiency, the District revised the language of Rule 3004(a)(4)(C) from "for the term of the permit" to "with the terms of the permit."

Issue (7): The District was required to revise Rule 3004(a)(9) to specify that any trading of emission increases and decreases allowed without changes to the permit must meet the requirements of the part 70 program. 40 CFR 70.6(a)(10)(iii).

Rule or Program Change: To correct this deficiency, the District revised Rule 3004(a)(9)(C) to state that the terms and conditions of emission trades "must meet all applicable requirements and requirements of this regulation."

Issue (8): The District was required to amend its operating permit program to provide that a source that is granted a general permit shall be subject to enforcement action for operating without a permit if the source is later determined not to qualify for the conditions and terms of the general permit, regardless of any applicable shield provisions. 40 CFR 70.6(d)(1).

Rule or Program Change: The District added Rule 3004(e)(8) to correct this deficiency. The rule states that if the equipment that has been approved for coverage under a general permit is later determined not to qualify for the conditions and terms of the general permit, the Title V facility shall be subject to enforcement action for operating without a Title V permit.

Issue (9): The District was required to amend Rule 3002(g)(1). The rule allows an emergency to constitute an affirmative defense if properly signed, contemporaneous operating logs or other credible evidence are kept at the facility, but the rule did not require the logs or other evidence to demonstrate that conditions set out in the rule were met by the facility. 40 CFR 70.6(g)(3).

Rule or Program Change: To correct this deficiency, the District revised Rule 3002(g)(1) to require that properly signed, contemporaneous operating logs or other credible evidence that demonstrates compliance with the rule are kept at the facility.

Issue (10): The District was required to modify the definition of "renewal" in Rule 3000(b)(22) to clarify that permits will be renewed at least every 5 years, regardless of whether renewal is necessary to incorporate new regulatory requirements.

Rule or Program Change: To correct this deficiency, the District revised Rule 3000(b)(22) to reference Rule 3004(f), Permit Expiration and Renewal, which specifies that except for solid waste incineration facilities, Title V permits expire 5 years from the date of issuance unless such permits have been renewed. Rule 3004(f) further states that Title V permits for solid waste incineration facilities subject to section 129(e) of the Clean Air Act expire 12 years after issuance, but must be reviewed every 5 years. See 40 CFR 70.4(b)(3)(iii) and (iv).

Issue (11): The District was required to revise Rule 3005(g)(1), changes that violate an express permit term or condition, to not allow changes that would violate compliance certification requirements instead of compliance plan requirements. Clean Air Act Section 502(b)(10).

Rule or Program Change: To correct this deficiency, the District revised Rule 3005(i)(1)(C)(i) from "compliance plan requirements" to "compliance certification requirements." The rule now correctly states that changes that would violate compliance certification requirements are not allowed.

Issue (12): The District was required to revise Rule 3005(g) to specify that the District and the source must attach a copy of any notice of Clean Air Act Section 502(b)(10) changes to the permit. 40 CFR 70.4(b)(12).

Rule or Program Change: To correct this deficiency, the District added Rule 3005(i)(1)(D) which states that the District and the facility have attached the written notice to their copy of the relevant permit.

Issue (13): The District was required to add provisions to Rule 3005(i) to specify the following: (1) Any change allowed under this section must meet all applicable requirements and shall not violate existing permit terms; (2) the source must provide contemporaneous notice to the District and EPA; and (3) the source must keep a record of the change. 40 CFR 70.4(b)(14).

Rule or Program Change: To correct this deficiency, the District revised Rule 3005(k), Prohibition on Changes Not Specifically Allowed by Permit, and Rule 3005(i), Operational Flexibility. Rule 3005(i)(1)(C)(i) requires a change to meet all regulatory requirements; Rule 3005(i)(1)(A) requires contemporaneous notice; and Rule 3005(i)(1)(D) requires recordkeeping in that the written notice must be attached to the relevant permit. Rule 3005(i)(1) prohibits the violation of express permit terms as required under 40 CFR 70.4(b)(14).

Issue (14): The District was required to either submit to EPA an approvable version of Rule 430, Breakdown Provisions, for inclusion into the State Implementation Plan, or revise Rule 3002(g), Emergency Provisions, by deleting the reference to Rule 430 as a requirement a source must meet to avail itself of an affirmative defense. 40 CFR 70.6(g).

Rule or Program Change: On October 2, 2001, the California Air Resources Board on behalf of the District requested to EPA that Rule 3002(g)(6), the reference to Rule 430, be withdrawn from the original Title V program and from the August 2, 2001, submittal. By removing Rule 3002(g)(6) from the federal Title V program, the District corrected this program deficiency.

What Is Involved in This Proposed Action?

South Coast has corrected the deficiencies cited in the interim approval on August 29, 1996 (61 FR 45330), and EPA proposes full approval the South Coast operating permit program. EPA is only taking action to approve program changes made by South Coast to correct interim approval deficiencies. EPA is not taking action on other program changes made since interim approval was granted, but will evaluate these additional changes and take appropriate action at a later date.

Request for Public Comment

EPA requests comments on the program revisions discussed in this proposed action. Copies of the South Coast submittals and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region IX office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 19, 2001.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58

FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves State law as meeting federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), because it proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal Government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 on May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control. Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 12, 2001.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26420 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 043–OPP; FRL–7086–9]

Clean Air Act Proposed Full Approval of Operating Permit Program; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to fully approve the operating permit program of the Ventura County Air Pollution Control District (District). The program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction.

On November 1, 1995, EPA granted interim approval to the District's operating permit program. The District has revised its operating permit program (Rule 33) to satisfy the conditions of the interim approval and this action proposes approval of these revisions made since the interim approval was granted.

DATES: Written comments must be received by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. You can inspect copies of the District's submittals, and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

You may also see copies of the submitted Title V program at the following locations:

- California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.
- Ventura County Air Pollution Control District: 669 County Square Drive, Ventura, CA 93003.

You may review the District rules by retrieving them from the California Air Resources Board (ARB) website. The location of the District rules is *http://arbis.arb.ca.gov/drdb/ven/cur.htm.*

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region IX, at (415) 744–1259 (*rios.gerardo@epa.gov*) or Nahid Zoueshtiagh at (415) 744–1261.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. District's Part 70 Permits

A. What Is the Operating Permit Program?

Title V of the Clean Air Act Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the Clean Air Act (CAA). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year or more of any single hazardous air pollutant (HAP) listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the National Ambient Air Quality Standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the non-attainment classification.

Ventura County is classified as a severe non-attainment area for ozone. Therefore, for reactive organic compounds or nitrogen oxides, the threshold for obtaining an operating permit is 25 tons per year or more of either reactive organic compounds or nitrogen oxides. Ventura County meets the NAAQS for all other pollutants.

B. What Is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct any deficiencies. Because the District's operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the District's program on November 1, 1995.

This **Federal Register** document describes the changes that the District has made to its Rule 33 (District's operating permit program) since interim approval was granted.

C. Are There Other Issues With the Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a document in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** document.

EPA received a letter from one person who commented on what he believes to be deficiencies with respect to title V programs in California. We are not taking any actions on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** document published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

D. What Are the Program Changes That EPA Is Proposing To Approve?

As discussed above, EPA granted final interim approval on November 1, 1995 (60 FR 55460) to the District's title V program. As stipulated in that rulemaking, full approval of the District operating permit program was made contingent upon satisfaction of certain conditions. In response to EPA's interim approval action, the District revised its Rule 33 (operating permit program) to remove the deficiencies identified by EPA. The District held a workshop (November 30, 2000), made the draft revised rule available to public review and comments (March/April 2001), and adopted the revisions on April 10, 2001. The revised program was submitted to EPA on May 21, 2001. We have included below a discussion of each of the interim approval deficiency issues (as enumerated and explained in EPA's proposed action in 1994 (see 59 FR 60104)), our conditions for correction, and a summary of how the District has corrected each of these deficiency issues. The Technical Support Document (TSD) for this action includes the District's submittal and details of the revisions made.

Issue a. Insignificant activities—Rules 33.2 and 23 provide the framework for Ventura's insignificant activities provisions. For its program to be fully approvable, Ventura needed to provide a demonstration that activities classified as "insignificant" are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, the District could restrict insignificant activities to those that are not likely to be subject to an applicable requirement and emit less than District-established emission levels. The District needed to establish separate emission levels for HAPs and for other regulated pollutants and demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements. (Reference: 40 CFR 70.4(b)(2) and 70.5(c))

District's response to issue a. The District revised its Rule 33 to add a new term under its Rule 33.1.10. The new term defines and specifies "Insignificant Activity" to address EPA's deficiency issue. The revision satisfies the part 70 requirements.

Issue b. Revision process for significant changes to monitoring terms and conditions—the definitions of "minor permit modification" and "significant part 70 permit modification" in Rule 33.1 needed to be revised to ensure that significant changes to existing monitoring permit terms or conditions are processed as significant permit modifications. (Reference: 40 CFR 70.7(e)(4)).

District's response to Issue b. The District revised its Rule 33 to address EPA's requirement. The newly adopted Rule 33.1.11.d states that the modification does not involve any significant change to any existing federally-enforceable monitoring term or condition or involve any relaxation of reporting or recordkeeping requirements in the part 70 permit.

Issue c. Operation of modifications prior to permit revision—except in the case when a federally enforceable permit condition would prohibit it, Ventura's Rule 33.9 A.1. allowed sources to make significant

modifications prior to receiving a part 70 permit revision. In order to be consistent with part 70, Ventura was required to revise its rule so that the only changes that may be operated prior to receiving a part 70 permit revision are those modifications subject to section 112(g) and title I, parts C and D of the Act, and those that are not prohibited by the existing part 70 permit. Under part 70, if a proposed change does not meet these criteria, the source may not make the change until the permitting authority has revised the source's part 70 permit. (Reference 40 CFR 70.5(a)(1)(ii)).

District's response to Issue c. The District replaced the last paragraph of its Rule 33.9.A.1 with the following: "The protection granted by this subsection for a significant part 70 permit modification shall not be applicable unless the modification was subject to section 112(g), or part C or D of title I of the federal Clean Air Act and the existing part 70 permit for the stationary source does not prohibit the modification. If either of these conditions is not met, the modified portion of the stationary source shall not be operated until the modified part 70 permit is issued."

Issue d. Public notice—VCAPCD needed to revise Rule 33.7 B. to include notice "by other means if necessary to assure adequate notice to the affected public." (Reference: 40 CFR 70.7(h)(1)).

District's response to Issue d. The District added a new section to its Rule 33.7. This new section (33.7.B.2.g) requires the District to provide notice by other means if necessary to assure adequate notice to the affected public.

Issue e. Permit Content—Ventura's permit content requirements are found in Rules 33.3 and 33.9. At the time of interim approval, these regulatory provisions adequately addressed nearly all of the part 70 requirements. Certain elements (e.g., §§ 70.6(a)(3)(ii)(B) and 70.6(a)(6)(i)), are more fully detailed in the General Part 70 Permit conditions, which were submitted in Appendix B.2.b. of Ventura's part 70 program submittal. Ventura needed to establish a binding requirement that the General Part 70 Permit Conditions will be included in all part 70 permits. Ventura could accomplish this by modifying its regulation to reference the general conditions that were submitted and approved by EPA, or by more fully addressing the conditions within the regulation. (Reference: 40 CFR 70.6(a)).

District's response to Issue e. The District significantly revised Sections A and B of its Rule 33.3 to incorporate EPA's requirements. For example, Rule 33.3.A.3 now requires conditions that establish all applicable emissions monitoring and analysis procedures, emissions test methods or continuous monitoring equipment required under all applicable requirements, and related recordkeeping and reporting requirements. It also requires, as necessary, conditions concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods. Further, all applicable recordkeeping and monitoring requirements must include details such as date, place and time of sampling or measurements.

Issue f. Recordkeeping requirements—VCAPCD needed to revise the permit content requirements of Rule 33.3 to provide adequate specificity with regard to the applicable recordkeeping requirements. (Reference: 40 CFR 70.6(a)(3)(C)(ii)).

District's response to Issue f. The District incorporated all of the above requirements in Rule 33.3.A.3. For example, the rule now specifies that permits incorporate all applicable data such as:

- Date, place as defined in the permit, and time of sampling or measurements;
- Date(s) analyses were performed;
- Company or entity that performed the analyses;
- Analytical techniques or methods used;
- Results of such analyses; and
- Operating conditions as existing at the time of sampling or measurements.

Support information includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by the part 70 permit.

Issue g. Emissions trading under applicable requirements—Ventura County needed to add emissions trading provisions consistent with § 70.6(a)(10), which requires that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval. (Reference 40 CFR 70.6(a)(10)).

District's response to Issue g. The District included EPA's requirement in its Rule 33.3.A.6, which states that: "Applicable conditions for allowing trading under a voluntary emission cap accepted by the permittee, and for allowing trading under applicable requirements to the extent that such requirements provide for trading emissions without a case by case approval of each trade. Such conditions shall include all terms required under section A of this rule to determine compliance and shall meet all applicable requirements."

Issue h. Compliance schedule—At the time of interim approval, Rule 33.3 B.2, which requires that a schedule of compliance be included in the permit, did not create an explicit link with Rule 33.9 B.4., which details the contents of a compliance schedule. Thus, VCAPCD needed to revise Rule 33.3's permit content requirements to ensure that all elements of the compliance schedule under § 70.5(c) are incorporated into the permit. (Reference: 40 CFR 70.6(c)(3), 70.6(c)(4)).

District's response to Issue h. The District revised its Rule 33.3 to include EPA's requirements. Rule 33.3.A.8 now requires that if the stationary source is not in compliance with any federally-enforceable requirement, it must have a schedule of compliance that is approved by the District Hearing Board, meets all requirements of Rule 33.2.A.7, and includes a condition that requires submittal of a progress report on the schedule of compliance at least semiannually.

Issue i. EPA notification of operational flexibility changes—Rule 33.5.D needed to be revised to incorporate EPA notification of changes made under the operational flexibility provisions, either by providing for it within the regulation, or by making the general permit conditions, which do specify EPA notification, required elements of each permit. (Reference 40 CFR 70.4(b)(14)(ii)).

District's response to Issue i. The District revised the first paragraph of its Rule 33.4.D to reflect EPA's requirements. The revised paragraph is as follows: "The owner or operator of any stationary source required to obtain a part 70 permit will be allowed to contravene an express part 70 permit condition with 30 days written notification to both EPA and the District unless the District objects in writing to the change within the 30 day notice period."

Issue j. State-wide agricultural permitting exemption—one of EPA's conditions for full title V program approval was the California Legislature's revision of the Health and Safety Code to eliminate the provision that exempts "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals" from the requirement to obtain a permit. *See* California Health and Safety Code section 42310(e). Even though the local Districts have, in many cases, removed the title V exemption for agricultural sources from their own rules, the Health and Safety Code has not been revised to eliminate this provision.

In evaluating the impact of the Health and Safety Code exemption, EPA believes there are a couple of key factors to consider. First, many post-harvest activities are not covered by the exemption and, thus, are still subject to title V permitting. For example, according to the California Air Resources Board (CARB), the Health and Safety Code exemption does not include activities such as milling and crushing, or canning or cotton ginning operations. Activities such as these are subject to review under the State's title V programs. See letter from Michael P. Kenny, Executive Officer, California Air Resources Board, to Jack Broadbent, Director, Air Division, U.S. EPA Region 9, dated September 19, 2001. In addition, since the granting of interim approval, the EPA has discovered that, in general, there is not a reliable or complete inventory of emissions associated with agricultural operations in California that are subject to the exemption. Although further research on this issue is needed, many sources with activities covered by the exemption may not have emission levels that would subject them to title V, and the State and/or individual Districts may be able to demonstrate that none of the sources that are exempt under the State law are subject to title V.

Based, in part, on these factors, EPA has tentatively concluded that requiring the immediate commencement of title V permitting of the limited types of agricultural activities presently subject to the exemption, without a better understanding of the sources and their emissions, would not be an appropriate utilization of limited local, state and federal resources. As a result, despite the State of California's failure to eliminate the agricultural permitting exemption, EPA is proposing to grant full approval to local Air District operating permit programs and allow a deferral of title V permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a further brief period, not to exceed three years. During the deferral period, we expect to develop the program infrastructure and experience necessary for effective implementation of the title V permitting program to this limited category of sources.

EPA believes it is appropriate to defer permitting for this limited category of agricultural sources because the currently available techniques for determining emissions inventories and for monitoring emissions (e.g., from irrigation pumps and feeding operations) are problematic and will be dramatically enhanced by several efforts currently being undertaken with the cooperation and participation of the operators and agricultural organizations, as well as EPA, other Federal agencies, and the State and local air pollution agencies. For example, the National Academy of Sciences is undertaking a study addressing emissions from animal feeding operations. Their report is due next year. In addition, EPA's Office of Air and Radiation is working with the U.S. Department of Agriculture to better address the impact of agricultural operations on air quality. We consider the effort to evaluate the existing science, improve on assessment tools, collect additional data, remove any remaining legal obstacles, and issue any necessary guidance within the three year deferral time frame to be ambitious. We welcome comments on other areas that might also warrant study, as well as ways that this work might be done more quickly.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, voluntary emission reduction strategies. At the end of this period, EPA will, taking into consideration the results of these studies, make a determination as to how the title V operating permit program will be implemented for any potential major agricultural stationary sources.

E. What Is Involved in This Proposed Action?

Today, we are proposing to fully approve the District's revised Rule 33 (operating permit program). We have determined that the revisions made by the District remove the deficiencies identified by us in 1995. We will make our final decision on our proposal after considering public comments submitted during the 30-day period from this publication date.

II. Request for Public Comment

EPA requests comments on the program revisions discussed in this proposed action. Copies of the District submittal and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 19, 2001.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the

provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 11, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26421 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 047–OPP; FRL–7087–4]

Clean Air Act Proposed Full Approval of Operating Permit Program; Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to fully approve the operating permits program submitted by the Monterey Bay Unified Air Pollution Control District (MBUAPCD) based on the revisions submitted on May 9, 2001, which satisfactorily address the program deficiencies identified in EPA's October 6, 1995 Interim Approval Rulemaking. In addition, EPA is proposing to approve, as a Title V operating permit program revision, changes to District Rule 218, Title V: Federal Operating Permits, adopted by MBUAPCD on February 21, 1996 and March 26, 1997. The MBUAPCD operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to MBUAPCD's operating permit program on October 6, 1995. MBUAPCD revised its program to satisfy the conditions of the interim approval and this action approves those revisions.

DATES: Written comments on today's proposal must be received by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Acting Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. You can inspect copies of the MBUAPCD submittal, and other supporting documentation relevant to this action, during normal business hours at EPA Region 9, Air Division, 75 Hawthorne Street, San Francisco, California, 94105.

You may also see copies of the submitted Title V program at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey CA 93940

A courtesy copy of MBUAPCD's title V rule, Rule 218, may be available via the Internet at *http://www.arb.ca.gov/drdb/mbu/cur.htm*. However, the version of District Rule 218 at the above internet address may be different from the version submitted to EPA for approval. Readers are cautioned to verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval (April 18, 2001). The official submittal is available only at the three addresses listed above.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, EPA Region IX, at (415) 744–1238 or kohn.roger@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
Are there other issues with the program?
What are the program changes that EPA is proposing to approve?
What is involved in this proposed action?

What Is the Operating Permit Program?

The CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM10); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "serious," major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

What Is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct the deficiencies. Because the MBUAPCD operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the program in a rulemaking published on October 6, 1995 (60 FR 52332). The interim approval notice described the conditions that had to be met in order for the MBUAPCD program to receive full approval. Since that time, MBUAPCD has submitted one revision of its interimly approved operating permit program, on May 9, 2001. This **Federal Register** document describes the changes that have been made to the MBUAPCD operating permit program since interim approval was granted.

To solicit citizens comments on the operating permit programs, on December 11, 2000, EPA published a document to announce a 90-day comment period for members of the public to identify deficiencies they perceive exist in State and local agency operating permits programs (see 65 FR 77376). The deficiencies the public claims exist could be either deficiencies in the substance of the approved program or deficiencies in how a permitting authority is implementing its program. Where EPA agrees that there is deficiency, it will publish a notice of deficiency on or before December 1, 2001, and establish a time frame for the permitting authority to take action to correct the deficiency.

Are There Other Issues With the Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a document in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** document.

EPA received a comment letter from one person on what he believes to be deficiencies with respect to Title V programs in California. EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** document published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

What Are the Program Changes That EPA Is Proposing To Approve?

A. Changes Required to Receive Full Program Approval

B. Other Changes

A. Changes Required To Receive Full Program Approval

As stipulated in the October 6, 1995 rulemaking, full approval of the MBUAPCD operating permit program was made contingent upon correction of deficiencies identified by EPA. MBUAPCD corrected all of these deficiencies in the revised title V program submitted to EPA on May 9, 2001. The corrections consist of the addition of new rule language, the deletion of problematic old rule language, or in one case, a commitment in the May 9, 2001 submittal to revise Rule 218 upon being notified by EPA of an application by an affected tribe for state status. The deficiencies identified by EPA when interim approval of the MBUAPCD title V program was granted, as well as the corrections made by MBUAPCD to address these deficiencies, are summarized below. The Technical Support Document (TSD) in the Docket for this rulemaking contains the full text of EPA's description of each deficiency in the 1995 rulemaking, as well as complete descriptions of how MBUAPCD corrected the deficiencies, including the revised rule language.

(1) Acid rain sources and solid waste incineration units are required to obtain a permit pursuant to section 129(e) of the Act and may not be exempted from the requirement to obtain a title V permit, in accordance with 40 CFR 70.3(b).

MBUAPCD revised Rule 218 so that it no longer exempts these types of sources from the requirement to obtain a title V permit. Under the revised rule, these sources must obtain title V permits even if they otherwise qualify for one of the exemptions listed in Rule 218.

(2) Revise the definition of "Administrative Permit Amendments." 40 CFR 70.7(d)(1)(iii) and 40 CFR 70.7(e)(4)).

MBUAPCD revised this definition, which now states that an administrative amendment "requires more frequent monitoring or reporting requirements for the stationary source. * * *" This definition distinguishes administrative amendments from permit modifications that increase monitoring or reporting requirements, which must be processed as significant permit modifications.

(3) Revise the definition of "Federally Enforceable Requirement" to be consistent with 40 CFR 70.2.

MBUAPCD revised this definition so that instead of referring to "District prohibitory rules that are in the State Implementation Plan (SIP)," it now refers to "any standard or other requirement provided for in the State Implementation Plan (SIP) approved or promulgated by USEPA."

(4) Revise of the definition of "Minor Permit Modification" to require that a minor permit modification may not establish or change a permit condition used to avoid a federally enforceable requirement to which the source would otherwise be subject, in accordance with 40 CFR 70.7(e)(2)(i)(A)(4).

MBUAPCD revised this definition so that a permit modification that would "establish or change any permit condition used to avoid a federally enforceable requirement to which the source would otherwise be subject" cannot be processed as a minor permit modification.

(5) Require the compliance certification within the permit application to indicate the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act, in accordance with 40 CFR 70.5(c)(9)(iv).

MBUAPCD revised the permit application section of Rule 218 to require that permit applications include "a description of the compliance status of each emissions unit within the stationary source with respect to federally enforceable requirements including any applicable enhanced monitoring and compliance certification requirements of the Act."

(6) Revise the application compliance certification requirement to be consistent with 40 CFR 70.5(c)(8)(iii)(C).

MBUAPCD has modified Rule 218 by incorporating the exact language of 40 CFR 70.5(c)(8)(iii)(C).

(7) Provide a demonstration that activities that are exempt from title V permitting are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, Rule 218 may restrict the exemptions to activities that are not likely to be subject

to an applicable requirement and emit less than District-established emission levels (40 CFR 70.5(c) and 40 CFR 70.4(b)(2)).

MBUAPCD added a new definition of "insignificant activity" to Rule 218 that establishes emission levels that are used to determine whether or not an activity qualifies as insignificant. The emission levels are two tons per year of any criteria pollutant, and the lesser of 1,000 pounds per year, the section 112(g) *de minimis* levels, or other Title I significant modification levels for Hazardous Air Pollutants and other toxics as identified in 40 CFR 52.21(b)(23)(i). EPA and the District agree that an activity that is subject to a source-specific applicable requirement does not qualify as insignificant, even if its emissions are less than the District-established emission levels.

(8) Revise Rule 218 to provide that the APCO shall also give public notice "by other means if necessary to assure adequate notice to the affected public," in accordance with 40 CFR 70.7(h)(1).

MBUAPCD revised Rule 218, which now states that the "notification shall be published in at least one newspaper of general circulation within the District and by other means if necessary to assure adequate notice to the affected public. * * *"

(9) Revise Rule 218 to include the contents of the public notice as specified by 40 CFR 70.7(h)(2).

MBUAPCD revised Rule 218 to explicitly require that the information required by 40 CFR 70.7(h)(2) be included in each public notice of the District's intent to issue, significantly modify, or renew a permit. This section of part 70 requires that public notices identify specific information, including the affected facility, the name and address of the permittee, the activities involved in the permitting action, and name, address, and telephone number of a person whom citizens may contact for additional information.

(10) Revise Rule 218 to provide that the District shall keep a record of the commenters and of the issues raised during the public participation process so that the Administrator may fulfill her obligation to determine whether a citizen petition may be granted (40 CFR 70.7(h)(5)).

MBUAPCD added new language to Rule 218 that states that the "APCO shall keep a record of the commenters and of the issues raised during the public participation process so that the Administrator of the USEPA may fulfill their obligation to determine whether a citizen petition may be granted."

(11) Revise Rule 218 to provide EPA with an additional 45 days to review a permit that the District proposes to issue that has been revised as a result of comments received from the public during concurrent public and EPA review of the proposed permit (40 CFR 70.8(a)(1)).

MBUAPCD added new language to Rule 218 that states that "If the permit is revised due to comments received from the public, the revised permit will be forwarded to USEPA for an additional 45-day review period."

(12) Revise Rule 218 to define and provide for giving notice to affected states per 40 CFR 70.2 and 70.8(b). Alternatively, MBUAPCD may make a commitment to: (1) Initiate rule revisions upon being notified by EPA of an application by an affected tribe for state status, and (2) provide affected state notice to tribes upon their filing for state status (i.e., prior to Monterey's adopting affected state notice rules).

MBUAPCD addressed this deficiency by making a formal commitment in its May 9, 2001 submittal of its title V program to EPA to revise Rule 218 upon notification by EPA of an affected state within 50 miles of the District.

(13) Revise Rule 218 to require that permits shall be reopened under specific circumstances as required by 40 CFR 70.7(f).

MBUAPCD revised Rule 218 to require that permits be reopened under specific circumstances described in the Rule, which are based on the requirements in 40 CFR 70.7(f).

(14) Revise Rule 218 to provide, consistent with 40 CFR 70.7(e)(2)(iv), that the District shall take action on a minor permit modification application within 90 days of receipt of the application or 15 days after the end of the 45-day EPA review period, whichever is later.

MBUAPCD revised Rule 218 to incorporate these time frames.

(15) Revise Rule 218 to specify the possible actions that may be taken on a minor permit modification application (40 CFR 70.7(e)(2)(iv)).

MBUAPCD added new language to Rule 218 that describes four possible actions that may be taken on a minor permit modification. The possible actions include issuing the permit modification, denying the application, determining that the application must be processed according to significant modification procedures, or revising the draft permit modification and submitting it to EPA as a proposed permit modification.

(16) The California Legislature must revise state law to eliminate the exemption of agricultural production sources from the requirement to obtain a title V permit.

One of EPA's conditions for full title V program approval was the California Legislature's revision of the Health and Safety Code to eliminate the provision that exempts "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals" from the requirement to obtain a permit. *See* California Health and Safety Code section 42310(e). Even though the local Districts have, in many cases, removed the title V exemption for agricultural sources from their own rules, the Health and Safety Code has not been revised to eliminate this provision.

In evaluating the impact of the Health and Safety Code exemption, EPA believes there are a couple of key factors to consider. First, many post-harvest activities are not covered by the exemption and, thus, are still subject to title V permitting. For example, according to the California Air Resources Board (CARB), the Health and Safety Code exemption does not include activities such as milling and crushing, or canning or cotton ginning operations. Activities such as these are subject to review under the State's title V programs. *See* letter from Michael P. Kenny, Executive Officer, California Air Resources Board, to Jack Broadbent, Director, Air Division, U.S. EPA Region 9, dated September 19, 2001. In addition, since the granting of interim approval, the EPA has discovered that, in general, there is not a reliable or complete inventory of emissions associated with agricultural operations in California that are subject to the exemption. Although further research on this issue is needed, many sources with activities covered by the exemption may not have emission levels that would subject them to title V, and the State and/or individual Districts may be able to demonstrate that none of the sources that are exempt under the State law are subject to title V.

Based, in part, on these factors, EPA has tentatively concluded that requiring the immediate commencement of title V permitting of the limited types of agricultural activities presently subject to the exemption, without a better understanding of the sources and their emissions, would not be an appropriate utilization of limited local, state and federal resources. As a result, despite the State of California's failure to eliminate the agricultural permitting exemption, EPA is proposing to grant full approval to local Air District operating permit programs and allow a deferral of title V permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a further brief period, not to exceed three years. During the deferral period, we expect to develop the program infrastructure and experience necessary for effective implementation of the title V permitting program to this limited category of sources.

EPA believes it is appropriate to defer permitting for this limited category of agricultural sources because the currently available techniques for determining emissions inventories and for monitoring emissions (e.g., from irrigation pumps and feeding operations) are problematic and will be dramatically enhanced by several efforts currently being undertaken with the cooperation and participation of the operators and agricultural organizations, as well as EPA, other federal agencies, and the State and local air pollution agencies. For example, the National Academy of Sciences is undertaking a study addressing emissions from animal feeding operations. Their report is due next year. In addition, EPA's Office of Air and Radiation is working with the U.S. Department of Agriculture to better address the impact of agricultural operations on air quality. We consider the effort to evaluate the existing science, improve on assessment tools, collect additional data, remove any remaining legal obstacles, and issue any necessary guidance within the three year deferral time frame to be ambitious. We welcome comments on other areas that might also warrant study, as well as ways that this work might be done more quickly.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, voluntary emission reduction strategies. At the end of this period, EPA will, taking into consideration the results of these studies, make a determination as to how the title V operating permit program will be implemented for any potential major agricultural stationary sources.

B. Other Changes

MBUAPCD adopted revisions to District Rule 218, Title V: Federal Operating Permits, on February 21, 1996, March 26, 1997, and April 18, 2001. These revisions are unrelated to the rule revisions made to address interim approval deficiencies, which are described in section A above. With two exceptions, EPA is proposing to approve the rule changes made by MBUAPCD in 1996, 1997, and 2001. The changes that we are proposing to approve are summarized below. EPA is not taking action at this time on MBUAPCD's revision of the definition of "major source" in Rule 218 and the effective date of revised Rule 218. The reader should refer to the TSD for additional information on the nature of the rule changes EPA is proposing to approve and the basis for EPA's proposed approval, as well as EPA's reasons for not taking action on the definition of "major source" and the effective date change. EPA is proposing to approve the following changes to Rule 218:

- Replace the term "reactive organic compounds" with "volatile organic compounds" (Sections 2.2.4 and 4.3.4) and refer to District Rule 101.
- Delete the definitions for "halogenated hydrocarbons" and "reactive organic compound".
- Add a permit shield provision. (Section 4.4)

What Is Involved in This Proposed Action?

The EPA proposes full approval of the operating permits program submitted by MBUAPCD based on the revisions submitted on May 9, 2001, which satisfactorily address the program deficiencies identified in EPA's October 6, 1995 Interim Approval Rulemaking. See 60 FR 52332.

Request for Public Comment

EPA requests comments on the program revisions discussed in this proposed action. Copies of the MBUAPCD submittal and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 19, 2001.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve

State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program , to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 11, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26416 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7514]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (*NGVD) (•NAVD)	
				Existing	Modified
Alabama	Baldwin County (Unincorporated Areas).	Fish River	Approximately 420 feet upstream of Threemile Creek.	•105	•104

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (*NGVD) (•NAVD)	
				Existing	Modified
			At the upstream side of U.S. Route 51 (State Highway 59).	None	•196
		Perone Branch	At confluence with Fish River	•35	•34
			At State Highway 59	None	•145
		Styx River	At confluence with Perdido River	•6	•9
			At Brady Road (Truck Route 17)	None	•77
		Mobile Bay	Approximately 200 feet south of intersection of Fort Morgan Road and Dune Drive.	None	•7
			Approximately 0.6 mile west of the intersection of Main Street and Bel Air Drive.	•17	•19
		Bon Secour Bay	Southeast corner of intersection of Veterans Road and State Route 180.	•10	•9
			Approximately 300 feet west of the intersection of Bay Road North and Beach Road.	•13	•15
		Gulf of Mexico	At intersection of Ono Boulevard and Pompano Key Drive.	None	•7
			Approximately 500 feet south of the intersection of Ponce de Leon Court and Choctow Road.	•12	•15
		Perdido Bay	Approximately 250 feet northwest of the intersection of Magnolia Street and Mobile Avenue.	None	•4
			Approximately 1.1 miles east of the intersection of Boykin Boulevard and Azalea Street.	•8	•9
		Wolf Bay	Approximately 500 feet south of the intersection of State Route 95 and East Quarry Drive.	None	•5
			Approximately 0.9 mile north of the intersection of Gulf Bay Road and Wolf Bay Terrace.	•8	•9
		Weeks Bay	Approximately 1,000 feet south of intersection of Yupon Lane and Gavin Lane.	•10	•11
			Approximately 500 feet west of intersection of Yupon Lane and Gavin Lane.	•12	•11
		Oyster Bay	Approximately 2,750 feet north of intersection of Old Fort Morgan Trail.	None	•10
			Approximately 0.6 mile north of intersection of Quail Run and Oyster Bay Lane.	•10	•14
Maps available for inspection at the Baldwin County Building Department, 201 East Section Street, Bay Minette, Alabama. Send comments to Mr. Joe Faust, Chairman of the Baldwin County Commission, P.O. Box 1488, Bay Minette, Alabama 36507.					
Alabama	Elmore County (Unincorporated Areas).	Tributary to Mill Creek	At a point approximately 1,000 feet upstream of the confluence with Mill Creek.	None	•204
			At a point approximately 2,500 feet upstream of the confluence with Mill Creek.	None	•214
		Alabama River	Approximately 950 feet downstream of Interstate 31.	None	•161
			Approximately 3,700 feet downstream of the confluence of Tallapoosa River.	None	•168
		Tallapoosa River	Approximately 3.3 miles River upstream of the confluence of Gravel Pit Creek.	None	•169
			Approximately 4.6 miles downstream of the confluence of Chubbehatchee Creek.	None	•176
Maps available for inspection at the Office of the Elmore County Engineer, 155 County Shop Road, Wetumpka, Alabama. Send comments to Mr. Don Whorton, Chairman of the Board of Elmore County Commissioners, 100 Commerce Street, Room 207, Wetumpka, Alabama 36092.					
Connecticut	Enfield (Town), Hartford County.	Waterworks Brook	Approximately 140 feet downstream of breached dam.	*55	*54
			Approximately 500 feet upstream of Elm Avenue.	*121	*124

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (*NGVD) (•NAVD)	
				Existing	Modified
		Terry Brook	At the confluence with the Scantic River	None	*117
			Approximately 250 feet upstream of Somers Road.	None	*204
Maps available for inspection at the Enfield Town Engineer's Office, 820 Enfield Street, Enfield, Connecticut.					
Send comments to Mr. Scott Shanley, Enfield Town Manager, 820 Enfield Street, Enfield, Connecticut 06082–2997.					
Connecticut	Marlborough (Town), Hartford County.	Blackledge River	Approximately 2,620 feet upstream of West Road.	*351	*352
			Approximately 550 feet upstream of Jones Hollow Bridge.	None	*384
		Fawn Brook	Approximately 210 feet upstream of South Main Street.	*179	*180
			Approximately 2,925 feet upstream of South Main Street.	None	*193
		Unnamed Tributary of Dickinson Creek.	At confluence with Dickinson Creek	None	*419
			A point approximately 660 feet upstream of State Route 2.	None	*423
Maps available for inspection at the Marlborough Town Planner's Office, Town Hall, 26 North Main Street, Marlborough, Connecticut.					
Send comments to Mr. Howard Dean, Jr., Town of Marlborough First Selectman, Town Hall, 26 North Main Street, P.O. Box 29, Marlborough, Connecticut 06447.					
Florida	Daytona Beach (City) Volusia County.	Eleventh Street Canal	At confluence with Tomoka River	*15	*16
			Approximately 2,810 feet upstream of Clyde Morris Boulevard North.	None	*26
		Eleventh Street Canal Tributary No. 2.	At confluence with Eleventh Street	*27	*26
			Approximately 2,800 feet 2 upstream of LPGA Boulevard.	*28	*26
			Just upstream of Clyde Morris Boulevard North.	*28	*26
			At confluence of Eleventh Street Canal Tributary No. 2A.	*28	*26
		Eleventh Street Canal Tributary No. 2A.	At confluence with Eleventh Street Canal Tributary No. 2.	*28	*26
			Approximately 2,600 feet upstream of confluence with Eleventh Street Canal Tributary No. 2.	*29	*26
		Shooting Range Canal	At confluence with Tomoka River	*12	*13
			At a point just upstream of Clyde Morris Boulevard North.	*28	*26
Maps available for inspection at the City of Daytona Beach Public Works Complex, Engineering Department, 950 Bellevue Avenue, Daytona Beach, Florida.					
Send comments to Mr. Carey F. Smith, Daytona Beach City Manager, P.O. Box 2451, Daytona Beach, Florida 32115.					
Florida	Ormond Beach (City), Volusia County.	Eleventh Street Canal Tributary No. 2.	At confluence with Eleventh	*27	*26
			Approximately 2,800 feet 2 upstream of LPGA Boulevard.	*28	*26
			Just upstream of Clyde Morris Boulevard North.	*28	*26
			At confluence of Eleventh Street Canal Tributary No. 2A.	*28	*26
		Eleventh Street Canal Tributary No. 2A.	At confluence with Eleventh Street Canal Tributary No. 2.	*28	*26
			Approximately 2,600 feet upstream of confluence with Eleventh Street Canal Tributary No. 2.	*29	*26
Maps available for inspection at the City of Ormond Beach Planning Department, Room 104, 22 South Beach Street, Ormond Beach, Florida.					
Send comments to Mr. Ted MacLeod, City of Ormond Beach Interim Manager, P.O. Box 277, Ormond Beach, Florida 32175–0277.					
Florida	Volusia County (Unincorporated Areas).	Eleventh Street Canal Tributary No. 2.	At confluence with Eleventh Street	*27	*26

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (*NGVD) (•NAVD)	
				Existing	Modified
			Approximately 2,800 feet upstream of LPGA Boulevard.	*28	*26
			Just upstream of Clyde Morris Boulevard North At confluence of Eleventh Street Canal Tributary No. 2A.	*28	*26
		Eleventh Street Canal Tributary No. 2A.	At confluence with Eleventh Street Canal Tributary No. 2.	*28	*26
			Approximately 2,600 feet upstream of confluence with Eleventh Street Canal Tributary No. 2.	*29	*26
		Shooting Range Canal	At confluence with Tomoka River	*12	*13
			At a point just upstream of Clyde Morris Boulevard North.	*28	*26
Maps available for inspection at the Volusia County Emergency Operations Center, 49 Keyton Drive, Daytona, Florida.					
Send comments to Ms. Cynthia Coto, Volusia County Manager, 123 West Indiana Avenue, Deland, Florida 32720–4612.					
Florida	Jupiter Island (Town), Martin County.	Atlantic Ocean	Approximately 0.94 mile east of intersection of Suddard Drive and Williams Drive.	*10	*13
			Approximately 1.32 miles north-northwest of intersection of Beach Road and Harmony Avenue.	*10	*6
Maps available for inspection at the Jupiter Town Hall, Building Department, 103 Bunker Hill Road, Hobe Sound, Florida.					
Send comments to Mr. James R. Spurgeon, Jupiter Island Town Manager, P.O. Box 7, Hobe Sound, Florida 33475–0007.					
Florida	Martin County (Unincorporated Areas).	Bessey Creek	Approximately 1,100 feet downstream of Andrews Drive.	*7	*8
			At 84th Avenue	None	*26
		Danforth Creek	At Martin Downs Boulevard	*7	*8
			Approxiamtely 1,600 feet upstream of State Route 76A.	None	*23
		South Fork St. Lucie River	Approximately 2.1 miles upstream of State Route 76.	*7	*8
			Approximately 4.9 miles upstream of State Route 76.	None	*10
		Roebuck Creek	Approximately 700 feet downstream of Buckskin Trail.	*7	*8
			Approximately 0.78 mile upstream of State Route 76A.	None	*19
		Manatee Creek	At State Route A1A	*8	*9
			Approximately 1,800 feet upstream of Twin Lakes Drive.	None	*15
		East Fork Creek	Approxiamtely 400 feet upstream of Cove Road.	*8	*9
			Approximately 100 feet upstream of Mariner Sands Drive.	None	*15
		Atlantic Ocean	Approximately 600 feet east of the intersection of A1A and 42nd Street.	*9	*14
			Approximately 1.1 miles northeast of intersection of Golfhouse Drive and Hill Terrace.	*10	*6
Maps available for inspection at the Martin County Engineer's Office, 2401 South East Monterey Road, Stuart, Florida.					
Send comments to Mr. Russ Blackburn, Martin County Administrator, 2401 South East Monterey Road, Stuart, Florida 34996.					
Georgia	White County (Unincorporated Areas).	Blue Creek	Approximately 300 feet upstream of the confluence with Chattahoochee River.	None	*1,268
			Approximately 2.5 miles upstream of Duncan Bridge Road.	None	*1,372
		Brasstown Creek	Approximately 800 feet upstream of the confluence with Chattahoochee River.	None	*1,271
			Approximately 3.2 miles upstream of Roy Powers Road.	None	*1,391
		Brasstown Creek Tributary No. 1.	At confluence with Brasstown Creek	None	*1,322
			Approximately 1.3 miles upstream of the confluence with Brasstown Creek.	None	*1,386

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (*NGVD) (•NAVD)	
				Existing	Modified
		Brasstown Creek Tributary No. 2.	At the confluence with Brasstown Creek	None	*1,341
			Approximately 0.9 mile upstream of the confluence with Brasstown Creek.	None	*1,394
		White Creek	Approximately 200 feet upstream of the confluence with Chattahoochee River.	None	*1,133
			At State Route 254	None	*1,317
		Chattahoochee	Approximately 1.7 miles downstream of State Route 75.	None	*1,390
			Approximately 1.5 miles downstream of State Route.	None	*1,394
Maps available for inspection at the White County Planning Commission Director's Office, 59 South Main Street, Cleveland, Georgia. Send comments to Mr. Paul Bryan, White County Manager, 59 South Main Street, Cleveland, Georgia 30528.					
Illinois	Elburn (Village), Kane County.	Blackberry Creek	At the confluence of Blackberry Creek Tributary D.	None	*741
			Approximately 1,050 feet upstream of Hughes Road.	None	*747
		Blackberry Creek Tributary D.	Approximately 600 feet upstream of confluence with Blackberry Creek.	None	*742
			Approximately 2,550 fee downstream of Keslinger Road.	None	*799
Maps available for inspection at the Elburn Village Hall, 301 East North Street, Elburn, Illinois. Send comments to Mr. James Willey, President of the Village of Elburn Board of Trustees, 301 East North Street, Elburn, Illinois 60119.					
Illinois	Elgin (City), Kane County.	Sandy Creek	At Randall Road	*821	*826
			Approximately 325 feet upstream of Randall Road.	None	*826
		Tyler Creek	Approximately 500 feet upstream of confluence with Fox River.	*716	*715
			Approximately 120 feet downstream of Soo Line Railroad.	None	*839
Maps available for inspection at City of Elgin Public Works Department, Engineering Division, 150 Dexter Court, Elgin, Illinois. Send comments to Ms. Joyce Parker, Elgin City Manager, 150 Dexter Court, Elgin, Illinois 60120.					
Illinois	Gilberts (Village) Kane County.	Tyler Creek	Just upstream of Big Timber Road	None	*867
			Approximately 200 feet downstream of McCornack Road.	None	*886
Maps available for inspection at the Gilberts Village Hall, 86 Railroad Street, Gilberts, Illinois. Send comments to Mr. Mike Isitoro, Gilberts Village President, 86 Railroad Street, Gilberts, Illinois 60136.					
Illinois	Kane County (Unincorporated Areas).	Blackberry Creek Tributary F.	Approximately 0.6 mile upstream of confluence with Blackberry Creek Tributary B.	*704	*703
			Approximately 250 feet downstream of Bliss Road.	*728	*727
		Main Street Ditch	At confluence with Blackberry Creek Tributary F.	None	*707
			Approximately 150 feet upstream of Main Street.	None	*709
		Tyler Creek	Approximately 375 downstream of Eagle Road East.	*791	*793
			Approximately 200 feet upstream of Illinois Route 72.	None	*898
		Pingree Creek	At confluence with Tyler Creek	None	*893
			Approximately 325 feet upstream of U.S. Route 20.	None	*906
		Mastadon Lake	Approximately 300 feet southeast of the intersection of Parker Avenue and Hinman Street.	None	*662
		Sandy Creek	Approximately 130 feet downstream of Randall Road.	*820	*821
			Just downstream of U.S. Route 20	None	*889
		Indian Creek	Approximately 0.41 mile upstream of Wood Street.	None	*676
			At downstream side of East-West Tollway	None	*717

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (*NGVD) (•NAVD)	
				Existing	Modified
		Indian Creek Tributary B	Approximately 0.61 mile upstream of confluence with Indian Creek.	None	*716
			Approximately 0.86 mile upstream of confluence with Indian Creek.	None	*716
		South Tributary	At confluence with Indian Creek	None	*684
			Approximately 680 feet upstream of confluence with Indian Creek.	None	*688
		Welch Creek	Approximately 1,110 feet downstream of Fay's Lane.	None	*680
			Just upstream of Burlington Northern Railroad.	None	*692
		Welch Creek Tributary 1	Just upstream of Aurora Municipal Airport	None	*693
			Approximately 2,600 feet upstream of Aurora Municipal Airport.	None	*694
		Blackberry Creek Tributary H.	Approximately 750 feet southwest of Lake View Court and Lake View Drive intersection.	None	*670
		Selmarten Creek	At confluence with Indian Creek	*715	*716
			At county boundary	*718	*720
Maps available for inspection at the Kane County Water Resources Department, Kane County Government Center Building "A," 719 Batavia Avenue, Geneva, Illinois. Send comments to Mr. Michael W. McCoy, Chairman of the Kane County Board of Commissioners, 719 Batavia Avenue, Geneva, Illinois 60134.					
Illinois	Kendall County (Unincorporated Areas).	Harvey Creek	From county boundary	None	*638
			At approximately 775 feet upstream of confluence with Little Rock Creek.	None	*617
Maps available for inspection at the Kendall County Planning and Zoning Department, 111 West Fox Street, Yorkville, Illinois. Send comments to Mr. John Church, Chairman of the Kendall County Board, 111 West Fox Street, Yorkville, Illinois 60560.					
Illinois	Lily Lake (Village), Kane County.	Ferson Creek	Approximately 100 feet downstream of Great Western Trail Railroad.	None	*802
			Just downstream of Route 64	None	*872
Maps available for inspection at the Lily Lake Village Hall, 43W680 Empire Road, St. Charles, Illinois. Send comments to Mr. Glenn Bork, Lily Lake Village President, 44W508 I.C. Trail, Lily Lake, Illinois 60151.					
Illinois	Montgomery (Village), Kane County.	Blackberry Creek Tributary G.	Approximately 2,050 feet downstream of Aucutt Road.	None	*661
			Approximately 550 feet downstream of Jericho Road.	None	*666
		Blackberry Creek	Approximately 0.4 mile downstream of Jericho Road.	None	*664
			At Jericho Road	None	*666
Maps available for inspection at the Montgomery Village Clerk's Office, 1300 South Broadway, Montgomery, Illinois. Send comments to Ms. Marilyn Michelini, Montgomery Village President, 1300 South Broadway, Montgomery, Illinois 60538.					
Illinois	Newark (Village), Kendall County.	Dave-Bob Creek	Approximately 175 feet upstream of confluence with Clear Creek.	None	*620
			Approximately 560 feet upstream of Chicago Road.	None	*663
Maps available for inspection at the Village of Newark Building Department, 101 West Lions Street, Newark, Illinois. Send comments to Mr. Roger Ness, Village President, P.O. Box 445, Newark, Illinois 60541–0001.					
Illinois	Pingree Grove (Village), Kane County.	Pingree Creek	Approximately 1,000 feet upstream of Highland Avenue.	None	*901
			Approximately 800 feet upstream of Soo Line Railroad.	None	*902
Maps available for inspection at the Pingree Grove Village Hall, 14N042 Reinking Road, Hampshire, Illinois. Send comments to Mr. Vern Wester, President of the Village of Pingree Grove Board, 14N042 Reinking Road, Hampshire, Illinois 60140.					
Illinois	Sandwich (City), DeKalb County.	Harvey Creek	Approximately 775 feet upstream of Little Rock Creek.	None	*617
			At Dayton Street	None	*640

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (*NGVD) (•NAVD) Existing	Modified
Maps available for inspection at the City Engineering Office, 144 East Railroad Street, Sandwich, Illinois. Send comments to Mr. Tom Thomas, Mayor of the City of Sandwich, 144 East Railroad Street, Sandwich, Illinois 60548.					
Illinois	Sugar Grove (Village), Kane County.	Blackberry Creek	Approximately 1,050 feet upstream of Densmore Road.	None	*678
			Approximately 1,800 feet upstream of Bliss Road.	None	*690
		Blackberry Creek Tributary E	At confluence with Blackberry Creek	None	*680
			At Mankes Road	None	*680
Maps available for inspection at the Sugar Grove Village Office, 10 Municipal Drive, Sugar Grove, Illinois. Send comments to Mr. P. Sean Michels, Sugar Grove Village President, 10 Municipal Drive, Sugar Grove, Illinois 60554.					
Maine	Lebanon (Town), York County.	Salmon Falls River	At downstream corporate limits	None	*190
			At upstream corporate limits	None	*421
Maps available for inspection at the Lebanon Code Enforcement Office, 655 Upper Guinea Road, Lebanon, Maine. Send comments to Mr. Gilber Zinck, Chairman of the Town of Lebanon Selectmen, P.O. Box 339, Lebanon, Maine 04027.					
Maine	Princeton (Town), Washington County.	Grand Falls Flowage	Entire shoreline within the Town of Princeton.	None	*204
		Lewy Lake	Entire shoreline within the Town of Princeton.	None	*204
		Long Lake	Entire shoreline within the Town of Princeton.	None	*204
Maps available for inspection at the Princeton Town Office, 15 Depot Street, Princeton, Maine. Send comments to Mr. Greg Monk, Chairman of the Town of Princeton Board of Selectmen, P.O. Box 408, Princeton, Maine 04668.					
New Hampshire	Nashua (City), Hillsborough County.	Nashua River	At the downstream side of B&M Railroad bridge.	*115	*114
			Approximately 0.75 mile upstream of State Route 111.	*177	*176
		Bartemus Brook	At confluence with Nashua River	*167	*165
			At upstream corporate limits	*168	*166
		Lyle Reed Brook	At confluence with Nashua River	*169	*167
			Approximately 0.75 mile upstream of State Route 11.	*169	*167
Maps available for inspection at the Nashua City Hall, 229 Main Street, Nashua, New Hampshire. Send comments to The Honorable Bernard A. Streeter, Mayor of the City of Nashua, City Hall, 229 Main Street, Nashua, New Hampshire 03061–2019.					
New Jersey	Deal (Borough), Monmouth County.	Poplar Brook	Approximately 20 feet upstream of New York and Long Branch Railroad.	*15	*29
			Approximately 480 feet downstream of Ocean Avenue.	*10	*11
Maps available for inspection at the Deal Borough Municipal Building, Durant Square, Deal, New Jersey. Send comments to Mr. James Rogers, Borough of Deal Clerk and Administrator, Municipal Building, Durant Square, Deal, New Jersey 07723.					
New York	Angola (Village), Erie County.	Big Sister Creek	Upstream corporate limits	None	*622
			Downstream corporate limits	None	*644
		Unnamed Tributary to Big Sister Creek.	At confluence with Big Sister Creek	None	*643
			Approximately 750 feet upstream of confluence with Big Sister Creek.	None	*643
Maps available for inspection at the Angola Village Office, 41 Commercial Street, Angola, New York. Send comments to The Honorable Jim Carlson, Mayor of the Village of Angola, 41 Commercial Street, Angola, New York 14006.					
New York	East Aurora (Village), Erie County.	Tannery Brook	At the confluence of East Branch Cazenovia Creek.	*867	*866
			Approximately 710 feet upstream of Brooklea Drive.	*943	*944

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (*NGVD) (•NAVD) Existing	Modified
Maps available for inspection at the East Aurora Village Hall, 571 Main Street, East Aurora, New York. Send comments to The Honorable John V. Pagliaccio, Mayor of the Village of East Aurora, 571 Main Street, East Aurora, New York 14052.					
New York	Fort Plain (Village), Montgomery County.	Otsquago Creek	Approximately 540 feet upstream of the confluence with the Mohawk River.	*305	*306
			Approximately 50 feet upstream of State Route 80.	*335	*336
Maps available for inspection at the Fort Plain Village Hall, 168 Canal Street, Fort Plain, New York. Send comments to The Honorable Thomas L. Quackenbush, Mayor of the Village of Fort Plain, Fort Plain Village Hall, 168 Canal Street, Fort Plain, New York 13339.					
New York	Herkimer (Village), Herkimer County.	West Canada Creek	Approximately 600 feet downstream of East State Street (State Route 5).	*388	*387
			At the upstream corporate limits with the Town of Herkimer (approximately 1.36 miles upstream of East State Street).	*414	*413
Maps available for inspection at the Herkimer Village Municipal Hall, 120 Green Street, Herkimer, New York. Send comments to Mr. Jams Franco, Herkimer County Department of Public Works, South Washington Street, Herkimer, New York 13350.					
New York	Jay (Town), Essex County.	East Branch Ausable River.	At the confluence with Ausable River	*551	*550
			At the upstream corporate limits (approximately 2.24 miles upstream of NYS Route 9N).	None	*724
		Ausable River	At the downstream corporate limits	None	*491
			At the confluence of East and West Branches of Ausable River.	*551	*550
		Tributary to East Branch Ausable River.	At the confluence with East Branch Ausable River.	None	*589
			At NYS Route 9R	None	*765
		West Branch	At the confluence with the Ausable	*551	*550
		Ausable River	River and East Branch Ausable River Approximately 250 feet upstream of the confluence with the Ausable River.	*553	*552
Maps available for inspection at the Jay Town Hall, School Street, Ausable Forks, New York. Send comments to Mr. Thomas O'Neill, Jay Town Supervisor, P.O. Box 730, Ausable Forks, New York 12912.					
New York	Lisle (Town), Broome County.	Dudley Creek	Approximately 650 feet downstream of Owen Hill Road.	None	*1,044
			At Popple Hill Road	None	*1,097
		Culver Creek	At the confluence with Dudley Creek	None	*1,075
			At Hunts Corners Road	None	*1,106
		Tioughnioga River	Approximately 3.12 miles downstream of Main Street.	None	*979
			A point approximately 1.19 miles upstream of Main Street.	None	*1,003
Maps available for inspection at the Lisle Town Office, 9234 NYS Route 79, Lisle, New York. Send comments to Mr. James C. Dunham, Lisle Town Supervisor, P.O. Box 98, Lisle, New York 13797.					
New York	Tusten (Town), Sullivan County.	Delaware River	At the corporate limits	None	*629
			Approximately 2.03 miles downstream of the CONRAIL bridge.	None	*665
Maps available for inspection at the Tusten Town Hall, 210 Bridge Street, Narrowsburg, New York. Send comments to Mr. Richard Crandell, Tusten Town Supervisor, P.O. Box 195, Narrowsburg, New York 12764.					
Virginia	Franklin (City), Independent City.	Blackwater River	At downstream corporate limits	None	*17
			At upstream corporate limits	*18	*22
Maps available for inspection at Franklin City Office, 207 West Second Avenue, Franklin, Virginia. Send comments to The Honorable James P. Councill, III, Mayor of the City of Franklin, 207 West Second Avenue, Franklin, Virginia 23851.					
Virginia	Isle of Wight County (Unincorporated Areas).	Blackwater River	Approximately 3.7 miles downstream of CSX Transportation.	None	*16

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (*NGVD) (•NAVD)	
				Existing	Modified
			Approximately 1.3 miles upstream of Broadwater Road (State Route 629).	*33	*36
Maps available for inspection at the Isle of Wight County Administrator's Office, 17130 Monument Circle, Suite A, Isle of Wight, Virginia.					
Send comments to Mr. W. Douglas Caskey, Isle of Wight County Administrator, P.O. Box 80, Isle of Wight, Virginia 23397.					
Virginia	Monterey (Town) Highland County.	West Strait	Approximately 650 feet downstream of U.S. Route 220.	*2,849	*2,853
			Approximately 630 feet upstream of the west stream crossing of Mill Alley.	*2,965	*2,967
Maps available for inspection at the Monterey Building and Zoning Department, Main Street, Monterey, Virginia.					
Send comments to The Honorable Janice Warner, Mayor of the Town of Monterey, P.O. Box 26, Monterey, Virginia 24465.					
Virginia	Suffolk (City), Independent City.	Blackwater	At downstream corporate limits	None	*15
			At upstream corporate limits	None	*16
Maps available for inspection at the Suffolk City Manager's Office, 441 Market Street, Suffolk, Virginia.					
Send comments to The Honorable Curtis R. Milteer, Sr., Mayor of the City of Suffolk, P.O. Box 1858, Suffolk, Virginia 23439.					
Vermont	Hardwick (Town/Village), Caledonia County.	Lamoille River Divergence	Approximately 460 feet upstream of the confluence with Lamoille River.	*793	*794
			At the divergence from Lamoille River	*805	*804
Maps available for inspection at the Hardwick Town Hall, 20 Church Street, Hardwick, Vermont.					
Send comments to Mr. Daniel P. Hill, Hardwick Town/Village Manager, P.O. Box 523, 20 Church Street, Hardwick, Vermont 05843.					
West Virginia	Berkeley County (Unincorporated Areas).	Evans Run	A point approximately 300 feet downstream of U.S. Route 11.	*489	*488
			A point approximately 300 feet downstream of State Route 45.	*558	*556
Maps available for inspection at the Berkeley County Planning Commission, 119 West King Street, Martinsburg, West Virginia.					
Send comments to Mr. Howard Strauss, President of the Berkeley County Board of Commissioners, 126 West King Street, Martinsburg, West Virginia 25401.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance").

Dated: October 9, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–26427 Filed 10–18–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–P–7601]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. •(NAVD)	
				Existing	Modified
AR	Patterson, City of Woodruff County.	Cache River	U.S. Highway 64 Bridge (COE Gage)	NONE	*197
Maps are available for inspection at City Hall, 123 South Main, Patterson, Arkansas.					
Send comments to the Honorable Charles Dallas, Mayor, City of Patterson, 123 South Main, Patterson, Arkansas 72123.					
IA	Council Bluffs, City of Pottawattamie County.	Indian Creek	At approximately 1600 feet downstream of U.S. Highway 275.	976	977
			At approximately 100 feet downstream of Frank Street.	1026	1023
Maps are available for inspection at the Building Division, City Hall, 209 Pearl Street, Room 207, Council Bluffs, Iowa.					
Send comments to the Honorable Thomas P. Hanafan, Mayor, City of Council Bluffs, City Hall, 209 Pearl Street, Council Bluffs, Iowa 51503					

Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance"

Dated: October 3, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–26428 Filed 10–18–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[IB Docket No. 01–185, ET Docket No. 95–18, DA #01–2314]

Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz band, the L-Band, and the 1.6/2.4 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In this document, the Commission extends the period for comment and reply comment in the proceeding that it initiated to explore proposals to bring flexibility to the delivery of communications by Mobile Satellite Service ("MSS") providers. The Commission extends the period for comment at the request of the Cellular Telecommunications & Internet Association (CTIA) in order to allow sufficient time to establish the most complete and well-developed record possible on which to base a decision.

DATES: Comments are due October 19, 2001, and Reply Comments are due November 5, 2001.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Breck Blalock, 202–418–8191.

SUPPLEMENTARY INFORMATION: This is a summary of the Order Extending Comment Period in IB Docket No. 01–185, ET Docket No. 95–18, DA 01–2314, adopted October 4, 2001. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC 20554 and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

1. The Commission extends the comment period deadlines established in the Notice of Proposed Rulemaking in this proceeding (66 FR 47621, September 13, 2001) from October 11, 2001 to October 19, 2001, and the reply comment period from October 25, 2001 to November 5, 2001.

Ordering Clause

2. The request of CTIA to extend the deadline for filing comments in this proceeding, filed September 25, 2001, is granted to the extent indicated, pursuant to § 1.46 of the Commission's Rules, 47 CFR 1.46.

Federal Communications Commission.

John V. Giusti,

Chief, International Spectrum and Communications Policy Branch.

[FR Doc. 01–26508 Filed 10–17–01; 12:58 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 01–2319, MM Docket No. 01–279, RM–10290]

Radio Broadcasting Services; Rocksprings, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 235C3 at Rocksprings, Texas. The coordinates for Channel 235C3 at Rocksprings are 30–07–06 and 100–19–18. There is a site restriction 16 kilometers (9.9 miles) northwest of the community. Since Rocksprings is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment at Rocksprings.

DATES: Comments must be filed on or before November 26, 2001, and reply comments on or before December 11, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, S.W., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Linda Crawford, 3500 Maple Avenue, No. 1320, Dallas, Texas 75219.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–279, adopted September 26, 2001, and released October 5, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1.The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 235C3 at Rocksprings.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–26373 Filed 10–18–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2320; MM Docket No. 01–281; RM–10287]

Radio Broadcasting Services; Washington and Watkinsville, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Southern Broadcasting Companies, Inc., licensee of Station WXKT (FM), Channel 261A, Washington, Georgia, requesting the reallotment of Channel 261A from Washington to Watkinsville, Georgia, and modification of its authorization accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. The coordinates for requested Channel 261A at Watkinsville, Georgia, are 33–52–19 and 83–15–19.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 261A at Watkinsville, Georgia, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before November 26, 2001, and reply comments on or before December 11, 2001.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C.; 5028 Wisconsin Avenue, NW., Suite 301; Washington. DC 20016.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–281 adopted September 26, 2001, and released October 5, 2001. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Watkinsville, Channel 261A, and removing Washington, Channel 261A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–26374 Filed 10–18–01; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

RIN 3090–AH01

General Services Administration Acquisition Regulation; Acquisition of Leasehold Interests in Real Property; Historic Preference

AGENCY: General Services Administration (GSA), Office of Acquisition Policy.

ACTION: Proposed rule.

SUMMARY: The General Services Administration amends the GSA Acquisition Regulation (GSAR) by revising the provision on Historic Preference.

DATES: Interested parties should submit comments in writing on or before December 18, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, Office of Acquisition Policy, 1800 F Street, NW., Room 4035, ATTN: Michael Hopkins, Washington, DC 20405. Please submit comments only.

FOR FURTHER INFORMATION CONTACT: For information pertaining to status or publication schedules contact Mr. Hopkins at (202) 501–1448. For clarification of content, contact Ms. Julia Wise, Procurement Analyst, at (202) 208–1168.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order (EO) 13006, dated May 21, 1996, requires that the Federal Government utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts, in order to help revitalize the nation's central cities. The EO requires that, subject to the requirements of the Rural Development Act and EO 12072, when locating Federal facilities, Federal agencies give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies must consider other developed or undeveloped sites within historic districts. Federal agencies must then consider historic properties outside historic districts, if no suitable site within a district exists. Based on the requirements of EO 13006, the GSAR provision has been revised to establish a hierarchy of consideration that is facilitated by giving a price evaluation preference to offers of space falling within the hierarchy.

A proposed rule implementing a historic preference provision for leasehold interests in real property was published in the **Federal Register** for comments on June 30, 1999. GSA received comments and the proposed rule has been revised. Because numerous changes have been made to the proposed historic preference provision, GSA is publishing it again as a proposed rule.

The comments received by GSA and the changes made to the historic preference provision are summarized as follows. The Advisory Council on Historic Preservation recommended that the definitions of historic property and historic district be made consistent with other existing regulations and statutory definitions and that the hierarchical preferences be stated more clearly. The proposed historic preference provision has been revised to incorporate appropriate definitions from the National Historic Preservation Act and implementing regulations in Title 36 of the Code of Federal Regulations, and to clarify how the historic preference will be applied.

GSA also considered whether the price preference for non-historic developed and undeveloped sites within historic districts should be less than the price preference for historic properties within and outside of historic districts. GSA believed that this would more appropriately reflect the relatively higher cost of rehabilitating, altering, and maintaining existing historic buildings as opposed to constructing and maintaining new buildings or altering existing non-historic buildings within a historic district. Accordingly, the historic preference provision has been revised to provide that historic properties within and outside of historic districts may be eligible for a 10 percent price preference; non-historic developed and undeveloped sites within historic districts may be eligible for a 2.5 percent price preference.

Finally, the provision has been revised to state that the Government will compute the price evaluation preferences by reducing the price(s) of the offerors qualifying for a price evaluation preference by the applicable percentage provided in the historic preference provision.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule implements an existing Executive Order (EO) and does not impose any new requirements. This rule requires the Federal Government to utilize and maintain historic properties and districts, wherever possible, to aid in the revitalization of the nation's central cities. This rule establishes a price evaluation preference and order preference for properties in these specific areas.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C.3501 *et seq.*

List of Subjects in 48 CFR Part 552

Government procurement.

Accordingly, it is proposed that 48 CFR part 552 be amended as follows:

1. The authority citation for part 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 552.270–2 is revised to read as follows:

552.270–2 Historic Preference.

As prescribed in 570.602, insert the following provision:

Historic Preference October 2001

(a) The Government will give preference to offers of space in historic properties following this hierarchy of consideration:

(1) Historic properties within historic districts.

(2) Non-historic developed and non-historic undeveloped sites within historic districts.

(3) Historic properties outside of historic districts.

(b) Definitions. (1) *Determination of eligibility* means a decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation although the property is not formally listed in the National Register. (36 CFR 60.3(c))

(2) *Historic district* means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history. (36 CFR 60.3(d)) The historic district must be included in or be determined eligible for inclusion in the National Register of Historic Places.

(3) *Historic property* means any pre-historic or historic district, site, building, structure, or object included in or been determined eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior. (36 CFR 800.16(l))

(4) *National Register of Historic Places* means the National Register of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering and culture that the Secretary of the Interior is authorized to expand and maintain under the National Historic Preservation Act. (36 CFR 60.1)

(c) The offer of space must meet the terms and conditions of this solicitation. The Contracting Officer has discretion to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicitation to maintain the historical integrity of an historic building, such as high ceilings and wooden floors, or to maintain the integrity of an historic district, such as setbacks, floor-to-ceiling heights, and location and appearance of parking.

(d) When award will be based on the lowest price technically acceptable source selection process, the Government will give a price evaluation preference, based on the total annual square foot (ANSI/BOMA Office Area) cost to the Government, to historic properties as follows:

(1) First to suitable historic properties within historic districts, a 10 percent price preference.

(2) If no suitable historic property within an historic district is offered, or the 10 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(3) If no suitable non-historic developed or undeveloped site within an historic district is offered, or the 2.5 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(4) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

(e) When award will be based on the best value tradeoff source selection process, which permits tradeoffs among price and non-price factors, the Government will give a price evaluation preference, based on the total annual square foot (ANSI/BOMA Office Area) cost to the Government, to historic properties as follows:

(1) First to suitable historic properties within historic districts, a 10 percent price preference.

(2) If no suitable historic property within a historic district is offered or remains in the competition, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(3) If no suitable non-historic developed or undeveloped site within an historic district is offered or remains in the competition, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(4) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

(f) The Government will compute price evaluation preferences by reducing the price(s) of the offerors qualifying for a price evaluation preference by the applicable percentage provided in this provision. The price evaluation preference will be used for price evaluation purposes only. The Government will award a contract in the amount of the actual price(s) proposed by the successful offeror and accepted by the Government.

(g) To qualify for a price evaluation preference, offerors must provide satisfactory documentation in their offer that their property is qualifies as one of the following:

(1) An historic property within an historic district.

(2) A non-historic developed or undeveloped site within an historic district.

(3) An historic property outside of an historic district. (End of provision)

Dated: May 30, 2001.

David A. Drabkin,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 01–26446 Filed 10–18–01; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 000320077–1177–02; I.D. 062501B]

RIN 0648–AN62

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; correction.

SUMMARY: This document, filed October 1, 2001, and published in the **Federal Register** on October 2, 2001, has inadverdently published without a RIN. This correction corrects that omission.

DATES: Written comments will be accepted on or before November 19, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Hoffman (ph. 727–570–5312, fax 727–570–5517, e-mail Robert.Hoffman@noaa.gov), or Therese A. Conant (ph. 301–713–1401, fax 301–713–0376, e-mail Therese.Conant@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

This document, published at 66 FR 50148, October 2, 2001, inadvertently omitted the RIN.

Correction

Accordingly, the RIN is corrected to read as set forth above.

Authority: 16 U.S.C. 1531-1544; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

Dated: October 15, 2001.

William T. Hogarth,

Assistant Administrator of Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26455 Filed 10–18–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No.010723187–1241–02, I.D. 061101I]

RIN 0648–AP33

Threatened Fish and Wildlife; Status Review of the Gulf of Maine/Bay of Fundy Population of Harbor Porpoise under the Endangered Species Act (ESA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final determination and response to comments; notice of availability of final harbor porpoise status review; removal from candidate species list.

SUMMARY: The National Marine Fisheries Service (NMFS) has completed a status review of the Gulf of Maine/Bay of Fundy (GOM/BOF) stock of harbor porpoise (*Phocoena phocoena*). Based on analysis of the best scientific and commercial data available, as required by the Endangered Species Act (ESA), NMFS determined that listing this stock of harbor porpoise as threatened or endangered is not warranted at this time. In addition, based on the current status of the GOM/BOF stock, NMFS is removing this stock from the ESA candidate species list. This notice also announces the availability of the final status review.

DATES: This determination was made on September 28, 2001.

ADDRESSES: Copies of the final report of the status review can be obtained from: NMFS, Marine Mammal Division, 1315 East-West Highway, Silver Spring, MD 20910; or NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298.

FOR FURTHER INFORMATION CONTACT: Emily Hanson, Office of Protected Resources, 301–713–2322 ext. 101; or Kim Thounhurst, Northeast Region, 978–281–9138. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

The final report of the status review on the GOM/BOF population of harbor porpoise is accessible by the Internet at http://www.nero.nmfs.gov/porptrp/.

Background

On August 2, 2001 (66 FR 40176), NMFS published a draft review of the biological status of the Gulf of Maine/Bay of Fundy (GOM/BOF) harbor porpoise stock. In the draft status review, NMFS made the preliminary determination that listing the GOM/BOF stock as threatened under the ESA was not warranted and that NMFS intended to remove the GOM/BOF harbor porpoise stock from the ESA candidate species list. In a status review completed in 1999 (64 FR 465, January 5, 1999), NMFS determined that listing the GOM/BOF population of harbor porpoise as threatened under the ESA was not warranted. NMFS also published a notice retaining the population on the ESA candidate species list to continue to monitor the species status and the results of implementation of the Harbor Porpoise Take Reduction Plan (HPTRP)(64 FR 480, January 5, 1999). The 1999 status review notice and the August 2001 draft status review notice also provided information on the background of ESA actions involving the GOM/BOF population of harbor porpoise, reviewed available scientific and commercial fishery information affecting the species, evaluated the status of the species according to criteria listed in the ESA, and described regulatory mechanisms in place to address harbor porpoise mortality and serious injury incidental to commercial fishing activities.

After consideration of the draft status review and public comments received, NMFS has determined not to list the harbor porpoise as threatened or endangered under the ESA and to remove the species from the ESA candidate species list. No significant changes have been made to the final report of the status review since publication of the draft in the **Federal Register** on August 2, 2001. The final status review is available to the public as a separate document. See **ADDRESSES** or information on Electronic Access in the **SUPPLEMENTARY INFORMATION** section of this notice for information on obtaining a copy of the final status review.

Comments and Responses

A summary of the comments on the status review and NMFS responses follows.

Comments on the Need for Listing

Comment 1: Three commenters supported NMFS' decision not to list harbor porpoise as threatened or endangered under the ESA.

Response: No information has been received since the publication of the draft status review to change NMFS' preliminary determination that listing is not warranted at this time.

Comments on the Status of Harbor Porpoise

Comment 2: One commenter, citing various potential negative biases in the mortality estimate, stated that actual mortality of harbor porpoise is likely to be higher than the annual estimated average mortality presented in the draft status review.

Response: NMFS recognizes that mortality estimates contain uncertainties. However, the estimates of mortality in U.S. and Canadian waters presented in the draft status review are the best available estimates. Additionally, these uncertainties are incorporated into the population viability analysis, as discussed in the draft status review, which predicted no chance of extinction in 100 years. These mortality estimates are reviewed and updated annually in NMFS Marine Mammal Stock Assessment Reports. The draft revised stock assessment for harbor porpoise, including mortality data from 1999 and 2000, is expected to be reviewed by the Atlantic Marine Mammal Scientific Review Group in November of 2001. The draft estimates will also be made available for public review and comment in the 2002 Stock Assessment Reports.

Comment 3: One commenter stated that NMFS must undertake the research recommended by the take reduction team to: (1) determine whether pingers were functioning on both sides of an actual take; and (2) randomly test net strings to determine the proportion of functioning versus deployed pingers.

Response: NMFS is preparing to conduct this research and anticipates conducting preliminary testing of pingers in the fall of 2001.

Comment 4: One commenter discussed the maximum rate of increase and recovery factor parameters, which are used to assess the status of harbor porpoise.

Response: The maximum rate of increase and recovery factor that NMFS used in conducting the harbor porpoise status review have been reviewed by the Atlantic Marine Mammal Scientific Review Group and the public through the annual Stock Assessment Report (SAR) process as mandated by section 117 of the MMPA. These values are the best available for the assessment of the harbor porpoise population. NMFS will consider this comment in its review of the SAR.

Comments on the Adequacy of Regulatory Mechanisms

Comment 5: One commenter stated that any changes in Fishery Management Council actions are likely to result in an increase in harbor porpoise mortality, and there is no plan in place to prevent this from happening. Therefore, the commenter concluded that current regulatory mechanisms are not adequate to protect harbor porpoise.

Response: NMFS' current strategy for reducing serious injury and mortality of harbor porpoise in commercial fisheries is to combine measures promulgated under the Marine Mammal Protection Act (MMPA) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In the final rule implementing the HPTRP (63 FR 66464, December 2, 1998), NMFS considered the cumulative scope of management actions under the Magnuson-Stevens Act and MMPA that would affect harbor porpoise bycatch and determined that a combined strategy was the best administrative approach. This strategy has reduced the bycatch to below the PBR level in both 1999 and 2000. If Fishery Management Plan (FMP) changes that may increase harbor porpoise bycatch are proposed, NMFS has authority under the MMPA to implement measures to reduce bycatch to appropriate levels. This adaptive strategy is adequate to address potential increases in harbor porpoise bycatch.

Comment 6: One commenter stated that if NMFS is considering the reduction in mortality that is gained through fishery management actions as a means of assessing the efficacy of management measures, NMFS must also consider the result if these temporary actions are altered or removed. The commenter noted that if closures are lifted or re-configured, the mortality of harbor porpoise is likely to increase once again. These questions about the stability of the Fishery Management Council actions lead, as a consequence, to doubts about their adequacy over the long term.

Response: NMFS and the New England Fishery Management Council (Council) are responsible for meeting the objectives of the Multispecies FMP, which include harbor porpoise conservation goals parallel to those under the MMPA. In addition, a member of the Council staff also sits on each of the two Harbor Porpoise Take Reduction Teams.

The history of implementation of harbor porpoise conservation measures under the Multispecies FMP, as described in the draft status review, clearly demonstrates the commitment of both NMFS and the Council to conserve harbor porpoise by restricting the Northeast sink gillnet fishery for groundfish as appropriate. NMFS has multiple options to address any risks to harbor porpoise that might arise through proposed changes to the Multispecies FMP. In addition, NMFS is a member of the Council, including the Council's Plan Development team, and works cooperatively with the Council staff in developing changes to the FMP. Therefore, NMFS will be aware of any of the Council's proposed groundfish regulatory changes that may directly or indirectly affect harbor porpoise, and NMFS will work with the Council and the two Harbor Porpoise Take Reduction Teams to determine whether any changes to the Multispecies FMP would require additional measures to protect harbor porpoise in the HPTRP regulations.

Comment 7: One commenter stated that fishery-related management actions have had a positive impact on harbor porpoise bycatch, and that effect cannot be understated.

Response: See responses to Comments 5 and 6.

Comment 8: One commenter stated that if mortality of harbor porpoise is to be curtailed, then it is critical to enforce the laws and regulations protecting them. The commenter also stated that the current level of enforcement is inadequate. Another commenter stated that NMFS must seriously consider using observer data to identify individual violators.

Response: Increased enforcement presence was also recommended by the Gulf of Maine Harbor Porpoise Take Reduction Team. At the Team's recommendation, NMFS is working on a compliance and enforcement plan for the HPTRP. At-sea boardings and direct observations of violations by NMFS enforcement and U.S. Coast Guard officers are the primary source of enforcement evidence used to develop a case. Observer data are used to provide a measure of overall compliance with Take Reduction Plan requirements and aid in focusing enforcement efforts.

Comment 9: One commenter noted that while NMFS states in the draft status review that the agency will monitor actions taken by the Council, and "may also revise the HPTRP to incorporate all measures necessary to ensure reduced harbor porpoise bycatch rather than relying on FMP time-area closures", it makes no commitment to do so.

Response: As described in the response to Comment 6, NMFS is actively involved in the Council process. The Council is also directly involved in the harbor porpoise take reduction process through membership of Council staff on the Harbor Porpoise Take Reduction Teams.

It is appropriate to manage harbor porpoise bycatch through both the Magnuson-Stevens Act and MMPA as described in the response to Comment 6. NMFS has the authority to adjust the U.S. harbor porpoise bycatch reduction program through the MMPA and/or the Magnuson-Stevens Act if the agency determines that proposed changes to FMPs would reduce harbor porpoise protection. It is important to emphasize that the Multispecies FMP also includes an objective requiring the reduction of harbor porpoise bycatch.

Comment 10: One commenter stated that the increase in harbor porpoise mortality between 1999 and 2000 may be an indication that mitigation measures are not sufficient.

Response: For both years the bycatch is below the PBR level. However, NMFS agrees that increases in bycatch are a concern and will continue to monitor the harbor porpoise bycatch and the effectiveness of the HPTRP.

Comment 11: One commenter stated that NMFS must revise the HPTRP to incorporate as requirements, not merely by reference, all of the measures necessary to achieve both a take level below PBR and the zero mortality rate goal.

Response: The current suite of measures under the MMPA and Magnuson-Stevens Act have already reduced the bycatch of harbor porpoise to below the PBR level. If the level of bycatch increases such that it exceeds PBR or does not continue toward the zero mortality rate goal, the agency will reconvene the take reduction team to address the issue.

Comment 12: NMFS' bycatch reduction strategy is strongly predicated on a calculated level of pinger effectiveness for various areas and seasons. This calculation does not accommodate any variation due to harbor porpoise habituation to pingers or the catch of harbor porpoise in pingered nets as a result of the failure of fishermen to fully comply with the pinger requirements.

Response: The expected level of pinger effectiveness does not consider habituation or non-compliance. However, it is not currently possible to quantify these potential effects. Furthermore, through the Harbor Porpoise Take Reduction Teams, NMFS has the authority to modify the HPTRP based on a new expected level of pinger effectiveness should such information become available.

Comments on the Removal of Harbor Porpoise from the Candidate Species List

Comment 13: Two commenters supported and two commenters opposed removal of harbor porpoise from the ESA candidate species list.

Response: NMFS is removing the GOM/BOF stock of harbor porpoise from the ESA candidate species list. This action is appropriate because of the current status of the species and the adequacy of regulatory mechanisms available to address risks to the population. NMFS will continue to monitor the status of harbor porpoise pursuant to the stock assessment process mandated under section 117 of the MMPA. In addition, NMFS will continue to monitor harbor porpoise bycatch, compliance with the HPTRP, and the potential effect of changes in FMPs on harbor porpoise bycatch. The removal of this stock from the ESA candidate species list does not change NMFS' mandates under the MMPA with regard to harbor porpoise protection under the HPTRP or other MMPA programs.

Final Determination

Section 4(b)(1) of the ESA requires the Secretary of Commerce to make a listing determination solely on the basis of the best scientific and commercial data available and after taking into account efforts being made to protect the species. Therefore, in reviewing the status of the GOM/BOF population of harbor porpoise, NMFS has assessed the status of the species according to the criteria in the ESA.

Since 1999, NMFS has obtained no information demonstrating that factors other than mortality incidental to commercial fishing could cause the stock to be in danger of extinction or likely to become so in the foreseeable future or that available regulatory mechanisms are inadequate to reduce harbor porpoise mortality and serious injury. After analysis of the GOM/BOF population of harbor porpoise under the five ESA listing factors, NMFS has determined that the stock is not in danger of extinction throughout all or a significant portion of its range, and it is not likely to become endangered in the foreseeable future. Therefore, listing the GOM/BOF population of harbor porpoise as threatened or endangered is not warranted at this time. In addition, because of the current status of the species it is appropriate to remove the GOM/BOF harbor porpoise population from the ESA candidate species list.

The most significant factors that NMFS considered in making this determination are the new abundance estimate from the 1999 survey and the results of measures promulgated under the MMPA through the HPTRP and under the Magnuson-Stevens Act through the Northeast Multispecies FMP that directly or indirectly reduce the level of harbor porpoise mortality incidental to commercial fishing in U.S. waters, the Harbor Porpoise Conservation Strategy implemented by the Canada Department of Fisheries and Oceans, and the existing authority by which regulatory agencies can adapt management measures if unanticipated changes in porpoise bycatch patterns occur. Although it is likely that porpoise mortality will continue to occur incidental to fishery operation, existing regulatory mechanisms and authority for amending these mechanisms to address bycatch in commercial fisheries are adequate to ensure that bycatch in commercial fisheries do not cause harbor porpoise to be in danger of extinction throughout all or a significant portion of its range, and it is not likely to become endangered in the foreseeable future.

Although the HPTRP and other bycatch reduction efforts have reduced the incidental take of harbor porpoise in gillnet fisheries to below the PBR level in both 1999 and 2000, it is clear that harbor porpoise bycatch must continue to be monitored. NMFS has documented non-compliance with HPTRP regulations that may have reduced its effectiveness, requiring additional outreach and enforcement measures. Furthermore, fishery management measures have changed since the implementation of the HPTRP and may continue to change via the annual adjustment process in the Multispecies FMP. It is possible that closures implemented for fish conservation will be removed when fish stocks reach their rebuilding targets, which could result in an increased risk to harbor porpoise and may require adjustment of the HPTRP.

NMFS will continue to monitor bycatch levels and will adjust the HPTRP as necessary to maintain bycatch levels within the goals established by section 118 of the MMPA. NMFS will also monitor any proposed regulations and proposed changes to existing regulations that may affect harbor porpoise bycatch and consider whether management measures need to be changed. NMFS intends to reconvene the two Harbor Porpoise Take Reduction Teams as necessary to monitor the implementation of the HPTRP relative to MMPA goals.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 12, 2001.

William T. Hogarth

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26454 Filed 10–18–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 203
Friday, October 19, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Draft Program Comment Regarding Historic Preservation Review Process for Projects Involving Historic Natural Gas Pipelines

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Intent to issue program comments on Historic Natural Gas Pipelines.

SUMMARY: The Advisory Council on Historic Preservation proposes a Program Comment to streamline the historic preservation review process for projects involving historic natural gas pipelines.

DATES: Submit comments on or before November 9, 2001.

ADDRESSES: Address all comments concerning this proposed program comment to Don Klima, Director, Office of Planning and Review, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606–8672. You may submit electronic comments to: *dklima@achp.gov*.

FOR FURTHER INFORMATION CONTACT: Don Klima, 202–606–8505.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires Federal agencies to consider the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation ("Council") a reasonable opportunity to comment with regard to such undertakings. The Council has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 ("Section 106 regulations").

The Council can streamline the regular Section 106 review process through program comments. 36 CFR 800.14(e). Instead of going through each of the steps detailed in subpart B of the Section 106 regulations, an agency can meet its Section 106 responsibilities for a specific program by taking into account the Council's program comments and following the steps set forth in those comments.

The Council is now proposing a program comment to help the Federal Energy Regulatory Commission ("Commission") meet its Section 106 responsibilities regarding natural gas pipelines. Specifically, the program comment deals with authorizations to construct, operate, and abandon natural gas pipelines and related pipeline facilities under Section 7 of the Natural Gas Act, 5 U.S.C. 717f, including the blanket authorizations under 18 CFR parts 157 and 284 of the Commission's regulations. The Commission's part 157, subpart F blanket authorization program applies to specified projects below a set cost level. Projects above that cost are processed pursuant to part 157, subpart A. Part 284 applies to activities conducted pursuant to section 311 of the Natural Gas Policy Act.

Consistent with Section 106, it is the Commission's responsibility to take into account the effect that issuing such authorizations has on historic properties. Due to the planning process for some pipeline projects, such as construction, many historic properties that might be affected by the construction can be avoided during right-of-way selection or during the construction process itself. However, in some pipeline projects, the historic properties simply cannot be avoided. Such is the case regarding existing natural gas pipelines and related pipeline facilities that are listed, or eligible for listing, in the National Register of Historic Places ("historic natural gas pipelines"). Natural gas pipelines and related pipeline facilities may be historic due to such things as their particular design and engineering features, or their association with important national or regional historic events and well-known persons. It is the Council's belief that the historic significance of historic natural gas pipelines is appropriately preserved through recordation of their historic attributes. This may include preservation of original construction drawings and documents, photographic recordation of current conditions, assembly and archiving of historical documentation, and retention and curation of artifacts from or associated with the historic pipeline.

Although most historic natural gas pipelines could be treated fairly expeditiously during compliance with Section 106, under Commission regulations the occurrence of an effect on a historic natural gas pipeline as a practical matter disqualifies the pipeline company from completing the project under a blanket certificate. 18 CFR part 157, subpart F, Appendix II, and 18 CFR part 284. This creates delays since, absent the ability to proceed under a blanket certificate, a fuller environmental review must be conducted and completed by the Commission, which may take substantially more time and resources. The potential for delay can impede necessary maintenance, repair and replacement actions that are essential to protect public health, ensure pipeline safety and provide essential energy resources. Absent an effect finding, pipeline companies can proceed under a blanket certificate for many types of projects, substantially simplifying the approval process, reducing required documentation, and expediting the necessary work undertaken by the pipeline company. These program comments give certificate holders the ability to stay within their blanket certificate, so long as the relevant historic natural gas pipeline is appropriately documented.

For applicants who are unable to proceed under a blanket certificate, but who appropriately document the relevant historic natural gas pipeline, these program comments provide a more efficient and predictable process that also results in an acceptable preservation outcome.

This streamlining initiative is consistent with the Administration's National Energy Policy (Report of the National Energy Policy Group, May 2001), and Executive order 13212 (May 18, 2001), which requires agencies to "expedite their review of permits or take other actions as necessary to accelerate the completion of (projects that will increase the production, transmission, or conservation of energy), while maintaining safety, public health, and environmental protections."

Once issued, these program comments will remain in effect unless the Council determines that the consideration of effects to historic natural gas pipelines is not being carried out in a manner consistent with these program comments and withdraws the comments. 36 CFR 800.14(e)(6).

These program comments will not apply to tribal land without the consent of the relevant tribe. The Council believes that these program comments have no consequences for historic properties of religious and cultural significance, regardless of location, to any Indian tribe or Native Hawaiian organization since they are limited to effects on only one type of historic property (i.e., historic natural gas pipelines). The Council is not aware of any historic natural gas pipelines that are of such significance to tribes or Native Hawaiian organizations.

The Council is seeking comments regarding the proposed program comments. Such comments must be received by the deadline set forth above in order to be considered by the Council.

The full text of the proposed program comment is reproduced below.

Program Comment for Historic Natural Gas Pipelines

I. Introduction

These program comments provide the Federal Energy Regulatory Commission ("Commission") with an alternate way to comply with its responsibilities under Section 106 of the National Historic Preservation Act ("Section 106"), with regard to effects on natural gas pipelines and related pipeline facilities ("pipelines") when authorizing projects under Section 7 of the Natural Gas Act by either (a) applicants pursuant to 18 CFR part 157, subpart A, or (b) certificate holders pursuant to 18 CFR part 157, subpart F and 18 CFR part 284 of the Commission's regulations ("pipeline projects").

II. Effects on Historic Natural Gas Pipelines

a. Evaluation

For pipeline projects affecting pipelines 50 years old or older not previously evaluated for eligibility for listing in the National Register of Historic Places ("National Register"), the applicant/certificate holder will consult with the appropriate State Historic Preservation Officer ("SHPO") to apply the National Register Criteria to the pipeline.

(1) If the applicant/certificate holder and SHPO agree that the pipeline is not eligible for listing in the National Register, then the pipeline will not be treated as a historic property for Section 106 purposes.

(2) If the applicant/certificate holder and SHPO agree that the pipeline is eligible for listing in the National Register, proceed to subparagraph (b), below.

(3) If the applicant/certificate holder and the SHPO cannot agree on the eligibility of the pipeline, these program comments will not be applicable to the pipeline project.

b. Treatment

(1) For pipelines already listed or determined to be eligible for listing in the National Register and for those determined to be eligible for National Register listing pursuant to subparagraph (a)(2) ("historic pipelines"), the applicant/certificate holder will consult with the appropriate SHPO to determine the appropriate level and type of documentation. In determining what is appropriate, the applicant/certificate holder and the SHPO should consider the likelihood and magnitude of future impacts.

(2) If the applicant/certificate holder and SHPO agree regarding documentation, the applicant/certificate holder will document the historic pipeline, or relevant portion thereof, and contributing features as follows:

(i) Documentation will be carried out in accordance with the Secretary of the Interior's Guidelines for Architectural and Engineering Documentation to meet, at a minimum, the Documentation Level IV Standard.

(ii) The documentation will be placed in an appropriate depository as recommended by the SHPO.

(iii) Once the applicant/certificate holder and the SHPO have agreed regarding this documentation and deposit, the project cannot be found to have an effect (as defined under 36 CFR part 800) upon the characteristics that make the pipeline eligible for National Register listing, and the requirements of Section 106 with regard to the historic pipeline will be deemed to have been met. Documentation and deposit need not be completed for this provision to apply, except to the extent that modification of the historic pipeline would preclude the subsequent completion of the agreed-upon documentation and deposit.

(iv) For those pipeline projects carried out by an applicant under 18 CFR part 157, subpart A, the applicant will also submit to the Commission the information necessary to comply with 18 CFR 380.12 (f).

(3) If the applicant/certificate holder and the SHPO cannot agree on the level and type of documentation and/or the depository, then these Program Comments will not be applicable.

III. Effects on Other Historic Properties

These program Comments address only pipeline project effects to historic pipelines. These program comments do not apply to potential effects to other properties listed in, or eligible for inclusion in, the National Register.

IV. Applicability

These Program Comments are not applicable on tribal lands, as defined under 36 CFR 800.16(x) ("all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities"), unless the relevant tribe consents. Federal agencies other than the Commission may use these program comments for pipeline projects that take place on federally administered lands under their jurisdiction.

Authority: 36 CFR 800.14(e)

Dated: October 16, 2001.

Ronald D. Anzalone,

Acting Executive Director.

[FR Doc. 01–26437 Filed 10–18–01; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. No. 104–127), has scheduled a National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting, October 30, 2001–November 1, 2001.

On Tuesday, October 30, 2001, through Thursday, November 1, 2001, the Advisory Board will hold a general meeting at the Washington Court Hotel in Washington, DC. An Orientation

Session for newly appointed Advisory Board members will be held, on Tuesday, October 30, 2001, from 9:00 a.m. until 12:00 p.m. The afternoon session will include remarks by the Secretary of Agriculture (invited) and an opening address by the Honorable Clayton Yeutter, former Secretary of Agriculture and former U.S. Trade Representative. The theme of the afternoon's Focus Session is *Global Agricultural Trade and Policy: U.S. Research Implications*. From 2:30 p.m.–5:30 p.m., a panel will be held on international trade policies, which will consist of several international trade representatives to the United States including the European Union, Brazil, and China. An evening session from 6 p.m.–7:30 p.m. will have two guest speakers, who will talk about the National Coalition on Food and Agricultural Research (N–CFAR) and the National Association of State Universities and Land-Grant Colleges (NASULGU) Food and Society Initiative.

On Wednesday, October 31, 2001, the Advisory Board will conduct general business, hear remarks from Dr. Joseph Jen, USDA Under Secretary, Research, Education, and Economics, and continue with special panels throughout the day on *Global Agricultural Trade and Policy: U.S. Research Implications*. Topics will include an overview of U.S. trade in agriculture, understanding impediments to global trade, and World Bank perspectives on currency exchange issues and other economic factors. Congressional panels held in the afternoon will include Marketing U.S. Food and Agriculture and the implications for research and education.

On Thursday, November 1, 2001, from 8 a.m.–12 p.m., special reports of interest (e.g., results of the Blue Ribbon Panel study on USDA's National Agricultural Library; an update on the reorganization of USDA's Cooperative State Research, Education, and Extension Service; and Research, Education, and Economics agency updates) will be presented to the Advisory Board. Detailed discussion and wrap-up of the Focus Session will be addressed by Board members. Ambassador Allen Johnson, Chief Agriculture Negotiator for Office of the United States Trade Representative, has been invited to speak about "What's on the Horizon for Research on Agricultural World Trade." New members to the 9-member Executive Committee will be determined by Board vote. Limited time each day will be provided for comments from the public as noted in a forthcoming agenda. Also, written comments will be accepted for public record up to two weeks following the Advisory Board meeting. The findings of the Focus Session, based on input from speakers and other stakeholders, will be consolidated into recommendations to the Secretary of Agriculture.

Dates:

- October 30, 2001, 9 a.m.–12 p.m., Orientation for New Board members
- October 30, 2001, 1 p.m.–5:30 p.m., Focus Session
- October 30, 2001, 6 p.m.–7:30 p.m., Working Reception with Guest Speaker
- October 31, 2001, 8 a.m.–6 p.m., Advisory Board Meeting and Focus Session
- October 31, 2001, 12 p.m.–1:30 p.m., Working Lunch with Speaker
- November 1, 2001, 8 a.m.–12 p.m., Focus Session, Special Reports of Interest, Discussion, and Wrap-up

Place: Washington Court Hotel, 525 New Jersey Avenue, NW.; Washington, DC; Atrium Ballroom and Executive Room (Reception Only).

Type of Meeting: Open to the Public.

Comments: The public may file written comments before or after the meeting (up to two weeks after the meeting) with the contact person. All statements will become part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, DC 20250–2255.

For Further Information Contact: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office; Room 344–A, Jamie L. Whitten Building; U.S. Department of Agriculture; STOP 2255; 1400 Independence Avenue, SW.; Washington, DC 20250–2255; Telephone: (202) 720–3684; FAX: (202) 720–6199; E-mail: smorgan@reeusda.gov.

Done at Washington, DC, this 16th day of October, 2001.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 01–26478 Filed 10–17–01; 12:29 pm]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Form FNS–135, Affidavit of Return or Exchange of Food Coupons

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed revision of a currently approved information collection contained in form FNS–135, Affidavit of Return or Exchange of Food Coupons.

DATES: Written comments must be submitted on or before December 18, 2001.

ADDRESSES: Send comments and requests for copies of this information, collection to: Jeffrey N. Cohen, Branch Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Jeffrey N. Cohen, (703) 305–2523.

SUPPLEMENTARY INFORMATION:

Title: Affidavit of Return or Exchange of Food Coupons.

OMB Number: 0584–0052.

Form Number: FNS–135.

Expiration Date: 11/30/2001.

Type of Request: Revision of a currently approved collection.

Abstract: Section 7(d) of the Food Stamp Act of 1977, as amended, (7 U.S.C.2016(d)) requires that State agencies determine and monitor food stamp coupon inventories. The Food Stamp Program regulations at 7 CFR 274.6(f) require that State agencies replace improperly manufactured or mutilated coupons after the recipient requesting replacement completes an FNS–135, Affidavit of Return or Exchange of Food Coupons. The form must also be used when coupons are returned for other reasons such as the return of found coupons. The forms document the return of coupons and provides an audit trail for their processing within State agency offices. The proposed revision reflects the fact that the expected number of respondents should be less than in previous years because the number of food stamp coupons has declined over the past several years with the implementation of electronic benefit delivery systems.

Affected Public: State and local government employees and recipients.

Estimated Number of Respondents: 30,000.

Estimated Number of Responses per respondent: 1.

Estimated Time per Response: .25 hours.

Estimated Total Annual Burden: 7,500 hours annually.

Dated; October 10, 2001.

George A. Braley,

Acting Administrator.

[FR Doc. 01–26466 Filed 10–18–01; 8:45 am]

BILLING CODE 3410–30–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 19, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Janitorial/Custodial, U.S. Army Reserve Center, Newington, Connecticut
NPA: Greater Enfield Allied Rehabilitation Centers, Inc., Enfield, Connecticut
Government Agency: Fort Devens Reserve Forces Training Center

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities are proposed for deletion from the Procurement List:

Commodities

Adhesive Tape, Surgical
6510–01–060–1639
6510–01–107–0223
6510–01–284–5110
6510–01–285–3896
6510–01–368–2659
6510–01–368–2660
6510–01–370–4099
6510–01–370–4100
6510–00–926–8882
6510–00–926–8883
Government Agency: Department of Veterans Affairs
Adhesive Tape, Surgical
6510–01–060–1639
6510–01–107–0223
6510–01–284–5110
6510–01–285–3896
6510–01–368–2659
6510–01–368–2660
6510–01–370–4099
6510–01–370–4100
6510–00–926–8882
6510–00–926–8883
Government Agency: Defense Supply Center Philadelphia
Penetrating Fluid
6850–00–973–9091

Sheryl D. Kennerly,

Director, Informotion Management.

[FR Doc. 01–26403 Filed 10–18–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 19, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 13, May 11, July 27, August 10 and August 31, 2001, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 19136, 24100, 39142, 42198 and 45960) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are added to the Procurement List:

Commodities

Shaft, Propeller
2520–01–171–4844
Paper, Xerographic
7530–01–398–2652

Services

Base Supply Center, United States Coast Guard, Integrated Support Command, Alameda, California
Base Supply Center, Fort McCoy, Wisconsin, Facilities Management, Television Audio Support Activity (TASA), McClellan AFB, California
Grounds Maintenance, Naval Base, Ventura County, California
Janitorial/Custodial, Eielson Air Force Base, Alaska
Manufacturing and Development Assistance, U.S. Army Natick Research Development & Engineering Center, Natick, Massachusetts

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 01–26404 Filed 10–18–01; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Addition; Correction

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: In the document appearing on page 51005, FR Doc. 01–25042, in the issue of October 5, 2001, in the third column the Committee published a notice of proposed addition to the Procurement List of, among other things, Shirt, Sleeping, 8415–00–890–2099, 8415–00–890–2101, 8415–00–890–2102 and 8415–00–890–2013. This notice is amended to include 8415–00–890–2100 and 8415–00–935–6855, which was omitted from original notice, and to correct the omission that this proposed addition is for the Remaining 50% of the Governments Requirement.

Comments Must be Received on or Before: November 19, 2001.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions. If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each commodity will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.
2. The action will result in authorizing small entities to furnish the commodity to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodity proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Shirt, Sleeping
8415–00–890–2099
8415–00–890–2100
8415–00–890–2101
8415–00–890–2102
8415–00–890–2203
8515–00–935–6855
(Remaining 50% of the Government Requirement)

NPA: BOST Human Development Services Fort Smith, Arkansas.

Government Agency: Defense Supply Center Philadelphia.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 01–26402 Filed 10–18–01; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815, A–580–816]

Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea: Extension of Time Limits for the Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for the final results of antidumping duty administrative review.

EFFECTIVE DATE: October 19, 2001.

FOR FURTHER INFORMATION CONTACT: James Doyle at (202) 482–0159; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce ("the Department") to issue the final results of an antidumping duty investigation within 120 days of the date the preliminary results are issued. However, if the Department concludes that it is not practicable to issue the results by the original deadline, it may extend the 120-day period to 180 days.

Background

On October 2, 2000, the Department initiated the above-referenced review. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 65 FR 58733 (October 2, 2000). The preliminary results were published in the **Federal Register** on September 11, 2001. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review* ("*Preliminary Results*"), 66 FR 47163 (September 11, 2001). The current due date for the final results is January 9, 2001.

Extension of Time Limits for the Final Results

Due to the complexity of issues involved in these cases, such as complicated cost accounting, downstream home market affiliated parties, and the addition of a new respondent in this seventh administrative review, it is not practicable to complete these reviews within the original time limit. Therefore, the Department has postponed the deadline for issuing the final results until March 11, 2002, which is 180 days after publication of the *Preliminary Results*.

Dated: October 12, 2001.

Richard O. Weible,
Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.
[FR Doc. 01–26447 Filed 10–18–01; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–837]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Greenhouse Tomatoes From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended preliminary determination of sales at less than fair value and postponement of final determination.

SUMMARY: The Department of Commerce is amending the preliminary determination of sales at less than fair value in the antidumping duty investigation of greenhouse tomatoes from Canada to reflect the correction of a significant ministerial error made in the dumping-margin calculation regarding BC Hot House Foods, Inc., and is postponing the final determination.

EFFECTIVE DATE: October 19, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Thomas Schauer, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone; (202) 482–4794 or (202) 482–0410, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to 19 CFR part 351 (April 2000).

Significant Ministerial Error

The Department of Commerce (the Department) is amending the preliminary determination of sales at less than fair value in the antidumping duty investigation of greenhouse tomatoes from Canada to reflect the correction of a significant ministerial error made in the dumping-margin calculation regarding BC Hot House Foods, Inc., in that determination, pursuant to 19 CFR 351.224(g)(1) and (g)(2). A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. See 19 CFR 351.224(f). A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. See 19 CFR 351.224(g). We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e). As a result of this amended preliminary determination, we have revised the weighted-average dumping margin for BC Hot House Foods, Inc.

Scope of Investigation

The merchandise subject to this investigation consists of all fresh or chilled tomatoes grown in greenhouses in Canada, *e.g.*, common round tomatoes, cherry tomatoes, plum or pear tomatoes, and cluster or "on-the-vine" tomatoes. Specifically excluded from the scope of this investigation are all field-grown tomatoes.

The merchandise subject to this investigation may enter under item numbers 0702.00.2000, 0702.00.2010, 0702.00.2030, 0702.00.2035, 0702.00.2060, 0702.00.2065, 0702.00.2090, 0702.00.2095, 0702.00.4000, 0702.00.4030, 0702.00.4060, 0702.00.4090, 0702.00.6000, 0702.00.6010, 0702.00.6030, 0702.00.6035, 0702.00.6060, 0702.00.6065, 0702.00.6090, and 0702.00.6095 of the Harmonized Tariff Schedule of the United States (HTSUS). These subheadings may also cover products that are outside the scope of this investigation, *i.e.*, field-grown tomatoes. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Ministerial-Error Allegation

On October 1, 2001, the Department issued its affirmative preliminary determination in this proceeding. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 66 FR 51010 (October 5, 2001) (*Preliminary Determination*). The following five companies are respondents in this investigation: BC Hot House Foods, Inc.,

Red Zoo Marketing (a.k.a. Produce Distributors, Inc.), Veg Gro Sales, Inc. (a.k.a. K & M Produce Distributors), J-D Marketing, Inc., and Mastronardi Produce Ltd.

On October 5 and 9, 2001, the Department received timely allegations of ministerial errors in the *Preliminary Determination* from BC Hot House Foods, Inc., and Red Zoo Marketing, respectively. BC Hot House Foods, Inc., alleged three ministerial errors: (1) The Department used arithmetically incorrect conversion factors in calculating the warehousing expense adjustment, (2) the Department incorrectly used a simple average, not a weighted average, to combine certain growers' costs, and (3) the Department incorrectly eliminated transactions with billing adjustments that exceed gross unit price only if the adjustments bore a negative value rather than eliminating billing adjustments with both positive and negative vales that exceed gross unit price. See October 5, 2001, letter from BC Hot House Foods, Inc., alleging ministerial errors in the *Preliminary Determination*. Red Zoo Marketing alleges that the Department made a ministerial error in calculating separate costs for roma tomatoes-on-the-vine (TOVs) and cherry TOVs produced by Great Northern Hydroponics. See October 9, 2001, letter from Red Zoo Marketing alleging ministerial errors in the *Preliminary Determination*.

We have reviewed our preliminary dumping-margin calculations for BC Hot House Foods, Inc., and agree that only one of the three errors that the respondent alleges is a ministerial error within the meaning of 19 CFR 351.224(f). Specifically, we agree that we used arithmetically incorrect conversion factors in calculating the warehousing expense adjustment. In the *Preliminary Determination* we treated the warehousing expense adjustment as if the respondent reported it on a per kilogram basis. After further analyzing the record in response to the ministerial-error allegation, we find that the record indicates that BC Hot House Foods, Inc., reported the warehousing expense adjustment on a per-case basis as claimed in its ministerial-error allegation. For example, in the respondent's August 31, 2001, and September 5, 2001, submissions, it specifically stated that the unit basis for these warehousing expenses is Canadian dollars per case. Further, the figure BC Hot House Foods, Inc., used as the denominator for calculating the warehousing expense adjustment is only one third the size of the kilogram value that it reported in the volume and value table at Exhibit A–24 of its August 23, 2001, supplemental questionnaire response. This supports that BC Hot House Foods, Inc., calculated and reported the warehousing expense adjustment on a per-case basis. Furthermore, we determine that this ministerial error rises to the level of a "significant error" pursuant to 19 CFR 351.224(g)(1) and (g)(2), and we are amending the *Preliminary Determination* to reflect the correction of this significant ministerial error made in the dumping-margin calculations for BC Hot House Foods, Inc., pursuant to 19 CFR 351.224(e). See the BC Hot House Foods, Inc., Amended Preliminary Determination Analysis Memorandum dated October 15, 2001. We have corrected this ministerial error by treating the warehousing expense adjustment as a per-case amount in the dumping-margin calculation.

After analyzing the other two ministerial errors alleged by BC Hot House Foods, Inc., we have determined that the alleged "errors" the respondent describes are not ministerial errors, and that the allegations are more properly classified as comments on our methodology. With regard to the allegation that we incorrectly used a simple average, not a weighted average, to combine certain growers' costs, on page 6 of our October 1, 2001, Preliminary Determination Analysis Memorandum for BC Hot House Foods, Inc., we specifically stated that this is the methodology we intended to use where more than one of the "cost respondents" provided costs for a given product. This was not a ministerial error. Similarly, with regard to BC Hot House Foods, Inc.'s, allegations that we incorrectly eliminated transactions with billing adjustments that exceed gross unit price only if the adjustments bore a negative value, rather than eliminating billing adjustments with both positive and negative values that exceed gross unit price, we do not find this to be a ministerial error. The elimination of transactions with negative billing adjustments that exceed gross unit price is consistent with our practice of disregarding transactions with adjustments that result in negative prices. See, *e.g., Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12781 (March 16, 1998). Further, the methodology we applied is consistent with the explanation provided on page 10 of our October 1, 2001, Preliminary Determination Analysis Memorandum for BC Hot House Foods, Inc. With regard to billing adjustments where the positive values of such adjustments exceed gross unit price, we included such transactions in the dumping-margin calculation because there is no information on the record that supports their exclusion.

As noted above, Red Zoo Marketing alleges that the Department made a ministerial error in calculating separate costs for roma tomatoes-on-the-vine (TOVs) and cherry TOVs produced by Great Northern Hydroponics. Red Zoo Marketing claims that the cost figures the Department calculated are "so grossly overstated and unrealistic as to be clear error" and that the costs the Department calculated for these tomatoes are many times greater than the next highest cost of any type of tomato produced by any other Canadian producer. Red Zoo Marketing further claims that the vast majority of its production is of round red TOVs and alleges that cost differences between different varieties of TOVs are not significant because, according to Red Zoo Marketing, all require the same inputs and have comparable productivity and vine life.

Red Zoo Marketing further contends that the error was caused in large part by the Department's faulty question in its supplemental questionnaire. Because of the way the question was worded and because Red Zoo Marketing did not know the reason the Department asked the question, Red Zoo Marketing states that it reported the product-specific areas as of December 31, 1999, and December 31, 2000. Red Zoo Marketing claims that the areas do not and were not intended to represent actual usage of the available greenhouse facilities throughout the year.

Red Zoo Marketing suggests two methods for fixing the alleged ministerial error. First, it suggests that the Department should use a single per-unit cost calculated for all of Great Northern Hydroponics's production. Alternatively, if the Department finds it necessary to continue calculating costs for each type, Red Zoo Marketing suggests that the Department use the data it attached to its October 9, 2001, ministerial-error allegation which would provide a more accurate measurement of the areas under production throughout the period of investigation rather than the year-end snapshot the Department used for the preliminary determination.

After analyzing Red Zoo Marketing's comments, we have determined that the alleged "error" Red Zoo Marketing describes is not a ministerial error. We made our decisions for the preliminary determination based on the record before us. Red Zoo Marketing's comments about our segregation of Great Northern Hydroponics's costs between tomato types and our use of the year-end product-specific area usage are more properly classified as comments on our methodology and not ministerial errors.

Further, to the extent the costs we calculated are "absurdly" high, it is not primarily a result of our methodology or the area data we used in calculating the costs but, rather, it overwhelmingly depends on the production quantities Great Northern Hydroponics reported. In examining Red Zoo Marketing's October 9, 2001, ministerial-error allegation, we found that Red Zoo Marketing used new production quantities for roma TOVs and cherry TOVs because "certain products were misclassified." See Red Zoo Marketing's October 9, 2001, ministerial-error allegation submission at page 10. This misclassification relates to how Red Zoo Marketing reported product-specific production quantities prior to the preliminary determination, not how the Department made adjustments in calculating the respondent's antidumping margin. The production quantities for these tomato types, which Red Zoo Marketing submitted after the preliminary determination in its ministerial error allegation, are approximately ten times greater than those production quantities Great Northern Hydroponics reported in its August 28, 2001, supplemental response. To the extent that there was an error in data the company submitted to us for use in the preliminary determination, it was not an error on our part. Accordingly, we have not recalculated Red Zoo Marketing's dumping margin for this amended preliminary determination. We intend, however, to examine this issue closely at verification.

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly and parties will be notified of this determination in accordance with sections 733(d) and (f) of the Act.

Amended Preliminary Determination

As a result of our correction of a ministerial error for BC Hot House Foods, Inc., we have determined that a revised weighted-average dumping margin of 33.95 percent applies to this company. In addition, we have recalculated the "all others" dumping margin to reflect the change to BC Hot House Foods, Inc.'s weighted-average dumping margin. The revised "all-others" dumping margin is 24.04 percent.

We are issuing an amendment to our instructions directing the Customs Service to suspend liquidation on imports of subject merchandise. The suspension-of-liquidation instructions will remain in effect until further notice.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters which account for a significant proportion of exports of the subject merchandise. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On October 9, 2001, Red Zoo Marketing, Veg Gro Sales, Inc., J–D Marketing, Inc., Mastronardi Produce Ltd., and all Ontario companies subject to the "all others" rate (collectively referred to as the "Ontario companies") requested that the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**. On the same day the parties making this request also requested an extension of the provisional measures from a four-month period to not more than six mohths. See 19 CFR 351.201(e). According to Attachment III of the "Selection of Respondents" memorandum from Laurie Parkhill to Richard W. Moreland dated May 15, 2001, during 2000 the Ontario companies accounted for more than 60 percent of exports of tomatoes from Canada. For the reasons explained on page 2 of the same memorandum, we determine that these export statistics which we obtained from the Customs Service provide a reasonable basis for concluding that the Ontario companies account for a significant proportion of exports of the subject merchandise.

On October 11, 2001, BC Hot House Foods, Inc., filed a letter stating that it opposes postponement of the final determination. The respondent claims that its high preliminary dumping margin will adversely affect its suppliers' ability to obtain financing for the upcoming season, jeopardize commercial relationships with its customers, and make it difficult to coordinate marketing and planting strategies for next year. We do not find this to be a compelling reason for denying the extension requested by the Ontario companies because such concerns are not different from those faced by any of the other companies that we preliminarily determined to be making sales at less than fair value.

In accordance with 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative, (2) the respondents requesting the postponement account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the Ontario companies' request and are postponing the final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**. Because February 17, 2002, is a Sunday, and February 18, 2002, is a federal holiday, we are postponing the final determination until no later than Tuesday, February 19, 2002. Suspension of liquidation, where applicable, will be extended accordingly.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (ITC) of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than one week after the issuance of the Department's verification reports. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made, the hearing will be tentatively held three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street

and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, by November 5, 2001. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published in accordance with sections 733(f), 735(a)(2), and 777(i)(1) of the Act and 19 CFR 351.210(b)(2).

Dated: October 15, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26538 Filed 10–18–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–820, A–533–823, and A–834–807]

Silicomanganese From Kazakhstan, India and Venezuela; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of preliminary determinations in antidumping duty investigations.

SUMMARY: The Department of Commerce (the Department) is postponing the preliminary determinations in the antidumping duty investigations of silicomanganese from Kazakhstan, India, and Venezuela from October 15, 2001, until no later than November 2, 2001. This postponement is made pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: October 19, 2001.

FOR FURTHER INFORMATION CONTACT: Jean Kemp (Kazakhstan), at (202) 482–4037, Sally Gannon (India), at (202) 482–0162, and Robert James (Venezuela), at (202) 482–0649, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

Postponement of Due Date for Preliminary Determinations

On April 26, 2001, the Department initiated antidumping duty investigations of imports of silicomanganese from Kazakhstan, India, and Venezuela. The notice of initiation stated that we would issue our preliminary determinations no later than 140 days after the date of initiation. *See* 66 FR 22209 (May 3, 2001). On August 17, 2001, petitioners made a timely request pursuant to 19 CFR 351.205(e) for a 30-day postponement, pursuant to section 733(c)(1)(A) of the Act. On September 17, Universal Ferro & Allied Chemical, Ltd. from India submitted a request that the Department fully extend the preliminary determination because of the time constraints. On September 24, Kazchrome and Considar submitted a request that the Department determine that the investigation on silicomanganese from Kazakhstan was extraordinarily complicated and postpone the preliminary determination to the full extent possible. On August 31, 2001, in accordance with petitioners' request for a postponement, the Department postponed the preliminary determinations in these investigations for 30 days. *See* 66 FR 45964. Currently, the preliminary determinations in these investigations are due on October 15, 2001.

However, pursuant to section 733(c)(1)(B) of the Act, we have determined that these investigations are "extraordinarily complicated" and are therefore fully extending the due date for the preliminary determinations to no later than November 2, 2001.

Under section 733(c)(1)(B), the Department can extend the period for reaching a preliminary determination until not later than the 190th day after the date on which the administering authority initiates an investigation if:

(B) The administering authority concludes that the parties concerned are cooperating and determines that:

(i) The case is extraordinarily complicated by reason of:

(I) The number and complexity of the transactions to be investigated or adjustments to be considered;

(II) The novelty of the issues presented;

(III) The number of firms whose activities must be investigated; and

(ii) Additional time is necessary to make the preliminary determination.

Regarding the first requirement, we find that in each case all concerned parties are cooperating. Regarding the second requirement, we find that each of these four cases is extraordinarily complicated for the following reasons:

Kazakhstan

The Kazakhstani investigation is extraordinarily complicated because the Government of Kazakhstan and Transnational Co. Kazchrome and Aksu Ferroalloy Plant ("Kazchrome"), the producer, requested that the Department revoke Kazakhstan's non-market economy status or determine that the silicomanganese industry in Kazakhstan is a "market oriented industry." In addition, Kazchrome claims it does not have knowledge of which of its export sales to Alloy 2000, a trading company, are destined to the United States. The Department is considering other complex issues such as the relationship between Considar, a U.S.-based selling agent, and Alloy 2000, as well as the appropriate date of sale.

India

The Indian investigation is extraordinarily complicated because of certain sales and cost issues including depreciation, date of sale, and cost of production. In addition, one of the companies is not represented by counsel. The Department has just sent out extensive supplemental questionnaires for each of the two companies, and we consider the information to be analyzed for these two companies within the time constraints of this investigation to be voluminous.

Venezuela

The Venezuelan investigation is extraordinarily complicated due to complex issues related to date of sale, cost of production, and affiliation.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: October 10, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26448 Filed 10–18–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–823]

Notice of Preliminary Determination of Critical Circumstances: Silicomanganese From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of critical circumstances; silicomanganese from India

EFFECTIVE DATE: October 19, 2001.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Abdelali Elouaradia at (202) 482–0197 and (202) 482–1374, respectively; AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (2000).

Background

On May 3, 2001, the Department of Commerce (the Department) initiated an investigation to determine whether imports of silicomanganese from India are being, or are likely to be, sold in the United States at less than fair value (LTFV) (66 FR 22209, May 3, 2001). On June 11, 2001, the International Trade Commission (ITC) published its determination that there is a reasonable indication of material injury to the domestic industry from imports of silicomanganese from India. On July 16, 2001, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of silicomanganese from India. In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, the Department must issue preliminary critical circumstances determinations not later than the date of the preliminary determination. In a policy bulletin issued on October 8, 1998, the Department stated that it may issue a preliminary critical circumstances determination prior to the date of the preliminary determinations of sales at less than fair value, assuming sufficient evidence of critical circumstances is available (*see Policy Bulletin 98/4: Timing of Issuance of Critical Circumstances Determinations* (63 FR 55364)). In accordance with this policy, at this time we are issuing the preliminary critical circumstances decision in the investigation of silicomanganese from India for the reasons discussed below and in the concurrent *Memorandum from Elfi Blum through Sally Gannon to Barbara Tillman: Antidumping Duty Investigation of Silicomanganese from India-Preliminary Affirmative Determinations of Critical Circumstances*, dated October 4, 2001 (*Critical Circumstances Preliminary Determinations Memorandum*), on file in Import Administration's Central Records Unit (CRU), Room B–099, of the Department of Commerce building.

Critical Circumstances

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and, (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, § 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the above criteria have been satisfied, we examined: (1) The evidence presented by petitioners in their July 16, 2001 and September 7, 2001 letters; (2) exporter-specific shipment data requested by the Department on August 2, 2001; (3) United States Customs Service import statistics available after the initiation of the LTFV investigation; and, (4) the International Trade Commission (ITC) preliminary injury determinations.

History of Dumping

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. The Department's practice has been to rely on the existence of evidence that there is a history of dumping of subject merchandise from the country in question to either the United States or any other countries. *See Preliminary Determination of Critical Circumstances: Steel Concrete reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000). In this case, we are not aware of any dumping order in any country on silicomanganese from India. For this reason, we do not find a history of injurious dumping of the subject merchandise from India pursuant to section 733(e)(1)(A)(i) of the Act.

Importer Knowledge

To determine whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling silicomanganese at LTFV, in accordance with section 733(e)(1)(ii) of the Act, the Department normally considers margins of 25 percent or more for EP sales sufficient to impute knowledge of dumping. *See, e.g., Preliminary Determination of Critical Circumstances: Certain Small Diameter Carbon and Alloy Steel Seamless Standard, Line and Pressure Pipe from the Czech Republic*, 65 FR 33803 (May 25, 2000). The Department normally bases its preliminary decision with respect to knowledge on the margins determined in the preliminary determination.

In this case, because we are issuing our preliminary critical circumstance

determination prior to our preliminary LTFV determination, the Department has relied on margin information provided in the petition to determine if there is a reasonable basis to believe or suspect that the importers knew or should have known that the subject merchandise was being sold at LTFV. In the petition, the estimated dumping margin, based on a comparison between adjusted U.S. price based on average unit value and price(s) in India, is 5.89 percent. The estimated dumping margin for price-to-constructed value (CV) comparisons is 86.98 percent. Because the highest estimated dumping margin calculated in the petition for India is greater than 25 percent, there is a reasonable basis to impute knowledge of dumping with respect to imports from this country. Therefore, we have imputed to importers knowledge of dumping of the subject merchandise from each of the two cooperating exporters and to importers of subject merchandise from all other producers/exporters in India.

Regarding knowledge of material injury by reason of the LTFV sales, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for subject imports of silicomanganese from India. *See Silicomanganese From India, Kazakhstan, and Venezuela*, 66 FR 31258 (June 11, 2001). As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers of silicomanganese from India from all exporters knew or should have known that there was likely to be material injury by reason of dumped imports of the subject merchandise from India, in accordance with section 733(e)(1)(ii) of the Act.

Massive Imports

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for three months immediately preceding the filing of the petition (*i.e.*, the base period), to the import volume of subject merchandise in the three months following the filing of the petition (*i.e.*, the comparison period). However, as stated in § 351.206(i) of the Department's regulations, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

In the Critical Circumstances Allegation submitted on July 16, 2001, petitioners cite an industry publication to document that importers, exporters and producers had reason to believe that a proceeding was likely prior to the filing of the petition on April 6, 2001. Petitioners state that, on March 8, 2001, a month before filing the petition, Eramet (a petitioner) issued a press release confirming that it intended to file an antidumping petition covering imports of silicomanganese. This intent was discussed in an industry publication, "Ryan's Notes," on March 12, 2001, which specified India as a likely target. On March 5, 2001, the same industry publication had already reported that petitioner "was on the verge of launching a dumping case." (*See* "Ryan's Notes," March 5, 2001, p. 5.) According to petitioners, numerous other articles in other industry publications demonstrate that, in early March 2001, importers and exporters of Indian silicomanganese had reason to believe that an antidumping petition covering India was likely. We examined the sources cited by petitioners to determine whether they provide a basis for inferring knowledge that a proceeding was likely. We find that such industry publications, particularly the one cited above, are sufficient to establish that, by early March 2001, importers, exporters, and producers knew or should have known that a proceeding was likely concerning silicomanganese from India.

With regard to the issue of massive imports, in accordance with our current practice (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon-Quality Steel Products From Brazil*, 65 FR 5554 (February 4, 2000)), we first considered the shipment data reported by the mandatory respondents for the base and comparison periods (October 2000 through February 2001 and March 2001 through July 2001, respectively). We found massive imports for one respondent, Universal Ferro & Allied Chemicals (Universal Ferro), based on an increase in imports exceeding the required 15 percent, but no massive imports for the other respondent, Nava Bharat Ferro Alloys (Nava Bharat).

With respect to the "all others" category, we considered the fact that we found massive imports for one of the investigated exporters but not the other. We also considered whether U.S. Customs Service data, as available on the International Trade Commission's Dataweb, would permit the Department to analyze imports of subject merchandise. The U.S. Customs import data does include low-carbon silicomanganese, which is excluded from the scope. However, the PIERS information submitted by petitioners indicates that low-carbon imports make up a low percentage of total imports. Thus, we believe it is appropriate to use the aggregate import data in our analysis of whether there have been massive imports from "all others." This data shows massive imports of the subject merchandise from India. Even if we were to subtract the shipment data provided by the two respondents from the aggregate data and to compare the remaining volume of imports in the base period to the remaining imports in the comparison period, this would indicate that massive imports occurred. *See Memorandum to Barbara Tillman through Sally Gannon from Elfi Blum: Antidumping Duty Investigation of Silicomanganese from India-Preliminary Affirmative and Negative Determinations of Critical Circumstances*, dated October 4, 2001 (*Critical Circumstances Memorandum*). Therefore, we find that there is a reasonable basis to believe or suspect that there were massive imports from "all others."

Conclusion

Given the above-referenced analysis, we preliminarily determine that critical circumstances exist for Universal Ferro and for companies in the "all others" category, but not for Nava Bharat.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, if the Department issues an affirmative preliminary determination of sales at LTFV in the investigation with respect to Universal Ferro or the "all others" category, the Department, at that time, will direct Customs to suspend liquidation of all entries of silicomanganese from India from these exporters that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination of sales at LTFV. Customs shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determination of sales at LTFV published in the **Federal Register**. The suspension of liquidation to be issued after our preliminary determination of sales at LTFV will remain in effect until further notice.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for India when we make our final determination regarding sales at LTFV in the investigation, which will be 75 days (unless extended) after the preliminary LTFV determination.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 10, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26449 Filed 10–18–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[I.D. 101501C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Processed Products Family of Forms.

Form Number(s): NOAA Forms 88–13 and 88–13c.

OMB Approval Number: 0648–0018.

Type of Request: Regular submission.

Burden Hours: 680.

Number of Respondents: 1,320.

Average Hours Per Response: 30 minutes for a NOAA Form 88–13; 15 minutes for a NOAA Form 88–13c.

Needs and Uses: This is a survey of seafood and industrial fishing processing firms. Firms processing fish from certain fisheries must report on their annual volume, the value of products, and monthly employment figures. Data are used in economic analyses to estimate the capacity and extent to which processors utilize domestic harvest. These analyses are necessary to carry out the provision of the Magnuson-Stevens Fishery Conservation and Management Act.

Affected Public: Business and other for-profit organizations.

Frequency: Annual.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 11, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–26452 Filed 10–18–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 101501D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0361.

Type of Request: Regular submission.

Burden Hours: 286.

Number of Respondents: 356.

Average Hours Per Response: 45 minutes for all but purse seine vessels; 75 minutes for purse seine vessels.

Needs and Uses: Vessels in certain federally-regulated fisheries off the West Coast or in the Western Pacific are required to display the vessel's official number in three locations. Purse seine vessels in the South Pacific are required to display their international radio call sign in three locations and on any helicopter or skiff. The requirement is necessary to aid enforcement of fishery regulations.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–26453 Filed 10–18–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101201C]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Oversight Committee in November, 2001. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Tuesday, November 6, 2001, at 5:30 p.m.

ADDRESSES: The meeting will be held at the Tavern on the Harbor, 30 Western Ave., Gloucester, MA 01930; telephone: (978) 283–4200.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New

England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review alternatives for designating essential fish habitat for deep-sea red crab, to be incorporated in the proposed Red Crab Fishery Management Plan. The Committee may select preferred alternatives to recommend to the full Council.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 15, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26456 Filed 10–18–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101201B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Oversight and Skate Oversight Committees in November 2001 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on November 5, 2001. The Monkfish Oversight Committee will meet at 9:30 a.m. The Skate Oversight Committee will meet from 6 p.m. to 8 p.m.

ADDRESSES: The meetings will be held at the King's Grant Inn, Trask Road, Route 128, Danvers, MA 01923; telephone: (978) 774–6800.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: Meeting Agendas The Monkfish Oversight Committee will review the Stock Assessment and Fishery Evaluation (SAFE) Report for 2000, incorporating the Monkfish Monitoring Committee Report. Based on this review, the committee will develop recommendations to the Council for adjustments to the Monkfish Fishery Management Plan (FMP) for the 2002 fishing year, in accordance with the framework adjustment procedures in the FMP. Options under consideration include, but are not limited to: taking no action and allowing the Year 4 default measures to take effect (eliminating the directed fishery); postponing for one year the Year 4 default measures and adjusting trip limits to achieve current landings levels after accounting for the effect of the recent court decision eliminating gear-based differential trip limits; and, adjusting management measures to reduce catches to the Years 2 and 3 total allowable catch (TAC) targets. The committee will also develop recommendations to the Council for research priorities under cooperative programs with the industry. At the end of the meeting the committee will hold a closed session to review applications and make recommendations for membership on the Monkfish Advisory Panel.

The Skate Oversight Committee will review guidance on skate overfishing definitions from the Council's Scientific and Statistical Committee and the Skate Plan Development Team. They will also develop recommendations as to which overfishing definition alternatives should be fully analyzed for the Draft Environmental Impact Statement (DEIS) and public hearing document. They will also review a timeline for DEIS development.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 15, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26457 Filed 10–18–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100101A]

Marine Mammals; Pinniped Removal Authority

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed extension of a Letter of Authorization (LOA) and request for comments.

SUMMARY: NMFS solicits public comments on a request from the State of Washington and a proposal by NMFS to extend, for 5 years, an LOA for the lethal removal of individually identifiable California sea lions that are having a significant negative impact on the status and recovery of winter steelhead that migrate through the Ballard Locks in Seattle, WA. No changes to the existing terms and conditions of the authorization are proposed beyond extension of the expiration date to June 30, 2006. This action is authorized under the Marine Mammal Protection Act (MMPA).

DATES: Comments must be received on or before November 19, 2001.

ADDRESSES: Comments on this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. Comments will not be accepted if submitted via email or the Internet. However, comments may be sent via fax to (503) 230–5435.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 231–2005, or Tom Eagle, NMFS, Office of Protected Resources, (301) 713–2322 ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

Additional information, including the State's LOA extension request, prior Environmental Assessments, and the current LOA, is available via the internet at *http://www.nwr.noaa.gov*.

Background

Pursuant to section 120 (b) of the MMPA, the State of Washington submitted an application to NMFS on June 30, 1994, requesting consideration of lethal removal of California sea lions at the Ballard Locks in Seattle, WA. In response to the application, NMFS formed the Ballard Locks Pinniped-Fisheries Interaction Task Force (Task Force). The Task Force met in late 1994, reviewed the available information and recommended approval of lethal removal with conditions. NMFS took the recommendations of the Task Force and public comments into consideration when it issued the initial 3–year LOA to the Washington Department of Fish and Wildlife (WDFW) on January 5, 1995.

As required by section 120, the Task Force reconvened in late 1995 to evaluate the effectiveness of the permitted lethal taking or alternative actions and recommended modifications to the terms and conditions of the LOA. The LOA was modified in 1996 and subsequently extended through June 30, 2001. No lethal removals were conducted during the period of the current LOA.

Information on Washington's original application for lethal removal, the process for considering the application, which included formation of a Pinniped-Fishery Interaction Task Force, the Terms and Conditions of the LOA issued to WDFW and its subsequent extension was published in the **Federal Register** on August 2, 1994 (59 FR 39325), September 27, 1994 (59 FR 49234), January 19, 1995 (60 FR 3841), August 15, 1995 (60 FR 42146), March 26, 1996 (61 FR 13153), August 26, 1996 (61 FR 43737), June 19, 1997 (62 FR 33396), and September 29, 1997 (62 FR 50903). Background information on the sea-lion steelhead conflict at the Ballard Locks and findings on the environmental consequences of issuance of the LOA are provided in two Environmental Assessments prepared by NMFS in 1995 and 1996 (see Electronic Access).

At the request of WDFW, NMFS granted a temporary extension of the LOA expiration date from June 30, 2001, to December 15, 2001, to allow time for the State to prepare, and NMFS to process, a formal request to extend the existing LOA. Under the terms and conditions of the LOA, which authorized lethal removal only during the steelhead migration period (January through May) no sea lions may be lethally removed during the temporary extension.

In a letter dated September 12, 2001, the State of Washington requested an extension of the LOA for an additional 5 years (with a new expiration date of June 30, 2006). The State's request cites severely depressed steelhead run returns (42 fish returned to spawn in 2001) and the need to quickly remove any sea lion that meets the criteria outlined in the LOA while the State continues management efforts to recover the run. In addition, the State noted that there are no lethal removals planned at this time and requested the authorization be extended so that, as a last resort, it can respond in a timely manner to uncontrollable sea lion predation and protect steelhead as the run recovers. The State requests no modifications to the terms and conditions of the LOA other than the extension to June 30, 2006. Copies of the request for extension are available (see Electronic Access).

The Task Force last met in 1996 to consider an earlier extension request by the State, and it submitted a report to NMFS that recommended that the LOA be extended, if so requested by the State, until such time as (a) the escapement goal of 1600 steelhead is reached or (b) it becomes clear that the process is unlikely to achieve the stated goal. At that time, the Task Force opinions on the extension ranged from "no extension" to "an extension period of 8 years (two steelhead life cycles)", with the majority favoring 4 years. The Task Force indicated that extending the LOA would provide needed time to enable an evaluation of the effectiveness of lethal or non-lethal but permanent removal on subsequent steelhead returns when they have recovered to abundances that previously attracted predatory sea lions. At the completion of their deliberations, the Task Force adjourned until such time as substantive new information and analysis become available that may alter its recommendation. Copies of the Task Force report and recommendations are available (see Electronic Access). The State's extension request indicates that, since the Task Force last met, conditions at the Locks have remained virtually unchanged (i.e., no sea lions have been lethally removed, no new individually identifiable sea lions have been added to the list of predatory sea lions to be removed, the steelhead run has not recovered, and efforts to recover the run are continuing.) The MMPA requires NMFS to consider the recommendations of the Task Force when determining whether to issue a lethal removal authorization. In order to obtain the Task Force's views regarding this extension of the previously issued LOA in light of its decision to adjourn pending significant new data or analysis, NMFS is consulting with Task Force members by mail during the 30-day public comment period.

NMFS is seeking public comments on the proposal to extend the LOA for a period of 5 years. After considering public comments and advice from Task Force members, NMFS will publish notice of its final decision in the **Federal Register**.

The environmental consequences of extending the existing LOA as requested, without further modification of the terms and conditions, are expected to be the same as those previously assessed. Nonetheless, NMFS will conduct an environmental analysis on the proposed 5–year extension as required by the National Environmental Policy Act.

Dated: October 15, 2001.

Wanda L. Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–26450 Filed 10–18–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Disclosure Document Program

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 18, 2001.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone 703–308–7400; by e-mail at *susan.brown@uspto.gov*; or by facsimile at 703–308–7400.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert J. Spar, Office of Patent Legal Administration, United States Patent and Trademark Office (USPTO), Washington, DC 20231; by telephone at 703–305–9285.

SUPPLEMENTARY INFORMATION:

I. Abstract

A service provided by the USPTO is the acceptance and preservation for two years of a "disclosure document" as evidence of the date of conception of an invention. A disclosure document is a paper disclosing an invention, signed by the inventor or inventors, and submitted to the USPTO. The document should contain a clear and complete explanation of the manner and process of making and using the invention in sufficient detail to enable a person having ordinary knowledge in the field of the invention to make and use the invention. The disclosure document request must be accompanied by a separate signed cover letter stating that it is submitted by, or on behalf of, the inventor, and requesting that the material be received into the Disclosure Document Program.

The disclosure document will be preserved by the USPTO for two years after its receipt, and then destroyed unless it is referred to in a separate letter in a related patent application filed within the two year period. The disclosure document is not a patent application, and the date of its receipt in the USPTO will not become the effective filing date of any patent application subsequently filed.

The information supplied to the USPTO by an applicant seeking to prove the date of conception for an invention is used by the USPTO to establish evidence of the date of conception of an invention.

II. Method of Collection

By mail, facsimile, or hand carried to the USPTO when the inventor desires to participate in the Disclosure Document Program.

III. Data

OMB Number: 0651–0030.

Form Number(s): PTO/SB/95.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the Federal Government; and state, local or tribal governments.

Estimated Number of Respondents: 20,250 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public approximately 12 minutes, depending upon the complexity of the situation, to gather, prepare, and submit a disclosure document deposit request. There is one form associated with this information collection, Form PTO/SB/95.

Estimated Total Annual Respondent Burden Hours: 4,050 hours per year.

Estimated Total Annual Respondent Cost Burden: Using the professional hourly rate of $252 per hour for associate attorneys in private firms, the USPTO estimates $1,020,600 per year for salary costs associated with respondents.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Disclosure Document Deposit Request	12 minutes	20,250	4,050
Total		202,250	4,050

Estimated Total Annual Nonhour Respondent Cost Burden: $202,500.00. (There are no capital start-up or maintenance costs associated with this information collection.)

There is annual nonhour cost burden in the way of a filing fee associated with this collection. The filing fee related to this collection is considered part of the nonhour cost burden of the collection.

Following is a chart listing this filing fee/nonhour cost burden. The total annual filing fee/nonhour cost burden is $202,500.00.

Item	Responses (a)	Filing fee ($)(b)	Total non-hour cost burden (a) × (b)
Disclosure Document Deposit Request	20,250	$10.00	$202,500.00
Total	20,250	10.00	202,500.00

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: October 12, 2001.

Thao Nguyen,

Acting Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 01–26326 Filed 10–18–01; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Assessment and Finding of No Significant Impact for BRAC 95 Disposal and Reuse of Camp Bonneville, WA

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure of Camp Bonneville, Washington.

The Final Environmental Assessment (EA) evaluates the environmental impacts of the disposal and subsequent reuse of the 3,020-acre installation. Alternatives examined in the EA include encumbered disposal of the property, unencumbered disposal of the property, and no action. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any Army imposed or legal restraint. Under the no action alternative, the Army would not dispose of property but would maintain it in caretaker status for an indefinite period.

DATES: Comments must be submitted on or before November 19, 2001.

ADDRESSES: A copy of the EA may be obtained by writing to Mr. Ken Brunner, U.S. Army Corps of Engineers, Seattle District (ATTN: CENWS–ED–TB–ER), 4735 East Marginal Way South, Seattle, WA 98124–2255.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Brunner by fax at (206) 764–4470.

SUPPLEMENTARY INFORMATION: While disposal of Camp Bonneville is the Army's primary action, the EA also analyzes the potential environmental effects of reuse as a secondary action by means of evaluating intensity-based reuse scenarios. The Army's preferred alternative for disposal of Camp Bonneville property is encumbered disposal, with encumbrances pertaining to the possible presence of unexploded ordnance, lead-based paint and asbestos-containing material, protection of wetlands and compliance with the Endangered Species Act, as well as the requirement for a right of reentry for environmental clean-up.

A Notice of Intent (NOI) declaring the Army's intent to prepare an EA for the disposal and reuse of Camp Bonneville was published in the **Federal Register** (60 FR 49264, September 22, 1995).

The Army will consider comments received on this EA prior to initiating any action.

The Final EA and Finding of No Significant Impact are available for review at the Vancouver, Washington Public Library.

Dated: October 12, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupationol Health) OASA(I&E).

[FR Doc. 01–26434 Filed 10–18–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 19, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 15, 2001

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Educational Longitudinal Study of 2002 (ELS:2002).

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 46,539.

Burden Hours: 54,102.

Abstract: Full-scale study in Spring, 2002 in 800 schools in all 50 states and the District of Columbia. Data collection from students, teachers, administrators and library media center specialists. Data collection will constitute the baseline of a longitudinal study of school effectiveness and impact on postsecondary and labor market outcomes. A field test was conducted in Spring, 2001.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–26338 Filed 10–18–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–6–000]

Colorado Interstate Gas Company; Notice of Application

October 15, 2001.

Take notice that on October 5, 2001, Colorado Interstate Gas Company (CIG), a Delaware corporation, Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP02–6–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's Regulations (Commission), for a certificate of public convenience and necessity authorizing CIG to construct certain pipeline facilities and miscellaneous appurtenant facilities and to operate them in interstate commerce as a part of CIG's existing interstate transmission system, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

CIG states that this project, in its entirety, will be referred to as the "Raton Basin 2002 Expansion Project." CIG states that it proposes to construct and operate facilities necessary to transport additional volumes of approximately 57.8 MMcf (55 MDth) per day of natural gas out of the Raton Basin Area in Colorado and New Mexico. In addition, CIG states that it proposes to construct and operate facilities south of its Keyes Compressor Station to allow Raton Basin shippers to deliver incremental quantities of gas to interconnections with the interstate pipeline systems of El Paso Natural Gas Company and Northern Natural Gas Company. To accomplish this, CIG states that it proposes to construct the following facilities:

(1) 25.61 miles of 16-inch O.D. pipeline loop of CIG's existing Campo Lateral; this loop line would extend from the outlet of CIG's Trinidad Compressor Station in Section 25, Township 32 South, Range 63 West to a point 3,590 feet east of County Road 129 in Section 24, Township 33 South, Range 59 West, all in Las Animas County, Colorado.

(2) 28.14 miles of 16-inch O.D. pipeline loop of CIG's existing Campo Lateral; this loop line would extend from the outlet of CIG's Kim Compressor Station in Section 31, Township 32 South, Range 54 West, Las Animas County, Colorado to the Harrison/USA 2 track in Section 26, Township 32 South, Range 50 West, Baca County, Colorado;

(3) 14.40 miles of 20-inch O.D. pipeline loop of CIG's existing Line 3A; this loop line would extend from the outlet of CIG's Keyes Compressor Station in Section 17, Township 5 North, Range 7 East to County Road E0210 in Section 20, Township 3 North, Range 8 East, all in Cimarron County, Oklahoma.

CIG states that the Campo Lateral loop line segments will increase the take-away capacity from the Raton Basin Area by approximately 57.8 MMcf (55 MDth) per day. CIG further states that the Line 3A loop line will facilitate the delivery of incremental volumes to points on the southern end of its transmission system.

In addition to the facilities proposed in the instant application, CIG states that it will undertake the replacement of meter facilities at the Baker and Dumas Meter Stations, pursuant to its blanket certificate authority, to accommodate the delivery of incremental volumes from the Raton Basin Area.

CIG states that it conducted an open season in July 2000 which resulted in long term contracts for incremental capacity of 85 MDth per day. These contract quantities are being accommodated through a recently completed expansion project pursuant to authorization granted in Docket No. CP00–452–000. CIG further states that this open season produced contracts for an additional 55 MDth per day of incremental capacity to accommodate future development of reserves in the Raton Basin Area. Finally, CIG states that it held an open season in July 2001 which produced no requests for additional capacity out of the Raton Basin Area. Thus, CIG states that the facilities proposed herein are designed solely to accommodate the incremental 55 MDth per day of capacity resulting from the July 2000 open season.

CIG states that the total cost of the proposed facilities for the Raton 2002 Expansion Project is $26,896,800. The combination of existing and incremental entitlements represent 100 percent of CIG's capacity out of the Raton Basin Area through the Campo Lateral. CIG is proposing rolled-in treatment for the expansion out of the Raton Basin Area.

Any questions regarding this application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs, at (719) 520–3788, Colorado Interstate Gas Company, Post Office Box 1087, Colorado Springs, Colorado 80944.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 5, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–26376 Filed 10–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

October 15, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License for the Transmission Line Route.

b. *Project No:* 6641–046.

c. *Date Filed:* July 13, 2001.

d. *Applicant:* City of Marion, Kentucky, and Smithland Hydroelectric Partners.

e. *Name of Project:* Smithland Lock and Dam Project.

f. *Location:* The Project is located on the Ohio River in Livingston County, Kentucky. The project will affect federal lands at the U.S. Army Corps of Engineers' Smithland Lock and Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James Price, 120 Calumet Court, Aiken, SC 29803, (803) 642–2749.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Mohamad Fayyad at (202) 219–2665 or *mohamad.fayyad@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* (November 19, 2001).

Please include the project number (P–6641–046) on any comments or motions filed.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Filing:* The City of Marion, Kentucky, and Smithland Hydroelectric Partners propose a revised route for the project's 161-kV transmission line. The currently approved (but not constructed yet) transmission line route extends about 8.7 miles from the project's dam to an existing transmission line of Louisville Gas and Electric Energy Company (LGEE). Now the licensee proposes a route that proceeds from the project's dam for 11 miles to LGEE's Livingston County substation, just west of the Cumberland River. This proposed transmission line route would require the clearing of about 35 acres of woods.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov.html* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26377 Filed 10–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

October 15, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12112–000.

c. *Date filed:* September 4, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Vanadium Project.

f. *Location:* On Big Bear Creek, in San Miguel County, Colorado. The project would utilize land administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov/efi/doorbell.htm.* Please include the project number (P–12112–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would consist of: (1) A proposed 75-foot-long, 10-foot-high dam with a negligible impoundment, (2) a proposed 12,000-foot-long, 30-inch-diameter steel penstock, (3) a proposed powerhouse containing four generating units having an installed capacity of 13.6 MW, (4) a proposed tailrace, (5) a proposed 4-mile-long, 25 kV Transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 58.4 GWh that would be sold to a local utility.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202)208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–26378 Filed 10–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 15, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12058–000.

c. *Date filed:* June 22, 2001.

d. *Applicant:* Baker County, Oregon.

e. *Name of Project:* Mason Dam Project.

f. *Location:* On the Powder River, in Baker County, Oregon. The proposed project would utilize the existing Bureau of Reclamation's existing Mason Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brian D. Cole, Chair, Baker County Board of Commissioners, 1995 Third Street, Baker City, OR 97814, (541) 523–8200.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov/efi/doorbell.htm.* Please include the project number (P–12058–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Competing Application: Project No. 11899–000, Date Filed: March 2, 2001, Date Notice Closed: May 25, 2001.

l. Description of Project: The proposed project using the Bureau of Reclamation's Mason dam and impoundment would consist of: (1) An existing 1320-foot-long, 56-inch-diameter which reduces to a 33-inch-diameter steel penstock, (2) a proposed powerhouse containing one generating unit having an installed capacity of 3 MW, (3) a proposed 0.5-mile-long, 25 kV transmission line, and (4) appurtenant facilities.

The project would have an annual generation of 14 GWh that would be sold to a local utility.

m. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202) 208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

n. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–26379 Filed 10–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 15, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12098–000.

c. *Date filed:* July 30, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Scofield Reservoir Project.

f. *Location:* On the Price River, in Sanpete County, Utah. Scofield Reservoir Dam is owned by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P. O. Box 535, Rigby, ID 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and

protests may be electronically filed via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov/efi/doorbell.htm.* Please include the project number (P–12098–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project using the Scofield Dam and Reservoir would consist of: (1) A proposed 300-foot-long, 60-inch-diameter steel penstock, (2) a proposed Powerhouse containing one generating unit having an installed capacity of 1.3 MW, (3) a proposed 1-mile-long, 15 kV transmission line, and (4) appurtenant Facilities.

The project would have an annual generation of 11.38 GWh that would be sold to a local utility.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202)208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–26380 Filed 10–18–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6622–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed October 15, 2001 Through October 19, 2001

Pursuant to 40 CFR 1506.9:

EIS No. 010385, Final Supplement, AFS, CO, Sheep Flats Diversity Unit, Timber Sales and Related Road Construction, Grand Mesa, Uncompahgre and Gunnison National Forests, Collbran Ranger District, Mesa County, CO, Wait Period Ends: November 19, 2001, Contact: Carol McKenzie (970) 874–6618.

EIS No. 010386, Draft EIS, AFS, MT, Game Range Project, To Improve Ecosystem Health and Productivity, Reduce Fuel Loading and Big Game Winter Range Condition, Lolo National Forest, Plain/Thompson Falls Ranger District, From Thompson River To Squaw Creek, Thompson Falls, MT, Comment Period Ends : December 3, 2001, Contact: Frank Yurczyk (406) 826–4313.

EIS No. 010387, Draft EIS, FHW, DC, NC, VA, Southeast High Speed Rail Corridor, From Washington, D.C. to Charlotte, NC, To Provide a Competitive Transportation Choice to Traveler, Funding and Federal Permits, DC and NC, Comment Period Ends: December 3, 2001, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 010388, Final EIS, AFS, MT, Burned Area Recovery, Proposal to Reduce Fuels, Improve Watershed Conditions and Reforest Burned Lands, Sula, Darby, West Fork and Stevensville Ranger Districts, Bitterroot National Forest, Ravalli County, MT, Comment Period Ends: November 19, 2001, Contact: Spike Thompson (406) 363–7100. This document is available on the Internet at: http://www.fs.fed.us/rl/bitterroot.

EIS No. 010389, Draft Supplemental, FHW, WV, VA, Appalachians Corridor H, To Construct a 16-mile Highway Between Kerens to Parsons, Battlefield Avoidance, Randolph and Tucker Counties, WV, Comment Period Ends Due: December 3, 2001, Contact: Thomas J. Smith (304) 347–5928.

Amended Notices

EIS No. 010326, Draft EIS, APH, Programmatic EIS—Rangeland Grasshopper and Mormon Cricket Suppression Program, Authorization, Funding and Implementation in 17 Western States, AZ, CA, CO. ID, KS, MT, NB, NV, NM, ND, OK, OR, SD, TX, UT, WA and WY , Due: November 14, 2001, Contact: Charles L. Brown (301) 734–8247. This document is available on Internet at: *http://www.aphis.usda.gov/ppd/es/ppqdocs.html.* Revision of FR Notice Published on 8/31/2001: CEQ Comment Period Ending 10/15/2001 has been extended to 11/14/2001.

Dated: October 16, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–26422 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6622–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (97 FR 27647).

Final EISs

ERP No. F–BLM–J01077–WY North Jacobs Ranch Coal Lease Application (WYW 146744), Federal Coal Tract, Located in the Powder River Basin, Campbell County, WY.

Summary: EPA continues to express concerns about NO2 air emissions from blasting mine overburden and a lack of site specific N02 data. EPA supports BLM's decision to group future Powder River Basin coal leases into one EIS.

ERP No. F–CDB–K81026–CA West Hollywood Gateway Public/Private Partnership Construction Project, Multi-Story Office, Retail, Restaurant and Entertainment Use Development, Community Development Block Grant (CDBG) Funds Issuance, City of West Hollywood, Los Angeles County, CA.

Summary: EPA determined that the document adequately addresses the issues raised in our comment letter on the DEIS.

ERP No. F–TVA–E05098–TN, Addition of Electric Generation Baseload Capacity, Proposes to Construct a Natural Gas Fired Combined Cycle Power Plant, Franklin County, TN.

Summary: While most impacts have been mitigated, EPA still expressed concern regarding noise impacts and suggested that the ROD provide noise mitigation measures that would be implemented as needed on follow-up monitoring.

Dated: October 16, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–26423 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 47]

Agency Information Collection Activities; Proposed Collection: Comment Request

AGENCY: Export-Import Bank of the United States (Ex-Im Bank).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 the Export-Import Bank of the United States will be submitting to the Office of Management and Budget (OMB) a request to review and approve a revised exporter and banker survey. The purpose of the survey is to fulfill a statutory mandate (the Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635) which directs Ex-Im Bank to report annually to the U.S. Congress any action taken toward providing export credit programs that are competitive with those offered by official foreign export credit agencies. The Act further stipulates that the annual report on competitiveness should include the results of a survey of U.S. exporters and U.S. commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with U.S. exporters.

Accordingly, Ex-Im Bank is requesting that the proposed survey (EIB No. 00–02) be sent to approximately 50 respondents, split equally between bankers and exporters. The revised survey is similar to the previous survey, as it asks bankers and exporters to evaluate the competitiveness of Ex-Im Bank's programs vis-á-vis foreign export credit agencies. However, it has been modified in order to account for newer policies and to capture enough information to provide a better analysis of our competitiveness. In addition, the survey will be administered electronically via email, with recipients encouraged to respond electronically as well.

DATES: Written comments should be received on or before December 18, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Carlista D. Robinson, 811 Vermont Avenue, NW., Room 764, Washington, DC 20571, (202) 565–3351.

SUPPLEMENTARY INFORMATION: With respect to the proposed collection of information, Ex-Im Bank invites comments as to—

—Whether the proposed collection of information is necessary for the proper performance of the functions of Ex-Im Bank, including whether the information will have a practical use;

—The accuracy of Ex-Im Bank's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Ways to enhance the quality, usefulness and clarity of the information to be collected; and

—Ways to minimize the burden of collection of information on those who are to respond, including

through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Title & Form Number: 2001 Exporter & Banker Survey of Ex-Im Bank Competitiveness, EIB Form 00–02.

OMB Number: 3048–0004.

Type of Review: Revision of a currently approved collection.

Annual Number of Respondents: 50.

Annual Burden Hours: 50.

Frequency of Reporting or Use: Annual survey.

Dated: October 16, 2001.

Carlista D. Robinson,

Agency Clearance Officer.

[FR Doc. 01–26383 Filed 10–18–01; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 10, 2001.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 19, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0652.

Title: Section 76.309, Customer Service Obligations; Section 76.1602, Customer Service—General Information; Section 76.1603, Customer Service—Rate and Service Changes; and Section 76.1619, Information on Subscriber Bills.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, local, or tribal government.

Number of Respondents: 10,410.

Estimated Time per Response: 10 mins. to 1 hr.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 32,527 hrs.

Total Annual Costs: None.

Needs and Uses: FCC rules under 47 CFR 76.309 and 76.1603 set forth various customer service obligations and notification requirements for changes in subscriber rates, programming services, and channel positions. 47 CFR 76.1602 requires each local franchise authority (LFA) to provide affected cable operators with 90 days written notice of its intent to enforce customer service standards. Cable operators must inform subscribers in writing of their right to file complaints about service and programming changes. 47 CFR 76.1603 requires cable companies to notify customers in writing within 30 days of any changes in rates and programming services. In addition, cable companies are required to notify subscribers and LFAs within 30 days prior to any rate or service changes. 47 CFR 76.1619 requires cable operators to respond to a written complaint regarding any subscriber's billing dispute within 30 days and also sets forth requirements for information on subscriber bills.

OMB Control Number: 3060–0667.

Title: Section 76.630, Compatibility with Consumer Electronic Equipment; Section 76.1621, Equipment Compatibility Offer; and Section 76.1622, Consumer Education of Equipment Compatibility.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 10,400.

Estimated Time per Response: 1 to 20 hrs.

Frequency of Response: On occasion and annual reporting requirements; Third party disclosure.

Total Annual Burden: 10,435 hrs.

Total Annual Costs: $5,275.

Needs and Uses: FCC Rules under 47 CFR 76.630(a) prohibit cable system operators from scrambling or otherwise encrypting signals carried on the basic service tier, unless granted a waiver by the FCC. 47 CFR 76.1621 requires cable system operators that use scrambling, encryption, or similar techniques to offer subscribers special equipment to enable the simultaneous reception of multiple signals. 47 CFR 76.1622 requires cable system operators to provide a consumer education program on compatibility matters to their subscribers in writing when they first subscribe and at least once a year thereafter.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26375 Filed 10–18–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, October 23, 2001, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum re: BIF Assessment Rates for the First Semiannual Assessment Period of 2002.

Memorandum re: SAIF Assessment Rates for the First Semiannual Assessment Period of 2002.

Memorandum and resolution re: Final Rule—Engaged in the Business of Receiving Deposits Other Than Trust Funds.

Memorandum and resolution re: Final Rule to Revise the Regulatory Capital Treatment of Recourse, Direct Credit Substitutes, and Residual Interests in Asset Securitizations.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: October 16, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–26507 Filed 10–17–01; 10:12 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the collection requirements for participation in the National Flood Insurance Program (NFIP) Community Rating System (CRS).

SUPPLEMENTARY INFORMATION: The NFIP began in 1968. A central element in the NFIP is the promotion and implementation of a sound local floodplain management program. Communities must adopt minimum floodplain management standards in order to participate in the NFIP and receive the benefits of flood insurance. The Community Rating System (CRS) was designed by FEMA to encourage, through the use of flood insurance premium discounts, communities and states to undertake activities that will mitigate flooding and flood damage, beyond the minimum standards for NFIP participation. The National Flood Insurance Reform Act of 1994 codified the CRS.

The NFIP/CRS Coordinator's Manual includes a Schedule and Commentary. The Application Worksheets and CRS Application are published separately. Communities will use the manuals to apply for activity points leading up to a CRS rating and commensurate flood insurance premium discounts. The Schedule describes the floodplain management and insurance activities available to qualifying communities that undertake the selected additional activities that will reduce flood losses. To apply, communities submit to FEMA the attached application worksheets and requisite documentation. Once approved, the applications are reviewed and field verified by Insurance Service Organization (ISO), Inc., an insurance industry service organization with varied experience, especially with community fire rating.

Collection of Information

Title: Community Rating System (CRS) Program—Application Policy, Instructions, and Worksheets.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0195.

Document Numbers: FEMA FIA 15 and 15A.

Abstract: The CRS Program establishes a system for FEMA to grade communities' floodplain management activities to determine flood insurance rates for communities. Communities exercising floodplain management activities that exceed Federal minimum standards qualify for lower insurance rates.

The January 1999 edition of the NFIP CRS Coordinator's Manual contains instructions for preparing the application worksheets that were used to apply to the CRS Program for the 1999 through 2001 calendar years. We are coordinating with the public the draft January 2002 edition for comments on the collections of information and all approved comments will be incorporated into the final January 2002 manual, to be effective January 2002–December 2004. The Application Worksheets and CRS Application are published separately. Communities will use the manuals to apply for activity points leading up to a CRS rating and commensurate flood insurance premium discounts. The Schedule describes the floodplain management and insurance activities available to qualifying communities that undertake the selected additional activities that will reduce flood losses. Annually, all CRS participating communities must certify they are maintaining the activities for which they receive credit.

Affected Public: State, Local, or Tribal Government.

Estimated Total Annual Burden Hours. 9,260.

Application worksheets	Number of respondents (A)	Frequency response (B)	Hours per response (C)	Annual burden hours (A × B × C)
New, Modified and Cycle Applications	220	1	29	6,380
Recertification Applications	720	1	4	2,880
Total	940			9,260

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or e:mail *muriel.anderson@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Bret Gates, CRS Coordinator, Federal Insurance & Mitigation Administration, Federal Emergency Management Agency, at (202) 646–4133, or by e:mail at bret.gates@fema.gov for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: October 11, 2001.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 01–26431 Filed 10–18–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1393–DR]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida, (FEMA–1393–DR), dated September 28, 2001, and related determinations.

EFFECTIVE DATE: October 3, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 28, 2001:

Collier, Highlands, Lee, and Putnam Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–26430 Filed 10–18–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 13, 2001.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Camargo Financial Company, Inc., Camargo, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Camargo, Oklahoma.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. National United Bancshares, Inc.,, Gatesville, Texas, and National United Holdings, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of National Bank, Gatesville, Texas.

Board of Governors of the Federal Reserve System, October 15, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26318 Filed 10–18–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 2, 2001.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Outsource Holdings, Inc., Lubbock, Texas; to acquire Jefferson Mortgage Services, Inc., Dallas, Texas, and Orr Lease, Inc., Dallas, Texas, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y, and in leasing personal or real property, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, October 15, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26319 Filed 10–18–01; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Office of Communications

Cancellation of an Optional Form by the Office of Personnel Management (OPM)

AGENCY: Office of Communications, GSA.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) cancelled of 630, Leave Recipient Application Under the Voluntary Leave Transfer Program. The form was only available with FPM Letter 630–33 which no longer exists. OPM developed their own form (OPM 630) which they are happy to share with you. To obtain a copy of this form, go to the following internet site: *http://www.opm.gov/forms.*

DATES: Effective October 19, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: October 12, 2001.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 01–26342 Filed 10–18–01; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetic Testing

Pursuant to Public Law 92–463, notice is hereby given of the eleventh meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. The meeting will be held from 9 a.m. to 5 p.m. on November 15, 2001 and 8:30 a.m. to 3 p.m. on November 16, 2001 at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814. The meeting will be open to the public with attendance limited to space available.

The Committee will discuss a number of topics, including the status of FDA activities to implement SACGT's recommendations for oversight of all new genetic tests; the outcomes and discussion of a roundtable meeting convened by the Education Work Group on how genetics fits into current or future health practice, major genetics educational needs of various disciplines of professions (e.g., core competencies, faculty needs, and training issues), and obstacles and gaps in the integration of genetics into health professional education and practice; and the Informed Consent Work Group's draft brochure for the general public on genetic testing and the status of the development of principles of informed consent in clinical and public health settings. The Committee will also begin exploring issues in the development, oversight, availability and accessibility of genetic tests for rare diseases through a number of invited presentations. In addition, the Committee is scheduled to be briefed by Congressional staff on the status of genetic discrimination legislation. Time will be provided for public comment and interested individuals should notify the contact person listed below.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGT to advise and make recommendations to the Secretary through the Assistant Secretary for Health on all aspects of the development and use of genetic tests. SACGT is directed to: (1) Recommend policies and procedures for the safe and effective incorporation of genetic technologies into health care; (2) assess the effectiveness of existing and future measures for oversight of genetic tests; and (3) identify research needs related to the Committee's purview.

The draft meeting agenda and other information about SACGT will be available at the following web site: *http://www4.od.nih.gov/oba/sacgt.htm.* Individuals who wish to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGT Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov.* The SACGT office is located at 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892.

Dated: August 12, 2001.

Sarah Carr,

Executive Secretary, SACGT.

[FR Doc. 01–26392 Filed 10–18–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written

comments should be received within 60 days of this notice.

Proposed Project

Survey of Consumer Reaction to Canadian-style Warning Labels of Tobacco Products—NEW—The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC), proposes to conduct a national survey of young persons to assess their attitudes towards larger and more graphic cigarette warning labels, such as those currently used in Canada. Although the purpose of cigarette warning labels is to alert consumers about the health hazards of smoking, research suggests that current U.S. warnings fail to get the attention of smokers, an important first step if warnings are to have any deterrent effect. Cigarette warning labels have not changed since 1984 in the United States.

The proposed study will be conducted through implementation of a web-based survey. We propose to administer a 10 minute survey to 2000 persons 18 to 24 years of age. The survey will include images of Canadian cigarette packs with their current warning labels and questions about reactions to these warnings, including acceptability, and perceived usefulness (perceived impact on starting to smoke or deciding to quit). The results of this study will be shared with policy makers and public health officials. There are no costs to respondents.

Respondents	Number of respondents	Responses/respondent	Avg. burden per response (in hrs)	Total burden (in hrs)
Persons 18–24 years old	2000	1	10/60	333
Total				333

Dated: October 12, 2001.

John Moore,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–26320 Filed 10–18–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–02–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Perceptions of Tuberculosis Among Foreign Born Persons: Ethnographic Studies—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

The National Center for HIV, STD, and TB Prevention, CDC proposes to conduct an ethnographic study to assess the attitudes, beliefs, and practices of selected foreign born persons regarding tuberculosis (TB). The purpose of this two-year effort is to provide formative research findings to use when designing future surveys, planning interventions, and evaluating programs to improve TB screening and adherence to therapy among foreign born persons. This research will also identify program gaps in addressing the special needs of these populations. A review of published data and consensus among TB researchers suggest that elimination of TB in the United States will depend largely upon reducing the impact of the disease among the foreign born. Currently, almost half of all domestic TB cases occur among foreign-born persons, and this proportion is growing. Providing culturally appropriate and responsive services to people from a variety of ethnic and cultural backgrounds is a challenge for local TB control programs and has been identified as a priority area in TB elimination activities.

Recognizing this challenge, the CDC Working Group on Tuberculosis Among Foreign Born Persons in 1998 developed recommendations for increasing emphasis on prevention and control of TB in foreign-born populations. The recommendations highlighted the need to utilize operational and behavioral research to gain a better understanding of relevant barriers to diagnosis and care. While few studies have examined these issues with the goal of developing practical tools to enhance TB services, one research project, conducted in New York State among Vietnamese refugees, created a valid research method for assessing TB issues among this population. The project resulted in policy change that increased this group's adherence to therapy.

The proposed study will build upon this research with Vietnamese refugees but will incorporate several cultural groups in four U.S. cities with a high burden of foreign-born TB patients. In depth ethnographic interviews will be conducted with 200 adults from the four ethnic/cultural groups, 50 per site. The information will be gathered by trained professional, multilingual/multicultural interviewers who will be rendered by the contracting agent. The data collection instrument will be comprised of semi-structured and open-ended questions intended to elicit a full range of responses concerning the participants' cultural beliefs and attitudes toward TB. Interviews will last no longer than one hour. Analysis of data will be performed with Atlas.ti, a qualitative analysis computer program.

The ultimate project outcomes will include a cultural competency resource manual with profiles of TB beliefs and behaviors from the studied cultural groups. The manual will assist local and state health departments in developing customized interventions tailored to the local context. Culturally appropriate interventions will increase tuberculin skin testing and patient adherence to treatment for active TB disease and latent TB infection. In addition, the results can be used to develop targeted outreach, as well as customized communication protocols, patient education materials, incentives, and enablers. Finally, the study will produce a valid interview instrument that TB clinics can adopt for their own assessments of TB beliefs and attitudes among the local communities they serve. There are no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Foreign Born Persons (interviewed)	100	1	1	100
Total				100

Dated: October 11, 2001.

John Moore,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–26322 Filed 10–18–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 28, 2001, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Ballrooms A and B, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Kimberly Littleton Topper or Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or by e-mail at TopperK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss the implementation of the pediatric rule with regard to study designs, ethical and developmental considerations, and extrapolation of findings from adult to pediatric cancer patients.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by November 16, 2001. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m., and 1 p.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 16, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 12, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–26314 Filed 10–18–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 28 and 29, 2001, from 8:30 a.m. to 5:30 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee conference room 1066, 5630 Fishers Lane, Rockville, MD.

Contact: Nancy Chamberlin, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1076), Rockville, MD 20857, 301–827–7001, e-mail: CHAMBERLINN@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 28, 2001, the committee will: (1) Discuss the current status of, and future plans for, the FDA draft guidance entitled "ANDAs: Blend Uniformity Analysis;" (2) discuss and provide direction for the Process Analytical Technology Subcommittee; (3) discuss and provide comments on stability testing and shelf life; and (4) receive updates from subcommittees and on other Center for Drug Evaluation and Research guidance documents. On November 29, 2001, the committee will: (1) Receive updates on FDA research in dermatopharmacokinetics, and (2) discuss and provide comments on bioequivalence issues.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 15, 2001. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. on November 28, 2001, and between approximately 11 a.m. and 12 noon on November 29,

2001. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 15, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 12, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–26370 Filed 10–18–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Needs Assessment of the Black Lung Clinics Program: NEW

The Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA), is planning to conduct a needs assessment of the Black Lung Clinics Program. The purpose of this study is to obtain data about the Black Lung Clinics Program grantees/sites and the services they provide to active and retired coal miners. The study consists of two sections: (1) A written and telephone survey of the site Program Coordinators about the patients and the services they provide, as well as services that patients would like to receive, but which are not available; and, (2) a measurement of the costs associated with delivering requisite services to this population, for whom data will be obtained from secondary sources. The data collected will provide policymakers with a better understanding of the resources needed to continue to support and expand the program. The assessment will provide new information about the organization, financing, and delivery of services to active and retired coal miners in Black Lung Clinics Programs.

Data from the survey and costing will provide quantitative information about the programs, specifically: (a) The characteristics of the patients they serve, (b) the organization components of the program, (c) the scope of services provided, (d) the costs and resources necessary to implement the program, (e) outreach services available, and (f) key unmet needs. This assessment will provide data useful to the program and will enable HRSA to provide data required by Congress under the Government Performance and Results Act of 1993.

The estimated burden is as follows:

Form name	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Survey	52	1	8	416

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 15, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–26317 Filed 10–18–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 2001.

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: November 15–16, 2001; 8 a.m. to 5 p.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting is open to the public on Thursday, November 15, 2001, from 8 a.m. to 9 a.m., and closed for the remainder of the meeting.

Purpose: To review research grant applications in the program areas of maternal and child health, administered by the Maternal and Child Health Bureau, Health Resources and Services Administration.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Research, Training and Education, who will report on program issues, congressional activities, and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on Thursday, November 15, 2001, from 9 a.m. through the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6),Title 5 U.S.C., and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write or contact Christopher DeGraw, M.D., M.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2190.

Dated: October 15, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–26371 Filed 10–18–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 2001.

Name: National Advisory Council on Nurse Education and Practice.

Date and Time: November 8, 2001; 8:30 a.m.–5 p.m., November 9, 2001; 8:30 a.m.–3 p.m.

Place: Hotel Washington, Pennsylvania Avenue, NW., at 15th St., Washington, DC 20004.

The meeting is open to the public.

Agenda: Department, Agency, Bureau and Division administrative updates; discussion of Council administrative procedures and selection of next co-chair; strategic plan review and update; identification of priorities for future work, including continued discussion of nursing shortage and other critical issues impacting nursing education and practice; workgroup breakout sessions to address work to be accomplished.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1405.

Dated: October 15, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–26316 Filed 10–18–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Eye Council, September 13, 2001, 8:30 a.m. to September 13, 2001, 5 p.m., 6130 Executive Boulevard, Executive Plaza North, Room H, Rockville, MD, 20852 which was published in the **Federal Register** on July 23, 2001, Vol. 66, Page 38295.

The meeting date has been changed to November 20, 2001. The location remains the same. The meeting is partially Closed to the public.

Dated: October 15, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26384 Filed 10–18–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, K 23 Review Panel Mentored Patient-Oriented Research Career Development Award.

Date: October 19, 2001.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Diane M. Reid, MD, Review Branch, Room 7182, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0277.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26387 Filed 10–18–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Human Genome Research Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Human Genome Research Institute.

Date: November 6–7, 2001.

Open: November 6, 2001, 8 am to 8:30 am.

Agenda: To discuss matters of program relevance.

Place: Eisenhower Inn and Conference Center, Gettysburg, PA.

Closed: November 6, 2001, 9 am to Adjournment on November 7.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Eisenhower Inn and Conference Center, Gettysburg, PA.

Contact Person: Claire Rodgaard, Assistant to the Scientific Director, Division of Intramural Research, Office of the Director, National Human Genome Research Institute, 45 Convent Drive, Building 49, Room 4A06, Bethesda, MD 20892, 301 435–5802.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 15, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26390 Filed 10–18–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–31, Review of R–44 Grants.

Date: October 24, 2001.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room C, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–14, Review of R–13 Grants.

Date: October 24, 2001.

Time: 3 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room C, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 02–11, Review of R01s.

Date: October 30, 2001.

Time: 10:30 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room H, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anna Sandberg, MPH, DRPH, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–3089.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–07, Applicant Interview, P01.

Date: November 13–14, 2001.

Time: 7 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Marriot Pooks Hill, 5151 Pooks Hills Road, Bethesda, MD 20814.

Contact Person: Lynn M. King, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial, Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 02–25, Review of R44 Grants.

Date: November 14, 2001.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive,

Contact Person: Natcher Building, Conference Room E½, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 02–20, Review R01 Grants.

Date: November 15, 2001.

Time: 10:30 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room E½, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anna Sandberg, MPH, DRPH, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm 4AN44F, Bethesda, MD 20892, (301) 594–3089.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–19, Review of R44 Grants.

Date: November 16, 2001.

Time: 10 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room C, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–18, Review of R01 Grants.

Date: November 19, 2001.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Bldg., Conf. Rms. A & D, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anna Sandbert, MPH, DRPH, Scientific Review Administrator, National Institute of Dental & Craniofacial Rès., 45 Center Drive, Natcher Building, Rm 4AN44F, Bethesda, MD 20892, (301) 594–3089.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–05, Review of P01 Grants.

Date: November 29–30, 2001.

Time: 7 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lynn M. King, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial, Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–24, Review of R44 Grants.

Date: December 6, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Bldg., Conf. Rms. A & D, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–09, Review of R01 Grants.

Date: December 6–7, 2001.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Anna Sandberg, MPH, DRPH, Scientific Review Administrator, National Institute of Dental & Craniofacial

Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–29, Review of R44s.

Date: December 11, 2001.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room C, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26389 Filed 10–18–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Acquired Immunodeficiency Syndrome Research Review Committee, AIDS Research Review Committee.

Date: November 8–9, 2001.

Open: November 8, 2001, 8:30 am to 9 am.

Agenda: Report on Institute business.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

Closed: November 8, 2001, 9 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *rb169@nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 15, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26391 Filed 10–18–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting.

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the contact person listed below in advance of the meeting. The meeting will be held as a telephone conference call with the members. A speaker phone installed in the conference room will enable members of the public in attendance to listen to the discussion and address the RAC.

Name of Committee: Recombinant DNA Advisory Committee (RAC).

Date: November 1, 2001.

Time: 12–1 p.m.

Agenda: To discuss and vote on a recommendation to the Director, NIH, regarding final action to amend Section IV–C–2 of the NIH Guidelines for Research Involving Recombinant DNA Molecules to change the prescribed number and expertise of RAC members and establish the charter of the RAC as the controlling document for the membership and procedures of that committee. The proposed action was published in the **Federal Register** on August 24, 2001 (66 FR 44638).

Place: National Institutes of Health, 9000 Rockville Pike, Building 45, Conference Room C1/C2, Bethesda, Maryland 20892.

Contact: Ms. Laurie Harris, RAC Program Assistant, Office of Biotechnology Activities, Rockledge 1, Room 750, Bethesda MD, 20892, (301) 496–9839.

Information is also available on the Institute's/Center's home page: www4.od.nih.gov/oba/, where an agenda and any additional information for the meeting will be posted when available. OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecules techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Instramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26388 Filed 10–18–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 25, 2001.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle, 1 Washington Circle, NW., Washington, DC 20037.
Contact Person: Rona L. Hirschberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 26, 2001.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, General Medicine B Study Section.
Date: October 29–30, 2001.
Time: 8 a.m. to 10 a.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 29, 2001.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.
Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel.
Date: November 1–2, 2001.
Time: 8 am to 5 pm.
Agenda To review and evaluate grant applications.
Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.
Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 1–2, 2001.
Time: 8 am to 12 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt, 2799 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, 301–435–1217, byrnesn@csr.nih.gov.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Pharmacology Study Section.
Date: November 1–2, 2001.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel Georgetown, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Jeanne N. Ketley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Study Section.
Date: November 1–2, 2001.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212, johnsong@csr.nih.gov.

Name of Committee: Biochemical Sciences Integrated Review Group, Physiological Chemistry Study Section.
Date: November 1–2, 2001.
Time: 8 am to 3 pm.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel Crystal City, 1300 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 1, 2001.
Time: 8 am to 12 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, *bunnagb@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 2.
Date: November 1–2, 2001.
Time: 8 am to 1 pm.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Marriott, Washingtonian Center, 9751 Washingtonina Blvd., Gaithersburg, MD 20878.
Contact Person: Sami A. Mayyasi, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *mayyasis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 1–2, 2001.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: Richard D. Rodewald, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024, *rodewalr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 1–2, 2001.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites Hotel—Harbor Building, 1000 29th Street NW., Washington, DC 20007.
Contact Person: Janet Nelson, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1723, *nelsonja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 1–2, 2001.
Time: 8:30 am to 5:30 pm.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Angela M. Pattatucci-Aragon, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 1, 2001.
Time: 8:30 am to 3 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.
Contact Person: Randolph Addison, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group Epidemiology and Disease Control Subcommittee 2.
Date: November 1–2, 2001.
Time: 8:30 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: David M. Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7848, Bethesda, MD 20892, (301) 435–0684, *monseesd@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 1–2, 2001.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@csr.nih.gov.*

Name of Committee: Genetic Sciences Integrated Review Group, Genome Study Section.
Date: November 1–2, 2001.
Time: 8:30 am to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: Embassy Square, 2000 N Street, NW., Washington, DC 20036.
Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 1–2, 2001.
Time: 1:30 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, *bunnagb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 1–2, 2001.
Time: 7:00 pm to 6 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda MD, 20814.
Contact Person: Peter Lyster, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892, (301) 435–1256.

Name of Committee: Oncological Sciences Integrated Review Group, Radiation Study Section.
Date: November 2–4, 2001.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Milano Hotel, 55 Fifth Street, San Francisco, CA 94103.
Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 2, 2001.
Time: 11 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 2, 2001.
Time: 1 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042, *shaikha@csr.nih.gov.*

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 15, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26385 Filed 10–18–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.
Date: October 18–19, 2001.
Time: 1 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Four Points Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Gerald L. Becker, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 15, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26386 Filed 10–18–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4652–N–16]

Notice of Proposed Information Collection for Public Comment for the Demolition/Disposition Application

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 18, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Demolition/ Disposition Application.

OMB Control Number: 2577–0075.

Description of the need for the information and proposed use: House Agencies (HAs), are required to submit information to HUD to request permission to demolish or sell or all or a portion of a development (i.e., dwelling units, nondwelling property or vacant land) owned and operated by a HA. The specific information requested in the application is based on requirements of the statute, section 18 of the United States Housing Act of 1937, as amended, and specifically identified in 24 CFR part 970 of the regulation. The Department uses the information submitted to determine whether, and under what circumstances, to permit a HA to demolish or sell all or a portion of a public housing development. The Department is considering automation of the application.

Agency form number: HUD–52860.

Members of affected public: State or Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 120 responses; on occasion; 16 average hours per response; total annual reporting burden is 1,920 hours.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 12, 2001.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Demolition / Disposition Application

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0075 (exp. 10/31/01)

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information is required to request permission to demolish or sell all or portion of a development (i.e., dwelling units, non-dwelling property or vacant land) owned and operated by a Housing Authority. The information requested in the application is based on requirements of Section 18 of the United States Housing Act of 1937, as amended and 24 CFR Part 970. HUD will use the information to determine whether, and under what circumstances, to permit HAs to demolish or sell all or a portion of a public housing development. Responses to the collection of information are statutory and regulatory to obtain a benefit. Approval of this application does not constitute approval for funding of the demolition or disposition action. The information requested does not lend itself to confidentiality.

Section 1: General Information

1. Name of PHA: | 2. Date of Application: (mm/dd/yyyy)

3. Address of PHA No. & Street: | City: | State: | Zip code:

4. Phone No. of PHA: | Fax No: | E:mail Address:

5. Executive Director's Name:

Phone No: | Fax No: | E:mail Address:

6. Primary Contact's Name:

Phone No: | Fax No: | E:mail Address:

Section 2: Long-Term Possible Impact of Proposed Action

1. Performance Funding Subsidy (PFS)

In FY _____, this HA received $_____ per unit in PFS funds.

The HA realizes that after this activity takes place, PFS will decrease by $_____ /year. (number of units proposed X subsidy per unit)

2. Comprehensive Grant Program (CGP)

In FY _____, this HA received $_____ per unit in CGP funds.

The HA realizes that after this activity takes place, CGP funding will decrease approximately by $_____ /year.

Section 3: Board Resolution, 24 CFR Part 970.8, and Environmental Review, 24 CFR Parts 50 and 58

1. Board Resolution Number _____ 2.. Date of Board Resolution _____

Attach a copy of the Board Resolution and reference it as Section 3, line 2.

3. Who is conducting the environmental review? ☐ Field Office under 24 CFR Part 50 ☐ Responsible Entity under 24 CFR Part 58

Please Note: Where the demolition is to be funded with HOPE VI funds, the HA is prohibited from using Part 58.

4. Give the date(s) the HA contacted the HUD Field Office to initiate the environmental review for all the developments in the application.

_____ _____ _____ _____ _____ _____

5. If the environmental review is to be performed by a responsible entity, name the entity.

_____

6. As it relates to this application for demolition/ disposition, I certify to the following:
   - o that all information contained in the application is true as of the date of this application;
   - o that no demolition will take place until all residents have been relocated; and
   - o that the HA will comply with the requirements of the Uniform Relocation Act (URA) and the implementing regulations found at 49 CFR Part 24.

Name of Executive Director _____

Signature _____ Date _____

Provide attachments as needed. All attachments must reference the Section and line number to which they apply.

form HUD-52860(7/98)
ref. 24 CFR 970

Section 3: Table I

Summary of Units to be Demolished/Disposed where more than one development is included in the application.

Development No. & Name	0 - Bdrm Units	1 - Bdrm Units	2 - Bdrm Units	3 - Bdrm Units	4 & 4+ Units	Total Units	Resident Bldg.	NonResid. Bldg.	Total Bldgs.	Acres Disposed
Totals										

Sections 4 thru 9 must be completed for each development in the application. If more than one development is included in the application, reproduce these pages for each development and provide a summary in Section 3: Table I.

Development Number:

Section 4: Description of Property 24 CFR Part 970.8

1. Name of the Development

2. Development Number

3. Date of Full Availability (mm/dd/yyyy)

4. No. of Residential Buildings

5. No. of Non-Residential Buildings

6. Date Constructed (mm/dd/yyyy)

7. Is Development a Scattered Site ☐ Yes ☐ No

8. Number of Building Types: Single Family Houses; Duplexes; 3-Plexes; 4-Plexes; Other (explain)

9. Number of Types of Structures: Row House Units; Walk-Up Units; High Rise Units

10. Existing Unit Distribution

	Family Units	Elderly Units	Total Units Being Used for Non-Dwelling Purposes	Total Units in Development
0 Bdrm				
1 Bdrm				
2 Bdrms				
3 Bdrms				
4 or more Bdrms				
Total *				

11. Total Acres of the Development

* Enter in Section 6, line 4c.

Section 5: Description of Proposed Action by Project 24 CFR Parts 970.8 and 970.9

1. Type of action proposed: Check one
☐ Complete Demolition ☐ Partial Demolition ☐ Disposition Only ☐ Demolition and Disposition

2. Proposed Action By Unit Type		Units to be Demolished Only	Units to be Disposed of Only
0 Bdrm	Elderly		
0 Bdrm	Family		
1 Bdrm	Elderly		
1 Bdrm	Family		
2 Bdrms	Elderly		
2 Bdrms	Family		
3 Bdrms	Family		
4 or more Bdrms	Family		
Totals *			

3. Proposed Action By Building Type	Buildings to be Demolished Only	Buildings to be Disposed of Only
Residential Buildings		
Non-Residential Buildings		
Total Buildings		

* Enter in Section 6, line 4a or b.

4. Acres included in Proposed Disposition

5. Site Map (**provide an attachment and reference it as Section 5, line 5**)

6. If this is a Disposition Application, estimate of Project Debt $

7. If application is a **partial** demolition/disposition of the **development**, provide the address, building number(s), or name of each building to be demolished or disposed of (**provide an attachment and reference it as Section 5, line 7**).

8. In the case of disposition of vacant land, provide the legal description of each parcel of land (**provide an attachment and reference it as Section 5, line 8**).

9. **If disposition**, what is the appraised value determined by an independent appraisal? **(Include a copy of the appraisal and reference it as Section 5, line 9)** $

10. Which of the following describe the proposed disposition? (check all that apply)
A. ☐ Disposition at Fair Market Value via Public Sale B. ☐ Negotiated Sale C. ☐ Sale at Less than Fair Market Value (e.g., donation)

If B and/or C are checked, **provide a justification and reference it as Section 5, line 10.** (see Instructions).

11. Calculation of Net Proceeds:

Estimated Sales Price	minus	Debt	minus	Cost & Fees	equals	Estimate Net Proceeds
$	-	$	-	$	=	$

12. How will the Net Proceeds be used? **(provide an attachment and reference it as Section 5, line 11)**

13. When will a contract for Disposition be executed? By _____ (mm/yyyy) Or _____ (number of months) after HUD approval

14. **If Demolition,** (a) what is the estimated cost of demolition? (Include professional fees, hazardous waste removal, building and site improvement, demolition, and seeding and sodding of land. Do not include relocation costs or site improvements such as landscaping, playground, retaining walls, streets, sidewalks, etc.)

$

(b) Indicate the source of funds: _____

15. General Timetable: The HA is to provide a brief timetable based on the number of days or weeks after approval of the application that the following major actions will occur: 1. begin relocation of residents 2. complete relocation of residents 3. execution of demolition contract or disposition sales contract 4. demolition or disposition of the property

16. Calendar year of Demolition/Disposition if doing in one year: _____

17. If Demolition/Disposition is phased, provide a complete TimeTable and bedroom breakdown for each year. If more than four years are proposed, **provide an attachment and reference it as Section 5, line 17.**

Phase	Calendar Year of Contract		Year of Years
Elderly Units No.	Family Units No.		Totals
0 Bdrm	0 Bdrm		
1 Bdrm	1 Bdrm		
2 Bdrms	2 Bdrms		
	3 Bdrms		
	4 or more Bdrms		

Phase	Calendar Year of Contract		Year of Years
Elderly Units No.	Family Units No.		Totals
0 Bdrm	0 Bdrm		
1 Bdrm	1 Bdrm		
2 Bdrms	2 Bdrms		
	3 Bdrms		
	4 or more Bdrms		

Phase	Calendar Year of Contract		Year of Years
Elderly Units No.	Family Units No.		Totals
0 Bdrm	0 Bdrm		
1 Bdrm	1 Bdrm		
2 Bdrms	2 Bdrms		
	3 Bdrms		
	4 or more Bdrms		

Phase	Calendar Year of Contract		Year of Years
Elderly Units No.	Family Units No.		Totals
0 Bdrm	0 Bdrm		
1 Bdrm	1 Bdrm		
2 Bdrms	2 Bdrms		
	3 Bdrms		
	4 or more Bdrms		

Section 6: Justification for Demolition and/or Disposition 24 CFR Parts 970.6 and 970.7

1. Check all that apply and **provide an attachment and reference it as Section 6, line 1** to support all applicable conditions.

Demolition

970.6(a) In the case of demolition of all or a portion of project, the project, or portion of the project, is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes and no reasonable program of modifications, is feasible to return the project or portion of the project to useful life. The Department generally shall not consider a program of modifications to be reasonable if the costs of such program exceed 90 percent of total development cost (TDC). Major problems indicative of obsolescence are:

☐ 970.6(a)(1) As to physical condition: Structural deficiencies (e.g., settlement of earth below the building caused by inadequate structural fills, faulty structural design, or settlement of floors), substantial deterioration (e.g., severe termite damage or damage caused by extreme weather conditions), or other design or site problems (e.g., severe erosion or flooding);

☐ 970.6(a)(2) As to location: physical deterioration of the neighborhood; change from residential to industrial or commercial development; or environmental conditions as determined by HUD environmental review in accord with part 50 or part 58 of this title, which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use;

☐ 970.6(a)(3) Other factors which have seriously affected the marketability, usefulness, or management of the property.

☐ 970.6(b) In the case of demolition of only a portion of a project, the demolition will help to assure the useful life of the remaining portion of the project (e.g., to reduce project density to permit better access by emergency, fire, or rescue services).

Disposition

970.7(a) Retention is not in the best interests of the tenants and the PHA because at least one to the following criteria is met:

☐ 970.7(a)(1) Developmental changes in the area surrounding the project (e.g., density, or industrial or commercial development) adversely affect the health or safety of the tenants or the feasible operation of the project by the PHA;

☐ 970.7(a)(2) Disposition will allow the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as lower income housing projects, and that will preserve the total amount of lower income housing stock available to the community. A PHA must be able to demonstrate to the satisfaction of HUD that the additional units are being provided in connection with the disposition of the property;

☐ 970.7(a)(3) There are other factors justifying disposition that HUD determines are consistent with the best interests of the tenants and the PHA and that are not inconsistent with other provisions of the Act. As and example, if the property meets any of the criteria for demolition under 970.6, it may be disposed of under this criterion (970.7(a)(3)), subject to conditions that HUD may impose (e.g., demolition to follow disposition in order to ensure abatement of a threat to safety or health).

☐ 970.7(b) In the case of disposition of property other than dwelling units (1) the property is determined by HUD to be excess to the needs of the project (after EIOP), or (2) the disposition of the property is incidental to, or does not interfere with, continued operation of the remaining portion of the project

2. **Total Development Cost (TDC) Calculation**

Based on HUD Notice _____ For Locality _____

If justification is based upon obsolesence of the units/buildings, complete the applicable calculation below for the unit proposed for demolition for each project.

	No. of Units	times	TDC per Unit	equals	TDC
0 - Bdrm Detached & SemiDetached		x		=	
0 - Bdrm Row Dwelling		x		=	
0 - Bdrm Walk-Up		x		=	
0 - Bdrm Elevator		x		=	
1 - Bdrm Detached & SemiDetached		x		=	
1 - Bdrm Row Dwelling		x		=	
1 - Bdrm Walk-Up		x		=	
1 - Bdrm Elevator		x		=	
2 - Bdrms Detached & SemiDetached		x		=	
2 - Bdrms Row Dwelling		x		=	
2 - Bdrms Walk-Up		x		=	
2 - Bdrms Elevator		x		=	
3 - Bdrms Detached & SemiDetached		x		=	
3 - Bdrms Row Dwelling		x		=	
3 - Bdrms Walk-Up		x		=	
3 - Bdrms Elevator		x		=	
4 - Bdrms Detached & SemiDetached		x		=	
4 - Bdrms Row Dwelling		x		=	
4 - Bdrms Walk-Up		x		=	
4 - Bdrms Elevator		x		=	
5 - Bdrms Detached & SemiDetached		x		=	
5 - Bdrms Row Dwelling		x		=	
5 - Bdrms Walk-Up		x		=	
5 - Bdrms Elevator		x		=	
6 - Bdrms Detached & SemiDetached		x		=	
6 - Bdrms Row Dwelling		x		=	
6 - Bdrms Walk-Up		x		=	
6 - Bdrms Elevator		x		=	
Total				=	$

3. Estimated Cost of Rehabilitation.

Provide an attachment showing cost breakdown and reference it as Section 6, line 3. $ _____

4. How many of the following units are occupied at the time of application submission?

a. Of the _____ (copy number from Section 5, line 2) units proposed for **demolition,** _____ (number) are occupied.

b. Of the _____ (copy number from Section 5, line 2) units proposed for **disposition,** _____ (number) are occupied.

c. Units **remaining** after demolition/disposition:

_____ (total existing units; copy from Section 4, line 10) minus _____ (from 4a.) minus _____ (from 4b.) = _____ remaining units.

How many of the remaining units are occupied? _____

If any occupied units are listed in a or b, complete Section 7, line 1.

Occupancy

5. Occupancy Information as of the date of the application.

	Occupied Units	Units Vacant for less than 12 months	Units Vacant for 12 or more months	Total Vacant Units	Total Units Occupied and Vacant
0 - Bdrm					
1 - Bdrm					
2 - Bdrms					
3 - Bdrms					
4 - Bdrms					
5 - Bdrms					
6 - Bdrms					
Totals					

Section 7: Relocation 24 CFR Part 970.8

1. How many **individuals** will be effected by this action? ☐
2. How will counseling and advisory services be provided? **Provide an attachment explaining and reference it as Section 7, line 2 .**
3. What housing resources are expected to used for relocation?
   ☐ Other Public Housing ☐ Section 8 ☐ Other **(Provide an attachment explaining and reference it as Section 7, line 3 .)**

	Per Unit Cost	x	No. of Units	=	Total
4. Estimated cost of counseling and advisory services	$	x		=	
5. Estimated cost of moving expenses	$	x		=	
6. Total cost of relocation expenses					$

7. What sources of funding will be used to pay for relocation activities?
   ☐ Operating Funds ☐ Comp Grant ☐ CIAP ☐ HOPE VI ☐ Other **(Provide an attachment explaining and reference it as Section 7, line 7 .)**
8. Has the HA provided residents with a **general information notice** advising them of the possible affects of proposed action?
   Provide an attachment explaining and reference it as Section 7, line 8 .
9. How many days in advance of actual relocation will the HA issue a **notice of eligibility** to each family to be affected by the relocation? ☐

Section 8: Resident Consultation 24 CFR Parts 970.4 and 970.8

1. Has the HA consulted with the residents of the affected development? ☐ Yes ☐ No

   Provide an attachment thoroughly describing the consultation process and reference it as Section 8, line 1.
2. Is there a resident organization at the affected development(s)? ☐ Yes ☐ No

   Provide an attachment explaining consultation with the resident organization(s) at the development and reference it as Section 8, line 2.
3. Is there a HA-wide resident organization? ☐ Yes ☐ No

   Provide an attachment explaining the consultation with the HA-wide resident organization(s) and reference it as Section 8, line 3.
4. Were any written comments received from the residents or any of the resident organizations? ☐ Yes ☐ No

   Attach copies of the comments received and the HA's evaluation of the comments and responses to the residents' comments and reference it as section 8, line 4.

Section 9: Section 412 Offer of Sale 24 CFR Part 970.13

1. Did the HA provide an offer of sale to the resident organization(s) at the development? ☐ Yes ☐ No
   If "yes," provide documentation of offer and response or certification of non-response and reference it as Section 9, line 1 .
2. If no organization existed, did the HA provide the residents an opportunity to form a resident organization? ☐ Yes ☐ No
   If "no," provide an explaination and reference it as Section 9, line 2 .
3. Is the HA exercising any of the exceptions to the offer of sale requirement permitted by 24 CFR 970.13(a)(2)? ☐ Yes ☐ No
   If "yes," which of the following exceptions apply? **Check all that apply and provide an attachment justifying the use of the exception and reference it as Section 9, line 3 .**

☐ 970.13(a)(2) (i) The PHA has determined that the property proposed for demolition is an imminent threat to the health and safety of residents.

☐ 970.13(a)(2) (ii) The local government has condemned the property proposed for demolition.

☐ 970.13(a)(2) (iii) A local government agency has determined and notified the PHA that units must be demolished to allow access to fire and emergency equipment.

☐ 970.13(a)(2) (iv) The PHA has determined that the demolition of selected portions of the development in order to reduce density is essential to ensure the long term viability of the development or the PHA (but in no case should this be used cumulatively to avoid Section 412 requirements).

☐ 970.13(a)(2) (v) A public body has requested to acquire vacant land that is less than two acres in order to build or expand its services (e.g., a local government wishes to use the land to build or establish a police substation).

☐ 970.13(a)(2) (vi) PHA seeks disposition outside the public housing program to privately finance or otherwise develop a facility to benefit low-income families (e.g., day care center, administrative building, other types of low-income housing).

Demolition/Disposition Application Instructions

Instructions for completing the HUD-52860, Application for Demolition/Disposition. Please fill out all of the information requested. Instructions and explanations are provided for those items which may not be self-explanatory. If you have questions about how to fill out this application, please contact the Special Applications Center (SAC).

Section 1: General Information

Item 1. Name of PHA - Please provide the full authority name, as well as the abbreviation that is preferred.

Item 2. Date of Application - The date the application was put in the mail.

Item 3. Address - Please provide a mailing address, other than a PO Box for express mail delivery.

Item 6. Primary contact - Identify the individual who was responsible for putting the application together, and is empowered to provide supplemental information, if needed.

Section 2: Long Term Possible Impact of Proposed Action

The actions covered by this application have many financial ramifications and the action proposed can only be reversed at the discretion of the Department. Prior to deciding to embark on a program of demolition or disposition, the HA staff should have determined: (1) that no other solution is feasible e.g., a new marketing strategy, or unit conversion,.etc. (2) analyzed how much it costs to operate the unit or units proposed for demolition or disposition and (3) determined how much these units represent in Comprehensive Grant Program (CGP) and operating subsidy (Performance Funding System (PFS)) funds. The HA should acknowledge that as the HA's inventory is reduced because of demolition or disposition there will be a reduction in the PFS and the CGP, if there is no replacement housing. In some cases these reductions will be phased in over a period of time. For specific information on which units (e.g., units proposed for demolition or disposition, vacant units or occupied units, etc.) are subject to a phase down in funding, see 24 CFR Part 968 and 24 CFR Part 990. The HA should also understand that after a period in time, the reduction in Federal income will reach a steady state. The purpose of requiring an estimate in the reduction of Federal funding is to show that the HA has performed an analysis and is aware that a reduction may take place.

Section 3: Board Resolution and Environmental Review

Items 1 and 2.

A Board Resolution is required in support of the proposed activity. The Board Resolution should be dated after the last resident meeting to show the Board is aware of all resident comments concerning the application. Provide the date of the resolution and the resolution number, if the HA numbers its resolutions.

Items 3 - 6.

Please fill out the information on your actions in arranging for the review and identify who is performing the review. **Please note that where the demolition is to be funded with HOPE VI funds for either revitalization or demolition only, the HA is prohibited from using the Part 58 and therefore, the Field Office must conduct the environmental review under Part 50.**

Table I: Summary of Units to be Demolished/Disposed Where More Than One Development is Included in the Application.

Complete this table where the HA's application contains more than one development, as identified by its unique public housing development number, in the application. For example, if the HA is proposing to demolish or dispose of four developments, then all four developments must be identified on this table with appropriate bedroom distribution, number of buildings and acres.

Sections 4 - 9 must be completed for each development in the application.

Section 4: Description of Property

The HA should be sure to describe the number of buildings, units, and total acres for the entire development as it currently exists. This is essential baseline information for the SAC.

Please note that although an application may contain multiple projects, under the current regulations, compliance with the regulations is determined on a project-by-project basis. Subsequent HUD approval and tracking is also performed at the project level.

Item 2. Development Number - Please use the HUD development number. All development numbers are at least 11 characters long. A few are up to 14 characters long for older developments. (Do not use the Major Reconstruction of Obsolete Projects number.)

Item 3. Date of Full Availability (DOFA)

Item 6. Date of Construction - applies to those developments that were acquired as part of the development process and reconstructed at the time of development. Therefore, for these acquired developments, the DOFA date is not a true indicator of the age of the developments.

Item 11. Total Acres of the Development. Give the total number of acres that currently exist in the development. The system recognizes up to two decimal places (1234.56).

Section 5: Description of Proposed Action by Project

Item 1. Type of Action Proposed. It is possible for a HA to request approval for a demolition and disposition in one application. However, the applicant must meet the regulatory requirements for both actions. See the summary of application requirements in 24 CFR Part 970.8. For example, an appraisal is required for a disposition or a demolition\disposition application but not a demolition application. Furthermore, the HA must justify to the satisfaction of HUD its rationale for spending Federal funds, usually Comprehensive Improvement Assistance Program (CIAP) funds or CGP Funds, for the demolition of units when the property will be leaving (e.g., disposition action) the public housing inventory.

Item 3. The HA will use this item to identify residential and non-residential buildings proposed for demolition and/or disposition.

Item 4. Acres Included in Proposed Disposition. The HUD data systems track this in acres. The system recognizes up to two decimal places (1234.56).

Item 5. A site map is critical in examining partial demolition/disposition requests. Please mark clearly the units and buildings proposed for demolition or disposition on the site map. (A copy of a site map for each development must be attached to the application form.)

Item 6. Estimate of Project Debt. For a disposition application only, provide the estimate of debt for each development in the application. The SAC or the HUD Field Office has access to this information through the Chief Financial Officer (CFO), if the HA does not have the information in a letter from HUD.

Item 7. In the attachment, the HA should explain why it selected the particular units and buildings to be demolished in the case of partial demolition. For example, in the case of demolition of a section of the development, clearly explain why the HA is proposing to demolish this section rather than another. Also, note that once the partial demolition application is approved by the SAC, the HA cannot change units in the approval without HUD's approval.

Item 9. The estimated sale price must be based on an appraisal. A copy of the appraisal must be included in the application. This requirement is only for a Disposition or a Demolition/Disposition application.

Item 10. If a HA elects (B) Negotiated Sale as the method of disposition, it must specify the disposition cost as either fair market value (FMV) or (C) less than FMV. See 24 CFR Part 970.9(a) of the regulations for guidance on the justification for a negotiated sale or sale at less than fair market value. An attachment describing a sale identified as (B) or (C) is required.

Item 11. Calculation of Net Proceeds. If the HA does not know if there is still outstanding debt, contact your local HUD servicing office. The Center will update the debt amount at the time of application review.

Item 12. Use of Net Proceeds. The HA's first priority is to retire outstanding debt with the proceeds of sale. If an HA has bonded debt that cannot be forgiven, proceeds must be used to make payment on the remaining debt. Second, where the HA has proceeds after payment of debt, those proceeds must be used for the provision of housing assistance to low-income families, e.g., the modernization of another development or building low-income housing. The activities proposed should generally relate to housing services and should be approvable under the CIAP and the CGP. (See 24 CFR Part 970.9(b). Determination of net proceeds for scattered sites are calculated differently, see 24 CFR Part 970.9 (c).

The HA should provide an estimate of gross and net proceeds of sale. Specify in the attachment how the proceeds will be used if the HA anticipates remaining funds after paying the debt and/or related expenses (e.g., relocation, sales costs, etc.). Use of proceeds must be approved by the Department.

Item 14. Indicate source of funds. Identify the source(s) of funding for the demolition or disposition (e.g., modernization, vacancy reduction, etc.) and estimated amount of funds needed.

Section 6: Justification of Demolition or Disposition

Item 1. The applicable criteria for demolition are found in 24 CFR Parts 970.6 and 970.7 for disposition. It is possible to use the demolition justification of obsolescence to support a disposition action.

The justifications that have been the most difficult for HAs to document are 24 CFR Parts 970.6 and 970.7(a)(2).

24 CFR Part 970.6 - Obsolescence. HAs that use Section 970.6(a), "*... the project, or portion other project, is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes* **and** *no reasonable program of modifications, is feasible to return the project or portion of the project to useful life.*", must provide documentation for meeting both parts of the test, obsolescence **and** rehabilitation is not reasonable.

The HA must provide evidence of obsolescence. For example, a structural problem with the building (as substantiated by an engineering report), an environmental issue related to hazardous substances at the site, or since the project was built has the highway surrounded the area removing access to public transportation, or schools, or has the neighborhood changed with more commercial activity.

Items 2 & 3. In addition, to documentation of some type of obsolescence, the HA must demonstrate that rehabilitation is not reasonable. The applicant must demonstrate to HUD that the cost of rehabilitation compared with the cost guidelines for that development (i.e., 90 percent of TDC) is excessive or that it is unreasonable. Completing items 2 and 3 of this section will provide the HA with the TDC and the estimated cost of rehabilitation. The SAC will make the necessary cost comparison.

24 CFR Part 970.7 - More Efficient, More Effective Lower Income Housing

An HA using Section Part 970.7(a)(2): "*. . .disposition will allow the acquisition, development or rehabilitation of other properties that will be more efficiently or effectively operated as lower income housing projects, and that will preserve the total amount of lower income housing stock available to the community . . .*", *is* expected to provide replacement housing for each unit that will be lost to the public housing inventory. This replacement housing may come from either the proceeds of the sale, another source or any combination of those resources. These units do not have to be public housing units but they must serve low income families in the community. This particular justification is not tied to the suspension of the one-for-one replacement requirement.

Section 7: Relocation

Item 1. Identify total number of individual residents including children. Do not provide number of households.

If units proposed for demolition are vacant, the HA should clearly explain in the application the circumstances that led to the units being vacant, when the residents were relocated(e.g., beginning in May 1997 until July 14, 1997), the resources used, and where the residents were relocated to.

Section 8: Resident Consultation - 24 CFR Part 970.6(e)

The regulation requires general resident consultation, however, it does not specify how the consultation should be done. The method of consultation is, therefore, at the HA's discretion. However, any consultation must be documented. This is one of two resident requirements in the regulation.

The application should document that the HA contacted the residents of the affected development and both the resident organization at the affected development (i.e., the development where the demolition or disposition is proposed), as well as the HA-wide resident organization(s). Many HAs mistakenly think that since the 24 CFR Part 970.13, the requirement for the offer of sale to the resident organization of any property proposed for demolition or disposition, is limited to the resident organization at the development, general resident consultation is likewise limited. Not true.

If prior to submission of the application the residents at the development were temporarily moved for modernization and the HA later decided to demolish or sell the property, the HA must go back to the residents and conduct consultation over the proposed action.

Section 9: Section 412 Offer of Sale (Note 1)

This is the second resident requirement in the regulation. HAs are required to offer the property (i.e., land, units and nondwelling space) proposed for demolition or disposition to resident organization at the affected development. However, the regulation does allow for exceptions to this opportunity to offer.

Item 3. The HA should review the list of six exceptions, identified in 24 CFR Part 970.13(a)(2), to determine if the requirement to make an offer to the resident organization is applicable. HAs are required to provide documentation e.g., if the property has been condemned by the city, a copy of the condemnation order, etc.), in order to claim any of the exceptions.

An application submitted to the Department should include one of the following:

(a) where there is a resident organization, a copy of the letter to the resident organization and the resident organization's letter of negative response.

(b) where there is no resident organization at the development, a certification from the Executive Director or Board that there is no resident organization, including evidence that the residents were given an opportunity to form (45 days) an organization for the expressed purpose of purchasing the property and expressed no interest.

(c) an explanation of why the proposed demolition or disposition action should be exempt from the Section 412 requirements (see Section 24 CFR Part 970.13(a)(2), including evidence to justify the use of the exemption, as required in the regulation.

(d) a certification from the Executive Director or Board stating that the resident organization at the development was contacted and the 30-day time frame expired without response from the organization.

Note 1: This requirement is often referred to as the 412 requirement, because it was established by Section 412 of the Cranston-Gonzalez National Affordable Housing Act of 1990.

[FR Doc. 01–26336 Filed 10–18–01; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–06]

Announcement of Funding Awards for Fiscal Year 2001 Alaska Native/Native Hawaiian Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2001 Alaska Native/Native Hawaiian Institutions Assisting Communities Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to help Alaska Native and Native Hawaiian Institutions of Higher Education expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of HUD's Community Development Block Grant program (CDBG) .

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Alaska Native/Native Hawaiian Institutions Assisting Communities Program (AN/NHIAC) was enacted under section 107 of the CDBG appropriation for fiscal year 2001, as part of the "Veterans Administration, HUD and Independent Agencies Appropriations Act of 2001" and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Alaska Native/Native Hawaiian Institutions Assisting Communities Program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs. On February 26, 2001 (66 FR 11779), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $4.2 million in Fiscal Year 2001 and carryover funds for the Alaska Native/Native Hawaiian Institutions Assisting Communities Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD three applications were funded. These grants, with their grant amounts are identified below.

The Catalog Federal Domestic Assistance number for this program is 14.515.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 ((103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 2001

Alaska Native/Hawaiian Institutions Assisting Communities Program Funding Competition, by Name and Address

Pacific/Hawaii

1. University of Hawaii for Kauai Community College, Maui Community College, and Leeward Community College, Dr. Peggy Cha (Kauai), Mike Inouye (Maui), and Mike Pecsok (Leeward), University of Hawaii, 2530 Dole Street, Sakamaki D–200, Honolulu, HI 96822. Grant: $1,192,620, $398,749 for Kauai, $304,013 for Kaui, and $399,848 for Leeward.

Northwest/Alaska

2. University of Alaska Fairbanks, Interior-Aleutians Campus, Clara Johnson, University of Alaska Fairbanks, Interior-Aleutians Campus, P.O. Box 757880, Fairbanks, AK 99775. Grant: $397,713.

3. University of Alaska Fairbanks, Bristol Bay Campus, Dr. Margaret Wood, University of Alaska Fairbanks, Bristol Bay Campus, P.O. Box 1070, Dillingham, AK 99576. Grant: $400,000.

Dated: October 4, 2001.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 01–26332 Filed 10–18–01; 8:45 am]
BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–03]

Announcement of Funding Awards for Fiscal Year 2001 Community Outreach Partnership Centers

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2001 Community Outreach Partnership Centers Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to establish and operate Community Outreach Partnership Centers that will: (1) Conduct competent and qualified research and investigation on theoretical or practical problems in large and small cities; and (2) facilitate partnerships and outreach activities between institutions of higher education, local communities, and local governments to address urban problems.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8110, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Community Outreach Partnership Centers Program was enacted in the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and is administered by the Office of University Partnerships

under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Community Outreach Partnership Centers Program provides funds for: research activities which have practical application for solving specific problems in designated communities and neighborhoods; outreach, technical assistance and information exchange activities which are designed to address specific problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, and community organizing. On February 26, 2001 (66 FR 11725), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $8 million in Fiscal Year 2001 funds for the Community Outreach Partnership Centers Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded 16 applications for New Grants and 8 applications for New Directions Grants. New Grants, which cannot exceed $400,000, are for institutions of higher education just beginning a COPC project. New Directions Grants, which cannot exceed $150,000, are for institutions of higher education that are undertaking new activities or expanding into new neighborhoods. These grants, with their grant amounts are identified below.

The Catalog Federal Domestic Assistance number for this program is 14.511.

In accordance with section 102(a) (4) (C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 2001

Community Outreach Partnership Centers Funding Competition, by Name and Address

New England

1. Housatonic Community College, Dr. Robert Thorton, Housatonic Community College, 900 Lafayette Blvd., Bridgeport, CT 06604. Grant: $399,574.

New York/New Jersey

2. Montclair State University, Dr. Freyda Lazarus, Montclair State University, Normal Avenue, Upper Montclair, NJ 07043. Grant: $399,010.

3. New Jersey City University, Dr. Jill Lewis, New Jersey City University, 2039 Kennedy Blvd., Jersey City, NJ 07305. Grant: $368,624.

4. Rensselaer Polytechnic Institute, Patricia Gray, Rensselaer Polytechnic Institute, 110 Eighth Street, Troy, NY 12180. Grant: $397,875.

Mid-Atlantic

5. George Mason University, Dr. Todd Endo, George Mason University, 4400 University Drive, MSN 4C6, Fairfax, VA 22030. Grant: $150,000.

Southeast/Caribbean

6. Gadsden State Community College, Dr. Brenda Crowe, Gadsden State Community College, P.O. Box 227, 1001 George Wallace Drive, Gadsden, AL 35902. Grant: $400,00.

7. Georgia State University, Dr. Douglas Greenwell, Georgia State University, University Plaza, Atlanta, GA 30303. Grant: $150,000.

8. University of Kentucky, Dr. Retia Walker, University of Kentucky, 201 Kinkead Hall, Lexington, KY 40506. Grant: $399,974.

Midwest

9. Calvin College, Dr. Steven Timmermans, Calvin College, 3201 Burton Street, SE, Grand Rapids, MI 49546. Grant: $399,949.

10. Cleveland State University, Dr. Philip Starr, Cleveland State University, 1717 Euclid Avenue, Cleveland, OH 44115. Grant: $149,279.

11. Eastern Michigan University, Dr. David Clifford, Starkweather Hall, 2nd Floor, Ypsilanti, MI 48197. Grant: $394,555.

12. Southern Illinois University Carbondale, Dr. Tess Heiple, Southern Illinois University Carbondale, Carbondale, IL 62901. Grant: $399,999.

13. University of Chicago, Colleen Burrus, University of Chicago, 5801 Ellis Avenue, Chicago, IL 606037. Grant: $399,999.

14. University of Illinois, Dr. R. Varkki George, University of Illinois, 801 S. Wright Street, 109 Coble Hall, Champaign, IL 61820. Grant: $149,974.

15. University of Minnesota, Dr. Fred Smith, University of Minnesota, 450 McNamara Center, 200 Oak Street SE, Minneapolis, MN 55455. Grant: $149,578.

Southwest

16. Louisiana State University, Dr. Gregory Vincent, Louisiana State University, 330 Thomas Boyd Hall, Baton Rouge, LA 70803. Grant: $399,766.

17. University of Texas at Brownsville and Texas Southmost College, Dr. Delina Barrera, University of Texas at Brownsville and Texas Southmost College, 80 Fort Brown, Brownsville, TX 78520. Grant: $399,000.

Great Plains

18. University of Missouri-St. Louis, Dr. Alan Artibise, University of Missouri-St. Louis, 341 Woods Hall, 8001 Natural Bridge Road, St. Louis, MO 63121. Grant: $399,566.

19. University of Nebraska-Lincoln, Norm Braaten, University of Nebraska-Lincoln, 303 Administration Building, Lincoln, NE 68588. Grant: $388,914.

Rocky Mountains

20. University of Colorado at Denver, Dr. Tony Robinson, University of Colorado at Denver Campus Box 129, P.O. Box 173364, Denver, CO 80217. Grant: $149,917.

Pacific/Hawaii

21. California State Polytechnic Institute, Pomona, Dr. Audrey Fine, California State Polytechnic Institute, Pomona, 3801 West Temple Avenue, Pomona, CA 91768. Grant: $399,979.

22. University of California, Irvine, Keith Taylor, University of California, Irvine, 160 Administration Building, Irvine, CA 92697. Grant: $149,505.

23. University of California, San Diego, Dr. Vivian Reznik, University of California, San Diego, 9500 Gilman Drive, 0934, La Jolla, CA 92093. Grant: $150,000.

24. University of the Pacific, Carol Brodie, University of the Pacific, 3601 Pacific Avenue, Stockton, CA 95211. Grant: $399,643.

Dated: October 4, 2001.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 01–26334 Filed 10–18–01; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–35]

Announcement of Funding Awards for the Indian Housing Drug Elimination Program for Fiscal Year 2001

AGENCY: Office of Native American Programs, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2001 Notice of Funding Availability (NOFA) for the Indian Housing Drug Elimination Program (IHDEP). This announcement contains the consolidated names and addresses of these award recipients under the IHDEP.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Indian Housing Drug Elimination Program awards, contact Barbara Gallegos, Office of Native Programs, Denver Program Office, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone 1–800–561–5913 or the Indian Housing Drug Elimination Program Resource Center at 1–800–839–5561. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The $12 million appropriated to fund the IHDEP was made available from the FY 2001 HUD Appropriation Act (Pub.L. 106–377, approved October 27, 2000). This program provides grants to Indian tribes and tribally designated housing entities (TDHEs) to eliminate drugs and drug-related crime in American Indian and Alaskan Native communities.

The FY 2001 awards announced in this Notice were selected for funding in a competition announced in a NOFA published in the **Federal Register** on February 26, 2001 (66 FR 11963). Applications were scored and selected for funding based on the selection criteria in that Notice and a national competition.

In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 50 awards made under the national competition in Appendix A to this document.

Dated: October 12, 2001.

Michael Liu,

Assistant Secretary for the Office of Public and Indian Housing.

APPENDIX A.—AWARDED APPLICANTS FY 2001 INDIAN HOUSING DRUG ELIMINATION PROGRAM

Applicant name	Contact	Address	City	State	Zipcode	Total
Bering Straits Regional Housing Authority.	Mr. Wayne Mundy	P.O. Box 995	Nome	AK	99762	$173,700
Cook Inlet Housing Authority	Ms. Carol Gore	3510 Spenard Road, Suite 201.	Anchorage	AK	99503	133,500
North Pacific Rim Housing Authority	Mr. Olen Harris	8300 King Street	Anchorage	AK	99518	75,300
Tagiumiullu Nunamiullu Housing Authority.	Mr. Delbert Rexford.	P.O. Box 409	Barrow	AK	99723	169,200
Tlinget-Haida Regional Housing Authority.	Mr. Blake Kazama	5446 Jenkins Dr., P.O. Box 32237.	Juneau	AK	99803	172,500
Poarch Band of Creek Indians Housing Development.	Mr. Fred McGhee	5811 Jack Springs Rd.	Atmore	AL	36502	61,500
Gila River Department of Community Housing.	Ms. Joyce Eddie	P.O. Box 528	Sacaton	AZ	85247	316,500
Navajo Nation	Mr. Kelsey Begaye.	P.O. Box 9000	Window Rock	AZ	86515	1,500,000
Tohono O'Odham Ki:Ki Association	Mr. Loren Goldtooth.	P.O. Box 790	Sells	AZ	85634	279,900
White Mountain Apache Housing Authority.	Mr. Victor Velasquez.	P.O. Box 1270	Whiteriver	AZ	85941	351,520
Concow-Maidu/Mooretown Rancheria.	Ms. Shirley Prusia	1 Alverda Drive	Oroville	CA	95966	15,000
Northern Circle Indian Housing Authority.	Ms. Darlene Tooley.	694 Pinoleville	Ukiah	CA	95482	50,700
Round Valley Indian Housing Authority.	Mr. Clifford Sloan	P.O. Box 682	Covelo	CA	95428	34,200
Southern Ute Indian Housing Authority.	Ms. Rachel Sorrell	P.O. Box 447	Ignacio	CO	81137	62,400
Seminole Tribe of Florida	Mr. James Billie	6300 Stirling Road.	Hollywood	FL	33024	140,100
Nez Perce Tribal Housing Authority	Ms. Cielo Gibson	P.O. Box 188	Lapwai	ID	83540	77,100
Pleasant Point Passamaquoddy	Mr. R. Clayton Cleaves.	RR1 Box 339	Perry	ME	04667	36,000
Bay Mills Housing Authority	Mr. Jeffrey Parker	3095 S. Towering Pines.	Brimley	MI	49715	60,900
Sault Ste Marie Tribe Housing Authority.	Ms. Jolene Nertoli	2218 Shunk Road	Sault Ste. Marie	MI	49783	129,600
Mille Lacs Health & Human Services Center.	Ms. Linda Lyons	43408 Oodena	Onamia	MN	56359	40,500
Choctaw Housing Authority	Mr. Morris Carpenter.	P.O. Box 6088, Choctaw Branch.	Philadelphia	MS	39350	282,300
Blackfeet Housing	Mr. Ray Wilson	PO Box 449	Browning	MT	59417	333,320
Fort Peck Assiniboine and Sioux Tribes.	Mr. Arlyn Headdress.	P.O. Box 1027	Poplar	MT	59155	330,000
Salish Kootenai Housing Authority	Mr. Robert Gauthier.	P.O. Box 38	Pablo	MT	59855	197,700
Qualla Housing Authority	Ms. Catherine Lambert.	P.O. Box 1749, Acquoni Road.	Cherokee	NC	29719	276,300

APPENDIX A.—AWARDED APPLICANTS FY 2001 INDIAN HOUSING DRUG ELIMINATION PROGRAM—Continued

Applicant name	Contact	Address	City	State	Zipcode	Total
Fort Berthold Housing Authority	Mr. Charles Moran	P.O. Box 310	Newtown	ND	58763	202,200
Standing Rock Housing Authority	Mr. Ken Alkire	P.O. Box 484	Fort Yates		58538	275,400
Turtle Mountain Housing Authority	Ms. Becky Phelps	P.O. Box 620	Belcourt	ND	58316	396,760
Omaha Tribal Housing Authority	Ms. Erica Spears	P.O. Box 150	Macy	NE	68039	79,500
Zuni Housing Authority	Ms. Mary Ghahate.	P.O. Box 710, Pueblo of Zuni.	Zuni	NM	87327	192,900
Reno Sparks Indian Colony Tribal Council.	Mr. Arlan Melendez.	98 Colony Road	Reno	NV	89502	60,000
Washoe Housing Authority	Mr. Willard Bennett.	1588 Watasheamu Dr.	Gardnerville	NV	89410	46,500
Chickasaw Nation Division of Housing.	Mr. Wayne Scribner.	901 N. Country Club Road.	Ada	OK	74820	468,520
Housing Authority of the Cherokee Nation.	Mr. Chadwick Smith.	P.O. Box 948	Tahlequah	OK	74465	725,660
Housing Authority of the Chocktaw Nation of Oklahoma.	Mr. Russell Sossamon.	P.O. Box G	Hugo	OK	74743	562,900
Kaw Tribal Housing Authority	Ms. Maryln Springer.	#9 Kanza Lane, P.O. Box 371.	Newkirk	OK	74647	35,100
Cheyenne River Housing Authority	Mr. Wayne Ducheneaux.	P.O. Box 480	Eagle Butte	SD	57625	270,300
Oglala Sioux Lakota Housing	Mr. Richard Shangreaux.	P.O. Box C	Pine Ridge	SD	57770	395,980
Rosebud Sioux Tribe	Mr. James Waln	Box #69	Rosebud	SD	57570	326,700
Sisseton Wahpeton Housing Authority.	Mr. Ron Jones	P.O. Box 687	Sisselton	SD	57262	184,800
Yankton Sioux Tribal Housing Authority.	Mr. Joseph Abdo, Jr.	410 South Main Street.	Wagner	SD	57380	93,900
Lummi Indian Nation	Mr. William Jones	2616 Kwina Road	Bellingham	WA	98226	70,800
Skokomish Indian Tribe Housing Authority.	Ms. Elizabeth Griffin-Hall.	North 80 Tribal Center Road.	Shelton	WA	98584	23,700
Bad River Band of Lake Superior Tribe of Chippewa.	Mr. Eugene Bigboy, Sr.	P.O. Box 39	Odanah	WI	54861	57,900
Ho-Chunk Housing Authority	Ms. Myra Price	P.O. Box 546	Tomah	WI	54660	53,400
Lac Courtes Oreilles Indian Housing Authority.	Mr. J. Wm. Cadotte.	13416 W. Trepania Rd.	Hayward	WI	54843	135,000
Lac Du Flambeau Chippewa Housing Authority.	Ms. Natalie Poupart.	554 Chicog Street, P.O. Box 187.	Lac Du Flambeau	WI	54538	93,300
Menominee Indian Tribe of Wisconsin.	Mr. Wendell Askenette.	P.O. Box 910	Keshena	WI	54135	121,200
Eastern Shoshone Housing Authority	Ms. Cheryl Arthur	P.O. Box 1250	Ft. Washakie	WY	82514	87,900
Northern Arapaho Tribal Housing	Mr. Frank Armajo	P.O. Box 8236	Ethete	WY	82520	116,100

[FR Doc. 01–26333 Filed 10–18–01; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4674–FA–03]

Announcement of Funding Awards for Fiscal Year 2001 Tribal Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2001 Tribal Colleges and Universities Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to enable tribal colleges and universities to build, expand, renovate, and equip their own facilities, especially those that are available to and used by the larger community.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Tribal Colleges and Universities Program was enacted under section 107 of the CDBG appropriation for fiscal year 2001, as part of the "Veterans Administration, HUD and Independent Agencies Appropriations Act of 2001" and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Tribal Colleges and Universities Program enables tribal colleges and universities to build, expand, renovate, and equip their own facilities, especially those that are available to and used by the larger community. On May 11, 2001 (66 FR 24237), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $3 million in Fiscal Year 2001 funds for the Tribal Colleges and Universities Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD seven applications were funded. These grants, with their grant amounts are identified below.

The Catalog Federal Domestic Assistance number for this program is 14.519.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 2001 Tribal Colleges and Universities Program Funding Competition, by Name and Address

1. College of Menominee Nation, Dr. Holly Youngbear-Tibbetts, College of Menominee Nation, P.O. Box 1179, Keshena, WI 54135. Grant: $400,000.

2. Fort Belknap College, Carol Falcon-Chandler, Fort Belknap College, P.O. Box 159, Harlem, MT 59526. Grant: $400,000.

3. Institute of American Indian Arts, Carol Guzman, Institute of American Indian Arts, 83 Avan Nu Po Road, P.O. Box 22370, Santa Fe, NM 85702. Grant: $400,000.

4. Oglala Lakota College, Thomas Shortbull, Oglala Lakota College, 490 Piya Wiconi Road, Kyle, SD 57752. Grant: $400,000.

5. Little Big Horn College, Avis Three Irons, Little Big Horn College, P.I. Box 370, One Forestry Lane, Crow Agency, MT 59022. Grant: $399,563.

6. Southwestern Indian Polytechnic Institute, Dr. Carolyn Elgin, Southwestern Polytechnic Institute, P.O. Box 10146, Albuquerque, NM 87184. Grant: $400,000.

7. Turtle Mountain College, Dr. Gerald Monette, Turtle Mountain College, P.O. Box 340, Belcourt, ND 58316. Grant: 399,440.

Dated: October 4, 2001.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 01–26335 Filed 10–18–01; 8:45 am]
BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–42]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: DOT: Mr. Rugene Spruill, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246; ENERGY: Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; GSA: Mr.Brian K. Polly, Assistant

Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., Washington, DC 20240; (202) 219–0728; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: October 11, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Supplus Property Program Federal Register Report for 10/19/01

Suitable/Available Properties

Buildings (by State)

Nebraska

Federal Building
1709 Jackson
Omaha Co: NE 68102–
Landholding Agency: GSA
Property Number: 54200140002
Status: Excess
Comment: 6564 sq. ft., needs repair, soil to be tested, most recent use—office/storage
GSA Number: GSA000

Washington

Clarkston USARC
721 Sixth St.
Clarkston Co: Asotin WA
Landholding Agency: GSA
Property Number: 54200140003
Status: Excess
Comment: total approx. 5043 sq. ft., presence of asbestos, most recent use—military reserve center/office
GSA Number: 9–D–WA–1196

Land (by State)

Florida

Lakeland Federal Property
N. Florida Ave. & Five Oaks St.
Lakeland Co: Polk FL 33806–
Landholding Agency: GSA
Property Number: 54200140001
Status: Surplus
Comment: 2.46 acres, former commercial use, environmental remediation in process
GSA Number: 4–G–FL–1092

Texas

11.8 acres
NALF Cabaniss
Saratoga Blvd
Corpus Christi Co: Nueces TX 75702–
Landholding Agency: GSA
Property Number: 54200140005
Status: Surplus
Comment: 11.8 acres w/security fence, most recent use—agriculture purposes
GSA Number: 7–N–TX–1061

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. V001
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140001
Status: Excess
Reasons: Secured Area
Extensive deterioration

Bldgs. T003, T004
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140002
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. B001
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140003
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. B002
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140004
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. B003
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140005
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. B004
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140006
Status: Excess
Reason: Secured Area

Bldg. B006
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140007
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. B008
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140008
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. B009
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140009
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. B011
Point Higgins
Ketchikan Co: AK 99901—
Landholding Agency: DOT
Property Number: 87200140010
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. B012
Point Higgins
Ketchikan Co: AK 99901—
Landholding Agency: DOT
Property Number: 87200140011
Status: Excess
Reason: Secured Area, Extensive deterioration

California

Brock Research Center
Range 19E
Imperial Valley Co: Imperial CA
Landholding Agency: Interior
Property Number: 61200140001
Status: Excess
Reason: Extensive deterioration

Bldg. PM7002
Point Mugu Site Naval Base
Oxnard Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200140001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1244
Marine Corps Base
Camp Pendelton Co: CA 92055—
Landholding Agency: Navy
Property Number: 77200140002
Status: Excess
Reason: Extensive deterioration

Bldg. 1331
Marine Corps Base
Camp Pendleton Co: CA 92055—
Landholding Agency: Navy
Property Number: 77200140003
Status: Excess
Reason: Extensive deterioration

Bldg. 1364
Marine Corps Base
Camp Pendleton Co: CA 92055—
Landholding Agency: Navy
Property Number: 77200140004
Status: Excess
Reason: Extensive deterioration

Bldg. 1674
Marine Corps Base
Camp Pendleton Co: CA 92055—
Landholding Agency: Navy
Property Number: 77200140005
Status: Excess
Reason: Extensive deterioration

Bldg. 1229
Marine Corps Base
Camp Pendleton Co: CA 92055—
Landholding Agency: Navy
Property Number: 77200140006
Status: Excess
Reason: Extensive deterioration

Bldg. 1242
Marine Corps Base
Camp Pendleton Co: CA 92055—
Landholding Agency: Navy
Property Number: 77200140007
Status: Excess
Reason: Extensive deterioration

Bldg. 1243
Marine Corps Base
Camp Pendleton Co: CA 92055—
Landholding Agency: Navy
Property Number: 77200140008
Status: Excess
Reason: Extensive deterioration

Bldg. 1253
Marine Corps Base
Camp Pendleton Co: CA 92055—
Landholding Agency: Navy
Property Number: 77200140009
Status: Excess
Reason: Extensive deterioration

Oregon

Bldg. 0320–00
Klamath Irrigation District
Klamath Falls Co: Klamath OR 97603–
Landholding Agency: Interior
Property Number: 61200140002
Status: Unutilized
Reason: Extensive deterioration

South Dakota

Residence
308 8th Ave South
Clearlake Co: Deuel SD 57226–
Landholding Agency: GSA
Property Number: 54200140004
Status: Surplus
Reason: Extensive deterioration
GSA Number: 7–J–SD–0552

Tennessee

Bldg. 81–22
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9409–26
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9723–4
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9733–4
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

4 Bldgs.
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9949–1
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140006
Status: Unutilized
Reason: Secured Area

[FR Doc. 01–26025 Filed 10–18–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to OMB for Review Under the Paperwork Reduction Act

The proposal for the information collection described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore comments on the proposal should be made directly to the Desk Officer for the Interior Department, Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: North American Breeding Bird Survey.

Current OMB Approval Number: None.

Summary: The North American Breeding Bird Survey (BBS) is a long-term, large-scale avian monitoring program that was initiated in 1966 to track the status and trends of continental bird populations. Each spring, interested volunteers conduct 3-minute point counts of birds along roadsides across the United States. Data can be submitted electronically via the Internet or on hard copy. These data provide an index of population abundance that can be used to estimate population trends and relative abundances at various geographic scales. Declining population trends act as an early warning system to galvanize research to determine the causes of these declines and reverse them before populations reach critically low levels. The BBS currently provides population trend estimates for 420 bird species and raw data for more than 650 species via the web.

Estimated Annual Number of Respondents: 2500.

Estimated Annual Burden Hours: 12,500 hours.

Affected Public: Primarily U.S. residents.

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Dated: October 15, 2001.

Dennis B. Fenn,

Associate Director for Biology.

[FR Doc. 01–26368 Filed 10–18–01; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to OMB for Review Under the Paperwork Reduction Act

The proposal for the information collection described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore comments on the proposal should be made directly to the Desk Officer for the Interior Department, Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley

Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: North American Amphibian Monitoring Program.

Current OMB Approval Number: None.

Summary: The North American Amphibian Monitoring Program (NAAMP) is long-term, large-scale anuran monitoring program to track the status and trends of eastern and central North American frogs and toads. Volunteers conduct calling surveys of frogs and toads three to four times per year, depending on the regional species assemblage. Volunteers listen for 5 minutes at 10 stops along the route. Data are submitted electronically via the Internet or on hard copy. These data will be used to estimate population trends at various geographic scales. Declining population trends can act as an early warning system to galvanize research to determine the causes of these declines and reverse them before populations reach critically low levels.

Estimated Annual Number of Respondents: 100.

Estimated Annual Burden Hours: 7,000 hours.

Affected Public: Primarily U.S. residents.

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Dated: October 15, 2001.

Dennis B. Fenn,

Associate Director for Biology.

[FR Doc. 01–26369 Filed 10–18–01; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal.

SUMMARY: This notice announces that the Information Collection Request for the Indian Service Population and Labor Force Estimates, OMB No. 1076–0147, requires renewal. The Bureau of Indian Affairs (BIA) in accordance with the Paperwork Reduction Act is soliciting comments on the proposed information collection.

DATES: Submit comments on or before December 18, 2001.

ADDRESSES: Your comments and suggestions on the requirements should be made directly to Mr. Harry Rainbolt, Budget Officer, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street NW., MS–4660–MIB, Washington, DC 20240. Telephone (202) 208–3463.

FOR FURTHER INFORMATION CONTACT: Copies of the documents contained in the information collection request may be obtained by contacting Mr. Harry Rainbolt at (202) 208–3463.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information is mandated by Congress through Public Law 102–477, Indian Employment, Training and Related Services Demonstration Act of 1992, section 17. The Act requires the Secretary to develop, maintain and publish, not less than biennially, a report on the population by gender, income level, age, service area, and availability for work. The information is used by the U.S. Congress, other Federal agencies, State and local governments and private sectors for the purpose of developing programs, planning, and to award financial assistance to American Indians. An agency may not conduct or sponsor, nor is any person required to respond to a collection of information unless it displays a currently valid OMB control number.

II. Request for Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

2. The accuracy of the BIA's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and,

4. How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

III. Data

Title of the Collection of Information: Department of the Interior, Bureau of Indian Affairs, Indian Service Population and Labor Force Estimates.

OMB Number: 1076–0147.

Affected Entities: American Indians and Alaska Natives, members and non-members, who are living on or near the tribe's defined service area and who are eligible for Bureau of Indian Affairs services.

Frequency of Response: Biennially.

Estimated Number of Biennial Responses: 561.

Estimated Time per Response: ½ hour.

Estimated Total Annual Burden Hours: 140 hours annually.

Dated: October 4, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–26445 Filed 10–18–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 11, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Interstate Arrangement for Combining Employment and Wages.

OMB Number: 1205–0029.

Affected Public: State, Local, or Tribal Government..

Frequency: Quarterly.

Number of Respondents: 53.

Number of Annual Responses: 212.

Estimated Time Per Response: 4 hours.

Total Burden Hours: 848.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The data collected on the Form ETA–586 are authorized by 20 CFR Part 616 and Section 303(a)(6) of the Social Security Act. The ETA–586 report provides the Secretary of Labor with information necessary to measure the scope and effect of the program for combining employment and wages and to monitor the performance of each State in responding to wage transfer requests and the payment of benefits.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–26343 Filed 10–18–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission or OMB Review; Comment Request

October 11, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: New collection.

Agency: Employment and Training Administration (ETA).

Title: Unemployment Insurance Data Validation Program.

OMB Number: 1205–ONEW.

Affected Public: State, Local, or Tribal Government; Federal Government.

Number of Respondents: 53.

Type of Response: Reporting.

Requirement	Number of annual responses	Frequency	Estimated time per response (hours)	Annual burden hours.
Full Data Validation	18	Every 3 years	1,600	28,267
Partial Data Validation [1]	12	Annually	160	1,920
Totals	30			30,187

[1] Partial data validation only occurs in years when full data validation is not conducted.

Total Annualized Capital/Startup Costs: $3,525,000.

Total Annual Costs (operating/maintaining systems of purchasing services): $873,612.

Description: In accordance with Section 303(a)(6) of the Social Security Act, The Unemployment Insurance Data Validation Program would require States to implement and operate a system for ascertaining the validity of unemployment insurance data they submit to ESA. Some of these date are used to assess performance or determine State grants for UI administration.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–26344 Filed 10–18–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 10, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 219–8904 or Email *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Application for Continuation of Death Benefit for Student.

OMB Number: 1215–0073.

Affected Public: Individuals or households and Business or other for-profit.

Frequency: On Occasion.

Number of Respondents: 43.

Number of Annual Responses: 43.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 22.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act. This Act was amended on October 27, 1972, to provide for continuation of death benefits for a child or certain other surviving dependents after the age of 18 years (to age 23) if the dependent qualifies as a student as defined in section 2(18) of the Act.

The information collected from Form LS–266 is used by OWCP to assure that a claimant receives all of the benefits under the Act to which he/she may be entitled. If the information were not collected, there would be no way to determine the proper status of a student and his/her continued entitlement to benefits.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–26345 Filed 10–18–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4461 and TA–W–38,601]

Arka Knitwear, Ridgewood, NY; Notice of Revised Determination on Reconsideration

By letter of April 15, 2001, the company official requested administrative reconsideration of the Department's denial of North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA–TAA) and Trade Adjustment Assistance (TAA), applicable to workers of Arka Knitwear, Ridgewood, New York, The notice were published in the **Federal Register** on April 16, 2001, NAFTA–4461 (66 FR 19522), and TA–W–38,601 (66 FR 19520).

The workers are primarily engaged in the production of sweaters.

The workers were denied NAFTA–TAA on the basis that there was no shift in production to Mexico or Canada, nor were there company or customer imports of sweaters from Mexico or Canada. The workers were denied TAA because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met.

The company has presented documents from major declining customers of the subject firm. This evidence shows that these customers stopped purchasing sweaters from the subject firm and began using Mexico and other countries to source their sweater purchases.

An examination of trade data for women's and girls' sweaters reveals that from 1999 to 200, aggregate U.S. imports increased absolutely and relative to domestic shipments. In 2000, the import/shipments ratio exceeded 200 percent.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Arka Knitwear, Ridgewood, New York, were adversely affected by increased imports (including those from Mexico) of articles like or directly competitive with sweaters produced at the subject firm.

"All workers of Arka Knitwear, Ridgewood, New York, who became totally or partially separated from employment on or after January 12, 2000, through two years from the date of certification, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974;" and

"All workers of Arka Knitwear, Ridgewood, New York, who became totally or partially separated from employment on or after January 12, 2000, through two years from the date of certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 28th day of September 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26357 Filed 10–18–01 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September and October, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Workers Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,813A & B; Greenwood Mills, Inc., Chalmers Plant, Greenwood, SC and Greenwood Mills, Inc., Lindale Manufacturing, Lindale, GA
TA–W–39,708; Globe Metallurgical, Springfield, OR
TA–W–39,016; Wabash Alloys LLC, Oak Creek, WI
TA–W–38,103; Sierra Pine Limited, Springfield Particleboard Div., Springfield, OR
TA–W–39,237; International Paper, Sheet Plant, Tupelo, MS
TA–W–39,648; Greg Stout Logging, Inc., Gold Hill, OR
TA–W–39,687; Ohio Industries, Bucyrus, OH
TA–W–39,394; Pittsburgh Gear Works, Inc., Pittsburgh, PA
TA–W–39,621; Franklyn Industries, div. of the Merrow Machine Co., Inc., Lavonia, GA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,978; Hein-Werner, Snap-On, Inc., Barboo, WI
TA–W–39,798; Friedrich & Dimmock, Inc., Millville, NJ
TA–W–39,709; Gemtron Corp., Clarksville, TN
TA–W–39,392; Aavid Thermalloy LLC, Dallas, TX
TA–W–39,165; E.C.I. Sportswear, Inc., New Bedford, MA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–39,970; KOA Speer Electronics, Inc., Bradford, PA
TA–W–40,026; American DeRosa Lamp Parts, Commerce, CA
TA–W–39,161; Almond International, Westbury, NY

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–39,848; Trane Co., A Division of American Standard, LaCrosse, WI.
TA–W–39,669; Conneaut Industries, Inc., West Greenwich, RI

The investigation revealed that criteria (1) and (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,162; ME International, Inc., Duluth, MN

The investigation revealed that criteria (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,109; Alcoa, Inc., St. Lawrence Plant, Massena, NY

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,822; Sweetwater Walls Industries, Inc., Sweetwater, TX: July 24, 2000.
TA–W–39,273; United States Steel LLC, Fairless Hills, PA: May 4, 2000.
TA–W–38,764; Brown Wooten Mills, Inc., Ballston Plant, Mt. Airy, NC: February 1, 2000.
TA–W–39,712; Signet Armorlite, Inc., San Marcos, CA: July 17, 2000.
TA–W–38,880; Cooper Energy Services, Ajax-Superior Div., Springfield, OH: March 6, 2000.
TA–W–39,607; UniFirst Corp., Wilburton, OK: June 18, 2000.
TA–W–39,368; Siemens Automotive Corp., Safety Electronics Div., Johnson City, TN: May 18, 2000.
TA–W–39,820; Tyco Electronics, Shrewsbury Molding Plant, Shrewsbury, PA: July 24, 2000.
TA–W–39,728; Graphic Controls, Cherry Hill Facility, Including Temporary Workers of Kaye Personnel, Inc., Cherry Hill, NJ: July 10, 2000.
TA–W–39,943; Realco Diversified, Inc., Meadville, PA: August 14, 2000.
TA–W–39,783; Plasticsource, Inc., Kelly Staff Leasing, El Paso, TX: July 26, 2000.
TA–W–39,445; Thomason Multimedia, Inc., ATO Division, Dunmore, PA May 16, 2000.
TA–W–39,813; Greenwood Mills, Inc., Executive Office, Greenwood, SC: August 1, 2000
TA–W–39,813C; Greenwood Mills, Inc., Aquatech Manufacturing, Inc., Cookeville, TN: November 11, 2001.
TA–W–39,953; Zexel Valeo Compressor USA, Decatur, IL: August 17, 2000.
TA–W–39,827; Southeast Mat Co., Crossville, TN: July 30, 2000.
TA–W–39,847; United Tool and Die, Inc., Meadville, PA July 30, 2000.
TA–W–39,198 & A; Stanley Mechanics Tools, Dallas, TX and Wichita Falls, TX: March 14, 2000.
TA–W–39,515; Teledyne Technologies, Teledyne Relays, Hawthorne, CA: June 4, 2000.
TA–W–39,976; VF Imagewear (West), Inc., Harriman, TN: August 22, 2000.
TA–W–39,823; Louisville/Saydah Home Fashions, Eminence, KY: July 11, 2000.
TA–W–39,752; Sola Optical USA, Inc., Eldon, MO: July 20, 2000.
TA–W–39,821; Clifton Walls Industries, Inc., Clifton, TX: July 24, 2000.
TA–W–39,731; Matsushita Refrigeration Company of America, Vonore, TN: July 16, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of September and October, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely.

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-05261; Hein-Werner, Snap-On, Inc., Braboo, WI
NAFTA-TAA-04822; ME International, Inc., Duluth, MN
NAFTA-TAA-05176; Greenwood Mills, Lindale Manufacturing Co., Lindale, GA
NAFTA-TAA-05163; Tyco Electronics, Fiber Optics Div., Glen Rock, PA
NAFTA-TAA-05053; Greg Stout Logging, Inc., Gold Hill, OR
NAFTA-TAA-05201; AC Enterprises Construction and Fab, Inc., Fargo, ND
NAFTA-TAA-04761; Sierra Pine Limited, Springfield Particleboard Div., Springfield, OR

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

NAFTA-TAA-05340; Qwest Wireless, Wireless Customer Care Center, Denver, CO

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-05209; Layne Christensen, Christensen Mining Products, Salt Lake City, UT: August 8, 2000.
NAFTA-TAA-05193; Micro Motion, Inc., Boulder, CO: August 7, 2000.
NAFTA-TAA-05182; Sweetwater Walls Industries, Inc., Sweetwater, TX July 24, 2000
NAFTA-TAA-05205; Signet Armorlite, Inc., San Marcos, CA: July 17, 2000.
NAFTA-TAA-05056; Bike Athletic Co., Mountain City, TN: July 9, 2000.
NAFTA-TAA-04887; Siemens Automotive Corp., Safety Electronics Div., Johnson City, TN: May 9, 2000.
NAFTA-TAA-05100; International Components Technology Corp., San Jose, CA
NAFTA-TAA-05263; VF Imagewear (West), Inc., Harriman, TN: August 22, 2000.
NAFTA-TAA-04992; Teledyne Technologies, Teledyne Relays, Hawthorne, CA: June 4, 2000.
NAFTA-TAA-05239; Rundel Products, Inc., Portland, OR: August 22, 2000.
NAFTA-TAA-05181; Clifton Walls Industries, Inc., Clifton, TX: July 24, 2000.
NAFTA-TAA-05138; Power One, Allston, MA: July 18, 2000.
NAFTA-TAA-05132; Gemtron Corp., Clarksville, TN: July 17, 2000.

I hereby certify that the aforementioned determinations were issued during the month of September and October, 2001. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 12, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01-26349 Filed 10-18-01; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-39,449 and NAFTA-04386]

Hasbro Manufacturing Services, El Paso, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Hasbro Manufacturing Services, El Paso, Texas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-39,449 and NAFTA-04386; Hasbro Manufacturing Services, El Paso, Texas (October 5, 2001)

Signed at Washington, DC, this 12th day of October, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01-26350 Filed 10-18-01; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-39,069 and NAFTA-04632]

Rosboro Lumber Company, Mill A, Springfield, OR; Notice of Negative Determination Regarding Application for Reconsideration

By application of May 1, 2001, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) under petition TA-W-39,069 and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA) under NAFTA-4632. The denial notices applicable to workers of Rosboro Lumber Company, Mill A, Springfield, Oregon, were signed on April 30, 2001 (TA-W-39,069), and April 19, 2001 (NAFTA-6432) and published in the Federal Register on Mau 18, 2001 (66 FR 27690) and May 3, 2001 (66 FR 22262), respectively.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If its appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Rosboro Limber Company, Mill A, Springfield, Oregon, producing softwood dimension lumber (primary product produced at the plant), was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed no increased customer imports of softwood dimension lumber during the relevant period. The investigation further revealed that the subject company did not import softwood dimensional lumber during the relevant period.

The NATA-TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. A surveys was conducted and revealed that customers did not increase their imports of softwood dimensional lumber from Mexico or Canada during the relevant period. The subject firm did not import softwood dimensional limber from Mexico or Canada, nor was production of softwood dimensional lumber shifted from the workers' firm to Mexico or Canada.

The petitioner alleges that the mill produced another product (lam-stock) and that product was being imported by the mill from Canada to the United States. Although the mill produced lam-stock (considered dimensional lumber of a higher quality) it accounted for a very low portion of mill production. The company reported importing lam-stock from Canada during the relevant period. However, since the workers are not separately identifiable at the mill by dimensional lumber type and the overwhelming majority of softwood dimensional lumber is of a different grade, the imports of lam-stock can not be considered a major contributing factor to the layoffs at the subject plant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, D.C., this 4th day of October, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01-26359 Filed 10-18-01; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-38,693 and NAFTA-04514]

Summit Timber Company Darrington, WA, Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of May 14, 2001, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA), applicable to workers and former workers of the subject firm. The denial notices were signed on April 6, 2001, and were published in the **Federal Register** on May 2, 2001 (66 FR 22006) and (66 FR 22007), respectively.

The company supplied an additional list of customers which was not supplied during the initial investigation. The company believes these customers may be importing softwood lumber during the relevant period.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 24th day of September, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01-26356 Filed 10-18-01; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA-4631 and TA-W-38,855]

Willamette Industries, Inc., Foster Plywood Division, Sweet Home, OR; Notice of Revised Determination on Reconsideration

By letter (postmark) of May 22, 2001, the International Association of Machinists & Aerospace Workers, Woodworkers (IAMAW), Local Lodge W246, requested administrative reconsideration of the Department's denial of North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA-TAA) and Trade Adjustment Assistance (TAA), applicable to workers of Willamette Industries, Inc., Foster Plywood Division, Sweet Home, Oregon. The notices were published in the **Federal Register** on May 2, 2001, NAFTA-4631 (66 FR 22007), and TA-W-38,855 (66 FR 22006).

The workers at the subject firm engaged in activities related to the production of plywood were denied NAFTA-TAA because criteria (1) and (2) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, were not met. The number of workers separated did not account for a significant portion of total workers at the subject firm and there were no declines in sales or production of plywood at the subject firm.

The same worker group was denied TAA because criteria (1) and (2) of the group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. The number of workers separated did not account for a significant portion of total workers at the subject firm and there were no declines in sales or production of plywood at the subject firm.

The request for reconsideration indicates that the worker group impacted at the subject plant were engaged in activities related to the production of veneer core. The request further indicates that veneer core production decreased at the subject plant. The original determinations were based on the workers engaged in activities related to the production of plywood and workers not being separately identifiable at the subject plant. Upon examination of the request it has become apparent that the workers engaged in the production of veneer core (which is integrated into plywood production at the subject plant) are separately identifiable from the workers producing plywood. Also, layoffs within the worker group producing veneer core are significant. The review further reveals that the plant decreased their veneer core production, while increasing their imports of veneer core from Canada during the relevant period.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of veneer core, including imports from Canada, contributed importantly to the decline in production and to the total or partial separation of workers at Willamette Industries, Inc., Foster Plywood Division, Sweet Home, Oregon. In accordance with the provisions of the Act, I make the following revised determination:

"Workers engaged in the production of veneer core at Willamette Industries, Inc., Foster Plywood Division, Sweet Home, Oregon, who became totally or partially separated from employment on or after March 1, 2000, through two years from the date of certification, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974;" and

"Workers engaged in the production of veneer core at Willamette Industries, Inc., Foster Plywood Division, Sweet Home, Oregon, who became totally or partially separated from employment on or after March 1, 2000, through two years from the date of certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 28th day of September 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01-26355 Filed 10-18-01; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,636]

Cookson Pigments, Inc., Newark, NJ; Notice of Negative Determination Regarding Application for Reconsideration

By application of April 18, 2001, the company requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Cookson Pigments, Inc., Newark, New Jersey, was issued on March 12, 2001, and was published in the **Federal Register** on April 16, 2001 (66 FR 19520).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner request states that the worker were retained for the purpose of decommissioning and the demolition of the subject facility. The petitioner requests Trade Adjustment Assistance eligibility for the worker group based on the initial Trade Adjustment Assistance certification which expired on June 6, 1999. Production ceased at the subject plant during October 1998. The workers have not produced a product since October 1998, and therefore, are considered to be performing a service during the relevant period.

Only in very limited instances are service workers certified for TAA, namely for worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under a certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 24th day of September 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–26363 Filed 10–18–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,887]

Huntsman Polymers, Odessa, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 27, 2001, in response to a petition filed on behalf of workers at Huntsman Polymers, Odessa, Texas.

Petition TA–W–39,887 is a duplicate of a previous petition (TA–W–39,780), which was certified on August 29, 2001. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 19th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26353 Filed 10–18–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 29, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 29, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 17th day of September, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 09/17/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
39,996	PixTech, Inc. (Co.)	Boise, ID	08/29/2001	Flat and Panel Displays.
39,997	Keokuk Ferro-Sil, Inc. (Co.)	Keokuk, IA	08/23/2001	Ferrosilion.
39,998	Cook Technologies, Inc. (Co.)	Green Lane, PA	08/23/2001	Welded Parts for Electric Carts.
39,999	Gerber Childrenswear (Co.)	Pelzer, SC	08/20/2001	Children's Bed and Bath Products.
40,000	Brother Industries USA (Co.)	Bartlett, TN	08/20/2001	Typewriter Assemblies.

APPENDIX—Continued

[Petitions instituted on 09/17/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,001	Crowe Rope Industries (Co.)	Searsmont, ME	08/29/2001	Twine and Small Rope.
40,002	PDS Railcar Services (BRTIU)	Port Huron, MI	08/27/2001	Repair & Maintain Railroad Cars.
40,003	HPM Corp./HPM Remanufact (IAMAW)	Mt. Gilead, OH	08/21/2001	Injection Molding Machines.
40,004	Baldor Motors and Drives (Wrks)	Plymouth, MN	08/23/2001	Electric AC and DC Drives.
40,005	SDK Knitting, Inc. (Co.)	Schaefferstown, PA	08/25/2001	Commission Knitting/Fabric.
40,006	Planar Systems, Inc. (Wrks)	Lake Mills, WI	08/23/2001	Liquid Crystal Displays.
40,007	Desa International (Wrks)	Shelbyville, TN	08/27/2001	Sheet Metal Fireplaces.
40,008	Summit Circuits, Inc. (UFCW)	Fort Wayne, IN	08/28/2001	Printed Circuit Boards.
40,009	JC Surrey 2001, Inc. (Wrks)	Leander, TX	08/24/2001	Luxury Glycerin Soaps.
40,010	Seville Dyeing Co., Inc. (Wrks)	Woonsocket, RI	08/24/2001	Textile Processing.
40,011	Cliffs Mining Service (Wrks)	Hibbing, MN	08/16/2001	Taconite Mining.
40,012	Forsheda Engineered Seals (Co.)	Vandalia, IL	08/27/2001	Automotive Gaskets.
40,013	Crompton Colors, Inc. (Co.)	Newark, NJ	08/27/2001	Organic Dyes and Intermediates.
40,014	MECO Corp. (Wrks)	Greeneville, TN	08/26/2001	Metal Folding Furniture.
40,015	Versatile Mold and Design (Co.)	Rutledge, GA	08/28/2001	Molds for Plastic Industry.
40,016	AVX Corp. (Wrks)	Myrtle Beach, SC	08/28/2001	Electrical Capacitors.
40,017	UniFirst Corp (Co.)	Cave City, AR	08/28/2001	Apparel.
40,018	Trailmobile Trailer LLC (Wrks)	Liberal, KS	08/28/2001	Dry Freight and Refrigerated Trailers.
40,019	Carolina Mills, Inc. (Co.)	Gastonia, NC	08/29/2001	Textile Yarns.
40,020	Continental Fabric, Inc (Co.)	Gloversville, NY	08/29/2001	Fabrics.
40,021	Alba-Waldensian, Inc. (Co.)	Rutherfordton, NC	08/27/2001	Knitted Intimate Apparel.
40,022	Anderson Greenwood/Tyco (UAW)	Wrentham, MA	08/29/2001	Pressure Relief Valves.
40,023	Nation Ford Chemical Co. (Wrks)	Fort Mill, SC	08/27/2001	Synthetic Organic Chemicals.
40,024	Phillips-Van Heusen (Co.)	Ozark, AL	08/28/2001	Men's Dress Shirts.
40,025	Bramton Co. (The) (Wrks)	Dallas, TX	08/20/2001	Cloth Pet Products.
40,026	American De Rosa Lamp (Wrks)	Commerce, CA	08/27/2001	Warehousing & Distribution of Lamp Parts.
40,027	Hayward Pool Products (Co.)	Kings Mountain, NC	08/30/2001	Pool Products.
40,028	Story and Clark Piano Co. (Wrks)	Seneca, PA	08/30/2001	Pianos—Upright and Grand.
40,029	Jackson Precision Diecast (Co.)	Jackson, MI	08/22/2001	Transmission Bushing, Dies.
40,030	Brown and Sharpe (Wrks)	No. Kingstown, RI	08/31/2001	Coordinate Measuring Machines.
40,031	Laclede Steel (Wrks)	Vandalia, IL	08/28/2001	Pipe and Conduit.
40,032	Laclede Steel (USWA)	Alton, IL	08/29/2001	Semi-Finished Tubular, Bar.
40,033	Kraft Foods (Wrks)	Allentown, PA	08/31/2001	Spoonables, Purables & Bar-B-Que.
40,034	D and M Tool, Inc. (Wrks)	Meadville, PA	08/30/2001	Molds, and Dies.
40,035	Eagle Veneer, Inc. (Wrks)	Harrisburg, OR	08/31/2001	Engineered Wood Products.
40,036	Poly One Corp (Co.)	Corona, CA	08/30/2001	Compounded Plastics.
40,037	Glad Rags, Inc. (Wrks)	Buchanan, VA	08/31/2001	Ladies' Apparel.
40,038	HH Smith, Inc. (Co)	Meadville, PA	08/31/2001	Electrical Connectors and Hardware.
40,039	TNS Mills, Inc. (Co.)	Rockingham, NC	08/30/2001	Ring Spun Yarns.
40,040	United Metal Fabricators (UMWA)	Johnstown, PA	08/27/2001	Hospital Cabinets, Exam Tables.
40,041	Magee Apparel Co (Co.)	Magee, MS	08/23/2001	Jeans & Related Apparel Bottoms.
40,042	WP Textiles Processing (Co.)	Richmond, VA	09/04/2001	Textile Pigment Printing.
40,043	Steelcase Architectural (Co.)	Solon, OH	08/24/2001	Movable Walls.
40,044	Boldt Metronics Int'l (Wrks)	Schaumburg, IL	08/23/2001	Metal Metronics Components.
40,045	Maxell Corp. of America (Co.)	Conyers, GA	08/28/2001	Video Cassettes.
40,046	Parker Hannifin Corp (Co.)	Lincolnshire, IL	08/31/2001	Hydraulic Components.
40,047	Carol Ann Fashions Corp (Wrks)	Hastings, PA	08/31/2001	Ladies' Skirts and Pants.
40,048	Three-Five Systems, Inc. (Wrks)	Tempe, AZ	08/17/2001	LCD Displays.
40,049	Daniel Measurement (Co.)	Statesboro, GA	09/05/2001	Valves and Turbines.
40,050	Moco Thermal Industries (PACE)	Caseville, MI	08/27/2001	Customer Designed Ovens.
40,051	Prime Tanning Co., Inc. (Co.)	Rochester, NH	09/04/2001	Leather for Shoes and Handbags.
40,052	Emsar, Inc. (Co.)	Bridgeport, CT	08/30/2001	Molded Spray Pumps.
40,053	Hagale Apparel, Inc. (Co.)	Kinston, NC	09/04/2001	Men's Shirts.
40,054	Fairchild Semiconductor (Wrks)	Mountaintop, PA	09/02/2001	Power Semiconductors.
40,055	GFC Fabricating LLC (Wrks)	Berwick, PA	08/31/2001	Elastic Material for Disposable Diapers.
40,056	Joint Venture Tool (Co.)	Saegertown, PA	08/13/2001	Mold Designs.
40,057	Virginia Glove (Wrks)	Glade Springs, VA	08/31/2001	Work Gloves.
40,058	Belco Tool and Mfg, Inc (Comp)	Meadville, PA	08/29/2001	Plastics Injection Molds.

[FR Doc. 01–26358 Filed 10–18–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,470]

Plum Creek Timber, Pablo, MT; Notice of Revised Determination on Reconsideration

On June 25, 2001, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on July 11, 2001 (66 FR 36332).

The initial petition investigation for workers at Plum Creek Timber Company, Pablo, Montana, TA–W–38,470, was denied based on the finding that customers of the subject firm did not increase import purchases of softwood dimension lumber.

The company's request for reconsideration stated the articles produced at the plant were one-inch boards, not softwood dimension lumber.

On reconsideration, the Department conducted another survey of Plum Creek Timber's customers regarding their purchases in 1998, 1999 and January through September 2000, of one-inch (1") boards and like or directly competitive products. The survey revealed that customers increased import purchases of one-inch boards while reducing purchases from Plum Creek Timber.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with increased imports of articles like or directly competitive with one-inch boards, contributed importantly to the decline in sales or production and to the total or partial separation of workers of Plum Creek Timber Company, Pablo, Montana. In accordance with the provisions of the Act, I make the following revised determination:

All workers of Plum Creek Timber Company, Pablo, Montana, who became totally or partially separated from employment on or after December 4, 1999, through two years from the date of this issuance, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 26th day of September 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–26362 Filed 10–18–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,698]

Powermatic Corporation, Walter Meyer Holding, AG, McMinnville, TN; Notice of Negative Determination Regarding Application for Reconsideration

By application of May 30, 2001, the United Steelworkers of America (USWA), District 9, requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance, applicable to workers of the subject firm. The denial notice was signed on April 6, 2001, and was published in the **Federal Register** on May 2, 2001 (66 FR 22006).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition denial for the workers of Powermatic Corporation, Walter Meyer Holding, AG, McMinnville, Tennessee was denied based on the finding that criterion (2) of the group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. Sales and/or production at the plant did not decline.

The request for reconsideration states that the Union and workers are of the opinion that plant sales and/or production decreased absolutely. The USWA also asserts that the products produced at the plant have been adversely affected by the use of imported components.

In response to components being imported by the company, it was determined in the original investigation that the company sourced out all components to domestic producers and then assembled industrial wood-working machinery at the plant. The components for the plants other product line (home-hobby) were always made in Taiwan and the end product assembled at the subject plant.

The USWA provided additional plant sales figures regarding the trends in sales for the time period corresponding to that of the initial investigation. The figures provided by the USWA depict increased sales similar to the period available during the original investigation.

Workers, the Union or company official may reapply for Trade Adjustment Assistance should conditions warrant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 28th day of September 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–26361 Filed 10–18–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,379, and TA–W–39,379A]

Savannah Luggage Works, Vidalia, GA, Savannah Luggage Works, Swainsboro, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 23, 2001, applicable to workers of Savannah Luggage Works, Vidalia, Georgia. The notice was published in the **Federal Register** on September 11, 2001 (66 FR 47242).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information shows that worker separations occurred at the Swainsboro, Georgia location of the subject firm. Workers at the Swainsboro, Georgia location are engaged in the production of luggage.

Based on these findings, the Department is amending the certification to include workers of the Swainsboro, Georgia location of Savannah Luggage Works.

The intent of the Department's certification is to include all workers of Savannah Luggage Works who were adversely affected by increased imports of luggage.

The amended notice applicable to TA–W–39,379 is hereby issued as follows:

All workers of Savannah Luggage Works, Vidalia, Georgia (TA–W–39,379) and Swainsboro, Georgia (TA–W–39,379A), who became totally or partially separated from employment on or after May 14, 2000, through August 23, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of September, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26348 Filed 10–18–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,599]

Sherwood, Harsco Corporation, Lockport, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 21, 2001, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 23, 2001, and published in the **Federal Register** on May 9, 2001 (66 FR 23733).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of TAA for the workers of Sherwood, Harsco Corporation, Lockport, New York, was based on the finding that criterion (3) of the worker group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. A survey of customers indicated that increased imports did not contribute importantly to worker separations.

The request for reconsideration claims that the Department of Labor was supplied wrong information for the Lockport and Wheatfield, New York plants and that the knowledgeable source should be contacted for the correct information.

The specified company official was contacted and indicated that the subject workers also produced component parts for the LPG valves/industrial valves produced at the subject plant. The contact indicated that the company did not import LPG valves/industrial valves nor did the company import component parts used for the assembly of the valves produced at the subject plant. The contact further revealed that their competitors were importing valve parts and using those parts for the assembly of valves domestically.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the applied is denied.

Signed at Washington, DC, this 28th day of September, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–26360 Filed 10–18–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,266]

TDK Ferrites Corporation, Shawnee, Oklahoma; Notice of Revised Determination on Reconsideration

By letter of September 10, 2001, the petitioners requested administrative reconsideration regarding the Department's Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination for the workers engaged in the production of CR core ferrites and micro cores ferrites issued on August 29, 2001, based on the finding that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. Also in the initial investigation the workers engaged in the production of EU core ferrites were certified eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974. The notice was published in the **Federal Register** on September 11, 2001 (66 FR 47241).

To support the petitioners' request for reconsideration, the company provided in evidence to show that the company increased their imports of CR core ferrites during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with CR core parts produced at TDK Ferrites Corporation, Shawnee, Oklahoma, contributed importantly to the decline in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of TDK Ferrites Corporation, Shawnee, Oklahoma, engaged in activities related to the production of CR core ferrites and EU core ferrites who became totally or partially separated from employment on or after April 25, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 24th day of September, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–26364 Filed 10–18–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,440]

Triple-O, Inc., Roseburg, Oregon; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 18, 2001 in response to a petition filed by a company official on behalf of workers at Triple-O, Inc., Roseburg, Oregon.

This case is being terminated at the petitioner's request. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 9th day of October 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26354 Filed 10–18–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05224]

Eaton Corporation, Cutler-Hammer, Pittsburgh, PA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on August 20, 2001 in response to a petition filed on behalf of workers at Eaton Corporation, Cutler-Hammer, Pittsburgh, Pennsylvania.

The petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of September, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26365 Filed 10–18–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05223]

Eaton Corporation, Cutler-Hammer, Moon Township, PA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on August 20, 2001 in response to a petition filed on behalf of workers at Eaton Corporation, Cutler-Hammer, Moon Township, Pennsylvania.

The petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of September, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26366 Filed 10–18–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04867]

GE Harris Harmon Railway Technology Corp., Formerly Harmon Industries, Inc., Jacksonville, FL; Amended Certification Regarding Eligibility To Apply for NAFTA—Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C 2273), the Department of Labor issued a Certifcation for NAFTA Transitional Adjustment Assistance on August 21, 2001, applicable to workers of GE Harris Harmon Railway Technology, Jacksonville, Florida. The notice was published in the **Federal Register** on September 11, 2001 (66 FR 47243).

At the request of the State agency, the Department received the certification for workers of the subject firm. The workers were engaged in activity related to the production of railway signaling equipment. New information shows that the Department inadvertently failed to identify the subject firm title name in its entirety.

The Department is amending the certification determination to correctly identify the subject firm title name to read GE Harris Harmon Railway Technology, Formerly, Harmon Industries, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA–04867 is hereby issued as follows:

All workers of GE Harris Harmon Railway Technology, formerly Harmon Industries, Inc., Jacksonville, Florida, who became totally or partially separated from employment on or after March 7, 2000, through August 21, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of September, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26347 Filed 10–18–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05047]

Graphic Controls, Cherry Hill Facility Including Temporary Workers of Kaye Personnel, Inc., Cherry Hill, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 150(A), Subchapter D, Chapter 2, Title II of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on September 10, 2001, applicable to workers of Graphic Controls, Cherry Hill Facility, Cherry Hill, New Jersey.

The notice was published in the **Federal Register** on September 21, 2001 (66 FR 48708).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State and the company shows that some employees of Graphic Controls were temporary workers from Kaye Personnel, Inc., Cherry Hill, New Jersey to produce softrans intrauterine pressure catheters, cables and leadwires at the Cherry Hill, New Jersey location of the subject firm.

Based on these findings, the Department is amending the certification to include temporary workers of Kaye Personnel, Inc. employed at Graphic Controls, Cherry Hill Facility, Cherry Hill, New Jersey.

The intent of the Department's certification is to include all workers of Graphic Controls, Cherry Hill Facility, Cherry Hill, New Jersey adversely affected by a shift of production to Mexico.

The amended notice applicable to NAFTA–5047 is hereby issued as follows:

All workers of Graphic Controls, Cherry Hill Facility, Cherry Hill, New Jersey including temporary workers of Kaye Personnel, Inc., Cherry Hill, New Jersey engaged in employment related to the production of softrans intrauterine pressure catheters, cables and leadwires at Graphic Controls, Cherry Hill Facility, Cherry Hill, New Jersey who became totally or partially separated from employment on or after June 26, 2000 through September 10, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of October, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–26352 Filed 10–18–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04917]

Pratt & Whitney Hac, Grand Prairie, TX, Including Temporary Workers of Manpower, ABC Staffing and Resource Management International, Inc. Employed at Pratt & Whitney HAC, Grand Prairie, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on September 10, 2001, applicable to workers of Pratt & Whitney HAC, Grand Prairie, Texas. The notice will be published soon in the **Federal Register.**

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that some employees of the subject firm were temporary workers from Manpower, Grand Prairie, Texas, ABC Staffing, North Richland Hills, Texas and Resource Management International, Inc., Dallas, Texas to produce composites at the Grand Prairie, Texas location of the subject firm.

Based on these findings, the Department is amending the certification to include temporary workers of Manpower, Grand Prairie, Texas, ABC Staffing, North Richland Hills, Texas and Resource Management International, Inc., Dallas, Texas who were engaged in the production of composites at Pratt & Whitney HAC, Grand Prairie, Texas.

The intent of the Department's certification is to include all workers of Pratt & Whitney HAC, Grand Prairie, Texas adversely affected by a shift in production of composites to Mexico.

The amended notice applicable to NAFTA—04698 is hereby issued as follows:

All workers of Pratt & Whitney HAC, Grand Prairie, Texas, including temporary workers of Manpower, ABC Staffing, and Resource Management International, Inc, engaged in the production of composites at Pratt & Whitney HAC, Grand Prairie, Texas, who became totally or partially separated from employment on or after May 29, 2000, through September 10, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of September 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26351 Filed 10–18–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4920]

Triple-O, Inc., Roseburg, OR; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on June 1, 2001 in response to a petition filed by a company official on behalf of workers at Triple-O, Inc., Roseburg, Oregon.

This case is being terminated at the petitioner's request. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 9th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26346 Filed 10–18–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-regulatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled "General Wage determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

District of Columbia
DC010001 (Mar. 2, 2001)
DC010003 (Mar. 2, 2001)
Maryland
MD010034 (Mar. 2, 2001)
MD010048 (Mar. 2, 2001)
MD010056 (Mar. 2, 2001)
MD010057 (Mar. 2, 2001)
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PA010006 (Mar. 2, 2001)
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MI010001 (Mar. 2, 2001)
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MN010039 (Mar. 2, 2001)
MN010051 (Mar. 2, 2001)
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MN010062 (Mar. 2, 2001)

Volume V

None

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AK010001 (Mar. 2, 2001)
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WA010007 (Mar. 2, 2001)
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CA010031 (Mar. 2, 2001)
CA010034 (Mar. 2, 2001)
CA010037 (Mar. 2, 2001)
CA010041 (Mar. 2, 2001)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (http://davisbacon.fedworld.gov) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

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Signed at Washington, DC, this 11th day of October, 2001.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–26039 Filed 10–18–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the administrators for coal mine safety and health and metal and nonmetal mine safety and health on petitions for modification of the application of existing safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of an existing safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term "FR Notice" appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated at Arlington, Virginia, this 11th day of October, 2001.

David L. Meyer,

Director, Office of Standards, Regulations, and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–2001–002–C.
FR Notice: 66 FR 18658.
Petitioner: Kentucky May Mining.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics in lieu of a padlock with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the Genesis Mine. MSHA grants the petition for modification the Genesis Mine with conditions.

Docket No.: M–2001–003–C.
FR Notice: 66 FR 18658.
Petitioner: Eagle Coal Company, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics in lieu of a padlock with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the No. 18 Mine. MSHA grants the petition for modification for the No. 18 Mine with conditions.

Docket No.: M–2001–004–C.
FR Notice: 66 FR 18658.
Petitioner: Long Fork Development, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics in lieu of a padlock with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the No. 5 Mine. MSHA grants the petition for modification for the No. 5 Mine with conditions.

Docket No.: M–2001–005–C.
FR Notice: 66 FR 18658.
Petitioner: Taurus Coal Company, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics in lieu of a padlock with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the No. 8 Mine. MSHA grants the petition for modification for the No. 8 Mine with conditions.

Docket No.: M–2001–006–C.
FR Notice: 66 FR 18658.
Petitioner: Coalburg Enterprises, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics in lieu of a padlock with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the No. 1 Mine. MSHA grants the petition for modification for the No. 1 Mine with conditions.

Docket No.: M–2001–007–C.
FR Notice: 66 FR 18659.
Petitioner: Beech Fork Processing, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics in lieu of a padlock with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the No. 3 Mine. MSHA grants the petition for modification for the No. 3 Mine with conditions.

Docket No.: M–2001–008–C.
FR Notice: 66 FR 18659.
Petitioner: Beech Fork Processing, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics in lieu of a padlock with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the No. 2 Mine. MSHA grants the petition for modification for the No. 2 Mine with conditions.

Docket No.: M–2001–009–C.
FR Notice: 66 FR 18659.
Petitioner: Eagle Coal Company, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics in lieu of a padlock with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the No. 7 Mine. MSHA grants the petition for modification for the No. 7 Mine with conditions.

Docket No.: M–2001–013–C.
FR Notice: 66 FR 28932.
Petitioner: Big Ridge, Inc.
Regulation Affected: 30 CFR 75.503 18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics in lieu of a padlock with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the Willow Lake Portal Mine. MSHA grants the petition for modification for the Willow Lake Portal Mine with conditions.

Docket No.: M–2001–016–C.
FR Notice: 66 FR 28932.
Petitioner: Goodin Creek Contracting, Inc.
Regulation Affected: 30 CFR 75.342.
Summary of Findings: Petitioner's proposal is to use a hand-held continuous multi-gas detector, which detects oxygen, methane, and carbon monoxide, in lieu of a machine mounted methane monitor for the three wheel tractors (Mescher tractors). This is considered an acceptable alternative method for the Goodin Creek #2 Mine. MSHA grants the petition for modification for the Goodin Creek #2 Mine with conditions.

Docket No.: M–2001–028–C.
FR Notice: 66 FR 30232.
Petitioner: DLR Mining, Inc.
Regulation Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: Petitioner's proposal is to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using 240 pounds of rock dust. This is considered an acceptable alternative method for the Nolo Mine. MSHA grants the petition for modification for the Nolo Mine with conditions.

Docket No.: M–2001–033–C.
FR Notice: 66 FR 30232.
Petitioner: American Energy Corporation.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use air coursed through belt haulage entries to ventilate active working places. This is considered an acceptable alternative method for the Century Mine. MSHA grants the petition for modification for the Century Mine with conditions.

Docket No.: M–2001–038–C.
FR Notice: 66 FR 30233.
Petitioner: Faith Coal Sales, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics in lieu of a padlock with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the White Star No. 1 Mine. MSHA grants the petition for modification for the White Star No. 1 Mine with conditions.

Docket No.: M–2001–042–C.
FR Notice: 66 FR 30234.
Petitioner: Branham & Baker Underground Corp.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics in lieu of a padlock with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the Mine No. 2B, Mine No. 10, Mine No. 15, and Mine No. 22. MSHA grants the petition for modification for the Mine No. 2B, Mine No. 10, Mine No. 15, and Mine No. 22 with conditions.

Docket No.: M–2000–008–C.
FR Notice: 65 FR 10563.
Petitioner: Island Creek Coal Company.
Regulation Affected: 30 CFR 75.1100–2(b).
Summary of Findings: Petitioner's proposal is to install a waterline in an entry adjacent to the conveyor belt entry on retreating longwalls equipped with fire hydrants spaced no more than 310 feet apart instead of the current operating procedures granted under a previous petition for modification (M–94–68–C) allowing for hydrants to be spaced no more than 270 feet apart in these entries. This is considered an acceptable alternative method for the VP–8 Mine. MSHA grants the petition for modification for the VP–8 Mine with conditions.

Docket No.: M–2000–015–C.
FR Notice: 65 FR 16966.
Petitioner: RAG Cumberland Resources, LP.
Regulation Affected: 30 CFR 75.503 (Schedule 2G, § 18.35).
Summary of Findings: Petitioner's proposal is to use a 1,000 foot trailing cable on full-face continuous miners and other face equipment during development mining. This is considered an acceptable alternative method for the Cumberland Mine. MSHA grants the petition for modification for the Cumberland Mine with conditions.

Docket No.: M–2000–018–C.
FR Notice: 65 FR 16966.
Petitioner: FKZ Coal, Inc.
Regulation Affected: 30 CFR 75.1200(d) and (i).
Summary of Findings: Petitioner's proposal is to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. This is considered an acceptable alternative method for the Mercury No. 1 Slope Mine. MSHA grants the petition for modification for the No. 1 Slope Mine with conditions.

Docket No.: M–2000–031–C.
FR Notice: 65 FR 31611.
Petitioner: Genwal Resources, Inc.
Regulation Affected: 30 CFR 75.500(b).
Summary of Findings: Petitioner's proposal is to use non-permissible low-voltage or battery powered electronic testing and diagnostic equipment such as lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices ultrasonic thickness gauges, electronic component testers, electronic tachometers and battery operated drills, in or inby the last open crosscut. This is considered an acceptable alternative method for the Crandall Canyon Mine. MSHA grants the petition for modification for the Crandall Canyon Mine with conditions.

Docket No.: M–2000–033–C.
FR Notice: 65 FR 31612.
Petitioner: Sidney Coal Company, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use 4,160-volt longwall face equipment, and submit proposed revisions for its approved Part 48 training plans to the District Manager that would specify initial and refresher training. This is considered an acceptable alternative method for the Rockhouse Energy Mining Company Mine No. 1. MSHA grants the petition for modification for the Rockhouse Energy Mining Company, Mine No. 1 with conditions.

Docket No.: M–2000–043–C.
FR Notice: 65 FR 31610.
Petitioner: Elk Run Coal Company, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use continuous mining machines with nominal voltage of the power circuits not to exceed 2,300 volts in its March 29, 2000, petition for modification. The petitioner amended its petition for modification in May 2000 and requested the stipulations to be changed to use 2,400-volt high-voltage continuous mining machines. This is considered an acceptable alternative method for the Castle Mine. MSHA grants the petition for modification for the 2,400-volt continuous miner(s) used at the Castle Mine with conditions.

Docket No.: M–2000–045–C.
FR Notice: 65 FR 31611.
Petitioner: Roberts Bros. Coal Company.
Regulation Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal is to use a 200KW, 480-volt, diesel powered generator set with an approved diesel drive engine to move equipment in and out of the mine and to perform rehabilitation work in areas outby section loading points. This is considered an acceptable alternative method for the Cardinal #2 Mine. MSHA grants the petition for modification for the Cardinal #2 Mine with conditions.

Docket No.: M–2000–047–C.
FR Notice: 65 FR 40141.
Petitioner: Bowie Resources, Ltd.
Regulation Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal is to use a 460KW, 480-volt, wye connected diesel powered generator for utility power and to move electrically powered mining equipment throughout the mine. This is considered an acceptable alternative method for the Bowie Mine. MSHA grants the petition for modification for the Bowie Mine with conditions.

Docket No.: M–2000–055–C.
FR Notice: 65 FR 40142.
Petitioner: RAG Cumberland Resources LP.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to request that Item 29 of its previously granted petition for modification (M–92–99–C), be amended to allow the widths and lengths of its panels to be increased; and that Item 31 be amended to allow a primary escapeway maintained in accordance with 30 CFR 75.380 be provided on the headgate end of all longwall panels. This is considered an acceptable alternative method for the Cumberland Mine. MSHA grants the petition for modification for the Cumberland Mine with conditions.

Docket No.: M–2000–088–C.
FR Notice: 65 FR 49017.
Petitioner: Elk Run Coal Company, Inc.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine through oil and gas wells. This is considered an acceptable alternative method for the White Knight Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to § 75.1700) plugged oil or gas wells penetrating the Powellton Coal Seam and other mineable coal seams using continuous mining methods for the White Knight Mine with conditions.

Docket No.: M–2000–089–C.
FR Notice: 65 FR 49017.
Petitioner: Elk Run Coal Company, Inc.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine through oil and gas wells. This is considered an acceptable alternative method for the Castle Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to § 75.1700) plugged oil or gas wells penetrating the Powellton Coal Seam and other mineable coal seams using continuous mining methods for the Castle Mine with conditions.

Docket No.: M–2000–090–C.
FR Notice: 65 FR 49018.
Petitioner: Elk Run Coal Company, Inc.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use air that is coursed through belt haulage entries to ventilate active working places and install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries at certain locations. This is considered an acceptable alternative method for the Castle Mine. MSHA grants the petition for modification for the Castle Mine with conditions.

Docket No.: M–2000–091–C.
FR Notice: 65 FR 49018.
Petitioner: Freeman United Coal Mining Company.
Regulation Affected: 30 CFR 75.1909(b)(6).
Summary of Findings: Petitioner's proposal is to use a diesel-grader without front wheel brakes, limit the diesel-grader speed to a maximum speed of 10 miles per hour, lower the grader blade (mold board) to increase stopping capability in emergencies, and provide training for the grader operators on how to recognize appropriate levels of speed for different road and slope conditions. This is considered an acceptable alternative method for the Crown III Mine. MSHA grants the petition for modification for the Crown III Mine with conditions.

Docket No.: M–2000–094–C.
FR Notice: 65 FR 49018.
Petitioner: Elk Run Coal Company, Inc.
Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal is to use high-voltage (4,160-volts) longwall mining equipment at the face. This is considered an acceptable alternative method for the Castle Mine. MSHA grants the petition for modification for the Castle Mine with conditions.

Docket No.: M–2000–095–C.
FR Notice: 65 FR 58818.
Petitioner: Blue Mountain Energy, Inc.
Regulation Affected: 30 CFR 75.1902(c)(2)(i), (ii), (iii).
Summary of Findings: Petitioner's proposal is to store the temporary diesel transportation unit (the unit) no more than 5 cross-cuts from the loading point, or projected loading point during installation, and the last loading point during equipment removal. This is considered an acceptable alternative method for the Deserado Mine. MSHA grants the petition for modification for the Deserado Mine with conditions. The petitioner filed a petition on June 8, 2000, seeking modification of 30 CFR 75.1902(2)(i), (ii), and (iii). On October 30, 2000, the petitioner filed an amended petition to more accurately reflect the current standard 30 CFR 75.1902(c)(2)(i), (ii) and (iii).

Docket No.: M–2000–098–C.
FR Notice: 65 FR 58818.
Petitioner: Black Beauty Coal Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use intake air off the belt and neutral entries to ventilate working sections. This considered an acceptable alternative method for the Air Quality #1 Mine. MSHA grants the petition for modification to allow air coursed through conveyor belt entries to be used to ventilate working places for the Air Quality #1 Mine with conditions.

Docket No.: M–2000–099–C.
FR Notice: 65 FR 58818.
Petitioner: San Juan Coal Company.
Regulation Affected: 30 CFR 75.500(d).
Summary of Findings: Petitioner's proposal is to use non-permissible low-voltage or battery powered electronic testing and diagnostic equipment such as lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices ultrasonic thickness gauges, electronic component testers, electronic tachometers and battery operated drills, in or inby the last open crosscut. This is considered an acceptable alternative method for the San Juan South Mine and the San Juan Deep Mine. MSHA grants the petition for modification for the San Juan South Mine and the San Juan Deep Mine with conditions.

Docket No.: M–2000–100–C.
FR Notice: 65 FR 58818.
Petitioner: Black Beauty Coal Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use intake air off the belt and neutral entries to ventilate working sections. This considered an acceptable alternative method for the Vermilion Grove Mine. MSHA grants the petition for modification to allow air coursed through conveyor belt entries to be used to ventilate working places for the Vermilion Grove Mine with conditions.

Docket No.: M–2000–101–C.
FR Notice: 65 FR 58818.
Petitioner: Genwal Resources, Inc.
Regulation Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal is to use a 480-volt, wye connected, 320 KW portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine. This is considered an acceptable alternative method for the Crandall Canyon Mine. MSHA grants the petition for the modification 480-volt, three-phase, 320KW diesel powered generator (DPG) set, Serial No. 31545, used to supply power to a 400 KVA autotransformer and the three-phase 480- and 995-volt power circuits for the Crandall Canyon Mine with conditions.

Docket No.: M–2000–102–C.
FR Notice: 65 FR 58819.
Petitioner: Genwal Resources, Inc.
Regulation Affected: 30 CFR 75.901.
Summary of Findings: Petitioner's proposal is to use a 480-volt, wye connected, 320 KW portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine. This is considered an acceptable alternative method for the Crandall Canyon Mine. MSHA grants the petition for the modification 480-volt, three-phase, 320KW diesel powered generator (DPG) set, Serial No. 31545, used to supply power to a 400 KVA auto-transformer and the three-phase 480- and 995-volt power circuits for the Crandall Canyon Mine with conditions.

Docket No.: M–2000–103–C.
FR Notice: 65 FR 58819.
Petitioner: West Ridge Resources, Inc.
Regulation Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal is to use a 480-volt, wye connected, 320 KW portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine. This is considered an acceptable alternative method for the West Ridge Mine. MSHA grants the petition for the modification 480-volt, three-phase, 320KW diesel powered generator (DPG) set, Serial No. 31545, used to supply power to a 400 KVA auto-transformer and the three-phase 480- and 995-volt power circuits for the West Ridge Mine with conditions.

Docket No.: M–2000–105–C.
FR Notice: 65 FR 58819.
Petitioner: Gibson County Coal, LLC.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine through oil and gas wells using specific procedures listed in the petition for modification. This is considered an acceptable alternative method for the Gibson Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to § 75.1700) plugged oil or gas wells penetrating the Kentucky No. 9 (Illinois No. 5) seam and other mineable coal seams for the Gibson Mine with conditions.

Docket No.: M–2000–106–C.
FR Notice: 65 FR 58819.
Petitioner: San Juan Coal Company.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and through oil and gas wells within a 300 foot diameter of abandoned oil and gas wells using the specific procedures outlined in its petition for modification. This is considered an acceptable alternative method for the San Juan South Mine and the San Juan Deep Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to § 75.1700) plugged oil or gas wells penetrating the Fruitland No. 8 Coal Seam and other mineable coal seams for the San Juan South Mine and the San Juan Deep Mine with conditions.

Docket No.: M–2000–107–C.
FR Notice: 65 FR 58819.
Petitioner: Sidney Coal Company, Inc.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and through oil and gas wells within a 300 foot diameter of abandoned oil and gas wells using the specific procedures outlined in its petition for modification. This is considered an acceptable alternative method for the Rockhouse Energy Mining Company Mine No. 1. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to § 75.1700) plugged oil or gas wells penetrating the Cedar Grove Coal Seam and other mineable coal seams using continuous miners, conventional mining or longwall mining methods. This is considered an acceptable alternative method for the Rockhouse Energy Mining Company Mine No. 1. MSHA grants the petition for modification for the Rockhouse Energy Mining Company Mine No. 1 with conditions.

Docket No.: M–2000–108–C.
FR Notice: 65 FR 58819.
Petitioner: San Juan Coal Company.
Regulation Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal is to use permissible low-voltage or battery powered electronic testing and diagnostic equipment such as lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices insulation testers (meggers), voltage, current, and power measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, electronic tachometers and may use other testing and diagnostic equipment if approved by the District Manager. This is considered an acceptable alternative method for the San Juan South Mine and San Juan Deep Mine. MSHA grants the petition for modification for the use of low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment within 150 feet of pillar workings for the San Juan South Mine and San Juan Deep Mine with conditions.

Docket No.: M–2000–117–C.
FR Notice: 65 FR 58820.
Petitioner: Genwal Resources, Inc.
Regulation Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal is to use nonpermissible low-voltage or battery powered electronic testing and diagnostic equipment such as lap top computers, osci..oscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressures and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, electronic techometers, inby the last open crosscut, and may use other equipment approved by the District Manager. This is considered an acceptable alternative method for the Crandall Canyon Mine. MSHA grants the petition for modification for the use of low-voltage or battery-powered nonpermissible equipment with 150 feet of pillar, under controlled conditions at the Crandall Canyon Mine with conditions.

Docket No.: M–2000–124–C.
FR Notice: 65 FR 64261.
Petitioner: Parkwood Resources, Inc.
Regulation Affected: 30 CFR 75.100–2(e)(2).
Summary of Findings: Petitioner's proposal is to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using 240 pounds of rock dust. This is considered an acceptable alternative method for the Parkwood Mine. MSHA grants the petition for modification for the temporary electrical installations provided the petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for portable fire extinguisher in 30 CFR 75.1100–1(e) at each of the temporary electrical installations at the Parkwood Mine with conditions.

Docket No.: M–2000–129–C.
FR Notice: 65 FR 64261.
Petitioner: Girdner Mining Company, Inc.
Regulation Affected: 30 CFR 75.342.
Summary of Findings: Petitioner's proposal is to use hand-held continuous-duty methane and oxygen indicators on three-wheel tractors with drag bottom buckets used to load and haul coal from the mine face, but approximately 20 percent of the time they are also used to haul supplies and as a mantrip vehicle. This is considered an acceptable alternative method for the Mine #1. MSHA grants the petition for modification for the Mescher permissible three-wheel battery-powered tractors used to load coal at the Mine #1 with conditions.

Docket No.: M–2000–138–C.
FR Notice: 65 FR 75973.
Petitioner: Black Beauty Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage (2,400-volt) trailing cables inby the last open crosscut at the working continuous miner section(s) g equipment. This is considered an acceptable alternative method for the Riola #1 Mine. MSHA grants the petition for modification for the 2,400-volt continuous miner(s) at the Riola #1 Mine with conditions.

Docket No.: M–2000–142–C.
FR Notice: 65 FR 64261.
Petitioner: D & A Resources, Inc.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's requests is for the Proposed Decision and Order for its previously granted petition for modification, docket number M–96–096–C, be amended to allow the terms and conditions to be used at locations other than the No. 3 bleeder shaft at the Emerald Mine. This is considered an acceptable alternative method for the Emerald Mine #1. MSHA grants the petition for modification for the submersible pumps installed in the No. 3 and No. 4 bleeder shafts and No. 6 return shafts and all future return and/or bleeder shafts in the Emerald Mine No. 1 with conditions.

Docket No.: M–2000–144–C.
FR Notice: 65 FR 75974.
Petitioner: McCoy Elkhorn Coal Corp.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded locking device on mobile battery-powered machines in lieu of padlocks to prevent the battery plugs from accidentally separating from their receptacles, and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Mine No. 14, Mine No. 16, Mine No. 21, and Smithfork Mine No. 1. MSHA grants the petition for modification for the Mine No. 14, Mine No. 16, Mine No. 21, and Smithfork Mine No. 1 with conditions.

Docket No.: M–2000–145–C.
FR Notice: 65 FR 75974.
Petitioner: Ohio County Coal Corporation.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics instead of a padlock to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve, to prevent battery plugs from accidentally separating from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the Freedom Mine. MSHA grants the petition for modification for the Freedom Mine with conditions.

Docket No.: M–2000–147–C.
FR Notice: 65 FR 75975.
Petitioner: Gibson County Coal, LLC.
Regulation Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal is to use a 200 KW/250 KVA, 480-volt, diesel powered generator set to move equipment in and out of the mine(s) and to move equipment underground in emergency situations. This is considered an acceptable

alternative method for the 480-volt, three-phase, 200KW diesel powered generator (DPG)set, supplying power to a 250 KVA three-phase transformer and three-phase 480- and 995-volt power circuits at the Gibson Mine. MSHA grants the petition for modification for the Gibson Mine with conditions.

Docket No.: M–2000–150–C.
FR Notice: 65 FR 75975.
Petitioner: D & F Deep Mine Buck Drift.
Regulation Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal is to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using 240 pounds of rock dust. This is considered an acceptable alternative method for the Buck Drift Mine. MSHA grants the petition for modification for the Buck Drift Mine with conditions.

Docket No.: M–2000–153–C.
FR Notice: 65 FR 75975.
Petitioner: Shamrock Coal Company.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine through a plugged oil and gas the well located adjacent to longwall gate entries and within a proposed longwall mining panel. This is considered an acceptable alternative method for the Shamrock #18 Series Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to § 75.1700) plugged oil or gas wells penetrating the hazard No. 4 Coal Seam and other mineable coal seams at the Shamrock #18 Series Mine with conditions.

[FR Doc. 01–26327 Filed 10–18–01; 8:45 am]
BILLING CODE 4510–43–P

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sunshine Act Meeting

AGENCY: U.S. National Commission on Libraries and Information Science.

ACTION: Notice of meeting.

SUMMARY: The U.S. National Commission on Libraries and Information Science is holding an open business meeting to discuss developments affecting the Commission budget and the appropriate activities for library and information services with regard to homeland security.

DATE AND TIME: NCLIS Business Meeting—October 26, 2001, 8:30 a.m. to 12 p.m.

ADDRESSES: Conference Room, NCLIS Office, 1110 Vermont Avenue, NW., Washington, DC 20005.

STATUS: Open meeting.

FOR FURTHER INFORMATION CONTACT: Rosalie Vlach, Director, Legislative and Public Affairs, U.S. National Commission on Libraries and Information Science, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005, e-mail *rvlach@nclis.gov*, fax 202–606–9203 or telephone 202–606–9200.

SUPPLEMENTARY INFORMATION: The meeting is open to the public, subject to space availability. To make special arrangements for physically challenged persons, contact Rosalie Vlach, Director, Legislative and Public Affairs, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005, e-mail *rvlach@nclis.gov*, fax 202–606–9203 or telephone 202–606–9200.

Dated: October 17, 2001.
Robert S. Willard,
NCLIS Executive Director.
[FR Doc. 01–26535 Filed 10–17–01; 12:23 pm]
BILLING CODE 7527–$$–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Biological Sciences (1110).
Date and Time: November 8, 2001; 8:30 am.–5 p.m. November 9, 2001; 8:30 a.m.–3 p.m.
Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA, Room 1235.
Type of Meeting: Open.
Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 292–8400.
Minutes: May be obtained from the contact person listed above.
Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.
Agenda: GPRA Evaluation and Planning Discussion.

Dated: October 16, 2001.
Susanne Bolton,
Committee Management Officer.
[FR Doc. 01–26439 Filed 10–18–01; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources
Date and Time: November 7; 8:30 am–6:30 pm. November 8; 8:30 am–3 pm.
Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Open.
Contact Person: John B. Hunt, Senior Liaison, ACEHR, Directorate for Education and Human Resources, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230, 703–292–8602.
Summary Minutes: May be obtained from contact person listed above.
Purpose of Meeting: To provide advice and recommendations concerning NSF support for Education and Human Resources.
Agenda: Discussion of FY 2001 programs of the Directorate for Education and Human Resources and planning for future activities.

Dated: October 16, 2001.
Susanne Bolton,
Committee Management Officer.
[FR Doc. 01–26438 Filed 10–18–01; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

NSB Public Service Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: NSB Public Service Award Committee) (5195).
Date/Time: Monday, November 5, 2001, 11 am–12:30 pm EST (teleconference meeting).
Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.
Type of Meeting: Closed.
Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703/292–8096.
Purpose of Meeting: To provide advice and recommendations in the selection of the NSB Public Service Award recipients.
Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 16, 2001.
Susanne Bolton,
Committee Management Officer.
[FR Doc. 01–26432 Filed 10–18–01; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date/Time: Tuesday, November 27, 2001 8:30 am–2 pm
Place: Room 370, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.
Type of Meeting: Closed.
Contact Person: Mrs. Susan E. Fannoney, Program Manager, Room 1220, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703/292–8096.
Purpose of Meeting: To provide advice and recommendations to the President in the selection of the National Medal of Science recipients.
Agenda: To review and evaluate nominations as part of the selection process for awards.
Reason for closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 16, 2001.
Susanne Bolton,
Committee Management Officer.
[FR Doc. 01–26433 Filed 10–18–01; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–186]

University of Missouri—Columbia; University of Missouri—Columbia Research Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Amended Facility License No. R–103, issued to the University of Missouri-Columbia (the licensee), for operation of the University of Missouri-Columbia Research Reactor (MURR), located in Columbia, Missouri.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Amended Facility License No. R–103 to change the license expiration date from November 21, 2001, to October 11, 2006, to recapture the construction time between the issuance date of Construction Fermit No. CPRR–68 (November 21, 1961) and issuance of Facility Operating License No. R–103 (October 11, 1966) to allow a 40-year operating license term.

The proposed action is in accordance with the licensee's application for amendment dated December 27, 2000, as supplemented by letters dated April 12 and June 6, 2001.

The Need for the Proposed Action

The proposed action is needed to recapture the time spent under the construction permit to allow operation of the MURR reactor for a term of 40 years from the date of issuance of the facility license.

Environmental Impacts of the Proposed Action

The MURR is located on a 7.5-acre lot in University Research Park, about one mile (1.6 km) southwest of the University of Missouri main campus in Columbia, Missouri. MURR is a pressurized, reflected, light-water moderated and cooled heterogeneous design reactor. The reactor is fueled with high-enriched, aluminum-clad, plate type fuel. The reactor has a maximum steady-state power level of 10 Megawatts thermal [MW(t)] with the reactor core located in a pressure vessel. The reactor pressure vessel is located in a cylindrically shaped pool and is covered by about 23 feet (7 m) of water during operation for radiation shielding. The reactor pool is surrounded by a biological shield. The reactor is located within a containment building.

The construction permit for the facility (CPRR–68) was issued to the University of Missouri on November 21, 1961. On October 11, 1966, Facility Operating License No. R–103 was issued to the University with a maximum power level of 5 MW(t). On July 9, 1974, Amendment No. 2 to the license was issued increasing the maximum operating power level to 10 MW(t). The facility normally operates on a 24-hour-a-day schedule with a shutdown once a week for refueling and maintenance.

The NRC has completed its evaluation of the proposed action and concludes that the proposed amendment to change the expiration date of the facility license to recapture time between construction and operation to allow for a 40-year operating license term will not result in a significant increase in environmental impacts. The licensee has not requested any changes to the facility design or operating conditions as part of this amendment request. Data from the last ten years of operation was assessed to determine the radiological impact of the facility on the environment.

Environmental surveys are performed by measuring the exposure to 41 thermoluminescent dosimeters (TLDs) placed on and off site at various distances and directions from the facility. The results of this monitoring for all TLDs averaged by year from 1991 to 2000, and the TLD with maximum exposure (both do not include TLDs affected by shipping operations) is as follows:

Year	Average (mrem/yr)	Maximum (mrem/yr)
2000	−1.3	18.6
1999	13.5	43.5
1998	3.4	51.9
1997	9.2	34.8
1996	9.2	34.9
1995	14.6	44.2
1994	20.5	49.7
1993	18.1	28.2
1992	6.3	26.7
1991	4.4	27.3

The 2000 average is slightly negative due to the inadvertent exposure of a control TLD.

In addition, the licensee has calculated the dose to the individual member of the public likely to receive the highest dose from air emission of radioactive material to the environment to demonstrate compliance with 10 CFR 20.1101(d). This regulation provides as low as is reasonably achievable criteria for air emissions which must result in an individual member of the public receiving a total effective dose equivalent (TEDE) of less than 10 mrem per year. The results of calculations for the years 1991–2000, is as follows:

Year	Dose (mrem/yr)
2000	0.8
1999	0.9
1998	0.9
1997	0.7
1996	0.6
1995	0.7
1994	0.5
1993	0.6
1992	0.4
1991	0.4

These doses are within the constraint on air emissions of 10 mrem per year total effective dose equivalent in 10 CFR 20.1101(d).

The radioactive material released from the facility in airborne effluents is given as follows:

Year	Curies released (Argon-41)	Curies released (Total)
2000	975	982
1999	1130	1137
1998	1130	1134
1997	861	870
1996	728	739
1995	878	888
1994	370	385
1993	409	425
1992	470	475
1991	440	441

Airborne effluent releases from the facility consist primarily of argon-41. This is characteristic for research reactors. The releases from the facility met the average concentration requirements of the facility technical specifications. The increase in the amount of radioactive effluents reported released between 1994 and 1995 was the result of a change in the method used by the licensee to sample the effluent. Prior to 1995, the results were based on the analysis of a daily grab sample. From 1995, the activity released was based on calculations performed on data recorded from the gas channel of the exhaust stack radioactivity monitor which is in operation 24 hours a day. Analysis of continuous data provided better accuracy than the grab sample method that only measured the radioactive material concentration in the airborne effluent once per day at the time the sample was taken.

Liquid effluent releases to the sanitary sewer were as follows:

Year	Curies released (Hydrogen-3)	Curies Released (Total)
2000	0.1199	0.1420
1999	0.1670	0.1740
1998	0.5901	0.5980
1997	0.1460	0.1510
1996	0.1487	0.1560
1995	0.0818	0.0900
1994	0.1089	0.1270
1993	0.2574	0.3160
1992	0.1711	0.2150
1991	0.2094	0.2580

Liquid effluent releases from the facility to the sanitary sewer consisted primarily of hydrogen-3. The licensee releases liquid effluent only to the sanitary sewer. The NRC inspection program confirmed that monthly concentrations met regulatory requirements found in Appendix B Table 3 of 10 CFR Part 20 in accordance with 10 CFR 20.2003.

Shipments of radioactive waste offsite for disposal at approved sites were as follows:

Year	Volume (cubic feet)	Activity (mCi)
2000	1207.5	249
1999	565.0	281
1998	910.0	53
1997	420.0	404
1996	337.5	1409
1995	0.0	0
1994	460.0	1228
1993	392.0	60,105
1992	679.0	1924
1991	772.5	1146

The NRC inspection program confirmed that waste shipments met the requirements of the regulations in 10 CFR Part 20 for waste disposal. The licensee did not ship radioactive waste offsite in 1995.

Shipments to return spent reactor fuel to the Department of Energy (DOE) were as follows:

Year	Shipments
2000	1
1999	2
1998	6
1997	4
1996	2
1995	4
1994	1
1993	3
1992	9
1991	0

Eight fuel elements are in each shipment. The fuel is returned to DOE facilities at the Savannah River Plant in Aiken, South Carolina. The NRC inspection program confirmed that fuel shipments met NRC and Department of Transportation requirements for the shipment of radioactive material.

Radiological releases from the facility and associated doses to the public are within regulatory limits or facility technical specifications and do not have a significant impact on human health or the environment. Monitoring of radiation levels in the environment includes soil, vegetative, and water sampling and direct radiation readings. Results of the monitoring program are reported in the Reactor Operations Annual Report and indicate that the facility does not have a significant impact on human health or the environment. Releases of radioactive material from the facility to the environment for the proposed construction permit recapture period are estimated to continue at levels similar to those above, which are well within regulatory limits.

Occupational doses to MURR staff and users meet the regulatory requirements found in 10 CFR part 20, subpart C, and are as low as is reasonably achievable. No changes in reactor operation that would lead to an increase in occupational dose are expected as a result of the proposed action.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to impact historic properties. The facility uses and disposes of small quantities of chemicals [e.g., up to about 5 gallons (20 liters) per year of hydrochloric acid, nitric acid, aqua regia and isopropyl alcohol] in research laboratories. These chemicals are disposed of in compliance with Environmental Protection Agency (EPA) and Missouri Department of Natural Resources requirements by the University of Missouri Environmental Health and Safety Department. These chemical forms and quantities are consistent with small laboratory use at universities.

The quality of the secondary cooling water is maintained using two commercial biocides, a corrosion inhibitor, and sulfuric acid (for pH control). These chemicals are similar to those used in cooling towers for the air conditioning systems of large buildings and enter the environment by evaporation from the tower to the air and by blowdown to the sanitary sewer. About 105 gallons (400 liters) of the two biocides, 700 gallons (2650 liters) of corrosion inhibitor, and 4000 gallons (15,150 liters) of sulfuric acid are used annually. The use of these chemicals is approved by EPA. These chemicals are stored in a manner that will contain the chemicals in the event of material storage container failure. The use and disposal of these chemicals will not have a significant impact on the environment. The proposed action will not result in significant increases in the use of these chemicals.

The facility uses approximately 38 million gallons of water annually. The water is supplied by university owned and maintained deep wells which provide water to the campus. Most of the water (28 million gallons) is used in the cooling tower with the majority of the water lost to the atmosphere as water vapor. Wastewater from the facility discharges to the City of Columbia sewer system and is treated at the Columbia Regional Wastewater Treatment Plant.

The Missouri Department of Conservation has determined that no Federal or State listed plants or animals are known to occur on the MURR site, but did identify two species in the vicinity of the project site. One species, the Topeka Shiner, is listed as endangered. MURR withdraws a minimal amount of groundwater for reactor operation, has no major refurbishment or construction activities planned, and will have no significant change in the types or amounts of effluents leaving the facility as a result of construction permit recapture. Therefore, the proposed action is not expected to affect aquatic and terrestrial biota. The staff concludes there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the proposed action would result in expiration of the current license in November 2001, and the commencement of decommissioning if an application for license renewal is not made. If the application is denied, it is expected that the licensee would apply for renewal of the license. With operation under the proposed action or with a renewed license or during the evaluation of a timely renewal application, the environmental impacts of the proposed action and the alternative are similar.

If the Commission denied the application for license renewal, facility operations would end and decommissioning would be required with no significant impact on the environment. The environmental impacts of the proposed action and this alternative action are similar. In addition, the benefits of education and research conducted by the facility would be lost.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Hazards Analysis Report prepared for initial licensing of the facility and the power upgrade to 10 MW(t).

Agencies and Persons Consulted

In accordance with its stated policy, on September 14, 2001, the staff consulted with the Missouri State official, Mr. Ron Kucera, Director of Intergovernmental Cooperation and Special Projects of the Missouri Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments. In addition, the NRC determined to exercise its discretion to circulate an Environmental Assessment and Finding of No Significant Impact to the public for a 30-day comment period in response to a request from the State of Missouri Department of Natural Resources. The Notice of "Request for Public Comment, Environmental Assessment and Finding of No Significant Impact" appeared in the **Federal Register** on August 1, 2001 (66 FR 39803). During the comment period, the staff received 12 comment letters. All of the comments have been reviewed by the NRC. The majority of the comments received related to the operation of the reactor and other issues not related to the EA or the license amendment request. In response to comments relevant to the EA, several changes were made to the text of the EA to clarify issues raised in the comments.

A "Discussion of Comments Received on the Environmental Assessment for the University of Missouri-Columbia Construction Permit Recapture Amendment" has been prepared by the NRC staff. This document contains the NRC staff's discussion and response to the public comments relative to the EA and copies of the comment letters. This document has accession number ML012850463. Members of the public may view the document by using ADAMS or contacting the Public Document Room staff as discussed below.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 27, 2000, as supplemented by letter dated April 12 and June 6, 2001, and the NRC staff's "Discussion of Comments Received on the Environmental Assessment for the University of Missouri-Columbia Construction Permit Recapture Amendment," which are available for public inspection, and can be copied for a fee, at the U.S. Nuclear Regulatory Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. Persons who do not have access to ADAMS or who have problems in accessing the documents located in ADAMS may contact the PDR reference staff at 1–800–397–4209, 301–415–4737 or by email at pdr@nrc.gov.

Dated at Rockville, Maryland, this 12th day of October 2001.

For the Nuclear Regulatory Commission.

Eugene V. Imbro,

Acting Chief, Operational Experience and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 01–26441 Filed 10–18–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corp; Vermont Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–28, issued to Vermont Yankee Nuclear Power Corporation (VYNPC, the licensee), for operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee) located in Windham County, Vermont. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend the Facility Operating License (FOL) by deleting obsolete information, correcting errors, and make administrative changes to enhance the context and provide consistency.

The proposed action is in accordance with the licensee's application for amendment dated April 23, 2001.

The Need for the Proposed Action

When FOL DPR–28 was issued to the licensee and in subsequent amendments, the NRC staff deemed certain issues essential to safety and/or essential to meeting certain regulatory interests. These issues were imposed as license conditions in the FOL. Since the unit was licensed to operate in the 1970s, most of these license conditions have been fulfilled or changed. For the license conditions that have been fulfilled, the licensee proposed to have them deleted from the FOL. The license conditions that are incorrect or need to be updated are being changed.

The licensee also proposed to make changes to correct administrative errors such as words misspelled and deleted documents being referenced and to provide clarifying information such as identifying deleted license conditions with the applicable amendment number and date and providing consistent paragraph identification.

The fire protection license condition will also be changed to reflect an updated list of applicable NRC safety evaluation reports.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the amendment is granted. No changes will be made to the design and licensing basis, and the applicable procedures at Vermont Yankee will remain the same. Other than the administrative changes, no other changes will be made to the FOL, including the Technical Specifications.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Vermont Yankee dated July 1972.

Agencies and Persons Consulted

On August 6, 2001, the staff consulted with the Vermont State official, William Sherman of the Department of Public Service, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 23, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library Component on the NRC web site, *http://www.nrc.gov* (Public Electronic Reading Room). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 12th day of October 2001.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–26443 Filed 10–18–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Nuclear Industry Consolidation and Deregulation Issues Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will conduct a workshop on issues related to nuclear power industry consolidation and deregulation. The workshop will consist of two sessions. Session 1, "Nuclear Industry Consolidation Issues", will be held from 8:30 a.m. to noon on Thursday, November 1, 2001. The document that forms the basis for discussion for this session is "Preliminary Impact Assessment of Nuclear Industry Consolidation on NRC Oversight (66 FR 34293, June 27, 2001)." The objectives of Session 1 are to discuss the staff's preliminary impact assessment and stakeholder comments on the assessments. Session 1 will be conducted in a "round table" format with discussions, as opposed to presentations, centered on selected focus areas related to nuclear industry consolidation. Suggested focus areas are Plant Operational Safety, Licensing, Inspection, Enforcement & Assessment, Decommissioning, Fuel Cycle Facilities, and Financial-Related Issues. Other issues of concern to the participants will also be discussed. A detailed agenda will be posted on the NRC website before the meeting. Selected staff and invited external stakeholders will be seated at the table to lead the discussions, but comments from all attendees will be entertained.

Session 2, "Effects of Deregulation on Safety—Research Issues", will be held from 1:00 p.m. to 5:30 p.m. on Thursday, November 1, and from 8:00 a.m. to 3:30 p.m. on Friday, November 2. The document that forms the basis for discussion for this session is "Effects of Deregulation on Safety: Implications Drawn From the Aviation, Rail, and United Kingdom Nuclear Power Industries", (NUREG/CR–6735). The primary objective of Session 2 is to recommend a research agenda for NRC to address any significant issues related to deregulation that could affect nuclear power plant safety. A detailed agenda will be posted on the NRC website before the meeting. Subject Matter Experts who have studied the effects of deregulation on safety in the aviation, rail and United Kingdom nuclear power industries, and invited external stakeholders, will be the primary discussants, however, members of the public will be invited to participate in the discussions as time permits.

Both workshop sessions will be open to the public and all interested parties may attend. All persons attending will register at the meeting.

DATES: November 1–2, 2001.

ADDRESSES: Nuclear Regulatory Commission, Two White Flint North Building (TWFN), Auditorium, 11545 Rockville Pike, Rockville, Maryland.

SCHEDULE:

November 1, 8:30 a.m. to 12:00 p.m.. Session 1. Agenda items include: Plant Operational Safety, Licensing, Inspection, Enforcement & Assessment, Decommissioning, Fuel Cycle Facilities, and Financial-Related Issues.

November 1, 1:00 p.m. to 5:30 p.m. Session 2. Agenda items include: Identification, definition, and prioritization of potential research issues.

November 2, 8 a.m. to 3:30 p.m. Session 2. Agenda items include: Potential research methods and research agenda

FOR FURTHER INFORMATION: For Session 1 contact Herbert N. Berkow, Mail Stop O 8 H12, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20–555–0001; Telephone (301) 415–1485 and E-mail at hnb@NRC.GOV. For Session 2, contact Julius J. Persensky, Mail Stop T 10 F13A, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone (301) 415–6759 and E-mail at jjp2@NRC.GOV.

SUPPLEMENTARY INFORMATION: The primary document for Session 1, "Preliminary Impact Assessment of Nuclear Industry Consolidation on NRC Oversight (for comment)", is available electronically by visiting NRC's Home Page (*http://www.nrc.gov/NRC/REACTOR/CONSOLIMPACT*).

The primary document for Session 2, "Effects of Deregulation on Safety: Implications Drawn From the Aviation, Rail, and United Kingdom Nuclear Power Industries", (NUREG/CR–6735), is available electronically by visiting NRC's Home Page (*http://www.nrc.gov/NRC/NUREGS/CR6735*). You may request a free single copy of NUREG/CR–6735 by writing to: Reproduction and Distribution Services Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or E-mail: *DISTRIBUTION@nrc.gov*, or Facsimile: (301) 415–2289.

The NRC is accessible to the Red Line White Flint Metro Station. Visitor parking near the NRC buildings is limited.

Dated at Rockville, Maryland, this 15th day of October, 2001.

For the Nuclear Regulatory Commission.

Thomas L. King,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 01–26442 Filed 10–18–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 3 of Regulatory Guide 1.149, "Nuclear Power Plant Simulation Facilities for Use in Operator Training and License Examinations," describes methods acceptable to the NRC staff for complying with the NRC's regulations associated with approval or acceptance of a simulation facility for use in reactor operator and senior operator training and NRC license examinations.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection or downloading at the NRC's Web site at *www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *DISTRIBUTION@NRC.GOV*. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 12th day of October 2001.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 01–26440 Filed 10–18–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44937; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Request To Extend Temporary Effectiveness of Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., the Pacific Exchange, Inc., and the American, Boston, Chicago, Philadelphia, and Cincinnati Stock Exchanges

October 15, 2001.

I. Introduction

On October 12, 2001, the Cincinnati Stock Exchange, Inc. ("CSE") on behalf of itself and the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange LLC, the Boston Stock Exchange, Inc., ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (hereinafter referred to as the "Participants") [1] submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposal to extend the operation of the Plan [2] for Nasdaq/

[1] The CSE was elected as chair of the Operating Committee for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities and for Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Plan") by the Participants.

[2] *See* letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE, to Jonathan G. Katz, Secretary, SEC, dated October 10, 2001 ("October 2001 Extension Request"). The signatories to the Plan are the Participants for purposes of this release. On October 12, 2001, CSE also submitted an amendment to the October 2001 Extension Request to include Amex as a Participant. *See* letter from Jeff T. Brown, Vice President

Continued

National Market ("Nasdaq/NM") securities traded on an exchange on an unlisted or listed basis.[3] The October 2001 Extension Request would extend the effectiveness of the Plan through November 19, 2001 and also would extend certain exemptive relief as described below. The October 2001 Extension Request does not seek permanent approval of the Plan because the Participants currently are negotiating certain amendments to the Plan for which they will seek approval in the future.[4]

II. Background

The Plan governs the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.[5] The Commission originally approved the Plan on a pilot basis on June 26, 1990.[6] The parties did not begin trading until July 12, 1993; accordingly, the pilot period commenced on July 12, 1993. The Plan has since been in operation on an extended pilot basis.[7]

III. Description of the Plan

The Plan provides for the collection from Plan Participants, and the consolidation and dissemination to vendors, subscribers and others, of quotation and transaction information in "eligible securities."[8] The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access; Description of Operation of Facility Contemplated by the Plan; Method of Frequency of Proposed Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer ("BBO"); Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.[9]

IV. Exemptive Relief

In conjunction with the Plan, on a temporary basis, the Commission granted an exemption to vendors from Rule 11Ac1–2 [10] under the Act regarding the calculation of the BBO.[11] In the October 2001 Extension Request, the Participants ask that the Commission grant an extension of the exemptive relief described above to vendors until the BBO calculation issue is fully resolved.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. The Commission continues to solicit comments regarding the BBO calculation, the trade-through rule and any issues presented by changes occurring in the market place. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposal that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by November 9, 2001.

VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through November 19, 2001, is appropriate and in furtherance of Section 11A [12] of the Act.[13] The Commission had previously stated that a revised Plan must be filed with the Commission by July 19, 2001, or the Commission will amend the Plan directly.[14] The Participants submitted the 12th Amendment to the Plan to the Commission on August 30, 2001, which, among other things, includes a process for selecting an alternative securities information processor. Therefore, to enable the Commission to consider and to solicit comment on the 12th Amendment, the Commission believes that it is appropriate to extend the current Plan.

The Commission notes that the revised final Plan must provide for either (1) A fully viable alternative exclusive securities information processor ("SIP") for all Nasdaq securities, or (2) a fully viable alternative non-exclusive SIP in the event that the Plan does not provide for an exclusive SIP. If the revised Plan provides for an exclusive consolidating SIP, a function currently performed by Nasdaq, the Commission believes that, to avoid conflicts of interest, there should be a presumption that a Plan Participant, and in particular Nasdaq, should not operate such exclusive consolidating SIP. The presumption may be overcome if: (1) The Plan processor is chosen on the basis of bona fide competitive bidding and the Participant submits the successful bid; and (2) any decision to award a contract to a Plan Participant, and any ensuring review or renewal of such contract, is made without that Plan Participant's direct or indirect voting participation. If a Plan Participant is chosen to operate such exclusive SIP, the Commission believes there should be a further presumption that the Participant-operated exclusive SIP shall operate completely separate from any order matching facility operated by that Participant and that any order matching facility operated by the Participant must interact with the plan-operated SIP on the same terms and conditions as any other market center trading Nasdaq-listed securities. Further, the Commission will expect the NASD to provide direct or indirect access to the alternative SIP, whether exclusive or non-exclusive, by any of its members that quality, and to disseminate transaction information and individually identified quotation information for these members through the SIP.

Furthermore, the revised final Plan should be open to all SROs, and the Plan should share governance of all matters subject to the Plan equitably among the SRO Participants. The Plan also should provide for sharing of market data revenues among SRO Participants. Finally, the Plan should provide a role for participation in decision making to non-SROs that have direct or indirect access to the alternative SIP provided by the NASD. The Commission expects the parties to continue to negotiate in good faith on the above matters [15] as well as any other issues that arise during Plan negotiations.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1–16 [16] under the Act until the earlier of November 19, 2001, or until such time as the calculation methodology of the BBO is based on a mutual agreement among the Participants approved by the Commission. The Commission believes that the temporary extension of the exemptive relief provided to vendors is consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) [17] and 11A [18] of the Act and in Rules 11Aa3–1 [19] and 11Aa3–2 [20] thereunder.

VII. Conclusion

It Is Therefore Ordered, pursuant to Sections 12(f) [21] and 11A [22] of the Act and paragraph (c)(2) of Rule 11Aa3–2 [23] thereunder, that the Participants' request to extend the effectiveness of the Plan, as amended, for Nasdaq/NM securities traded on an exchange on an unlisted or listed basis through November 19, 2001, and certain exemptive relief through November 19, 2001, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26399 Filed 10–18–01; 8:45 am]

BILLING CODE 8010–01–M

Regulation and General Counsel, CSE, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001.

[3] Section 12 of the Securities Exchange Act of 1934 ("Act") generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges ("UTP") under certain circumstances. For example, Section 12(f) of the Act, among other things, permits, exchanges to trade certain securities that are traded over-the-counter ("OTC/UTP"), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of the Section 12(f) requirement, *see* November 1995 Extension Order, *infra* note 7.

[4] In accordance with the Commission's statements in its order approving the establishment of the Nasdaq Order Display Facility and Order Collector Facility ("SuperMontage"), the Participants represent that they are revising the Plan. *See* Securities Exchange Act Release No. 43863 (January 19, 2001) 66 FR 8020 (January 26, 2001). As the first step, the Participants submitted the 12th amendment to the Plan ("12th Amendment") on August 30, 2001, which was published for comment in the **Federal Register** on October 2, 2001. *See* Securities Exchange Act Release No. 44882 (September 20, 2001), 66 FR 50226. The revised revenue sharing section of the Plan was approved by the Commission on a temporary basis.

[5] *See* Section 12(f)(2) of the Act, 15 U.S.C. 78*l*(f)(2).

[6] *See* Securities Exchange Act Release No. 28146, 55 FR 27917 (July 6, 1990) ("1990 Plan Approval Order")

[7] *See* Securities Exchange Act Release Nos. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995), 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); 36368 (October 13, 1995); 60 FR 54091 (October 19, 1995); 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) ("November 1995 Extension Order"); 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997); 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998); 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) ("May 1999 Approval Order"); 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); 43005 (June 30, 2000); 65 FR 42411 (July 10, 2000); 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001); 44348 (May 24, 2001), 66 FR 29610 (May 31, 2001); 44552 (July 13, 2001), 66 FR 37712 (July 19, 2001); 44694 (August 14, 2001), 66 FR 43598 (August 20, 2001); and 44804 (September 17, 2001), 66 FR 48299 (September 19,, 2001).

[8] Currently, the Plan defines "eligible security" as any Nasdaq/NM security as to which UTP have been granted to a national securities exchange pursuant to Section 12(f) of the Act or that is listed on a national securities exchange. On May 12, 1999, in response to a request from the CHX, the Commission expanded the number of eligible Nasdaq/NM securities that may be traded by the CHX pursuant to the Plan from 500 to 1000. *See* May 1999 Approval Order, *supra* note 7. On November 9, 2000, the Commission noticed and requested comment on a proposal by the PCX to expand the maximum number of securities eligible to trade to include all Nasdaq/NM securities. *See* Securities Exchange Act Release No. 43545, 65 FR 69581 (November 17, 2000). The Participants have proposed to amend the definition of "eligible security" to include Nasdaq SmallCap securities. *See* 12th Amendment, *supra* note 4.

[9] The full text of the Plan, as well as a "Concept Paper" describing the requirements of the Plan, are contained in the original filing, which is available for inspection and copying in the Commission's Public Reference Room. In addition, the Commission published the Plan in its entirety as proposed to be amended by 12th Amendment. *See* 12th Amendment, *supra* note. 4.

[10] 17 CFR 240.11Ac1–2.

[11] Rule 11Ac1–2 under the Act requires that the best bid or best offer be computed on a price/size/time algorithm in certain circumstances. Specifically, Rule 11Ac1–2 under the Act provides that "in the event two or more reporting market centers make available identical bids or offers for a specified security, the best bid or offer * * * shall be computed by ranking all such identical bids or offers * * * first by size * * * then by time." The exemption permits vendors to display the BBO for Nasdaq securities subject to the Plan on a price/time/size basis.

[12] 15 U.S.C. 78k–1.

[13] In approving this extension, the Commission has considered the extension's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[14] *See supra* note 4. The Commission notes that the SuperMontage order stated the Participants were directed to produce a revised plan by July 19, 2001. The Commission, however, provided for a 3-month extension of the July 19, 2001 deadline if requested by the Participants for good cause. The Commission recognizes that the Participants have been meeting to discuss the alternatives for a new plan and has submitted the 12th Amendment to the Plan.

[15] *See also* discussion in the SuperMontage order, *supra* note 4.

[16] 17 CFR 240.11Ac1–2.

[17] 15 U.S.C. 78*l*(f).

[18] 15 U.S.C. 78k–1.

[19] 17 CFR 240.11Aa3–1.

[20] 17 CFR 240.11Aa3–2.

[21] 15 U.S.C. 78*l*(f).

[22] 15 U.S.C. 78k–1.

[23] 17 CFR 240.11Aa3–2(c)(2).

[24] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [66 FR 52468, October 15, 2001].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, October 18, 2001 at 10 a.m.

CHANGE IN THE MEETING: Additional Item.

The following item has been added to the closed meeting scheduled for Thursday, October 18, 2001:

Report of an investigation.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 16, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–26526 Filed 10–17–01; 12:03 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 22, 2001:

A closed meeting will be held on Tuesday, October 23, 2001, at 9:30 a.m., and an open meeting will be held on Thursday, October 25, 2001, in Room 1C30, the William O. Douglas Room, at 2:30 p.m.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5

U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matters of the closed meeting scheduled for Tuesday, October 23, 2001, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Formal orders.

The subject matters of the open meeting scheduled for Thursday, October 25, 2001, will be:

1. The Commission will consider whether to adopt final amendments to its broker-dealer books and records rules, Rule 17a–3 and Rule 17a–4 under the Securities Exchange Act of 1934. The amendments to Rule 17a–3 would clarify and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. The amendments to Rule 17a–4 would expand the types of records that broker-dealers must maintain and require broker-dealers to maintain or promptly produce certain records at each office to which those records relate. These amendments are designed to assist securities regulators, particularly state securities regulators, when conducting sales practice examinations of broker-dealers. These amendments were originally proposed on October 22, 1996 (see Exchange Act Release No. 37850, 61 FR 55593 (Oct. 28, 1996)), and were reproposed on October 2, 1998 (see Exchange Act Release No. 40518, 63 FR 54404 (Oct. 9, 1998)).

For further information, please contact Michael Macchiaroli, Associate Director, Division of Market Regulation at (202) 942–0132, Thomas McGowan, Assistant Director, Division of Market Regulation at (202) 942–4886, or Bonnie Gauch, Attorney, Division of Market Regulation at (202) 942–0765.

2. The Commission will consider the Pacific Exchange's proposal, filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, to establish the Archipelago Exchange as its equities trading facility.

For further information, please contact John Polise at (202) 942–0068.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 17, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–26570 Filed 10–17–01; 3:57 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44929; File No. SR–Amex–2001–86]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Temporary Use of Personal Cellular Telephones

October 12, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on October 11, 2001, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Amex asserts that the proposed rule change meets the criteria set forth in Rule 19b–4(f)(6)[3] under the Act, which renders the proposal effective upon receipt of the filing by the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A proposed rule change adopting temporary Amex Rule 220T, which allowed Amex members to use personal cellular telephones on a temporary 10-business day basis, became effective on filing on October 1, 2001.[5] The Amex adopted temporary Amex Rule 220T as a result of damage to Amex-provided telephones sustained during the September 11, 2001, attacks on the World Trade Center. The Amex proposes to extend the effectiveness of temporary Amex Rule 220T through and including November 9, 2001, to permit members continue to use personal cellular telephones as long as their service on Amex-provided telephones continues to be limited as a result of damage sustained in the attacks on the World Trade Center. In addition, the Amex proposes to include in the text of temporary Amex Rule 220T procedures applicable to a floor broker who receives an incoming call on a cellular telephone or initiates an outgoing call on a cellular telephone.[6]

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Telecommunications facilities in the western half of downtown New York sustained serious damage as the result of the attacks on the World Trade Center on September 11, 2001. In light of the damage sustained during the September 11, 2001, attacks, the Amex filed a proposal with the Commission to adopt temporary Amex Rule 220T. The proposal to adopt temporary Amex Rule 220T became effective on filing on October 1, 2001.[7] Temporary Amex Rule 220T allowed Amex members to use personal cellular telephones on a temporary ten-business day basis, subject to the conditions in temporary Amex Rule 220T.

The Amex notes that its staff has worked diligently with the Amex's primary telecommunications service providers and member firms to restore the damaged telecommunications facilities to full operational status. The repairs, however, have not been completed. Accordingly, the Amex seeks to extend the effectiveness of temporary Amex Rule 220T through and including November 9, 2001, to permit Amex members (*i.e.*, specialists, registered traders, and floor brokers) to use personal cellular telephones in the event that their service on the Amex's telephone system continues to be limited. In addition, the Amex proposes to amend temporary Amex rule 220T to include in the text of temporary Amex Rule 220T procedures applicable to a floor broker who receives an incoming call on a cellular telephone or initiates an outgoing call on a cellular telephone.

Under temporary Amex Rule 220T, the use by members of personal cellular telephones is subject to the following conditions:

- A member must have (1) tested his or her Exchange-provided telephones and found significant limitations on service, and (2) furnished a written statement to the Exchange to that effect. Members that previously applied to use a personal cellular telephone will be required to reapply for the extension of the effectiveness of temporary Amex Rule 220T;
- A member may not use a personal cellular telephone once full service is restored to the member's or member organization's Exchange telephone systems;
- A member must maintain his or her cellular telephone records, including logs of calls placed, for a period of not less than one year. The Exchange reserves the right to inspect and/or examine such telephone records;
- If a floor broker receives an incoming call on a cellular telephone and the caller wishes to give the floor broker an order for a security traded at the post where the broker is standing, the broker must step out of the crowd prior to accepting the order. In contrast, if a broker receives an incoming call on a cellular telephone and the caller wishes to give the broker an order for a security traded at some other location on the floor, the broker does not have to leave the crowd where he or she is standing in order to receive the order. A floor broker also may initiate an outgoing call on a cellular telephone and (1) accept an order for a security traded at the post where the broker is standing without leaving the trading crowd, or (2) accept an order for a security traded at some other location on the floor; and
- Except as provided in temporary Amex Rule 220T, all other requirements applicable to the use of Exchange-provided telephones by members shall apply to the use by members of personal cellular telephones.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has filed the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3) of the Act and Rule 19b–4(f)(6) thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Amex has asked the Commission to designate such shorter time period so that the proposed rule change may become operative immediately. In this regard, the Amex believes that it would be prudent to permit members to use personal cellular telephones as a temporary back up in the event that regular phone service is not fully restored. In addition, the Amex notes that the Commission previously has permitted floor brokers, lead market makers, specialists, and registered traders on the Pacific Exchange and the Philadelphia Stock Exchange to use personal cellular telephone to conduct business.[13] Moreover, the Amex notes that its proposal contemplates the use of personal cellular telephones on a temporary basis until the current telecommunications difficulties resulting from the September 11, 2001, attacks on the World Trade Center are resolved.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately to allow Amex members to continue to use personal cellular telephones through and including November 9, 2001, subject to the requirements of temporary Amex Rule 220T.[14] The Commission finds that permitting the proposal to become operative immediately is consistent with the protection of investors and the public interest because it will help the Amex to continue to operate effectively while the Exchange and its telecommunications service providers work to repair the damage to the Amex's telecommunications facilities resulting from the September 11, 2001, attacks on the World Trade Center.

The Commission notes that temporary Amex Rule 220T is effective only on a temporary basis through and including November 9, 2001. In addition, the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The Amex has requested that the Commission waive the five-business day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 44890 (October 1, 2001), 66 FR 51482 (October 9, 2001) (notice of filing and immediate effectiveness of File No. SR–Amex–2001–82 ("October 1 Release").

[6] These procedures were included in Amendment No. 2 to the proposal adopting temporary Amex Rule 220T on a temporary ten-business day basis and were discussed in the October 1 Release. *See* note 5, *supra*. The current proposal codifies the procedures applicable to floor brokers in the text of temporary Amex Rule 220T.

[7] *See* October 1 Release, *supra* note 5.

[8] The rules of the Exchange continue to prohibit individuals who are not properly qualified to take public orders for securities (*i.e.*, non-Series 7 member or member firm employees) from interacting with the public. Surveillance of such telephone usage will be accomplished through the record-maintenance requirements of temporary Amex Rule 220T, which requires members to maintain OSC cellular telephone records for at least one year and to give the Exchange the authority to inspect such records.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] *See* Securities Exchange Act Release Nos. 43972 (February 15, 2001), 66 FR 12579 (February 27, 2001) (order approving File No. SR–PHLX–00–48); and 43836 (January 11, 2001), 66 FR 6727 (January 22, 2001) (order approving File No. SR–PCX–00–33).

[14] For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission notes that the relief provided under temporary Amex Rule 220T applies in limited circumstances. Specifically, the Commission notes that under temporary Amex Rule 220T a member may use a personal cellular telephone only if the member has provided the Amex with a written statement indicating that service on the member's Exchange-provided telephone is limited significantly. In addition, a member may not continue to use a personal cellular telephone after full service is restored to the member's Amex telephone systems. The Commission also notes that temporary Amex Rule 220T provides safeguards in connection with the use of personal cellular telephones. In this regard, temporary Amex Rule 220T requires a member to maintain records of his or her cellular telephone calls, including logs of calls placed, for a period of not less than one year. In addition, as described more fully above, temporary Amex Rule 220T specifies procedures applicable to a floor broker who receives an incoming call on a cellular telephone or initiates an outgoing call on a cellular telephone.

A proposed rule change filed under Rule 19b-4(f)(6) normally requires that the self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. However, Rule 196-4(f)(6)(iii) permits the Commission to waive the five-business day pre-filing notice requirement. The Amex has asked the Commission waive the pre-filing notice requirement. The Commission finds good cause to waive the five-business day pre-filing requirement because the Exchange's staff discussed with the Commission staff the need for an extension of temporary Amex Rule 220T prior to filing the proposed rule change. In addition, the Commission notes that the Amex submitted a draft of its proposal for review prior to filing the proposal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–86 and should be submitted by November 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26400 Filed 10–8–01; 8:45 am]

BILLING CODE 8010–01–M

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Self Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Nasdaq National Market Execution System Fees Charged to Non-Members

October 12, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 9, 2001, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nadaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On October 11, 2001, Nasdaq filed Amendment No. 1 with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from John M. Yetter, Assistant General Counsel, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (October 11, 2001) ("Amendment No. 1"). Amendment No. 1 is a technical amendment that amends the proposed rule language to clarify that the filing seeks to modify the fees for use of NNMSs by non-NASD members. Amendment No. 1 also notes that the rule filing, once effective, will be implemented the later of (i) December 1, 2001, or (ii) the first day of the month immediately following Commission approval, and will remain in effect, on a pilot basis, until November 30, 2002.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the fees for use of the Nasdaq National Markett Execution System ("NNMS" or "SuperSOES") charged to national securities exchanges trading Nasdaq-listed securities pursuant to grants of unlisted trading privileges ("UTP Exchanges"), on a pilot basis.[4] The rule filing will become effective upon approval by the Commission and will be implemented the later of (i) December 1, 2001, or (ii) the first day of the month immediately following Commission approval. The rule filing will remain in effect, on a pilot basis, until November 30, 2002. During the pilot period, Nasdaq will assess the effect of the rule change on market participants and Nasdaq and may file additional changes to the level or structure of its fees. The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7010. System Services

(a)(1) Nasdaq Level 1 Service

The charge to be paid by the subscriber for each terminal receiving Nasdaq Level 1 Service is $20 per month. This Service includes the following data:

(A) inside bid/ask quotations calculated for securities listed in The Nasdaq Stockk Market and securities quoted in the OTCC Bulletin Board (OTCBB) service;

(B) the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and

(C) last sale information on securities classified as designated securities in the Rule 4630, 4640, and 4650 Series and securities classified as over-the-counter equity securities in the Rule 6600 Series.

[4] Nasdaq also filed a companion rule filing (SR–NASD–2001–71) to apply these rule changes to NASD members. *See* Securities Exchange Act Release No. 44918 (October 10, 2001). SR–NASD–2001–71, proposes on a pilot basis, or: (1) Modify the fees for use of SuperSOES; (2) modify Nasdaq's liquidty provider rebate; (3) institute a quotation update charge; and (4) introduce a mechamism for sharing market data revenue with NASD members that report substantially all of their trades through the Automated Confirmation Transaction Service ("ACT"). SR–NASD–2001–71 is effective upon filing, and Nasdaq will implement it for a pilot period commencing on December 1, 2001 and ending on November 30, 2002.

(2) Market Data Revenue Sharing

For a pilot period commencing on December 1, 2001 and lasting until November 30, 2002, Full Contribution Members (as defined in Rule 7010(i)(2)) shall receive a market data revenue sharing credit. The total credit consist of two components, a "Base Credit" and a "Supplemental Credit."[5]

(A) A Full Contribution Member's Base Credit shall be calculated in accordance with the following formula:

Base Credit = (0.50) × (Eligible Revenue) × (Member's Volume Percentage)

(B) A Full Contribution Member's Supplemental Credit shall be calculated in accordance with the following formula:

Supplemental Credit = (Eligible Revenue × (Member's Volume Percentage) × (Member's Overall Volume Percentage, not to exceed 10%)

(C) Definitions. The following definitions shall apply to this Rule:

(i) "Eligible Revenue" shall mean:

a. the portion of the net distributable revenues that Nasdaq, through the NASD, is eligible to receive under the Nasdaq UTP Plan, that is attributed to the Nasdaq Level 1 Service for Eligible Securities, minus

b. the portion of the fee charged to Nasdaq by NASD Regulation, Inc. for regulatory services allocated to the Nasdaq Level 1 Service for Eligible Securities.

(ii) "Eligible Securities" shall mean all Nasdaq National Market securities and any other security that meets the definition of "Eligible Security" in the Nasdaq UTP Plan.

(iii) "Member's Volume Percentage" shall mean the average of:

a. the percentage derived from dividing the total number of trades in Eligible Securities conducted on non-Nasdaq transaction systems that the member reports in accordance with NASD trade reporting rules to the Automated Confirmation Transaction Service ("ACT") by the total number of trades in Eligible Securities reported to ACT by NASD members, and

b. the percentage derived from dividing the total number of shares represented by trades in Eligible Securities conducted on non-Nasdaq transaction systems taht the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all trades in Eligible Securities reported to ACT by NASD members.

(iv) "Member's Overall Volume Percentage" shall mean the average of:

a. the percentage derived from dividing the total number of trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of trades in Eligible Securities reported to ACT by NASD members, and

b. the percentage derived from dividing the total number of shares represented by trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all trades in Eligible Securities reported to ACT by NASD members.

(v) "Nasdaq UTP Plan" shall have the meaning set forth in NASD Rule 4720.

(b)–(h) No change.

(i) Transaction Execution Services.

(1) No change.

(2) Nasdaq National Market Execution System (SuperSOES).[6]

(A) The following charges shall apply to the use of the Nasdaq National Market Execution System:

Order Entry Charge: $0.10 per order entry (entering party only)

Per Share Charge: $0.001 per share executed for all fully or partially executed orders (entering party only)

Cancellation Fee: $0.25 per order cancelled (cancelling party only)

(B)(i) For a pilot period commencing on December 1, 2001 and lasting until November 30, 2002, the per share charge will be determined as follows:

Full Contribution Members: $0.002 per share executed for all fully or partially executed orders (entering party only)

Partial Contribution Members: $0.003 per share executed for all fully or partially executed orders (entering party only)

Full Contribution UTP Exchanges: $0.003 per share executed for all fully or partially executed orders (entering party only)

(ii) Definitions. The following definitions shall apply to this Rule:

a. "Full Contribution Member" shall mean an NASD member that reports substantially all of its trades during regular market hours through the Automated Confirmation Transaction Service; provided, however, that for the first three months of the pilot period, all NASD members shall be deemed to be Full Contribution Members. Nasdaq may request that a member submit data demonstrating that it satisfies the definition of a Full Contribution Member, and may deem a member that fails to submit such data upon request to be a Partial Contribution Member.

b. "Partial Contribution Member" shall mean any NASD member that is not a Full Contribution Member.

c. "Full Contribution UTP Exchange" shall mean any national securities exchange trading Nasdaq securities pursuant the Nasdaq UTP Plan (as defined in NASD Rule 4720) that chooses to participate in the automatic execution functionality of the Nasdaq National Market Execution System.

(3) No change.

(4) Liquidity provider rebate.

For a pilot commencing on December 1, 2001 and lasting until November 30, 2002:

(A) Full Contribution Members that do not charge an access fee to market participants accessing their quotations through the Nasdaq National Market Execution System will receive a rebate of $0.001 per share when their quotation is executed against by a Nasdaq National Market Execution System order.

(B) Partial Contribution Members that do not charge an access fee to market participants accessing their quotations through the Nasdaq National Market Execution System will receive a rebate of $0.0005 per share when their quotation is executed against by a Nasdaq National Market Execution System order.

(C) Full Contribution Members and Partial Contribution Members will receive a rebate of $0.001 per share when they send a Nasdaq National Market Execution System order that executes against the quotation of a market participant that charges an access fee to market participants accessing its quotations through the Nasdaq National Market Execution System.

(5) Quotation Updates.

For a pilot period commencing on December 1, 2001 and lasting until November 30, 2002, the following charges shall apply to NASD members for quotation updates at the Nasdaq quotation montage:

Full Contribution Members: $0.01 per quotation update

Partial Contribution Members: $0.03 per quotation update

(j)–(q) No change.

[5] Nasdaq corrected a typographical error that appeared in the proposed rule language. Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, October 10, 2001.

[6] Nasdaq corrected a typographical error that appeared in the proposed rule language. Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, October 10, 2001.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 14, 2000, the Commission issued an order approving a rule change that: (1) Established the NNMS, a new platform for the trading of Nasdaq National Market ("NNM") securities; (2) modified the rules governing the use of SelectNet for trading NNM issues; and (3) left unchanged trading of Nasdaq SmallCap securities through the Small Order Execution System ("SOES") and SelectNet.[7] Nasdaq began implementing these system changes on July 9, 2001 and completed implementation on July 30, 2001. Through these changes, the NNMS has become the primary trading platform for NNM securities, and SelectNet is intended to be used primarily for the transmittal and execution of "non-liability" orders for market makers in NNM securities, as well as the transmittal and execution of "liability" orders to market participants that do not participate in the automatic execution functionality of the NNMS. On September 28, 2001, Nasdaq filed modification to the pricing structure for SelectNet and the NNMS.[8] These changes were designed as an interim modification to begin the process of aligning the charges to market participants for using the NNMS and SelectNet more closely with the costs of providing these services and the benefits that they provide to market participants. On October 3, 2001, Nasdaq filed a rule change, on a pilot basis, to increase the per share charge for use of the NNMS, and introduced a liquidity provider rebate for NASD members.[9]

With this filing and SR–NASD–2001–71, Nasdaq is making additional modifications to the fees for use of the NNMS and the liquidity provide rebate to calibrate the level of fees and rebates to the contributions that each type of market participant makes to the support of the Nasdaq market. Nasdaq is also introducing a mechanism for sharing market data revenue with NASD members that report substantially all trades through ACT. Finally, Nasdaq is introducing a quotation update charge.

Nasdaq represents that the proposal is designed to enhance market efficiency and fairness by offering incentives to market participants that provide liquidity through the NNMS and support Nasdaq operations through trade reporting. The proposal imposes new charges on market participants that use the Nasdaq quotation mechanism to quote, but do not provide meaningful liquidity by exposing and executing orders in Nasdaq. The proposal seeks to reward those who provide meaningful quotes and expose orders for execution in Nasdaq, while building in economic incentives to discourage posting of inefficient quotations that impose burdens on system capacity. In particular, Nasdaq is concerned about the extent to which the quotes of market participants that are displayed in Nasdaq are accessed and/or reported through non-Nasdaq systems. Market participants may advertise their liquidity on Nasdaq, but contribute very little to supporting the quotation, execution, and regulatory infrastructure that underpins the Nasdaq market.

The proposal delineates three types of market participants. A "Full Contribution Member" is defined as an NASD member that reports substantially all of its trades during regular market hours through ACT (either directly or as a result of an execution through a Nasdaq transaction execution system). All other NASD members would be considered "Partial Contribution Members" under the proposal. For the first three months of the pilot period, all NASD members are deemed to be Full Contribution Members. Thereafter, Nasdaq may request that a member submit data demonstrating that it satisfies the definition of a Full Contribution Member, and may deem a member that fails to submit such data upon request to be a Partial Contribution Member. A "Full Contribution UTP Exchange" is defined as any UTP Exchange that chooses to participate in the automatic execution functionality of the NNMS.

Charges for order execution and quotation updates. Under the proposal, the per share charge for orders executed in the NNMS by Partial Contribution Members and Full Contribution UTP Exchanges will increase to $0.003 per share and will remain at $0.002 per share for Full Contribution Members. Nasdaq is also institution a quotation update fee that is applicable to NASD members (but not UTP Exchanges), in recognition of the fact that the ability to post quotes in the Nasdaq quotation montage provides market participants with the valuable opportunity to advertise the liquidity that they offer. Nasdaq believes that the absence of any charges for quotation updates has encouraged market participants to quote inefficiently, imposing unnecessary burdens on Nasdaq system capacity. Moreover, to the extent that quotations are accessed through non-Nasdaq systems, the firms that post the quotations are currently free riding on the quotation infrastructure provided by Nasdaq. Accordingly, Nasdaq will charge Full Contribution Members $0.01 each time their quotation is updated and Partial Contribution Members $0.03 each time their quotation is updated.[10]

Liquidity Provider Rebate. Effective on December 1, 2001, Nasdaq will modify the liquidity provider rebate instituted by SR–NASD–2001–67,[11] by setting the rebate for Partial Contribution Members that do not charge an access fee to market participants accessing their quotations through the NNMS at $0.0005 per share when their quotation is executed against via the NNMS. The rebate for Full Contribution Members that do not charge an access fee to market participants accessing their quotations through the NNMS will remain $0.001 per share when their quotation is executed against via the NNMS, and a rebate of $0.001 per share will remain for all members when they send an NNMS order that executes against the quotation of a market participant that charges an access fee to market participants accessing its quotation through the NNMS.

Market Data Revenue Sharing. Nasdaq proposes to share a portion of market data revenue with Full Contribution Members, the members that do the most to generate such revenues. The proposal is similar to the transaction credit already in effect to share Consolidated Tape Association revenue with NASD members that trade exchange-listed stocks through Nasdaq's Intermarket Trading System[12] and similar revenue sharing programs established by UTP Exchanges.[13] A member's total credit will consist of two parts, a Base Credit and a Supplemental Credit.

A member's Base Credit will be 50% of the product of Eligible Revenue and the Member's Volume Percentage. Eligible Revenue is defined as (i) the portion of the net distributable revenues that Nasdaq, through the NASD, is eligible to receive under the Nasdaq UTP Plan, that is attributed to the Nasdaq Level 1 Service for NNM securities or other securities covered by the Nasdaq UTP Plan ("Eligible Securities"), minus (ii) the portion of the fee charged to Nasdaq by NASD Regulation, Inc. ("NASDR") for regulatory services allocated to the Nasdaq Level 1 Service for Eligible Securities. The Member's Volume Percentage is defined as the average of (i) the percentage derived from dividing the total number of trades in Eligible Securities conducted on non-Nasdaq transaction systems that the member reports in accordance with NASD trade reporting rules to ACT by the total number of trades in Eligible Securities reported to ACT by NASD members, and (ii) the percentage derived from dividing the total number of shares represented by trades in Eligible Securities conducted on non-Nasdaq transaction systems that the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all trades in Eligible Securities reported to ACT by NASD members. In other words, the Base Credit is 50% of the net Level 1 revenue attributable to the member's reports of non-Nasdaq transaction system trades in Eligible Securities, with the pool of sharable revenue being comprised of Level 1 revenues distributable to Nasdaq under the UTP Plan minus an allocated portion of the NASDR regulation fee, and the member's non-Nasdaq transaction system trade report activity being measured by total number of trades and share volume.

In addition, a member may receive a Supplemental Credit, equal to a percentage of the product of Eligible Revenue and the Member's Volume Percentage. The percentage will be the lesser of 10% or the Member's Overall Volume Percentage, which is defined as the average of (i) the percentage derived from dividing the total number of trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of trades in Eligible Securities reported to ACT by NASD members, and (ii) a percentage calculated by dividing the total number of shares represented by trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all trades in Eligible Securities reported to ACT by NASD members. In other words, the Supplemental Credit of up to 10% is based upon all of the member's trade reports, as measured by the total number of trades and share volume.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[14] which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and Section 15A(b)(6) of the Act,[15] which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As the Commission has noted in the context of another self-regulatory organization's fees, the Act "prohibits 'unfair discrimination,' not 'discrimination' simpliciter * * *."[16] Nasdaq believes that the proposed fee structure distinguishes among market participants in order to reward those who do the most to finance market innovations such as SuperSOES and who contribute the most to the liquidity and efficient operation of Nasdaq's market, while imposing higher fees on market participants that receive the benefits of posting quotations on Nasdaq systems but pay relatively little to support the operation of those systems. Thus, the economic incentives embodied by the new fee structure are designed to promote behavior that benefits both the market structure that Nasdaq offers to investors and Nasdaq as a business. As another self-regulatory organization noted when it established a credit available only to certain of its market participants, "measures * * * designed to promote and encourage certain behaviors and/or discourage others * * * [are] an appropriate, nondiscriminatory business strategy."[17]

Moreover, Nasdaq believes that the level of fees charged to market participants under the proposal is reasonable. Nasdaq anticipates that overall fees for the NNMS, SelectNet, and SOES, net of the liquidity provider rebate and the market data revenue sharing credit, will be comparable to overall fees for the NNMS, SelectNet, and SOES under Nasdaq's recently implemented pricing changes. Such fees are, in turn, estimated to slightly lower than overall fees for SelectNet and SOES prior to the introduction of the NNMS.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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[7] *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) (SR–NASD–99–11).

[8] *See* Securities Exchange Act Release No. 44899 (October 2, 2001) (SR–NASD–2001–63) and Securities Exchange Act Release No. 44898 (October 2, 2001) (SR–NASD–2001–64). SR–NASD–2001–63 applied the new fees to NASD members, effective upon filing, and was implemented on October 1, 2001. SR–NASD–2001–64 will apply the new fees to UTP Exchanges and will be implemented on the first day of the month immediately following Commission approval.

[9] *See* Securities Exchange Act Release No. 44910 (October 5, 2001) (SR–NASD–2001–67) and Securities Exchange Act Release No. 44914 (October 9, 2001) (SR–NASD–2001–68). SR–NASD–2001–67 applied these pilot changes to NASD members, effective upon filing, for a pilot period from November 1, 2001 through October 31, 2002. SR–NASD–2001–68 will apply the increase in the per share charge to UTP Exchanges, and will be implemented on the first day of the month immediately following Commission approval.

[10] A quotation update charge will not be imposed on UTP Exchanges at this time, because the Nasdaq Unlisted Trading Privileges Plan (the "Nasdaq UTP Plan") does not currently authorize such a charge.

[11] *See supra* note 9.

[12] *See* NASD Rule 7010(c)(2).

[13] *See, e.g.*, Securities Exchange Act Release No. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999) (SR–CSE–99–03); Securities Exchange Act Release No. 40591 (October 22, 1998), 63 FR 58078 (October 29, 1998) (SR–BSE–98–9); Securities Exchange Act Release No. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997) (SR–CHX–97–01).

[14] 15 U.S.C. 78o–3(b)(5).

[15] 15 U.S.C. 78o–3(b)(6).

[16] Securities Exchange Act Release No. 37250 (May 29, 1996), 61 FR 28629 (June 5, 1996) (SR–CBOE–96–23) (quoting *Timpinaro* v. *SEC*, 2 F.3d 453, 456 (D.C. Cir. 1993)).

[17] Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–72 and should be submitted by November 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26401 Filed 10–18–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region VIII: Wyoming Regulatory Fairness Board; Public Hearing

The Small Business Administration Region VIII Wyoming Regulatory Fairness Board and the SBA Office of the National Ombudsman, will hold a Public Hearing Monday, October 29, 2001 at 8:30 a.m. at the Best Western Dunmar Inn, 1601 Harrison Dr. (Highway 30 West), Evanston, Wyoming 82930, phone (307) 789–3770, to receive comments and testimony from small business owners and representatives of trade associations concerning regulatory enforcement or compliance actions taken by federal agencies.

Anyone wishing to make an oral presentation must contact Mr. Mahlon Sorensen, Regulatory Fairness Coordinator, in writing by letter or fax no later than October 22, 2001, in order to put on the agenda. Mahlon Sorensen, Regulatory Fairness Coordinator, Wyoming District Office, U.S. Small Business Administration, 100 East "B" Street, Suite 4001, Casper, Wyoming 82601, (307) 261–6503 phone (307) 261 6535 fax.

Steve Tupper,

Committee Management Office.

[FR Doc. 01–26330 Filed 10–18–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region V: Wisconsin District Advisory Council; Public Meeting

The Small Business Administration Region V Wisconsin District Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting at 12 noon central time on Wednesday, October 24, 2001, at the MMAC building, 756 North Milwaukee Street, 4th Floor, Milwaukee, Wisconsin 53202, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Yolanda Staples Lassiter, in writing by letter or fax no later than Monday, October 22, 2001, in order to be put on the agenda. The contact information is as follows: Yolanda Staples Lassiter, EDS, U.S. Small Business Administration, 310 West Wisconsin Ave, Suite 400, Milwaukee, Wisconsin 53202, telephone—(414) 297–1090 or (414) 297–3928 fax.

Steve Tupper,

Committee Management Officer.

[FR Doc. 01–26331 Filed 10–18–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3820]

Culturally Significant Objects Imported for Exhibition Determinations: "The Emergence of Jewish Artists in Nineteenth Century Europe"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibit "The Emergence of Jewish Artists in Nineteenth Century Europe," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at The Jewish Museum, of New York, NY, from on or about November 18, 2001, to on or about March 17, 2002, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 11, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 01–26398 Filed 10–18–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3799]

Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission; Notice of a Closed Meeting

The Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission will meet on October 29, 2001, at the Victoria Conference Center, 720 Douglas Street, Victoria, B.C. V8VV 3M7, Canada. This session will involve discussion of the Eighth Annual Meeting of the North Pacific Anadromous Fish Commission, to be held on October 28–November 2, 2001. The discussion will begin at 8 a.m. and is closed to the public.

The members of the Advisory Panel will examine various options for the U.S. position at the Ninth Annual Meeting. These considerations must necessarily involve review of sensitive matters, the disclosure of which would frustrate U.S. participation at the Annual Meeting. Accordingly, the determination has been made to close the 8:00 a.m. meeting pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. Section 552b(c)(9).

Requests for further information on the meeting should be directed to Ms. Sally Cochran, International Relations Officer, Office of Marine Conservation (OES/OMC), Room 5806, U.S. Department of State, Washington, DC 20520–7818. Ms. Cochran can be reached by telephone on (202) 647–1073 or by FAX (202) 736–7350.

Dated: October 5, 2001.

Mary Beth West,

Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 01–26397 Filed 10–18–01; 8:45 am]

BILLING CODE 4710–09–P

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–01–10380]

Hazardous Materials: Knowledge Required for Civil Penalty Enforcement Proceedings; Postponement of Public Meeting and Extension of Comment Period

AGENCY: Office of the Secretary, DOT.

ACTION: Postponement of public meeting and extension of comment period.

SUMMARY: Due to exigencies following the events of September 11, 2001, DOT is postponing a public meeting that had been scheduled for November 14, 2001 and extending the comment period to February 28, 2002. The purpose of the public meeting was to solicit comments for consideration by DOT in developing additional guidance as to when a reasonable person, offering, accepting, or transporting a hazardous material in commerce would be deemed to have knowledge of facts giving rise to a violation of the Federal Hazardous Materials law or the Hazardous Materials regulations.

DATES: Written comments must be received by February 28, 2002.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street SW, Washington, DC 20590–0001. Comments should identify Docket Number OST–01–10380 and be submitted in two copies. You may also submit comments by e-mail by accessing the DOT Dockets Management System website at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: LCDR Thomas Sherman, Intermodal Hazardous Materials Program, Office of Intermodalism, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590. Telephone (202) 366–5846; E-Mail: *Tom.Sherman@ost.dot.gov.*

SUPPLEMENTARY INFORMATION: On August 15, 2001, at the request of industry, we published a notice announcing plans to host a public meeting to solicit comments for consideration by DOT in developing additional guidance as to when a reasonable person, offering, accepting, or transporting a hazardous material in commerce would be deemed to have knowledge of facts giving rise to a violation of the Federal Hazardous Materials law or the Hazardous Materials regulations, 66 FR 42909. Due to exigencies following the events of September 11, 2001, DOT has received a request from the Air Transport Association to postpone the meeting. DOT agrees and hereby postpones the meeting that had been scheduled for November 14, 2001. DOT intends to reschedule a public meeting on the same topic in 2002. We are also extending the comment period to February 28, 2002.

Issued in Washington, DC on October 15, 2001.

Jackie A. Goff,

Director, Intermodal Hazardous Materials Program, Office of Intermodalism.

[FR Doc. 01–26465 Filed 10–18–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Air Carrier and General Aviation Maintenance Issues—New Tasks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new tasks assigned to the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA has assigned two new tasks to the Aviation Rulemaking Advisory Committee. The tasks are related to aeronautical repair station regulations. The first task involves evaluating the current system of ratings and classes for aeronautical repair stations and, if appropriate, recommending a new system. The second task involves evaluating the current requirements for quality assurance programs for aeronautical repair stations and recommending whether the FAA should include such systems in the regulations. The Committee has elected to work these tasks itself rather than establish working groups to develop recommendations.

FOR FURTHER INFORMATION CONTACT: James J. Ballough, Manager, Continuous Airworthiness Maintenance Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3546.

SUPPLEMENTARY INFORMATION:

Background

The FAA established the Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities with respect to aviation-related issues. The Committee addresses a wide range of aviation issues. The committee will address these tasks under Air Carrier and General Aviation Maintenance Issues.

On July 30, 2001, the FAA issued a final rule that revised part 145 of Title 14 of the Code of Federal Regulations (66 FR 41088). In Notice of Proposed Rulemaking No. 99–09 (64 FR 33142; June 21, 1999), the FAA proposed a new system of rating and classes and solicited comments on requirements for a quality assurance program for aeronautical repair stations. Commenters overwhelmingly objected to these proposals. The FAA is seeking advice and recommendations from the Committee before promulgating additional rulemaking on these topics.

Task 1—Repair Station Ratings System Recommendations

Task Summary

Recommend a system to rate aeronautical repair stations that mitigates problems associated with the existing system of ratings and accommodate the growth of the aviation industry.

Committee Activity

- Review the existing system of ratings and classes contained in the current part 145 and any other documents issued by the FAA pertaining to aeronautical repair stations.
- Review comments submitted to FAA in response to the public meetings held in 1989 and the system of ratings proposed in June 1999 in Notice No. 99–09.
- Review challenges reported by Aviation Safety Inspectors (ASIs) under the existing system of ratings.
- Identify the challenges that aeronautical repair stations encounter under the existing system of rating and classes, including those pertaining to:
- Current business practices that are not regulated that may require some form of control;

- Provisions in the current regulation that prevent repair stations from performing desired business practices; and
- Enforcement problems associated with the current regulations.
- Draft a Technical Report that—
- Presents a review of the existing system of ratings and classes;
- Identifies various options for rating systems;
- Identifies the advantages and disadvantages of each option;
- Provides economic information for each of the alternative rating systems; and
- Recommends a preferred system of ratings.

Task 2—Repair Station Quality Assurance Program Recommendations

Task Summary

Recommend a quality assurance program that reflects the industry requirements of aeronautical repair stations and accounts for the varying scope of repair station operations.

Committee Activity

- Review the discussion about quality assurance in the June 1999 Notice of Proposed Rulemaking (Notice No. 99–09).
- Review comments relating to quality assurance submitted to FAA in response to the public meetings held in 1989 and the quality assurance program requirements proposed in Notice No. 99–09.
- Review current industry practices relating to quality assurance issues to—
- Identify quality assurance systems currently used by some repair stations, and
- Analyze the elements of the systems used by the aviation industry.
- Develop a Technical Report that—
- Presents a review of regulatory requirements that comprise a quality assurance program;
- Identifies various options for regulating quality assurance programs;
- Identifies the advantages and disadvantages of each option;
- Provides information on the economic impacts of applying a quality assurance system to various segments of the repair station industry; and
- Recommends a preferred quality assurance program/system.

Delivery Date: The Committee must complete this task by February 28, 2002.

ARAC Acceptance of Task

The Committee has accepted these tasks and elected not to establish working groups to assist in analyzing these tasks because the tasks are time critical.

The new tasks and a plan for accomplishing these tasks will be discussed at the next meeting on Air Carrier and General Aviation Maintenance Issues. The Committee may be required to meet every 4 to 6 weeks to accomplish the tasks within the scheduled completion date. Meeting attendance is open to the interested public but space may be limited. The FAA will arrange teleconference capability for individuals wishing to participate in meetings if we receive notification within the time specified in each notice of meeting.

The Secretary of Transportation determined that the information and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Issued in Washington DC, on October 15, 2001.

James Ballough,

Assistant Executive Director, Air Carrier and General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–26460 Filed 10–18–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Guidance on Instructions for Continued Airworthiness (ICA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on withdrawal of policy memoranda, clarification of regulatory intent, and implementation guidance.

SUMMARY: The FAA invites public comment on its intent to rescind two policy memoranda issued in 1982 and 1983 regarding ICA submittals, and to clarify that ICA are required for all design approvals applied for after January 28, 1981, per Title 14, Code of Federal Regulations (CFR), section 21.50(b). Lastly, a six-point implementation plan is included.

DATES: Comments must be received by November 19, 2001.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, FAA, Aircraft Certification Service, Aircraft Engineering Division, Delegation and Airworthiness Programs Branch, AIR–140, ARB Room 304, 6500 S. MacArthur Boulevard, Oklahoma City, Oklahoma 73169; telephone: (405) 954–7073; fax: (405) 954–4104; e-mail *ruth.harder@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested parties to comment on this notice. Comments should identify the subject, and be submitted to the address specified under **FOR FURTHER INFORMATION CONTACT.** The FAA will consider all comments received by the closing date before issuing final guidance.

Background

The FAA Aircraft Certification Service (AIR) has recently had several certification projects in which the applicability of the requirement to develop Instructions for Continuing Airworthiness (ICA) was a matter of contention. The FAA staff wanted clarity as to whether 14 CFR 21.50(b) requires ICA for supplemental type certificates (STCs) for products for which the the original type certificate (TC) was applied for before January 28, 1981. The language of 14 CFR 21.50(b) is clear, stating, in relevant part:

> The holder of a design approval, including either the type certificate or supplemental type certificate for an aircraft, aircraft engine, or propeller for which application was made after January 28, 1981, shall furnish at least one set of complete Instructions for Continued Airworthiness * * *

Both STCs and amended TCs (ATCs) are design approvals. Under 14 CFR 21.50(b), all STCs and ATCs for which application was filed after January 28, 1981, must provide ICA. This is regardless of the date of application for the original TC.

FAA's AIR predecessor, the Office of Airworthiness, issued memoranda dated August 3, 1982 and August 8, 1983. Both stated that:

> 14 CFR 21.50(b) applies only to type certification, supplemental type certification, and amended type certification projects, whose original certification basis includes a requirement for ICA as amended on September 11, 1980 (effective January 28, 1981).

The 1983 memorandum further states that a project to amend 14 CFR 21.50(b) was initiated to reflect this interpretation. An amendment was never issued. These memoranda have sometimes been relied on as a basis for not requiring ICA for some STC projects.

FAA Policy

FAA legal counsel has determined that these memoranda did not change the plain meaning of 14 CFR 21.50(b). The 1982 and 1983 memoranda are hereby rescinded. AIR's policy is to require adherence to 14 CFR 21.50(b) by submittal of ICA for all design approvals (TC, STC, and ATC) for which application is made after January 28, 1981.

In response to comments already received from Aircraft Certification Offices (ACOs) and Aircraft Evaluation Groups (AEGs), points one through six below provide interim guidance in applying this requirement. AIR–100 will work with ACOs and AEGs to provide follow-on guidance on development and submittal of ICA.

1. Effective immediately, each applicant for a TC, STC, or ATC must submit a complete set of ICA.

2. Design approvals for STCs and ATCs should not be issued until ACO and AEG personnel have accepted the ICA.

3. The FAA will not address certification projects previously approved without ICA at this time. We will not require development of ICA for those products unless ACO and AEG personnel determine that ICA are necessary to prevent or correct an unsafe condition.

4. The ICA for an STC or ATC need only address continued airworthiness with respect to the design change for which application is made, as well as parts or areas of the aircraft affected by the design change. We consider such ICA "complete" for the purposes of 14 CFR 21.50(b).

5. An applicant's submitted assessment of the need for ICA may satisfy the "complete set of ICA." If the assessment shows that the certification project did not change any information, procedures, process, requirements, or limitations in the current ICA, or require new ICA, and the FAA concurs, no further ICA development is necessary.

a. A statement should be placed on the design approval indicating that additional ICA change is not required.

b. For an STC, that statement may be placed under the "Limitations and Conditions" section.

6. If previous ICA or maintenance documents do not exist, or were developed before January 28, 1981, the ICA submitted for a design change should follow the format and contents specified in the appropriate airworthiness standards (14 CFR parts 23–35) appendix to the extent possible. ACOs and AEGs should give consideration to any submittal of ICA containing the essential information to maintain the design change in an airworthy condition.

This guidance does not create any new requirements.

Issued in Washington, DC, on October 11, 2001.

Thomas E. McSweeny,

Associate Administrator for Regulation and Certification.

[FR Doc. 01–26461 Filed 10–18–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–8247; Notice 2]

Cooper Tire & Rubber Company; Grant of Application for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper) has determined that approximately 8,824 motorcycle tires produced at the Melksham, England, tire manufacturing facility of Cooper-Avon Tyres Limited, do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New Pneumatic Tires for Vehicles Other than Passenger Cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Cooper has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on January 2, 2001, in the **Federal Register** (66 FR 131). NHTSA received no comments.

The purpose of FMVSS No. 119, according to S2, is "to provide safe operational performance levels for tires used on motor vehicles other than passenger cars, and to place sufficient information on the tires to permit their proper selection and use." Paragraph S6.5(d) of FMVSS No. 119 requires that each tire be marked with the maximum load rating and corresponding inflation pressure, and provides the following example "Max Load _____ lbs at _____ psi cold."

Cooper's noncompliance relates to the mislabeling of approximately 8,824 tires. The tires are the MT90–16 71H, Load Range B, motorcycle tires sold to one original equipment manufacturer/customer under the brand names AVON MT90–16 Roadrunnner, AVON MT90–16 Gangster, and Avon MT90–16 Indian. These tires were produced with the incorrect maximum load rating on the serial side of the tire during the first through the twentieth production weeks of 2000. Approximately 8,124 of the tires involved have been accounted for in either Cooper's inventory or the inventory of original equipment manufacturer/customer, leaving an estimated 700 tires not accounted for in either inventory. The incorrect plate read "MAX LOAD 345 KG AT 2.9 BAR COLD, 760 LBS AT 42 PSI COLD." The correct information should have been "MAX LOAD 770 LBS AT 36 PSI COLD."

According to Cooper, this mislabeling does not present a safety-related defect. The tires involved are designed to carry a heavier load (770 lbs.) than the incorrect labeling specified (760 lbs.). Consequently, any misapplication of the tire would be for the user to carry a lighter load than the load for which the tires are designed. The tires produced from this mold during the aforementioned production periods comply with all other requirements of 49 CFR 571.119.

Based on the agency's telephone discussions with the petitioner, Cooper management has extensively reviewed the processes, the causes of these noncompliances have been isolated, and changes in the processes have been instituted to prevent any future occurrences. The noncompliance is limited to the equipment addressed in this notice. In addition, Cooper stated that all of its motorcycle tires assembled after this noncompliance were constructed in compliance with FMVSS No. 119 requirements.

The agency has reviewed Cooper's petition and believes this labeling noncompliance is inconsequential as it relates to motor vehicle safety. The primary safety purpose of this label is to ensure that the owners can select a tire appropriate for their motorcycle. In this case, Cooper understated the load carrying capability of the tire by labeling the maximum load on the tire as 760 pounds instead of 770 pounds. Cooper, in effect, produced a better tire than the label would indicate to the purchaser. Regarding the mis-marked inflation pressure, Cooper stated, in a telephone conversation, that the pressure was initially to be labeled on the tire as 36 psi, even though the tire was designed to accommodate a much higher inflation pressure. [Note: Per the Tire and Rim Association's 2000 Yearbook, page 7–09: A motorcycle tire of size MT–90–16, Load Range B, is 783 pounds at 36 psi. In addition, footnote no. 2 on that page states "For special operating conditions, inflation pressure may be increased up to 40 psi maximum with no increase in load]. During the agency's technical discussions with Cooper, the tire manufacturer stated that the tires were designed to accommodate a higher inflation pressure than the mis-marked maximum inflation pressure of 42 psi. Cooper verified with the motorcycle manufacturer using the subject tire as a rear tire that when the tire is inflated to 40 psi, it could safely carry the maximum load. Cooper conducted a safety verification of these various inflation pressures with indoor test

wheels and production motorcycles on a closed track.

The agency agrees with Cooper's rationale that a motorcycle equipped with the mis-labeled tires and loaded per the incorrect maximum load rating would not cause an unsafe condition, because the motorcycle would carry a lighter load than the load for which the tires are designed and be inflated to a pressure level below the tire's designed maximum inflation pressure.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, Cooper's application is hereby granted, and the applicant is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(49 U.S.C. 30118; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 15, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–26463 Filed 10–18–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20982]

Americanos U.S.A., L.L.C., et al.—Acquisition—Autobuses Adame, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Americanos U.S.A., L.L.C. (Americanos), a motor passenger carrier, and Americanos Acquisition Co., L.L.C. (Acquisition), a noncarrier, seek approval under 49 U.S.C. 14303 for acquisition, by either Americanos or Acquisition, of the operating authority and certain other properties of Autobuses Adame, Inc. (Adame), a motor passenger carrier. Additionally, Sistema Internacional de Transporte de Autobuses, Inc. (SITA), Greyhound Lines, Inc. (Greyhound), and Laidlaw, Inc. (Laidlaw), through their control of Americanos and Acquisition, seek approval to acquire control of the operating rights and properties of Adame and to continue in control of Acquisition if and when it becomes a motor passenger carrier. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by December 3, 2001. Applicants may file a reply by December 18, 2001. If no comments are filed by December 3, 2001, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20982 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Fritz R. Kahn, 1920 N Street, NW. (8th floor), Washington, DC 20036–1601.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Americanos (MC–309813) is authorized to conduct regular-route passenger operations between certain points in the Southwestern States, focusing particularly on the Mexican border crossing points at El Paso, Laredo, and McAllen, TX. Americanos and Acquisition are controlled by SITA, which, in turn is controlled by Greyhound. Laidlaw, a noncarrier, indirectly controls Greyhound,[1] which holds nationwide operating authority (MC–1515).[2] SITA holds no operating authority but also controls two other motor passenger carriers: Autobuses Amigos, L.L.C. (MC–340462), operating between Brownsville and Houston, TX; and Gonzalez, Inc., d/b/a Golden State Transportation (MC–173837), operating between Mexican border points and points in various Western States. Adame holds operating authority (MC–237411) to conduct regular-route passenger operations between the Mexican border points at Roma, Hidalgo, and Brownsville, TX, and such cities as Houston, TX, Chamblee, GA, Charlotte, NC, Wilson, NC, Tallahassee, FL, and Immokalee, FL.

Acquisition has entered into an agreement to purchase the operating assets of Adame, including its operating authority. At some point at or before the time of closing, it is expected that Acquisition will be merged with Americanos, leaving Americanos as the surviving corporation. However, if the merger has not been completed at the time of closing, Acquisition will be the entity acquiring Adame's properties. Accordingly, authority is sought to permit either Acquisition or Americanos to be the purchaser, and to permit the merger of Acquisition and Americanos, if necessary.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction that we find consistent with the public interest, taking into consideration at least: (1) The effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transactions are consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicants have shown that the proposed transaction will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges. As to the effect on employees (*see* 49 CFR 1182.2(a)(7)), applicants state that the proposed transaction will have no significant adverse effect on employees. Applicants state that Americanos will be able to offer employment to qualified Adame employees, who they say will be needed to operate the expanded operations of the combined entities.

On the basis of the application, we find that the proposed transactions are consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition is approved and authorized, subject to the filing of opposing comments.

2. The proposed merger and the resulting acquisition and/or continuance in control, if necessary, are approved and authorized, subject to the filing of opposing comments.

3. If timely opposing comments are filed, the findings made in this decision will be deemed to be vacated.

4. This decision will be effective on December 3, 2001 unless timely opposing comments are filed.

5. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th St., SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: October 15, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–26435 Filed 10–18–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received requests from Bowling Green State University, Department of Economics (WB580, August 30, 2001), The University of Missouri St. Louis, Center for Transportation Studies (WB579, August 23, 2001), and the Association of American Railroads (WB463–4, September 28, 2001) for permission to use certain data from the Board's Carload Waybill Samples. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: James A. Nash, (202) 565–1542.

Vernon A. Williams,

Secretary.

[FR Doc. 01–26436 Filed 10–18–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34099]

The Kansas City Southern Railway Company—Acquisition and Merger Exemption—Gateway Western Railway Company and Kansas City Southern Transportation Company

The Kansas City Southern Railway Company (KCSR), Gateway Western Railway Company (GWWR), and Kansas City Southern Transportation Company (KCSTC) jointly filed a verified notice of exemption.[1] As part of a proposed corporate restructuring: (1) KCSTC will convey to KCSR all of the stock it owns in GWWR, which is all of GWWR's issued and outstanding stock, of all classes; and (2) KCSTC and GWWR will be merged into KCSR, with KCSR as the surviving entity. After the transaction is consummated, GWER will remain a wholly owned subsidiary of KCSR. Under the agreement and plan of merger, KCSR will assume all rights, obligations and business functions of its subsidiaries.

The transaction was scheduled to be consummated on or shortly after September 28, 2001, the effective date of the exemption.

The purpose of the transaction is to eliminate multiple filing, reporting and record keeping to and for various entities.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties stated that the transaction will not result in adverse changes in service levels, significant operational changers, or change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Although applicants do not expect any employees to be adversely affected by this merger and control transaction, they have agreed to apply employee protective conditions pursuant to 49 U.S.C. 11326(a). Therefore, any employees adversely affected by the merger and control transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34099 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William A. Mullins, 401 Ninth Street, NW., Suite 1000, Washington, DC 20004.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 12, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–26283 Filed 10–18–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Performance Review Board—Appointment of Members

AGENCY: U.S. Customs Service, Department of the Treasury.

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[1] In addition to Greyhound (Delaware), Laidlaw (Canada) controls (through its subsidiaries Laidlaw Investments, Ltd. (Ontario) and Laidlaw Transportation, Inc. (Delaware)) Hotard Coaches, Inc. (Louisiana) (MC–143881), Coastliner d/b/a Mississippi Coast Lines (Mississippi) (MC–14388), Laidlaw Transit, Inc. (Delaware) (MC–161299), Chatham Coach Lines, Inc. (Delaware) (MC–172751), Willett Motor Coach Co. (New Jersey) (MC–16073), and (through noncarrier Laidlaw Transit Holdings, Inc. (Delaware)) Laidlaw Transit Services, Inc. (Delaware) (MC–163344), and Safe Ride Services, Inc. (Arizona) (MC–246193). In addition Laidlaw controls, through Laidlaw Transit Ltd. (Ontario) (MC–102189), a number of other motor passenger carriers conducting special and charter operations in the United States, including: (a) Greyhound Canada Transportation Corp. (Ontario) (MC–304126), which also controls Voyageur Corp. (Canada) (MC–360339); and (b) Gray Line of Vancouver Holdings Ltd. (Canada) (MC–357855), The Gray Line of Victoria Ltd. (Canada) (MC–380234), I. I. DeNure (Chatham) Limited (Canada) (MC–111143 (Sub-No. 1)), and Penetang-Midland Coach Lines Limited (Canada) (MC–139953 and MC–139953 (Sub-No. 1)).

[2] Greyhound also controls several regional motor passenger carriers: Carolina Coach Company, Inc. (MC–13300), operating in Delaware, Maryland, North Carolina, Pennsylvania, and Virginia; Continental Panhandle Lines, Inc. (MC–8742), operating in Kansas, Oklahoma, and Texas; Peoria Rockford Bus Lines, L.L.C. (MC–66810), operating in Illinois; Texas, New Mexico & Oklahoma Coaches, Inc. (MC–61120), operating in Colorado, Kansas, New Mexico, Oklahoma, and Texas; Valley Transit Company, Inc. (MC–74), operating in Texas; and Vermont Transit Co., Inc. (MC–45626), operating in Maine, Massachusetts, New York, and Vermont.

[1] KCSR, a Class I carrier, operating in the States of Nebraska, Iowa, Kansas, Missouri, Oklahoma, Arkansas, Texas, Louisiana, Mississippi, Tennessee, and Alabama, owns all of the issued and outstanding stock of KCSTC. KCSTC, a noncarrier holding company, owns all of the issued and outstanding stock of GWWR. GWWR, a Class II carrier operating in the States of Kansas, Missouri, and Illinois, owns all of the issued and outstanding stock of Gateway Eastern Railway (GWER), a Class III carrier operating in the State of Illinois.

ACTION: General notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB's is to review senior executives' performance appraisals and to make recommendations regarding performance appraisals and performance awards.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Robert M. Smith, Assistant Commissioner, Human Resources Management, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Room 2.4–A, Washington, DC 20229; Telephone (202) 927–1250.

Background

There are two PRB's in the U.S. Customs Service.

Performance Review Board 1

The purpose of this Board is to review the performance appraisals of senior executives rated by the Commissioner of Customs. The members are:

Donnie Carter, Deputy Assistant Director, Recruitment and Hiring, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury
Anna Fay Dixon, Director, Office of Finance and Administration, Office of the Under Secretary for Enforcement, Department of the Treasury
Kenneth Papaj, Deputy Commissioner, Financial Management Service, Department of the Treasury
Barry Hudson, Director, Office of Financial Management, Department of the Treasury
Tim Skud, Director, Office of Trade and Tariff Affairs, Department of the Treasury.

Performance Review Board 2

The purpose of this Board is to review the performance appraisals of all senior executives except those rated by the Commissioner of Customs. The members are:

William F. Riley, Director, Office of Planning, Office of the Commissioner
Assistant Commissioners:
Douglas M. Browning, International Affairs
Marjorie L. Budd, Training and Development
S.W. Hall, Information and Technology/CIO
C. Wayne Hamilton, Finance/CFO
Dennis H. Murphy, Public Affairs
William A. Keefer, Internal Affairs
Robert M. Smith, Human Resources Management
Deborah J. Spero, Strategic Trade
Bonni G. Tischler, Field Operations
John C. Varrone, Investigations.

Dated: October 15, 2001.

Robert C. Bonner,

Commissioner of Customs.

[FR Doc. 01–26367 Filed 10–18–01; 8:45 am]

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Federal Register

Friday,
October 19, 2001

Part II

Department of Transportation

Federal Highway Administration

23 CFR Part 627 et al.
Design-Build Contracting; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 627, 635, 636, 637 and 710

[FHWA Docket No. FHWA–2000–7790]

RIN 2125–AE79

Design-Build Contracting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is proposing to implement regulations for design-build contracting as mandated by section 1307(c) of the Transportation Equity Act for the 21st Century (TEA–21), enacted on June 9, 1998. The TEA–21 requires the Secretary of Transportation (Secretary) to issue regulations to allow design-build contracting for selected projects. The regulations list the criteria and procedures that will be used by the FHWA in approving the use of design-build contracting by State Transportation Departments (STDs).

The regulation would not require the use of design-build contracting, but allows STDs to use it as an optional technique in addition to traditional contracting methods. The FHWA is soliciting comments on its proposed regulation which would establish prescribed policies and procedures for utilizing the design-build contracting technique on Federal-aid highway projects.

DATES: Written comments must be received on or before December 18, 2001.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dmses.dot.gov/submit*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: *For technical information:* Mr. Gerald Yakowenko, Office of Program Administration (HIPA), (202) 366–1562. *For legal information*: Mr. Harold Aikens, Office of the Chief Counsel (HCC–32), (202) 366–1373, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Background

Section 112(b)(1) of title 23, United States Code, requires highway construction contracts to be awarded competitively to the lowest responsive bidder. A State must use competitive bidding procedures, unless it demonstrates that some other method is more cost effective or that an emergency exists. Similarly, 23 U.S.C. 112(b)(2) requires engineering service contracts to be awarded using qualifications-based selection procedures. Under the "design-build contracting method," one entity (known as the design-builder) performs both engineering and construction of a project under a single contract with the owner. Prior to the TEA–21 (Public Law 105–178, 112 Stat. 107 (1998)), the design-build contracting method did not fully comply with existing statutes; however, the FHWA allowed the States to evaluate the design-build method on an experimental basis under Special Experimental Projects Number 14 (SEP–14)—Innovative Contracting.[1] Under SEP–14, twenty-four States and several local public agencies evaluated the design-build contracting technique.

Transportation Equity Act for the 21st Century

Section 1307 of the TEA–21 defines the term "design-build contract" as "an agreement that provides for design and construction of a project by a contractor, regardless of whether the agreement is in the form of a design-build contract, a franchise agreement, or any other form of contract approved by the Secretary." In addition, section 1307 amends 23 U.S.C. 112 to allow the design-build contracting method after the FHWA promulgates a regulation prescribing the policies and procedures for utilizing the design-build contracting method on qualified Federal-aid highway projects. The TEA–21 defined qualified projects as projects that comply with the criteria in this regulation and whose total costs are estimated to exceed: (1) $5 million for intelligent transportation system projects, and (2) $50 million for any other project. It also provides certain key requirements that the FHWA must address in the development of these regulations. These requirements include, but are not limited to, the following:

- Prior to initiating the rulemaking process, the FHWA must consult with representatives from the American Association of State Highway and Transportation Officials (AASHTO) and representatives from other affected industries;
- The FHWA must complete the rulemaking process within three years of the date of TEA–21 enactment, or by June 9, 2001; and
- The regulation must: (1) Identify the criteria to be used by the Secretary in approving design-build projects, and (2) establish the procedures to be followed by Federal-aid recipients in seeking the FHWA's approval.

In addition, section 1307 modifies FHWA's statutes with several other key provisions regarding the use of the design-build contracting method, including the following:

- In general, an FHWA recipient may award a design-build contract for a "qualified" project using any procurement process permitted by applicable State and local law;
- Section 112(e)(2) of title 23, U.S.C., Standardized Contract Clause Concerning Site Conditions, does not apply to design-build contracts;
- Final design under a design-build contract shall not commence before compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); and
- Prior to the final rule and for projects outside of the qualified project limits, the FHWA may continue experimental evaluation and approval procedures under Special Experimental Project No. 14 (SEP–14)—Innovative Contracting.

[1] Information concerning Special Experimental Project No. 14 (SEP–14), "Innovative Contracting Practices," is available on FHWA's home page: *http://www.fhwa.dot.gov*. Additional information may be obtained from the FHWA Division Administrator in each State.

Report to Congress

Section 1307(f) of the TEA–21, "Report to Congress," requires the FHWA to assess the impacts of design-build contracting by June 9, 2003. Specifically, the FHWA is required to report on the following items:

- An assessment of the effect of design-build contracting on project quality, project cost, and timeliness of project delivery;
- Recommendations on the appropriate level of design for design-build procurements;
- An assessment of the impact of design-build contracting on small businesses;
- An assessment of the subjectivity used in design-build contracting; and
- Such recommendations concerning design-build contracting procedures as the Secretary determines to be appropriate.

Presently the FHWA has little data available concerning the cost-effectiveness of design-build contracting in the transportation industry. Transportation Research Record No. 1351, titled "Final Evaluation of the Florida Department of Transportation's Pilot Design/Build Program,"[2] documents the Florida DOT's (FDOT) early experience with eleven State-funded design-build projects. This study was performed by the University of Florida, Gainesville, FL in 1992.

In a comparison with FDOT's traditional design-bid-build projects, the researchers found that the average design-build direct cost was 4.59 percent greater than the average design-bid-build cost. However, the statistical analysis of the data did not confirm the difference in means (because of the small sample size and the data variability, the direct cost comparison was inconclusive). However, the average design-build construction time was 21.1 percent less than the average for design-bid-build projects. Also, the researchers noted significant differences in the average increases for contract cost. The design-build projects had an average cost increase of 4.09 percent versus FDOT's 1990 design-bid-build project average cost increase of 8.78 percent.

By the time the report to Congress is developed, the FHWA anticipates that there will be more experience with the design-build contracting technique. The FHWA will be in a better position to assess the true impacts of design-build contracting on the transportation industry.

The FHWA welcomes comments on this subject. The agency invites recommendations concerning how we might assess the cost effectiveness of design-build contracting. Also, we invite comment on what techniques and procedures should be used in assessing the issues identified by Congress in section 1307(f).

Pre-Rule Workshop and Outreach

Throughout 1998, 1999, and 2000, the FHWA representatives met with representatives from the AASHTO and other affected industries. During these meetings, the FHWA, the AASHTO and industry discussed issues relating to design-build contracting. The FHWA was invited to attend numerous association annual meetings and also met individually at the request of some industry representatives. The FHWA employees attended the following meetings:

- The American Consulting Engineer's Council (ACEC), March 5, 1999, Washington, DC;
- The Associated General Contractors of America (AGC), March 23, 1999, Las Vegas, NV;
- The American Road Builders and Transportation Association (ARTBA), March 24, 1999, Las Vegas, NV;
- The Design-Build Institute of America (DBIA), March 25, 1999, Las Vegas, NV;
- AASHTO's Standing Committee on Highways, April 17, 1999, Little Rock, AR;
- AASHTO's Subcommittee on Design, June 22, 1999, Dewey Beach DE;
- AASHTO's Value Engineering Conference, July 14, 1999, Branson, MO; and
- AASHTO's Subcommittee on Construction, August 2, 1999, New Orleans, LA.

In 1999, employees from the FHWA's Fort Worth, Texas office performed a field review of existing design-build projects. This team interviewed engineers and administrators who are involved with design-build projects in seven States: Arizona, California, Colorado, Florida, Michigan, Ohio, and Utah. Representatives from construction contractors, design consultants, the STDs, toll road agencies and other individuals were interviewed to share experiences and capture the lessons learned regarding the design-build contracting technique.

The FHWA representatives attended outreach sessions related to the design-build rulemaking effort at two national conferences. The first annual "Design-Build for Transportation Conference" was held April 21–23, 1999, in Salt Lake City, UT. This conference was sponsored by the Design-Build Institute of America, the American Society of Civil Engineers, and the FHWA. A special two-hour outreach session was sponsored by the FHWA to seek comments and suggestions concerning our development of this regulation. The second annual "Design-Build for Transportation Conference" was held March 29–31, 2000, in Tampa, FL. This conference was sponsored by the Design-Build Institute of America, the AASHTO, and the FHWA. An FHWA representative presented an update on the status of the rulemaking effort and several members of the audience expressed their recommendations for items that should be considered in the rulemaking process.

In addition, on December 16, 1999, the FHWA sponsored a one-day pre-rule workshop for the design-build regulation in Washington, D.C. More than 100 registrants from 26 States, Puerto Rico, and the District of Columbia attended. They represented 13 STDs, 1 county, 3 Federal agencies, 2 construction organizations, 12 construction companies, 16 engineering firms, and 1 engineering organization. Representatives from law firms, auditing agencies, insurance companies, and the media also attended the December 16 workshop. Representatives from the AASHTO and each of the major industry associations presented their viewpoints on issues that should be considered in the rulemaking process.

Many of the comments received at these meetings have been incorporated into this document. A summary of the minutes from the December 16, 1999 meeting is available on the FHWA's web page at the following address: *http://www.fhwa.dot.gov/infrastructure/progadmin/contracts/d_build.htm*.

[2] R. D. Ellis, Jr. and A. Kumar, "Final Evaluation of the Florida Department of Transportation's Pilot Design/Build Program," 1992, pp. 94–105 of the Transportation Research Record No. 1351, Transportation Research Board (TRB). This publication is out of print, but a photocopy may be purchased from the TRB Publications Sales Office at Lockbox 289, Washington, DC 20055. Telephone (202) 334–3213. See TRB web site at URL: *http://nationalacademies.org/trb*. A copy is in the file for FHWA Docket No. 2000–7790.

Section-by-Section Analysis

This section includes a section-by-section analysis of the proposed requirements and incorporates summary information regarding comments received during the FHWA's pre-rule workshop and outreach sessions. The comments are, of necessity, summarized in each of the relevant sections of the proposed rule and are intended to provide an overall perspective on the comments submitted to the FHWA concerning design-build contracting.

General Comments

During the pre-rule workship, many individuals and associations recommended that the FHWA keep the rules simple and flexible. It is apparent that States which have evaluated design-build under SEP–14 have their own unique needs and preferences. Each would like to maintain that flexibility and not be limited by any regulation which might hinder project delivery, innovation, or cost savings. The industry associations, on the other hand, raised specific issues concerning the procurement process and the importance of minimizing subjectivity in the selection process. Position papers for the AASHTO and the major industry associations, which participated in the December 16, 1999, pre-rule workshop meeting are posted on the FHWA's web site at: *http://www.fhwa.dot.gov/infrastructure/progadmin/contracts/d_build.htm.*

In general terms, the AASHTO expressed the need for a simple, yet flexible rule which will create a framework for encouraging the development of a design-build process in each State. The rule should not impede project delivery, innovation, or cost savings. The AASHTO encouraged the FHWA to develop a rule which would foster the mainstreaming of the design-build process into the transportation arena. Finally, the AASHTO asserted that a rule cannot be written to ensure complete fairness in the procurement process, but AASHTO noted that STDs must make every reasonable effort to provide an open and understandable process.

The construction industry was represented at the pre-rule workshop meeting by the Associated General Contractors of America (AGC) and the American Road and Transportation Builders Association (ARTBA). They echoed similar comments and reservations regarding issues that should be considered in the proposed rule. The ARTBA stated that there is no clear industry consensus regarding the design-build contracting method. Construction firms often have different opinions depending on such factors as their size and culture. Both the ARTBA and the AGC stated that the traditional "design-bid-build" [3] system is the preferred delivery system for publicly financed transportation construction projects and should be used whenever possible. The AGC said that States should demonstrate how a specific project would benefit from the use of the design-build method before a delivery system is chosen. Both associations are concerned with the potential for subjectivity in the selection process and the need for a fair, equitable, and consistent procurement process.

The ACEC recommended that the proposed rule be crafted in a manner to allow the STDs to evaluate and select the project delivery system which will represent the best value for a specific project. The proposed rule should promote a best value/value-based selection process that evaluates cost, technical qualifications, technical approach, and quality. In broad terms, the ACEC recommended a process which would encourage innovation in addition to design and construction flexibility.

The Design-Build Institute of America (DBIA) illustrated the positive aspects of the design-build process and hoped that the FHWA's proposed rule would provide STDs and local agencies with maximum flexibility in structuring their procurement processes. The DBIA strongly supports the use of a best value selection process in procurement. It blends the attributes of price, qualifications and other technical properties to arrive at the best value for the project owner.

Based on a review of all of the comments received during the pre-rule workshop process, the FHWA proposes to give Federal-aid recipients as much flexibility as possible in the selection of the appropriate form of design-build contracting for their individual projects. We have developed the proposed regulation with two goals in mind:

- Continue the flexibility that exists under the current SEP–14 design-build program, and
- Develop a model for the appropriate use of the design-build process in each State.

This proposed rule would provide a general framework for the procurement of design-build projects, ranging from simple projects which may be awarded on a low-bid basis to complex projects, which may utilize a best-value selection process through competitive negotiation. Federal agencies, which contract directly with the private sector for goods and services, currently have such standards in the Federal Acquisition Regulations (FAR). These regulations define the standards for contracting in direct Federal procurement, including design-build and competitive negotiation. Specifically, the concepts in 48 CFR Part 15, Contracting by Negotiation, provide standards which have been tested by numerous contracting agencies and the courts.

The FHWA proposes to adopt a modified version of the FAR provisions. We believe our proposed rule would satisfy both of the above mentioned goals. Accordingly, the STDs will then have the same degree of flexibility in procurement as other Federal agencies which procure directly for contract services. Also, industry representatives who contract in both the direct Federal and Federal-aid transportation markets will be subject to the same standards of fairness in competitive negotiation.

Specific Comments

Part 627—Value Engineering

It is necessary to amend the existing value engineering regulations in 23 CFR 627 to clarify how the FHWA's value engineering policies apply to design-build projects.

During the pre-rule workshop process, both the AASHTO and the AGC provided recommendations on this subject. The AASHTO believes that the STDs should have the flexibility to use value engineering clauses where appropriate. The AGC stated that value engineering proposals should not be permitted during the proposal stage of design-build procurement, but the AGC believes that post-award value engineering proposals may be acceptable.

The FHWA believes that flexibility is appropriate for this issue. New paragraph (e) in § 627.5 would provide several options for meeting the value engineering provision of § 627.1(a). This provision requires States to perform a value engineering analysis on all National Highway System (NHS) projects with an estimated cost of $25 million or more. The first option noted in the proposed rule would allow STDs to perform a value engineering analysis prior to the initiation of the procurement process. In lieu of this, STDs may require the design-builder or other parties to perform a value engineering analysis at other points in the project development process. Also,

[3] Design-bid-build" means the traditional delivery method where design and construction are sequential steps in the project development process.

in keeping with the FHWA's existing philosophy regarding value engineering change proposal clauses, these provisions may be used at the STD's discretion, but are not required, for design-build projects.

Part 635—Construction and Maintenance

Section 635.102 Definitions

It is necessary to amend the existing regulations to clarify how the FHWA's requirements for Federal-aid construction contracts will apply to design-build projects. A definition is added for "design-build project."

The term "certification acceptance" is removed. Section 1604 of the TEA–21, which replaced 23 U.S.C. 117 (formerly titled "Certification Acceptance"), removed this term and replaced it with the new program "High Priority Projects Program."

Section 635.104 Method of Construction

New paragraph (c) would be added to provide a reference to new part 636 and the contracting provisions for Federal-aid design-build projects.

Section 635.107 Participation by Disadvantaged Business Enterprise

During the design-build pre-rule workshop process, the AASHTO recommended that specific Disadvantaged Business Enterprise (DBE) commitments should not be mandated at the time of award. The AGC stated its belief that DBE requirements should be the same as for traditional projects; however, where STDs are meeting goals through race neutral means, contractual goals should not be stated in the Request for Proposals document. The AGC also stated that DBE utilization should not be a weighted factor in selecting the successful offeror.

The DBE program requirements under the U.S. DOT's DBE regulation in 49 CFR part 26 are applicable to FHWA design-build projects. The STDs may establish an overall DBE contract goal for design-build projects. The design-builder in turn may establish appropriate goals for the subcontracts it lets to meet the overall design-build contract goal. The STDs are to maintain oversight of the design-builder's activities to ensure compliance with the provisions of 49 CFR part 26.

We are proposing several different changes to § 635.107. First, we are proposing to change the title from "Small and disadvantaged business participation" to "Participation by disadvantaged business enterprise." This is being done to be consistent with the terminology in the U.S. DOT's DBE program in 49 CFR part 26. Paragraph (a) would also be modified to provide the correct reference to 49 CFR part 26.

Second, we are proposing to add new paragraph (b) to clarify how DBE requirements will apply to design-build projects. These provisions would state that offerors do not need to furnish the specific commitment information required by 49 CFR 26.53(b)(2) prior to the award of a contract. However, the design-builder must indicate that it can obtain the necessary DBE commitments. If the design-builder cannot obtain the necessary commitments, it must document to the STD its good faith efforts, as described in 49 CFR 26.53. Under 49 CFR 26.53(e), the STD or contracting agency must maintain oversight to ensure contractual requirements are met throughout the life of the contract. Lastly, the proposed rule would prohibit STDs from providing additional credit during the proposal evaluation process for offerors who indicate that they will attain DBE participation above the contract goal. The DBE program requirements are one of many contractual requirements which are binding on the design-builder; however, STDs must not give preferences to offerors who exceed the DBE contract goals.

Section 635.109 Standardized changed condition clauses

Section 1307(b) of TEA–21 modified 23 U.S.C. 112(e)(2) such that the FHWA's requirement to utilize standardized changed condition clauses on all Federal-aid construction projects will not apply to design-build projects. However, depending on the level of risk sharing between the STD and the design-builder, modified versions of these clauses may be appropriate in certain circumstances.

During the pre-rule meeting with the AASHTO and industry, the AGC stated that the proposed rule should require the use of a changed condition clause in design-build contracts. The AGC asserted that such clauses will limit litigation and reduce overall project cost by precluding the need to include contingencies in prices for unknown conditions or for undertaking extensive pre-proposal geologic studies. The ACEC addressed this issue indirectly in recommending that the preliminary design should be advanced to the point where risks, such as differing site conditions, are identified and properly allocated. The other associations did not comment on this issue.

The FHWA believes that certain elements of the standardized changed condition clauses may be appropriate for certain design-build projects. Others may be included at the discretion of the contracting agency depending on the risk allocation for a given project. Specifically, the differing site conditions clause (or a modified version of the clause in 23 CFR 635.109(a)(1)) may be specified by an owner depending on the specific risks and responsibilities which are being allocated to the design-builder.

The "Suspensions of Work Ordered by the Engineer" clause is appropriate in any situation where the contracting agency suspends or delays the work for an unreasonable time period. Therefore, the FHWA is requiring its use on all design-build contracts.

The intent of the "Significant Changes in the Character of Work" clause in 23 CFR 635.109(a)(3) is to provide equitable adjustments for changes in quantities and other alterations in the work (designed by the owner) as necessary to complete the project. In the case of a design-build project, the STD may have delegated this responsibility to the design-builder and it may not be appropriate to include such change clauses in a design-build contract. In addition, the "lump sum payment" structure of most design-build contracts does not correlate with the "unit price payment" structure of traditional design-bid-build contracts. In other cases, an owner may believe that it is appropriate to include provisions similar to the "significant changes in the character of work" clause in a design-build contract. However, such use would be optional under this proposed rule.

New paragraph (c) would be added to require the use of the standardized suspensions of work ordered by the engineer clause [23 CFR 635.109(a)(2)] for all design-build projects. However, the STDs would be encouraged to consider using differing site condition clauses and significant changes in the character of work clauses which are appropriate for the risk and responsibilities that are shared with the design-builder.

Section 635.110 Licensing and Qualification of Contractors

The FHWA proposes to amend this section to clarify how the requirements for licensing and qualification of contractors would apply to design-build contracts. During the pre-rule workshop process there were several comments on this issue.

The AASHTO recommended that contracting agencies be permitted to require contractor prequalification and licensed engineers in accordance with

the owner's requirements or State and local statutes. The ACEC recommended that flexibility be provided in prequalification and licensing requirements to allow a design firm to lead the design-build team. While the AGC did not specifically comment on this issue, it indicated that prequalification is a necessary element in the design-build process to limit the number of design-builders that will incur the expense of preparing proposals.

The ARTBA suggested that contracting agencies should use some type of screening process which might be based on prequalification, a surety bond system, or merely a demonstration of understanding technical requirements. However, the ARTBA recommended against a short listing process as it believes that anyone who is qualified to perform the work should be allowed to submit a proposal. The DBIA stated that prequalification is essential for effective design-build contracting. The DBIA recommended that the proposed rules provide that design-builders must clearly demonstrate their ability to become licensed or to practice professionally in the State in which the project is located.

In consideration of all of these comments, the FHWA has proposed to allow States to require certain prequalification requirements if required by their own statutes or procedures. Prequalification may be required as a condition of a proposal submission if it is required by State statute or policy; however, the STD must allow adequate time between project advertisement and the opening of cost/technical proposals for proposers to become prequalified.

In addition, new paragraph (f) would be added to allow the STDs to use their own bonding, insurance, licensing and qualification procedures for any phase of design-build procurement. Geographic preferences are prohibited. The STDs may require offerors to demonstrate their ability to become licensed; however, licensing procedures may not serve as a barrier for the consideration of otherwise responsive proposals.

Section 635.112 Advertising for Bids

During the pre-rule workshop process, the AASHTO recommended that the FHWA authorization should take place prior to offering the project for advertisement. The AASHTO suggested that this authorization should carry through the rest of the project's development.

We are proposing two changes to this section. First, this section would be retitled to read "Advertising for bids and proposals." We prefer the term "proposal" rather than "bids" for design-build contracting. The term "bid" is usually associated with an invitation for bids under the design-bid-build method of contracting. The term "proposal" is usually associated with the design-build contracting method.

Second, we are proposing to add new paragraph (i). Paragraph (i) would amend the requirements of this section for a design-build project. The FHWA Division Administrator's approval of the Request for Proposals (RFP) document will constitute the FHWA's project authorization and the FHWA's approval of the STD's request to release the RFP document. The STD may decide the appropriate solicitation schedule for the project advertising, release of the request for proposals, and proposal submission deadlines.

Section 635.113 Bid Opening and Bid Tabulations

New paragraph (c) would be added to allow STDs to use their own procedures for the process of receiving, reviewing and processing design-build proposals. The STD will submit a tabulation of proposal costs to the FHWA Division Administrator as is presently done for traditional design-bid-build projects.

Section 635.114 Award of Contract and Concurrence in Award

New paragraph (k) would provide a reference to the design-build contracting requirements of part 636.

Section 635.116 Subcontracting and Contractor Responsibilities

The FHWA's current subcontracting provision requires the prime contractor to perform at least 30 percent of the work (less specialty items). During the pre-rule workshop process, the AASHTO recommended that the States be allowed to determine the required percentage of work to be performed by the design-builder and/or its subcontractors. The DBIA recommended that the FHWA not establish a requirement, but leave this issue to the discretion of the design-builder. The ACEC recommended flexibility in all procurement policies to allow the situation where a design firm serves as the leader on a design-build team. The AGC recommended no change in the existing requirement. The other associations did not provide comments on this issue.

The FHWA proposes to provide greater flexibility in this area for design-build contracts. We believe that the contract agency is in the best position to establish minimum percentages of work that must be accomplished by the design-builder. Therefore, the proposed rule would not apply the existing 30 percent requirement to design-build projects. At their discretion, STDs may establish minimum percentages of the work which would be accomplished by the design-builder.

Accordingly, we propose to add new paragraph (d). Paragraph (d) would allow the STDs to determine the minimum amount of work which must be accomplished by the design-builder. In addition, the FHWA has also included a prohibition on any procedure, requirement, or preference which imposes minimum subcontracting requirements or goals (other than those necessary to meet the Disadvantaged Business Enterprise program requirements of 49 CFR part 26). Subcontracting goals may serve as a local contracting preference, thereby presenting an artificial contractual barrier to the design-builder's ability to manage an efficient contract. Therefore, we are proposing to prohibit subcontracting goals.

Section 635.122 Participation in Progress Payments

The proposed rule would add paragraph (c) which would require STDs to specify how progress payments will be made in the RFP document on lump sum design-build contracts.

Section 635.309 Authorization

This proposed rule would define the RFP document approval as the key point in the Division Administrator's authorization of a design-build project. The Division Administrator's approval of the RFP document would constitute the FHWA's authorization of the project. This includes approval to proceed with the advertisement /release of the RFP document and, subject to concurrence-in-award, proceed with the design and construction of the project. The requirements for authorization of a design-build project are added in a new paragraph (p).

Section 635.411 Material or Product Selection

In general, the associations supported the concept of applying the existing restrictions for proprietary products to design-build projects. The current requirement for traditional design-bid-build construction projects generally prohibits the STDs from specifying proprietary products in the plan and specifications, unless the proprietary product is: (1) Bid competitively with equally suitable unpatented products, (2) used for research, or (3) necessary for synchronization purposes. For design-build projects, the prohibition on specifying proprietary products would apply to the requirements in the RFP document. The design-builder would be free to use a proprietary product if it met the requirements of the design-build contract.

The AASHTO stated that the proprietary product restrictions should be in accordance with current requirements. Any allowable exceptions should be clearly defined in the contract documents. The AGC stated that the specification of proprietary products in the RFP should be strongly discouraged. The AGC believed that specifying proprietary products undermines the design-builder's creativity in developing a proposal to meet the owner's needs. The DBIA stated the current prohibition for specifying proprietary products in the contract documents should be continued. The STDs employing design-build should be using performance specifications seeking quality end results in lieu of means and methods prescriptive specifications. The FHWA concurs with the recommendations of the associations and this proposed rule would extend the current requirements to the design-build RFP document. The requirements for material or product selection in design-build contracts are added in paragraph (f).

Section 635.413 Warranty Clauses

There was a difference of opinion among the associations regarding the use of warranty clauses on design-build projects. Some, but not all, of the associations elected to comment on the warranty issue. The AASHTO stated that the use of warranties should be at the owner's discretion. If an owner believes that warranties are desirable, they should carefully consider and clearly communicate the requirements in the RFP document. The ACEC expressed concern over any attempt to extend uninsurable warranty provisions to professional engineering services. The AGC stated that warranty requirements should not be addressed in the proposed rule. The AGC believes that this is a significant issue that should be addressed separately. The DBIA indirectly addressed this issue in the subject of risk allocation. The DBIA supports the concept of appropriate risk delegation by including warranty provisions only where certain design and construction features are within the control of the design-builder.

The FHWA recognizes the significant concern regarding warranty issues and agrees with the AASHTO that STDs should have the discretion to use warranties where appropriate. The proposed rule would not amend the current warranty regulation in 23 CFR 635.413 which limits the application of warranties to specific products or construction features on NHS projects. The STDs would continue to use their own warranty procedures on non-NHS projects.

Part 636—Design-Build Contracting

This part would provide new requirements for Federal-aid design-build projects. The agency believes it is necessary to provide additional explanation for certain new requirements which are not self-explanatory. Specific comments on these new provisions follow.

Section 636.102 Does This Part Apply to Me?

This part is written in the plain-language format. The pronoun "you" refers to the STD, the primary recipient of Federal-aid funds in a State. Where the STD has an agreement with a local public agency (or other governmental agency) to administer a Federal-aid design-build project, the term "you" will also apply to that contracting agency.

Section 636.103 What Are the Definitions of Terms Used in This Part?

Many of the definitions used in this section are taken from the DBIA's "Design-Build Manual of Practice,"[4] Document Number 103. Modifications are made to certain terms to agree with the actual use in the Federal-aid highway program. Other definitions, such as the definition of a "qualified project," are taken from section 1307 of the TEA–21.

Section 636.106 What Type of Projects May Be Used With Design-Build Contracting?

In its recommendations to the FHWA, the AASHTO stated that the proposed rules for design-build should not limit a State's ability to gain maximum benefit from the process. States should not be prohibited from using the most effective selection process for each individual project. Similarly, the ACEC recommended that owners should be provided with the flexibility to adopt the project delivery method that offers the best value, given the unique opportunities, constraints, risks, and demands of a particular project. The DBIA strongly supported a process which will encourage the use of design-build. On the other hand, both the ARTBA and the AGC expressed reservations with the design-build method and recommended that the traditional design-bid-build method remain the preferred method of contracting. The AGC stated that design-build should only be allowed for use on Federal-aid projects where it can be demonstrated that traditional contracting methods are not appropriate or where there are unique problems or circumstances associated with a particular project. The ARTBA recognized that there may be certain projects that will lend themselves to design-build including projects incorporating innovative financing arrangements (certainty in price and/or scheduling), and projects incorporating specific technical challenges. The ARTBA, however, believes that design-build should only be used where it would provide the public with a real advantage which is not readily provided by the traditional design-bid-build method. The ARTBA also recommended that the estimated contract amount should not be a determining factor in an owner's criteria to use design-build.

Considering the sharp division of comments offered by the associations, and the congressional mandate of section 1307, we propose providing broad discretion to the States regarding project selection criteria. We have not set specific criteria which limit the type of projects which are suitable for design-build contracting. This is a subject which is better addressed in non-regulatory guidance.

Under SEP–14, the States have evaluated more than 140 design-build projects since 1991. These projects include various types of surface transportation projects, including the following: simple roadway resurfacing, bridge replacements, interchange modifications, intelligent transportation system installation, roadways on new alignment, vehicle emission inspection stations, ferry boats, tunnel reconstruction and mega-construction projects, such as the I–15 reconstruction in Utah. Based on the FHWA's experience with the SEP–14 program, we do not believe that it is necessary or appropriate to limit the design-build contracting technique to projects with a certain type of work or contract size. Federal-aid recipients will be given the flexibility to choose the correct contracting method which is appropriate for the project objectives based on project delivery time, cost, construction schedule and/or quality.

[4] The Design-Build Manual of Practice," Document Number 103 (Design-Build Definitions), is available for purchase from the Design-Build Institute of America, 1010 Massachusetts Avenue, N.W., Suite 350, Washington, D.C. 20001 ($9 for DBIA members; $12 nonmembers). Online publication information is available at URL: *http://www.dbia.org/pubs.*

Section 636.107 Does the Definition of a "Qualified Project" Limit the Use of Design-Build Contracting?

The TEA–21 requires the FHWA to establish the procedures to be followed by an owner for obtaining the Secretary's approval for the use of design-build contracting. The procedures for obtaining the FHWA's approval for traditional project authorization are established and well known by the STDs. The procedures for requesting the FHWA authorization of Federal-aid design-build projects would be the same as any other project funded by the FHWA. However, after the effective date of the final rule, design-build projects which do not meet the TEA–21 definition of a "qualified project" must follow SEP–14 procedures.

The AASHTO recommended that all design-build projects be exempt from the SEP–14 process once a final rule is developed. If this is not possible, the AASHTO recommended that the FHWA Division Offices be granted approval authority for the SEP–14 program because they have a better understanding of State and local needs. The AASHTO also advocates a simplification of the SEP–14 process and a change in the "qualified project" limit from $50 million to $10 million.

The FHWA agrees with many of the AASHTO's recommendations; however, the definition of a "qualified project" is a statutory requirement which the FHWA cannot change. Under the proposed rule, the FHWA Division Offices would use the provisions of the final rule in approving "non-qualified" projects for inclusion under SEP–14. Projects which do not comply with the provisions of the final rule will be referred to the FHWA Headquarters for concept approval under SEP–14.

Section 636.108 How Does the Definition of a "Qualified Project" Apply to ITS Projects?

The AASHTO recommended that an ITS design-build project be defined as one that applies information and control technologies to improve the safety, efficiency, and operation of the transportation system.

In defining a "qualified project" in section 1307 of the TEA–21, the Congress did not provide additional guidance on the $5 million limitation for ITS projects. For this reason, the FHWA is reluctant to provide further clarification in the proposed rule. However, we believe that for eligibility purposes, a design-build project with an estimated cost of $5 million or more, which is primarily for ITS technology purposes, complies with the definition of a "qualified project."

Section 636.109 How Does the NEPA Review Process Relate to the Design-Build Procurement Process?

Several of the associations provided comments regarding the application of the FHWA's National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) requirements to design-build projects. The following are the views of the industry associations concerning the relationship of the NEPA process and the design-build procurement process.

The AASHTO recommended that the NEPA process be completed prior to the award of a design-build project to ensure that all environmental concerns and remedial measures are sufficiently detailed for the design-builder. However, in cases where environmental impacts are expected to be minimal and the outcome of the NEPA review appears certain, the AASHTO believes the RFP document could be released after approval of the final environmental impact statement. The AASHTO stated that the responsibility for obtaining environmental approval rests with the owner. Also, the AASHTO recommended that the public's perception of the NEPA process and its relation to the design-build procurement process should be carefully considered. Additionally, the AASHTO suggested that the NEPA and design-build project delivery issues are best addressed by the individual project owner in consultation with the FHWA Division Office.

The AGC indicated that the NEPA process should be complete prior to the selection of the design-builder. The AGC supports the concept of the owner being responsible for all necessary environmental permits.

The ACEC was concerned about the potential adverse public perception where the design-build procurement process is initiated prior to the conclusion of the NEPA process. The ACEC recommended that the FHWA discourage owners from releasing the RFP document prior to the completion of the NEPA process. However, the ACEC suggested the solicitation of qualifications should be allowed at the discretion of the owner.

The FHWA agrees with many of the recommendations provided by the associations. Section 1307(a)(3)(B) of the TEA–21 states the following: "Final design under a design-build contract referred to in subparagraph (A) shall not commence before compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332)." The FHWA believes the congressional intent of this provision was to ensure full compliance with NEPA for all design-build projects. To ensure a complete unbiased NEPA process, it is imperative that the STDs perform a level of design and environmental review which is necessary to fully evaluate the range of reasonable alternatives chosen to meet project goals and avoid adverse environmental impact. Project design activities beyond this stage involve a certain level of risk.

The FHWA's NEPA review process was developed to ensure that environmental impact information for any federally funded action is available to public officials and citizens before decisions are made and before actions are taken. The success of the NEPA process is based on the assumption that there will be an objective and unbiased review of all reasonable alternatives that address project needs and are prudent in terms of avoiding potential environmental effects. Moreover, the public perception of the NEPA review process is very important to the FHWA and STDs. The perception of an unbiased review process should not be compromised by a decision to release the design-build RFP prior to the conclusion of the NEPA review process. Therefore, the NEPA review process should be complete (an approval received for a Categorical Exclusion, Finding of No Significant Impact, or a Record of Decision as defined in 23 CFR 771.113(a)) prior to releasing the RFP document.

The FHWA's environmental regulations require the evaluation of alternatives, their environmental consequences, and the incorporation of mitigation measures (avoidance, minimization, and compensation) prior to proceeding with an action. Project activities beyond those necessary to answer environmental questions during the NEPA review process (for example: final design, right-of-way acquisition, and construction) are not permitted prior to the conclusion of the NEPA review process.

The FHWA also agrees with the association recommendations to ensure that the RFP document address all environmental commitments and mitigation measures. Due to the nature of the design-build process, proposers often expend significant effort preparing technical and cost proposals in response to an RFP. Therefore, STDs have a responsibility to: (1) Ensure that the RFP scope of work includes the details related to all environmental commitments and (2) assure proposers that the scope will not change as a result of the environmental review process.

This will minimize the need for proposers to include contingencies in their cost proposals.

The proposed rule would allow the request for qualifications (RFQ) solicitation to proceed prior to the conclusion of the NEPA process. However, the RFP should not be released prior to the conclusion of the NEPA process.

Section 636.110 What Procedures May Be Used for Solicitations and Receipt of Proposals?

Rather than adopting a modification of FAR provisions for this subject, the FHWA has elected to allow the States to use their own procedures for the solicitation and receipt of proposals.

Section 636.111 Can Oral Presentations Be Used During the Procurement Process?

The proposed language in this section is a modified version of the requirement in 48 CFR 15.102, Oral Presentations. The modifications provide flexibility for State procurement officials.

Section 636.112 May Stipends Be Used?

All of the associations which provided comments to the FHWA during the pre-rule workshop meeting supported both the owner's use of stipends and Federal-aid participation in the cost of stipends. The AASHTO indicated that the payment of stipends to firms submitting competitive proposals should be at the owner's discretion. The AGC recommended that the stipend be based on some formula related to the value of the project and not selected arbitrarily. The AASHTO also stated that owners should have full rights to retain and use ideas from proposals when stipends are accepted by the offerors. The DBIA said that stipends are an effective means for encouraging competition. When used in combination with short listing or prequalification procedures, the contracting agency will benefit from a cost effective procurement process.

Based on our preliminary experience with SEP–14 design-build projects, the FHWA agrees that stipends appear to be cost effective on large projects where offerors may be required to incur significant costs to submit a proposal. The use of stipends in such cases should: (1) Offset costs incurred by the offerors for their substantial efforts and thereby ensure a minimum level of competition through the end of the procurement process, (2) ensure that smaller companies are not put at a significant competitive disadvantage, and (3) send a message to potential offerors that the owner is serious about awarding a contract and receiving a quality proposal.

Section 636.113 Is the Stipend Amount Eligible for Federal Participation?

The cost of stipends is eligible for Federal-aid participation. The FHWA has listed a range of costs based on the estimated proposal development costs. In addition, the proposed rule states that STDs may retain the right to use ideas from unsuccessful offerors if State law provides for this.

Section 636.114 What Factors Should Be Considered in Risk Allocation?

The AASHTO recommended that the assignment of risk be determined by the owner and clearly defined in the procurement and contract documents. The ACEC stated that the RFP document should clearly define the owner's requirements and assign risk to the party who is best able to manage it. The AGC cautioned against the temptation to shift all project related risk to the design-builder. The AGC recommended that contracts incorporate standardized change condition clauses to reduce the offeror's need to cover contingencies through increased project costs. The AGC also supports the concept of incentive and disincentive provisions to reduce the actual construction time and reduce impacts to the traveling public. The DBIA noted that an unfair allocation of risks to offerors may lead to increased bid prices, change order disputes, and litigation costs. According to the DBIA, studies have shown that the risk best belongs to the party who is best able to evaluate, control, and bear the cost of the risk. Many risks and liabilities are best shared. Every risk has an associated and unavoidable cost, which must be assumed somewhere in the process.

The FHWA concurs with the recommendations of the Associations. Section 636.114 would encourage STDs to identify, consider, and allocate risks in the procurement documents.

Section 636.115 May I Meet With Industry To Gather Information Concerning the Appropriate Risk Allocation Strategies?

The proposed requirements of this section are modified from 48 CFR 15.201, Exchanges with Industry Before Receipt of Proposals. This section will encourage the STDs to gather the appropriate information concerning risk allocation prior to the initiation of the procurement process. The FHWA is proposing modifications to the FAR provisions to give the STDs the necessary flexibility in procurement.

Section 636.116 What Organizational Conflict of Interest Requirements Apply to Design-Build Projects?

The organizational conflict of interest subject generated significant comments from many associations. Several commenters requested that owners be required to list specific conflict of interest provisions in all solicitations for design-build projects. Most of the associations believed that the owner's consultant or sub-consultant (who was involved in the development or preparation of the RFP document) should be excluded from the proposal process because this may present a real or an apparent conflict of interest. In addition, the AASHTO recommended that consultants or sub-consultants who participate as offerors should not be involved in the evaluation of proposals or the administration of design-build contracts. However, the AASHTO suggested that, at the option of the owner, a consultant should be allowed to join multiple proposal teams.

The AGC recommended that the regulation should not prohibit consultants from working for more than one bidder or from participating on the successful design-build team if the consultant worked with a different firm during the proposal stage.

The ACEC is concerned about the potential for conflict of interest when an owner's consultant joins one of the prospective offerors. However, it identified cases where it may be appropriate to allow the owner's sub-consultants to participate in the proposal process. One example might be where the sub-consultant provides limited information in the project development process and this information is provided to all offerors (such as a geotechnical engineering firm).

The DBIA stated that, as an overall guideline, relationships between owner's consultants and design-build team members should be avoided. Owner's consultants should not be permitted to participate on design-build proposal teams. However, an exception may be made for certain consultants who assisted the owner with project development activities on very large projects with multiple designers, provided that the information prepared by these consultants is available to all offerors.

We incorporated many of these recommendations in the proposed rule; however, we also recognize that it is not practical to address every specific instance where the appearance of a

conflict, or an actual conflict of interest may arise. State statutes and practices in this area will govern. The proposed rule provides flexibility by requiring the apparent successful offerors to submit certifications regarding actual or apparent organizational conflicts of interest. The owners will then have the ability to make a determination regarding actual or apparent conflicts and take the appropriate action in accordance with State standards prior to the award of the contract.

Section 636.117 What Conflict of Interest Standards Apply to Individuals Who Serve as Selection Team Members for the Owner?

The ACEC recommended that members of the selection team sign non-disclosure statements, non-conflict-of-interest statements, and agreements not to become an employee, agent, or consultant to the successful designer-builder for the duration of the project.

The proposed rule provides flexibility for States to use their own standards regarding personal conflicts of interest; however, in the absence of such State provisions, the requirements of Title 48 CFR Part 3, Improper Business Practices and Personal Conflicts of Interest, will apply to selection team members.

Section 636.118 Is Team Switching Allowed After Contract Award?

The AASHTO recommended that successful offerors be allowed to add members to their teams after project award with approval of the owner. In addition, the AASHTO said that State rules related to changes in team members or changes in personnel within teams should be explicitly stated by the owner in the project advertisement. On the other hand, the ACEC recommended that the proposed rule prevent the switching of team members after selection. This recommendation was based on the ACEC's belief that if an owner uses qualifications and technical capabilities as a factor in the selection process, then steps need to be taken to prevent the restructuring of the team after project award.

In general, FHWA agrees with the ACEC recommendation. However, some flexibility is appropriate to provide owners with the ability to review team changes or team enhancements on a case-by-case basis. Accordingly, the FHWA believes the proposed rule provides the necessary flexibility.

Section 636.119 How Does This Part Apply to a Project Developed Under a Public-Private Partnership?

Under the proposed rule, the FHWA is making a distinction between: (1) Public-private partnership projects utilizing traditional Federal-aid funding and (2) public-private partnership projects utilizing some form of loan assistance from FHWA.

The FHWA recognizes the significant risks and responsibilities accepted by private entities in a public-private partnership agreement. Private entities must often consider the risks associated with financing, planning, designing, constructing, maintaining and operating public facilities for long time periods. In some situations, the FHWA's participation in such projects may be limited to a loan, loan assistance (guarantee), line of credit or other means of credit assistance. At the end of the loan period, the Federal investment in the project may be zero.

In the first case, the FHWA's procurement policies would apply to any project that utilizes traditional Federal-aid funding. If an owner utilizes traditional Federal-aid funding in the cost of work done under a public-private franchise agreement, then the FHWA procurement policies apply to the procurement of the franchise. If an owner elects to utilize traditional Federal-aid funding in only a portion of the work done under a franchise agreement (such as a design-build contract under the franchise agreement), then the FHWA procurement policies would only apply to that particular contract. The FHWA procurement policies include qualification-based-selection procedures for engineering service contracts, competitive bidding requirements for construction contracts, and the requirements of this part for design-build contracts.

In the second case, FHWA's procurement policies would not apply to work done under a public-private partnership agreement if the only form of FHWA funding is loan assistance. If the procurement process for the public-private partnership was a competitive process, then the public-private entity may select consultants, construction contractors or design-builders in whatever manner it sees fit. However, the public-private entity must comply with State laws and procedures. This policy is consistent with the FHWA's May 10, 1996, guidance memorandum concerning "Guidance on Section 313(b) of the National Highway System Act Loan Provisions under Section 129(a)(7) of Title 23" (see *http://www.fhwa.dot.gov/innovativefinance/ifg.htm*).

However, all Federal-aid recipients should be aware that general Title 23, U.S. Code, provisions (environment, right-of-way, etc.) will apply to all FHWA projects regardless of whether traditional Federal-aid funding or loan assistance is used. In addition, any construction or design-build contract which utilizes any form of FHWA funding must comply with the FHWA's requirements for construction contracts in 23 CFR part 635 including Buy America, Davis-Bacon minimum wage rates, and others.

Subparts B through F

These subparts propose additional requirements for the design-build procurement process. As previously noted in the General Comments section, the FHWA is adopting modified FAR provisions from 48 CFR Part 15, Contracting by Negotiation, and 48 CFR 36.3, Two-Phase Design-Build Selection Procedures. The industry representatives at the pre-rule workshop meeting did not voice particular concerns regarding the individual requirements in these subparts. However, the representatives did provide general comments regarding the design-build procurement process.

The AASHTO believes that the procurement process for design-build projects should be left to each STD's discretion. This will allow each State to adapt a procurement system to their needs and their legislative authority. In addition, the AASHTO believes that the selection criteria and award formulas should clearly be communicated to offerors in the RFP document.

The ACEC recommended that the FHWA develop rules and regulations for the design-build procurement process. The process should be flexible and allow the owners to select an appropriate procurement vehicle for the size and complexity of the project. However, the process should maintain a system of checks and balances to guarantee the integrity of the selection process. The ACEC believes that the following steps will assist in maintaining integrity:

(1) Develop specific judging rules and a fully pre-defined point award system that is specified in the Request for Qualifications (RFQ) and/or RFP documents.

(2) Place significant weight on qualifications and technical approach. The cost weight may vary from project to project; however, it should not be over-emphasized at the expense of other important criteria.

(3) Assign knowledgeable personnel to the selection team. Enforce integrity and conflict-of-interest standards to maintain a separation of interests between the owner and industry representatives.

(4) Require separate qualitative and cost proposal submissions. Do not open cost proposals until after the completion and publication of the qualitative scoring.

In addition, the ACEC recommended that the rule not give preferential treatment to a firm based on its size during the selection process.

The AGC indicated that the FHWA should define the specific procurement procedures that States would have to follow in the proposed rule. They believe STDs should have some administrative flexibility in developing their own procedures to meet State and local requirements. According to the AGC, prequalification is a necessary element in the design-build procurement process. The AGC supports the use of the two-step selection process. Costs must be a major factor in the selection process. The separate submission and evaluation of cost and technical proposals should help to minimize subjectivity. The selection criteria, and their relative weights, must clearly be presented to all potential offerors. The AGC believes that best-and-final-offer (BAFO) negotiation procedures should be prohibited in the regulation.

The ARTBA strongly believes that public owners should have the maximum flexibility in determining procurement methods. While the ARTBA recognized the FHWA's duty to ensure the appropriate expenditure of Federal tax dollars, it hoped that the FHWA would minimize Federal control and bureaucratic interference in procurement. At the same time the ARTBA expressed the need for a fair, equitable, and consistent procurement process which is free from the elements of subjectivity and favoritism. The ARTBA suggested several "guiding principles" which State and local units of government should consider if they elect to use design-build. These include the following:

(1) Use a two-step procurement. In the first step, prequalify offerors based on well-defined, objective, measurable criteria relevant to the project's size, value, duration, technical features, and complexity;

(2) Clearly communicate the prequalification criteria (and relative weights) in the solicitation;

(3) Owners should prequalify, but should not develop a short list of the most qualified firms. Anyone who is prequalified should be able to submit a proposal;

(4) Proposal criteria should be as objective as possible; and

(5) Proposal cost should be the most significant factor in the final selection.

The DBIA recommended that the regulations be structured to provide owners with maximum flexibility in structuring their procurement procedures and contracts. It further suggested that the FHWA should not try to impose its ideas regarding best contracting practices on State and local agencies. The FHWA should limit the proposed rule to addressing the TEA–21 requirements and clarifying how certain existing rules will apply in the context of design-build. The DBIA suggested that the FHWA produce an advisory guideline to assist the States in making procurement and contracting decisions. In contrast to the AGC and the ARTBA, the DBIA stated that low bid is the least desirable way to select a design-builder. The DBIA recommends best-value selections. However, the DBIA stated that if an owner requires a low bid selection system, then the prequalification process must be stringent.

The FHWA weighed the wide range of recommendations provided by the associations concerning procurement issues. Some of the recommendations appear to be diametrically opposed. We considered individual comments and weighed them in relation to the overall goals of maintaining flexibility and establishing a model for the use of design-build in each State. In the final analysis, we elected to allow flexibility to the maximum extent practical and adopt modified FAR provisions for design-build and competitive acquisition. This will establish an equitable framework that has been tested by the courts for the use of design-build contracting in the Federal-aid highway program.

Part 637—Subpart B—Quality Assurance Procedures for Highway Construction

The AASHTO said that owner oversight should be sufficient to certify that the project meets the owner's quality control/quality assurance (QC/QA) plan, as well as any associated Federal regulations. It was recommended that the design-builder furnish a QC/QA plan for the owner's approval. The AGC stated that the proposed rule should require owners to define oversight needs in the RFP. The AGC believes that the successful design-build team should have an approved QC/QA program and should do the majority of the acceptance testing and inspection.

The FHWA recognizes the STD's responsibility to ensure that the final product meets contractual requirements. We also recognize that the design-build contracting method allows for risk allocation strategies which are not typical for traditional design-bid-build contracts. Therefore, it is appropriate for STDs to have the flexibility to require alternate contractual methods for oversight, acceptance procedures and verification testing. For this reason, we have expanded the language in Subpart B, Quality Assurance Procedures for Construction, to include alternate contractual methods such as warranties and operational requirements. However, the concept of STD responsibility for quality assurance procedures remains the same as for traditional design-bid-build projects. The provisions of § 637.205(d) requiring verification sampling and testing by the STD, or its agent, are maintained for design-build projects. The States should use their own discretion in listing oversight and acceptance testing procedures in the RFP document.

Part 710—Right-of-Way; Subpart C—Project Development

The AASHTO stated that the determination of who should have the responsibility for dealing with right-of-way acquisition issues should be left to the discretion of the STD. Some STDs, however, may believe that it is in the public interest to delegate this responsibility to the design-builder. The industry associations, on the other hand, urged caution or recommended that the STDs keep such responsibility. The ACEC stated that it is usually advantageous for the STDs to perform right-of-way acquisition prior to the notice-to-proceed for the design-build project; however, there may be certain cases where it is appropriate for the design-builder to carry this responsibility to promote innovation and cost-effective design alternatives. The ACEC stated that the RFP document should clearly address all responsibility issues concerning right-of-way acquisition. The AGC, on the other hand, stated that right-of-way acquisition should be the responsibility of the STDs.

The FHWA recognizes that there are many and varied concerns regarding responsibility and risk allocation for right-of-way issues. We have elected to provide as much flexibility as possible to the STDs who have the ultimate responsibility for right-of-way acquisition and ensuring compliance with the Uniform Relocation Assistance

and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601, *et seq.*). Thus, this proposed rule would provide this flexibility by requiring that certain responsibility allocation issues be clarified in the RFP document.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date shown above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. Comments received after the comment closing date will be filed in the FHWA docket identified above and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment closing period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after the close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action would be a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. The Office of Management and Budget has reviewed this document under E.O. 12866. The FHWA anticipates that the economic impact of this rulemaking would be minimal. However, this rule is considered to be significant because of the substantial State and industry interest in the design-build contracting technique.

The FHWA anticipates that the proposed rule would not adversely affect, in a material way, any sector of the economy. However, at the present time the FHWA does not have sufficient data to make a conclusive statement regarding the economic impacts. Interested parties are invited to comment on the anticipated economic impact. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This rulemaking merely allows the STDs to utilize the design-build contracting technique—a contracting method that has only been used on an experimental basis to date in the Federal-aid highway program. The proposed rule would not affect the total Federal funding available to the STDs under the Federal-aid highway program. Therefore, it is anticipated that an increased use of design-build delivery method will not yield significant economic impacts to the Federal-aid highway program. Consequently, a full regulatory evaluation is not required.

The increased usage of the design-build contracting method may result in certain efficiencies in the cost and/or time it normally takes to deliver a transportation project. However, as stated above, the FHWA presently does not have sufficient data to make a conclusive statement regarding economic impacts.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities and has preliminarily determined that the proposed action would not have a significant economic impact on a substantial number of small entities. However, we invite comment on this subject.

By its very nature, design-build contracting is best suited to large transportation projects. However, several STDs such as Pennsylvania, Ohio and Michigan have successfully completed several relatively small design-build contracts (less than $5 million) under SEP–14. Approximately 50 percent of the projects approved under SEP–14 have been less than $5 million. We expect that this trend will continue after the final rule is enacted.

Design-build contracts will present subcontracting opportunities which are similar to or greater than those available under design-bid-build contracts. In many cases, design-build contractors will subcontract for design services. Under the traditional design-bid-build system, owners typically prepare a design with their own staff or will contract with a design consultant for this work. Based on data provided by the Pennsylvania Department of Transportation (PennDOT), the average subcontracting amount for design-build contracts compares favorably with the average subcontracting amount for design-bid-build projects in the same contract size range. While the number of PennDOT completed design-build projects is small, this preliminary data (shown in Table 1) shows that there are comparable subcontracting opportunities for relatively small design-build projects.

TABLE 1

PennDOT projects	Design-Build		Design-Bid-Build	
	Number of projects	Subcontracting percentage	Number of projects	Subcontracting percentage
Contract Size:				
$0–5 million	4	20	541	29
$5–10 million	1	39	21	29
$10–20 million	0	.....	13	30
>$20 million	0	.....	10	40

Large design-build contracts will present significant subcontracting opportunities for firms of all sizes. Table 2 illustrates the subcontracting opportunities which have been associated with medium to large-sized highway design-build contracts.

TABLE 2

Project	Owner	Contract size (million)	Subcontracting percentages
Eastern Toll Road	Transportation Corridors Agency, CA	$767	39

TABLE 2—Continued

Project	Owner	Contract size (million)	Subcontracting percentages
San Joaquin Hills Toll Road	Transportation Corridors Agency, CA	799.7	41
I–15 Reconstruction	Utah DOT	1,318	54
I–17 Reconstruction	Arizona DOT	79.7	33
E–470 Segments I and II	E–470 Public Highway Authority	323.6	90
Southern Connector	South Carolina DOT	106.4	87
Conway Bypass	South Carolina DOT	386.0	89

Thus, from the data available to the FHWA, it appears that the subcontracting opportunities for small entities will be similar under both design-build and design-bid-build contracts.

To offset potential adverse impacts on small entities, the proposed rule would eliminate the FHWA's existing requirement for the prime contractor to perform 30 percent of all contract work, less specialty items (see § 635.116). This should provide greater flexibility for STDs in administering design-build contracts. For design-builders, it will remove potential barriers regarding the choice of subcontractors, and most important, it will provide greater subcontracting opportunities for firms of all sizes. For these reasons and because this proposed rule is directed to the States and directly affects the STDs, which are not considered small entities for the purposes of the Regulatory Flexibility Act, the FHWA is able to preliminarily certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*). This rulemaking proposes to allow STDs to use a contracting method which has only been used in the Federal-aid highway program on an experimental basis to date. There is no requirement for a State to use the design-build contracting technique. It is strictly an optional contracting method. Therefore, this proposed rule is not considered an unfunded mandate.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a Federal assessment. Nothing in this document directly preempts any State law or regulation or affects the States' ability to discharge traditional State governmental functions. Section 1307 of the TEA–21 directs the FHWA to develop regulations which will: (1) Identify Secretary's approval criteria for design-build contracts, and (2) establish procedures for obtaining FHWA's approval for design-build contracts. Throughout the proposed regulation there is an effort to give the STDs flexibility in deciding where to appropriately use design-build contracting while keeping administrative burdens to a minimum.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000, and believes that the proposed rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. The proposed rule does not address issues which are related to tribal operations. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway planning and construction. The regulations implementing Executive Order 12372 regarding Intergovernmental consultation on Federal programs and activities apply to this program.

Executive Order 12988 (Civil Justice Reform)

This proposed action would meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has reviewed this proposal and determined that it does not contain collection of information requirements for the purposes of the PRA.

Since 1990 the FHWA has been allowing the STDs to evaluate design-build contracting on an experimental basis through Special Experimental Project No. 14 (SEP–14). To receive the FHWA's approval, STDs were requested to prepare experimental project work plans and evaluation reports for all design-build projects.

Under the proposed rule, the STDs will no longer be required to develop workplans or evaluation reports for "qualified projects." However, because of the "qualified project" definition in section 1307 of TEA–21, the FHWA will continue to approve "non-qualified" design-build projects under SEP–14. Therefore, a SEP–14 workplan and evaluation will continue to be necessary for these projects. The evaluation reports will document the lessons

learned through design-build contracting and this information will be shared with others in the highway industry. The collection of SEP–14 information does not entail the reporting of information in response to identical questions. The SEP–14 design-build evaluation reports do not involve answering specific questions; they address issues relating to competitive acquisition. Each is a one of a kind document which relates to the lessons learned on a particular project.

We invite comments on this analysis.

National Environmental Policy Act

The agency has analyzed this proposed action for the purposes of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and has preliminarily determined that this proposed action would not have any effect on the quality of the environment. Design-build projects must comply with NEPA requirements and the proposed rule includes guidance concerning compliance with NEPA in relation to the release of the Request for Proposals document.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this proposed action with the Unified Agenda.

List of Subjects

23 CFR Part 627

Government procurement, Grant programs-transportation, Highways and roads.

23 CFR Part 635

Grant programs-transportation, Highways and roads, Reporting and recordkeeping requirements.

23 CFR Part 636

Design-build, Grant programs-transportation, Highways and roads.

23 CFR Part 637

Construction inspection and approval; Highways and roads.

23 CFR 710

Grant programs-transportation, Highway and roads, Real property acquisition. Rights-of-way, Reporting and recordkeeping requirements.

Issued on: October 12, 2001.

Mary E. Peters,

Administrator.

For reasons set forth in the preamble, the FHWA proposes to amend Chapter I of title 23, Code of Federal Regulations, by adding part 636 and by revising parts 627, 635, 637 and 710 as set forth below:

PART 627—VALUE ENGINEERING

1. Revise the authority citation for part 627 to read as follows:

Authority: 23 U.S.C. 106(d), 106(f), 112(b), 302, 307, and 315; 49 CFR 18.

2. In part 627 revise all references to "State highway agencies" to read "State transportation departments"; and revise the acronyms "SHA" and "SHAs" to read "STD" and "STDs", respectively.

3. In § 627.5, add paragraph (e) to read as follows:

§ 627.5 General principles and procedures.

* * * * *

(e) In the case of a Federal-aid design-build project meeting the project criteria in 23 CFR 627.1(a), the STDs shall fulfill the value engineering requirements by:

(1) Performing their own value engineering analysis of the concepts in the Request for Proposals document prior to the initiation of the design-build procurement process; or

(2) Requiring a value engineering analysis at other key points in the project development process. Value engineering reviews are generally not recommended as part of the design-build proposal process. At the STD's discretion, value engineering change proposal clauses may be used in design-build contracts.

PART 635—CONSTRUCTION AND MAINTENANCE

4. Revise the authority citation for part 635 to read as follows:

Authority: 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; sec. 1041 (a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b).

5. In part 635 revise all references to "State highway agencies" to read "State transportation departments"; and revise the acronyms "SHA" and "SHAs" to read "STD" and "STDs", respectively.

6. Amend § 635.102 by placing all definitions in alphabetical order, removing the definition of "certification acceptance," and by adding the definition of "design-build project" to read as follows:

§ 635.102 Definitions.

* * * * *

Design-build project means a project which utilizes a single contract to provide for design and construction.

* * * * *

7. Amend § 635.104 by adding paragraph (c) to read as follows:

§ 635.104 Method of construction.

* * * * *

(c) In the case of a design-build project, the requirements of part 636 and the appropriate provisions pertaining to design-build contracting in this part will apply.

8. Revise § 635.107 to read as follows:

§ 635.107 Participation by disadvantaged business enterprises.

(a) The STD shall schedule contract lettings in a balanced program providing contracts of such size and character as to assure an opportunity for all sizes of contracting organizations to compete. In accordance with Title VI of the Civil Rights Act of 1964, subsequent Federal-aid Highway Acts, and 49 CFR part 26, the STD shall ensure equal opportunity for disadvantaged business enterprises (DBEs) participating in the highway construction program.

(b) In the case of a design-build project funded with title 23 funds, the requirements of 49 CFR part 26 and the following provisions apply.

(1) The STDs may establish specific DBE goals in the request for proposal document, however, offerors do not have to furnish the information required by 49 CFR 26.53(b)(2) prior to the award of contract. The STDs may determine when this information must be submitted.

(2) If a DBE contract goal is established, the STD must require offerors to make a commitment to meet the goal or provide good faith efforts, as described in 49 CFR 26.53.

(3) During the proposal evaluation process, the STD will make a fair and reasonable judgment whether a proposer, that did not meet the goal, made adequate good faith efforts as described in 49 CFR 26.53.

(4) During the proposal evaluation process, DBE commitments above the contractual requirements must not be used as a proposal evaluation factor in determining the successful offeror.

(5) The STD must maintain oversight of the design-builder's DBE commitments during the project to ensure that contract requirements are met.

9. Amend § 635.109 by adding paragraph (c) to read as follows:

§ 635.109 Standardized changed condition clauses.

* * * * *

(c) In the case of a design-build project, only the requirements of section (a)(2) of this section are applicable. However, STDs may consider using "differing site condition clauses" and "significant changes in the character of work clauses" which are appropriate for the risk and responsibilities that are shared with the design-builder.

10. Amend § 635.110 by adding paragraph (f) to read as follows:

§ 635.110 Licensing and qualification of contractors.

* * * * *

(f) In the case of a design-build project, the STDs may use their own bonding, insurance, licensing, qualification or prequalification procedure for any phase of design-build procurement.

(1) The STDs may not impose statutory or administrative requirements which provide an in-State or local geographical preference in the solicitation, licensing, qualification, pre-qualification, short listing or selection process. The geographic location of a firm's office may not be a selection criteria. However, the STDs may require the successful design-builder to establish a local office after the award of contract.

(2) If required by State statute, local statute, or administrative policy, the STDs may require prequalification for construction contractors. The STDs may require offerors to demonstrate the ability of their engineering staff to become licensed in that State as a condition of responsiveness; however, licensing procedures may not serve as a barrier for the consideration of otherwise responsive proposals. The STDs may require compliance with State licensing practices as a condition of contract award.

11. Amend § 635.112 by revising the section heading and by adding paragraph (i) to read as follows:

§ 635.112 Advertising for bids and proposals.

* * * * *

(i) In the case of a design-build project, the requirements of this section are modified by the following:

(1) The FHWA Division Administrator's approval of the Request for Proposals document will constitute the FHWA's project authorization and the FHWA's approval of the STD's request to release the document. This approval will carry the same significance as plan, specification and estimate approval on a design-bid-build Federal-aid project.

(2) The STD may decide the appropriate solicitation schedule for all design-build requests. This includes all project advertising, the release of the Request for Qualifications document, the release of the Request for Proposals document and all deadlines for the receipt of qualification statements and proposals. Typical advertising periods range from six to ten weeks and can be longer for large, complicated projects.

(3) The STD shall obtain the approval of the Division Administrator prior to issuing addenda which result in major changes to the Request for Proposals document. Minor addenda need not receive prior approval but may be identified by the STD at the time of or prior to requesting the FHWA's concurrence in award. The STD shall provide assurance that all offerors have received all issued addenda.

12. Amend § 635.113 by adding paragraph (c) to read as follows:

§ 635.113 Bid opening and bid tabulations.

* * * * *

(c) In the case of a design-build project, the requirements of this section are modified by the following:

(1) All proposals received shall be opened and reviewed in accordance with the terms of the solicitation. The STD shall use its own procedures for the following:

(i) The process of handling proposals and information;

(ii) The review and evaluation of proposals;

(iii) The submission, modification, revision and withdrawal of proposals; and

(iv) The announcement of the successful offeror.

(2) The STD shall submit a tabulation of proposal costs to the FHWA Division Administrator. The tabulation of price proposal information may include detailed pricing information when available or lump sum price information if itemized costs are not used.

13. Amend § 635.114 by adding paragraph (k) to read as follows:

§ 635.114 Award of contract and concurrence in award.

* * * * *

(k) In the case of a design-build project, the requirements of this section are modified by the following sentence: Design-build contracts shall be awarded on the basis of the criteria specified in the Request for Proposals document. See Part 636, Design-build Contracting, for details.

14. Amend § 635.116 by adding paragraph (d) to read as follows:

§ 635.116 Subcontracting and contractor responsibilities.

* * * * *

(d) In the case of a design-build project, the requirements of this section are modified by the following:

(1) The provisions of paragraph (a) of this section are not applicable to design-build contracts;

(2) At their discretion, the STDs may establish a minimum percentage of work which must be done by the design-builder;

(3) No procedure, requirement or preference shall be imposed which prescribes minimum subcontracting requirements or goals (other than those necessary to meet the Disadvantaged Business Enterprise program requirements of 49 CFR part 26).

15. Amend § 635.122 by adding paragraph (c) to read as follows:

§ 635.122 Participation in progress payments.

* * * * *

(c) In the case of a design-build project, the STD shall define its procedures for making progress payments on lump sum contracts in the Request for Proposal document.

16. Amend § 635.309 by adding paragraph (p) to read as follows:

§ 635.309 Authorization.

* * * * *

(p) In the case of a design-build project, the requirements of this section are supplemented with the following:

(1) The FHWA's project authorization (authorization to advertise or release the Request for Proposals document) will not be issued until the following conditions have been met:

(i) All projects must conform with the statewide and metropolitan transportation planning requirements (23 CFR part 450).

(ii) All projects in air quality nonattainment and maintenance areas must meet all transportation conformity requirements (40 CFR parts 51 and 93).

(iii) The NEPA review process has been concluded. (see § 636.109).

(iv) The Request for Proposals document has been approved.

(v) A statement is received from the STD that either all right-of-way, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the design-builder's construction schedule.

(vi) If the STD elects to include right-of-way, utility, and/or railroad services as part of the design-builder's scope of work, then the Request for Proposals document must include:

(A) A statement concerning scope and current status of the required services, and

(B) A statement which requires compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and 23 CFR part 710.

(2) During a conformity lapse, a design-build project (including right-of-way acquisition activities) may continue if the FHWA authorized the design-build contract prior to the lapse and the project met transportation conformity requirements (40 CFR parts 51 and 93); whether the right-of-way authorization comes before the design-build authorization, or is part of such an authorization.

(3) Changes to the design-build project concept and scope may require a modification of the transportation plan and transportation improvement program. The project sponsor must comply with the metropolitan and statewide transportation planning requirements in 23 CFR part 450 and provide appropriate approval notification to the design-builder for such changes.

17. Amend § 635.411 by adding paragraph (f) to read as follows:

§ 635.411 Material or product selection.

* * * * *

(f) In the case of a design-build project, the requirements of this section are supplemented with the following:

Federal funds shall not participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the Request for Proposals document unless the conditions of paragraph (a) of this section are applicable.

18. Add Part 636 to read as follows:

PART 636—DESIGN-BUILD CONTRACTING

Subpart A—General

Sec.

636.101 What does this part do?
636.102 Does this part apply to me?
636.103 What are the definitions of terms used in this part?
636.104 Does this part apply to all Federal-aid design-build projects?
636.105 Is the FHWA requiring the use of design-build?
636.106 What type of projects may be used with design-build contracting?
636.107 Does the definition of a qualified project limit the use of design-build contracting?
636.108 How does the definition of a qualified project apply to ITS projects?
636.109 How does the NEPA review process relate to the design-build procurement process?
636.110 What procedures may be used for solicitations and receipt of proposals?
636.111 Can oral presentations be used during the procurement process?
636.112 May stipends be used?
636.113 Is the stipend amount eligible for Federal participation?
636.114 What factors should be considered in risk allocation?
636.115 May I meet with industry to gather information concerning the appropriate risk allocation strategies?
636.116 What organizational conflict of interest requirements apply to design-build projects?
636.117 What conflict of interest standards apply to individuals who serve as selection team members for the owner?
636.118 Is team switching allowed after contract award?
636.119 How does this part apply to a project developed under a public-private partnership?

Subpart B—Selection Procedures, Award Criteria

636.201 What selection procedures and award criteria may be used?
636.202 When are two-phase design-build selection procedures appropriate?
636.203 What are the elements of two-phase selection procedures for competitive proposals?
636.204 What items may be included in a phase-one solicitation?
636.205 Can past performance be used as an evaluation criteria?
636.206 How do I evaluate offerors who do not have a record of relevant past performance?
636.207 Is there a limit on short listed firms?
636.208 May I use my existing prequalification procedures with design-build contracts?
636.209 What items must be included in a phase-two solicitation?
636.210 What requirements apply to projects which use the modified design-build procedure?
636.211 When and how should tradeoffs be used?
636.212 To what extent must tradeoff decisions be documented?

Subpart C—Proposal Evaluation Factors

636.301 How should proposal evaluation factors be selected?
636.302 Are there any limitations on the selection and use of proposal evaluation factors?
636.303 May pre-qualification standards be used as proposal evaluation criteria in the RFP?
636.304 What process may be used to rate and score proposals?
636.305 Can price information be provided to analysts who are reviewing technical proposals?

Subpart D—Exchanges

636.401 What types of information exchange may take place during the procurement process?
636.402 What information may be exchanged with a clarification?
636.403 Can a competitive range be used to limit competition?
636.404 After developing a short list, can I still establish a competitive range?
636.405 Are communications allowed prior to establishing the competitive range?
636.406 Am I limited in holding communications with certain firms?
636.407 Can communications be used to cure proposal deficiencies?
636.408 Can offerors revise their proposals during communications?

Subpart E—Discussions, Proposal Revisions and Source Selection

636.501 What issues may be addressed in discussions?
636.502 Why should I use discussions?
636.503 Must I notify offerors of my intent to use/not use discussions?
636.504 If the solicitation indicated my intent was to award contract without discussions, but circumstances change, may I still hold discussions?
636.505 Must a contracting agency establish a competitive range if it intends to have discussions with offerors?
636.506 What issues must be covered in discussions?
636.507 What subjects are prohibited in discussions, communications and clarifications with offerors?
636.508 Can price or cost be an issue in discussions?
636.509 Can offerors revise their proposals as a result of discussions?
636.510 Can the competitive range be further defined once discussions have begun?
636.511 Can there be more than one round of discussions?
636.512 What is the basis for the source selection decision?

Subpart F—Notifications and Debriefings

636.601 When must notification be provided to unsuccessful offerors?
636.602 What issues must be provided in the written notification of contract award to unsuccessful offerors?
636.603 How may I notify the successful offeror?
636.604 Can offerors request preaward or postaward debriefings?
636.605 What issues must be discussed at preaward debriefings?
636.606 What issues must not be discussed at preaward debriefings?
636.607 What issues must be discussed at postaward debriefings?
636.608 What issues must not be discussed at postaward debriefings?

Authority: Sec. 1307 of Pub. L. 105–178, 112 Stat. 107, at 229 (1998); 23 U.S.C. 101, 109, 112, 113, 114, 115, 119, 128, and 315; 49 CFR 1.48(b).

Subpart A—General

§ 636.101 What does this part do?

This part describes the FHWA's policies and procedures for approving design-build projects financed under title 23, United States Code (U.S.C.). This part satisfies the requirement of section 1307(c) of the Transportation Equity Act for the 21st Century (TEA–21), enacted on June 9, 1998. The contracting procedures of this part apply to all design-build project funded under title 23, U.S.C.

§ 636.102 Does this part apply to me?

(a) This part uses a plain language format to make the rule easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Unless otherwise noted, the pronoun "you" means the primary recipient of Federal-aid highway funds, the State Transportation Department (STD). Where the STD has an agreement with a local public agency (or other governmental agency) to administer a Federal-aid design-build project, the term "you" will also apply to that contracting agency.

§ 636.103 What are the definitions of terms used in this part?

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. Also, the following definitions are used:

Adjusted low bid means a form of best value selection in which qualitative aspects are scored on a 0 to 100 scale expressed as a decimal; cost is then divided by qualitative score to yield an "adjusted bid" or "cost per quality point." Award is made to offeror with the lowest adjusted bid.

Best value selection means any selection process in which proposals contain both cost and qualitative components and award is based upon a combination of cost and qualitative considerations.

Clarifications means a written or oral exchange of information which takes place after the receipt of proposals when award without discussions is contemplated. The purpose of clarifications is to address minor or clerical revisions in a proposal.

Competitive range means a list of the most highly rated proposals based on the initial proposal rankings. It is based on the rating of each proposal against all evaluation criteria.

Communications are exchanges, between the contracting agency and offerors, after receipt of proposals, which lead to the establishment of the competitive range.

Contracting agency means the agency which represents the owner for the design-build project.

Competitive acquisition means an acquisition process which is designed to foster an impartial and comprehensive evaluation of offerors' proposals, leading to the selection of the proposal representing the best value to the contracting agency.

Deficiency means a material failure of a proposal to meet a contracting agency requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

Design-bid-build means the traditional project delivery method where design and construction are sequential steps in the project development process.

Design-build contract means a single contract which provides for design and construction services.

Design-builder means the entity contractually responsible for delivering the project design and construction.

Discussions mean written or oral exchanges that take place after the establishment of the competitive range with the intent of allowing the offeror to revise its proposal.

Fixed price/best design means a form of best value selection in which contract price is established by the owner and stated in the Request for Proposals document. Design proposals and management plan are evaluated and scored, with award going to the firm offering the best qualitative proposal for the established price.

Intelligent Transportation System (ITS) services—means services which provide for the acquisition of technologies or systems of technologies (e.g., computer hardware or software, traffic control devices, communications link, fare payment system, automatic vehicle location system, etc.) that provide or contribute to the provision of one or more ITS user services as defined in the National ITS Architecture.

Modified design-build means a variation of design-build in which the contracting agency furnishes offerors with partially complete plans (generally 30 to 35 percent complete). The design-builders role is generally limited to the completion of the design and construction of the project.

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Prequalification means the contracting agency's process for determining whether a firm is fundamentally qualified to compete for a certain project or class of projects. The prequalification process may be based on financial, management and other types of qualitative data. Prequalification should be distinguished from short listing.

Price proposal means the price submitted by the offeror to provide the required design and construction services.

Proposal modification means a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal revision means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer, as the result of negotiations.

Qualified project means any design-build project with a total estimated cost greater than $50,000,000.00 or an intelligent transportation system project greater than $5,000,000. (23 U.S.C. 112 (b)(3)(C)).

Request for Proposals (RFP) means the document that describes the procurement process, forms the basis for the final proposals and may potentially become an element in the contract.

Request for Qualification (RFQ) means the document issued by the owner in Phase I of the two-phased selection process. It typically describes the project in enough detail to let potential offerors determine if they wish to compete and forms the basis for requesting qualifications submissions from which the most highly qualified firms can be identified.

Single-phase selection process means a procurement process where cost and/or technical proposals are submitted in response to an RFP. Short listing is not used.

Short listing means the narrowing of the field of offerors through the selection of the most qualified offerors who have responded to an RFQ.

Solicitation means a public notification of an owner's need for information, qualifications, or proposals related to identified services.

Stipend means a monetary amount sometimes paid to the most highly qualified unsuccessful offerors.

Technical proposals means that portion of a design-build proposal which contains design factors, layout, aesthetics and specifications for materials.

Tradeoff means a method of source selection which allows you to select the source which represents the best value. This process permits an exchange between cost and non-cost factors and allows you to accept other than the lowest priced proposal.

Two-phase selection process means a procurement process in which the first phase consists of short listing (based on qualifications submitted in response to an RFQ) and the second phase consists

of the submission of cost and technical proposals in response to an RFP.

Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance. A significant weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

Weighted criteria process means a form of best value selection in which maximum point values are preestablished for qualitative and cost components, and award is based upon high total points earned by the offerors.

§ 636.104 Does this part apply to all Federal-aid design-build projects?

The provisions of this part apply to all Federal-aid design-build projects on the National Highway System (NHS) and non-NHS projects which are located within the highway right-of-way. Projects which are not located within the highway right-of-way, and not linked to a Federal-aid highway project (i.e., the project would not exist without the Federal-aid highway) may utilize State procedures.

§ 636.105 Is the FHWA requiring the use of design-build?

No, the FHWA is neither requiring nor promoting the use of the design-build contracting method. The design-build contracting technique is optional.

§ 636.106 What type of projects may be used with design-build contracting?

You may use the design-build contracting technique for any qualified or non-qualified project which you deem to be appropriate on the basis of project delivery time, cost, construction schedule and/or quality.

§ 636.107 Does the definition of a qualified project limit the use of design-build contracting?

(a) No, the use of the term "qualified project" does not limit the use of design-build contracting. It merely determines the FHWA's procedures for approval. The FHWA Division Administrator may approve the design-build method for "qualified projects" which meet the requirements of this part.

(b) The FHWA Division Administrator may also approve other design-build projects (which do not meet the "qualified projects" definition) by using Special Experimental Projects No. 14 (SEP–14), "Innovative Contracting Practices," [1] provided the project meets the requirements of this part. Projects which do not meet the requirements of this part must be submitted to the FHWA Headquarter's for concept approval.

§ 636.108 How does the definition of a qualified project apply to ITS projects?

For the purpose of this rule, a Federal-aid ITS design-build project meets the criteria of a "qualified project" if:

(a) A majority of the scope of services provides ITS services (at least 50 percent of the scope of work is related to ITS services); and

(b) The estimated contract value exceeds $5 million.

§ 636.109 How does the NEPA review process relate to the design-build procurement process?

In terms of the design-build procurement process:

(a) The RFQ solicitation may be released prior to the conclusion of the NEPA review process as long as the RFQ solicitation informs proposers of the general status of the NEPA process.

(b) The RFP should not be released prior to the conclusion of the NEPA process. The NEPA review process is concluded with either a Categorical Exclusion classification, an approved Finding of No Significant Impact, or an approved Record of Decision as defined in 23 CFR 771.113(a).

(c) The RFP must address how environmental commitments and mitigation measures identified during the NEPA process will be implemented.

§ 636.110 What procedures may be used for solicitations and receipt of proposals?

You may use your own procedures for the solicitation and receipt of proposals and information including the following:

(a) Exchanges with industry before receipt of proposals;

(b) RFQ, RFP and contract format;

(c) Solicitation schedules;

(d) Lists of forms, documents, exhibits, and other attachments;

(e) Representations and instructions;

(f) Advertisement and amendments;

(g) Handling proposals and information; and

(h) Submission, modification, revisions and withdrawal of proposals.

§ 636.111 Can oral presentations be used during the procurement process?

(a) Yes, the use of oral presentations as a substitute for portions of a written proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, however, you must comply with the appropriate State procurement integrity standards.

(b) Oral presentations may substitute for, or augment, written information. You must maintain a record of oral presentations to document what information you relied upon in making the source selection decision. You may decide the appropriate method and level of detail for the record (e.g., videotaping, audio tape recording, written record, contracting agency notes, copies of offeror briefing slides or presentation notes). A copy of the record should be placed in the contract file and may be provided to offerors upon request.

§ 636.112 May stipends be used?

At your discretion, you may elect to pay a stipend to the most highly ranked unsuccessful offerors who have submitted responsive proposals. The decision to do so should be based on your analysis of the estimated proposal development costs and the anticipated degree of competition during the procurement process.

§ 636.113 Is the stipend amount eligible for Federal participation?

(a) Yes, stipends are eligible for Federal-aid participation. Stipends are recommended on large projects where there is substantial opportunity for innovation and the cost of submitting a proposal is significant. On such projects, stipends are used to:

(1) Encourage competition;

(2) Compensate unsuccessful offerors for a portion of their costs (usually one-third to one-half of the estimated proposal development cost); and

(3) Ensure that smaller companies are not put at a competitive disadvantage.

(b) If provided by State law, you may retain the right to use ideas from unsuccessful offerors if they accept stipends. If stipends are used, the RFP should describe the process for distributing the stipend to qualifying offerors.

§ 636.114 What factors should be considered in risk allocation?

(a) You may consider, identify, and allocate the risks in the RFP document and define these risks in the contract. Risk should be allocated with consideration given to the party who is in the best position to manage and control a given risk.

(b) Risk allocation will vary according to the type of project and location, however, the following factors should be considered:

(1) Governmental risks, including the potential for delays, modifications, withdrawal, scope changes, or additions that result from multi-level Federal, State, and local participation and sponsorship;

(2) Regulatory compliance risks, including environmental and third-party issues, such as permitting, railroad, and utility company risks;

(3) Construction phase risks, including differing site conditions, traffic control, interim drainage, public access, weather issues, and schedule;

(4) Post-construction risks, including public liability and meeting stipulated performance standards; and

(5) Right-of-way risks including acquisition costs, appraisals, relocation delays, condemnation proceedings, including court costs and others.

§ 636.115 May I meet with industry to gather information concerning the appropriate risk allocation strategies?

(a) Yes, information exchange at an early project stage is encouraged if it facilitates your understanding of the capabilities of potential offerors. However, any exchange of information must be consistent with State procurement integrity requirements. Interested parties include potential offerors, end users, acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

(b) The purpose of exchanging information is to improve the understanding of your requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy your requirements, and enhancing your ability to obtain quality supplies and services, including construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(c) An early exchange of information can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules. This also includes the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents; and any other industry concerns or questions. Some techniques to promote early exchanges of information are as follows:

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research;

(4) One-on-one meetings with potential offerors (any meetings that are substantially involved with potential contract terms and conditions should include the contracting officer; also see paragraph (e) of this section regarding restrictions on disclosure of information);

(5) Presolicitation notices;

(6) Draft RFPs;

(7) Request for Information (RFI) ;

(8) Presolicitation or preproposal conferences; and

(9) Site visits.

(d) RFIs may be used when you do not intend to award a contract, but want to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted to form a binding contract. There is no required format for an RFI.

(e) When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information shall be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. Information provided to a particular offeror in response to that offeror's request shall not be disclosed if doing so would reveal the potential offeror's confidential business strategy. When a presolicitation or preproposal conference is conducted, materials distributed at the conference should be made available to all potential offerors, upon request.

§ 636.116 What organizational conflict of interest requirements apply to design-build projects?

(a) State statutes or policies concerning organizational conflict of interest should be specified or referenced in the design-build RFQ or RFP document as well as any contract for engineering services, inspection or technical support in the administration of the design-build contract. All design-build solicitations should address the following situations as appropriate:

(1) Consultants and/or sub-consultants who assist the owner in the preparation of a RFP document will not be allowed to participate as an offeror or join a team proposing on that project. However, a State may determine there is not an organizational conflict of interest for a sub-consultant where:

(i) The sub-consultant or registered design professional provides only preliminary design services, or

(ii) The sub-consultant has had no involvement with this design-build procurement process, or

(iii) Where all information generated by the sub-consultant is provided to all offerors.

(2) All solicitations for design-build contracts, including related contracts for inspection, administration or auditing services, must include a provision which:

(i) Directs offerors attention to this subpart;

(ii) States the nature of the potential conflict as seen by the owner;

(iii) States the nature of the proposed restraint or restrictions (and duration) upon future contracting activities, if appropriate;

(iv) Depending on the nature of the acquisition, states whether or not the terms of any proposed clause and the application of this subpart to the contract are subject to negotiation; and

(v) Requires the apparent successful offeror to provide information concerning potential organizational conflicts of interest prior to the award of contract. The apparent successful offerors must disclose all relevant facts concerning any past, present or currently planned interests which may present an organizational conflict of interest. Such firms must state how their interests, or those of their chief executives, directors, key project personnel, or any proposed consultant, contractor or subcontractor may result, or could be viewed as, an organizational conflict of interest. The information may be in the form of a disclosure statement or a certification.

(3) Based upon a review of the information submitted, the owner should make a written determination of whether the offeror's interests create an actual or potential organizational conflict of interest and identify any actions that must be taken to avoid, neutralize, or mitigate such conflict. The owner should award the contract to the apparent successful offeror unless an organizational conflict of interest is determined to exist that cannot be avoided, neutralized, or mitigated.

(b) The organizational conflict of interest provisions in this subpart provide minimum standards for STDs to identify, mitigate or eliminate apparent or actual organizational conflicts of interest. To the extent that State-developed organizational conflict of interest standards are more stringent than that contained in the rule, the State standards prevail.

§ 636.117 What conflict of interest standards apply to individuals who serve as selection team members for the owner?

State laws and procedures governing improper business practices and personal conflicts of interest will apply

[1] Information concerning Special Experimental Project No. 14 (SEP–14), "Innovative Contracting Practices," is available on FHWA's home page: *http://www.fhwa.dot.gov*. Additional information may be obtained from the FHWA Division Administrator in each State.

to the owner's selection team members. In the absence of such State provisions, the requirements of 48 CFR Part 3, Improper Business Practices and Personal Conflicts of Interest, will apply to selection team members.

§ 636.118 Is team switching allowed after contract award?

Where the offeror's qualifications are a major factor in the selection of the successful design-builder, team member switching (adding or switching team members) is discouraged after contract award. However, the owner may use its discretion in reviewing team changes or team enhancement requests on a case-by-case basis. Specific project rules related to changes in team members or changes in personnel within teams should be explicitly stated by the STD in all project solicitations.

§ 636.119 How does this part apply to a project developed under a public-private partnership?

(a) When an owner utilizes traditional Federal-aid funds for work done under a public-private partnership agreement (or a portion of the work under a public-private agreement), the provisions of 23 U.S.C. 112 apply to the contracts funded with Federal-aid funds. In such instances, the procurement of engineering service contracts, construction contracts and design-build contracts must follow the appropriate Federal-aid requirements (Brooks Architect-Engineers Act, 40 U.S.C. 541 *et seq;* competitive bidding procedures for construction contracts, 23 U.S.C. 112; and the design-build requirements of this part). If an owner is only requesting traditional Federal-aid funding for one particular contract under a franchise agreement, then Federal-aid procurement procedures will only apply to the work under that particular Federal-aid contract and not to the selection of the public-private entity.

(b) For projects developed under public-private partnership agreements where the only FHWA funding is in the form of a loan, a loan guarantee, a line of credit, or some other form of loan assistance, the requirements of this part do not apply. In such cases, the public-private entity may select consultants, construction contractors or design-builders in whatever manner it sees fit provided:

(1) The procurement process for the selection of the public-private entity is a competitive process; and

(2) The selection process follows State laws and procedures.

(c) Except as noted above, the State must ensure such public-private partnership projects comply with all other 23 U. S. Code provisions, regardless of the form of the FHWA funding (traditional Federal-aid funding or loan assistance). This includes compliance with all FHWA policies such as environmental and right-of-way requirements and compliance with construction contracting requirements, such as Buy America, Davis-Bacon minimum wage rate requirements, etc., for federally funded construction or design-build contracts under the franchise agreement.

Subpart B—Selection Procedures, Award Criteria

§ 636.201 What selection procedures and award criteria may be used?

You should consider using two-phase selection procedures for all design-build projects. However, if you do not believe two-phase selection procedures are appropriate for your project (based on the criteria in § 636.202), you may use a single phase selection procedure or the modified-design-build contracting method. The following procedures are available:

Selection procedure	Criteria for using a selection procedure	Award criteria options
(a) Two-Phase Selection Procedures (RFQ followed by RFP).	§ 636.202	Lowest Cost, Adjusted low-bid (cost per quality point), meets criteria/low bid, weighted criteria process, fixed price/best design, best value, tradeoff.
(b) Single Phase (RFP)	Project not meeting the criteria in § 636.202	All of the award criteria in item (a) above.
(c) Modified Design-Build (may be one or two phases).	Projects with relatively simple scope.[2]	Lowest price technically acceptable.

[2] The modified design-build contracting technique, as defined above, should be reserved for projects which are relatively simple in scope (such as pavement resurfacing, simple pavement rehabilitation, or other projects) where the design-builder's role is primarily limited to completing the design and constructing the project.

§ 636.202 When are two-phase design-build selection procedures appropriate?

You may consider the following criteria in deciding whether two-phase selection procedures are appropriate. A negative response may indicate that two-phase selection procedures are not appropriate.

(a) Are three or more offers anticipated?

(b) Will offerors be expected to perform substantial design work before developing price or cost proposals?

(c) Will offerors incur a substantial expense in preparing proposals?

(d) Have you identified and analyzed other contributing factors, including:

(1) The extent to which you have defined the project requirements?

(2) The time constraints for delivery of the project?

(3) The capability and experience of potential contractors?

(4) Your capability to manage the two-phase selection process?

(5) Other criteria that you may consider appropriate?

§ 636.203 What are the elements of two-phase selection procedures for competitive proposals?

The first phase consists of short listing based on a RFQ. The second phase consists of the receipt and evaluation of cost and technical proposals in response to a RFP.

§ 636.204 What items may be included in a phase-one solicitation?

You may consider including the following items in any phase-one solicitation:

(a) The scope of work;

(b) The phase-one evaluation factors and their relative weights, including:

(1) Technical approach (but not detailed design or technical information);

(2) Technical qualifications, such as—

(i) Specialized experience and technical competence;

(ii) Capability to perform (including key personnel); and

(iii) Past performance of the members of the offeror's team (including the architect-engineer and construction members);

(3) Other appropriate factors (excluding cost or price related factors, which are not permitted in phase-one);

(c) Phase-two evaluation factors; and

(d) A statement of the maximum number of offerors that will be short listed to submit phase-two proposals.

§ 636.205 Can past performance be used as an evaluation criteria?

(a) Yes, past performance information is one indicator of an offeror's ability to perform the contract successfully. Past performance information may be used as an evaluation criteria in either phase-one or phase-two solicitations. If you elect to use past performance criteria, the currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance may be considered.

(b) Describe your approach for evaluating past performance in the solicitation, including your policy for evaluating offerors with no relevant performance history. You should provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the current solicitation.

(c) If you elect to request past performance information, the solicitation should also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. You may consider this information, as well as information obtained from any other sources, when evaluating the offeror's past performance. You may use your discretion in determining the relevance of similar past performance information.

(d) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the current acquisition.

§ 636.206 How do I evaluate offerors who do not have a record of relevant past performance?

In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

§ 636.207 Is there a limit on short listed firms?

Normally, three to five firms are short listed, however, the maximum number specified shall not exceed five unless you determine, for that particular solicitation, that a number greater than five is in your interest and is consistent with the purposes and objectives of two-phase design-build contracting.

§ 636.208 May I use my existing prequalification procedures with design-build contracts?

Yes, you may use your existing prequalification procedures for either construction or engineering design firms as a supplement to the procedures in this part.

§ 636.209 What items must be included in a phase-two solicitation?

You must include the requirements for technical proposals and price proposals in the phase-two solicitation. All factors and significant subfactors that will affect contract award and their relative importance must be stated clearly in the solicitation. Use your own procedures for the solicitation as long as it complies the requirements of this part.

§ 636.210 What requirements apply to projects which use the modified design-build procedure?

(a) Modified design-build selection procedures (lowest price technically acceptable source selection process) may be used for projects which are relatively simple in scope.

(b) The solicitation must clearly state the following:

(1) The identification of evaluation factors and significant subfactors that establish the requirements of acceptability.

(2) That award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors.

(c) The contracting agency may forgo a short listing process and advertise for the receipt of proposals from all responsible offerors. The contract is then awarded to the lowest responsive bidder.

(d) Tradeoffs are not permitted, however, you may incorporate cost-plus-time bidding procedures (A+B bidding), lane rental, or other cost-based provisions in such contracts.

(e) Proposals are evaluated for acceptability but not ranked using the non-cost/price factors.

(f) Exchanges may occur (see subpart D of this part).

§ 636.211 When and how should tradeoffs be used?

(a) At your discretion, you may consider a tradeoff process when it is desirable to award to other than the lowest priced offeror or other than the highest technically rated offeror.

(b) If you use a tradeoff process, the following apply:

(1) All evaluation factors and significant subfactors that will affect contract award and their relative importance must be clearly stated in the solicitation; and

(2) The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(i) Significantly less important than cost or price; or

(ii) Approximately equal to cost or price. As a minimum, cost or price must have a weight of at least 50 percent in the award criteria.

§ 636.212 To what extent must tradeoff decisions be documented?

When tradeoffs are performed, the source selection records shall include the following:

(a) An assessment of each offeror's ability to accomplish the technical requirements; and

(b) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

Subpart C—Proposal Evaluation Factors

§ 636.301 How should proposal evaluation factors be selected?

(a) The proposal evaluation factors and significant subfactors should be tailored to the acquisition.

(b) Evaluation factors and significant subfactors should:

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(2) Support meaningful comparison and discrimination between and among competing proposals.

§ 636.302 Are there any limitations on the selection and use of proposal evaluation factors?

(a) The selection of the evaluation factors, significant subfactors and their relative importance are within your broad discretion subject to the following requirements:

(1) You must evaluate cost or price in every source selection. As a minimum, cost or price must have a weight of at least 50 percent in the award criteria. (Cost is assumed to have a weight of at least 50 percent under the "adjusted low-bid" and the "fixed price/best design" award criteria.)

(2) You must evaluate the quality of the product or service through consideration of one or more non-cost evaluation factors. These factors may include (but are not limited to) such criteria as:

(i) Compliance with solicitation requirements;

(ii) Completion schedule (contractual incentives and disincentives for early

completion may be used where appropriate); or

(iii) Technical solutions.

(3) At your discretion, you may evaluate past performance and management experience (subject to § 636.303(b)).

(b) All factors and significant subfactors that will affect contract award and their relative importance must be stated clearly in the solicitation.

§ 636.303 May pre-qualification standards be used as proposal evaluation criteria in the RFP?

(a) If you use a prequalification procedure or a two-phase selection procedure to develop a short list of qualified offerors, then pre-qualification criteria should not be included as proposal evaluation criteria.

(b) The proposal evaluation criteria should be limited to the quality, quantity, value and timeliness of the product or service being proposed. However, there may be circumstances where it is appropriate to include prequalification standards as proposal evaluation criteria. Such instances include situations where:

(1) The scope of work involves very specialized technical expertise, and

(2) Where prequalification procedures or two-phase selection procedures are not used (short listing is not performed).

§ 636.304 What process may be used to rate and score proposals?

(a) Proposal evaluation is an assessment of the offeror's proposal and ability to perform the prospective contract successfully. You must evaluate proposals solely on the factors and subfactors specified in the solicitation.

(b) You may conduct evaluations using any rating method or combination of methods including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation must be documented in the contract file.

§ 636.305 Can price information be provided to analysts who are reviewing technical proposals?

Normally, technical and price proposals are reviewed independently by separate evaluation teams. However, there may be occasions where the same experts needed to review the technical proposals are also needed in the review of the price proposals. This may occur where a limited amount of technical expertise is available to review proposals. Price information may be provided to such technical experts in accordance with your procedures.

Subpart D—Exchanges

§ 636.401 What types of information exchange may take place during the procurement process?

Certain types of information exchange may be desirable at different points in the procurement process. The following table summarizes the types of communications that will be discussed in this subpart. These communication methods are optional.

Type of information exchange	When	Purpose	Parties involved
(a) Clarifications	After receipt of proposals	Used when award without discussions contemplated. Used to clarify certain aspects of a proposal (resolve minor errors, clerical errors, obtain additional past performance information, etc.).	Any offeror whose proposal is not clear to the contracting agency.
(b) Communications	After receipt of proposals, prior to the establishment of the competitive range.	Used to address issues which might prevent a proposal from being placed in the competitive range.	Any offeror whose exclusion from, or inclusion in, the competitive range is uncertain. All offerors whose past performance information is the determining factor preventing them from being placed in the competitive range.
(c) Discussions (see Subpart E of this part).	After receipt of proposals and after the determination of the competitive range.	Enhance contracting agency understanding of proposals and offerors understanding of scope of work. Facilitate the evaluation process.	Must be held with all offerors in the competitive range.

§ 636.402 What information may be exchanged with a clarification?

You may wish to clarify any aspect of proposals which would enhance your understanding of an offeror's proposal. This includes such information as an offeror's past performance, or information regarding adverse past performance to which the offeror has not previously had an opportunity to respond. Clarification exchanges are discretionary. They do not have to be held with any specific number of offerors and do not have to address specific issues.

§ 636.403 Can a competitive range be used to limit competition?

If the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency, you may limit the number of proposals to the greatest number that will permit an efficient competition. However, you must provide written notice to any offeror whose proposal is no longer considered to be included in the competitive range. Offerors excluded or otherwise eliminated from the competitive range may request a debriefing. Debriefings may be conducted in accordance with your procedures as long as you comply with the provisions of Subpart F, Notifications and Debriefings.

§ 636.404 After developing a short list, can I still establish a competitive range?

Yes, if you have developed a short list of firms, you may still establish a competitive range. The short list is based on qualifications criteria. The competitive range is based on the rating of technical and price proposals.

§ 636.405 Are communications allowed prior to establishing the competitive range?

Yes, prior to establishing the competitive range, you may conduct communications to:

(a) Enhance your understanding of proposals;

(b) Allow reasonable interpretation of the proposal; or

(c) Facilitate your evaluation process.

§ 636.406 Am I limited in holding communications with certain firms?

Yes, if you establish a competitive range, you must do the following:

(a) Hold communications with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range;

(b) Address adverse past performance information to which an offeror has not had a prior opportunity to respond; and

(c) Hold communications only with those offerors whose exclusion from, or inclusion in, the competitive range is uncertain.

§ 636.407 Can communications be used to cure proposal deficiencies?

(a) No, communications must not be used to:

(1) Cure proposal deficiencies or material omissions;

(2) Materially alter the technical or cost elements of the proposal; and/or

(3) Otherwise revise the proposal.

(b) Communications may be considered in rating proposals for the purpose of establishing the competitive range.

§ 636.408 Can offerors revise their proposals during communications?

(a) No. Communications shall not provide an opportunity for an offeror to revise its proposal, but may address the following:

(1) Ambiguities in the proposal or other concerns (e.g., perceived deficiencies, weaknesses, errors, omissions, or mistakes); and

(2) Information relating to relevant past performance.

(b) Communications must address adverse past performance information to which the offeror has not previously had an opportunity to comment.

Subpart E—Discussions, Proposal Revisions and Source Selection

§ 636.501 What issues may be addressed in discussions?

In a competitive acquisition, discussions may include bargaining. The term bargaining may include: persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

§ 636.502 Why should I use discussions?

You should use discussions to maximize your ability to obtain the best value, based on the requirements and the evaluation factors set forth in the solicitation.

§ 636.503 Must I notify offerors of my intent to use/not use discussions?

Yes, in competitive acquisitions, the solicitation must notify offerors of your intent. You should either:

(a) Notify offerors that discussions may or may not be held depending on the quality of the proposals received (except clarifications may be used as described in § 636.401). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint; or

(b) Notify offerors of your intention to establish a competitive range and hold discussions.

§ 636.504 If the solicitation indicated my intent was to award contract without discussions, but circumstances change, may I still hold discussions?

Yes, you may still elect to hold discussions when circumstances dictate, as long as the rationale for doing so is documented in the contract file. Such circumstances might include situations where all proposals received have deficiencies, when fair and reasonable prices are not offered, or when the cost or price offered is not affordable.

§ 636.505 Must a contracting agency establish a competitive range if it intends to have discussions with offerors?

Yes, if discussions are held, they must be conducted with all offerors in the competitive range. If you wish to hold discussions and do not formally establish a competitive range, then you must hold discussions with all responsive offerors.

§ 636.506 What issues must be covered in discussions?

(a) Discussions should be tailored to each offeror's proposal. Discussions must cover significant weaknesses, deficiencies, and other aspects of a proposal (such as cost or price, technical approach, past performance, and terms and conditions) that could be altered or explained to enhance materially the proposal's potential for award. You may use your judgment in setting limits for the scope and extent of discussions.

(b) In situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, you may hold discussions regarding increased performance beyond any mandatory minimums, and you may suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.

§ 636.507 What subjects are prohibited in discussions, communications and clarifications with offerors?

You may not engage in conduct that:

(a) Favors one offeror over another;

(b) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(c) Reveals an offerors price without that offeror's permission;

(d) Reveals the names of individuals providing reference information about an offeror's past performance; or

(e) Knowingly furnish source selection information which could be in violation of State procurement integrity standards.

§ 636.508 Can price or cost be an issue in discussions?

You may inform an offeror that its price is considered to be too high, or too low, and reveal the results of the analysis supporting that conclusion. At your discretion, you may indicate to all offerors your estimated cost for the project.

§ 636.509 Can offerors revise their proposals as a result of discussions?

(a) Yes, you may request or allow proposal revisions to clarify and document understandings reached during discussions. At the conclusion of discussions, each offeror shall be given an opportunity to submit a final proposal revision.

(b) You must establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be in writing and that the contracting agency intends to make award without obtaining further revisions.

§ 636.510 Can the competitive range be further defined once discussions have begun?

Yes, you may further narrow the competitive range if an offeror originally in the competitive range is no longer considered to be among the most highly rated offerors being considered for award. That offeror may be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the offeror has been afforded an opportunity to submit a proposal revision. You must provide an offeror excluded from the competitive range with a written determination and notice that proposal revisions will not be considered.

§ 636.511 Can there be more than one round of discussions?

Yes, but only at the conclusion of discussions will the offerors be requested to submit a final proposal revision. Thus, regardless of the length

or number of discussions, there will be only one request for a revised proposal (i.e., only one best and final offer).

§ 636.512 What is the basis for the source selection decision?

(a) You must base the source selection decision on a comparative assessment of proposals against all selection criteria in the solicitation. While you may use reports and analyses prepared by others, the source selection decision shall represent your independent judgment.

(b) The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

Subpart F—Notifications and Debriefings

§ 636.601 When must notification be provided to unsuccessful offerors?

You must provide written notification to unsuccessful offerors, as follows:

(a) *Preaward notification.* When you exclude an offeror from the competitive range or otherwise eliminate an offeror from competition prior to the award of contract, you must provide a written notification to the offeror. The notification shall state the basis for the determination and that a proposal revision will not be considered.

(b) *Postaward notification.* You must provide written notification of contract award within three working days to:

(1) Each offeror whose proposal was in the competitive range, but did not receive award; and

(2) Offerors who did not receive a preaward notification.

§ 636.602 What issues must be provided in the written notification of contract award to unsuccessful offerors?

(a) The written notification must include:

(1) The number of offerors solicited;

(2) The number of proposals received;

(3) The name and address of each offeror receiving an award;

(4) The items, quantities, and unit prices of awarded contracts, except where it its impractical to furnish unit prices, the total contract price may be furnished; and

(5) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information readily reveals the reason.

(b) The notification must not reveal an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information to any other offeror.

§ 636.603 How may I notify the successful offeror?

You may notify the successful offeror in accordance with your own procedures.

§ 636.604 Can offerors request preaward or postaward debriefings?

(a) Yes, any offeror may request a debriefing. You may provide oral or written debriefings.

(b) Offerors who have been excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award by submitting a written request within three days after receipt of a notice of exclusion from further consideration. You should provide the debriefing as soon as practicable. However, at your discretion, you may delay the debriefing until after contract award.

(c) If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(d) An official summary of the preaward or postaward debriefing shall be included in the contract file.

§ 636.605 What issues must be discussed at preaward debriefings?

At a minimum, preaward debriefings shall include:

(a) The agency's evaluation of significant elements in the offeror's proposal;

(b) A summary of the rationale for eliminating the offeror from the competition; and

(c) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

§ 636.606 What issues must not be discussed at preaward debriefings?

You must not disclose:

(a) The number of offerors;

(b) The identity of other offerors;

(c) The content of other offerors' proposals;

(d) The ranking of other offerors;

(e) The evaluation of other offerors; or

(f) Any of the information prohibited in § 636.608.

§ 636.607 What issues must be discussed at postaward debriefings?

At a minimum, the debriefing information shall include the following:

(a) Your agency's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(b) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;

(c) The overall ranking of all offerors, when any ranking was developed by your agency during the source selection;

(d) A summary of the rationale for award; and

(e) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

§ 636.608 What issues must not be discussed at postaward debriefings?

(a) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors.

(b) The debriefing shall not reveal any information prohibited from disclosure under the Freedom of Information Act (5 U.S.C. 552) including the following:

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

PART 637—CONSTRUCTION INSPECTION AND APPROVAL

19. The authority citation for part 637 is revised to read as follows:

Authority: Sec. 1307, Pub. L. 105–178, 112 Stat. 107, at 229 (1998); 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

PART 637—[AMENDED]

20. In part 637 revise all references to "State highway agency's" to read "State transportation department's"; revise the acronyms "SHA" and "SHAs" to read "STD" and "STDs", respectively; and revise the references to "non-SHA" to read "non-STD".

21. Amend § 637.207 by adding paragraph (a)(1)(iv) and paragraph (b) to read as follows:

§ 637.207 Quality assurance program.

(a) * * *

(1) * * *

(iv) In the case of a design-build project on the National Highway System, warranties may be used where appropriate. Warranties which are limited in scope or duration may be supplemented by quality control and verification sampling and testing. Warranty provisions shall generally be for a specific product or feature.

* * * * *

(b) In the case of a design-build project funded under title 23, U.S. Code, the STD's quality assurance program should consider the specific contractual needs of the design-build project. All provisions of § 637.207(a) are applicable to design-build projects. In addition, the quality assurance program may include the following:

(1) Reliance on a combination of contractual provisions and acceptance methods;

(2) Reliance on quality control sampling and testing as part of the acceptance decision, provided that adequate verification of the design-builder's quality control sampling and testing is performed to ensure that the design-builder is providing the quality of materials and construction required by the contract documents.

(3) Contractual provisions which require the operation of the completed facility for a specific time period.

PART 710—RIGHT-OF-WAY AND REAL ESTATE

22. The authority citation for part 710 is revised to read as follows:

Authority: Sec. 1307, Pub. L. 105–178, 112 Stat. 107, at 229 (1998); 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d *et seq.*, 4633, 4651–4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

23. Amend part 710 by adding § 710.313 to subpart C to read as follows:

§ 710.313 Design-build projects.

(a) In the case of a design-build project, right-of-way must be acquired and cleared in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and STD right-of-way procedures. The procedures in § 710.311 regarding responsibility for the review and approval of right-of-way availability statements and certifications also apply to design-build projects.

(b) The decision to advance a right-of-way segment to the construction stage shall not impair the safety or in anyway be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of project right-of-way.

(c) Certain right-of-way acquisition and clearance services may be incorporated into the design-build contract if allowed under State law. The contract may include language that provides that construction will not commence until all property is acquired and relocations have been completed. In situations where large, multi-year construction projects are undertaken, the construction could be phased or segmented to allow right-of-way activities to be completed in phases, thereby allowing certification for each section.

(d) If the STD elects to include right-of-way services in the design-build contract, the following provisions must be addressed in the request for proposals document:

(1)(i) The design-builder must submit written acquisition and relocation procedures to the STD for approval prior to commencing right-of-way activities. These procedures should contain a prioritized appraisal, acquisition, and relocation strategy as well as check points for STD approval, such as approval of just compensation, replacement housing payment calculations, replacement housing payment and moving cost claims, appraisals, administrative and stipulated settlements that exceed determined thresholds based on a risk management analysis, etc.

(ii) The written relocation plan must provide reasonable time frames for the orderly relocation of residents and businesses on the project. It should be understood that these time frames will be based on best estimates of the time it will take to acquire the right-of-way and relocate families in accordance with certain legal requirements and time frames which may not be violated. Accordingly, the time frames estimated for right-of-way acquisition will not be compressed in the event other necessary actions preceding right-of-way acquisition miss their assigned due dates.

(2)(i) The design-builder must establish a project tracking system and quality control system. This system must show the appraisal, acquisition and relocation status of all parcels.

(ii) The quality control system may be administered by an independent consultant with the necessary expertise in appraisal, acquisition and relocation policies and procedures, who can make periodic reviews and reports to the design-builder and the STD.

(3) The STD may consider the establishment of a hold off zone around all occupied properties to ensure compliance with right-of-way procedures prior to starting construction activities in affected areas. The limits of this zone should be established by the STD prior to the design-builder entering on the property. There should be no construction related activity within the hold off zone until the property is vacated. The design-builder must have written notification of vacancy from the right-of-way quality control consultant or STD prior to entering the hold off zone.

(4) Adequate access shall be provided to all occupied properties to insure emergency and personal vehicle access.

(5) Utility service must be available to all occupied properties at all times prior to and until relocation is completed.

(6) Open burning should not occur within 305 meters (1,000 feet) of an occupied dwelling.

(7) The STD will provide a right-of-way project manager who will serve as the first point of contact for all right-of-way issues.

(e) If the STD elects to perform all right-of-way services relating to the design-build contract, the provisions in § 710.311 will apply. The STD will notify potential offerors of the status of all right-of-way issues in the request for proposal document.

[FR Doc. 01–26234 Filed 10–18–01; 8:45 am]

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Federal Register

Friday,
October 19, 2001

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 36, and 53
Federal Acquisition Regulation; New Consolidated Form for Selection of Architect-Engineer Contractors; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 36, and 53

[FAR Case 2000–608]

RIN 9000–AJ15

Federal Acquisition Regulation; New Consolidated Form for Selection of Architect-Engineer Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to replace SF 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects, with SF 330, Architect-Engineer Qualifications. SF 330 reflects current architect-engineer practices in a streamlined and updated form, organized in data blocks that readily support automation.

DATES: Interested parties should submit comments in writing on or before December 18, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: farcase.2000–608@gsa.gov

Please submit comments only and cite FAR case 2000–608 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAR case 2000–608.

SUPPLEMENTARY INFORMATION:

A. Background

An interagency ad hoc committee developed SF 330. The ad hoc committee based the development of the form on Federal Facilities (FCC) Council Technical Report No. 130, "[Joint Federal-industry] Survey on the Use of SFs 254 and 255 for Architect-Engineer Qualifications," 1996 (The Federal Facilities Council is an arm of the Congressionally charted National Academy of Sciences.) The report states that Federal agencies and the architect-engineer industry strongly endorse maintaining a structured format for presenting architect-engineer qualifications. The report also concludes that the SFs 254 and 255 need improvement.

Both Federal and industry architect-engineer practitioners believe that the forms need streamlining, as well as updating to facilitate electronic usage. Hence the SFs 254 and 255 have been consolidated into SF 330. The SF 330 reflects current architect-engineer practices in a streamlined and updated form organized in data blocks that readily support automation.

The proposed rule replaces SFs 254 and 255 with SF 330 and makes related FAR revisions in 1.106, 36.603, 36.702, 53.236–2 and 53.301–330. The proposed rule makes the following changes:

- Merges the SFs 254 and 255 into a single streamlined SF 330.
- Expands essential information about qualifications and experience such as an organizational chart of all participating firms and key personnel.
- Reflects current architect-engineer disciplines, experience types and technology.
- Eliminates information of marginal value such as a list of all offices of a firm.
- Permits limited submission length thereby reducing costs for both the architect-engineer industry and the government.
- Facilitates electronic usage by organizing the form in data blocks.

SF 330, Part II, Block 5.b. requests information based on the North American Industry Classification System (NAICS). Effective October 1, 2000, the FAR was revised to convert size standards and other programs in the FAR that are currently based on the Standard Industrial Classification (SIC) code system to NAICS (65 FR 46055). The SF 330 has been revised to comply with the aforementioned, October 1, 2000, FAR revision.

Pending public comment, this is not considered a significant regulatory action and, therefore, is not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only replaces two standard forms, with one consolidated streamlined standard form. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 1, 36, and 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000–608), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. The proposed rule replaces the current SF 254, Architect-Engineer and Related Services, and the current SF 255, Architect-Engineer and Related Services Questionnaire for Specific Project, Questionnaire, with a new SF 330, Architect-Engineer Qualifications. The current SF 254 approved information collection requirement states that it takes 1 hour to complete; and the current SF 255 approved information collection requirement states that it takes 1.2 hours to complete. Experience has shown that these hours are substantially underestimated. The SF 330, Architect-Engineer Qualifications, has been developed by an interagency ad hoc committee, based on Federal Facilities (FCC) Council Technical Report No. 130, "[Joint Federal-industry] Survey on the Use of SFs 254 and 255 for Architect-Engineer Qualifications," 1996. Accordingly, the FAR Secretariat has submitted a request for approval of a new information collection requirement concerning OMB control number 9000–00XX, New Consolidated Form for Selection of Architect-Engineer Contractors, to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 29 hours (25 hours for Part 1 and 4 hours for Part 2) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Because of the tailoring required by the form for each project submittal, there are virtually no savings in burden hours by repeat submittals.

The annual reporting burden is estimated as follows:

Respondents: 5000.
Responses per respondent: 4.
Total annual responses: 20,000.
Preparation hours per response: 29.
Total response burden hours: 580,000.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than December 18, 2001 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology..

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00XX, FAR Case 2000–608 New Consolidated Form for Selection of Architect-Engineer Contractors, in all correspondence.

List of Subjects in 48 CFR Parts 1, 36, and 53

Government procurement.

Dated: October 11, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose to amend 48 CFR parts 1, 36, and 53 as set forth below:

1. The authority citation for 48 CFR parts 1, 36, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend Section 1.106 in the table following the introductory text by removing from the column "FAR segment" the entries "SF 254" and "SF 255" and their corresponding OMB Control Numbers; and by adding, in sequential order, to the FAR segment column "SF 330" and the corresponding OMB Control Number "9000–00XX".

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

3. Amend Section 36.603 by—

a. Revising paragraph (b) and the introductory text of paragraph (c);

b. Removing from paragraph (d) introductory text "shall" and adding "must" in its place;

c. Removing from paragraph (d)(1) "SF 254" and adding "SF 330, Part II" in its place; and

d. Removing from paragraph (d)(2) "SF's 254 and 255" and inserting "SF 330" in its place.

The revised text reads as follows:

36.603 Collecting data on and appraising firms' qualifications.

* * * * *

(b) *Qualifications data.* To be considered for architect-engineer contracts, a firm must file with the appropriate office or board the Standard Form 330, "Architect-Engineer Qualifications", Part II, and when applicable, SF 330, Part I.

(c) *Data files and the classification of firms.* Under the direction of the parent agency, offices or permanent evaluation boards must maintain an architect-engineer qualifications data file. These offices or boards must review the SF 330 filed, and must classify each firm with respect to—

* * * * *

4. Amend Section 36.702 by revising paragraph (b) to read as follows:

36.702 Forms for use in contracting for architect-engineer services.

* * * * *

(b) The SF 330, Architect-Engineer Qualifications, shall be used to evaluate firms before awarding a contract for architect-engineer services:

(1) Use the SF 330, Part I—Contract-Specific Qualifications, to obtain information from an architect-engineer firm about its qualifications for a specific contract when the contract amount is expected to exceed the simplified acquisition threshold. Part 1 may be used when the contract amount is expected to be at or below the simplified acquisition threshold, if the contracting officer determines that its use is appropriate.

(2) Use the SF 330, Part II—General Qualifications, to obtain information from an architect-engineer firm about its general professional qualifications.

* * * * *

PART 53—FORMS

5. Amend Section 53.236–2 by revising the section heading and paragraph (b); and by removing paragraph (c) and redesignating paragraph (d) as (c). The revised text reads as follows:

53.236–2 Architect-engineer services (SFs 252, 330, and 1421).

* * * * *

(b) *SF 330 (xx/01), Architect-Engineer Qualifications.* SF 330 is prescribed for use in obtaining information from architect-engineer firms regarding their professional qualifications, as specified in 36.702(b)(1) and (2).

* * * * *

53.301–254 and 53.301–255 [Removed]

5. Sections 53.301–254 and 53.301–255 are removed.

53.301–330 [Added]

6. Section 53.301–330 is added as follows:

53.301–330 Architect-Engineer Qualifications.

BILLING CODE 6820–EP–P

ARCHITECT-ENGINEER QUALIFICATIONS

OMB No.: 9000-0004
Expires:

Public reporting burden for this collection of information is estimated to average a total of 29 hours per response (25 hours for Part 1 and 4 hours for Part 2), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Acquisition Policy Division, GSA, Washington, DC 20405.

PURPOSE

Federal agencies use this form to obtain information from architect-engineer (A-E) firms about their professional qualifications. Federal agencies select firms for A-E contracts on the basis of professional qualifications as required by the Brooks A-E Act (40 U.S.C. 541-544) and Part 36 of the Federal Acquisition Regulation (FAR).

The Brooks A-E Act requires the public announcement of requirements for A-E services (with some exceptions provided by other statutes), and the selection and interviews with at least three of the most highly qualified firms based on demonstrated competence and professional qualifications according to specific criteria published in the announcement. The Act then requires the negotiation of a contract with the most highly qualified firm at a fair and reasonable price.

The information used to evaluate firms is from this form and other sources; it includes performance evaluations, any additonal data requested by the agency, and interviews with the most highly qualified firms and their references.

GENERAL INSTRUCTIONS

Part I presents the qualifications for a specific contract.

Part II presents the general qualifications of a firm or a specific branch office of a firm. Part II has two uses:

1. An A-E firm may submit Part II to the appropriate central, regional or local office of each Federal agency to be kept on file. A public announcement is not required for certain contracts, and agencies may use Part II as a basis for selecting at least three of the most highly qualified firms for discussions prior to requesting submission of Part I. Firms are encouraged to update Part II on file with agency offices, as appropriate, according to FAR Part 36. If a firm has branch offices, submit a separate Part II for each branch office seeking work.

2. Prepare a separate Part II for each firm that will be part of the team proposed for a specific contract and submitted with Part I. If a firm has branch offices, submit a separate Part II for each branch office that is part of the team.

INDIVIDUAL AGENCY INSTRUCTIONS

Individual agencies may supplement these instructions. For example, they may limit the number of projects or number of pages submitted in Part I in response to a public announcement for a particular project. Carefully comply with any agency instructions when preparing and submitting this form. Be as concise as possible and provide only the information requested by the agency.

DEFINITIONS

Architect-Engineer Services: Defined in FAR 2.101.

Branch Office: A geographically distinct place of business or subsidiary office of a firm that is part of the proposed team.

Discipline: Primary technical capabilities of key personnel, as evidenced by academic degree, professional registration, certification, and/or extensive experience.

Firm: Defined in FAR 36.102.

Key Personnel: Individuals who will have major contract responsibilities and/or provide unusual or unique expertise.

SPECIFIC INSTRUCTIONS

Part I - Contract-Specific Qualifications:

1. and 2. Page Number and Total Pages. Number each page of Part I sequentially, including any additional sheets, and indicate the total number of pages on each page.

Section A. Contract Information.

3. and 4. Title and Location. Enter the title and location of the contract for which this form is being submitted, exactly as shown in the public announcement or agency request.

5. Public Notice Date. Enter the posted date of the agency's notice on FedBizOpps, other form of public announcement or agency request for this contract.

6. Solicitation or Project Number. Enter the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request for this contract.

Section B. Architect-Engineer Point of Contact

7-11. Name, Title, Telephone Number, Fax (Facsimile) Number and E-mail (Electronic Mail) Address. Provide information for a representative of the prime contractor or joint venture that the agency can contact for additional information.

Section C. Proposed Team

12-14. Firm Name, Address, and Role in This Contract. Indicate the contractual relationship (prime contractor, joint venture partner or subcontractor) and provide the name, full mailing address, and role of each firm that will be involved in performance of this contract. If a firm has branch offices, indicate each individual branch office that will be part of the team. The named subcontractors and outside associates or consultants must be used, and any change must be approved by the contracting officer. (See FAR Part 52 Clause "Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)".) Attach an additional sheet in the same format as Section C if needed.

Section D. Organizational Chart of Firms and Key Personnel

On a separate sheet, inserted after Section C, present an organizational flowchart showing each firm (and each branch office, if appropriate) listed in Section C, and the names and roles of all key personnel listed in Section E.

Section E. Resumes of Key Personnel Proposed for This Contract

Complete this section for each key person who will participate in this contract. Group by firm, with personnel of the prime contractor or joint venture partner firms first. The following blocks must be completed for each resume:

15. Name. Self-explanatory.

16. Role in This Contract. Self-explanatory.

17. Years Experience. Total years of relevant experience (block 17a), and years of relevant experience with this firm, but not necessarily the same branch office (block 17b).

18. and 19. Firm Name and Firm Location. Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate) listed in Section C.

20. Education. Provide information on the highest relevant academic degree(s) received. Indicate the area(s) of emphasis for each degree under Specialization (block 20d). If the person has more than two relevant degrees, show in Other Professional Qualifications (block 22).

21. Current Professional Registration. Provide information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36. If the person has more than two relevant professional registrations, show in Other Professional Qualifications (block 22).

22. Other Professional Qualifications. Provide information on any other professional qualifications relating to this contract, such as education, professional registration, publications, organizational memberships, certifications, training, awards, security clearance, and foreign language capabilities.

23. Relevant Projects. Provide information on up to five projects in which the person had a significant role that demonstrates the person's capability relevant to her/his proposed role in this contract. These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F. If any of the professional services or construction projects are not complete, leave Year Completed (block (3)) blank and indicate the status in Description (block (4)). Only attach photographs if requested by the agency.

Section F. Example Projects Which Best Illustrate Proposed Team's Qualifications for This Contract

Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract. Complete one Section F for each project. Present ten projects, unless otherwise specified by the agency. Complete the following blocks for each project:

24. Title. Title of project or contract.

25. Location. Self-explanatory.

26. Project Owner. Project owner or user, such as a government agency or installation, an institution, a corporation or private individual.

27. Project Owner's Point of Contact. Provide information about a person associated with the project owner or the organization which contracted for the professional services, who is very familiar with the project and the firm's (or firms') performance.

28. Brief Description of Project and Relevance to This Contract. Indicate scope, size, cost, principal elements and special features of the project. Discuss the relevance of the example project to this contract. Only attach photographs if requested by the agency.

29. and 30. Professional Services and Construction. Enter the year completed and cost of the professional services (such as planning, engineering study, design, or surveying), and/or the year completed and cost of construction, if applicable. If any of the professional services or the construction projects are not complete, leave Year Completed (block 29a or 30a) blank and indicate the status in Brief Description (block 28).

31. Firms from Section C Involved with This Project. Indicate which firms (or branch offices, if appropriate) on the project team were involved in the example project, and their roles. List in the same order as in Section C.

32. Awards. Describe any awards the project received from governmental agencies or industry or professional organizations. Only attach the awards if requested by the agency.

33. Additional Project Information. Enter specific data requested by the agency for each example project. See the Commerce Business Daily or other types of announcements.

Section G. Key Personnel Participation in Example Projects

This matrix is intended to graphically depict which key personnel identified in Section E worked on the example projects listed in Section F. Complete the following blocks (see example below).

34. and 35. Names of Key Personnel and Role in This Contract. List the names of the key personnel and their proposed roles in this contract in the same order as they appear in Section E.

36. Example Projects Listed in Section F. In the column under each project key number (see block 37) and for each key person, insert a "1" if the person was involved in any role with the project or a "2" if the person performed in the same or similar role as proposed for this contract. Attach an additional Section G sheet if needed.

37. Example Projects Key. List the titles of the example projects in the same order as they appear in Section F.

Section H. Additional Information

38. Use this section to provide information specifically requested by the agency or to address selection criteria which are not covered by the information provided in Sections A-G. Typical information which may be required in this section includes: computer-aided design capabilities, metric design experience, quality management procedures, special contract capabilities, specialized equipment, security clearances, capacity to perform this contract in the required time period, knowledge of the project locality and local regulations, and contract awards by Federal agencies.

Section I. Authorized Representative

39. and 40. Signature of Authorized Representative and Date. An authorized representative of a joint venture or the prime contractor must sign and date the completed form. Signing attests that the information provided is current and factual, and that all firms on the proposed team agree to work on the project. Joint ventures selected for negotiations must make available a statement of participation by a principal of each member of the joint venture.

SAMPLE ENTRIES FOR SECTION G (MATRIX)

34. NAMES OF KEY PERSONNEL (From Section E, Block 15)	35. ROLE IN THIS CONTRACT (From Section E, Block 16)	36. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below first, before completing table. Place "1" under project key number for project participation in any role; Place "2" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10
Jane A. Smith	Chief Architect	1		2							
Joseph B. Williams	Chief Mech. Engineer	2	2	2	2						
Tara C. Donovan	Chief Elec. Engineer	2	1		2						
Evan D. Summer	CADD Technician	1	1	2	1						

37. EXAMPLE PROJECTS KEY

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)	NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)
1	Federal Courthouse, Denver, CO	3	XYZ Corporation Headquarters, Boston, MA
2	Justin J. Wilson Federal Building, Baton Rouge, LA	4	Founder's Museum, Newport RI

41. and 42. Name and Title of Authorized Representative. Provide this information for the authorized representative who signed the form.

Part II - General Qualifications

See the **"General Instructions"** on page 1 for firms with branch offices. If a firm has branch offices, prepare Part II for the specific branch office seeking work.

1. Solicitation Number. If Part II is submitted for a specific contract, insert the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request.

2a-2f. Firm (or Branch Office) Name and Address. Self-explanatory.

3. Year Established. Enter the year the firm (or branch office, if appropriate) was established under the current name.

4. DUNS Number. Insert the Data Universal Numbering System number issued by Dun and Bradstreet Information Services. See FAR Part 4. No DUNS number is required if the firm has not been issued one.

5. Ownership.

a. Type. Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).

b. Small Business Status. Refer to the North American Industry Classification System (NAICS) code in the public announcement, and indicate if the firm is a small business according to the current size standard for that NAICS code (for example, Engineering Services (part of NAICS 541330), Architectural Services (NAICS 541310), Surveying and Mapping Services (NAICS 541370)). The small business categories and the description of the NAICS codes appear in FAR Part 19. Contact the requesting agency for any questions.

6a-6d. Point of Contact. Provide this information for a representative of the firm that the agency can contact for additional information. The representative must be empowered to speak on contractual and policy matters.

7. Name of Firm. Enter the name of the firm if Part II is prepared for a branch office.

8a-8c. Former Firm Names. Indicate any other previous names for the firm (or branch office) during the last six years. Insert the year that this corporate name change was effective and the associated DUNS Number. This information is used to review past performance on Federal contracts.

9. Employees by Discipline. If Part II is prepared for a firm (including all branch offices), enter the number of employees by discipline in Col. c(1). If Part II is prepared for a branch office, enter the number of employees by discipline in Col. c(2) and for the firm in Col. c(1). Use the relevant disciplines and associated function codes shown at the end of these instructions, and list in the same numerical order. After the listed disciplines, write in any additional disciplines and leave the function code blank. Each person can be counted only once according to his/her primary function.

10. Profile of Firm's Experience and Annual Average Revenue for Last 5 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience. Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order. After the listed experience categories, write in any additional relevant project experiences and leave the profile code blank. For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm for performing that type of work. A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm. However, do not double count the revenues received on a particular project.

11. Annual Average Professional Services Revenues of Firm for Last 3 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office. Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non-Federal work (all other domestic and foreign work, including Federally-assisted projects), and the total. If the firm has been in existence for less than 3 years, see FAR Subpart 19.1 "Annual Receipts".

12. Authorized Representative. An authorized representative of the firm or branch office must sign and date the completed form. Signing attests that the information provided is current and factual. Provide the name and title of the authorized representative who signed the form.

List of Disciplines (Function Codes)

Code	Description
01	Administrative
02	Architects
03	Biologists
04	CADD Technicians
05	Cartographers
06	Chemists
07	Construction Inspectors
08	Construction Managers
09	Draftspersons
10	Ecologists
11	Economists
	Engineers:
12	Acoustical
13	Aeronautical
14	Chemical
15	Civil
16	Communications
17	Corrosion
18	Cost (Estimators)
19	Electrical/Electronic
20	Environmental
21	Fire Protection
22	Forensic
23	Foundation/Geotechnical
24	Industrial
25	Information Systems
26	Materials
27	Mechanical
28	Mining
29	Safety/Occupational Health
30	Soils
31	Specifications
32	Structural
33	Transportation
34	Value
35	Environmental Scientists
36	Geodetic Surveyors
37	Geologists
38	Geospacial Information Systems
39	Technicians/Analysts
40	Health Facility Planners
41	Hydrologists
42	Industrial Hygienists
43	Interior Designers
44	Landscape Architects
45	Oceanographers
46	Planners: Urban/Regional
47	Project Managers
48	Risk Assessors
49	Schedulers
50	Security Specialists
51	Topographic Surveyors
52	Toxicologists

List of Experience Categories (Profile Codes)

Code	Description	Code	Description
A01	Acoustics, Noise Abatement	E06	Energy Conservation; New Energy Sources
A02	Aerial Photogrammetry	E07	Engineering Economics
A03	Agricultural Development; Grain Storage; Farm Mechanization	E08	Environmental Impact Studies, Assessments or Statements
A04	Air Pollution Control	E09	Environmental Remediation
A05	Airports; Navaids; Airport Lighting; Aircraft Fueling; Paving	E10	Environmental Testing and Analysis
A06	Airports; Terminals and Hangars; Freight Handling	F01	Fallout Shelters; Blast-Resistant Design
A07	Arctic Facilities	F02	Field Houses; Gyms; Stadiums
A08	Animal Facilities	F03	Fire Protection
A09	Asbestos Abatement	F04	Fisheries; Fish ladders
A10	Auditoriums & Theaters	F05	Forensic Engineering
A11	Automation; Controls; Instrumentation	F06	Forestry & Forest products
B01	Barracks; Dormitories	G01	Galleries
B02	Bridges	G02	Garages; Vehicle Maintenance Facilities; Parking Decks
C01	Cemeteries *(Planning & Relocation)*	G03	Gas Systems (Propane; Natural, Etc.)
C02	Chemical Processing & Storage	G04	Geographic Information System Development/Analysis
C03	Child Care/Development Facilities	G05	Graphic Design
C04	Churches; Chapels	H01	Harbors; Jetties; Piers, Ship Terminal Facilities
C05	Coastal Engineering	H02	Hazardous Materials Handling and Storage
C06	Codes; Standards; Ordinances	H03	Hazardous, Toxic, Radioactive Waste Remediation
C07	Cold Storage; Refrigeration and Fast Freeze	H04	Heating; Ventilating; Air Conditioning
C08	Commercial Building *(low rise)*; Shopping Centers	H05	Health Systems Planning
C09	Community Facilities	H06	Highrise; Air-Rights-Type Buildings
C10	Communications Systems; TV; Microwave	H07	Highways; Streets; Parking Lots
C11	Computer Facilities; Computer Service	H08	Historical Preservation
C12	Conservation and Resource Management	H09	Hospital & Medical Facilities
C13	Construction Management	H10	Hotels; Motels
C14	Construction Surveying	H11	Housing *(Residential, Multi-Family; Apartments; Condominiums)*
C15	Corrosion Control; Cathodic Protection; Electrolysis	H12	Hydraulics & Pneumatics
C16	Cost Engineering and Analysis; Parametric Costing; Forecasting; Risk Analysis; Life Cycle Costing	H13	Hydrographic Surveying
C17	Cryogenic Facilities	I01	Industrial Buildings; Manufacturing Plants
D01	Dams *(Concrete; Arch)*	I02	Industrial Processes; Quality Control
D02	Dams *(Earth; Rock)*; Dikes; Levees	I03	Industrial Waste Treatment
D03	Desalinization *(Process & Facilities)*	I04	Interior Design; Space Planning
D04	Design-Build	I05	Irrigation; Drainage
D05	Dining Halls; Clubs; Restaurants	J01	Judicial and Courtroom Facilities
D06	Dredging Studies and Design	L01	Laboratories
E01	Ecological & Archeological Investigations	L02	Land Boundary Surveying
E02	Educational Facilities; Classrooms	L03	Landscape Architecture
E03	Electrical Studies and Design	L04	Libraries
E04	Electronics		
E05	Elevators; Escalators; People-Movers		

List of Experience Categories (Profile Codes)

Code	Description
L05	Lighting (Interior; Display; Theater, Etc.)
L06	Lighting (Exteriors; Streets; Memorials; Athletic Fields, Etc.)
M01	Materials Handling Systems; Conveyors; Sorters
M02	Metallurgy
M03	Microclimatology; Tropical Engineering
M04	Military Design Standards
M05	Mining & Mineralogy
M06	Missile Facilities (Silos; Fuels; Transport)
M07	Modular Systems Design; Pre-Fabricated Structures or Components
M08	Museums
N01	Naval Architecture; Off-Shore Platforms
N02	Nuclear Facilities; Nuclear Shielding
O01	Office Buildings; Industrial Parks
O02	Oceanographic Engineering
O03	Ordnance; Munitions; Special Weapons
P01	Petroleum Exploration; Refining
P02	Petroleum and Fuel (Storage and Distribution)
P03	Pipelines (Cross-Country - Liquid & Gas)
P04	Planning (Community, Regional, Areawide and State)
P05	Planning (Site, Installation, and Project)
P06	Plumbing & Piping Design
P07	Prisons & Correctional Facilities
P08	Product, Machine Equipment Design
P09	Pneumatic Structures, Air-Support Buildings
P10	Postal Facilities
P11	Power Generation, Transmission, Distribution
P12	Public Safety Facilities
R01	Radar; Sonar; Radio & Radar Telescopes
R02	Radio Frequency Systems & Shieldings
R03	Railroad; Rapid Transit
R04	Recreation Facilities (Parks, Marinas, Etc.)
R05	Refrigeration Plants/Systems
R06	Rehabilitation (Buildings; Structures; Facilities)
R07	Research Facilities
R08	Resources Recovery;
R09	Recycling Risk Analysis
R10	Rivers; Canals; Waterways; Flood Control
R11	Roofing
S01	Safety Engineering; Accident Studies; OSHA Studies
S02	Security Systems; Intruder & Smoke Detection
S03	Seismic Designs & Studies
S04	Sewage Collection, Treatment and Disposal
S05	Soils & Geologic Studies; Foundations
S06	Solar Energy Systems
S07	Solid Wastes; Incineration; Landfill
S08	Special Environments; Clean Rooms, Etc.
S09	Structural Design; Special Structures
S10	Surveying; Platting; Mapping; Flood Plain Studies
S11	Sustainable Design
S12	Swimming Pools
S13	Storm Water Handling & Facilities
T01	Telephone Systems *(Rural; Mobile; Intercom, Etc.)*
T02	Testing & Inspection Services
T03	Traffic & Transportation Engineering
T04	Topographic Mapping
T05	Towers *(Self-Supporting & Guyed Systems)*
T06	Tunnels & Subways
U01	Unexploded Ordinance Remediation
U02	Urban Renewals; Community Development
U03	Utilities
V01	Value Analysis; Life-Cycle Costing
W01	Warehouses & Depots
W02	Water Resources; Hydrology; Ground Water
W03	Water Supply; Treatment and Distribution
W04	Wind Tunnels; Research/Testing Facilities Design
Z01	Zoning; Land Use Studies

ARCHITECT - ENGINEER QUALIFICATIONS

1. PAGE NUMBER | 2. TOTAL PAGES

PART I - CONTRACT-SPECIFIC QUALIFICATIONS

A. CONTRACT INFORMATION

3. TITLE | 4. LOCATION *(City and State)*

5. PUBLIC NOTICE DATE | 6. SOLICITATION OR PROJECT NUMBER

B. ARCHITECT-ENGINEER POINT OF CONTACT

7. NAME | 8. TITLE

9. TELEPHONE NUMBER | 10. FAX NUMBER | 11. E-MAIL ADDRESS

C. PROPOSED TEAM

(Complete this section for the prime contractor and all other firms proposed for this contract. If a firm has branch offices, complete this section for the particular branch office(s) proposed for the contract.)

	"X" ONE: PRIME	JV PARTNER	BRANCH	SUBCONTRACTOR	12. FIRM NAME	13. ADDRESS	14. ROLE IN THIS CONTRACT
a.							
b.							
c.							
d.							
e.							
f.							
g.							
h.							
i.							

D. ORGANIZATIONAL CHART OF FIRMS AND KEY PERSONNEL ☐ *(Attached)*

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT *(Complete one Section E for each key person.)*

PAGE NUMBER | TOTAL PAGES

15. NAME | 16. ROLE IN THIS CONTRACT | 17. YEARS EXPERIENCE: a. TOTAL | b. WITH THIS FIRM

18. FIRM NAME | 19. FIRM LOCATION *(City and State)*

20. EDUCATION

a. DEGREE	b. DISCIPLINE	c. YEAR	d. SPECIALIZATION

21. CURRENT PROFESSIONAL REGISTRATION

a. STATE	b. YEAR FIRST REGISTERED	c. DISCIPLINE

22. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

23. RELEVANT PROJECTS

a. (1) TITLE | (2) LOCATION *(City and State)* | (3) YEAR COMPLETED: PROFESSIONAL SERVICES | CONSTRUCTION *(If applicable)*
(4) DESCRIPTION *(Brief scope, size, cost, etc.)* | (5) SPECIFIC ROLE
☐ Check if photos attached

b. (1) TITLE | (2) LOCATION *(City and State)* | (3) YEAR COMPLETED: PROFESSIONAL SERVICES | CONSTRUCTION *(If applicable)*
(4) DESCRIPTION *(Brief scope, size, cost, etc.)* | (5) SPECIFIC ROLE
☐ Check if photos attached

c. (1) TITLE | (2) LOCATION *(City and State)* | (3) YEAR COMPLETED: PROFESSIONAL SERVICES | CONSTRUCTION *(If applicable)*
(4) DESCRIPTION *(Brief scope, size, cost, etc.)* | (5) SPECIFIC ROLE
☐ Check if photos attached

d. (1) TITLE | (2) LOCATION *(City and State)* | (3) YEAR COMPLETED: PROFESSIONAL SERVICES | CONSTRUCTION *(If applicable)*
(4) DESCRIPTION *(Brief scope, size, cost, etc.)* | (5) SPECIFIC ROLE
☐ Check if photos attached

e. (1) TITLE | (2) LOCATION *(City and State)* | (3) YEAR COMPLETED: PROFESSIONAL SERVICES | CONSTRUCTION *(If applicable)*
(4) DESCRIPTION *(Brief scope, size, cost, etc.)* | (5) SPECIFIC ROLE
☐ Check if photos attached

DRAFT

F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT *(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)*

PAGE NUMBER | TOTAL PAGES

24. TITLE

25. LOCATION *(City and State)* | 26. PROJECT OWNER

27. PROJECT OWNER'S POINT OF CONTACT

a. NAME | b. TELEPHONE | c. FAX NUMBER | d. E-MAIL ADDRESS

28. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT

☐ CHECK IF PHOTOGRAPH(S) OF PROJECT ATTACHED *(If applicable)*

29. PROFESSIONAL SERVICES		30. CONSTRUCTION *(If applicable)*	
a. YEAR COMPLETED	b. FEE	a. YEAR COMPLETED	b. COST

31. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT

	(1) FIRM NAME	(2) FIRM LOCATION *(City and State)*	(3) ROLE
a.			
b.			
c.			
d.			
e.			
f.			
g.			
h.			
i.			

32. AWARDS *(If applicable)*

33. ADDITIONAL PROJECT INFORMATION

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G. KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS			PAGE NUMBER	TOTAL PAGES

34. NAMES OF KEY PERSONNEL (From Section E, Block 15)	35. ROLE IN THIS CONTRACT (From Section E, Block 16)	36. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below first, before completing table. Place "1" under project key number for project participation in any role; Place "2" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10

37. EXAMPLE PROJECTS KEY

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)	NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)
1		6	
2		7	
3		8	
4		9	
5		10	

H. ADDITIONAL INFORMATION	PAGE NUMBER	TOTAL PAGES

36. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS REQUIRED.

I. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

39. SIGNATURE	40. DATE

41. NAME *(Print or type)*	42. TITLE *(Print or type)*

ARCHITECT-ENGINEER QUALIFICATIONS

1. SOLICITATION NUMBER *(If any)*

PART II - GENERAL QUALIFICATIONS

(If a firm has branch offices, complete for each specific branch office seeking work.)

2a. FIRM (OR BRANCH OFFICE) NAME	3. YEAR ESTABLISHED / 4. DUNS NUMBER
2b. OPTIONAL ADDRESS LINE	5. OWNERSHIP
2c. STREET	a. TYPE
2d. CITY / 2e. STATE / 2f. ZIP CODE	b. SMALL BUSINESS STATUS
6a. POINT OF CONTACT NAME / 6b. POINT OF CONTACT TITLE	7. NAME OF FIRM *(If block 3a is a branch office)*
6c. TELEPHONE NUMBER / 6d. E-MAIL ADDRESS	

8a. FORMER FIRM NAME(S) *(If any)*	8b. YR. ESTABLISHED	8c. DUNS NUMBER

9. EMPLOYEES BY DISCIPLINE

a. Function Code	b. Discipline	c. No. of Employees (1) FIRM	(2) BRANCH
	Total		

10. PROFILE OF FIRM'S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS

a. Profile Code	b. Experience	c. Revenue Index Number *(see below)*

11. ANNUAL AVERAGE PROFESSIONAL SERVICES REVENUES OF FIRM FOR LAST 3 YEARS
(Insert revenue index number shown at right)

a. Federal Work	
b. Non-Federal Work	
c. Total Work	

PROFESSIONAL SERVICES REVENUE INDEX NUMBER

1. Less than $100,000
2. $100,00 to less than $250,000
3. $250,000 to less than $500,000
4. $500,000 to less than $1 million
5. $1 million to less than $2 million
6. $2 million to less than $5 million
7. $5 million to less than $10 million
8. $10 million to less than $25 million
9. $25 million to less than $50 million
10. $50 million or greater

12. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

a. SIGNATURE	b. DATE
c. NAME OF AUTHORIZED *(Print or type)*	d. TITLE *(Print or type)*

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 1583/P.L. 107–49
To designate the Federal building and United States courthouse located at 121 West Spring Street in New Albany, Indiana, as the "Lee H. Hamilton Federal Building and United States Courthouse". (Oct. 15, 2001; 115 Stat. 262)

H.R. 1860/P.L. 107–50
Small Business Technology Transfer Program Reauthorization Act of 2001 (Oct. 15, 2001; 115 Stat. 263)

H.J. Res. 42/P.L. 107–51
Memorializing fallen firefighters by lowering the American flag to half-staff in honor of the National Fallen Firefighters Memorial Service in Emmitsburg, Maryland. (Oct. 16, 2001; 115 Stat. 267)

H.J. Res. 51/P.L. 107–52
Approving the extension of nondiscriminatory treatment with respect to the products of the Socialist Republic of

Vietnam. (Oct. 16, 2001; 115 Stat. 268)

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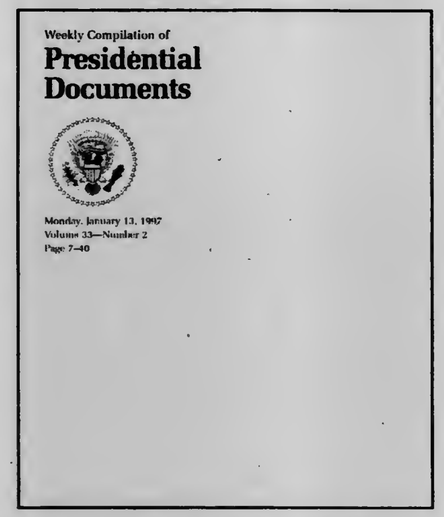
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SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245–AE82

Disaster Loan Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Interim final rule with request for comments.

SUMMARY: In response to the President's major disaster declarations with respect to the World Trade Center and the Pentagon and the attendant economic repercussions from those disasters, the SBA is revising its disaster loan regulations. This Interim Final Rule allows SBA to make economic injury disaster loans to eligible small business concerns outside the declared disaster areas that suffered substantial economic injury as a direct result of the destruction of the World Trade Center, New York, New York, or the damage to the Pentagon on September 11, 2001, or as a direct result of any related Federal action taken between September 11, 2001 and October 22, 2001. Because these affected small business concerns need economic injury disaster assistance quickly, SBA is issuing this regulation as an interim final rule.

DATES: *Effective Date:* This rule is effective on October 22, 2001.

Comment Date: Comments must be received on or before November 21, 2001.

ADDRESSES: Address all comments concerning the interim rule to Herbert Mitchell, Associate Administrator for Disaster Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: James Rivera, Deputy Associate Administrator, Office of Disaster Assistance, 202–205–6734.

SUPPLEMENTARY INFORMATION:

I. General Description of New Program

The President made major disaster declarations for the terrorist attacks on the World Trade Center, New York, New York and the Pentagon that took place on September 11, 2001. Notices, 66 FR 48682–48638, Sept. 21, 2001, amended 66 FR 49674, Sept. 28, 2001, and 66 FR 51435, Oct. 9, 2001, (NY) and 66 FR 51535, Oct. 9, 2001 (VA). Pursuant to SBA's current regulations, SBA has issued disaster declarations which provide economic injury disaster loans (EIDL) to eligible small business concerns in geographic areas contiguous to the declared disaster areas. Notices, 66 FR 48154, Sept. 18, 2001 (NY), amended 66 FR 50702–50703, Oct. 4, 2001 (NY), and 66 FR 49736, Sept. 28, 2001 (VA), corrected 66 FR 50703, Oct. 4, 2001; and Military Reservist Economic Injury Disaster Loan (EIDL) Notices, 66 FR 50241–50242, Oct. 2, 2001.

Under section 4(d) of the Small Business Act the SBA has a statutory obligation to act in the public interest when determining eligibility for assistance under the Small Business Act. 15 U.S.C. 633(d). In addition, the SBA is specifically authorized to provide economic injury disaster assistance to small businesses suffering substantial economic injury in areas affected by disasters. 15 U.S.C. 636(b)(2). Further, there is nothing in the Small Business Act that precludes SBA from expanding EIDL assistance to businesses located beyond the areas contiguous to the declared disaster areas. Accordingly, SBA is adding a new subpart G, with respect to the terrorist attacks on September 11, 2001, to authorize it to provide EIDL assistance to eligible small businesses located beyond such contiguous areas.

This action is being taken in recognition of the widespread economic dislocation caused by the terrorist attacks and the related Federal actions taken directly thereafter. Many small business concerns have suffered economic injury directly attributable to the terrorist attacks on September 11, 2001 or to certain necessary Federal actions taken in response to those attacks. These economic injuries have ranged from interruptions of normal business activities for brief periods of time to significant changes to normal business practices and procedures.

Under section 123.601 of the new subpart, SBA EIDL assistance will be available to such businesses if they can show that they suffered substantial economic injury as a direct result of the destruction of the World Trade Center, New York, New York, or the damage to the Pentagon on September 11, 2001, or any related Federal action occurring between September 11, 2001 and the date of publication of this interim final rule such that they are unable to meet their obligations as they mature or are unable to pay their ordinary and necessary operating expenses. The proceeds of an EIDL loan can be used by a business for working capital necessary to carry the business until resumption of normal operations and for expenditures necessary to alleviate the economic injury attributable to the terrorist attacks. EIDL assistance is not available for economic losses attributable to an economic downturn, and it may not exceed the amount attributable to the September 11, 2001 attacks or the specified Federal action. A loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

Under section 123.601 of the new subpart, in order to obtain SBA EIDL assistance the business must show that it was a small business, as defined in part 121 of SBA's regulations (13 CFR part 121), on September 11, 2001. It must also demonstrate that the principal owners of the business have used all reasonably available funds, and that the business is unable to obtain credit elsewhere.

Under section 123.602 of the new subpart, not all small businesses are legally eligible for EIDL assistance. For example, SBA cannot provide EIDL assistance to a nonprofit or charitable entity or a business that derives more than one-third of its gross annual revenue from legal gambling activities. It is also unable to provide EIDL assistance to a business principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting. Further, EIDL assistance cannot be used to refinance indebtedness that the business incurred prior to the terrorist attacks on September 11, 2001. Nor can such assistance be used to pay dividends or other disbursements to owners, partners, officers or stockholders, except

for reasonable remuneration directly related to their performance of services for the business.

The window to apply for assistance under this subpart will expire ninety days from the date of publication of this rule. Therefore, all applications must be postmarked on or before that date. The SBA may extend this deadline in its discretion for good cause. Any request for an increase in EIDL assistance must be made not later than one year after the date SBA approves the initial loan request.

Eligible small business concerns may apply for assistance under this subpart using existing SBA Forms for the existing EIDL Program. The forms needed are SBA Form #5 "Disaster Business Loan Application (OMB #3245–0017), SBA Form #1368 "Additional Filing Requirements EIDL" (OMB #3245–0017), SBA Form #413 "Personal Financial Statement" (OMB #3245–0188), and IRS Form #8821 "Tax Information Authorization" (OMB #1545–1165). Applications can be filed at the SBA disaster office servicing the applicant's state. Such offices are located in Niagara Falls, NY; Atlanta, GA; Ft. Worth, TX; and Sacramento, CA. Small business concerns may obtain additional information by contacting the Disaster Area Office responsible for their state: Niagara Falls Disaster Office (Area 1), Telephone: (800) 659–2955; Facsimile: (716) 282–1472; (Connecticut, Delaware, Maryland, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands); Atlanta Disaster Office (Area 2), Telephone: (800) 359–2227; Facsimile: (404) 347–4183; (Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, Wisconsin); Dallas/Ft. Worth Disaster Office (Area 3); Telephone: (800) 366–6303; Facsimile: (817) 885–7616; (Arkansas. Colorado, Iowa, Kansas, Louisiana, Missouri, Montana, North Dakota, Nebraska, New Mexico, South Dakota, Oklahoma, Texas, Utah, Wyoming); or Sacramento Disaster Office (Area 4); Telephone: (800) 488–5323; Facsimile: (916) 566–7280; (Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington; The Islands of American Samoa, Marshall Islands, Micronesia, and Guam).

II. Justification for Publication as Interim Final Status Rule

In general. SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without public participation. The President declared a national emergency as a result of the events of September 11, 2001. The events of that day have affected U.S. businesses both in the declared disaster areas and across the nation. Many of the affected businesses would qualify for SBA and other Federal assistance but for their location outside the contiguous counties.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to make economic injury disaster loans available to businesses that have suffered economic injury, but that do not qualify under SBA's existing geographic restrictions. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would delay the delivery of critical assistance to these businesses by a minimum of three to six months. Any such delay would be extremely prejudicial to the affected businesses. It is likely that some would be forced to cease operations before a rule could be promulgated under standard notice and comment rulemaking procedures.

Furthermore, SBA has a statutory obligation to act in the public interest in determining eligibility for Federal assistance under the Small Business Act. 15 U.S.C. 633(d). In addition, SBA also has the specific statutory authority to provide economic injury assistance to small businesses in areas affected by disasters. 15 U.S.C. 636(b)(2). SBA also notes the failure to adopt this rule immediately would work to the detriment of many small businesses.

Although this rule is being published as an interim final rule, comments are hereby solicited from interested members of the public. These comments must be received on or before November 21, 2001. SBA may then consider these comments in making any necessary revisions to these regulations.

III. Justification for Immediate Effective Date of Interim Final Rule

The APA requires that "publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register.**

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in II, Justification of Publication of Interim Final Status Rule, SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date.

SBA also believes, based on its contacts with interested members of the public, that there is strong interest in immediate implementation of this rule. SBA is aware of many entities that will be assisted by the immediate adoption of this rule.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government. Therefore, under Executive Order 13132, SBA determines that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule does not impose any new information collection requirements from SBA which require the approval of OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. The new rule increases access to SBA programs that assist small businesses, but uses existing SBA Forms with current OMB control numbers. Eligible small business concerns may apply for assistance under this subpart using existing SBA Forms for the existing EIDL Program. The forms needed are SBA Form #5 "Disaster Business Loan Application (OMB #3245–0017), SBA Form #1368 "Additional Filing Requirements EIDL" (OMB #3245–0017), SBA Form #413 "Personal Financial Statement"(OMB #3245–0188), and IRS Form 8821 "Tax Information Authorization" (OMB #1545–1165). Applications can be filed at the SBA disaster office servicing the state where the business is located. Such offices are located in Niagara Falls, NY; Atlanta, GA; Ft. Worth, TX; and Sacramento, CA. Small business concerns may obtain additional information by contacting the Disaster Area Office responsible for their state: Niagara Falls Disaster Office (Area 1), Telephone: (800) 659–2955; Facsimile: (716) 282–1472; Atlanta Disaster Office (Area 2), Telephone: (800) 359–2227; Facsimile: (404) 347–4183; Dallas/Ft. Worth Disaster Office (Area 3); Telephone: (800) 366–6303; Facsimile: (817) 885–7616; or Sacramento Disaster Office (Area 4); Telephone: (800) 488–5323; Facsimile: (916) 566–7280.

Due to its publication as an interim final rule, SBA has determined that the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612, do not apply.

The Office of Management and Budget (OMB) reviewed this rule as a "significant regulatory action" under section 3(f) under Executive Order 12866. SBA estimates that the final rule will have a significant economic impact of more than $100 million.

Under section 4(d) of the Small Business Act, the SBA has a statutory responsibility to act in the public interest in determining eligibility for Federal assistance under the Small Business Act. 15 U.S.C. 633(d). In addition, the SBA is specifically authorized to provide disaster assistance to small business concerns suffering substantial economic injury in areas affected by disasters. 15 U.S.C. 636(b)(2). SBA believes this regulation is necessary to reduce the adverse economic impact of the terrorist attacks and provide assistance to small business concerns affected.

Description of Potential Benefits of the Rule

The most significant benefit to small businesses as a result of this rule is their eligibility for economic injury disaster assistance programs. As stated above, SBA estimates that approximately $852 million will be loaned to small businesses as a result of this change. These small businesses will, as a result, be able to meet basic operational costs and payroll obligations. SBA believes that, while the subsidy cost of this lending will be approximately $250,000,000, the economic benefit of keeping these small businesses operating will be significant. The events of September 11, 2001 deepened the economic slowdown the country was experiencing, and in many instances it also raised unforeseen economic consequences for certain small businesses. In addition, many small businesses find themselves directly affected by certain necessary Federal regulatory action made necessary by the need for heightened security. As such, many small businesses that would have otherwise successfully weathered an ordinary economic downturn find themselves faced with extraordinary situations. The survival of these businesses presents a potential net increase to the economy. Furthermore, it will ameliorate the negative effects of the downturn and reduce or prevent additional costs to the government (through increased payments in entitlement programs, and reduced revenues) and the economy as a whole (through increased business failures and loss of capacity).

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

1. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102–395, 106 Stat. 1828, 1864; Pub. L. 103–75, 107 Stat. 739; and Pub. L. 106–50, 113 Stat. 245.

2. In part 123, add new subpart G to read as follows:

Subpart G—Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks

Sec.

123.600 Are economic injury disaster loans under this subpart limited to the geographic areas contiguous to the declared disaster areas?
123.601 Is my business eligible to apply for an economic injury disaster loan under this subpart?
123.602 When would my business not be eligible to apply for an economic injury disaster loan under this subpart?
123.603 What is the interest rate on an economic injury disaster loan under this subpart?
123.604 How can my business spend my economic injury disaster loan under this subpart?
123.605 How long do I have to apply for a loan under this subpart?
123.606 May I request an increase in the amount of an economic injury disaster loan under this subpart?

Subpart G—Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks

§ 123.600 Are economic injury disaster loans under this subpart limited to the geographic areas contiguous to the declared disaster areas?

No. Notwithstanding § 123.4, SBA may make economic injury disaster loans outside the declared disaster areas and the contiguous geographic areas to small business concerns that have suffered substantial economic injury as a direct result of the destruction of the World Trade Center or the damage to the Pentagon on September 11, 2001, or as a direct result of any related federal action taken between September 11, 2001 and October 22, 2001.

§ 123.601 Is my business eligible to apply for an economic injury disaster loan under this subpart?

(a) If your business has suffered substantial economic injury as a direct result of the destruction of the World Trade Center or the damage to the Pentagon on September 11, 2001, or as a direct result of any related federal action taken between September 11, 2001 and October 22, 2001, you are eligible to apply for an economic injury disaster loan under this subpart.

(1) Substantial economic injury is such that a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.

(2) Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

(b) Economic injury disaster loans are available under this subpart only if you were a small business (as defined in part 121 of this chapter) on September 11, 2001, you and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (see § 123.104).

(c) Eligible businesses do not include agricultural enterprises, but do include small agricultural cooperatives and producer cooperatives.

§ 123.602 When would my business not be eligible to apply for an economic injury disaster loan under this subpart?

Your business is not eligible for an economic injury disaster loan under this subpart if you (or any principal of the business) fit into any of the categories in §§ 123.101 and 123.201, or if your business is:

(a) Engaged in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for rental on September 11, 2001);

(b) A non-profit or charitable concern;

(c) A consumer or marketing cooperative;

(d) Not a small business concern; or

(e) Deriving more than one-third of gross annual revenue from legal gambling activities;

(f) A loan packager which earns more than one-third of its gross annual revenue from packaging SBA loans;

(g) Principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(h) Primarily engaged in political or lobbying activities.

§ 123.603 What is the interest rate on an economic injury disaster loan under this subpart?

Your economic injury disaster loan under this subpart will have an interest rate of 4 percent per annum or less.

§ 123.604 How can my business spend my economic injury disaster loan under this subpart?

(a) You can only use the loan proceeds for working capital necessary to carry your concern until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business could have provided had the injury not occurred.

(b) Loan proceeds may not be used to:

(1) Refinance indebtedness which you incurred prior to September 11, 2001;

(2) Make payments on loans owned by another federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act;

(3) Pay, directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter;

(4) Repair physical damage; or

(5) Pay dividends or other disbursements to owners, partners, officers, or stockholders, except for reasonable remuneration directly related to their performance of services for the business.

§ 123.605 How long do I have to apply for a loan under this subpart?

You have until January 22, 2002 to apply for a loan under this subpart. Your application must be postmarked no later than this date. SBA has the discretion, for good cause, to extend the application deadline by publication of a notice in the **Federal Register**.

§ 123.606 May I request an increase in the amount of an economic injury disaster loan under this subpart?

Yes. Notwithstanding § 123.20, you may request an increase in the amount of an economic injury disaster loan under this subpart not later than one year after the date SBA approves your initial request.

Dated: October 16, 2001.

Hector V. Barreto,

Administrator.

[FR Doc. 01–26565 Filed 10–19–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–62–AD; Amendment 39–12473; AD 2001–21–03]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain General Electric Company (GE) GE90 series turbofan engines. That AD currently requires inspecting and purging the P3B and Ps3 lines and associated fittings and ports of moisture. This amendment will allow the installation of improved hardware as terminating action to requirements of the AD, and remove the GE90–92B engine model from the AD applicability. This amendment is prompted by the recent FAA approval of redesigned P3B and Ps3 sense lines, and the removal of the GE90–92B engine from the applicability. The actions specified in this AD are intended to prevent corruption of Ps3 signals, which could result in simultaneous loss of thrust control of both engines.

DATES: Effective date November 26, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 26, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, OH 45215; telephone: (513) 672–8400, fax: (513) 672–8422. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7135; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–27–15, Amendment 39–11496 (65 FR 692, January 6, 2000), which is applicable to General Electric Company (GE) models GE90–76B, –77B, –85B, and –90B turbofan engines was published in the **Federal Register** on June 12, 2001 (66 FR 31569). That action proposed to allow the installation of improved hardware in accordance with the Accomplishment Instructions, Section 3 of GE Alert Service Bulletin (ASB) No. GE90 73–A0060, Revision 3, dated September 14, 2000 as terminating action to requirements of the AD. That action also proposed to remove the GE90–92B engine model from the AD applicability. Also, that action proposed an installation deadline for the improved hardware of October 31, 2001. The deadline is changed for this final rule to December 31, 2001, to support the timing for when the final rule is published in the **Federal Register**. In doing this, no additional risk to the fleet will incur, based on information from GE that in response to the proposal, all remaining engines are now retrofitted with redesigned hardware.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Remove Reference to P3B Signal Blockage From Unsafe Condition Description

One comment from the manufacturer requests that the unsafe condition statement in the AD be revised to remove P3B signal blockage and partial blockage as some of the causes of loss of engine thrust control. Blockage and partial blockage of the P3B signal could result in a change to the engine acceleration schedule, and possibly a reduction in compressor stall margin, but a loss of thrust control would not occur. The FAA agrees. Reference to P3B signal blockage and partial blockage is removed from the unsafe condition statement in this AD.

Delete Certain Hardware From the Old Configuration Table

Another comment from the manufacturer requests that three hardware items in the paragraph (k) Old Configuration Table be deleted to avoid confusion, because these items may be used in other locations on the engine. The FAA agrees. The hardware items which are a single tube clamp, double tube clamp, and bracket assembly, are deleted from the Old Configuration Table in this AD.

Delete Last Phrase of Unsafe Condition Description

One commenter requests the deletion of the last phrase of the unsafe condition description, "which if it occurs in a critical phase of flight, could result in loss of airplane control." The commenter did not provide a reason or justification for the request. The FAA partially agrees. As stated in the original AD, the FAA is especially concerned about the possibility of simultaneous loss of thrust control on both engines due to ice blockage of each engine's Ps3 pressure sensing system under certain atmospheric conditions. Corruption of Ps3 signals could result in simultaneous loss of thrust control of both engines. The unsafe condition description is rewritten for clarification as follows: "The actions specified in this AD are intended to prevent corruption of Ps3 signals, which could result in simultaneous loss of thrust control of both engines."

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are about 208 engines of the affected design in the worldwide fleet. The FAA estimates that 28 engines installed on aircraft of U.S. registry would be affected by this AD, that it would take about one work hour per engine to do the inspection and purging, and that the average labor rate is $60 per work hour. Based on these figures, the total AD cost effect on U.S. operators for one inspection is estimated to be $1,680. The FAA also estimates that it would take about four work hours per engine to do the proposed P3B/Ps3 sense line replacement, and that the average labor rate is $60 per work hour. The manufacturer has stated that it may provide the redesigned hardware at no cost to operators. Based on this information, the total AD cost effect on U.S. operators for sense line replacement is estimated to be $6,720.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic effect, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11496 (65 FR 692, January 6, 2000) and by adding a new airworthiness directive, Amendment 39–12473, to read as follows:

2001–21–03 General Electric Company: Amendment 39–12473. Docket No. 99–NE–62–AD. Supersedes AD 99–27–15, Amendment 39–11496.

Applicability: General Electric Company (GE) Models GE90–76B, –77B, –85B, and –90B turbofan engines. These engines are installed on, but not limited to Boeing 777 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (m) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with the requirements of this AD is required as indicated, unless already done.

To prevent corruption of Ps3 signals, which could result in simultaneous loss of thrust control of both engines, do the following:

Determination of Further Action

(a) If the engine has been configured as specified in one of the following service bulletins (SB's), or has one of the following serial numbers (SN's), no further action is required.

(1) SB GE90 S/B 75–0031, Revision 1, dated August 29, 2000.

(2) SB GE90 S/B 75–0031, Revision 2, dated September 14, 2000.

(3) SB GE90 S/B 75–0031, Revision 3, dated March 30, 2001.

(4) Engine SN is 900–326, 900–328, 900–332, 900–333, 900–334, or higher.

Initial Inspection, Cleaning, Moisture Purging, and Blending

(b) For engines that are not configured or listed by SN as specified in paragraph (a) of this AD, do the following:

(1) Inspect, clean, moisture purge, and if necessary, blend any high metal, nicks, or burrs on fitting threads, on one engine installed on Boeing 777 series aircraft, within 10 cycles-in-service (CIS) after the effective date of this AD in accordance with the Accomplishment Instructions, Section 3 of GE Alert Service Bulletin (ASB) No. GE90 73–A0060, Revision 3, dated September 14, 2000.

(2) Inspect, clean, moisture purge, and if necessary, blend any high metal, nicks, or burrs on fitting threads, on the other engine installed on the Boeing 777 series aircraft, within 20 CIS after the effective date of this AD in accordance with the Accomplishment Instructions, Section 3 of GE ASB No. GE90

73–A0060, Revision 3, dated September 14, 2000.

Credit for Previous Inspections, Cleaning, and Moisture Purging

(c) For engines that have complied with the initial and repetitive inspections of AD 99–27–15, GE ASB No. GE90 73–A0060, Revision 1, dated March 1, 2000; GE ASB No. GE90 73–A0060, Revision 2, dated May 12, 2000; GE ASB No. GE90 73–A0060, Revision 3, dated September 14, 2000; or with an FAA approved alternative method of compliance, perform repetitive inspections as specified in paragraph (d) of this AD.

Repetitive Inspections

(d) Thereafter, inspect, clean, and moisture purge, and if necessary, blend any high metal, nicks, or burrs on fitting threads of each engine in accordance with the Accomplishment Instructions, Section 3, of GE ASB No. GE90 73–A0060, Revision 3, dated September 14, 2000, within:

(1) 30 CIS since-last-inspection, OR,

(2) If applicable, 125 CIS since-last-inspection for one-engine-only per airplane.

Replacement Engines

(e) For replacement engines, perform the initial inspection, cleaning, and moisture purging, and if necessary, blend any high metal, nicks, or burrs on fitting threads as specified in paragraph (b) of this AD, except perform initial inspection before accumulating 30 CIS or 125 CIS, depending on the existing inspection interval for the engine that was replaced.

Idle Leak Check or Dual Signoff Procedure Check

(f) After accomplishing the inspection and maintenance actions specified in paragraphs (b) through (e) of this AD, and before entry into service, do EITHER of the following:

(1) Perform an idle leak check to confirm no P3B or Ps3 sense system faults in accordance with Accomplishment Instructions, Section 3, paragraph (15), of GE ASB No. GE90 73–A0060, Revision 3, dated September 14, 2000. OR,

(2) Perform a dual signoff procedure check to confirm there are no loose fittings that could cause P3B and Ps3 sense system faults, in accordance with Accomplishment Instructions, Section 3, paragraph (15), of GE ASB No. GE90 73–A0060, Revision 3, dated September 14, 2000. Idle leak checks that were performed using GE ASB No. GE90 73–A0060, dated December 23, 1999, and idle leak checks or dual signoff procedure checks that were performed using GE ASB No. GE90 73–A0060, Revision 1, dated March 1, 2000, or GE ASB No. GE90 73–A0060, Revision 2, dated May 12, 2000, may be considered as alternative methods of compliance for this requirement.

Installation of Redesigned Hardware

(g) At the next engine shop visit after the effective date of this AD, but not later than December 31, 2001, install the redesigned P3B and Ps3 tubes, hoses, clamps, and bracket assembly in accordance with Accomplishment Instructions, Section 3.A. through 3.H. of GE ASB No. GE90 S/B 75–0031, Revision 3, dated March 30, 2001.

Definition

(h) For the purposes of this AD, an engine shop visit is defined as any time an engine has maintenance performed that involves separation of a major flange, such as removal of the low pressure turbine module, or high pressure compressor top case half.

Credit for Installation of Redesigned Hardware

(i) Hardware installation that was performed using GE ASB No. GE90 S/B 75–0031, Revision 2, dated September 14, 2000; or GE ASB No. GE90 S/B 75–0031, Revision 1, dated August 29, 2000, may be considered as alternative methods of compliance for this requirement.

No Simultaneous Actions

(j) Do not perform the actions required by this AD concurrently on both engines installed on Boeing 777 series aircraft.

Old Configuration Hardware

(k) After the effective date of this AD, do not install any of the old configuration hardware listed in the following table.

OLD CONFIGURATION HARDWARE NOT TO BE INSTALLED

Part	Part No.
Ps3 Tube	350–151–505–0
	350–184–806–0
	350–114–005–0
Ps3 Hose	649–794–573–0
P3B Tube	350–151–604–0
	350–184–904–0
	350–114–105–0
P3B Hose	649–794–572–0

Terminating Action

(l) Installation of redesigned hardware as specified in paragraph (g) of this AD constitutes terminating action for requirements of paragraph (d) and paragraph (e) of this AD.

Alternative Methods of Compliance

(m) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(n) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Documents That Have Been Incorporated By Reference

(o) The inspections and installation of redesigned hardware must be done in accordance with the following General Electric alert service bulletins (ASB's):

Document No.	Pages	Revision	Date
ASB No. GE90 73–A0060	1–8	3	September 14, 2000.
Total pages: 8			
ASB No. GE90 S/B 75–0031	1–36	3	March 30, 2001.
Total pages: 36			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, OH 45215; telephone: (513) 672–8400, fax: (513) 672–8422. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date of This AD

(p) This amendment becomes effective on November 26, 2001.

Issued in Burlington, Massachusetts, on October 10, 2001.

Donald E. Plouffe,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–26324 Filed 10–19–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–337–AD; Amendment 39–12476; AD 2001–21–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires a revision of the Airplane Flight Manual (AFM) to alert the flightcrew that both flight management computers (FMC) must be installed and operational. That AD also requires an inspection to determine the serial number of the FMC's; and follow-on corrective actions, if necessary, which terminate the AFM revision. This amendment requires an inspection to verify if a certain modification is on the front and rear identification plates of the FMC's; and applicable follow-on and corrective actions. This amendment is prompted by the FAA's determination that further rulemaking action is necessary to ensure that all affected airplanes are inspected for suspected defective multiplexers. The actions specified by this AD are intended to prevent loss of airspeed and altitude indications on both primary flight displays in the cockpit, and/or loss or degradation of the autopilot functionality, and consequent failure of the data busses.

DATES: Effective November 26, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 26, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–15–14, amendment 39–10665 (63 FR 38464, July 17, 1998), which is applicable to certain McDonnell Douglas Model MD–11 series airplanes, was published in the **Federal Register** on April 19, 2001 (66 FR 20116). The action proposed to continue to require a revision of the Airplane Flight Manual to alert the flightcrew that both flight management computers (FMCs) must be installed and operational. This action also proposed to require an inspection to determine whether McDonnell Douglas Modification "AS" had been incorporated and applicable follow-on and corrective actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Commenter Concurs

One operator indicates that it has no objections to the proposed actions, which it has already completed.

Request To Allow Verification of Prior Re-identification

One operator states that "if the Mod AS accomplishes the corrective action of the data bus failure condition, and was satisfactorily demonstrated and approved by the FAA, then the terminating action should be to 'verify that the FMCs installed have Mod AS incorporated and are software updated to the –912 P/N.' There should be no need to confirm that a data bus failure condition does not exist."

The same commenter states that it has already accomplished the proposed terminating action by modifying all of its FMCs with Mod "AS", and has accomplished the Honeywell and the McDonnell Douglas/Boeing service bulletins to ensure that the software was updated to the –912 P/N. The FAA concurs that if the requirements of the applicable service bulletin have already been accomplished, this AD does not require that those actions be repeated. As a result, no change to the AD is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 174 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 98–15–14 and retained in this AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,540, or $60 per airplane.

The new actions that are required by this AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $3,540 or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions

actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10665 (63 FR 38464, July 17, 1998), and by adding a new airworthiness directive (AD), amendment 39–12476, to read as follows:

2001–21–05 McDonnell Douglas: Amendment 39–12476. Docket 2000–NM–337–AD. Supersedes AD 98–15–14, Amendment 39–10665.

Applicability: Model MD–11 series airplanes having manufacturer's fuselage numbers 0447 through 0552 inclusive, and 0554 through 0621 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airspeed and altitude indications on both primary flight displays in the cockpit, and/or loss or degradation of the autopilot functionality, and consequent failure of the data busses, accomplish the following:

Restatement of Requirements of AD 98–15–14

Airplane Flight Manual (AFM) Revision

(a) Within 5 days after May 20, 1998 (the effective date of AD 98–10–01, amendment 39–10512), revise Section 1, page 5–1, of the Limitations Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

"Prior to dispatch of the airplane, both Flight Management Computer 1 (FMC–1) and FMC–2 must be installed and operational."

New Actions Required by This AD

Inspection

(b) Within 90 days after the effective date of this AD, do an inspection to verify that modification "AS" is on the front and rear identification plates of flight management computer 1 (FMC–1) and FMC–2, per McDonnell Douglas Service Bulletin MD11–34–085, Revision 01, dated September 20, 1999. After the inspection has been done, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

Condition 1 (Modification "AS" Is Installed)

(c) If modification "AS" is found installed during the inspection required by paragraph (b) of this AD, before further flight, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD, per McDonnell Douglas Service Bulletin MD11–34–085, Revision 01, dated September 20, 1999.

(1) Do a test of the FMC's in the flight compartment to ensure that modification "AS" is operational, and do applicable corrective actions, if necessary. Both FMC's must have modification "AS" installed and pass the test before loading new software per paragraph (c)(2) of this AD.

(2) Install new software and reidentify FMC–1 and FMC–2 as part number (P/N) 4059050–912.

Note 2: McDonnell Douglas Service Bulletin MD11–34–085, Revision 01, dated September 20, 1999, references Honeywell Service Bulletin 4059050–34–6020, Revision 1, dated April 30, 1999, as an additional source of service information for the installation and reidentification requirements of paragraphs (c)(2) and (d)(2) of this AD.

Condition 2 (Modification "AS" Is Not Installed)

(d) If modification "AS" is NOT found installed during the inspection required by paragraph (a) of this AD, before further flight, do the actions specified in paragraphs (d)(1), (d)(2), and (d)(3) of this AD, per McDonnell Douglas Service Bulletin MD11–34–085, Revision 01, dated September 20, 1999.

(1) Remove FMC–1 and FMC–2.

(2) Install modification "AS" and new software, and reidentify FMC–1 and FMC–2 as P/N 4059050–912.

(3) Install modified and reidentified FMC–1 and FMC–2.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as required by paragraph (a) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin MD11–34–085, Revision 01, dated September 20, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on November 26, 2001.

Issued in Renton, Washington on October 15, 2001.

Ali Bahrami,

Acting Monager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26472 Filed 10–19–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–305–AD; Amendment 39–12477; AD 2001–21–06]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model G–V Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Gulfstream Model G–V series airplanes. This action requires an initial inspection of the electrical connections for the fire extinguisher bottles; an inspection after any subsequent maintenance affecting the fire extinguisher bottles; corrective action, if necessary; and reporting of the results of the inspection to the Federal Aviation Administration (FAA). This action is prompted by a report indicating that the electrical connections for the fire extinguisher bottle squibs had been improperly installed either during manufacturing or during subsequent maintenance. This action is necessary to prevent fire extinguishing agent from being discharged into the wrong location, which could result in failure to extinguish an in-flight fire on an affected engine and jeopardize operation of the opposite engine. This action is intended to address the identified unsafe condition.

DATES: Effective November 6, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 6, 2001.

Comments for inclusion in the Rules Docket must be received on or before December 21, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–305–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–305–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Chupka, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6046; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The FAA has received a report that, during an inspection of a Gulfstream Model G–V series airplane, the electrical connections for the left and right fire extinguisher bottle squibs were found to be improperly installed. The improper installation occurred either during manufacturing or during subsequent maintenance affecting the fire extinguisher bottles. This condition, if not corrected, could cause fire extinguishing agent to be discharged into the wrong location, which could result in failure to extinguish an in-flight fire on an affected engine and jeopardize operation of the opposite engine.

Explanation of Relevant Service Information

The FAA has reviewed and approved Gulfstream V Alert Customer Bulletin No. 14, dated September 20, 2001, which describes procedures for a one-time inspection of the electrical connections for the engine fire extinguisher bottles and for correction of any incorrect electrical connection which is detected.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent fire extinguishing agent from being discharged into the wrong location, which could result in failure to extinguish an in-flight fire on an affected engine and jeopardize operation of the opposite engine. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below. This AD also requires that operators report results of inspection findings to the FAA.

Differences Between Service Bulletin and This AD

Because it is not known whether the improper installation of the electrical connections for the fire extinguisher bottles occurred during the manufacturing process or during subsequent maintenance, this AD requires inspection of those electrical connections following any maintenance affecting the fire extinguisher bottles. The alert customer bulletin does not refer to inspection following maintenance. This AD also requires that inspection findings be reported to the FAA, whereas the alert customer bulletin recommends notice to Gulfstream that the Accomplishment Instructions of the alert customer bulletin have been performed.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All

communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–305–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–21–06 Gulfstream Aerospace Corporation: Amendment 39–12477. Docket 2001–NM–305–AD.

Applicability: Model G–V series airplanes, serial numbers 501 through 652 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fire extinguishing agent from being discharged into the wrong location, which could result in failure to extinguish an in-flight fire on an affected engine and jeopardize operation of the opposite engine, accomplish the following:

Inspections

(a) Within the next 25 flight hours, but no later than 10 days after the effective date of this AD: Perform a general visual inspection of the electrical connections of the fire extinguisher bottles for correct connections, in accordance with Gulfstream Alert Customer Bulletin No. 14, dated September 20, 2001.

(b) Prior to further flight following any maintenance that affects the fire extinguisher bottles: Perform the inspection required by paragraph (a) of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Action

(c) If any incorrect electrical connection is detected during the inspections required by paragraph (a) or (b) of this AD: Correct that connection, in accordance with the Accomplishment Instructions of Gulfstream Alert Customer Bulletin No. 14, dated September 20, 2001.

Reporting

(d) Submit a report of inspection findings (both positive and negative) to the Manager, Atlanta Aircraft Certification Office (ACO), FAA, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; fax (770) 703–6097; at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection required by paragraph (a) of this AD is accomplished after the effective date of this AD: Submit the report within 35 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection required by paragraph (a) of this AD has been accomplished prior to the effective date of this AD: Submit the report within 35 days after the effective date of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with Gulfstream V Alert Customer Bulletin No. 14, dated September 20, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on November 6, 2001.

Issued in Renton, Washington, on October 15, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26473 Filed 10–19–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AJ97

Board of Veterans' Appeals: Appeals Regulations and Rules of Practice—Jurisdiction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule proposed amendments to the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals (Board). These amendments clarify that the Board may address questions related to its jurisdiction in the first instance. They also provide for notice and an opportunity to comment when the Board raises jurisdictional questions on its own initiative.

DATES: *Effective Date:* November 21, 2001.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs. 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: Initial decisions on claims for veterans' benefits are made at VA field offices throughout the nation. Claimants may appeal those decisions to the Board. This final rule amends Department of Veterans Affairs' regulations pertaining to such appeals.

These amendments were previously published in the **Federal Register** as a proposed rule on April 4, 2001, at 66 FR 17840. We received no comments. Based on the rationale set forth in the proposed rule, we are adopting its provisions as a final rule, with a nonsubstantive editorial change to the first sentence of § 20.101(e).

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would affect only the processing of claims by VA and would not affect small businesses.

Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans.

Approved: September 27, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 19 and 20 are amended as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 19.35 is amended by revising the first sentence to read as follows:

§ 19.35 Certification of appeals.

Following receipt of a timely Substantive Appeal, the agency of original jurisdiction will certify the case to the Board of Veterans' Appeals.

* * *

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PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

3. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

4. Section 20.101 amended by revising paragraph (c), and adding paragraphs (d) and (e), to read as follows:

§ 20.101 Rule 101. Jurisdiction of the Board.

* * * * *

(c) *Appeals as to jurisdiction.* All claimants have the right to appeal a determination made by the agency of original jurisdiction that the Board does not have jurisdictional authority to review a particular case. Jurisdictional questions which a claimant may appeal, include, but are not limited to, questions relating to the timely filing and adequacy of the Notice of Disagreement and the Substantive Appeal.

(d) *Authority to determine jurisdiction.* The Board may address questions pertaining to its jurisdictional authority to review a particular case, including, but not limited to, determining whether Notices of Disagreement and Substantive Appeals are adequate and timely, at any stage in a proceeding before it, regardless of whether the agency of original jurisdiction addressed such question(s). When the Board, on its own initiative, raises a question as to a potential jurisdictional defect, all parties to the proceeding and their representative(s), if any, will be given notice of the potential jurisdictional defect(s) and granted a period of 60 days following the date on which such notice is mailed to present written argument and additional evidence relevant to jurisdiction and to request a hearing to present oral

argument on the jurisdictional question(s). The date of mailing of the notice will be presumed to be the same as the date stamped on the letter of notification. The Board may dismiss any case over which it determines it does not have jurisdiction.

(e) *Application of 38 CFR 19.9 and 20.1304.* Section 19.9 of this chapter shall not apply to proceedings to determine the Board's own jurisdiction. However, the Board may remand a case to an agency of original jurisdiction in order to obtain assistance in securing evidence of jurisdictional facts. The time restrictions on requesting a hearing and submitting additional evidence in § 20.1304 of this part do not apply to a hearing requested, or evidence submitted, under paragraph (d) of this section.

Authority: 38 U.S.C. 511(a), 7104, 7105, 7108

§ 20.203 [Removed and Reserved]

5. Section 20.203 is removed and reserved.

[FR Doc. 01–26557 Filed 10–19–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 245–0295; FRL–7078–7]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on July 6, 2001 and concerns volatile organic compound (VOC) emissions from the miscellaneous metal parts source category. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule regulating these emission sources and directs California to correct the rule's deficiencies.

EFFECTIVE DATE: This rule is effective on November 21, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and,

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On July 6, 2001 (66 FR 35573), EPA proposed a limited approval and limited disapproval of SJVUAPCD Rule 4603 submitted by California for incorporation into the California SIP.

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
SJVUAPCD	4603	Surface Coating of Metal Parts and Products	09/21/00	12/11/00

We proposed a limited approval because we determined that Rule 4603 improves the SIP and is largely consistent with the relevant CAA requirements. Simultaneously, we proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act.

These provisions of Rule 4603 conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

1. The language in section 4.1 allows at least two competing interpretations of the rule. This section should be revised to allow only one interpretation consistent with EPA guidance and policy concerning rule applicability, size cut-offs, and allowable non-compliant coating use. District practice of exempting fifteen pounds per day of non-compliant VOC emissions from all sources contradicts the intent of the size cutoff requirements of EPA's RACT Guidance. Furthermore, this practice is inconsistent with EPA policy providing for no more than 55 gallons of non-compliant coating use per rolling 12 month period.

2. Rule 4603 sets a viscosity limit for dip coating of structural steel components. However, SJVUAPCD did not provide a test method for determining compliance with this viscosity limit.

3. Rule 4603 incorporates a solid film lubricant specialty category emissions limit of 880 grams per liter (gr/l.) This limit exceeds the statutory and Control Technique Guideline (CTG) limit of 420 gr/l.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments on our proposed limited approval and disapproval of Rule 4603.

III. EPA Action

No comments were submitted that may have provoked reconsideration of our assessment of the rule as described in our July 6, 2001 proposed action. Therefore, EPA is finalizing a limited approval of the submitted rule as authorized in sections 110(k)(3) and 301(a) of the Act. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of Rule 4603. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule's deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule's deficiencies within 24 months. The San Joaquin Valley Unified Air Pollution Control District has adopted the submitted rule and EPA's final limited disapproval does not prevent the SJVUAPCD from enforcing it.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 21, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 18, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(285)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(285) * * *

(i) * * *

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4603 adopted on April 11, 1991 and amended on September 21, 2000.

* * * * *

[FR Doc. 01–26528 Filed 10–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301056; FRL–6745–6]

RIN 2070–AB78

Pseudomonas Chlororaphis Strain 63–28; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Pseudomonas chlororaphis* Strain 63–28 in or on all food commodities. Agrium US, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Pseudomonas chlororaphis* Strain 63–28.

DATES: This regulation is effective October 22, 2001. Objections and requests for hearings, identified by docket control number OPP–301056, must be received by EPA, on or before December 21, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301056 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Anne Ball, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8717; and e-mail address: Ball.Anne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301056. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 20, 1998 (63 FR 64478) (FRL–6042–4), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(d), as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide tolerance petition by Agrium US, Inc., 4582 S. Ulster St., Suite 1400, Denver, CO 80237. This notice included a summary of the petition prepared by the petitioner Agrium US, Inc. On October 13, 1999 all of Agrium's data were transferred to Eco Soil Systems, Inc. 10740 Thornmint Rd., San Diego, CA 92127 and Eco Soil Systems, Inc. is still interested in seeking this exemption. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Pseudomonas chlororaphis* Strain 63–28.

III. Risk Assessment

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." Additionally, section 408(b)(2)(D) requires that the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Acute toxicity studies indicate that AtEze, the end-use product containing *P. chlororaphis* Strain 63–28 is a Toxicity Category IV substance. The acute oral toxicity of *P. chlororaphis* Strain 63–28 in rats is greater than 5,000 milligrams/kilogram of body weight or Toxicity Category IV. The LD_{50} for dermal toxicity of *P. chlororaphis* Strain 63–28 is considered to be > 2g/kg body weight or Toxicity Category IV. In an eye irritation study, six New Zealand White rabbits were treated with the product and all except one showed no ocular irritation with observations continuing for seven days after dosing. (Toxicity Category IV). In a toxicity/pathogenicity study, the product containing *P. chlororaphis* Strain 63–28 was tested following acute intravenous challenge in male and female rats. Intravenous administration of the viable test substance (TS) and killed test substance (KTS) was followed by measuring levels of viable microbes in sampled tissues and observing for signs of toxicity or pathogenicity. A sampling of organs for presence of *P. chlororaphis* showed that cells were present in lungs, spleen, kidneys, and livers of male and female rats, and in the blood, mesenteric lymph nodes and caecum of male rats on day 0 (i.e. the day of treatment with TS). In subsequent sampling, one female rat was found to harbor some viable *P. chlororaphis* in the kidney on day three. All other samples from all animals were negative (i.e., below the detection limit). This lack of detection of the test substance in TS treated rats after day 3 indicates a clearance of the organism from the animals to < 30 cfu/ml or per tissue. No toxic or pathogenic effects were attributable to the intravenous administration of *P. chlororaphis* Strain 63–28 to rats at 4.3×10^6 cfu per animal. No effects were noted from application of the killed test substance (KTS).

Tier II and III data as listed in 40 CFR 158.740(c) were not triggered because of *P. chlororaphis* Strain 63–28's ubiquity in nature, favorable toxicological data based on studies submitted, favorable toxicological history because there have been no reports of the organism in the literature as a pathogen of humans or any animals, and inconsequential exposure based on the proposed use. Review of the available toxicology data and literature submitted in support of registration indicates that sufficient information is available for characterization of the risks to humans. Therefore, EPA has concluded that products which contain *P. chlororaphis* Strain 63–28 are not likely to produce adverse effects on humans and the organism is generally considered non-pathogenic to humans.

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information

concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

P. chlororaphis Strain 63–28 is a non-toxic, non pathogenic bacterium which is ubiquitous in nature. The Agency has previously registered *Pseudomonas* strains (e.g. *fluorescens*) for use on many crops. These species are closely related but, unlike *P. fluorescens*, there are no reports of any negative pathogenic effects on humans or on other animals by *P. chlororaphis*.

1. *Food.* Review of the available toxicology data submitted in support of registration indicated that sufficient information is available to allow for characterization of the risks to humans. Products which contain *P. chlororaphis* Strain 63–28 are not likely to produce adverse effects on humans via their food since the organism is generally considered as non-toxic and non-pathogenic to humans.

2. *Drinking water exposure.* There is no expected human exposure to the organism in drinking water from pesticidal use. Pesticide application for the only use currently proposed is limited to contained plants in greenhouses as a soil/potting mix drench for ornamental or vegetable crops. The proposed product label directs that for drip or trickle chemigation, the system must contain a functional check valve, vacuum relief valve, and low pressure drain to prevent water source contamination from back flow. Since the organism is non-toxic and non-pathogenic to humans, even if small amounts would seep into the ground water, there would be no adverse effects on humans.

B. Other Non-Occupational Exposure

P. chlororaphis Strain 63–28 is proposed for use on greenhouse grown vegetables and ornamentals. Exposures resulting from application to ornamentals is anticipated to be negligible because consumers will not be in contact with treated plants until after the foliage is dry when the number of bacteria present is greatly diminished compared to the amount that was applied. Leaf surfaces are nutrient poor and cannot support growth of the bacteria. Also, the bacteria are exposed to ultraviolet light and temperature extremes and are dried out in the greenhouse. Moisture is needed for growth of the bacteria. *P. chlororaphis* are common on plants and in soil and may be present in the absence of any application, but in relatively small amounts. Increase of the bacteria present through application of the pesticide is expected to be insignificant. No dermal or inhalation exposure is expected.

VI. Cumulative Effects

P. chlororaphis Strain 63–28 does not share any common mechanisms of toxicity (metabolic mechanisms) with other substances. The use as a microbial pesticide should not significantly increase exposure to naturally occurring sources of *P. chlororaphis* Strain 63–28. Furthermore, the bacteria are not toxic or pathogenic for humans. Therefore, the potential for toxic effects or cumulative effects from the use of this pesticide is not expected.

VII. Determination of Safety for U.S. Population, Infants and Children

For the U.S. population, including infants and children, aggregate exposure to *P. chlororaphis* Strain 63–28 is expected to be minimal with no known adverse effects. As discussed previously, there is no potential for harm via dietary exposure since the bacteria is considered non-toxic and non-pathogenic to humans. There is a negligible exposure to consumers from other non-occupational sources; however, because the bacterium is non-toxic and non-pathologic to humans, no risk is foreseen. Moreover no dermal or inhalation exposure is expected. Therefore, EPA concludes that there is reasonable certainty that no harm will result to the U.S. population including infants and children, from aggregate exposure to residues of *P. chlororaphis* Strain 63–28 including all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above and throughout this document, no toxicity or pathogenicity to mammals has been observed for *P. chlororaphis* strain 63–28. Thus, a tolerance for *P. chlororaphis* Strain 63–28 is not necessary to protect the public health. Therefore, 40 CFR part 180 is amended as set forth below.

VIII. Other Considerations

A. Endocrine Disruptors

EPA is required under FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there was a scientific basis for including, as part of the program, the androgen-and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC'S recommendation that the Program include evaluations of potential effects in wildlife. For pesticide chemicals EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

When the appropriate screening and or testing protocols being considered under the Agency's Endocrine Disruptor Screening Program have been developed, *P. chlororaphis* Strain 63–28 may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption. Based on the weight of the evidence of available data, no endocrine system-related effects have been identified for *P. chlororaphis* Strain 63–28.

B. Analytical Method(s)

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation. Accordingly the Agency has concluded that analytical methods are not needed for enforcement purposes for residues of *P. chlororaphis* Strain 63–28.

C. Codex Maximum Residue Level

There are no Codex Maximum Residue Levels nor any tolerances or exemptions issued for *P. chlororaphis* Strain 63–28 outside the United States.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made.

The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301056 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 21, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP–301056, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires

EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications " is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 28, 2001.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1212 is added to subpart D to read as follows:

§ 180.1212 Pseudomonas chlororaphis Strain 63–28; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Pseudomonas chlororaphis* Strain 63–28 in or on all food commodities.

[FR Doc. 01–26533 Filed 10–19–01]
BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 101501B]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Quota transfers; General category daily retention limit adjustment.

SUMMARY: NMFS adjusts the October–December subquota for the General category Atlantic bluefin tuna (BFT) fishery by transferring 50 metric tons (mt) from the Longline South subcategory quota, 10 mt from the Longline North subquota, and 100 mt from the Angling category (50 mt from the school size class and 50 mt from the large school/small medium size class for the northern area), for a revised coastwide General category subquota of approximately 347.7 mt for October–December, including the addition of underharvest from previous time periods. NMFS also adjusts the Angling South large school/small medium subcategory by transferring 75 mt from the Angling North large school/small medium subcategory. Finally, NMFS adjusts the BFT General category daily retention limit to one fish per vessel. These actions are being taken to allow for maximum utilization of the U.S. landings quota of BFT while maintaining a fair distribution of fishing opportunities, preventing overharvest of the adjusted subquotas for the affected fishing categories, helping to achieve optimum yield in the General category fishery, and allowing the collection of a broad range of data for stock monitoring purposes, consistent with the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP).

DATES: The quota transfers are effective October 16, 2001, through May 31, 2002. The General category retention limit adjustment is effective October 19, 2001, through December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Pat Scida, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Quota Transfers

Under the implementing regulations at 50 CFR 635.27(a)(8), NMFS has the authority to transfer quotas among categories, or, as appropriate, subcategories, of the fishery, after considering the following factors: (1) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; (2) the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded; (5) the effects of the transfer on BFT rebuilding and overfishing; and (6) the effects of the transfer on accomplishing the objectives of the HMS FMP.

If it is determined, based on the factors listed here and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the Reserve quota.

Quota Adjustments

Annual BFT quota specifications issued under § 635.27 provide for a quota of 666.7 mt of large medium and giant BFT to be harvested from the regulatory area by vessels fishing under the General category quota during the 2001 fishing year. The General category BFT quota is further subdivided into time period subquotas to provide for broad temporal and geographic distribution of scientific data collection and fishing opportunities. The October–December subquota was initially set at 65.7 mt for the 2001 fishing year, and is currently 187.7 mt, after the addition of approximately 122 mt of unharvested subquota from previous periods. As of October 12, 2001, General category landings against this adjusted October–December subquota have totaled approximately 161.6 mt, reducing the available quota for the remainder of the season to 26.1 mt. An additional 10 mt has been set aside for the traditional fall New York Bight fishery.

After considering the factors for making transfers between categories, NMFS has determined that 50 mt of the remaining Longline South subcategory quota of approximately 166.6 mt, and 10 mt of the remaining Longline North subcategory quota of approximately 21 mt should be transferred to the General category. While substantial quota remains in the Longline category, NMFS is in the process of developing proposed regulations to adjust the target catch requirements for pelagic longline vessels retaining bluefin tuna, and is therefore not transferring additional quota from the Longline category. NMFS has also determined that 50 mt of the remaining Angling North school subcategory quota of approximately 124.7 mt, and 50 mt of the remaining Angling North large school/small medium subcategory quota of approximately 165.4 mt should be transferred to the General category. The adjusted subquota for the coastwide General category fishery for the October–December period is 347.7 mt. Finally, NMFS has determined that 75 mt of the remaining Angling North large school/small medium subcategory quota of approximately 115.4 (after 50 mt transfer to the General category) should be transferred to the Angling South large school/small medium subcategory quota category. Landings of large school/small medium BFT have been substantial in the southern area so far this year, and this transfer of quota is to ensure a winter and spring Angling category fishery for North Carolina.

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on restricted fishing days) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that a return to the one fish per vessel General category daily retention limit is appropriate and necessary for the remainder of the General category season. An adjustment to the General category daily retention limit will allow full use of the adjusted October–December subquota, while preventing overharvest and ensuring reasonable fishing opportunities in all areas. Therefore, NMFS adjusts the daily retention limit for October 19, 2001 through December 31, 2001, to one large medium or giant BFT per vessel.

Once the adjusted General category subquota for the October–December period has been attained, the coastwide fishery will be closed and NMFS will take action to reopen the New York Bight fishery. Announcement of the closure will be filed with the Office of the Federal Register, stating the effective date of closure, and further communicated through the Highly Migratory Species Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line at (888) USA-TUNA or (978) 281-9305, to check the status of the fishery before leaving for a fishing trip.

Classification

This action is taken under 50 CFR 635.23 and 635.27, is consistent with the management measures contained in the HMS FMP, and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 16, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26477 Filed 10–16–01; 4:54 pm]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 204
Monday, October 22, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Parts 609 and 620

RIN 3052–AC02

Electronic Commerce; Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA or Agency) proposes to create and amend regulations to reflect emerging business approaches to electronic commerce (E-commerce). The proposed rule is designed to remove regulatory barriers to E-commerce and create a flexible regulatory environment that facilitates the safe and sound use of new technologies by Farm Credit System (System or FCS) institutions and their customers.

DATES: Please send your comments to us by November 21, 2001.

ADDRESSES: You may send comments by electronic mail(e-mail) to *reg-comm@fca.gov* or through the Pending Regulations section of our Web site at *www.fca.gov*. You may also mail or deliver written comments to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or fax them to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Jane Virga, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposed rule are to:

- Remove regulatory barriers to E-commerce;
- Create a flexible regulatory framework that facilitates the safe and sound use of new technologies by System institutions and their customers; and
- Provide a brief overview of Federal laws and regulations that facilitate E-commerce.

We are seeking comments on this proposal and also on any other FCA regulation that we could amend, or eliminate, to facilitate E-commerce.

II. Background

A. Creating a New E–Commerce Rule Part

We propose creating a new E-commerce Rule part. System institutions are increasingly using new technologies and engaging in E-commerce. In 2000, Congress enacted the "Electronic Signatures in Global and National Commerce Act" (E–SIGN) (Pub. L. 106–229), which legitimatizes the use of electronic contracts, signatures, and record keeping in many situations. E–SIGN makes it easier for System institutions to use electronic communications in transactions and realize potential cost savings. We believe many System institutions, like other financial institutions, will use electronic communications to conduct E-commerce and engage in online lending, among other activities. Thus, we believe this rulemaking and creation of a new part are necessary. The following information provides more background:

1. Department of Commerce Working Group Solicitation

In a presidential memorandum dated November 29, 1999, Federal Agencies were asked to adopt policies, laws, and regulations on E-commerce, electronic services, and electronic transmissions. The Department of Commerce was directed to form a workgroup, which would invite public comment on how the Federal Government could adjust to the electronic environment while ensuring existing protections for the public. The Department of Commerce formed the United States Government Working Group on Electronic Commerce (USGWG). On February 1, 2000, the USGWG invited the public to identify laws or regulations that might obstruct or hinder E-commerce. (*See* 65 FR 4801, Feb. 1, 2000.)

On February 15, 2000, the FCA issued an informational memorandum advising the System of the USGWG's request for comments on facilitating E-commerce. We advised System institutions this was their opportunity to suggest how the Act or its implementing regulations could better facilitate E-commerce. The public comment period closed on March 17, 2000. The Farm Credit Council Presidents' Planning Committee (Planning Committee), Farm Credit Service of America, PCA & FLCA (FCS of America), and Pacific Coast Farm Credit Services, ACA[1] (Pacific Coast) forwarded comments to the USGWG, with copies to the FCA.

2. System Institution Requests

System institutions have wanted to communicate electronically with shareholders and do online lending. Many System institutions have an Internet Web site presence through their home pages. We have received the following comments from the System on E-commerce:

- In March 2000, the Planning Committee and FCS of America stated that FCA should undertake a rulemaking to remove barriers to E-commerce and address legal issues raised by electronic records and signatures.
- In March 2000, Pacific Coast stated that FCA regulations that require legal loan documents and disclosures to shareholders to be in writing hindered E-commerce.
- In April and May 2000, AgCredit of California PCA and FLCA,[2] and the Western Farm Credit District Chief Financial Officers' Subcommittee on Accounting and Reporting stated that they wanted to post annual reports to shareholders on System institution Web sites. They wanted to notify System institution shareholders by brief letters or postcards of the electronic posting.
- In April 2000, the Farm Credit Council and the System's Accounting Standards Work Group asked us to consider allowing the System to use electronic media to deliver information to shareholders.
- In March 2001, the System's E-Commerce Task Force (Task Force) identified FCA regulations that they believe may impede the System's efforts to use E-commerce. Many of those regulations pertain to disclosures or notices to shareholders, which are a subject of this proposed regulation. We will consider other suggestions of the Task Force in other rulemakings.

[1] After submitting its comment letter Pacific Coast Farm Credit Services, ACA merged with other System institutions. The successor institution is American AgCredit, ACA.

[2] After submitting its comment letter AgCredit of California PCA and FLCA, merged with other System institutions. The successor institution is AgCredit Financial, ACA.

3. Electronic Signatures in Global and National Commerce Act (E–SIGN)

E–SIGN became effective October 1, 2000. FCA Bookletter BL–041 notified the System of E–SIGN's enactment and its principal provisions.

E–SIGN helps to facilitate E-commerce by providing greater legal certainty to electronic transactions. E–SIGN establishes (with some exceptions) the legal validity of electronic contracts, electronic signatures, and records maintained in electronic rather than paper form. Thus, an online contract with an electronic signature is legally equivalent to a contract signed in ink on paper. With the consent of the parties to the transaction, you can now engage in E-commerce with customers, System institutions, and others. You can also purchase and sell goods and services online or engage in online lending.

E–SIGN supercedes (with some exceptions) most State or Federal statutes or regulations, including the Farm Credit Act (Act) and its implementing regulations, that require contracts or other records to be written, signed, or in non-electronic form. Thus, in general (certain exceptions exist) we cannot create, amend, or enforce any provision of the Act or its implementing regulations requiring paper copies and handwritten signatures. For example, this means that you can now enter into electronic contracts, engage in electronic online lending, and send disclosures electronically as long as the other party consents. However, all electronic records, signatures, and contracts must satisfy other legal requirements.

As explained in more detail below, E–SIGN has exceptions for certain kinds of records. Written notification is still required for notices of default, acceleration, repossession, foreclosure, eviction, or the right to cure when a loan is secured by the primary residence of an individual. E–SIGN also does not apply to writing or signature requirements imposed under the Uniform Commercial Code (UCC), other than sections 1–107 and 1–206 and Articles 2 and 2A.

Under E–SIGN the parties to a transaction are not required to use or accept electronic records or signatures. Both parties must agree to do so.E–SIGN preserves the right to refuse to use electronic media in any transaction. Thus, the parties to a transaction retain the right to establish their own requirements for acceptable communications. E–SIGN does not prohibit or limit traditional oral or paper-based forms of communication and commerce or require that transactions be conducted electronically.

E–SIGN establishes different standards for conducting E-commerce with businesses and with consumers. Although both businesses and consumers must consent to electronic communications, E–SIGN provides certain protections and establishes mandatory procedures for consumers. Under E–SIGN, "consumer" means an individual who obtains, through a transaction, products or services used primarily for personal, family, or household purposes.

E–SIGN provides that, if any other law requires information concerning the transaction to be provided to a consumer in writing, the consumer must affirmatively consent to receiving the information electronically. The "consumer consent" provisions do not apply to business-to-business transactions. An example of a law requiring certain information to be provided to a consumer in writing is the Equal Credit Opportunity Act (ECOA), which requires a creditor to notify a consumer (but not a business) in writing of the specific reasons for rejecting a loan application or the right to learn the reasons if the consumer asks within 60 days of the creditor's notification. Under E–SIGN, you cannot make this disclosure electronically without complying with its consumer consent provisions.

Under E–SIGN, some System loans qualify as consumer transactions, while others are business transactions. You will need to distinguish between the two types of transactions to comply with E–SIGN.

If consumers do agree to E-commerce, the following provisions of E–SIGN apply:

- Consumers may choose between receiving legal notices and records electronically or in writing but can change their minds in the future (possibly subject to a fee);
- Consumer consent may apply to a particular transaction and/or to categories of records;
- The provider of an electronic record must describe the procedures: (1) The consumer must use to withdraw consent; and, (2) to update the information needed to contact the consumer electronically;
- The provider of the electronic record must inform the consumer of the ability to get a paper copy of an electronic record (possibly subject to a fee) after consent;
- Consumers who choose to receive documents electronically must demonstrate the technological capacity to do so prior to consenting to E-commerce;
- The provider of the electronic record must provide the consumer with a statement detailing the computer hardware and software needed to receive and keep the information to be sent; and
- A consumer may opt out of using electronic signatures without paying a fee if a change in the technology needed affects the consumer's ability to receive or keep information.

E–SIGN permits the parties to the transaction to determine the appropriate document integrity and signature authentication technologies. Document integrity ensures that each party signing a document will sign the same document and that the terms of the document cannot be changed after signing. Signature authentication ensures that appropriate parties sign a document and that each electronic signature is exclusively attributable to each of the parties signing the document. A party entering into an online transaction in reliance on an electronic communication must be confident of the source of the document. For example, when a System institution receives an online loan application, the System institution must be able to verify the source of the application and ensure that it is not dealing with an impostor.

An essential element for the enforceability of all electronic transactions is record keeping. E–SIGN also encourages electronic records storage. Under E–SIGN, electronic records storage satisfies any law or regulation, with certain exceptions. Electronic records may be used to satisfy requirements that an "original" be retained. Electronic records storage should result in cost savings.

E–SIGN requires that electronically stored documents accurately reflect the information in the original, whether in paper or electronic form, and be accessible to all persons entitled to review the original in a form capable of

accurate reproduction. In other words, records stored electronically must be accurate, accessible, and reproducible for later reference. This is important because FCA must be able to examine System institutions, including their electronic records, for safety and soundness and for compliance with law and regulation.

Electronic promissory notes secured by real property are subject to different treatment under E–SIGN. E–SIGN establishes special technological and business process standards for electronic promissory notes secured by real estate. To treat an electronic version as the equivalent of a paper promissory note, you must conform to E–SIGN's detailed requirements for transferable records. A transferable record is an electronic record that: (1) Would be a note under Article 3 of the UCC if the electronic record were in writing; (2) the issuer of the electronic record has expressly agreed is a transferable record; and (3) relates to a loan secured by real property.

As we explained in BL–041, the requirements of E–SIGN are complex. We have provided only a brief overview of E–SIGN. System institutions should read E–SIGN in its entirety to see how it applies and affects their conduct of E-commerce. System institutions are encouraged to consult legal counsel before engaging in E-commerce.

4. Consumer Protection Regulations B, Z, and M

In March and April 2001, the Federal Reserve Board (FRB) issued interim final rules, with requests for comments, to establish uniform standards for the electronic delivery of disclosures or notices required by Regulations B (Equal Credit Opportunity), Z (Truth in Lending), and M (Consumer Leasing).[3] The rules were effective March 30, 2001. The FRB lifted the October 1, 2001, mandatory compliance date on August 2, 2001, to allow consideration of the comments received. The comments pertained to operational issues regarding the requirements that institutions alert consumers by e-mail when electronic disclosures are made available at another location, such as a Web site. The comment period closed June 1, 2001. The FRB rules establish standards of fair practice and meaningful disclosure for certain lending and leasing activities.

Under the rules, consistent with E-SIGN, financial institutions, creditors, lessors, and others may deliver disclosures electronically if they obtain the consumer's consent. The FRB's rules establish uniform requirements for the timing and delivery of electronic disclosures. Disclosures may be sent by e-mail to a designated electronic address or to another location, such as an Internet Web site address. When the disclosures are not sent by e-mail, the consumer must be notified of the availability of the disclosures. Disclosures posted on a Web site must be available for at least 90 days to allow adequate time to access and retain the information. Under the FRB's rules, when disclosures are returned undelivered, there must be a good faith attempt to redeliver electronic disclosures using available information.

These rules apply only to consumer transactions and not to business transactions. System institutions will have to distinguish between consumer and business transactions to comply with the FRB's rules.

B. Amending Part 620—Disclosures to Shareholders

As discussed above, System institutions have wanted to use electronic media to provide disclosures to shareholders. Currently, part 620 addresses only paper disclosures. We propose amending this part to specifically allow electronic disclosures.

III. Analysis of Proposed Rules

A. Part 609

We are proposing to create a new regulation part on E-commerce. The new part provides an overview of E–SIGN's general rules, including E–SIGN's prohibition on using electronic communications to deliver certain notices. For example, we note that under E–SIGN, System institutions may not use electronic media to deliver certain notices of default, acceleration, repossession, foreclosure, eviction, or the right to cure when a loan is secured by the primary residence of an individual. We also note that E–SIGN does not apply to the writing or signature requirements imposed under the UCC, other than sections 1–107 and 1–206 and Articles 2 and 2A. You should review E–SIGN yourself to determine which of its other provisions apply to your institution.

We also include a reminder that System institutions must comply with FRB Regulations B, Z, and M. These regulations establish guidance on the timing and delivery of electronic disclosures to ensure an adequate opportunity to access and retain required information. Under these rules, disclosures may be delivered electronically if the consumer consents in accordance with E–SIGN. These rules were adopted as interim rules to allow for additional public comment.

This new part also explains that all terms in the Act and its regulations should be broadly interpreted and defined in the context of E-commerce. For example, the terms "mail," "notice," and "send" should be broadly interpreted to encompass both paper-based and electronic transactions. You should interpret "address," "signature," "record," and "writing" similarly. We provide some background definitions to assist with your understanding of E-commerce.

Boards and management must ensure trust in all aspects of electronic transactions, including security procedures. What is required to establish trust varies depending on the type of transaction. We propose that System institutions' boards and management assess the risks and benefits of E-commerce and establish a policy and procedures for E-commerce. Boards and management must establish good business practices for E-commerce to ensure the safety and soundness of System institutions and compliance with law and regulation. We have identified subjects that your policy and procedures should address. This should help you understand your responsibilities and accountability. We have not established specific requirements or standards because they could become outdated quickly due to technological and customer service innovations.

Finally, this part also would establish our general requirements for your use of electronic communications with consumers and parties other than consumers. We restate E–SIGN's requirement that both parties consent to electronic communications. We need to ensure appropriate electronic communications between System institutions and their customers. A customer includes a borrower, applicant, shareholder, or lessee. A customer may always choose to receive paper copies. Also, System institutions must ensure their communications with parties other than consumers demonstrate good business practices.

At this time, we are not imposing document integrity standards for electronic disclosures or mandating the use of independent certification authorities for signature authentication. Nonetheless, boards and management should consider adopting document integrity standards and the use of independent certification authorities as part of good business practices. System institutions should consider the level of assurance needed based on the sensitivity and importance of the electronic communication. Customers will expect these assurances.

B. Amending Part 620—Disclosures to Shareholders

We are proposing to amend part 620 to allow System institutions to communicate electronically with their shareholders. We are not amending any of the substantive requirements of the rule; we are only specifying that electronic communications are permitted, with the consent of the parties. The amendments allow System institutions to provide electronic disclosures and notices, including annual and quarterly reports, annual meeting information statements, report of condition of the Federal Agricultural Mortgage Corporation, and notices of significant changes in a System institution's permanent capital ratio.

As we have already stated, in adding new part 609 and amending part 620 we do not suggest our other regulations do not allow E-commerce. All of our regulations must be interpreted in light of what E–SIGN does and does not allow. We will review all our regulations over time and amend them as necessary to reflect E–SIGN's provisions and to promote E-commerce.

IV. Request for Comment

FCA invites comment on how particular statutes, regulations, or FCA policies affect you or your customer's use of new technologies.

A. E-Commerce Regulations

We propose creating a new part on E-commerce and amending part 620 to specifically allow E-commerce. We request your comment on whether adding a new and separate part 609 on E-commerce is necessary or desired. We request comments on whether the general rules, interpretations and definitions, standards, and requirements at proposed part 609 help in providing a flexible regulatory environment and ensuring the System's safety and soundness. We also ask whether part 609 adequately addresses E-commerce and electronic communications.

We would also like your comments on whether our proposed amendments to our Disclosure to Shareholders regulations at part 620 to specifically allow electronic communications benefit you.

Please tell us what other regulatory changes you need to facilitate E-commerce, including online lending and the electronic delivery of services. Which regulations, if any, negatively affect the likelihood that a customer would choose to engage in online borrowing? Do any FCA policies impose unreasonable burdens on your institution's online technologies?

B. Interpreting E–SIGN Provisions

Under section 104(b) of E–SIGN, we have limited authority to interpret E–SIGN. We are authorized to issue regulations that interpret how E–SIGN applies to our regulations if they are consistent with E–SIGN and do not add to the requirements of E–SIGN. Before issuing any such regulation, however, FCA must find that the regulation is necessary and will not impose unreasonable costs on the acceptance and use of electronic records. Finally, the regulation cannot favor one technology over another.

We request comments on how provisions of E–SIGN, or any other law, affect your or your customers' ability to use new technologies. We also request comments on whether you need additional guidance on E–SIGN's statutory provisions, including consumer consent. For example, you should tell us whether you need guidance on how consumers can confirm their consent electronically or clarification on what happens when a consumer withdraws consent or requests paper copies of electronic disclosures.

List of Subjects

12 CFR Part 609

Agriculture, Banks, banking, Electronic commerce, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, we propose to add a new part 609 and amend part 620 of chapter VI, title 12 of the Code of Federal Regulations to read as follows:

1. Add a new part 609 to subchapter B to read as follows:

PART 609—ELECTRONIC COMMERCE

Subpart A—General Rules

Sec.
609.905 Background.
609.910 Compliance with the Electronic Signatures in Global and National Commerce Act (Pub. L. 106–229) (E–SIGN).
609.915 Compliance with Federal Reserve Board Regulations B, Z, and M.

Subpart B—Interpretations and Definitions

609.920 Interpretations.
609.925 Definitions.

Subpart C—Standards for Boards and Management

609.930 Policy and procedures.
609.935 Business planning.
609.940 Internal systems and controls.
609.945 Records retention.

Subpart D—General Requirements for Electronic Communications

609.950 Electronic communications.

Authority: Sec. 5.9 of the Farm Credit Act (12 U.S.C. 2243); 5 U.S.C. 301; Pub. L. 106–229 (114 Stat. 464).

Subpart A—General Rules

§ 609.905 Background.

The Farm Credit Administration (FCA) wants to create a flexible regulatory environment that facilitates electronic commerce (E-commerce) and allows Farm Credit System (System) institutions and their customers to use new technologies. System institutions may use E-commerce but must establish good business practices that ensure safety and soundness while doing so.

§ 609.910 Compliance with the Electronic Signatures in Global and National Commerce Act (Pub. L. 106–229) (E–SIGN).

(a) *General.* E–SIGN makes it easier to conduct E–commerce. With some exceptions, E–SIGN permits the use and establishes the legal validity of electronic contracts, electronic signatures, and records maintained in electronic rather than paper form. E-commerce is optional; all parties to a transaction must consent before it can be used.

(b) *Consumer transactions.* E–SIGN contains extensive consumer disclosure provisions that apply whenever another consumer protection law, such as the Equal Credit Opportunity Act, requires the disclosure of information to a consumer in writing. Consumer means an individual who obtains, through a transaction, products or services, including credit, used primarily for personal, family, or household purposes. You must follow E–SIGN's specific procedures to make the required consumer disclosures electronically. E–SIGN's special disclosure rules for consumer transactions do not apply to business transactions. Under E–SIGN, some System loans qualify as consumer transactions, while others are business transactions. You will need to distinguish between the two types of transactions to comply with E–SIGN.

(c) *Specific exceptions.* E–SIGN does not permit electronic notification for notices of default, acceleration, repossession, foreclosure, eviction, or the right to cure, under a credit

[3] *See* 66 FR 17779, Apr. 4, 2001; 66 FR 17329, Mar. 30, 2001; and 66 FR 17322, Mar. 30, 2001, respectively.

agreement secured by, or a rental agreement for, a person's primary residence. These notices require paper notification. The law also requires paper notification to cancel or terminate life insurance. Thus, System institutions cannot use electronic notification to deliver some notices that must be provided under part 614, subpart L of this chapter, Actions on Applications; Review of Credit Decisions, and part 614, subpart N of this chapter, Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal. In addition, E–SIGN does not apply to the writing or signature requirements imposed under the Uniform Commercial Code, other than sections 1–107 and 1–206 and Articles 2 and 2A.

(d) *Promissory notes.* E–SIGN establishes special technological and business process standards for electronic promissory notes secured by real estate. To treat an electronic version of such a promissory note as the equivalent of a paper promissory note, you must conform to E–SIGN's detailed requirements for transferable records. A transferable record is an electronic record that:

(1) Would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing;

(2) The issuer of the electronic record has expressly agreed is a transferable record; and

(3) Relates to a loan secured by real property.

(e) *Effect on State and Federal law.* E–SIGN supercedes most State and Federal statutes or regulations, including the Farm Credit Act of 1971, as amended (Act), and its implementing regulations, that require contracts or other records to be written, signed, or in non-electronic form. Under E–SIGN, an electronic record or signature generally satisfies any provision of the Act, or its implementing regulations that requires records and signatures to be written, signed, or in paper form. Therefore, unless an exception applies or a necessary condition under E–SIGN has not been met, an electronic record or signature satisfies any applicable provision of the Act or its implementing regulations.

(f) *Document integrity and signature authentication.* Each System institution must verify the legitimacy of an E-commerce communication, transaction, or access request. Document integrity ensures that the same document is provided to all parties. Signature authentication proves the identities of all parties. The parties to the transaction may determine how to ensure document integrity and signature authentication.

(g) *Records retention.* Each System institution may maintain all records electronically even if originally they were paper records. The stored electronic record must accurately reflect the information in the original record. The electronic record must be accessible and capable of being reproduced by all persons entitled by law or regulation to review the original record.

§ 609.915 Compliance with Federal Reserve Board Regulations B, Z, and M.

The regulations in this part require fair practices and meaningful disclosures for certain lending and leasing activities. System institutions must comply with Federal Reserve Board Regulations B (Equal Credit Opportunity), Z (Truth in Lending), and M (Consumer Leasing) (12 CFR parts 202, 226 and 213).

Subpart B—Interpretations and Definitions

§ 609.920 Interpretations.

(a) E–SIGN supercedes existing statutes and regulations, including the Act and its implementing regulations that require paper copies and handwritten signatures. E–SIGN requires that statutes and regulations be interpreted to allow E-commerce as long as the safeguards of E–SIGN are met and its exceptions recognized. Generally, an electronic record or signature satisfies any provision of the Act or its implementing regulations that require records and signatures to be written, signed, or in paper form.

(b) System institutions may interpret the Act and its implementing regulations broadly to allow electronic transmissions, communications, records, and submissions, as provided by E–SIGN. This means that the terms address, copy, distribute, document, file, mail, notice, notify, record, provide, send, signature, sent, written, writing, and similar words generally should be interpreted to permit electronic transmissions, communications, records, and submissions.

§ 609.925 Definitions.

We provide the following definitions that apply to this part:

(a) *Electronic* means relating to technology having electrical, digital, magnetic, wireless, optical, electronomagnetic, or similar capabilities.

(b) *Electronic communication* means a message that can be transmitted electronically and displayed on equipment as visual text. An example is a message displayed on a personal computer monitor screen. This does not include audio- and voice-response telephone systems.

(c) *Electronic business (E-business) or electronic commerce (E-commerce)* means buying, selling, producing, or working in an electronic medium.

(d) *Electronic mail (E-mail)* means:

(1) To send or submit information electronically; or

(2) A communication received electronically.

(e) *Electronic signature* means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record. Electronic signature describes a category of electronic processes that can be substituted for a handwritten signature.

Subpart C—Standards for Boards and Management

§ 609.930 Policy and procedures.

The FCA supports E-commerce and wants to facilitate it and other new technologies and innovations to enhance the efficient conduct of business and the delivery of safe and sound credit and closely related services. Through E-commerce, System institutions can improve customer service, access information, and provide alternate communication systems. At the same time, E-commerce presents challenges and risks that your board must carefully consider in advance. Before engaging in E-commerce, you must weigh its business risks against its benefits. You must also adopt an E-commerce policy and procedures to ensure your institution's safety and soundness and compliance with law and regulation. Among other concerns, the policy and procedures must address:

(a) Security and integrity of System institution and borrower data;

(b) The privacy of your customers as well as visitors to your Web site;

(c) Notices to customers or visitors to your Web site when they link to an affiliate or third party Web site;

(d) Capability of vendor or application providers;

(e) Business resumption after disruption;

(f) Fraud and money laundering;

(g) Intrusion detection and management;

(h) Liability insurance; and

(i) Prompt reporting of known or suspected criminal violations associated with E-commerce to law enforcement authorities and FCA under part 617 of this chapter.

§ 609.935 Business planning.

When applicable, business plans must contain an analysis of:

(a) The strategic and operational aspects of E-commerce; and

(b) Potential and existing customers that can use E-commerce.

§ 609.940 Internal systems and controls.

When applicable, internal systems and controls must provide reasonable assurances that System institutions will:

(a) Follow and achieve business plan objectives and policy and procedure requirements regarding E-commerce; and

(b) Prevent and detect material deficiencies on a timely basis.

§ 609.945 Records retention.

Records stored electronically must be accurate, accessible, and reproducible for later reference.

Subpart D—General Requirements for ElectronicCommunications

§ 609.950 Electronic communications.

(a) *Consent.* In accordance with E–SIGN, System institutions may communicate electronically to conduct business. E-commerce transactions require the consent of all parties when you do business.

(b) *Communications with consumers.* E–SIGN and Federal Reserve Board Regulations B, Z, and M (12 CFR parts 202, 226 and 213) outline specific disclosure requirements for communications with consumers.

(c) *Communications with parties other than consumers.* The consumer disclosure requirements of E–SIGN and of Federal Reserve Board Regulation B (12 CFR part 202) do not apply to your communications with parties other than consumers. (Federal Reserve Board Regulations Z and M (12 CFR parts 226 and 213) apply to consumers only.) Nonetheless, you must ensure that your communications, including those disclosures required under the Act and these regulations, demonstrate good business practices in the delivery of credit and closely related services and in your obtaining goods and services.

PART 620—DISCLOSURE TO SHAREHOLDERS

2. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); secs. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart A—General

3. Amend § 620.1 as follows:

a. Revise paragraph (o);

b. Redesignate existing paragraph (r) as new paragraph (s); and

c. Add a new paragraph (r).

§ 620.1 Definitions.

* * * * *

(o) *Report* refers to the annual report, quarterly report, notice, or information statement, regardless of form, required by this part unless otherwise specified.

* * * * *

(r) Signed, when referring to paper form, means a manual signature, and, when referring to electronic form, means marked in a manner that authenticates each signer's identity.

4. Amend § 620.2 as follows:

a. Remove the first sentence and add three new sentences in its place in paragraph (a);

b. Revise paragraph (b) introductory text;

c. Remove the word "filed" and add in its place, the word "required" in paragraph (b)(3)(i);

d. Remove the words "typed or" from the second sentence in paragraph (b)(3)(ii); and

e. Redesignate existing paragraphs (d), (e), (f), (g), (h), and (i) as newly designated paragraphs (e), (f), (g), (h), (i), and (j) consecutively;

f. Add new paragraph (d); and

g. Remove the words "mail or otherwise furnish" and add in their place, the word "provide" in newly designated paragraph (i)(3).

§ 620.2 Preparing and filing the reports.

* * * * *

(a) Copies of each report required by this section, including financial statements and related schedules, exhibits, and all other papers and documents that are a part of the report must be sent to the Chief Examiner, or to another office designated by the Chief Examiner. If sending paper copies, send three copies to Chief Examiner, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. If providing electronic copies, send according to our instructions to you.

* * *

(b) At least one of the reports provided to the Farm Credit Administration shall be dated and manually signed on behalf of the institution by:

* * * * *

(d) Shareholders must consent to electronic disclosures of reports required by this part.

* * * * *

Subpart B—Annual Report to Shareholders

§ 620.4 [Amended]

5. Amend § 620.4 as follows:

a. Remove the word "distributing" and add in its place, the word "providing" in the heading; and

b. Remove the word "distribute" and add the word "provide" each place it appears in paragraphs (a), (b)(1), and (b)(2).

§ 620.5 [Amended]

6. Amend § 620.5 as follows:

a. Remove the word "distributed" and add in its place, the word "provided" in paragraph (a)(3); and

b. Remove the word "signed" and add in its place, the words "manually signed, or if in electronic form, signed in a manner that authenticates each signer's identity" in paragraph (m)(2).

Subpart C—Quarterly Report

7. Amend § 620.11 by revising the second sentence of paragraph (b)(6) to read as follows:

§ 620.11 Content of quarterly report to shareholders.

* * * * *

(b) * * *

(6) * * * In addition, a statement from the persons who verify the institution's financial statements shall be included as an exhibit, indicating whether or not the change is to an alternative principle which in their judgment is preferable under the circumstances, except that no such statement need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

* * * * *

Subpart D—Notice to Shareholders

8. Revise § 620.15 to read as follows:

§ 620.15 Notice.

(a) Each Farm Credit bank and direct lender association shall prepare and provide the Farm Credit Administration and shareholders a notice, within 30 days following the monthend that the institution initially determines that it is not in compliance with the minimum permanent capital standard prescribed under § 615.5205 of this chapter.

(b) An institution that has given notice to shareholders pursuant to paragraph (a) of this section or subsequent notice pursuant to this paragraph shall also prepare and provide the Farm Credit Administration and shareholders a notice within 45 days following the end of any subsequent quarter at which the institution's permanent capital ratio decreases by one-half of 1 percent or more from the level reported in the most recent notice provided to shareholders.

(c) Each institution required to prepare a notice under § 620.15(a) or (b)

shall provide the notice to shareholders or publish it in any publication with circulation wide enough to be reasonably assured that all of the institution's shareholders have access to the information in a timely manner.

§ 620.17 [Amended]

9. Amend § 620.17 by removing the words "distribute" and adding in its place, the word "provide" in paragraph (b)(4).

Subpart E—Association Annual Meeting Information Statement

§ 620.20 [Amended]

10. Amend § 620.20 as follows:

a. Remove the word "distributing" and add in its place, the word "providing" in the heading; and

b. Remove the word "distribute" and add in its place, the word "provide" in paragraph (a).

11. Amend § 620.21 as follows:

a. Remove the words "furnished a letter" and add in their place, the words "provided a notice" in the first sentence of paragraph (c)(3);

b. Remove the words "contained in the letter" at the end of the first sentence in paragraph (c)(3);

c. Add the words "paper mail or electronic" before the word "mail" in each place it appears in paragraphs (d)(3)(i)(A), (d)(3)(i)(B), (d)(3)(ii)(A), and (d)(3)(ii)(B);

d. Revise paragraph (d)(5) to read as follows:

§ 620.21 Contents of the information statement and other information to be furnished in connection with the annual meeting.

* * * * *

(d) * * *

(5) For each nominee who is not an incumbent director, except a nominee from the floor, provide the information referred to in § 620.5(j) and (k) and § 620.21(d)(4). If shareholders will vote by paper mail or electronic mail ballot upon conclusion of all sessions, each floor nominee must provide the information referred to in § 620.5(j) and (k) and § 620.21(d)(4) in paper or electronic form to the association within the time period prescribed by the association's bylaws. If the association's bylaws do not prescribe a time period, state that each floor nominee must provide the disclosure to the association within 5 business days of the nomination. The association shall ensure that the information is provided to the voting shareholders by delivering the ballots for the election of directors in the same format as the comparable information contained in the association's annual meeting information statement. If shareholders will not vote by paper mail or electronic mail ballot upon conclusion of all sessions, each floor nominee must provide the information referred to in § 620.5(j) and (k) and § 620.21(d)(4) in paper or electronic form at the first session at which voting is held.

* * * * *

§ 620.30 [Amended]

12. Amend § 620.30 by removing the words "distribute or mail" and adding in their place, the word "provide" in the second sentence.

Subpart G—Annual Report of Condition of the Federal Agricultural Mortgage Corporation

13. Amend § 620.40 as follows:

a. Remove the words "distribution of" and add in their place, the words "providing of the" in the heading;

b. Remove the word "distribute" and add in its place, the word "provide" in paragraph (b);

c. Remove the words "mail or otherwise furnish to the requestor a copy of" and add in their place, the words "provide the requester" in paragraph (c); and

d. Revise paragraph (d):

§ 620.40 Content, timing, and providing of the Federal Agricultural Mortgage Corporation annual report of condition.

* * * * *

(d) The Corporation shall provide copies of the annual report of condition to the Farm Credit Administration's Office of Secondary Market Oversight within 120 days of its fiscal year-end. If providing paper copies, send three copies to Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. If providing electronic copies, send according to our instructions to you.

Dated: October 15, 2001.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 01–26305 Filed 10–19–01; 8:45 am]

BILLING CODE 6705–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 054–OPP; FRL–7087–9]

Clean Air Act Proposed Full Approval of the Title V OperatingPermit Programs for Twenty-Four California Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to fully approve the operating permit programs submitted by the California Air Resources Board (CARB) on behalf of Amador County Air Pollution Control District (APCD), Butte County Air Quality Management District (AQMD), Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Glenn County APCD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lake County AQMD, Lassen County APCD, Mariposa County APCD, Mendocino County APCD, Modoc County APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Shasta County APCD, Siskiyou County APCD, Tehama County APCD, Tuolumne County APCD, and Yolo-Solano AQMD. All twenty-four operating permit programs were submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted final interim approval to nineteen of the twenty-four districts' operating permit programs on May 3, 1995 (60 FR 21720). The five districts that were not included in that rulemaking were Glenn County APCD, Tehama County APCD, Lake County AQMD, Shasta County APCD, and Mariposa APCD. EPA granted final interim approval to Mariposa APCD's operating permit program on December 7, 1995 (60 FR 62758) and to the other four districts' programs on July 13, 1995 (60 FR 36065). All twenty-four districts revised their programs to satisfy the conditions of the interim approval and this action proposes approval of those revisions. In addition, many districts made other changes to their rules that were not required to correct an interim approval issue; EPA proposes to approve most of these other changes districts have made.

DATES: Comments on the program revisions discussed in this proposed action must be received in writing by November 21, 2001.

ADDRESSES: Written comments on this proposed action should be addressed to Gerardo Rios, Acting Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. You can inspect copies of the program submittals, and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. You may also see copies of the submitted title V programs at the California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814, and at the appropriate local Air Pollution Control District office (current District addresses are listed on the Internet at *http://www.arb.ca.gov/capcoa/roster.htm*)

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region IX, at (415) 744–1259 or *rios.gerardo@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

I. What is the operating permit program?
II. What is being addressed in this document?
III. Are there other issues with the program?
IV. What are the program changes that EPA proposes to approve?
A. Changes Made for Full Approval
1. Group 1—Changes Required of All Districts
2. Group 2—District-Specific Changes
B. Other District-Specific Changes Submitted Since EPA Granted Final Interim Approval
V. What is involved in this proposed action?

I. What Is the Operating Permit Program?

The CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One goal of the operating permit program is to improve compliance by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "serious," major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

II. What Is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct the deficiencies. Because all twenty-four operating permit programs substantially, but not fully, met the requirements of part 70, EPA granted interim approval to each program in three separate rulemakings, published on May 3, 1995 (60 FR 21720) for nineteen of the twenty-four districts, on July 13, 1995 (60 FR 36065) for Glenn County APCD, Tehama County APCD, Lake County AQMD, and Shasta County APCD, and on December 7, 1995 (60 FR 62758) for Mariposa County APCD. Each interim approval notice described the conditions that had to be met in order for the programs to receive full approval. Since that time, each of the twenty-four districts have revised their interimly approved operating permit program at least once. These changes were necessary to correct the conditions for full approval; but some districts made other changes as well. Table 1 below lists the dates of submission by CARB of each of the revised district programs.

TABLE 1.—RULE NUMBER, NAME, ADOPTION DATE(S), AND PROGRAM SUBMISSION DATES, FOR CALIFORNIA NON-GRANTEE DISTRICTS' OPERATING PERMIT PROGRAMS

District name	Rule No. and name	Date(s) of adoption of revised rule	Date of submission by CARB
Amador County APCD	Rule 500—Procedures for Issuing Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990.	3/27/01 and 2/27/97	04/10/01
Butte County AQMD	Rule 1101—Title V—Federal Operating Permits	4/26/01 and 6/24/99	5/17/01
Calaveras County APCD	Regulation X—Additional Procedures for Issuing Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990.	6/11/01	7/27/01
	Rule 1001—Purpose and General Requirements of Regulation X.		
	Rule 1002—Definitions		
	Rule 1003—Applicability		
	Rule 1004—Administrative Procedures for Sources		
	Rule 1005—District Administrative Procedures		
	Rule 1006—Permit Content Requirements		
	Rule 1007—Supplemental Annual Fee		
Colusa County APCD	Rule 3–17—Permits to Operate for Sources Subject to Title V.	8/7/01	8/22/01
El Dorado County APCD	Rule 522—Title V Federal Operating Permit Program	7/10/01	8/16/01
Feather River AQMD	Rule 10.3—Federal Operating Permits	5/7/01 and 12/4/00	5/22/01
Glenn County APCD	Article VIII—Additional Procedures for Issuing Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990.	6/19/01 and 1/30/01	9/13/01

TABLE 1.—RULE NUMBER, NAME, ADOPTION DATE(S), AND PROGRAM SUBMISSION DATES, FOR CALIFORNIA NON-GRANTEE DISTRICTS' OPERATING PERMIT PROGRAMS—Continued

District name	Rule No. and name	Date(s) of adoption of revised rule	Date of submission by CARB
Great Basin Unified APCD	Rule 217—Additional Procedures for Issuing Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990.	5/9/01 and 3/8/95	5/18/01
Imperial County APCD	Rule 900—Procedures for Issuing Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990.	6/26/01 and 4/4/00	8/2/01
Kern County APCD	Rule 201.1—Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990.	5/3/01 and 1/9/97	5/24/01
Lake County AQMD	Chapter XII—Requirements for Issuing Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990.	5/22/01 and 12/5/00	6/1/01
	Article I—Purpose and General Requirements		
	Article III—Applicability		
	Article IV—Administrative Procedures for Sources		
	Article V—District Administrative Procedures		
	Article VI—Permit Content		
	Article VII—Permit Fees		
	Article VIII—Designated Non-major Stationary Source		
Lassen County APCD	Regulation VII—Title V—Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990.	7/2/01	8/2/01
	Rule 7-1—Purpose and General Requirements		
	Rule 7-2—Applicability		
	Rule 7-3—Exemptions		
	Rule 7-4—Definitions		
	Rule 7-5—Administrative Procedures for Sources		
	Rule 7-6—District Administrative Procedures		
	Rule 7-7—Permit Content Requirements		
	Rule 7-8—Annual Fees		
Mariposa County APCD	Regulation X—Additional Procedures for Issuing Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990.	9/4/01	9/20/01
	Rule 1001—Purpose and General Requirements of Regulation X.		
	Rule 1002—Definitions		
	Rule 1003—Applicability		
	Rule 1004—Administrative Procedures for Sources		
	Rule 1005—District Administrative Procedures		
	Rule 1006—Permit Content Requirements		
	Rule 1007—Supplemental Annual Fee		
Mendocino County APCD	Regulation V—Procedures for Issuing Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendment of 1990.	11/14/00	4/13/01
	Chapter I—Purpose and General Requirements		
	Chapter II—Definitions		
	Chapter III—Applicability		
	Chapter IV—Administrative Procedures for Sources		
	Chapter V—District Administrative Procedures		
	Chapter VI—Permit Content		
Modoc County APCD	Rule 2.13—Additional Procedures for Issuing Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990.	7/24/01	9/12/01
North Coast Unified AQMD	Regulation V—Procedures for Issuing Permits to Operate for Sources Subject to Title V.	5/18/01 and 11/21/94	5/24/01
	Chapter 1—Purpose and General Requirements; Rules 100, 110, and 120.		
	Chapter 2—Definitions; Rule 200—Definitions		
	Chapter 3—Applicability; Rule 300—Applicability		
	Chapter 4—Administrative Procedures for Sources; Rules 400, 405, 410, 415, 425, 430, 440, 450, 455, 460, and 470.		
	Chapter 5—District Administrative Procedures; Rules 500, 510, 520, 530, 540, 545, 550, 560, 570, and 580.		
	Chapter 6—Permit Content; Rules 600, 610, 615, 620, 625, 630, 635, 640, 645, 650, 660, 670, 675, 680, and 690.		
Northern Sierra AQMD	Rule 522—Title V Federal Operating Permits	3/8/01 and 9/11/94	5/24/01
Northern Sonoma County APCD.	Regulation V—Procedures for Issuing Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendment of 1990.	5/8/01	5/21/01
	Chapter I—Purpose and General Requirements		

TABLE 1.—RULE NUMBER, NAME, ADOPTION DATE(S), AND PROGRAM SUBMISSION DATES, FOR CALIFORNIA NON-GRANTEE DISTRICTS' OPERATING PERMIT PROGRAMS—Continued

District name	Rule No. and name	Date(s) of adoption of revised rule	Date of submission by CARB
	Chapter II—Definitions Used in Regulation 5		
	Chapter III—Applicability of Regulation 5		
	Chapter IV—Administrative Procedures for Sources		
	Chapter V—District Administrative Procedures		
	Chapter VI—Permit Content Requirements		
Placer County APCD	Rule 507—Federal Operating Permit Program	4/17/01 and 8/24/95	5/4/01
Shasta County APCD	Rule 5-0—Additional Procedures for Issuing Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990.	5/8/01	5/18/01
Siskiyou County APCD	Rule 2.13—Additional Procedures for Issuing Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990.	9/25/01	9/28/01
Tehama County APCD	Rule 7:1—Federal Operating Permit Program	5/22/01	6/4/01
Tuolumne County APCD	Rule 500—Additional Procedures for Issuing Permits to Operate for Sources Subject to Title V of the 1990 Federal Clean Air Act Amendments.	6/19/01	7/18/01
Yolo-Solano AQMD	Rule 3.8—Federal Operating Permits Additional Procedures for Issuing Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990.	4/11/01 and renumbered on 2/23/94 (from 3.19 to 3.8).	5/9/01

This document describes changes that have been made to the twenty-four operating permit programs since EPA granted interim approval. These changes include those made by the districts to resolve interim approval deficiencies, as well as other rule and program changes submitted to EPA for approval.

III. Are There Other Issues With the Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

EPA received a comment letter from one organization on what they believe to be deficiencies with respect to title V programs in California. EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** notice published on December 11, 2000 (65 FR 77376), EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

IV. What Are the Program Changes That EPA Proposes To Approve?

A. Changes Made for Full Approval

As discussed earlier, the title V programs for the twenty-four districts included in today's rulemaking were given interim approval on May 3, 1995 (60 FR 21720) for nineteen of the twenty-four Districts; on July 13, 1995 (60 FR 36065) for Glenn County APCD, Tehama County APCD, Lake County AQMD, and Shasta County APCD; and on December 7, 1995 (60 FR 62758) for Mariposa County APCD. As stipulated in each of those rulemakings, full approval of the specific district operating permit program was made contingent upon satisfaction of certain conditions. We have included below a discussion of these conditions and a summary of how the twenty-four districts revised their part 70 programs and rules to meet the conditions required for full program approval. We have structured this section by categorizing each of the required changes into either Group 1 or Group 2. Group 1 consists of the eleven (11) conditions that are common to all twenty-four districts,[1] unless otherwise noted. Group 2 consists of all other conditions that are specific to each district and may or may not apply to more than one district. The district's rule (or program) correction follows the description of the required changes.

1. Group 1—Changes Required of All Districts

Unless otherwise noted, the following eleven conditions are common to all twenty-four districts that are the subject of today's proposed action.

Issue (1): Each district needed to provide a demonstration that activities that are exempt from part 70 permitting are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, districts could restrict the exemptions (including any director's discretion provisions) to activities that are not likely to be subject to an applicable requirement and emit less than district-established emission levels. Districts needed to establish separate emission levels for HAPs and for other regulated pollutants and demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that

[1] The reason for the similarity among the title V programs included in today's proposed action is that all twenty-four districts originally replicated a model title V rule developed by the California Air Resources Board (CARB). EPA Region 9 worked with the CARB to develop language to correct the deficiencies in the model rule that EPA identified as interim approval issues. In most cases, the language changes agreed to by EPA and CARB were adopted verbatim by the local Air District Boards. Please see the Technical Support Documents, included in the docket for this rulemaking, for more information.

are required to be permitted or subject to applicable requirements. This was a condition for full approval for all districts except for Mendocino County AQMD and Northern Sonoma County APCD.

Districts' Response: Districts addressed this requirement by implementing one of two options for defining insignificant activities in their part 70 (title V) programs. Option 1 involved adopting the Model List of Insignificant Activities for Title V Permit Programs developed by EPA and CARB. The Model List includes criteria for 24 specific source categories that are presumptively insignificant, as well as general criteria that define an insignificant activity as any activity that is not subject to a source-specific requirement *and* that emits no more than 0.5 tons per year (tpy) of a federal hazardous air pollutant (HAP) and no more than two tpy of a regulated pollutant that is not a HAP. Option 2 allowed districts to adopt the general criteria from Option 1 (*i.e.*, any activities that are not subject to a source-specific requirement and emit below the 0.5 and 2 tpy emission thresholds) into their part 70 program rules. Of the districts for which this was a condition of full approval, only Amador, El Dorado, Feather River, Imperial, North Coast, Placer and Shasta elected Option 1; the remainder elected Option 2.

Issue (2): Districts were required to revise the exemption list to remove the general exemption for agricultural production sources or to restrict the exemptions to non-title V sources. This was a condition for full approval for all district programs except for Great Basin Unified APCD and Lassen County APCD which did not have general exemptions for agricultural operations in their exemption lists and for Mendocino County which did not provide a list of exempted activities.

Districts' Response: In general, districts addressed this requirement by revising their title V rules and/or programs, where necessary, to delete the reference to the previously submitted permit exemption list. Further, districts added the following language to their part 70 programs: "Upon amendment of the California Health and Safety Code to allow the issuance of title V permits to agricultural production sources, such sources shall be subject to evaluation for applicability to the requirements of title V."

In addition, one of EPA's conditions for full title V program approval was the California Legislature's revision of the Health and Safety Code to eliminate the provision that exempts "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals" from the requirement to obtain a permit. *See* California Health and Safety Code section 42310(e). Even though the local Districts have, in many cases, removed the title V exemption for agricultural sources from their own rules, the Health and Safety Code has not been revised to eliminate this provision.

In evaluating the impact of the Health and Safety Code exemption, EPA believes there are a couple of key factors to consider. First, many post-harvest activities are not covered by the exemption and, thus, are still subject to title V permitting. For example, according to the California Air Resources Board (CARB), the Health and Safety Code exemption does not include activities such as milling and crushing, or canning or cotton ginning operations. Activities such as these are subject to review under the State's title V programs. *See* letter from Michael P. Kenny, Executive Officer, California Air Resources Board, to Jack Broadbent, Director, Air Division, U.S. EPA Region 9, dated September 19, 2001. In addition, since the granting of interim approval, the EPA has discovered that, in general, there is not a reliable or complete inventory of emissions associated with agricultural operations in California that are subject to the exemption. Although further research on this issue is needed, many sources with activities covered by the exemption may not have emission levels that would subject them to title V, and the State and/or individual Districts may be able to demonstrate that none of the sources that are exempt under the State law are subject to title V.

Based, in part, on these factors, EPA has tentatively concluded that requiring the immediate commencement of title V permitting of the limited types of agricultural activities presently subject to the exemption, without a better understanding of the sources and their emissions, would not be an appropriate utilization of limited local, state and federal resources. As a result, despite the State of California's failure to eliminate the agricultural permitting exemption, EPA is proposing to grant full approval to local Air District operating permit programs and allow a deferral of title V permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a further brief period, not to exceed three years. During the deferral period, we expect to develop the program infrastructure and experience necessary for effective implementation of the title V permitting program to this limited category of sources.

EPA believes it is appropriate to defer permitting for this limited category of agricultural sources because the currently available techniques for determining emissions inventories and for monitoring emissions (e.g., from irrigation pumps and feeding operations) are problematic and will be dramatically enhanced by several efforts currently being undertaken with the cooperation and participation of the operators and agricultural organizations, as well as EPA, other federal agencies, and the State and local air pollution agencies. For example, the National Academy of Sciences is undertaking a study addressing emissions from animal feeding operations. Their report is due next year. In addition, EPA's Office of Air and Radiation is working with the U.S. Department of Agriculture to better address the impact of agricultural operations on air quality. We consider the effort to evaluate the existing science, improve on assessment tools, collect additional data, remove any remaining legal obstacles, and issue any necessary guidance within the three year deferral time frame to be ambitious. We welcome comments on other areas that might also warrant study, as well as ways that this work might be done more quickly.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, voluntary emission reduction strategies. At the end of this period, EPA will, taking into consideration the results of these studies, make a determination as to how the title V operating permit program will be implemented for any potential major agricultural stationary sources.

Issue (3): Districts needed to revise their rules' application content requirements so that any compliance schedule required by the rule for a source not in compliance resembles and is at least as stringent as that contained in any judicial consent decree, administrative order, or schedule approved by the hearing board to which the source is subject as required by 40 CFR 70.5(c)(8)(iii)(C), rather than simply a schedule of compliance approved by the district's hearing board.

Districts' Response: Districts addressed this requirement by revising the application content portion of their part 70 program rules to include the specific language from part 70 regarding the stringency of a schedule of compliance for sources that are not in compliance with all applicable

requirements at the time of permit issuance.

Issue (4): Districts were required to revise their rules' application content requirements to clarify that all reports and other documents submitted in the permit application must be certified by the responsible official as required by 40 CFR 70.5(d) and to provide the full text of the responsible official's certification in § 70.5(d). This was an interim approval issue for all twenty-four district programs except Yolo-Solano AQMD whose part 70 program rule already required this.

Districts' Response: Districts addressed this requirement by revising the application content portion of their part 70 program rules to require that all reports and documents submitted in the permit application be certified by a responsible official and to further require that the certification must state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Issue (5): Districts needed to provide in their rules a permit application deadline for sources that become subject to the district's part 70 rule after the rule's effectiveness date for reasons other than commencing operation. This deadline cannot be any later than 12 months after the source becomes subject to the rule as required by 40 CFR 70.5(a)(1). This was a condition for full approval for all twenty-four district programs except for Northern Sierra AQMD and Yolo-Solano AQMD whose rules already contained this deadline.

Districts' Response: Districts addressed this requirement by revising their part 70 program rules to require a source to submit a permit application within 12 months of the source commencing operation "or of otherwise becoming subject to" the district's part 70 program rule.

Issue (6): Districts needed to revise their rules' permit issuance procedures to provide for notifying the EPA and affected States in writing of any refusal by the district to accept all recommendations for the proposed permit that the affected State submitted during the public/affected State review period as required by 40 CFR 70.8(b)(2).

Districts' Response: Districts addressed this requirement by revising their part 70 program rules to require such written notification to EPA and to affected States as part of their permit issuance procedures.

Issue (7): Districts were required to incorporate into their rules provisions citing the right of the public to petition EPA under 40 CFR 70.8(d) after the expiration of the EPA's 45-day review period and prohibiting the district from issuing a permit, if it has not already done so, until the EPA's objections in response to the petition are resolved as required by § 70.8(d).

Districts' Response: Districts addressed this requirement by incorporating the public petition provision and the post-petition permit issuance prohibition into their part 70 program rules.

Issue (8): Districts had to revise their rules to provide for public notice of permitting actions by other means if necessary to assure adequate notice to the affected public as required by 40 CFR 70.7(h)(1).

Districts' Response: Districts addressed this requirement by modifying their part 70 programs' public notice procedures. In addition to publication in a newspaper of general circulation, districts added the requirement to provide notice by other means if necessary to assure adequate notice to the affected public.

Issue (9): Districts were required to revise their rules' permit content requirements to clarify that all reports and other documents required by the permit must be certified by a responsible official as required by 40 CFR 70.6(c)(1) and to provide the full text of the responsible official's certification in § 70.5(d). This condition is very similar to issue #4 above, except that it applies to the district rules' permit content requirements instead of the permit application requirements.

Districts' Response: Districts addressed this requirement by revising the permit content requirements of their part 70 program rules to require that any such reports or documents are certified by a responsible official and to further require that the certification must state that, based on information and belief formed after reasonable inquiry, the statements and information in the documents are true, accurate, and complete.

Issue (10): Districts needed to revise their rules' permit content requirements to require that any compliance schedule for a source not in compliance must resemble and be at least as stringent as that contained in any judicial consent decree, administrative order, or schedule approved by the hearing board to which the source is subject as required by 40 CFR 70.6(c)(3) and 70.5(c)(8)(iii)(C). This was an interim approval issue for all districts except Yolo-Solano AQMD whose rule already provided for this. This condition is very similar to issue #3 above, except that it applies to the district rules' permit content requirements instead of the permit application requirements.

Districts' Response: Districts addressed this requirement by revising their part 70 program rules to include the specific language from part 70 regarding the stringency of a schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance.

Issue (11): Districts were required to revise their rules' permit content requirements to require the submission of compliance certifications more frequently than annually if a more frequent period is specified in the applicable requirement or by the district as required by 40 CFR 70.6(c)(5)(i). This was an interim approval issue for all districts except Yolo-Solano AQMD whose rule already provided for this.

Districts' Response: Districts addressed this requirement by revising their part 70 programs' permit content requirements to require more frequent submission of compliance certifications as stipulated by 40 CFR 70.6(c)(5)(i).

Group 2—District-Specific Changes

In addition to the interim approval conditions noted above for all districts, numerous district-specific changes were also identified by EPA as conditions for full approval of districts' operating permit programs. These conditions are discussed below:

(1) *Amador County APCD:* (a) Amador County APCD (ACAPCD) was required to revise all deadlines for final permit action in Rule 500 V.C. (except for C.1. and C.5.) to be no later than the appropriate number of months after the complete application is received, rather than after the application is deemed to be complete, as required by 40 CFR 70.4(b)(11)(iii) and 70.7(a)(2).

ACAPCD addressed this condition by revising Rule 500 to require final action no later than the appropriate number of months "after the complete application is received" rather than "after the application is deemed complete."

(b) ACAPCD was required to revise the definition of "potential to emit" in Rule 500 II.AA. to clarify that only federally-enforceable limitations may be considered in determining a source's potential to emit under title V. Subsequent litigation has affected EPA's consideration of this issue. In *Clean Air Implementation Project vs. EPA*, No. 96–1224 (D.C. Cir. June 28, 1996), the court remanded and vacated the requirement forfederal enforceability for potential to emit limits under part 70. Even though part 70 has not been revised it should be read to mean, "federally enforceable or legally and practicably enforceable by

a state or local air pollution control agency."[2]

ACAPCD revised the definition which now states that "[p]hysical and operational limitations on the emissions unit shall be treated as part of its design, if the limitations are set forth in permit conditions or in rules or regulations that are legally and practicably enforceable by U.S. EPA and citizens or by the District." EPA proposes to approve this revision because ACAPCD's rule is consistent with the current meaning of potential to emit at 40 CFR 70.2. EPA has issued several guidance memoranda that discuss how the court rulings affect the definition of potential to emit under CAA § 112, New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs, and title V.[3] In particular, the memoranda reiterate the Agency's earlier requirements for practicable enforceability for purposes of effectively limiting a source's potential to emit.[4] For example, practicable enforceability for a source-specific permit means that the permit's provisions must, at a minimum: (1) Be technically accurate and identify which portions of the source are subject to the limitation; (2) specify the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); (3) be independently enforceable and describe the method to determine compliance including appropriate monitoring, recordkeeping and reporting; (4) be permanent; and (5) include a legal obligation to comply with the limit.

EPA will rely on ACAPCD implementing this new definition in a manner that is consistent with the court's decisions and EPA policies. In addition, EPA wants to be certain that absent federal and citizen's enforceability, Amador County's enforcement program still provides sufficient incentive for sources to comply with permit limits. This proposal provides notice to Amador about our expectations for ensuring the permit limits they impose are enforceable as a practical matter (i.e., practicably enforceable) and that its enforcement program will still provide sufficient compliance incentive. In the future, if ACAPCD does not implement the new definition consistent with our guidance, and/or has not established a sufficient compliance incentive absent Federal and citizen's enforceability, EPA could find that the District has failed to administer or enforce its program and may take action to notify the District of such a finding as authorized by 40 CFR 70.10(b)(1).

(c) ACAPCD was required to revise Rule 500 V.I.2 and 3 to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(12).

ACAPCD addressed this condition by revising both sections of Rule 500 to require that written notice be provided to both USEPA and the APCO as required by 40 CFR 70.4(b)(12).

(d) ACAPCD was required to revise the definition of "affected state" in Rule 500 II.C. to allow for the treatment of Tribal Authorities as affected states if the Authority request such treatment under the Tribal Air Regulations.

ACAPCD addressed this requirement by revising this definition, which now states that an affected State "is any State that: (1) Is contiguous with California and whose air quality may be affected by a permit action, or (2) is within 50 miles of the source for which a permit action is being proposed."

(2) *Butte County AQMD:* (a) Butte County AQMD (BCAQMD) was required to revise Rule 1101 V.C.6. to take final action on early reduction applications within nine months of receipt of the complete application rather than within nine months of the date the application was deemed complete as required by 40 CFR 70.4(b)(11)(iii).

BCAQMD addressed this condition by revising Rule 1101 Section 5.3.6 (please note that BCAQMD has renumbered its rule) to require final action no later than nine months "after the complete application is received" rather than "after the application is deemed complete."

(b) BCAQMD was required to revise Rule 1101 IV.B.4. to incorporate the compliance provisions of 40 CFR 70.7(e)(2)(v). Rule 1101 did not state, as does § 70.7(e)(2)(v), that until the District takes final action to issue or deny the requested permit modification or determines that it is a significant modification, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions, but the source need not comply with the existing permit terms and conditions being modified. Rule 1101 also needed to be revised to state that if the source fails to comply with the permit terms and conditions in the requested modification, the existing permit terms and conditions being modified may be enforced against it.

BCAQMD addressed this requirement by revising Rule 1101 Section 4.2.4 to eliminate the ability for sources to commence operation of proposed modifications until the APCO takes final action to approve the permit. This revision corrects the deficiencies in Rule 1101 that EPA had identified as interim approval issues.

(c) BCAQMD was required to revise Rule 1101 IV.B.3. to limit the discretion of the APCO to authorize sources to commence operations of significant permit modifications prior to final permit action to when the changes meet the criteria of 40 CFR 70.5(a)(1)(ii). Rule 1101 IV.B.3. allowed the APCO to authorize sources to commence operations of significant permit modifications when the proposed permit revision is publicly noticed but prior to final permit action. Part 70 prohibits sources from making significant permit modification changes prior to final permit issuance unless the changes are subject to preconstruction review under § 112(g) of the Act or preconstruction review programs approved into the SIP pursuant to part C or D of title I of the Act, and the changes are not otherwise prohibited by the source's existing part 70 permit. *See* 40 CFR 70.5(a)(1)(ii).

BCAQMD addressed this requirement by revising Rule 1101 Section 4.2.3 to limit the discretion of the APCO to authorize sources to commence operations of a significant permit modification prior to final action only where the changes meet the criteria of 40 CFR 70.5(a)(1)(ii).

(3) *Calaveras County APCD* did not have to make any additional corrections.

(4) *Colusa County APCD:* (a) The District was required to revise Rule 3.17 d.2.D. to incorporate the compliance provisions of 40 CFR 70.7(e)(2)(v). Rule 3.17 did not state, as does § 70.7(e)(2)(v), that until the District takes final action to issue or deny the requested permit modification or determines that it is a significant modification, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions, but the source need not comply with the existing permit terms and conditions being modified. Rule 3.17 also needed to be revised to state that if the source fails to comply with the permit terms and conditions in the requested modification, the existing permit terms and conditions being modified may be enforced against it.

Colusa County APCD (CCAPCD) addressed this requirement by revising Rule 3.17 d.2.D to include the appropriate compliance provisions from 40 CFR 70.7(e)(2)(v).

(b) The District needed to revise Rule 3.17 d.2.C. to limit the discretion of the APCO to authorize sources to commence operations of significant permit modifications prior to final permit action to when the changes meet the criteria of 40 CFR 70.5(a)(1)(ii). At the time of interim approval, Rule 3.17 d.2.C. allowed the APCO to authorize sources to commence operations of significant permit modifications when the proposed permit revision was publicly noticed but prior to final permit action. Part 70 prohibits sources from making significant permit modification changes prior to final permit issuance unless the changes are subject to preconstruction review under § 112(g) of the Act or preconstruction review programs approved into the SIP pursuant to part C or D of title I of the Act and the changes are not otherwise prohibited by the source's existing part 70 permit. *See* 40 CFR 70.5(a)(1)(ii).

CCAPCD addressed this requirement by revising Rule 317 d.2.C to limit the discretion of the APCO to authorize sources to commence operations of a significant permit modification prior to final action only where the changes meet the criteria of 40 CFR 70.5(a)(1)(ii).

(5) *El Dorado County APCD:* (a) The District needed to revise Rule 522 to restrict the use of minor permit modification procedures to be consistent with 40 CFR 70.7(e)(2)(i)(B). Rule 522, by default, allowed minor permit modification procedures to be used for those permit modifications that involve the use of economic incentives, marketable permits, emissions trading, and other similar approaches. 40 CFR 70.7(e)(2)(i)(B) constrains the use of the minor permit modification procedures for these approaches to situations where minor permit modification procedures are explicitly provided for in the applicable implementation plan or in the applicable requirements promulgated by the EPA.

El Dorado County APCD (EDCAPCD) addressed this requirement by revising its definition of minor modification in Rule 522.2(U) to include the constraining language from 40 CFR 70.7(e)(2)(i)(B) regarding minor permit modification procedures.

(b) EDCAPCD was required to revise Rule 522's permit content requirements to provide that every permit contain a provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit as required by 40 CFR 70.6(a)(8). EDCAPCD addressed this requirement by modifying Rule 522.6(B)(21) to add this provision from § 70.6(a)(8).

(6) *Feather River AQMD:* (a) The District needed to revise Rule 10.3 to restrict the use of minor permit modification procedures to be consistent with 40 CFR 70.7(e)(2)(i)(B). Rule 10.3, by default, allowed minor permit modification procedures to be used for those permit modifications that involve the use of economic incentives, marketable permits, emissions trading, and other similar approaches. 40 CFR 70.7(e)(2)(i)(B) constrains the use of minor permit modification procedures for these approaches to situations where minor permit modification procedures are explicitly provided for in the applicable implementation plan or in the applicable requirements promulgated by the EPA.

Feather River AQMD (FRAQMD) addressed this requirement by revising their definition of minor permit modification in Rule 10.3 B.21 to include the constraining language from 40 CFR 70.7(e)(2)(i)(B) regarding minor permit modification procedures.

(b) Feather River AQMD needed to revise Rule 10.3's permit content requirements to provide that every permit contain a provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit as required by 40 CFR 70.6(a)(8).

FRAQMD addressed this requirement by modifying Rule 10.3 F.2.u to add this provision from § 70.6(a)(8).

(c) The District was required to revise Rule 10.3 D.2.c. to limit the discretion of the APCO to authorize sources to commence operation of significant permit modifications prior to final permit action to when such changes meet the criteria of 40 CFR 70.5(a)(1)(ii). At the time of interim approval, Rule 10.3 D.2.c. allowed the APCO to authorize sources to commence operations of significant permit modifications when the proposed permit revision was publicly noticed but prior to final permit action. Part 70 prohibits sources from making significant permit modification changes prior to final permit issuance unless the changes are subject to preconstruction review under § 112(g) of the Act or preconstruction review programs approved into the SIP pursuant to part C or D of title I of the Act and the changes are not otherwise prohibited by the source's existing part 70 permit. *See* 40 CFR 70.5(a)(1)(ii).

FRAQMD addressed this requirement by revising Rule 10.3 D.2.c. to limit the discretion of the APCO to authorize sources to commence operation of a significant permit modification prior to final action only where the changes meet the criteria of 40 CFR 70.5(a)(1)(ii).

(7) *Glenn County APCD:* (a) Glenn County APCD (GCAPCD) needed to revise the rule's operational flexibility provisions to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(12).

GCAPCD addressed this requirement by revising Article VIII Section V.I.3.e to require that written notice be provided to both USEPA and the APCO as required by 40 CFR 70.4(b)(12).

(b) GCAPCD was required to revise Article VIII V.C.6.3. to take final action on early reduction applications within nine months of receipt of the complete application rather than within nine months of the date the application was deemed complete as required by 40 CFR 70.4(b)(11)(iii).

GCAPCD addressed this condition by revising Article VIII V.C.6.3 to require final action no later than nine months "after the complete application is received" rather than "after the application is deemed complete."

(8) *Great Basin Unified APCD:* (a) The District needed to revise Rule 217 IV.B.1.b. to delete the phrase "or is discovered to be subject." When EPA granted the District interim approval, Rule 217 IV.B.1.b. established a 12-month deadline for applications from sources which are "discovered to be subject to Rule 217 after the date the rule becomes effective." It is a source's obligation to determine if it is or is not subject to title V and Rule 217. A source that is subject but fails to apply for a permit in the appropriate timeframes is in violation of its Clean Air Act section

[2] See also, *National Mining Association (NMA) v. EPA*, 59 F.3d 1351 (D.C. Cir. July 21, 1995) and *Chemical Manufacturing Ass'n (CMA) v. EPA*, No. 89–1514 (D.C. Cir. Sept. 15, 1995) (regarding federal enforceability of potential to emit limits for Title III and Title I of the Act, respectively).

[3] *See*, e.g., January 22, 1996, Memorandum entitled, "Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit" from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement to EPA Regional Offices; January 31, 1996 paper to the Members of the Subcomittee on Permit, New Source Review and Toxics Integration from Steve Herman, OECA, and Mary Nichols, Assistant Administrator of Air and Radiation; and the August 27, 1996 Memorandum entitled, "Extension of January 25, 1995 Potential to Emit Transition Policy" from John Seitz, Director, OAQPS and Robert Van Heuvelen, Director, Office of Regulatory Enforcement.

[4] *See*, e.g., June 13, 1989 Memorandum entitled, "Guidance on Limiting Potential to Emit in New Source Permitting, from Terrell F. Hunt, Associate Enforcement Counsel, OECA, and John Seitz, Director, OAQPS, to EPA Regional Offices. This guidance is still the most comprehensive statement from EPA on this subject. Further guidance was provided on January 25, 1995 in a memorandum entitled, "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, ORE to Regional Air Directors. Also please refer to the EPA Region 7 database at http://www.epa.gov/region07/programs/artd/air/policy/policy.htm for more information.

502(a) obligation to apply for a part 70 permit and is subject to appropriate enforcement action. Discovery of a source that should have applied for a part 70 permit at an earlier date should not automatically provide that source twelve additional months to apply for a permit. The period for permit application should be decided in the context of the enforcement action against the source for failing to apply for and/or have a valid part 70 permit.

Great Basin Unified APCD (GBUAPCD) addressed this requirement by deleting the phrase "or is discovered to be subject" from Rule 217 IV.B.1.b.

(b) The District was required to revise all deadlines for final permit action in Rule 217 V.C. (except for C.1. and C.5.) to be no later than the appropriate number of months after the complete application is received, rather than after the application is deemed complete, as required by 40 CFR 70.4(b)(11)(iii) and 70.7(a)(2).

GBUAPCD addressed this requirement by changing the deadlines in Rule 217 V.C.2, C.3, C.4, and C.6 to require final action no later than the appropriate number of months "after the complete application is received" rather than "after the application is deemed complete."

(c) The District needed to revise Rule 217 V.I.2 and V.I.3.e. to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(12).

GBUAPCD addressed this requirement by modifying Rule 217 V.I.2 and V.I.3.e to require that written notice be provided to both USEPA and the APCO as required by 40 CFR 70.4(b)(12).

(9) *Imperial County APCD:* (a) Imperial County APCD (ICAPCD) was required to revise Rule 900 E.3.f. to take final action on early reduction applications within nine months of receipt of the complete application rather than the date the application was deemed complete as required by 40 CFR 70.4(b)(11)(iii).

ICAPCD addressed this condition by revising Rule 900 to require final action no later than nine months "after the complete application is received" rather than "after the application is deemed complete."

(b) ICAPCD was required to submit a complete Acid Rain Program consistent with 40 CFR part 72 and title IV of the Act. ICAPCD submitted a complete Acid Rain program (Rule 901) that was determined to be acceptable to the EPA Administrator as part of the District's title V operating permits program. (*See* 60 FR 52911, October 11, 1995).

(c) ICAPCD was required to revise Rule 900 E.9.b. and c. to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(11)(iii).

ICAPCD revised both sections of Rule 900 to require that written notice be provided to both USEPA and the APCO as required by § 70.4(b)(12).

(10) *Kern County APCD* did not have to make any additional corrections.

(11) *Lake County AQMD:* (a) Lake County AQMD (LCAQMD) was required to revise the rule's operational flexibility provisions to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(12).

LCAQMD addressed this condition by adding new Section 12.580(a)(5) to require that EPA and the District be notified by the source in writing of all operational flexibility changes at least 30 days prior to the change as required by 40 CFR 70.4(b)(12).

(b) The District's maintenance exemption in Section 500 did not prohibit sources from violating some types of permit terms (including those that limit emissions, such as a work practice standard or a requirement to continuously apply a control technology) while shutting down control equipment for maintenance and, therefore, the rule did not allow the District the authority to enforce against all types of violations, as required under 40 CFR 70.11. The District was required to narrow the maintenance exemption in Section 500 to state that violations of applicable federal requirements including part 70 permit terms may not be automatically exempted.

LCAQMD addressed this requirement by narrowing Section 500 to require that all applicable federal requirements be met during periods when maintenance and scheduled outages of abatement or control equipment occur.

(c) The District rule needed to be clarified to state that citizen enforcement, as well as EPA enforcement, of Clean Air Act requirements is not affected by APCO discretion, as expressed in Sections 500 and 510, to not pursue an enforcement action.

LCAQMD addressed this condition by revising Section 500 to clarify that any discretion exercised by the APCO shall not impede or otherwise interfere with the ability of the EPA, or citizens, to bring an enforcement action or suit under the CAA.

(d) The District was required to revise Section 510 to require the actions that are "beyond the reasonable control of the source operator" to also meet the criteria in the rule for qualifying for an exemption.

LCAQMD addressed this requirement by amending Section 510 to require that all the listed criteria must be met in order for the Air Pollution Control Officer to not pursue an enforcement action. Further, Lake County amended the rule to eliminate the phrase, "are not a violation of an emission limitation contained in a permit or rule," and added a statement to clarify that any discretion exercised by the APCO shall not impede or otherwise interfere with the ability of the EPA, or citizens, to bring an enforcement action or suit under the CAA.

(e) Lake County was required to revise all deadlines for final permit action in Chapter VII, Section 12.520 (except for (a) and (e)) to be no later than the appropriate number of months after the complete application is received, rather than after the application is deemed complete, as required by 40 CFR 70.4(b)(11)(iii) and 70.7(a)(2).

LCAQMD addressed this condition by revising Sections 12.520(b), (c), (d) and (f) to require final action no later than the appropriate number of months "after the complete application is received" rather than "after the application is deemed complete."

(12) *Lassen County APCD:* (a) The District was required to revise all deadlines for final permit action in Rule 7:5 c. (except for c.1. and c.5.) to be no later than the appropriate number of months after the complete application is received, rather than after the application is deemed complete as required, by 40 CFR 70.4(b)(11)(iii) and 70.7(a)(2).

Lassen County APCD (LCAPCD) addressed this condition by revising Rule 7:6 c.2, 3, 4, and 6 to require final action no later than the appropriate number of months "after the complete application is received" rather than "after the application is deemed complete."

(b) LCAPCD needed to revise Rule 7:5 b.4. to clarify that the APCO's approval of a minor permit modification prior to EPA's review is not a final permit action. Rule 7:5 b.4. allowed the APCO to approve minor permit modifications changes prior to EPA's review; however, 40 CFR 70.7(e)(2)(iv) precludes the District from issuing a final permit modification until after EPA's review period or until EPA has notified the District that EPA will not object, although the District may approve the permit modification prior to that time.

LCAQMD addressed this condition by revising Rule 7:5 b.4 to eliminate the ability for sources to commence operation of proposed modifications until the APCO takes final action to approve the permit. This revision corrects the deficiencies in Rule 7:5 b.4 EPA had identified as interim approval issues.

(c) LCAPCD was required to revise Rule 7.5 b.4. to incorporate the compliance provisions of 40 CFR 70.7(e)(2)(v). Regulation VII did not state, as does § 70.7(e)(2)(v), that until the District takes final action to issue or deny the requested permit modification or determines that it is a significant modification, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions, but the source need not comply with the existing permit terms and conditions being modified. Regulation VII also needed to be revised to state that if the source fails to comply with the permit terms and conditions in the requested modification, the existing permit terms and conditions being modified may be enforced against it.

LCAQMD addressed this condition by revising Rule 7:5.b.4 to eliminate the ability for sources to commence operation of proposed modifications until the APCO takes final action to approve the permit. See above.

(d) LCAPCD needed to revise Rule 7:5 b.3. to limit the discretion of the APCO to authorize sources to commence operations of significant permit modifications prior to final permit action to when the changes meet the criteria of 40 CFR 70.5(a)(1)(ii). Rule 7:5 b.3. allowed the APCO to approve significant permit modifications and the source to commence operations of those modifications prior to the EPA's review and final permit action. Part 70 prohibits sources from making significant permit modification changes prior to final permit issuance unless the changes are subject to preconstruction review under § 112(g) of the Act or preconstruction review programs approved into the SIP pursuant to part C or D of title I of the Act and the changes are not otherwise prohibited by the source's existing part 70 permit. *See* 40 CFR 70.5(a)(1)(ii).

LCAQMD addressed this requirement by revising Rule 7:5 b.3 to limit the discretion of the APCO to authorize sources to commence operations of a significant permit modification prior to final action only where the changes meet the criteria of 40 CFR 70.5(a)(1)(ii).

(e) LCAPCD was required to revise Rule 7:6 i.2. and 3. to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(11)(iii).

LCAQMD addressed this condition by revising Rule 7:6 i.2 and 3 to require that written notice be provided to both USEPA and the APCO as required by 40 CFR 70.4(b)(12).

(13) *Mariposa County APCD* did not have to make any additional corrections.

(14) *Mendocino County APCD:* (a) The District was required to revise all deadlines for final permit action in Regulation 5, Rule 5.520 (except for (a) and (e)) to be no later than the appropriate number of months after the complete application is received, rather than after the application is deemed complete, as required by 40 CFR 70.4(b)(11)(iii) and 70.7(a)(2).

Mendocino County APCD (MCAPCD) addressed this requirement by revising the necessary portions of Rule 5.520 to require final action no later than the appropriate number of months "after the complete application is received" rather than "after the application is deemed complete."

(b) MCAPCD was required to revise Regulation 5, Rule 5.580(b) and (c) to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(11)(iii).

MCAPCD addressed this condition by revising Rule 5.580(b) and (c) to require that written notice be provided to both USEPA and the APCO as required by 40 CFR 70.4(b)(12).

(c) MCAPCD was required to restrict insignificant activities to those that are not likely to be subject to an applicable requirement and emit less than-District-established emission levels. EPA had recommended that the District establish separate emission levels for HAPs and for other regulated pollutants and demonstrate that these emission levels are insignificant compared to the level of emissions from the type of units that are required to be permitted or subject to applicable requirements.

MCAPCD addressed this condition by adding a definition of insignificant activities at Rule 5.200(i2) to be any activity, or combination of similar activities, that generates less than 5 tons per year of carbon monoxide, or less than 2 tons per year of any other criteria pollutant (VOC, PM, NO_X, SO_X, O_3, Pb). Further, the definition states that an insignificant activity must generate less than 1000 pounds per year of a compound listed under the Federal Clean Air Act Amendment for 1990 § 112(b)(1) as amended, or less than the daily outputs listed in Regulation 1, Rule 130(s2), whichever is smaller. In addition, a section to Rule 5.415 was added to require that a permit application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount.

(15) *Modoc County APCD:* (a) MCAPCD was required to revise all deadlines for final permit action in Rule 2.13 IV.C. (except for C.1. and C.5.) to be no later than the appropriate number of months after the complete application is received, rather than after the application is deemed to be complete, as required by 40 CFR 70.4(b)(11)(iii) and 70.7(a)(2).

MCAPCD revised Rule 2.13 to require final action no later than the appropriate number of months "after the complete application is received" rather than "after the application is deemed complete."

(b) MCAPCD was required to revise Rule 2.13 IV.B.4. to clarify that the APCO's approval of a minor permit modification prior to EPA's review is not a final permit action. Rule 2.13 IV.B.4. allowed the APCO to approve minor permit modification changes prior to the EPA's review; however, 40 CFR 70.7(e)(2)(iv) precludes the District from issuing a final permit modification until after EPA's review period or until the EPA has notified the District that EPA will not object, although the District may approve the permit modification prior to that time.

MCAPCD addressed this requirement by adding language to Rule 2.13 that clarifies the conditions under which a source can implement a permit modification that has not yet been approved by the APCO and EPA. The new language includes the criteria that a source must satisfy in order to make a change prior to permit issuance, and states that "(a)llowing a stationary source to make a change prior to permit issuance does not constitute final action and does not preclude the District from denying the change or requiring the change to be processed as a significant permit modification, nor does it preclude the U.S. EPA from objecting to the permit modification."

(c) MCAPCD was required to revise Rule 2.13 IV.B.4. to incorporate the compliance provisions of 40 CFR 70.7(e)(2)(v). Rule 2.13 did not state, as does § 70.7(e)(2)(v), that until the District takes final action to issue or deny the requested permit modification or determines that it is a significant modification, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions, but the source need not comply with the existing permit terms and conditions being modified. Rule 2.13 also had to be revised to state that if the source fails to comply with the permit terms and

conditions in the requested modification, the existing permit terms and conditions being modified may be enforced against it.

MCAPCD addressed this requirement by revising Rule 2.13 to include the appropriate compliance provisions from 40 CFR 70.7(e)(2)(v).

(d) MCAPCD was required to revise Rule 2.13 IV.B.3. to limit the discretion of the APCO to authorize sources to commence operations of significant permit modifications prior to final permit action to when the changes meet the criteria of 40 CFR 70.5(a)(1)(ii). Rule 2.13 IV.B.3. allowed the APCO to approve significant permit modifications and the source to commence operations of those modifications prior to the EPA's review and final permit action. Part 70 prohibits sources from making significant permit modification changes prior to final permit issuance unless the changes are subject to preconstruction review under § 112(g) of the Act or preconstruction review programs approved into the SIP pursuant to part C or D of title I of the Act and the changes are not otherwise prohibited by the source's existing part 70 permit. *See* 40 CFR 70.5(a)(1)(ii).

MCAPCD addressed this condition by revising Rule 213 to limit the discretion of the APCO to authorize sources to commence operations of a significant permit modification prior to final action only where the changes meet the criteria of 40 CFR 70.5(a)(1)(ii).

(e) MCAPCD was required to revise Rule 2.13 V.I.2 and V.I.3. to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(11)(iii).

MCAPCD revised both sections of Rule 2.13 to require that written notice be provided to both USEPA and the APCO as required by 40 CFR 70.4(b)(12).

(16) *North Coast Unified AQMD:* (a) North Coast Unified AQMD (NCUAQMD) was required to revise Regulation 5, Rule 520(f) to take final action on early reduction applications within nine months of receipt of the complete application rather than the date the application was deemed complete as required by 40 CFR 70.4(b)(11)(iii).

NCUAQMD addressed this condition by revising Rule 520 to require final action no later than nine months "after the complete application is received" rather than "after the application is deemed complete."

(b) NCUAQMD was required to submit a complete Acid Rain Program consistent with 40 CFR part 72 and title IV of the Act.

NCUAQMD submitted a complete Acid Rain Program (Rules 300 and 690) that was determined to be acceptable to the EPA Administrator as part of the District's title V operating permits program. (*See* 60 FR 52911, October 11, 1995).

(c) NCUAQMD was required to revise Regulation 5, Rule 580(b) and (c) to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(11)(iii).

NCUAQMD addressed this condition by revising both sections of Rule 580 to require that written notice be provided to both USEPA and the APCO as required by 40 CFR 70.4(b)(12).

(17) *Northern Sierra AQMD* was not required to make any additional corrections.

(18) *Northern Sonoma County APCD:* (a) Northern Sonoma County APCD (NSCAPCD) was required to revise all deadlines for final permit action in Rule 5.520 (except for (a) and (e)) to be no later than the appropriate number of months after the complete application is received rather than after the application is deemed complete as required by 40 CFR 70.4(b)(11)(iii) and 70.7(a)(2).

NSCAPCD addressed this requirement by changing the deadlines in Rule 5.520(b),(c),(d), and (f) to require final action no later than the appropriate number of months "after the complete application is received" rather than "after the application is deemed complete."

(b) NSCAPCD needed to revise Rule 5.580(b) and (c) to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(11)(iii).

NSCAPCD addressed this requirement by modifying Rule 5.580(b) and (c) to require sources to provide written notice to USEPA, in addition to the APCO, in advance of implementing the operational flexibility provisions of the District's Rule.

(c) The District needed to revise Policy A–33A (Small Emission Source Exemptions) to state that the APCO may not exempt from the requirement for permitting any process, article, machine, equipment, device or contrivance at a title V source if that process, etc. is subject to an applicable federal requirement. NSCAPCD also had to revise the Policy to restrict the exemptions (including any director's discretion provisions) to activities that emit less than District-established emission levels for HAPs. EPA also required the District to demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements.

NSCAPCD elected to address this requirement by eliminating the Small Emission Sources Exemptions Policy (A–33A) from their operating permits program.

(19) *Placer County APCD:* (a) Placer County APCD (PCAPCD) needed to revise the definition of "major source," section 219 of Rule 507, to reference the "major source" definition in CAA § 112, rather than the CAA § 112 "source" definition. Also, since "source" is not defined in Rule 507, PCAPCD had to revise section 219.2 to refer to a "stationary source" with a potential to emit, rather than a "source."

PCAPCD addressed this requirement by revising Sections 219.1 and 219.2 of Rule 507 to make the required changes regarding the definition of "major stationary source."

(b) The District was required to revise Section 302.6 of Rule 507 to limit the discretion of the APCO to authorize sources to commence operations of significant permit modifications prior to final permit action to when the changes meet the criteria of 40 CFR 70.5(a)(1)(ii). At the time of interim approval, Section 302.6 of Rule 507 allowed the APCO to authorize sources to commence operation of significant permit modifications when the proposed permit was publicly noticed but prior to final permit modification. Part 70 prohibits sources from making significant permit modification changes prior to final permit issuance unless the changes are subject to preconstruction review under § 112(g) of the Act or preconstruction review programs approved into the SIP pursuant to part C or D of title I of the Act and the changes are not otherwise prohibited by the source's existing part 70 permit. *See* 40 CFR 70.5(a)(1)(ii).

PCAPCD addressed this requirement by revising Section 302.6 of Rule 507 to limit the discretion of the APCO to authorize sources to commence operation of a significant permit modification prior to final action only where the changes meet the criteria of 40 CFR 70.5(a)(1)(ii).

(c) Placer County APCD needed to revise Section 302.7 of Rule 507 to restrict the use of minor permit modification procedures consistent with 40 CFR 70.7(e)(2)(i)(B). Rule 507, by default, allowed minor permit modification procedures to be used for those permit modifications that involve the use of economic incentives, marketable permits, emissions trading, and other similar approaches. 40 CFR 70.7(e)(2)(i)(B) constrains the use of the minor permit modification procedures for these approaches to situations where minor permit modification procedures are explicitly provided for in the applicable implementation plan or in the applicable requirements promulgated by EPA.

PCAPCD addressed this requirement by revising their definition of minor modification in Rule 507, Section 220, to include the constraining language from 40 CFR 70.7(e)(2)(i)(B) regarding minor permit modification procedures.

(d) The District was required to revise Rule 507's permit content requirements (Section 402) to provide that every permit contain a provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit as required by 40 CFR 70.6(a)(8).

PCAPCD addressed this requirement by modifying Rule 507, Section 402.2(u) to add this provision from 40 CFR 70.6(a)(8).

(e) The District needed to revise all deadlines for final permit action in section 401.3 of Rule 507 (except for a. and e.) to be no later than the appropriate number of months after the complete application is received, rather than after the application is deemed complete, as required by 40 CFR 70.4(b)(11)(iii) and 70.7(a)(2).

PCAPCD addressed this requirement by changing the deadlines in Rule 507, Sections 401.3(b), (c), (d), and (f) to require final action no later than the appropriate number of months "after the complete application is received" rather than "after the application is deemed complete."

(f) Placer County APCD needed to revise Section 401.9 of Rule 507 to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(11)(iii).

PCAPCD addressed this requirement by modifying Sections 401.9(b) and (c) of Rule 507 to require sources to provide written notice to USEPA, in addition to the APCO, in advance of implementing the operational flexibility provisions of the District's Rule.

(20) *Shasta County APCD:* (a) Shasta County APCD (SCAPCD) needed to revise the rule's operational flexibility provisions to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(12).

SCAPCD addressed this requirement by revising Rule 5, Section V.I.2.c to require this dual notification of operational flexibility changes, as required by part 70.

(b) SCAPCD was required to revise all deadlines for final permit action in Rule 5 IV.C. (except for C.1. and C.5.) to be no later than the appropriate number of months after the complete application is received, rather than after the application is deemed complete, as required by 40 CFR 70.4(b)(11)(iii) and 70.7(a)(2).

SCAPCD addressed this requirement by modifying Rule 5, Sections V.C(2), (C)(3), (C)(4), and (C)(6) to refer to the appropriate number of months "after the complete application is received."

(c) SCAPCD needed to revise Rule 3:10 (Excess Emissions) to remove the prohibition on the use of reports required by Rule 3:10 in enforcement/permitting actions.

SCAPCD addressed this requirement by removing this prohibition from Rule 3:10.

(d) SCAPCD was required to revise paragraph (g) of Rule 3:10 to include a provision that EPA, as well as the APCO, can request a demonstration that the excess emissions are unavoidable. In addition, the rule needed to clarify that the APCO will specify in the permit the amount, time, duration, and under what circumstances excess emissions are allowed during start-up and shut-down.

SCAPCD addressed this requirement by revising paragraph (g) of Rule 3:10 to allow EPA to request a demonstration that excess emissions are unavoidable, and clarified in Rule 3:10 that the APCO will specify certain limits and restrictions regarding excess emissions during start-up and shut-down in the permit.

(21) *Siskiyou County APCD:* (a) Siskiyou County APCD (SCAPCD) was required to revise all deadlines for final permit action in Rule 2.13 IV.C. (except for C.1. and C.5.) to be no later than the appropriate number of months after the complete application is received, rather than after the application is deemed complete, as required by 40 CFR 70.4(b)(11)(iii) and 70.7(a)(2).

SCAPCD addressed this requirement by revising rule 2.13 to require final action no later than nine months "after the complete application is received" rather than "after the application is deemed complete."

(b) SCAPCD needed to revise Rule 2.13 IV.B.4. to clarify that the APCO's approval of a minor permit modification prior to EPA's review is not a final permit action. Rule 2.13 IV.B.4. allowed the APCO to approve minor permit modifications changes prior to the EPA's review; however, 40 CFR 70.7(e)(2)(iv) precludes the District from issuing a final permit modification until after EPA's review period or until EPA has notified the District that EPA will not object, although the District may approve the permit modification prior to that time.

SCAPCD addressed this requirement by revising Rule 2.13 IV.B.4. to state the following: "allowing a stationary source to make a change prior to permit issuance does not constitute final action and does not preclude the District from denying the change or requiring the change to be processed as a significant permit modification, nor does it preclude the U.S. EPA from objecting to the permit modification."

(c) SCAPCD was required to revise Rule 2.13 IV.B.4. to incorporate the compliance provisions of 40 CFR 70.7(e)(2)(v). Rule 2.13 IV.B.4 allowed the APCO to approve minor permit modifications prior to the EPA's review. While this is allowed under 40 CFR 70.7(e)(2)(v), Rule 2.13 did not state, as does § 70.7(e)(2)(v), that until the District takes final action to issue or deny the requested permit modification or determines that it is a significant modification, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions, but the source need not comply with the existing permit terms and conditions being modified. Rule 2.13 also needed to be revised to state that if the source fails to comply with the permit terms and conditions in the requested modification, the existing permit terms and conditions being modified may be enforced against it.

SCAPCD addressed this condition by revising Rule 2.13 IV.B.4 to include the appropriate compliance provisions from 40 CFR 70.7(e)(2)(v).

(d) SCAPCD was required to revise Rule 2.13 IV.B.3. to limit the discretion of the APCO to authorize sources to commence operations of significant permit modifications prior to final permit action to when the changes meet the criteria of 40 CFR 70.5(a)(1)(ii). Rule 2.13 IV.B.3. allowed the APCO to approve significant permit modifications and the source to commence operations of those modifications prior to the EPA's review and final permit action. Part 70 prohibits sources from making significant permit modification changes prior to final permit issuance unless the changes are subject to preconstruction review under § 112(g) of the Act or preconstruction review programs approved into the SIP pursuant to part C or D of title I of the Act and the changes are not otherwise prohibited by

the source's existing part 70 permit. *See* 40 CFR 70.5(a)(1)(ii).

SCAPCD addressed this requirement by revising Rule 2.13 IV.B.3 to limit the discretion of the APCO to authorize sources to commence operations of a significant permit modification prior to final action only where the changes meet the criteria of 40 CFR 70.5(a)(1)(ii).

(e) SCAPCD was required to revise Rule 2.13 V.I.2 and V.I.3. to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(11)(iii).

SCAPCD addressed this condition by revising Rule 2.13 V.I.2 and V.I.3 to require that EPA and the District be notified by the source in writing of all operational flexibility changes at least 30 days prior to the change.

(22) *Tehama County APCD:* (a) Tehama County APCD (TCAPCD) was required to revise the rule's operational flexibility provisions to require notification by the source of operational flexibility changes to both the EPA and the District as required by 40 CFR 70.4(b)(12).

TCAPCD addressed this condition by revising Rule 7:1 E.9.a.2.b. to require that USEPA and the District be notified by the source in writing of all operational flexibility changes at least 30 days prior to the change.

(b) TCAPCD was required to revise Rule 7:1 IV.B.4. to incorporate the compliance provisions of 40 CFR 70.7(e)(2)(v). Rule 7:1 did not state, as does § 70.7(e)(2)(v), that until the District takes final action to issue or deny the requested permit modification or determines that it is a significant modification, the source must comply with the applicable requirements governing the change and the proposed permit terms and conditions in lieu of complying with the existing permit terms and conditions being modified. Rule 7:1 also needed to be revised to state that if the source fails to comply with the permit terms and conditions in the requested modification, the existing permit terms and conditions may be enforced against it.

TCAPCD addressed this condition by revising Rule 7:1 D.2.d (note that the rule has been renumbered) to include the appropriate compliance provisions from § 70.7(e)(2)(v).

(c) TCAPCD was required to revise Rule 7:1 IV.B.3. to limit the discretion of the APCO to authorize sources to commence operation of significant permit modifications prior to final permit action to when the changes meet the criteria of 40 CFR 70.5(a)(1)(ii). Rule 7:1 IV.B.3. allowed the APCO to authorize sources to commence operation of significant permit modifications when the proposed permit revision is publicly noticed but prior to final permit action. Part 70 prohibits sources from making significant permit modification changes prior to final permit issuance unless the changes have undergone preconstruction review pursuant to § 112(g) or a program approved into the SIP pursuant to part C or D of title I, and the changes are not otherwise prohibited by the source's existing part 70 permit. *See* 40 CFR 70.5(a)(1)(ii).

TCAPCD addressed this requirement by revising Rule 7:1 D.2.c to limit the discretion of the APCO to authorize sources to commence operations of a significant permit modification prior to final action only where the changes meet the criteria of 40 CFR 70.5(a)(1)(ii).

(23) *Tuolumne County APCD:* (a) Tuolumne County APCD (TCAPCD) was required to revise all deadlines for final permit action in Rule 500 V.C. (except for C.1. and C.5.) to be no later than the appropriate number of months after the complete application is received, rather than after the application is deemed complete, as required by 40 CFR 70.4(b)(11)(iii) and 70.7(a)(2).

TCAPCD addressed this condition by revising Rule 500 to require final action no later than the appropriate number of months "after the complete application is received" rather than "after the application is deemed complete."

(b) TCAPCD was required to revise the definition of "potential to emit" in Rule 500 II.Y. to clarify that only federally-enforceable limitations may be considered in determining a source's potential to emit under title V.

TCAPCD addressed this condition by revising this definition, which now states that "physical and operational limitations on the emissions unit shall be treated as part of its design, if the limitations are set forth in permit conditions or in rules or regulations that are legally and practicably enforceable by U.S. EPA and citizens or by the District." For a discussion of how subsequent litigation has affected EPA's consideration of this issue, please refer to the Amador County portion of Section IV.A.2. of this **Federal Register**. EPA's description of the potential to emit issue for Amador County also applies to TCAPCD, which made the same rule change.

(24) *Yolo-Solano AQMD:* (a) The District was required to revise Rule 3.8 to restrict the use of minor permit modification procedures consistent with 40 CFR 70.7(e)(2)(i)(B). Rule 507, by default, allowed minor permit modification procedures to be used for those permit modifications that involve the use of economic incentives, marketable permits, emissions trading, and other similar approaches. 40 CFR 70.7(e)(2)(i)(B) constrains the use of the minor permit modification procedures for these approaches to situations where minor permit modification procedures are explicitly provided for in the applicable implementation plan or in the applicable requirements promulgated by the EPA.

Yolo-Solano AQMD (YSAQMD) addressed this requirement by revising its definition of minor modification in Rule 3.8, Section 222, to include the constraining language from 40 CFR 70.7(e)(2)(i)(B) regarding minor permit modification procedures.

(b) The District needed to Revise Rule 3.8's permit content requirements to provide that every permit contain a provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit as required by 40 CFR 70.6(a)(8).

YSAQMD addressed this requirement by modifying Rule 3.8 Section 302.22 to add this provision from § 70.6(a)(8).

A. Other District-Specific Changes Submitted Since EPA Granted Final Interim Approval

In addition to the changes each district made to correct interim approval issues, most districts also made other changes to their rule (or program) that go beyond those necessary to receive full approval. This section describes, in general terms, the additional rule or program changes that districts have made. EPA proposes approval of most of the additional changes described below. For one rule change, made by several of the districts, EPA is taking no action. For a complete description of the rule changes and the basis for our decision to propose approval, or to take no action, please see the Technical Support Documents.

Most of the districts made at least one of four changes recommended by the California Air Resources Board in its January 18, 2001 table entitled, "Summary of Title V Interim Approval Issues." Because these changes are common to many districts, we will discuss them here and refer back to the changes, where necessary, in the discussion of district-specific changes below. For three of the common changes, EPA is proposing approval, and for the fourth change, EPA is taking no action today. The three common changes that EPA is proposing to approve are:

(a) *Definition of Potential to Emit:* Many districts changed the definition of "potential to emit" (PTE) to clarify wording and to add that the emissions limits be "legally and practicably enforceable by U.S. EPA and citizens or by the District." Enforceability of PTE limits was an interim approval deficiency for Amador County APCD and Tuolumne County APCD and each has made the necessary change to resolve the deficiency (see Section IV.A.2). Ten other districts also made the same change to their definition of PTE, although the revision did not address an interim approval deficiency in these cases. EPA proposes to approve this rule revision for all of the districts that made the change, as identified below. For a discussion of why EPA is proposing to approve districts' revision to the definition of PTE, please refer to the Amador County portion of Section IV.A.2. of this **Federal Register** and to the TSD.

(b) *Owner/Operator Change:* Some districts changed the term "owner/operator" to "responsible official" in the permit content portion (and perhaps other sections) of their rule. It was not identified as an interim approval deficiency for any districts and it is an important change that EPA proposes to approve.

(c) *Applicability Section Clarification:* Many Districts revised the Applicability section of their rule to clarify wording regarding sources that are exempt from the title V program (e.g., residential wood heaters, asbestos NESHAP-regulated sources, and other sources in a source category that EPA has deferred). This wording clarification improves the programs and EPA proposes to approve the clarification.

The fourth common change that several districts made was a revision to the effective date of their rules. EPA is currently evaluating the approvability of the change to the effective date of the districts' operating permits rules. Because EPA has not yet determined whether this change is approvable under the requirements of 40 CFR part 70, and since this change was not required by EPA for any district to receive full program approval, the Agency is taking no action at this time.

The following changes beyond those necessary for full approval have been submitted to EPA since interim approval was granted. EPA proposes full approval of all the following changes, except for the effective date change, as noted above. Please refer to the TSD for details on the rule/program changes and the basis for our proposed approval or decision to take no action.

(1) *Amador County APCD.* Amador County APCD made all four of the common changes noted above. However, the revision of the definition of "potential to emit" was done to address an interim approval deficiency. This change is therefore described in Section IV.A.2. above. EPA is also proposing to approve the District's replacement of the term owner/operator at Section IV.C.K.1.a and Amador County APCD's clarification of its exempt sources list at Section III.B. EPA is taking no action on the District's change to the effective date of Rule 500 at Section I.

In addition to the changes noted above, EPA is proposing to approve revisions to sections I through VII Rule 500 adopted by ACAPCD on February 25, 1997. The purpose of the 1997 rule changes was to make Rule 500 consistent with EPA guidance on permit streamlining. See "White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program", March 5, 1996.

ACAPCD's definition of potential to emit in Section II.BB.2 of Rule 500 lists source categories that must count fugitives for the purposes of determining potential to emit. In the part of the definition that addresses stationary sources, subparagraph 3 has been modified to read: "any other stationary source category regulated under section 111 or 112 of the CAA, and for which the U.S. EPA has made an affirmative determination by rule under section 302(j) of the CAA." (emphasis added) The addition of the 302(j) requirement restricts the types of sources that are required to count fugitives towards the major source threshold. This is inconsistent with the current version of part 70 and is not approvable.

EPA has, however, proposed to revise the major source definition to incorporate a 1980 cutoff date, consistent with EPA's New Source Review regulations. EPA final action would mean that Rule 500 would be consistent with part 70 with respect to which sources must count fugitives. We are therefore proposing to approve the District's definition of potential to emit provided that EPA finalizes revisions to the part 70 rule that will make the change approvable. Alternatively, if EPA does not finalize the changes to part 70 described above, a portion of ACAPCD's potential to emit definition will conflict with the operative version of the major source definition in part 70 and we will be unable to approve it.

The change that EPA will make to part 70 will make that rule consistent with EPA's New Source Review regulations in parts 51 and 52 with respect to the treatment of fugitives in major source determinations. The revised part 70 language will require that fugitives be counted for "Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act." This differs from the ACAPCD language cited above, which relies on 302(j) rulemaking instead of the 1980 cut-off date to determine which sources must count fugitives. However, at the present time, the 302(j) requirement in Rule 500 captures the same sources as the revised part 70 will, since EPA has not done any 302(j) rulemakings to expand the types of sources for which fugitive emissions are counted to determine title V applicability. If EPA does 302(j) rulemakings in the future, the Agency will have to revise part 70 to ensure that fugitives are counted for the new source category. The advantage of ACAPCD's language is that Rule 500 will not have to be revised if the universe of source categories for which fugitives are counted is expanded by EPA via 302(j) rulemakings.

In addition to the rule changes, ACAPCD's April 10, 2001 submittal of its amended title V program to EPA included one programmatic change. The District will use California Air Resource Board (CARB) model application forms instead of the forms initially approved by EPA for use in the District's title V program. EPA is also proposing to approve the use of these forms as part of ACAPCD's title V program. Copies of the forms are available in the docket for this rulemaking.

(2) *Butte County AQMD.* Butte County made all four of the common changes noted above to Rule 1101. EPA proposes to approve the modification of the definition of potential to emit at Section 2.23.1, the replacement of the term owner/operator at Section 6.5.14.1, and the District's clarification of its exempt sources list at Section 3.2. EPA is taking no action on Butte County AQMD's change to the effective date of Rule 1101 in Section I. In addition, on June 24, 1999, the District modified its title V rules to: (1) Create new Rule 505 "Title V Fees" which replaced section 7 of previous Regulation V, Rule 1101; and (2) to completely recodify rule 1101 including related references in the rule. EPA proposes to approve these changes.

(3) *Calaveras County APCD.* Calaveras County APCD made three of the four common changes noted above to Regulation X. They modified the definition of potential to emit, at Rule 1002, replaced the term owner/operator at rule 1006—section B.14.(a), and clarified its exempt sources list at Rule

1003—"Applicability" subsections B.1, B.2, and B.3. EPA proposes to approve all of these changes.

(4) *Colusa County APCD.* Colusa County APCD made all four of the common changes noted above to Rule 3.17. EPA proposes to approve the modification of the definition of potential to emit at Section 3.17(b)(23)(A), the replacement of the term owner/operator at Sections 3.17(d)(2) and 3.17(f)(2), and the District's clarification of its exempt sources list at Section 3.17(c)(2). EPA is taking no action on Colusa County APCD's change to the effective date of Rule 3.17 at Sections 3.17(a)(3) and 3.17(b)(12).

(5) *El Dorado County APCD.* El Dorado County APCD made all four of the common changes noted above to Rule 522. EPA proposes to approve the modification of the definition of potential to emit at Section 522.2(W)(1), the replacement of the term owner/operator at Section 522.6(B)(14)(a), and the District's clarification of its exempt sources list at Section 522.3(B). EPA is taking no action on El Dorado County APCD's change to the effective date of Rule 522 at Sections 522.1 and 522.2(L). El Dorado County APCD also clarified their reporting requirements for permit deviations at Section 522.6(B)(7)(a), and corrected several regulatory citations at Sections 522.4(D) and 522.5(G). EPA proposes to approve these changes.

(6) *Feather River AQMD.* Feather River AQMD made all four of the common changes noted above to Rule 10.3. EPA proposes to approve the modification of the definition of potential to emit at Section 10.3(B)(23), the replacement of the term owner/operator at Sections 10.3(D)(2)(c)(1) and 10.3(F)(2)(n)(1), and the District's clarification of its exempt sources list at Section 10.3(C)(2). EPA is taking no action on Feather River AQMD's change to the effective date of Rule 10.3 at Section A. Feather River AQMD also clarified the federal regulatory citation for its definitions at Section 10.3(B), made a small correction to its definition of "regulated air pollutant" at Section 10.3(B)(25)(e), made a minor clarification to its application content requirements at Section 10.3(D)(3)(a)(6)(c), and changed the basis of its fee collection from actual to potential emissions in Section 10.3(G). EPA proposes to approve these changes.

(7) *Glenn County APCD.* Glenn County made two of the four common changes noted above to Article VII. The District modified its definition of potential to emit at Section II.W.I, and clarified its exempt sources list at Section III(B). EPA proposes to approve these two changes.

(8) *Great Basin Unified APCD.* Great Basin Unified APCD made two of the common changes noted above to Rule 217. The District modified its definition of potential to emit at Section 217.II(Z) and clarified its exempt sources list at Section 217.III(B). Great Basin Unified APCD also specified the timeframes for reporting permit deviations at Section 217.VI(B)(7)(a), added a definition for "emissions allowable under the permit" at Section 217.II(N), clarified the definitions of "applicable federal requirement" at section 217.II(E)(1)(c) and "responsible official" at Section 217.II(CC), revised Section 217.VI(B)(3) regarding the requirement to specify the origin and authority for every permit condition, and made a clarification to the requirement for sources to submit compliance reports at Section 217.VI(B)(7)(b). EPA proposes to approve all of the additional changes made by Great Basin Unified APCD.

(9) *Imperial County APCD.* Imperial County APCD made three of the four common changes noted above. EPA is proposing to approve the District's modification to its definition of potential to emit at Section B.24, the replacement of the term owner/operator at Sections D, E, F, and G, and the District's clarification of its exempt sources list at Section C.2. In addition to these changes, EPA is proposing to approve revisions to Rule 900 adopted by ICAPCD on April 4, 2000. These changes are the addition of a definition of permit shield at Section B.23, and the addition of a permit shield provision at Section D.2. EPA proposes to approve these changes.

(10) *Kern County APCD.* Kern County APCD (KCAPCD) made three of the four common changes noted above. EPA proposes to approve the replacement of the term owner/operator at Sections IV.C.k and VI.B and the District's clarification of its exempt sources list at Section III.B. EPA is taking no action on Kern County APCD's change to the effective date of 201.1 at Section II.M. In addition, EPA is proposing to approve revisions to Sections I through VI of Rule 201.1 adopted by the District on January 9, 1997. The purpose of the 1997 rule changes was to make Rule 201.1 consistent with EPA guidance on permit streamlining. *See* "White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program", March 5, 1996. The reader is referred to the Docket for this rulemaking for the exact text of these rule changes.

KCAPCD's definition of potential to emit in Section II.X of Rule 201.1 lists source categories that must count fugitives for the purposes of determining potential to emit. In subparagraph 2, which addresses stationary sources, the definition has been modified to read: "any other stationary source category regulated under section 111 or 112 of the CAA, and for which the U.S. EPA has made an affirmative determination by rule under section 302(j) of the CAA." (emphasis added) The addition of the 302(j) requirement restricts the types of sources that are required to count fugitives towards the major source threshold. This is inconsistent with the current version of part 70.and is not approvable.

EPA has, however, proposed to revise the major source definition to incorporate a 1980 cutoff date, consistent with EPA's New Source Review regulations. We are therefore proposing to approve the District's definition of potential to emit provided that EPA finalizes revisions to the part 70 rule that will make the change approvable. Alternatively, if EPA does not finalize the changes to part 70 described above, a portion of KCAPCD's potential to emit definition will conflict with the operative version of the major source definition in part 70 and we will be unable to approve it.

The change that EPA will make to part 70 will make that rule consistent with EPA's New Source Review regulations in parts 51 and 52 with respect to the treatment of fugitives in major source determinations. The revised part 70 language will require that fugitives be counted for "Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act." This differs from the KCAPCD language cited above, which relies on 302(j) rulemaking instead of the 1980 cut-off date to determine which sources must count fugitives. However, at the present time, the 302(j) requirement in Rule 201.1 captures the same sources as the revised part 70 will, since EPA has not done any 302(j) rulemakings to expand the types of sources for which fugitive emissions are counted to determine title V applicability. If EPA does 302(j) rulemakings in the future, the Agency will have to revise part 70 to ensure that fugitives are counted for the new source category. The advantage of KCAPCD's language is that Rule 201.1 will not have to be revised if the universe of source categories for which fugitives are counted is expanded by EPA via 302(j) rulemakings.

(11) *Lake County AQMD.* Lake County made only one of the four common changes noted above to Chapter XII. The District revised its definition of potential to emit at Rule 12.200 (p2). In addition, Lake County made two additions to its list of sources exempt from the requirements of Chapter XII: (1) "Any insignificant source at a facility not requiring a title V permit;" and (2) "When EPA finalizes the underlying requirements in 40 CFR part 70, a source classified as a major source solely because it has the potential to emit major amounts of a pollutant listed at § 112(r)(3) of the CAA, and is not otherwise a major source as defined in 12.200." (*See* Rule 12.300 (b)(5)). EPA proposes to approve all of these additional changes made by Lake County AQMD. The second addition to the District's list of sources exempt from the requirements of Chapter XII is approvable because the exception is only allowed after EPA changes part 70.

(12) *Lassen County APCD.* Lassen County made three of the four common changes noted above to Rule 7. EPA proposes to approve the District's revision to its definition of potential to emit at Rule 7:4.w.1 and the clarification of its list of sources exempt from title V at Rule 7:3. EPA is taking no action on the District's change to the effective date at Rule 7:1.b. and Rule 7:4.l. Lassen County APCD made two other revisions that EPA is proposing to approve. The District added a definition of minor permit modification at Rule 7:4.u (consistent with 40 CFR 70.7(e)(2)(i)(B)) and added Rule subsection 7:6.d.1.b.4, a requirement that the public notice include, "the location where the public may inspect the complete application, the District analysis, and the proposed permit."

(13) *Mariposa County APCD.* Mariposa County APCD did not make any other changes.

(14) *Mendocino County APCD.* Mendocino County APCD made only one of the four changes noted above to Rule 5. The District revised its definition of potential to emit at Rule 5.200(p2). EPA proposes to approve this change.

(15) *Modoc County APCD.* Modoc County APCD made three of the four common changes noted above. EPA proposes to approve the District's modification to its definition of potential to emit at Section II.W and the clarification of its exempt sources list at Section III.B. EPA is taking no action on the District's change to the effective date of Rule 2.13 at Section II.L.

(16) *North Coast Unified AQMD.* North Coast Unified AQMD made two of the four changes noted above. The District modified its definition of potential to emit in Rule 200, and clarified its exempt sources list in Rule 300.b. EPA proposes to approve both of these changes.

(17) *Northern Sierra AQMD.* Northern Sierra made all four changes noted above to its Rule 522. EPA proposes to approve the District's modification to its definition of potential to emit at Section 2.24.1, the replacement of the term owner/operator at Section 6.2.14.a, and the clarification of its exempt sources list at Section 3.2. EPA is taking no action on the District's change to the effective date of Rule 522 at 522.2, Part 1.0.

(18) *Northern Sonoma County APCD.* Northern Sonoma County made three of the common changes noted above to Regulation 5. EPA is proposing to approve the District's modification to its definition of potential to emit at Section 5.200(p)(2) and the clarification of its exempt sources list at Section 5.300(b). EPA is taking no action on the District's change to the effective date of Regulation 5 at Section 5.200(e)(1).

(19) *Placer County APCD.* Placer County APCD made three of the common changes noted above to Rule 507. EPA is proposing to approve the District's modification to its definition of potential to emit at Section 223.1 and the clarification of its exempt sources list at Section 110. EPA is taking no action on the District's change to the effective date of Rule 507 at Section 101. Placer County also revised their definition of "major source" at Section 219 to lower the emission thresholds for nitrogen oxides and volatile organic compounds, made a minor language change to Rule 507's application requirements at Section 302.1, and clarified the specific dates by which certain permitting-related actions are required in Sections 302.2, 302.3, and 401.3. EPA proposes to approve these changes.

(20) *Shasta County APCD.* Shasta County APCD made three of the common changes noted above to Rule 5. EPA proposes to approve the District's modification to its definition of potential to emit at Section II.X.1 and the clarification of its exempt sources list at Section III.B. EPA is taking no action on the District's change to the effective date of Rule 5 at Section I. Shasta County also made some minor wording revisions to a few of their definitions in Sections II.E, II.L, and II.N, clarified the application requirements in Section IV.B(1)(a), added a requirement to Section IV.C(1)(q) for sources submitting compliance certifications, modified their procedures for operational flexibility in Section V.I(2), clarified the reporting requirements in Section VI.B(7), and added a condition to Section VI.B(18)(e) regarding voluntary emission caps. In addition to these rule changes, Shasta County made several program changes including adopting Rule 2.3 (Toxics New Source Review) to comply with CAA § 112(g) requirements, updating their title V staff description, their fee requirements and the expected operating permit program costs, revising their title V source list, and updating their permit application forms. With the exception of the effective date change, EPA proposes to approve all of the additional changes made by Shasta County APCD.

(21) *Siskiyou County APCD.* Siskiyou County APCD made three of the four changes noted above to rule 2.13. EPA proposes to approve the District's revision to its definition of potential to emit at Rule 2.13.II.W.1 and the clarification of its exempt sources list at 2.13.III.B. EPA is taking no action on the District's change to the effective date at Rule 2.13.I and 2.13.II.L.

(22) *Tehama County APCD.* Tehama County APCD made all four of the common changes noted above to Rule 7:1. EPA proposes to approve the District's modification to its definition of potential to emit at Section B.1.w.1, the replacement of the term owner/operator at Sections F.1.a.14.1, and the clarification of its exempt sources list at Section C.2.a. EPA is taking no action on the District's change to the effective date of Rule 7:1 at Sections A.1 and B.1.

(23) *Tuolumne County APCD.* Tuolumne County APCD made two of the four changes noted above. However, the revision of definition of "potential to emit" was done to address an interim approval deficiency. This change is therefore described in the Section IV.A.2. above. The other change that EPA is proposing to approve is the District's clarification of its exempt sources list at Section III.B.

(24) *Yolo-Solano AQMD.* Yolo-Solano AQMD made three of the common changes noted above to Rule 3.8. EPA proposes to approve the District's modification to its definition of potential to emit at Section 224 and the clarification of its exempt sources list at Section 110. EPA is taking no action on the District's change to the effective date of Rule 3.8 at Sections 101 and 213. In addition to these changes, Yolo-Solano also modified their definition of "administrative permit amendment" in Section 203, incorporated lower emission thresholds for nitrogen oxides and volatile organic compounds into their "major source" definition in Section 221, and corrected typographical errors in Sections 222 and 302. EPA proposes to approve these changes.

V. What Is Involved in This Proposed Action?

All twenty-four districts have fulfilled the conditions of the interim approval granted on May 3, 1995, July 13, 1995, or December 7, 1995, and EPA proposes full approval of their title V operating permit programs.

As discussed above, many of the twenty-four districts that are the subject of today's proposed action also made additional changes to their operating permits programs. These changes were not required by EPA to address conditions of the interim approval granted to the twenty-four districts on May 3, 1995, July 13, 1995, or December 7, 1995. However, EPA has reviewed all changes and proposes to approve all of them except the change to the effective date many districts made.

Request for Public Comment

EPA requests comments on the program revisions discussed in this proposed action. Copies of these submittals and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 21, 2001.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 11, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26529 Filed 10–19–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IL; FRL–7088–6]

Clean Air Act Proposed Full Approval of Operating Permits Program; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes fully approving the Illinois Clean Air Act Permit Program (CAAPP), 415 ILCS 5/39.5, submitted by Illinois pursuant to subchapter V of the Clean Air Act, which requires states to develop and submit to EPA for approval, programs for issuing operating permits to all major stationary sources and to certain other sources.

DATES: EPA must receive comments on this proposed action on or before November 21, 2001.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Steve Marquardt at (312) 353–3214 to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Steve Marquardt, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Telephone Number: (312) 353–3214, E-Mail Address: marquardt.steve@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is being addressed in this document?
What are the program changes that EPA proposes to approve?
What is involved in this proposed action?

What Is Being Addressed in This Document?

As required under Subchapter V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated regulations which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, or withdraw approval of the state programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V of the Act, generally known as Title V, and the implementing regulations, states developed and submitted to EPA programs for issuing operating permits to all major stationary sources and to certain other sources. Where a program substantially, but not fully, met the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a state's operating permit program by the expiration of its interim approval period, EPA must establish and implement a federal program under 40 CFR part 71 in that state.

EPA promulgated final interim approval of the Illinois Title V program on March 7, 1995 (60 FR 12478), and the program became effective on that date.

Illinois submitted amendments to its Title V program for approval on May 31, 2001. Illinois intended the amendments to correct interim approval issues identified in the March 7, 1995 interim approval action.

What Are the Program Changes That EPA Proposes To Approve?

A. Title V Interim Approval Corrections

In the March 7, 1995 action, EPA identified four interim approval issues. The following is a description of the issues and their subsequent resolution.

1. Insignificant Activities

In the interim approval, the EPA discussed Illinois' regulations relating to insignificant emissions units (IEUs). 40 CFR 70.5(c) prohibits, in an application, omission of information needed to determine the applicability of, or to impose, any applicable requirements, or to evaluate the fee amount required under the schedule approved pursuant to 40 CFR 70.9. The EPA found that section 201.208 of the State's administrative code, 35 IAC 201.208, did not require information on IEUs necessary to meet the requirements of 40 CFR 70.5(c). In addition, the EPA stated that Illinois must amend 35 IAC 201.210(b) to clarify that a source must specifically list in its permit application the insignificant activities present at its facility rather than rely solely on a general statement that denotes the presence of IEUs.

EPA outlined in the final interim approval that, to obtain full approval, the State must (1) require in section 201.208 that applications include all necessary information on IEUs to determine the applicability of or to impose any applicable requirements or fees and (2) require in section 201.210(b) that sources specifically list the insignificant activities present at their facilities.

With regard to the first issue, Illinois clarified in its May 31, 2001 submittal that 415 ILCS 5/39.5(5)(c) requires applicants to submit "all information, as requested in Agency application forms, sufficient to evaluate the subject source and its application and to determine all applicable requirements, pursuant to the Clean Air Act, and regulations thereunder, this Act and regulations thereunder." Section 39.5(5)(g) further provides that applicants must furnish additional information on the request of the permitting authority. Finally, section 39.5(5)(i) provides that applicants must submit supplementary information if the initial submittal was incomplete or incorrect.

To further clarify that applicants must include in their applications all information on IEUs necessary to determine applicability of and compliance with specific applicable requirements, Illinois will revise form 297–CAAPP to require information regarding specific applicable requirements which apply to IEUs, and compliance of the IEUs with those specific applicable requirements prior to receiving full approval.

EPA addressed IEU issues in a July 10, 1995 document, "White Paper for the Streamlined Development of Part 70 Permit Applications" (White Paper), a guidance document clarifying Part 70 permit application requirements. The White Paper provides that "requirements can normally be adequately addressed in the permit application with minimal or no reference to any specific emissions unit or activity, provided that the scope of the requirement and the manner of its enforcement are clear." White Paper, Section II.B.4. However, when an IEU is subject to a specific applicable requirement, the applicant must list that IEU individually, along with the specific applicable requirements and associated monitoring requirements.

In light of these clarifications and Illinois' proper implementation of this requirement, we have determined that the Illinois rules and administrative code provide a sufficient basis to require that permit applicants submit all necessary information required by 40 CFR 70.5(c).

We also have determined that Illinois need not require sources to include in their applications specific information on IEUs for purposes of fee calculation. Illinois Administrative Code section 270.603(b) states that, "the amount of the fee shall be based on the allowable emissions information submitted by the applicant in the fee calculation portion of its CAAPP application, not including emissions of insignificant levels or from insignificant activities, pursuant to 35 Ill. Adm. Code 201."

In the second IEU issue identified in the final interim approval notice, EPA stated that Illinois must require applicants to list specifically in their permit applications insignificant units present at their facilities. However, as noted above, since granting interim approval EPA has issued guidance which clarifies that 40 CFR 70.5(c) provides permitting authorities with the flexibility to tailor the level of information on IEU's required in an application, as long as the applications include sufficient information to meet the goals of 40 CFR 70.5(c). In particular, EPA stated that permitting authorities could allow sources "merely to list in the application the kinds of insignificant activities that are present at the source or check them off from a list of insignificant activities approved in the program." White Paper, section II.B.3. EPA also stated in "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program," issued March 5, 1996 (White Paper #2), that permitting authorities may allow applicants to group generically information on IEU's and to list IEU groups without emissions estimates, unless emission estimates are needed for another purpose such as determining the amount of permit fees that are calculated using total source emissions. White Paper #2, section II.C.2. This approach allows applicants to incorporate into their applications standard permit conditions with minimal or no reference to any specific emission unit or activity, provided that the scope of the requirement and associated monitoring requirements are

clear. However, applicants must continue to include in their applications information on IEUs which are exempt due to size or production rate, in accordance with 40 CFR 70.5(c).

EPA believes that the clarifications made by Illinois and the White Paper and White Paper #2 are sufficient to address this IEU interim approval issue.

2. Administrative Amendments

In the final interim approval, EPA stated that the State must amend 415 ILCS 5/39.5(13)(c)(vi) to require the use of the significant modification procedure to incorporate emission trades into a CAAPP permit.

Illinois deleted this provision from its operating permit program in House Bill 3373 that became effective on July 1, 2001. Illinois' action corrects this interim approval issue because the permitting authority is now required to determine the appropriate modification mechanism consistent with Illinois' permit modification procedures and 40 CFR 70.7.

3. Enhanced NSR

In the March 7, 1995 interim approval notice, EPA noted that 415 ILCS 5/39.5(13)(c)(v) allowed incorporation of requirements from preconstruction permits authorized under a federally approved preconstruction permit program into a Title V permit through the administrative amendment process provided for under the enhanced New Source Review provision of 40 CFR 70.7(d)(1)(v). EPA commented that, to use this provision, the State must develop and have approved into its CAAPP program regulations which are substantially equivalent to the procedural and compliance requirements of 40 CFR 70.7 and 70.8 that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in 40 CFR 70.6. EPA expressed concern that, without these regulations, the public and EPA cannot track the issuance and amendments of part 70 permits to ensure that the permits contain all requirements. The public also needs assurance that a source will not be able to avoid the requirements of the part 70 process through a different permitting program such as preconstruction review.

EPA has determined that the existence of this provision in the Illinois CAAPP program without regulations defining procedures substantially equivalent to 40 CFR 70.6, 70.7 and 70.8 does not make the program deficient. Illinois has not developed any regulations to address this issue. Without the required procedures, the provision is not usable. If the State ever intends to use this enhanced NSR provision, it must (1) develop regulations outlining the exact substantive, procedural and compliance requirements for incorporation of preconstruction permits into part 70 permits, and (2) submit these regulations to EPA for review and approval into the CAAPP program. Until Illinois adopts the necessary "substantially equivalent" requirements, the State cannot use the enhanced NSR provision. To assure that this provision is unused, the Illinois EPA will amend the State's administrative amendment application form, 273–CAAPP, to delete the category that enables a source to take advantage of incorporation of a construction permit through administrative amendment procedures. Also, the Illinois EPA will submit a letter to the EPA describing that the Illinois EPA will not use this option until the proper procedures are in place. Illinois must make the form changes and submit the letter prior to receiving full approval.

4. Acid Rain

The final interim approval notice stated that for an eventual full approval of the State's CAAPP, the State must incorporate by reference the federal acid rain program into the State's its existing CAAPP program. Illinois developed Senate Bill 0819, which became effective on August 10, 1997, in part to provide that Subchapter IV–A of the Federal Clean Air Act and regulations promulgated under the Act, concerning sources of acid rain deposition, are enforceable under the Illinois Environmental Protection Act. 415 ILCS 5/39.5(17)(a) now states that, "Title IV of the Clean Air Act and regulations promulgated thereunder, including but not limited to 40 CFR Part 72, as now or hereafter amended, are applicable to and enforceable under this Act." This legislative change corrects this issue.

B. Other Title V Program Revisions

As discussed in detail below, EPA will address any uncorrected deficiencies in a notice of deficiency which EPA will publish by December 1, 2001.

What Is Involved in This Proposed Action?

A. Proposed Action

The EPA proposes full approval of the operating permits program submitted by Illinois based on the revisions submitted on May 31, 2001. EPA finds that Illinois has satisfactorily addressed the program deficiencies identified in EPA's March 7, 1995 interim approval rulemaking.

B. Citizen Comment Letter on Illinois Title V Program

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

Citizens commented on what they believe to be deficiencies with respect to the Illinois Title V program. EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** notice published on December 11, 2000, (65 FR 77376), EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as

described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the Federal Government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order, and has determined that the rule's requirements do not constitute a taking. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 16, 2001.

David A. Ullrich,

Deputy Regional Administrator, Region V.

[FR Doc. 01–26677 Filed 10–19–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390, 391, 392, 393, 395, and 396

[FMCSA Docket No. FMCSA–2000–7174]

RIN 2126–AA53

Interstate School Bus Safety

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FMCSA requests comments on whether to extend the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to all interstate school transportation operations (thus excluding home-to-school or school-to-home transportation) by local governmentally-operated educational agencies. This action responds to section 4024 of the Transportation Equity Act for the 21st Century (TEA–21) which directs the FMCSA to determine whether the FMSCRs should apply to these operations. The FMCSA requests comments, data, and information to assist the agency in making the determination.

DATES: Comments must be received on or before January 22, 2002.

ADDRESSES: You can mail, fax, hand deliver, or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Document Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The fax number is (202) 493–2251. You can comment to the Web site (*http://dmses.dot.gov/submit*). You must include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., et., Monday through Friday, except Federal holidays. You may also review the docket on the Internet at *http://dms.dot.gov*. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or after submitting comments electronically, print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: Mr. Philip J. Hanley, Jr., Office of Bus and Truck Standards and Operations, (202) 366–6811, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The ANPRM responds to section 4024 of the TEA–21 (Pub. L. 105–128, 112 Stat. 107, at 416), which directs FMCSA to initiate a rulemaking proceeding on whether or not the FMSCRs should apply to all interstate school transportation operations by local

educational agencies. The definition of the term "local educational agency" at 20 U.S.C. 8801(18) is applicable to Sec. 4024:

(A) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(B) The term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(C) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs but only to the extent that such inclusion makes such school eligible for programs for which specific eligibility is not provided to such school in another provision of law and such school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that such school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

The FMCSA must determine whether Federal regulatory involvement in interstate school bus transportation operations by local educational agencies is necessary to enhance the safety of those passengers and that of the general public. The FMCSA is also considering whether the interstate transportation (other than home to school and school to home) by all governmental educational entities such as public universities should be subject to the FMCSRs.

At present, there are two exceptions in the FMCSRs relating to school bus operations. The first (49 CFR 390.3(f)(1)) exempts all school bus operations, whether by a for-hire carrier of passengers operating under a contract with the educational agency or local educational agencies, that transport only school children and/or school personnel from home to school and from school to home. This exception originated from section 206(f) of the Motor Carrier Safety Act of 1984 (MCSA) (Pub. L. 98–554, 98 Stat. 2832) formerly codified at 49 U.S.C. 31136(e)(1) which specifically directed the Secretary of Transportation (Secretary) to waive application of the regulations issued under section 206 with respect to school buses, unless the Secretary determined that making such regulations applicable to school buses was necessary for public safety taking into account all Federal and State laws applicable to school buses. This statutory language was subsequently repealed by section 4007(c) of the Transportation Equity Act for the 21st Century (TEA–21) in 1998. However, section 4007(d) provided that amendments made by 4007 shall not apply to or otherwise affect a waiver, exemption, or pilot program in effect on the date of enactment of TEA–21. In 1988, the agency indicated that the transportation of school children and school personnel from home to school and back again involved problems which are common to the States, and which, in accordance with the then-current Executive Order on Federalism (Executive Order 12612), could best be left to the individual States (see 53 FR 18043, May 19, 1988).

The second exception is contained in 49 CFR 390.3(f)(2), which makes transportation by a government entity exempt from the FMCSRs. This exemption also originated from section 206 of the MCSA, which specifically authorized the Secretary to waive application of the regulations to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of CMVs. Although safety on the public highways is an area that must not be compromised, the FMCSA has historically exempted some segments of transportation. Transportation by government entities has been one such segment.

Currently, some pupil transportation for school-related purposes (e.g., field trips) may be subject to the FMCSRs. One example is where a private school or contractor transports passengers in a commercial motor vehicle (CMV) across a state line outside the scope of home to school and school to home. These operations are subject to the applicable provisions of 49 CFR parts 350–399 of the FMCSRs.

At the present time, most school bus drivers, including those employed by private schools, contractors, and educational agencies, are subject to the commercial driver's license requirements in 49 CFR part 383 and the drug and alcohol requirements in 49 CFR part 382 because most medium to large school buses meet the regulatory definition of a CMV (i.e. designed to transport 16 or more passengers, including the driver). School bus drivers are required to hold a commercial driver's license, and their employers are required to have a controlled substances and alcohol testing program for the drivers.

Under this ANPRM, the FMCSA is considering holding the educational agencies to the same standards that the private schools and contractors are required to meet when operating in interstate commerce in other than home to school and school to home-type operations. Examples of these standards include qualifications of drivers, hours of service, and maintenance of vehicles.

The primary goal of the FMCSRs is to promote the safe operation of CMVs. The goal of the FMCSA's Passenger Carrier Safety Program is to reduce bus crashes and thereby decrease fatalities, bodily injuries and property losses. School bus operations are distinguished from other types of passenger transportation operations because of their highly specialized type of service. For the most part, the operation of a school bus entails the transportation of school children and/or school personnel from home to school and school to home. This type of transportation generally involves the regularly scheduled operation of school buses into and through residential, rural, and business areas, which collectively encompass a relatively small geographic area within the confines of a single State. The routes are, in most circumstances, predetermined and of a "stop and go" nature during specific morning and afternoon hours. The other users of the highways have generally come to expect and accept the "stop and go" operations of school buses during those specific hours of operation.

When transporting children, school personnel and (sometimes) parents on other kinds of trips, school buses often travel the same highways " many of them high-speed arteries " that are used by large CMVs. The speeds that are maintained are considerably greater than those attained in "stop and go" pickup or drop-off operations. The actual time spent driving is generally greater, as is the possibility of fatigue.

The FMCSA is aware that some local jurisdictions and/or school systems have imposed specific requirements on drivers who transport school children. The FMCSA believes that most States have established programs to review the qualifications of school bus operators and the maintenance of school bus vehicles involved in home-to-school and school-to-home movements. The FMCSA is interested in obtaining information about the present extent of safety oversight of school bus operations by local educational agencies. The FMCSA requests States, counties, and localities to submit information about their safety standards and oversight programs to the docket. The FMCSA is primarily interested in the safety standards concerning driver qualification, vehicular parts and accessories, hours-of-service controls, and vehicular inspection, repair, and maintenance. Public comment on the issues raised in this ANPRM will assist the FMCSA in determining whether any further regulatory action is required.

Discussion of Government Crash Data

The FMCSA has reviewed the current data from the National Highway Traffic Safety Administration's Fatal Analysis Reporting System (FARS) and General Estimates System (GES) for 1998 and 1999. The data is located in the docket for this ANPRM. The FARS shows there were 111 school buses involved in a fatal crash in calendar year 1998. There were 303 school bus occupants on these 111 school buses and 4 of these occupants were killed . The FARS shows there were 138 school buses involved in a fatal crash in calendar year 1999. There were 469 school bus occupants on these 138 school buses and 8 of these occupants were killed. As the name implies, the GES contains only estimates for the number of injuries resulting from school bus crashes. The GES indicates 15,000 estimated injuries resulting from school bus crashes in 1999. The FARS and the GES do not provide a means to separate crash statistics for interstate school bus transportation or for school buses operated by local educational agencies. The FMCSA strongly encourages the submission of crash data and information involving interstate school bus transportation by local educational agencies to the docket.

Request for Comments

The purpose of this ANPRM is to gather information, data, and recommendations from a broad spectrum of commenters to assist the FMCSA in evaluating the potential safety benefits and the potential costs of making the FMCSRs applicable to interstate school bus transportation by local educational agencies. The FMCSA requests views and supporting information about whether only certain, but not all, parts of the FMCSRs should apply to interstate school bus transportation by local educational agencies. For example, a commenter might assert that the hours-of-service limitations contained in 49 CFR part 395 should apply to the interstate school bus drivers of local educational agencies, but that the driving rules in 49 CFR part 392 should not because adequate local traffic safety laws already exist. The FMCSA requests all commenters to support their positions with data and factual information.

Commenters may include in their comments to the docket discussions of any other issues that they believe are relevant to this rulemaking. In addition, the FMCSA encourages all interested parties to respond to the specific questions posed below:

1. How many local educational agencies that operate school buses would be impacted if the FMCSRs applied to their interstate school bus transportation (but not home-to-school or school-to-home) operations, e.g., interstate class trips? How many school buses and drivers working for local educational agencies are involved in the interstate transportation? (These questions assume that the public school students are not bused across State lines in the course of home-to-school or school-to-home transportation. It is possible, however, that school districts in rural areas of adjacent States may have reciprocal agreements to accept each other's students where the closest in-State school is much farther away than a school just across the State line. If so, we would like to know where this occurs and how many students, drivers and buses are involved.)

2. What requirements of the FMCSRs are not addressed by State or local school bus safety standards? For example, to what extent do local educational agencies require their interstate school bus drivers to undergo periodic physical examinations? Is there a systematic inspection, repair and maintenance program in place for school buses?

3. Are there limits to the number of hours that a driver may operate a school bus during school-related activities (e.g., field trips, etc.)? Are there any limitations on on-duty time by local educational agencies?

4. What would be the incremental cost (if any) for local educational agencies of complying with the FMCSRs for interstate trips, over and above the safety program and regulatory compliance costs that are already expended? Keep in mind that the FMCSRs include driver qualifications, medical qualifications, hours-of-service limits, and vehicle requirements (including inspection, repair, and maintenance provisions). Please describe the nature and extent of the impact upon operations and procedures.

5. What are the potential safety benefits of applying all or selected FMCSRs to interstate school bus transportation by educational agencies? Please provide data and information to support your position.

6. Should the FMCSA require that States receiving Motor Carrier Safety Assistance Program (MCSAP) funds adopt State laws and regulations that are compatible with the FMCSRs for intrastate school bus transportation by educational agencies?

7. If the States adopt safety standards that are equivalent to the FMCSRs for interstate school bus transportation by local educational agencies, how would they enforce them? Would more personnel be required? Please provide cost estimates if available.

8. Should the FMCSRs be applied uniformly for all providers of transportation whether they are local educational agencies, private schools, or contractors?

9. Should the FMCSRs be made applicable to all educational institutions beyond the secondary level that transport students to after-school type activities?

10. Should the FMCSA apply the FMCSRs to all interstate transportation of school children, even school-to-home and home-to-school? (see Question 1)

Rulemaking Analyses and Notices

We will consider all comments received before the close of business on the comment closing due date indicated above. We will file comments received after the comment closing date in the docket and will consider them to the extent possible.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This ANPRM is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Regulatory Flexibility Act

Due to the preliminary nature of this document and the lack of necessary information on costs, the FMCSA is unable at this time to evaluate the effects of the potential regulatory changes on small entities. Based on the information received in response to the ANPRM, the FMCSA intends, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) to carefully consider the economic impact of these potential changes on small entities. The FMCSA solicits comments, information, and data on these potential impacts.

Unfunded Mandates Reform Act

The FMCSA will analyze any proposed rule to determine whether it would result in the expenditure by

State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 13045 (Protection of Children)

This publication is not a covered regulatory action under Executive Order 13045 because it would not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety of State, local, or tribal governments or communities.

Executive Order 12630 (Taking of Private Property)

This publication will not affect the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action will be analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, to determine if this action has federalism implications. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program. Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety.

Paperwork Reduction Act

This action, if taken beyond the ANPRM stage, could have an impact on existing collection of information requirements for the purposes of the Paperwork Reduction Act of 1995 (49 U.S.C. 3501–3520). Office of Management and Budget (OMB) reviews and approvals would be required if regulatory changes were proposed and promulgated.

National Environmental Policy Act

The FMCSA is a new administration within the Department of Transportation (DOT). We are striving to meet all of the statutory and executive branch requirements on rulemaking. The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order will be consistent with and reflect the procedures for considering environmental impacts under DOT Order 5610.1C. Due to the preliminary nature of this document and the lack of necessary information, the FMCSA is unable to evaluate the effects of the potential regulatory changes on the environment at this time.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revoked Executive Order 13084 (Tribal Consultation) as of that date. E.O. 13175 requires the DOT to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." At this time, we are only soliciting data to develop a rulemaking. Due to the preliminary nature of this document and the lack of necessary information, the FMCSA is unable to evaluate the effects of the potential regulatory changes on Indian Tribal Governments.

Issued on: October 16, 2001.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

[FR Doc. 01–26562 Filed 10–19–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–1999–5572; Notice 2]

RIN 2127–AG51

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This notice is a request for comments to assist NHTSA in upgrading the requirements of Federal Motor Vehicle Safety Standard No. 216, "*Roof Crush Resistance*," to reduce injuries and fatalities in passenger cars, pickup trucks, vans and multipurpose passenger vehicles resulting from roof intrusion during rollover crashes. It asks the public for its views and comments on what changes, if any, are needed to the roof crush resistance standard. NHTSA will consider all such comments in deciding what regulatory changes, if any, may be appropriate for upgrading the standard. Concerns presented in a petition for rulemaking from the law firm R. Ben Hogan, Smith and Alspaugh requesting that dynamic testing be used to validate the strength of vehicle roof structures, instead of the current quasi-static procedure, are also addressed in this notice.

DATES: Comments on this notice must be received no later than December 6, 2001.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) website at http://dms.dot.gov. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590: *For technical and policy issues:* Mr. Maurice Hicks, Office of Crashworthiness Standards, NPS–11, telephone (202) 366–6345, facsimile (202) 366–4329, electronic mail: maurice.hicks@nhtsa.dot.gov *For legal issues:* Ms. Nancy Bell, Office of the Chief Counsel (202–366–2992), facsimile (202) 366–3820, electronic mail: nancy.bell@nhtsa.dot.gov

SUPPLEMENTARY INFORMATION: You may read the materials placed in the docket for this notice (e.g., the comments submitted in response to this notice by other interested persons) by going to the DMS at the street address given above under **ADDRESSES.** The hours of the DMS are indicated above in the same location.

You may also read the materials on the Internet. To do so, take the following steps:

(1) Go to the Web page of the Department of Transportation DMS (http://dms.dot.gov/).

(2) On that page, click on "search" near the top of the page or scroll down to the words "Search the DMS Web" and click on them.

(3) On the next page (http://dms.dot.gov/search/), scroll down to "Docket Number" and type in the four-digit docket number shown in the title at the beginning of this notice. After typing the docket number, click on "search."

(4) On the next page ("Docket Summary Information"), which contains docket summary information for the materials in the docket you selected, scroll down to "search results" and click on the desired materials. You may download the materials.

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I. Background

A. Current Requirements

In the early 1970's, the National Highway Traffic Safety Administration (NHTSA) was responsible for the United States becoming the first country in the world to address deaths and serious injures associated with vehicle roof crush. Federal Motor Vehicle Safety Standard (FMVSS) No. 216, "Roof Crush Resistance," became effective on September 1, 1973. This standard established strength requirements for the roof structure over the front occupants of passenger cars with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. The purpose of the standard is to reduce deaths and injuries due to crushing of the roof into the passenger compartment area in rollover crashes. Since 1973, Canada and Saudi Arabia have adopted roof crush standards that have the same requirements as Standard No. 216. We are not aware that any other country has adopted a roof crush standard, and know that both Europe and Japan do not have any such requirements.

Since inception, the roof crush standard has been amended, extending its requirements to passenger cars, trucks, buses, and multipurpose passenger vehicles with a GVWR of 2722 kilograms (6,000 pounds) or less (55 FR 15510, April 17, 1991). The standard was also amended to modify the test device placement procedure to accommodate vehicles with raised and highly sloped (aerodynamic) roof structures (64 FR 22567, April 27, 1999).

The test procedure currently used to evaluate compliance with the standard involves securing a vehicle on a rigid horizontal surface, placing a flat steel rectangular plate on the vehicle's roof, and using the plate to apply 1.5 times the unloaded weight of the vehicle (up to a maximum of 22,240 N, or 5,000 pounds, for passenger cars) onto the roof structure. During the test, the plate is angled and positioned to simulate vehicle-to-ground contact on the roof over the front seat area.[1] To achieve this contact, the plate is tilted forward at a 5-degree angle, along its longitudinal axis, and tilted outward at a 25-degree angle, along its lateral axis, so that the plate's outboard side is lower than its inboard side. The test plate's edges are also positioned with respect to fixed locations on the vehicle's roof, depending upon the roof slope, to ensure that the plate stresses the roof over the front seat area. Compliance with the standard is achieved if the vehicle's roof prevents the test plate from moving downward more than 127 mm (5 inches).

B. Safety Problem

Roof intrusion and roof contact injury are common factors in rollovers. Based upon crash data in NHTSA's National Automotive Sampling System (NASS) for 1995–1999, rollover crashes are the most dangerous collision type for light duty vehicles, measured by the ratios of fatal and serious injuries to the number of occupants involved in towaway crashes. Table 1 shows the ratios and the number of fatalities and serious injuries in light duty vehicle towaway crashes by crash type.

TABLE 1.—ANNUAL AVERAGE NUMBER OF FATAL AND SERIOUS OCCUPANT INJURIES IN TOWAWAY CRASHES BY CRASH TYPE IN THE 1995–1999 NASS AND FARS CRASH DATABASES*

Crash type	Total occupants	Fatalities	Fatalities per total occupants	Fatal and serious injuries	Injuries per total occupants
Rollover	418,371	10,149	0.0243	27,057	0.0647
Frontal	2,921,864	12,384	0.0042	62,536	0.0214
Side	1,359,538	8,169	0.0060	33,610	0.0247
Rear	467,559	1,023	0.0022	2,701	0.0058
Other	36,978	432	0.0117	580	0.0157
Totals	5,204,309	32,157	0.0062	126,484	0.0243

* Adjusted for unknowns

From NASS, it is estimated that an annual average of 253,000 light vehicle rollovers resulted in towaway crashes. Eighty-one percent (205,000) of these rollovers are in single-vehicle crashes, and 87 percent (178,000) occurred after the vehicle left the roadway. According to the 1999 Fatality Analysis Reporting System (FARS), 10,149 people were killed in light vehicle rollovers. This includes 8,345 occupants who were killed in single-vehicle rollovers. Eighty percent of these people were unrestrained and 64 percent were ejected (including 53 percent who were completely ejected). FARS shows that 55 percent of light vehicle occupant fatalities in single-vehicle crashes involved rollover. The proportion differs greatly by vehicle type: 46 percent of passenger car occupant fatalities in single-vehicle crashes involved rollover, compared to 63 percent for pickup trucks, 60 percent for vans, and 78 percent for multipurpose passenger vehicles. The higher proportion for pickup, vans, and sports utility vehicles may be attributed to their higher center of gravity compared to passenger cars.

The FARS and NASS data were further analyzed to determine the various causes and distribution of rollover injury. NASS data from 1988–1999 were used in the analysis, and thus provide slightly different estimates of

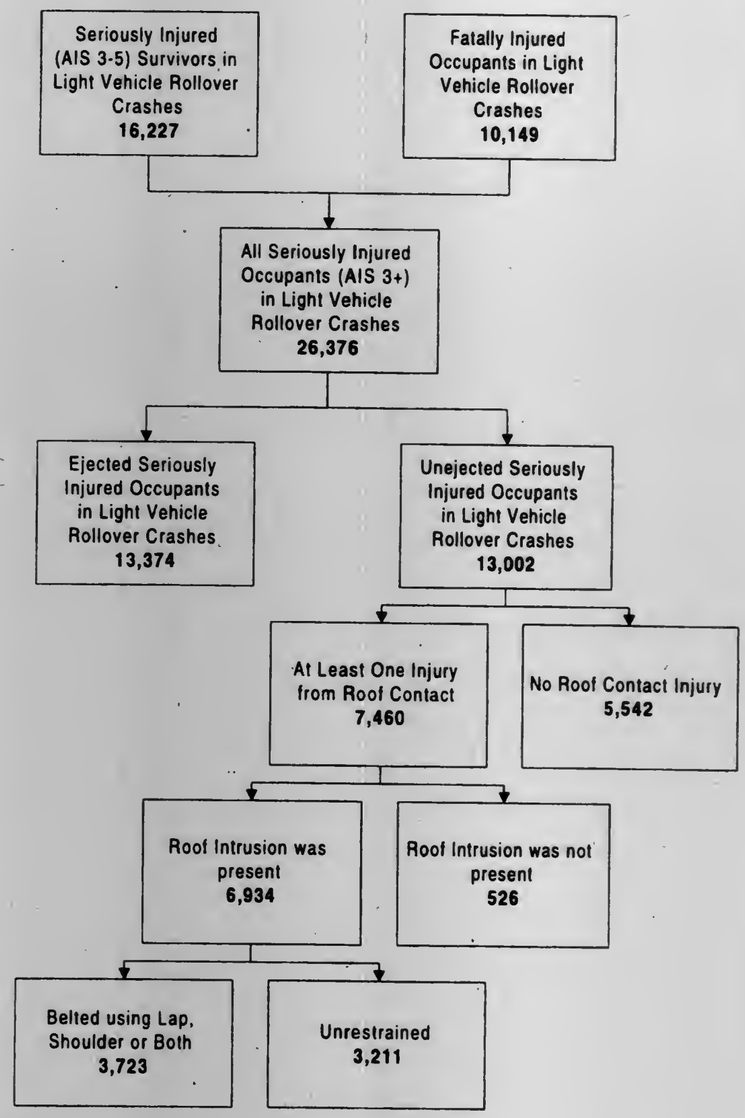
[1] The roof over the front seat area means the portion of the roof, including windshield trim, forward of a transverse plane passing through a point 162 mm rearward of the seating reference point of the rearmost front outboard seating position.

rollover serious injury from those presented in Table 1. The NASS data were adjusted and prorated to account for unknown data relating to ejection, roof intrusion, roof contact injury, and belt use. Fatality estimates from the NASS sample were adjusted to agree with the 10,149 rollover fatalities in the 1999 FARS. As shown in Figure 1, this analysis resulted in an estimate of 16,227 seriously injured occupants in light vehicle rollover, where serious injury was defined as an Abbreviated Injury Scale (AIS)[2] rating of at least 3. An estimated 26,376 vehicle occupants sustain serious or fatal injury due to rollover annually. Over half of these are ejected, and about 13,000 are occupants who remain in the vehicle. In 7,460 cases, at least one injury was due to roof contact, and roof intrusion was present for 6,934 (93%) of those. Over half (3,734) of those sustaining injury with the occurrence of roof intrusion were belted. Thus, roof crush intrusion is estimated to occur, and potentially contribute to serious or fatal occupant injury, in about 26% (6,934/26,376) of the rollover crashes.

[2] The Abbreviated Injury Scale is a method of classifying injuries. It is a six level scale, with higher levels associated with more serious injury. AIS 1 is assigned to minor injuries; AIS 3 injuries include serious lacerations, breaks, and concussions; AIS 6 represents currently untreatable, fatal injuries.

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Figure 1 – 1988 through 1999 Rollover Injury Causation Distribution: Annual Estimates



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A study by Partyka [3] examining light duty vehicle crashes that required towing found that roof intrusion occurs in approximately 10 percent of all crashes. The study showed that eighty percent of rollover crashes, with two or more vehicle quarter turn rolls, involved vertical roof intrusion (which included the roof top, roof side rails and front/rear headers). It is noted that the first quarter turn occurs when the vehicle flips from the upright position (wheels on the roadway) to either side of the vehicle, and the second quarter turn occurs when the vehicle flips from its side to the roof that is in contact with the roadway/ground. Other meaningful findings from the study showed that vertical roof intrusion was present in a larger percentage of pickups (12.9%) and sport utility vehicles (13.7%) than in passenger cars (6.3%) in towaway crashes.

Observing only drivers in rollover crashes with vertical roof intrusion, the study concluded that 15 percent of drivers are injured by roof intrusion. It was also found that the roof itself was the most frequently reported source of roof injury and the head was the body part most frequently injured by these contacts. Further, 89 percent of roof-injured drivers received their most serious injuries from the roof.

According to NASS, roof contact and the severity of rollover injury is greatly influenced by belt usage. Eighty-nine percent of unbelted ejected occupants receive their most severe injury from ejection (based on NASS annual averages from 1988–1997). Consequently, preventing ejection is the most important means for reducing injury to unbelted occupants. Roof crush intrusion is an additional injury source for unbelted occupants, although generally only a minor contributor. Roof intrusion is present in the majority of cases, but is only the leading cause of injury in less than 10 percent of unbelted rollover cases.

Partyka's study found that eliminating injuries caused by roof intrusion might not reduce overall injury severity of non-ejected unbelted occupants. It showed that severe injuries received by unbelted rollover occupants are more frequently caused by ejection or vehicle interior components rather than from the roof structure. Thus, unbelted occupants will gain little, if any, safety benefit from changes to the roof crush standard. By contrast, belted rollover occupants usually receive their most severe injury by contacting the roof structure.

The methods for preventing roof contact, by limiting the occupant's movement or by limiting roof intrusion (through improved roof strength or roof reinforcements), and the predicted benefits (lives saved and injuries prevented), have been debated for many years. There are a number of possible factors that influence the type of outcomes and the severity of injury for belted occupants in rollover crashes. These factors include the occupant's initial position and motion while in the rollover event, seatbelt tension or/slack, the deformation and velocity of intruding vehicle components (i.e., the roof, side rails and A/B-pillars), and severity of the crash. Additionally, most crash databases, including the NASS Crashworthiness Database System (CDS), do not provide sufficient information to separate and identify the contribution of each of these and other factors. For example, most crash databases only record whether seat belts are worn, not whether they were worn properly. In addition, belt slack and any subsequent vertical excursion of the occupant cannot be determined. Of particular interest is the timing of occupant to roof contact and any roof intrusion that may occur. Crash investigations cannot distinguish between occupant travel off the seat towards the roof, and head to roof contact from roof intrusion.

In summary, unbelted occupants in rollover crashes are primarily injured by ejection from the vehicle, which is fatal in about half the cases. Belted occupants in rollover crashes are primarily injured by roof contact and by contacts with other components within the vehicle's interior. Roof contact for belted occupants in rollover crashes is usually non-fatal, but the severity of the injury is only directly related to the level of roof intrusion in severe cases of intrusion. In less severe cases, the severity of injury is related to other vehicle and occupant factors. A discussion of the relationship between these factors and injury severity is presented in the following section.

C. Evaluation of Roof Crush Testing

In November 1989, NHSTA published an Evaluation Report concerning FMVSS No. 206, Door Locks and Door Retention Components (49 CFR 571.206) and FMVSS No. 216.[4] This report specifically evaluated the safety effectiveness and benefits of improvements to door locks and roof structures in passenger cars.[5]

The objectives of the evaluation were to determine if there were actual benefits (lives saved, injuries prevented, damage avoided and costs of safety equipment installed in production vehicles) in connection with FMVSS Nos. 206 and 216 for passenger car occupants. More specifically, the evaluation examined these standards in the context of the overall trend in fatality risk of unbelted occupants of passenger cars of model years 1963–82 in rollover crashes. However, because FMVSS Nos. 206 and 216 were not the only vehicle factors which affected fatality risk in rollover crashes during the 1963–82 periods, a major task of the evaluation was to study the overall fatality trend and identify what changes were due to improved door locks and roof crush strength, as opposed to other vehicle factors.

Based on examinations of rollover trends as well as more detailed analyses of vehicle changes in the fleet, the principal rollover findings and conclusions of the analysis were as follows:

(1) By influencing changes during the 1970's in vehicle design (true hardtops were restyled as pillared hardtops or sedans), the implementation of the standard saved an estimated 110 lives per year for vehicles manufactured from 1963–1982.

(2) True hardtops have approximately 15 percent higher risk of a non-ejection fatality in a rollover crash than pillared cars of the same size and exposure pattern.

(3) Narrower, lighter, shorter cars have higher rollover rates than wide, heavy, long ones under the same crash conditions. During 1970–82, as the market shifted from large domestic cars to downsized, subcompact or imported cars, the fleet became more rollover prone. That may have been partly offset by increases in the track width of some imported cars after 1977. The net effect of all car changes since 1970 is an increase of approximately 1340 rollover fatalities per year.

(4) The fatality or injury rate per 100 rollover crashes is not a valid measure of crashworthiness in comparisons of cars of different sizes. Cars that tend to roll over easily (small, narrow cars) do so in crashes of intrinsically low severity. These rollovers have low injury rates. Larger cars would not roll over at all in those circumstances. When larger cars do roll over, it is typically in more severe crashes, which are more likely to result in injuries. Hence, the fatality rate per 100 rollover crashes may well be lower for small cars, even if they are less crashworthy, simply because they are more likely to experience a rollover crash.

The Kahane study has not been updated to examine the post-1982 fleet, particularly as it has shifted to a greater percentage of light trucks, vans, and sport utility vehicles. Consequently, the effectiveness of the changes made to FMVSS No. 216 in 1991, extending the requirements to pickup trucks and multipurpose passenger vehicles with a GVWR of 6,000 pounds or less, has not been assessed.

Various researchers [6] have found that comparing the results from FMVSS No. 216's compliance testing directly to the severity of injury in rollover crashes involving occupants with roof contact injuries only had meaningful relationships after intrusion reached extensive levels. Other researchers support this conclusion. An analysis by Friedman [7] on rollover crash data from the 1982–1983 NASS data files showed that the injury risk in rollover accidents increased dramatically only when intrusion in the proximity of the occupant exceeds a Collision Deformation Classification (CDC) [8] extent of 3. A CDC value of 3 usually denotes vertical deformation about half the distance from the roof to the bottom of the side door window. Digges and Klisch [9] found similar findings when examining 161 rollover cases from the 1988–1989 NASS data. It was noted that when CDC extent values approached 4 or 5 (5 denotes the location of the bottom of the side door window), 5 percent of non-ejected occupants were fatalities and intrusion was approximately 12 to 15 inches (for the studied vehicles); however, when the CDC extent values were below the top of the side door window, at CDC 6 or 7, 20 percent of the occupants received fatal injuries.

However, these findings became confounded by other limitations existing within the data investigations. In particular, researchers acknowledged that both the severity of the roof crush and the severity of injury were possibly related to the severity of the crash. Partyka [3] concluded that there are two important limitations with the results of most data analysis. First, most investigators did not attempt to determine whether intrusion increased the frequency or the severity of injury, that is, whether the roof intrusion is something more than merely a reflection of crash severity. If it is merely a reflection of crash severity, one generally expects higher severity injuries in higher severity crashes. It should be noted that there is no widely accepted measure of crash severity in rollover crashes. A measure of crash severity would allow fair comparison of injury rates in similar crash exposures of occupants with and without roof intrusion.

Second, occupant contacts with vehicle interior components are reported only if they cause injury. Therefore, it is not possible to estimate how often occupants contact intruding surfaces without injury when estimating injury rates for these contacts or comparing them to rates for non-intruding surfaces. On the other hand, occupant contact with interior vehicle components can produce injury even when there is no intrusion, and preventing roof intrusion may not always prevent injury from contact. Thus, it is important to determine if roof crush and injury are both associated with impact severity.

In an attempt to determine the relationship between limiting roof intrusion, by rollcaged/reinforced roofs, and injury severity measured using unbelted Hybrid III anthropomorphic test dummies, Orlowski, et al.,[10] conducted full vehicle dolly rollover tests (as defined in FMVSS No. 208, "Frontal Occupant Protection") measuring dummy movement and head and neck loads with intrusion. They concluded that roof strength was not an important factor in the mechanics of head/neck injuries in rollover collisions for unbelted occupants. There were no significant differences in dummy kinematics or any reduction in head injury severity resulting for roof reinforcements.

In 1990, Orlowski, et al.,[11] conducted similar research using lap/shoulder belted Hybrid III dummies in dynamic dolly rollover tests and inverted vehicle drop tests. This research was conducted to evaluate the relationship between roof strength and injury severity when restraints are used. Comparisons were made on the basis of the dummy axial neck loads resulting from rollover tests in production and reinforced roof vehicles. The analysis also attempted to understand the factors that influence neck loads under these conditions. For these analyses, Orlowski found similarities between the results of dynamic drop and rollover tests. Particularly, in both tests, the dummies in the reinforced roof vehicles indicated a lower number of potentially injurious impacts and a lower average neck load than the dummies in the production vehicles. However, for tests that could be compared on the basis of similar roof-to-ground impact conditions (i.e., drop and rollover conditions), Orlowski found that there was no increase in the level of protection in the reinforced roof vehicles over the production roof vehicles. He concluded that roof strength might not be a factor influencing injury. Orlowski also found that roof deformation never caused the dummy to be compressed between the roof and the seat. He observed that all of the dummy neck loads resulted from "diving" type impacts where the head stops the torso momentum and compresses the neck, with a magnitude proportional to the impact velocity. Orlowski stated that, at best, the absence of deformation may only benefit belted occupants if it results in the belted occupant not contacting the roof.

D. Previous Agency Roof Crush Rulemaking

On April 17, 1991, NHTSA published a final rule amending FMVSS No. 216 to extend its requirements to multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating (GVWR) of 6,000 pounds or less (56 FR 15510). NHTSA explained that we were extending FMVSS No. 216 to light trucks because of the increased use of light trucks as passenger vehicles and the need to ensure that those vehicles offer safety protection comparable to that offered passenger car occupants. This final rule adopted the same test requirement and procedure as those for passenger cars, except there is

[3] Partyka, Susan C., "Roof Intrusion and Occupant Injury in Light Passenger Vehicle Towaway Crashes," NHTSA Docket No. 88–06–GR, 1992.

[4] Charles J. Kahane, PhD, January 1989, DOT HS 807 489.

[5] The report was developed in response to Executive Order 12291, which provided for Government-wide review of existing major Federal regulations.

[6] Moffatt Edward A. and Padmanaban, Jeya, "The Relationship Between Vehicle Roof Strength and Occupant Injury in Rollover Crash data," 39th Annual Proceedings: AAAM, Oct 1995.

[7] Friedman, Donald and Keith D. Friedman, "Roof Collapse and the Risk of Severe Head and Neck Injury," Paper No. 91–S6–0–11, 13th Experimental Safety Vehicle Conference, Paris, France, 1991.

[8] The Collision Deformation Classification (CDC), defined in SAE J224, is a means of classifying the extent of vehicle deformation caused by vehicle accidents on the highway by direction, size of the area and extent of the damage.

[9] Digges, Kennerly and Steven Klisch, "Crashworthiness Effectiveness in Rollover Crashes," Final Report, Task II (DTRS–57–90–c–00092), Washington, DC, 1992.

[10] Orlowski, KF, RT Bundorf, and EA Moffat, "Rollover Crash Test—The influence of Roof Strength on Injury Mechanics," SAE Paper No. 851734, Society of Automotive Engineers, Warrendale, PA, 1985.

[11] Bahling GS, RT Bunforf, GS Kaspzyk, EA Moffat, KF Orlowski, and JE Stocke, "Rollover and Drop Tests: The Influence of Roof Strength on Injury Mechanics Using Belted Dummies," SAE Paper No. 902314, Society of Automotive Engineers, Warrendale, PA, 1990.

no 5,000 pound maximum limit on the test force. This test force is applied to either side of the forward edge of the vehicle. This amendment became effective on September 1, 1994.

In 1991, Congress mandated NHTSA to assess rulemaking on rollover occupant protection as a part of the Intermodal Surface Transportation Efficiency Act (ISTEA). ISTEA required NHTSA to initiate rulemaking to address the problems of rollover crashes. In response to that mandate, NHTSA published an advance notice of proposed rulemaking (ANPRM) (57 FR 242, January 3, 1991) that summarized the statistics and research in rollover crashes, sought answers to several questions about vehicle stability and rollover crashes, and outlined possible regulatory and other approaches to reduce rollover casualties. NHTSA also published a report to Congress [12] that detailed agency efforts in these areas.

During the development of the ANPRM and after receiving and analyzing comments to the ANPRM, it became apparent that no single type of rulemaking could solve all, or even a majority of, the problems associated with rollover. This view was strengthened by the agency's review and analysis of comments on the ANPRM. To emphasize this conclusion and inform the public further about the complicated nature of the light duty vehicle rollover problem, the agency released a document titled, "Planning Document for Rollover Prevention and Injury Mitigation," at a Society of Automotive Engineers (SAE) meeting on rollover on September 23, 1992. The Planning Document gave an overview of the rollover problem and a list of alternative actions that NHTSA was examining to address the problem. Activities described in the document were: crash avoidance research on vehicle measures for rollover resistance, research on antilock brake effectiveness, rulemaking on upper interior padding to prevent head injury, research into improved roof crush resistance to prevent head and spinal injury, research on improved side window glazing and door latches to prevent occupant ejection, and consumer information to alert people to the severity of rollover crashes and the benefits of safety seat belt use in this type of crash. NHTSA published a notice announcing the availability of the Planning Document and requesting comments (57 FR 44721, September 29, 1992).

In May 1996, NHTSA issued the "Status Report for Rollover Prevention and Injury Mitigation" (NHTSA 1996–1811–2). This document updated the progress of the programs discussed in the Planning Document.

On May 6, 1996, the agency received a petition for rulemaking from R. Ben Hogan, Smith and Alspaugh, PC, a law firm. Hogan commented that the current static requirements in FMVSS No. 216 bear no relationship to real world rollover crash conditions and therefore should be replaced with a more realistic test such as the inverted vehicle drop test defined in the Society of Automotive Engineers (SAE) Standard J996. This request coincided with agency research testing that was being conducted using the inverted drop test procedure. The petitioner also requested that NHTSA require "roll cages" to be standard in all cars as requested by some commenters responding to the January 3, 1992, ANPRM on rollover occupant protection. NHTSA granted this petition on January 8, 1997, because we believed that the inverted drop testing had merit for further agency consideration.

On April 27, 1999, NHTSA published a final rule relating to the test procedure in FMVSS No. 216 (64 FR 22567). Prior to the amendments made by the final rule, the existing procedure resulted in certain vehicles with rounded roofs (e.g., the Ford Taurus) being tested with the test plate positioned too far rearward on the vehicle roof. In this position, the plate did not test the roof over the front occupants. In addition, this position created the potential for contact between the front edge of the test plate and the roof, allowing the plate to penetrate the roof along the leading edge of the plate. Similarly, in following this procedure for vehicles with raised, irregularly-shaped roofs (such as some vans with roof conversions), the initial contact point on the roof may not be above the front occupants, but on the raised rear portion of the roof, behind those occupants. In both of these cases, the positioning of the plate relative to the initial contact point on the roof, instead of relative to a fixed location on the roof, resulted in too much variability in the plate positioning and reduced test repeatability.

This final rule addressed the problem of rounded roofs by specifying a new primary test procedure for all vehicles except those with certain modified roof configurations. Under the new procedure, the test plate is to be positioned so that the front edge of the plate is 254 mm (10 inches) in front of the forwardmost point of the roof. Positioned in this way, the front edge of the plate will always project slightly forward of the roof instead of contacting it. The rule addressed the problem for vehicles with raised or modified roofs by specifying that if following the primary test procedure results in an initial point of contact that is rearward of the front seats, a second procedure would be used to position and orient the plate as specified for the primary procedure, except that the plate is moved forward such that its rearward edge is positioned at the rear of the roof over the front seat area.

Until October 25, 2000, vehicle manufacturers also had the option of using the standard's original test plate placement procedure (as established in 1973) for multipurpose vehicles, trucks and buses that have a raised or altered roof, instead of the primary or secondary procedures defined above (65 FR 4579, January 31, 2000). The original procedure positioned the plate with respect to its initial point of contact with the roof. The initial point of contact was established by angling the plate as required for the first procedure and then lowering it horizontally until it contacted the roof. After establishing the initial contact point on the vehicle, the test plate was moved upwards, and positioned as specified in the first procedure, except the plate's forward edge was positioned 254 mm forward of the initial point of contact with the vehicle. This position was allowed to make testing possible for raised roof vehicles that experience contact with the plate's rearward edge when testing to the second procedure.[13]

II. Agency Roof Crush Research

NHTSA has undertaken a comprehensive research program to find ways to protect occupants better in rollover crashes. The roof crush research has taken the form of both vehicle testing and analytical research.

A. Vehicle Testing

NHTSA has conducted an extensive vehicle-testing program to evaluate rollover crashes. The research has consisted of: (1) full vehicle dynamic rollover testing (as defined in FMVSS No. 208, "Frontal Occupant Protection"); (2) computer modeling; (3) inverted vehicle drop test (as defined in the SAE Recommended Practice J996); and (4) modified FMVSS No. 216 testing with comparisons to inverted drop testing. The following paragraphs summarize the findings of these activities.

[12] "Rollover Prevention and Roof Crush", April 1992, DOT Docket No. NHTSA–1999–5572.

[13] Currently, the agency is assessing whether to re-allow this option or to add/modify the placement procedure to address the petitions for reconsideration dated June 11, 1999, from Ford and the Recreational Vehicle Industry Association (see DOT Docket 99–5572).

A series of full-scale dynamic rollover tests has been conducted by NHTSA to evaluate a range of crash situations, injury mechanisms, and safety countermeasures. NHTSA designed a rollover test cart that was similar to the FMVSS 208 dolly rollover cart, but was elevated four feet vertically and the vehicle's angular momentum could be initiated using pneumatic cylinders. These tests were designed to produce severe roof intrusion, and to study occupant kinematics and injury mechanisms. The severity of this test condition, however, made it difficult to discriminate between good and bad performing roof structures. While the test program provided valuable insight into occupant kinematics and injury mechanisms, the occupant kinematics were inherently unrepeatable. As a result, it was determined that the development of an improved roof crush standard based on dynamic rollover testing was not feasible.[14] [15]

The agency also contracted with Pioneer Engineering and later EASi Engineering to design and test a reinforced roof structure for a Nissan pickup.[16] The Nissan pickup was chosen since several rollover tests had previously been conducted with this vehicle. Modification involved the use of high strength steel reinforcements and foam filler material in the roof header, side rails and A and B-pillars. It was found that substantial reduction in roof intrusion could be achieved by reinforcing the roof. However, the severity of the full-scale dynamic rollover test made it difficult to prevent all intrusion.

NHTSA also began investigating other possible test procedures for upgrading FMVSS No. 216. One such procedure was the inverted vehicle drop test, defined in SAE J996[17], which has been noted to produce deformation patterns similar to what is observed in rollover tests and real-world collisions.[18] After evaluating a series of dynamic drop tests, NHTSA concluded that this procedure had merit in its usage, realism and repeatability in evaluating roof crush. However, the disadvantage to this approach is that it does not introduce the complex rolls and ground/vehicle interaction of a full-scale rollover test. The dynamic drop test also involves a difficult procedure for suspending the vehicle and turning it over. While the dynamic drop test would be more repeatable than a full-scale rollover test, it would not be as repeatable as the existing FMVSS No. 216 static test.

Additional testing was then conducted using a modified FMVSS No. 216 test with increased loads to produce more extensive roof crush (254 mm (10 inches) and 381 mm (15 inches), instead of the 127 mm (5 inches) requirement in the standard).[19] In order to achieve the more extensive roof crush levels, forces ranging up to twice that required by Standard No. 216 were necessary. The objective of the study was to determine the correlation between roof crush performance measured by the modified 216 test and the dynamic inverted drop test. A series of tests comparing quasi-static roof loading versus dynamic roof loading was conducted to determine how static and dynamic tests can be correlated, and if static test results can be used to predict the dynamic behavior of the roof structure.

It is noted that a statistical analysis of the findings showed the modified FMVSS No. 216 procedure results strongly correlated with the dynamic results of inverted drop tests (correlation coefficient of 0.94). This correlation was based on energy equivalence between the results of the two sets of tests. To further validate the relationship (energy equation), additional vehicle testing was performed using the modified 216 test. The energy equation was then used to predict the dynamic performance of the same vehicle types drop tested at two different heights. The energy equation from the modified 216 deviated from the two dynamic drop heights by no more than about 15 percent.

B. Analytical Research

NHTSA conducted an analytical study to explore the relationship between roof intrusion and the severity of injury. To evaluate the relationship between injury, occupant parameters and belt slack, the agency conducted a comparative study [20] using the NASS CDS. This study evaluated belted rollover occupants who did and did not receive head injuries from roof contact to determine if headroom reduction [21] was related to the risk of head injury in rollovers. For the analysis, pre-crash and post-crash headroom for 155 rollover involved belted occupants in the 1988–1992 NASS data was determined using information in the American Automobile Manufacturers Association manuals, and NASS reported occupant height and vehicle roof intrusion measurements. Examining the severity of head injuries with the pre-crash and post-crash headroom led to the following conclusions:

(1) Headroom reduction (pre- versus post-crash) by more than 70% substantially increased the risk of head injury from roof contact.

(2) Head injury increased when the post crash headroom was less than the original headroom. Also, as the severity of the injury increased, the percentage of cases with no remaining headroom increased.

(3) When the intrusion exceeded the original headroom, the percentage of injured occupants was 1.8 times the percentage of uninjured occupants.

(4) The average percent of headroom reduction for injured occupants was more than twice that of uninjured occupants.

III. Discussion of Issues

This section discusses a range of issues and presents a series of questions for public comment to aid the agency in evaluating the current roof crush standard and whether further action by the agency is warranted. These issues and questions are grouped according to the following areas: (1) Current test procedure; (2) alternative dynamic tests; and (3) limiting headroom reduction.

A. Current Test Procedure

1. Agency analysis of crash data indicates that injury levels did not progressively increase with roof intrusion until severe amounts of intrusion were established. In addition, vehicles that perform well in roof crush tests do not appear to better protect occupants from more severe roof intrusion in real world crashes. Are there more appropriate ways than the current FMVSS No. 216 test procedure to measure roof intrusion that would

[14] Segal, D. and Kamholz, L., "Development of a General Rollover Test Device", DOT Report HS–807–587 September 1983.

[15] Stultz, John C., "Modifications to the NHTSA General Purpose Rollover Test Device", Transportation Research Center of Ohio, January 1989.

[16] Design Modification for a 1989 Nissan Pick-up—Final Report. 1991. NHTSA/USDOT. DOT HS 807 925, NTIS, Springfield, Virginia, 22161.

[17] The Inverted Drop Test in SAE J996 involves suspending the vehicle upside down at specified roll and pitch angles, and at a specified height above the ground. The vehicle is then allowed to free-fall and provide roof crush upon contact with the ground.

[18] Michael J. Leigh and Donald T. Willke, "Upgraded Rollover Roof Crush Protection: Rollover Test and NASS Case Analysis," Docket NHTSA–1996–1742–18, June 1992.

[19] Glen C. Rains and Mike Van Voorhis, "Quasi Static and Dynamic Roof Crush Testing", DOT HS 808–873, 1999.

[20] Kanianthra, Joseph and Rains, Glen, "Determination of the Significance of Roof Crush on Head and Neck Injury to Passenger Vehicle Occupants in Rollover Crashes," SAE Paper 950655, Society of Automotive Engineers, Warrendale, PA, 1994.

[21] Headroom reduction was defined as the decrease in the vertical space between the interior of the roof and the top of the occupant's head.

better relate to injury severity in rollover crashes? If so, please identify the appropriate metric. Is it possible to evaluate the more appropriate metric with the current test procedure? If so, please explain how. If not, please describe the test procedure that should be used to evaluate the appropriate performance and provide any data that show the repeatability, practicability, and objectivity of the alternative test procedure.

2. Are FMVSS No. 216's testing procedures, particularly the test plate load requirement and plate angles, adequate for simulating real world rollover conditions? If not, please identify more appropriate testing parameters and explain the basis for the belief that this parameter is more appropriate.

3. Beginning in the mid-1990's, the composition of the light duty vehicle fleet has been drastically changing with an increasing proportion of this fleet consisting of light trucks. This has been accompanied by increases in GVWR for some of these vehicles. In the past, vehicles with a GVWR of more than 6,000 pounds were typically used for commercial applications as work vehicles. However, today's larger light trucks, particularly sport utility vehicles, are now typically used as an everyday means for personal transportation. Currently, the requirements of FMVSS No. 216 are not applicable to many of these vehicles because they exceed 6,000 pounds GVWR. Is it appropriate for NHTSA to propose extending the applicability of FMVSS No. 216 to vehicles with a 10,000 pounds GVWR?

4. FMVSS No. 216's test load application is not representative of dynamic roof crush rates in real-world rollovers. Our standard currently applies the load at a rate of 13 mm per second, which is far less than the loading rate in a real-world rollover. However, agency research demonstrates that static loading in the current standard and dynamic loading in inverted drop tests can be correlated by use of a dynamic equivalency factor/equation. Is such a factor appropriate for equating static and dynamic roof intrusion? If so, is it appropriate or necessary for the agency to conduct further research into finding appropriate dynamic conditions through inverted vehicle drop testing before proceeding with a proposal? Or, is it more appropriate for the agency to accept the current static loading as "good enough," based on the correlation already found, and proceed with a proposal based on what we now know?

B. Alternative Dynamic Tests

5. As mentioned above, the current standard uses a quasi-static rate of load application that is not representative of real-world dynamic roof intrusion. Full vehicle dynamic testing is most representative of real-world rollover conditions. However, it has been difficult to attain repeatable results when testing vehicles. Factors such as the orientation/altitude of the vehicle at the initiation of the rollover, the tolerance of the speed of the vehicle and test cart before roll initiation and the method of initiating the roll cause variability in testing. To date, the agency has evaluated two dynamic tests to better simulate real-world rollovers. This includes: (1) the full vehicle rollover test (as defined in FMVSS No. 208, "Frontal Occupant Protection"); and (2) an inverted vehicle drop test (as defined in the Society of Automotive Engineers Recommended Practice J996).[22]

a. Is it appropriate to consider using the FMVSS No. 208 dynamic rollover procedure for testing vehicles and, if so, are there any means of reducing/eliminating the test variability resulting from dynamic conditions?

b. With regard to SAE J996, should the agency require inverted drop testing as requested by R. Ben Hogan and Associates? Have manufacturers or others evaluated the drop angle conditions for inverted drop tests? What complications with the test have manufacturers experienced? (In agency testing, certain vehicles experienced complications in testing at the angles prescribed within J996, whereas ground contact with the hood or top of the front quarter panel occurred prior to, or just after, contact with the roof structure, resulting in less energy being imparted to the roof structure.) Also, have manufacturers or others evaluated the effects of different drop heights? If so, what attempts have been made to equate drop height to real-world deformation or injury severity?

6. Have any other dynamic rollover test procedures been evaluated by manufacturers or other interested parties? Have manufacturers or other parties assessed any new criteria for experimental dynamic rollover tests? Have manufacturers or other parties performed dynamic rollover testing using dummies? If so, what injury criteria do manufacturers or other parties use to assess performance in that dynamic test?

C. Limiting Headroom Reduction

7. Agency research analysis demonstrates that limiting the reduction of headroom between the occupant's head and the roof reduces injuries in rollovers. More specifically, this research shows a moderate correlation between post crash headroom elimination and the severity of injury to the head, neck or face resulting from roof contact. However, this benefit only exists for belted occupants.

Can limiting headroom reduction offer quantifiable benefits for unbelted occupants in rollover crashes? Are there quantifiable benefits for belted occupants in rollover crashes where roof intrusion does not exceed the top of the occupant's head?

8. If NHTSA were to incorporate a headroom limitation in a compliance procedure, either as percentage of the original cabin environment or an absolute crush requirement based upon maintaining room over the head of an anthropomorphic dummy, what would be an appropriate limitation and would there be any problems associated with such a requirement? Should different limitations be made to accommodate different size occupants?

IV. Submission of Comments

Interested persons are invited to submit comments in response to this request for comments. For easy reference, the agency has consecutively numbered its questions. NHTSA requests that commenters respond to each question by these numbers and provide all relevant factual information of which they are aware to support their conclusion or opinions, including but not limited to statistical data and estimated cost and benefits, and the source of such information. It is also requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the length limitation. This limitation is intended to encourage commenters to state their positions and arguments as concisely as possible.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the NHTSA Chief Counsel, Room 5219, 400 Seventh Street, SW., Washington DC 20590, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section at the street address given above. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

Comments on this notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. Those persons desiring to be notified upon receipt of their written comments in the Docket Section should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receipt, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: October 16, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–26560 Filed 10–19–01; 8:45 am]

BILLING CODE 4910–59–P

[22] The inverted vehicle drop test, defined in the Society of Automotive Engineers Recommended Practice J996, provides a repeatable means of dynamically testing roof crush. The agency has conducted numerous tests to evaluate its performance. However, very little research has been done by NHTSA, and we are not aware of research by others, to relate the results in SAE J996 to real-world rollover condition and performance. Also, there is no certainty that the test parameters (defined in J996) relate to real-world conditions.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[I.D. 101701B]

RIN 0648–AN62

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearing notice.

SUMMARY: Notice is hereby given that the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, will hold public hearings for the purpose of receiving comments on the proposed rule to amend the regulations protecting sea turtles to enhance their effectiveness in reducing sea turtle mortality resulting from shrimp trawling in the Atlantic and Gulf Areas of the southeastern United States, published in the **Federal Register** on October 2, 2001. Turtle excluder devices (TEDs) have proven to be effective at excluding sea turtles from shrimp trawls; however, NMFS has determined that modifications to the design of TEDs need to be made to exclude leatherbacks and large, sexually mature loggerhead and green turtles; several approved TED designs are structurally weak and do not function properly under normal fishing conditions; and modifications to the trynet and bait shrimp exemptions to the TED requirements are necessary to decrease lethal take of sea turtles. These proposed amendments are necessary to protect endangered and threatened sea turtles in the Atlantic and Gulf Areas.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates, times and addresses of the hearings.

FOR FURTHER INFORMATION CONTACT: Robert Hoffman (ph. 727–570–5312, fax 727–570–5517, e-mail Robert.Hoffman@noaa.gov), or Therese A. Conant (ph. 301–713–1401, fax 301–713–0376, e-mail Therese.Conant@noaa.gov).

SUPPLEMENTARY INFORMATION: The hearings are scheduled as follows:

1. October 24, 2001 at 7 p.m. to 9 p.m., Madeira Beach, FL
2. November 1, 2001, at 7 p.m. to 9 p.m., Charleston, SC
3. November 5, 2001, at 7 p.m. to 9 p.m., Beaufort, NC
4. November 5, 2001, at 7 p.m. to 9 p.m., Kenner, LA
5. November 6, 2001, at 7 p.m. to 9 p.m., Brunswick, GA
6. November 7, 2001, at 7 p.m. to 9 p.m., Galveston, TX
7. November 8, 2001, at 7 p.m. to 9 p.m., Port Isabel, TX
8. November 9, 2001, at 7 p.m. to 9 p.m., Cocoa, FL

The hearings will be held in the following locations:

1. Madeira Beach City Hall, 300 Municipal Dr., Madeira Beach, FL 33708
2. South Carolina Department of Natural Resources, Marine Resources Research Institute Main Auditorium, 217 Fort Johnson Rd., Charleston, SC 29412
3. Duke Marine Laboratory, I.E. Grey Library Auditorium Building, 135 Duke Marine Lab Rd., Beaufort, NC 28516
4. Airport Hilton, Main Ballroom, 901 Airline Dr., Kenner, LA 70062
5. University of Georgia, Marine Extension Service Office, 715 Bay St., Brunswick, GA 31520
6. Texas A&M University, Classroom Laboratory Building, Room 100, 200 Seawolf Parkway, Galveston, TX 77553
7. Laguna Madre Learning Center at the Port Isabel High School Lecture Hall, Highway 100, Port Isabel, TX 78578
8. Brevard Agricultural Center Auditorium, 3695 Lake Dr., Cocoa, FL 32926

Dated: October 16, 2001.

Wanda L. Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–26552 Filed 10–19–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 204
Monday, October 22, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Deschutes Provincial Advisory Committee (PAC)

AGENCY: Forest Service, Agriculture.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on November 8, 2001 at the Jefferson County Fire Hall on the corner of Adam and "J" Street in Madras, Oregon. A business meeting will begin at 9 a.m. and finish at 3:30 p.m. Agenda items will include a discussion on the Lower Deschutes Data Committee Charter, Northwest Forest Plan Monitoring, Recreation Fee Demo, Issue Team Approval of the Upper Deschutes Resource Management Plan, Future Meeting Dates and Topics, Information Sharing and a Public Forum from 3 p.m. until 3:30 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDAFS, Bend-Ft. Rock Ranger District, 1230 NE 3rd, Bend, OR 97701, Phone (541) 416–6872.

Leslie A.C. Weldon,
Forest Supervisor.
[FR Doc. 01–26517 Filed 10–19–01; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

San Carlos Watershed, Pinal County, Arizona

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Availability of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice than an environmental impact statement is not being prepared for the San Carlos Watershed, Pinal County, Arizona.

FOR FURTHER INFORMATION CONTACT: Michael Somerville, State Conservationist, Natural Resources Conservation Service, 3003 North Central Avenue, Suite 800, Phoenix, Arizona, 85012. Telephone: (602) 280–8808.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Michael Somerville, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are agricultural water management and includes a mixture of land treatment and management practices to conserve irrigation water. The planned works of improvement include irrigation land leveling, suitable irrigation water conveyance, structures for turnouts and water measurement for irrigation water management, and plant, and fertility management practices (not cost-shared) including irrigation water management, crop residue use, conservation cropping sequence, appropriate erosion control practices as needed, nutrient management and pest management. All works of improvement are on previously cropped land.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on the file and may be reviewed by contacting Donald Paulus, at (602) 280–8780.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: August 9, 2001.
Michael Somerville,
State Conservationist.
[FR Doc. 01–26475 Filed 10–19–01; 8:45 am]
BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Michigan

AGENCY: Natural Resources Conservation Service (NRCS) in Michigan, US Department of Agriculture.

ACTION: Notice of availability of proposed changes in Michigan NRCS FOTG, Section IV for review and comment.

SUMMARY: It is the intention of NRCS in Michigan to issue revised conservation practice standards in Section IV of the FOTG. The revised standards include:

Fence (382)
Firebreak (394)
Hedgerow Planting (422)
Prescribed Burning (338)
Use Exclusion (472)
Forest Stand Improvement (666)
Heavy Use Area Protection (561)
Riparian Herbaceous Cover (390)
Stream Habitat Improvement and Management (395)
Tree/Shrub Planting (660)
Water Well (642)
Composting Facility (317)
Forest Site Preparation (490)
Recreation Land Grading and Shaping (566)
Recreation Trail and Walkway (568)
Waste Storage Facility (313)

DATES: Comments will be received on or before November 21, 2001.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Kevin Wickey, Assistant State Conservationist for Technology, Natural Resources Conservation Service, 3001 Coolidge Road, Suite 250, E. Lansing, MI 48823 or telephone Mr. Wickey at 517–324–5279. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to *Kevin.Wickey@mi.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 393 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment.

For the next 30 days, the NRCS in Michigan will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Michigan regarding disposition of those comments and a final determination of change will be made.

Dated: September 26, 2001.
Ronald C. Williams,
State Conservationist, E. Lansing, Michigan.
[FR Doc. 01–26474 Filed 10–19–01; 8:45 am]
BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 011010246–1246–01]

2001 Company Organization Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2001 Company Organization Survey. The survey's data are needed, in part, to update the multiestablishment companies in the Business Register. The survey, which has been conducted annually since 1974, is designed to collect information on the number of employees, payroll, geographic location, current operational status, and kind of business for the establishments of multilocation companies. We have determined that annual data collected from this survey are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from this survey are not available from any other source.

FOR FURTHER INFORMATION CONTACT: Paul Hanczaryk, Economic Planning and Coordination Division, U.S. Census Bureau, Room 2747, Federal Building 3, Washington, DC 20233–6100, telephone (301) 457–4058.

SUPPLEMENTARY INFORMATION: Title 13, United States Code, Sections 182, 195, 224, and 225, authorize the Census Bureau to undertake surveys necessary to furnish current data on the subjects covered by the major censuses. This survey will provide continuing and timely national statistical data for the period between economic censuses. The next economic censuses will be conducted for the year 2002. The data collected in this survey will be within the general scope, type, and character of those that are covered in the economic censuses. Form NC–9901 will be used to collect the desired data.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the Paperwork Reduction Act, 44 U.S.C., Chapter 35, the OMB approved Form NC–9901 on November 3, 1999, under OMB Control Number 0607–0444. We will furnish report forms to organizations included in the survey, and additional copies are available on written request to the Acting Director, U.S. Census Bureau, Washington, DC 20233–0701.

I have, therefore, directed that the 2001 Company Organization Survey be conducted for the purpose of collecting these data.

Dated: October 17, 2001.
William G. Barron, Jr.,
Acting Director, Bureau of the Census.
[FR Doc. 01–26522 Filed 10–19–01; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–098]

Anhydrous Sodium Metasilicate from France: Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 10, 2001, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate from France for sales made by Rhone-Poulenc, S.A., for the period January 1, 2000, through December 31, 2000. We gave interested parties an opportunity to comment on the preliminary results of review but received no comments. Therefore, these final results of review have not changed from those presented in the preliminary results of review, in which we applied total adverse facts available.

EFFECTIVE DATE: October 22, 2001.

FOR FURTHER INFORMATION CONTACT: Dunyako Ahmadu or Richard Rimlinger, Office of Antidumping/Countervailing Duty Enforcement, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0198 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On August 10, 2001, the Department published in the **Federal Register** (66 FR 42199) the preliminary results of the review of this order. In the preliminary results, we determined the weighted-average dumping margin for the period January 1, 2000, through December 31, 2000 to be 60.00 percent. We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The Department has now completed the administrative review in accordance with section 751 of the Act.

Scope of the Order

Imports covered by the order are shipments of anhydrous sodium metasilicate, a crystallized silicate which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under the *Harmonized Tariff Schedules of the United States* (HTSUS) item numbers 2839.11.00 and 2839.19.00. The HTSUS item numbers

are provided for convenience and customs purposes. The written description remains dispositive.

Final Results of the Review

We received no comments from interested parties, and we have determined that no changes to the preliminary results are warranted for purposes of these final results. The weighted-average dumping margin for Rhone-Poulenc, S.A., for the period January 1, 2000, through December 31, 2000, is 60.00 percent.

The Department will issue appraisement instructions for Rhone-Poulenc merchandise directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Rhone-Poulenc, S.A., will be 60.00 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 60.0 percent, the "all others" rate established in the LTFV investigation (45 FR 77498, November 24, 1980). This deposit rate shall remain in effect until publication of the final results of the next administrative review.

Pursuant to 19 CFR 351.402(f)(2) this notice serves as a final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 15, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26548 Filed 10–19–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review: certain welded carbon steel pipes and tubes from Thailand.

SUMMARY: On April 12, 2001, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand (66 FR 18901). The review covers Saha Thai Steel Pipe Company, Ltd. ("Saha Thai"), a manufacturer/exporter of the subject merchandise. The period of review is March 1, 1999 through February 29, 2000.

Based on our analysis of the comments received, the final results differ from the preliminary results of review. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: October 22, 2001.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Sally Gannon, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2243 and (202) 482–0162, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 ("the Act"), as amended, effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

Background

On April 12, 2001, the Department published its preliminary results in this administrative review. *See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18901 (April 12, 2001). We invited parties to comment on the preliminary results. After the preliminary results were issued, the Department verified Saha Thai's sales and cost data from June 4 through 13, 2001. On August 15, 2001, we extended the time limit for the final results of this review until no later than October 9, 2001. *See Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes From Thailand*, 66 FR 42840(August 15, 2001). The petitioners, Allied Tube & Conduit Corporation and Wheatland Tube Co., submitted a timely case brief on September 13, 2001, and the respondent submitted a timely rebuttal brief on September 17, 2001.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Antidumping Order

The products covered by this antidumping order are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipe and tube." The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum"

("*Decision Memorandum*") from Joseph A. Spetrini, Deputy Assistant Secretary, AD/CVD Enforcement Group III, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 9, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, Room B–099, of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on verification and our analysis of comments received and of the database calculations, we have changed our results from the preliminary results of review. For the final results of review, duty drawback has been adjusted to reflect the decisions the Department has reached for the final results. These changes are discussed in the relevant sections of the *Decision Memorandum*. In addition, minor corrections from verification by the Department resulted in revisions to: the gross unit price for certain U.S. invoices; the brokerage amounts for certain invoices; the indirect selling expenses; the home market credit; the packing expense; the U.S. and home market interest rates, and any calculations using these rates; and other miscellaneous expenses for some sales.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period March 1, 1999, through February 29, 2000:

Manufacturer/exporter/reseller	Margin (percent)
Saha Thai Steel Pipe Company, Ltd	1.92

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the entered value of those reviewed sales for Saha Thai. We will direct Customs to assess the resulting percentage margins against the entered value for the subject merchandise on each of Saha Thai's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain welded carbon steel pipes and tubes from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Saha Thai will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate established in the original LTFV investigation, which is 15.67 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

The cash deposit rate has been determined on the basis of the selling price to the first unaffiliated U.S. customer.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 9, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix 1—Issues in *Decision Memorandum*

Comments and Responses

1. Duty Reimbursement
2. Theoretical Conversion Factor
3. Duty Drawback

[FR Doc. 01–26549 Filed 10–19–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Determination With Final Antidumping Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary affirmative countervailing duty determination.

EFFECTIVE DATE: October 22, 2001.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur at (202) 482–5346 or Mark Manning (202) 482–3936, Office of AD/CVD Enforcement IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

PRELIMINARY DETERMINATION: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

SUPPLEMENTARY INFORMATION:

Case History

This investigation was initiated on June 6. 2001.[1] *See Notice of Initiation of Countervailing Duty Investigation: Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India*, 66 FR 31892 (June 13, 2001). Since the initiation of this investigation, the following events have occurred: on June 22, 2001, the Department selected Ester Industries Ltd. (Ester), Garware Polyester Ltd. (Garware), and Polyplex Corporation Ltd. (Polyplex) (collectively, the respondents) as mandatory respondents in this investigation. *See* Memorandum from Nithya Nagarajan to Bernard Carreau on Selection of Respondents dated June 22, 2001. On June 25, 2001, the petitioners requested that the Department investigate three infrastructure assistance schemes administered by the State of Gujarat. On June 27, 2001, we issued countervailing duty questionnaires to the Government of India (GOI).[2] On July 16, 2001, the Department initiated an investigation of the Gujarat infrastructure assistance schemes. On July 19, 2001, the Department postponed the preliminary determination until no later than October 15, 2001. *See Notice of Postponement of Preliminary Determination of Countervailing Duty Investigation: Polyethylene Terephthalate Film, Sheet, and Strip (PET film) From India*, 66 FR 39013 (July 26, 2001). On August 17, 2001, we received questionnaire responses from Ester, Garware, and Polyplex, and on September 7, 2001, we received a questionnaire response from the GOI. On August 23, 27, and 31, 2001, September 12, 17, 24, 25, and 28, 2001, and October 1, 2, 5, and 9, 2001, the Department issued supplemental questionnaires to Ester, Garware, Garware's affiliated input provider, Garware Chemicals Limited (Garware Chemicals), Polyplex, and the GOI. On September 7, 13, 14, 19, 26, and 27, 2001, and October 1, 3, 4, 5, 9, and 10, 2001, the Department received supplemental questionnaire responses from Ester, Garware, Garware Chemicals, Polyplex, and the GOI.

[1] The petitioners in this investigation are DuPont Teijin films, Mitsubishi Polyester film, and Toray Plastics (America) Inc. (collectively, the petitioners).

[2] Upon the issuance of the questionnaire, we informed the GOI that it was the government's responsibility to forward the questionnaires to Ester, Garware, and Polyplex.

Scope of the Investigation

For purposes of this investigation, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Injury Test

Because India is a "Subsidy Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure or threaten material injury to a U.S. industry. On July 11, 2001, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from India of subject merchandise. *See Polyethylene Terephthalate Film, Sheet, and Strip From India and Taiwan*, 66 FR 36292 (July 11, 2001).

Alignment With Final Antidumping Duty Determination

On September 28, 2001, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the antidumping duty investigation of PET film from India.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is April 1, 2000, through March 31, 2001, which corresponds to the period for the respondents' most recently completed fiscal year.

Subsidies Valuation Information

Allocation Period

Under section 351.524(d)(2)(i) of the Department's regulations, we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant, pursuant to section 351.524(d)(2)(ii) of the Department's regulations. For assets used to manufacture plastic film, such as PET film, the IRS tables prescribe an AUL of 9.5 years.

In their questionnaire responses, Ester, Garware, Garware Chemicals, and Polyplex have calculated company-specific AULs by dividing the aggregate of their respective annual average gross book values of their depreciable productive fixed assets by their aggregated annual charge to accumulated depreciation for a ten-year period in the manner specified by section 351.524(d)(2)(iii) of the Department's regulations. Using this method, Ester and Polyplex calculated an AUL of 18 years, and Garware and Garware Chemical calculated an AUL of 19 years. Based on information submitted by the respondents, we have preliminarily determined to use company-specific AUL data when calculating the AUL for Ester, Garware, and Polyplex. For Garware Chemical, we did not use any AUL in our calculations because Garware Chemical did not report the use of any non-recurring subsidies.

Benchmarks for Loans and Discount Rate

In accordance with section 351.505(a)(3)(i) of the Department's regulations, for those programs requiring the application of a short-term benchmark interest rate, we used company-specific, short-term interest rates on commercial loans as reported by the respondents. With respect to the rupee-denominated, short-term benchmark used in calculating the benefit for pre-shipment export financing, we used the weighted average of the companies' cash credit loans. Cash credit loans are the most comparable type of short-term loan to use as a benchmark because, like the pre-shipment export financing, cash credit loans are denominated in rupees and take the form of a line of credit which can be drawn down by the recipient. *See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India*, 64 FR 73131, 73137 (December 29, 1999) (*Plate from India*). With respect to the rupee-denominated, short-term benchmark used in calculating the benefit for post-shipment export financing, we used, where available, the weighted-average of the companies' "inland" or "local" bill discounting loans. These loans, like the post-shipment export financing loans, are rupee-denominated working capital loans used to finance receivables. Where a company did not have any "inland" or "local" bill discounting loans, we used the weighted-average of the companies' cash credit loans, which are the next most comparable type of short-term loans.

For those programs requiring a rupee-denominated discount rate or the application of a rupee-denominated, long-term benchmark interest rate, we used, where available, company-specific, weighted-average interest rates on comparable commercial long-term, rupee-denominated loans. We did not use those long-term loans that had unpaid interest or principal payments because we do not consider such loans to be comparable loans under section 771(5)(E)(ii) of the Act and section 351.505(a)(2)(i) of the Department's regulations. We note that some respondents did not have rupee-denominated, comparable long-term loans from commercial banks for all required years. Therefore, for those years, we had to rely on a rupee-denominated, long-term benchmark interest rate that is not company-specific, but still provides a reasonable representation of industry practice, in order to determine whether a benefit was provided to the companies from rupee-denominated, long-term loans received from the GOI. Pursuant to 19 CFR 351.505(a)(3)(ii), we used national average interest rates for those years in which the respondents did not report company-specific interest rates on comparable commercial loans. We based these national average interest rates on information on long-term, rupee-denominated financing from private creditors in the International Monetary Fund's publication *International Financial Statistics*.

Cross-Ownership and Attribution of Subsidies

Because Garware owns 80 percent of Garware Chemicals, an affiliated supplier of an input to Garware that is primarily dedicated to the production of the subject merchandise, we have examined whether cross-ownership exists between the two companies within the meaning of section 351.525(b)(6) of our regulations. Section 351.525(b)(6)(vi) of the regulations defines cross-ownership as existing "where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."

Given Garware's 80 percent ownership in Garware Chemicals, and the fact that Garware Chemicals supplies an input to Garware that is primarily dedicated to the production of the subject merchandise, we preliminarily determine that cross-ownership exists and that subsidies received by Garware Chemicals are attributable to the products sold by both corporations in accordance with section 351.525(b)(6)(iv) of the Department's regulations. Thus, for purposes of this preliminary determination, for all applicable programs except for the electricity duty exemption scheme, we have calculated a subsidy rate for Garware Chemicals for each program by dividing Garware Chemicals' countervailable subsidies during the POI under each program by the sum of the two companies' total sales (excluding the sales between Garware and Garware Chemicals) (for domestic subsidies), or appropriate export sales (for export subsidies) during the POI. We then added these subsidy rates to Garware's calculated subsidy rates for each applicable program to calculate Garware's total subsidy rate.

For the electricity duty exemption scheme, due to the manner in which Garware and Garware Chemicals pay for their electricity charges, and the manner in which they receive the benefit through this program (see section of this notice on the electricity duty exemption scheme), we calculated Garware's total subsidy rate for this program by dividing the amount of countervailable subsidy received by both companies under this program by the sum of the two companies' total sales (excluding the sales between Garware and Garware Chemicals).

Furthermore, since Garware owns 80 percent of Garware Chemicals, guarantees almost all of Garware Chemicals' loans, and is in a position to control Garware Chemicals' finances, we calculated company-specific long-term benchmark interest rates for both Garware and Garware Chemicals based on both companies' reported long-term loans. We did not calculate company-specific short-term benchmark interest rates based on both companies' short-term loans because Garware Chemicals did not report its short-term loans. However, we intend to issue a supplemental questionnaire to Garware Chemicals requesting that it report such loans, and use these loans to calculate company-specific short-term benchmark interest rates based on both Garware's and Garware Chemicals' short-term loans in the final determination.

Programs Preliminarily Determined To Confer Subsidies

GOI Programs

1. Pre-Shipment and Post-shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or "packing credits," to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes, *i.e.*, for the purchase of raw materials, warehousing, packing, and transporting of export merchandise. Exporters may also establish pre-shipment credit lines upon which they may draw as needed. Credit line limits are established by commercial banks, based upon a company's creditworthiness and past export performance, and may be denominated either in Indian rupees or in foreign currency. Companies that have pre-shipment credit lines typically pay interest on a quarterly basis on the outstanding balance of the account at the end of each period. Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates determined by the RBI. During the POI, the rate of interest charged on pre-shipment, rupee-denominated export loans up to 180 days was 10.0 percent. For those loans over 180 days and up to 270 days, banks charged interest at 13.0 percent.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for

this program by presenting their export documents to their lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of export proceeds from the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize export proceeds within 180 days from the date of shipment, which is monitored by the RBI. Post-shipment financing is, therefore, a working capital program used to finance export receivables.

In general, post-shipment loans are granted for a period of no more than 180 days. For loans not repaid within the due date, exporters lose the concessional interest rate on this financing.

We find that the provision of the pre- and post-shipment export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act. To determine whether a benefit was conferred under the pre- and post-shipment export financing programs for rupee-denominated loans,[3] we compared the interest rate charged on these loans to rupee-denominated, short-term benchmark interest rates, as described in the "Benchmarks for Loans and Discount Rate" section above. This comparison shows that the interest rates charged on these loans were lower than the rates on comparable commercial loans that the recipient could actually obtain on the market. Therefore, in accordance with section 771(5)(E)(ii) of the Act, we preliminarily determine that the provision of the pre- and post-shipment export financing conferred benefits on the respondents during the POI.

The Department has previously found both pre-shipment and post-shipment export financing to be contingent upon export performance and, therefore, to constitute export subsidies. *See, e.g., Hot-Rolled from India*, Decision Memo, Analysis of Programs Section at Paragraph 1.A. No new information has been submitted in this investigation to warrant reconsideration of this specificity determination. Therefore, in accordance with section 771(5A) of the Act, we continue to find that provision of the pre- and post-shipment export financing constitutes a countervailable export subsidy.

To calculate the subsidy rates for the pre-shipment export financing, we divided the total amount of benefit to each respondent by each respondent's total exports. Accordingly, we preliminarily determine the net countervailable subsidy under the pre-shipment export financing program to be 1.43 percent *ad valorem* for Ester, 2.24 percent *ad valorem* for Garware, and 0.50 percent *ad valorem* for Polyplex.

With regard to rupee-denominated post-shipment loans, the respondents have indicated that post-shipment financing can be tied to specific export contracts. Therefore, when calculating the net subsidy rate for rupee-denominated post-shipment loans, we divided the benefits received by each respondent under this program by their respective sales of subject merchandise made to the United States during the POI. On this basis, we preliminarily determine the net countervailable subsidy under the post-shipment export financing program to be 1.59 percent *ad valorem* for Ester, 2.28 percent *ad valorem* for Garware, and 0.47 percent *ad valorem* for Polyplex.

2. Duty Entitlement Passbook Scheme (DEPS)

The DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. Prior to the POI, exporting companies could obtain DEPS credits on a pre-export or on a post-export basis. The GOI reported that the pre-export DEPS program was abolished effective April 1, 2000.

All exporters are eligible to earn DEPS credits on a post-export basis, provided that the exported product is listed in the GOI's standard input-output norms (SION). Post-export DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. Post-export DEPS credits are valid for 12 months and are transferable. With respect to subject merchandise, exporters were eligible to earn credits equal to 15 percent of the f.o.b. value of their export shipments during the fiscal year ending March 31, 2001. During the POI, Ester, Garware, and Polyplex all earned post-export DEPS credits.

The criteria regarding the remission, exemption or drawback of import duties is set forth in 19 CFR 351.519. Pursuant to this provision, the entire amount of an import duty exemption is countervailable if the government does not have in place and apply a system or procedure to confirm which imports are consumed in the production of the exported product and in what amounts. In *Hot-Rolled from India*, we determined that the DEPS rate of credit appears not to be reflective of imports of the producer which it is intended to represent. *See Hot-Rolled from India*, Decision Memo, Analysis of Comments Section at Comment 6. We also found that, since the DEPS rates are based on the value of imports and not the quantity of imports, there is no reliable method for the GOI to monitor whether the value of credits given is commensurate with the value of credits claimed. *Id.* Therefore, we concluded in *Hot-Rolled from India* that the GOI does not have in place and does not apply a system to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended. *Id.*

Consequently, in *Hot-Rolled from India* we determined that under section 351.519(a)(4) of the Department's regulations, the entire amount of import duty exemption earned by the respondents during the POI constitutes a benefit. *Id.* In addition, we further found that a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program because the GOI provides the respondents with credits for the future payment of import duties. *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Determination With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 20240, 20245 (*Hot-Rolled from India Prelim*) (unchanged by the final determination). We further found that this program can only be used by exporters and, therefore, is specific under section 771(5A)(B) of the Act. *Id.* In the instant proceeding, no new information has been submitted to demonstrate that a different decision is warranted at this time. Therefore, for purposes of this preliminary determination, we find that the DEPS conferred countervailable export subsidies upon the respondents during the POI.

Under 19 CFR 351.519(b)(2), if a program permits exemption of import duties upon export, the Department normally will consider the benefit as having been received upon exportation. The Department calculates the benefit on an "earned" basis (that is, upon export) where it is provided, as in the DEPS program, as a percentage of the value of the exported merchandise on a shipment-by-shipment basis, and the exact amount of the exemption is known. *See Plate from India*, 64 FR at 73140. In the instant case, we have determined, pursuant to section 771(5)(E) of the Act and 19 CFR 351.519(b)(2), that benefits from the DEPS are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned rather than the date DEPS credits are used. At the date of exportation, the amount of the benefit is known by the exporter. The benefit to the respondents under this program is the total value of DEPS import duty exemptions that the respondents earned on their export shipments of subject merchandise to the United States during the POI. We note that this approach is consistent with the methodology employed in *Hot-Rolled from India. See e.g., Hot-Rolled from India*, Decision Memo, Analysis of Comments Section at Comment 16.

Under 19 CFR 351.524(c), this program provides a recurring benefit because DEPS credits provide exemption from import duties. To derive the DEPS program rate, we first calculated the value of the post-export credits that the respondents earned for their export shipments of subject merchandise to the United States during the POI by multiplying the f.o.b. value of each export shipment by the percentage of DEPS credit allowed under the program for exports of subject merchandise. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Act. Finally, we took this sum (the total value of the licenses net of application fees paid) and divided it by each respondent's total respective exports of subject merchandise to the United States during the POI.

On this basis, we preliminarily determine the net countervailable subsidy from this program to be 15.63 percent *ad valorem* for Ester, 14.66 percent *ad valorem* for Garware, and 14.33 percent *ad valorem* for Polyplex.

3. Special Import Licenses (SILs)

During the POI, Ester and Garware sold two types of import licenses—SILs for Quality and SILs for Trading Houses. SILs for Quality are licenses granted to exporters which meet internationally-accepted quality standards for their products, such as the International Standards Organization (ISO) standards. SILs for Trading Houses are licenses granted to exporters that meet certain export targets. Both types of SILs permit the holder to import products listed on a "Restricted List of Imports" in amounts up to the face value of the SIL. Under the program, the SILs do not exempt or reduce the amount of import duties paid by the importer.

In addition, Garware reported in its September 27, 2001 response that it surrendered certain SILs to the GOI during the POI because it had not met its export obligation for materials that it had imported in previous years under the "Advance Licence under Duty Exemption Entitlement Certificate Scheme, wherein the company had undertaken to export with a minimum value addition of 33%." (*i.e.*, apparently, the pre-export DEPS program).

The Department has previously determined that the sale of SILs constitutes an export subsidy because companies receive these licenses based on their status as exporters. See, *e.g., Hot-Rolled from India*, Decision Memo, Analysis of Programs Section at paragraph I.D. No new information has been submitted in this investigation to warrant reconsideration of this determination. Therefore, in accordance with section 771(5A)(B) of the Act, we continue to find that the receipt of benefits under this program is contingent upon export performance. Pursuant to section 771(5)(D)(i) of the Act, the financial contribution in the sale of SILs consists of the revenue received on the sale of licenses, the amount of which constitutes the benefit from the sale of SILs under section 771(5)(E) of the Act.

Furthermore, by using other SILs granted by the GOI to fulfill its export obligation under the pre-export DEPS program, Garware avoided the expense of having to purchase SILs on the open market to fulfill this obligation. Since Garware received these SILs (like its SILs sold during the POI) because of its status as an exporter, we preliminarily find that the use of SILs constitutes a countervailable export subsidy in accordance with section 771(5A)(B) of the Act. Pursuant to section 771(5)(D)(i) of the Act, the financial contribution in the use of SILs consists of the expense that Garware avoided by not having to buy SILs on the open market, the amount of which constitutes the benefit from the use of SILs under section 771(5)(E) of the Act. At verification, we intend to obtain information on whether Garware received other benefits from the use of SILs, such as avoiding the payment of penalties for not meeting its export obligation under the pre-export DEPS program.

The respondents also reported the application fees that they paid to obtain those SILs that they sold during the POI. We preliminarily determine that the application fees paid by the respondent companies for the SILs qualify as an "* * * application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." *See* section 771(6)(A) of the Act.

We calculated the net subsidy rate for the sale and (for Garware) the use of SILs in the following manner. We first calculated the total amount of proceeds each respondent received from its sales of these licenses (net of application fees). For Garware, we added to the proceeds the expense that Garware avoided by not having to buy SILs on the open market, which we calculated based on the prices that Garware received for the sale of its SILs during the POI. Because the receipt of SILs cannot be segregated by type or destination of export, we then divided the resulting amounts for each respondent by its respective total export sales for the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 0.00 percent *ad valorem* for Ester and 0.01 percent *ad valorem* for Garware.

The GOI indicated that the SIL scheme was abolished on March 31, 2001. However, the GOI has not yet submitted a copy of any legislation to substantiate the termination of this program. During verification, we will seek to confirm whether this program has been terminated and whether its termination qualifies as a "program-wide change" under 19 CFR 351.526. If we can substantiate during verification that there has been a program-wide change, we will adjust the cash deposit rates to reflect the termination of this program in our final determination.

4. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to four to five times the value of the capital goods within a period of eight years. Failing to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

The respondents reported that they imported machinery under the EPCGS in the years prior to the POI and during the POI. For some of their imported machinery, the respondents met their export requirements. As a result, the GOI completely waived the amount of import duties. However, the respondents have not completed their export requirements for other imports of capital machinery. Therefore, although the respondents received a reduction in import duties when the capital machinery was imported, the final waiver on the potential obligation to repay the duties has not yet been made by the GOI.

[3] None of the respondents reported using foreign currency-denominated loans through the pre- or post-shipment export financing programs during the POI.

In *Hot-Rolled from India*, we determined that the import duty reduction provided under the EPCGS was a countervailable export subsidy. *See Hot-Rolled from India*, Decision Memo, Analysis of Programs Section at paragraph I.E. No new information or evidence of changed circumstances has been provided to warrant a reconsideration of this determination. Therefore, in accordance with section 771(5A)(B) of the Act, we continue to find that the receipt of benefits under this program is contingent upon export performance.

We determine that the GOI provided a financial contribution under section 771(5)(D)(i) of the Act, and the respondents benefitted under section 771(5)(E) of the Act, in two ways by participating in this program. The first financial contribution and benefit to the respondents is the waiver of import duty on imports of capital equipment. Because the GOI has formally waived the unpaid duties on those imports, we have treated the full amount of the waived duty exemptions as a grant received in the year in which the GOI officially granted the waiver.

The criteria to be used by the Department in determining whether to allocate the benefits from a countervailable subsidy program is specified under 19 CFR 351.524. Specifically, recurring benefits are not to be allocated but are to be expensed to the year of receipt, while non-recurring benefits are to be allocated over time. For the preliminary determination of this investigation, non-recurring benefits will be allocated over 18 years for Ester and Polyplex, and 19 years for Garware, the company-specific AUL of assets as reported by the respondents.[4]

Normally, tax benefits are considered to be recurring benefits and are expensed in the year of receipt. Since import duties are a type of tax, the benefit provided under this program is a tax benefit, and, thus, normally would be considered a recurring benefit. However, the Department's regulations recognize that, under certain circumstances, it is more appropriate to allocate over time the benefits of a program normally considered a recurring subsidy, rather than to expense the benefits in the year of receipt. Section 351.524(c)(2) of the Department's regulations provides that a party can claim that a subsidy normally treated as a recurring subsidy should be treated as a non-recurring subsidy and enumerates the criteria to be used by the Department in evaluating such a claim. In the Preamble to our regulations, the Department provides an example of when it may be more appropriate to consider the benefits of a tax program to be non-recurring benefits, and, thus, allocate those benefits over time. *Countervailing Duties; Final Rule*, 63 FR 65348, 65393 (November 25, 1998). We also stated in the Preamble to our regulations that, if a government provides an import duty exemption tied to major capital equipment purchases, it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring, even though import duty exemptions are on the list of recurring subsidies. *Id.* Because the benefit received from the waiver of import duties under the EPCGS is tied to the capital assets of the respondent companies, and, therefore, is just such a benefit, we determine that it is appropriate to treat the waiver of duties as a non-recurring benefit. We note that our approach on this issue is consistent with that taken in *Hot-Rolled from India*. *See Hot-Rolled from India Prelim*, 66 FR 20247 (unchanged by the final determination).

In their questionnaire responses, the respondents reported all of the capital equipment imports they made using EPCGS licenses and the application fees they paid to obtain their EPCGS licenses. We preliminarily determine that the application fees paid by the respondent companies qualify as an "* * * application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." *See* section 771(6)(A) of the Act.

In order to calculate the benefit received from the waiver of the respondent companies' import duties on their capital equipment imports, we determined the total amount of duties waived in each year (net of application fees). Consistent with our approach in *Hot-Rolled from India*, we determine the year of receipt to be the year in which the GOI formally waived the respondent companies' remaining outstanding import duties. *Id.* Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2) for each year in which the GOI granted the respondent companies an import duty waiver.[5] Those waivers whose face values exceeded 0.5 percent of each of the respondent companies' total export sales in the year in which the waivers were granted were allocated over the company-specific AULs, the AUL used in this investigation, using the Department's standard allocation methodology for non-recurring subsidies under section 19 CFR 351.524(b).

A second type of financial contribution and benefit conferred under this program involves the import duty reductions that the respondents received on the imports of capital equipment for which the respondents have not yet met their export requirements. For those capital equipment imports, the respondents have unpaid duties that will have to be paid to the GOI if the export requirements are not met. Therefore, we determine that the companies had outstanding contingent liabilities during the POI. When a company has an outstanding liability and the repayment of that liability is contingent upon subsequent events, our practice is to treat any balance on that unpaid liability as an interest-free loan. *See* 19 CFR 351.505(d)(1).

We determine that the amount of contingent liability to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondents applied but, as of the end of the POI, had not been finally waived by the GOI. Accordingly, we determine the benefit to be the interest that the respondents would have paid during the POI had they borrowed the full amount of the duty reduction at the time of import. We note that this approach is consistent with the methodology employed in *Hot-Rolled from India*. *Id.* Pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period for the respondents to fulfill their export commitments) occurs at a point in time more than one year after the date the capital goods were imported.

To calculate the program rate, we combined, where applicable, the sum of the allocated benefits received on waived duties and the benefits conferred on the respondents in the form of contingent liability loans. We then divided each respondent's total benefit under the program by its respective total export sales during the POI. For Garware Chemicals, we used the total export sales of Garware and Garware Chemicals as the denominator in this calculation. We added the resulting percentages for Garware and Garware Chemicals to calculate Garware's total rate. On this basis, we preliminarily determine the net countervailable subsidy from this program to be 2.85 percent *ad valorem* for Ester, 6.66 percent *ad valorem* for Garware, and 4.55 percent *ad valorem* for Polyplex.

[4] Garware Chemicals did not have any non-recurring benefits to be allocated.

[5] Under this section, non-recurring subsidies will be expensed in the year of receipt rather than allocated over time if the benefit from the non-recurring subsidy is less than 0.5 percent of the company's sales.

State of Maharashtra Programs

1. Sales Tax Incentives

The State of Maharashtra (SOM) grants a package scheme of incentives for privately-owned (*i.e.*, not 100 percent owned by the GOI) manufacturers to invest in certain areas of Maharashtra. One of these incentives consists of either an exemption or deferral of state sales taxes. Through this incentive, companies are exempted from paying state sales taxes on purchases, and collecting sales taxes on sales; or, as an alternative, are allowed to defer submitting sales taxes collected on sales to the SOM for ten to twelve years. After the deferral period expires, the companies are required to submit the deferred sales taxes to the SOM in equal installments over five to six years. The total amount of the sales tax incentive either exempted or deferred is based on the size of the capital investment, and the area in which the capital is invested.

Garware and Garware Chemicals reported that they participate in the sales tax incentive program. Prior to 1997, Garware received a deferral through this program for submitting the state sales tax to the SOM that it collected on its sales, and during the POI, still owed the SOM for part of the pre-1997 deferred taxes. After 1997, Garware received an exemption through this program from the payment and collection of state sales tax. Garware Chemicals also received an exemption through this program from the payment and collection of state sales tax.

We preliminarily find that this program is specific within the meaning of sections 771(5A)(D)(i) and (iv) of the Act because the benefits of this program are limited to privately-owned (*i.e.*, not 100 percent owned by the GOI) industries located within designated geographical regions within the SOM. We also preliminarily find that the SOM provided a financial contribution under section 771(5)(D)(i) of the Act, and that the respondents benefitted under section 771(5)(E) of the Act, in two ways through this program.

First, for the sales taxes exempted, a benefit exists to the extent that the taxes paid by Garware and its affiliate as a result of this program are less than the taxes these companies would have paid in the absence of the program. *See* 19 CFR 351.510(a)(1). As applied to the program at issue, Garware and its affiliate paid less taxes through the exemption of sales taxes on purchases. Furthermore, Garware and its affiliate did not collect any sales taxes on their sales. However, this did not have the effect of Garware and its affiliate paying any less taxes from their own funds. Therefore, we preliminarily determine that the only benefit and financial contribution were conferred in the amount of sales taxes exempted on purchases.

Second, for the sales taxes deferred, the Department treats such deferred indirect taxes as a government-provided loan in the amount of the taxes deferred. A benefit thus exists to the extent that the appropriate interest charges are not collected. *See* 19 CFR 351.510(a)(2). We therefore preliminarily determine that a benefit was conferred in the amount of the interest that Garware would have paid during the POI had it borrowed, at the time the collected sales taxes were deferred, the amount of the deferred sales taxes still unpaid at the end of the POI. Pursuant to19 CFR 351.505(a)(2)(iii), to determine the amount of the benefit conferred, we used a long-term benchmark interest rate based on long-term loans which were established during the years in which the terms of the sales tax deferrals were established.

To calculate the program rate, we first summed Garware's benefits received on exempted sales taxes on purchases during the POI and the benefits conferred in the form of unpaid interest on the deferred sales taxes. We then divided Garware's total benefit under the program by its total sales during the POI. For Garware Chemicals, we divided the amount of benefits received on exempted sales taxes on purchases during the POI by the sum of Garware's and Garware Chemicals' total sales (excluding sales between Garware and Garware Chemicals). We added the resulting percentages for Garware and Garware Chemicals to calculate Garware's total subsidy rate. On this basis, we preliminarily determine the net countervailable subsidy from this program to be 1.92 percent *ad valorem* for Garware.

2. Electricity Duty Exemption Scheme

Another incentive that the SOM provides as part of the package scheme of incentives is an exemption from the payment of tax on electricity charges. This exemption is available to manufacturers located in certain regions of Maharashtra. Garware and Garware Chemicals reported that they received an exemption from the payment of tax on electricity charges through this program.

Because the SOM has forgone or not collected revenue otherwise due, we preliminarily find that the tax exemption provided through this program constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. We also preliminarily find that this program is specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits of this program are limited to industries located within designated geographical regions within the SOM. In regard to the benefit to Garware and its affiliate under this program pursuant to section 771(5)(E) of the Act, we preliminarily find that the benefit consists of the amount of tax exempted on electricity charges through this program during the POI.

In our calculation of the subsidy rate for this program, we treated the benefit under this program as a recurring benefit, and took into account the manner in which Garware and Garware Chemicals pay for their electricity charges, and the manner in which they receive the benefit from this program. Garware reported that it pays the electricity charges (net of the exempted electricity tax) for both Garware and Garware Chemicals, and Garware Chemicals subsequently compensates Garware for the amount of the electricity that it actually consumed. Since Garware pays for the electricity charges for both companies, Garware and Garware Chemicals do not separately benefit from the exemption of the tax on electricity charges, but rather jointly benefit through Garware's joint payment of electricity charges, and joint exemption of electricity taxes. Since these two companies do not separately benefit from this program, we preliminarily determine that it is appropriate to directly calculate a joint subsidy rate for this program, rather than to calculate two separate subsidy rates, and then combine the rates to calculate Garware's overall rate. We therefore calculated the subsidy rate for this program by dividing the total amount of electricity tax exempted during the POI for both companies under this program by the sum of the two companies total sales (excluding the sales between Garware and Garware Chemicals). On this basis, we preliminarily determine the net countervailable subsidy from this program to be 0.37% percent *ad valorem* for Garware.

State of Uttar Pradesh [6] Programs

Sales Tax Incentives

The State of Uttar Pradesh (SUP), like the SOM, provides sales tax incentives for manufacturers that make capital investments. This incentive, established by section 4–A of the Uttar Pradesh Trade Tax Act, consists of either an exemption or deferral of state sales taxes. Through this incentive, companies are exempted from paying state sales taxes on purchases, and collecting sales taxes on sales; or, as an alternative, are allowed to defer submitting sales taxes collected on sales. The amount of the sales tax incentive is based on the size of the capital investment, and the area in which the capital is invested.[7] Eligibility for this program is also based on companies meeting certain employment percentages for specific castes, tribes, "backward classes," and minorities, while thirteen specified industries are not eligible for any benefits under this program. Ester and Polyplex reported that they participate in the sales tax incentive program, and received an exemption through this program from the payment and collection of state sales tax.

We preliminarily find that this program is specific within the meaning of sections 771(5A)(D) (i) and (iv) of the Act because the benefits of this program are limited to the industries not otherwise excluded, and the benefits are based, in part, on the area in which companies invest capital. We also preliminarily find that the SUP, in the same manner as the SOM (*see* section of this notice on SOM Sales Tax Incentive program), provided a financial contribution under section 771(5)(D)(i) of the Act, and Ester and Polyplex benefitted under section 771(5)(E) of the Act, in the amount of sales taxes exempted on purchases.

We calculated the net subsidy rate for this program for each company by dividing each company's total amount of sales tax not paid on purchases through this program during the POI by each company's total sales for the POI.[8] On this basis, we preliminarily determine the net countervailable subsidy from this program to be 0.00% percent *ad valorem* for Ester and 0.00% percent *ad valorem* for Polyplex.

Programs Preliminarily Determined Not to Confer Subsidies

GOI Programs

Advance License Scheme

In order for the Department to consider a drawback program, such as the Advance License Scheme, to be not countervailable, the government must have in place and apply a reasonable system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts. In *Hot-Rolled from India*, we determined that, under the Advance License Scheme, the GOI has in place and applies a system to confirm which inputs are consumed in the production of the exported products and in what amounts, and that this system is reasonable and effective for the purposes intended. *See Hot-Rolled from India*, Decision Memo at Comment 5. We made this determination based on the following findings:

- This program has a built-in monitoring system by virtue of the application process and the manner in which the amount of duty exemption to be granted is limited by the quantity stipulated in the license.
- the GOI grants an advance license only for items listed on the SION for that industry.
- the GOI will grant the license for the items and quantities requested by a company only if the items and amounts requested are listed on the SION for the product.
- the items specified in the advance licenses as items to be imported are items that are used in the production of the relevant exported merchandise.
- the GOI is able to base the duties to be exempted (when those imports are made using the license) on the amounts of imported inputs necessary for producing the product. *Id.*

We also determined in *Hot-Rolled from India* that the portion of the advance licenses attributable to items not consumed in the production process constitute an over-rebate of duties because the amount drawn-back exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product. We therefore found this over-rebate to be a countervailable subsidy. *Id.*

We further determined in *Hot-Rolled from India* that the sale of advance licenses is not countervailable. *Id.* We based this determination on the finding that "because the amount of exemption granted is determined at the time of import and is based on the type and quantity of a specific good used in the production of exported product, the amount of duty exemption ultimately granted need not be claimed by the original licensee." *Id.*

In the present case, the record evidence indicates that the Advance License Program during the POI contained those same features that we found in *Hot-Rolled from India*. One respondent, Polyplex, reported that, through the GOI, it transferred part of an Advance License to another Indian company during the POI, and domestically purchased an input from that company. The input that Polyplex purchased from the other Indian company was consumed in the production of the exported product. Since the facts of this case indicate that Polyplex did not use an Advanced License during the POI to import or otherwise purchase an input that was not consumed in the production of the exported product, we preliminarily determine that Polyplex did not benefit from the use of the Advance License under section 771(5)(E) of the Act, and that Polyplex's use of an Advance License is not countervailable. We also note that we intend to scrutinize the details of Polyplex's transaction involving an Advanced License during verification.

State of Maharashtra Programs

Octroi Refund Scheme

Under this program, which is part of the SOM's package of incentives, industrial establishments that make capital investments in specific regions of Maharashtra are entitled to the refund of octroi duty, a tax levied by local authorities on goods that enter a town or district. Garware reported that it participates in this program, and that it has filed claims for the refund of octroi duty, but that it has not received any refund so far under this program. Since the SOM has not refunded any octroi duty to Garware, the SOM has not provided a financial contribution to Garware within the meaning of section 771(5)(D) of the Act. Moreover, since Garware has not received any refund from this program, Garware has not received any benefit from this program under section 771(5)(E) of the Act. We therefore preliminarily determine that Garware's participation in this program during the POI is not countervailable.

[6] The GOI, in its October 1, 2001 supplemental response, explained that in November 2000 (during the POI), the State of Uttar Pradesh (SUP) was re-organized into two states: the SUP and the State of Uttaranchal (SOU). The GOI further explained that, as a result of this reorganization, the facilities of the two respondents, Ester and Polyplex, that previously were located in the SUP were now located in the SOU. The GOI noted that the SOU continues to apply the same legislation and regulations underlying the programs at issue in this investigation that originated in the SUP. For the purposes of this notice, we will refer to both the SUP and SOU as the SUP, since the programs at issue originated in the SUP.

[7] Companies that invest in all areas of the SUP can receive benefits through this program, but the level of benefits granted depends in part on the area where the capital is invested.

[8] For purposes of the final determination, we may reconsider whether each company's total sales is the appropriate denominator to calculate the subsidy rate for this program, based on our final determination concerning the sales tax incentive for exports under Section 4–B of the Uttar Pradesh Trade Tax Act, as discussed below.

Programs Preliminarily Determined Not To Be Not Used

GOI Programs

1. Exemption of Export Credit from Interest Taxes
2. Income Tax Exemption Scheme (Sections 10A, 10B and 80 HHC)
3. Loan Guarantees from the GOI
4. Benefits for Export Processing Zones / Export Oriented Units

State of Maharashtra Programs

Capital Incentive Scheme

State of Uttar Pradesh Programs

Capital Incentive Scheme

State of Gujarat Programs

Infrastructure Assistance Schemes

Program For Which Additional Information Is Needed

State of Uttar Pradesh Programs

Sales Tax Incentives for Exports Under Section 4–B of the Uttar Pradesh Trade Tax Act

In their questionnaire responses, the GOI, Ester, and Polyplex referenced a sales tax incentive for exports under Section 4–B of the Uttar Pradesh Trade Tax Act. The Department has not previously investigated this program. However, it appears that this incentive may be a countervailable subsidy, pursuant to section 775 of the Act. Therefore, the Department is including this program in this investigation.

Under this program, the SUP exempts from the state sales tax purchases of inputs required for the manufacture of goods that will ultimately be exported. According to the GOI, the sales tax authorities make an annual assessment of whether the exporter has claimed excess rebates by comparing the (tax-free) raw materials purchased to the exports actually made. Ester and Polyplex reported that they purchased such tax-free inputs during the POI.

Ester claims that this program does not provide a benefit under 19 CFR 351.517 because the amount of the indirect tax remission is not greater than the amount that would have been paid if the goods had been sold domestically. The GOI also states that this program is permissible under paragraph 1 of Annex II of the WTO Agreement on Subsidies and Countervailing Measures because the program remits "prior-stage cumulative indirect taxes on goods that are used in the production of exported products."

Section 351.517(a) of the Department's regulations states that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." However, the information on the record is not sufficient to evaluate how the sales tax authorities assess whether exporters have claimed excess sales tax exemptions through this program, and, accordingly, whether the sales tax exemptions in this program exceed the amount of sales tax levied on inputs used in production of domestically-sold merchandise. Therefore, the information on the record is not sufficient to evaluate whether the sales tax exemptions at issue confer a benefit under section 771(5)(E) of the Act. At verification, we intend to seek additional information about how this program operates, and closely examine how the sales tax authorities assess whether exporters have claimed excess sales tax exemptions through this program.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated individual rates for the companies under investigation (Ester, Garware, and Polyplex). To calculate the "all others" rate, we weight-averaged the individual rates of these companies by each company's respective sales of subject merchandise made to the United States during the POI. These rates are summarized in the table below:

Producer/exporter	Net subsidy rate
Ester Industries Ltd.	21.51% *ad valorem*.
Garware Polyester Ltd.	28.14% *ad valorem*.
Polyplex Corporation Ltd.	19.85% *ad valorem*.
All Others	22.85% *ad valorem*.

In accordance with section 703(d)(1)(B) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from India, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Any requested hearing will be tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of

the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of the case briefs. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above. Further, we would appreciate if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on a diskette.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: October 15, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26547 Filed 10–19–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Vanessa Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 90–4A005."

The California Kiwifruit Commission and California Kiwifruit Exporters Association's ("CKC") original Certificate was issued on August 10, 1990 (55 FR 33740, August 17, 1990) and previously amended on November 27, 1990 (55 FR 50204, December 5, 1990); January 29, 1991 (56 FR 4601, February 5, 1991); and February 24, 1992 (57 FR 6712, February 27, 1992). A summary of the application for an amendment follows.

Summary of the Application

Applicant: California Kiwifruit Commission and California Kiwifruit Exporters Association, 9845 Horn Road, Suite 160, Sacramento, California 95827.

Contact: E. Scott Horsfall, President, Telephone: (916) 362–7490.

Application No.: 90–4A005.

Date Deemed Submitted: October 15, 2001.

Proposed Amendment: CKC seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Stellar Distributing, Fresno, California; George Brothers, Sultana, California; Trinity Fruit Sales Co., Clovis, California; Sun Pacific Marketing Coop., Los Angeles, California; and Regatta Tropicals, Arroyo Grande, California;

2. Delete the following companies as "Members" of the Certificate: Alkop Farms, Inc., Chico, California; Bartell Marketing, Inc., Fresno, California; Blue Anchor, Inc., Sacramento, California; Coast to Coast Produce Co., San Luis Obispo, California; Nash De Camp Company, Visalia, California; and Richland Sales Co., McFarland, California; and

3. Change the listing of the company names for the current Members: Kings Canyon Fruit Sales Corp. to the new listing Kings Canyon/Corrin Sales Corp.; Venida Packing Inc. to the new listing Venida Packing Co.; and Wil-Ker-Son Kiwifruit Ranch to the new listing WKS/Wil-Ker-Son Ranch.

Dated: October 17, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 01–26546 Filed 10–19–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000202024–1248–02; I.D. 100401B]

RIN 0648–ZA79

Announcement of Funding Opportunity to Submit Proposals for the South Florida Ecosystem Research and Monitoring Program (SFP)

AGENCY: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Funding Availability for financial assistance for project grants and cooperative agreements.

SUMMARY: The purpose of this notice is to advise the public that CSCOR/COP is soliciting 1-year and 2-year proposals to support coastal ecosystem studies in South Florida including Florida Bay, Florida Keys, the Florida Keys National Marine Sanctuary (FKNMS), and adjacent coastal waters. It will provide support for research and monitoring activities for the South Florida Ecosystem Restoration Prediction and Modeling Program (SFERPM), the South Florida Living Marine Resources Program (SFLMR), and the Florida Keys National Marine Sanctuary (FKNMS). The overall goal of this Announcement is to fund high priority research and monitoring needed to predict the impacts of Everglades restoration on the South Florida coastal ecosystem. Funding is contingent upon the availability of Federal appropriations. It is anticipated that projects funded under this announcement will have a March 1, 2002 start date.

DATES: The deadline for receipt of proposals at the COP office is 3 p.m., e.s.t. November 29, 2001. (Note that late-arriving applications provided to a delivery service on or before November 28, 2001, with delivery guaranteed before 3 p.m., e.s.t. on November 29, 2001, will be accepted for review if the applicant can document that the application was provided to the delivery service with delivery to the address listed below guaranteed prior to the specified closing date and time, and, in any event, the proposals are received in the COP office by 3 p.m., e.s.t., no later than 2 business days following the closing date.)

ADDRESSES: Submit the original and 19 copies of your proposal to Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (N/SCI 2), SSMC#4, 8th Floor, Station 8243, 1305 East-West Highway, Silver Spring, MD 20910. NOAA and Standard Form Applications with instructions are accessible on the following COP Internet Site: http://www.cop.noaa.gov under the COP Grants Support Section, Part D, Application Forms for Initial Proposal Submission. Forms may be viewed and, in most cases, filled in by computer. All forms must be printed, completed, and mailed to CSCOR/COP with original signatures. Blue ink for original signatures is recommended but not required. If you are unable to access this information, you may call CSCOR/COP at 301–713–3338 to leave a mailing request.

FOR FURTHER INFORMATION CONTACT:
Technical Information. Larry Pugh, SFP 2002 Program Manager, CSCOR/COP, 301–713–3338/ext 160, Internet: larry.pugh@noaa.gov
Business Management Information. Leslie McDonald, COP Grants Administrator, 301–713–3338/ext 155, Internet: Leslie.McDonald@noaa.gov

SUPPLEMENTARY INFORMATION:

Electronic Access

Background information on the South Florida Ecosystem Restoration Prediction and Modeling program, including descriptions of presently funded projects, results, data management, and programmatic infrastructure (including small boat access and policy) can be found at http://www.aoml.noaa.gov/ocd/sferpm.

Background information on the Florida Bay and Adjacent Marine Systems Interagency Science Program, including the Program Management Committee (PMC), Scientific Oversight Panel (SOP), copies of the annual science conference abstracts, workshop reports, and present Strategic Science Plan, can be found at http://www.aoml.noaa.gov/flbay.

Background information regarding Florida Keys National Marine Sanctuary can be found at http://www.fknms.nos.noaa.gov.

Background information regarding South Florida Ecosystem Restoration (SFER) in general can be found at http://www.sfrestore.org, but the Comprehensive Everglades Restoration Plan (CERP) can be found at http://www.evergladesplan.org.

Background

Program Description

For complete program description and other requirements criteria for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual notification in the **Federal Register** (65 FR 62706, October 19, 2000) and at the COP home page.

This program is one of the Federal and state programs contributing to the Florida Bay and Adjacent Marine Systems Interagency Science Program, which is designed to understand the effects of South Florida ecosystem restoration.

The activities conducted to restore the South Florida ecosystem occur predominantly upstream of Florida Bay, and restoration impacts may not be direct or immediate. Through funding of the research priorities identified here, COP will fund an integrated suite of activities to better understand the coastal and marine ecosystem adjacent to the Everglades, comprising Florida Bay and the FKNMS. The GOAL of the complete effort is to develop a capability to predict the impacts of proposed Everglades Restoration activities on the coastal system from the mangroves to the coral reefs.

Research Areas

To address the goal of developing a capability to predict changes in coastal ecosystems resulting from Restoration activities, this announcement has five specific areas of interest: nutrient inputs and dynamics, water quality, circulation and physical oceanography, fisheries and protected resources, and Florida Keys habitat characterization and research.

(1) Nutrient Inputs and Dynamics. Proposals are solicited to quantitatively address the extent, relative contribution, and distribution of groundwater-derived nutrients into Florida Bay and the FKNMS at present and under various upstream water management alternatives. Proposals are also solicited on nutrient cycles within the water column and between the water column and benthos. A priority topic for nutrient proposals will be biogeochemical processes (including the microbial loop) governing the bio-availability of organic nitrogen.

(2) *Water Quality.* The health of the coral reef community of the FKNMS depends upon the quality (temperature, salinity, nutrients, inorganic particulate load and chemical contaminants) of the waters that flow over them. With Everglades restoration, water quality throughout South Florida coastal waters will be changed. Proposals are now solicited that address the chemical, biological, and optical characteristics of Bay waters that exit Keys passes and potentially reach the reef tract and protected areas in the FKNMS. Priority will be given to projects coordinated with and complementary to physical oceanographic field studies and to projects addressing timely dissemination of information to the Interagency SFER science community and the public.

(3) *Circulation and Physical Oceanography.* In the area of Circulation and Physical Oceanography, emphasis is placed on predicting the impacts of different restoration scenarios both upstream and in the Keys in the context of integrated natural system variability. Proposals are solicited to monitor the oceanographic parameters needed in order to verify and initialize circulation models; quantify flows intermittently exiting through Keys passages and potentially reaching the reef tract; determine basin residence and turnover times, circulation, and flow within the Bay and upstream effects upon the Dry Tortugas Ecological Reserve; and improve evaporation and sediment transport estimates.

(4) *Fisheries and Protected Resources.* Ecosystem changes caused by SFER

activities have ultimate impacts on the sustainability of higher trophic level (HTL) species, including fishery and protected resources, which have widely recognized importance. Proposals are solicited to build models and provide information to increase predictive capability in linking higher trophic levels to ER activities. Proposals should be directed at the following research priorities: (1) determining human (e.g., water management, fishing) and natural influences on biological processes affecting growth, survival, and recruitment of HTL species; (2) determining the major factors that influence distribution and abundance patterns and community and trophic structure; (3) identifying major pathways, mechanisms, and influencing factors in the transport of pre-settlement stages of offshore-spawning species onto nursery grounds; or (4) defining and quantifying major ecological processes that are substantially influenced by HTL species distributions or community and trophic structure.

(5) *Florida Keys Habitat Characterization and Research.* Coral reefs, seagrass beds, and hardbottom communities comprise the submerged, biogenic habitats of the FKNMS that support diverse species assemblages. Monitoring the coral reefs, seagrass beds, and hardbottom communities is necessary to provide a basis for detecting potential changes associated with Everglades restoration and fully protected zones.

Over the past several years, there has been a decline in the abundance of live coral in the FKNMS and shifting patterns of relative abundance of seagrass species in Florida Bay. Recently, management issues concerning hardbottom communities could not be addressed because of a lack of ecological research. Proposals are now solicited to investigate (a) causes of coral decline with emphasis on cause and effect; (b) possible associations between water quality and seagrass distribution; and (c) the functional significance of hardbottom communities in the FKNMS ecosystem.

The fully protected zones of the FKNMS, including the Tortugas Ecological Reserve, were created to assist in the protection of biological diversity and to disperse resource utilization in order to reduce user conflicts and to lessen the concentrated impact to marine organisms on heavily used reefs. Proposals are solicited to monitor commercially important species (e.g., spiny lobster) and key depleted fishery species (e.g., queen conch) and to create ecosystem models of reef fish communities to predict the effects of zoning on species diversity, abundance, and trophic structure.

Part I: Schedule and Proposal Submission

This document requests full proposals only. The provisions for proposal preparation provided here are mandatory. Proposals received after the published deadline or proposals that deviate from the prescribed format will be returned to the sender without further consideration. Information regarding this announcement, additional background information, and required Federal forms are available on the COP home page.

Full Proposals

Applications submitted in response to this announcement require an original proposal and 19 proposal copies at time of submission. This includes color or high-resolution graphics, unusually sized materials, or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. The stated requirements for the number of proposal copies provide for a timely review process. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

All recipients must follow the instructions in the preparation of the CSCOR/COP application forms included in this document in Part II: Further Supplementary Information, (10) Application forms and kit. Each proposal must also include the following eight elements:

(1) *Signed Summary title page.* The title page should be signed by the Principal Investigator (PI). The Summary Title page identifies the project's title starting with the acronym SFP 2002 (South Florida Project), a short title (less than 50 characters); and the PI's name and affiliation, complete address, phone, FAX and E-mail information. The requested budget for each fiscal year should be included on the Summary Title page. Multi-institution proposals must include signed Summary Title pages from each institution.

(2) *One-page abstract/project summary.* The Project Summary (Abstract) Form, which is to be submitted at time of application, shall include an introduction of the problem, rationale, scientific objectives and/or hypotheses to be tested, and a brief summary of work to be completed. The prescribed COP format for the Project Summary Form can be found on the COP Internet site under the COP Grants Support section, Part D.

The summary should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost and budget period. It should be written in the third person. The summary is used to help compare proposals quickly and allows the respondents to summarize these key points in their own words.

(3) *Statement of work/project description.* The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the SFP 2002 program goal. The project description section (including relevant results from prior support) should not exceed 15 pages. Page limits are inclusive of figures and other visual materials, but exclusive of references and milestone chart.

This section should clearly identify project management with a description of the functions of each PI within a team. It should provide a full scientific justification for the research, do not simply reiterate justifications presented in this document. It should also include:

(a) The objective for the period of proposed work and its expected significance;

(b) The relation to the present state of knowledge in the field and relation to previous work and work in progress by the proposing principal investigator(s);

(c) A discussion of how the proposed project lends value to the program goal;

(d) Potential coordination with other investigators; and,

(e) References cited.

Reference information is required. Each reference must include the name(s) of all authors in the same sequence in which they appear in the publications, the article title, volume number, page numbers and year of publications. While there is no established page limitation, this section should include bibliographic citations only and should not be used to provide parenthetical information outside the 15-page project description.

(4) *Milestone chart.* Provide time lines of major tasks covering the 12- to 24-month duration of the proposed project.

(5) *Budget and Application Forms.* Both NOAA and COP-specific application forms may be obtained at the COP Grants website. Forms may be viewed and, in most cases, filled in by computer. All forms must be printed, completed, and mailed to CSCOR/COP; original signatures in blue ink are encouraged. If applicants are unable to access this information, they may contact the CSCOR/COP grants administrator previously listed in the

section **FOR FURTHER INFORMATION CONTACT.**

At time of proposal submission, all applicants must submit the Standard Form, SF–424 (Rev 7–97) Application for Federal Assistance to indicate the total amount of funding proposed for the whole project period. Applicants must also submit a COP Summary Proposal Budget Form for each fiscal year increment. Multi-institution proposals must include a Summary Proposal Budget Form for each institution. Use of this budget form will provide for a detailed annual budget and for the level of detail required by the COP program staff to evaluate the effort to be invested by investigators and staff on a specific project. The COP budget form is compatible with forms in use by other agencies that participate in joint projects with COP and can be found on the COP home page under COP Grants Support, Part D. All applications must include a budget narrative and a justification to support all proposed budget categories. The SF-424A, Budget Information (Non-Construction) Form, will be requested only from those applicants subsequently recommended for award.

(6) *Biographical sketch.* With each proposal, the following must be included: abbreviated curriculum vitae, two pages per investigator; a list of up to five publications most closely related to the proposed project and up to five other significant publications; and list of all persons (including their organizational affiliation), in alphabetical order, who have collaborated on a project, book, article, or paper within the last 48 months. If there are no collaborators, this should be so indicated. Students, post-doctoral associates, and graduate and postgraduate advisors of the PI should also be disclosed. This information is used to help identify potential conflicts of interest or bias in the selection of reviewers.

(7) *Proposal format and assembly.* The original proposal should be clamped in the upper left-hand corner, but left unbound. The 19 additional copies can be stapled in the upper left-hand corner or bound on the left edge. The page margin must be one inch (2.5 cm) margins at the top, bottom, left and right, and the typeface standard 12-points size must be clear and easily legible. Proposals should be single spaced.

Part II: FURTHER SUPPLEMENTARY INFORMATION

(1) *Program authorities.* For a list of all program authorities for the Coastal Ocean Program, see the General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** (65 FR 62706, October 19, 2000) and at the COP home page. Specific Authority cited for this Announcement is 33 U.S.C. 1442.

(2) *Catalog of Federal Domestic Assistance (CFDA) Number.* The CFDA number for the Coastal Ocean Program is 11.478.

(3) *Program description.* For complete COP program descriptions, see the General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** (65 FR 62706, October 19, 2000).

(4) *Funding availability.* Funding is contingent upon receipt of fiscal years 2002-2003 Federal appropriations. Approximately $2.8 million per year for FY2002 and FY2003 will be available for SFP activities under this announcement. Up to $2.1 million of these funds will be provided by COP and up to $0.6 million will be provided by NOAA/NMFS/SEFSC.

If an application is selected for funding, NOAA has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Renewal of an award to increase funding or to extend the period of performance is based on satisfactory performance and is at the total discretion of the funding agency.

Publication of this notice does not obligate any agency to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

(5) *Matching requirements.* None. (6) Type of funding instrument. Project Grants for non-Federal applicants, interagency transfer agreements, or any other appropriate mechanisms other than project grants or cooperative agreements for Federal applicants.

(7) *Eligibility criteria.* For complete eligibility criteria for the COP, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (65 FR 62706, October 19, 2000) and the COP home page. Eligible applicants are institutions of higher education, not-for-profit institutions, international organizations, state, local and Indian tribal governments and Federal agencies. COP will accept proposals that include foreign researchers as collaborators with a researcher who is affiliated with a U.S. academic institution, Federal agency, or any other non-profit organization.

Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA employees shall be effected by an intra-agency fund transfer. Proposals selected for funding from a non-NOAA Federal agency will be funded through an inter-agency transfer.

PLEASE NOTE: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 USC 1535) is not an appropriate legal basis.

(8) *Award period.* Full Proposals can cover a project period from 1 to 2 years, i.e. from date of award up to 24 consecutive months. Multi-year project period funding will be funded incrementally on an annual basis. For NOAA awards, each annual award shall require an Implementation Plan and statement of work that can be easily divided into annual increments of meaningful work representing solid accomplishments (if prospective funding is not made available, or is discontinued).

(9) *Indirect costs.* If indirect costs are proposed, the total dollar amount of the indirect costs proposed in an application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

(10) *Application forms and kit.* For complete information on application forms for the COP, see COP's General Grant Administration Terms and Conditions annual Document in the **Federal Register** (65 FR 62706, October 19, 2000); at the COP home page; and the information given under Required Elements, paragraph (5) Budget.

(11) *Project funding priorities.* For description of project funding priorities, see COP's General Grant Administration Terms and Conditions annual notification in the **Federal Register** (65 FR 62706, October 19, 2000) and at the COP home page.

(12) *Evaluation criteria.* For complete information on evaluation criteria, see COP's General Grant Administration Terms and Conditions annual Document in the **Federal Register** (65 FR 62706, October 19, 2000) and at the COP home page.

(13) *Selection procedures.* For complete information on selection procedures, see COP's General Grant Administration Terms and Conditions

annual Document in the **Federal Register** (65 FR 62706, October 19, 2000) and at the COP home page. All proposals received under this specific Document will be evaluated and ranked individually in accordance with the assigned weights of the above evaluation criteria by independent peer mail review and panel review. No consensus advice will be given by the independent peer mail review or the review panel.

(14) *Other requirements.* As participants in the Interagency Science Program, funded principal investigators will be expected to:

(a) Participate in meetings for planning and coordination of the Program. This includes attending and contributing to the annual Interagency Florida Bay Science Program Conference, Research Team Meetings, and other relevant technical workshops.

(b) Promptly quality control their data and make them readily available through the Coordinating Office in accordance with the Data Policy, mentioned earlier in this document.

(c) Assist the Coordinating Office in the synthesis and interpretation of research results and the development of products of value to restoration and resource.

(d) Work with the Coordinating Office regarding small boat requirements (if any) to schedule access to the dedicated research vessel (description available on the SFERPM website earlier cited). If your project will have small boat needs that you cannot furnish, please provide description and schedule requirements in your proposal.

(e) If your project uses or relies on data/information from the NOAA CMAN SEAKEYS meteorological/ oceanographic monitoring network, please provide description and requirements in your proposal. Similarly, if your project uses/relies on data/information from research categories in this Announcement, other than the one you are proposing to study, please describe.

For a complete description of other requirements, see COP's General Grant Administration Terms and Conditions annual Document in the **Federal Register** (65 FR 62706, October 19, 2000) and at the COP home page. NOAA has specific requirements that environmental data be submitted to the National Oceanographic Data Center.

(f) The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** (66 FR 49917, October 1, 2001) are applicable to this solicitation.

(15) *Intergovernmental review.* Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(16) This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

The following requirements have been approved by OMB under control number 0648–0384: a Summary Proposal Budget Form (30 minutes per response), a Project Summary Form (30 minutes per response), a standardized format for the Annual Performance Report (5 hours per response), a standardized format for the Final Report (10 hours per response) and the submission of up to 20 copies of proposals (10 minutes per response). The response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Leslie.McDonald@noaa.gov. Copies of these forms and formats can be found on the COP home page under Grants Support sections, Parts D and F.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: October 16, 2001.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–26553 Filed 10–19–01; 8:45 am]

BILLING CODE 3510–JS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Science Advisory Board; Notice of Meeting

AGENCY: Office of Oceanic and Atmospheric Research, NOAA, DOC.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Tuesday, November 6, 2001, from 8 a.m. to 5 p.m.; Wednesday, November 7, 2001, from 8 a.m. to 4:30 p.m.; and Thursday, November 8, from 8:30 a.m. to 3 p.m.

Place: The meeting on Tuesday, November 6 and Thursday, November 8 will be held at the Sheraton Tucson Hotel & Suites, 5151 East Grant Road, Tucson, AZ. On Wednesday, November 7, the meeting will be held at the Institute for the Study of Planet Earth (ISPE) on the University of Arizona campus, 715 N. Park Avenue, Tucson, AZ.

STATUS: The meeting will be open to public participation with two 30-minute time periods set aside for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by October 29, 2001, in order to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after October 29 will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

Matters to be Considered: The meeting will include the following topics: (1) NOAA hydrologic research and services, (2) NOAA science and technology contributions to solving water-related issues in the west, (3) the global water cycle initiative, (4) international water issues, (5) SAB comments on the Department of Commerce Aquaculture Guidelines, (6) reports on program and laboratory reviews conducted under the auspices of the SAB and (7) public statements.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 10600, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–0163, E-mail: Michael.Uhart@noaa.gov); or visit the NOAA SAB website at http://www.sab.noaa.gov.

David L. Evans,

Assistant Administrator, OAR.

[FR Doc. 01–26470 Filed 10–19–01; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092601C]

Marine Mammals; File No. 1003–1646

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Jennifer Burns, Ph.D., University of Alaska Anchorage, Department of Biological Sciences, 3211 Providence Drive, Anchorage, AK 99508, has been issued a permit to import specimens collected from Canadian populations of harbor seal (*Phoca vitulina*), hooded seal (*Cystophora cristata*), harp seal (*Phoca groenlandica*), and gray seal (*Halichoerus grypus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On August 23, 2001, notice was published in the **Federal Register** (66 FR 44333) that a request for a scientific research permit to import specimens collected from Canadian populations of harbor seal (*Phoca vitulina*), hooded seal (*Cystophora cristata*), harp seal (*Phoca groenlandica*), and gray seal (*Halichoerus grypus*) had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: October 15, 2001.

Eugene T. Nitta,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–26550 Filed 10–19–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101001B]

Marine Mammals; File No. 42–1642–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Mystic Aquarium, 55 Coogan Blvd., Mystic, CT 06355 (Dr. Lisa Mazarro, Principal Investigator) has been issued a permit to take Steller sea lions for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment. See **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 31, 2001, notice was published in the **Federal Register** (66 FR 39493) that a request for a scientific research permit to take Steller sea lions had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9200; fax (978) 281–9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727) 570–5301; fax (727) 570–5320.

Dated: October 15, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–26551 Filed 10–19–01; 8:45 am]

BILLING CODE 3510–22–S

UNITED STATES PATENT AND TRADEMARK OFFICE

Recording Assignments

ACTION: Proposed Collection; Comment Request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 21, 2001.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Data Administration Division, Office of Data Management, United States Patent and Trademark Office, Crystal Park 3, Suite 310, Washington, DC 20231; by telephone at (703) 308–7400; or by electronic mail at *Susan.Brown@uspto.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Joyce R. Johnson, Manager of the Assignment Division, United States Patent and Trademark Office, Crystal Gateway 4, Room 300, 1213 Jefferson Davis Highway, Arlington, Va. 22202; by telephone at (703) 308–9706; or by electronic mail at Joyce.Johnson@uspto.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

As part of the responsibilities outlined by 35 U.S.C. 261 and 262 for patents, and 15 U.S.C. 1057 and 1060 of the Trademark Act of 1946 for trademarks, the USPTO records a variety of documents submitted to them by the public, corporations, other federal agencies, and Government-owned or Government-controlled corporations. These individuals, federal agencies, and corporations can submit various documents that establish their rights and/or titles for patents and trademarks to the USPTO for recording. This process officially and publicly establishes their rights and titles. These documents typically include items such as transfers of properties (*i.e.* patents and trademarks), liens, licenses, assignments of interest, security interests, mergers, and explanations of transactions or other documents that record the transfer of ownership from one party to another. The USPTO can also record assignments for applications, patents, and trademarks. By submitting these various documents, the individual, federal agency, or corporation can establish their ownership of a particular patent or trademark property.

Once a document has been recorded, it is available to the public. All recorded documents, except for those under secrecy orders or those in which the federal government has a documented interest, can be viewed by the public. The public uses these documents to conduct ownership and chain-of-title searches. The public can view these records either at the USPTO or the National Archives and Records Administration, depending on when they were recorded.

To make the recording process faster, more efficient, and more accurate, the USPTO developed the Patent and Trademark Assignment System (PTAS). This system helps automate the movement of the various documents to be recorded throughout the USPTO Assignment Division.

In order to accurately record a document and to take advantage of the speed and efficiency of the PTAS, the USPTO developed cover sheets to submit with the document to be recorded. These cover sheets capture all of the necessary data needed to accurately record the various documents.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0027.
Form Number(s): PTO–1594 and PTO–1595.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; farms; the Federal Government; and state, local or tribal governments.

Estimated Number of Respondents: 275,500 responses per year. The USPTO estimates that 27,550 Trademark Recordation Form Cover Sheets (Form PTO–1594) and 247,950 Patent Recordation Form Cover Sheets (Form PTO–1595) will be submitted per year.

Estimated Time Per Response: The USPTO estimates that it will take the public 30 minutes (.5 hours) to complete either the Trademark Recordation Form Cover Sheet (PTO–1594) or the Patent Recordation Form Cover Sheet (PTO–1595). These estimates include the time to gather the necessary information, prepare the form, and submit the completed form.

Estimated Total Annual Respondent Burden Hours: 137,750 hours per year. The USPTO estimates that the total annual burden hours will be 13,775 hours per year for Form PTO–1594 and 123,975 hours per year for Form PTO–1595.

Estimated Total Annual Respondent Cost Burden: $34,713,000 per year. Using the professional hourly rate of $252 per hour for associate attorneys in private firms, the USPTO estimates $3,471,300 per year for salary costs associated with respondents using Form PTO–1594, and $31,241,700 per year for salary costs associated with respondents using Form PTO–1595.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Trademark Recordation Form Cover Sheet	30	27,550	13,775
Patent Recordation Form Cover Sheet	30	247,950	123,975
Total		275,500	137,750

Estimated Total Annual Nonhour Respondent Cost Burden (includes capital start-up costs and filing fees): $11,020,000 per year. The filing cost for submitting a Trademark Recordation Form Cover Sheet is $40 for the first property, for a minimum total of $1,102,000 per year, and for submitting a Patent Recordation Form Cover Sheet is $40 per property, for a minimum total of $9,918,000 per year. However, the total filing cost for a Trademark Recordation Cover Sheet or a Patent Recordation Cover Sheet varies according to the number of properties involved in each submission. When submitting a Trademark Recordation Form Cover Sheet, the customer must pay the processing fee of $40 as indicated by 37 CFR 2.6(b)(6) for recording the first property in a document and $25 for each additional property in the same document. When submitting a Patent Recordation Form Cover Sheet, the customer must pay the processing fee of $40 as indicated by 37 CFR 1.21(h) for recording each property in a document.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 12, 2001.

Susan K. Brown,

Acting Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 01–26381 Filed 10–19–01; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Federal Advisory Committee for Air Force Academy Academic and Institutional Programs

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meeting of the Federal Advisory Committee for Air Force Academy Academic and Institutional Programs. The purpose of this meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy. Certain sessions of these meetings will be closed to the public.

DATES: November 16–17, 2001.

ADDRESSES: USAF Academy, 2304 Cadet Drive, Colorado Springs, CO 80840–5002.

FOR FURTHER INFORMATION CONTACT: Major Steve Sandridge or Ms. Sue Christensen, Development and Alumni Programs Division, HQ USAFA/XPA, 2304Cadet Drive, Suite 303, USAF Academy, Colorado Springs, CO 80840–5002, (719) 333–3668.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–26544 Filed 10–19–01; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant Beta LaserMike, Inc., a company having its headquarters in Dayton, Ohio, an exclusive license in any right, title and interest the Air Force has in U.S. Patent No. 5,895,927, entitled, "Electro-Optic, Noncontact, Interior Cross-Section Profiler."

A license for this patent will be granted unless a written objection is received within 15 days from the date of publication of this Notice. Information concerning this Notice may be obtained from Mr. William H. Anderson, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304, Arlington, VA 22209–2310. Mr. Anderson can be reached at 703–588–5090/5091 or by fax at 703–588–8037.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–26545 Filed 10–19–01; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comment son the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 21, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10202, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 16, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.
Title: Consolidated State Performance Report and State Self-Review.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 14, 452; Burden Hours; 134,768.

Abstract: This information collection package contains two related parts: the Consolidated State Performance Report (CSPR) and the State Self-Review (SSR). The Elementary and Secondary Education Act (ESEA), in general, and its provision for submission of consolidated plans, in particular (see section 14301 of the ESEA), emphasize the importance of cross-program coordination and integration of federal programs into educational activities carried out with state and local funds. States would use both instruments for reporting on activities that occur during the 2000–2001 school year and, if the ESEA, when reauthorized, does not become effective for the 2001–2002 school year, for that year as well. The proposed CSPR request most of the same information as in 1999–2000, with a few modifications to cover new programs and new emphases. The proposed SSR deletes several questions from the previous version and has no new information requests. When the ESEA is reauthorized the Department intends to work actively with the public to revise the content of these documents and develop an integrated information collection system that responds to the new law, uses new technologies, and better reflects how federal programs help to promote state and local reform efforts.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese,

Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her internet address *Katy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–26481 Filed 10–19–01; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by October 26, 2001. Interested persons are invited to submit comments on or before November 21, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Cristal Thomas, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10202, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address CAThomas@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 16, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs.

Type of Review: Reinstatement.

Title: Federal Perkins/NDSL Loan Assignment Form.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions; Individuals or household; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 21,262.

Burden Hours: 10,631.

Abstract: This form is used to collect pertinent data regarding defaulted student loans from institutions participating in the Federal Perkins Loan Program. The ED Form 553 serves as the transmittal document in the assignment of such defaulted loans to the Federal government for collection from postsecondary institutions.

Additional Information: Burden has been reduced due to the hard work of the community with the Department this last Spring.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–26482 Filed 10–19–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–254 and EA–255]

Application To Export Electric Energy; Aquila Energy Marketing Corporation and Aquila, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Aquila Energy Marketing Corporation (AEM) and Aquila, Inc. (ILA) have applied to transfer AEM's authority to export electric energy from the United States to Mexico and to Canada, pursuant to section 202(e) of the Federal Power Act, to ILA.

DATES: Comments, protests or requests to intervene must be submitted on or before November 21, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 23, 2001, the Department of Energy (DOE) issued Order Nos. EA–147–B and EA–148–B granting authority to AEM to export electric energy from the United States to Mexico and to Canada, respectively, through August 23, 2006, AEM and ILA have now applied to transfer AEM's export authority from AEM to ILA. The applicants request that the voluntary transfer be effective on the date of the liquidation of AEM and its merger into ILA. The applicants will provide the DOE with notice of completion of the liquidation and merger.

AEM, a Delaware corporation with its principal place of business in Kansas City, Missouri, is a wholly-owned subsidiary of ILA, formerly Aquila Energy Corporation, which in turn is

80% owned by UtiliCorp United Inc. ("UtiliCorp") and 20% owned by the public. AEM is currently authorized to do business in all states in which it operates. AEM does not own or control any electric generation or transmission facilities nor does it have a franchised service area. UtiliCorp owns and operates transmission facilities in the United States through its operating divisions. AEM is engaged in the marketing of power as both a broker and as a marketer of electric power at wholesale. AEM purchases the power that it sells from cogeneration facilities, federal power marketing agencies, electric utilities and exempt wholesale generators.

ILA is a Delaware corporation with its principal place of business in Kansas City, Missouri. AEM is a subsidiary of ILA. ILA is 80% owned by UtiliCorp and 20% owned by the public. ILA is restructuring its trade entities. AEM will be liquidated and merged into ILA. Upon completion of the liquidation and merger, ILA will engage in power marketing activities.

In FE Docket No. EA–254, ILA proposes to export electric energy to Mexico and to arrange for the delivery of those exports to Mexico over the international transmission facilities owned by San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national utility of Mexico. In FE Docket No. EA–255, ILA proposes to export electric energy to Canada and to arrange for the delivery of those exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by ILA has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the ILA applications to export electric energy to Mexico and/or Canada should be clearly marked with Docket EA–254 and/or Docket EA–255, respectively. Additional copies are to be filed directly with Kevin Fox, Senior Vice President and General Manager, Aquila Energy Marketing Corporation, 1100 Walnut Street, Suite 3300, Kansas City, Missouri 64106 *and* Kathryn A. Flaherty, Blackwell Sanders Peper Martin, 13710 FNB Parkway, Suite 200, Omaha, Nebraska 68154.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy homepage at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on October 16, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–26515 Filed 10–19–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2756–000]

Camden Cogen, L.P.; Notice of Issuance of Order

October 16, 2001.

Camden Cogen, L.P. (Camden Cogen) submitted for filing a rate schedule under which Camden Cogen will engage in wholesale electric power and energy transactions at market-based rates. Camden Cogen also requested waiver of various Commission regulations. In particular, Camden Cogen requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Camden Cogen.

On September 13, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Camden Cogen should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Camden Cogen is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Camden Dogen's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 30, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

David P. Boergers,

Secretary.

[FR Doc. 01–26494 Filed 10–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2765–000]

Cedar Brakes II, L.L.C.; Notice of Issuance of Order

October 16, 2001.

Cedar Brakes II, L.L.C. (Cedar Brakes) submitted for filing a rate schedule under which Cedar Brakes will engage in wholesale electric power and energy transactions at market-based rates. Cedar Brakes also requested waiver of various Commission regulations. In particular, Cedar Brakes requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Cedar Brakes.

On September 13, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Cedar Brakes should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Cedar Brakes is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Cedar Brakes' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 30, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–26495 Filed 10–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2562–000 and ER01–2562–001]

Competitive Energy Services, LLC; Notice of Issuance of Order

October 16, 2001.

Competitive Energy Services, LLC (CES) submitted for filing a rate schedule under which CES will engage in wholesale electric power and energy transactions at market-based rates. CES also requested waiver of various Commission regulations. In particular, CES requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by CES.

On September 20, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-East, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CES should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, CES is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CES's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 30, 2001:

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–26493 Filed 10–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–19–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 16, 2001.

Take notice on that October 10, 2001, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Thirtieth Revised Sheet No. 7 and Thirtieth Revised Sheet No. 8, with a proposed effective date of November 1, 2001.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission (Columbia) under its Rate Schedule FSS. The costs of the above referenced storage service comprise the rates and charges payable under ESNG's respective Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26503 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–004]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 16, 2001.

Take notice that on September 28, 2001, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to be effective October 1, 2001:

Original Sheet No. 10A

MRT states that the purpose of the filing is to reflect the implementation of a new negotiated rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26500 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–613–001]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 16, 2001.

Take notice that on October 10, 2001, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective October 26, 2001:

Substitute Second Revised Sheet No. 278–C
Substitute Original Sheet No. 278–D

Northwest states that the purpose of this filing is to clarify that under the proposal submitted by Northwest in this proceeding on September 27, 2001, a shipper that wishes to exercise a right of first refusal will not be required to match a negotiated rate bid that exceeds Northwest's maximum base tariff rate or a five-year term in order to retain its capacity.

Northwest states that it has served a copy of this filing upon all parties on the service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26502 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2799–000]

Poquonock River Funding, L.L.C.; Notice of Issuance of Order

October 16, 2001.

Poquonock River Funding, L.L.C. (PRF) submitted for filing a rate schedule under which PRF will engage in wholesale electric power and energy transactions at market-based rates. PRF also requested waiver of various Commission regulations. In particular, PRF requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by PRF.

On September 13, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-East, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PRF should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, PRF is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably

necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PRF's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 30, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–26496 Filed 10–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–20–000]

Portland Natural Gas Transmission System; Notice of Tariff Filing of Annual Charge Adjustment

October 16, 2001.

Take notice that on October 11, 2001, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, 1st Rev Original Sheet No. 100 . The proposed effective date of this revised tariff sheet is October 1, 2001.

PNGTS states that, pursuant to Section 154.402 of the Commission's regulations and Section 17 of the General Terms and Conditions of its tariff, it is filing the referenced tariff sheet to reflect implementation of the Annual Charge Adjustment surcharge of $0.0022 per Dth. PNGTS states further that it is filing this tariff sheet within 10 days of receipt of its bill for the Annual Charge Adjustment.

PNGTS states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 23, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26504 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–000, et al.]

Notice of Filing of Offer of Settlement and Motion To Intervene Out-of-Time

October 15, 2001.

San Diego Gas & Electric Company, Complainant v. Sellers of Energy and Ancillary Service Into Markets Operated by the California IndependentSystem Operator Corporation and the California Power Exchange Corporation, Respondents.

Investigation of Practices of the California Independent System Operator and the California Power Exchange; Coral Power, L.L.C., Enron PowerMarketing, Inc., Arizona Public Service Company, Cargill Alliant,LLC, San Diego Gas & Electric Company, Avista Energy, Inc.,Sempra Energy Trading Corp., PacifiCorp, and ConstellationPower Source v. California Power Exchange Corporation; Salt River Project Agricultural Improvement and Power District and Sacramento Municipal UtilityDistrict v. California Power Exchange Corporation, Public Service Company of New Mexico v. California Power Exchange Corporation.

On October 5, 2001, the Official Committee of Participant Creditors (the Committee) of the California Power Exchange Corporation (CalPX) filed, under the provisions of Rule 602(d)(2) of the Commission's Rules of Practice and Procedure, an Offer of Settlement of Issues Affecting the California Power Exchange Corporation. The Offer of Settlement, among other things, proposes a methodology to account for the nonpayments by Pacific Gas & Electric Company and Southern California Edison Company and their impact on CalPX, the California Independent System Operator Corporation (CalISO), and participants in CalPX and CalISO markets. The Committee's filing also includes a motion to intervene out-of-time in Docket Nos. EL0–95–000 and EL00–98–000 and all related subdockets. The Committee also moves to intervene out-of-time in three proceedings relating to accounting issues under CalPX's tariff: EL01–36–000, EL01–37–000, and EL01–43–000.

The Committee also requests expedited consideration and approval of the Offer of Settlement, but has not requested a shortened comment period. Therefore, pursuant to Rule 602(f)(2) of the Commission's Rules of Practice and Procedure, comments on the Offer of Settlement are to filed on or before October 25, 2001. Reply comments shall be filed on or before November 5, 2001. Pursuant to Rule 213(d)(1) of the Commission's Rules of Practice and Procedure, any answers to the Committee's motion to intervene out-of-time shall be filed on or before October 20, 2001.

David P. Boergers,

Secretary.

[FR Doc. 01–26492 Filed 10–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–521–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

October 16, 2001.

Take notice that on October 11, 2001, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 114, to be effective December 1, 2001.

Trailblazer states that this tariff sheet was filed in compliance with the Commission's Letter Order issued in the referenced docket on September 26, 2001.

Trailblazer states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP01–521.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26501 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–036]

TransColorado Gas Transmission Company; Notice of Compliance Filing

October 16, 2001.

Take notice that on October 10, 2001, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Thirty-Sixth Revised Sheet No. 21 and Ninth Revised Sheet No. 22A, to be effective October 10, 2001.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000. The tendered tariff sheets propose to revise TransColorado's Tariff to reflect a new negotiated-rate contract.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26499 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–006]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

October 16, 2001.

Take notice that on October 1, 2001, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing copies of the executed service agreements that contain a negotiated rate under Rate Schedule FT applicable to Phase 1 of the MarketLink Expansion Project between Transco and various MarketLink customers.

Transco states that the purpose of the filing is to comply with filing requirements specified in the Commission's Order issued December 13, 2000, "Order Amending Certificate and Denying Request for Stay" which required Transco, among other things, to file, not less than 30 days nor more than 60 days prior to the commencement of service on Phase 1 of the MarketLink Project, the negoitated rate agreements or tariff sheets reflecting the essential elements of its negotiated rate agreements. The effective date of these negoitated rate agreements is November 1, 2001.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 23, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26498 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2825–001, et al.]

PSEG Services Corporation, et al. Electric Rate and Corporate Regulation Filings

October 15, 2001.

Take notice that the following filings have been made with the Commission:

1. PSEG Services Corporation

[Docket No. ER01–2825–001]

Take notice that on August 15, 2001, PSEG Services Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) a supplement to its August 8, 2001 filing submitting Service Agreement covering sale of capacity and energy to Bethlehem Steel Corporation (Bethlehem) pursuant to PSEG Wholesale Power Market-Based Sales Tariff now on file with the Commission (Docket No. 99–3151–000, approved October 1, 1999).

Copies have been sent to the New Jersey Board of Public Utilities.

Comment date: October 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Cambridge Electric Light Company

[Docket No. ER02–43–000]

Take notice that on October 4, 2001, Cambridge Electric Light Company (Cambridge Electric) tendered for filing with the Federal Energy Regulatory Commission (Commission) a non-firm point-to-point transmission service agreement between Cambridge Electric and H.Q. Energy Services (U.S.) Inc. (HQUS). Cambridge Electric states that the service agreement sets out the transmission arrangements under which Cambridge Electric will provide non-firm point-to-point transmission service to HQUS under Cambridge Electric's open access transmission tariff accepted for filing in Docket No. ER01–2291–001. Cambridge Electric requests waiver of the Commission's thirty day notice requirement in order to allow the service agreement to become effective on August 1, 2001.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services, Inc.

[Docket No. ER01–2730–001]

Take notice that on October 10, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed with the Federal Energy Regulatory Commission (Commission), Amendment No. 1 to the Agreement for Network Integration Transmission Service and Complementary Services between the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (SEPA), and SCS, as agent for Southern Companies, under Southern Companies' Open Access Transmission Tariff, as directed by the Commission's letter order dated September 25, 2001. This compliance filing is made to conform to the requirements of FERC Order No. 614, Designation of Electric Rate Schedule Sheets, 65 FR 18,221 (2000), FERC Stats. & Regs. 31,096 (2000). The Agreement is designated First Revised Service Agreement FERC No. 415 under the Open Access Transmission Tariff of the Southern Companies.

Comment date: October 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Electric Company

[Docket No. ER02–44–000]

Take notice that on October 4, 2001, Commonwealth Electric Company (Commonwealth) tendered for filing with the Federal Energy Regulatory Commission (Commission) a non-firm point-to-point transmission service agreement between Commonwealth and H.Q. Energy Services (U.S.) Inc. (HQUS). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to HQUS under Commonwealth open access transmission tariff accepted for filing in Docket No. ER01–2291–001. Commonwealth requests waiver of the Commission's thirty day notice requirement in order to allow the service agreement to become effective on August 1, 2001.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Ameren Services Company

[Docket No. ER02–45–000]

Take notice that on October 4, 2001, Ameren Services Company (ASC) tendered for filing with the Federal Energy Regulatory Commission (Commission) Service Agreements for Firm Point-to-Point Transmission Services between ASC and Ameren Energy, Inc. and ASC and Reliant Energy Services, Inc. (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER02–46–000]

Take notice that on October 4, 2001, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission) an Interconnection Agreement by and between Con Edison and the Power Authority of the State of New York, dated as of August 1, 2001. Con Edison seeks an effective date for the agreement of August 1, 2001.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Aquila Long Term, Inc.

[Docket No. ER02–47–000]

Take notice that on October 4, 2001, Aquila Long Term, Inc. (Aquila Long Term), an indirect wholly owned subsidiary of Aquila, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission) a rate schedule to engage in sales at market-based rates. Aquila Long Term included in its filing a proposed code of conduct.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER02–48–000]

Take notice that on October 4, 2001, Carolina Power & Light Company (CP&L) of Raleigh, North Carolina tendered for filing with the Federal Energy Regulatory Commission (Commission) under the provisions of Section 205 of the Federal Power Act, First Revised Sheet No. 84 in substitution of Original Sheet No. 84 to its First Revised Rate Schedule No. 134 for the provision of electric generation service by CP&L to the North Carolina Electric Membership Corporation (NCEMC). The filing has the effect of eliminating CP&L's 12 kV delivery point at the Louisburg 115 kV substation. In its filing, CP&L also asked for permission to waive the delivery point termination charges that would be owned by NCEMC under Article 7.6.2 of the rate schedule.

CP&L has also asked the Commission to allow its proposed rate schedule change to become effective as of October 8, 2001.

Copies of the filing were served upon NCEMC, Wake Electric Membership Corporation and the state commissions of North Carolina and South Carolina.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company

[Docket No. ER02–49–000]

Take notice that on October 4, 2001, Commonwealth Edison Company (ComEd) submitted for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreement for Network Integration Transmission Service (Service Agreement) and associated Network Operating Agreement (Operating Agreement) between ComEd and Exelon Energy (Exelon) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 1, 2001, and accordingly requests waiver of the Commission's notice requirements. A copy of this filing has been sent to Exelon.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER02–50–000]

Take notice that on October 4, 2001, Commnwealth Edison Company (ComEd) submitted for filing with the Federal Energy Regulatory Commission (Commission) two Firm Point-To-Point Transmission Service Agreements (Service Agreements) between ComEd and Wisconsin Electric Power Company (WEPCO) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 1, 2001, and accordingly requests waiver of the Commission's notice requirements. A copy of this filing has been sent to WEPCO.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Alliance Energy Services Partnership

[Docket No. ER02–51–000]

Take notice that on October 5, 2001, pursuant to Section 35.15 of the Commission's regulations, Alliance Energy Services Partnership (AESP) submitted for filing with the Federal Energy Regulatory Commission (Commission) a notice of cancellation of its Rate Schedule FERC No. 1 and Rate Schedule FERC No. 2.

AESP has requested an effective date for the proposed rate schedule cancellation of October 4, 2001. Accordingly, AESP requests waiver of the 60-day prior notice requirement.

Comment date: October 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER02–52–000]

Take notice that on October 5, 2001, Carolina Power & Light Company (CP&L) filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, an executed Interconnection and Operation Agreement between CP&L and Dominion Person, Inc.

Comment date: October 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Pennsylvania Electric Company

[Docket No. ER02–53–000]

Take notice that on October 5, 2001, Pennsylvania Electric Company (doing business as GPU Energy) submitted for filing with the Federal Energy Regulatory Commission (Commission) a Generation Facility Interconnection Agreement between Pennsylvania Electric Company d/b/a GPU Energy and Somerset Windpower LLC.

Comment date: October 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Cleco Power LLC

[Docket No. ER02–54–000]

Take notice that on October 9, 2001, Cleco Power LLC (Cleco Power), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Substitute Original Sheet No. 4 to Cleco Power's FERC Electric Tariff, Original Volume No. 2. Cleco Power also gave notice that the following service agreements of Cleco Utility Group Inc., that were canceled effective May 29, 2001, will not be refiled as Cleco Power Service Agreements because service is no longer being provided under them:

T2S2
T2S3
T2S4
T2S5
T2S6
T2S7
T2S8
T2S10
T2S11
T2S12
T2S13
T2S15
T2S17
T2S19
T2S21
T2S22
T2S23

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER02–55–000]

Take notice that on October 9, 2001, the New England Power Pool (NEPOOL) Participants Committee filed notification with the Federal Energy Regulatory Commission (Commission) requesting that the effective date of membership in NEPOOL of EmPower Energy, LLC (EmPower) be deferred until the first day of the calendar month following final regulatory approval permitting EmPower to participate in the NEPOOL Control Area as a load aggregator.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Bangor Hydro-Electric Company

[Docket No. ER02–56–000]

Take notice that on October 9, 2001, Bangor Hydro-Electric Company tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of its Firm Point-to-Point Transmission Service Agreement (Service Agreement No. 31 of Tariff Volume No. 1) with Beaver Wood Joint Venture to be effective April 30, 2001.

Copies of the filing were served upon the affected purchaser, Beaver Wood Joint Venture, the Maine Public Utilities Commission, and Maine Public Advocate.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Aquila Energy Marketing Corporation

[Docket No. EC02–1–000]

Take notice that on October 4, 2001, Aquila Energy Marketing Corporation (AEMC), filed with the Federal Energy Regulatory Commission (Commission) an application for approval pursuant to section 203 of the Federal Power Act and section 33 of the Commission's regulations of the internal transfer of certain power sales and purchase agreements to its wholly owned subsidiary Aquila Long Term, Inc. and for the transfer of AEMC's ownership of Aquila Long Term, Inc., to AEMC's parent Aquila, Inc. AEMC has asked the Commission to approve the Application within forty-five days of filing.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Commonwealth Atlantic Limited Partnership and Commonwealth Atlantic Power LLC

[Docket No. EC02–2–000]

Take notice that on October 9, 2001, Commonwealth Atlantic Limited Partnership and Commonwealth Atlantic Power LLC filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of an indirect transfer of an approximately 50.04995 percent ownership interest in Commonwealth Atlantic Limited Partnership to Commonwealth Atlantic Power LLC. Commonwealth Atlantic Limited Partnership owns a 310 MW generating facility. The jurisdictional facilities transferred consist of books and records, Commonwealth Atlantic Limited Partnership's market-based rate tariff and related contracts, and the interconnection equipment associated with the generating facility.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Elwood Energy LLC

[Docket No. EG01–338–000]

Take notice that on August 1, 2001, Elwood Energy LLC (Elwood) filed with

the Federal Energy Regulatory Commission (Commission) an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Upon completion of the Mergers, Elwood will own, in addition to the generation facilities it owned before the Mergers, those generation facilities formerly owned by Elwood II and Elwood III, all of which previously have been determined by the Commission to eligible facilities in connection with its orders determining Elwood, Elwood II and Elwood III to be exempt wholesale generators. Elwood also will own interconnection facilities, including generator leads, step up transformers and associated circuit breakers, used solely for interconnection with the transmission system of Commonwealth Edison Company.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26505 Filed 10–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of Exemption and Removal of Dam, and Soliciting Comments, Motions to Intervene, and Protests

October 16, 2001.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Surrender of Exemption.

b. *Project No:* 7118–007.

c. *Date Filed:* September 10, 2001.

d. *Applicant:* State of Maine, Department of Marine Resources (Maine DMR).

e. *Name of Project:* Smelt Hill Hydroelectric Project.

f. *Location:* The Smelt Hill Dam is located on the Presumpscot River in the town of Falmouth, Cumberland County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas Squires, Director, Stock Enhancement Division, Maine DMR, 21 State House Station, Augusta, ME 04333, (207) 624–6348.

i. *FERC Contact:* Any questions concerning this notice should be addressed to Paul Friedman at (202) 208–1108; e-mail: paul.friedman@ferc.fed.us.

j. *Deadline for filing comments, motions, or protests:* November 16, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Commission, 888 First Street, NE., Washington, DC. 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the Project No. (7118–007) on any comments or motions filed.

k. Description of Project and Proposed Action: The Smelt Hill development consists of a dam, powerhouse and feeder canal, gatehouse, two fish passage structures, and a reservoir. A flood in 1996 damaged portions of the dam, the hydroelectric generating facility, and the hydraulic fish lift, rendering them inoperable. In September 2001, the Maine DMR acquired the Smelt Hill dam and associated facilities, with the intent of removing the dam to restore the aquatic ecosystem of the lower Presumpscot River. The dam would be removed by the U.S. Army Corps of Engineers.

l. Locations of this application: Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

David P. Boergers,

Secretary.

[FR Doc. 01–26497 Filed 10–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

October 17, 2001.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552b:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: October 24, 2001, 10 a.m.

Place: Room 2c, 888 First Street, NE., Washington, DC 20426.

Status: Open.

Matters To Be Considered: Agenda.

* **Note.**— Items listed on the agenda may be deleted without further notice.

Contact Person for More Information: David P. Boergers, Secretary, Telephone (202) 208–0400, For a Recording Listing Items Stricken From or Added to the Meeting, Call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

777th—Meeting, October 24, 2001, Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–2, 000, Legislative Matters

A–3.
Docket# AD02–3, 000, Customer Matters

A–4.

Docket# AD02–4, 000, Reliability, Security and Market Operations

Miscellaneous Agenda

M–1.
Reserved

Markets, Tariffs and Rates—Electric

E–1.
Docket# EX02–1, 000, Discussion of RTO Developments in the Northeast
Other#s RT01–99, 000, Regional Transmission Organizations
RT01–2, 000, PJM Interconnection, L.L.C., AlleghenyElectric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities Inc.
RT01–98, 000, PJM Interconnection, L.L.C. and Allegheny Power
RT01–95, 000, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc. and Rochester Gas & Electric Corporation
RT01–86, 000, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company, Vermont Electric Power Company and ISO New England Inc.

E–2.
Docket# EX02–2, 000, Discussion of RTO Developments in the Southeast
Other#s RT01–100, 000, Regional Transmission Organizations
RT01–74, 000, GridSouth Transco, LLC, Carolina Power & Light Company, Duke Energy Corporation and South Carolina Electric & Gas Company
RT01–34, 000, Southwest Power Pool, Inc.
RT01–75, 000, Entergy Services, Inc.
RT01–77, 000, Southern Company Services, Inc.

E–3.
Docket# EX02–3, 000, Discussion of RTO Developments in the Midwest
Other#s RT01–87, 000, Midwest Independent TransmissionSystem Operator, Inc., Alliance Companies, Ameren Corporation on behalf of: Union Electric Company and Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, Consumers Energy and Michigan Electric Transmission Company, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corp. on behalf of: American Transmission Systems, Inc., The Cleveland ELectric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, The Detroit Edison Company, International Transmission Company and Virginia Electric and Power Company
ER01–123, 000, Midwest Independent Transmission System Operator, Inc., Alliance Companies, Ameren Corporation on behalf of: Union Electric Company and Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, Consumers Energy and Michigan Electric Transmission Company, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corp. on behalf of: American Transmission Systems, Inc., The Cleveland ELectric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, The Detroit Edison Company, International Transmission Company and Virginia Electric and Power Company
ER01–780, 000, Midwest Independent Transmission System Operator, Inc., Alliance Companies, Ameren Corporation on behalf of: Union Electric Company and Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, Consumers Energy and Michigan Electric Transmission Company, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corp. on behalf of: American Transmission Systems, Inc., The Cleveland ELectric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, The Detroit Edison Company, International Transmission Company and Virginia Electric and Power Company
ER01–966, 000, Midwest Independent Transmission System Operator, Inc., Alliance Companies, Ameren Corporation on behalf of: Union Electric Company and Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, Consumers Energy and Michigan Electric Transmission Company, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corp. on behalf of: American Transmission Systems, Inc., The Cleveland ELectric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, The Detroit Edison Company, International Transmission Company and Virginia Electric and Power Company
ER99–3144, 000, Midwest Independent Transmission System Operator, Inc., Alliance Companies, Ameren Corporation on behalf of: Union Electric Company and Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, Consumers Energy and Michigan Electric Transmission Company, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corp. on behalf of: American Transmission Systems, Inc., The Cleveland ELectric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, The Detroit Edison Company, International Transmission Company and Virginia Electric and Power Company
EC99–80, 000, Midwest Independent Transmission System Operator, Inc., Alliance Companies, Ameren Corporation on behalf of: Union Electric Company and Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of:

Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, Consumers Energy and Michigan Electric Transmission Company, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corp. on behalf of: American Transmission Systems, Inc., The Cleveland ELectric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, The Detroit Edison Company, International Transmission Company and Virginia Electric and Power Company
EL01–80, 000, National Grid USA

E–4.
Docket# AD01–2, 000, Discussion of Western Infrastructure Adequacy Conference

E–5.
Docket# RM01–12, 000, Electricity Market Design and Structure

E–6.
Docket# ER01–2922, 000, New England Power Pool

E–7.
Docket# ER01–2967, 000, New York Independent System Operator, Inc.

E–8.
Omitted

E–9.
Docket# ER01–2994, 000, Arizona Public Service Company

E–10.
Docket# ER01–2984, 000, Cinergy Services, Inc.

E–11.
Docket# ER01–2977, 000, American Electric Power Service Corporation
Other#s ER01–2658, 000, American Electric Power Service Corporation
ER01–2980, 000, American Electric Power Service Corporation

E–12.
Docket# ER01–2985, 000, Commonwealth Edison Company

E–13.
Docket# ER01–3001, 000, New York Independent System Operator, Inc.

E–14.
Docket# ER01–3009, 000, New York Independent System Operator, Inc.
Other#s EL00–90, 000, Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.
ER01–3153, 000, New York Independent System Operator, Inc.

E–15.
Docket# ER01–3014, 000, PJM Interconnection L.L.C.

E–16.
Docket# ER01–3026, 000, American Electric Power Service Corporation

E–17.
Docket# ER01–3022, 000, Cinergy Services, Inc.

E–18.
Docket# ER01–3086, 000, ISO New England Inc.

E–19.
Docket# EL00–95, 034, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
Other#s EL00–98, 038, Investigation of Practices of the California Independent System Operator and the California Power Exchange

E–20.
Docket# ER01–1639, 000, Pacific Gas and Electric Company

E–21.
Docket# ER01–2685, 000, PacifiCorp Power Marketing, Inc.

E–22.
Omitted

E–23.
Docket# ER97–1523, 066, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
Other#s OA97–470, 061, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
ER97–4234, 059, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool

E–24.
Docket# EC01–145, 000, EME Homer City Generation L.P.
Other#s EL01–110, 000, EME Homer City Generation L.P.

E–25.
Docket# ER01–2163, 001, American Electric Power Service Corporation

E–26.
Docket# EL01–93, 001, Mirant Americas Energy Marketing, L.P., Mirant New England, LLC, Mirant Kendall, LLC and Mirant, LLC v. ISO New England Inc.

E–27.
Omitted

E–28.
Omitted

E–29.
Omitted

E–30.
Docket# EL01–124, 000, Calpine Eastern Corporation, Mirant Americas Energy Marketing, LP, Mirant New England, LLC, Mirant Kendall, LLC, Mirant Canal, LLC and FPL Energy, LLC v. ISO New England, Inc.
Other#s ER01–2559, 001, ISO New England, Inc.
ER01–2559, 002, ISO New England, Inc.

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP01–613, 000, Northwest Pipeline Corporation
Other#s RP01–613, 001, Northwest Pipeline Corporation

G–2.
Docket# RP01–612, 000, ANR Pipeline Company

G–3.
Omitted

G–4.
Docket# RP96–389, 031, Columbia Gulf Transmission Company

G–5.
Docket# RP96–389, 032, Columbia Gulf Transmission Company

G–6.
Docket# RP02–5, 000, TransColorado Gas Transmission Company

G–7.
Docket# GT01–35, 000, ANR Pipeline Company

G–8.
Omitted

G–9.
Docket# RP01–626, 000, Dominion Transmission, Inc.

G–10.
Docket# PR01–16, 000, Bridgeline Holdings, L.P.

G–11.
Docket# PR01–17, 000, Raptor Natural Pipeline LLC

G–12.
Docket# RP97–406, 032, Dominion Transmission, Inc.
Other#s RP01–74, 007, Dominion Transmission, Inc.

G–13.
Docket# RP00–223, 005, Northern Natural Gas Company

G–14.
Docket# IS01–33, 000, Alpine Transportation Company

G–15.
Docket# RP00–399, 003, National Fuel Gas Supply Corporation
Other#s RP00–399, 004, National Fuel Gas Supply Corporation
RP00–399, 005, National Fuel Gas Supply Corporation
RP01–2, 001, National Fuel Gas Supply Corporation

G–16.
Docket# GT01–25, 001, ANR Pipeline Company

G–17.
Docket# RP01–232, 002, Northwest Pipeline Corporation

G–18.
Docket# RP01–246, 002, Natural Gas Pipeline Company of America

G–19.
Docket# RP99–301, 029, ANR Pipeline Company

G–20.
Docket# RP99–301, 030, ANR Pipeline Company

G–21.
Docket# MG01–29, 000, Pine Needle LNG Company LLC

G–22.
Docket# MG01–28, 000, Vector Pipeline, L.P.

G–23.
Docket# RP01–539, 000, Texas Gas Transmission Corporation

G–24.
Docket# RP01–624, 000, Gulf South Pipeline Company, LP

Energy Projects—Hydro

H–1.
Docket# HB61–93–11, 004, Public Service Company of New Hampshire, CHI Energy, Inc. and Essex Hydro Associates

H–2.
Docket# P–11871, 001, Symbiotics, L.L.C.
Other#s P–11884, 002, City of Twin Falls, Idaho

H–3.
Docket# DI98–2, 001, Alaska Power & Telephone Company

H–4.
Omitted

H–5.
Docket# P–4204, 025, City of Batesville, Arkansas
Other#s P–4659, 027, Independence County, Arkansas
P–4660, 029, Independence County, Arkansas

H–6.
Docket# P–1962, 000, Pacific Gas & Electric Company
Other#s P–1962, 028, Pacific Gas & Electric Company

Energy Projects—Certificates

C–1.
Docket# CP01–79, 000, ANR Pipeline Company

C–2.
Docket# CP01–389, 000, Transcontinental Gas Pipe Line Corporation

C–3.
Docket# CP01–69, 000, Petal Gas Storage, L.L.C.
Other#s CP01–69, 001, Petal Gas Storage, L.L.C.

C–4.
Docket# CP01–444, 000, Calypso Pipeline, LLC

C–5.
Docket# CP01–87, 001, Dominion Transmission, Inc.

C–6.
Docket# CP01–106, 001, Kern River Gas Transmission Company

C–7.
Docket# CP01–70, 001, Columbia Gas Transmission Corporation
Other#s CP01–70, 002, Columbia Gas Transmission Corporation

C–8.
Docket# CP01–31, 002, Kern River Gas Transmission Company
Other#s CP01–31, 000, Kern River Gas Transmission Company
CP01–31, 001, Kern River Gas Transmission Company

C–9.
Docket# CP01–49, 001, Northwest Pipeline Corporation
Other#s CP01–49, 000, Northwest Pipeline Corporation

C–10.
Docket# CP01–141, 001, PG&E Gas Transmission Northwest Corporation

C–11.
Docket# CP01–97, 001, Nornew Energy Supply Inc. and Norse Pipeline, L.L.C.

David P. Boergers,
Secretary.
[FR Doc. 01–26666 Filed 10–18–01; 12:17 pm]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7088–1]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the ComprehensiveEnvironmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Double Eagle Refinery site, Oklahoma City, Oklahoma with the parties referenced in the Supplementary Information portion of this Notice.

The settlement requires the settling de minimis parties to pay a total of $3,323,666 as payment of past response costs to the Hazardous Substances Superfund, and a total of $73,022.90 to the U.S. Department of the Interior Natural Resource Damage Assessment and Restoration Fund. The settlement includes a covenant not to sue pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before November 21, 2001.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–6713. Comments should reference the Double Eagle Refinery Superfund Site, Oklahoma City, Oklahoma and EPA Docket Number 6–07–01, and should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: Pamela J. Travis,1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–8056.

SUPPLEMENTARY INFORMATION:

Adcor Drilling, Inc.
AT&T Corporation
Browning-Ferris Industries
Cato Oil & Grease Company
Conoco Chemical Company
Cooper Industries, Inc. (Demco)
Defense Logistic Agency
Dresser Titan
General Electric
Groendyke Transport
Hertz Truck Rental
Huffy Corporation
Jack Cooper Transport
Mobil Chemical
National Beef Packing
Northwest Transformer
OCT Equipment
Oklahoma City Freightliner Inc.
Oklahoma Gas & Electric
Penske Truck Leasing (Feld)
Rheem Manufacturing Company
Rural Electric Co-Operative
Ryder Truck Rental (and Wilco)
Scrivner, Inc.
Southwest Electric Co.
Tinker Air Force Base
Truckstops Corporation of America
Turner Brothers Trucking
The Western Company
Wolverine Tube Inc.

Dated: September 27, 2001.

Lynda F. Carroll,
Acting Regional Administrator, Region 6.
[FR Doc. 01–26530 Filed 10–19–01; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket 95–59; DA 01–2323]

Preemption of Local Zoning Regulations of Satellite Earth Stations

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission invites interested parties to update the record pertaining to petitions for reconsideration filed with respect to the rules adopted by the Commission in the Report and Order in IB Docket No.

95–59. This *Public Notice* seeks comment on this additional issue.

DATES: Comments may be filed on or before November 21, 2001; reply comments may be filed on or before December 3, 2001.

ADDRESSES: Electronic comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via Internet to *http://www.fcc.gov/e-file/ecfs.html*. All other filings must be sent to Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Rm. TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Selina Khan of the International Bureau at 202–418–7282.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice* in IB Docket No. 95–59, DA0 01–2322 (released October 5, 2001).

In March of 1996, the Commission released the Report and Order and Further Notice of Proposed Rulemaking, *Preemption of Local Zoning Regulation of Satellite Earth Stations*. IB Docket No. 95–59, 61 FR 10896 (March 18, 1996) (*1996 Antenna Order*). In this Report and Order, the Commission, among other things, amended 25.104, 47 CFR 25.104 by creating a rebuttable presumption that local regulations that impose restrictions affecting the installation, use and maintenance of satellite earth station antennas one meter or less in any area or two meters or less in commercial or industrial areas were unreasonable and would be preempted. § 25.104 was subsequently further amended by the Report and Older, Preemption of local Zoning Regulation of Satellite Earth Stations, IB Docket No. 95–59, and Implementation of Section 207 of the Telecommunications Act of 1996. Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service, CS Docket No. 96–83, 61 FR 46557 (September 4, 1996) (*OTARD Order*) to eliminate provisions regarding satellite antennas that are one meter or smaller and used to receive video programming. Such antennas are covered by 47 CFR 1.4000 (OTARD Rule).

Nine petitions for reconsideration of the 1996 Antenna Order were filed requesting that the Commission revise certain aspects of § 25.104, 47 CFR 25.104. Because many of these petitions were filed some time ago, the passage of time and intervening developments may have rendered the records developed for those petitions stale. Moreover, some issues raised in petitions for reconsideration may have become moot or irrelevant in light of intervening events, including Commission amendment of § 1.4000, 47 CFR 1.4000, to apply to antennas used to transmit as well as receive both video and non-video services.[1]

For these reasons, the International Bureau requests that parties that filed petitions for reconsideration concerning § 25.104 following the release of the 1996 Antenna Order identify issues from that order that remain unresolved now and supplement those petitions, in writing, to indicate which findings and rules they still wish to be reconsidered. To the extent that intervening events have materially altered the circumstances surrounding filed petitions or the relief sought by filing parties, those entities may refresh the record with new information or arguments related to their original filings that they believe to be relevant to the issues. The previously filed petitions will be deemed withdrawn and will be dismissed if parties do not indicate in writing an intent to pursue their respective petitions for reconsideration. The refreshed record in the § 25.104 proceeding will enable the Commission to undertake appropriate and expedited reconsideration of its rules. The OTARD Order and the OTARD Rule are not the subject of this Public Notice inviting petitions for reconsideration.

Procedural Matters

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, and 1.419, interested parties may file Supplemental Comments, limited to the issues addressed in this *Public Notice*, no later than November 21, 2001. Supplemental Reply Comments must be filed no later than December 3, 2001. In view of the tendency of this proceeding, we expect to adhere to the schedule set forth in this *Public Notice* and do not contemplate granting extensions of time. Comments should reference IB Docket No. 95–59 and should include the FCC number shown on this *Public Notice*. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[2] Comments filed through the ECFS can be sent as an electronic file via Internet to http://www.fcc.gov/e-file/ecfs.html. In completing the transmittal screen, parties responding should include their full name, mailing address, and the applicable docket number, IB Docket 95–59. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas. Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Rm. TW–A325, Washington, DC 20554. One copy of all comments should also be sent to the Commission's copy contractor. Copies of all filings are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Washington, DC 20554, telephone 202–857–3800, facsimile 202–857–3805.

In the *Part 100 Notice*, the Commission presented an Initial Regulatory Flexibility Analysis,[3] as required by the Regulatory Flexibility Act (RFA).[4] If commenters believe that the proposals discussed in this Public Notice require additional RFA analysis, they should include a discussion of these issues in their Supplemental Comments.

For *ex parte* purposes, this proceeding continues to be a "permit-but-disclose" proceeding, in accordance with § 1.1200(a) of the Commission's rules, 47 CFR 1.1200(a) and is subject to the requirements set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26512 Filed 10–19–01; 8:45 am]

BILLING CODE 6712–01–P

[1] Promotion of Competitive Networks in Local Telecommunications Markets, Report and Order, 15 FCC Rcd 22983 (2000).

[2] *See* Electronic Filing of Documents in Rulemaking Proceeding, 63 FR 24121 (May 1, 1998).

[3] *Part 100 Notice*, 13 FCC Rcd at 6907.

[4] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 5, 2001.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Albert V. Schulze, and Michelle A. Schulze, both of Orwigsburg, Pennsylvania; to acquire voting shares of Union Bancorp, Inc., Pottsville, Pennsylvania, and thereby indirectly acquire voting shares of Union Bank and Trust Company Pottsville, Pennsylvania.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Elizabeth L. Kirch, Moorhead, Minnesota; to acquire voting shares of State Bancshares of Ulen, Inc., Dilworth, Minnesota, and thereby indirectly acquire voting shares of The Northwestern State Bank of Ulen, Ulen, Minnesota.

Board of Governors of the Federal Reserve System, October 16, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26479 Filed 10–19–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 2001.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Dakota Bancshares, Inc., Mendota Heights, Minnesota; to acquire 100 percent of the voting shares of The Midway National Bank of St. Paul, St. Paul, Minnesota.

Board of Governors of the Federal Reserve System, October 16, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26480 Filed 10–19–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Public Comment on AHRQ's Evidence-based Practice Program

AGENCY: The Agency for Healthcare Research and Quality (AHRQ), DHHS.

ACTION: Request for public comments.

SUMMARY: AHRQ will issue a Request for Proposals (RFP) in December 2001, to continue its Evidence-based Practice Centers Program (EPC Program). Prior to release of the RFP, AHRQ invites comments from interested parties about the EPC Program with respect to: (a) What has worked well; (b) What has not worked well; (c) What changes and improvements could be made.

AHRQ also is interested in suggestions about new opportunities. For example, what steps might AHRQ take to encourage more healthcare organizations and other relevant groups to translate EPC evidence reports into clinical practice guidelines? What steps might AHRQ take to expand the number of performance measures, educational curricula, and other quality enhancement tools derived from EPC evidence reports? How might AHRQ better track implementation of the evidence-based tools and measures derived from EPC evidence reports, that impact on patient outcomes and quality of care? Are there information technology systems that AHRQ might utilize to broaden clinician access to and use of EPC products?

DATES: To be considered for incorporation in the planned RFP, comments must be received by Friday, November 9, 2001. Comments should be sent to Jacqueline Besteman via e-mail (preferred) *jbstema@ahrq.gov;* or fax number: 301–594–4027.

FOR FURTHER INFORMATION CONTACT: Jacqueline Besteman, J.D., M.A., Director, EPC Program, Center for Practice and Technology Assessment, AHRQ, 6010 Executive Blvd., Suite 300, Rockville, MD 20852; Phone: (301) 594–4017; Fax: (301) 594–4027; E-mail: *jbestema@ahrq.gov*

SUPPLEMENTARY INFORMATION:

Background

AHRQ is the lead Federal agency for enhancing the quality, appropriateness, and effectiveness of healthcare services and access to such services. In carrying out this mission, AHRQ conducts and funds research that develops and presents evidence-based information on healthcare outcomes, quality, cost, use and access. Included in AHRQ's legislative mandate is support of syntheses and wide-spread dissemination of scientific evidence, including dissemination of methods or systems for rating the strength of scientific evidence. These research findings and syntheses assist providers, clinicians, payers, patients, and policymakers in making evidence-based decisions regarding the quality and effectiveness of health care.

In June 1997, AHRQ established the Evidence-based Practice Center Program (EPC Program) to better respond to significant changes within the health care industry. AHRQ became a science partner with private and public-sector organizations in their efforts to improve the quality, effectiveness and appropriateness of clinical practice. AHRQ awarded 5-year contracts to 12 institutions and designated them as Evidence-based Practice Centers (EPCs). Since 1997, the EPCs have conducted more than 80 systematic reviews and analyses of scientific literature on a wide spectrum of topics, incorporating

the results and conclusions into evidence reports and technology assessments (visit AHRQ's website *www.ahrq.gov* for Summaries of EPC reports).

EPC evidence reports and technology assessments have been used by systems of care, professional societies, health plans, public and private purchasers, States, and other entities, as a scientific foundation for development and implementation of their own clinical practice guidelines, clinical pathways, review criteria, performance measures, and other clinical quality improvement tools, as well as for formulation of evidence-based policies related to specific health care technologies.

The objectives of the upcoming second competition for the EPC Program (EPC II) are: (1) Continuation of the methodologically rigorous systematic reviews and analyses of scientific literature on clinical, organizational, and financing systems topics; (2) updating or prior EPC reports; (3) supporting EPC methodologies assistance to professional organizations and others, to facilitate translation of the evidence reports into quality improvement tools, educational programs, etc.; and (4) expanded EPC methods and implementation research.

The EPC Program in an essential component of AHRQ's resources for evidence-based systematic reviews, analyses, and research. AHRQ intends that evidence reports, technology assessments, and research, flowing from EPC II will be more useful to a broader array of stakeholders—consumers, providers, employers, policymakers—and be more rapidly available. AHRQ invites your comments and suggestions on how to achieve these EPC Program goals.

Dated: October 15, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–26476 Filed 10–19–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of Unsolicited Proposal

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of Fiscal Year 2001 funds in the amount of $42,140 for a one-year research grant entitled "International Pooled Analysis of Lead-Exposed Cohorts." The recipient is Children's Hospital Research Foundation, Division of General Pediatrics, 3333 Burnet Avenue, Cincinnati, Ohio 45229–3039. Performance Period: September 30, 2001 through September 29, 2002.

This grant addresses the "Healthy People 2010" focus area of Environmental Health. The purpose of the program is to examine lead-associated cognitive deficits below 10 µg/dL.

B. Where To Obtain Additional Information

To obtain business management technical assistance, contact: Sharron Orum, Lead Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2716, FAX: (770) 488–2777, Email address: *spo2@cdc.gov.*

For program technical assistance, contact: Pamela Meyer, Epidemiologist, Division of Environmental Hazards and Health Effects, Air Pollution and Respiratory Health Branch, National Center for Environmental Health, Centers for Disease Control and Prevention, Executive Park, Building 6, Room 1043, Mailstop E–17, Atlanta, GA 30333, Telephone number: (770) 498–1015, FAX: (770) 498–1088, Email address: *PMeyer@cdc.gov.*

Dated: October 16, 2001.

Rebecca B. O'Kelley,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 01–26518 Filed 10–19–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02007]

State Implementation Projects for Preventing Secondary Conditions and Promoting the Health of People With Disabilities; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for cooperative agreements for State implementation projects for preventing secondary conditions and promoting the health of persons with disabilities. This program addresses the Healthy People 2010 focus area of Disability and Secondary Conditions.

The purpose of this program is to support States in preventing secondary conditions in persons with disabilities and in implementing effective health promotion and wellness programs for persons with disabilities.

This announcement is comprised of three levels of cooperative agreements:

Level I—Full State Implementation Projects with Intervention and Evaluation Components. The purpose of this Level is to sustain and expand support for States having already established CDC programs, provide the resources to build upon achievements and effective collaborations now in place, and allow States to immediately implement intervention programs to address the documented needs of targeted populations. Level I awards will also provide a mechanism to permit States to offer on-site guidance and consultation to other State projects to accelerate their development and capacity to also prevent secondary conditions and promote the health of people with disabilities. Level I projects are expected to implement targeted interventions during the first budget year.

Level II—State Implementation Projects. The purpose of this Level is: (1) To allow currently funded States that may not meet the comprehensive requirements for a Level I award to continue to develop their State Plan, advisory, program management, disability surveillance, partnering, health promotion, and intervention planning functions to advance toward a Full State Implementation Project; and (2) to allow States not currently funded that have an advanced capacity to also address and achieve the program status and operational components noted above, and expressed under the Recipient Activities listed in this announcement. Level II projects should have the capacity to implement targeted interventions within the project period based on established or developed capacity.

Level III—State Infrastructure Development Projects. The purpose of this Level is to provide States not currently funded with the resources to develop the infrastructure necessary, and build the capacity to meet the comprehensive requirements and components of a State implementation project over time. These States should aspire to demonstrate performance that could later form the basis for consideration for additional funding based on the achievement of program goals and objectives. Funding for Level III projects is designed to develop State infrastructure, and the short-term implementation of intervention activities is not required.

B. Eligible Applicants

Assistance will be provided to the health departments of States or their bona fide agents or designees, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Agencies applying under this announcement other than the official health department must provide written concurrence from that health agency and describe the proposed collaborative relationship. Under that circumstance, the role of the official State health agency must be shown to be complementary, collaborative, and demonstrate clearly defined programmatic commitments and obligations.

Only one application from each State or Territory may be submitted for each Level. The agency determined to be the applicant for the State may apply for more than one Level of funding under the eligibility requirements for each. Once that agency is determined, no other agency within that State can submit an application for any other Level of funding. However, a complete and separate application must be submitted from that same applicant agency/entity based on the program requirements and evaluation criteria for that component (Level) of this announcement. Only one award will be issued per State.

States are considered the most appropriate applicants since the national goals of this program include developing capacity in all States and their delivery systems to monitor, characterize, and improve the health of people with disabilities and prevent secondary conditions.

Three levels of cooperative agreements will be awarded:

Level I: Eligible applicants for Level I funding are States currently funded under CDC Program Announcement Number 97030, Disability and Health State Programs.

To be eligible, applicants for Level I must also provide:

a. The State Plan for Disability and Health. The Plan must be established and published, and being utilized at the State level for the planning, implementation and tracking of program activities.

b. An established and functioning disability and health advisory component of which at least 30 percent of the members are people with disabilities. A listing of the advisory committee membership with their areas of expertise and interest is to be provided and certified by the committee/council chairperson, with an indication only as to the number within that group who have a disabling condition.

Documentation to determine eligibility for Level I must begin on the first page of the application narrative. Applications that fail to submit evidence listed above will be considered non-responsive and will be returned without review. A copy of the State Plan and the composition and function statement of the Advisory Council must be provided as attachments to the application.

Level II: Eligible applicants for Level II funding are all States, Tribes and Territories regardless of their current CDC Disability and Health Program funding status.

Level III: Eligible applicants for Level III funding are States, Tribes and Territories not currently funded by CDC under the Disability and Health Program.

The funding Level being requested must be clearly stated on the cover sheet of the application. A one page abstract of the proposed project should be included immediately after the table of contents.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $5,000,000 will be available in FY 2002 to fund State implementation projects.

Level I: CDC anticipates making 4–6 awards which will not exceed $450,000 each.

Level II: CDC anticipates making 4–6 awards which will not exceed $300,000 each.

Level III: CDC anticipates making 6–10 awards which will not exceed $140,000 each.

Level I State awards are expected to begin on April 1, 2002, for a twelve month budget period within a project period of up to five years.

Level II and Level III State awards are also expected to begin on April 1, 2002, for a 12-month budget period within a project period of up to three years.

Funding estimates are subject to change. Continuation awards within the approved project period will be made on the basis of satisfactory progress, reports, and the availability of funds.

Use of Funds

These awards may be used for personnel services, supplies, equipment, travel, subcontracts, consultants, and services directly related to project activities. Funds may not be used to supplant State or local funds for the purpose of this cooperative agreement, for construction costs, to lease or purchase space or facilities, or for patient care.

By virtue of accepting an award, States are understood to have agreed to use cooperative agreement funds for travel by project staff selected to participate in CDC-sponsored workshops, and for meetings requiring out-of-state travel.

This program has no statutory matching requirement; however applicants should demonstrate and document capacity to support a portion of project costs, increase cost-sharing over time, and identify other funding sources for expanding the project.

Conference Call

CDC will conduct a conference call on November 7, 2001 with prospective applicants to answer questions regarding this announcement. If you wish to participate, contact by e-mail the official noted for Program Technical Assistance in the "Where to Obtain Additional Information" section of this announcement. You will be informed by return e-mail as to the time, telephone number, and pass code for that call. You are encouraged to provide advance questions that will be part of the general discussion during the call.

D. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for activities under 1. Recipient Activities, and CDC will be responsible for activities listed under 2. CDC Activities.

1. Recipient Activities for Level I projects:

a. Implement a disability and health program that is recognized within the State health department or other award agency that is visible to the population of persons with disabilities in the State and their support network.

b. Develop an operational work plan with a structured evaluation component for the first two years of the project that includes objectives, methods, benchmark time frames for accomplishment of objectives, outcomes, and staff responsibilities for specific tasks.

c. Support existing state advisory activities related to review and refinement of the State Plan, development of initiatives and objectives, and program evaluation.

d. Implement the State Plan for disability and health through: (1) Collaborating with other entities that provide services to, or advocate for people with disabilities; (2) continuing existing university partnerships and expand relationships with other institutions that sponsor disability-related programs; (3) providing assistance and curriculum guidance to service providers and educational programs that impact the lives of persons with disabilities; (4) refining existing mechanisms for computerized communications and information systems including web sites and linkages; (5) providing technical assistance to key collaborators and partners; and (6) fostering systems change to make existing health promotion efforts inclusive of people with disabilities.

e. Extend the planning process through State-sponsored Healthy People 2010 objectives or other instruments that require accountability and progress reporting.

f. Effect the collection of data using survey questions from the Behavioral Risk Factor Surveillance System (BRFSS) related modules and other survey instruments.

g. Develop and implement health promotion programs and intervention initiatives (based on or indicated by existing disability survey data or State administrative data) to work with defined populations.

h. Establish and implement a plan to evaluate the efficacy and effectiveness of the selected interventions.

i. Disseminate health promotion and secondary condition prevention information through innovative marketing plans.

j. Plan, co-sponsor, conduct, and evaluate a statewide disability and health conference by not later than the close of the second budget year.

k. Provide mentoring and training support to Level II and III State projects as a model for program operations and replication.

Recipient Activities for Level II and Level III projects: Note that items (a) through (f) relate to activities for both Level II and III applicants. Item (g) below relates only to Level II applicants.

a. Establish the organizational location and focus for the project within the applicant agency and engage key collaborators (e.g., disability service organizations, advocacy and voluntary groups, universities) in the design and attainment of program goals and objectives.

b. Expand or develop an advisory function comprised of key partners representing the disability community that can contribute to policy and planning functions. At least 30 percent of the advisory membership must have a disabling condition.

c. Promote and help develop strategic planning instruments that will influence State-level public health and health promotion activities such as Healthy People 2010 objectives.

d. Collect and analyze data using survey questions in the BRFSS or other survey instruments.

e. Investigate and document the feasibility of gaining access to or obtaining information from administrative data within the State to plan and implement activities to prevent secondary conditions and improve the health of people with disabilities to which the data relate.

f. Disseminate health promotion information through diverse and innovative marketing plans.

g. Plan, implement and evaluate over the project period health promotion interventions related to Chapter 6 objectives in Healthy People 2010 or the leading health indicators for people with disabilities.

2. CDC Activities:

a. Provide scientific and programmatic technical assistance as requested or indicated in the planning and conduct of disability data collection, communications, and health promotion activities.

b. Provide a point of referral and coordination for State, regional and/or national data pertinent to the disabling process.

c. Provide assistance to States in regard to BRFSS, or other survey-based sources of data, and assist in the analysis of the resulting information.

d. Facilitate coordination with other federal statistical research and data resources.

e. Assist State projects in their development of program evaluation measures and processes.

E. Application Content

Letter of Intent

A non-binding letter of intent is requested from prospective applicants. The letter should not exceed one page. It should identify the announcement number, name the proposed project director, and denote the funding Level being proposed. This letter will allow CDC to determine the amount of interest in the announcement, to plan the review more efficiently, and to ensure that each applicant receives timely and relevant information prior to the application submission date.

Application Content

Use the information in the Program Requirements, Application Content, Other Requirements, and Evaluation Criteria to develop the application. The application will be evaluated and scored on the criteria listed, so it is important to follow them in laying out your program plan. Potential applicants are directed to the Program Guidance, Attachment II, that is pertinent to this announcement and available on the "CDC Funding Opportunities" Web site at *http://www.cdc.gov/od/pgo/funding/02007.htm*

For Level I applications, the narrative should be no more than 55 double-spaced pages, printed on one side, with one-inch margins, and 12 point font.

For Level II and III applications, the narrative should not be more than 50 double-spaced pages printed on one side, with one-inch margins, and 12 point font.

In all cases, the budget justification and human subjects narrative does not count against the maximum page length.

Applications must be held together only by rubber bands or metal clips and not be bound together in any other way. Attachments to the application should be held to a minimum in keeping to those items referenced or required by this Announcement.

Within the narrative, Level I applicants should provide the following information:

1. Document performance in current project activities including a progress report that re-states major objectives from the past two budget years and clearly indicates project performance in meeting those specific objectives.

2. Indicate how the State Plan and Advisory Functions are contributing to the design of the proposed work plan and how they will be used to advance and support project activities.

3. Provide accounts of how the project is assuring the inclusion of persons with disabilities within agency services and functions, and how the applicant agency is promoting the health of persons with disabilities.

4. Furnish descriptions of the epidemiologic capacity structure in place to coordinate and promote data collection and analysis including the BRFSS, other state data sources, selected administrative data sets, and with university partners. Describe how the applicant will assess the reliability and validity of epidemiological data collected and used for policy development and intervention planning.

5. Discuss the foundation and rationale for selecting the specific population(s) for health promotion and intervention programs and its congruence with Healthy People 2010 goals and objectives, health disparities, or leading health indicators for people with disabilities.

6. Identify the specific intervention design(s) proposed based on a justification that includes empirical support of the effectiveness of the proposed program in improving health and/or environmental outcomes for the selected population. Provide evidence that such support consists of documentation from research literature or credible evaluations conducted by the applicant or other investigators.

7. Provide a time interval-based graphic flowchart covering the first two years. Include the methods proposed for specific major objective attainment.

8. Denote the responsibilities of individual staff members including the level of effort and time allocation for each proposed major activity by staff position. This includes the capacity to appoint a full-time program manager/coordinator to provide oversight responsibility for the entire project.

9. Describe how the applicant will assess changes in public policy and measure the effects of its technical assistance to communities and targeted groups.

10. Denote the specific organizations that will provide services in support of the applicant's work plan, and how those services will be delivered and evaluated.

11. Describe the specific health promotion, outreach, and intervention programs proposed and how and by whom they will be implemented and evaluated.

Within the narrative, Level II and Level III applicants should provide the following information:

1. Provide background information as to why the applicant has elected to submit an application, denote the current status of disability and health programs in the state, and describe your understanding of the need for this program in the State. Include the extent of the problem, available services and support resources, at-risk groups, knowledge gaps, and the use of this award in meeting such needs.

2. Provide justification for emphasizing select populations or the sub-group of disabling conditions to be targeted by the applicant.

3. Discuss the collaborations proposed with principal partners in the conduct of the project, such as a formal university alliance that will have an impact on the capacity of the State to mount or improve efforts in health promotion and the prevention of secondary conditions.

4. Describe the roles and responsibilities of working partners denoting the products and services to be provided.

5. Outline the process for developing or completing a formal State Plan for the prevention of secondary conditions and promoting the health of people with disabilities, and describe the role of a new or existing advisory function to aid in that effort and in other assigned responsibilities.

6. Furnish descriptions of the epidemiologic capacity structure in place or proposed to coordinate and promote data collection and analysis including the BRFSS, other state data sources, selected administrative data sets, and those in conjunction with identified partners.

7. Describe the plan for how the university partnership (if selected), or collaboration with other agencies will be engaged to facilitate epidemiologic excellence toward assessing both the magnitude of disability, and the risk and protective factors related to the onset and progress of secondary conditions for the purpose of planning future health promotion priorities.

8. Describe how the applicant will assess the reliability and validity of epidemiological data collected and used for policy development and planning.

9. Provide a description of the proposed staffing for the project, and the plan to expedite filling of all positions, including the appointment of a full time program manager/coordinator.

10. Discuss the responsibilities of individual staff members including the level of effort and time allocation for each major project objective by staff position.

11. Present a graphic flowchart (i.e., Gantt chart) denoting time interval performance expectations over the first budget year.

12. Discuss how the project will measure the outcomes of proposed targeted activities (e.g., increases in public awareness, knowledge, behavior, and the overall benefits of State Planning and advisory activities) and how the project will determine the extent of changes in public policies, and measure the effects of its communications outreach directed toward communities and special populations.

13. Present how the applicant will achieve the integration of disability and health functions as a component of applicant/health agency activities, including awareness of and attention to Americans With Disabilities Act (ADA) compliance issues.

F. Submission and Deadline

Letter of Intent (LOI)

On or before November 14, 2001, submit the LOI to the Official Designated for Program Technical Assistance identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of Form PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*

On or before January 10, 2002, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications will be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

Late Applications: Applications that do not meet the criteria in a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

G. Evaluation Criteria

Applications will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Level I Applicants (Total 100 Points)

1. Documentation of Progress and Performance in Current Project: (20 Points)

a. The extent to which the applicant provides a concise indication of its progress and performance to date, and how that work will serve as a foundation for, and directly contribute to meeting the health promotion and intervention requirements specified under this announcement.

b. The extent to which the applicant provides adequate descriptions of the activities of the planning and advisory functions, and the planned use of the products of university and other

disability collaborators in working with the applicant in shaping and implementing the work plan for the new project period.

2. Integration of disability and health activities into applicant agency public health functions: (15 Points)

a. The extent to which the applicant demonstrates clear evidence of how the project's visibility and leadership are being utilized to embrace and promote the health of people with disabilities within the State by agencies that provide disability-related services and programs.

b. The extent to which the applicant provides adequate descriptions of how it has and will continue to assure that the program services and activities funded are fully accessible to persons with disabilities. This includes how the applicant is working with the State's Americans with Disabilities Act (ADA) compliance coordinator to address and facilitate access and service equality concerns.

3. Strength of established and emerging surveillance activities: (20 Points)

a. The extent to which the applicant effectively demonstrates the epidemiologic capacity and structure in place to coordinate and facilitate data collection, analysis, interpretation, and dissemination.

b. The extent to which the applicant provides adequate descriptions of how it will conduct the BRFSS, access other State disability information sources related to the population of interest such as administrative data sets; and how such data is currently being utilized.

c. The extent to which the applicant adequately describes its plan for how the university partnership or other entities will be engaged to facilitate epidemiologic excellence toward assessing the magnitude of disability, and the risk and protective factors related to the onset and progression of secondary conditions for the purpose of setting health promotion priorities.

d. The extent to which the project demonstrates its capacity to assess the reliability and validity of epidemiological data collected and used for policy development, and directed toward defined health promotion interventions.

4. Intervention planning and targeted health promotion programs toward preventing secondary conditions: (20 points)

a. The extent to which the applicant adequately presents the methods to be employed to reach the intended audience described in the narrative during the first budget year, including how progress will be tracked and measured throughout the entire project period. This criteria includes describing and defining the specific interventions proposed.

b. The extent to which the applicant adequately describes how it will engage people with disabilities and their support networks into the design and evaluation of proposed interventions and health promotion programs.

c. The extent to which the applicant provides a comprehensive approach to provide health promotion outreach programs, technical assistance, education and training, and the proposed design of a shared information and communications dissemination system.

d. The extent to which the applicant fully describes the methods, process, and project components which it will use as a basis for providing training and counseling/mentoring support to Level II and III States.

e. The extent to which the applicant fully describes a viable plan for securing necessary human subjects approvals in a timely manner prior to implementing the proposed interventions.

5. Goals, Objectives, Management and Staffing, and Evaluation Plan: (25 Points)

a. The extent to which the established project goals and objectives are specific, measurable, achievable, and time-referenced; and based on a formal work plan with descriptive methods.

b. The extent to which the organizational placement of the project assures maximum visibility and influence, and that staff responsibilities are effectively directed toward meeting project objectives.

c. The extent to which the applicant provides adequate descriptions of key staff responsibilities addressing proposed major activities.

d. The extent to which the method to evaluate and measure the process, effects, and outcomes of the elements of the total work plan is reasonable and viable over the course of the proposed project.

e. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences in prevalence, risk and protective factors, and program outcomes when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

6. Budget Justification: (Not Scored)

The budget section must provide a clear, concise, accurate and justifiable explanation of expenditures and a full itemization of line categories for Federal and non-Federal funds comprising the total budget. It also must show consistency with the project goals and objectives and all intended uses of cooperative agreement funds.

7. Human Subjects if applicable: (Not Scored)The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

Level II and Level III Applicants (100 Points)

1. Evidence of Need and Understanding of the Problem:(10 Points)

a. The extent to which the applicant provides an adequate description and understanding of the magnitude of disabilities showing evidence (as available) of estimates of prevalence, demographic indicators, severity, effect on families and caregivers, and associated costs.

b. The degree to which the applicant provides a suitable description of the extent of current activities related to disability and health, including those addressing the prevention of secondary conditions within the State.

2. Evidence of Collaboration: (20 Points)

a. The extent to which the proposed collaborations are well documented with letters of commitment conveying specific indications as to the level of involvement and material effort to be provided in support of project objectives.

b. The extent to which the applicant adequately describes the proposed or existing advisory function, including evidence of representation of persons with disabilities and their role and capacity to influence State-level policy.

c. The extent to which the applicant presents evidence that demonstrates how these collaborations will result in successful infrastructure development and expansion of the project to include planning for future health promotion interventions.

d. The extent to which the proposed approach demonstrates an effective process to develop and publish a State strategic plan with a Healthy People 2010 emphasis, and/or policy directive for the prevention of secondary conditions as a precursor to the development of the State Plan.

3. Epidemiologic Capacity: (20 Points)

a. The extent to which the application conveys the epidemiologic capacity and structure in place to coordinate and facilitate disability-related data collection, analysis, interpretation, and dissemination.

b. The extent to which the applicant adequately describes how it will conduct the BRFSS, access other State disability information sources related to the population of interest such as administrative data sets; and how such data is currently, or will be utilized.

c. The extent to which the applicant effectively describes its plan for how the university partnership or other entities will be engaged to facilitate epidemiologic excellence toward assessing the magnitude of disability, and the risk and protective factors related to the onset and progression of secondary conditions for the purpose of setting health promotion priorities.

4. Goals and Objectives and Management/Staffing Plan:(25 Points)

a. The extent to which the formal work plan includes a clear and concise presentation of project goals and objectives which are specific, measurable, achievable, and time-referenced.

b. The extent to which the organizational placement of the project assures optimal visibility and influence based on evidence provided by applicant agency leadership.

c. The extent to which the applicant provides adequate descriptions of key staff responsibilities addressing proposed major activities.

d. The extent to which the applicant effectively documents its plan to provide technical assistance, education and training, and health promotion programs; and the proposed design of a shared information and communications dissemination system.

e. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Program Evaluation: (15 Points)

a. The extent to which the applicant presents an appropriate and viable plan for the overall evaluation of the project; including the design, methods (quantitative methods as well as qualitative approaches such as focus groups), partners, and processes to be followed for conducting project evaluation.

b. The extent to which the applicant adequately outlines the methods and process by which it will self-evaluate its performance towards meeting all specified time-phased objectives.

6. Program services for persons with disabilities:(10 Points)

a. The extent to which the applicant addresses how it will assure and achieve integration of disability and health functions as an integral component of applicant/health agency services and operations.

b. The extent to which the applicant fully accounts for how it will work with the Americans with Disabilities (ADA) compliance office in the State toward promoting full access to applicant agency services and programs for persons with disabilities.

7. Budget Justification: (Not Scored)

The budget section must provide a clear, concise, accurate and justifiable explanation of expenditures and a full itemization of line categories for Federal and non-Federal funds comprising the total budget. It also must show consistency with the project goals and objectives and all intended uses of cooperative agreement funds.

8. Human Subjects—if applicable: (Not Scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semi-annual progress reports no later than 30 days after each six-month period;

2. Financial status report, no later than 90 days after the end of each budget period; and

3. Final financial report and performance report, no later than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and RacialMinorities in Research

AR–7 Executive Order 12372 Review

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301 and 317 of the Public Health Service Act, (42 U.S.C. Sections 241 and 247(b) as amended. The Catalog of Federal Domestic Assistance number is 93.184.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on Funding, then go to Grants and Cooperative Agreements.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:Nancy Pillar, Grants Management Specialist,Grants Management Branch, Procurement and Grants Office,Announcement Number 02007,Centers for Disease Control and Prevention (CDC),2920 Brandywine Road, Room 3000,Atlanta, Georgia 3034–4146,Telephone: 770–488–2721,E-mail address: *nfp6@cdc.gov*.

For program technical assistance, contact:Joseph B. Smith, Senior Project Officer,National Center on Birth Defects and Developmental, Disabilities, CDC, 4770 Buford Highway (F–35),Atlanta, Georgia 30341,Telephone: 770–488–7082,E-mail address: *jos4@cdc.gov*.

Dated: October 16, 2001.

Rebecca B. O'Kelley,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 01–26519 Filed 10–19–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Computer Matching Program (Match No. 2001–02)

AGENCY: Department of Health and Human Services (HHS), the Centers for Medicare and Medicaid Services (CMS), formerly the Health Care Financing Administration.

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces a renewal and modification for a computer matching agreement that CMS plans to conduct with the Social Security Administration (SSA). We have provided background information about the proposed matching program in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed matching program, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section below for comment period.

EFFECTIVE DATES: CMS filed a report of the computer matching program with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 16, 2001. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Lori Anderson, Health Insurance Specialist, Division of National Systems, Financial Systems and Quality Group, Center for Medicaid and State Operations, S2–11–07, CMS, 7500 Security Boulevard, N2–04–06, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–6190, or facsimile (410) 786–6730.

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 100–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in matching programs;

2. Obtain the Data Integrity Board's approval of the match agreement;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and

5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all of the computer match programs that this agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: October 12, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Computer Match No. 2001–02

NAME:

Disclosure of Skilled Nursing Facility Admission Information.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

PARTICIPATING AGENCIES:

Centers for Medicare and Medicaid Services; and the Social Security Administration.

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

Authority for matching agreement is given under sections 1611(e)(1)(A) and (B) and 1631(f) of the Social Security Act (the Act) (42 U.S.C.) 1382(e)(1)(A) and (B).

PURPOSE(S) OF THE MATCHING PROGRAM:

The primary purpose for the renewal and modification of this matching program is to identify Social Security recipients who did not report their admission to certain skilled nursing facilities as required under applicable provisions of the Act. Such admissions would subject the amount of Supplemental Security Income (SSI) that the individual could receive for any month throughout which the individual is in such a facility to a reduced benefit rate.

In addition, under the Special Veterans' Benefits (SVB) Program, certain World War II veterans may be entitled to receive a special benefit for each month they subsequently reside outside of the United States (U.S.) after April 2000. The match will be used to identify those beneficiaries who are no longer residing outside the U.S.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

SSA will furnish CMS with an electronic file on a monthly basis, extracted from SSA's "Supplemental Security Income Record," SSA/OSR 60–0103, containing identifying information on applicants for, and recipients of, SSI benefits. CMS will match the SSA file against its "Long Term Care/Minimum Data Set System," (No. 09–70–1517) system of records and disclose information on skilled nursing facilities admission dates. CMS's data will help enforce the provision of the Act which limits the amount of SSI individuals may receive in certain cases for any month throughout which an individual or his eligible spouse is in a hospital, extended care facility, nursing home, or intermediate care facility, and is receiving Medicare payments. The information provided by this match will help SSA determine if the individual has returned to the U.S., since an individual is entitled to receive SVB only when he/she resides outside the U.S.

INCLUSIVE DATES OF THE MATCH:

The Matching Program shall become effective no sooner than 40 days after the report of the matching program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 01–26489 Filed 10–19–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Computer Matching Program (Match No. 2001–03)

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice proposes to establish a CMP that CMS plans to conduct with the Social Security Administration (SSA), and the Internal Revenue Service (IRS). We have provided background information about the proposed matching program in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed matching program, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section below for comment period.

EFFECTIVE DATES: CMS filed a report of the Computer Matching Program with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 16, 2001. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

ADDRESS: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: John A. Albert, Health Insurance Specialist, Division of Benefits Coordination, Benefits Operations Group, Center for Medicare Management, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–7457.

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (Title 5 United States Code (U.S.C.) 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 100–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in matching programs;

2. Obtain the Data Integrity Boards approval of the match agreement;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and,

5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all of the computer matches programs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: October 11, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Computer Match No. 2001–03

Name:

Medicare Secondary Payer Program.

Security Classification

Level Three Privacy Act Sensitive.

Participating Agencies:

Centers for Medicare & Medicaid Services; Internal Revenue Service; and Social Security Administration.

Authority for Conducting Matching Program:

This Matching Program is executed pursuant to the Privacy Act of 1974 (Title 5 United States Code (U.S.C.) 552a), as amended, and OMB Appendix I, A–130, titled: *Management of Federal Information Resources.* In addition, this program implements the information matching provisions of section 6103 (1)(12) of the Internal Revenue Code (IRC)(26 U.S.C. 6103(1)(12)) and section 1862 (b)(5) of the Social Security Act (the Act) (42 U.S.C. 1395y (b) (5)).

Section 6103 (1) (12) of the IRC provides for disclosure by IRS of return information relating to taxpayer identity, filing status of the individual for any specified tax year after 1986; and if married, the identity of the spouse of the individual. Section 1862 (b)(5) of the Act provides for disclosure of the name and social security number (SSN) of each Medicare beneficiary and Medicare-eligible spouse who are identified as having received wages above the minimum level. It also provides for disclosure of the name, address, and identification number of each employer identified as providing wages above the minimum level. The minimum wage level used in this match shall be established by the Secretary of HHS prior to the match and pertains to amounts received from a qualified employer in a previous year.

Purpose(s) of the Matching Program:

The primary purpose for this matching program is to establish the conditions, safeguards, and procedures for the disclosure of information used to identify coverage in the Medicare Secondary Payer Program. CMS does not have accurate information on all Medicare beneficiaries and Medicare-eligible spouses who have medical insurance coverage that may be primary to Medicare. SSA, through information collected from employers of working-aged beneficiaries and Medicare-eligible spouses, is able to identify Medicare-eligible individuals who have primary coverage through a group health plan.

Categories of Records and Individuals Covered by the Match:

Under the terms of this matching program, the SSA will transmit to the IRS, a list of names and tax identification numbers of Medicare beneficiaries. This information is maintained in SSA's Master Beneficiary Record (MBR) System. The IRS agrees to

match MBR data against taxpayer identity information collected from individual tax returns and maintained in the IRS Individual Master File (IMF). IRS established Project 241, IMF/Medicare Beneficiary Match, to facilitate this matching program.

SSA will validate the taxpayer identity disclosed from the IMF by matching that information against the Master Files of SSN Holders (NUMIDENT). The NUMIDENT file contains records of SSNs issued to individuals by SSA. SSA will then extract employer identity information from the Earnings Recording and Self-employment Income System, referred to as the Master Earnings File. This file contains information on the starting date of employment for Medicare beneficiaries and Medicare-eligible spouses.

CMS and its agent will mail a data match questionnaire to the employers of Medicare beneficiaries or eligible spouses to verify periods of health insurance coverage and periods of employment. Instances of mistaken payments are referred to the appropriate Medicare contractor and become a part of its ongoing recovery process.

Inclusive Dates of the Match:

The Matching Program shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 01–26490 Filed 10–19–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Computer Matching Program (Match No. 2001–01)

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the establishment of a computer matching program that CMS plans to conduct with the Social Security Administration (SSA). We have provided background information about the proposed matching program in the "Supplementary Information" section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed matching program, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section below for comment period.

EFFECTIVE DATES: CMS filed a report of the Computer Matching Program with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 16, 2001. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution), Enterprise Databases Group, Office of Information Services, CMS, Mailstop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Robin Dalton, Health Insurance Specialist, Division of Data Liaison and Distribution, Enterprise Databases Group, Office of Information Services, CMS, Mailstop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–0184, or facsimile (410) 786–5636.

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law(Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits.

Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 100–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;
2. Obtain the Data Integrity Board's approval of the match agreements;
3. Furnish detailed reports about matching programs to Congress and OMB;
4. Notify applicants and beneficiaries that the records are subject to matching; and
5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all of the computer match programs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Thomas A. Scully,
Administrator.

Computer Match No. 2001–01

NAME:

Medicare Beneficiary Identification and Non-utilization Information on Social Security Recipients.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services (CMS); and the Social Security Administration (SSA).

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This Computer Matching Agreement is executed to comply with the Privacy Act of 1974 (5 U.S.C. 552a), as amended the Office of Management and Budget (OMB) Circular A–130, titled "Management of Federal Information Resources" (61 FR 6435, February 20, 1996), and OMB guidelines pertaining to computer matching (54 FR 25818, June 19, 1989).

This agreement implements the information matching provisions of sections 202 and 205 of the Social Security Act (Title 42 U.S.C. 402 and 405 (c)).

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of this agreement is to establish the conditions, safeguards, and procedures under which CMS will periodically disclose the identity of Medicare enrollees whose records have been inactive for a specific period of time (not to be less than 1 year). SSA will use the selected data as an indicator of cases that should be reviewed in order to determine continued eligibility to SSA-administered programs. Cases may be selected for review directly from the match of non-utilization of Medicare or may be used as a factor in a system to prioritize reviews. SSA's Office of Inspector General (OIG) will investigate individual cases alleging fraud, waste, and/or abuse referred to the OIG.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

SSA will furnish CMS with an electronic file containing Title II Claim Account Number and Title II Beneficiary Identification Code and any other information needed to accurately match the records. CMS will match the SSA file against its "Enrollment Database" system of records (formerly known as the Health Insurance Master Record), system No. 09–70–0502, and will disclose information on non-utilization of Medicare benefits by SSA recipients.

INCLUSIVE DATES OF THE MATCH:

The Computer Matching Program shall become effective no sooner than 40 days after the report of the matching program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 01–26491 Filed 10–19–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0175]

Agency Information Collection Activities; Announcement of OMB Approval; Survey of Single-Use Medical Device Reuse and Reprocessing in Hospitals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Survey of Single-Use Medical Device Reuse and Reprocessing in Hospitals" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 25, 2001 (66 FR 38713), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0477. The approval expires on October 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 12, 2001.

Margaret M. Dotzel,
Associate Commissioner for Policy.

[FR Doc. 01–26554 Filed 10–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1637]

Agency Information Collection Activities; Announcement of OMB Approval; Transmittal of Advertising and Promotional Labeling for Drugs and Biologics for Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Transmittal of Advertising and Promotional Labeling for Drugs and Biologics for Human Use" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 2001 (66 FR 1137), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0053. The approval expires on October 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 12, 2001.

Margaret M. Dotzel,
Associate Commissioner for Policy.

[FR Doc. 01–26555 Filed 10–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1682]

Agency Information Collection Activities; Announcement of OMB Approval; Radioactive Drug Research Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Radioactive Drug Research Committee" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 21, 2000 (65 FR 80437), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0376. The approval expires on October 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 12, 2001.

Margaret M. Dotzel,
Associate Commissioner for Policy.

[FR Doc. 01–26555 Filed 10–19–01; 8:45 am]

BILLING CODE 4160–01–S

the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–26556 Filed 10–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Wanapa Energy Center, Umatilla County, Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), with the cooperation of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), intends to gather the information necessary for preparing an Environmental Impact Statement (EIS) for the proposed lease to Wanapa Energy Center of up to 195 acres of land held in trust by the United States for the benefit of the CTUIR in Umatilla County, Oregon. The Williams Energy Marketing and Trading Company, CTUIR, the Eugene Water and Electric Board, the City of Hermiston and the Port of Umatilla intend to jointly build and operate the Wanapa Energy Center, an approximately 1,300 megawatt electric generation plant, on the property. The purpose of the proposed project is to conjointly help provide for the economic development of the CTUIR and for the power needs of the Pacific northwest. Details on the proposed project and its location are provided in the **SUPPLEMENTARY INFORMATION** section. This notice also announces public scoping meetings to identify potential issues for inclusion in the EIS, distinguish those to be analyzed in depth, and eliminate from consideration those that are not significant.

DATES: Written comments on the scope and implementation of this proposal must arrive by November 21, 2001. The public scoping meetings will be held on November 5, 2001, and November 6, 2001, from 5 to 8 p.m.

ADDRESSES: You may mail or hand carry written comments to Philip Sanchez, Superintendent, Bureau of Indian Affairs, Umatilla Agency, P.O. Box 520, Pendleton, Oregon 97801.

The November 5, 2001, public hearing will be in Pendleton, Oregon. The November 6, 2001, public hearing will be in Hermiston, Oregon. Exact locations of the hearings will be determined at a later date and can be obtained from the **FURTHER INFORMATION CONTACT** listed below.

If you would like a map displaying the proposed project location, please contact Jerry L. Lauer, Natural Resource Officer, at the above Umatilla Agency address, telephone (541) 278–3790, or e-mail *JerryLauer@bia.gov*.

FOR FURTHER INFORMATION CONTACT: Jerry L. Lauer, (541) 278–3790.

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of BIA approval of a proposed lease between Wanapa Energy Center, the lessee, and the CTUIR, the lessor, of part of Lots 1, 2, 3, and 4, the South Half of the Southwest Quarter, Section 7, Township 5 North, Range 29 East, Willamette Meridian, Umatilla County, Oregon. The property lies in western Umatilla County near McNary Dam on the Columbia River. The parties developing the Wanapa Energy Center plan to construct and operate the facility on this property.

The proposed project has several components. They include an electrical connection at or near the Bonneville Power Administration's McNary Substation; a natural gas-fired, combined cycle, combustion turbine electric generation plant; a natural gas supply pipeline; a water supply pipeline; and a new electric power transmission line. All proposed facilities would be located within Umatilla County, Oregon.

The proposed Wanapa Energy Center would be a combustion turbine, combined cycle electric power plant with a nominal generating capacity of 1,300 megawatts. It would consist of four essentially identical combustion turbine generators, four heat recovery steam generators (HRSG) and two steam turbines. Expanding gasses from combustion would turn rotors within the turbines that are connected to electric generators. The hot gases exhausted from the combustion turbines would be used to raise steam in the HRSGs. Steam from the HRSGs would be expanded through steam turbines that drive their own electric generators. The combustion turbines would be fueled by natural gas from either the existing Williams pipeline or an existing PGT pipeline. The facility would interconnect in either case through a new, approximately ten mile gas supply lateral.

Water to generate steam and cool the steam process at the plant would be supplied from the Port of Umatilla Regional Water Supply. A recirculation cooling system employing mechanically induced draft, evaporative cooling towers would be used. Water would be added to the cooling system to compensate for evaporative losses and blowdown. Blowdown is water bled from the cooling system to limit the build-up of salts.

The proposed Wanapa Energy Center would deliver electric power to the regional power grid at BPA's McNary Substation, using a new high voltage transmission line crossing property owned by the Port of Umatilla.

Public Comment Solicitation

As an alternative to submitting written comments regarding the scope of the EIS to the location identified in the **ADDRESSES** section, interested persons may instead comment via the Internet to *PhilipSanchez@bia.gov*. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. If you do not receive confirmation from the system that your Internet message was received, contact Philip Sanchez at (541) 278–3786.

Comments, including names and home addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: October 4, 2001.

Neal A. McCaleb,

Assistant Secretary, Indian Affairs.

[FR Doc. 01–26506 Filed 10–19–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–910–01–1430–HN–LRTN]

Notice of Temporary Closure of Access to Public Lands Administered by the Bureau of Land Management; Fairfax County, VA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Eastern States, is temporarily closing Meadowood Farm in Fairfax County, Virginia to public entry with the exception of those persons who board their horses at the boarding facility located on the property. This closure notice serves as a follow-up to the Planning Analysis/Environmental Assessment (PA/EA) whose Notice of Availability was published in the **Federal Register** on August 6, 2001. Section II(A) of the PA/EA stipulated that upon acquisition, Meadowood Farm would be closed to the public on an interim basis until a long-term management plan could be completed. This closure complies with the requirements of the Federal Land Policy and Management Act, that a land use plan be completed prior to acquisition of land. This is to ensure protection of resources, protection of structures and facilities, and provide for the safety of the public. The authority for this closure is found in 43 CFR 8364.1. The closure is necessary to protect soils, vegetation, cultural, wildlife and riparian resources, facilities, structure, from potential adverse effects. No recreational activities for public use exist currently except horseback riding. All new activities must undergo an Environmental Assessment to determine their levels of impact to sensitive areas, habitat, resources. It is necessary that this be done to preclude adverse impacts and unintended degradation of the property and to provide for the safety of the public until a plan is completed.

A horse boarding facility is located on the property and will, during the closure period, continue operation under a Special Recreation Permit. No new activities will be allowed until completion of a PA/EA. The main entrance to the property leading to the office will remain open to the general public. All other access will be closed except to Federal, State and local officers and bureau employees in the scope of his or her duties, contractors, consultants and their employees engaged in official duties, members of organized rescue or fire-fighting force in performance of official duties, and others with written permission from the Bureau of Land Management.

EFFECTIVE DATE: This closure goes into effect upon acquisition of the Meadowood Farm, and will remain in effect until the State Director, Eastern States determines it is no longer needed.

Location: The land commonly known as Meadowood Farm, Fairfax County, Virginia is closed to the public.

FOR FURTHER INFORMATION CONTACT: Charles Bush, Meadowood Project Manager, Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. (703) 440–1745.

Prohibited Act: Under 43 CFR 8364.1 and 8360.0–7, the Bureau of Land Management is providing notice that within the closure area described above:

You must not enter the closed area.

Exemptions: Persons who are exempt from these rules include any Federal, State or local officer or employee in the scope of his or her duties, members of any organized rescue or fire-fighting force in performance of an official duty, contractors, and their employees while engaged in official duty, and others authorized in writing by the Bureau of Land Management.

Penalties: Penalties for violating this closure notice is found in section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who fails to comply with a restriction order may be tried before a United States Magistrate and fined not more than $1,000 or imprisoned for no more than 12 months, or both.

Dated: October 4, 2001.

Gayle F. Gordon,

State Director.

[FR Doc. 01–26569 Filed 10–19–01; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–01–1610–JP–064B]

Temporary Closure of Approximately 49,300 Acres to Motorized Vehicle Use of Five Selected Areas in the Imperial Sand Dunes Recreation Management Area, Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of approximately 49,300 acres to motorized vehicle use of five selected areas in the Imperial Sand Dunes Recreation Management Area, Imperial County, California.

DATES: This temporary closure was approved September 27, 2001 and is in effect.

ADDRESSES: Bureau of Land Management, El Centro Field Office, 1661 S. 4th Street, El Centro, CA 92243.

FOR ADDITIONAL INFORMATION CONTACT: Roxie Trost, BLM, El Centro Field Office, 1661 S. 4th Street, El Centro, CA 92243, telephone (760) 337–4400. The closure is posted in the El Centro Field Office and at places near and/or within the area to which the closure applies. Maps identifying the affected areas are available at the El Centro Field Office as well as on the Bureau of Land Management (BLM) California Web site at *www.ca.blm.gov*.

SUPPLEMENTARY INFORMATION: This temporary closure is implemented pursuant to Title 43 Code of Federal Regulations (CFR) 8341.2(a). The closure was approved September 27, 2001 and will remain in effect until BLM completes and implements the Imperial Sand Dunes Recreation Management Plan (ISDRMP) now under preparation.

Exceptions to this closure include government vehicles conducting official business which shall be allowed inside the closed areas as authorized. Official business may include public service emergencies, resource monitoring/research, other dunes operations and management activities, and other actions authorized by BLM's El Centro Field Office Manager.

Notice of the proposed closure was published in the **Federal Register** June 15, 2001 (66 FR 32640).

Dated: October 12, 2001.

Greg Thomsen,

Field Manager.

[FR Doc. 01–26691 Filed 10–19–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-670-01-1610-JP-064B]

Revocation of Temporary Closure of Parts of the Imperial Sand Dunes Recreation Management Area to Off-Highway Vehicles and Other Vehicular Use in Compliance With Court-Approved Stipulations Resulting From a Lawsuit Involving the Endangered Species Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

DATES: The temporary closure implemented November 16, 2000 (65 FR 69324) is revoked upon the publication of this notice.

ADDRESSES: Bureau of Land Management, El Centro Field Office, 1661 S. 4th Street, El Centro, CA 92243

FOR ADDITIONAL INFORMATION CONTACT: Roxie Trost, BLM, El Centro Field Office, 1661 S. 4th Street, El Centro, CA 92243, telephone (760) 337-4400.

SUPPLEMENTARY INFORMATION: Revocation of temporary closure of parts of the Imperial Sand Dunes Recreation Management Area to off-highway vehicles and other vehicular use in compliance with court-approved stipulations resulting from a lawsuit involving the Endangered Species Act.

Dated: October 3, 2001.

Greg Thomsen,

Field Manager.

[FR Doc. 01-26692 Filed 10-19-01; 8:45 am]

BILLING CODE 4310-40-P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-01-036]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 25, 2001 at 11:00 a.m.

PLACE: Room 101, 500 E Street, S.W., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731-TA-919-920 (Final)(Certain Welded Large Diameter Line Pipe from Japan and Mexico)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on October 25, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on November 2, 2001.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 17, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01-26655 Filed 10-18-01; 11:06 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)-1335]

Program Announcement for Nonparticipating State Program, South Dakota

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of competitive program announcement.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (hereinafter the JJDP Act), is issuing a program announcement and solicitation for applications from nonprofit agencies operating statewide in the State of South Dakota. Because South Dakota does not participate in the JJDP Act, the State is not eligible to receive its fiscal year (FY) 1999 and FY 2000 Formula Grants program allocations under Part B of Title II of the JJDP Act, which total $1,349,000 and which are available to be competitively awarded through the Nonparticipating State Program. Eligible applicants are limited to private nonprofit agencies operating statewide that propose innovative service delivery programs designed to provide placement alternatives to existing secure confinement placements that are not consistent with the core protections of the JJDP Act. Applicants must currently be operating in the State, and their proposed programs must directly impact the core protections of the JJDP Act. Such agencies are eligible to receive assistance awards to be expended over a 2-year period. Of the total amount available, a minimum of $1,079,200 must be used by the applicant to contract with local public or private nonprofit agencies for local community-based placement alternatives to adult jails and lockups for both delinquent and status offender populations, and up to $269,800 may be retained by the applicant to manage the contracts and provide technical assistance to and coordination among the local contractors funded under the Nonparticipating State Program.

The recipient will be required to contract with Indian tribes, at a minimum, the same amount that the State of South Dakota would have been required to pass-through to tribes under section 223(a)(5)(C) of the JJDP Act ($69,995). The financial assistance provided under this program requires no matching contribution in accordance with Part C of Title II of the JJDP Act.

DATES: Applications must be received by November 21, 2001.

ADDRESSES: All application packages should be mailed or delivered to the State and Tribal Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531; 202-307-5924. (Please note that this address is different from the one listed in the 2001 *OJJDP Application Kit.*) Faxed or e-mailed applications will not be accepted. Interested applicants can obtain the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse at 800-638-8736. The *Kit* is also available on OJJDP's Web site at *http://www.ncjrs.org/pdffiles1/ojjdp/s1000480.pdf.*

FOR FURTHER INFORMATION CONTACT: Timothy S. Wight, Compliance Monitoring Coordinator, State and Tribal Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531, 202-307-5924, e-mail: *WightT@ojp.usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Purpose

The JJDP Act, as amended through 1992, establishes four core protections. The core protections are the deinstitutionalization of status offenders, removal of juveniles from adult jails and lockups, separation of juveniles and adults in institutions, and reduction of disproportionate minority confinement, where it exists. Meeting the core protections is essential to creating a fair and consistent juvenile justice system that advances an important goal of the JJDP Act: to increase the effectiveness of juvenile delinquency prevention and control. The purpose of this program is to assist South Dakota in developing a range of secure and nonsecure alternatives and revising associated policies to ensure that the core protections are met.

Background

JJDP Act Statutory Requirement

Pursuant to section 223(d) of the JJDP Act, if a State chooses not to submit a Formula Grants Program plan, fails to submit a plan, or submits a plan which does not meet the requirements of the JJDP Act, the OJJDP Administrator shall endeavor to make the Formula Grants Program fund allotment, under section 222(a) of the JJDP Act, available to private nonprofit agencies within the State. The funds must be used solely for the purpose of achieving compliance with the following JJDP Act core protections:

1. Section 223(a)(12)(A) requires that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses (other than an offense that constitutes a violation of a valid court order or a violation of section 922(x) of Title 18 or a similar State law), or alien juveniles in custody, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities.

2. Section 223(a)(13) provides that juveniles alleged to be or found to be delinquent, and those within the purview of section 223(a)(12)(A) above shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges or with the part-time or full-time security staff (including management) or direct-care staff of a (collocated) jail or lockup for adults.

3. Section 223(a)(14) provides that no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which make exceptions with regard to the detention of juveniles accused of nonstatus offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within 24 hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas that are in compliance with section 223(a)(13), above; and

a. (1) Are outside a Standard Metropolitan Statistical Area; and

(2) Have no existing acceptable alternative placement available; or

b. Are located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, so that a brief (not to exceed 48 hours) delay is excusable; or

c. Are located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

For further information and explanation of regulatory exceptions to the provisions of section 223(a)(12)(A), (13), and (14), see the OJJDP Consolidated Regulation, 28 CFR Part 31, § 31.303 (c–e) substantive requirements. Copies of the Consolidated Regulation may be obtained by contacting the Office of Juvenile Justice and Delinquency Prevention at 202-307-5924.

History

South Dakota historically has not been able to successfully address the core protections of the JJDP Act because of State laws that sanction violations, a lack of local policies that promote the coordination of available resources, and a limited number of alternative resources available to communities. South Dakota Codified Law 26-7A-26 permits apparent, alleged, or adjudicated children in need of supervision [1] 14 years of age and older to be held in an adult jail or lockup. In addition, South Dakota law defines separation from adult prisoners in an adult jail or lockup in terms of physical separation only. Finally, South Dakota Codified Law 26-8B-6 permits the commitment of an adjudicated child in need of supervision to the South Dakota Department of Corrections for placement in a juvenile correctional facility.

Because of the State's inability to address the core protections of the JJDP Act, the State of South Dakota did not submit a Formula Grants Program plan for the FY 1999 and FY 2000 Formula Grants Program allocations.

Goal

In accordance with section 223(d) of the JJDP Act, the goal of this program is to assist South Dakota in developing a range of secure and nonsecure alternatives and revising associated policies to ensure the core protections of section 223(a)(12)(A), (13) and (14) are met.

Objectives

Local jurisdictions may be using secure facilities to detain or confine juveniles in a manner inconsistent with section 223(a)(12)(A), (13), and (14). To address this, the following objectives would be met:

1. Develop local and statewide policies regarding the issues of juveniles in secure confinement consistent with section 223(a)(13) and (14) and the secure confinement of status offender juveniles in violation of section 223(a)(12)(A) of the JJDP Act.

2. Increase coordination and cooperation among juvenile justice system agencies including schools, law enforcement, prosecution, the judiciary, jails, corrections, public and private service providers, and local public interest groups. Lack of coordination and cooperation often contributes to placement of juveniles in jails and lockups in violation of section 223(a)(12)(A), (13), and (14) of the JJDP Act.

3. Create a flexible network of services and programs that is responsive to local jurisdictions' needs and capabilities. This network should focus on jurisdictions with the most difficult barriers to meeting the core protections of the JJDP Act.

4. Create alternative services that can be sustained over time with local resources including, but not limited to:

a. Availability of appropriate secure juvenile facilities for the detention of juvenile criminal-type offenders.

b. Intensive supervision in a child's home as a placement alternative and use of home detention, including electronic monitoring, when safe and appropriate.

c. Emergency foster care, shelter care, group care, and independent living arrangements.

d. Crisis intervention services, short-term residential crisis intervention programs, and nonsecure holdovers that can be used for conflict mediation, emergency holding, and provision of emergency attention for youth with physical or emotional problems.

Program Strategy

OJJDP will select one applicant from nonprofit agencies operating Statewide in the State of South Dakota and award a $1,349,000 cooperative agreement for a 2-year project period.

[1] The term "children in need of supervision" includes truancy, runaway, and other offenses "for which there is not a penalty of a criminal nature for an adult."

Eligibility Requirements

OJJDP invites applications from local public and private nonprofit agencies operating statewide in the State of South Dakota. When submitting joint applications with more than one organization, the parties must set forth their relationships in the application. As a general rule, organizations that describe their working relationship as primarily cooperative or collaborative when developing products and delivering services will be considered coapplicants. In the event of a coapplicant submission, one coapplicant must be designated the payee and, as such, will receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other coapplicant. Under this arrangement, each organization would agree to be jointly and separately responsible for all project funds and services. Each coapplicant must sign Standard Form-424, Application for Federal Assistance, and indicate its acceptance of the conditions of joint and separate responsibility with the other coapplicant.

Selection Criteria

Applicants will be evaluated and rated by a peer review panel according to the criteria outlined below.

Problem To Be Addressed (15 points)

The applicant must demonstrate a clear understanding of the core protections of the JJDP Act and the manner in which the core protections are currently being addressed or not addressed in jurisdictions throughout the State.

Goals and Objectives (15 points)

The applicant must clearly outline the specific goals and objectives to be achieved by the project. Simply restating the goals and objectives given in this solicitation is not adequate.

Project Design (30 points)

The project design must describe how the applicant will have an effect on the following:

1. State laws impacting the placement of juveniles in adult jails and lockups and status offenders and nonoffenders in secure detention or correctional facilities and the issues surrounding the removal of such juveniles from the facilities.

2. State and local jurisdictions' compliance in relation to the measurable core protections of the JJDP Act where the applicant is proposing to contract for the development of alternative placements to adult jails and lockups.

3. State legislative, judicial, and executive branch activities related to supervision and protection of status offenders and nonoffenders and jail removal.

4. The ability of the State and local jurisdictions to meet the core protections of the JJDP Act by providing community-based alternative placements to adult jails and lockups.

5. Establishment and maintenance of a working relationship between the applicant and the South Dakota Department of Corrections in order to coordinate efforts and enhance the project's statewide efforts to meet the JJDP Act core protections.

Management and Organizational Capability (30 points)

Applicants must demonstrate that they are eligible to compete for an award on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience. Applicants must concisely describe their experience with respect to the eligibility criteria. Applicants must demonstrate how their experience and capabilities will enable them to achieve the goals and objectives of this initiative.

2. Capability of Working With Other Organizations in the State. Applicants must demonstrate that they have discussed this program with local and State elected public officials or their staffs; the South Dakota Department of Corrections; key decisionmakers in the juvenile justice system such as juvenile court judges, associations of those involved in juvenile justice, the boards of public and private youth service providers; and other groups whose cooperation or participation is essential to the success of the program. The applicant must describe how it will be able to obtain the aforementioned cooperation or participation.

3. Financial Capability. OJP procedures require each private nonprofit applicant to demonstrate that its organization has or can establish fiscal controls and accounting procedures that ensure that Federal funds available under this announcement are disbursed and accounted for properly.

Budget (10 points)

The proposed 24-month budget must be complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken.

Format

The narrative portion of this application (excluding forms, assurances, and appendixes), must not exceed 25 pages and must be submitted on 8½- by 11-inch paper, double spaced on one side in a standard 12-point font. The double-spacing requirement applies to all parts of the program narrative, including any lists, bulleted items, tables, or quotations. These standards are necessary to maintain fair and uniform consideration of all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

Award Period

This project will be funded as a cooperative agreement for a 2-year budget and project period.

Award Amount

A cooperative agreement in the amount of $1,349,000 is available for the 2-year budget and project period.

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number, which is required on Standard Form 424 is 16.541. This form and other required forms and instructions are included in the 2001 *OJJDP Application Kit* available from the Juvenile Justice Clearinghouse at 800–638–8736. The *Kit* is also available on OJJDP's Web site at *http://www.ncjrs.org/pdffiles1/ojjdp/s1000480.pdf.*

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice (DOJ) is requiring applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from DOJ; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

The term "related efforts" is defined for these purposes as one of the following:

1. Efforts for the same purpose (i.e., the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).

2. Another phase or component of the same program or project (e.g., to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).

3. Services of some kind (e.g., technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All application packages must be mailed or delivered to the State and Tribal Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531; 202–307–5924. (Note that this address is different from the one listed in the 2001 *OJJDP Application Kit.*) Faxed or e-mailed applications will not be accepted.

Note: *In the lower left-hand corner of the envelope, applicants must clearly write "Nonparticipating State Program, South Dakota."*

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on November 21, 2001.

Contact

For further information, contact Timothy S. Wight, Compliance Monitoring Coordinator, State and Tribal Assistance Division, 202–307–5924, or send an e-mail inquiry to WightT@ojp.usdoj.gov.

Dated: October 16, 2001.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 01–26539 Filed 10–19–01; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1336]

Program Announcement for Nonparticipating State Program, Wyoming

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of competitive program announcement.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (hereinafter the JJDP Act), is issuing a program announcement and solicitation for applications from nonprofit agencies operating statewide in the State of Wyoming. Because Wyoming does not participate in the JJDP Act, the State is not eligible to receive its fiscal year (FY) 1998, FY 1999, and FY 2000 Formula Grants program allocations under Part B of Title II of the JJDP Act, which total $1,851,050 [1] and which are available to be competitively awarded through the Nonparticipating State Program. Eligible applicants are limited to private nonprofit agencies operating statewide that propose innovative service delivery programs designed to provide placement alternatives to existing secure confinement placements that are not consistent with the core protections of the JJDP Act. Applicants must currently be operating in the State, and their proposed programs must directly impact the core protections of the JJDP Act. Such agencies are eligible to receive assistance awards to be expended over a 2-year period. Of the total amount available, a minimum of $1,480,840 must be used by the applicant to contract with local public or private nonprofit agencies for local community-based placement alternatives to adult jails and lockups for both delinquent and status offender populations, and up to $370,210 may be retained by the applicant to manage the contracts and provide technical assistance to and coordination among the local contractors funded under the Nonparticipating State Program.

The recipient will be required to contract with Indian tribes, at a minimum, the same amount that the State of Wyoming would have been required to pass-through to tribes under section 223(a)(5)(C) of the JJDP Act ($23,049). The financial assistance provided under this program requires no matching contribution in accordance with Part C of Title II of the JJDP Act.

DATES: Applications must be received by November 21, 2001.

ADDRESSES: All application packages should be mailed or delivered to the State and Tribal Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531; 202–307–5924. (Please note that this address is different from the one listed in the 2001 *OJJDP Application Kit.*) Faxed or e-mailed applications will not be accepted. Interested applicants can obtain the 2001 *OJJDP Application Kit* from the Juvenile Justice Clearinghouse at 800–638–8736. The *Kit* is also available at OJJDP's Web site at *http://www.ncjrs.org/pdffiles1/ojjdp/s1000480.pdf.*

FOR FURTHER INFORMATION CONTACT: Timothy S. Wight, Compliance Monitoring Coordinator, State and Tribal Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531, 202–307–5924, e-mail: *WightT@ojp.usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Purpose

The JJDP Act, as amended through 1992, establishes four core protections. The core protections are the deinstitutionalization of status offenders, removal of juveniles from adult jails and lockups, separation of juveniles and adults in institutions, and reduction of disproportionate minority confinement, where it exists. Meeting the core protections is essential to creating a fair and consistent juvenile justice system that advances an important goal of the JJDP Act: To increase the effectiveness of juvenile delinquency prevention and control. The purpose of this program is to assist Wyoming in developing a range of secure and nonsecure alternatives and revising associated policies to ensure that the core protections are met.

Background

JJDP Act Statutory Requirement

Pursuant to section 223(d) of the JJDP Act, if a State chooses not to submit a Formula Grants Program plan, fails to submit a plan, or submits a plan which does not meet the requirements of the JJDP Act, the OJJDP Administrator shall endeavor to make the Formula Grants Program fund allotment, under section 222(a) of the JJDP Act, available to private nonprofit agencies within the State. The funds must be used solely for the purpose of achieving compliance with the following JJDP Act core protections:

1. Section 223(a)(12)(A) requires that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses (other than an offense that constitutes a violation of a valid court order or a violation of section 922(x) of Title 18 or a similar State law), or alien juveniles in custody, or such nonoffenders as dependent or neglected children, shall not be placed in secure

[1] State allocations of $650,000 (FY 1998), $649,000 (FY 1999), and $648,000 (FY 2000) minus $95,950 which has been awarded directly to the Wyoming Department of Family Services for the support of the activities of the Wyoming State Advisory Group Council on Juvenile Justice.

detention facilities or secure correctional facilities.

2. Section 223(a)(13) provides that juveniles alleged to be or found to be delinquent, and those within the purview of section 223(a)(12)(A) above shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges or with the part-time or full-time security staff (including management) or direct-care staff of a (collocated) jail or lockup for adults.

3. Section 223(a)(14) provides that no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which make exceptions with regard to the detention of juveniles accused of nonstatus offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within 24 hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas that are in compliance with section 223(a)(13), above; and

a. (1) Are outside a Standard Metropolitan Statistical Area; and

(2) Have no existing acceptable alternative placement available; or

b. Are located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, so that a brief (not to exceed 48 hours) delay is excusable; or

c. Are located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

For further information and explanation of regulatory exceptions to the provisions of section 223(a)(12)(A), (13), and (14), see the OJJDP Consolidated Regulation, 28 CFR part 31, § 31.303 (c–e) substantive requirements. Copies of the Consolidated Regulation may be obtained by contacting the Office of Juvenile Justice and Delinquency Prevention at 202–307–5924.

History

Wyoming historically has not been able to successfully address the core protections of the JJDP Act due to State laws that sanction violations, a lack of local policies that promote the coordination of available resources, and a limited number of alternative resources available to communities. Due to the State's inability to address the core protections of the JJDP Act, the State of Wyoming did not submit a Formula Grants Program plan for the FY 1998, FY 1999 and FY 2000 Formula Grants program allocations.

Goal

In accordance with section 223(d) of the JJDP Act, the goal of this program is to assist Wyoming in developing a range of secure and nonsecure alternatives and revising associated policies to ensure the core protections of section 223(a)(12)(A), (13) and (14) are met.

Objectives

Local jurisdictions may be using secure facilities to detain or confine juveniles in a manner inconsistent with section 223(a)(12)(A), (13), and (14). To address this, the following objectives would be met:

1. Develop local and statewide policies regarding the issues of juveniles in secure confinement consistent with section 223(a)(13) and (14) and the secure confinement of status offender juveniles in violation of section 223(a)(12)(A) of the JJDP Act.

2. Increase coordination and cooperation among juvenile justice system agencies including schools, law enforcement, prosecution, the judiciary, jails, corrections, public and private service providers, and local public interest groups. Lack of coordination and cooperation often contributes to placement of juveniles in jails and lockups in violation of section 223(a)(12)(A), (13), and (14) of the JJDP Act.

3. Create a flexible network of services and programs that is responsive to local jurisdictions' needs and capabilities. This network should focus on jurisdictions with the most difficult barriers to meeting the core protections of the JJDP Act.

4. Create alternative services that can be sustained over time with local resources including, but not limited to:

a. Availability of appropriate secure juvenile facilities for the detention of juvenile criminal-type offenders.

b. Intensive supervision in a child's home as a placement alternative and use of home detention, including electronic monitoring, when safe and appropriate.

c. Emergency foster care, shelter care, group care, and independent living arrangements.

d. Crisis intervention services, short-term residential crisis intervention programs, and nonsecure holdovers that can be used for conflict mediation, emergency holding, and provision of emergency attention for youth with physical or emotional problems.

Program Strategy

OJJDP will select one applicant from nonprofit agencies operating Statewide in the State of Wyoming and award a $1,851,050 cooperative agreement for a 2-year project period.

Eligibility Requirements

OJJDP invites applications from local public and private nonprofit agencies operating statewide in the State of Wyoming. When submitting joint applications with more than one organization, the parties must set forth their relationships in the application. As a general rule, organizations that describe their working relationship as primarily cooperative or collaborative when developing products and delivering services will be considered coapplicants. In the event of a coapplicant submission, one coapplicant must be designated the payee and, as such, will receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other coapplicant. Under this arrangement, each organization would agree to be jointly and separately responsible for all project funds and services. Each coapplicant must sign Standard Form 424, Application for Federal Assistance, and indicate its acceptance of the conditions of joint and separate responsibility with the other coapplicant.

Selection Criteria

Applicants will be evaluated and rated by a peer review panel according to the criteria outlined below.

Problem To Be Addressed (15 points)

The applicant must demonstrate a clear understanding of the core protections of the JJDP Act and the manner in which the core protections are currently being addressed or not addressed in jurisdictions throughout the State.

Goals and Objectives (15 points)

The applicant must clearly outline the specific goals and objectives to be achieved by the project. Simply restating the goals and objectives given in this solicitation is not adequate.

Project Design (30 points)

The project design must describe how the applicant will have an effect on the following:

1. State laws impacting the placement of juveniles in adult jails and lockups and status offenders and nonoffenders in secure detention or correctional facilities and the issues surrounding the removal of such juveniles from the facilities.

2. State and local jurisdictions' compliance in relation to the measurable core protections of the JJDP Act where the applicant is proposing to contract for the development of alternative placements to adult jails and lockups.

3. State legislative, judicial, and executive branch activities related to supervision and protection of status offenders and nonoffenders and jail removal.

4. The ability of the State and local jurisdictions to meet the core protections of the JJDP Act by providing community-based alternative placements to adult jails and lockups.

5. Establishment and maintenance of a working relationship between the applicant and the Wyoming State Advisory Group and the Wyoming Department of Family Services, Division of Juvenile Services in order to coordinate efforts and enhance the project's statewide efforts to meet the JJDP Act core protections.

Management and Organizational Capability (30 points)

Applicants must demonstrate that they are eligible to compete for an award on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience.

Applicants must concisely describe their experience with respect to the eligibility criteria. Applicants must demonstrate how their experience and capabilities will enable them to achieve the goals and objectives of this initiative.

2. Capability of Working With Other Organizations in the State.

Applicants must demonstrate that they have discussed this program with local and State elected public officials or their staffs; the Wyoming State Advisory Group; the Wyoming Department of Family Services, Division of Juvenile Services; key decisionmakers in the juvenile justice system such as juvenile court judges, associations of those involved in juvenile justice, the boards of public and private youth service providers; and other groups whose cooperation or participation is essential to the success of the program. The applicant must describe how it will be able to obtain the aforementioned cooperation or participation.

3. Financial Capability.

OJP procedures require each private nonprofit applicant to demonstrate that its organization has or can establish fiscal controls and accounting procedures that ensure that Federal funds available under this announcement are disbursed and accounted for properly.

Budget (10 points)

The proposed 24-month budget must be complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken.

Format

The narrative portion of this application (excluding forms, assurances, and appendixes), must not exceed 25 pages and must be submitted on 8½- by 11-inch paper, double spaced on one side in a standard 12-point font. The double-spacing requirement applies to all parts of the program narrative, including any lists, bulleted items, tables, or quotations. These standards are necessary to maintain fair and uniform consideration of all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

Award Period

This project will be funded as a cooperative agreement for a 2-year budget and project period.

Award Amount

A cooperative agreement in the amount of $1,851,050 is available for the 2-year budget and project period.

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number, which is required on Standard Form 424 is 16.541. This form and other required forms and instructions are included in the 2001 *OJJDP Application Kit* available from the Juvenile Justice Clearinghouse at 800–638–8736. The *Kit* is also available on OJJDP's Web site at *http://www.ncjrs.org/pdffiles1/ojjdp/s1000480.pdf*.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice (DOJ) is requiring applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from DOJ; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

The term "related efforts" is defined for these purposes as one of the following:

1. Efforts for the same purpose (i.e., the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).

2. Another phase or component of the same program or project (e.g., to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).

3. Services of some kind (e.g., technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All application packages must be mailed or delivered to the State and Tribal Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531; 202–307–5924. (Note that this address is different from the one listed in the 2001 *OJJDP Application Kit*.) Faxed or e-mailed applications will not be accepted. Note: *In the lower left-hand corner of the envelope, applicants must clearly write "Nonparticipating State Program, Wyoming."*

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on November 21, 2001.

Contact

For further information, contact Timothy S. Wight, Compliance Monitoring Coordinator, State and Tribal Assistance Division, 202–307–5924, or send an e-mail inquiry to *WightT@ojp.usdoj.gov*.

Dated: October 16, 2001.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 01–26540 Filed 10–19–01; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on November 28, 2001, in Room 283 of the Hall of States located at 444 N. Capitol Street, NW., Washington, DC. The meeting is open to the public and will begin at 9 a.m. and last until approximately 4 p.m.

The meeting will begin with an overview of activities of the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH). Other agenda items include: a presentation on OSHA and NIOSH's response to the terrorists attacks; ergonomics issues; recordkeeping and outreach.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to J. Catherine Sutter at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Veneta Chatmon (phone: 202–693–1912; FAX: 202–693–1634) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–693–2350). For additional information contact: J. Catherine Sutter, Occupational Safety and Health Administration (OSHA); Room N–3641, 200 Constitution Avenue NW., Washington, DC 20210 (phone: 202–693–1933; FAX: 202–693–1641; e-mail Catherine.Sutter@osha.gov); or check the National Advisory Committee on Occupational Safety and Health information pages located at www.osha.gov.

Signed at Washington, DC, this 16th day of October, 2001.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 01–26511 Filed 10–19–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2001–38; Exemption Application No. D–10953, et al.]

Grant of Individual Exemptions; The Savings Plan for Employees of Florida Progress Corporation (the Plan) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Savings Plan for Employees of Florida Progress Corporation (the Plan)Located in St. Petersburg, FL

[Prohibited Transaction Exemption 2001–38; Exemption Application No. D–10953]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective November 30, 2000, to (1) the receipt, by the Plan, of contingent value obligations (the CVOs), as a result of the Plan's ownership of certain common stock (the Florida Progress Stock) in Florida Progress Corporation (Florida Progress), the Plan sponsor;

(2) the continued holding of the CVOs by the Plan; and the (3) potential resale of the CVOs by the Plan to Progress Energy, Inc. (Progress Energy), a party in interest with respect to the Plan.

This exemption is subject to the following conditions:

(a) The Plan received one CVO for each share of Florida Progress Stock on the effective date of the share exchange between Florida Progress and CP&L Energy, Inc. (CP&L Energy), the predecessor entity to Progress Energy.

(b) All Florida Progress shareholders, including Plan participants, received the CVOs in the same manner, so that the Plan participants and beneficiaries were not in a less advantageous position than other Florida Progress shareholders.

(c) The Plan's receipt of the CVOs, including other share exchange consideration consisting of cash and/or shares of CP&L Energy stock, resulted from shareholder approval and did not relate to any unilateral exercise of discretion by a Plan fiduciary.

(d) Salomon Smith Barney, Inc. (Salomon Smith Barney) advised Florida Progress that the consideration to be received by Florida Progress shareholders in exchange for their shares of Florida Progress Stock was "fair," from a financial point of view.

(e) The Plan did not pay any fees or commissions in connection with the acquisition of the CVOs, nor will it pay any fees or commissions in connection with the holding or potential sale of the CVOs to Progress Energy.

(f) An independent fiduciary, United States Trust Company, N.A.,

(1) Has overseen, and continues to oversee, the Plan's holding or disposition of any CVOs for which the Plan does not receive any investment direction and determines whether it is appropriate for the Plan to sell the CVOs; and

(2) Retains the services of an independent appraiser to calculate the price at which the CVOs are sold to Progress Energy in order to ensure that adequate consideration is received.

(g) Plan participants have the same rights and flexibility as unrelated parties and they may sell their CVOs at any time.

Effective Date: This exemption is effective as of November 30, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 30, 2001 at 66 FR 39363.

Written Comments

During the comment period, the Department received one written comment with respect to the proposed exemption and no requests for a public hearing. The comment was submitted by the Plan's legal counsel and is intended to clarify the Summary of Facts and Representations (the Summary) of the proposal in two areas. First, in Representation 3 of the Summary, the third sentence of the initial paragraph states, at 39363, that at the time of the share exchange transaction, Progress Energy, then known as CP&L Energy, Inc., operated through three subsidiaries, CP&L, North Carolina Power & Gas, Inc. and Interpath Communications, Inc. The applicant suggests that this sentence be revised to read as follows to correct certain minor inaccuracies:

At the time of the share exchange transaction described in this notice of proposed exemption, Progress Energy, then known as CP&L Energy, Inc., operated primarily through three major subsidiaries, CP&L, North Carolina Power & Gas, Inc. and Interpath Communications, Inc. (ICI).

Second, in Representation 12 of the proposed exemption, the last sentence of the paragraph states, at 39366, that Salomon Smith Barney advised Florida Progress, in an opinion letter dated July 5, 2000 to the company's Board of Directors, that due to the low trading volume in the "when, as and if issued" market, a mass sale of the CVOs by the Plan would likely depress the value of the CVOs, thereby adversely affecting the interests of the Plan participants. The applicant requests that the phrase "in an opinion letter dated July 5, 2000 to the company's Board of Directors" be deleted since the letter related solely to the fairness of the corporate transaction to the Florida Progress shareholders from a financial point of view, whereas the referenced advice was given separately. Therefore, the applicant recommends that the sentence be revised to read as follows:

However, Salomon Smith Barney advised Florida Progress that due to the low trading volume in the "when, as and if issued" market, a mass sale of the CVOs by the plan would likely affect the value of the CVOs, thereby adversely affecting the interests of the Plan participants.

In response to the applicant's comment letter, the Department has noted the foregoing changes to the Summary. For further information regarding the applicant's comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10953) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the applicant's comment, the Department has decided to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Independent Fiduciary Services, Inc. (IFS) Located in Washington, DC

[Prohibited Transaction Exemption (PTE) 2001–39; Exemption Application Nos. D–10960 and D–10971]

Exemption

I. General Transactions

The restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D),[1] shall not apply, effective from November 3, 2000, to a transaction between a party in interest with respect to the Plumbers and Pipe Fitters National Pension Fund (the Fund) and an account (the Diplomat Account) that holds certain assets of the Fund managed by IFS while serving as independent named fiduciary (the Named Fiduciary) in connection with PTE 99–46[2]; provided that the following conditions are satisfied:

(a) IFS, as Named Fiduciary of the Diplomat Account, is an investment adviser registered under the Investment Advisers Act of 1940, as amended, (the Advisers Act) that has, as of the last day of its most recent fiscal year, shareholders' equity or partners' equity, as defined in Section III (h), below, in excess of $750,000;

(b) At the time of the transaction, as defined in Section III (i), below, the party in interest or its affiliate, as defined in Section III (a), below, does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) Appoint or terminate the Named Fiduciary as a manager of the Diplomat Account, or

(2) Negotiate the terms of the management agreement with the Named Fiduciary (including renewals or modifications thereof) on behalf of the Fund;

(c) The transaction is not described in—

(1) Prohibited Transaction Class Exemption 81–6 (PTCE 81–6)[3] (relating to securities lending arrangements);

(2) Prohibited Transaction Class Exemption 83–1 (PTCE 83–1)[4] (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Class Exemption 82–87 (PTCE 82–87)[5]

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

[2] 64 FR 61944, November 15, 1999.

[3] 46 FR 7527, January 23, 1981.

[4] 48 FR 895, January 7, 1983.

[5] 47 FR 21331, May 18, 1982.

(relating to certain mortgage financing arrangements);

(d) The terms of the transaction are negotiated on behalf of the Diplomat Account under the authority and general direction of the Named Fiduciary, and either the Named Fiduciary, or (so long as the Named Fiduciary retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the Named Fiduciary, makes the decision on behalf of the Diplomat Account to enter into the transaction, provided that the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(e) The party in interest dealing with the Diplomat Account is neither the Named Fiduciary nor a person related to the Named Fiduciary, as defined in Section III(f), below;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the Named Fiduciary, the terms of the transaction are at least as favorable to the Diplomat Account as the terms generally available in arm's length transactions between unrelated parties;

(g) Neither the Named Fiduciary nor any affiliate thereof, as defined in Section III(b), below, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in the Named Fiduciary is a person who, within the ten (10) years immediately preceding the transaction, has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) Any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization;

(2) Any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) Income tax evasion;

(4) Any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or

(5) Any other crimes described in section 411 of the Act.

For purposes of this Section I(g), a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether the judgment remains under appeal.

II. Specific Exemption Involving Places of Public Accommodation

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective from November 3, 2000, to the furnishing of services, facilities, and any goods incidental thereto by a place of public accommodation owned by the Diplomat Account managed by IFS, acting as the Named Fiduciary, to a party in interest with respect to the Fund, if the services, facilities, and incidental goods are furnished on a comparable basis to the general public.

III. Definitions

(a) For purposes of Section I(b), above, of this exemption, an "affiliate" of a person means —

(1) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) any director of the person or any employee of the person who is a highly compensated employee, as described in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets. A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan, and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of Section I(b) if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(b) For purposes of Section I(g), above, of this exemption, an "affiliate" of a person means —

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) any director of, relative of, or partner in, any such person,

(3) any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) any employee or officer of the person who —

(A) Is a highly compensated employee (as described in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person) or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of Fund assets.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "goods" includes all things which are movable or which are fixtures used by the Diplomat Account but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights, and any other property, tangible or intangible, which, under the relevant facts and circumstances, is held primarily for investment.

(e) The term "party in interest" means a person described in section 3(14) of the Act and includes a "disqualified person," as defined in section 4975(e)(2) of the Code.

(f) The Named Fiduciary is "related" to a party in interest for purposes of Section I(e), above, of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in the Named Fiduciary, or if the Named Fiduciary (or a person controlling, or controlled by, the Named Fiduciary) owns a 5 percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity —

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority —

(A) To exercise any voting rights, or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(g) The term "relative" means a relative as that term is defined in section 3(15) of the Act, or a brother, sister, or a spouse of a brother or sister.

(h) For purposes of Section I(a) of this exemption, the term "shareholders' equity" or "partners' equity" means the equity shown in the most recent balance sheet prepared within the two (2) years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(i) The "time" as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the effective date of this exemption, or if a renewal that requires the consent of the Named Fiduciary occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, then the requirements will be deemed to continue to be satisfied thereafter with respect to the transaction. Nothing in this subsection shall be construed as exempting a transaction which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

Effective Date: This exemption is effective November 3, 2000, the date when IFS was appointed to serve as the independent Named Fiduciary for the Fund with respect to the Diplomat Account.

Background

The Diplomat Resort and Country Club (the Property) is located in Hollywood and Hallandale, Florida. Constructed in the late 1950's, the Property functioned as a premier hotel and resort in the decades from the 1950's to the 1980's. During this period, the Property was in the possession of the family of Samuel Friedland. After the death of Mr. Friedland in 1985, his son-in-law, Irving Cowan, bought out the interests in the Property held by other family members. In 1987, a consortium of trade union pension funds, led by the Union Labor Life Insurance Company (ULLICO) loaned Mr. Cowan $44 million to continue operation of the Property. In 1991, ULLICO foreclosed on the loan to Mr. Cowan and, as a result, acquired title to the Property through a subsidiary. In 1991, the hotel on the Property was closed for renovations and did not reopen. In 1997, ULLICO placed the entire Property on the market for sale.[6]

When ULLICO offered the Property for sale, it is represented that the Trustees of the Fund were interested in acquiring it as an investment for the Fund. However, a non-negotiable condition of the sale offer excluded assets of any employee benefit fund subject to the Act from being used to purchase the Property, and prevented the Fund from buying the Property. As a result of the offer to sell the Property, it is represented that ULLICO's subsidiary received seven or eight bids from prospective purchasers, including the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (the Union).

As the successful bidder on the Property, the Union acquired title to the Property on October 1, 1997. In this regard, a wholly-owned subsidiary of the Union, the Diplomat Properties Limited Partnership (the Partnership), purchased the Property from ULLICO's wholly-owned subsidiary for a purchase price of $40 million, plus closing costs and related expenses. The Partnership financed the purchase of the Property by obtaining a loan from National City Bank of Cleveland, Ohio (NCB) which was guaranteed by the Union and collateralized by Union assets consisting of cash, cash equivalents, and securities held by NCB in a custodial account.

On October 3, 1997, the Department received an exemption application (D–10514) from the Fund. The transaction for which relief was requested was initially described in the application, as the purchase by the Fund from the Union of title to the Property for $40 million, plus the closing costs and related expenses incurred by the Union in purchasing the Property from ULLICO's subsidiary. Upon submission of application D–10514, the Fund had not yet consummated the transaction, but planned to close the deal within a few days of filing the application with the Department. Accordingly, the Fund requested retroactive relief.

The closing occurred on October 9, 1997. Specifically, the transactions involved in the closing included: (a) The transfer by the Union to the Fund of the Union's limited partnership interests in the Partnership, the sole asset of which was the Property, and (b) the transfer to the Fund of 100 percent (100%) of the stock in Diplomat Properties, Inc., the corporate general partner of the Partnership (the General Partner), which was owned by the Union. In consideration of these transfers, the Fund made a capital contribution to the Partnership in the amount of $40 million, plus reasonable costs incurred by the Union in purchasing the Property, on behalf of the Partnership, from ULLICO's subsidiary. On October 10, 1997, the Fund's capital contribution to the Partnership was used to pay off the loan from NCB that the Union, on behalf of the Partnership, had incurred in acquiring the Property. Once the loan was paid off, Union assets were no longer pledged as collateral for the loan, and the Union was released from its guaranty.

During the eight (8) months from October 3, 1997, when application D–10514 was filed until May 29, 1998, when the proposed exemption was published, the Department, in considering the application, received a number of submissions from the Fund, in response to questions from the Department about the details of the transactions and the appropriateness of the acquisition of the Property by the Fund. Representations were made that the $40 million purchase price paid by the Fund would constitute less than 2% of the assets of the Fund (approximately $3.1 billion in 1997). Application D–10514 included several reports prepared by Chadwick, Saylor & Co., Inc. (CSC), an investment advisor registered under the Investment Advisors Act of 1940. In this regard, CSC represented that it was independent and qualified to serve as the independent fiduciary acting on behalf of the Fund with regard to the acquisition by the Fund of the Property. In its reports to the Department, CSC stated that, subject to certain assumptions, the acquisition price of the Property was fair, the transaction was a prudent investment for the Fund, and the transaction was in the best interest of the participants and beneficiaries of the Fund. Application D–10514 also contained a copy of an independent appraisal report, dated August 22, 1997, prepared for the Union by Roe Research, Inc., stating that, as of August 8, 1997, the fair market value of the Property was $40 million "as is" in a "bulk sale of all parcels to a single purchaser." The appraiser indicated that the highest and best use of the Property would be to renovate or to demolish and replace some or all of the existing improvements on the Property. In this

[6] In this regard, for information on the history of the Property, please refer to an article by Jeff Shields, published in the Hollywood, Florida Sun-Sentinel on May 13, 2001, which was sent to the Department attached to a letter from a commentator.

regard, when application D–10514 was filed, CSC represented in a letter dated September 29, 1997, that "even though redevelopment/construction cost budgets and time schedules and projected operating budgets and cash flow for the development/ redevelopment and operational phases of the project were not available, CSC believes that such budgets, schedules and projections, if available, would support the opinion offered herein." Thereafter, in response to questions from the Department, CSC addressed, in a letter dated, December 15, 1997, "* * * the appropriateness of the acquisition of the Property and the contemplated development and redevelopment related to the return and risk characteristics of the Fund." In this regard, CSC represented that nothing came to CSC's attention in reviewing a substantial amount of physical property, area, governmental and legal information that indicated that matters related to budgeting, scheduling and operation could not be favorably resolved. Further, CSC stated its expectation that such matters would be favorably resolved based on the work undertaken at the Property since the issuance of the September 29, 1997, opinion letter.

On May 29, 1998, the Department published in the **Federal Register** a notice of proposed exemption for the acquisition of the Property by the Fund, effective October 9, 1997, from the prohibited transaction provisions of section 406(a) and (b) of the Act and 4975 of the Code. Notice of the publication of the proposed exemption for application D–10514 was provided to all interested persons with respect to the Fund. All comments and requests for a hearing were due on August 3, 1998. During the comment period, the Department received comments from 65 commentators. It was during this comment period that the Department was made aware from commentators that the hotel on the Property had been demolished and that the amount of the Fund's assets to be invested in the Property was likely to exceed the $40 million capital contribution made by the Fund to acquire the Union's interest in the Partnership which owned the Property.

In response to this issue raised by the commentators, representatives of the Fund advised the Department in a letter, dated August 12, 1998, that the Fund had committed to the Partnership a total of $100 million (including the $40 million acquisition cost). It was represented that the additional $60 million had been placed in a separate account (*i.e.*; the Diplomat Account) to be drawn down by the Partnership, as necessary. It was represented that, while redevelopment plans for the Property were not yet final, the total cost was anticipated to be approximately $400 million. However, it was represented that there were no plans for the Fund to invest more than the $100 million already committed.

On September 14, 1998, an additional submission from the applicant included the Partnership's proposed investment structure for the redevelopment of the Property which indicated equity capital of $100 million from the Fund, anticipated equity investment from third party investors of $100 million, and a balance of $325 million to come from debt financing. It was represented in this letter that any decision to commit more of the Fund's assets to the redevelopment of the Property would be subject to the approval of an independent fiduciary retained by the Fund to monitor the investment. On September 24, 1998, an additional submission from the applicant included a clarification that, to date, less than $60 million (including the Fund's initial capital contribution of $40 million to the Partnership) had been spent on the Property.

Because of the facts that came to the Department's attention regarding the Fund's involvement in the redevelopment of the Property, the Department suspended processing the exemption application on February 2, 1999, pending an investigation into the facts surrounding the redevelopment of the Property. Further, the Department began discussions with the Board of Trustees of the Fund (the Trustees) about additional safeguards for inclusion in the final exemption.

In this regard, the Trustees agreed by way of a Term Sheet dated October 13, 1999 (the Term Sheet), to several undertakings in addition to the conditions published in the Notice of Proposed Exemption. The Department was not a party to the Term Sheet. One such safeguard agreed to by the Trustees, pursuant to the Term Sheet, was a percentage limitation on the amount of the total assets of the Fund to be invested in the redevelopment of the Property. The relevant provision of the Term Sheet states that:

> [t]he Trustees will instruct the custodian of the Fund to transfer to the Diplomat Account any additional amounts * * * for the operations or expenses of the Diplomat Account or the Partnership, so long as the total amount of the Fund assets at risk (*i.e.*, the Fund's investment in the Partnership plus any recourse debt in excess of the value of the assets in the Partnership) does not exceed 13 percent of the Fund assets at the time of the transfer (the 13% Limitation).

Further, the Trustees agreed, pursuant to the Term Sheet, to the appointment of a Named Fiduciary to oversee the Fund's investment in the Partnership and to oversee the continuing redevelopment of the Property. In this regard, on November 8, 1999, the Trustees appointed Actuarial Sciences Associates, Inc. (ASA), to serve as the Named Fiduciary of the Diplomat Account, an account which was established to hold the Fund's interest in the Partnership, the Fund's interest in the General Partner, and any other Fund assets invested in or awaiting investment in the Property. ASA's service contract was subject to the approval of the Secretary of Labor. The performance of ASA's services and responsibilities commenced on the date when the final exemption was executed by the Secretary of Labor or her delegate.

The final exemption for application D–10514 was published in the **Federal Register** by the Department on November 15, 1999, as Prohibited Transaction Exemption 99–46 (PTE 99–46).[7] PTE 99–46 provided retroactive relief, effective October 9, 1997, from the prohibited transaction provisions of section 406(a) and (b) of the Act and section 4975 of the Code. In this regard, the transaction for which retroactive relief was granted involved the transfer to the Fund by the Union of the Union's limited partnership interests in the Partnership, the sole asset of which is the Property, and the transfer to the Fund of the Union's stock in the General Partner, in consideration of a capital contribution by the Fund to the Partnership in the amount of $40 million, plus reasonable costs incurred by the Union in purchasing the Property, and in consideration of the release of a certain loan obligation of the Partnership which was guaranteed by the Union and collateralized by Union assets; provided that certain conditions were satisfied. The Department noted in the final exemption that the additional undertakings agreed to by the Trustees, pursuant to the Term Sheet, including the appointment of ASA, to serve as Named Fiduciary on behalf of the Fund, were material factors in the Department's determination to grant PTE 99–46. Accordingly, the provisions of the Term Sheet, which were described in the written comment section of the final exemption, were incorporated by reference into PTE 99–46.

[7] 64 FR 61944.

Pursuant to the provisions of the Term Sheet, ASA, as the Named Fiduciary of the Fund, could be replaced by the Trustees only upon the concurrence of the Department or pursuant to a court order for cause. Subsequently, when ASA established a wholly-owned subsidiary, ASA Fiduciary Counselors, Inc. (ASA Counselors) to provide the investment advisory services previously performed by ASA for the Diplomat Account, ASA sought and received the consent of the Trustees of the Fund and the Department before assigning those responsibilities to ASA Counselors.

On March 15, 2000, the Department received an exemption application (D–10879) from ASA and from ASA Counselors, requesting retroactive relief from the prohibited transaction provisions of section 406(a) and (b) of the Act and section 4975 of the Code. The requested relief was similar to that available under Prohibited Transaction Class Exemption 84–14 (PTCE 84–14),[8] to a qualified professional asset manager (QPAM), provided certain conditions are satisfied. As neither ASA nor ASA Counselors were able to satisfy all of the requirements of PTCE 84–14, reliance on the class exemption was not available, and accordingly, an administrative exemption was requested. The Department published a Notice of Proposed Exemption for application D–10879 in the **Federal Register** on June 26, 2000.[9] The comment period for application D–10879 ended on August 31, 2000. All comments and requests for hearing from interested persons were due for application D–10879 on August 31, 2000. During the comment period, the Department received eleven (11) letters from commentators. Generally, the commentators expressed concern over the acquisition by the Fund of the Property, and over ASA Counselors' authority to use assets of the Fund for the operation of the Property.

After giving full consideration to the entire record for application D–10879, including the comments from commentators and the response to such comments from ASA and ASA Counselors, the Department determined to grant the requested relief. The final exemption for application D–10879, was published in the **Federal Register** on October 11, 2000, as Prohibited Transaction Exemption 2000–49 (PTE 2000–49).[10] PTE 2000–49 permitted ASA, effective from November 8, 1999, to December 20, 1999, and thereafter ASA Counselors, while serving as the Named Fiduciary of the Fund with respect to the Diplomat Account, to engage, on behalf of the Diplomat Account, in certain transactions with parties in interest with respect to the Fund. In the case of transactions involving places of public accommodation, PTE 2000–49 also permitted, effective November 8, 1999, the furnishing of services, facilities, and any goods incidental thereto by a place of public accommodation owned by the Diplomat Account that is managed by ASA or ASA Counselors, when acting as the Named Fiduciary, to parties in interest with respect to the Fund, if such services, facilities, and incidental goods are furnished on a comparable basis to the general public.

Effective as of November 3, 2000, ASA Counselors resigned its appointment as Named Fiduciary with respect to the Fund and the Diplomat Account. Prior to that date, the Trustees entered into an agreement with IFS, dated September 12, 2000, the terms of which were reviewed and found acceptable by the Department. Pursuant to the terms of such agreement IFS was appointed, effective November 3, 2000, as the successor Named Fiduciary of the Fund. On December 7, 2000, IFS hired LaSalle Investment Management, Inc., a member of the Jones, Lang, LaSalle group, to act as the investment manager with respect to the Property.

On December 21, 2000, the Department received an exemption application (D–10960) in which IFS requested relief from the prohibited transaction provisions of section 406(a) and (b) of the Act and section 4975 of the Code. IFS, as successor Named Fiduciary of the Fund, sought relief identical to that received by its predecessors, ASA and ASA Counselors, pursuant to PTE 2000–49. In this regard, although IFS could not satisfy certain conditions of PTCE 84–14, IFS requested an administrative exemption which would permit IFS to be treated as a QPAM for certain purposes related to the redevelopment and operation of the Property (the Project).

On January 10, 2001, officials of the Department met with IFS to discuss IFS' concern that completion of construction of improvements on the Property would not be possible under a conservative interpretation of the 13% Limitation,[11] contained in the Term Sheet described in PTE 99–46. Subsequently, on February 23, 2001, the Department received an exemption application (D–10971) from IFS, acting as Named Fiduciary on behalf of the Fund, in which IFS requested a modification of the 13% Limitation in the Term Sheet. Because applications D–10960 and D–10971 were both filed by IFS and involved the assets of the Fund in the Diplomat Account, the Department determined to combine its consideration of the relief requested in both applications. In this regard, the Notice of Proposed Exemption (the Notice) for applications D–10960 and D–10971 was published in the **Federal Register** on March 21, 2001.[12]

Written Comments

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption for applications D–10960 and D–10971 within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on March 21, 2001. All comments and requests for hearing on the proposed exemption for applications D–10960 and D–10971 were due by April 30, 2001.

In notifying interested persons of the pendency of the proposed exemption for applications D–10960 and D–10971 and notifying such interested persons of the right to comment and/or request a hearing on the proposed exemption, IFS furnished by first class mailing, within ten (10) days of the publication of the Notice in the **Federal Register**, a copy of the Notice along with a copy of the supplemental statement, as described at 29 CFR § 2570.43(b)(2), to the Trustees of the Fund and to the interested persons who had commented in writing to the Department in connection with PTE 99–46. In this regard, IFS believes that providing notification to the Trustees of the Fund and to interested persons who commented in writing to the Department in connection with PTE 99–46 was sufficient, because the requested relief was technical in nature, and because it was unlikely that individuals other than the Trustees and those who commented on PTE 99–46 would be concerned with such an exemption.

During the comment period, certain commentators objected to the fact that IFS had only provided notification of the pendency of the proposed exemption for applications D–10960 and D–10971 to the Trustees of the Fund and to those interested persons who had commented on PTE 99–46. In this regard, these commentators believe

[8] 50 FR 41430, October 10, 1985.

[9] 65 FR 39435.

[10] 65 FR 60454.

[11] IFS seeks the relief requested because of its concern that one possible interpretation of the 13% Limitation could result in the Fund exceeding such Limitation.

[12] 66 FR 15900.

that such notification was inadequate where the requested relief, specifically the modification of the provision of the Term Sheet concerning the 13% Limitation, might seriously affect the stability of the Fund. Accordingly, these commentators suggested that the Department require that every participant and beneficiary in the Fund be notified of the publication of the proposed exemption for applications D–10960 and D–10971 in the **Federal Register**.

The Department has considered the concern raised by commentators that the notification provided by IFS to interested persons was inadequate because the requested relief might seriously affect the stability of the Fund. In this regard, the Department notes that the administrative record for applications D–10960 and D–10971 includes a letter, dated April 2, 2001, from the Fund's counsel which addressed the impact of the proposed exemption on the stability of the Fund. In this regard, the April 2 letter indicates that the Fund's administrator has determined that granting the requested modification to the provisions of the Term Sheet concerning the 13% Limitation would not adversely affect the liquidity of the Fund and/or the ability of the Fund to pay benefits when due.

Further, the Department has considered the expense to the Fund involved in providing notification of the publication of the proposed exemption for applications D–10960 and D–10971 to all the participants and beneficiaries of the Fund. In this regard, the expense of mailing first class to the approximately 123,000 participants and beneficiaries of the Fund would constitute an additional burden to the Fund. Accordingly, the Department has determined that the notification to interested persons as provided by IFS with regard to the publication of the proposed exemption for applications D–10960 and D–10971 was adequate and reasonable under the circumstances.

During the comment period, the Department received four (4) requests from commentators that the Department hold a hearing to evaluate the merits of the representations from IFS with respect to the proposed transactions. In this regard, the commentators requested that the Department delay approval of the requested exemption until all participants and beneficiaries had a chance to review the materials and to present objections to the proposed transactions at a hearing.

The Department has carefully considered the concerns expressed by the individuals who requested a hearing. After a review of these concerns, the Department does not believe that there are material factual issues relating to the proposed exemption that were raised by commentators during the comment period which would require the convening of a hearing. Thus, the Department has determined not to delay consideration of the final exemption by holding a hearing on applications D–10960 and D–10971.

During the comment period, the Department received eleven (11) letters from nine (9) interested persons commenting on the transactions involved in applications D–10960 and D–10971. At the close of the comment period, the Department forwarded copies of these comment letters to IFS and requested that IFS address in writing the various issues raised by the commentators.

As an initial matter, IFS noted in responding to the Department's request, that none of the comments was directed at application D–10960. Rather, the comments relate to application D–10971 in which IFS requested modification of a provision of the Term Sheet concerning the 13% Limitation. Accordingly, the responses provided by IFS, herein, generally discuss D–10971, but to the extent applicable, are intended by IFS to provide responses with respect to both applications. A description of the comments and the responses from IFS thereto are summarized in the numbered paragraphs, below.

1. A number of commentators expressed concern that the decision to invest the Fund's assets in the Partnership has not been and would not be, made solely to benefit the participants and beneficiaries of the Fund, and that the investment by the Fund in the Partnership has not been, and would not become, profitable.

As an initial matter, IFS notes "that these comments are inapposite to the extent that they relate to the Fund's investment in the Project up to the 13% Allocation Limit." In this regard, IFS maintains that, pursuant to PTE 99–46, the Department has already sanctioned the investment of Fund assets in the Partnership to that extent.[13]

With regard to whether an additional investment by the Fund above the 13% Limitation would be in the interest of participants and beneficiaries of the Fund, IFS maintains that the requested modification to the provision of the Term Sheet concerning the 13% Limitation will allow an additional investment that can be reasonably expected to enhance the Fund's overall investment and, likely will reduce the risk that the Fund will suffer a significant financial loss.

As indicated in the applications, IFS represents that the Project, since December 14, 2000, has been under the management of LaSalle Investment Management, Inc. (LaSalle), acting as a QPAM within the meaning of PTCE 84–14 with respect to the Project. In its capacity as an independent expert in the hospitality, real property, and construction industries, and after an extensive review of the status of the Project, it is represented that LaSalle (with the assistance of various divisions of the Jones Lang LaSalle group, including the Jones Lang LaSalle Hotels group) has concluded, based on its acknowledged expertise, that a further investment in the Project by the Fund would likely maximize the benefits to the Fund and would, therefore, be in the interest of participants and beneficiaries of such Fund.

It is represented that LaSalle has determined that, due to risk factors inherent in the development process and the still uncompleted state of the Project, the current value of the partially-completed Property (expressed as a percentage of completion) is well below its conceptual completion value, and that an appraiser, bank, or prospective purchaser would discount significantly the current value of the Property for purposes of an appraisal, loan, or purchase, respectively. It is further represented that LaSalle believes, based on its significant expertise within the hospitality and real estate industries, that most investors interested in the Project would view any current effort to sell the Property as akin to a distressed sale and therefore would be looking for a very high opportunistic

[13] The Department notes that, in granting PTE 99–46, the Department exempted the initial investment by the Fund in the Partnership. The 13% Limitation or any other limitation on Fund expenditures relating to the Property should not be viewed as an endorsement by the Department of either the amount of the expenditures or its appropriateness. The appointment of an independent named fiduciary and the 13% Limitation were agreed to by the Trustees of the Fund in response to commentator concerns about the risks and costs involved in acquiring and redeveloping the Property. The Department further notes that the fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from the general fiduciary responsibility provisions of section 404 of the Act. Section 404 (a)(1)(A) and (B) of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries in a prudent fashion. Accordingly, it is the responsibility of the Fund's fiduciaries to develop the Property in a manner designed to maximize the Fund's rate of return, consistent with their fiduciary duties under section 404 of the Act.

rate of return on their investment. Accordingly, it is represented that to sell the Property at this stage (rather than to complete it) would likely lead to substantial losses for the Partnership.

In addition, it is represented that if the Project were abandoned or interrupted, because additional investment from the Fund was not permitted by the Department, there would be significant costs associated with shutting down the Project, including operational, legal, contractual, and degradation avoidance costs, many of which costs would not otherwise be incurred. LaSalle has estimated that these costs alone could cause the Fund to substantially exceed the 13% Limitation in any event.

In contrast, it is represented that if additional cash infusions from the Fund enable the Project to be completed and if, as LaSalle expects, the Project subsequently achieves stabilized income, LaSalle projects that the increased value of the Project from completion and income stabilization, less the remaining cost of completion, will likely be significantly higher than the value of the Project, if the Fund was forced to abandon or sell it as a distressed asset. In addition, opening the Property would give the Partnership the opportunity to receive cash flow from operations, as well as to establish a "track record" of performance in actual operation, which is likely to enhance the sale value of the Property. Thus, it is represented that, if the Project were not completed, significant losses would be incurred by the Fund, and the Fund would be prevented from enjoying the benefits of completion, which LaSalle has concluded likely would significantly outweigh the additional costs of completion.

As discussed in the applications, the three principal financing alternatives to further cash infusion from the Fund include outside debt financing (on a non-recourse basis), outside equity investment, and sale of a portion of the assets of the Property. In this regard, it is represented that LaSalle has concluded, based on a conservative interpretation of the 13% Limitation, that completion of the Project is not feasible, absent a modification to that Limitation because none of these three alternatives would be sufficient to provide the requisite financing. First, in light of the status of construction and retention of an operator, it is represented that the Partnership could not timely obtain the requisite non-recourse financing to remain within the 13% Limitation (assuming that non-recourse financing could be obtained at all). Second, it is represented that bringing in an equity partner at this juncture (assuming that one could be found) would take an unacceptable amount of time (thereby delaying completion of the Project significantly) and would likely result in an extremely unfavorable business arrangement for the Fund because any equity investor would likely treat this as a distressed sale. Finally, it is represented that asset sales of components of the Project, such as future development sites and the country club hotel, would not provide sufficient capital to avoid exceeding the 13% Limitation, and could ultimately reduce the overall return to the Fund.

For the foregoing reasons, IFS maintains that regardless of the merit of the initial investment by the Fund in the Partnership, it is clear that an additional investment by the Fund in the Partnership would be in the interest of participants and beneficiaries and would improve the Fund's investment return on the Project, based on LaSalle's conclusion that such an investment would permit the Fund to realize the substantial benefits of completion (including avoidance of the losses attendant to abandonment, sale, or interruption of the Project at this stage) which are projected to outweigh the completion costs.

2. A number of commentators indicated a concern about a lack of diversification in the Fund's investments resulting from its investment in the Project.

In the opinion of IFS, "[b]y granting PTE 99–46, the Department effectively determined that an investment in the Partnership of 13 percent of Fund assets would not result in a lack of diversification."[14] Accordingly, IFS maintains that the only matter raised by the commentators, that is relevant to application D–10971, is whether the marginal increase in the Fund's investment (*i.e.*, the amount by which $800 million exceeds 13 percent (13%) of Fund assets) results in a violation of section 404(a)(1)(C) of the Act.

IFS notes that neither section 408(a) of the Act nor the regulations thereunder require a showing of compliance with section 404(a)(1)(C) of the Act in an application for a prohibited transaction exemption.[15] In addition, IFS maintains that it is the independent Named Fiduciary of the Fund only with respect to the Fund's investment in the Project and, as such, is not charged with making any decisions with respect to the overall diversification of the Fund's assets or the Fund's compliance with section 404(a)(1)(C) of the Act. It is the understanding of IFS that this decision generally is made by the Trustees.[16]

IFS notes that, even in light of the recent significant downturn in the equity markets, an $800 million investment in the Partnership represents less than 18.5% of the Fund's assets. In addition, based on information provided by the Fund, IFS understands that most of the remaining Fund assets are invested in a broad range of diversified investments, including investment in at least three other asset classes (domestic and international fixed income, domestic and international equity and alternative investments).

Even if it could be argued that the Fund's investments would not be sufficiently diversified as a result of an additional investment in the Project, IFS points out that one could conclude that it would nevertheless be prudent under the Act to have less diversification, because of the unique circumstances involving the Project. In this regard, independent of any consideration of the overall portfolio of the Fund, LaSalle has concluded that an additional investment in the Partnership would be prudent because of the substantial economic harm to the Fund and the Partnership that would result if application D–10971 were denied. It is represented that if the additional investment were not made (which could be the case if application D–10971 was not granted), the Project likely would not be completed even though the projected benefits of completion (including avoidance of the loss attendant to interruption and/or abandonment) significantly outweigh the additional costs of completion.

In contrast, it is represented that granting the exemption would allow the Project to be completed which, in turn, should allow the Partnership (and,

[14] The Department wishes to correct IFS' apparent misunderstanding of the Department's authority under section 408(a) of the Act. As previously noted, in footnote 13, an exemption under section 408(a) of the Act does not relieve a fiduciary from certain other provisions of the Act, including the general fiduciary responsibility provisions of section 404 of the Act. Section 404(a)(1)(C) of the Act requires, among other things, that a plan fiduciary diversify plan assets in order to minimize the risk of large losses unless, under the circumstances, it is clearly prudent not to do so. It is the responsibility of the appropriate Fund fiduciary or fiduciaries to determine whether the diversification requirements of section 404(a)(1)(C) have been satisfied.

[15] Conversely, it is the Department's position that both section 408(a) of the Act and the regulations promulgated thereunder make clear that the fiduciaries of a plan that has received an administrative exemption are not insulated from responsibility and/or potential liability under section 404 of the Act.

[16] The Department is expressing no views, herein, as to the person or persons ultimately responsible under the Fund for the overall diversification of the Fund assets.

therefore, the Fund) to realize the expected significant net economic gain of completion, without incurring the potentially substantial costs of interruption or abandonment of the Project.

3. One commentator noted that application D–10514 indicated that the Project was "camouflaged * * * to be about a $40 million project."

As noted above, IFS maintains that the subject of application D–10971 is not whether the Fund's initial investment in the Partnership was appropriate. Rather, IFS seeks an amendment to the 13% Limitation, because the increase to that limitation (*i.e.*, the amount by which $800 million exceeds 13 percent (13%) of the assets of the Fund) would, for the reasons set forth above, be in the interest of participants and beneficiaries. Therefore, in the opinion of IFS no further response to this comment would appear to be necessary.

4. Various commentators expressed concern about past actions of the Trustees and the prior independent Named Fiduciary, including whether Fund assets have been wasted or mismanaged with respect to the Project. Other commentators questioned how information could be obtained regarding how the Fund's investment in the Project has been expended, and claimed that IFS did not provide an adequate explanation of the steps to be taken to protect the interests of participants and beneficiaries.

As the current independent named fiduciary, IFS is charged with the responsibility of appropriately reviewing prior (and future) management and expenditure of Fund assets with respect to the Project. It is represented that such review is currently being conducted. However, in the opinion of IFS, the subject of these applications is not whether the Fund's Trustees, the prior Named Fiduciary, service providers, or other fiduciaries mismanaged assets but whether an additional investment by the Fund, as determined by the current independent Named Fiduciary, should be permitted on the grounds that it would clearly be in the interest of the participants and beneficiaries of the Fund.

As discussed in application D–10960, the interests of participants and beneficiaries are protected because IFS is acting prudently as an *independent* Named Fiduciary under an Independent Named Fiduciary Agreement, dated September 12, 2000 (the IFS Agreement), the terms of which were reviewed and approved by the Department prior to its execution.

Under the IFS Agreement, IFS has a continuing responsibility to furnish the Trustees and the Department with monthly written reports concerning the progress of the Project (including, *inter alia*, the operations, assets, receipts, and disbursements with respect to the Project). The IFS Agreement also requires IFS to provide the Department with certain documents upon request and to meet with the Department and its agents as reasonably requested. This will enable the Department to exercise continuing oversight regarding IFS' performance of services under the IFS Agreement, and with respect to the Project overall.

Additionally, there are very strict limitations on the ability of the Trustees to remove IFS from its position as independent Named Fiduciary, which allow IFS to maintain strict independence from the Trustees. Section 14 of the IFS Agreement provides that, until November 5, 2002, no termination of IFS:

> shall become effective until the effective date of the appointment of a replacement independent named fiduciary that is acceptable to the U.S. Department of Labor and, in the case of a termination by the Trustees or their duly appointed delegate, such termination shall not be effective unless (i) it has received the concurrence of the U.S. Department of Labor, or (ii) it is pursuant to a court order obtained for "cause" * * * after reasonable notice to the Secretary of Labor * * *

IFS recognizes the concern expressed by these commentators that, unless an independent named fiduciary, such as IFS, remains involved in the Project for an extended time period, the Trustees could again control the Project. However, IFS understands that, if the applications are granted, the Trustees have agreed that the Project will be managed by an independent party for so long as the Fund has a controlling interest in the underlying assets of the Partnership or its successors.[17]

IFS respectfully requests that any exemption granted in connection with application D–10960 be coextensive with IFS' service as independent Named Fiduciary, rather than be limited to five (5) years, from November 3, 2000, until November 3, 2005 (as proposed), because the revised arrangement between the Trustees and the Department contemplates a long-term relationship between the Fund and an independent named fiduciary, and because it would be expensive for the Fund to incur the costs of subsequent applications to renew or modify the exemption.

It is anticipated that the existence of an independent named fiduciary on a long-term basis will help assure completely independent fiduciary decision-making with respect to all aspects of the Project, and will further protect the interests of participants and beneficiaries of the Fund. In addition, the concerns expressed in the comments regarding prior actions by the Trustees or other fiduciaries of, or service providers to, the Fund are inapposite, because IFS will, with the assistance of LaSalle, other industry professionals, and legal counsel independent of the Trustees, continue to exercise its fiduciary discretion independent of any influence from such individuals.

The Department concurs with IFS' request that the effectiveness of the final exemption not be limited to the five (5) year period, from November 3, 2000, until November 3, 2005. Accordingly, the Department has modified the final exemption, as follows:

(a) By deleting the phrase, "until November 3, 2005," from Section I, as published in the **Federal Register** on page 15900, column 1, lines 21–22 of the Notice; and from Section II, as published in the **Federal Register** on page 15901, column 2, lines 51–53 of the Notice;

(b) By deleting in its entirety the paragraph entitled, "Temporary Nature of Exemption," as published in the **Federal Register** on page 15902, column 2, of the Notice; and adding in place of such paragraph the sentence, **EFFECTIVE DATE:** This exemption is effective November 3, 2000, the date upon which IFS was appointed to serve as the Named Fiduciary for the Fund with respect to the Diplomat Account; and

(c) by modifying a sentence in the definition of the "time" as of which any transaction occurs, as published in Section III(i) of the Notice on page 15902, column 1, lines 60–69, and column 2, lines 1–3 of the **Federal Register**. In this regard, words that have been deleted from Section III(i) have been stricken from the language, below, and phrases which have been added to the language appear in brackets, below:

> If any transaction is entered into [on or after the effective date of this exemption] or if a renewal that requires the consent of the Named Fiduciary occurs [on or after the effective date of this exemption] and the requirements of this proposed exemption are satisfied at the time the transaction is entered into or renewed, then the requirements will be deemed to continue to be satisfied thereafter with respect to the transaction.

The Department emphasizes that the relief provided for the transactions described in the final exemption will be available to IFS, only for the period of time that IFS serves as the independent Named Fiduciary for the Fund with respect to the Diplomat Account. In the event that IFS, resigns, is removed, or is replaced as the independent Named Fiduciary for the Fund, IFS may no longer rely on the relief provided by this exemption for the transactions, described in application D–10960.

Under the agreement, executed by the chairman of the Trustees on May 31, 2001, it is the Department's understanding that the Diplomat Account will be managed by an independent Named Fiduciary for so long as the Fund has a controlling interest in the Project. Accordingly, upon the resignation, replacement, or removal of IFS, as independent Named Fiduciary with respect to the Diplomat Account, any successor to IFS who will serve as the independent Named Fiduciary for the Fund with respect to the Diplomat Account, may submit an application for exemption to the extent that such successor independent Named Fiduciary does not qualify as a QPAM and would need an exemption to be treated as if they were a QPAM.

The relief requested in application D–10971 pertains to the modification of the 13% Limitation described in PTE 99–46. The requested modification involves setting the limitation at $800 million rather than the 13% Limitation, as set forth in the Term Sheet. If the modification is approved by the Department by the granting of the subject exemption, IFS and any successor to IFS who serves as the independent Named Fiduciary for the Fund with respect to the Diplomat Account would be subject to the $800 million fixed amount. By letter dated October 11, 2001, IFS indicated that, if the proposed amendment to PTE 99–46 is granted, it does not foresee any circumstances under which it will request from the Department any additional amendments to PTE 99–46 that would have the effect of increasing the maximum amount of assets of the Fund that may be invested in the Project.

5. Various commentators requested information regarding the Department's investigation of the use of Fund assets in the development of the Project. Other commentators indicated that IFS is required to submit copies of all correspondence regarding the substantive issues involved in that investigation.

With respect to the commentators' indication that IFS did not submit copies of all correspondence regarding the substantive issues involved in the Department's investigation of the use of Fund assets in connection with the development of the Project, IFS noted that it was not, at the time the applications were submitted, aware of any correspondence with the Department that addresses the substantive issues related to the investigation and that is required to be provided to the Department, pursuant to 29 CFR § 2570.35(a)(7) of the Department's regulations.

Since the applications were submitted, IFS has become aware of certain correspondence that cannot clearly be classified as substantive correspondence related to any investigation. However, IFS has submitted certain correspondence that, based on a conservative interpretation of 29 CFR § 2570.35(a)(7), arguably may be appropriate to provide to the Department in connection with the applications. It is IFS' position that the request concerning the release of information about the Department's investigation is solely within the purview of the Department.

The Department notes that the disclosure required by 29 CFR § 2570.35(a)(7) of the Department's regulation (relating to investigations, examinations, litigation, and continuing controversy by or with certain specified Federal agencies), is necessary to ensure that the Department's exemption activities do not compromise its enforcement efforts. In this regard, the Department does not require submission by an applicant of copies of all correspondence, but only requires submission of copies of correspondence relating to substantive issues involved in such investigation, examination, litigation, or controversy. Once copies of such correspondence become part of the administrative record of an application for exemption, 29 CFR § 2570.51 of the Department's regulations provides that the public may examine and copy the administrative record of each exemption application and all correspondence and documents submitted in connection therewith.

To the extent that information submitted in connection with an investigation, examination, litigation, or continuing controversy by or with certain specified Federal agencies, is not contained in the administrative record of an application for exemption, such information is not available to the public and is not considered by the Department in making its determination that the transaction for which relief has been requested is administratively feasible and in the interest of, and protective of a plan, and its participants and beneficiaries, pursuant to section 408(a) of the Act. Thus, the Department's final decision on any exemption is based on the information contained in the official exemption application file. The Department further notes that an exemption does not take effect or protect parties in interest from liability with respect to the exemption transaction unless the material facts and representations contained in the application, and in any materials and documents submitted in support of the application, are true and complete (see 29 CFR § 2570.49(a)).

The final decision on the merits of a requested exemption by the Department entails an administrative process which is based on a careful review of the entire public record of facts and representations as documented in the application file. The Department may not grant an exemption, pursuant to section 408(a) of the Act, unless a determination is made on the record with respect to the findings that such an exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries, and protective of the rights of the participants and beneficiaries of such plan.

6. One commentator questioned whether IFS and ASA "have a clue about what is going on, except spending the Pension Fund's money."

In response to such comment, IFS notes that neither ASA nor ASA Counselors now has any ongoing relationship with the Fund or the Project. As noted in application D–10960, IFS replaced ASA Counselors as independent Named Fiduciary of the Fund. Pursuant to its authority as independent Named Fiduciary, effective December 14, 2000, IFS appointed LaSalle as QPAM, pursuant to PTCE 84–14, with respect to the Project.

It is represented that both IFS and LaSalle have devoted significant personnel and enormous amounts of time to the Project. In this regard, IFS, the most senior officers of which are personally involved in the Project on a daily basis, has broad expertise in a wide range of subjects and, in particular, the financial and fiduciary aspects of pension fund investing.

It is further represented that LaSalle is a leading global real estate investment manager that frequently acts as a fiduciary. In addition, LaSalle is a member of the Jones Lang LaSalle group, various divisions of which have assisted (and will continue to assist) LaSalle in connection with the Project. These divisions, including Jones Lang LaSalle Hotels, the Project and Development Management Group, the Risk Management Group, and Jones

[17] In this regard, the Department notes that the chairman of the Trustees executed such an agreement on May 31, 2001.

Lang LaSalle Capital Markets, are staffed with industry professionals collectively familiar with all major aspects of the Project.

IFS' conclusions set forth in application D–10971 regarding the benefit to participants and beneficiaries of further investment in the Project are premised in large part on expert conclusions by LaSalle. In this regard, (based on its careful review of the status of the Project and its extensive expertise as a real estate investment manager), LaSalle has concluded that the Fund is likely to suffer significant economic harm, if the Fund was not able to complete the Project (which would be the case if the Fund could not invest further assets in the Partnership because of the 13% Limitation). It is represented that the various reports prepared by both LaSalle and IFS with respect to the Project are clear evidence of the considerable knowledge of both entities with respect to the Project.

7. One commentator requested information on whether there is a criminal investigation regarding the Project.

IFS has not been formally advised that there is any pending criminal investigation with respect to the Project.

8. Various commentators indicated that IFS did not provide an adequate explanation of whether the exemption transaction is customary in the industry.

IFS disagrees with the contention of the commentators in that regard. It is IFS' view that in granting PTE 99–46, the Department has implicitly determined that the underlying transaction (*i.e.*, the Fund's purchase of the Property and investment in the Partnership) is customary in the industry.[18]

Furthermore, as noted in application D–10971, it is customary for an equity investor to use its capital to financially support a real estate project (so long as the investor believes that the incremental investment will either earn a reasonable return or avoid significant losses) and establish an operating history before abandoning the project or engaging in a distressed sale of assets or obtaining equity co-investment on onerous terms that may result in a substantial economic loss that exceeds the benefit of completion of the project. It is represented that the requested amendment would permit the Fund to continue to financially support the Project to completion, without incurring the risk of possibly violating PTE 99–46.

In summary, IFS maintains that if the relief requested in application D–10971 is not granted, the Fund may not be able to make an additional investment in the Partnership, because of the 13% Limitation. It is represented that after a careful review of the Project, LaSalle has concluded that such an additional investment should (i) allow the Partnership to realize a stabilized value of the Property in excess of its estimated current market value (if the Property were sold today in a distressed sale) plus the costs of completion; (ii) allow the Partnership to receive from operations a current cash yield on its investment; (iii) allow the Partnership to avoid the costs of interruption or abandonment of the Project; and (iv) prevent the Partnership from being forced to sell the Property as a distressed asset and at a significantly reduced amount. Thus, it is represented that LaSalle (and, based on LaSalle's advice, IFS) has concluded that, if the requested relief is not granted, the Partnership, and, through it, the Fund, could suffer significant adverse consequences, which clearly would not be in the interest of participants and beneficiaries.

9. In a letter dated June 15, 2001, IFS notified the Department of a development regarding the Property that, in the opinion of IFS, further supports LaSalle's conclusion that completing the Project is likely to lead to a more financially attractive result for the Fund than not completing it. In this regard, it is represented that LaSalle has conducted a competitive process for the selection of a hotel operator in which a field of ten (10) candidates was narrowed to three (3) major operators. Further, interviews and negotiations with each of the three finalists resulted in the selection of Starwood Hotels and Resorts Worldwide (Starwood) through its corporate vehicle, Westin Management Company East, Inc. It is represented that Starwood is the owner of such well-known brands as Sheraton, Westin, and St. Regis.

Further, it is represented that on June 5, 2001, LaSalle signed a brand and management agreement (together, the Operating Agreement) with Starwood to brand and operate the Property as the Westin Diplomat Resort and Spa and to operate the country club, pursuant to a parallel operating agreement, as a member of Starwood's Luxury Collection. It is represented that the terms of the 15-year Operating Agreement evidence Starwood's significant, long-term business and financial commitment to the Property. In this regard, it is represented that the Operating Agreement requires Starwood to provide a substantial amount of "key money" to pay for various pre-opening expenses and to provide loans, at very attractive terms, to the Property (without recourse to the Fund), in certain circumstances, including the occurrence of actual future cash flow shortfalls related to either the operation of the Property or its ability to service debt.

It is represented that the willingness of a major international hotel management company to enter into a long-term agreement, the terms of which are very favorable to the Partnership and the Property should be viewed as further evidence of the economic viability of the Property and the commercial reasonableness of permitting the Fund to fund the development of the Property to completion.

As a result of the terrorist attacks of September 11, 2001 and its potential impact on the hotel and convention industry, the Department specifically requested that IFS, as the independent Named Fiduciary of the Fund, confirm that the most prudent course of action for the Fund to follow is completion of the Project. In response to this request, IFS, in a letter dated October 5, 2001, noted that it sought the views of LaSalle and Starwood. Both LaSalle and Starwood, in letters dated October 4, 2001 and October 5, 2001, respectively, indicated that none of the groups that had booked space cancelled their reservations subsequent to the September 11, 2001 events. Both parties also noted that it is not possible to do an assessment of the impact of these events on the The Westin Diplomat Resort and Spa's future hotel and convention business—other than to note the absence of cancellations—because the hotel will not begin operations until January 2002. In a letter dated October 5, 2001, LaSalle stated that it has not changed its opinion that the prudent course of action is to complete construction of the Property as soon as possible. In a separate letter dated October 5, 2001, IFS states that "IFS has discussed this opinion with appropriate parties and finds this conclusion reasonable."

Accordingly, after full consideration and review of the entire administrative record, including the written comments from the commentators and the responses thereto by IFS, the Department has determined to grant the exemption, as modified and amended herein.

[18] In granting an exemption, the Department expresses no opinion as to whether or not a particular transaction for which relief is provided is customary in the industry. In this regard, the Department notes that pursuant to 29 CFR § 2570.34(e)(6) of the Department's regulations, it is the responsibility of the applicant to inform the Department whether the transaction for which relief is requested is customary for the industry or class involved.

The comments submitted by the commentators to the Department and the response by IFS thereto has been included as part of the public administrative record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Pension Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on March 21, 2001, 66 FR 15900.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Sierra Health Services, Inc. Profit Sharing Plan (the Plan)Located in Las Vegas, Nevada

[Prohibited Transaction Exemption No. 2001–40; Application No. D–10884]

Exemption

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain limited partnership interests (collectively, the Interest(s)) to Sierra Health Services, Inc., (the Employer) the sponsor of the Plan and a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The sale is a one-time transaction for cash;

(b) The Plan pays no commissions or any other expenses relating to the sale;

(c) The sales price is the greater of (i) the fair market value of the Interests as determined by a qualified, independent, appraiser (ii) the value of the Interests, as determined by the general partner of each partnership and reported on the most recent account statements available at the time of the sale or (iii) the Plan's original acquisition and holding costs.

(d) The Plan suffers no loss, as a result of its acquisition and holding of the Interests, taking into account all cash distributions received by the Plan as a result of owning the Interests.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on July 30, 2001 at 66 FR 39356.

Written Comments

The Department received one comment from an interested person on the proposed exemption. The Department forwarded a copy of the comment to the 401(k) committee (the Committee), which approves the guidelines for investment of the Employer directed fund, and requested that the Committee respond in writing to the concerns raised by the commentator. A description of the comment and the Committee's response are summarized below.

The commentator urged that the exemption not be granted because she believed that the Property had been under valued and requested another independent appraisal of the Property.

The Committee, in response represents the following: The valuation used for the purchase price is the highest of the following three items: (1) The fair market value of the Interests, as determined by a qualified independent appraiser; (2) the value of the Interests as determined by the General Partner of each partnership; or (3) the Plan's original acquisition and holding costs.

As part of a long-term employee retention strategy, the Employer ceased to direct the investment of the employer's contributions to the Plan. Prudential Securities was engaged as Trustee, and both the employer's and employees' contributions were combined in a single account. Every participant now has the ability to direct his/her investments, on a daily basis if they so desire. The holding of these Interests prevents participants from being able to direct their investment to the extent that these Interests constitute a portion of their Plan assets.

The qualified, independent, certified appraisal was completed by William P. Geary, a Nevada Certified General Appraiser. The appraisal was prepared in conformity with the current requirements of the Uniform Standards of Professional Appraisal Practice as published by the Appraisal Foundation, and the federal financial institutions regulating agencies. The compensation for the appraisal was not contingent upon the reporting of a predetermined value or direction in value that favors SHS, the amount of the value estimate, the attainment of stipulated result or the occurrence of a subsequent event.

Accordingly, after giving full consideration to the entire record, including the comment by the commentator, and the responses of the Committee, the Department has determined to grant the exemption as proposed. In this regard, the comment submitted to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Ave. NW, Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 219–8883 (this is not a toll-free number).

Barclays Bank PLC and Barclays Capital Inc. Located in London, England and New York, New York

[Prohibited Transaction Exemption 2001–41; Application No. D–10966]

Exemption

Section I—Transactions

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply as of January 24, 2001, to:

(a) The lending of securities, under certain exclusive borrowing arrangements, to:

(1) Barclays Bank plc (Barclays);

(2) Barclays Capital Inc. (BCI) and any other affiliate of Barclays that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or U.S. bank;

(3) Barclays Capital Securities Limited, which is subject to regulation in the United Kingdom by the Securities and Futures Authority of the United Kingdom (the UK SFA); and

(4) Any broker-dealer or bank that, now or in the future, is an affiliate of Barclays which is subject to regulation by the UK SFA or the Bank of England,(each such affiliated foreign broker-dealer or bank referred to as a "Foreign Borrower," and, together with Barclays and BCI, collectively referred to as the "Borrowers"), by employee benefit plans, including commingled investment funds holding assets of such plans (Plans), with respect to which Barclays or any of its affiliates is a party in interest; and

(b) The receipt of compensation by Barclays or any of its affiliates in connection with securities lending transactions, provided that the following conditions set forth in Section II, below, are satisfied.

Section II—Conditions

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over the Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) The party in interest dealing with the Plan is a party in interest with respect to the Plan (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act.

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with a Plan fiduciary which is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by a Plan to a Borrower are at least as favorable to such Plan as those of a comparable arm's-length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Plan receives from the Borrower either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (ii) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively, the Exclusive Fee). If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral may be retained by the Plan or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral (the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the Lending Fee)(the Lending Fee and the Shared Earnings Compensation are collectively referred to as the "Transaction Lending Fee"). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day the loaned securities are delivered to the Borrower, the Plan receives from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank other than Barclays or any affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption 81–6 (46 FR 7527, Jan. 23, 1981, as amended at 52 FR 18754, May 19, 1987) (PTE 81–6) (as amended or superseded)[19] Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of the Plan by an affiliate of the Borrower that is the trustee or custodian of the Plan.

(h) The market value (or in the case of a letter of credit, the stated amount) of the collateral initially equals at least 102 percent of the market value of the loaned securities on the close of business on the day preceding the day of the loan and, if the market value of the collateral at any time falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent. The level of the collateral is monitored daily by the Plan or its designee, which may be Barclays or any of its affiliates which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan. The applicable Borrowing Agreement shall give the Plan a continuing security interest in and lien on the collateral.

(i) Before entering into a Borrowing Agreement, the Borrower furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement.

(j) The Borrowing Agreement contains a representation by the Borrower that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings)[20] had it remained the record owner of the securities.

(l) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty (except for, if the Plan has terminated its Borrowing Agreement, the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan) whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

(n) Except as otherwise provided herein, all procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States and/or the United Kingdom, as appropriate.

(o) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrowers; provided, however, that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrowers, a copy of this exemption (and the notice of pendency) is provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.[21]

(q) The independent fiduciary of the Plan receives monthly reports with respect to the securities lending transactions, including but not limited to the information set forth in the following sentence, so that an independent Plan fiduciary may monitor such transactions with the Borrowers. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily confirmations of securities lending transactions.

(r) In addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is a bank which is subject to regulation by the Bank of England or is a registered broker-dealer subject to regulation by the UK SFA;

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 C.F.R. 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides foreign broker-dealers a limited exception from United States registration requirements;

(3) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit, or other collateral permitted under PTE 81–6 (as amended or superseded);

(4) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 C.F.R. 2550.404(b)–1; and

(5) Prior to entering into a transaction involving a Foreign Borrower, Barclays or the Foreign Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by Barclays or the Foreign Borrower will occur in the United States courts.

(s) Barclays or the Borrower maintains, or causes to be maintained, within the United States for a period of

[19] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

[20] The Department notes the Applicants' representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings and that the Borrower will always put the Plan back in at least as good a position as it would have been had it not loaned securities.

[21] The Department notes the Applicants' representation that, under the proposed exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, i.e., the Applicants will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities or the fiduciary who decides to lend securities pursuant to an exclusive arrangement. However, the Applicants or their affiliates may monitor the level of collateral and the value of the loaned securities.

six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Barclays and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Borrower shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (SEC);

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (t)(1)(ii)-(t)(1)(iv) are authorized to examine the trade secrets of Barclays or its affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) An "affiliate" of a person means:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(ii) Any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(iii) Any corporation or partnership of which such person is an officer, director or employee, or in which such person is a partner.

(b) The term "Foreign Borrower" or "Foreign Borrowers" means Barclays Capital Securities Limited and any broker-dealer or bank that, now or in the future, is an affiliate of Barclays which is subject to regulation by the UK SFA or the Bank of England.

(c) The term "Borrower" includes Barclays, BCI, the Foreign Borrowers and any other affiliate of Barclays that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or U.S. bank.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on June 28, 2001 at 66 FR 34475.

Effective Date: This exemption will be effective as of January 24, 2001.

Written Comments

The Department received one comment letter with respect to the Notice. The comment letter was submitted by Barclays Bank PLC and certain of its affiliates (the Applicants). The Applicants made three comments that concerned minor modifications to the language of the exemption, as proposed.

First, the Applicants requested that the word "remaining" be deleted from the second sentence in Section II(e) of the Notice. Second, the Applicants requested that the term "financial statements" in Section II(j) of the Notice be replaced with the term "statements of financial condition" in the final exemption. Finally, the Applicants requested that the following language be added to the end of the sentence in Section II(r)(3) of the Notice: "or such other collateral as may be permitted under PTE 81–6 from time to time."

The Department concurs with the Applicants' comments and suggested changes, and has modified the language of the final exemption accordingly.

After giving full consideration to the entire record, including the written comments from the Applicants, the Department has decided to grant the exemption, as modified herein.

FOR FURTHER INFORMATION CONTACT: Karen Lloyd of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Columbia Savings Plan (the Plan) Located in Wilmington, DE

[Prohibited Transaction Exemption 2001–42; Exemption Application No. D–10977]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective November 1, 2000, to (1) the receipt, by the Plan, of Stock Appreciation Income Linked Securities (SAILS), in exchange for common stock in Columbia Energy Group (Columbia Energy), the Plan sponsor; (2) the extension of credit by the Plan to NiSource, Inc. (NiSource), a party in interest, in connection with the receipt of the zero coupon bond portion of the SAILS; (3) the continued holding of the SAILS by the Plan; and (4) the potential sale of the SAILS by the Plan to NiSource.

This exemption is subject to the following conditions:

(a) The Plan automatically received the SAILS in exchange for its shares of Columbia Energy common stock, in accordance with the terms of an agreement and plan of merger, and it paid no fees or commissions in connection with its receipt of the SAILS and other merger consideration.

(b) All Columbia Energy shareholders, including Plan participants, received SAILS in the same manner, so that the Plan participants and beneficiaries were not in a less advantageous position than other Columbia Energy shareholders.

(c) The Plan's receipt of the SAILS resulted from shareholder approval and did not relate to any unilateral exercise of discretion by a Plan fiduciary.

(d) Morgan Stanley and Salomon Smith Barney, Inc. advised Columbia Energy that the consideration consisting of NiSource common stock, SAILS and cash for Columbia Energy common stock was "fair," from a financial point of view.

(e) Duff & Phelps, Inc. provided Fidelity Investments, Inc., the Plan trustee (the Trustee), and the Plan's Savings Plan Committee with independent financial advice concerning the valuation of the SAILS.

(f) The Plan did not pay any fees or commissions in connection with the acquisition and holding of the SAILS, nor will it pay any fees or commissions if any SAILS are sold to NISource.

(g) An independent fiduciary, United States Trust Company, N.A. (U.S. Trust),

(1) Monitored the Plan's holding and disposition of the SAILS;

(2) Determined whether it was appropriate for the Plan to dispose of the SAILS (either on the open market or through a direct sale to NiSource) and instructed the Trustee regarding such disposition;

(3) Would determine, in the event of a sale of any SAILS to NiSource, the fair market value of such SAILS either (i) based on their closing price on the New York Stock Exchange (the NYSE) on the date of the transaction, or (ii) on the basis of an independent appraisal if the SAILS were not carried on the NYSE, or in the event it concluded that the closing price on the NYSE was not representative of the fair market value of the SAILS as of the transaction date; and

(4) Disposed of all SAILS held by the Plan on the NYSE before the end of calendar year 2001.

(h) The Plan would not be required to pay any fees or commissions in the event any SAILS were sold to NiSource.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 30, 2001 at 66 FR 39367.

Written Comments

The Department received one written comment with respect to the proposed exemption and no requests for a public hearing. The comment was submitted by a Plan participant who stated that she was initially given the choice of how she wanted her shares of Columbia Energy common stock converted. Although the commenter chose to exchange her Columbia Energy common stock for NiSource common stock, she ended up receiving both NiSource common stock and SAILS. The commenter declared this form of consideration to be unacceptable to herself and to other Plan participants who were treated similarly. The commenter also questioned whether participants who received SAILS would be again taken advantage of by not having a choice or say in the matter and she suggested that Columbia Energy provide meetings and clearer explanations to questions in layman's terms so that all parties involved could make informed choices.

Columbia Energy responded to the commenter's concerns by stating that the Trustee and the Plan fiduciaries had acted prudently and in the best interests of the Plan participants with respect to the subject transactions. In this regard, Columbia Energy noted that the Plan was treated in the same manner as any other holder of Columbia Energy common stock that had made a valid election to receive NiSource common stock in exchange for Columbia Energy common stock, or to receive consideration in the form of cash and SAILS, in exchange for Columbia Energy common stock. Columbia Energy also noted that due to uncertainty on whether the SAILS constituted qualifying employer securities, the Trustee was required, under the terms of the Trust Agreement and applicable law, to override all Plan participant elections to receive cash and SAILS consideration, and to elect, in the alternative NiSource common stock. However, because a large number of Columbia Energy's shareholders elected to receive NiSource common stock, the stock elections had to be prorated. Thus, Columbia Energy explained that the Plan (and Plan participants) ultimately received SAILS, in addition to shares of NiSource common stock, and cash. The SAILS were held in a separate fund, which was not subject to participant direction, and disposed of during the 2001 calendar year.

To protect the interests of the Plan participants, Columbia Energy indicated that it retained U.S. Trust to serve on behalf of the Plan as an independent fiduciary and oversee the Plan's holding and eventual disposition of the SAILS on the NYSE. As a result of such disposition, Columbia Energy stated that each Plan participant received the proceeds attributable to the number of SAILS held in the participant's SAILS account, thereby entitling the participant to direct the proceeds into one or more investment options under the Plan.

Because the Plan has already disposed of all SAILS it held on the NYSE rather than selling them directly to NiSource, the Department has decided to modify Conditions (g) and (h) of the proposed exemption to reflect more accurately the role of U.S. Trust and what actually transpired. Thus, Conditions (g) and (h) of the final exemption have been revised to read as follows:

(g) An independent fiduciary, United States Trust Company, N.A. (U.S. Trust),

(1) Monitored the Plan's holding and disposition of the SAILS;

(2) Determined whether was appropriate for the Plan to dispose of the SAILS (either on the open market or through a direct sale to NiSource) and instructed the Trustee regarding such disposition;

(3) Would determine, in the event of a sale of any SAILS to NiSource, the fair market value of such SAILS either (i) based on their closing price on the New York Stock Exchange (the NYSE) on the date of the transaction, or (ii) on the basis of an independent appraisal if the SAILS were not carried on the NYSE, or in the event it concluded that the closing price on the NYSE was not representative of the fair market value of the SAILS as of the transaction date; and

(4) Disposed of all SAILS held by the Plan on the NYSE before the end of calendar year 2001.

(h) The Plan would not be required to pay any fees or commissions in the event any SAILS were sold to NiSource.

Accordingly, after giving full consideration to the entire record, including the written comment and clarifications noted above, the Department has decided to grant the exemption.

For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10977) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the

transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of October, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 01–26568 Filed 10–19–01; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (1130).

Dates/Time: November 5, 2001; 8:30 am to 5 pm; November 6, 2001; 8:30 am to 5 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA—Room 1235.

Type of Meeting: Open.

Contact Person: Brenda Williams, Office of Polar Programs (OPP), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the polar research community; to provide advice to the Director of OPP on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Discussion of NSF-wide initiatives, long-range planning and GPRA.

Dated: October 16, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–26516 Filed 10–19–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Company; Notice of Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. to Facility Operating License No. NPF–63 issued to Carolina Power & Light Company (CP&L, the licensee), which revised the Operating License (OL) and Technical Specifications (TS) for operation of the Shearon Harris Nuclear Power Plant, Unit 1 (HNP), located in Wake and Chatham Counties, North Carolina. The amendment is effective as of the date of issuance.

The amendment modified the OL and TS for HNP to reflect an increase in the licensed core power level to 2900 Megawatts (thermal), 4.5% greater than the current level.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on February 6, 2001 (66 FR 9110). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (66 FR 51982).

For further details with respect to the action see (1) the application for amendment dated December 14, 2000, and supplements dated March 8, March 27, April 26, May 14, May 18, June 4, June 11, June 26, June 29, July 3, July 16 (2 letters), July 17, August 17, and September 20, 2001, (2) Amendment No. 107 to License No. NPF–63, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 12th day of October 2001.

For the Nuclear Regulatory Commission.

N. Kalyanam,

Acting Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–26525 Filed 10–19–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

TXU Electric; Notice of Issuance of Amendments to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment No. 89 to Facility Operating License (FOL) No. NPF–87 and Amendment No. 89 to FOL No. NPF–89 issued to TXU Electric (the licensee), which revised FOL Nos. NPF–87 and NPF–89 and the Technical Specifications for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell and Hood Counties, Texas. The amendments are effective as of the date of issuance.

The amendments modified FOL Nos. NPF–87 and NPF–89 and the Technical Specifications to increase the maximum licensed thermal power of CPSES, Units 1 and 2, to 3458 MWt, which represents an increase of approximately 1.4 percent of the currently licensed thermal power for CPSES, Unit 1, and an increase of approximately 0.4 percent for CPSES, Unit 2. In addition, the amendments remove Texas Municipal Power Agency (TMPA) from both Unit 1 and Unit 2 FOLs since transfer of partial ownership from TMPA to TXU was completed.

The application for the amendment, as supplemented, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on May 29, 2001 (66 FR 29186). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment(66 FR 45065, dated August 27, 2001).

For further details with respect to the action see (1) the licensee's application for amendment dated April 5, 2001, as supplemented by letters dated June 28, August 2, and September 10, 2001; (2) Amendment No. 89 to FOL No. NPF–87 and Amendment No. 89 to FOL No. NPF–89; (3) the Commission's related Safety Evaluation; and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, http://www.nrc.gov/NRC/ADAMS/index.html. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 12th day of October, 2001.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–26524 Filed 10–19–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44923; File No. 4–208]

Intermarket Trading System: Order Granting Approval of the Eighteenth Amendment to the ITS Plan Relating to the Pacific Exchange, Inc.'s Implementation of the ARCA Facility

October 11, 2001.

On July 24, 2001, the Intermarket Trading System Operating Committee ("ITSOC") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 11A of the Securities ExchangeAct of 1934 ("Act"),[1] and Rule 11A3a3–2 thereunder,[2] proposed amendment ("Eighteenth Amendment") to the restated ITS Plan.[3] The proposed amendment eliminated provisions in the ITS Plan relating to the PCX's Remote Specialists, and included provisions relating to the PCX's implementation of the Archipelago ("ARCA") facility.[4] The ARCA facility is a computerized electronic facility for trading equity securities at the PCX. Notice of the proposed amendment appeared in the **Federal Register** on August 16, 2001.[5] The Commission received no comments on the proposed amendment. This order approves the proposed amendment.

The proposed amendment describes how the ARCA facility will interact with ITS. It provides a formula that the ARCA must comply with which limits both share volume and trade volume that the ARCA facility may execute using ITS. If the ARCA facility exceeds the limitations in the formula, the PCX must stop sending commitments originated by the ARCA facility for a month. The proposed amendment also provides that the PCX may prepare an analysis of the effect of the ceilings in the formula on the ability of the ARCA facility to access Participant markets via ITS. The terms for linking the ARCA facility to ITS have been discussed extensively and were agreed upon by the ITS Participants. As noted, the Commission received no comments in response to publication of the Eighteenth Amendment.

The Commission finds that the proposed amendment is consistent with the Act and the rules and regulations thereunder applicable to the ITS and, in particular, Sections 11A(a)(1)(C)(ii) and (D) of the Act,[6] and Rule 11A3–2(c)(2) thereunder,[7] which require among other things, that a plan amendment must be necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and shall remove impediments to, and perfects the mechanisms of, a national market system.

The Commission believes that linking the ARCA facility to ITS will provide a new and potentially more efficient way to execute trading interest.

In addition, the Commission believes that the proposed amendment will be beneficial to brokers, dealer and investors because it facilitates the linkage of all markets through communication and data processing facilities.

It is therefore ordered, pursuant to Section 11A(a)(3)(B) of the Act,[8] that the proposed Eighteenth Amendment be, and hereby is, approved.[9]

For the Commission, by the Divison of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26487 Filed 10–19–01; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C.; 78k-1.

[2] 17 CFR 240.11Aa3–2.

[3] The ITS is a National Market System ("NMS") plan, which was designed to facilitate itermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS Participants include the American Stock Exchange LLC) "Amex"), the Boston Stock Exchange, Inc. ("BDE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") ("Participants").

[4] The PCX filed a proposed rule change that details the operation of ARCA and establishes ARCA as a facility of the Exchange. *See* Securities Exchange Act Release No. 43608 (November 21, 2000), 65 FR 78822 (December 15, 2000).

[5] *See* Securities Exchange Act Release No. 44662 (August 8, 2001), 66 FR 43036.

[6] 15 U.S.C. 78k-1(a)(1)(C)(ii) and (D).

[7] 17 CFR 240.11A3–2(c)(2).

[8] 15 U.S.C. 78k–1(a)(3)(B).

[9] The Eighteeoth Amendment states that it will become effective upon the later of the approval of the Amendment of SR–PCX–00–25 (the rule filing to establish ArcaEx as a facility of PCX).

[10] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44924; File No. SR–Amex–2001–84]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days its Pilot Program Relating to Facilitation Cross Transactions

October 11, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 9, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in detail in Item II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions approved by the Commission on July 11, 2001.[3] Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions in equity options.[4] The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crown can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class by class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer order on the specialist's book or represented in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crown in response to his initial request for a market—and the crown then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crown in response to his initial request for a market, and the trading crown subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.[5] However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.

In the sixteen months since the pilot program was first implemented, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with Commission[6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

In order to allow the pilot program to be extended without significant interruption, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to Section 19(b)(2) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

[3] *See* Securities Exchange Act Release No. 44538 (July 11, 2001), 66 FR 37507 (July 18, 2001). The Commission's approval in July 2001 permitted the reinstatement, after a brief lapse, of a pilot program that was originally approved on June 2, 2000, and subsequently extended on two occasions. *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000); 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); and 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

[5] Amex trading floor practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seek to codify specialist allocation practices. *See* Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

[6] *See* File No. SR–Amex–00–49, available for inspection at the Commission's Public Reference Room.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interest persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Amex–2001–84 and should be submitted by November 13, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In its original approval of the pilot program,[11] the Commission detailed its reasons for finding its substantive features consistent with the Act, and in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[12] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[13] and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will extend the pilot program without significant interruption while revisions are considered, and does not raise any new regulatory issues.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved on an accelerated basis as a pilot program through January 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26483 Filed 10–19–01; 8:45 am]

BILLING CODE 8010–01–M

[10] In approving this proposal, the commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See supra,* note 3.

[12] 15 U.S.C. 78f(b)(5) and (b)(8).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44928; File No. SR–BSE–2001–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Boston Stock Exchange, Inc. Relating to the Generic Listing and Trading Standards of Trust Issued Receipts Pursuant To Rule 19b–4(e) Under the Securities Exchange Act of 1934

October 12, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2001, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On October 2, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On October 10, 2001, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to approve the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BSE Chapter XXIV–A, ("Trust Issued Receipts" (hereinafter, "TIRs")), to provide generic standards that permit the listing and trading, or the trading pursuant to unlisted trading privileges ("UTP"), of TIRs pursuant to Rule 19b–4(e) under the Act. In addition, the Exchange proposes to adopt eligibility requirements for component securities that are represented by a series of TIRs pursuant to distribution or other corporate event. Below is the text of the proposed rule change. Proposed new language is italicized.

* * * * *

Chapter XXIV–A—Trust Issued Receipts

** * * Interpretation and Policies*

.02 The Exchange may approve a series of Trust Issued Receipts for listing pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the component securities satisfies the following criteria:

(a) Eligibility Criteria for Component Securities Represented by a Series of Trust Issued Receipts:

(i) Each Component Security of the Trust Issued Receipt must be registered under Section 1 of the Exchange Act;

(ii) Each Component Security of the Trust Issued Receipt must have a minimum public float of at least $150 million;

(iii) Each Component Security of the Trust Issued Receipt must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security;

[13] *See, e.g.,* Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Esther M. Radovsky, Staff Attorney, BSE, to Lisa N. Jones, Attorney, Division of Market Regulation ("Division"), Commission (October 2, 2001) ("Amendment No. 1"). Amendment No. 1 amends the proposed rule text to reflect that the underlying security is of the Trust Issued Receipt rathar than the HOLDR product, and therefore replaces the original filing in its entirety.

[4] *See* Letter from Esther M. Radovsky, Staff Attorney, BSE, to Lisa N. Jones, Attorney, Division, Commission (October 9, 2001) ("Amendment No. 2"). Amendment No. 2 amends the proposed rule text to replace the term "Underlying Securities" with "Component Securities," and corrects a typographical error.

(iv) Each Component Security of the Trust Issued Receipt must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(v) Each Component Security of the Trust Issued Receipt must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $ 1 million; and

(vi) The most heavily weighted Component Security in the Trust Issued Receipt cannot initially represent more than 20% of the overall value of the Trust Issued Receipt.

.03 The eligibility requirement for the Component Securities that are represented by a series of Trust Issued Receipts and that become part of the Trust Issued Receipt when the security was either: (a) distributed by a company already included as a Component Security in the series of Trust Issued Receipts; or (b) received in exchange for the securities of a company previously included as a Component Security that is no longer outstanding due to a merger, consolidation, corporate combination or other event, shall be as follows:

(a) the Component Security must be listed on a national securities exchange or traded through the facilities of NASDAQ and a reported national market system security;

(b) *the Component Security must be registered under Section 12 of the Exchange Act; and*

(c) *the Component Security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification represented by the Component Securities included in the Trust Issued Receipt at the time of the distribution or exchange.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its listing and trading standards for TIRs under BSE Chapter XXIV–A in two parts. First, the Exchange proposes to provide generic standards that permit the listing and trading, or trading pursuant to UTP, or TIRs, pursuant to Rule 19b–4(e) under the Act.[5] Second, the Exchange proposes to adopt eligibility requirements for component securities, represented by a series of TIRs, that became part of such a series when the security was either: (a) distributed by a company whose securities are already included as an component security in the series of TIRs; or

(b) received in exchange for the securities of a company previously included as a component security that are no outstanding due to a merger, consolidation, corporate combination or other event.

Trading Trust Issued Receipts Pursuant to 19b–4(e).

On January 13, 2000, the Exchange received approval to adopt BSE Chapter XXIV–A, *et seq.* to establish standards for the listing and trading, pursuant to UTP, of TIRs.[6] To accommodate the efficient listing and trading, or trading pursuant to UTP, of additional TIRs, the Exchange proposes to add a new section to its *Interpretation and Policies*, BSE Chapter XXIV–A, to permit the generic listing and trading of TIRs pursuant to Rule 19b–4(e).

The Commission has previously approved rules of other exchanges that permit the listing and trading of individual TIRs.[7] In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the Exchange rules and surveillance programs that govern their trading.

The Exchange represents that BSE Chapter XXIV–A subjects TIRs to all of the Exchange's trading rules by expressly providing that the provisions of the Exchange's Constitution and all other rules and policies of the Board of Governors apply to the trading of TIRs on the Exchange.[8] Furthermore, the Exchange represents that the initial and continued listing standards established for TIRs mandate that for each Trust,[9] the Exchange will establish a minimum number of TIRs required to be outstanding at the time trading begins on the Exchange.[10] BSE Chapter XXIV–A also requires that, following the initial twelve month period after trading begins, the Exchange will consider the suspension of trading in, or removal from listing of a TIR if: (1) The Trust has more than 60 days remaining until termination and there are fewer than 50 record or beneficial holders of TIRs for 30 or more consecutive days; (2) the Trust has fewer than 50,000 receipts issued and outstanding; (3) the market value of all receipts issued and outstanding is less than $1,000,000; or (4) any other event occurs or conditions exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.[11]

Under the *Interpretation and Policies* section of BSE Chapter XXIV–A, the Exchange proposes to provide generic standards to list or trade, pursuant to Rule 19b–4(e), any TIRs that meet the following criteria: (1) Each component security of the TIR must be registered under Section 12 of the Act; (2) each component security of the TIR must have a minimum public float of at least $150 million; (3) each component security of the TIR must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security; (4) each component security of the TIR must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; and (5) each component security of the TIR must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million. Finally, the Exchange proposes that no component security of the TIR may initially represent more than 20% of the overall value of the receipt.

The Exchange believes that these additional criteria to the listing and trading standards for TIRs will ensure that no component security in a TIR product will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various TIRs to meet investors' needs. These criteria also will ensure sufficient liquidity for those investors seeking to purchase and deposit the component securities with the trustee to create a new TIR.

The Exchange proposes to use existing surveillance procedures for the Trust Issued Receipts that it trades pursuant to Rule 19b–4(e). In addition, the Exchange will comply with the recordkeeping requirements of Rule 19b–4(e),[12] and will file Form 19b–4(e) for each series of TIRs within five business days of commencement of trading.

The Exchange proposes that TIRs are subject to the Exchange's rule relating to trading halts due to extraordinary market volatility (BSE Chapter II, Section 34A) and the Exchange's rule that provides discretion to Exchange officials to halt trading in specific securities under certain circumstances (BSE Chapter II, Section 34B). In exercising the discretion described in BSE Chapter II, Section 34B, appropriate Exchange officials may consider a variety of factors, including the extent to which trading is not occurring in a stock underlying the portfolio and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Further, the Exchange proposes that it will distribute an information circular to its members in connection with the trading of TIRs. It will discuss the special characteristics and risks of trading this type of security, including the fact that TIRs are not individually redeemable. Specifically, the circular, among other issues, will discuss what TIRs are, how they are created, the requirement that member and member firms deliver a prospectus to investors purchasing TIRs prior to or concurrently with the confirmation of a TIRs transaction, applicable BSE rules, dissemination information, trading information, and the applicability of suitability rules. In addition, the circular will inform members of specific BSE policies, such as trading halts and market conditions particular to such securities.

Eligibility Requirements for Component Securities Pursuant to Distribution or Other Corporate Event

Recently, the American Stock Exchange LLC ("Amex") revised its rules relating to the distributions of securities by component securities in a Trust.[13] In sum, the Amex rules provide: (a) If a company whose securities are included in a series of TIRs distributes a security, the distributed security will remain in the Trust as a component security if it is listed for trading on a U.S. national securities exchange or through the facilities of Nasdaq and its Standard & Poor's sector classification is the same as the sector classification represented by the other component securities in the Trust at the time of the distribution; and (b) if the securities of a company that are included in a series of TIRs are no longer outstanding as a result of a merger, consolidation, corporate combination or other event, any securities received in exchange for those securities will remain in the Trust as a component security if it is listed for trading on a U.S. national securities exchange or through the facilities of Nasdaq and its Standard & Poor's sector classification is the same as the sector classification represented by the other component securities in the Trust at the time of the merger, consolidation, corporate combination or other event.

As a result of this change, the Exchange proposes that a security, which is automatically deposited into the Trust as a result of a distribution or a corporate event, may remain in the Trust even though it does not meet all of the initial eligibility requirements set forth in proposed *Interpretation and Policies* .02 of BSE Chapter XXIV–A. Specifically, the Exchange proposes under the *Interpretation and Policies* section of BSE Chapter XXIV–A, to provide eligibility requirements for a component security that became part of a Trust when the security was either: (a) Distributed by a company already included as a component security in the series of TIRs; or (b) received in exchange for the securities of a company previously included as a component security and that are no longer outstanding due to a merger, consolidation, corporate combination or other event.

The Exchange proposes that the eligibility requirements for such component securities are the following: (1) That such component security must be listed on national securities exchange or traded through the facilities of Nasdaq and a reported national market system security; (2) that such component security must be registered under Section 12 of the Exchange Act; and (3) that such component security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification represented by component securities already included in the TIRs at the time of the distribution or exchange.

The Exchange believes that it is appropriate in these limited situations to provide alternate eligibility criteria for the component securities. To reduce the number of distributions of securities from the TIR, which may cause inconvenience and increased transaction and administrative costs for investors, the Exchange believes that it is useful to allow certain securities that are received as part of a distribution from a company or as the result of a merger, consolidation, corporate combination or other event to remain in the TIR. The Exchange believes that the proposed eligibility requirements ensure that component securities included in a TIR as a result of a distribution or exchange event are widely held (having been distributed to all of the shareholders holding the original component security), traded through the facilities of an exchange or Nasdaq and registered under Section 12 of the Act.[14]

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with them Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–2001–05 and should be submitted by November 13, 2001.

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[5] 17 CFR 240.19b–4(e). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to Rule 19b–4(c)(1) under the Act, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listings standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class. *See* 17 CFR 240.19b–4(e).

[6] *See* Securities Exchange Act Release No. 42347, 65 FR 4451 (January 27, 2000) (accelerated order approving SR–BSE–99–15).

[7] *See, e.g.* Securities Exchange Act Release Nos. 43396 (September 29, 2000) 65 FR 60230 (October 10, 2000) (order granting accelerated approval of SR–Amex–00–10 and SR–CHX–00–16); 44182 (April 16, 2001), 66 FR 21798 (May 1, 2001) (order granting accelerated approval of SR–PCX–2001–01).

[8] Exceptions exist where a trading rule is inconsistent with the Trust Issued Receipt listing standard or where the context otherwise requires. *See* BSE Chapter XXIV–A, Section 1(a).

[9] *See* BSE Chapter XXIV–A, Section 2(a) (defining the term, "Trust").

[10] *See* BSE Chapter XXIV–A, Section 5(a).

[11] *See* BSE Chapter XXIV–A, Section 5(b).

[12] 17 CFR 240.19b(c).

[13] *See* Securities Exchange Act Release No. 44309 (May 16, 2001), 66 FR 28587 (May 23, 2001) (order granting accelerated approval of SR–Amex–2001–04).

[14] 15 U.S.C. 781

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act [15] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal to provide standards to permit listing and trading of trust issued receipts pursuant to Rule 19b–4(e) [16] furthers the intent of the Rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval.

By establishing generic listing standards, the proposal should reduce the BSE's regulatory burden, as well as benefit the public interest, by enabling the BSE to bring qualifying products to the market more quickly. Accordingly, the Commission finds that BSE's proposal should promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[17]

As described above, the Commission has previously approved similar Amex, CHX, and PCX rules that permit the generic listing and trading of individual TIRs.[18] In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and the Exchanges' rules and surveillance programs that govern their trading. The Commission concluded then, as it does now, that securities approved for listing under those rules would allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transactions costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities component the TIRs.

The Commission notes that the BSE's proposed standards are substantially similar to the Amex, CHX and PCX standards. The Commission therefore believes that TIRs that satisfy the BSE's proposed standards should produce the same benefits to the BSE and to investors.

The Commission further believes that adopting generic listing standards for these securities pursuant to Rule 19b–4(e) under the Act should fulfill the intended objective of the Rule by giving the BSE the ability to potentially reduce the time frame for bringing these securities to the market, or for permitting the trading of these securities pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that it maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission finds that the BSE's proposal contains adequate rules and procedures to govern the listing and trading of TIRs pursuant to Rule 19b–4(e) on the BSE, or pursuant to UTP. All TIR products listed under the standards will be subject to the full panoply of BSE rules and procedures that now govern both the trading of TIRs and the trading of equity securities on the Amex, CHX, and the PCX including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

The Commission further finds that: (1) By requiring that the component securities in a TIR be registered under Section 12 of the Act and listed on a national securities exchange or Nasdaq, and (2) by establishing minimum values for the number of outstanding receipts, average daily trading volume, average daily dollar volume, and public float, the Exchange's proposed listing criteria will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets for those TIRs listed and traded pursuant to Rule 19b–4(e). The Commission believes that these listing criteria will help to ensure that no component security a TIR will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various trust issued receipts to meet investors' needs. The Commission further believes that these criteria should serve to ensure that the component securities of such TIRs are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new TIRs under Rule 19b–4(e). Accordingly, the Commission finds that these criteria are consistent with Section 6(b)(5) of the Act,[19] because they serve to prevent fraudulent or manipulative acts; promote just and equitable principles of trade; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.

Additionally, as the Commission noted in its previous review and approval of Amex, CHX and the PCX Rules, the Exchange's delisting criteria allows it to consider the suspension of trading and the delisting of a TIR if an event occurs that makes further dealings in such securities inadvisable. This will give the Exchange flexibility to delist TIRs if circumstances warrant.

The Commission notes that, in connection with its previous review and approval of Amex, CHX and PCX Rules, it approved similar applicable minimum price increments, surveillance procedures, and disclosure and prospectus delivery requirements for TIRs.[20] In accordance with these previous findings, the Commission believes that the BSE's proposed rules will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. Further, the Commission believes that the proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risk of trading TIRs.

The BSE has noted that it will file Form 19b–4(e) with the Commission within five business days of commencement of trading a TIR under the listing standards and will comply with all Rule 19b–4(e) recordkeeping requirements.

Finally, the Commission finds that the BSE's proposal to provide an alternative eligibility criteria for component securities received as part of a distribution or as a result of a merger, consolidation, corporate combination or other event to remain in the Trust will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. As noted above, the Commission has previously approved Amex rules that provided similar eligibility requirements.[21]

Thus, the Commission finds good cause for approving the proposed rule change (SR–BSE–2001–05) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the BSE's proposed rule change is similar to rules previously approved by the Commission for Amex, CHX and the PCX. The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the previous filings. Moreover, the Commission believes that approving the generic listing and trading of TIRs on the BSE will increase industry competitiveness by providing an additional venue for the trading of such issues, to the benefit of the investor. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[22] to approve the proposal on an accelerated basis, and before expiration of the period for filing comments.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–BSE–2001–05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

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[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 240.19b–4(e).

[17] 15 U.S.C. 78f(b)(5). In approving these rules, the Commission has considered their impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] *See* Securities Exchange Act Release Nos. 43396 (September 29, 2000) 65 FR 60230 (October 10, 2000) (order granting accelerated approval of SR–Amex–00–10 and SR–CHX–00–16); 44182 (April 16, 2001), 66 FR 21798 (May 1, 2001) (order granting accelerated approval of SR–PCX–2001–01).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* note 17, *supra.*

[21] *See* Securities Exchange Act Release No. 44309 (May 16, 2001), 66 FR 28587 (May 23, 2001) (order granting accelerated approval of SR–Amex–2001–04).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44927; File No. SR–ISE–2001–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Modifying Certain Fees Relating to Servers and Cabinets Located on Members' Sites and Imposing a Fee for the Production of Certain Reports

October 12, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2001, the International Securities Exchange LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing changes to its fee schedule (i) to replace a $1,650 "enhanced cabinet charge" with a $250 incremental fee per server in an enhanced cabinet; (ii) to broaden the definition of "cabinet removal" and "router installation/removal" charges to include "moves, adds or changes"; and (iii) to impose a fee for providing reports to brokers on quarterly statistics relating to their order routing practices.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to effect the following changes in the ISE's fees:

Cabinets: One method by which ISE members connect to the Exchange is through ISE equipment located in cabinets on the members' sites. The ISE charges for this equipment based on, among other things, the number of servers in a cabinet. To provide more flexibility in this pricing, the ISE proposes to replace its "enhanced cabinet charge" with an incremental charge per server that is added to the base cabinet. The incremental fee will be $250 per server, equivalent to the $250 incremental fee per server in an enhanced cabinet. This will permit members to add more than one additional server per cabinet.

Also, the ISE is sometimes requested to reconfigure and relocate member equipment. Thus, the ISE proposes to broaden the definition of the "cabinet removal" and "router installation/removal" charges. These fees would encompass any "moves, adds or changes" to ISE equipment at a members' site, and would cover the Exchange's costs for providing these services.

Reports: Newly-adopted Commission Rule 11Ac1–6 [3] under the Act requires brokers to disclose certain quarterly statistics regarding their order routing practices. The ISE proposes to provide requesting members with a report that will facilitate their compliance with this rule. The Exchange represents that its proposed $500 monthly fee would cover the costs of providing this report.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, because it is an equitable allocation of reasonable fees among the Exchange's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.11Ac1–6.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2) thereunder.[7] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2001–25 and should be submitted by November 13, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44940; File No. SR–NASD–2001–59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Historical Research Reports and Licensing the Redistribution of Information from Such Reports

October 16, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7010(p) to modify the fees charged for historical research reports provided through Nasdaq's NasdaqTrader.com web site, and to establish a fee for licensing the redistribution of information contained in such reports. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 7010. System Services

(a)–(o) No change

(p) Historical Research and Administrative Reports

(1) The charge to be paid by the purchaser of an Historical Research Report regarding a Nasdaq security through the NasdaqTrader.com website shall be determined in accordance with the following schedule:

	Number of fields of information in the report		
	1–10	11–15	16 or more
A. Market Summary Statistics			
For a day	$10	$15	$20
For a month, quarter, or year	$15	$20	$25
B. Index Weighting Information			
For a day	$15	$30	$45
C. Nasdaq Issues Summary Statistics			
For a security for a day	$10	$15	$20
For a security for a month, quarter, or year	$20	$30	$40
For all issues for a day	$50	$75	$100
For all issues for a month, quarter, or year	$100	$150	$200
D. Intra-Day Quote and Intra-Day Time and Sales Data			
For a security and/or a market participant for a day	$15	$25	$35
For all market participants for a day or for all securities for a day	$30	$40	$50
E. Member Trading Activity Reports			
For a security and a market participant for a day	$15	$25	$50
For all securities for a market participant for a day	$30	$50	$75

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

	Number of fields of information in the report		
	1–10	11–15	16 or more
F. Nasdaq may, in its discretion, choose to make a report that purchasers wish to obtain every trading day available on a subscription discount basis. In such cases, the price for a subscription to receive a report every trading day in a month shall be the applicable rate to receive the report for a day times 20; the price for a subscription to receive a report every trading day in a quarter shall be the applicable rate to receive the report for a day times 60; and the price for a subscription to receive a report every trading day in a year shall be the applicable rate to receive the report for a day times 240.			

(2) The charge to be paid by the purchaser of an Historical Research Report regarding a Nasdaq security that wishes to obtain a license to redistribute the information contained in the report to subscribers shall be determined in accordance with the following schedule:

	Number of subscribers				
	1–500	501–999	1,000–4,999	5,000–9,999	10,000+
A. Market Summary Statistics					
More often than once a month	$250	$350	$450	$550	$750
Once a month, quarter, or year	$125	$175	$225	$275	$375
B. Index Weighting Information					
More often than once a month	$1,000	$1,500	$2,500	$3,500	$5,000
Once a month, quarter, or year	$500	$550	$600	$750	$1,000
C. Nasdaq Issues Summary Statistics					
More often than once a month	$500	$600	$700	$800	$1,000
Once a month, quarter, or year	$250	$300	$350	$400	$500
D. Intra-Day Quote and Intra-Day Time and Sales Data					
For a security and/or a market participant for a day	$200	$300	$400	$500	$700
For all market participants for a day or for all securities for a day	$1,000	$1,500	$2,500	$3,500	$5,000

(3) The charge to be paid by the purchaser of [separate] *an* Historical Research [and Administrative] Report[s] *regarding an OTC Bulletin Board security or other OTC security through the OTCBB.com website* shall be as follows:

[(1)]*(A)* Daily Detailed Reports—$7 per day, per security and/or market participant for reports containing 15 fields or less. $15 per day, per security and/or market participant for reports exceeding 15 fields.

[(2)]*(B)* Summary Level Activity Reports—$25 per report.

[(3)]*(4)* Administrative Reports—$25 per user, per month.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Historical Research Reports

In 2000, Nasdaq established a fee structure for providing historical research reports pertaining to Nasdaq, OTC Bulletin Board or other OTC issues to investors.[3] Before that time, Nasdaq had provided such reports on an ad hoc basis to persons requesting this information by telephone. To alleviate the demand upon staff resources and to increase the quality, speed, and availability of the information to market participants, investors, and other interested parties (hereafter referred to as "customers"), Nasdaq developed an automated request and delivery system that allows the delivery of these reports in a timely and systematic manner at a fixed price, based on a standardized pricing methodology. Customers are able to access the reports through the Internet on the Nasdaq Trader.com (for Nasdaq issues) and OTCBB.com (for OTCBB and other OTC issues) websites by directing an Internet browser to the appropriate website. Once at the proper location within the website, the customer may choose from a list of standardized reports, input the necessary information pertaining to the desired security or market participant, and provide credit card information for payment.[4] Once completed, the report is sent via e-mail directly to the customer.

Currently, historical research reports are divided into two categories: "Daily Detailed Reports" and "Summary Level Activity Reports." Examples of Daily Detailed Reports include a Market Maker Price Movement Report (displays all market maker quote changes and the best bid and offer throughout a chosen day for a selected security), and a Time and Sales Report (provides a record of media-reported trades in the selected security, indicating the reported time, price and share volume). Summary Level Activity Reports provide trade and/or quote information over a monthly or quarterly period. Fees for the Daily Detailed Reports are set on a two-tiered basis, based on the number of data fields contained in the report. Examples of fields, depending on the type of report chosen, include reported volume, reported price, reported time, inside bid/ask, short sale indicator, etc. Nasdaq assesses a fee of $7 for reports

[3] *See* Securities Exchange Act Release No. 42341 (Jan. 14, 2000), 64 FR 69811 (Jan. 21, 2000) (SR–NASD–99–70).

[4] Credit card information is provided using a secure website connection.

with 15 or fewer fields of information for each trading day requested,[5] and a fee of $15 for reports with more than 15 fields of information for each trading day of information. Fees for Summary Level Activity Reports are set at $25 per report.

Nasdaq believes that this system for distributing historical research reports has been a successful method of providing beneficial information to customers in an efficient manner. However, Nasdaq believes that the fee structure for these reports should more clearly differentiate among the varieties of reports that are provided to customers, with prices that are calibrated to the size of the report, the frequency with which the report is provided, and the type of information contained in the report. Accordingly, Nasdaq is proposing a new fee schedule for historical research reports relating to Nasdaq securities.[6]

As is true under the current rule, the price of reports varies with the fields of information contained in the report. The new proposed schedule would assess different fees for reports with 1 to 10 fields of information, 11 to 15 fields, and 16 or more fields. The proposed fee schedule would also introduce categories for a wider variety of reports than are reflected in the current fee schedule.[7]

- *Market Summary Statistics:* This category consists of data reports that provide a summary of overall market performance. Reports in this category include (but are not limited to) end-of-day or end-of-month market statistics (*e.g.*, most actives, advances, declines, overall trading volumes, and similar statistics), index summary reports (*e.g.*, high, low, and close values for all indexes), pre-market and after-hours market indicators, and after-hours market statistics. The prices charged for these reports would depend on whether the report provided information about a day or a month, quarter, or year.
- *Index Weighting Information:* This category consists of data report that provide information about Nasdaq indexes, including (but not limited to) the weightings, pricing, depositary receipt multipliers, total shares outstanding, and/or market capitalization for each issue in a Nasdaq index, or the calculation report, pre-market indicator or after-hours indicator for each of the Nasdaq indexes. These reports are provided on a per day basis.
- *Nasdaq issues Summary Statistics:* This category consists of data reports that provide information about a particular security that is listed on Nasdaq. Information contained in these reports may include high, low or closing prices, high, low, or closing quotes, trading volumes, or dividends, IPO trading summary statistics, monthly short interest, or monthly share volume. The prices charged for these reports would depend on whether they cover a particular security or all listed securities, and whether they cover a day or a month, quarter, or year.
- *Intra-Day Quote and Intra-Day Time and Sales Data:* This category consists of data that provide detailed intra-day quote and/or time and sales information during a particular time of day or throughout the trading day. These reports are provided on a per day basis. The prices charged for these reports would depend on whether they cover a particular security or a particular market participant or all securities or market participants.
- *Member Trading Activity Reports:* This category consists of reports that provide data about a specific market participant's trading activity, such as ACT Compliance Reports, Equity Audit Trail Reports, and SelectNet Activity Reports. These reports are provided on a per day basis, and the prices charged would depend on whether they cover a particular security traded by the market participant or all securities.

The proposed fee schedule would also allow Nasdaq to offer discounted subscription pricing to customers who wish to subscribe to receive a daily report for each day of a month. The price would be the applicable per day price for the report, multiplied by twenty. Thus, in a month with more than twenty trading days, the reports would be received at a discount. Similarly, the price for a quarterly subscription would be the applicable per day price for the report multiplied by 60, and the price for an annual subscription would be the applicable per day price for the report multiplied by 240.

Redistribution Licensing Fees

The purchase of an historical research report relating to a Nasdaq security does not currently provide the purchaser with a license to redistribute the data from the report to other persons. However, Nasdaq has received numerous requests from various organizations—primarily organizations that provide research and analytical products to institutional investors, individual investors and market participants—that wish to redistribute such data to their customers. Although in some cases (*e.g.*, the market summary reports) the data is available from data vendors that subscribe to Nasdaq market data feeds (*e.g.*, Level 1), these organizations seeks data distribution arrangements that are more tailored to their needs and those of their customers. Nasdaq has also found that market data vendors seek ways to supplement their current Nasdaq data feed offerings with more specific historical data to provide more in-depth analytical information to their customers. Accordingly, Nasdaq is proposing a fee schedule that would allow a customer who signs an addendum to the Nasdaq vendor agreement to receive and redistribute information found in historical research reports relating to Nasdaq securities.[8] The fees would be paid instead of, not in addition to, the fees charged to a customer who does not want a license to redistribute. The structure of the proposed licensing fee schedule is similar to the structure for the purchase of reports. Available reports would be divided into four categories: Market Summary Statistics, Index Weighting Information, Nasdaq Issues Summary Statistics, and Intra-Day Quote and Intra-Day Time and Sales Data.[9] For the first three categories, the level of the fee charged would depend on whether the reports would be redistributed more than once a month or only once a month. For Intra-Day Quote and Intra-Day Time and Sales Data, the level of the fee charged would depend on whether the reports provide information with respect to one market participant or all market participants.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)[10] and 15A(b)(6)[11] of the Act. Section 15A(b)(5)[12] requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6)[13] requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this service provides beneficial information to customers and that the fees for reports are equitably allocated on the basis of the size, frequency, and type of report sold to a particular customer. Nasdaq also believes that licensing the redistribution of the information will respond to customer requests for licensing arrangements and will allow broader dissemination of the information.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2001–59 and should be submitted by November 13, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26541 Filed 10–19–01; 8:45 am]

BILLING CODE 8010–01–M

[5] Thus, an investor requesting a report containing 12 fields of information for a three trading-day period would be charged $21.

[6] Nasdaq is not at this time modifying (i) the fees for administrative reports, which are firm-specific reports that generally serve to assist NASD members in auditing their own internal systems, verifying back-end processing, and projecting monthly costs, or (ii) the fees for historical data reports on OTC Bulletin Board or other OTC securities obtained through the OTCBB.com website.

[7] The examples of reports covered by each category are not intended to be exclusive. New reports may be made available and assigned to an appropriate category in the future.

[8] Nasdaq is not at this time proposing to license the redistribution of information from historical data reports relating to OTC Bulletin Board or other OTC securities.

[9] Member Trading Activity reports, which are sold only to the market participant whose trading is described in the report, would not be available for licensed redistribution.

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78o–3(b)(5).

[13] 15 U.S.C. 78o–3(b)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–44938; File No. SR–PCX–2001–35)]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating To Split Price Executions of Auto-Ex Orders

October 15, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4[2] thereunder, notice is hereby given that on August 31, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The proposed rule change has been filed by the PCX as a "non-controversial" rule change under Rule 19b–4(f)(6)[3] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to adopt Rule 6.87(p) permitting split-price executions. Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

Rule 6.87(a)–(m)—No change.

(n)–(o)—Reserved.

(p) Auto-Ex Split-Price Executions. When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange, contra-side incoming Auto-Ex orders will be executed as follows:

(1) When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange and is for a size less than the Auto-Ex guaranteed size for the issue, that best bid or offer will be denoted in the Exchange's disseminated quote by a "Book Indicator." An incoming Auto-Ex order will be executed against the order in the book. In the event the order in the book is for a smaller number of contracts than the Auto-Ex order, the balance of the Auto-Ex order up to the firm quote size for the issue will be assigned to Market-Makers on the Auto-Ex wheel at the same price at which the initial portion of the order was executed. Any remaining balance thereafter will be:

(A) Assigned to market Makers on the Auto-Ex wheel at the Auto-Quote price if Auto-Quote constitutes the new prevailing market bid or offer that is equal to or better than the NBBO; or

(B) Executed against any order in the book that constitutes the new prevailing market bid or offer with the balance of the Auto-Ex order being assigned to Market Makers on the Auto-Ex wheel at that price up to the firm quote size. Any additional remaining balance of on Auto-Ex order shall be handled in accordance with (A) or (B) of this paragraph.

(2) Notwithstanding paragraph (1) above, if the bid or offer generated by the Exchange's Auto-Quote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's Auto-Quote system) crosses or locks the Exchange's best bid or offer established by an order in the Exchange's customer limit order book, or is outside the NBBO, then Auto-Ex orders for options of that series will not be automatically executed but instead will be rerouted to Floor Broker Hand-Held Terminals or to another location in the event of system problems or contrary firm routing instructions. These rerouted orders will be executed in accordance with Rule 6.86.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

Commentary:

.01 For purposes of this rule, the firm quote size is the minimum quotation size established by Rule 6.86.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will permit split-price executions of Auto-Ex orders when the book represents the best PCX market and is for a size less than the Auto-Ex guaranteed size for the issue.[4] In such cases, the book's best bid or offer will be denoted by a "Book Indicator" and the incoming Auto-Ex order will be executed against the actual book size. The balance of the Auto-Ex order up to the firm quote size[5] for the issue will be assigned to Market Makers on the Auto-Ex wheel at the same price at which the initial portion of the order was executed. If any portion of the Auto-Ex order remains unfilled, the balance of the order will be executed at the next prevailing bid or offer, *i.e.*, the book price and/or the Auto-Quote price. The NBBO will be checked after each quote update to ensure that automatic executions do not occur at inferior prices.

If the bid or offer generated by the Exchange's Auto-Quote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's Auto-Quote system) crosses or locks the Exchange's best bid or offer established by an order in the Exchange's customer limit order book, or is outside the NBBO, then Auto-Ex orders for options of that series will not be automatically executed but instead will be rerouted to Floor Broker Hand-Held Terminals or to another location in the event of system problems or contrary firm routing instructions. These rerouted orders will be executed in accordance with Rule 6.86.

Currently, when the book represents the best PCX market and is for a size less than the Auto-Ex guaranteed size for the issue, the incoming Auto-Ex order will be executed against the actual book size and the balance of the order up to the Auto-Ex guarantee size for the issue will be assigned to Market Makers on the Auto-Ex wheel at the same price that the initial portion of the order was executed. For example, assume the Auto-Ex guarantee is 100 and the firm quote size is 20. If the book contains an order for one contract that represents the best bid, an incoming market order to sell 100 contracts will execute against the book for one contract and then against Market Makers logged onto Auto-Ex for 99 remaining contracts at the book price, regardless of the trading crowd's best bid. Under the split-price execution proposal, 19 contracts of the sell order will be assigned to Market Makers logged onto Auto-Ex for sale at the book price and the balance of the order will be executed at the next prevailing bid or offer, *i.e.*, the book price and/or the Auto-Quote price. The NBBO will be checked after each quote update to ensure that automatic executions do not occur at inferior prices.

2. Statutory Basis

The Exchange believes that this proposal is ocnsistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitation transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6)[9] thereunder.

The PCX did not request that the Commission waive the 30-day delay in the operative date of the proposed rule change pursuant to Section 19(b)(3)(A)(iii) under the Act. Accordingly, the proposed rule change became operative on October 1, 2001.

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX.

All submissions should refer to File No. SR-PCX-2001-35 and should be submitted by November 13, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-26488 Filed 10-19-01; 8:45 am]

BILLING CODE 8010-01-M

[4] The Exchange represents that the proposed rule change is, in large part, adapted from Chicago Board Options Exchange Rule 6.8(d)(iv). *See* Securities Exchange Act Release No. 44244 (May 1, 2001), 66 FR 23283 (May 8, 2001).

[5] The firm quote size is the minimum quotation size established by PCX Rule 6.86.

[6] 15 U.S.C. 78(B).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b-4(f)(6).

[10] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C).

[11] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44930; File No. SR-Phlx-2001-77]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Exchange Rule 625, Trading Floor Training, Equity Floor Procedure Advice F-30, and Options Floor Procedure Advice F-30

October 12, 2001.

On August 9, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Phlx Rule 625 ("Trading Floor Training"), Equity Floor Procedure Advice F-30, and Options Floor Procedure Advice F-30 (collectively referred to as "Advice F-30")[3] to allow the Exchange to require from time to time its members and their respective personnel to attend mandatory training sessions related to conduct, health and safety on the Exchange's equity and options trading floors (collectively referred to as "trading floor"). The Phlx also proposed to amend the fine schedule in Equity Floor Procedure Advice F-30 to be consistent with the fine schedule in the corresponding Options Floor Procedure Advice.[4] Notice of the proposed rule change appeared in the **Federal Register** on August 30, 2001.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[6] in general, and the rules and regulations thereunder.[7] In particular, the Commission believes that the proposal is consistent with Section 6(c)(3)(B) of the Act,[8] which provides, among other things, that a national securities exchange may require its members to meet certain standards of training, experience and competence as prescribed by the rules of an exchange. The Commission believes that requiring, providing notice of, and conducting training sessions related to conduct, health and safety on the trading floor by the Exchange should promote a safer work environment by informing Exchange members and their respective personnel of important issues related to the Exchange's trading floor.

The Commission also finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges to exchange members, in that the Exchange's proposed fine schedule for its Equity Floor Procedure is consistent with the already existing fine schedule of the Exchange's Option Floor Procedures.[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR-Phlx-2001-77) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-26484 Filed 10-19-01; 8:45 am]

BILLING CODE 8010-01-M

[1] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Advice F-30 and the accompanying fine schedules are part of the Exchange's minor rule violation and reporting plan ("minor rule plan"). The Exchange's minor rule plan, codified in Phlx Rule 970 ("Floor Procedure Advices: Violations, Penalties, and Procedures"), contains floor procedure advices with accompanying fine schedules such that a minor rule violation and reporting plan citation could be issued. Rule 19d-1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting. 17 CFR 240.19d-1(c)(2). Rule 19d-1(c)(1) under the Act requires prompt filing with the Commission of any final disciplinary actions. 17 CFR 240.19d-1(c)(1). However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate reporting.

[4] The fine schedule applicable to Options Floor Procedure Advice F-30 was recently amended and reflects the same fines as proposed herein. *See* Securities Exchange Act Release No. 44537 (July 11, 2001), 66 FR 37511 (July 18, 2001) (order approving SR-Phlx-2001-36).

[5] *See* Securities Exchange Act Release No. 44742 (August 23, 2001), 65 FR 45885.

[6] 15 U.S.C. 78f.

[7] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(c)(3)(B).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* note 4, *supra.*

[11] 15 U.S.C. 78s(b)(2)

[12] 17 CFR 200.30-3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer and at the following addresses:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503

(SSA), Social Security Administration, DCFAM, Attn: SSA Reports Clearance Officer, 1-A-21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-4145, or by writing to him at the address listed above.

1. Employer Report of Special Wage Payments—0960-0565. The Social SecurityAdministration (SSA) gathers the information on Form SSA-131 to prevent earnings related overpayments to employees and to avoid erroneous withholding. The respondents are employers who provide special wage payment verification.

Number of Respondents: 30,000.
Frequency of Response: 1.
Average Burden Per Response: 20 minutes.
Estimated Annual Burden: 10,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. Representative Payee Report—0960–0068. Sections 205(j) and 1631(a)(2) provide for the payment of Social Security and Supplemental Security Income benefits to a relative, another person or an organization (referred to as representative payee) when the best interests of the beneficiary would be served. These sections also provide that SSA monitor how the benefits were used. SSA uses forms SSA–623 and SSA–6230 to collect this information. SSA needs the information to determine whether the payments provided to the representative payee have been used for the beneficiary's current maintenance and personal needs and whether the representative payee continues to be concerned with the beneficiary's welfare. The respondents are representative payees designated to receive funds on behalf of Social Security and Supplemental Security Income (SSI) recipients.

Number of Respondents: 5,527,755.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 1,381,939 hours.

2. Reporting Events, SSI—0960–0128. SSI applicants, recipients and their representative payees use Form SSA–8150–EV (or the Spanish version) to report by mail changes in circumstances that could affect eligibility for SSI. SSA uses the reported changes on the form to determine eligibility and correct payment amounts for SSI payments, which may include federally administered State supplementary payments. The respondents are SSI applicants, recipients, and their representative payees.

Number of Respondents: 33,200.
Frequency of Response: 1.
Average Burden Per Response: 5.
Estimated Annual Burden: 2,767 hours.

Dated: October 16, 2001.
Frederick W. Brickenkamp,
Reports Clearance Officer.
[FR Doc. 01–26469 Filed 10–19–01; 8:45 am]
BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 3819]

Bureau of African Affairs; Africa/Public Diplomacy (AF/PD) Professional Internship Program

Introduction

The United States Department of State announces an open competition for an assistance award. Nongovernmental organizations may apply to design and manage a multi-faceted program that consists of (1) U.S.-based professional internships, (2) Africa-based AGOA workshops.

AGOA (Africa Growth and Opportunity Act), signed into law in May 2000, offers qualifying African countries preferential access to U.S. markets for their industries. The countries participating in AGOA are positioned in varying degrees to take advantage of the bill. Some, such as South Africa and Mauritius, have well-developed light industrial sectors poised to begin exporting to U.S. markets. Others have little industry positioned to compete and no immediate prospects. All have indicated enthusiasm for the possibilities offered by AGOA, tempered by the realization that the African private sector needs more exposure to U.S. markets, business practices, and trade associations before they will be able to access U.S. markets and develop viable two-way trade relationships and thereby realize the full benefits of AGOA.

Purpose

The program will provide medium and small African business entrepreneurs and members of business associations exposure to AGOA and to the American market in order to increase capacity to develop new African-U.S. trade linkages. The program will give them an understanding of American business norms and actual practices, provide them with knowledge of U.S. customs operations, product distribution and retailing, and, finally, help them develop business linkages and relationships with manufacturers and businesses in their respective sectors. The grant will fund a two-part program to offer African entrepreneurs both exposure to U.S. markets and the opportunity to share their insights and knowledge with business associations and other entrepreneurs upon returning home.

The AF/PD AGOA Professional Internship Program is designed to enhance the professional skills and abilities of the participants and assist them in understanding the variety, depth, and practices of the American market and also provide them with an introduction to American entrepreneurs and trade associations.

The contract agency will be expected to work closely with AF/PD and Public Affairs Sections of U.S. Embassies in Africa in developing and implementing this program.

Authority

22 U.S.C.–2452(a)(2)

Eligible Applicants

Eligible applicants include all nongovernmental institutions, private organizations, and commercial entities.

Availability of Funds

The funding level for this Cooperative Agreement shall be no higher than $750,000. Award of this cooperative agreement is based on the availability of funds for fiscal year 2002. A final award will not be made until funds appropriated by Congress are available through internal Department of State procedures.

Continuing awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Reporting Requirement

Periodic progress reports and a final evaluation will be required.

Review Criteria

Technically eligible applicants will be competitively reviewed under 6 criteria. The criteria are: (1) Cost effectiveness and cost sharing; (2) Program planning and ability to achieve objectives; (3) Institutional capacity; (4) Program monitoring; (5) Program evaluation (6) Support of diversity.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork ReductionAct.

Application Submission and Deadline

The original and ten (10) copies of the application (Standard Form 424) must be submitted to the U.S. Department of State, Ms. Joanna Pisciotta Snearly, Grants Officer, A/LM/AQM/IP, State Annex #44, Room M–22, 301 4th Street SW, Washington, DC, 20547 on or before November 28, 2001.

Where To Obtain Additional Information

A detailed program description and application package may be obtained from Ms. Joanna Pisciotta Snearly, Grants Officer, U.S. Department of State, A/LM/AQM/IP, State Annex #44, Room M–22, 301 4th Street SW, Washington, DC 20547, telephone (202) 260–6549, fax (202) 205–5466 email *jsnearly@pd.state.gov*. Please refer to the "AF/PD Professional Internship Program" when requesting information or sending an application.

Dated: October 16, 2001.
Joanna Pisciotta Snearly,
Grants Officer, Administration/Logistics Management/Acquisition Management/ International Programs, Department of State.
[FR Doc. 01–26542 Filed 10–19–01; 8:45 am]
BILLING CODE 4710–26–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1535).
TIME AND DATE: 9 a.m. (CDT), October 24, 2001.
PLACE: Jackson State Community College, McWherter Building—Ayers Auditorium, 2046 North Parkway, Jackson, Tennessee.
STATUS: Open.

Agenda

Approval of minutes of meeting held on September 19, 2001.

New Business

A—Budget and Financing

A1. Fiscal year 2001 Financial Review and Asset Valuation Recommendation.

A2. Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury.

C—Energy

C1. Delegation of authority to the Vice President of Fuel Supply and Engineering Services to award a term contract to Crounse Corporation for barging services to Paradise Fossil Plant.

C2. Term coal contract with U.S. Coal, Inc., for coal supply to Kingston Fossil Plant.

C3. Contract with ALSTOM Power, Inc., to provide for the design, engineering, fabrication, and supply of boiler pressure parts and components for Bull Run Fossil Plant.

C4. Supplement to Contract No. 1601 with Braden Manufacturing, L.L.C., for design, supply, and installation of replacement inlet air duct systems on TVA-owned General Electric combustion turbines at Colbert and Johnsonville combustion turbine sites.

F—Other

F1. Approval to file condemnation cases to acquire transmission line easement rights-of-way and the right to enter affecting Tract No. KD2, Kemper-DeKalb Transmission Line in Kemper County, Mississippi, and Tract Nos. SWM–1000TE, 1001TE, and 1003TE, Sweetwater-Madisonville Transmission Line in Monroe County, Tennessee.

Information Items

1. Supplement to contract for communication services with Media South LLC.

2. Delegation of authority to arrange for third-party long-term financing for energy services contracts through sales of accounts receivable.

3. Implementation of the results of negotiations with the Engineering Association, Inc., over compensation for Fiscal Years 2001 and 2002.

4. Manager and Specialist and Excluded Schedule annual performance award budget and pay band structure adjustment.

5. Negotiated pay adjustments for Fiscal Year 2002 for SA and SB employees represented by the Office and Professional Employees International Union.

6. Pay benefits for TVA employees called to active duty.

7. TVA contribution to the TVA Retirement System for Fiscal Year 2002.

8. Sale of an exclusive and transferable permanent easement for future development of a medical technology corridor for the City of Johnson City, Tennessee.

9. Amendments to the Rules and Regulations of the TVA Retirement System and to the provisions of the TVA Savings and Deferral Retirement Plan (401(k) Plan).

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000.

Dated: October 17, 2001.
Maureen H. Dunn,
General Counsel and Secretary.
[FR Doc. 01–26706 Filed 10–18–01; 3:39 pm]
BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10772]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.
ACTION: Notice of meetings.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Subcommittees will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. All meetings will be open to the public. These meetings were originally scheduled for September 12–14, 2001.

DATES: CTAC will meet on Wednesday, November 28, from 9 a.m. to 3 p.m. The Subcommittees on Prevention Through People (PTP) and Hazardous Substances Response Standards will meet on Tuesday, November 27, 2001, from 8:30 a.m. to 4 p.m. The Subcommittee on Vessel Cargo Tank Overpressurization will meet on Thursday, November 29, 2001, from 9 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before November 16, 2001. Requests to have a copy of written material distributed to each member of the Committee or Subcommittee should reach the Coast Guard on or before November 20, 2001.

ADDRESSES: CTAC will meet in room 2415, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC. The PTP Subcommittee and the Hazardous Substances Response Standards Subcommittee will meet at Coast Guard Headquarters in room 5303 and 2415, respectively. The Vessel Cargo Tank Overpressurization Subcommittee will meet at the Department of Transportation Headquarters, Nassif Building, 400 7th Street, SW., Washington, DC in room 3328. Send written material and requests to make oral presentations to Commander James M. Michalowski, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Commander James M. Michalowski, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the

Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

Chemical Transportation Advisory Committee

(1) Introduction of Committee members and attendees.

(2) Progress Reports from the PTP, Hazardous Substances Response Standards, and Vessel Cargo Tank Overpressurization Subcommittees.

(3) Presentation on the Millennium Class Tanker.

(4) Presentation by a Guest Speaker on "Expansive Imbibition for Practical Pollution Particulation or Separating Things from Stuff."

(5) Coast Guard update on Cargo Authority Lists for the New Coast Guard MISLE Database.

(6) Update of Coast Guard Regulatory Projects and IMO Activities.

Subcommittee on PTP. The agenda includes the following:

(1) Continuation of work on the development of a risk management guide for the chemical transportation industry.

Subcommittee on Hazardous Substances Response Standards. The agenda includes the following:

(1) Final development of recommendations to the Coast Guard concerning protocols for emergency chemical response.

Subcommittee on Vessel Cargo Tank Overpressurization. The agenda includes the following:

(1) Continuing development of recommendations for an industry standard to address the prevention of cargo tank overpressurization during inerting, padding, purging, and line clearing operations.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than November 16, 2001. Written material for distribution at a meeting should reach the Coast Guard no later than November 16, 2001. If you would like a copy of your material distributed to each member of the Committee or Subcommittee in advance of the meetings, please submit 25 copies to the Executive Director no later than November 20, 2001.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Assistant to the Executive Director of CTAC as soon as possible.

Dated: October 4, 2001.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 01–26564 Filed 10–19–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Supplemental Environmental Impact Statement on the Central Link Light Rail Transit Project

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Central Puget Sound Regional Transit Authority (Sound Transit) intend to prepare a supplemental EIS in accordance with the National Environmental Policy Act (NEPA) on the Central Link Light Rail Transit project north corridor from Convention Place to Northgate. This is a supplemental EIS to the Central Link Light Rail Transit Project Final EIS (November 1999). The supplemental EIS will evaluate a no build alternative and light rail station and route options in three segments: Capitol Hill/South Lake Union (Convention Place Station to SR–520), Ship Canal crossing/University District (SR–520 to NE 45th Street), and the Northgate segment (NE 45th to Northgate). Scoping will be accomplished through meetings and correspondence with interested persons, organizations, the general public, federal, state and local agencies and tribes.

DATES: *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be sent to Sound Transit by November 9, 2001. See **ADDRESSES** below. *Scoping meetings:* Public scoping meetings will be held on Wednesday, October 24, 2001 from 5 p.m. to 8 p.m. at Union Station and on Thursday, October 25, 2001 from 5 p.m. to 8 p.m. at Calvary Temple. An agency scoping meeting will be held Wednesday, October 24, 2001 from 1 p.m. to 3 p.m. at Union Station. See **ADDRESSES** below.

ADDRESSES: Written comments on the project scope of alternatives and impacts to be considered should be sent to James Irish, Sound Transit, 401 South Jackson St., Seattle, WA 98104–2826 by November 9, 2001. Scoping meetings will be held on the following days and locations.

Public Scoping Meetings

Wednesday, October 24, 2001

5 pm–8 pm
Location: Union Station—Great Hall, 401 S. Jackson Street, Seattle, Washington, and

Thursday, October 25, 2001

5 pm–8 pm
Location: Calary Temple—Children's Auditorium, 6810 8th Avenue NE., Seattle, Washington

Agency Scoping Meeting

Wednesday, October 24, 2001

1 pm–3 pm
Location: Union Station—Sound Transit Board Room, 401 S. Jackson Street, Seattle, Washington

FOR FURTHER INFORMATION CONTACT: John Witmer, Federal Transit Administration, 915 2nd Avenue Suite 3142, Seattle, WA 98174, Telephone: 206.220.7964 or James Irish, Sound Transit, 401 South Jackson St., Seattle, WA 98104–2826, Telephone: 206.398.5140.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and Sound Transit invite comments from interested individuals, organizations, and federal, state, regional and local agencies for a period of 30 days after publication of this notice (See **DATES** and **ADDRESSES** above). Comments should focus on defining the alternatives within the corridor to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives. An Environmental Scoping Information Report describing the project, the proposed alternatives, the impact areas to be evaluated, the public involvement program and the preliminary project schedule has been prepared. You may request a copy of the report by contacting Anna Mallon, Sound Transit, 401 South Jackson St., Seattle, WA 98104–2826, Telephone: 206.398.5144. In addition to written comments, which may be made at the meetings or as decribed above, a stenographer will be available at the public meetings to record oral comments. All of the locations for the scoping meetings are accessible to people with disabilities. Non-English translation services and accessible formats are available by request at 800.201.4900 (voice) or 206.398.5410 (TTY).

II. Study Area and Alternatives

FTA and the Central Puget Sound Regional Transit Authority (Sound Transit) will prepare a supplemental EIS on route alternatives from Convention Place to Northgate. The study are will be divided into three segments: Capitol Hill/South Lake Union (Convention Place Station to SR–520), Ship Canal Crossing/University District (SR–520 to NE 45th Street), and the Northgate segment (NE 45th to Northgate). The supplemental EIS will address the no build alternative and the following light rail station and route options:

Capitol Hill/South Lake Union (Convention Place Station to SR–520)

These include the adopted Capitol Hill route including Capitol Hill station alternatives, an Eastlake Avenue Route, a Bouren Avenue route, and a route bypassing First Hill with stations between Capitol Hill and First Hill and on 15th Avenue.

Ship Canal Crossing/University District (SR–520 to NE 45th Street)

These include the Postage Bay tunnel adopted route, a Montlake tunnel route via the University of Washington's Rainier Vista, a tunnel route in the vicinity of the University bridge, and a high-and/or mid-level bridge.

Northgate Segment (NE 45th to Northgate)

Includes the two 8th Avenue route options, and the 12th Avenue route. A Notice of Intent was issued on April 16, 2001 to prepare a supplemental EIS for the Northgate segment (NE 45th to Northgate) to the project. That supplemental EIS has been terminated. Supplemental environmental review for the Northgate segment of the project will be incorporated in this new supplemental EIS.

III. Probable Effects

This is a supplemental EIS to the Central Link Rail Transit Project Final EIS (November 1999). The FTA and Sound Transit will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the supplemental EIS. Impacts will be evaluated for all issues evaluated in the original EIS.

Issued on: September 27, 2001.

Helen Knoll,

Regional Administrator, Region X.

[FR Doc. 01–26559 Filed 10–19–01; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–10044; Notice 2]

Reliance Trailer Co., LLC; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

This notice grants the application by Reliance Trailer Co., LLC, of Spokane, Washington ("Reliance"), for a temporary exemption of its dump body trailers from Federal Motor Vehicle Safety Standard No. 224 *Rear Impact Protection.* The basis of the grant is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We published notice a of receipt of the application on July 10, 2001, affording an opportunity to comment (66 FR 36032).

Why Reliance Says That It Needs an Exemption

In February 2001, Reliance acquired the assets of SturdyWeld, another Washington company, in order to commence manufacture of "trailers built to mate with asphalt paving equipment." We observed that this appears to be a horizontal discharge trailer that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. However, the sole commenter on the notice, Dan Hill & Associates, pointed out that the trailer is a "dump body/gravity feed" trailer. Dan Hill distinguishes this type of trailer as one that "can handle everything from 9-foot-plus slabs of concrete all the way down to sand, whereas * * * controlled horizontal discharge products are limited to the transportation of hot-mix asphalt and, on occasion, other related processed road-building materials under 2″ in size."

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 kg or more, including Reliance's trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards.* Reliance argued that installation of the rear impact guard will prevent its trailers from connecting to the paver and performing their mission. Thus, its trailers will no longer be functional.

Reliance's Reasons Why It Believes That Compliance Would Cause It Substantial Economic Hardship and That It Has Tried in Good Faith To Comply With Standard No. 224

Reliance is a small volume manufacturer whose total production in the 12-month period preceding its petition was 268 trailers. In the absence of an exemption, Reliance says that "considering the over $2 million paid for the [SturdyWeld] Division and if we are able to sell the over $1 million inventory, but have to shut this operation down, we would probably lose over $1 million." Reliance's cumulative net income after taxes for the fiscal years 1998, 1999, and 2000 was $150,793.

Reliance apparently learned of its compliance problem after producing 26 of the trailers in question. It has determined that these trailers fail to comply with Standard No. 224, and has notified NHTSA pursuant to 49 CFR Part 573. It has also filed a petition for a determination that the noncompliance is inconsequential to safety. Reliance has also discovered that "this is a nationwide, yet unsolved, problem," citing three manufacturers of similar trailers who have received temporary exemptions from Standard No. 224, Beall Trailers, Red River Manufacturing, and Dan Hill Associates.

The petition discusses "possible alternative means of compliance" which "will include the analysis of moveable, replaceable or retractable under-rides. To date these concepts are very difficult to maintain due to the nature of the paving material." After discussion with its customers, Reliance "will proceed to design, build and test prototype designs to meet the regulations and allow dumping asphalt into paving equipment." It believes that it will comply by the end of a two-year exemption period.

Reliance's Reasons Why It Believes That a Temporary Exemption Would Be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Reliance argues that an exemption would be in the public interest and consistent with traffic safety objectives because the trailers "represent about 80% of the output of the 38 employees' of the SturdyWeld division, and "if this petition is denied, the operation will be closed and those people will be out of jobs." An exemption would allow it "to continue to provide equipment needed by road building industries to expand

and develop" the national transportation system.

The trailers will be built in small quantities. "Typical hauls are short" with a minimal amount of time traveling on highways compared with most freight trailers," which "diminishes the exposure for these vehicles." Reliance knows of no rear end collisions and consequent injuries with its type of trailer.

In commenting on the application, Dan Hill did not "take a position to either support or criticize Reliance/SturdyWeld's application for a temporary exemption."

As we understand it, Reliance acquired SturdyWeld in order to enter the dump body trailer market. The trailers did not comply with Standard No. 224, and Reliance has asked for a temporary exemption of two years, at the end of which it believes it will comply. In the meantime, it could not sell dump body trailers, and might lose more than half of its investment of $2 million in SturdyWeld. Such a loss would presage a negative effect on its net income, which, on a three-year cumulative basis is $150,793. These factors indicate that to require immediate compliance would create substantial economic hardship.

We must also find that an applicant has made a good faith effort to comply with the standard from which exemption has been requested. Understandably, if Reliance only recently learned of its noncompliance, its compliance efforts are only in the early stages. The applicant referred to compliance as "a nationwide, yet unsolved, problem," and cited three manufacturers who had received temporary exemptions from Standard No. 224: Dan Hill, Red River Manufacturing, and Beall Trailers of Washington, Inc.

In its comment, Dan Hill distinguished between horizontal discharge trailers of the type that it and Red River manufactures ("a market that consists of fewer than 400 unit sales per year"), and dump-type trailers manufactured by the applicant, Beall Trailers, and others ("on the average, 7,451 units per year (Source: The U.S. Census Bureau, measurement period 1991 through 1997)." It would appear, then, that the factual situation in the Beall exemption might afford an appropriate comparison.

We granted Beall NHTSA Temporary Exemption No. 98–5 on July 8, 1998 (63 FR 36989), and extended it to August 1, 2001 (66 FR 22069). Beall was similar in size to Reliance. It had produced 311 trailers in the year preceding the filing of its petition, of which 124 were dump body types. Its average net income for 1995, 1996, and 1998 was slightly lower than Reliance's cumulative figure (The figure reported for 1997 was a before-taxes number). Both its original petition and petition for renewal recounted difficulties in developing a rear impact guard that was compatible with paving equipment, including hinged, retractable devices. Although Beall's exemption has expired, the company has indicated that it will have to apply for a further exemption. Beall's experience indicates that compliance by dump body trailers with Standard No. 224 can be a complex matter. Thus, the term of the exemption we are granting Reliance is the two years that it requested.

We must also find that an exemption would be in the public interest and consistent with the objectives of vehicle safety. This exemption will afford additional time for Reliance to solve its compliance issue. The vehicles produced under a temporary exemption will be built in small quantities and the time that they spend on the highways no more than the other trailers granted an exemption. Thus, the exposure of other vehicles to the rear of a trailer lacking a rear impact guard is likely to be minimal.

In consideration of the foregoing, it is hereby found that to require compliance with Standard No. 224 would result in substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard, and that a temporary exemption would be in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Reliance Trailer Co, LLC is granted NHTSA Temporary Exemption No. 2001–6 from Federal Motor Vehicle Safety Standard No. 224, Rear Impact Protection, expiring October 1, 2003. The exemption covers only dump body trailers manufactured by the applicant.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on October 16, 2001.

Jeffrey W. Runge,

Administrator.

[FR Doc. 01–26561 Filed 10–19–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–77]

Cancellation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury.

ACTION: Customs broker license cancellation.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is canceled without prejudice.

Name	License #	Port name
F.X. Coughlin Company.	4382	Detroit

Dated: October 17, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–26521 Filed 10–19–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculatinginterest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the quarter beginning October 1, 2001, the interest rates for overpayments will be 6 percent for corporations and 7 percent for non-corporations, and the interest rate for underpayments will be 7 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the short-term Federal rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2001–47 (see, 2001–39 IRB 1, dated September 24, 2001), the IRS determined the rates of interest for the calendar quarter beginning October 1, 2001, and ending December 31, 2001. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate (4%) plus three percentage points (3%) for a total of seven percent (7%). For corporate overpayments, the rate is the Federal short-term rate (4%) plus two percentage points (2%) for a total of six percent (6%). For overpayments made by non-corporations, the rate is the Federal short-term rate (4%) plus three percentage points (3%) for a total of seven percent (7%). These interest rates are subject to change for the calendar quarter beginning January 1, 2002, and ending March 31, 2002.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under payments (percent)	Over payments (percent)	Corporate Overpayments (Eff. 1–1–99) (percent)
Prior to:				
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6

Dated: October 17, 2001.

Robert C. Bonner,

Commissioner of Customs.

[FR Doc. 01–26520 Filed 10–19–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106902–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106902–98 (TD 8833), Consolidated Returns—Consolidated Overall Foreign Losses and Separate Limitation Losses (§ 1.1502–9(c)(2)(iv)).

DATES: Written comments should be received on or before December 21, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Consolidated Returns—Consolidated Overall Foreign Losses and Separate Limitation Losses.

OMB Number: 1545–1634.

Regulation Project Number: REG–106902–98.

Abstract: The regulation provides guidance relating to the amount of overall foreign losses and separate limitation losses in the computation of the foreign tax credit. The regulations affect consolidated groups of corporations that compute the foreign tax credit limitation or that dispose of property used in a foreign trade or business.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Average Time Per Respondent: 1 hr., 30 min.

Estimated Total Annual Burden Hours: 3,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–26467 Filed 10–19–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–104924–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, REG–104924–98, Mark-to-Market Accounting for Dealers in Commodities and Traders in Securities or Commodities (§§ 1.475(e)–1 and 1.475 (f)–2).

DATES: Written comments should be received on or before December 21, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Mark-to-Market Accounting for Dealers in Commodities and Traders in Securities or Commodities.

OMB Number: 1545–1640.

Regulation Project Number: REG–104924–98.

Abstract: The collection of information in this proposed regulation is required by the Internal Revenue Service to determine whether an exemption from mark-to-market treatment is properly claimed. This information will be used to make that determination upon audit of taxpayers' books and records.

Current Actions: There is no change to this existing proposed regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–26468 Filed 10–19–01; 8:45 am]

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Federal Register

Monday,
October 22, 2001

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1, et al.
Federal Acquisition Regulations (FAR); Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–01; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–01. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–01 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.arnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Application of the Davis-Bacon Act to Construction Contracts With Options to Extend the Term of the Contract.	1997–613	Nelson.
II	Acquisition of Commercial Items	2000–303	Moss.
III	Prompt Payment Under Cost-Reimbursement Contracts for Services (Interim)	2000–308	Olson.
IV	Veterans' Employment	1998–614	Nelson.
V	Veterans Entrepreneurship and Small Business Development Act of 1999 (Interim)	2000–302	Cundiff.
VI	Very Small Business Pilot Program	2001–001	Cundiff.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 2001–01 amends the FAR as specified below:

Item I—Application of the Davis-Bacon Act to Construction Contracts With Options To Extend the Term of the Contract

[FAR Case 1997–613]

This final rule implements the Department of Labor's requirement to incorporate a current Davis-Bacon Act wage determination at the exercise of each option to extend the term of a contract for construction.

Item II—Acquisition of Commercial Items

[FAR Case 2000–303]

This final rule amends the FAR to clarify the definition of "commercial item." The revised language will help contracting officers make commerciality determinations. The rule also alerts contracting officers to be aware of customary commercial terms and conditions that may affect the contract price when pricing commercial items. The rule also clarifies that Subpart 46.8, Contractor Liability for Loss of or Damage to Property of the Government, does not apply to acquisitions of commercial items. Contracting officers should use standard commercial practices instead of the policies in Subpart 46.8. Finally, the rule amends the clause at 52.212–4, Limitation of liability, to conform it to standard commercial practice.

Item III—Prompt Payment Under Cost-Reimbursement Contracts for Services

[FAR Case 2000–308]

This interim rule implements changes in the Office of Management and Budget's (OMB) Prompt Payment Act regulations at 5 CFR 1315 that implemented Section 1010 of the National Defense Authorization Act for Fiscal Year 2001. Those changes were published by OMB as an interim final rule and became effective on December 15, 2000 (65 FR 78403) and were applicable to all covered contracts awarded on or after December 15, 2000. Section 1010 of the National Defense Authorization Act for Fiscal Year 2001 requires agencies to pay an interest penalty, in accordance with regulations issued, whenever an interim payment under a cost-reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from a contractor. The Act does not permit payment of late payment penalty interest for any period prior to December 15, 2000.

This FAR amendment eliminates the prior policy and contract clause prohibitions on payment of late payment penalty interest for late interim finance payments under cost-reimbursement contracts for services. It adds new policy and contract clause coverage to provide for those penalty payments.

Item IV—Veterans' Employment

[FAR Case 1998–614]

This final rule amends the FAR to implement statutory and regulatory changes relating to veterans' employment opportunities and reporting. Most significantly for contracting officers, the rule amends the FAR to prohibit contracting officers from obligating or expending appropriated funds to enter into a contract with a contractor that has not met its veterans' employment reporting requirements (VETS–100 Report). This prohibition does not apply to contracts for commercial items or contracts valued at or below the simplified acquisition threshold. The rule adds a new solicitation provision that requires each offeror to represent, by submission of its offer, that it is in compliance with the VETS–100 reporting requirements. The contracting officer may verify compliance by checking with the Department of Labor.

Item V—Veterans Entrepreneurship and Small Business Development Act of 1999

[FAR Case 2000–302]

This interim rule amends the FAR to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554) that was enacted on December 21, 2000.

This rule requires a contractor that is required to submit a subcontracting plan to report as a separate subcontracting plan goal requirement, subcontracting activity pertaining to service-disabled veteran-owned small business concerns. The rule also changes the Standard Form (SF) 294, "Subcontracting Report for Individual Contracts," and the SF 295, "Summary Subcontract Report," to capture this category of information for the contracting officer.

Item VI—Very Small Business Pilot Program

[FAR Case 2001–001]

This final rule amends FAR Subpart 19.9 to implement Section 503(c) of the Small Business Reauthorization Act of 2000 (part of Public Law 106–554). Section 503(c) extends, for three additional years, the Very Small Business Pilot Program until September 30, 2003. The purpose of the program is to improve access to Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain acquisitions for competition among such concerns.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–01 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–01 is effective December 21, 2001, except for Items III and V, which are effective October 22, 2001.

Dated: August 31, 2001.

Carolyn M. Balven,
Acting Director, Defense Procurement.

Dated: August 28, 2001.

David A. Drabkin,
Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: August 27, 2001.

Anne Guenther,
Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 01–26295 Filed 10–19–01; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONATICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 22, and 52

[FAC 2001–01; FAR Case 1997–613; Item I]

RIN 9000–AI47

Federal Acquisition Regulation; Application of the Davis-Bacon Act to Construction Contracts With Options To Extend the Term of the Contract

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the requirement of Department of Labor (DoL) All Agency Memorandum No. 157 (AAM 157), as clarified in the **Federal Register** on November 20, 1998, at 63 FR 64542. The rule requires incorporation of the current Davis-Bacon Act wage determination at the exercise of each option period in construction contracts.

DATES: *Effective Date:* December 21, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–01, FAR case 1997–613.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule provides for incorporation of the current Davis-Bacon Act wage determination at the exercise of each option to extend the term of a contract for construction, or a contract that includes substantial and segregable construction work. Unlike the Service Contract Act, the Davis-Bacon Act and its implementing regulations do not state that new or revised wage determinations must be incorporated at the exercise of each contract option period.

On December 9, 1992, DoL issued AAM 157, which required incorporation of a current Davis-Bacon Act wage determination at the exercise of each option period in construction contracts containing options to extend the term of the contract. Following several years of controversy regarding the authority of the DoL to issue AAM 157, DoL Administrative Review Board confirmed on July 17,1997, the authority of the DoL Administrator's ruling that a current Davis-Bacon Act wage determination must be incorporated at the exercise of an option to extend the term of the contract. The Review Board also directed DoL to clarify the language of AAM 157 and to republish the memorandum in the **Federal Register** at 63 FR 64542, November 20, 1998.

On December 3, 1999, DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 67986. Eight respondents submitted comments on the proposed rule. The comments were considered in the development of the final rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA). The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

The FRFA is summarized as follows:

The final rule amends FAR Parts 1, 22, and 52 to implement the requirement of Department of Labor (DoL) All Agency Memorandum No. 157 (AAM 157), as clarified in the **Federal Register** on November 20, 1998. The rule requires incorporation of the current Davis-Bacon Act wage determination at the exercise of each option period in construction contracts. The rule provides four alternative methods of adjusting the contract price when exercising the option to extend the term of the contract.

1. No adjustment in contract price (because the option prices may include an amount to cover estimated increases);

2. Price adjustment based on a separately specified pricing method, such as application of a coefficient to an annually published unit pricing book incorporated at option exercise;

3. A percentage price adjustment, based on a published economic indicator; and

4. A price adjustment based on a specific calculation to reflect the annual increase or decrease in wages and fringe benefits as a result of incorporation of the new wage determination.

The last method, applying calculations similar to the calculations of price

adjustments in contracts subject to the Service Contract Act, removes the risk to the contractor, but imposes some reporting requirements, to provide the required information upon which to base the price adjustment. However, the contractor is already required to keep payroll records upon which the calculations are based, so the burden is not significant. Data for fiscal year 1998 indicates the Government awarded 229 indefinite-delivery construction contracts, of which 121 were awarded to small businesses. Nearly all construction contracts with delivery contracts and most indefinite-delivery contracts have options to extend the term. Although there is no database to determine the number of contracts for other than construction that have substantial and segregable construction requirements, we estimate 225 prime contractors and 675 subcontractors, of which approximately 50 percent are small businesses.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 67986, December 3, 1999. Eight respondents submitted comments on the proposed rule. No comments were received on the IRFA.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. The FAR Secretariat submitted a request for approval of a revised information collection requirement concerning application of the Davis-Bacon Act to construction contracts with options to extend the term of the contract to the Office of Management andBudget (OMB). The burden associated with this rule has been approved under OMB Control No. 9000–0154.

List of Subjects in 48 CFR Parts 1, 22, and 52

Government procurement.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 22, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.106 in the table following the introductory paragraph by adding an entry to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

FAR segment	OMB Control No.
52.222–32	9000–0154

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENTACQUISITIONS

22.403–4 [Amended]

3. Amend section 22.403–4 in paragraph (b)(5) by removing the words "Wage Appeals" and by adding "Administrative Review" in its place.

4. Amend section 22.404–1(a)(1) by revising the third sentence; and paragraph (b) by revising the fourth sentence to read as follows:

22.404–1 Types of wage determinations.

(a) *General wage determinations.* (1) * * * Once incorporated in a contract, a general wage determination normally remains effective for the life of the contract, unless the contracting officer exercises an option to extend the term of the contract (see 22.404–12). * * *

(b) * * * Once incorporated in a contract, a project wage determination normally remains effective for the life of the contract, unless the contracting officer exercises an option to extend the term of the contract (see 22.404–12).

5. Amend section 22.404–2 by revising paragraph (a) to read as follows:

22.404–2 General requirements.

(a) The contracting officer must incorporate only the appropriate wage determinations in solicitations and contracts and must designate the work to which each determination or part thereof applies. The contracting officer must not include project wage determinations in contracts or options other than those for which they are issued. When exercising an option to extend the term of a contract, the contracting officer must select the most current wage determination(s) from the same schedule(s) as the wage determination(s) incorporated into the contract.

* * * * *

6. In section 22.404–3, revise the last sentence of paragraph (c); remove paragraph (d); and redesignate paragraph (e) as (d) to read as follows:

22.404–3 Procedures for requesting wage determinations.

* * * * *

(c) * * * Accordingly, agencies should submit requests to the Department of Labor at least 45 days (60 days if possible) before issuing the solicitation or exercising an option to extend the term of a contract.

* * * * *

7. In section 22.404–6, revise paragraph (a); and add paragraph (d) to read as follows:

22.404–6 Modifications of wage determinations.

(a) *General.* (1) The Department of Labor may modify a wage determination to make it current by specifying only the items being changed or by reissuing the entire determination with changes incorporated.

(2) All project wage determination modifications expire on the same day as the original determination. The need to include a modification of a project wage determination in a solicitation is determined by the time of receipt of the modification by the contracting agency. Therefore, the contracting agency must annotate the modification of the project wage determination with the date and time immediately upon receipt.

(3) The need for inclusion of the modification of a general wage determination in a solicitation is determined by the publication date of the notice in the **Federal Register,** or by the time of receipt of the modification (annotated with the date and time immediately upon receipt) by the contracting agency, whichever occurs first. (Note the distinction between receipt by the agency (modification is effective) and receipt by the contracting officer, which may occur later.)

* * * * *

(d) The following applies when modifying a contract to exercise an option to extend the term of a contract:

(1) A modified wage determination is effective if—

(i) The contracting agency receives a written action from the Department of Labor prior to exercise of the option, or within 45 days after submission of a wage determination request (22.404–3(c)), whichever is later; or

(ii) The Department of Labor publishes notice of modifications to general wage determinations in the **Federal Register** before exercise of the option.

(2) If the contracting officer receives an effective modified wage determination either before or after execution of the contract modification to exercise the option, the contracting officer must modify the contract to incorporate the modified wage determination, and any changed wage rates, effective as of the date that the option to extend was effective.

8. Revise section 22.404–7 to read as follows:

22.404–7 Correction of wage determinations containing clerical errors.

Upon the Department of Labor's own initiative or at the request of the contracting agency, the Administrator, Wage and Hour Division, may correct any wage determination found to contain clerical errors. Such corrections will be effective immediately, and will apply to any solicitation or active contract. Before contract award, the contracting officer must follow the procedures in 22.404–5(b)(1) or (2)(i) or (ii) in sealed bidding, and the procedures in 22.404–5(c)(3) or (4) in negotiations. After contract award, the contracting officer must follow the procedures at 22.404–6(b)(5), except that for contract modifications to exercise an option to extend the term of the contract, the contracting officer must follow the procedures at 22.404–6(d)(2).

9. In section 22.404–10, revise the first sentence to read as follows:

22.404–10 Posting wage determinations and notice.

The contractor must keep a copy of the applicable wage determination (and any approved additional classifications) posted at the site of the work in a prominent place where the workers can easily see it. * * *

22.404–11 [Amended]

10. In section 22.404–11, amend the first sentence by removing "a Wage Appeals" and adding "an Administrative Review" in its place.

11. Add section 22.404–12 to read as follows:

22.404–12 Labor standards for contracts containing construction requirements and option provisions that extend the term of the contract.

(a) Each time the contracting officer exercises an option to extend the term of a contract for construction, or a contract that includes substantial and segregable construction work, the contracting officer must modify the contract to incorporate the most current wage determination.

(b) If a contract with an option to extend the term of the contract has indefinite-delivery or indefinite-quantity construction requirements, the contracting officer must incorporate the wage determination incorporated into the contract at the exercise of the option into task orders issued during that option period. The wage determination will be effective for the complete period of performance of those task orders without further revision.

(c) The contracting officer must include in fixed-price contracts a clause that specifies one of the following methods, suitable to the interest of the Government, to provide an allowance for any increases or decreases in labor costs that result from the inclusion of the current wage determination at the exercise of an option to extend the term of the contract:

(1) The contracting officer may provide the offerors the opportunity to bid or propose separate prices for each option period. The contracting officer must not further adjust the contract price as a result of the incorporation of a new or revised wage determination at the exercise of each option to extend the term of the contract. Generally, this method is used in construction-only contracts (with options to extend the term) that are not expected to exceed a total of 3 years.

(2) The contracting officer may include in the contract a separately specified pricing method that permits an adjustment to the contract price or contract labor unit price at the exercise of each option to extend the term of the contract. At the time of option exercise, the contracting officer must incorporate a new wage determination into the contract, and must apply the specific pricing method to calculate the contract price adjustment. An example of a contract pricing method that the contracting officer might separately specify is incorporation in the solicitation and resulting contract of the pricing data from an annually published unit pricing book (*e.g.*, the R.S. Means Cost Estimating System, or the U.S. Army Computer-Aided Cost Estimating System), which is multiplied in the contract by a factor proposed by the contractor (*e.g.*, .95 or 1.1). At option exercise, the contracting officer incorporates the pricing data from the latest annual edition of the unit pricing book, multiplied by the factor agreed to in the basic contract. The contracting officer must not further adjust the contract price as a result of the incorporation of the new or revised wage determination.

(3) The contracting officer may provide for a contract price adjustment based solely on a percentage rate determined by the contracting officer using a published economic indicator incorporated into the solicitation and resulting contract. At the exercise of each option to extend the term of the contract, the contracting officer will apply the percentage rate, based on the economic indicator, to the portion of the contract price or contract unit price designated in the contract clause as labor costs subject to the provisions of the Davis-Bacon Act. The contracting officer must insert 50 percent as the estimated portion of the contract price that is labor unless the contracting officer determines, prior to issuance of the solicitation, that a different percentage is more appropriate for a particular contract or requirement. This percentage adjustment to the designated labor costs must be the only adjustment made to cover increases in wages and/or benefits resulting from the incorporation of a new or revised wage determination at the exercise of the option.

(4) The contracting officer may provide a computation method to adjust the contract price to reflect the contractor's actual increase or decrease in wages and fringe benefits (combined) to the extent that the increase is made to comply with, or the decrease is voluntarily made by the contractor as a result of incorporation of, a new or revised wage determination at the exercise of the option to extend the term of the contract. Generally, this method is appropriate for use only if contract requirements are predominately services subject to the Service Contract Act and the construction requirements are substantial and segregable. The methods used to adjust the contract price for the service requirements and the construction requirements would be similar.

12. In section 22.406–3, add paragraph (e) to read as follows:

22.406–3 Additional classifications.

* * * * *

(e) In each option to extend the term of the contract, if any laborer or mechanic is to be employed during the option in a classification that is not listed (or no longer listed) on the wage determination incorporated in that option, the contracting officer must require that the contractor submit a request for conformance using the procedures noted in paragraphs (a) through (d) of this section.

22.406–10 [Amended]

13. Amend section 22.406–10 in the last sentence of paragraph (e) by removing the words "Wage Appeals" and by adding "Administrative Review" in its place.

14. In section 22.407, add paragraphs (e), (f), and (g) to read as follows:

22.407 Contract clauses.

* * * * *

(e) Insert the clause at 52.222–30, Davis-Bacon Act—Price Adjustment (None or Separately Specified Pricing Method), in solicitations and contracts if the contract is expected to be—

(1) A fixed-price contract subject to the Davis-Bacon Act that will contain option provisions by which the

contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate contract price adjustment method is the method at 22.404–12(c)(1) or (2); or

(2) A cost-reimbursable type contract subject to the Davis-Bacon Act that will contain option provisions by which the contracting officer may extend the term of the contract.

(f) Insert the clause at 52.222–31, Davis-Bacon Act—Price Adjustment (Percentage Method), in solicitations and contracts if the contract is expected to be a fixed-price contract subject to the Davis-Bacon Act that will contain option provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate contract price adjustment method is the method at 22.404–12(c)(3).

(g) Insert the clause at 52.222–32, Davis-Bacon Act—Price Adjustment (Actual Method), in solicitations and contracts if the contract is expected to be a fixed-price contract subject to the Davis-Bacon Act that will contain option provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate method to establish contract price is the method at 22.404–12(c)(4).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

15. Add sections 52.222–30, 52.222–31, and 52.222–32 to read as follows:

52.222–30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).

As prescribed in 22.407(e), insert the following clause:

Davis-Bacon Act—Price Adjustment (None or Separately Specified Method) (Dec 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of—

(1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or

(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

(End of clause)

52.222–31 Davis-Bacon Act—Price Adjustment (Percentage Method).

As prescribed in 22.407(f), insert the following clause:

Davis-Bacon Act—Price Adjustment (Percentage Method) (Dec 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will adjust the portion of the contract price or contract unit price(s) containing the labor costs subject to the Davis-Bacon Act to provide for an increase in wages and fringe benefits at the exercise of each option to extend the term of the contract in accordance with the following procedures:

(1) The Contracting Officer has determined that the portion of the contract price or contract unit price(s) containing labor costs subject to the Davis-Bacon Act is _____ [*Contracting Officer insert percentage rate*] percent.

(2) The Contracting Officer will increase the portion of the contract price or contract unit price(s) containing the labor costs subject to the Davis-Bacon Act by the percentage rate published in _____[*ContractingOfficer insert publication*].

(c) The Contracting Officer will make the price adjustment at the exercise of each option to extend the term of the contract. This adjustment is the only adjustment that the Contracting Officer will make to cover any increases in wages and benefits as a result of—

(1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or

(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

(End of clause)

52.222–32 Davis-Bacon Act—Price Adjustment (Actual Method).

As prescribed in 22.407(g), insert the following clause:

Davis-Bacon Act—Price Adjustment (Actual Method) (Dec 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b)(1) The Contractor states that if the prices in this contract contain an allowance for wage or benefit increases, such allowance will not be included in any request for contract price adjustment submitted under this clause.

(2) The Contractor shall provide with each request for contract price adjustment under this clause a statement that the prices in the contract do not include any allowance for any increased cost for which adjustment is being requested.

(c) The Contracting Officer will adjust the contract price or contract unit price labor rates to reflect the Contractor's actual increase or decrease in wages and fringe benefits to the extent that the increase is made to comply with, or the decrease is voluntarily made by the Contractor as a result of—

(1) Incorporation of the Department of Labor's Davis-Bacon Act wage determination applicable at the exercise of an option to extend the term of the contract; or

(2) Incorporation of a Davis-Bacon Act wage determination otherwise applied to the contract by operation of law.

(d) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a revised wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall notify the Contracting Officer promptly of any decrease under this clause, but nothing in this clause precludes the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records that the Contracting Officer may reasonably require. Upon agreement of the parties, the Contracting Officer will modify the contract price or contract unit price in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) Contract price adjustment computations shall be computed as follows:

(1) *Computation for contract unit price per single craft hour for schedule of indefinite-quantity work.* For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination shall be added to the original contract unit price if the difference results in a combined increase. If the difference computed results in a combined decrease, the contract unit price shall be decreased by that amount if the Contractor provides notification as provided in paragraph (e) of this clause.

(2) *Computation for contract unit price containing multiple craft hours for schedule of indefinite-quantity work.* For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination shall be multiplied by the actual number of hours expended for each craft involved in accomplishing the unit-priced work item. The product of this computation will then be divided by the actual number of units ordered in the preceding contract period. The total of these computations for each craft will be added to the current contract unit price to obtain the new contract unit price. The extended amount for the contract line item will be obtained by multiplying the new unit price by the estimated quantity. If actual hours are not available from the preceding contract period for computation of the adjustment for a specific contract unit of work, the Contractor, in agreement with the Contracting Officer, shall estimate the total hours per craft per contract unit of work.

EXAMPLE: ASPHALT PAVING—CURRENT PRICE $3.38 PER SQUARE YARD

DBA craft	New WD		Hourly rate paid		Diff.		Actual hrs.	Actual units (sq. yard)		Increase/ sq. yard
Equip. Opr.	$18.50	–	$18.00	=	$.50	×	600 hrs./	3,000 sq. yrd.	=	$.10
Truck Driver	$19.00	–	$18.25	=	$.75	×	525 hrs./	3,000 sq. yrd.	=	$.13
Laborer	$11.50	–	$11.25	=	$.25	×	750 hrs./	3,000 sq. yrd.	=	$.06
Total increase per square yard										*$.29

*Note: Adjustment for labor rate increases or decreases may be accompanied by social security and unemployment taxes and workers' compensation insurance.

Current unit price (per square yard)	$3.38
Add DBA price adj.	+.29
New unit price (per square yard)	$3.67

(End of clause)

[FR Doc. 01–26296 Filed 10–19–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 12, 46, and 52

[FAC 2001–01; FAR Case 2000–303; Item II]

RIN 9000–AI88

Federal Acquisition Regulation; Acquisition of Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement two statutory changes to the definition and application of "Commercial Items": Section 803(a)(2)(D) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 to revise the definition of "commercial item" to provide specific guidance on the meaning and appropriate application of the terms "purposes other than government purposes" at 41 U.S.C. 403(12)(A); and Section 805 of the National Defense Authorization Act for Fiscal Year 2000 to clarify the definition of "commercial item" with respect to associated services.

The final rule also makes changes related to the acquisition of commercial items, including conforming the coverage regarding contractor liability for property loss or damage to commercial practice.

DATES: *Effective Date*: December 21, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 2001–01, FAR case 2000–303.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation Part 12, Acquisition of Commercial Items, was developed to implement Title VIII of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355). The regulations became effective on October 1, 1995.

The final rule revises—

- Paragraph (a) of the "commercial item" definition at FAR 2.101 and the corresponding definition in the clause at FAR 52.202–1, and FAR 12.102 to implement Section 803(a)(2)(D) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261). Section 803(a)(2)(D) requires that the FAR be revised to provide specific guidance on the meaning and appropriate application of the term "purposes other than government purposes" in the definition of "commercial item" at 41 U.S.C. 403(12)(A);
- Paragraph (e) of the "commercial item" definition at FAR 2.101 to implement Section 805 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) (Clarification of Definition of Commercial Items with Respect to Associated Services). Section 805 clarifies that services ancillary to a commercial item, such as installation, maintenance, repair, training, and other support services, are considered a commercial service, regardless of whether the service is provided by the same vendor or at the same time as the item, if the service is provided contemporaneously to the general public under similar terms and conditions. The FAR clause at 52.202–1, Definitions, is similarly revised to make the new definition available to contractors and subcontractors;
- Paragraph (f) of the "commercial item" definition at FAR 2.101 to add definitions of "catalog price" and "market price" which provide guidance for identifying services that may be acquired under FAR Part 12;
- FAR 12.209 to add guidance concerning customary commercial terms and conditions related to the determination of price reasonableness when pricing commercial items;
- Subpart 46.8 to reconcile it with the coverage regarding contractor liability for property loss or damage with paragraph (p) in the clause at 52.212–4; and
- Paragraph (p) in the clause at 52.212–4 to conform to commercial practice (*i.e.*, deleting the phrase "or implied" permits industry to take advantage of the latitude provided by the Uniform Commercial Code which

allows sellers to exclude the application of an implied warranty through the terms of an express warranty).

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 52284, August 28, 2000. Six sources submitted comments in response to the proposed rule. The FAR Council considered all comments in the development of the final rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because changes made by the rule will primarily affect large businesses that are more likely than small businesses to have separate workforces for Federal contracts and to be ultimately liable for consequential damages. It clarifies the definition of commercial item to more closely parallel the statutory language and provide guidance for identifying services that may be acquired under FAR Part 12. The rule further conforms language regarding contractor liability to commercial practice.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR parts 2, 12, 46, and 52

Government procurement.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 12, 46, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 12, 46, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. In section 2.101, amend the definition "Commercial item" by revising the introductory text of paragraph (1), and paragraphs (5) and (6) to read as follows:

2.101 Definitions.

* * * * *

Commercial item means—

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

* * * * *

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services—

(i) *Catalog price* means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) *Market prices* means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 12.102 by redesignating paragraph (d) as paragraph (e) and by adding a new paragraph (d) to read as follows:

12.102 Applicability.

* * * * *

(d) The definition of commercial item in section 2.101 uses the phrase "purposes other than governmental purposes." These purposes are those that are not unique to a government.

* * * * *

4. Revise section 12.209 to read as follows:

12.209 Determination of price reasonableness.

While the contracting officer must establish price reasonableness in accordance with 13.106–3, 14.408–2, or subpart 15.4, as applicable, the contracting officer should be aware of customary commercial terms and conditions when pricing commercial items. Commercial item prices are affected by factors that include, but are not limited to, speed of delivery, length and extent of warranty, limitations of seller's liability, quantities ordered, length of the performance period, and specific performance requirements. The contracting officer must ensure that contract terms, conditions, and prices are commensurate with the Government's need.

PART 46—QUALITY ASSURANCE

5. In section 46.801, revise the last sentence of paragraph (a) to read as follows:

46.801 Applicability.

(a) * * * This subpart does not apply to commercial items.

* * * * *

46.804 [Removed and Reserved]

6. Remove and reserve section 46.804.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. In section 52.202–1, revise the date of the clause and paragraphs (c)(1), (c)(5), and (c)(6) to read as follows:

52.202–1 Definitions.

* * * * *

Definitions (Dec 2001)

* * * * *

(c) * * *

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

* * * * *

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services—

(i) *Catalog price* means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) *Market prices* means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

* * * * *

52.212–4 [Amended]

8. Amend section 52.212–4 by revising the date in the clause heading to read "(Dec 2001)"; and by removing "or implied" from paragraph (p).

[FR Doc. 01–26297 Filed 10–19–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 32 and 52

[FAC 2001–01; FAR Case 2000–308; Item III]

RIN 9000–AJ17

Federal Acquisition Regulation; Prompt Payment Under Cost-Reimbursement Contracts for Services

AGENCIES: Department of Defense (DoD), General ServicesAdministration (GSA), and National Aeronautics and SpaceAdministration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to require agencies to pay an interest penalty whenever they make an interim payment under a cost-reimbursement contract for services more than 30 days after the agency receives a proper invoice from the contractor.

DATES: *Effective Date:* October 22, 2001.

Applicability Date: This amendment is applicable to solicitations issued and contracts awarded on or after October 22, 2001. Any cost reimbursement solicitations issued or contracts awarded for services on or after December 15, 2000, but prior to October 22, 2001 must be amended/modified to incorporate the new Alternate I to 52.232–25. In no event may agencies pay late payment penalty interest for any delay in payment that occurred prior to December 15, 2000.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 21, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: *farcase.2000–308@gsa.gov*

Please submit comments only and cite FAC 2001–01, FAR case 2000–308, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2001—01, FAR case 2000–308.

SUPPLEMENTARY INFORMATION:

A. Background

This FAR amendment implements changes in the Office of Management and Budget's (OMB) Prompt Payment Act regulations at 5 CFR part 1315 that implemented Section 1010 of the National Defense Authorization Act for Fiscal Year 2001. Those changes were published by OMB as an interim final rule and became effective on December 15, 2000 (65 FR 78403). Section 1010 requires agencies to pay an interest penalty, in accordance with regulations issued, whenever an interim payment under a cost-reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from a contractor. The Act does not permit payment of late payment interest penalty for any period prior to December 15, 2000.

This FAR amendment eliminates the prior policy and contract clause prohibitions on payment of late payment penalty interest for late interim finance payments under cost reimbursement contracts for services. It adds new policy and a contract clause, Alternate I to 52.232–25, to provide for those penalty payments. The policy and clause apply to all covered contracts awarded on or after December 15, 2000. OMB's regulation states that agencies, at their discretion, may apply the revisions made by Section 1010 to interim payment requests received under cost-reimbursement contracts for services awarded prior to December 15, 2000. Accordingly, agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion provided no late payment interest penalty is paid for any period prior to December 15, 2000.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the number of small entities receiving awards of cost-reimbursement contracts for services is very low compared to the number of fixed-price-type contracts awarded. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2001–01, FAR case 2000–308), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the amendments to the controlling regulation issued by OMB (5 CFR part 1315, 65 FR 78403) became effective on December 15, 2000. (Section 1010 of the National Defense Authorization Act for Fiscal Year 2001, which required OMB to issue the regulation, was effective December 15, 2000.) This amendment to the FAR is necessary to enable agencies to comply with OMB's interim final rule in the most effective and consistent manner possible.

Pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule. In addition, this interim rule will be revised, as necessary, to reflect any changes OMB may make to its regulations in promulgating a final rule.

List of Subjects in 48 CFR Parts 2, 32 and 52

Government procurement.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

2. In section 2.101, amend the definition "Proper invoice" by removing "32.905(e)" and adding "32.905(f)" in its place.

PART 32—CONTRACT FINANCING

3. Amend section 32.902 in the definition "Contract financing payment" by revising the second sentence; revising the definition "Invoice payment"; and in the definition "Receiving report" by removing "32.905(f)" and adding "32.905(g)" in its place. The revised text reads as follows:

32.902 Definitions.

* * * Contract financing payments include advance payments, progress payments based on cost under the clause at 52.232–16, Progress Payments, progress payments based on a percentage or stage of completion (see 32.102(e)(1)) other than those made under the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232–10, Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost-type contracts other than contracts for services. * * *

* * * * *

Invoice payment means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government.

(1) This includes payments for partial deliveries that have been accepted by the Government and final cost or fee payments where amounts owed have been settled between the Government and the contractor.

(2) For purposes of this subpart, invoice payments also include all payments made under the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, the clause at 52.232–10, Payments Under Fixed-Price Architect-Engineer Contracts, or the clause at 52.232–25, Prompt Payment, when Alternate I is used for interim payments on cost-reimbursement contracts for services.

(3) Invoice payments do not include contract financing payments.

* * * * *

4. Amend section 32.905 by—

a. Removing from the introductory text of paragraph (a)"paragraphs (b), (c), and (d)" and adding "paragraphs (b) through (e)" in its place;

b. Redesignating paragraphs (e) through (j) as (f) through (k), respectively, and adding a new paragraph (e);

c. Revising the introductory text of newly designated paragraph (f); and

d. Revising the first sentence of the introductory text of newly designated paragraph (g) to read as follows:

32.905 Invoice payments.

* * * * *

(e) *Cost-reimbursement contracts for services.* For purposes of computing late payment interest penalties that may apply, the due date for making interim payments on cost-reimbursement contracts for services is 30 days after the date of receipt of a proper invoice.

(f) *Content of invoices.* A proper invoice must include the items listed in paragraphs (f)(1) through (f)(8) of this section, except for interim payments on cost-reimbursement contracts for services. An interim payment request under a cost-reimbursement contract for services constitutes a proper invoice for purposes of this subpart if it includes all the information required by the contract. If the invoice does not comply with these requirements, it will be returned within 7 days after the date the designated billing office received the invoice (3 days on contracts for meat, meat food products, or fish; 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. If such notice is not timely, then an adjusted due date for the purpose of determining an interest penalty, if any, will be established in accordance with 32.907–1(b):

* * * * *

(g) *Authorization to pay.* All invoice payments, with the exception of interim payments on cost-reimbursement contracts for services, must be supported by a receiving report or any other Government documentation authorizing payment. * * *

* * * * *

5. Amend section 32.907–1 by adding paragraph (a)(5); and in paragraphs (b)(1) and (b)(2) by removing "32.905(e)" and adding "32.905(f)" in its place. The added text reads as follows:

32.907–1 Late invoice payment.

(a) * * *

(5) In the case of interim payments on cost-reimbursement contracts for services, when payment is made more than 30 days after the designated billing office receives a proper invoice.

* * * * *

6. Amend section 32.908 by adding paragraph (c)(4) to read as follows:

32.908 Contract clauses.

* * * * *

(c) * * *

(4) If the contract is a cost-reimbursement contract for services, use the clause with its Alternate I.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.232–25 by adding Alternate I to read as follows:

52.232–25 Prompt Payment.

* * * * *

Alternate I (Oct 2001). As prescribed in 32.908(c)(4), add the following paragraph (d) to the basic clause:

(d) *Invoices for interim payments.* For interim payments under this cost-reimbursement contract for services—

(1) Paragraphs (a)(2), (a)(3), (a)(4)(ii), (a)(4)(iii), and (a)(5)(i) do not apply;

(2) For purposes of computing late payment interest penalties that may apply, the due date for payment is the 30th day after the designated billing office receives a proper invoice; and

(3) The Contractor shall submit invoices for interim payments in accordance with paragraph (a) of FAR 52.216–7, Allowable Cost and Payment. If the invoice does not comply with contract requirements, it will be returned within 7 days after the date the designated billing office received the invoice.

[FR Doc. 01–26298 Filed 10–19–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 12, 13, 22, and 52

[FAC 2001–01; FAR Case 1998–614; Item IV]

RIN 9000–AI46

Federal Acquisition Regulation; Veterans' Employment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Sections 7 and 8 of the Veterans Employment Opportunities Act of 1998. Section 7 expands and improves veterans' employment emphasis under Federal contracts. Section 8 amends the veterans' employment reporting requirements. The rule also implements the Department of Labor's (DoL) Office of Federal Contract Compliance Programs (OFCCP) final rule amending regulations on Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Veterans of the Vietnam Era, which clarifies DoL implementation of the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended.

DATES: *Effective Date:* December 21, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–01, FAR case 1998–614.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 12.503, 13.005, 22.13, and the associated clauses and provisions at FAR Part 52 to implement recent statutory and regulatory changes relating to veterans' employment opportunities and reporting. Paragraph (a) of Section 7 of the Veterans' Employment Opportunities Act of 1998 (Pub. L. 105–339) amends 38 U.S.C.4212 in paragraph (a) to increase the threshold for covered contracts from $10,000 to $25,000, and expands applicability beyond "special disabled veterans and veterans of the Vietnam era" to include other eligible veterans (*i.e.*, any other veterans who served on active duty during a war or in a campaign or an expedition for which a campaign badge has been authorized).

Paragraph (b) of Section 7 amends 31 U.S.C. 1354 to specifically prohibit contracting officers from obligating or expending appropriated funds to enter into covered contracts with a contractor that does not meet veterans' employment reporting requirements (VETS–100 Report). In accordance with 41 U.S.C. 429 and 41 U.S.C. 430, the Councils have listed this law as inapplicable to acquisitions not greater than the simplified acquisition threshold and acquisitions of commercial items.

Paragraph (b) also requires the DoL to maintain a database on those contractors that have submitted the required VETS–100 Reports for the current reporting period. However, the database will not contain data on whether those contractors that did not submit reports were required to do so. The Councils have added a new provision by which the offeror represents that, if subject to the reporting requirements of 38 U.S.C. 4212(d), it has not failed to submit the most recent required VETS–100 Reports.

This rule lists 31 U.S.C. 1354(a) as not applicable to commercial item contracts and acquisitions not greater than the simplified acquisition threshold of $100,000 pursuant to FASA at 41 U.S.C. 429 and 41 U.S.C. 430. Accordingly, the representation in the provision at 52.222–38, Compliance with Veterans' Employment Reporting Requirements, is not applicable to commercial item acquisitions and acquisitions not greater than the simplified acquisition threshold of $100,000.

Section 8 of Public Law 105–339 amends 38 U.S.C. 4212(d)(1) to require reporting of the maximum number and the minimum number of employees during the period covered by the report. This requirement has been included in the clause at 52.222–37, which summarizes the DoL reporting requirements.

In conformance with the Veterans Employment Opportunities Act of 1998 and the OFCCP final rule, this final rule revises the clause at 52.222–35, adding definitions of "special disabled veterans," "qualified special disabled veteran," "other eligible veteran," and "executive and top management," and changes the definition of "veteran of the Vietnam Era." The clause requires contractors to list all employment openings, except executive and top management, with the local employment service office. Contractors may fulfill the listing requirement by listing jobs electronically with America's Job Bank. The requirements for posting employment notices have also changed.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 67992, December 3, 1999. Four respondents submitted comments on the proposed rule. The comments were considered in the development of the final rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory FlexibilityAct, 5 U.S.C. 601, *et seq.*, because the rule implements the Contracting Restrictions of the Veterans Employment Opportunities Act of 1998 (Pub. L. 105–339) which will only affect offerors who were required to submit reports but did not do so; and also implements the OFCCP final rule (63 FR 59630), which DoL has certified will not have a significant economic impact on

a substantial number of small businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements beyond those imposed by the DoL, for which DoL obtained the required approval from the Office of Management and Budget (OMB Control Numbers 1215–0072, 1215–0163, and 1293–0005) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 12, 13, 22, and 52

Government procurement.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 12, 13, 22, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 12, 13, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. In section 2.101, amend the definition "United States" by redesignating paragraphs (3) and (4) as (4) and (5), respectively, and by adding a new paragraph (3) to read as follows:

2.101 Definitions.

* * * * *

United States * * *

* * * * *

(3) For use in subpart 22.13, see the definition at 22.1301.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 12.503 in the introductory text of paragraph (a) by removing "executive" and adding "Executive" in its place; and by revising the section heading and adding paragraph (a)(5) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) * * *

(5) 31 U.S.C. 1354(a), Limitation on use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements (see 22.1302).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

4. Amend section 13.005 by adding paragraph (a)(10) to read as follows:

13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.

(a) * * *

(10) 31 U.S.C. 1354(a) (Limitation on use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

5. Revise Subpart 22.13 to read as follows:

Subpart 22.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

Sec.

22.1300 Scope of subpart.
22.1301 Definition.
22.1302 Policy.
22.1303 Applicability.
22.1304 Procedures.
22.1305 Waivers.
22.1306 Department of Labor notices and reports.
22.1307 Collective bargaining agreements.
22.1308 Complaint procedures.
22.1309 Actions because of noncompliance.
22.1310 Solicitation provision and contract clauses.

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (38 U.S.C. 4211 and 4212) (the Act); Executive Order 11701, January 24, 1973 (3 CFR 1971–1975 Comp., p. 752); the regulations of the Secretary of Labor (41 CFR Part 60–250 and Part 61–250); and the Veterans Employment Opportunities Act of 1998, Public Law 105–339.

22.1301 Definition.

United States, as used in this subpart, means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

22.1302 Policy.

(a) Contractors and subcontractors, when entering into contracts or subcontracts subject to the Act, must—

(1) List all employment openings, with the appropriate local employment service office except for—

(i) Executive and top management positions;

(ii) Positions to be filled from within the contractor's organization; and

(iii) Positions lasting three days or less.

(2) Take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based on their disability or veteran's status.

(b) Except for contracts for commercial items or contracts that do not exceed the simplified acquisition threshold, contracting officers must not obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract for the procurement of personal property and nonpersonal services (including construction) with a contractor that has not submitted a required annual Form VETS–100, Federal Contractor Veterans' Employment Report (VETS–100 Report), with respect to the preceding fiscal year if the contractor was subject to the reporting requirements of 38 U.S.C. 4212(d) for that fiscal year.

22.1303 Applicability.

(a) The Act applies to all contracts and subcontracts for personal property and nonpersonal services (including construction) of $25,000 or more except as waived by the Secretary of Labor.

(b) The requirements of the clause at 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in any contract with a State or local government (or any agency, instrumentality, or subdivision) do not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

(c) The Act requires submission of the VETS–100 Report in all cases where the contractor or subcontractor has received an award of $25,000 or more, except for awards to State and local governments, and foreign organizations where the workers are recruited outside of the United States.

22.1304 Procedures.

To verify if a proposed contractor is current with its submission of the VETS–100 Report, the contracting officer may—

(a) Query the Department of Labor's VETS–100 Database via the Internet at *http://www.vets100.cudenver.edu/vets100search.htm* using the validation code "vets" to proceed with the search in the database; or

(b) Contact the VETS–100 Reporting Systems via e-mail at *verify@vets100.com* for confirmation, if the proposed contractor represents that it has submitted the VETS–100 Report and is not listed in the database.

22.1305 Waivers.

(a) The Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), may waive any or all of the terms of the clause at 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans for—

(1) Any contract if a waiver is in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b) The head of the agency may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the agency must notify the Deputy Assistant Secretary of Labor in writing within 30 days.

(c) The contracting officer must submit requests for waivers in accordance with agency procedures.

(d) The Deputy Assistant Secretary of Labor may withdraw an approved waiver for a specific contract or group of contracts to be awarded, when in the Deputy's judgment such action is necessary to achieve the purposes of the Act. The withdrawal does not apply to awarded contracts. For procurements entered into by sealed bidding, such withdrawal does not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of bids.

22.1306 Department of Labor notices and reports.

(a) The contracting officer must furnish to the contractor appropriate notices for posting when they are prescribed by the Deputy Assistant Secretary of Labor (*see http://www2.dol.gov/dol/esa/public/ofcp_org.htm*).

(b) The Act requires contractors and subcontractors to submit a report at least annually to the Secretary of Labor regarding employment of special disabled veterans, veterans of the Vietnam era, and other eligible veterans under the terms of the clause at 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, have been waived (see 22.1305). The contractor and subcontractor must use Form VETS–100, Federal Contractor Veterans" Employment Report, to submit the required reports.

22.1307 Collective bargaining agreements.

If performance under the clause at 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, may necessitate a revision of a collective bargaining agreement, the contracting officer must advise the affected labor unions that the Department of Labor will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer may discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

22.1308 Complaint procedures.

Following agency procedures, the contracting office must forward any complaints received about the administration of the Act to the Veterans" Employment and Training Service of the Department of Labor, or through the local Veterans' Employment Representative or designee, at the local State employment office. The Deputy Assistant Secretary of Labor is responsible for investigating complaints.

22.1309 Actions because of noncompliance.

The contracting officer must take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans. These sanctions (see 41 CFR 60–250.66) may include—

(a) Withholding payments;

(b) Termination or suspension of the contract; or

(c) Debarment of the contractor.

22.1310 Solicitation provision and contract clauses.

(a)(1) Insert the clause at 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in solicitations and contracts if the expected value is $25,000 or more, except when—

(i) Work is performed outside the United States by employees recruited outside the United States; or

(ii) The Deputy Assistant Secretary of Labor has waived, in accordance with 22.1305(a) or the head of the agency has waived, in accordance with 22.1305(b) all of the terms of the clause.

(2) If the Deputy Assistant Secretary of Labor or the head of the agency waives one or more (but not all) of the terms of the clause, use the basic clause with its Alternate I.

(b) Insert the clause at 52.222–37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in solicitations and contracts containing the clause at 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

(c) Insert the provision at 52.222–38, Compliance with Veterans' Employment Reporting Requirements, in solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Amend section 52.212–5 by revising the date of the clause; and revising paragraphs (b)(13), (b)(15), and (e)(2) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DEC 2001)

* * * * *

(b) * * *

_____(13) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

* * * * *

_____(15) 52.222–37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

* * * * *

(e) * * *

(2) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212);

7. Amend section 52.213–4 by revising the date of the clause; by redesignating (b)(1)(ii) through (b)(1)(xii) as (b)(1)(iii) through (b)(1)(xiii), and adding a new (b)(1)(ii); and by revising newly redesignated paragraphs (b)(1)(iv) and (b)(1)(vi) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (DEC 2001)

* * * * *

(b) * * *

(1) * * *

(ii) 52.222–21, Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246) (Applies to contracts over $10,000).

* * * * *

(iv) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212) (Applies to contracts of $25,000 or more).

* * * * *

(vi) 52.222–37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212) (Applies to contracts of $25,000 or more).

8. Revise the section heading and text of 52.222–35 to read as follows:

52.222–35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

As prescribed in 22.1310(a)(1), insert the following clause:

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) *Definitions.* As used in this clause—

All employment openings means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

Executive and top management means any employee—

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

Other eligible veteran means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

Positions that will be filled from within the Contractor's organization means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Qualified special disabled veteran means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Special disabled veteran means—

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

Veteran of the Vietnam era means a person who—

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) *General.* (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) *Listing openings.* (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) *Postings.* (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of $25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

(End of clause)

Alternate I (Dec 2001). As prescribed in 22.1310(a)(2), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: _____ (List term(s)).

9. Revise the section heading and text of 52.222–37 to read as follows:

52.222–37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

As prescribed in 22.1310(b), insert the following clause:

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS–100, entitled "Federal Contractor Veterans' Employment Report (VETS–100 Report)".

(c) The Contractor shall submit VETS–100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of $25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

10. Add section 52.222–38 to read as follows:

52.222–38 Compliance with Veterans' Employment Reporting Requirements.

As prescribed in 22.1310(c), insert the following provision:

COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause 52.222–37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS–100 Report required by that clause.

(End of provision)

11. Amend section 52.244–6 by revising the date of the clause, the introductory text of paragraph (c)(1), and paragraph(c)(1)(iii) to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2001)

* * * * *

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

* * * * *

(iii) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));

* * * * *

[FR Doc. 01–26299 Filed 10–19–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19, 52, and 53

[FAC 2001–01; FAR Case 2000–302; Item V]

RIN 9000–AI93

Federal Acquisition Regulation; Veterans Entrepreneurship and Small Business Development Act of 1999

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule to amend the Federal Acquisition Regulation (FAR) to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001. Section 803 amended section 8(d) of the Small Business Act by adding an additional subcontracting plan goal requirement for service-disabled veteran-owned small business concerns.

DATES: *Effective Date*: October 22, 2001.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 21, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.2000—302@gsa.gov*

Please submit comments only and cite FAC 2001–01, FAR case 2000–302, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff at (202) 501–0044. Please cite FAR case 2000–302.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the FAR to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554).

The Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50) established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. Specifically, the Act—

- Defines the terms "small business concern owned and controlled by veterans" and "small business concern owned and controlled by service-disabled veterans";
- Establishes that veteran-owned and service-disabled veteran-owned small businesses be afforded maximum practical opportunity to participate in the performance of contracts and subcontracts awarded by any Federal agency;
- Establishes a requirement to include a goal for veteran-owned small businesses in subcontracting plans underFAR 52.219–9;
- Establishes a 3 percent Governmentwide goal (based on the total value of all prime contract and subcontract awards) for participation by service-disabled veteran-owned small businesses; and
- Adds data collection requirements for prime and subcontract awards to veteran-owned small businesses and service disabled veteran-owned small business concerns.

DoD, GSA, and NASA published an interim FAR rule in the **Federal Register** at 65 FR 60542, October 11, 2000, to implement this statute. Twenty-nine respondents submitted comments in response to the interim rule. The Councils considered all comments and made no changes as a result. Two public comments merit noting. The first recommended that the FAR specifically reference the statutory 3 percent goal for service-disabled veteran-owned small business. The Councils have not adopted this recommendation. The FAR does not specify the statutory Governmentwide goals for any small business category because they have no regulatory purpose for agencies. Statutory goals for small businesses are established on a Governmentwide basis. Within these Governmentwide goals, SBA negotiates separate annual goals for each small business category with each agency. The individual agency goals attempt to reflect the agency mission and its contracting requirements, and these individual agency goals may be higher or lower than the Governmentwide goal. SBA then tracks cumulative agency achievements against the Governmentwide goal. Accordingly, specifying the 3 percent service-disabled veteran-owned small business goals in the FAR is inappropriate in that only the goal negotiated with SBA is relevant to that agency. The second public comment recommended that the FAR establish a requirement for a separate subcontracting plan goal for service-disabled veteran-owned small business. The Councils concur in this recommendation, but could not make this change in the first interim rule. That rule was based solely on the Veterans Entrepreneurship and Small Business Development Act of 1999. Section 501(c) of the Act established a subcontracting plan goal requirement for veteran-owned small businesses, but not for service-disabled veteran-owned small businesses. The interim rule accurately reflected this statutory change.

However, section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554) was subsequently enacted on December 21, 2000. Section 803 amended section 8(d) of the Small Business Act (15 U.S.C 637(d)) by adding an additional subcontracting plan goal requirement for service-disabled veteran-owned small business concerns. This interim rule adds the new statutory subcontracting plan goal requirement for service-disabled veteran-owned small business concerns.

Public comments are specifically sought on the service-disabled veteran-owned small business subcontracting plan goal changes. Since public comments received in response to the first interim rule have already been addressed, only comments on the issue unique to the second interim rule need to be submitted.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule adds a new statutory subcontracting plan goal requirement for service-disabled veteran-owned small business concerns. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

This interim rule amends the Federal Acquisition Regulation to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554).

Section 803 supplements the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50) by adding a separate subcontracting plan goal requirement for service-disabled veteran-owned small business concerns. There are approximately 4 to 5.5 million small businesses owned and controlled by veterans and 100,000 to 300,000 small businesses owned and controlled by service-disabled veterans. This rule does not duplicate, overlap, or conflict with other relevant Federal regulations. There are no alternatives to the interim rule that would accomplish the stated objectives.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 19, 52, and 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2001–01, FAR case 2000–302), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies; however, this interim rule only requires contractors to report, as a separate item, information already collected and reported under OMB Control Numbers 9000–0006 and 9000–0007. The impact on the information collection hours of these OMB clearances is so small as to be within the estimating parameters of these clearances. Therefore, the clearances have not been changed.

D. Determination to Issue an Interim Rule

A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary in order to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554). However, pursuant to Pub. L. 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in formulating the final rule.

List of Subjects in 48 CFR parts 19, 52, and 53

Government procurement.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 19, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 19, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

19.704 and 19.705 [Amended]

2. Amend sections 19.704 and 19.705 as follows:

a. Add "service-disabled veteran-owned small business," after the phrase "veteran-owned small business," in the following sections:

19.704(a)(1), (a)(2), (a)(3), (a)(6), (a)(8), and (a)(11)
19.705–4(c) (twice)
19.705–4(d)(1) and (d)(5);

and

b. Remove "(including service-disabled veteran-owned small business)" and add ", service-disabled veteran-owned small business" in the following sections:

19.705–2(d)
19.705–7(a)
19.705–7(d) (twice)
19.706(b)
19.706(c)
19.708(c)(1), (c)(2), and (c)(3).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.219–9 as follows:

a. Revise the date of the clause;

b. Add "service-disabled veteran-owned small business," after the phrase "veteran-owned small business," in the following sections:

52.219–9(c) (twice)
52.219–9(d)(1), (d)(8), (d)(11), (d)(11)(i), and (d)(11)(ii)
52.219–9(e)(1) (twice), (e)(2) and (e)(3)
Alternate I(c) (twice)
Alternate II(c) (twice);

and

c. Redesignate paragraphs (d)(2)(iv) through (d)(2)(vi) as (d)(2)(v) through (d)(2)(vii), respectively; and add a new paragraph (d)(2)(iv);

d. Redesignate paragraphs (d)(3)(iii) through (d)(3)(v) as (d)(3)(iv) through (d)(3)(vi), respectively; and add a new paragraph (d)(3)(iii);

e. In the second sentence of paragraph (d)(5), add "service-disabled veteran-owned small," after the phrase "veteran-owned small,";

f. Redesignate paragraphs (d)(6)(iii) through (d)(6)(v) as (d)(6)(iv) through (d)(6)(vi), respectively; and add a new paragraph (d)(6)(iii);

g. In the second sentence of paragraph (d)(10)(iii), add "HUBZone small business concerns," after the phrase "service-disabled veteran-owned small business concerns,";

h. Redesignate paragraphs (d)(11)(iii)(C) through (d)(11)(iii)(F) as (d)(11)(iii)(D) through (d)(11)(iii)(G), respectively; and add a new paragraph (d)(11)(iii)(C); and

i. In Alternates I and II of the clause, remove "(*Oct 2000*)" and add "(*Oct 2001*)" in their places.

The revised and added text reads as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2001)

* * * * *

(d) * * *

(2) * * *

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

* * * * *

(3) * * *

(iii) Service-disabled veteran-owned small business concerns;

* * * * *

(6) * * *

(iii) Service-disabled veteran-owned small business concerns;

* * * * *

(11) * * *

(iii) * * *

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

* * * * *

4. In section 52.219–10, revise the date of the clause; and in paragraph (a) and the first sentence of paragraph (b) of the clause, remove "(including service-disabled veteran-owned small business)" and add ", service-disabled veteran-owned small business" in their places. The revised text reads as follows:

52.219–10 Incentive Subcontracting Program.

* * * * *

INCENTIVE SUBCONTRACTING PROGRAM (OCT 2001)

* * * * *

PART 53—FORMS

53.219 [Amended]

5. Amend section 53.219 in paragraphs (a) and (b) by removing

"(*Rev. 10/00*)" and adding "(*Rev. 10/01*)" in their places.

6. Revise sections 53.301–294 and 53.301–295 to read as follows:

BILLING CODE 6820–EP–P

53.301–294 Subcontracting Report for Individual Contracts.

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

OMB No.: 9000-0006
Expires: 04/30/2004

Public reporting burden for this collection of information is estimated to average 9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED
a. COMPANY NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE
2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED

4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU:
☐ MAR 31 ☐ SEPT 30 YEAR

5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*
☐ ARMY ☐ NAVY ☐ AIR FORCE ☐ GSA ☐ DOE ☐ DEFENSE CONTRACT MANAGEMENT AGENCY ☐ NASA ☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one and provide appropriate number)*
☐ PRIME CONTRACTOR — PRIME CONTRACT NUMBER
☐ SUBCONTRACTOR — SUBCONTRACT NUMBER

8. AGENCY OR CONTRACTOR AWARDING CONTRACT
a. AGENCY'S OR CONTRACTOR'S NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE

9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:
☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS (Include SDB, WOSB, HBCU/MI, HUBZone SB, and VOSB *(Including Service-Disabled VOSB)*) *(Dollar Amount and Percent of 10c)*				
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*				
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%		100.0%
11. SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS *(Include HBCU/MI) (Dollar Amount and Percent of 10c.)*				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*				
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable) (Dollar Amount and Percent of 10c.)*				
14. HUBZone SMALL BUSINESS (HUBZone SB) CONCERNS *(Dollar Amount and Percent of 10c.)*				
15. VETERAN-OWNED SMALL BUSINESS CONCERNS *(Including Service-Disabled Veteran-Owned SB Concerns) (Dollar Amount and Percent of 10c.)*				
16. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS *(Dollar Amount and Percent of10c.)*				

17. REMARKS

18a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN

18b. TELEPHONE NUMBER — AREA CODE | NUMBER

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 294 (REV. 10/2001)
Prescribed by GSA-FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting Plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business (HUBZone SB), Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.

5. Only subcontracts involving performance in the U.S. or its outlying areas should be included in this report.

6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number availble that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 14. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

BLOCKS 10a through 16: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, WOSB, VOSB, service-disabled VOSBs, and HUBZone SB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 16. The amounts entered in Blocks 10a through 15 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, VOSBs, service-disabled VOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 through 16: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e. g., SDBs owned by women or veterans).

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned, veteran-owned, service-disabled VOSBs, and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms (including SDBs, VOSB's, service-disabled VOSBs, and HUBZone SBs owned by women).

BLOCK 13 (For contracts with DoD, NASA, and Coast Guard): Report all subcontracts with HBCUs/MIs. Complete the column under "Current Goal" only when the subcontracting plan establishes a goal.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned, veteran-owned, service-disabled VOSBs, and SDB HUBZone SBs).

BLOCK 15: Report all subcontracts awarded to VOSBs including service-disabled VOSBs (include VOSBs that are also SDBs, WOSBs and HUBZone SBs.).

BLOCK 16: Report all subcontracts awarded to service-disabled veteran-owned SB concerns that are also SDBs, WOSBs, and HUBZone SBs.

BLOCK 17: Enter a short narrative explanation if (a) SB, SDB, WOSB, VOSBs, Service-Disabled VOSBs, or HUBZone SB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

2. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Contract Management Agency (DCMA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commerical Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

53.301-295 Summary Subcontract Report.

SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

OMB No.: 9000-0007
Expires: 09/30/2003

Public reporting burden for this collection of information is estimated to average 15.9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED
a. COMPANY NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE

3. DATE SUBMITTED

4. REPORTING PERIOD:
☐ OCT 1 - MAR 31 ☐ OCT 1 - SEPT 30 YEAR

2. CONTRACTOR IDENTIFICATION NUMBER

5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*

☐ ARMY	☐ DEFENSE CONTRACT MANAGEMENT AGENCY	☐ DOE	
☐ NAVY	☐ NASA	☐ OTHER FEDERAL AGENCY *(Specify)*	
☐ AIR FORCE	☐ GSA		

7. REPORT SUBMITTED AS *(Check one)*	8. TYPE OF PLAN		
☐ PRIME CONTRACTOR	☐ INDIVIDUAL	IF PLAN IS A COMMERCIAL PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY. ▶	
☐ SUBCONTRACTOR	☐ COMMERCIAL PRODUCTS		
☐ BOTH			

9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES
a | b

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report cumulative figures for reporting period in Block 4)

TYPE	WHOLE DOLLARS	PERCENT (To nearest tenth of a %)
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI, HUBZone SB, and VOSB (including Service-Disabled VOSB)) (Dollar Amount and Percent of 10c.)*		
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*		
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%
11. SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS *(Include HBCU/MI) (Dollar Amount and Percent of 10c.)*		
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable) (Dollar Amount and Percent of 10c.)*		
14. HUBZONE SMALL BUSINESS (HUBZone SB) CONCERNS *(Dollar Amount and Percent of10c.)*		
15. VETERAN-OWNED SMALL BUSINESS (VOSB) CONCERNS *(Including Service-Disabled VOSB Concerns) (Dollar Amount and Percent of10c.)*		
16. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS *(Dollar Amount and Percent of10c.)*		

17. REMARKS

18. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM
a. NAME | b. TITLE | c. TELEPHONE NUMBER (AREA CODE / NUMBER)

19. CHIEF EXECUTIVE OFFICER
a. NAME | c. SIGNATURE
b. TITLE | d. DATE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 295 (REV.10/2001)
Prescribed by GSA - FAR (48 CFR) 53.219(b)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), Veteran-Owned Small Business (VOSB), Service-Disabled Veteran-Owned Small Business, and HUBZone Small Business (HUBZone SB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.

4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.

5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over $500,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)

6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.

7. Only subcontracts involving performance in the U.S. or its outlying areas should be included in this report.

8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

10. See special instructions in right-hand column for Commercial Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Plan" only if this report is under an approved Commercial Plan. For a Commercial Plan, the contractor must specify the percentage of dollars in Blocks 10a through 16b attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 16: These entries must include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts must include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which thereport is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commerical" is checked in Block 8 (see Special Instructions for Commercial Plans in right hand column). Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, VOSBs, Service-Disabled VOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 through 16: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned, veteran-owned, service-disabled VOSBs, and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to WOSB firms (including SDBs, VOSBs, service-disabled VOSBs, and HUBZone SBs owned by women).

BLOCK 13: (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned, veteran-owned, service-disabled VOSBs, and SDB HUBZone SBs).

BLOCK15: Report all subcontracts awarded to VOSBs (including women-owned, SDB, and HUBZone SB VOSBs).

BLOCK 16: Report all subcontracts awarded to service disabled VOSBs (including Service-Disabled Veteran Owned Small Business Concerns that are SDBs, WOSBs, and HUBZone SBs). These subcontracts should also be reported in Block 15.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.

2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial items shall include all subcontracting activity under commercial plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial items, if any.

3. Enter in Blocks 10a through 15b the total of all subcontract awards under the contractor's Commercial Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial items covered by an approved Commercial Plan were received.

DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

2. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HS), Washington, DC 20546

2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

[FR Doc. 01–26300 Filed 10–19–01; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 2001–01, FAR Case 2001–001; Item VI]

RIN 9000–AJ16

Federal Acquisition Regulation; Very Small Business Pilot Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by extending, for three additional years, the Very Small Business Pilot Program until September 30, 2003. This rule implements section 503(c) of the Small Business Reauthorization Act of 2000 (part of Public Law 106–554).

DATES: *Effective Date:* December 21, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2001–01, FAR case 2001–001

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends paragraph (c) of section 19.901 to implement section 503(c) of the Small Business Reauthorization Act of 2000 (part of Public Law 106–554). Section 503(c) amends Section 304 of Public Law 103–403 (15 U.S.C. 644 note) to extend the pilot program through September 30, 2003. The purpose of the program is to improve access to Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain acquisitions for competition among such concerns. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–01, FAR case 2001–001), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any new information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government Procurement.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA and NASA amend 48 CFR part 19 as set forth below:

PART 19—VERY SMALL BUSINESS PILOT PROGRAM

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

19.901 [Amended]

2. Amend section 19.901 in the first sentence of paragraph (c) by removing "2000" and adding "2003" in its place.

[FR Doc. 01–26301 Filed 10–19–01; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–01 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–01 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–01

Item	Subject	FAR case	Analyst
I	*Application of the Davis-Bacon Act to Construction Contracts With Options to Extend the Term of the Contract.	1997–613	Nelson.
II	Acquisition of Commercial Items	2000–303	Moss.
III	Prompt Payment Under Cost-Reimbursement Contracts for Services (Interim).	2000–308	Olson.
IV	Veterans' Employment	1998–614	Nelson.
V	*Veterans Entrepreneurship and Small Business Development Act of 1999 (Interim).	2000–302	Cundiff.

LIST OF RULES IN FAC 2001–01—Continued

Item	Subject	FAR case	Analyst
VI	Very Small Business Pilot Program	2001–001	Cundiff

Item I—Application of the Davis-Bacon Act to Construction Contracts With Options To Extend the Term of the Contract

[FAR Case 1997–613]

This final rule implements the Department of Labor's requirement to incorporate a current Davis-Bacon Act wage determination at the exercise of each option to extend the term of a contract for construction.

Item II—Acquisition of Commercial Items

[FAR Case 2000–303]

This final rule amends the FAR to clarify the definition of "commercial item." The revised language will help contracting officers make commerciality determinations. The rule also alerts contracting officers to be aware of customary commercial terms and conditions that may affect the contract price when pricing commercial items. The rule also clarifies that subpart 46.8, Contractor Liability for Loss of or Damage to Property of the Government, does not apply to acquisitions of commercial items. Contracting officers should use standard commercial practices instead of the policies in subpart 46.8. Finally, the rule amends the clause at 52.212–4, Limitation of liability, to conform it to standard commercial practice.

Item III—Prompt Payment Under Cost-Reimbursement Contracts for Services

[FAR Case 2000–308]

This interim rule implements changes in the Office of Management and Budget's (OMB) Prompt Payment Act regulations at 5 CFR 1315 that implemented Section 1010 of the NationalDefense Authorization Act for Fiscal Year 2001. Those changes were published by OMB as an interim final rule and became effective on December 15, 2000 (65 FR 78403) and were applicable to all covered contracts awarded on or after December 15, 2000. Section 1010 of the National DefenseAuthorization Act for Fiscal Year 2001 requires agencies to pay an interest penalty, in accordance with regulations issued, whenever an interim payment under a cost-reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from a contractor. The Act does not permit payment of late payment penalty interest for any period prior to December 15, 2000.

This FAR amendment eliminates the prior policy and contract clause prohibitions on payment of late payment penalty interest for late interim finance payments under cost-reimbursement contracts for services. It adds new policy and contract clause coverage to provide for those penalty payments.

Item IV—Veterans' Employment

[FAR Case 1998–614]

This final rule amends the FAR to implement statutory and regulatory changes relating to veterans' employment opportunities and reporting. Most significantly for contracting officers, the rule amends the FAR to prohibit contracting officers from obligating or expending appropriated funds to enter into a contract with a contractor that has not met its veterans' employment reporting requirements (VETS—100 Report). This prohibition does not apply to contracts for commercial items or contracts valued at or below the simplified acquisition threshold. The rule adds a new solicitation provision that requires each offeror to represent, by submission of its offer, that it is in compliance with the VETS—100 reporting requirements. The contracting officer may verify compliance by checking with the Department of Labor.

Item V—Veterans Entrepreneurship and Small Business Development Act of 1999

[FAR Case 2000–302]

This interim rule amends the FAR to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554) that was enacted on December 21, 2000.

This rule requires a contractor that is required to submit a subcontracting plan to report as a separate subcontracting plan goal requirement, subcontracting activity pertaining to service-disabled veteran-owned small business concerns. The rule also changes the Standard Form (SF) 294, "Subcontracting Report for Individual Contracts," and the SF 295, "Summary Subcontract Report," to capture this category of information for the contracting officer.

Item VI—Very Small Business Pilot Program

[FAR Case 2001–001]

This final rule amends FAR Subpart 19.9 to implement Section 503(c) of the Small Business Reauthorization Act of 2000 (part of Public Law 106–554). Section 503(c) extends, for three additional years, the Very Small Business Pilot Program until September 30, 2003. The purpose of the program is to improve access to Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain acquisitions for competition among such concerns.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–26302 Filed 10–19–01; 8:45 am]
BILLING CODE 6820–EP–P

Reader Aids

Federal Register

Vol. 66, No. 204

Monday, October 22, 2001

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–3447**
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Agusta; comments due by 10-29-01; published 8-30-01 [FR 01-21748]
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Agusta S.p.A.; comments due by 10-29-01; published 8-29-01 [FR 01-21219]
Boeing; comments due by 10-29-01; published 8-29-01 [FR 01-21488]
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Eurocopter France; comments due by 10-29-01; published 8-29-01 [FR 01-21753]
EXTRA Flugzeugbau GmbH; comments due by 10-31-01; published 9-26-01 [FR 01-24024]
Fairchild; comments due by 10-29-01; published 8-21-01 [FR 01-20941]
Pratt & Whitney; comments due by 10-29-01; published 8-30-01 [FR 01-21895]
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Tax shelter rules list; modification; comments due by 10-31-01; published 8-7-01 [FR 01-19616]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

H.R. 1583/P.L. 107–49

To designate the Federal building and United States courthouse located at 121 West Spring Street in New Albany, Indiana, as the "Lee H. Hamilton Federal Building and United States Courthouse". (Oct. 15, 2001; 115 Stat. 262)

H.R. 1860/P.L. 107–50

Small Business Technology Transfer Program Reauthorization Act of 2001 (Oct. 15, 2001; 115 Stat. 263)

H.J. Res. 42/P.L. 107–51

Memorializing fallen firefighters by lowering the American flag to half-staff in honor of the National Fallen Firefighters Memorial Service in Emmitsburg, Maryland. (Oct. 16, 2001; 115 Stat. 267)

H.J. Res. 51/P.L. 107–52

Approving the extension of nondiscriminatory treatment with respect to the products of the Socialist Republic of Vietnam. (Oct. 16, 2001; 115 Stat. 268)

Last List October 16, 2001

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This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-044-00001-6)	6.50	[4]Jan. 1, 2001
3 (1997 Compilation and Parts 100 and 101)	(869-044-00002-4)	36.00	[1] Jan. 1, 2001
4	(869-044-00003-2)	9.00	Jan. 1, 2001
5 Parts:			
1-699	(869-044-00004-1)	53.00	Jan. 1, 2001
700-1199	(869-044-00005-9)	44.00	Jan. 1, 2001
1200-End, 6 (6 Reserved)	(869-044-00006-7)	55.00	Jan. 1, 2001
7 Parts:			
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27-52	(869-044-00008-3)	45.00	Jan. 1, 2001
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210-299	(869-044-00010-5)	56.00	Jan. 1, 2001
300-399	(869-044-00011-3)	38.00	Jan. 1, 2001
400-699	(869-044-00012-1)	53.00	Jan. 1, 2001
700-899	(869-044-00013-0)	50.00	Jan. 1, 2001
900-999	(869-044-00014-8)	54.00	Jan. 1, 2001
1000-1199	(869-044-00015-6)	24.00	Jan. 1, 2001
1200-1599	(869-044-00016-4)	55.00	Jan. 1, 2001
1600-1899	(869-044-00017-2)	57.00	Jan. 1, 2001
1900-1939	(869-044-00018-1)	21.00	[4]Jan. 1, 2001
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9 Parts:			
1-199	(869-044-00023-7)	55.00	Jan. 1, 2001
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10 Parts:			
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51-199	(869-044-00026-1)	52.00	Jan. 1, 2001
200-499	(869-044-00027-0)	53.00	Jan. 1, 2001
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11	(869-044-00029-6)	31.00	Jan. 1, 2001
12 Parts:			
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220-299	(869-044-00032-6)	54.00	Jan. 1, 2001
300-499	(869-044-00033-4)	41.00	Jan. 1, 2001
500-599	(869-044-00034-2)	38.00	Jan. 1, 2001
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13	(869-044-00036-9)	45.00	Jan. 1, 2001
14 Parts:			
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60-139	(869-044-00038-5)	55.00	Jan. 1, 2001
140-199	(869-044-00039-3)	26.00	Jan. 1, 2001
200-1199	(869-044-00040-7)	44.00	Jan. 1, 2001
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15 Parts:			
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16 Parts:			
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17 Parts:			
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19 Parts:			
1-140	(869-044-00053-9)	54.00	Apr. 1, 2001
141-199	(869-044-00054-7)	53.00	Apr. 1, 2001
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20 Parts:			
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400-499	(869-044-00057-1)	57.00	Apr. 1, 2001
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21 Parts:			
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100-169	(869-044-00060-1)	44.00	Apr. 1, 2001
170-199	(869-044-00061-0)	45.00	Apr. 1, 2001
200-299	(869-044-00062-8)	16.00	Apr. 1, 2001
300-499	(869-044-00063-6)	27.00	Apr. 1, 2001
500-599	(869-044-00064-4)	44.00	Apr. 1, 2001
600-799	(869-044-00065-2)	15.00	Apr. 1, 2001
800-1299	(869-044-00066-1)	52.00	Apr. 1, 2001
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22 Parts:			
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23	(869-044-00070-9)	40.00	Apr. 1, 2001
24 Parts:			
0-199	(869-044-00071-7)	53.00	Apr. 1, 2001
200-499	(869-044-00072-5)	45.00	Apr. 1, 2001
500-699	(869-044-00073-3)	27.00	Apr. 1, 2001
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§§ 1.1401-End	(869-044-00088-1)	58.00	Apr. 1, 2001
2-29	(869-044-00089-0)	54.00	Apr. 1, 2001
30-39	(869-044-00090-3)	37.00	Apr. 1, 2001
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27 Parts:			
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28 Parts:			
0-42	(869-044-00098-9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
0-99	(869-042-00100-1)	33.00	July 1, 2000
100-499	(869-044-00101-2)	14.00	[6]July 1, 2001
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1910 (§§ 1910.1000 to end)	(869-044-00105-5)	42.00	July 1, 2001
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30 Parts:			
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700-End	(869-044-00111-7)	53.00	July 1, 2001
31 Parts:			
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200-End	(869-044-00113-6)	56.00	July 1, 2001
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1-190	(869-044-00114-4)	51.00	[6]July 1, 2001
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33 Parts:			
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125-199	(869-044-00121-7)	55.00	July 1, 2001
200-End	(869-044-00122-5)	45.00	July 1, 2001
34 Parts:			
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300-399	(869-044-00124-1)	40.00	July 1, 2001
400-End	(869-044-00125-0)	56.00	July 1, 2001
35	(869-042-00126-5)	10.00	July 1, 2000
36 Parts			
1-199	(869-044-00127-6)	34.00	July 1, 2001
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63 (63.1200-End)	(869-042-00142-7)	49.00	July 1, 2000
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266-299	(869-042-00152-4)	35.00	July 1, 2000
300-399	(869-044-00157-8)	41.00	July 1, 2001
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46 Parts:			
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70-89	(869-042-00174-5)	13.00	Oct. 1, 2000
90-139	(869-042-00175-3)	41.00	Oct. 1, 2000
140-155	(869-042-00176-1)	23.00	Oct. 1, 2000
156-165	(869-042-00177-0)	31.00	Oct. 1, 2000
166-199	(869-042-00178-8)	42.00	Oct. 1, 2000
200-499	(869-042-00179-6)	36.00	Oct. 1, 2000
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47 Parts:			
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7-14	(869-042-00190-7)	52.00	Oct. 1, 2000
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50 Parts:			
1-199	(869-042-00200-8)	55.00	Oct. 1, 2000
200-599	(869-042-00201-6)	35.00	Oct. 1, 2000

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600-End	(869-042-00202-4)	55.00	Oct. 1, 2000
CFR Index and Findings Aids	(869-044-00047-4)	56.00	Jan. 1, 2001
Complete 2000 CFR set		1,094.00	2000
Microfiche CFR Edition:			
Subscription (mailed as issued)		290.00	1999
Individual copies		1.00	1999
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained..

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JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
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AFRDO SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
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The President

Presidential Determination No. 2002–02 of October 16, 2001

Assistance for Pakistan

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) (the "Act"), I hereby determine that it is important to the security interests of the United States to furnish up to $50 million for Pakistan without regard to any provision of law within the scope of section 614(a)(1) of the Act. I hereby authorize the furnishing of this assistance.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register.**

THE WHITE HOUSE,
Washington, October 16, 2001.

[FR Doc. 01–26789
Filed 10–22–01; 8:45 am]
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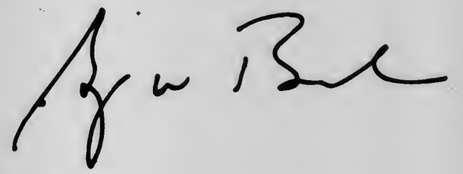
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Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority and conditions contained in section 538(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001, Public Law 106–429, as provided for in the Joint Resolution Making Continuing Appropriations for the Fiscal Year 2002, and for other Purposes (Public Law 107–44), I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months from the date hereof. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 16, 2001.

[FR Doc. 01–26790
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5 CFR Part 550

Pay Administration (General)

CFR Correction

PART 550—[CORRECTED]

§ 550.342 [Removed]

In Title 5 of the Code of Federal Regulations, Parts 1 to 699, revised as of January 1, 2001, part 550 is corrected by removing § 550.342.

[FR Doc. 01–55532 Filed 10–22–01; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

7 CFR Parts 718, 723 and 1464

RIN 0560–AG 40

Amendments to the Tobacco Marketing Quota Regulations

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the provisions of the Agricultural Risk Protection Act of 2000 (ARPA) regarding transfers of tobacco allotments, the lease and transfer of burley tobacco quota and record keeping for burley tobacco quota and acreage. It also implements the provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (the 2001 Act) regarding the Tobacco Loss Assistance Program 2000 (TLAP00).

Notice and Comment

Section 840 of Pub. L. 106–387 requires that the regulations necessary to implement its provisions regarding TLAP00 be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Section 263 of Pub. L. 106–224 requires that the regulations necessary to implement its provisions regarding quotas and allotments be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These provisions are thus issued as final and are effective immediately.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Joe Lewis Jr., Agricultural Program Specialist, Tobacco and Peanuts Division, or Bob Tarczy, Agricultural Economist, Tobacco and Peanuts Analysis Staff, Farm Service Agency, United States Department of Agriculture (USDA), 1400 Independence Avenue, SW., STOP 0514, Washington, DC 20250–0514, telephone (202) 720–0795, (202) 720–5346.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and was reviewed by OMB .

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Federal Assistance Programs

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies is: Commodity Loans and Purchases–10.0514.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Act of 1996

Section 263 of Pub. L. 106–224 and Section 840 of Pub. L. 106–387 requires that these regulations be issued as soon as practicable after the date of enactment and without regard to the notice and comment provision of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notice of proposed rulemaking and public participation in rulemaking. They also require the Secretary to use the provisions of 5 U.S.C. 808, the Small Business Regulatory Enforcement Act (SBREFA), which provide that a rule may take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public purpose, and thus does not have to meet the requirements of 801 of SBREFA requiring a 60-day delay for Congressional review of a major regulation before the regulation can go into effect. This final rule is considered major for the purposes of SBREFA. However, these regulations affect a large number of agricultural producers who have been significantly impacted by natural disasters and poor market conditions. Accordingly, and because § 263 explicitly sets out Congress' intent that the waiting period of SBREFA should not apply, it has been determined that it would be

contrary to the public interest and the relevant public laws to delay implementation of this rule. This rule is therefore made effective immediately.

Paperwork Reduction Act

Section 263 of Pub. L. 106–224 requires that the bulk of these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act and an equivalent provision is contained in the other legislation implemented herein, specifically in section 840 of the 2001 Act. This means that the information collections required by these rules and the burdens that may be imposed as a result do not have to be reviewed and/or approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period that may be applicable to some information collections.

Background

This final rule implements provisions of section 204 (b) (8)–(12) of the ARPA, enacted on June 20, 2000, which amended provisions of the Agricultural Adjustment Act of 1938 (1938 Act) pertaining to burley tobacco. In addition, as indicated below provisions of Pub. L. 106–387 relating to tobacco are also implemented in this rule.

Section 204(b)(8) of the ARPA revised section 318 (g) of the 1938 Act (7 U.S.C. 1314d), which deals with the transfer of allotments for fire-cured, dark air-cured and Virginia sun-cured tobacco. Prior to the amendment such transfers between farms could not exceed more than 10 acres of allotments and the total acreage allotted to any farm after the transfer could not exceed 50 percent of the acreage of cropland on the farm. The amendment retains the latter limitation but drops the 10 acre rule. This rule updates the program regulations accordingly.

Section 204(b)(9) of the ARPA deals with burley tobacco. It amends section 319(c)(3) of the 1938 Act which sets out the formula for setting the annual burley tobacco quota. Under that formula, the Secretary is allowed to make an adjustment in the calculated formula so that stocks of the tobacco reach a prescribed "reserve stock level." Provisions of Section 319 have limited the amount in pounds that can be made using that authority; however, the new law provides that the limitation on the adjustment will not apply beginning with any year in which non-committed pool stocks of burly tobacco actually do reach a level equal to or less than the reserve stock level. This rule updates the program regulations accordingly.

Section 204(b)(10)(A) of the ARPA also deals with burley tobacco. It also amends section 319. It limit the total amount of under marketings that can be "carried over" as quota additions to farms, nationwide, in total, to 10 percent of the national basic quota for the preceding year. Hence, if individual farms under marketings will, in total, exceed that level, some form of factoring will have to be used to determine the amount of under marketings that can be carried forward by the individual farm. In this rule, the program regulations are updated accordingly. Further, in other legislation, Pub. L. 106–472, enacted after ARPA, Congress provided that the amendments made by Section 204(b)(10)(A) of the ARPA would only apply beginning with under marketings of the 2001 crop of burley tobacco and with marketings of the 2002 crops of burley tobacco. Further, in Pub. L. 106–554, it was provided that section 204(b)(10)(B) would not be effective until July 1, 2002. Hence, this limitation on the amount of under marketings that can be added to a farm's quota will not be applied until beginning with 2002 crop (at which time the quota calculations will take into account the 2001 crop under marketings).

Other provisions in this rule, however, are effective beginning with the 2001 crops. Section 204(b)(10)(B) of the ARPA deals with burley tobacco. It changes 319(k) of the 1938 Act to limit "fall transfers" of burley tobacco quota (those essentially being disaster transfers of quota made after the normal planting season). Under the statutory amendment, the total quantity of tobacco that can be leased or transferred to a farm during a crop year is limited to 15 percent of the effective quota on that farm that existed prior to the lease or transfer for leases filed after July 1 of the crop year. The program rules have been updated accordingly.

Section 204(b)(11) of the ARPA deals with burley tobacco. It revises section 319(l) of the 1938 Act by making a technical change in the language dealing with allowing cross-county leasing of burley tobacco, but in certain states only and then only if, in those states, producers approve of the measure in a state-wide referendum. Previous language in Section 319 produced litigation and following the statutory revisions new votes were held in those states in which the Department had previously considered the measure for cross-county leasing to have been approved. After that new vote in those four states, three approved the measure—Tennessee, Indiana, and Ohio. Kentucky producers, which had previously approved the measure, voted against it. In this rule, the regulations are updated to reflect the new votes.

Section 204(b)(12) of the ARPA deals with burley tobacco. It amends section 319 of the 1938 Act by adding a requirement that owners of farms for which a burley tobacco quota is established must report acreage planted to burley tobacco annually. This final rule revises the tobacco regulations at 7 CFR part 1464 accordingly and makes a corresponding change in 7 CFR 718.102(b)(4).

This final rule also implements provisions of Pub. L. 106–387 related to the TLAP 2000. TLAP 2000 unlike the previous "TLAP" program involved direct federal payments to farmers. In the previous TLAP, program the payments were made to States which then paid farmers. TLAP 2000 was provided for under Pub. L. 106–224 and a rule implementing that program was published in the **Federal Register** on November 2, 2000 (65 FR 65718). By the provisions of that statute actual production of the quota was required for anyone associated with the quota to be paid. However, Section 841 of Pub. L. 106–387 directs the Secretary to make payments to otherwise eligible persons who would have been paid but for the quota not being produced. Payments are to be made under the same rules, and in the same amounts, that otherwise applied to other payments but these payments are not subject to the same overall funding limit that applied to the program. Hence, the TLAP rules are amended accordingly and they are clarified, too, in accord with the circumstances under which the payment was made with respect to quota lessees. Other than the change in eligibility compelled by Pub. L. 106–387, there has been no change in payment eligibility and no additional payments will be made.

Changes made in this rule are prospective only and do not effect previous program actions and determinations.

List of Subjects

7 CFR Part 718

Acreage allotments, Marketing quotas, Reconstitutions.

7 CFR Part 723

Acreage allotments, Auction warehouses, Dealers, Domestic manufacturers, Marketing quotas Penalties, Reconstitutions, Tobacco.

7 CFR Part 1464

Tobacco, Loans, Importer [illegible] assessments.

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

1. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 1373, 1374, 7201 *et seq.*; 15 U.S.C. 714b, Pub. L. 106–224.

2. Revise § 718.102(b)(4) to read as follows:

§ 718.102 Acreage reports.

* * * * *

(b) * * *

(4) Participants in the programs authorized by parts 723 and 1464 of this title must report the acreage planted to tobacco by kind on all farms that have an effective allotment or quota greater than zero; provided further that for burley tobacco each person who owns a farm for which a burley quota is established must report the acreage planted to burley tobacco, including instances in which the acres planted are zero acres; and

* * * * *

PART 723—TOBACCO

4. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1377–1379, 1421, 1445–1 and 1445–2.

5. Revise § 723.206(c)(1) to read as follows:

§ 723.206 Determining farm marketing quotas and effective farm marketing quotas.

* * * * *

(c) * * *

(1) Upward adjustments. Adding the:

(i) Effective under marketings from the preceding marketing year, but effective for the 2002 and subsequent marketing years, the aggregate amount for all farms of under marketings of burley tobacco for all farms that can be carried over shall be limited to 10 percent of the national basic quota of the preceding year. If needed, factoring will be undertaken to insure that the limit of the preceding sentence is not exceeded.

* * * * *

6–8. Revise §§ 723.216(e)(5)(iv), (e)(6)(ii)(B) and (i)(6) to read as follows:

§ 723.216 Transfer of tobacco acreage allotment or marketing quota by sale, lease, or owner.

* * * * *

(e) * * *

(5) * * *

(iv) Filed on or before July 1. Unless the receiving farm is administratively located in the same county as the transferring farm. However, burley tobacco producers in the States of Tennessee, Ohio and Indiana shall, irrespective of the preceding sentence, be permitted to lease and transfer burley tobacco quota from one farm in a State to any other farm in the State if other conditions for the transfer are met.

* * * * *

(e) * * *

(6) * * *

(ii) * * *

(B) Pounds of quota to be transferred to the lessee farm do not exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year. However, the total quantity of tobacco that can be leased or transferred to a farm during a crop year may not exceed that quantity which equals 15 percent of the effective quota on the farm prior to any leases or transfers filed after July 1 of the crop year.

* * * * *

(i) * * *

(6) *Limitation on acreage transferred.* The total of the Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment which may be transferred for each kind of tobacco, by sale, lease, or by owner, to a farm shall not exceed 50 percent of the acreage of cropland on the farm. The cropland in the farm for the current year for purposes of such transfers shall be the total cropland as defined in Part 718 of this chapter.

* * * * *

9. Revise § 723.503(a)(3) to read as follows:

§ 723.503 Establishing the quotas.

* * * * *

(a) * * *

(3) *Reserve stock level adjustment.* The Director may then adjust the total calculated by adding the sums of paragraphs (a)(1) and (a)(2) of this section, by making such adjustment which the Director, in his discretion, determines necessary to maintain inventory levels held by producer loan associations for burley and flue-cured tobacco at the reserve stock level. For burley tobacco, the reserve stock level for these purposes is the larger of 50 million pounds farm sales weight or 15 percent of the previous year's national market quota. For flue-cured tobacco, the reserve stock level for these purposes is the larger of 100 million pounds farm sales weight or 15 percent of the previous year's national market quota. Any adjustment under this clause shall be discretionary taking into account supply conditions: provided that for burley tobacco no downward adjustment under this clause may exceed the larger of 35 million pounds (farm sales weight) or 50 percent of the amount by which loan inventories exceed the reserve stock level. However, if for any of the 2001 and subsequent crops the uncommitted pool stocks of burley tobacco become equal to or less than the reserve stock level, then for that year and any subsequent year the limitation contained in the previous sentence on the amount of the downward adjustment in quota that may be made based on the reserve stock level, for that kind of tobacco, shall not apply.

* * * * *

PART 1464—TOBACCO

10. The authority citation for part 1464 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1; 1445–2; 15 U.S.C. 714b, 714c; Pub. L. 106–78, Pub. L. 106–113, Stat.1135 and Pub. L. 106–224.

11. Revise § 1464.8(d)(1) to read as follows:

§ 1464.8 Eligible tobacco.

* * * * *

(d) * * *

(1) The farm operator has filed a report of the acreage planted to tobacco on the farm in the applicable year in accordance with part 718 of this title.

* * * * *

12. Revise § 1464.401(a) to read as follows:

§ 1464.401 Applicability and basic terms for payments.

(a) This subpart sets forth the terms and conditions of the Tobacco Loss Assistance Program 2000 (TLAP00) authorized by Section 204(b) of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224). That section provides that $340 million of funds of the Commodity Credit Corporation (CCC) shall be made available to make direct payments to eligible persons, on a farm for which the quantity of quota of eligible tobacco allotted to the farm was reduced from the 1999 crop year to the 2000 crop year.

* * * * *

13. Revise § 1464.403 to read as follows:

§ 1464.403 Eligibility.

For a person to be considered an "eligible person" for purposes of this

part, such person must own, operate or produce eligible tobacco on a farm for which a quota reduction from the 1999 crop year to the 2000 crop year occurred and that was used for the production of tobacco during the 2000 crop year. Leased quotas may, as determined appropriate by the Deputy Administrator in making the payments prior to January 1, 2001, may qualify operators or controllers and growers by reference by back, as needed, to the leasing farm. Also, to the extent allowed by Pub. L. 106–387 payments may be made to person without regard to whether the quota was used for the production of eligible tobacco during the 2000 crop year. Payments that are made by virtue of the preceding sentence may by made, to the extent authorized by law, from funds of the Commodity Credit Corporation and without regard to the overall limitation for payment that otherwise apply to this program.

14. In § 1464.404 revise the definition of "Eligible person" to read as follows:

§ 1464.404 Definitions.

* * * * *

Eligible person means, with respect to payments under this part and subject to the provisions of section 1464.403 and other provisions of this part, a person who owns or operates, or produces eligible tobacco on a farm for which the quantity of quota of eligible tobacco allotted to the farm under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 was reduced from the 1999 crop year to the 2000 crop year. Actual production of the crop may be required to the extent otherwise provided in these rules. For purposes of this subpart, further, an eligible person's status, as owner or controller or producer of the tobacco, will be determined as of July 3, 2000.

* * * * *

Signed at Washington, DC, on October 16, 2001.

James R. Little,

Acting Administrator, Farm Service Agency and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 01–26543 Filed 10–22–01; 8:45 am]

BILLING CODE 3410–05–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 140 and 155

RIN 3038–AB56

Rules Relating to Intermediaries of Commodity Interest Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: Following the enactment of the Commodity Futures Modernization Act of 2000 (CFMA) and the resulting revisions to the Commodity Exchange Act (CEA or Act), the Commodity Futures Trading Commission (CFTC or Commission) is adopting rules relating to intermediation of commodity futures and commodity options (commodity interest) transactions. These new rules and rule amendments provide greater flexibility in several areas, and addresses, among other things, the definition of the term "principal," certified financial reports, ethics training, disclosure, account opening procedures, trading standards, reporting requirements, and offsetting positions. The Commission is also adopting changes to allow a registrant to notify the Commission when a new natural person is added as a principal promptly after the change occurs.

These rules are consistent with the mandate of the CFMA to streamline regulation of entities registered under the Act. Most of the new rules and rule amendments were part of the Commission's final rules relating to intermediaries that were adopted in December 2000, and subsequently withdrawn following the CFMA's enactment in order to determine their consistency with the CFMA (December Release). Upon reviewing the rules in light of the CFMA, the Commission has determined that the rules being adopted herein are consistent with the CFMA.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Michael A. Piracci, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5450.

SUPPLEMENTARY INFORMATION:

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I. Background

Section 2 of the CFMA sets forth the purposes of the CFMA, which include streamlining and eliminating unnecessary regulation for the commodity futures exchanges and other entities regulated under the Act. Section 125 of the CFMA directs the Commission to complete a study of its rules, regulations, and interpretations governing the conduct of persons registered under the Act by December 21, 2001. The rules adopted herein are designed to be an initial step in fulfilling the mandates of Section 2 and Section 125.

Most of the new rules and rule amendments were part of the Commission's final rules relating to intermediaries that were adopted in December 2000, and subsequently withdrawn following the CFMA's enactment in order to determine their consistency with the CFMA (December Release).[1] On August 20, 2001, after reviewing the rules in light of the CFMA and determining that the rules are consistent with the CFMA, the Commission proposed the new rules and rule amendments being adopted herein.[2]

II. Overview of Comments

The Commission received five comment letters on the proposals. The commenters included Fimat USA Inc. (Fimat), a registered futures commission merchant (FCM) and securities broker-dealer (BD); the Chicago Board of Trade (CBT), a designated contract market; Exchange Analytics Inc. (EA), an ethics training provider; National Futures Association (NFA), a registered futures association; and the Managed Funds Association (MFA), an industry trade association. Each commenter indicated that it generally supported the adoption of the proposed new rules and rule amendments. The issue that generated the most discussion was ethics training, which was addressed by four of the five commenters. As discussed more fully below, the Commission proposed to replace Rule 3.34 governing ethics training with a Statement of Acceptable Practices.

As noted above, these rules are intended to be a first step with respect to intermediaries in meeting the purpose of the CFMA to streamline and eliminate unnecessary regulation. The Commission will look at possible further regulatory relief related to intermediaries as part of the study mandated by Section 125 of the CFMA.[3] Fimat urged the Commission to consider adopting further relief for intermediaries prior to the conclusion of this study. The study is just one aspect of the Commission's ongoing efforts in this regard and the Commission anticipates that additional reforms may be implemented before the study is completed.[4] The Commission urges Fimat and any other persons interested in intermediaries reform to submit comments regarding appropriate reforms to the Secretary of the Commission in accordance with the **Federal Register** release soliciting such comments.[5]

III. New Rules and Rule Amendments

A. Registration

1. Definition of the Term "Principal"

Under Commission staff's prior interpretation of the definition of the term "principal" in Rules 3.1(a)(1) and 4.10(e)(1),[6] all officers of a registrant were treated as principals and were required to register as such.[7] In response to changes in management structures over the last 20 years and requests from registrants that certain employees, such as some vice presidents, not be considered principals because they do not exercise a controlling influence over the registrant or any of its activities subject to Commission regulation, the Commission is amending Rules 3.1(a)(1) and 4.10(e)(1) by defining as principals persons within a given organizational structure who hold specific offices.[8] A registrant, therefore, will no longer be required to treat every officer as a principal, but only those who meet the criteria of the rule as revised.[9] The amendment to the definition of principal thus reduces the number of officers that will be considered principals, while ensuring that appropriate personnel, *e.g.*, those that exercise, or are in a position to exercise a controlling influence over the registrant or any of its activities subject to Commission regulation, remain listed as such.

The principal definition also includes an individual who directly or indirectly, through agreement, holding company, nominee, trust or otherwise: (1) Is the owner of ten percent or more of any class of a firm's securities; (2) is entitled to vote ten percent or more of any class of a firm's voting securities; (3) has the power to sell or direct the sale of ten percent or more of any class of a firm's voting securities; (4) has contributed ten percent or more of a firm's capital; or (5) is entitled to receive ten percent or more of a firm's profits. Further, the principal definition includes an *entity* that is the direct owner of ten percent or more of any class of a firm's securities or that has directly contributed ten percent or more of a firm's capital. Adopting these amendments permits the deletion of Rule 3.10(a)(2)(ii), which has proved somewhat unwieldy in practice.[10] NFA and CBT supported these amendments to the principal definition.

The Commission is also adopting conforming changes to Rules 4.24(f)(1)(v), 4.25(a)(8)(ii)(A) and 4.25(c)(2)(i)(B), applicable to CPOs, and 4.34(f)(1)(ii) and 4.35(a)(7)(ii)(A), applicable to CTAs, as incorporated by reference in amended Rule 4.10(e)(1). Accordingly, CPOs and CTAs are only required to provide business backgrounds and proprietary trading results for those principals who participate in making trading or operational decisions, or supervise persons so engaged, and not for all officers.

Finally, the Commission is deleting Rule 3.32, which specifies certain events or changes within a firm's management structure that require the firm to file a new registration form. In its place, a new paragraph (a)(2) is being added to Rule 3.31 to require the registrant to file a Form 8–R on behalf of each new natural person principal who was not listed on the registrant's Form 7–R, promptly after the change occurs. New Rule 3.31(a)(2) closely parallels Rule 3.10(a)(2)(i),[11] and provides that, if the change that renders the application for registration deficient or inaccurate results from the addition of a new principal without a current Form 8–R on file with NFA, a Form 8–R for that principal must accompany the Form 3–R amending the registrant's application for registration.[12] NFA supported these rule changes, as well as the changes to Part 4 referred to above.

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[1] *See* Rules Relating to Intermediaries of Commodity Interest Transactions, 65 FR 39008 (June 22, 2000) (proposed rules); "Rules Relating to Intermediaries of Commodity Interest Transactions," 65 FR 77993 (Dec. 13, 2000) (final rules); 65 FR 82272 (Dec. 28, 2000) (final rules; partial withdrawal).

[2] *See* 66 FR 45221 (Aug. 28, 2001).

[3] *See* 66 FR 33531 (June 22, 2001).

[4] As the Commission stated in the August proposals, to the extent that an existing rule is not addressed in this release, the Commission will, pending further relief, continue to apply the rule to intermediaries transacting business on behalf of customers on designated contract markets and registered derivatives transaction execution facilities (DTFs) regardless of whether the contract market or DTF itself, or its operators, have been exempted from applicable provisions of the rule. *See* 66 FR 45221 at 45222.

[5] *See* 66 FR at 33532.

[6] Rule 3.1(a) defines "principal" for purposes of the Commission's Part 3 rules, which govern registration. Rule 4.10(e) defines "principal" for purposes of the Commission's Part 4 rules, which apply to the activities of commodity pool operators (CPOs) and commodity trading advisors (CTAs).

[7] This interpretation was consistent with the language of the second proviso to Section 8a(2) of the Act, which states that a principal shall mean a general partner of a partnership, any officer, director or beneficial owner of at least ten percent of the voting shares of a corporation, "and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of [firms] which are subject to regulation by the Commission."

[8] Thus, the principal definition includes, if the entity is organized as a sole proprietorship, the proprietor; if a partnership, any general partner (including individuals and entities, such as corporations); if a corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; and, if a limited liability company or limited liability partnership, any director, the president, chief executive officer, chief operating officer, chief financial officer, the manager, managing member or those members vested with management authority for the entity, and any person in charge of a principal business unit, division or function subject to regulation by the Commission. *See* Rule 3.1(a)(1).

The reference in the amendment to the "principal" definition to "any person in charge of a principal business unit subject to regulation by the Commission" does not include departments such as human resources or administration.

[9] The "principal" definition continues to include all directors of a corporate registrant. In addition, the definition includes the general provision that defines as a principal any person occupying a similar status as or performing similar functions to those persons specifically listed, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over a firm's activities that are subject to regulation by the Commission. What constitutes "a controlling influence" will generally be left for determination on a case-by-case basis; however, such influence would be ascribed to, among others, those persons who have policymaking or managerial authority over the activities of an applicant or registrant that are subject to Commission regulation.

[10] The amendments also result in the redesignation of Rule 3.10(a)(2)(i) as Rule 3.10(a)(2).

[11] As noted in the preceding footnote, this provision is being redesignated as Rule 3.10(a)(2).

[12] An additional conforming amendment to Rule 3.21(c) reflects the deletion of Rule 3.32, and the addition of new paragraph (a)(2) to Rule 3.31.

2. Application Procedures for IBs and FCMs

The Commission is also adopting Rule 1.10(a)(2)(ii)(A)(3), which will permit applicants for registration as IBs who raise their own capital to satisfy minimum financial requirements, to file an unaudited financial report indicating satisfaction of the minimum requirements, rather than requiring them to provide certified financial statements with their registration application.[13] A firm taking advantage of the new procedure will be subject to an on-site review within six months of registration by the firm's designated self-regulatory organization (DSRO) or, at the DSRO's discretion, a conference between appropriate staff of the firm and the DSRO at the DSRO's offices.[14] This alternative procedure is modeled on similar procedures in the securities industry.[15]

With respect to the six-month review that must be conducted should an IB choose not to file a certified financial statement with its registration application, the Commission believes that the six-month time period for the review of IBs should begin from the date the applicant is registered. The Commission has held consistently that once a registrant becomes registered in a certain capacity, the registrant is immediately assumed to be engaging in the activities permitted by such registration.[16] However, the Commission notes that the DSRO will be able to conduct the review telephonically where the DSRO does not have reason to question the IB's capital. In addition, an applicant that does not wish to be subject to the six-month review can continue to follow the existing rules and file a certified financial statement with its application.

The Commission's December Release contained relief for FCM applicants similar to that provided to IB applicants. The Commission did not repropose these rule changes for FCM applicants in light of comments filed by NFA and CBT on the June 2000 proposed rules. NFA and CBT reiterated in their comment letters filed on the August 2001 proposals their strong support for maintaining the requirement of a certified financial report as part of an FCM registration application.[17]

B. Fitness and Supervision

An essential component of maintaining fitness is continuing education concerning obligations under the Act and rules thereunder. In order to provide flexibility and ease compliance for all registrants, the Commission proposed deleting Rule 3.34 and instead implementing Congressional intent regarding ethics training through a Statement of Acceptable Practices. Rule 3.34 specified the frequency and duration of ethics training, the suggested curriculum, qualifications of instructors, and the necessary proof of attendance at such classes. In proposing to replace the rule with a Statement of Acceptable Practices that leaves the format, frequency, and providers of ethics training up to the registrants themselves, the Commission noted that greater flexibility regarding ethics training would be afforded to registrants than had been permitted under Rule 3.34 so that registrants could tailor training to their particular business activities. For registrants seeking guidance as to the maintenance of proper ethics training procedures, the Statement of Acceptable Practices would serve as a "safe harbor."[18]

Ethics training generated the most discussion among the commenters. Fimat commented that, while it did not oppose the elimination of Commission Rule 3.34, it did believe that a Commission rule providing for ethics training on a specified schedule would help Fimat to "ensure full cooperation by all [of its] employees." EA expressed opposition to the repeal of Rule 3.34, although it indicated that it would be amenable to the removal of the minimum time requirements of that rule (four hours within six months of being granted registration and an hour every three years thereafter) and to allowing training in whatever format works best for the industry. EA also expressed concern about the maintenance of records of completion of ethics training and stated that NFA should continue to assist firms by maintaining records of training even if Rule 3.34 is replaced with a Statement of Acceptable Practices. EA stated that the Commission's proposal concerning ethics training would create uncertainty, may lead firms to place an inadequate priority on training, and weaken public confidence in the industry. CBT applauded the Commission's proposal concerning ethics training, stating that the result would avoid micromanagement in this area, consistent with the overall intent of the CFMA. NFA also strongly supported the Commission's proposal, claiming that the current rule was far too detailed and administratively cumbersome.

The Commission does not believe that the replacement of the rule with a Statement of Acceptable Practices diminishes a registrant's obligations to remain fit and to adequately supervise the handling of customer accounts. Instead, the Commission, through the Statement of Acceptable Practices, which provides guidance to registrants to develop training programs that are suited to their individual needs, is signaling that ethics should be considered an ongoing responsibility rather than an episodic one. The Commission believes that the essence of the ethics training or continuing education requirement is to remain current as to the legal requirements applicable to a person's role in the futures industry, which a registrant ignores at his or her peril. The Commission further believes that, given

[13] However, those IB applicants who do not raise their own capital continue to be required to file a guarantee agreement entered into with an FCM with their registration application. IBs and FCMs should refer to Commission Rules 1.10(j) and 1.57(a)(1) concerning the procedures applicable to guarantee agreements. *See also First American Discount Corp. v. CFTC*, 222 F.3d 1008 (D.C. Cir. Aug. 18, 2000).

Filing of financial statements or guarantee agreements is unnecessary for any FCM or IB registered in accordance with recently-adopted Rule 3.10(a)(3), which applies to those securities brokers or dealers registering as FCMs or IBs because their only futures-related activities involve security futures products. *See* 66 FR 43080 (Aug. 17, 2001).

[14] Although the rule does not require IBs to file a certified financial statement with their application for registration, this does not preclude any SRO from imposing this requirement before accepting an IB for membership.

[15] Certain technical amendments are also being made to paragraph (j)(6), which addresses guaranteed IBs' compliance with the financial reporting requirements in the event that their guarantee agreement has been terminated. Such IBs will be deemed to have satisfied the Commission's minimum financial requirements if they enter into another guarantee agreement or file a certified Form 1–FR–IB.

[16] *See, e.g., In re Premex*, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,992 (Feb. 1, 1984), *aff'd in relevant part, rev'd in part*, 785 F.2d 1403 (9th Cir. 1986).

[17] As noted in the August 2001 proposals, the Commission did not repropose its "passporting" registration procedure in light of various provisions of the CFMA. See 66 FR 45221 at 45222 & n.2. The Commission also indicated that it might revisit that issue in the context of the study mandated by Section 125 of the CFMA. NFA agreed that the Commission's earlier passporting proposal was generally rendered moot by the CFMA, but stated that the issue of streamlining the registration process for dual securities and futures applicants by eliminating duplicate background checks should be addressed as part of the mandated study.

[18] For instance, under the Statement of Acceptable Practices, registrants may engage in ethics training programs sponsored by the registrants themselves, their DSROs, trade associations or others. The format of such training, whether by personal or recorded instruction, or by circulation of written materials such as legal cases, interpretative letters or advisories, is left to the discretion of registrants and DSROs. It is also permissible to require training on whatever periodic basis the registrants and DSROs deem appropriate. Thus, the Commission will not specify any particular programs or procedures that must be followed.

the increasing rapidity of market evolution, it is appropriate for firms to determine how frequently their employees need to be updated on their obligations to customers. Thus, the Commission is not adopting EA's suggestion to maintain the current six-month and three-year training schedule or Fimat's suggestion that the Commission mandate that all registrants participate in some kind of program at least annually or once within some other specified time period. Instead, the Commission is replacing Rule 3.34 with the Statement of Acceptable Practices as proposed.

The Commission is also publishing its recent "guidance letters" issued to NFA concerning the treatment of SRO disciplinary actions in assessing the fitness of floor brokers (FBs) and floor traders (FTs). The guidance letters were issued to provide greater clarity in interpreting the "other good cause" ground for statutory disqualification from registration under Section 8a(3)(M) of the Act. These letters are being added to the end of Appendix A to Part 3 as they relate to the issue of "other good cause," which is discussed at the end of Appendix A.

C. Financial Requirements

1. Trading by Non-Institutional Customers on DTFs

Although access to DTFs is generally limited to institutional customers,[19] under certain conditions a DTF may permit non-institutional customers to enter into transactions thereon. To address the higher degree of risk associated with the lower regulatory protections offered to DTF participants, such non-institutional customer busjness may be transacted through a registered FCM that (1) is a clearing member of a derivatives clearing organization, and (2) has a minimum net capital of at least $20 million.[20] Such an FCM is considered to be more capable of properly handling these transactions and the associated risk.

The Commission is adopting new Rule 4.32 to permit registered CTAs to enter trades on or subject to the rules of a DTF on behalf of a non-institutional customer, provided that the CTA: (1) directs the client's commodity interest account;[21] (2) directs accounts containing total assets of not less than $25 million at the time the trade is entered; and (3) discloses to the client that it may enter trades on a DTF on the client's behalf. Paragraph (b) of Rule 4.32 further requires that the client's commodity interest account be carried by a registered FCM. However, an FCM who receives orders on behalf of a non-institutional customer from a CTA acting in accordance with Rule 4.32 need not maintain $20 million in minimum adjusted net capital. *See* Rule 1.17(a)(1)(ii)(B).

As with a highly-capitalized FCM, a CTA meeting this asset test, in its capacity as a professional asset manager, should have the appropriate financial sophistication to handle the risk associated with trading for non-institutional customers on a DTF.[22] Additionally, focusing on the financial sophistication of the person managing the assets, rather than on the sophistication of the individual client advised by the CTA, is consistent with the approach taken by the Commission in adopting Rule 30.12.[23] NFA and MFA supported the new rule pertaining to CTAs.

In order to provide guidance to non-institutional customers trading through a highly-capitalized FCM or a CTA meeting the standards of Rule 4.32, NFA will issue a Statement of Acceptable Practices regarding additional disclosures to be made to such customers trading on DTFs and on related issues involving price dissemination. NFA stated in its comment letter that it looked forward to developing appropriate disclosures for non-institutional customers trading on DTFs.

2. Investment of Customer Funds

Final rules and rule amendments concerning the investment of customer funds by FCMs and clearing organizations became effective on December 28, 2000.[24] To facilitate the implementation of Rule 1.25 and its related amendments, new paragraph (a)(7) to Rule 140.91 is being added to delegate to the Director of the Division of Trading and Markets any functions reserved to the Commission in Rule 1.25 regarding permitted investments for customer funds. The Commission notes that it has determined not to rescind Division of Trading and Markets Financial and Segregation Interpretation No. 9 (Interp. 9).[25] The Commission had previously indicated that it would do so in light of the fact that amendments to Rule 1.25 would now permit investment of customer funds in money market mutual funds (MMMFs).[26] Because Interp. 9 addresses the use of money market deposit accounts rather than MMMFs, however, the Commission has decided not to rescind Interp. 9.

D. Risk Disclosure and Account Statements

The Commission recognizes that there are certain areas of the account opening process that may be streamlined. Accordingly, the Commission has adopted amendments to Rules 1.55(d)(1) and (2), to permit certain required disclosures, such as those concerning consent to (1) allow electronic transmission of statements under new Rule 1.33(g),[27] or (2) transfer funds out of segregated accounts to another account (such as a money market account), to be included in a customer agreement and acknowledged through a "single signature," rather than the multiple signatures that are currently required.[28] The single signature may be made electronically as provided for in Rules 1.3(tt) and 1.4.[29]

CBT supported these rule changes. NFA commented that Rule 1.55 should not dictate the specifics of delivering and acknowledging disclosure. Because the Commission made no proposal on those aspects of Rule 1.55, it has determined not to adopt NFA's suggestion, but will revisit the issue in the intermediary study.

E. Trading Standards

The Commission proposed that Rules 155.1, 155.3, and 155.4, which collectively require FCMs and IBs to establish and to maintain supervisory procedures to assure that neither they nor any affiliated persons use their knowledge of customer orders to the customer's disadvantage, continue to apply to intermediation of trades on contract markets. The Commission also proposed to extend these requirements to trading by non-institutional customers on DTFs under new Rule 155.6(a). Rules 155.1, 155.3 and 155.4 have helped the Commission to deter

[19] *See* new Part 37 of the Commission rules, 66 FR 42256 at 42271 (Aug. 10, 2001).

[20] Section 5a of the Act, 7 U.S.C. 7a, as amended by Pub. L. No. 106–554, 114 Stat. 2763.

[21] The term "direct" as defined in Rule 4.10(f), refers to, in the context of trading commodity interest accounts, "agreements whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization."

[22] *See* Section 1a(12)(C) of the Act.

[23] *See* 65 FR 47275, at 47277 (Aug. 2, 2000).

[24] *See* 65 FR 82270 (Dec. 28, 2000).

[25] 1 Comm. Fut. L. Rep. (CCH) ¶ 7119 (Nov. 23, 1983).

[26] *See* 65 FR at 78001 n.53.

[27] *See infra.*

[28] Contemporaneously with opening an account, an FCM may obtain the acknowledgment of receipt and understanding of the risk disclosure statement, along with margin funds and any other required account opening documents, from the customer. However, the FCM remains responsible for ensuring that the risk disclosure document is furnished to the customer in such a way that the customer can review and understand the document before committing funds to the FCM.

[29] 65 FR 12466 (Mar. 9, 2000).

such practices as "front-running," "trading ahead," "bucketing," and improper disclosure of customer orders. However, for intermediation of trades by institutional customers at DTFs, the Commission proposed to adopt a new Rule 155.6(b), which would set forth a general standard of practice in this area. The Commission also indicated in the August 2001 proposals that it would consider the development of a Statement of Acceptable Practices to be issued at a later date, with the consultation of DTFs, regarding appropriate procedures that should be employed in order to ensure compliance with the general standard.[30]

NFA commented that, with respect to trading standards, there should be no distinctions based upon the type of trading facility or the type of customer. NFA further commented that it could support either extending the existing rules to DTFs or a core principle with a Statement of Acceptable Practices for both designated contract markets and DTFs. CBT suggested a rule change related to the Commission's proposal to retain the applicability of Rules 155.3 and 155.4 to FCMs and IBs with regard to transactions on designated contract markets. CBT noted that paragraph (b)(2) of each rule prohibits an FCM or IB, respectively, and their affiliated persons, from knowingly taking the other side of a customer order "except with such other person's prior consent and in conformity with contract market rules *approved by the Commission*." (Emphasis added.) CBT requested that, in light of the new rule certification procedures permitted by the CFMA and the Commission, the emphasized text be amended to read "approved by *or certified to* the Commission."

The Commission believes that its proposed approach with respect to trading standards strikes a reasonable balance in preserving rules that have worked successfully over the years in curbing abusive trading practices, while relaxing certain of the specific provisions of the existing rules in connection with the trading on DTFs by more sophisticated customers. New Rule 155.6 is intended to proscribe the same trade practice abuses as Rules 155.1, 155.3, and 155.4. Accordingly, the Commission is adopting Rule 155.6 as proposed and has determined not to follow NFA's suggestions in this area.

[30] Because the DTF is a new institution, and it is not known how such an institution would choose to operate (*e.g.*, a DTF may choose to sponsor trading in a traditional open-outcry pit trading system, in a purely automated, electronic trading format, or in a combination of the two formats), the Commission is not at this time issuing a Statement of Acceptable Practices in this area.

However, the Commission believes that CBT's comment is valid and has adopted amendments to Rules 155.3 and 155.4 to encompass rules certified to the Commission as well as those approved by the Commission concerning trading standards.

F. Recordkeeping

1. Customer Account Statements

In keeping with changes in technology and commercial practices, the Commission proposed to codify its previous Advisory relating to the electronic transmission of account statements in new Rule 1.33(g).[31] The Advisory permitted an FCM, with customer consent, to deliver required confirmation, purchase-and-sale, and monthly account statements electronically in lieu of mailing a paper copy. FCMs need only to retain the daily confirmation statement as of the end of the trading session, provided that it reflects all trades made during that session. Before transmitting any statement electronically to a customer, however, the FCM is required to make certain disclosures regarding the practice, including: (1) The electronic medium or source through which statements would be delivered, (2) the duration, whether indefinite or not, of the period during which consent would be effective, (3) any charges for such service, (4) the information that would be delivered electronically, and (5) a statement that consent to electronic delivery may be revoked at any time. For non-institutional customers, the FCM is required to obtain the customer's signed consent acknowledging the disclosures, prior to the transmission of any statement by means of electronic media. The acknowledgement could be made through a single signature in accordance with Rule 1.55 as discussed above. Institutional customers do not need to provide written consent, and the Commission recommends that FCMs confirm procedures relating to electronic transmission of statements to institutional customers as described in the above-referenced Advisory. Any statement required to be furnished to a person other than a customer in accordance with paragraph (d) of Rule 1.33 would also be permitted to be furnished by electronic media.

NFA opposed codification of the Advisory, even though it fully supports its content. NFA stated that codification would decrease flexibility and that the Advisory should be treated as acceptable practices guidance rather than codified in a rule. The Commission believes that adopting the contents of the Advisory as a rule provides greater legal certainty and visibility, and has determined to adopt new Rule 1.33(g) as proposed.

[31] 65 FR at 39017; *see also* 62 FR 31507 (June 10, 1997).

2. Close-Out of Offsetting Positions

The Commission is amending Rule 1.46 to allow customers or account controllers to instruct the FCM (in writing or orally) if they wish to deviate from the current default rule that the FCM close out offsetting positions on a first-in, first-out basis, looking across all accounts it carries for the same customer.[32] NFA supported this rule change, but cautioned that the discretion provided by the rule amendment should not be misused to permit customers to change offsetting instructions on every transaction. The Commission appreciates these concerns and will monitor implementation of the rule amendment to prevent misuse.

The Commission proposed that CPOs and CTAs be required to disclose to customers, under amendments to Rules 4.24(h)(2) and 4.34(h), respectively, if they instruct an FCM to deviate from the default rule for closing out offsetting positions.[33] NFA objected to these proposals. NFA commented that disclosure would only be material if a CPO or CTA is compensated based upon realized gains and, if that is the case, disclosure about how positions are closed out and the effect on fees is already required. The Commission believes that, given the change in the longstanding rule concerning offsetting positions and the concerns about possible misuse expressed by NFA as noted above, disclosure by CPOs and CTAs as proposed is appropriate. Accordingly, the Commission has determined to adopt the amendments to Rules 4.24(h)(2) and 4.34(h) as proposed.

In order to implement this revision of Rule 1.46, the Commission is amending the rule by inserting, after the words "omnibus accounts" in paragraph (a), the phrase "or where the customer or account controller has instructed otherwise." Rule 1.46 is also being amended by revising paragraph (e) to correspond to new Rule 1.33(g) (the substance of paragraph (e) of Rule 1.46 is being deleted because it relates back to paragraph (d)(6), which is being removed and reserved) to read: "The statements required by paragraph (a) of this section may be furnished to the customer or the person described in § 1.33(d) by means of electronic transmission, in accordance with § 1.33(g)."

[32] An FCM must take into consideration positions in separate accounts of the same customer that it is carrying in applying Rule 1.46. *See* 57 FR 55082, 55083 n.2 (Nov. 24, 1992), *citing* U.S. Department of Agriculture, Commodity Exchange Authority Administrative Determination No. 134 (May 25, 1948).

[33] Generally, responsibility for transmitting instructions regarding offset would lie with the registrant directing trading. Thus, where a pool's trading is directed by a CTA, it would be the CTA who would be responsible for transmitting offset instructions, not the CPO.

IV. Section 4(c) Findings

Certain of the rules and rule amendments discussed herein are being adopted under Section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may, by rule, regulation or order, exempt any class of agreements, contracts or transactions, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to the agreement, contract, or transaction, from any of the provisions of the Act (except certain provisions governing a group or index of securities and security futures products). As relevant here, when granting an exemption pursuant to Section 4(c), the Commission must find that the exemption would be consistent with the public interest.

As explained above, the rules and rule amendments provide greater flexibility for intermediaries and their customers in several areas. Specifically, the Commission is adopting rule amendments concerning the definition of the term "principal" that are narrower than the language of the second proviso of Section 8a(2) of the Act. These amendments recognize the evolution of management structures by reducing the number of officers that will be considered principals, while ensuring that appropriate personnel that perform significant roles within the firm remain listed as such. The Commission believes that, in light of the conditions and safeguards provided for under the rules and rule amendments, the exemptive relief will have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act. Moreover, the Commission believes that the additional flexibility for intermediaries and their customers provided for by the rules and rule amendments adopted herein are consistent with the public interest. The Commission, in proposing the rules and rule amendments adopted herein, specifically invited public comment on this finding. The Commission received no comments regarding this finding.

V. Cost-Benefit Analysis

Section 15 of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15 as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15 simply requires the Commission to "consider the costs and benefits" of its action.

The amended Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

This rulemaking constitutes a package of related rule provisions affecting market intermediaries. The rules and rule amendments are intended to provide greater flexibility for intermediaries and their customers in their methods of doing business. The Commission is considering the costs and benefits of these rules in light of the specific provisions of Section 15 of the Act:

1. *Protection of market participants and the public.* In general, the rules would be expected to cost little in terms of diminishing the protection of market participants and the public.

2. *Efficiency and competition.* The rules are expected to benefit competition and market efficiency broadly by providing increased flexibility for intermediaries. For instance, the Commission is adopting new rule amendments concerning the definition of the term "principal" that recognize the evolution of management structures by reducing the number of officers that will be considered principals, while ensuring that personnel that exercise or are in a position to exercise a controlling influence over the activities of the registrant will remain listed as such. In addition, FCMs will be permitted to obtain several consents from consumers with a single signature. The rules do not impose a cost on market efficiency or competition.

3. *Financial integrity of futures markets and price discovery.* The rules should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets or on the risk management practices of FCMs, CTAs, CPOs or IBs.

4. *Sound risk management practices.* The Commission has previously adopted amendments to its rules regarding the investment of customer funds that were originally part of the December Release. These amendments expanded the list of permissible investments in which FCMs and clearing organizations are permitted to invest cash segregated for the benefit of commodity customers, thereby enhancing the yield available to FCMs, clearing organizations and their customers, and contained specific risk-limiting features intended to minimize credit risk, market risk, and liquidity risk.

5. *Other public interest considerations.* The Commission's rules implementing the new regulatory structure would open up new markets for the benefit of market participants and the public, thus making available more customized products for risk management purposes. The new rules and rule amendments adopted herein establish appropriate safeguards for those customers seeking to trade on the new DTF and security futures product markets.

After considering these factors, the Commission has determined to adopt the revisions to its rules discussed above. The Commission invited public comment on its application of the new cost-benefit provision. The Commission did not receive any comments regarding the application of the cost-benefit provision.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (1994 & Supp. II 1996), requires federal agencies, in promulgating rules, to consider the impact of those rules on small businesses. The rules adopted herein would affect FCMs, IBs, CPOs, CTAs, FBs, FTs, leverage transaction merchants (LTMs) and agricultural trade option merchants (ATOMs), as well as principals thereof. The Commission has previously established certain

definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[34] The Commission has previously determined that registered FCMs, CPOs, LTMs and ATOMs are not small entities for the purpose of the RFA.[35] With respect to IBs, CTAs, FBs and FTs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all of the affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule. In this regard, the rules being adopted herein would not require any registrant to change its current method of doing business. For many registrants, the revisions should decrease the number of persons within the registrant's organization who would be considered principals under the CFTC's rules. Further, the revisions should reduce, rather than increase, the regulatory requirements that apply to registrants and applicants for registration, regardless of size. The Commission notes that no comments were received from the public on the RFA and its relation to the proposed rules.

B. Paperwork Reduction Act

This proposed rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the Commission has submitted a copy of these proposed amendments to its rules to the Office of Management and Budget (OMB) for its review. No comments were received in response to the Commission's invitation in the proposed rules to comment on any potential paperwork burden associated with this regulation.

C. Administrative Procedures Act

The Administrative Procedures Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for "a substantive rule which grants or recognizes an exemption or relieves a restriction."[36] The new rules and rule amendments herein provide greater flexibility in several areas, including, among other things, amending the definition of "principal" so as to reduce the number of officers of a registrant that are required to be listed as principals with the Commission, reducing the burden on a registrant in notifying the Commission when a new natural person is added as a principal, and permitting a firm greater freedom in creating its own program for ethics training. Further, the Commission notes that most of the rules and rule amendments have now been published twice for public comment and that this is the second time they have been adopted by the Commission. Accordingly, the Commission has determined to make the new rules and rule amendments effective immediately.

Lists of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Principals, Registration, Reporting and recordkeeping requirements.

17 CFR Part 4

Advertising, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Disclosure, Principals, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies), Conflict of interests, Organization and functions (Government agencies).

17 CFR Part 155

Brokers, Commodity futures, Reporting and recordkeeping requirements.

For the reasons discussed in the foregoing, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

2. Section 1.3 is amended by adding new paragraph (g) to read as follows:

§ 1.3 Definitions.

* * * * *

(g) *Institutional customer.* This term has the same meaning as "eligible contract participant" as defined in section 1a(12) of the Act.

* * * * *

3. Section 1.10 is amended by revising paragraphs (a)(2) and (j)(8) and removing the undesignated paragraphs within and following paragraphs (a)(2) and (j)(8) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(a) * * *

(2) (i) (A) Except as provided in paragraphs (a)(3) and (h) of this section, each person who files an application for registration as a futures commission merchant and who is not so registered at the time of such filing, must, concurrently with the filing of such application, file either:

(*1*) A Form 1–FR–FCM certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which such report is filed; or

(*2*) A Form 1–FR–FCM as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1–FR–FCM certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which such report is filed.

(B) Each such person must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii) (A) Except as provided in paragraphs (a)(3) and (h) of this section, each person who files an application for registration as an introducing broker and who is not so registered at the time of such filing, must, concurrently with the filing of such application, file either:

(*1*) A Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which such report is filed;

(*2*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1-FR-IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which such report is filed;

(*3*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which such report is filed, *Provided, however,* that such applicant shall be subject to a review by the applicant's designated self-regulatory organization within six months of registration; or

(*4*) A guarantee agreement.

(B) Each person filing in accordance with paragraphs (a)(2)(ii)(A) (*1*), (*2*) or (*3*) of this section must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

* * * * *

(j) * * *

(8)(i)(A) An introducing broker that is a party to a guarantee agreement that has been terminated in accordance with the provisions of paragraph (j)(5) of this section, or that is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, must cease doing business as an introducing broker on or before the effective date of such termination or expiration unless, on or before 10 days prior to the effective date of such termination or expiration or such other period of time as the Commission or the designated self-regulatory organization may allow for good cause shown, the introducing broker files with its designated self-regulatory organization either a new guarantee agreement effective as of the day following the date of termination of the existing agreement, or, in the case of a guarantee agreement that is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, a new guarantee agreement effective on or before such expiration, or either:

(*1*) A Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which the report is filed; or

(*2*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed.

(B) Each person filing a Form 1–FR–IB in accordance with this section must include with the financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii) (A) Notwithstanding the provisions of paragraph (j)(8)(i) of this section or of § 1.17(a), an introducing broker that is a party to a guarantee agreement that has been terminated in accordance with the provisions of paragraph (j)(5)(ii) of this section shall not be deemed to be in violation of the minimum adjusted net capital requirement of § 1.17(a)(1)(ii) or (a)(2) for 30 days following such termination. Such an introducing broker must cease doing business as an introducing broker on or after the effective date of such termination, and may not resume doing business as an introducing broker unless and until it files a new agreement or either:

(*1*) A Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which the report is filed; or

(*2*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed.

(B) Each person filing a Form 1–FR–IB in accordance with this section must include with the financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

* * * * *

4. Section 1.17 is amended by redesignating paragraph (a)(1)(ii) as (a)(1)(iii) and by adding new paragraph (a)(1)(ii) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a) * * *

(1) * * *

(ii) Each person registered as a futures commission merchant engaged in soliciting or accepting orders and customer funds related thereto for the purchase or sale of any commodity for future delivery or any commodity option on or subject to the rules of a registered derivatives transaction execution facility from any customer who does not qualify as an "institutional customer" as defined in § 1.3(g) must:

(A) Be a clearing member of a derivatives clearing organization and maintain net capital in the amount of the greater of $20,000,000 or the amounts otherwise specified in paragraph (a)(1)(i) of this section; or

(B) Receive orders on behalf of the customer from a commodity trading advisor acting in accordance with § 4.32 of this chapter.

* * * * *

5. Section 1.33 is amended by adding a new paragraph (g) to read as follows:

§ 1.33 Monthly and confirmation statements.

* * * * *

(g) *Electronic transmission of statements.* (1) The statements required by this section, and by § 1.46, may be furnished to any customer by means of electronic media if the customer so consents, *Provided, however,* that a futures commission merchant must, prior to the transmission of any statement by means of electronic media, disclose the electronic medium or source through which statements will be delivered, the duration, whether indefinite or not, of the period during which consent will be effective, any charges for such service, the information that will be delivered by such means, and that consent to electronic delivery may be revoked at any time.

(2) In the case of a customer who does not qualify as an "institutional customer" as defined in § 1.3(g), a futures commission merchant must obtain the customer's signed consent acknowledging disclosure of the information set forth in paragraph (g)(1) of this section prior to the transmission of any statement by means of electronic media.

(3) Any statement required to be furnished to a person other than a customer in accordance with paragraph (d) of this section may be furnished by electronic media.

(4) A futures commission merchant who furnishes statements to any customer by means of electronic media must retain a daily confirmation statement for such customer as of the end of the trading session, reflecting all transactions made during that session for the customer, in accordance with § 1.31.

* * * * *

6. Section 1.46 is amended as follows:

a. By revising paragraph (a) introductory text,

b. By removing and reserving paragraphs (d)(4) through (d)(7),

c. By removing paragraph (d)(9) and

d. By revising paragraph (e) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(a) *Application of purchases and sales.* Except with respect to purchases or sales which are for omnibus accounts, or where the customer has instructed otherwise, any futures commission merchant who, on or subject to the rules of a designated

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[34] 47 FR 18618–21 (Apr. 30, 1982).

[35] *Id.* at 18619–20 (discussing FCMs and CPOs); 54 FR 19556, 19557 (May 8, 1989) (discussing LTMs); and 63 FR 18821, 18830 (Apr. 16, 1998) (discussing ATOMs).

[36] 5 U.S.C. 553(d).

contract market or registered derivatives transaction execution facility:

* * * * *

(e) The statements required by paragraph (a) of this section may be furnished to the customer or the person described in § 1.33(d) by means of electronic transmission, in accordance with § 1.33(g).

* * * * *

7. Section 1.55 is amended by revising paragraphs (d) and (f) to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

* * * * *

(d) Any futures commission merchant, or in the case of an introduced account any introducing broker, may open a commodity futures account for a customer without obtaining the separate acknowledgments of disclosure and elections required by this section and by § 1.33(g), and by §§ 33.7 and 190.06 of this chapter, provided that:

(1) Prior to the opening of such account, the futures commission merchant or introducing broker obtains an acknowledgment from the customer, which may consist of a single signature at the end of the futures commission merchant's or introducing broker's customer account agreement, or on a separate page, of the disclosure statements and elections specified in this section and § 1.33(g), and in §§ 33.7 and 190.06 of this chapter, and which may include authorization for the transfer of funds from a segregated customer account to another account of such customer, as listed directly above the signature line, provided the customer has acknowledged by check or other indication next to a description of each specified disclosure statement or election that the customer has received and understood such disclosure statement or made such election; and

(2) The acknowledgment referred to in paragraph (d)(1) of this section is accompanied by and executed contemporaneously with delivery of the disclosures and elective provisions required by this section and § 1.33(g), and by §§ 33.7 and 190.06 of this chapter.

* * * * *

(f) A futures commission merchant or, in the case of an introduced account an introducing broker, may open a commodity futures account for an "institutional customer" as defined in § 1.3(g) without furnishing such institutional customer the disclosure statements or obtaining the acknowledgments required under paragraph (a) of this section, §§ 1.33(g) and 1.65(a)(3), and §§ 30.6(a), 33.7(a) and 190.10(c) of this chapter.

* * * * *

PART 3—REGISTRATION

8. The authority citation for Part 3 is revised to read as follows:

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

9. Section 3.1 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 3.1 Definitions.

(a) * * *

(1) If the entity is organized as a sole proprietorship, the proprietor; if a partnership, any general partner; if a corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; if a limited liability company or limited liability partnership, any director, the president, chief executive officer, chief operating officer, chief financial officer, the manager, managing member or those members vested with the management authority for the entity, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; and, in addition, any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission;

(2)(i) Any individual who directly or indirectly, through agreement, holding company, nominee, trust or otherwise, is the owner of ten percent or more of the outstanding shares of any class of stock, is entitled to vote or has the power to sell or direct the sale of ten percent or more of any class of voting securities, or is entitled to receive ten percent or more of the profits; or

(ii) Any person other than an individual that is the direct owner of ten percent or more of any class of securities; or

* * * * *

10. Section 3.10 is amended by removing paragraph (a)(2)(ii) and by redesignating paragraph (a)(2)(i) as paragraph (a)(2).

11. Section 3.21 is amended by revising paragraph (c) introductory text to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

* * * * *

(c) *Outside directors.* Any futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm may, in lieu of submitting a fingerprint card in accordance with the provisions of §§ 3.10(a)(2) and 3.31(a)(2), file a "Notice Pursuant to Rule 3.21(c)" with the National Futures Association. Such notice shall state, if true, that such outside director:

* * * * *

12. Section 3.31 is amended by redesignating paragraph (a) as paragraph (a)(1), and by adding new paragraph (a)(2) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a) (1) * * *

(2) Where the deficiency or inaccuracy is created by the addition of a new principal not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration), each Form 3–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8–R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c). The provisions of this paragraph do not apply to any principal who has a current Form 8-R on file with the Commission or the National Futures Association.

* * * * *

§ 3.32 [Removed]

13. Section 3.32 is removed.

§ 3.34 [Removed]

14. Section 3.34 is removed.

15. Appendix A to Part 3 is amended by adding to the end thereto the following:

Appendix A to Part 3—Interpretative Statement With Respect to Section 8A(2)(C) and (E) and Section 8A(3)(J) and (M) of the Commodity Exchange Act

* * * * *

The Commission has further addressed "other good cause" under Section 8a(3)(M) of the Act in issuing guidance letters on assessing the fitness of floor brokers, floor traders or applicants in either category:

[First guidance letter]

December 4, 1997

Robert K. Wilmouth, President, National Futures Association, 200 West Madison Street, Chicago, IL 60606–3447

Re: Adverse Registration Actions with Respect to Floor Brokers, Floor Traders and Applicants for Registration in Either Category

Dear Mr. Wilmouth: As you know, the Commission on June 26, 1997, approved for publication in the **Federal Register** a Notice and Order concerning adverse registration actions by the National Futures Association ("NFA") with respect to registered floor brokers ("FBs"), registered floor traders ("FTs") and applicants for registration in either category. 62 Fed. Reg. 36050 (July 3, 1997). The Notice and Order authorized NFA to grant or to maintain, either with or without conditions or restrictions, FB or FT registration where NFA previously would have forwarded the case to the Commission for review of disciplinary history. The Commission has worked with its staff to determine which of the pending matters could efficiently be returned to NFA for handling, and such matters have been forwarded to NFA. The Commission will continue to accept or to act upon requests for exemption, and the Commission staff will consider requests for "no-action" opinions with respect to applicable registration requirements.

By this correspondence, the Commission is issuing guidance that provides NFA further direction on how it expects NFA to exercise its delegated power, based upon the experience of the Commission and the staff with the registration review process during the past three years. This guidance will help ensure that NFA exercises its delegated power in a manner consistent with Commission precedent.

In exercising its delegated authority, NFA, of course, needs to apply all of the provisions of Sections 8a(2) and (3) of the Commodity Exchange Act ("Act").[1] In that regard, NFA should consider the matters in which the Commission has taken action in the past and endeavor to seek similar registration restrictions, conditions, suspensions, denials, or revocations under similar circumstances.

One of the areas in which NFA appears to have had the most uncertainty is with regard to previous self-regulatory organization ("SRO") disciplinary actions. Commission Rule 1.63[2] provides clear guidelines for determining whether a person's history of "disciplinary offenses" should preclude service on SRO governing boards or committees.[3] In determining whether to grant or to maintain, either with or without conditions or restrictions, FB or FT registration, NFA should, as an initial matter, apply the Rule 1.63(a)(6) criteria to those registered FBs, registered FTs and applicants for registration in either category. However, NFA should be acting based upon any such offenses that occurred within the previous five years, rather than the three years provided for in Rule 1.63(c). NFA should consider disciplinary actions taken by an SRO as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934 no differently from disciplinary actions taken by an SRO in the futures industry as defined in Rule 1.3(ee).[4] Application of the Rule 1.63 criteria, as modified, to these matters will aid NFA in making registration determinations that are reasonably consonant with Commission views.[5] NFA should focus on the nature of the underlying conduct rather than the sanction imposed by an SRO. Thus, if a disciplinary action would not come within the coverage of Rule 1.63 but for the imposition of a short suspension of trading privileges (such as for a matter involving fighting, use of profane language or minor recordkeeping violations), NFA could exercise discretion, as has the Commission, not to institute a statutory disqualification case. On the other hand, conduct that falls clearly within the terms of Rule 1.63, such as violations of rules involving potential harm to customers of the exchange, should not be exempt from review simply because the exchange imposed a relatively minor sanction.

The Commission has treated the registration process and the SRO disciplinary process as separate matters involving separate considerations. The fact that the Commission has not pursued its own enforcement case in a particular situation does not necessarily mean that the Commission considers the situation to be a minor matter for which no registration sanctions are appropriate. Further, the Commission believes that it and NFA, entities with industry-wide perspective and responsibilities, are the appropriate bodies, rather than any individual exchange, to decide issues relating to registration status, which can affect a person's ability to function in the industry well beyond the jurisdiction of a particular exchange. Thus, NFA's role is in no way related to review of exchange sanctions for particular conduct, but rather it is the entirely separate task of determining whether an FB's or FT's conduct should impact his or her registration.

NFA also should look to Commission precedent in selecting conditions or restrictions to be imposed, such as a dual trading ban where a person has been involved in disciplinary offenses involving customer abuse. Where conditions or restrictions are imposed, or agreed upon, NFA also should follow Commission precedent, under which such conditions or restrictions generally have been imposed for a two-year period.

The Commission has required sponsorship for conditioned FBs and FTs when their disciplinary offenses have involved noncompetitive trading and fraud irrespective of the level of sanctions imposed by an SRO. Indeed, but for a sponsorship requirement there would be no one routinely watching and responsible for the activities of these registrants. Absent sponsorship, such FBs and FTs would only be subject to routine Commission and exchange surveillance. The Commission's rules are premised upon the judgment that requiring FTs and FBs to have sponsors to ensure their compliance with conditions is both appropriate and useful. See Rule 3.60(b)(2)(i).

A question has arisen whether, if NFA is required to prove up the underlying facts of an SRO disciplinary action, the exchanges can provide information on exchange disciplinary proceedings directly to NFA. Although Section 8c(a)(2) of the Act states that an exchange shall not disclose the evidence for a disciplinary action except to the person disciplined and to the Commission, Section 8a(10) of the Act allows the Commission to authorize any person to

[1] 7 U.S.C. 12a(2) and (3) (1994). The letter is intended to supplement, not to supersede, other guidance provided in the past to NFA. In this regard, the NFA should continue to follow other guidance provided by the Commission or its staff.

[2] Commission rules referred to herein are found at 17 CFR Ch. I.

[3] Rule 1.63(c) provides that a person is ineligible from serving on an SRO's disciplinary committees, arbitration panels, oversight panels or governing board if, as provided in Rule 1.63(b), the person, inter alia: (1) within the past three years has been found by a final decision of an SRO, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense; or (2) within the past three years has entered into a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

Rule 1.63(a)(6) provides that a "disciplinary offense" includes: (i) any violation of the rules of an SRO except those rules related to (A) decorum or attire, (B) financial requirements, or (C) reporting or record-keeping unless resulting in fines aggregating more than $5,000 within any calendar year; (ii) any rule violation described in subparagraphs (A) through (C) above that involves fraud, deceit or conversion or results in a suspension or expulsion; (iii) any violation of the Act or the regulations promulgated thereunder; or (iv) any failure to exercise supervisory responsibility with respect to an act described in paragraphs (i) through (iii) above when such failure is itself a violation of either the rules of an SRO, the Act or the regulations promulgated thereunder.

[4] Thus, for example, a disciplinary action taken by the Chicago Board Options Exchange or the National Association of Securities Dealers, Inc. should be considered in a manner similar to a disciplinary action of the Chicago Board of Trade or NFA.

[5] In reviewing these matters, the NFA should bear in mind recent Commission precedent which allows for reliance on settled disciplinary proceedings in some circumstances. *See In the Matter of Michoel J. Clark*, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,032 (Apr. 22, 1997) ("other good cause" under Section 8a(3)(M) of the Act exists based upon a pattern of exchange disciplinary actions resulting in significant sanctions for serious rule violations—whether settlements or adjudications), *aff'd sub nom., Clark* v. *Commodity Futures Trading Commission*, No. 97–4228 (2d Cir. June 4, 1999) (unpublished).

perform any portion of the registration functions under the Act, notwithstanding any other provision of law. The effective discharge of the delegated registration function requires NFA to have access to the exchange evidence. Thus, the Commission believes that Section 8a(10) may reasonably be interpreted to allow the disclosure of information from exchange disciplinary proceedings directly to NFA despite the provisions of Section 8c(a)(2).

Nothing in the Notice and Order affects the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration functions, including review of the sufficiency of conditions or restrictions imposed by NFA, to review the determination by NFA not to take action to affect an existing registration, or to take its own action to address a statutory disqualification. Moreover, the Commission Order contemplates that to allow for appropriate Commission oversight of NFA's exercise of this delegated authority, NFA will provide for the Commission's review quarterly schedules of all applicants cleared for registration and all registrants whose registrations are maintained without adverse action by NFA's Registration, Compliance, Legal Committee despite potential statutory disqualifications.

The Commission will continue to monitor NFA activities through periodic rule enforcement reviews, and NFA remains subject to the present requirement that it monitor compliance with the conditions and restrictions imposed on conditioned and restricted registrants.

Sincerely,

Jean A. Webb, Secretary of the Commission

[Second guidance letter]

April 13, 2000

Robert K. Wilmouth, President, National Futures Association, 200 West Madison Street, Chicago, IL 60606–3447

Re: Use of Exchange Disciplinary Actions as "Other Good *Cause" to Affect Floor Broker/Floor Trader Registration*

Dear Mr. Wilmouth:

I. Introduction and Background

In July 1997, the Commission issued a Notice and Order authorizing the National Futures Association ("NFA") to grant or to maintain, either with or without conditions or restrictions, floor broker ("FB") or floor trader ("FT") registration where NFA previously would have forwarded the case to the Commission for review of disciplinary history.[1] By letter dated December 4, 1997 ("Guidance Letter"), the Commission provided further direction on how the Commission expected NFA to exercise its delegated power and to ensure that NFA exercised its delegated power in a manner consistent with Commission precedent.

The Commission has determined to revise the Guidance Letter. Specifically, the Commission is revising the portion of the Guidance Letter that addresses the use of exchange disciplinary actions as "other good cause" to affect FB and FT registrations. The Commission has made this determination following its own reconsideration of the issue and at the urging of industry members.[2]

The Guidance Letter pointed out that, in exercising its delegated authority, NFA must apply all of the provisions of Sections 8a(2) and (3) of the Commodity Exchange Act ("Act").[3] In particular, Section 8a(3)(M) of the Act authorizes the Commission to refuse to register or to register conditionally any person if it is found, after opportunity for hearing, that there is other good cause for statutory disqualification from registration beyond the specifically listed grounds in Sections 8a(2) and 8a(3) of the Act. The Commission held in *In the Matter of Clark* that statutory disqualification under the "other good cause" provision of Section 8a(3)(M) may arise on the basis of, among other things, a pattern of exchange disciplinary actions alleging serious rule violations that result in significant sanctions, and that it is immaterial whether the sanctions imposed resulted from a fully-adjudicated disciplinary action or an action that was taken following a settlement.[4]

The Guidance Letter recommended the application of the provisions of Commission Rule 1.63[5] as criteria to aid in assessing the impact of an FB or FT applicant's or registrant's previous disciplinary history on the person's fitness to be registered, with the exception that NFA should be acting based on disciplinary history from the previous five years, rather than the three years provided for in Rule 1.63.[6] The Guidance Letter also noted that NFA should consider disciplinary actions taken not only by futures industry SROs but also those taken by SROs as defined in Section 3(a)(26) of the Securities Exchange Act of 1934 ("1934 Act"), including settled disciplinary actions.

II. Revised Guidance

As stated above, the Commission has determined to revise the Guidance Letter. From this point forward, NFA should cease using Rule 1.63 as the basis to evaluate the impact of an FB or FT applicant's or registrant's disciplinary history on his or her fitness to be registered. Instead, as *Clark* stated, when reviewing disciplinary history to assess the fitness to be registered of an FB, FT, or applicant in either category, a pattern of exchange disciplinary actions alleging serious rule violations that result in significant sanctions will trigger the "other good cause" provision of Section 8a(3)(M). The "pattern" should consist of at least two final exchange disciplinary actions, whether settled or adjudicated.

NFA also should consider initiating proceedings to affect the registration of the FB or FT, even if there is only a single exchange action against the FB or FT, if the exchange action was based on allegations of particularly egregious misconduct or involved numerous instances of misconduct occurring over a long period of time. If, however, a proceeding is initiated based on a single exchange action that was disposed of by settlement, NFA may have to prove up the underlying misconduct. Furthermore, traditional principles of collateral estoppel apply to adjudicated actions, whether they are being considered individually or as part of a pattern.[7]

As provided by the Guidance Letter, "exchange disciplinary actions" would continue to include disciplinary actions taken by both futures industry SROs and SROs as defined in Section 3(a)(26) of the 1934 Exchange Act. Furthermore, NFA should review an applicant's or registrant's disciplinary history for the past five years.[8] At least one of the actions forming the pattern, however, must have become final after *Clark* was decided by the Commission on April 22, 1997. Finally, "serious rule violations" consist of, or are substantially related to, charges of fraud, customer abuse, other illicit trading practices, or the obstruction of an exchange investigation.

Congress, the courts and the Commission have indicated the importance of considering an applicant's history of exchange disciplinary actions in assessing that person's fitness to register.[9] Furthermore, NFA's review of exchange disciplinary actions within the context of the registration process should not simply mirror the disciplinary actions undertaken by the exchanges. The two processes are separate matters that involve separate considerations. As part of their ongoing self-regulatory obligations, exchanges must take disciplinary action[10] and such disciplinary matters necessarily focus on the specific misconduct that forms the allegation. In a statutory disqualification action, however, NFA must determine whether the disciplinary history of an FB, FT or applicant over the preceding five years should impact his or her registration. Additionally, NFA possesses industry-wide perspective and responsibilities. As such, NFA, rather than an individual exchange, should decide registration status issues, since those issues affect an individual's status within the industry as a whole, well beyond the jurisdiction of a particular exchange.

The Commission also wants to clarify to the fullest extent possible that its power to delegate the authority to deny or condition the registration of an FB, FT, or an applicant for registration in either category permits exchanges to disclose to NFA all evidence underlying exchange disciplinary actions, notwithstanding the language of Section 8c(a)(2) of the Act.[11] The Commission's power to delegate stems from Section 8a(10) of the Act, which permits delegation of registration functions, including statutory disqualification actions, to any person in accordance with rules adopted by such person and submitted to the Commission for approval or for review under Section 17(j) of the Act, "notwithstanding any other provision of law." Certainly, Section 8c(a)(2) qualifies as "any other provision of law." Furthermore, the effective discharge of the delegated function requires NFA to have access to the exchange evidence. Thus, the exercise of the delegated authority pursuant to Section 8a(10) permits the exchanges to disclose all evidence underlying disciplinary actions to NFA.[12]

This letter supersedes the Guidance Letter to the extent discussed above. In all other aspects, the Guidance Letter and other guidance provided by the Commission or its staff remain in effect. Therefore, NFA should continue to follow Commission precedent when selecting conditions or restrictions to be imposed. For example, NFA should impose a dual trading ban where customer abuse is involved and any conditions or restrictions imposed should be for a two-year period. Furthermore, NFA should require sponsorship for conditioned FBs or FTs when their disciplinary offenses involve noncompetitive trading and fraud.

Nothing in the Notice and Order or this letter affects the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration functions, including review of the sufficiency of conditions or restrictions imposed by NFA, to review the determination by NFA not to take action to affect an existing registration, or to take its own action to address a statutory disqualification. Moreover, the Commission Order contemplates that to allow for appropriate Commission oversight of NFA's exercise of this delegated authority, NFA will provide for the Commission's review quarterly schedules of all applicants cleared for registration and all registrants whose registrations are maintained without adverse action by NFA's Registration, Compliance, Legal Committee despite potential statutory disqualifications.

The Commission will continue to monitor NFA activities through periodic rule enforcement reviews, and NFA remains subject to the present requirement that it monitor compliance with the conditions and restrictions imposed on conditioned and restricted registrants.

Sincerely,

Jean A. Webb,

Secretary of the Commission.

16. Part 3 is amended by adding Appendix B to read as follows:

Appendix B to Part 3—Statement of Acceptable Practices With Respect to Ethics Training

(a) The provisions of Section 4p(b) of the Act (7 U.S.C. 6p(b) (1994)) set forth requirements regarding training of registrants as to their responsibilities to the public. This section requires the Commission to issue regulations requiring new registrants to attend ethics training sessions within six months of registration, and all registrants to attend such training on a periodic basis. The awareness and maintenance of professional ethical standards are essential elements of a registrant's fitness. Further, the use of ethics training programs is relevant to a registrant's maintenance of adequate supervision, a requirement under Rule 166.3.

(b)(1) The Commission recognizes that technology has provided new, faster means of sharing and distributing information. In view of the foregoing, the Commission has chosen to allow registrants to develop their own ethics training programs. Nevertheless, futures industry professionals may want guidance as to the role of ethics training. Registrants may wish to consider what ethics training should be retained, its format, and how it might best be implemented. Therefore, the Commission finds it appropriate to issue this Statement of Acceptable Practices regarding appropriate training for registrants, as interpretative guidance for intermediaries on fitness and supervision. Commission registrants may look to this Statement of Acceptable Practices as a "safe harbor" concerning acceptable procedures in this area.

(2) The Commission believes that section 4p(b) of the Act reflects an intent by Congress that industry professionals be aware, and remain abreast, of their continuing obligations to the public under the Act and the regulations thereunder. The text of the Act provides guidance as to the nature of these responsibilities. As expressed in section 4p(b) of the Act, personnel in the industry have an obligation to the public to observe the Act, the rules of the Commission, the rules of any appropriate self-regulatory organizations or contract markets (which would also include registered derivatives transaction execution facilities), or other applicable federal or state laws or regulations. Further, section 4p(b) acknowledges that registrants have an obligation to the public to observe "just and equitable principles of trade."

(3) Additionally, section 4p(b) reflects Congress' intent that registrants and their personnel retain an up-to-date knowledge of these requirements. The Act requires that registrants receive training on a periodic basis. Thus, it is the intent of Congress that Commission registrants remain current with regard to the ethical ramifications of new technology, commercial practices, regulations, or other changes.

(c) The Commission believes that training should be focused to some extent on a person's registration category, although there will obviously be certain principles and issues common to all registrants and certain general subjects that should be taught. Topics to be addressed include:

(1) An explanation of the applicable laws and regulations, and the rules of self-regulatory organizations or contract markets and registered derivatives transaction execution facilities;

(2) The registrant's obligation to the public to observe just and equitable principles of trade;

(3) How to act honestly and fairly and with due skill, care and diligence in the best interests of customers and the integrity of the market;

(4) How to establish effective supervisory systems and internal controls;

(5) Obtaining and assessing the financial situation and investment experience of customers;

(6) Disclosure of material information to customers; and

(7) Avoidance, proper disclosure and handling of conflicts of interest.

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[1] Registration Actions by National Futures Association With Respect to Floor Brokers, Floor Traders and Applicants for Registration in Either Category, 62 FR 36050 (July 3, 1997).

[2] *See* letters submitted by James Bowe, former president of the New York Board of Trade ("NYBOT"), dated October 13, 1999, Christopher Bowen, general counsel of the New York Mercantile Exchange ("NYMEX"), dated October 18, 1999, and the Joint Compliance Committee ("JCC"), dated February 2, 2000. The JCC consists of senior compliance officials from all domestic futures exchanges and the NFA (*i.e.*, the domestic self-regulatory organizations ("SROs")). In addition, staff from the Contract Markets Section of the Commission's Division of Trading and Markets attend the JCC meetings as observers. The JCC was established to aid in the development of improved compliance systems through joint efforts and information-sharing among the SROs. Commission staff have also discussed this issue with SRO staff.

[3] 7 U.S.C. 12a(2) and (3) (1994).

[4] *In the Matter of Clark*, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,032 (Apr. 22, 1997), *aff'd sub nom., Clark* v. *Commodity Futures Trading Commission*, No. 97–4228 (2d Cir. June 4, 1999) (unpublished).

[5] Commission rules referred to in this letter are found at 17 CFR Ch. 1.

[6] Rule 1.63 provides, among other things, that a person is ineligible from serving on SRO disciplinary committees, arbitration panels, oversight panels or governing boards if that person, *inter alio*, entered into a settlement agreement within the past three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

Rule 1.63(a)(6) defines a "disciplinary offense" to include:

(i) any violation of the rules of an SRO except those rules related to (A) decorum or attire, (B) financial requirements, or (C) reporting or record-keeping unless resulting in fines aggregating more than $5,000 within any calendar year; (ii) any rule violation described in subparagraphs (A) through (C) above that involves fraud, deceit or conversion or results in a suspension or expulsion; (iii) any violation of the Act or the regulations promulgated thereunder; or (iv) any failure to exercise supervisory responsibility with respect to an act described in paragraphs (i) through (iii) above when such failure is itself a violation of either the rules of an SRO, the Act or the regulations promulgated thereunder.

[7] *Clark* at 44,929.

[8] The Commission generally looked at a five-year period of disciplinary history. On occasion, however, the Commission examined a longer period of an applicant's or registrant's disciplinary history. For example, the Commission revoked the registration of one FB on the basis of exchange disciplinary cases that extended back six years, *see Clark*, 2 Comm. Fut. L. Rep. (CCH) ¶ 27,032, and denied an application for registration as an FT on the basis of exchange disciplinary cases that extended back seven years, *see In the Matter of Castellano*, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,360 (Nov. 23, 1988), *summarily aff'd* (May 29, 1990), *reh. denied* [1990–1992 Transfer Binder] Comm. Fut. L. Rep. ¶ 24,870 (June 26, 1990), *aff'd sub nom. Castellano v. CFTC*, Docket No. 90–2298 (7th Cir. Nov. 20, 1991).

[9] Letter dated July 14, 1995, from Mary L. Schapiro to R. Patrick Thompson, President, New York Mercantile Exchange (unpublished). *See also Castellano*, *supra* note 8.

[10] *See* Rule 1.51(a)(7).

[11] Section 8c(a)(2) states, in relevant part, that "[A]n exchange * * * shall not disclose the evidence therefor, except to the person who is suspended, expelled, disciplined, or denied access, and to the Commission."

[12] Of course, the Commission could request records from the exchange and forward them to NFA. The Commission believes that this is an unnecessary administrative process and that NFA should obtain the records it needs to carry out the delegated function of conducting disciplinary history reviews directly from the exchanges. In this context and pursuant to Commission orders authorizing NFA to institute adverse registration actions, NFA should be viewed as standing in the shoes of the Commission.

(d) An acceptable ethics training program would apply to all of a firm's associated persons and its principals to the extent they are required to register as associated persons. Additionally, personnel of firms that rely on their registration with other regulators, such as the Securities and Exchange Commission, should be provided with ethics training to the extent the Act and the Commission's regulations apply to their business.

(e) As to the providers of such training, the Commission believes that classes sponsored by independent persons, firms, or industry associations would be acceptable. It would also be permissible to conduct in-house training programs. Further, registrants should ascertain the credentials of any ethics training providers they retain. Thus, persons who provide ethics training should be required to provide proof of satisfactory completion of the proficiency testing requirements applicable to the registrant and evidence of three years of relevant industry or pedagogical experience in the field. This industry experience might include the practice of law in the fields of futures or securities, or employment as a trader or risk manager at a brokerage or end-user firm. Likewise, the Commission believes that registrants should employ as ethics training providers only those persons they reasonably believe in good faith are not subject to any investigations or to bars to registration or to service on a self-regulatory organization governing board or disciplinary panel.

(f)(1) With regard to the frequency and duration of ethics training, it is permissible for a firm to require training on whatever periodic basis and duration the registrant (and relevant self-regulatory organizations) deems appropriate. It may even be appropriate not to require any such specific requirements as, for example, where ethics training could be termed ongoing. For instance, a small entity, sole proprietorship, or even a small section in an otherwise large firm, might satisfy its obligation to remain current with regard to ethics obligations by distribution of periodicals, legal cases, or advisories. Use of the latest information technology, such as Internet websites, can be useful in this regard. In such a context, there would be no structured classes, but the goal should be a continuous awareness of changing industry standards. A corporate culture to maintain high ethical standards should be established on a continuing basis.

(2) On the other hand, larger firms which transact business with a larger segment of the public may wish to implement a training program that requires periodic classwork. In such a situation, the Commission believes it appropriate for registrants to maintain such records as evidence of attendance and of the materials used for training. In the case of a floor broker or floor trader, the applicable contract market or registered derivatives transaction execution facility should maintain such evidence on behalf of its member. This evidence of ethics training could be offered to demonstrate fitness and overall compliance during audits by self-regulatory organizations, and during reviews of contract market or registered derivatives transaction execution facility operations.

(g) The methodology of such training may also be flexible. Recent innovations in information technology have made possible new, fast, and cost-efficient ways for registrants to maintain their awareness of events and changes in the commodity interest markets. In this regard, the Commission recognizes that the needs of a firm will vary according to its size, personnel, and activities. No format of classes will be required. Rather, such training could be in the form of formal class lectures, video presentation, Internet transmission, or by simple distribution of written materials. These options should provide sufficiently flexible means for adherence to Congressional intent in this area.

(h) Finally, it should be noted that self-regulatory organizations and industry associations will have a significant role in this area. Such organizations may have separate ethics and proficiency standards, including ethics training and testing programs, for their own members.

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

17. The authority citation for Part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

18. Section 4.10 is amended by revising paragraph (e)(1) to read as follows:

§ 4.10 Definitions.

* * * * *

(e)(1) *Principal,* when referring to a person that is a principal of a particular entity, shall have the same meaning as the term "principal" under § 3.1(a) of this chapter.

* * * * *

19. Section 4.24 is amended by revising paragraphs (f)(1)(v) and (h)(2) to read as follows:

§ 4.24 General disclosures required.

* * * * *

(f) * * *

(1) * * *

(v) Each principal of the persons referred to in this paragraph (f)(1) who participates in making trading or operational decisions for the pool or who supervises persons so engaged.

* * * * *

(h) * * *

(2) A description of the trading and investment programs and policies that will be followed by the offered pool, including the method chosen by the pool operator concerning how futures commission merchants carrying the pool's accounts shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and any material restrictions or limitations on trading required by the pool's organizational documents or otherwise. This description must include, if applicable, an explanation of the systems used to select commodity trading advisors, investee pools and types of investment activity to which pool assets will be committed;

* * * * *

20. Section 4.32 is added to read as follows:

§ 4.32 Trading on a Registered Derivatives Transaction Execution Facility for Non-Institutional Customers.

(a) A registered commodity trading advisor may enter trades on or subject to the rules of a registered derivatives transaction execution facility on behalf of a client who does not qualify as an "institutional customer" as defined in § 1.3(g) of this chapter, provided that the trading advisor:

(1) Directs the client's commodity interest account;

(2) Directs accounts containing total assets of not less than $25,000,000 at the time the trade is entered; and

(3) Discloses to the client that the trading advisor may enter trades on or subject to the rules of a registered derivatives transaction execution facility on the client's behalf.

(b) The commodity interest account of a client described in paragraph (a) of this section must be carried by a registered futures commission merchant.

21. Section 4.34 is amended by revising paragraphs (f)(1)(ii) and (h) to read as follows:

§ 4.34 General disclosures required.

* * * * *

(f) * * *

(1) * * *

(ii) Each principal of the trading advisor who participates in making trading or operational decisions for the trading advisor or supervises persons so engaged.

* * * * *

(h) *Trading program.* A description of the trading program, which must include the method chosen by the commodity trading advisor concerning how futures commission merchants carrying accounts it manages shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and the types of commodity interests and other interests the commodity trading advisor intends to trade, with a description of any restrictions or limitations on such trading established by the trading advisor or otherwise.

* * * * *

PART 140—ORGANIZATION, FUNCTIONS AND PROCEDURES OF THE COMMISSION

22. The authority citation for Part 140 continues to read as follows:

Authority: 7 U.S.C. 2, 12a.

23. Section 140.91 is amended by adding paragraph (a)(7) to read as follows:

§ 140.91 Delegation of authority to the Director of the Division of Trading and Markets.

(a) * * *

(7) All functions reserved to the Commission in § 1.25 of this chapter.

* * * * *

PART 155—TRADING STANDARDS

24. The authority citation for Part 155 continues to read as follows:

Authority: 7 U.S.C. 6b, 6c, 6g, 6j and 12a unless otherwise noted.

25. Section 155.3 is amended by revising paragraph (b)(2) to read as follows:

§ 155.3 Trading standards for futures commission merchants.

* * * * *

(b) * * *

(2) Knowingly take, directly or indirectly, the other side of any order of another person revealed to the futures commission merchant or any of its affiliated persons by reason of their relationship to such other person, except with such other person's prior consent and in conformity with contract market rules approved by or certified to the Commission.

* * * * *

26. Section 155.4 is amended by revising paragraph (b)(2) to read as follows:

§ 155.4 Trading standards for introducing brokers.

* * * * *

(b) * * *

(2) Knowingly take, directly or indirectly, the other side of any order of another person revealed to the introducing broker or any of its affiliated persons by reason of their relationship to such other person, except with such other person's prior consent and in conformity with contract market rules approved by or certified to the Commission.

* * * * *

27. Section 155.6 is added to read as follows:

§ 155.6 Trading standards for the transaction of business on registered derivatives transaction execution facilities.

(a) A futures commission merchant, or affiliated person thereof, transacting business on behalf of a customer who does not qualify as an "institutional customer" as defined in § 1.3(g) of this chapter on a registered derivatives transaction execution facility shall comply with the provisions of § 155.3.

(b) No futures commission merchant, introducing broker or affiliated person thereof shall misuse knowledge of any institutional customer's order for execution on a registered derivatives transaction execution facility.

Issued in Washington, D.C. on October 16, 2001 by the Commission.

Jean A. Webb,

Secretary of the Commission,

[FR Doc. 01–26523 Filed 10–22–01; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that U.S.S. *Tempest* (PC 2) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 17, 2000.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Department of the Navy, Office of the Judge Advocate General, 1322 Patterson Avenue, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that U.S.S. *Tempest* (PC 2) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(c) pertaining to the placement of the stern light as nearly as practicable at the stern. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the light involved is located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

2. Table Three of § 706.2 is amended by revising the entry for U.S.S. *Tempest* to read as follows:

TABLE 3

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters; 3(b) annex 1	Stern light, distance forward of stern in in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters; 2(K) annex 1
TEMPEST ...	PC 2	.....	.....	.....	.....	28.26[1]	3.01	1.1 below

[1] Only when towing.

Dated: September 7, 2000.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 01–26640 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS HOWARD (DDG 83) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 24, 2000.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS HOWARD (DDG 83) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, Annex I paragraph 2(f)(ii) pertaining to the vertical placement of the task lights, Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights, and Annex I paragraph 3(c) pertaining to the horizontal placement of the task lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS HOWARD:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Horizontal distance (in meters) from the fore and aft centerline of the vessel in the athwartship direction
USS HOWARD	DDG 83	1.88

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS HOWARD:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Obstruction angle relative ship's headings
USS HOWARD	DDG 83	103.20 thru 112.50°

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS HOWARD:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions.	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS HOWARD	DDG 83	X	X	X	14.0

Dated: October 24, 2000.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Editorial Note: This document was received at the Office of the Federal Register on October 18, 2001.

[FR Doc. 01–26638 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS BULKELEY (DDG 84) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS BULKELEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Horizontal distance (in meters) from the fore and aft centerline of the vessel in the athwartship direction
USS BULKELEY	DDG 84	1.90

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS BULKELEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Obstruction angle relative ship's headings
USS BULKELEY	DDG 84	104.74 thru 112.50°

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS BULKELEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a).	Percentage horizontal separation attained
USS BULKELEY	DDG 84	X	X	X	14.1

Dated: June 15, 2001.

Richard T. Evans,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 01–26639 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS LASSEN (DDG 82) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 8, 2000.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS LASSEN (DDG 82) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, Annex I paragraph 2(f)(ii) pertaining to the vertical placement of the task lights, Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights, and Annex I paragraph 3(c) pertaining to the horizontal placement of the task lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS LASSEN:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Horizontal distance (in meters) from the fore and aft centerline of the vessel in the athwartship direction
USS LASSEN	DDG 82	1.93

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS LASSEN:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
USS LASSEN	DDG 82	102.30 thru 112.50°

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS LASSEN:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS LASSEN	DDG 82	X	X	X	13.7

Dated: November 8, 2000.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Editorial Note: This document was received at the Office of the Federal Register on October 18, 2001.

FR Doc. 01–26641 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS IWO JIMA (LHD 7) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 28, 2001.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS IWO JIMA (LHD 7) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS: Rule 21(a), pertaining to the location of the masthead lights over the fore and aft centerline of the ship; Annex I, section 2(g), pertaining to the distance of the sidelights above the hull; Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship; and the horizontal distance between the forward and after masthead lights; and Annex I, section 3(b), pertaining to the positioning of the sidelights in relationship to the forward masthead light, without interfering with its special functions as an amphibious assault ship. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Two of § 706.2 is amended by adding the following entry for USS IWO JIMA:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE TWO

Vessel	No.	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I [6]	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii) [6]	Aft anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS IWO JIMA	LHD 7						2.97	88.80	

[6] Blank (or no entry) under this column indicates full compliance with the specific COLREGS requirement.

3. Table Five of § 706.2 is amended by adding the following entry for USS IWO JIMA:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS IWO JIMA	LHD 7		X	X	40.9

Dated: November 8, 2000.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Editorial Note: This document was received at the Office of the Federal Register on October 18, 2001.

[FR Doc. 01–26642 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), acting pursuant to authority delegated from the Secretary of the Navy: has determined that USS NIMITZ (CVN 68) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval aircraft carrier. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 8, 2001.

FOR FURTHER INFORMATION CONTACT: Captain Richard T. Evans, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Department of the Navy, Office of the Judge Advocate General, 1322 Patterson Avenue, Suite 3000, SE, Washington Navy Yard, DC 20374, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. The Secretary of the Navy previously certified that USS NIMITZ (CVN 68) is a vessel of the Navy which, due to its special construction and purpose, cannot fully with 72 COLREGS. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has amended that certification to reflect that certain anchor lights on USS NIMITZ (CVN 68), previously certified as not in compliance with 72 COLREGS, now comply with the applicable 72 COLREGS requirements, to wit: the forward and aft anchor lights are now located on the centerline of the ship, the required height above the hull, as required by Rules 21(e), 30(a)(i), and 30 (a)(ii).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [AMENDED]

2. Table Two of § 706.2 is amended by revising the entry for USS NIMITZ (CVN 68):

TABLE 2

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a) (i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a) (ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS NIMITZ	CVN 68	31.0					0.7		

Dated: June 8, 2001.

Richard T. Evans,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 01–26643 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final Rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS ROOSEVELT (DDG 80) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 30, 2001.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, 1322 Patterson Avenue, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS ROOSEVELT (DDG 80) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following

specific provision of the 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 3(a) pertaining the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 16 of § 706.2 is amended by revising, in numerical order, the following entry for U.S.S. ROOSEVELT:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

Vessel	Number	Obstruction angle relative ship's headings
USS ROOSEVELT	DDG 80	109.34 thru 112.50°.

3. Table Five of § 706.2 is amended by revising, in numerical order, the following entry for U.S.S. ROOSEVELT:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS ROOSEVELT	DDG 80	X	X	X	14.6

Dated: May 30, 2001.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 01–26644 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final Rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS OSCAR AUSTIN (DDG 79) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS OSCAR AUSTIN (DDG 79) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS OSCAR AUSTIN:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

Vessel	Number	Obstruction angle relative ship's headings
USS OSCAR AUSTIN	DDG 79	107.94 thru 112.50°.

3. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS OSCAR AUSTIN:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS OSCAR AUSTIN	DDG 79	X	X	X	14.7

Dated: January 10, 2001.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 01–26647 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS WINSTON S. CHURCHILL (DDG 81) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 9, 2001.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C.

1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS WINSTON S. CHURCHILL (DDG 81) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, and Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS WINSTON S. CHURCHILL:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * * * *		
USS WINSTON S. CHURCHILL	DDG 81	103.72 thru 112.50°.
* * * * * * *		

3. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS WINSTON S. CHURCHILL:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage hor-izontal separa-tion attained
* * * * * * *					
USS WINSTON S. CHURCHILL	DDG 81	X	X	X	14.0
* * * * * * *					

Dated: January 9, 2001.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 01–26646 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy has determined that USS RAMAGE (DDG 61) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship.

The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 29, 2001.

FOR FURTHER INFORMATION CONTACT: Commander G. A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Department of the Navy, Office of the Judge Advocate General, 1322 Patterson Avenue, Suite 3000, Washington Navy Yard, DC, 20374, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS RAMAGE (DDG 61) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to 1public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [AMENDED]

2. Table Five of § 706.2 is amended by revising the entry for USS RAMAGE (DDG 61) to read as follows:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage hor-izontal separa-tion attained
USS RAMAGE	DDG 61	X	X	X	19.2

Dated: May 29, 2001.

G.A. Cervi,

CDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law)

[FR Doc. 01–26645 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[Alaska 001; FRL –7062–4]

Outer Continental Shelf Air Regulations; Consistency Update for Alaska

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule; Removal of amendment and reinstatement of regulatory text.

SUMMARY: On March 1, 2001, the EPA published a direct final rule (66 FR 12982), and an accompanying proposed rule (66 FR 12986) updating the Outer Continental Shelf ("OCS") Air Regulations as they apply to OCS sources off the coast of Alaska.

The direct final rule indicated that the rule was effective April 16, 2001; unless EPA received adverse comment on the rule by April 2, 2001. The Federal Register action also indicated that if adverse comment was received, EPA would publish a withdrawal of the final rule.

On March 9, 2001, EPA received adverse comments from the International Association of Drilling Contractors. Accordingly, EPA is removing the amendment made by that final rule due to the adverse public comments received and reinstating the previous regulatory text. In a subsequent action, EPA will summarize and respond to the comments received on the OCS Air Regulations as they apply to OCS sources off the coast of Alaska.

DATES: This rule is effective October 23, 2001. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 23, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Dan Meyer, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, Telephone: (206) 553–4150.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 24, 2001.

Charles E. Findley,

Acting Regional Administrator, Region 10.

Title 40 of the Code of Federal Regulations, part 55, is amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraph (e)(2)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) *State of Alaska Requirements Applicable to OCS Sources*, January 18, 1997.

* * * * *

3. Appendix A to CFR part 55 is amended by revising paragraph (a)(1) under the heading "Alaska" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

* * * * *

Alaska

(a) * * *

(1) The following requirements are contained in the *State of Alaska Requirements Applicable to OCS Sources*, January 18, 1997.

Alaska Administrative Code—Department of Environmental Conservation.

The following sections of Title 18, Chapter 50:

Article 1. Ambient Air Quality Management

18 AAC 50.005. Purpose and Applicability of Chapter (effective 1/18/97)
18 AAC 50.010. Ambient Air Quality Standards (effective 1/18/97)
18 AAC 50.015. Air Quality Designations, Classifications, And Control Regions (effective 1/18/97)
Table 1. Air Quality Classifications
18 AAC 50.020. Baseline Dates, Maximum Allowable Increases, And Maximum Allowable Ambient Concentrations (effective 1/18/97)
Table 2. Baseline Dates
Table 3. Maximum Allowable Increases
AAC 50.025. Visibility and Other Special Protection Areas with the exception of (b) and (c) (effective 1/18/97)
18 AAC 50.030. State Air Quality Control Plan (effective 1/18/97)
18 AAC 50.035. Documents, Procedures, and Methods Adopted by Reference (effective 1/18/97)2
18 AAC 50.045. Prohibitions (effective 1/18/97)
18 AAC 50.050. Incinerator Emission Standards (effective 1/18/97)
Table 4. Particulate Matter Standards for Incinerators
18 AAC 50.055. Industrial Processes and Fuel-burning Equipment (effective 1/18/97)
18 AAC 50.065. Open Burning (effective 1/18/97)
(a) General Requirements
(b) Black Smoke Prohibited
(c) Toxic and Acid Gases and Particulate Matter Prohibited
(d) Adverse Effects Prohibited
(e) Air Quality Advisory
(i) Firefighter Training: Fuel Burning
(j) Public Notice
(k) Complaints
18 AAC 50.070. Marine Vessel Visible Emission Standards (effective 1/18/97)
18 AAC 50.080. Ice Fog Standards (effective 1/18/97)
18 AAC 50.100. Nonroad Engines (effective 1/18/97)
18 AAC 50.110. Air Pollution Prohibited (effective 5/26/72)

Article 2. Program Administration

18 AAC 50.201. Ambient Air Quality Investigation (effective 1/18/97)
18 AAC 50.205. Certification (effective 1/18/97)
18 AAC 50.210. Potential to Emit (effective 1/18/97)
18 AAC 50.215. Ambient Air Quality Analysis Methods (effective 1/18/97)
18 AAC 50.220. Enforceable Test Methods (effective 1/18/97)
18 AAC 50.225. Owner-requested Limits (effective 1/18/97)
18 AAC 50.230. Preapproved Limits (effective 1/18/97)
18 AAC 50.235. Unavoidable Emergencies and Malfunctions (effective 1/18/97)
18 AAC 50.240. Excess Emissions (effective 1/18/97)

Article 3. Permit Procedures and Requirements

18 AAC 50.300. Construction Permits: Classifications (effective 1/18/97)
(a) [untitled]
(b) Ambient Air Quality Facilities
(c) Prevention of Significant Deterioration Major Facilities
(d) Nonattainment Major Facilities
(e) Major Facility Near a Nonattainment Area
(f) Hazardous Air Contaminant Major Facilities
(g) Port of Anchorage Facilities
(h) Modifications
18 AAC 50.305. Construction Permit Provisions Requested by the Owner or Operator (effective 1/18/97)
18 AAC 50.310. Construction Permits: Application (effective 1/18/97)
(a) Application Required
(b) Operating Permit Coordination
(c) General Information
(d) Prevention of Significant Deterioration Information
Table 6. Significant Concentrations
(e) Excluded Ambient Air Monitoring
(f) Nonattainment Information
(g) Demonstration Required Near A Nonattainment Area
(h) Hazardous Air Contaminant Information
(j) Nonattainment Air Contaminant Reductions
(k) Revising Permit Terms
(l) Requested Limits
(m) Stack Injection
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257 and 258

[FRL–7076–4]

RIN 2050–AE86

Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In order to help accelerate the pace of lead-based paint removal from residences, and thereby reduce exposure to children and adults from the health risks associated with lead, EPA is taking direct final action to revise the definition of "municipal solid waste landfill unit" in both the Criteria for Classification of Solid Waste Disposal Facilities and Practices and the Criteria for Municipal Solid Waste Landfills. EPA is also adding two new definitions for "construction and demolition (C&D) landfill" and "residential lead-based paint waste." This rule will expressly allow residential lead-based paint waste to be disposed of in construction and demolition landfills by clearly stating that a construction and demolition landfill accepting residential lead-based paint waste, and no other household waste, is not a municipal solid waste landfill unit. Today's action does not prevent a municipal solid waste landfill unit from continuing to receive residential lead-based paint waste.

DATES: This rule is effective on January 22, 2002 unless EPA receives adverse comment by November 23, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2001–LBPP–FFFFF to: (1) if using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by the docket number F–2001–LBPP–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

You can view supporting materials for this rule in the Resource Conservation and Recovery Act (RCRA) Information Center (RIC). The RIC is located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA, and is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. The Docket Identification Number for this notice is F–2001–LBPF–FFFFF.

To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For information on specific aspects of this rule, contact Sue Nogas, Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; (703) 308–7251, *nogas.sue@epa.gov*.

SUPPLEMENTARY INFORMATION: The index to the rule docket and some supporting materials are available on the Internet. You can find these materials at *http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/pb-paint.htm*.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. The rule expressly allows another environmentally safe waste disposal option (*i.e.*, C&D landfills) for residential LBP waste, an option that may be less expensive than MSWLFs in certain areas of the U.S. For that reason, EPA believes this rule may hasten the pace with which LBP hazards are removed from homes, thus reducing the risk of lead poisoning in children. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to revise the definition of municipal solid waste landfill unit and add the definitions of construction and demolition landfill and residential lead-based paint waste. We are publishing the proposal to give the public the opportunity to comment on today's action, although we do not expect to receive comments. This rule will be effective on January 22, 2002 without further notice unless we receive adverse comment by November 23, 2001. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Affected Entities: You may be potentially affected by this direct final rule if you generate residential lead-based paint (LBP) waste as a result of LBP activities (including abatement, rehabilitation, renovation and remodeling) in homes, residences, and other households. By "households," we mean single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

Affected categories and entities would include:

Category	Examples of affected entities
Individuals and firms who generate residential LBP waste	Contractors and do-it-yourselfers who generate and dispose of residential LBP waste as a result of abatement, rehabilitation, renovation and remodeling activities in homes, residences, and other households.
Construction and demolition waste disposal firms.	Owners or operators of construction and demolition landfills that accept residential LBP waste for disposal.

This table is not intended to be exhaustive, but rather lists the types of entities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in this table could also be affected. (Please see Sections X.A. and X.B. of this preamble for further discussion of affected entities. Also, in the docket for today's rule, see "Economic Analysis of EPA's Direct Final Rule Amending 40 CFR parts 257 and 258.") If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Acronyms

Acronym	Definition
CDC	Centers of Disease Control and Prevention.
C&D	Construction and Demolition.
CFR	Code of Federal Regulations.
EA	Economic Analysis.
EPA	Environmental Protection Agency.
FR	Federal Register.
HUD	U.S. Department of Housing and Urban Development.
IQ	Intelligence Quotient.
LBP	Lead-Based Paint.
MSWLF	Municipal Solid Waste Landfill.
OMB	Office of Management and Budget.
OPPTS	Office of Prevention, Pesticides, and Toxic Substances.
OSWER	Office of Solid Waste and Emergency Response.
RCRA ...	Resource Conservation Recovery Act.
RIC	RCRA Docket Information Center.
TC	Toxicity Characteristic.
TSCA ...	Toxic Substances Control Act.
USEPA	United States Environmental Protection Agency.

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  I. Executive Order 12898: Environmental Justice Strategy
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I. Legal Authority

EPA is promulgating this rule pursuant to section 1008(a)(3), 2002(a), 4004(a) and 4010(c) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6907(a), 6912(a), 6944(a), 6949a(c). We are also correcting a typographical error in the existing statement of authority in part 257 by amending the citation to 42 U.S.C. 6949(c) to read "6949a(c)."

II. Why Are Lead and Lead-Based Paint a Concern?

The Centers for Disease Control and Prevention (CDC) have estimated that approximately 900,000 children, or about 4.4% of children under the age of 6 years old, may have unacceptably high levels of lead in their blood. (See: "Update: Blood Lead Levels—United States, 1991–1994." Morbidity and Mortality Weekly Report, Vol.46, No. 7, February 21, 1997. CDC, U.S. Department of Health and Human Services.) Children are more susceptible than adults to the toxic effects of lead because their nervous systems are still developing and their bodies more readily absorb lead once exposed to it. (For a fuller discussion of this issue, see 66 FR 1206–1240, January 5, 2001). The most common sources of residential lead exposure include contaminated dust and paint chips from deteriorated lead-based paint (LBP) in older homes, activities that disturb LBP (such as abatement, deleading, home renovation and remodeling), lead-contaminated drinking water, and lead-contaminated soil around homes and play areas. It is estimated that approximately 38 million homes in the United States contain interior LBP. (See "Economic Analysis of EPA's Direct Final Rule Amending 40 CFR parts 257 and 258," p. 31.

III. Congressional Response to Lead Hazards: Title X

In response to this health threat, Congress enacted the Residential Lead-Based Paint Hazard Reduction Act of 1992 (hereinafter referred to as Title X of the Housing and Community Development Act of 1992, or as Title X). Among other provisions, Title X amended the Toxic Substances Control Act (TSCA) and directed the Environmental Protection Agency (EPA) to develop and finalize standards governing: (1) The training and certification of individuals engaged in LBP activities; (2) the accreditation of training programs; and (3) the process by which LBP activities are conducted by certified individuals. Congress also directed EPA to identify by regulation LBP hazards, lead-contaminated dust, and lead-contaminated soil. As a result of the enactment of Title X, there is an increasing effort to reduce the hazards posed by LBP (especially to children) in residential housing and other buildings.

IV. RCRA as a Barrier to Cost-Effective LBP Abatements, and Stakeholders' Requests for Regulatory Relief From EPA

The Resource Conservation and Recovery Act (RCRA) was enacted in 1976 to address management of solid waste, including industrial and municipal wastes. Subtitle C of RCRA governs the generation, transportation, treatment, storage and disposal of hazardous waste. A solid waste is a "hazardous waste" if it exhibits one or more of the characteristics of hazardous waste pursuant to 40 CFR part 261, subpart C (toxicity, ignitability, corrosivity, and reactivity) or if it is listed as a hazardous waste in part 261 subpart D. Subtitle D of RCRA addresses the management of nonhazardous solid waste (including municipal and nonmunicipal waste). Subtitle D was amended in 1984 to address two classes of hazardous wastes exempt from Subtitle C hazardous waste requirements: conditionally exempt small quantity generator (CESQG) waste and household hazardous waste. Household waste is defined in 40 CFR 258.2 as "any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas)." Household waste is excluded from RCRA hazardous waste regulations at 40 CFR 261.4(b)(1).

Abatements, renovations, and remodeling activities in housing units with LBP can generate large quantities of residential LBP waste. In cases where the waste exhibits the toxicity characteristic for lead, the waste would be classified as a hazardous waste subject to the comprehensive "cradle to grave" hazardous waste management regulations of RCRA Subtitle C, unless they qualify for an exemption. Lead abatement contractors and public housing agencies argued that the application of these hazardous waste rules to residential LBP waste poses a barrier to the cost-effective abatement of lead hazards. EPA and HUD met to review the disposal requirements for lead-based paint waste and to consider regulatory relief from the applicability of RCRA Subtitle C to waste generated from residential LBP activities. Additionally, several States and advocacy groups (such as the Alliance to End Childhood Lead Poisoning) expressed concern that the RCRA requirements were considerably reducing the number of residential LBP abatements by imposing significant waste disposal costs. They argued that the benefits of handling lead-based paint waste as a hazardous waste were outweighed by the potential risk to children resulting from the disincentive the RCRA regulations created for lead-based paint abatement. They requested that EPA consider ways to minimize management and disposal costs and provide an appropriate regulatory framework that would both accelerate the pace of lead abatements (by lowering costs) and ensure that waste from such activities be managed and disposed of reliably, effectively, and in a manner which protects human health and the environment. They further contended that any regulatory relief that would avoid the cost of managing LBP waste as a hazardous waste would allow public housing authorities to use cost savings to perform additional abatements, thus reducing current and future exposure of children to residential lead-based paint.

V. EPA's Implementation of Title X and Response to Stakeholders' Requests

A. 1998 Proposed Rules

In order to facilitate efforts to address lead-based paint hazards to children and respond to stakeholders' requests for regulatory relief, EPA analyzed waste characterization, laboratory leachate, and the risk and cost of disposal for lead-based paint debris. Based on those analyses, EPA published two proposals on December 18, 1998—the TSCA Proposed Rule ("Management and Disposal of Lead-Based Paint Debris"), and the RCRA Proposed Rule ("Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris"). The Agency believed that these rules, if finalized, would help reduce the costs associated with the management and disposal of LBP debris, increasing the number of LBP abatements, while continuing to protect human health and the environment.

1. TSCA Proposal ("Management and Disposal of Lead-Based Paint Debris")

Under the mandate of Title X of TSCA, we proposed new TSCA management and disposal standards for LBP debris generated by contractors from pre-1978 homes and public and commercial buildings (63 FR 70190–70233, December 18, 1998.) These standards would allow the disposal of contractor-generated LBP debris in a variety of facilities, including construction and demolition (C&D) landfills. EPA based the C&D landfill disposal option on the results of the groundwater risk analysis performed to support the proposal. The results showed that the potential impact to groundwater resources from the disposal of LBP debris in C&D landfills would be negligible. (For further details, see "USEPA. June 1998, Groundwater Pathway Analysis for Lead-Based Paint (LBP) Architectural Debris; Background Document" in the docket for today's rule. Also, see Section VII of this preamble.) The TSCA proposal has not been finalized.

The preamble to the proposed TSCA rule also clarified that the RCRA Subtitle C household waste exclusion in 40 CFR 261.4(b)(1) applies to residential LBP waste generated by do-it-yourselfers in their homes (see 63 FR 70241–70242). This clarification remains in place.

2. RCRA Proposal ("Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris")

In 1998, EPA proposed to temporarily suspend the applicability of the Toxicity Characteristic (TC) rule to contractor-generated LBP debris that would be subject to the TSCA management and disposal standards cited above. The Agency proposed this suspension in order to avoid duplication with other statutes implemented by EPA as mandated under RCRA Section 1006(b)(1).

B. Contractor-Generated Residential Lead-Based Paint Memorandum

On July 31, 2000, EPA issued a memorandum clarifying the regulatory status of waste generated as a result of LBP activities (including abatement, renovation and remodeling, and rehabilitation) in homes and other residences.

Specifically, the memorandum clarified that contractors can manage residential LBP waste as household waste and thus are not subject to RCRA Subtitle C requirements. This means contractors can dispose residential LBP waste as household waste in municipal solid waste landfills or municipal solid waste combustors, according to State and local requirements. Dumping and open burning of residential LBP waste are not allowed. (See RCRA Sections 1008 and 4004.)

By interpreting residential LBP waste as a household waste under 40 CFR 261.4(b)(1), the July 2000 memorandum could be construed as allowing land disposal of LBP waste only in municipal solid waste landfill units complying with the requirements of 40 CFR part 258. This is because a "municipal solid waste landfill unit" is defined in 40 CFR 258.2 as receiving "household waste." Therefore, under section 258.2, a C&D landfill that receives residential LBP waste could be deemed to be receiving household waste and may need to comply with EPA's Municipal Solid Waste Landfill Criteria found in 40 CFR part 258. Today's rule is designed to expressly state that C&D landfills can receive residential LBP waste without becoming subject to the requirements for a MSWLF in part 258.

Please note that the memorandum does not affect the regulatory status of nonresidential LBP waste, such as that generated during the abatement or

renovation and remodeling of a commercial building. In addition, the memorandum does not cover residential demolition and deconstruction. EPA does not consider demolition and deconstruction waste to be household waste, since it is not similar to those wastes generated by a consumer in the home in the course of daily living. (For more information visit, *http://www.epa.gov/lead/hhwmemo-july00fnl.pdf* for a direct link to the memorandum. See "Regulatory Status of Waste Generated by Contractors and Residents from Lead-Based Paint Activities Conducted in Households" by visiting http://www.epa.gov/lead/fslbp.htm, or call the RCRA Hotline at 1–800–424–9346.)

The Agency evaluated if and how to finalize the 1998 RCRA and TSCA proposals. EPA decided to use alternative policy and regulatory vehicles (i.e., the July 31, 2000 policy memorandum and today's rule) in order to expeditiously accomplish some of the same goals of the 1998 proposals for certain key noncontroversial aspects. The Agency has no further plan to finalize the 1998 RCRA proposal.

VI. What Does Today's Rule Do?

A. Revision to the Definition of a Municipal Solid Waste Landfill Unit

Today's rule expressly allows construction and demolition landfills to receive residential lead-based paint waste, by adding a statement to the definition of MSWLF unit. The definition of MSWLF unit in 40 CFR 257.2 and 258.2 is amended by inserting at the end of the definition, the sentence, "A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit." As previously explained, the existing definition of a MSWLF unit includes language which states that a disposal unit "that receives household waste" is a municipal solid waste landfill unit. This language can be construed to prohibit the disposal of any household waste into a facility that is not designed and operated in conformance with 40 CFR part 258 regulations. Today, we are amending the definition of MSWLF unit, in order to distinguish residential lead-based paint waste, which has been determined to be a household waste, from other types of household waste, for purposes of disposal.

The amended definition will now read, "Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may continue to receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately-owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit."

It is important to understand that today's change to the definition of a municipal solid waste landfill unit does not in any way affect these disposal units. This change is being made simply to distinguish residential lead-based paint waste from other household wastes. Today's amendment does not alter what a MSWLF can or cannot receive. MSWLFs can continue to receive residential LBP waste as household waste. Today's rule expressly provides that an additional land-based waste disposal option exists for residential LBP waste. Furthermore, this rule in no way affects or changes the operation and design requirements for municipal solid waste landfills or any other MSWLF criteria.

B. Addition of Construction and Demolition Landfill Definition

As stated above, the revised definition of "municipal solid waste landfill unit" allows a subset of household waste—residential LBP waste—to be disposed of in construction and demolition landfills as well as MSWLF units. Today's rule will also add a definition of a construction and demolition landfill in order to expressly allow only C&D landfills, and no other types of land disposal units that meet the criteria of 40 CFR part 257 to receive this subset of household waste.

Based on a groundwater risk analysis used to support the TSCA proposal, we believe that the disposal of residential LBP debris in C&D landfills is appropriate and would not pose adverse health risks to residents living near C&D landfills. (For more information, see Section VII of this preamble.)

A C&D landfill will be defined in 40 CFR part 257 as follows: "Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements of subparts A or B of this part that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) other than conditionally exempt small quantity generator waste (defined in § 261.5 of this chapter), or industrial solid waste (defined in § 258.2 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste." A parallel definition is also being added to 40 CFR part 258.

EPA proposed a similar definition of C&D landfill in the TSCA proposal, and received no germane comments on the definition during the public comment period.

C. Addition of Residential Lead-Based Paint Waste Definition

Today's rule adds a definition of "residential lead-based paint waste" in order to clarify the scope of the waste stream addressed by today's rule. This definition of residential lead-based paint waste states: "Residential lead-based paint waste means waste generated as a result of lead-based paint activities (including abatement, rehabilitation, renovation and remodeling) in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges." Not included in the residential LBP waste definition are residential LBP demolition and deconstruction waste, and LBP waste from nonresidential structures such as public and commercial buildings, warehouses, bridges, water towers, and transmission towers.

In drafting this definition, we included these particular LBP activities because they are those limited to residences and that could pose lead hazards to occupants, especially to children. We included these particular waste types (i.e., debris, chips, dust, and sludges) because they are those that are typically generated during the named LBP activities.

VII. Analytic Basis for Today's Rule

The technical basis for today's rule is the analytical data and groundwater risk analysis used to support the 1998 TSCA proposal. (See "USEPA. June 1998, Groundwater Pathway Analysis for Lead-Based Paint (LBP) Architectural Debris; Background Document" in the docket for today's rule.) Based on that data and analysis, EPA is concluding that residential LBP waste is not hazardous household waste when disposed of in C&D landfills. What follows is a discussion of that data and analysis and how they support today's rule.

In the groundwater risk analysis used to support the 1998 TSCA proposal, we assumed that all lead-based paint from the entire pre-1978 U.S. housing stock would be disposed of in C&D landfills, and that the LBP would be removed from housing while it was still attached to architectural (i.e., building) components that are removed during LBP activities. Examples of architectural components are doors, window frames, moldings, painted plaster boards, concrete, and bricks. We assumed that the components would be removed with intact LBP because we believed that component removal, if cost-effective, would be preferred over paint scraping and other paint removal options, since the latter pose worker and occupant exposure concerns. This assumption was necessary due to the lack of data indicating what portion of pre-1978 housing would undergo paint removal vs. component removal and what types and quantities of LBP waste are generated at what frequency from various residential LBP activities. Also, in the groundwater analysis, we used the term "LBP debris" to refer to architectural components with intact LBP.

To estimate lead loading from residential LBP debris in C&D landfills around the country, we relied upon the 1990 Report to Congress prepared by the U.S. Department of Housing and Urban Development (HUD). The Report estimated total quantities of building components from pre-1978 homes in the U.S. From the amount of painted surfaces per housing unit reported in the HUD Report, we estimated the total quantities of building materials with LBP that would be disposed of in the landfills.

Then, in our groundwater risk analysis, we used leachate data, calculated the potential lead concentration in groundwater, and estimated risks from the disposal of LBP debris in C&D landfills. We also assumed that all of the lead from the LBP debris (which in this analysis meant the equivalent of all of the lead in all of the lead-based paint from the entire pre-1978 U.S. housing stock) would eventually end up in the leachate. The lead concentration in C&D landfill leachate varied depending on the landfill size. These lead concentrations served as inputs to the groundwater modeling we conducted to simulate the subsurface movement of landfill leachate and the resultant potential contamination of groundwater with lead.

The results from this analysis show that the lead concentration in groundwater would potentially exceed the drinking water action level of 0.015 mg/L for lead in less than 1% of the receptor wells in the vicinity of C&D landfills receiving LBP debris during the first 2,000 years after disposal. During the first 10,000 years after disposal of LBP debris, the drinking water action level would be exceeded in fewer than 5% of the receptor wells.

Based on these groundwater modeling results and the general geochemical behavior of lead in a subsurface environment, the Agency concluded that, on a national scale, the disposal of LBP debris in C&D landfills would, in general, be protective of human health and the environment at the 95th percentile protection level. This level of protectiveness is at the high end (i.e., most protective) of the levels that the Agency has used in regulating hazardous wastes under the RCRA program. (See 63 FR 70203, December 18, 1998.) When deciding whether to regulate industrial solid wastes as hazardous wastes, the Agency has considered a 90th percentile or higher level as the appropriate protection level and so has not regulated wastes satisfying this level of protection as hazardous wastes. Thus, in the 1998 TSCA proposal, we concluded that the disposal of LBP debris in C&D landfills is appropriate and would not pose adverse health risks to residents living near C&D landfills. Note that the Agency received many public comments addressing various aspects of the groundwater risk analysis. The comments were generally supportive of the proposed provision to allow LBP debris to be disposed of in C&D landfills and provided no data supporting a contrary decision.[1]

EPA believes that the technical basis for the 1998 TSCA proposal, as discussed above, also supports today's rule. This is because our groundwater risk analysis assumed that the total mass of lead-based paint from pre-1978 U.S. housing was disposed of in C&D landfills, and that all of the lead from that lead-based paint ended up in the C&D landfill leachate. Hence, it was irrelevant to the results of the analysis whether or not the LBP entered the C&D landfills by being attached to architectural components (i.e., as LBP debris), or rather did so in the form of other types of LBP waste, such as chips, dusts, and sludges.

In conclusion, we have determined that residential LBP waste from abatement, rehabilitation, renovation and remodeling activities does not pose a substantial hazard to human health and the environment when disposed of in C&D landfills. The disposal of residential LBP waste in C&D landfills is therefore an appropriate and legal disposal option.

[1] All comments and data received in response to the 1998 TSCA proposal may be accessed via Docket Control OPPTS–62160, located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460. The TSCA Nonconfidential Information Center telephone number is 202–260–7099. For a summary of the comments, especially those related to the groundwater risk analysis, see "Summary of Comments on: Management and Disposal of Lead-Based Paint Debris; Proposed Rule, and Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris; Proposed Rule" in the docket for today's rule.

VIII. Other Applicable Federal, State, Tribal, and Local Requirements

Today's rule will not alter the authority of State, local and Tribal governments to regulate LBP waste more stringently than does EPA. The generators of residential LBP waste should contact State environmental agencies to determine if there are additional or more stringent disposal requirements for residential LBP waste. Also, generators should comply with applicable HUD and/or TSCA regulations when addressing residential LBP hazards.

IX. How Do States and Tribes Implement This Rule?

Because today's rule is less stringent than existing federal criteria, States are not required to amend permit programs which have been determined to be adequate under 40 CFR part 239. States have the option to amend statutory or regulatory definitions pursuant to today's direct final rule. If a state chooses to amend its permit program pursuant to today's action, the State must notify the Regional Administrator of the modification as provided by 40 CFR 239.12.

Today's amendments are directly applicable to landfills in States without an approved permit program under Part 239 and in Indian Country. We also encourage Tribes to adopt today's amendments into their programs in order to promote lead-based paint abatement activities in homes and other residences in Indian Country.

X. How Does This Rule Comply With Applicable Statutes and Executive Orders?

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the other provisions of the Executive Order. The Order defines a significant regulatory action as one that is likely to result in

a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

EPA has performed a full economic analysis, "Economic Analysis of EPA's Direct Final Rule Amending 40 CFR Part 257 and 258," which is available in the docket for today's rule. The EA concludes that this rule will impose no additional costs to parties, but may result in cost savings and incremental public health benefits. The rule authorizes the disposal of residential LBP waste in C&D landfills, where previously, under the July 31, 2000 policy memorandum, disposal was authorized only in MSWLFs. As a result, EPA believes that, in those parts of the country where it is cheaper to transport and dispose of residential LBP waste in C&D landfills compared to MSWLFs, some residential LBP waste will be diverted from MSWLFs to C&D landfills. Where this occurs, generators will benefit from lower waste management and disposal costs.

EPA assumes that only residential LBP waste generators in the Midwest, Northeast, and South regions will shift disposal from MSWLFs to C&D landfills, based on an analysis of the relative costs of MSWLF and C&D landfill disposal by region. EPA further assumes that the percentage of residential LBP waste that is affected is proportional to the share of these three regions in the number of housing units with LBP, which is 84.4 percent. Under these assumptions, an estimated 0.87 million tons of residential LBP waste will be diverted from MSWLFs to C&D landfills annually. This represents 0.73 percent of the total volume of all waste disposed of in MSWLFs annually. This shift in disposal would save residential LBP waste generators in the Midwest, Northeast, and South regions up to an estimated $16.76 million annually. The savings accruing to generators of residential LBP abatement waste is estimated at $0.79 million per year, while the savings accruing to generators of residential renovation and remodeling waste is $15.98 million per year.

EPA estimates that of the $0.79 million in savings that could accrue to generators of residential LBP abatement waste, an estimated 39.7 percent, or $0.31 million, will be generated annually in the public housing sector. EPA assumes that in the public sector, any savings in residential LBP waste management and disposal costs will be used to conduct additional LBP abatements. Given an average cost for LBP abatement in public housing units of $3,650, the $0.31 million in annual savings would fund an additional 86 abatements each year. This ensuing increase in LBP abatement projects would result in a more rapid reduction in the potential for exposure to the hazards of LBP, especially for children. These hazards include decreased intelligence (i.e., lower IQ), behavioral problems, reduced physical stature and growth, and impaired hearing.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards established for industries as described in the North American Industry Classification System (see http://www.sba.gov/size/NAICS-cover-page.html; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not impose any new requirements on small entities. The rule will provide an additional non-mandatory option for the disposal of residential LBP waste.

C. Paperwork Reduction Act

Today's rule is in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule does not require the collection of information from the States, Federal Agencies, or industry. Therefore, we do not need to prepare an Information Collection Request.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of regulatory actions on State, local, and Tribal governments, and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objective of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for

State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As explained in Section IX of this preamble, none of today's revisions are more stringent or broaden the scope of the existing Federal requirements. Therefore, States are not required to adopt the revision to the definition of MSWLF unit nor the additional definitions of construction and demolition (C&D) landfill and residential lead-based paint waste in today's rule. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's rule expressly provides an additional option for disposal of certain waste applicable in Indian Country, but does not create any mandate on Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866. However, this rule will affect decisions involving the environmental health or safety risks to children. It will benefit children by allowing environmentally protective disposal of residential lead-based paint waste in C&D landfills, which is less costly than disposal in MSWLFs in certain areas of the U.S., therefore reducing the cost of lead abatements. Reducing the cost of LBP abatements will also reduce the amount of time needed to complete abatements in public housing. Lower abatement costs may increase the amount of private homes undergoing abatements. By reducing costs associated with the disposal of LBP waste, the Agency believes that the number of abatements may marginally increase, thus resulting in a reduction of the number of children exposed to LBP.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. Today's rule does not involve technical standards, voluntary or otherwise. Therefore, the NTTAA does not apply to today's rule.

I. Executive Order 12898: Environmental Justice Strategy

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

Today's rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities. On the contrary, since the rule will reduce the cost of performing LBP abatements in certain regions of the U.S., EPA assumes that the savings will afford public housing authorities, in particular, the opportunity to conduct additional abatements of LBP hazards in affected housing units. Tenants of public housing units are possibly more likely to be minority and lower-income households, and the rule should have the effect of providing a differential benefit to such populations.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective [January 22, 2002].

K. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects

40 CFR Part 257

Environmental protection, Waste treatment and disposal.

40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: September 28, 2001.

Christine Todd Whitman,

Administrator.

For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 257—[AMENDED]

1. The authority citation for part 257 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a), and 6949a(c); 33 U.S.C. 1345(d) and (e).

2. Section 257.2 is amended:

a. By adding in alphabetical order the definitions for "Construction and demolition (C&D) landfill" and "Residential lead-based paint waste".

b. By revising the definition of "Municipal solid waste landfill (MSWLF) unit".

The revision and additions read as follows:

§ 257.2 Definitions.

* * * * *

Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements of subparts A or B of this part that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) other than conditionally exempt small quantity generator waste (defined in § 261.5 of this chapter), or industrial solid waste (defined in § 258.2 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

* * * * *

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

* * * * *

Residential lead-based paint waste means waste generated as a result of lead-based paint activities (including abatement, rehabilitation, renovation and remodeling) in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

* * * * *

PART 258—[AMENDED]

1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c).

2. Section 258.2 is amended:

a. By adding in alphabetical order the definitions for "Construction and demolition (C&D) landfill" and "Residential lead-based paint waste".

b. By revising the definition of "Municipal solid waste landfill (MSWLF) unit" .

The revision and additions read as follows:

§ 258.2 Definitions.

* * * * *

Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements of part 257, subparts A or B of this chapter that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) other than conditionally exempt small quantity generator waste, (defined in § 261.5 of this chapter), or industrial solid waste (defined in this section). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

* * * * *

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under § 257.2 of this chapter. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

* * * * *

Residential lead-based paint waste means waste generated as a result of lead-based paint activities (including abatement, rehabilitation, renovation and remodeling) in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

* * * * *

[FR Doc. 01–26094 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 126

[USCG–2001–10164]

RIN 2115–AG17

Alternate Compliance Program; Incorporation of Offshore Supply Vessels

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: By this direct final rule, the Coast Guard is amending regulations to incorporate Offshore Supply Vessels (OSVs) into the Alternate Compliance Program (ACP). The action will improve the flexibility of regulations governing OSVs by providing an alternative method to fulfill the requirements for vessel design, inspection, and certification without compromising existing safety standards.

DATES: This rule is effective January 22, 2002, unless an adverse comment, or notice of intent to submit an adverse comment, reaches the Docket Management Facility on or before December 24, 2001. If an adverse comment, or notice of intent to submit an adverse comment, is received, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–10164), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and related material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington DC, 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Lieutenant Benjamin Nicholson, United States Coast Guard Office of Design and Engineering Standards (G-MSE), at 202–267–0143, or e-mail him at *BNicholson@comdt.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–10164), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments by only one means. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

We are publishing this direct final rule, amending 46 CFR part 126, because we do not expect an adverse comment. An "adverse" comment explains why this rule or a part of it would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change. If no adverse comment or notice of intent to submit an adverse comment is received by December 24, 2001 this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule before it becomes effective. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

Background and Purpose

The Coast Guard is amending 46 CFR part 126 (subchapter L) to authorize Offshore Supply Vessels (OSVs) to be eligible for the Alternate Compliance Program (ACP). Recent interest by the offshore industry to construct OSVs in compliance with international standards, specifically the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS), has provided the impetus for this regulatory amendment. Current regulations permit tank vessels, passenger vessels, cargo vessels, miscellaneous vessels, and mobile offshore drilling units to enroll in the ACP. OSVs are presently not authorized to participate in the program.

OSVs were not originally included in the ACP's framework because they were not generally intended or designed for international service. During development of the ACP in the mid 1990's, industry did not demonstrate an interest in conforming OSVs to SOLAS requirements. The operational climate of the offshore industry has since changed and the Coast Guard sees a legitimate need to amend the regulations.

This rule expands the ACP's applicability. The ACP is intended to provide regulatory flexibility for U.S. Flag vessels while providing a progressive level of safety that is aligned with recognized international standards. Furthermore, the ACP allows the Coast Guard to be more efficient with its resources; thus enabling the allocation of resources to high-risk marine safety concerns.

The Coast Guard has been a proponent for increasing regulatory flexibility while also progressively improving marine safety. The ACP has proven successful over the last five years and its expansion to include OSVs has the potential to significantly increase the program's vessel enrollment as well as to provide a stimulus for SOLAS conformity within the OSV fleet. The Coast Guard considers this amendment to be a safe and non-controversial course of action.

Discussion of Rule

This rule does not change any substantive requirements of the existing regulations. This rule applies to U.S. Flag OSVs certificated for international voyages and classed by a recognized classification society that is authorized by the Coast Guard to participate in the ACP as specified in 46 CFR part 8.

Specifically, this rule is intended to amend 46 CFR part 126, subpart B, concerning the compliance standards for a Certificate of Inspection (COI) for OSVs. This rule provides a means of alternate compliance for OSVs in place of compliance with the subchapter's other applicable provisions. Under this rule, the owner or operator of a vessel subject to plan review and inspection under subchapter L for initial issuance or renewal of a COI may comply with the ACP provisions of 46 CFR part 8 including approved classification society rules and supplements as referenced.

Regulatory Evaluation

This rule is not considered to be a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)[44 FR 11040 (February 26, 1979)]. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. It will not impose any costs on the public because it enables a voluntary alternative to another prescribed method of inspection.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule does not change any requirements in the regulations. It is simply updating information to facilitate continuation of the Coast Guard's Alternate Compliance Program. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the "Regulatory Information" section of the preamble.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if the rule has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100 million or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(d) and (e) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This exclusion is in accordance with section 2.B.2. and figure 2–1 of the NEPA implementing Procedures, Commandant Instruction M16475.1D, concerning regulations that are based on vessel inspection and equipment aspects. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 126

Authority delegation, Hazardous materials transportation, Marine safety, Offshore Supply Vessels, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 126 as follows:

PART 126—[AMENDED]

1. The citation of authority for part 126 continues to read as follows:

Authority: 46 U.S.C. 3205, 3306, 3307; 33 U.S.C. 1321(j); E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. Add § 126.235 to read as follows:

§ 126.235 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection (CG–841 rev. 3/85) may comply with the Alternate Compliance Program provisions of 46 CFR part 8.

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (G-MSE), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202) 267–6925; or fax (202) 267–4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

Dated: August 1, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–26563 Filed 10–22–01; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–115; CC Docket No. 96–149; FCC 01–247]

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: This document is intended to clarify the status of the Commission's CPNI rules after the Tenth Circuit's opinion and explains how parties may obtain customer consent for use of their CPNI.

FOR FURTHER INFORMATION CONTACT: Marcy Greene, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–2410.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Clarification Order in CC Docket Nos. 96–115 and 96–149, FCC 01–247, adopted August 28, 2001, and released September 7, 2001. The complete text of this Clarification Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's website at *http://www.fcc.gov*.

Synopsis of the Clarification Order

1. In the *Customer Proprietary Network Information (CPNI) Order* (63 FR 20364, April 24, 1998), the Commission stated that section 222(c)(1) of the Act allows a carrier to use, without the customer's prior approval, the customer's CPNI derived from the complete service that the customer subscribes to from that carrier and its affiliates, for marketing purposes within the existing service relationship. This is known as the "total service approach." The Commission also concluded that carriers must notify the customer of the customer's rights under section 222 and then obtain express written, oral or electronic customer approval—a "notice and opt-in" approach—before a carrier may use CPNI to market services outside the customer's existing service relationship with that carrier. US West appealed this order to the Tenth Circuit. On August 16, 1999, the Commission adopted the *CPNI Reconsideration Order* (64 FR 53242, October 1, 1999) in response to a number of petitions for reconsideration, forbearance, and clarification of the *CPNI Order*. The *CPNI Reconsideration Order*, among other things, further clarified the total service approach. It also retained the opt-in approach.

2. After the Commission adopted the *CPNI Reconsideration Order*, the Tenth Circuit issued its decision in *US WEST* v. *FCC*, vacating a portion of the *CPNI Order* "and the regulations adopted therein." In *US WEST* v. *FCC*, US WEST contended that the opt-in approach for customer approval in the *CPNI Order* violated the First and Fifth Amendments of the Constitution. The Tenth Circuit first questioned whether the government had demonstrated that the interests it put forward in regulating CPNI—protecting customer privacy and fostering competition—are substantial. The court agreed that the government had asserted a substantial interest in protecting customers' privacy, but declined to find that promoting competition was a significant consideration in Congress' enactment of section 222. The court nonetheless concluded that the government did not demonstrate that the CPNI regulations requiring opt-in customer approval "directly and materially advanc[ed] its interests in protecting privacy and promoting competition." The court concluded that the Commission's determination that an opt-in requirement would best protect a consumer's privacy interests was not narrowly tailored as required by the First Amendment because the Commission had failed to adequately consider an opt-out option.

Effect of the US WEST Decision on the CPNI Rules

3. The court's opinion in *US WEST* v. *FCC* analyzed only the constitutionality of the Commission's interpretation of the customer approval requirement of section 222(c)(1) of the Act by enacting the opt-in regime discussed above. As the Commission has found previously, the court's vacatur order related only to the discrete portions of the *CPNI Order* and rules requiring opt-in customer approval. Had the court intended to take the unusual step of vacating portions of the order and rules not before it, the Commission believes it would have said so explicitly. Accordingly, we conclude that the court sought to eliminate only the specific section of our rules that was before it, and that its vacatur order applied only to § 64.2007(c), the only provision inextricably tied to the opt-in mechanism. The remainder of the Commission's CPNI rules remain in effect.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26579 Filed 10–22–01; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, and 1852

Miscellaneous Administrative Revisions to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule to conform the NASA FAR Supplement with the FAR as a result of changes made by FAC's 97–20, 97–22 and 97–26, and make editorial and miscellaneous changes dealing with NASA internal and administrative matters.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, (202) 358–1645, e-mail: *celeste.dalton@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

FAC 97–20 amended various FAR subparts and clauses to implement sections 501(c), 502(a)(2), and 604(d) of the Veterans Entrepreneurship and Small Business Development Act of 1999, which established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. FAC 97–22 amended FAR Subpart 32.4 to change certain terminology (e.g., change the word "bank" to "financial institution"), and updated references in FAR Subpart 42.2 to the Defense Contract Management Agency. FAC 97–26 designated Federal Business Opportunities ("FedBizOpps") as the Governmentwide Point of Entry (GPE) as the single point of universal electronic public access to Governmentwide procurement opportunities. This final rule makes changes to the NFS necessary to conform to the changes in FAC's 97–20, 97–22 and 97–26. Miscellaneous changes dealing with NASA internal and administrative matters included in this rule are: revisions to NASA's acquisition planning, award fee, letter contract, and undefinitized contract action (UCA) coverage to ensure that the use of letter contracts and UCAs is minimized and properly authorized; revised procedures for electronic submission of Master Buy Plans; clarification of authority to approve D&Fs under the Economy Act where the servicing agency is not subject to the FAR; update of terminology used in the clause addressing restrictions on printing and duplicating; update internal procedures under NASA research announcements; and update of award fee evaluation factors to include veteran-owned small business and service-disabled veteran-owned small business concerns. This rule also makes amendments to the NFS to update references and make editorial changes.

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, 1845, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, 1845, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Revise section 1804.402 to read as follows:

1804.402 General.

(b) NASA security policies and procedures are prescribed in NPD 1600.2A, NASA Security Policy; NPG 1600.6A, Communications Security Procedures and Guidelines; NPG 1620.1, Security Procedures and Guidelines; NPG 2810.1 and NPD 2810.1 Security of Information Technology.

3. Revise sections 1804.570–1 and 1804.570–2 to read as follows:

1804.570–1 General.

The NASA Acquisition Internet Service (NAIS) provides an electronic means for posting procurement synopses, solicitations, and associated information on the NAIS Internet site which in turn, automatically posts relevant information onto the Governmentwide point of entry (GPE).

1804.570–2 Electronic Posting System.

(a) The NAIS Electronic Posting System (EPS) enables the NASA procurement staff to—

(1) Electronically create and post synopses on the NAIS Internet site and the GPE; and

(2) Post solicitation documents, including solicitation amendments or cancellations, and other procurement information on the NAIS Internet site with linked references on the GPE.

(b) The EPS maintains an on-line index linking the posted synopses and solicitations for viewing and downloading.

(c) The EPS shall be used to—

(1) Create and post all synopses in accordance with FAR part 5 and NFS 1805; and

(2) Post all competitive solicitation files, excluding large construction and other drawings, for acquisitions exceeding $25,000.

(d) The NAIS is the official site for solicitation postings which in turn, automatically posts relevant information onto the Government-wide point of entry (GPE). In the event supporting materials, such as program libraries, cannot be reasonably accommodated by the NAIS, Internet sites external to NAIS may be established after coordination with the contracting officer. Such sites must be linked from the NAIS business opportunities index where the solicitation resides. External sites should not duplicate any of the files residing on the NAIS.

1804.7103 [Amended]

4. Amend section 1804.7103 in the first sentence of paragraph (b) by removing "number" and adding "numbers" in its place.

PART 1807—ACQUISITION PLANNING

5. Revise paragraph (b)(10) of section 1807.105 to read as follows:

1807.105 Contents of written acquisition plans.

* * * * *

(b) (10) Address contract management issues, including—

(A) Planned delegations of administrative functions; and

(B) When contract changes are anticipated, the plan to manage such changes and the specific measures that will be taken to minimize the issuance of undefinitized contract actions.

* * * * *

6. Revise section 1807.7103 to read as follows:

1807.7103 Format of Master Buy Plan.

In accordance with the requirements of 1807.7102–1 and 1807.7102–2, installations must prepare Master Buy Plans and amendments to Master Buy Plans in accordance with the Master Buy Plan Database (MBPD) instructions at http://www/hq.nasa.gov/office/procurement/regs/Table1807.doc and submit them in accordance with the MBPD User Manual Instructions listed at *http://ec.msfc.nasa.gov/hq/ library/mbp.User Guide.html.*

7. Delete Table 1807–1.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8. Revise section 1808.802 to read as follows:

1808.802 Policy.

(b)(i) The Headquarters Chief Information Officer (Code AO) is the NASA central printing authority.

(ii) Requests for approval to contract for printing supplies or services shall be addressed to Code AO. Approval to contract for such supplies or services is restricted to those requirements meeting the following conditions:

(A) An individual order is under $1,000;

(B) The order is not of a continuing or repetitive nature; and,

(C) The Public Printer certifies it cannot be provided more economically through the GPO.

PART 1815—CONTRACTING BY NEGOTIATIONS

1815.404–2 [Amended]

9. Amend section 1815.404–2 in the last sentence of paragraph (C) by removing "DCMC" and adding "DCMA" in its place.

1815.604 [Amended]

10. In section 1815.604, amend paragraph (a) by removing the URL "*http://ec.msfc.nasa.gov/msfc/nasahdbk.html*" and adding "*http://ec.msfc.nasa.gov/hq/library/unSol-Prop.html*" in its place.

PART 1816—TYPES OF CONTRACTS

1816.104–70 [Amended]

11. Amend section 1816.104–70 in the first sentence of paragraph (a) by removing "FAR 37.101" and adding "FAR 2.101" in its place.

12. Amend section 1816.405–274 by revising paragraphs (g)(1) and (g)(4); redesignating paragraphs (h) and (i) as (i) and (j) respectively; and adding new paragraph (h) to read as follows:

1816.405–274 Award fee evaluation factors.

* * * * *

(g)(1) The contractor's performance against the subcontracting plan incorporated in the contract shall be evaluated. Emphasis may be placed on the contractor's accomplishment of its goals for subcontracting with small business, HUBZone small business, women-owned small business, veteran-owned small business, and service-disabled veteran-owned small business concerns.

* * * * *

(4) The evaluation weight given to the contractor's performance against the considerations in paragraphs (g)(1) through (g)(3) of this section should be significant (up to 15 percent of available award fee). The weight should motivate the contractor to focus management attention to subcontracting with small, HUBZone, women-owned, veteran-owned, and service-disabled veteran-owned small business concerns, and with small disadvantaged business concerns in designated NAICS Major Groups to the maximum extent practicable, consistent with efficient contract performance.

(h) When contract changes are anticipated, the contractor's responsiveness to requests for change proposals should be evaluated. This evaluation should include the contractor's submission of timely, complete proposals and cooperation in negotiating the change.

* * * * *

13. Add section 1816.603–2 to read as follows:

1816.603–2 Application.

(a) Centers must ensure that NASA liabilities and commitments are minimized under letter contracts. When a letter contract is justified and program requirements can be severed into smaller, discreet efforts, the work authorized by the letter contract must be limited to the minimum severable effort required to satisfy the urgent program requirements. The remaining requirements may not be initially included in the letter contract and must be acquired through a separate fully priced and definitized contract action.

PART 1817—SPECIAL CONTRACTING METHODS

14. Add paragraph (c) to the end of section 1817.503 to read as follows:

1817.503 Determinations and findings requirements.

* * * * *

(c) The Associate Administrator for Procurement as the agency senior procurement executive will approve all D&F's for a servicing agency not covered by the Federal Acquisition Regulations. This approval may not be delegated below the senior procurement executive level.

PART 1819—SMALL BUSINESS PROGRAMS

1819.201 [Amended]

15. Amend section 1819.201 in the first sentence of paragraph (a)(i) by adding "veteran-owned small business, service-disabled veteran-owned small business," before the word "HUBZone"; and in paragraph (a)(ii) by adding "service-disabled veteran-owned small business," before the word "HUBZone".

1819.20 [Removed]

16. Delete section 1819.202.

17. Amend Subpart 1819.3 by revising the subpart heading to read as follows:

Subpart 1819.3—Determination of Small Business Status for Small Business Programs

1819.705–470 [Amended]

18. Amend section 1819.705–470 in the last sentence by adding "veteran-owned small business, service-disabled veteran-owned small business," before the word "HUBZone".

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Part 1822 [Amended]

19. Amend Part 1822 by removing "(Code JLR)" and adding "(Code JR)", and removing "Code JLR" and adding "Code JR" in each occurrence.

PART 1832—CONTRACT FINANCING

20. Amend section 1832.006–2 by revising the section heading to read as follows:

1832.006–2 Definition.

1832.410 [Amended]

21. Amend section 1832.410 in paragraph (b)(ii) by removing "bank" each time it appears, and adding "financial institution" in its place.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

22. Amend section 1835.016–71 by revising paragraph (b)(1); redesignating paragraphs (c)(2)(i)(B) through (c)(2)(i)(G) as paragraphs (c)(2)(i)(C) through (c)(2)(i)(H); adding new paragraph (c)(2)(i)(B) and in paragraph (d)(4) by removing "best and final offers" and adding "final proposal revisions" in its place. The revisions read as follows:

1835.016–71 NASA Research Announcements.

* * * * *

(b) *Issuance.* (1) Before issuance, each field-generated NRA shall be approved by the installation director or designee, with the concurrence of the procurement officer, and each Headquarters-generated NRA shall be approved by the cognizant Program Associate Administrator or designee, with the concurrence of the Headquarters Offices of General Counsel (Code GK) and Procurement (Code HS). In addition, the issuing office shall obtain input from the cognizant offices responsible for matters of safety and mission assurance, occupational health, environmental protection, information technology, export control, and security. Input shall also be obtained from the appropriate systems safety organization

for NRA's that may involve potentially hazardous operations such as those related to flight and/or mission critical ground systems. The NRA approval authority shall designate the selection official.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) The following statement concerning safety:

"Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) The public, (2) astronauts and pilots, (3) the NASA workforce (including employees working under NASA instruments), and (4) high-value equipment and property.

* * * * *

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEEER CONTRACTS

1836.602–1 [Amended]

23. Amend section 1836.602–1 by removing the paragraph designation "(a)(7)" and adding "(a)(6)" in its place.

PART 1837—SERVICE CONTRACTING

1837.104 [Amended]

24. Amend section 1837.104 in the last sentence of paragraph (b) by removing "NPD 3000.1, Management of Human Resources" and adding "NPG 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants" in its place.

1837.203 [Amended]

25.–26. Amend section 1837.203(c) by deleting "NPD 3000.1, Management of Human Resources" and adding "NPG 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants" in its place.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1842.302 [Amended]

27. Amend section 1842.302 by removing "DCMC" and adding "DCMA" in its place.

28. Amend section 1842.7301 by revising paragraphs (e)(1) introductory text and (e)(1)(ii) to read as follows:

1842.7301 NASA external audit follow-up system.

* * * * *

(e)(1) The terms "resolution" and "corrective action/disposition" are defined as follows:

* * *

(ii) Corrective action/disposition—Management action responsive to an agreed upon audit recommendation.

* * * * *

PART 1843—CONTRACT MODIFICATIONS

1843.205–70 [Amended]

29. Amend section 1843.205–70 by deleting the last sentence of paragraph (a)(1).

30. Revise section 1843.7002 to read as follows:

1843.7002 Policy.

(a) Undefinitized contract actions may be issued only on an exception basis, and centers must ensure that NASA liabilities and commitments are minimized. When an undefinitized contract action is justified and program requirements can be severed into smaller, discreet efforts, the work authorized by the undefinitized contract action must be limited to the minimum severable effort required to satisfy the urgent program requirements. The remaining requirements may not be initially included in the undefinitized contract action and must be acquired through a separate fully priced and definitized contract action.

(b) The contract file for each UCA shall be documented to justify issuance and shall include a Government estimate for the changed requirements.

31. Amend section 1843.7003 by revising paragraph (a) and the first sentence of paragraph (b)(1) to read as follows:

1843.7003 Procedures.

(a)(1) Issuance of undefinitized contract actions with a Government estimated cost or price over $100,000 must be approved in writing by the Center Director.

(2) All other undefinitized contract actions must be approved in writing by the procurement officer.

(3) In emergency situations, approval may be given orally and subsequently confirmed in writing.

(4) The approval authorities in paragraphs (a)(1) and (2) of this section are not delegable.

(b)(1) Undefinitized contract actions exceeding $100,000 must be issued as bilateral agreements setting forth a ceiling price or "not to exceed" estimated cost figure for the changed contractual requirements.* * *

* * * * *

32. Revise the introductory text of paragraph (a) of section 1843.7004 to read as follows:

1843.7004 Exceptions.

(a) Exceptions to the requirement for Center Director or procurement officer approval of undefinitized contract actions are—

* * * * *

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

1844.302–70 [Amended]

33. Amend section 1844.302–70 by removing "DCMC" in the heading and adding "DCMA" in its place; removing "Command (DCMC)" in the introductory text and adding "Agency (DCMA)" in its place; and removing "DCMC" each time it appears in paragraphs (c) and (e) and adding "DCMA" in its place.

1844.302–71 [Amended]

34.–35. Amend section 1844.302–71 in the introductory text to by removing "DCMC" each time it appears and adding "DCMA" in its place.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.204–74 [Amended]

36. Amend the clause at section 1852.204–74 by revising the date of the clause to read October 2001 and removing "Government and" from the introductory text of paragraph (a)(4) and adding "and Government" in its place.

37. Revise section 1852.208–81 to read as follows:

1852.208–81 Restrictions on Printing and Duplicating.

As prescribed in 1808.870, insert the following clause:

Restrictions on Printing and Duplicating October 2001

(a) The Contractor may duplicate or copy any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub 101–9, U.S. Government Printing Office, Washington, DC, 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term "printing" includes the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) The Contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 10–¾ by 14–¼ inches. A "production unit" is one sheet, size 8–½ x 11 inches (215 x 280 mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing, duplicating, or copying in excess of the limits in paragraph (c) of this clause are unallowable without prior written approval of the Contracting Officer. If the Contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating or copying, it immediately shall provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations, NFS 1808.802, and NPG 1490.5, NASA Procedures and Guidelines for Printing, Duplicating, and Copying Management.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing, duplicating, and copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).

(End of clause)

38. Amend Alternate I to the provision at section 1852.223–73 by revising the date to read October 2001 and removing "Contractor" in the second sentence and adding "Contracting" in its place.

39. Amend section 1852.243–70 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

1852.243–70 Engineering Change Proposals.

* * * * *

Engineering Change Proposals October 2001

(a) Definitions.

"ECP" means an Engineering Change Proposal (ECP) which is a proposed engineering change and the documentation by which the change is described, justified, and submitted to the procuring activity for approval or disapproval.

(b) Either party to the contract may originate ECPs. Implementation of an approved ECP may occur by either a supplemental agreement or, if appropriate, as a written change order to the contract.

* * * * *

[FR Doc. 01–26624 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 66, No. 205
Tuesday, October 23, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 75

[Docket Number LS–01–07]

Increase in Fees for Voluntary Federal Seed Testing and Certification Services and Establishment of a Fee for Preliminary Test Reports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the hourly fee rate charged for voluntary Federal seed testing and certification services and establish a fee for issuing preliminary test reports. The fee rate needs to be increased to cover increases in salaries of Federal employees, rent, supplies, replacement equipment, and other increased Agency costs. A new fee needs to be established to recover the cost of providing preliminary test reports.

DATES: Comments must be received on or before December 24, 2001.

ADDRESSES: Send written comments to Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC–East, Beltsville, MD 20705–2325. Comments may be faxed to (301) 504–8098.

State that your comments refer to Docket No. LS–01–07 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC–East, Beltsville, Maryland 20725–2325; telephone: (301) 504–9430, Fax: (301) 504–8098; E-mail: Richard.Payne2@usda.gov.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

This rule has been reviewed by the Office of Management and Budget (OMB) and determined to be not significant for purposes of Executive Order 12866.

B. Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The AMS provides, under the authority of the Agricultural Marketing Act (AMA) of 1946, a voluntary, user-fee funded seed testing and certification service to approximately 65 businesses per year. Many of the users of the testing and certification services would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Over ninety-five percent of the samples tested in this program represent seed and grain scheduled for export. Grain is examined for the presence of specified weed and crop seeds upon request of the USDA's Grain Inspection, Packers and Stockyards Administration. A Federal Seed Analysis Certificate, containing purity, germination, noxious-weed seed examination, and other test results is issued upon completion of the testing. The Federal Seed Analysis Certificate is required documentation for shipments of seed and grain from the United States entering certain countries.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Without a fee increase, FY 2002 revenues for seed testing and certification services are projected at $138,000, costs are projected at $149,000, and the trust fund balance is projected to be $92,000 or 7.4 months of operating reserve. With a fee increase, FY 2002 revenues are projected at $160,000, costs are projected at $151,000, and the trust fund balance is projected to be $113,000 or 9.0 months of operating reserve.

This action will raise the hourly rate charged to users of the seed testing and certification services. This proposed fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees for 2001 and projected increases in 2002, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

The AMS estimates that this proposed rule will yield an additional $22,000 during FY 2002. The hourly rate for seed testing and certification services will increase by approximately 17 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual firms will be, on average, approximately $13.00 per Federal Seed Analysis Certificate issued. There will also be an increase of $1.90 for each duplicate certificate issued. In addition, this action will establish a fee of $13.00 to recover the cost of issuing preliminary test reports.

C. Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

D. Paperwork Reduction Act

The information collection requirements that appear in Part 75 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581–0140 under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Background and Proposed Changes

The Secretary of Agriculture is authorized by the AMA of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal seed testing and certification services to facilitate the orderly marketing of seed and grain and to enable consumers to obtain the quality of seed and grain they desire.

The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered.

The AMS regularly reviews programs to determine if fees are adequate and if costs are reasonable. This action will increase the hourly fee rate and charges for voluntary seed testing and certification services provided to the seed and grain industries to reflect the costs currently associated with providing the services.

A recent review of the current hourly fee rate, effective March 1, 2001, revealed that anticipated revenue will not cover increased program costs. Without a fee increase, FY 2002 revenues for seed testing and certification services are projected at $138,000, costs are projected at $149,000, and the trust fund balance is projected to be $92,000 or 7.4 months of operating reserve. With a fee increase, FY 2002 revenues are projected at $160,000, costs are projected at $151,000, and the trust fund balance is projected to be $113,000 or 9.0 months of operating reserve.

The hourly fee for service is established by distributing the projected annual program operating costs over the estimated revenue hours of service provided to users of the service. Revenue hours include the time spent conducting tests, keeping sample logs, preparing Federal Seed Analysis Certificates and storing samples. As program operating costs continue to rise, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law. Program operating costs include the salaries and fringe benefits of seed analysts, supervision, training, and all administrative costs of operating the program.

Employee salaries and benefits account for approximately 75 percent of the total budget. A general and locality salary increase of 3.81 percent for Federal employees involved in the seed testing and certification service became effective in January 2001 and has materially affected program costs. Another general and locality salary increase is expected in January 2002.

This proposed fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees for 2001 and projected increases in 2002, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

In view of these increases in costs, the Agency is proposing to increase the hourly rate charged to applicants for the service, including the issuance of Federal Seed Analysis Certificates from $44.40 to $52.00. The fee for issuing additional duplicate certificates will increase from $11.10 to $13.00 and a fee of $13.00 will be established for issuing preliminary reports.

The proposed action will recover the costs associated with providing the voluntary testing service to the seed and grain industry. Although the proposed user-fee increase will increase costs to individual firms, the cost for providing the seed testing and certification services will increase by an average of only $13.00 per Federal Seed Analysis Certificate and $1.90 for each duplicate certificate. It is estimated that the total revenue generated will increase by approximately $22,000 annually.

List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Reporting and recordkeeping requirements, Seeds, Vegetables.

For the reasons set forth in the preamble, 7 CFR Part 75 is proposed to be amended as follows:

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS

1. The authority citation for Part 75 continues to read as follows:

Authority: 7 U.S.C. 1622 and 1624.

§ 75.41 [Amended]

2. In § 75.41, "$44.40" is removed and "$52.00" is added in its place.

3. In § 75.43, a new paragraph (c) is added to read as follows:

§ 75.43 Laboratory testing.

* * * * *

(c) The charge for a preliminary report issued prior to completion of testing shall be $13.00 and billed in accordance with paragraph (a) of this section.

§ 75.47 [Amended]

4. In § 75.47, "$11.10" is removed and "$13.00" is added in its place.

Dated: October 17, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 01–26592 Filed 10–22–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[Docket No. AO–313–A44; DA–01–07]

Milk in the Central Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider proposals that would amend certain pooling and related provisions of the Central order. Proposals include amending the pool supply plant and pool supply plant system provisions of the order, eliminating the provision for a cooperative supply plant and amending the portion of the producer milk definition that specifies the percentage of a handler's milk that may be diverted to nonpool plants. Another proposed amendment to the order's pooling provisions would allow milk diverted to a nonpool plant before the producer's milk is delivered to a pool plant to be considered producer milk and allow the producer's milk to retain its association with the market for any months during which the handler fails to pool the producer's milk under any order. Other proposals would provide for establishing separate pooling provisions by state of origin for milk from areas outside the Central order marketing area, preventing the pooling of milk that is already pooled on a State marketwide order and increasing minimum partial payments to producers and cooperative associations. Proponents have requested that these issues be handled on an emergency basis.

DATES: The hearing will convene at 8:30 a.m. on Wednesday, November 14, 2001.

ADDRESSES: The hearing will be held at the Hilton Hotel-Kansas City Airport, 8801 N.W. 112th Street, Kansas City, Missouri 64153; (816) 891–8900.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202)720–2357, e-mail address connie.brenner@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact Bob

Vander Linden at 913–495–9313 or Dave Stukenberg at 913–495–9326; email econ.staff@fmmacentral.com before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Hilton Hotel—Kansas City Airport, 8801 N.W. 112th Street, Kansas City, Missouri 64164; (816) 891–8900; beginning at 8:30 a.m., on Wednesday, November 14, 2001, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any of the proposed amendments.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with three copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

PART 1032—[Amended]

The authority citation for 7 CFR Part 1032 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by: Dairy Farmers of America, Prairie Farms Cooperative, and Swiss Valley Farms:

Proposal No. 1

Amend the pool supply plant provision to reduce the percentage of milk physically received at a supply plant that must be shipped to distributing plants during the fall months from 35 to 25 percent and from 25 to 20 percent during all other months of the year, with the fall months changed from September through November and January to August through November. In addition, handlers would not be able to use shipments under § 1000.9(c) or § 1032.13(c) to qualify plants located outside the marketing area. While qualifying shipments would be expanded to include shipments to any plant that is part of a distributing plant unit, they would also be limited by excluding shipments to distributing plants regulated under other Federal orders. These provisions are proposed to be amended to read as follows:

§ 1032.7 Pool Plant.

* * * * *

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than 25 percent during the months of August through November and 20 percent in all other months of the Grade A milk received from dairy farmers (except dairy farmers described in § 1032.12(b)) and handlers described in § 1000.9(c), including milk diverted pursuant to § 1032.13, subject to the following conditions:

(1) Qualifying shipments may be made to plants described in paragraphs (a), (b) or (e) of this section.

(2) The operator of a pool plant located in the marketing area may include as qualifying shipments milk delivered directly from producer's farms pursuant to § 1000.9(c) or § 1032.13(c). Handlers may not use shipments pursuant to § 1000.9(c) or § 1032.13(c) to qualify plants located outside the marketing area.

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage.

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

* * * * *

Proposal No. 2

Remove the provision for a cooperative supply plant, as follows:

§ 1032.7 Pool Plant.

* * * * *

(d) Removed and reserved.

* * * * *

Proposal No. 3

Revise the provision for a system of supply plants by providing for increased shipping percentages (5 percent higher than for individual supply plants in the months of August through November and 3 percent higher in all other months) by adding a new paragraph (f)(1) and redesignating paragraphs § 1032.7(f)(1) through (4) as paragraphs § 1032.7(f)(2) through (5) to read as follows:

§ 1032.7 Pool plant.

* * * * *

(f) * * *

(1) The applicable percentage requirements for each unit shall be 30 percent for the months of August through November, and 23 percent in all other months.

* * * * *

Proposal No. 4

Amend the provision authorizing the market administrator to adjust shipping percentages to remove the reference to paragraph (d) by revising the first sentence of paragraph (g) to read as follows:

§ 1032.7 Pool Plant.

* * * * *

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section may be increased or decreased, for all or part of the marketing area, by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments.

* * * * *

Proposal No. 5

Relax the diversion limits for the fall months from 65 to 75 percent of producer receipts and change those months by including August and removing January; relax the diversion limits for the rest of the year from 75 to 80 percent of producer receipts. Diversion limits would apply to all months. Paragraph (d)(2) would read as follows:

§ 1032.13 Producer Milk.

* * * * *

(d) * * *

(2) The quantity of milk diverted to a nonpool plant by a pool plant operator or by a cooperative association pursuant to § 1000.9(c) may not exceed 75 percent of the producer milk receipts reported by the handler pursuant to § 1032.30 for the months of August through November and 80 percent of the remaining months' producer milk receipts reported by the handler pursuant to § 1032.30 provided that not less than 25 percent of such receipts in the months of August through November and 20 percent of the remaining months' receipts are delivered to plants described in § 1032.7(a), (b) and (e). These percentages are subject to any adjustments that may be made pursuant to § 1032.13(d)(5);

* * * * *

Proposal No. 6

Increase the partial payment rate to producers and cooperative associations from the lowest class price for the preceding month to 110 percent of that price in paragraphs (a)(1) and (c)(1) of § 1032.73 to read as follows:

§ 1032.73 Payments to producers and to cooperative associations.

(a) * * *

(1) *Partial Payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than 110 percent times the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

* * * * *

(c) * * *

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than 110 percent times the lowest announced class prices per hundredweight for the preceding month;

* * * * *

Proposed by: Dairy Farmers of America:

Proposal No. 7

Amend the pool supply plant and producer milk definitions to require milk from "distant" locations to be reported by individual state units that would each be subject to the performance standards applicable to supply plants and producer milk in the applicable paragraphs in §§ 1032.7 and 1032.13 to read as follows:

§ 1032.7 Pool Plant.

* * * * *

(c) * * *

(4) If milk is delivered to a plant physically located outside the States of Colorado, Illinois, Iowa, Kansas, Minnesota (or certain designated counties), Missouri, Nebraska, Oklahoma, South Dakota and Wisconsin (or certain designated counties) by producers also located outside the area specified in this paragraph, producer receipts at such plant shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1032.30.

(ii) At least the required minimum percentage specified in § 1032.7(c) of the producer milk of each unit of the handler shall be delivered to plants described in § 1032.7 (a), (b) or (e), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1032.7(f); and

(iii) The percentages of 1032.7(c)(4) are subject to any adjustments that may be made pursuant to § 1032.7(g).

* * * * *

§ 1032.13 Producer Milk.

Subject to the conditions of paragraph (e) of this section, "producer milk" means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

* * * * *

(e) Milk receipts from producers whose farms that are physically located outside the States of Colorado, Illinois, Iowa, Kansas, Minnesota (or certain designated counties), Missouri, Nebraska, Oklahoma, South Dakota and Wisconsin (or certain designated counties) such producers shall be organized by individual state units and each unit shall be subject to the following requirements:

(1) Each unit shall be reported separately pursuant to § 1032.30.

(2) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1032.7(c), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1032.13(d)(2); and

(3) The percentages of § 1032.13(d)(2) are subject to any adjustments that may be made pursuant to § 1032.13(d)(5).

Proposed by: Anderson-Erickson Dairy Company, Associated Milk Producers, Inc., Family Dairies USA, First District Association, Foremost Farms, Swiss Valley Dairy, Milwaukee Cooperative Milk Producers, Manitowoc Milk Producers Cooperative, and Mid-West Dairymen's Company:

Proposal No. 8

Amend paragraph (d)(6) of the "Producer Milk" definition to exclude

milk that is pooled under any other marketwide equalization pool to read as follows:

§ 1032.13 Producer milk.

* * * * *

(d) * * *

(6) *Provided, however,* that diverted milk pursuant to this paragraph shall not include milk subject to the minimum pricing provisions of another federal order or milk which qualifies for inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government.

Proposed by: Associated Milk Producers Inc., Foremost Farms USA, Land O'Lakes, First District Association, Family Dairies USA, Midwest Dairymen's Co., Manitowoc Milk Producers Cooperative, and Milwaukee Cooperative Milk Producers:

Proposal No. 9

Amend paragraph (d)(1) of the "Producer Milk" definition to allow milk diverted to a nonpool plant before the producer's milk is delivered to a pool plant to be considered producer milk and allow the producer's milk to retain its association with the market for any months during which the handler fails to pool the producer's milk under any order to read as follows:

§ 1032.13 Producer Milk.

* * * * *

(d) * * *

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer has been physically received as producer milk at a pool plant during the first month the dairy farmer is a producer and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval or as a result of the handler of the dairy farmer's milk failing to pool the milk under any order), the dairy farmer's milk shall not be eligible for diversion unless milk of the dairy farmer has been physically received as producer milk at a pool plant.

Proposed by: Dairy Programs, Agricultural Marketing Service:

Proposal No. 10

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of the Central Marketing Area or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Programs, Agricultural Marketing Service (Washington office) and the Office of the Market Administrator of the Central Milk Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: October 17, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 01–26593 Filed 10–22–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products and Commercial and Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The Department of Energy (DOE or Department) will hold a public meeting to explore potential new products to be included in the existing appliance standards program and/or voluntary programs. This meeting will continue the September 11, 2001, public meeting where DOE discussed the priorities of the existing appliance standards program, possible expansion of the scope of the program, and criteria and the process for applying the criteria in considering new products for either standards or voluntary programs. In addition, the Department is interested in receiving comments on the preliminary data sheets for potential new products and recommendations as to whether or not these products should be further considered for a standard and/or for a voluntary program such as Energy Star.

DATES: The public meeting will be held on Tuesday, November 6, 2001, from 9:00 a.m. to 4:00 p.m. Written comments should be submitted by November 20, 2001.

ADDRESSES: The meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones at (202) 586–2945 so that the necessary procedures can be completed.)

A list identifying the proposed priority for standards rulemakings that are currently mandated by statute, a list of possible new products that have been identified by various stakeholders, comments on the August 28, 2001, **Federal Register** notice of the September 11, 2001, public meeting, including the transcript and presentation material from the September 11, 2001, public meeting, and preliminary data sheets for potential new products can be found on the DOE website at: http://www.eren.doe.gov/buildings/codes_standards/index.htm

Written comments are welcome, especially following the meeting. Please submit written comments to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–2945; Telefax: (202) 586–4617. You should label comments both on the envelope and on the documents and submit them for DOE receipt by November 20, 2001. Please submit one signed copy and a computer diskette (WordPerfect 8) or 10 copies (no telefacsimiles). The Department will also accept electronically-mailed comments, e-mailed to Brenda.Edwards-Jones@ee.doe.gov, but you must supplement such comments with a signed hard copy.

Copies of the agenda and attendees of the public meeting, the public comments received, the list of current rulemakings and possible new products, and this notice may be read at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9611, email: *michael.raymond@ee.doe.gov* pertaining to priority setting for current rulemakings, and Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0371, email: *bryan.berringer@ee.doe.gov* pertaining to possible new products, or Francine Pinto, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–7432, email: *francine.pinto@hq.doe.gov*

SUPPLEMENTARY INFORMATION: On May 2001, the National Energy Policy Development Group (NEPD Group) reported a National Energy Policy to the President. One of the recommendations called for the President to direct the Secretary of Energy to take steps to improve the energy efficiency of appliances. The recommendation included supporting the existing appliance standards program, setting higher standards where technologically feasible and economically justified, and expanding the scope of the program to include additional consumer products and commercial and industrial equipment where technically feasible and economically justified.

The **Federal Register** notice dated August 28, 2001 (66 FR 45188), announced the September 11, 2001, public meeting and requested written comments be submitted by October 11, 2001. The September 11 public was to discuss the priorities of the existing appliance standards program and any possible expansion of the scope of the program to include additional consumer products and commercial and industrial equipment. However, as a result of the tragic events of September 11, 2001, the public meeting was cut short. At the September 11 public meeting, the interested parties discussed the criteria DOE should consider in deciding whether to expand the scope of the program, including the factors, data and analysis methods that might be used by DOE in its decision making process. Following the September 11 public meeting, DOE received written comments supporting adding a new factor, impact on innovation to the existing priority setting criteria.

DOE developed the list of possible new commercial and residential products from various independent sources which was presented at the September 11 public meeting. DOE has incorporated an additional criterion suggested at the September 11 public meeting, and developed preliminary data sheets for potential new products. This list as well as a listing of current rulemakings and the preliminary data sheets can be found on the following web-site: http://www.eren.doe.gov/buildings/codes_standards/index.htm

The November 6, 2001, public meeting will be to: continue the discussion of the possible expansion of the scope of the program, and review the comments received in response to the August 28, 2001, notice of public meeting; discuss how these comments should be incorporated into the process; review the preliminary data sheets developed; and discuss how these products should be considered for prioritization. The outcome of the meeting would be to screen out products which do not merit further consideration for either a standard and/or voluntary program.

The meeting will be conducted in an informal, conference style. There will not be any discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by the U.S. antitrust laws.

After the meeting and expiration of the period for submitting written statements, the Department will begin consideration of the comments received.

If you would like to participate in the meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information regarding the energy conservation program for consumer products and commercial and industrial equipment, please contact Ms. Brenda Edwards-Jones at (202) 586–2945.

Issued in Washington, DC, on October 17, 2001.

David K. Garman,

Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 01–26672 Filed 10–22–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142499–01]

RIN 1545–BA24

Catch-Up Contributions for Individuals Age 50 or Over

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would provide guidance concerning the requirements for retirement plans providing catch-up contributions to individuals age 50 or older pursuant to the provisions of section 414(v). These proposed regulations would affect section 401(k) plans, section 408(p) SIMPLE IRA plans, section 408(k) simplified employee pensions, section 403(b) tax-sheltered annuity contracts, and section 457 eligible governmental plans, and would affect participants eligible to make elective deferrals under these plans or contracts. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for February 21, 2002, must be received by January 31, 2002.

ADDRESSES: Send submissions to: CC:IT&A:RU (REG–142499–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:IT&A:RU (REG–142499–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/reglist.html*. The public hearing will be held in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111

Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, R. Lisa Mojiri-Azad or John T. Ricotta at (202) 622–6060 (not a toll-free number); concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, Donna Poindexter, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations under section 414(v) of the Internal Revenue Code of 1986 (Code). Section 414(v) was added by section 631 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (Public Law 107–16), enacted on June 7, 2001. Under section 414(v), an individual age 50 or over is permitted to make additional elective deferrals (up to a dollar limit provided in that section) under a plan that otherwise permits elective deferrals if certain requirements provided under that section are satisfied. Section 414(v) also provides that a plan will not violate any provision of the Code by permitting these additional elective deferrals to be made.

Explanation of Provisions

These proposed regulations would implement new section 414(v) by providing that an employer plan is not treated as violating any provision of the Code solely because the plan permits a catch-up eligible participant (as defined in these proposed regulations) to make catch-up contributions. Catch-up contributions generally are elective deferrals made by a catch-up eligible participant that exceed an otherwise applicable limit and that are treated as catch-up contributions under the plan, but only to the extent they do not exceed the maximum amount of catch-up contributions permitted for the taxable year. An employer is not required to provide for catch-up contributions in any of its plans, even if the plans provide for elective deferrals. If, however, any plan of an employer provides for catch-up contributions, all plans of the employer that provide elective deferrals must comply with the universal availability requirements described below.

A. Eligibility for Catch-up Contributions

Under these proposed regulations, a participant is a catch-up eligible participant, and thus is permitted to make catch-up contributions, if the participant is otherwise eligible to make elective deferrals under the plan and is age 50 or older. For purposes of this rule, a participant who is projected to attain age 50 before the end of a calendar year is deemed to be age 50 as of January 1 of that year. The effect of this rule is that all participants who will attain age 50 during a calendar year are treated the same beginning January 1 of that year, without regard to whether the participant survives to his or her 50th birthday or terminates employment during the year and without regard to the employer's choice of plan year.

A catch-up eligible participant can make catch-up contributions under a section 401(k) plan, a SIMPLE IRA plan as defined in section 408(p), a simplified employee pension as defined in section 408(k) (SEP), a plan or contract that satisfies the requirements of section 403(b), or a section 457 eligible governmental plan, as long as the participant can otherwise make elective deferrals under the plan or contract. For this purpose, elective deferrals include not only elective deferrals defined in section 402(g)(3), but also any contribution to a section 457 eligible governmental plan.

B. Determination of Catch-up Contribution

In describing section 631 of EGTRRA, the Conference report states that "the otherwise applicable dollar limit on elective deferrals under a section 401(k) plan, section 403(b) annuity, SEP, or SIMPLE, or deferrals under a section 457 plan is increased for individuals who have attained age 50 by the end of the year." Conf. Rep. No. 107–84, at 236 (2001). The legislative history to section 631 of EGTRRA indicates that the intent of Congress in enacting section 414(v) was to allow a catch-up eligible participant to make additional elective deferrals over and above any otherwise applicable limit, up to the catch-up contribution limit for the taxable year. The proposed regulations would provide that elective deferrals made by a catch-up eligible participant are treated as catch-up contributions if they exceed any otherwise applicable limit, to the extent they do not exceed the maximum dollar amount of catch-up contributions permitted under section 414(v). However, the regulations would not require that a participant have made elective deferrals in excess of an otherwise applicable limit in order to be a catch-up eligible participant. A plan providing for $1,000 of catch-up contributions in 2002 could allow a participant who is over age 50 to make elective deferrals in an amount projected to exceed the otherwise applicable limit by $1,000 at any time during 2002.

Under the proposed regulations, catch-up contributions would be determined by reference to three types of limits: statutory limits, employer-provided limits, and the actual deferral percentage (ADP) limit. A statutory limit is a limit contained in the Code on elective deferrals or annual additions permitted to be made under the plan or contract (without regard to section 414(v)). Statutory limits include the requirement under section 401(a)(30) that the plan limit all elective deferrals within a calendar year under the plan and other plans (or contracts) maintained by members of a controlled group to the amount permitted under section 402(g).

An employer-provided limit is a limit on the elective deferrals an employee can make under the plan (without regard to section 414(v)) that is contained in the terms of the plan, but that is not a statutory limit. For example, a limit on elective deferrals of highly compensated employees to 10% of pay is an employer-provided limit. The condition that a employer-provided limit be contained in the terms of the plan is intended to correspond with the requirements of § 1.401–1 that a qualified plan have a definite written program and provide for a definite predetermined formula for allocating contributions made to the plan.

For a section 401(k) plan that would fail the ADP test of section 401(k)(3) if it did not correct under section 401(k)(8), the ADP limit is the highest dollar amount of elective deferrals that may be retained in the plan by a highly compensated employee after the application of section 401(k)(8)(C) (without regard to section 414(v)). For example, if after ADP testing, elective deferrals by highly compensated employees in excess of $8,000 would be required to be distributed or recharacterized as employee contributions under the statutory correction set forth under section 401(k)(8)(C), then the ADP limit is $8,000. Similar rules apply in the case of a SEP.

The amount of elective deferrals in excess of an applicable limit is generally determined as of the end of a plan year by comparing the total elective deferrals for the plan year with the applicable limit for the plan year. For example, if a plan limits elective deferrals to 10% of compensation, then whether the participant has elective deferrals in excess of 10% of compensation is determined at the end of the plan year. Similarly, elective deferrals in excess of the ADP limit are determined as of the end of the plan year. For a limit that is determined on the basis of a year other than a plan year (such as the calendar year limit on elective deferrals under section 401(a)(30)), the determination of whether elective deferrals are in excess of the applicable limit is made on the basis of such other year.

If a plan provides for separate employer-provided limits on separate portions of compensation during the plan year, the determination of the amount of elective deferrals in excess of the employer-provided limit is still made on an annual basis, with the applicable limit for the year equal to the sum of the dollar limits that apply to the separate portions of compensation. This situation may occur, for example, when the plan sets a deferral percentage limit for each payroll period.

If the plan limits elective deferrals for separate portions of the plan year, then, solely for purposes of determining the amount that is in excess of an employer-provided limit, the plan may provide, as an alternative rule, that the applicable limit for the plan year is the product of the employee's plan year compensation and the time-weighted average of the deferral percentage limits. For example, if a plan using this time-weighted average limits deferrals to 8 percent of compensation during the first half of the year and 10 percent of compensation for the second half of the year, the applicable limit will be 9 percent of each employee's plan year compensation.

Under the proposed regulations, elective deferrals in excess of an applicable limit would be treated as catch-up contributions only to the extent that such elective deferrals do not exceed the catch-up contribution limit for the taxable year reduced by elective deferrals previously treated as catch-up contributions for the taxable year. The catch-up contribution limit for a taxable year is generally the applicable dollar catch-up limit for such taxable year, except that an elective deferral will not be treated as a catch-up contribution to the extent that the elective deferral, when added to all other elective deferrals for the taxable year under all plans of the employer, exceeds the participant's compensation (determined in accordance with section 415(c)(3)).

These proposed regulations would include a timing rule for purposes of determining when elective deferrals in excess of an applicable limit are treated as catch-up contributions. This rule is necessary because the maximum amount of catch-up contributions is based on a participant's taxable year, but the determination of whether an elective deferral is in excess of an applicable limit is determined on the basis of a taxable year, plan year, or limitation year, depending on the underlying limit. Under the proposed regulations, whether these elective deferrals in excess of an applicable limit can be treated as catch-up contributions would be determined as of the last day of the relevant year, except that if the limit is determined on a taxable or calendar year basis, then whether elective deferrals in excess of the limit can be treated as catch-up contributions would be determined at the time they are deferred. This timing rule is most significant for a plan with a plan year that is not the calendar year. For example, in a plan with a plan year ending on June 30, 2005, elective deferrals in excess of the employer-provided limit or the ADP limit for the plan year ending June 30, 2005, would be treated as catch-up contributions as of the last day of the plan year, up to the catch-up contribution limit for 2005. Any amounts deferred after June 30, 2005, that are in excess of the section 401(a)(30) limit for the 2005 calendar year would also be treated as catch-up contributions at the time they are deferred, up to the catch-up contribution limit for 2005 reduced by elective deferrals treated as catch-up contributions as of June 30, 2005.

C. Treatment of Catch-up Contributions

If an elective deferral is treated as a catch-up contribution, it is not subject to otherwise applicable limits under the plan and the plan will not be treated as failing otherwise applicable nondiscrimination requirements because of the making of catch-up contributions. The proposed regulations would provide guidance on how catch-up contributions under the plan are taken into account for purposes of these various requirements under the Code. Under the proposed regulations, catch-up contributions would not be taken into account in applying the limits of section 401(a)(30), 401(k)(11), 402(h), 402A(c)(2), 403(b), 404(h), 408(k), 408(p), 415, or 457 to other contributions or benefits under the plan offering catch-up contributions or under any other plan of the employer.

For purposes of ADP testing, the proposed regulations would provide that any elective deferral for the plan year that is treated as a catch-up contribution because it is in excess of a statutory limit or an employer-provided limit is disregarded for purposes of calculating the participant's actual deferral ratio (i.e., catch-up contributions are subtracted from the participant's elective deferrals for the plan year prior to determining the participant's actual deferral ratio). This subtraction applies without regard to whether the catch-up eligible participant is a highly compensated employee or a nonhighly compensated employee. If, after running the ADP test, a plan needs to take corrective action under section 401(k)(8), the plan must determine the amount of elective deferrals that are catch-up contributions because they are in excess of the ADP limit. The elective deferrals that are treated as catch-up contributions must be retained by the plan. The plan would not be treated as failing section 401(k)(8) by reason of this retention of catch-up contributions. Excess contributions treated as catch-up contributions would nevertheless be treated as excess contributions for purposes of section 411(a)(3)(G). Therefore, if the plan does not provide for matching contributions on catch-up contributions, any matching contributions related to excess contributions treated as catch-up contributions can be forfeited. The approach under the proposed regulations would exclude those catch-up contributions that can be identified before ADP testing, and allow the plan to treat elective deferrals as catch-up contributions for those participants who would be limited under the plan (because the plan otherwise would be required to distribute some of their elective deferrals), while minimizing changes to current plan administration.

Catch-up contributions with respect to the current plan year are not taken into account for purposes of section 416 or 410(b). However, catch-up contributions made to the plan in prior years are taken into account in determining whether a plan is top-heavy under section 416, and for purposes of average benefit percentage testing to the extent prior years' contributions are taken into account (i.e., if accrued to date calculations are used).

A plan does not fail the requirements of section 401(a)(4) merely because it permits only catch-up eligible participants to make catch-up contributions. Similarly, if a plan applies a single matching formula to elective deferrals whether or not they are catch-up contributions, the matching formula as applied to catch-up eligible participants is not treated as a separate benefit, right, or feature under § 1.401(a)(4)–4 from the matching formula as applied to the other participants. However, the matching contributions under the matching formula must satisfy the actual contribution percentage test under section 401(m)(2) taking into account all matching contributions, including matching contributions on catch-up contributions.

D. Universal Availability

Under the proposed regulations, a plan that offers catch-up contributions would satisfy the requirements of section 401(a)(4) only if all catch-up eligible participants are provided with the effective opportunity to make the same dollar amount of catch-up contributions. Therefore, if an employer provides for catch-up contributions under a section 401(k) plan, all other employer plans in the controlled group that provide for elective deferrals, including plans not subject to section 401(a)(4), must provide catch-up eligible participants with the same effective opportunity to make catch-up contributions. This universal availability requirement applies solely with respect to catch-up eligible participants. Because the definition of catch-up eligible participants requires that the participant be eligible to make elective deferrals under a plan without regard to section 414(v), the universal availability requirement will not require plans that do not otherwise provide for elective deferrals to provide for catch-up contributions.

In order to provide catch-up eligible participants with an effective opportunity to make catch-up contributions, the plan would have to permit each catch-up eligible participant to make sufficient elective deferrals during the year so that the participant has the opportunity to make elective deferrals up to the otherwise applicable limit plus the catch-up contribution limit. An effective opportunity could be provided in several different ways. For example, a plan that limits elective deferrals on a payroll-by-payroll basis might also provide participants with an effective opportunity to make catch-up. contributions that is administered on a payroll-by-payroll basis (i.e., by allowing catch-up eligible participants to increase their deferrals above the otherwise applicable limit by a pro-rata portion of the catch-up limit for the year). However, as discussed above, whether these elective deferrals are treated as catch-up contributions would not be determined until the end of the year.

A plan would not fail the universal availability requirement solely because an employer-provided limit did not apply to all employees or different employer-provided limits apply to different groups of employees. As under current law, a plan could provide for different employer-provided limits for different groups of employees, as long as each limit satisfies the nondiscriminatory availability requirements of § 1.401(a)(4)–4 for benefits, rights, and features. Thus, for example, a plan could provide for an employer-provided limit that applies to highly compensated employees, even though no employer-provided limit applies to nonhighly compensated employees. However, a plan is not permitted to provide lower employer-provided limits for catch-up eligible participants.

The proposed regulations would provide several exceptions to this universal availability requirement. First, the proposed regulations would provide for coordination between catch-up contributions under section 414(v) and the provisions of section 457(b)(3) in accordance with section 414(v)(6)(C). The proposed regulations would also provide transition rules for collectively bargained employees and newly-acquired plans.

E. Participants in Multiple Plans

As discussed in Section B above, the intent of section 414(v) is to permit a catch-up eligible participant to make elective deferrals in an amount equal to the catch-up contribution limit for the year in addition to the amount of elective deferrals that the participant would otherwise have been allowed to defer under the plan or plans in which the catch-up eligible participant participated. Many of the statutory limits that would otherwise limit the participant's elective deferrals are applied on an aggregated basis, for example, across all plans within a controlled group. Accordingly, the proposed regulations would provide that, for purposes of determining whether elective deferrals are in excess of a statutory limit, all elective deferrals in excess of the statutory limit are aggregated in the same manner as the underlying limit and the aggregate amount of elective deferrals treated as catch-up contributions because they exceed the statutory limit must not exceed the applicable dollar catch-up limit.

For example, compliance with section 401(a)(30) is determined based on elective deferrals under all section 401(k) plans and all section 403(b) contracts sponsored by the employer. Therefore, all section 401(k) plans and section 403(b) contracts in the controlled group of the employer would be aggregated for purposes of determining the total amount of elective deferrals in excess of the section 401(a)(30) limit. The amount of elective deferrals treated as catch-up contributions by reason of exceeding the section 401(a)(30) limit under the aggregated plans or contracts must not exceed the dollar amount of the catch-up limit for the taxable year.

In calculating the actual deferral ratio (ADR) (as defined in § 1.401(k)–1(g)) for a highly compensated employee who participates in more than one section 401(k) plan of the employer during the year, all section 401(k) plans are treated as one section 401(k) plan. Consistent with this approach, if a highly compensated employee participates in more than one section 401(k) plan of an employer, in determining the elective deferrals in excess of an employer-provided limit, the proposed regulations would take into account the elective deferrals and employer-provided limits under all section 401(k) plans in which the employee participates. In such a case, the proposed regulations would provide that in determining whether an employee's elective deferrals exceed an employer-provided limit, the applicable limit for the plan year is the sum of the dollar amounts of the limits under the separate plans and the employee's elective deferrals under all these plans are combined to determine if that aggregate employer-provided limit is exceeded.

When the elective deferrals in excess of a statutory or employer-provided limit would be determined based on more than one plan, the aggregate amount of elective deferrals in excess of that limit made under all section 401(k) plans of the employer in which a catch-up eligible participant who is a highly compensated employee participates would be treated as elective deferrals in excess of an applicable limit under each of those section 401(k) plans. In the case of a highly compensated employee, all elective deferrals that exceed a statutory or employer-provided limit and are treated as catch-up contributions under the section 401(k) plans of the employer in which the catch-up eligible participant participates are subtracted from the participant's elective deferrals for purposes of determining the participant's ADR. However, if any of the section 401(k) plans corrects through distribution of excess contributions under section 401(k)(8) in order to comply with section 401(k)(3), only the catch-up contributions made under that plan are permitted to be subtracted from elective deferrals for purposes of this correction.

When the elective deferrals in excess of a statutory or employer-provided limit are determined on an aggregated basis, it must be determined under which plan the elective deferrals in excess of the limit were made. The plan under which the elective deferrals in excess of the limit were made may be determined in any manner that is not inconsistent with the manner in which such amounts were actually deferred under the plans. For example, if a catch-up eligible participant participates in a section 401(k) plan only during the first 6 months of the year and during the second 6 months of the year, while participating in a section 403(b) contract, the participant's contributions reach and exceed the section 401(a)(30) limit for the year, then all elective deferrals in excess of the section 401(a)(30) limit for the year could be treated as made to the section 403(b) contract.

F. Excludability of Catch-up Contributions

Catch-up contributions are generally not treated as exceeding the applicable dollar amount of section 402(g)(1). The proposed regulations would also provide that a catch-up eligible participant who participates in multiple plans may treat an elective deferral as a catch-up contribution (up to the maximum amount of catch-up contributions permitted for the taxable year) because it exceeds the catch-up eligible participant's section 402(g) limit for the taxable year. This rule would allow a catch-up eligible participant who participates in plans of two or more employers an exclusion from gross income for elective deferrals that exceed the section 402(g) limit, even though the elective deferrals do not exceed an applicable limit for either employer's plan. The treatment by an individual of such elective deferrals as catch-up contributions will not have any impact on either employer's plan. This treatment is parallel to the treatment of excess deferrals for an individual under age 50 who exceeds the section 402(g) limit in the plans of two unrelated employers. Accordingly, the proposed regulations would not provide for the ADP test to be rerun to disregard elective deferrals that an individual treats as catch-up contributions because they exceed the section 402(g) limit. However, the total amount of elective deferrals in excess of the applicable dollar limit in section 402(g)(1)(B) that are not includible in income because they are treated as catch-up contributions cannot exceed that limit by more than the catch-up contribution limit for the taxable year.

Proposed Effective Date

The regulations are proposed to apply to contributions in taxable years beginning on or after January 1, 2002. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. In addition to the other requests for comments set forth in this document, the IRS and Treasury also request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 21, 2002, at 10 a.m. in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 31, 2002.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are R. Lisa Mojiri-Azad and John T. Ricotta of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Paragraph 2. Section 1.414(v)–1 is added to read as follows:

§ 1.414(v)–1 Catch-up contributions.

(a) *Catch-up contributions*—(1) *General rule.* An applicable employer plan shall not be treated as failing to meet any requirement of the Internal Revenue Code solely because the plan permits a catch-up eligible participant to make catch-up contributions in accordance with section 414(v) and this section. With respect to an applicable employer plan, catch-up contributions are elective deferrals made by a catch-up eligible participant that exceed any of the applicable limits set forth in paragraph (b) of this section and that are treated under the applicable employer plan as catch-up contributions, but only to the extent they do not exceed the catch-up contribution limit described in paragraph (c) of this section (determined in accordance with the special rules for employers that maintain multiple applicable employer plans in paragraph (f) of this section, if applicable). The definitions in paragraphs (a)(2) through (5) of this section apply for purposes of this section.

(2) *Applicable employer plan.* The term applicable employer plan means a section 401(k) plan, a SIMPLE IRA plan

as defined in section 408(p), a simplified employee pension plan as defined in section 408(k) (SEP), a plan or contract that satisfies the requirements of section 403(b), or a section 457 eligible governmental plan.

(3) *Elective deferral.* The term elective deferral means an elective deferral within the meaning of section 402(g)(3) or any contribution to a section 457 eligible governmental plan.

(4) *Catch-up eligible participant*—(i) *General rule.* The term catch-up eligible participant means an employee who—

(A) Is eligible to make elective deferrals during the plan year under an applicable employer plan (without regard to section 414(v) or this section); and

(B) Is age 50 or older.

(ii) *Projection of age 50.* For purposes of paragraph (a)(4)(i)(B) of this section, a participant who is projected to attain age 50 before the end of a calendar year is deemed to be age 50 as of January 1 of such year.

(5) *Other definitions.* (i) The terms employer, employee, section 401(k) plan, and highly compensated employee have the meanings provided in § 1.410(b)–9.

(ii) The term section 457 eligible governmental plan means an eligible deferred compensation plan described in section 457(b) that is established and maintained by an eligible employer described in section 457(e)(1)(A).

(b) *Elective deferrals that exceed an applicable limit*—(1) *Applicable limits.* An applicable limit for purposes of determining catch-up contributions for a catch-up eligible participant is any of the following:

(i) *Statutory limit.* A statutory limit is a limit on elective deferrals or annual additions permitted to be made (without regard to section 414(v) and this section) with respect to an employee for a year provided in section 401(a)(30), 402(h), 403(b)(1)(E), 404(h), 408(k), 408(p), 415, or 457, as applicable.

(ii) *Employer-provided limit.* An employer-provided limit is any limit on the elective deferrals an employee is permitted to make (without regard to section 414(v) and this section) that is contained in the terms of the plan, but which is not required under the Internal Revenue Code. Thus, for example, a plan provision that limits highly compensated employees to a deferral percentage of 10% of compensation is an employer-provided limit that is an applicable limit with respect to the highly compensated employees.

(iii) *Actual deferral percentage (ADP) limit.* In the case of a section 401(k) plan that would fail the ADP test of section 401(k)(3) if it did not correct under section 401(k)(8), the ADP limit is the highest amount of elective deferrals that can be retained in the plan by a highly compensated employee under the rules of section 401(k)(8)(C). In the case of a SEP with a salary reduction arrangement (within the meaning of section 408(k)(6)) that would fail the requirements of section 408(k)(6)(A)(iii) if it did not correct in accordance with section 408(k)(6)(C), the ADP limit is the highest amount of elective deferrals that can be made by a highly compensated employee under the rules of section 408(k)(6).

(2) *Contributions in excess of applicable limit*—(i) *Plan year limits.* Except as provided in paragraph (b)(2)(ii) of this section, the amount of elective deferrals in excess of an applicable limit is determined as of the end of the plan year by comparing the total elective deferrals for the plan year with the applicable limit for the plan year. In the case of a plan that provides for separate employer-provided limits on elective deferrals for separate portions of plan compensation within the plan year, the applicable limit for the plan year is the sum of the dollar amounts of the limits for the separate portions. This plan provision may occur, for example, when the plan sets a deferral percentage limit for each payroll period. If the plan limits elective deferrals for separate portions of the plan year, then, solely for purposes of determining the amount that is in excess of an employer-provided limit, the plan may provide, as an alternative rule, that the applicable limit for the plan year is the product of the employee's plan year compensation and the time-weighted average of the deferral percentage limits. Thus, for example, if a plan that provides for use of a time-weighted average limits deferrals to 8 percent of compensation during the first half of the plan year and 10 percent of compensation for the second half of the plan year, the applicable limit is 9 percent of each employee's plan year compensation.

(ii) *Other year limit.* In the case of an applicable limit which is applied on the basis of a year other than the plan year (e.g., the calendar year limit on elective deferrals under section 401(a)(30)), the determination of whether elective deferrals are in excess of the applicable limit is made on the basis of such other year.

(c) *Catch-up contribution limit*—(1) *General rule.* Elective deferrals with respect to a catch-up eligible participant in excess of an applicable limit under paragraph (b) of this section are treated as catch-up contributions under this section as of a date within a taxable year only to the extent that such elective deferrals do not exceed the catch-up contribution limit described in this paragraph (c), reduced by elective deferrals previously treated as catch-up contributions for the taxable year, determined in accordance with paragraph (c)(3) of this section. The catch-up contribution limit for a taxable year is generally the applicable dollar catch-up limit for such taxable year, as set forth in paragraph (c)(2) of this section. However, an elective deferral is not treated as a catch-up contribution to the extent that the elective deferral, when added to all other elective deferrals for the taxable year under any applicable employer plan of the employer, exceeds the participant's compensation (determined in accordance with section 415(c)(3)) for the taxable year.

(2) *Applicable dollar catch-up limit*—(i) *In general.* The applicable dollar catch-up limit for an applicable employer plan, other than an applicable employer plan described in section 401(k)(11) or a SIMPLE IRA plan as defined in section 408(p), is determined under the following table:

For taxable years beginning in	Applicable dollar catch-up limit
2002	$1,000
2003	2,000
2004	3,000
2005	4,000
2006	5,000

(ii) *SIMPLE plan.* The applicable dollar catch-up limit for an applicable employer plan described in section 401(k)(11) or a SIMPLE IRA plan as defined in section 408(p) is determined under the following table:

For taxable years beginning in	Applicable dollar catch-up limit
2002	$500
2003	1,000
2004	1,500
2005	2,000
2006	2,500

(iii) *Cost of living adjustments.* For taxable years after 2006, the applicable dollar catch-up limit is the applicable dollar catch-up limit for 2006 described in paragraph (c)(2)(i) or (ii) of this section increased at the same time and in the same manner as adjustments under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase that is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(3) *Timing rules.* For purposes of determining the maximum amount of permitted catch-up contributions for a catch-up eligible participant during a taxable year, the determination of whether an elective deferral is a catch-up contribution is made as of the last day of the plan year (or in the case of section 415, as of the last day of the limitation year), except that, with respect to elective deferrals in excess of an applicable limit that is tested on the basis of the taxable year or calendar year (e.g., the section 401(a)(30) limit on elective deferrals), the determination of whether such elective deferrals are treated as catch-up contributions is made at the time they are deferred.

(d) *Treatment of catch-up contributions*—(1) *Contributions not taken into account for certain limits.* Catch-up contributions shall not be taken into account in applying the limits of section 401(a)(30), 401(k)(11), 402(h), 402A(c)(2), 403(b), 404(h), 408(k), 408(p), 415, or 457 to other contributions or benefits under an applicable employer plan or any other plan of the employer.

(2) *Contributions not taken into account for certain nondiscrimination tests*—(i) *Application of ADP test.* Elective deferrals that are treated as catch-up contributions with respect to a section 401(k) plan because they exceed a statutory or employer-provided limit described in paragraph (b)(1)(i) or (ii) of this section, respectively, are subtracted from the catch-up eligible participant's elective deferrals for the plan year for purposes of determining the actual deferral ratio (ADR) (as defined in § 1.401(k)–1(g)) of a catch-up eligible participant. Similarly, elective deferrals that are treated as catch-up contributions with respect to a SEP because they exceed a statutory or employer-provided limit described in paragraph (b)(1)(i) or (ii) of this section, respectively, are subtracted from the catch-up eligible participant's elective deferrals for the plan year for purposes of determining the deferral percentage under section 408(k)(6)(D) of a catch-up eligible participant.

(ii) *Adjustment of elective deferrals for correction purposes.* For purposes of the correction of excess contributions in accordance with section 401(k)(8)(C), elective deferrals under the plan treated as catch-up contributions for the plan year are subtracted from the catch-up eligible participant's elective deferrals under the plan for the plan year.

(iii) *Excess contributions treated as catch-up contributions.* A section 401(k) plan that satisfies the ADP test of section 401(k)(3) through correction under section 401(k)(8) must retain any elective deferrals that are treated as catch-up contributions pursuant to paragraph (c) of this section because they exceed the ADP limit in paragraph (b)(1)(iii) of this section. In addition, a section 401(k) plan is not treated as failing to satisfy section 401(k)(8) merely because elective deferrals described in the preceding sentence are not distributed or recharacterized as employee contributions. Similarly, a SEP is not treated as failing to satisfy section 408(k)(6)(A)(iii) merely because catch-up contributions are not treated as excess contributions with respect to a catch-up eligible participant under the rules of section 408(k)(6)(C). Notwithstanding the fact that elective deferrals described in this paragraph (d)(2)(iii) are not distributed, such elective deferrals are still considered to be excess contributions under section 401(k)(8), and accordingly, matching contributions with respect to such elective deferrals may be forfeited under the rules of section 411(a)(3)(G).

(iv) *Application for top-heavy.* Catch-up contributions with respect to the current plan year are not taken into account for purposes of section 416. Thus, if the only contributions made for a plan year for key employees are catch-up contributions, the applicable percentage under section 416(c)(2) is 0%, and no top-heavy minimum contribution under section 416 is required for the year. However, catch-up contributions for prior years are taken into account for purposes of section 416. Thus, catch-up contributions for prior years are included in the account balances that are used in determining whether the plan is top-heavy under section 416(g).

(v) *Application for section 410(b).* Catch-up contributions with respect to the current plan year are not taken into account for purposes of section 410(b). Thus, catch-up contributions are not taken into account in determining the average benefit percentage under § 1.410(b)–5 for the year if benefit percentages are determined based on current year contributions. However, catch-up contributions for prior years are taken into account for purposes of section 410(b). Thus, catch-up contributions for prior years would be included in the account balances that are used in determining the average benefit percentage if allocations for prior years are taken into account.

(3) *Availability of catch-up contributions.* An applicable employer plan does not violate § 1.401(a)(4)–4 merely because the group of employees for whom catch-up contributions are currently available (i.e., the catch-up eligible participants) is not a group of employees that would satisfy section 410(b) (without regard to § 1.410(b)–5). In addition, a catch-up eligible participant is not treated as having a right to a different rate of allocation of matching contributions merely because an otherwise nondiscriminatory schedule of matching rates is applied to elective deferrals that include catch-up contributions. The rules in this paragraph (d)(3) also apply for purposes of satisfying the requirements of section 403(b)(12).

(e) *Universal availability requirement*—(1) *General rule.* An applicable employer plan that offers catch-up contributions and that is otherwise subject to section 401(a)(4) (including a plan that is subject to section 401(a)(4) pursuant to section 403(b)(12)) will not satisfy the requirements of section 401(a)(4) unless all catch-up eligible participants who participate under any applicable employer plan maintained by the employer are provided with the effective opportunity to make the same dollar amount of catch-up contributions. A plan does not fail to satisfy this effective opportunity requirement merely because the plan allows participants to defer an amount equal to a specified percentage of compensation for each payroll period and for each payroll period permits each catch-up eligible participant to defer a pro-rata share of the applicable dollar catch-up limit in addition to that amount. A plan does not fail the universal availability requirement of this paragraph (e) solely because an employer-provided limit does not apply to all employees or different limits apply to different groups of employees under paragraph (b)(2)(i) of this section. However, a plan may not provide lower employer-provided limits for catch-up eligible participants.

(2) *Exception for section 457 eligible governmental plans.* An applicable employer plan does not fail to comply with the universal availability requirement of this paragraph (e) merely because another applicable employer plan that is a section 457 eligible governmental plan does not provide for catch-up contributions to the extent set forth in section 414(v)(6)(C).

(3) *Exception for newly acquired plans.* An applicable employer plan does not fail to comply with the universal availability requirement of this paragraph (e) merely because another applicable employer plan does not provide for catch-up contributions, if—

(i) The other applicable employer plan becomes maintained by the employer by reason of a merger,

acquisition or similar transaction described in § 1.410(b)–2(f); and

(ii) The other applicable employer plan is amended to provide for catch-up contributions as soon as practicable, but no later than by the end of the period described in section 410(b)(6)(C).

(f) *Special rules for an employer that sponsors multiple plans*—(1) *General rule.* If elective deferrals under more than one applicable employer plan of an employer are aggregated for purposes of applying a statutory limit under paragraph (b)(1)(i) of this section, then the aggregate elective deferrals treated as catch-up contributions by reason of exceeding that statutory limit under all such applicable employer plans must not exceed the applicable dollar catch-up limit for the taxable year. For example, since compliance with section 401(a)(30) is determined based on elective deferrals under section 401(k) plans and section 403(b) contracts sponsored by the employer, the total amount of elective deferrals under all section 401(k) plans and section 403(b) contracts of the employer treated as catch-up contributions by reason of exceeding the section 401(a)(30) limit for a calendar year under the aggregated plans must not exceed the applicable dollar catch-up limit for such taxable year.

(2) *Highly compensated employee in more that one section 401(k) plan.* If a highly compensated employee is a participant in more than one section 401(k) plan of an employer, in determining whether the employee's elective deferrals exceed an employer-provided limit under paragraph (b)(1)(ii) of this section, the employer-provided limit for the plan year is the sum of the dollar amounts of the limits under the separate plans for that employee and the employee's elective deferrals under all section 401(k) plans of the employer are combined to determine if the employer-provided limit is exceeded.

(3) *Allocation rules.* When the amount of elective deferrals in excess of an applicable limit under paragraph (b)(1) of this section is determined under the aggregation rules of paragraph (f)(1) or (f)(2) of this section, the aggregate amount of the elective deferrals in excess of that applicable limit made under all section 401(k) plans that are aggregated for purposes of determining a highly compensated employee's ADR are treated as elective deferrals in excess of an applicable limit for purposes of applying the catch-up contribution limit under paragraph (c)(1) of this section with respect to each of these section 401(k) plans. However, the catch-up contributions are subtracted from elective deferrals for purposes of paragraph (d)(2)(ii) of this section only under the applicable employer plan under which the catch-up contributions are made. The applicable employer plan under which the elective deferrals in excess of an applicable limit are made for purposes of this paragraph (f)(3) may be determined in any manner that is not inconsistent with the manner in which such amounts were actually deferred under the plans.

(g) *Application of section 402(g)*—(1) *Exclusion of catch-up contributions.* In determining the amount of elective deferrals that are includable in gross income under section 402(g), except as provided in paragraph (g)(2) of this section, catch-up contributions are not treated as exceeding the applicable dollar amount of section 402(g)(1). For purposes of this paragraph (g), a catch-up eligible participant who makes elective deferrals under applicable employer plans of two or more employers that exceed the applicable dollar amount under section 402(g)(1) may treat the elective deferrals in excess of that applicable dollar amount as a catch-up contribution to the extent permitted in paragraph (g)(2) of this section, even though the elective deferrals do not exceed an applicable limit under either plan. Therefore, for a catch-up eligible participant who makes elective deferrals under applicable employer plans of two or more employers that exceed the applicable dollar amount under section 402(g)(1), the elective deferrals in excess of that applicable dollar amount are excludable from gross income as catch-up contributions to the extent permitted in paragraph (g)(2) of this section. Whether an elective deferral is treated as a catch-up contribution by an applicable employer plan is determined under paragraph (c) of this section and without regard to whether the employee treats an elective deferral as a catch-up contribution under this paragraph (g).

(2) *Maximum excludable amount.* If a catch-up eligible participant participates in two or more applicable employer plans during a taxable year, the total amount of elective deferrals under all plans that are not includable in gross income under this paragraph (g) because they are catch-up contributions shall not exceed the applicable dollar catch-up limit under paragraph (c)(2)(i) of this section for the taxable year.

(h) *Coordination with other catch-up provisions*—(1) *Coordination with section 457(b)(3).* In the case of an applicable employer plan that is a section 457 eligible governmental plan, the catch-up contributions permitted under this section shall not apply to a catch-up eligible participant for any taxable year for which the additional contributions permitted under section 457(b)(3) applies to such participant. For additional guidance, see regulations under section 457.

(2) *Coordination with section 402(g)(7).* [Reserved].

(i) *Examples.* The following examples illustrate the application of this section. For purposes of these examples, the limit under section 401(a)(30) is $15,000 and the applicable dollar catch-up limit is $5,000 and, except as specifically provided, the plan year is the calendar year. In addition, it is assumed that the participant's elective deferrals under all plans of the employer do not exceed the participant's section 415(c)(3) compensation and that any correction pursuant to section 401(k)(8) is made through distribution of excess contributions. The examples are as follows:

Example 1. (i) Participant A is eligible to make elective deferrals under a section 401(k) plan, Plan P. Plan P does not limit elective deferrals except as necessary to comply with sections 401(a)(30) and 415. In 2006, Participant A is 55 years old. Plan P also provides that a catch-up eligible participant is permitted to defer amounts in excess of the section 401(a)(30) limit up to the applicable dollar catch-up limit for the year. Participant A defers $18,000 during 2006.

(ii) Participant A's elective deferrals in excess of the section 401(a)(30) limit ($3,000) do not exceed the applicable dollar catch-up limit for 2006 ($5,000). Under paragraph (a)(1) of this section, the $3,000 is a catch-up contribution and, pursuant to paragraph (d)(2)(i) of this section, it is not taken into account in determining Participant A's ADR for purposes of section 401(k)(3).

Example 2. (i) Participants B and C, who are highly compensated employees earning $120,000, are eligible to make elective deferrals under a section 401(k) plan, Plan Q. Plan Q limits elective deferrals as necessary to comply with section 401(a)(30) and 415, and also provides that no highly compensated employee may make an elective deferral at a rate that exceeds 10% of compensation. However, Plan Q also provides that a catch-up eligible participant is permitted to defer amounts in excess of 10% during the plan year up to the applicable dollar catch-up limit for the year. In 2006, Participants B and C are both 55 years old and, pursuant to the catch-up provision in Plan Q, both elect to defer 10% of compensation plus a pro-rata portion of the $5,000 applicable dollar catch-up limit for 2006. Participant B continues this election in effect for the entire year, for a total elective contribution for the year of $17,000. However, in July 2006, after deferring $8,500, Participant C discontinues making elective deferrals.

(ii) Once Participant B's elective deferrals for the year exceed the section 401(a)(30) limit ($15,000), subsequent elective deferrals are treated as catch-up contributions as they are deferred, provided that such elective deferrals do not exceed the catch-up contribution limit for the taxable year. Since the $2,000 in elective deferrals made after Participant B reaches the section 402(g) limit for the calendar year does not exceed the applicable dollar catch-up limit for 2006, the entire $2,000 is treated as a catch-up contribution.

(iii) As of the last day of the plan year, Participant B has exceeded the employer-provided limit of 10% (10% of $120,000 or $12,000 for Participant B) by an additional $3,000. Since the additional $3,000 in elective deferrals does not exceed the $5,000 applicable dollar catch-up limit for 2006, reduced by the $2,000 in elective deferrals previously treated as catch-up contributions, the entire $3,000 of elective deferrals is treated as a catch-up contribution.

(iv) In determining Participant B's ADR, the $5,000 of catch-up contributions are subtracted from Participant B's elective deferrals for the plan year under paragraph (d)(2)(i) of this section. Accordingly, Participant B's ADR is 10% ($12,000 / $120,000). In addition, for purposes of applying the rules of section 401(k)(8), Participant B is treated as having elective deferrals of $12,000.

(v) Participant C's elective deferrals for the year do not exceed an applicable limit for the plan year. Accordingly, Participant C's $8,500 of elective deferrals must be taken into account in determining Participant C's ADR for purposes of section 401(k)(3).

Example 3. (i) The facts are the same as in *Example 2*, except that Plan Q is amended to change the maximum permitted deferral percentage for highly compensated employees to 7%, effective for deferrals after April 1, 2006. Participant B, who has earned $ 40,000 in the first 3 months of the year and has been deferring at a rate of 10% of compensation plus a pro-rata portion of the $5,000 applicable dollar catch-up limit for 2006, reduces the 10% of pay deferral rate to 7% for the remaining 9 months of the year (while continuing to defer a pro-rata portion of the $5,000 applicable dollar catch-up limit for 2006). During those 9 months, Participant B earns $80,000. Thus, Participant B's total elective deferrals for the year are $14,600 ($4,000 for the first 3 months of the year plus $5,600 for the last 9 months of the year plus an additional $5,000 throughout the year).

(ii) The employer-provided limit for Participant B for the plan year is $9,600 ($4,000 for the first 3 months of the year, plus $5,600 for the last 9 months of the year). Accordingly, Participant B's elective deferrals for the year that are in excess of the employer-provided limit are $5,000 (the excess of $14,600 over $9,600), which does not exceed the applicable dollar catch-up limit of $5,000.

(iii) Alternatively, Plan Q may provide that the employer-provided limit is determined as the time-weighted average of the different deferral percentage limits over the course of the year. In this case, the time-weighted average limit is 7.75% for all participants, and the applicable limit for Participant B is 7.75% of $120,000, or $9,300. Accordingly, Participant B's elective deferrals for the year that are in excess of the employer-provided limit are $5,300 (the excess of $14,600 over $9,300). Since the amount of Participant B's elective deferrals in excess of the employer-provided limit ($5,300) exceeds the applicable dollar catch-up limit for the taxable year, only $5,000 of Participant B's elective deferrals may be treated as catch-up contributions. In determining Participant B's actual deferral ratio, the $5,000 of catch-up contributions are subtracted from Participant B's elective deferrals for the plan year under paragraph (d)(2)(i) of this section. Accordingly, Participant B's actual deferral ratio is 8% ($9,600 / $120,000). In addition, for purposes of applying the rules of section 401(k)(8), Participant B is treated as having elective deferrals of $9,600.

Example 4. (i) The facts are the same as in *Example 1*. In addition to Participant A, Participant D is a highly compensated employee who is eligible to make elective deferrals under Plan P. During 2006, Participant D, who is 60 years old, elects to defer $14,000.

(ii) The ADP test is run for Plan P (after excluding the $3,000 in catch-up contributions from Participant A's elective deferrals), but Plan P needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(B), the maximum deferrals which may be retained by any highly compensated employee in Plan P is $12,500.

(iii) Pursuant to paragraph (b)(1)(iii) of this section, the ADP limit under Plan P of $12,500 is an applicable limit. Accordingly, $1,500 of Participant D's elective deferrals exceed the applicable limit. Similarly, $2,500 of Participant A's elective deferrals (other than the $3,000 of elective deferrals treated as catch-up contributions because they exceed the section 401(a)(30) limit) exceed the applicable limit.

(iv) The $1,500 of Participant D's elective deferrals that exceed the applicable limit are less than the applicable dollar catch-up limit and are treated as catch-up contributions. Pursuant to paragraph (d)(2)(iii) of this section, Plan P must retain Participant D's $1,500 in elective deferrals and Plan P is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant D.

(v) The $2,500 of Participant A's elective deferrals that exceed the applicable limit are greater than the portion of the applicable dollar catch-up limit ($2,000) that remains after treating the $3,000 of elective deferrals in excess of the section 401(a)(30) limit as catch-up contributions. Accordingly, $2000 of Participant A's elective deferrals are treated as catch-up contributions. Pursuant to paragraph (d)(2)(iii) of this section, Plan P must retain Participant A's $2,000 in elective deferrals and Plan P is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant A. However, $500 of Participant A's elective deferrals can not be treated as catch-up contributions and must be distributed to Participant A in order to satisfy section 401(k)(8).

Example 5. (i) Participant E is a catch-up eligible employee under a section 401(k) plan, Plan R, with a plan year ending October 31, 2006. Plan R does not limit elective deferrals except as necessary to comply with section 401(a)(30) and section 415. Plan R permits all catch-up eligible participants to defer an additional amount equal to the applicable dollar catch-up limit for the year ($5,000) in excess of the section 401(a)(30) limit. Participant E did not exceed the section 401(a)(30) limit in 2005. Participant E made $3,200 of deferrals in the period November 1, 2005 through December 31, 2005 and an additional $16,000 of deferrals in the first 10 months of 2006, for a total of $19,200 in elective deferrals for the plan year.

(ii) Once Participant E's elective deferrals for the calendar year 2006 exceed $15,000, subsequent elective deferrals are treated as catch-up contributions at the time they are deferred, provided that such elective deferrals do not exceed the applicable dollar catch-up limit for the taxable year. Since the $1,000 in elective deferrals made after Participant E reaches the section 402(g) limit for the calendar year does not exceed the applicable dollar catch-up limit for 2006, the entire $1,000 is a catch-up contribution. Pursuant to paragraph (d)(2)(i) of this section, $1,000 is subtracted from Participant E's $19,200 in elective deferrals for the plan year ending October 31, 2006 in determining Participant E's ADR for that plan year.

(iii) The ADP test is run for Plan R (after excluding the $1,000 in elective deferrals in excess of the section 401(a)(30) limit), but Plan R needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(C), the maximum deferrals that may be retained by any highly compensated employee under Plan R for the plan year ending October 31, 2006 (the ADP limit) is $14,800.

(iv) Under paragraph (d)(2)(ii) of this section, elective deferrals that exceed the section 401(a)(30) limit are also subtracted from Participant E's elective deferrals under Plan R for purposes of applying the rules of 401(k)(8). Accordingly, for purposes of correcting the failed ADP test, Participant E is treated as having contributed $18,200 of elective deferrals in Plan R. The amount of elective deferrals that would have to be distributed to Participant E in order to satisfy section 401(k)(8)(C) is $3,400 ($18,200 minus $14,800), which is less than the excess of the applicable dollar catch-up limit ($5,000) over the elective deferrals previously treated as catch-up contributions under Plan R for the taxable year ($1,000). Under paragraph (d)(2)(iii) of this section, Plan R must retain Participant E's $3,400 in elective deferrals and is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant E.

(v) Even though Participant E's elective deferrals for the calendar year 2006 have exceeded the section 401(a)(30) limit, Participant E can continue to make elective deferrals during the last two months of the calendar year, since Participant E's catch-up contributions for the taxable year have not exceeded the applicable dollar catch-up limit

for the taxable year. However, the maximum amount of elective deferrals Participant E may make for the balance of the calendar year is $600 (the $5,000 applicable dollar catch-up limit for 2006, reduced by the $4,400 ($1,000 plus $3,400) of elective deferrals previously treated as catch-up contributions during the taxable year).

Example 6. (i) The facts are the same as in *Example 5*, except that Participant E exceeded the section 401(a)(30) limit for 2005 by $1,300 prior to October 31, 2005, and made $600 of elective deferrals in the period November 1, 2005, through December 31, 2005 (which were catch-up contributions for 2005). Thus, Participant E made $16,600 of elective deferrals for the plan year ending October 31, 2006.

(ii) Once Participant E's elective deferrals for the calendar year 2006 exceed $15,000, subsequent elective deferrals are treated as catch-up contributions as they are deferred, provided that such elective deferrals do not exceed the applicable dollar catch-up limit for the taxable year. Since the $1,000 in elective deferrals made after Participant E reaches the section 402(g) limit for calendar year 2006 does not exceed the applicable dollar catch-up limit for 2006, the entire $1,000 is a catch-up contribution. Pursuant to paragraph (d)(2)(i) of this section, $1,000 is subtracted from Participant E's elective deferrals in determining Participant E's actual deferral ratio for the plan year ending October 31, 2006. In addition, the $600 of catch-up contributions from the period November 1, 2005 to December 31, 2005 are subtracted from Participant E's elective deferrals in determining Participant E's ADR. Thus, the total elective deferrals taken into account in determining Participant E's ADR for the plan year ending October 31, 2006, is $15,000 ($16,600 in elective deferrals for the current plan year, less $1,600 in catch-up contributions).

(iii) The ADP test is run for Plan R (after excluding the $1,600 in elective deferrals in excess of the section 401(a)(30) limit), but Plan R needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(C), the maximum deferrals that may be retained by any highly compensated employee under Plan R (the ADP limit) is $14,800.

(iv) Under paragraph (d)(2)(ii) of this section, elective deferrals that exceed the section 401(a)(30) limit under Plan R are also subtracted from Participant E's elective deferrals under Plan R for purposes of applying the rules of 401(k)(8). Accordingly, for purposes of correcting the failed ADP test, Participant E is treated as having contributed $15,000 of elective deferrals in Plan R. The amount of elective deferrals that would have to be distributed to Participant E in order to satisfy section 401(k)(8)(C) is $200 ($15,000 minus $14,800), which is less than the excess of the applicable dollar catch-up limit ($5,000) over the elective deferrals previously treated as catch-up contributions under Plan R for the taxable year ($1,000). Under paragraph (d)(2)(iii) of this section, Plan R must retain Participant E's $200 in elective deferrals and is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant E.

(v) Even though Participant E's elective deferrals for calendar year 2006 have exceeded the section 401(a)(30) limit, Participant E can continue to make elective deferrals during the last two months of the calendar year, since Participant E's catch-up contributions for the taxable year 2006 have not exceeded the applicable dollar catch-up limit for the taxable year. However, the maximum amount of elective deferrals Participant E may make for the balance of the calendar year is $3,800 (the $5,000 applicable dollar catch-up limit for 2006, reduced by $1,200 ($1,000 plus $200) in elective deferrals previously treated as catch-up contributions during taxable year 2006).

Example 7. (i) Participant F, who is 58 years old, is a highly compensated employee who earns $100,000. Participant F participates in a section 401(k) plan, Plan S, for the first six months of the year and then transfers to another section 401(k) plan, Plan T, sponsored by the same employer, for the second six months of the year. Plan S limits highly compensated employees' elective deferrals to 6% of compensation for the period of participation, but permits catch-up eligible participants to defer amounts in excess of 6% during the plan year, up to the applicable dollar catch-up limit for the year. Plan T limits highly compensated employee's elective deferrals to 8% of compensation for the period of participation, but permits catch-up eligible participants to defer amounts in excess of 8% during the plan year, up to the applicable dollar catch-up limit for the year. Participant F, who earned $50,000 in the first six months of the year, defers $5,000 under Plan S. Participant F also deferred $5,000 under Plan T.

(ii) Under paragraph (f)(2) of this section, the employer-provided limit for Participant F is $7,000, the sum of the employer-provided limit for Plan S ($3,000) and the employer-provided limit for Plan T ($4,000). Participant F's elective deferrals for the year are $10,000. Therefore, the amount of Participant F's elective deferrals in excess of the employer-provided limit is $3,000. Under paragraph (f)(3) of this section, the $3,000 in excess of the employer-provided limit is treated as an elective deferral in excess of that limit under both Plans S and T for purposes of applying the catch-up contribution limit under paragraph (c)(1) of this section.

(iii) Since the amount of Participant F's elective deferrals in excess of the employer-provided limit ($3,000) does not exceed the applicable dollar catch-up limit for the taxable year, the entire $3,000 of Participant F's elective deferrals are treated as catch-up contributions. In determining Participant F's actual deferral ratio, the entire $3,000 of catch-up contributions is subtracted from Participant F's elective deferrals for the plan year under paragraph (d)(2)(i) of this section. Accordingly, Participant F's actual deferral ratio is 7% ($7,000/$100,000) for both Plans S and T.

(iv) In accordance with paragraph (f)(3) of this section, it is determined that $2,000 of the excess over the employer-provided limit was made under Plan S and $1,000 of the excess over the employer-provided limit was made under Plan T. This determination is not inconsistent with the manner in which the elective deferrals were actually made. Therefore, under paragraph (d)(2)(ii) of this section, for purposes of applying the rules of section 401(k)(8), Participant F is treated as having elective deferrals of $3,000 ($5,000–$2,000) in Plan S and $4,000 ($5,000–$1,000) in Plan T.

(v) If, after applying the ADP test of section 401(k)(3), Plan S or Plan T were to require correction under section 401(k)(8), the maximum amount of elective deferrals in excess of the ADP limit that could be treated as catch-up contributions for Participant F under the Plan could not exceed $2,000, the applicable dollar catch-up limit of $5,000, reduced by the $3,000 in excess of the employer-provided limit previously treated as catch-up contributions for the taxable year.

(j) *Effective date and transition rule*— (1) *Effective date.* Section 414(v) and this section apply to contributions in taxable years beginning on or after January 1, 2002.

(2) *Transition rule for collectively bargained employees.* An applicable employer plan will not fail to satisfy the requirements of paragraph (e) of this section merely because employees eligible to make elective deferrals who are included in a unit of employees covered by a collective bargaining agreement in effect on January 1, 2002, are not permitted to make catch-up contributions until the first plan year beginning after the termination of such agreement.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–26566 Filed 10–22–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[REG–143219–01]

RIN 1545–BA27

Gasoline Tax Claims Under Section 6416(a)(4)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document invites comments from the public on issues that the IRS may address in proposed regulations relating to claims for credits or refunds of the gasoline tax. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be received by January 22, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–143219–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–143219–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, the Regulations Unit, (202) 622–7180; concerning the proposals, Frank Boland, (202) 622–3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Under section 6416(b)(2), the person that paid the gasoline tax imposed by section 4081 to the government may receive a credit or refund of the amount of the tax if the gasoline is, by any person, exported, used or sold for use as supplies for vessels or aircraft, sold to a state or local government for its exclusive use, sold to a nonprofit educational organization for its exclusive use, or used or sold for use in the production of special fuels (exempt purposes).

Section 6102 of the Technical and Miscellaneous Revenue Act of 1988 (the 1988 Act) (Public Law 100–647, 102 Stat. 3342) added section 6416(a)(4) to the Internal Revenue Code. Under section 6416(a)(4)(A), a wholesale distributor (described in section 6416(a)(4)(B)) that buys gasoline on which the tax imposed by section 4081 has been paid and sells the gasoline to its ultimate purchaser for an exempt purpose is treated as the person (and the only person) that paid the tax to the government and thus is the person eligible to claim a credit or refund of that tax.

Section 6416(a)(4)(B), as added by the 1988 Act, provides that the term wholesale distributor includes any person that sells gasoline to producers, retailers, or to users that purchase in bulk quantities and accept delivery into bulk storage tanks. For this purpose, the term producer includes a refiner, blender, or wholesale distributor of gasoline, or a dealer selling gasoline exclusively to producers of gasoline. The term wholesale distributor does not include any person that is an importer, refiner, or blender of gasoline, or is a dealer selling gasoline exclusively to producers. Section 905 of the Taxpayer Relief Act of 1997 (Public Law 105–34, 111 Stat. 788) amended section 6416(a)(4)(B) of the Code by providing that the term wholesale distributor also includes any person that makes retail sales of gasoline at 10 or more retail motor fuel outlets.

Notice 89–29 (1989–1 C.B. 669) provides rules for implementing section 6416(a)(4), as added by the 1988 Act. These include rules that allow claims by the person that actually paid the tax to the government instead of claims by the wholesale distributor if (1) tax is not included in the price of the gasoline bought by the wholesale distributor or (2) the sale by the wholesale distributor is charged on an oil company credit card issued to an exempt person.

In response to questions that have arisen concerning the application of the rules in Notice 89–29, the IRS is considering proposing regulations under section 6416(a)(4) that, when finalized, would replace the guidance provided by Notice 89–29. The IRS invites comments from the public on issues that should be addressed in the regulations, including issues relating to refund claims by persons other than the wholesale distributor.

Paul Kugler,

Associate Chief Counsel (Passthroughs and Special Industries).

[FR Doc. 01–26571 Filed 10–22–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK18

Finality of Decisions

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the adjudication regulation concerning finality of the decisions made by the Department of Veterans Affairs (VA). The intended effect of this amendment is to present the existing regulation in "plain language".

DATES: Comments must be received on or before December 24, 2001.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC, 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK18". All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC, 20420, telephone (202) 273–7228. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: VA proposes to rewrite 38 CFR 3.104 in plain language. This regulation explains how a decision made by one VA field office affects other field offices as well as the VA Insurance Center. There is also a discussion of the circumstances under which VA may change a decision. The current regulation is located in subpart A of part 3. We propose to create new § 3.2120 to restate the current regulation. The new section would be located in subpart D, Universal Adjudication Rules that Apply to Benefit Claims Governed by part 3 of This Title.

Paragraph (a) of proposed new § 3.2120 informs claimants that when a Veterans Service Center makes a decision, the claimant is informed and given appeal rights. That decision is then binding on all other Veterans Service Centers. There are three exceptions to this general rule. The specific conditions under which a decision can be changed, based on the same evidence, are listed in paragraphs (a)(1) through (a)(3). Paragraphs (a)(1) and (a)(2) are restatements of the exceptions currently found in § 3.104(a). Paragraph (a)(3) incorporates new § 3.2600, Review of benefit claims decisions.

Proposed paragraph (b) of new § 3.2120 lists types of VA decisions that are made by both Veterans Service Centers and the VA Insurance Center. For clarity, we have added some examples of "domestic relations" issues. It explains that a decision by one Center is binding on the other Centers, as long as the facts of the case have not changed, and the instructions and criteria used to make the decision have not changed. The only exception is if VA determines the decision was based on a clear and unmistakable error, since VA will revise such decisions. This is a restatement of § 3.104(b).

This rulemaking reflects VA's goal of making government more responsive, accessible, and comprehensible to the public. The Plain Language Regulations Project was developed as a long-term comprehensive project to reorganize and rewrite in plain language the

adjudication regulations in part 3 of title 38, Code of Federal Regulations. This proposed rule is part of a series of proposed revisions to those regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act, Public Law 104–4, March 22, 1995, requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule does not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The catalog of Federal Domestic Assistance program numbers for this proposal are 64.100, 64.101, 64.104, 64.105, 64.109, 64.110, and 64.127.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: October 12, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.104 [Removed]

2. Section 3.104 is removed.

Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

3. The authority citation for part 3, subpart D, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

4. New § 3.2120 is added to read as follows:

§ 3.2120 When do VA benefit decisions become binding?

(a) When a claim is decided, and the Veterans Service Center sends the claimant written notification of that decision along with information about appeal rights, the decision is binding on all Veterans Service Centers and cannot be changed, based on the evidence in file at the time the Center notified the claimant, except:

(1) Through an appellate decision by the Board of Veterans' Appeals, the U.S. Court of Appeals for Veterans Claims, the U.S. Court of Appeals for the Federal Circuit, or the U.S. Supreme Court; or

(2) Under § 3.105, Revision of decisions; or

(3) Under § 3.2600, Review of benefit claims decisions.

(Authority: 38 U.S.C. 502, 511, 5104, 5109A)

(b) Types of decisions made by both Veterans Service Centers and the Insurance Center are listed in paragraphs (b)(1) through (b)(7) of this section. A decision of a Veterans Service Center or the Insurance Center on one of these issues is binding on all other Centers, unless the decision was the result of clear and unmistakable error. Absent such error, the issues decided cannot be reconsidered by a Veterans Service Center or the Insurance Center, if the later decision would require application of the same instructions or criteria and would be based on the same facts. The types of issues to which this paragraph (b) applies are:

(1) Line of duty;
(2) Character of discharge;
(3) Relationship;
(4) Dependency;
(5) Domestic relations issues such as marriage, divorce, adoption and child custody and support;
(6) Homicide; and
(7) Findings of fact of death or presumption of death.

(Authority: 38 U.S.C. 511)

[FR Doc. 01–26558 Filed 10–22–01; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257 and 258

[FRL–7076–5]

RIN 2050–AE86

Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In order to help accelerate the pace of lead-based paint removal from residences, and thereby reduce exposure to children and adults from the health risks associated with lead, EPA is proposing to revise the definition of "municipal solid waste landfill unit" in both the Criteria for Classification of Solid Waste Disposal Facilities and Practices and the Criteria for Municipal Solid Waste Landfills. EPA is also proposing to add two new definitions for "construction and demolition (C&D) landfill" and "residential lead-based paint waste." This rule would expressly allow residential lead-based paint waste to be disposed of in construction and demolition landfills by clearly stating that a construction and demolition landfill accepting residential lead-based paint waste, and no other household waste, is not a municipal solid waste landfill unit. Today's action would not prevent a municipal solid waste landfill unit from continuing to receive residential lead-based paint waste.

In the "Rules and Regulations" section of the **Federal Register**, we are approving these definitions as a direct final rule without prior proposal because we view this rule as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by November 23, 2001.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2001–LBPP–FFFFF to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by the docket number F–2001–LBPP–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For information on specific aspects of this rule, contact Sue Nogas, Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; (703) 308–7251, *nogas.sue@epa.gov*.

SUPPLEMENTARY INFORMATION: The index and some supporting materials are available on the Internet. You can find these materials at *http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/pb-paint.htm*.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Affected Entities

You may be potentially affected by this proposed rule if you generate residential lead-based paint (LBP) waste as a result of LBP activities (including abatement, rehabilitation, renovation and remodeling) in homes, residences, and other households. By "households," we mean single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

Affected categories and entities would include:

Category	Examples of affected entities
Individuals and firms who generate residential LBP waste	Contractors and do-it-yourselfers who generate and dispose of residential LBP waste as a result of abatement, rehabilitation, renovation and remodeling activities in homes, residences, and other household.
Construction and demolition waste disposal firms	Owners or operators of construction and demolition landfills that accept residential LBP waste for disposal.

This table is not intended to be exhaustive, but rather lists the types of entities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in this table could also be affected. (Please see Sections X.A. and X.B. of this preamble for further discussion of affected entities. Also, in the docket for today's rule, see "Economic Analysis of EPA's Direct Final Rule Amending 40 CFR part 257 and 258.") If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Acronyms

Acronym	Definition
CDC	Centers of Disease Control and Prevention.
C&D	Construction and Demolition.
CFR	Code of Federal Regulations.
EA	Economic Analysis.
EPA	Environmental Protection Agency.
FR	Federal Register.
HUD	U.S. Department of Housing and Urban Development.
IQ	Intelligence Quotient.
LBP	Lead-Based Paint.
MSWLF	Municipal Solid Waste Landfill.
OMB	Office of Management and Budget.
OPPTS	Office of Prevention, Pesticides, and Toxic Substances.
OSWER	Office of Solid Waste and Emergency Response.
RCRA ...	Resource Conservation Recovery Act.
RIC	RCRA Docket Information Center.
TC	Toxicity Characteristic.
TSCA ...	Toxic Substances Control Act.
USEPA	United States Environmental Protection Agency.

Outline

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G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. National Technology Transfer and Advancement Act of 1995
I. Executive Order 12898: Environmental Justice Strategy
J. Executive Order 13211: Energy Effects

I. Legal Authority

EPA is proposing this rule pursuant to section 1008(a)(3), 2002(a), 4004(a) and 4010(c) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6907(a), 6912(a), 6944(a), 6949a(c). We are also proposing to correct a typographical error in the existing statement of authority in part 257 by amending the citation to 42 U.S.C. 6949(c) to read "6949a(c)."

II. Why Are Lead and Lead-Based Paint a Concern?

The Centers for Disease Control and Prevention (CDC) have estimated that approximately 900,000 children, or about 4.4% of children under the age of 6 years old, may have unacceptably high levels of lead in their blood. (See: "Update: Blood Lead Levels—United States, 1991–1994." Morbidity and Mortality Weekly Report, Vol. 46, No. 7, February 21, 1997. CDC, U.S. Department of Health and Human Services.) Children are more susceptible than adults to the toxic effects of lead because their nervous systems are still developing and their bodies more readily absorb lead once exposed to it. (For a fuller discussion of this issue, see 66 FR 1206–1240, January 5, 2001). The most common sources of residential lead exposure include contaminated dust and paint chips from deteriorated lead-based paint (LBP) in older homes, activities that disturb LBP (such as abatement, deleading, home renovation and remodeling), lead-contaminated drinking water, and lead-contaminated soil around homes and play areas. It is estimated that approximately 38 million homes in the United States contain interior LBP. (See "Economic Analysis of EPA's Direct Final Rule Amending 40 CFR Part 257 and 258," p. 31.

III. Congressional Response to Lead Hazards: Title X

In response to this health threat, Congress enacted the Residential Lead-Based Paint Hazard Reduction Act of 1992 (hereinafter referred to as Title X of the Housing and Community Development Act of 1992, or as Title X). Among other provisions, Title X amended the Toxic Substances Control Act (TSCA) and directed the Environmental Protection Agency (EPA) to develop and finalize standards governing: (1) the training and certification of individuals engaged in LBP activities; (2) the accreditation of training programs; and (3) the process by which LBP activities are conducted by certified individuals. Congress also directed EPA to identify by regulation LBP hazards, lead-contaminated dust, and lead-contaminated soil. As a result of the enactment of Title X, there is an increasing effort to reduce the hazards posed by LBP (especially to children) in residential housing and other buildings.

IV. RCRA as a Barrier to Cost-Effective LBP Abatements, and Stakeholders' Requests for Regulatory Relief From EPA

The Resource Conservation and Recovery Act (RCRA) was enacted in 1976 to address management of solid waste, including industrial and municipal wastes. Subtitle C of RCRA governs the generation, transportation, treatment, storage and disposal of hazardous waste. A solid waste is a "hazardous waste" if it exhibits one or more of the characteristics of hazardous waste pursuant to 40 CFR part 261, subpart C (toxicity, ignitability, corrosivity, and reactivity) or if it is listed as a hazardous waste in part 261 subpart D. Subtitle D of RCRA addresses the management of nonhazardous solid waste (including municipal and nonmunicipal waste). Subtitle D was amended in 1984 to address two classes of hazardous wastes exempt from Subtitle C hazardous waste requirements: conditionally exempt small quantity generator (CESQG) waste and household hazardous waste. Household waste is defined in 40 CFR 258.2 as "any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas)." Household waste is excluded from RCRA hazardous waste regulations at 40 CFR 261.4(b)(1).

Abatements, renovations, and remodeling activities in housing units with LBP can generate large quantities of residential LBP waste. In cases where the waste exhibits the toxicity characteristic for lead, the waste would be classified as a hazardous waste subject to the comprehensive "cradle to grave" hazardous waste management regulations of RCRA Subtitle C, unless they qualify for an exemption. Lead abatement contractors and public housing agencies argued that the application of these hazardous waste rules to residential LBP waste poses a barrier to the cost-effective abatement of lead hazards. EPA and HUD met to review the disposal requirements for lead-based paint waste and to consider regulatory relief from the applicability of RCRA Subtitle C to waste generated from residential LBP activities. Additionally, several States and advocacy groups (such as the Alliance to End Childhood Lead Poisoning) expressed concern that the RCRA requirements were considerably reducing the number of residential LBP abatements by imposing significant waste disposal costs. They argued that the benefits of handling lead-based paint waste as a hazardous waste were outweighed by the potential risk to children resulting from the disincentive the RCRA regulations created for lead-based paint abatement. They requested that EPA consider ways to minimize management and disposal costs and provide an appropriate regulatory framework that would both accelerate the pace of lead abatements (by lowering costs) and ensure that waste from such activities be managed and disposed of reliably, effectively, and in a manner which protects human health and the environment. They further contended that any regulatory relief that would avoid the cost of managing LBP waste as a hazardous waste would allow public housing authorities to use cost savings to perform additional abatements, thus reducing current and future exposure of children to residential lead-based paint.

V. EPA's Implementation of Title X and Response to Stakeholders' Requests

A. 1998 Proposed Rules

In order to facilitate efforts to address lead-based paint hazards to children and respond to stakeholders' requests for regulatory relief, EPA analyzed waste characterization, laboratory leachate, and the risk and cost of disposal for lead-based paint debris. Based on those analyses, EPA published two proposals on December 18, 1998—the TSCA Proposed Rule ("Management and Disposal of Lead-Based Paint Debris"), and the RCRA Proposed Rule ("Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris"). The Agency believed that these rules, if finalized, would help reduce the costs associated with the management and disposal of LBP debris, increasing the number of LBP abatements, while continuing to protect human health and the environment.

1. TSCA Proposal ("Management and Disposal of Lead-Based Paint Debris")

Under the mandate of Title X of TSCA, we proposed new TSCA management and disposal standards for LBP debris generated by contractors from pre-1978 homes and public and commercial buildings (63 FR 70190–70233, December 18, 1998). These standards would allow the disposal of contractor-generated LBP debris in a variety of facilities, including construction and demolition (C&D) landfills. EPA based the C&D landfill disposal option on the results of the groundwater risk analysis performed to support the proposal. The results showed that the potential impact to groundwater resources from the disposal of LBP debris in C&D landfills would be negligible. (For further details, see "USEPA. June 1998, Groundwater Pathway Analysis for Lead-Based Paint (LBP) Architectural Debris; Background Document" in the docket for today's rule. Also, see Section VII of this preamble.) The TSCA proposal has not been finalized.

The preamble to the proposed TSCA rule also clarified that the RCRA Subtitle C household waste exclusion in 40 CFR 261.4(b)(1) applies to residential LBP waste generated by do-it-yourselfers in their homes (see 63 FR 70241–70242). This clarification remains in place.

2. RCRA Proposal ("Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris")

In 1998, EPA proposed to temporarily suspend the applicability of the Toxicity Characteristic (TC) rule to contractor-generated LBP debris that would be subject to the TSCA management and disposal standards cited above. The Agency proposed this suspension in order to avoid duplication with other statutes implemented by EPA as mandated under RCRA Section 1006(b)(1).

B. Contractor-Generated Residential Lead-Based Paint Memorandum

On July 31, 2000, EPA issued a memorandum clarifying the regulatory status of waste generated as a result of LBP activities (including abatement, renovation and remodeling, and rehabilitation) in homes and other residences.

Specifically, the memorandum clarified that contractors can manage residential LBP waste as household waste and thus are not subject to RCRA Subtitle C requirements. This means contractors can dispose residential LBP waste as household waste in municipal solid waste landfills or municipal solid waste combustors, according to State and local requirements. Dumping and open burning of residential LBP waste are not allowed. (See RCRA Sections 1008 and 4004.)

By interpreting residential LBP waste as a household waste under 40 CFR 261.4(b)(1), the July 2000 memorandum could be construed as allowing land disposal of LBP waste only in municipal solid waste landfill units complying with the requirements of 40 CFR part 258. This is because a "municipal solid waste landfill unit" is defined in 40 CFR 258.2 as receiving "household waste." Therefore, under section 258.2, a C&D landfill that receives residential LBP waste could be deemed to be receiving household waste and may need to comply with EPA's Municipal Solid Waste Landfill Criteria found in 40 CFR part 258. Today's rule is designed to expressly state that C&D landfills can receive residential LBP waste without becoming subject to the requirements for a MSWLF in part 258.

Please note that the memorandum does not affect the regulatory status of nonresidential LBP waste, such as that generated during the abatement or renovation and remodeling of a commercial building. In addition, the memorandum does not cover residential demolition and deconstruction. EPA does not consider demolition and deconstruction waste to be household waste, since it is not similar to those wastes generated by a consumer in the home in the course of daily living. (For more information visit, *http://www.epa.gov/lead/hhwmemo-july00fnl.pdf* for a direct link to the memorandum. See "Regulatory Status of Waste Generated by Contractors and Residents from Lead-Based Paint Activities Conducted in Households" by visiting *http://www.epa.gov/lead/fslbp.htm*, or call the RCRA Hotline at 1–800–424–9346.)

The Agency evaluated if and how to finalize the 1998 RCRA and TSCA proposals. EPA decided to use alternative policy and regulatory vehicles (*i.e.*, the July 31, 2000 policy memorandum and today's rule) in order to expeditiously accomplish some of the same goals of the 1998 proposals for certain key noncontroversial aspects. The Agency has no further plans to finalize the 1998 RCRA proposal.

VI. What Would Today's Proposed Rule Do?

A. Revision to the Definition of a Municipal Solid Waste Landfill Unit

Today's rule would expressly allow construction and demolition landfills to receive residential lead-based paint waste, by adding a statement to the definition of MSWLF unit. The definition of MSWLF unit in 40 CFR 257.2 and 258.2 would be amended by inserting at the end of the definition, the sentence, "A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit." As previously explained, the existing definition of a MSWLF unit includes language which states that a disposal unit "that receives household waste" is a municipal solid waste landfill unit. This language can be construed to prohibit the disposal of any household waste into a facility that is not designed and operated in conformance with 40 CFR part 258 regulations. Today, we are proposing to amend the definition of MSWLF unit, in order to distinguish residential lead-based paint waste, which has been determined to be a household waste, from other types of household waste, for purposes of disposal.

The amended definition would read, "Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may continue to receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately-owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit."

It is important to understand that today's proposed change to the definition of a municipal solid waste

landfill unit would not in any way affect these disposal units. This change would simply distinguish residential lead-based paint waste from other household wastes. Today's amendment would not alter what a MSWLF can or cannot receive. MSWLFs can continue to receive residential LBP waste as household waste. The proposed rule would expressly provide an additional land-based waste disposal option for residential LBP waste. Furthermore, this rule would in no way affect or change the operation and design requirements for municipal solid waste landfills or any other MSWLF criteria.

B. Addition of Construction and Demolition Landfill Definition

As stated above, the revised definition of "municipal solid waste landfill unit" would allow a subset of household waste—residential LBP waste—to be disposed of in construction and demolition landfills as well as MSWLF units. Today's proposed rule would also add a definition of a construction and demolition landfill in order to expressly allow only C&D landfills, and no other types of land disposal units that meet the criteria of 40 CFR part 257 to receive this subset of household waste.

Based on a groundwater risk analysis used to support the TSCA proposal, we believe that the disposal of residential LBP debris in C&D landfills is appropriate and would not pose adverse health risks to residents living near C&D landfills. (For more information, see Section VII of this preamble.)

A C&D landfill would be defined in 40 CFR part 257 as follows: "Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements of subparts A or B of this part that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) other than conditionally exempt small quantity generator waste (defined in § 261.5 of this chapter), or industrial solid waste (defined in § 258.2 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste." A parallel definition would also be added to 40 CFR part 258.

EPA proposed a similar definition of C&D landfill in the TSCA proposal, and received no germane comments on the definition during the public comment period.

C. Addition of Residential Lead-Based Paint Waste Definition

Today's proposed rule would also add a definition of "residential lead-based paint waste" in order to clarify the scope of the waste stream addressed by today's rule. The proposed definition of residential lead-based paint waste states: "Residential lead-based paint waste means waste generated as a result of lead-based paint activities (including abatement, rehabilitation, renovation and remodeling) in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges." Not included in the proposed definition of residential LBP waste are residential LBP demolition and deconstruction waste, and LBP waste from nonresidential structures such as public and commercial buildings, warehouses, bridges, water towers, and transmission towers.

In drafting this definition, we included these particular LBP activities because they are those limited to residences and that could pose lead hazards to occupants, especially to children. We included these particular waste types (*i.e.*, debris, chips, dust, and sludges) because they are those that are typically generated during the named LBP activities.

VII. Analytic Basis for Today's Proposed Rule

The technical basis for today's proposal is the analytical data and groundwater risk analysis used to support the 1998 TSCA proposal. (See "USEPA. June 1998, Groundwater Pathway Analysis for Lead-Based Paint (LBP) Architectural Debris; Background Document" in the docket for today's rule.) Based on that data and analysis, EPA has concluded that residential LBP waste is not hazardous household waste when disposed of in C&D landfills. What follows is a discussion of that data and analysis and how they support today's proposed rule.

In the groundwater risk analysis used to support the 1998 TSCA proposal, we assumed that all lead-based paint from the entire pre-1978 U.S. housing stock would be disposed of in C&D landfills, and that the LBP would be removed from housing while it was still attached to architectural (*i.e.*, building) components that are removed during LBP activities. Examples of architectural components are doors, window frames, moldings, painted plaster boards, concrete, and bricks. We assumed that the components would be removed with intact LBP because we believed that component removal, if cost-effective, would be preferred over paint scraping and other paint removal options, since the latter pose worker and occupant exposure concerns. This assumption was necessary due to the lack of data indicating what portion of pre-1978 housing would undergo paint removal vs. component removal and what types and quantities of LBP waste are generated at what frequency from various residential LBP activities. Also, in the groundwater analysis, we used the term "LBP debris" to refer to architectural components with intact LBP.

To estimate lead loading from residential LBP debris in C&D landfills around the country, we relied upon the 1990 Report to Congress prepared by the U.S. Department of Housing and Urban Development (HUD). The Report estimated total quantities of building components from pre-1978 homes in the U.S. From the amount of painted surfaces per housing unit reported in the HUD Report, we estimated the total quantities of building materials with LBP that would be disposed of in the landfills.

Then, in our groundwater risk analysis, we used leachate data, calculated the potential lead concentration in groundwater, and estimated risks from the disposal of LBP debris in C&D landfills. We also assumed that all of the lead from the LBP debris (which in this analysis meant the equivalent of all of the lead in all of the lead-based paint from the entire pre-1978 U.S. housing stock) would eventually end up in the leachate. The lead concentration in C&D landfill leachate varied depending on the landfill size. These lead concentrations served as inputs to the groundwater modeling we conducted to simulate the subsurface movement of landfill leachate and the resultant potential contamination of groundwater with lead.

The results from this analysis show that the lead concentration in groundwater would potentially exceed the drinking water action level of 0.015 mg/L for lead in less than 1% of the receptor wells in the vicinity of C&D landfills receiving LBP debris during the first 2,000 years after disposal. During the first 10,000 years after disposal of LBP debris, the drinking water action level would be exceeded in fewer than 5% of the receptor wells.

Based on these groundwater modeling results and the general geochemical behavior of lead in a subsurface environment, the Agency concluded that, on a national scale, the disposal of LBP debris in C&D landfills would, in general, be protective of human health and the environment at the 95th percentile protection level. This level of protectiveness is at the high end (*i.e.*, most protective) of the levels that the Agency has used in regulating hazardous wastes under the RCRA program. (See 63 FR 70203, December 18, 1998.) When deciding whether to regulate industrial solid wastes as hazardous wastes, the Agency has considered a 90th percentile or higher level as the appropriate protection level and so has not regulated wastes satisfying this level of protection as hazardous wastes. Thus, in the 1998 TSCA proposal, we concluded that the disposal of LBP debris in C&D landfills is appropriate and would not pose adverse health risks to residents living near C&D landfills. Note that the Agency received many public comments addressing various aspects of the groundwater risk analysis. The comments were generally supportive of the proposed provision to allow LBP debris to be disposed of in C&D landfills and provided no data supporting a contrary decision.[1]

EPA believes that the technical basis for the 1998 TSCA proposal, as discussed above, also supports today's proposed rule. This is because our groundwater risk analysis assumed that the total mass of lead-based paint from pre-1978 U.S. housing was disposed of in C&D landfills, and that all of the lead from that lead-based paint ended up in the C&D landfill leachate. Hence, it was irrelevant to the results of the analysis whether or not the LBP entered the C&D landfills by being attached to architectural components (*i.e.*, as LBP debris), or rather did so in the form of other types of LBP waste, such as chips, dusts, and sludges.

In conclusion, we have determined that residential LBP waste from abatement, rehabilitation, renovation and remodeling activities does not pose a substantial hazard to human health and the environment when disposed of in C&D landfills. The disposal of residential LBP waste in C&D landfills is therefore an appropriate and legal disposal option.

[1] All comments and data received in response to the 1998 TSCA proposal may be accessed via Docket Control OPPTS–62160, located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW, Washington, DC 20460. The TSCA Nonconfidential Information Center telephone number is 202–260–7099. For a summary of the comments, especially those related to the groundwater risk analysis, see "Summary of Comments on: Management and Disposal of Lead-Based Paint Debris; Proposed Rule, and Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris; Proposed Rule" in the docket for today's rule.

VIII. Other Applicable Federal, State, Tribal, and Local Requirements

Today's proposed rule would not alter the authority of State, local and Tribal governments to regulate LBP waste more stringently than does EPA. Generators of residential LBP waste should contact State environmental agencies to determine if there are additional or more stringent disposal requirements for residential LBP waste. Also, generators should comply with applicable HUD and/or TSCA regulations when addressing residential LBP hazards.

IX. How Would States and Tribes Implement This Proposed Rule?

Because today's proposed rule would be less stringent than existing federal criteria, States would not be required to amend permit programs which have been determined to be adequate under 40 CFR Part 239. States would have the option to amend statutory or regulatory definitions pursuant to today's proposed rule. If a state chooses to amend its permit program pursuant to today's action, the State would be required to notify the Regional Administrator of the modification as provided by 40 CFR 239.12.

Today's proposed amendments would be directly applicable to landfills in States without an approved permit program under Part 239 and in Indian Country. We would also encourage Tribes to adopt today's proposed amendments into their programs in order to promote lead-based paint abatement activities in homes and other residences in Indian Country.

X. How Would This Proposed Rule Comply With Applicable Statutes and Executive Orders?

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the other provisions of the Executive Order. The Order defines a significant regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

EPA has performed a full economic analysis, "Economic Analysis of EPA's Direct Final Rule Amending 40 CFR parts 257 and 258," which is available in the docket for today's rule. The EA concludes that this rule will impose no additional costs to parties, but may result in cost savings and incremental public health benefits. The rule authorizes the disposal of residential LBP waste in C&D landfills, where previously, under the July 31, 2000 policy memorandum, disposal was authorized only in MSWLFs. As a result, EPA believes that, in those parts of the country where it is cheaper to transport and dispose of residential LBP waste in C&D landfills compared to MSWLFs, some residential LBP waste will be diverted from MSWLFs to C&D landfills. Where this occurs, generators will benefit from lower waste management and disposal costs.

EPA assumes that only residential LBP waste generators in the Midwest, Northeast, and South regions will shift disposal from MSWLFs to C&D landfills, based on an analysis of the relative costs of MSWLF and C&D landfill disposal by region. EPA further assumes that the percentage of residential LBP waste that is affected is proportional to the share of these three regions in the number of housing units with LBP, which is 84.4 percent. Under these assumptions, an estimated 0.87 million tons of residential LBP waste will be diverted from MSWLFs to C&D landfills annually. This represents 0.73 percent of the total volume of all waste disposed of in MSWLFs annually. This shift in disposal would save residential LBP waste generators in the Midwest, Northeast, and South regions up to an estimated $16.76 million annually. The savings accruing to generators of residential LBP abatement waste is estimated at $0.79 million per year, while the savings accruing to generators of residential renovation and remodeling waste is $15.98 million per year.

EPA estimates that of the $0.79 million in savings that could accrue to generators of residential LBP abatement waste, an estimated 39.7 percent, or $0.31 million, will be generated annually in the public housing sector.

EPA assumes that in the public sector, any savings in residential LBP waste management and disposal costs will be used to conduct additional LBP abatements. Given an average cost for LBP abatement in public housing units of $3,650, the $0.31 million in annual savings would fund an additional 86 abatements each year. This ensuing increase in LBP abatement projects would result in a more rapid reduction in the potential for exposure to the hazards of LBP, especially for children. These hazards include decreased intelligence (i.e., lower IQ), behavioral problems, reduced physical stature and growth, and impaired hearing.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards established for industries as described in the North American Industry Classification System (*see http://www.sba.gov/size/NAICS-cover-page.html*); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on small entities. The rule will provide an additional non-mandatory option for the disposal of residential LBP waste.

C. Paperwork Reduction Act

Today's proposed rule is in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This proposed rule does not require the collection of information from the States, Federal Agencies, or industry. Therefore, we do not need to prepare an Information Collection Request.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of regulatory actions on State, local, and Tribal governments, and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objective of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As explained in Section IX of this preamble, none of today's proposed revisions are more stringent or broaden the scope of the existing Federal requirements. Therefore, States are not required to adopt the revision to the definition of MSWLF unit nor the additional definitions of construction and demolition (C&D) landfill and residential lead-based paint waste in today's rule. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's proposed rule would expressly provide an additional option for disposal of certain waste applicable in Indian Country, but would not create any mandate on Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866. However, this rule will affect decisions involving the environmental health or safety risks to children. It will benefit children by allowing environmentally protective disposal of residential lead-based paint waste in C&D landfills, which is less costly than disposal in MSWLFs in certain areas of the U.S., therefore reducing the cost of lead abatements. Reducing the cost of LBP abatements will also reduce the amount of time needed to complete abatements in public housing. Lower abatement costs may increase the amount of private homes undergoing abatements. By reducing costs associated with the disposal of LBP waste, the Agency believes that the number of abatements may marginally increase, thus resulting in a reduction of the number of children exposed to LBP.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. Today's proposed rule does not involve technical standards, voluntary or otherwise. Therefore, the NTTAA does not apply to today's proposed rule.

I. Executive Order 12898: Environmental Justice Strategy

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

Today's proposed rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities. On the contrary, since the rule will reduce the cost of performing LBP abatements in certain regions of the U.S., EPA assumes that the savings will afford public housing authorities, in particular, the opportunity to conduct additional abatements of LBP hazards in affected housing units. Tenants of public housing units are possibly more likely to be minority and lower-income households, and the rule should have the effect of providing a differential benefit to such populations.

J. Executive Order 13211: Energy Effects

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 (May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects

40 CFR Part 257

Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: September 28, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–26095 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to Revise Critical Habitat for the Cape Sable Seaside Sparrow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to revise critical habitat for the Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*), under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that revision of critical habitat is warranted. Currently, most of our listing budget must be directed to complying with numerous court orders, settlement agreements, litigation related activities, and due and overdue final listing determinations. We will proceed with a proposal to revise critical habitat for the Cape Sable seaside sparrow as soon as feasible, considering our workload priorities and available funding. We continue to address habitat needs of the sparrow through coordination with agencies that manage land and water in South Florida.

ADDRESSES: The complete file for this finding, including comments and information submitted, is available for public inspection, by appointment, during normal business hours at the South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.

FOR FURTHER INFORMATION CONTACT: David Martin (see **ADDRESSES** section), telephone 561/562–3909, extension 230.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(D)(ii) of the Act and our listing regulations (50 CFR 424.14(c)(3)) require that within 12 months after receiving a petition that is found to present substantial information indicating that revision of a critical habitat may be warranted, we shall determine how we intend to proceed with the requested revision, and promptly publish notice of such intention in the **Federal Register**.

On August 26, 1999, Mr. Sidney Maddock, Biodiversity Legal Foundation, submitted a petition to us, on behalf of himself, the Biodiversity Legal Foundation, the Florida Biodiversity Project, Brian Scherf, and Rosalyn Scherf, to revise critical habitat for the Cape Sable seaside sparrow. We received the petition on August 31, 1999.

After considering the petition and review of all available scientific and commercial information, we found that the petition presented substantial information indicating that the requested action may be warranted. We published a notice announcing our finding in the **Federal Register** on July 10, 2000 (65 FR 42316).

We designated critical habitat for the sparrow on August 11, 1977 (42 FR 40685). Currently designated critical habitat encompasses about 76,883 hectares (189,979 acres) in the southern Everglades along the eastern flank of Shark River Slough and along Taylor Slough. Most of the critical habitat is on Federal or State managed lands, including portions of Everglades National Park managed by the National Park Service, and portions of the Southern Glades Wildlife and Environmental Area managed by the Florida Fish and Wildlife Conservation Commission. Major constituent elements within the designated critical habitat requiring special management considerations or protection were not described in detail in this designation.

At the time the sparrow was listed, limited published information was available on the species' natural history and habitat requirements, and existing research had been conducted primarily on the sparrow's eastern habitats. To fill these gaps, much detailed research was conducted on the sparrow during the 1990s. Recent research has focused on determining natural history parameters, demographic parameters, and management strategies for habitat and populations. Agencies or organizations involved in these efforts include Everglades National Park, U.S. Geological Survey—Biological Resources Division, Army Corps of Engineers (Corps), and the Florida Fish and Wildlife Conservation Commission. Concerted efforts since the early 1990s have resulted in annual rangewide breeding season surveys, investigation of non-breeding season habitat use and movements, population modeling, habitat management including exotic vegetation and fire control, and a revised recovery plan. These efforts have expanded and refined our knowledge about critical habitat for the sparrow. Monitoring required for consultations under section 7 of the Act has also contributed to our database regarding critical habitat.

We have reviewed the petition, the information provided in the petition, other literature, and information gathered since the previous critical habitat designation, as well as submitted comments and information. Based on the best scientific and commercial information available, we find that revision of critical habitat is warranted for the Cape Sable seaside sparrow. Based on this new information, some new areas will likely need to be added and others removed from the designation.

Section 4(b)(3)(D)(ii) of the Act provides that with a 12-month warranted finding, we shall determine how we intend to proceed with the requested revision and publish such notice of our intention in the **Federal Register**. We have determined that the revision is warranted and we intend to proceed according to the following steps:

Habitat Assessment

Criteria for designating critical habitat are provided in our regulations at 50 CFR 424. We must consider for inclusion in critical habitat those areas that meet physiological, behavioral, ecological, and evolutionary requirements that are essential to the conservation of a species and that may require special management considerations or protection. Such requirements include, but are not limited to: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species.

When considering how to revise the designation of critical habitat, we will focus on the principal biological or physical constituent elements that are essential to the Cape Sable seaside sparrow's conservation. Known primary constituent elements will be listed with the critical habitat. Areas that contain these primary constituent elements must be determined for the sparrow.

We will designate as critical habitat areas essential to the conservation of the sparrow. The quantity and overall quality of habitat, ownership, land use, and connectivity with other sparrow habitat changes significantly from site to site. Once identified, the habitats must be delineated, mapped, and described for the proposed designation process. This process may include review of aerial photography, ownership maps, field ground truthing, locating landmarks or other geographical markers using survey techniques such as geographic positioning systems to locate latitude and longitude, with the final product being a usable map.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We will conduct the economic analysis for the proposed critical habitat designation prior to making a final determination. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Proposed Revision

We will develop and publish a proposed rule to revise critical habitat for the Cape Sable seaside sparrow as soon as feasible, considering our workload priorities and available funding. Currently, most of our listing budget must be directed to complying with numerous court orders, settlement agreements, litigation related activities, and due and overdue final listing determinations.

Coordination

We will coordinate with Federal, State, Tribal, local, and private landowners during the habitat assessment process.

At this time, we are part of the Federal government's efforts to improve water management in the Everglades, and thus conserve species, including the Cape Sable seaside sparrow, that depend on appropriate water levels. In 1999, we issued a Jeopardy Biological Opinion to the U.S. Army Corps of Engineers (Corps) for the Modified Water Deliveries to Everglades National Park project, Experimental Water Deliveries Program, and the C–111 Project proposed by the Corps in South Florida. This opinion contains Reasonable and Prudent Alternatives (RPAs) that address all of the currently known subpopulations of the Cape Sable seaside sparrow. These RPAs include elements that are designed to protect and improve the habitat of all of these subpopulations, regardless of whether the specific location of that habitat is currently designated as critical habitat. As a result of that Opinion, we have been working with the Corps, Everglades National Park, and the South Florida Water Management District to establish water-management practices that will achieve the aims of the RPAs, including protection and improvement of all known areas where sparrows have been documented since the early 1980s. Efforts for protection of the sparrow and its habitat in the near future will include coordination with the Florida Fish and Wildlife Conservation Commission and the Miccosukee Tribe of Indians. Through this section 7 process and our work with the Federal and State agencies in south Florida, we will continue to protect and improve habitat for the Cape Sable seaside sparrow.

Author

The primary author of this document is David Martin (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: October 17, 2001.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 01–26746 Filed 10–22–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 011005244–1244–01; I.D. No. 092401D]

RIN 0648–AP08

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Foreign Fishing and Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2002 Specifications and Foreign Fishing Restrictions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed Rule, 2002 initial specifications; request for comments.

SUMMARY: NMFS announces initial specifications for the 2002 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of this action is to fulfill this requirement and to promote the development and conservation of the MSB resources. This action also proposes an inseason adjustment procedure for the 2002 mackerel joint venture processing (JVP) annual specifications. Finally, NMFS proposes to revise the regulations to add a provision that specifies a method for carrying over *Loligo* squid Quarter I underages into Quarter III.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on November 23, 2001.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at http:/www.nero.gov/ro/doc/nr.htm.

Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope, "Comments-2002 MSB Specifications." Comments also may be sent via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, Fishery Management Specialist 978–281–9226, fax 978–281–9135, e-mail jennifer.anderson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP), prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at §§ 600.516(c) and 648.21, require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a proposed rule specifying the initial amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), and JVP for the affected species managed under the FMP. The regulations also specify that there will be no JVP or TALFF specified for *Loligo* squid, *Illex* squid, or butterfish, except that a butterfish bycatch TALFF will be specified if TALFF is specified for Atlantic mackerel. Procedures for determining the initial annual amounts are found in § 648.21.

On August 10, 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow the specification of quota set-asides to be used for research purposes. For each of the four species managed under the FMP, the Council recommended that up to 2 percent of the 2002 IOY be set aside for scientific research purposes. A Request for Proposals has been published to solicit proposals for 2002 based on research priorities identified by the Council (66 FR 38636, July 25, 2001, and 66 FR 45668, August 29, 2001). The deadline for submission was September 14, 2001, and proposals are currently under review. The quota set-asides will be adjusted in the final rule establishing the annual specifications for the MSB fisheries, consistent with projects forwarded to the NOAA Grants Office for award. If the awards are not made for any reason, NMFS will publish an additional rule to restore the unused set-aside amount to the annual quota.

Table 1 contains the proposed initial specifications for the 2002 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

TABLE 1. PROPOSED INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	*Illex*		
Max OY	26,000	24,000	N/A[1]	16,000
ABC	17,000	24,000	347,000	7,200
IOY	17,000[5]	24,000[5]	85,000[2,5]	5,900[5]
DAH	17,000	24,000	85,000[3]	5,897
DAP	17,000	24,000	50,000	5,897
JVP	0	0	20,000[4]	0
TALFF	0	0	0	0

[1] Not applicable.
[2] IOY may be increased during the year, but the total ABC will not exceed 347,000 mt
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] JVP may be increased up to 30,000 mt at discretion of Regional Administrator.
[5] If a 2-percent research set-aside is deducted, the total IOY would be as follows: Atlantic mackerel - 83,300 mt, *Loligo* - 16,660 mt, *Illex* - 23,520 mt, and butterfish - 5,782 mt.

Table 2 contains the proposed research set-asides for the 2002 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

TABLE 2. PROPOSED RESEARCH QUOTA SET-ASIDES, IN MT, FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	*Illex*		
Research Set-aside	340	480	1,700	118
Remaining Quota	16,660	23,520	83,300	5,782
TAL	17,000	24,000	85,000	5,900

2002 Proposed Specifications

Atlantic Mackerel

Overfishing for Atlantic mackerel is defined by the FMP to occur when the catch associated with a threshold fishing mortality rate (F) of F_{MSY} (the F that produces MSY (maximum sustainable yield)) is exceeded. When spawning stock biomass (SSB) is greater than 890,000 mt, the maximum F threshold is F_{MSY} (0.45), and the target F is 0.25. To avoid low levels of recruitment, the FMP contains a control rule whereby the threshold F decreases linearly from 0.45 at 890,000 mt SSB to zero at 225,000 mt SSB (1/4 of the biomass level that would produce MSY on a continuing basis (B_{MSY})), and the target F decreases linearly from 0.25 at 890,000 mt SSB to zero at 450,000 mt SSB (1/2 B_{MSY}). Annual quotas are specified that correspond to the target F resulting from this control rule.

Since SSB is currently above 890,000 mt, the target F for 2002 is 0.25. The yield associated with that target F at the estimated stock size is 369,000 mt. The ABC recommendation of 347,000 mt represents an adjustment to the yield estimate of 369,000 mt, minus the estimated Canadian catch of 22,000 mt. The proposed IOY for the 2002 Atlantic mackerel fishery is 85,000 mt, which is equal to the proposed DAH. The specification for DAH is computed by calculating the estimated recreational catch, the proposed DAP and JVP. The recreational catch component of DAH is estimated to be 15,000 mt. DAP and JVP components of DAH have historically been estimated using the Council's annual processor survey, which is intended to obtain estimates of processing capacity in the domestic and joint venture (JV) fisheries. However, for the years 1994 through 2002, response to this voluntary survey was low and did not contain projections from some large processors. The Council believes, based on the best data available, that the capacity of the domestic fleet to harvest mackerel greatly exceeds the domestic processors' capacity to process mackerel.

Therefore, the Council has recommended, and NMFS proposes, a specification of 20,000 mt of JVP for the 2002 fishery, with a possible increase to 30,000 mt later in the year. If additional applications for JVP are received, the Council could authorize NMFS to increase this allocation to 30,000 mt by publishing notification in the **Federal Register**. The Council also recommended, and NMFS proposes, a TALFF of zero and a DAP of 50,000 mt, yielding a DAH of 85,000 mt, which includes the 15,000-mt recreational catch estimate. The Council chose to specify TALFF at zero despite the minimal loss to the Nation that may result from the loss of poundage fees collected from foreign vessels. The Council was concerned that the perceived competition TALFF represents to U.S. processors could impede the future expansion of mackerel processing facilities.

As authorized by §§ 600.501 and 600.520(b)(2)(ii), the Council recommended, and NMFS proposes, that several special conditions be imposed on the 2002 Atlantic mackerel fishery, as follows: (1) JVs would be allowed south of 37°30' N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Administrator should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel optimum yield (OY) may be increased during the year, but the total should not exceed 347,000 mt; and (4) applications from a particular nation for an Atlantic mackerel JV allocation for 2002 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

Atlantic Squids

Loligo

The FMP defines overfishing for *Loligo* squid as occurring when the catch associated with a threshold of the fishing mortality that produces the maximum sustainable level of yield per recruit (F_{MAX}) is exceeded (F_{MAX} is a proxy for F_{MSY}). When an estimate of F_{MSY} becomes available, it will replace the current overfishing proxy F_{MSY}. Max OY is specified as the catch associated with F_{MAX}. In addition, the biomass target is specified as B_{MSY}.

The most recent stock assessment for *Loligo* squid (the 29th Northeast Regional Stock Assessment Workshop, August 1999 (SAW-29)) concluded that the stock was approaching an overfished condition and that overfishing was occurring. However, recent survey data for *Loligo* squid indicate that abundance of this species has increased significantly since SAW 29 was conducted. Estimates of biomass based on NMFS' Northeast Fisheries Science Center (NEFSC) fall 1999, spring 2000, and fall 2000 survey indices for *Loligo* squid indicate that the stock is currently at or near B_{msy}. The stock is also no longer listed as overfished in NMFS' Report to Congress: Status of the Fisheries of the United States (January 2001).

Based on the assumption that the stock will be at or near B_{msy} in 2002, the Council recommended no changes from the 2001 quota level. The 2002 quota is specified as the yield associated with 75 percent of F_{msy} at B_{msy}, or 17,000 mt, based on projections from SAW-29. The regulations continue to specify Max OY as the yield associated with F_{max}, or 26,000 mt. Thus, the 2002 proposed Max OY for *Loligo* squid is 26,000 mt and the recommended ABC for the 2002 fishery is 17,000 mt.

In Amendment 5 to the FMP, the Council concluded that U.S. vessels have the capacity to, and will harvest the OY on an annual basis, so that DAH equals OY. The Council also concluded that U.S. fish processors, on an annual basis, can process that portion of the OY that will be harvested by U.S. commercial fishing vessels, so that DAP equals DAH, and JVP is zero. Since U.S. fishing vessels have the capacity to harvest, and are expected to attempt to harvest, the entire OY, there is no portion of the OY that can be made available for foreign fishing, making TALFF zero.

Distribution of the Annual *Loligo* Squid Quota

The *Loligo* squid 2000 annual quota was allocated among three 4-month trimesters. Due to the premature closures and overages that occurred during the 2000 fishing year, the 2001 annual DAH for *Loligo* squid was allocated into quarterly periods. The Council has proposed, and NMFS recommends, no change from the 2001 quarterly distribution system. The 2002 quarterly allocations would be as follows:

TABLE 3. *Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric Tons	Research Set-aside
I (Jan–Mar)	33.23	5,649	N/A
II (Apr–Jun)	17.61	2,994	N/A
III (Jul–Sep)	17.3	2,941	N/A
IV (Oct–Dec)	31.86	5,416	N/A
Total	100	17,000	340

Also unchanged from 2001, NMFS proposes that the 2002 directed fishery be closed in Quarters I-III when 80 percent of the period allocation is harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* squid trip limit per single calender day until the end of the respective quarter. The directed fishery would close when 95 percent of the total annual DAH has been harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* squid trip limit per single calender day for the remainder of the year. Quota overages from Quarter I would be deducted from the allocation in Quarter III, and any overages from Quarter II would be deducted from Quarter IV.

Carry-over of Quarterly Quota Underages

The Council has also recommended, and NMFS proposes, to modify the method for carrying over *Loligo* squid quarterly underages for 2002 and subsequent fishing years. For the 2001 fishing year, by default, quarterly underages carried over into Quarter IV because the fourth quarter does not close until 95 percent of the total annual quota has been harvested. However, beginning with the 2002 fishing year, NMFS proposes to add a provision under 50 CFR part 648.21 stating that, in the event that the first quarter landings for *Loligo* squid are less than 70 percent of the first quarter allocation, the underage below 70 percent would be applied to Quarter III. Underages from quarters II and III would continue to be added to Quarter IV by default, based on the 95-percent closure rule mentioned above.

Illex

The approved overfishing definition for *Illex* squid states that overfishing for *Illex* squid occurs when the catch associated with a threshold fishing mortality rate of F_{MSY} is exceeded. Maximum OY is to be specified as the catch associated with a fishing mortality rate of F_{MSY}. In addition, the biomass target is specified as B_{MSY}. The minimum biomass threshold is specified as 1/2 B_{MSY}.

The most recent assessment of the *Illex* squid stock (SAW-29) concluded that the stock is not overfished and that overfishing is not occurring. The previous assessment, the 21st Northeast Regional Stock Assessment (1996), had concluded that the U.S. *Illex* squid stock is fully exploited. Due to a lack of adequate data, the estimate of yield at F_{MSY} was not updated in SAW-29. However, an upper bound on annual F was computed for the U.S. Exclusive Economic Zone portion of the stock, based on a model that incorporated weekly landings and relative fishing effort and mean squid weights during 1994-1998. These estimates of F were well below the biological reference points. Current absolute stock size is unknown and no stock projections were done in SAW-29.

Since data limitations did not allow an update of yield estimates at the threshold and target F values, the Council recommended, and NMFS

proposes, that the specification of Max OY and ABC remain unchanged from 2001 at 24,000 mt (the yield associated with F_{MSY}). Under this option, the directed fishery for *Illex* squid would remain open until 95 percent of the ABC is taken (22,800 mt). Once 95 percent of the ABC is estimated to have been taken, the directed fishery would be closed and a 5,000-lb (2,268-kg) trip limit would take effect for the remainder of the fishing year. Similar to *Loligo* squid, when a trip limit is in effect, vessels are prohibited from possessing or landing more than 5,000 lb (2,268 kg) in a single calendar day. Amendment 5 to the FMP eliminated the possibility of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's ability to harvest and to process the OY from this fishery.

Butterfish

The FMP set OY for butterfish at 16,000 mt. Based on the most current stock assessment, the Council recommends, and NMFS proposes, an ABC of 7,200 mt for the 2002 fishery. This represents no change in the specifications since 1996. Commercial landings of butterfish have been low at 2,798 mt, 1,964 mt, and 2,116 mt for the 1997 through 1999 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market-sized fish have impacted this fishery.

For the 2002 fishing year, the Council recommended, and NMFS proposes, an IOY for butterfish of 5,900 mt. The IOY is composed of a DAH of 5,900 mt and a bycatch TALFF that is equal to zero. Amendment 5 eliminated the possibility of JVP or TALFF specifications for butterfish except for a bycatch TALFF specification if TALFF is specified for Atlantic mackerel. Because the Council did not recommend TALFF for Atlantic mackerel, TALFF for butterfish is set at zero.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA in section 5.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the **SUPPLEMENTARY INFORMATION** section. A summary of the IRFA follows:

The numbers of potential fishing vessels in the 2002 fisheries are 395 for *Loligo* squid/butterfish, 77 for *Illex* squid, and 2,098 for Atlantic mackerel. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The proposed ABC specifications of 347,000 mt and DAH of 85,000 mt for Atlantic mackerel, the DAH specifications of 24,000 mt for *Illex* squid, and the DAH specifications of 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The level of landings in the proposed specifications for 2002 have not been achieved by vessels in these fisheries in recent years. Absent such a constraint, no impacts on revenues are expected as a result of the proposed action.

From 1996-2000, *Loligo* squid landings averaged 16,548 mt. If the 2002 proposed DAH specification of 17,000 mt for *Loligo* squid is achieved, there would be an increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1996-2000. NMFS also proposes to modify the provision for carrying over Quarter I *Loligo* squid underages. Under the new measure, *Loligo* squid Quarter I underages less than 70 percent of the first quarter allocation would be applied to Quarter III. Currently, all underages from Quarter I are applied to Quarter IV because Quarter IV does not close until 95 percent of the total annual quota is harvested. However, by making the underage available during Quarter III, *Loligo* squid permit holders could continue to fish during a time when the quarter may have otherwise been closed. This could provide an added economic benefit to fishers during Quarter III. However, because this provision would only shift a limited amount of quota from one period to another, and does not modify the *Loligo* squid annual quota, no overall change in revenue is expected.

One alternative considered for the Atlantic mackerel fishery was to set the 2002 specifications at the same level as 2001. The specifications under this alternative were similar to the preferred alternative, with the exception of IOY and TALFF. Under this alternative, the IOY specification would be slightly higher (88,000 mt) because TALFF would be specified at 3,000 mt. The specification of TALFF above zero was rejected by the Council as inconsistent with the FMP because it would not meet the policy objectives of the Council relative to further development of the U.S. domestic harvest for Atlantic mackerel. NMFS accepted the Council recommendation regarding IOY as accomplishing this objective. However, this alternative would place no constraints, and consequently no revenue impacts on the fishery because the proposed levels of harvest for Atlantic mackerel under this alternative have not been harvested in recent years. A second alternative for Atlantic mackerel was to set ABC at the long-term potential catch (LTPC), or 134,000 mt. This alternative was found inconsistent with the FMP because it would not allow for variations and contingencies in the status of the stock. For example, the current adult stock was recently estimated to exceed 2.1 million mt. The specification of ABC at LTPC would effectively result in an exploitation rate of only about 6 percent, well below the optimal level of exploitation. The level of foregone yield under this alternative was considered unacceptable, but would not impact the IOY specifications. A third alternative considered for mackerel included the elimination of JVP for 2002, which would lower the specification of IOY to 68,000 mt, also far in excess of recent landings. This alternative was rejected due to the need for JVP's, which allow U.S. harvesters to take Atlantic mackerel at levels in excess of current U.S. processing capacity. However, these alternatives would not constrain the mackerel fishery and were determined to have no impact on the revenues of participants in this fishery.

For *Loligo* squid, one alternative that was considered was to set the ABC, DAH, DAP, and IOY at 13,000 mt, or a 23.3-percent reduction from the 2001 level. This was the same level as the 2000 fishing year until an inseason adjustment increased the ABC, DAH, DAP, and IOY to 15,000 mt (65 FR 60118, October 10, 2000). If the 13,000-mt alternative was adopted for the 2002 fishing year, 132 of the 497 impacted vessels would experience a total gross revenue reduction (all species combined) of greater than 5 percent. The remaining 365 vessels would experience a less than 5-percent reduction in revenue or an increase in revenue. A second alternative would set ABC, DAH, DAP, and IOY at 11,700 mt. This would represent a 31-percent reduction in landings relative to 2000. Under this scenario, 170 of the 497 impacted vessels would experience gross revenue reductions (all species combined) of greater than 5 percent. The remaining 327 vessels would experience a less than 5-percent reduction in revenue, or an increase in revenue.

For *Illex* squid, one alternative considered would set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt and a second alternative would set Max OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. These specifications would be far in excess of recent landings in this fishery. Therefore, there would be no constraints, and, thus, no revenue reductions, associated with these specifications. However, the first alternative was considered unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid. Conversely, under the second alternative an ABC of 19,000 mt would not allow the fishery to perform at its optimal exploitation level during a year of relatively high abundance, and was therefore rejected.

For butterfish, the Council considered two alternatives; the first alternative set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second alternative set a Max OY of 16,000 mt and a ABC, IOY, DAH, and DAP at 10,000 mt. These specifications far exceed recent harvests in the butterfish fishery and would not constrain or impact the industry; however, they could lead to overfishing of the stock, and, thus, were rejected by the Council.

It has been determined that this rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

This proposed rule does not contain or involve any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

A copy of the IRFA is available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 17, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.21, paragraph (f)(3) is added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(f) * * *

(3) Beginning January 1, 2002, if commercial landings in Quarter I are determined to be less than 70 percent of the Quarter I quota allocation, any remaining Quarter I quota that is less than 70 percent will be reallocated to Quarter III (e.g., if the Quarter I quota was 100,000 lb (220,462 kg) and 50,000 lb (110,231 kg) was landed, then the remaining Quarter I quota, up to 70 percent, or 20,000 lb (44,092 kg), would be reallocated to Quarter III. A balance of 30 percent, or 30,000 lb (66,139 kg), would remain in Quarter I).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 011011249–1249–01; I.D. 092701A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Petition for Emergency Rulemaking for Red Snapper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agency decision; denial of a petition for emergency rulemaking.

SUMMARY: NMFS announces the denial of a petition for emergency rulemaking for the red snapper fishery in the Gulf of Mexico that was filed with the U.S. Department of Commerce by the Texas Shrimp Association (TSA). TSA's petition requested emergency rulemaking to reduce the 2001 total allowable catch (TAC) in the fishery and to shorten the associated recreational fishing season.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–570–5305, fax 727–570–5583, e-mail Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: TSA petitioned the U.S. Department of Commerce to promulgate an emergency rule to reduce the 2001 TAC in the directed fisheries for red snapper in the Gulf of Mexico from 9.12 million lb (MP)(4.14 million kg) to not more than 3 million lb (1.36 million kg) and to shorten the recreational fishing season as part of the TAC reduction. The petition alleged that overfishing has been occurring in the fishery and will occur again in 2001 without the requested emergency rulemaking. On April 19, 2001, NMFS published a notice of receipt of the TSA petition and requested public comments on the petition (66 FR 20129). After thorough consideration of the petition and of all public comments received, NMFS has denied TSA's petition for emergency rulemaking.

Basis for Denial of the Petition

The TSA petition states that the following are causes of previous and continuing overfishing (NMFS responses are provided as appropriate):

(1) TSA asserts that the current definition of "optimum yield" (OY) in the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) does not conform to the more rigorous definition of OY required by the Sustainable Fisheries Act (SFA) of 1996, which amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Response: The current definition of OY in the Reef Fish FMP is "any harvest level which maintains, or is expected to maintain, over time a survival rate or biomass into the stock of spawning age to achieve at least 20 percent spawning potential ratio (SPR)." Additionally, the Reef Fish FMP currently requires that overfished red snapper stocks be restored to a level of 20 percent SPR by 2019. However, the Magnuson-Stevens Act and NMFS' National Standard Guidelines (NSG) (63 FR 24212; May 1, 1998) require that the Councils and NMFS develop new definitions of "overfishing" and "overfished" for managed stocks based on the ability of a stock to produce maximum sustainable yield (MSY) on a continuing basis. While NMFS has approved proposed definitions of overfishing that are based on static SPR as a proxy for fishing mortality rate, definitions of overfished and stock rebuilding targets must be biomass-based, as required by the Magnuson-Stevens Act and the NSG. For overfished stocks, the Magnuson-Stevens Act and the NSG require that a recovery plan must be developed to restore overfished stocks to the biomass level capable of producing MSY on a continuing basis (B_{MSY}).

NMFS agrees that these Magnuson-Stevens Act (as amended by the SFA) and NSG requirements represent a more conservative fishery management approach than is reflected in the Reef Fish FMP's current definition of overfishing (when a reef fish stock or stock complex is overfished, overfishing is defined as harvesting at a rate that is not consistent with a program established to rebuild the stock or stock complex to the 20 percent SPR level), which is estimated to be the minimal

level needed to prevent future declines in the stock. On November 17, 1999, NMFS disapproved the Gulf of Mexico Fishery Management Council's (Council) red snapper rebuilding targets, as proposed in its Generic Sustainable Fisheries Act (SFA) Amendment to the Council's FMPs (Generic SFA Amendment), because the Generic SFA Amendment specified a fishing mortality-based stock rebuilding target rather than the required biomass-based target. Further, the Generic SFA Amendment did not estimate the time to rebuild in the absence of fishing mortality, as required by the Magnuson-Stevens Act and the NSG. NMFS also disapproved the Generic SFA Amendment's proposed SPRs as proxies for MSY, OY, and other stock status determination criteria. In conjunction with these disapproval actions, NMFS informed the Council that it must submit a new red snapper rebuilding plan as soon as possible for agency review.

In order to comply with the requirements of the Magnuson-Stevens Act, the Council has recently submitted to NMFS, for Secretarial review, a framework action under the Reef Fish FMP that provides for a revised red snapper rebuilding plan through 2032. While a final agency decision on this proposal has not yet been made, the rebuilding plan does contain new biomass-based targets and thresholds, including a revised OY and recovery time-frame parameters that, upon preliminary review, appear consistent with the Magnuson-Stevens Act, as amended by the SFA, and the NSG. The proposed action would institute a red snapper 31-year rebuilding plan with 5-year interim management goals. The rebuilding plan would maintain the current TAC set at 9.12 MP under a constant catch scenario for the years 2001-2005, with existing bycatch reduction requirements. Thereafter, the plan would shift to a constant fishing mortality rate strategy. At that time, a reduction in the red snapper TAC is likely, unless other means of reducing bycatch and bycatch mortality are more effective than currently anticipated and the stock achieves a greater level of rebuilding than currently anticipated. Under the constant fishing mortality rate strategy, TAC is set as a constant proportion of the stock that can be removed that would allow the stock to rebuild within the required time period. As stock size increases, so can the TAC (i.e., as the stock size approaches BMSY, TAC will be approaching OY). Because red snapper are such a long-lived species and the fishery is in need of stability in all sectors, the rebuilding plan aspires to make TAC adjustments, as necessary, at 5-year intervals. Of course, section 304(e)(7) of the Magnuson-Stevens Act requires the Secretary of Commerce (Secretary) to review independently the stock rebuilding plan itself in no more than 2-year intervals to ensure adequate progress toward ending overfishing and rebuilding the affected stock. The framework procedure under the Reef Fish FMP currently contemplates annual review of the status of managed fish stocks. If the Secretary's independent review, pursuant to section 304(e)(7), results in a finding that the rebuilding plan is not making adequate progress, the Secretary is required to notify the Council immediately and recommend appropriate further conservation and management measures (see section 304(e)(7)(b) of the Magnuson-Stevens Act). In light of the Council's recent proposal for a revised red snapper stock rebuilding plan, a reduction in TAC now, based on the current Reef Fish FMP's OY definition, would be premature.

(2) TSA asserts that NMFS' scientific studies indicate that bycatch reduction devices (BRDs) required in shrimp trawls in the Exclusive Economic Zone (EEZ) of the Gulf of Mexico west of Cape San Blas, Florida, have reduced juvenile red snapper mortality by 40 percent or less instead of the 50- to 60-percent reduction necessary as a basis for the present TAC of 9.12 MP. Further, TSA asserts that NMFS and the Council have greatly exaggerated the importance (positive impact) of bycatch reduction for rebuilding the red snapper stock; and

(3) TSA asserts that recent scientific information presented to the Council's Reef Fish Stock Assessment Panel (RFSAP) (a Council scientific advisory committee) indicates that the overfished condition of the red snapper fishery is a result of excessive fishing pressure by the directed fisheries, in particular the recreational sector of the fishery, and not a result of bycatch mortality associated with shrimp harvest.

Response: The RFSAP again endorsed the red snapper stock rebuilding plan under consideration by the Council and currently under review by NMFS. The RFSAP did not alter its long-standing opinion that bycatch reduction in the shrimp fishery is necessary to rebuild the red snapper stock. The combined effects of excessive fishing mortality in the directed fishery and bycatch mortality of juvenile red snappers in the shrimp fishery have all contributed to the overfished status of red snapper in the Gulf of Mexico. Red snapper stock assessments reviewed by the RFSAP, dating back to 1990, as well as the Congressionally Mandated Red Snapper Peer Review (1997), have not only indicated that fishing mortality in the directed fishery must be reduced, but also that the Gulf red snapper stock will not recover from its overfished condition without a significant reduction in bycatch mortality of juvenile red snappers associated with shrimp trawling. In fact, the magnitude of the shrimp fishery's bycatch of juvenile red snappers far outweighs the impacts of TAC adjustments on rebuilding the red snapper stock. The best available scientific information, as represented by continuing scientific stock assessments and various scientific peer reviews over recent years during which the 9.12 MP TAC has been in place, consistently demonstrates that even if the red snapper TAC were set at zero, BRDs and other measures to address bycatch mortality of juvenile red snappers in the shrimp fishery would still be required in order to rebuild this fish stock. As described earlier, NMFS is currently reviewing the Council's stock rebuilding plan, which will likely result in future reductions in the red snapper TAC. However, it appears that an immediate TAC reduction would achieve only limited short-term conservation benefits not justified in the face of resulting significant and immediate adverse impacts on the red snapper fishery.

A 40-percent reduction in juvenile red snapper bycatch mortality in the Gulf shrimp fishery has been achieved, as substantiated by data that NMFS submitted to the Council (Nichols, 1990; Nichols & Pellegrin, 1992), and that the RFSAP reviewed. Further, NMFS biologist Dr. Scott Nichols, at the September 20-24, 1999, RFSAP meeting, and at the October 27, 1999, meeting of the Council's Scientific and Statistical Committee, stated that, excluding the now illegal configuration of a fisheye BRD covered by the trawl net's elephant ear, fisheye BRDs are currently attaining a 40-percent reduction in fishing mortality of juvenile red snappers and that a 50-percent reduction appears feasible. Additionally, NMFS biologist Dr. John Watson, in statements to the Council at its November 8-12, 1999, and November 13-16, 2000, meetings, indicated that a 50-percent bycatch reduction could be achieved from fisheye BRDs. NMFS believes that further reductions are possible with improved BRD technology. Tests conducted by NMFS have already demonstrated that prototype BRDs can reduce bycatch mortality of red snapper in shrimp trawls by as much as 70 percent.

BRDs have significantly reduced shrimp trawl bycatch mortality of red snapper and other species in the western Gulf. However, National Standard 9 requires that bycatch be reduced to the extent practicable and the Council must continue to review possible measures that would achieve higher levels of bycatch reduction and minimize bycatch mortality. NMFS has encouraged the Council to take additional actions throughout the Gulf to reduce shrimp trawl bycatch. Such actions could include extending the requirement for BRDs into Federal waters east of Cape San Blas, FL; effort reduction in the shrimp fishery; closed areas; or seasonal closures. Additionally, monitoring of bycatch in the shrimp fishery must be improved. This could be accomplished with vessel permits (as proposed under Amendment 11 to the FMP for the Shrimp Fishery of the Gulf of Mexico (Shrimp FMP)), mandatory observers, and mandatory logbooks.

Consultants for TSA presented scientific information regarding the preceding TSA assertion (No. 3) at the RFSAP meeting held at the NMFS Southeast Fisheries Science Center (SEFSC) on September 28-October 1, 2000. The RFSAP considered three presentations in the context of the proposed revised red snapper rebuilding plan: Two were by the TSA consultants, Mr. Gazey and Dr. Gallaway, and one was by Dr. Shipp. The RFSAP concluded that "the presentations by Mr. Gazey, Dr. Gallaway, and Dr. Shipp do not affect our previous endorsement of the rebuilding plan."

(4) TSA asserts that the recreational sector of the directed fishery continues to exceed its annual quota under the present season opening and closing dates.

Response: While NMFS recognizes that quota overruns in the recreational fishery have occurred in the past, the Council and NMFS have taken steps to rectify this situation. In December 1999, at the Council's request, NMFS issued an interim rule to implement management measure changes for the red snapper fishery to address quota overages in the recreational sector and, thus, reduce overfishing (64 FR 71056). The interim rule established a Federal recreational season from April 21 through October 31. Also, the rule reduced fishing effort that would have occurred in state waters after the closure of the Federal season under the regulations in effect prior to implementation of the interim rule. These actions appear to have been successful, as preliminary data for the 2000 fishing year indicate that the recreational red snapper harvest was approximately 320,000 pounds under the allowable quota (4.47 MP). The interim rule measures were implemented on a permanent basis under an approved regulatory amendment, pursuant to the Reef Fish FMP's framework procedure, through a final rule issued August 17, 2000 (65 FR 50158). NMFS' goal is to continue monitoring the recreational fishery quota and to take additional action as warranted. Further discussion of NMFS and Council efforts to structure a red snapper recreational fishing season that best prevents recreational fishery quota overruns is contained in the response to public comment number 2 (see below).

(5) TSA asserts that NMFS is significantly underestimating fishing effort in the recreational sector, which allows that sector to harvest red snapper in excess of its share of the TAC; and

(6) TSA asserts that NMFS has failed to make a reduction in the recreational sector's share of the TAC to account for these excessive harvests.

Response: The best scientific information available indicates that effort in the red snapper charter vessel sector, the largest component of the recreational fishery, has not been underestimated, and that charter vessels currently account for approximately 42 percent of the total annual recreational harvest of red snapper in the Gulf of Mexico. NMFS has recently adopted new and more precise and accurate methodologies for estimating the recreational red snapper harvest that were developed cooperatively by NMFS and the Gulf States Marine Fisheries Commission. This is part of a continuing effort by NMFS to improve data collection for the recreational sector. There is no evidence to suggest that recreational landings have been underestimated.

Comments and Responses

NMFS received 1, 567 comments addressing this petition. They are summarized and responded to here:

Comment 1: Fifteen hundred and sixty three comments were received that opposed the petition for emergency rulemaking submitted by TSA including any reduction in the TAC or shortening of the 2001 recreational fishing season.

Response: The best available scientific information indicates that the 9.12 MP (4.14 million kg) TAC for 2001 may slow the recovery in the early part of any stock rebuilding program but would not jeopardize recovery of the stock consistent with the rebuilding requirements of the Magnuson-Stevens Act, particularly if greater reductions in bycatch mortality are achieved, as expected. However, an immediate reduction in TAC or shortening of the recreational fishing season for red snapper would have serious adverse economic effects upon participants in the fishery.

Comment 2: Included in the group of comments opposed to the TSA petition was a comment from an environmental group expressing its concerns regarding NMFS' regulation of the red snapper recreational fishing season and the history of TAC overruns in this fishery. Further, this group requested that NMFS close the recreational and commercial red snapper fisheries, once their allocations are met, based on available real-time data.

Response: The Magnuson-Stevens Act requires that the Gulf of Mexico red snapper recreational fishery be closed when its quota is reached. To comply with this requirement, NMFS works jointly with the Council to implement management measures and establish closure dates that, based upon the best available scientific information, are likely to result in annual catches that approximate the quota, within the margin of error of the harvest projections. NMFS uses a computer simulation model to assess the future status of the red snapper stock. The model integrates estimates of stock abundance with fishing effort to project how many fish will be caught for various time periods. This projection assumes that the current year's fishing effort will be similar to that of previous years. In-season data are not used to establish or adjust closure dates; instead, a closure date is based entirely on projections of the model used. This is the only practicable method of setting closure dates because the NMFS Marine Recreational Fishery Statistics Survey (MRFSS) is not designed for real-time quota monitoring. MRFSS data are available in 2-month blocks, referred to as waves, and landings are not available until 5 weeks after the end of a wave. Thus, there is a time lag of at least 3 months before even preliminary MRFSS landings data can be evaluated; consequently, NMFS cannot determine the closure date based on real-time fishery data. In projecting recreational fishery harvest rates and closure dates, NMFS attempts to approximate the quota in the long term, while recognizing that annual variations in the catch are inevitable. Based on the last two years' monitoring, the projections appear accurate since no overruns occurred.

Comment 3: Four comments were received in support of the petition,

including two from TSA that requested an immediate reduction in TAC to no more than 3 MP (1.36 million kg) and a shortening of the 2001 recreational fishing season.

Response: NMFS has reviewed the administrative records and court decisions from prior litigation on the issue of the red snapper TAC. NMFS has also reviewed more recent information regarding the conduct of the red snapper fishery, as discussed above, including the petition received on behalf of TSA and the public comments received on the petition. NMFS disagrees with TSA that the law or the present circumstances in the red snapper fishery require an immediate reduction in TAC. As described below, this is because (a) the Council's proposed red snapper stock rebuilding plan appears to comply with the Magnuson-Stevens Act requirements to end overfishing; (b) the deployment of BRDs in the shrimp fishery appears to be more effective than TAC adjustments in rebuilding the red snapper stock; (c) NMFS believes that greater than current levels of reduction in bycatch mortality of juvenile red snapper in shrimp trawls are attainable; and (d) the shrimp fishery does not appear to be subject to any disproportionate regulatory impacts compared to the directed red snapper fisheries.

For these reasons, NMFS disagrees with TSA's assertions, the majority of which have been raised previously by TSA and refuted by NMFS (see *Florida Wildlife Federation, et al.* v. *Daley*, Case No. 4:98cv101RH (N. D. Fla.); affirmed Case No. 99-14747c (11th Circuit Court of Appeals); Texas Shrimp Association v. Daley, Case No. 4:000v20RH (N. D. Fla.); affirmed Case No. 00-12328 (11th Circuit Court of Appeals). As TSA, through its legal counsel, recently noted, "nothing in the petition raised any novel questions" (see July 11, 2001, letter from TSA Counsel to Dr. William T. Hogarth). Rather, TSA asserts that the agency is making decisions based on political pressure rather than on scientific information and the Magnuson-Stevens Act (id.).

The best available scientific information affirms that the status quo TAC of 9.12 MP (4.14 million kg) is compatible with the stock rebuilding requirements of the Magnuson-Stevens Act, provided that expected bycatch reduction levels are met, that harvests will not exceed quotas, and that future recruitment, on average, will increase as spawning stock biomass increases. Additionally, the Council has submitted a framework action under the Reef Fish FMP to NMFS for approval and implementation that would establish a revised red snapper rebuilding plan through 2032. The plan contains new biomass-based targets and thresholds, including a revised OY and recovery time-frame parameters that are consistent with the Magnuson-Stevens Act, as amended by the SFA, and the NSG. The proposed action would institute a red snapper 31-year rebuilding plan with 5-year interim management goals. The rebuilding plan would maintain the current TAC set at 9.12 MP under a constant catch scenario for the years 2001-2005, with existing bycatch reduction requirements. Thereafter, the plan would shift to a constant fishing mortality rate strategy, and the status of the stock would be reviewed every 5 years to evaluate the need for additional bycatch reductions or adjustments in TAC. Under the constant fishing mortality rate strategy, TAC is set as a constant proportion of the stock that can be removed that would allow the stock to rebuild within the required time period. As stock size increases, so can the TAC (i.e., as the stock size approaches B_{MSY}, TAC will be approaching OY).

The best available scientific information, as represented by continuing scientific stock assessments and various scientific peer reviews over the recent years during which the 9.12 MP TAC has prevailed, consistently demonstrates that even if the red snapper TAC were set at zero, BRDs and other measures to address bycatch mortality of juvenile red snappers in the shrimp fishery would still be required in order to rebuild this stock. Although the Court in the BRD litigation held that a sufficient nexus existed between the need for BRDs and the red snapper TAC for purposes of conferring legal standing upon the shrimp industry so they could challenge the BRD requirement, elsewhere in the opinion, as noted above, the Court acknowledged that shrimp trawlers' severe effects upon the red snapper population is beyond dispute (Order Denying Petitions Challenging Regulations, at 7, 41). The magnitude of the impacts of the shrimp fishery's bycatch of juvenile red snappers far outweighs the impacts of TAC adjustments on rebuilding the red snapper stock. However, the current and foreseeable future regulatory burden for the shrimpers is far less than that of the red snapper fishery participants.

Section 304(e)(4)(A) of the Magnuson-Stevens Act explicitly states that, in pertinent part, fishery management plans, plan amendments, or proposed regulations for an overfished fishery shall "specify a time period for ending overfishing." The Council's proposed red snapper stock rebuilding plan, inter alia, would do just that, while maintaining stability in the fishery. As Judge Hinkel noted in the decision upholding the BRD requirement, which was affirmed on appeal, rejecting one viewpoint in favor of another, when weighing competing scientific opinions and making policy determinations, is not an abuse of discretion (see Order Denying Petitions Challenging Regulations, Case No. 4:98cv101-RH, N. D. Fla, at 22). Further, the Court noted that uncertain scientific evidence does not preclude making a decision based, in part, upon reasonable expectations (id. at 43).

NMFS believes that greater reductions in bycatch mortality of juvenile red snapper in shrimp trawls are attainable, and further believes that this expectation is reasonable based upon the following considerations. First, the Jones-Davis BRD already by far exceeds the necessary level of bycatch reduction, demonstrating concretely that, in fact, such reduction is attainable. Although the Jones-Davis BRD is not widely used, due in large part to greater shrimp loss rates, given its outstanding performance at reducing bycatch mortality, it may be practicable to expand its usage, particularly if shrimp loss rates can be reduced. Second, the level of reduction in bycatch mortality for the more widely used BRD designs has steadily improved since the BRD requirement became effective. Initially, reduction levels among those BRDs measured 27 percent, but current levels are between 40 percent and 50 percent. Some of this improvement has resulted from minor modifications to the gear arising from actual use, such as adjusting the "elephant ear" flap in the shrimp trawls. Finally, NMFS is in the process of revising its BRD certification protocol following its experience since the original protocol was implemented several years ago. Information from BRD users as well as the Gulf and South Atlantic Fisheries Foundation has indicated the need for greater flexibility in the provisions of the BRD certification protocol. NMFS expects that once these revisions are effected, more efficient and better performing BRD designs will be developed and certified, resulting in greater reductions of bycatch and bycatch mortality of red snapper.

These developments show that reductions in red snapper bycatch mortality based on technology are feasible and likely. However, technological advances are not the only means under consideration for reducing red snapper bycatch in the shrimp fishery. In addition to technological considerations, the Council is developing Amendment 10 to its Shrimp FMP to further address general bycatch issues. Among the alternative actions included in Amendment 10 are those that would require the use of BRDs east of Cape San Blas, FL. Although the original BRD requirement exempted this area because of minimal red snapper occurrence in that area, more recent information (Schirripa & Legault, 1999) demonstrates a significantly increased occurrence of red snapper there. The objective of Amendment 10 is not limited to reducing bycatch and bycatch mortality of red snapper, but it now appears that red snapper bycatch mortality would be reduced somewhat, along with that of other species, if such a geographic expansion in the use of BRDs were implemented. Amendment 10 also contains other action alternatives, such as those based on seasonal and areal adjustments that, in the course of addressing bycatch issues in a general sense, will clearly effect some level of reduction in red snapper bycatch mortality.

In addition to Amendment 10, further regulation of the Gulf shrimp fishery to address red snapper issues may become necessary. For example, the Council has proposed, under its Reef Fish FMP's framework action, a 31-year rebuilding program for red snapper. A fundamental element of that proposal is the achievement of greater reductions in red snapper bycatch mortality; however, the plan also provides for the contingency of not achieving that goal. It seems clear that without greater red snapper bycatch mortality reductions, both a future reduction in the red snapper TAC and further regulation of the shrimp fishery in the EEZ are likely. The latter possibility appears to form the basis for TSA's assertions that the Council's and NMFS' management of the red snapper fishery is somehow unfair to shrimpers. These claims were addressed in prior litigation, and the Court then wrote that although the BRD requirement placed serious costs on the shrimp industry, the directed red snapper fishery had for years been subject to numerous restrictions, including increased minimum fish size limits, TAC limits, and reduced bag limits and trip limits. The judge also noted that the shrimp industry had, until recently, not only been required to do very little to address bycatch, but actually enjoyed a statutory prohibition against regulations addressing the bycatch issue. In an earlier footnote within that Court opinion, the Court stated that the specific and severe effects upon the red snapper population from shrimp trawlers is "beyond dispute." The judge concluded that imposing the BRD requirement and attendant costs, even with a TAC at 9.12 MP, was not only not an abuse of agency discretion or inequitable, but "perhaps required" (Order Denying Petitions Challenging Regulations, Case No. 4:98cv101-RH, at 7, 23, 24, 25, 43-46).

These conclusions are still applicable today. The Council has submitted Amendment 11 to the Shrimp FMP, which would establish mandatory Federal permits for the shrimp fishery, for Secretarial review, approval, and implementation. However, this is the only additional regulation currently proposed for the shrimp fishery. The Gulf shrimp fishery is the only federally managed fishery in the southeastern United States not subject to a permit requirement. The Federal shrimp permit would be available without any qualifying criteria, and the permit requirement would constitute only a minimal burden on shrimp fishermen. The red snapper commercial and recreational fisheries, however, are now and have long been subject to a much more complex and burdensome regulatory program. In particular, since entry of the legal opinion referred to above, the recreational red snapper fishing season has been significantly reduced in order to comply with the statutory quota provisions enacted under the SFA in 1996. While TSA seems to overlook this development, one benefit is that the quota appears to have eliminated the recreational overruns about which TSA complains. If approved and implemented, Shrimp FMP Amendment 10, discussed above, is likely to result in additional regulations for the Gulf shrimp fishery. However, even if the most restrictive of the amendment's alternative actions under consideration were implemented, they would not necessarily produce an inequitable result for shrimp fishermen.

The NSG make clear that under National Standard 4 an allocation of fishing privileges may impose a hardship upon one group if it is outweighed by the total benefits received by another group or groups (50 CFR 600.325 (c)(3)(i)). Although this guidance generally applies to a single fishery, in this instance, the red snapper stock is more significantly affected by the shrimp fishery than by the directed red snapper fishery. The situation is clearly analogous to an allocation of fishing privileges within a single fishery.

In light of the foregoing, it appears that additional regulation of the shrimp fishery would not result in a disproportionate regulatory impact upon shrimpers. Further, rebuilding the red snapper stock and minimizing shrimp fishery bycatch is mandated by law. Clearly, reductions in shrimp trawl bycatch mortality would benefit red snapper fishery participants. However, even with additional shrimp regulations and maintenance of a 9.12 MP TAC for red snapper, the overall result would not leave the shrimp fishery with a greater regulatory burden than the red snapper fishery.

Even if the shrimp fishery does incur additional regulatory burdens, any hardships for the shrimpers will likely be far outweighed by the overall benefits of ending overfishing of red snapper and restoring the red snapper fishery. Conversely, immediately lowering the red snapper TAC, as suggested by TSA, would not result in any apparent benefit to the shrimp industry.

Based on the discussion above, since lowering the red snapper TAC would not relieve either the biological need nor the legal requirement to address the bycatch and bycatch mortality of juvenile red snappers in shrimp trawls, and since such a TAC change would severely disrupt and adversely impact the red snapper fishery, the National Marine Fisheries Service has denied the TSA petition.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 16, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26678 Filed 10–18–01; 1:37 pm]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 205
Tuesday, October 23, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–086–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Virus-Serum-Toxin Act and regulations.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by December 24, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–086–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–086–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information on the Virus-Serum-Toxin Act and regulations, contact Dr. Albert Morgan, Chief Staff Officer, Center for Veterinary Biologics, Operational Support Staff, VS, APHIS, 4700 River Road Unit 148, Riverdale MD 20737, (301) 734–8245. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Virus-Serum-Toxin Act and Regulations.

OMB Number: 0579–0013.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for assuring that veterinary biological products are pure, safe, potent, and effective. This program is conducted under the Virus-Serum-Toxin Act (21 U.S.C. 151, *et seq.*) and the regulations in 9 CFR, chapter I, subchapter E. Veterinary biological products are defined as all viruses, serums, toxins (excluding substances that are selectively toxic to microorganisms, e.g., antibiotics), or analogous products at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of animals and which act primarily through the direct stimulation, supplementation, enhancement, or modulation of the immune system or immune response. The term "biological products" includes, but is not limited to, vaccines, bacterins, allergens, antibodies, antitoxins, toxoids, immunostimulants, certain cytokines, antigenic or immunizing components of live organisms, and diagnostic components that are of natural or synthetic origin or that are derived from synthesizing or altering various substances or components of substances, such as microorganisms, genes or genetic sequences, carbohydrates, proteins, antigens, allergens, or antibodies.

To accomplish its mission, APHIS issues licenses to qualified establishments that produce biological products and issues permits to importers of such products. We also enforce requirements concerning production, packaging, labeling, and shipping of these products and set standards for the testing of these products.

Fulfilling this responsibility requires us to use certain information collection activities such as establishment license applications, product license applications, product import permit applications, product and test report forms, and field study summaries. This information helps us to ensure that biological products used in the United States are pure, safe, potent, and effective.

If we did not collect this information, we would be unable to carry out this mission.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning these information collection activities. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 2.62813 hours per response.

Respondents: U.S. importers and exporters of biological products, shippers, operators of establishments that produce or test biological products or that engage in product research and development.

Estimated annual number of respondents: 200.

Estimated annual number of responses per respondent: 97.36.

Estimated annual number of responses: 19,472.

Estimated total annual burden on respondents: 51,175 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 16th day of October 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–26594 Filed 10–22–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Neshaminy Creek Watershed, Bucks and Montgomery Counties, PA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service (formerly the Soil Conservation Service) Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Neshaminy Creek Watershed, Bucks and Montgomery Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Ms. Robin E. Heard, State Conservationist, USDA-Natural Resources Conservation Service, One Credit Union Place, Suite 340, Harrisburg, Pennsylvania 17110–2993, telephone (717) 237–2200; fax (717) 237–2239.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robin E. Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to reduce flood damages along the lower Neshaminy Creek. The planned works of improvement will be a change from the works of improvement planned in the previously approved Work Plan for Neshaminy Creek Watershed. The previously planned floodwater retarding structure will be replaced with the following works of improvement: flood warning system; voluntary program to acquire or move residential and commercial buildings (including the establishment of riparian buffers); voluntary elevation and/or flood proofing of residential and commercial buildings; continuation and enhancement of floodplain ordinances, the flood insurance program and storm water management.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and other interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robin E. Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904 " Watershed Protection and Flood Prevention " and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: October 16, 2001.

Robin E. Heard,

State Conservationist.

[FR Doc. 01–26695 Filed 10–22–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Senior Executive Service: Performance Review Boards; Membership

AGENCY: Economic Development Administration, Commerce.

ACTION: Notice.

SUMMARY: Announcement of New Members for the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: LaVerne H. Hawkins, Department of Commerce, Office of Human Resources, Room 7412, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The following individuals are eligible to serve on the Economic Development Administration's Performance Review Board:

Gerald R. Lucas, Chairperson, Deputy Chief Financial Officer
Mary Pleffner, Chief Financial Officer
James L. Taylor, Deputy Chief Financial Officer, Office of the Secretary
Deborah Jefferson, Deputy Director, Office of Human Resources Management, Office of the Secretary
Samuel Calderon, Deputy Director, Office of Budget, Office of the Secretary
LaVerne H. Hawkins, Executive Secretary, ITA, Office of Human Resources Management, (202) 482–2537

Dated: October 17, 2001.

Vicki G. Brooks,

Human Resources Manager for the Economic Development Administration.

[FR Doc. 01–26589 Filed 10–22–01; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India: Initiation of Antidumping New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping new shipper review.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper review of the antidumping duty order on stainless steel bar from India. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214, we are initiating this new shipper review.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Annika O'Hara or Cole Kyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3798 or (202) 482–1503, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (April 2001).

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2001, the Department received a request from Uday Engineering Works ("Uday"), pursuant to section 751(a)(2)(B) of the Act and in accordance with 19 CFR 351.214(b), to conduct a new shipper review of the antidumping duty order on stainless steel bar from India. At the Department's direction, Uday amended its request for a new shipper review on September 20, 2001. This order has an August semi-annual anniversary month.

Initiation of Review

Pursuant to 19 CFR 351.214(b)(2)(iii), Uday certified in its July 25, 2001 request that it is not now and never has been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation ("POI") (July 1, 1993 through December 31, 1993). In its September 20, 2001 filing, Uday certified, pursuant to 19 CFR 351.214(b)(2)(i), that it did not export the subject merchandise to the United States during the POI. On September 20, 2001, Uday also submitted documentation establishing: (i) The date on which its stainless steel bar was first shipped for export to the United States; (ii) the volume of that shipment; and (iii) the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, we are initiating a new shipper review of the antidumping duty order on stainless steel bar from India. In accordance with 19 CFR 351.214(h)(i), we intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated. All provisions of 19 CFR 351.214 will apply to Uday throughout the duration of this new shipper review. The standard period of review ("POR") in a new shipper review based on the semiannual anniversary month is the six month period immediately preceding the semiannual anniversary month, *i.e.* for the instant review, February 1 through July 31, 2001.

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, until the completion of the review.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is in accordance with section 751(a) of the Act and 19 CFR 351.214.

Dated: October 17, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–26696 Filed 10–22–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Voluntary Conformity Assessment Systems Evaluation

ACTION: Request for comment on proposed information collection.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted by December 24, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jogindar S. Dhillon, National Institute of Standards and Technology (NIST), 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899–2100, telephone: (301) 975–5521.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Voluntary Conformity Assessment Systems Evaluation (NVCASE) Program is a voluntary program to evaluate organizations that carry out activities related to laboratory testing, product certification, and quality system registration. Interested organizations provide information to NIST to support their conformance with established criteria for any of these activities. The information provided is used to conduct an NVCASE evaluation. Based on NVCASE evaluations, NIST provides recognition to qualified U.S. organizations. The ultimate goal is to help U.S. manufacturers satisfy applicable product requirements mandated by other countries through conformity assessment procedures conducted in this country prior to export.

NVCASE recognition (1) provides other governments with a basis for having confidence that qualifying U.S. conformity assessment bodies (CABs) are competent, and (2) facilitates the acceptance of U.S. products in foreign regulated markets based on U.S. conformity assessment results.

The NVCASE recognition program facilitates U.S. trade with Europe, Asia and the Americas under government-to-government agreements, and allows the unhindered flow of U.S. products to countries in those regions.

II. Method of Collection

Applicants submit written information to NIST.

III. Data

OMB Number: 0693–0019.
Form Number: None.
Type of Review: Regular submission for an extension of a currently approved collection.
Affected Public: Accreditation Bodies.
Estimated Number of Respondents: 100.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Burden Hours: 100.
Estimated Total Annual Cost: The estimate of the total annual cost to submit this information for fiscal year 2001 and future years is $3500. The cost is borne by the entities submitting the information. The small increase in cost from the previous estimate is due to cost escalation and experience in working with these organizations.

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: October 16, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–26697 Filed 10–22–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Tuesday, November 13, 2001, 9 a.m. to 5:30 p.m.; Wednesday, November 14, 2001, 8 a.m. to 5:30 p.m.; Thursday, November 15, 2001, 8 a.m. to 5:30 p.m.; Friday, November 16, 2001, 8 a.m. to 3:00 p.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the site visit process, review the final judging process and meeting procedures, final judging of the 2001 applicants, learnings and improvements for 2002, and update on the 2002 program. The review process involves examination of records and discussions of applicant data, and will be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code.

DATES: The meeting will convene November 13, 2001 at 9 a.m. and adjourn at 3 p.m. on November 16, 2001. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 12, 2001, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act Pub. L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: October 16, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–26698 Filed 10–22–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100201C]

Marine Mammals; File No. 1008–1637

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that John Wise, Ph.D., Yale University, School of Medicine, P.O. Box 208034, New Haven, CT, 06520–8034 has been issued a permit to take marine mammal species of the orders Cetacea and Pinnipedia for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On August 16, 2001, notice was published in the **Federal Register** (66 FR 42997) that a request for a scientific research permit to import, export, or otherwise take marine mammals of the orders Cetacea and Pinnipedia had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Dated: October 15, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–26689 Filed 10–22–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

October 18, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 435 is being increased for special shift, reducing the limit for Category 444 to account for the special shift being applied to Category 435.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 77594, published on December 12, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 23, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
435	16,412 dozen.
444	12,997 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–26658 Filed 10–22–01; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 66, No. 201, Wednesday, October 17, 2001, page 52747.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, October 23, 2001.

CHANGES IN MEETING: The Commission meeting regarding Purchaser Identification Card Program (ANPR) is canceled. The meeting has not been rescheduled at this time.

For a recorded message containing the latest agenda information, call (301) 504–009.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 19, 2001.

Todd A. Stevenson,

Acting Secretary.

[FR Doc. 01–26819 Filed 10–19–01; 3:14 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

TIME AND DATE: 10:00 a.m., Tuesday, October 23, 2001.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

ENFORCEMENT MATTER OS# 4312: The Commission will be brief on issues related to enforcement matter OS# 4312.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 19, 2001.

Todd A. Stevenson,

Acting Secretary.

[FR Doc. 01–26820 Filed 10–19–01; 3:14 pm]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed AmeriCorps Education Award Utilization Survey. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and,
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by December 24, 2001.

ADDRESSES: Send comments to: Corporation for National and Community Service, Attn. William Ward, Office of Evaluation, 9th Floor, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: William Ward, (202) 606–5000, ext. 375.

SUPPLEMENTARY INFORMATION:

AmeriCorps Education Award Utilization Survey

Background

One of the goals of the AmeriCorps program is furthering the educational opportunities of its members. The AmeriCorps Education Award provides up to $4,725 to help a member pay for further education or to repay student loans. Part-time members get a pro-rated portion of that amount. The Corporation's National Service Trust data showed that about half of the AmeriCorps graduates who have earned Education Awards had begun to use them. Through the proposed study, the Corporation seeks to identify reasons for non-use of Education Awards. In addition, a thorough exploration of trends in non-use and reasons for non-use will identify ways in which the Corporation can meaningfully increase the use of Education Awards, thus furthering educational opportunity.

Current Action

The Corporation seeks to conduct a survey of former members of the AmeriCorps*State and National, AmeriCorps*VISTA and AmeriCorps*NCCC programs. This survey will entail telephone interviews of approximately 30 minutes in length with 1,000 former AmeriCorps members. It will identify trends in and reasons for non-use of the Educational Awards.

- *Type of Review:* New collection.
- *Agency:* Corporation for National and Community Service.
- *Title:* AmeriCorps Education Award Utilization Survey.
- *OMB Number:* None.
- *Agency Number:* None.
- *Affected Public:* Former AmeriCorps members.
- *Total Respondents:* 1,000.
- *Frequency:* One time.
- *Average Time Per Response:* 30 minutes.
- *Estimated Total Burden Hours:* 500 hours.
- *Total Burden Cost (capital/startup):* 0
- *Total Burden Cost (operating/maintenance):* 0

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 18, 2001.

David Rymph,

Acting Director, Department of Evaluation and Effective Practices.

[FR Doc. 01–26669 Filed 10–22–01; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Detection of Antibodies to Squalene in Serum

AGENCY: U.S. Army Medical Research and materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/859,389 entitled "Detection of Antibodies to Squalene in Serum" filed May 18, 2001. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention is a method for detecting squalene in sera.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–26675 Filed 10–22–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method of Inhibiting Side Effects of Pharmaceutical Compositions Containing Amphiphilic Vehicles or Drug Carrier Molecules

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/183,375 entitled "Method of Inhibiting Side Effects of Pharmaceutical Compositions Containing Amphiphilic Vehicles or Drug Carrier Molecules" filed October 30, 1998. Foreign rights are also available (PCT/US98/23280). This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A method is provided for inhibiting or preventing toxicity and other unwanted effects (a) caused by solvents for pharmaceuticals which solvents or emulsifier contain amphiphilic molecules such as polyethoxylated oils or a derivative thereof, or (b) caused by a drug in a vehicle containing amphiphilic molecules such as phospholipids or derivative thereof, employing a complement inhibitor, and pharmaceutical compositions including a drug, solvent, or carrier containing amphiphilic molecules or derivatives thereof, and a complement inhibitor are also provided.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–26674 Filed 10–22–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Novel Dendrimer Technologies for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to novel dendrimer based technologies as described in U.S. Patent applications "One-Pot Synthesis of Functional Dendrigrafts and their Block Copolymers with Simple Initiating Systems" (09/356802 filed 7/19/98) and "Methods of using Nanomanipulation for Enhancing Bio-Assay Performance" (09/448403 filed 11/22/99). Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 459, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–26676 Filed 10–22–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Morro Bay Estuary Feasibility Study, Morro Bay California

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District of the U.S. Army Corps of Engineers will prepare a DEIS to support the Morro Bay Estuary Feasibility Study, Morro Bay, California. The Study Area is the Morro Bay Estuary, which is located on the central coast of California within the City of Morro Bay, California. The Bay is approximately four miles long and one and three quarters miles at its maximum width. The central portion of the bay encompasses the delta of Chorro and Los Osos Creeks.

Morro Bay Estuary and associated wetlands provide valuable habitat for aquatic wildlife and are an important refuge for migratory birds and marine animals. Morro Bay is one of 28 estuaries in the Environmental Protection Agency's National Estuary Program.

The predominant problem that threatens the Morro Bay Estuary ecosystem is excessive sedimentation during periods of stormwater flows from Los Osos and Chorro Creeks. This results in significant increases in the volume of sediment deposited within the Bay. Deposition results in loss of wetlands as large-scale sedimentation promotes swift progression from marine to degraded salt marsh habitat. The Feasibility Study will focus on addressing the problems and needs caused by sediment deposition in the Morro Bay area. The DEIS will analyze the potential impacts (beneficial and adverse) on the environment for a range of alternatives, including the recommended plan.

The Los Angeles District, the Morro Bay national Estuary Program, and the County of San Luis Obispo will cooperate in conducting this Feasibility Study.

ADDRESSES: District Engineer, U.S. Army corps of Engineers, Los Angeles District, ATTN: CESPL–PD–RQ (R. Farve), P.O. Box 532711, Los Angeles, California 90053–2325.

FOR FURTHER INFORMATION CONTACT: Mr. Rey Farve, Environmental Coordinator, telephone (213)–452–3864, or Mr. Tony Risko, Chief, Coastal Studies Group, telephone (213)–452–3833.

SUPPLEMENTARY INFORMATION:

1. Authorization

This Feasibility Study was authorized by U.S. House Committee on Transportation and Infrastructure Resolution dated 7 May 1997 which states, in part: "Resolved by the Committee on Transportation and Infrastructure of the United States House of Representatives, that the Secretary of the Army is requested to review the report of the Chief of Engineers on Morro Bay Harbor, San Luis Obispo County, California published as House Document 103–33, 103rd Congress, 1st Session, and other pertinent reports to determine whether modifications of the recommendations contained therein are advisable at the present time in the interest of environmental protection and restoration and related purposes within the Morro Bay Estuary in Morro Bay, California."

2. Background

Morro Bay Estuary is located on the central coast of California within the City of Morro Bay, California. The Morro Bay Estuary joined the Environmental Protection Agency's National Estuary Program in July 1995. The Bay contains the most significant wetland system on California's south central coast. It serves a critical environmental function on the Pacific coast and serves national and international interests, in that the Estuary supports several federally listed threatened or endangered species, many species of migratory birds protected by international treaties, and provides a protected harbor of offshore marine fisheries.

There are many known and potential threats to this nationally significant estuary. Sediment threatened to shorten the life of this open water resource by as much as ten-fold. Other water quality concerns include excessive levels of bacteria, nutrients, and heavy metals. Water diversion, urban and agricultural runoff, and increasing impervious surfaces threaten the long-term health of the Bay.

The predominant problem that threatens the Morro Bay Estuary ecosystem is excessive sedimentation during periods of stormwater flows from Lost Osos and Chorro Creeks. This results in significant increases in the volume of sediment deposited within the Bay. Deposition results in loss of wetlands as large-scale sedimentation promotes swift progression from marine to degraded salt marsh habitat.

The non-federal sponsor of the Feasibility Study is the County of San Luis Obispo.

3. Alternatives

The Feasibility Study will focus on addressing the problems and needs caused by sediment deposition in the Morro Bay area. In general, alternative plans will focus on reducing the uncontrolled sediment deposition within the backbay, and associated restoration of the ecosystem. Alternative plans will also consider improving tidal circulation and tidal flushing. Other measures to restore desired environmental conditions and habitat for federal threatened and endangered species will be formulated and addressed during coordination efforts with the general public and other resource agencies. Environmentally sensitive dredging methods will be explored, and alternate sites and uses for dredged material will be considered.

The primary undesirable impacts of concern from any of the alternatives will likely be related to disposal of dredged material, and construction impacts. These will be addressed in the study as part of the plan formulation of the Feasibility Study, and potential impacts will be analyzed in the DEIS.

4. Scoping Process

Participation of all interested Federal, State, and County agencies, groups with environmental interests, and any interested individuals is encouraged. Public involvement will be most beneficial and worthwhile in identifying the scope of pertinent, significant environmental issues to be addressed; identifying and eliminating from detailed study issues that are not significant; offering useful information such as published or unpublished data; providing direct personal experience or knowledge which informs decision making; and recommending suitable mitigation measures to offset potential impacts from the proposed action or alternatives.

A public scoping meeting is scheduled for November 1, 2001 in the City of Morro Bay. When available, the specific time and location of this meeting will be announced in a mailing to those on the mailing list developed for this project, and announced through local media channels. The purpose of the scoping meeting will be to gather information from the general public or interested organizations about issues and concerns that they would like to see addressed in the DEIS. Comments may be delivered in writing or verbally at the meeting or sent in writing to the Los Angeles District at the address given above. The scoping period will conclude 60 days after publication of this NOI.

5. Availability of the DEIS

The DEIS is expected to be available to the public for review and comment beginning in the fall of 2003.

Dated: October 12, 2001

Richard G. Thompson,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 01–26673 Filed 10–22–01; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Federal Student Assistance Programs under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Notice inviting letters of application for participation in the Quality Assurance Program.

SUMMARY: The Secretary of Education invites institutions of higher education that may wish to participate in the Quality Assurance Program, under section 487A(a) of the Higher Education Act of 1965, as amended (HEA), to submit a letter of application to participate in the program.

DATES: Letters of application may be submitted any time after October 23, 2001.

ADDRESSES: Institutions wishing to apply to participate in the Quality Assurance Program may do so by mailing a letter of application to Barbara Mroz, U.S. Department of Education, 830 First Street, NE., Washington, DC 20202–5232 or by submitting a letter of application electronically to Barbara Mroz at: *Barbara.Mroz@ed.gov*

FOR FURTHER INFORMATION CONTACT: Sharyn Hutson, U.S. Department of Education, 830 First Street, NE., Washington, DC 20202–5232, telephone: (202) 377–4379, or via internet: *Sharyn.Hutson@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio tape or computer diskette) on request by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background

Institutions of higher education are invited to join the Department in an effort to simplify regulations and administrative processes for the Federal Student Financial Assistance (SFA) Programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). The vision of the Quality Assurance Program, with 143 institutions currently participating, is to provide tools that help all Title IV institutions promote better service to students, compliance, and continuous improvement in program delivery. The program encourages participating institutions to develop and implement their own comprehensive systems to verify student financial aid application data.

The Department continues to support the expansion of the Quality Assurance Program. The Secretary is authorized to provide participating institutions with regulatory flexibility for the verification of student data, and to encourage alternative management approaches in the areas of institutional processing and disbursement of Title IV funds, and entrance and exit counseling.

The Secretary believes that the process of continuous improvement fostered by the institutions already participating in the Quality Assurance Program has enhanced not only the accuracy of student aid awards and payments, but also the management of student aid offices and the delivery of services to students. By expanding the Quality Assurance Program to include other management areas, the Secretary believes it can serve more institutions and promote further improvements.

Features of the Program

The mission of the Quality Assurance Program is to help schools attain, sustain, and advance exceptional student aid delivery and service excellence. For the past 16 years, the program has done that by providing participating institutions with the flexibility to design an institutional verification program that more directly focuses on their own population segments. It has also helped them target areas of administration that affect award accuracy or that may leave the institution vulnerable to potential liabilities.

The Quality Assurance Program has given institutions the tools and techniques to assess, measure, analyze, correct and prevent problems, and has provided them with data on which to base their decisions for solving problems and addressing verification items.

The Secretary encourages institutions participating in the Quality Assurance Program to evaluate their policies and procedures and adopt improvements in those procedures. Institutions measure performance and test the effectiveness of their verification program by using the Department's Quality Analysis Tool. The Quality Analysis Tool is an Institutional Student Information Record (ISIR) analysis software product that provides Financial Aid Administrators with an in-depth analysis of their applicant population. It allows them to see not only which FAFSA elements changed when verified, but also what impact these changes have upon the Expected Family Contribution (EFC). This analysis helps Financial Aid Administrators develop a targeted institutional verification program, which makes the financial aid process easier for students.

The Quality Assurance Program also helps institutions make improvements beyond verification. It helps them set goals for continuous improvement in all areas of financial aid delivery, rather than be satisfied just to achieve basic compliance. It is a management tool that works well at all types of institutions,

including 2- and 4-year public, private, and proprietary. One key benefit of the program: institutions have reported better service to students as a primary outcome of their participation in the Quality Assurance Program. The program is a partnership between the Department and the participating institutions. Both parties become engaged in promoting continuous improvement in the administration and delivery of the student financial assistance programs, thereby enhancing service to students.

Invitation for Applications

The Secretary invites institutions of higher education that administer one or more Title IV programs to submit a letter of application to participate in the Quality Assurance Program. Institutions that currently participate in the program may continue to do so without submitting a new letter of application. The Secretary will review the letter of application, which should reflect the institution's commitment to the goals of the Quality Assurance Program, as determined by the Secretary. The letter of application should address the following goals in detail:

- Attain and sustain compliance and continuous improvement in program delivery, and better service to students;
- Improve the accuracy of institutional verification programs;
- Increase institutional flexibility in managing student aid funds, while maintaining accountability for the proper use of those funds;
- Encourage the development of innovative management approaches that advance quality.

Review Process

The Department will screen prospective participants to determine if the institution meets general Title IV eligibility requirements and has a demonstrated record of program compliance. The Secretary may also consider the institution's performance with regard to financial responsibility, administrative capability, program review findings, audit findings, etc. as outlined in the regulations and in the Student Financial Aid Handbook: Institutional Eligibility and Participation section. The Secretary anticipates that the review of applications will begin within 45 days of the date of this notice. However, applications that are received later will also be considered.

Electronic Access to This Document

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Dated: October 17, 2001.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 01–26648 Filed 10–22–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Tuesday, November 13, 2001, 8:00 a.m.–6:00 p.m.; Wednesday, November 14, 2001, 8:00 a.m.–5:00 p.m.

Public participation sessions will be held on: Tuesday, November 13, 2001, 12:15–12:30 p.m, 5:45–6:00 p.m.; Wednesday, November 14, 2001, 11:45–12:00 noon, 4:00–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSS: Ameritel Inn, 645 Lindsay Boulevard, Idaho Falls, Idaho.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board(CAB) Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda: (Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *www.ida.net/users/cab/.*)

To meet with the new site manager.

To receive presentations on and to discuss:

- Potential site groundwater contamination
- Authorized DOE–Idaho funding for fiscal year 2002
- INEEL CERCLA Disposal Facility (ICDF) and the CAB's position on the facility
- INEEL efforts to identify potential new site missions

To discuss:

- Acceptable remediation objectives for the Subsurface Disposal Area
- Public perceptions related to alternatives to incineration
- Progress to date on the Decontamination and Decommissioning Decision Making Model
- CAB participation in the Top-to-Bottom DOE–HQ review

To receive status reports on:

- The dispute between DOE, the EPA, and the State of Idaho regarding the approach and schedule for cleanup at Pit 9 (located in Waste Area Group at the Radioactive Waste Management Complex)
- Workforce restructuring at the INEEL
- Coordination with the Bureau of Land Management (regarding Wildland Fires Memorandum of Understanding)

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or tele-phone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Wendy Lowe, INEEL CAB Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402 or by calling (208) 522–1662.

Issued at Washington, DC on October 18, 2001.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–26671 Filed 10–22–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL93–10–012 and ER93–150–019]

Boston Edison Company; Notice of Filing

October 17, 2001.

Take notice that on September 26, 2001, New England Power Company (NEP) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance refund report in accordance with the Commission's September 13, 2001 letter Order approving settlement filed June 15, 2001 in the above-captioned proceedings.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 26, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers

Secretary

[FR Doc. 01–26598 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

October 17, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12093–000.

c. *Date filed:* August 30, 2001.

d. *Applicant:* City of Brawley, California.

e. *Name of Project:* Colorado River Aqueduct Desalination and Salton Sea Water Supply Project.

f. *Location:* On the Colorado River Aqueduct Wasteway No. 1, and Salton Sea, in Riverside and Imperial Counties, California. Colorado River Aqueduct is owned by The Metropolitan Water District of Southern California, Wasteway No. 1 is administered by the U.S. Bureau of Reclamation, and the Salton Sea is managed by the Salton Sea Authority.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael Clinton, Michael Clinton Engineering, 3004 Harborside Drive, Las Vegas, NV 89117–2242, (702) 255–1536

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the project number (P–12093–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A Proposed 500-foot-long, 7-foot-high dam, (2) a proposed impoundment having and surface area of 100 acres and storage capacity of 500 acre-feet and normal water surface elevation of 1670 feet msl, (3) a proposed 18-mile-long, 48-inch-diameter steel penstock, (4) a proposed powerhouse containing two generating units having an installed capacity of 8.5 MW, (5) a proposed tailrace emptying into the Salton Sea, (6) a proposed 8-mile-long, 12.5 kV transmission line, and (7) appurtenant Facilities.

The project would have an annual generation of 100 GWh that would be sold to a local utility.

l. Copies of this filing are on file with the Commission and are available for public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified

comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–26600 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–003]

Colorado Interstate Gas Company; Notice of Compliance Filing

October 17, 2001.

Take notice that on October 11, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 1, 2001:

Fifth Revised Sheet No. 7A
First Revised Sheet No. 7B
First Revised Sheet No. 7C
Seventh Revised Sheet No. 8A
Second Revised Sheet No. 8B
First Revised Sheet No. 13C
First Revised Sheet No. 13D
Seventh Revised Sheet No. 21
Third Revised Sheet No. 30
Third Revised Sheet No. 132A.03
Third Revised Sheet No. 231A
Eleventh Revised Sheet No. 234A
Fourth Revised Sheet No. 306A
Fifth Revised Sheet No. 307
Seventh Revised Sheet No. 352
Fifth Revised Sheet No. 353
Fifth Revised Sheet No. 354
Second Revised Sheet No. 355
Seventh Revised Sheet No. 358

CIG states that the tariff sheets are being filed in compliance with Ordering Paragraph (D) of the Commission's September 26, 2001 order in this proceeding addressing the new services proposed by CIG in its rate case.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26606 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–009]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Contract and Non-Conforming Service Agreement

October 17, 2001.

Take notice that on October 12, 2001, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and Engage Energy America LLC (Engage) (FT Service Agreement). The FT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and Engage commencing December 1, 2001. Engage obtained the capacity as the successful bidder in an open season held for the capacity. The FT Agreement also constitutes a non-conforming service agreement as contemplated in § 154.1(d) of the Commission's regulations.

Great Lakes states that the FT Service Agreement is being filed to implement a negotiated rate contract as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000.

Great Lakes also states that the FT Service Agreement is a non-conforming service agreement in that it deviates in a material aspect from the form of service agreement in Great Lakes' tariff. Accordingly, Great Lakes has also filed Tenth Revised Sheet No. 1 and Original Sheet No. 90 for inclusion in Great Lakes' FERC Gas Tariff, Second Revised Volume No. 1, identifying the FT Service Agreement as a non-conforming service agreement as required by § 154.112(b) of the Commission's regulations, effective December 1, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 24, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26604 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–157–005]

Kern River Gas Transmission Company; Notice of Negotiated Rate

October 17, 2001.

Take notice that on October 10, 2001, Kern River Gas Transmission Company (Kern River) tendered the following tariff sheets for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, with an effective date November 1, 2001:

Second Revised Sheet No. 2
Sheet Nos. 491–494 [Reserved]
Original Sheet No. 495
Sheet Nos. 496–499 [Reserved]
Second Revised Sheet No. 912 [Reserved]

Kern River states that the purpose of this filing is to implement negotiated rate transactions between Kern River and Questar Gas Company, and between Kern River and the Town of Eagle Mountain, in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Kern River states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26605 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

October 17, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12104–000.

c. *Date filed:* August 2, 2001.

d. *Applicant:* NatEl System US.

e. *Name of Project:* W. D. Mayo Dam Project.

f. *Location:* On the Arkansas River, in Sequoyah and LeFlore Counties, Oklahoma. Would utilize the U.S. Army Corps of Engineer's existing W. D. Mayo Dam Lock and Dam #14.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gary F. Ricketts, 2760 76th Avenue SE., Suite 208, Mercer Island, WA 98040, (206) 275–0390.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the project number (P–12104–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 11932–000, Date Filed: March 29, 2001, Date Notice Closed: August 8, 2001.

l. *Description of Project:* The proposed project using the U.S. Army Corps of Engineer's W. D. Mayo Dam and impoundment would consist of: (1) A proposed powerhouse containing 7 generating units having a total installed capacity of 35 MW, (2) a proposed 2-mile-long, 25 kV transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 155 GWh that would be sold to a local utility.

m. Copies of this filing are on file with the Commission and are available for public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the

web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

n. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–26601 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–2–000]

Natural Gas Pipeline Company of America; Notice of Termination of Gathering Service

October17, 2001.

Take notice that on October 1, 2001, Natural Gas Pipeline Company of America (Natural), tendered for filing in Docket No. RP02–2–000 a request pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c, and the Federal Energy Regulatory Commission's policy set forth in its order on rehearing in *Arkla Gathering Services Company*, 69 FERC ¶61,280 (1994) for authorization to terminate services through previously certificated and uncertificated gathering facilities located in Beckham and Washita Counties, Oklahoma (Elk City, Elk Creek, Liberty Prospect, Southwest Burns Flat and West Sentinel Area Facilities) effective November 1, 2001. Natural intends to sell these facilities to Aquila Gas Processing Corporation (Aquila).

Natural states that copies of the filing have been mailed to the customers which are currently receiving service via the subject facilities and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 24, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26607 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–413–001—1]

Northern Natural Gas Company; Notice of Compliance Filing

October 17, 2001.

Take notice that on October 9, 2001, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariffs, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on September 27, 2001:

Fifth Revised Volume No. 1
Eighth Revised Sheet No. 6
Original Volume No. 2
23 Revised Sheet No. 1A.1
Fourth Revised Sheet No. 544

Northern states that the above sheets represent cancellation of Rate Schedule T–12 from Northern's Original Volume No. 2 FERC Gas Tariff, and its associated deletion from the Table of Contents in Northern's Volume Nos. 1 and 2 tariffs.

Northern states that copies of the filing were served upon the company's customers and interested state Commissions.

Any person desiring to be heard or to protest said application should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 29, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202)208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 01–26596 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–438–000]

Northwest Pipeline Corporation; Notice of Site Visit

October 17, 2001.

On October 23–24, 2001, the Office of Energy Projects (OEP) staff will conduct a pre-certification site visit of Northwest Pipeline Corporation's (Northwest) Rockies Expansion Project in various counties in Wyoming and Idaho. We will examine the proposed project route and possible route variations. An aerial inspection is scheduled for the entire route on the 23rd and the morning of the 24th. A ground inspection will be conducted by automobile and on foot on the afternoon of the 24th. The ground inspection will be limited to the proposed Pocatello Loop route. Representatives of Northwest will be accompanying the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. For further information on attending the site visit, please contact the Commission's Office of External Affairs at (202) 208–0004.

David P. Boergers,

Secretary.

[FR Doc. 01–26597 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–058]

Tennessee Gas Pipeline Company; Notice of Change in Rates and Negotiated

October 17, 2001.

Take notice that on September 26, 2001, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a notice of a change in the rates for the October 18, 2000 Negotiated Rate Agreement between Tennessee and Dynegy Marketing and Trade which was accepted by the Commission in *Tennessee Gas Pipeline Company*, 93 FERC ¶61,168 (2000) (November 17 Order). As agreed to in the November 17 Order, Tennessee is providing notice of substitution of a fixed price effective October 1, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 24, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26603 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 17, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12087–000.

c. *Date filed:* July 16, 2001.

d. *Applicant:* White River Falls Energy Associates, Inc.

e. *Name of Project:* White River Falls Project.

f. *Location:* On the White River, near the Town of Maupin in Wasco County, Oregon. The project would not use any federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles G. Prewitt, White River Falls Energy Associates, Inc., 1415 140th Avenue NE., #9, Bellevue, WA, 98005 (425) 957–1874.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the project number (P–12087–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 400-foot-long, 5-foot-high diversion dam with a negligible

impoundment, (2) a proposed 1500-foot-long, 8.5-foot-diameter tunnel, (3) a proposed 300-foot-long, 8.5 foot-diameter steel penstock, (4) a proposed powerhouse containing one generating unit having an installed capacity of 8.5 MW, (5) a proposed tailrace, (5) a proposed 600-foot-long, 69 kV Transmission line, and (6) appurtenant facilities.

The project would have an annual generation of 33 GWh that would be sold to a local utility.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–26599 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Eergy Regulatory Commission

[Docket No. ER01–1695–001, *et al.*]

Boston Edison Company, *et al.*; Electric Rate and Corporate Regulation Filings

October 17, 2001.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company

[Docket No. ER01–1695–001, Docket No. ER01–1695–003, Docket No. ER01–1705–001, Docket No. ER01–1705–003, Docket No. ER01–1782–001, Docket No. ER01–1782–003]

Take notice that on October 12, 2001, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company (the NSTAR Companies) tendered for filing with the Federal Energy Regulatory Commission (Commission) Attachment K to their respective Open Access Transmission Tariffs, "Standard Form of Interconnection Agreement" in compliance with the Commission's August 13, 2001 and September 12, 2001 orders in the above-referenced dockets. Cambridge Electric Light Company, et al., 96 FERC 61,205, and Cambridge Electric Light Company, et al., 96 FERC 61,269.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Southern Company Services, Inc.

[Docket No. ER01–2854–001]

Take notice that on October 12, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), resubmitted to the Federal Energy Regulatory Commission (Commission) Amendment No. 2 to the Agreement for Network Integration transmission Service for Alabama Electric Cooperative, Inc., under Southern Companies Open Access transmission tariff to Add Delivery Points. This refiling is made in compliance with FERC's letter order accepting Amendment No. 2 for filing dated September 14, 2001 in FERC Docket No. ER01–2854–000. Amendment No. 2 provides that transmission service under the referenced service agreement (Service Agreement No. 225 under Southern Companies Open Access Transmission Tariff (FERC Electric Tariff Original Volume No. 5) is to be provided at two new delivery points and it specifies the estimated Direct Assignment Facility Charges for these additional delivery points.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. ISO New England Inc.

[Docket No. ER01–316–004]

Take notice that on September 24, 2001, ISO New England Inc. (the ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Compliance Report pursuant to the Commission Order dated September 12, 2001.

Comment date: October 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER02–79–000]

Take notice that on October 12, 2001, Southern California Edison Company (SCE) submitted to the Federal Energy Regulatory Commission (Commission) Letter Agreements between SCE and High Desert Power Project, LLC (High Desert), Pegasus Power Partners, LLC (Pegasus), Energy Unlimited, Inc. (Energy Unlimited) and Blythe Energy, LLC (Blythe).

These Agreements specify the terms and conditions under which SCE will provide limited pre-interconnection services including procurement, engineering, and limited construction. Copies of this filing were served upon the Public Utilities Commission of the State of California and High Desert, Pegasus, Energy Unlimited, and Blythe.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. American Transmission Systems, Inc., Ohio Edison Company, The Cleveland, Electric Illuminating Company, and The Toledo Edison Company

[Docket No. ER02–80–000]

Take notice that on October 12, 2001, American Transmission Systems, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) on behalf of itself and Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, a Service Agreement for Network Integration Service and Operating Agreement for the Network Integration Transmission Service under the Ohio Retail Electric Program with Sempra Energy Solutions pursuant to the American Transmission Systems, Inc. Open Access Tariff. This agreement will enable the party to obtain Network Integration Service under the Ohio Retail Electric Program in accordance with the terms of the Tariff. The proposed effective date under this agreement is October 10, 2001.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. American Transmission Company LLC

[Docket No. ER02–81–000]

Take notice that on October 12, 2001, American Transmission Company LLC (ATCLLC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Revised Network Operating Agreement and a Revised Network Integration Service Agreement for Consolidated Water Power Company. ATCLLC requests an effective date of October 1, 2001.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Energy Supply Company, LLC

[Docket No. ER02–82–000]

On behalf of Hatfield's Ferry, LLC

Take notice that on October 12, 2001, Allegheny Energy Supply Company, LLC, on behalf of its to-be-formed subsidiary, Hatfield's Ferry, LLC (Hatfield) filed with the Federal Energy Regulatory Commission (Commission) a market rate tariff of general applicability under which it proposes to sell capacity and energy to affiliates and non-affiliates at market-based rates, and to make such sales to franchised public utility affiliates at rates capped by a publicly available regional index price.

Hatfield requests an effective date no later than November 16, 2001, and also requests expedited Commission review so an order may be issued by November 16, 2001.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Energy Vermillion, LLC

[Docket No. ER02–83–000]

Take notice that on October 12, 2001, Duke Energy Vermillion, LLC (Duke Vermillion) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 205 of the Federal Power Act an executed Electric Energy And Ancillary Service Sales Agreement, dated as of September 13, 2001 between Duke Vermillion and the Duke Energy Trading and Marketing, LLC as a service agreement under the Duke Vermillion's FERC Electric Tariff No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Nevada Power Company

[Docket No. ER02–84–000]

Take notice that on October 12, 2001, Nevada Power Company (Nevada Power) filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, an executed Interconnection and Operation Agreement between Nevada Power and Duke Energy Moapa, LLC.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Lake Road Generating Company, L.P.

[Docket No. ER02–85–000]

Take notice that on October 12, 2001, Lake Road Generating Company, L.P. (Lake Road) tendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement for power sales (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) pursuant to which Lake Road will sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PG&E Dispersed Generating Company, LLC

[Docket No. ER02–86–000]

Take notice that on October 12, 2001, PG&E Dispersed Generating Company, LLC (PG&E Dispersed Gen) tendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement for power sales (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P.

(PGET) pursuant to which PG&E Dispersed Gen will sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Millennium Power Partners, L.P.

[Docket No. ER02–87–000]

Take notice that on October 12, 2001, Millennium Power Partners, L.P. rendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement for power sales (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P. pursuant to which Millennium will sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Rate Schedule No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Madison Windpower, LLC

[Docket No. ER02–88–000]

Take notice that on October 12, 2001, Madison Windpower, LLC (Madison) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission) a service agreement for power sales (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) pursuant to which Madison will sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Mountain View Power Partners, LLC

[Docket No. ER02–89–000]

Take notice that on October 12, 2001, Mountain View Power Partners, LLC (Mountain View) filed with the Federal Energy Regulatory Commission (FERC or Commission) a service agreement for power sales (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) as required by the Commission in its letter Order of February 9, 2001. See Mountain View Power Partners, LLC, Docket No. ER01–1336–000 (delegated letter order issued February 9, 2001) (Section 205 Letter Order). See also Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC 61,139 clarified, 65 FERC 61,081 (1993) (permitting non-marketer public utilities with umbrella form of service agreements on file with the Commission to file individual, executed service agreements with the Commission within thirty days of commencing service). The Service Agreement commits Mountain View to sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Williams Energy Marketing & Trading Company

[Docket No. ER02–91–000]

Take notice that on October 12, 2001, Williams Energy Marketing & Trading Company (Williams EM&T) made an informational filing with the Federal Energy Regulatory Commission (Commission) detailing and supporting their Annual Fixed Revenue Requirements and their Variable O&M Rates as required by Schedule F of the reliability Must Run Agreement with the California Independent System Operator (CAISO). Copies of the filing have been served upon the CAISO both in hard copy and electronic format. Williams EM&T requests an effective date of January 1, 2002.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER02–92–000]

Take notice that on October 12, 2001, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Generator Interconnection and Operating Agreement (Interconnection Agreement) with CPV Cunningham Creek LLC (CPV). The unexecuted Interconnection Agreement sets forth the terms and conditions governing the interconnection between a combustion turbine and steam cycle project to be constructed by CPV and Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission accept this filing and make the Interconnection Agreement effective on December 11, 2001.

Copies of the filing were served upon CPV Cunningham Creek LLC and the Virginia State Corporation Commission.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Consumers Energy Company

[Docket No. ER02–94–000]

Take notice that on October 12, 2001 Consumers Energy Company (Consumers) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Nordic Marketing, L.L.C., (Customer) under Customer' FERC Electric Tariff No. 9 for Market Based Sales. Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Consumers requested that the Agreement be allowed to become effective as of September 26, 2001.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Power Resource Group, Inc.

[Docket No. ER02–95–000]

Take notice that on October 12, 2001, Power Resource Group, Inc. (PRG) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its market-based rate schedule, Rate Schedule FERC No. 1, Original Volume No. 1. PRG proposes that its Rate Schedule FERC No. 1, Original Volume No. 1 become effective October 15, 2001, which is one business day after the date of filing.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Company

[Docket No. ER02–96–000]

Take notice that on October 12, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Pepco Energy Services designated as Service Agreement No. 343 under the Company's Retail Access Pilot Program, pursuant to Attachment L of the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers effective June 7, 2000. Copies of the filing were served upon Pepco Energy Services, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Dominion Virginia Power requests an effective date of October 1, 2001, the date requested by the customer.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Doyle I, L.L.C. Walton Electric Membership Corporation

[Docket No. EC02–3–000]

Take notice that on October 12, 2001, Doyle I, L.L.C. (Doyle) (on behalf of Power Generation Investco, L.L.C. (Investco) and Enron North America Corp. (ENA) and Walton Electric Membership Corporation (Walton) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Investco will transfer all of the membership interests it holds in Doyle to Walton through an LLC Interest Purchase Agreement. Applicants request confidential treatment of Exhibit I, pursuant to 18 CFR 388.112 of the Commission's regulations, for the written instruments associated with the proposed disposition.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Holdings, Inc. Select Energy, Inc.

[Docket No. EC02–4–000]

Take notice that on October 12, 2001, Niagara Mohawk Holdings, Inc. and Select Energy, Inc. filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Select Energy will acquire all of the common stock of Niagara Mohawk Energy Marketing, Inc., an indirect, wholly owned subsidiary of Niagara Mohawk Holdings, Inc. and an indirect change of control of the jurisdictional facilities of Niagara Mohawk Energy Marketing, Inc. will occur as a result of the proposed stock transfer.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Vermont Yankee Nuclear Power Corporation and Entergy Nuclear Vermont Yankee, LLC

[Docket No. EC02–5–000]

Take notice that on October 12, 2001, Vermont Yankee Nuclear Power Corporation (VYNPC) and Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY) filed with the Federal Energy Regulatory Commission (Commission), an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby VYNPC will divest, and Entergy Nuclear VY will acquire, the 510 megawatt Vermont Yankee Nuclear Power Station located in Vernon, Vermont, including the facility's appurtenant interconnection facilities.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Boston Edison Company

[Docket Nos. EL93–10–000,013 and ER93–150–000, 020]

Take notice that on October 12, 2001, Boston Edison Company (Boston Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission), in compliance with the Commission's September 13, 2001 order in Docket Nos. EL93–10–000, 010 and EL93–150–000, 017, a refund report and notices of cancellation in connection with services it had provided to Commonwealth Electric Company and Montaup Electric Company pursuant to Pilgrim Unit sale contracts with those utilities (FPC Rate Schedule Nos. 68 and 69, respectively).

Copies of the filing were served upon Commonwealth Electric Company and National Grid USA (the successor to Montaup Electric Company).

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Mirant Chalk Point, LLC; Mirant Mid-Atlantic, LLC; Mirant Peaker, LLC; Mirant Potomac River, LLC

[Docket No. EL01–97–001]

Mirant Americas Energy Marketing, L.P., Potomac Electric Power Company

[Docket No. ER01–2634–001]

Take notice that on October 15, 2001, Mirant Americas Energy Marketing, L.P. (Mirant Americas) and Potomac Electric Power Company jointly tendered for filing with the Federal Energy Regulatory Commission (Commission), in accordance with the Commission's order issued on September 14, 2001, in the above-captioned docket, two service agreements pursuant to Mirant Americas' FERC Electric Market Rate Tariff, Original Volume No. 1.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Pacific Gas and Electric Company

[Docket Nos. ER91–505–007 and EL92–18–004]

Take notice that on October 12, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing modifications to the Supplements to PG&E Rate Schedule FERC No. 143, the Principles for Tesla-Midway Transmission Service (SOTP) between PG&E and Transmission Agency of Northern California (TANC) in compliance with Orders of the Federal Energy Regulatory Commission (Commission) in Docket Nos. ER91–505–001 and EL92–18–000. The modifications are detailed in the redline version of the Supplements submitted in this filing.

Copies of this filing have been served upon the California Public Utilities Commission and to the parties designated on the service list compiled by the Commission in FERC Docket Nos. ER91–505–000 and EL92–18–000.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26668 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–3–000, *et al.*]

Llano Estacado Wind, LP, *et al*; Electric Rate and Corporate Regulation Filings

October 16, 2001.

Take notice that the following filings have been made with the Commission:

1. Llano Estacado Wind, LP

[Docket No. EG02–3–000]

Take notice that on October 10, 2001, Llano Estacado Wind, LP, 823 Congress Avenue, Suite 515, Austin, Texas 78701, (Llano Estacado Wind) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

Llano Estacado Wind is a Texas limited partnership that plans to construct, own and operate the Llano Estacado Wind RanchTM at White Deer, a small power production facility located approximately three miles northwest of White Deer, Texas in Carson County (the Facility), and will engage exclusively in the generation of electric energy for sale at wholesale. The Facility will consist of a wind-powered generation facility with a power production capacity of approximately 78.8 megawatts and associated control, substation and interconnection facilities. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge that represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992.

Copies of this Application have been served upon the Public Utilities Commission of Texas and the Securities and Exchange Commission.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. GNE, LLC

[Docket No. EG02–4–000]

Take notice that on October 5, 2001, GNE, LLC, located at 1 Katahdin Avenue, Millinocket, Maine, 04462–1398, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

GNE, LLC is a Delaware limited liability company that will own and operate four hydroelectric plants located at or near Millinocket, Maine, with a total nameplate capacity of approximately 130 megawatts and certain undivided joint ownership interests in several transmission interconnection components that will be part of the eligible facility. GNE, LLC will be engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Energy Services Nevada, Inc.

[Docket No. EG02–6–000]

Take notice that on October 9, 2001, Energy Services Nevada, Inc. (Applicant), filed with the Federal Energy Regulatory Commission (Commission), an application for a determination of Exempt Wholesale Generator status pursuant to Part 365 of the Commission's regulations.

Applicant will own or operate, or both own and operate, an electric cogeneration facility with a capacity of approximately 2.7 MW (along with appurtenant interconnected transmission facilities) located in Fernley, Nevada. All electric output from the facility will be sold exclusively by Applicant at wholesale.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. ISO New England Inc.

[Docket Nos. EL00–62–036]

Take notice that on October 3, 2001 the New England Power Pool (NEPOOL) Participants Committee submitted to the Federal Energy Regulatory Commission (Commission), the Seventy-Eighth Agreement Amending New England Power Pool Agreement and the Seventy-Ninth Agreement Amending New England Power Pool Agreement in response to requirements of the Commission's August 27, 2001 order in Docket No.EL00–62–030, New England Power Pool, 96 FERC 61,228 (2001), and the Commission's August 28, 2001 order in Docket Nos. EL00–62–026 and EL00–62–029, ISO New England Inc., 96 FERC 61,234 (2001). NEPOOL has noted for each an effective date of September 1, 2001.

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service list in the captioned proceeding, the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment date: November 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket Nos. EL02–5–000 and ER02–65–000]

Take notice that on October 9, 2001, Arizona Public Service Company (APS) tendered for filing a petition for a declaration of APS' rights and obligations with respect to a Lease Power Agreement between APS and Electrical District No. Three of the County of Pinal and the State of Arizona (ED–3).

APS also submits notice of termination of a Lease Agreement governing the Facilities.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Co.

[Docket Nos. ER93–465–029, ER93–922–015, EL94–12–010, OA96–39–005, ER96–2381–003]

Take notice that on October 11, 2001, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission (Commission) a refund compliance report in connection with the July 7, 2000 settlement agreement between FPL and Orlando Public Utilities, which the Commission approved by a letter order issued September 13, 2001, in the above-captioned dockets. Applicants state that copies of this filing have been served on the official service lists in the above-captioned dockets.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Energy Group of America, Inc.

[Docket No. ER01–2694–001]

Take notice that on October 11, 2001, the Energy Group of America, Inc. submitted for filing with the Federal Energy Regulatory Commission (Commission) a First Revised Rate Schedule No. 1 in compliance with the Commission's Letter Order dated September 18, 2001. The First Revised Rate Schedule No.1 has been modified to incorporate the designation information required by Order No. 614.

The Energy Group of America, Inc. states that a copy of this filing has been served on each person designated on the official service list in Docket ER01–2964.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Pilot Power Group, Inc.

[Docket No. ER01–1699–003]

Take notice that on October 9, 2001, Pilot Power Group, Inc. (Pilot) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to the Commission's Order on April 30, 2001, submitting its index and a description of its seller/end users.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Midwest Independent Transmission

[Docket No. ER01–3142–001]

Take notice that on October 11, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a corrected copy of the clean version of Attachment Q to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Original Volume No. 1, which was previously accepted for filing in Docket No. ER98–1438–000, and which has been reformatted to conform to the requirements of Order No. 614.

The Midwest ISO seeks an effective date of November 27, 2001. The Midwest ISO also seeks waiver of the Commission's Regulations, 18 CFR 385.2010 (2000) with respect to service on all parties on the official service list in this proceeding.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Southwest Power Pool, Inc.

[Docket No. ER02–57–000]

Take notice that on October 9, 2001, Southwest Power Pool, Inc. (SPP) submitted for filing with the Federal Energy Regulatory Commission (Commission) a service agreement for Firm Point-to-Point Transmission Service with Southwestern Public Service Marketing (Transmission Customer). SPP requests an effective date of January 1, 2002 for this service agreement.

A copy of this filing was served on the Transmission Customer.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Services Company

[Docket No. ER02–58–000]

Take notice that on October 9, 2001, Ameren Services Company (ASC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Transmission System Interconnection Agreement between ASC and Clay County Trust 2000. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Clay County Trust 2000 pursuant to Ameren's Open Access Transmission Tariff.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Xcel Energy Services Inc.

[Docket No.ER02–59–000]

Take notice that on October 9, 2001, Xcel Energy Services Inc. (XES), on behalf of Public Service Company of Colorado (PSCo), submitted for filing with the Federal Energy Regulatory Commission (Commission) a Short-Term Firm and a Non-Firm transmission service agreement between PSCo and Exelon Generation Company, LLC.

PSCo requests that the Commission accept the agreement effective September 6, 2001, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket No. ER02–60–000]

Take notice that on October 9, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Generator Interconnection Agreement (GIA) to replace the unexecuted placeholder GIA that is part of the Generator Special Facilities Agreement (GSFA) between PG&E and Pacific Gas and Electric Company and La Paloma Generating Company, LLC, as agent for La Paloma Generating Trust, Ltd. (La Paloma) (collectively, Parties) providing for Special Facilities and the parallel operation of La Paloma's generating facility and the PG&E-owned electric system that is on file with the Commission as PG&E Rate Schedule FERC No. 220. PG&E also tendered for filing a Supplemental Letter Agreement between the Parties. A Notice of Termination will terminate PG&E Rate Schedule FERC No. 220, and the GSFA, the newly-executed GIA and Supplemental Letter Agreement will be re-designated as Service Agreement 18 under PG&E's Electric Tariff, 6th Revised Volume No. 5.

Copies of this filing have been served upon La Paloma, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Kentucky Utilities Company

[Docket No. ER02–61–000]

Take notice that on October 9, 2001, Kentucky Utilities Company tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Amendment the interconnection between Kentucky Utilities Company and East Kentucky Power Cooperative, Inc. The agreements provides for the construction of facilities to add an additional interconnection point on Kentucky Utilities Company's Loudon to Winchester 69kV transmission line to serve the new load area referred to as the Treehaven load station. Additionally, Kentucky Utilities Company will transfer load from a substation named Columbia to a new substation referred to as Columbia South on the East Kentucky Power Cooperative's Summer Shade to Sewellton Junction 69 Kv line. The Amendment is numbered 18.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Kentucky Utilities Company

[Docket No. ER02–62–000]

Take notice that on October 9, 2001, Kentucky Utilities Company tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Amendment the interconnection between Kentucky Utilities Company and East Kentucky Power Cooperative, Inc. The agreement provides for the reactivation of a previously constructed load station on the East Kentucky Power Cooperative's 69 kV line from Kentucky Utilities Company's Lynch substation to East Kentucky Power Cooperative's Oven Fork substation. The reactivated load station is referred to as the Arkland load station. The Amendment is numbered 20.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER02–63–000]

Take notice that on October 9, 2001, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Generator interconnection and Operating Agreement (Interconnection Agreement) with Swells Fargo Bank Northwest, National Association (Wells Fargo). The Interconnection agreement sets forth the terms and conditions under which Dominion Virginia Power will provide interconnection service for Wells Fargo's yet to be built generating facility.

Dominion Virginia Power respectfully requests that the Commission set an effective date of December 10, 2001 for the Interconnection Agreement.

Copies of the filing were served upon Wells Fargo bank Northwest, National Association and the Virginia State Corporation Commission.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Mirant Delta, LLC and Mirant Potrero, LLC

[Docket No. ER02–64–000]

Take notice that on October 9, 2001, Mirant Delta, LLC and Mirant Potrero, LLC provided to the Federal Energy Regulatory Commission (Commission) an informational filing in compliance with Schedule F of their respective Must-Run Service Agreements with the California Independent System Operator Corporation.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Progress Energy Inc. On behalf of Carolina Power & Light Company

[Docket No. ER02–66–000]

Take notice that on October 10, 2001, Carolina Power & Light Company (CP&L) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreement between CP&L and the following eligible buyer, The Detroit Edison Company. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5. Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

CP&L requests an effective date of September 15, 2001 for this Service Agreement.

Comment date: October 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Pool

[Docket No. ER02–67–000]

Take notice that on October 10, 2001, the New England Power Pool (NEPOOL) Participants Committee submitted a filing with the Federal Energy Regulatory Commission (Commission) requesting acceptance of proposed changes to Market Rule & Procedure 5 that amend the allocation among Participants of certain costs and payments associated with Inadvertent Energy. NEPOOL requests the Commission to allow these proposed changes to become effective on October 1, 2001.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: October 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. NRG McClain LLC

[Docket No. ER02–68–000]

Take notice that on October 10, 2001, NRG McClain LLC (NRG McClain) submitted with the Federal Energy Regulatory Commission (Commission) a Notice of Succession pursuant to Section 35.16 of the Commission's regulations, 18 CFR 35.16. As a result of the name change, NRG McClain is succeeding to the FERC Electric Tariff of Duke Energy McClain, LLC, effective August 31, 2001. The tariff sheets filed by Duke Energy McClain in Docket No. ER01–566–000 are canceled.

Comment date: October 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Commonwealth Edison Company

[Docket No. ER02–69–000]

Take notice that on October 10, 2001, Commonwealth Edison Company (ComEd) submitted for filing with the Federal Energy Regulatory Commission (Commission) one amended Form of Service Agreement for Firm Point-To-Point Transmission Service (Amended Service Agreement) between ComEd and Edison Mission Marketing & Trading Inc. (Edison) and one Form of Service Agreement for Firm Point-To-Point Transmission Service (Service Agreement) between ComEd and Reliant Energy Services, Inc. (Reliant) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd asks that the Amended Service Agreement with Edison supersede and be substituted for the Service Agreement with Edison previously filed on April 17, 2001 in Docket No. ER01–1813–000. The Amended Service Agreement has been amended to change Edison's roll-over rights from pending to granted. Copies of this filing were served on Edison and Reliant.

ComEd requests an effective date of October 1, 2001 for the Amended Service Agreement with Edison and an effective date of November 1, 2001 for the Service Agreement with Reliant, and therefore seeks waiver of the Commission's notice requirements.

Comment date: October 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Commonwealth Edison Company

[Docket No. ER02–70–000]

Take notice that on October 10, 2001 Commonwealth Edison Company (ComEd) submitted for filing with the Federal Energy Regulatory Commission (Commission) six re-executed Form of Service Agreements for Firm Point-To-Point Transmission Service (Service Agreements) between ComEd and Exelon Generation Company LLC (Exelon) under the terms of ComEd's Open Access Transmission Tariff (OATT). At the time Service Agreement No. 503 and Service Agreement No. 504 were entered into, the name of Exelon was Commonwealth Edison Company in it Wholesale Merchant Function. Similarly, at the time Service Agreement No. 495, Service Agreement No. 496, Service Agreement No. 497, and Service Agreement No. 498 were entered into, the name of Exelon was PECO Energy Company. Service Agreement No. 503, Service Agreement No. 504, Service Agreement No. 495, Service Agreement No. 496, Service Agreement No. 497, and Service Agreement No. 498 are being revised, at the request of Exelon, to reflect the new name of the company. A copy of this filing was served on Exelon.

ComEd requests that the re-executed Service Agreements with Exelon be granted the same effective dates as were previously granted them. Accordingly, ComEd requests an effective date of January 1, 2001 for Service Agreement Nos. 503, 495, 496, 497, and 498, and an effective date of January 8, 2001 for Service Agreement No. 504.

Comment date: October 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Cinergy Services, Inc.

[Docket No. ER02–71–000]

Take notice that on October 11, 2001, Cinergy Services, Inc. (Provider) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Exelon Generation Company, LLC (Customer).

Provider and Customer are requesting an effective date of September 11, 2001.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Cinergy Services, Inc.

[Docket No. ER02–72–000]

Take notice that on October 11, 2001, Cinergy Services, Inc. (Provider) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and Exelon Generation Company, LLC (Customer).

Provider and Customer are requesting an effective date of September 11, 2001.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Llano Estacado Wind, LP

[Docket No. ER02–73–000]

Take notice that on October 11, 2001, Llano Estacado Wind, LP (Llano Estacado Wind) submitted for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, an Application of Llano Estacado Wind, LP for Blanket Authorizations, Certain Waivers, and Order Accepting Tariff. Llano Estacado Wind will own and operate a 79.8 megawatt wind-powered generating facility near White Deer in Carson County, Texas.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. Xcel Energy Services Inc.

[Docket No. ER02–74–000]

Take notice that on October 11, 2001, Xcel Energy Services Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), submitted for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement between Public Service and Midwest Energy, Inc., which is an umbrella service agreement under Public Service's Rate Schedule for Market-Based Power Sales (FERC Electric Tariff, First Revised Volume No. 6). XES requests that this agreement become effective on September 30, 2001.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

27. Public Service Company of New Mexico

[Docket No. ER02–75–000]

Take notice that on October 11, 2001, Public Service Company of New Mexico (PNM) submitted for filing with the Federal Energy Regulatory Commission (Commission) two executed service agreements with Pinnacle West Marketing & Trading, under the terms of PNM's Open Access Transmission Tariff. One agreement is for non-firm point-to-point transmission service and one agreement is for short-term firm point-to-point transmission service. PNM requests October 4, 2001, as the effective date for the agreements. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to Pinnacle West Marketing & Trading, and to the New Mexico Public Regulation Commission.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

28. PacifiCorp

[Docket No.ER02–76–000]

Take notice that PacifiCorp on October 11, 2001, tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission (Commission) Rules and Regulations, three Long-Term Firm Transmission Service Agreements with PacifiCorp Power Marketing (PPM) under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

29. New Mexico Electric Marketing, LLC

[Docket No. ER02–77–000]

Take notice that on October 11, 2001, New Mexico Electric Marketing, LLC, 1044 North 115 Street, Suite 400, Omaha, Nebraska 68154 (NewMex) submitted for filing with the Federal Energy Regulatory Commission (Commission) an application for blanket authorization and certain waivers under regulations of the Commission, and for an order accepting its FERC Electric Rate Schedule No. 1, enabling NewMex to engage in electric power and energy transactions as a marketer and a broker.

In transactions where NewMex purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, NewMex will be functioning as a marketer. In NewMex's marketing transactions, NewMex proposes to charge rates mutually agreed upon by the parties. In transactions where NewMex does not take title to electric power and/or energy, NewMex will be limited to the role of a broker and will charge a fee for its services. NewMex is not in the business of producing electric power nor does it contemplate acquiring title to any electric power transmission facilities.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

30. Midwest Independent Transmission System Operator, Inc. American Transmission Company LLC

[Docket No. ER02–78–000]

Take notice that on October 11, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and American Transmission Company LLC (ATCLLC) tendered for filing with the Federal Energy Regulatory Commission (Commission) Midwest ISO rate schedules that reflect the current ATCLLC open access transmission rates for service within the ATCLLC rate zone under the Midwest ISO tariff. The Midwest ISO and ATCLLC request an effective date commensurate with the operation date of the Midwest ISO, currently expected to be December 15, 2001.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all required parties. The Midwest ISO has posted its reformatted OATT on its Internet site at *www.midwestiso.org*, and the Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the

comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26667 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 17, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12120–000.

c. *Date filed:* September 12, 2001.

d. *Applicant:* North Unit Irrigation District.

e. *Name of Project:* Wickiup Dam Project.

f. *Location:* On the Deschutes River, in Deschutes County, Oregon. The proposed project would utilize the existing Wickiup Dam and reservoir administered by the U.S. Bureau of Reclamation and located on U.S. Forest Service Land within the Deschutes National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Chuck Schonneker, North Unit Irrigation District, 2024 NW Beech Street, Madras, OR 97741, (503) 475–3625.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the project number (P–12120–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 11953–000, Date Filed: April 16, 2001, Date Notice Closed: August 14, 2001.

l. *Description of Project:* The proposed project using the U.S. Bureau of Reclamation's Wickiup Dam and impoundment would consist of: (1) Two proposed 79-foot-long, 96-inch-diameter steel penstocks that converge to one proposed 21-foot-long, 120-inch-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 7 MW, (3) a proposed 9.1-mile-long, 24.7 kV transmission line, and (4) appurtenant facilities.

The project would have an annual generation of 26.1 GWh that would be sold to a local utility.

m. Copies of this filing are on file with the Commission and are available for public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

n. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–26602 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7088–7]

EPA Science Advisory Board: Executive Committee Teleconference; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Executive Committee of the US EPA Science Advisory Board (SAB) will meet on Wednesday, November 14, 2001 from 11:00 am–2:00 pm Eastern Time. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Diana Pozun (see contact information below). The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included in the FR citations given below.

Purpose of the Meeting—In this meeting, the Executive Committee plans to review reports from some of its Committees/Subcommittee, most likely including the following:

(a) *Environmental Health Committee (EHC) & Integrated Human Exposure Committee (IHEC) Joint Review Panel*—Proposed Indoor Air Pollutant Ranking Methodology: An SAB Report (see 66 FR 34924, dated July 2, 2001 for details).

(b) *Ecological Processes and Effects Committee (EPEC)*—(1) USEPA's Science to Achieve Results STAR Program for Waters and Watersheds: An SAB Report (see 66 FR 15433, dated March 19, 2001); and (2) Planning for Ecological Risk Assessment: Developing Management Objectives: An SAB Report (see 66 FR 34924, July 2, 2001 for details)

Please check with Diana Pozun (see contact information below) prior to the meeting to determine which reports will be on the agenda as last minute changes can take place.

Availability of Review Materials: Drafts of the reports that will be reviewed at the meeting will be available to the public at the SAB website (*http://www.epa.gov/sab*) approximately two weeks prior to the meeting.

Charge to the Executive Committee: The focus of the review of these four reports will be to on the following questions: (a) Has the SAB adequately responded to the questions posed in the Charge? (b) Are the statements and/or responses in the draft report clear? And (c) Are there any errors of fact in the report?

In accord with the Federal Advisory Committee Act (FACA), the public and the Agency are invited to submit written comments on these three questions that are the focus of the review. Submissions should be received by November 7, 2001 by Ms. Diana Pozun, EPA Science Advisory Board, Mail Code 1400A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (Telephone (202) 564–4544, FAX (202) 501–0323; or via e-mail at: *pozun.diana@epa.gov.* Submission by e-mail to Ms. Pozun will maximize the time available for review by the Executive Committee.

The SAB will have a brief period available for applicable public comment. Therefore, anyone wishing to make oral comments on the three focus questions above, but that are not duplicative of the written comments, should contact the Designated Federal Officer for the Executive Committee, Dr. Donald G. Barnes (see contact information below) by November 7, 2001.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (3 minutes or less) must contact Dr. Donald Barnes, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at *barnes.don@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Barnes no later than noon Eastern Standard Time on November 7, 2001.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Barnes at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 17, 2001.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 01–26686 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7088–4]

Notice of Proposed Administrative Order on Consent Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Economy Products Superfund Site, Shenandoah, IA, Docket No. CERCLA 07–2001–0007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative order on consent, Economy Products Superfund Site, Shenandoah, Iowa.

SUMMARY: Notice is hereby given of a proposed administrative order on consent for recovery of past and projected future response costs concerning the Economy Products Superfund Site in Shenandoah, Iowa with the following party: Factory Place, L.C. This proposed settlement was approved by the United States Department of Justice (DOJ) on August 22, 2001.

DATES: EPA will receive written comments relating to the proposed administrative order on consent by November 23, 2001.

ADDRESSES: Comments should be addressed to Gerhardt Braeckel, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to Economy Products Superfund Site Administrative Order on Consent, Docket No. CERCLA–07–2001–0007.

The proposed settlement may be examined or obtained in person or by mail from Kathy Robinson, Regional Hearing Clerk, at the office of the United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7567.

SUPPLEMENTARY INFORMATION: The Economy Products Site consists of three parts: (1) The Factory Place Facility which includes property previously owned by Economy Products, Inc. and the May Seed & Nursery Company; (2) the immediately adjacent residential property located to the south along Southwest Road; and (3) part of the railroad right-of-way across the street from the Facility. The proposed Administrative Order on Consent addresses only the Factory Place Facility.

Economy Products operated an agricultural pesticides formulation plant at Southwest Road and Eighth Avenue in the City of Shenandoah, Iowa from 1961 to 1973. Business activities ceased in 1973 when the operation was destroyed by fire, which resulted in the dispersion of pesticide residues across the Economy Products property and onto other parts of the Economy Products Superfund Site. Contaminated debris and soil were removed and disposed of off-site and approximately one foot of clay was spread over the site. May Seed & Nursery Co. purchased the property in 1976 and used it for storage. The property was sold to Factory Place, L.C. in 1999.

Site investigations of the Factory Place Facility found that several pesticides (toxaphene; aldrin; diedrin; DDT; chlordane; endrin; and heptachlor) were detected at concentrations which exceeded Removal Action Levels including toxaphene at 498.0 mg/kg in a surface soil sample.

EPA conducted an Engineering Evaluation and Cost Analysis and selected thermal desorption as the removal action in an Action Memorandum dated February 8, 2001. EPA has started the removal action at the Facility.

The partial cashout settlement requires the settling party to pay $950,000.00, including interest, into a special account to fund EPA's removal action at the Facility. The settling party also agrees to pay for 50% of any cost overruns that exceed $4,005,479. This proposed settlement includes institutional controls and a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a).

Dated: September 21, 2001.

William W. Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 01–26685 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–2367]

Rescheduled Fifth Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the fifth meeting of the WRC–03 Advisory Committee that was originally scheduled for September 28, 2001 and canceled will now be held on November 15, 2001, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: November 15, 2001; 10:00 am–12:00 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Julie Garcia, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0763.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fifth meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the fifth meeting is as follows:

Agenda

Fifth Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554

November 15, 2001; 10:00 am–12:00 noon

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Fourth Meeting
4. Reports from regional WRC–2003 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26578 Filed 10–22–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 16, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. First Southern Bancorp, Statesboro, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Southern National Bank, Statesboro, Georgia.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Lauritzen Enterprises, Omaha, Nebraska; to become a bank holding company by acquiring 88.9 percent of the voting shares of Farmers & Merchants State Bank, Bloomfield, Nebraska.

Board of Governors of the Federal Reserve System, October 17, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26583 Filed 10–22–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 16, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. The Banc Corporation, Birmingham, Alabama; to acquire CF Bancshares, Inc., Port St. Joe, Florida, and its subsidiary, Citizens Federal Savings Bank, Port St. Joe, Florida, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 17, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26584 Filed 10–22–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, October 29, 2001.

PLACE: Federal Reserve Board Offices, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 19, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26769 Filed 10–19–01; 12:48 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–174]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of one update and one new draft toxicological profile, completing the 2nd set developed for the Department of Energy, prepared by ATSDR for review and comment.

DATES: To ensure consideration, comments on these draft toxicological profiles must be received on or before February 22, 2002. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles or comments regarding the draft toxicological profiles should be sent to the attention of Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–174. Send one copy of all comments and three copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection after the profile is published is final, no confidential business information or other confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–(888) 422–8737 or (404) 498–0720.

SUPPLEMENTARY INFORMATION: These toxicological profiles were developed by ATSDR for hazardous substances at Department of Energy (DOE) waste sites under Section 104(i)(3) and (5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund). This public law directed ATSDR to prepare toxicological profiles for hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL) and that pose the most significant potential threat to human health, as determined by ATSDR and the EPA. The current ATSDR priority list of hazardous substances at DOE NPL sites was announced in the **Federal Register** on July 24, 1996 (61 FR 38451).

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 2001.

Document	Hazardous substance	CAS No.
1	Cobalt	7440–48–4
	Cobalt (II) Acetate	71–48–7
	Cobalt (III) Acetate	917–69–1
	Cobalt (II) Carbonate	513–79–10
	Cobalt Carbonyl	10210–68–1
	Cobalt (II) Chloride	7646–79–9
	Cobalt (II) Hydroxide	21041–93–0
	Cobalt (II) Mesoporphyrin	21158–51–0
	Cobalt (II) Naphthalene	61789–51–3
	Cobalt (II) Nitrate	10026–22–9
	Cobalt (II) Oxide	1307–96–6
	Cobalt (II) Oxide	1308–4–9
2	Iodine	7553–56–2
	Hydrogen Iodide	10034–85–2
	Sodium Iodide	7681–82–5
	Potassium Iodide	7681–11–0
	Methyl Iodide	74–88–4
	Cesium Iodide	7789–17–5
	Potassium Iodate	7758–05–6
	Sodium Periodate	7790–28–5
	Calcium Iodide	10102–68–8
	Copper (I) Iodide	7681–65–4
	Povidone Iodine	25655–41–8

All profiles issued as "Drafts for Public Comment" represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: October 16, 2001.

Georgi Jones,

Director, Office of Policy and External Affairs Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–26585 Filed 10–22–01; 8:45 am]

BILLING CODE 4163–10–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–173]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Section 104(i)(3) [42 U.S.C. 9604(i)(3)] directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of the 15th set of toxicological profiles, which consists of three new drafts and two updated drafts, prepared by ATSDR for review and comment.

DATES: In order to be considered, comments on these draft toxicological profiles must be received on or before February 22, 2002. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles should be sent to the attention of Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Comments regarding the draft toxicological profiles should be sent to the attention of Dr. Ganga Choudhary, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–173. Send one copy of all comments and three copies of all supporting documents to Dr. Ganga Choudhary at the above stated address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business or other confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–(888)422–8737 or (404)498–0720.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these responsibilities is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on October 21, 1999 (64 FR 56792). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744) and November 17, 1997 (62 FR 61332). [CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.]

Section 104(i)(3) of CERCLA [42 U.S.C. 9604(i)(3)] outlines the content of these profiles. Each profile will include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to identify the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 2001.

Document	Hazardous substance	CAS No.
1	Atrazine	001912–24–9
2	Fluorides (Update).	016984–48–8
3	Malathion	000121–75–5
4	Pyrethrins and Pyrethroids.	Various.
5	Selenium (Update).	007782–49–2

All profiles issued as "Drafts for Public Comment" represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: October 17, 2001.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–26649 Filed 10–22–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–175]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of six updated final toxicological profiles of priority hazardous substances comprising the thirteenth set prepared by ATSDR.

FOR FURTHER INFORMATION CONTACT: Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–(888)422–8737 or (404)498–0720.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on October 21, 1999 (64 FR 56792). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744; and November 17, 1997 (62 FR 61332).

Notice of the availability of drafts of these six updated toxicological profiles for public review and comment was published in the **Federal Register** on October 15, 1999, (64 FR 55943), with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments and other data submitted in response to the **Federal Register** notices bear the docket control number ATSDR–152. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia, (not a mailing address) between 8:00 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of six updated final toxicological profiles comprising the thirteenth set prepared by ATSDR. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

Toxicological profile	NTIS Order No.	CAS No.
Thirteenth Set:		
1. Asbestos	PB2001–109101	001332–21–4
Amosite Asbestos	.....	012172–73–5
Chrysotile Asbestos	.....	012001–29–5
2. Benzidine	PB2001–109102	000092–87–5
3. 1,2-Dichloroethane	PB2001–109103	000107–06–2
4. Di-n-butyl Phthalate	PB2001–109104	000084–74–2
5. Methyl Parathion	PB2001–109105	000298–00–0
6. Pentachlorophenol	PB2001–109106	000087–86–5

Dated: October 16, 2001.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–26586 Filed 10–22–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0458]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed collection of information concerning requests for fast track designation by sponsors of investigational new drugs and applicants for new drug approvals or biological licenses as provided in the guidance for industry on fast track drug development programs.

DATES: Submit written or electronic comments on the collection of information by Decmeber 24, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review (OMB Control Number 0910–0389)—Extension

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506 (21 U.S.C. 356). The section authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrates a potential to address an unmet medical need. Under section 112(b) of FDAMA, FDA issued guidance to industry on fast track policies and procedures outlined in section 506 of the act. The guidance discusses collections of information that are specified under section 506 of the act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. The guidance describes three general areas involving collections of information: (1) Fast track designation requests, (2) premeeting packages, and (3) requests to submit portions of an application. Of these, fast track designation requests and premeeting packages, in support of receiving a fast track program benefit, provide for additional collections of information not covered elsewhere in statute or regulation. Information in support of fast track designation or fast track program benefits that has previously been submitted to the agency, may, in some cases, be incorporated into the request by referring to the information rather than resubmitting it.

Under section 506(a)(1) of the act, an applicant who seeks fast track designation is required to submit a request to the agency showing that the product meets the statutory standard for designation, i.e., that: (1) The product is intended for a serious or life-threatening condition; and (2) the product has the potential to address an unmet medical need. Mostly, the agency expects that information to support a designation request will have been gathered under existing provisions of the act, the PHS Act, or the implementing regulations. If such information has already been submitted to the agency, the information may be summarized in the fast track designation request. The guidance recommends that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to address an unmet medical need where an approved therapy exists for the serious or life-threatening condition to be treated. Such information may include clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast track designation have been met.

After the agency makes a fast track designation, a sponsor or applicant may submit a premeeting package which may include additional information supporting a request to participate in certain fast track programs. As with the request for fast track designation, the agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the act, the PHS Act, or implementing regulations. These may include descriptions of clinical safety and efficacy trials not conducted under an investigational new drug application (IND) (i.e., foreign studies), and information to support a request for accelerated approval. The discussion of such information in a premeeting package may be summarized if it has already been previously submitted to FDA under an OMB approved collection of information. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Under section 506(c) of the act, a sponsor must submit sufficient clinical data for the agency to determine, after preliminary evaluation, that a fast track product may be effective. Section 506(c) of the act also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance does not provide for any new collection of information regarding the submission of portions of an application that is not required under section 506(c) of the act or any other provision of the act. All forms referred to in the guidance have a current OMB approval: FDA Forms 1571 (OMB Control No. 0910–0014, expires September 30, 2002); 356h (OMB Control No. 0910–0338, expires March 31, 2003); and 3397 (OMB Control No. 0910–0297, expires February 29, 2004).

Respondents to this information collection are sponsors and applicants who seek fast track designation under section 506 of the act. The agency

estimates the total annual number of respondents submitting requests for fast track designation to the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) will be approximately 45. To obtain this estimate, FDA averaged the number of requests for fast track designation received by CBER and CDER in the 3-year period of 1998 to 2000. For these 3 years, CBER and CDER together received a yearly average of 53 requests from 45 respondents. The rate of submissions is not expected to change significantly in the next few years. FDA estimates that the number of hours needed to prepare a request for fast track designation may range between 40 and 80 hours per request, depending on the complexity of each request, with an average of 60 hours per request, as indicated in table 1 of this document.

Not all requests for fast track designation may meet the statutory standard. Of the average 53 requests made per year, the agency granted 33 requests for fast track designation. For each of the 33 granted requests, FDA estimates that a premeeting package was submitted to the agency. FDA estimates that a premeeting package needs more preparation time than needed for a designation request because the issues may be more complex and the data may need to be more developed. FDA estimates that the preparation hours may generally range between 80 and 120 hours, with an average of 100 hours per package, as indicated in table 1 of this document.

The hour burden estimates contained in table 1 of this document are for information collections requests in the guidance only and do not include burden estimates for statutory requirements specifically mandated by the act, the PHS Act, or implementing regulations. FDA estimates the burden of this collection of information as follows:

TABLE1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Designation request	45	1.18	53	60	3,180
Premeeting packages	33	1.00	33	100	3,300
Total					6,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–26575 Filed 10–22–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0178]

Agency Information Collection Activities; Announcement of OMB Approval; Premarket Notification 510(k) Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Premarket Notification 510(k) Submissions" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 18, 2001 (66 FR 37479), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0120. The approval expires on September 30, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–26573 Filed 10–22–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0276]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision for Foods With Vinclozolin Residues

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 23, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision for Foods With Vinclozolin Residues Description

Under the pesticide tolerance reassessment process that the Environmental Protection Agency (EPA) was mandated to carry out under the Food Quality Protection Act of 1996 (FQPA), EPA has proposed to revoke the tolerances for the pesticide chemical vinclozolin on several food commodities. The FQPA includes a provision in section 408(l)(5) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a(l)(5)), referred to as the "channels of trade provision," that addresses the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical whose tolerance has been revoked, suspended, or modified by EPA.

In general, FDA anticipates that the party responsible for food found to contain vinclozolin residues (within the former tolerance) after the tolerance for the pesticide chemical has been revoked, will be able to demonstrate that such food was packed or processed during the acceptable timeframes cited in the draft guidance, by providing appropriate documentation to the agency as discussed in the draft guidance. FDA is not suggesting that firms maintain a certain set list of documents where anything less or different would likely be considered unacceptable. Rather, the agency is leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so packed or processed.

Examples of documentation which FDA anticipates will serve this purpose consists of documentation associated with packing codes, batch records, and inventory records. These are types of documents that many food processors routinely generate as part of their basic food-production operations.

The likely respondents to this collection of information are firms in the produce and food-processing industries that handle food products that may contain residues of vinclozolin after the tolerances for this pesticide chemical have been revoked.

In the **Federal Register** of July 10, 2001 (66 FR 35990), the agency requested comments on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
307	1	307	3	921

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
31	1	31	16	496

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimates for the annual reporting burden were determined by using the maximum number of samples collected throughout a year that FDA believes might be found to contain vinclozolin residues. The estimated annual reporting burden was determined using the total number of samples historically tested for vinclozolin and the number of samples that historically contained vinclozolin residues. These numbers established a rate of samples expected to contain vinclozolin residues. This rate, when applied to the number of potentially affected establishments, was used to calculate the number of expected respondents.

When determining the estimated annual recordkeeping burden, FDA estimated that most firms (at least 90 percent) maintain (or maintain access to) documentation such as packing codes, batch records, and inventory records as part of their basic food production and/or import operations. Therefore, the recordkeeping burden was calculated as the time required for the 10 percent of firms which may not currently be maintaining this documentation to develop and maintain (or maintain access to) documentation such as batch records, inventory records, sales records, and distribution records.

Dated: October 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–26651 Filed 10–22–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting and Nonvoting Consumer Representative Members on Public Advisory Committees and Panels

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting and nonvoting consumer representatives to serve on its advisory committees and panels in the Center for Devices and Radiological Health, the Center for Drug Evaluation and Research, and the Center for Food Safety and Applied Nutrition.

Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2002.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Nominations should be received approximately 6 months before the vacancy dates listed in this notice.

ADDRESSES: All nominations with curricula vitae or resume (which should include nominee's office address, telephone number, and e-mail address) should be submitted to Maureen Hess (address below).

FOR FURTHER INFORMATION CONTACT: Maureen Hess, Office of Consumer Affairs (HFE–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5006, e-mail: MHess@oc.fda.gov.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and nonvoting consumer representatives of the following nine advisory committees and panels for vacancies listed below.

Center for Devices and Radiological Health

1. *Clinical Chemistry and Clinical Toxicology Devices Panel*: One vacancy occurring February 28, 2002.
2. *Circulatory System Devices Panel*: One vacancy occurring June 30, 2002.
3. *Gastroenterology and Urology Devices Panel*: One vacancy occurring December 31, 2002.
4. *General and Hospital Personal Use Devices Panel*: One vacancy occurring December 31, 2002.

Center for Drug Evaluation and Research

1. *Anesthetic and Life Support Drugs Advisory Committee*: One vacancy occurring March 31, 2002.
2. *Medical Imaging Drugs Advisory Committee*: One vacancy occurring June 30, 2002.
3. *Psychopharmacologic Drugs Advisory Committee*: One vacancy occurring June 30, 2002.
4. *Advisory Committee for Pharmaceutical Science*: one vacancy occurring October 31, 2002.

Center for Food Safety and Applied Nutrition

1. *Food Advisory Committee*: Five vacancies occurring June 30, 2002.

I. Criteria for Members

Persons nominated for membership on the committees as a consumer representative shall have demonstrated ties to consumer and community-based organizations and be able to analyze data, understand research design, discuss benefits and risks, and evaluate the safety and effectiveness of products under review. The consumer representative must be able to represent the consumer perspective on issues and actions before the advisory committee, serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations, and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

II. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include use of a list of organizations representing the public interest and consumer advocacy groups. The list of organizations has the responsibility for recommending candidates for the agency's selection.

III. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons for membership on one or more of the advisory committees to represent consumer interests. Self-nominations are also accepted. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or in any advisory committee. The term of office is up to 4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 16, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–26572 Filed 10–22–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 30, 2001, from 9:45 a.m. to 4:30 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, SMT@CDRH.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for a conductive keratoplasty (CK) refractive surgical device for the reduction of previously untreated spherical hyperopia in patients 40 years of age or greater, who have 0.75 diopter (D) to 3.25 D of cycloplegic spherical hyperopia, with less than or equal to 0.75 D of refractive astigmatism (minus cylinder format), a cycloplegic spherical equivalent of 0.75 D to 3.00 D, and no more than 0.50 D difference between preoperative manifest refraction spherical equivalent (MRSE) and cycloplegic refraction spherical equivalent (CRSE) which shows some regression of the initial effect over time. Background information, including the agenda and questions for the committee, will be available to the public on November 29, 2001, on the Internet at http://www.fda.gov/cdrh/panelmtg.html.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 16, 2001. Formal oral presentations from the public will be scheduled between approximately 9:50 a.m. and 10:20 a.m. Near the end of the committee deliberations on the PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Those desiring to make formal oral presentations should notify the contact person before November 16, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 16, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–26574 Filed 10–22–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 28, 2001, from 8:30 a.m. to 5:15 p.m.; and on November 29, 2001, from 8:30 a.m. to 2:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 28 and 29, 2001, the committee will review issues surrounding efficacy trial endpoints for vaccines for the prevention of Human Papilloma Virus. On November 29, 2001, the committee will discuss the intramural scientific research of the Laboratory of Bacterial Toxins.

Procedure: On November 28, 2001, from 12:30 p.m. to 5:15 p.m.; and on November 29, 2001, from 8:30 a.m. to 1:40 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee by November 16, 2001. Written submissions may be made to the contact person by November 16, 2001. On November 28, 2001, oral presentations will be held between approximately 3:15 p.m. and 4:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 16, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 28, 2001, from 8:30 a.m. to 12:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). On November 29, 2001, from 1:45 p.m. to 2:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The meeting will be closed to discuss personal information concerning individuals associated with the research program.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 16, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–26576 Filed 10–22–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Community Health Center and National Health Service Corps User/Visit Survey—NEW

The purpose of this study is to conduct a sample survey which has the following components: (1) A personal interview survey of Community Health Center (CHC) and National Health Service Corps (NHSC) site users; and (2) a record-based study of visits to CHCs and NHSC sites. CHCs and NHSC sites serve predominantly poor minority medically underserved populations. The proposed user and visit survey will collect in-depth information about CHC and NHSC site users, their health status, the reasons they seek care, their diagnoses, and the services utilized in a medical encounter.

The proposed User/Visit Survey builds on a 1995 User/Visit Survey which was conducted to learn about the process and outcomes of care in CHC users. The 1995 User/Visit Survey included a personal interview of approximately 2000 users of 48 selected CHCs as well as medical record abstractions for about 3000 visits to these same health centers. The interview questionnaire was derived from the National Health Interview Survey (NHIS) conducted by the National Center for Health Statistics (NCHS) and the visit survey was an adaptation of the NCHS National Hospital Ambulatory Medical Care Survey (NHAMCS). Conformance with the NHIS and NHAMCS allowed comparisons between these NCHS surveys and the User/Visit Survey.

The proposed User/Visit Survey was developed using similar questionnaire methodology in conjunction with a contractor and will allow longitudinal comparisons for CHCs with the 1995 version of the survey data, including monitoring of process outcomes over time. This User/Visit Survey is the first year that NHSC non-grantee, freestanding sites will be surveyed.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Total respondents	Hours per response	Total burden hours
Site Induction	85 sites	1	85	1	85
Site Sampling Method	85 sites	1	85	1.5	127.5
User Survey	30 users at 70 CHCs and 40 users at 15 NHSC sites.	1	2,700	2.75	7,425
Visit Survey	70 CHCs	43 records	3,010	.5	1,505
Total					9,142.5

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 16, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–26652 Filed 10–22–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Customer Satisfaction Survey; Request for Public Comment

AGENCY: Indian Health Service, HHS.

ACTION: Request for Public Comment: 30-day notice; Proposed Information Collection: Indian Health Service Customer Satisfaction Survey.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed information collection projects, the Indian Health Service (HHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was previously published in the **Federal Register** (65 FT 18120) on April 6, 2000 and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted to OMB.

Proposed Collection

Title: "Indian Health Service Customer Satisfaction Survey." *Type of Information Collection Request:* New. *Form Number:* None. *Need and Use of the Information Collection:* Executive Order 12862, "Setting Customer Service Standards" directs agencies "that provide significant services directly to the public" to "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services." The proposed customer satisfaction survey is designed to assess the level of customer (patient) satisfaction with the services provided at HHS-operated health care facilities. Voluntary customer service surveys will provided at IHS-operated health care facilities. Voluntary customer service surveys will be conducted at IHS-operated health care facilities. The information gathered will be used by agency management and staff to identify strengths and weaknesses in current service provision, to plan and redirect resources to make improvements that are practical and feasible, and to provide vital feedback to local health officials, health boards, and community members regarding customer satisfaction with the health care and related services being provided. *Affected Public:* Individuals. *Type of Respondents:* Individuals.

The table below provides burden hour information.

TABLE

Data Collection Instrument	Estimated No. of Respondents	Responses per Respondent	Average burden hour per response*	Total annual burden hrs
Customer Satisfaction Survey	7500	1	0.25 hr (15 minutes).	1875.0
Total	7500	1		1875.0

*The ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report for this information collection.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry our an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality,utility, and clarity of the information being electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS. To request more information on the proposed collection or to obtain a copy of the data collection plan(s) and/or instruction(s), contact: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, or call non-toll free (301) 443-2613, or send your e-mail requests, comments, and return address to: *lhodahkwen@hqe.ihs.gov.*

Comment Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: October 10, 2001.

Michael H. Trujillo, M.D., M.P.H., M.S.,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 01–26653 Filed 10–22–01; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture—Rheumatoid Arthritis Validation Sub-study

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Agricultural Health Study—A Prospective Cohort Study of Cancer and Other diseases Among Men and Women in Agriculture—Rheumatoid Arthritis Validation Study. *Type of Information Collection Request:* Revision. (OMB 0925–0406, expires 11/30/01). *Need and Use of Information Collection:* The Agricultural Health Study is an ongoing prospective cohort study of 89,189 farmers, their spouses, and commercial applicators of pesticides from Iowa and North Carolina. The proposed revision is intended to assess the validity of self-reported Rheumatoid Arthritis (RA) in the Agricultural Health Study (AHS) within small subgroups of individuals. The collection is intended to identify confirmed cases of RA to include in etiologic analyses of farming exposures and RA; evaluate the efficacy of certain questions or sets of questions for screening out false-positives for self-reported RA and identify subgroups to target for future etiologic studies of RA, based on a relatively high prevalence of RA and the feasibility of disease confirmation. *Frequency of Response:* One time. *Affected Public:* Individuals or households, Farms. *Type of Respondents:* Private pesticide applicators and their spouses. The annual reporting burden is as follows: *Estimated Number of Respondents:* 439; *Estimated Number of Responses per Respondent:* 1.0; *Average Burden Hours Per Response:* .42; and *Estimated Total Annual Burden Hours Requested:* 184. The annualized cost to respondents is estimated at: $1,840. There are no Capitol Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestion from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Michael C.R. Alavanja, Dr. P.H., Epidemiology and Biostatistics Program, Division of Cancer Etiology, National Cancer Institute, EPN 8000, 6120 Executive Boulevard, Rockville, MD 20852, or call (310) 435–4720, or E-mail your request, including your address to: alavanjam@mail.nih.gov

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before December 24, 2001.

Dated: October 15, 2001.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 01–26620 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB review; comment request; The National Survey to Evaluate the NIH SBIR Program.

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork, Reduction Act of 1995, the Office of Extramural Research, Office of Extramural Programs, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 14, 2001 (p. 32361) and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: *Title:* The National Survey to Evaluate the NIH SBIR Program. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The NIH, Office of Extramural Research, Office of Extramural Programs seeks to obtain OMB's approval to conduct a survey to evaluate the Small Business Innovation Research (SBIR) Program. The SBIR Program, established by Congress in 1982 (Public Law 97–219) and recently reauthorized through September 30, 2008 (Pub. L. 106–554), provides research support to small businesses for innovative technology. The primary objectives are to assess the extent to which SBIR program goals are being met, particularly those dealing with the commercialization of research products, processes or services and the uncovering of new knowledge that will lead to better health for everyone. With survey information, NIH is enabled to accurately assess the results of its large financial investment in funding innovative research conducted by small business concerns. Findings will help to: (1) Understand if innovative projects supported through the NIH SBIR Program are being commercialized, and if so, to classify the types of products, processes or services that are derived through SBIR funding; (2) determine if other measures of success defined within the NIH mission are being achieved; and (3) enhance NIH's administration of the SBIR Program and the support that it provides to small business concerns. Overall, the NIH will use the survey results to assess the outcomes from NIH-supported SBIR awards. OD will collect information from SBIR awardees using an Internet survey. The online survey will be implemented using SSL (Secure Socket Layer) encryption technology and password access. OD will use first-class mail and email messages to advise awardees that they have been selected to participate in the survey. Frequency of Response: Annual (As needed on an on-going basis.); *Affected Public:* Small business concerns supported by NIH through the SBIR Program; and *Type of Respondents:* For-profit small business concerns that have received NIH SBIR awards. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .5; and *Estimated Total Annual Burden Hours Requested:* 500. The annualized cost to respondents is estimated at $37,500. There are no Capital Costs to report. There are no Operating Costs and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the

following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Jo Anne Goodnight, Coordinator, NIH Small Business Innovation Research/ Small Business Technology Transfer Programs, Rockledge II Building, Room 6186, 6701 Rockledge Drive, Bethesda, Md, or call non-toll-free number (301) 435–2688, or email your request, including your address, to: jg128w@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before November 23, 2001.

Dated: October 9, 2001.

Jo Anne Goodnight,

SBIR/STTR Program Coordinator, NIH.

[FR Doc. 01–26619 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Call for Nominations for the National Cancer Institute Director's Liaison Group

The National Cancer Institute (NCI), the Federal Government's primary agency for cancer research, is seeking nominations for five new members of the NCI Director's Consumer Liaison Group (DCLG) who will be appointed in July 2002. The DCLG helps NCI to identify appropriate advocates to serve on its program and policy advisory committees, and it serves as a channel for consumer advocates to voice their views and concerns. The DCLG is federal chartered advisory committee of the National Cancer Institute (NCI). It consists of 15 consumer advocates who are involved in cancer advocacy and who reflect the diversity among those whose lives are affected by cancer.

NCI brings together these advocates from many communities to advise and make recommendations to the Director, NCI from the consumer advocate perspective on a wide variety of issues, programs and research priorities. All DCLG members must be U.S. citizens. Specifically the DCLG members:

• Help develop and establish processes, mechanisms, and criteria for identifying appropriate consumer advocates to serve on a variety of program and policy advisory committees responsible for advancing the mission of the NCI.

• Serve as a primary forum for discussing issues and concerns and exchanging viewpoints that are important to the broad development of the NCI programmatic and research priorities.

• Establish and maintain strong collaborations between the NCI and the cancer advocacy community to reach common goals.

Eligibility Requirements for Individual members. To serve on the DCLG, a member must meet the following minimum eligibility requirements:

• Be involved in the cancer experience as a cancer survivor, a person affected by the suffering and consequences of cancer, or a professional or volunteer who works with survivors or those affected.

• Represent a constituency (formally or informally) with whom she or he communicates regularly on cancer issues and be able to serve as a conduit for information both to and from his/her constituency.

DCLG members must be committed to participating in all activities of the DCLG which includes at least two meetings a year in Bethesda.

Criteria For Evaluating Individual Candidates. Nominees who meet the minimum eligibility requirements will be further assessed based on the following criteria:

• Cancer advocacy experience

• Ability to communicate effectively

• Ability to represent broad issues, think "globally"

• Ability to contribute to an effective group process

• Leadership ability

Characteristics of the DCLG. In addition to the criteria for individual candidates, the following characteristics of the DCLG as a group are intended to ensure that it reflects the breadth and diversity of the consumer advocacy community:

• Multicultural diversity

• A broad mix of cancer sites

• Representation of the medically underserved

• Men and women

• A range of organizations (local/ regional and national)

• Age diversity

• Geographic diversity (rural/urban mix)

Selection Process. A call for nominations is disseminated annually to a broad range of groups, including local, regional and national organizations, to encourage nominations of candidates reflecting the diversity sought for the DCLG. All nominees are screened for eligibility, then evaluated according to the criteria. A list of highly qualified candidates who reflect balance and diversity of representation is forwarded to the Director, NCI, who selects the DCLG members. The original members of the DCLG endorsed this process, which will be used to select future members.

NCI encourages nomination of candidates reflecting the diversity sought on the DCLG. Nominations can be made by organizations, including local/regional and national groups, or individuals, including self-nominations. To receive a nomination package for the DCLG, send your name, advocacy/ voluntary organization affiliation (if any), address and phone number to the Office of Liaison Activities, NCI, c/o Palladian Partners, 1010 Wayne Avenue, Suite 1200, Silver Spring, MD 20910, FAX (301) 650–8676.

Nominations must be postmarked by December 8, 2001.

Dated: October 16, 2001.

LaVerne Stringfield

Director, Office of Federal Advisory Committee Policy National Institutes of Health.

[FR Doc. 01–26618 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Molecular Target Drug Discovery.

Date: November 29–30, 2001.

Time: 8 a.m to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Versailles III, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8084, Bethesda, MD 20892, 301/594–1286.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26610 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Extension of Radiotherapy Research.

Date: November 13–15, 2001.

Time: 4 pm to 2 pm.

Agenda: to review and evaluate grant applications.

Place: National Cancer Institute, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shakeel Ahmad, Phd, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 8th Floor, Room 8139, 6116 Executive Boulevard, Bethesda, MD 20892, 301–594–0114.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26611 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material; and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Centers of Excellence in Cancer Communications Research.

Date: December 5–7, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: C.M. Kerwin, PhD, Scientific Review Administrator, Special Review And Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8039, Rockville, MD 20892–7405, 301/496–7421.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, national Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26612 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institutes; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Cancer Epidemiology and Cancer Prevention Research.

Date: November 19–20, 2001.

Time: 8 a.m. to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, Conference Room D, 6130 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301/594–1566.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394; Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26613 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: December 7, 2001.

Time: 12 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 31 Center Drive, Conference Rm. B2B32, NHGRI, MD 20892 (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26614 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: November 6, 2001.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 31 Center Drive, Conference Rm. B2B32, NHGRI, MD 20892 (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Human Genome Research, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26615 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Reproductive Genomics: Mutant Models for Infertility.

Date: November 6, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW, Washington, DC 20005.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26608 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 16, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5e03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26609 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personnel privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: November 18–20, 2001.

Closed: November 18, 2001, 8 pm to 9:30 pm.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27709.

Open: November 19, 2001, 8:30 am to 5 pm.

Agenda: An overview of the organization and conduct of research in the Laboratory of Signal Transduction.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: November 20, 2001, 8:30 am to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Steven K. Akiyama, PhD, Acting Deputy Scientific Director, Division of Intramural Research, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, MSC A2–09, Research Triangle Park, NC 27709, 919/541–3467, akiyama@niehs.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26617 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: Center for Scientific Review Emphasis Panel.

Date: November 5–6, 2001.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Dr., Room 5118, Bethesda, MD 20892, (301) 435–1259, *orrt@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 3.

Date: November 5–6, 2001.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Orthopedics and Musculoskeletal Study Section.

Date: November 5–6, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 2001.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Virginian Suites, 1500 Arlington Boulevard, Arlington, VA 22209.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Experimental Therapeutics Subcommittee 2.

Date: November 5–7, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposing by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: David M. Armstrong, BS, MS, PhD, Chief, Brain Disorders and Clinical Neurosciences, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Donald Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov*

This notice is being published less than 15 days proir to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Respiratory Physiology Study Section.

Date: November 5, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036–3305.

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Metabolic Pathology Study Section.

Date: November 5–7, 2001.

Time: 8:30 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Sheraton, Premiere Hotel, 8661 Leesburg Pike, Vienna, VA 22182.

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 6.

Date: November 5–6, 2001.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 2001.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 2001.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, (301) 435–0902, *mkrause@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 6–7, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW., Washington, DC 20037.

Contact Person: Clare K. Schmitt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148, *schmittc@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 6, 2001.

Time: 10 am to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852,, Bethesda, MD 20892, (301) 435–1167, *srinivor@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 6, 2001.

Time: 1 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, Bethesda, MD 20892, (301) 435–1259, *orrt@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 6, 2001.

Time: 4 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 7, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Rona L. Hirschberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 7, 2001.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 7, 2001.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, (301) 435–3504, *fungv@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 7, 2001.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 7, 2001.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Alec S. Liacouras, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 7–8, 2001.

Time: 6 pm to 4 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Embassy Square, 2000 N Street, NW, Washington, DC 20036.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, 301/435–1743, *sipej@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 7–9, 2001.

Time: 6 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Wyndham San Diego at Emerald Plaza, 400 West Broadway, San Diego, CA 92101.

Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 5.

Date: November 8–9, 2001.

Time: 8 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Handlery Hotel and Resort, 950 Hotel Circle North, San Diego, CA 92108.

Contact Person: Ranga Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

Name of Committee: Center for Scientific Review Special Emphasis Panel SNEM 5 (02).

Date: November 8, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 8, 2001.

Time: 8 am to 9 am.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 8, 2001.

Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8–9, 2001
Time: 8:30 am to 5:30 pm.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 TMP (01).
Date: November 8–9, 2001
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8–9, 2001.
Time: 9 am to 5:30 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 2001.
Time: 11 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 2001.
Time: 2 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, 301–435–0902, *mkrause@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 2001.
Time: 2:15 to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alec S. Liecouras, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 2001.
Time: 3:30 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 2001.
Time: 12:30 pm to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, 301–435–0902, *mkrause@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 9, 2001.
Time: 8:30 am to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, The Chevy Chase Pavilion, 4300 Military Road NW, Wisconsin at Western Avenue, Washington, DC 20015.
Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, , 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 16, 2001.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 01–26616 Filed 10–22–01; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Availability of Expert Panel Reports National Toxicology Program (NTP), National Institute of Environmental Health Sciences (NIEHS), Center for the Evaluation of Risks to Human Reproduction (CERHR), announces:

(1) Availability of the Draft Expert Panel Reports on 1-Bromopropane and 2-Bromopropane—Public comments are solicited on these draft reports and the deadline for written comments is November 23, 2001.

(2) Bromopropane Expert Panel Meeting scheduled for December 5–7, 2001—The meeting is open to the public and will be held at the Hilton Washington-Dulles Airport Hotel, Herndon, VA.

Background

The NTP and the NIEHS established the NTP CERHR [**Federal Register**, December 14, 1998 (Volume 63, Number 239, page 68782)] in June 1998. The purpose of the Center is to provide scientifically-based, uniform assessments of the potential for adverse effects on reproduction and development caused by agents to which humans may be exposed. Expert panels conduct scientific evaluations of agents selected by the Center in public forums. Additional details about CERHR are provided below (see Additional Information about CERHR evaluations).

The agents currently under evaluation are 1-bromopropane (CASRN: 106–94–5) and 2-bromopropane (CASRN: 75–26–3). 1-Bromopropane is used as a cleaning solvent; as a solvent vehicle in spray adhesives; as a solvent for fats, waxes, or resins; and as an intermediate in the synthesis of other compounds. 2-Bromopropane is used in the synthesis of pharmaceuticals, dyes, and other compounds and is present as a contaminant in 1-bromopropane. Bromopropanes are being considered as replacement chemicals for ozone-depleting chemicals such as hydrochlorofluorocarbons and chlorinated solvents. The scientific database on these chemicals includes studies on neurotoxicity, reproductive toxicity, and occupational exposures. 2-Bromopropane is reported to be a reproductive toxicant in humans.

Draft Expert Panel Reports on 1-Bromopropane and 2-Bromopropane Available

The Draft Expert Panel Report is composed of the following sections:
1.0 Chemistry, Use, and Human Exposure
2.0 General Toxicological and Biological Effects
3.0 Developmental Toxicity Data
4.0 Reproductive Toxicity Data
5.0 Summary, Conclusions, and Critical Data Needs

Sections 1–4 will be available to the public by October 10, 2001. Copies can be obtained electronically on the CERHR web site (*http://cerhr.niehs.nih.gov*) or in hard copy by contacting Dr. Michael Shelby, Director CERHR (NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 103, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709, Phone: (919) 541–3455; Fax: (919)316–4511; *shelby@niehs.nih.gov*).

Request for Written Comments on Draft Expert Panel Reports

The CERHR invites written public comments on Sections 1–4 of the Draft Expert Panel Reports on 1-bromopropane and 2-bromopropane. Comments can be submitted in hard copy or electronic format and must be received by the Center by November 23, 2001. These comments will be distributed to CERHR staff and the Bromopropane Expert Panel for consideration in revising the draft report and in preparing for the Bromopropane Expert Panel Meeting (see below). These comments should be sent to Dr. Michael Shelby at the address provided above. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if any).

Expert Panel Will Review 1-Bromopropane and 2-Bromopropane

An expert panel (the Panel) of independent scientists selected for their scientific expertise in reproductive and developmental toxicology and other relevant areas of science are conducting this review. The roster of experts follows:

Bromopropane Expert Panel (Name and Affiliation)

Kim Boekelheide, MD, PhD [Chair] Brown University, Providence, RI
Cynthia F. Bearer, MD, PhD Case Western Reserve, Cleveland, OH
Sally Perreault Darney, PhD U.S. EPA, Research Triangle Park, NC
George P. Daston, PhD Procter & Gamble Co., Cincinnati, OH
Raymond M. David, PhD Eastman Kodak Company, Rochester, NY
Ulrike Luderer, MD, PhD University of California-Irvine, Irvine, CA
Andrew F. Olshan, PhD University of North Carolina, Chapel Hill, NC
Wayne T. Sanderson, PhD, CIH NIOSH, Cincinnati, OH
Calvin C. Willhite, PhD DTSC, State of California, Berkeley, CA
Susan Woskie, PhD University of Massachusetts-Lowell, Lowell, MA

Public Meeting of the Bromopropane Expert Panel

This meeting is open to the public and attendance is limited only by the availability of space. The meeting will take place on December 5–7, 2001, in the Solarium of the Hilton Washington-Dulles Airport Hotel, 13869 Park Center Road, Herndon, VA 20171, Phone (703) 478–2900, Fax (703) 478–9286.

Preliminary Meeting Agenda

The meeting begins each day at 8:30 a.m. It is anticipated that each day there will be a lunch break from 12–1 p.m. and the meeting will adjourn between 5 and 6 p.m. .

December 5, 2001 (8:30 a.m.)

Opening comments
Public comment session
• The Panel will receive comments from the public (up to seven minutes per speaker; details are given below).

Review of Sections 1–4 of the Draft Expert Panel Report on 1-Bromopropane and 2-Bromopropane

Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs

December 6, 2001 (8:30 a.m.)

Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs

Preparation of draft summaries and conclusion statements

December 7, 2001 (8:30 a.m.)

Presentation, discussion of, and agreement on summaries and conclusions
Closing comments

Oral Public Comments Can Be Presented at the Expert Panel Meeting

Time is set aside on December 5 for the presentation of oral public comments at the Bromopropane Expert Panel Meeting. To facilitate planning of this meeting, those persons wishing to make oral public comments are asked to contact the CERHR Director by November 26 [Dr. Michael Shelby, NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 103, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709, Phone: (919) 541–3455; Fax (919) 316–4511; *shelby@niehs.nih.gov*]. Seven minutes will be available for each speaker (one speaker per organization). When registering to comment orally, please provide your name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any). If possible, also send a copy of the statement or talking points to CERHR by November 26. This information will be provided to the expert panel, to assist the panel in identifying issues for discussion, and will be noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on December 5 (7:30—8:30 a.m.). Those persons registering at the meeting are asked to bring 20 copies of their statement or talking points.

In lieu of making an oral presentation at the meeting, the public is invited to submit a written statement to CERHR by November 26. This statement will be distributed to CERHR staff and the Bromopropane Expert Panel and noted in the meeting record.

Post-Meeting Public Comments

Following the Bromopropane Expert Panel Meeting and completion of the Expert Panel Report, public comment will be solicited. This solicitation will be announced in a future **Federal Register** notice.

For other questions about the Draft Report on 1-Bromopropane and 2-Bromopropane or the Bromopropane Expert Panel Meeting, contact the CERHR Director [contact information provided above].

Additional Information About CERHR Evaluations

CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting the Center Director (contact information provided above). The Center selects chemicals for evaluation based upon several factors including production volume, extent of human exposure, public concern, and published evidence of reproductive or developmental toxicity.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process is outlined in the **Federal Register** notice July 16, 2001 (Volume 66, Number 136, pages 37047–37048) and on the CERHR web site

under "About CERHR". Briefly, the Center establishes an expert panel to review and evaluate the scientific evidence on the selected chemical(s), to receive public comments, and to prepare a report on the chemical(s). This draft expert panel report is made publicly available for comment, both through the CERHR web site and upon request from CERHR, and an expert panel meeting is held to discuss and evaluate the draft report. Following the expert panel meeting and completion of the expert panel report, public comment is solicited again. After this public comment period ends, the NTP staff prepares a NTP center report on the evaluated chemical(s) that integrates background information on the chemical(s), findings of the expert panel, and a discussion of any additional, recent studies. The NTP center report includes all public comments received on the expert panel report. The final NTP center report is made publicly available and distributed to interested stakeholders and to appropriate regulatory, health, and research agencies.

Dated: October 3, 2001.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 01–26621 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2001 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, Grants to Support the Accreditation of Opioid Treatment Programs (OTPs), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2001	Est. No. of awards	Project period
Grants to Support Accreditation of Opioid Treatment Programs.	December 4, 2001	$1.6 million	~8	3 years

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web homepage: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) announces the availability of fiscal year (FY) 2002 funds for grants to partially subsidize the cost of accreditation of Opioid Treatment Programs (OTPs). The goal of these grants is to reduce the costs of basic accreditation education and accreditation surveys (site visits) for OTPs participating in the accreditation process pursuant to Title 42 of the Code of Federal Regulations (CFR), part 8.

Eligibility: Under Federal regulations, the final rule on Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction (42 CFR part 8), only private nonprofit organizations or State governmental entities, or political subdivisions thereof, which are approved by SAMHSA pursuant to that regulation, may accredit opioid treatment programs. Therefore, awards under this grant program will be made only to organizations that have been approved by SAMHSA as accreditation bodies.

SAMHSA intends to make awards under this program as soon as possible; however, all grant awards must be made prior to September 30, 2002. Therefore, any organization that has not yet applied to SAMHSA for approval as an accreditation body is urged to do so as soon as possible, as review and approval of these applications takes some time.

Such organizations may apply for funding under this grant program prior to, simultaneously with, or after they submit their application for approval as an accreditation body, so long as they submit their application for funding prior to the application due date of December 4, 2001. However, an application for a grant under this program will be considered for funding only after the applicant has been approved as an accrediting body, if such approval occurs prior to September 30, 2002.

Availability of Funds: In FY 2002, approximately $1,600,000 will be available for the total costs (direct and indirect) of 4 to 8 awards.* Awards will be made in annual increments. Actual funding levels will vary depending on the availability of appropriated funds and the number of OTPs which apply to each SAMHSA-approved accreditation body grantee. Grant funding will be awarded in two phases. Phase I funds will be awarded at the beginning of the project period and will include up to $50,000 for one-time project start-up and initial operational costs. Phase II awards for accreditation education and accreditation surveys will depend on the availability of appropriated funds and the number of OTPs accepted by the grantee for the accreditation process.

Period of Support: An award may be requested for a project period of up to 3 years.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.230.

Program Contact: For questions concerning program issues, contact: Jacqueline Hendrickson, MSW CSAT/SAMHSA, Rockwall II Building, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1109, *E-mail: jhendric@samhsa.gov*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-mail: shudak@samhsa.gov

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2001 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2001 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: October 17, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–26654 Filed 10–22–01; 8:45 am]

BILLING CODE 4162–20–P

*This program is being announced prior to the full annual appropriation for fiscal year (FY) 2002 for the Substance Abuse and Mental Health Services Administration's (SAMHSA) programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2002 to permit funding of a reasonable number of applications being hereby solicited. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. Questions regarding the status of the appropriation of funds should be directed to the Program Contact listed under the "How to Get Help" section in the grant announcement.

DEPARTMENT OF INTERIOR

Office of the Secretary

John H. Chafee Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 15, 2001.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist Federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at the Quinsigamond Elementary School located at 828 Millbury Street, Worcester, MA for the following reasons:

1. Approval of Minutes
2. Chairman's Report
3. Executive Director's Report
4. Approval Close-out Budget FY2001
5. Financial Budget FY2002 Approval
6. Public Input

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the

Commission at the aforementioned address.

Michael Creasey,
Executive Director BRVNHCC.
[FR Doc. 01–26595 Filed 10–22–01; 8:45 am]
BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–01–0777XX–241A]

Sierra Front/Northwestern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Combined Resource Advisory Council Meeting Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Council meetings will be held as indicated below. Topics for discussion will be a presentation and discussion of accomplishments during 2001 and the outlook for 2002 of the BLM in Nevada; opening and closeout reports of the three Resource Advisory Councils (RACs); discussion of proposed acquisitions to be funded by the Southern Nevada Public Land Management Act of 1998; breakout meetings of the "pods"; breakout meetings of the three RACs; setting of schedules for meetings of the individual RACs for the coming year, and other issues members of the councils may raise.

All meetings are open to the public. During the two noon luncheons, members of the public may join the group for lunch, at their own expense. The public may present written comments to the three-RAC group or the individual RACs. The public comment period for the council meeting will be at 3 p.m. on Thursday, November 8. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Robert Stewart at the Nevada State Office, BLM, 1340 Financial Blvd., Reno, telephone (775) 861–6586.

DATE, TIME: The council will meet on Thursday, November 8 from 8:00 a.m. to 4:30 p.m. and Friday, November 9, 2001, from 8:00 a.m. to 3:00 p.m., at the Elko Convention Center, Elko, Nevada. If due to unforeseeable problems this site is not available, the alternate site of the meeting will be determined at that time, and will be in Elko, Nevada. The meeting may be cancelled if an alternate site is not available. The dates and times will remain the same. Public comment will be received at the discretion of the State Director, as meeting moderator, with a general public comment period on Thursday, November 8, 2001 at 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert Stewart, Public Information Specialist, BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, telephone (775) 861–6586.

Dated: August 27, 2001.
Robert V. Abbey,
State Director, Nevada.
[FR Doc. 01–26581 Filed 10–22–01; 8:45 am]
BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–0102703, COC–28242]

Public Land Order No. 7502; Partial Revocation of Secretarial Order Dated May 23, 1946 and Public Land Order No. 3500; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a public land order and a Secretarial Order insofar as they affect 276.57 acres of public land withdrawn for the Bureau of Reclamation's Fryingpan-Arkansas and the Arkansas Valley Reclamation Projects. The Bureau of Reclamation has determined that the lands are no longer needed for project purposes. This revocation will allow for disposal of these lands by exchange. The lands have been and will remain open to mineral leasing. The lands continue to be segregated by a proposed land exchange.

EFFECTIVE DATE: November 23, 2001.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Secretarial Order dated May 23, 1946 and Public Land Order No. 3500, which withdrew public lands for the Bureau of Reclamation's Arkansas Valley and Fryingpan-Arkansas Reclamation Projects, are hereby revoked insofar as they affect the following described lands:

Sixth Principal Meridian

T. 18 S., R. 69 W.,
sec. 1, lots 7 to 10, inclusive;
sec. 24, S½NW¼ and W½SW¼.

The areas described aggregate 276.57 acres in Fremont County.

2. At 9 a.m. on November 23, 2001, the lands described in paragraph 1 shall be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received on or prior to 9 a.m. on November 23, 2001, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands will remain closed to location and entry under the United States mining laws by an overlapping segregation.

Dated: September 28, 2001.
J. Steven Griles,
Deputy Secretary.
[FR Doc. 01–26580 Filed 10–22–01; 8:45 am]
BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–922 (Final)]

Automotive Replacement Glass Windshields From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–922 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of automotive replacement glass windshields, provided for in subheading 7007.21.10 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: September 19, 2001.

FOR FURTHER INFORMATION CONTACT: Gail Burns (202–205–2501), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of automotive replacement glass windshields from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on February 28, 2001, by PPG Industries, Pittsburgh, PA; Safelite Glass Corporation, Columbus, OH; and Apogee Enterprises, Inc., Minneapolis, MN.

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "ARG (automotive replacement glass) windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (i.e., two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (e.g., passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged * * * Specifically excluded from the scope of this investigation are laminated automotive windshields sold for use in original assembly of vehicles."

Participation in the investigation and public service list

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on January 23, 2002, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on February 5, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 29, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 31, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is January 30, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is February 12, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 12, 2002. On March 1, 2002, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 5, 2002, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: October 17, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–26588 Filed 10–22–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 15, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Revision of a currently approved collection.

Title: Alien Claims Activity Report.

OMB Number: 1205–0268.

Affected Public: State, Local, or Tribal Government.

Frequency: Quarterly.

Type of Response: Reporting.

Number of Respondents: 53.

Number of Annual Responses: 212.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 212.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The information collected on the Form ETA–9016 is authorized by the Social Security Act, Section 303(a)(6) and allows the Secretary of Labor to assess the cost efficiency of the INS Verification System and to determine the national impact of the Immigration Reform and Control Act on the Unemployment Insurance system.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–26634 Filed 10–22–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 15, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 219–8904 or Email *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. e.g., permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Report of Construction Contractor's Wage Rates.

OMB Number: 1215–0046.

Affected Public: Business or other for-profit.

Frequency: On Occasion.

Number of Respondents: 37,500.

Number of Annual Responses: 75,000.

Estimated Time Per Response: 20 minutes.

Total Burden Hours: 25,000.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Davis-Bacon Act (29 U.S.C. 276a–276–a–7) provides, in part that "* * * every contract in excess of $2,000 * * * which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village or other civil subdivision of the State in which the work is performed * * *."

Form WD–10 is used by the US Department of Labor to elicit construction project data from contractor associations, contractors and unions. The wage date is used to determine locally prevailing wages under the Davis-Bacon and Related Acts. The information collection requests addresses changes being proposed to Form WD1–10 to develop more cost-effective and less burdensome methods of obtaining reliable wage data.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–26635 Filed 10–22–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 15, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 219–8904 or email *Howze-Marlene@dol.gov*).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Alternative Method of Compliance for Certain Simplified Employee Pensions.

OMB Number: 1210–0034.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 460.

Number of Annual Responses: 20,693.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 1,954.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $7,863.

Description: Section 110 of the Employee Retirement Income Security Act (ERISA) authorizes the Secretary of Labor to prescribe alternative methods of compliance with the reporting and disclosure requirements of Title I of ERISA for pension plans, even though simplified employee pensions (SEPs) are established in section 401(k) of the Internal Revenue Code. This regulation provides an alternative method of disclosure for sponsors of certain types of SEPs that is easier to comply with than otherwise required under ERISA. The disclosure requirement is the only method of insuring that administrators of non-model SEPs provide participating employees with specific written information concerning SEPs.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Prohibited Transaction Class Exemption 77–44 for Certain Transactions between Investment Companies and Employee Benefit Plans.

OMB Number: 1210–0049.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 431.

Number of Annual Responses: 82,240.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 7,069.

Total Annualized Capital/Startup Costs: $0

Total Annual Costs (operating/maintaining systems or purchasing services): $31,251.

Description: Prohibited Transaction Class Exemption 77–44 permits an employee benefit plan to purchase and sell shares of an open-ended investment company (mutual fund) when a fiduciary with respect to the plan is also the investment adviser for the mutual fund. In order to ensure that the class exemption is not abused, that the rights of the participants and beneficiaries are protected, and that the exemption's conditions are being complied with, the Department often requires minimal information collection pertaining to the affected transactions.

Type of Review: Revision of currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Prohibited Transaction Class Exemption 98–54 relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions.

OMB Number: 1210–0111.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Frequency: On Occasion.

Number of Respondents: 35.

Numbers of Annual Responses: 8,400.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 4,200.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Prohibited Transaction Class Exemption 98–54 permits certain foreign exchange transactions between employee benefit plans and certain banks or broker dealers that are parties in interest with respect to such plans. Without this exemption, plans would lose investment income and incur higher exchange rates on small transactions. The information collection requirements of the exemption are intended to protect the interests of plan participants and beneficiaries by ensuring that the independent plan fiduciaries have sufficient information to fulfill their fiduciary duties with respect to the plan. It also ensures that the federal government agencies responsible for administration and enforcement of ERISA have sufficient information to determine that the condition of the exemption have been met.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–26636 Filed 10–22–01;845am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 15, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Type of Review: Extension of a currently approved collection.

Title: Safety Standards for Underground Coal Mine Ventilation—30 CFR 75.360(a)(1) and 75.360(f).

OMB Number: 1219–0125.

Affected Public: Business or other for-profit.

Type of Response: Recordkeeping.

Frequency: Once each shift.

Number of Respondents: 127 (75 small mines and 52 large mines).

Number of Annual Responses: 102,000.

Estimated Time Per Response: 1.08 hours for small mines and 1.67 hours for large mines.

Burden Hours: 78,001.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The preshift examination is the mine operator's fundamental tool for assessing the overall safety condition of the mine. During the examination, the examiner focuses on discovering both existing and developing hazards, such as methane accumulation, bad roof and water accumulation, and determining the effectiveness of the mine ventilation system. The examination has proven to be particularly effective in the discovery and correction of hazardous conditions and practices before they lead to injuries or fatalities. Because conditions in the underground mining environment can change rapidly, recurring examinations are necessary to assure safety of the miners underground. A timely preshift examination assures the safety of the environment on a routine basis.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–26637 Filed 10–22–01; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension of form WH–516, Worker Information—Terms and Conditions of Employment (English and Spanish).

DATES: Written comments must be submitted to the office listed in the addresses section below within December 24, 2001.

ADDRESSES: Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451, E-mail *pforkel@fenix2.dol-esa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Various sections of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 *et seq.*, require that each farm labor contractor, agricultural employer and agricultural association disclose in writing the terms and conditions of employment to: (a) Migrant agricultural workers at the time of recruitment (section 201(a)); (b) seasonal agricultural workers, upon request, at the time of employment (section 301(a)(1)); and (c) seasonal agricultural workers employed through a day-haul operation at the place of recruitment (section 301(a)(2)). Sections 201(b) and 301(b) also require that each such employer provide to each worker, upon request, a written statement of the terms and conditions of employment. In addition, sections 201(g) and 301(f) require that such information be provided in English, or as necessary and reasonable, in a language common to the workers and that the U.S. Department of Labor (DOL) make forms available to provide such information. Optional Form WH–516, Worker Information, is printed and made available by DOL for these purposes. The terms and conditions required to be disclosed to workers are set forth in section 500.75(a) and (b) and 500.76(a), (b) and (c) of Regulations, 29 CFR Part 500, Migrant and Seasonal Agricultural Worker Protection, and Form WH–516, when completed and disclosed to workers, satisfies these requirements.

Public Law 104–49, enacted on November 15, 1995, provides in section 4 for the disclosure of certain information regarding State workers' compensation insurance to the employee, i.e., whether State workers' compensation is provided and if so, the name of the State workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which this notice must be given. Optional Form WH–516 was revised in the previous OMB 83–1 submission to provide space to include this new statutorily-required information. This disclosure requirement can also be met by the employer by providing the worker with a photocopy of any notice regarding workers' compensation insurance required by law of the state in which such worker is employed.

Sections 500.75 and 500.76 of Regulations, 29 CFR part 500, Migrant and Seasonal Agricultural Worker Protections include in the terms and conditions of employment to be disclosed to the workers, the State workers' compensation notifications required by section 4 of Public Law 104–49.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to ensure that farm labor contractors, agricultural employers and agricultural associations have disclosed to their migrant and seasonal agricultural workers the terms and conditions of employment as required by MSPA and its regulations.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Worker Information—Terms and Conditions of Employment (English and Spanish).

OMB Number: 1215–0187.

Agency Number: WH–516.

Affected Public: Businesses or other for-profit; Individuals or households; Farms.

Frequency: On occasion.

Total Respondents: 137,000.

Total Annual Responses: 3.24 million.

Time per Response: 32 minutes.

Estimated Total Burden Hours: 73,067.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $29,160.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 9, 2001.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 01–26633 Filed 10–22–01; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10949, et al.]

Proposed Exemptions; Kimball International, Inc. Retirement Plan (the Plan) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Kimball International, Inc. Retirement Plan (the Plan), Located in Jasper, Indiana

[Application No. D–10949]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of stock (the Shares) of Springs Valley Bank & Trust Company (Springs Valley) to Springs

Valley, the Trustee of the Plan and a party in interest with respect to the Plan, provided that the following conditions are met:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) The fair market value of the Shares is determined by a qualified, independent appraiser;

(d) The Plan does not pay any commissions, costs or other expenses in connection with the Sale; and

(e) The Plan receives as consideration an amount that is no less than the greater of: (1) the fair market value of the Shares as of the date of the Sale or (2) $40 per Share.

Summary of Facts and Representations

1. The Kimball International, Inc. Retirement Plan (the Plan) is a defined contribution plan within the meaning of ERISA Section 3(34), permitting both before-tax (401(k)) participant contributions and after-tax participant contributions. As of November 9, 2000, the Plan covers approximately 7,400 participants and has Plan assets of approximately $349,204,819.28. Approximately 1.66% ($5,796,800) of the Plan assets are involved in the proposed transaction. The Trustee of the Plan is Springs Valley.

2. Kimball International, Inc. (the Employer) is engaged in the manufacture of pianos, office, hotel, restaurant, healthcare and residential furniture and cabinets (in both wood and metal), and in the design, engineering, manufacture, packaging and distribution of electronic assemblies, circuit boards, multi-chip modules and semiconductor components on a contract basis to customers in the transportation, defense, aerospace, telecommunications, computer and medical industries.

3. Prior to 1990 the Employer sponsored and maintained two separate defined contribution profit sharing plans, the Kimball International, Inc. Indirect Retirement Plan (established effective January 1, 1952) covering the Employer's salaried employees; and the Kimball International, Inc. Direct Retirement Plan (established effective July 1, 1968) covering the Employer's non-salaried employees. Effective July 1, 1990, those two separate plans were merged to form the Plan. Subsequently, beginning March 1, 1994, the Employer incorporated a 401(k) feature within the Plan.

4. Springs Valley, as the Trustee of the Plan, has held the authority to vote the securities in the Plan, including the Shares. The Shares in the Plan were voted each year by an independent person, Claude Taylor (Mr. Taylor), on behalf of Spring Valley as Trustee. Mr. Taylor is not an employee of Spring Valley. He is a local resident of French Lick, Indiana, and has been serving in this independent capacity for over 20 years.

5. The Plan holds 144,920 Shares, having an estimated value of $5,796,800 at June 30, 2000 (based on a private transaction at $40 per share occurring in 2000), and representing approximately 19.5% of the issued and outstanding Shares. The Employer, its significant shareholders, and the Plan own in the aggregate approximately 38% of the issued and outstanding Shares. The Shares were originally acquired from Spring Valley by the Plan in three separate transactions prior to the enactment of the Act[1]. The total cost of the shares to the Plan was $319,547.88.

6. The Shares are not publicly traded, and there is no ready market for it. The Shares are valued annually by an independent, qualified, appraiser, Professional Bank Services located in Louisville, Kentucky, retained and paid by Spring Valley for the purpose of valuing such stock in connection with the Springs Valley employees' stock option plan. The method used in such valuation can briefly be described as follows: (i) The appraisal is based on a valuation of the Plan's minority interest in Springs Valley; (ii) an analysis of the bank's market liquidity, regulatory and audit reports; and (iii) other such summary information that is available and deemed appropriate. The Plan uses that valuation for its purposes of valuing the Shares annually. Professional Bank Services concluded that the fair market value of the Shares is $40 per common share as of April 5, 2001.

7. With dividends reinvested, the compound rate of return of the Shares has been 10.663% from 1984 through 1999. The Plan will receive $5,796,800 resulting from the investment by the Plan in the Shares of $319,547.88.

8. On July 1, 2001, the Employer amended the Plan to permit participants to self-direct the investment of their Plan accounts. In order to facilitate this process, and because of the illiquid nature of the Shares, the continued investment in the Shares is incompatible with Plan participant self-direction, and with the future distributions from the Plan. As a result, the Plan now proposes to sell the Shares for the greater of: (1) The fair market value of the Shares as of the date of the Sale or (2) $40 per Share.

9. Before the Sale, the Shares will be transferred from Springs Valley as trustee to an independent trustee also acting under the Plan. That independent trustee will be the National Bank of Indianapolis (the National Bank) located in Indianapolis, Indiana. The National Bank will perform an independent review and fairness determination of the appraisal process prior to the Sale to Springs Valley, which may include obtaining a second independent appraisal.

10. The applicant represents that the proposed transaction is administratively feasible, and in the best interest and protective of the Plan. The transaction will be for cash and the Plan will pay no costs or commissions associated with the sale, allowing the Plan to divest itself of the Shares and reinvest the proceeds of the Sale in assets that will be diversified and generate higher rates of return.

11. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those reasonably obtainable in an arm's-length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) The fair market value of the Shares is determined by a qualified, independent, appraiser;

(d) The Plan does not pay any commissions, costs or other expenses in connection with the Sale; and

(e) The Plan receives as consideration an amount that is no less than the greater of: (1) the fair market value of the Shares as of the date of the Sale or (2) $40 per Share.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

For Further Information Contact: Khalif Ford of the Department, telephone (202) 219–8883. (This is not a toll-free number).

[1] The Department expresses no opinion herein as to whether the holding of the Shares by the Plan violated any of the provisions of Part 4 of Title I of the Act.

Alaska United Food and Commercial Workers Health and Security Trust Fund (the Plan) Located in Anchorage, Alaska

[Application No. L–10896]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the proposed purchase by Plan participants and beneficiaries of prescription drugs from Safeway, Inc. (Safeway), a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) The terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of Safeway and its wholly owned subsidiary, SMCrx; (c) at least 50% of the preferred providers participating in the Preferred Provider Network (PPN) involving Safeway are unrelated to Safeway or any other party in interest with respect to the Plan; (d) Safeway will be treated no differently than any other pharmacy participating in the PPN; and (e) the transaction is not part of an agreement, arrangement or understanding designed to benefit Safeway or any other party in interest with respect to the Plan.

Effective Date: The proposed exemption, if granted, will be effective as of August 1, 2000.

Summary of Facts and Representations

1. The Plan is a multi-employer welfare benefit plan, which has been in existence since February 25, 1965. The Plan was established to provide health and welfare benefits, including life, sickness, accident and other benefits for Plan participants and their beneficiaries. The Plan is directed by a six person board of trustees. The three trustees representing labor are appointed by the United Food and Commercial Workers Local Union 1496 (the Union). The three employer trustees are appointed by contributing employers to the Plan, including Safeway, which operates Safeway/Carr's grocery stores. The Plan currently has approximately 2,916 participants and $8,687,702 in assets.

2. The applicant represents that the Plan had an existing relationship with a Pharmacy Benefits Manager (PBM), a company called PCS, that had not been satisfactory for an extended period of time. The applicant states that PCS has an extensive network of participating pharmacies but could not accommodate the needs of the Plan by processing non-electronic (i.e., paper) claims. The failure of PCS to process paper claims for the Plan placed the burden of processing such claims on the Plan's third party administrator, Labor Trust Services of Anchorage, Alaska.

3. After several attempts to rectify these problems with PCS, the Plan's trustees decided to seek bids from other PBMs. The trustees requested that the Plan's independent consultant, William M. Mercer, Inc., of Seattle, Washington (Mercer), find and recommend an alternative PBM at a competitive price, who would be better able to adapt to the needs of the Plan. The trustees did not select the entities to be considered in the PBM search.

4. Mercer considered four entities as possible PBMs for the Plan. Requests for proposals had been sent to SysteMed (Merck-Medco), PCN and SMCrx. PCS also provided an unsolicited bid. Mercer analyzed the bids and recommended SMCrx as being the most able to fulfill the needs of the Plan since its price was competitive and it would process the non-electronic claims. The applicant represents that the trustees of the Plan chose SMCrx based on the findings and recommendation of Mercer, the Plan's independent consultant. Safeway's representative on the Plan's board of trustees took no part in the discussion or voting on the selection of SMCrx as the Plan's PBM.

5. SMCrx is a wholly-owned subsidiary of Safeway, which is a major contributing employer to the Plan through its grocery stores in Alaska. SMCrx has a separate board of directors and a separate corporate headquarters from Safeway.

6. A PBM normally maintains an extensive system of participating pharmacies in its preferred provider network (i.e., a PPN) throughout the United States. The applicant states that SMCrx has a PPN comparable to many of its competitors. However, SMCrx is smaller in size, and, therefore, more willing to adjust its operations to the needs of the Plan, including the processing of paper claims. The Plan does have a mail order prescription option through SMCRx, which is an advantage to the participants and beneficiaries. As a PBM, SMCrx negotiated discounts with the drug manufacturers as well as the participating pharmacies. These discounts will be passed on to the Plan and its participants and beneficiaries. Unless the pharmacies meet the discount standards of SMCrx, they do not participate in the PPN. SMCrx has a nationwide network of participating pharmacies. The applicant states that the discounts with the pharmacies are uniform, thereby avoiding any favoritism.

7. Effective August 1, 2000, the Plan entered into an agreement with SMCrx wherein SMCrx agreed to act as the PBM for the Plan.[2] The Plan will receive the same discounts on pharmaceutical drugs as all other customers of SMCrx. The Plan will, through SMCrx, participate in the PPN as well as benefit from SMCrx's ability to handle the paper claims of participants and beneficiaries. SMCrx has agreed to a 30 day cancellation clause in its contract for cause, and either party may cancel the contract without cause by giving 60 days prior notice.

8. SMCrx has agreed to the following terms for a period of one year:

(a) *Custom Alaska Network*

Brand Discount 11% off AWP[3] or U&C[4]
Dispensing Fee $2.50/Rx
Generic Discount 25% off AWP or U&C
Dispensing Fee $2.50/Rx

Claims Processing:

Electronic $0.60 per claim

[2] The provision of services to a plan by a party in interest with respect to the plan is a separate prohibited transaction under section 406(a)(1)(C) of the Act. However, the provision of services to a plan by a party in interest, which are necessary for the operation of the plan, are statutorily exempt under section 408(b)(2) of the Act, if the conditions required therein are met. The regulation promulgated by the Department which defines the scope of the statutory exemption contained in section 408(b)(2) of the Act states that no relief is provided for any arrangement for services which would violate section 406(b) of the Act (see 29 CFR section 2550.408b–2).

Therefore, it should be noted that in this proposed exemption, the Department is providing no relief beyond that provided by section 408(b)(2) of the Act with respect to the provision of PBM services by SCMrx to the Plan. In addition, the Department is providing no opinion herein as to whether any service arrangements between SMCrx and the Plan would meet the conditions of section 408(b)(2) of the Act and the regulations thereunder.

However, interested persons should review DOL Adv. Op. 99–09A (May 21, 1999) for a discussion of issues relating to such service arrangements.

[3] "AWP" stands for "Average Wholesale Price." The AWP is determined by SMCrx's utilization of the Medispan First Data Bank. This data bank is the national drug pricing standard for determining AWP. The AWP pricing is updated daily and automatically in SMCrxs adjudication system. AWP represents the retail spread over wholesale acquisition costs and is set by the manufacturers. Thus, the applicant represents that it is objectively determined. The PBM also utilizes HCFA–MAC pricing for generics. This is a nationally recognized generic pricing standard which is updated monthly.

[4] "U&C" stands for "Usual and Customary." The discount will be taken off either the AWP or the U&C price, whichever produces the lowest price.

Paper $1.50 per claim

(b) Broad Network

Brand Discount 13% off AWP or U&C
Dispensing Fee $2.50/Rx
Generic Discount AWP—33%
Dispensing Fee $2.50/Rx

(c) Mail Order

Brand Discount 15% off AWP
Generic Discount 30% off AWP
Dispensing Fee $2.00/Rx

9. The Custom Network consists of participating pharmacies who file claims electronically, while the Broad Network consists of all other pharmacies in SMCRx's network. In each network, the Plan receives a discount on the price of drugs. The SMCRx proposal provides the Plan with the highest savings off AWP. However, there are "paper" claims which are part of the Broad Network which must be processed by SMCRx. There is no mandatory formulary arrangement. A voluntary formulary arrangement exists where the Plan receives 60% of the manufacturer's rebate.

10. Plan participants and beneficiaries may acquire their prescription drugs through the PPN established by SMCrx. SMCrx will adjudicate prescription claims that have been submitted to the PPN by the covered individual and shall perform all claims-related processing functions, not limited to determining the validity and the accuracy of the claims submitted. SMCrx will then bill the Plan for the cost of these services, which is agreed to by contract. SMCrx will receive a monthly fee assessed on a per claim basis which will be paid for by the Plan. SMCRx's performance and competitiveness are monitored by the Plan's third party administrator, Labor Trust Services, Inc. (LTS), and the Plan's consultant Mercer. Both Mercer and LTS are independent of Safeway.

11. The Plan benefits by: (a) Receiving discounts through the participating pharmacies; (b) receiving discounts from any participating pharmaceutical company or manufacturer in the form of lower costs to participants and beneficiaries; (c) the processing and review of claims by professional management; and (d) the submissions of reports regarding trends in the pharmaceutical/prescription industry.

The applicant represents that at least 50% of the preferred providers participating in the PPN are, and will continue to be, unrelated to Safeway or any other party in interest. All Plan decisions to enter into agreements governing the subject purchases of prescription drugs have been and will continue to be made by Plan fiduciaries that are independent of Safeway and SMCrx. In this regard, any fiduciary affiliated with Safeway or SMCrx has removed or will remove himself or herself from all consideration by the Plan as to whether to engage in the covered transactions. Finally, the applicant states that the subject transactions are not part of an agreement, arrangement or understanding designed to benefit a party in interest.

12. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The terms of the transactions are at least as favorable to the Plan as those the Plan could obtain in similar transactions with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of Safeway and SMCrx; (c) at least 50% of the preferred providers participating in the PPN are unrelated to Safeway or any other party in interest; (d) Safeway will be treated no differently than any other pharmacy participating in the PPN; and (e) the transactions are not part of an agreement, arrangement or understanding designed to benefit a party in interest.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of October, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 01–26567 Filed 10–22–01; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–135)]

Agency Information Collection Activity; OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This collection is required to document changes to NASA contracts and ensure that they are made quickly and in a cost-effective manner.

DATES: All comments should be submitted on or before December 24, 2001.

ADDRESSES: All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Contract Modifications, NASA FAR Supplement Part 1[illegible]-43.

OMB Number: 2700–0054.

Type of review: Extension.

Need and Uses: NASA procurement and technical personnel use the information obtained by this collection to manage each contract, and to ensure that the Agency can obtain the best goods and services at the best prices.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 88.

Responses Per Respondent: 2.

Annual Responses: 176.

Hours Per Request: 45.

Annual Burden Hours: 7,920.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26625 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–133]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This collection provides NASA with information necessary for the effective management of government property.

DATES: All comments should be submitted on or before December 24, 2001.

ADDRESSES: All comments should be addressed to Mr. Phillip Smith, Code BFZ, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Property in the Custody of Contractors.

OMB Number: 2700–0017.

Type of review: Extension.

Need and Uses: NASA is required to account for Government-owned/contractor-held property in accordance with SFFAS #6. NASA Form 1018 provides for the annual collection of summary data from these records to ensure the accurate reflection of Agency assets and related depreciation on the financial statements and essential property management information.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 860.

Responses Per Respondent: 1.

Annual Responses: 1.

Hours Per Request: 8.

Annual Burden Hours: 7000.

Frequency of Report: Annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26627 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–132]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This information collection is used by NASA contracting officers to ensure that projected contract cost savings are being realized.

DATES: All comments should be submitted on or before November 23, 2001.

ADDRESSES: All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Cost Reduction Proposals under the NASA FAR Supplement Shared Savings Clause.

OMB Number: 2700–0094.

Type of review: Extension.

Need and Uses: This program provides an incentive for contractors to propose and implement, with NASA approval, significant cost reduction initiatives on current and follow-on contracts.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 9.

Responses Per Respondent; 1.25.

Annual Responses: 11.25.

Hours Per Request: 45.

Annual Burden Hours: 506.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26628 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–131]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). The financial recordkeeping information and reports obtained through this collection are used by NASA to ensure proper accountability for and use of NASA-provided funds.

DATES: All comments should be submitted on or before November 23, 2001.

ADDRESSES: All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Financial Monitoring and Control, Grants.

OMB Number: 2700–0049.

Type of review: Extension.

Need and Uses: Information is used by NASA to effectively maintain an appropriate internal control system for grants and cooperative agreements with institutions of higher education and other non-profit organizations, and to comply with statutory requirements on the accountability of public funds.

Affected Public: Not-for-profit institutions.

Number of Respondents: 7,149.
Responses Per Respondent: 5.
Annual Responses: 37,696.
Hours Per Request: 7½ hrs.
Annual Burden Hours: 284,792.
Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26629 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–130]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). The information obtained through this collection is used by NASA management and contracting offices to assess progress toward meeting statutory goals for small businesses/small disadvantaged businesses.

DATES: All comments should be submitted on or before November 23, 2001.

ADDRESSES: All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Small Business and Small Disadvantaged Business Concerns and Related Contract Provisions, NASA FAR Supplement Part 18–19, SF 295.

OMB Number: 2700–0073.
Type of review: Extension.
Need and Uses: NASA requires reporting of small disadvantaged business subcontract awards in order to meet its Congressionally mandated goals.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 225.
Responses Per Respondent: 2.
Annual Responses: 450.
Hours Per Request: 12.
Annual Burden Hours: 5,400.
Frequency of Report: Semi-annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26630 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–129]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This information collection is used by NASA to effectively maintain an appropriate internal control system for equipment and property provided or acquired under grants or cooperative agreements with institutions of higher education and other non-profit organizations.

DATES: All comments should be submitted on or before November 23, 2001.

ADDRESSES: All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Property Management and Controls, Grants.
OMB Number: 2700–0047.
Type of review: Extension.
Need and Uses: Collection is required to ensure proper accounting of Federal property provided under grants and cooperative agreements with institutions of higher education and to satisfy external requirements of internal control of property provided by NASA or acquired with NASA funds.

Affected Public: Not-for-profit institutions.

Number of Respondents: 7,149.
Responses Per Respondent: 4.
Annual Responses: 28,596.
Hours Per Request: 4 hrs.
Annual Burden Hours: 114,384.
Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26631 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–134]

Agency Information Collection Activity; OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This information collection will help NASA to assess the services provided by its procurement offices.

DATES: All comments should be submitted on or before November 23, 2001.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Procurement Customer Survey.
OMB Number: 2700.
Type of review: New.
Need and Uses: The NASA Procurement Customer Survey will be used to determine whether NASA's procurement offices are providing an acceptable level of service to the business/educational community, and if not, which areas need improvement. Respondents will be business concerns and educational institutions that have been awarded a NASA procurement, or are interested in receiving such an award.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 1000.
Responses Per Respondent: 1.
Annual Responses: 500.
Hours Per Request: 25.
Annual Burden Hours: 125.
Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26626 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–128]

NASA Advisory Council, Minority Business Resource Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: Thursday, November 8, 2001, 9:00 a.m. to 4:00 p.m., and Friday, November 9, 2001, 9:00 a.m. to 12:00 noon.

ADDRESSES: Hyatt Regency Washington, One Capitol Hill, 400 New Jersey Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Previous Meeting
—OSDBU Update of Activities
—NAC Meeting Report
—Overview of NASA Enterprises and Functional Staff Offices
—Public Comment
—Panel Discussion and Review
—Goals for MBRAC V Review
—Status of Open Committee Recommendations
—New Business

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–26632 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before November 23, 2001 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on August 7, 2001 (66 FR 41270 and 41271). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Presidential Library Facilities.
OMB Number: 3095–0036.
Agency Form Number: None.
Type of Review: Regular.
Affected Public: Presidential library foundations or other entities proposing to transfer a Presidential library facility to NARA.
Estimated Number of Respondents: 1.
Estimated Time per Response: 31 hours.
Frequency of Response: On occasion.
Estimated Total Annual Burden Hours: 31 hours.

Abstract: The information collection is required for NARA to meet its obligations under 44 U.S.C. 2112(a)(3) to submit a report to Congress before accepting a new Presidential library facility. The report contains information that can be furnished only by the foundation or other entity responsible for building the facility and establishing the library endowment.

Dated: October 17, 2001.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 01–26577 Filed 10–22–01; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–530]

Arizona Public Service Company, Palo Verde Nuclear Generating Station, Unit 3; Exemption

1.0 Background

The Arizona Public Service Company (APS/licensee) is the holder of Facility Operating License No. NPF–74 which authorizes operation of the Palo Verde Nuclear Generating Station (PVNGS), Unit 3. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now, or hereafter in effect.

The facility consists of a pressurized water reactor located in Maricopa County in Arizona.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, discusses fuel performance requirements for fuel used in light water nuclear power reactors. The requirements refer specifically to cladding types of zircaloy or ZIRLO, and do not address other cladding material. Since advanced zirconium based cladding materials do not conform to the two designations specified in the code, an exemption is required.

APS requested a temporary exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, appendix K, for PVNGS, Unit 3, by letter dated March 2, 2001, as supplemented on August 28, 2001, and September 25, 2001. The exemption would allow continued testing of a lead fuel assembly (LFA) containing fuel rods fabricated with an advanced zirconium based cladding material, designated as Alloy A. This cladding material has been previously approved for limited use and testing at PVNGS in letters dated July 17, 1992, and February 4, 1997. The requested exemption extension would allow the Unit 3 LFA to exceed the already approved operating cycles.

Part 50 of 10 CFR specifies standards and acceptance criteria only for fuel rods clad with zircaloy or ZIRLO. As noted above, APS was granted an exemption to use Alloy A in a limited number of pins starting in Cycle 4 and continuing through Cycle 6 in Unit 3. Based on the success of this advanced cladding, APS was granted an additional exemption to extend the burnup for a limited number of pins clad with Alloy A during Cycle 7. As part of the second exemption, APS was allowed to use a full assembly of the Alloy A clad in Unit 3 for three operating cycles, starting in Cycle 7. Based on the results of physical examination and measurements that have confirmed the superior performance of Alloy A, and NRC's prior approval for a limited number of pins, APS has requested an exemption to extend the burnup into Cycle 10 for the full assembly of Alloy A fuel rods.

Section 50.44 (a) of 10 CFR states, "Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding, must, as provided in paragraphs (b) through (d) of this section, include means for control of hydrogen gas that may be generated, following a postulated loss-of-coolant accident (LOCA)."

Section 50.46(a)(1)(i) of 10 CFR states, "Each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section. ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated loss-of-coolant accidents of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated loss-of-coolant accidents are calculated."

Section 50.46 of 10 CFR continues on to delineate specifications for peak cladding temperature, maximum hydrogen generation, coolable geometry, and long-term cooling. Sections 50.44 and 50.46 of 10 CFR specifically refer to fuel with zircaloy or ZIRLO cladding; the use of fuel clad with zirconium-based alloys that do not conform to either of these two designations requires an exemption from this section of the Code.

Appendix K, paragraph I.A.5, of 10 CFR part 50 states, "The rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation." The Baker-Just equation presumes the use of zircaloy or ZIRLO cladding. The use of fuel with zirconium-based alloys that do not conform to either of these two designations requires an exemption from this section of the Code.

APS believes that special circumstances are present, pursuant to 10 CFR 50.12(a)(ii), to warrant granting the exemption request.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by an interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present. These circumstances include the special circumstances as set forth in 10 CFR 50.12(a)(2)(ii), which states that special circumstances are present whenever, "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

The underlying purpose of 10 CFR 50.44 is to ensure that there is an adequate means of controlling generated hydrogen. The hydrogen produced in a post-LOCA scenario comes from a metal-water reaction. In the previous exemptions, it was concluded that the use of the Baker-Just equation to determine the metal-water reaction rate is conservative for Alloy A cladding. Therefore, the amount of hydrogen generated by metal-water reaction in these materials will be within the design basis of Palo Verde Unit 3.

Section 50.46 of 10 CFR identifies acceptance criteria for ECCS system performance at nuclear power facilities. The effectiveness of the ECCS in Palo Verde Unit 3 will not be affected by the reinsertion of the LFA. Due to the similarities in the material properties of Alloy A to zircaloy, and the location of the LFA in a non-limiting location, it can be concluded that the ECCS performance in Palo Verde Unit 3 will not be adversely affected.

The intent of paragraph I.A.5 of Appendix K to 10 CFR part 50 is to apply an equation for rates of energy release, hydrogen generation, and cladding oxidation from a metal-water reaction which conservatively bounds all post-LOCA scenarios. CEN–429–P, Rev. 00–P, "Safety Analysis Report for Use of Advanced Zirconium Based Cladding Material in PVNGS Unit 3 Lead Fuel Assemblies," August 1996, verifies that due to the similarities in the composition of the Alloy A cladding and zircaloy, the application of the Baker-Just equation will continue to conservatively bound all post-LOCA scenarios.

The staff examined the licensee's rationale to support the exemption requests and concluded that continued use of advanced zirconium based cladding materials would meet the underlying purpose of 10 CFR part 50.

Based upon the considerations discussed in this exemption, the staff concludes that the information provided by APS and the actions described in the application form an acceptable basis for extending the exemption for another cycle.

The safety evaluation may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room).

Therefore, the staff concludes that pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances exist as discussed in Section 3.0 above, and granting this exemption will not present an undue risk to the public health and safety and is consistent with the common defense and security.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants Arizona Public Service Company, *et al.*, an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, appendix K, for Palo Verde Nuclear Generating Station, Unit 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 52644).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of October 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–26694 Filed 10–22–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–454, STN 50–455, STN 50–456, STN–50–457]

Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37, NPF–66, NPF–72, and NPF–77, issued to Exelon Generation Company, LLC (the licensee), for operation of the Byron Station, Units 1 and 2 located in Ogle County, Illinois, and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendment would revise technical specification (TS) 3.7.2, "Main Steam Isolation Valves" (MSIV). TS surveillance requirement (SR) 3.7.2.1 and 3.7.2.2 would be revised for Byron and Braidwood to allow these requirements not to be met until the first startup after September 27, 2001. By letter dated October 1, 2001, the licensee requested that the Nuclear Regulatory Commission (NRC) exercise discretion not to enforce compliance with the actions required in Byron Station, Unit 1 and 2, and Braidwood Station, Unit 2, TS. While reviewing the SRs section of the Bases for SR 3.7.2.1 and SR 3.7.2.2. in support of Braidwood Station, Unit 1 refueling outage activities, the licensee discovered that the existing surveillance procedures were inconsistent with the TS Bases. During start-up following the last refueling outages at Braidwood Station, Units 1 and 2, and Byron Station Units 1 and 2, SR 3.7.2.1 and SR 3.7.2.2 were performed in Mode 4 and not in Mode 3 as required by the TS. The existing surveillance procedures for SR 3.7.2.1 and 3.7.2.2 allow testing in Mode 3, 4, or 5.

The licensee stated that on September 27, 2001, 4 p.m. CDT (5 p.m. EDT), the plants would not be in compliance with SR 3.7.2.1 and SR 3.7.2.2, which would require Braidwood Station, Unit 2, and Byron Station, Units 1 and 2, to be in Mode 3 within the next 7 hours. A Notice of Enforcement Discretion (NOED) was requested pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.C. of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG–1600, to be effective for the period until the first startup after September 27, 2001. The NOED was granted to the licensee on October 3, 2001, requiring an exigent amendment to be issued within 4 weeks of this date.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

MSIV closure is the initiator of the Inadvertent MSIV Closure event. Operation of the affected units with MSIVs tested in Mode 4 instead of Mode 3 will not affect the probability of an inadvertent MSIV closure event, since the only effect would be to potentially delay to closure of the MSIVs. The MSIVs Original Equipment Manufacturer (OEM) was contacted regarding the effect of system conditions on MSIV stroke times. The OEM indicated that the most significant impact on stroke time is main steam flow. The OEM also indicated that impact due to MSL pressures alone resulted in little change to valve closure time. According to the OEM, a few tenths of a second is added to full design steam line pressure stroke test versus stroke tests as performed without line pressure. The OEM's basis for these statements was from testing that was performed during the production of these and similar MSIVs. Any delay in closure time will mitigate the effects of the resulting pressure transient caused by the inadvertent closure of the MSIV. There are no modifications to the hardware associated with accomplishing the closure functions. Therefore there is no increase in the probability of the Inadvertent MSIV closure event. The safety function of the MSIVs is to close in the event of a high energy line break or to be closed in the event of a steam generator tube rupture. These are mitigative actions and are not initiators to any other accident scenario previously analyzed in the updated final safety analysis report. Therefore, the proposed change will not increase the probability of any other previously analyzed accident.

The consequences of previously analyzed accidents will not be significantly increased. Based on past data related to closure time, and vendor information stating that the valve stroke time impact due to increase in steam line pressure is on the order of a few tenths of a second, we have reasonable assurance the valves will still function within the assumed analysis time, thereby maintaining the analyzed dose consequence for the steam line break and feedline break accident analyses. The MSIVs will still function as assumed for the steam generator tube rupture event, in that the valves will function in response to operator action. Therefore, no additional source term is added to the steam generator tube rupture analysis and the consequence resulting from that event are not increased.

Therefore, due to the limited effect the deficient testing has on the valve stroke time and the appreciable margin between the required stroke time and the assumed isolation time in the limiting analyses, the probability of occurrence and consequences of any accident previously analyzed are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of

accident from any accident previously evaluated?

The proposed action does not involve physical alteration of the units. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the units are operated. There are no setpoints at which protective or mitigative actions are initiated that are affected by this proposed action. This proposed action will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. The surveillance procedures for stroke time testing the MSIVs will be revised to ensure the MSIVs are tested in Mode 3. This change does not impact normal operation of the MSIVs. In addition, no alteration in the procedures, which ensure the units remain within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed action does not alter assumptions made in the safety analysis. Therefore, the proposed action does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed action does not involve a significant reduction in the margin of safety. The margin of safety is assured by the operation of the plant within the prescribed parameters and by the diverse and redundant protection afforded by the Reactor Protection System (RPS) and Engineered Safety Feature Actuation System (ESFAS). The identified testing deficiency does not affect the parameters within which the unit is maintained, and is not detrimental to the actuation of the RPS or ESFAS functions. Reasonable assurance is provided that the MSIVs will achieve full closure within the required time interval. As noted above, there is additional margin between the required isolation time and that assumed in the limiting accident analysis.

Therefore, based on the above evaluation, we have concluded that the proposed changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 23, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Edward J. Cullen Jr., Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way KSB 3–W, Kennett Square, PA 19348, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 17, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 17th day of October 2001.

For the Nuclear Regulatory Commission.

Mahesh Chawla,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–26693 Filed 10–22–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on November 8–10, 2001, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Friday, November 17, 2000 (65 FR 69578).

Thursday, November 8, 2001

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10 A.M.: Final Review of the Hatch License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Southern Nuclear Operating Company regarding the license renewal application for the Edwin I. Hatch Nuclear Plant Units 1 and 2, and the associated NRC staff's final Safety Evaluation Report (SER).

10:20 A.M.–12:30 P.M.: Dresden and Quad Cities Core Power Uprate (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Exelon Generation Company regarding the license amendment request to increase the core thermal power level for Dresden Nuclear Power Station Units 2 and 3 and the Quad Cities Nuclear Power Station Units 1 and 2, and the associated NRC staff's SER.

[**Note:** A portion of this session may be closed to discuss General Electric Nuclear Energy proprietary information applicable to this matter.]

1:30 P.M.–3:30 P.M.: Safety Research Program (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC Office of Nuclear Regulatory Research regarding the vision and expectations of the NRC Safety Research Program.

3:50 P.M.–5 P.M.: Proposed Update to 10 CFR part 52 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed update to 10 CFR part 52 that is based on experience gained from previous design certification reviews and discussions with stakeholders on the early site permit and combined license processes.

5:15 P.M.–7 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as proposed reports on Final Review of the Hatch License Renewal Application, Dresden and Quad Cities Core Power Uprate, and Proposed Update to 10 CFR part 52.

Friday, November 9, 2001

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:30 A.M.: Circumferential Cracking of PWR Vessel Head Penetrations (Open)—The Committee will hear a presentation by and hold discussions with representatives of the NRC staff regarding the status of staff activities associated with resolving issues related to circumferential cracking of pressurized water reactor (PWR) vessel head penetrations, including control rod drive mechanism nozzles.

10:50 A.M.–12:15 P.M.: Licensing Approach for the Pebble Bed Modular Reactor Design (Open)—The Committee will hear remarks by Dr. Kress and Dr. Powers regarding the October 10–12, 2001 future plant design workshop organized by the NRC Office of Nuclear Regulatory Research. Also the Committee will hear a presentation by and hold discussions with representatives of the NRC staff regarding the licensing approach for the Pebble Bed Modular Reactor design.

1:15 P.M.–2 P.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

2 P.M.–2:15 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

2:30 P.M.–4:30 P.M.: Discussion of Topics for Meeting with the NRC Commissioners (Open)—The Committee will discuss the following topics for meeting the NRC Commissioners on December 5, 2001:

- Regulatory Challenges for Future Plant Designs
- Reactor Oversight Process
- ACRS Activities Associated with Power Uprates and Related Matters
- ACRS Activities Associated with License Renewal and Related Matters

4:30 P.M.–7 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, November 10, 2001

8:30 A.M.–12:30 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 P.M.–1 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50462). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Dr. Sher Bahadur, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Dr. Sher Bahadur prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Dr. Sher Bahadur if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close a portion of this meeting noted above to discuss proprietary information per 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur (telephone 301–415–0138), between 7:30 a.m. and 4:15 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the Internet at *http://www.nrc.gov/ACRSACNW*. Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: October 17, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–26690 Filed 10–22–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of October 22, 29, November 5, 12, 19, 26, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 22, 2001

There are no meetings scheduled for the Week of October 22, 2001.

Week of October 29, 2001—Tentative

There are no meetings scheduled for the Week of October 29, 2001.

Week of November 5, 2001—Tentative

There are no meetings scheduled for the Week of November 5, 2001.

Week of November 12, 2001—Tentative

Thursday, November 15, 2001

2:00 p.m.—Discussion of Intragovernmental Issues (Closed-Ex. 1)

Week of November 19, 2001—Tentative

There are no meetings scheduled for the Week of November 19, 2001.

Week of November 26, 2001—Tentative

There are no meetings scheduled for the Week of November 26, 2001.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/SECY/smj/schedule.htm*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: October 18, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–26818 Filed 10–19–01; 3:10 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Boston Stock Exchange, Inc. (DrugMax, Inc., Common Shares, $.001 Par Value) File No. 1–15445

October 17, 2001.

DrugMax, Inc., a Nevada corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 [1] ("Act") and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Shares, $.001 par value ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The Issuer stated in its application that the Security has been listed on the Nasdaq SmallCap Market since November 19, 1999. In making the decision to withdraw the Security from listing and registration on the BSE, the Issuer considered the liquidity provided by the BSE and the cost associated with maintaining such listing. The Issuer represented that it will maintain its listing on the Nasdaq SmallCap Market so that the shareholders are provided with accessible and liquid markets. The Issuer's application relates solely to the Security's withdrawal from listing on the BSE and from registration under Section 12(b) of the Act [3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before November 8, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–26660 Filed 10–22–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Notice of Application To Withdraw From Listing and Registration on the Philadelphia Stock Exchange, Inc. (Public Service Enterprise Group Inc., Common Stock, no par value) File No. 1–9120

October 17, 2001.

Public Service Enterprise Group Inc., a New Jersey corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934, as amended ("Act"),[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value ("Security"), from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on January 16, 2001 to withdraw its Security from listing on the Exchange. The Security was suspended from trading on February 9, 2001. The Board believes that withdrawing the Security from the exchange will reduce its listing expenses. The Issuer will continue to list its Security on the New York Stock Exchange, Inc. ("NYSE").

The Issuer states in its application that it has met the requirements of Phlx Rule 809 governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the withdrawal of the Security from the Phlx and shall have no effect upon its listing on the NYSE or its registration under Section 12(b) of the Act.[3]

Any interested person may, on or before November 8, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Phlx and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–26659 Filed 10–22–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25211;812–12162]

MassMutual Institutional Funds, et al.; Notice of Application

October 16, 2001

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 ("Act") exempting applicants from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit them to enter into and materially amend sub-advisory agreements without shareholder approval.

APPLICANTS: Mass Mutual Institutional Funds ("MMIF"), MML Series Investment Fund ("MML Series," and together with MMIF, the "Trusts"), Massachusetts Mutual Life Insurance Company (the "Manager").

FILING DATES: The application was filed on June 30, 2000 and amendments thereto on December 13, 2000 and October 16, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–

[4] 17 CFR 200.30–3(a)(1).

0609. Applicants, 1295 State Street, B379, Springfield, MA 01111–0001.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. The Trusts, organized as Massachusetts business trusts, are registered under the Act as open-end management investment companies. MMIF and MML Series currently are comprised of eighteen and eleven series, respectively (each a "Fund," and together, the "Funds"), each with its own investment objectives, policies and restrictions.[1] Shares of MML Series are offered solely to separate accounts established by the Manager and its life insurance company subsidiaries, including MML Bay State Life Insurance Company and C.M. Life Insurance Company. The Manager, a mutual life insurance company organized under the laws of The Commonwealth of Massachusetts, serves as the investment manager to the Funds and is registered under the Investment Advisers Act of 1940 ("Advisers Act").

2. The Manager serves as investment manager to each Fund pursuant to separate investment management agreements ("Management Agreements") between the Trusts and the Manager that were approved by the board of trustees of each Trust (each, the "Board," and collectively, the "Boards"), including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Trustees"), and each Fund's shareholders. Under the terms of the Management Agreements, the Manager provides investment management services to each Fund while delegating the day-to-day portfolio management for each Fund to one or more sub-advisers ("Sub-Advisers") pursuant to separate investment sub-advisory agreements ("Sub-Advisory Agreements"). Each Sub-Adviser is an investment adviser registered under the Advisers Act, and any future Sub-Adviser will be registered under the Advisers Act. The Manager selects each Sub-Adviser, subject to approval by the respective Board, and compensates the Sub-Advisers out of fees paid to the Manager by the respective Fund.

3. The Manager monitors each Fund's performance and the Sub-Advisers and makes recommendations to the Board regarding allocation, and reallocation, of assets among Sub-Advisers to the extent the Manager deems appropriate in order to achieve the overall objectives of the Fund. The Manager also is responsible for recommending whether to employ, terminate or replace a particular Sub-Adviser. The Manager recommends the selection of a Sub-Adviser based on a number of factors, including whether the Sub-Adviser has displayed discipline and thoroughness in pursuit of its stated investment objectives, has maintained consistently above-average performance over time, and has demonstrated a high level of services to clients.

4. Applicants request relief to permit the Manager, subject to approval by the Boards, to enter into and materially amend Sub-Advisory Agreements without seeking shareholder approval.[2] The requested relief will not extend to a Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of either Trust or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Funds ("Affiliated Sub-Adviser").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants state that the structure of each Trust is different from that of traditional investment companies. Applicants assert that the investors are relying on the Manager's experience to select one or more Sub-Advisers best suited to achieve a Fund's desired investment objectives. Applicants assert that, from the perspective of the investors, the role of Sub-Advisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Sub-Advisory Agreements may impose unnecessary costs and delays on the Funds, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Management Agreements will remain subject to the requirements of section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Fund (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or, in the case of a Fund created in the future whose public shareholders (or variable contract owners through a separate account) purchased shares on the basis of a prospectus containing the disclosure contemplated by condition (2) below, by the sole initial shareholder(s) before offering shares of that Fund to the public (or the variable contract owners through a separate account).

2. Each Trust will disclose in its prospectuses the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectuses will prominently disclose that the Manager has the ultimate responsibility (subject to oversight by the Boards) to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. Within ninety (90) days of the hiring of any new Sub-Adviser, the Manager will furnish shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) with the information about the new Sub-Adviser that would be included in a proxy statement. This information will include any change in such disclosure caused by the addition of a new Sub-Adviser. The Manager will meet this condition by providing shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) within ninety (90) days of the hiring of a Sub-Adviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that Sub-Advisory Agreement, including the compensation to be paid thereunder, being approved by the Fund's shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account).

5. At all times, a majority of each Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

6. When a Sub-Adviser change is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Fund and the unitholders of any sub-account) and does not involve a conflict of interest from which the Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. The Manager will provide general management services to each Trust and the Funds relying on the requested order, including overall supervisory responsibility for the general management and investment of each Fund's assets and, subject to review and approval by the Boards, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select, and recommend Sub-Advisers to manage all or a part of a Fund's assets; (c) allocate and, when appropriate, reallocate a Fund's assets among multiple Sub-Advisers; (d) monitor and evaluate the performance of Sub-Advisers; and (e) ensure that the Sub-Advisers comply with the relevant Fund's investment objective, policies, and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance.

8. No director, trustee or officer of either Trust or director or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in any Sub-Adviser except for: (a) Ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by or is under common control with a Sub-Adviser.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26590 Filed 10–22–01; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicants also request relief with respect to future series of the Trusts and all future registered open-end management investment companies or series thereof that (a) are advised by the Manager or any entity controlling, controlled by, or under common control with the Manager, (b) use the multi-manager structure described in the application; and (c) comply with the terms and conditions in the application ("Future Funds", and together with the Funds, the "Funds"). The Trusts are the only existing registered open-end management investment companies that currently intend to rely on the requested order. If the name of any Fund contains the name of a Sub-Adviser, as defined below, it will be preceded by, the name of the Manager or the name of the entity controlling, controlled by, or under common control with the Manager that serves as primary adviser to such Fund.

[2] The term "shareholders" includes variable contract owners, as applicable.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44941; File No. SR–NYSE–99–38]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2, by the New York Stock Exchange, Inc. to Amend the NYSE's Minor Rule Violation Plan

October 16, 2001.

I. Introduction

On September 2, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Minor Rule Violation Plan ("Plan"). On November 12, 1999, the Exchange amended the proposal.[3] Notice of the proposed rule change, as modified by Amendment No. 1, appeared in the **Federal Register** on December 20, 1999.[4] The Commission received no comments on the proposal. On October 9, 2001, the NYSE again amended the proposal.[5] This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

II. Description of the Proposal

The proposed rule change would revise the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to NYSE Rule 476A" for imposition of fines for minor violations of rules by adding to the list failure to comply with the provisions of NYSE Rules 35, 345A(b), and 440A. In addition, the proposal clarifies that paragraph (c) of currently listed NYSE Rule 472 encompasses telemarketing scripts.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed Amendment No. 2, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See November 10, 1999 letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). In Amendment No. 1, the NYSE made technical changes to the proposal.

[4] See Securities Exchange Act Release No. 42225 (December 13, 1999), 64 FR 71162.

[5] See October 5, 2001 letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission ("Amendment No. 2"). In Amendment No. 2, at the request of Division staff, the NYSE removed NYSE Rule 345A(a) (Regulatory Element Continuing Education Requirements) from the proposed additions to the List of Exchange Rules Subject to Rule 476A Procedures.

SR–NYSE–99–38 and should be submitted by November 13, 2001.

IV. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[8] and, in particular, the requirements of section 6 of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(6) of the Act[8] because it provides an additional option for the appropriate discipline of the NYSE's members and persons associated with its members for certain rule violations. Finally, the Commission finds the proposal is consistent with Securities Exchange Act Rule 19d–1(c)(2)[9] that governs minor rule violation plans.

The Commission finds good cause for accelerating approval of Amendment No. 2 to the proposed rule change prior to the 30th day after publication in the **Federal Register**. Amendment No. 2 removes the Regulatory Element of the Continuing Education requirements from the list of rules the NYSE administers pursuant to the Plan. The Commission notes that the National Association of Securities Dealers, ("NASD"), at the Commission's request, removed the Continuing Education Regulatory Element requirement from its proposal regarding administration of rules pursuant to its minor rule violation plan.[10] Amendment No. 2 ensures that the NYSE and the NASD have the same disciplinary options for their members and associated persons with regard to violations of Continuing Education requirements. Accordingly, the Commission finds that good cause exists, consistent with section 6(b)(6) of the Act,[11] and section 19(b) of the Act[12] to accelerate approval of Amendment No. 2 to the proposed rule change.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Plan. The Commission believes that the violation of any self-regulatory organizations' rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the NYSE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] and Rule 19d–1(c)(2)[14] thereunder, that the proposed rule change (SR–NYSE–99–38), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26591 Filed 10–22–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3370]

State of Texas

Bee and Maverick Counties and the contiguous counties of Dimmit, Goliad, Karnes, Kinney, Live Oak, Refugio, San Patricio, Uvalde, Webb and Zavala in the State of Texas constitute a disaster area as a result of severe storms and flooding that occurred from August 28 through September 14, 2001. Applications for loans for physical damage may be filed until the close of business on December 17, 2001 and for economic injury until the close of business on July 17, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

For Physical Damage:	
Homeowners with credit available elsewhere	6.750%
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 337011 and for economic injury is 9M9600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 17, 2001.

John Whitmore,

Acting Administrator.

[FR Doc. 01–26670 Filed 10–22–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

President's Commission to Strengthen Social Security

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of Meeting.

DATES: November 9, 2001 10:00 a.m.–3:30 p.m.

ADDRESSES: Washington, DC–Venue to be determined. Due to unforeseen circumstances the venue has not been identified to date. This information will be published in the **Federal Register** and posted at *www.CSSS.gov* as soon as it is available.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting will be open to the public between 10:00 a.m. and 3:30 p.m., with a break for lunch between 1:00 p.m. and 2:00 p.m.

Purpose: This is the fifth deliberative meeting of the Commission. No public testimony will be heard at this meeting.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(6).

[9] 17 CFR 240.19d–1(c)(2).

[10] *See* Securities Exchange Act Release No. 44512 (July 3, 2001), 66 FR 36812 (July 13, 2001) (SR–NASD–00–39).

[11] 15 U.S.C. 78f(b)(6).

[12] 15 U.S.C. 78s(b).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 204.19d–1(c)(2).

[15] 17 CFR 200.30-3(a)(12).

However, interested parties are invited to attend the meeting.

Agenda: The Commission will meet commencing Friday, November 9, at 10:00 a.m. and ending at 3:30 p.m., with a break for lunch between 1:00 p.m. and 2:00 p.m. The Commission will be deliberating on Social Security reform options, including how to administer personal accounts.

Records are being kept of all Commission proceedings that are subject to public release under the Federal Advisory Committee Act and are available for public inspection at the Commission's office at the address below. Documents such as meeting announcements, agendas, transcripts, minutes, and Commission reports will be available on the Commission's web page. Anyone requiring information regarding the Commission should contact Commission staff by:

- Internet at *http://www.CSSS.gov*, email to comments@CSSS.gov;
- Mail addressed to President's Commission to Strengthen Social Security, 734 Jackson Place, NW, Washington, DC, 20503;
- Telephone at (202) 343–1255.

Dated: October 16, 2001.

Michael A. Anzick,

Designated Federal Officer.

[FR Doc. 01–26656 Filed 10–22–01; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given to reissue the Office of the Commissioner (SA) because the following organizations are being deleted: The Office of the Deputy Commissioner of Social Security (SAP), the Office of the Senior Executive Officer (SAK) and the Senior Advisor to the Commissioner (SAL). Notice is also being given that the following organizations are being established: The Office of Strategic Management (SAQ) and the Office of Executive Operations (SAR) The new material and changes are as follows:

Section SA.00 *The Office of the Commissioner*—(Mission):

The Office of the Commissioner (OC) is directly responsible for all programs administered by SSA; for State-administered programs directed by SSA; and for certain functions with respect to the black lung benefits program. It provides executive leadership to SSA. The Office is responsible for development of policy, administrative and program direction, program interpretation and evaluation, maintenance of relations with news media, research oriented to the study of the problems of economic insecurity in American society; and development of recommendations on methods of advancing social and economic security through social insurance and related programs.

Section SA.10 The Office the Commissioner—(Organization):

The Office of the Commissioner, under the leadership of the Commissioner of Social Security, includes:

A. The Commissioner of Social Security (SA).

B. The Deputy Commissioner of Social Security (SA).

C. Immediate Office of the Commissioner (SA).

D. The Office of the Chief of Staff (SAN).

E. The Office of Strategic Management (SAQ).

F. The Office of Executive Operations (SAR).

Section SA.20 The Office of the Commissioner—(Functions):

A. The Commissioner of Social Security (SA) and Deputy Commissioner of Social Security provide executive leadership to SSA and exercise general supervision over its major components. The Chief Information Officer is also located in the immediate Office of the Commissioner and reports directly to the Commissioner on statutorily defined CIO duties and as a key advisor to the Deputy Commissioner of Social Security.

B. The Deputy Commissioner of Social Security (SA) assists the Commissioner in carrying out his/her responsibilities and performs other duties as the Commissioner may prescribe.

C. The Immediate Office of the Commissioner (SA), including the Chief Information Officer, provides the Commissioner and Deputy Commissioner of Social Security with staff assistance on the full range of responsibilities.

D. The Chief of Staff (SAN) provides day-to-day support to the Commissioner and Deputy Commissioner in matters relating to program policy, administration, communications and external liaison.

E. The Office of Strategic Management (SAQ).

1. Directs the development of the Agency's tactical and strategic planning process, and develops and promulgates planning policies, procedures and methodologies for the Agency.

2. Produces the Agency Strategic Plan, Annual Performance Plan and Annual Performance Report; establishes and implements a framework for the effective integration of planning functions with evaluation and management of SSA resources, projects and activities in accordance with applicable law and regulations; oversees and integrates the Agency's Service Vision objectives into the Agency's strategic and tactical planning processes.

3. Ensures that the budget process focuses resources on priority initiatives that support the Agency's strategic objectives and goals, and that the appropriate measures are built to determine Agency performance, and validates and monitors Agency performance goals attainment.

4. Supports an ongoing market measurement program that collects and assesses employee, customer and stakeholder feedback to be used and provides staff support to the Office of the Commissioner on strategic initiatives and on high priority issues, directing special Agency-level cross-cutting projects.

F. The Office of Executive Operations (SAR).

1. Coordinates priority matters requiring the attention of, or decision by, the Commissioner and directs the tracking and monitoring of actions assigned by the Commissioner to all Agency components.

2. Coordinates and provides liaison for internal communication and correspondence control for OC.

3. Monitors administrative and program policy development and policy implementation activities, and prepares periodic status reports.

4. Ensures that issues requiring the Commissioner's attention are developed timely and coordinated with SSA and other Federal Agencies having an interest in the matter; designs and implements procedures for proper coordination and follows through on specific issues.

5. Expedites regulation development, review, clearance, publication and issuance. Oversees the management of the final stages of regulations development and clearance prior to submittal to the Commissioner.

6. Communicates the objectives, priorities and standards of OC to individuals involved in the preparation of correspondence and memoranda, and ensures that communications signed or approved by OC are consistent with these standards and objectives.

7. Reviews and analyzes memoranda and other communications directed to OC for adequacy of coordination and clearances, clearness and conciseness of presentation, timeliness, necessary follow through and other elements of completed staff work.

8. Works with functional components and staff offices to improve the quality of decision papers and correspondence.

Dated: October 16, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

[FR Doc. 01–26657 Filed 10–22–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–82]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC., on October 17, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10229.
Petitioner: GE Celma S.A.
Section of 14 CFR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit GE Celma to use the calibration standards of the Instituto Nacional de Mertologia, Normalizaçso Qualidade Industrial in lieu of the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment.

Grant, 10/02/2001, Exemption No. 6546C.

Docket No.: FAA–2001–10566.

Petitioner: Montgomery Bay Chapter of the International Organization of the Ninety-Nines, Inc.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Montgomery Bay 99's to conduct local sightseeing flights at the Watsonville Open House in the vicinity of Aptos, California, for a Nickel a Pound airlift during October 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements to part 135.

Grant, 10/04/2001, Exemption No. 7633.

Docket No.: FAA–2001–10169.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Boeing to give copies of its Inspection Procedures Manual (IPM) to key individuals and make the IPM available electronically to all other employees, rather than giving a paper copy of each of its supervisory and inspection personnel.

Grant, 09/21/2001, Exemption No. 7065A.

Docket No.: FAA–2001–9713.

Petitioner: All Nippon Airways, Co., Ltd.

Section of 14 CFR Affected: 14 CFR 145.47(b).

Description of Relief Sought/ Disposition: To (1) allow ANA to use the calibration standards of the National Metrology Institute of Japan in lieu of the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment.

Grant, 10/02/2001, Exemption No. 7051A.

[FR Doc. 01–26662 Filed 10–22–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–83]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 17, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10446 (previously Docket No. 29118).
Petitioner: Homestead Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Homestead to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 10/05/2001, Exemption No. 6733B.

Docket No.: FAA–2001–10414 (previously Docket No. 29846).
Petitioner: Air Cargo Carriers, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Air Cargo to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 10/05/2001, Exemption No. 7124A.

Docket No.: FAA–2001–10364 (previously Docket No. 29093).
Petitioner: Grand Aire Express, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit GAE to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/04/2001, Exemption No. 6723B.

Docket No.: FAA–2001–10267.
Petitioner: Carver Aero, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Carver to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/04/2001, Exemption No. 6229C.

Docket No.: FAA–2001–10262 (previously Docket No. 27052).
Petitioner: Petroleum Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c).
Description of Relief Sought/ Disposition: To permit PHI to operate certain Bell Model 206L–1 helicopters under part 135 without a TSO–C112 (Mode S) transponder installed on each helicopter.

Grant, 10/04/2001, Exemption No. 5586D.

Docket No.: FAA–2001–10265 (previously Docket No. 29076).
Petitioner: RR Investments, Inc., dba Million Air Dallas.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Million Air Dallas to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/04/2001, Exemption No. 6718B.

Docket No.: FAA–2001–10606 (previously Docket No. 29810).
Petitioner: IHC Health Services, Inc., dba IHC Life Flight of Salt Lake City, UT.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit IHC to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/09/2001, Exemption No. 7079A.

[FR Doc. 01–26663 Filed 10–22–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Harmonization Initiatives

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Federal Aviation Administration and the Joint Aviation will convene a meeting to accept input from the public on the Harmonization Work Program. The Harmonization Work Program is the means by which the Federal Aviation Administration and the Joint Aviation Authorities carry out a commitment to harmonize, to the maximum extent possible, the rules regarding the certification, operation and maintenance of civil aircraft, and the standards, practices, and procedures governing the design, materials, workmanship, and construction of civil aircraft, aircraft engines, and other components. The purpose of the meeting is to provide an opportunity for the public to submit input to the Harmonization Work Program. This notice announces the date, time, location and procedures for the public meeting.

DATES: The public meeting will be held on November 27, 2001, starting at 1:30 p.m. Industry comments, presentations and proposals must be received on or before November 1, 2001.

ADDRESSES: The public meeting will be held at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC, 20001. Persons unable to attend the meeting may mail their comments in triplicate to: Brenda Courtney, Federal Aviation Administration, Office of Rulemaking (ARM–200), 800 Independence Avenue, SW., Washington, DC 20591. You may also submit your comments to Brenda Courtney by e-mail: *brenda.courtney@faa.gov* or by facsimile at (202) 267–5075.

FOR FURTHER INFORMATION CONTACT: Requests to attend and present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Brenda Courtney, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3327, e-mail: *brenda.courtney@faa.gov*, or facsimile at (202) 267–3327.

SUPPLEMENTARY INFORMATION: Federal Aviation Administration (FAA) and the Joint Aviation Authorities (JAA) will convene a meeting to accept input from the public on the Harmonization Work Program. The meeting will be held on November 27, 2001, at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC beginning at 1:30 p.m. The agenda is as follows.

November 27, 2001—Springwood Room

1:30–5 p.m. Welcome, practical arrangements
Authorities News of Interest
Approbation of Minutes (March 2001)
Debrief on action items from
- March 2001 HMT Meeting
- FAA/JAA 18th Annual Meeting (June 2001)
- OHG and CCHG Meetings

Industry and Public Presentations
Suggestions for 195h FAA/JAA Annual Meeting (June 2002)

The Washington Court Hotel is located on New Jersey Avenue, NW., three blocks from the U.S. Capitol building. Union Station, which includes Amtrak (train) and metro rail service (red line), is two blocks away. Washington Reagan National airport is a 15-minute ride by taxi. For hotel reservations at the Washington Court Hotel, please call (202) 628–2100 or fax 1–202–879–7918. Conference attendees should advise the hotel that you plan to attend the "FAA/JAA Meeting". Reservations must be made by Friday, October 26, 2001.

Participation at the Meeting

The FAA should receive requests from persons who wish to present oral and written statements at the public meeting no later than November 10, 2001. Statements and presentations should be provided on diskette or forwarded by e-mail to the person identified under the caption **FOR FURTHER INFORMATION CONTACT** to be made part of the official minutes of the meeting. Requests to present oral statements received after November 10 will be scheduled if time is available during the meeting.

Meeting Procedures

The following procedures are established to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting, subject to availability of space in the meeting room.

(2) The meeting may adjourn early if scheduled speakers complete their statements in less than the time scheduled for the meeting.

(3) The FAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served

basis. However, the FAA reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(4) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested at the above number listed under **FOR FURTHER INFORMATION CONTACT** at least 10 calendar days before the meeting.

(5) Representatives from FAA and JAA will preside over the meeting.

(6) The FAA and JAA will review and consider all material presented by participants at the meeting. Position papers or material presenting views or information related to proposed harmonization initiatives may be accepted at the discretion of the FAA and JAA. The FAA requests that persons participating in the meeting provide copies of all materials to be presented. Copies may be provided to the audience at the discretion of the participant.

(7) Statements made by the FAA and JAA are intended to facilitate discussion of issues or to clarify issues. Any statement made during the meeting by an official is not intended to be, and should not be construed as, a position of the FAA and JAA.

(8) The meeting is designed to solicit public views and more complete information on proposed harmonization initiatives. Therefore, the meeting will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

Dated: Issued in Washington, DC, on October 17, 2001.

Brenda D. Courtney,

Manager, Aircraft and Airport Rules Division.

[FR Doc. 01–26665 Filed 10–22–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

The Federal Aviation Administration (FAA) Satellite Operational Implementation Team (SOIT) Hosted Forum on the Capabilities of the Global Positioning System (GPS)/Wide Area Augmentation System (WAAS) and Local Area Augmentation System (LAAS)

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Name: FAA SOIT Forum on GPS/WAAS/LAAS Capabilities.

Time And Date: 9:00 a.m.–5:00 p.m., December 3–4, 2001.

Place: Hyatt Fair Lakes Hotel, 12777 Fair Lakes Circle, Fairfax, Virginia 22033.

Status: Open to the aviation industry with attendance limited to space available.

Purpose: The FAA SOIT will be hosting a public forum to discuss the FAA's GPS approvals and WAAS/LAAS operational implementation plans. This meeting will be held in conjunction with a regularly scheduled meeting of the FAA SOIT and in response to aviation industry requests to the FAA Administrator. Formal presentations by the FAA will be followed by question and answer sessions. Those planning to attend are invited to submit proposed discussion topics.

Registration: Participants are requested to register their intent to attend this meeting by November 27th, 2001. Names, affiliations, email addresses, telephone and facsimile numbers should be sent to the point of contact listed below.

Point of Contact: Registration and submission of suggested discussion topics may be made to Mr. Steven Albers, phone (202) 267–7301, fax (202) 267–5086, or email at steven.CTR.albers@faa.gov.

Issued in Washington D.C. on October 16, 2001.

Hank Cabler,

SOIT Co-Chairman.

[FR Doc. 01–26661 Filed 10–22–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–10851]

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 011015251–1251–01]

Request for Commercial Requirements for U.S. Launch Range Improvements and Modernization

AGENCIES: Federal Aviation Administration (FAA); Department of Commerce, Technology Administration, Office of Space Commercialization.

ACTION: Request for Commercial Requirements for U.S. Launch Range Improvements and Modernization.

SUMMARY: The Department of Transportation (DOT) and the Department of Commerce (DOC) request inputs from the U.S. commercial space transportation sector regarding U.S. launch base and range support and modernization. Specifically, DOT and DOC seek to collect range support and modernization requirements from current or future commercial users of the Eastern Range at Cape Canaveral Air Force Station, Florida, and the Western Range at Vandenberg Air Force Base, California.

DATES: Submit requirements on or before November 30, 2001.

ADDRESSES: Please submit responses to this announcement to both the FAA and DOC, Office of Space Commercialization. Your responses can be sent in writing and in duplicate to the FAA and the Office of Space Commercialization, respectively, as follows: Docket No. FAA–2001–10851, Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Docket No. 011015251–1251–01, Office of Space Commercialization, Room 4805, U.S. Department of Commerce, Herbert C. Hoover Building, 14th & Constitution Ave., NW, Washington, D.C. 20230. If you wish to receive confirmation that FAA and DOC received your comments, include a self-addressed, stamped postcard.

You also have the option to submit comments electronically through the Internet to the FAA at *http://dms.dot.gov.* Information and/or data considered to be proprietary should be labeled appropriately and should not be filed electronically. You may review the public docket containing responses to this announcement in person in the Department of Transportation Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kelvin Coleman (FAA), (202) 267–7972, or Paul Eckert (DOC), (202) 482–4571.

SUPPLEMENTARY INFORMATION: The February 2000 White House report on the Future Use and Management of the U.S. Space Launch Bases and Ranges documented a national strategy to enhance and expand the government-industry partnership for management and use of the Eastern and Western ranges (EWR). This strategy included a recommendation to allow commercial users of the Eastern and Western ranges adequate opportunity to communicate their requirements so they could be actively considered and factored into Air Force decisions on range improvements and modernization. Further, it was desired that an ongoing process for collecting, communicating, and considering commercial requirements for EWR support and modernization be established. Thus, the Departments of Transportation and Commerce seek to work with U.S. commercial space sector users of the EWR to collect commercial requirements, especially those common to multiple users, for launch range support and modernization. Responses to this announcement should include the following:

1. A detailed explanation of the requirement;

2. technical and economic rationale, as well as, overall importance; and

3. key dimensions of performance, with threshold and objective requirements if possible.

A threshold requirement is a minimum acceptable value for a system capability or characteristic, which, in the user's judgment, is necessary to provide an operational capability. An objective requirement is a value beyond the threshold that could have a measurable and beneficial impact on the system capability, supportability, or operational concept of employment. (For example, "The imaging subsystem must be capable of maintaining coverage on space launch vehicles from first motion through powered flight as a threshold and orbital insertion as an objective.")

Subsequent to collecting these requirements, DOT and DOC will consolidate and prioritize requirements, with consultation from the commercial sector, and prepare a report. This report will contain commercial requirements for EWR support and modernization, and will be provided to the Air Force such that commercial sector requirements for range support and modernization can be considered in the Department of Defense (DOD) requirements process.

This request is applicable to requirements for EWR support and modernization only, and not to mission specific requirements that may be appropriately handled via the Universal Documentation System (UDS), per Air Force Space Command Instruction 21–104.

Dated: Issued in Washington, DC, on October 17, 2001

Patricia G. Smith

Associate Administrator for Commercial Space Transportation, Federal Aviation Administration.

Bruce Mehlman,

Assistant Secretary for Technology Policy, Department of Commerce.

[FR Doc. 01–26664 Filed 10–22–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: In order to comply with the requirements of the Paperwork Reduction Act of 1995, FinCEN intends to submit the information collection addressed in this notice for a three-year extension of approval by the Office of Management and Budget ("OMB"). Prior to submission of the extension request, FinCEN is soliciting comment on the information collection in FinCEN Issuance 98–1, as extended (the conditional exception to the application of 31 CFR 103.33(g)).

DATES: Written comments should be received on or before December 24, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 1618, Vienna, VA 22183–1618, *Attention:* PRA Comments—CIF Exception. Comments also may be submitted by electronic mail to the following Internet address: "regcomments@fincen.treas.gov" with the caption in the body of the text, "*Attention:* PRA Comments—CIF Exception."

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Stacie A. Larson (703) 905–3590, Office of Chief Counsel, FinCEN, or Cynthia L. Clark, Deputy Chief Counsel, FinCEN (703) 905–3590. A copy of the issuance may be obtained from http://www.access.gop.gov/su_docs/aces/aces140.html.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, the following information is presented concerning the information collections below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Title: Conditional Exception to the Application of 31 CFR 103.33(g).

OMB Number: 1506–0008.

Abstract: Under 31 CFR 103.33(g) (the "Travel Rule") financial institutions must include certain information in transmittal orders relating to the transmittal of funds of $3,000 or more. In 1998, FinCEN granted a conditional exception (the "CIF Exception")[1] to the strict operation of the Travel Rule.[2] The CIF exception requires, among other things, that a financial institution include on a transmittal order a question mark ("?") after the name on the transmittal order whenever that name is other than the transmittor's true name.

The information collection addressed in this notice is mandatory. The use of the question mark symbol after a name that is not the true name of the transmittor will assist law enforcement authorities in the prevention and detection of money laundering. If a transmittal order is being examined by a law enforcement agency and the question mark symbol is included, the agency will then know to ask the financial institution for the transmittor's true name. All records required to be maintained under the BSA must be retained for five years.

Current Action: There is no change to the existing information collection.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

[1] FinCEN Issuance 98–1, 63 FR 3640, January 26, 1998.

[2] FinCEN extended the CIF Exception in 1999 (FinCEN Issuance 99–1, 64 FR 41041, July 29, 1999) and again in 2001 (FinCEN Issuance 2001–1, 66 FR 32746, June 18, 2001).

Burden: The estimated number of transmittal numbers with the question mark symbol is 5,000. The estimated annual reporting burden is 250 hours, and the estimated annual recordkeeping burden is 1,250 hours.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments concerning the accuracy of the burden estimate and suggestions for reducing the burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Treasury Department, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dated: October 16, 2001.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 01–26582 Filed 10–22–01; 8:45 am]

BILLING CODE 4820–03–P

DEPARTMENT OF THE TREASURY

Customs Service

Customs Trade Symposium 2001

AGENCY: U. S. Customs Service, Treasury.

ACTION: Notice of Customs trade symposium 2001.

SUMMARY: This document announces that the U.S. Customs Service will convene a major trade symposium that will feature joint discussions by Customs, members of the trade, and other public and private sector representatives on the challenges of facilitating the flow of commerce in a heightened security environment. Newly appointed Customs Commissioner Robert C. Bonner will be the keynote speaker. This event is open to members of the international trade and transportation community and other interested parties.

DATES: Reception and pre-registration will be held on Monday, November 26, 2001, from 6 p.m. to 8 p.m. The symposium will be held on Tuesday, November 27, 2001, from 8:30 a.m. to 6 p.m. All registrations must be made on-line and confirmed by November 19, 2001.

ADDRESSES: The meeting will be held in Washington, DC, at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW.

FOR FURTHER INFORMATION CONTACT: ACS Client Representatives; Customs Account Managers; or the Office of the Trade Ombudsman at (202) 927–1440 (*trade.ombudsman@customs.treas.gov*). To obtain the latest information on program changes or to register on-line, visit the Customs Web site at *http://www.customs.gov/trade2001*.

SUPPLEMENTARY INFORMATION: The cost is $150.00 per individual and includes a reception and luncheon. All registrations must be made on-line at the Customs Web site (*http://www.customs.treas.gov/trade2001*). Registrations will be accepted on a space available basis and must be confirmed by November 19, 2001. The J.W. Marriott has reserved a block of rooms for November 26th and 27th for overnight accommodations. The room rate is $119 US dollars and reservations must be confirmed with the Marriott by November 9, 2001. Call 1–800–228–9290 and reference "U.S. Customs Trade Symposium 2001".

Dated: October 18, 2001.

Eula D. Walden,

Acting Trade Ombudsman, U.S. Customs Service.

[FR Doc. 01–26699 Filed 10–22–01; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Tuesday,
October 23, 2001

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–103–; KY–107–; KY–110–; KY–114–; KY–115–; KY–122–200203; FRL–7082–7]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Approval of Revisions to State Implementation Plan; Revised Format for Materials Being Incorporated by Reference for Jefferson County, Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP). The revisions were adopted by the Air Pollution Control District of Jefferson County (APCDJC) and submitted to EPA on February 3, 1998; September 22, 1998; February 11, 1999; May 21, 1999; July 20, 1999; and September 22, 2000, by the Commonwealth of Kentucky (Commonwealth) through the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC). These submittals include miscellaneous rule revisions and the recodification of APCDJC regulations.

EPA is also revising the format of 40 CFR part 52 for materials submitted by the Commonwealth that are incorporated by reference (IBR) into the Jefferson County portion of the Kentucky SIP. This format revision primarily affects the "Identification of plan" section of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC, and the Regional Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or State-submitted materials that are not subject to IBR remain unchanged.

EFFECTIVE DATE: This final rule is effective on November 23, 2001.

ADDRESSES: Copies of documents relative to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency; Region 4 Air Planning Branch; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet; Division for Air Quality; 803 Schenkel Lane; Frankfort, Kentucky 40601–1403

Air Pollution Control District of Jefferson County; 850 Barrett Avenue; Louisville, Kentucky 40204

The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day and reference files KY–103, KY–107, KY–110, KY–114, KY–115, KY–122. The Region 4 office may have additional background documents not available at the other locations.

FOR FURTHER INFORMATION CONTACT: Allison Humphris, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, 404/562–9030, (humphris.allison@epa.gov).

SUPPLEMENTARY INFORMATION: The supplemental information is organized in the following order.

I. Rule Revisions Being Approved by EPA in This Action
II. Revised IBR Format for Jefferson County, Kentucky Being Approved by EPA in This Action
III. Final Action
IV. Administrative Requirements

I. Rule Revisions Being Approved by EPA in This Action

The Commonwealth, through KNREPC, submitted to EPA revisions to the Jefferson County portion of the Kentucky SIP, as adopted by APCDJC, on February 3, 1998, September 22, 1998, February 11, 1999, May 21, 1999, July 20, 1999 and September 22, 2000. The revisions include amendments and modifications of APCDJC regulations to ensure consistency with existing CAA and EPA requirements. The revisions also include a recodification that renumbers APCDJC rule sections to make the SIP less complex and corrects typographical errors, capitalization, spelling, and punctuation. Finally, today's action removes existing APCDJC regulations that do not need to be included in the SIP. Some of these regulations are no longer applicable because they have been moved to other portions of the Kentucky SIP, or because APCDJC submitted negative declarations verifying that there are no existing sources in Jefferson County subject to these rules. The remaining regulations removed were incorrectly approved into the Kentucky SIP (i.e. regulations that EPA does not enforce, or that EPA enforces pursuant to other parts of the Code of Federal Regulations).

On June 21, 2001 (66 FR 33216), EPA published a notice of proposed rulemaking (NPR) to approve the above revisions. That NPR provided for a public comment period ending on July 23, 2001. A detailed description of the SIP revisions and EPA's rationale for approving them was provided in the NPR and will not be restated here.

II. Revised IBR Format for Jefferson County, Kentucky Being Approved by EPA in This Action

In this final action, EPA is also revising the format of 40 CFR part 52 for materials submitted by the Commonwealth that are IBR into the Jefferson County portion of the Kentucky SIP. These revisions are consistent with the SIP compilation requirements of section 110(h)(1) of the Clean Air Act (CAA) and the May 22, 1997, (62 FR 27968) **Federal Register**, in which EPA revised the procedures for IBR federally-approved SIP regulations.

The new SIP compilation for Jefferson County will consist of two parts: the federally-approved portion of regulations and source-specific SIP revisions submitted by the Commonwealth. The table identifying federally-approved regulations is provided with this **Federal Register**. The table identifying source-specific SIP revisions will be provided at a later date. All of these regulations have been approved by EPA through previous rule making actions in the **Federal Register**, or are being approved in this action or other actions being published in today's **Federal Register**. Each part has a table of contents identifying each regulation or each source-specific SIP revision. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for the Commonwealth. A copy of the full text of the Commonwealth's current compilation will also be maintained at the Office of Federal Register and EPA's Air Docket and Information Center.

By today's final action, EPA is also revising the organization of the "Identification of plan" section. The revised Identification of plan section will still contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA-approved source specific requirements, and (e) EPA-approved nonregulatory provisions, such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc. However, subsection (b) is being amended to include an EPA approval date for Jefferson County, Kentucky regulations, and subsection (c) is being amended to add a table for EPA-approved Jefferson County regulations for Kentucky. All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to paragraphs (c), (d) or (e) of the applicable identification of plan found in each subpart of 40 CFR part 52.

III. Final Action

EPA is approving revisions to the Jefferson County portion of the Kentucky SIP that were adopted by the APCDJC and submitted to EPA on February 3, 1998; September 22, 1998; February 11, 1999; May 21, 1999; July 20, 1999; and September 22, 2000 by the Commonwealth through KNREPC. EPA is partially approving revisions to APCDJC Regulation 2.04 Construction or Modification of Major Sources in or Impacting upon Non-Attainment Areas (Emission Offset Requirements). As described in detail in the NPR, EPA is taking no action on subsection 3.2 of this regulation regarding applicability of the offset requirement, because this language conflicts with existing EPA policy. EPA finds that Kentucky's submittals are otherwise fully approvable. EPA is also revising the format of 40 CFR part 52 for materials submitted by the Commonwealth that are IBR into the Jefferson County portion of the Kentucky SIP.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 18, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. Section 52.920 is amended:

a. By revising paragraphs (b)(1) and (b)(2).

b. By adding a table to the end of paragraph (c).

The revision and addition read as follows:

§ 52.920 Identification of plan.

* * * * *

(b) * * * (1) Material listed in paragraph (c) of this section with an EPA approval date prior to March 1, 1999, for the Commonwealth of Kentucky (Volume I of the Kentucky State Implementation Plan) and November 23, 2001 for Jefferson County, Kentucky (Volume II of the Kentucky State Implementation Plan) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraph (c) of this section with EPA approval dates after March 1, 1999, for the Commonwealth of Kentucky and November 23, 2001 for Jefferson County, Kentucky will be

incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP Compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of March 1, 1999, for the Commonwealth of Kentucky (Volume I) and November 23, 2001 for Jefferson County, Kentucky (Volume II).

* * * * *

(c) * * *

EPA—APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
Reg 1	General Provisions			
1.01	General Application of Regulations and Standards	11/23/01	66 FR 53660	03/17/99
1.02	Definitions	11/23/01	66 FR 53660	11/19/97
1.03	Abbreviations and Acronyms	11/23/01	66 FR 53660	09/25/96
1.04	Performance Tests	11/23/01	66 FR 53660	11/19/97
1.05	Compliance with Emission Standards and Maintenance Requirements.	11/23/01	66 FR 53660	11/18/92
1.06	Source Self-Monitoring and Reporting	11/23/01	66 FR 53660	12/15/93
1.07	Emissions During Startups, Shutdowns, Malfunctions and Emergencies.	11/23/01	66 FR 53660	01/17/96
1.08	Administrative Procedures	11/23/01	66 FR 53660	09/25/96
1.09	Prohibition of Air Pollution	11/23/01	66 FR 53660	11/16/83
1.10	Circumvention	11/23/01	66 FR 53660	04/19/72
1.11	Control of Open Burning	11/23/01	66 FR 53660	02/22/90
1.14	Control of Fugitive Particulate Emissions	11/23/01	66 FR 53660	01/20/88
Reg 2	Permit Requirements			
2.01	General Application	11/23/01	66 FR 53660	4/21/82
2.02	Air Pollution Regulation Requirements and Exemptions	11/23/01	66 FR 53660	6/21/95
2.03	Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits.	11/23/01	66 FR 53660	12/15/93
2.04	Construction or Modification of Major Sources in or Impacting Upon Non-Attainment Areas (Emission Offset Requirements).	11/23/01	66 FR 53660	3/17/93
2.05	Prevention of Significant Deterioration of Air Quality	11/13/89	54 FR 47210	4/19/89
2.06	Permit Requirements—Other Sources	11/23/01	66 FR 53660	11/16/83
2.07	Public Notification for Title V, PSD, and Offset Permits; SIP Revisions; and Use of Emission Reduction Credits.	11/23/01	66 FR 53660	6/21/95
2.09	Causes for Permit Suspension	11/23/01	66 FR 53660	6/13/79
2.10	Stack Height Considerations	11/23/01	66 FR 53660	7/19/89
2.11	Air Quality Model Usage	11/23/01	66 FR 53660	5/19/99
2.17	Federally Enforceable District Origin Operating Permits	02/15/00	65 FR 7437	6/21/95
Reg 3	Ambient Air Quality Standards			
3.01	Purpose of Standards and Expression of Non-Degradation Intention.	11/23/01	66 FR 53660	6/13/79
3.02	Applicability of Ambient Air Quality Standards	11/23/01	66 FR 53660	6/13/79
3.03	Definitions	11/23/01	66 FR 53660	6/13/79
3.04	Ambient Air Quality Standards	11/23/01	66 FR 53660	4/20/88
3.05	Methods of Measurement	11/23/01	66 FR 53660	4/20/88
Reg 4	Emergency Episodes			
4.01	General Provisions for Emergency Episodes	11/23/01	66 FR 53660	6/13/79
4.02	Episode Criteria	11/23/01	66 FR 53660	4/20/88
4.03	General Abatement Requirements	11/23/01	66 FR 53660	2/16/83
4.04	Particulate and Sulfur Dioxide Reduction Requirements	11/23/01	66 FR 53660	4/19/72
4.05	Hydrocarbon and Nitrogen Oxides Reduction Requirements	11/23/01	66 FR 53660	2/16/83
4.06	Carbon Monoxide Reduction Requirements	11/23/01	66 FR 53660	2/16/83
4.07	Episode Reporting Requirements	11/23/01	66 FR 53660	6/13/79
Reg 6	Standards of Performance for Existing Affected Facilities			
6.01	General Provisions	11/23/01	66 FR 53660	11/16/83
6.02	Emission Monitoring for Existing Sources	11/23/01	66 FR 53660	11/16/83
6.07	Standards of Performance for Existing Indirect Heat Exchangers.	11/23/01	66 FR 53660	6/13/79
6.08	Standard of Performance for Existing Incinerators	11/23/01	66 FR 53660	6/13/79
6.09	Standards of Performance for Existing Process Operations	11/23/01	66 FR 53660	3/17/99
6.10	Standard of Performance for Existing Process Gas Streams	11/23/01	66 FR 53660	11/16/83

EPA—APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
6.12	Standard of Performance for Existing Asphalt Paving Operations.	11/23/01	66 FR 53661	5/15/91
6.13	Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds.	11/23/01	66 FR 53661	5/15/91
6.14	Standard of Performance for Selected Existing Petroleum Refining Processes and Equipment.	11/23/01	66 FR 53661	4/21/82
6.15	Standard of Performance for Gasoline Transfer to Existing Service Station Storage Tanks (Stage I Vapor Recovery).	01/25/80	45 FR 6092	6/13/79
6.16	Standard of Performance for Existing Large Appliance Surface Coating Operations.	11/23/01	66 FR 53661	5/15/91
6.17	Standard of Performance for Existing Automobile and Truck Surface Coating Operations.	11/23/01	66 FR 53661	11/18/92
6.18	Standards of Performance for Existing Solvent Metal Cleaning Equipment.	11/23/01	66 FR 53661	5/15/91
6.19	Standard of Performance for Existing Metal Furniture Surface Coating Operations.	11/23/01	66 FR 53661	5/15/91
6.20	Standard of Performance for Existing Bulk Gasoline Plants	11/23/01	66 FR 53661	11/16/83
6.21	Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals.	11/23/01	66 FR 53661	11/16/83
6.22	Standard of Performance for Existing Volatile Organic Materials Loading Facilities.	11/23/01	66 FR 53661	3/17/93
6.24	Standard of Performance for Existing Sources Using Organic Materials.	11/23/01	66 FR 53661	3/17/93
6.26	Standards of Performance for Existing Volatile Organic Compound Water Separators.	11/23/01	66 FR 53661	6/13/79
6.27	Standards of Performance For Existing Liquid Waste Incinerators.	11/23/01	66 FR 53661	6/13/79
6.28	Standard of Performance for Existing Hot Air Aluminum Atomization Processes.	11/23/01	66 FR 53661	3/18/81
6.29	Standard of Performance for Existing Graphic Arts Facilities Using Rotogravure and Flexography.	11/23/01	66 FR 53661	5/15/91
6.30	Standard of Performance for Existing Factory Surface Coating Operations of Flat Wood Paneling.	11/23/01	66 FR 53661	5/15/91
6.31	Standard of Performance for Existing Miscellaneous Metal Parts and Products Surface-Coating Operations.	11/23/01	66 FR 53661	4/23/96
6.32	Standard of Performance for Leaks from Existing Petroleum Refinery Equipment.	11/23/01	66 FR 53661	5/15/91
6.33	Standard of Performance for Existing Synthesized Pharmaceutical Product Manufacturing Operations.	11/23/01	66 FR 53661	5/15/91
6.34	Standard of Performance for Existing Pneumatic Rubber Tire Manufacturing Plants.	11/23/01	66 FR 53661	5/15/91
6.35	Standard of Performance for Existing Fabric, Vinyl and Paper Surface Coating Operations.	11/23/01	66 FR 53661	5/15/91
6.38	Standard of Performance for Existing Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industries.	11/23/01	66 FR 53661	12/17/86
6.39	Standard of Performance for Equipment Leaks of Volatile Organic Compounds in Existing Synthetic Organic Chemical and Polymer Manufacturing Plants.	11/23/01	66 FR 53661	7/17/96
6.40	Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control).	11/23/01	66 FR 53661	8/18/93
6.42	Reasonably Available Control Technology Requirements for Major Volatile Organic Compound- and Nitrogen Oxides-Emitting Facilities.	11/23/01	66 FR 53661	3/17/99
6.44	Standards of Performance for Existing Commercial Motor Vehicle and Mobile Equipment Refinishing Operations.	11/23/01	66 FR 53661	9/20/95
6.46	Standards of Performance for Existing Ferroalloy and Calcium Carbide Production Facilities.	11/23/01	66 FR 53661	12/21/94
6.48	Standard of Performance for Existing Bakery Oven Operations	11/23/01	66 FR 53661	7/19/95
Reg 7	Standards of Performance for New Affected Facilities			
7.01	General Provisions	11/23/01	66 FR 53661	5/17/00
7.06	Standards of Performance for New Indirect Heat Exchangers	11/23/01	66 FR 53661	4/21/82
7.07	Standard of Performance for New Incinerators	11/23/01	66 FR 53661	9/15/93
7.08	Standards of Performance for New Process Operations	11/23/01	66 FR 53661	3/17/99
7.09	Standards of Performance for New Process Gas Streams	11/23/01	66 FR 53661	6/18/97
7.11	Standard of Performance for New Asphalt Paving Operations	11/23/01	66 FR 53661	5/15/91
7.12	Standard of Performance for New Storage Vessels for Volatile Organic Compounds.	11/23/01	66 FR 53661	5/15/91
7.14	Standard of Performance for Selected New Petroleum Refining Processes and Equipment.	11/23/01	66 FR 53661	6/13/79

EPA—APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
7.15	Standards of Performance for Gasoline Transfer to New Service Station Storage Tanks (Stage I Vapor Recovery).	11/23/01	66 FR 53662	4/20/88
7.18	Standards of Performance for New Solvent Metal Cleaning Equipment.	11/23/01	66 FR 53662	5/15/91
7.20	Standard of Performance for New Gasoline Loading Facilities at Bulk Plants.	11/23/01	66 FR 53662	11/16/83
7.22	Standard of Performance for New Volatile Organic Materials Loading Facilities.	11/23/01	66 FR 53662	3/17/93
7.25	Standard of Performance for New Sources Using Volatile Organic Compounds.	11/23/01	66 FR 53662	3/17/93
7.34	Standard of Performance for New Sulfite Pulp Mills	11/23/01	66 FR 53662	6/13/79
7.35	Standard of Performance for New Ethylene Producing Plants	11/23/01	66 FR 53662	6/13/79
7.36	Standard of Performance for New Volatile Organic Compound Water Separators.	11/23/01	66 FR 53662	6/13/79
7.51	Standard of Performance for New Liquid Waste Incinerators	11/23/01	66 FR 53662	1/20/88
7.52	Standard of Performance for New Fabric, Vinyl, and Paper Surface Coating Operations.	11/23/01	66 FR 53662	5/15/91
7.55	Standard of Performance for New Insulation of Magnet Wire	11/23/01	66 FR 53662	3/17/93
7.56	Standard of Performance for Leaks from New Petroleum Refinery Equipment.	11/23/01	66 FR 53662	5/15/91
7.57	Standard of Performance for New Graphic Arts Facilities Using Rotogravure and Flexography.	11/23/01	66 FR 53662	5/15/91
7.58	Standard of Performance for New Factory Surface Coating Operations of Flat Wood Paneling.	11/23/01	66 FR 53662	5/15/91
7.59	Standard of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations.	11/23/01	66 FR 53662	4/23/96
7.60	Standard of Performance for New Synthesized Pharmaceutical Product Manufacturing Operations.	11/23/01	66 FR 53662	5/15/91
7.77	Standards of Performance for New Blast Furnace Casthouses	11/23/01	66 FR 53662	10/20/93
7.81	Standard of Performance for New or Modified Bakery Oven Operations.	11/23/01	66 FR 53662	5/17/00
Reg 8	Mobile Source Emissions Control			
8.01	Mobile Source Emissions Control Requirements	11/23/01	66 FR 53662	7/14/00
8.02	Vehicle Emissions Testing Procedure	11/23/01	66 FR 53662	7/14/00
8.03	Commuter Vehicle Testing Requirements	07/28/95	60 FR 3870	3/1/93

* * * * *

[FR Doc. 01–25892 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–131, and KY–133–200201; FRL–7083–1a]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky: Approval of Revisions to State Implementation Plan, Source Specific Requirements, and Nonregulatory Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Kentucky State Implementation Plan (SIP) which concern the control of emissions of volatile organic compounds (VOC) at a specific source in Bullitt County, Kentucky (Publisher's Printing, Inc.), and Regulation 6.49 adopted by the Air Pollution Control District of Jefferson County (APCDJC), Kentucky. Regulation 6.49 specifies reasonably available control technology (RACT) control requirements for VOC emissions at Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry (SOCMI). In addition, EPA is approving negative declarations from Kentucky and from the APCDJC for certain categories of sources subject to Control Techniques Guidelines (CTGs).

EFFECTIVE DATE: This final rule is effective on November 23, 2001.

ADDRESSES: Copies of documents relative to this action are available at the following addresses for inspection during normal business hours. People who want to examine these documents should make an appointment at least 24 hours in advance of the day they want to visit and they should reference files KY–127 and KY–128.

U.S. Environmental Protection Agency—Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303; Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403; Air Pollution Control District of Jefferson County, 850 Barret Avenue, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Raymond S. Gregory, Environmental Engineer, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–9116. Mr. Gregory can also be reached via electronic mail at *gregory.ray@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Final Action
III. Administrative Requirements

I. Background

Under the Clean Air Act (CAA) section 107(d)(4)(A), on November 6, 1991 (56 FR 56694), all of Jefferson County, portions of Bullitt and Oldham Counties in Kentucky, and the Indiana Counties of Clark and Floyd were designated as the Louisville moderate ozone nonattainment area, as a result of monitored violations of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) during the 1987–1989 time frame. Since that time, Kentucky, Indiana and the APCDJC have adopted and implemented programs required under the CAA for a moderate 1-hour ozone nonattainment area to reduce emissions of VOC and NO_x which are precursors of ozone.

Since the Louisville area was classified as moderate ozone nonattainment, in order to be redesignated, the Louisville area is required to meet the applicable CAA requirements of subpart 2 of part D including RACT requirements for three classes of VOC sources (section 182(b)(2)). The categories are: (A) All sources covered by a CTG document issued between November 15, 1990, and the date of attainment; (B) all sources covered by a CTG issued prior to November 15, 1990; and (C) all other major non-CTG stationary sources of VOCs.

EPA is approving a source-specific non-CTG VOC RACT determination for Publisher's Printing, Inc., submitted on July 3, 2001, by Kentucky as one of the requisites (182(b)(2)(C)) for redesignation of the Kentucky portion of the Louisville 1-hour ozone nonattainment area.

Kentucky submitted a negative declaration on December 14, 1999, for the CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture manufacturing which would apply to the nonattainment portions of Oldham and Bullitt Counties. The APCDJC submitted a negative declaration for Jefferson County for the same four CTG categories on February 26, 2001. The APCDJC withdrew the negative declaration for the SOCMI category on May 1, 2001. EPA is approving the negative declaration from Kentucky (CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture manufacturing), and the negative declaration from the APCDJC (CTG categories of aerospace, shipbuilding, and wood furniture manufacturing). These negative declarations partially fulfill the CAA requirements under 182(b)(2)(A) in the Kentucky portion of the Louisville 1-hour ozone nonattainment area.

APCDJC adopted Regulation 6.49 for control of VOCs from SOCMI sources and Kentucky submitted APCDJC's Regulation 6.49 on July 18, 2001. Final approval of Regulation 6.49 completes the CAA requirement relative to the Kentucky portion of the Louisville 1-hour ozone nonattainment area for 182(b)(2)(A) and is also a requisite to redesignation of the Louisville area.

On July 23, 2001, (66 FR 38229) EPA published a notice of proposed rulemaking (NPR) proposing to approve the above revisions and negative declarations. That NPR provided for a public comment period ending on August 22, 2001. A detailed description of the SIP revisions and EPA's rationale for approving them and the negative declarations was provided in the proposed rule and will not be restated here. No comments were received on EPA's proposal.

II. Final Action

In today's action, the EPA is approving SIP revisions submitted by Kentucky to address outstanding VOC RACT requirements of subpart 2 of Part D, in particular section 182(b)(2), of the CAA. The SIP revisions EPA is approving are VOC RACT requirements for sources subject to the SOCMI CTG for Jefferson County (Regulation 6.49), and source specific VOC RACT requirements for Publisher's Printing, Inc., in Bullitt County, Kentucky. EPA's review of Regulation 6.49 found it to follow the CTG model regulation. EPA found that the VOC RACT requirements specified by Kentucky for Publisher's Printing, Inc., follow the requirements in EPA's September 1993 draft, "Guideline Series—Control of Volatile Organic Compound Emissions from Offset Lithographic Printing" and EPA's June 1994, "Alternative Control Techniques Document: Offset Lithographic Printing" and are approvable as meeting section 182(b)(2)(C) requirements for Publisher's Printing, Inc. Kentucky submitted the title V permit for Publisher's Printing, Inc., as a source-specific SIP revision.

EPA is approving the negative declaration from Kentucky for the CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture manufacturing, and the negative declaration from the APCDJC for the CTG categories of aerospace, shipbuilding, and wood furniture manufacturing as meeting the section 182(b) VOC RACT requirement for these source categories in the Kentucky portion of the Louisville 1-hour ozone nonattainment area.

The EPA has reviewed Kentucky's requested revisions of the federally-approved SIP for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to the relevant statutory and regulatory requirements.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255; August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health

Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 18, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. Section 52.920 is amended:

a. By adding a new entry in numerical order to the last table in paragraph (c).

b. By adding a new entry to the end of the table in paragraph (d).

c. By adding new entries in numerical order to the table in paragraph (e).

The additions read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) *EPA-approved regulations.*

* * * * * * * * *

EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	*Federal Register* Notice	District effective date
	• • • • • • •			
	Reg 6 Standards of Performance for Existing Affected Facilities			
	• • • • • • •			
6.49	Standards of Performance for Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry.	10/23/01	66 FR 53664	06/20/01
	• • • • • • •			

(d) *EPA-approved source-specific requirements.*

* * * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	*Federal Register* Notice
• • • • •				
Title V permit requiring VOC RACT for Publisher's Printing, Inc., Bullitt County.	KDEPDAQ Permit 21–029–00019 ...	07/20/01	10/23/01	66 FR 53664

(e) *EPA-approved nonregulatory provisions.*

EPA-APPROVED KENTUCKY NONREGULATORY PROVISIONS

Appendix	Title/subject	State effective date	EPA approval date	*Federal Register* Notice
•	• • • • • •			
21	Negative Declarations for the nonattainment portions of Bullitt and Oldham Counties in Louisville 1-hour moderate ozone nonattainment area for CTG rules for aerospace, SOCMI, shipbuilding, and wood furniture manufacturing.	12/14/99	10/23/01	66 FR 53665
22	Negative Declarations submitted by the Air Pollution Control District of Jefferson County for the Louisville 1-hour moderate ozone nonattainment area for CTG rules for aerospace, shipbuilding, and wood furniture manufacturing.	02/26/01	10/23/01	66 FR 53665

[FR Doc. 01–25893 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[KY–117; KY–126; KY–129; KY–132–200202; IN–121–3; FRL–7082–9]

Approval and Promulgation of Implementation Plans and Redesignation of Areas for Air Quality Planning Purposes; Kentucky and Indiana; Approval of Revisions to State Implementation Plan; Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Louisville moderate 1-hour ozone nonattainment area (Louisville area) has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). The Louisville area includes Jefferson County, and portions of Bullitt and Oldham Counties, Kentucky; and Clark and Floyd Counties, Indiana. This determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1998 to 2000 ozone seasons. On the basis of this determination, EPA is also determining that the State Implementation Plan (SIP) submissions for certain reasonable further progress (RFP) and attainment demonstration requirements, along with certain other related requirements of part D of title I of the Clean Air Act (CAA), are not applicable to the area. EPA is also approving Kentucky's and Indiana's requests submitted March 30, 2001, and April 11, 2001, respectively, as subsequently supplemented, to redesignate the Louisville area to attainment for the 1-hour ozone NAAQS. In approving these requests, EPA is approving the plans for maintaining the 1-hour ozone NAAQS through 2012, as revisions to the Kentucky and Indiana (States) SIPs. EPA is also approving and finding adequate Kentucky's and Indiana's motor vehicle emission budgets (MVEBs) for volatile organic compounds (VOC) and nitrogen oxides(NO_X) in the submitted maintenance plans for transportation conformity purposes. Approval of the MVEBs is based in part on commitments submitted by the States to use the MOBILE6 mobile emission model within a specific timeframe when it becomes available to update the MVEBs. Finally, EPA is approving source-specific Board Orders to control NO_X emissions from 11 sources in Jefferson County, Kentucky. This action finalizes EPA's proposed rulemakings to determine that the Louisville area has attained the 1-hour ozone NAAQS; and to redesignate both the Kentucky and Indiana portions of the Louisville area to attainment for the 1-hour ozone NAAQS, and to approve the 11 source-specific NO_X Reasonably Available Control Technology (RACT) Board Orders as revisions to the Kentucky SIP.

EFFECTIVE DATE: This action will be effective on November 23, 2001.

ADDRESSES: Copies of Kentucky's submittals, as well as other information, are available for inspection during normal business hours at the following locations. U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. Air Pollution Control District of Jefferson County, 850 Barret Avenue, Louisville, Kentucky 40204. Persons wishing to examine these documents should make an appointment at least 24 hours before the visiting day and reference files KY–117, KY–126, KY–129, and KY–132.

Copies of Indiana's submittals, as well as other information, are available for inspection during normal business hours at the following locations. U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604. Indiana Department of Environmental Management, Office of Air Quality, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206–6015. Indiana Department of Environmental Management Southwest Regional Office, 208 NW 4th Street, Suite 201, Evansville, Indiana 47708–1353. Persons wishing to examine these documents should make an appointment at least 24 hours before the visiting day and reference file IN–121–3.

FOR FURTHER INFORMATION CONTACT: Allison Humphris, Environmental Scientist, or Raymond Gregory, Environmental Engineer, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–9030, (404) 562–9116, (*Humphris.Allison@epa.gov*) (*Gregory.Ray@epa.gov*). Mary Portanova, Environmental Engineer, U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, (AR–18J), Air Programs Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, (*Portanova.Mary@epa.gov*)

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Whenever "we," "us," or "our" are used it means EPA.

I. What Is the Background for These Actions?

The Louisville area was designated as an ozone nonattainment area in March

1978 (43 FR 8962) and designated as the Louisville moderate 1-hour ozone nonattainment area on November 6, 1991 (56 FR 56694). The Louisville area includes Jefferson County, and portions of Bullitt and Oldham Counties, Kentucky; and Clark and Floyd Counties, Indiana. As the result of programs adopted and implemented by Kentucky, Indiana and the Air Pollution Control District of Jefferson County (APCDJC) to reduce VOC and NO_x emissions since that time, monitors in the Louisville area have recorded three years of complete, quality-assured, ambient air quality monitoring data for the 1998, 1999, and 2000 ozone monitoring seasons, demonstrating attainment of the 1-hour ozone NAAQS. Preliminary data for the 2001 ozone season shows continuing attainment. The initial redesignation requests from Kentucky and Indiana were submitted on March 30, 2001, and April 11, 2001, respectively, and supplemented on July 9, 2001, and August 24, 2001, respectively.

In a notice of proposed rulemaking (NPR) published May 17, 2001, (66 FR 27483) we proposed to determine that the Louisville area has attained the 1-hour ozone NAAQS. On the basis of this determination, we also proposed to determine that the SIP submissions for certain RFP and attainment demonstration requirements, along with certain other related requirements of part D of title I of the CAA, are not applicable to the area for so long as the Louisville area continues to attain the 1-hour ozone NAAQS. The NPR included a detailed description and rationale for EPA's proposed actions, and provided for a public comment period on these actions ending on June 18, 2001. No comments were received on that NPR during the comment period.

In an NPR published June 22, 2001, (66 FR 33505), we proposed to approve the requests by Kentucky and Indiana to redesignate the Louisville area to attainment for the 1-hour ozone NAAQS and to approve source-specific Board Orders adopted by the Air Pollution Control Board of Jefferson County (APCBJC) to control NO_x emissions at 11 sources in Jefferson County. The NPR included more detailed information and rationale for these actions, and provided for a public comment period ending on July 23, 2001. We received comments from three commenters.

II. What Comments Did We Receive and What Are Our Responses?

The summarized comments received and EPA responses to them are provided below.

Comment 1—Attainment of the standard: The commenter believes that the area has failed to show attainment of the 1-hour ozone NAAQS. The commenter points out that EPA's Aerometric Information Retrieval System (AIRS) data base shows that the Charlestown monitor recorded 3.2 estimated exceedances of the 1-hour ozone NAAQS in the three-year period of 1998–2000 and concludes that this translates to an annual average expected exceedance rate of more than 1.05 exceedances per year, and therefore nonattainment.

The commenter also asserts that in determining that three days of data were unlikely to be above the standard, EPA has ignored the potential for exceedances on the eight other days for which data was missing. The commenter claims that additional information should be considered and claims that it was ignored. This includes "the potential for exceedances on days where no exceedance was recorded, but where data was not available for all daytime hours (even if enough data was available to meet the minimum coverage of 75 percent of hours)". The commenter also claims that EPA ignored the historic pattern of exceedances in this area, in which years with no exceedances have been followed by years with multiple exceedances. The commenter believes that EPA ignored the concentration levels of ozone exceedances recorded at Charlestown in 1997–99, pointing out that the design value for this three-year period was higher than for the period 1996–98 and that the peak reading in 1998 at Charlestown of 0.156 parts per million (ppm) was one of the highest recorded in the region in recent years. For these reasons, the commenter believes that EPA's proposal is arbitrary and capricious, and fails to adequately consider all of the relevant factors.

Note: Although EPA received no comments on the proposed determination of attainment (66 FR 27483, May 17, 2001), the above comment addresses issues covered in that NPR. Therefore, the following response clarifies EPA's background and rationale for approving both the proposed determination of attainment and the proposed redesignation.

Response 1: The current version of the AIRS database, EPA's air quality data system, calculates that the Charlestown monitor had 3.2 estimated exceedances during the 1998 ozone season, based on the availability of valid AIRS data for 172 out of 183 ozone season days. However, the program only reflects this value because of limitations in the software that are not entirely reflective of the provisions in the CAA. For 11 days during the 1998 ozone monitoring season, incomplete air quality data was available for the Charlestown, Indiana monitor. Three of these days have been documented in AIRS to note that EPA has made a determination, based on documentation presented by the State, and in accordance with 40 CFR part 50, Appendix H, that it is highly unlikely that the 1-hour ozone NAAQS was exceeded (for further explanation, see 66 FR 27483, May 17, 2001) on these three days. 40 CFR part 50, Appendix H states, in part, that: "[s]ome allowance should also be made for days for which valid daily maximum hourly values were not obtained but which would quite likely have been below the standard." It then suggests a criterion that "may be used" for ozone.

For one day (August 1, 1998), EPA determined that the 1-hour NAAQS was not exceeded based on records of valid daily maxima below the 75 percent level of the standard for the Charlestown monitor for the days immediately preceding and following this date. This determination is consistent with the example criterion provided in 40 CFR part 50, Appendix H.

For two days early in the 1998 ozone monitoring season (April 3–4, 1998), EPA made a similar determination based on: the State's explanation of the site's failure to collect ozone data during the period, records of valid daily maxima well below the standard for the remaining six Louisville area monitors on those dates, and overwhelming evidence that meteorological conditions were not conducive to ozone formation (i.e. temperatures between 42 and 58 degrees, overcast skies, showers and windy conditions). In addition, no exceedances have ever been recorded at this monitoring site in early April. This determination was made in response to documentation presented by Indiana in a December 11, 2000 request. These materials are available for inspection in the Louisville redesignation dockets. The determination for these two days is consistent with 40 CFR part 50, Appendix H, which EPA interprets as allowing for use of Agency discretion in defining conditions for determining when a missing value may be assumed to be below the level of the standard.

The estimated exceedances for the Charlestown monitor are calculated using the parameters provided in Table 1 and the following equation: $e = v + [(v/n)*(N-n-z)]$. Assuming that the 1-hour ozone NAAQS was not exceeded for 172 of 183 ozone season days, and that valid AIRS data was unavailable for eight days, the Charlestown monitor is calculated as having a total of 3.1 estimated exceedances for the 1998 ozone season. This value was determined in accordance with 40 CFR 50.9 and Appendix H. Since no exceedance was recorded for 1999 or 2000, the average number of expected exceedances for this monitor is 1.0 exceedance per year for the 1998 through 2000 three-year period, using conventional rounding techniques. Thus, the data indicate that the Louisville area has attained the 1-hour ozone NAAQS for this three-year period.

TABLE 1.—PARAMETERS FOR CALCULATION OF ESTIMATED EXCEEDANCES

Variable description	Value for Charlestown monitor for 1998	Comments
e = the estimated number of exceedances for the year,	3.1	Calculated.
N = the number of required monitoring days in the year,	183	Indiana's ozone season is April 1–September 30
n = the number of valid daily maxima,	172	Days with valid data based on 40 CFR 50 and Appendix H.
v = the number of daily values above the level of the standard	3	Based on monitored values.
z = the number of days assumed to be less than the standard level	3	Based on 40 CFR 50 Appendix H, for days that were likely below thestandard.

The commenter claims that, in calculating the 1998–2000 estimated exceedances for the Charlestown monitor, EPA did not consider eight of the 11 days for which no monitoring data was available. Examination of the equation and the values used to calculate the estimated exceedances for 1998 through 2000 shows that this is not the case. In calculating the correction factor to account for missing data (i.e. $[(v/n)*(N-n-z)]$), EPA does consider the remaining eight days for which no data was recorded. EPA adjusts the difference between the number of required and actual monitoring days (N-n) only by the number of days for which no data was recorded and for which we assumed the daily maximum value to be below the 1-hour NAAQS (i.e. z=3). Thus, EPA took the remaining eight days into account as prescribed in the CAA and 40 CFR 50.9. We did not assume that the daily maximum value for those eight days was below the 1-hour ozone NAAQS, and we adjusted the area's estimated exceedance rate to account for this assumption.

Regarding the adequacy and completeness of the remaining monitoring data used to calculate 1998–2000 estimated exceedances for the Charlestown monitor, EPA notes that there was over 99 percent data completeness on days meeting the 75 percent completeness test at the Charlestown site over the three-year period. Neither the guidance nor 40 CFR contemplates questioning data that meet the 75 percent completeness test. There was also over 97 percent completeness for all days over the three-year period. EPA completed a review of the data and did not find any abnormalities that would indicate that the Charlestown monitor was not being run whenever possible. In addition, Region 5 conducted a performance audit of this monitor on September 26–27, 2000, which confirmed the monitor's performance to be within acceptable limits.

The commenter also claims that EPA ignored the historic pattern of exceedances for the Louisville area. EPA has not ignored historical data in making our determination. Rather, we looked at the historical data presented to us by the States in the context of the provisions of 40 CFR 50.9. When evaluating whether the 1-hour ozone NAAQS has been met, the CAA specifies that EPA must consider the most recent three years of quality-assured monitoring data. As indicated above, the data for the most recent three-year period, i.e., 1998–2000, indicates attainment. Preliminary 2001 ozone season data indicates that the area continues to attain the 1-hour NAAQS. Note that the CAA and EPA guidance also requires that the improvement in air quality be attributable to permanent and enforceable reductions. Our determination that reductions are attributable to permanent and enforceable measures is discussed further in Response 3.

Comment 2—Fully approved SIP and all requirements applicable to the area under section 110 and subpart D: The commenter indicated that, pursuant to section 107(d)(3)(E)(ii) of the CAA, EPA cannot redesignate an area to attainment unless EPA "has fully approved the applicable implementation plan for the area." The commenter contends that EPA has yet to fully approve the applicable implementation plan for the Louisville area, including the specific SIP elements identified in subparts A. through I. of this comment below, as required by the CAA for moderate ozone nonattainment areas. Also, pursuant to section 107(d)(3)(E)(v) of the CAA, EPA cannot redesignate an area to attainment unless the state containing the area "has met all requirements applicable to the area under section 110 and part D." The commenter contends that the States have not yet met the requirement to submit approvable plans that satisfy all CAA-required moderate area ozone SIP elements. The commenter claims that the SIP elements identified in subparts A. through I. of this comment have not been satisfied for the reasons indicated below.

Response 2: As described in the responses to subparts A. through I. of this comment below, EPA believes that both the Kentucky and Indiana portions of the Louisville area have satisfied all applicable moderate area ozone SIP requirements. In acting on a redesignation request, EPA may rely on any SIP approvals that precede, or are performed in conjunction with, the final rulemaking action to redesignate the area. The September 4, 1992 memorandum from John Calcagni, Director, Air Quality Management Division, entitled "Procedures for Processing Requests to Redesignate Areas to Attainment," (September 4, 1992 Calcagni memorandum) allows for approval of SIP elements and redesignation to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. EPA is approving today or has previously approved all remaining portions of the SIP that must be approved prior to redesignation. Therefore, the Kentucky and Indiana SIPs are fully approved.

Comment 2A—Attainment Demonstration: A commenter stated that under the CAA (42 U.S.C. 7502(c)(1), (c)(6), 7511a(b)(1); 7511a(j)) a moderate area is required to submit an attainment demonstration based on modeling or other analytical method determined by EPA to be at least as effective. The

commenter contends that since EPA has not approved an attainment demonstration for the Louisville area as required by the CAA, nor have the States involved submitted an approvable attainment demonstration, the requirements of section 110 and part D have not been met, and that EPA has not fully approved the SIP as required.

Response 2A: An attainment demonstration is not required under EPA's attainment determination policy, as set forth in the May 10, 1995, memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," (May 10, 1995, Seitz memorandum). EPA has explained at length in other actions its rationale for the reasonableness of that interpretation of the CAA and incorporates those explanations by reference here. See, for example, Cleveland-Akron-Lorain, Ohio (61 *FR* 20458, May 7, 1996); Salt Lake and Davis Counties, Utah (60 FR 36723, July 18, 1995); Grand Rapids, MI (61 FR 31832–33, June 21, 1996); and Cincinnati-Hamilton, Ohio and Kentucky (65 FR 37879, June 19, 2000). EPA also reiterates its position set forth in the proposed rulemaking to redesignate the Louisville area (66 *FR* 33505, June 22, 2001), and in the proposed rulemaking to determine that the Louisville area has attained the 1-hour ozone NAAQS (66 *FR* 27483, May 17, 2001). Subpart 2 of part D of title I of the CAA contains various air quality planning and SIP submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with certain other related provisions, as not requiring SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the 1-hour ozone NAAQS (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA has interpreted the general provisions of subpart 1 of part D of title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or section 172(c)(9) contingency measures. As explained in the May 10, 1995, Seitz memorandum, EPA believes it is appropriate to interpret the more specific attainment demonstration and related provisions of subpart 2 in the same manner. (See *Sierra Club* vs *EPA*, 99 F.3d 1551 (10th Cir. 1996))

The attainment demonstration requirements of section 182(b)(1) are that the plan provide for "such specific annual reductions in emissions* * *as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA." If an area has in fact monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble for the Interpretation of title I of the CAA Amendments of 1990 (57 *FR* 13496, April 16, 1992, supplemented at 57 FR 18070, April 28, 1992) (General Preamble). As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached" (57 FR 13564, April 16, 1992). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS.

EPA has reviewed the 1998–2000 ambient air ozone monitoring data for the Louisville area for consistency with the requirements of 40 CFR part 58. A discussion of this review is included in EPA's proposed determination of attainment for the Louisville area (66 FR 27483, May 17, 2001) and in the response to comment 1. On the basis of this review, EPA has determined that the Louisville area has attained the 1-hour ozone NAAQS during the 1998–2000 period, and is therefore not required to submit an attainment demonstration. Since an attainment demonstration is not required, EPA is not required to approve an attainment demonstration as a requisite to redesignating the Louisville area.

Comment 2B—All reasonably available control measures (RACM): The commenter contends that EPA has not approved a demonstration showing that the Kentucky and Indiana SIPs provide for implementation of all RACM as expeditiously as practicable. 42 U.S.C. 7502(c)(1). The commenter also alleges that the States have not met this requirement for the Louisville area. The commenter contends that EPA has no authority to waive this requirement, which applies in addition to the requirement to demonstrate timely attainment.

Response 2B: The General Preamble treats the RACM requirement as a "component" of an area's attainment demonstration. The General Preamble explains that "section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM as expeditiously as practicable. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area's attainment demonstration." Thus, EPA's final suspension of the attainment demonstration requirement pursuant to today's final determination of attainment also suspends the section 172(c)(1) RACM requirement, since the latter is a component of the attainment demonstration.

The General Preamble further states that "where measures that might in fact be available for implementation in the nonattainment area could not be implemented on a schedule that would advance the date for attainment in the area, EPA would not consider it reasonable to require implementation of such measures." Because attainment has been reached for the Louisville area, no additional measures are needed to provide for attainment, nor could the attainment date for the area now be advanced through implementation of RACM. Therefore, no additional RACM controls beyond what are already required in the SIP are necessary for redesignation to attainment.

Comment 2C—RACT: The commenter contends that EPA has not fully approved the Kentucky SIP as meeting the requirement for RACT for all VOC sources within the nonattainment area, including each category of VOC sources covered by Control Technique Guideline (CTG) documents. The commenter further contends that without EPA reopening the public comment period on the redesignation proposal, the public will be deprived of the opportunity to offer fully informed comment as to whether the state plan as a whole meets all of the applicable requirements of section 110 and part D.

Response 2C: As described in the proposed redesignation (66 FR 33511, June 22, 2001), Indiana fulfilled all RACT requirements prior to submittal of its redesignation request. Likewise, Kentucky fulfilled most RACT requirements prior to submittal of its redesignation request. In two final actions signed on September 18, 2001, and a third signed on October 3, 2001, and published elsewhere in the *FR*, EPA approved the following revisions to the Kentucky SIP: Existing VOC RACT regulations; new regulations to address VOC RACT, a source-specific non-CTG VOC RACT determination, and negative declarations. These final actions addressed all remaining VOC RACT requirements for Kentucky. EPA had previously published NPRs that included proposals for each of these final actions that provided the public with adequate opportunity to offer comments on these revisions to the Kentucky SIP. Comments were received on one of the three NPRs. However, none of these comments addressed the VOC RACT requirements being proposed for approval. Since no comments were received that raised questions regarding the adequacy of the relevant VOC RACT requirements, EPA has issued final approval for these revisions to the Kentucky SIP. Therefore, with these actions, in conjunction with today's action, the Kentucky SIP for the Louisville area 1-hour ozone SIP is fully approved. In acting on a redesignation request, EPA may rely on any SIP approvals that precede, or are performed in conjunction with, the final redesignation action. The September 4, 1992 Calcagni memorandum allows for approval of SIP elements and redesignation to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. Thus, all RACT requirements have been fully adopted by Kentucky and Indiana and approved by EPA.

Comment 2D—Rate of progress plans: The commenter contends that the CAA required the States to obtain EPA approval of a 15 percent "rate of progress" plan (RFP plan) for the Louisville area (section 182(b)(1)). Although the States submitted such a plan, the commenter notes that EPA has not approved the plan. The commenter asserts that, on this basis, the SIP does not meet all requirements under section 110 and part D.

Response 2D: The General Preamble provides EPA's interpretation of certain section 172(c) requirements, including the following interpretation regarding RFP requirements: "The requirements for RFP will not apply in evaluating a request for redesignation to attainment, since* * * air quality data* * * must show that the area has already attained. Showing that the state will make RFP towards attainment will have no meaning at that point."

The May 10, 1995, Seitz memorandum, which sets forth EPA's attainment determination policy, provides a similar position on the RFP requirement. In this memo, EPA interprets the general provisions of subpart 1 of part D of title I (sections 171 and 172) and the more specific requirements of subpart 2 of part D of title I so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or section 172(c)(9) contingency measures, and the corresponding more specific SIP revisions identified in subpart 2, for so long as the subject area is monitoring attainment of the 1-hour ozone NAAQS. With regards to the specific requirement for RFP, whether dealing with the general RFP requirement of section 172(c)(2) or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas, including the 15 percent plan requirement of 182(b)(1), "the stated purpose of RFP is to ensure attainment by the applicable attainment date. If an area has in fact attained the relevant NAAQS, the stated purpose of the RFP requirement will have been met, and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1), and 182(c)(2)(B) and (C)."

As noted by the commenter, both States had submitted 15 percent plans prior to submitting the redesignation request. EPA approved Indiana's 15 percent plan (62 FR 24815, May 7, 1997), and Indiana continues to implement and enforce all regulations associated with that submittal. EPA also proposed approval, in the form of a direct final rulemaking, of Kentucky's 15 percent plan and the regulations relied on to achieve those reductions (64 FR 49425, September 13, 1999), but subsequently withdrew the direct final rulemaking (64 FR 59644, November 3, 1999). In this final rulemaking, EPA is taking final action on our determination of attainment for the Louisville area, thereby removing the requirement for the 15 percent plan. Elsewhere in this FR, in a separate final rulemaking, EPA concludes that although no action on the 15 percent plan itself is required, the regulations submitted by Kentucky with its 15 percent plan provided permanent and enforceable reductions during the 1998 through 2000 time period, since they were implemented prior to 1998, and EPA approves regulations submitted by Kentucky as part of its 15 percent plan. That final action ensures that regulations implemented by Kentucky prior to attainment of the 1-hour ozone NAAQS are permanent and enforceable as part of the SIP, thereby fulfilling the requirements of section 107(d)(3)(iii), and the requirements for redesignation.

Comment 2E—New Source Review (NSR): The commenter points out that the CAA requires the SIP to include a preconstruction permit program for new major sources and modifications within the nonattainment area (42 U.S.C. 7410(a)(2)(C), 7502(c)(4)&(5), 7503, 7511a(a)(2)(C), and (b)(5)). The commenter contends that the States have not met this requirement, and that EPA has no express authority to waive this mandate.

Response 2E: Notwithstanding the current status of the Kentucky and Indiana SIPs, EPA has determined that areas being redesignated to attainment do not need to comply with the requirement that a part D NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the applicable NAAQS without part D NSR in effect. The rationale for this decision is described in a memorandum from Mary Nichols dated October 14, 1994. See also the discussion in the Grand Rapids, Michigan action (61 FR 31834, June 21, 1996). The States have demonstrated that the Louisville area will be able to maintain the 1-hour NAAQS without part D NSR in effect, and, therefore, need not have fully-approved part D NSR programs prior to approval of the redesignation request for the Louisville area. Kentucky's and Indiana's PSD requirements will be applicable and remain enforceable after the redesignation of the Louisville area (66 FR 33509–33510, June 22, 2001). See also the discussion in the final redesignation rulemaking for the Cincinnati-Hamilton area (65 FR 37890–37891, June 19, 2000).

In any event, the Kentucky and the Indiana SIPs were reviewed to ensure that they satisfied all CAA requirements to include a fully-approved part D NSR program. Section 172(c)(5) mandates that SIPs require permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. Section 182(b)(5) requires all major new sources or modifications in a moderate nonattainment area to achieve offsetting reductions of VOCs at a ratio of at least 1.15 to 1.0. For Kentucky, these requirements were completed through previously-published final rulemaking actions, and a final rulemaking action signed on September 18, 2001, to approve revisions to Kentucky's NSR program that were proposed for approval on June 21, 2001, (66 FR 33216). Indiana's part D NSR program was approved in October 1994.

Comment 2F—Conformity: The commenter contends that the SIP does not include conformity procedures as required by the CAA, and that EPA has no authority to waive this requirement. Since the CAA allows redesignation to attainment only where EPA has fully approved the implementation plan and only where the state has met all requirements applicable to the area

under section 110 and part D, the commenter contends that the area should not be redesignated.

Response 2F: Kentucky and Indiana have met the statutory requirement for submitting approvable general conformity procedures. EPA approved the Indiana general conformity rules effective on March 16, 1998, (63 FR 2146, January 14, 1998). EPA approved the Kentucky general conformity rules effective on September 25, 1998, (63 FR 40044, July 27, 1998).

In addition to general conformity, section 176(c) provides that state conformity revisions must be consistent with Federal transportation conformity regulations that the CAA requires EPA to promulgate. The Federal transportation conformity regulations were finalized on November 24, 1993, amended on August 7, 1995, and amended again on August 15, 1997 (40 CFR parts 51 and 93 Transportation Conformity Rule Amendments: Flexibility and Streamlining). On March 2, 1999, a court decision (*Environmental Defense Fund* v. *EPA*, 167 F.3d 641 (D.C. Cir. 1999)) rescinded several sections of the Federal transportation conformity rule, requiring EPA to revise those sections of the Federal rule. Kentucky submitted transportation conformity rules on November 23, 1994, and updated this submittal with revised rules on December 19, 1997. Indiana submitted transportation conformity rules on January 23, 1997, and updated this submittal with revised rules on April 19, 2001. The revised rules were adopted by Indiana in 1998 in response to the August 1997 changes to the Federal regulations. EPA has not acted on the submittals from either State, as they do not address later Federal transportation conformity regulation amendments. Once EPA has completed revisions to the Federal rule to reflect the 1999 court decision, both States will need to revise their regulations to address the changes.

EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a Section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. EPA has explained its rationale and applied this interpretation in numerous redesignation actions. See redesignations for: Tampa, Florida (60 FR 52748, December 7, 1995); Jacksonville, Florida (60 FR 41, January 3, 1995); Miami, Florida (60 FR 10325, February 24, 1995); Grand Rapids, Michigan (61 FR 31835, June 21, 1996); and Cleveland-Akron-Lorain, Ohio (61 FR 20458, May 7, 1996). The U.S. Court of Appeals for the Sixth Circuit recently upheld this interpretation in *Wall* v. *EPA*, No. 00–4010, Slip Op. at 21–24 (6th Cir. September 11, 2001). The Court upheld EPA's view that failure to submit a revision that meets part D transportation conformity requirements is not a basis to deny a redesignation request. Consequently, EPA may approve Kentucky's and Indiana's 1-hour ozone redesignation requests notwithstanding the lack of fully approved conformity SIPs.

Comment 2G— NO_X SIP Call: The commenter contends that under 42 U.S.C. 7410(a)(2)(D)(i) the SIP must include provisions to prohibit emissions that will contribute significantly to nonattainment in, or interfere with maintenance by, any other state. The commenter asserts that EPA has specifically determined that emissions from the States Kentucky and Indiana contribute significantly to ozone nonattainment in downwind states, and issued a SIP Call to require additional NO_X controls in each State's SIP to address this problem. The commenter contends that this indicates that each State's SIP does not fully meet all of the requirements under section 110. The commenter believes that EPA cannot find the SIP Call requirement inapplicable for the purposes of redesignation.

Response 2G: EPA believes that submissions under the NO_X SIP call should not be considered applicable requirements for purposes of evaluating a redesignation request. Nevertheless, Indiana adopted the NO_X SIP Call rules on June 6, 2001, and submitted them for parallel processing on March 20, 2001, with a final submittal on August 20, 2001. EPA signed a final FR approving Indiana's rules on September 27, 2001. Therefore, Indiana has met the NO_X the SIP Call submission requirements.

Kentucky submitted regulations for parallel processing on February 20, 2001. EPA is currently awaiting supplemental information before determining if the Kentucky NO_X SIP Call submittal is approvable. However, the requirement to submit complete SIP revisions under the NO_X SIP call continues to apply to the area after redesignation to attainment. Therefore, Kentucky remains obligated to ensure its submittal is complete and approvable even after redesignation, and would risk sanctions for failure to do so.

The NO_X SIP Call requirements are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular area's designation and classification are the requirements that are the relevant measures to evaluate in reviewing a redesignation request. The NO_X SIP call submittal requirements continue to apply to the States regardless of the designation of any one particular area in these States. The NO_X SIP Call submissions are required to reduce emissions affecting downwind areas, not to address air quality in the designated Louisville ozone nonattainment area.

Thus, we do not agree that the NO_X SIP Call submission requirement should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing redesignation policies regarding conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176, October 10, 1996; and 62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, 62741, December 7, 1995).

Comment 2H—Serious area requirements: One commenter stated that because the Louisville area failed to attain by its applicable attainment date of November 15, 1996, or the extended attainment date of November 15, 1997 (64 FR 27734, May 21, 1999), the Louisville area must be reclassified to "serious" and must meet all of the requirements for serious areas prior to redesignation.

Response 2H: Prior to the proposed determination of attainment (66 FR 27483, May 17, 2001), EPA approved a one 1-year extension of the Louisville area's attainment date (62 FR 55173, October 23, 1997) making its new attainment date November 15, 1997. On May 21, 1999, (64 FR 27734), EPA proposed to find that the Louisville area failed to attain the 1-hour ozone NAAQS by its extended attainment date of November 17, 1997. Alternatively, EPA proposed in this same notice to extend the Louisville area's attainment date, provided Kentucky and Indiana submit SIPs pursuant to EPA's notice of proposed interpretation entitled, "Extension of Attainment Dates for Downwind Transport Areas" (64 FR 14441, March 25, 1999) by November 15, 1999. Provided the States met the extension policy criteria and EPA proposed to approve the States' submittals, EPA would then be able to propose a specific extended attainment date in that same notice. Kentucky and Indiana submitted attainment demonstration SIPs by the November 15, 1999, deadline, and were in the process of finalizing these submittals in the fall of 2000. At this same time, preliminary monitoring data for the 2000 ozone season indicated that the Louisville area was attaining the 1-hour ozone NAAQS for the 1998 to 2000 three-year period. This attainment status was confirmed when Kentucky and Indiana provided early certification of their 2000 ozone season monitoring data as complete, accurate, quality-assured in accordance with 40 CFR part 58, and recorded in AIRS on January 16, 2001, and January 11, 2001, respectively. Thus, EPA was in the process of reviewing the requests to extend the Louisville area's attainment date when the area, in fact, attained the 1-hour ozone NAAQS. Since the Louisville area has attained the 1-hour ozone NAAQS and submitted an approvable maintenance plan, the additional requirements for a "serious" area are not needed.

Comment 2I— NO_X RACT: EPA proposed to approve various source-specific NO_X RACT orders from Kentucky as part of the SIP (66 FR 33505, June 22, 2001). The commenter notes that EPA's longstanding definition of RACT is "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." (44 FR 53762, September 17, 1979). The commenter contends that the material in the proposed rulemaking action (66 FR 33505, June 22, 2001) does not demonstrate that the proposed emission limits are in fact RACT. The commenter contends that to determine RACT for these sources, EPA must at least examine NO_X control technologies in use throughout the nation and elsewhere, select one or more technologies as RACT for each category, and document why any more effective technologies are not technically and/or economically feasible. That EPA has failed to provide such analysis here. (The commenter also claims to identify several specific deficiencies with respect to individual sources and categories. These are described and responded to as subparts of this comment).

Response 2I: On November 12, 1999, and May 23, 2001, Kentucky submitted Board Orders approved by APCBJC for the 11 major NO_X sources located in the Louisville area. A Board Order is a regulatory instrument adopted by an air pollution control board which specifies air pollution control limits or requirements for a specific source or company. EPA reviewed each Board Order at both the prehearing and formal submittal stage for adequacy in meeting the requirements of NO_X RACT as defined in the November 25, 1992, Nitrogen Oxides Supplement to the General Preamble; CAA Amendments of 1990 Implementation of title I (57 FR 55625) (NO_X Supplement). The original November 12, 1999, submittal included Board Orders for 10 sources, but EPA concluded that only two of these Board Orders satisfied RACT. Following extensive consultation between APCDJC and EPA, Kentucky submitted revised Board Orders for the remaining eight sources, and for one additional major NO_X source, all of which EPA determined to satisfy RACT.

Comment 2Ia—Louisville Gas and Electric (LG&E) emission limits: EPA proposes to approve emission limits ranging from 0.47 to 0.52 pounds NO_X per million British thermal unit (lb/mmBtu) for LG&E electric generating units. The commenter contends that EPA does not explain why most of these limits are so much higher than the Ozone Transport Commission (OTC) phase II limit, which is the less stringent of 0.2 lb/mmBtu or a 65 percent reduction. The commenter claims that EPA estimates that the phase II reductions will be achieved at a cost of $1,600 per ton—a level that EPA has determined to be reasonably achievable. The commenter contends that in the absence of an adequate explanation or analysis of this discrepancy, EPA cannot determine that the proposed limits constitute RACT.

Response 2Ia: NO_X RACT for each of the sources located in the Louisville area, including LG&E's Cane Run and Mill Creek Generating Stations, was determined based on EPA's interpretation of what constitutes RACT as presented in the NO_X Supplement. The OTC is comprised of several northeastern states, and the programs and emission limits established by OTC for purpose of controlling NO_X emissions in the northeast are applicable only to those states.

The NO_X Supplement considers RACT for utilities to be "the most effective level of combustion modification reasonably available to an individual unit. This implies low-NO_X burners. * * *" EPA determined that, in the majority of cases, such controls result in an overall level of control equivalent to maximum allowable NO_X emission rates of 0.45 and 0.50 lb/mmBtu, respectively, for tangentially-fired and wall-fired coal-burning electric utility boilers, with compliance based upon a 30-day rolling average emission rate. EPA further determined that "the actual NO_X emission reduction that can be achieved on a specific boiler depends on a number of site-specific factors * * *"

The initial Board Orders for these two facilities, submitted November 12, 1999, addressed EPA's prehearing concern that compliance with the established emission limits must be determined based on a 30-day rolling average emission rate. However, EPA commented that Kentucky increased the emission limits over the presumptive RACT limit provided in the NO_X Supplement, making them unapprovable absent further justification. Specifically, the November 12, 1999 Board Orders included emission limits of 0.49 lb/mmBtu for the tangentially-fired units (Mill Creek boilers 1 and 2 and Cane Run boiler 6) and 0.55 lb/mmBtu for the wall-fired units (Mill Creek boilers 3 and 4 and Cane Run boilers 4 and 5) located at these facilities. To support why these two sources could not meet presumptive RACT levels, Kentucky provided documentation showing that the selected acid rain controls for compliance with title 4 requirements—low-NO_X burners—were installed on these boilers and operated as designed on a regular basis. Kentucky further demonstrated, using Continuous Emission Monitoring data from the sources, that reasonable emission limits for these boilers, based on a 30-day rolling average compliance period and appropriate operation of the installed controls, were 0.47 lb/mmBtu for the three tangentially-fired units and 0.52 lb/mmBtu for the four wall-fired units. On May 23, 2001, Kentucky submitted revised Board Orders for the LG&E Cane Run and Mill Creek facilities that specify emission limits of 0.47 for three tangentially-fired coal-burning utility

boilers and 0.52 for four bottom wall-fired coal-burning utility boilers.

EPA therefore determined that Kentucky has required a RACT level of control for these facilities by installing the most effective, reasonably available controls, documenting the actual NO_X emission reduction achieved through appropriate operation of those controls, and requiring the corresponding emission limits in the final Board Orders for these facilities. The unit-specific nature of these requirements also assures a greater level of control than could be achieved through an "overall [facility-wide] level of control," which the NO_X Supplement uses to establish presumptive RACT limits.

Comment 2Ib—Setting emission limits for some sources: For several source categories, EPA proposes to approve limits on capacity factors, rather than actual emission limits. The commenter contends that the notice does not explain why these constitute RACT, when other states have set numeric NO_X RACT emission limits for the same or similar source categories. See EPA's October 17, 1995, Summary of NO_X RACT Rules (available at *www.epa.gov/ttn/caaa/t1pgm.htm*). The commenter further contends that the proposal conflicts with EPA's NO_X RACT guidance, which indicates that EPA expects that NO_X RACT for sources other than electric utility boilers to be set at levels at least comparable to RACT guidance levels for electric utility boilers (57 *FR* 55620, November 25, 1992).

Response 2Ib: Capacity factors that limit the operation of coal- and gas-fired boilers at facilities to less than 10 percent of total capacity were included in the Board Orders for five facilities in lieu of emission limits. However, all of the boilers subject to capacity limits are back-up or emergency units that are operated on a very infrequent basis. In fact, most of these units were not operated during the 2000 and/or 2001 ozone seasons. Thus, total ozone season emissions from the capacity-limited units in recent years have been so low that additional controls or extensive monitoring are clearly not cost-effective and therefore not justified. The Board Orders do establish emission limits for all primary boilers in use at these facilities that satisfy RACT. Taken together, these different approaches for addressing emissions from primary and back-up boilers ensure that the emissions from these five facilities comply with RACT. The five Board Orders also require these facilities to record the amount, type and heat content of fuel combusted each day for each boiler subject to a 10 percent capacity limit; the capacity factor for each of these boilers must also be calculated and recorded monthly. Finally, the facilities must submit a semi-annual report documenting all deviations from NO_X RACT Plan requirements. These comprehensive usage and reporting requirements ensure that emissions from the subject boilers for all five facilities will continue to represent RACT. In summary, due to limited operating hours, the costs to control these units would be very high for a small amount of emission reductions.

For three of the five facilities, the boilers subject to 10 percent capacity factors are gas-fired. Low usage rates, combined with the clean-burning, inherently lower-emitting nature of these gas-fired boilers (0.20 lb/mmBtu or less) ensure that total emissions from these units will be minimal. The Board Order for one of these facilities—Oxy Vinyls—establishes a 10 percent capacity factor for one gas-fired boiler that serves as a back-up unit for the two primary coal-fired boilers. In actuality, this gas-fired boiler was not operated during the 1999 or 2000 ozone seasons. However, even if operated at 10 percent capacity, total potential NO_X emissions for this unit would be significantly lower than could be achieved by establishing a RACT emission limit for the unit, assuming operation at full capacity. In addition, emissions from the two primary coal-fired boilers effectively dwarf emissions from the capacity-limited gas boiler by comparison. Installation of controls on the latter unit would be non-cost effective and impracticable. The second facility—Ford Louisville Assembly Plant—has three gas-fired boilers subject to a 10 percent capacity factor. Two of these boilers were not operated in 2000 or 2001. The third was operated for a short time in October of one year for testing purposes. The third facility—Rohm and Haas—has one primary gas-fired boiler, and one back-up gas-fired boiler subject to a 10 percent capacity factor. Emissions from the latter could potentially comprise a greater portion of this facility's total emissions. However, the Rohm & Haas Board Order also requires this boiler to meet a 0.20 lb/mmBtu emissions limit in the event that it is unable to comply with the 10 percent capacity limit. This boiler was operated at less than three percent capacity in 2000.

The Board Order for the fourth facility, GE Appliances, establishes a 10 percent capacity factor for each of five secondary backup coal-fired boilers. The primary energy source for the facility is a clean-burning methane gas boiler, and the secondary energy source is a gas-fired boiler subject to an emissions limit of 0.2 lb/mmBtu. During the 2000 ozone season, four of the coal-fired boilers were not used and the fifth had a usage rate equivalent to two percent of its total capacity. During the 2001 ozone season, none of these five boilers were operated. In addition to the above-mentioned recordkeeping and reporting requirements that all five facilities must meet, the GE Appliances Board Order requires this facility to conduct a thorough maintenance or "tune-up" of each of the five coal-fired boilers prior to the start of the ozone season. It also requires even more extensive maintenance on one of these five boilers—to be identified by May 1 of each year as the primary backup among these five boilers. The required semi-annual report submitted by GE Appliances must document all maintenance activities performed on these boilers to verify that the pre-season "tune-up" was completed and that the boilers continued to be well-maintained on an ongoing basis.

The Board Order for the fifth facility, the Louisville Medical Center Steam Plant, establishes a 10 percent capacity factor for each of two coal-fired boilers that are designated as third-level backup for the primary boilers at the source. The Board Order establishes emission limits that satisfy RACT for the primary, and first- and second-level backup boilers in use at the facility. During the 2000 ozone season, the two coal-fired boilers subject to 10 percent capacity limits were not operated.

Comment 2Ic—Texas Gas Transmission delayed compliance dates: The commenter points out that EPA proposes to approve delayed compliance dates for various emission limits applicable to Texas Gas Transmission. Some of these dates are during 2002, and one is during 2004. The commenter contends that EPA cannot approve NO_X RACT with such delayed compliance dates. The CAA required adoption and implementation of NO_X RACT in Louisville long ago, and EPA has no authority to approve orders that allow for delayed compliance.

Response 2Ic: Based on review of the November 12, 1999, submittal, EPA noted that the turbine lacked controls and identified several types of controls, including dry low NO_X controls, that appeared to be viable RACT choices. Absent adequate justification, EPA required the facility to install controls on this unit. Texas Gas agreed to install dry low NO_X controls on the turbine in 2004. Installation could not be done in 2001–2002, because the facility will be

installing RACT controls on the Internal Combustion Engines (ICEs) during that timeframe, and requires that either the ICEs or the turbine be operational at all times. Following installation of these controls, this facility will have fulfilled the CAA requirement to implement NO_X RACT.

Comment 3—Showing that air quality improvement is due to permanent and enforceable reductions: The commenter asserts that neither the States nor EPA have shown that air quality improvements are due to permanent and enforceable emission reductions, as required by 42 U.S.C. 7407(d)(3)(E)(iii). The commenter asserts that although States have adopted measures that have produced some emission reductions, EPA has not demonstrated that these reductions are responsible for the area's improved air quality or the absence of violations. The commenter holds that the only way to reliably make such a showing is through photochemical grid modeling. The commenter further asserts that given the complex chemistry and meteorology of ozone formation, the combination of NO_X and VOC emission reductions that might be attributable to the cited measures could just as easily lead to increases in ozone concentrations. The commenter contends that the lack of violations in 1998–2000 could be due to weather patterns or changes in transport of ozone precursors. The commenter further contends that the States did not offer other technically sound analysis showing that air quality improvements are due to permanent and enforceable emission reductions.

Response 3—Our policy does not specify that photochemical grid modeling is required for all ozone nonattainment areas to demonstrate that permanent and enforceable emission reductions have produced improvements in air quality. See the September 4, 1992, Calcagni memorandum; the General Preamble; "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993; and "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

We have found that reductions in ozone precursor (VOC and NO_X) emissions (emission inventory approach) have brought many areas across the country into attainment. Reductions in ozone precursor emissions similar to the reductions that have taken place in the Louisville area have been confirmed in photochemical grid modeling to reduce ambient ozone concentrations. EPA has approved many ozone redesignations showing decreases in ozone precursor emissions resulting in attainment of the 1-hour ozone NAAQS. See redesignations for Charleston, West Virginia (59 FR 30326, June 13, 1994; and 59 FR 45985, Sept. 6, 1994); Greenbrier County, West Virginia (60 FR 39857, Aug. 4, 1995); Parkersburg, West Virginia (59 FR 29977, June 10, 1994; and 59 FR 45978, Sept. 6, 1994); Jacksonville/Duval County, Florida (60 FR 41, January 3, 1995); Miami/Southeast, Florida (60 FR 10325, February 24, 1995); Tampa, Florida (60 FR 62748, December 7, 1995); Lexington, Kentucky (60 FR 47089, September 11, 1995); Greensboro, North Carolina (58 FR 47391, September 9,1993); Indianapolis, Indiana (59 FR 35044, July 8, 1994; and 59 FR 54391, October 31, 1994); South Bend-Elkhart, Indiana (59 FR 35044, July 8, 1994); Evansville/Vanderburgh County, Indiana (62 FR 12137, March 14, 1997, and 62 FR 64725, December 9, 1997); Canton, Youngstown-Warren, Ohio (61 FR 3319, January 31, 1996); Cleveland-Akron-Lorain, Ohio (60 FR 31433, June 15, 1995, and 61 FR 20458, May 7, 1996), Clinton County, Ohio (60 FR 22337, May 5, 1995, and 61 FR 11560, March 21, 1996); Columbus, Ohio (61 FR 3591, February 1, 1996); Kewaunee, Manitowoc, and Sheboygan Counties, Wisconsin (61 FR 29508, June 11, 1996; and 61 FR 43668, August 26,1996); Walworth County, Wisconsin (61 FR 28541, June 5, 1996, and 61 FR 43668, August 26, 1996); Pointe Coupee Parish, Louisiana (61 FR 37833, July 22, 1996, and 62 FR 648, January 6, 1997); and Monterey Bay, California (62 FR 2597, January 7, 1997). Most of the areas that have been redesignated to attainment for the 1-hour ozone NAAQS have continued to attain the standard. Areas that are not maintaining the 1-hour ozone NAAQS are implementing maintenance plans designed to bring them back into attainment. The U.S. Court of Appeals for the Sixth Circuit recently upheld EPA's emissions inventory approach for maintenance plans as a basis for approval of those plans in *Wall* v. *EPA*, supra at 17–19.

Between 1990 and 1999, VOC emissions in the Louisville nonattainment area have decreased area-wide by more than 112 tons per day. These emissions reductions are due to a number of permanent and enforceable regulatory programs, including the Federal Motor Vehicle Emissions Control Program, fleet turnover of automobiles, implementation of Stage II vapor recovery program, implementation of VOC RACT, lower Reid vapor pressure gasoline, restrictions on open burning, regulations covering landfill emissions, and ceased operation and improved technology at facilities in the Louisville area. Kentucky also instituted regulations regarding rule effectiveness and mandated the use of reformulated gasoline in the nonattainment area. Additional reductions in Indiana resulted from regulations for VOC storage tanks, shipbuilding/ship repair, wood furniture coating, automobile refinishing, and the implementation of an improved vehicle Inspection and Maintenance (I/M) program and a ridesharing program. Since the 1999 attainment year, the States have increased the rule effectiveness of Stage I vapor control and have implemented additional Federal regulations on such emission sources as architectural coatings, traffic paints, auto-body refinishing, and commercial/consumer products rules.

It is a technically sound and acceptable analysis to show that air quality improvements are due to permanent and enforceable emission reductions by demonstrating a decline in ozone levels which corresponds to the implementation of the enforceable reductions. An analysis of the ozone values in the Louisville area shows that ambient ozone concentrations dropped after this combination of ozone precursor reductions occurred. Ozone air quality monitoring data shows that the design value [1] changed from 0.149 ppm during the 1987–1989 time period to 0.123 ppm during the 1998–2000 time period. The decline in ozone concentrations indicates that the reduction in ozone precursor emissions in the area has contributed to improved air quality and helped bring about attainment of the 1-hour ozone NAAQS. The Louisville area's decrease in ozone levels is consistent with what other areas have experienced.

While the complex chemistry and meteorology of ozone formation is a factor, the combination of NO_X and VOC emission reductions in the Louisville area have lead to decreases in ozone concentrations, not increases. The commenter has not provided data

[1] The design value is typically the fourth highest ozone concentration recorded at a monitor over a three-year period. This value is calculated for each monitor and the highest value is the design value for the area.

showing that similar decreases in ozone precursor emissions have led to higher levels of ozone elsewhere. Nor did the commenter supply evidence to support the conclusion that the absence of violations during 1998–2000 was due to weather patterns or changes in transport of ozone precursors. Climatological data for the Louisville area from the National Oceanic and Atmospheric Administration [2] (*http://www.cdc.noaa.gov/USclimate/USclimdivs.html*) shows that during the 1998–2000 ozone seasons, local weather conditions were, in fact, more favorable for high ozone concentrations than low concentrations. This data is summarized in Tables 2 and 3. The fact that weather conditions and transport may have a substantial effect on ozone concentrations, both in terms of increasing ozone and decreasing ozone, cannot be controlled. We use a three-year averaging period to account for the year-to-year difference in weather conditions. In the Louisville area, the fact that the preliminary ozone data for 2001 continues to demonstrate attainment of the 1-hour ozone NAAQS increases our confidence that meteorology has not been the controlling factor in the area's attainment.

Table 2 shows the ranking (percentile) for each year of the average temperatures over the April—October period (ozone season) for the listed years compared to the long term average (1895 to 1999). A rank or value of 100 represents the highest temperature percentile and is given to the hottest year. Correspondingly, rank of one represents the lowest temperature percentile and is given to the coolest year. Table 3 shows the standard deviation for the average temperature anomaly (in degrees Fahrenheit) over recent three-year ozone seasons compared to a contemporary long-term average of temperature (1971–2000). In this table, warmer periods are indicated by larger positive values. If favorable weather conditions had been a large factor in Louisville's attainment of the standard, then one would have expected the attainment period to have been cooler than the previous nonattainment period (1997–1999). Instead, during the attainment period of 1998–2000, average temperatures were above the long term average (+1.24) from Table 2. Table 2 also shows that the three attainment years (1998–2000) were relatively warm, ranked in the 82th, 79nd, and 49st percentiles respectively. The temperature rankings and anomalies indicate that the ozone seasons with violations were less conducive to ozone formation based on temperature than the attainment period of 1998–2000 with no violations.

[2] The weather data for Louisville used to develop Tables 2 and 3 was derived from the average of the two weather zones covering Louisville (Kentucky zones 2 and 3)

TABLE 2.—TEMPERATURE PERCENTILES (RANKING) FOR THE OZONE SEASONS

Year	Temperature percentiles (ranking) for Louisville, Kentucky
1990	19
1991	92
1992	5
1993	30
1994	29
1995	67
1996	23
1997	5
1998	82
1999	79
2000	49

TABLE 3.—COMPOSITE TEMPERATURE ANOMALIES [1] FOR APRIL—OCTOBER VERSUS 1971–2000 AVERAGE

Three year period of April–October data [2]	Temperature anomaly for Louisville, KY
1992–1994	−0.72
1993–1995	0.22
1994–1996	0.10
1995–1997	−0.50
1996–1998	−0.23
1997–1999	0.45
1998–2000	1.24

[2] The standard deviation for temperature anomaly in degrees Fahrenheit.

The above data shows that the weather conditions in the 1998–2000 attainment years were not unusually favorable towards lower levels of ozone, and that the area has attained the 1-hour ozone NAAQS despite this warmer than average weather. The combination of this analysis of the meteorological conditions in conjunction with the existence of adopted emission controls demonstrates that the improvement in air quality is due to permanent and enforceable emission reductions. In light of this information, EPA believes that photochemical grid modeling is not necessary to support this conclusion, nor is it required by the CAA or guidance.

Comment 4A—Maintenance demonstration using adequate methods: One commenter stated that the attainment inventory approach was inadequate, and that modeling shows continued nonattainment through 2007 and beyond. The specific details of the commenter's remarks and EPA's replies are addressed below in the comments and responses identified as 4Aa, 4Ab, and 4Ac.

Comment 4Aa—Demonstration of maintenance: The commenter asserts that the plan does not demonstrate maintenance as required by the CAA, and that EPA has proposed to find maintenance on the presumption that the area will always be in attainment if emissions remain at or below estimated 1999 levels. The commenter contends that since the area violated the NAAQS in the 1997–99 period, holding emissions to 1999 levels will not assure attainment. The commenter further contends that EPA regulation and guidance explicitly require modeled maintenance demonstrations in multi-state ozone nonattainment areas like Louisville, where modeling was required for the attainment demonstration (see 40 CFR 51.112; 65 FR 6711, rejecting use of rollback analysis for making attainment and nonattainment predictions; and the September 4, 1992, Calcagni memorandum). The commenter insists that until EPA approves such a modeling demonstration, it cannot approve the maintenance plan.

Response 4Aa: In evaluating Kentucky's and Indiana's maintenance plans, EPA determined that the Louisville area's ability to demonstrate attainment for the 1998–2000 time period indicates that the attainment year (1999) level of emissions is adequate to keep the area in attainment (maintenance) for at least the next 10 years. Pursuant to EPA policy, states may demonstrate maintenance by preparing an attainment emissions inventory corresponding to the period during which the area monitored attainment and showing that future emissions will stay below the attainment emissions inventory. (See September 4, 1992, Calcagni memorandum). The Louisville area emissions are indeed projected to remain below the 1999 level for the next 10 years. Holding emissions at or below the level of attainment is, in EPA's view, "adequate to reasonably assure continued maintenance of the 1-hour ozone NAAQS." Thus, under EPA's interpretation, the air quality will be maintained by keeping emissions below the attainment emissions level, continuing to monitor ozone levels, and having maintenance plan contingency measures available. As noted above, in response to comment 3, the U.S. Court of Appeals for the Sixth Circuit recently upheld EPA's emissions inventory approach to evaluating maintenance plans in *Wall* v. *EPA*, supra at 17–19.

According to the September 4, 1992, Calcagni memorandum, "many areas are required to submit modeled attainment demonstrations to show that proposed reductions in emissions will be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstrations should be based upon the same level of modeling. In areas where no such modeling was required, the State should be able to rely on the attainment inventory approach." This guidance does not, as the commenter suggests, require an area such as the Louisville area to submit modeled attainment demonstrations when the States have already produced actual quality-assured data showing attainment. Therefore, the maintenance demonstration need not be based on modeling. As provided for by the September 4, 1992, Calcagni memorandum, "[a] State may generally demonstrate maintenance of the NAAQS by *either* showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS." Kentucky and Indiana are not required to submit a modeled attainment demonstration to support their redesignation request, since EPA has concluded that this requirement is not applicable so long as the area actually attained the 1-hour ozone NAAQS. Therefore, EPA has determined that an attainment demonstration that includes photochemical grid modeling is not needed to show that the area has attained the 1-hour ozone NAAQS. Since the States were not required to submit a modeled attainment demonstration under EPA's established interpretation of the statute and its longstanding policy, the States need not submit a modeled maintenance demonstration. EPA finds that the States can rely on the attainment inventory approach as was done here.

In addition, citing 40 CFR 51.112, the commenter contends that EPA's regulations require modeling to show that a maintenance plan is adequate. Section 51.112 provides in relevant part, that "[e]ach plan must demonstrate that the measures, rules and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements." Both the language and the context of this regulation indicate that it applies to attainment demonstrations, and not to stand alone maintenance plans submitted under CAA section 175A. There is no reference in the regulation to modeling requirements applicable to a section 175A plan revision for the sole purpose of providing maintenance and not attainment.

Moreover, even if the regulation could be construed as applying such a requirement, by its own terms, the regulation provides authority for EPA to modify requirements through notice and comment rulemaking. The rulemaking proposing redesignation of the Louisville area (66 FR 33505, June 22, 2001) addresses the attainment inventory approach in the maintenance plan, requests comments, and concludes that a modeled demonstration is not required to demonstrate maintenance under the statute. Many of the ozone areas for which EPA has approved ozone redesignations have used an emissions inventory approach to demonstrate maintenance. Indeed, the majority of areas have continued to maintain the 1-hour ozone NAAQS using that approach. There are ozone monitors located in the Louisville area to ensure that the area's air quality remains below the level set by the one-hour ozone NAAQS. Additionally, areas that are not maintaining the 1-hour ozone NAAQS have contingency measures in a maintenance plan to bring them back into attainment. See redesignations listed above in Response 3.

Comment 4Ab—Tier 2/Gasoline Sulfur Ozone Modeling Analysis: The commenter asserts that a modeling analysis set forth in EPA's Tier 2/Gasoline Sulfur Ozone Modeling Analysis, contradicts the premise that the Louisville area's maintenance plan is adequate to maintain the 1-hour ozone NAAQS for the required 10 year period. Specifically, the commenter contends that the Louisville area was included in the Tier 2 modeling analysis as among those that are certain or highly likely to require additional emission reductions in order to attain and maintain the 1-hour ozone NAAQS.

Response 4Ab: In the Tier 2 rulemaking, EPA used a regional ozone modeling system to predict ozone levels in many cities as part of an analytical process to characterize the risk that there would be nonattainment in a large and geographically broad number of areas. The Tier 2 modeling involved many approximations and assumptions because it was conducted for a very large region. While ozone predictions and the characterization of the risk of nonattainment in individual areas was a step toward reaching a conclusion about risks across the group of areas that characterization was not a finding by EPA of violations for any specific area. In addition, EPA's decision to approve the Louisville maintenance plan is based on more recent air quality data than was taken into account in the Tier 2 rulemaking. The Tier 2 rulemaking reflected only air quality data through 1998; it did not reflect the additional two years of air quality data in which the Louisville area attained the 1-hour ozone NAAQS. This is clear from the Tier 2 notice (65 FR 6709, February 10, 2000) which indicated that Louisville was included on a list of areas "that have current violations of the 1-hour NAAQS." (See also the discussion of this issue in the final redesignation rulemaking for the Cincinnati-Hamilton area 65 FR 37882–37883, June 19, 2000).

The Louisville area is not now nor was it in violation of the 1-hour ozone NAAQS at the time it was proposed to be redesignated. In fact, the preliminary air quality data for the Louisville area for 2001 indicates continued attainment. In addition, the emission inventory projections in the maintenance plans show that total NO_X and VOC emissions decline between 1999 and 2012. When the air quality data is combined with a downward trend in total emissions, there is an even stronger basis for not relying completely on the Tier 2 ozone modeling. Even so the Tier 2 reductions are the type of additional reductions that will help ensure maintenance for the next 10 years. The U.S. Court of Appeals for the Sixth Circuit recently upheld EPA's decision to treat Tier 2 findings as inapplicable to an evaluation of an area's maintenance plan in a redesignation action (see *Wall* v. *EPA*, supra at 19–20).

Even if there is some risk of lapse, that would not preclude the redesignation of the Louisville area. In drafting the CAA, Congress did not presume that an area will always be in attainment (62 FR 650). In fact, Congress specifically contemplated that future violations may occur and therefore required that EPA fully approve a maintenance plan and contingency measures for an area consistent with the requirements of section 175A of the CAA before that area can be redesignated to attainment (See 42 U.S.C. 7407(d)(3)(E)(iv)). If the area monitors a violation, then the contingency measures required by section 175A to be included in the maintenance plan would be triggered to bring the area back into attainment. Clearly, the CAA and Congress anticipated that areas redesignated to attainment may violate the NAAQS in the future, and Congress ensured in the CAA that control measures to remedy

the violation are available if such violations occur.

Comment 4Ac—Correlation of emission levels with ozone levels: The commenter asserts that EPA cannot assume that emission levels correlate with ozone levels in a linear or consistent fashion. Because the Charlestown and New Albany monitors violated the 1-hour NAAQS through 1999 and recorded more exceedances in 1997–98 than in 1995–96, even though emissions were declining, the commenter concludes that the States' attainment inventory approach is not a reliable predictor of future attainment.

Response 4Ac: We believe that the monitoring data confirms that the 1999 level of emissions is adequate to keep the area in attainment. Table 4 summarizes the number of estimated exceedances at each monitor in the area from 1995 through 2000. It is considered a violation of the 1-hour ozone NAAQS [3] if the average expected exceedances over a three year period total more than 1.0 at any one monitor (See 40 CFR 50.9 and Appendix H).

During 1999 and 2000 exceedances of the 1-hour ozone standard were measured at only one of the Louisville area monitors. The Buckner monitor in Oldham County, Kentucky had 1.2 exceedances in 1999. Therefore, over the three-year averaging period from 1998 through 2000, there were exceedances but no violations of the 1-hour ozone NAAQS.

TABLE 4.—LOUISVILLE AREA 1-HOUR OZONE NAAQS ESTIMATED EXCEEDANCES FROM 1995 TO 2000

Year	Indiana sites		Kentucky sites				
	Charlestown, Clark County	New Albany, Floyd County	Shepherdsville, Bullitt County	Bates, Jefferson County	Watson, Jefferson County	WLKY–TV Jefferson County	Buckner, Oldham County
1995	2.1	1.0	0.0	1.0	1.0	0.0	0.0
1996	0.0	1.0	0.0	0.0	1.0	1.1	0.0
1997	3.1	2.0	1.2	1.0	0.0	0.0	2.1
1998	[1]3.1	2.0	0.0	1.2	1.2	1.1	1.1
1999	0.0	0.0	0.0	0.0	0.0	0.0	1.2
2000	0.0	0.0	0.0	0.0	0.0	0.0	0.0

[1] See Response 1 for explanation of the derivation of this value.

Several factors which cannot be controlled have an effect on ozone formation, most notably meteorology and the presence of transported ozone or transported ozone precursors. EPA addresses meteorological variations by using long term averaging (EPA's 3-year ozone averaging period) and evaluating the effectiveness of a local control strategy during ozone-conducive years. As Response 3 described, the local control strategy for Louisville has been effective during warmer than average years. See Tables 2 and 3. See also the discussion of this issue in the final redesignation rulemaking for the Cincinnati-Hamilton area (65 FR 37886–37887, June 19, 2000).

The commenter states that "[b]oth the Charlestown and New Albany monitors violated the 1-hour NAAQS through 1999, and both recorded more exceedances in 1997–98 than in 1995–96." In order to test the commenter's contention that temperature (weather) not emission reductions brought about the lower ozone concentrations in the Louisville area, we ranked the average ozone-season temperatures for the years the commenter referenced. The percentile table (Table 2) compares each year's average temperature to the average temperature during the period 1895–2000, ranks the years from coolest to warmest. Table 2 (see Response 3) shows that the rankings of 1997–1998 are 5 and 86 respectively, and the rankings of 1999–2000 to be 82 and 51 respectively. It also lists the rankings for the years of 1995–1996 as 69 and 24 respectively.

If weather is the sole or most significant influence on ozone levels, then the period with a lower temperature ranking should have a lower number of ozone exceedances The year 1997 was cooler but had more exceedances than 1995 or 1996. During the period 1998–1999, with the two highest temperature rankings between 1995 and 2000, there were fewer exceedances than in the 1996–1997 or 1997–1998 periods. Given that ozone exceedances did not occur more frequently in apparently ozone-conducive high-temperature years (1998–1999), it seems reasonable to conclude that the improvement in air quality that occurred during this timeframe in the Louisville area is due to permanent and enforceable emission reductions. See also the discussion of this issue in the final redesignation rulemaking for the Cincinnati-Hamilton area (65 FR 37886, June 19, 2000). Based on its analyses, EPA continues to believe that reductions in ozone precursors do lead to measurable ozone decreases, and therefore, the attainment inventory approach used by the States is an appropriate predictor of future attainment. *Wall* v. *EPA*, supra at 17–19.

Comment 4B—Understatement of future emissions: The commenter contends that even if the emissions inventory approach was otherwise defensible here, Kentucky has failed to demonstrate that emission reductions projected for future years will in fact be achieved. The Kentucky appears to rely in part on reductions claimed in their 15 percent rate of progress plans, but EPA has never determined that the plans actually demonstrate the claimed emission reductions. The commenter insists that the reductions claimed from various 15 percent plan measures, as well as from other measures, are not creditable. Specifically, the commenter claims that Kentucky's Regulation 1.18 (Rule Effectiveness) does not require any specified minimum level of emission reduction, and that because the content of each rule effectiveness plan is determined solely by the source, these plans provide no assurance of any emission reductions at all. The commenter also claims that emission reductions resulting from Regulation 6.43 (VOC Reduction Requirements) are not creditable, because Kentucky raised questions about the legality of adopting this regulation, and the reductions claimed are also dependent on the adequacy of the APCDJC's emissions trading program, which EPA has not approved.

[3] Estimated exceedances take into account actual monitored exceedances and account for days where there is missing data or the data was invalidated (See Response 1).

Response 4B: EPA is publishing elsewhere in this FR its final rulemaking action approving regulations contained in Kentucky's 15 percent plan. EPA hereby incorporates the rationale and responses of that rulemaking by reference. As EPA explains in that rulemaking, EPA's final attainment determination renders EPA approval of Kentucky's 15 per cent plan unnecessary, since that requirement is no longer applicable. Thus no specific credits are being approved as part of the 15 percent plan. Notwithstanding this circumstance, EPA has taken final action to approve the control measures contained in the plan, and these measures will continue to be implemented after redesignation. Therefore, all reductions by these control measures are permanent and enforceable and will continue to be achieved after redesignation. Indiana's 15 percent plan was approved on May 7, 1997 (62 FR 24815).

Comment 4C—Lack of resource and enforcement commitments: A commenter contends that the maintenance plan is also not approvable because it lacks enforcement programs and commitments of legal authority and resources to implement all of the measures, as required by the CAA (42 U.S.C. 7410(a)(2)(E)). The commenter claims that EPA simply assumes that the various measures relied on for continued and future emission reductions will continue to be implemented. See also 40 CFR 51.111, 51.280, 57 FR 13498, 13564 (1992).

Response 4C: The States have committed to select and implement the maintenance plan contingency measures within 18 months of a violation of the 1-hour ozone NAAQS. The commenter provided no evidence that the maintenance plan fails to satisfy section 110(a)(2)(E). The CAA does not require a separate level of enforcement for a maintenance plan as a prerequisite to redesignation. The enforcement program approved for, and applicable to, the SIP as a whole also applies to the maintenance plan. The U.S. Court of Appeals for the Sixth Circuit recently upheld EPA's approval of a maintenance plan without requiring a separate commitment of resources and authority (see *Wall* v. *EPA*, supra at 17–19).

EPA approved the Kentucky ozone SIP on January 25, 1980, (45 FR 6092) and the Indiana ozone SIP on January 18, 1983, (48 FR 2124), as meeting all of the requirements of section 110, which included section 110(a)(2)(F), the predecessor of current section 110(a)(2)(E). EPA has consistently interpreted section 107(d)(3) as allowing EPA to rely on prior approvals of SIP provisions when reviewing redesignation requests. The September 4, 1992, Calcagni memorandum describes procedures that EPA regions should use to evaluate requests to redesignate areas to attainment status. The memo states: "An area cannot be redesignated if a required element of its plan is the subject of a disapproval.* * *' However, this does not mean that earlier issues with regard to the SIP will be reopened. Regions should not reconsider those things that have already been approved and for which the Clean Air Act Amendments did not alter what is required." EPA does not need to reconsider the issue of whether the Kentucky or Indiana SIPs met section 110(a)(2)(E) requirements prior to redesignation. *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984 (6th Cir. 1998).

Even if violations subsequently occur, this does not conclusively establish that state enforcement is so inadequate as to make the state enforcement program deficient under the CAA. EPA has not made such a finding, and even if an area is redesignated, EPA retains authority to make a finding of failure to implement under section 173(b) of the CAA or to require a SIP revision under section 110(a)(2)(H) if it concludes that state implementation and enforcement is deficient. The state would thus remain subject to EPA authority to improve its enforcement even after the area is redesignated. For purposes of redesignation, the area has a fully approved SIP.

Comment 4D—Lack of accurate estimate of Tier II benefit: The commenter contends that there is no accurate estimate of Tier 2 benefits. Since EPA has recognized that better data will be available after the issuance of MOBILE6, the commenter believes that, EPA cannot allow the state to claim credit in its future year emissions projections for a specific level of Tier 2 reductions. The commenter asserts that without the Tier 2 reductions claimed, it does not appear that future year VOC emissions will be lower than 1999 emissions, and therefore, EPA cannot approve the maintenance demonstration.

Response 4D: EPA requires that maintenance plans reflect expected actual emission rates (see September 4, 1992, Calcagni memorandum). Hence, once rules are finalized and enforceable, they need be considered when preparing maintenance plans and establishing MVEBs. The MVEBs represent the emissions budgets for motor vehicles and are closely related to the emission reductions from the Tier 2 program. EPA requires that 1-hour ozone maintenance plans contain MVEBs for ozone precursors. In order to find MVEBs in plans adequate, EPA requires that the MVEBs be consistent with the control measures in the submitted maintenance plan (40 CFR 93.118(e)(4)(v)). EPA believes that once a regulation is finalized and we know that the reductions will occur, it is best professional practice, and thereby required by EPA guidance, to account for those reductions in plan development. The final Tier 2 low sulfur rulemaking was published on February 10, 2000, (65 FR 6697). In this case, the maintenance plans, and the MVEBs, contained in these plans, need to reflect the reductions achieved by the Tier 2 rulemaking.

EPA first estimated emission reductions from Tier 2 for serious and severe 1-hour ozone attainment demonstration areas in a memorandum, "1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking," from Lydia N. Wegman, Director, Air Quality Standards Division of the Office of Air Quality Planning and Standards and Merrylin Zaw-Mon, Director, Fuels and Energy Division of the (then) Office of Mobile Sources to the Air Directors of EPA Regions 1–6, on November 8, 1999. This memorandum was the result of a detailed analysis to determine the best way to estimate the reductions from Tier 2 given the fact that MOBILE6 had not yet been released. The purpose of the memorandum was to advise the EPA Regional offices of the relationship between 1-hour ozone attainment demonstrations and the emissions reductions that will be achieved by the Tier 2 rule and to provide emissions data related to that rule. A copy of this memorandum and the associated spreadsheet is available on the EPA web site at *http://www.epa.gov/ttncaaa1/t1/meta/m10433.html*.

Subsequently, in April 2000, the Office of Transportation and Air Quality (OTAQ) issued an information sheet so that other areas could use the emission reduction methodology that was used to determine the reductions for the serious and severe ozone areas. That information sheet is titled, "MOBILE5 Information Sheet #8—Tier 2 Benefits Using MOBILE5" and is also available on the OTAQ website at *http://www.epa.gov/oms/m5.htm*.

In order to derive these estimates, OTAQ developed a special version of MOBILE called "Modified MOBILE5b/Version2," for the Tier 2 rulemaking. Full documentation of the methods used to develop the estimates for VOC and NO_X Tier 2 emission reductions are

available in the Tier 2 Docket. To briefly summarize here, highway vehicle emissions were first estimated using MOBILE5b with input files that described specific conditions (I/M program, temperatures, fuel parameters, and registration distribution). The resulting emission factors were then multiplied by correction factors in order to simulate emission factors that would result from proposed changes in MOBILE to be incorporated in MOBILE6. Correction factors were developed for both a base case (without Tier 2 control) and a Tier 2 control case. Because the factors used were based on default national MOBILE inputs and for the reasons described above, we do recognize that the results should be viewed as interim approximations which may change when MOBILE6 becomes available.

The differences in grams per mile shown in the tables (see "MOBILE5 Information Sheet #8—Tier 2 Benefits Using MOBILE5" April 2000) can be multiplied by the appropriate local vehicle miles traveled (VMT) to develop estimates of Tier 2 reductions in any area in any year starting in 2004. These Tier 2 reductions would then be subtracted from the total on-highway mobile emissions that were calculated using MOBILE5a or MOBILE5b and existing MOBILE information sheets.

EPA understands and acknowledges the limitations of this information and the potential inaccuracies introduced by the use of national defaults and differing baselines. We also recognize the need, consistent with our guidance, to be able to estimate reductions from this program now, since it is a final rule that we know will provide emission reductions within the scope of the 20 year transportation plans, as well as 10 year maintenance plans. Recognizing that this is an interim approach, EPA has required both Kentucky and Indiana to update the MVEBs in their maintenance plans within two years after the release of MOBILE6 and furthermore, any new conformity analysis in the Louisville area can not be found to conform during the second year until budgets based on MOBILE6 calculations are in place.

The modeling process is constantly improving and EPA looks forward to the release of MOBILE6 as an improved MOBILE modeling tool that will fully incorporate the Tier 2 reductions. Until that time, EPA has established this interim approach so that state air quality planning initiatives can continue to make progress toward clean air goals. Furthermore, recognizing the limitations of this approach, EPA has required and the States have committed to use MOBILE6 to develop new MVEBs.

Comment 4E—Mobile source budget: The commenter points out that, given the VOC MVEB safety margin originally proposed by the States in their submittals, the area does not in fact show that 2012 emissions of VOCs will be less than 1999 emissions. The commenter contends that EPA cannot allow the state to revise the maintenance plan (MVEB safety margin) to correct the deficiency in the amendments to the submittal without providing another public notice and comment opportunity prior to approval of the redesignation request and the maintenance plan.

Response 4E: In the FR proposing approval of the redesignation requests, EPA specified the changes that the States intended to make to their VOC MVEB and proposed approval of their plans only if those plans were amended to incorporate the changes. After receiving the submittals, EPA had pointed out this error in the MVEB safety margin to the States. To remedy this issue, Kentucky submitted a letter on May 17, 2001, and Indiana submitted a letter on May 29, 2001, indicating their intent to revise the maintenance plans so that the amended documents would include an approvable VOC MVEB of 48.17 tons/day, 2.76 tons/day less than the MVEB included in the original submittal. Based on the States' letters, EPA was able to specify the exact VOC MVEB of 48.17 tons/day that the States were planning to adopt in their maintenance plans. Our proposed approval demonstrated how this revised VOC MVEB would affect the maintenance plan and that the revised 2012 VOC emission projections were less than the 1999 attainment year emissions. The proposal also stated that we could only take final approval action on the maintenance plans if they were in fact revised to include the 48.17 tons/day VOC MVEB consistent with an approvable maintenance plan.

As noted by the commenter, it is very important that there should be an opportunity for public notice and comment on all significant aspects of a plan. Each revised VOC MVEB was subjected to public hearing with opportunity for public comment. Kentucky's hearing was held on May 16, 2001, and Indiana's was held July 30, 2001. Neither State received any public comments regarding the revised VOC MVEB. Since there has been public notice with comment periods on this VOC MVEB at both the state and federal level, and no public comment has been received on the technical merits of the MVEB itself, EPA does not believe an additional public comment period is necessary.

Comment 5—Contingency plan: Two commenters contend that the contingency measures contained in the maintenance plans submitted by the States do not adequately address the CAA requirement to include measures that "assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area." 42 U.S.C. § 7505a(d). The first commenter claims that EPA does not explicitly address this requirement in the proposed rulemaking: "Nowhere has EPA proposed to find that the maintenance contingency plan for Louisville 'assures' prompt correction of future violations. Nor is there anything in the record to support such a finding." The commenter further contends that the contingency measures do not meet the requirements of EPA guidance (see September 4, 1992, Calcagni memorandum), to "clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State."(Note: Responses to the detailed comments for this item are addressed below as Responses 5A–5F).

Comment 5A—Need for clearly-defined contingency measures: Regarding the requirement in EPA guidance to "clearly identify the measures to be adopted," both commenters contend that the measures identified in Kentucky's and Indiana's plans must be more clearly defined. The first commenter notes that contingency measures in both maintenance plans have yet to be adopted, and consist solely of "lists of largely undefined categories of measures * * *[or] other as-yet unidentified measures * * *." The commenter further contends that the subject maintenance plans "[provide no] procedure for quantifying the reductions needed to correct ambient violations, or any estimate of the potential emission reduction benefit from the listed measures, it provides no basis for concluding that these measures, if ever adopted, would assure correction of any violations." The second commenter argues for the importance of having "a more specific plan to require additional reductions from stationary sources and other sources that can be [readily] implemented by Board Order", based on "the difficult history of District efforts to secure across-the-board reductions as part of the 15 percent plan."

The first commenter claims that more specificity is needed for the Kentucky measures pointing out that "the Kentucky list includes 'more restrictive new source review requirements' and 'more rigorous vehicle emissions testing program', without giving any indication of how much 'more restrictive' or 'more stringent' the state has in mind." The second commenter states that the contingency measures to require "implementation of a program to require additional emission reductions at stationary sources for specific types of processes or an across-the-board reduction for the larger stationary sources" and "more restrictive new source review requirements" should be better defined prior to approval of the plan.

In providing more specific arguments of the need for clearly-defined contingency measures in Indiana's maintenance plan, the first commenter notes that the list of contingency measures includes "such items as 'broader' geographic applicability of existing programs, and application of RACT to 'smaller' sources, without giving any definition to these vague terms."

Response 5A: EPA believes that Kentucky's and Indiana's maintenance plans, and the contingency measures contained in those plans, are consistent with the structure and intent of the CAA requirements and EPA guidance, and provide adequate assurances of adequate public health benefits. The description of the contingency measures contained in the maintenance plans satisfies the CAA requirement to assure prompt correction of any monitored violations. As stated in the September 4, 1992, Calcagni memorandum, "For purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered." As the commenter notes, the guidance later states that the measures to be adopted should be clearly identified. EPA believes that the measures are adequately identified, and that the goal of returning the area to attainment as expediently as possible may be most effectively achieved by reviewing and refining the precise levels and scope of the contingency measures at the time they are required to be put into effect. Each of the contingency measures now contained in the maintenance plans will clearly achieve emission reductions and contribute to reattainment of the 1-hour NAAQS in the event of a violation. Newer control programs that would be more effective or advantageous for the area may also be developed after the area is redesignated to attainment. Selecting and adjusting the stringency of the measures that will most effectively bring the area back into attainment may best be performed at the time of response to a violation.

As noted by the commenter, and as the above excerpt from the guidance on contingency measures goes on to say, "* * * the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered." Kentucky's maintenance plan satisfies this requirement by establishing a clear schedule to ensure expeditious adoption of clearly defined contingency measures in the event of a violation. First, in the event of a monitored exceedance or if periodic emission inventory updates reveal a greater than 10 percent increase in ozone precursor emissions, Kentucky and APCDJC will identify and evaluate existing control measures, and assess, using available data and technical analyses, the amount of emission reductions needed to ensure that repeated exceedances of the 1-hour ozone NAAQS or further emissions increases do not occur. In the event of an actual violation, they must adopt, within nine months, "one or more * * *contingency measures to reattain the standard." The maintenance plan allows Kentucky the freedom to select the appropriate emission control strategy from a number of emission control measures (including not only one of the contingency measures listed in the plan, but also additional contingency measures if new, more advantageous control programs are developed for the area), but it must still demonstrate to the EPA that the emission controls will be adequate to prevent future violations of the ozone NAAQS. This demonstration process will likely be expedited by considering the results of the evaluation completed to address the exceedances that preceded the violation; that evaluation should provide the agencies with the basis for identifying, at the time, which of these control measures would be most effectively used to achieve the needed reductions and restore the area to attainment. In summary, the schedule presented by the maintenance plan ensures the adoption of contingency measures within nine months of a violation. The inclusion of somewhat broad, but still clearly identified, categories of contingency measures in the maintenance plan, provides Kentucky with flexibility to select the most effective measure(s) available, while ensuring compliance with the contingency measures requirement. Kentucky must implement such measure(s) within 18 months following the confirmation of a 1-hour ozone NAAQS violation in accordance with 175A(b). EPA believes that these are sufficient to assure that the Commonwealth will promptly correct any violation of the standard which occurs after the redesignation of the area.

Indiana's maintenance plan also provides for expeditious action to address future ozone increases. If an ozone exceedance is monitored, or if the level of VOC or NO_X for the entire Louisville area increases above the 1999 baseline, Indiana would study the situation and choose appropriate control measures from those listed in its contingency plan. Some of the measures identified in Indiana's list of contingency measures are clearly defined and could be readily adopted and implemented by the State. The full scope of some other measures in Indiana's plan has not been specifically prescribed, but this allows the State to determine an appropriate level of control to address future ozone exceedances effectively and economically. The State would adopt and implement these control measures as expeditiously as possible, and in no case later than 18 months after Indiana's contingency plan is triggered. If there is a monitored violation of the 1-hour ozone NAAQS in the Louisville area (more than 1.0 expected exceedances over a 3-year period), Indiana has committed to choose, adopt, and implement suitable control measures within 18 months.

Finally, the requirement to adopt any control measures needed to attain the NAAQS as part of the SIP gives the public assurance that these measures will be carried out, if necessary, through federal enforcement or citizen suit. The CAA places the burden on the state to demonstrate that its plan, at all times, provides for attainment and maintenance of the NAAQS, through federally enforceable emission reductions sufficient to avoid violations of the NAAQS. The CAA also provides protections to the public in the event that state plans are not fully and successfully implemented to achieve the scheduled emission reductions and air quality improvements. These protections include federally imposed nonimplementation sanctions and opportunities for citizens to sue to compel implementation.

Comment 5B—Need for prompt implementation schedule: Regarding the requirement in EPA guidance to "clearly

identify * * * a schedule and procedure for adoption and implementation," the second commenter contends that the schedule for implementation of contingency measures in the event of a monitored violation, as contained in Kentucky's maintenance plan, fails to "assure * * * prompt correct[ion of] any violation". This schedule allows Kentucky to take up to nine months to adopt, and another nine months to implement, regulatory contingency measures in the event of a monitored violation of the 1-hour ozone NAAQS, which, the commenter contends, is not an assurance of prompt correction of the violation.

Response 5B: EPA believes that the schedule requiring adoption of contingency measures within nine months of a confirmed violation, followed by implementation of the associated regulatory programs within 18 months of a confirmed violation, constitutes prompt, responsive implementation. While in some instances, an identified contingency measure may be adopted and implemented in less than 18 months, more often, a number of complicating factors lengthen the time to complete these actions. For example, in the case of stationary source controls, development of the necessary regulation or source-specific SIP revision specifying additional controls may occur quickly. However, even using emergency rulemaking procedures, the adoption process may take several months. For many types of controls, nine months to install and ensure proper operation of those controls is an ambitious schedule. In the case of many transportation control measures, as noted by one of the commenters, obtaining the necessary budgets or acquiring the necessary property for such measures may entail consultation with numerous local county or city governments or transportation management agencies. Thus, implementation of these measures may proceed quickly following adoption of these measures, but adoption of these measures within nine months from the date of violation is a very expeditious schedule. Overall EPA deems the schedule to comply with the requirements of 175A(d).

Comment 5C—Authority to implement: The second commenter contends that the Kentucky and APCDJC air pollution control agencies lack the legal ability to promptly implement contingency measures identified in the plan, making those measures "insufficient under Section 175A(d)." The commenter contends that the agencies cannot assure prompt implementation of measures requiring "local county or city (or soon, merged city-county) government budgetary or regulatory action." Therefore, "[f]or each of the proposed contingency measures, the state and local air pollution district should be required to explain whether the agency has the authority to implement the contingency measure, and whether that measure would be implemented by Board Order or by regulation."

The commenter specifically requests additional explanation of the agencies' authority to implement several types of measures. The commenter notes that "new construction of pedestrian and non-motorized vehicles would require several activities beyond the control of state and local air pollution control agencies including budgeting for construction using funds not available to the air pollution district,* * * which would have to be allocated by local or state government, and [would also require] dedication or acquisition of areas for such construction." The commenter also notes that "the state and local agencies should be required to assess and document whether they have the legal authority to adopt trip-reduction ordinances, to restrict road access to HOVs [high occupancy vehicle lanes], to limit parking and vehicle use in areas of emission concentration, and to broaden emission testing programs." No challenge is made to Indiana's authority to promptly implement contingency measures.

Response 5C: Chapters 224.10–100(30) and 77.190 of the Kentucky revised Statutes provide Kentucky and APCDJC with broad authority to enact orders, rules and regulations to reduce air pollution. Other subchapters of KRS 77 give APCDJC the power to "* * * take by grant, purchase, gift, devise, or lease * * * real or personal property of every kind within or without the district necessary to the full exercise of its powers." (KRS 77.060) and to establish an "air quality trust fund to be used for conducting and funding air quality research and development projects * * * to assist in implementing the policies and purposes of this chapter." (KRS 77.127).

Certain control measures that may be applied under diverse circumstances, or implemented on a voluntary basis, may not lend themselves to the development and adoption of specific regulations, but will probably require the development of formal implementation and/or reporting procedures. In such instances, Kentucky and the APCDJC may take an active role in promoting the use of such procedures. In addition, it should be noted that this process may be community-based, with local residents and industries taking the lead rather than Kentucky.

Kentucky recognizes that the budgeting of funds for the construction of certain types of vehicles and roadway improvements requires the approval of various state and local transportation agencies. However, since conformity will continue to apply to the Louisville area following redesignation, Kentucky must continue to work with these agencies to ensure that conformity analyses continue to be conducted to ensure that short- and long-term transportation plans provide for emission levels within the MVEBs provided in the SIP. Kentucky also continues to work with these agencies to improve the consultation process by establishing and/or refining further consultation procedures that will facilitate and streamline the process of making future conformity determinations for all areas, including the Louisville area. Overall EPA finds that there is adequate authority to implement within the meaning of 175A(d).

Comment 5D—Need for measures to prevent violation: Both commenters contend that the Kentucky maintenance plan contains inadequate provisions to respond to exceedances, and/or anticipated violations. They contend that Kentucky's maintenance plan is insufficient, as it only commits to evaluate the list of control measures in the event of recorded exceedances or unexpected growth (i.e. greater than 10 percent growth in ozone precursor emissions, based on the periodic inventories). They are concerned that the plan offers no assurance that Kentucky will adopt additional controls to prevent a future violation, even where analyses show that such a violation is likely. The first commenter contends that "the lack of commitment [to ever actually adopt additional controls to address anticipated violations] renders the plan inadequate under the Act and EPA policy. EPA guidance explicitly requires the maintenance plan to 'contain any additional measures as necessary to ensure that the standard will not be violated'." (57 FR 13563). The guidance further requires that "Any future measures must be implemented before any violations might be anticipated, based on tracking of the emission inventory." Id. The state's plan here meets none of these requirements." The second commenter further states that "any exceedances of the 1-hour standard should be considered as violations triggering the implementation of contingency measures."

Response 5D: In the event of a monitored exceedance or if periodic emission inventory updates reveal a greater than 10 percent increase in ozone precursor emissions, the maintenance plan requires Kentucky to initiate a study to determine if additional emission controls are needed to prevent a future 1-hour ozone NAAQS violation. EPA views these commitments to be adequate and enforceable. This approach is consistent with the September 4, 1992, Calcagni memorandum, which states that the maintenance plan should "identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented. The indicators would allow the State to take early action to address potential violations of the NAAQS before they occur." Kentucky's maintenance plan addresses this requirement by identifying two occurrences that trigger a study "to evaluate existing control measures to see if any further emission reduction measures should be implemented at that time." This commitment allows Kentucky to take early action. It does require Kentucky to fully evaluate the current air quality status and control status of the area, and determine if, and what level of, action should be implemented to prevent further air quality deterioration. If Kentucky concludes from this evaluation that a violation is likely, and further controls are needed to avoid such occurrence, the maintenance plan indicates that action will be initiated "at that time." The evaluation, in effect, allows Kentucky to pro-actively identify and implement controls deemed necessary to avoid an actual violation. Should any action taken be insufficient to prevent a violation, Kentucky is clearly aware of their obligation to implement controls within 18 months of that violation. Indiana has made similar commitments to implement controls expeditiously to address ozone exceedances and avoid violations of the 1-hour ozone NAAQS.

Comment 5E—Commitment to implement all existing SIP measures: The first commenter contends that Kentucky's and Indiana's contingency plan does not contain the commitment mandated by the CAA that the state will implement all ozone-control measures in the SIP prior to redesignation (42 U.S.C. 7505a(d)). Regardless of whether the state is currently implementing all required SIP measures, the foregoing commitment is crucial to ensuring that the contingency plan will remain adequate in the future if the state stops implementing pre-redesignation SIP measures. EPA does not have the discretion to approve the maintenance plan without this mandatory commitment.

Response 5E: 42 U.S.C. 7505(d) (section 175A(d)) requires that "[s]uch provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area." There are no unimplemented measures in the Kentucky SIP to which any commitments under section 175A(d) could apply. There is no need for the Commonwealth to commit to further implementation in light of the fact that they are continuing to implement all measures contained in their SIP. Since the section 175A(d) requirement to implement all measures is being satisfied, there is no requirement for an additional commitment.

Kentucky's redesignation request includes the following statement: "The DAQ, APCD, and EPA have instituted programs that will remain enforceable and are hereby submitted as a plan to maintain air quality which meets the 1-hour ozone standard for the Kentucky portion of the Louisville 1-hour ozone attainment area. Sources are prohibited from reducing emissions controls following the redesignation of the area unless such a relaxation is first approved by the EPA as a revision to the Kentucky SIP." This is a clear statement of the requirement that the regulatory programs (adopted by both the Kentucky Division of Air Quality (DAQ), and the APCDJC; as well as, EPA's Federal measures relative to control of ozone levels) which constitute the regulatory scheme for reduction of ozone precursors instituted to attain the 1-hour ozone NAAQS in the Kentucky portion of the Louisville area, having been implemented will remain enforceable. It is clear that Kentucky has stated that it prohibits sources from reducing emission controls after redesignation unless EPA approves any change via a SIP revision. Such a revision would have to meet the requirements of 110(l) which requires that the revision could not interfere with "* * * any applicable requirement concerning attainment * * *" EPA considers that under these circumstances, the requirements of 42 U.S.C. 7505(d) are satisfied.

Similarly, in its maintenance plan, Indiana stated that it intends to maintain its current control measures after redesignation. Indiana has committed that any changes to its rules or emission limits applicable to VOC and/or NOX sources, as required for maintenance of the ozone standard in Clark and Floyd Counties, will be submitted to EPA for approval as a SIP revision. Indiana further stated that through the Indiana Department of Environmental Management's Office of Air Quality and its Office of Enforcement it has the necessary resources to actively enforce any violations of its rules or permit provisions. After redesignation, it intends to continue enforcing all rules that relate to the emissions of ozone precursors in Clark and Floyd counties. Thus Indiana also satisfies the requirements of section 175A(d).

Comment 5F—Adequate demonstration of maintenance: The second commenter voices concern over the accuracy of the Kentucky maintenance plan's demonstration that the area's attainment status will be maintained for at least the next 10 years, "due in large part to the increases in mobile source emissions traceable to both increases in vehicle miles traveled and to lower fuel efficiency among the "SUV" [Sport Utility Vehicles] and light duty truck classes of vehicles that populate Louisville's highways'.

Response 5F: The redesignation request submitted by Kentucky addresses the issue of "SUVs" as follows: "In 2000–2001, responding to advice by EPA, the District undertook to update the fleet characterization data to support redesignation to attainment status. The primary concern was that market research had shown a significant shift from passenger automobiles toward sport utility vehicles (SUVs) over the 1990's decade. It was prudent to reflect the shift toward larger, higher-emitting vehicles in the MOBILE modeling for Jefferson County. In response, the District produced updated tables based on 1999 Vehicle Emission Testing operations data, Federal Highway Administration VMT mix data for Indiana and Kentucky, and draft MOBILE6 mileage accumulation rates. A spreadsheet (RDIST99Q.WK1) was developed to construct the necessary tables from raw data in a transparent manner, and to fill in certain gaps in the data. The spreadsheet reconciled unavailable Heavy Duty Vehicle (HDV) count and usage data with overall VMT mix and reasonable assumptions about local daily VMT. Following local peer review of this spreadsheet, the updated tables were implemented into District MOBILE modeling.

As expected, the net effect of the updated fleet tables was a significant increase in all emission factors over prior estimates. This reflected both the

move toward SUVs and a significantly higher, more accurate estimate of the local contribution of HDVs, particularly interstate transport vehicles."

It is clear from the discussion above that Kentucky and the APCDJC did address the issue of increases in emissions from SUVs and light trucks in the modeling of the mobile source emissions. They found as the commenter had suggested that there was a significant increase in all emission factors over prior estimates. However, the commenter's "concern over the accuracy of the maintenance plan's demonstration that the area's attainment status will be maintained for at least the next ten years' is unfounded. The increased emissions were accounted for and the States have made a commitment to revise the mobile modeling using MOBILE6 when appropriate.

EPA, in proposing to approve Kentucky's and Indiana's requests to redesignate the Louisville area to attainment for the 1-hour ozone NAAQS, required both States to revise their maintenance plans to include an enforceable commitment to revise the MVEBs using MOBILE6 (once it becomes available) and to revise the VOC MVEB so that the area's 2012 projected emissions do not exceed the 1999 attainment year emissions. Both States met these requirements by submitting enforceable commitment to revise the MVEBs using MOBILE6 and a revised MVEB that does not exceed the 1999 attainment year emissions.

Comment 6: One commenter expressed concern over the possible implementation of more restrictions, in reference to the list of contingency measures at 66 FR 33516, on individuals or personal vehicles. This commenter also expressed the opinion that the listed contingency measures were oppressive, "designed to punish an ordinary citizen." In addition, the commenter objects to the statement "Kentucky [also] reserves the right to implement other contingency." (sic) [The complete statement is "Kentucky also reserves the right to implement other contingency measures if new control programs should be developed and deemed more advantageous for the area."] The commenter's objection is on the basis that this is an open ended "political ploy to do something secret that is not on the list." The commenter was concerned that "something secret" might include higher "gas prices." The commenter questioned how the process of instituting contingency measures could be allowed without public involvement and requested that this not be allowed.

Response 6: There are contingency measures listed at 66 FR 33516 which if implemented in the event of a triggering mechanism or violation of the 1-hour ozone NAAQS may impact in some limited manner the operation or use of private vehicles. The implementation of the contingency measures must follow applicable public notice and public hearing procedures during which the public is invited and encouraged to make comments or bring forth information which would influence the decision under consideration. If contingency measures are required to be implemented, they would be for the purpose of protecting the public health and environment of the citizens in the Louisville area and only implemented after following CAA procedures.

Neither the CAA nor the regulatory requirements adopted by the elected officials in the Louisville area are "designed to punish an ordinary citizen." They were and are required by law to be adopted or amended in a public forum requiring public notice and a public hearing process allowing for citizen input. Just as the items on the list of contingency measures have, or will have to, undergo the public adoption process, any "other contingency" measures will also have to meet the same requirements. All regulations adopted for submittal to meet federal requirements and SIP revisions submitted to EPA for approval must contain proof of public notice and a public hearing before they are considered complete. The process for adoption of contingency measures in response to federal requirements must be done in a manner which allows for public participation or they will not be approved at the federal level.

III. What Actions Are We Taking?

We are determining that the Louisville area has attained the 1-hour ozone NAAQS. The Louisville area includes the Kentucky Counties of Bullitt, Jefferson, Oldham; and the Indiana Counties of Clark, and Floyd. On the basis of this determination, EPA is also determining that SIP revisions to address certain requirements of part D of title I of the CAA need not be submitted, since they would no longer be considered applicable requirements under section 107(d)(3)(E) for so long as the area continues to attain the 1-hour ozone NAAQS. These requirements include RFP (see the general requirements of section 172(c)(2) and the more specific requirement of section 182(b)(1) for a plan that reduces VOC emissions by 15 percent), attainment demonstration requirements (see the general requirement of section 172(c)(1)) and the specific requirement of section 182(j) for a multi-state attainment demonstration) and contingency measures (see the general requirement of section 172(c)(9)).

We are approving Kentucky's redesignation request and redesignating the Kentucky portion of the Louisville nonattainment area to attainment for the 1-hour ozone NAAQS. We are also approving as revisions to the Kentucky SIP, the maintenance plan and associated MVEBs for the Kentucky portion of the Louisville nonattainment area that were submitted by Kentucky with its redesignation request. In this final rule, we are notifying the public that we believe the MVEBs for VOC and NO_X in the Kentucky portion of the Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan. We are approving Indiana's redesignation request and redesignating the Indiana portion of the Louisville nonattainment area to attainment for the 1-hour ozone NAAQS. We are also approving as revisions to the Indiana SIP, the maintenance plan and associated MVEBs for the Indiana portion of the Louisville nonattainment area that were submitted by Indiana with its redesignation request. In this final rule, we are notifying the public that we believe the MVEBs for VOC and NO_X in the Indiana portion of the Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan. We are also approving 11 Board Orders to control NO_X emissions consistent with RACT requirements from major NO_X sources in Jefferson County, Kentucky.

Any challenge to EPA's actions regarding the redesignation of one portion of the Louisville area shall not be deemed to affect the validity of the redesignation of the other portion. The Commonwealth of Kentucky and the State of Indiana have satisfied all of the necessary requirements of the CAA relative to these actions.

IV. Why Are We Taking These Actions?

We are making a determination that the area has attained the 1-hour ozone NAAQS. EPA is basing this determination upon three years of complete, quality-assured, ambient air monitoring data for the 1998–2000 ozone seasons that demonstrate that the 1-hour ozone NAAQS has been attained in the entire Louisville area, and preliminary data for the 2001 ozone season that shows continuing attainment. Regarding the need to address the requirements of part D of title I of the CAA, EPA interprets the general provisions of subpart 1 of part D of title I (sections 171 and 172) and the more specific attainment demonstration and related provisions of subpart 2 (section 182) to not require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures for areas where the monitoring data show that the area is attaining the 1-hour ozone NAAQS (See *Sierra Club* vs *EPA, 99 F.3d 1551 (10th Cir. 1996)).* This rationale is described in the May 10, 1995, Seitz memorandum. EPA has previously applied this interpretation in a number of areas, including Salt Lake and Davis Counties, Utah (60 FR 36723, July 18, 1995); Grand Rapids, Michigan (61 FR 31831, June 21, 1996); Cleveland-Akron-Lorrain (61 FR 20458, May 7, 1996); and Cincinnati, Ohio (65 FR 37879, June 19, 2000). All previously-approved SIP revisions are not affected by this action and must continue to be implemented and enforced. This includes Indiana's 15 percent plan approved on May 7, 1997, (62 FR 24815).

We are redesignating the Kentucky and Indiana portions of the Louisville area because the area has attained three years of ambient air quality monitoring data demonstrating that the 1-hour ozone NAAQS has been attained, and both the Kentucky and Indiana portions of the area have satisfied the other criteria for redesignation. We are approving Kentucky's and Indiana's maintenance plans, including the MVEBs, that were submitted with the State's redesignation requests as revisions to the Kentucky and Indiana SIPs, because these plans meet the requirements of section 175A and 107(d). We are also notifying the public that we believe the MVEBs for VOC and NO_X for the Kentucky and Indiana Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plans, because in addition to meeting the requirements of section 175A and 107(d), adequate opportunity for public comment on these MVEBs was provided through the adequacy process (posted April 13, 2001) and in the NPR (66 FR 33505, June 22, 2001). In the NPR, EPA explained that we could not approve the originally-submitted VOC MVEB unless the States revised this MVEB, by adjusting the safety margin, so that the MVEB would not exceed attainment year VOC emissions. The States corrected the VOC MVEB accordingly in July 9, 2001 and August 24, 2001 supplements to their original redesignation requests.

Finally, we are approving 11 Board Orders relating to control of NO_X sources in Jefferson County, Kentucky submitted by Kentucky on November 12, 1999, and May 23, 2001, because they satisfy the NO_X RACT requirements of 182(f) of the CAA.

V. What Are the Effects of These Actions?

These actions determine that the Louisville area has attained the 1-hour ozone NAAQS and that the requirements of sections 172(c)(1) and 182(j) concerning submission of an ozone attainment demonstration, the requirements of sections 172(c)(2) and 182(b)(1) concerning submission of a 15 percent VOC emission reduction plan, and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment are not applicable to the Louisville area. However, all controls previously approved for the area by EPA must continue to be implemented. Kentucky and Indiana must continue to operate an appropriate ozone air quality monitoring network, in accordance with 40 CFR part 58, to verify the ozone attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance.

The redesignation changes the official designation of the Kentucky Counties of Bullitt, Jefferson, Oldham, and the Indiana Counties of Clark, and Floyd from nonattainment to attainment for the 1-hour ozone NAAQS. It also approves as a SIP revision and puts into place plans for maintaining the 1-hour ozone NAAQS for the next 10 years. These maintenance plans include contingency measures to correct any future violations of the 1-hour ozone NAAQS. These maintenance plans establish MVEBs for the Louisville area for the purposes of transportation conformity. These MVEB are now 48.17 tons per summer day VOC and 92.93 tons per summer day NO_X for the year 2012. Finally, this action also approves 11 Board Orders for sources of NO_X in Jefferson County, Kentucky.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This action also redesignates an area to attainment, an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This action also redesignates an area to attainment. The redesignation merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health

Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Additionally, redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *FR*. A major rule cannot take effect until 60 days after it is published in the *FR*. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: October 3, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Dated: October 3, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (x) to read as follows:

§ 52.777 Control strategy: photochemical oxidants (hydrocarbons).

* * * * *

(x) The request submitted by Indiana on April 11, 2001 and supplemented on August 24, 2001, to redesignate the Indiana portion of the Louisville moderate interstate ozone nonattainment area from nonattainment to attainment was approved on October 23, 2001. The motor vehicle emissions budgets for VOC and NO_X in the Indiana portion of the Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan. The 1-hour ozone standard maintenance plan motor vehicle emission budgets for the entire interstate Louisville area for the purposes of transportation conformity are now 48.17 tons per summer day of VOC and 92.93 tons per summer day of NO_X for the year 2012.

Subpart S—Kentucky

3. Section 52.920 is amended:

a. By adding new entries to the end of the table in paragraph (d).

b. By adding a new entry in numerical order to the table in paragraph (e). The additions read as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Federal Register Notice
Board Order American Synthetic Rubber Company.	NO_X RACT Plan 12/20/00.	01/01/01	10/23/01	66 FR 53684
Board Order E. I. du Pont de Nemours & Company.	NO_X RACT Plan 02/21/01.	03/01/01	10/23/01	66 FR 53684
Board Order Ford Louisville Assembly Plant	NO_X RACT Plan 11/08/99.	01/01/00	10/23/01	66 FR 53684
Board Order General Electric Company	NO_X RACT Plan 01/17/01.	03/01/01	10/23/01	66 FR 53684
Board Order Kosmos Cement Company	NO_X RACT Plan 11/15/00.	01/01/01	10/23/01	66 FR 53684
Board Order Louisville Gas and Electric Company, Cane Run Generating Station.	NO_X RACT Plan 10/18/00.	01/01/01	10/23/01	66 FR 53684
Board Order Louisville Gas and Electric Company, Mill Creek Generating Station.	NO_X RACT Plan 10/18/00.	01/01/01	10/23/01	66 FR 53684

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS—Continued

Name of source	Permit number	State effective date	EPA approval date	Federal Register Notice
Board Order Louisville Medical Center Steam Plant.	NO_X RACT Plan 2/21/01.	04/01/01	10/23/01	66 FR 53685
Board Order Oxy Vinyls, LP	NO_X RACT Plan 12/20/00.	01/01/01	10/23/01	66 FR 53685
Board Order Rohm and Haas Company	NO_X RACT Plan 12/20/00.	01/01/01	10/23/01	66 FR 53685
Board Order Texas Gas Transmission	NO_X RACT Plan 11/08/99.	01/01/00	10/23/01	66 FR 53685

(e) * * *

EPA-APPROVED KENTUCKY NONREGULATORY PROVISIONS

Appendix	Title/subject	State effective date	EPA approval date	Federal Register notice
23	Louisville Ozone Maintenance Plan	10/23/01	66 FR 53685	

4. Section 52.930 is amended by adding paragraph (k) to read as follows:

§ 52.930 Control strategy: Ozone.

* * * * *

(k) The redesignation request submitted by the Commonwealth of Kentucky, on March 30, 2001, and supplemented on July 9, 2001, for the Kentucky portion of the Louisville moderate interstate ozone nonattainment area from nonattainment to attainment was approved on October 23, 2001. The motor vehicle emissions budgets for VOC and NO_X in the Kentucky portion of the Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan. The 1-hour ozone standard maintenance plan motor vehicle emission budgets for the entire interstate Louisville area for the purposes of transportation conformity are now 48.17 tons per summer day of VOC and 92.93 tons per summer day of NO_X for the year 2012.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 81.315 is amended by revising the entry for the "Louisville Area" in the Indiana-Ozone (1-Hour Standard) table to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Louisville Area:				
Clark County	10/23/01	Attainment		
Floyd County	10/23/01	Attainment		

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

3. Section 81.318 is amended by revising the entry for the "Louisville Area" in the Kentucky-Ozone (1-Hour Standard) table to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Louisville Area:				
Bullitt County	10/23/01	Attainment		
Jefferson County	10/23/01	Attainment		
Oldham County	10/23/01	Attainment		

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

[FR Doc. 01–25894 Filed 10–22–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–75–1; KY–97–1–200109, FRL–7082–8]

Approval and Promulgation of Implementation Plans Kentucky: Approval of Revisions to Kentucky State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 13, 1999, EPA published a direct final rule approving and an accompanying notice of proposed rulemaking proposing to approve the 15 percent Rate-of-Progress Plan (15 percent plan) for the Louisville moderate 1-hour ozone nonattainment area which was submitted on November 12, 1993, and amended on April 5, 1994, and June 30, 1997. As stated in the **Federal Register** document, if adverse or critical comments were received by October 13, 1999, the effective date would be delayed and timely notice would be published in the **Federal Register**. Due to receipt of adverse comments within the comment period, EPA withdrew the direct final rule on November 3, 1999, in order to address all public comments received.

This action addresses the adverse comments related to the approvability of the emission reduction measures and grants final approval to the rule revisions and the 1990 Base Line Emissions Inventory. No comments were received relating to the 1990 Base Line Emissions inventory.

EFFECTIVE DATE: This rule will be effective November 23, 2001.

ADDRESSES: Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, Division of Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Air Pollution Control District of Jefferson County, 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Scott Martin of the EPA Region 4 staff at (404) 562–9036.
martin.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 13, 1999, EPA published a direct final rule (64 FR 49404) approving and an accompanying notice of proposed rulemaking (64 FR 49425) proposing to approve the 15 percent plan for the Louisville moderate 1-hour ozone nonattainment area which was submitted on November 12, 1993, and amended on April 5, 1994, and June 30, 1997. This submittal was required by Section 182(b)(1)(A) of the Clean Air Act, as amended in 1990 (CAA) in order to demonstrate reasonable further progress (RFP) in attaining the National Ambient Air Quality Standard (NAAQS) for ozone. As stated in the **Federal Register** document, if adverse or critical comments were received by October 13, 1999, the effective date would be delayed and timely notice would be published in the **Federal Register**. Due to receipt of adverse comments within the comment period, EPA withdrew the direct final rule on November 3, 1999, (64 FR 59644) in order to address all public comments received in a subsequent final rule.

In a separate action, EPA is finalizing it's proposal (66 FR 27483) to determine that the Louisville moderate ozone nonattainment area has attained the public health-based 1-hour ozone NAAQS. The Louisville area includes the Kentucky Counties of Jefferson, Bullitt and Oldham and the Indiana Counties of Clark and Floyd. This determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1998 to 2000 ozone seasons that demonstrate that the area has attained the ozone NAAQS. On the basis of this determination, EPA is also determining that State implementation plan (SIP) submissions for certain RFP and attainment demonstration requirements, along with certain other related requirements, of part D of title 1 of the CAA are no longer required for the Louisville area. All previously approved SIP revisions must continue to be implemented and enforced and are not affected by this action.

EPA's final action on the determination of attainment eliminates the need for approval of the 15 percent plan and therefore no further action will be taken on the demonstration that this reduction was achieved. However, the control measures contained in the 15 percent plan have been implemented prior to attainment of the 1-hour ozone NAAQS. This action addresses comments related to the approvability of the control measures and grants final approval to the rule revisions and the 1990 Base Line Emissions Inventory, although no action is taken on the 15 percent demonstration itself since it is no longer required.

II. Analysis of State's Submittal

The comment and response is summarized below:

Comment 1

Regulation 1.18: Rule Effectiveness

Jefferson County is claiming 6.37 tons per day in volatile organic compound (VOC) reductions from its "Rule Effectiveness" program. This program requires sources to develop and implement a "rule effectiveness improvement plan." There is no minimum level of effort or improvement required under the rule, no standard for judging whether a particular plan is adequate or inadequate, and no requirement that the County actually review and approve or disapprove the plan. Nor does the County explain how it developed the 6.37 ton per day estimate of VOC reductions from this program. Further, although the rule requires plans to be implemented by November 15, 1996, there is no evidence in the record that this in fact occurred.

Under these circumstances, the County's Rule Effectiveness program is neither approvable nor creditable. Because the rule does not require any specified level of emission reduction, and the content of each rule effectiveness plan is determined solely by the source, there is no assurance of any emission reductions at all. The Clean Air Act (the Act) and EPA guidance do not allow approval or crediting of undefined, hypothetical SIP measures. EPA can approve and credit only clearly defined, real, permanent, and enforceable measures. 57 FR 13498, 13509 (1992). In fact, EPA guidance explicitly requires that any benefits claimed from rule effectiveness improvement must be documented at a minimum by conducting a post-implementation source specific emissions study. EPA, *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans*, at 45 (EPA–452/R–93–002, March 1993) (hereinafter, "15 percent guidance"). Only where such studies have documented additional emission reductions due to rule effectiveness measures can EPA grant credit for such measures toward the required 15 percent rate of progress. For all the foregoing reasons, the County's rule effectiveness program cannot be credited with any emission reductions.

Response

Regulation 1.18, Rule Effectiveness, states that all sources subject to this regulation shall complete and return, by the date specified, a questionnaire supplied by the District that will determine the current procedures that impact rule effectiveness evaluation, including but not limited to: employee training, maintenance procedures, monitoring procedures, and record keeping methods. Sources were required to submit a detailed rule effectiveness implementation plan to the District. These plans were implemented as expeditiously as practicable but no later than November 15, 1996, as required by the District's rule. The District has submitted the rule effectiveness plans to EPA, and they are available for inspection at the Region 4 offices.

The above referenced EPA guidance states that rule effectiveness improvements must reflect real emissions reductions resulting from specific implementation program improvements. However, the guidance does not require a specified level of emission reductions be established in rule effectiveness improvement plans. Additionally, as stated above, the final action on the determination of attainment for the Louisville area eliminates the need for the approval of the 15 percent plan and the specific level of emission reduction credits. Therefore, EPA is granting approval to Regulation 1.18.

Comment 2

Regulation 6.43: VOC Emission Reduction Requirements

The County claims 3.56 tons per day in reductions from regulation 6.43. During the County's process for adopting this rule, the Commonwealth raised questions about the legality of adopting source specific emission limits by rule. The County responded by offering assurances that it would obtain written commitments from each source not to challenge the legality of the rule on this basis. The record does not indicate whether these written commitments were ever obtained from all affected sources. Given the legal doubts raised by the Commonwealth, EPA cannot credit emission reductions from any source that has not signed such a commitment.

Response

According to the December 13, 1996, Air Pollution Control District Comment and Response Document relating to Regulation 6.43, the following comment was made by Mr. John Hornback, Director, Kentucky Division for Air Quality: "The regulation, as proposed, specifically identifies each company by name and sets the required emission; equipment, and operational requirements for that company. The regulation states that the listed companies have voluntarily agreed to the requirements of the regulation. This regulation, as written, would probably constitute special legislation in violation of Sections 59 and 60 of the Commonwealth's Constitution. The Division recommends that the regulation be rewritten and promulgated without the specific listing of company names and their individual emission reduction limits." The following response was given: "The District disagrees. The District does not believe that this regulation constitutes special legislation. The category of stationary sources to which this regulation applies is all of the stationary sources who volunteered to be regulated pursuant to this regulation. Each stationary source is treated equally in that each is required to meet the requirements for which they have voluntarily agreed. The District will ask the Air Pollution Control Board (Board) to adopt the proposed changes."

The revisions were adopted by the Board on December 18, 1996. Based on responses from the District, and the Board's action, EPA believes that the District has the authority to adopt and implement these regulations without need for additional commitments from regulated entities and that the regulations are therefore creditable as SIP measures. Additionally, as stated above, the final action on the determination of attainment for the Louisville area will eliminate the need for the approval of the 15 percent plan and the specific level of emission reduction credits. Therefore, EPA is granting approval to Regulation 6.43.

Comment 3

Regulation 6.43: VOC Emission Reduction Requirements

Because the emission limits set by rule 6.43 can be met by emissions trading, the reductions claimed from the rule 6.43 are dependent on the adequacy of the County's emissions trading program. Accordingly, we question how EPA can propose to credit all of the claimed reductions from the rule when the County's trading program has not been approved by EPA, and when the Agency has specifically stated that the program does not meet EPA guidance 64 FR 49406.

Response

The June 30, 1997, SIP submittal contains three different versions of Regulation 6.43 adopted September 21, 1994, December 18, 1996, and May 21, 1997. The September 1994 and December 1996 versions contained section 5: Compliance Plan and Schedule. This section did allow the affected sources to meet the emission reduction requirements by utilizing the emissions trading program in Regulation 2.12: Emission Trading. However, the May 1997 version deletes section 5: Compliance Plan and Schedule. Therefore, sources cannot meet the emission reduction requirements through an emissions trading program. Thus, EPA concludes that this regulation is approvable.

Comment 4

Audit Privilege and Immunity Law

EPA seeks to discount the impact of Kentucky's audit privilege and immunity (API) law by asserting that it does not impact on federal enforcement. In order to be approvable, however, the plan must be enforceable by the state as well as the federal government. 42 U.S.C. 7410(a)(2)(A), (C), (E). Among other things, the state must adopt enforceable emission limits, adopt a program for enforcement of the plan, and provide assurances that it will have adequate authority to carry out the plan (and is not prohibited by any provision of state law from doing so). An API law that hampers state and local enforcement is flatly contrary to these requirements of the Act. EPA has previously identified Kentucky's law as an impediment to approval of state programs under the CAA, and must address this matter squarely prior to final approval of the submitted plan. Further, EPA cannot credit any emission reductions claimed under the plan for sources that can evade enforcement action via the state API law.

Response

On December 6, 2000, EPA issued a notice of deficiency (NOD) to Kentucky (65 FR 76230). This NOD was based upon EPA's finding that the Commonwealth's audit privilege and immunity law, KRS 224.01–040, unduly restricted Kentucky's ability to adequately administer and enforce the criminal enforcement, civil penalty and public access provisions of its title V program, which was previously granted interim approval status. In response, the Kentucky General Assembly amended KRS 224.01–040 to address these deficiencies. This amendment was signed by the Governor on March 19, 2001 and became effective on June 16, 2001. EPA reviewed the amendments and concluded that, as of the effective date, all issues identified in the NOD were resolved.

Approval of Supporting Regulations

EPA is granting final approval to the following regulations:

Regulation 1.18 Rule Effectiveness, adopted September 21, 1994.

Regulation 6.40 Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control), amended August 9, 1993.

Regulation 6.43 Volatile Organic Compound Reduction Requirements, adopted May 21, 1997.

Regulation 6.44 Standards of Performance for Existing Commercial Motor Vehicles and Mobile Equipment Refinishing Operations, adopted February 2, 1994.

Regulation 6.45 Standards of Performance for Existing Solid Waste Landfills, adopted February 2, 1994.

Regulation 7.79 Standards of Performance for New Commercial Motor Vehicle and Mobile Equipment Refinishing Operations, adopted February 2, 1994.

Regulation 8.03 Commuter Vehicle Testing Requirements, amended September 15, 1993.

Please see the **Federal Register** document published on September 13, 1999, (64 FR 49404) for further discussion of the rule revisions.

Withdrawn Regulations

Regulation 1.16 Standards for Volatile Organic Compound Content of Architectural and Industrial Maintenance Coatings and Modification of Alternate Fuels Vehicle Conversion Program was withdrawn on February 25, 2000.

Regulation 2.12 Emissions Trading (including Banking and Bubble Rules) was withdrawn on May 10, 2001.

1990 Base Line Emissions Inventory

In this action, the EPA is approving the 1990 base line emissions inventory for the Louisville area. Detailed information on the emissions calculations can be obtained at the Region 4 office. The following table is a summary of the base line emissions inventory.

LOUISVILLE 1990 BASE LINE EMISSIONS INVENTORY

[tons/day]

Source type	VOC	NO_x	CO
Point	83.75	147.87	10.14
Area	38.69	4.5	28.04
Mobile	92.81	40.49	541.22
Nonroad	12.68	16.58	54.61
Biogenic	20.9	N/A	N/A
Total	248.83	209.44	634.01

The EPA is approving this inventory as satisfying the requirements of section 182(a)(1) of the CAA.

III. Final Action

EPA is granting final approval of the Louisville 1990 Base Line Emissions Inventory and the aforementioned rule revisions because they are consistent with the requirements of the CAA and EPA policy.

Also included in this submittal were revisions to Regulation 1.02 Definitions; Regulation 1.04 Performance Tests; Regulation 1.06 Source Self Monitoring and Reporting; Regulation 1.07 Emissions During Shutdowns, Malfunctions, and Emergencies; Regulation 1.08 Administrative Procedures; Regulation 2.02 Air Pollution Regulation; Regulation 2.03 Permit Requirements—Non-Title V Operating Permits and Construction/Demolition Permits; Regulation 2.07 Public Notification; Regulation 2.08 Emission Fees, Permit Fees, and Permit Renewal Procedures; Regulation 5.14 Hazardous Air Pollutants; and Regulation 6.42 VOC and nitrogen oxide reasonably available control technology (NO_x RACT). Action on these regulations will be taken in a separate notice.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 3, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. Section 52.920 is amended by revising the entry for 8.03 and by adding new entries in numerical order to the last table in paragraph (c) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
Reg 1 General Administrative Procedures				
1.18	Rule Effectiveness	11/23/01	66 FR 53689	9/21/94
Reg 6 Standards of Performance for Existing Affected Facilities				
6.43	Volatile Organic Compound Reduction Requirements	11/23/01	66 FR 53689	5/21/97
6.45	Standards of Performance for Existing Solid Waste Landfills	11/23/01	66 FR 53689	2/2/94

EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
	• • •	•	•	
	Reg 7 Standards of Performance for New Affected Facilities			
	• • •	•	•	
7.79	Standards of Performance for New Commercial Motor Vehicles and Mobile Equipment Refinishing Operations.	11/23/01	66 FR 53690	2/2/94
	• • •	•	•	
	Reg 8 Mobile Source Emission Control			
	• • •	•	•	
Requirements 8.03.	Commuter Vehicle Testing	11/23/01	66 FR 53690	2/2/94
	• • •	•	•	

* * * * *

[FR Doc. 01–25895 Filed 10–22–01; 8:45 am]

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Federal Register

Tuesday,
October 23, 2001

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Proposed Plan for Fiscal Year 2002; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1337]

Proposed Plan for Fiscal Year 2002

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of Proposed Program Plan for fiscal year 2002.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this notice of its Proposed Plan for fiscal year (FY) 2002.

DATES: Comments must be received on or before December 7, 2001.

ADDRESSES: Comments may be mailed to Terrence S. Donauhue, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531. In the lower left hand corner of the envelope clearly write, "Proposed Program Plan Comments."

FOR FURTHER INFORMATION CONTACT: The Office of Juvenile Justice and Delinquency Prevention at 202–307–5911. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. Pursuant to the provisions of Section 204 (b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. § 5601 *et seq.* (JJDP Act), the Acting Administrator of OJJDP is publishing for public comment a Proposed Plan describing the program activities that OJJDP proposes to carry out during fiscal year (FY) 2002 under Parts C and D of Title II of the JJDP Act, codified at 42 U.S.C. § 5651–5665a, 5667, 5667a. Taking into consideration comments received on this Proposed Plan, the Acting Administrator will develop and publish OJJDP's Final Plan describing the particular program activities that OJJDP intends to fund during FY 2002, using in whole or in part funds appropriated under Parts C and D of Title II of the JJDP Act.

OJJDP acknowledges that at this time its FY 2002 appropriation is not yet final. Depending on the final appropriation, OJJDP may alter how its programs are structured and will make any necessary modifications to this Proposed Program Plan when it is published in final form following the public comment period. The proposals presented here represent OJJDP's current thinking and initial priorities for this fiscal year. These priorities also reflect feedback from OJJDP's ongoing outreach to the field asking for ideas on priority areas and the most promising types of programs for those areas.

Notice of the official solicitation of grant or cooperative agreement applications for competitive programs to be funded under the Final Plan will be published at a later date in the **Federal Register**. No proposals, concept papers, or other forms of application should be submitted at this time.

Background

In 1974, the JJDP Act established OJJDP as the Federal agency responsible for providing national leadership, coordination, and resources to develop and implement effective methods to prevent and reduce juvenile delinquency and improve the quality of juvenile justice in the United States. OJJDP performs its role of national leadership in juvenile justice and delinquency prevention through a cycle of activities. These include the following:

- Collecting data and statistics to determine the extent and nature of issues affecting juveniles.
- Supporting research studies that can lead to program demonstrations; testing and evaluating demonstration projects; and sharing lessons learned from the field with practitioners through a range of information dissemination vehicles.
- Providing seed money to States and local governments through formula and block grants to implement programs, projects, or reform efforts.
- Providing training and technical assistance to assist States and local governments to implement programs effectively and to maintain the integrity of model programs as they are being replicated.

OJJDP administers State Formula Grants under Part B of Title II, State Challenge Grants under Part E of Title II, and Community Prevention Grants under Title V of the JJDP Act to assist States and territories to fund a range of delinquency prevention, control, and juvenile justice system improvement activities. OJJDP provides support activities for these programs under statutory set-asides that are used to provide related research, evaluation, statistics, demonstration, and training and technical assistance services.

Under Part C of Title II of the JJDP Act, OJJDP funds Special Emphasis programs and—through its National Institute for Juvenile Justice and Delinquency Prevention—numerous research, evaluation, statistics, demonstration, training and technical assistance, and information dissemination activities. OJJDP funds school- and community-based gang prevention, intervention, and suppression programs under Part D and funds mentoring programs under Part G of Title II of the JJDP Act. OJJDP also coordinates Federal activities related to juvenile justice and delinquency prevention through the Concentration of Federal Efforts Program and serves as the staff agency for the Coordinating Council on Juvenile Justice and Delinquency Prevention. Both of these activities are authorized in Part A of Title II of the JJDP Act. Under Title IV, OJJDP administers the Missing and Exploited Children's Program.

Other programs administered by OJJDP include the following:

- Drug Prevention Program.
- Enforcing Underage Drinking Laws Program.
- Safe Schools Initiative.
- Tribal Youth Program.
- Safe Start: Children Exposed to Violence Initiative.
- Juvenile Accountability Incentive Block Grants program.
- Programs under the Victims of Child Abuse Act of 1990, as amended, 42 U.S.C. 13001 *et seq.*

In this Proposed Plan, OJJDP provides a brief overview of its FY 2002 program priorities. The plan also describes projects that may receive funding under Part C (National Programs) and Part D (Gang-Free Schools and Communities; Community-Based Gang Intervention) of Title II of the JuvenileJustice and Delinquency Prevention Act. The described projects are those that may receive Part C or Part D FY 2002 continuation funding under project period or discretionary continuation assistance awards. In addition to this plan, OJJDP intends to publish *An Overview of OJJDP's FY 2002 Program Plan*, which will summarize proposed activities to be supported under OJJDP's other funding streams. Readers can order a copy of the publication from OJJDP's Juvenile Justice Clearinghouse via the Web (http://puborder.ncjrs.org/Content/search.asp) or by calling 800–638–8736 (choose option 2 to speak to a specialist or choose option 1 to have a copy faxed to you). OJJDP's Web site (www.ojjdp.ncjrs.org) lists all OJJDP grants and funding opportunities.

Fiscal Year 2002 Program Planning Activities

The OJJDP program planning process for FY 2002 is being coordinated with the Assistant Attorney General, Office of Justice Programs, and all OJP components. The program planning process involves the following steps:

- Internal review of existing programs by OJJDP staff.
- Internal review of proposed programs by OJP bureaus and Department of Justice components.
- Review of information and data from OJJDP grantees and contractors.
- Review of information contained in State comprehensive plans.
- Review of comments from youth service providers, juvenile justice practitioners, and researchers who provide input in proposed new program areas.
- Consideration of suggestions made by juvenile justice policymakers concerning State and local needs.
- Consideration of all comments received during the period of public comment on this Proposed Comprehensive Plan.

FY 2002 Program Priorities

During FY 2002, OJJDP will focus its efforts on programs that help prevent or intervene in delinquent behavior by funding activities that provide youth with the skills and values necessary to make choices that lead to positive outcomes. OJJDP also will focus on programs that hold youth accountable for their delinquent actions and on initiatives that prepare serious and violent juvenile offenders to successfully return home to their communities after they leave correctional institutions and training schools.

OJJDP program priorities in FY 2002 will encompass the following five broad areas:

- Capacity building in community- and faith-based organizations.
- Youth reentry programs.
- Juvenile drug use prevention programs.
- Juvenile gun violence prevention programs.
- School violence prevention programs.

OJJDP will design a new discretionary Community Initiative to mobilize and maximize the resources of community- and faith-based organizations and build their capacity to address the needs of at-risk and delinquent youth through prevention, intervention, and treatment services. The initiative will support community-based organizations, including those that are faith-based, in applying for and implementing Federal, State, and local programs. These services could include mentoring at-risk youth and children of prisoners, providing shelter for abused and neglected children, and sponsoring afterschool programs. OJJDP also hopes to assist community- and faith-based organizations in establishing partnerships with Federal, State, and local justice and social service agencies and to encourage their cooperation, sharing of resources, and expansion of efforts within States. In addition, OJJDP encourages community- and faith-based organizations to apply for Juvenile Mentoring Program grants funded under Part G of Title II of the JJDP Act.

A new Youth Reentry Initiative will address issues related to three target populations: Serious youthful offenders (ages 14–18), Native American youth, and juvenile sex offenders. OJJDP will develop and provide information resources and training and technical assistance to help communities design programs, based on promising and best practices, that will help serious juvenile offenders when they return home to their communities after leaving State training or correctional facilities. These reentry programs will direct resources at housing, substance abuse and mental health intervention and treatment, education, and employment, and will assist these youth in establishing support systems integral to their ultimate success in remaining crime- and drug-free.

Recognizing the importance of breaking the cycle of juvenile drug abuse and the serious delinquent behavior which often results, OJJDP will develop a demonstration program to help communities select and replicate promising and model drug prevention programs. The initiative also will include a national evaluation.

During FY 2002, OJJDP will consider developing or enhancing existing programs that address juvenile gun violence policies that deter juveniles from purchasing or carrying guns and encourage stricter enforcement of existing gun laws. OJJDP plans to fund programs that help prevent school violence by stressing zero tolerance of seriously disruptive students and tougher penalties for youth who bring guns to school.

Primary Program Goals

In addition to the above priorities, the discretionary programs OJJDP administers under Parts C and D of Title II typically address one or more of the four goals that OJJDP has identified as necessary to ensure public safety and security while establishing effective juvenile justice and delinquency prevention programs. Achieving these goals, which are discussed below, is vital to protecting the long-term safety of the public from juvenile delinquency and violence.

- OJJDP promotes *delinquency prevention and early intervention* efforts that reduce the flow of juvenile offenders into the juvenile justice system, the numbers of serious and violent offenders, and the development of chronic delinquent careers. While removing serious and violent juvenile offenders from the street serves to protect the public, long-term solutions lie primarily in taking aggressive steps to stop delinquency before it starts or becomes a pattern of behavior.
- OJJDP seeks to *improve the juvenile justice system* and the response of the system to juvenile delinquents, status offenders, and dependent, neglected, and abused children.
- OJJDP supports efforts in the area of *corrections, detention, and community- and faith-based alternatives* to preserve the public safety in a manner that serves the appropriate development and best use of secure detention and corrections options, while at the same time fostering the use of community-based programs for juvenile offenders.
- OJJDP seeks to *support law enforcement, public safety, and other justice agency efforts* to prevent juvenile delinquency, intervene in the development of chronic delinquent careers, and collaborate with the juvenile justice system to meet the needs of dependent, neglected, and abused children.

Fiscal Year 2002 Programs

OJJDP has organized its proposed programs under four broad categories that reflect these four program goals. These categories are Public Safety and Law Enforcement, Delinquency Prevention and Intervention, Strengthening the Juvenile Justice System, and Child Abuse and Neglect and Dependency Cases. A fifth category (Overarching) contains programs with significant elements common to more than one of the other four categories. The programs that OJJDP may support in FY 2002 with Parts C and D funds (based on funding availability, grantee performance, and other factors) are listed alphabetically and summarized below.

As part of the appropriations process, Congress is likely to identify a number of programs for funding consideration with regard to the grantee(s), the amount of funds, or both. These programs will be listed in the Final Program Plan.

Continuation Discretionary Grants

The continuation projects listed in this proposed program plan are those currently funded in whole or in part with Part C and Part D funds and eligible for continuation funding in FY 2002, either as part of an existing project period or through an extension for an additional project or budget period. A

grantee's eligibility for continued funding for an additional budget period within an existing project period depends on the grantee's compliance with funding eligibility requirements and achievement of the prior year's objectives. The amount of award is based on prior projections, demonstrated need, and the availability of funds.

OJJDP will base consideration for continuation funding for an additional project period for previously funded discretionary grant programs on several factors, including the following:

- The extent to which the project meets the applicable requirements of the JJDP Act.
- Responsiveness to OJJDP and Department of Justice FY 2002 program priorities and goals.
- Compliance with performance requirements of prior grant years.
- Compliance with fiscal and regulatory requirements.
- Compliance with any special conditions of the award.
- Availability of funds (based on appropriations and program priority determinations).

In accordance with section 262 (d)(1)(B) of the JJDP Act, as amended, 42 U.S.C. 5665a, the competitive process for the award of Part C funds is not required if the (Acting) Administrator makes a written determination waiving the competitive process:

1. With respect to programs to be carried out in areas with respect to which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act codified at 42 U.S.C. 5121 *et seq.* that a major disaster or emergency exists, or

2. With respect to a particular program described in Part C that is uniquely qualified.

Fiscal Year 2002 Program Listing

Overarching

American Statistical Association Crime and Justice Committee Coalition for Juvenile Justice
Insular Area Support
Juvenile Justice Clearinghouse
Juvenile Justice Telecommunications Assistance Project
National Reporting System for Formula Grants Program
National Resource Center for Safe Schools
National Training and Technical Assistance Center
OJJDP Management Evaluation Contract
OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center
Program of Research on the Causes and Correlates of Delinquency
Technical Assistance for State Legislatures
Understanding and Monitoring the "Whys" Behind Juvenile Crime Trends

Public Safety and Law Enforcement

Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program
Evaluation of the Comprehensive Gang Model: An Enhanced School Approach
Evaluation of the Rural Gang Initiative
Gang-Free Schools and Communities Initiative
Gang Prevention Through Targeted Outreach (Boys & Girls Clubs)
Law Enforcement Training and Technical Assistance Program
National Youth Gang Center
Rural Gang Initiative Demonstration Sites
Technical Assistance to the Gang-Free Schools and Communities Initiative

Delinquency Prevention and Intervention

Assessing Alcohol, Drug, and Mental Disorders Among Juvenile Detainees
Comprehensive Children and Families Mental Health Training and Technical Assistance
Evaluation of the Truancy Reduction Demonstration Program
Integrated Information Sharing To Prevent Juvenile Delinquency: A Training and Technical Assistance Approach
Intergenerational Transmission of Antisocial Behavior
Investing in Youth for a Safer Future
Juvenile Defender Training, Technical Assistance, and Resource Center
Multisite, Multimodal Treatment Study of Children With Attention Deficit/Hyperactivity Disorder
National Center for Conflict Resolution Education
National Youth Court Center
Pathways to Desistance: A Prospective Study of Serious Adolescent Offenders
Race Against Drugs/Stay on Track Curriculum Evaluation
Technical Assistance for the Title V Community Prevention Programs
Truancy Reduction Demonstration Program
Violence Intervention and Prevention Protocol

Strengthening the Juvenile Justice System

Accountability-Based Training for Staff in Juvenile Confinement Facilities
Balanced and Restorative Justice
Building Blocks for Youth
Census of Juveniles in Residential Placement
Center for Students With Disabilities in the Juvenile Justice System
Connecticut/Cook County (IL) Girls Collaborative
Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders
Evaluation of Teen Courts
Girls Study Group Project
Improving Juvenile Sanctioning: An Intensive Training and Technical Assistance Delivery Program
Intensive Community-Based Juvenile Aftercare Dissemination and Technical Assistance Program
James E. Gould Memorial Program for Training and Technical Assistance for Juvenile Corrections and Detention
Juvenile Justice Prosecution Unit
Juvenile Residential Facility Census
Longitudinal Study To Examine the Development of Conduct Disorder in Girls
Meta-Analysis Project
National Census and Survey of Juvenile Probation
National Evaluation of the Performance-based Standards Project
National Juvenile Justice Data Analysis Project
National Juvenile Justice Program Directory
National Juvenile Sex Offenders Training Project
National Longitudinal Survey of Youth
National Training and Technical Assistance for Effective Juvenile Detention and Corrections Practices
Performance-based Standards Project
Survey of Youth in Residential Placement
Systems Improvement Training and Technical Assistance
Training Programs for Juvenile Justice Professionals in Corrections and Detention
Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement

Child Abuse and Neglect and Dependency Courts

Evaluation of the Parents Anonymous® Program
National Evaluation of the Safe Kids/Safe Streets Program
Research on Child Neglect
Safe Kids/Safe Streets: Community Approaches To Reducing Abuse and Neglect and Preventing Delinquency

Overarching

American Statistical Association Crime and Justice Committee

In 2001, OJJDP, through an intra-agency agreement with the Bureau of Justice Statistics (BJS), began funding the American Statistical Association (ASA) Committee on Crime and Justice Statistics to support the committee's work and to sponsor a methodology and statistics grant program. ASA-sponsored grants and activities seek to improve the quality and utility of juvenile-related Federal Bureau of Investigation (FBI) data, in particular county-level arrest and homicide data. A specific research agenda for these funds will be developed jointly by OJJDP, BJS, the FBI, and the ASA Law and Justice Statistics Committee. This joint OJJDP and BJS activity should improve the processing of these files and make the two offices' public presentation of the final data more consistent. Funds in FY 2002 would support the further development of the research agenda and the continued improvement of the juvenile justice data.

This project would be implemented by the current grantee, the American Statistical Association. No additional applications would be solicited in FY 2002.

Coalition for Juvenile Justice

This project supports the Coalition for Juvenile Justice, an organization composed of member representatives of State Advisory Groups appointed by State Governors under section 223(a)(3) of the JJDP Act to establish policies and priorities for the Formula Grants program. Pursuant to statutory requirements, the Coalition will conduct an annual conference of member representatives; disseminate information on data, standards, advanced techniques, and program models developed and funded by OJJDP; offer training on how to work with the media on juvenile justice issues; and review Federal policies regarding juvenile justice and delinquency prevention. The Coalition also advises the OJJDP Administrator with respect to the work of OJJDP and advises the President and Congress with regard to State perspectives on the operation of OJJDP and on Federal legislation pertaining to juvenile justice and delinquency prevention.

This project would be implemented by the current grantee, the Coalition for Juvenile Justice. No additional applications would be solicited in FY 2002.

Insular Area Support

The purpose of this statutorily required program is to provide support to the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Funds are available to address the special needs and problems of juvenile delinquency in these insular areas, as specified by section 261(e) of the JJDP Act of 1974, as amended, 42 U.S.C. 5665(e).

Juvenile Justice Clearinghouse

A component of the National Criminal Justice Reference Service (NCJRS), the Juvenile Justice Clearinghouse (JJC) collects, synthesizes, and disseminates information on all aspects of juvenile justice. OJJDP established the Clearinghouse in 1979 to serve the information needs of the juvenile justice community, policymakers, the media, and the public. JJC offers toll-free telephone access to information; prepares specialized responses to information requests; produces, warehouses, and distributes OJJDP publications; exhibits at national conferences; maintains a comprehensive juvenile justice library and database; and operates several electronic information resources, including OJJDP's Web site. NCJRS is administered by the National Institute of Justice (NIJ) under a competitively awarded contract to Aspen Systems Corporation. FY 2002 is the fourth year of a 4-year project period.

This project will be implemented by the current contractor, Aspen Systems Corporation. No additional applications will be solicited in FY 2002.

Juvenile Justice Telecommunications Assistance Project

The Juvenile Justice Telecommunications Assistance Project (JJTAP) has been funded by OJJDP since 1995. The grantee, Eastern Kentucky University (EKU), provides OJJDP with the technical expertise and necessary equipment to conduct national satellite videoconferences and technical assistance for training and information dissemination purposes. Through the use of live videoconferences and Internet technology, OJJDP has reached thousands of juvenile justice professionals simultaneously to inform the field of the latest developments in research, best practices, and promising programs in an expeditious and relatively inexpensive manner. These videoconferences are designed to address specific issues and allow interaction between experts and the viewing audience during call-in segments.

In addition to satellite technology, this project has used the Internet since 1999 to reach an even greater audience. Five of the videoconferences have been Webcast live on the Internet, and all past videoconferences are available for viewing, in their entirety, on the project's Web site archive. Written materials accompanying each broadcast are sent to each downlink site and are available to anyone to download from the Internet. Videotapes and associated written materials for all past videoconferences are available for purchase through the Juvenile Justice Clearinghouse. JJTAP has provided technical assistance on satellite videoconferencing to a large number of organizations and has published the *Satellite Teleconferencing Resource Manual*, a resource document for agencies interested in delivering training via satellite.

In FY 2002, all videoconferences will be available via satellite and the Internet. Four new videoconferences will be developed and marketed through the National Criminal Justice Reference Service. EKU also will continue providing limited technical assistance in the use of telecommunications technology to other juvenile justice agencies.

This project would be implemented by the current grantee, Eastern Kentucky University. No additional applications would be solicited in FY 2002.

National Reporting System for Formula Grants Program

The National Reporting System will allow OJJDP to continue assisting States in reporting program information as required for participation in the Title II, Part B State Formula Grants Program. Under this project, States gain the capacity to efficiently submit program information to OJJDP. In this second year of the cooperative agreement, a new data collection tool will be piloted and subsequently refined. The data obtained using this new collection tool will be analyzed and disseminated to provide a national picture of juvenile justice programming.

This project will be implemented by the current grantee, the Justice Research and Statistics Association. No additional applications will be solicited in FY 2002.

National Resource Center for Safe Schools

OJJDP established the National Resource Center for Safe Schools (NRCSS) in 1998 by funding, along with the U.S. Department of Education's Safe and Drug-Free Schools Program, the Northwest Regional Educational Laboratory (NWREL) to provide intensive training, technical assistance, and data collection to strengthen statewide and local safe school initiatives. The mission of NRCSS is to implement a training and technical assistance program that helps schools

and communities create and maintain safe learning environments that are free of crime and violence. NRCSS's approach assumes that the development of a safe school environment cannot be isolated from an overall school improvement plan that includes community services agencies. This approach provides safe schools programs with a solid foundation that embraces diversity, builds resiliency, and provides educational programming, such as anger management, peer mediation, and conflict resolution (however, such programming is not appropriate in cases involving dating violence or sexual harassment).

NRCSS's accomplishments to date include developing a database and services to support crisis response referrals; holding 3 advisory committee meetings; publishing 8 newsletters, 12 fact sheets, and 1 case study; establishing a training and technical assistance calendar, a pool of providers, and a toll-free phone number; and developing a training curriculum protocol and a curriculum manual for the project.

In FY 2002, NRCSS will identify and focus on the 10 areas of concern that are most important to creating safer schools. NRCSS will take a consolidated approach to these 10 areas of concern and will support schools in their efforts to implement other effective OJJDP initiatives such as mentoring, youth courts, bullying, and conflict resolution.

This project would be implemented by the current grantee, the Northwest Regional Educational Laboratory. No additional applications would be solicited in FY 2002.

National Training and Technical Assistance Center

The National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center (NTTAC) was established in FY 1995 under a competitive 3-year project period award. In FY 2000, a competitive 1-year contract was awarded to Caliber Associates to continue implementation of the Center; a second contract was awarded to Caliber through a competitive process in FY 2001. Renewal of this contract for project implementation is anticipated annually over a 3-year period, based on availability of funds and satisfactory performance.

NTTAC serves as a national training and technical assistance repository, inventorying and coordinating the integrated delivery of juvenile justice training and technical assistance resources and establishing a database of these resources. Past NTTAC activities included convening the first in a series of annual OJJDP training and technical assistance grantee-contractor meetings, finalizing the jurisdictional team training and technical assistance packages on critical needs in the juvenile justice system, developing a bimonthly newsletter (NTTAC News), and responding to training and technical assistance requests from the field.

NTTAC also brokered more than 500 training and technical assistance requests in FY 2001 and revamped its marketing and outreach strategy to include a redesign of its marketing materials, indicating "a family-of-products" look. NTTAC expanded and enhanced its Web site, increasing its usership by approximately 40 percent. In addition, NTTAC developed the OJJDP Core Performance Standards, which serve as minimum expectations for training and technical assistance providers in the planning, delivery, and evaluation of their services.

During FY 2002, NTTAC will disseminate the Core Performance Standards and a toolkit series of fact sheets and bulletins to facilitate the implementation of the Standards. The NTTAC will continue to develop an Information Resource Management System (IRMS). NTTAC will complete development of its training and technical assistance product and curriculum review process and will endeavor to complete the Office of Management and Budget clearance process for its User Feedback Form. The Center will also provide assistance to State juvenile corrections training academies in facilitating the reoccurring revisions and updates of basic job descriptions and will serve as a repository of training materials developed by juvenile corrections training academies.

This project will be implemented by the current grantee, Caliber Associates. No additional applications will be solicited in FY 2002.

OJJDP Management Evaluation Contract

This contract was competitively awarded in FY 1999 to Caliber Associates for a period of 4 years to provide OJJDP with an expert resource to perform independent program evaluations and assist in implementing evaluation activities. The contractor provides assistance to OJJDP staff in determining the evaluation needs of programs and develops evaluation designs that OJJDP can use in defining the requirements for a grant or contract to implement the evaluation. Caliber is currently conducting two full-scale program evaluations for OJJDP. One is a national evaluation to examine the viability and effectiveness of Title V-Community Prevention Grants for Local Delinquency Prevention Programs. The contractor also is completing a process evaluation of the implementation of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. The contractor also may provide training to OJJDP program managers and other staff on evaluation-related topics.

This contract will be implemented by the current contractor, Caliber Associates. No additional applications will be solicited in FY 2002.

OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center

The Juvenile Justice Resource Center (JJRC) provides technical assistance and support to OJJDP, its grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention in the areas of program development, evaluation, training, and research. With assistance from expert consultants, JJRC coordinates the peer review process for OJJDP grant applications and grantee reports, conducts research and prepares reports on current juvenile justice issues, plans meetings and conferences, and provides administrative support to various Federal councils and boards. FY 2002 is the fourth year of a 4-year project period.

This project will be implemented by the current contractor, Aspen Systems Corporation. No additional applications will be solicited in FY 2002. Since this is the final year of funding, a new solicitation will be issued and a contract awarded through a competitive contract action so there will not be a break in services.

Program of Research on the Causes and Correlates of Delinquency

Since 1986, this longitudinal study has addressed a variety of issues related to juvenile violence and delinquency and has produced a massive amount of information on the causes and correlates of delinquent behavior. Three project sites participate: The Institute of Behavioral Science, University of Colorado at Boulder; the Western Psychiatric Institute and Clinic, University of Pittsburgh; and Hindelang Criminal Justice Research Center, University at Albany, State University of New York. These projects are designed to improve the understanding of serious juvenile delinquency, violence, and drug use by examining how youth develop within the context of family, school, peers, and community. The three sites engage in both collaborative and site-specific research. The three research teams worked together to ensure that certain core measures were identical across the sites. This strengthens the findings from these projects by allowing for replications of findings in individual sites and enabling cross-site analyses.

In the upcoming year, the Causes and Correlates projects will continue collaborative and site-specific analyses of the data. Future reports will address such topics as mental health problems and interventions, gangs, and the transition from school to work. In addition, researchers at the three sites will provide greater access to the study data. Confidentiality concerns prohibit the release of the data sets to the general public. However, OJJDP and the researchers have been exploring alternative methods of making the data more accessible to other researchers, the most promising being a remote access system. Plans for the next year include developing and testing a remote access system at one of the sites.

This program would be implemented by the current grantees, The Institute of Behavioral Science, University of Colorado at Boulder; The Western Psychiatric Institute and Clinic, University of Pittsburgh; and Hindelang Criminal Justice Research Center, University at Albany, State University of New York. No additional applications would be solicited in FY 2002.

Technical Assistance for State Legislatures

The Technical Assistance for State Legislatures project was established in FY 1995, when OJJDP awarded funds to the National Conference of State Legislators (NCSL) to provide juvenile justice information on recent research, legislation, reform options, and innovative program models and provide customized technical assistance for State legislatures. NCSL also aids State legislators in the improvement of State juvenile justice systems by exploring causes and crafting comprehensive responses to youth crime and violence. The NCSL project provides State legislatures with extensive consultation and technical assistance on key juvenile justice reform issues.

The project's accomplishments since FY 1995 include provision of onsite assistance by NCSL on 25 occasions to 14 State legislatures, with 4 occurring in FY 2001. Technical assistance is being planned in Louisiana and is ongoing in Vermont and Wyoming. The project has produced a 38-minute audiotape based on *Comprehensive Juvenile Justice: A Legislator's Guide* and distributed 600 copies of the tape to new lawmakers. Eleven lawmakers from five States (Hawaii, Kansas, Michigan, Mississippi, and Texas) participated in two juvenile justice study tours to learn how communities planned and implemented OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.

During FY 2001, NCSL information services responded to 1,500 information requests. The grant has improved capacity for delivery of information services to State legislatures. The project also supports increased communication between State legislators and other State and local leaders who make decisions about juvenile justice issues.

In FY 2002, the Technical Assistance for State Legislatures project will continue to provide technical assistance to State legislatures; hold an invitational "Leadership Forum" on comprehensive juvenile justice in January 2002; and develop, prepare, and distribute publications to highlight current trends, juvenile justice approaches, and issues in the States. Two topics will be researched, prepared, and distributed as part of the NCSL LegisBriefs (fact sheets) series. Research/information clearinghouse activities will continue to inform State legislatures on juvenile justice issues, enactments, and research.

This project would be implemented by the current grantee, the National Conference of State Legislators. No additional applications would be solicited in FY 2002.

Understanding and Monitoring the "Whys" Behind Juvenile Crime Trends

The purpose of this research project is to identify and understand the principal reasons behind the trends in juvenile crime and violence. As national rates of youth violence have dropped substantially in recent years, a number of theories have been advanced to explain this trend. However, the lack of empirical evidence to fully support various theories enables proponents of vastly different policy orientations to claim victory for the recent declines and continue to assert their policy objectives. Not all localities experienced the same trends in juvenile violent crime during either the increases in the late 1980s or the subsequent declines that began in the early 1990s, and there is considerable variation in local juvenile crime rates across the country. In FY 2001, under a competitive award, the University of Pennsylvania's Jerry Lee Center on Criminology began a 5-year study to address these issues. The Center recruited six "developmental sites" and produced a report addressing the trends, theories discarded and remaining, feasibility of testing these theories, and limitations of various designs. In FY 2002, the University of Pennsylvania will begin testing these theories and will issue additional reports on the onsite testing process, experience, and feasibility.

This program will be implemented by the current grantee, the University of Pennsylvania. No additional applications will be solicited in FY 2002.

Public Safety and Law Enforcement

Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program

OJJDP proposes to continue funding this evaluation in FY 2002. Under a competitive cooperative agreement awarded in FY 1995, the evaluation grantee helped the five program sites (Bloomington, IL; Mesa, AZ; Riverside, CA; San Antonio, TX; and Tucson, AZ) establish realistic and measurable objectives, document program implementation, and measure the impact of this comprehensive approach. The grantee has trained the local site interviewers and also provided interim feedback to the program implementors. The grantee would continue to analyze data required to evaluate the program, monitor and oversee the quality control of data, and prepare final reports for the full evaluation.

This project would be implemented by the current grantee, the University of Chicago, School of Social Service Administration. No additional applications would be solicited in FY 2002.

Evaluation of the Comprehensive Gang Model: An Enhanced School Approach

This initiative is a continuation of ongoing efforts to test OJJDP's Comprehensive Gang Model. In FY 2000, four sites were competitively selected to conduct comprehensive assessments of their local gang problem and develop programs to implement the Comprehensive Gang Model. Program designs will be communitywide but will emphasize school-based responses. The four sites are Dade County, FL; East Cleveland, OH; Houston, TX; and Pittsburgh, PA. The evaluation grantee, COSMOS Inc., is conducting case studies to document and analyze the four sites' 1-year community assessment and program planning efforts. COSMOS is also developing an outcome evaluation design for the sites that would be funded to implement the model.

This program would be implemented by the current grantee, COSMOS Inc. No

additional applications would be solicited in FY 2002.

Evaluation of the Rural Gang Initiative

This initiative is a continuation of ongoing efforts to test OJJDP's Comprehensive Gang Model. In FY 1999, four competitively selected rural sites (Elk City, OK; Glenn County, CA; Longview, WA; and Mt. Vernon, IL) conducted comprehensive assessments of their local gang problems and developed program designs to implement the Comprehensive Gang Model. The evaluation grantee, the National Council on Crime and Delinquency (NCCD), has conducted case studies to document and analyze the 1-year community assessment and program planning efforts in all four sites. NCCD has developed and is conducting an outcome evaluation design for the sites that are being funded to implement the model: Glenn County, CA, and Mt. Vernon, IL.

This program will be implemented by the current grantee, the National Council on Crime and Delinquency. No additional applications will be solicited in FY 2002.

Gang-Free Schools and Communities Initiative

In FY 2000, OJJDP launched a multisite effort to continue to demonstrate, test, and replicate the implementation of the OJJDP Comprehensive Gang Model in as many as 16 sites around the country. In response to a competitive solicitation, 10 new sites were selected to participate in this initiative, which consists of the two separate programs described below.

The Comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime program is designed to demonstrate and test the Model's ability to assist communities in addressing youth gang problems in both the school setting and in the community, through a tightly coordinated approach, including antiviolence efforts. The four participating communities are the City of East Cleveland, OH; the City of Houston, TX; the City of Pittsburgh, PA; and the City and County of Miami-Dade, FL. In FY 2001, these sites received initial training in conducting an assessment of the youth gang problem and began collecting data. In FY 2002, these sites will be eligible for funding to begin implementing the OJJDP Comprehensive Gang Model to address the problems identified. An independent evaluation of this effort is being conducted by the COSMOS Corporation.

The Gang-Free Communities program is designed to offer "seed" support to communities selected to replicate the OJJDP Comprehensive Gang Model. The communities selected to participate are Broward County, FL; East Los Angeles, CA; Jefferson County, KY; the City of Lakewood, WA; San Francisco, CA; and Washington, DC. The goal of this program is to reduce youth gang violence in the community. In FY 2001, these sites also received initial training in conducting an assessment of the youth gang problem and began collecting the necessary data. In FY 2002, these sites would be eligible for funding to begin implementing the OJJDP Comprehensive Gang Model to address the problems identified.

The National Youth Gang Center is providing training and technical assistance for communities participating in both programs.

These two programs would be implemented by the current grantees: East Cleveland, Houston, Miami-Dade, and Pittsburgh for the comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime and Broward County, FL; East Los Angeles, CA; Jefferson County, KY; the City of Lakewood, WA; San Francisco, CA; and Washington, DC, for the Gang-Free Communities program. No new applications would be solicited in FY 2002 for these programs.

Gang Prevention Through Targeted Outreach (Boys & Girls Clubs)

The purpose of this program is to enable local Boys & Girls Clubs to prevent youth from entering gangs, intervene with gang members in the early stages of gang involvement, and divert youth from gang activities into more constructive programs. The Boys & Girls Clubs of America provides training and technical assistance to local gang prevention and intervention sites, including some at OJJDP's gang program demonstration sites, and to other clubs and organizations through regional trainings and national conferences. In FY 2000, the Boys & Girls Clubs added new gang prevention sites, gang intervention sites, and "Targeted Reintegration" sites where clubs work to provide services to youth returning to the community from juvenile correctional facilities to prevent them from returning to gangs and violence. A national evaluation of the Gang Prevention Through Targeted Outreach Program was completed in FY 2001. The evaluation, conducted by Public/Private Ventures, Inc., concluded in part that "participants demonstrated positive change" and that "the clubs were successful in reaching an underserved, high-risk population through direct outreach and referral-network-building activities." In FY 2002, the Boys & Girls Clubs of America will identify and support up to 30 new gang prevention sites. Evaluation of the Targeted Reintegration program component may also begin in FY 2002. In addition, the Boys & Girls Clubs will jointly sponsor OJJDP's National Youth Gang Symposium in June 2002, in partnership with the National Youth Gang Center.

This program would be implemented by the current grantee, the Boys & Girls Clubs of America. No additional applications would be solicited in FY 2002.

Law Enforcement Training and Technical Assistance Program

The Law Enforcement Training and Technical Assistance Program was initially funded through a competitive award in 1999 to the International Association of Chiefs of Police (IACP) for a 3-year project period. The purpose of the program is to increase the capacity of law enforcement and allied professions to address juvenile crime, delinquency, and victimization, through multiagency system responses to school violence; juvenile gang, gun, and drug activity; and serious, violent, and chronic juvenile crime. Training workshops and technical assistance strengthen existing multiagency collaboration and facilitate creation of new partnerships.

In FY 2001, program activities included 19 workshops for more than 1,000 participants from 600 jurisdictions in 12 States. In addition, a marketing database was developed that allows the program to promote each individual product by State, via fax, directly to police, sheriffs, school administrators, school resource officers, juvenile probation and corrections agencies, juvenile mental health service officials, and other juvenile justice stakeholders. An OJJDP/IACP Training and Technical Assistance Web page was created for the IACP Web site. The page includes the training schedule and registration forms for specific training sessions and onsite technical assistance.

In FY 2002, the following deliverables will be provided under this program: 18 workshops, 12 onsite technical assistance projects, and 8 Chief Executive Officer Exchange Forums. Additionally, 1,500 CD–ROMs with relevant OJJDP literature and reference materials will be created and disseminated among training attendees; a Fact Sheet for OJJDP distribution and an article for a professional periodical will be written.

The program will be implemented by the current grantee, the International Association of Chiefs of Police. No additional applications will be solicited in FY 2002.

National Youth Gang Center

The proliferation of gang problems over the past two decades led OJJDP to develop a comprehensive, coordinated response that involved five program components, one of which was implementation and operation of the National Youth Gang Center (NYGC). Competitively funded in 1994 to expand and maintain the body of critical knowledge about youth gangs and effective responses to them, NYGC provides support services to the National Youth Gang Consortium, composed of Federal agencies with responsibilities in this area. NYGC is also providing technical assistance for OJJDP's Gang-Free Communities Program, Gang-Free Schools Program, and Rural Gang Initiative. In FY 2001, NYGC (1) conducted indepth analyses of the National Youth Gang Survey results, which track changes in gang membership and activity, (2) developed and administered a survey of youth gangs in American Indian communities, (3) produced timely information on the nature and scope of the youth gang problem, (4) continued tracking gang-related legislation at both the State and Federal levels, and (5) continued to provide training and technical assistance for OJJDP's Gang-Free Communities Program, Gang-Free Schools Program, and Rural Gang Initiative.

With FY 2002 funds, the Center would continue to collect, analyze, and disseminate current, comprehensive, and accurate national-level gang-related information. It would continue to assist State and local jurisdictions in the collection, analysis, and exchange of information on gang-related demographics, legislation, literature, research, and promising program strategies. The Center would also continue to provide indepth technical assistance to grantees of OJJDP gang programs.

This program would be implemented by the current grantee, the Institute for Intergovernmental Research. No additional applications would be solicited in FY 2002.

Rural Gang Initiative Demonstration Sites

During FY 2000, OJJDP competitively funded four rural communities (Elk City, OK; Glenn County, CA; Longview, WA; and Mount Vernon, IL) to conduct a comprehensive assessment of their local youth gang problems. Each site collected and analyzed comprehensive local data to determine the nature and scope of the existing local youth gang problem(s). A steering committee of community representatives in each site used the final assessment findings to develop a response to the problems identified. In FY 2001, two of these four communities, Glenn County, CA, and Mt. Vernon, IL, began implementing the OJJDP Comprehensive Gang Model to address the most serious problems identified in their assessments. In each site, intervention teams of workers from police, probation, schools, community-based agencies, and others have begun working in gang violence hotspots to provide services and supports to gang-involved youth, with a goal of reducing and eventually eliminating youth gang violence in the community. In FY 2002, these sites will continue implementing the OJJDP Comprehensive Gang Model. Ongoing assessment and data collection will be used to assist in selecting intervention targets.

An independent evaluation of these two sites also will be conducted and technical assistance will be provided through the National Youth Gang Center.

This initiative would be implemented by the current grantees, Glenn County, CA, and Mount Vernon, IL. No additional applications would be solicited for this initiative in FY 2002.

Technical Assistance to the Gang-Free Schools and Communities Initiative

In FY 2000, OJJDP launched a multisite replication of the OJJDP Comprehensive Gang Model and a four-site demonstration program to implement the Model and further enhance the Model's school component. In FY 2001, the National Youth Gang Center (NYGC) developed a manual to assist these communities in conducting the assessment, developed and provided these sites with tools and instruments for data collection, developed Web-based technical assistance resources for these communities, and provided initial gang problem assessment training to 10 participating sites and followup technical assistance and training to five of these sites. NYGC also developed a web page to enable unsuccessful applicants to access technical assistance in conducting an assessment and the OJJDP Model. In FY 2002, OJJDP will fund NYGC to provide training and technical assistance during the implementation stages of this initiative in selected communities across the country. The National Youth Gang Center is currently providing technical assistance on OJJDP's Model to communities involved in OJJDP's Rural Gang Initiative and to other OJJDP grantees.

OJJDP would provide a supplemental award to the National Youth Gang Center to provide the technical assistance. No additional applications would be solicited in FY 2002.

Delinquency Prevention and Intervention

Assessing Alcohol, Drug, and Mental Disorders Among Juvenile Detainees

This project, which was funded competitively in 1999, is a major longitudinal study assessing alcohol, drug, and mental disorders among juveniles in the Cook County Detention Center in Chicago, IL. The project has three primary goals: (1) To determine how alcohol, drug, and mental disorders develop over time among juvenile detainees, (2) to investigate whether juvenile detainees receive needed psychiatric services after their cases reach disposition (whether they return to the community or are incarcerated), and (3) to study the development and interrelationship of dangerous and risky behaviors related to violence, substance use, and HIV/AIDS. This project is unique because the sample is so large: It includes 1,829 youth from Chicago who were arrested and originally interviewed between 1995 and 1998. The sample is stratified by gender, race (African American, Hispanic, non-Hispanic white), and age. Initial interviews have been completed, and extensive archival data (e.g., arrest and incarceration history, health and mental health treatment) have been collected on each subject. The investigators have been tracking the subjects, and they have completed several sets of followup interviews. A significant number of subject deaths, virtually all of them linked to violence (e.g., gunshot wounds) have already occurred. The large sample size has provided sufficient statistical power to study the prevalence of co-occurring disorders. Researchers are preparing an OJJDP Bulletin that compares subjects' self-reported substance use with the results of urine screens conducted shortly after arrest.

This project will be implemented by the current grantee, Northwestern University. No additional applications will be solicited in FY 2002.

Comprehensive Children and Families Mental Health Training and Technical Assistance

OJJDP has entered into an interagency agreement with the Center for Mental Health Services (CMHS) of the

Substance Abuse and Mental Health Services Administration to support the CMHS-funded Comprehensive Mental Health sites. CMHS currently funds 45 sites, a technical assistance provider, and an evaluation. OJJDP funds are used to fund the juvenile justice specialist member of the technical assistance team, which also includes child welfare, mental health, education, and parent specialists. This team oversees technical assistance to the sites and coordinates technical assistance to meet their needs. The juvenile justice specialist responsibilities include efforts to assist with the development of increased coordination between the juvenile justice and mental health systems in the 45 sites.

This initiative will be implemented through an interagency agreement with CMHS. No additional applications will be solicited in FY 2002.

Evaluation of the Truancy Reduction Demonstration Program

OJJDP currently funds seven sites that are implementing truancy reduction programs. Grantees include Contra Costa, CA; Honolulu, HI; Houston, TX; Jacksonville, FL; King County, WA; Suffolk County, NY; and Tacoma, WA. OJJDP also funds the Colorado Foundation for Families and Children (CFFC) to conduct the national evaluation of the Truancy Reduction Demonstration Program. As part of the evaluation, CFFC is working with the sites to (1) determine how community collaboration can reduce truancy and lead to systemic reform and (2) assist OJJDP in developing a community collaborative truancy reduction program model and identifying the essential elements of that model. To that end, CFFC continues to assist project sites to identify and document the nature of the truancy problem in their communities, enhance effective truancy reduction planning and collaboration, and incorporate that process into the implementation of the Truancy Reduction Demonstration Program at each site. In addition, CFFC is assisting sites in collecting information on truant youth and documenting services.

This project would be implemented by the current grantee, the Colorado Foundation for Families and Children. No additional applications would be solicited in FY 2002.

Integrated Information Sharing To Prevent Juvenile Delinquency: A Training and Technical Assistance Approach

The Integrated Information Sharing To Prevent Juvenile Delinquency: A Training and Technical Assistance Approach project was established in FY 2001 under a competitive 2-year cooperative agreement between OJJDP and the Center for Non-Profit Development/Center for Network Development (CND). The project is designed to launch OJJDP's integrated information-sharing (IIS) effort. CND works to increase the capacity of State and local collaboratives to establish and manage effective multidisciplinary, multiagency information-sharing systems; support proactive solutions to juvenile delinquency; and improve coordination, decisionmaking, and services to at-risk youth and their families.

Under this cooperative agreement, CND has completed several key tasks to accomplish the project's goals. The results of a national training needs assessment survey and focus group meeting influenced the content of instructional materials for regional training workshops scheduled for FY 2001 and FY 2002. Similarly, a curriculum design team has outlined particular training modules and engaged practitioners at various levels of experience with IIS systems to critique the designs and discuss the challenges, barriers, and solutions to building effective partnerships and planning and implementing IIS systems.

In FY 2001, CND collected lists of collaborative groups interested in enhancing IIS efforts from OJJDP program managers and added these lists to the IIS database. The national training needs assessment was developed and mailed to 953 youth-focused collaborative practitioners interested in developing and/or enhancing an IIS system.

In FY 2002, the final year of this 2-year project, CND will continue developing, marketing, and piloting level 1 and level 2 trainings, providing followup assistance, and evaluating the application of knowledge and skills gained in the trainings to improve IIS's collaborative performance.

This project will be implemented by the current grantee, the Center for Non-Profit Development/Center for Network Development. No additional applications will be solicited in FY 2002.

Intergenerational Transmission of Antisocial Behavior

The purpose of the Intergenerational Transmission of Antisocial Behavior study is to examine the development of childhood antisocial behavior in a three-generation prospective panel study by making the children of the current participants in the OJJDP-sponsored Rochester (NY) Youth Development Study the focal subjects of a new long-term study. Forty percent of the original Rochester participants were parents by age 21. The Youth Development Study began in 1986. The new study is being funded under an FY 1998 interagency agreement with the National Institute of Mental Health. The grantee will combine data on the original study's participants and their parents with new data on the children of the original participants. The combined data will enable researchers to examine and track the development of delinquent behavior across three generations in a particularly high-risk sample. The results of the study should provide useful findings that will have policy implications for prevention programs. In FY 2002, the program will continue data collection.

The project will be implemented by the current grantee, the University at Albany, State University of New York. No additional applications will be solicited in FY 2002.

Investing in Youth for a Safer Future

This program supports the "Investing in Youth for a Safer Future" public service program and other advertising and media initiatives of the National Citizens' Crime Prevention Campaign. The "Investing in Youth for a Safer Future" campaign educates the public about prevention programs and intervention strategies that reduce youth violence and delinquency. The campaign develops creative public service advertisements that aim to motivate adults to become positively involved in the lives of young people.

The program would be implemented under an interagency agreement with the Bureau of Justice Assistance by the current grantee, the National Crime Prevention Council. No additional applications would be solicited in FY 2002.

Juvenile Defender Training, Technical Assistance, and Resource Center

The Juvenile Defender Training, Technical Assistance, and Resource Center (Juvenile Defender Center), now in its third year of funding under a 5-year project period grant, was competitively awarded to the American Bar Association (ABA) in FY 1999. The Juvenile Defender Center fills a major gap in resources and support for juvenile defenders in the United States by providing training and technical assistance services. Nationally focused training and technical assistance for juvenile defenders did not exist before OJJDP funded the original Due Process Advocacy project from 1993 to 1999. Building on that project, the Juvenile Defender Center project is designed to facilitate the development of a permanent training and technical assistance capability for juvenile defenders. Improving the capabilities and skills of juvenile defenders strengthens the juvenile justice system and provides greater assurance that juveniles charged with delinquency will receive the due process and adequate representation they are guaranteed under the U.S. Constitution.

The ABA has competitively selected eight regional centers to provide training and technical assistance in their regions. Each year the ABA organizes and holds a National Juvenile Defender Summit that brings together juvenile defenders and related practitioners to address key issues in juvenile defense work. The ABA operates under a unique incentive funding scheme that enables it to receive additional funds over a base amount if they raise money in the private sector or obtain in-kind services. The ABA has been very successful in raising private funds and obtaining donated resources.

This project will be implemented in FY 2002 by the American Bar Association, the current grantee. No additional applications will be solicited in FY 2002.

Multisite, Multimodal Treatment Study of Children With Attention Deficit/Hyperactivity Disorder

In 1992, the U.S. Department of Health and Human Services' National Institute of Mental Health (NIMH) began a study of the long-term efficacy of stimulant medication and intensive behavioral and educational treatment for children with attention deficit/hyperactivity disorder (ADHD). Although ADHD is classified as a childhood disorder, up to 70 percent of affected children continue to experience symptoms in adolescence and adulthood. Researchers at six primary study sites and three subcontractor sites are following children in the three treatment groups (medication management only, behavioral treatment, and a combination of medication and behavioral treatment) and a control group (community care).

OJJDP's participation in the study, which began in FY 1998, supports continued investigation into the subjects' aggressive and delinquent behavior and contact with the legal system, including arrest, detention, and incarceration. In FY 2002, OJJDP will transfer funds to NIMH through an interagency agreement that will support the collection of data related to subjects' delinquent and criminal behavior and contact with the juvenile justice system.

This program will be implemented through an interagency agreement with the National Institute of Mental Health. No additional applications will be solicited in FY 2002.

National Center for Conflict Resolution Education

This project will assist communities in providing quality conflict resolution programs by providing training and technical assistance opportunities and developing products to expand the knowledge of conflict resolution skills, processes, implementation, and application. Program objectives include: (1) Increasing the number of conflict resolution programs that use effective design elements, (2) enhancing the skills of conflict resolution program volunteers and professional staff, and (3) facilitating the development and use of research-driven training and technical assistance materials. The major clients to be served are educational agencies and organizations, juvenile justice programs, and community youth service organizations.

This project will be implemented by the current grantee, Illinois State Bar Association, in FY 2002. It is anticipated that OJJDP will issue a solicitation in FY 2002 and the grantee selected in response to the solicitation will implement the program in FY 2002.

National Youth Court Center

OJJDP established the National Youth Court Center (NYCC) in 1999 to provide intensive training, technical assistance, data collection, and considerable programmatic resources to strengthen statewide and local youth court initiatives. NYCC supports the establishment of youth courts consistent with effective design elements for the purposes of preventing delinquency and holding young people accountable for their delinquent and criminal behavior within the context of constructive peer group community sanctions. Youth courts are programs where juvenile offenders are sentenced by their peers. These programs are rapidly becoming an integral component of the juvenile justice system in communities across America.

OJJDP is the lead Federal agency responsible for supporting the national youth court movement, with the U.S. Department of Transportation providing a small amount of support through an annual interagency agreement. With more than 800 programs currently operating and hundreds of jurisdictions planning to develop programs, youth courts have experienced tremendous growth in the past few years.

Accomplishments of the project to date include publication of *National Youth Court Guidelines*, which provides programmatic blueprints for operating effective youth court programs; *National Youth Court Directory*, which provides the largest and most accurate listing of youth court programs in the United States; and *A Street Law Curriculum for Youth Courts*. NYCC has also developed a comprehensive youth court Web site and a national youth court center newsletter that offer the most comprehensive and up-to-date information on youth courts, provided onsite technical assistance to jurisdictions in support of local or statewide youth court development efforts, launched a national lawyer/law student recruitment campaign (a nationwide initiative linking lawyers and law students with local youth court programs), and published *Youth Court and Balanced and Restorative Justice*.

In FY 2002, NYCC will produce three instructional videos about youth court benefits, responsibilities, and training for volunteer jurors. NYCC will also develop a training Web site to aid youth volunteers in preparing for their cases online. New documents will include a manual for a 10-week training program for youth volunteers; instructor's guides for adult volunteers who train volunteer youth; a daily operations handbook that will serve as a resource guide for coordinators of youth court programs; a "road map to youth court," designed to teach those in the legal community about youth court; and a community service workbook that will teach program coordinators to set up task- and service-oriented community service projects for youthful offenders. Educational community service modules for youthful offenders will be designed around the most common victim issues and alcohol and marijuana offenses handled in youth court.

Training events for FY 2002 include a national youth court conference and a "train the trainers" session that will prepare one person from each State as the key State trainer for both the community service education and student membership training programs. Public education campaigns also will be developed and launched in FY 2002.

This project would be implemented by the current grantee, the American Probation and Parole Association with a subgrant to the American Bar Association. No additional applications would be solicited in FY 2002.

Pathways to Desistance: A Prospective Study of Serious Adolescent Offenders

In FY 2001, OJJDP, along with the Centers for Disease Control and

Prevention and several private foundations, provided funding for the first year of data collection for the Pathways to Desistance study. This multisite, longitudinal, collaborative research project follows approximately 1,200 serious juvenile offenders from adolescence to young adulthood. Interviews are conducted regularly with these youth and their family members and friends for several years following their involvement with the court for felony-level offenses. The aims of the investigation are to: (1) Identify initial patterns of desistance from antisocial activity in serious adolescent offenders, (2) describe the role of social context and developmental changes in promoting positive behavioral change, and (3) compare the effects of sanctions and interventions in promoting positive change and desistance from criminal behavior. The larger goals of the study are to improve decisionmaking by court and social services personnel and to clarify policy debate about dispositional alternatives for serious adolescent offenders. The project is anticipated to last at least 3 years. In FY 2002, OJJDP, in conjunction with the U.S. Department of Justice's National Institute of Justice, the William T. Grant Foundation, the Robert Wood Johnson Foundation, and the John D. and Catherine T. MacArthur Foundation, will support the project's second year of data collection.

This project will be implemented by the current grantee, the University of Pittsburgh. No additional applications will be solicited in FY 2002.

Race Against Drugs/Stay on Track Curriculum Evaluation

Since 1995, OJJDP has supported Race Against Drugs (RAD), a partnership in substance abuse prevention that includes the Drug Enforcement Administration, the Federal Bureau of Investigation, the Center for Substance Abuse Prevention, the National Child Safety Council, and U.S. motor sports organizations. The primary goals of RAD are to educate youth about the dangers of substance abuse and provide them with the skills they need to resist drugs. RAD also empowers the motor sports industry, communities, schools, and local law enforcement agencies to play greater roles in keeping their neighborhoods and schools drug free. With OJJDP support, RAD has established a national network of dedicated volunteers who have implemented more than 5,000 drug prevention/education programs at schools, shopping malls, trade shows, youth organizations, civic centers, and motor sports events. Drug prevention materials, including posters, public service announcements, decals, T-shirts, hats, coloring books, and education kits, are available to complement all activities.

In FY 2000, with funding from OJJDP, RAD worked with prevention scientists at the University of Maryland's Center for Substance Abuse Research and a panel of experts to develop a new science-based drug prevention curriculum, Stay on Track, for use in middle schools (grades six through eight) and other structured environments. This curriculum capitalizes on the knowledge gained during RAD's 10 years of youth drug prevention experience. Stay on Track is currently being implemented in selected schools in Phoenix, AZ, and may expand to other communities. OJJDP is funding a comprehensive evaluation of the curriculum by researchers from Embry Riddle University.

This project would be implemented by the current grantee, the National Child Safety Council. No additional applications would be solicited in FY 2002.

Technical Assistance for the Title V Community Prevention Programs

The purpose of this project is to provide OJJDP with the capacity to provide communities with training and technical assistance support for implementation of the Title V Community Prevention Grants program. The contract was awarded in FY 2000 through a competitive process. The contractor will continue to provide nationwide training and technical assistance for State and local jurisdictions on developing and implementing comprehensive communitywide, data-based delinquency prevention strategies. Through training and technical assistance, community leaders develop the knowledge and skills necessary to assess local risk factors for and protective factors against delinquency and to address risk factors using community resources. To build training capacity within States and national regions, instruction on data-based, risk- and protection-focused prevention will be provided for trainers.

This project will be implemented by the current contractor, Development Services Group, Inc. No additional applications will be solicited in FY 2002.

Truancy Reduction Demonstration Program

In FY 1998, OJJDP, the Executive Office for Weed and Seed and the U.S. Department of Education supported a grant program to reduce truancy. The Truancy Reduction Demonstration Program is a comprehensive program designed to combine education, justice and law enforcement, social services, and community resources to identify and track truant youth and cooperatively design and implement comprehensive systemwide programs to meet the needs of these youth. The four components of the Truancy Reduction Program are (1) system reform and accountability, (2) a service continuum to address the needs of truant children and adolescents, (3) data collection and evaluation, and (4) a community prevention education and awareness program for kindergarten through grade 12. OJJDP has awarded grants to seven sites to implement the comprehensive truancy program. Three were non-Weed and Seed (Honolulu, HI; Jacksonville, FL; and King County, WA), and four were Weed and Seed sites (Houston, TX; Martinez, CA; Tacoma, WA; and Yaphank, NY). Operation Weed and Seed is a two-pronged strategy within the Office of Justice Programs (OJP) that seeks to prevent, control, and reduce violent crime, drug abuse, and gang activity in targeted high-crime neighborhoods. All the sites are in the implementation phase of the program. Examples of the program strategies include the following: Case managers conducting home visits, attendance monitoring, tutoring, and case management referral of youth and families to community agencies for needed services. In FY 2001, the Truancy Reduction Program served approximately 2,085 students and 1,180 families. The Colorado Foundation for Families and Children (CFFC) is conducting a process evaluation that will help to identify key elements of an effective truancy program.

The current grantees (Honolulu, HI; Houston, TX; Jacksonville, FL; King County, WA; Martinez, CA; Tacoma, WA; and Yaphank, NY) would continue to carry out the truancy activities. No additional applications would be solicited in FY 2002.

Violence Intervention and Prevention Protocol

In 2001, OJJDP began a project with the American Academy of Pediatrics (AAP) to develop a Violence Intervention and Prevention Program (VIPP). The Academy has a long history of educating pediatricians and families about unintentional injuries and those caused by child abuse.

The overall goal of this project is to develop a theory-based comprehensive program for the primary prevention of violence-related injury to children and adolescents that will be incorporated into the primary care of all American children seen by pediatricians. This research project will be conducted in three phases: Design decisions, development of materials and protocols, and small-scale pilot testing.

This project will be implemented by the current grantee, the American Academy of Pediatrics. No additional applications will be solicited in FY 2002.

Strengthening the Juvenile Justice System

Accountability-Based Training for Staff in Juvenile Confinement Facilities

The Accountability-Based Training for Staff in Juvenile Confinement Facilities program, provided through the National Juvenile Detention Association's (NJDA's) Center for Research and Professional Development (CRPD), offers extensive training that enhances the ability of staff in juvenile confinement facilities around the country to handle and care for confined youth. OJJDP has funded this program for 6 years to enable staff working in secure facilities to avail themselves of state-of-the-art training. With OJJDP's support, CRPD has provided more than 101,600 training hours to line staff in juvenile justice facilities and programs in 33 States. In addition to training through CRPD, NJDA provides comprehensive technical assistance to State and local juvenile detention centers that are experiencing problems with their operations.

During FY 2002, CRPD will continue to provide onsite training and technical assistance to direct care staff in juvenile confinement and custody facilities with the existing materials and curriculums. CRPD also will develop and pilot a new 40-hour curriculum, "BARJ-ing into Juvenile Confinement: Practical Application of BARJ [Balanced And Restorative Justice] Principles for Line Staff"; develop advanced training curriculums in the areas of suicide prevention and management of mentally ill residents; and revise the curriculum for juvenile detention careworkers.

This project would be implemented by the current grantee, the National Juvenile Detention Association, Center for Research and Professional Development. No additional applications would be solicited in FY 2002.

Balanced and Restorative Justice

OJJDP established the Balanced and Restorative Justice (BARJ) training and technical assistance project in FY 1992 by awarding funds to Florida Atlantic University to provide training, technical assistance, and guidelines on implementing the BARJ model, which encourages the juvenile justice system to address three goals equally: (1) Ensuring community safety, (2) holding offenders accountable to victims, and (3) promoting competency development for offenders in the juvenile justice system so they are equipped to pursue noncriminal lines of work after release. The project is national in scope. However, to use limited resources efficiently, BARJ technical assistance works with seven "special emphasis" States—California, Florida, Illinois, Michigan, New York, Pennsylvania, and Texas—and with several local jurisdictions across the Nation to help them plan and implement BARJ. The project also works with key justice system and community leaders to clarify BARJ concepts and to seek their help in advancing BARJ goals and activities.

In FY 2001, the BARJ project developed, helped organize, or participated in more than 40 major training and technical assistance events on restorative justice. BARJ roundtables provided training and technical assistance to teams of juvenile justice managers and practitioners from the seven special emphasis States. In addition, the project has updated its instructional materials for the BARJ courses and produced new reference publications on restorative justice. The project also publishes a quarterly BARJ newsletter, *Kaleidoscope of Justice.*

In FY 2002, the BARJ project will conduct the BARJ Academy workshops, the introduction to restorative justice and training for trainers courses, and a graduate BARJ trainers conference. The project will develop new training courses on restorative justice in schools, training of trainers for group conferencing, and strategic BARJ management. One or more specialized workshops on selected BARJ topics are also planned. The project plans to present workshops at national and regional conferences sponsored by groups representing judges, prosecutors, probation and corrections personnel, law enforcement, victims advocates, child welfare practitioners, and others. Resource documents will be developed, and the program's existing training materials and Web site will be updated.

This project would be implemented by the current grantee, the Florida Atlantic University. No additional applications would be solicited in FY 2002.

Building Blocks for Youth

OJJDP established the Building Blocks for Youth project in FY 1998 by funding the Youth Law Center to: (1) Conduct research on issues such as the impact on minority youth of new State laws and the implications of privatization of juvenile facilities by profitmaking corporations; (2) undertake an analysis of decisionmaking in the justice system and develop model decisionmaking criteria that reduce or eliminate the disproportionate impact of the system on minority youth; (3) build a constituency for change at the national, State, and local levels; and (4) develop communication strategies for disseminating information. The goals of this initiative are to protect minority youth in the juvenile justice system and promote rational and effective juvenile justice policies.

FY 2001 activities include developing and implementing a strategy to support the analysis of decisionmaking and a significant increase in the number of partner organizations to create constituencies for change; site-based work in Phoenix, AZ; Portland, OR; Seattle, WA; and Watsonville, CA, and conducting research and developing resources on the disparate numbers of minority youth in the juvenile justice system and the effects of State laws and zero-tolerance polices on these populations.

In FY 2002, the fifth year of the initiative, Building Blocks for Youth will focus on following up its research projects and using a number of its project studies and reports as tools for change. Site-based work will continue and associated analyses and findings will be completed; results will be shared to assist others in reducing the number of minority youth in the juvenile justice system. The initiative will continue its work in establishing and maintaining relationships with other national and State organizations through its extensive information and dissemination activities, including the monthly newsletter, bulletins, and comprehensive Web site.

This project would be implemented by the current grantee, the Youth Law Center. No additional applications would be solicited in FY 2002.

Census of Juveniles in Residential Placement

The Census of Juveniles in Residential Placement (CJRP) collects individual-level data on all juveniles in residential placement on a specific reference day (the fourth Wednesday in October). The data elements collected include each offender's age, sex, race, placing agency, legal status, and most serious offense. Because this project is a census, it allows for State-level reporting of juveniles in residential placement. The

census is mailed to all facilities that can and do hold juvenile offenders for reasons of the offense. Personnel report on all offenders younger than 21 years old residing in their facilities on the reference day. The facilities also provide some basic information on any other persons who do not fit these criteria. The CJRP was first conducted in October 1997 and again in October 1999. In 2002, the Census Bureau would continue to conduct the 2001 CJRP including data collection, data editing, data inputting, and data file preparation.

This program would be implemented through an existing interagency agreement with the Bureau of the Census. No additional applications would be solicited in FY 2002.

Center for Students With Disabilities in the Juvenile Justice System

During FY 1999, OJJDP undertook a joint initiative with the Office of Special Education and Rehabilitative Services, U.S. Department of Education, to establish a Center for Students with Disabilities in the Juvenile Justice System. This project is expected to improve the juvenile justice system's services for students with disabilities in the areas of prevention, educational services, and reintegration based on a combination of research, training, and technical assistance. The Center guides and assists States, schools, juvenile justice programs, families, and communities in designing, implementing, and evaluating comprehensive educational programs, based on research-validated practices, for students with disabilities in the juvenile justice system.

This program will be implemented under an existing 5-year interagency agreement with the U.S. Department of Education by the current grantee, the University of Maryland. No additional applications will be solicited in FY 2002.

Connecticut/Cook County (IL) Girls Collaborative

A national collaboration between the State of Connecticut and Cook County, IL, has been forged around the needs of court-involved girls. The primary goal of this collaboration is the creation of a replicable model of systems change for court-involved girls, including girls who are pregnant and/or young mothers. Since this project began in FY 1997, the sites have shared lessons learned and have taken action to improve services to court-involved girls. Specific accomplishments include developing a profile of the juvenile female offender and conducting a technical mapping of the juvenile justice system in Cook County, completing an evaluation of a pilot gender-specific case management system for girls, developing a Web site to identify and link service providers in metropolitan Cook County and surrounding counties in Illinois, training mentors to work with girls on probation and girls detained in the detention center, completing a study of Connecticut court-involved girls age 18 and under, and creating a gender-specific team of juvenile probation officers in Connecticut. OJJDP would support this national collaboration in FY 2002 in order to continue to develop innovative responses to the female offender population and girls at-risk of entering the juvenile justice system.

The program would be implemented by the current grantees, Cook County Board of Commissioners and Connecticut Judicial Branch. No additional applications would be solicited in FY 2002.

Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders

This continuation grant would enable OJJDP's grantees to continue providing State and local jurisdictions with training and technical assistance in developing and implementing strategic plans for reducing juvenile delinquency based on research included in the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. Through training and technical assistance, communities will develop the knowledge and skills necessary to assess risk and protective factors, develop and implement research-based programs and prevention and graduated sanctions services, and more effectively address juvenile crime in their communities.

This project would be implemented by the current grantees, Developmental Research and Programs, Inc., and the National Council on Crime and Delinquency. No additional applications would be solicited in FY 2002.

Evaluation of Teen Courts

OJJDP initiated the Evaluation of Teen Courts project to assess the impact of teen courts (or youth courts) on nonserious juvenile offenders. The project is the first national, multisite evaluation of this emerging diversion strategy for at-risk youth.

The Evaluation of Teen Courts was structured to determine the impact of teen courts on subsequent delinquency or recidivism, perceptions of justice among youth referred to teen courts, and their commitment to prosocial norms and normative institutions (e.g., school). The evaluation includes three components—an impact evaluation, a process evaluation, and a new enhancement that will employ a random assignment design in new teen court sites. The impact evaluation will examine what effect teen court programs have on youth, what happens to youth as a result of a teen court experience, and whether the results differ from those observed in youth handled in a traditional juvenile justice system. The process evaluation will determine what happens in teen court programs, what they do, and how well they do it.

This project would be implemented by the current grantee, the Urban Institute. No additional applications would be solicited in FY 2002.

Girls Study Group Project

The purpose of the Girls Study Group project, which OJJDP competitively awarded to the Regents of the University of Michigan in FY 2001, is to develop the research foundation that will help communities make sound decisions on how best to prevent and reduce delinquency and violence by girls. The University of Michigan will bring together a multidisciplinary group of 15 scholars to examine the nature of offending by adolescent females and to identify effective prevention and intervention strategies and programs for this population. In the first year of this 2-year project, the entire Girls Study Group will convene twice for 2- to 3-day meetings to identify research needs and questions. The Girls Study Group will also be divided into approximately six working groups based on broad areas of concern. Products from the first year will include a comprehensive annotated bibliography of relevant research and preliminary reports from the working groups.

This program will be implemented by the current grantee, the University of Michigan. No additional applications will be solicited in FY 2002.

Improving Juvenile Sanctioning: An Intensive Training and Technical Assistance Delivery Program

The purpose of this program is to improve the capacity of the juvenile justice system by providing intensive training and technical assistance to at least 10 selected jurisdictions to strengthen and enhance existing juvenile accountability-based sanctioning programs and to support development of new ones, within the context of community-based programs that support competency development in youth. The primary target population for this program is youthful offenders who could be referred by law enforcement, schools, or juvenile courts to community-managed alternatives to detention and secure confinement. The program's goal is to create or improve juvenile accountability-based programs at the front end of the continuum, while enhancing the competencies and skills of youth, in order to strengthen the juvenile justice system's capability to respond appropriately to delinquent behavior.

This project, initially funded in FY 2001 through a competitive solicitation, is designed as a 5-year project, with funding of up to $1 million each year, given the availability of funds and satisfactory grantee performance.

This program will be implemented by the grantee selected through the FY 2001 competition. No additional applications will be solicited in FY 2002.

Intensive Community-Based Juvenile Aftercare Dissemination and Technical Assistance Program

This initiative supports replication of, training and technical assistance for, and information dissemination about the Intensive Aftercare Program (IAP) model, which was implemented in three competitively selected demonstration sites. The overall goal of the IAP model is to identify and assist adjudicated juvenile offenders who are in secure confinement to make a successful transition to the community upon release. An independent evaluation of the IAP demonstration is currently underway, with a final report due in the winter of 2002.

As the demonstration period for the three pilot sites has ended, the focus of this initiative has shifted to six distinct areas: (1) Replication of the model with emphasis on specialized youth populations; (2) linkage with select Performance-Based Standards correctional sites; (3) provision of technical assistance to DOL's Youth Offender Demonstration sites; (4) provision of technical assistance to select Boys & Girls Clubs sites participating in OJJDP's Targeted Outreach initiative; (5) creation of a national juvenile reintegration and aftercare center; and (6) creation of a new Web site.

This initiative would be implemented by the current grantee, the Johns Hopkins University. No additional applications would be solicited in FY 2002.

James E. Gould Memorial Program for Training and Technical Assistance for Juvenile Corrections and Detention

OJJDP established the Training and Technical Assistance Program for Juvenile Corrections and Detention staff 16 years ago by funding the American Correctional Association (ACA) to provide leadership to the juvenile justice field through training and technical assistance to staff working in juvenile corrections, detention, community residential, and nonresidential facilities. ACA conducts an annual National Juvenile Corrections and Detention Forum on behalf of OJJDP. In addition to the forums, ACA developed a curriculum addressing increased privatization in the field of juvenile justice and conducted three regional privatization workshops on writing requests for proposals, writing good contracts, and monitoring contracts. ACA publishes articles on juvenile justice issues in each issue of its *Corrections Today* magazine and recently published a monograph and a curriculum on privatization. ACA also provides technical assistance to juvenile justice professionals concerning detention and corrections issues.

In FY 2002, the project will continue to coordinate with other national juvenile justice organizations to provide technical assistance to juvenile justice agencies and will hold the 17th annual National Juvenile Corrections and Detention Forum. ACA will update mailing lists of both public and private juvenile facilities and develop a listserv and Internet service to enhance knowledge and facilitate sharing of information among juvenile justice detention and corrections professionals. Texts, papers, monographs, and related juvenile corrections and detention resource materials will be developed and disseminated to the juvenile justice community. Three 3-day regional workshops on issues related to privatization and two 1-day national workshops that address needs and trends in juvenile corrections and detention will be held.

This project would be implemented by the current grantee, the American Correctional Association. No additional applications would be solicited in FY 2002.

Juvenile Justice Prosecution Unit

OJJDP supports the Juvenile Justice Prosecution Unit's (JJPU's) training and technical assistance program for prosecutors under a grant to the American Prosecutors Research Institute (APRI), which was first awarded in FY 1995. JJPU develops and presents training workshops to chief prosecutors, juvenile unit chiefs, and deputy district attorneys assigned to juvenile courts. The training deals with leadership roles of prosecutors in the juvenile justice system, handling of juvenile delinquency cases, and significant juvenile justice issues that are of concern to prosecutors. Approximately six training workshops are held annually, and curriculums and appropriate reference materials are developed for each training event.

In FY 2001, APRI developed and presented two workshops on disproportionate minority confinement (DMC); conducted five JUMPSTART courses for newly assigned juvenile prosecutors, several short workshops at the National Juvenile Justice Conference, a course on juvenile justice prosecution for prosecutor coordinators, and a serious and violent offender workshop; and created two new workshops for prosecutors on balanced and restorative justice and interdisciplinary issues. The training and technical assistance materials developed by APRI include curriculums and topical resource guides for the courses offered. In addition, APRI developed a Web page, continued updating the *Compendium of Juvenile Programs for Prosecutors*, and produced four *In Re* newsletters.

In FY 2002, APRI will provide training (including two new courses) and technical assistance to new groups of prosecutors. APRI will provide a Webcast for prosecutors, conduct five JUMPSTART courses, and present a juvenile justice prosecution track at the National Juvenile Justice Conference. The project will continue updating its training curriculums and materials, including its Web page, and preparing new training and resource documents. The project also will keep prosecutors informed on developments in restorative justice and expand the *Compendium of Juvenile Programs for Prosecutors* as new programs are reported from the field.

This project would be implemented by the current grantee, the American Prosecutors Research Institute. No additional applications would be solicited in FY 2002.

Juvenile Residential Facility Census

OJJDP designed the Juvenile Residential Facility Census (JRFC) to collect important information on facility characteristics, services provided to residents in the facility, and the conditions within the facility. Similar to the Census of Juveniles in Residential Placement, JRFC is a biennial census of residential facilities used by the juvenile justice system to hold youth accused of or adjudicated for an offense. The data collection forms are mailed to each facility for personnel to complete. The JRFC collects information on health care services, mental health counseling or treatment, substance abuse treatment,

and education and whether youth in the facility have access to the particular services they need. The methods used in the census cannot make evaluative statements on the quality of those services; rather the JRFC indicates the availability of such services. The JRFC also asks specific questions about the nature of the facility itself, specifically about the conditions of confinement, the number of beds used (including makeshift beds), and the use of isolation or restraints. Finally, the JRFC collects information on any deaths in custody, a subject on which OJJDP must report annually. The first full JRFC was conducted in October 2000. In FY 2002, the Census Bureau would prepare for the second full implementation of the JRFC, mail out the necessary forms, and begin full data collection.

This project would be conducted through an interagency agreement with the Bureau of the Census, Governments Division and Statistical Research Division. No additional applications would be solicited in FY 2002.

Longitudinal Study To Examine the Development of Conduct Disorder in Girls

The purpose of this project, which is being funded under an FY 1999 interagency agreement between OJJDP and the National Institute of Mental Health, is to examine the development of conduct disorder in a sample of 2,500 inner-city girls who are ages 6–8 at the beginning of the study. The study will follow the girls annually for 5 years and will provide information that is critical to the understanding of the etiology, comorbidity, and prognosis of conduct disorder in girls. Delinquency in girls has been steadily increasing over the past decade, and a better understanding of developmental processes in girls will help identify effective means of prevention and provide direction for juvenile justice responses to delinquent girls. In FY 2002, the program will continue data collection.

The project will be implemented by the current grantee, the University of Pittsburgh. No additional applications will be solicited in FY 2002.

Meta-Analysis Project

In FY 2001, Vanderbilt University began a program to update a significant existing database of juvenile justice program evaluations and to provide various meta-analyses of the data for OJJDP. Meta-analysis is defined as "a statistical analysis that combines or integrates the results of several independent clinical trials considered by the analyst to be combinable."[1] This technique creates a larger research framework to make broad generalizations about, for example, the impact of specific types of interventions on different types of outcomes. Meta-analysis allows for the results of small, weak, and/or methodologically flawed studies to be combined and reanalyzed. Vanderbilt University has created a database that contains data from more than 500 published and unpublished studies of programs involving a wide range of treatments and services. Each study is codified using 156 variables, including characteristics of the study, types of interventions, and measures of outcomes.

In FY 2001, the project was updated to include approximately 100 new studies that were completed in the past several years. In FY 2002, the study will expand the analysis to include different measures of outcomes and recidivism. The resulting series of reports will be made available to juvenile justice practitioners and policymakers.

This program will be implemented by the current grantee, Vanderbilt University. No additional applications will be solicited in FY 2002.

National Census and Survey of Juvenile Probation

In FY 2001, OJJDP entered into an interagency agreement with George Mason University (GMU) to develop and test a new survey and census of juvenile probation. OJJDP worked with the U.S. Bureau of the Census's Center for Survey Methods Research to develop this project; the GMU team would complete the work. The project consists of developing questionnaires for both a census and a survey of juvenile probation. GMU would also fully test the questionnaires in cooperation with the data collection agency, the U.S. Bureau of the Census.

This project would be conducted through an interagency agreement with George Mason University. No additional applications would be solicited in FY 2002.

National Evaluation of the Performance-based Standards Project

OJJDP funded the National Academy of Public Administration (NAPA) to conduct an independent evaluation of OJJDP's Performance-based Standards (PbS) Project. This formative evaluation provides feedback to the PbS project development team on how to improve the program design and implementation supports to the sites. The evaluation is collecting both quantitative and qualitative data describing the processes used to implement the PbS model in 80 juvenile detention and correctional facilities across the country. To date, the evaluator has completed a chronicle that tracks major program decisions and improvements. In addition to conducting two all-site surveys, the evaluator also has contributed to the conceptualization and design of key program elements, including the Program Monitoring System, the expansion of the program to reintegration outcomes, and the migration of the project to integrate with agencies' management information systems (MIS) and has developed materials for meeting privacy and human subjects issues. A new focus of the evaluation is to develop six case studies to capture in depth the process of a facility's journey from initiation to institutionalization of PbS in its day-to-day operations.

As the PbS project expands in FY 2002 to include community-based correctional functions and deals with the launching of an MIS integrated system, it will be necessary to continue to independently review the work, both to chronicle its development and to capture, through the case studies and surveys, how the innovations are being carried out in the field.

This project would be implemented by the current grantee, the National Academy of Public Administration. No additional applications would be solicited in FY 2002.

National Juvenile Justice Data Analysis Project

First funded in FY 1999 under a competitive process, the National Juvenile Justice Data Analysis Project (NJJDAP) provides research and analysis into a wide variety of juvenile justice issues including juvenile placement, custody, arrests, victimization, and juvenile offending. However, the topics of interest to juvenile professionals are not limited to these typical justice topics. As research expands, the field learns more about the intersections of delinquency and other problems, such as mental health disorders, education needs, and physical injury. Attention to these problems can help the field design effective prevention or intervention measures and identify what problems the juvenile justice system will face in dealing with delinquent youth. NJJDAP will examine such issues of concern through cooperation with experts in the fields of interest and with data collected in those fields. This project produces quick, unique analyses of these issues for publication by OJJDP.

In FY 2002, NJJDAP will expand its roster of available consultants who can provide either expertise in data analysis or knowledge of particular aspects of adolescent development, juvenile delinquency, or the juvenile justice system. NJJDAP will also investigate innovative data sets at the State and local levels.

This project will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in FY 2002.

National Juvenile Justice Program Directory

To conduct statistical projects, OJJDP and the Census Bureau require a support infrastructure that enables both to perform the necessary survey tasks efficiently and effectively. This infrastructure includes as a basic component the maintenance of a list or frame of all survey or sampling units. For example, the surveying of residential facilities could not take place without a list of such facilities. Indeed, as OJJDP moves toward surveying these facilities once a year, this list must be maintained continuously. Also, as the Office moves toward surveying juvenile probation offices, OJJDP and the Census Bureau will need a current list of all such offices in the United States. Other areas of interest might include juvenile courts, police departments, State agencies, etc. Maintenance of the lists includes contacting various key State and local officials or practitioners, who can provide the names of agencies or facilities associated with their respective agencies. It also requires maintaining current contact information for these agencies or facilities. Finally, it requires developing and updating a database of these facilities that contains information necessary for sampling or stratification purposes. This project fills the needs for lists of juvenile agencies, programs, and facilities.

This project would be conducted through an interagency agreement with the Bureau of the Census, Governments Division. No additional applications would be solicited in FY 2002.

National Juvenile Sex Offenders Training Project

The purpose of this program is to develop and deliver training to police, intake workers, school counselors, detention line staff, judges, prosecutors, and other juvenile justice personnel to increase the accuracy of information in the field about juvenile sex offending. The availability of accurate information will lead to improved prevention, intervention, and treatment services for the youth population. The dissemination of knowledge that specifically deals with juvenile sex offender issues will help ensure that the drafting and implementation of any policy or legislation on this issue are based on accurate and timely information, focus on juvenile offenders, and use juvenile-based research versus adult research that is often applied to young people.

Project staff and other subject matter experts within the Office of Justice Programs will collaborate to develop a matrix that identifies and categorizes the major portals of entry (e.g., youth-serving agencies and organizations, schools) for children with sexual behavior problems and juvenile sex offenders. In the first year of this project, training goals and objectives will be developed, and curriculums will be written in collaboration with juvenile justice personnel. The next step will establish the priority for testing and delivering training to the range of personnel working with sex offending youth. In the final year of the project, it is anticipated that curriculums will have been developed for all identified portals of entry that work with juvenile sex offenders and current knowledge will have been disseminated that impacts the ongoing treatment and handling of these youth.

This program will be implemented by the current grantee, the University of Oklahoma. No additional applications will be solicited in FY 2002.

National Longitudinal Survey of Youth

Since 1997, OJJDP has supported the U.S. Department of Labor's Bureau of Labor Statistics (BLS) as it conducts the National Longitudinal Survey of Youth (NLSY). Using a nationally representative sample, youth who were in the eighth grade in 1997 are surveyed about their school experiences, family background, and employment. The NLSY will provide critical information on these young peoples' transition from school to work. With OJJDP support, BLS includes a wide battery of questions on delinquency such as theft and assault and problem behaviors such as alcohol and tobacco use. Because the NLSY follows the same youth each year, the data from this effort will provide important national information on the onset of delinquency, trends in offending, and correlation with other factors such as family, school, health, etc. So far, the NLSY project has collected four waves of data (one each year). The fourth wave will be released in 2002. OJJDP expects to continue contributing to this effort until the sampled youth have reached young adulthood.

This project would be conducted through an interagency agreement with the Bureau of Labor Statistics. No additional applications would be solicited in FY 2002.

National Training and Technical Assistance for Effective Juvenile Detention and Corrections Practices

Since FY 1996, OJJDP has funded the National Juvenile Detention Association's (NJDA's) National Training and Technical Assistance for Effective Juvenile Detention and Corrections Practices project (Overcrowding Project) to combat overcrowding in the Nation's juvenile detention facilities. The Overcrowding Project is an intensive, onsite training and technical assistance program that assists selected jurisdictions in reducing overcrowding in their juvenile detention facilities. NJDA and the Youth Law Center, a partner in the project, have considerable experience with juvenile facility overcrowding. The original Overcrowding Project is being broadened significantly to include a greater emphasis on capacity building to achieve meaningful systemic reform and to incorporate nationally recognized operational "best practices" within juvenile confinement facilities.

Accomplishments during previous grant years included providing intensive technical assistance to Camden County, NJ; Oklahoma County, OK; Santa Cruz County, CA; and the States of Rhode Island and South Carolina and technical assistance to juvenile detention or corrections systems in Arkansas, Illinois, Louisiana, Michigan, Nebraska, Nevada, and Ohio. The project also developed and delivered a jurisdictional team training curriculum on overcrowding to five jurisdictions. It also helped develop and produce OJJDP's national videoconference on overcrowding in juvenile detention and eight major training and technical assistance documents.

During FY 2002, the Overcrowding Project will expand its focus to address broader systemic issues through delivery of intensive technical assistance to six to eight new jurisdictions. This effort will be supported by a partnership with OJJDP and the Annie E. Casey Foundation, which will focus on development of a strategy for initiating a national juvenile detention reform movement. The project also will coordinate and complete intensive technical assistance to the West Virginia Division of Juvenile Justice.

[1] Huque, M.F. 1988. Experiences with meta-analysis in NDA submissions. *Proceedings of the Biopharmaceutical Section of the American Statistical Associaiton* 2:28–33.

This project would be implemented by the current grantee, the National Juvenile Detention Association. No additional applications would be solicited in FY 2002.

Performance-Based Standards Project

To date, the Performance-based Standards (PbS) project has developed an integrated set of goals, performance standards, outcome measures, and implementation tools to help facilities improve in six key areas of operations: safety, order, security, programming, health/mental health, and justice of facility operations. Participating sites submit data on 96 outcome measures at 6-month intervals via a secure Internet Web site (www.performance-standards.org), and the results are fed back to the PbS sites within a month of data closeout. The Council of Juvenile Correctional Administrators (CJCA) has worked very closely with the juvenile corrections field in developing and testing a program that focuses on accountability, performance, and the attainment of measurable goals. Currently more than 80 juvenile detention and correctional facilities from 23 States are participating in the PbS project. Five State youth corrections agencies are implementing PbS agencywide.

FY 2002 funding would support implementation of significant innovations in the program that have been under design, development, and testing during the past 2 years. Full implementation would include revisions of the data collection instruments for youth and staff, specifically the incorporation of survey items that track the national Survey of Youth in Residential Placement; implementation of the reintegration standards, outcome measures currently being tested in three States; testing and implementation of an MIS-integrated system that would allow facilities to track performance on a daily basis, rather than at 6-month intervals, as is currently the case. In addition, the scope of the project would expand to include community-based correctional functions as an extension of the work on reintegration standards and also would enable the project to increase the number of participating sites.

This project would be implemented by the current grantee, the Council of Juvenile Correctional Administrators. No additional applications would be solicited in FY 2002.

Survey of Youth in Residential Placement

The first national Survey of Youth in Residential Placement (SYRP) will interview a sample of 10,000 youth in residential placement. It will be conducted in March and April 2003 and will use audio-assisted computerized interviews. The survey will collect critical research information on youth history with the justice system, family life, education, and current treatment needs.

SYRP will follow up on the FY 1998 Planning for the Survey of Youth in Residential Placement cooperative agreement with Westat, Inc. That project developed the data collection instrument, the sampling scheme, and an analysis plan. The planning project also extensively tested the questions used in the instrument, the computer-assisted interviewing method, and the complete instrument and survey methodology in a sample of 40 facilities in a specific geographic region of the country. The new project will implement the finalized Audio-Computer Assisted Survey Instrument (A–CASI) and produce a report based on the data collected.

This project will be implemented by the current grantee Westat, Inc. No additional applications will be solicited in FY 2002.

Systems Improvement Training and Technical Assistance

In FY 2000, OJJDP continued funding to the Institute for Educational Leadership (IEL) for training and technical assistance programs that strengthen and sustain the capacity of SafeFutures and Safe Kids/Safe Streets demonstration sites and selected other communities to assist them with changing their systems. The project seeks to help sites (1) address their system goals and effectively address challenges, (2) educate and inform other communities and the juvenile justice field about how they can more effectively pursue community-based systems reform, (3) enhance the skills of community and staff leadership so they can better sort through the complexities of systems reform, and (4) build the overall capacity of the selected sites to engage in strategic planning, develop policies and programs, and build community collaboratives to address specific substantive challenges and achieve measurable results.

Since the project was awarded, IEL has established a pool of consultants with expertise in systems improvement; developed useful resources for communities addressing issues critical to systems improvement, including using data effectively, achieving sustainability, and building consumer capacity and cultural competence; and provided assistance to several OJJDP comprehensive initiatives.

In FY 2002, OJJDP will continue to fund the project to further assist selected OJJDP grantee communities interested in systems reform and change and to continue disseminating "lessons learned" to other communities.

This project will be implemented by the current grantee, the Institute for Educational Leadership. No additional applications would be solicited in FY 2002.

Training Programs for Juvenile Justice Professionals in Corrections and Detention

The Training Programs for Juvenile Justice Professionals in Corrections and Detention, provided by the National Institute of Corrections (NIC) through an interagency agreement funded by OJJDP, was established in 1990. NIC provides a variety of training and technical assistance, primarily geared toward supervisors and administrators who work in the juvenile justice system. NIC offers comprehensive training courses at its academy in Longmont, CO, and at various sites around the country. The training program is designed to enhance professional development and leadership skills of juvenile justice corrections and detention administrators and supervisors. Through this interagency agreement, training is also offered on critical elements of aftercare, services and programs for juvenile female offenders, restorative justice, curriculum design and development, and training for juvenile justice agency training coordinators and directors. NIC also provides training for newly appointed chief executive officers of juvenile justice corrections agencies and new facility directors.

In FY 2002, NIC will continue to support standards for training juvenile justice professionals through its Juvenile Justice Training Academy project. This project will also provide technical assistance to enhance existing academies and training programs. NIC will conduct several regional training sessions and will provide national training and workshops at their academy during FY 2002.

This project would be implemented through an interagency agreement between OJJDP and the National Institute of Corrections. No additional applications would be solicited in FY 2002.

Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement

The goal of this project is to assist States and local jurisdictions in their efforts to reduce the overrepresentation of minority youth in secure facilities. States participating in the Formula Grants Program are required to determine whether the proportion of minorities in confinement exceeds their proportion in the population and, if so, demonstrate efforts to reduce it. Research and Evaluation Associates (REA) is one of several Office of Juvenile Justice and Delinquency Prevention (OJJDP) grantees with responsibility for support of the Disproportionate Minority Confinement (DMC) requirement. This project, funded in FY 2001, follows a 3-year grant that supported development of a curriculum for policymakers and practitioners on DMC issues.

In FY 2001, REA developed a set of strategic tools and materials to assist jurisdictions to address this issue and managed delivery of intensive technical assistance to five selected States. In working with the five States, project staff established a protocol for the delivery of technical assistance in response to DMC issues, which will help States identify and prioritize interventions that provide both an immediate and a long-term impact on DMC.

In FY 2002, the grantee's activities will include identifying and training consultants to support the expansion of the intensive technical assistance, evaluating the use of the protocol in technical assistance delivery, conducting a DMC training of trainers, updating the DMC Web site, and continuing to develop strategies and approaches that will aid in implementing and monitoring the DMC effort.

This project will be implemented by the current grantee, Research and Evaluation Associates. No additional applications will be solicited in FY 2002.

Child Abuse and Neglect and Dependency Courts

Evaluation of the Parents Anonymous® Program

In FY 2001, OJJDP began this project through a competitive process to evaluate the Parents Anonymous® program. Parents Anonymous, Inc., is a national child abuse prevention program dedicated to family strengthening in partnership with local communities. The purpose of the evaluation is to assess the implementation and effectiveness of the Parents Anonymous® program in preventing and treating child abuse and neglect. The National Council on Crime and Delinquency is conducting this evaluation in two phases. Phase I is an ongoing process evaluation that is investigating how the theoretical premises, principles, best practices, and model of Parents Anonymous® are operationalized in a sample of programs selected by the evaluator. Phase II will present a preliminary approach to conducting the outcome evaluation of the selected programs. This will include a detailed discussion of the overall design of the outcome evaluation and methods for selecting programs and comparison groups, designing and testing data collection instruments, and collecting and analyzing data.

This project will be implemented by the current grantee, the National Council on Crime and Delinquency. No additional applications will be solicited in FY 2002.

National Evaluation of the Safe Kids/Safe Streets Program

OJJDP will continue funding the grant competitively awarded in FY 1997 to Westat, Inc., Rockville, MD, for the National Evaluation of the Safe Kids/Safe Streets Program. The evaluation has three main goals: to document and explicate the process of community mobilization, planning, and collaboration taking place before and during the Safe Kids/Safe Streets award; to inform program staff of performance levels on an ongoing basis; and to determine the effectiveness of the implemented programs in achieving the goals of the Safe Kids/Safe Streets Program. The initial 18-month grant began a process evaluation and a feasibility study for a future impact evaluation. With FY 2001 funding, Westat continued the process evaluation, which focuses on tracking the implementation efforts at each of the sites, and continued working with local evaluators to develop their skills and capacity for program evaluation. With funding in FY 2002, Westat will continue the impact evaluation, which includes a pilot study of its proposed case tracking procedure.

This evaluation will be implemented by the current grantee, Westat, Inc. No additional applications will be solicited in FY 2002.

Research on Child Neglect

This project is a collaborative effort of several Federal agencies concerned with research in the area of child abuse and neglect. The National Institutes of Health Child Abuse and Neglect Working Group (CANWG) is a consortium of Federal agencies that was formed in 1997. CANWG's goals are to assess the state of the science in child abuse and neglect, make recommendations for a research agenda, and develop plans for future coordination efforts across Federal agencies and institutes. In 1998, OJJDP joined CANWG to participate in funding a research program focused specifically on child neglect. OJJDP funds are supporting two research projects within the overall CANWG research program.

This project will be implemented through the current interagency agreement with the National Institutes of Health Child Abuse and Neglect Working Group. No additional applications will be solicited in FY 2002.

Safe Kids/Safe Streets: Community Approaches To Reducing Abuse and Neglect and Preventing Delinquency

This 5½-year demonstration is designed to break the cycle of early childhood victimization and later delinquency and criminality by reducing child and adolescent maltreatment and fatalities. Several components of the Office of Justice Programs joined in FY 1996 to develop this coordinated community response program. These components provide fiscal and technical support for local efforts to restructure and strengthen the justice system and the child welfare, family services, education, health, and related systems to be more comprehensive and proactive in helping children, adolescents, and their families. Safe Kids requires the five funded sites to develop, implement, and/or expand cross-agency strategies and to partner with natural networks in their communities. OJJDP awarded competitive cooperative agreements in FY 1997 to Chittenden County, VT; Huntsville, AL; Kansas City, MO; the Sault Ste. Marie Tribe of Chippewa Indians, MI; and Toledo, OH. Funds were provided by OJJDP, the Executive Office for Weed and Seed, and the Violence Against Women Office. FY 2002 is the fifth year of the demonstration project period.

This demonstration will continue to be implemented in FY 2002 by the current grantees: Chittenden County, VT; Huntsville, AL; Kansas City, MO; the Sault Ste. Marie Tribe of Chippewa Indians, MI; and Toledo, OH. No additional applications will be solicited in FY 2002.

Dated: October 17, 2001.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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H.R. 1583/P.L. 107–49
To designate the Federal building and United States courthouse located at 121 West Spring Street in New Albany, Indiana, as the "Lee H. Hamilton Federal Building and United States Courthouse". (Oct. 15, 2001; 115 Stat. 262)

H.R. 1860/P.L. 107–50
Small Business Technology Transfer Program Reauthorization Act of 2001 (Oct. 15, 2001; 115 Stat. 263)

H.J. Res. 42/P.L. 107–51
Memorializing fallen firefighters by lowering the American flag to half-staff in honor of the National Fallen Firefighters Memorial Service in Emmitsburg, Maryland. (Oct. 16, 2001; 115 Stat. 267)

H.J. Res. 51/P.L. 107–52
Approving the extension of nondiscriminatory treatment with respect to the products of the Socialist Republic of Vietnam. (Oct. 16, 2001; 115 Stat. 268)

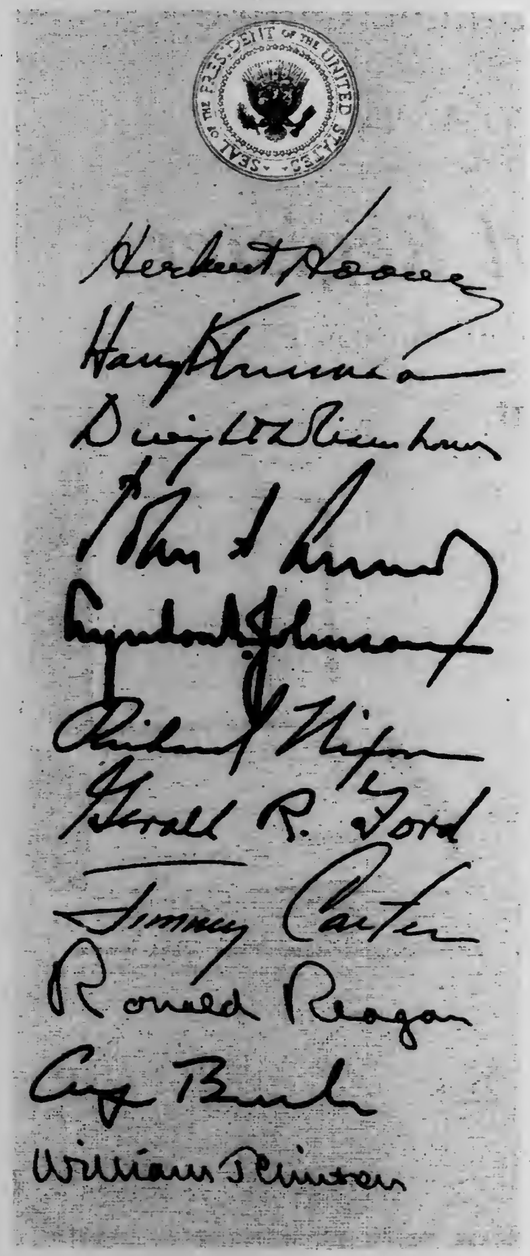
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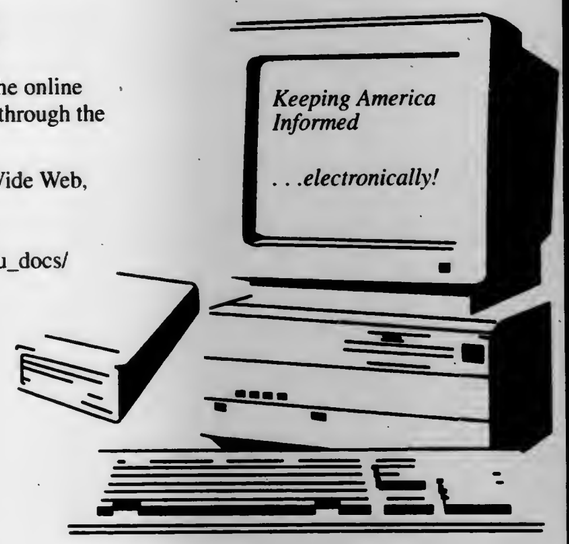
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Pages 53711–53942

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 99F–2533]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Change in Specifications for Gum or Wood Rosin Derivatives in Chewing Gum Base; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of July 23, 2001 (66 FR 38152). The document amended the food additive regulations in § 172.615 (21 CFR 172.615) to provide for their safe use as plasticizing materials (softeners) in chewing gum base. A word in the specification for glycerol ester of gum rosin was inadvertently misspelled. This document corrects that error.

EFFECTIVE DATE: July 23, 2001.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, Washington, DC 20204–0001, 202–418–3072.

SUPPLEMENTARY INFORMATION: In the FR Doc. 01–18221, appearing in the **Federal Register** of Monday, July 23, 2001, the following correction is made:

§ 172.615 [Corrected]

On page 38153, in § 172.615 *Chewing gum base*, in paragraph (a), in the table entitled "Plasticizing Materials (Softeners)" in the entry for "Glycerol ester of gum rosin," the word "striping" is corrected to read "stripping."

Dated: October 15, 2001.

L. Robert Lake,

Director of Regulations Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–26708 Filed 10–23–01; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 3811]

Visas—Visa Classification Symbols: Corrections

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Correcting amendments.

SUMMARY: The Department of State (the Department) is publishing this document to correct an error in a final rule published in the **Federal Register** [66 FR 32740] on June 18, 2001. The Department is also taking this opportunity to include the dependents of the SN categories to the N8 and N9 categories in accordance with the provisions of Pub. L. 105–277.

DATES: This rule takes effect on October 24, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Office, (202) 663–1206.

SUPPLEMENTARY INFORMATION: On June 18, 2001, the Department amended section 41.12 of part 22 of the Code of Federal Regulations by adding the new nonimmigrant "T" classifications and the new nonimmigrant U classifications. The new T1 classification symbol would be used to classify victims of a severe form of trafficking in persons and the T2 classification for the spouse, child and parent of the T1. The rule also created two new U visa classification symbols; the U1 classification symbol for victims of criminal activity and the U2 for the spouse, child or parent of a U1.

The Immigration and Naturalization Service (INS), however, has decided there should be separate visa classifications for the spouses, the children and the parents of the T1 and U1 principals. This rule corrects section 41.12 by revising the T2 and U2 classification symbols and creating additional classification symbols T3, T4, U3, and U4.

This rule also amends the N8 and N9 categories to include dependents of the SN categories (NATO special immigrants) to comply with the provisions of Pub. L. 105–277. This rule corrects section 41.12 to read as follows:

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports, and Visas.

Accordingly, 22 CFR part 41 is corrected by making the following correcting amendments:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681 *et. seq.*

§ 41.12 (Amended)

2. In the table in § 41.12, revise the entries for N8 and N9, correct the entries for T2 and U2 and add the new visa classification symbols T3 and T4 and U3 and U4 to read as follows:

NONIMMIGRANTS

Symbol and class	Section of law
. . .	. . .
N8 Parent of an Alien Classified SK3 or SN3.	101(a)(15)(N)(i)
N9 Child of N8 or of an SK1, SK2, SK4, SN1, SN2 or SN4.	101(a)(15)(N)(ii)
. . .	. . .
T2 Spouse of T1	101(a)(15)(T)(ii)
T3 Child of T1	101(a)(15)(T)(ii)
T4 Parent of T1	101(a)(15)(T)(ii)
. . .	. . .
U2 Spouse of U1	101(a)(15)(U)(ii)
U3 Child of U1	101(a)(15)(U)(ii)
U4 Parent of U1	101(a)(15)(U)(ii)
. . .	. . .

Dated: October 2, 2001.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 01–26772 Filed 10–23–01; 8:45 am]
BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–01–066]

RIN 2115–AE84

Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Commander, Fifth Coast Guard District is adding vessel speed limits, for certain vessels operating in the vicinity of Naval Station Norfolk, to the existing regulated navigation area for the Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters. This temporary rule is necessary to ensure the safety and security of naval vessels that are moored at Naval Station Norfolk. The temporary rule will require all vessels of 300 gross tons (GT) and greater to reduce speed to eight knots (as over ground) in the vicinity of Naval Station Norfolk, in order to improve security measures and reduce the potential threat to Naval Station Norfolk security that may be posed by these vessels.

DATES: This temporary final rule is effective from October 24, 2001 to June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–01–066 and are available for inspection or copying at USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia 23510 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Monica Acosta, USCG, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3453.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rulemaking, and the rule takes effective immediately. The changes made by this temporary rule are specifically authorized under 33 U.S.C. 1223(a)(4) and 1226 as a response to the terrorist acts that occurred on September 11, 2001, and to prevent similar occurrences. In response to an October 9, 2001 request by the Navy, immediate action is necessary to ensure the safety and security of naval vessels moored at Naval Station Norfolk during large merchant vessel transits of the Elizabeth River. Due to their large size and substantial momentum while underway, and considering the close proximity of the shipping channel to Naval Station Norfolk, merchant vessels greater than 300 GT pose a potential threat to Naval Station Norfolk's security. Imposing this speed limit will help provide better security alongside Naval Station Norfolk as well as reduce the potential threat. Therefore, delay in implementing these changes is contrary to the public interest, and the Coast Guard finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and comment rulemaking and advance publication are not required.

Background and Purpose

The Commander Naval Station Norfolk requested this rule to reduce the potential threat to national security that may be posed by vessels of 300 gross tons or greater as they pass the naval station. This temporary modification of the RNA is necessary to ensure the safety and security of naval vessels in the vicinity of Naval Station Norfolk. The U.S. Navy or other federal agencies may assist the U.S. Coast Guard in the enforcement of this rule.

No vessel of 300 gross tons or greater may proceed at a speed over eight knots between Elizabeth River Channel Lighted Gong Buoy 5 (LL 9470) of Norfolk Harbor Reach and gated Elizabeth River Channel Lighted Buoys 17 (LL 9595) and 18 (LL 9600) of Craney Island Reach. All vessels less than 300 gross tons are exempt from this rule, as well as all Public vessels as defined in 33 U.S.C. 1321, which states that a public vessel means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979). This temporary final rule will be in effect for less than nine months. During this period, it is estimated to affect 3988 vessel transits. However, the speed limit restrictions are only in effect for less than four miles, and typical vessel speed is 10 knots, so the actual delay for each vessel will be less than 6 minutes in each direction. Therefore, this delay caused by the two-knot reduction in speed will be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities. This rule will only affect the following entities, some of which may be small entities: The owners or operators of vessels 300 gross tons or greater intending to transit Norfolk Harbor Reach at speeds greater than eight knots. This rule will only affect a limited portion of a vessel's total transit, and for only a length of less than four miles. Deep-draft vessels typically transit this area at approximately 10 knots, and therefore the eight-knot speed limit will not cause significant delays. The actual delay for each vessel is less than 6 min. in each direction and the impact on small entities should be minimal. Additionally, we believe that very few small entities operate vessels of greater than 300 gross tons on a regular basis. Further, the rule is only in effect for nine months.

If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this temporary rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lC, this temporary rule is categorically excluded from further environmental documentation. This temporary rule seeks to modify a well-established Regulated Navigation Area, and will be in effect for less than nine months. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From October 24, 2001 until June 15, 2002, in § 165.501, add new paragraph (d)(14) to read as follows:

§ 165.501 Chesapeake Bay entrance and Hampton Roads, Va. and adjacent waters—regulated navigation area.

* * * * *

(d) * * *

(14) Speed restrictions on Norfolk Harbor Reach. Vessels of 300 gross tons or more may not proceed at a speed over eight knots between the Elizabeth River Channel Lighted Gong Buoy 5 (LL 9470) of Norfolk Harbor Reach (northwest of Sewells Point) at approximately 36°58′00″ N, 76°20′00″ W and gated Elizabeth River Channel Lighted Buoys 17 (LL 9595) and 18 (LL 9600) of Craney Island Reach (southwest of Norfolk International Terminal) at approximately 36°54′17″ N, 76°20′11″ W. All vessels less than 300 gross tons are exempt from this rule. All coordinates reference Datum NAD 1983. This speed restriction does not apply to Public vessels as defined in 33 U.S.C. 1321(a)(4). The U.S. Navy or other Federal agencies may assist the U.S. Coast Guard in the enforcement of this paragraph.

* * * * *

Dated: October 10, 2001.

T.W. Allen,

Vice Admiral, U. S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 01–26817 Filed 10–23–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 01–008]

RIN 2115–AA97

Security Zones; Los Angeles Harbor, Los Angeles, CA and Avila Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary security zones—one in the waters surrounding the Coast Guard Base-ISC San Pedro at Reservation Point in the Los Angeles Harbor, the second one in the waters surrounding the Los Angeles Cruise Ship Terminal in the Los Angeles Harbor and the third zone is in the waters adjacent to the Diablo Canyon Nuclear Power Plant in Avila Beach, CA. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts against the public and commercial structures and individuals near or in these structures. These security zones will prohibit all persons and vessels from entering,

transiting through or anchoring within the security zones unless authorized by the Captain of the Port (COTP), or his designated representative.

DATES: This rule is effective from 4 p.m. (PDT) on September 28, 2001 to 3:59 p.m. (PDT) March 29, 2002.

ADDRESSES: Any comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP Los Angeles-Long Beach 01–008, and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 1001 S. Seaside Avenue, Bldg 20, San Pedro, California. 90731, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM1 George Kirk, Waterways Management Division, Marine Safety Office/Group Los Angeles-Long Beach, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**.

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York; New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon in Arlington, Virginia on the same day. National security officials warn that future terrorist attacks against civilian targets may be anticipated. A heightened level of security has been established concerning all vessels transiting in the Los Angeles Harbor and Diablo Canyon Nuclear Power Plant areas. These security zones are needed to protect the United States and more specifically the people, ports, waterways, and properties of the Los Angeles Harbor and Diablo Canyon Nuclear Power Plant areas.

The delay inherent in the NPRM process, and any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to the Coast Guard Base-ISC San Pedro, Los Angeles Cruise Ship Terminal and the Diablo Canyon Nuclear Power Plant vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by the rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to these Los Angeles Harbor and Diablo Canyon Nuclear Power Plant area facilities. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

Background and Purpose

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating near these installations within Los Angeles Harbor and the Diablo Canyon Nuclear Power Plant present possible platforms from which individuals may gain unauthorized access to these installations, or launch terrorist attacks upon the waterfront structures and adjacent population centers.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended The Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001 have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing three temporary security zones in the navigable waters of the United States within Los Angeles Harbor and the navigable waters of the United States adjacent to the Diablo Canyon Nuclear Power Plant.

These temporary security zones are necessary to provide for the safety and security of the United States of America and the people, ports, waterways and properties within the Los Angeles Harbor and Diablo Canyon Nuclear Power Plant area. These temporary security zones, prohibiting all vessel traffic from entering, transiting or anchoring within the above described areas, are necessary for the security and protection of the Coast Guard Base-ISC San Pedro, the Los Angeles Cruise Ship Terminal and any vessels moored there, as well as the Diablo Canyon Nuclear Power Plant. These zones will be enforced by Coast Guard patrol craft or any patrol craft enlisted by the COTP. Persons and vessels are prohibited from entering into these security zones unless authorized by the Captain of the Port or his designated representative. Each person and vessel in a security zone shall obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the COTP.

Any violation of either security zone described herein, is punishable by, among other things, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 12 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Due to the recent terrorist actions against the United States the implementation of this security zone is necessary for the protection of the United States and its people. Because these security zones are established in an area of the Los Angeles Harbor that is seldom used by non-Coast Guard vessels and non-cruise ships; and in an area near the Diablo Canyon Nuclear Power Plant that is seldom used, the Coast Guard expects the economic impact of this rule to so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

These security zones will not have a significant impact on a substantial number of small entities because these security zones are only closing small portions of the navigable waters of the Los Angeles Main Channel. Vessels may still continue to transit other portions of the Los Angeles Main Channel. The portion of the security zone that affects the Diablo Canyon Nuclear Power Plant will also have an insignificant impact on small entities, because the area is infrequently transited. In addition, there are no small entities shoreward of any of these security zones, and no vessels other than Coast Guard vessels and/or cruise ships would normally transit these zones. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact BM1 George Kirk, Waterways Management Division, Marine Safety Office/Group Los Angeles-Long Beach, at (310) 732–2020.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34), of Commandant Instruction M16475.lD, this rule, which establishes three security zones, is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add new § 165.T11–055 to read as follows:

§ 165.T11–055 Security Zones: Waters surrounding Coast Guard Base-ISC San Pedro, Reservation Point; Los Angeles Cruise Ship Terminal, Los Angeles Harbor; and Diablo Canyon Nuclear Power Plant, Avila Beach, CA.

(a) *Location.* (1) *Coast Guard Base-ISC San Pedro.* This security zone encompasses all waters of Los Angeles Harbor Main Channel within 100 yards of the western shore of Reservation Point including the small boat basin.

(2) *Los Angeles Cruise Ship Terminal.* This security zone encompasses all waters of Los Angeles Harbor Main Channel within 100 yards of the cruise ship terminal, including the entire basin at berth 93 to a point 100 yards east of the south end of berth 94.

(3) *Diablo Canyon Nuclear Power Plant.* This security zone encompasses waters within a one-nautical-mile radius of Diablo Canyon Nuclear Power Plant that is centered at the following coordinate: latitude 35°12′30″ N, longitude 120°51′30″ W.

(b) *Effective dates.* These security zones will be in effect from 4 p.m. (PDT) on September 28, 2001 to 3:59 p.m.

(PST) on March 29, 2002. If the need for these security zones ends before the scheduled termination time and date, the Captain of the Port will cease enforcement of the security zones and will also announce that fact via Broadcast Notice to Mariners and Local Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in the security zone established by this temporary section, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zones established by this temporary section. Mariners requesting permission to transit through the security zones must request authorization to do so from the Captain of the Port, who may be contacted through Coast Guard Group Los Angeles—Long Beach on VHF–FM Channel 16.

Dated: October 2, 2001.

J.M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 01–26816 Filed 10–23–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301182; FRL–6805–8]

RIN 2070–AB78

Vinyl Acetate Polymers; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of vinyl acetate polymers; when used as an inert ingredient in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals. Uniqema submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of vinyl acetate polymers.

DATES: This regulation is effective October 24, 2001. Objections and requests for hearings, identified by docket control number OPP–301182, must be received by EPA on or before December 24, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301182 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373 and e-mail address: *alston.treva@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov/.* To access this document, on the homepage select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html,* a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301182. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 20, 2001, (66 FR 33081) (FRL–6785–9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170) announcing the filing of a pesticide petition (PP 1E6294) by Uniqema, 900 Uniqema Blvd, New Castle, DE 19720. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(c), and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of vinyl acetate polymers.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. These vinyl acetate polymers, are not cationic polymers nor are they reasonably anticipated to become cationic polymers in a natural aquatic environment.

2. These polymers do contain as an integral part of their compostion the atomic elements carbon, hydrogen, and oxygen.

3. These polymers do not contain as an integral part of their composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. These polymers are neither designed nor can they be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. These polymers are manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. These polymers are not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, vinyl acetate polymers, also meet as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 1,200 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, vinyl acetate polymers meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to theabove criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to vinyl acetate polymers.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that vinyl acetate polymers could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of these vinyl acetate polymers is 1,200 daltons. Generally, polymers of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since vinyl acetate polymers conform to the criteria that identify low risk polymers, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not vinyl acetate polymers share a common mechanism of toxicity with any other chemicals. However, vinyl acetate polymers conform to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of vinyl acetate polymers.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low

toxicity of vinyl acetate polymers, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that vinyl acetate polymers are endocrine disruptors.

B. Existing Exemptions from a Tolerance

There are no existing tolerance exemptions for vinyl acetate polymers.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for vinyl acetate polymers nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of vinyl acetate polymers from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301182 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 24, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301182, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications " as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.1001 the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
. . . . .	.	
Vinyl acetate polymer with none and/or one or more of the following monomers: ethylene, propylene, N-methyl acrylamide, acrylamide, monoethyl maleate, diethyl maleate, monooctyl maleate, dioctyl maleate, maleic anhydride, maleic acid, octyl acrylate, butyl acrylate, ethyl acrylate, methyl acrylate, acrylic acid, octyl methacrylate, butyl methacrylate, ethyl methacrylate, methyl methacrylate, methacrylic acid carboxyethyl acrylate, and diallyl phthalate; and their corresponding sodium, potassium, ammonium, isopropylamine, triethylamine, monoethanolamine and/or triethanolamine salts; the resulting polymer having a minium number average molecular weight (in amu) 1200.	.....	Components of films, binders, carriers, adhesives, or related adjuvants
. . . . .	.	

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
Vinyl acetate polymer with none and/or one or more of the following monomers: ethylene, propylene, N-methyl acrylamide, acrylamide, monoethyl maleate, diethyl maleate, monooctyl maleate, dioctyl maleate, maleic anhydride, maleic acid, octyl acrylate, butyl acrylate, ethyl acrylate, methyl acrylate, acrylic acid, octyl methacrylate, butyl methacrylate, ethyl methacrylate, methyl methecrylate, methacrylic acid carboxyethyl acrylate, and diallyl phthalate; and their corresponding sodium, potassium, ammonium, isopropylamine, triethylamine, monoethanolamine and/or triethanolamine salts; the resulting polymer having a minium number average molecular weight (in amu) of 1200.	.....	Components of films, binders, carriers, adhesives, or related adjuvants

[FR Doc. 01–26532 Filed 10–23–01; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301183; FRL–6805–6]

RIN 2070–AB78

Modified Acrylic Polymers; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of modified acrylic polymers; when used as inert ingredients in pesticide formulations in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals. Uniqema submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of modified acrylic polymers.

DATES: This regulation is effective October 24, 2001. Objections and requests for hearings, identified by docket control number OPP–301183, must be received by EPA on or before December 24, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control numberOPP–301183 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373 and e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov/*. To access this document, on the homepage select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301183. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 20, 2001 (66 FR 33081) (FRL–6785–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 1E6293) by Uniqema, 900

Uniqema Blvd, New Castle, DE 19720. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(c), (d), and/or (e) be amended by establishing an exemption from the requirement of a tolerance for residues of a group of modified acrylic polymers.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . ." and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. These modified acrylic polymers, are not cationic polymers nor are they reasonably anticipated to become cationic polymers in a natural aquatic environment.

2. These polymers do contain as an integral part of their compostion the atomic elements carbon, hydrogen, and oxygen.

3. These polymers do not contain as an integral part of their composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. These polymers are neither designed nor can they be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. These polymers are manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. These polymers are not water absorbing polymers with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

7. The polymer's number average MW of 1,200 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Additionally, the modified acrylic polymers, also meet as required the following exemption criteria specified in 40 CFR 723.250(e).

Thus, modified acrylic polymers meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to modified acrylic polymers.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that modified acrylic polymers could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of modified acrylic polymers is 1,200 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since modified acrylic polymers conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not modified acrylic polymers share a common mechanism of toxicity with any other chemicals. However, modified acrylic polymers conform to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of modified acrylic polymers.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low toxicity of modidfied acrylic polymers, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that modified acylic polymers is an endocrine disruptor.

B. Existing Exemptions from a Tolerance

There are no existing tolerance exemptions for modified acrylic polymers.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for modified acrylic polymers nor have any Codex Maximum Residue Levels been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of modified acrylic polymers from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301183 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 24, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301183, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.1001, the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
. . . . .	. . . .	. . . .
Acrylic polymers composed of one or more of the following monomers: Acrylic acid, methyl acrylate, ethyl acrylate, butyl acrylate, hydroxyethyl acrylate, hydroxypropyl acrylate, hydroxybutyl acrylate, carboxyethyl acrylate, methacrylic acid, methyl methacrylate, ethyl methacrylate, butyl methacrylate, isobutyl methacrylate, hydroxyethyl methacrylate, hydroxypropyl methacrylate, hydroxybutyl methacrylate, lauryl methacrylate, and stearyl methacrylate; with none and/or one or more of the following monomers: Acrylamide, *N*-methyl acrylamide, *N*-octylacrylamide, maleic anhydride, maleic acid, monoethyl maleate, diethyl maleate, monooctyl maleate, dioctyl maleate; and their corresponding sodium, potassium, ammonium, isopropylamine, triethylamine, monoethanolamine,and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu) 1,200.	.....	Components of films, binders, carriers, adhesives, or related adjuvants
. . . . .	. . . .	

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
. . . . .	. . . .	. . . .
Acrylic polymers composed of one or more of the following monomers: Acrylic acid, methyl acrylate, ethyl acrylate, butyl acrylate, hydroxyethyl acrylate, hydroxypropyl acrylate, hydroxybutyl acrylate, carboxyethyl acrylate, methacrylic acid, methyl methacrylate, ethyl methacrylate, butyl methacrylate, isobutyl methacrylate, hydroxyethyl methacrylate, hydroxypropyl methacrylate, hydroxybutyl methacrylate, lauryl methacrylate, and stearyl methacrylate; with none and/or one or more of the following monomers: Acrylamide, *N*-methyl acrylamide, *N*-octylacrylamide, maleic anhydride, maleic acid, monoethyl maleate, dietyl maleate, monooctyl maleate, dioctyl maleate; and their corresponding sodium, potassium, ammonium, isopropylamine, triethylamine, monoethanolamine, and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu) 1,200.	.....	Components of films, binders, carriers, adhesives, or related adjuvants
. . . . .	. . . .	

[FR Doc. 01–26531 Filed 10–23–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–7014–9]

Indiana: Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the EPA may grant States Final Authorization to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that are part of the authorized State program. The purpose of this action is to codify Indiana's authorized hazardous waste program in 40 CFR part 272. This rule incorporates by reference provisions of Indiana's hazardous waste statutes and regulations and clarifies which of these provisions are authorized and federally enforceable. Unless adverse written comments are received during the comment period, the EPA's decision to incorporate by reference Indiana's authorized hazardous waste program will take effect as provided.

DATES: This document will become effective December 24, 2001 without further notice, if EPA receives no adverse comment on this rule by November 23, 2001. Should the Agency receive such comments, it will withdraw this rule before its effective date by publishing a withdrawal in the **Federal Register**. The Director of the Federal Register approved the incorporation by reference of the Indiana statutes and regulations contained in this rule as of December 24, 2001.

ADDRESSES: Send written comments to Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of RCRA, 42 U.S.C. 6926 *et seq.*, allows the EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. EPA provides notice of its authorization of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that are a part of the authorized State program under RCRA. This effort provides clearer notice to the public of the scope of the authorized programs. The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority.

Effective August 23, 1989 (54 FR 34988), EPA incorporated by reference Indiana's then authorized hazardous waste program. The purpose of today's **Federal Register** document is to incorporate by reference EPA's authorization of Indiana's subsequent nine revisions to that program. This rule incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program.

B. Indiana Authorized Hazardous Waste Program

Indiana received Final Authorization for its RCRA hazardous waste base program on January 31, 1986, effective January 31, 1986 (51 FR 3955). EPA incorporated by reference the then authorized hazardous waste program in subpart P of 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.751, and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at Sec. 272.751(b)(5),(b)(6), and (b)(7), respectively.

Since the initial codification, Indiana has received authorization for revisions to its program on July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866) (this was a renumbering of Indiana's regulations from 320 IAC 4.1 to 329 IAC 3); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43008) (this was a renumbering of Indiana's regulations from 329 IAC 3 to 329 IAC 3.1); August 20 1996, effective October 21, 1996 (61 FR 43018); September 1, 1999, effective November 30, 1999 (64 FR 47692); and on January 4, 2001, effective January 4, 2001 (66 FR 733). In this document EPA is revising the incorporation by reference of Indiana's authorized hazardous waste program in subpart P of 40 CFR part 272, to include these revisions.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Indiana enforcement authorities. Section 272.751(b)(2) of 40 CFR lists those enforcement authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of a State's hazardous waste management program are not part of the Federally authorized State program. These nonauthorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal provisions which the State incorporated into its regulations when the State adopted Federal regulations by reference, but for which the State is not authorized;

At this time, Indiana has adopted but is not authorized for the Corrective Action for Injection Wells portion of HSWA Codification Rule 2 published in the FR on December 1, 1987 (52 FR 45788); and the Federal rules published in the FR on February 21, 1991 (56 FR 7134); July 17, 1991 (56 FR 32688); August 27, 1991 (56 FR 42504); September 5, 1991 (56 FR 43754); February 18, 1992 (57 FR 5859); August 25, 1992 (57 FR 38558); September 30, 1992 (57 FR 44999); July 20, 1993 (58 FR 38816); November 9, 1993 (58 FR 59598); May 12, 1997 (61 FR 25998); June 13, 1997 (62 FR 32452); June 17, 1997 (62 FR 32974); July 14, 1997 (62 FR 37694) August 28, 1997 (62 FR 45568); December 8, 1997 (62 FR 64636); April 15, 1998 (63 FR 18504); May 6, 1998 (63 FR 24963); May 26, 1998 (63 FR 28556); June 8, 1998 (63 FR 31266); June 19, 1998 (63 FR 33782); July 14, 1998 (63 FR 37780); August 6, 1998 (63 FR 42110); August 31, 1998 (63 FR 46332); September 4, 1998 (63 FR 47409); September 9, 1998 (63 FR 48124); September 24, 1998 (63 FR 51254); October 9, 1998 (63 FR 54356); October 22, 1998 (63 FR 56710); November 30, 1998 (63 FR 65874); December 24, 1998 (63 FR 71225); January 21, 1999 (64 FR 3381) and February 11, 1999 (64 FR 6806). Therefore these Federal amendments included in Indiana's adoption by reference at 329 IAC 3.1 are not part of the State's authorized program and are not part of the incorporation by reference addressed by today's FR document.

Since EPA cannot enforce a State's requirements which have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is important to clarify any limitations on the scope of a State's authorized hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, or where a State has made unauthorized amendments to previously authorized sections of State code, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in 40 CFR 272.751(b)(4), any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. Thus, notwithstanding the language in the Indiana hazardous waste regulations incorporated by reference at 40 CFR 272.751(b)(1), EPA will only enforce the State provisions that are actually authorized by EPA. For the convenience of the regulated community, the actual State regulatory text authorized by EPA for the citations listed at 40 CFR 272.751(b)(1) is compiled as a separate document, *Addendum to the EPA-Approved Indiana Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, March 2001*. This document is available from U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, attention Gary Westefer. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

C. HSWA Provisions

The Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) take effect in authorized and not authorized States at the same time. A HSWA requirement or

prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985). EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirements implemented by EPA. However, until EPA authorizes those State requirements, EPA can only enforce the HSWA requirements and not the State analogs. EPA will not codify those State requirements until the State receives authorization for those requirements.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The section 202 and 205 requirements do not apply to today's action because it is not a "Federal mandate" and because it does not impose annual costs of $100 million or more for State, local and/or tribal governments in the aggregate, or the private sector. Today's action contains no Federal mandates for State, local or tribal governments or the private sector because it does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector. This rule merely incorporates by reference existing requirements with which regulated entities must already comply under State and Federal law. For this same reason, this action will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector because it incorporates by reference an existing State program that EPA previously authorized. Cost to the State, local and/or tribal governments, and to regulated entities already exist under the authorized program. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary Federal program.

The requirements of section 203 of UMRA also do not apply to today's action because it contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate treatment, storage, and disposal facilities, this codification incorporates into the CFR Indiana's requirements which EPA already authorized under 40 CFR part 271. Small governments are not subject to any additional significant or unique requirements by virtue of this action.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this codification on small entities, I certify pursuant to the provision at 5 U.S.C. 605(b), that this codification will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws authorized by EPA under 40 CFR part 271. This codification incorporates Indiana's requirements which have been authorized by EPA under 40 CFR part 271 into the CFR. The EPA's codification does not impose any additional burdens on these small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations' as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities. Today's rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves Indiana's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in Indiana in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

Compliance With Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

This rule is not subject to Executive Order 13175 because it does not significantly or uniquely affect the communities of Indian tribal governments. Indiana is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA may implement in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This rule is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 3, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Subpart P—[Amended]

2. Section 272.750 is removed and reserved.

3. Section 272.751 is revised to read as follows:

§ 272.751 Indiana state-administered program: Final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Indiana has final authorization for the following elements as submitted to EPA in Indiana's base program application for final authorization which was approved by EPA effective on January 31, 1986. Subsequent program revision applications were approved effective on December 31, 1986, January 19, 1988, September 11, 1989, September 23, 1991 (two separate revisions), September 27, 1991, September 30, 1991, October 21, 1996, November 30, 1999, and January 4, 2001.

(b) *State statutes and regulations.* (1) The Indiana statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Copies of the Indiana regulations that are incorporated by reference in this paragraph are available from the Indiana Legislative Services Agency, Administrative Code and Register Division, 302 State House, Indianapolis, Indiana 46204.

(i) The EPA approved Authorized Indiana Statutory Requirements Applicable to the Hazardous Waste Management Program, dated March 2001.

(ii) The EPA approved Indiana Regulatory Requirements Applicable to the Hazardous Waste Management Program, dated March 2001.

(2) The following statutes and regulations concerning State procedures and enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Annotated Indiana Code, 1998 edition, Title 13, Article 4–21.5, 5–14–3–2, 13–11–2, 13–14–2–2, 13–14–9, 13–14–10, 13–15–2, 13–19–1, 13–19–2, 13–20, 13–22–1, 13–22–3, 13–22–5 through 13–22–14, 13–23, 13–30, and 23–1–16.

(ii) Indiana Administrative Code, as amended, 1996 edition, certified October 24, 1995, 2000 cumulative supplement, certified November 30, 1999, sections 329 IAC 3.1–1–1 through 3.1–1–6; 3.1–1–8 through 3.1–1–14; 3.1–2–1 through 3.1–2–16; 3.1–3–1 through 3.1–3–9; 3.1–4–2 through 3.1–4–26; 3.1–13–5; 3.1–13–8 through 3.1–13–17; 3.1–14–2; 3.1–14–3; and 13–1–3 through 13–1–6.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference: Indiana Administrative Code as amended, 1996 edition, certified October 24, 1995, 2000 cumulative supplement, certified November 30, 1999, sections 329 IAC 3.1–6–3; and 3.1–8–4.

(4) *Unauthorized State provisions:* Although the Federal rules listed in the following table have been adopted by the State and have been included in the materials incorporated by reference in paragraph (b)(1) of this section, EPA has not authorized the State for these rules at this time. While they may be enforceable under State law, they are not enforceable under RCRA:

Federal requirement	**Federal Register** reference	Publication date
1. Hazardous Waste Management System; Testing and Monitoring Activities (Checklist 158).	62 FR 32452	June 13, 1997.
2. Kraft Mill Stream Stripper Condensate Exclusion (Checklist 164)	63 FR 18504	April 15, 1998.
3. Recycled Used Oil Management Standards; Technical Correction and Clarification (Checklist 166) as amended (Checklist 166.1).	63 FR 24963	May 6, 1998.
4. Bevill Exclusion Revisions and Clarification (Checklist 167E)	63 FR 37780	July 14, 1998.
5. Exclusion of Recycled Wood Preserving Wastewaters (Checklist 167F)	63 FR 28556	May 26, 1998.
6. Hazardous Waste Combustors Revised Standards (Checklist 168)	63 FR 33782	June 19, 1998.
7. Universal Waste Rule; Technical Amendment (Checklist 176)	63 FR 71225	December 24, 1998.

(i) Additionally Indiana has adopted but is not authorized to implement the HSWA rules that are listed the following table. EPA will continue to implement the Federal HSWA requirements for which Indiana is not authorized until the State receives specific authorization for those requirements:

Federal requirement	**Federal Register** reference	Publication date
1. HSWA Codification Rule 2; Corrective Action for Injection Wells (Checklist 44C)	52 FR 45788	December 1, 1987.
2. Burning of Hazardous Waste in Boilers and Industrial Furnaces (Checklist 85)	56 FR 7134	February 21, 1991.
3. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments (Checklist 94).	56 FR 32688	July 17, 1991.
4. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments II (Checklist 96).	56 FR 42504	August 27, 1991.
5. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment III (Checklist 111).	57 FR 38558	August 25, 1992.
6. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment IV (Checklist 114).	57 FR 44999	September 30, 1992.
7. Requirements for Preparation, Adoption, and Submittal of Implementation Plans (Checklist 125).	58 FR 38816	July 20, 1993.
8. Burning of Hazardous Waste in Boilers and Industrial Furnaces (Checklist 127)	58 FR 59598	November 9, 1993.
9. Land Disposal Restrictions-Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions (Checklist 157).	62 FR 25998	May 12, 1997.
10. Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions (Checklist 159).	62 FR 32974	June 17, 1997.
11. Land Disposal Restrictions-Phase III—Emergency Extension of the K088 National Capacity Variance (Checklist 160).	62 FR 37694	July 14, 1997.
12. Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production (Checklist 161).	62 FR 45568	August 28, 1997.
13. Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment (Checklist 163).	62 FR 64636	December 8, 1997.
14. Land Disposal Restrictions-Phase IV: Treatment Standards for Metal Wastes and Mineral Processing Wastes (Checklist 167A), Hazardous Soils Treatment Standards and Exclusions (Checklist 167B), and Corrections (Checklist 167C) as amended (Checklist 167C.1).	63 FR 28556 63 FR 31266	May 26, 1998. June 8, 1998.
15. Petroleum Refining Process (Checklist 169) as amended (Checklist 169.1)	63 FR 42110 63 FR 54356	August 6, 1998. October 9, 1998.
16. Land Disposal Restrictions-Phase IV (Checklist 170)	63 FR 46332	August 31, 1998.
17. Emergency Revisions of the Land Disposal Restrictions Treatment Standards (Checklist 171).	63 FR 47409	September 4, 1998.
18. Emergency Revision of the Land Disposal Restrictions Treatment Standards (Checklist 172).	63 FR 48124	September 9, 1998.
19. Land Disposal Restrictions Treatment Standards (Spent Potliners) (Checklist 173)	63 FR 51254	September 24, 1998.

(ii) Some regulations listed in the table in paragraph (b)(4)(i) of this section are predominantly HSWA authority but contain provisions that are not HSWA authority. EPA will not enforce these non-HSWA provisions. The affected rules are as follows:

(A) Burning of Hazardous Waste in Boilers and Industrial Furnaces (BIF), including BIF (February 21, 1991);

(B) Corrections and Technical Amendments I (July 17, 1991);

(C) Technical Amendments II (August 27, 1991);

(D) Technical Amendments III (August 25, 1992);

(E) Amendment IV (September 30, 1992);

(F) Requirements for Preparation, Adoption, and Submittal of Implementation Plans (July 20, 1993); and

(G) BIF (November 9, 1993).

(iii) EPA will not enforce BIF rules for Sludge Dryers, Infrared Incinerators, Plasma Arc Incinerators, and Carbon Regeneration Units, until Indiana is authorized for these rules. Petroleum Refining Process (August 6, 1998, as amended October 9, 1998) 40 CFR 261.3, 261.4, and 261.6 are non-HSWA provisions. Standards Applicable to Owners and Operators of Closed/Closing Facilities (October 22, 1998) 40 CFR 264.90(e), 265.110(c), 265.118(c)(4), 265.121 (except § 265.121(a)(2)), 270.1, 270.14(a), and 270.28 are non-HSWA provisions. Hazardous Remediation Waste Management Requirements (HWIR Media) (November 30, 1998) 40 CFR 261.4(g), 264.1(j)(1–13), 264.73(b)(17), 270.2, 270.11(d), 270.68, 270.73(a), and 270.79 through 270.230 (40 CFR part 270, subpart H) except § 270.230(e)(1) are non-HSWA provisions. Until Indiana becomes authorized for these rules, EPA will not enforce the non-HSWA provisions.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 5 and the Indiana Department of Environmental Management, signed by the Commissioner of the IDEM on February 14, 1996 and acknowledged by the EPA Regional Administrator in the **Federal Register** noticed signed on July 29, 1996, August 2, 1999, and December 14, 2000, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of legal authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of Indiana on June 28, 1985 and revisions, supplements and addenda to that Statement dated August 26, 1986, June 1, 1987, December 15, 1987, March 25, 1988, July 22, 1988, December 15, 1989, May 29, 1996, March 24, 1997, and January 31, 2000 are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program

under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by adding in alphabetical order the listing for "Indiana" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Indiana

The statutory provisions include:

Annotated Indiana Code, 1998 edition, Title 13, Sections 13–14–1, 13–14–7, 13–14–8, 13–19–3, 13–22–2, and 13–22–4.

Copies of the Indiana statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P.O. Box 64526, St. Paul, Minnesota 55164–0526.

The regulatory provisions include:

Indiana Administrative Code, 1996 edition, 2000 cumulative supplement, Title 329, Article 3.1, Sections 3.1–1–7, 3.1–4–1, 3.1–5–1, 3.1–5–2, 3.1–5–3, 3.1–5–4, 3.1–5–5, 3.1–5–6, 3.1–6–1, 3.1–6–2, 3.1–7–1, 3.1–7–2, 3.1–7–3, 3.1–7–4, 3.1–7–5, 3.1–7–6, 3.1–7–7, 3.1–7–8, 3.1–7–9, 3.1–7–10, 3.1–7–11, 3.1–7–12, 3.1–7–13, 3.1–7–14, 3.1–7–15, 3.1–7–16, 3.1–8–1, 3.1–9–1, 3.1–9–2, 3.1–9–3, 3.1–10–1, 3.1–10–2(1 through 3), 3.1–10–2(5 through 22), 3.1–11–1, 3.1–11–2, 3.1–12–1, 3.1–13–1, 3.1–13–2(1 through 3), 3.1–13–2(5 through 15), 3.1–13–3, 3.1–13–4, 3.1–13–5, 3.1–13–6, 3.1–13–7, 3.1–13–8, 3.1–13–9, 3.1–13–10, 3.1–13–11, 3.1–13–12, 3.1–13–13, 3.1–13–14, 3.1–13–15, 3.1–13–16, 3.1–13–17, 3.1–14–1, 3.1–14–2, 3.1–14–3, 3.1–14–4, 3.1–14–5, 3.1–14–6, 3.1–14–7, 3.1–14–8, 3.1–14–9, 3.1–14–10, 3.1–14–11, 3.1–14–12, 3.1–14–13, 3.1–14–14, 3.1–14–15, 3.1–14–16, 3.1–14–17, 3.1–14–18, 3.1–14–19, 3.1–14–20, 3.1–14–21, 3.1–14–22, 3.1–14–23, 3.1–14–24, 3.1–14–25, 3.1–14–26, 3.1–14–27, 3.1–14–28, 3.1–14–29, 3.1–14–30, 3.1–14–31, 3.1–14–32, 3.1–14–33, 3.1–14–34, 3.1–14–35, 3.1–14–36, 3.1–14–37, 3.1–14–38, 3.1–14–39, 3.1–14–40, 3.1–15–1, 3.1–15–2, 3.1–15–3, 3.1–15–4, 3.1–15–5, 3.1–15–6, 3.1–15–7, 3.1–15–8, 3.1–15–9, 3.1–15–10, 3.1–16–1, 13–1–1, 13–1–2, 13–2–1, 13–2–2, 13–2–3, 13–2–4, 13–2–5, 13–2–6, 13–2–7, 13–2–8, 13–2–9, 13–2–10, 13–2–11, 13–2–12, 13–2–13, 13–2–14, 13–2–15, 13–2–16, 13–2–17, 13–2–18, 13–2–19, 13–2–20, 13–2–21, 13–2–22, 13–2–23, 13–2–24, 13–2–25, 13–2–26, 13–2–27, 13–3–1, 13–3–2, 13–3–3. 13–4–1, 13–4–2, 13–4–3, 13–4–4, 13–4–5, 13–5–1, 13–5–2, 13–5–3, 13–6–1, 13–6–2, 13–6–3, 13–6–4, 13–6–5, 13–6–6, 13–6–7, 13–6–8, 13–7–1, 13–7–2, 13–7–3, 13–7–4, 13–7–5, 13–7–6, 13–7–7, 13–7–8, 13–7–9, 13–7–10, 13–8–1, 13–8–2, 13–8–3, 13–8–4, 13–8–5, 13–8–6, 13–8–7, 13–8–8, 13–9–1, 13–9–2, 13–9–3, 13–9–4, 13–9–5, 13–9–6, 13–10–1, 13–10–2, 13–10–3.

Copies of the Indiana regulations that are incorporated by reference are available from Indiana Legislative Services Agency, Administrative Code and Register Division, Legislative Information Center, 302 State House, Indianapolis, Indiana 46204.

* * * * *

[FR Doc. 01–26682 Filed 10–23–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2386, MM Docket No. 01–160, RM–10159]

Digital Television Broadcast Service; Albuquerque, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of ACME Television Licenses of New Mexico, LLC, substitutes DTV channel 45 for DTV channel 51c at Albuquerque, New Mexico. *See* 66 FR 40174, August 2, 2001. DTV channel 45 can be allotted to Albuquerque, New Mexico, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (35–12–48 N. and 106–27–00 W.) with a power of 245, HAAT of 1287 meters and with a DTV service population of 759 thousand. With this action, this proceeding is terminated.

DATES: Effective December 3, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–160 , adopted October 12, 2001, and released October 18, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under New Mexico, is amended by removing DTV channel 51c and adding DTV channel 45 at Albuquerque.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–26752 Filed 10–24–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2378; MM Docket No. 00–226; RM–10001]

Radio Broadcasting Services; Fair Bluff, NC, Litchfield Beach, Johnsonville and Olanta, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission denies request of joint petitioners Atlantic Broadcasting Co., Inc., permittee of Station WSIM(FM), Channel 287C3, Fair Bluff, North Carolina, and The Waccamaw Neck Broadcasting Company, licensee of Station WPDT(FM), Channel 286A, Johnsonville, South Carolina. The Report and Order denies the request for the reallotment of Channel 286A from Johnsonville, South Carolina, to Olanta, South Carolina, as the community's first local aural transmission service, because it would remove the community's sole local transmission service without countervailing public interest benefits. It denies as moot the reallotment of Channel 287C3 from Fair Bluff, North Carolina, to Litchfield Beach, South Carolina, as the community's first local aural transmission service.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–226, adopted October 3, 2001, and released October 12, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–26750 Filed 10–23–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2249; MM Docket No. 01–93; RM–10076]

Radio Broadcasting Services; McCall, ID and Pinesdale, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed by Idaho Broadcasting Consortium, Inc., we will substitute Channel 294C1 for Channel 294C2 at McCall, Idaho, reallot Channel 294C1 to Pinesdale, Montana, and modify the authorization for Channel 294C2 to specify operation on Channel 294C1 at Pinesdale, Montana.[1] *See* 66 FR 27059, May 16, 2001. The coordinates for Channel 294C1 at Pinesdale are 46–10–07 and 114–17–06. 112–59–42. Although Canadian concurrence has been requested for the allotment of Channel 294C1 at Pinesdale, notification has not yet been received. Therefore, operation with the facilities specified for Pinesdale herein is subject to modification, suspension, or termination without right to a hearing, if found by the Commission to be necessary in order to conform to the 1991 Canada-USA FM Broadcast Agreement or if specifically objected to by Canada. With this action, this proceeding is terminated.

DATES: Effective November 12, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–93, adopted September 19, 2001, and released September 28, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Information Reference Center, Portals II, 445 12th Street, SW, Room Cy-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC. 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 294A at McCall.

3. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Pinesdale, Channel 294C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–26748 Filed 10–23–01; 8:45 am]

BILLING CODE 6712–01–P

[1] Channel 294A was allotted to McCall, Idaho, in MM Docket No. 86–350, 52 FR 42438, November 5, 1987. Idaho Broadcasting Consortium, Inc. filed a first-come/first-serve application for the allotment at McCall as a C2 allotment in lieu of a Class A allotment. Idaho Broadcasting Consortium, Inc. was granted a construction permit for Channel 294C2 at McCall on December 8, 1999 (BPH–19971023MD). The Table of FM Allotments will be amended to reflect the substitution of Channel 294C2 for Channel 294A at McCall pursuant to the one-step application.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. NHTSA–2001–001; Notice 02]

RIN 2127–AI07

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule updates Appendices A, B, and C of 49 CFR part 544, insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices must file three copies of its report for the 1998 calendar year before October 25, 2001.

DATES: The final rule on this subject is effective October 24, 2001. Insurers listed in the appendices are required to submit reports on or before October 25, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Spinner's telephone number is (202) 366–4802. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and (3) rental and leasing companies with a fleet of 20 or more vehicles not covered

by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term "small insurer" is defined, in Section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best publishes in its State/Line Report each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from Automotive Fleet Magazine and Business Travel News.

C. When a Listed Insurer Must File a Report

Under Part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report by October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

On August 7, 2001, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (66 FR 41190). Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on August 14, 2000 (65 FR 49505). Based on the 1998 calendar year data market shares from A.M. Best, we proposed to remove Prudential of America Group and Zurich Insurance Group-U.S. from Appendix A and to add CGU Group, SAFECO Insurance Companies, and St. Paul Companies to Appendix A.

Each of the 19 insurers listed in Appendix A is required to file a report before October 25, 2001, setting forth the information required by Part 544 for each State in which it did business in the 1998 calendar year. As long as these 19 insurers remain listed, they would be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 1998, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1998 calendar year data for market shares from A.M. Best, we proposed to remove Allmerica P & C Companies, Commercial Union Insurance Companies, and Nodak Mutual Insurance Company from Appendix B and to add New Jersey Manufacturers Group to Appendix B.

The nine insurers listed in Appendix B are required to report on their calendar year 1998 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2001, and set forth the information required by part 544. As long as these nine insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Based on information in Automotive Fleet Magazine and Business Travel News for 1998, NHTSA proposed to remove Ford Rent-A-Car-System, Ryder System, Inc., and USL Capital Fleet Services from Appendix C and to add Consolidated Service Corporation to Appendix C. Each of the 17 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 1998 no later than October 25, 2001, and set forth the information required by Part 544. As long as those 17 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Public Comments on Final Determination

Insurers of Passenger Motor Vehicles

In response to the NPRM, the agency received no comments. Accordingly, this final rule adopts the proposed changes to Appendices A, B, and C.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and has determined that the action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2000, the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $86,100 for any insurer added to Appendix A, $34,440 for any insurer added to Appendix B, and $9,936 for any insurer added to Appendix C. In this final rule, for Appendix A, the agency removed two companies and added three companies; for Appendix B, the agency removed three companies and added one company; and for Appendix C, the agency removed two companies and added one company. The agency estimates that the net effect of this final rule, would be $7,284 to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW, Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this final rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements") and approved for use through August 31, 2003, and the agency will seek to extend the approval afterwards.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. "Small insurer" is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it would not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909, and section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor Vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (e.g., the report due by October 25, 2001 will contain the required information for the 1998 calendar year).

* * * * *

3. Appendix A to Part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American Financial Group
American International Group
California State Auto Association
CGU Group [1]
CNA Insurance Companies
Erie Insurance Group
Farmers Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Hartford Insurance Group
Liberty Mutual Insurance Companies
Nationwide Group
Progressive Group
SAFECO Insurance Companies[1]
St. Paul Companies[1]
State Farm Group
Travelers PC Group
USAA Group

4. Appendix B to Part 544 is revised to read as follows:

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 2001.

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Concord Group Insurance Companies (Vermont)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)[1]
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Rentals, Inc.)
Associates Leasing Inc.
A T & T Automotive Services, Inc.
Avis, Rent-A-Car, Inc.
Budget Rent-A-Car Corporation
Consolidated Service Corporation [1]
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
PHH Vehicle Management Services
U-Haul International, Inc. (Subsidiary of AMERCO)
Wheels Inc.

Issued on: October 18, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–26812 Filed 10–23–01; 8:45 am]

BILLING CODE 4910–59–P

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 2001.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1244

[STB Ex Parte No. 385 (Sub–No. 5)]

Modification of the Carload Waybill Sample Reporting Procedures

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Board modifies its regulations to require all railroads operating in the United States to include in the Carload Waybill Sample (Waybill Sample) export traffic moving from or through the United States. To comply with this regulation, railroads may report data on either the U.S. portion of movements or on entire international movements. Railroads reporting information on only the U.S. portion of movements may use a mileage proration to estimate the revenues attributable to the U.S. leg of the movement. When actual revenue divisions are reported, carriers may encrypt (mask) the revenue information if such information is commercially sensitive. This modification of the reporting requirements is designed to improve the accuracy of the Waybill Sample.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: James Nash, (202) 565–1542 or H. Jeff Warren, (202) 565–1533. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: We require railroads that annually terminate 4,500 or more carloads (or 5 percent of the carloads in any state) to report data, including revenues, on individual movements drawn from a random sampling of their traffic. 49 CFR 1244.2. This Waybill Sample is used for a variety of purposes by the Board, parties appearing before the Board, other Federal and state agencies, and the public in general. Because of the increased volume of rail traffic moving between the United States and Canada or Mexico, or between Canada and Mexico through the United States, we proposed (in a Notice of Proposed Rulemaking served September 8, 2000 (65 FR 54471)) to require railroads to include in the sampling process export traffic moving on the U.S. rail system.

Comments were filed by the United States Department of Transportation (DOT), the Western Coal Traffic League (WCTL), and the Association of American Railroads (AAR). DOT and WCTL support the proposal but ask for clarification.

DOT asks whether, when using data on the U.S. portion of international movements, we will modify our revenue and costing algorithms to account for the fact that the traffic does not actually terminate at the U.S. border. We recognize that, when waybill information is used to develop costs associated with specific rail service or assign revenues to segments of a movement, we must account for the fact that export traffic does not terminate at the border. Accordingly, when estimating segment costs and revenues for cross-border traffic, we will not assign the extra costs or revenues generally associated with actual terminations to points where international traffic simply crosses the border on the way to its final destination.

WCTL suggests that, to the extent possible, railroads should specify the foreign destination and revenues associated with the export traffic. As discussed below, railroads will be permitted to report such information but will not be required to do so. We do not have the authority to require foreign carriers that terminate export traffic to report information on traffic moving outside the United States. 49 U.S.C. 10501(a)(2). WCTL further asks whether export traffic will be sampled and tracked as a specific category, or whether it will be sampled on the same basis as, and subsumed within, other traffic generally. While our regulations will require the specific identification of export traffic in the Waybill Sample, we do not intend that such traffic be treated as a separate category of traffic but rather be sampled and tracked like other railroad traffic.

AAR, while acknowledging the need for an accurate Waybill Sample, expresses concern that the proposal may be burdensome for some railroads to implement because it could require expensive data processing changes in order to develop revenue data on only the U.S. portion of international movements. We note that the Canadian National Railroad Company and the Canadian Pacific Railroad Company, which are currently voluntarily reporting the information that the proposed regulations would require, have not complained of an undue burden. Nevertheless, should other carriers find it impractical to allocate revenues between the U.S. and foreign legs of movements, we will allow the reporting of information on entire international movements. With this modification, we believe that any expense associated with implementing the new regulations should be limited.

Because actual U.S. revenues are only available for traffic that is interchanged at or near the border, AAR notes that for much of the international traffic a mileage proration formula or other estimation process must be used to allocate revenues. AAR suggests that if such a revenue allocation procedure is adopted, it may be easier for carriers to rely on the mileage proration formula now used by ALK Associates (ALK).

We recognize that an allocation of revenues may be necessary. Indeed, we currently use a mileage formula to allocate revenues between U.S. carriers on multi-carrier domestic movements.

Furthermore, as with other reporting requirements, carriers are free to use an outside contractor to develop their reports. We are familiar with the ALK revenue allocation procedure and do not object to its use for this purpose.

Finally, AAR expresses concern that the proposal may result in the disclosure of commercially sensitive revenue-division information. We share AAR's concern. Therefore, as with contract revenue information, we will allow carriers to encrypt (mask) actual revenue divisions on traffic interchanged at or near the U.S. border.[1]

In sum, we are adopting regulations that will require carriers to include export traffic in the Waybill Sample. Railroads may report information on either the entire international movement or treat the U.S. portion of the movement as terminating at or near the border [2] for purposes of developing the data required by the Waybill Sample.

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping requirements.

Decided: October 17, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, part 1244 of the Code of Federal Regulations will be amended as follows:

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

1. The authority citation for title 49, part 1244 continues to read as follows:

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

2. Section 1244.3 is amended by revising the section heading and adding paragraphs (c) through (f) to read as follows:

§ 1244.3 Reporting contract shipment waybills and Canadian and Mexican international waybills.

* * * * *

(c) Railroads moving traffic on the U.S. rail system to the Canadian or Mexican border shall include a representative sample of such international export traffic in the Waybill Sample.

(d) Railroads shall identify (flag) such movements as international traffic in the waybill records.

(e) Railroads may report information on the complete rail routing or report only information related to the U.S. portion of the movement.

(f) Railroads may mask revenue divisions associated with cross-border traffic following the masking procedures set forth in paragraphs (a) and (b) of this section.

[FR Doc. 01–26773 Filed 10–23–01; 8:45 am]

BILLING CODE 4915–00–P

[1] Carriers that mask cross-border waybill revenues must follow the procedures set forth in 49 CFR 1244.3(a) and (b) and use the same masking factors they use to mask contract revenues. Masked contract revenues should have the waybill flag set to one (1) and non-contract cross-border waybill revenues that are masked should have the flag set to two (2).

[2] Near the border is defined as the first station or interchange point through which the shipment moves in either Canada or Mexico.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 011005243–1243–01; I.D. 091001B]

RIN 0648–AO48

International Fisheries; Pacific Tuna Fisheries; 2001 Quotas and Management Measures for Yellowfin and Juvenile Bigeye Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; 2001 quotas and management measures for yellowfin and juvenile bigeye tuna.

SUMMARY: NMFS announces the 2001 quotas and associated purse seine fishery conservation measures for the eastern tropical Pacific Ocean (ETP), consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS) under the terms of the Tuna Conventions Act.

DATES: Effective October 24, 2001, through December 31, 2001, or attainment of either or both quotas, which will be announced in the **Federal Register**.

ADDRESSES: Copies of the environmental assessment (EA) and the biological opinion (BO) for the January 3, 2000, interim final rule implementing the International Dolphin Conservation Program Act (IDCPA) and the aggregate data upon which the action is based are available from: Rodney McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION:

Background

The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. The area covered by the Convention is all waters of the eastern Pacific Ocean (EPO) between 40° N. lat. and 40° S. lat. from North and South America west to 150° W. long. Within the area covered by the Convention, the IATTC has designated a smaller Commission Yellowfin Regulatory Area (CYRA) in which the total catch of yellowfin tuna historically has been limited. The boundaries of the CYRA are found at 50 CFR 300.21.

Under the regulations implementing the Tuna Conventions Act at 50 CFR 300.29, the Southwest Regional Administrator, NMFS (Regional Administrator), directly notifies owners or agents of U.S. tuna vessels of fishery management recommendations made by the IATTC and approved by the DOS. As soon as practicable after such notification, NMFS publishes a notification of the approved IATTC recommendations in the **Federal Register**.

Action by IATTC

At its annual meeting June 19–21, 2001, the IATTC adopted a resolution dealing with yellowfin tuna conservation. This resolution set an initial quota of 250,000 metric tons (mt) for yellowfin tuna taken in calendar year 2001 by purse seine vessels in the CYRA. This quota could be raised by up

to three successive increments of 20,000 mt each if the Director of the IATTC concludes from examination of available data that such increases will pose no substantial danger to the stocks. After the quota is reached and the yellowfin tuna fishery is closed, catches of any vessel may include a maximum of 15 percent yellowfin tuna (relative to its total catch of all species of fish) caught while fishing for other species of tuna.

In a separate resolution adopted in June 2001, the IATTC recommended that action be taken to limit the catch of juvenile bigeye tuna in the purse seine fisheries to the level reached in 1999, which was 5,813 mt. The Director of IATTC will monitor the fisheries and determine the date on which the quota is projected to be reached (if at all). The Director will then inform the member nations that they should prohibit further use of purse seine sets on floating objects within 2 weeks of that date, except that the floating objects fishery will not close sooner than November 1, 2001.

The yellowfin tuna quota and juvenile bigeye tuna quota are both based on 2001 stock assessments of yellowfin and bigeye tuna stocks in the ETP. The stock assessments indicate that both the yellowfin and bigeye tuna stocks are healthy, although there is substantial uncertainty with respect to the bigeye tuna stock assessment. This stock extends throughout the Pacific and has not been assessed throughout its range by any international organization. However, the quotas set for yellowfin tuna and juvenile bigeye tuna are believed to be conservative because of the conservative assumptions used in the stock assessments concerning life history parameters of yellowfin and bigeye tuna.

NMFS Action

After receiving oral approval of this recommendation from the DOS on September 6, 2001, the Regional Administrator provided actual notice of these fishery management recommendations to owners or agents of U.S. tuna vessels on September 12, 2001. The DOS subsequently provided written approval of the IATTC recommendation on September 25, 2001. This notice is the formal announcement to the public of the implementation of the recommendations of the IATTC. As provided in 50 CFR 300.29(b), if any quota is reached, NMFS will announce a closure directly to the owners or agents of U.S. tuna vessels and publish the announcement in the **Federal Register** as soon as practicable after the attainment of the quota.

Classification

This action is authorized by 50 CFR part 300, subpart C.

The Assistant Administrator for Fisheries, NOAA (AA) finds that this action constitutes a foreign affairs function under 5 U.S.C. 553(a)(1), which exempts such functions from that section of the Administrative Procedure Act. This action implements quotas and management measures that have been recommended by the IATTC and approved by DOS, as authorized by the Tuna Conventions Act of 1949 and this part. Therefore, the provisions of 5 U.S.C. 553(b)(3)(B) for providing prior notice and an opportunity for public comment and the provisions of 5 U.S.C. 553(d)(3) for a 30-day delay in effectiveness do not apply to this action.

An EA was prepared for the interim final rule to implement the IDCPA (65 FR 47, January 3, 2000). This document is available from the Acting Regional Administrator (see **ADDRESSES**). The AA concluded that that rule would pose no significant impact on the human environment. The impacts of the fisheries as they will operate under quotas set in this action are within the range of impacts considered in the alternatives of that EA, and do not pose significant threats to the human environment; therefore, this action does not require further environmental analysis.

NMFS prepared a BO assessing the impacts of the fisheries as they would operate under the regulations implementing the IDCPA (65 FR 47, January 3, 2000). This document is available from the Acting Regional Administrator (see **ADDRESSES**). NMFS concluded that the fishing activities conducted under those regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This rule will not result in any changes to the fisheries that would cause impacts beyond those considered in the BO.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C., 601 *et seq.*, are inapplicable.

This action is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: October 18, 2001.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 01–26794 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 101901D]

Fisheries of the Economic Exclusive Zone Off Alaska; Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the 2001 Pacific halibut prohibited species catch (PSC) limit specified for trawl gear in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 21, 2001, until 1200 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and at 50 CFR part 679.

The Pacific halibut PSC limit for vessels using trawl was established as 2,000 metric tons (mt) by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001), and adjusted (66 FR 17087, March 29, 2001, and 66 FR 37167, July 17, 2001). The Administrator, Alaska Region, has determined, in accordance with § 679.21(d)(7)(i), that vessels engaged in directed fishing for groundfish with trawl gear in the GOA have caught the 2001 Pacific halibut PSC limit. Therefore, NMFS is closing the directed fishery for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20 (e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the 2001 Pacific halibut bycatch allowance specified for trawl gear in the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2001 Pacific halibut bycatch allowance specified for trawl gear in the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553 (d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 19, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26798 Filed 10–19–01; 2:59 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 206
Wednesday, October 24, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–33–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 airplanes that incorporate a certain engine-driven pump. This proposed AD would require you to: inspect the joints between the engine-driven pump housing, relief valve housing, and the relief-valve cover for signs of fuel leakage or extruding gasket material; replace any engine-driven pump with signs of fuel leakage or extruding gasket material; and inspect to ensure that the relief valve attachment screws are adequately torqued and re-torque as necessary. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. Such conditions could lead to fuel leakage and result in a fire in the engine compartment.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before November 30, 2001.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–33–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get information that applies to the proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2001–CE–33–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA of an unsafe condition that may exist on Pilatus Models PC–7, PC–12, and PC–12/45 airplanes. The FOCA reports instances of fuel leaking from the engine-driven pump on the referenced airplanes. The compression set of the gasket and diaphragm after thermal cycling could cause the gasket of the engine-driven pump to extrude between the relief valve housing and the engine-driven pump housing. This in turn relieves the torque of the relief-valve cover screws of the engine-driven pump, which could result in fuel leakage.

Information on the affected pumps follows:

—The affected engine-driven pumps are Lear Romec part number RG9570R1 (Pilatus part number 968.84.51.106) as installed on Models PC–12 and PC–12/45 airplanes or Lear Romec part number RG9570M1 (Pilatus part number 968.84.51.105) as installed on Model PC–7 airplanes;
—Pilatus installed these engine-driven pumps on manufacturer serial number (MSN) 101 through MSN 400 of the Models PC–12 and PC–12/45 airplanes and MSN 101 through MSN 618 of the Model PC–7 airplanes; and
—These engine-driven pumps could be installed through field approval on any MSN of the Models PC–7, PC–12, and PC–12/45 airplanes.

What are the consequences if the condition is not corrected? Gasket material extruding from the engine-driven pump housing and relief valve attachment screws with inadequate torque, if not detected and corrected, could lead to fuel leakage and result in a fire in the engine compartment.

Is there service information that applies to this subject? Pilatus has issued the following:

—Service Bulletin No. 28–006, dated August 10, 2001, which applies to the Model PC–7 airplanes; and
—Service Bulletin No. 28–009, dated August 10, 2001, which applies to the Models PC–12 and PC–12/45 airplanes.

What are the provisions of this service information? These service bulletins include procedures for:

—Inspecting the joints between the engine-driven pump housing, relief valve housing, and the relief-valve cover for signs of fuel leakage or extruding gasket material;
—Replacing any engine-driven pump with signs of fuel leakage or extruding gasket material; and
—Inspecting to ensure that the relief valve attachment screws are adequately torqued and re-torque as necessary.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD HB 2001–500 (PC–12 and PC–12/45) and Swiss AD HB–505 (PC–7), both dated August 24, 2001, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus Models PC–7, PC–12, and PC–12/45 airplanes of the same type design that are on the U.S. registry;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 278 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed inspections and re-torque:

Labor cost	Parts cost	Total cost Per airplane	Total cost on U.S. operators
2 workhours at $60 an hour = $120	Not applicable	$120	$33,360

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane.
1 workhour at $60 an hour = $60	$3,900 per new pump	$3,960 per airplane.

Compliance Time of This Proposed AD

What would be the compliance time of this proposed AD? The compliance time of the inspections that would be required by the proposed AD is "within 20 hours time-in-service (TIS) after the effective date of this AD or within the next 30 days after the effective date to this AD, whichever occurs first."

Why is the compliance time of this proposed AD presented in both hours TIS and calendar time? The deterioration and potential extrusion of the gasket occurs over time and is not a condition of repetitive airplane operation. However, the relief valve attachment screws becoming inadequately torqued occurs as a result of airplane usage if the compression set of the gasket and diaphragm after thermal cycling causes the gasket of the engine-driven pump to extrude between the relief valve housing and the engine-driven pump housing.

Therefore, to ensure that the unsafe condition defined in this document is detected and corrected in a timely manner, we are proposing the compliance in both calendar time and hours TIS.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft LTD.: Docket No. 2001–CE–33–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial No.
PC–7	All manufacturer serial numbers (MSN) with a Lear Romec part number RG9570M1 (Pilatus part number 968.84.51.105) engine-driven pump.
PC–12 and PC–12/45.	All MSN with a Lear Romec part number RG9570R1 (Pilatus part number 968.84.51.106) engine-driven pump.

Note 1: Pilatus installed these engine-driven pumps on manufacturer serial number (MSN) 101 through MSN 400 of the Models PC–12 and PC–12/45 airplanes and MSN 101 through MSN 618 of the Model PC–7 airplanes. These engine-driven pumps could be installed through field approval on any MSN of the Models PC–7, PC–12, and PC–12/45 airplanes;

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. Such conditions could lead to fuel leakage and result in a fire in the engine compartment.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For all affected airplanes: inspect the joints between the engine-driven pump housing, relief valve housing, and the relief-valve cover for signs of fuel leakage or extruding gasket material.	Initially inspect within the next 20 hours time-in-service (TIS) after the effective date of this AD or within the next 30 days after the effective date of this AD, whichever occurs first.	In accordance with the Accomplishment Instructions section of either Pilatus Service Bulletin No. 28–006 or Pilatus Service Bulletin No. 28–009, both dated August 10, 2001, as applicable.
(2) For the Model PC–7 airplanes: if you find signs of fuel leakage or extruding gasket material during the inspection required by paragraph (d)(1) of this AD, replace the engine-driven pump with a Lear Romec part number RG9570M1/M engine-driven pump.	Replace prior to further flight after the inspection required by paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 28–006, dated August 10, 2001; and the appropriate maintenance manual.
(3) For the Models PC–12 and PC–12/45 airplanes: if you find signs of fuel leakage or extruding gasket material during the inspection required by paragraph (d)(1) of this AD, replace the engine-driven pump with one of the following and accomplish any specified follow-on action:. (i) a Lear Romec part number RG95701R1/M (Pilatus part number 968.84.51.106/M) engine-driven pump; or. (ii) a Lear Romec part number RG9570R1 (Pilatus part number 968.84.51.106) engine-driven pump. Installation of this part requires you to accomplish the inspection specified in paragraph (d)(1) of this AD. This inspection is to ensure that the compression set of the gasket and diaphragm after thermal cycling does not cause the gasket of the engine-driven pump to extrude between the relief valve housing and the pump housing.	Replace prior to further flight after the inspection required by paragraph (d)(1) of this AD. Accomplish the inspection at least 20 hours TIS after the installation, but not to exceed 30 hours TIS after the installation.	In accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 28–009, dated August 10, 2001; and the appropriate maintenance manual.
(4) For all affected airplanes: inspect to ensure that the relief valve attachment screws are adequately torqued and retorque as necessary.	Prior to further flight after the inspection required by paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of either Pilatus Service Bulletin No. 28–006 or Pilatus Service Bulletin No. 28–009, both dated August 10, 2001, as applicable.
(5) Do not install, on any affected Model PC–7 airplane, a replacement Lear Romec part number RG9570M1 (Pilatus part number 968.84.51.105) engine-driven pump	As of the effective date of this AD	Not Applicable.

Actions	Compliance	Procedures
(6) If you install, on any Model PC–12 or Model PC–12/45 airplane, a part number RG9570R1 (Pilatus part number 968.84.51.106) engine-driven pump, you must accomplish the inspection specified in paragraph (d)(1) of this AD. This inspection is to ensure that the compression set of the gasket and diaphragm after thermal cycling does not cause the gasket of the engine-driven pump to extrude between the relief valve housing and the pump housing.	Accomplish the inspection at least 20 hours TIS after the installation, but not to exceed 30 hours TIS after the installation.	In accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 28–009, dated August 10, 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Swiss AD HB 2001–500 (PC–12 and PC–12/45) and Swiss AD HB–505 (PC–7), both dated August 24, 2001.

Issued in Kansas City, Missouri, on October 16, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26587 Filed 10–23–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–86–AD]

RIN 2120–AA64

Airworthiness Directives; Aerostar Aircraft Corporation Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Aerostar Aircraft Corporation (Aerostar) Models 601, 601P, 602P, and 700P airplanes. The proposed AD would require you to replace Roto-Master and Rajay scavenge pumps with Aerostar scavenge pumps. The proposed action is the result of failures of the existing Roto-Master and Rajay scavenge pump found during regular maintenance inspections. The actions specified by this proposed AD are intended to prevent failure of the oil scavenge pumps, which could result in loss of engine oil and possible loss of engine power.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 2, 2002.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-CE-86-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may look at comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Aerostar Aircraft Corporation, 10555 Airport Drive, Coeur d'Alene Airport, Hayden Lake, Idaho 83835–8742; Telephone: (208) 762–0338; facsimile: (208) 762–8349. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Richard Simonson, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055; telephone: (425) 227–2597; facsimile: (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that

summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments Docket No. 99–CE–86–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received several reports of excessive internal pump wear found during normal maintenance inspections on Aerostar Models 601, 601P, 602P, and 700P airplanes. Analysis of these incidents reveals that inadequate retention of the existing oil scavenge pump rotor allows the rotor to machine its way through the end plate.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in loss of engine oil and possible loss of engine power.

Is There Service Information That Applies to This Subject?

Aerostar has issued Mandatory Service Bulletin SB SB600-131A, dated January 10, 1998.

What Are the Provisions of This Service Bulletin?

The service bulletin describes procedures for replacing the Roto-Master scavenge pumps, part numbers 101633–01 or –02; and Rajay scavenge pumps, part numbers RJ1025–1 or –2; with Aerostar scavenge pumps, part number 300110–001 or –002.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Aerostar Models 601, 601P, 602P, and 700P airplanes of the same type design;

—These airplanes should have the actions specified in the above service bulletin incorporated; and

—The FAA should take AD action to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to replace the Roto-Master or Rajay scavenge pumps with Aerostar scavenge pumps, if not already performed.

What Are the Differences Between the Service Bulletin and the Proposed AD?

Aerostar specifies in the service information that you replace the scavenge pumps within the next 50 hours time-in-service (TIS) or at the next annual inspection, whichever comes first. We propose a requirement that you replace the scavenge pumps within the next 50 hours TIS after the effective date of the proposed AD. We cannot enforce a compliance time of "at the next annual inspection." We believe that 50 hours TIS will give the owners/operators of the affected airplanes enough time to have the proposed actions done without compromising the safety of the airplanes. This will allow the owners/operators to work this proposed replacement into regularly scheduled maintenance.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate the proposed AD would affect 650 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate that it would take about 8 workhours to do the proposed installation of both left and right engine scavenge pumps, at an average labor rate of $60 an hour. We estimate parts costs for each airplane at $4,750. Based on the cost factors presented above, we estimate the total cost impact of the proposed installation on U.S. operators is $3,399,500, or $5,230 for each airplane.

Regulatory Flexibility Determination and Analysis

What Are the Requirements of the Regulatory Flexibility Act?

The Regulatory Flexibility Act of 1980 was enacted by Congress to assure that small entities are not unnecessarily or disproportionately burdened by government regulations. This Act establishes "as principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

What Is FAA's Determination?

The FAA has determined that this proposed AD could have a significant economic impact on a substantial number of small entities. However, we have determined that we should continue with this proposed action in order to address the unsafe condition and ensure aviation safety.

You may obtain a copy of the complete Regulatory Flexibility Analysis (entitled "Initial Regulatory Flexibility Analysis") that was prepared for this proposed AD from the Docket file at the location listed under the **ADDRESSES** section of this document.

Regulatory Impact

Would This Proposed AD Impact Relations Between Federal and State Governments?

The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, could have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. You may obtain a copy of the complete Regulatory Flexibility Analysis (entitled "Initial Regulatory Flexibility Analysis") that was prepared for this proposed AD from the Docket file at the location listed under the **ADDRESSES** section of this document.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

Aerostar Aircraft Corporation: Docket No. 99–CE–86–AD.

Actions	Compliance times	Procedures
(1) Replace the Roto-Master scavenge pumps, part numbers 101633–01 or –02; and Rajay scavenge umps, part numbers RJ1025–1 or –2; with Aerostar part number 300110–001 or –002.	Within the next 50 hours time-in-service after the effective date of this AD, unless already performed.	Do this replacement following the INSTRUCTIONS paragraph of Aerostar Mandatory Service Bulletin SB600–131A, January 10, 1998, and the Aerostar Maintenance Manual.
(2) Do not install, on any affected airplane, Roto-Master scavenge pumps, part numbers 101633–01 or –02; and Rajay scavenge pumps, part numbers RJ1025–1 or –2	As of the effective date of this AD	Not applicable.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes, all serial numbers, certificated in any category: Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to replace faulty oil scavenge pumps with pumps of improved design. The faulty oil scavenge pumps have rotors that machine through the end plate, resulting in loss of engine oil and possible loss of engine power.

(d) *What must I do to address this problem?* To address this problem, you must do the following actions:

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Seattle Aircraft Certification Office (ACO), approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98055.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Richard Simonson, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4065; telephone: (425) 227–2597; facsimile: (425) 227–1181.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can do the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get the service information referenced in the AD from Aerostar Aircraft Corporation, 10555 Airport Drive, Coeur d'Alene Airport, Hayden Lake, Idaho 83835–8742; Telephone: (208) 762–0338; facsimile: (208) 762–8349. You may read this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 16, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26714 Filed 10–23–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–414–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes. This proposal would require installation of an extender bracket for the compensator of the Simmonds fuel quantity indication system (FQIS) in the main fuel tanks. This action is necessary to prevent contact between the compensator for the Simmonds FQIS system and a flapper check valve on a baffle rib in the main fuel tanks, which—in conjunction with another wiring failure outside the fuel tank—could result in an electrical arc and a consequent potential source of ignition in the fuel tank. This action is intended

to address the identified unsafe condition.

DATES: Comments must be received by December 10, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–414–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–414–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1024; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–414–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–414–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that contact between the compensator for the Simmonds fuel quantity indication system (FQIS) and a flapper check valve on a baffle rib in a main fuel tank was found on certain Boeing Model 757 series airplanes. Further investigation revealed that such contact is not uncommon. Over time, this contact between the compensator and flapper check valve can wear through the compensator's protective finish and result in electrical contact between the compensator and airplane structure. This condition, in conjunction with another wiring failure outside the fuel tank, if not corrected, could result in an electrical arc and a consequent potential source of ignition in the fuel tank.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletins 757–28–0057 and 757–28–0059, both dated September 14, 2000. These service bulletins describe procedures for installation of extender brackets for the compensators of the Simmonds FQIS in the left and right main fuel tanks. The procedures include ensuring minimum clearance between the compensators, wiring, and components, and the fuel tank structure, and testing the electrical bond in the fuel tank. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 938 airplanes of the affected design in the worldwide fleet. The FAA estimates that 607 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed installation (not including time for gaining access and closing up), and that the average labor rate is $60 per work hour. Required parts would cost approximately $404 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $427,328, or $704 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–414–AD.

Applicability: Model 757 series airplanes listed in Boeing Special Attention Service Bulletin 757–28–0057 or 757–28–0059, both dated September 14, 2000, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent contact between the compensator for the Simmonds fuel quantity indication system (FQIS) and a flapper check valve on a baffle rib in the main fuel tanks, which—in conjunction with another wiring failure outside the fuel tank—could result in an electrical arc and a consequent potential source of ignition in the fuel tank, accomplish the following:

Installation of Brackets

(a) Within 24 months after the effective date of this AD, install an extender bracket for the compensator of the Simmonds FQIS in the left and right main fuel tanks (including ensuring minimum clearance between the compensators, wiring, and components, and the fuel tank structure, and testing the electrical bond in the fuel tank), according to Boeing Special Attention Service Bulletin 757–28–0057 or 757–28–0059, both dated September 14, 2000, as applicable.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 17, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26713 Filed 10–23–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB24

Labor Certification and Petition Process for Temporary Agricultural Employment of Nonimmigrant Workers in the United States (H–2A Workers); Modification of Fee Structure; Extension of Comment Period

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period for filing comments on the proposed rule that would require employers to submit fees for labor certification and the associated H–2A petition with a consolidated application form at the time of filing. The proposed rule also would modify the fee structure for H–2A labor certification applications. This action is once again being taken to permit additional comment from interested persons.

DATES: Interested persons are invited to submit written comments on or before December 17, 2001.

ADDRESSES: Submit written comments to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210, Attention: Dale Ziegler, Chief, Division of Foreign Labor Certifications.

FOR FURTHER INFORMATION CONTACT: Charlene Giles; telephone 202–693-2950 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 13, 2000, (65 FR 43545) we published a notice requesting comments on a proposed rule to require employers to submit the fees for temporary foreign agricultural (H–2A) labor certification and the associated non-immigrant H–2A petition with a consolidated application form at the time of filing. The proposal also would modify the fee structure for H–2A labor certification applications. On August 17, 2000, the comment period was reopened and extended to September 18, 2000. 65 FR 50170. On September 27, 2001, the comment period was again reopened through October 29, 2001. 66 FR 49328. Because of comments received during the comment period and continuing interest in the proposal, it is desirable to extend the comment period for all interested persons. Therefore, the comment period for the proposed rule revising 20 CFR part 655, subpart B (Labor Certification Process for Temporary Agricultural Employment in the United States (H–2A Workers) is extended until December 17, 2001.

Signed at Washington, DC, this 19th day of October, 2001.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 01–26867 Filed 10–23–01; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB24

Labor Certification and Petition Process for Temporary Agricultural Employment of Nonimmigrant Workers in the United States (H–2A Workers); Modification of Fee Structure; Informal Briefing

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; notice of informal briefing; reopening and extension of deadline for notices of intention to appear.

SUMMARY: The Division of Foreign Labor Certification, Employment and Training Administration (ETA), Department of Labor (Department), is reopening and extending the deadline for notices of intention to appear at two informal briefings to allow agricultural workers and employers and other interested parties to communicate directly with the Department regarding proposed rule changes which would require employers to submit fees for temporary foreign agricultural labor certification and the associated H–2A petition with a consolidated application form at the time of filing. See proposed rule to amend 20 CFR part 655, published elsewhere in today's issue of the **Federal Register**. The proposed rule also would modify the fee structure for H–2A labor certification applications. These briefings are being held to allow the Department to solicit individual responses and experiences from interested persons and other entities. This notice extends the deadline for filing by the public of their intention to appear.

DATES: The briefing dates are:

Thursday, November 8, 2001, 9:30 a.m. to 4 p.m., Washington, DC.

Friday, November 16, 2001, 9:30 a.m. to 4 p.m., Monterey, CA.

Notices of intention to appear at the briefing must be postmarked no later than October 31, 2001.

ADDRESSES: The briefing locations are:

U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, NW., Plaza Level Auditorium, Washington, DC 20010.

Hilton Monterey, 1000 Oguajito Road, Monterey, CA 93940.

Send notices of intention to appear to: Charlene Giles, U.S. Department of Labor, 200 Constitution Avenue, NW, Room C–4318, Washington, DC 20210. Notices also may be faxed to Charlene Giles at 202–693–2760 (this is not a toll-free number), or submitted by e-mail at *dflc@uis.doleta.gov*.

FOR FURTHER INFORMATION CONTACT: Charlene Giles; telephone 202–693–2950. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The informal public briefings will be chaired by a senior official of the Employment and Training Administration. Persons appearing at the briefings will be allowed to present their views and pose questions to Department staff and other parties presenting their views.

Signed at Washington, DC, this 19th day of October, 2001.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 01–26866 Filed 10–23–01; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA–203P]

RIN 1117–AA52

Establishment of a Threshold for Gamma-Butyrolactone

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: DEA is proposing a zero kilogram threshold for domestic, export, and import transactions of gamma-butyrolactone (GBL), a List I chemical and the precursor to gamma-hydroxybutyric acid (GHB), a Schedule I controlled substance. DEA is concerned that GBL packaged in individual containers is convenient to traffickers and at risk of diversion. Therefore, DEA is proposing to regulate containers that can be easily transported, stored, and generally dealt with in clandestine settings.

However, most GBL produced is used in captive markets or transported in large quantities in single containers. This material is less likely to be diverted. Therefore, this NPRM proposes to exempt from the definition of a "regulated transaction" all transactions of 16,000 kilograms (net weight) or more in a single container.

Pub. L. 106–172, the "Hillory J. Farias and Samantha Reid Date-Rape Prohibition Act of 1999," made GBL a List I chemical. Accordingly, DEA published a Final Rule, on April 24, 2000, (65 FR 21645) conforming its regulations to this Act and making GBL a List I chemical. Because that Final Rule did not establish a threshold, all transactions in GBL are regulated transactions as described by 21 CFR 1300.02(b)(28). The removal from the definition of a "regulated transaction" that DEA proposes in this NPRM for large (i.e., over 16,000 kilograms) transactions of GBL will help minimize the potential impact of this rule on legitimate industry while preventing diversion.

DATES: Written comments must be received on or before December 24, 2001.

ADDRESSES: Comments should be submitted to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Division Control, Drug Enforcement Administration, Washington, DC 20537.

SUPPLEMENTARY INFORMATION:

What Is GBL and Why Is It Being Regulated Under the Controlled Substances Act (CSA)?

GBL is gamma-butyrolactone, the precursor used in the clandestine production of the Schedule I controlled substance gamma-hydroxybutyric acid (GHB). Since 1990, DEA has documented over 15,600 overdoses and law enforcement encounters in 46 states with GHB. DEA has documented 71 GHB-related deaths. The GHB obtained in the vast majority of these encounters is by conversion of GBL.

GBL was placed in the CSA as a List I chemical effective February 18, 2000, by enactment of Pub. L. 106–172, the "Hillory J. Farias and Samantha Reid Date-Rape Prohibition Act of 1999" (65 FR 21645, April 24, 2000). That law, however, did not establish a threshold. As a result of the law not establishing a threshold, all transactions in GBL are regulated transactions as described in 21 CFR 1300.02(b)(28).

DEA has identified the source for illicit GHB as being clandestinely synthesized from GBL. Law enforcement agencies have encountered GHB on at least 1,700 occasions, including more than 180 clandestine laboratories and more than 750 seized and analyzed laboratory exhibits. GHB has only recently been scheduled in the CSA as a controlled substance and GBL regulated as a List I chemical.

The Final Rule titled, "Placement of gamma-Butyrolactone in List I of the Controlled Substances Act (21 U.S.C. 802(34))" was published in the **Federal Register** on April 24, 2000, (65 FR 21645). It amended 21 CFR 1310.02(a) (List I chemicals) to reflect the status of GBL as a List I chemical. For regulatory purposes, DEA had no discretion in taking this action. Therefore, 21 CFR 1310.02(a) was amended as a final rule. Since it was published as a Final Rule, a threshold could not be established at that time because that would circumvent the notice and comment process. Therefore, DEA is proposing to establish a threshold for GBL in this NPRM to allow opportunity for public comment.

Law enforcement authorities have identified GBL in many GHB clandestine laboratories and documented its use as a GHB precursor. GBL is a necessary chemical precursor in the clandestine synthesis of GHB because, to date, no other chemical has been substituted for GBL in this process. Congress recognized this, and controlled GBL as a List I chemical upon enactment of Pub. L. 106–172 on February 18, 2000.

GBL is a unique chemical precursor. It can be converted to GHB by a simple chemical reaction or it can be ingested directly, without running a chemical reaction. That is, the body efficiently converts GBL to GHB when ingested. Because GBL is converted to GHB by the body's own action, GBL is routinely substituted for GHB to obtain the same type of intoxication. Congress recognized this and adopted in Pub. L. 106–172 a new subparagraph to 21 U.S.C. 802(32), which is the section of the CSA that defines a "controlled substance analogue." The subparagraph maintains that the placement of GBL, or any other chemical, as a listed chemical does not preclude a finding that the chemical is a controlled substance analogue. DEA recognizes this concern of Congress that GBL is being used as a direct substitute for a Schedule I controlled substance. Although GBL is a chemical commodity when used by legitimate industry, diversion of GBL can be tantamount to diversion of a Schedule I controlled substance when it is intended for human consumption.

What Amounts of GBL Are Diverted for Conversion to GHB?

DEA is aware that GBL is diverted in a variety of sizes to produce GHB. Unscrupulous suppliers, including those operating through the internet, supply different size containers to the public. GBL diverted from well-known and well-established reputable companies has also been identified. At least fifteen companies operated internet sites that sold GBL and potassium hydroxide or sodium hydroxide. The latter two chemicals are used to convert GBL to GHB in a simple one-step chemical reaction. These sites sold GBL either separately or in "GHB kits." A kit contains premeasured amounts of GBL and potassium hydroxide or sodium hydroxide, as needed to produce GHB. GBL has been made available to anyone who desires it in quantities ranging from 75, 150, and 450 grams, to 55-gallon drums. Most DEA documented diversion or attempted diversion of GBL is in 500-gram, three-kilogram, one-gallon, three-gallon, five-gallon, and 55-gallon sizes. Usually, multiple containers are found at GHB manufacturing sites. However, because GBL has only recently been made a listed chemical and GHB a scheduled substance, law enforcement has only recently been involved with diversion of GBL and mostly concerned with large-scale diversion.

What Transactions of GBL Are of Concern?

GBL is an industrial chemical. Most GBL produced is consumed by the producer or transported in large quantities. DEA is concerned that GBL packaged in smaller individual containers is convenient to traffickers and higher risk of diversion. DEA is proposing to regulate containers that can be easily transported, stored, and generally dealt with in clandestine settings.

The largest size container identified by DEA, short of a tank-truck, is a 55-gallon (500-pound) drum. This size, as well as smaller sizes (see above), have been marketed to the public, used for conversion to GHB, and encountered in clandestine GHB laboratories. Therefore, to address diversion of GBL in 55-gallon and smaller containers, DEA is proposing that no threshold be established. However, because DEA is concerned with these smaller size containers and because large-scale industrial distributions of GBL by tank-truck and rail car containers have not, and are not, likely to be diverted this proposal includes an exemption for large container industrial distributions.

This notice proposes that large, single-container distributions of GBL are exempt from the definition of a regulated transaction. DEA identified approximately 16,330 kilograms as the smallest bulk size distribution in a single container. A tank-truck is used to transport that amount. Therefore, DEA is proposing that distributions of GBL in single container shipments of 16,000 kilograms (35,200 pounds) (net weight) or more be excluded from the definition of a regulated transaction for domestic, import and export distributions. According to this proposal, transactions involving multiple containers each holding less than 16,000 kilograms are regulated, even if the aggregate weight is over 16,000 kilograms.

Why Is DEA Proposing This Rulemaking?

The purpose of this notice is to propose a zero threshold for distribution of GBL, to propose a regulatory exemption for large bulk transactions, and obtain comments on this approach. DEA is soliciting further information on the type and extent of transactions in GBL. This information is required to help minimize the potential impact on industry while maintaining necessary regulatory controls.

What Is a Threshold and Why Are Thresholds Used?

Transactions involving listed chemicals that are not exempt by statute (e.g. certain transactions in chemical mixtures) may be removed from the definition of "regulated transaction" (21 U.S.C. 802(39)) if regulation of such transactions is determined to be unnecessary for purposes of law enforcement. Two options for doing so include a categorical exemption under 21 U.S.C. 802(39)(A)(iii) or the establishment of a quality threshold under 21 U.S.C. 802(39)(A).

The CSA provides that the Attorney General may establish a threshold amount for each listed chemical. A threshold amount is established to determine whether a receipt, sale, importation or exportation within a calendar month or cumulative transactions by an individual within a calendar month are considered regulated transactions. If the transaction is considered a regulated transaction, recordkeeping and reporting requirements as specified in 21 CFR part 1310 apply.

Why Is DEA Proposing This Threshold?

Because GBL is easily converted to GHB, GBL is desired by persons not experienced in chemistry and finds its way into both household and traditional clandestine laboratory settings. That is, GBL is converted to GHB for "individual use" and by traffickers for wider distribution. Therefore, the control of GBL is necessary for relatively small quantities of GBL used to make "individual use" amounts of GHB.

DEA is proposing a zero threshold for domestic, import, and export transactions to capture all quantities of GBL that can be easily used in a clandestine laboratory. In addition, this chemical is efficiently converted to GHB when ingested. Therefore, the zero threshold is proposed to regulate distribution of a chemical that can be, and is, directly converted into and substituted for a Schedule I controlled substance.

DEA identified GBL in quantities as small as 75 grams being sold unconcernedly to the public by unscrupulous persons. If a threshold above zero is established for GBL, DEA believes that individuals will obtain GBL at a quantity below the established threshold, not only from legitimate distributors, but also from businesses that will cater to this market.

The DEA is aware that most businesses that manufacture and/or distribute GBL have recognized its abuse and attempted to prevent its diversion, even before the chemical became a regulated chemical. The GBL that is sold irresponsibly to the general public is not manufactured clandestinely. All GBL is produced by legitimate manufacturers. GBL diverted from legitimate and responsible companies has been identified at clandestine GHB laboratories and at sites where GBL is knowingly diverted. Chemical companies that are concerned about public safety still find it difficult to prevent diversion of their products. However, if records are kept for all transactions, and the buyer understands that the sale is reportable to DEA, persons who intend to use the chemical illegitimately will be discouraged from ordering.

What Is an Exemption and Why Are Exemptions Used?

In addition to setting quantity-based thresholds, DEA is authorized to remove certain categories of transactions from the definition of "regulated transactions." Under 21 U.S.C. 802(39)(A)(ii) the agency may, by regulation, exempt "any category of transaction of any category of transactions for a specific listed chemical or chemicals specified by regulation of the Attorney General as excluded from this definition as unnecessary for enforcement of this subchapter or subchapter II of this chapter."

What Exemptions Is DEA Proposing and Why?

DEA is proposing to exempt large single container distributions of GBL based on industry's response to an earlier solicitation of information. DEA published a request for information entitled "Industrial Uses and Handling of Gamma-butyrolactone; Solicitation of Information" in the **Federal Register** on October 23, 1998 (63 FR 56941) in anticipation that GBL may become a regulated chemical. Interested persons supplied DEA with pertinent information. Of the eight respondents, three were manufacturers, one a European business association, and four were end-users. There was no response from distributors of GBL, except that the three manufacturers also distribute.

Domestic manufacturers informed DEA that tens of thousands of tons are produced annually. Most GBL is consumed by the manufacturer or transported in net weight of tens of thousands of pounds. The smallest tank-truck size identified by DEA, from the response to the Federal Register request for information, is 16,330 kilograms (net weight). GBL shipped by tank-truck needs to be transferred to a holding container. This equipment implies shipment is made to an established industrial location having facilities able to handle large quantities of industrial chemicals. It is likely that the added difficulty, cost, equipment, and complexity in handling this type of large bulk shipment would deter diversion. Therefore, DEA is proposing to exempt shipments of 16,000 kilograms (35,200 pounds) (net weight) or more in a single container from the definition of a regulated transaction, pursuant to 21 U.S.C. 802(39)(A)(iii).

What Alternatives Has DEA Considered, and Why Were They Not Chosen?

As an alternative to the above exemption, DEA considered proposing a threshold of multiple quantity 55-gallon drums. However, DEA determined that while clandestine operations would have difficulty handling tank-truck shipments they will be able to divert smaller, self-contained receptacles of GBL, *i.e.*, containers of 55-gallons or less. Accordingly, DEA declined to propose a threshold of multiple quantity 55-gallon drums.

DEA also considered exempting smaller quantities of GBL, such as those below 75 grams. However, because these smaller quantities would be desirable to those who would manufacture "individual use" quantities of GHB, or consume the GBL without chemical conversion to GHB, DEA decided not to propose this exemption. Further, most legitimate GBL is distributed in larger quantities. Quantities of 75 grams and less is restricted mostly to chemical clearinghouses that supply researchers. The amount of GBL distributed in these quantities is relatively small. The minimal regulatory relief from exemption of small quantity distributions in GBL, weighed against its diversion without fear of reprisal, convinced DEA not to propose small quantity exemptions.

Regulatory Certifications

Regulatory Flexibility, and Small Business Concerns

This NPRM will not have a significant economic impact on small business. Pub. L. 106–172 amended the CSA to make GBL a List I chemical effective February 18, 2000. Regulatory impact due to registration requirements were addressed in the Final Rule "Placement of gamma-butyrolactone in List I of the Controlled Substances Act (21 U.S.C. 802(34))" (65 FR 21645). In that final rule, DEA concluded that making GBL a List I chemical would not have a significant economic impact. That conclusion was based on an estimated number of new registrants and that all distributions in GBL are regulated. This NPRM does not add new regulatory controls. In fact, it proposes to eliminate some large-scale industrial transactions from the definition of "regulated transaction," thus granting additional relief to industry. DEA identified approximately 16,330 kilograms as the minimum amount available by tank-truck. DEA determined that clandestine operations will have difficulty handling tank-truck shipments but will be able to divert self-contained shipments of GBL, *i.e.*, containers of 55-gallons or less. Therefore, DEA is proposing to exempt tank-truck sized shipments (16,000 kilograms or more, net weight) from the requirements of this regulation.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Deputy Administrator has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. DEA has determined that this rule is not a "significant regulatory action" under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Paperwork Reduction Act

This rulemaking imposes no recordkeeping or reporting requirements on registrants. No information collection request is necessary.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. this rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

The DEA makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7297.

List of Subjects in 21 CFR Part 1310

Drug traffic control, List I and List II chemicals, reporting requirements.

For the reasons set out above, 21 CFR part 1310 is proposed to be amended to read as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.04(g)(1) is proposed to be amended by adding a new paragraph to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(g) * * *

(1) * * *

(ii) Gamma-Butyrolactone (Other names include: GBL; Dihydro-2(3H)-furanone; 1,2-Butanolide; 1,4-Butanolide; 4-Hydroxybutanoic acid lactone; gamma-hydroxybutyric acid lactone)

* * * * *

3. Section 1310.08 is proposed to be amended by adding a new paragraph (j) to read as follows:

§ 1310.08 Excluded transactions.

* * * * *

(j) Domestic, import, and export distributions of gamma-butyrolactone weighing 16,000 kilograms (net weight) or more in a single container.

Dated: October 16, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26741 Filed 10–23–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–093–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the West Virginia surface mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of West Virginia (W. Va. Code) as contained in Enrolled Senate Bill 5003. The amendment provides for the creation of a special reclamation fund advisory council, and additional revenues for the West Virginia special reclamation fund by increasing the special reclamation tax. The amendment is intended to improve the effectiveness of the West Virginia program and to revise the program to be consistent with SMCRA and the Federal regulations.

This document gives the times and locations that the West Virginia program and proposed amendment are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:30 p.m. (local time), on November 23, 2001. If requested, we will hold a public hearing or meeting on the amendment on November 19, 2001. We will accept requests to speak at the hearing until 4:30 p.m. (local time), on November 8, 2001.

ADDRESSES: You may mail or hand-deliver written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301. Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov*.

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0510.

The proposed amendment will be posted at the Department's Internet page: *http://www.dep.state.wv.us*.

In addition, you may review copies of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston

Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description of the Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915–5956). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated September 17, 2001 (Administrative Record Number WV–1237), the West Virginia Department of Environmental Protection (WVDEP) notified OSM of proposed legislation that was approved during a special session of the West Virginia Legislature. By letter dated September 24, 2001 (Administrative Record Number WV–1238), the WVDEP sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment was submitted in response to OSM's 30 CFR part 733 notification of June 29, 2001 (Administrative Record Number WV–1218). It is also intended to improve the effectiveness of the West Virginia program and to address required program amendments at 30 CFR 948.16(jjj), (kkk), and (lll).

While the proposed program amendment consists of Enrolled Senate Bill 5003, which was signed by the Governor on October 4, 2001, we are making available for public review and comment Engrossed Senate Bill 5003. Engrossed Senate Bill 5003 is identical to Enrolled Senate Bill 5003 except that the former clearly shows, via underline and strikethrough, all the statutory language that has been added or deleted from the W.Va. Code as a result of Senate Bill 5003.

The program amendment adds new W. Va. Code section 22–1–17 concerning the establishment of the special reclamation fund advisory council. The amendment also revises the provisions of W. Va. Code sections 22–3–11 concerning the special reclamation tax, and section 22–3–12 concerning site-specific bonding. You will find the full amended language of West Virginia's program amendment quoted below.

1. W. Va. Code 22–1–17 Special Reclamation Fund Advisory Council

This provision is new, and provides for the creation of a special reclamation fund advisory council. The new language is quoted below.

Article 1. Division of Environmental Protection

22–1–17. Special reclamation fund advisory council.

(a) There is hereby created within the department of environmental protection a special reclamation fund advisory council. The council's purpose is to ensure the effective, efficient and financially stable operation of the special reclamation fund. The special reclamation advisory council shall consist of eight members, including the secretary of the department of environmental protection, or his or her designee, the treasurer of the state of West Virginia, or his or her designee, the director of the national mine land reclamation center at West Virginia university and five members to be appointed by the governor with the advice and consent of the Senate.

(b) Each appointed member of the council shall be selected based on his or her ability to serve on the council and effectuate its purposes. The governor shall appoint, from a list of three names submitted by the major trade association representing the coal industry regulated under article three of this chapter, a member to represent the interests of the industry. The governor shall appoint, from a list of three names submitted by organizations advocating environmental protection, one member to represent the interest of environmental protection organizations. The governor shall appoint, from a list of four names submitted by the coal mining industry and the organizations advocating environmental protection, one member who, by training and profession, is an actuary or an economist. The governor shall appoint, from a list of three names submitted by the united mine workers of America, one member to represent the interest of coal miners. The governor shall appoint a member to represent the interests of the general public.

(c) The terms of all members shall begin on the first day of July, two thousand two. The secretary shall be an ex officio, nonvoting member and serve as chairperson of the council. The terms of the governor's appointees shall be for six years. Appointees may be reappointed to serve on the council. The terms of the appointed members first taking office are to be expired as designated by the governor at the time of the nomination, two at the end of the second year, two at the end of the forth year and one at the end of the sixth year. As the original appointments expire, each subsequent appointment will be for a full six-year term. Any appointed member whose term has expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy is to serve only for the unexpired term.

(d) Appointed members of the council shall be paid the same compensation and expense reimbursement as is provided for members of the Legislature pursuant to sections six and eight, article two-a, chapter four of this code. Council members who are state employees or officials shall be reimbursed for expenses in accordance with the applicable agency's policy.

(e) The council shall meet at the call of the chairperson or his or her designee, but not less than once every six months. The secretary shall provide funds for necessary administrative and technical services for the council from the special reclamation fund.

(f) The council shall, at a minimum:

(1) Study the effectiveness, efficiency and financial stability of the special reclamation fund with an emphasis on development of a financial process that ensures long-term stability of the special reclamation program;

(2) Identify and define problems associated with the special reclamation fund, including, but not limited to, the enforcement of federal and state law, regulation and rules pertaining to contemporaneous reclamation;

(3) Evaluate bond forfeiture collection, reclamation efforts at bond forfeiture sites and compliance with approved reclamation plans as well as any modifications;

(4) Provide a forum for a full and fair discussion of issues relating to the special reclamation fund;

(5) Contract with a qualified actuary who shall make a determination as to the special reclamation fund's fiscal soundness. This determination shall be completed on the thirty-first day of December, two thousand four, and every four years thereafter. The review is to include an evaluation of the present and prospective assets and liabilities of the special reclamation fund; and

(6) Study and recommend to the Legislature alternative approaches to the current funding scheme of the special reclamation fund, considering revisions which will assure future proper reclamation of all mine sites and continued financial viability of the state's coal industry.

(g) On or before the first day of January, two thousand three, and every year thereafter, the council shall submit to the Legislature and the governor a report on the adequacy of the special reclamation tax and the fiscal condition of the special reclamation fund. The report shall, at a minimum, contain:

(1) A recommendation as to whether or not any adjustments to the special reclamation tax should be made considering the cost, timeliness and adequacy of bond forfeiture reclamation, including water treatment;

(2) A discussion of the council's required study issues as set forth in subsection (f) of this section; and

(3) The availability of federal abandoned mine lands funds for West Virginia reclamation projects.

2. W. Va. Code 22–3–11 Bonds

Subsection 22–3–11(a) is amended to provide that the penal amount of the bond shall be not less than one thousand dollars nor more than five thousand dollars for each acre or fraction thereof. The existing requirement that the minimum amount of bond furnished for any type of reclamation bonding is ten thousand dollars is relocated within this subsection.

Subsection 22–3–11(g) is amended by adding a reference to section 22–1–17. As amended, the moneys accrued in the special reclamation fund are reserved only for the purposes set forth in sections 22–3–11 and 22–1–17. Language is added which provides that moneys in the special reclamation fund may be spent to reclaim abandoned lands where the amount of bond posted and forfeited is less less than the actual cost of reclamation, "and where the land is not eligible for abandoned mine land reclamation funds under article two of this chapter." Language is deleted that limits expenditures from the special reclamation fund for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation of the affected lands to 25 percent of the fees collected. This revision is intended to satisfy the required amendment at 30 CFR 948.16(jjj). As amended, the provision provides that the secretary may use the special reclamation fund for the purpose of designing, constructing and maintaining water treatment systems where they are required for a complete reclamation of the affected lands. Also, the words "articles two and four of this chapter" are deleted from the sentence which identifies the administrative provisions for which up to 10 percent of the special reclamation funds may be spent.

Subsection 22–3–11(h) is amended by adding language that provides for a new per-ton special reclamation tax on surface coal mining operations .

Subsections 22–3–11(i) and (j) are amended by adding references to the special reclamation tax.

Subsection 22–3–11(k) is amended by adding a reference to the special "reclamation" tax and by deleting the last sentence which provided that the special reclamation tax "shall be collected whenever the liabilities of the state established in this subsection exceed the accrued amount in the fund." This revision is intended to satisfy the required amendment at 30 CFR 948.16 (kkk).

New subsection 22–3–11(n) is added to provide that the amendments to section 22–3–11 will become effective upon the approval by OSM.

The amended section 22–3–11 is quoted below.

Article 3. Surface Coal Mining and Reclamation Act

22–3–11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

(a) After a surface mining permit application has been approved pursuant to this article, but before a permit has been issued, each operator shall furnish a penal bond, on a form to be prescribed and furnished by the secretary, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal amount of the bond shall be not less than one thousand dollars nor more than five thousand dollars for each acre or fraction thereof: Provided, That the minimum amount of bond furnished for any type of reclamation bonding shall be ten thousand dollars. The bond shall cover: (1) The entire permit area; or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the secretary an additional bond or bonds to cover the increments in accordance with this section: Provided, however, That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for bond coverage begins with issuance of a permit and continues for the full term of the permit plus any additional period necessary to achieve compliance with the requirements in the reclamation plan of the permit.

(c) (1) The form of the bond shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank or of the homeowners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of such securities or certificates shall be equal to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it is to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled, from time to time, to receive from the state treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

(2) The secretary may approve an alternative bonding system if it will: (1) Reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time; and (2) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator's obligations to the state for the reclamation of lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) The special reclamation fund previously created is continued. The moneys accrued in the fund, including interest, are reserved solely and exclusively for the purposes set forth in this section and section seventeen, article one of this chapter. The fund shall be administered by the secretary who is authorized to expend the moneys in the fund for the reclamation and rehabilitation of lands which were subjected to permitted surface mining operations and abandoned after the third day of August, one thousand nine hundred seventy-seven, where the amount of the bond posted and forfeited on the land is less than the actual cost of reclamation, and where the land is not eligible for abandoned mine land reclamation funds under article two of this chapter. The secretary shall develop a long-range planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate short-term obligations of the assets in the fund of such magnitude that the solvency of the fund is jeopardized. The secretary may use the special reclamation fund for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation

of the affected lands described in this subsection. The secretary may also expend an amount not to exceed ten percent of the total annual assets in the fund to implement and administer the provisions of this article and, as they apply to the surface mine board, articles one and four, chapter twenty-two-b of this code.

(h) Prior to the first day of January, two thousand two, every person conducting coal surface mining operations shall contribute into the fund a sum equal to three cents per ton of clean coal mined. For tax periods commencing on and after the first day of January, two thousand two, every person conducting coal surface mining shall contribute into the fund as follows: (1) For a period not to exceed thirty-nine months, seven cents per ton of clean coal mined; and (2) an additional seven cents per ton of clean coal mined. The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply on or after the first day of January, two thousand two. The additional seven-cent tax shall be reviewed and, if necessary, adjusted annually by the Legislature upon recommendation of the council pursuant to the provisions of section seventeen, article one of this chapter: Provided, That the tax may not be reduced until the special reclamation fund has sufficient moneys to meet the reclamation responsibilities of the state established in this section.

(i) This special reclamation tax shall be collected by the state tax commissioner in the same manner, at the same time and upon the same tonnage as the minimum severance tax imposed by article twelve-b, chapter eleven of this code is collected: Provided, That under no circumstance shall the special reclamation tax be construed to be an increase in either the minimum severance tax imposed by said article or the severance tax imposed by article thirteen of said chapter.

(j) Every person liable for payment of the special reclamation tax shall pay the amount due without notice or demand for payment.

(k) The tax commissioner shall provide to the secretary a quarterly listing of all persons known to be delinquent in payment of the special reclamation tax. The secretary may take the delinquencies into account in making determinations on the issuance, renewal or revision of any permit.

(l) The tax commissioner shall deposit the fees collected with the treasurer of the state of West Virginia to the credit of the special reclamation fund. The moneys in the fund shall be placed by the treasurer in an interest-bearing account with the interest being returned to the fund on an annual basis.

(m) At the beginning of each quarter, the secretary shall advise the state tax commissioner and the governor of the assets, excluding payments, expenditures and liabilities, in the fund.

(n) To the extent that this section modifies any powers, duties, functions and responsibilities of the department that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of the federal Surface Mining Control and Reclamation Act, 30 U.S.C. 1270 by the state, the modifications will become effective upon the approval of the modifications by the appropriate federal agency or official.

3. Section 22–3–12 Site-Specific Bonding

Subsection 22–3–12(b) is deleted in its entirety, and the remaining subsections relettered.

Various clarifying word changes have been made to subsections 22–3–12(b) through (d) (formerly (c) through (e)).

Subsection 22–3–12(f) has been deleted in its entirety.

The amended section 22–3–12 is quoted below.

22–3–12. Site-specific bonding; legislative rule; contents of legislative rule; legislative intent.

(a) Notwithstanding the provisions of section eleven of this article, the secretary may establish and implement a site-specific bonding system in accordance with the provisions of this section.

(b) A legislative rule proposed or promulgated pursuant to this section must provide, at a minimum, for the following:

(1) The penal amount of a bond shall be not less than one thousand dollars nor more than five thousand dollars per acre or fraction thereof.

(2) Every bond, subject to the limitations of subdivision (1) of this subsection, shall reflect the relative potential cost of reclamation associated with the activities proposed to be permitted, which would not otherwise be reflected by bonds calculated by merely applying a specific dollar amount per acre for the permit.

(3) Every bond, subject to the provisions of subdivision (1) of this subsection, shall also reflect an analysis under the legislative rule of various factors, as applicable, which affect the cost of reclamation, including, but not limited to: (A) The general category of mining, whether surface or underground; (B) mining techniques and methods proposed to be utilized; (C) support facilities, fixtures, improvements and equipment; (D) topography and geology; and (E) the potential for degrading or improving water quality.

(c) A legislative rule proposed or promulgated pursuant to the provisions of this section may, in addition to the requirements of subsection (b) of this section, provide for a consideration of other factors determined to be relevant by the secretary. For example, the rule may provide for the following:

(1) A consideration as to whether the bond relates to a new permit application, a renewal of an existing permit, an application for an incidental boundary revision or the reactivation of an inactive permit;

(2) A consideration of factors which may result in environmental enhancement, as in a case where remining may improve water quality or reduce or eliminate existing highwalls, or a permitted operation may create or improve wetlands; or

(3) An analysis of various factors related to the specific permit applicant, including, but not limited to: (A) The prior mining experience of the applicant with the activities sought to be permitted; and (B) the history of the applicant as it relates to prior compliance with statutory and regulatory requirements designed to protect, maintain or enhance the environment in this or any other state.

(d) It is the intent of the Legislature that a legislative rule proposed or promulgated pursuant to the provisions of this section shall be constructed so that when the findings of fact by the division [Sic] of environmental protection with respect to the proposed mining activity and the particular permit applicant coincide with the particular factors or criteria to be considered and analyzed under the rule, the rule will direct a conclusion as to the amount of the bond to be required, subject to rebuttal and refutation of the findings by the applicant. To the extent practicable, the rule shall limit subjectivity and discretion by the secretary and the division [Sic] in fixing the amount of the bond.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments, on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the West Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendation(s). In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Charleston Field Office.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. WV–093–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during our normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law.

Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comment We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:30 p.m. (local time), on November 8, 2001. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

If you are disabled and need special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of the meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse affect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions or Federal, State, or local government agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon

counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 4, 2001.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 01–26770 Filed 10–23–01; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 173

[USCG–1999–6094]

RIN 2115–AF87

Raising the Threshold of Property Damage for Reports of Accidents Involving Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of reopening of comment period.

SUMMARY: The Coast Guard is reopening the period for public comment on a partial suspension of rule with request for comments published on June 26, 2001. The chairman of a subcommittee of the National Association of State Boating Law Administrators (NASBLA) asked that we reopen the comment period so his subcommittee could discuss the rule at their meeting in October 2001 and submit a comment to the docket. We are reopening the period for 30 days so the subcommittee and other interested persons can submit comments.

DATES: Comments must reach the docket on or before November 23, 2001.

ADDRESSES: Identify your comments and related material by the docket number for this rulemaking [USCG–1999–6094]. To make sure they do not enter the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand-delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Internet site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, at the address listed above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.* You may obtain a copy of this partial suspension of final rule by calling the Infoline of the U.S. Coast Guard at 1–800–368–5647, or read it on the Internet, at the Web site for the Office of Boating Safety, at *http://www.uscgboating.org* or at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Bruce Schmidt, Project Manager, Office of Boating Safety, U.S. Coast Guard, by telephone at 202–267–0955 or by e-mail at *bschmidt@comdt.uscg.mil.* For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

The early regulatory history for this rulemaking appears in the preamble of the final rule entitled "Raising the Threshold of Property Damage for Reports of Accidents Involving Recreational Vessels" [66 FR 21671 (May 1, 2001)].

Reason for Partial Suspension of Effective Date

After we issued the final rule on May 1, 2001, a State boating-law administrator expressed concern about a provision in the rule requiring reports of all collisions involving two or more vessels resulting exclusively in damage to property, regardless of the amount of such damage.

Currently, few States have statutory authority to require reports of multi-vessel accidents that result neither in personal injury nor in any damage to property. Further, States' legislative calendars precluded compliance by the published effective date, July 2, 2001. We note that States' legislation would be unnecessary if our provision for reporting collisions of two or more vessels included a threshold of $500, since all States do now maintain such a threshold. Because of the concern raised about the impact of our provision on States' legislation, the Coast Guard delayed implementation of that provision, in 33 CFR 173.55(a)(3), requiring a report whenever "* * * a collision occurs involving two or more vessels, regardless of the amount of damage to property; * * *", and provided a 90-day comment period on the provision.

Reason for Reopening the Comment Period

In response to the notice of partial suspension of effective date, we received 28 comments, including a request from the Chairman of the Boating Accident Investigation Reporting and Analysis Committee (BAIRAC) of NASBLA to extend the comment period beyond the meeting of BAIRAC in October 2001. We are reopening the comment period until November 23, 2001 to let BAIRAC discuss the suspended provision at that meeting and submit a comment to the docket. We are also reopening it to anyone else who would like to submit a comment, but please do not re-submit comments already in the docket.

Request for Comments

We encourage you to participate in this rulemaking by submitting your comments to the Docket Management Facility as specified in **ADDRESSES.** Please submit comments and materials related only to the provision in 33 CFR 173.55(a)(3), requiring a report whenever "* * * a collision occurs involving two or more vessels, regardless of the amount of damage to property; * * *". We will consider comments received during this reopened comment period and may change 33 CFR 173.55(a)(3) in response to the comments.

Dated: October 18, 2001.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 01–26814 Filed 10–23–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–7014–8]

Indiana: Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to codify in part 272 of Title 40 of the Code of Federal Regulations (CFR) Indiana's authorized hazardous waste program. EPA will incorporate by reference into the CFR those provisions of the State statutes and regulations that are authorized and federally enforceable. In the "Rules and Regulations" section of this **Federal Register**, the EPA is codifying and incorporating by reference the State's hazardous waste program as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this codification and incorporation by reference in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received on or before November 23, 2001.

ADDRESSES: Mail written comments to Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

FOR FURTHER INFORMATION CONTACT: Gary Westefer at the address listed in **ADDRESSES** and (312) 886–7450.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register.**

Dated: July 3, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01–26683 Filed 10–23–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2381, MM Docket No. 01–298, RM–10299]

Radio Broadcasting Services; Camden, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 280A at Camden, Alabama, providing the community with additional local FM service. The coordinates for Channel 280A at Camden are 32–04–21 and 87–13–52. There is a site restriction 10.7 kilometers (6.6 miles) northeast of the community.

DATES: Comments must be filed on or before December 3, 2001, and reply comments on or before December 18, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–298, adopted October 3, 2001 and released October 12, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Channel 280A at Camden.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–26751 Filed 10–23–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2376; MM Docket No. 01–291; RM–10301; MM Docket No. 01–292; RM–10302; MM Docket No. 01–293; RM–10303; MM Docket No. 01–294; RM–10304; MM Docket No. 01–295; RM–10305]

Radio Broadcasting Services; Cherokee, OK; Ballinger, TX; Crowell, TX; Eldorado, TX; and Jayton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes new allotments to Cherokee, OK; Ballinger, TX; Crowell, TX; Eldorado, TX and Jayton, TX. The Commission requests comments on a petition filed by Maurice Salsa, proposing the allotment of Channel 237C2 at Cherokee, OK, as that community's first local aural transmission service. Channel 237C2 can be allotted to Cherokee at a restricted site located 23.9 kilometers southwest of the community, utilizing coordinates 36–39–27 NL and 98–35–45 WL. *See* **SUPPLEMENTARY INFORMATION,** *infra.*

DATES: Comments must be filed on or before December 3, 2001, and reply

comments on or before December 18, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Maurice Salsa, 5616 Evergreen Valley Drive, Kingwood, TX 77345 (petitioner for Cherokee, OK); Jeraldine Anderson, 1702 Cypress Drive, Irving, TX 75061 (petitioner for Ballinger, TX; Crowell, TX; and Eldorado, TX); and Linda Crawford, 3500 Maple Ave., #1320, Dallas, TX 75219 (petitioner for Jayton, TX).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–291; MM Docket No. 01–292; MM Docket No. 01–293; MM Docket No. 01–294; and MM Docket No. 01–295, adopted October 3, 2001, and released October 12, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

In addition to the above, the Commission requests comments on a petition filed by Jeraldine Anderson proposing the allotment of Channel 238A at Ballinger, Texas, as that community's second local commercial FM service. Channel 238A requires a site restriction 12.8 kilometers southeast of the community, utilizing coordinates 31–38–03 NL and 99–53–13 WL. Additionally, as Ballinger, Texas, is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government will be requested for this allotment.

The Commission further requests comments on a petition filed by Jeraldine Anderson proposing the allotment of Channel 250C3 at Crowell, Texas, as that community's potential second local FM transmission service. Channel 250C3 requires a site restriction 3.1 kilometers southwest of the community, utilizing coordinates 33–57–54 NL and 99–44–59 WL.

The Commission further requests comments on a petition filed by Jeraldine Anderson proposing the allotment of Channel 293A at Eldorado, Texas, as an additional local commercial FM transmission service at that community. Channel 293A requires a site restriction 1.3 kilometers southwest of the community, utilizing coordinates 30–51–14 NL; 100–36–43 WL. Additionally, as Eldorado is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government will be requested for this allotment.

The Commission further requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 231A at Jayton, Texas, as that community's first local aural transmission service. Channel 231A can be allotted to Jayton at city reference coordinates 33–14–53 NL and 100–34–24 WL.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Cherokee, Channel 237C2.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 238A at Ballinger; Crowell, Channel 250C3; Channel 293A at Eldorado; and Jayton, Channel 231A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–26749 Filed 10–23–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG92

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Thlaspi californicum (Kneeland Prairie Penny-cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Thlaspi californicum* (Kneeland Prairie penny-cress). Approximately 30 hectares (74 acres) in Humboldt County, California, are proposed for designation as critical habitat. If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that any actions they fund, authorize, or carry out do not result in the destruction or adverse modification of critical habitat. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

DATES: We will accept comments until December 24, 2001. Public hearing requests must be received by December 10, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Project Leader, Arcata Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521.

2. You may also send comments by electronic mail (e-mail) to *FW1_kneelandpennycress@fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

3. You may hand-deliver comments to our Arcata Fish and Wildlife Office at the address given above.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Bruce Halstead, Project Leader, Arcata Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521 (telephone 707/822–7201; facsimile 707/822–8411).

SUPPLEMENTARY INFORMATION:

Background

Thlaspi californicum (Kneeland Prairie penny-cress) is a perennial member of the mustard family (Brassicaceae). The species grows from 9.5 to 12.5 centimeters (3.7 to 4.9 inches) tall with a basal cluster of green to purplish, sparsely toothed leaves. Leaves borne along the stem are sessile (without a stalk) with entire to toothed margins. The white flowers have strongly ascending flower stalks. *Thlaspi californicum* flowers from April to June. The fruit is a sharply pointed silicle (a short fruit typically no more than two to three times longer than wide), and is elliptic to obovate, without wings, and with an ascending stalk.

Serano Watson (1882) first described *Thlaspi californicum* based on a collection made by Volney Rattan from among rocks at Kneeland Prairie at 760 meters (m) (2,500 feet (ft)) elevation. Jepson (1925) later referred to it as *T. alpestre* var. *californicum*. Munz (1959) referred to the taxon as *T. glaucum* var. *hesperium*; however, he segregated it as *T. californicum* in his supplement (Munz 1968). Holmgren (1971) assigned the name *Thlaspi montanum* var. *californicum*. Finally, the taxon was returned to *T. californicum* in the current Jepson Manual (Hickman 1993; Rollins 1993).

Thlaspi californicum is endemic to serpentine soils in Kneeland Prairie, located in the outer north coast range of Humboldt County, California. Serpentine soils are derived from ultramafic rocks (rocks with unusually large amounts of magnesium and iron). The entire known distribution of *T. californicum* occurs on Ashfield Ridge at elevations ranging from 792 to 841 m (2,600 to 2,760 ft).

Plant communities in Kneeland Prairie include the following: California annual and introduced perennial grasslands; seasonal and perennial wetlands; and mixed oak/Douglas-fir woodlands (SHN 1997). Boulder outcrops in Kneeland Prairie form scattered knobs that protrude out of the grasslands. The majority of these outcrops are volcanic rock types such as greenstone pillow basalt, basalt, tuff, or agglomerates (State of California 1975). Along Ashfield Ridge and nearby side ridges, many of the outcrops are serpentine (State of California 1975). The serpentine outcrops exhibit a distinctive flora compared to the surrounding grassland (SHN 2001). In addition to *Thlaspi californicum*, serpentine outcrops on Ashfield Ridge support the following two special interest plants, both considered as rare by the California Native Plant Society: *Fritillaria purdyi* (Purdy's fritillary) and *Astragalus rattanii* (Rattan's milk-vetch) (SHN 1997).

Little is known about the reproductive biology of *Thlaspi californicum*. Some members of the genus, such as *T. montanum*, are known to be outbreeding, while others, such as *T. alpestre*, are primarily self-pollinating (Holmgren 1971). Due to its very close taxonomic relationship to *T. montanum*, *T. californicum* is almost certainly an outbreeder. The principal pollinators are believed to be generalist bees and/or flies (SHN 2001).

The only known occurrence of *Thlaspi californicum* includes five relatively distinct groups of plants all located within 300 m (980 ft) of each other. The area occupied by the species is divided by the Kneeland Airport and Mountain View Road. We do not know if genetic interchange occurs between plants in these separate groups; therefore, the five areas will be referred to as individual colonies. The location was described as consisting of three colonies in 1990 (Imper 1990; SHN 2001); a fourth colony was discovered in 1999 (SHN 2001), and one additional colony in 2001 (SHN 2001).

In 1997, the largest colony was estimated at 10,840 plants (SHN 1997); this estimate was later corrected to 9,919 plants (SHN 2001). The sizes of the other two colonies known in 1997 were 140 and 40 plants (SHN 1997); therefore, the total revised estimate in 1997 was 10,099 plants. In 2001, the total number of *Thlaspi californicum* plants was estimated at approximately 5,293 (SHN 2001), with 5,142 plants at the largest colony, and 90 plants, 30 plants, 16 plants, and 15 plants at the four smaller colonies. These data suggest the total number of plants has declined by about 48 percent since 1997, even though two new small colonies have been discovered (SHN 2001).

Historically, several land use activities may have altered the distribution and abundance of *Thlaspi californicum* colonies. These activities included construction of the county road in the 1800s (currently Mountain View Road), the Kneeland Airport in 1964, and the California Department of Forestry & Fire Protection (CDFFP) helitack base in 1980. Prior to 1964, suitable habitat for *T. californicum* on Ashfield Ridge consisted of two serpentine patches (1.9 hectares (ha) (4.7 acres (ac)) and 0.6 ha (1.4 ac)) and scattered smaller patches of 0.01 ha (0.02 ac) to 0.2 ha (0.6 ac) in size. The two larger serpentine outcrops formed a semi-continuous ridgetop exposure covering more than 2.4 ha (6 ac), extending in an east-west direction along the top of the ridge in the area now occupied by the airstrip, county road, and helitack base (SHN 2001).

Construction of the county road, airstrip, and helitack base fragmented the two largest patches of suitable habitat into four relatively isolated patches. The construction also reduced the total available habitat by approximately 50 percent. No data are available on the distribution or number of individuals prior to this habitat alteration. However, anecdotal evidence indicates that prior to this habitat loss these colonies occupied more area or formed one large colony. The impacts on population or community processes from this habitat loss and possible population reduction are unknown. In general, smaller serpentine outcrops are known to support fewer native species and more exotic species (Wolf and Harrison 2001). Smaller outcrops may also be more vulnerable to recreational impacts, trampling, and modification of the unique serpentine soil chemistry as a result of enrichment from the surrounding meadow system (SHN 2001). All of these factors, in addition to a reduction and/or fragmentation of the site, increase the likelihood of extinction.

In 2001, all the known colonies occupied an estimated 0.3 ha (0.8 ac), divided among the five colonies as follows: 0.29 ha (0.72 acre); 0.02 ha (0.05 ac); 0.008 ha (0.02 ac); 0.004 ha (0.01 ac); and 0.002 ha (0.005 ac). The five known colonies occur on three separate serpentine outcrops, but currently occupy only about 29 percent of the suitable habitat on these three outcrops (total area 1.1 ha (2.8 ac)). In addition to the three occupied outcrops, fourteen unoccupied serpentine outcrops occur on Ashfield Ridge, ranging in size from 0.01 ha (0.02 ac) to 0.2 ha (0.6 ac) (combined area of 0.9 ha (2.2 ac)). The distances between the outcrops range from 10 m to 85 m (33 ft to 279 ft). All of these patches are located within 400 m (1,312 ft) of the largest *T. californicum* colony. Serpentine soils contiguous with and in the vicinity of the colonies are the most likely to support *T. californicum* in the future.

Historic records for *Thlaspi californicum* refer to Kneeland Prairie and Ashfield Ridge as site locations (Watson 1882; Holmgren 1971). Over 99

percent of the serpentine soils in Kneeland Prairie occur on Ashfield Ridge. Two additional small serpentine outcrops are located on a ridge approximately 4.8 kilometers (km) (3 miles (mi)) southwest of Ashfield Ridge (State of California 1975). We do not have any historic records to show that these two outcrops were once occupied by *T. californicum* or current records to indicate that they are occupied. The next nearest known serpentine outcrops to Kneeland Prairie occur approximately 6.4 km (4 mi) southeast of Ashfield Ridge at Iaqua Buttes. The serpentine at Iaqua Buttes supports the more widespread *T. montanum*. No evidence of *T. californicum* or intergradation between *T. californicum* and *T. montanum* was observed during surveys at the Iaqua Buttes site in 2001 (SHN 2001). *Thlaspi montanum* also occurs on serpentine soils in the vicinity of Horse Mountain approximately 24 km (15 mi) northeast of Ashfield Ridge (SHN 2001). Evidence that the historic range of *T. californicum* ever extended beyond Kneeland Prairie does not currently exist (SHN 2001).

Previous Federal Action

Federal Government actions for *Thlaspi californicum* began when we published an updated notice of review (NOR) for plants on December 15, 1980 (45 FR 82480). This notice included *T. californicum* (referred to as *T. montanum* var. *californicum*) as a category 2 candidate. Category 2 candidates were those taxa for which data in our possession indicated listing might be appropriate, but for which additional biological information was needed to support a proposed rule. On November 28, 1983, we published a supplement to the 1980 NOR (48 FR 53640) as well as the subsequent revision on September 27, 1985 (50 FR 39526) which included *T. m.* var. *californicum* as a category 2 candidate.

We published revised NORs on February 21, 1990 (55 FR 6184) and September 30, 1993 (58 FR 511440). In both notices, we included *Thlaspi montanum* var. *californicum* as a category 1 candidate. Category 1 candidates are those taxa for which we have on file sufficient information on biological vulnerability and threats to support preparation of listing proposals, but issuance of the proposed rules are precluded by other pending listing proposals of higher priority. In our February 28, 1996, **Federal Register** Notice of Review of Plant and Animal Taxa that are Candidates for Listing as Endangered or Threatened Species (CNOR) (61 FR 7595), we discontinued designation of multiple categories of candidates. Only those taxa meeting the definition of former category 1 are now considered candidates for listing. *Thlaspi montanum* var. *californicum* was included as a candidate species in the February 28, 1996, notice. Our September 19, 1997, CNOR (62 FR 49397) included *T. californicum* as a candidate for listing.

On February 12, 1998 (63 FR 7112), we published a proposal to list *Thlaspi californicum* as endangered. Our October 25, 1999, CNOR (64 FR 57533) included *T. californicum* as a taxon proposed for listing as endangered. The final rule listing *T. californicum* as an endangered species was published on February 9, 2000 (65 FR 6332).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. At the time *Thlaspi californicum* was proposed, we determined that designation of critical habitat for *T. californicum* was not prudent because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

A series of court decisions for a variety of species overturned our determinations that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cri. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we reexamined the question of whether designation of critical habitat for *Thlaspi californicum* was prudent. At the time *T. californicum* was listed, we found that designation of critical habitat was prudent.

On June 17, 1999, our failure to issue final rules for listing *Thlaspi californicum* and nine other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the 10 species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Babbitt* (Case No. C99–2992 (N.D.Cal.)). On May 19, 2000, the U.S. District Court for the Northern District of California issued an order setting the timetable for the promulgation of the critical habitat designations. We agreed to complete the proposed critical habitat designations for the 10 species by September 30, 2001. However, in mid-September 2001, plaintiffs agreed to a brief extension of this due date until October 19, 2001. We will make our final critical habitat determinations no later than May 1, 2002.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Areas outside the geographic area currently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

Conservation is defined in section 3(3) of the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary. Regulations under 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

When we designate critical habitat at the time of listing, as required under

Section 4 of the Act, or under short court-ordered deadlines, we may not have the information necessary to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

We will designate only currently known essential areas. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. We will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." (50 CFR 424.12(e)). Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best scientific and commercial data demonstrate that the unoccupied areas are essential for the conservation needs of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments, unpublished materials, and expert opinion or personal knowledge.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best available scientific information in determining which areas are essential for the conservation of *Thlaspi californicum*. This information included data from the following sources: 1993 United States Geological Survey (USGS) 1:24,000 scale 3.75′ infrared color digital orthophotographic quarter quadrangle images; geologic map of the Van Duzen River Basin (State of California 1975); 1962 panchromatic 1:12,000 scale aerial photograph HCN–222–17; ownership parcels from the Humboldt County Planning Department, updated as of August 2000; recent biological surveys and reports; and discussions with botanical experts. We also conducted or contracted for site visits, either cursory or more extensive, at locations on private lands where access had been obtained, on State lands managed by CDFFP, and on public lands managed by Six Rivers National Forest and the Bureau of Land Management, including Iaqua Buttes and Board Camp Mountain.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The long-term probability of survival and recovery of *Thlaspi californicum* is dependent upon a number of factors, including protection of serpentine sites containing existing colonies; protection of all serpentine sites on Ashfield Ridge to allow for recolonization or expansion; preservation of the connectivity between serpentine sites to allow gene flow between the colonies through pollinator activity and seed dispersal mechanisms; and protection and maintenance of proximal areas for the survival of pollinators and seed dispersal agents. In addition, the small, fragmented distribution of this species makes it especially vulnerable to edge effects from adjacent activities, such as the spread of non-native species; nearby uses of herbicides and pesticides; livestock grazing; and erosion due to natural or diverted flow patterns.

Based on our knowledge of this species to date, the primary constituent elements of critical habitat for *Thlaspi californicum* consist of, but are not limited to:

(1) Thin rocky soils that have developed on exposures of serpentine substrates (SHN 2001);

(2) Plant communities that support a relatively sparse assemblage of serpentine indicator or facultative-serpentine indicator species, including various native forbs and grasses but not trees or shrubs, such that competition for space and water (both above and below ground), and light is reduced, compared to the surrounding habitats (SHN 2001). Known associated species include: *Festuca rubra* (red fescue), *Koeleria macrantha* (junegrass), *Elymus glaucus* (blue wildrye), *Eriophyllum lanatum* (woolly sunflower), *Lomatium macrocarpum* (large-fruited lomatium), and *Viola hallii* (Hall's violet) (SHN 2001);

(3) Serpentine substrates that contain 15 percent or greater (by surface area) of exposed gravels, cobbles, or larger rock fragments, which may contribute to alteration of factors of microclimate, including surface drainage and moisture availability, exposure to wind and sun, and temperature (SHN 2001); and

(4) Prairie grasslands and oak woodlands located within 30 m (100 ft) of the serpentine outcrop area on Ashfield Ridge. Protection of these habitats is essential to the conservation of the *Thlaspi californicum* in that it will provide connectivity among the serpentine sites, help to maintain the hydrologic and edaphic integrity of the serpentine sites, and support populations of pollinators and seed dispersal organisms.

Criteria Used To Identify Critical Habitat

In our delineation of the critical habitat unit, we selected areas to provide for the conservation of *Thlaspi californicum* at the only location it is known to occur. Adult individuals of the species are currently only growing on approximately 0.3 ha (0.8 ac) of land on Ashfield Ridge in Kneeland Prairie. However, the area essential for the conservation of the species is not restricted solely to the area where the plant is physically visible. It must include an area large enough to maintain the ecological functions upon

which the species depends (e.g., the hydrologic and edaphic conditions).

We first mapped all the known *T. californicum* occurrences. Due to the historic loss and fragmentation of the largest patches of suitable habitat, we also mapped all suitable habitat in proximity to the known occurrences. Maintaining the number and distribution of serpentine outcrops on Ashfield Ridge will help to ensure the long-term viability of *T. californicum*, as high-quality habitat patches in close proximity to a source population which have the highest likelihood of future occupancy (Murphy *et al.* 1990). Protection of these outcrops will provide a range in habitat conditions, for example, moisture availability, temperature, and wind exposure, which will optimize the opportunities for recolonization or expansion and reduce the likelihood of extinction due to stochastic events. They will also provide protection of undetected *T. californicum* colonies and seed banks.

We also mapped grasslands and oak woodlands surrounding the serpentine outcrops. These areas provide connectivity between all serpentine outcrops; maintain the hydrologic and edaphic integrity of the serpentine sites; and support biological agents of pollination and seed dispersal deemed necessary for the conservation of the species. Inclusion of the grasslands and oak woodlands will also minimize impacts to the serpentine outcrops resulting from external peripheral influences, such as erosion, grazing, or the spread of exotic species.

At this time, we do not propose to designate as critical habitat any serpentine outcrops within Kneeland Prairie, other than the outcrops on Ashfield Ridge. Serpentine outcrops not located on Ashfield Ridge, however, may also be necessary for the conservation of *Thlaspi californicum*. Since *T. californicum* has an extremely restricted range, establishment at new locations may be necessary to provide insurance against stochastic events. A draft recovery plan for this species has not been completed. The recovery plan may provide additional guidance regarding areas essential for the conservation of the species. If necessary, we will reexamine our critical habitat designation after completion of the recovery plan.

We considered ownership status in proposing areas as critical habitat. *Thlaspi californicum* is known only to occur on State, county, and private lands. We could not depend on Federal lands for critical habitat designation because we are not currently aware of any Federal lands occupied by this taxon. We are not aware of any Tribal lands in or near our proposed critical habitat unit for *T. californicum*. However, should we learn of any Tribal lands in the vicinity of the critical habitat designation subsequent to this proposal, we will coordinate with the Tribes before making a final determination as to whether any Tribal lands should be included as critical habitat for *T. californicum*.

We used a geographic information system (GIS) to facilitate the identification of proposed critical habitat. We used information from recent biological surveys and reports; discussions with botanical experts; and locations of serpentine soils to create GIS data layers. The serpentine soil sites were derived from a geologic map, infrared color digital orthophotos, and global positioning system data collected in the field during 2000 and 2001. These data layers were created on a base of 1:24,000 scale USGS 3.75′ infrared color digital orthophotographic quarter quadrangle images. We used the data layers to map the primary constituent elements. We defined the boundaries for the proposed critical habitat unit by overlaying this map with a 100-m Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) grid and removing all NAD27 grid cells that did not contain the primary constituent elements.

In selecting areas of proposed critical habitat, we attempted to avoid developed areas and other lands unlikely to contribute to the conservation of *Thlaspi californicum*. However, we did not map the critical habitat unit in sufficient detail to exclude all such areas. Existing features and structures within the critical habitat unit boundary, such as buildings, roads, airports, and other paved areas will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Special Management Considerations

As noted in the Critical Habitat section, "special management considerations or protection" is a term that originates in the definition of critical habitat. We believe the proposed area may require special management considerations or protection because *Thlaspi californicum* occupies an extremely localized range and the number of individuals may be declining. Potential threats to the habitat of *T. californicum* include: Expansion of Kneeland Airport and CDFFP helitack base; road realignment; fires caused by airplane or vehicular accidents; contaminant spills; erosion; application of herbicides and pesticides; livestock grazing; and introduction and spread of exotic species.

Additional special management is not required if adequate management or protection is already in place. Adequate special management considerations or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. Currently, no plans meeting these criteria have been developed for *T. californicum*.

Proposed Critical Habitat Designation

The proposed critical habitat area described below includes all the primary constituent elements discussed above, and constitutes our best assessment at this time of the areas needed for the species' conservation. Critical habitat is being proposed for *Thlaspi californicum* at the only location it is known to occur. We are not proposing any critical habitat units that do not contain the species.

We propose designating one unit of critical habitat, comprising 30 ha (74 ac), surrounding Kneeland Airport and roughly bisected by Mountain View Road. The unit includes all five known colonies and all other serpentine outcrops in close proximity to the colonies. All of the proposed critical habitat for *Thlaspi californicum* is located on Ashfield Ridge in Kneeland Prairie, Humboldt County, California. This ridge separates the Van Duzen and Mad River basins near the community of Kneeland in central Humboldt County.

The unit contains approximately 2 ha (5 ac) of serpentine soils. Approximately 16 percent of the serpentine soils are known to be occupied. However, undetected colonies may exist on the serpentine soils within the unit. The approximate area, by land ownership, of this unit is shown in Table 1. Approximately 5 percent (2 ha (4 ac)) of this area consists of State lands, while County lands comprise approximately 11 percent (3 ha (8 ac)), and private lands comprise approximately 84 percent (25 ha (62 ac)). No Federal lands are within the proposed critical habitat unit. This species is not currently known to occur or to have occurred historically on Federal lands.

TABLE 1.—APPROXIMATE AREAS AND PERCENT OF PROPOSED CRITICAL HABITAT OF *Thlaspi californicum* IN HECTARES (HA) (ACRES (AC)) IN HUMBOLDT COUNTY, CALIFORNIA, BY LAND OWNERSHIP.

[Estimates reflect the total area within critical habitat unit boundaries]

Ownership	Hectares	Acres	Percent
State	2	4	5
Private	25	62	84
County	3	8	11
Federal	0	0	0
Total	30	74	100

Effects of Critical Habitat Designation

Section 7 Consultation

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the applicable prohibitions of section 9, as determined on the basis of the best available information at the time of the action. If *Thlaspi californicum* is discovered outside of the designated critical habitat area, it is possible that federally funded or assisted projects affecting plants outside of the designated critical habitat area may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires Federal agencies to confer with the Service on any actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "* * * a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed action(s). The conservation measures in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation we would ensure that the permitted actions do not jeopardize the species or destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation

has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If *Thlaspi californicum* is discovered on Federal lands, those activities on Federal lands that may affect *Thlaspi californicum* or its critical habitat would require a section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., Federal Housing Administration or Federal Emergency Management Agency), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe within any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat are those that appreciably reduce the value of critical habitat for both the survival and recovery of *Thlaspi californicum*. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by *Thlaspi californicum* is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. Designation of critical habitat in areas not occupied by *T. californicum* may result in an additional regulatory burden when a Federal nexus exists.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Ground disturbance of serpentine outcrops and grassland and oak woodland areas, including but not limited to, grading, ripping, tilling, and paving;

(2) Alteration of serpentine outcrops, including but not limited to, removal of boulders, mining, and quarrying;

(3) Removing, destroying, or altering vegetation in the critical habitat unit, including but not limited to inappropriately managed livestock grazing, clearing, introducing or encouraging the spread of nonnative species, recreational activities, and maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly timed;

(4) Hydrologic changes or other activities that alter surface drainage patterns resulting in erosion of serpentine outcrops or adjacent areas, including but not limited to water diversion, groundwater pumping, irrigation, and erosion control;

(5) Construction or maintenance activities that destroy or degrade critical habitat, including but not limited to road building, building construction, airport expansion, drilling, and culvert maintenance or installation;

(6) Application or runoff of pesticides, herbicides, fertilizers, or other chemical or biological agents; and

(7) Emergency response and clean-up of fuel or other contaminant spills.

Designation of critical habitat could affect the following agencies and/or actions: development on private, State, or county lands requiring permits or funding from Federal agencies, such as the U.S. Army Corps of Engineers, the Department of Housing and Urban Development, the Federal Aviation Administration, or the Federal Highway Administration; construction of communication sites licensed by the Federal Communications Commission; and authorization of Federal grants or loans. These actions would be subject to the section 7 process. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Project Leader, Arcata Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Region 1, Division of Endangered Species, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503/231–6131, facsimile 503/231–6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Currently, no habitat conservation plans (HCPs) exist that include *Thlaspi californicum* as a covered species. However, we believe that, in most instances, the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs covering *T. californicum* are developed within the boundaries of the designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *T. californicum*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *T. californicum* and appropriate management for those lands. The take minimization and mitigation measures provided under such HCPs would be expected to protect the essential habitat lands proposed as critical habitat in this rule.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day public comment period on the draft economic analysis and proposed rule at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Thlaspi californicum* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *T. californicum* such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values", and reductions in administrative costs); and

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment on this proposed rule, you may submit your comments and materials by any one of several methods (see **ADDRESSES**). Please submit electronic mail comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: 1018–AG92" and your name and return address in your electronic message. Please note that the electronic address *FW1_kneelandpennycress@.fws.gov* will be closed out at the termination of the public comment period. If you do not receive a confirmation from the system that we have received your electronic message, contact us directly by calling our Arcata Fish and Wildlife Office at phone number 707/822–7201.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing and designation of critical habitat.

We will consider all comments and information received during the public comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made within 45 days of the date of publication of this proposal within the **Federal Register**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days before the first hearing is held.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the Field Supervisor, Arcata Fish and Wildlife Office (see **ADDRESSES**).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant

rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas would be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal communities. Therefore, we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

Thlaspi californicum was listed as endangered on February 9, 2000. As needed, we will conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of *Thlaspi californicum*. Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as jeopardy to the species under the Act in areas occupied by the species.

Accordingly, we do not expect the designation of occupied areas as critical habitat to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation, may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act: see Economic Analysis section of this rule). Non-federal persons who do not have a Federal sponsorship of their actions are not restricted by the designation of critical habitat.

(b) This rule is not expected to create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of *Thlaspi californicum* since its listing in 2000. The prohibition against adverse modification of critical habitat is expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agencies' actions.

(c) This proposed rule, if made final, is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan programs. This conclusion is based on the small acreage and number of entities affected by this proposal. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

TABLE 2.—IMPACTS OF *Thlaspi californicum* LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal Activities Potentially Affected [2].	Activities conducted by the Army Corps of Engineers, the Federal Aviation Administration, the Department of Housing and Urban Development, and any other Federal Agencies, including, but not limited to, grading, construction, road building, hydrologic changes or other activities that alter surface drainage patterns, herbicide application, and recreational activities that would destroy habitat for this species or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, or fragmentation).	Activities identified in column one by these Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for *Thlaspi californicum* by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our determination.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack any Federal nexus. In areas occupied by *Thlaspi californicum*, Federal agencies funding, permitting, or implementing activities are already required, through consultation with us under section 7 of the Act, to avoid jeopardizing the continued existence of *Thlaspi californicum*. If this critical habitat designation is finalized, Federal agencies also must ensure, also through consultation with us, that their activities do not destroy or adversely modify designated critical habitat. However, for the reasons discussed above, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants.

In unoccupied areas, or areas of uncertain occupancy, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. However, outside the existing developed areas, land use on the majority of the proposed critical habitat consists of homesteading, grazing, and unforested lands surrounding timber lands. The likelihood of future development in these areas is low, although the airport may expand in the future. Any development that lacked Federal involvement would not be affected by the critical habitat designation. Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents. In addition, the area proposed as critical habitat is small, less than 75 acres, and we have identified fewer than a half-dozen landowners. The scale of the designation ensures that the "substantial number of small entities" threshold of the Regulatory Flexibility Act will not be met.

Therefore, we are certifying that the proposed designation of critical habitat for *Thlaspi californicum* is not expected to have a significant adverse impact on a substantial number of small entities. Thus, an initial flexibility analysis is not required.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule, as proposed, will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule, as proposed, will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications, and a takings implication assessment is not required. This rule would not take private property. As discussed above, the designation of critical habitat affects only Federal agency actions; it does not provide additional protection for the species on non-Federal lands or regarding actions that lack any Federal involvement. Furthermore, the Act provides mechanisms, through section 7 consultation, to resolve apparent conflicts between proposed Federal actions, including Federal funding or permitting of actions on private land, and the conservation of the species, including avoiding the destruction or adverse modification of designated critical habitat. While we have not conducted any formal consultations on *Thlaspi californicum* since its listing, and we are not aware of any upcoming or proposed projects that would require consultation, we recognize that such Federal projects that also affect private property may be proposed in the future. We fully expect that, through section 7 consultation, such projects can be implemented consistent with both the conservation of the species; therefore, this rule would not result in a takings.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Thlaspi californicum* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning

(rather than waiting for case-by-case section 7 consultation to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Thlaspi californicum*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Thlaspi californicum* because they do not support the species, nor do they provide essential habitat. Therefore, critical habitat for *Thlaspi californicum* has not been designated on Tribal lands.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Arcata Fish and Wildlife Office (see **ADDRESSES** section).

Author

The author of this proposed rule is Robin Hamlin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) revise the entry for *Thlaspi californicum* under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	
Thlaspi californicum	Kneeland Prairie penny-cress.	U.S.A. (CA)	Brassicaceae—Mustard.	E	684	17.96(b)	NA
.	.	.	.	.	.	.	

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add critical habitat for the Kneeland Prairie penny-cress (*Thlaspi californicum*) under paragraph (b) by adding an entry for *Thlaspi californicum* in alphabetical order under Brassicaceae to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(b) Single-species critical habitat—flowering plants.

Family Brassicaceae: *Thlaspi californicum* (Kneeland Prairie penny-cress)

1. A critical habitat unit is depicted for Humboldt County, California, on the map below.

2. The primary constituent elements of critical habitat for *Thlaspi californicum* are the habitat components that provide:

(i) Thin rocky soils that have developed on exposures of serpentine substrates;

(ii) Plant communities that support a relatively sparse assemblage of serpentine indicator, or facultative-serpentine indicator species, including various native forbs and grasses, but not trees or shrubs, such that competition for space and water (both above and below ground) and light is reduced, compared to the surrounding habitats. Known associated species include the following: *Festuca rubra* (red fescue), *Koeleria macrantha* (junegrass), *Elymus glaucus* (blue wildrye), *Eriophyllum lanatum* (woolly sunflower), *Lomatium macrocarpum* (large-fruited lomatium), and *Viola hallii* (Hall's violet);

(iii) Serpentine substrates that contain 15 percent or greater (by surface area) of exposed gravels, cobbles, or larger rock fragments, which may contribute to alteration of factors of microclimate, including surface drainage and moisture availability, exposure to wind and sun, and temperature; and

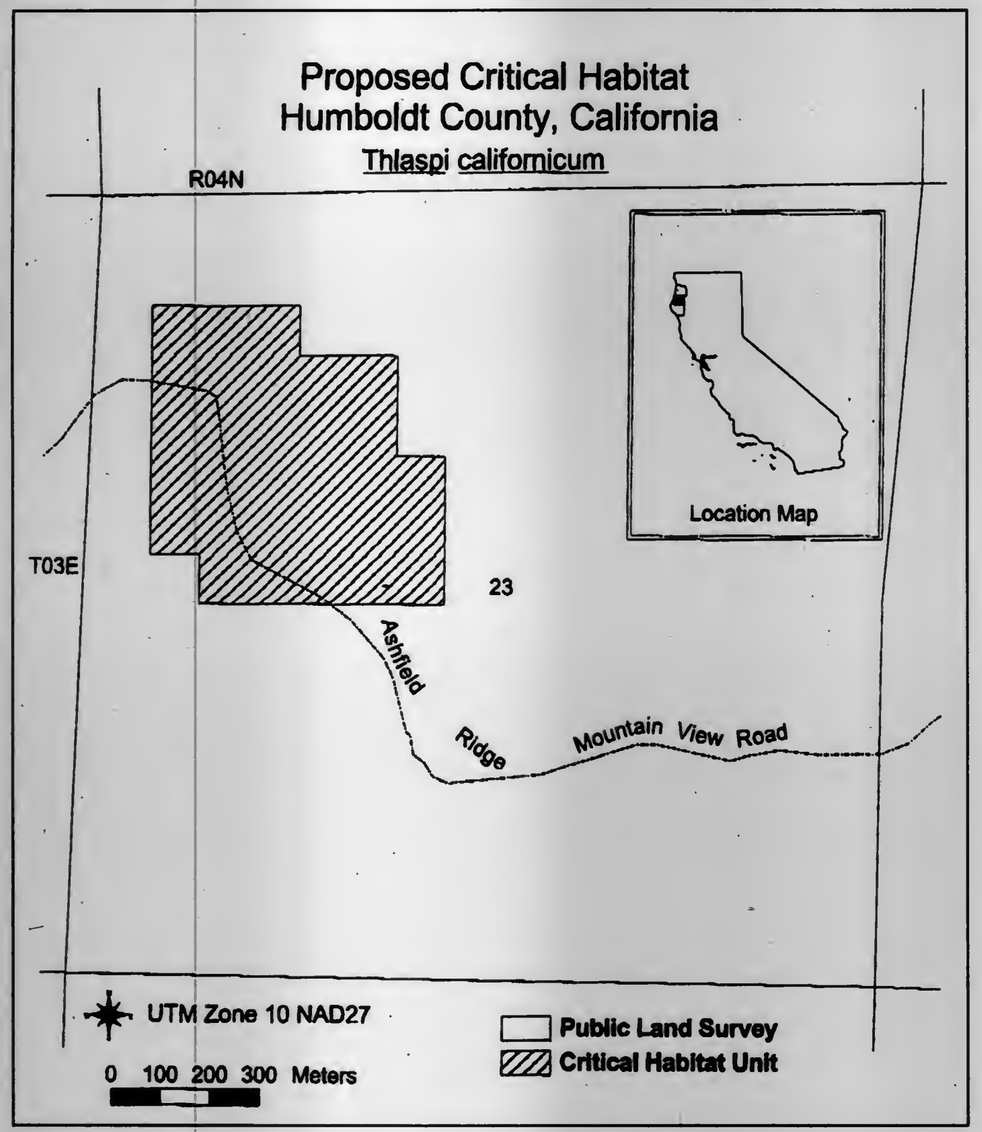
(iv) Prairie grasslands and oak woodlands located within 30 m (100 ft) of the serpentine outcrop area on Ashfield Ridge. Protection of these habitats is essential to the conservation of the *Thlaspi californicum* in that it will provide connectivity among the serpentine sites, help to maintain the hydrologic and edaphic integrity of the serpentine sites, and support populations of pollinators and seed dispersal organisms.

3. Existing features and structures within the boundaries of mapped critical habitat units, such as buildings, roads, airports, and other paved areas will not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

4. Critical habitat unit. Humboldt County, California. From U.S.G.S. 1:24,000 scale Iaqua Buttes quadrangle, land bounded by the following UTM Zone 10 NAD27 coordinate pairs (East, North): 421700,4507300; 422100,4507800; 422100,4507300; 422200,4507600; 421600,4507400; 421700,4507900; 421700,4507800; 421900,4507900

Note: Map follows:

BILLING CODE 4310–55–P



* * * * *

Dated: October 17, 2001.

Joseph E. Doddridge,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–26711 Filed 10–23–01; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 101701A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3–day Council meeting on November 6 through 8, 2001, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday, November 6, 7, and 8, 2001. The meeting will begin at 9 a.m. on Tuesday and 8:30 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Tavern on the Harbor, 30 Western Avenue, Gloucester, MA 01930; telephone (978) 283–4200. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, November 6, 2001

Following introductions, the Council staff will present the 2001 Whiting Stock Assessment and Fishery Evaluation (SAFE) Report for small mesh multispecies, including Whiting Monitoring Committee recommendations concerning future management actions. The Scallop Committee will request approval of additional management alternatives to be included in draft Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and analyzed in the Draft Supplemental Environmental Impact Statement (DSEIS). Primary issues include alternatives to manage limited access fishing effort and general category scallop vessels, minimize habitat and bycatch impacts, and address monitoring and data collection issues.

The afternoon session will include consideration and approval of a schedule of management actions for 2002. The Spiny Dogfish Committee will then seek approval of New England Council recommendations for spiny dogfish specifications for the 2002–2003 fishing year. Measures may include a Total Allowable Catch (TAC) quota, trip limits, and/or any other measures specified in the Spiny Dogfish FMP.

Wednesday, November 7, 2001

The meeting will reconvene with reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. A brief period for general comments from the public concerning fisheries management issues will follow. The Multispecies Monitoring Committee (MSMC) will present an update on stock status and management alternatives to meet Northeast Multispecies FMP goals and objectives. During the Groundfish Committee Report, the Council will review scoping comments on the Notice of Intent for Framework Adjustment 36 to the Northeast Multispecies FMP. Measures in this action would be designed to reduce Gulf of Maine cod fishing mortality and discards, extend or change the Western Gulf of Maine closed area, change the area authorized for the northern shrimp fishery, and allow tuna purse seine vessels access to groundfish closed areas. The Council is considering the full range of measures for reducing Gulf of Maine cod fishing mortality, including changes to recreational fishing measures. In addition, because Framework 36 will address the Northeast multispecies annual adjustment process for the 2002 fishing year, the Council will also consider alternatives that may be necessary to meet the goals and objectives of the plan. The Framework 36 discussions will include opportunities for the public to comment. During this discussion, the Council also will review the MSMC-proposed management alternatives for achieving plan goals for possible inclusion in Framework Adjustment 36, as well as identify alternatives for analyses in the accompanying DSEIS.

Thursday, November 8, 2001

On the final day of the meeting, the agenda will include red crab and monkfish issues. During the Red Crab report, the Council intends to approve the Red Crab FMP DEIS (including possible identification of a preferred alternative) and public hearing document. Discussion will include review and approval of the Habitat Committee's recommendations for the designation of red crab Essential Fish Habitat. There will be a presentation of the Monkfish SAFE Report for the 2000–2001 fishing year, including the recommendations of the Monkfish Monitoring Committee concerning management recommendations. The Council also intends to approve initial action on Framework Adjustment 1 to the Monkfish FMP (annual framework adjustment) to implement management measures for the 2002–2003 fishing year (Year 4 of the rebuilding program). Measures under consideration include, but are not limited to, no action, which would allow the Year 4 default measures to take effect; continue the Year 3 measures with adjustments to the gear-based trip limits to account for the recent federal court decision; or adjust Year 3 measures to achieve Year 3 target total allowable catch (TAC) levels. Any outstanding business will be addressed following this report.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the National Marine Fisheries Service Regional Administrator on any framework adjustment to a fishery management plan. If the Regional Administrator concurs with the adjustment proposed by the Council, the Regional Administrator may publish the action either as proposed or final regulations in the **Federal Register**. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul

J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 19, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26781 Filed 10–19–01; 2:40 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011004242–1242–01; I.D. 092401F]

RIN 0648–AP09

Fisheries of the Northeastern United States; Proposed 2002 Fishing Quotas for Atlantic Surfclams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2002 fishing quotas for Atlantic surfclams, ocean quahogs, and Maine mahogany ocean quahogs; request for comments.

SUMMARY: NMFS proposes quotas for the Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2002. Regulations governing these fisheries require NMFS to propose for public comment specifications for the 2002 fishing year. The intent of this action is to propose allowable harvest levels of Atlantic surfclams and ocean quahogs from the exclusive economic zone and an allowable harvest level of Maine mahogany ocean quahogs from the waters north of 43°50′ N. lat. in 2002.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on November 23, 2001.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Essential Fish Habitat Assessment, are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. A copy of the EA/RIR/IRFA is accessible via the Internet at *http:/www.nero.gov/ro/doc/nr.htm*.

Written comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, "Comments--2002 Clam and Quahog Specifications." Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Walter Gardiner, Fishery Management Specialist, 978–281–9326.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surfclams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. While staying within this constraint, the Council must also consider the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP published on May 19, 1998 (63 FR 27481), added Maine mahogany ocean quahogs to the management unit and provides that a small artisanal fishery for ocean quahogs in the waters north of 43°50′ N. lat. will have an annual quota within a range of 17,000 to 100,000 Maine bushels (bu) (5,991 to 35,240 hectoliters (hL)), with an initial amount of 100,000 Maine bu (35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery.

The quotas recommended by the Council must be in compliance with overfishing definitions for each species. The overfishing definition for ocean quahogs is based on a control rule, which specifies a biomass target of one half of the virgin biomass, or 2 billion lb (907,200 mt) of meats (200 million bu); a target fishing mortality rate (F) of $F_{0.1}$ = 0.02; a minimum biomass threshold of one half of the biomass target, or 1 billion lb (453,600 mt) of meats (100 million bu); and a maximum fishing mortality threshold of F = 0.042. The current biomass of ocean quahog is estimated to be about 3.3 billion lb (1.6 million mt) of meats (330 million bu), or about 80 percent of the virgin biomass, and currently F is estimated to be 0.02. Thus, the stock is not overfished and overfishing is not occurring. NMFS approved the overfishing definition for ocean quahogs in Amendment 12 to the FMP, but disapproved the proposed overfishing definition for surfclams because it was based only on surfclams from the Northern New Jersey area and did not take into account the entire range of the resource. The December 1999 Stock Assessment Review Committee (SARC) proposed an overfishing definition for surfclams, which the Council reviewed and approved at their March 2000 meeting.

The definition approved by the Council for surfclams has a biomass target of one half of the current biomass as a proxy for F_{MSY} (1.4 billion lb, or 640,000 mt, or 82.4 million bu); a minimum biomass threshold of one-half of the proxy for B_{MSY} (700,000 million lb or 320,000 mt); and a maximum fishing mortality rate threshold of F_{MSY}, where the current best proxy for F_{MSY} is the natural mortality rate of M =(0.15). The fishing mortality target is always to be set less than the F threshold and is to be the F associated with the Council-selected quota (approximately 0.03 for 2002). This new overfishing definition for surfclams will be submitted to the Secretary of Commerce for approval in Amendment 13 to the FMP, which the Council is currently developing. If the Secretary were to approve these standards, the surfclam resource will not be overfished and overfishing will not be occurring.

In proposing the 2002 quotas, the Council considered the available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas closed to fishing. This information was presented in a written report prepared by the Council staff. The proposed quotas for the 2002 Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries are shown in the following table. The Council's recommended quotas for 2002 would maintain the status quo levels of 2001 for both the ocean quahog and Maine mahogany ocean quahog, but the surfclam quota would be increased by 10 percent, from 2.85 million bu to 3.135 million bu (1.518 million hL to 1.669 million hL).

PROPOSED 2002 SURFCLAM/ OCEAN QUAHOG QUOTAS

Fishery	2002 final quotas (bu)	2002 final quotas (hL)
[1]Surfclam	3,135,000	1,669,000
[1]Ocean quahog	4,500,000	2,396,000

PROPOSED 2002 SURFCLAM/ OCEAN QUAHOG QUOTAS—Continued

Fishery	2002 final quotas (bu)	2002 final quotas (hL)
[2]Maine mahogany quahog	100,000	35,240

[1] 1 bushel = 1.88 cubic ft = 53.24 liters
[2] 1 bushel = 1.2445 cubic ft = 35.24 liters

Surfclams

The Council's recommended 2002 quota of 3.135 million bu (1.669 million hL) for surfclams is the second change in the quota since 1995. The most recent biological assessments (from both the 1997 and 1999 surveys) indicate that the surfclam resource is healthy, composed of many age classes, and can safely sustain increased harvests. Sufficient recruitment is also evident; thus, this level of quota will not harm the long-term sustainability of the resource. The F in 1999 (the last time it was measured at a peer-reviewed SARC) associated with a quota of 2.565 million bu (1.366 million hL) was approximately 0.02 ($F=_{0.2}$); this slight quota increase proposed for 2002 could increase the F in 2002 to, at most, $F=_{0.3}$, which is consistent with the Council-adopted control rule.

Ocean Quahogs

The Council recommended a 2002 quota of 4.5 million bu (2.396 million hL) for ocean quahogs. This quota would be identical to that adopted for the past 3 years, but represents an increase of 13 percent from the 1998 quota level.

The 1999 quota yielded an F (the last time it was measured at a peer-reviewed SARC) of approximately 0.02 ($F=_{0.02}$), compared to the F threshold of 0.04 ($F=_{0.04}$) contained in the overfishing definition. The F associated with the 2002 quota is expected to be close to the F in 1999, because a similar proportion of the biomass remains unexploited compared to 1999.

The Atlantic surfclam and ocean quahog quotas are specified in standard bushels of 53.24 L. per bushel, while the Maine mahogany ocean quahog quota is specified in "Maine" bushels of 35.24 L. per bu. Because Maine mahogany ocean quahogs are the same species as ocean quahogs, they are managed under the ocean quahog overfishing definition. When the two quota amounts (ocean quahog and Maine mahogany quahog) are added, the total allowable harvest is still lower than the level that would result in overfishing for the entire stock.

The Council proposed a 2002 ocean quahog quota based on the analysis of abundance for that species found in the 31st Northeast Regional Stock Assessment Workshop (SAW 31), which concluded in August 2000. Although SAW 31 showed that the ocean quahog quota could have been increased beyond the 2001 quota level, the Council did not recommend any change for 2002 because of four major factors: (1) The 2000 quota was not constraining to the industry; (2) nearly all industry members supported the 4.5 million bu (2.396 million hL) harvest level; (3) repeated concern was expressed by industry over the continued lack of apparent ocean quahog recruitment south of Georges Bank; and (4) unless prices or technology change significantly in the near future, it is unlikely that the ocean quahog fishery extractions in the past are sustainable, because those extractions have been dependent on rich unexploited beds.

The Council recommended that the Maine mahogany ocean quahog quota remain unchanged from the 2001 quota level at 100,000 Maine bu (35,240 hL) for 2002. No additional information on the impacts of the mahogany quahog quota is available at this time that would allow a more in-depth analysis of the stock and, therefore, allow the quota to be increased beyond the current maximum level of 100,000 Maine bu (35,240 hL). A scientific survey and assessment of the extent of the resource is currently under way by the State of Maine and will be fully analyzed in the development of Amendment 13 to the FMP, which is expected to be submitted by the Council in 2002. From the information currently available, maintaining the quota at its current level for another year will not seriously constrain the fishery or endanger the resource.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132; therefore, preparation of a Federalism assessment is not necessary.

The Council prepared an IRFA in section 9.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives and the legal basis for this action are contained at the beginning of the **SUPPLEMENTARY INFORMATION** section. This action does not duplicate, overlap, or conflict with any other Federal rules. A summary of the IRFA follows:

Vessels

In 2000, a total of 48 vessels reported harvesting surfclams or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. Average 2000 gross income from surfclam harvests was $702,317 per vessel, and $470,854 per vessel from ocean quahog harvests. In the small artisanal fishery for ocean quahogs in Maine, 34 vessels reported harvests in the clam logbooks, with an average value of $97,223 per vessel. All of these vessels fall within the definition of a small entity. The Council recommends no change in the 2002 quotas for ocean quahogs or Maine mahogany ocean quahogs from their 2001 quotas, and a 10-percent increase in the surfclam quota. Since 2000 harvest levels of 2.561 and 3.161 million bu (1.364 million hL to 1.683 million hL) for surfclams and ocean quahogs, respectively, were below the 2002 proposed quotas, and the Council assumes no changes in fishing effort or yield-to-effort will take place in 2001, the Council believes that the proposed 2002 quotas will yield a surplus quota available to vessels participating in these fisheries. In the case of a surplus quota, vessels would not be constrained from harvesting additional product, thus, allowing them to increase their revenues.

The Council analyzed four ocean quahog quota alternatives in addition to the preferred 4.500-million bu (2.396-million hL) option, including 4.000, 4.250, 4.750, and 6.000 million bu (2.129, 2.263, 2.529, and 3.195 million hL). The minimum allowable quota specified in the current OY range is 4.000 million bu (2.129 million hL) of ocean quahogs. Adoption of a 4.000 million bu (2.129 million hL) quota would represent a 12-percent decrease from the current 4.500 million bu (2.396 million hL) quota and, assuming the entire quota is harvested, a 27-percent increase in harvest from the 2000 harvest level of 3.161 million bu (1.683 million hL). This alternative would take the most conservative approach to managing the fishery that is currently available to the Council. Adopting the maximum allowable quota of 6.000 million bu (3.195 million hL) for ocean quahogs would represent a 33-percent increase in allowable harvest and a 90-percent increase in landings from 2000, assuming that all of the quota is harvested. However, the industry does not have a market available to absorb such a massive increase in landings and may not have the vessel capacity necessary to harvest a quota this large (two of the most productive ocean quahog vessels sank in January 1999

and have not been replaced). Since all alternatives, including the preferred, would yield increases relative to the actual 2000 landings, increased revenues, would be likely to occur.

The Council identified four surfclam quota alternatives in addition to the preferred alternative of 3.135 million bu (1.669 million hL), including 1.850, 2.850, 3.000, and 3.400 million bu (0.985, 1.517, 1.597, and 1.810 million hL). The minimum allowable quota specified in the current OY range is 1.850 million bu (0.985 million hL) of surfclams. Adoption of a 1.81 million bu (0.985 million hL) quota would represent a 35-percent decrease from the current 2.850-million bu (1.517-million hL) quota, and a 28-percent decrease from the 2000 harvest level of 2.561 million bu (1.364 million hL). A reduction in quota of this magnitude would have a substantially negative impact on overall exvessel revenues. Adoption of the 2.850 million bu (1.517 million hL) quota would most likely have a limited impact on small entities, since it is identical to the 2001 quota. Adopting the maximum allowable quota of 3.400 million bu (1.810 million hL) for surfclams would allow for a 19-percent increase in harvest. The Council considered a 5-percent increase in quota from the 2001 level to 3.000 million bu (1.597 million hL), but industry representatives asked for, and stated that they preferred, a 10-percent increase. The preferred alternative allows for the 10-percent increase of 2.850 million bu (1.517 million hL) to 3.135 million bu (1.669 million hL). The Council determined that the only alternative that would significantly negatively impact revenues to vessels is the 1.850 million bu (0.985 million hL) alternative for surfclams. Both the status quo quota alternative and the 5-percent increase could be constraining on industry. At best, the 5-percent increase would probably increase revenues by a small amount. The resource can support the 10-percent increase in landings and the industry believes it can harvest and process this additional product.

The quota for Maine mahogany ocean quahogs is specified at a maximum 100,000 Maine bu (35,240 hL). The FMP specifies that upward adjustments to the quota would require a scientific survey and stock assessment of the Maine mahogany ocean quahog resource. However, no survey or assessment has been conducted. The Council considered two alternative quotas for the Maine mahogany fishery, in addition to the preferred alternative of 100,000 Maine bu (35,240 hL), including 50,000 Maine bu and 72,466 bu (17,620 and 25,537 hL). Any quota the Council would have recommended below the 1999 landing level of 93,938 Maine bu (33,104 hL) would most likely have resulted in a decrease in revenues to individual vessels.

Processors

Nine to 12 processors currently participate in the surfclam and ocean quahog fisheries. However, five firms are responsible for the vast majority of purchases in the ex-vessel market and sale of processed clam products in wholesale markets. Impacts to surfclams and ocean quahog processors would most likely mirror the impacts of the various quota alternatives to vessels, as discussed above. Revenues earned by processors would be derived from the wholesale market for clam products and, since a large number of substitute products (i.e., other food products) are available, the demand for processed clam products is likely to be price-dependent.

Allocation Holders

In 2001, there were 99 surfclam allocation holders, while 63 firms or individuals held an ocean quahog allocation. If the recommended quotas are accepted, i.e., no change from 2001 quotas on ocean quahogs or Maine mahogany ocean quahogs, and an increase of 10-percent for surfclams, it is likely that impacts to allocation holders or buyers will be minimal. Theoretically, increases in the quota would most likely benefit those who purchase quota (through lower prices (values)) and negatively impact sellers of quota because of reduction in value. Decreases in the quota would most likely have an opposite effect.

Reporting and Recordkeeping Requirements

This proposed rule would not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the costs of compliance would remain unchanged.

The RIR/IRFA is available from the Council (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 18, 2001.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 01–26791 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 206
Wednesday, October 24, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

TIME AND DATE: 9:30 a.m.–12 p.m. November 7, 2001.

PLACE: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

STATUS: Most of the meeting will be open to the public. If there is a need for an executive session (closed to the public), it will be held at about 9:30 a.m.

MATTERS TO BE CONSIDERED:

Portions Open to the Public: The primary purpose of this meeting is to (1) Review the independent auditors' report of Commission's financial statements for fiscal year 2000–2001; (2) Review the information on LLRW generation within the Appalachian Compact; (3) Discuss LLRW generation reporting requirements for the Compact; (4) Consider a proposed budget for fiscal year 2002–2003; (5) Review and discuss the recent developments in South Carolina and Utah related to the Barnwell and Envirocare disposal facilities; (6) Review the EPA's Final Rule on Mixed Low-Level Waste; and (7) Elect the Commission's officers.

Portions Closed to the Public: Executive Session, if deemed necessary, will be held at about 9:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Richard R. Janati, Pennsylvania Staff member on the Commission, at 717–787–2163.

Richard R. Janati,

Staff Member on the Commission.

[FR Doc. 01–26723 Filed 10–23–01; 8:45 am]

BILLING CODE 0000–00–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Government Employment Forms.

Form Number(s): E–1, E–2, E–3, E–4, E–5, E–6, E–7, E–9.

Agency Approval Number: 0607–0452.

Type of Request: Revision of a currently approved collection.

Burden: 82,520.

Number of Respondents: 96,591.

Avg Hours Per Response: 51 minutes.

Needs and Uses: The Census Bureau requests OMB clearance of the questionnaires needed to conduct the 2002 Census of Governments, Employment Phase, and the 2003 Annual Survey of Government Employment. Title 13, Section 161, of the United States Code requires the Secretary of Commerce to conduct a census of governments every fifth year. Section 182 allows the Secretary to conduct annual surveys in other years. There are eight survey forms used to collect data on government employment, pay, and hours. Since there are many different types and sizes of governments, each form is tailored to the unique characteristics of the type and size of government or government agency to be surveyed. The type of employment and pay data to be collected in the 2002 Census of Governments and the 2003 Annual Survey of Government Employment is identical to data collected in recent annual surveys of government employment.

The 2002 Census of Governments will collect data for all of the governments in our universe by type of government and by government function. By state, the 2003 Employment sample supports estimates of total local government employment and payrolls by type of government and government function.

Statistics compiled from data gathered using these forms are used in several important Federal government programs. Economists at the Bureau of Economic Analysis use the statistics for developing the National Income and Product Accounts. The Department of Housing and Urban Development determines the allocation of operating subsidies to local housing authorities based on these survey data. The Bureau of Labor Statistics uses these data in its benchmarking procedures for state and local government components of its monthly employment and earnings statistics. Other users include state and local government executives and legislators, policy makers, economists, researchers, and the general public.

Affected Public: Federal Government; State, local or Tribal Government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 161 and 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 18, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–26737 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

[I.D. 101901C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Marine Sanctuary Permits.

Form Number(s): None.

OMB Approval Number: 0648–0141.

Type of Request: Regular submission.

Burden Hours: 1,018.

Number of Respondents: 336.

Average Hours Per Response: 1 hour for a general permit application; 15 minutes for a baitfish permit application; 13 hours for a historical resource permit application; 24 hours for a special use permit application; 1 hour for a notification of other agency permits or requests; 15 minutes for a permit amendment; 30 minutes for a request for certification of a pre-existing lease, license or permit; 15 minutes for an entry to a voluntary registry of activities; and 90 minutes for a appeal of an application rejection.

Needs and Uses: National Marine Sanctuary (NMS) regulations list specific activities that are prohibited in the sanctuaries. These otherwise-prohibited activities are permissible if a permit is issued by the NMS program. Persons wanting permits must submit applications, and persons obtaining permits must submit reports on the activity conducted under the permit. The information is needed by NMS to protect and manage the sanctuaries.

Affected Public: Not-for-profit institutions, individuals or households, business or other for-profit organizations, and State, local, or tribal government.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 17, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–26793 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–NK–S

DEPARTMENT OF COMMERCE

[I.D. 101901A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Gear Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0352.

Type of Request: Regular submission.

Burden Hours: 3,079.

Number of Respondents: 1,046.

Average Hours Per Response: 15 minutes per marking.

Needs and Uses: Regulations implementing the Pacific Coast Groundfish Fisheries Management Plan at 50 CFR 660.322 (c)(3) specify that federally-permitted vessels are required to mark their fixed-gear with an identifying number. This number is used by NOAA, the U.S. Coast Guard, and other agencies for fishery enforcement activities.

Affected Public: Business or other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 17, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–26795 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 5 of the 2001 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 24, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on school enrollment, child support agreements, adult and child disabilities and employer provided health benefits. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2001 Panel is currently scheduled for three years and will include nine waves of interviewing beginning February 2001. Approximately 50,000 households will be selected for the 2001 Panel, of which 37,500 are expected to be interviewed. We estimate that each household will contain 2.1 people, yielding 78,750 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves of interviewing will occur in the 2001 SIPP Panel during FY 2002. The total annual burden for the 2001 Panel SIPP interviews would be 118,125 hours in FY 2002.

The topical modules for the 2001 Panel Wave 5 collect information about:

- School Enrollment and Financing.
- Child Support Agreements.
- Support for Non-Household Members.
- Adult Disability.
- Child Disability.
- Employer—Provided Health Benefits.

Wave 5 interviews will be conducted from June 2002 through September 2002.

A 10-minute reinterview of 2,500 people is conducted at each wave to ensure accuracy of responses. Reinterviews would require an additional 1,253 burden hours in FY 2002.

An additional 2,100 burden hours is requested in order to continue the SIPP Methods Panel testing. The test targets SIPP items and sections that require thorough and rigorous testing in order to improve the quality of core data.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of one to four years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2001 Panel, respondents are interviewed a total of nine times (nine waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0875.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 78,750 people per wave.

Estimated Time Per Response: 30 minutes per person, on average.

Estimated Total Annual Burden Hours: 121,478.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: October 18, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–26736 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Notice of Postponement of Preliminary Antidumping Duty Determination: IQF Red Raspberries From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary determination in the antidumping duty investigation on individually quick frozen red raspberries from Chile.

EFFECTIVE DATE: October 24, 2001.

FOR FURTHER INFORMATION CONTACT: Cole Kyle (202) 482–1503 or Annika O'Hara (202) 482–3798; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2001).

Postponement of Preliminary Determinations

On June 6, 2001, the Department published the initiation of the antidumping duty investigation of imports of individually quick frozen (IQF) red raspberries from Chile. The notice of initiation stated that we would make our preliminary determination for these antidumping duty investigation no later than 140 days after the date of issuance of the initiation (*i.e.*, November 7, 2001). *See Notice of Initiation of Antidumping Duty Investigations: IQF Red Raspberries from Chile*, 66 FR 34407 (June 28, 2001).

On October 12, 2001, the petitioners[1] made a timely request pursuant to 19 CFR 351.205(e) for a 35-day postponement of the preliminary determination until December 12, 2001. The petitioners requested a postponement of the preliminary determination because of the need for additional time to submit comments regarding the respondents'

[1] The petitioners are the IQF Red Raspberries Fair Trade Committee and its members.

supplemental questionnaire responses and for the Department to analyze the respondents' data and seek additional data, if necessary, prior to the issuance of the preliminary determination.

For the reasons identified by the petitioners, and because there are no compelling reasons to deny the request, we are postponing the preliminary determination under section 733(c)(1) of the Act. We will make our preliminary determination no later than December 12, 2001.

This notice is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: October 18, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26788 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Automotive Replacement Glass Windshields From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended preliminary antidumping duty determination of sales at less than fair value.

EFFECTIVE DATE: October 24, 2001.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1102.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations for the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Scope of the Investigation

The products covered by this investigation are automotive replacement glass ("ARG") windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (*i.e.*, two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (*i.e.*, passengers cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged.

ARG windshields subject to this investigation are currently classifiable under subheading 7007.21.10.10 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this investigation are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

As discussed in our notice of initiation, the scope of this investigation poses unique problems of administration. For the final determination, we continue to invite parties to provide information on physical characteristics which would allow U.S. Customs officials to distinguish between ARG windshields, and windshields for new automobiles. We also invite comments on procedures for administering any order which may result from this investigation on the basis of end use. Finally, information on the record shows that all windshields imported from the PRC during the POI were ARG windshields; consequently, we note that even if the scope of this order were to cover all windshields, the Department would have all the information necessary to make a final determination.

Amendment of Preliminary Determination

On September 10, 2001, the Department of Commerce ("the Department") preliminary determined that ARG windshields from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Tariff Act. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China,* 66 FR 48233 (September 19, 2001).

On September 21, 2001, respondent, Fuyao Glass Industry Group Company, Ltd. ("FYG") and petitioners timely filed allegations that the Department made ministerial errors in the final determination.

The Department is amending the preliminary determination in the antidumping investigation of ARG windshields from the PRC only for FYG.

Significant Ministerial Error

A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or de minimis and a weighted-average dumping margin of greater than de minimis or vice versa. *See* 19 CFR 351.224(g).

FYG's Allegations of Ministerial Errors by the Department

Comment 1: FYG argues that the Department incorrectly calculated constructed export price ("CEP") profit. FYG argues that the CEP profit ratio, calculated by the Department, should be multiplied by U.S. selling expenses to derive CEP profit. FYG points out that the Department incorrectly multiplied the CEP profit ratio by gross unit price. FYG cites section 772(d)(3) of the Act and *DOC Policy Memo 97/1* in arguing that the CEP profit ratio must be multiplied by U.S. Selling expenses, not gross unit price.

Department's Position: We are with FYG. The Department's practice is to multiply the CEP profit ratio by U.S. selling expenses. The Department will change the calculation for the final determination by multiplying the CEP profit rate by U.S. selling expenses. The correction of this error in combination with the correction of the other errors would result in a margin of 3.04 percent. This is more than five percentage points different from and more than 25 percent of the weighted-average dumping margin calculated in the preliminary determination (9.79%). Accordingly, the error alleged by respondent is a significant ministerial error within the meaning of 19 CFR 351.224(g)(1).

Comment 2: FYG alleges that the Department double counted molding. FYG argues that the Department deducted an amount from U.S. price to account for molding purchases made in the U.S. and shipped directly to FYG's U.S. customer. FYG argues that the Department should not deduct an amount for molding from U.S. price when molding is sourced from Taiwan. FYG argues that they provided a ratio for control numbers ("CONNUM") for which molding was purchased and that the Department should use this ratio to allocate molding purchases from U.S. suppliers.

Department's Position: The Department does not agree that this is a ministerial error. FYG reported in its June 25, 2001 response at 8, that it had no way to distinguish between those sales which used molding sourced in the United States (and shipped directly to the U.S. customer), and those sales which used molding purchased from the United States and shipped to China (to be included in the shipment). The Department, therefore, made an adjustment for molding for all U.S. sales. Therefore, we are not making the suggested correction because the alleged error is not an unintentional error covered by the ministerial error provision.

Comment 3: FYG alleges that the Department failed to correctly calculate the freight expense for the input of coal. Citing the Factors of Production Memorandum ("FOP Memo") at 20, FYG maintains that the Department should use the shorter of the distance from the domestic supplier to FYG's factory or the distance from the nearest seaport to FYG's factory (*See Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997)). FYG argues that the Department calculated distance using the "Sigma" freight distance, and should have instead used the actual distance from the supplies to FYG's factory, which is shorter than the distance between the port and FYG's factory.

Department's Position: We agree with FYG and have used the actual distance between the coal supplier and FYG's factory. We have revised the freight input calculation to reflect this correction. The correction of this error in combination with the correction of the other errors would result in a margin of 3.04 percent. This is more than five percentage points different from and more than 25 percent of the weighted-average dumping margin calculated in the preliminary determination (9.79%). Accordingly, the error alleged by respondent is a significant ministerial error within the meaning of 19 CFR 351.244(g)(1).

Comment 4: FYG alleges that the Department made a ministerial error by improperly deducting a molding cost for a CONNUM that in fact included no molding. Citing Exhibit 6 of its August 15, 2001 submission, FYG argues that the data provided in this exhibit contained a CONNUM that should not have been merged into the U.S. and FOP dataset. FYG argues that the seventh digit in the CONNUM denotes that no molding was sold with this particular model and, therefore, sales with this CONNUM should not have a molding deduction.

Department's Position: The Department does not agree that this a ministerial error. The Department relied on FYG's August 15, 2001 submission which shows that for the CONNUM in question, market economy molding purchases occurred. The Department relied on FYG's response in preparing the calculations and it is not evident that the CONNUM in question did not in fact have molding purchases. Therefore, we are not making the suggested correction because the alleged error is not an unintentional error covered by the ministerial error provision.

Comment 5: FYG alleges that the Department made a ministerial error by incorrectly failing to add selling, general and administrative ("SG&A") costs to the cost of manufacture ("COM") in calculating cost of production ("COP"). Citing FOP Memo at 17, FYG points out that the Department intended to calculate COP by summing materials, energy, labor, overhead, and selling, general and administrative expenses ("SG&A"). FYG argues that the COP figure did not include costs associated with SG&A, only materials, energy, labor and overhead.

Department's Position: The Department agrees that this is a ministerial error. The Department normally adds SG&A to COM to derive COP, which we failed to do in this case. The correction of this error in combination with the correction of the other errors would result in a margin of 3.04 percent for FYG. This is more than five percentage points different from and more than 25 percent of the weighted-average dumping margin calculated in the preliminary determination (9.79%). Accordingly, the error alleged by respondent is a significant ministerial error within the meaning of 19 CFR 351.224(g)(1).

Comment 6: FYG alleges that the Department used an outdated labor rate in calculating inputs. Citing *1998 Yearbook of Labour Statistics* and the Department's regression-based analysis posted on its Web site, FYG argues that the labor rate used in the preliminary determination is outdated, compared with a more contemporaneous labor rate for 1999 now listed on the Department's Web site.

Department's Position: The Department does not agree that this is a ministerial error. The Department used information available at the time of the preliminary determination and at that time listed on its website. Labor rates for 1999 were not available to the Department at the time of the preliminary determination. Therefore, we are not making the suggested correction because the alleged error is not an unintentional error covered by the ministerial error provision.

Petitioner's Allegations of Ministerial Errors by the Department

Comment 7: Petitioners allege that the Department made a ministerial error in the value it assigned to the second panel of glass of FYG's solar windshields. Citing FYG's June 25, 2001 submission at 11, petitioners point out that FYG reported it uses one pane of standard float glass and one pane of solar glass when it constructs a solar windshield. Petitioners argue that the Department should treat standard float glass as clear float glass, instead of colored float glass.

Department's Position: The Department does not agree that this is a ministerial error. FYG explained that standard float glass was used along with a solar panel in the construction of solar windshields. The Department does not consider this record information to be sufficient to make a determination that standard glass is clear glass. The Department also notes that FYG uses a small amount of clear glass in producing subject merchandise. The Department plans to examine this information more closely at verification. Therefore, we are not making the suggested correction because the alleged error is not an unintentional error covered by the ministerial error provision.

Comment 8: Petitioners allege that the Department made a ministerial error in the values it assigned to Xinyi Automotive Glass (Shenzhen) Company, Ltd.'s ("Xinyi") PVB. Citing the FOP Memo at 7, petitioners point out that Attachment 4 to the FOP Memo lists the value for clear PVB and shaded PVB differently then those listed on page 7 of the FOP memo. Petitioners argue that the values listed for clear PVB and shaded PVB should be reversed.

Department's Position: The Department agrees that this is a ministerial error. The Department found that the values calculated for clear and shaded PVB in the FOP Memo were reversed. The Department found that after correction of this error, Xinyi's margin remains de minimis. Accordingly, the error alleged by

respondent is not a significant ministerial error within the meaning of 19 CFR 351.224(g)(1) or (2) and we are not issuing an amended preliminary determination. The Department of Commerce will, however, correct this error for the final determination.

Comment 9: Petitioners allege that the Department made a ministerial error by using the incorrect Wholesale Price Index ("WPI") value for December 2000. Citing *International Financial Statistics* ("IFS"), May 2001, petitioners argue that the Department used a preliminary value listed in this publication, instead of using the final WPI for December 2000 as it is listed in the IFS for July 2001. Petitioners also argue that the WPI listed for December 2000 was in bold to indicate that it is preliminary. Petitioners also maintain that the WPI for other periods used by the Department (April 2000–December 2000, April 1998–March 1999, 1997, and 1996) do not match what is reported in the July 2001 edition of IFS.

Department's Position: The Department does not agree that this is a ministerial error. Contrary to petitioners' argument, the December 2000 WPI was not bolded (denoting a preliminary number) in the May 2001 issue of IFS used by the Department. The Department utilized the most recent information on the record at the time of the preliminary determination. June WPI data were not available. In regard to the other claimed inaccuracies listed above, petitioners derive different WPI's due to rounding differences. Therefore, we are not making the suggested correction because the alleged error is not an unintentional error covered by the ministerial error provision.

Comment 10: Petitioners allege that the Department made a ministerial error by using a 1992 WPI base for data collected from the period November 1991 through April 1992 in calculating an average value in Rupees per metric ton value for domestic inland insurance. Citing the Department's Web site (*http://www.ia.ita.doc.gov/factory/prc/#Source Index*), which shows the average value in Rupees per metric ton, petitioners argue that the period of data used to calculate the average value in Rupees per metric ton should coincide with the period November 1991 through April 1992, and not the 1992 time period, as used by the Department. Petitioners also argue that the Department should have used the adjusted base year figure for 1992.

Department's Position: The Department does not agree that this is a ministerial error. The Department considers the argument by petitioners to be one of methodology and not ministerial. Therefore, we are not making the suggested correction because the alleged error is not an unintentional error covered by the ministerial error provision. However, the Department will examine both issues mentioned above more closely for the final determination.

Comment 11: Petitioners allege that the Department made a ministerial error by including labor expenses, both direct and indirect, incurred by surrogate company Saint-Gobain Sekurit India Limited ("St. Gobain") in the Department's calculation of the financial ratio for factory overhead and ultimately in the SG&A ratio. Petitioners argue that inclusion of total labor from St. Gobain in the calculation of factory overhead by the Department is incorrect because doing so would include not only direct, but indirect labor in the total COM.

Department's Position: The Department does not agree that this is a ministerial error. The Department regards its decision to account for labor in the build-up of COM as one of selected methodology. Based on the information available to the Department, there was no way to distinguish between indirect and direct labor in reviewing St. Gobain's financial statement. The Department also took into consideration that a majority of the labor reported in St. Gobain's financial statement, absent information to the contrary, is more likely to be direct labor. Therefore, we are not making the suggested correction because the alleged error is not an unintentional error covered by the ministerial error provision.

We are amending the preliminary results of the antidumping duty investigation of ARG from the PRC to reflect the correction of the above-cited ministerial errors. The revised final weighted-average dumping margins are as follows:

Exporter/ manufacturer	Original weighted average margin percent	Revised weighted average margin percent
FYG	9.79	3.04
All Others Rate	9.79	3.04

Suspension of Liquidation

In accordance with section 635(c)(1)(B) of the Act, we are directing the United States Customs Service ("Customs") to continue suspending liquidation on all imports of the subject merchandise from the PRC. Customs shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which normal value exceeds the export price as indicated in the chart above. These suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 635(d) of the Act, we have notified the International Trade Commission of our amended final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: October 17, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26787 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 01–00005." A summary of the application follows.

Summary of the Application

Applicant: Vinex International, Inc., 1407 Foothill Blvd., Suite 105, La Verne, California 91750.

Contact: Vatche Sahakian, President.

Telephone: (909) 596–3556.

Application No.: 01–00005.

Date Deemed Submitted: October 12, 2001.

Members (in addition to applicant): None.

Vinex International, Inc. ("VINEX") seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. Export Trade Facilitotion Services (as they Relate to the Export of Products, Services and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to: government relations; state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

With respect to the sale of Products and Services, licensing of Technology Rights and provisions of Export Trade Facilitation Services, VINEX may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Market and distribute such information to clients;

3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;

4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

6. Allocate export orders among Suppliers;

7. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;

8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

9. Enter into contracts for shipping; and

10. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of products for export and coordinating export with distributors.

Definitions

1. "Supplier" means a person who produces, provides, or sells a Product and/or Service.

Dated: October 19, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 01–26775 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Comments on Modification of Worsted Wool Fabric Tariff Rate Quotas

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of solicitation of comments on requests for modification of tariff rate quota limitations on the import of certain worsted wool fabrics.

DATES: To be considered, comments must be received or postmarked by 5 p.m. November 13, 2001.

ADDRESSES: Comments must be submitted to: Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, Room 3001, United States Department of Commerce. Washington, D.C. 20230. Six copies of comments should be submitted.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

SUPPLEMENTARY INFORMATION: The Department of Commerce (Department) hereby solicits comments on requests for an increase in the limitations on the quantity of imports of certain worsted wool fabric under the 2002 tariff rate quotas established by the Trade and Development Act of 2000. To be considered, comments must be received or postmarked by 5:00 p.m. November 13, 2001 and must comply with the requirements of 15 CFR 340 (66 FR 6459, published January 22, 2001). Thirty days after the end of the comment period, the Department will determine whether the limitations should be modified.

1. Background

Title V of the Trade and Development Act of 2000 (the Act) creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted

wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty is limited to 2,500,000 square meters per year. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12), the reduction is limited to 1,500,000 square meters per year. Both these limitations may be modified by the President, not to exceed 1,000,000 square meters per year for each tariff rate quota.

The Act requires the annual consideration of requests by U.S. manufacturers of men's or boys' worsted wool suits, suit-type jackets and trousers for modification of the limitations on the quantity of fabric that may be imported under the tariff rate quotas, and grants the President the authority to proclaim modifications to the limitations. In determining whether to modify the limitations, specified U.S. market conditions with respect to worsted wool fabric and worsted wool apparel must be considered. On January 22, 2001, the Department published regulations establishing procedures for considering requests for modification of the limitations. 66 FR 6459, 15 CFR 340.

On September 14, 2001, the Department published a notice in the Federal Register soliciting requests for modification of the 2002 tariff rate quota limitations. The Department received four such requests from the following: Hartmarx Corporation (on its own behalf, on behalf of its wholly-owned subsidiaries including Hickey-Freeman, and on behalf of the Tailored Clothing Association); Hartz & Company, Inc.; Hugo Boss; and Tom James Company. These requests were for the maximum increase (1,000,000 square meters) in each of the two tariff rate quota limitations (HTS 9902.51.11 and HTS 9902.51.12). A summary of these requests is provided below. The full text of the request and exhibits, with the exception of business confidential information, is available for inspection between 9:00 a.m. and 4:30 p.m. in Room 2233, United States Department of Commerce, 1401 Constitution Avenue, Washington D.C. 20230.

Comments may be submitted by any interested person, including U.S. manufacturers of worsted wool fabric, wool yarn, wool top and wool fiber. Comments must comply with the requirements of 15 CFR 340. If the person submitting comments is a domestic producer of worsted wool fabric, comments should include, to the extent available, the following information for each limitation with respect to which comments are being made: 1) A list of domestic manufacturers of worsted wool suits, suit-type jackets, or trousers for whom orders were filled during the period July 1, 2000 to June 30, 2001, the date of such orders, the total quantity ordered and supplied in square meters of domestically produced worsted wool fabric and of imported worsted wool fabric, and the average price received per square meter of domestically produced worsted wool fabric and of imported worsted wool fabric for such orders; 2) A list of all requests to purchase worsted wool fabric during the period July 1, 2000 to June 30, 2001 that were rejected by the person submitting the comments, indicating the dates of the requests, the quantity requested, the price quoted, and the reasons why the request was rejected; 3) Data indicating the increase and/or decrease in production and sales for the period January 1, 2001 to June 30, 2001 and the comparable six month period in the previous year of domestically-produced worsted wool fabrics used in the production of worsted wool suits, suit-type jackets and trousers; 4) Evidence of lost sales due to the temporary duty reductions on certain worsted wool fabric under the tariff rate quotas; and 5) Other evidence of the ability of domestic producers of worsted wool fabric to meet the needs of the manufacturers of worsted wool suits, suit-type jackets and trousers in terms of quantity, variety, and other relevant factors.

Comments must be accompanied by a statement by the person submitting the request (if a natural person), or an employee, officer or agent of the legal entity submitting the request, with personal knowledge of the matters set forth therein, certifying that the information is complete and accurate, signed and sworn before a Notary Public, and acknowledging that false representations to a federal agency may result in criminal penalties under federal law. Any business confidential information provided that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law. To the extent business confidential information is provided, a non-confidential submission should also be provided, in which business confidential information is summarized or, if necessary, deleted.

II. Summary of Request

All four requests, from Hartmarx Corporation (on its own behalf, on behalf of its wholly-owned subsidiaries including Hickey-Freeman, and on behalf of the Tailored Clothing Association), Hartz & Company, Inc., Hugo Boss, and Tom James Company, request the maximum possible increase (1 million square meters) in each of the two tariff rate quotas (HTS 9902.51.11 and HTS 9902.51.12).

The Hartmarx request claims that current government statistics demonstrate only a small percentage of imported worsted wool fabrics is being entered under the tariff rate quotas and that worsted wool fabric import data for the first six months of 2001, when annualized, demonstrate that in neither HTS category is there a large percentage of worsted wool fabric imports subject to duties that are covered by the tariff rate quota. Of the more than four million square meters of the finer worsted wool fabric imports (annualized), only 37 percent is subject to tariff rate quota duty-rates. Of the more than 10.5 million square meters of coarser worsted wool fabric imports (annualized), only 24 percent is subject to tariff rate quota duty-rates.

The Hartmarx request also addresses the six market factors that the Act requires be considered in determining whether to modify the tariff rate quota limitations. The request cites certain findings of the U.S. International Trade Commission in its report titled "Certain Wool Articles: First Annual Report on U.S. Market Conditions" (Investigation No. 332-427, USITC Publication 3454, September 2001) to support its claims that 1) there has been a decrease in the sale and production of domestically-produced worsted wool fabrics during 2000, with additional and significant production cutbacks during 2001; 2) there has been no decrease in the consumption of overall tailored worsted wool apparel on a square meter equivalent basis; 3) there is a growing inability of domestic producers of worsted wool fabrics to meet the needs of the domestic apparel manufacturers, and an increased need to rely on imported fabrics; 4) there is no evidence of reduced sales by domestic worsted wool fabric manufacturers because of any factor other than their decisions to reduce production; 5) there is evidence of lost sales by domestic apparel manufacturers because of an inability to access fabrics on a price competitive basis; and 6) the domestic textile industry is not losing sales because of imports of lower priced fabrics.

The Hartmarx request claims the current market conditions for each relevant factor favor granting the maximum increase permitted under the Act and argues that such an increase would not harm the domestic textile industry because it would not displace current domestic fabric orders nor cover a sizeable percentage of imports. The request claims that U.S. textile mills are not producing sufficient fabrics to satisfy the needs of the U.S. tailored clothing industry, arguing that the domestic textile industry has made business decisions that have eroded its capacity to supply tailored clothing companies. The request states that the tailored clothing industry has experienced significant economic injury as a result of tariff rate quota limitations that are too small, while the textile industry has demonstrated no harm as a result of the tariff rate quotas. The tailored clothing industry claims it has demonstrated that, given current import levels, the increase being sought does not cover a majority of the worsted wool fabrics that the industry has been importing. Therefore, the request states that the U.S. textile industry remains fully protected by existing duty rates on a majority of the fabric that the tailored clothing industry will continue to import, and by the significant duty rates charged on fabric even under the tariff rate quota.

The Hartmarx request states that under the North American Free Trade Agreement (NAFTA), Canada and Mexico can export to the United States more than 6.5 million square meter equivalents of duty-free tailored clothing manufactured with non-NAFTA fabrics. In addition, these 6.5 million square meters of fabric imported into Canada and Mexico are subject to effective duty rates far lower than the reduced rates U.S. tailored clothing companies pay on the four million square meters of tariff rate quota-subject fabric. The request claims that most of these 6.5 million square meter equivalents of tailored clothing represent lost sales for domestic apparel producers. The request claims that the textile industry has experienced significant financial benefit from the Act, specifically unlimited duty-free access to yarns, top, and fiber. In addition, the sheep industry received significant funding from the Act. The request claims that the tailored clothing industry has received little benefit to date.

Hartz & Company, Inc., Hugo Boss, and Tom James Company associate themselves with the reasons and supporting material included in the petition submitted on behalf of the Tailored Clothing Association. In addition, these requesters argue the following reasons why the tariff rate quota limitations should be increased: 1) domestic fabric mills have significantly reduced their commitment to act as suppliers to domestic producers of men's and boys' worsted wool tailored clothing. Domestic producers of worsted wool fabric do not produce the fabric that the tailored clothing industry customers demand with respect to styling, variety, types, quality, and prices; 2) Canadian and Mexican manufacturers export duty-free to the United States more than 6.5 million square meter equivalents of worsted wool apparel items (suits, suit-type jackets, and trousers) containing fabrics imported from outside NAFTA countries. These fabric imports are subject to lower duty rates than those paid by U.S. importers of worsted wool fabric for apparel, even for imports under the tariff rate quotas and the United States government should provide at least as much access to imported fabric as it has allowed to Canadian and Mexican competitors. Even if the full relief is granted, the domestic tailored clothing industry will be able to import only 6 million square meters of such fabric subject to comparable duty rates; and 3) the tariff rate quota allocations for calendar year 2001 when described as a percentage of fabric imports demonstrate the inadequacy of the tariff rate quota limitations.

Dated: October 18, 2001.

Linda M. Conlin,

Assistant Secretary for Trade Development, Department of Commerce.

[FR Doc.01–26780 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101901B]

Proposed Information Collection; Comment Request; Coastal Impact Assistance Program: Project Review Checklist

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before December 24, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at *MClayton@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John R. King, N/ORM3, Room 11357, 1305 East-West Highway, Silver Spring, MD 20910– 3282 (phone 301– 713– 3155, ext. 188).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Coastal Impact Assistance Program (CIAP) recognizes that impacts from Outer Continental Shelf oil and gas activities fall disproportionately on coastal states and localities nearest to where the activities occur. The program provides funds to seven states and 147 local governments to conduct a variety of related projects, including construction and land acquisition. NOAA must review the projects in accordance with the CIAP legislation before disbursing funds. To expedite review, NOAA developed the CIAP Project Checklist for the construction and land acquisition projects. The Checklist, whose use is voluntary, asks applicants to provide project information to allow NOAA to determine their eligibility under the CIAP as well as eligibility under other relevant statutes (NEPA, etc.).

II. Method of Collection

Form submitted in paper or electronic format.

III. Data

OMB Number: 0648–0440.
Form Number: None.
Type of Review: Regular submission.
Affected Public: State, local, or tribal government.
Estimated Number of Respondents: 154.
Estimated Time Per Response: 5 hours.
Estimated Total Annual Burden Hours: 1,875.
Estimated Total Annual Cost to Public: $1,875.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 17, 2001.

Gwellnar Banks

Management Analyst, Office of the Chief Information Officer Information Officer.

[FR Doc. 01–26796 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of availability of final evaluation findings.

SUMMARY: Notice is hereby given of the availability of the final evaluation findings for the Delaware, Maine, Massachusetts and Texas Coastal Management Programs. Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of coastal management programs, and the operation and management of NERRs.

The states of Delaware, Maine, Massachusetts and Texas were found to be implementing and enforcing their federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards.

Copies of these final evaluation findings may be obtained upon written request from: Ralph Cantral, Senior Policy Analyst, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway 10th Floor, Silver Spring, Maryland 20910, or *Ralph.Cantral@noaa.gov*, (301) 713–3155 Extension 118.

Dated: October 16, 2001.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–26724 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101601B]

Bottlenose Dolphin Take Reduction Team Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Take Reduction Team for Western North Atlantic coastal bottlenose dolphins (BDTRT) will hold its first meeting to develop a take reduction plan as described in the Marine Mammal Protection Act (MMPA). Input will be sought from the BDTRT on a peer review process for all data related to stock structure, abundance, and human-caused mortality and serious injury rates. The BDTRT will focus on reducing bycatch in the following fisheries: Mid-Atlantic coastal gillnet, North Carolina inshore gillnet, Southeast Atlantic gillnet, Southeastern U.S. Atlantic shark gillnet, Atlantic blue crab trap/pot, Mid-Atlantic haul/beach seine, North Carolina long haul seine, North Carolina roe mullet stop net, and Virginia pound net.

DATES: The meeting will be held on November 6, 2001, starting at 9 a.m., and continue on November 7 and 8, starting at 8:30 a.m.

ADDRESSES: The BDTRT meeting will be held at the Sheraton Oceanfront Hotel, located oceanfront at 36th Street in Virginia Beach, Virginia. Phone: 757–425–9000.

FOR FURTHER INFORMATION CONTACT: Kathy Wang, Southeast Region, 727–570– 5312, or Emily Hanson, Office of Protected Resources, 301– 713– 2322, x101.

SUPPLEMENTARY INFORMATION: Invitation letters mailed to BDTRT participants on August 27, 2001, and a **Federal Register** otice published on August 31, 2001 (66 FR 45968), announced that the BDTRT would be convened on September 12 and 13, 2001. However, the terrorist events of September 11, 2001, caused NMFS to cancel the September meeting. NMFS has rescheduled the first BDTRT meeting for November 6– 8, 2001, in Virginia Beach, Virginia.

NMFS has asked the following individuals to be members of the BDTRT: Mike Baker, Florida Gillnet Representative; Dave Beresoff, North Carolina Gillnet and Crab Pot Representative; Tina Berger, Atlantic States Marine Fisheries Commission; Paul Biermann, North Carolina Gillnet Representative; Gordon Colvin, New York Department of Environmental Conservation; David Cupka, South Carolina Wildlife and Marine Resources; Joseph DeAlteris, University of Rhode Island, Fisheries Center; Martin Dunson, Florida Crab Pot Representative; Lewis Gillingham, Virginia Marine Resources Commission; Michael Greco, Delaware Division of Fish and Wildlife; Doug Guthrie, North Carolina Stop Net Representative; Bruce Halgren, New Jersey Division of Fish and Wildlife; Emily Hanson, NMFS Office of Protected Resources; Chris Hickman, Long Haul Seine Fishery Representative; Fulton Love, Georgia Shad Gillnet Representative; Richard Luedtke, New Jersey Gillnet Representative; Rick Marks, New Jersey Gillnet and Haul Seine Representative; Dave Martin, Maryland Gillnet Representative; Bill McLellan, University of North Carolina at Wilmington; Ken Moran, South Carolina Shad Gillnet Representative; Fentress Munden, North Carolina Division of Marine Fisheries; Robert Munson, New Jersey Gillnet, Crab Pot and Pound Net Representative; Margaret Murphy, South Atlantic Fishery Management Council; Peter Nixon, Virginia Gillnet, Beach Seine, Crab Pot, and Pound Net Representative; William Outten, Maryland Department of Natural Resources; Mike Peele, North Carolina Beach Seine, Pound Net, and Gillnet Representative; Carl Poppell, Georgia Crab Pot Representative; Tim Ragen, Marine Mammal Commission; Andy Read, Duke University Marine Laboratory; John Reynolds III, Marine Mammal Commission; Sentiel Rommel, Florida Fish and Wildlife Conservation Commission; Jerry Schill, North Carolina commercial fisheries representative; Richard Seagraves, Mid-Atlantic Fishery Management Council; Larry Simns, Maryland Crab Pot Representative; Mark Swingle, Virginia Marine Science Museum; Leonard Voss, Delaware Gillnet and Crab Pot Representative; Chris Walker, Virginia Gillnet Representative; Kathy Wang, NMFS Southeast Regional Office; Rob West, North Carolina Gillnet, Pound Net, and Crab Pot Representative; A.D. Willis, North Carolina Recreational Crab Pot and Gillnet Representative; David Woolman, South Carolina Crab Pot Representative; Nina Young, The Ocean Conservancy; Sharon Young, The Humane Society of the United States; Chris Zeman, American Oceans Campaign; Barb Zoodsma, Georgia Coastal Resources, Georgia Department of Natural Resources. The BDTRT will be facilitated by Hans Neuhauser and Jim Feldt, Georgia Environmental Policy Institute.

Meetings are open to the public.

Dated: October 18, 2001.

Wanda L. Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–26792 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

October 19, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.ustreas.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Memorandum of Understanding dated February 17, 2000 between the Governments of the United States and Belarus establishes a limit for the period January 1, 2002 through December 31, 2002.

This limit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 19, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of glass fiber fabric products in Category 622, produced or manufactured in Belarus and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of 12,921,400 square meters of which not more than 1,123,600 square meters shall be in Category 622–L [1].

Products in the above categories exported during 2001 shall be charged to the applicable category limit for that year (see directive dated November 14, 2000) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Belarus.

This limit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–26779 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–DR–S

[1] Category 622–L: only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

October 18, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 25, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also

see 65 FR 79344, published on December 19, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 25, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	82,592,155 square meters.
313	45,640,563 square meters.
317	29,568,549 square meters.
326	11,413,085 square meters.
334/634	213,683 dozen.
335/635	951,316 dozen.
336/636	1,360,292 dozen.
338/339	5,134,479 dozen.
340/640	2,778,913 dozen.
341	5,768,744 dozen of which not more than 3,335,245 dozen shall be in Category 341–Y [2]
342/642	1,926,418 dozen.
345	288,718 dozen.
347/348	1,093,834 dozen.
351/651	407,207 dozen.
363	63,229,578 numbers.
369–D [3]	1,807,425 kilograms.
369–S [4]	990,292 kilograms.
641	1,897,413 dozen.
647/648	1,123,847 dozen.
Group II	
200, 201, 220–227, 237, 239pt. [5], 300, 301, 331–333, 350, 352, 359pt. [6], 360–362, 600–604, 606 [7], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [8], 666, 669pt. [9], 670, 831, 833–838, 840–858 and 859pt. [10], as a group	181,254,409 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 359pt.: all HTS numbers except 6406.99.1550.

[7] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[8] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[9] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[10] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–26778 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

October 18, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 25, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69913, published on November 21, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 25, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
333/334/335/833/834/835.	455,414 dozen of which not more than 239,896 dozen shall be in Categories 333/335/833/835.
336/836	103,369 dozen.
338	538,188 dozen.
339	2,349,081 dozen.
340	539,003 dozen.
342	160,500 dozen.
345	90,231 dozen.
347/348/847	1,286,900 dozen.
351/851	120,780 dozen.
359–C/659–C [2]	625,313 kilograms.
359–V [3]	215,888 kilograms.
638/639/838	3,003,100 dozen.
642/842	211,265 dozen.
647/648	934,689 dozen.
Group II	
400–431, 433–438, 440–448, 459pt. [4], 464 and 469pt. [5], as a group.	1,744,810 square meters equivalent.
Sublevel in Group II	
445/446	94,772 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–26776 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

October 18, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 25, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://www.otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66730, published on November 7, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 27, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Turkey and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 25, 2001, you are directed to increase the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Limits not in a Group	
338/339/638/639	7,466,052 dozen of which not more than 6,495,087 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].
350	775,336 dozen.
369–S [3]	2,366,427 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[3] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–26777 Filed 10–23–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 31 October 2001 through 01 November 2001.

Time of Meeting: 0800–1700.

Place: Institute for Defense Analyses, 1801 North Beauregard Street, Alexandria, VA.

Agenda: The Army Science Board's (ASB) FY2002 Summer Study "Methods to Reduce O&S Costs in the Future Army" leadership group will meet to discuss the upcoming studies and other related issues. This meeting

will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact MAJ Robert B. Grier, Executive Officer, Army Science Board (703) 604–7478.

Wayne Joyner,

Executive Assistant, Army Science Board.

[FR Doc. 01–26718 Filed 10–23–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Acambis, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Acambis, Inc., a revocable, nonassignable, exclusive license to practice worldwide the Government-owned inventions described in U.S. Patent application Serial No. 09/439,311, entitled "A Recombinant Polypeptide for Use in the Manufacture of Vaccines Against Campylobacter Induced Diarrhea and to Reduce Colonization" filed November 14, 1998, and its PCT serial number US99/27195 in the field of vaccines against Campylobacter associated disease.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428.

Dated: October 15, 2001.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–26719 Filed 10–23–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Notice

AGENCY: National Assessment Governing Board; U.S. Department of Education.

ACTION: Recommendations for candidates to fill board vacancies.

SUMMARY: The Secretary of Education, the Honorable Rod Paige, and the National Assessment Governing Board (NAGB), seek your assistance in identifying qualified individuals who can serve as members of the National Assessment Governing Board.

In 1988 Congress passed legislation creating the Board. In 1994 Congress amended and reauthorized the original legislation. The statute provides that "* * * the Secretary and the Board shall ensure at all times that the membership of the Board reflects regional, racial, gender, and cultural balance and diversity * * *;" Currently, the Board is comprised of 26 members, each of whom serves a four-year term. The membership of the Board represents a wide and specified diversity of expertise and experience. As vacancies occur, new members of the Board are appointed by the Secretary from among candidates who are nominated by the Board itself, after national consultation with many organizations, associations, and knowledgeable individuals. For each vacancy, the Board must nominate at least six persons who, by reason of experience or training, are qualified in a particular category. Current members of the Board who have not completed two full terms, and who are otherwise eligible, may be re-nominated.

In order for the Board to consider a candidate, it is essential to have a nominating letter, which sets forth your evaluation of the recommended individual's qualifications, as well as a current resume for the individual being suggested. For 2002, the Board must nominate candidates for eight positions in the following eight categories:

1. Elementary School Principal
2. Secondary School Principal
3. Fourth-Grade Teacher
4. Eighth-Grade Teacher
5. Representative of Business or Industry
6. Representative of the General Public, including Parents
7. State Legislator (Democrat)
8. Chief State School Officer.

Please feel free to nominate potential candidates in any of the above categories. Note, however, that in order to receive full consideration, all recommendations must be received by the Board no later than February 22, 2002. Nominations or inquires should be directed to: National Assessment Governing Board, 800 North Capitol Street, NW, Suite 825, Washington, DC 20002–4233, Attention: Dr. Sharif Shakrani.

FOR FURTHER INFORMATION CONTACT: Sharif Shakrani, Deputy Executive Director, National Assessment Governing Board, 800 North Capitol Street, NW, Suite #825, Washington, DC 20002–4233, telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382). The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. More detailed information about the Governing Board and the National Assessment of Educational Progress program is available on the NAGB Web site: *http//www.nagb.org.*

Dated: October 19, 2001.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 01–26747 Filed 10–23–01; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–6–000]

Dynegy Midwest Generation, Inc. and Dynegy Power Marketing, Inc. Complainants v. Commonwealth Edison Company Respondent; Notice of Complaint

October 18, 2001.

Take notice that on October 17, 2001, Dynegy Midwest Generation, Inc. and Dynegy Power Marketing, Inc. (Dynegy) tendered for filing a Complaint against Commonwealth Edison Company, (ComEd).

In its Complaint, Dynegy alleges that ComEd has failed to properly enforce the network resource designation provisions of its Open Access Transmission Tariff (OATT). Dynegy further alleges that ComEd's actions jeopardize reliability, deprive Dynegy of revenues for capacity sales, and permits the improper prioritization of network transmission service for bumping and curtailment.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 26, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before October 26, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26715 Filed 10–23–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2398–002]

Liberty Electric Power, LLC; Notice of Filing

October 18, 2001.

Take notice that on October 16, 2001, Liberty Electric Power, LLC, which will own and operate a natural gas-fired electric generating facility in the Borough of Eddystone, Pennsylvania submitted for filing with the Federal Energy Regulatory Commission (Commission) its initial FERC Electric Tariff Volume No. 1, in compliance with the Commission's August 15, 2001 and October 12, 2001 letter orders, which will enable Liberty Electric to engage in the sale of electric energy and capacity and ancillary services at market-based rates.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 26, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26756 Filed 10–23–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting on Initial Information Package and Project Site Visit for an Alternative Licensing Procedure

October 18, 2001.

a. *Type of Application:* Alternative Licensing Procedure.

b. *Project No.:* 11803–002.

c. *Applicant:* City of Broken Bow, Oklahoma.

d. *Name of Project:* Broken Bow Reregulating Dam Project.

e. *Location:* On the Mountain Fork River near the town of Broken Bow, McCurtain County, Oklahoma utilizing federal lands administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Stewart Noland, Crist Engineers, Inc., 1405 North Pierce Street, Suite 301, Little Rock, AR 72207, (501) 664–1552.

h. *FERC Contact:* Peter Leitzke at (202) 219–2803; e-mail *peter.leitzke@ferc.fed.us.*

i. The proposed project would utilize the existing U.S. Army Corps of Engineers' Broken Bow Reregulating Dam and would consist of: (1) A new 50-foot-long, 50-foot-wide, 20-foot-high powerhouse containing one or two generating units having a total installed capacity of 5,000 kilowatts; (2) a short transmission line; and (3) appurtenant facilities.

j. Public Meetings and Project Site Visit

The City of Broken Bow is using the Federal Energy Regulatory Commission's (Commission) alternative licensing procedure (ALP). Under the ALP, the City of Broken Bow will prepare an Applicant Prepared Environmental Assessment (APEA) and license application for the Broken Bow Reregulating Dam Hydroelectric Project.

The ALP includes provisions for the distribution of an initial information package (IIP), and for the cooperative scoping of environmental issues and information needs. The City of Broken Bow plans to distribute its IIP for the Broken Bow Project on or about October 15, 2001, to the mailing list for this proceeding.

The City of Broken Bow will hold informational meetings and a project site visit on November 15, and 16, 2001. The purpose of the meetings is to review the information presented in the IIP and to initiate the identification of areas of interest which should be addressed in the licensing and related Applicant Prepared Environmental Assessment (APEA) processes. All interested individuals, organizations, and agency representatives are invited and encouraged to attend any or all the meetings.

The site visit is intended to provide the opportunity for interested individuals to learn more about the proposed project, its operations and the surrounding environment. Planned activities include a facility tour, a visit to public access sites, and a tour of the project reservoir and waterway.

Additional notices seeking comments on the specific project proposal, public scoping, interventions and protests, and recommended terms and conditions will be issued at later dates.

The site visit will begin at 2 p.m. November 15 at the Broken Bow City Hall, 210 North Broadway, Broken Bow, Oklahoma.

The November 15th meeting will be held at the Broken Bow Library Public Meeting Room, 400 North Broadway, Broken Bow, Oklahoma, beginning at 7 p.m.

The November 16th meeting will be held at the Broken Bow City Hall, 210 North Broadway, Broken Bow, Oklahoma, beginning at 8 a.m.

Based on feedback received on the IIP, the meetings, and the project site visit, the City of Broken Bow will prepare a Scoping Document 1 (SD1) which will provide information on the scoping process, APEA schedule, background information, potential environmental issues, and proposed project alternatives. Additional meetings may be held to assist in the development of SD1.

Upon issuance of SD1, the City of Broken Bow and the Commission will issue public notice of its availability and will hold a public scoping meeting(s) pursuant to the National Environmental Policy Act of 1969 (NEPA).

All interested individuals, organizations, and agencies are invited and encouraged to attend the informational meetings on the IIP and project site visit, and to assist in the identification of environmental issues that should be included in SD1.

For further information regarding the informational meetings and project site visit or to be added to the mailing list for the Broken Bow Reregulating Dam Project ALP, please contact Stewart Noland at (501) 664–1552 or Peter Leitzke of the Commission's staff at (202) 219–2803.

David P. Boergers,

Secretary.

[FR Doc. 01–26717 Filed 10–23–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11566–000—Maine Damariscotta Mills Project]

Ridgewood Maine Hydro Partners, L.P.; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

October 18, 2001.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Maine State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Advisory Council) pursuant to the Council's regulations, 36 CFR part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470 f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 11566–000.

The Programmatic Agreement, when executed by the Commission, the SHPO, and the Advisory Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below. The executed Programmatic Agreement would be incorporated into any license issued.

Ridgewood Maine Hydro Partners, L.P., as prospective licensee for Project No. 11566–000, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 11566–000 as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004

Kevin Webb, CHI Energy, Inc., 200 Bulfinch Drive, Andover, MA 01810

Earle G. Shettleworth, Jr., SHPO, ME Historic Preservation Commission, 55 Capitol Street, State House Station 65, Augusta, ME 04330

Dr. Arthur E. Spiess, ME Historic Preservation Commission, 55 Capitol Street, State House Station 65, Augusta, ME 04330

Kevin Mendik, National Park Service, 15 State Street, Boston, MA 02109

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

David P. Boergers,

Secretary.

[FR Doc. 01–26716 Filed 10–23–01; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140292; FRL–6807–6]

Access to Confidential Business Information by Syracuse Research Corporation (SRC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Syracuse Research Corporation (SRC) of Arlington, VA access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA under sections 4, 5, 6, and 8 of TSCA occurred as a result of an approved waiver dated September 24, 2001, which requested granting SRC immediate access to sections 4, 5, 6, and 8 of TSCA CBI.

FOR FURTHER INFORMATION CONTACT: Barbara A. Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to "those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA)." Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov/.* To access this document, on the homepage select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

III. What Action is the Agency Taking?

Under contract number 68–W–01–061, SRC of 1215 Jefferson Davis Highway, Suite 405, Arlington, VA, will assist the Office of Pollution Prevention and Toxics (OPPTS) in preparing chemical reviews for the TSCA New Chemicals Review Program. This includes preparing documents to be used for Chemical Review Search Strategy and Structure Activity Team meetings. The contractor requires access to current and past cases to fulfill these duties.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W–01–061, SRC will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA, to perform successfully the duties specified under the contract.

SRC personnel was given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

Access to the confidential data submitted to EPA under sections 4, 5, 6, and 8 of TSCA occurred as a result of an approved waiver dated September 24, 2001, which requested granting SRC immediate access to sections 4, 5, 6, and 8 of TSCA CBI. This waiver was necessary to allow SRC to assist EPA in preparing chemical reviews for the TSCA New Chemicals Review Program.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6,and 8 of TSCA, that the Agency may provide SRC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at the SRC site located at 1215 Jefferson Davis Highway, Suite 405, Arlington, VA.

SRC will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual.*

Clearance for access to TSCA CBI under this contract may continue until September 30, 2006.

SRC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: October 12, 2001.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 01–26687 Filed 10–23–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64061; FRL–6805–4]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on April 22, 2002, unless indicated otherwise.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 266A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: *hollins.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov.* To access this document, on the homepage select "Laws and Regulations" "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listing at *http://www.epa.gov/fedrgstr/.*

2. *In person.* Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall #2, Rm. 232, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in 16 pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name, active ingredient and specific uses deleted:

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product	Chemical Name	Delete From Label
000228–00095	Riverdale 2,4-D L.V. 6 Ester	Acetic acid, 2,4-D 2-ethylhexyl ester	Drainage ditchbanks and aquatic uses
000228–00126	Riverdale Solution Emulsible	Acetic acid, 2,4-D 2-Ethylhexyl ester	Drainage ditchbanks and aquatic uses

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Registration No.	Product	Chemical Name	Delete From Label
000228–00139	Riverdale 2,4-D L.V. 4 Ester	Acetic acid, 2,4-D 2-Ethylhexyl ester	Aquatic uses and sugarcane
000228–00185	Riverdale Tri-Ester	Acetic Acid, 2,4-D 2-Ethyl Ester; Isooctyl 2-(2,4-D) propionate	Drainage ditchbanks
000264–00324	Sevin Brand 99% Technical Carbaryl Insecticide	Carbaryl	Poultry
000264–00456	Ethoprop Technical	Ethoprop	Peanuts, citrus seedlings, commercial and golf course turf
000264–00457	MOCAP 15% Nematicide-Insecticide	Ethoprop	Peanuts, sweet corn lay-by applications
000264–00458	MOCAP EC Nematicide-Insecticide	Ethoprop	Peanuts, dry/snap beans, sugarcane, field/sweet corn, citrus seedlings
000264–00465	MOCAP 10% Granular Nematicide-Insecticide	Ethoprop	Peanuts, golf course turf, sweet corn lay-by applications
000264–00469	MOCAP (R) 20% Granular Nematicide-Insecticide	Ethoprop	Sweet corn lay-by application
000264–00599	Ethoprop Technical	Ethoprop	Peanuts, citrus seedlings, commercial and golf course turf
000769–00898	Pratt Triple X NA Weed Killer	Acetic acid, (2,4-D)-2-ethylhexyl ester; Prometon	Drainage ditchbanks
009779–00262	MCPA Amine Herbicide	MCPA, dimethylamine salt	Rice
011656–00021	Carbaryl Cutworm Bait	Carbaryl	Alfalfa and grapes
042750–00014	MCPA Amine 4	MCPA, dimethylamine salt	Rice
042750–00024	MCPA Sodium Salt	MCPA, Sodium salt.	Rice

Note: Company numbers 000264 and 011656 have wavied the 180–day comment period

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before April 22, 2002 unless indicated otherwise, to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000228	Riverdale Chemical Co., 1333-Burr Ridge Parkway, Suite 125A, Burr Ridge, IL 60521.
000264	Aventis Cropscience USA LP, 2 T.W. Alexander Drive, Box 12014, Research Triangle Park, NC 27709.
000769	The Platinum Group, Agent For: Verdant Brands, Inc., 9855 W. 78th Street, Eden Prairie, MN 55344.
009779	Agriliance, LLC, Box 64089, St. Paul, MN 55164.
011656	Western Farm Service, Inc., Attn: Dunya Haproff-Fondse, Box 1168, Fresno, CA 93715.
042750	Pyxis Regulatory Consulting, Agent For: Albaugh Inc., 11324 17th Ave., Ct. NW., Gig Harbor, WA 98332.

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. How and to Whom Do I Submit Withdrawal Requests?

1. *By mail*: Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked November 23, 2001.

2. *In person or by courier*. Deliver your withdrawal request to: Document Processing Desk (DPD), Information Services Branch, Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 266A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The DPD is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The DPD telephone number is (703) 305–5263.

3. *Electronically*. You may submit your withdrawal request electronically by e-mail to: *hollins.james@epa.gov*. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: October 3, 2001.

Richard D. Schmitt,

Associate Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 01–26268 Filed 10–23–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1045; FRL–6802–5]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1045, must be received on or before November 23, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1045 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112	Crop production Animal production
	311 32532	Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov/*. To access this document, on the homepage select "Laws and Regulations" "Regulation and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket control number PF–1045. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1045 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP); Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1045. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version

of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 5, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Industry Task Force

PP 4E3060

EPA has received a pesticide petition (4E3060) from Industry Task Force II on 2,4-D Research Data, McKenna and Cuneo, 1900 K Street, NW., Washington, DC 20006–1108 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by extending for 3 years, until December 31, 2004, the time-limited tolerance for residues of 2,4-dichlorophenoxyacetic acid (2,4-D) in or on the raw agricultural commodity soybeans at 0.02 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant and animal metabolism.* The nature of the residue in plants is adequately understood. Acceptable wheat, lemon, and potato metabolism studies have been submitted. The nature of the residue in animals is adequately understood based upon acceptable ruminant and poultry metabolism studies submitted.

2. *Analytical method.* The residue field tests on soybeans used a gas chromatography (GC) method with electron capture detection (ECD), EN-CAS Method ENC-2/93. This GC/ECD method is adequate for determining residues in or on soybeans with a limit of quantitation (LOQ) of 0.01 ppm.

3. *Magnitude of residues.* In 27 tests on soybeans conducted in Arkansas, Illinois, Louisiana, Missouri, and Tennessee, residues of 2,4-D were nondetectable (<0.01 ppm) in/on all samples of forage and seeds from soybeans treated with a preplant application of 2,4-D (acid, ester, or amine) at 0.5, 1.25, and 2.75 lb active ingredient per acre at lx, 2.5x, and 5.5x rates. Residues of 2,4-D were also nondetectable (<0.01 ppm) in/on 21 of 27 hay samples from the same tests. Hay samples with detectable residues of 0.01-0.04 ppm only came from 2.5x and 5.5x applications of the 2,4-D 2-ethylhexyl ester (2-EHE). Since the label restriction against feeding/grazing soybean forage and hay is not proposed for deletion at this time, no tolerances are necessary for these feed items. Since data from the 5.5x application demonstrate that 2,4-D residues on soybean seeds are nondetectable or >0.05 ppm, a soybean processing study is not required. Based on the residue data for seeds from soybeans, a tolerance of 0.02 ppm in or on the raw agricultural commodity soybeans is appropriate.

B. Toxicological Profile

1. *Acute toxicity.* The oral LD_{50} of 2,4-D acid is 699 mg/kg in the rat. The dermal LD_{50} in the rabbit is >2,000 mg/kg. The acute inhalation LC_{50} in the rat is >1.8 mg/liter. A primary eye irritation study in the rabbit showed severe irritation. A dermal irritation study in the rabbit showed moderate irritation. A dermal sensitization study in the guinea pig showed no skin sensitization. An acute neurotoxicity study in the rat produced a no observed adverse effect level (NOAEL) of 227 milligram/kilograms (mg/kg) for systemic toxicity and a neurobehavioral NOAEL of 67 mg/kg with a lowest observed adverse effect level (LOAEL) of 227 mg/kg.

2. *Genotoxicity.* Mutagenicity studies including gene mutation, chromosomal aberrations, and direct DNA damage tests were negative for mutagenic effects.

3. *Reproductive and developmental toxicity.* A 2–generation reproduction study was conducted in rats with NOAELs for parental and developmental toxicity of 5 mg/kg/day. The LOAELs for this study are established at 20 mg/kg/day based on reductions in body weight gain in F_0 and F_{2b} pups, and reduction in pup weight at birth and during lactation. A teratology study in rabbits given gavage doses at 0, 10, 30, and 90 mg/kg on days 6 through 18 of gestation was negative for developmental toxicity at all doses tested. A teratology study in rats given gavage doses at 0, 8, 25, and 75 mg/kg on days 6 through 15 of gestation showed maternal toxicity only at 75 mg/kg. A NOAEL for fetotoxicity was established at 25 mg/kg/day based on delayed ossification at the 75 mg/kg dose level. The effects on pups occurred in the presence of parental toxicity.

4. *Subchronic toxicity.* A subchronic dietary study was conducted with mice fed diets containing 0, 1, 15, 100, and 300 mg/kg/day with a NOAEL of 15 mg/kg/day. The (LOAEL) was established at 100 mg/kg/day based on decreased glucose and thyroxine levels, increases in absolute and relative kidney weights, and histopathological lesions in the liver and kidneys. A 90–day dietary study in rats fed diets containing 0, 1, 15, 100, or 300 mg/kg/day resulted in a NOAEL of 15 mg/kg/day and an LOAEL of 100 mg/kg/day. The LOAEL was based on decreases in body weight and food consumption, alteration in clinical pathology, changes in organ weights, and histopathological lesions in the kidney, liver, and adrenal glands of both sexes of rats. A 90–day feeding study was conducted in dogs fed diets containing 0, 0.3, 1, 3, and 10 mg/kg/day with a NOAEL of 1 mg/kg/day. The LOAEL was established at 3 mg/kg/day based on histopathological changes in the kidneys of male dogs.

5. *Chronic toxicity.* A 1–year dietary study was conducted in the dog using doses of 0, 1, 5, and 7.5 mg/kg/day. The NOAEL was 1 mg/kg/day and the LOAEL was 5 mg/kg/day based on clinical chemistry changes and histopathological lesions in the liver and kidney. A 2–year feeding/carcinogenicity study was conducted in mice fed diets containing 0, 1, 15, and 45 mg/kg/day with a NOAEL of 1 mg/kg/day. The systemic LOAEL was established at 15 mg/kg/day based on increased kidney and adrenal weights and homogeneity of renal tubular epithelium due to cytoplasmic vacuoles. No carcinogenic effects were observed under the conditions of the study at any dosage level tested.

A second 2–year oncogenicity study was conducted in mice fed diets containing 0, 5,62.5, and 125 mg/kg/day (males) and 0, 5, 150, and 300 mg/kg/day (females). The NOAEL was 5 mg/kg/day and LOAEL was 62.5 (M) and 150 (F) mg/kg/day based on increases in absolute and/or relative kidney weights and histopathological lesions in the kidneys. No treatment-related oncogenicity was observed.

A 2–year feeding/carcinogenicity study was conducted in rats fed diets containing 0, 1, 15, and 45 mg/kg/day with a NOAEL of 1 mg kg/day. Although there appeared to be a slight treatment-related incidence of benign brain tumors (astrocytomas) in male rats fed diets containing 45 mg/kg/ day, two different statistical evaluations found no strong statistical evidence of carcinogenicity in male rats. There were no carcinogenic effects observed in female rats.

A second 2–year feeding/carcinogenicity study was conducted in rats fed diets containing 0, 5, 75, and 150 mg/kg/day. The NOAEL was 5 mg/kg/day and the LOAEL was 75 mg/kg/day based on decreased body weight, body weight gain, and food consumption; clinical chemistry changes; organ weight changes and histopathological lesions. No treatment-related carcinogenic effects or increased incidences of astrocytomas were observed.

6. *Animal metabolism.* The metabolism of phenyl ring labeled ^{14}C-2,4-D was studied in the rat following a single intravenous or oral dose of approximately 1 mg/kg/day. At 48 hours after treatment, recovery of radioactivity in urine was in excess of 98%. Parent 2,4-D was the major metabolite (72.9% to 90.5%) found in the urine.

7. *Metabolite toxicology.* Because 2,4-D is rapidly excreted without significant metabolism, the toxicology data on the parent compound adequately represents metabolite toxicology.

8. *Endocrine disruption.* Although tests explicitly designed to evaluate the potential endocrine effects of 2,4-D have not been conducted, a large and diverse battery of toxicology studies is available including acute, subchronic, chronic, reproductive, and developmental toxicity tests. The results of these studies do not provide a pattern of effects suggestive of endocrine modulated toxicity.

C. Aggregate Exposure

1. *Dietary exposure.* Residues are below the limit of quantification (LOQ = 0.01 ppm) in soybeans. Tolerances have been established (40 CFR 180.142) for residues of 2,4-D as the acid or various of its salts and esters, in or on a variety of raw agricultural commodities. In addition, there are also tolerances for 2,4-D for meat, milk, and eggs.

2. *Drinking water.* 2,4-D is soluble in water. The average field half-life is 10 days. The chemical is potentially mobile, but rapid degradation in soil and removal by plant uptake minimizes leaching. A Maximum Contaminant Level (MCL) of 0.07 mg/L has been established. In addition, the following Health Advisories have been established: For a 10-kg child, a range of 1 mg/L from 1–day exposure to 0.1 mg/L for longer-term exposure up to 7 years; for a 70 kg adult, a range of 0.4 mg/L for longer-term exposure to 0.07 mg/L for lifetime exposure.

3. *Non-dietary exposure.* 2,4-D is currently registered for use on the following residential non-food sites: Ornamental turf, lawns, and grasses, golf course turf, recreational areas, and several other indoor and outdoor uses. 2,4-D is a commonly-used pesticide in non-agricultural settings. There are chemical-specific and site-specific data available to determine the potential risks associated with residential exposures from the registered uses of 2,4-D. Dislodgeable residues taken from ten 2,4-D turf transferable residue studies showed low dislodgeable percent of application, 0.9% at 1 hour, 0.8% at 8 hours and 0.7% at 24 hours following applications. No detectable residues were found in urine samples supplied by volunteers exposed to sprayed turf 24 hours following application. Intermediate-term postapplication exposure is thus not expected.

D. Cumulative Effects

There are no available data to determine whether 2,4-D has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, 2,4-D does not appear to produce a toxic metabolite produced by other substances.

E. Safety Determination

1. *U.S. population.* For chronic dietary exposure, EPA has established the Reference Dose (RfD) for 2,4-D at 0.01 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 1–year oral toxicity study in dogs with a NOAEL of 1 mg/kg/day and an uncertainty factor of 100. In the most recent final rule establishing tolerances for 2,4-D (time-limited tolerance in soybeans at 64 FR 11792 on March 10, 1999), EPA calculated aggregate risks for the existing uses of 2,4-D at that time (including soybeans and all other existing uses). Since those uses have not changed in the interim, it is appropriate to utilize the same calculations to support extension of the time-limited tolerance in or on soybeans. Chronic dietary exposure estimates (from Dietary Exposure Evaluation Model) used mean consumption (3 day average) and anticipated or tolerance-level residues for all commodities. Exposure estimates used 25.6% of the RfD for the general U.S. population (48 states) and 49.2% of the RfD for the most exposed population of non-nursing infants (less than 1 years old). Despite the potential for exposure to 2,4-D in drinking water and from non-dietary, non-occupational exposure, EPA did not expect the aggregate exposure to exceed 100% of the RfD.

For acute dietary exposure, the NOAEL of 67 mg/kg/day from the rat acute neurotoxicity study should be used for risk assessment. As

neurotoxicity is the effect of concern, the acute dietary risk assessment should evaluate acute dietary risk to all population subgroups. Again, relying upon the EPA calculations underlying the most recent final rule establishing tolerances for 2,4-D cited above, which included soybeans and all other existing uses, EPA calculated acute aggregate risk taking into account anticipated residues or tolerance level residues on all treated crops, which is a significant over estimation of dietary exposure. For the U.S. population, the acute dietary margin of exposure (MOE) is 321 and it is 399 for females 13+ years. These figures do not exceed EPA's level of concern for acute dietary exposure.

Regarding dietary cancer risk assessment, EPA's Cancer Peer Review Committee has classified 2,4-D as a Group D chemical (not classifiable as to human carcinogenicity) on the basis that, the evidence is inadequate and cannot be interpreted as showing either the presence or absence of a carcinogenic effect.

2. *Infants and children.* The data base on 2,4-D relative to prenatal and postnatal toxicity is complete with respect to current data requirements. Since the developmental NOAELs for rats and rabbits are 25-fold greater and 90-fold greater, respectively, than the RfD NOAEL of 1 mg/kg/day in the 17–year oral toxicity study in dogs, an additional uncertainty factor to protect infants and children is not warranted.

Using conservative EPA calculations underlying the most recent final rule establishing tolerances for 2,4-D cited above, which included soybeans and all other existing uses, aggregate acute MOEs for exposure to 2,4-D from food are 214 for infants less than 1 years old and 399 for females 13 and older. The maximum estimated concentrations of 2,4-D in surface and ground water are less than EPA's Drinking Water Level of Comparison (DWLOC) figures for 2,4-D as a contribution to acute aggregate exposure. EPA concluded with reasonable certainty that residues of 2,4-D in drinking water do not contribute significantly to the aggregate acute human health risk.

Using the same conservative assumptions described earlier to estimate chronic risk from aggregate chronic exposure to 2,4-D from food, 11.4% of the RfD is utilized for nursing infants less than 1 years old up to 49.2% of the RfD for non-nursing infants less than 1 years old. Further refinement using additional anticipated residue values in crops and percent crop-treated information would result in lower chronic dietary (food) exposure estimates, thus reducing the aggregate risk estimate. Despite the potential for exposure to 2,4-D in drinking water and from non-dietary, non-occupational exposure, EPA concluded that it did not expect the aggregate exposure to exceed 100% of the RfD.

F. International Tolerances

There are no Codex, Canadian, or Mexican maximum residue limits for use of 2,4-D on soybeans.

[FR Doc. 01–26534 Filed 10–23–01; 8:45 am]
BILLING CODE 6560–S

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U. S. commercial banks for trade with Sub-Saharan Africa.

Time and Place: Wednesday, November 7, 2001, at 9:30 a.m to 12 p.m. The meeting will be held at the Export-Import Bank in room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

Agenda: This meeting will focus on improving deal flow for transactions in sub-Saharan Africa. SAAC members and the Bank staff will discuss opportunities in various markets and sectors and will also discuss actions that the Bank can take to increase transactions.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to November 1, 2001, Teri Stumpf, Room 1215, 811 Vermont Avenue, NW, Washington, DC 20571, voice: (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1215, 811 Vermont Avenue, NW, Washington, DC 20571, (202) 565–3502.

Peter B. Saba,
General Counsel.
[FR Doc. 01–26786 Filed 10–23–01; 8:45 am]
BILLING CODE 6690–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 4300F.
Name: American Intercargo Express Inc.
Address: One World Trade Center, Suite 4667, New York, NY 10048.
Date Revoked: September 13, 2001.
Reason: Failed to maintain a valid bond.

License Number: 15644N.
Name: Amerilines, Inc.—New York.
Address: 7 Dey Street, Suite 1501, New York, NY 10007.
Date Revoked: September 28, 2001.
Reason: Failed to maintain a valid bond.

License Number: 11238N.
Name: Arrow Cargo Express, Inc.
Address: 2254–B Landmeier Road, Elk Grove Village, IL 60007.
Date Revoked: September 26, 2001.
Reason: Failed to maintain a valid bond.

License Number: 16341N.
Name: Dit (USA), Inc.
Address: 1805 W. Hovey Ave., Suite B, Normal, IL 61761.
Date Revoked: August 17, 2001.
Reason: Surrendered license voluntarily.

License Number: 2430F.
Name: Emigdio S. Ledesma dba Jack Ledesma International Forwarder.
Address: 729 83rd Avenue North, Suite 204, St. Petersburg, FL 33702.
Date Revoked: September 20, 2001.
Reason: Failed to maintain a valid bond.

License Number: 2338NF.
Name: Kamden International Shipping, Inc.
Address: 179–02 150th Avenue, Jamaica, NY 11434.
Date Revoked: September 23, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4238F.
Name: Land Ocean Management, Inc.
Address: 825 20th, Suite 310, Portland, OR 97232.
Date Revoked: September 8, 2001.
Reason: Failed to maintain a valid bond.

License Number: 3964F.
Name: Logistic Excel Corporation.
Address: 1521 West Magnolia, Suite B, Burbank, CA 91506.
Date Revoked: September 16, 2001.
Reason: Failed to maintain a valid bond.

License Number: 16715F.
Name: Nasser Massry dba Maromax Industries.
Address: 417 Pisgah Church Road, Greensboro, NC 27455.
Date Revoked: September 11, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4374F.
Name: Richard T. Freeman.
Address: 2441 Foxwood Road South, Orange Park, IL 32073.
Date Revoked: September 22, 2001.
Reason: Failed to maintain a valid bond.

License Number: 3415NF.
Name: TCX International, Inc. dba Land Joy.
Address: 3101 N.W. 74th Avenue, Miami, FL 33122.
Date Revoked: September 28, 2001.
Reason: Failed to maintain a valid bond.

License Number: 16633N.
Name: Transworld Lines, Incorporated.
Address: 9950 W. Lawrence Avenue, Schiller Park, IL 60176.
Date Revoked: August 24, 2001.
Reason: Surrendered license voluntarily.

Ronald D. Murphy,
Deputy Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 01–26803 Filed 10–23–01; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/Address	Date reissued
14503N	Hana Worldwide Shipping Co., Inc., 20435 S. Western Avenue, Torrance, CA 90501	September 12, 2001.

Ronald D. Murphy,
Deputy Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 01–26801 Filed 10–23–01; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Sea-Big Express, Inc., 24404 S. Vermont Avenue, #305, Harbor City, CA 90710, Officer: Jung Hyun Lee, President (Qualifying Individual)

Pibe, Inc., 6909 NW 52nd Street, Miami, FL 33166, Officers: Luis Rocha, General Manager (Qualifying Individual), Edward Rocha, Vice President

HJM Int'l Corp., Cargo Bldg. 80, Suite 204, Jamaica, NY 11430, Officer: Henry Mandil, President (Qualifying Individual)

Best Raider Cargo Express, Ltd., 147–11 182nd Street, Jamaica, NY 11434, Officers: Danny J. Chen, President (Qualifying Individual), Raymond Chen, Vice President

On My Way, Inc., 8510 NW. 72nd Street, Miami, FL 33166, Officers: Maria Sardi (Gaby), Vice President (Qualifying Individual), Luis Aldaya, President

Inter-Cargo Systems LLC, 5200 Mitchelldale, Suite D–8 Houston, TX 77092, Officers: Richard Kershaw, Vice President (Qualifying Individual), Khurram Iqbal, President

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Direct Shipping Line 9550 Flair Dr., #5031, El Monte, CA 91731, Officer: Phuong Lam, President (Qualifying Individual),

Benefitor Logistics Inc., 7323 Parkwood Court, #302, Falls Church, VA 22042, Officers: Min Liu, Shipping Manager (Qualifying Individual), Kong Ng, Director

Quisqueya Lines, Inc., 3780 N.W. South River Drive, Miami, FL 33142, Officers: Milagros Abreu, Vice President (Qualifying Individual), Jose Abreu, President

Access Freight Forwarders Inc., 8220 N.W. 30th Terrace, Miami, FL 33122, Officers: Marcelo V. Leal, President, Isabella Riddell, Secretary (Qualifying Individuals)

Interconn, Inc. 15565 Northland Drive, Suite 708W, Southfield, MI 48075, Officers: Anthony Heath, President/CEO (Qualifying Individual), Aaron S. Heath, Vice President

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Grizzard Customs Brokers, Inc., 4158 Old Dixie Road, Hapeville, GA 30354, Officer: Michael R. Grizzard, President (Qualifying Individual)

Hub Air Intl. Ltd., 140 Eastern Avenue, Chelsea, MA 02150, Officer: Barry F. Curran, President (Qualifying Individual)

Armstrong Export, Inc., 2001 N.W. 93rd Avenue, Miami, FL 33172, Officers: Lewis R. Armstrong, President (Qualifying Individual), Evelyn S. Armstrong, Secretary

Dated: October 19, 2001.
Bryant L. VanBrakle,
Secretary.
[FR Doc. 01–26802 Filed 10–23–01; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 7, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Associated Banc-Corp*, Green Bay, Wisconsin; to acquire Signal Finance Company, Mendota Heights, Minnesota (Signal Finance), and engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y, and acting as agent or broker for insurance directly related to extensions of credit of Signal Finance, pursuant to § 225.28(b)(11)(ii) of Regulation Y, and to acquire Signal Trust Company, N.A., Mendota Heights, Minnesota, and engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, October 18, 2001.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 01–26732 Filed 10–23–01; 8:45 am]
BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35) and 5 CFR 1320.05. The following are those information collections recently submitted to OMB.

1. Surveys of SCHIP Enrollees and Disenrollees for the Congressionally Mandated Evaluation of the State Children's Health Insurance Program—NEW—As part of the evaluation of the State Children's Health Insurance Program (SCHIP), the Office of the Assistant Secretary for Planning and Evaluation is proposing to conduct surveys about children currently and previously covered by the program. These surveys, to be conducted in ten states, will provide detailed description of the children's characteristics, their movement in and out of the program, access to care, service use and experiences with the program. A supplemental survey about Medicaid children will be conducted in two states. *Respondents:* individuals or households; Burden Information for SCHIP Survey—*Number of Respondents:* 18,000; *Frequency of Response:* once; *Average Burden per Response:* .59 hours; *Burden for SCHIP Survey:* 10,620 hours—Burden Information for Medicaid Survey—*Number of Respondents:* 3,600; *Frequency of Response:* once; *Average Burden per Response:* .59 hours; *Burden for Medicaid Survey:* 2,124 hours—*Total Burden*—12,744 hours.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: October 16, 2001.
Kerry Weems,
Acting Deputy Assistant Secretary, Budget.
[FR Doc. 01–26758 Filed 10–23–01; 8:45 am]
BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel meeting.

The Health Care Policy and Research Emphasis Panel is a list of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ) and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed or long terms. Rather, they are asked to serve for particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Independent Scientist Award are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with these applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *SEP Meeting on:* Independent Scientists Award (K02).
Date: November 1, 2001 (Open on November 1 from 3 p.m. to 3:10 p.m. and closed for remainder of the meeting).
Place: 2101 East Jefferson Street, Suite 400W, Rockville, MD 20852.
Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the November 1 meeting due to the time constraints of reviews.

Dated: October 18, 2001.
John M. Eisenberg,
Director
[FR Doc. 01–26730 Filed 10–23–01; 8:45 am]
BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02011]

Cooperative Agreements for the Development and Improvement of Population-Based Birth Defects Surveillance Programs and the Integration of Surveillance Data With Public Health Programs; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for developing and improving birth defects surveillance and integrating surveillance data with other public health programs. This program addresses the "Healthy People 2010" focus area of Maternal, Infant, and Child Health.

The purpose of the program is to support: (1) The development, implementation, expansion, and evaluation of population-based birth defects surveillance systems; (2) the development and implementation of population-based programs to prevent birth defects; and (3) the development and implementation or expansion of activities to improve the access of children with birth defects to health services and early intervention programs.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Recipients funded under CDC Program Announcement 00094 (Cooperative Agreements for the Development of State-Based Birth Defect Surveillance Programs and the Use of the Surveillance Data for Public Health Programs) and Program Announcement 96043 (Centers of Excellence to Provide Surveillance, Research, Services, and Evaluation Aimed at Prevention of Birth Defects) are not eligible. See Attachment I in the Application Kit for a list of the States currently funded under these program announcements.

The eligible States are: Alabama, Alaska, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia and Wyoming.

Applicants may apply under one of two categories:

Category 1—States/territories/tribes with no birth defects surveillance systems; or

Category 2—States/territories/tribes with newly implemented or ongoing surveillance systems.

Note: Title 2 of the United States Code, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately $2,400,000 is available in FY 2002 to fund approximately 4–8 awards in Category 1, and 8–10 awards in Category 2. It is expected that the awards will range from $50,000 to $250,000. The average award will be $100,000 for Category 1 States and $200,000 for Category 2 States. The awards will begin on or about March 1, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

These awards may be used for personnel services, equipment, travel, and other costs related to project activities. Project funds may not be used to supplant State funds available for birth defects surveillance or prevention, health care services, patient care, construction, nor lease/purchase of facilities or space.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient activities for States with no birth defects surveillance systems; or 2. Recipient activities for States with newly implemented or ongoing surveillance systems; and CDC will be responsible for the activities under 3. CDC activities.

1. Recipient Activities for States with no birth defects surveillance systems:

a. Develop and begin implementation of a population-based surveillance system to ascertain cases and generate timely population-based data of major birth defects occurring in the State.

b. Analyze and disseminate the surveillance data generated by the system in a timely fashion including rates and trends of major birth defects.

c. Develop and implement a plan to evaluate the surveillance methodology used.

d. Involve the appropriate partners within the State to develop a plan and begin implementation of a birth defects prevention program (i.e., Neural Tube Defects (NTD) occurrence prevention). Share results with appropriate organizations within the State and with other States.

e. Develop a plan to evaluate the prevention activities.

f. Involve the appropriate partners within the State to develop a plan and begin implementation of activities to improve the access of children with birth defects to comprehensive, community-based, family-centered care (e.g., establish linkages with other programs like Children with Special Health Care Needs).

g. Develop a plan to evaluate the identification of and/or timeliness of referral to services among eligible children or families.

2. Recipient Activities for States with newly implemented or ongoing surveillance systems:

a. Broaden methodologies and approaches which will improve, sustain, and expand the capacity of the existing population-based surveillance system to ascertain cases and generate timely population-based data of major birth defects occurring in the State.

b. Analyze and disseminate the surveillance data generated by the system in a timely fashion including rates and trends of major birth defects (e.g., publish a report on the surveillance data).

c. Evaluate the surveillance methodology used.

d. Involve the appropriate additional partners within the State to expand birth defects prevention programs (i.e., Neural Tube Defects (NTD) occurrence prevention). Share results with appropriate organizations within the State and with other States.

e. Evaluate the prevention progress.

f. Involve the appropriate partners within the State to expand activities to improve the access of children with birth defects to comprehensive, community-based, family-centered care (e.g., establish linkages with other programs like Children with Special Health Care Needs).

g. Evaluate the progress on improving access to services (e.g., identification of children and families eligible for services; evaluate the timeliness of referral to services).

3. CDC Activities:

a. Assist, if requested, in designing, developing, and evaluating methodologies and approaches used for population-based birth defects surveillance.

b. Assist, if requested, in analyzing surveillance data related to birth defects.

c. Assist, if requested, in designing plans for prevention programs and plans to improve the access of children with birth defects to health services and intervention programs.

d. Provide, if requested, a reference point for sharing regional and national data and information pertinent to the surveillance and prevention of birth defects.

E. Content

Letter of Intent (LOI)

A LOI is requested for this program. The LOI will not be used to eliminate potential applicants, but it will enable CDC to determine the level of interest and plan the review more efficiently. The narrative should be no more than two, double-spaced pages, printed on one side, with one inch margins and 12 point font. The LOI should include the following information: this program announcement number; applicant's name and address; project director's name, phone number, and email; identification of the category for which the applicant is applying (Category 1 or Category 2); a brief description of the number of state-wide births and current birth defect surveillance system; and a brief description of the planned statement of work.

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in describing the program plan.

The applicant should provide a detailed description of first-year activities and briefly describe future-year objectives and activities. The application must contain the following:

1. *Cover Letter:* A one page cover letter should indicate whether the applicant is applying for Category 1 or Category 2.

2. A one-page, single-spaced, typed abstract in 12 point font must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number. The abstract should clearly state which option the applicant is applying for: Category 1 or Category 2. The abstract should briefly summarize the program for which funds are requested, the activities to be undertaken, and the applicant's organization structure. The abstract should precede the program narrative. A table of contents that provides page numbers for each of the following sections should be included. All pages must be numbered.

3. *Narrative:* The narrative should be no more than 25 double-spaced pages printed on one side, with one inch margins, and unreduced font (12 point). The required detailed budget and detailed budget justification are not considered to be part of the program narrative. The narrative should specifically address item 1 or 2 in the "Program Requirements" and should contain the following sections:

a. Understanding of the Public Health Impact of Birth Defects;

b. Impact on Population-Based Birth Defects Surveillance;

c. Use of Surveillance Data for Prevention Activities;

d. Use of Surveillance Data for Improving Access to Health Services and Early Intervention Programs;

e. Organizational and Program Personnel Capability; and

f. Human Subjects Review

4. Budget and Budget Justification—Provide a detailed budget which indicates the anticipated costs for personnel, fringe benefits, travel, supplies, contractual, consultants, equipment, indirect, and other items.

F. Submission and Deadline

Letter of Intent (LOI)

On or before November 16, 2001, submit the LOI to the officials designated for programmatic technical assistance identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before December 7, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC as they relate to the applicant's response to either item 1 or 2 in the "Program Requirements" section.

1. Applicant's understanding of the public health impact of birth defects (5 points):

The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement. The extent to which the application reflects an understanding of the public health impact of birth defects in their State and the purpose and complexities of birth defects surveillance as it relates to their State.

2. Impact on population-based birth defects surveillance (20 points):

The extent to which the applicant describes the anticipated level of impact this cooperative agreement will have on birth defects surveillance activities in the State. The current and proposed activities evaluated in this element are specific for Category 1 and Category 2.

a. Evaluation criteria for Category 1 (States with no birth defects surveillance systems):

(1) Plans for developing population-based birth defects surveillance;

(2) Methods of case ascertainment;

(3) Timeliness of case ascertainment;

(4) Level of coverage of the population;

(5) Specific birth defects ascertained;

(6) Plans for analyzing and reporting surveillance data to appropriate State, local, and federal health officials;

(7) Plans for evaluating the surveillance methodology and the quality of the surveillance data; and

(8) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(b) The proposed justification when representation is limited or absent.

(c) A statement as to whether the design of the study is adequate to measure differences when warranted.

(d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

b. Evaluation criteria for Category 2 (States with newly implemented or ongoing birth defects surveillance systems):

(1) Ability to improve/expand population-based birth defects surveillance;

(2) Methods of case ascertainment;

(3) Timeliness of case ascertainment;

(4) Level of coverage of the population;

(5) Specific birth defects ascertained;

(6) Analyzing and reporting surveillance data to appropriate State, local, and federal health officials;

(7) Evaluating the surveillance methodology and quality of the surveillance data; and

(8) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(b) The proposed justification when representation is limited or absent.

(c) A statement as to whether the design of the study is adequate to measure differences when warranted.

(d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. Use of the surveillance data for prevention activities (30 points):

The extent to which the applicant describes the plans for using surveillance data to develop and implement or expand existing programs to prevent birth defects. The current and proposed activities evaluated in this element are specific for Category 1 and Category 2.

a. Evaluation criteria for Category 1 (States with no birth defects surveillance systems):

(1) Ability to work with appropriate partners in the State (e.g., provide letters of support, Memorandums of Agreement/Understanding); and

(2) Plan for using the surveillance data to develop prevention programs; and/or Plan for sharing surveillance data (e.g., personal identifiers and contact information) with programs or agencies so that children or families can be enrolled in prevention programs.

b. Evaluation criteria for Category 2 (States with newly implemented or ongoing birth defects surveillance systems):

(1) Ability to work with appropriate partners in the State (e.g., provide letters of support, Memorandums of Agreement/Understanding);

(2) Use of surveillance data to expand prevention programs; and/or sharing of surveillance data (e.g., personal identifiers and contact information) with programs or agencies so that children or families are enrolled in prevention programs; and

(3) Evaluation of progress made in the prevention of birth defects.

4. Use of surveillance data for improving access to health services and early intervention programs (30 points). The extent to which the applicant describes the plans to develop and implement or expand existing activities to improve the access of children with birth defects to health services and early interventions. The current and proposed activities evaluated in this element are specific for Category 1 and Category 2.

a. Evaluation criteria for Category 1 (States with no birth defects surveillance systems):

(1) Identification of appropriate programs within the State for referral to health services (e.g., provide letters of support, Memorandums of Agreement/Understanding);

(2) Plan for linking programs or developing other approaches to increase identification of children or families eligible for health services; and

(3) Plan to evaluate the implementation process.

b. Evaluation criteria for Category 2 (States with newly implemented or ongoing birth defects surveillance systems):

(1) Ability to integrate programs within the State (e.g., provide letters of support, Memorandums of Agreement/Understanding, documentation of numbers of eligible children or families referred for and percent receiving services);

(2) Improve and expand approaches to increase identification of children or families eligible for health services; and

(3) Plan for evaluating outcomes of children who receive services.

5. Organizational and program personnel capability (15 points):

a. The extent to which the applicant has the experience, skills, and ability to develop and improve birth defects surveillance and use surveillance data to develop prevention programs and improve access to health services or early intervention programs.

b. The adequacy of the present staff and/or the capability to assemble competent staff to either implement or improve upon a birth defects surveillance system and develop programs for prevention or improving access to health services and early intervention programs. If it is necessary to hire staff to conduct program activities, provide plans for identifying and hiring qualified applicants on a timely basis. Also, provide plans for how work on program activities will be conducted prior to hiring necessary staff.

c. To the extent possible, the applicant shall identify all current and potential personnel who will work on this cooperative agreement including qualifications and specific experience as it relates to the requirements set forth in this announcement.

6. Human Subjects Review (not scored):

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks are so inadequate as to make the entire application unacceptable.)

7. Budget justification and adequacy of facilities (not scored):

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds. The applicant shall describe and indicate the availability of

facilities and equipment necessary to carry out this project.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II in the Application Kit.

AR–1—Human Subjects Requirements
AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7—Executive Order 12372 Review
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 311 and 371 (C) of the Public Health Service Act [42 U.S.C. 241(a), 243, and 247 (b–4)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Virginia Hall-Broadnax, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Announcement 02011, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2761, E-mail address: *vdh2@cdc.gov.*

Programmatic technical assistance may be obtained from:

Larry D. Edmonds or Amanda S. Brown, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, 4770 Buford Highway N.E., Atlanta, GA 30341–3724, Telephone: (770) 488–7171, E-mail address: *LEdmonds@cdc.gov* or *ABrown2@cdc.gov.*

Dated: October 18, 2001.

Rebecca B. O'Kelley,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–26743 Filed 10–23–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02018]

New York Emergency Disaster Relief Related to Asthma; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of funds for a cooperative agreement program for New York Emergency Disaster Relief Related to Asthma. The purpose of the program is to assist the New York State Department of Human Services in assessing public health threats and addressing public health issues related to asthma, as a result of the terrorist attack of September 11, 2001. This program addresses the "Healthy People 2010" focus areas of Environmental Health and Public Health Infrastructure.

B. Eligible Applicant

Eligible applicant is Health Research, Inc./New York State Department of Health. No other applications are solicited.

This project is authorized by H.R. 2888, 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States.

C. Availability of Funds

Approximately $5,200,000 is available to fund this award. The award is expected to be made for a 12-month budget period within a 5 year project period. As long as funds are continued or directed for this applicant continuation funding will be made available for up to 5 years. Funding estimates may vary and are subject to change.

At the request of the applicant, Federal personnel, equipment, or supplies may be provided in lieu of a portion of the financial assistance.

D. Where To Obtain Additional Information

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharon Robertson, Lead Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2740, E-mail address: *sqr2@cdc.gov.*

For program technical assistance, contact: Liane Hostler, Air Pollution and Respiratory Health Branch, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Road, NE (MS E–17), Atlanta, GA 30333, Telephone number: (404) 498–1009, E-mail address: *lch2@cdc.gov.*

Dated: October 18, 2001.

Rebecca O'Kelley,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–26742 Filed 10–23–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10051]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Evaluation of the MassHealth Insurance Partnership; *Form No.:* CMS–10051 (OMB# 0938–NEW); *Use:* This collection will be used to evaluate the Massachusetts' 1115 Waiver Demonstration, including Insurance Partnership program, offering subsidies to small employers to encourage them to offer health insurance coverage to employees. The purpose of the survey is to determine the factors influencing an employer's decision to participate or not, in the IP program and their respective characteristics.; *Frequency:* Other: One-time; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Farms; *Number of Respondents:* 2,016; *Total Annual Responses:* 2,016; *Total Annual Hours:* 336.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–10051, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 17, 2001.

John P. Burke III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 01–26720 Filed 10–23–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10048]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Health Insurance Flexibility and Accountability Section 1115 Model Waiver; *Form No.:* CMS–10048 (OMB# 0938–0848); *Use:* This Health Insurance Flexibility and Accountability (HIFA) Section 1115 Model Demonstration will enable states to use Medicaid and SCHIP funds in concert with private health insurance options to expand coverage to low-income uninsured individuals, with a focus on those with income at or below 200 percent of the Federal poverty level. The model demonstration application will facilitate State efforts in designing programs to cover the uninsured; *Frequency:* Other: 5 years after initial submission; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 25; *Total Annual Responses:* 25; *Total Annual Hours:* 250.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS–10048, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 17, 2001.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 01–26783 Filed 10–23–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0476]

Electronic Interchange Standard for Digital ECG and Similar Data; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to collect information regarding the content and format of electrocardiographic (ECG) data to be submitted to the agency in support of applications. The agency is interested in obtaining ECG waveform data in digital format from the full spectrum of ECG devices (i.e., standard 12-lead ECGs, Holter monitors, transtelephonic monitors, and implanted devices) along with annotations for events (e.g., standard ECG interval measurements, arrhythmic events).

DATES: The public meeting will be held on November 19, 2001, from 10 a.m. to 4 p.m. Submit registration requests by November 6, 2001. Written or electronic comments on ECG data standards are welcome at any time.

ADDRESSES: The public meeting will be held at FDA's Center for Drug Evaluation and Research Advisory Committee Conference Room, 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Norman L. Stockbridge, Center for Drug

Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5329, e-mail: *stockbridgen@cder.fda.gov;* or Randy Levin, Center for Drug Evaluation and Research (HFD–001), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400, e-mail: *levinr@cder.fda.gov.*

SUPPLEMENTARY INFORMATION: FDA is holding a public meeting to discuss potential data standards for digital ECG waveform data to be submitted in support of applications to FDA. Topics for discussion will include: (1) Scope of ECG datasets (i.e, what information should be included); (2) logical organization of a dataset supporting multiple recording sessions, multiple recording epochs within a session, and multiple leads; (3) logical organization supporting the annotation of data in one or more leads with the submitter's assessment of the locations of events of interest, including standard ECG intervals, arrhythmic events, and other information; and (4) realization of the data in extensible markup language (XML) or other open formats.

Although the agency is considering updating guidance documents on related drug evaluation standards (i.e., arrhythmic potential, electronic submission of clinical trial data, including electronic ECG data), the use of ECG data in support of applications will not be the topic for this meeting. The purpose of this meeting is to get public input on the following questions related to the technical issues of transmitting digital ECG data:

- What information is needed to make ECG datasets easy to interpret?
- Is the data structure complex enough that the standard should be implemented in XML or some other format?
- Are the datasets so large that the data standards should be implemented in binary format?
- What tools can be used to review digital ECG data?

An agenda and other materials, including a proposed data standard, will be available on the Internet at *http://www.fda.gov/cder/regulatory/ersr/default.htm* before the meeting. Although there is no registration fee, preregistration by November 6, 2001, is recommended for those individuals who wish to attend this meeting. Participation is limited to the first 100 registrants. To accommodate the greatest number of interested parties, registration is limited to people outside FDA, and no more than two individuals from a company should attend. To register, send an e-mail message to Wendy Lail (*lailw@cder.fda.gov*) with the names of one or two individuals who wish to attend and the name of their company.

The location of the meeting is 5630 Fishers Lane, Rockville, MD (next to the Parklawn Bldg). Registrants should use the lower entrance, which faces Parklawn Dr. Visitors' badges will be held at the guards' station at the entrance to the building, and participants will need picture identification to pick up their badges. Public parking is not available at the 5630 Fishers Lane location. A public parking lot (for a fee) is available on Fishers Lane across from the Parklawn Bldg. Additional public parking (for a fee) is available at the Twinbrook Metro Station, which is located several blocks west of the meeting location.

Interested persons may submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written comments on standards for digital ECG data. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Comments are to be identified with the docket number found in brackets in the heading of this document. Comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 19, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–26821 Filed 10–19–01; 4:12 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Voluntary Customer Satisfaction Surveys to Implement Executive Order 12862 in the Substance Abuse and Mental Health Services Administration (SAMHSA)

OMB No. 0930–0197; Extension—Executive order 12862 directs agencies that "provide significant services directly to the public" to "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services." SAMHSA provides significant services directly to the public, including treatment providers and State substance abuse agencies, through a range of mechanisms, including publications, technical assistance and web sites. Many of these services are focused on information dissemination activities. The purpose of this submission is to extend the existing generic approval for such surveys.

The primary use for information gathered is to identify strengths and weaknesses in current service provisions by SAMHSA and to make improvements that are practical and feasible. Several of the customer satisfaction surveys expected to be implemented under this approval will provide data for measurement of program effectiveness under the Government Performance and Results Act (GPRA). Information from these customer surveys will be used to plan and redirect resources and efforts to improve or maintain a high quality of service to health care providers and members of the public. Focus groups may be used to develop the survey questionnaire in some instances. The estimated annual hour burden is as follows:

Type of data collection	Number of respondents	Responses/ Respondent	Hours/response	Total hours
Focus group	150	1	2.50	375
Mail/telephone.e-mail survey	30,000	1	.33	10,000
Total	30,150			10,375

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 17, 2001

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–26744 Filed 10–23–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on November 5–6, 2001 is to convene the full Advisory Committee and discuss implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of Invasive Species Advisory Committee: 9:30 a.m., Monday, November 5, 2001 and 8:30 a.m., Tuesday, November 6, 2001.

ADDRESSES: American Institute of Architects, 1735 New York Avenue, N.W., Washington, DC 20006. Meetings on both days will be held in the AIA Boardroom.

FOR FURTHER INFORMATION CONTACT: Kelsey Passé, National Invasive Species Council Program Analyst; e-mail: *kelsey_passe@ios.doi.gov;* phone: (202) 208–6336; fax: (202) 208–1526.

Dated: October 2, 2001.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 01–26825 Filed 10–19–01; 4:15 pm]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE–048598

Applicant: Gary McDaniel, Spring Branch, Texas

Applicant requests a permit for presence/absence surveys and collection of the following karst invertebrates species in Bexar County, Texas: Helotes Mold Beetle (*Batrisodes venyivi*), Robber Baron Cave harvestman (*Texella cokendolpheri*), Madla's Cave spider (*Cicurina madla*), Robber Baron Cave spider (*Cicurina baronia*), Vesper Cave spider (*Cicurina vespera*), Government Canyon Cave spider (*Neoleptoneta microps*), as well as another cave spider (*Cicurina venii*) and two cave beetles (*Rhadine exilis* and *Rhadine infernalis*) that do not have common names. Applicant requests presence/absence surveys and collection of the following karst invertebrates species in Travis County, Texas: Kretschmarr Cave Mold beetle (*Texamaurops reddelli*), Tooth Cave Ground beetle (*Rhadine persephone*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), and Tooth Cave spider (*Neoleptoneta myopica*). Applicant requests presence/absence surveys and collection of the following karst invertebrates species in Williamson County Texas: Coffin Cave Mold beetle (*Batrisodes texanus*), Tooth Cave Ground beetle (*Rhadine persephone*), and Bone Cave harvestman (*Texella reyesi*). Applicant also requests presence/absence surveys and collection for Peck's Cave amphipod (*Stygobromus pecki*) in Comal County, Texas and presence/absence surveys for Texas Blind Salamander (*Typhlomolge rathbuni*) in Hays County, Texas. There may be possible disturbance to the Mexican long-nosed bat (*Leptonycteris nivalis*) in Brewster County, Texas.

Permit No. TE–020661

Applicant: Janine Spencer, Prescott, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for the Black-footed ferret (*Mustela nigripes*) within New Mexico and Arizona.

Permit No. TE–048609

Applicant: Michael Rigney, Wickenburg, Arizona.

Applicant requests a permit for recovery purposes to conduct presence/absence surveys for the Southwestern willow flycatcher (*Empidonax traillii extimus*) within the Hassayampa River Preserve, Maricopa County, Arizona.

Permit No. TE–048464

Applicant: Joanne M. Kirchner, Sierra Vista, Arizona.

Applicant requests a permit for recovery purposes to conduct presence/absence surveys for the following species: Cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), Lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*), Black-footed ferret (*Mustela nigripes*), and Yuma clapper rail *Rallus longirostris yumanensis).* Applicant also requests a permit to conduct presence/absence surveys, capture, band, and collect blood samples from the Mexican spotted owl (*Strix occidentalis lucida*). Further, applicant requests a permit to conduct presence/absence surveys, capture, band, nest monitor, and collect feathers from the Southwestern willow flycatcher (*Empidonax traillii extimus*). These activities will be conducted within Arizona.

Permit No. TE–048806

Applicant: U.S. Fish and Wildlife Service; Austwell, Texas.

Applicant requests a permit for individuals to possess and/or ship dead Whooping cranes or their parts, including eggs, feathers, semen and blood; capture, band, radio-tag, raise, breed, and administer health care to captive birds; and re-introduce and rehabilitate Whooping cranes (*Grus americana*) throughout North America from the Rocky Mountains to the east coast. This will be for the Whooping crane Recovery Program.

Permit No. TE–048579

Applicant: Kathlene Meadows, Tucson, Arizona.

Applicant requests a permit for recovery purposes to conduct presence/absence surveys for the Cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) within Arizona.

Permit No. TE–048907

Applicant: Elizabeth Davis, San Marcos, Texas.

Applicant requests a permit to collect plant materials for research and recovery purposes from the Texas wild-rice plant (*Zizania texana*) within Texas.

DATES: Written comments on these permit applications must be received on or before November 23, 2001.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103; (505) 248–6649; Fax (505) 248–6788. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, Albuquerque, New Mexico, at the above address. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Steven M. Chambers,

Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 01–26745 Filed 10–23–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

PRT–048761

Applicant: Kevin Gross, Claremont, CA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–048784

Applicant: Zoological Society of Philadelphia, PA

The applicant request a permit to re-export one captive born male giant otter (*Pteronura brasiliensis*) to the Fundacao Polo Ecologico de Brasilia (Brasilia Zoo) in Brazil for the purpose of enhancement of the survival of the species.

PRT–039276

Applicant: Chicago Zoological Park (Brookfield Zoo), Brookfield, IL

The applicant requests a permit to import biological samples from captive-held/captive-born Goeldi's monkey (*Callimico goeldii*) from the University of Zurich, Zurich, Switzerland, for scientific research.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Written data, comments, or requests for copies of these complete applications or requests for a public hearing on these applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–048671

Applicant: Benjamin Robson, Whittier, CA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

PRT–048768

Applicant: Ralph Gitz, Berwick, PA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: October 9, 2001.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–26800 Filed 10–23–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permit for Marine Mammals

On August 14, 2001, a notice was published in the **Federal Register** (66 FR 42676), that an application had been filed with the Fish and Wildlife Service by Sead Dizdarevic for a permit (PRT–043241) to import one polar bear taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on September 24, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

Dated: October 5, 2001.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–26799 Filed 10–23–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–690–01–1610–JP–064B, C00–0927 WHA–ADR]

Temporary Closure to Camping of Selected Federal Lands in Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure to camping east of sand dunes on selected federal lands in Imperial County, California.

DATES: The temporary closure was approved October 18, 2001, and is in effect.

ADDRESSES: Bureau of Land Management, El Centro Field Office, 1661 S. 4th Street, El Centro, CA 92243.

FOR FURTHER INFORMATION CONTACT: Roxie Trost, BLM, El Centro Field Office, 1661 S. 4th Street, El Centro, CA 92243, telephone (760) 337–4400. The camp closure area east of the sand dunes is posted in the El Centro Field Office and at places near and/or within the area to which the closure applies. Maps identifying the affected areas are available at the El Centro Field Office as well as on the Bureau of Land Management (BLM) California Web site at *www.ca.blm.gov.*

SUPPLEMENTARY INFORMATION: This temporary camping closure is implemented pursuant to title 43 Code of Federal Regulations (CFR) 8341.2(a). The closure was approved October 18, 2001 and will remain in effect until a Record of Decision is signed on the North Eastern Colorado Deserts Bio-regional Plan, which is expected to be signed September 2002.

Exceptions to this closure include government vehicles conducting official business shall be allowed inside the closed areas as authorized. Official business may include public service emergencies, resource monitoring/research, other dunes operations and management activities, and other actions authorized by BLM's El Centro Field Office Manager.

Notice of the proposed closure was published in the **Federal Register** August 10, 2001 (66 FR 42234).

Dated: October 19, 2001.

Henri Bisson,

Assistant Director for Renewable Resources and Planning.

[FR Doc. 01–26826 Filed 10–22–01; 9:33 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–690–01–1610–JP–064B, C00–927 WHA–ADR]

Temporary Motorized Vehicle use Closure on Selected Federal Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure to motorized vehicle use on selected federal lands Edwards Bowl area in San Bernardino County, California.

DATES: The temporary closure was approved October 17, 2001, and is in effect.

ADDRESSES: Bureau of Land Management, Barstow Field Office, 2601 Barstow Rd., Barstow, CA 92311

FOR FURTHER INFORMATION CONTACT: Tim Read, BLM, Barstow Field Office, 2601 Barstow Rd., Barstow, CA 92311. The closure is posted in the Barstow Field Office and at places near and/or within the area to which the closure applies. Maps identifying the affected areas are available at the Barstow Field Office as well as on the Bureau of Land Management (BLM) California Web site at *www.ca.blm.gov.*

SUPPLEMENTARY INFORMATION: This temporary closure is implemented pursuant to title 43 Code of Federal Regulations (CFR) 8341.2(a). The closure was approved October 17, 2001 and will remain in effect until a Record of Decision is signed on the West Mojave Plan, which is expected to be signed June 2003.

Exceptions to this closure include government vehicles conducting official business which shall be allowed inside the closed areas as authorized. Official business may include public service emergencies, resource monitoring/research, and management activities, and other actions authorized by BLM's Barstow Field Office Manager.

Notice of the proposed closure was published in the **Federal Register** July 20, 2001 (66 FR 32639–32640).

Dated: October 19, 2001.

Henri Bisson,

Assistant Director Renewable Resources and Planning.

[FR Doc. 01–26827 Filed 10–22–01; 9:33 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–01–1610–JP–064B, C00–0927 WHA–ADR]

Temporary Closure to Motorized Vehicles on Selected Routes of Travel or Areas Known as NECO Wash in San Bernardino, Riverside, and Imperial Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure to motorized vehicles on selected routes of travel or areas in San Bernardino, Riverside, and Imperial Counties, CA.

DATES: The temporary closure was approved October 17, 2001, and is in effect.

ADDRESSES: Bureau of Land Management, California Desert District Office, 6221 Box Springs Boulevard, Riverside, CA 92507.

FOR FURTHER INFORMATION CONTACT: Richard Crowe, BLM, California Desert District Office, 6221 Box Springs Boulevard, Riverside, CA 92507, telephone (909) 697–5216. The NECO wash closure is posted in the California Desert District Office, and at places near and/or within the area to which the closure applies. Maps identifying the affected areas are available at the

California Desert District Office, as well as on the Bureau of Land Management (BLM) California Web site at *www.ca.blm.gov.*

SUPPLEMENTARY INFORMATION: This temporary closure is implemented pursuant to Title 43 Code of Federal Regulations (CFR) 8341.2(a). The closure was approved October 17, 2001 and will remain in effect until a Record of Decision is signed on the North Eastern Colorado Deserts Bio-regional Plan, which is expected to be signed September 2002.

Exceptions to this closure include government vehicles conducting official business shall be allowed inside the closed areas as authorized. Official business may include public service emergencies, resource monitoring/research, other dunes operations and management activities, and other actions authorized by BLM's California Desert District Office Manager.

Notice of the proposed closure was published in the **Federal Register** June 15, 2001 (66 FR 32639–32640).

Dated: October 19, 2001.

Henri Bisson,

Assistant Director for Renewable Resources and Planning.

[FR Doc. 01–26828 Filed 10–22–01; 9:33 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–690–01–1610–JP–064B, C00–0927 WHA–ADR]

Temporary Motorized Vehicle Use Closure on Selected Federal Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure to motorized vehicle use on selected federal lands in Red Mountain area in San Bernardino County, California

DATES: The temporary closure was approved October 19, 2001, and is in effect.

ADDRESSES: Bureau of Land Management, Ridgecrest Field Office, 300 S. Richmond Rd, Ridgecrest, CA 93555

FOR FURTHER INFORMATION CONTACT: Hector Villalobos, BLM, Ridgecrest Field Office, 300 South Richmond Rd, Ridgecrest, CA 93555, telephone (760) 384–5400. The Red Mountain closure is posted in the Ridgecrest Field Office and at places near and/or within the area to which the closure applies. Maps identifying the affected areas are available at the Ridgecrest Field Office as well as on the Bureau of Land Management (BLM) California Web site at *www.ca.blm.gov.*

SUPPLEMENTARY INFORMATION: This temporary closure is implemented pursuant to title 43 Code of Federal Regulations (CFR) 8341.2(a). The closure was approved October 19, 2001 and will remain in effect until a Record of Decision is signed on the WEMO Plan, which is expected to be signed June 2003.

Exceptions to the closure include government vehicles conducting official business which shall be allowed inside the closed areas as authorized. Official business may include public service emergencies, resource monitoring/research, and management activities, and other actions authorized by BLM's Ridgecrest Field Office Manager.

Dated: October 19, 2001.

Henri Bisson,

Assistant Director for Renewable Resources and Planning.

[FR Doc. 01–26829 Filed 10–23–01; 9:44 pm]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–01–1610–JP–064B, C00–0927 WHA–ADR]

Temporary Closure of Selected Routes of Travel in Lower Chemehuevi Valley, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure to motorized vehicles on selected routes of travel or areas in San Bernardino, County, California.

DATES: The temporary closure was approved October 18, 2001, and is in effect.

ADDRESSES: Bureau of Land Management, California Desert District Office, 6221 Box Springs, Boulevard, Riverside, CA 92507.

FOR ADDITIONAL INFORMATION CONTACT: Richard Crowe, BLM, California Desert District Office, 6221 Box Springs Boulevard, Riverside, CA 92507, telephone (909) 697–5216. The closure is posted in the California Desert District Office, and at places near and/or within the area to which the closure applies. Maps identifying the affected areas are available at the California Desert District Office, as well as on the Bureau of Land Management (BLM) California Web site at *www.ca.blm.gov.*

SUPPLEMENTARY INFORMATION: This temporary closure is implemented pursuant to title 43 Code of Federal Regulations (CFR) 8341.2(a). The closure was approved October 18, 2001 and will remain in effect until a Record of Decision is signed on the Northern and Eastern Colorado Desert (NECO) Plan, an amendment to the California Desert Conservation Area Plan, which is expected to be signed September 2002.

Exceptions to this closure include government vehicles conducting official business which shall be allowed inside the closed areas as authorized. Official business may include public service emergencies, resource monitoring/research, other dunes operations and management activities, and other actions authorized by BLM's California Desert District Office Manager.

Notice of the proposed closure was published in the **Federal Register** on July 30, 2001, (66 FR 39332–39333).

Dated: October 19, 2001.

Henri Bisson,

Assistant Director Renewable Resources and Planning.

[FR Doc. 01–26869 Filed 10–23–01; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–680–02–1610–JP–064B]

Temporary Motorized Vehicle Use Closure and Establish an Interim Motorized Vehicle Access Network on Selected Federal Lands in Western San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure to motorized vehicle use on selected federal lands in San Bernardino County, California and establish an interim motorized vehicle access network. The area encompasses 81,585 acres in the Newberry-Rodman subregion.

DATES: The temporary closure was approved October 19, 2001, and is in effect.

ADDRESSES: Bureau of Land Management, Barstow Field Office, 2601 Barstow Rd, Barstow, CA 92311

FOR ADDITIONAL INFORMATION CONTACT: Tim Read, BLM, Barstow Field Office 2601 Barstow Rd, Barstow, CA 92311, telephone (760) 252–6000. The closure is posted in the Barstow Field Office and at places near and/or within the area to which the closure applies. Maps identifying the affected areas are available at the Barstow Field Office as well as on the Bureau of Land Management (BLM) California Web site at *www.ca.blm.gov.*

SUPPLEMENTARY INFORMATION: This temporary closure is implemented pursuant to Title 43 Code of Federal Regulations (CFR) 8341.2(a). The closure was approved October 18, 2001 and will remain in effect until a Record of Decision is signed on the West Mojave Coordinated Management Plan (WEMO Plan), which is expected to be signed June 2003.

Exceptions to this closure include government vehicles conducting official business which shall be allowed inside the closed areas as authorized and an interim route network signed as open routes on the ground and identified on the map. Official business may include public service emergencies, resource monitoring/research, and management activities, and other actions authorized by BLM's Barstow Field Office.

Dated: October 19, 2001.

Henri Bisson,

Assistant Director of Renewable Resources and Planning.

[FR Doc. 01–26830 Filed 10–22–01; 9:44 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–680–02–1610–JP–064B]

Temporary Motorized Vehicles Use Closure and Establish an Interim Motorized Vehicle Access Network on Selected Federal Lands in Western San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure to motorized vehicle use on selected federal lands in San Bernardino County, California and establish an interim motorized vehicle access network. The area encompasses 271,528 acres in the Superior subregion.

DATES: The temporary closure was approved October 19, 2001, and is in effect.

ADDRESSES: Bureau of Land Management, Barstow Field Office, 2601 Barstow Rd., Barstow, CA 92311.

FOR FURTHER INFORMATION CONTACT: Tim Read, BLM, Barstow Field Office, 2601 Barstow Rd., Barstow, CA 92311, telephone (760) 252–6000. The closure is posted in the Barstow Field Office and at places near and/or within the area to which the closure applies. Maps identifying the affected areas are available at the Barstow Field Office as well as on the Bureau of Land Management (BLM) California Web site at *www.ca.blm.gov.*

SUPPLEMENTARY INFORMATION: This temporary closure is implemented pursuant to title 43 Code of Federal Regulations (CFR) 8341.2(a). The closure was approved October 18, 2001 and will remain in effect until a Record of Decision is signed on the West Mojave Coordinated Management Plan (WEMO Plan), which is expected to be signed June 2003.

Exceptions to this closure include government vehicles conducting official business which shall be allowed inside the closed areas as authorized and an interim route network signed as open routes on the ground and identified on the map. Official business may include public service emergencies, resource monitoring/research, and management activities, and other actions authorized by BLM's Barstow Field Office.

Dated: October 19, 2001.

Henri Bisson,

Assistant Director for Renewable Resources and Planning.

[FR Doc. 01–26831 Filed 10–22–01; 9:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–680–02–1610–JP–064B]

Temporary Motorized Vehicles Use Closure and Establish an Interim Motorized Vehicle Access Network on Selected Federal Lands in Western San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure to motorized vehicle use on selected federal lands in San Bernardino County, California and establish an interim motorized vehicle access network. The area is known as Helendale/Silver Lakes adjacent to the community of Silver Lakes.

DATES: The temporary closure was approved October 19, 2001, and is in effect.

ADDRESSES: Bureau of Land Management, Barstow Field Office, 2601 Barstow Rd., Barstow, CA 92311.

FOR FURTHER INFORMATION CONTACT: Tim Read, BLM, Barstow Field Office, 2601 Barstow Rd., Barstow, CA 92311, telephone (760) 252–6000. The closure is posted in the Barstow Field Office and at places near and/or within the area to which the closure applies. Maps identifying the affected areas are available at the Barstow Field Office as well as on the Bureau of Land Management (BLM) California Web site at *www.ca.blm.gov.*

SUPPLEMENTARY INFORMATION: This temporary closure is implemented pursuant to title 43 Code of Federal Regulations (CFR) 8341.2(a). The closure was approved October 18, 2001 and will remain in effect until a Record of Decision is signed on the West Mojave Coordinated Management Plan (WEMO Plan), which is expected to be signed June 2003.

Exceptions to this closure include government vehicles conducting official business which shall be allowed inside the closed areas as authorized and an interim route network signed as open routes on the ground and identified on the map. Official business may include public service emergencies, resource monitoring/research, and management activities, and other actions authorized by BLM's Barstow Field Office.

Dated: October 19, 2001.

Henri Bisson,

Assistant Director for Renewable Resources and Planning.

[FR Doc. 01–26832 Filed 10–22–01; 9:44 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concessions Management Advisory Board Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting of Concessions Management Advisory Board.

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Section 10), notice is hereby given that the Concessions Management Advisory Board will hold its sixth meeting October 31 and November 1, 2001, at the Pisgah Inn on the Blue Ridge Parkway in North Carolina. The meeting will be in the Rhododendron Room at the Pisgah Inn located at Mile Marker 408.6 on the Blue Ridge Parkway. The meeting will convene at 8:30 a.m. on Wednesday, October 31, and will conclude in the afternoon on November 1.

SUPPLEMENTARY INFORMATION: The Advisory Board was established by Title IV, Section 409 of the National Park Omnibus Management Act of 1998, November 13, 1998 (Public Law 105–391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System.

The advisory board will meet at 8:30 a.m. for the regular business meeting to discuss the following subjects.

- Approval of Minutes of Previous Meeting 5/30–5/31/01
- Report of findings by the handcraft subcommittee
- Rate Approval Program
- Discussion and Preparation of outline for report to the Congress
- Agenda for next meeting
- Date for next meeting

The meeting will be open to the public, however, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

In light of the events which took place on September 11, 2001, and a recent attempt to relocate National Park Service administrative personnel and offices affecting the publication of notices this notice could not be published at least 15 days prior to the meeting date. The National Park Service regrets these events, but is compelled to hold the meeting as scheduled because of the significant sacrifice re-scheduling would require of committee members who have adjusted their schedules to accommodate the proposed meeting dates, and the high level of anticipation by all parties who will be affected by the outcome of the Board's actions.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Interested persons may make oral/written presentations to the Advisory Board during the business meeting or file written statements. Such requests should be made to the Director, National Park Service, Attention: Manager, Concession Program, at least 7 days prior to the meeting. Further information concerning the meeting may be obtained from National Park Service, Concession Program, 1849 C Street NW, Room 7313, Washington, DC 20240, Telephone, 202/565–1210.

Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting, in room 7313, Main Interior Building, 1849 C Street, NW, Washington, DC.

Fran P. Mainella,

Director, National Park Service.

[FR Doc. 01–26757 Filed 10–23–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review; new collection; Tribal Resources Grant Program Application.

The Department of Justice (DOJ), (Office of Community Oriented Policing Services (COPS)) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (Volume 66, Number 147, pages 39537) on July 31, 2001, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 23, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Tribal Resources Grant Program Application.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: None. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked to required to respond, as well as a brief abstract:* Primary: Federally Recognized Tribal Governments.

Other: None. The information collected will be used by the COPS Office to determine whether Federally recognized Tribal Governments are eligible for three year grants specifically targeted to meet the most serious needs of law enforcement in Indian communities. The grants are meant to enhance law enforcement infrastructures and community policing efforts in these communities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 200 respondents at 8 hours per response. The information will be collected annually from each respondent.

(6) An estimate of the total public burden (in hours) associated with the collection: There are 1800 annual burden hours associated with this information collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW, Patrick Henry Building, Suite 1600, NW, Washington, DC 20530.

Dated: October 16, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 01–26707 Filed 10–23–01; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI).

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division and thereafter, make appropriate recommendations to the FBI Director. The topics to be discussed will include the Justice Consolidated Network, Applicability of Compact Council "rules, procedures, or standards" to Nonparty States and to Law Enforcement Agencies, CJIS System of Systems Enhancements Status, request for Dissemination of NCIC Vehicle File Information by the National Insurance Crime Bureau to For-Profit, Non-Criminal Justice Agencies, Access to National Vehicle Registration Data to Combat Vehicle Cloning, Discussion of "Criminal Justice" and the Possible Expansion of the Term as Defined in the Code of Federal Regulations (CFR) and the United States Code (U.S.C.), and Emergency Response to National Disasters. Discussion will also include the status on the National Crime Prevention and Privacy Compact, the DOJ Global and Information Sharing Project, and other issues related to the Integrated Automated Fingerprint Identification System, NCIC, Law Enforcement Online, National Instant Criminal Background Check System and Uniform Crime Reporting Programs.

The meeting will be open to the public on a first-come first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Roy G. Weise, Programs Development Section, (304) 625–2730, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

DATES: The Advisory Policy Board will meet in open session from 9 a.m. until 5 p.m. on December 12–13, 2001.

ADDRESSES: The meeting will take place at the W New Orleans Hotel, 333 Poydras Street, New Orleans, Louisiana, telephone (504) 525–9444.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Randall R. Hissam, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2705, facsimile (304) 625–5090.

Dated: October 12, 2001.

Roy G. Weise,

Designated Federal Employee, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 01–26784 Filed 10–23–01; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Refuse Piles and Impounding Structures, Recordkeeping and Reporting Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or containing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before December 24, 2001.

ADDRESSES: Send comments to Gordon J. Burke, Jr., Director, Administration and Management, 4015 Wilson Boulevard, Room 615, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to Burke-Gordon@msha.gov, along with an original printed copy. Mr. Burke can be reached at (703) 235–13830 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Charlene N. Barnard, Regulatory Specialist, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 725, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Barnard can be reached at *barnard-charlene@msha.gov* (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 facsimile).

SUPPLEMENTARY INFORMATION:

I. Backgound

The Coal Mine Health and Safety Act of 1969 was amended by the Federal Mine Safety and Health Act of 1977 after the Buffalo Creek dam failure in 1972 in West Virginia. The refuse pile and impound standards, Title 30 CFR sections 77.215 and 77.216 had been enacted earlier in 1975 and were incorporated into the Act. Additional parts of these Sections were promulgated and enacted in 1992.

The standards require that the agency approve prudently engineered design plans for dams and their impoundments, as well as the plans for hazardous refuse piles that are routinely constructed by coal mine operators. Plan revisions are also required to be submitted for approval. In addition, the standards also require plans when one of these sites is to be abandoned. And plans are required when spontaneous fires erupt and need to be extinguished at the burning site. Records of weekly inspections and instrument monitoring are also required to ensure that the sites remain safe. Finally, the mine operators are also required to submit an annual status report and certification that guarantees that the site is being constructed in accordance with the approved plan, and the site has not been altered during the construction year.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Refuse Piles and Impound Structures, Recordkeeping and

Reporting Requirements. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA homepage (*http://www.msha.gov*) and selecting "Statutory and Regulatory Information" then "Paperwork Reduction Act submission (*http://www.msha.gov/regspwork.htm*)", or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

There are approximately 750 coal mine impounding structures, of which at least 250 are high-hazard sites. In addition, there are hundreds of refuse piles, and of these, it is estimated that 25 are hazardous. All impoundments and hazardous refuse piles are required by the standards to be constructed and operated in an approved manner. In addition, coal mine operators frequently revise construction plans to accommodate mining conditions, cycles or markets. Since these revisions to the structures can adversely affect a great number of people, such changes are required to be planned in a prudent manner and approved by the agency.

Fire extinguishing plans are only required from an operator when a spontaneous combustion has occurred, and the operator is directed to extinguish the fire.

Inspections on a weekly basis, or inspections at a longer interval for long-established and stable impoundments (after the regulation changes in 1992), are required to ensure that precipitation, seismic activity, or perhaps an unknown construction flaw, has not adversely affected any part of the dam site. The annual status report and certification ensures that the company's engineers confirm that the site is in accordance with the approved engineering plan.

An abandonment plan approved by the agency, ensures that a hazardous site is not left in place after all mining activity has ceased.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Impounding Safety and Refuse Piles, Reporting Requirements, Certifications and Record keeping.

OMB Number: 1219–0015.

Record keeping: 3 years.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR Sections 77.215 and 77.216.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (in hours)	Burden hours
77.215 New Refuse Piles	50	Annually	50	16	800
Fire Ext. Plans	1	Annually	1	4	4
Abandonment Plans	25	Annually	25	8	200
Certification	15	Annually	15	2	30
77.16 New Impoundments	50	Annually	50	1,300	65,000
Revisions	100	Annually	100	5	500
Annual Certification	115	Annually	115	2	230
Inspections w/monitoring Instruments	285	On Occasion	4,845	3	14,535
w/o Monitoring Instruments	426	On Occasion	7,242	2	14,484
Totals	755		12,428	8	95,753

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 17, 2001.

Gordon J. Burke, Jr.,

Director, Administration and Management.

[FR Doc. 01–26738 Filed 10–23–01; 8:45 am]

BILLING CODE 4510–43–M

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: Commission on Ocean Policy.

ACTION: Notice of public meeting.

SUMMARY: The Commission on Ocean Policy is an independent Federal commission appointed by the President and authorized by the Oceans Act of 2000 (Public Law 106–256).

The Commission on Ocean Policy is hereby announcing the Commission's second public meeting to be held on Tuesday and Wednesday, November 13 and 14, 2001. The meeting will begin at 9 a.m. on November 13, and conclude at 5 p.m. The Commission will reconvene at 9 a.m. on November 14 and meet until 5 p.m. The meeting will be held in the Naval Memorial and Heritage Center auditorium, 701 Pennsylvania Avenue NW, Suite 123, Washington, DC.

The Commission on Ocean Policy is holding this second public meeting pursuant to requirements under the Oceans Act of 2000 (Public Law 106–256, Section 3(e)(1)(E)). The agenda will include welcoming remarks, presentations by invited guests representing Congress, various Federal agencies and national non-governmental organizations, opportunity for comment from the public and any required administrative discussions and executive sessions. Further information, including a draft agenda, will be available at the Commission's Web site, *http://oceancommission.gov*.

FOR FURTHER INFORMATION CONTACT: Terry Schaff, Commission on Ocean Policy, 2300 Clarendon Boulevard, Suite 1350, Arlington, Virginia, 22201, 703–588–0851; *TSchaff@nsf.gov*.

Dated: October 16, 2001.

James D. Watkins,

Chairman, Commission on Ocean Policy.

[FR Doc. 01–26734 Filed 10–23–01; 8:45 am]

BILLING CODE 6820–WM–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Railroad Separation Allowance or Severance Pay Report

Section 6 of the Railroad Retirement Act provides for a lump-sum payment to an employee or the employee's survivors equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward retirement. The lump-sum is not payable until retirement benefits begin to accrue or the employee dies. Also, Section 4(a–1)(iii) of the Railroad Unemployment Insurance Act provides that a railroad employee who is paid a separation allowance is disqualified for unemployment and sickness benefits for the period of time the employee would have to work to earn the amount of the allowance. In order to calculate and provide payments, the Railroad Retirement Board (RRB) must collect and maintain records of separation allowances and severance payments which were subject to Tier II taxation from railroad employers. The RRB uses Form BA–9 to obtain, on a quarterly basis, the information needed from railroad employers concerning the separation allowances and severance payments made to railroad employees and/or the survivors of railroad employees. All reports contain a one-line entry for each such payment or adjustment. Completion is mandatory. Responses are requested quarterly. The RRB proposes non-burden impacting editorial changes to Form BA–9.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #	Annual responses	Time (min)	Burden (hrs)
BA–9	1,009	75	1,262

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 01–26721 Filed 10–23–01; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 45, SEC File No. 270–164, OMB Control No. 3235–0154

Rule 52, SEC File No. 270–326, OMB Control No. 3235–0369

Rule 53, SEC File No. 270–376, OMB Control No. 3235–0426

Rule 54, SEC File No. 270–376, OMB Control No. 3235–0427

Rule 57(b) and Form U–33–S, SEC File No. 270–376, OMB Control No. 3235–0429

Rule 58 and Form U–9C–3, SEC File No. 270–400, OMB Control No. 3235–0457

Rule 71, Form U–12(I)–A, and Form U–12(I) –B, SEC File No. 270–161, OMB Control No. 3235–0173

Part 257, SEC File No. 270–252, OMB Control No. 3235–0306

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information, under the Public Utility Holding Company Act of 1935 (Act), as discussed below.

Rule 45 imposes a filing requirement on registered holding companies and their subsidiaries under Section 12(b) of the Act. Under the requirement, the companies must file a declaration seeking authority to make loans or otherwise extend credit to other companies in the same holding company system. Among others, the rule exempts from the filing requirement the performance of payment obligations under consolidated tax agreements. The 15 recordkeepers together incur about 46 annual burden hours to comply with these requirements.

There is no recordkeeping requirement for this information collection. Companies that are subject to Rule 45 are under a mandatory duty to provide the Commission with the required information. There is no requirement to keep the information confidential because it is public information.

Rule 52 permits public utility subsidiary companies of registered holding companies to issue and sell certain securities without filing a declaration if certain conditions are met. The Commission estimates that the total annual reporting and recordkeeping burden of collection under Rule 52 is 33 hours (33 responses × one hour = 33 burden hours).

There is no recordkeeping requirement for this information collection. It is mandatory that qualifying companies provide the information required by Rule 52. There is no requirement to keep to information

confidential because it is public information.

Sections 32 and 33 of the Act as amended, and Rules 53, 54 and 57(b) under the Act, permit among other things, utility holding companies registered under the Act to make direct or indirect investments in exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs"), as defined in Sections 32 and 33 of the Act, respectively, without the prior approval of the Commission, if certain conditions are met. Rules 53 and 54 do not create a reporting burden for respondents. These rules do, however, contain recordkeeping and retention requirements. As required by Congress, the Commission mandates the maintenance of certain books and records identifying investments in and earnings from all subsidiary EWGs or FUCOs in order to measure their financial effect on the registered systems.

The Commission estimates that the total annual recordkeeping and record retention burden under Rule 53 will be a total of 160 hours (10 hours per respondent × 16 respondents = 160 burden hours). It is estimated that there will be no burden hours associated with Rule 54.

Under Rule 57(b) there is an annual requirement for any public utility company that owns one or more FUCOs to file Form U–33–S. The information contained in Form U–33–S allows the Commission to monitor overseas investments by public utility companies.

The Commission estimates that the total annual reporting burden under Rule 57(b) will be 30 hours (3 hours per respondent × 10 filings = 30 hours).

Rules 53, 54, 57(b) each impose a mandatory recordkeeping requirement of this information collection. It is mandatory that qualifying companies provide the information required by Rules 53, 54 and 57(b). There is no requirement to keep the information confidential because it is public information.

Rule 58 under the Act allows registered holding companies and their subsidiaries to acquire energy-related and gas-related companies. Acquisitions are made, within certain limits, without prior Commission approval under Section 10 of the Act. However, within sixty days after the end of the first calendar quarter in which any exempt acquisition is made, and each calendar quarter thereafter, the registered holding company is required to file with the Commission a Certificate of Notification on Form U–9C–3 containing the information prescribed by that form. The Commission uses this information to determine the existence of financial detriment, regarding the acquisition of certain energy-related companies, to the interests the Act is designed to protect. The Commission estimates that the total annual reporting burden is 1,008 hours to comply with these requirements (63 respondents × 16 = 1,008 burden hours).

Rule 71 requires that certain information be filed by employees of registered holding companies who represent the companies' interests before Congress, the Commission or the Federal Energy Regulatory Commission on either Form U–12(I)–A or Form U–12(I)–B. The filings must provide, among other things, the identity of the representative, the person's position and compensation, and a quarterly statement of those expenses not incurred in the ordinary course of business. Employees appearing for the first time must file this information on Form U–12(I)–A within ten days of an appearance. Employees appearing on a regular basis may file the information in advance on Form U–12(I)–B, which will remain valid for the remainder of the year in which it was first filed and for the following two calendar years. Thereafter, it may be renewed for additional three-year periods within thirty days of the expiration of the prior filing.

The information collection prescribed by Form U–12(I)–A and Form U–12(I)–B is required by Rule 71 under the Act. Rule 71 implements section 12(i) of the Act, which expressly requires the filing of the prescribed disclosure information with the Commission in the interest of investors and consumers. The Commission estimates that the total annual reporting burden of collections under Rule 71 is 167 hours (250 responses × forty minutes = 167 burden hours).

Part 257 generally mandates the preservation, and provides for the destruction, of books and records of registered public utility holding companies subject to Rule 26 under the Act and service companies subject to Rule 93. Part 257 prescribes which records must be maintained for regulatory purposes and which media methods may be used to maintain them. Further, it sets a schedule for destroying particular documents or classes of documents.

The Commission estimates that there is an associated recordkeeping burden of 25 hours in connection with the record preservation programs administered by registered holding companies under Part 257 (25 recordkeepers × 1 hour = 25 burden hours).

It is mandatory that records subject to Part 257 be maintained by the holding companies and their service companies for the prescribed period. There is no requirement to keep the information related to Part 257 confidential, because it is public information.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

It should be noted that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 12, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26725 Filed 10–23–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25214; 812–11928]

Clearwater Investment Trust and Clearwater Management Co., Inc.; Notice of Application

October 18, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: The requested order would permit applicants, Clearwater Investment Trust (the "Trust") and Clearwater Management Co., Inc. (the "Adviser"), to enter into and materially amend investment subadvisory agreements without obtaining shareholder approval.

FILING DATES: The application was filed on January 6, 2000, and amended on April 10, 2000, and August 13, 2001, and amended on October 3, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 13, 2001, and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, c/o Richard T. Holm, Esq., Clearwater Management Co., Inc., 332 Minnesota Street, Suite 2100, St. Paul MN 55101–1394.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574, or Nadya Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulations).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open end management investment company. The Trust is comprised of three separate series, each with its own distinct investment objectives, policies, and restrictions (each, a "Fund").[1]

2. The Adviser is registered under the Investment Advisers Act of 1940 ("Advisers Act"). The Trust, on behalf of each Fund, has entered into investment advisory agreements with the Adviser (each, an "Advisory Agreement"), pursuant to which the Adviser serves as the investment adviser to the Funds. Each Advisory Agreement has been approved by the Funds' initial shareholder and by a majority of the Trust's board of trustees (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust or the Adviser ("Independent Trustees").

3. Under the Advisory Agreements, the Adviser, subject to Board oversight, provides each Fund with investment research, advise, and supervision, and furnishes an investment program for each Fund. The Advisory Agreements also provide that the Adviser may delegate its responsibility for providing investment advise and making investment decisions for a particular Fund to one or more subadvisers ("Subadvisers"). The Adviser selects Subadvisers based on the Adviser's continuing evaluation of their skills in managing assets pursuant to particular investment styles. The Adviser screens potential new Subadvisers and engages in an on-going analysis of the continued advisability as to the retention of its existing Subadvisers. From time to time, the Adviser may recommend to the Board that the services of a Subadviser be terminated. Each Fund pays the Adviser a fee for its services based on the Fund's average daily net assets.

4. The Adviser and each Fund have entered into investment subadvisory agreements ("Subadvisory Agreements") with each Subadviser. None of the Trust's existing Subadvisers is an "affiliated person," as defined in section 2(a)(3) of the Act, of the Fund or the Adviser (other than by serving as a Subadviser to the Fund). Each Subadviser, and any future Subadviser will be, registered under the Advisers Act or exempt from registration. The Adviser pays each Subadviser's fees out of the fees the Adviser receives from each Fund.

5. Applicants request relief to permit the Adviser to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. Applicants state that shareholder approval of a Subadvisory Agreement with a Subadviser that is an affiliated person of the Trust or the Adviser (other than by reason of serving as a Subadviser to one or more of the Funds) ("Affiliated Subadviser") will be obtained.

Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract approved by a majority of the investment company's outstanding voting shares. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the Act, or from any rule thereunder, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit them to enter into and materially amend Subadvisory Agreements without shareholder approval.

3. Applicants assert that a Fund's investors rely on the Adviser to select and monitor Subadvisers best suited to manage the Fund's portfolio. Applicants submit that, from the perspective of an investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment company advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose expenses and unnecessary delays on the Funds, and may preclude the Adviser from promptly acting in a manner considered advisable by the Board. Applicants note that the Advisory Agreements will remain subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in this application, the operation of the Fund in the manner described in this application will be approved by a majority or the Fund's outstanding voting securities, as defined in the Act, or by its initial shareholder, provided that, in the case of approval by the initial shareholder, the pertinent Fund's shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below. Similarly, before a Future Fund

[1] Applicants also request relief with respect to future Funds and any other registered open-end management investment company and its series that in the future: (a) is advised by the Adviser, or a person controlling, controlled by or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser; (b) operates in substantially the same manner as the Funds with regard to the Adviser's responsibility to select, evaluate, and supervise Subadvisers; and (c) complies with the terms and conditions in the application ("Future Funds"). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. (p. 2, fn. 1) No Fund or Future Fund will incorporate the name of any Subadviser in the Fund's name.

may rely on the order requested in this application, the operation of the Future Fund in the manner described in this application will be approved by its initial shareholder before a public offering of shares of such Future Fund, provided that shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility to oversee Subadvisers and recommend their hiring, termination and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate change.

6. Within 90 days of the hiring of any new Subadviser for any Fund, the Fund shareholders will be furnished all relevant information about a new Subadviser that would be contained in a proxy statement, including any change in such disclosure caused by the addition of a new Subadviser. Each Fund will meet this condition by providing shareholders with an information statement meeting the disclosure requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934 within 90 days of the hiring of a Subadviser.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's portfolio, and, subject to review and approval by the Board, will: (i) Set the Fund's overall investment strategies; (ii) select Subadviser(s); (iii) monitor and evaluate the performance of Subadviser(s); (iv) ensure that the Subadviser(s) comply with each Fund's investment objectives, policies and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance; and (v) allocate and, where appropriate, reallocate a Fund's assets among its Subadvisers when a Fund has more than one Subadviser.

8. No trustee or officer of the Trust or director of officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, director or officer), any interest in a Subadviser, except for: (i) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or any entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26753 Filed 10–23–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25213; File No. 812–12140]

United Life & Annuity Insurance Company, et al.

October 17, 2001.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: United Life & Annuity Insurance Company ("United Life") and United Life & Annuity Separate Account One ("Separate Account One", and together with United Life, "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the Limited Maturity Bond Portfolio of Neuberger Berman Advisers Management Trust for shares of the Fixed Income Portfolio of Credit Suisse Warburg Pincus Trust II held by Separate Account One to find certain variable annuity contracts and certificates ("Contracts") issued by United Life.

FILING DATE: The application was filed on June 26, 2000, and amended on April 4, 2001 and October 9, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 13, 2001, and be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Linda E. Senker, United Life & Annuity Insurance Company, c/o ING Variable Annuities, 1475 Dunwoody Drive, West Chester, PA 19380.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Fang, Attorney, or Keith E. Carpenter, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. United Life is a stock life insurance company organized in 1955. United Life was originally domiciled in Louisiana. On December 18, 1998, United Life was re-domesticated to Texas. United Life is authorized to conduct business in 47 states, the District of Columbia and Puerto Rico. On July 24, 1996, Pacific Life and Accident Insurance Company (PLAIC) acquired one hundred percent ownership of United Life. PLAIC is a wholly-owned subsidiary of PennCorp Financial Group, Inc. On April 30, 1999, ING America Insurance Holdings, Inc. ("ING America") acquired United Life. ING America's ultimate parent is ING Groep N.V. (The Netherlands) ("ING"). ING, based in the Netherlands, is a global financial services holding company.

2. Separate Account One is a separate account of United Life which was authorized by United Life's Board of Directors under Louisiana insurance law on November 2, 1994. Separate Account One is registered as a unit investment trust under the 1940 Act (File No. 811–09026) for the purpose of funding the Contracts that invest in the Neuberger Berman Advisers Management Trust, Credit Suisse Warburg Pincus Trust II and other underlying mutual funds. Security interests under the Contracts have been registered under the Securities Act of 1933 ("1933 Act") (File Nos. 33–91362 and 33–95778).

3. Separate Account One is currently divided into sub-accounts, each of which reflects the investment performance of a corresponding portfolio of the Neuberger Berman Advisers Management Trust, Credit Suisse Warburg Pincus Trust II and other underlying mutual funds.

4. The Fixed Income Portfolio is a portfolio of the Credit Suisse Warburg Pincus Trust II (formerly, Warburg Pincus Trust II), a registered open-end management company. The Fixed Income Portfolio's investment objective is to seek total return consistent with prudent investment management. The Fixed Income Portfolio invests primarily in fixed-income securities. The Fixed Income Portfolio normally maintains a weighted average portfolio maturity of 10 years or less.

5. Credit Suisse Asset Management, LLC ("CSAM"(, 466 Lexington Avenue, New York, NY 10017, a registered investment adviser and indirect wholly-owned U.S. subsidiary of Credit Suisse Group, provides overall management of the investment strategies and policies of the Fixed Income Portfolio as investment adviser to the Credit Suisse Warburg Pincus Trust II.

6. CSAM receives an annual management fee of .50% of the Fixed Income Portfolio's average daily net assets (before any waivers). The total expenses, after all expense reimbursements for the Fixed Income Portfolio for the year ended December 31, 2000 were 1.29% of its average net assets. Without regard to such expense reimbursements or credits, the total expenses for the year ended December 31, 2000 were 3.11%.

7. On December 31, 2000, the Fixed Income Portfolio had approximately $1,572,000 in net assets.

8. The Limited Maturity Bond Portfolio's investment objective is to seek the highest current income consistent with liquidity and low risk to principal. Total return is a secondary goal. The Limited Maturity Bond Portfolio invests primarily in investment-grade bonds and other debt securities from U.S. government and corporate issuers such as mortgage- and asset-backed securities.

9. Neuberger Berman Management Inc., ("NBM"), 605 Third Avenue, 2nd Floor, New York, New York 10158, a registered investment adviser, is the overall adviser to Neuberger Berman Advisers Management Trust. Neuberger Berman LLC, 605 Third Avenue, New York, New York 10158, is the sub-adviser of the Limited Maturity Bond Portfolio. Neuberger Berman LLC is an affiliate of NBM. United Life is not affiliated with the Limited Maturity Bond Portfolio of Neuberger Berman Advisers Management Trust, NBM or Neuberger Berman LLC.

10. NBM receives an annual fee of 0.65% of the Limited Maturity Bond Portfolio's average net assets. The total expenses of the Limited Maturity Bond Portfolio for the year ended December 31, 2000 were 0.76% of its average net assets.

11. On December 31, 2000 the Limited Maturity Bond Portfolio had approximately $214,400,000 in net assets.

12. For those Contract Owners who continue to have any of their Contract Values invested in shares of the Fixed Income Portfolio on the effective date of the Substitution, United Life proposes to substitute shares of the Limited Maturity Bond Portfolio for shares of the Fixed Income Portfolio on the following basis. As of the effective date of the Substitution, United Life would redeem the shares of the Fixed Income Portfolio representing Contract values. On the same day, United Life would use the proceeds to purchase the appropriate number of shares of the Limited Maturity Bond Portfolio. The Substitution will be a cash transaction (*i.e.*, no securities will be exchanged in the transaction). The Substitution will take place at relative net asset values of the Portfolios, with no change in the amount of any Contract Owner's Contract values or in the dollar value of his or her investment in Separate Account One.

13. United Life will pay all expenses and transactions costs of the Substitution, including any applicable brokerage commissions. United Life will schedule the Substitution to occur as soon as practicable following the issuance of the Order so as to maximize the benefits to be realized from the Substitution. Within five (5) days after the completion of the Substitution pursuant to the Order of the Commission approving the Substitution, United Life will send to the affected Contract Owners written notice of the Substitution (the "Notice") stating that shares of the Fixed Income Portfolio have been eliminated and that the shares of the Limited Maturity Bond Portfolio have been substituted. United Life will include in such mailing the supplement to the prospectuses of Separate Account One, which describes the Substitution.

14. Contract Owners will be advised in the Notice that for a period of thirty (30) days from the mailing of the Notice, they may transfer all assets, as substituted, to any other available subaccount, without limitation and without charge. The period from the date of the supplement to thirty (30) days from the mailing of the Notice is referred to as the "Free Transfer Period." Transfers made by Contract Owners during the Free Transfer Period will not count in determining the transfer fee. Following the Substitution, Contract Owners will be afforded the same Contract rights, including surrender and other transfer rights with regard to amounts invested under the Contracts, as they currently have.

Applicant's Legal Analysis and Conditions

1. Section 26(c) (formerly, Section 26(b)) of the 1940 Act provides, in pertinent part, that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." The purpose of Section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(c) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. The purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. Warburg Pincus notified United Life that it intends to close the Fixed Income Portfolio once there is no

longer Contract Owner money invested in it. United Life has no other choice but to effect a Substitution.

3. The Substitution will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons: (a) The Substitution is of shares of the Limited Maturity Bond Portfolio whose objectives, policies, and restrictions are similar to the objectives, policies, and restrictions of the Fixed Income Portfolio so as to continue fulfilling the Contract Owners' objectives and risk expectations; (b) the total annual expenses of the Limited Maturity Bond Portfolio as a percentage of net assets are lower than the Fixed Income Portfolio; (c) if a Contract Owner so requests, during the Free Transfer Period, assets will be reallocated for investment in a Contract Owner-selected sub-account; (d) the Substitution will, in all cases, be effected at net asset value of the respective shares, without the imposition of any transfer or similar charge; (e) United Life has undertaken to assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage expenses, relating to the Substitutions in a manner that attributes transaction costs to United Life; (f) the Substitution will in no way alter the insurance benefits to Contract Owners or the contractual obligations of United Life; (g) the Substitution will in no way alter the tax benefits to Contract Owners; (h) Contract Owners may choose simply to withdraw amounts credited to them following the Substitution under the conditions that currently exist, subject to any applicable contingent deferred sales charge; and (i) the Substitution is expected to confer certain economic benefits to Contract Owners by virtue of the enhanced asset size and lower total expenses, as described below.

4. United Life, on the basis of the following facts and circumstances, has determined that it is in the best interests of Contract Owners to substitute shares of the Limited Maturity Bond Portfolio for shares of the Fixed Income Portfolio:

(a) The investment objectives and programs of the Limited Maturity Bond Portfolio and the Fixed Income Portfolio are sufficiently similar so as to continue fulfilling the Contract Owner's objectives and risk expectations.

(b) The total expenses of the Limited Maturity Bond Portfolio are lower than the total expenses of the Fixed Income Portfolio.

(c) On December 31, 2000, the Fixed Income Portfolio had approximately $1,572,000 in net assets. On December 31, 2000, the Limited Maturity Bond Portfolio had approximately $214,400,000 in net assets.

(d) The larger size of the Limited Maturity Bond Portfolio lends itself to greater flexibility in purchasing attractive investments and consequently the Limited Maturity Bond Portfolio can more readily react to changes in market conditions. Contract Owners would benefit in the long run through the more effective management of a larger portfolio such as the Limited Maturity Bond Portfolio.

5. United Life does not currently receive (and will not receive for 3 years from the date of the Commission order requested herein) any direct or indirect benefit from the Limited Maturity Bond Portfolio of Neuberger Berman Advisers Management Trust or Neuberger Berman Management Inc. (and their affiliates including Neuberger Berman LLC and its affiliates) that would exceed the amount that United Life had received from the Fixed Income Portfolio of the Credit Suisse Warburg Pincus Trust II or Credit Suisse Asset Management LLC (or their affiliates), including without limitations, 12b–1, shareholder service, administrative or other service fees, revenue sharing or other arrangements, either with respect to specific reference to the Limited Maturity Bond Portfolio or as part of an overall business arrangement.

Conclusion

Applicants submit, for all of the reasons stated herein, that the requested Order under Section 26(c) of the 1940 Act meets the standards of that section.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26754 Filed 10–23–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [66 FR 53272, October 19, 2001].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW, Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, October 25, 2001 at 2:30 p.m.

CHANGE IN THE MEETING: Additional item.

The following item has been added to the open meeting scheduled for Thursday, October 25, 2001:

The Commission will consider extending the comment periods for the joint proposed rules relating to Customer Margin for Security Futures (File No. S7–16–01) and Applicability of CFTC and SEC Customer Protection, Recordkeeping, Reporting, and Bankruptcy Rules and the Securities Investor Protection Act of 1970 to Accounts Holding Security Futures Products (File No. S7–17–01).

For further information, contact Jennifer Colihan at 202 942–0735.

Commissioner Unger, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 22, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–26962 Filed 10–22–01; 4:01 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44946; File No. SR–GSCC–2001–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Redesign of Comparison Rules

October 17, 2001.

On January 16, 2001, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") and on April 11 and August 17, 2001,[1] amended the proposed rule change (File No. SR–GSCC–2001–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[2] Notice of the proposal was published in the **Federal Register** on May 16, 2001.[3] No comment letters were received. For the reasons discussed below, the Commission is granting approval for the proposed rule change.

[1] The August 17, 2001, amendment withdrew a portion of the proposed rule change which was reflected by GSCC in a subsequent proposed rule change. Securities Exchange Act Release No. 44907 (October 4, 2001), 66 FR 51988 (October 11, 2001) [File No. SR–GSCC–2001–09]. As such, republication of notice was not required.

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 44282 (May 8, 2001), 66 FR 27190.

I. Description

The purpose of the filing is to redesign GSCC's comparison rules in order to implement real-time interactive services. In a white paper distributed to all members in early 1997, GSCC outlined its long-range plans to provide straight-through processing and a point-of-trade guarantee to its members primarily through the implementation of real-time interactive services. Last years, GSCC announced that it would implement its interactive services in three phases. Phase 1 will introduce interactive messaging to support real-time comparison; phase 2 will introduce interactive messaging to support netting; and phase 3 will introduce support of same-day settlement of repo start legs.

During the latter part of 2000, GSCC implemented the necessary technical changes to its automated system to implement the first phase of its interactive processing service (*i.e.*, making available the interactive messaging facility to support real-time comparison). Up until this point, GSCC's processing experience has been essentially batch. Members now have the ready ability, from a technological perspective, to submit trade input on an automated basis to GSCC intraday as trades are executed. While GSCC will continue to support its existing batch input and output facilities initially, it plans to eventually stop supporting these older formats. Members will be encouraged to make the shift from batch to interactive processing as soon as it is feasible for them to do so. At some point in time, once a sufficient nucleus of members has begun processing interactively, GSCC will implement disincentives to discourage members from continuing to submit and receive data via the old batch formats.[4]

Concurrent with this development, GSCC has been redesigning its matching and comparison procedures to better meet the needs of its members during their transition from batch to an interactive environment. This redesign is the subject of this proposed rule change. GSCC's central goal in this redesign is to provide straight-through processing by allowing for the easy identification and resolution of trades intraday to achieve 100 percent comparison. GSCC believes that interactive messaging and enhanced real-time matching processing are critical steps in helping to reduce risk by ensuring that more transactions are compared earlier in the day and then eventually also netted and guaranteed through GSCC so that intraday credit exposure to counterparties is minimized.

In the current environment, with the exception being certain locked-in trades, most trades such as members' Federal Reserve auction purchases are compared within the GSCC system as a result of bilateral comparison. To facilitate real-time comparison while still providing members with the flexibility to transition from batch to interactive submission according to a timeframe suitable to their own needs and resources, GSCC is proposing to: (i) Amend its rules to provide for three types of trade comparison: (a) bilateral comparison, (b) demand comparison, and (c) locked-in comparison; and (ii) make certain other related rules changes as further discussed below.

Bilateral Comparison

Bilateral comparison, which is the traditional method of comparison, will continue to require that the two trade counterparties (or if one or both of the counterparties are not GSC members, the members acting on their behalf) submit trades to GSCC in which certain mandatory details either match or fall within predefined parameters to effect a match. Bilateral comparison will remain the primary comparison type for dealer-to-dealer trades and will be available in both real-time and batch. Members may elect to submit interactively regardless of whether their trade counterparties do so.

A new feature of bilateral comparison will be the ability for members to "DK" any trades they "do not know". The proposed rule change introduces the term "DK Notice" to GSCC's rules. If a member determines that a request for comparison is invalid or incorrect, it can send a DK notice to GSCC which will be forwarded to the original submitter. The receipt of the DK notice by GSCC will prevent the trade from comparing on GSCC's system. If a member that sent a DK notice determines that it did so erroneously, the member will be able to remove the DK and enable comparison to occur if it does so within the timeframes prescribed by GSCC for such purpose.

Demand Comparison

Demand comparison is a new type of comparison that has been designed to provide members with flexibility and control over the comparison process for trades executive via intermediaries. Demand comparison strikes a balance between bilateral comparison, where the member is required to submit trade data in order for its trade to compare, and locked-in comparison (discussed in more detail below), where the trade has essentially been operationally compared before being submitted to GSCC.

Demand trades will be submitted by approved intermediaries (*e.g.*, brokers) that will be called "demand trade sources." Demand trade sources must be able to communicate with GSCC interactively. In order for GSCC to accept trades from a demand trade source on a member's behalf, the member must provide GSCC with prior written authorization. The intermediary must also be approved and authorized by GSCC to be a demand trade source.

GSCC will deem a demand trade compared upon receipt of the trade data from the demand trade source. However, if a member does not know a trade submitted on its behalf by a demand trade source, the member will be able to submit a DK notice to GSCC. The receipt of a DK notice by GSCC will cause the demand trade to no longer be eligible for comparison. If a member that sent a DK notice determines that it did so erroneously, the member will be able to remove the DK and enable comparison to occur if it does so within the timeframes prescribed by GSCC for such purpose.

GSCC is making incidental rules changes to Rules 11, 16, 18, 21, 22, and 39 to take into account the introduction of demand trades.

Locked-In Comparison

Locked-in comparison will be similar to that currently provided for in GSCC's rules. Locked-in comparison presumes that a member would elect not to submit corresponding trade details to affect a match because the trade has been precompared by the trade source. An example of a trade appropriate for locked-in comparison would be one executed through a "pure" electronic trading system that is terminal-driven and that no discretion over trade details is exercised once the trade is submitted.

In order to participate, the locked-in trade source must be authorized by both the members of whose behalf it will be submitting trade data and by GSCC. With the exception of some current locked-in sources, such as the Federal Reserve banks, locked-in trade sources will be expected to communicate interactively with GSCC.

Locked-in trades will be deemed compared upon receipt by GSCC. The DK feature will also be available for locked-in trades. However, unlike the case of demand trades, a DK of a locked-in trade will be treated by GSCC as a

[4] GSCC will file with the Commission pursuant to Section 19 of the Act proposed rule changes with respect to any fees intended as disincentives to discourage members from using batch formats.

request for cancellation to the locked-in trade source. In order to actually cancel the trade on GSCC's system, the locked-in trade source will have to respond to the request by submitting a trade cancellation. The locked-in trade source can modify the trade in response to a DK notice.

Submission Methods

In order to set forth the concept of a member submitting interactively versus submitting in one of the batch modes, GSCC is adding three new definitions to its rules: "interactive submission method," "multiple batch submission method," and "single batch submission method." The proposed rules changes make clear which submission type is required for each type of comparison. In addition, GSCC is adding a definition of "real time" in its rules to be used to indicate when a particular process (*e.g.*, the enhanced comparison processes set forth in Rule 10) will be performed by GSCC in real time as opposed to at end of day.

Submission of Full-Sized Trades

GSCC is permitting members to submit full-sized trades. Currently, non-GCF Repo trades are submitted in $50 million increments. Because members' internal systems tend to reflect the full size of each trade (as opposed to the pieces that they submit to GSCC), the submission of full-sized trades will permit members to better reconcile their trading activity. GSCC recognizes that not all members will be able to begin processing full-sized trades immediately. Therefore, GSCC will not require that members exercise this option.

Timing of Key Processes of GSCC

GSCC's key processes are comparison, netting, novation, and guaranty of settlement. GSCC is changing the timing of the comparison and guaranty of settlement processes.

With respect to the timing of comparison, GSCC's rules currently provide that it occurs when GSCC makes its comparison output available to members. GSCC is amending its rules to state that, while comparison will continue to occur upon issuance of the comparison message by GSCC with respect to trades submitted for bilateral comparison, comparison will be deemed to occur upon receipt of trade data from the authorized trade source with respect to trades submitted for demand comparison and locked-in comparison.

With respect to the timing of netting, GSCC's rules currently provide that netting occurs upon issuance of the report of or output on net settlement positions by GSCC. This will continue to be the case. Similarly, GSCC's rules currently provide that novation, the process by which GSCC becomes the substituted counterparty to trades submitted to it, occurs upon the issuance of the report of or output on net settlement positions by GSCC. This will also remain unchanged.

With respect to the timing of GSCC's guaranty of settlement, GSCC's current rules provide that GSCC guarantees the settlement of a netting-eligible trade upon issuance of the report/output that sets forth the member's net settlement position.[5] The proposed rule changes will move the timing of GSCC's guaranty to the point of comparison. This means that a netting-eligible trade submitted for bilateral comparison will be guaranteed upon issuance of the comparison message by GSCC, and a netting-eligible trade submitted for demand or locked-in comparison will be guaranteed upon receipt of trade, data from the authorized trade source. If a trade is DKed (and with respect to a locked-in trade cancelled by the locked-in trade source), GSCC's guaranty will no longer be in effect with respect to that trade. As a transition measure that recognizes that members may need some time to switch to interactive processing, GSCC is proposing that it maintain its policy of guaranteeing blind brokered repo trades entered into in good faith upon trade execution through the year 2001.

General Responsibilities of Members

GSCC's comparison rule contains a provision that requires members to review documents that they receive from GSCC. GSCC desires to expand the provision to cover any type of communication provided to members by GSCC and to require members to inform GSCC promptly, but in no event later than ten calendar days upon receipt of the communication, if there is any error, omission, or other problem with respect to the communication. GSCC's netting rule contains a similar provision with respect to which GSCC is adding the ten-day requirement. GSCC believes that the ten-day time frame will provide members with a sufficient amount of time within which to detect problems in a communication from GSCC.

[5] The exception to this rule is GSCC's policy of guaranteeing blind brokered repos entered into in good faith upon trade execution. GSCC adopted this policy in order to comfort dealers that have intraday credit exposure to brokers through whom they execute such transactions. The policy only applies to such transactions that are entered into in good faith, which means, for example, that GSCC would not honor it in the event that a dealer entered into a transaction knowing that the counterparty was insolvent.

Amendments to Schedules

GSCC is making incidental changes to certain of its Schedules for clarification purposes and to bring them into conformity with the proposed rules changes discussed above. Specifically, GSCC is expanding the output time slot in its "Schedule of Timeframes" from "midnight to 2:00 a.m." to "8:00 p.m. to 2:00 a.m." This change reflects the fact that GSCC may be able to provide certain output earlier given the implementation of real-time trade matching and also the recent shift to the 8:00 p.m. trade submission deadline.

GSCC is also adding language to make clear that the 10:30 a.m. deadline for satisfaction of a clearing fund deficiency call is approximate because members have two hours after a call is made to fulfill their obligation.

GSCC is also updating its "Schedule of Required Match Data," "Schedule of Required Data Submission Items," and its "Schedule of Required Data Submission Items for a Right of Substitution" to make clear that the only locked-in trades to which those schedules do not apply are Treasury/Federal Reserve auction purchases and GCF repo transactions.

GSCC is also amending its fee structure to set fees for demand trades which will be the same as those currently imposed on locked-in trades.

II. Discussion

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of GSCC. The rule change, which allows GSCC to implement interactive messaging to support real-time comparison, will enable GSCC to reduce risk by enabling firms to know earlier of any trades which do not compare and to have more time to resolve the problems. This should reduce the number of failed trades at GSCC. The rule change also provides for more efficient procedures in the comparison process thereby facilitating prompt and accurate clearance and settlement of securities at GSCC. Therefore, the Commission finds that the rule change is consistent with Section 17A and the rules and regulations thereunder.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the

[6] 15 U.S.C. 78q–1(b)(3)(F).

requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–2001–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26727 Filed 10–23–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44955; File No. SR–ISE–2001–18]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 to Proposed Rule Change, by the International Securities Exchange LLC, Relating to Priority Principles on Complex Orders

October 18, 2001.

I. Introduction

On May 25, 2001, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish priority and order handling principles for complex orders. Notice of the proposed rule change and Amendment Nos. 1, 2 and 3 thereto was published for comment in the **Federal Register** on August 13, 2001.[3] No comments were received.

On October 16, 2001, the ISE filed Amendment No. 4 to the proposed rule change. In Amendment No. 4, the Exchange added text to proposed new Rule 722(b)(5) to provide that the right to facilitate or cross up to 40% of a customer's complex order without exposing the order for 30 seconds, as is otherwise required by ISE rules, would be limited to those complex orders where at least one leg of the order was for at least 50 contracts.[4]

This order approves the proposed rule change as amended, accelerates approval of Amendment No. 4, and solicits comment from interested persons on that amendment.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Commission notes that the rules of other options exchanges allow similar procedures for the execution of complex orders.[7] In general, such rules serve to reduce the risk of incomplete or inadequate executions, while increasing efficiency and competitive pricing. At the same time, they protect the priority of orders of public customers by permitting the legs of complex orders to trade ahead of bids and offers established in the marketplace only under restrictions such as those proposed here. Although the ISE's proposal would apply to more types of orders than the rules of other options exchanges, such as box spread and collar orders, the Commission believes that these types of orders are of a similar degree of complexity to those approved in the past for special priority rules, and it is therefore appropriate to accord them the same treatment.

As originally proposed, the new rule would have allowed a firm to execute immediately up to 40% of a complex order, either as principal ("facilitation") or against an order it has solicited ("crossing"), as opposed to first exposing the order to the market for 30 seconds, as is otherwise required by paragraphs (d) and (e) of ISE Rule 717. In Amendment No. 4 to the proposed rule change, the ISE limited this allowance to orders where at least one leg of the transaction was for at least 50 contracts.[8]

The Commission finds that Amendment No. 4 is consistent with the Act, and finds good cause to approve it prior to the thirtieth day after the date of publication of notice of its filing in the **Federal Register.** Amendment No. 4 conforms the proposed rules to existing ISE Rules 716 and 717, which permit similar execution procedures for other orders, provided that they are for 50 contracts or more. The Commission believes that limiting such facilitation or crossing rights to orders of this size should help to adequately protect competitive pricing for smaller orders. Finally, the Commission notes that a broker who accepts a customer's order has a fiduciary duty toward that order.

Therefore, the Commission finds good cause to approve Amendment No. 4 to the proposed rule change on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4, including whether Amendment No. 4 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 USC 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2001–18 and should be submitted by November 14, 2001.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–ISE–2001–18), as amended, be, and it hereby is, approved.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 USC 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44659 (August 6, 2001), 66 FR 42575 (August 13, 2001) ("Notice").

[4] *See* letter from Jennifer Lamie, Assistant General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 15, 2001 ("Amendment No. 4").

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 USC 78(c)(f).

[6] 15 USC 78f(b)(5).

[7] *See* Chicago Board Options Exchange Rule 6.45; American Stock Exchange Rule 950(d), Commentary .01; Philadelphia Stock Exchange Rule 1033; Pacific Exchange Rule 6.75.

[8] *See* fn. 4, *supra.*

[9] 15 USC 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26755 Filed 10–23–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44631A; File No. SR–NASD–00–38]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Application of NASD Rules and Interpretive Materials to Exempted Securities; Corrections

October 17, 2001.

In FR Document No. 01–19700, beginning on page 41283, column 3, for Tuesday, August 7, 2001, a sentence was incorrectly stated. Specifically, footnote 10 should be revised to delete references to National Association of Securities Dealers, Inc. ("NASD") Rule 2440, "Fair Prices and Commissions," and to IM–2440, "Mark-Up Policy."

Footnote 10 is revised to read as follows:

[10] *See* Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996) (order approving File No. SR–NASD–95–39) ("1996 Order"). The 1996 Order approved the application of the following NASD rules to exempted securities, including government securities but not municipal securities: NASD Rule 2110, "Standards of Commercial Honor and Principles of Trade;" NASD Rule 2120, "Use of Manipulative, Deceptive or Other Fraudulent Devices;" NASD Rule 2210, "Communications with the Public;" IM–2210–2, "Communications with the Public about Collateralized Mortgage Obligations;" IM–2210–2, "Communications with the Public about Variable Life Insurance and Variable Annuities;" IM–2210–3, "Use of Rankings in Investment Companies Advertisements and Sales Literature;" NASD Rule 2250, "Disclosure of Participation or Interest in Primary or Secondary Distribution;" NASD Rule 2270, "Disclosure of Financial Condition to Customers;" NASD Rule 2310, "Recommendations to Customers (Suitability);" IM–2310–2, "Fair Dealing with Customers;" IM–2310–3, "Suitability Obligations to Institutional Customers;" NASD Rule 2320, "Best Execution and Interpositioning;" NASD Rule 2330, "Customers' Securities or Funds;" IM–2330, "Segregation of Customers' Securities;" NASD Rule 2340, "Customer Account Statements;" NASD Rule 2430, "Charges for Services Performed;" NASD Rule 2450, "Installment or Partial Sales;" NASD Rule 2510, "Discretionary Accounts;" NASD Rule 2520, "Margin Accounts;" NASD Rule 2521, "Margin Requirements—Exception for Certain Members" (formerly NASD Rule 2520(a); NASD Rule 2522, "Definitions Related to Options, Currency Warrants Currency Index Warrants and Stock Index Warrants Transactions" (formerly NASD Rule 2520(b); NASD Rule 2770, "Disclosure of Price in Selling Agreements" (applicable only to traditional underwriting arrangements); NASD Rule 2780, "Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities;" NASD Rule 2910, "Disclosure of Financial Condition to Other Members;" NASD Rule 3010, "Supervision;" NASD Rule 3020, "Fidelity Bonds;" NASD Rule 3030, "Outside Business Activities of an Associated Person;" NASD Rule 3040, "Private Securities Transactions of an Associated Person;" NASD Rule 3050, "Transactions for or by Associated Persons;" NASD Rule 3060, "Influencing or Rewarding Employees of Others;" NASD Rule 3070, "Reporting Requirements;" NASD Rule 3120, "Use of Information Obtained in a Fiduciary Capacity;" NASD Rule 3110, "Books and Records;" IM–3110, "Customer Account Information;" NASD Rule 3130, "Regulation of Members Experiencing Financial and/or Operational Difficulties;" IM–3130, "Restrictions on a Member's Activity;" NASD Rule 3131, "Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties;" NASD Rule 3140, "Approval of Change in Exempt Status under SEC Rule 15c3–3;" NASD Rule 3230, "Clearing Agreements;" NASD Rule 3310, "Publication of Transactions and Quotations;" IM–3310, "Manipulative and Deceptive Quotations;" NASD Rule 3320, "Offers at Stated Prices;" IM–3320, "Firmness of Quotations;" NASD Rule 3330, "Payment Designed to Influence Market Prices, Other than Paid Advertising;" NASD Rule 8110, "Availability to Customers of Certificate, By-Laws, and Rules;" NASD Rule 8120, "Complaints by Public Against Members for Violations of Rules;" NASD Rule 8130, "Complaints by District Business Conduct Committees;" NASD Rule 8140, "Complaints by the Board of Governors;" NASD Rule 8210, "Reports and Inspections of Books for Purpose of Investigating Complaints;" NASD Rule 8220, "Suspension of Members for Failure to Furnish Information Duly Requested;" NASD Rule 8310, "Sanctions for Violation of the Rules;" IM–8310–1, "Effect of a Suspension, Revocation, or Bar;" IM–8310–2, "Release of Disciplinary Information;" NASD Rule 8320, "Payment of Fines, Other Monetary Sanctions, or Costs;" and NASD Rule 8330, "Cost of Proceedings." As discussed more fully below, Amendment No. 2 clarifies NASD Regulation's reasons for including NASD Rules 2521, 2522, 2910, 8220 (which was expanded to include current NASD Rules 8221 through 8227), and IM–8310–2 in its list of rules and interpretative materials applicable to exempted securities, including government securities, other than municipal securities. *See* Amendment No. 2, *supra* note 4.

[10] 17 CFR 200.30–3(a)(12).

In addition, in FR Document No. 01–19700, beginning on page 41284, column 1, a sentence in footnote 12 was incorrectly stated. Specifically, footnote 12 should be changed to delete references to NASD Rule 2300 and to IM–8310 and to add a reference to IM–2522.

Footnote 12 is revised to read as follows:

[12] Specifically, NASD Rule 0116(b) states that, unless otherwise indicated within a particular provision, the following NASD rules and interpretative materials apply to transactions and business activities relating to exempted securities but not municipal securities, conducted by members and associated persons: 2110, 2120, 2210, IM–2210–1, IM–2210–2, IM–2210–3, 2250, 2270, 2310, IM–2310–2, IM–2310–3, 2320, 2330, IM–2330, 2340, 2430, 2450, 2510, 2520, 2521, 2522, IM–2522, 2770, 2780, 2820(g), 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM–3110, 3120, 3130, IM–3130, 3131, 3140, 3230, 3310, IM–3310, 3320, IM–3320, 3330, 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM–8310–1, IM–8310–2, 8320, and 8330. *See* Amendment No. 2, *supra* note 4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26728 Filed 10–23–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44943; File No. SR–NYSE–2001–39]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 123

October 16, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–b–4 thereunder,[2] notice is hereby given that on October 8, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC" the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the NYSE. The text of the proposed rule change is available for inspection and copying at

[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the places specified in Item IV below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rule 123. The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposed rule change was originally filed as a one-month pilot in SR–NYSE–2001–36.[3] With this proposed rule change, the NYSE seeks permanent approval to the amendments to NYSE Rule 123.

The Exchange has adopted requirements for the electronic capture of orders at the point of sale (front end systemic capture, or "FESC")[4] and at the point of receipt (order tracking system, or "OTS"). The purpose of the requirements is to create a complete systemic record of orders handled by members and member organizations. The Exchange believes that these requirements will provide benefits both to the Exchange and members in terms of recordkeeping, surveillance and order processing.

However, due to the time sensitivity of bona fide arbitrage orders and orders to offset transactions made in error, the Exchange is proposing to carve out two exceptions to NYSE Rule 123(e). These orders may be initiated by a member on the Floor pursuant to SEC Rule 11a–1 and NYSE Rule 111, and a requirement that such orders be first entered into FESC may result in a lost arbitrage opportunity, or the covering of an error at additional loss to the member. With respect to bona fide arbitrage orders,[5] a member may execute such order before entering the order into FESC. However, such member must enter such order into FESC no later than 60 seconds after the execution of such order.

Similarly, with respect to orders to offset transactions made in error, a member may, upon discovering such error within the same trading session, effect an offsetting transaction without first entering such order into FESC. However, such member must enter such order into FESC no later than 60 seconds after the execution of such order.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act[6] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is designed to accomplish these ends by strengthening the Exchange's ability to surveil the Floor activities of members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] *See* Securities Exchange Act Release No. 44783 (September 10, 2001), 66 FR 48304 (September 19, 2001).

[4] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (Order approving amendments to NYSE Rule 123 providing for the systemic capture of order information on the Exchange floor).

[5] In Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 January 31, 1979), the Commission defined "bona fide arbitrage" as an "activity undertaken by market professionals in which essentially contemporaneous purchases and sales are effected in order to 'lock in' a gross profit or spread resulting from a current differential in pricing." The Commission further stated that it "understands that many transactions currently being undertaken by those who are regularly engaged in arbitrage involve some limited, intentional delay (usually a matter of minutes or hours but sometimes, under extraordinary circumstances, as long as a day or even two days) in between the transaction in which the first leg of the arbitrage is established and the subsequent transaction in which the second, offsetting, leg is completed." With respect to the latter, each "leg" of an arbitrage would be considered an "order" for purposes of the bona fide arbitrage exception under Exchange Rule 123(e). Thus, a member would be required to enter such order into FESC no later than 60 seconds after the execution of each "leg" of the arbitrage.

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission notes that under Rule 19b–4(f)(6)(iii),[9] the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to permit the continued implementation of the amendments to NYSE Rule 123, as begun on September 10, 2001, for a one-month pilot. The NYSE believes it is consistent with investor protection and the public interest. In particular, the Exchange believes the proposed rule change will enable members to execute bona fide arbitrage orders and orders to offset transactions made in error quickly without having to enter the order into the FESC. The proposed rule will still require that these be entered into the FESC within 60 seconds after the execution of the respective order.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing require and designate the proposed rule change

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] 17 CFR 240.19b–4(f)(6).

immediately operative.[10] Accelerating the operative date and waiving the pre-filing requirement will permit the Exchange to continue implementation of NYSE Rule 123(e) without interruption. For this reason, the Commission finds good cause to designate that the proposed rule change become operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–2001–39 and should be submitted by November 14, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26729 Filed 10–23–01; 8:45 am]

BILLING CODE 8010–01–M

[10] For purposes of accelerating the operative date of this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44947; File No. SR–Phlx–2001–90]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Registration Fees for Registered Representatives

October 17, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on October 5, 2001, the Philadelphia Stock Exchange, Inc. ("Plx" and "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b–4 under the Act, the Phlx proposes to amend its fee schedule for Registered Representative registration. Specifically, the Phlx proposes to increase the initial Registered Representative registration fee from $45 to $55 and to increase both the maintenance and transfer registration fee for Registered Representatives from $45 to $50. The proposed effective date of the increase is January 1, 2002.

The text of the proposed rule change appears below. Next text is italics; deletions are in brackets.

Phlx Fee Schedule

* * * * *

Registered Representative Registration

	Delections	New text
Initial	[$45.00]	*$55.00*
Maintenance	[1] 45.00]	[1] *50.00*
Transfer	[45.00]	*50.00*

[1] Annual.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to increase the Exchange's initial Registered Representative registration fee from $45 to $55 and to increase its maintenance and transfer Registered Representative registration fee from $45 to $50. These fees, which were adopted in 1993,[3] and subsequently adjusted in 1995;[4] 1997,[5] 1999[6] and 2000[7] are payable by member organizations that apply for, maintain, and transfer Registered Representative registration.[8] The Proposed fee increases will be effective January 1, 2002. The Phlx intends that, on its behalf, the National Association of Securities Dealers, Inc. ("NASD") will bill for the year 2002 fees in November 2001 and will thereafter collect the fees for the Exchanges.[9] The proposed fees will apply to year 2002 registrations. Any initial registration in 2001 will continue to be subject to the current $45 initial registration fee. Any maintenance and transfer fees incurred for calendar year 2001 will continue to be subject to the $45 maintenance or transfer fee. The purpose of the proposed rule change is to address the increased costs associated with maintaining surveillance and regulatory programs in an increasingly sophisticated trading environment. The Exchange continues to believe that strong surveillance and regulatory programs are essential to the ability of the Exchange to maintain a fair and orderly market for the investment community.

According to the Phlx, the general costs associated with the Exchange's surveillance and regulatory programs have continued to rise. The Phlx notes that since the last Registered Representative fee increase in 2000,[10] costs associated with the Exchange's surveillance and regulatory programs have increased. The Phlx attributes the increase in costs to, among other things, inflationary and competitive pressures upon the cost of staffing, equipment, and computer technology, as well as the expansion of the Exchange surveillance and regulatory programs in response to increased market share. Moreover, the Exchange has listed, and will likely continue to list, new issues and products, which trigger significant additional surveillance and regulatory costs.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(4),[12] in particular, in that is provides for the equitable allocation of reasonable dues, fees, and offer charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Rule 19(b)(3)(A)(ii) of the Act[13] and Rule 19b–4(f)(2) hereunder.[14] The Exchange intends to implement the fees effective as of January 1, 2002. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

[3] See Securities Exchange Act Release No. 32833 (September 14, 1993), 58 FR 48922 (September 20, 1993) (order approving File No. SR–Phlx–93–24).

[4] See Securities Exchange Act Release No. 36348 (October 14, 1993), 58 FR 48922 (September 20, 1993) (order approving File No. SR–Phlx–93–24).

[5] See Securities Exchange Act Release No. 39044 (September 10, 1997), 62 FR 48914 (September 17, 1997) (notice of filing and immediate effectiveness of File No. SR–Phlx–97–41).

[6] See Securities Exchange Act Release No. 42122 (November 10, 1999), 64 FR 63098 (November 18, 1999) (notice of filing and immediate effectiveness of File No. SR–Phlx–99–34).

[7] See Securities Exchange Act Release No. 43547 (November 13, 2000), 65 FR 69980 (November 21, 2000) (notice of filing and immediate effectiveness of File No. SR–Phlx–00–95).

[8] The Phlx originally implemented the fees to offset regulatory costs based on the number of Registered Representative registrations maintained by member organizations.

[9] The Exchange hes represented that initial, transfer, and maintenance Registered Representative registration fees traditionally have been billed and collected by the NASD. Under the proposal, as noted ebove, the NASD will continue to bill for and collect these fees. Telephone conversation between Murray L. Ross, Vice President and Security, Phlx, to Yvonne Fraticelli. Special Counsel, Division of Market Regulation, Commission, on October 15, 2001.

[10] See supra note 7.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2001–90 and should be submitted by November 14, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26726 Filed 10–23–01; 8:45 am]

BILLING CODE 8010–01–M

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3347]

State of Texas; Amendment #7

In accordance with a notice received from the Federal Emergency Management Agency, dated October 17, 2001, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to October 31, 2001.

All other information remains the same, i.e., the deadline for filing applications for loans for economic injury is March 8, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 18, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–26733 Filed 10–23–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region VII Regulatory Fairness Board; Meetings

The Small Business Administration Region VII Regulatory Fairness Board and the SBA Office of the National Ombudsman, will hold a Public Roundtable Thursday, November 1, 2001 at 1 p.m. at the Carlsen Center, Room 232, Johnson County Community College, 12345 College Boulevard, Overland Park, Kansas 66313, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Ms. Barbara Caldwell, Public Information Officer, in writing by letter or fax no later than October 31st , 2001, in order to be put on the agenda. Barbara Caldwell, Public Information Officer, Kansas City District Office, U.S. Small Business Administration, 323 W. 8th Street, Lucas Place, Suite 501 Kansas City, MO 64105, Phone (816) 374–6762 (ext. 244), fax (816) 374–6759.

Steve Tupper,

Committee Management Officer.

[FR Doc. 01–26739 Filed 10–23–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region III Regulatory Fairness Board; Meeting

The Small Business Administration Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman, will hold a Public Roundtable November 13, 2001, at 1 p.m. at Harrisburg City Council, 10 North 2nd Street, Room 101, Harrisburg, PA 17101, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Ms. Susan Harris, in writing by letter or fax no later than November 6, 2001, in order to be put on the agenda. Susan Harris,

Philadelphia District Office, U.S. Small Business Administration, Robert N C Nix Sr., Federal Building 900 Market Street, 5th Floor, Philadelphia, PA 19107, Phone (215) 580–2709, Fax (215) 580–2759.

Steve Tupper,

Committee Management Officer.

[FR Doc. 01–26740 Filed 10–23–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3821]

Privacy Act of 1974: Creation of a New System of Records

Notice is hereby given that the Department of State proposes to create a new system of records, STATE–32, pursuant to the provisions of the Privacy Act of 1974, as amended [5 U.S.C. 552a(r)], and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on October 04, 2001.

STATE–32 is being implemented by the Department of State to facilitate its responsibility for managing the Department's Child Care Subsidy Program.

Any persons interested in commenting on this new system of records may do so by submitting comments in writing to Margaret Peppe, Chief; Programs and Policies Division; Office of IRM Programs and Services; A/RPS/IPS/PP; U.S. Department of State, SA–2; Washington, DC 20522–6001.

This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

This new system description, "Child Care Subsidy Program Records, STATE–32" will read as set forth below.

Dated: October 4, 2001.

William A. Eaton,

Assistant Secretary for the Bureau of Administration, Department of State.

STATE–32

SYSTEM NAME:

Child Care Subsidy Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State, SA–14, 2401 E Street, NW; Washington, DC 20520; and the Federal Employees Education and Assistance Fund (FEEA), 8441 W. Bowles Avenue, Suite 200, Littleton, CO 80123–9501.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department of State who voluntarily apply for a child care subsidy, their spouses and children.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms for a child care subsidy contain personal information including employee's (parent/guardian) name, Social Security Number, position grade, home phone number, home address, total income, number of dependent children, and number of children on whose behalf the parent is applying for a subsidy, information on any tuition assistance received from state/county/local child care subsidy, and information on child care providers used, including their name, address, provider license number, and state of license issued, tuition cost, provider tax identification number, and copies of Internal Revenue Form 1040 for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Consolidated Appropriations Act of 2001, Pub. L. 106–544.

PURPOSE(S):

Information contained in the Child Care Subsidy Program Records is collected and maintained by the Bureau of Human Resources in the administration of its responsibility for managing the Department's Child Care Subsidy Program. The primary use of the records maintained in this system is to establish and verify Department of State employees' eligibility for child care subsidies in order to provide monetary assistance to them. Other uses of the records in the system include verifying the eligibility of child care centers and compliance with regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in this system is used by:

(1) Experts, consultants or contractors of the Department who determine eligibility and/or payment of child care subsidies;

(2) Child care providers in order to verify a covered child's dates of attendance at the provider's facility;

(3) The Bureau of Finance and Management Policy (FMP) of the Department of State, responsible for wages, compensation and allowances;

(4) The Department of Justice, or a court, adjudicative or other administrative body, or a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(1) The Department or any component of the Department;

(2) Any Departmental employee acting in his or her official capacity;

(3) Any Departmental employee acting in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

(4) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and

(b) The Department deems the disclosure to be relevant and necessary to the proceedings.

STORAGE:

Electronic media, hard copy.

RETRIEVABILITY:

Individual name and Social Security Number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes are controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel and contractors; and Federal Employees Education and Assistance Fund employees and contractors. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director; Office of IRM Programs and Services; SA–2; Department of State; 515 22nd Street, NW; Washington, DC 20522–6001.

SYSTEM MANAGER AND ADDRESS:

The Director General of the Foreign Service and Director of Human Resources, Department of State; 2201 C Street, NW; Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Bureau of Human Resources might have records pertaining to themselves should write to the Director; Office of IRM Programs and Services; SA–2; Department of State; 515 22nd Street, NW; Washington, DC 20522–6001. The individual must specify that he/she wishes the Child Care Subsidy Program Records to be checked. At a minimum, the individual should include: name; date and place of birth; current mailing address and zip code; signature; and preferably his/her Social Security Number; a brief description of the circumstances that caused the creation of the record, and the approximate dates which give the individual cause to believe that the Bureau of Human Resources has records pertaining to him/her.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of IRM Programs and Services (address above).

RECORD SOURCE CATEGORIES:

Information is provided by Department of State employees who apply for child care subsidies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 01–26771 Filed 10–23–01; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10862]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The License Implementation Working Group of the Towing Safety Advisory Committee (TSAC) will meet to discuss and develop the performance criteria to be used with the Towing Officer Assessment Record (TOAR). The meetings are open to the public.

DATES: The Working Group will meet on Wednesday, November 14, 2001, from 1 p.m. to 5 p.m., and on Thursday, November 15, 2001, from 8:30 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before November 7, 2001.

ADDRESSES: The Working Group will meet in the 7th Floor, All-Hands Conference Room at Coast Guard's National Pollution Fund Center; 4200 Wilson Blvd.; Arlington, VA. Send written materials and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1); Room 1210, U.S. Coast Guard Headquarters; 2100 Second Street, SW; Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

Security notice: All non-military/government participants MUST first go to the 10th floor and sign in with a photo ID (driver's license). You will then receive a 2-day pass for the meetings.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director, TSAC, telephone 202–267–0229, fax 202–267–4570, or e-mail at: gmiante@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. The performance criteria to be discussed at this working group meeting, when developed, will be announced in the **Federal Register** and made available for review and comment. Sample TOARs were published on May 21, 2001, as part of the Navigation and Vessel Inspection Circular 4–01 (NVIC 4–01) entitled "Licensing and Manning for Officers of Towing Vessels." This NVIC provides guidance on the implementation of a recent interim rule with request for comments published in the **Federal Register** on April 26, 2001 (66 FR 20931; Licensing and Manning for Officers of Towing Vessels, Docket Number: USCG 1999–6224). The NVIC is available on the Internet at *http://www.uscg.mil/hq/g-m/nvic/4–01/n4–01.pdf.* The rulemaking history is also available on the Internet at *http://dms.dot.gov* under the same Docket Number.

Agenda of Meeting

The agenda includes the Working Group's review of the TOARs and the drafting of performance criteria proposals that will be presented to the full Committee for approval at a later date.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director on or before November 7, 2001.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant Executive Director as soon as possible.

Dated: October 17, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 01–26815 Filed 10–23–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Camden and Gloucester Counties, NJ

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for improvements at the interchange of Routes I–295/I–76/NJ 42 in Camden and Gloucester Counties, to enhance the traffic flow within the interchange.

FOR FURTHER INFORMATION CONTACT: Lourdes Castaneda, Area Engineer, or Amy Fox, Environmental Coordinator, Federal Highway Administration, 840 Bear Tavern Road, Suite 310, West Trenton, NJ 08628.

SUPPLEMENTARY INFORMATION: Pursuant to title 23, Code of Federal Regulations, part 771, Environmental Impact Statement and Related Procedures, the FHWA, in cooperation with the New Jersey Department of Transportation (NJDOT), will prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for a proposal to improve the interchange of Routes I–295/I–76/NJ 42 in Camden and Gloucester Counties.

Improvements to the interchange are considered necessary to provide a safer and more efficient roadway. Several alternatives including a "No-Build" Alternative (continuation of the existing condition) will be analyzed.

Letters describing the action and soliciting comments will be sent to appropriate Federal, State, and Local

agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held during the development of this document. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting will be conducted.

To ensure that the full range of issues relating to this proposed action are addressed and all significant issues are identified, written comments, suggestions or questions should be directed to the FHWA at the address provided above or directed to: Mr. Andras Fekete, Manager, Bureau of Environmental Services, New Jersey Department of Transportation, 1035 Parkway Avenue, Trenton, NJ 08625–0600, telephone: (609) 530–2824.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program)

Issued on: October 12, 2001.

Randell Prescott,

Program Operations Director, FHWA—New Jersey Division, Trenton.

[FR Doc. 01–26785 Filed 10–23–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: St. Louis County and the City of St. Louis, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed improvements to I–64 in St. Louis County and the City of St. Louis, Missouri.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Casey, Environmental Projects Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101, Telephone: (573) 638–2620 or Mr. Dave Nichols, Director of Project Development, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751–4586.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS for a proposal to reconstruct the existing I–64 (U.S. Route 40) facility with new interchange configurations and appurtenant roadways/structures in St. Louis County and the City of St. Louis, Missouri. It is intended that the reconstructed facility will meet current standards. A location study will run concurrently with the preparation of the EIS and will provide definitive reasonable alternatives for evaluation in the EIS. The proposed action will accomplish several goals: (1) Replace the deteriorating facility and substandard interchanges, (2) improve safety (and capacity between Spoede Road and I–170), (3) improve operation and decrease congestion, and (4) promote community redevelopment.

The proposed project which includes work on I–170 from south of Brentwood Boulevard to I–64, begins west of Spoede Road in St. Louis County and continues easterly to west of Sarah Street in the City of St. Louis. The project is approximately 12 miles in length. Known potential impacts include residential and/or commercial relocations, acquisition of National Register of Historic Places-eligible properties, access changes, and likely impacts to parkland at the City of St. Louis' Forest Park and Richmond Heights' A.B. Green Athletic Field Complex, both eligible for protection under Section 4(f) of the Department of Transportation Act of 1966. A Department of the Army Section 404 permit and a floodplain development permit from the State Emergency Management Agency may be required.

Alternatives under consideration include (1) no build, (2) build alternatives, and (3) transportation system management options.

To date, substantial preliminary coordination has occurred with local officials and other interested parties. As part of the scoping process, an interagency coordination meeting will be held with all appropriate federal, state, and local agencies. In addition, public information meetings and further meetings with community officials will be held to solicit public and agency input on the reasonable range of alternatives. A location public hearing will be held to present the findings of the Draft EIS. Public notice will be given announcing the time and place of all public meetings and the public hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 15, 2001.

Peggy J. Casey,

Environmental Projects Engineer, Jefferson City.

[FR Doc. 01–26722 Filed 10–23–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–10578]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice announces the FMCSA's receipt of applications from 37 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before November 23, 2001.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard, or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.*

Background

Thirty-seven individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemptions will achieve the required level of safety.

Qualifications of Applicants

1. Loa M. Boggs

Mr. Boggs, age 50, has amblyopia of the left eye. His aided acuity is 20/20 with the right eye and 20/200 with the left. An optometrist who examined him in 2000 stated, "In my opinion, he has sufficient vision to continue operating a commercial vehicle." Mr. Boggs submitted that he has driven straight trucks for 21 years, accumulating 577,000 miles. He holds a Class D driver's license from West Virginia. His driving record shows he has had no accidents or convictions for traffic violations in a CMV for the last 3 years.

2. Anthony Brandano

Mr. Brandano, 35, has amblyopia in his right eye. His corrected vision is 20/40-in the right eye and 20/20 in the left eye. Following an examination in 2001, his ophthalmologist concluded, "It is my opinion patient has sufficient vision to drive a commercial vehicle." Mr. Brandano reported that he has operated straight trucks for 2 years, traveling 100,000 miles, and tractor-trailer combinations for 6 years, traveling 750,000 miles. He holds a Class A CDL from New York, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

3. Jerald D. Davis

Mr. Davis, 58, is blind in the left eye due to trauma in 1959. His best-corrected visual acuity is 20/20 in the right eye. An ophthalmologist examined him in 2001 and affirmed, "In my medical opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Davis submitted that he has driven tractor-trailer combinations for 27 years, accumulating 4.0 million miles. He holds a Class A CDL from Texas. His driving record shows he has had no accidents and one conviction for a moving violation—Speeding—in a CMV during the last 3 years. He exceeded the speed limit by 13 mph.

4. Vernon J. Dohrn

Mr. Dohrn, 65, has amblyopia in his right eye. The corrected vision in his right eye is 20/80- and in the left eye, 20/20. His optometrist examined him in 2001 and certified, "In my opinion, this patient can safely perform the visual tasks required to operate a commercial vehicle even with the vision deficiency in his right eye." Mr. Dohrn stated in his application that he has driven tractor-trailer combination vehicles for 31 years, accumulating 2.7 million miles, and straight trucks for 7 years, accumulating 280,000 miles. He holds a Minnesota Class A CDL. His driving record shows he has had no accidents and one conviction for a moving violation—Drive and/or Pass on Shoulder—in a CMV during the past 3 years.

5. Stanley E. Elliott

Mr. Elliott, 47, has amblyopia in his left eye. His corrected vision is 20/20 in the right eye and $20/70^{-2}$ in the left eye. Following an examination in 2001, his optometrist concluded, "It is my opinion that Mr. Elliott can perform all driving tasks related to operating a commercial vehicle." According to Mr. Elliott's application, he has 4 years of experience driving straight trucks, totaling 150,000 miles, and 12½ years of experience driving tractor-trailers, totaling 312,500 miles. He holds a Utah Class A CDL and has had no accidents or moving violations in a CMV for the past 3 years, according to his driving record.

6. Elmer E. Gockley

Mr. Gockley, 56, has had a corneal scar in his right eye since age 6. His best-corrected visual acuity in the right eye is counting fingers at 2 feet and in the left eye 20/20. An ophthalmologist examined him in 2001 and certified, "I verify that Mr. Gockley has sufficient vision to perform the driving tasks required to operate a commercial vehicle at this time." Mr. Gockley submitted that he has driven straight trucks for 11 years, traveling 220,000 miles, and tractor-trailer combinations for 40 years, traveling 4.2 million miles. He holds a Class A CDL from Pennsylvania, and his driving record for the past 3 years shows no accidents or convictions for moving violations in a CMV.

7. Paul C. Gruenberg

Mr. Gruenberg, 53, is blind in the left eye due to an injury at the age of 12. The corrected visual acuity in his right eye is 20/15. An ophthalmologist examined him in 2001 and stated, "He should have no problem operating commercial vehicle(s)." Mr. Gruenberg reported he has 3 years' and 240,000 miles' experience driving tractor-trailer combinations. He holds a Class A CDL from Florida, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

8. Tommy D. Habben

Mr. Habben, 36, has amblyopia in his left eye. His corrected vision in the right eye is $20/25^{-2}$ and in the left, 20/100. An optometrist examined him in 2001 and certified, "It is my opinion that Mr. Habben has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Habben reported that he has driven straight trucks for 15 years, accumulating 750,000 miles. He holds a Class D driver's license from Tennessee and has no accidents or convictions for moving violations in a CMV on his driving record during the last 3 years.

9. Glenn T. Hehner

Mr. Hehner, 53, had a perforation of his right eye in 1963. He has no light perception in the right eye and 20/20 vision, best-corrected, in the left eye. An ophthalmologist examined him in 2000 and certified, "In my opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Hehner reported that he has 13 years' experience driving straight trucks and has accumulated 1.3 million miles. He holds a Class DMB CDL from Kentucky, and there are no accidents or convictions for moving violations in a CMV on his record for the last 3 years.

10. Carl R. Hunt

Mr. Hunt, 64, has a right eye that is aphakic with a retinal detachment and scar formation. His corrected vision in the right eye is hand motion and in the left, 20/20. Following an examination in 2001, his ophthalmologist stated, "I certify that it is my medical opinion that Carl R. Hunt has sufficient vision to perform driving tasks required to operate a commercial vehicle since his left eye is in excellent visual shape." In his application, Mr. Hunt indicated he has driven straight trucks for 47 years, accumulating 1.4 million miles. He holds a Class E license from the State of Missouri, and his driving record shows he has had no accidents or convictions for moving violations in a CMV during the last 3 years.

11. Shane M. Hunter

Mr. Hunter, 29, has amblyopia in his right eye. His best-corrected visual acuities are 20/60 in the right eye and 20/20 in the left. Following an examination in 2001, his optometrist stated, "In my opinion, Shane has sufficient vision to operate a commercial vehicle as long as he is wearing glasses or contact lenses to give him optimum driving efficiency." In his application, Mr. Hunter indicated he has driven straight trucks for 3 years, accumulating 78,000 miles. He holds an Operator's license from the State of Washington, and his driving record shows he has had no accidents or convictions for moving violations in a CMV during the last 3 years.

12. Thomas M. Ingebretsen

Mr. Ingebretsen, 45, has retinal scars in his left eye due to toxoplasmosis at age 3. His best-corrected visual acuity is 20/20 in the right eye and 20/60 in the left. Following an examination in 2001, his ophthalmologist stated, "I reiterate my statement on my last letter to you that Mr. Ingebretsen has sufficient vision to operate a commercial vehicle according to the guidelines you have submitted to me." Mr. Ingebretsen reported that he has 18 years' experience driving straight trucks, accumulating 409,000 miles, and 12 years' experience driving tractor-trailer combinations, accumulating 420,000 miles. He holds a Class A CDL from California, and his driving record shows he has had no accidents or convictions for moving violations in a CMV over the last 3 years.

13. Lonnie M. Jones

Mr. Jones, 50, is blind in his right eye due to a childhood injury. His best-corrected visual acuity is 20/20 in the left eye. An ophthalmologist examined him in 2001 and affirmed, "In my medical opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Jones submitted that he has driven tractor-trailer combinations for 27 years and straight trucks for 2 years, accumulating 3.2 million miles and 6,000 miles, respectively. He holds a Class A CDL from Georgia. His driving record shows that he has had no accidents and one conviction for a moving violation—Speeding—in a CMV during the last 3 years. He exceeded the speed limit by 17 mph.

14. Martin D. Keough

Mr. Keough, 52, has 20/400 vision in his left eye from an injury over 40 years ago. The visual acuity in his right eye is 20/20^{+}. An optometrist examined him in 2001 and stated, "In my professional opinion this patient can drive a motor vehicle and operate a commercial vehicle safely." Mr. Keough submitted that he has driven straight trucks and tractor-trailer combinations for 25 years, accumulating 250,000 miles in the former and 125,000 miles in the latter. He holds a Class AM CDL from New York, and his driving record for the last 3 years shows no accidents or convictions for traffic violations in a CMV.

15. Ricky J. Knutson

Mr. Knutson, 46, had his left eye enucleated in 1990 due to a choroidal melanoma. The visual acuity in his right eye is 20/20 with correction. His optometrist examined him in 2001 and certified, "Rick has sufficient vision to perform any driving tasks to safely operate a commercial vehicle." In his application, Mr. Knutson indicated he has driven straight trucks for 13 years, accumulating 195,000 miles, and tractor-trailer combinations for 5 years, accumulating 225,000 miles. He holds a Class A CDL from Minnesota, and his driving record for the past 3 years shows he has had no accidents or convictions for traffic violations in a CMV.

16. Randall B. Laminack

Mr. Laminack, 43, has amblyopia in his right eye. His best-corrected visual acuities are 20/200 in the right eye and 20/20 in the left eye. Following a 2001 examination, his optometrist stated, "In my medical opinion, Randy has sufficient vision to perform the driving tasks required to operate a commercial vehicle." According to his application, Mr. Laminack has operated tractor-trailer combinations for 20 years and 2.0 million miles, and straight trucks for 5 years and 500,000 miles. He holds a Class A CDL from Texas, and he has had no accidents or convictions for moving violations in a CMV during the last 3 years.

17. Norman R. Lamy

Mr. Lamy, 49, has amblyopia in his left eye. His best-corrected visual acuity is 20/15 in the right eye and 20/70 in the left eye. An optometrist examined him in 2001 and certified, "Central and peripheral field results are sufficient for driving tasks required to operate a commercial vehicle." Mr. Lamy submitted that he has driven straight trucks for 13 years, accumulating 377,000 miles. He holds a Class B CDL from Massachusetts. His driving record for the last 3 years shows no accidents or convictions for traffic violations in a CMV.

18. James A. Lenhart

Mr. Lenhart, 46, has amblyopia in his right eye. His best-corrected visual acuities are 20/70 in his right eye and 20/20 in his left eye. Following a 2001 examination, his ophthalmologist noted, "It is my medical opinion that Mr. James Lenhart has sufficient vision to perform driving tasks required to operate a commercial vehicle." According to Mr. Lenhart, he has operated straight trucks for 20 years, accumulating 2.0 million miles, and tractor-trailer combinations for 5 years, accumulating 625,000 miles. He holds a West Virginia Class A CDL, and he has no accidents or convictions for moving violations on his driving record for the last 3 years.

19. Dennis L. Lockhart, Sr.

Mr. Lockhart, 55, has amblyopia in his left eye. His corrected vision in the right eye is 20/20 and in the left, 20/400. An optometrist examined him in 2001 and certified, "His condition is congenital and stable, and should not interfere with operating a commercial vehicle." Mr. Lockhart submitted that he has driven tractor-trailer combinations for 15 years traveling 750,000 miles and straight trucks for 7 years traveling 490,000 miles. He holds a Class A CDL from Virginia, and his driving record for the past 3 years shows no accidents or convictions for moving violations in a CMV.

20. Jerry J. Lord

Mr. Lord, 49, has amblyopia in his right eye. His best-corrected visual acuity is 20/25 in the left eye and counting fingers in the right eye. Mr. Lord was examined in 2001 and his ophthalmologist stated, "I certify that in my medical opinion, Mr. Lord has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Lord submitted that he has driven straight trucks for 33 years, accumulating 3.3 million miles. He holds a Maryland Class BM CDL, and his driving record for the last 3 years contains no accidents or convictions for moving violations in a CMV.

21. Raymond P. Madron

Mr. Madron, 50, has had scarring of his right eye since birth due to toxoplasmosis. His vision in the right eye is 20/200^{-1}, not correctable, and in the left eye, 20/20 without correction. Following an examination in 2001, his optometrist affirmed, "Raymond Madron is able to see to operate a commercial vehicle without a vision correction." Mr. Madron holds a Class AM CDL from Maryland and reported that he has driven straight trucks for 7 years, accumulating 105,000 miles, and tractor-trailer combinations for 21 years, accumulating 630,000 miles. His driving record shows no accidents or convictions for moving violations in a CMV for the past 3 years.

22. Ronald S. Mallory

Mr. Mallory, 45, has amblyopia in his left eye. His visual acuity is 20/20+ in the right eye without correction and 20/400 in the left eye, not correctable. An optometrist examined him in 2001 and certified, "He has sufficient vision required to perform driving tasks with a commercial vehicle." Mr. Mallory, who holds a Class A CDL from Oklahoma, reported that he has been driving straight trucks and tractor-trailer combinations for 25 years, accumulating 625,000 miles in the former and 125,000 in the latter. His driving record shows he has had no accidents or convictions for traffic violations in a CMV during the last 3 years.

23. Keith G. McCully

Mr. McCully, 62, has amblyopia in his right eye. His best-corrected visual acuity is 20/200 in the right eye and 20/20^{+} in the left eye. Following an examination in 2000, his optometrist certified, "He does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. McCully submitted that he has driven tractor-trailer combinations for 40 years, accumulating 3.2 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no accidents or convictions for traffic violations in a CMV.

24. Ernest L. McLendon

Mr. McLendon, 51, lost light perception in his right eye in 1985 due to glaucoma. The visual acuity in his left eye is 20/20, best-corrected. An optometrist examined him in 2001 and certified, "He has sufficient vision to operate a commercial vehicle with no medical condition that would compromise his visual field OS [left]." Mr. McLendon submitted that he has driven tractor-trailer combinations for 23 years, traveling 2.7 million miles, and straight trucks for 6 years, traveling 480,000 miles. He holds a Class A CDL from Florida, and his driving record for the past 3 years shows no accidents or convictions for moving violations in a CMV.

25. Charles J. Morman

Mr. Morman, 48, has had a chorioretinal lesion of the right eye since birth. His aided visual acuity is 20/400 with the right eye and 20/20 with the left. An optometrist who examined him in 2001 stated, "In my opinion, Mr. Morman has sufficient vision to operate a commercial motor vehicle." Mr. Morman reported that he has 5 years' experience driving straight trucks, accumulating 250,000 miles, and 20 years' experience driving tractor-trailer combinations, accumulating 1.2 million miles. He holds a Class A CDL from Florida, and his driving record shows he has had no accidents or convictions for moving violations in a CMV over the last 3 years.

26. Eugene C. Murphy

Mr. Murphy, 47, has chorioretinal scarring and a retinal detachment in the right eye due to an injury at age 13. His best-corrected visual acuity in the right eye is hand motion at one foot and in the left 20/20. Following an examination in 2001, his ophthalmologist commented, "In my medical opinion, Mr. Murphy has significant binocular visual acuity as well as horizontal visual field to meet the requirements to operate a commercial vehicle." Mr. Murphy indicated he has driven straight trucks for 20 years and 910,000 miles. He holds a Class B CDL from Maine, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

27. Jack E. Potts, Jr.

Mr. Potts, 28, has amblyopia of the left eye. His best-corrected visual acuities are 20/20 in the right eye and 20/200 in the left eye. In 2001 his optometrist examined him and affirmed, "Upon completion of Jack's most recent visual examination, I have determined that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Potts submitted that he has 6 years of experience driving straight trucks for 165,000 miles. He holds a Class C license from Pennsylvania, and his driving record for the last 3 years has no accidents or convictions for a moving violation in a CMV.

28. Bernard A. Ranly

Mr. Ranly, 50, has amblyopia of the left eye. The visual acuity of his right eye is 20/20 uncorrected and of the left eye 20/50 corrected. His optometrist examined him in 2001 and certified, "It is my opinion, since this is a long-term condition, that Mr. Ranly has adapted very well and that Mr. Ranly has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Ranly reported that he has driven tractor-trailer combinations for 29 years, accumulating 3.1 million miles. He holds a Class AM CDL from Texas, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

29. John E. Rogstad

Mr. Rogstad, 50, has amblyopia of the left eye. His aided acuity is 20/20 with the right eye and 20/200 with the left eye. An optometrist who examined him in 2001 stated, "It is my opinion that Mr. Rogstad has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Rogstad reported that he has driven straight trucks for 30 years, accumulating 360,000 miles. He holds a Class ABCD CDL from Wisconsin, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

30. Jerry W. Russell

Mr. Russell, 55, has had a cataract in his right eye since birth. His vision is light perception only in the right eye and 20/20 in the left eye. His optometrist examined him in 2001 and certified, "Because Mr. Russell's condition has been present since birth, there is no risks of further changes, and he is safe to perform the task of driving a commercial vehicle." Mr. Russell reported that he has driven straight trucks for 7 years, accumulating 218,400 miles. He holds a Class D license from Kentucky. His driving record for the last 3 years shows no accidents and no convictions for moving violations in a CMV.

31. Stephen G. Sniffin

Mr. Sniffin, 52, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/400 in the left. His ophthalmologist examined him in 2000 and noted, "Patient has

sufficient vision to operate a commercial vehicle." Mr. Sniffin submitted that he has driven straight trucks for 32 years, accumulating 1.3 million miles, and buses for 4 years, accumulating 40,000 miles. He holds a Class A CDL, and his driving record shows he has had no accidents or convictions for moving violations in a CMV in the last 3 years.

32. John R. Snyder

Mr. Snyder, 31, has amblyopia in his right eye. His best-corrected vision is 20/80 in the right eye and 20/20 in the left. An ophthalmologist examined him in 2000 and certified, "It is my opinion that Mr. John Snyder has sufficient vision to perform any driving task required to operate a commercial vehicle." Mr. Snyder reported that he has operated tractor-trailer combinations for 8 years and 560,000 miles, and straight trucks for 13 years and 65,000 miles. He holds a Class A license from the State of Washington. His driving record for the last 3 years shows he has had no accidents and one conviction for a moving violation—Failure to Yield Right of Way to Emergency Vehicle—in a CMV.

33. Darwin J. Thomas

Mr. Thomas, 52, has amblyopia in his left eye. His best-corrected visual acuities are 20/25 in the right eye and 20/200 in the left. Following an examination in 2001, his optometrist certified, "In my medical opinion, Mr. Thomas has sufficient vision to continue to drive his commercial vehicle." Mr. Thomas submitted that he has 17 years' and 2.0 million miles' experience operating tractor-trailer combinations, and 2 years' and 12,000 miles' experience operating straight trucks. He holds a Class A CDL from Pennsylvania, and his driving record shows he has had no accidents or convictions for moving violations in a CMV for the last 3 years.

34. Rene R. Trachsel

Mr. Trachsel, 43, has had a macular scar in his left eye since January 1994. The vision in his right eye is 20/20 and in the left eye, 20/200. Following an examination in 2001, his ophthalmologist certified, "In my opinion, his vision is adequate to perform all tasks required to operate a commercial vehicle, as for practical purposes his central vision is 20/20 by a virtue of the central vision in the right eye, and his peripheral vision is entirely unaffected." In his application, Mr. Trachsel stated he has driven tractor-trailer combinations for 15 years, accumulating 122,850 miles. He holds an Oregon Class A CDL. His official driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

35. Stephen D. Vice

Mr. Vice, 46, has amblyopia in his right eye. His best-corrected visual acuities are 20/70^{-1} in the right eye and 20/20 in the left. An optometrist examined him in 2001 and certified, "In my personal opinion, Mr. Vice's vision is adequate to operate a commercial vehicle." Mr. Vice submitted that he has driven buses for 4 years, accumulating 35,000 miles, and straight trucks for 2 years, accumulating 20,000 miles. He holds a Class DB Operator/CDL from Kentucky, and his driving record for the last 3 years shows he has had no accidents or convictions for moving violations in a CMV.

36. John H. Voigts

Mr. Voigts, 49, has had a corneal opacity in his left eye since birth. The corrected vision in his right eye is 20/20 and in the left eye, light perception only. Following an examination in 2001, his optometrist certified, "I feel there is no reason why he cannot continue to drive commercial because of his vision." According to his application, Mr. Voigts has operated straight trucks for 30 years, accumulating 2.2 million miles, and tractor-trailer combinations for 27 years, accumulating 2.7 million miles. He holds a Class A CDL from Arizona. His official driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

37. Kendle F. Waggle, Jr.

Mr. Waggle, 38, has been aphakic in his right eye since birth. His aided acuity is 20/150 with the right eye and 20/20 with the left eye. An optometrist who examined him in 2001 stated, "In my medical opinion, since he has driven a commercial vehicle with this vision condition for many years, I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle as he has in the past." Mr. Waggle submitted that he has driven straight trucks and tractor-trailer combinations for 15 years, accumulating 150,000 miles in the former and 772,500 miles in the latter. He holds a Class A CDL from Indiana, and his driving record for the last 3 years shows no accidents or convictions for traffic violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the FMCSA may publish in the **Federal Register** a notice of final determination at any time after the close of the comment period.

Issued on: October 19, 2001.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development.

[FR Doc. 01–26810 Filed 10–23–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; Nissan

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Nissan North America, Inc., (Nissan) for an exemption of a high-theft line (codenamed "Model M") from the parts-marking requirements of the Federal motor vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. Nissan requested confidential treatment for its information and attachments submitted in support of its petition. The agency will address Nissan's request for confidential treatment in a separate letter.

DATES: The exemption granted by this notice is effective beginning with the (confidential) model year.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington DC 20590. Ms. Proctor's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated June 21, 2001, Nissan North America, Inc. (Nissan), requested exemption from the parts-marking requirements of the theft prevention standard for a motor vehicle line. The nameplate of the line and the model year of introduction are confidential. The petition requested an exemption from parts-marking pursuant to 49 CFR 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Based on the evidence submitted by Nissan, the agency believes that the antitheft device for the Nissan "Model M" vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

Section 33106(b)(2)(D) of title 49, United States Code, authorized the Secretary of Transportation to grant an exemption from the parts-marking requirements for not more than one additional line of a manufacturer for MYs 1997–2000. However, it does not address the contingency of what to do after model year 2000 in the absence of a decision under Section 33103(d). 49 U.S.C. 33103(d)(3) states that the number of lines for which the agency can grant an exemption is to be decided after the Attorney General completes a review of the effectiveness of antitheft devices and finds that antitheft devices are an effective substitute for parts-marking. The Attorney General has not yet made a finding and has not decided the number of lines, if any, for which the agency will be authorized to grant an exemption. Upon consultation with the Department of Justice, we determined that the appropriate reading of Section 33103(d) is that the National Highway Traffic Safety Administration (NHTSA) may continue to grant parts-marking exemptions for not more than one additional model line each year, as specified for model years 1997–2000 by 49 U.S.C. 33106(b)(2)(C). This is the level contemplated by the Act for the period before the Attorney General's decision. The final decision on whether to continue granting exemptions will be made by the Attorney General at the conclusion of the review pursuant to Section 330103(d)(3).

Nissan's submittal is considered a complete petition, as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Nissan requested confidential treatment for the information submitted in support of its petition. The agency will address Nissan's request for confidential treatment in a separate letter.

In its petition, Nissan provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an engine-immobilizer and alarm system. The antitheft device is a passive system, and is activated by turning the ignition switch to the "OFF" position using the proper ignition key.

In order to ensure the reliability and durability of the device, Nissan conducted tests based on its own specified standards. Nissan provided a detailed list of tests conducted and believes that its device is reliable and durable since the device complied with its specified requirements for each test.

Nissan compared the device proposed for its vehicle line with devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Nissan stated that its proposed device is functionally equivalent to the systems used in previous vehicle lines which were deemed effective and granted exemptions from the parts-marking requirements of the theft prevention standard. Additionally, theft data have indicated a decline in theft rates for vehicle lines that have been equipped with antitheft devices similar to that which Nissan proposes to install on the new line.

On the basis of this comparison, Nissan has concluded that the proposed antitheft device is no less effective than those devices installed on lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by Nissan, the agency believes that the antitheft device for the Nissan vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

The agency concludes that the device will provide five of the types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR part 543.6(a)(4) and (5), the agency finds that Nissan has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Nissan provided about its device, much of which is confidential. This confidential information included a description of reliability and functional tests conducted by Nissan for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for its vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. Advanced listing, including the release of future product nameplates, is necessary in order to notify law enforcement agencies of new models exempted from the parts-marking requirements of the Theft Prevention Standard. Therefore, since Nissan has been granted confidential treatment for its vehicle line, the confidential status of the vehicle line will be protected until the introduction of its vehicle line into the market place. At that time, Appendix A–1 will be revised to reflect the nameplate of Nissan's exempted vehicle line.

If Nissan decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, part 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which

might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: October 18, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–26811 Filed 10–23–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 18, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 23, 2001 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0034.
Form Number: POD 315.
Type of Review: Extension.
Title: Depositor's Application to Withdraw Postal Savings.
Description: This form is prepared by the applicant for payment of a Postal Savings Account. This form is used to identify the depositor and ensure that payment is made to the proper person. POD form was formerly used by the Post Office Department for processing payments when payments of accounts were their responsibility.
Respondents: Individuals or households.
Estimated Number of Respondents: 700.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 350 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 144, PGP II, Hyattsville, MD 20782

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–26804 Filed 10–23–01; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 16, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 23, 2001 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0337.
Recordkeeping Requirement ID Number: ATF REC 5150/1.
Type of Review: Extension.
Title: Usual and Customary Business Records Relating to Denatured Spirits.
Description: Denatured Spirits are used for nonbeverage industrial purposes in the manufacture of personal household products. Records ensure spirits accountability. Tax revenue and public safety are protected.
Respondents: Business or other for-profit, State, Local or Tribal Government.
Estimated Number of Recordkeepers: 3,111.
Estimated Burden Hours Per Recordkeeper: 0.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512–0363.
Recordkeeping Requirement ID Number: ATF REC 5210/6.
Type of Review: Extension.
Title: Tobacco Products Manufacturers—Supporting Records for Removals for the Use of the United States.
Description: Used by tobacco products manufacturers to record removals of tobacco products for use of the United States. Used by ATF to verify that removals were tax exempt. Needed to trace transactions for protection of the revenue.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 101.
Estimated Burden Hours Per Recordkeeper: 5 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 505 hours.

OMB Number: 1512–0373.
Recordkeeping Requirement ID Number: ATF REC 5400/3.
Type of Review: Extension.
Title: RECORDS AND SUPPORTING DATA: Importation, Receipt, Storage, and Disposition by Licensed Explosives Manufacturers, Importers, Dealers, and Users.
Description: These records show daily activities in the importation, manufacture, receipt, storage, and disposition of all explosive materials covered under 18 U.S.C. Chapter 40. The records are used to show where and to whom explosives materials are sent, thereby ensuring that any diversions will be readily apparent and, if lost or stolen, ATF will be immediately notified.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 10,519.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 132,754 hours.

OMB Number: 1512–0391.
Recordkeeping Requirement ID Number: ATF REC 5210/10.
Type of Review: Extension.
Title: Tobacco—Record of Disposition of More than 60,000 Cigarettes in a Single Transaction.
Description: Records must be maintained by tobacco products manufacturers and cigarette distributors showing details of large cigarette transactions. The records are also used to trace the movement of contraband cigarettes and helps curtail the illicit traffic in cigarettes between states.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 9,500.
Estimated Burden Hours Per Recordkeeper: 120 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1,140,000 hours.

Clearance Officer: Frank Bowers (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–26805 Filed 10–23–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 16, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 23, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1752.
Revenue Procedure Number: Revenue Procedure 2001–42.
Type of Review: Extension.
Title: Modified Endowment Contract Correction Program Extension.
Description: This revenue procedure allows issuers (life insurance companies) to remedy inadvertent non-egregious failures to comply with the modified endowment rules set forth in section 7702A of the Internal Revenue Code.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 100 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–26806 Filed 10–23–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Internal Revenue Service; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Information Reporting Program Advisory Committee (IRPAC) will hold a public meeting on Thursday, November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Lorenza Wilds, Office of National Public Liaison, CL:NPL:PAC, Room 7565 IR, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: 202–622–6440 (not a toll-free number). E-mail address: *public_liaison@irs.gov.*

SUPPLEMENTARY INFORMATION: By notice herein given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRPAC will be held on Thursday, November 1, 2001, from 9 a.m. to 4 p.m. in Room 3313, main Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC 20224. Issues to be discussed include: TIN matching system/automatic penalty waiver; questionable W–4s; gross proceeds on periodic payment of principal on debt obligation; affiliate taxpayer sharing W–8/W–9; enforcement of social security card presentation; recommendations to reporting requirements for SEP/SARSEP plans; uniformity of payees copy of schedule K–1 (Form 1065); and attorney reporting regulations. Reports from the four IRPAC sub-groups, Wage & Investment/Small Business/Self Employed, Large and Mid-Size Business, Tax Exempt and Government Entities and Multi-Interest will also be presented and discussed. Last minute agenda changes may preclude advance notice. The meeting room accommodates approximately 50 people, IRPAC members and Internal Revenue Service officials inclusive. Due to limited seating and security requirements, please call Lorenza Wilds to confirm your attendance. Ms. Wilds can be reached at (202) 622–6440. Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for purposes of security clearance. Please use the main entrance at 1111 Constitution Avenue to enter the building.

Should you wish the IRPAC to consider a written statement, please call (202) 622–6440, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:PAC, 1111 Constitution Avenue, NW., Room 7565 IR, Washington, DC 20224, or e-mail: *public_liaison@irs.gov.*

Dated: October 16, 2001.

Nancy A. Thoma,

Designated Federal Official, Acting Director, National Public Liaison.

[FR Doc. 01–26807 Filed 10–23–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Open Meeting

ACTION: Notice.

SUMMARY: An open meeting of the Pacific-Northwest Citizen Advocacy Panel will be held in Seattle, Washington.

DATES: The meetings will be held Friday November 16, 2001 and Saturday November 17, 2001.

FOR FURTHER INFORMATION CONTACT: Judi L. Nicholas at 1–888–912–1227 or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday November 16, 2001, from 9 a.m. to 4:30 p.m. at the Jackson Federal Building located at 915 Second Avenue, Room 3442, Seattle, WA, 98714; Saturday, November 17, 2001, from 9 a.m. to Noon at the Port of Seattle, Pier 69 Commission Chambers located at 2711 Alaskan Way, Seattle, Washington.

The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Judi L. Nicholas, CAP Office, 915 2nd Avenue, Room 442, Seattle, WA 98174. Due to limited conference space, notification of intent to attend the meeting must be made with Judi L. Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The Agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 1, 2001.

Cindy Vanderpool,

Director, CAP, Communications and Liaison.

[FR Doc. 01–26808 Filed 10–23–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of The Florida Citizen Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Florida Citizen Advocacy Panel will be held in Sunrise CAP Office, Florida.

DATES: The meeting will be held Friday, November 16, 2001, and Saturday, November 17, 2001.

FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday, November 16, 2001, from 6 p.m. to 9 p.m. and Saturday, November 17, 2001, from 9 a.m. to 12 p.m, at Sunrise CAP Office, 7771 W Oakland Park Boulevard Suite 225, Sunrise, Florida 33351. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351, or e-mail *firstcapsfl@mindspring.com*. Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973, or e-mail *firstcapsfl@mindspring.com*.

The agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 17, 2001.

Cindy Vanderpool,

Director, CAP, Communications and Liaison.

[FR Doc. 01–26809 Filed 10–23–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before December 24, 2001.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.gov*. In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Deborah Goddard, Program Analyst (Compliance), Compliance Policy and Specialty Examinations, (202) 906–6438, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Loans in Areas Having Special Flood Hazards.

OMB Number: 1550–0088.

Form Number: N/A.

Regulation requirement: 12 CFR 572.

Description: Lending institutions are required by statute and OTS regulations to use the standard flood hazard determination form developed by FEMA when determining whether property securing the loan is or will be located in a special flood hazard and is required to retain a copy of the completed form.

Type of Review: Renewal

Affected Public: Savings Associations and Savings Banks.

Estimated Number of Respondents: 1,035.

Estimated Frequency of Response: Annually.

Estimated Burden Hours per Response: .25 hours.

Estimated Total Burden: 27,168.75 hours.

Clearance Officer: Sally W. Watts, (202) 906–7380, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 18, 2001.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 01–26735 Filed 10–23–01; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Wednesday,
October 24, 2001

Part II

Department of Health and Human Services

Food and Drug Administration

Annual Comprehensive List of Guidance Documents at the Food and Drug Administration; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0046]

Annual Comprehensive List of Guidance Documents at the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing its annual comprehensive list of all guidance documents currently in use at the agency. This list is being published under 21 CFR 10.115(n)(2) of FDA's regulation on Good Guidance Practices (GGPs). This list is intended to inform the public of the existence and availability of all of our current guidance documents. It also provides information on guidance documents that have been added or withdrawn in the past year.

DATES: We welcome general comments on this list and on agency guidance documents at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov.dockets/ecomments. We have provided information in the tables below on where to obtain a single copy of any of the guidance documents listed.

FOR FURTHER INFORMATION CONTACT: Carol A. Kimbrough, Office of Policy, Planning, and Legislation (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3480.

SUPPLEMENTARY INFORMATION:

I. Background

We published our final rule on GGPs in the **Federal Register** of September 19, 2000 (65 FR 56468), and they became effective October 19, 2000. GGPs are intended to ensure involvement of the public in the development of guidance documents, and to enhance understanding of the availability, nature, and legal effect of such guidance. We committed in the GGPs to publishing annually a comprehensive list of guidance documents. This list updates a comprehensive list published July 21, 2000 (65 FR 45428).

The following comprehensive list identifies all final guidances that have been issued and are in use, and all draft guidances that have been distributed for comment and not for implementation. Any guidances that have been withdrawn this year are also listed. We have organized the documents by the issuing Center or Office within FDA, and we have identified the pertinent intended users or regulatory activities. The dates in the list refer to the date we issued the guidances or, where applicable, the last date we revised a document. Because each issuing Center or Office maintains its own database, there are slight variations in the way in which they provide information on the tables below.

The following most frequently used Internet sites for agency guidances are provided for future reference:

CBER: http://www.fda.gov/cber/guidelines.htm

CDER: http://www.fda.gov/cder/guidance/index.htm

CDRH: http://www.fda.gov/cdrh/guidance.html

CFSAN: http://www.cfsan.fda.gov/dms/guidance.html

CVM: http://www.fda.gov/cvm/guidance/published.htm#documents

ORA: http://www.fda.gov/ora/compliance—;ref

II. Guidance Documents Issued by the Center for Biologics Evaluation and Research (CBER)

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Interpretative Guidelines of the Source Plasma (Human) Standards	October 2, 1973	FDA Regulated Industry	Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within U.S.) or 301–827–3844 (outside U.S. and local to Rockville, MD). Internet access: http://www.fda.gov/cber
Guidelines for Reviewing Amendments to Include Plasmapheresis of Hemophiliacs	July 20, 1976	Do	Do
Package Insert: Immune Serum Globulin (Human)	March 30, 1978	Do	Do
Guidelines for Interpretation of Potency Test Results for All Forms of Adsorbed Diphtheria and Tetanus Toxoids	April 12, 1979	Do	Do
Guidelines for Immunization of Source Plasma (Human) Donors With Blood Substances	June 1, 1980	Do	Do
Collection of Human Leukocytes for Further Manufacturing (Source Leukocytes)	January 28, 1981	Do	Do
Platelet Testing Guidelines—Approval of New Procedures and Equipment	July 1, 1981	Do	Do

II. Guidance Documents Issued by the Center for Biologics Evaluation and Research (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Revised Guideline for Adding Heparin to Empty Containers for Collection of Heparinized Source Plasma (Human)	August 1, 1981	Do	Do
Requirements for Infrequent Plasmapheresis Donors	August 27, 1982	Do	Do
Recommendations to Decrease the Risk of Transmitting AIDS From Plasma Donors	March 24, 1983	Do	Do
PTC in the Manufacture of In Vitro Monoclonal Antibody Products Subject to Licensure	June 20, 1983	Do	Do
Draft PTC in the Production and Testing of Interferon Intended for Investigational Use in Humans (Interferon Test Procedures)	July 28, 1983	Do	Do
Interstate Shipment of Interferon for Investigational Use in Laboratory Research Animals or Tests in Vitro	November 21, 1983	Do	Do
Deferral of Blood Donors Who Have Received the Drug Accutane (Isotretinoin/Roche); 13-cis-retinoic acid)	February 28, 1984	Do	Do
Equivalent Methods for Compatibility Testing	December 14, 1984	Do	Do
Plasma Derived From Therapeutic Plasma Exchange	December 14, 1984	Do	Do
Draft PTC in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology	April 10, 1985	Do	Do
Guidelines for Meningococcal Polysaccharide Vaccines	July 17, 1985	Do	Do
Guideline for the Uniform Labeling of Blood and Blood Components	August 1, 1985	Do	Do
Recommended Methods for Short Ragweed Pollen Extracts	November 1, 1985	Do	Do
Reduction of the Maximum Platelet Storage Period to 5 Days in an Approved Container	June 2, 1986	Do	Do
To In Vitro Diagnostic Reagent Manufacturers: Guidance on the Labeling of Human Blood Derived in Vitro Diagnostic Devices in Regard to Labeling for HTLV–III/LAV Antibody Testing	December 6, 1986	Do	Do
Guideline for Submitting Documentation for the Stability of Human Drugs and Biologics	February 1, 1987	Do	Do
Guideline for Submitting Documentation for Packaging for Human Drugs and Biologics	February 1, 1987	Do	Do
Guideline on General Principles of Process Validation	May 1, 1987	Do	Do
Guideline on Sterile Drug Products Produced by Aseptic Processing	June 1, 1987	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Deferral of Donors Who Have Received Human Pituitary-Derived Growth Hormone	November 25, 1987	Do	Do
Guideline on Validation of the Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices	December 1, 1987	Do	Do
Recommendations for the Management of Donors and Units That Are Initially Reactive for Hepatitis B Surface Antigen (HBsAg)	December 2, 1987	Do	Do
Extension of Dating Period for Storage of Red Blood Cells, Frozen	December 4, 1987	Do	Do
To Licensed In Vitro Diagnostic Manufacturers: Handling of Human Blood Source Materials	December 23, 1987	Do	Do
Recommendations for Implementation of Computerization in Blood Establishments	April 6, 1988	Do	Do
Control of Unsuitable Blood and Blood Components	April 6, 1988	Do	Do
Discontinuance of Prelicensing Inspection for Immunization Using Licensed Tetanus Toxoid and Hepatitis B and Rabies Vaccines	July 7, 1988	Do	Do
Physician Substitutes	August 15, 1988	Do	Do
To Licensed Manufacturers of Blood Grouping Reagents: Criteria for Exemption of Lot Release	August 26, 1988	Do	Do
Revised Guideline for the Collection of Platelets, Pheresis	October 7, 1988	Do	Do
To Manufacturers of HTLV–I Antibody Test Kits: Antibody to Human T-Cell Lymphotropic Virus, Type I (HTLV–I) Release Panel I	October 18, 1988	Do	Do
Draft Guideline for the Design of Clinical Trials for Evaluation of Safety and Efficacy of Allergenic Products for Therapeutic Uses	November 1, 1988	Do	Do
HTLV–I Antibody Testing	November 29, 1988	Do	Do
Use of Recombigen HIV–1 LA Test	February 1, 1989	Do	Do
Guidelines for Release of Pneumococcal Vaccine, Polyvalent	February 1, 1989	Do	Do
Guidance for Autologous Blood and Blood Components	March 15, 1989	Do	Do
HTLV–I Antibody Testing	July 6, 1989	Do	Do
Use of Recombigen HIV–1 Latex Agglutination (LA) Test	August 1, 1989	Do	Do
Draft PTC in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Antibodies to Human Immunodeficiency Virus Type 1 (1989)	August 8, 1989	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
PTC in the Collection, Processing and Testing of Ex Vivo Activated Mononuclear Leukocytes for Administration to Humans	August 22, 1989	Do	Do
Information Relevant to the Manufacture of Acellular Pertussis Vaccine	August 23, 1989	Do	Do
FDA Regulated Industries for Drug Master Files	September 1, 1989	Do	Do
Requirements for Computerization of Blood Establishments	September 8, 1989	Do	Do
Abbott Laboratories' HIVAG–1 Test for HIV–1 Antigen(s) Not Recommended for Requirements for Computerization of Blood Establishments	October 4, 1989	Do	Do
Guideline for Collection of Blood or Blood Products From Donors With PositiveTests for Infectious Disease Markers ("High Risk" Donors)	October 26, 1989	Do	Do
Guideline for Determination of Residual Moisture in Dried Biological Products	January 1, 1990	Do	Do
Autologous Blood Collection and Processing Procedures	February 12, 1990	Do	Do
Cytokine and Growth Factor Pre-Pivotal Trial Information Package	April 2, 1990	Do	Do
Use of Genetic Systems HIV–2 EIA	June 21, 1990	Do	Do
PTC in the Safety Evaluation of Hemoglobin-Based Oxygen Carriers	August 21, 1990	Do	Do
Guideline on the Preparation of Investigational New Drug Products (Human and Animal)	March 1, 1991	Do	Do
FDA Request for Information on Blood Storage Patterns and Red Cell Contamination by Yersinia Enterocolitica	March 15, 1991	Do	Do
Revision to October 26, 1989, Guideline for Collection of Blood or Blood Products From Donors With Positive Tests for Infectious Disease Markers (High Risk Donors)	March 17, 1991	Do	Do
Deficiencies Relating to the Manufacture of Blood and Blood Components	March 20, 1991	Do	Do
Responsibilities of Blood Establishments Related to Errors and Accidents in the Manufacture of Blood and Blood Components	March 20, 1991	Do	Do
To Biologic Product Manufacturers—Controlling Materials of Bovine or Ovine Origin	May 3, 1991	Do	Do
FDA Recommendations Concerning Testing for Antibody to Hepatitis B Core Antigen (Anti-HBc)	September 10, 1991	Do	Do
Disposition of Blood Products Intended for Autologous Use That Test Repeatedly Reactive for Anti-HCV	September 11, 1991	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Clarification of FDA Recommendations for Donor Deferral and Product Distribution Based on the Results of Syphilis Testing	December 12, 1991	Do	Do
Recommended Methods for Blood Grouping Reagents Evaluation	March 1, 1992	Do	Do
Recommended Methods for Evaluating Potency, Specificity and Reactivity of Anti-Human Globulin	March 1, 1992	Do	Do
PTC in the Design and Implementation of Field Trials for Blood Grouping Reagents and Anti-Human Globulin	March 1, 1992	Do	Do
PTC in the Manufacture of In Vitro Monoclonal Antibody Products for Further Manufacturing into Blood Grouping Reagent and Anti-Human Globulin	March 1, 1992	Do	Do
Supplement to the PTC in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology: Nucleic Acid Characterization and Genetic Stability	April 6, 1992	Do	Do
Revised Recommendations for the Prevention of Human Immunodeficiency Virus (HIV) Transmission by Blood and Blood Products	April 23, 1992	Do	Do
Use of Fluorognost HIV–1 Immunofluorescent Assay (IFA)	April 23, 1992	Do	Do
Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	April 23, 1992	Do	Do
Exemptions to Permit Persons With a History of Viral Hepatitis Before the Age of Eleven Years to Serve as Donors of Whole Blood and Plasma; Alternative Procedures, 21 CFR 640.120	April 23, 1992	Do	Do
Changes in Equipment for Processing Blood Donor Samples	July 21, 1992	Do	Do
Nomenclature for Monoclonal Blood Grouping Reagents	September 28, 1992	Do	Do
Volume Limits for Automated Collection of Source Plasma	November 4, 1992	Do	Do
FDA's Policy Statement Concerning Cooperative Manufacturing Arrangements for Licensed Biologics	November 25, 1992	Do	Do
Revision of October 7, 1988, Memo Concerning Red Blood Cell Immunization Programs	December 16, 1992	Do	Do
Draft PTC in the Characterization of Cell Lines Used to Produce Biologicals	July 12, 1993	Do	Do
CBER Refusal to File (RTF) Guidance for Product and Establishment License Applications	July 12, 1993	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guidance on Alternatives to Lot Release for Licensed Biological Products	July 20, 1993	Do	Do
Recommendations Regarding License Amendments and Procedures for Gamma Irradiation of Blood Products	July 22, 1993	Do	Do
Deferral of Blood and Plasma Donors Based on Medications	July 28, 1993	Do	Do
Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	August 19, 1993	Do	Do
Changes in Administrative Procedures	September 9, 1993	Do	Do
To Sponsors of INDs Using Retroviral Vectors	September 20, 1993	Do	Do
Draft Guideline for the Validation of Blood Establishment Computer Systems	September 28, 1993	Do	Do
Methods of the Allergenic Products Testing Laboratory	October 1, 1993	Do	Do
Application of Current Statutory Authorities to Human Somatic Cell Therapy Products and Gene Therapy Products; Notice	October 14, 1993	Do	Do
Guideline for Adverse Experience Reporting for Licensed Biological Products	October 15, 1993	Do	Do
Guidance Regarding Post Donation Information Reports	December 10, 1993	Do	Do
To Manufacturers: Bovine Derived Materials (BSE)	December 17, 1993	Do	Do
Donor Suitability Related to Laboratory Testing for Viral Hepatitis and a History of Viral Hepatitis	December 22, 1993	Do	Do
Compliance Program Guidance Manual (Drugs and Biologics)	1994	Do	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, 703–605–6050 (NTIS Order No. 94–920699)
Recommendations for the Invalidation of Test Results When Using Licensed Viral Marker Assays to Screen Donors	January 3, 1994	Do	Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within U.S.) or 301–827–3844 (outside U.S. and local to Rockville, MD). Internet access: http://www.fda.gov/cber
To Sponsors of INDs for Human Immunoglobulin Products	May 23, 1994	Do	Do
To Manufacturers of Licensed Anti-HIV Test Kits	May 26, 1994	Do	Do
Recommendations for Deferral of Donors for Malaria Risk	July 26, 1994	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
ICH Guideline for Industry: Studies in Support of Special Populations	August 1, 1994	Do	Do
OELPS, Advertising and Promotional Labeling Staff Procedural Guidance Document (Draft)	August 1, 1994	Do	Do
ICH Guideline for Industry: Stability Testing of New Drug Substances and Products	September 1, 1994	Do	Do
Guide to Inspections of Blood Banks, Division of Field Investigations, Office of Regional Operations, Office of Regulatory Affairs	September 1, 1994	FDA Personnel	Do
Letter to Manufacturers of Immune Globulin Intravenous (Human) (IGIV), Aseptic Meningitis Syndrome	October 3, 1994	FDA Regulated Industry	Do
Guidance on Alternatives to Lot Release for Licensed Biological Products	October 27, 1994	Do	Do
Guidance for Industry: For the Submission of Chemistry, Manufacturing, and Controls Information for Synthetic Peptide Substances	November 1994	Do	Do
Recommendations to Users of Medical Devices That Test for Infectious Disease Markers by Enzyme Immunoassay (EIA) Test Systems	December 20, 1994	Do	Do
To Manufacturers of Immune Globulin Products: Testing for Hepatitis C Virus RNA Immunoglobulin	December 27, 1994	Do	Do
Timeframe for Licensing Irradiated Blood Products	February 3, 1995	Do	Do
Home Specimen Collection Kit Systems Intended for Human Immunodeficiency Virus (HIV–1 and/or HIV–2) Antibody Testing; Revisions to Previous Guidance	February 23, 1995	Do	Do
ICH Guideline for Industry: Clinical Safety Data Management: Definitions and Standards for Expedited Reporting	March 1, 1995	Do	Do
To Manufacturers of Intramuscular Immune Globulin Products: HCV RNA Testing by PCR	March 3, 1995	Do	Do
Revision of 8/27/82 FDA Memo: Requirements for Infrequent Plasmapheresis Donors	March 10, 1995	Do	Do
To Manufacturers of Intramuscular Immune Globulin Products: Additional Information Regarding HCV RNA Testing by PCR	March 13, 1995	Do	Do
To Health Professionals: Implementation of Testing for HCV RNA by PCR for Immune Globulin Products for Intramuscular Administration	March 14, 1995	Do	Do
To All Establishments Performing Red Blood Cell Immunizations: Revised Recommendations for Red Blood Cell Immunization Programs for Source Plasma	March 14, 1995	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Recommendations for the Deferral of Current and Recent Inmates of Correctional Institutions as Donors of Whole Blood, Blood Components, Source Leukocytes and Source Plasma	June 8, 1995	Do	Do
Guideline for Quality Assurance in Blood Establishments	July 11, 1995	Do	Do
FDA Guidance Document Concerning Use of Pilot Manufacturing Facilities for the Development and Manufacture of Biological Products	July 11, 1995	Do	Do
Disposition of Products Derived From Donors Diagnosed With, or at Known High Risk for, Creutzfeldt-Jakob Disease	August 8, 1995	Do	Do
Recommendations for Labeling and Use of Units of Whole Blood, Blood Components, Source Plasma, Recovered Plasma or Source Leukocytes Obtained From Donors With Elevated Levels of Alanine Aminotransferase (ALT)	August 8, 1995	Do	Do
Precautionary Measures to Further Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease by Blood and Blood Products	August 8, 1995	Do	Do
Recommendations for Donor Screening With a Licensed Test for HIV–1 Antigen	August 8, 1995	Do	Do
PTC in the Manufacture and Testing of Therapeutic Products for Human Use Derived From Transgenic Animals	August 22, 1995	Do	Do
Informed Consent for Plasmapheresis/Immunization	October 1, 1995	FDA Personnel	Do
Draft Reviewers' Guide: Changes in Personnel	October 1, 1995	FDA Personnel	Do
Disease Associated Antibody Collection Program	October 1, 1995	FDA Personnel	Do
Guidance Concerning Conversion to FDA-Reviewed Software Products	November 13, 1995	FDA Regulated Industry	Do
Donor Deferral Due to Red Blood Cell Loss During Collection of Source Plasma by Automated Plasmapheresis	December 4, 1995	Do	Do
Interim Definition and Elimination of Lot-by-Lot Release for Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products	December 8, 1995	Do	Do
Dear Colleague: Regarding Reverse Transcriptase Activity in Viral Vaccines Produced in Chicken Cells	January 4, 1996	Do	Do
Requesting All Manufacturers Immediately to Revise Warning Section for Package Insert on Thrombin	January 4, 1996	Do	Do
ICH Final Guideline: Quality of Biotechnological Products: Analysis of the Expression Construct in Cells Used for Production of r-DNA Dervied Protein Products	February 23, 1996	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
ICH Final Guideline on the Need for Long-Term Rodent Carcinogenicity Study of Pharmaceuticals	March 1, 1996	Do	Do
Additional Recommendations for Donor Screening With a Licensed Test for HIV–1 Antigen	March 14, 1996	Do	Do
FDA Guidance Concerning Demonstration of Comparability of Human Biological Products, Including Therapeutic Biotechnology-Derived Products	March 26, 1996	Do	Do
ICH Guideline on the Detection of Toxicity to Reproduction for Medicinal Products; Addendum on Toxicity to Male Fertility	April 5, 1996	Do	Do
ICH Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals	April 24, 1996	Do	Do
To Manufacturers of FDA-Regulated Drug/Biological/Device Products, Bovine Spongiform Encephalopathy (BSE)	May 9, 1996	Do	Do
Additional Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leucocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	May 16, 1996	Do	Do
Guidance for Industry—The Content and Format for Pediatric Use Supplements	May 23, 1996	Do	Do
Guidance on Applications for Products Comprised of Living Autologous Cells Manipulated Ex Vivo and Intended for Structural Repair of Reconstruction	May 24, 1996	Do	Do
Recommendations and Licensure Requirements for Leukocyte-Reduced Blood Products	May 29, 1996	Do	Do
Guide to Inspections of Infectious Disease Marker Testing Facilities	June 1, 1996	FDA Personnel	Do
To Manufacturers: Implementation of Testing for Hepatitis C Virus RNA by Manufacturers: Implementation of Testing for Hepatitis C Virus RNA by Polymerase Chain Reaction (PCR) of Intramuscular Immune Globulin Preparations	June 13, 1996	FDA Regulated Industry	Do
ICH Final Guidelines on Stability Testing of Biotechnological/Biological Products	July 10, 1996		
ICH Guideline on Structure and Content of Clinical Study Reports	July 17, 1996	Do	Do
Recommendations for the Quarantine and Disposition of Units From Prior Collections From Donors With Repeatedly Reactive Screening Tests for Hepatitis B Virus (HBV), Hepatitis C Virus (HCV) and Human T-Lymphotropic Virus Type I (HTLV–I)	July 19, 1996	Do	Do
To Manufacturers: HIV–1 Group O	July 31, 1996	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guidance for Industry for the Submission of Chemistry, Manufacturing, and Controls Information for a Therapeutic Recombinant DNA-Derived Product or a Monoclonal Antibody Product for In Vivo Use	August 15, 1996	Do	Do
ICH Revised Guidance: Single Dose Acute Toxicity Testing for Pharmaceuticals	August 26, 1996	Do	Do
ICH Draft Guideline on Data Elements for Transmission of Individual Case Reports	October 1, 1996	Do	Do
To All Plasma Derivative Manufacturers and to ABRA: Warning Statement for Plasma Derivative Product Labeling	October 7, 1996	Do	Do
Advertising and Promotion; Guidance; Notice	October 8, 1996	Do	Do
To Biologic Product Manufacturers: Revised Procedures for Internal Labeling Review Number Assignment	December 3, 1996	Do	Do
Interim Recommendations for Deferral of Donors at Increased Risk for HIV–1 Group O Infection	December 11, 1996	Do	Do
PTC on Plasmid DNA Vaccines for Preventive Infectious Disease Indications	December 22, 1996	Do	Do
Guidance for the Submission of Chemistry, Manufacturing, and Controls Information and Establishment Description for Autologous Somatic Cell Therapy Products	January 1997	Do	Do
Reviewer Guidance for a Premarket Notification Submission for Blood Establishment Computer Software	January 13, 1997	FDA Personnel	Do
PTC in the Manufacturing and Testing of Monoclonal Antibody Products for Human Use	February 28, 1997	Do	Do
Proposed Approach to Regulation of Cellular and Tissue-Based Products	February 27, 1997	Do	Do
Tables 1 and 2 From Proposed Approach to Regulation of Cellular and Tissue-Based Products	March 4, 1997	Do	Do
Preclearance of Promotional Labeling; Clarification	March 5, 1997	Do	Do
Guidance for Industry for the Evaluation of Combination Vaccines for Preventable Diseases: Production, Testing and Clinical Studies	April 1997	Do	Do
ICH Draft Guideline on Dose Selection for Carcinogenicity Studies for Pharmaceuticals: Addendum on the Limit Dose	April 2, 1997	Do	Do
ICH Draft Guideline on the Timing of Nonclinical Studies for the Conduct of Human Clinical Trials for Pharmaceuticals	May 2, 1997	Do	Do
ICH Draft Guideline on Impurities: Residual Solvents	May 2, 1997 (Correction May 19, 1997)	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
ICH Guideline on Stability Testing for New Dosage Forms	May 9, 1997	Do	Do
ICH Draft Guideline on Statistical Principles for Clinical Trials, Part III	May 9, 1997	Do	Do
ICH Good Clinical Practice: Consolidated Guideline, Part II	May 9, 1997	Do	Do
ICH Guideline for the Photostability Testing of New Drug Substances and Products, Part II	May 16, 1997	Do	Do
ICH Guideline on Impurities in New Drug Products, Part IV	May 19, 1997	Do	Do
ICH Guideline on Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs, Part VI	May 19, 1997	Do	Do
ICH Guideline on the Validation of Analytical Procedures: Methodology, Part V	May 19, 1997	Do	Do
To Plasma Fractionators—CBER's View on Product Recalls Conducted by the Plasma Fractionation Industry	May 29, 1997	Do	Do
ICH Draft Guideline on General Considerations for Clinical Trials	May 30, 1997	Do	Do
Guide to Inspections of Source Plasma Establishments (Division of Field Investigations, Office of Regional Operations, Office of Regulatory Affairs)	June 1, 1997	FDA Personnel	Do
Draft Guidance for Industry: Computerized Systems Used in Clinical Trials; Availability	June 18, 1997	FDA Regulated Industry	Do
Guidance for Industry—Changes to an Approved Application: Biological Products	July 1997	Do	Do
Guidance for Industry—Changes to an Approved Application for Specified Biotechnology and Specified Synthetic Biological Products	July 1997	Do	Do
Guidance for Industry—Screening and Testing of Donors of Human Tissue Intended for Transplantation	July 1997	Do	Do
Guidance for Industry—Donor Screening for Antibodies to HTLV–II	August 1997	Do	Do
Guidance for Industry—Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report	August 1997	Do	Do
Draft Guidance for Industry Efficacy Evaluation of Hemoglobin- and Perfluorocarbon-Based Oxygen Carriers	September 1997	Do	Do
Guidance for Industry—The Sourcing and Processing of Gelatin to Reduce the Potential Risk Posed by Bovine Spongiform Encephalopathy (BSE) in FDA-Regulated Products for Human Use	September 1997	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Notification Process for Transfusion Related Fatalities and Donation Related Deaths (revised telephone number)	October 7, 1997	Do	Do
Submission Requirements for Requesting Certificates for Exporting Products to Foreign Countries	October 15, 1997	Do	Do
ICH Guidance on Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals	November 18, 1997	Do	Do
ICH Guidance on Genotoxicity: A Standard Battery for Genotoxicity Testing for Pharmaceuticals	November 21, 1997	Do	Do
ICH Guidance on Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals	November 25, 1997	Do	Do
Guidance for FDA and Industry: Direct Final Rule Procedures	November 21, 1997	FDA Personnel and Regulated Industry	Do
Draft Guidance for Industry: Promoting Medical Products in a Changing Healthcare Environment; I. Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMS)	December 1997	FDA Regulated Industry	Do
Guidance for Industry: Industry-Supported Scientific and Educational Activities	December 3, 1997	Do	Do
ICH Guidance on Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on a Limit Dose and Related Notes	December 4, 1997	Do	Do
To Biologic Product Manufacturers—Withdrawal of Human Blood-Derived Materials Because Donors Diagnosed With, or at Increased Risk for, CJD	December 11, 1997	Do	Do
To Allergenic Extract Manufacturers—Standardized Grass Pollen Extracts	December 23, 1997	Do	Do
ICH Guidance on Data Elements for Transmission of Individual Case Safety Reports	January 15, 1998		
Guidance for Industry: Year 2000 Date Change for Computer Systems and Software Applications Used in the Manufacture of Blood Products	January 1998	Do	Do
Draft Guidance for Industry: Container and Closure Integrity Testing in Lieu of Sterility Testing as a Component of the Stability Protocol for Sterile Products	January 1998	Do	Do
ICH Guidance on Testing for Carcinogenicity of Pharmaceuticals	February 28, 1998		
Draft Guidance for Industry: Manufacturing, Processing or Holding Active Pharmaceutical Ingredients	March 1998	Do	Do
Guidance for Industry: Guidance for Human Somatic Cell Therapy and Gene Therapy	March 1998	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Draft Guidance for Industry: Instructions for Submitting Electronic Lot Release Protocols to the Center for Biologics Evaluation and Research	May 1998	Do	Do
Draft Guidance for Industry: Pilot Program for Electronic Investigational New Drug (eIND) Applications for Biological Products	May 1998	Do	Do
Guidance for Industry: Classifying Resubmissions in Response to Action Letters	May 1998	Do	Do
Guidance for Industry: Pharmacokinetics in Patients With Impaired Renal Function—Study Design, Data Analysis and Impact on Dosing and Labeling	May 1998	Do	Do
Guidance for Industry: Standards for the Prompt Review of Efficacy Supplements, Including Priority Efficacy Supplements	May 1998	Do	Do
Guidance for Industry: Providing Clinical Evidence of Effectiveness for Human Drugs and Biological Products	May 1998	Do	Do
Draft Guidance for Industry: Stability Testing of Drug Substances and Drug Products	June 1998	Do	Do
Guidance for Industry: Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act	June 1998	Do	Do
Guidance for Industry: Errors and Accidents Regarding Saline Dilution of Samples Used for Viral Marker Testing	June 1998	Do	Do
ICH Draft Guidance on Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	June 9, 1998	Do	Do
ICH Guidance on Ethnic Factors in the Acceptability of Foreign Clinical Data	June 10, 1998	Do	Do
Draft Guidance for Industry: Exports and Imports Under the FDA Export Reform and Enhancement Act of 1996	June 12, 1998	Do	Do
Guidance for Industry: Implementation of Section 126 of the Food and Drug Administration Modernization Act of 1997—Elimination of Certain Labeling Requirements	July 1998	Do	Do
Guidance for Industry: Environmental Assessment of Human Drug and Biologics Applications	July 1998	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units From Prior Collections From Donors With Repeatedly Reactive Screening Tests for Antibody to Hepatitis C Virus (Anti-HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti-HCV	September 1998	Do	Do
Draft Guidance for Industry: Submitting Debarment Certification Statements	September 1998	Do	Do
Guidance for Industry: How to Complete the Vaccine Adverse Reporting System Form (VAERS–1)	September 1998	Do	Do
Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review	September 1998	Do	Do
ICH Guidance on Statistical Principles for Clinical Trials	September 16, 1998	Do	Do
ICH Guidance on Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products	September 21, 1998	Do	Do
ICH Guidance on Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin	September 24, 1998	Do	Do
Guidance for Industry: On Advisory Committees: Implementing Section 120 of the Food and Drug Administration Act of 1997	October 1998	Do	Do
Draft Guidance for Industry: General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products	November 1998	Do	Do
To Viral Vaccine IND Sponsors—Use of PCR-Based Reverse Transcriptase Assay	December 18, 1998	Do	Do
Guidance for Industry: FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products	December 1998	Do	Do
Draft Guidance for Industry: Content and Format of Geriatric Labeling	December 1998	Do	Do
Draft Guidance for Industry: Product Name Placement, Size and Prominence in Advertising and Promotional Labeling	January 1999	Do	Do
Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product	January 1999	Do	Do
Guidance on Amended Procedures for Advisory Panel Meetings	January 1999	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guidance for Industry: Providing Regulatory Submissions in Electronic Format—General Considerations	January 1999	Do	Do
Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Plasma-Derived Biological Products, Animal Plasma or Serum-Derived Products	February 1999	Do	Do
Guidance for Industry: Population Pharmacokinetics	February 1999	Do	Do
Guidance for Industry: Clinical Development Programs for Drugs, Devices and Biological Products for the Treatment of Rheumatoid Arthritis (RA)	February 1999	Do	Do
Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Plasma-Derived Biological Products, Animal Plasma or Serum-Derived Products	February 1999	Do	Do
Draft Guidance for Industry: INDs for Phase 2 and 3 Studies of Drugs, Including Specified Therapeutic Biotechnology-Derived Products, Chemistry, Manufacturing and Controls Content and Format	February 1999	Do	Do
Draft Guidance for Industry: Accelerated Approval Products—Submission of Promotional Materials	March 1999	Do	Do
Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Biological In Vitro Diagnostic Product	March 1999	Do	Do
Guidance for Industry: Public Health Issues Posed by the Use of Nonhuman Primate Xenografts in Humans	April 1999	Do	Do
Guidance for Industry on the Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test	April 1999	Do	Do
Guidance for Industry for the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and for the Completion of the Form FDA 356h "Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use"	May 1999	Do	Do
Guidance for Industry for Platelet Testing and Evaluation of Platelet Substitute Products	May 1999	Do	Do
Guidance for Industry: Efficacy Studies to Support Marketing of Fibrin Sealant Products Manufactured for Commercial Use	May 1999	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guidance for Industry: Container Closure Systems for Packaging Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Documentation	May 1999	Do	Do
Draft Guidance for Industry: Establishing Pregnancy Registries	June 1999	Do	Do
Draft Reviewer Guidance: Evaluation of Human Pregnancy Outcome Data	June 1999	FDA Personnel	Do
Draft Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections From Donors With Repeatedly Reactive Screening Tests for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of Donor Test Results for Antibody to HCV (Anti-HCV)	June 1999	FDA Regulated Industry	Do
ICH Guidance on the Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)	June 25, 1999	Do	Do
Draft Guidance for Industry: Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)	July 1999	Do	Do
Draft Guidance for Industry: Interpreting Sameness of Monoclonal Antibody Products Under the Orphan Drug Regulations	July 1999	Do	Do
Draft Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics	August 1999	Do	Do
Guidance for Industry: Consumer-Directed Broadcast Advertisements	August 1999	Do	Do
Draft Guidance for Industry: Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act	August 1999	Do	Do
Guidance for Industry: Possible Dioxin/PCB Contamination of Drug and Biological Products	August 1999	Do	Do
Guidance for Industry: Submission of Abbreviated Reports and Synopses in Support of Marketing Applications	August 1999	Do	Do
ICH Guidance on Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	August 18, 1999	Do	Do
Draft Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors	September 1999	Do	Do
Guidance for Industry: Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act	September 1999	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
International Conference on Harmonisation Draft Guidance; Choice of Control Group in Clinical Trials	September 24, 1999	Do	Do
Guidance for Industry: Providing Regulatory Submissions to the Center for Biologics Evaluation and Research (CBER) in Electronic Format—Biologics Marketing Applications [Biologics License Application (BLA), Product License Application (PLA)/Establishment License Application (ELA) and New Drug Application (NDA)]—Revised	November 1999	Do	Do
Guidance for Industry: Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and New Variant Creutzfeldt-Jakob Disease (nvCJD) by Blood and Blood Products	November 1999	Do	Do
Guidance for Industry: In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis and Recommendations for Dosing and Labeling	November 1999	Do	Do
Draft Guidance for Industry: Application of Current Statutory Authority to Nucleic Acid Testing of Pooled Plasma	November 1999	Do	Do
Draft Guidance for Industry: Pharmacokinetics in Patients With Impaired Hepatic Function: Study Design, Data Analysis and Impact on Dosing and Labeling	November 1999	Do	Do
International Conference on Harmonsation of Technical Requirements for Registration of Pharmaceuticals for Human Use M4: Common Technical Document	November 8, 1999	Do	Do
Guidance for Industry: In the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Viruses Types 1 and 2	December 1999	Do	Do
Draft Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products From Xenotransplantation Product Recipients and Their Contacts	December 1999	Do	Do
Draft Guidance for Industry: Special Protocol Assessment	December 1999	Do	Do
Draft Guidance for Industry: Changes to an Approved Application: Biological Products: Human Blood and Blood Components Intended for Transfusion or for Further Manufacture	January 2000	Do	Do
Draft Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol	February 2000	FDA Personnel	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Draft Guidance for Industry: IND Meetings for Human Drugs and Biologics: Chemistry, Manufacturing, and Controls Information	February 2000	FDA Regulated Industry	Do
Guidance for Industry: Formal Meetings With Sponsors and Applicants for PDUFA Products	February 2000	Do	Do
Guidance for Industry: Formal Dispute Resolution: Appeals Above the Division Level	February 2000	Do	Do
Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing	February 2000	Do	Do
Draft Guidance for Industry: Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank	March 2000	Do	Do
International Conference on Harmonisation; Draft Revised Guidance on Q1A(R) Stability Testing of New Drug Substances and Products	April 21, 2000	Do	Do
Draft Guidance for Industry: Content and Format of the Adverse Reactions Section of Labeling for Human Prescription Drugs and Biologics	May 2000	Do	Do
Guidance for Industry: Recognition and Use of a Standard for the Uniform Labeling of Blood and Blood Components	June 2000	Do	Do
Draft Guidance for Industry: Recommendations for Donor Questioning Regarding Possible Exposure to Malaria	June 2000	Do	Do
Draft Guidance for Industry: Pediatric Oncology Studies in Response to a Written Request	June 2000	Do	Do
Guidance for Industry: Availability of Licensed Donor Screening Tests Labeled for Use With Cadaveric Blood Specimens (Level 2)	June 2000	Do	Do
Draft Guidance for Industry: Chronic Cutaneous Ulcer and Burn Wounds—Developing Products for Treatment	June 2000	Do	Do
Draft Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained From an Outside Supplier	June 2000	Do	Do
Draft Guidance for Industry: Developing Medical Imaging Drugs and Biological Products	June 2000	Do	Do
International Conference on Harmonisation (ICH) Draft Guidance; Good Manufacturing Practice Guide for Active Pharmaceutical Ingredients (March 17, 2000)	June 2000	Do	Do
International Conference on Harmonisation (ICH) Draft Revised Guidance on Impurities in New Drug Products	July 19, 2000	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
International Conference on Harmonisation (ICH) Draft Revised Guidance on Impurities in New Drug Substances	July 20, 2000	Do	Do
International Conference on Harmonisation (ICH) Draft Guideline: Organisation of the Common Technical Document for the Registration of Pharmaceuticals for Human Use	July 20, 2000	Do	Do
International Conference on Harmonisation (ICH) Draft Guideline on Safety Pharmacology Studies for Human Pharmaceuticals	August 2000	Do	Do
Draft Guidance for Industry: Analytical Procedures and Methods Validation—Chemistry, Manufacturing, and Controls Documentation	August 2000	Do	Do
Draft Guidance for Industry: Considerations for Reproductive Toxicity Studies for Preventive Vaccines for Infectious Disease Indications	August 2000	Do	Do
Guidance for Industry: Q & A Content and Format of INDs for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products	October 2000	Do	Do
Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors	October 2000	Do	Do
Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds	October 2000	Do	Do
Draft Guidance for Industry: Cancer Drug and Biological Products—Clinical Data in Marketing Applications	November 2000	Do	Do
Guidance for Industry: Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts	November 2000	Do	Do
Guidance for Industry: Use of Sterile Connecting Devices in Blood Bank Practices (Level 2)	November 2000	Do	Do
Draft Guidance for Industry: Recommendations for Complying With the Pediatric Rule (21 CFR 314.55(a) and 601.27(a))	November 2000	Do	Do
International Conference on Harmonisation (ICH) Guidance for Industry: E11 Clinical Investigation of Medicinal Products in the Pediatric Population	December 2000	Do	Do
Draft Guidance for Industry: Variances for Blood Collection From Individuals With Hereditary Hemochromatosis	December 2000	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Draft Guidance for Industry: Submitting Separate Marketing Applications and Clinical Data for Purposes of Assessing User Fees	December 2000	Do	Do
International Conference on Harmonisation; Guidance on Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances	December 29, 2000	Do	Do
PHS Guideline on Infectious Disease Issues in Xenotransplantation	January 19, 2001	Do	Do
Draft Guidance for Industry: Pre-Storage Leukocyte Reduction of Whole Blood and Blood Components Intended for Transfusion	January 2001	Do	Do
Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods	January 2001	Do	Do
Draft Guidance for Industry: Providing Regulatory Submissions in Electronic Format—Prescription Drug Advertising and Promotional Labeling	January 2001	Do	Do
Draft Guidance for Industry: Source Animal, Product, Preclinical and Clinical Issues Concerning the Use of Xenotransplantation Products in Humans	February 2001	Do	Do
Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods—Technical Correction February 2001	February 2001	Do	Do
Draft Guidance for Industry: Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of Biologic Products and Convened by the Center for Biologics Evaluation and Research	February 2001	Do	Do
Draft Guidance for Industry: Postmarketing Safety Reporting for Human Drug and Biological Products Including Vaccines	March 2001	Do	Do
Guidance for Industry: Acceptance of Foreign Clinical Studies	March 2001	Do	Do
Guidance for Industry: Financial Disclosure by Clinical Investigators	March 2001	Do	Do
Guidance for Industry: Monoclonal Antibodies Used as Reagents in Drug Manufacturing	March 2001	Do	Do
Draft Guidance for Industry: Reports on the Status of Postmarketing Studies—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997	April 2001	Do	Do
Draft Guidance for Industry: Using FDA-Approved Patient Labeling in Consumer-Directed Print Advertisements	April 2001	Do	Do

II. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Draft Guidance for Industry: Forms for Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution	April 2001	Do	Do
Draft Guidance for Industry: Providing Regulatory Submissions in Electronic Format—Postmarketing Expedited Safety Reports	May 2001	Do	Do
Guidance for Industry: E 10 Choice of Control Group and Related Issues in Clinical Trials	May 2001	Do	Do
Draft Guidance for Industry: IND Meetings for Human Drugs and Biologics; Chemistry, Manufacturing and Controls Information	May 2001	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Accelerated Approval Products—Submission of Promotional Materials—Draft	March 26, 1999	Advertising Draft	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Product Name, Placement, Size, and Prominence in Advertising and Promotional Labeling—Draft	March 12, 1999	Do	Do
Promoting Medical Products in a Changing Healthcare Environment; Medical Product Promotion by Healthcare Organizations or Pharmacy Management Companies—Draft	January 5, 1998	Do	Do
Using FDA-Approved Patient Labeling in Consumer-Directed Print Advertisements—Draft	April 23, 2001	Do	Do
Aerosol Steroid Product Safety Information in Prescription Drug Advertising and Promotional Labeling	January 12, 1998	Advertising	Do
Consumer-Directed Broadcast Advertisements	August 9, 1999	Do	Do
Industry-Supported Scientific and Educational Activities	December 3, 1997	Do	Do
Antifungal (Topical)—Draft	February 24, 1990	Biopharmaceutic Draft	Do
Antifungal (Vaginal)—Draft	February 24, 1990	Do	Do
Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action—Draft	June 2, 1999	Do	Do
Conjugated Estrogens, USP: LC–MS Method for Both Qualitative Chemical Characterization and Documentation of Qualitative Pharmaceutical Equivalence—Draft	March 9, 2000	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Food-Effect Bioavailability and Bioequivalence Studies—Draft	December 30, 1997	Do	Do
In Vivo Bioequivalence Studies Based on Population and Individual Bioequivalence Studies—Draft	December 10, 1997	Do	Do
Topical Dermatological Drug Product NDAs and ANDAs—In Vivo Bioavailability, Bioequivalence, In Vitro Release and Associated Studies—Draft	June 18, 1998	Do	Do
Bioanalytical Method Validation	May 23, 2001	Biopharmaceutic	Do
Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations	October 27, 2000	Do	Do
Cholestyramine Powder In Vitro Bioequivalence	July 15, 1993	Do	Do
Clozapine (Tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	November 15, 1996	Do	Do
Corticosteroids, Detmatologic (Topical) In Vivo	June 2, 1995	Do	Do
Dissolution Testing of Immediate Release Solid Oral Dosage Forms	August 25, 1997	Do	Do
Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations	September 26, 1997	Do	Do
Levothyroxine Sodium Tablets—In Vivo Pharmacokinetic and Bioavailability Studies and In Vitro Dissolution Testing	March 8, 2001	Do	Do
Metaproterenol Sulfate and Albuterol Metered Dose Inhalers In Vitro	June 27, 1989	Do	Do
Phenytoin/Phenytion Sodium (Capsules, Tablets, Suspension) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 4, 1994	Do	Do
Potassium Chloride (Slow-Release Tablets and Capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 6, 1994	Do	Do
Statistical Approaches to Establishing Bioequivalence	February 2, 2001	Do	Do
Waiver of In Vivo Bioavailability and Bioequivalence Studies for Immediate Release Solid Oral Dosage Forms Based on a Biopharmaceutics Classification System	August 31, 2000	Do	Do
Analytical Procedures and Methods Validation: Chemistry, Manufacturing, and Controls Documentation—Draft	August 30, 2000	Chemistry Draft	Do
Botanical Drug Products—Draft	August 11, 2000	Do	Do
INDs for Phase 2 and 3 Studies of Drugs, Including Specified Therapeutic Biotechnology-Derived Products, Chemistry, Manufacturing, and Controls Content and Format—Draft	April 20, 1999	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Metered Dose Inhalers (MDI) and Dry Powder Inhalers (DPI) Drug Products; Chemistry, Manufacturing, and Controls Documentation—Draft	November 19, 1998	Do	Do
Monoclonal Antibodies Used as Reagents in Drug Manufacturing—Draft	June 24, 1999	Do	Do
Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products—Draft	June 2, 1999	Do	Do
Stability Testing of Drug Substances and Drug Products—Draft	June 8, 1998	Do	Do
Submitting Supporting Chemistry Documentation in Radiopharmaceutical Drug Applications—Draft	November 1, 1991	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
SUPAC–SS: Nonsterile Semisolid Dosage Forms Manufacturing Equipment Addendum—Draft	January 5, 1999	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Tracking of NDA and NDA Reformulations for Solid, Oral, Immediate Release Drug Products—Draft	April 12, 1989	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
BACPAC1: Intermediates in Drug Substance Synthesis: Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation	February 16, 2001	Chemistry	Do
Changes to an Approved Application for Specified Biotechnology and Specified Synthetic Biological Products	July 24, 1997	Do	Do
Changes to an Approved NDA or ANDA	November 23, 1999	Do	Do
Changes to an Approved NDA or ANDA: Questions and Answers	January 22, 2001	Do	Do
Container Closure Systems for Packaging Human Drugs and Biologics	July 7, 1999	Do	Do
Development of New Stereoisomeric Drugs	May 1, 1992	Do	Do
Drug Master Files	September 1, 1989	Do	Do
Drug Master Files for Bulk Antibiotic Drug Substances	November 29, 1999	Do	Do
Environmental Assessment of Human Drugs and Biologics Applications	July 27, 1998	Do	Do
Format and Content for the CMC Section of an Annual Report	September 1, 1994	Do	Do
Format and Content of the Chemistry, Manufacturing and Controls Section of an Application	February 1, 1987	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Format and Content of the Microbiology Section of an Application	February 1, 1987	Do	Do
IND Meetings for Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Information	May 25, 2001	Do	Do
Monoclonal Antibodies Used as Reagents in Drug Manufacturing	March 29, 2001	Do	Do
NDAs: Impurities in Drug Substances	February 25, 2000	Do	Do
PAC–ALTS: Postapproval Changes—Analytical Testing Laboratory Sites	April 28, 1998	Do	Do
Reviewer Guidance: Validation of Chromatographic Methods	November 1, 1994	Do	Do
Submission of Chemistry, Manufacturing, and Controls Information for Synthetic Peptide Substances	November 1, 1994	Do	Do
Submission of Documentation for Sterilization Process Validation Applications for Human and Veterinary Drug Products	November 1, 1994	Do	Do
Submitting Documentation for the Manufacturing of and Controls for Drug Products	February 1, 1987	Do	Do
Submitting Documentation for the Stability of Human Drugs and Biologics	February 1, 1987	Do	Do
Submitting Samples and Analytical Data for Methods Validation	February 1, 1987	Do	Do
Submitting Supporting Documentation in Drug Applications for the Manufacture of Drug Products	February 1, 1987	Do	Do
Submitting Supporting Documentation in Drug Applications for the Manufacture of Drug Substances	February 1, 1987	Do	Do
SUPAC IR: Immediate-Release Solid Oral Dosage Forms: Scale-Up and Post-Approval Changes: Chemistry, Manufacturing, and Controls, In Vitro Dissolution Testing and In Vivo Bioequivalence Documentation	November 30, 1995	Do	Do
SUPAC IR/MR: Immediate Release and Modified Release Solid Oral Dosage Forms, Manufacturing Equipment Addendum	February 26, 1999	Do	Do
SUPAC–IR: Questions and Answers	February 18, 1997	Do	Do
SUPAC–MR: Modified Release Solid Oral Dosage Forms: Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls, In Vitro Dissolution Testing, and In Vivo Bioequivalence Documentation	October 6, 1997	Do	Do
SUPAC–SS: Nonsterile Semisolid Dosage Forms; Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls; In Vitro Release Testing and In Vivo Bioequivalence Documentation	June 13, 1997	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
The Sourcing and Processing of Gelatin to Reduce the Potential Risk Posed by Bovine Spongiform Encephalopathy	December 20, 2000	Do	Do
Acute Bacterial Exacerbation of Chronic Bronchitis; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Clinical Antimicrobial Draft	Do
Acute Bacterial Meningitis; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Acute Bacterial Sinusitis; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Acute or Chronic Bacterial Prostatitis; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Acute Otitis Media; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Bacterial Vaginosis; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Catheter-Related Bloodstream Infections—Developing Antimicrobial Drugs for Treatment—Draft	October 18, 1999	Do	Do
Clinical Considerations for Accelerated and Traditional Approval of Antiretroviral Drugs Using Plasma HIV RNA Measurements—Draft	September 1, 1999	Do	Do
Community Acquired Pneumonia; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Complicated Urinary Tract Infections and Pylonephritis; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Developing Antimicrobial Drugs—General Considerations for Clinical Trials—Draft	July 22, 1998	Do	Do
Empiric Therapy of Febrile Neutropenia; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Evaluating Clinical Studies of Antimicrobials in the Division of Anti-Infective Drug Products—Draft	February 17, 1997	Do	Do
Lyme Disease; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Nosocomial Pneumonia; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Secondary Bacterial Infections of Acute Bronchitis; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Streptococcal Pharyngitis and Tonsillitis; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Uncomplicated and Complicated Skin and Skin Structure Infections; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Uncomplicated Gonorrhea—Cervical, Urethral, Rectal, and/or Pharyngeal; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Uncomplicated Urinary Tract Infections; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Vulvovaginal Candidiasis; Developing Antimicrobial Drugs for Treatment—Draft	July 22, 1998	Do	Do
Clinical Development and Labeling of Anti-Infective Drug Products	October 26, 1992	Clinical Antimicrobial	Do
Clinical Evaluation of Anti-Infective Drugs (Systemic)	September 1, 1977	Do	Do
Preclinical Development of Antiviral Drugs	November 1, 1990	Do	Do
Abuse Liability Assessment—Draft	July 1, 1990	Clinical Medical Draft	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Allergic Rhinitis: Clinical Development Programs for Drug Products—Draft	June 21, 2000	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Cancer Drug and Biological Products—Clinical Data in Marketing Applications—Draft	November 9, 2000	Do	Do
Chronic Cutaneous Ulcer and Burn Wounds—Developing Products for Treatment—Draft	June 28, 2000	Do	Do
Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)—Draft	July 15, 1999	Do	Do
Clinical Evaluation of Anti-Anginal Drugs—Draft	January 1, 1989	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Clinical Evaluation of Anti-Arrhythmic Drugs—Draft	July 1, 1985	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Clinical Evaluation of Antihypertensive Drugs—Draft	May 1, 1988	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Clinical Evaluation of Drugs for the Treatment of Congestive Heart Failure—Draft	December 1, 1987	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Clinical Evaluation of Drugs for Ulcerative Colitis (3rd draft)—Draft	January 7, 1991	Do	Do
Clinical Evaluation of Lipid-Altering Agents In Adults and Children—Draft	September 1, 1990	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Clinical Evaluation of Motility-Modifying Drugs—Draft	Date not available	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Clinical Evaluation of Weight-Control Drugs—Draft	September 24, 1996	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Developing Medical Imaging Drugs and Biologics—Revised—Draft	July 31, 2000	Do	Do
Development and Evaluation of Drugs for the Treatment of Psychoactive Substance Use Disorders—Draft	February 12, 1992	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Development of Parathyroid Hormones for the Prevention and Treatment of Osteoporosis—Draft	June 14, 2000	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Establishing Pregnancy Registries—Draft	June 4, 1999	Do	Do
Evaluation of Human Pregnancy Outcome Data—Draft	June 4, 1999	Do	Do
Female Sexual Dysfunction: Clinical Development of Drug Products for Treatment—Draft	May 19, 2000	Do	Do
Institutional Review Boards, Clinical Investigators, and Sponsors: Exception From Informed Consent Requirements for Emergency Research—Draft	March 30, 2000	Do	Do
OTC Treatment of Herpes Labialis With Antiviral Agents—Draft	March 8, 2000	Do	Do
Pediatric Oncology Studies in Response to a Written Request—Draft	June 21, 2000	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Postmarketing Safety Reporting for Human Drug and Biological Products Including Vaccines—Draft	March 12, 2001	Do	Do
Preclinical and Clinical Evaluation of Agents Used in the Prevention or Treatment of Postmenopausal Osteoporosis—Draft	April 1, 1994	Do	Do
Preparation of IND Applications for New Drugs Intended for the Treatment of HIV-Infected Individuals—Draft	September 1, 1991	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Recommendations for Complying With the Pediatric Rule—Draft	December 4, 2000	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
System Inflammatory Response Syndrome (SIRS) (1st draft)—Draft	July 1993	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Acceptance of Foreign Clinical Studies	March 13, 2001	Clinical Medical	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA)	February 17, 1999	Do	Do
Clinical Development Programs for MDI and DPI Drug Products	September 19, 1994	Do	Do
Clinical Evaluation of Analgesic Drugs	December 1, 1992	Do	Do
Clinical Evaluation of Antacid Drugs	April 1, 1978	Do	Do
Clinical Evaluation of Anti-Inflammatory and Antirheumatic Drugs (Adults and Children)	April 1, 1988	Do	Do
Clinical Evaluation of Antianxiety Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Antidepressant Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Antidiarrheal Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Antiepileptic Drugs (Adults and Children)	January 1, 1981	Do	Do
Clinical Evaluation of Combination Estrogen/Progestin-Containing Drug Products Used for Hormone Replacement Therapy of Postmenopausal Women	March 20, 1995	Do	Do
Clinical Evaluation of Gastric Secretory Depressant (GSD) Drugs	September 1, 1977	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Clinical Evaluation of General Anesthetics	May 1, 1982	Do	Do
Clinical Evaluation of Hypnotic Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Laxative Drugs	April 1, 1978	Do	Do
Clinical Evaluation of Local Anesthetics	May 1, 1982	Do	Do
Clinical Evaluation of Psychoactive Drugs in Infants and Children	July 1, 1979	Do	Do
Clinical Evaluation of Radiopharmaceutical Drugs	October 1, 1981	Do	Do
Content and Format for Pediatric Use Supplements	May 24, 1996	Do	Do
Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products	November 20, 1995	Do	Do
Development of Vaginal Contraceptive Drugs (NDA)	April 19, 1995	Do	Do
FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products	February 2, 1999	Do	Do
FDA Requirements for Approval of Drugs to Treat Non-Small Lung Cancer	January 29, 1991	Do	Do
FDA Requirements for Approval of Drugs to Treat Superficial Bladder Cancer	June 20, 1989	Do	Do
Format and Content of the Clinical and Statistical Sections of an Application	July 1, 1988	Do	Do
Format and Content of the Summary for New Drug and Antibiotic Applications	February 1, 1987	Do	Do
Formatting, Assembling and Submitting New Drug and Antibiotic Applications	February 1, 1987	Do	Do
General Considerations for the Clinical Evaluation of Drugs	December 1, 1978	Do	Do
General Considerations for the Clinical Evaluation of Drugs in Infants and Children	September 1, 1977	Do	Do
Levothyroxine Sodium Tablets—In Vivo Pharmacokinetic and Bioavailability Studies and In Vitro Dissolution Testing	March 8, 2001	Do	Do
Oncologic Drugs Advisory Committee Discussion on FDA Requirements for Approval of New Drugs for Treatment of Ovarian Cancer	April 13, 1988	Do	Do
Oncologic Drugs Advisory Committee Discussion on FDA Requirements for Approval of New Drugs for Treatment of Colon and Rectal Cancer	April 19, 1988	Do	Do
Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products; Clarification of What to Report	August 27, 1997	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Postmarketing Reporting of Adverse Drug Experiences	March 1, 1992	Do	Do
Preclinical Development of Immunomodulatory Drugs for the Treatment of HIV Infection and Associated Disorders	September 4, 1992	Do	Do
Preparation of Investigational New Drug Products (Human and Animal)	November 1, 1992	Do	Do
Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products	May 15, 1998	Do	Do
Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs	July 22, 1993	Do	Do
Study of Drugs Likely To Be Used in the Elderly	November 1, 1989	Do	Do
Submission of Abbreviated Reports and Synopses in Support of Marketing Applications	September 13, 1999	Do	Do
General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products—Draft	November 30, 1998	Clinical Pharmacology Draft	Do
Pharmacokinetics in Patients With Impaired Hepatic Function: Study Design, Data Analysis, and Impact on Dosing and Labeling—Draft	December 7, 1999	Do	Do
Drug Metabolism/Drug Interaction Studies in the Drug Development Process: Studies In Vitro	April 7, 1997	Clinical Pharmacology	Do
Format and Content of the Human Pharmacokinetics and Bioavailability Section of an Application	February 1, 1987	Do	Do
In Vivo Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling	November 24, 1999	Do	Do
Pharmacokinetics and Pharmacodynamics in Patients With Impaired Renal Function: Study Design, Data Analysis, and Impact on Dosing and Labeling	May 15, 1998	Do	Do
Population Pharmacokinetics	February 10, 1999	Do	Do
Guidance for IRBs, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research (21 CFR 50.24)—Draft	March 30, 2000	Compliance Draft	Do
Investigating Out of Specification (OOS) Test Results for Pharmaceutical Production—Draft	September 30, 1998	Do	Do
Manufacture, Processing or Holding of Active Pharmaceutical Ingredients—Draft	April 17, 1998	Do	Do
Repacking of Solid Oral Dosage Form Drug Products—Draft	February 1, 1992	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
A Review of FDA's Implementation of the Drug Export Amendments of 1986		Compliance	Do
Compressed Medical Gases	December 1, 1989	Do	Do
Computerized Systems Used in Clinical Trials	May 10, 1999	Do	Do
Expiration Dating and Stability Testing of Solid Oral Dosage Form Drugs Containing Iron	June 27, 1997	Do	Do
General Principles of Process Validation	May 1, 1987	Do	Do
Good Laboratory Practice Regulations Questions and Answers		Do	Do
Guidance for Hospitals, Nursing Homes, and Other Health Care Facilities	April 6, 2001	Do	Do
Monitoring of Clinical Investigations	January 1, 1988	Do	Do
Nuclear Pharmacy Guideline Criteria for Determining When to Register as a Drug Establishment	May 1, 1984	Do	Do
Possible Dioxin/PCB Contamination of Drug and Biological Products	August 23, 1999	Do	Do
Sterile Drug Products Produced by Aseptic Processing	May 1, 1987	Do	Do
Street Drug Alternatives	April 3, 2000	Do	Do
Validation of Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices	December 1, 1987	Do	Do
Providing Regulatory Submissions in Electronic Format—Postmarketing Expedited Safety Reports—Draft	May 4, 2001	Electronic Submission Draft	Do
Providing Regulatory Submissions in Electronic Format: Prescription Drug Advertising and Promotional Labeling—Draft	January 31, 2001	Do	Do
Preparing Data for Electronic Submissions in ANDAs	September 23, 1999	Electronic Submission	Do
Regulatory Submissions in Electronic Format; General Considerations	January 28, 1999	Do	Do
Regulatory Submissions in Electronic Format; New Drug Applications	January 28, 1999	Do	Do
ANDAs; Blend Uniformity Analysis—Draft	August 26, 1999	Generic Drug Draft	Do
ANDAs; Impurities in Drug Products—Draft	January 5, 1999	Do	Do
Content and Format of an Abbreviated New Drug Application (ANDA)—Positron Emission Tomography (PET) Drug Products—With Specific Information for ANDAs for Fludeoxyglucose F18 Injection—Draft	April 18, 1997	Do	Do
Alternate Source of Active Pharmaceutical Ingredients in Pending ANDAs—Draft	December 12, 2000	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
ANDAs: Impurities in Drug Substances	December 3, 1999	Generic Drugs	Do
Court Decisions, ANDA Approvals, and 180-Day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act	March 30, 2000	Do	Do
Letter Announcing That the OGD Will Now Accept the ICH Long-Term Storage Conditions as Well as the Stability Studies Conducted in the Past	August 18, 1995	Do	Do
Letter Describing Efforts by CDER and ORA to Clarify the Responsibilities of CDER Chemistry Review Scientists and ORA Field Investigators in the New and Abbreviated Drug Approval Process in Order to Reduce Duplication or Redundancy in the Process	October 14, 1994	Do	Do
Letter on Incomplete Abbreviated Applications, Convictions Under GDEA, Multiple Supplements, Annual Reports for Bulk Antibiotics, Batch Size for Transdermal Drugs, Bioequivalence Protocols, Research, Deviations From OGD Policy	April 8, 1994	Do	Do
Letter on the Provision of New Information Pertaining to New Bioequivalence Guidelines and Refuse-to-File Letters	July 1, 1992	Do	Do
Letter on the Provision of New Procedures and Policies Affecting the Generic Drug Review Process	March 15, 1989	Do	Do
Letter on the Request for Cooperation of Regulated Industry to Improve the Efficiency and Effectiveness of the Generic Drug Review Process, by Assuring the Completeness and Accuracy of Required Information and Data Submissions	November 8, 1991	Do	Do
Letter on the Response to 12/20/84 Letter From the Pharmaceutical Manufacturers Association About the Drug Price Competition and Patent Term Restoration Act	March 26, 1985	Do	Do
Letter to all ANDA and AADA Applicants About the Generic Drug Enforcement Act of 1992 (GDEA), and the Office of Generic Drugs Intention to Refuse-to-File Incomplete Submissions as Required by the New Law	January 15, 1993	Do	Do
Letter to Regulated Industry Notifying Interested Parties About Important Detailed Information Regarding Labeling, Scale-up, Packaging, Minor/major Amendment Criteria, and Bioequivalence Requirements	August 4, 1993	Do	Do
Major, Minor, Facsimile, and Telephone Amendments to Original Abbreviated New Drug Applications (Revised)	May 1, 2000	Do	Do
Organization of an ANDA	March 2, 1999	Do	Do
Revising ANDA Labeling Following Revision of the RLD Labeling	April 25, 2000	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Skin Irritation and Sensitization Testing of Generic Transdermal Drug Products	February 3, 2000	Do	Do
Variations in Drug Products That May Be Included ANDA	January 27, 1999	Do	Do
Conducting a Clinical Safety Review of a New Product Application and Preparing a Report on the Review—Draft	November 22, 1996	Good Review Practices Draft	Do
Pharmacology/Toxicology Review Format	May 10, 2001	Good Review Practices	Do
Q1A(R)—Stability Testing of New Drug Substances and Products—Draft	April 21, 2000	ICH Draft—Quality	Do
Q3A(R)—Impurities in New Drug Substances—Draft	July 20, 2000	Do	Do
Q3B(R)—Impurities in New Drug Products—Draft	July 19, 2000	Do	Do
Q6A—Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances—Draft	November 25, 1997	Do	Do
Q7A—Good Manufacturing Practice for Active Pharmaceutical Ingredients—Draft	August 1, 2000	Do	Do
S7—Safety Pharmacology Studies for Human Pharmaceuticals—Draft	August 7, 2000	ICH Draft—Safety	Do
E12 A—Principles for Clinical Evaluation of New Antihypertensive Drugs—Draft	August 9, 2000	ICH Draft—Efficacy	Do
M4—Common Technical Document—Draft	August 24, 2000	ICH Draft—Joint Safety/Efficacy (Multidisciplinary)	Do
Q1A—Stability Testing of New Drug Substances and Products	September 22, 1994	ICH—Quality	Do
QIB—Photostability Testing of New Drug Substances and Products	May 16, 1997	Do	Do
QIC—Stability Testing for New Dosage Forms	May 9, 1997	Do	Do
Q2A—Text on Validation of Analytical Procedures	March 1, 1995	Do	Do
Q2B—Validation of Analytical Procedures: Methodology	May 19, 1997	Do	Do
Q3A—Impurities in New Drug Substances	January 4, 1996	Do	Do
Q3B(R)— Impurities in New Drug Products	July 19, 2000	Do	Do
Q3C—Impurities: Residual Solvents	December 24, 1997	Do	Do
Q5A—Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin	September 24, 1998	Do	Do
Q5B—Quality of Biotechnology Products: Analysis of the Expression Construct in Cells Used for Production of r-DNA Derived Protein Products	February 23, 1996	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Q5C—Quality of Biotechnological Products: Stability Testing of Biotechnology/Biological Products	July 10, 1996	Do	Do
Q5D—Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products	September 21, 1998	Do	Do
Q6A—Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances	December 29, 2000	Do	Do
Q6B—Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	August 18, 1999	Do	Do
S1A—The Need for Long-Term Rodent Carcinogenicity Studies of Pharmaceuticals	March 1, 1996	ICH—Safety	Do
S1B—Testing for Carcinogenicity in Pharmaceuticals	February 23, 1998	Do	Do
S1C—Dose Selection for Carcinogenicity Studies of Pharmaceuticals	March 1, 1995	Do	Do
S1C(R)—Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on a Limit Dose and Related Notes	December 4, 1997	Do	Do
S2A—Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals	April 24, 1996	Do	Do
S2B—Genotoxicity: Standard Battery Testing	November 21, 1997	Do	Do
S3A—Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies	March 1, 1995	Do	Do
S3B—Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies	March 1, 1995	Do	Do
S4A—Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)	June 25, 1999	Do	Do
S5A—Detection of Toxicity to Reproduction for Medicinal Products	September 22, 1994	Do	Do
S5B—Detection of Toxicity to Reproduction for Medicinal Products: Addendum on Toxicity to Male Fertility	April 5, 1996	Do	Do
S6—Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals	November 18, 1997	Do	Do
S7A—Safety Pharmacology Studies for Human Pharmaceuticals	July 13, 2001	Do	Do
EIA—The Extent of Population Exposure to Assess Clinical Safety: for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions	March 1, 1995	ICH—Efficacy	Do
E2A—Clinical Safety Data Management: Definitions and Standards for Expedited Reporting	March 1, 1995	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
E2B—Data Elements for Transmission of Individual Case Safety Reports	January 15, 1998	Do	Do
E2C—Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs	May 19, 1997	Do	Do
E3—Structure and Content of Clinical Study Reports	July 17, 1996	Do	Do
E4—Dose-Response Information to Support Drug Registration	November 9, 1994	Do	Do
E5—Ethnic Factors in the Acceptability of Foreign Clinical Data	June 10, 1998	Do	Do
E6—Good Clinical Practice: Consolidated Guideline	May 9, 1997	Do	Do
E7—Studies in Support of Special Populations: Geriatrics	August 2, 1994	Do	Do
E8—General Considerations for Clinical Trials	December 24, 1997	Do	Do
E9—Statistical Principles for Clinical Trials	September 16, 1998	Do	Do
E10—International Conference on Harmonisation: Choice of Control Group and Related Issues in Clinical Trials	May 14, 2001	Do	Do
E11—Clinical Investigation of Medicinal Products in the Pediatric Population	December 15, 2000	Do	Do
M3—Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals	November 25, 1997	ICH—Joint Safety/Efficacy (Multidisciplinary)	Do
A Revision in Sample Collection Under the Compliance Program Pertaining to Pre-Approval Inspections	July 15, 1996	Industry Letters	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Certification Requirements for Debarred Individuals in Drug Applications	June 1, 1990	Do	Do
Continuation of a Series of Letters Communicating Interim and Informal Generic Drug Policy and Guidance. Availability of Policy and Procedure Guides, and Further Operational Changes to the Generic Drug Review Program	March 2, 1998	Do	Http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Fifth of a Series of Letters Providing Informal Notice About the Act, Discussing the Statutory Mechanism by Which ANDA Applicants May Make Modifications in Approved Drugs Where Clinical Data Is Required	April 10, 1987	Do	Do
Fourth of a Series of Letters Providing Informal Notice to Affected Parties About Policy Developments and Interpretations Regarding the Act. Three-Year Exclusivity Provisions of Title 1	October 31, 1986	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Implementation of the Drug Price Competition and Patent Term Restoration Act; Preliminary Guidance	October 11, 1984	Do	Do
Implementation Plan USP Injection Nomenclature	October 2, 1995	Do	Do
Instructions for Filing Supplements Under the Provisions of SUPAC–IR	April 11, 1996	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Seventh of a Series of Letters About the Act Providing Guidance on the "180-Day Exclusivity" Provision of Section 505(j)(4)(B)(iv) of the Act	July 29, 1988	Do	Http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Sixth of a Series of Informal Notice Letters About the Act Discussing 3- and 5-year Exclusivity Provisions of Section 505(c)(3)(D) and (j)(4)(D) of the Act	April 28, 1988	Do	Do
Streamlining Initiative	December 24, 1996	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Supplement to 10/11/84 Letter About Policies, Procedures and Implementation of the Act (Q & A Format)	November 16, 1984	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Third of a Series of Letters Regarding the Implementation of the Act	May 1, 1985	Do	Do
Y2K Letter From Dr. Janet Woodcock	October 19, 1998	Do	Do
Combined Oral Contraceptives—Labeling for Healthcare Providers and Patients—Draft	July 10, 2000	Labeling Draft	Do
Content and Format for Geriatric Labeling—Draft	January 21, 1999	Do	Do
Content and Format of the Adverse Reactions Section of Labeling for Human Prescription Drugs and Biologics—Draft	June 21, 2000	Do	Do
Non-Contraceptive Estrogen Drug Products—Physician and Patient Labeling—Draft	January 8, 1999	Do	Do
Noncontraceptive Estrogen Class Labeling—Draft	September 27, 1999	Do	Do
Labeling of OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvovaginal Candidiasis)—Draft	July 16, 1998	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Referencing Discontinued Labeling for Listed Drugs in Abbreviated New Drug Applications—Draft	October 26, 2000	Do	Do
Therapeutic Equivalence Code Placement on Prescription Drug Labels and Labeling—Draft	January 28, 1999	Do	Do
Acetaminophen and Codeine Phosphate Tablets/Capsules	December 1, 1993	Labeling	Do
Acetaminophen and Codeine Phosphate Oral Solution/Suspension	December 1, 1993	Do	Do
Acetaminophen, Aspirin and Codeine Phosphate Tablets/Capsules	December 1, 1993	Do	Do
Alprazolam Tablets USP	August 1, 1996	Do	Do
Amiloride Hydrochloride and Hydrochlorothiazide Tablets USP	September 1, 1997	Do	Do
Amlodipine Besylate Tablets	September 1, 1997	Do	Do
Astemizole Tablets	September 1, 1997	Do	Do
Atenolol Tablets USP	August 1, 1997	Do	Do
Barbiturate, Single Entity-Class Labeling	March 1, 1981	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Butalbital, Acetaminophen and Caffeine Capsules/Tablets USP	September 1, 1997	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Butalbital, Acetaminophen, Caffeine and Hydocodone Bitartrate Tablets	September 21, 1997	Do	Do
Butorphanol Tartrate Injection USP	October 1, 1992	Do	Do
Captopril and Hydrochlorothiazide Tablets USP	April 1, 1995	Do	Do
Captopril Tablets	February 1, 1995	Do	Do
Carbidopa and Levodopa Tablets USP	February 1, 1992	Do	Do
Chlordiazepoxide Hydrochloride Capsules	January 1, 1988	Do	Do
Cimetidine Hydrochloride Injection	September 1, 1995	Do	Do
Cimetidine Tablets	September 1, 1995	Do	Do
Cisapride Oral Suspension	September 1, 1997	Do	Do
Cisapride Tablets	September 1, 1997	Do	Do
Clindamycin Phosphate Injection USP	September 1, 1998	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Clorazepate Dipotassium Capsules/Tablets	March 1, 1993	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Combination Oral Contraceptives—Physician and Patient Labeling	January 1, 1994	Do	Do
Cyproheptadine Hydrochloride Tablets/Syrup	December 1, 1986	Do	Do
Diclofenac Sodium Delayed-Release Tablets	January 1, 1997	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Diltiazem Hydrochloride Extended-Release Capsules	September 1, 1995	Do	Do
Diphenoxylate Hydrochloride and Atropine Sulfate Oral Solution USP	April 1, 1995	Do	Do
Diphenoxylate Hydrochloride and Atropine Sulfate Tablets USP	April 1, 1995	Do	Do
Dipivefrin Hydrochloride Ophthalmic Solution, 0.1%	November 2, 1998	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Ergoloid Mesylates Tablets	January 1, 1988	Do	Do
Fludeoxyglucose F18 Injection	January 1, 1997	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Flurbiprofen Tablets USP	January 1, 1994	Do	Do
Fluvoxamine Maleate Tablets	September 1, 1997	Do	Do
Gentamicin Sulfate Ophthalmic Ointment and Solution USP	April 1, 1992	Do	Do
Heparin Sodium Injection USP	March 1, 1991	Do	Do
Hydrocodone Bitartrate and Acetaminophen Tablets USP	April 1, 1994	Do	Do
Hydroxyzine Hydrochloride Injection	December 1, 1989	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Hypoglycemic Oral Agents Federal Register	April 1, 1984	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Indomethacin Capsules USP	September 1, 1995	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Informal Labeling Guidance Texts for Estrogen Drug Products Patient Labeling	August 1, 1992	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Informal Labeling Guidance Texts for Estrogen Drug Products: Professional Labeling	August 1, 1992	Do	Do
Isoetharine Inhalation Solution	March 1, 1989	Do	Do
Itraconazole Capsules, USP	September 1, 1998	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Leucovorin Calcium for Injection	July 1, 1996	Do	Do
Leucovorin Calcium Tablets, USP	July 1, 1996	Do	Do
Local Anesthetics Class Labeling	September 1, 1982	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Meclofenamate Sodium Capsules	July 1, 1992	Do	Do
Medroxyprogesterone Acetate Tablets, USP	September 1, 1998	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Metaproterenol Sulfate Inhalation Solution USP	May 1, 1992	Do	Do
Metaproterenol Sulfate Syrup USP	May 1, 1992	Do	Do
Metaproterenol Sulfate Tablets	May 1, 1992	Do	Do
Metoclopramide Tablets USP/Oral Solution	February 1, 1995	Do	Do
Naphazoline Hydrochloride Ophthalmic Solution	March 1, 1989	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Naproxen Sodium Tablets, USP	September 1, 1997	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Naproxen Tablets, USP	September 1, 1997	Do	Do
Niacin Tablets	July 1, 1982	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Paclitaxel Injection	September 1, 1997	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Phendimetrazine Tartrate Capsules/T Nets, and Extended-Release Capsules	February 1, 1991	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Phentermine Hydrochloride Capsules/Tablets	August 1, 1988	Do	Do
Promethazine Hydrochloride Tablets	March 1, 1990	Do	Do
Propantheline Bromide Tablets	August 1, 1988	Do	Do
Pyridoxine Hydrochloride Injection	June 1, 1984	Do	Do
Quinidine Sulfate Tablets/Capsules USP	October 1, 1995	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Ranitidine Tablets USP	November 1, 1993	Do	Do
Risperidone Oral Solution	September 1, 1997	Do	Do
Risperidone Tablets	September 1, 1997	Do	Do
Sulfacetainide Sodium and Prednisolone Acetate Ophthalmic Suspension and Ointment	January 1, 1995	Do	Do
Sulfacetamide Sodium Ophthalmic Solution/Ointment	August 1, 1992	Do	Do
Sulfamethoxazole and Phenazopyridine Hydrochloride Tablets	February 1, 1992	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Sulfamethoxazole and Trimethoprim Tablets and Oral Suspension	August 1, 1993	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Theophylline Immediate-Release Dosage Forms	February 1, 1995	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Theophylline Intravenous Dosage Forms	September 1, 1995	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Thiamine Hydrochloride Injection	February 1, 1988	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Tobramycin Sulfate Injection USP	May 1, 1993	Do	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
Venlafaxine Hydrochloride Tablets	October 1, 1997	Do	Do
Verapamil Hydrochloride Tablets	October 1, 1991	Do	Do
Vitamin A Capsules	February 1, 1992	Do	Do
Zolpidem Tartrate Tablets	September 1, 1997	Do	Do
Demonstration of Comparability of Human Biological Products, Including Therapeutic Biotechnology-Derived Products	April 1, 1996	Microbiology	Do
Labeling OTC Human Drug Products—Submitting Requests for Exemptions and Deferrals—Draft	December 19, 2000	OTC Draft	Do
Labeling OTC Human Drug Products: Updating Labeling in ANDAs—Draft	February 22, 2001	Do	Do
OTC Actual Use Studies—Draft	July 22, 1994	Do	Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
OTC Nicotine Substitutes—Draft	March 1, 1994	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Enforcement Policy on Marketing OTC Combination Products (CPG 7132b.16)		OTC	http://www.fda.gov/cder/guidance/index.htm Division of Drug Information (HFD–200), Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573
General Guidelines for OTC Combination Products		Do	Do
Labeling OCT Human Drug Products Using a Column Format	December 19, 2000	Do	Do
Upgrading Category III Antiperspirants to Category 1 (43 FR 46728–46731)		Do	Do
Carcinogenicity Study Protocol Submissions—Draft	November 7, 2000	Pharmacology/Toxicology Draft	Do
Immunotoxicology Evaluation of Investigational New Drugs—Draft	May 11, 2001	Do	Do
Photosafety Testing—Draft	January 10, 2000	Do	Do
Statistical Aspects of the Design, Analysis, and Interpretation of Chronic Rodent Carcinogenicity Studies of Pharmaceuticals—Draft	May 8, 2001	Do	Do
Content and Format of INDs for Phase 1 Studies of Drugs Including Well-Characterized, Therapeutic, Biotechnology-Derived Products	October 4, 2000	Pharmacology/Toxicology	Do
Format and Content of the Nonclinical Pharmacology/Toxicology Section of an Application	February 1, 1987	Do	Do
Nonclinical Pharmacology/Toxicology Development of Topical Drugs Intended to Prevent the Transmission of Sexually Transmitted Diseases (STD) and/or for the Development of Drugs Intended to Act as Vaginal Contraceptives	October 16, 1996	Do	Do
Reference Guide for the Nonclinical Toxicity Studies of Antiviral Drugs Indicated for the Treatment of N/A Non-Life Threatening Disease: Evaluation of Drug Toxicity Prior to Phase I Clinical Studies	February 1, 1989	Do	Do
Single Dose Acute Toxicity Testing Toxicity Testing for Pharmaceuticals	August 26, 1996	Do	Do
Applications Covered by Section 505(b)(2)—Draft	December 8, 1999	Procedural Draft	Do
Content and Format of New Drug Applications and Abbreviated New Drug Applications for Certain Positron Emission Tomography Drug Products—Draft	March 10, 2000	Do	Do
Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by CDER, Beginning January 1, 2000—Draft	December 22, 1999	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Forms for Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution—Draft	May 15, 2001	Do	Do
Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank—Draft	March 29, 2000	Do	Do
Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Implementation Plan—Draft	July 9, 2001	Do	Do
Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act—Draft	August 17, 1999	Do	Do
PET Drug Applications—Content and Format for NDAs and ANDAs—Draft	March 10, 2000	Do	Do
Postmarketing Safety Reporting for Human Drug and Biological Products Including Vaccines—Draft	March 12, 2001	Do	Do
Potassium Iodide as a Thyroid Blocking Agent in Radiation Emergencies—Draft	January 4, 2001	Do	Do
Reports on the Status of Postmarketing Studies—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997—Draft	April 4, 2001	Do	Do
Special Protocol Assessment—Draft	February 9, 2000	Do	Do
Submitting Debarment Certification Statements—Draft	October 2, 1998	Do	Do
180-Day Generic Drug Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act	July 14, 1998	Procedural	Do
Advisory Committees: Implementing Section 120 of the Food and Drug Modernization Act of 1997	November 2, 1998	Do	Do
Court Decisions, ANDA Approvals, and 130-Day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act	March 30, 2000	Do	Do
Disclosure of Materials Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Convened by the Center for Drug Evaluation and Research Beginning on January 1, 2000	November 30, 1999	Do	Do
Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act	November 23, 1998	Do	Do
Fast Track Drug Development Programs: Designation, Development, and Application Review	November 18, 1998	Do	Do
Financial Disclosure by Clinical Investigators	March 20, 2001	Do	Do
Formal Dispute Resolution: Appeals Above the Division Level	March 7, 2000	Do	Do

III. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Formal Meetings With Sponsors and Applicants for PDUFA Products	March 7, 2000	Do	Do
Implementation of Section 120 of the FDA Modernization Act of 1997—Advisory Committees	November 20, 1998	Do	Do
Implementation of Section 126 of the FDA Modernization Act of 1997—Elimination of Certain Labeling Requirements	July 21, 1998	Do	Do
Levothyroxine Sodium Products—Enforcement of August 14, 2001, Compliance Date and Submission of New Applications	July 13, 2001	Do	Do
National Uniformity for Nonprescription Drugs Ingredient Labeling for OTC Drugs	April 9, 1998	Do	Do
Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act—Revised	October 1, 1999	Do	Do
Reduction of Civil Money Penalties for Small Business Entities	March 20, 2001	Do	Do
Refusal to File	July 12, 1993	Do	Do
Repeal of Section 507 of the Federal Food, Drug, and Cosmetic Act	June 15, 1998	Do	Do
Standards for the Prompt Review of Efficacy Supplements Including Priority Efficacy Supplements	May 15, 1998	Do	Do
Women and Minorities Guidance Requirements	July 20, 1998	Do	Do
Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act	August 17, 1999	User Fee Draft	Do
Submitting Separate Marketing Applications and Definitions of Clinical Data for Purposes of Assessing User Fees—Draft	February 22, 2001	Do	Do
Waivers of and Reductions in User Fees (Attachment G)—Draft	July 16, 1993	Do	Do
Applicability of User Fees to: (1) Applications Withdrawn Before Filing Decision, or (2) Applications the Agency Has Refused to File and That Are Resubmitted or Filed Over Protest (Attachment F)	July 12, 1993	User Fee	Do
Application, Product, and Establishment Fees: Common Issues and Their Resolution (Attachment D)	December 16, 1994	Do	Do
Classifying Resubmissions in Response to Action Letters	May 14, 1998	Do	Do
Fees-Exceed-the-Costs Waivers Under the Prescription Drug User Fee Act	August 25, 1999	Do	Do
Formal Meetings With Sponsors and Applicants for PDUFA Products	March 7, 2000	Do	Do
Submitting and Reviewing Complete Responses to Clinical Holds (Revised)	October 26, 2000	Do	Do

WITHDRAWALS

Name of Document	Date of Issuance	Intended User or Regulatory Activity	Date of Withdrawal
Dissemination and Reprints of Certain Published Original Data (No Replacement)	October 8, 1996	Advertising	February 16, 2000
Funded Dissemination of Reference Texts (No Replacement)	October 8, 1996	Advertising	February 16, 2000
Buspirone Hydrochloride Tablets In Vivo Bioequivalence (No Replacement)	May 14, 1998	Biopharmaceutics	November 30, 2000
Cimetidine Tablets In Vivo Bioequivalence and In Vitro Dissolution (No Replacement)	Unknown	Biopharmaceutics	November 30, 2000
Diclofenac Sodium (Tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing (No Replacement)	October 6, 1994	Biopharmaceutics	November 30, 2000
Glipizide In Vivo Bioequivalence and In Vivo Dissolution Testing (No Replacement)	Unknown	Biopharmaceutics	November 30, 2000
Glyburide In Vivo Bioequivalence and In Vivo Dissolution Testing (No Replacement)	Unknown	Biopharmaceutics	November 30, 2000
Oral Extended (Controlled) Release Dosage Forms In Vivo Bioequivalence and In Vitro Dissolution Testing (No Replacement)	Unknown	Biopharmaceutics	November 30, 2000
Statistical Procedures for Bioequivalence Studies Using a Standard Two-Treatment Crossover Design (No Replacement)	July 1, 1992	Biopharmaceutics	November 30, 2000
Clinical Evaluation of Drugs to Prevent Dental Caries (No Replacement)	November 1, 1978	Clinical Medical	May 18, 2000
Clinical Evaluation of Drugs to Prevent, Control, and/or Treat Periodontal Disease (No Replacement)	November 1, 1978	Clinical Medical	May 18, 2000
OTC Treatment of Hypercholesterolemia (No Replacement)	October 27, 1997	OTC	August 3, 2000
Levothyroxine Sodium: Questions and Answers (Replaced by Levothyroxine Sodium Products Enforcement of August 14, 2001, Compliance Date and Submission of New Applications issued on July 13, 2001)	March 8, 2001	Procedural	July 13, 2001

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
The FDA Export Reform and Enhancement Act of 1996/ Export Certification Package Including "Instructions for Requests for Certificate to Foreign Governments"	February 7, 2000	Office of Compliance (OC)	Division of Small Manufacturers Assistance; 1–800–638–2041 or 301–827–0111 or (FAX) Facts-on-Demand (FOD) at 1–800–899–0381 or Internet at http://www.fda.gov/ cdrh/ ggpmain.html	865
Commercial Distribution/Exhibit Letter	April 10, 1992	OC	Do	246
Color Additive Status List (Inspection Operations Manual)	February 1, 1989	OC	Do	268
FDA Guide for Validation of Biological Indicator Incubation Time	January 1, 1986	OC	Do	283

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Guide for Establishing and Maintaining a Calibration Constancy Intercomparison System for Microwave Oven Compliance Survey Instruments (FDA 88–8264)	March 1, 1988	OC	Do	286
Preproduction Quality Assurance Planning: Recommendations for Medical Device Manufacturers (FDA 90–4236)	September 1, 1989	OC	Do	295
Color Additive Petitions (p. 11–19 of PMA Manual)	June 1, 1987	OC	Do	296
Guidance for Preparation of PMA Manufacturing Information	August 1, 1992	OC	Do	448
Civil Money Penalty Policy; Guidance for FDA Staff	June 8, 1999	OC	Do	1124
General Principles of Software Validation; Draft Guidance	June 9, 1997	OC	Do	938
Classification Names for Medical Devices and In Vitro Diagnostic Products (FDA Pub. No. 95–4246)	March 1, 1995	OC	Do	10
Cover Letter/Guidance Document on the Performance Standard for Electrode Lead Wires and Patient Cable	March 9, 1998	OC	Do	1197
Guidance on Medical Device Tracking [FDAMA]; Guidance for Industry and FDA Staff	January 24, 2000	OC	Do	169
Compliance Program Guidance Manual: Inspection of Medical Devices; Draft	August 12, 1999	OC	Do	1702
Procedures for Laboratory Compliance Testing of Television Receivers—Part of TV Packet	May 1, 1986	OC	Do	945
Sec. 300.600 Commercial Distribution with Regard to Premarket Notification [510(k)] [CPG 7124.19]	September 24, 1987	OC	Do	181
Letter to Medical Device Manufacturer on Pentium Processors	February 14, 1995	OC	Do	456
Implementation of the Biomaterials Access Assurance Act of 1998	April 2, 2001	OC	Do	1324
Guideline for the Monitoring of Clinical Investigations	January 1, 1988	OC	Do	428
Regulating In Vitro Diagnostic Device (IVD) Studies; Guidance for FDA Staff	December 17, 1999	OC/Division of Bioresearch Monitoring (DBM)	Do	1132
Preparing Notices of Availability of Investigational Medical Devices and for Recruiting Study Subjects	March 19, 1999	OC/DBM	Do	2229
Guidance on Electrosurgical Devices and the Application of the Performance Standard for Electrode Lead Wires and Patient Cables	November 15, 1999	OC/Division of Enforcement (DOE) I	Do	1129
Guidance on Quality System Regulation Information for Various Premarket Submissions; Draft	August 3, 1999	OC/DOEII	Do	1140
Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves; Guidance for Industry—Draft	July 26, 2000	OC/DOEII	Do	1141
Manufacturers/Assemblers of Diagnostic X-Ray Systems: Enforcement Policy for Positive-Beam Limitation (PBL) Requirements in 21 CFR 1020.31(g)	October 13, 1993	OC/DOEI	Do	116
Guide for the Submission of Initial Reports on Diagnostic X-Ray Systems and their Major Components	January 1, 1982	OC/DOEI	Do	257

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Exemption From Reporting and Recordkeeping Requirements for Certain Sunlamp Product Manufacturers	September 16, 1981	OC/DOEI	Do	343
Letter to Medical Device Industry on Endoscopy and Laparoscopy Accessories (Galdi)	May 17, 1993	OC/DOEI	Do	545
Clarification of Radiation Control Regulations for Diagnostic X-Ray Equipment (FDA 89–8221)	March 1, 1989	OC/DOEI	Do	758
CPG 7133.19: Retention of Microwave Oven Test Record/Cover Letter: 08/24, 1981 Retention of Records Required by 21 CFR [Part] 1002	March 1, 1995	OC/DOEI	Do	880
Guideline for the Manufacture of In Vitro Diagnostic Products	January 10, 1994	OC/DOEI	Do	918
A Guide for the Submission of Abbreviated Radiation Safety Reports on Cephalometric X-Ray Devices: Defined as Dental Units With an Attachment for Mandible Work That Holds a Cassette and Beam Limiting Device	March 1, 1996	OC/DOEI	Do	977
A Guide for the Submission of an Abbreviated Radiation Safety Report on X-Ray Tables, Cradles, Film Changers or Cassette Holders Intended for Diagnostic Use	March 1, 1996	OC/DOEI	Do	978
A Guide for the Submission of Abbreviated Radiation Safety Reports on Image Receptor Support Devices for Mammographic X-Ray Systems	March 1, 1996	OC/DOEI	Do	979
Compliance Program Guidance Manual; Field Compliance Testing of Diagnostic (Medical) X-Ray Equipment; Guidance for FDA Staff	March 15, 2000	OC/DOEI	Do	1133
Information Disclosure by Manufacturers to Assemblers for Diagnostic X-Ray Systems; Final Guidance for Industry and FDA	April 2, 2001	OC/DOEI	Do	2619
Guide for Submission of Information on Accelerators Intended to Emit X-Radiation Required Pursuant to 21 CFR 1002.10	April 1, 1971	OC/DOEI&III	Do	235
Abbreviated Reports on Radiation Safety for Microwave Products (Other Than Microwave Ovens)—E.G. Microwave Heating, Microwave Diathermy, RF Sealers, Induction, Dielectric Heaters, Security Systems	August 1, 1995	OC/DOEI&III	Do	236
Guide for Preparing Reports on Radiation Safety of Microwave Ovens	March 1, 1985	OC/DOEI&III	Do	239
Reporting Guide for Laser Light Shows and Displays (21 CFR [Part] 1002) (FDA 88–8140)	September 1, 1995	OC/DOEI&III	Do	251
Guide for Filing Annual Reports for X-Ray Components and Systems	July 1, 1980	OC/DOEI&III	Do	253
Reporting and Compliance Guide for Television Products Including Product Report, Supplemental Report, Radiation Safety Abbreviated Report, Annual Report, Information and Guidance	October 1, 1995	OC/DOEI&III	Do	260
Revised Guide for Preparing Annual Reports on Radiation Safety Testing of Laser and Laser Light Show Products (Replaces FDA 82–8127)	September 1, 1995	OC/DOEI&III	Do	264

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Guide for Preparing Abbreviated Reports of Microwave and RF Emitting Electronic Products Intended for Medical Use	September 1, 1996	OC/DOEI&III	Do	399
Letter to Manufacturers and Importers of Microwave Ovens: Information Requirements for Cookbooks and User and Service Manuals	October 31, 1988	OC/DOEI&III	Do	697
Abbreviated Reports on Radiation Safety of Non-Medical Ultrasonic Products	August 1, 1995	OC/DOEI&III	Do	951
Guide for Preparing Product Reports for Medical Ultrasound Products	September 1, 1996	OC/DOEI&III	Do	960
Letter—Manufacturers, Distributors and Importers of Condom Products	February 23, 1994	OC/DOEII	Do	52
Letter—Manufacturers, Importers, and Repackagers of Condoms for Contraception or Sexually-Transmitted Disease Prevention (Holt)	February 13, 1989	OC/DOEII	Do	53
Letter—Condom Manufacturers and Distributors	April 5, 1994	OC/DOEII	Do	56
Letter to Manufacturers/Repackers Using Cotton	April 22, 1994	OC/DOEII	Do	101
Guide for Preparing Product Reports for Lasers and Products Containing Lasers	September 1, 1995	OC/DOEII	Do	277
Compliance Guide for Laser Products (FDA 86–8260)	September 1, 1985	OC/DOEII	Do	278
Condoms: Inspection and Sampling at Domestic Manufacturers and of All Repackers; Sampling From All Importers (Damaska Memo to Field on 4/8, 1987)	April 8, 1987	OC/DOEII	Do	293
Dental Handpiece Sterilization (Dear Doctor Letter)	September 28, 1992	OC/DOEII	Do	589
Latex Labeling Letter (Johnson)	March 18, 1993	OC/DOEII	Do	831
Pesticide Regulation Notice 94–4: Interim Measures for the Registration of Antimicrobial Products/Liquid Chemical Germicides With Medical Device Use Claims Under the Memorandum of Understanding Between EPA and FDA	June 30, 1994	OC/DOEII	Do	851
Letter to Industry, Powered Wheelchair Manufacturers From RM Johnson	May 10, 1993	OC/DOEII	Do	869
Hazards of Volume Ventilators and Heated Humidifiers	September 15, 1993	OC/DOEII	Do	901
Manufacturers and Initial Distributors of Sharps Containers and Destroyers Used by Health Care Professionals	February 3, 1994	OC/DOEII	Do	933
Ethylene Oxide; Ethylene Chlorohydrin; and Ethylene Glycol; Proposed Maximum Residue Limits and Maximum Levels of Exposure	June 23, 1978	OC/DOEII	Do	1019
Letter to: Manufacturers and Users of Lasers for Refractive Surgery [Excimer]	October 10, 1996	OC/DOEII	Do	1093
Shielded Trocars and Needles Used for Abdominal Access During Laparoscopy	August 23, 1996	OC/DOEII	Do	1122
Surveillance and Detention Without Physical Examination of Condoms; Guidance for Industry; Draft	August 14, 2000	OC/DOEII	Do	1139
All U.S. Condom Manufacturers, Importers and Repackagers	April 7, 1987	OC/DOEII	Do	2510

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Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Manufacturers and Initial Distributors of Hemodialyzers	May 23, 1996	OC/DOEII	Do	2507
Laser Light Show Safety—Who's Responsible? (FDA 86–8262)	May 1, 1986	OC/DOEIII	Do	13
Suggested State Regulations for Control of Radiation—Volume II Nonionizing Radiation—Lasers (FDA Pub. No. 83–8220)	January 1, 1982	OC/DOEIII	Do	70
Letter to All Foreign Manufacturers and Importers of Electronic Products for Which Applicable FDA Performance Standards Exist	May 28, 1981	OC/DOEIII	Do	231
Guide for Submission of Information on Industrial X-Ray Equipment Required Pursuant to 21 CFR 1002.10	March 1, 1973	OC/DOEIII	Do	237
Guide for Submission of Information on Analytical X-Ray Equipment Required Pursuant to 21 CFR 1002.10	April 30, 1974	OC/DOEIII	Do	240
Guidance for the Submission of Cabinet X-Ray System Reports Pursuant to 21 CFR 1020.40	February 1, 1975	OC/DOEIII	Do	241
Guide for Preparing Annual Reports on Radiation Safety Testing of Electronic Products (General)	October 1, 1987	OC/DOEIII	Do	243
Computerized Devices/Processes Guidance—Application of the Medical Device GMP to Computerized Devices and Manufacturing Processes	May 1, 1992	OC/DOEIII	Do	247
Guide for Preparing Product Reports for Ultrasonic Therapy Products (Physical Therapy Only)	August 1, 1996	OC/DOEIII	Do	249
Guide for Submission of Information on Industrial Radiofrequency Dielectric Heater and Sealer Equipment Pursuant to 21 CFR 1002.10 and 1002.12 (FDA 81–8137)	September 1, 1980	OC/DOEIII	Do	254
Guide for Preparing Annual Reports for Ultrasonic Therapy Products	September 1, 1996	OC/DOEIII	Do	261
Guide for Preparing Annual Reports on Radiation Safety Testing of Sunlamps and Sunlamp Products (Replaces FDA 82–8127)	September 1, 1995	OC/DOEIII	Do	262
Guide for Preparing Annual Reports on Radiation Safety Testing of Mercury Vapor Lamps (Replaces FDA 82–8127)	September 1, 1995	OC/DOEIII	Do	263
Quality Control Guide for Sunlamp Products (FDA 88–8234)	March 1, 1988	OC/DOEIII	Do	270
Guide for the Submission of Initial Reports on Computed Tomography X-Ray Systems	September 1, 1984	OC/DOEIII	Do	271
Guide for Preparing Product Reports on Sunlamps and Sunlamp Products (21 CFR [Part] 1002)	September 1, 1995	OC/DOEIII	Do	279
Letter: Policy on Maximum Timer Interval and Exposure Schedule for Sunlamp Products	August 21, 1986	OC/DOEIII	Do	342
Reporting Guide for Product Reports on High Intensity Mercury Vapor Discharge Lamps (21 CFR [Part] 1002)	September 1, 1995	OC/DOEIII	Do	348
Quality Control Practices for Compliance With the Federal Mercury Vapor Lamp Performance Standard	May 1, 1980	OC/DOEIII	Do	349

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Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Keeping Up With the Microwave Revolution (FDA Pub. No. 91–4160)	March 1, 1990	OC/DOEIII	Do	356
Quality Assurance Guidelines for Hemodialysis Devices	February 1, 1991	OC/DOEIII	Do	507
Letter to Manufacturers and Importers of Microwave Ovens—Open Door Operation of Microwave Ovens as a Result of Oven Miswiring	March 28, 1980	OC/DOEIII	Do	646
Reporting of New Model Numbers to Existing Model Families	June 14, 1983	OC/DOEIII	Do	675
Import: Radiation-Producing Electronic Products (FDA 89–8008)	November 1, 1988	OC/DOEIII	Do	756
Unsafe Patient Lead Wires and Cables	September 3, 1993	OC/DOEIII	Do	889
Application for a Variance from 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device [Form FDA 3147]	July 1, 1998	OC/DOEIII	Do	903
Letter to Trade Association: Reuse of Single-Use or Disposable Medical Devices	December 27, 1995	OC/DOEIII	Do	961
Design Control Guidance for Medical Device Manufacturers	March 11, 1997	OC/DOEIII	Do	994
Keeping Medical Devices Safe From Electromagnetic Interference	July 1, 1995	OC/DOEIII	Do	1081
Medical Devices and EMI: The FDA Perspective	January 1, 1995	OC/DOEIII	Do	1082
Medical Device Electromagnetic Interference Issues, Problem Reports, Standards, and Recommendations		OC/DOEIII	Do	1086
Safety of Electrically Powered Products: Letter to Medical Device and Electronic Product Manufacturers From Lillian Gill and BHB Correction Memo	September 18, 1996	OC/DOEIII	Do	1087
Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals; Guidance for Industry and for FDA Staff	August 14, 2000	OC/DOEIII	Do	1168
Labeling for Electronic Anti-Theft Systems; Guidance for Industry; Final	August 15, 2000	OC/DOEIII	Do	1170
Wireless Medical Telemetry Risks and Recommendations, Guidance for Industry; Final	September 27, 2000	OC/DOEIII	Do	1173
Policy on Warning Label Required on Sunlamp Products	June 25, 1985	OC/DOEIII	Do	1343
Policy on Lamp Compatibility (Sunlamps)	September 2, 1986	OC/DOEIII	Do	2343
Guidance for Industry on the Likelihood of Facilities Inspections When Modifying Devices Subject to Premarket Approval	August 5, 1999	OC/Division of Program Operations (DPO)	Do	1269
Guidance on IDE Policies and Procedures [FDAMA]; Final	January 20, 1998	Office of Device Evaluation (ODE)	Do	882
Color Additives for Medical Devices	November 15, 1995	ODE	Do	575
Preamendment Class III Devices	March 11, 1992	ODE	Do	584
Viable Bacteriophage in CO2 Laser Plume: Aerodynamic Size Distribution	Date not available	ODE	Do	595
Guidance for Submitting Reclassification Petition	June 1, 1989	ODE	Do	609

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Electromagnetic Compatibility for Medical Devices: Issues and Solutions; Memorandum	June 13, 1995	ODE	Do	639
SMDA Changes—Premarket Notification; Regulatory Requirements for Medical Devices [510(k)] Manual Insert	April 17, 1992	ODE	Do	655
"Real-Time" Review Program for Premarket Approval Application (PMA) Supplements	April 22, 1997	ODE	Do	673
Classified Convenience Kits	April 30, 1993	ODE	Do	789
30-Day Notices and 135-Day PMA Supplements for Manufacturing Method or Process Changes, Guidance for Industry and CDRH [FDAMA]; Final	February 19, 1998	ODE	Do	795
Suggested Content for Original IDE Application Cover Letter—Version 4	February 27, 1996	ODE	Do	797
Device Specific Guidance Documents (List)	May 11, 1993	ODE	Do	815
PMA Shell Development and Modular Review; Guidances for the Medical Device Industry; Final	November 6, 1998	ODE	Do	835
Determination of Intended Use for 510(k) Devices—Guidance for Industry and CDRH Staff [FDAMA]; Final	January 30, 1998	ODE	Do	857
Premarket Notification [510(k)] Status Request Form, Revised	March 14, 1997	ODE	Do	858
CDRH's 510(k)/IDE/PMA Refuse to Accept/Accept/File Policies	June 30, 1993	ODE	Do	859
Indications for Use Statement	February 6, 1996	ODE	Do	879
The New 510(k) Paradigm—Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications; Final	March 20, 1998	ODE	Do	905
Preamendments Class III Strategy; SXAlpert	April 19, 1994	ODE	Do	611
Letter to Industry, Powered Wheelchair/Scooter or Accessory/Component Manufacturer From Susan Alpert, Ph.D., M.D.	May 26, 1994	ODE	Do	883
ODE Executive Secretary Guidance Manual	August 7, 1987	ODE	Do	1338
Modifications to Devices Subject to Premarket Approval—The PMA Supplement Decision Making Process; Guidance for Industry; Draft	August 6, 1998	ODE	Do	102
CDRH Submissions Coversheet [PMA/PDP/510k/IDE]	May 8, 1998	ODE	Do	147
Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff [FDAMA]; Final	February 19, 1998	ODE	Do	159
Limulus Amebocyte Lysate; Reduction of Samples for Testing	October 23, 1987	ODE	Do	178
Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities: FDA Reviewer Guidance	April 1, 1996	ODE	Do	198
New Section 513(f)(2)—Evaluation of Automatic Class III Designation; Guidance for Industry and CDRH Staff [FDAMA]; Final	February 19, 1998	ODE	Do	199

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Methods for Conducting Recall Effectiveness Checks	June 16, 1978	ODE	Do	225
Suggestions for Submitting a Premarket Approval (PMA) Application	April 1, 1993	ODE	Do	228
Guidance for Off-the-Shelf Software Use in Medical Devices; Final	September 9, 1999	ODE	Do	1252
Application of the Device Good Manufacturing Practice (GMP) Regulation to the Manufacture of Sterile Devices	December 1, 1983	ODE	Do	267
Points to Consider in the Characterization of Cell Lines Used to Produce Biological Products (From John C. Petricciani, M.D.)	June 1, 1984	ODE	Do	269
Early Collaboration Meetings Under the FDA Modernization Act (FDAMA), Guidance for Industry and CDRH Staff [FDAMA]	February 19, 1998	ODE	Do	310
Format for IDE Progress Reports	June 1, 1996	ODE	Do	311
Guidance on PMA Interactive Procedures for Day-100 Meetings and Subsequent Deficiencies—For Use by CDRH and Industry [FDAMA]; Final	February 19, 1998	ODE	Do	322
Industry Representatives on Scientific Panels	March 27, 1987	ODE	Do	329
PMA Review Schedule [P87–1]	March 31, 1988	ODE	Do	333
Necessary Information for Diagnostic Ultrasound 510(k) (Draft)	November 24, 1987	ODE	Do	335
Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices; Guidance for FDA and Reviewers and Industry; Final	May 29, 1998	ODE	Do	337
Master Files Part III; Guidance on Scientific and Technical Information	June 1, 1987	ODE	Do	338
510(k) Quality Review Program (Blue Book Memo) (I96–1)	March 29, 1996	ODE	Do	344
FDA Policy for the Regulation of Computer Products (Draft)	November 13, 1989	ODE	Do	351
Threshold Assessment of the Impact of Requirements for Submission of PMAs for 31 Medical Devices Marketed Prior to May 28, 1976	January 1, 1990	ODE	Do	352
4-of-A-Kind PMAs	October 1, 1991	ODE	Do	371
Supplements to Approved Applications for Class III Medical Devices: Use Published Literature, Use of Previously Submitted Materials, and Priority Review [FDAMA]; Guidance for Industry; Final	May 20, 1998	ODE	Do	380
Substantial Equivalence (SE) Decision Making Documentation ATTACHED: "SE" Decision Making Process (Detailed), i.e., the Decision Making Tree	January 1, 1990	ODE	Do	390
Shelf Life of Medical Devices	March 1, 1991	ODE	Do	415
Guideline on General Principles of Process Validation	May 1, 1987	ODE	Do	425
Guideline on Sterile Drug Products Produced by Aseptic Processing	June 1, 1987	ODE	Do	426

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Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Guideline on Validation of the Limulus Amebocyte Lysate (LAL) Test as an End-Product Endotoxin Test	December 1, 1987	ODE	Do	427
General/Specific Intended Use [FDAMA]; Draft Guidance for Industry	November 4, 1998	ODE	Do	499
Distribution and Public Availability of Premarket Approval Application Summary of Safety and Effectiveness Data Packages [Blue Book Memo #P98–1]; Final	October 10, 1997	ODE	Do	563
Proposal for Establishing Mechanisms for Setting Review Priorities Using Risk Assessment and Allocating Review Resources and T93–28 dated 6/25, 1993, Device "Fast Track" Plan Announcement (Include with 926–930)	June 30, 1993	ODE	Do	931
New Model Medical Device Development Process; Guidance for Industry; Final	July 21, 1998	ODE	Do	1101
Guidance on the Use of Standards in Substantial Equivalence Determinations; Final	March 12, 2000	ODE	Do	1131
Guidance for Industry and for FDA Reviewers; Interpretive Guidance on Section 216 of the Food and Drug Administration Modernization Act of 1997	August 9, 2000	ODE	Do	1135
Evidence Models for the Least Burdensome Means to Market; Guidance for Industry and FDA Reviewers; Draft	September 1, 1999	ODE	Do	1154
Questions and Answers for the FDA Reviewer Guidance: Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities	September 3, 1996	ODE	Do	1198
Deciding When to Submit a 510(k) for a Change to an Existing Wireless Telemetry Medical Device; Final Guidance for FDA Reviewers and Industry	November 30, 2000	ODE	Do	1073
Guidance on Amended Procedures for Advisory Panel Meetings	July 22, 2000	ODE	Do	413
Medical Devices Containing Materials Derived From Animal Sources (Except for In Vitro Diagnostic Devices), Guidance for FDA Reviewers and Industry; Final	November 16, 1998	ODE	Do	2206
Frequently Asked Questions on the New 510(k) Paradigm; Guidance for Industry; Final	October 22, 1998	ODE	Do	2230
The Least Burdensome Provisions of the FDA Modernization Act of 1997: Concept and Principles; Draft Guidance for FDA and Industry	May 3, 2001	ODE	Do	1332
Guidance for the Content of Premarket Notifications for Conventional and Antimicrobial Foley Catheters	September 12, 1994	ODE Division of Reproductive, Abdominal, and Radiological Devices (DRARD)	Do	97
Checklist for Mechanical Lithotripters and Stone Dislodgers Used in Gastroenterology and Urology	November 1, 1994	ODE/DRARD	Do	98
Convenience Kits Interim Regulatory Guidance (Include 874)	May 20, 1997	ODE/510K	Do	562

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Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Announcement: Implementation of the FDA/HCFA Interagency Agreement Regarding Reimbursement Categorization of Investigational Devices, Att. A Interagency Agreement. Att. B Criteria for Categorization of Investigational Devices #D95–2 (Blue Book Memo)	September 15, 1995	ODE/BlueBook	Do	106
Consolidated Review of Submissions for Diagnostic Ultrasound Equipment, Accessories and Related Measurement Devices #G90–2 (Blue Book Memo)	October 19, 1990	ODE/BlueBook	Do	30
Consolidated Review of Submissions for Lasers and Accessories #G90–1 (Blue Book Memo)	October 19, 1990	ODE/BlueBook	Do	31
Review of Final Draft Medical Device Labeling #P91–4 (Blue Book Memo)	August 29, 1991	ODE/BlueBook	Do	34
Review of 510(k)s for Computer Controlled Medical Devices #K91–1 (Blue Book Memo)	August 29, 1991	ODE/BlueBook	Do	35
Use of International Standard ISO–10993, "Biological Evaluation of Medical Devices Part 1: Evaluation and Testing" (Replaces #G87–1 #8294) (Blue Book Memo)	May 1, 1995	ODE/BlueBook	Do	164
ODE Regulatory Information for the Office of Compliance—Information Sharing Procedures #G87–2 (Blue Book Memo)	May 15, 1987	ODE/BlueBook	Do	276
Panel Review of "Me-Too" Devices #P86–6 (Blue Book Memo)	July 1, 1986	ODE/BlueBook	Do	280
Guidance on the Center for Devices and Radiological Health's Premarket Notification Review Program #K86–3 (Blue Book Memo)	June 30, 1986	ODE/BlueBook	Do	289
PMA Filing Decisions #P90–2 (Blue Book Memo)	May 18, 1990	ODE/BlueBook	Do	297
PMAs—Early Review and Preparation of Summaries of Safety and Effectiveness #P86–1 (Blue Book Memo)	January 27, 1986	ODE/BlueBook	Do	302
Criteria for Panel Review of PMA Supplements #P86–3 (Blue Book Memo)	January 30, 1986	ODE/BlueBook	Do	304
Review and Approval of PMAs of Licensees #P86–4 (Blue Book Memo)	October 22, 1990	ODE/BlueBook	Do	305
Panel Report and Recommendations on PMA Approvals #P86–5 (Blue Book Memo)	April 18, 1986	ODE/BlueBook	Do	306
510(k) Sign-Off Procedures #K94–2 (Blue Book Memo)	June 3, 1994	ODE/BlueBook	Do	308
Review of Laser Submissions #G88–1 (Blue Book Memo)	April 15, 1988	ODE/BlueBook	Do	330
Delegation of IDE Actions #D88–1 (Blue Book Memo)	April 26, 1988	ODE/BlueBook	Do	331
Premarket Notification—Consistency of Reviews #K89–1 (Blue Book Memo)	February 28, 1989	ODE/BlueBook	Do	339
Telephone Communications Between ODE Staff and Manufacturers #I93–1 (Blue Book Memo)	January 29, 1993	ODE/BlueBook	Do	360
510(k) Sterility Review Guidance—and Revision of 11/18/1994 #K90–1 (Blue Book Memo)	February 12, 1990	ODE/BlueBook	Do	361
Review of IDEs for Feasibility Studies #D89–1 (Blue Book Memo)	May 17, 1989	ODE/BlueBook	Do	362

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Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Toxicology Risk Assessment Committee #G89–1 (Blue Book Memo)	August 9, 1989	ODE/BlueBook	Do	363
Assignment of Review Documents #I90–2 (Blue Book Memo)	August 24, 1990	ODE/BlueBook	Do	366
Meetings With the Regulated Industry #I89–3 (Blue Book Memo)	November 20, 1989	ODE/BlueBook	Do	367
Policy Development and Review Procedures #I90–1 (Blue Book Memo)	February 15, 1990	ODE/BlueBook	Do	368
PMA Supplements: ODE Letter to Manufacturers; Identifies Situations Which May Require the Submission of a PMA Supplement (When PMA Supplements Are Required) #P90–1 (Blue Book Memo)	April 24, 1990	ODE/BlueBook	Do	387
510(k) Refuse to Accept Procedures #K94–1 (Blue Book Memo)	May 20, 1994	ODE/BlueBook	Do	401
PMA Refuse to File Procedures #P94–1 (Blue Book Memo)	May 20, 1994	ODE/BlueBook	Do	402
Premarket Approval Application (PMA) Closure #P94–2 (Blue Book Memo)	July 8, 1994	ODE/BlueBook	Do	403
PMA/510(k) Triage Review Procedures #G94–1 (Blue Book Memo)	May 20, 1994	ODE/BlueBook	Do	404
Goals and Initiatives for the IDE Program #D95–1 (Blue Book Memo)	July 12, 1995	ODE/BlueBook	Do	405
Cover Letter: 510(k) Requirements During Firm-Initiated Recalls; Attachment A: Guidance on Recall and Premarket Notification Review Procedures During Firm-Initiated Recalls of Legally Marketed Devices (Blue Book Memo #K95–1)	November 21, 1995	ODE/BlueBook	Do	406
IDE Refuse to Accept Procedures #D94–1 (Blue Book Memo)	May 20, 1994	ODE/BlueBook	Do	410
Device Labeling Guidance #G91–1 (Blue Book Memo)	March 8, 1991	ODE/BlueBook	Do	414
Clinical Utility and Premarket Approval #P91–1 (Blue Book Memo)	May 3, 1991	ODE/BlueBook	Do	443
Panel Review of Premarket Approval Applications #P91–2 (Blue Book Memo)	May 3, 1991	ODE/BlueBook	Do	444
PMA Compliance Program #P91–3 (Blue Book Memo)	May 3, 1991	ODE/BlueBook	Do	445
Document Review Processing #I91–1 (Blue Book Memo)	February 12, 1992	ODE/BlueBook	Do	446
Integrity of Data and Information Submitted to ODE #I91–2 (Blue Book Memo)	May 29, 1991	ODE/BlueBook	Do	447
Nondisclosure of Financially Sensitive Information #I92–1 (Blue Book Memo)	March 5, 1992	ODE/BlueBook	Do	587
Memorandum of Understanding Regarding Patient Labeling Review (Blue Book Memo #G96–3))	August 9, 1996	ODE/BlueBook	Do	806
Continued Access to Investigational Devices During PMA Preparation and Review (Blue Book Memo) (D96–1)	July 15, 1996	ODE/BlueBook	Do	872

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Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
510(k) Additional Information Procedures #K93–1 (Blue Book Memo)	July 23, 1993	ODE/BlueBook	Do	886
Overdue IDE Annual Progress Report Procedures #D93–1 (Blue Book Memo)	July 23, 1993	ODE/BlueBook	Do	887
Documentation and Resolution of Differences of Opinion on Product Evaluations #G93–1 (Blue Book Memo)	December 23, 1993	ODE/BlueBook	Do	920
Deciding When to Submit a 510(k) for a Change to an Exisiting Device; (Blue Book Memo #K97–1)	January 10, 1997	ODE/BlueBook	Do	1935
Interagency Agreement Between FDA and HCFA; #D95–2, Attachment A	September 15, 1995	ODE/BlueBook	Do	2106
Executive Secretaries Guidance Manual #G87–3	August 7, 1987	ODE/BlueBook	Do	2326
Criteria for Categorization of Investigational Devices (HCFA); #D95–2, Attachment B	September 15, 1995	ODE/BlueBook	Do	3106
Center for Devices and Radiological Health's Premarket Notification [510(k)] Refuse to Accept Policy—(Updated Checklist March 14, 1995)	June 30, 1993	ODE/BlueBook	Do	3859
HCFA Reimbursement Categorization Determinations for FDA-Approved IDEs	October 31, 1995	ODE/BlueBook	Do	4106
Center for Devices and Radiological Health's Investigational Device Exemption (IDE) Refuse to Accept Policy	June 30, 1993	ODE/BlueBook	Do	4859
Guidance for Prescription Use Drugs of Abuse Assays Premarket Notifications; Guidance for Industry and/or for FDA Reviewers/Staff and/or Compliance; Draft Guidance—Not for Implementation	November 14, 2000	ODE Division of Clinical Laboratory Devices (DCLD)	Do	152
Review Criteria for Assessment of In Vitro Diagnostic Devices for Drugs of Abuse Assays Using Various Methodologies	August 31, 1995	ODE/DCLD	Do	1191
Guidance for Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing; Draft	December 21, 1999	ODE/DCLD	Do	1359
Review Criteria for In Vitro Diagnostic Devices for the Assessment of Thyroid Autoantibodies Using Indirect Immunofluorescence Assay (IFA), Indirect Hemagglutination Assay (IHA), Radioimmunoasay (RIA), and Enzyme Linked Immunosorbent Assay (ELISA)	February 1, 1994	ODE/DCLD	Do	51
Review Criteria for Blood Culture Systems	August 12, 1991	ODE/DCLD	Do	82
Points to Consider for Collection of Data in Support of In Vitro Device Submissions for 510(k) Clearance	September 26, 1994	ODE/DCLD	Do	95
Points to Consider for Portable Blood Glucose Monitoring Devices Intended for Bedside Use in the Neonate Nursery	February 20, 1996	ODE/DCLD	Do	122
Criteria for Assessment of In Vitro Diagnostic Devices for Drugs of Abuse Assays Using Various Methodologies; Draft	August 31, 1995	ODE/DCLD	Do	1191
Review Criteria for Assessment of Rheumatoid Factor (RF) In Vitro Diagnostic Devices Using Enzyme-Linked Immunoassay (EIA), Enzyme Linked Immunosorbent Assay (ELISA), Particle Agglutination Tests, and Laser and Rate Nephelometry	February 21, 1997	ODE/DCLD	Do	165

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Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Assessing the Safety/Effectiveness of Home-Use In Vitro Diagnostic Devices (IVDs): Points to Consider Regarding Labeling and Premarket Submissions; Draft	October 1, 1988	ODE/DCLD	Do	272
Guidance for Submission of Immunohistochemistry Applications to the FDA; Final	June 3, 1998	ODE/DCLD	Do	364
Review Criteria for Assessment of Cytogenetic Analysis Using Automated and Semi-Automated Chromosome Analyzers	July 15, 1991	ODE/DCLD	Do	417
Review Criteria for Assessment of Alpha-Fetoprotein (AFP) In Vitro Diagnostic Devices for Fetal Open Neural Tube Defects Using Immunological Test Methodologies	July 15, 1994	ODE/DCLD	Do	459
Guidance for 510(k) Submission of Lymphocyte Immunophenotyping IVDs using Monoclonal Antibodies; Draft	September 26, 1991	ODE/	Do	475
Points to Consider for Hematology Quality Control Materials	September 30, 1997	ODE/DCLD	Do	512
Review Criteria for In Vitro Diagnostic Devices for Detection of IGM Antibodies to Viral Agents	August 1, 1992	ODE/DCLD	Do	527
Points to Consider for Review of Calibration and Quality Control Labeling for In Vitro Diagnostic Devices/Cover Letter Dated March 14, 1996	February 1, 1996	ODE/DCLD	Do	553
Review Criteria for Devices Intended for the Detection of Hepatitis B "e" Antigen and Antibody to HBe	December 30, 1991	ODE/DCLD	Do	554
Guidance Criteria for Cyclosporine PMAs	January 24, 1992	CDE/DCLD	Do	564
Review Criteria for Assessment of Laboratory Tests for the Detection of Antibodies to Helicobacter Pylori	September 17, 1992	ODE/DCLD	Do	588
Review Criteria for Assessment of Human Chorionic Gonadotropin (hCG) In Vitro Diagnostic Devices (IVDs)	September 27, 1995	ODE/DCLD	Do	592
Premarketing Approval Review Criteria for Premarket Approval of Estrogen (ER) or Progesterone (PGR) Receptors In Vitro Diagnostic Devices Using Steroid Hormone Binding (SBA) With Dextran-Coated Charcoal (DCC) Separation, Histochemical Receptor Bi; Draft	September 10, 1992	ODE/DCLD	Do	603
Review Criteria for Assessment of Portable Blood Glucose In Vitro Diagnostic Devices Using Glucose Oxidase, Dehydrogenase, or Hexokinase Methodology	February 14, 1996	ODE/DCLD	Do	604
Guidance for 510(k)s on Cholesterol Tests for Clinical Laboratory, Physicians' Office Laboratory, and Home Use	July 14, 1995	ODE/DCLD	Do	605
Review Criteria for Devices Assisting in the Diagnosis of C. Difficile Associated Diseases	May 31, 1990	ODE/DCLD	Do	629
Guidance Document for 510(k) Submission of Glycohemoglobin (Glycated or Glycosylated) Hemoglobin for IVDs; Draft	September 30, 1991	ODE/DCLD	Do	658
Review Criteria For Premarket Approval of In Vitro Diagnostic Devices for Detection of Antibodies to Parvovirus B19	May 15, 1992	ODE/DCLD	Do	770

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Guidance Document for 510(k) Submission of Fecal Occult Blood Tests; Draft	July 29, 1992	ODE/DCLD	Do	772
Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Chlamydiae in Clinical Specimens	January 1, 1992	ODE/DCLD	Do	778
Guidance Document for 510(k) Submission of Immunoglobulins A, G, M, D and E Immunoglobulin System In Vitro Devices; Draft	September 1, 1992	ODE/DCLD	Do	785
Review Criteria for the Assessment of Allergen-Specific Immunoglobulin E (IGE) In Vitro Diagnostic Devices Using Immunological Test Methodologies	March 2, 1993	ODE/DCLD	Do	800
Review Criteria for the Assessment of Anti-Nuclear Antibodies (ANA) In Vitro Diagnostic Devices Using Indirect Immunofluorescence Assay (IFA), Immunodiffusion (IMD) and Enzyme Linked Immunosorbant Assay (ELISA).	September 1, 1992	ODE/DCLD	Do	848
Review Criteria for Nucleic Acid Amplification Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms; Draft	June 14, 1993	ODE/DCLD	Do	861
Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Mycobacterium Spp. [Tuberculosis (TB)]	July 6, 1993	ODE/DCLD	Do	862
Data for Commercialization of Original Equipment Manufacturer, Secondary and Generic Reagents for Automated Analyzers	June 10, 1996	ODE/DCLD	Do	950
Guidance Document for the Submission of Tumor Associated Antigen Premarket Notification [510(k)] to FDA	September 19, 1996	ODE/DCLD	Do	957
Points to Consider for Cervical Cytology Devices	July 25, 1994	ODE/DCLD	Do	968
Review Criteria for In Vitro Diagnostic Devices That Utilize Cytogenetic In Situ Hybridization Technology for the Detection of Human Genetic Mutations (Germ Line and Somatic)	February 15, 1996	ODE/DCLD	Do	980
In Vitro Diagnostic Bicarbonate/Carbon Dioxide Test System; Guidance for Industry; Final	July 6, 1998	ODE/DCLD	Do	1102
In Vitro Diagnostic Chloride Test System; Guidance for Industry; Final	July 6, 1998	ODE/DCLD	Do	1103
In Vitro Diagnostic Creatinine Test System; Guidance for Industry; Final	July 2, 1998	ODE/DCLD	Do	1104
In Vitro Diagnostic Glucose Test System; Guidance for Industry; Final	July 6, 1998	ODE/DCLD	Do	1105
In Vitro Diagnostic Potassium Test System; Guidance for Industry; Final	July 6, 1998	ODE/DCLD	Do	1107
In Vitro Diagnostic Sodium Test System; Guidance for Industry; Final	July 6, 1998	ODE/DCLD	Do	1109
In Vitro Diagnostic Urea Nitrogen Test System; Guidance for Industry; Final	July 6, 1998	ODE/DCLD	Do	1110
Guidance for Administrative Procedures for CLIA Categorization; Guidance for Industry and/or for FDA Reviewers/Staff and/or Compliance; Draft	August 14, 2000	ODE/DCLD	Do	1143

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Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Guidance for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Criteria for Waiver; Draft Guidance for Industry and FDA Applications	March 1, 2001	ODE/DCLD	Do	1147
Guidance for Over-the-Counter (OTC) Ovulation Predictor 510(k)s	July 22, 2000	ODE/DCLD	Do	1171
Guidance for Over-the-Counter (OTC) Human Chorionic Gonadotropin (hCG) 510(k)s	July 22, 2000	ODE/DCLD	Do	1172
Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices; Draft	March 8, 2000	ODE/DCLD	Do	631
In Vitro Diagnostic C-Reactive Protein Immunological Test System; Guidance for Industry; Final	July 20, 1998	ODE/DCLD	Do	1246
Abbreviated 510(k) Submissions for In Vitro Diagnostic Calibrators; Guidance for Industry: Final	February 22, 1999	ODE/DCLD	Do	1247
Guidance on Labeling for Laboratory Tests; Guidance for Industry; Draft	June 24, 1999	ODE/DCLD	Do	1352
Premarket Approval Applications for Assays Pertaining to Hepatitis C Viruses (HCV) That Are Indicated for Diagnosis or Monitoring of HCV Infection or Associated Disease; Draft	October 8, 1999	ODE/DCLD	Do	1353
Class II Special Control Guidance Document for Anti-Saccharomyces Cerevisiae (S. Cerevisiae) Antibody (ASCA) Premarket Notifications; Final	August 23, 2000	ODE/DCLD	Do	1183
Guidance for Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final; Guidance for Industry and FDA	November 1, 2000	ODE/DCLD	Do	1184
Review Criteria for Assessment of Antimicrobial Susceptibility Test Discs	October 30, 1996	ODE/DCLD	Do	1631
Over the Counter (OTC) Screening Tests for Drugs of Abuse: Guidance for Premarket Notifications; Guidance for Industry; Draft	November 14, 2000	ODE/DCLD	Do	2209
Points to Consider Guidance Document on Assayed and Unassayed Quality Control Material; Guidance for Industry	February 3, 1999	ODE/DCLD	Do	2231
Document for Special Controls for Erythropoietin Assay Premarket Notifications [510(k)s]; Guidance for Industry; Final	April 28, 1999	ODE/DCLD	Do	2241
In Vitro Diagnostic Fibrin Monomer Paracoagulation Test; Guidance for Industry and FDA Reviewers/Staff; Final	April 27, 1999	ODE/DCLD	Do	2242
Class II Special Control Guidance Document for B-Type Natriuretic Peptide Premarket Notifications; Final Guidance for Industry and FDA Reviewers	November 30, 2000	ODE/DCLD	Do	1072
Guidance for Electrical Safety, Electromagnetic Compatibility and Mechanical Testing for Indwelling Blood Gas Analyzer Premarket Notification Submissions	June 28, 2000	ODE Division of Cardiovascular and Respiratory Devices (DCRD)	Do	1161
Guidance for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads and for Pacemaker Lead Adaptor 510(k) Submissions; Final	November 1, 2000	ODE/DCRD	Do	372

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Investigational Device Exemption (IDE) Study Enrollment for Cardiac Ablation of Typical Atrial Flutter; Final Guidance for Industry and FDA Reviewers	November 8, 2000	ODE/DCRD	Do	1199
Guidance Document for Vascular Prostheses 510(k) Submissions; Guidance for Industry and FDA Staff; Final	November 1, 2000	ODE/DCRD	Do	1357
Guidance for Annuloplasty Rings 510(k) Submissions; Final Guidance for Industry and FDA Staff	January 31, 2001	ODE/DCRD	Do	1358
1–Consolidated Annual Report for a Device Product Line (1–CARD); Pilot for Preparation of Annual Reports for Pacemaker Premarket Approval Applications	July 6, 2000	ODE/DCRD	Do	1167
Excerpts Related to EMI From November 1993 Anesthesiology and Respiratory Devices Branch (Including Electromagnetic Compatibility Standard for Medical Devices; 10/1/79)	November 1, 1993	ODE/DCRD	Do	638
Guidance for Infant/Child Apnea Monitor 510(k) Submissions	September 22, 2000	ODE/DCRD	Do	1178
Guidance for Industry and for FDA Reviewers: Recommended Clinical Study Design for Ventricular Tachycardia Ablation	May 7, 1999	ODE/DCRD	Do	2244
Guidance for Industry: Electro-Optical Sensors for the In Vivo Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE/PMA; Draft	August 25, 1999	ODE/DCRD	Do	266
Guidance for Cardiovascular Intravascular Filter 510(k) Submission; Final	November 26, 1999	ODE/DCRD	Do	24
Guidance for the Submission of 510(k) Premarket Notifications for Electrocardiograph (ECG) Electrode—Version 1.0	February 11, 1997	ODE/DCRD	Do	25
Guidance for the Submission of 510(k) Premarket Notifications for Electrocardiograph (ECG) Lead Switching Adapter—Version 1.0	February 11, 1997	ODE/DCRD	Do	26
Guidance Document Device: Electrocardiograph (ECG) Surface Electrode Tester—Version 1.0	February 11, 1997	ODE/DCRD	Do	27
Draft Guidance Outline—Points to Consider for Clinical Studies for Vasovasostomy Devices	November 30, 1993	ODE/DCRD	Do	100
Medical Device Labeling—Suggested Format and Content; Draft Document	April 25, 1997	ODE/DCRD	Do	119
Non-Invasive Blood Pressure (NIBP) Monitor Guidance	March 10, 1997	ODE/DCRD	Do	123
Policy for Expiration Dating (DCRD RB92–G)	October 30, 1992	ODE/DCRD	Do	137
Human Heart Valve Allografts; Draft	June 21, 1991	ODE/DCRD	Do	224
Guidance for Extracorporeal Blood Circuit Defoamer 510(k) Submissions; Final	February 16, 2000	ODE/DCRD	Do	1632
Guidance for Cardiopulmonary Bypass Arterial Line Blood Filter 510(k) Submissions; Final	February 21, 2000	ODE/DCRD	Do	1622
Balloon Valvuloplasty Guidance for the Submission of an IDE Application and a PMA Application	January 1, 1989	ODE/DCRD	Do	370
Replacement Heart Valve Guidance; Draft	October 14, 1994	ODE/DCRD	Do	375

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Implantable Pacemaker Testing Guidance	January 12, 1990	ODE/DCRD	Do	383
Letter/Guidance: Vascular Graft Manufacturer, Developer, or Representative	May 11, 1990	ODE/DCRD	Do	391
Reviewer Guidance for Ventilators; Draft	July 1, 1995	ODE/DCRD	Do	500
Draft 510(k) Checklist for Urological Irrigation System and Tubing Set	August 1, 1995	ODE/DCRD	Do	515
Draft Guidance to Firms on Biliary Lithotripsy Studies	August 2, 1990	ODE/DCRD	Do	522
Draft Guidance for Clinical Investigations of Devices Used for the Treatment of Benign Prostatic Hyperplasia (BPH)	November 11, 1994	ODE/DCRD	Do	533
Letter: Notice to Manufacturers of Bone Mineral Densitometers	September 25, 1997	ODE/DCRD	Do	552
Information for Manufacturers Seeking Marketing Clearance of Diagnostic Ultrasound Systems and Transducers: Draft	September 30, 1997	ODE/DCRD	Do	560
Draft Guidance for the Content of Premarket Notifications for Urological Balloon Dilatation Catheters	January 24, 1992	ODE/DCRD	Do	567
Guideline for the Arrangement and Content ot a Premarket Approval (PMA) Application for a Cochlear Implant in Adults at Least 18 Years of Age	May 1, 1990	ODE/DCRD	Do	577
Guidance for the Preparation of the Annual Report to the PMA Approved Heart Valve Prostheses	April 1, 1990	ODE/DCRD	Do	582
Draft Version: Electrode Recording Catheter Preliminary Guidance (Data to Be Sumitted to the FDA in Support of Premarket Notifications [510(k)s])	March 1, 1995	ODE/DCRD	Do	602
Cardiac Ablation Preliminary Guidance (Data to Be Submitted to the FDA in Support Investigation Device Exemption Application; Draft	March 1, 1995	ODE/DCRD	Do	619
Premarket Testing Guidelines for Falloposcopes	November 20, 1992	ODE/DCRD	Do	621
Guidelines for Evaluation of Non-Drug IUDs	September 28, 1976	ODE/DCRD	Do	641
Simplified 510(k) procedures for certain radiology devices: 12/21, 1993, letter from L Yin, ODE/ODE/DRARD, to NEMA	December 21, 1993	ODE/DCRD	Do	708
Draft 510(k) Checklist for Endoscopic Electrosurgical Unit (ESU) and Accessories Used in Gastroenterology and Urology	August 16, 1995	ODE/DCRD	Do	768
Heated Humidifier Review Guidance	August 30, 1991	ODE/DCRD	Do	780
Reviewer Guidance for Nebulizers, Metered Dose Inhalers, Spacers and Actuators	October 1, 1993	ODE/DCRD	Do	784
Reviewer Guidance for Automatic X-Ray Film Processor 510(k)	February 1, 1990	ODE/DCRD	Do	788
Guidance for the Technical Content of a Premarket Approval (PMA) Application for an Endolymphatic Shunt Tube With Valve	April 1, 1990	ODE/DCRD	Do	791
Guidance for Magnetic Resonance Diagnostic Devices—Criteria for Significant Risk Investigations	September 29, 1997	ODE/DCRD	Do	793

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Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Draft Guidance for Preparation of PMA Applications for Testicular Prostheses	March 16, 1993	ODE/DCRD	Do	809
Draft Guidance for Preparation of PMA Applications for Penile Inflatable Implants	March 16, 1993	ODE/DCRD	Do	810
Draft Guidance for the Content of Premarket Notifications for Water Purification Components and Systems for Hemodialysis	May 30, 1997	ODE/DCRD	Do	842
Guidance for the Submission of Research and Marketing Applications for Interventional Cardiology Devices: PTCA Catheters, Atherectomy Catheters, Lasers, Intravascular Stents; Draft	May 1, 1995	ODE/DCRD	Do	846
Draft Guidance for Preclinical and Clinical Investigations of Urethral Bulking Agents Used in the Treatment of Urinary Incontinence	November 29, 1995	ODE/DCRD	Do	850
Draft Guidance for Review of Bone Densitometer 510(k) Submissions	November 9, 1992	ODE/DCRD	Do	866
Battery Guidance	July 12, 1993	ODE/DCRD	Do	873
Guidance for the Preparation of Research and Marketing Applications for Vascular Graft Prostheses; Draft	August 1, 1993	ODE/DCRD	Do	885
510(k) Checklist for Sterile Lubricating Jelly Used With Transurethral Surgical Instruments	September 19, 1994	ODE/DCRD	Do	892
Draft Guidance for Hemodialyzer Reuse Labeling	October 6, 1995	ODE/DCRD	Do	899
Hysteroscopes and Gynecology Laparoscopes—Submission Guidance for a 510(k)—Includes 00192	March 27, 1996	ODE/DCRD	Do	907
Draft Guidance for the Content of Premarket Notifications for Loop and Rollerball Electrodes for GYN Electrosurgical Excisions	July 29, 1991	ODE/DCRD	Do	953
Intravascular Brachytherapy—Guidance for Data to be Submitted to the Food and Drug Administration in Support of Investigational Device Exemption (IDE) Applications; Draft	May 24, 1996	ODE/DCRD	Do	955
Percutaneous Transluminal Coronary Angioplasty Package Insert Template; Draft	February 7, 1995	ODE/DCRD	Do	959
Coronary and Cerebrovascular Guidewire Guidance	January 1, 1995	ODE/DCRD	Do	964
Guidance for Implantable Cardioverter-Defibrillators; Draft	June 24, 1996	ODE/DCRD	Do	965
Carotid Stent—Suggestions for Content of Submissions to the Food and Drug Administration in Support of Investigational Devices Exemption (IDE) Applications	October 26, 1996	ODE/DCRD	Do	974
Emergency Resuscitator Guidance; Draft	April 14, 1993	ODE/DCRD	Do	985
Review Guidelines for Oxygen Generators and Oxygen Equipment; Draft Document	April 14, 1993	ODE/DCRD	Do	986
Draft 510(k) Checklist for Condom Catheters	February 23, 1995	ODE/DCRD	Do	991
CDRH Interim Regulatory Policy for External Penile Rigidity Devices	September 10, 1997	ODE/DCRD	Do	992

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Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Reviewer Guidance on Face Masks and Shield for CPR; Draft	March 16, 1994	ODE/DCRD	Do	996
General Guidance Document: Non-Invasive Pulse Oximeter	September 7, 1992	ODE/DCRD	Do	997
Guidance for Peak Flow Meters for Over-the-Counter Sale	June 23, 1992	ODE/DCRD	Do	998
510(K) Submission Requirements for Peak Flow Meters; Draft	January 13, 1994	ODE/DCRD	Do	999
Guidance for Industry and FDA; Guidance for Indwelling Blood Gas Analyzer 510(k) Submissions	February 21, 2000	ODE/DCRD	Do	1126
Guidance Document for Premarket Notification Submission for Nitric Oxide Delivery Apparatus, Nitric Oxide Analyzer and Nitrogen Dioxide Analyzer; Final	January 24, 2000	ODE/DCRD	Do	1157
Latex Condoms for Men—Information for 510(k) Premarket Notifications: Use of Consensus Standards for Abbreviated Submissions	July 23, 1998	ODE/DCRD	Do	1250
Guidance for Industry—Uniform Contraceptive Labeling; Final	July 23, 1998	ODE/DCRD	Do	1251
Guidance for Cardiopulmonary Bypass Oxygenators 510(k) Submissions; Final	January 17, 2000	ODE/DCRD	Do	1361
Guidance for the Content of Premarket Notifications for Penile Rigidity Implants; Final	January 16, 2000	ODE/DCRD	Do	177
Federal Register Notice; Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures: Submission Guidance for a 510(k); Draft; Availability	September 10, 1998	ODE/DCRD	Do	1620
Hysteroscopic and Laparoscopic Insufflators: Submission Guidance for a 510(k)	August 1, 1995	ODE/DCRD	Do	1907
Guidance for Industry and CDRH Reviewers—Guidance for the Content of Premarket Notifications for Hemodialysis Delivery Systems; Final	August 7, 1998	ODE/DCRD	Do	2202
Noise Claims in Hearing Aid Labeling; Final	October 21, 1998	ODE/DCRD	Do	2210
Guidance for Industry—Diagnostic ECG Guidance (Including Non-Alarming ST Segment Measurement); Final	November 5, 1998	ODE/DCRD	Do	2232
Guidance for Industry—Cardiac Monitor Guidance (including Cardiotachometer and Rate Alarm); Final	November 5, 1998	ODE/DCRD	Do	2233
Guidance for Industry—Harmonic Imaging With/Without Contrast—Premarket Notification; Final	November 16, 1998	ODE/DCRD	Do	2234
Guidance for Industry—Guidance for the Content of Premarket Notifications for Intracorporeal Lithotripters; Final	November 30, 1998	ODE/DCRD	Do	2235
Guidance for Industry—Guidance for the Submission of Premarket Notifications for Radionuclide Dose Calibrators; Final	November 20, 1998	ODE/DCRD	Do	2238
Guidance for Industry—Non-Automated Sphygmomanometer (Blood Pressure Cuff) Guidance; Version 1; Final	November 19, 1998	ODE/DCRD	Do	2239

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Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Guidance for Industry—Guidance for the Submission of Premarket Notifications for Emission Computed Tomography Devices and Accessories (SPECT and PET) and Nuclear Tomography Systems; Final	December 3, 1998	ODE/DCRD	Do	2240
Guidance for the Content of Premarket Notifications for Metal Expandable Biliary Stents; Final	February 5, 1998	ODE/DCRD	Do	2243
Guidance for the Submission of 510(k)'s for Solid State X-Ray Imaging Devices; Final	August 6, 1999	ODE/DCRD	Do	644
Class II Special Control Guidance Document for Acute Upper Airway Obstruction Devices	July 30, 2000	ODE/DCRD	Do	1138
Guidance for Conducting Stability Testing to Support an Expiration Date Labeling Claim for Medical Gloves; Draft	November 16, 1999	ODE Division of Dental, Infection Control and General Hospital Devices (DDIGD)	Do	1355
Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme; Draft	February 8, 2000	ODE/DDIGD	Do	1156
Premarket Approval Applications (PMA) for Sharps Needle Destruction Devices; Final Guidance for Industry and FDA	March 2, 2001	ODE/DDIGD	Do	891
Guidance on the Content and Format of Premarket Notification 510(k) Submissions of Washers and Washer-Disinfectors	June 2, 1998	ODE/DDIGD	Do	4
Overview of Information Necessary for Premarket Notification Submissions for Endosseous Implants; Final	April 21, 1999	ODE/DDIGD	Do	86
Guidance for the Arrangement and Content of a Premarket Approval (PMA) Application for an Endosseous Implant for Prosthetic Attachment	May 16, 1989	ODE/DDIGD	Do	353
Guidance on 510(k) Submissions for Implanted Infusion Ports	October 1, 1990	ODE/DDIGD	Do	392
Guidance on the Content of Premarket Notification [510(K)] Submissions for Hypodermic Single Lumen Needles	April 1, 1993	ODE/DDIGD	Do	450
Guidance Document on Dental Handpieces	July 1, 1995	ODE/DDIGD	Do	556
Guidance on the Content and Format of Premarket Notification 510(k) Submissions for Liquid Chemical Germicides	December 6, 1996	ODE/DDIGD	Do	576
Guidance on the Content of Premarket Notification [510(K)] Submissions for Piston Syringes	April 1, 1993	ODE/DDIGD	Do	821
Guidance on the Content of Premarket Notification [510(K)] Submissions for Clinical Electronic Thermometers	March 1, 1993	ODE/DDIGD	Do	822
Guidance on the Content of Premarket Notification [510(k)] Submissions for External Infusion Pumps	March 1, 1993	ODE/DDIGD	Do	823
Guidance on Premarket Notification [510(K)] Submissions for Short-Term and Long-Term Intravascular Catheters	March 16, 1995	ODE/DDIGD	Do	824
Guidance on Premarket Notification [510(k)] Submissions for Sterilizers Intended for Use in Health Care Facilities	March 1, 1993	ODE/DDIGD	Do	833

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Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Guidance on Premarket Notification [510(k)] Submissions for Automated Endoscope Washers, Washer/Disinfectors, and Disinfectors Intended for Use in Health Care Facilities	August 1, 1993	ODE/DDIGD	Do	881
Guidance on Premarket Notification [510(k)] Submissions for Surgical Gowns and Surgical Drapes	August 1, 1993	ODE/DDIGD	Do	888
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for Sharps Containers	October 1, 1993	ODE/DDIGD	Do	895
Draft Supplementary Guidance on the Content of Premarket Notification [510(k)] Submissions for Medical Devices With Sharps Injury Prevention Features (Antistick)	March 1, 1995	ODE/DDIGD	Do	934
Guidance for Industry and FDA Reviewers/Staff—Premarket Notification [510(k)] Submissions for Testing for Skin Sensitization to Chemicals in Natural Latex Products [Draize Testing]	January 13, 1999	ODE/DDIGD	Do	944
Information Necessary for Premarket Notification Submissions for Screw-Type Endossesous Implants	December 9, 1996	ODE/DDIGD	Do	948
Draft Guidance Document for the Preparation of Premarket Notification [510(k)'s] for Dental Alloys	March 3, 1997	ODE/DDIGD	Do	984
Guidance on the Content of Premarket Notification [510(k)] Submissions for Protective Restraints	December 1, 1995	ODE/DDIGD	Do	993
Guidance on Premarket Notifications for Intravascular Administration Sets; Guidance for Industry and FDA Review Staff; Final	October 12, 2000	ODE/DDIGD	Do	1189
Addendum to: Guidance on Premarket Notification [510(k)] Submissions for Sterilizers Intended for Use in Health Care Facilities	September 19, 1995	ODE/DDIGD	Do	1833
Groups Capable of Testing for Latex Skin Sensitization (Addendum to #944)	July 28, 1997	ODE/DDIGD	Do	1944
Guidance for Industry and FDA Reviewers; Neonatal and Neonatal Transport Incubators—Premarket Notifications; Final	September 18, 1998	ODE/DDIGD	Do	2201
Dental Impression Materials—Premarket Notification; Final	August 17, 1998	ODE/DDIGD	Do	2203
Dental Cements Premarket Notification; Final	August 18, 1998	ODE/DDIGD	Do	2204
OTC Denture Cushions, Pads, Reliners, Repair Kits and Partially Fabricated Denture Kits; Final	August 18, 1998	ODE/DDIGD	Do	2205
Guidance for the Preparation of a Premarket Notification [510(k)] for Direct Filling Dental Composites	November 27, 1998	ODE/DDIGD	Do	642
Guidance and Format of Premarket Notification [510(k)] Submissions for Liquid Chemical Sterilants/High Level Disinfectants; Final	January 3, 2000	ODE/DDIGD	Do	397
Class II Special Control Guidance Document: Pharmacy Compounding Devices; Final Guidance for Industry and FDA	March 12, 2001	ODE/DDIGD	Do	1326
Guidance for Industry: Guidance for the Content of Premarket Notifications for Esophageal and Tracheal Prostheses; Final	April 28, 1998	ODE Division of General, Restorative and Neurological Devices (DGRND)	Do	6

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Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Calcium Phosphate (Ca-P) Coating Draft Guidance for Preparation of FDA Submissions for Orthopedic and Dental Endosseous Implants	February 21, 1997	ODE/DGRND	Do	33
510(k) Information Needed for Hydroxyapatite Coated Orthopedic Implants	February 20, 1997	ODE/DGRND	Do	47
Letter: Core Study for Silicone Breast Implants	January 11, 1996	ODE/DGRND	Do	107
Protocol for Dermal Toxicity Testing for Devices in Contact With Skin (Draft)	January 1, 1985	ODE/DGRND	Do	124
Draft Version 1—Biofeedback Devices—Draft Guidance for 510(k) Content	August 1, 1994	ODE/DGRND	Do	143
Draft Data Requirements for Ultrahigh Molecular Weight Polyethylene (Uhmupe) Used in Orthopedic Devices	March 28, 1995	ODE/DGRND	Do	180
Draft Guidance Document for Femoral Stem Prostheses	August 1, 1995	ODE/DGRND	Do	187
Draft Premarket Notification Review Guidance for Evoked Response Somatosensory Stimulators	June 1, 1994	ODE/DGRND	Do	207
Draft Version Guide for Cortical Electrode 510(k) Content	August 10, 1992	ODE/DGRND	Do	208
Draft Version Guidance for Clinical Data to be Submitted for Premarket Approval Application for Cranial Electrotherapy Stimulators	August 20, 1992	ODE/DGRND	Do	209
Draft Version Cranial Perforator Guidance	July 13, 1994	ODE/DGRND	Do	212
Draft Version Neuro Endoscope Guidance	July 7, 1994	ODE/DGRND	Do	214
Galvanic Skin Response Measurement Devices—Draft Guidance for 510(k) Content	August 1, 1994	ODE/DGRND	Do	215
Guidance Document for the Preparation of IDE and PMA Applications for Intra-Articular Prosthetic Knee Ligament Devices	February 18, 1993	ODE/DGRND	Do	233
Guidance for Industry, FDA Reviewers/Staff and Compliance Guidance Document for Powered Muscle Stimulator 510(k)s; Final	June 9, 1999	ODE/DGRND	Do	2246
Guidance for Industry—Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater; Final	August 30, 1999	ODE/DGRND	Do	54
Guide for TENS 510(k) Content (Draft)	August 1, 1994	ODE/DGRND	Do	300
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Submerged (Underwater) Exercise Equipment	July 26, 1995	ODE/DGRND	Do	307
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Electromyograph Needle Electrodes	July 26, 1995	ODE/DGRND	Do	325
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Exercise Equipment	July 26, 1995	ODE/DGRND	Do	326
Guidance Document for the Preparation of Premarket Notification [510k)] Applications for Mechanical and Powered Wheelchairs, and Motorized Three-Wheeled Vehicles	July 26, 1995	ODE/DGRND	Do	346

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Guidance Document for the Preparation of Premarket Notification for Ceramic Ball Hip Systems	January 10, 1995	ODE/DGRND	Do	355
Guidance on the Content and Organization of a Premarket Notification for a Medical Laser	June 1, 1995	ODE/DGRND	Do	386
Draft Guidance Document for Testing Acetabular Cup Prostheses	May 1, 1995	ODE/DGRND	Do	453
Guidance Document for Industry and CDRH Staff for the Preparation of Investigational Device Exemptions and Premarket Approval Applications for Bone Growth Stimulator Devices; Draft	March 18, 1998	ODE/DGRND	Do	487
Copy of October 9, 1992, Letter and Original Suture Labeling Guidance (Reformatted 12/17/1997)	October 9, 1992	ODE/DGRND	Do	502
Alternate Suture Labeling Resulting From the January 11, 1993, Meeting With HIMA (Reformatted 12/17/1997)	January 11, 1993	ODE/DGRND	Do	503
Guidelines for Reviewing Premarket Notifications that Claim Substantial Equivalence to Evoked Response Stimulators	February 1, 1997	ODE/DGRND	Do	593
Draft Version—Guidance on Biocompatibility Requirements for Long Term Neurological Implants: Part 3—Implant Model	September 12, 1994	ODE/DGRND	Do	627
Guidance for Studies for Pain Therapy Devices—General Considerations in the Design of Clinical Studies for Pain-Alleviating Devices	May 12, 1988	ODE/DGRND	Do	640
ORDB 510(k) Sterility Review Guidance	July 3, 1997	ODE/DGRND	Do	659
Draft Guidance for the Preparation of a Premarket Notification for Extended Laparoscopy Devices (ELD)	August 30, 1994	ODE/DGRND	Do	667
Draft Outline for a Guidance Document for Testing Orthopedic Bone Cement, Request for Comments by December 10, 1993	November 1, 1993	ODE/DGRND	Do	668
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Beds	July 26, 1995	ODE/DGRND	Do	689
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Immersion Hydrobaths	July 26, 1995	ODE/DGRND	Do	729
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Powered Tables and Multifunctional Physical Therapy Tables	July 26, 1995	ODE/DGRND	Do	735
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Communications Systems (Powered and Non-Powered) and Powered Environmental Control Systems	July 26, 1995	ODE/DGRND	Do	762
Electroencephalograph Devices Guidance for 510(k) Content; Draft	November 3, 1997	ODE/DGRND	Do	767
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Therapeutic Massagers and Vibrators	July 26, 1995	ODE/DGRND	Do	818
Guidance Document for Testing Orthopedic Implants With Modified Metallic Surfaces Apposing Bone or Bone Cement (Replaces 8623 and 8093)	April 28, 1994	ODE/DGRND	Do	827

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Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Heating and Cooling Devices	July 26, 1995	ODE/DGRND	Do	828
Reviewers Guidance Checklist for Orthopedic External Fixation Devices	February 21, 1997	ODE/DGRND	Do	829
Draft Guidance for the Preparation of Premarket Notifications [510(k)]s for Cemented, Semi-Constrained Total Knee Prostheses	April 1, 1993	ODE/DGRND	Do	830
Draft Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Orthopedic Devices—The Basic Elements	July 16, 1997	ODE/DGRND	Do	832
Draft 510(k) Guideline for General Surgical Electrosurgical Devices	May 10, 1995	ODE/DGRND	Do	904
Draft Guidance for Arthroscopes and Accessory 510(k)s	May 1, 1994	ODE/DGRND	Do	909
Guidance Document for Testing Biodegradable Polymer Implant Devices; Draft	April 20, 1996	ODE/DGRND	Do	914
Guidance Document for Testing Bone Anchor Devices; Draft	April 20, 1996	ODE/DGRND	Do	915
Guidance Document for Testing Non-Articulating, "Mechanically Locked", Modular Implant Components; Draft	May 1, 1995	ODE/DGRND	Do	916
Reviewers Guidance Checklist for Intramedullary Rods	February 21, 1997	ODE/DGRND	Do	956
Draft Guidance for Testing MR Interaction With Aneurysm Clips	May 22, 1996	ODE/DGRND	Do	958
Guidance for Industry—Guidance Document for Dura Substitute Devices; Final	August 13, 1999	ODE/DGRND	Do	1152
Guidance Document for Surgical Lamp 510Ks; Final	July 13, 1998	ODE/DGRND	Do	1244
Guidance for Industry—Guidance on Preclinical and Clinical Data and Labeling for Breast Prostheses; Draft	October 5, 1999	ODE/DGRND	Do	1354
Guidance Document for the Preparation of IDEs for Spinal Systems; Final	January 13, 2000	ODE/DGRND	Do	2250
Draft Guidance for the Preparation of an IDE Submission for a Interactive Wound and Burn Dressing	April 4, 1995	ODE/DGRND	Do	1817
Guidance for Industry and/or for FDA Reviewers/Staff and/or Compliance—Guidance Document for Powered Suction Pump 510(k)s	October 30, 1998	ODE/DGRND	Do	2207
Guidance for the Preparation of a Premarket Notification Application for a Surgical Mesh; Final	March 2, 1999	ODE/DGRND	Do	2247
Class II Special Controls Guidance Shoulder Joint Metal/Polymer/Metal Nonconstrained or Semi-Constrained Porous-Coated Uncemented Prosthesis; Final	October 31, 2000	ODE/DGRND	Do	1193
Guidance for Dermabrasion Devices; Final	March 2, 1999	ODE/DGRND	Do	2248
Draft Guidance for the Preparation of a Premarket Notification for a Non-Interactive Wound and Burn Dressing [510(k)]	May 31, 1995	ODE/DGRND	Do	2817

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Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery; Draft	December 16, 1999	ODE/DGRND	Do	1356
Special Control Guidance for Premarket Notifications for Totally Implanted Spinal Cord Stimulators for Pain Relief; Guidance for Industry; Draft	September 6, 2000	ODE/DGRND	Do	1179
Guidance for Surgical Suture 510(k)s; Guidance for Industry; Final	August 10, 2000	ODE/DGRND	Do	1180
Guidance for Neurological Embolization Devices; Guidance for Industry; Final	November 1, 2000	ODE/DGRND	Do	1151
Guidance for Spinal System 510(k)s	September 27, 2000	ODE/DGRND	Do	636
FDA Guidelines for Multifocal Intraocular Lens IDE Studies and PMAs	May 29, 1997	ODE Division of Ophthalmic and Ear, Nose, and Throat Devices (DOED)	Do	55
Announcement: Information for Manufacturers and Users of Lasers for Refractive Surgery [Excimer]	September 22, 1997	ODE/DOED	Do	93
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for Surgical Mask—Draft	January 16, 1998	ODE/DOED	Do	94
New FDA Recommendations and Results of Contact Lens Study (7-Day Letter)	May 30, 1989	ODE/DOED	Do	265
Draft Premarket Notification 510(k) Guidance for Contact Lens Care Products	May 1, 1997	ODE/DOED	Do	674
Important Information About Rophae Intraocular Lenses	August 20, 1992	ODE/DOED	Do	811
Draft Premarket Notification [510(k)] Guidance Document for Class II Daily Wear Contact Lenses and 6/28, 1994, Corrections to Pages 18 and 20	May 12, 1994	ODE/DOED	Do	896
Retinoscope Guidance; Final	July 8, 1998	ODE/DOED	Do	1240
Guidance for Industry—Ophthalmoscope Guidance (Direct and Indirect)	July 8, 1998	ODE/DOED	Do	1241
Slit Lamp Guidance; Final	July 13, 1998	ODE/DOED	Do	1242
Guidance for Industry and FDA Staff—Revised Procedures for Adding Lens Finishing Laboratories to Approved Premarket Approval (PMA) Applications for Class III Rigid Gas Permeable Contact Lenses for Extended Wear; Final	August 11, 1998	ODE/DOED	Do	1249
Accountability Analysis for Clinical Studies for Ophthalmic Devices; Draft	August 4, 1999	ODE/DOED	Do	1350
Guidance on 510(k) Submissions for Keratoprostheses; Final	March 3, 1999	ODE/DOED	Do	1351
Amendment 1: Draft Premarket Notification [510(k)] Guidance Document for Class II Daily Wear Contact Lenses	June 28, 1994	ODE/DOED	Do	1896
Checklist of Information Usually Submitted in an Investigational Device Exemptions (IDE) Application for Refractive Surgery Lasers [Excimer]	October 10, 1996	ODE/DOED	Do	2093
Third Party Review Guidance for Vitreous Aspiration and Cutting Device Premarket Notification [510(k)]	January 31, 1997	ODE/DOED	Do	2196

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Guidance Document for Nonprescription Sunglasses; Final	October 9, 1998	ODE/DOED	Do	2208
Aqueous Shunts—510(k) Submissions; Final	November 16, 1998	ODE/DOED	Do	2236
Discussion Points for Expansion of the "Checklist of Information Usually Submitted in an Investigational Device Exemption (IDE) Application for Refractive Surgery Lasers" Draft Document	September 5, 1997	ODE/DOED	Do	7093
Intraocular Lens (IOL) Guidance Document; Draft	October 14, 1999	ODE/DOED	Do	834
Refractive Implants: Guidance for Investigational Device Exemptions (IDE) and Premarket Approval (PMA) Applications	August 1, 2000	ODE/DOED	Do	1145
Guidance on Premarket Submissions of Orthokeratology Rigid Gas Permeable Contact Lenses; Final	April 10, 2000	ODE/DOED	Do	1134
Guidance for Manufacturers Seeking Marketing Clearance of Ear, Nose, and Throat Endoscope Sheaths Used as Protective Barriers; Final	March 12, 2000	ODE/DOED	Do	954
Information for a Latex Condom 510(k) Submission for Obstetrics-Gynecology Devices Branch—Draft	April 13, 1994	ODE Division of Reproductive, Abdominal, and Radiological Devices (DRARD)	Do	398
Guidance for the Content of Premarket Notifications for Urine Drainage Bags	June 7, 1994	ODE/DRARD	Do	96
Draft—510(k) Checklist for Conditioned Response Enuresis Alarms	November 23, 1994	ODE/DRARD	Do	99
Draft Guidance for Preparation of PMA Applications for the Implanted Mechanical/Hydraulic Urinary Continence Device (Artificial Urinary Sphincter)	May 1, 1995	ODE/DRARD	Do	161
Draft Guidance for the Content of Premarket Notifications for Endoscopes Used in Gastroenterology and Urology	March 17, 1995	ODE/DRARD	Do	162
Draft Guidance for the Content of Premarket Notifications for Menstrual Tampons	May 25, 1995	ODE/DRARD	Do	166
Draft 510(k) Checklist for Non-Implanted Electrical Stimulators Used for the Treatment of Urinary Incontinence	June 6, 1995	ODE/DRARD	Do	189
Draft 510(k) Checklist for Endoscopic Light Sources Used in Gastroenterology and Urology	June 22, 1995	ODE/DRARD	Do	190
Guidance ("Guidelines") for Evaluation of Laparoscopic Bipolar and Thermal Coagulators (and Accessories)	May 1, 1978	ODE/DRARD	Do	232
Guidance ("Guidelines") for Evaluation of Fetal Clip Electrode	March 8, 1977	ODE/DRARD	Do	244
Guidance ("Guidelines") for Evaluation of Tubal Occlusion Devices	November 22, 1977	ODE/DRARD	Do	245
Guidance ("Guidelines") for Evaluation of Hysteroscopic Sterilization Devices	May 10, 1978	ODE/DRARD	Do	248
Intrapartum Continuous Monitors for Fetal Oxygen Saturation and Fetal pH; Submission Guidance for a PMA; Draft Document	June 14, 1997	ODE/DRARD	Do	298

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Guidance for the Arrangement and Content of a Premarket Approval (PMA) Application For A Cochlear Implant in Children Ages 2 Through to 17 Years	May 1, 1990	ODE/DRARD	Do	327
Guidance for Industry—Guidance for the Submission of Premarket Notifications for Magnetic Resonance Diagnostic Devices; Final	November 14, 1998	ODE/DRARD	Do	340
Premarket Testing Guidelines for Female Barrier Contraceptive Devices Also Intended to Prevent Sexually Transmitted Diseases	April 4, 1990	ODE/DRARD	Do	384
Draft of Suggested Information for Reporting Extracorporeal Shock Wave Lithotripsy Device Shock Wave Measurements	January 18, 1991	ODE/DRARD	Do	418
Guidance for the Content of Premarket Notifications for Conventional and Permeability Hemodialyzers; Final	August 7, 1998	ODE/DRARD	Do	421
Guidance for the Content of Premarket Notifications for Urethral Stents	February 10, 1993	ODE/DRARD	Do	431
Testing Guidance for Male Condoms Made From New Material (Non-Latex)	June 29, 1995	ODE/DRARD	Do	455
Guidance for the Content of Premarket Notifications for Biopsy Devices Used in Gastroenterology and Urology	February 10, 1993	ODE/DRARD	Do	482
Guidance for the Content of Premarket Notifications for Urodynamic/Uroflowmetry Systems	July 29, 1994	ODE/DRARD	Do	490
Guidance for Investigational Device Exemptions for Solutions for Hypothermic Flushing, Transport, and Storage of Organs for Transplantation; Final Guidance for Industry and FDA Reviewers	January 16, 2001	ODE/DRARD	Do	1164
Guidance for the Submission of Premarket Notifications for Medical Image Management Devices; Guidance for Industry; Final	July 27, 2000	ODE/DRARD	Do	416
Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi; Final	August 9, 2000	ODE/DRARD	Do	1226
Guidance for the Submission of Premarket Notifications for Photon-Emitting Brachytherapy Sources; Guidance for Industry; Final	August 2, 2000	ODE/DRARD	Do	1177
Premarket Applications for Digital Mammography Systems; Final Guidance for Industry and FDA	February 16, 2001	ODE/DRARD	Do	983
Class II Special Controls Guidance for Home Uterine Activity Monitors; Final Guidance for Industry and FDA Reviewers	March 9, 2001	ODE/DRARD	Do	820
Class II Special Controls Guidance Document for Clitoral Engorgement Devices; Guidance for Industry and FDA Reviewers	July 3, 2000	ODE/DRARD	Do	1144
Thermal Endometrial Ablation Devices (Submission Guidance for an IDE); Final	March 14, 1996	ODE/DRARD	Do	547
Draft Guidance for the Clinical Investigation of Urethral Stents	November 2, 1995	ODE/DRARD	Do	573

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Tympanostomy Tubes Submission Guidance for a 510(k) Premarket Notification; Final	January 14, 1998	ODE/DRARD	Do	930
Early Collaboration Meetings Under the FDA Modernization Act (FDAMA); Final Guidance for Industry and for CDRH Staff	February 28, 2001	ODE Program Operations Staff (POS)	Do	310
PMA/510(k) Expedited Review #G98–4 (Blue Book Memo)	March 20, 1998	ODE/POS	Do	7
PMA/510(k) Expedited Review—Guidance for Industry and CDRH Staff [FDAMA]; Final	March 20, 1998	ODE/POS	Do	108
Deciding When to Submit a 510(k) for a Change to an Existing Device	January 10, 1997	ODE/POS	Do	935
A Suggested Approach to Resolving Least Burdensome Issues	September 11, 2000	ODE/POS	Do	1188
Suggested Format for Developing and Responding to Deficiencies in Accordance with the Least Burdensome Provisions of FDAMA; Final; Guidance for Industry and FDA Staff	November 2, 2000	ODE/POS	Do	1195
FDA Modernization Act of 1997 Guidance for the Device Industry on Implementation of Highest Priority Provisions [FDAMA]	February 6, 1998	Office of Health and Industry Programs (OHIP)	Do	434
Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendations to State and Local Agencies	August 13, 1998	OHIP	Do	1071
Compliance Guidance—The Mammography Quality Standards Act Final Regulations—Preparing for MQSA Inspections	May 5, 1999	OHIP Division of Mammography Quality and Radiation Programs (DMQRP)	Do	6400
Guidance for Submission of Request for Reconsideration of Adverse Decisions on Accreditation of Mammography Facilities Under the Mammography Quality Standards Acts, 42 U.S.C. 263(b)/4/8, 1998	March 26, 1998	OHIP/DMQRP	Do	69
Guidance for Review of Requests for Reconsideration of Adverse Decisions on Accreditation of Mammography Facilities Under the Mammography Quality Standards Act, 42 U.S.C. 263(b)/4/8, 1998	March 26, 1998	OHIP/DMQRP	Do	83
Compliance Guidance; The Mammography Quality Standards Act Final Regulations Document #4; Draft	September 13, 2000	OHIP/DMQRP	Do	1159
The Mammography Quality Standards Act Final Regulations; Modifications and Additions to Policy Guidance Help System #2; Final Guidance for Industry and FDA (Incorporated into PGHS)	January 24, 2001	OHIP/DMQRP	Do	1317
Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3 (Incorporated into PGHS)	December 8, 1999	OHIP/DMQRP	Do	1496
Guidance: The Mammography Quality Standards Act Final Regulations Document #1 (Incorporated into PGHS)	March 4, 1999	OHIP/DMQRP	Do	1499
Policy and Standard Operating Procedures When Mammography Facilities in States That Have Accreditation Bodies Intend to Change Accreditation Bodies	April 15, 1998	OHIP/DMQRP	Do	1186

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Guidance for Request and Issuance of Interim Notice Letters for Mammography Facilities Under the Mammography Quality Standards Act, 42 U.S.C. Section 263(b)	May 4, 1999	OHIP/DMQRP	Do	2217
Continuing Education Credit for Reading/Writing Articles/Papers and Presenting Courses/Lectures (Incorporated into PGHS)	March 17, 1998	OHIP/DMQRP	Do	66206
Guidance for Industry—Requalification for Interpreting Physician's Continuing Experience Requirement (Incorporated into PGHS)	May 28, 1998	OHIP/DMQRP	Do	66301
Compliance Guidance: The Mammography Quality Standards Act Final Regulations Motion of Tube-Image Receptor Assembly (Incorporated into PGHS)	March 23, 1999	OHIP/DMQRP	Do	2256
Compliance Guidance: The Mammography Quality Standards Act Final Regulations Quality Assurance Documentation (Incorporated into PGHS)	December 7, 1999	OHIP/DMQRP	Do	1194
Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #2 (Incorporated into PGHS)	February 25, 2000	OHIP/DMQRP	Do	1498
Compliance Guidance—Mammography Facility Survey, Equipment Evaluation and Medical Physicist Qualification Requirements Under MQSA; Final	November 6, 2000	OHIP/DMQRP	Do	6409
Medical Glove Guidance Manual Draft FDA 99–4257	August 12, 1999	OHIP Division of Small Manufacturers Assistance (DSMA)	Do	852
Instructions for Completion of Medical Device Registration and Listing Forms FDA 2891, 2891a and 2892	July 1, 1997	OHIP/DSMA	Do	12
An Introduction to Medical Device Regulations (FDA 92–4222)	January 1, 1992	OHIP/DSMA	Do	18
Regulatory Requirements for Devices for the Handicapped (FDA 87–4221)	August 1, 1987	OHIP/DSMA	Do	22
Impact Resistant Lenses: Questions and Answers (FDA 87–4002)	September 1, 1987	OHIP/DSMA	Do	23
Comparison Chart: 1996 Quality System Reg vs. 1978 Good Manufacturing Practices Reg vs. ANSI/ISO/ASQC Q9001 and ISO/DI 13485:1996 (Include 126)	November 29, 1996	OHIP/DSMA	Do	133
Medical Device Appeals and Complaints: A Guidance on Dispute Resolution	February 19, 1998	OHIP/DSMA	Do	396
Premarket Notification: 510(k)—Regulatory Requirements for Medical Devices (FDA 95–4158) [Available on Disk]	August 1, 1995	OHIP/DSMA	Do	469
Labeling—Regulatory Requirements for Medical Devices (FDA 89–4203)	September 1, 1989	OHIP/DSMA	Do	470
In Vitro Diagnostic Devices: Guidance for the Preparation of 510(k) Submissions (FDA 97–4224) [Available on Disk]	January 1, 1997	OHIP/DSMA	Do	471
Investigational Device Exemptions [IDE] Manual (FDA 96–4159) DSMA [Available on Disk]	June 1, 1996	OHIP/DSMA	Do	472

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Regulation of Medical Devices; Background Information for International Officials (Entire Document Available on Disk)	April 14, 1999	OHIP/DSMA	Do	610
Medical Device Reporting for Manufacturers [Available on Disk]	March 1, 1997	OHIP/DSMA	Do	987
Premarket Approval (PMA) Manual	January 1, 1998	OHIP/DSMA	Do	1051
Overview of FDA Modernization Act of 1997 Medical Device Provisions [FDAMA]	February 19, 1998	OHIP/DSMA	Do	1174
Mutual Recognition Agreement Between the European Union and the United States of America: Confidence Building Programme: Overview and Procedure; Medical Device Annex, Version 7, June 29, 2000; Draft	June 29, 2000	OHIP/DSMA	Do	1175
Implementation of Third Party Programs Under the FDA Modernization Act of 1997; Final Guidance for Staff, Industry and Third Parties	February 2, 2001	OHIP/DSMA	Do	1160
CDRH Manual for the Good Guidance Practices (GGP) Regulations; Final Guidance for FDA Staff	February 9, 2001	OHIP Division of Device User Programs and Systems Analysis (DUPSA)	Do	1323
Human Factors Principles for Medical Device Labeling	September 1, 1993	OHIP/DUPSA	Do	227
Human Factors Points to Consider for IDE Devices	January 17, 1997	OHIP/DUPSA	Do	839
Write It Right	August 1, 1993	OHIP/DUPSA	Do	897
Medical Device Reporting for User Facilities	April 1, 1996	OHIP/DUPSA	Do	989
Do It By Design—An Introduction to Human Factors in Medical Devices	December 1, 1996	OHIP/DUPSA	Do	995
Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management; Guidance for Industry and FDA Premarket and Design Control Reviewers	July 18, 2000	OHIP/DUPSA	Do	1497
Guidance on Medical Device Patient Labeling; Final Guidance for Industry and FDA Reviewers	April 19, 2001	OHIP/DUPSA	Do	1128
Perspectives on Clinical Studies for Medical Device Submissions (Statistical)		Office of Surveillance and Biometrics (OSB) Division of Biostatistics (DB)	Do	78
PMA Review Statistical Checklist	(no date available)	OSB/DB	Do	84
Statistical Aspects of Submissions to FDA: A Medical Device Perspective (Also Includes as Appendix the Article Observed Uses and Abuses of Statistical Procedures in Medical Device Submissions	June 1, 1984	OSB/DB	Do	537
MDR Guidance Document: Remedial Action Exemption—E1996001; Final	July 30, 1996	OSB/DSS	Do	188
Guidance on Adverse Event Reporting for Hospitals That Reprocess Devices Intended by the Originial Equipment Manufacturer for Single Use	April 24, 2001	OSB/DSS	Do	1334
MDR Guidance Document No. 1–IOL–E1996004; Final	August 7, 1996	OSB/DSS	Do	216
MDR Guidance Document No. 3—Needlestick and Blood Exposure—E1996003; Final	August 9, 1996	OSB/DSS	Do	250

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Common Problems: Baseline Reports and Medwatch Form 3500A	January 1, 1997	OSB/DSS	Do	379
MDR Reporting Guidance for Breast Implants—E1996002; Final	August 7, 1996	OSB/DSS	Do	452
Medical Device Reporting: An Overview; Final	April 1, 1996	OSB/DSS	Do	509
Instructions for Completing FDA Form 3500A With Coding Manual for Form 3500A (MEDWATCH)(MDR); Final	December 15, 1995	OSB/DSS	Do	853
MEDWATCH FDA Form 3500A for Use by User Facilities, Distributors and Manufacturers for Mandatory Reporting (MDR); Final	June 1, 1993	OSB/DSS	Do	854
Variance From Manufacturer Report Number Format [MDR Letter]; Final	July 16, 1996	OSB/DSS	Do	1059
Instructions for Completing Form 3417: Medical Device Reporting Baseline Report [MDR]; Final	March 31, 1997	OSB/DSS	Do	1061
MDR Internet List Server (listserv) Instruction Sheet; Final	August 29, 1996	OSB/DSS	Do	1094
Medical Device Reporting-Alternative Summary Reporting (ASR) Program; Guidance for Industry	October 19, 2000	OSB/DSS	Do	315
Addendum to the Instructions for Completing FDA Form 3500A With Coding Manual (MEDWATCH) (MDR); Final	June 9, 1999	OSB/DSS	Do	1853
Guidance to Sponsors on the Development of a Discretionary Postmarket Surveillance Study for Permanent Implantable Cardiac Pacemaker Electrodes (Leads)	June 9, 1993	OSB Issues Management Staff (IMS)	Do	206
Guidance on Criteria and Approaches for Postmarket Surveillance	November 2, 1998	OSB/IMS	Do	9
Guidance on Procedures to Determine Application of Postmarket Surveillance Strategies [FDAMA]; Final	February 19, 1998	OSB/IMS	Do	316
Guidance on Procedures for Review of Postmarket Surveillance Submissions [FDAMA]; Final	February 19, 1998	OSB/IMS	Do	317
Guidance for Industry and FDA Staff—SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance Protocols [FDAMA]; Final	November 2, 1998	OSB/IMS	Do	318
Amendment to Guidance on Discretionary Postmarket Surveillance on Pacemaker Leads; Final	March 30, 1994	OSB/IMS	Do	374
Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket	February 2, 2000	OSB/IMS	Do	946
Guidance on Frequently Asked Questions on Recognition of Consensus Standards [FDAMA]	December 21, 1998	Office of Science and Technology (OST)	Do	109
Guidance on the Recognition and Use of Consensus Standards/Appendix A [FDAMA]	February 19, 1998	OST	Do	321
A Primer on Medical Device Interactions With Magnetic Resonance Imaging Systems; Draft	February 7, 1997	OST	Do	952
CDRH Standard Operating Procedures for the Identification and Evaluation of Candidate Consensus Standard for Recognition	August 6, 1999	OST	Do	616

IV. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)	FOD No.
Guidance on FDA's Expectations of Medical Device Manufacturers Concerning the Year 2000 Date Problems	May 15, 1998	OST	Do	2000
Guidance for Industry and FDA Reviewers: Guidance on Immunotoxicity Testing	May 6, 1999	OST Division of Life Sciences (DLS)	Do	635

WITHDRAWALS

Name of Document	Date of Issuance	Intended User or Regulatory Activity	Date of Withdrawal	FOD No.
Guidance for Industry and for FDA Staff: Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals, Draft Guidance—Not for Implementation (Replaced by Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals; Guidance for Industry and for FDA Staff 8/14/00)	February 8, 2000	OC	August 8, 2000	801029
Guidance on Information Disclosure by Manufacturers to Assemblers for Diagnostic X-Ray Systems; Guidance for Industry (Replaced by Information Disclosure by Manufacturers to Assemblers for Diagnostic X-Ray Systems; Final Guidance for Industry and FDA 4/2/01)	October 18, 1999	OC/DOE!	March 30, 2001	802619
Final Design Control Report and Guidance (No Replacement)	June 1, 1998	OC/DOEIII	July 24, 2000	800949
Working Draft of the Current Good Manufacturing Practice (CGMP) Final Rule (No Replacement)	July 1, 1995	OC/OT	April 24, 2000	800303
Guidance on Amended Procedures for Advisory Panel Meetings [FDAMA]; Final (Replaced by Guidance on Amended Procedures for Advisory Panel Meetings, 7/22/00)	January 26, 1999	ODE	August 4, 2000	800413
Review Criteria for Assessment of Antimicrobial Susceptibility Devices (Replaced by Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices, 3/8/00)	May 31, 1991	ODE/DCLD	June 16, 2000	800631
Guidance for Premarket Submissions for Kits for Screening Drugs of Abuse to Be Used by the Consumer; Guidance for Industry; Draft (Replaced by Over-the-Counter (OTC) Screening Tests for Drugs of Abuse: Guidance for Premarket Notifications; Guidance for Industry; Draft 11/14/00)	December 30, 1998	ODE/DCLD	October 30, 2000	802209
Guidance Document for Vascular Prostheses 510(k) Submission; Final (Replaced by Guidance Document for Vascular Prostheses 510(k) Submissions; Guidance for Industry and FDA Staff; Final 11/1/00)	November 1, 2000	ODE/DCRD	January 16, 2000	801357
Guidance to Manufacturers on the Development of Required Postapproval Epidemiological Study Protocols for Testicular Implants (No Replacement)	Date not available	ODE/DCRD	June 15, 2000	800202
510(k) Reviewer Guidelines—Tracheostomy Tubes 868.5800 (No Replacement)	Date not available	ODE/DCRD	June 15, 2000	800550

WITHDRAWALS—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	Date of Withdrawal	FOD No.
Guidance for the Comment and Review of 510(k) Notifications for Picture Archiving and Communications Systems (PACS) and Related Devices (Replaced by Guidance for the Submission of Premarket Notifications for Medical Image Management Devices; Guidance for Industry; Final 7/27/00)	August 1, 1993	ODE/DCRD	August 8, 2000	800416
Guidance for Industry—Guidance for the Content of Premarket Notifications [510(k)s] for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi (Replaced by Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi; Final 8/9/00)	February 8, 1999	ODE/DCRD	August 10, 2000	801226
Guidance for Oxygen Conserving Device 510(k) Review 73 BZD 868.5905 Non-continuous Ventilator Class II (No Replacement)	February 1, 1989	ODE/DCRD	August 30, 2000	800583
Reviewer's Guidance for Oxygen Concentrator (No Replacement)	August 30, 1991	ODE/DCRD	August 30, 2000	800781
Guidance Document for Vascular Prostheses 510(k) Submission; Final (Replaced by Guidance Document for Vascular Prostheses 510(k) Submissions; Guidance for Industry and FDA Staff; Final 11/1/00)	November 26, 1999	ODE/DCRD	November 16, 2000	801357
Guidance for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads and for Pacemaker Lead Adaptor 510(k) Submissions; Final (Replaced by Guidance for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads and for Pacemaker Lead Adaptor 510(k) Submissions; Final 11/1/00)	January 14, 2000	ODE/DCRD	January 21, 2000	800372
Draft Guidance for Information on Clinical Safety and Effectiveness Data for Extracorporeal Shock Wave Lithotripsy of Upper Urinary Tract (Renal Pelvis, Renal Calyx and Upper Ureteral) Calculi (Replaced by Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi; Final 8/9/00)	February 5, 1992	ODE/DCRD	January 10, 2001	800864
Guidance for Annuloplasty Rings 510(k) Submissions; Final (Replaced by Guidance for Annuloplasty Rings 510(k) Submissions; Final Guidance for Industry and FDA Staff 1/31/01)	November 26, 1999	ODE/DCRD	February 12, 2001	801358
Home Uterine Activity Monitors: Guidance for the Submission of 510(k) Premarket Notifications (Replaced by Class II Special Controls Guidance for Home Uterine Activity Monitors; Final Guidance for Industry and FDA Reviewers, 3/9/01)	July 30, 1999	ODE/DCRD	March 2001	800820
Status Update—Information for Manufacturers Seeking Marketing Clearance of Digital Mammography Systems (Replaced by Premarket Applications for Digital Mammography Systems; Final Guidance for Industry and FDA 2/16/01)	February 4, 1999	ODE/DCRD	February 27, 2001	800983
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for General Purpose Disinfectants (includes Addendum of 3/9, 1994) (No Replacement)	October 1, 1993	ODE/DDIGD	August 10, 2000	800902
Guidance for the Preparation of Premarket Notification [510(k)] for Resorbable Periodontal Barriers (No Replacement)	April 1, 1991	ODE/DDIGD	September 1, 2000	800028

WITHDRAWALS—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	Date of Withdrawal	FOD No.
Guidance for Spinal System 510(k); Final (Replaced by Guidance for Spinal System 510(k)s 9/27/00)	May 7, 1999	ODE/DGRND	October 2, 2000	800636
Guidance for Industry—Guidance Document for Neurological Embolization Devices; Final (Replaced by Guidance for Neurological Embolization Devices; Guidance for Industry; Final 11/1/00)	August 13, 1999	ODE/DGRND	November 7, 2000	801151
Ophthalmic Device Triage (No Replacement)	March 19, 1998	ODE/DOED	June 20, 2000	800160
Announcement by Dr Alpert at 7/26, 1996, Ophthalmic Panel Meeting Concerning Manufacturers and Users of Lasers for Refractive Surgery [Excimer] (No Replacement)	August 26, 1996	ODE/DOED	July 17, 2000	803093
Owners Certification of Lasers as PMA Approved Devices [Excimer] (No Replacement)	September 26, 1996	ODE/DOED	July 17, 2000	804093
Compliance Guidance—Mammography Facility Survey and Medical Physicist Qualification Requirements Under MQSA (Replaced by Compliance Guidance—Mammography Facility Survey and Medical Physicist Qualification Requirements Under MQSA; Final 11/6/00)	May 5, 1999	OHIP/DMORP	April 8, 2000	806409
A Pocket Guide to Device GMP Inspections—Inspections of Medical Device Manufacturers and GMP Regulation Requirements (No Replacement)	November 1, 1991	OHIP/DSMA	June 28, 2000	800508
Guidance for Staff, Industry, and Third Parties Implementation of Third Party Programs Under the FDA Modernization Act of 1997—June 2000; Draft (Replaced by Implementation of Third Party Programs Under the FDA Modernization Act of 1997; Final Guidance for Staff, Industry and Third Parties 2/2/01)	June 12, 2000	OHIP/DSMA	February 2, 2001	801160
Guidance for Industry—Device Use Safety: Incorporating Human Factors in Risk Management (No Replacement)	August 3, 1999	OHIP/DUPSA	July 20, 2000	801497
Guidance on Medical Device Patient Labeling; Final Guidance for Industry (Replaced by Guidance on Medical Device Patient Labeling; Final Guidance for Industry and FDA Reviewers 4/19/01)	March 3, 2000	OHIP/DUPSA	April 9, 2001	801128
MDR Documents Access Information for National Technical Information Service (NTIS) (No Replacement)	May 10, 1996	OSB	June 28, 2000	803799
Proposed Draft Guidance to Sponsors Regarding Required Postmarket Surveillance Studies of Plasma-Sprayed Porous-Coated Hip Prostheses (Archived by OSB—Replaced by Guidance Testing Metallic Plasma Sprayed Orthopedic Implants, 2/2/00)	October 7, 1994	OSB/DPS	June 16, 2000	800323
Letter to Manufacturers: Summary Reporting Approval for Adverse Events; Final (Replaced by Medical Device Reporting—Alternative Summary Reporting (ASR) Program; Guidance for Industry 10/19/00)	July 31, 1997	OSB/DSS	October 30, 2000	800315
Draft Thermal Endometrial Ablation Devices (Submission Guidance for an IDE) (Replaced by Thermal Endometrial Ablation Devices (Submission Guidance for an IDE); Final 3/14/96))	March 14, 1996	ODE/DCRD	March 1996	800547
Guidance for Review of Cases of Possible Suspension or Revocation of Mammography Facility Certificates Under the Mammography Quality Standards Act, 42 U.S.C. 263(b)/4/8, 1998 (No Replacement)	March 26, 1998	OHIP/DMORP	May 23, 2001	800080

WITHDRAWALS—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	Date of Withdrawal	FOD No.
Compliance Guidance—Mammography Facility Survey and Medical Physicist Qualification Requirements Under MQSA , Draft (replaced by Compliance Guidance—Mammography Facility Survey and Medical Physicist Qualification Requirements Under MQSA; Final 11/6/00	May 5, 1999	OHIP/DMORP	November 8, 2000	806409

V. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR FOOD SAFETY AND APPLIED NUTRITION (CFSAN)

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain A Hard Copy of the Document (Name and Address, Phone, Fax, E-Mail or Internet)
Compliance Policy Guides Manual	1998	FDA Regulated Industries	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, NTIS Order No. PB96-920500
Compliance Programs Guidance Manual	1995	FDA Regulated Industries	Do (NTIS Order No. PB95-915499
FDA Recall Policy	1995	FDA Regulated Industries	Industry Activities Staff (HFS-565), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204
Investigators' Operations Manual	May 1996	FDA Regulated Industries	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, (NTIS Order No. PB-95-913399)
Regulatory Procedures Manual	August 1995	FDA Regulated Industries	Do (NTIS Order No. PB95-265534)
Requirements of Laws and Regulations Enforced by the U.S. Food and Drug Administration "Blue Book"	1997	FDA Regulated Industries	Superintendent of Documents, Government Printing Office, Washington, DC 20402
Action Levels for Poisonous or Deleterious Substances in Human Food and Animal Feed	1995	Food and Animal Feed Industries	Industry Activities Staff (HFS-565), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, (NTIS Order No. PB96-920500)
Pesticides Analytical Manual	1996	Food Industry	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, (NTIS Order No. PB94-911899)
FDA Advisory for Deoxynivanol (DON) in Finished Wheat Products Intended for Human Consumption and in Grain and Grain By-Products for Animal Feed	September 16, 1993	Food and Animal Feed Industries	Office of Plant and Dairy Foods and Beverages, Food and Drug Administration (HFS-306), 200 C St. SW., Washington, DC 20204, 202-205-4681
FDA's Cosmetic Labeling Manual	October 1991	Cosmetic Industry	Food and Drug Administration, Office of Colors and Cosmetics (HFS-105), 200 C St. SW., Washington, DC 20204, 202-205-4493
Statement of Policy: Foods Derived From New Plant Varieties: Notice	May 29, 1992	Developers of New Plant Food Varieties	Office of Premarket Approval, Food and Drug Administration (HFS-200), 200 C St. SW., Washington, DC 20204, 202-418-3100
A Food Labeling Guide	May 1997	Food Industry	Industry Activities Staff (HFS-565), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202-205-5251
Model Small Business Food Labeling Exemption Notice	1998	Food Industry	Do
Food Labeling: Questions and Answers	August 1994	Food Industry	Do

V. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR FOOD SAFETY AND APPLIED NUTRITION (CFSAN)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain A Hard Copy of the Document (Name and Address, Phone, Fax, E-Mail or Internet)
Food Labeling: Questions and Answers: Volume II	February 1996	Food Industry	Superintendent of Documents, Government Printing Office, Washington, DC 20420, 202-512-1800
Fair Packaging and Labeling Act Manual	June 1978	Food Industry	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, 703-487-4650, (NTIS Order No. PB-83-222117)
Bacteriological Analytical Manual 7th Edition	1992	FDA Regulated Industries	AOAC International, 481 N. Frederick Ave., suite 500, Gaithersburg, MD 20877-2417, 301-924-7077
FDA Food Importer's Guide for Low-Acid Canned and Acidified Foods	1985	Food Industry	Industry Activities Staff (HFS-565), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202-205-5251
Evaluation of Milk Laboratories	1995	States	Milk Safety Branch (HFS-626), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204, 202-205-9175
Methods of Making Sanitation Ratings of Milk Supplies	1999	States	Do
Dry Milk Ordinance	1995	States	Do
Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers	1999	Dairy Industry	Do
Frozen Dessert Processing Guidelines	1989	Dairy Industry	Office of Plant and Dairy Foods and Beverages (HFS-302), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204, 202-205-9175
Pasteurized Milk Ordinance	1999	States	Milk Safety Branch (HFS-626), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204, 202-205-9175
Guidelines for Determining Metric Equivalents of Household Measures	October 1, 1993	Food Industry	Office of Nutritional Products, Labeling, and Dietary Supplements, Food and Drug Administration (HFS-800), 200 C St. SW., Washington, DC 20204, 202-205-4561
List of Food Defect Action Levels (DALs)	1995	Food and Animal Feed Industries	Industry Activities Staff (HFS-565), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202-205-5251
Action Levels for Poisonous or Deleterious Substances in Human Food and Feed (Also Found in CPGs)	1995	Food and Animal Feed Industries	Do
FDA Food Code	1999	States	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, 703-487-4650
Seafood List	1993	Seafood Industry	Superintendent of Documents, Government Printing Office, Washington, DC 20402, 202-512-1800
Manual of Operations National Shellfish Sanitation	1992	States	Office of Seafood (HFS-407), Shellfish Sanitation Branch, 200 C St. SW., Washington, DC 20204, 202-418-3150

V. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR FOOD SAFETY AND APPLIED NUTRITION (CFSAN)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain A Hard Copy of the Document (Name and Address, Phone, Fax, E-Mail or Internet)
Fish and Fisheries Product Hazards and Control Guide	1996	Seafood Industry	Do
Guidance for Submitting Requests Under 21 CFR 170.39, Threshold of Regulation for Substances Used in Food Articles	1996	Food Packaging Industry	Office of Premarket Approval, Food and Drug Administration (HFS–200), 200 C St. SW., Washington, DC 20204, 202–418–3100
Guidelines for the Preparation of Petition Submissions	1996	Food Ingredient or Packaging Industry	Do
Guideline for Approval of Color Additives in Contact Lenses Intended as Colors	1996	Color or Contact Lens Industry	Do
FDA Recommendations for Submission of Chemical and Technological Data on Color Additives for Food, Drugs or Cosmetics Use	February 1993	Color Additives Industry	Do
Points to Consider for the Use of Recycled Plastics in Food Packaging: Chemistry Considerations	December 1992	Food Packaging Industry	Do
Recommendations for Submission of Chemical and Technological Data for Direct Food Additive and GRAS Food Ingredient Petitions	May 1993	Food Packaging Industry	Do
Recommendations for Chemistry Data for Indirect Food Additive Petitions	June 1995	Food Packaging Industry	Do
Enzyme Preparations: Chemistry Recommendations for Food Additive and GRAS Affirmation Petitions	January 1993	Food Enzyme Industry	Do
Estimating Exposure to Direct Food Additive and Chemical Contaminants in the Diet	September 1995	Food and Food Ingredient Industry	Do
Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food (also known as Redbook I)	1982	Petitioners for Food or Color Additives	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 2216, (NT IS Order No. PR–83–170696
Environmental Assessment Technical Handbook	March 1987	Petitioners for Food or Golor Additives	Do (NTIS Order No. PB87175345–AS, A–01)
Color Additive Petitions Information and Guidance	1996	Petitioners for Color Additives	Office of Premarket Approval, Food and Drug Administration (HFS–200), 200 C St. SW., Washington, DC 20204, 202–418–3100
Toxological Testing of Food Additives	1983	Petitioners for Food or Color Additives	Do
List of Products for Each Product Category	October 8, 1992	Food Industry	Office of Nutritional Products, Labeling, and Dietary Supplements (HFS–800), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561
Label Declaration of Allergenic Substances in Foods; Notice to Manufacturers	June 10, 1996	Food Industry	Do
Guidance on Labeling of Foods That Need Refrigeration by Consumers	February 24, 1997	Food Industry	Do
Guidelines Concerning Notification and Testing of Infant Formula	1985	Infant Formula Manufacturers	Do

V. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR FOOD SAFETY AND APPLIED NUTRITION (CFSAN)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain A Hard Copy of the Document (Name and Address, Phone, Fax, E-Mail or Internet)
Guidelines for the Evaluation of Safety and Suitability of New Infant Formulas for Feeding Preterm Infants	1988	Infant Formula Manufacturers	Do
Clinical Testing of Infant Formulas With Respect to Nutritional Suitability for Term Infants	1988	Infant Formula Manufacturers	Do
Guidelines for the Evaluation of the Safety and Suitability of Infant Formulas for Feeding Infants With Allergic Diseases	1990	Infant Formula Manufacturers	Do
Guidelines for the Clinical Evaluation of New Products Used in the Dietary Management of Infants, Children and Pregnant Women With Metabolic Disorders	1987	Infant Formula Manufacturers	Do
Guidance Document for Arsenic (Trace Elements in Seafood)	January 1993	States	Office of Seafood, Food and Drug Administration (HFS–400), 200 C St. SW., Washington, DC 20204, 202–418–3150, Internet: FDA Home Page Http://vm.cfsan.fda.gov/list.html
Guidance Document for Cadmium (Trace Elements in Seafood)	January 1993	States	Do
Guidance Document for Chromium (Trace Elements in Seafood)	January 1993	States	Do
Guidance Document for Lead (Trace Elements in Seafood)	August 1993	States	Do
Guidance Document for Nickel (Trace Elements in Seafood)	January 1993	States	Do
Guidance on Consultation Procedures for Foods Derived From New Plant Varieties	October 1997	Regulated Industry	Office of Premarket Approval (HFS–200), 200 C St. SW., Washington, DC 20204, 202–418–3100, Internet: FDA Home Page Http://vm.cfsan.fda.gov
FDA's Policy for Foods Developed by Biotechnology	1995	Food Industry	Do
Bovine Spongiform Encephalopathy (BSE) in Products for Human Use	1997	Food Industry	Office of Plant and Dairy Foods and Beverages (HFS–302), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204, 202–205–9175, Internet: FDA Home Page Http://www.fda.gov/opacom/morechoices/industry/guidance/gelguide.htm
Interim Guidance on the Voluntary Labeling of Milk and Milk Products That Have Not Been Treated With Recombinant Bovine Somatropin	February 1994	Regulated Industry	Office of Nutritional Products, Labeling, and Dietary Supplements (HFS–800), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168
Shellfish Sanitation Model Ordinance	1995	States	Shellfish Program Implementation Branch, Division of Cooperative Programs, Office of Field Programs (HFS–628), 200 C St. SW., Washington, DC 20204, 202–205–8137
Guide to Minimize Microbial Hazards for Fresh Fruits and Vegetables (Available in English, Spanish, Portuguese, and French)	1998	Farmers and Food Packers	Food Safety Initiative (HFS–32), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204, or jsaltsman@bangate.fda.gov

V. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR FOOD SAFETY AND APPLIED NUTRITION (CFSAN)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain A Hard Copy of the Document (Name and Address, Phone, Fax, E-Mail or Internet)
Iron-Containing Supplements and Drugs: Label Warning and Unit Dose Packaging; Small Entity Compliance Guide	1997	Dietary Supplement Manufacturers: Small Entities	Office of Nutritional Products, Labeling, and Dietary Supplements (HFS–450), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204
Partial List of Enzyme Preparations That Are Used in Foods	1998	FDA Regulated Industry	Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204
Partial List of Microorganisms and Microbial-Derived Ingredients That Are Used in Food	1998	FDA Regulated Industry	Do
Fish and Fishery Products Hazards and Controls Guide, 2d Edition	January 1998	FDA Regulated Industry	Office of Seafood (HFS–400), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204
HACCP Regulations for Fish and Fishery Products: Questions and Answers	1998	FDA Regulated Industry	Do
Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body	1998	FDA Regulated Industry	Office of Nutritional Products, Labeling, and Dietary Supplements (HFS–150), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204
FDA Nutrition Labeling Manual, A Guide for Developing and Using Data Bases	March 1998	FDA Regulated Industry	Do
HACCP Regulation for Fish and Fishery Products: Questions and Answers, Issue Three, Revised January 1999	January 1999	Seafood Processors	Office of Seafood (HFS–400), Center for Food Safety and Nutrition, 200 C St. SW., Washington, DC 20204, Ellen Nesheim, 202–418–3150
Foods—Adulteration Involving Hard or Sharp Foreign Objects (CPG)	February 1999	FDA Field Offices	Office of Plant and Dairy Foods and Beverages (HFS–300), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204
Food Additive Petition Expedited Review	January 1999	Guidance for Industry and Center for Food Safety and Applied Nutrition Staff	Robert L. Martin (HFS–215), OPA/CFSAN/FDA, 200 C St. SW., Washington, DC 20204, 202–418–3074, premarkt@cfsan.fda.gov or http://vm.cfsan.fda.gov/≤dms/opa-expe.html
Use of Antibiotic Resistance Marker Genes in Transgenic Plants	September 1998	Guidance for Industry	Nega Beru (HFS–206), OPA/CFSAN/FDA, 200 C St. SW., Washington, DC 20204, 202–418–3097, premarkt@cfsan.fda.gov or http://vm.cfsan.fda.gov//≤dms/opa-armg.html
Guidance: Channels of Trade Policy for Commodities With Methyl Parathion Residues	December 2000	Regulated Industry	Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition (HFS–300), FDA, 200 C St. SW., Washington, DC 20204, http://vm.cfsan.fda.gov/*dms
Draft Guidance: Fumonisin Levels in Human Foods and Animal Feeds	June 2000	Regulated Industry	Do
Statement of Identity, Nutrition Labeling, and Ingredient Labeling of Dietary Supplements Small Entity Compliance Guide	January 1999	Small Business Entities	Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–5251
Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements (December 1999)	December 1999	Regulated Industry	Office of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–4561

V. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR FOOD SAFETY AND APPLIED NUTRITION (CFSAN)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain A Hard Copy of the Document (Name and Address, Phone, Fax, E-Mail or Internet)
Antimicrobial Food Additives	July 1999	Regulated Industry	Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–418–3100
Preparation of Premarket Notifications for Food Contact Substances: Chemistry Recommendations	November 1999	Regulated Industry	Do
Preparation of Premarket Notifications for Food Contact Substances: Toxicology Recommendations	November 1999	Regulated Industry	Do
Guidance for Small Businesses: Submission of Comments for CFSAN Rulemaking	October 1999	Small Business Entities	Division of Market Studies (HFS–726), Center for Food Safety and Applied Nutrition, Food and Drug Administration, Washington, DC 20204, 202–401–4590
Warning and Notice Statement: Labeling of Juice Products Small Entity Compliance Guide	September 1998	Regulated Industry	Office of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–4561
Reducing Microbial Food Safety Hazards for Sprouted Seeds	October 1999	Regulated Industry	Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–4064
Sampling and Microbial Testing of Spent Irrigation Water During Sprout Production	October 1999	Regulated Industry	Do
Seafood HACCP Transition Policy	December 1999	Regulated Industry	Office of Seafood (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–3150
FDA Recommendations for Sampling and Testing Yellow Corn Shipments for Cry9C Protein Residues	January 19, 2001	Regulated Industry	Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–4064
Draft Guidance: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering	January 2001	Regulated Industry	Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–418–3100
Bacteriological Analytical Manual	2001	Regulated Industry	Do
Importation of PMO Defined Dairy Products	April 11, 2000	Dairy Industry	Milk Safety Branch (HFS–626), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204, 202–205–9175
Draft Guidance: Apple Juice, Apple Juice Concentrates, and Apple Juice Products—Adulteration with Patulin	June 2000	Juice Industry	Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–4064
Draft Guidance for Industry on Refusal of Inspection or Access to HACCP Records Pertaining to the Safe and Sanitary Processing of Fish and Fishery Products	November 2000	Seafood Industry	Office of Seafood (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–3150

WITHDRAWALS

Name of Document	Date of Issuance/ Date Withdrawn	Intended User or Regulatory Activity	How to Obtain A Hard Copy of the Document (Name and Address, Phone, Fax, E-Mail or Internet)
FDA Nutrition Labeling Manual: A Guide for Developing and Using Databases (Replaced by 1998 update with the same title.)	1993/June 2001	Food Industry	Office of Nutritional Products, Labeling, and Dietary Supplements, Food and Drug Administration (HFS-800), 200 C St. SW., Washington, DC 20204, 202-205-4561
Fabrication of Single Service Containers and Closures for Milk and Milk Products (Incorporated into Pasteurized Milk Ordinance as an appendix.)	1995/June 2001	States	Milk Safety Branch, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-9175

VI. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR VETERINARY MEDICINE (CVM)

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guidance for Industry: Effectiveness of Anthelmintics: Specific Recommendations for Equine (VICH GL15)—Draft	September 2000	Animal Drug Industry	Internet via: http://www.fda.gov/cvm Communications Staff (HFV-12), FDA/CVM, 7500 Standish Pl., Rockville, MD 20855, 301-827-4582, FAX 301-594-1831
Guidance for Industry: Effectiveness of Anthelmintics: Specific Recommendations for Porcine (VICH GL16)—Draft	September 2000	Do	Do
Guidance for Industry: Effectiveness of Anthelmintics: Specific Recommendations for Canine (VICH GL19)—Draft	September 2000	Do	Do
Guidance for Industry: Effectiveness of Anthelmintics: Specific Recommendations for Feline (VICH GL20)—Draft	December 2000	Do	Do
Guidance for Industry: Effectiveness of Anthelmintics: Specific Recommendations for Poultry (VICH GL21)—Draft	December 2000	Do	Do
Guidance for Industry: Safety Studies for Veterinary Drug Residues in Human Food: Reproduction Studies (VICH GL22)—Draft	December 2000	Do	Do
Guidance for Industry: Safety Studies for Veterinary Drug Residues in Human Food: Genotoxicity Studies (VICH GL23)—Draft	December 2000	Do	Do
Guidance for Industry: Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports (AERs)(VICH GL24)—Draft	December 2000	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: General Recommendations (VICH GL7)—Final	March 2000	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: Specific Recommendations for Bovines (VICH GL12)—Final	March 2000	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: Specific Recommendations for Ovines (VICH GL13)—Final	March 2000	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: Specific Recommendations for Caprines (VICH GL14)—Final	March 2000	Do	Do

VI. GUIDANCE DOCUMENTS ISSUED BY THE CENTER FOR VETERINARY MEDICINE (CVM)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guidance for Industry: Environmental Impact Assessments (EIAs) for Veterinary Medicinal Products (VMPs)—Phase I (VICH GL6)—Final	March 2000	Do	Do
Guidance for Industry: Stability Testing of New Biotechnological/Biological Veterinary Medicinal Products (VICH GL17)—Final	March 2000	Do	Do
Guidance for Industry: Good Clinical Practices (VICH GL9)—Final	May 2000	Do	Do
Guidance for Industry: Impurities: Residual Solvents in New Veterinary Medicinal Products, Active Substances and Excipients (VICH GL18)—Final	May 2000	Do	Do
Guidance for Industry: How to Use E-Mail to Submit a Notice of Final Disposition of Animals Not Intended for Immediate Slaughter (NFDAs)	February 2000	Do	Do
Guidance for Industry: How to Use E-Mail to Submit a Notice of Intent to Slaughter for Human Food Purposes	February 2000	Do	Do
Guidance for Industry: How to Use E-Mail to Submit a Request for a Meeting or Teleconference to the Office of New Animal Drug Evaluation	February 2000	Do	Do
How to Use E-Mail to Submit Information to the Center for Veterinary Medicine—Final	February 2000	Do	Do
Dioxin in Anti-Caking Agents Used in Animal Feed and Feed Ingredients	Revised April 2000	Do	Do
Guidance for Industry: Fumonisin Levels in Human Foods and Animal Feeds—Draft	June 2000	Do	Do
The Use of Published Literature in Support of New Animal Drug Approval	November 2000	Do	Do
Guidance for Industry: Bioequivalence Guidance	Revised October 2000	Do	Do
Guidance for Industry #124: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering—Draft	January 2001	Do	Do
Guidance for Industry #126: BACPAC I: Intermediates in Drug Substance Synthesis Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation, February 2001	February 2001	Do	Do
Guidance for Industry #120: Veterinary Feed Directive Regulation	March 2001	Do	Do
Guidance for Industry #121: Expedited Review for New Animal Drug Applications for Human Pathogen Reduction Claims	March 2001	Do	Do

VI. Guidance Documents Issued by the Center for Veterinary Medicine (CVM)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guidance for Industry and Reviewers: How the Center for Veterinary Medicine Intends to Handle Deficient Submissions Filed During the Investigation of a New Animal Drug—Draft	March 2001	Do	Do

VII. Guidance Documents Issued by the Office of Policy (OP)

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Draft Guidance for Industry; Exports and Imports Under the FDA Export Reform and Enhancement Act of 1996	June 12, 1998	Regulated Industry	Internet via www.fda.gov/opacom/fedregister/frexport.html or 63 FR 32219, June 12, 1998, or Office of Policy, 301–827–3360
Direct Final Rule Guidance	November 21, 1997	FDA Personnel	Internet via www.fda.gov/opacom/morechoices/industry/guidance.htm or 62 FR 62467, November 21, 1997, or Office of Policy, 301–827–3480
International Harmonization; Policy on Standards	October 1995	FDA Personnel and Regulated Industry	60 FR 53078, October 11, 1995, or Office of Policy, 301–827–3360

Withdrawals

Name of Document	Date of Issuance	Intended User or Regulatory Activity	Date Withdrawn
FDA's Development, Issuance and Use of Guidance Documents	February 27, 1997	FDA Personnel and Regulated Industry	September 19, 2000
Small Entities Compliance Guide On: Regulations To Restrict the Sale and Distribution of Cigarettes and Smokeless Tobacco in Order to Protect Children and Adolescents (21 CFR Part 897)	February 1997	Regulated Industry	March 31, 2000
Children and Tobacco—Frequently Asked Questions About the New Regulations (Draft)	July 1997	Regulated Industry	March 31, 2000
Children and Tobacco—A Retailers Guide to the New Federal Regulations	October 1997	Regulated Industry	March 31, 2000
Children and Tobacco—A Guide to the New Federal Regulations	October 1997	Regulated Industry	March 31, 2000

VIII. Guidance Documents Issued by the Office of Regulatory Affairs (ORA)

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Compliance Policy Guide Manual—Compliance Policy Guidance for FDA Staff (Replaces Compliance Policy Guide—January 1996)	August 2000	FDA Staff	National Technical Information Service (NTIS) 5285 Port Royal Rd., Springfield, VA 22161 or Internet at: www.fda.gov/ora/cpgm/default.html
Compliance Policy Guide, New Sec. 615.115 Extra-Label Use of Medicated Feeds for Minor Species	April 2001	Do	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420 or via Internet at: www.fda.gov/ora/compliance—;ref/rpm/rpmtc.html

VIII. Guidance Documents Issued by the Office of Regulatory Affairs (ORA)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Compliance Policy Guide, New Sec. 555.250 Statement of Policy for Labeling and Preventing Cross-Contact of Common Food Allergens	April 2001	Do	Do
Compliance Policy Guide, Reformat Sec. 220.100 Interstate Shipment of Biological Products for Use in Medical Emergencies	March 2001	Do	Do
Compliance Policy Guide, Reformat Sec. 270.100 Final Container Labels—Allergenic Extracts Containing Glycerin; Reporting Changes	March 2001	Do	Do
Compliance Policy Guide, Draft Sec. 230.150, Blood Donor Incentives	December 2000	Do	Do
Compliance Policy Guide, Draft Distributor Medical Reporting	August 28, 1997	FDA Staff Personnel and Regulated Industry	Do Internet at: www.fda.gov/ora/compliance—;ref/cpg—;mdr3.txt
Compliance Policy Guide Sec. 7150.09 Fraud, Statements of Material Facts, Bribery, and Illegal Gratuities	July 1991	FDA Staff and Regulated Industry	Do Internet at: www.fda.gov/ora/compliance—;ref/aip—;page.html
Medical Device Warning Letter Pilot	March 8, 1999	FDA Staff and Regulated Industry	Do Internet at: www.fda.gov/ohrms/Dockets/98fr/030899e.pdf
Glossary of Computerized System and Software Development Terminology	August 1995	Do	National Technical Information Service (NTIS) 5285 Port Royal Rd., Springfield, VA 22161 (NTIS Order No. PB96–127352) or via Internet: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guidelines for Entry Review of Radiation-Emitting Electronic Devices	March 12, 1999	FDA Staff	Division of Import Operations and Policy (HFC–170), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–1218
Laboratory Procedures Manual	June 1994	Do	Division of Field Science (HFC–141), Food and Drug Administration, 5600 Fishers Lane, rm. 12–41, Rockville, MD 20857, or Internet at: www.fda.gov/ora/science—;ref/lpm/lpmtc.html
Laboratory Procedures Manual Chapter X, New: Method Validation Samples	May 1999	Do	Do
Memorandum: ORA Investigational Strategy on Gamma-Butyrolactone (GBL) and Related Products	May 15, 2000	Do	Division of Emergency and Investigational Operations (HFC–130), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, Not Available on the Internet
Investigations Operations Manual	January 2001	Do	National Technical Information Service (NTIS) 5285 Port Royal Rd., Springfield, VA 22161 (NTIS Order No. PB2001–913399 and Internet at www.fda.gov/ora/inspect—;ref/iom/default.htm)
Medical Devices: Draft Guidance entitled "Guidance for FDA Staff on Civil Money Penalty Policy"	Released for Comment June 8, 1999	FDA Staff	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420, or Internet at: http://www.fda.gov/ohrms/dockets/98fr/060899e.pdf

VIII. GUIDANCE DOCUMENTS ISSUED BY THE OFFICE OF REGULATORY AFFAIRS (ORA)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Regulatory Procedures Manual Update/ New Subchapter 5 Civil Money Penalty Reduction Policy for Small Entities	April 19, 2001	Do	Do Internet at: www.fda.gov/ora/compliance—;ref/rpm/rpmtc.html
Regulatory Procedures Manual New RPM Subchapter: Communication Concerning Assessment of Civil Monetary Penalties by U.S. Customs Service in Cases Involving Imported Food	January 2001	Do	Do Internet at: www.fda.gov/ora/compliance—;ref/rpm/rpmtc.html
Regulatory Procedures Manual: Update, New Subchapter Application Integrity Policy	March 1998	Do	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420 or via Internet at: www.fda.gov/ora/compliance—;ref/rpm/rpmtc.html
Regulatory Procedures Manual: Update/ Revision Subchapter/Priority Enforcement Strategy for Problem Importers	April 1998	Do	Do
Regulatory Procedures Manual: Update/ Revision Subchapter/Import Procedures	April 1998	Do	Do
Regulatory Procedures Manual: Update/ Revision Subchapter/Notice of Sampling	April 1998	FDA Staff	Do
Regulatory Procedures Manual: Update New Subchapter/Granting and Denying Transportation and Exportation (T&E) Entries	May 1998	Do	Do
Regulatory Procedures Manual: Update/ Revision Subchapter/Seizure	June 1998	Do	Do Internet at: www.fda.gov/ora/compliance—;ref/rpm—;new2/ch6.html
Regulatory Procedures Manual: Update/ Revision Subchapter/Supervisory Charges	June 1998	Do	Do Internet at: www.fda.gov/ora/compliance—;ref/new2/ch9chgs.html
Regulatory Procedures Manual: New Subchapter: Civil Penalties—Electronic Product Radiation Control	July 1998	Do	Do Internet at: www.fda.gov/ora/compliance—;ref/ch6civpen.html
Regulatory Procedures Manual: Update/ Revision, Chapter 4, Subchapter/ Warning Letters	March 21, 2000	Do	Do Internet at: www.fda.gov/ora/compliance—;ref/rpm—;new2/ch4.html
Regulatory Procedures Manual New Chapter 9, Communication Concerning Assessment of Civil Monetary Penalties by U.S. Customs in Cases Involving Imported Food	January 2001	Do	Do Internet at: www.fda.gov/ora/compliance—;ref/rpm—;new2/ch9civmonpen.html
Regulatory Procedures Manual New Chapter 9, Secured Storage	January 2001	Do	Do Internet at: www.fda.gov/ora/compliance—;ref/rpm—;new2/ch9securedstorage.html
Guide to Inspections of Bulk Pharmaceutical Chemicals	May 1994	Do	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, (NTIS Order No. PB96–127154) or via Internet at: www.fda.gov/ora/inspect)—;ref/igs/iglist.html
Guide to Inspections of Pharmaceutical Quality Control Laboratories	July 1993	Do	Do (NTIS Order No. PB96–127279) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html

VIII. GUIDANCE DOCUMENTS ISSUED BY THE OFFICE OF REGULATORY AFFAIRS (ORA)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guide to Inspections of Microbiological Pharmaceutical Quality Control Laboratories	July 1993	Do	Do (NTIS Order No. PB96–127287) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Validation of Cleaning Processes	July 1993	Do	Do (NTIS Order No. PB96–127246) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Lyophilization of Parenterals	July 1993	Do	Do (NTIS Order No. PB96–127253) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of High Purity Water Systems	July 1993	Do	Do (NTIS Order No. PB96–127261) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Dosage Form Drug Manufacturers—CGMPs	October 1993	Do	Do (NTIS Order No. PB96–127212) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Oral Solid Dosage Forms Pre/Post Approval Issues for Development and Vaccination	January 1994	Do	Do (NTIS Order No. PB96–127345) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Topical Drug Products	July 1994	Do	Do (NTIS Order No. PB96–127394) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Sterile Drug Substance Manufacturers	July 1994	Do	Do (NTIS Order No. PB96–127295) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Oral Solutions and Suspensions	August 1994	Do	Do (NTIS Order No. PB96–127147) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Nutritional Labeling and Education Act (NLEA) Requirements	February 1995	Do	Do (NTIS Order No. PB96–127378) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Interstate Carriers and Support Facilities	April 1995	Do	Do (NTIS Order No. PB96–127386) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Dairy Product Manufacturers	April 1995	Do	Do (NTIS Order No. PB96–127329) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Miscellaneous Foods Vol. 1	May 1995	Do	Do (NTIS Order No. PB97–127220) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Miscellaneous Foods Vol. 11	September 1996	Do	Do (NTIS Order No. PB97–196133) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Low Acid Canned Foods Manufacturers, Part 1—Administrative Procedures/Scheduled Processes	November 1996	Do	Do (NTIS Order No. PB97–196141) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Cosmetic Product Manufacturers	February 1995	Do	Do (NTIS Order No. PB96–127238) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Low Acid Canned Foods Manufacturers, Part 2—Processes/ Procedures	April 1997	Do	Do (NTIS Order No. PB97–196158) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html

VIII. GUIDANCE DOCUMENTS ISSUED BY THE OFFICE OF REGULATORY AFFAIRS (ORA)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guide to Inspections of Low Acid Canned Foods Manufacturers, Part 3—Container Closurers	July 2001	FDA Staff	Do (NTIS Order No. PB00–133795)
Guide to Inspections of Blood Banks	September 1994	Do	Do (NTIS Order No. PB96–127303) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Source Plasma Establishments	December 1994	Do	Do (NTIS Order No. PB96–127360) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Infectious Disease Marker Testing Facilities	June 1996	Do	Do (NTIS Order No. PB96–199476) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Biotechnology Inspections Guide	November 1991	Do	Do (NTIS Order No. PB96–127402) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Computerized Systems in Drug Processing	February 1983	Do	Do (NTIS Order No. PB96–127337) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Foreign Medical Device Manufacturers	September 1995	Do	Do (NTIS Order No. PB96–127311) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Foreign Pharmaceutical Manufacturers	May 1996	Do	Do (NTIS Order No. PB96–199468) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Mammography Quality Standards Act (MQSA) Auditors Guide	January 1998	Do	Do (NTIS Order No. PB98–127178) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Electromagnetic Compatibility Aspects of Medical Device Quality Systems	December 1997	Do	Do (NTIS Order No. PB98–127152) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Acidified Food Manufacturers	May 1998	Do	http://www.fda.gov/ora/inspect—;ref/igs/acidfgde.htm
Guide to Inspection of Aseptic Processing and Packaging for the Food Industry	February 2001	Do	Division of Emergency and Investigational Operations (HFC–130), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1240
Guide to Inspections of Grain Product Manufacturers	March 1998	Do	(NTIS Order No. PB–98–137128) or via Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Bioresearch Monitoring Inspections of In Vitro Devices	February 1998	Do	Do Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Viral Clearance Processes for Plasma Derivatives	March 1998	Do	Do Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Trace Back of Fresh Fruits and Vegetables Implicated in Epidemiological Investigations	April 2001	Do	Do Internet at: www.fda.gov/ora/inspect—;ref/igs/iglist.html
Guide to Inspections of Computerized Systems in the Food Processing Industry	August 1998	Do	Do Internet at: www.fda.gov/ora/inspect—;ref/igf/foodcomp.html
Guide to International Inspections and Travel, Revision (Formerly, FDA/ORA International Inspection Manual and Travel Guide)	July 1999	Do	Do Revision not available on Internet

VIII. GUIDANCE DOCUMENTS ISSUED BY THE OFFICE OF REGULATORY AFFAIRS (ORA)—Continued

Name of Document	Date of Issuance	Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document
Guide to Inspections of Quality Systems	August 1999	Do	Do Internet at: www.fda.gov/ora/inspect—;ref/igs/qsit/QSITGUIDE.PDF
Guide to Inspection of Firms Producing Food Products Susceptible to Contamination with Allergenic Ingredients	April 2001	Do	Do Internet at: http://www.fda.gov/ora/inspect—;ref/igs/iglist.html
Computerized Systems Used in Clinical Trials	April 1999	Do	Do Internet at: www.fda.gov/ora/compliance—;ref/bimo/ffinalact.html
Compliance Program 7348.001: Bioresearch Monitoring, Human Drugs, In Vivo Bioequivalence	October 1, 1999	D0	Do Internet at: www.fda.gov/ora/compliance—;ref/Bimo/7348—;001/default.html
Good Laboratory Practice Program (Nonclinical Laboratories) 7348.808A; EPA Data Audit Inspections	October 1, 1991	Do	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420
Guideline for the Monitoring of Clinical Investigators	January 1988	FDA Regulated Industry	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420
Small Business Guide to FDA (FDA 96–1092)	January 1, 1996	Do	Federal-State Relations (HFC–150), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2905 Internet at: www.fda.gov/ora/indust—;assit/default.htm
Compliance Program 7348.808 Bioresearch Monitoring: Good Laboratory Practices (Nonclinical)	Revised August 17, 1998	FDA Staff	Do Internet at: www.fda.gov/ora/compliance—;ref/bimo/default.html
Compliance Program 7348.809 Bioresearch Monitoring: Institutional Review Board	August 18, 1994	Do	Do
Compliance Program 7348.810: Sponsors, Contract Research Organizations and Monitors	Revised October 30, 1998	Do	Do
Good Laboratory Practice Regulations Management Briefings	August 1979	Do	Do Internet at: www.fda.gov/ora/compliance—;ref/bimo/default.html
Draft: Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research	March 31, 2000	FDA Regulated Industry	Do

Dated: October 9, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–26650 Filed 10–23–01; 8:45 am]

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Federal Register

Wednesday,
October 24, 2001

Part III

Department of Housing and Urban Development

24 CFR Parts 200 and 203
Single Family Mortgage Insurance; Section 203(k) Consultant Placement and Removal Procedures; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200 and 203

[Docket No. FR–4592–P–01]

RIN 2502–AH51

Single Family Mortgage Insurance; Section 203(k) Consultant Placement and Removal Procedures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish placement and removal procedures for HUD's list of qualified consultants under the Section 203(k) Rehabilitation Loan Insurance program. The 203(k) Program is the Federal Housing Administration's (FHA's) primary program for the rehabilitation and repair of single family properties. A 203(k) lender may select a qualified independent consultant, who is an expert in the field of home inspection, cost estimating, and construction, to perform various tasks required for the rehabilitation of the property. Presently, there are no regulatory procedures for placing a consultant on, nor for removing a poorly performing consultant from, the list. HUD believes that the establishment of these placement and removal procedures will better protect 203(k) borrowers and lenders and safeguard FHA insurance funds.

DATES: *Comments Due Date:* December 24, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Hearing -or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The Section 203(k) Rehabilitation Loan Insurance Program

Section 203(k) of the National Housing Act (12 U.S.C. 1709(k)) authorizes HUD to insure loans for the purchase and/or rehabilitation and repair of residential properties. The 203(k) Program is HUD's primary program for the rehabilitation and repair of single family properties. Section 203(k) loan insurance enables homebuyers and homeowners to finance both the purchase (or refinance) of a house and the cost of its rehabilitation through a single mortgage. The regulations implementing the 203(k) Program are located in 24 CFR 203.50 and 24 CFR 203.440 through 203.449. The program is administered by HUD's Office of Single Family Housing-Federal Housing Administration (FHA).

The 203(k) Program fills a unique and important role for homebuyers. In the conventional loan market, a homebuyer who purchases a home that is in need of repair or modernization usually has to follow a complicated and costly process. The homebuyer must obtain financing to purchase the dwelling, additional financing for the rehabilitation work, and a permanent mortgage after rehabilitation is completed to pay off the interim loans. The interim acquisition and improvement loans often have relatively high interest rates and short repayment terms. The 203(k) Program was designed to address this situation. Under this program, a homebuyer may obtain a single loan, at a long-term fixed (or variable) rate, to finance both the acquisition and rehabilitation of the property.

The extent of the rehabilitation covered by 203(k) loan insurance may range from relatively minor (though exceeding $5,000 in cost) to virtual reconstruction. For example, a home that has been demolished, or will be razed as part of rehabilitation, is eligible, provided that some of the existing foundation system remains in place. Section 203(k) loan insurance can also finance the rehabilitation of the residential portion of a property that has non-residential uses. In addition to typical home rehabilitation projects, the 203(k) Program can be used to convert a property of any size to a one-to four-unit dwelling.

HUD requires that properties financed under this program meet certain basic health, safety, energy efficiency and structural standards. All improvements undertaken with loan insurance under the 203(k) Program must comply with the HUD minimum property standards and all local codes and ordinances.

II. 203(k) Consultants

One of the most time consuming and difficult parts of the 203(k) loan process is for the borrower to properly prepare the required cost estimate, work write-up, and architectural exhibits. A borrower using the 203(k) Program may choose to have a qualified independent consultant, who is an expert in the field of home inspection, cost estimating, and construction, perform these tasks. The use of a consultant by the borrower is not required. However, many borrowers elect to use consultants to expedite processing of their 203(k) loans.

Although the borrower determines whether to use a consultant, the lender is solely responsible for selecting the 203(k) consultant and for determining the scope of the work to be performed by the consultant. The consultant must enter into a written agreement with the lender that completely explains what services the consultant will perform for the lender. Consultant fees are set in accordance with HUD's established fee schedule. The lender may require that the borrower enter into a written agreement obligating the borrower to pay for any or all of the consultant fees, whether or not the property is rehabilitated. The fee charged by the consultant may be included in the mortgage as a part of the cost of rehabilitation.

In some cases, the lender may also request a consultant to conduct a preliminary feasibility analysis. The purpose of this analysis is to determine the extent of the rehabilitation work required, a rough cost estimate of the work, and the expected market value of the property after completion of the work. The analysis may be conducted before or after submission of the sales contract to the seller.

The consultant may perform the required draw inspections for the release of funds during the construction period. The lender may also have the consultant conduct the plan review to ensure that the architectural exhibits are acceptable and comply with all applicable program requirements. HUD notes that the plan review is a mandatory step in the processing of the 203(k) loan. There is no requirement that the consultant conduct the plan review. However, if a consultant is not used to perform this function, the borrower must hire an independent plan reviewer.

HUD, through its four Homeownership Centers (HOCs), maintains lists of qualified consultants

on the applicable HOC internet website. Only those consultants included on a HOC's list of qualified consultants may be employed by the lender as a consultant under the 203(k) Program. Currently, to apply for placement on the list of qualified consultants, a consultant must submit his or her qualifications to the appropriate HOC and demonstrate knowledge of 203(k) Program requirements.

III. This Proposed Rule—Placement and Removal of 203(k) Consultants

A. Placement Procedures

This proposed rule would establish the placement and removal procedures for 203(k) consultants in subpart F to part 200 of the FHA regulations (entitled "Placement and Removal Procedures for Participation in FHA Programs"). Part 200 (entitled "Introduction to FHA Programs") prescribes requirements that apply to several of the FHA programs. The 203(k) consultant placement procedures would be located in a new § 200.191.

The proposed rule would provide that, to apply for placement on the list, a consultant must submit an application (or materials) in a form prescribed by HUD. To be eligible for placement on the list:

1. The consultant must demonstrate to HUD that it has a minimum of three years' experience as a remodeling contractor, general contractor or home inspector. A state license as a state certified engineer or architect may be submitted in lieu of the documentation of the three years' experience.

2. If located in a state that requires the licensing of home inspectors, the consultant would be required to submit proof of such licensing.

3. The consultant must submit a narrative description of the consultant's ability to perform home inspections, prepare architectural drawings, use proper methods of cost estimating and complete draw inspections.

4. The consultant must certify that it has read and fully understands the requirements of the HUD handbook on the 203(k) Program (4240.4), and all Mortgagee Letters and other instructions issued by HUD relating to the 203(k) Program. Copies of HUD Handbook 4240.4 and the HUD Mortgagee Letters concerning the 203(k) Program may be obtained by accessing the HUD internet Web site at *http://www.hud.gov.*

5. The consultant must not be listed on the General Service Administration's Suspension and Debarment List, HUD's Limited Denial of Participation List, or HUD's Credit Alert Interactive Voice Response System.

HUD also intends to develop a formal comprehensive examination on the 203(k) Program, which consultants would be required to pass before placement on the list. Consultants included on the list on the date this examination is enacted would have until 6 months following this date to pass the comprehensive test. Failure of the 203(k) consultant to pass the examination by the deadline date would constitute cause for removal from the list.

The inclusion of a consultant on the list means only that the consultant has met the qualifications and conditions prescribed by the Secretary for placement on the list of consultants qualified for the 203(k) Program. The inclusion of a consultant on the list does not create or imply a warranty or endorsement by HUD of the consultant, nor does it represent a warranty of any work performed by the consultant.

B. Removal Procedures

This proposed rule would also establish regulatory standards for the removal of a poorly performing consultant from the list. HUD has determined that regulatory removal procedures are necessary to better protect 203(k) lenders and safeguard FHA insurance funds. The proposed removal procedures are largely modeled on the existing and successful procedures for the removal of appraisers from the FHA Appraiser Roster (see the final rule published on April 3, 2000 (66 FR 17974)).

These procedures would supplement HUD's existing debarment, suspension and limited denial of participation remedies. The proposed removal procedure would provide a less lengthy process, and would fully protect the due process rights of consultants. The removal procedures would be located in new § 200.192 of subpart F.

The proposed rule provides that HUD may remove a consultant for any cause that HUD determines to be detrimental to HUD or its programs. Cause for removal includes, but is not limited to:

1. Poor performance on a HUD quality control field review;

2. Failure to comply with applicable regulations or other written instructions or standards issued by HUD;

3. Failure to comply with applicable Civil Rights requirements;

4. Being debarred or suspended, or subject to a limited denial of participation;

5. Misrepresentation or fraudulent statements;

6. Failure to retain standing as a state licensed architect or state-licensed engineer (unless the consultant can demonstrate the required three years' experience as a home inspector or remodeling contractor); or

7. Serving, or having served, as the rehabilitation consultant for properties securing 203(k) mortgages of which a significant percentage are in foreclosure, default or claim status.

8. Failure to respond within a reasonable time to HUD inquiries or requests for documentation.

The removal procedure proposed by this rule would require HUD to give a consultant written notice of a proposed decision to remove the consultant from the list. This notice would state the reasons for, and the duration of, the proposed removal. The consultant would be given not less than 20 days from the date of the removal notice to submit a written response appealing the proposed removal. The consultant would also have the right to submit a written request for a conference along with the written response. This procedure would not be applicable, however, if the consultant has been debarred or suspended or subject to a limited denial of participation.

A HUD official, designated by the Secretary, would review the consultant's appeal and send the consultant a final decision either affirming, modifying, or cancelling the removal from the list. The HUD official designated by the Secretary to review the consultant's appeal would not be someone involved in HUD's initial removal decision. HUD would respond with a decision within 30 days of receiving the appeal or, if the consultant has requested a conference, within 30 days after the completion of the conference. HUD may extend the 30-day period by providing written notice to the consultant.

If the consultant does not submit a timely written response, the removal would become effective 20 days after the date of HUD's initial removal notice (or after a longer period provided in the notice). If the consultant submits a written response, and the removal decision is affirmed or modified, the removal would become effective on the date of HUD's notice affirming or modifying its initial removal decision.

The proposed addition of § 200.192 would not prohibit HUD from debarring, suspending, issuing a limited denial of participation, seeking a false claims action, or taking such other action against a consultant as provided for in 24 CFR part 24 (entitled "Government Debarment and Suspension and Governmentwide Requirements for Drug-Free Workplace (Grants)"), or from seeking any other remedy against a

consultant available to HUD by statute or otherwise.

A consultant who has been removed from the list may apply for placement on the list after the period for the consultant's removal from the list has expired.

C. Small Business Concerns Related to the Removal of Consultants

With respect to removing a consultant from the list, or taking other appropriate enforcement action against a consultant, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) (referred to as "SBREFA") requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel." To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

IV. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and are pending OMB approval. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
200.191 (Consultant Application Package)	2,500	1	4	10,000
200.191(b)(6) (Consultant Proficiency Exam)	2,500	1	36	90,000

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–4592) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503;
and
Ethelene Washington, Reports Liaison Officer, Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451—7th Street, SW., Room 9114, Washington, DC 20410.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Environmental Impact

This proposed rule would establish placement and removal procedures for HUD's list of qualified 203(k) rehabilitation loan consultants. The proposed rule would not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, in accordance with 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

The proposed rule would establish the procedure by which a consultant, who has violated FHA single family mortgage insurance program requirements, may be removed from HUD's list of qualified 203(k) consultants. Accordingly, to the extent that this proposed rule would impact small entities it will be as a result of actions taken by small entities themselves—that is, violation of single family program regulations and requirements.

Further, the proposed rule would provide several procedural safeguards designed to minimize any potential impact on small entities. For example, the rule grants consultants, selected for removal from the list, the opportunity to provide a written response and to request a conference regarding a proposed removal. The rule also specifies that the official designated by HUD to review an appeal may not be the same HUD official involved in the initial removal decision. In addition, the proposed examination requirements would be "phased-in" for consultants on the list, and not take effect until six months after the effective date of promulgation. This delayed effective date will provide consultants on the list with additional time to meet the new requirements.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number for the Section 203(k) Rehabilitation Loan Insurance program is 14.108.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 200 and 203 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 is revised to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

2. In subpart F as proposed to be added at 66 FR 48082, add a new undesignated centerheading and §§ 200.190 through 200.193 to read as follows:

Subpart F—Placement and Removal Procedures for Participation in FHA Programs

Sec.

Section 203(k) Rehabilitation Loan Consultants

200.190 HUD list of qualified 203(k) consultants.
200.191 Placement of 203(k) consultant.
200.192 Removal of 203(k) consultant.
200.193 Responsibilities of 203(k) consultants on the list.

Section 203(k) Rehabilitation Loan Consultants

§ 200.190 HUD list of qualified 203(k) consultants.

(a) *Qualified consultant list.* HUD maintains a list of qualified consultants for use in the rehabilitation loan insurance program authorized by section 203(k) of the National Housing Act (12 U.S.C. 1709(k)) (referred to as the "203(k) Program").

(b) *Consultant functions.* Only a consultant included on the list may be selected by the lender to conduct any consultant function under the 203(k) Program (see § 203.50(l) of this chapter).

(c) *Disclaimer.* The inclusion of a consultant on the list means only that the consultant has met the qualifications and conditions prescribed by the Secretary for placement on the list of consultants qualified for the 203(k) Program. The inclusion of a consultant on the list does not create or imply a warranty or endorsement by HUD of the consultant, nor does it represent a warranty of any work performed by the consultant.

§ 200.191 Placement of 203(k) consultant.

(a) *Application.* To be considered for placement on the list, a consultant must apply to HUD using an application (or materials) in a form prescribed by HUD.

(b) *Eligibility.* To be eligible for placement on the list:

(1) The consultant must demonstrate to HUD that it either:

(i) Has at least three years' experience as a remodeling contractor, general contractor or home inspector; or

(ii) Is a state-licensed architect or state-licensed engineer;

(2) If located in a state that requires the licensing of home inspectors, the consultant must submit proof of such licensing;

(3) The consultant must submit a narrative description of the consultant's ability to perform home inspections, prepare architectural drawings, use proper methods of cost estimating and complete draw inspections;

(4) The consultant must certify that it has read and fully understands the

requirements of the HUD handbook on the 203(k) Program (4240.4) and all HUD Mortgagee Letters (*see http://www.hudclips.org*) and other instructions relating to the 203(k) Program;

(5) The consultant must not be listed on:

(i) The General Service Administration's Suspension and Debarment List;

(ii) HUD's Limited Denial of Participation List; or

(iii) HUD's Credit Alert Interactive Voice Response System;

(6) The consultant must have passed a comprehensive examination on the 203(k) Program, if HUD has developed such an exam.

(c) *Delayed effective date of examination requirement for consultants currently on the list.* Consultants who are included on the list on the date when the requirement for the examination described in paragraph (b)(6) of this section becomes effective have until 6 months following this date to pass the comprehensive exam. Failure to pass the examination by the deadline date constitutes cause for removal under § 200.192.

§ 200.192 Removal of 203(k) consultant.

(a) *Cause for removal.* HUD may remove a consultant from the list for any cause that HUD determines to be detrimental to HUD or its programs. Cause for removal includes, but is not limited to:

(1) Poor performance on a HUD quality control field review;

(2) Failure to comply with applicable regulations or other written instructions or standards issued by HUD;

(3) Failure to comply with applicable Civil Rights requirements;

(4) Being debarred or suspended, or subject to a limited denial of participation;

(5) Misrepresentation or fraudulent statements;

(6) Failure to retain standing as a state licensed architect or state-licensed engineer (unless the consultant can demonstrate the required three years experience as a home inspector or remodeling contractor);

(7) Serving, or having served, as the rehabilitation consultant for properties securing 203(k) mortgages of which a significant percentage are in foreclosure, default or claim status; or

(8) Failure to respond within a reasonable time to HUD inquiries or requests for documentation.

(b) *Procedure for removal.* A consultant that is debarred or suspended, or subject to a limited denial of participation will be automatically removed from the list. In all other cases, the following procedure for removal will be followed:

(1) HUD will give the consultant written notice of the proposed removal. The notice will state the reasons for, and the duration of, the proposed removal.

(2) The consultant will have 20 days from the date of the notice (or longer, if provided in the notice) to submit a written response appealing the proposed removal and to request a conference. A request for a conference must be in writing and must be submitted along with the written response.

(3) A HUD official will review the appeal and send a response either affirming, modifying, or cancelling the removal. The HUD official will not be someone who was involved in HUD's initial removal decision. HUD will respond with a decision within 30 days of receiving the appeal or, if the consultant has requested a conference, within 30 days after the completion of the conference. HUD may extend the 30-day period by providing written notice to the consultant.

(4) If the consultant does not submit a timely written response, the removal will be effective 20 days after the date of HUD's initial removal notice (or after a longer period provided in the notice). If a written response is submitted, and the removal decision is affirmed or modified, the removal will be effective on the date of HUD's notice affirming or modifying the initial removal decision.

(c) *Placement on the list after removal.* A consultant that has been removed from the list may apply for placement on the list (in accordance with § 200.191) after the period of the consultant's removal from the list has expired. An application will be rejected if the period for the consultant's removal from the list has not expired.

(d) *Other action.* Nothing in this section prohibits HUD from taking such other action against a consultant, as provided in 24 CFR part 24, or from seeking any other remedy against a consultant available to HUD by statute or otherwise.

§ 200.193 Responsibilities of 203(k) consultants on the list.

All consultants included on the list are responsible for:

(a) Obtaining and reading the HUD handbook on the 203(k) Program (4240.4) and any updates to the handbook.

(b) Complying with the HUD handbook on the 203(k) Program (4240.4), and any updates to the handbook, when performing any consultant function under the 203(k) Program.

(c) Obtaining and reading all Mortgagee Letters and other instructions issued by HUD relating to the 203(k) Program.

(d) Complying with all Mortgagee Letters and other instructions issued by HUD relating to the 203(k) Program, when undertaking any consultant function under the 203(k) Program.

(e) Complying with HUD's request for documentation relating to any 203(k) project on which the consultant has worked.

(f) Complying with HUD's monitoring requirements relating to the 203(k) Program.

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

4. Add § 203.50(l) to read as follows:

§ 203.50 Eligibility of rehabilitation loans.

* * * * *

(l) *Rehabilitation loan consultants.* HUD maintains a list of qualified consultants, in accordance with §§ 200.190–200.193 of this chapter. The lender may select a consultant on the list to perform one or more of the following tasks:

(1) Conduct a preliminary feasibility analysis before or after the submission of a sales contract;

(2) Prepare the cost estimate, work write-up, and architectural exhibits required for the rehabilitation of the property;

(3) Conduct a plan review; and

(4) Conduct the draw inspections for the release of funds during the construction phase of the project.

Dated: July 12, 2001.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 01–26709 Filed 10–23–01; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Wednesday,
October 24, 2001

Part IV

Federal Communications Commission

Change in Filing Procedures; Notices

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–2430]

Change in Filing Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces new procedures for all persons wishing to hand-deliver documents at the filing counter of the Federal Communications Commission's (the Commission) Secretary. The new procedures are due to precautionary measures.

DATES: The new procedures were effective on October 17, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Magalie Roman Salas, Secretary, FCC, (202) 418–0300.

SUPPLEMENTARY INFORMATION: This is a notice for all persons wishing to hand-deliver documents at the filing counter of the Commission's Secretary, located at 445 12th Street, SW., Washington, DC. As a precautionary measure, effective immediately and until further notice, the following procedures are in place:

- The staff at the Secretary's filing counter will not accept documents enclosed in envelopes.
- Any filer or messenger carrying such documents into the Commission's building will be asked to leave the building and dispose of the envelope in a receptacle that will be placed outside the building. Once this is done, the filer or messenger will be allowed to proceed to the filing counter.
- Originals and copies of each official filing must continue to be addressed to the Commission's Secretary and held together with rubber bands or fasteners. As usual, "stamp and return" copies will be provided as long as they clearly accompany each individual filing.
- Documents intended to be received by specific staff persons within Bureaus and Offices must be clearly labeled on the first page of the document or with a cover sheet indicating the destination. As appropriate, originals and copies must be held together with rubber bands or fasteners.
- Filings requesting confidential treatment under the Commission's rules must also be filed without envelopes. As long as the request for confidential treatment is clearly indicated on the first page of the filing, the staff at the filing counter will enclose the filing in a Commission envelope labeled "confidential" to signal that the filing contains material that is subject to a request for confidential treatment.
- The Office of the Secretary will work with specific Bureaus and Offices, as appropriate, to handle bulk filings in accordance with the precautionary measures described.

As the Commission continues to balance its efforts to be accessible to its customers with the need for heightened security measures, the Commission encourages its customers to make full use of the Commission's electronic filing systems to facilitate the filing of documents.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26823 Filed 10–23–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–2451]

Clarification on Changes in Filing Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document clarifies two other notices that were published elsewhere in this issue as a result of numerous inquires that the Federal Communications Commission (the Commission) received concerning changes in the filing procedures.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Magalie Roman Salas, Secretary, FCC, (202) 418–0300.

SUPPLEMENTARY INFORMATION: This notice is issued as a result of inquiries that the Commission has received today about the Public Notices issued yesterday announcing changes in filing procedures (DA 01–2430; DA 01–2436).

The Commission clarifies that:

- No hand-delivered or messenger-delivered filings will be accepted today or tomorrow, October 18 and 19, at either 445 12th Street, SW., Washington, DC, or at Capitol Heights, MD. Hand-delivered or messenger-delivered filings will be accepted only at our Capitol Heights, MD, facility beginning Monday, October 22, 2001.
- The due date for any filings due at the Commission on October 18 and October 19, 2001 has been extended to Monday, October 22, 2001. This extension applies to both paper and electronic filings. This determination is consistent with past extensions of time that have been granted due to the Commission's early closing for inclement weather or other extraordinary situations.
- The procedures for filings stated in DA 01–2430, released October 17, 2001, remain in effect. Only the filing location has changed. These procedures stated, among other things, that filings enclosed in envelopes will not be accepted. Therefore, all hand-delivered or messenger-delivered filings at the Capitol Heights, MD, location will not be accepted for filing if they are enclosed in an envelope.
- We remind all parties that the Commission's unique agency zip code "20554" cannot be used for documents delivered by entities such as Federal Express or any other express mail service. In these circumstances, you must use the zip code "20024" as follows:

Federal Communications Commission, 445 12th Street, SW., Washington, DC 20024.

Filings and other documents sent by United States Postal Service should use the "20554" zip code.

The Commission continues to encourage its customers to make full use of the Commission's electronic filing systems to facilitate the filing of documents.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26822 Filed 10–23–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–2436]

Changes in Filing Location for Paper Documents

AGENCY: Federal Communications Commission

ACTION: Notice.

SUMMARY: This document announces that the Federal Communications Commission (the Commission) will no longer accept hand-delivered or messenger-delivered paper filings at its headquarters location, 445—12th Street, SW., Washington, DC 20554.

DATES: The due date for any filings due at the Commission Thursday, October 18, 2001, or Friday, October 19, 2001, is hereby extended to Monday, October 22, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Magalie Roman Salas, Secretary, FCC, (202) 418–0300.

SUPPLEMENTARY INFORMATION: On Monday, October 22, 2001, the Commission will resume accepting hand-delivered or messenger-delivered paper filings only at our Capitol Heights facility located at 9300 East Hampton Drive, Capitol Heights, MD 20743. To accommodate this change in location, the time deadline for filing at the Capitol Heights facility is extended hereafter to 9 p.m. Eastern Time. Filings received at the Capitol Heights facility will be date-stamped. Filings made pursuant to 47 CFR 1.13(a) should also be made at the Capitol Heights facility where they will be date and time stamped. Subpoenas directed to the Commission or its employees in their official capacities will be received only at the Capitol Heights facility. The Commission is currently looking for an alternative site in Washington, DC, to accept delivery of filings on a more permanent basis. The public will be notified of that location as quickly as possible.

We encourage our customers to make full use of the Commission's electronic filings systems to facilitate the filing of documents.

Filings and other documents sent to the Commission by United States Postal Service or overnight delivery services should continue to be addressed to the Commission at 445—12th Street, SW., Washington, DC 20554. The Commission itself will divert those deliveries to the Capitol Heights facility.

This notice supersedes any Commission rules permitting the hand filing of documents at the Commission's headquarters.

The Commission finds it necessary at this time to make these changes to its procedures to protect the health and safety of its employees and therefore finds good cause to make them effective as expeditiously as possible in accordance with this notice.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26824 Filed 10–23–01; 8:45 am]

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Federal Register

Wednesday,
October 24, 2001

Part V

The President

Executive Order 13232—Further Amendment to Executive Order 10789, as Amended, To Authorize the Department of Health and Human Services To Exercise Certain Contracting Authority in Connection With National Defense Functions

Federal Register
Vol. 66, No. 206
Wednesday, October 24, 2001

Presidential Documents

Title 3—

The President

Executive Order 13232 of October 20, 2001

Further Amendment to Executive Order 10789, as Amended, To Authorize the Department of Health and Human Services To Exercise Certain Contracting Authority in Connection With National Defense Functions

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 50 U.S.C. 1431–35, and in order to authorize the Department of Health and Human Services to exercise certain contracting authority in connection with national defense functions, it is hereby ordered that Executive Order 10789 of November 14, 1958, as amended, is further amended by inserting the words "Department of Health and Human Services" in the list of departments and agencies in section 21 of that order after the words "Department of Commerce."

THE WHITE HOUSE,
October 20, 2001.

[FR Doc. 01–26990
Filed 10–23–01; 11:17 am]
Billing code 3195–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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H.J. Res. 69/P.L. 107–53

Making further continuing appropriations for the fiscal year 2002, and for other purposes. (Oct. 22, 2001; 115 Stat. 269)

Last List October 18, 2001

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Federal Register

10–25–01
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Pages 53943–54096

Thursday
Oct. 25, 2001

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Presidential Documents

Title 3—

The President

Proclamation 7487 of October 19, 2001

National Forest Products Week, 2001

By the President of the United States of America

A Proclamation

Our Nation has been blessed with and sustained by its many natural resources. Among these resources, one that has provided us with both vital products and much enjoyment is America's forestland.

Throughout our Nation's history, our forests have provided paper products, construction materials for dwellings and furniture, and fuel for warmth and cooking. Timbers harvested from our lands have been fundamental to the growth and expansion of America. Although our reliance on our forests has changed during the last century, they continue to remain an invaluable resource.

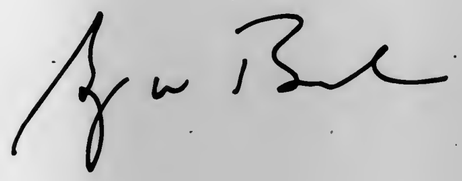
The beautiful cherry wood of Pennsylvania, the mighty oaks of the Midwest, the pines of the South, and the firs of the West are loved by millions of Americans, who find solace and relaxation in camping, hiking, and enjoying recreational activities among these trees. And for many Americans working in the construction, manufacturing, and recreation industries, our forests represent economic security for their families and communities. They serve as important ecosystems, sheltering and feeding wildlife, protecting soil, and purifying water and air. Our timberlands also serve as an important symbol of our Nation's beauty and economic strength. Now, more than ever, we have a responsibility to ensure that they remain healthy and productive.

By working together to develop and promote sensible policies, we can achieve success in protecting these natural resources and pristine areas. My Administration will work closely with Federal, State, and local officials, as well as private landowners to encourage sustainable land management techniques, utilize the latest in scientific research, foster local stewardship of resources, and support innovative methods of pollution control. If we remain vigilant, our forests will provide products, recreation, clean air, clean water, and wildlife habitat for generations to come.

In recognition of the economic, environmental, and recreational importance of our forests, the Congress, by Public Law 86–753 (36 U.S.C. 123), has designated the week beginning on the third Sunday in October of each year as "National Forest Products Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 21 through October 27, 2001, as National Forest Products Week. I call upon all Americans to observe that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of October, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01-27060
Filed 10-24-01; 8:45 am]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

Release of Burley Tobacco Farmer's Warehouse, Receiving Station and Dealer Designations to Warehouse Operators, Receiving Station Buying Companies and Dealers

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Intent to Release Designation Records and Opportunity to Opt Out of the Release.

SUMMARY: This document announces the intention of the Secretary of Agriculture to release the burley tobacco farm designation information, which includes, but is not limited to, the farm serial number, operator's name and address and pounds designated to a specific market location; and provides notice of the method in which interested parties can opt out of that release. The release will be to the designated warehouse operator, receiving station buying company or dealer in order to facilitate an orderly marketing of the 2001 crop of burley tobacco.

DATES: Submit Request to Opt Out of Release October 30, 2001.

ADDRESSES: Notices should be mailed to Misty Jones, Farm Service Agency (FSA), Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250–0514.

FOR FURTHER INFORMATION CONTACT: Misty L. Jones, telephone number (202) 720–0200 or via e-mail at TOB_Comments@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION: The marketing quota program is provided for in Section 319 of the Agricultural Adjustment Act of 1938, as amended, and is a program in which Federal marketing quotas are established for burley tobacco. Tobacco farmers who filed market designation information were asked to provide the Farm Service Agency (FSA) the exact market location and the poundage of burley tobacco that would be offered for sale at each respective location.

In order to facilitate an orderly marketing of such commodity FSA collected information to be used in scheduling Federal graders at auction warehouses and to provide like information to nonauction receiving stations and dealers and auction warehouse operators for marketing scheduling purposes. So that affected parties may efficiently and expeditiously make arrangements for the 2001 burley tobacco marketing season FSA will release information collected after October 30, 2001. The release will be made to any person asking for the information. This will help warehouse operators schedule sales in a manner that will assist farmers, the warehouse operators and inspectors. This can also avoid difficulties for the farmer with regard to private contracts for sale. Because this information can provide much needed help to market locations, the Secretary intends to provide the information to the warehouse operators, receiving station buying companies, dealers and others as may request the information that is not confidential, except in the case of those parties who wish to opt out of the release. Those who wish to opt out of the release should send notice in writing of their election to Misty Jones, Farm Service Agency, Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250–0514. Such notice must be received by October 30, 2001.

The Agency does not expect many exemption requests.

Signed at Washington, DC on October 16, 2001.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01-26947 Filed 10-22-01; 4:41 pm]
BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV01-989-3 FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2000–01 Crop Natural (Sun-dried) Seedless and Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim final rule that established final volume regulation percentages for 2000–01 crop Natural (sun-dried) Seedless raisins (Naturals) and Zante Currant raisins (Zantes) covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 53 percent free and 47 percent reserve for Naturals, and 83 percent free and 17 percent reserve for Zantes. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

EFFECTIVE DATE: November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202)

720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule continues in effect final free and reserve percentages for Naturals and Zantes for the 2000–01 crop year, which began August 1, 2000, and ended July 31, 2001. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect final volume regulation percentages for 2000–01 crop Naturals and Zantes which were established through an interim final rule published on August 1, 2001, in the **Federal Register** (66 FR 39623). The volume regulation percentages are 53 percent free and 47 percent reserve for Naturals and 83 percent free and 17 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. Final percentages were unanimously recommended by the Committee on January 12, 2001.

Computation of Trade Demands

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 15, 2000, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for each varietal type is equal to a 5-year rolling average, dropping the high and low figures, of free tonnage shipments during the months of August, September, and October. In accordance with these provisions, the Committee computed and announced 2000–01 trade demands for Naturals and Zantes at 233,344 tons and 4,290 tons, respectively, as shown below.

COMPUTED TRADE DEMANDS

[Natural condition tons]

	Naturals	Zantes
Prior year's shipments	264,619	4,635
Multiplied by 90 percent	0.90	0.90
Equals adjusted base	238,157	4,172
Minus carry-in inventory	97,109	1,109
Plus desirable carryout	92,296	1,227
Equals computed trade demand	233,344	4,290

Computation of Preliminary Volume Regulation Percentages

As required under § 989.54(b) of the order, the Committee met on October 4, 2000, and announced a preliminary crop estimate of 427,394 tons for Naturals. Naturals are the major varietal type of California raisin. This estimate was about 27 percent higher than the 10-year average of 336,766 tons. Combining the carryin inventory of 97,109 tons with the 427,394-ton crop estimate resulted in a total available supply of 524,503 tons, which was significantly higher (about 125 percent) than the 233,344-ton trade demand. Thus, the Committee determined that volume regulation for Naturals was warranted. The Committee announced preliminary free and reserve percentages for Naturals which released 65 percent of the computed trade demand since the field price (price paid by handlers to producers for their free tonnage raisins) had not yet been established. The preliminary percentages were 35 percent free and 65 percent reserve.

Also at its October 4, 2000, meeting, the Committee announced a preliminary crop estimate for Zantes at 4,828 tons, which was comparable to the 10-year average of 4,447 tons. Combining the carry-in inventory of 1,109 tons with the 4,828-ton crop estimate resulted in a total available supply of 5,937 tons. With the estimated supply about 38 percent greater than the 4,290-ton trade demand, the Committee determined that volume regulation for Zantes was warranted. The Committee announced preliminary percentages for Zantes which released 65 percent of the computed trade demand since field price had not yet been established. The preliminary percentages were 58 percent free and 42 percent reserve.

In addition, preliminary percentages were also announced for Dipped Seedless and Other Seedless raisins. The Committee ultimately determined that volume regulation was only warranted for Naturals and Zantes. As in past seasons, the Committee submitted its marketing policy to the Department for review.

Computation of Final Volume Regulation Percentages

Pursuant to § 989.54(c) and (d) of the order, the Committee met on January 12, 2001, and recommended interim percentages for Naturals and Zantes to release slightly less than their full trade demands. Specifically, interim percentages were recommended for Naturals at 52.75 percent free and 47.25 percent reserve, and for Zantes at 82.75 percent free and 17.25 percent reserve.

The Department reviewed the Committee's recommendation for interim percentages in light of unusual circumstances facing the industry. Field prices for Naturals and Zantes are negotiated between the Raisin Bargaining Association (RBA) and handlers, and are usually set in October. For the first time ever, price negotiations proceeded to arbitration, a process that occurred between April 30—May 2, 2001. The Committee's rationale for recommending interim percentages in January, prior to the establishment of field prices, was that the industry was proceeding to binding arbitration, and that field prices would be set through this process.

In reviewing the Committee's recommendation regarding interim percentages, the Department considered the fact that volume regulation under the order is linked to the establishment of field prices. Preliminary percentages release 85 percent of the trade demand if field prices have been set, but only 65 percent if they have not. The order also permits preliminary and interim percentages to be implemented through announcements by the Committee, but final percentages must be established by the Department through informal rulemaking.

While preliminary percentages were designed to release 65 percent of the trade demand until field price is set, the order does not contemplate and provides no contingency for the failure to set prices by mid-February. The rulemaking record indicates that the quantity of tonnage released at the 65-percent level would be sufficient to supply market needs through February, but does not address restrictions after February 15. The Department does not support marketing order regulations that restrict supplies to the point where market needs are not met. This would negatively impact the industry as a whole. Thus, on March 15, 2001, the Department approved the establishment of interim percentages for Naturals and Zantes.

At its January 2001 meeting, the Committee also recommended final percentages to release the full trade demands for Naturals and Zantes, once field prices were set through arbitration. Field prices were established on May 2, 2001. Final percentages compute to 53 percent free and 47 percent reserve for Naturals, and 83 percent free and 17 percent reserve for Zantes.

Both the interim and final percentage computations were based on revised crop estimates of 440,000 tons for Naturals and 5,160 tons for Zantes. The Committee's calculations to arrive at final percentages for Naturals and Zantes are shown in the table below:

FINAL VOLUME REGULATION PERCENTAGES

[Natural condition tons]

	Naturals	Zantes
Trade demand	233,344	4,290
Divided by crop estimate	440,000	5,160
Equals free percentage	53	83
100 minus free percentage equals reserve percentage	47	17

In addition, the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal was met for Naturals and Zantes by the establishment of final percentages which released 100 percent of the trade demand and the offer of additional reserve raisins for sale to handlers under the "10 plus 10 offers." As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

The "10 plus 10 offers" were held for both Naturals and Zantes in May 2001. For Naturals, a total of 52,924 tons was made available to raisin handlers, and 22,091 tons were purchased. Adding the 22,091 tons of 10 plus 10 raisins purchased to the 233,344-ton trade demand figure, plus 97,109 tons of 1999–2000 carryin inventory, equates to about 352,544 tons of natural condition raisins, or about 330,300 tons of packed raisins, that were made available for free use, or to the primary market. This is 133 percent of the quantity of Naturals shipped during the 1999–2000 crop year (264,619 natural condition tons or 247,925 packed tons).

For Zantes, 824 tons were made available to handlers through 10 plus 10 offers. This quantity is less than the amount specified in the order (927 tons). Although 927 tons were not available, all of the reserve raisins available were offered to and purchased by handlers for free use through the 10 plus 10 offers. Adding the 824 tons of 10 plus 10 raisins to the 4,290-ton trade demand figure, plus 1,109 tons of 1999–2000 carryin inventory equates to 6,223 tons natural condition raisins, or about 5,543 tons of packed raisins, that were made available for free use, or to primary markets. This is 134 percent of the quantity of Zantes shipped during the 1999–2000 crop year (4,635 tons natural condition tons or 4,129 tons packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, the additional offers of reserve raisins make even more raisins available to primary markets which is consistent with the Department's Guidelines.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from non-agricultural sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities, excluding receipts from non-agricultural sources.

Since 1949, the California raisin industry has operated under a Federal marketing order. The order contains authority to, among other things, limit the portion of a given year's crop that

can be marketed freely in any outlet by raisin handlers. This volume control mechanism is used to stabilize supplies and prices and strengthen market conditions.

Pursuant to § 989.54(d) of the order, this rule continues in effect final volume regulation percentages for 2000–01 crop Natural and Zante raisins. The volume regulation percentages are 53 percent free and 47 percent reserve for Naturals and 83 percent free and 17 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation was warranted for 2000–01 crop Naturals because the final crop estimate of 440,000 tons combined with the 1999–2000 carryin inventory of 97,109 tons, plus 41,395 tons of 1999–2000 reserve raisins released for free use through an export program, resulted in a total available supply of 578,504 tons, which was almost 150 percent higher than the 233,344-ton trade demand. Volume regulation was warranted for 2000–01 Zantes because the final crop estimate of 5,160 tons combined with the carryin inventory of 1,109 tons resulted in a total available supply of 6,269 tons, which was about 46 percent higher than the 4,290-ton trade demand.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help prevent oversupplies in the domestic market.

Raisin grapes are a perennial crop, so production in any year is dependent upon plantings made in earlier years. The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, over 60 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970's, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for Naturals have remained fairly steady between the 1992–93 through the 1997–98 seasons, although production has varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94, or about 42 percent. According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or 16 percent. Total producer prices for the 1998–99 and 1999–2000 seasons increased significantly due to back-to-back short crops during those years.

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Production [1]	Producer prices
1999–2000	299,910	[2] $1,211.25
1998–99	240,469	[3] 1,290.00
1997–98	382,448	946.52
1996–97	272,063	1,049.20
1995–96	325,911	1,007.19
1994–95	378,427	928.27
1993–94	387,007	904.60
1992–93	371,516	901.41

[1] Natural condition tons.
[2] Return to-date, reserve pool still open.
[3] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. In recent years, both export and domestic shipments have been decreasing. Domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000. In addition, exports decreased from 114,576 packed tons in 1991–92 to 91,599 packed tons in the 1999–2000 crop year.

In addition, the per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.62 pounds in 1999. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit through out the year.

While the overall demand for raisins has been decreasing (as reflected in the decline in commercial shipments), production has been increasing. The production of dried raisins reached an all-time high of an estimated 440,000 tons in the 2000–01 crop year. This large crop was preceded by two short crop years; production was 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Production for the 2000–01 crop year soared to a record level because of increased bearing acreage and yields.

The order permits the industry to exercise supply control provisions, which allow for the establishment of free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, grower prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances grower returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been constructed. The model developed is for the purpose of estimating nominal prices under a number of scenarios using the volume control authority under the Federal marketing order. The price growers receive for the harvest and delivery of their crop is largely determined by the level of production and the volume of carry-in inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of reserve and free percentages for primary markets, and a reserve pool. The establishment of reserve percentages impacts the

production that is marketed in the primary markets.

The reserve percentage limits what handlers can market as free tonnage. Assuming the 47 percent reserve limits the total free tonnage to 233,200 natural condition tons (.53 × 440,000 tons) and carryin is 97,109 natural condition tons, and purchases from reserve total 55,000 natural condition tons (which includes reserve raisins released through the export program and other purchases), then the total free supply would total 385,309 natural condition tons. The econometric model estimates prices to be $240 per ton higher than under an unregulated scenario. This price increase is beneficial to all growers regardless of size and enhances growers' total revenues in comparison to no volume control. Establishing a reserve allows the industry to help stabilize supplies in both domestic and export markets, while improving returns to producers.

Regarding Zantes, Zante production is much smaller than that of Naturals. Volume regulation has been implemented for Zantes during the 1994–95, 1995–96, 1997–98, 1998–99, 1999–2000, and 2000–01 seasons. Various programs to utilize reserve pool Zantes were implemented during those years. As shown in the table below, although production varied during those years, volume regulation helped to reduce inventories, and helped to strengthen total producer prices (free tonnage plus reserve Zantes) from $412.56 per ton in 1994–95 to a high of $1,034.03 per ton in 1998–99. The Committee is implementing an export program for Zantes, in addition to Naturals. Through this program, the Committee plans to continue to manage its Zante supply, build and maintain export markets, and ultimately improve producer returns. Volume regulation helps the industry not only to manage oversupplies of raisins, but also maintain market stability.

ZANTE CURRANT INVENTORIES AND PRODUCER PRICES DURING YEARS OF VOLUME REGULATION

[Natural condition tons]

Crop year	Production	Inventory		Total [1]
		Desirable	Physical	
1999–2000	3,683	573	1,906	$771.14
1998–99	3,880	694	1,188	1,034.03
1997–98	4,826	788	1,679	710.08
1996–97	4,491	987	549	[2] 1,150.00
1995–96	3,294	782	2,890	711.32
1994–95	5,377	837	4,364	412.56

[1] Total season average produces price (per ton).
[2] No volume regulation.

Free and reserve percentages are established by varietal type, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, the Committee recommended only two of the nine raisin varietal types defined under the order for volume regulation this season.

The free and reserve percentages release the full trade demands and apply uniformly to all handlers in the industry, regardless of size. For Naturals, with the exception of the 1998–99 crop year, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action will not impose any additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

An interim final rule concerning this action was published in the **Federal Register** on August 1, 2001 (66 FR 39623). Copies of the rule were mailed by Committee staff to all Committee members and alternates, the RBA, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and the Department. That rule provided for a 30-day comment period that ended on August 31, 2001. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found

that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 66 FR 39623 on August 1, 2001, is adopted as a final rule without change.

Dated: October 19, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–26899 Filed 10–24–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–9]

Establishment of Class E2 Airspace; Greenwood, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in the geographic position coordinates and the description of airspace lateral distance of a final rule that was published in the **Federal Register** on July 31, 2001, (66 FR 39435), Airspace Docket No. 01–ASO–9. The final rule established Class E2 airspace at Greenwood, MS.

EFFECTIVE DATE: October 25, 2001.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 01–19044, Airspace Docket No. 01–ASO–9, published on July 31, 2001, (66 FR 39435), established Class E2 airspace at Greenwood, MS. The airspace description inadvertently contained an incorrect lateral distance and geographic position coordinates for the Greenwood-Leflore Airport. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace description for the Class E2 airspace area Greenwood, MS, incorporated by reference at Sec. 71–1 and published in the **Federal Register** on July 31, 2001, (66 FR 39435), is corrected as follows:

§ 71.71 [Corrected]

* * * * *

ASO MS E2 Greenwood, MS [Corrected]

On page 39435, column 3, line 2, of the Greenwood-Leflore Airport, MS, geographic position description, correct the geographic position coordinates by substituting "(lat. 33°29′40″N, long. 90°05′05″W)" for "(lat. 33°29′44″N, long. 90°05′03″W)". On line 3, correct the lateral distance from the Greenwood-Leflore Airport, MS, by substituting "4.4-mile radius" for 4-mile radius".

* * * * *

Issued in College Park, Georgia, on October 15, 2001.

Richard Biscomb,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–26923 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–3]

Establishment of Class E5 Airspace; Reform, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action established Class E5 airspace at Reform, AL. A Area Navigation (RNAV) Global Positioning System (GOP) Runway (RWY) 19 Standard Instrument Approach Procedure (SIAP) has been developed for North Pickens Airport, Reform, AL. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at North Pickens Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On September 5, 2001, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E5 airspace at Reform, AL, (66 FR 46406) to provide adequate controlled airspace to contain the RNAV (GPS) RWY 19 SIAP and other IFR operations at North Pickens Airport. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Reform, AL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Reform, AL [New]

North Pickens Airport
(Lat. 33&°23′20″ N, long. 88°00′20″ W)

That airspace extending upward from 700. feet above the surface within a 6.5-mile radius of North Pickens Airport.

* * * * *

Issued in College Park, Georgia, on October 11, 2001.

Richard Biscomb,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–26924 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA 2001–10527, Airspace Docket No. 01–ASW–10]

RIN 2120–AA66

Amendment to Time of Designation for Restricted Area R–4403; Gainesville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the time of designation for Restricted Area 4403 (R–4403), Gainesville, MS, from "Continuous," to "Intermittent, 0600–2300 local time daily; other times by NOTAM 24 hours in advance." The FAA is taking this action in response to a request from the National Aeronautics and Space Administration (NASA) which is the designated using agency for R–4403.

EFFECTIVE DATE: 0901 UTC, December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of a review of restricted area activity, NASA has requested the FAA to reduce the time of operation for R–4403 to more accurately reflect actual requirements for the airspace. This change reduces the burden on the flying public. This action does not alter the boundaries, designated altitudes, or type of activities conducted within the restricted area.

The Rule

This amendment to 14 CFR part 73 changes the time of designation for R–4403, Gainesville, MS, from "continuous" to "Intermittent, 0600–2300 local time daily; other times by NOTAM 24 hours in advance." The FAA is taking this action in response to written notification from the using agency that a reduction in the time of designation for the restricted area is appropriate.

Since this change reduces the burden on the flying public by reducing the amount of time that R–4403 is activated, and because this action does not affect the boundaries, designated altitudes, or activities conducted therein; I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Environmental Review

In accordance with FAA Order 1050.1D, "Policies and Procedures for Handling Environmental Impacts," and the National Environmental Policy Act of 1969, this action is not subject to environmental assessments and procedures.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.44 [Amended]

2. § 73.44 is amended as follows:

* * * * *

R–4403 Gainesville, MS [Amended]

By removing "Time of Designation. Continuous." and inserting "Time of Designation. Intermittent, 0600–2300 local time daily; other times by NOTAM 24 hours in advance."

* * * * *

Issued in Washington, DC, on October 18, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–26919 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR 1700

Household Products Containing Hydrocarbons; Final Rules

AGENCY: Consumer Product Safety Commission.

ACTION: Final Rules.

SUMMARY: These rules, promulgated under authority of the Poison Prevention Packaging Act (PPPA), require child-resistant (CR) packaging for certain products that contain low-viscosity hydrocarbons. (The Commission voted 3–0 to issue this final rule. The statements of Chairman Brown and Commissioners Gall and Moore concerning the vote are available from the CPSC Office of the Secretary.) This requirement is intended to protect children under five years of age from serious injury associated with aspiration of hydrocarbon products. The requirement applies to certain prepackaged nonemulsion-type liquid household chemical products, including drugs and cosmetics, that contain ten (10) percent or more hydrocarbons by weight and have a viscosity of less than one hundred (100) Saybolt Universal Seconds (SUS) at 100 °F (covered products). For purposes of these rules, hydrocarbons are defined as compounds that consist solely of carbon and hydrogen. For a product that contains multiple hydrocarbons, the total percentage of hydrocarbons in the product is the sum of the percentages by weight of the individual hydrocarbon components.

DATES: These rules become effective October 25, 2002, and apply to covered products packaged on or after that date.

ADDRESSES: Copies of documents relevant to this rulemaking can be

requested from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, (301) 504–0800, e-mail *cpsc-os@cpsc.gov*, or in person at Room 502, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Geri Smith, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0608, ext. 1160.

SUPPLEMENTARY INFORMATION:

A. Background

The Poison Prevention Packaging Act (PPPA), 15 U.S.C. 1471–1476, authorizes the U.S. Consumer Product Safety Commission (CPSC or Commission) to require child-resistant (CR) packaging of hazardous household substances in appropriate cases. These rules require CR packaging for certain low-viscosity hydrocarbon products.

Direct aspiration into the lung, or aspiration during vomiting, of small amounts of petroleum distillates and other similar hydrocarbon solvents can result in chemical pneumonia, pulmonary damage, and death. These chemicals are the primary ingredients in a multitude of consumer products to which children have access.

The viscosity of a hydrocarbon-containing product contributes to its potential toxicity. Viscosity is the measurement of the ability of a liquid to flow. Liquids with high viscosities are thick or "syrupy." Liquids with low viscosities are more "watery." Products with low viscosity pose a greater risk of aspiration into the lungs.

Under regulations issued pursuant to the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261–1278, the CPSC regulates the labeling of hazardous household substances containing 10 percent or more by weight of petroleum distillate hydrocarbons because these products may cause injury or illness if ingested. 16 CFR 1500.14. The PPPA regulations in effect as of this date also require child-resistant packaging for certain household products containing petroleum distillates. 16 CFR 1700.14. Under these regulations, the specified consumer products containing 10 percent or more by weight of petroleum distillates, and having viscosities less than 100 Saybolt Universal Seconds (SUS) at 100 °F, are subject to child-resistant packaging standards. These PPPA-regulated products include prepackaged liquid kindling and illuminating preparations (*e.g.*, lighter fluid) (16 CFR 1700.14(a)(7)), prepackaged solvents for paint or other similar surface-coating materials (*e.g.*, paint thinners)(16 CFR 1700.14(a)(15)), and nonemulsion liquid furniture polish (16 CFR 1700.14(a)(2)).

Because hydrocarbons are not now regulated as a chemical class under the PPPA, many other hydrocarbon-based consumer products are not required to be in child-resistant packaging. Cleaning solvents, automotive chemicals, shoe-care products, and cosmetics may contain large amounts of various hydrocarbons and are not required to be in child-resistant packaging. For example, an existing child-resistant packaging standard requires child-resistant packaging of prepackaged kerosene for use as lamp fuel.

However, a gun cleaning solvent that contains over 90 percent kerosene does not have to meet this requirement. Mineral spirits used as a paint solvent require child-resistant packaging, but spot removers containing 75 percent mineral spirits, and water repellents containing 95 percent mineral spirits, do not.

On January 3, 2000, the CPSC issued a Notice of Proposed Rulemaking (NPR) proposing CR packaging requirements for consumer products that contain hydrocarbons of low viscosity. 65 FR 93.

The Commission proposed two discrete rules, one for products regulated under the FHSA and the other for products regulated under the Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 301–397. The proposed rules would require CR packaging of prepackaged nonemulsion-type liquid household chemical products or drugs and cosmetics that contain 10 percent or more hydrocarbons [1] by weight and have a viscosity of less than 100 SUS at 100 °F. For products that contain multiple hydrocarbons, the total percentage of hydrocarbons in the product is calculated by adding the percentage by weight of the individual hydrocarbon components.

The NPR outlined several packaging types that would be exempted from the rules. These included products packaged in aerosol cans, and mechanical pumps or trigger sprayers, provided the aerosol, mechanical pump, or trigger sprayer expelled the product as a mist. For mechanical pumps and trigger sprayers, the spray mechanism would be required to be permanently attached to the bottle or have a CR attachment. However, if the mechanical pump or trigger sprayer expelled product as a stream (either solely or as an option), the entire package including the pump mechanism would have been required to be CR. Aerosol products that formed a stream by the addition of an extension tube inserted into the nozzle would have been excluded from the packaging requirements if, without the extension tube, the product would be expelled as a mist.

Writing markers and ballpoint pens are exempted from full cautionary labeling requirements under the FHSA relating to ingestion toxicity if they meet certain specifications prescribed by regulation. 16 CFR 1500.83. The Commission proposed that these products also be exempted from CR packaging requirements. In addition, the NPR proposed that cosmetics and other household substances, such as battery terminal cleaners, paint markers, and make-up removal pads, that do not have product free flowing from the packaging, be excluded from the CR packaging requirements, even if they contained 10 percent or more hydrocarbons by weight and have a viscosity under 100 SUS.

The NPR was sent to 375 trade associations and businesses believed to be involved with hydrocarbon-containing products. Seven individuals and groups submitted comments. Most of the comments focused on which products should be subject to the rules. Many of them reiterated comments that were previously submitted in response to the advance notice of proposed rulemaking (ANPR) and addressed in the NPR.

Several commenters requested a test method to define "stream" for aerosol and pump and trigger spray products. Aerosols and the discharge from pump and trigger spray mechanisms are not subject to the final rules being issued today. The CPSC expects to address the "stream" vs. "mist" issue in a subsequent proceeding.

At the Commission meeting on December 3, 1999, Commissioner Gall requested that the CPSC staff develop a plan for the collection of additional data related to ingestion incidents involving mineral oil-based cosmetics. To this end, the Commission approved the purchase from the American Association of Poison Control Centers (AAPCC) of additional information on exposures to mineral oil-based cosmetics. These data were evaluated by the CPSC staff. In an April 11, 2001 supplemental **Federal Register** notice of data availability, the Commission provided an opportunity for the public to comment on this information. 66 FR 18738. The comment period, which was extended at the request of the Cosmetic, Toiletry, and Fragrance Association (CTFA), ended on June 11, 2001. Four comments were received in response to the notice.

[1] Hydrocarbons are defined for purposes of these rules as compounds that consist solely of carbon and hydrogen.

The comments on the NPR and the additional data, the CPSC's responses, the scope of these final rules, and the Commission findings required under the PPPA for issuance of the rules, are discussed below.

B. Response to Comments on the NPR

1. Mechanical Pumps and Trigger Sprayers

Comment: One commenter (CP00–1–6) requested that the language of the proposed provision that would exempt pump-or trigger-actuated sprays that form a mist be modified to state clearly that the exemption is only available for pump/trigger sprays that have the pumping unit permanently affixed to the product container.

Response: The exemption provision proposed in the NPR read, "Products in packages in which the only non-CR access to the contents is by a spray device (*e.g.* aerosols or pump-or trigger-actuated sprays) that expels the product solely as a mist." The phrase "the only non-child-resistant access to the contents is by a spray device" implicitly requires that the trigger or pump have either a permanent or a CR attachment to the package.

The final rules being issued today do not cover aerosols or pump or trigger spray mechanisms. However, irrespective of the absence from the final rules of a requirement for the aerosol or pump/trigger spray mechanism itself to be child-resistant, products in trigger or pump sprayers that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100° F must still have either a CR or permanent attachment to the product container. The language of the final rules clarifies this requirement.

Comment: One commenter (CP00–1–4) suggested that senior testing should not be required for assessing the removability of a trigger sprayer from the product container because a senior does not need to remove the trigger mechanism to use the product.

Response: Mechanical pumps and trigger sprayers have two routes of access to the package contents—via the spray mechanism and via the attachment of the spray mechanism to the product container. Companies have two options concerning the attachment of the sprayer to the container. The sprayer can be either permanently attached or have a CR attachment. A CR attachment is required if the container is refillable.

The senior test protocol at 16 CFR 1700.20 directs that the senior adults on the test panel open and close the packaging properly according to the instructions found on the package. If the instructions for use are to operate the trigger, this feature should be tested (for a product where the trigger mechanism is required to be child-resistant). If no instructions are found, activation of the trigger would still be considered the "normal usage" of the package. This approach is consistent with the commenter's view. However, if the trigger mechanism itself is removable, manufacturers would need to test to see if senior adults could remove and properly replace the trigger sprayer mechanism onto the product container.

2. Single-Use Products

Comment: A comment (CP00–1–1) was received requesting that products intended for "total package use" not require CR packaging. The commenter supported the addition of a labeling statement, and provided as an example, "Add entire contents to gasoline tank."

Response: This comment was addressed previously in the preamble of the NPR. CPSC reiterates that any regulated product that is intended to be fully used in a single application must meet the child-resistance and adult-use-effectiveness specifications for the first opening, since regulations require that the CR packaging be effective for the life of the product. However, for example, an automotive additive would not necessarily be a "single-use-product" if only a portion of the contents were to be added to certain engine sizes.

Comment: Two commenters (CP00–1–4, 5) requested that language be added to the rules to address single-use products. They suggested, "Any regulated product that is intended and likely to be fully used in a single application must meet the child-resistance and adult-use-effectiveness specifications for only the first opening."

Response: Additional language is not necessary in the rules to address CR packaging of single-use-products. The regulation clearly states that special packaging must continue to function for the number of openings and closings customary for its size and contents. 16 CFR 1700.15(a). One opening would be customary for a single-use product.

3. Turpentine

Comment: One commenter (CP00–1–7) requested that the CR packaging requirement of the proposed rules be applied to turpentine with a viscosity level of less than 100 SUS at 100° F in addition to hydrocarbons.

Response: While turpentine presents an aspiration hazard, turpentine is also readily absorbed following ingestion and systemic toxicity can result. The systemic toxicity associated with turpentine is different from the hazards of many hydrocarbons which have low systemic toxicity but a significant risk of chemical pneumonitis following aspiration. Turpentine, if ingested, is hazardous regardless of the viscosity. Liquid household products that contain 10 percent or more turpentine by weight now require CR packaging. 16 CFR 1700.14(a)(6). These final rules do not amend or supersede the turpentine CR packaging regulation, which remains applicable without regard to the viscosity of the turpentine product.

4. Writing Instruments

Comment: One commenter (CP00–1–7) stated a concern that if a marker contained a substance newly covered by these final rules that was not exempted from FHSA labeling, the marker would require CR packaging.

Response: In the NPR, the Commission proposed an exemption from CR packaging for hydrocarbon-containing writing implements exempted from the FHSA labeling requirements. 16 CFR 1500.83. In addition, the Commission proposed to exempt products from which the liquid could not flow freely. This would include paint markers or other such products not exempted from the FHSA labeling regulations. Therefore, under the rules as proposed, if a marker contained a "hydrocarbon" not specifically exempted from the FHSA labeling requirements, it would still not require CR packaging if the hydrocarbon did not freely flow from the implement. However, the proposed exemption would not extend to substances beyond "hydrocarbons" as defined in the proposed rule. The final rules issued today adopt these exemption provisions.

5. Effective Date

Comment: Two commenters (CP–00–1–4, 5) stated that an effective date of at least one year was appropriate. The commenters requested that the Commission incorporate a procedure for companies to apply for a temporary stay of enforcement as was done previously in the CPSC rulemaking to revise the CR packaging protocol test methods. 60 FR 37710.

Response: The Commission believes that one year is sufficient for manufacturers to adopt CR packaging for hydrocarbon-containing products. The commenter provided no specific information that would demonstrate the need for additional time. The

Commission is not including a special procedure for the submission of requests for stays of enforcement as was done in the previous CPSC rulemaking to revise the CR packaging protocol test methods. The large volume of products affected by that rule, the technical difficulties involved with changing many different closure types, and the availability of a large supply of CR closures justified the incorporation of a special procedure. This rulemaking does not involve those considerations. However, a company can request a stay of enforcement from the Commission or enforcement discretion from the CPSC Office of Compliance at any time on a case by case basis.

Comment: One commenter (CP00–1–2) requested that the effective date take into account the schedule for the development and marketing of suntan products, which have a long lead-time. In addition, the commenter stated that products not sold in one season may be held until the next year's season.

Response: The PPPA requires that no standard take effect later than one year from the date a rule is issued. 15 U.S.C. 1471n. However, the standard applies only to products packaged on or after the effective date. Therefore, suntan products packaged before the effective date but sold thereafter are not subject to the rules. According to the commenter, the timing of bringing products to market is over a year. However, the schedule from product development to packaging described in the commenter's submission is less than one year. (Product lines are decided by December and production of those lines begins in August of the following year.) The one-year effective date thus allows ample time for suntan products subject to these final rules to comply with the CR packaging requirement.

6. Additional Data on Mineral Oil-Based Cosmetics

The following comments were received in response to the **Federal Register** notice providing a public comment period on the CPSC staff analysis of the additional brand name data purchased from the AAPCC on exposures to mineral oil-based cosmetics. 66 FR 18738–40 (April 11, 2001). Also, two commenters submitted comments about aerosol products. Since, as was stated previously, the final rules issued today do not apply to aerosols, these comments are not addressed here.

Comment: One commenter (CP–01–3–1) stated that it was important that the CPSC identify all cosmetic products that would meet the criteria for requiring CR packaging.

Response: Applicability of the proposed rules is based on the physical and chemical characteristics of the product, not its product category. That is, any product that contains 10 percent hydrocarbons or more by weight with a viscosity less than 100 SUS at 100 °F is required to be in CR packaging, unless otherwise exempted. The purpose of the rules promulgated today is to protect children from exposure to any product that contains low viscosity hydrocarbons that have the potential for serious injury. The CPSC staff solicited information about products and categories of products that might be subject to the rules to assess their scope and to determine if CR packaging is available or can be developed for those types of products. Under these final rules, it is the responsibility of the packager of a product exhibiting the specified physical and chemical characteristics to comply. What category the product type happens to fall within is irrelevant.

Comment: One commenter (CP–01–3–4) stated that the TESS data and staff analyses are not valid for making the conclusion that mineral oil-containing cosmetics require CR packaging.

Response: The TESS database is a specialized data collection system that contains information about calls to Poison Control Centers. The staff agrees that there are limitations to the TESS data. However, these data support the fact that children do access cosmetic products that contain hydrocarbons. See, 66 FR 18739 (April 11, 2001) (*The CPSC staff analysis of the additional data on mineral oil-based cosmetics shows at least 1,460 cases of access*). CTFA in its comment concurs that the data demonstrate that children access mineral oil-based cosmetics. If these products, or any others, have 10 percent or more hydrocarbons by weight with a viscosity less than 100 SUS at 100 °F, serious injury could result from ingestion with accompanying aspiration. The TESS data simply further confirm this.

Comment: One commenter (CP–01–3–4) stated that the data show a low incidence of serious injuries and that several of the deaths would not have been prevented by CR packaging.

Response: The PPPA does not require a minimum number of deaths and serious injuries before the Commission can proceed with a child-resistant packaging rule. Rather, the PPPA requires that the Commission find that a substance is capable of causing serious injury or illness to young children that are exposed to it. The purpose of the human experience data is to demonstrate that children access products that may contain hydrocarbons and to further validate the fact that aspiration of hydrocarbon-containing products with viscosities under 100 SUS at 100 °F can result in serious injury. The data presented demonstrate these points. 66 FR 18739. However, the commenter states that the descriptions of the incidents do not support the conclusion that child-resistant packaging would have protected these children from death. The commenter attributes this either to the closure apparently being left off in one instance or to information being inconclusive in the other scenarios. While it is unknown if child-resistant packaging would have saved the lives of these children, the effectiveness of child-resistant packaging in reducing deaths is well documented. For prescription medicines and aspirin alone, CPSC estimates that the lives of over 900 children have been saved since child-resistant packaging was first required for these products. The commenter does not attempt to refute that aspiration of mineral oil-based cosmetics may be associated with serious injury. Requiring child-resistant packaging would limit access to these products by children in the future.

Comment: One commenter (CP–01–3–4) provided a calculation of relative risk and compared the risk of a baby oil fatality to the risk of death by other products and the risk levels apparently used by the Department of Defense and the Federal Aviation Administration.

Response: The PPPA requires that the Commission find: 1) that a substance is capable of causing serious injury or illness to young children that are exposed to it and 2) that CR packaging is technically feasible, practicable, and appropriate. 15 U.S.C. 1472(a). The PPPA does not require a relative risk evaluation as a prerequisite to requiring CR packaging.

C. Additional Death

CPSC staff has become aware of an additional death resulting from aspiration of baby oil (010628HAA3357). The victim's twin brother opened the closed bottle of baby oil and gave it to the victim. According to the mother, the child, a 15–16 month-old who had a history of respiratory problems, then ingested baby oil. The child was admitted to the hospital on the following day with breathing problems and died 29 days after the exposure. The death certificate lists respiratory failure due to acute respiratory distress syndrome (ARDS) and oil aspiration.

D. The Scope of the Regulations

After reviewing the comments submitted in response to the NPR and the supplemental notice of data availability, the Commission has decided to issue final PPPA rules for household products that contain hydrocarbon chemicals capable of causing chemical pneumonia and death following aspiration. The remainder of this section describes the scope and form of the final rules.

The rules apply to prepackaged nonemulsion-type liquid household chemical products, including drugs and cosmetics, that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100 °F. Hydrocarbons are defined as compounds that consist solely of carbon and hydrogen. For products that contain multiple hydrocarbons, the total percentage of hydrocarbons in the product is the sum of the percentages by weight of the individual hydrocarbon components.

The final rules exclude aerosol products (*i.e.*, pressurized spray containers). The rules also exclude products packaged in mechanical pumps and trigger sprayers, provided that the spray mechanism is either permanently attached to the product container or has a child-resistant attachment. Potential coverage of aerosols, pump and trigger sprayers will be addressed separately in a future proceeding.

The definition of what is a "household substance" that can be regulated under the PPPA includes, inter alia, both a "hazardous substance" as defined in the FHSA and a "food, drug, or cosmetic" as those terms are defined in the Federal Food, Drug, and Cosmetic Act (FDCA). Enforcement of the PPPA with respect to hazardous substances is accomplished using the misbranding and prohibited acts sections of the FHSA. Enforcement of child-resistant packaging requirements applicable to foods, drugs, or cosmetics relies on comparable provisions of the FDCA. Therefore, the Commission is issuing two discrete rules, one for hazardous substances and one for drugs and cosmetics, to closely associate a particular rule with the applicable enforcement mechanism. Foods are not covered under the rules, because there currently are no data indicating a need for CR packaging of food products.

Current FHSA regulations partially exempt small packages, minor hazards, and certain special circumstances from the FHSA's labeling requirements. 16 CFR 1500.83(a). Writing markers and ballpoint pens are exempt from full cautionary labeling requirements relating to toxicity if they meet specifications listed in the regulations. These products are also excluded from the child-resistant packaging requirements in this final rule due to the difficulty a child would have in obtaining a toxic amount of fluid from these types of products. For the same reason, products that are packaged so their contents are not free-flowing, such as some battery terminal cleaners, paint markers, and make-up removal pads, are also excluded from the child-resistant packaging requirements of the final rules.

E. Statutory Considerations

1. Hazard to Children

Before issuing rules requiring CR packaging, the Commission must find that the degree or nature of the hazard to children in the availability of the products in question by reason of their packaging is such that special packaging is required to protect children from serious injury or illness from handling, using, or ingesting the products. 15 U.S.C. 1472(a)(1). The Commission made these findings preliminarily with regard to household chemicals and cosmetics in the preambles to the ANPR and NPR for the rules that are being issued in final form today.[2] Subsequent CPSC staff review of additional data on mineral oil-based cosmetics, as discussed above, validate that children access these products and that those that contain 10 percent or more hydrocarbons with viscosities under 100 SUS at 100 °F can result in serious injury. In fact, it is worth noting that several brands of baby oil, a product obviously intended for use on small children, are labeled with a warning as follows:

> For external use only. Keep out of children's reach to avoid drinking and accidental inhalation, which can cause serious injury. Should breathing problems occur, consult a doctor immediately.

That warning is in effect the required PPPA statutory finding.

With respect to the general category of hydrocarbon-containing products, Congress, in enacting the original PPPA in 1970, specifically addressed the hazard of ingesting and aspirating hydrocarbon-containing products as one of the fundamental bases of the need for the PPPA:

> In the household specialties area, some chemicals cause serious illness requiring lengthy hospitalization from which the child may never recover. * * * On ingestion, these petroleum distillates [hydrocarbons] are readily aspirated into the lungs and may lead to severe chemical pneumonitis in a matter of minutes.

H.R. Rep. No. 91–1642 at 5 (1970)

For the foregoing reasons, the Commission finds that the degree or nature of the hazard to children in the availability of products that contain 10 percent or more hydrocarbons with viscosities under 100 SUS at 100 °F, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting the products.

2. Technical Feasibility, Practicability, and Appropriateness

As a prerequisite to CR packaging rules, the Commission must also find that the special packaging is "technically feasible, practicable, and appropriate." 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists or can be readily developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use. See S. Rep. No. 91–845, at 10 (1970).

The Commission made these findings preliminarily and issued the proposed rules. Those findings, which appear at 65 FR 99–100, are hereby incorporated by reference. No comments were received in response to the NPR regarding the technical aspects of child-resistant packaging. Therefore, the Commission concludes that CR packaging is technically feasible, practicable, and appropriate for products that contain 10 percent hydrocarbons or more by weight with a viscosity less than 100 SUS at 100 °F.

3. Other Considerations

Section 3(b) of the PPPA requires that the Commission consider the following in establishing special packaging standards:

[2] See 62 FR 8661–2 (February 26, 1997) and 65 FR 98–9 (January 3, 2000), which are hereby incorporated by reference.

It is also worth noting that the PPPA "hazard to children" finding with respect to these hydrocarbons has also been made as a prerequisite to issuing the three current child-resistant packaging regulations that address specific household products containing hydrocarbons: prepackaged liquid kindling and illuminating preparations (*e.g.*, lighter fluid), 16 CFR 1700.14(a)(7); prepackaged solvents for paint or other similar surface coating materials (*e.g.*, paint thinners), 16 CFR 1700.14(a)(15); and nonemulsion liquid furniture polish (16 CFR 1700.14(a)(2).

a. The reasonableness of the standard;
b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;
c. The manufacturing practices of industries affected by the PPPA; and
d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to the various determinations made in this rulemaking, and finds no reason to conclude that the rules are unreasonable or otherwise inappropriate.

F. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year after the date such final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n. The NPR proposed an effective date of one (1) year after publication of the final rules.

Two comments received on the NPR requested additional time for companies that may need it. However, no information was submitted to demonstrate that more than one year would be necessary to adopt child-resistant packaging for any product.

The CPSC staff estimated that any necessary packaging changes could be achieved during a one-year time frame. Therefore, the Commission is issuing these final rules with an effective date of one year after the date of their publication in the **Federal Register**. The Commission is not establishing a general procedure for stays of enforcement of the requirements of these final rules. However, there is nothing to preclude an individual company from requesting relief from the CPSC Office of Compliance if specific difficulties arise in complying by the effective date.

G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared an assessment of the impact of rules to require CR packaging for products that contain 10 percent hydrocarbons or more by weight with a viscosity less than 100 SUS at 100 °F. A copy of the assessment is available for inspection in the docket for this rulemaking. The assessment reports that the incremental cost of providing basic CR packaging is usually small ($0.005-$0.02/per package), and confirms the staff's previous experience with child-resistant packaging and current packaging. Child-resistant packaging is widely available and the incremental costs are small relative to the cost of most household chemicals and cosmetic products. In addition, the one (1) year effective date should include enough lead-time for companies to use up existing package inventory.

Based on that assessment, the Commission certified in the NPR that the rules, if promulgated as proposed, would not have a significant economic effect on a substantial number of small entities.

The NPR was sent to 375 trade associations and companies believed to make products that contain hydrocarbons. The Commission did not receive any comments in response that questioned the certification. Therefore, there is no evidence available that the rules would have a significant economic impact on a substantial number of small entities.

Based on the foregoing analysis, the Commission certifies that these final rules do not have a significant impact on a substantial number of small businesses or other small entities.

H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has analyzed the possible environmental effects associated with the proposed PPPA requirements on products that contain 10 percent hydrocarbons or more by weight and have a viscosity less than 100 SUS at 100 °F.

The Commission's regulations state that rules requiring special packaging normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). Nothing in these rules alters that expectation. Therefore, because the rules would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

I. Executive Order No. 12988

As provided in Executive Order No. 12988 the CPSC states the preemptive effect of these final rules as follows.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, "no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard." 15 U.S.C. 1476(a). A State or local standard may be excepted from this preemptive effect if (1) the State or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the State or political subdivision applies to the Commission for an exemption from the PPPA's preemption clause and the Commission grants the exemption through procedures specified at 16 CFR part 1061. 15 U.S.C. 1476(c)(1). In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, State or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, these rules preempt non-identical state or local special packaging standards for such drug products.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Reporting and record keeping requirements.

For the reasons stated in the preamble, the Commission amends 16 CFR 1700.14(a) as follows.

PART 1700—POISON PREVENTION PACKAGING ACT OF 1970 REGULATIONS

1. The authority citation for part 1700 continues to read as follows:

Authority: 15 U.S.C. 1471–1476. Secs. 1700.1 and 1700.14 also issued under 15 U.S.C. 2079(a).

2. In § 1700.14 add new paragraphs (a)(31) and (32) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(31) *Hazardous substances containing low-viscosity hydrocarbons.* All prepackaged nonemulsion-type liquid household chemical products that are hazardous substances as defined in the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261(f)), and that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100 °F, shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c), except for the following:

(i) Products in packages in which the only non-child-resistant access to the contents is by a spray device (*e.g.*, aerosols, or pump-or trigger-actuated sprays where the pump or trigger mechanism has either a child-resistant or permanent attachment to the package).

(ii) Writing markers and ballpoint pens exempted from labeling requirements under the FHSA by 16 CFR 1500.83.

(iii) Products from which the liquid cannot flow freely, including but not limited to paint markers and battery terminal cleaners. For purposes of this requirement, hydrocarbons are defined as substances that consist solely of carbon and hydrogen. For products that contain multiple hydrocarbons, the total percentage of hydrocarbons in the product is the sum of the percentages by weight of the individual hydrocarbon components.

(32) *Drugs and cosmetics containing low-viscosity hydrocarbons.* All prepackaged nonemulsion-type liquid household chemical products that are drugs or cosmetics as defined in the Federal Food, Drug, and Cosmetics Act (FDCA) (21 U.S.C. 321(a)), and that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100 °F, shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c), except for the following:

(i) Products in packages in which the only non-child-resistant access to the contents is by a spray device (*e.g.*, aerosols, or pump-or trigger-actuated sprays where the pump or trigger mechanism has either a child-resistant or permanent attachment to the package).

(ii) Products from which the liquid cannot flow freely, including but not limited to makeup removal pads. For the purposes of this requirement, hydrocarbons are defined as substances that consist solely of carbon and hydrogen. For products that contain multiple hydrocarbons, the total percentage of hydrocarbons in the product is the sum of the percentages by weight of the individual hydrocarbon components.

* * * * *

Dated: October 19, 2001.

Todd A. Stevenson,

Acting Secretory, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Suzanne Barone, Ph.D., EH, to the Commission, "Final Rule to Require Special Packaging for Hydrocarbons of Low Viscosity," September 12, 2001.

2. Memorandum from Robert L. Franklin, EC to Suzanne Barone, Ph.D., EH, "Economic Considerations Regarding the Final Rule to Require CR Packaging for Products Containing Low Viscosity Hydrocarbons," August 24, 2001.

3. "Pediatric Potential Aspirations of Cosmetic Products: 1998 Data," C. Craig Morris, Ph.D., U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis, March 2001.

4. "Pediatric Hydrocarbon Exposures and Potential Aspirations," C. Craig Morris, Ph.D., U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis, February 2001.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 40, 42, 46, 51, 55, 62, 63, 65, 72, 76, 79, 89, 98, 102, 103, 111, 114, 115, 132, 157, 159, 159a, 171, 186, 188, and 194

Removal of Regulatory Parts

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is removing various parts from chapter I, Office of the Secretary of Defense. This administrative action removes obsolete information from the Code of Federal Regulations and notifies readers of the availability of the current DoD documents that contain the information being removed.

DATES: This rule is effective October 25, 2001.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, 703–601–4722.

SUPPLEMENTARY INFORMATION: The chart below identifies the status of the parts being removed. All documents with a current date status may be found as a DoD Directive (D), DoD Instruction (I), or DoD Publication on the Washington Headquarters Services Web site at *http://www.dtic.mil/whs/directives.*

Part No.	Document No.	Status
40	Standard of Conduct Cross-Reference	No replacement.
42	D5200.24	Canceled by D5505.9, 4/20/95.
46	D1000.4	Current date 9/4/96.
51	D1350.2	Current date 8/18/95.
55	D1205.9	Completely canceled 9/19/97.
62	D1010.4	Current date 9/3/97.
63	D1340.16	Current date 9/20/97.
65	D1304.19	Current date 9/18/93.
72	I1322.9	Current date 10/5/95.
76	D1235.10	Current date 7/1/95.
79	D1412.2	Completely canceled 4/3/97.
89	D1418.4	Completely canceled 4/3/97.
98	D7050.1	Current date 12/4/98.
102	D1215.6	Current date 3/14/97.
103	D1205.14	Current date 5/24/74.
111	I1205.13	Current date 12/26/95.
114	I7730.54	Current date 3/15/99.
115	I1200.15	Current date 9/18/97.
132	D1215.9	Completely canceled 2/7/97.
157	I5200.21	Canceled by I3200.14, 5/13/97.
159	D5200.1	Current date 12/13/96.
159a	5200.1–R	Current date 1/14/97.

Part No.	Document No.	Status
171	None	Rule expired 9/30/2000.
186	D6055.9	Current date 7/29/96.
188	D6050.1	Completely canceled 9/10/98.
194	D2000.9	Current date 1/23/74.

List of Subjects

32 CFR Part 40

Conflict of Interests.

32 CFR Part 42

Law enforcement, National defense, Wiretapping and electronic surveillance.

32 CFR Part 46

Elections, Government employees, Military personnel, Seamen.

32 CFR Part 51

Aged, Civil rights, Education, Equal employment opportunity, Individuals with disabilities, Military personnel, Religious discrimination, Sex discrimination.

32 CFR Part 55

Armed forces reserves, Health care.

32 CFR Part 62

Alcohol abuse, Drug abuse, Government employees, Military personnel.

32 CFR Part 63

Alimony, Child support, Military personnel, Pensions, Reporting and recordkeeping requirements.

32 CFR Part 65

Armed forces, Chaplains.

32 CFR Part 72

Armed forces, Colleges and universities.

32 CFR Part 76

Armed forces reserves.

32 CFR Part 79

Armed forces reserves, Disability benefits, Government employees, Intergovernmental relations, Pensions.

32 CFR Part 89

Government employees, Wages.

32 CFR Part 98

Armed forces, Fraud, Investigations.

32 CFR Part 102

Armed forces reserves.

32 CFR Part 103

Armed forces reserves.

32 CFR Part 111

Armed forces, Elementary and secondary education.

32 CFR Part 114

Archives and records, Armed forces reserves.

32 CFR Part 115

Armed forces reserves.

32 CFR Part 132

Armed forces reserves.

32 CFR Part 157

Classified information.

32 CFR Part 159

Classified information.

32 CFR Part 159a

Classified information.

32 CFR Part 171

Aircraft, Fire prevention.

32 CFR Part 186

Arms and munitions, Civil defense, Hazardous substances, Organization and functions (Government agencies).

32 CFR Part 188

Environmental impact statements.

32 CFR Part 194

Armed forces, Arms and munitions, Defense communications, Foreign relations, International organizations.

PARTS 40, 42, 46, 51, 55, 62, 63, 65, 72, 76, 79, 89, 98, 102, 103, 111, 114, 115, 132, 157, 159, 159a, 171, 186, 188, and 194—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR parts 40, 42, 46, 51, 55, 62, 63, 65, 72, 76, 79, 89, 98, 102, 103, 111, 114, 115, 132, 157, 159, 159a, 171, 186, 188, and 194 are removed.

Dated: October 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–26845 Filed 10–24–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–142]

RIN 2115–AA97

Safety Zone; Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Navy Pier fireworks in Chicago, IL. This safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over Lake Michigan. The safety zone is intended to restrict vessels from a portion of Lake Michigan off Chicago, Illinois.

DATES: This rule is effective from 8 p.m. (local) October 13, 2001 to 11 p.m. (local) October 27, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD10–01–142] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60521, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Mike Hogan, U.S. Coast Guard Marine Safety Office, 215 W. 83rd Street, Suite D, Burr Ridge, IL 60521. The telephone number is (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. The safety zone consists of the waters of Lake Michigan within the arc of a circle with a 750-foot radius from the fireworks launch site with its center in the approximate position of 41° 53′18″ N, 087° 36′08″ W. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Chicago or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on VHF Channel 16. All geographic coordinates are North American Datum of 1983 (NAD3).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). For the same reasons stated below, in the last paragraph of the discussion of Small Entities, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Michigan from 8 p.m. to 11 p.m., October 13, October 20, and October 27, 2001. This regulation would not have a significant economic impact for the following reasons. The regulation is only in effect for only three hours on three days. The designated area is being established to allow for maximum use of the waterway for commercial vessels to enjoy the fireworks display in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–113 is added to read as follows:

§ 165.T09–113 Safety Zone; Lake Michigan, Chicago, IL.

(a) *Location.* The following area is designated a safety zone: the waters of Lake Michigan within the arc of a circle with a 750-foot radius from the fireworks launch site with its center in the approximate position of 41(53'18" N, 087° 36'08" W. (NAD 1983).

(b) *Enforcement times and dates.* This section will be enforced from 8 p.m. until 11 p.m. (local), on October 13, October 20, and October 27, 2001.

(c) *Regulations.* This safety zone is being established to protect the boating public during a planned fireworks display. In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated Patrol Commander.

Dated: October 12, 2001.

R. E. Seebald,

Captain, U. S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 01–27051 Filed 10–23–01; 3:04 pm]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 00–258; FCC 01–256]

New Advanced Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adds a mobile allocation to the 2500–2690 MHz band to provide additional near-term and long-term flexibility for use of this spectrum, thereby making this band potentially available for advanced mobile and fixed terrestrial wireless services, including third generation and future generations of wireless systems. This action promotes the continued introduction of fixed wireless broadband services; provides for the introduction of new advanced wireless services to the public, consistent with its obligations under section 706 of the Telecommunications Act; and promotes increased competition among terrestrial services.

DATES: Effective November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Report and Order*, ET Docket No. 00–258, FCC 01–256, adopted September 6, 2001, and released September 24, 2001. The full text of this Commission decision is available on the Commission's Internet site at *www.fcc.gov*. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, Qualex International, (202) 863–2893, Room CY–B402, 445 12th Street, SW., Washington, DC 20554.

Summary of the First Report and Order

1. In the *Notice of Proposed Rule Making* (*"Advanced Wireless Services NPRM"*), 66 FR 7483, January 23, 2001 in this proceeding, the Commission explored the possibility of introducing advanced wireless services in frequency bands currently used for cellular, broadband Personal Communications Service ("PCS"), and Specialized Mobile Radio services; in certain frequency bands already allocated for Fixed and Mobile services that could be used to deploy new advanced wireless services; and in five other frequency bands: 1710–1755 MHz, 1755–1850 MHz, 2110–2150 MHz, 2160–2165 MHz, and 2500–2690 MHz. Pursuant to its independent spectrum management responsibilities, the Commission undertook a study of the 2500–2690 MHz band. An *Interim Report* regarding this band was issued in November 2000, and a *Final Report* was issued in March 2001.

2. As commenters note, the 2500–2690 MHz band has been used for a number of years to provide one-way analog fixed services and is now being increasingly used to provide two-way digital, including broadband, fixed services. Nationwide deployment of two-way, digital Instructional Television Fixed Service ("ITFS") and Multichannel Multipoint Distribution Services ("MMDS") systems will provide Americans with another option for high-speed broadband access, furthering competition with other service providers such as digital subscriber line ("DSL"), cable modem, or satellite-based services provided by incumbent telephone companies, cable operators, or satellite operators. We will add a mobile allocation to this band in order to provide additional flexibility for use of this spectrum and promote more efficient use, thereby serving the public interest. However, we also conclude that we will not relocate, displace, or otherwise modify incumbent ITFS/MMDS operations. We will rely instead on a market-based approach to introduce additional flexibility in this band. We note that such additional flexibility will not necessarily result in any change in service offerings in the 2500–2690 MHz band because fixed uses could prove to be more highly-valued by the market than mobile uses.

3. We find that adding a mobile allocation to the 2500–2690 MHz band will further promote the public interest by providing an additional option to service providers in that band. As was stated in our November 1999 *Policy Statement* on principles for reallocation of spectrum: "Flexible allocations may result in more efficient spectrum markets." We recognize that with flexible allocations, spectrum efficiencies can be accomplished in a number of ways. For example, licensees can negotiate among themselves arrangements for avoiding interference rather than relying on mandatory technical rules to control interference; relaxed service rules would allow licensees greater freedom in determining the specific services to be offered; and rules for similar services can be harmonized to provide regulatory neutrality to help establish a level playing field across technologies and foster more effective competition. We have already provided such flexibility in many services, including PCS, Wireless Communications Service, and new services operating on television channels 60–69; and have proposed flexibility in other services, including new services operating on television channels 52–59. In permitting new services to operate on television channels 60–69, we added Fixed and Mobile services to the Broadcasting allocation in the 746–806 MHz band. In our related proceeding that developed service rules for the 746–764 MHz and 776–794 MHz bands, we stated that our goal was "enabling the broadest possible use of this spectrum, consistent with sound spectrum management * * *." We adopted service rules primarily oriented toward fulfilling the need for a variety of fixed and mobile wireless services in those bands, but did not structure the rules to establish a particular service configuration. Rather, the service rules would allow licensees to make determinations respecting the services provided and the technologies to be used, including new broadcast-type services so long as they complied with the technical rules adopted for the bands. In proposing to permit new services to operate on television channels 52–59, we also proposed a co-primary Fixed, Mobile, and Broadcasting allocation to "enable service providers to select the technology they wish to use to provide new broadband services in order to make the best use of this spectrum." Thus, we have provided flexible spectrum use for many services and are proposing to provide flexible spectrum use for other services.

4. Specifically with regard to ITFS/MMDS, we already have provided licensees with additional operational flexibility. First, in 1995 we expanded the protected service area contour for site-based MMDS licensees from a 15 mile radius to a 35 mile radius. Second, in 1996 we implemented rules for the use of digital modulation schemes, thereby allowing ITFS/MMDS licensees to provide multiple channels of video programming and high-speed data applications such as Internet access. Third, in 1998 we authorized the use of two-way transmissions on ITFS/MMDS frequencies, effectively enabling the provision of voice, video and data services and granted a 35-mile protected service area to every ITFS licensee. With the advent of two-way technology, ITFS/MMDS has become a vehicle for offering high-speed Internet access and broadband service to educational, residential and small office/home office customers. Finally, we note that, although many MMDS licenses were granted subject to area-wide (Basic Trading Areas or "BTAs") auctions in 1996, the secondary market for both MMDS licenses and ITFS spectrum on a leased basis has been very vibrant. Since 1998 WorldCom and Sprint have invested over $2 billion dollars in the acquisition, by purchase or lease, of MMDS and ITFS channel rights covering 60 million households.

5. The Communications Act of 1934, as amended, specifically authorizes the Commission to allocate spectrum to provide flexibility of use, if—

(1) such use is consistent with international agreements to which the United States is a party; and

(2) the Commission finds, after notice and an opportunity for public comment, that—

(A) such an allocation would be in the public interest;

(B) such use would not deter investment in communications services and systems, or technology development; and

(C) such use would not result in harmful interference among users.

6. With regard to the 2500–2690 MHz band, we find that the above conditions are met and that adding a mobile allocation to the band is in the public interest. First, as noted above and in *the Advanced Wireless Services NPRM*, the 2500–2690 MHz band is allocated in Region 2 on a primary basis to the Fixed, Fixed Satellite, Mobile except aeronautical mobile, and Broadcasting-Satellite Services. The 2000 World Radiocommunication Conference identified the 2500–2690 MHz band for possible terrestrial third generation mobile, or IMT–2000, use. While it is unclear whether other countries will use this band for advanced mobile systems, the band is potentially available in many countries, and it is possible that advanced wireless use will evolve there on a regional or worldwide basis. Therefore, adding a mobile allocation to the 2500–2690 MHz band in the United States is consistent with international agreements to which the United States is a party and will permit the possibility of long-term harmonized use of the band.

7. Second, we find that adding a mobile allocation to the band would not deter investment in current fixed wireless operations, and would not result in harmful interference if appropriate protective measures are taken. As discussed above, the public interest is served because a flexible allocation allows licensees to make efficient use of spectrum, especially if licensees are given greater freedom in determining the specific services to be offered. We also conclude that investment in communications services and systems and technology development would not be deterred by a flexible allocation in this band. While some ITFS/MMDS incumbents indicate that investment in the band, particularly for fixed broadband deployment, could be deterred and interference to incumbents could be caused if we were to add a mobile allocation to the band, we believe that a flexible allocation will actually encourage investment in and the development of new and innovative technology and services. For example, investment in ITFS/MMDS increased as the result of the Commission's decision to allow for two-way digital services in this band, thereby allowing for the deployment of fixed broadband services. A flexible allocation that permits mobile service will spur new technology developments and investment.

8. Third, we note that there is support for potentially using this spectrum for mobile services. Further, IPWireless, Inc. has developed and is testing technology for portable data services that it claims can operate under existing ITFS/MMDS service rules (*i.e.*, not cause harmful interference to incumbent one-way and two-way fixed services) without disrupting the provision of fixed services in the 2500–2690 MHz band. The addition of a mobile allocation will facilitate the introduction of these types of services and will provide flexibility for introducing other mobile applications in the future, thereby encouraging technology development and investment. We emphasize that this addition merely increases options for incumbents to employ spectrum in its highest-valued use, consistent with prior Commission policy, and does not change existing ITFS/MMDS service or technical rules.

9. Finally, we conclude that the introduction of additional mobile uses in the 2500–2690 MHz band can be accomplished without causing harmful interference to incumbent ITFS/MMDS operators. We emphasize that existing technical rules, including interference rules, will be maintained until a rulemaking proceeding has been completed that will address any changes to those rules that may be necessary. More importantly, we emphasize that until that occurs, any mobile use introduced in this band would be subject to existing technical rules or interference agreements between incumbent users and new mobile users. We note that changes in geographic or service applications by incumbent ITFS/MMDS operators may permit other types of mobile uses to be introduced in this band, licensees may partition their service areas, and parties may develop non-interference agreements. Under those circumstances, additional technical service rules would have to be established to protect incumbent operations.

10. We disagree with AT&T that our action here will necessarily result in a "windfall" to incumbent ITFS/MMDS licensees. Permitting mobile use of the 2500–2690 MHz band simply allows incumbent licensees an additional option, but it is entirely possible that fixed use of the band will continue to predominate. Additionally, we note that certain types of mobile applications could be deployed in the near-term under existing service rules; thus, as noted, our action is consistent with the type of flexibility already afforded other types of licensees, such as cellular and broadband PCS. Finally, it is reasonable for us to conclude that, on balance, although incumbents may enjoy some benefits by adding a mobile allocation to the band, permitting mobile use of the band by new service providers would pose a very high risk of disrupting important incumbent fixed operations that our decision does not pose. Accordingly, we find it in the public interest to permit ITFS/MMDS licensees the flexibility to offer mobile services, and we are adding a "Mobile except aeronautical mobile" allocation for the

United States to the 2500–2690 MHz band.

11. While we find that adding a mobile allocation in the 2500–2690 MHz band would be in the public interest, we find that relocating incumbent ITFS/MMDS operations would jeopardize the provision of important fixed wireless broadband services. The FCC staff's *Final Report* studied whether the band could be shared with or reallocated, in whole or in part, for new advanced mobile service providers. The FCC staff's *Final Report* concludes that in many cases lack of uniform geographic use in the band precludes co-frequency sharing between ITFS/MMDS and advanced mobile service providers. The FCC staff's *Final Report* recognized that although voluntary partitioning between incumbent users and new advanced mobile service operators offered some promise of sharing as an interim measure in some geographic areas, sufficient spectrum does not appear to be available in populated areas to support viable advanced mobile services operations. That conclusion is unchallenged by any party to this proceeding. The FCC staff's *Final Report* also studied permitting mobile use by new service providers by reallocating all or a portion of the 2500–2690 MHz band from fixed to mobile services. However, even the 60 MHz reallocation proposed by Verizon would cause severe disruptions to ITFS/MMDS incumbents if they were forced to vacate a segment of the band. Further, the option of relocating ITFS/MMDS incumbents to another band would likely impose even greater overall costs because existing licensees in all candidate relocation bands examined by the FCC staff's *Final Report* would also need to be relocated to accommodate displaced ITFS/MMDS incumbents. Based on this record, we find that relocating ITFS/MMDS incumbents would not be cost-effective or desirable.

12. Our assessment is shared by the majority of parties to this proceeding. Some parties contend that there will likely be insufficient spectrum for advanced mobile services if a portion of the 2500–2690 MHz band is not reallocated for exclusive mobile use. However, in our recent *Further NPRM* in this proceeding, we solicited comment on allocating additional bands for advanced mobile services. Further, as discussed above, we are adding a mobile allocation to the 2500–2690 MHz band to permit flexibility for incumbent licensees. We will be addressing the issue of how much additional spectrum from other bands is required for advanced mobile services in a forthcoming decision in this proceeding. Moreover, we have encouraged the provision of both advanced mobile and fixed services and note that the services currently being provided and planned in the 2500–2690 MHz band—while fixed in nature—have significant value. Accordingly, we find that displacing ITFS/MMDS incumbents to permit advanced mobile use of the 2500–2690 MHz band by new service providers would be detrimental to the public interest.

13. We recognize that, under current technology and service rules, fixed and mobile (other than portable) sharing of the 2500–2690 MHz band does not appear feasible, but we anticipate advances in technology that may permit such sharing. We further recognize that we will have to explore in a separate future proceeding the service rules that will apply to permit mobile operations in the band. The FCC staff's *Final Report* cites the possibility of interference to incumbent ITFS/MMDS operations from new advanced mobile service providers, and we would want to provide service and technical rules that would allow both incumbent ITFS/MMDS and mobile operations to co-exist in the band. As noted, in developing service rules for the 746–764 MHz and 776–794 MHz bands, we struck a balance in developing rules that would facilitate licensees' flexibility to provide either fixed or mobile services as well as certain broadcast-type services on a non-interference basis. We would want to strike the same balance for the 2500–2690 MHz band so that mobile use of the band will not impair fixed use of the band. We emphasize that if fixed and mobile sharing of the band continues to be infeasible in the long run, our service rules would ensure the protection of fixed operations.

Final Regulatory Flexibility Certification

14. The Regulatory Flexibility Act of 1980, as amended ("RFA")[1] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[2] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

15. In this *First Report and Order*, "the Commission adds a mobile allocation to the 2500–2690 MHz band and thus provides ITFS/MMDS incumbent users of that band additional flexibility to offer mobile, as well as current fixed, services. This change may provide new opportunities for ITFS/MMDS incumbents, but will not adversely affect any incumbents because mobile use of the band will be at their discretion. As noted in paragraph 26 of the *First Report and Order*, the introduction of additional mobile uses in the 2500–2690 MHz band can be accomplished without causing harmful interference to incumbent ITFS/MMDS operators because * * * the incumbent licensees will have the flexibility to determine the specific services to be offered." Therefore, we certify that the requirements of this *First Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *First Report and Order*, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the First Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 605(b).

16. Authority for issuance of the First Report and Order is contained in sections 1, 4(i), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j).

[1] The RFA, *see* 5 U.S.C. S 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. S 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[5] Small Business Act, 15 U.S.C. S 632.

List of Subjects in 47 CFR Part 2

Communications equipment, Radio, Table of frequency allocation.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR, part 2 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by revising pages 52 and 53. The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.351A Radiolocation S5.150 S5.371 S5.397 S5.398 S5.399 S5.400 S5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.351A RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 S5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) S5.398 S5.150 S5.400 S5.402	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 S5.402 US41	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 S5.402 US41 NG147	ISM Equipment (18) Satellite Communications (25) Private Land Mobile (90) Fixed Microwave (101)
2500-2520 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (space-to-Earth) S5.403 S5.351A S5.405 S5.407 S5.412 S5.414	2500-2520 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (space-to-Earth) S5.403 S5.351A S5.404 S5.407 S5.414 S5.415A		2500-2655	2500-2655 FIXED S5.409 S5.411 US205 FIXED-SATELLITE (space-to-Earth) NG102 MOBILE except aeronautical mobile BROADCASTING-SATELLITE NG101	Domestic Public Fixed (21) Auxiliary Broadcasting (74)
2520-2655 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.403 S5.405 S5.412 S5.418	2520-2655 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.403	2520-2535 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.403 S5.415A 2535-2655 FIXED S5.409 S5.411 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.418			

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[FR Doc. 01-26841 Filed 10-24-01; 8:45 am]
BILLING CODE 6712-01-P

2655-3700 MHz (UHF/SHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2655-2670 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.412 S5.420	2655-2670 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.420	2655-2670 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.420	2655-2690 Earth exploration-satellite (passive) Radio astronomy Space research (passive) US205 US269	2655-2690 FIXED US205 FIXED-SATELLITE (Earth-to-space) NG102 MOBILE except aeronautical mobile BROADCASTING-SATELLITE NG101 Earth exploration-satellite (passive) Radio astronomy Space research (passive) US269 NG47	Domestic Public Fixed (21) Auxiliary Broadcasting (74)
2670-2690 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (Earth-to-space) S5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.419 S5.420	2670-2690 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (Earth-to-space) S5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.419 S5.420	2670-2690 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) S5.415 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (Earth-to-space) S5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.419 S5.420 S5.420A			
2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340 S5.421 S5.422			2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
2700-2900 AERONAUTICAL RADIONAVIGATION S5.337 Radiolocation S5.423 S5.424			2700-2900 AERONAUTICAL RADIO-NAVIGATION S5.337 METEOROLOGICAL AIDS Radiolocation G2 S5.423 US18 G15	2700-2900 S5.423 US18	

Proposed Rules

Federal Register
Vol. 66, No. 207
Thursday, October 25, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NY002; FRL–7090–4]

Clean Air Act Proposed Full Approval of Operating Permits Program: State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: The EPA proposes full approval of the operating permits program submitted by the State of New York for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources and to certain other sources.

DATES: Comments on this proposed action must be received in writing by November 26, 2001.

ADDRESSES: Written comments should be addressed to Steven C. Riva, Chief, Permitting Section, Air Programs Branch, at the New York Region 2 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following location: EPA Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, Attention: Steven C. Riva.

FOR FURTHER INFORMATION CONTACT: Steven C. Riva, Chief, Permitting Section, Air Programs Branch, at the above EPA office in New York or at telephone number (212) 637–4074.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under Title V of the Clean Air Act ("the Act"), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at Title 40 of the Code of Federal Regulations (40 CFR) part 70. Title V of the Act directs States to develop, and submit to EPA for approval, programs for issuing operating permits to all major stationary sources and to certain other sources. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval.

On November 7, 1996, EPA granted New York interim approval of its part 70 program. 61 FR 57589. At that time, EPA stated that there were eight interim approval issues that needed to be fixed in order for the EPA to grant New York full approval. However, with regard to five of the eight issues identified, EPA stated that if revisions to part 70 were finalized (proposed revisions were published in the **Federal Register** on August 29, 1994 and August 31, 1995) prior to expiration of New York's interim approval, New York might not need to address those five issues.

On June 8, 1998, New York submitted to EPA Region 2 revisions to 6 NYCRR part 201 which address three of the interim approval issues. EPA has reviewed the changes and finds that they provide approvable corrections for the three issues cited in the final interim approval notice.

On October 5, 2001, New York submitted additional revisions to 6 NYCRR Parts 200 and 201 which addressed three of the remaining five interim approval issues. These changes were accomplished through New York State's emergency rulemaking procedures and were filed with the New York State Department of State with an effective date of September 19, 2001. A separate rulemaking proposal with identical changes was also filed with the Department of State and will replace the "emergency" package once the rulemaking proposal is finalized.

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

Several citizens commented on what they believe to be deficiencies with respect to the New York State Title V program. EPA takes no action on those comments in today's action and will respond to them separately by December 1, 2001. As stated in the **Federal Register** notice published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) if we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that EPA has identified through its program oversight.

Therefore, citizens should limit any comments on today's Notice to the specific issues delineated herein; that is, those eight specific issues that were addressed pursuant to EPA's November 7, 1996 interim approval of the New York State operating permits program.

II. Proposed Action and Implications

A. Analysis of State Submission

EPA is proposing full approval of New York's Title V program as submitted on November 12, 1993, June 17, 1996, and June 27, 1996, revised and resubmitted on June 8, 1998, and resubmitted under emergency rulemaking procedures on October 5, 2001. The following addresses the June 8, 1998, resubmission which fixes three of the program deficiencies EPA found on November 7, 1996, and the October 5, 2001, emergency rulemaking which addresses three additional program deficiencies that were also identified by EPA on November 7, 1996. EPA seeks comment on its proposal to fully approve New York's program.

1. Issues Raised in the Interim Approval Notice That Have Been Corrected

a. On June 8, 1998, New York submitted revisions to 6 NYCRR Part 201 which satisfy three deficiencies noted in the November 7, 1996, **Federal Register** notice granting New York interim approval.

i. Under the reporting requirements of 6 NYCRR 201–6.5(c)(3)(ii), New York provides that a permittee can seek to have a violation excused as provided in 201–1.4 if such violations are reported as required in 201–1.4(b). The DEC Commissioner is provided discretion under 201–1.4 to excuse violations of any applicable emission standard for necessary scheduled equipment maintenance, start-up/shutdown conditions, malfunctions, and upsets if such violations are unavoidable and the permittee meets certain conditions and reporting requirements. EPA found that New York's rule was deficient since it was not clear that the DEC Commissioner's discretion could only apply to state implementation plan (SIP) requirements or State-only requirements. Such discretion could not extend to other Federal requirements such as NSPS, NESHAPs or PSD/NSR. In its notice proposing interim approval, EPA stated that in order to receive full approval, New York must add a sentence to 6 NYCRR 201–6.5(c)(3)(ii) which clarifies that the discretion to excuse a violation under 201–1.4 will not extend to Federal requirements unless the specific Federal requirement provides for the affirmative defense during start-ups, shutdowns, malfunctions, or upsets. New York amended 201–6.5(c)(3)(ii) to state that a federal regulation can only be excused if the specific federal regulation provides an affirmative defense during start-up, shutdowns, malfunctions or upsets. Therefore, the affirmative defense provisions at 201–1.4 cannot be used for federally promulgated regulations. EPA considers this issue resolved for purposes of granting the State of New York full program approval.

ii. 40 CFR 70.6 provides that permits can include alternative emission limits, equivalent to those contained in the SIP, as long as the SIP allows for alternative emission limits to be made through the permit issuance, renewal or significant modification process. EPA in its interim approval notice found that New York's language was overly broad in that it allowed New York to provide for alternative emission limits even if that was not provided in a particular regulation approved into the SIP or even if the limit was not determined to be "equivalent" to that in the SIP. New York amended 201–6.5(a)(1)(ii) to state that permits can only include alternative emission limits if provided for in a SIP and if the alternative emission limit is determined by NYSDEC to be equivalent to the limit in the SIP. Therefore, EPA considers this issue resolved for purposes of granting the State of New York full program approval.

iii. EPA in its interim approval notice had found that 6 NYCRR 201–6.5(f)(3) concerning operational flexibility related to emissions trading under the SIP did not include one of the "gatekeepers" of 40 CFR 70.4(b)(12)(i) which states that changes do not need to undergo a permit revision as long as the changes are not modifications under any provision of Title I of the Act. 6 NYCRR 201–6.5(f)(4) concerning operational flexibility related to emissions trading under a cap did not include the two gatekeepers of 40 CFR § 70.4(b)(12) which state that (1) changes do not need to undergo a permit revision as long as the changes are not modifications under any provision of Title I of the Act and (2) the changes do not exceed the emissions allowable under the permit. New York revised paragraphs 201–6.5(f)(3) and 201–6.5(f)(4) to include the needed gatekeepers from § 70.4(b)(12)(i). Therefore, EPA considers this issue resolved for purposes of granting the State of New York full program approval.

b. On October 5, 2001, New York submitted revisions to 6 NYCRR Parts 200 and 201 which satisfy three additional deficiencies noted in the November 7, 1996 **Federal Register** notice granting New York interim approval.

i. 40 CFR 70.7(e)(2)(i)(B) states that minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches "to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA." EPA in its interim approval notice found that 6 NYCRR 201–6.7(c)(2) provided for use of minor modification procedures for permit modifications involving the use of economic incentives and marketable permits, but did not include the language quoted above. New York has revised 201–6.7(c)(2) to include the language quoted above. Therefore, EPA considers this issue resolved for purposes of granting the State of New York full program approval.

ii. EPA had originally found as a deficiency New York's definition of "Regulated Air Pollutant" in 6 NYCRR 200.1(bq) because it failed to include pollutants regulated under section 112(r) of the Act. The definition of Regulated Air Pollutant at § 70.2 includes "any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including sections 112(g), (j), and (r) of the Act. * * *" New York's definition of regulated air pollutant includes "any hazardous air pollutant," which New York defines by providing a list of the 112(b) pollutants. New York added a new requirement at 6 NYCRR 201.1(bm) to include in its definition of regulated air pollutants, pollutants regulated under section 112(r) of the Act. Therefore, EPA considers this issue resolved for purposes of granting the State of New York full program approval.

iii. 40 CFR 70.4(b)(12)(i) provides that states can allow sources to make 502(b)(10) changes without requiring a permit revision. 40 CFR § 70.2 defines "section 502(b)(10) changes" as changes that contravene an express permit term as long as such changes would not violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements. New York's regulation did not provide for one of the three elements defined to provide operational flexibility under section 502(b)(10) of the Act. New York has revised its regulations at 6 NYCRR 201–6.5(f)(6) to provide the operational flexibility provisions as set forth in section 502(b)(10) of the Act. Therefore, EPA considers this issue resolved for purposes of granting the State of New York full program approval.

2. Other Issues Raised in Interim Approval Notice

i. Judicial Review: 40 CFR 70.4(b)(3)(xii) requires that petitions for judicial review be filed no later than 90 days after the final permit action, or such shorter time as the State shall designate. Article 78 of the New York Civil Practice Law and Rules (CPLR) provides a four month statute of limitations for persons to seek judicial review of all New York State agencies' actions. When granting the interim approval, EPA stated that New York must adopt a 90 day statute of limitations through rulemaking in order to be consistent with part 70. However, in granting New York interim approval

EPA also mentioned that it had proposed on August 29, 1994 to extend the filing date of requesting judicial review from 90 days to 125 days, and that if part 70 were promulgated as proposed, New York would not need to change the statute of limitations.

EPA has revisited this issue and now proposes that New York need not change its filing date for seeking judicial review as its filing date is more stringent than the federal requirement. One goal of Title V is to provide more public participation in the air permitting process. The four month statute of limitations provided under the CPLR gives citizens an additional month to seek judicial review. EPA believes that imposing a unique, and shorter, statute of limitations than otherwise applies in New York State for Title V purposes would result in less public involvement in permitting actions. EPA also believes that the one additional month provided by New York's rule, beyond the 90 day period provided in part 70, is not so long as to deny facilities repose as to when their permits would no longer be subject to suit. Because EPA encourages involvement by citizens as well as permittees in the permitting process, it is prudent that EPA allow a state to continue to use the statute of limitations the public is familiar with when seeking judicial review. The statute of limitations has no impact on the implementation or enforcement of the Title V program. EPA also considers New York's statute of limitations to be more stringent than the one required under part 70 such that this should not have been raised as a program deficiency. Therefore, EPA proposes to remove the statute of limitations interim approval issue.

ii. Definition of Major Source: In its interim approval, EPA found New York's definition of "major source" at 6 NYCRR 201–2(b)(21) to be inconsistent with the definition in 40 CFR 70.2. In 40 CFR 70.2, the last category in the list of 27 categories of stationary sources in which fugitive emissions must be included to determine if a source is subject to Title V includes "* * * all other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category." EPA determined this to be a deficiency based on a March 8, 1994 memorandum from Lydia Wegman entitled "Consideration of Fugitive Emissions in Major Source Determinations." EPA stated it would grant interim approval for programs that do not require fugitives to be counted in determining the status of post 1980 NSPS source categories. That same memo also stated that EPA did not follow the procedural steps necessary for a proper rulemaking under Section 302(j) of the Act and would revise the definition in part 70.

EPA has proposed a revision to the major source definition that will incorporate the 1980 cutoff date which will resolve this issue in the New York State program. We are therefore proposing to approve New York's definition of major source.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed full approval. Copies of the State's submittal and other information relied upon for the proposed approval are contained in a docket maintained at the EPA Regional Office located in New York. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by November 26, 2001.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

C. Paperwork Reduction Act

This action will not impose any collection information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, *see* 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule may have federal implications. For example, under the authority of section 505 of the Act, 42 U.S.C. 7661(d), EPA may object to a permit issued under the New York's Title V Operating Permit Program. Should New York fail to revise the permit based upon EPA's objection, EPA has the authority under this section of the Act to issue a federal permit for the facility under 40 CFR Part 71. However, it will not impose direct compliance costs on State or local governments, nor will it preempt State law. Thus, the requirements of sections 6(b) and Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) require EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds. Therefore, section 6(c) of the Executive Order does not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted closely with the Governor of New York and his staff early and throughout the process of developing New York's regulations to allow them to have meaningful and timely input in the development of its Title V Operating Permit Program. EPA worked closely with the Governor's legal staff in drafting the legislation and regulations for this program.

F. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because Part 70 approvals under Section 502 of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permit, Reporting and recordkeeping requirements.

Dated: October 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2

[FR Doc. 01–26927 Filed 10–24–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NJ001; FRL–7090–5]

Clean Air Act Proposed Full Approval of Operating Permit Program; New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking proposed action to fully approve the operating permit program of the State of New Jersey. New Jersey's operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that States develop and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. EPA granted interim approval to New Jersey's operating permit program on May 16, 1996. New Jersey revised its program to satisfy the conditions of the interim approval and submitted the corrected program on May 31, 2001. This action approves those revisions. In addition, EPA is also taking proposed action to approve the following changes to New Jersey's Operating Permit Rule: (1) N.J.A.C.7:27–22.29(a) and 22.29(e) were changed to incorporate the final nitrogen oxide regulations under 40 CFR Part 76 as required by EPA; and N.J.A.C. 7:27–22.1 was changed to add the definition of a fuel cell system and to add fuel cell systems with a power output of less than 500 kilowatts to the list of exempt activity.

DATES: Comments on this proposed action must be received in writing by November 26, 2001.

ADDRESSES: Written comments on this action should be addressed to Steven C. Riva, Chief, Permitting Section, Air Programs Branch, EPA–Region 2, 290 Broadway, New York, New York 10007–1866. Copies of the State's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Steven C. Riva, Chief, Permitting Section, Air Programs Branch, at the above EPA office in New York or at telephone number (212) 637–4074.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
What are the program changes that EPA is approving?
What is involved in this proposed action?

What Is the Operating Permit Program?

Title V of the Clean Air Act Amendments (CAA) of 1990 and its implementing regulations at 40 CFR Part 70 require all States to develop and implement operating permit programs that meet certain criteria. Operating permit programs are intended to consolidate into a single federally enforceable document all CAA requirements that apply to a particular source. This consolidation of all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined. Sources required to obtain an operating permit under this program include: "major" sources of air pollution and certain other sources specified in Section 501 of the CAA or in EPA's implementing regulations (see 40 CFR 70.3).

The EPA reviews state programs pursuant to Section 502 of the CAA and the Part 70 regulations, which together outline the criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval which would be effective for 2 years. If a state does not have in place a fully approved program by the time the interim program approval expires, the federal operating permit program promulgated under 40 CFR Part 71 will be implemented. Due to unexpected circumstances that affected States' timeliness in developing a fully approvable program, EPA took final action to extend the effective date of all interim approvals until December 1, 2001. EPA's action required all States with interim approvals to submit a full program on or before June 1, 2001 which would allow EPA a period of six months to render a decision on the approvability of the State submittal. Any State that fails to have a fully approved program in place by December 1, 2001 will be required to cease all permitting activities under the interim program. At such point, the federal operating permit program promulgated under 40 CFR Part 71 will take effect immediately. All sources subject to the federal program that do not have final Part 70 permits already issued to them by the state are required to submit a Part 71 application and the appropriate fees within one year to their respective EPA Regional offices pursuant to 40 CFR Part 71.

What Is Being Addressed in This Document?

New Jersey's operating permit program substantially, but not fully, met the requirements of Part 70; therefore, EPA granted the New Jersey operating permit program interim approval on May 16, 1996, which became effective on June 17, 1996 (*See* 61 FR 24715). EPA identified four issues that needed correction before NJ would be eligible for full program approval. NJ submitted a corrected program to the EPA on May 31, 2001 which addressed each of the four deficiencies. This document describes the changes made in New Jersey's operating permit program that corrected those deficiencies.

What Are the Program Changes Made by New Jersey?

1. Nonmajor Sources

The first condition for full program approval of NJ's operating permit program was a rule revision to require nonmajor sources subject to Section 111 standards promulgated after July 21, 1992 to apply for an operating permit unless EPA exempts such sources in future rulemaking. In accordance with the above directive, in its proposed changes to N.J.A.C. 7:27–22, NJ included changes to N.J.A.C. 7:27–22.2(b) to require all nonmajor sources subject to Section 111 standards to apply for an operating permit unless the EPA completed a rulemaking exempting such sources. However, based on a clarification of EPA's interpretation of 40 CFR 70.3(b)(1) and (b)(2), NJ did not adopt the above-noted change. As a result, N.J.A.C. 7:27–22.2(b) currently reads as follows: "A nonmajor facility not included in (a) above shall become subject to this subchapter if EPA completes a rulemaking requiring an operating permit for that category of nonmajor facilities pursuant to 40 CFR 70.3(b)(1) or (2)."

It is EPA's position that 40 CFR 70.3(b)(1) allows states to defer nonmajor section 111 sources from title V permitting requirements until EPA affirmatively addresses whether these sources are to be permitted. Therefore, if a section 111 standard is promulgated after July 21, 1992 and the standard does not address whether nonmajor sources subject to it must obtain title V permits consistent with 40 CFR 70.3(b)(2), then States can defer the permitting of these sources until EPA completes the rulemaking described in 40 CFR 70.3(b)(1). Based on its reference to 40 CFR 70.3(b)(1) and (2), N.J.A.C. 7:27–22.2 essentially requires all sources, major and nonmajor, that are subject to Section 111 of the CAA to apply for an operating permit unless they are specifically exempted by the EPA in its final rulemaking. Nonetheless, NJ may still exercise its discretion provided under 40 CFR 70.3(b)(1) to defer permitting of these nonmajor sources.

It is important to note the difference between a deferral and an exemption. Under a deferral, while sources are allowed to defer the process of obtaining a Part 70 permit until a later date, they are still required to comply with all applicable provisions of the standard to which they are subject. An exemption, on the other hand, is granted by EPA in its rule promulgation. An exemption not only relieves the subject sources from the permitting requirement; it also relieves them from the substantive requirements. In the case of NJ, while NJ chooses to defer the permitting requirement for all nonmajor sources, except nonmajor sources under section 129 of the CAA, through its reference to 40 CFR 70.3(b)(1), NJ still enforces all applicable requirements to which a nonmajor source is subject.

The above discussion relative to nonmajor sources subject to section 111 of the Act does not apply to solid waste incineration units subject to section 129 of the Act. Specifically, section 129(e) of the Act requires solid waste incineration units to operate pursuant to a title V permit and the introductory phrase in 40 CFR 70.3(b)(1) excludes such units from being exempted from title V permitting for any period of time. As a result, although solid waste incineration units are subject to standards promulgated under sections 111 and 129, the exemption in 40 CFR 70.3(b)(1) does not apply to section 129 sources. Based on this clarification, EPA has determined that NJ's existing rule provisions at N.J.A.C. 7:27–22.2(b) are acceptable for full program approval.

However, EPA believes that it would be helpful to revise N.J.A.C. 7:27–22.2(b) to specifically include the introductory phrase in 40 CFR 70.3(b)(1), which excludes major sources, affected sources, or solid waste incineration units from being exempted from title V permitting for any period of time, in order to eliminate any confusion for sources. In an October 3, 2001 letter, William O'Sullivan, Administrator, Air Quality Permitting Program, Department of Environmental Protection, State of New Jersey, stated that NJ interprets 7:27–22.2(b) to incorporate 40 CFR 70.3(b)(1) in its entirety. Mr. O'Sullivan further stated in this letter that NJ does require the permitting of sources subject to section 129 of the Act. Such sources (both major and nonmajor) have been applying for title V permits in NJ. However, NJ agrees with EPA that for purposes of clarity to the subject sources that they would incorporate 40 CFR 70.3(b)(1), including the introductory phrase, into N.J.A.C.7:27–22.2(b) in a future rulemaking so as to eliminate any confusion for subject sources. This change will also help ensure that solid waste incineration units apply for and obtain title V permits consistent with the deadlines established in sections 129(e) and 503(c) and (d) of the Act, and in the regulations developed pursuant to these Act provisions.

Although EPA views this rule change to be beneficial to sources for clarification purposes, EPA does not believe it to be crucial for granting full program approval because it is shown in NJ's October 3, 2001, commitment letter that they are complying in substance. Since EPA's original determination that NJ's rule was deficient relative to the permitting of nonmajor sources subject to section 111 of the Act was incorrect and given that NJ is requiring nonmajor sources subject to a section 129 standard to apply for title V permits, EPA considers this issue resolved for purposes of granting the State of New Jersey full program approval.

2. Affirmative Defense

The second condition for full approval of NJ's operating permit program was a rule and/or legislation revision to ensure conformance with 40 CFR 70.6(g). Specifically, NJ has general air legislation (N.J.S.A.26:2C–19.1 through 19.5) which allows an affirmative defense for startups, shutdowns, equipment maintenance and malfunctions and its operating permit rule (N.J.A.C.7:27–22.3(nn) and 22.16(l)) discusses when it can be used. This legislation is separate and apart from the title V enabling legislation and applies generally to New Jersey's rules. The Part 70 regulations allow an affirmative defense in emergency situations only and does not extend this defense to startups, shutdown, equipment maintenance or malfunctions per se. EPA found NJ's general affirmative defense provisions to be inconsistent with the Part 70 regulations. 40 CFR 70.6(g) provides that the emergency affirmative defense is only applicable to technology-based emission limits and not health-based emission limits. The definition of "emergency" also limits excursions resulting from sudden and unforeseeable events. As a condition of full approval, EPA required NJ to revise its legislation as cited above to limit its affirmative defense for title V purposes only to emergency situations resulting from violations of technology-based emission standards. Alternatively, NJ could submit an opinion from the State Attorney General clarifying that the NJ Law prohibits the use of an affirmative defense for violations of health based emission limitations. In addition, EPA required NJ to revise both the legislation and N.J.A.C.7:27–22 to limit the use of its affirmative defense, for title V purposes, to sudden and unforeseeable events that are beyond the control of the source. This addition would ensure that the affirmative defense is only applicable during emergency situations.

Since the time this issue arose in NJ's interim approval, EPA has differentiated the issue before it. The startup, shutdown and malfunction affirmative defense cited in New Jersey's legislation (N.J.S.A. 26:2C–19.1–19.5) is separate and apart from the emergency affirmative defense under 40 CFR 70.6(g)(1). In terms of conforming with 40 CFR 70.6(g)(1), NJ defines "emergency" in N.J.A.C. 7:27–22.1 of its rule as follows:

"Any situation arising from sudden and reasonably unforeseeable events beyond the control of a facility such as an act of God, * * * to exceed a technology-based emission limit set forth in its operating permit. This term shall not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation or operator error."

As a result, NJ's rule already meets the requirements EPA placed upon it through EPA's interim approval of NJ's title V program to conform with 40 CFR 70.6(g)(1). In addition, NJ has inserted a sentence in the general provisions of its permits to state that any emergency affirmative defense asserted under 40 CFR Part 70 must follow the procedures set out in 40 CFR Part 70. As a result, this portion of the affirmative defense issue under NJ's interim approval has been resolved.

The actual issue before EPA during the interim approval of NJ's title V operating permit program was the existence of NJ's general legislation, providing an affirmative defense for startups, shutdowns, maintenance and malfunctions, under N.J.S.A. 26:2C–19.1–19.5. As already stated, this affirmative defense went beyond the emergency affirmative defense permitted under 40 CFR 70.6(g)(1). More importantly, it created a possible conflict between the state affirmative defense and affirmative defenses established under federal requirements such as the New Source Performance Standards (NSPS) and New Emission Standards for Hazardous Air Pollutants (NESHAP).

As a result of the sharper delineation of the issue before us, EPA has since re-evaluated alternatives that may resolve this issue. EPA recognizes States' discretion to grant an affirmative defense for violations of State requirements without jeopardizing their operating permit programs. EPA believes limiting the affirmative defense to violations of non-federally promulgated standards would in turn limit its application to technology-based standards, rather than health-based standards. It should however, be noted that under N.J.S.A. 26:2C–19.3, New Jersey's general startup, shutdown, maintenance and malfunction affirmative defense cannot be used for public health or welfare violations. As a result, this protection already exists in the legislation itself. Regardless, in promulgating federal emissions standards such as the NSPS and NESHAP, EPA evaluated the appropriateness of allowing sources to exceed certain emission limits under particular circumstances. Where EPA allowed for such excursions within the standard, EPA had already taken into consideration the limitations of add-on controls that may cause unexpected excess emissions as well as health concerns associated with the excursion. The situation under which an excursion may be allowed had also been evaluated. Consequently, depending on the standard in question, some may excuse excursions and some may not. Therefore, EPA finds it more suitable to defer to the provisions of the federal emissions standard for appropriate actions regarding violations of a particular standard.

On January 30, 2001, EPA informed NJ that as an alternative to the legislation and rule changes described in the May 16, 1996 **Federal Register** notice for correcting this deficiency, NJ should (1) submit an opinion from the Attorney General stating that the affirmative defense provisions of N.J.S.A.26:2C–19.1 through 19.5 are applicable to non-federally promulgated standards only and (2) include a statement in the General Provisions of each permit that reflects the Attorney General's opinion. On May 31, 2001, NJ submitted an Attorney General's opinion clarifying the inapplicability of the State's affirmative defense, N.J.S.A.26:2C–19.1 through 19.5, to federally delegated standards. NJ also submitted language to be added to Section F (the general provisions of NJ operating permits) stating that its affirmative defense for startups, shutdowns, maintenance and malfunctions under N.J.S.A.26:2C–19.1 through 19.5 does not apply to federally delegated regulations, including but not limited to NSPS, NESHAP or MACT.

3. Administrative Amendments

The third condition for full program approval of New Jersey's operating permit program was a rule revision to ensure that the administrative amendment procedure is properly used to incorporate preconstruction permits into operating permits. NJ's rule had allowed a preconstruction permit to be incorporated into the operating permit via the administrative amendment process if it was issued through public participation requirements substantially equivalent to those for operating permits. EPA identified this as a deficiency in the interim approval because a public participation process that is "substantially equivalent" to, may not actually meet, the requirements of the NJ operating permit rule. The public comment and EPA comment sections of NJ's operating permit rule are stipulated in N.J.A.C.7:27–22.11 and 22.12, respectively. As a condition of the interim approval, EPA required NJ to correct this deficiency by revising N.J.A.C. 7:27–22.20(b)(7) to require the preconstruction permit to undergo a process that meets 22.11 and 22.12 as opposed to a process that is substantially equivalent to 22.11 and 22.12. NJ revised its operating rule accordingly on August 2, 1999. A copy of the New Jersey Register (31 N.J.R. 2202) notice was submitted with the full program package on May 31, 2001.

4. Permit Fees

The fourth, and final, condition for full program approval of New Jersey's operating permit program was the submittal of a revised fee demonstration showing that the legislative limit of $9.51 million on program appropriation will not render the NJ program inadequately funded. The New Jersey Air Pollution Control Act (NJAPCA) delineates the fee collection schedule for the operating permit program during the initial years of program implementation. While EPA found NJ's adoption of the presumptive minimum of $25 per ton (in 1989 dollars adjusted by the CPI) to be acceptable for purposes of determining adequate funding for the NJ program, EPA found the appropriation cap of $9.51 million stipulated in the legislation to be problematic. This provision allows NJ to collect the presumptive minimum fees from all affected sources but prevents any appropriation in excess of $9.51 million for purposes of administering the operating permit program. It was difficult to determine whether $9.51 million was or was not adequate to fund the NJ program. Therefore, as a condition of the interim approval, EPA required NJ to submit a revised fee demonstration to show that $9.51 million would adequately fund the operating permit program. If the fee demonstration showed otherwise, NJ would be required to take actions to correct this deficiency prior to full program submittal. In the May 31, 2001, full program submittal, NJ informed EPA that this program deficiency is no longer an issue because the legislative cap on appropriation does not apply to State fiscal year 1998 and thereafter. A copy of the pertinent section of the legislation (N.J.A.P.C.A. 26:2C–9.5d) was submitted to show that there no longer is a limit on operating permit program appropriations.

What Is Involved in This Proposed Action?

The State of New Jersey has fulfilled the conditions of the interim approval granted on

May 16, 1996. EPA is therefore taking proposed action to fully approve the State's operating permit program. EPA is also taking proposed action to approve other program changes made by the State since the interim approval was granted.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action will not impose any collection information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, *see* 40 CFR Part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule may have federal implications. For example, under the authority of section 505 of the Act, 42 U.S.C. 7661(d), EPA may object to a permit issued under the NJ's Title V Operating Permit Program. Should NJ fail to revise the permit based upon EPA's objection, EPA has the authority under this section of the Act to issue a federal permit for the facility under 40 CFR Part 71. However, it will not impose direct compliance costs on State or local governments, nor will it preempt State law. Thus, the requirements of sections 6(b) and Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) require EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds. Therefore, section 6(c) of the Executive Order does not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted closely with the Governor of NJ and her staff early and throughout the process of developing NJ's regulations to allow them to have meaningful and timely input in the development of its Title V Operating Permit Program. EPA worked closely with the Governor's legal staff in drafting the legislation and regulations for this program.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because Part 70 approvals under Section 502 of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permit, Reporting and recordkeeping requirements.

Dated: October 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 01–26928 Filed 10–24–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 00–258; RM–9911; FCC 01–256]

New Advanced Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Denial of Petition for Reconsideration of Notice of Proposed Rule Making.

SUMMARY: This document responds to the Petition for Reconsideration filed by Satellite Industry Association. The petition requested that we reconsider our decision not to allocate the 2500–2520 MHz and 2670–2690 MHz bands for Mobile Satellite Service use for 3G services. We affirm our finding that the Mobile Satellite Service has sufficient spectrum without those band segments.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418-2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket No. 00–258, FCC 01–256, adopted September 6, 2001, and released September 24, 2001. The full text of this Commission decision is available on the Commission's Internet site at www.fcc.gov. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, Qualex International, (202) 863–2893, Room CY–B402, 445 12th Street, SW., Washington, DC 20554.

Summary of the Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order* ("MO&O"), we deny a petition for reconsideration filed by the Satellite Industry Association ("SIA") of the *Notice of Proposed Rule Making and Order*, 66 FR 7483, January 23, 2001, in this proceeding. SIA requested that we reconsider our decision not to allocate the 2500–2520 MHz and 2670–2690 MHz bands for Mobile Satellite Service ("MSS") use for 3G services, but we affirm our prior determination that reallocation of the 2.5 GHz band to the MSS is unwarranted because sharing between terrestrial and satellite systems would present substantial technical challenges in that band and MSS already has access to a significant amount of spectrum below 3 GHz to meet its needs in the foreseeable future.

2. In its petition for reconsideration, SIA maintains that there is no evidence that spectrum sharing between fixed services and MSS will result in interference and that existing MSS spectrum allocations are insufficient. SIA cites Telecommunications Industry Association ("TIA") joint working group TR14.11/TR34.2 as finding in its Telecommunications System Bulletin ("TSB") 86 that sharing between fixed services and MSS is feasible. SIA also argues that the geographic separation of MSS and Instructional Television Fixed Service/Multichannel Multipoint Distribution Services ("ITFS/MMDS") users should significantly alleviate any potential interference between the services. Finally, SIA argues that interference from MSS spacecraft was addressed by the International Telecommunication Union ("ITU") over the 1994–1996 period and power flux density limits were developed to protect fixed services operating in the 2500–2520 MHz and 2670–2690 MHz bands. SIA contends that these limits have been incorporated into the ITU's Radio Regulations, and ITFS/MMDS interests have presented no technical evidence to support their claim that those limits are insufficient to protect ITFS/MMDS licensees from MSS interference. Therefore, SIA contends that we must reconsider our decision to dismiss its petition for reconsideration and request comment on the merits of allocating the 2500–2520 MHz and 2670–2690 MHz bands to MSS on a shared basis with fixed services.

3. Commenters opposed SIA's petition for reconsideration on both procedural and substantive grounds. We agree with these commenters that SIA's petition for reconsideration relies on facts that have not been presented to the Commission previously. Section 1.429(b) of our rules states:

A petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only under the following circumstances:

(1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;

(2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or

(3) The Commission determines that consideration of the facts relied on is required in the public interest.

4. SIA submitted its petition for rulemaking in April 2000, significantly after the October 1999 TSB 86 document was published and even more significantly after the 1994–1996 ITU work that SIA cites in its petition for reconsideration. Thus, SIA properly should have cited the TSB 86 document and the ITU work in its petition for rulemaking. Even in its petition for reconsideration, SIA does not explain the relevance of this material to its petition. TSB 86 is titled "Criteria and Methodology to Assess Interference Between Systems in the Fixed Service and the Mobile-Satellite Service in the Band 2165–2200 MHz" and thus was prepared for analyzing interference in another frequency band for space-to-Earth satellite links. Further, the working group that prepared TSB 86 "was formed under the auspices of TIA following a number of informal discussions among representatives of the mobile satellite and terrestrial fixed microwave point-to-point service industry sectors." Thus, contrary to SIA and Globalstar, TSB 86 does not appear relevant either to the 2500–2690 MHz band or to the ITFS/MMDS point-to-multipoint licensees that use that band.

Additionally, neither SIA nor Globalstar explains how power flux density limits that they contend the ITU developed for that band would permit sharing of the 2500–2520 MHz and 2670–2690 MHz band segments by the MSS and ITFS/MMDS. Globalstar cites Recommendation ITU–R M.1142–1; however, the Recommendation "applies only for sharing in the space-Earth direction. No specific criteria have been developed for sharing in the Earth-to-space direction."

5. We also agree with opponents of SIA's petition for reconsideration that ITFS/MMDS licensees are deploying services in rural, as well as urban, areas; thus, in a best case scenario, the areas in which geographical sharing with MSS could occur would be quite limited. Moreover, given the fact that we are herein permitting mobile, as well as fixed, use of the 2500–2690 MHz band by ITFS/MMDS licensees, the possibility of such sharing is further sharply diminished. Therefore, we find that authorizing MSS use of the 2500–2520 MHz and 2670–2690 MHz band segments would result in little, if any, actual MSS use of those segments while greatly complicating their use for ITFS/MMDS.

6. Finally, we affirm our finding that MSS has sufficient spectrum without those band segments, and note that our International Bureau recently authorized eight new MSS systems in the 1990–2025 MHz and 2165–2200 MHz bands. While we recognize that our Further NPRM solicits comment on reallocating portions of those bands for advanced mobile terrestrial services and that a companion *Notice of Proposed Rule Making*, IB Docket No. 01–185 and ET Docket No. 95–18, 66 FR 47621, September 13, 2001, solicits comment on bringing flexibility to the delivery of communications by MSS providers, final decisions on these proposals will take into account the needs of the MSS. We note that the ITU has adopted a resolution inviting studies of the sharing and coordination issues in several bands, including the 2500–2520 MHz and 2670–2690 MHz bands, "related to use of the mobile-satellite service allocations for the satellite component of IMT–2000 and the use of this spectrum by the other allocated services . . ." Our action here is without prejudice to renewal of SIA's request, in the event ITU studies develop new methods for sharing or coordination that would result in enhanced service to the public, without creating significant complications for provision of existing service. Accordingly, we deny SIA's petition for reconsideration. The petition for reconsideration filed by the Satellite Industry Association *Is Denied*.

List of Subjects in 47 CFR Part 2

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26840 Filed 10–24–01; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 66, No. 207

Thursday, October 25, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. LS–01–11]

Notice of Request for Extension of Currently Approved Information Collection and Recordkeeping Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension of approval of an information collection in support of the Livestock Mandatory Reporting Act of 1999 and regulations which was temporarily approved until January 31, 2002.

DATES: Comments on this notice must be received by December 24, 2001, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Comments may be sent to John E. Van Dyke, Chief, Livestock and Grain Market News Branch, Livestock and Seed Program, Agricultural Marketing Service, USDA, 1400 Independence Avenue, SW., Room 2619-South Building, Stop 0252, Washington, DC 20250–0242; telephone (202) 720–6231, facsimile (202) 690–3732, e-mail *john.vandyke@usda.gov*. For further information, contact John E. Van Dyke at the above address. Comments received may be inspected at 1400 Independence Avenue, SW, Room 2619-South Building, Washington, DC between 7:30 a.m. and 4 p.m. The comments will also be posted on the Livestock and Grain Market News Branch Web site, located at *www.ams.usda.gov/lsg/mncs/index.htm*.

SUPPLEMENTARY INFORMATION:

Title: Livestock Mandatory Reporting Act of 1999.

OMB Number: 0581–0186.

Expiration Date of Approval: January 31, 2002.

Type of Request: Extension of an emergency approved information collection and recordkeeping requirements.

Abstract: In accordance with the Livestock Mandatory Reporting Act of 1999 (Act)(7 U.S.C. 1635h–1636h), a mandatory program of reporting information related to the marketing of cattle, swine, lambs, and products of such livestock, was established and made effective on April 02, 2001 (65 FR 75464; 66 FR 41194). This mandatory reporting program requires the submission of market information by packers who have annually slaughtered an average of 125,000 cattle or 100,000 swine over the most recent 5 calendar year period, or have annually slaughtered or processed an average of 75,000 lambs over the most recent 5 calendar year period. Importers who have annually imported an average of 5,000 metric tons of lamb meat products over the most recent 5 calendar year period are also subject to mandatory reporting requirements. This program is intended to provide information on pricing, contracting for purchase, and supply and demand conditions for livestock, livestock production, and livestock products, that can be readily understood by producers, packers, and other market participants.

Packers subject to mandatory reporting requirements are required to report the details of all transactions involving purchases and sales of livestock, domestic and export sales of boxed beef and lamb cuts (including applicable branded product) and sales of lamb carcasses. Qualifying importers are required to report sales of all imported boxed lamb cuts. To verify the accuracy of submitted information, each packer and importer required to report must maintain, and make available for 2 years, such records as are necessary to document the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics associated with reported livestock, boxed beef and/or boxed lamb transactions.

The information collection and recordkeeping requirements in the regulations under the Act (7 CFR part 59) are essential to establishing and implementing a mandatory program of livestock and livestock products reporting. Based on the information available, AMS estimates that there are 49 beef packer plants, 50 pork packer plants, and 17 lamb packer plants and lamb importers that are required to report market information. These companies have similar recordkeeping systems and business operation practices and conduct their operations in a similar manner. AMS believes that all of the information required can be collected from existing materials and systems and that these materials and systems can be adapted to satisfy the forms. The Paperwork Reduction Act also requires AMS to measure the recordkeeping burden. Each packer and importer required to report must maintain and make available upon request for 2 years, such records as are necessary to verify the accuracy of the information required to be reported. These records include original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock.

The electronic data files which the packers are required to utilize when submitting information to AMS will have to be maintained as these files provide the best record of compliance. The recordkeeping burden includes the amount of time needed to store and maintain records. AMS estimates that, since records of original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock are stored and maintained as a matter of normal business practice by these companies for a period in excess of 2 years, additional annual costs are nominal. AMS estimates the annual cost per respondent for the storage of the electronic data files which were submitted to AMS in compliance with the reporting provisions to be $1,830.00. This estimate includes the cost of electronic data storage media, backup electronic data storage media, and backup software required to maintain an estimated annual electronic recordkeeping and backup burden of 42

megabytes, on average, per respondent. In addition, this estimate includes the cost per employee to maintain such records which is estimated to average 70 hours per year at $20.00 per hour for a total salary component cost of $1,400.00 per year.

Information collection requirements include the submission of the required information on a daily and weekly basis in the standard format provided in the following forms: (1) Live Cattle Daily Report (Current Established Prices), (2) Live Cattle Daily Report (Committed and Delivered Cattle), (3) Live Cattle Weekly Report (Forward Contract and Packer-Owned), (4) Live Cattle Weekly Report (Formula Purchases), (5) Cattle Premiums and Discounts Weekly Report, (6) Boxed Beef Daily Report, (7) Swine Prior Day Report, (8) Swine Daily Report, (9) Swine Noncarcass Merit Premium Weekly Report, (10) Live Lamb Daily Report (Current Established Prices), (11) Live Lamb Daily Report (Committed and Delivered Lambs), (12) Live Lamb Weekly Report (Forward Contract and Packer-Owned), (13) Live Lamb Weekly Report (Formula Purchases), (14) Lamb Premiums and Discounts Weekly Report, (15) Boxed Lamb Report, and (16) Lamb Carcass Report. Cattle packers utilize six of these forms when reporting information to AMS including two for daily cattle reporting, three for weekly cattle reporting, and one for daily boxed beef cuts reporting. Swine packers utilize three forms, two for daily reporting of swine purchases and one for weekly reporting of non-carcass merit premium information. Lamb packers utilize seven of these forms when reporting information to AMS including two for daily lamb reporting, three for weekly lamb reporting, one for daily and weekly boxed lamb cuts reporting and one for daily and weekly lamb carcass reporting. Lamb importers utilize one of these forms when reporting information to AMS for reporting weekly imported boxed lamb cut sales.

These information collection requirements have been designed to minimize disruption to the normal business practices of the affected entities. Each of these forms requires the minimal amount of information necessary to properly describe each reportable transaction. The number of forms reflect an attempt to reduce the complexity of each form.

Because there was insufficient time for a normal clearance procedure, AMS requested emergency processing and received temporary approval from OMB for the use of the information collection and recordkeeping requirements that was used to implement the mandatory livestock reporting program on an expedited basis. OMB granted temporary approval on January 18, 2001, to expire on January 31, 2002.

AMS provided two methods for respondents to use when submitting information electronically under LMR. The first method, electronic data transfer, allows respondents to submit livestock mandatory information in comma-delimited ASCII (text) data files directly to AMS. This method is used by a majority of those entities required to submit information to AMS. Respondents create these text files by extracting the required information from their existing electronic recordkeeping systems, thereby avoiding manual data entry. The second method, the industry web interface, allows respondents to input and submit livestock mandatory information to AMS through the Internet. Respondents access the AMS livestock mandatory reporting website through a personal computer (PC). The AMS website provides an interface that emulates the official OMB approved collection forms.

Information submitted by respondents through either electronic data collection method is scanned for viruses before being decrypted and loaded into a input directory on the AMS database system (SQL Server). Once accepted, the reports are sent to the AMS Market News Communication System (MNCS) and released to the public.

Both electronic data collection methods are taken into account in the following overall burden estimate and individual burden estimates for each of the 16 reporting forms.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .18 hours per response.

Respondents: Certain packers, livestock product processors and importers.

Estimated Number of Respondents: 116.

Estimated Number of Responses per Respondent: 1,171.

Estimated Total Annual Burden on Respondents: 24,426.08 hours.

Estimated Total Annual Responses: 135,824 responses.

(1) Live Cattle Daily Report (Current Established Prices): Form LS–113

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Department of Agriculture (USDA).

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 4,332 hours.

Total Cost: $86,640.

(2) Live Cattle Daily Report (Committed and Delivered Cattle): Form LS–114

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the USDA.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 4,332 hours.

Total Cost: $86,640.

(3) Live Cattle Weekly Report (Forward Contract and Packer-Owned): Form LS–115

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the USDA.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 637 hours.

Total Cost: $12,740.

(4) Live Cattle Weekly Report (Formula Purchases): Form LS–116

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the USDA.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 637 hours.

Total Cost: $12,740.

(5) Cattle Premiums and Discounts Weekly Report: Form LS–117

Estimate of Burden: Public reporting burden for collection of information is estimated to be .08 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the USDA.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 204 hours.

Total Cost: $4,080.

(6) Boxed Beef Daily Report: Form LS–126

Estimate of Burden: Public reporting burden for collection of information is estimated to be .125 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on domestic and export boxed beef cut sales to the USDA.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 3,185 hours.

Total Cost: $63,700.

(7) Swine Prior Day Report: Form LS–118

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the USDA.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 3,250 hours.

Total Cost: $65,000.

(8) Swine Daily Report: Form LS–119

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the USDA.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 4,420 hours.

Total Cost: $88,400.

(9) Swine Noncarcass Merit Premium Weekly Report: Form LS–120

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the USDA.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 650 hours.

Total Cost: $13,000.

(10) Live Lamb Daily Report (Current Established Prices): Form LS–121

Estimate of Burden: Public reporting burden for collection of information is estimated to be .34 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the USDA.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 707 hours.

Total Cost: $14,140.

(11) Live Lamb Daily Report (Committed and Delivered Lambs): Form LS–122.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .34 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the USDA.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 707 hours.

Total Cost: $14,140.

(12) Live Lamb Weekly Report (Forward Contract and Packer-Owned): Form LS–123

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the USDA.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 104 hours.

Total Cost: $2,080.

(13) Live Lamb Weekly Report (Formula Purchases): Form LS–124

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the USDA.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 104 hours.

Total Cost: $2,080.

(14) Lamb Premiums and Discounts Weekly Report: Form LS–125

Estimate of Burden: Public reporting burden for collection of information is estimated to be .08 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the USDA.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 33 hours.

Total Cost: $660.

(15) Boxed Lamb Report: Form LS–128

Estimate of Burden: Public reporting burden for collection of information is estimated to be .167 hours per electronically submitted response for domestic packing plants and .084 hours per electronically submitted response for importers.

Respondents: Packer processing plants and importers required to report information on boxed lamb cut sales to the USDA.

Estimated Number of Respondents: 14 entities (including 1 entity that both processes and imports).

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days) for domestic packing plants; 52 (1 per week for 52 weeks) for importers.

Estimated Total Annual Burden on Respondents: 391 hours for domestic packing plants and 26 hours for importers.

Total Cost: $7,810 for domestic packing plants and $520 for importers for a total of $8,330.00.

(16) Lamb Carcass Report: Form LS–129

Estimate of Burden: Public reporting burden for collection of information is estimated to be .167 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on lamb carcass sales to the USDA.

Estimated Number of Respondents: 8 entities.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 347 hours.

Total Cost: $6,940.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All comments received will be available for public inspection during regular business hours at the address above.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 19, 2001.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–26900 Filed 10–24–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–057–1]

International Standards Under the International Plant Protection Convention

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a public meeting on a draft international standard for the environmental impact of quarantine pests, including quarantine pests that are invasive.

Place, Date, and Time of Meeting: The meeting will be held at the Yates Auditorium at the Department of the Interior, 1849 C Street NW., Washington, DC. The meeting will be held on November 15, 2001, from 1 p.m. to 3 p.m. Please use the entrance at C Street.

FOR FURTHER INFORMATION CONTACT: Dr. Ron A. Sequeira, Biological Scientist, CPHST, PPQ, APHIS, 1017 Main Campus Drive, Suite 2500, Raleigh, NC 27606–5202; (919) 513–2662.

SUPPLEMENTARY INFORMATION: The International Plant Protection Convention (IPPC) is a multilateral convention adopted in 1952 for the purpose of securing international cooperation in the control and prevention of the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control. Under the IPPC, the understanding of plant protection has been, and continues to be, broad, encompassing the protection of both cultivated and noncultivated plants from direct or indirect injury by plant pests. Activities addressed by the IPPC include the development and establishment of international plant health standards, the harmonization of phytosanitary activities through emerging standards, the facilitation of the exchange of official and scientific information among countries, and the furnishing of technical assistance to developing countries that are signatories to the IPPC. The IPPC is recognized by the World Trade Organization as the standard-setting body for international plant quarantine issues.

The IPPC is placed under the authority of the United Nations' Food and Agriculture Organization (FAO), and the members of the Secretariat of the IPPC are appointed by the FAO. The IPPC is implemented by national plant protection organizations in cooperation with regional plant protection organizations, the Interim Commission on Phytosanitary Measures (ICPM), and the Secretariat of the IPPC. The United States has played a major role in all standard-setting activities under the IPPC and has representation on FAO's highest governing body, the FAO Conference.

The United States became a contracting party to the IPPC in 1972 and has been actively involved in furthering the work of the IPPC ever since. The IPPC was amended in 1979, and the amended version entered into force in 1991 after two-thirds of the contracting countries accepted the amendment. More recently, in 1997, contracting parties completed negotiations on further amendments that were approved by the FAO Conference and submitted to the parties for acceptance. This 1997 amendment updated phytosanitary concepts and formalized the standard-setting structure within the IPPC. The 1997 amended version of the IPPC will enter into force once two-thirds of the current contracting parties notify the Director General of FAO of their acceptance of the amendment.

The IPPC has been, and continues to be, administered at the national level by plant quarantine officials whose primary objective is to safeguard plant resources from injurious pests. In the United States, the national plant protection organization is the Plant Protection and Quarantine unit of the Animal and Plant Health Inspection Service.

In June 2000, an IPPC working group identified the need to supplement the current pest risk analysis guidelines with additional guidance regarding the consideration of potential environmental risks of plant pests and recommended that a draft standard be developed. The entire report from the June 2000 working group meeting is available on the Internet at *http://www.fao.org/waicent/faoinfo/agricult/agp/agpp/pq/en/archive/wg_gmos/recom.htm.*

In April 2001, the IPPC's ICPM agreed to establish a technical expert working group to develop an IPPC standard for considering the environmental impact of quarantine pests, including quarantine pests that are invasive. The technical expert working group charged with developing the draft standard met in August 2001.

The first draft of the standard includes consideration of the following five elements relating to potential environmental risks of plant pests, which were identified in the June 2000 working group meeting:

1. Reduction or elimination of endangered (or threatened) native plant species;
2. Reduction or elimination of a keystone plant species (a species that plays a major role in the maintenance of an ecosystem);
3. Reduction or elimination of a plant species that is a major component of a native ecosystem;
4. Ecosystem destabilization caused by a change to plant biological diversity;
5. Control, eradication, or management programs that would be needed if a quarantine pest were introduced, and impacts of such programs (e.g., pesticides or release of nonindigenous predators and parasites) on biological diversity.

The draft standard is available on the Internet at *http://www.fao.org/ag/agp/agpp/pq/ and http://www.aphis.usda.gov/ppq/pim/standards/#01.*

The draft standard is a supplement to the existing "International Standard for Phytosanitary Measures Number 11 (Pest Risk Analysis for Quarantine Pests)," which is available on the Internet at *http://www.fao.org/ag/agp/agpp/pq.*

The purpose of the meeting is to solicit public comment on the draft standard as part of the country consultation process. The meeting will be open to the public and the public is invited to participate. Also, you may file written statements on meeting topics with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT,** or you may file written statements at the meeting. Please refer to Docket No. 01–057–1 when submitting your statements.

Preregistration is not required. However, upon arrival, all participants will be asked to sign in. Also, members of the public will be required to present valid photo identification, and Federal employees will be required to present valid government identification.

Done in Washington, DC, this 19th day of October 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–26895 Filed 10–24–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc Resource Advisory Committee, Alturas, California, USDA Forest Service.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Saturday, November 17, 2001 and Saturday, December 1, 2001 in Alturas, California for business meetings. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting Nov. 17 begins at 9:30 am, at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include FACA overview, Charter overview, Process for project identification/recommendation, election of Chairperson, operating guidelines, and establish future meetings. Time will be set aside for public comments. The business meeting December 1, 2001 begins at 9:30 am, at the Modoc National Forest Office, Conference Room, 800 West 12th Street, Alturas. Agenda topics will include operating guidelines and review and discussion of potential projects on the Modoc National Forest that meet the intent of Pub. L. 106–393. Time will be set aside for public comments.

FOR FURTHER INFORMATION CONTACT: Dan Chisholm, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Dan Chisholm,

Forest Supervisor.

[FR Doc. 01–26872 Filed 10–24–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Awards under the RUS Distance Learning and Telemedicine Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of applications selected to receive grant awards.

SUMMARY: The Rural Utilities Service (RUS) hereby announces the recipients that were selected to receive grant awards during fiscal year (FY) 2001 under the Distance Learning and Telemedicine Grant Program.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Morgan, Branch Chief, Distance Learning and Telemedicine Branch, U.S. Department of Agriculture, Rural Utilities Service, STOP 1550, Room 2845, South Building, 1400 Independence Avenue, S.W., Washington, DC 20250–1701. Telephone: (202) 720–0413. FAX: (202) 720–1051.

SUPPLEMENTARY INFORMATION: Pursuant to 7 CFR 1703.101, RUS is hereby publishing the names of the 87 organizations that have been awarded $26,750,535 in grants under 7 CFR part 1703, Subpart D, Distance Learning and Telemedicine Grant Program. The recipients are as follows:

USDA, RURAL UTILITIES SERVICE, TELECOMMUNICATIONS PROGRAM, FY 2001 DISTANCE LEARNING AND TELEMEDICINE GRANT AWARDS

State	Grantee	Award amount
AK	Matanuska-Susitna Borough School District	$361,272
AL	Lowndes County Board of Education	228,000
AL	Northwest-Shoal Community College	273,887
AR	Crowley's Ridge Education Service Cooperative	81,872
AR	DeQueen/Foreman/Ashdown Distance Learning Consortium	500,000
AR	Helena-West Helena School District	500,000
AS	American Samoa Community College	411,989
AZ	Central Arizona College	130,100
CA	Monterey County Office of Education	500,000
CA	West Hills Community College District	500,000
CA	Visible Light, Inc.	500,000
CA	Visiting Nurse Association of the Inland Counties	339,524
CA	Clovis Unified School District	438,011
CO	High Plains Rural Health Network	292,900
CO	Montrose Memorial Hospital	418,000
FL	Florida State University	246,206
HI	Hawaii Health Systems Foundation	372,650
IA	Indian Hills Community College	94,028

USDA, RURAL UTILITIES SERVICE, TELECOMMUNICATIONS PROGRAM, FY 2001 DISTANCE LEARNING AND TELEMEDICINE GRANT AWARDS—Continued

State	Grantee	Award amount
IA	Lamoni Community School District	249,380
IA	Corning Community School District	494,289
IN	Central Indiana Health System	133,428
IN	Scott County School District 1	500,000
IN	Wilson Education Center	500,000
KS	Smith County Memorial Hospital	59,500
KY	Johnson Mathers Health Care, Inc.	352,787
KY	Morgan County ARH Hospital	52,500
LA	Union General Hospital, Inc	69,600
LA	East Carroll Parish Hospital	100,100
MA	Hampshire Educational Collaborative	208,288
MA	Nantucket Cottage Hospital	113,400
ME	Penquis Community Action Program, Inc.	497,426
ME	St. Andrews Hospital	115,000
ME	St. Joseph Healthcare, Inc.	499,800
ME	Visiting Nurse Service of Southern Maine and Seacoast New Hampshire	188,702
MI	Gratiot-Isabella Regional Educational Service District	296,500
MI	Iosco Regional Educational Service Agency	106,362
MI	Owendale-Gagetown Area Schools	54,000
MN	Cuyuna Range Hospital District	500,000
MN	Paynesville Area Health Hospital District	264,071
MN	Tri-County Hospital, Inc.	500,000
MO	Pathways Community Behavioral Healthcare	410,275
MO	The University of Health Sciences	165,840
MO	Texas County Technical Institute	71,863
MS	Cleveland School District	500,000
MS	Harrison County School District	500,000
MS	Neshoba County School District	500,000
MT	Deaconess Billings Clinic Foundation	500,000
MT	Poplar Public Schools	350,000
MT	Saint Vincent Foundation	368,142
ND	Landon School District Foundation	110,000
ND	Medcenter One Health Systems, Inc	447,710
ND	West River Health Services	68,229
NE	Crossroads Distance Learning Education Consortium	433,830
NE	Madonna Rehabilitation Hospital	306,110
NE	Rural Health Partners, Inc.	196,012
NM	Clayton Municipal School District No. 1	163,100
NM	University of New Mexico-Gallup	482,420
NY	Copenhagen Central School—Lead Educational Agency	473,900
NY	Hoosick Falls Health Center, Inc.	205,393
NY	Research Foundation of SUNY for SUNY College of Technology at Canton	122,565
NY	Westchester Medical Center	455,303
OH	Ohio University Southern Campus	468,000
OK	Hillcrest-Riverside, Inc.	142,000
OK	Sequoyah County-City of Sallisaw Hospital Authority	63,431
OR	North Central Education Service District	215,300
OR	North Lincoln Hospital Foundation	103,519
OR	Rogue Valley Medical Center Foundation	499,750
OR	St. Charles Medical Center Foundation	321,447
PA	The Pennsylvania State University	364,087
SD	Horizon Health Care, Inc.	208,739
TN	Polk County School System	500,000
TN	The University of Tennessee Health Science Center, College of Pharmacy	459,295
TN	The University of Tennessee Health Science Center	498,747
TN	The University of Tennessee Health Science Center, College of Pharmacy	493,675
TN	The University of Tennessee Health Science Center	477,057
TX	Hill College	176,266
TX	Info-Net Consortium	463,040
TX	Odessa Emergency Providers AF, Inc.	71,838
TX	Scott & White Memorial Hospital & Scott, Sherwood, Brindley Foundation	335,402
TX	Taft Independent School District	190,038
TX	Texana Mental Health and Mental Retardation Center	66,800
TX	Texas Family Health Network, Inc.	494,927
TX	Texas A&M University-Kingsville	195,500
VA	Medical College of Hampton Roads (Eastern Virginia Medical School)	51,226
VA	Paul D. Camp Community College	445,930
WI	Spring Valley Health Care Center	70,257
WI	Cooperative Educational Service Agency	500,000

Dated: October 19, 2001.

Kenneth M. Ackerman,

Acting Administrator, Rural Utilities Service.

[FR Doc. 01–26836 Filed 10–24–01; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 5:00 p.m. on Wednesday, November 14, 2001, at the Hyatt Regency Hotel, 350 North High Street, Columbus, Ohio 43215. The purpose of the meeting is to discuss current events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 17, 2001.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 01–26835 Filed 10–24–01; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, Department of Commerce.

ACTION: Notice of request for public comment on the potential market impact of proposed revisions to disposals of excess commodities currently held in the National Defense Stockpile under the Fiscal Year 2002 Annual Material Plan (AMP), and proposed commodity disposals under the Fiscal Year 2003 AMP.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comment on the potential market impact of proposed disposals of excess materials from the National Defense Stockpile as set forth in Attachment 1 to this notice. The Fiscal Year 1993 National Defense Authorization Act requires this Committee to consult with representatives of producers, processors and consumers of the types of materials stored in the stockpile.

DATES: Comments must be received by November 26, 2001.

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; fax (202) 482–5650. Comments submitted via e-mail will not be accepted.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Terri L. Robl, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (hereinafter "NDAA") (50 U.S.C. 98h-l) formally established a Market Impact Committee (the Committee) to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * * ." The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and the Federal Emergency Management Agency, and is co-chaired by the Departments of Commerce and State. The NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

Attachment 1 lists the current FY 2002 AMP quantities (previously approved by the Committee), proposed revisions to the FY 2002 AMP quantities for seven materials, and the proposed FY 2003 AMP. The Committee is seeking public comment on the potential market impact of the sale of these materials as proposed in the revised FY 2002 AMP and FY 2003 AMP.

The quantities listed in Attachment 1 are not sales target disposal quantities. They are only a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time as well as on the quantity of each material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Although comments in response to this Notice must be received by November 26, 2001 to ensure full consideration by the Committee, interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comment is an important element of the Committee's market impact review process.

Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. The Committee will seek to protect such information to the extent permitted by law.

The records related to this Notice will be made accessible in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Specifically, the Bureau of Export Administration's FOIA reading room is located on its Web page, which can be found at http://www.bxa.doc.gov, and copies of the public comments received will be maintained at that location (see Freedom of Information Act (FOIA) heading). If requesters cannot access the web site, they may call (202) 482–2165 for assistance.

Dated: October 22, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

ATTACHMENT 1.—PROPOSED REVISIONS TO FY 2002 ANNUAL MATERIALS PLAN (AMP) AND PROPOSED FY 2003 AMP

Material	Unit	Current FY 2002 quantity	Revised FY 2002 quantity	Revised FY02 notes	Proposed FY 2003 quantity	FY03 notes
Aluminum Oxide, Abrasive	ST	6,000			6,000	
Antimony	ST	5,000			5,000	1
Bauxite, Metallurgical Jamaican	LDT	2,000,000			1,540,000	1
Bauxite, Refractory	LCT	5,000	43,000	1/3	43,000	1/3
Beryl Ore	ST	4,000			3,000	1
Beryllium Metal	ST	40			40	
Beryllium Copper Master Alloy	ST	2,200			1,000	1
Cadmium	LB	1,200,000			1,200,000	
Celestite	SDT	3,600			3,600	
Chromite, Chemical	SDT	100,000		1	100,000	1
Chromite, Metallurgical	SDT	100,000		1	100,000	1
Chromite, Refractory	SDT	100,000			100,000	
Chromium, Ferro	ST	150,000			150,000	
Chromium, Metal	ST	500			500	
Cobalt	LB Co	6,000,000			6,000,000	
Columbium Carbide Powder	LB Cb	21,500		1	21,500	1
Columbium Concentrates	LB Cb	560,000			560,000	
Columbium Metal Ingots	LB Cb	20,000			20,000	
Diamond Stone	ct	510,000	1,300,000	1	600,000	1
Fluorspar, Acid Grade	SDT	12,000		1	12,000	1
Fluorspar, Metallurgical Grade	SDT	60,000			60,000	1
Germanium	Kg	8,000			8,000	
Graphite	ST	3,760			3,760	1
Iodine	LB	1,000,000			1,000,000	
Jewel Bearings	PC	52,000,000	82,051,558	1/3	82,051,558	1/3
Kyanite	SDT	150		1	150	1
Lead	ST	60,000			60,000	
Manganese, Battery Grade, Natural	SDT	30,000			30,000	
Manganese, Battery Grade, Synthetic	SDT	3,011		1	3,011	1
Manganese, Chemical Grade	SDT	40,000			40,000	
Manganese, Ferro	ST	75,000			75,000	
Manganese, Metal, Electrolytic	ST	2,000			2,000	
Manganese, Metallurgical Grade	SDT	250,000			250,000	
Mica, All	LB	4,000,000	8,500,000	1/4	8,500,000	1
Palladium	Tr Oz	600,000			250,000	1
Platinum	Tr Oz	95,000	140,000		30,000	1
Platinum—Iridium	Tr Oz	0	6,000	3	6,000	3
Quartz crystals	Lb	0	216,648	1/3	216,648	1/3
Quinidine	OZ	750,000			750,000	
Rubber	LT	75,000		1	70,000	1
Sebacic Acid	LB	1,000,000			600,000	
Silver (Coins)	Tr Oz	5,000,000	8,000,000	1	5,000,000	1
Talc	ST	2,000		1	2,000	1
Tantalum Carbide Powder	LB Ta	4,000			4,000	
Tantalum Metal Ingots	LB Ta	40,000			40,000	
Tantalum Metal Powder	LB Ta	50,000		1	50,000	1
Tantalum Minerals	LB Ta	500,000			500,000	
Tantalum Oxide	LB Ta	20,000			20,000	
Thorium	LB	7,093,464		1/2	7,095,065	1/2
Tin	MT	12,000			12,000	
Titanium Sponge	ST	5,000	7,000	4	7,000	
Tungsten Ferro	LB W	300,000			300,000	
Tungsten Metal Powder	LB W	300,000			300,000	
Tungsten Ores & Concentrates	LB W	4,000,000			4,000,000	
VTE, Chestnut	LT	250		1	250	1
VTE, Quebracho	LT	50,000			50,000	
VTE, Wattle	LT	6,500		1	6,500	1
Zinc	ST	50,000			50,000	

Notes:
1. Actual quantity will be limited to remaining sales authority or inventory.
2. The radioactive nature of this material may restrict sales or disposal options. Efforts are underway to determine the environmentally and economically feasible disposition of the material.
3. Pending Congressional authority.
4. Previously approved by the Market Impact Committee. Revision in process for current FY 2002.

[FR Doc. 01–26910 Filed 10–24–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.101701C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a research permit (1352).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received an application for a scientific research permit from Dr. Colin A. Simpfendorfer, of Mote Marine Laboratory (MML).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on November 26, 2001.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–1401, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: *Lillian.Becker@noaa.gov).*

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10 (a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Fish

Proposed Endangered Smalltooth Sawfish (*Pristis pectinata*)

New Applications Received

Application 1352

The applicant requests a 5–year permit that would authorize the take of endangered smalltooth sawfish in the state of Florida. The purpose of the research is to develop conduct surveys of habitats where sawfish have historically occurred. All sawfish caught during the surveys will be handled, measured, tagged, genetically sampled, and released. Capture methods include: longline, rod and reel, set lines, gill nets, and beach seines. Tagging methods will include: rototags, plastic-headed dart tags, PIT tags, acoustic tags, PAT tags, and SPOT tags.

Dated: October 19, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–26931 Filed 10–24–01; 8:45 a.m..]

BILLING CODE: 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Exemption of Certain Textile and Apparel Products From Visa and Quota Requirements

October 22, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs exempting certain textile and apparel products imported in connection with international athletic events from certain quota and visa requirements.

EFFECTIVE DATE: October 25, 2001.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Heading 9817.60.0000 permits the duty-free entry of the certain articles associated with international athletic events held in the United States, such as the Olympics and Paralympics, the Goodwill Games, the Special Olympics World Games, the World Cup Soccer Games, or any similar event as the Secretary of the Treasury may determine. Effective on October 25, 2001, textiles and apparel products not intended for sale or distribution to the public entered into the United States under Harmonized Tariff Schedule of the United States heading 9817.60.0000 shall not be subject to visa and quota requirements.

D. Michael Hutchinson,

Acting Chairmon, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 22, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Heading 9817.60.0000 permits the duty-free entry of the certain articles associated with international athletic events held in the United States, such as the Olympics and Paralympics, the Goodwill Games, the Special Olympics World Games, the World Cup Soccer Games, or any similar event as the Secretary of the Treasury may determine. Effective on October 25, 2001, textiles and apparel products not intended for sale or distribution to the public entered into the United States under Harmonized Tariff Schedule of the United States heading

9817.60.0000 shall not be subject to visa and quota requirements.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–26912 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–02]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–02 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

4 October 2001

In reply refer to:
I-01/010734

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-02, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the United Kingdom for defense articles and services estimated to cost $235 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: United Kingdom

(ii) Total Estimated Value:

Major Defense Equipment*	$ 70 million
Other	$165 million
TOTAL	$235 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Five hundred fifty JAVELIN anti-tank missile command launch units, simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.

(iv) Military Department: Army (UML)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 04 OCT 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom - JAVELIN Command Launch Units

The Government of United Kingdom has requested a possible sale of 550 JAVELIN anti-tank missile command launch units, simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is $235 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of the United Kingdom while enhancing weapon system standardization and interoperability with U.S. forces.

This notification is transmitted in conjunction with Section 36(c) AECA notification of a commercial sale for JAVELIN anti-tank missile systems. The United Kingdom will use these JAVELIN anti-tank missile systems to enhance their medium anti-tank capability for the infantry, scouts, and combat engineers. This system will provide the United Kingdom a strong anti-landing capability and will increase interoperability with U.S. forces. The United Kingdom will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be JAVELIN Joint Venture (Raytheon and Lockheed Martin) of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two U.S. Government and one contractor representatives to the United Kingdom for one week to assist in the delivery and deployment of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-02

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major tactical components; a reusable Command Launch Unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in the stand-alone mode for battlefield surveillance and target detection. JAVELIN's key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately take cover. Additional special features are the top attack and/or direct fire modes (for targets under cover), integrated day/night sight, advanced tandem warhead, imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. Reverse engineering of the software would require a substantial effort. The JAVELIN weapon system is unclassified. Specific data related to operation, performance, and system vulnerabilities are classified up to the Secret level.

2. A determination has been made that the Government of United Kingdom can provide substantially the same degree of protection for the technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification portion of the notification. Further, the sale strengthens collective security and contributes to the standardization and interoperability in the case of coalition warfare. The benefits to be derived from the sale outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 01-26846 Filed 10-24-01; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02-03]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02-03 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 19, 2001.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-08-M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

4 October 2001

In reply refer to:
I-01/011028

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-03, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Canada for defense articles and services estimated to cost $43 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-03

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

(i) Prospective Purchaser: Canada

(ii) Total Estimated Value:

Major Defense Equipment*	$31 million
Other	$12 million
TOTAL	$43 million

(iii) Description of Articles or Services Offered: Components of the TOW Improved Target Acquisition System (ITAS): 75 TOW Target Acquisition System, 75 Fire Control Systems, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.

(iv) Military Department: Army (ZTK)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 04 OCT 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Canada - TOW-2B Target Acquisition System

The Government of Canada has requested a possible sale for the components of the TOW Improved Target Acquisition System (ITAS): 75 TOW Target Acquisition System, 75 Fire Control Systems, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is $43 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Canada and further weapon system standardization and interoperability with U.S. forces.

Canada will use these ITAS components on their Light Armored Vehicles. The system will greatly enhance the coalition efforts within the region. Canada, which already has ITAS in its inventory, will have no difficulty absorbing these additional components.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be of Raytheon Corporation of McKinney, Texas. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team to Canada for a week to assist in the delivery and deployment of the missiles. Four contractor representatives will be required for two years to perform maintenance services.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The TOW Improved Target Acquisition System (ITAS) increases target acquisition, detection , recognition, and engagement ranges, while retaining the ability to fire all configurations of the TOW missiles when used in the stand-alone mode or when mounted on the light armored vehicle. ITAS uses a second-generation, forward-looking, infrared night vision sight, digital components, and an eye-safe laser range finder to address the weather and day/night capabilities. Key features that achieve the ITAS objectives include auto-boresight, aided tracking, embedded training, and traversing unit modifications. The TOW ITAS is unclassified; however, the documentation is Classified.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Canada can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 01–26847 Filed 10–24–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–08]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703)604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–08 with attached transmittal and policy justification.

Dated: October 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

4 October 2001

In reply refer to:
I-01/010199

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-08 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Oman for defense articles and services estimated to cost $1,120 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-08

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)**

(i) Prospective Purchaser: Oman

(ii) Total Estimated Value:

Major Defense Equipment*	$ 763 million
Other	$ 357 million
TOTAL	$1,120 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Twelve F-16C/D Block 50+ aircraft with either the F100-PW-229 or F110-GE-129 engine and APG-68(V)XM FMS radars; two spare F100-PW-229 or two spare F110-GE-129 engines; 14 LANTIRN Targeting Pods (FMS variant); 14 LANTIRN Navigation Pods with Terrain Following Radar (TFR); 50 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM) and 10 AMRAAM training missiles; 100 AIM-9M-8/9 SIDEWINDER missiles and 10 SIDEWINDER training missiles; 80 AGM-65D/G MAVERICK missiles and 10 MAVERICK training missiles; 20 AGM-84D HARPOON Air-Launched Anti-ship missiles; 100 Enhanced-GBU-10 and 100 Enhanced-GBU-12 PAVEWAY II laser guided bomb kits; 80 GBU-31/32 Joint Direct Attack Munitions; LANTIRN Night Vision Goggle compatible cockpits; and the capability to employ a wide variety of munitions. Associated support equipment, software development/integration, modification kits, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided.

(iv) Military Department: Air Force (SDC)

(v) Prior Related Cases, if any: FMS case YEH - $4 million - 30Dec98

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover

(viii) Date Report Delivered to Congress: 04 OCT 2001

* as defined in Section 47(6) of the Arms Export Control Act.

(v) **Prior Related Cases, if any: FMS case YEH - $4 million - 30Dec98**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover**

(viii) **Date Report Delivered to Congress:**

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

4 October 2001

In reply refer to:
I-01/010199

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-08 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Oman for defense articles and services estimated to cost $1,120 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

[FR Doc. 01-26848 Filed 10-24-01; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 24, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process

would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance

Type of Review: Extension.
Title: Lender's Application for Payment of Insurance Claim.
Frequency: On Occasion.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household.
Reporting and Recordkeeping Hour Burden: Responses: 1,804; Burden Hours: 4,870.
Abstract: The ED Form 1207—Lender's Application for Payment of Insurance Claim is completed for each borrower for whom the lender is filing a Federal claim. Lenders must file for payment within 90 days of the default, depending on the type of claim filed.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–26868 Filed 10–24–01; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.
DATES: Interested persons are invited to submit comments on or before December 24, 2001.
SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 23, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision of a currently approved collection.
Title: Applications for Assistance (Sections 8002 and 8003) Impact Aid Program.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary) Federal Government.
Reporting and Recordkeeping Hour Burden: Responses: 1061320. Burden Hours: 531211.
Abstract: A local educational agency must submit an application to the Department to receive Impact Aid payments under sections 8002 or 8003 of the Elementary and Secondary Education Act (ESEA), and a State requesting certification under section 8009 of the ESEA must submit data for the Secretary to determine whether the State has a qualified equalization plan and may take Impact Aid payments into consideration in allocating State aid.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO.RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–27015 Filed 10–24–01; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.
ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**
DATES: Wednesday, November 14, 2001—6:00 p.m.–9:00 p.m.
ADDRESSES: Great Basin Room, National Nuclear Security Administration Nevada Operations Office, 232 Energy Way, North Las Vegas, Nevada.
FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197, fax: 702–295–5300.
SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.
Tentative Agenda:
1. Training on browsing for and locating information on the Internet sites of NNSA/NV, EM, Nevada Division of EPA, NTS CAB and related sites.
2. Presentation explaining computer modeling, used in the Underground Test Area Project at the Nevada Test Site.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on October 19, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–26881 Filed 10–24–01; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**
DATES: Wednesday, November 14, 2001—6:00 p.m.—9:30 p.m.
ADDRESSES: Garden Plaza Hotel, 215 South Illinois Avenue, Oak Ridge, TN 37830.
FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*
SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: 1. An overview of the Oak Ridge Reservation's Environmental Management Waste Management Facility will be provided by Mr. William Cahill, DOE/Oak Ridge Operations.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on October 19, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–26882 Filed 10–24–01; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–328–001]

Algonquin LNG, Inc.; Notice of Compliance Filing

October 19, 2001.

Take notice that on October 15, 2001, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet:

First Revised Volume No. 1
First Revised Sheet No. 42A

ALNG states that the purpose of this filing is to comply with the Commission's September 14, 2001 Order on ALNG's Order No. 637 Compliance Filing. Specifically, ALNG is establishing a mechanism that credits to its existing customers the value of gas retained by ALNG in accordance with Section 6.2 of the General Terms and Conditions of the FERC Gas Tariff.

ALNG states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered

by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26857 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–889–000]

California Independent System Operator Corporation; Notice of Filing

October 19, 2001.

Take notice that on October 12, 2001, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission, a Status Report of the ISO Regarding Creditworthy Counter-Parties for Third-Party Suppliers.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 29, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26852 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–8–000]

Mirant Americas Energy Marketing, LP, Mirant Bowline, LLC, Mirant Lovett, LLC, and Mirant NY-Gen, LLC, Complainants, v. New York Independent System Operator, Inc., Respondent; Notice of Complaint

October 19, 2001.

Take notice that on October 18, 2001, Mirant Americas Energy Marketing, LP, Mirant Bowline, LLC, Mirant Lovett, LLC and Mirant NY-Gen, LLC (collectively, the Mirant Companies) tendered for filing a complaint pursuant to Sections 206 and 306 of the Federal Power Act against the New York Independent System Operator, Inc. (NYISO) in connection with the NYISO's violation of its Open Access Transmission Tariff (OATT) and the requirements of Order 888 in failing to offer long-term physically firm transmission service.

The Mirant Companies have served a copy of the complaint on the NYISO.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 7, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before November 7, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26851 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–7–000]

Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Mirant Americas Energy Marketing, LP, and Mirant California, Complainants v. California Independent System Operator Corporation, Respondent; Notice of Complaint

October 19, 2001.

Take notice that on October 18, 2001, Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Mirant Americas Energy Marketing, LP and Mirant California, LLC (Complainants) submitted a complaint against the California Independent System Operator Corporation (CAISO) alleging that the CAISO is acting in a discriminatory and unduly preferential manner by granting advantages to its fellow state agency, the California Department of Water Resources (CDWR) (along with its marketing arm, the California Energy Resources Scheduler (CERS) that are not available to other participants in the CAISO market.

Complainants allege that the CAISO's discriminatory and unduly preferential actions violate the CAISO's Tariff, the Federal Power Act, and the Commission's own policies and orders. Complainants further allege that the CAISO's actions are causing injury to Complainants, to other market participants in California, and are threatening the viability of the CAISO market.

Copies of this filing were served upon the CAISO and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 29, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before October 29, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26850 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–5–000]

Westward Energy, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

October 19, 2001.

Take notice that on October 11, 2001, Westward Energy, LLC, 2727 NW Westover, Portland, Oregon 97210, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant proposed to develop and own a natural gas-fired electric generation plant. The facility will have a maximum capacity of 520 megawatts. The facility will be located in Columbia County, Oregon. The facility is scheduled to be completed in May 2004.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before October 29, 2001, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26849 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–296–001]

Williams Gas Pipelines Central, Inc.; Notice of Compliance Filing

October 19, 2001.

Take notice that on October 15, 2001 Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective October 1, 2001:

Second Revised Sheet No. 281
Second Revised Sheet No. 405
Second Revised Sheet No. 406
Second Revised Sheet No. 413
Second Revised Sheet No. 414
Second Revised Sheet No. 421
Second Revised Sheet No. 422
Second Revised Sheet No. 428
Second Revised Sheet No. 429
Second Revised Sheet No. 480
Second Revised Sheet No. 481
Second Revised Sheet No. 482
Second Revised Sheet No. 483

Williams states that this filing is being made to comply with the Commission's October 1, 2001 order in the above referenced docket in order to allow Williams to contract for minimum delivery pressure obligations with customers where mutually agreeable on a non-discriminatory basis. The filing revises tariff sheets to incorporate an agreed upon pressure commitment, if any, into the service agreements for Williams' TSS, STS, SFT and FTS services, as well as a change to Section 20 of Williams' General Terms and Conditions to allow for the exception of mutually agreed pressure commitments in transport agreements, as agreed to by the parties and conditioned by the orders in this proceeding.

Williams states that copies of the revised tariff sheet are being mailed to Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26858 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–106–000, *et al.*]

Midwest Independent Transmission System Operator, Inc., *et al.* Electric Rate and Corporate Regulation Filings

October 19, 2001.

Take notice that the following filings have been made with the Commission:

1. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–106–000]

Take notice that on October 15, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Summary of its Operating and Emergency Procedures, Midwest Independent Transmission System Operators, Inc., which was previously accepted for filing in Docket No. ER98–1438–000, and which has been reformatted to conform to the requirements of Order No. 614.

The Midwest ISO seeks an effective date of December 15, 2001. The

Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading "FERC Filings" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. San Diego Gas & Electric Company

[Docket No. ER01–3093–001]

Take notice that on October 2, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission), errata Page Nos. 7 and 8, which should be substituted for Page Nos. 7 and 8 to the unexecuted Service Agreement No. 9, the Expedited Interconnection Facilities Agreement (EIFA) by and between SDG&E and CalPeak Power-Enterprise, LLC tendered for filing on September 24, 2001. Additionally, SDG&E submits errata Page Nos. 3, 7, and 11 to Service Agreement No. 10, the Interconnection Agreement (IA) by and between CalPeak Power Enterprise, LLC and SDG&E.

Comment date: October 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Ameren Services Company

[Docket No. ER00–2366–001]

Take notice that on October 16, 2001, Central Illinois Public Service Company, dba AmerenCIPS (CIPS), tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to the Commission's September 13, 2001 Order, hereby submits its refund report.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Hermiston Generating Company, L.P.

[Docket No. ER01–2159–002]

Take notice that on October 17, 2001, Hermiston Generating Company, L.P. (Hermiston) submitted for filing with the Federal Energy Regulatory Commission (Commission), in compliance with an order issued on October 9, 2001 by the Commission's Division of Tariffs and Rates—West, a revised Code of Conduct as part of its Rate Schedule FERC No. 3.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Calpine Construction Finance Company, L.P.

[Docket No. ER01–2784–001]

Take notice that on October 17, 2001, Calpine Construction Finance Company, L.P. (CCFC) filed with the Federal Energy Regulatory Commission (Commission) an amended Direct Power Transaction Confirmation under its market-based rate schedule.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. South Point Energy Center, LLC

[Docket No. ER01–2887–001]

Take notice that on October 16, 2001, South Point Energy Center, LLC (the Applicant), submitted for filing with the Federal Energy Regulatory Commission (Commission), first Substitute Sheet Nos. 2 and 3 to its FERC Electric Tariff No. 1, in compliance with the Commission Staff Letter issued in this Docket on October 12, 2001.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Southwest Power Pool, Inc.

[Docket No. ER02–13–001]

Take notice that on October 9, 2001, Southwest Power Pool, Inc. (SPP) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed service agreement for Firm Point-to-Point Transmission Service with OG+E Energy Resources, Inc. (Transmission Customer) as a replacement for the service agreement filed October 1, 2001.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Attala Generating Company, LLC

[Docket No. ER02–90–000]

Take notice that on October 12, 2001, Attala Generating Company, LLC (Attala) rendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) pursuant to which Attala will sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–107–000]

Take notice that on October 15, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for with the Federal Energy Regulatory Commission (Commission) a Supplement to its Alternative Dispute Resolution Plan, Midwest Independent Transmission System Operators, Inc., which was previously accepted for filing in Docket No. ER98–1438–000, and which has been reformatted to conform to the requirements of Order No. 614.

The Midwest ISO seeks an effective date of December 15, 2001. The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading "FERC Filings" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–108–000]

Take notice that on October 15, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Proposed Market Monitoring Plan, Midwest Independent Transmission System Operators, Inc., which was previously accepted for filing in Docket No. ER98–1438–000, and which has been reformatted to conform to the requirements of Order No. 614.

The Midwest ISO seeks an effective date of December 15, 2001. The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading "FERC Filings" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PSEG Nuclear LLC

[Docket No. EG02–8–000]

Take notice that on October 17, 2001, PSEG Nuclear LLC (PSEG Nuclear or Applicant), having its principal place of business at 80 Park Plaza, T–16, Newark, New Jersey, filed with the Federal Energy Regulatory Commission (Commission), an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG Nuclear is a limited liability company organized under the laws of the State of Delaware. PSEG Nuclear will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating eligible generating facilities, and engaging in sales of electric energy at wholesale.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

12. Maine Electric Power Company

[Docket No. OA02–2–000]

Take notice that on October 9, 2001, Maine Electric Power Company (MEPCO) tendered for filing pursuant to Section 37.4(c) of the Code of Federal Regulations, 18 CFR 37.4(c), the revised Standards of Conduct to be followed by MEPCO personnel.

MEPCO requests that the Standards of Conduct become effective on October 10, 2001.

MEPCO served copies of the filing upon the persons listed in the Commission's official service list and the Maine Public Utilities Commission.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Michigan Electric Transmission Company

[Docket No. OA02–3–000]

Take notice that on October 17, 2001 Michigan Electric Transmission Company (Michigan Transco) tendered for filing standards of conduct procedures pursuant to 18 CFR 37.4(c).

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Central Maine Power Company

[Docket No. OA02–1–000]

Take notice that on October 9, 2001, Central Maine Power Company (CMP) tendered for filing, pursuant to Section 37.4(c) of the Code of Federal Regulations, 18 CFR 37.4(c), the revised Standards of Conduct to be followed by CMP personnel.

CMP requests that the Standards of Conduct become effective on October 10, 2001.

CMP served copies of the filing upon the Maine Public Utilities Commission.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Alliance Companies, Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company; American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company; Consumers Energy Company and Michigan Electric Transmission Company; Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.; FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company; Virginia Electric and Power Company; Illinois Power Company; Northern Indiana Public Service Company; The Dayton Power and Light Company

[Docket Nos. RT01–88–010]

Take notice that on October 16, 2001, Ameren Services Company (on behalf of Union Electric Company and Central Illinois Public Service Company), American Electric Power Service Corporation (on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company), Consumers Energy Company and Michigan Electric Transmission Company, The Dayton Power and Light Company, Exelon Corporation (on behalf of Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.), FirstEnergy Corp. (on behalf of American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company), Illinois Power Company, Northern Indiana Public Service Company, and Virginia Electric and Power Company (collectively, the "Alliance Companies"), tendered for filing (1) proposed alternate tariff sheets reflecting the proposed withdrawal of International Transmission Company ("ITC") from the Alliance, (2) proposed substitute tariff sheets reflecting corrections to certain tariff sheets filed by the Alliance Companies on August 31, 2001 and September 10, 2001, (3) supplemental testimony and revised exhibits supporting the proposed alternate tariff sheets and the proposed substitute tariff sheets, (4) Attachment O, Market Monitoring Plan, (5) revised Attachment J, Reservation and Scheduling Procedures, and (6) additional contracts under Attachment X to the OATT. The Alliance Companies request that the proposed substitute tariff sheets, proposed alternate tariff sheets, and original tariff sheets become effective on December 15, 2001, Day 1 of operations of the Alliance RTO.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Alliance Companies, Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company; American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company; Consumers Energy Company and Michigan Electric Transmission Company; Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.; FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company; Virginia Electric and Power Company; Illinois Power Company; Northern Indiana Public Service Company; The Dayton Power and Light Company

[Docket Nos. RT01–88–011]

Take notice that on October 16, 2001, Alliance Companies, *et al.* tendered for filing with the Federal Energy Regulatory Commission (Commission), additional information concerning he Alliance Companies' request for authorization under Section 203 of the Federal Power Act to transfer control of their jurisdictional facilities to the Alliance Regional Transmission Organization (Alliance RTO).

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26884 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–6–000, *et al.*]

TXU Electric Company, *et al.*; Electric Rate and Corporate Regulation Filings

October 18, 2001.

Take notice that the following filings have been made with the Commission:

1. TXU Electric Company, TXU SESCO Company, and TXU Energy Trading Company

[Docket No. EC02–6–000]

Take notice that on October 15, 2001, TXU Electric Company, TXU SESCO Company, and TXU Energy Trading Company (the Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby the Applicants propose to internally reorganize in order to comply with the unbundling mandates of the Texas Utilities Code. As a result of the internal corporate reorganization, the Applicants' jurisdictional assets will be transferred to other wholly-owned subsidiaries of the TXU Corp. holding company.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. ISO New England Inc.

[Docket No. OA97–237–000]

Take notice that on October 11, 2001, ISO New England Inc. filed its "Quarterly Report for Regulators," as required by New England Power Pool Market Rules and Procedures 17, for the fourth quarter. A privileged version, and a redacted public version were filed, together with a request for privileged treatment under 18 CFR 388.112.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company.

[Docket Nos. OA96–39–006, ER93–465–030, ER93–922–016, EL94–12–011 and ER96–2381–004]

Take notice that on October 15, 2001, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission (Commission) revised sheets to Schedules 3 through 6 of its Open Access Transmission Tariff to provide a one-day minimum term for the purchase of these ancillary services. FPL states that it made the revisions in compliance with the Commission's letter order issued September 13, 2001, in the above-captioned docket (96 FERC ¶ 61,289).

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER01–833–000]

Take notice that on October 15, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Further Request for Deferral of Consideration of the unexecuted Wholesale Distribution Tariff (WDT) Service Agreement and Interconnection Agreement between Pacific Gas and Electric Company and Modesto Irrigation District (MID) filed in FERC Docket No. ER01–833–000 on December 29, 2000. PG&E and Modesto are finalizing the WDT Service Agreement and a letter agreement for review and signature, and PG&E therefore is notifying the Commission that executed agreements will not be filed by October 14, 2001, the requested deferral date. PG&E requests that the Commission defer consideration of the proceedings filed in ER01–833–000 to October 29, 2001 or 15 days beyond the last request for Deferral in order that the parties may finalize and execute the Agreements.

Copies of this filing have been served upon MID, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power Company, a Division of Duke Energy Corporation

[Docket No. ER00–3454–000]

Take notice that on October 15, 2001, Duke Power Company (Duke), a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) its quarterly transaction summaries of power marketing activity for transactions conducted pursuant to its market-based rate tariffs, FERC Electric Tariff Original Volume No. 3 and FERC Electric Tariff Original Volume No. 5, for the quarter ending September 30, 2001.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER01–3142–002]

Take notice that on October 15, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission) revisions to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Original Volume No. 1, which was previously accepted for filing in Docket No. ER98–1438–000, and which has been reformatted to conform to the requirements of Order No. 614.

The Midwest ISO seeks an effective date of December 15, 2001. The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading FERC Filings for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER02–97–000]

Take notice that on October 15, 2001, Southern California Edison Company (SEC) tendered for filing with the Federal Energy Regulatory Commission (Commission), that effective the fourteenth day of December 2001, Rate Schedule FERC No. 163 and all supplements thereto, filed with the Federal Energy Regulatory Commission by Southern California Edison Company, are to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and the Department of Water and Power of the City of Los Angeles.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Pinnacle West Capital Corporation

[Docket No. ER02–98–000]

Take notice that on October 15, 2001, Pinnacle West Capital Corporation tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement under the Western Systems Power Pool Agreement for service to Utah Associated Municipal Power Systems.

A copy of this filing has been served on Utah Associated Municipal Power Systems.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Company

[Docket No. ER02–99–000]

Take notice that on October 15, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Generator Special Facilities Agreement (GSFA) and two Supplemental Letter Agreements between PG&E and Three Mountain Power, LLC (TMP) (collectively Parties).

The GSFA permits PG&E to recover the ongoing costs associated with owning, operating and maintaining the Special Facilities. As detailed in the Special Facilities Agreement, PG&E proposes to charge TMP a monthly Cost of Ownership Charge equal to the rates for transmission-level, customer-financed facilities in PG&E's currently effective Electric Rule 2, as filed with the California Public Utilities Commission (CPUC). PG&E's currently effective rate of 0.31% for transmission-level, customer-financed Special Facilities is contained in the CPUC's Advice Letter 1960–G/1587–E, effective August 5, 1996, a copy of which is included as Attachment 2 of this filing.

PG&E has requested certain waivers. Copies of this filing have been served upon TMP, the California Independent System Operator Corporation and the CPUC.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Mexico

[Docket No. ER02–100–000]

Take notice that on October 15, 2001, Public Service Company of New Mexico (PNM) submitted for filing with the Federal Energy Regulatory Commission (Commission) an Agreement for Wheeling Services between the Navajo Tribal Utility Authority (NTUA) and PNM (Agreement). The Agreement incorporates an agreed to formula for assessment of State Gross Receipts Taxes and consolidates three interdependent Amendments that comprise the existing wheeling service arrangement between PNM and NTUA into one document that conforms with FERC Order 614 regarding rate schedule designation, formatting and pagination. PNM requests an effective date of January 1, 2002 for the Agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to NTUA and to the New Mexico Public Regulation Commission.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PJM Interconnection, L.L.C.

[Docket No. ER02–101–000]

Take notice that on October 15, 2001, PJM Interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) amendments to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to provide State Consumer Advocates with voting rights in the PJM Members Committee while remaining only ex officio members of PJM.

Copies of this filing were served upon all PJM members, each state electric utility regulatory commission and each Office of State Consumer Advocate in the PJM control area.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Mid-Continent Area Power Pool

[Docket No. ER02–102–000]

Take notice that on October 15, 2001, the Mid-Continent Area Power Pool, on behalf of its public utility members, filed with the Federal Energy Regulatory Commission (Commission) amendments to Schedule F that will allow for MAPP members to transition to membership in regional transmission organizations.

A copy of this filing has been served on all MAPP members and the state commissions in the MAPP region.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–103–000]

Take notice that on October 15, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to Section 17.5 of the Midwest ISO's Open Access Transmission Tariff to charge a fee for non-confirmed transmission service requests for transmission service greater than one week.

The Midwest ISO requests that the amendment become effective December 15, 2001. Copies of this filing were electronically served upon Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the Midwest ISO region.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Lakefield Junction, L.P.

[Docket No. ER02–104–000]

Take notice that on October 15, 2001, Lakefield Junction, L.P. (Lakefield) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of its FERC Electric Tariff Original Volume No. 1.

Lakefield requests that the cancellation be accepted and made effective as of December 14, 2001.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. South Carolina Electric & Gas Company

[Docket No. ER02–105–000]

Take notice that on October 16, 2001, South Carolina Electric & Gas Company (SCE&G) submitted to the Federal Energy Regulatory Commission (Commission) four service agreements: a transmission service agreement for firm point-to-point service and a transmission service agreement for non-firm point-to-point service between SCE&G and Calpine Energy Services, L.P. (Calpine) and a transmission service agreement for firm point-to-point service and a transmission service agreement for non-firm point-to-point service between SCE&G and Entergy-Koch Trading , Inc. (Entergy-Koch) under SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of October 16, 2001 for all four agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon Calpine, Entergy-Koch and the South Carolina Public Service Commission.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26859 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2416–009 South Carolina]

Aquenergy Systems, Inc.; Notice of Availability of Draft Environmental Assessment

October 19, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Ware Shoals Hydroelectric Project and has prepared a Draft Environmental Assessment (DEA) for the project. The project is located on the Saluda River, in the Town of Ware Shoals, within the counties of Laurens, Greenwood, and Abbeville, South Carolina. No federal lands or facilities are occupied or used by the project

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the web at http://www.ferc.gov using the "RIMS" link—select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Please affix Project No. 2416–009 to all comments. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

For further information, contact Timothy Looney at (202) 219–2852.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26854 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2724–023 Ohio]

City of Hamilton, Ohio; Notice of Availability of Environmental Assessment

October 19, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the City of Hamilton Hydroelectric Project, located on the Great Miami River in Butler County, and partially within the city limits of Hamilton, Ohio, and has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

For further information, contact Nick Jayjack at (202) 219–2825.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26856 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2576–022 and 2597–019–Connecticut]

Northeast Generation Company; Notice of Intent To Prepare an Environmental Impact Statement

October 19, 2001.

On August 31, 1999, the Federal Energy Regulatory Commission (Commission) received an application for a New Major License for the Housatonic River Project located on the Housatonic River in Fairfield, New Haven, and Litchfield counties, Connecticut. The application for a New Major License for the Falls Village Project (P–2576) and the Housatonic Project (P–2597) proposes to combine the two projects into a single licensed project, the Housatonic River Project. Approximately 74 acres of land are within project boundaries. The project would include five developments with a total installed capacity of 114.9 megawatts.

Public scoping meetings were held on December 4, 6, and 7, 2000, in Falls Village, New Milford, and Hartford, Connecticut, respectively. Following scoping and based on preliminary environmental analysis of the Housatonic River Project, the Commission staff has determined that licensing of the Housatonic River Project could constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an Environmental Impact Statement (EIS) for the Housatonic River Project in accordance with the National Environmental Policy Act (NEPA). The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff prepared the Scoping Document 2 (SD2) to provide the public with information on: (1) the proposed action and alternatives; (2) the environmental analysis process staff will follow to prepare the EIS; and (3) a revised list of issues to be addressed in the EIS. Copies of the SD2 were distributed to the Commission's service and mailing lists for this project. The SD2 may also be viewed on the Internet at http://www.ferc.gov, and then using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the Commission staff and considered in the final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

This application is not ready for environmental analysis at this time, therefore we are not soliciting terms and conditions at this time.

This notice informs all interested individuals, organizations, and agencies with environmental expertise and concerns, that: (1) the Commission staff has decided to prepare an EIS; and (2) that the scoping conducted on the Housatonic River Project for the Environmental Assessment (EA) and comments filed with the Commission still apply.

If you have any questions regarding this notice, please contact Jarrad Kosa, FERC Team Leader, at (202) 219–2831.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26855 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Amend License To Change Effective Date and Soliciting Comments, Motions To Intervene, and Protests

October 19, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 2107–011.

c. *Date Filed:* October 12, 2001.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Poe Hydroelectric Project.

f. *Location:* On the North Fork Feather River in Butte County, near Pulga, California. The project includes 144 acres of lands of the Plumas National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Tom Jereb, Project Manager, Pacific Gas and Electric Company, P.O. Box 770000, N11D, San Francisco, CA 94177, (415) 973–9320.

i. *FERC Contact:* Questions about this notice can be answered by John Mudre at (202) 219–1208 or e-mail address: *john.mudre@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, terms and conditions, motions to intervene, and protests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (http://www.ferc.gov) under the "e-Filing" link.

k. Pacific Gas and Electric Company (PG&E) has filed a request for a change in the effective date of the license for the Poe Hydroelectric Project from October 1, 1953 to October 26, 1953. The requested change would result in a change of the license expiration date from September 30, 2003 to October 25, 2003.

PG&E is requesting this change to ensure that its application for a new license for the project, filed October 2, 2001, will be timely filed pursuant to § 15(c)(1) of the Federal Power Act (18 U.S.C. § 808). Under the existing license

effective date, the license application was due to be filed on October 1, 2001.

l. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–26853 Filed 10–24–01; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 17, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 26, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0430.

Title: 47 CFR 1.1206, Permit-but-Disclose Proceedings.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit, not-for-profit institutions, federal government, and state, local or tribal governments.

Number of Respondents: 10,000.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement, and recordkeeping requirement.

Total Annual Burden: 5,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission's rules require that a public record be made of ex parte presentations in "permit-but-disclose" proceedings, such as notice-and-comment rulemakings. Persons making such presentations are required to file copies of written presentations and memoranda of new data or arguments in oral presentations. The availability of the ex parte materials helps ensure that interested parties/persons have fair notice of presentations made to the Commission and the development of a complete record.

OMB Control No.: 3060–0215.

Title: Section 73.3527, Local Public Inspection File of Noncommercial Educational Stations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 2,515.

Estimated Time Per Response: 2 hours per week (104 hours per year) + 1 hour for 15 NCE TV Stations.

Frequency of Response: Recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 261,575 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 73.3527 requires each noncommercial educational broadcast station licensee/permittee to maintain a file for public inspection. The contents of the file vary according to type of service and status. The public and the FCC staff in use the data in field investigations to evaluate information about the station's performance. This submission is being sent to the Office of Management and Budget (OMB) to obtain the full three-year approval.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26842 Filed 10–24–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Response

Note: On Thursday, September 25, 2001, this information collection FR 01–23972 appeared at 66 FR 49021–49022. Due to miscalculations in various sections of that document the corrected version is being reprinted in its entirety.

AGENCY: Federal Communications Commission (FCC).

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission.

SUMMARY: Due to miscalculations in the reporting of the number of respondents and of the associated response time that they would need in order to meet the requirements in this information collection, the FCC is withdrawing the Notice which published on September 25, 2001 (66 FR 49021). The FCC has corrected the miscalculations, and is hereby instituting a second comment period.

DATES: Written comments should be submitted on or before December 24, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0291.

Title: Interconnected Systems.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 12,509.

Estimated Time Per Response: .25 hours for 12,405 responses and 2 hrs. for 104 responses.

Frequency of Response: On occasion and annual reporting requirements, and recordkeeping requirement.

Total Annual Burden: 3,309 hours.

Needs and Uses: This rule section allows commercial and private land mobile radio licensees to use common point telephone interconnection with telephone service costs distributed on a non-profit cost sharing basis. Records of such arrangements must be placed in the licensee's station file and made available to participants in the sharing arrangement and the Commission upon request.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26843 Filed 10–24–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2508]

Petition for Reconsideration of Action in Rulemaking Proceeding

October 19, 2001.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by November 9, 2001. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96–98).

Number of Petitions Filed: 1.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26844 Filed 10–24–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: *Tuesday, October 30, 2001 at 10:00 A.M.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE & TIME: *Thursday, November 1, 2001 at 10:00 A.M.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 2001–16: Democratic National Committee by counsel, Joseph E. Sandler and Neil P. Reiff.

Statement of Policy Regarding Party Committee Transfers of Nonfederal Funds for Payment of Allocable Expenses.

Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–26989 Filed 10–23–01; 11:05 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final

approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before December 24, 2001.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell (202) 872-4984, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposals to Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports:

1. Report title: Annual Salary Survey, ad hoc surveys, and Compensation Trend Survey.
Agency form number: FR 29a, b, c.
OMB control number: 7100-0290.
Frequency: FR 29a, once each year; FR 29b, on occasion; FR 29c, once each year.
Reporters: Employers considered competitors for Federal Reserve employees.
Annual reporting hours: FR 29a, 270 hours; FR 29b, 30 hours; FR 29c, 1,300 hours.
Estimated average hours per response: FR 29a, 6 hours; FR 29b, 1 hour; FR 29c, 2 hours.
Number of respondents: FR 29a, 45; FR 29b, 10; FR 29c, 650.
Small businesses are affected.

General description of report: This information collection is voluntary (sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. 244 and 248(1)) and is given confidential treatment (5 U.S.C 552 (b)(4) and (b)(6)).

Abstract: The surveys collect information on salaries, employee compensation policies, and other employee programs from employers that are considered competitors for Federal Reserve employees. The data from the surveys primarily are used to determine the appropriate salary structure and salary adjustments for Federal Reserve employees.

2. Report title: Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H.
Agency form number: Reg H-3.
OMB control number: 7100-0196.
Frequency: Development of policy statement, one-time; Trust company report, quarterly; Transactions recordkeeping, on occasion; and Disclosure, on occasion
Reporters: State member banks and trust companies.
Annual reporting hours: 158,423 hours.
Estimated average hours per response: Development of policy statement, 0.50 hours; Trust company report, 0.25 hours; Transaction recordkeeping, 0.05 Hours; and Disclosure, 0.05 hours.
Number of respondents: 1,509.
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 325). If the records maintained by state member banks come into the possession of the Federal Reserve, they are given confidential treatment (5 U.S.C. §§ 552(b)(4), (b)(6), and (b)(8)).

Abstract: State-chartered member banks and trust companies effecting securities transactions for customers must establish and maintain a system of records, furnish confirmations to customers, and establish written policies and procedures relating to securities trading. They are required to maintain records for three years following the transaction. These requirements are necessary for customer protection, to avoid or settle customer disputes, and to protect the bank against potential liability arising under the anti-fraud and insider trading provisions of the Securities Exchange Act of 1934.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, with Revision, of the Following Report:

1. Report title: Application for Employment with the Board of Governors of the Federal Reserve System.
Agency form number: FR 28.
OMB control number: 7100-0181.
Frequency: On occasion.
Reporters: Employment applicants.
Annual reporting hours: 8,625 hours.
Estimated average hours per response: 1 hour.
Number of respondents: 8,500.
Small businesses are not affected.

General description of report: This information collection is required to obtain a benefit (sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. § 244 and 248(1)). The Board is required to treat the information collected on the Application as confidential pursuant to the requirements of the Privacy Act (5 U.S.C. § 552a). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. §§ 552(b)(2) and (b)(6)).

Abstract: The Application collects information to determine the qualifications, suitability, and availability of applicants for employment with the Board. The Application asks about education, training, employment, and other information covering the period since the applicant left high school.

Current Actions: The Federal Reserve will add two short supplemental forms to the Application. One form will be given to all applicants and collects information about the gender and race of the applicant. The information from this form will be used to assist the Board with federal equal opportunity record keeping, reporting, and other legal requirements. The second form will be filled out by applicants for Research Assistant positions in the divisions of Monetary Affairs, International Finance, and Research and Statistics. The survey will serve to streamline the recruiting process by attempting to determine an applicant=s interest in the policy and research topics that are germane to individual research sections.

Proposal to Implement Under OMB Delegated Authority the Following Report:

1. Report title: Surveys of Board Publications.
Agency form number: FR 1373 a and b.
OMB control number: to be assigned.
Frequency: FR 1373a, 1.5; FR 1373b small-panel, 8; and FR 1373b large-panel,
2. Reporters: FR 1373a, educators who have previously requested materials from the Board; FR 1373b, current subscribers of Board publications.
Annual reporting hours: 762 hours.
Estimated average hours per response: FR 1373a, 30 minutes; FR 1373b, 15 minutes.
Number of respondents: FR 1373a, 400; FR 1373b small-panel, 131; FR 1373b large-panel, 400.
Small businesses are affected.

General description of report: This information collection is voluntary. The FR 1373a survey is authorized pursuant to the Federal Trade Commission Improvement Act (15 U.S.C. §57(a)); the FR 1373b survey is authorized pursuant to 12 U.S.C. §248(i). The specific information collected is not considered confidential.

Abstract: Data from the FR 1373a survey would help the Board staff to 1) conduct periodic reviews and evaluations of the consumer education resources available to consumers and consumer educators, and to 2) evaluate consumer education resources under consideration for distribution. Data from the FR 1373b survey would help the Board staff to evaluate Board publications that are available to the public. The staff would use the FR 1373b data to help determine if the Board should continue to issue certain publications and, if so, whether the public would like to see changes in the method of information delivery, issuance frequency, content, or format/ appearance.

Board of Governors of the Federal Reserve System, October 19, 2001

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 01-26862 Filed 10-24-01; 8:45 am]
BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 19, 2001.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; and thereby indirectly acquire voting shares of Marquette Bank Monmouth, Monmouth, Illinois; The Bank of Santa Fe, Santa Fe, New Mexico; Delaware Financial, Inc., Wilmington, Delaware; First National Bank of Texas, Decatur, Texas; First State Bank of Texas, Denton, Texas; Marquette Bank, N.A., Rogers, Minnesota; Marquette Capital Bank, N.A., Wayzata, Minnesota; The First National Bank and Trust Company of Baraboo, Baraboo, Wisconsin; Meridian Capital Bank, N.A., Milwaukee, Wisconsin; and Marquette Bank Morrison, Morrison, Illinois.

In connection with this application, Applicant also has applied to acquire Marquette Financial Group, Inc., Minneapolis, Minnesota, and thereby engage in securities brokerage and investment advisory activities, pursuant to § 225.28(b)(6) and (7) of Regulation Y.

Board of Governors of the Federal Reserve System, October 19, 2001.

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 01-26863 Filed 10-24-01; 8:45 am]
BILLING CODE 6210-01-S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0118]

Submission for OMB Review; Comment Request Entitled Standard Form 94, Statement of Witness

AGENCY: Federal Vehicle Policy Division, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Standard Form 94, Statement of Witness. A request for public comments was published at 66 FR 37233, July 17, 2001. No comments were received.

DATES: Comments may be submitted on or before November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Moses, Federal Vehicle Policy Division, (202) 501-2507.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090-

0118, concerning Standard Form 94, Statement of Witness. This form is used by all Federal agencies to report accident information involving U.S. Government motor vehicles.

B. Annual Reporting Burden

Respondents: 874.
Annual Responses: 874.
Burden Hours: 291.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0118, Standard Form 94, Statement of Witness, in all correspondence.

Dated: October 17, 2001.

Michael Carleton,

Chief Information Officer.

[FR Doc. 01–26894 Filed 10–24–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FRM B–1]

Personal Property

This notice contains GSA Bulletin FMR B–1 which announces a new provider for official U.S. Government license plates and clarifies changes in the way official identification is displayed on motor vehicles. The text of the bulletin follows:

To: Heads of Federal agencies.
Subject: Acquisition and display of official U.S. Government licence plates and other motor vehicle identification.

1. *What is the purpose of this bulletin?* This bulletin announces a new provider for official U.S. Government license plates and clarifies changes in the way official identification is displayed on motor vehicles.

2. *What is the effective date of this bulletin?* This bulletin is effective October 25, 2001.

3. *What is the expiration date of this bulletin?* This bulletin expires October 25, 2002.

4. *What is the background to this announcement?*

a. The previous supplier of official U.S. Government license plates, the District of Columbia Department of Correction, Lorton Prison, stopped taking license plate orders on June 30, 2001. The new supplier, Federal Prison Industries, Inc. (UNICOR), started taking license plate orders on July 1, 2001. Actual production of license plates at the UNICOR facility will begin on or about September 15, 2001.

b. Subsection 211(k) of the Federal Property and Administrative Services Act of 1949, as amended, requires motor vehicles owned or leased by the Government to display official U.S. Government identification. Sections 102–34.110 and 102–34.120 of the Federal Management Regulation (FMR) implemented this section of the Property Act, providing for placement and size of this identification.

c. On June 21, 2001, the General Services Administration's (GSA) Office of Governmentwide Policy entered into a Memorandum of Understanding (MOU) with UNICOR for the production of license plates for Federal agencies. Prior to entering into the MOU, GSA's Office of Governmentwide Policy obtained a waiver from the provisions of sections 102–34.110 through 102–34.120 and 102–34.170 of the FMR. This Memorandum of Understanding and FMR waiver were coordinated through the Federal Fleet Policy Council, obtaining the approval of all agencies operating motor vehicle fleets.

d. The MOU between GSA and UNICOR and the FMR waiver allow changes to the way license plates are produced in order to increase the security of Federal license plates and eliminate the need for identification decals in the rear windows of motor vehicles owned or leased by the Government.

5. *What does the new license plate look like?* The new license plates will have the following characteristics:

a. The plate will be flat and digitally produced with an embossed flange rim.

b. The plate will have a reflective sheeting similar to most regular State-issued license plates.

c. The plate will have a security reflective watermark consistent on all plates (repeating the phrase "U.S. Government") and a hologram positioned vertically down the center (an American eagle).

d. The plate will contain Federal agency or bureau identification that readily identifies the vehicle's owner.

6. *What must agencies do to order license plates?* All Federal agencies must execute an addendum to the MOU between GSA and UNICOR. Agencies will prepare only one addendum listing all bureaus, departments, districts, etc. authorized to order license plates. This addendum will provide UNICOR with specific ordering and payment information, and include, at a minimum, the following information:

a. Agency name.
b. Agency code.
c. Point of contact.
d. Mailing address.
e. Telephone number.
f. Email address.
g. Anticipated annual need.
h. Personnel authorized to order license plates.
i. Invoicing and billing information.
j. Shipping instructions.
k. Graphic description of agency information on license plates.

7. *Can a Federal agency or activity order license plates without completing an addendum to the Memorandum of Understanding?* No.

8. *What activities may order and receive shipments of license plates?* Only Federal agencies or activities may order or receive shipments of official U.S. Government license plates.

9. *What procedures should agency field activities follow when ordering license plates?* Agency field activities should contact their agency (national level) Fleet Manager for guidance.

10. *What is the point of contact at UNICOR?*

Mr. Abraham Burgos, Program Manager, U.S. Department of Justice, UNICOR Federal Prison Industries, Inc., 400 First Street, NW., Room 6010, Washington, DC 20534, (202) 305–3752, *aburgor@central.unicor.gov*

11. *Who do I contact if I still have questions?*

Mr. Michael Moses, Team Leader, General Services Administration, Office of Governmentwide Policy, Federal Vehicle Policy Division (MTV), 1800 F Street, NW., Room G241, Washington, DC 20405, (202) 501–2507, *mike.moses@gsa.gov*

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 01–26929 Filed 10–24–01; 8:45 am]

BILLING CODE 6820–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.
ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

David A. Padgett, Ph.D., The Ohio State University: Based on the report of an investigation conducted by The Ohio State University (OSU), the Respondent's admissions, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Dr. Padgett, an Assistant Professor at the OSU College of Dentistry engaged in scientific misconduct in grant application 1 R01 AG20102–01 submitted to the National Institute of Aging, National Institutes of Health (NIH).

Specifically, PHS finds that Dr. Padgett plagiarized and misrepresented as his own research data for Figures 1 and 2 of this NIH grant application, data which represented unpublished experiments originally conducted by a researcher at another institution for a private company. The plagiarism was a significant misrepresentation because the data appeared in the preliminary results section of the NIH grant application. The respondent used these experiments, which were relevant to the proposed research, to support the request for funding.

Dr. Padgett has entered into a Voluntary Exclusion Agreement (Agreement) in which he has voluntarily agreed for a period of three (3) years, beginning on October 4, 2001:

(1) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That Dr. Padgett and any institution employing him are required to certify, in every PHS application or report in which he is involved, that all persons who contribute original sources of ideas, data, or research results to the applications or reports are properly cited or otherwise acknowledged. This requires Dr. Padgett and the institution, with respect to Dr. Padgett's contributions to the application or report, to certify that all individuals (both within and outside the institution) who contributed to the application or report are acknowledged. The institution must also send a copy of the certification to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 01–26886 Filed 10–24–01; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.
ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: 2001–2003 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC). In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on August 28, 2001 and allowed 60 Days for public comment. No pubic comments were received. The purpose of this notice is to allow an additional 30 Days for public comment.

DATES: Comments on this notice must be received by November 26, 2001.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235; Washington, D.C. 20503.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

2001–2003 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC)

The MEPS–IC, an annual survey of the characteristics of employer-sponsored health insurance, was first conducted by AHRQ in 1997 for the calendar year 1996. The survey has since been conducted annually for calendar years 1997 through 2000. AHRQ proposes to continue this annual survey of establishments for calendar years 2001 through 2003. The survey data for calendar year 2001 will be collected in 2002.

Likewise, calendar year 2002 data will be collected in 2003 and calendar year 2003 data in 2004. The survey will collect information from both public and private employers. This survey will be conducted for AHRQ by the Bureau of Census using a sample comprised of:

1. Employers selected from Census Bureau lists of private sector employers and governments (known as the List Sample), and

2. Employers identified by respondents to the MEPS-Household Component (MEPS–HC) for the same calendar year (known as the Household Sample). The MEPS–HC is an annual household survey designed to collect information concerning health care expenditures and related data for individuals. The size of the Household sample varies from year to year with the size of the MEPS–HC.

Data to be collected from each employer will include a description of the business (e.g., size, industry) and descriptions of health insurance plans available, plan enrollments, total plan costs and costs to employees.

Data Confidentiality Provisions

MEPS—IC List Sample data confidentiality is protected under the U.S. Census Bureau confidentiality statute, Section 9 of Title 13, United States Code. MEPS—IC Household Sample data confidentiality is protected under Sections 308(d) and 924(c) of the Public Health Service (PHS) Act (42 U.S.C. 242m(d) and 42 U.S.C.299c–3(c)).

Section 308(d), of the PHS Act, the confidentiality statute of the National Center for Health Statistics, is applicable because the MEPS–HC sample is derived from respondents in an earlier NCHS survey. Section 924(c), the confidentiality statute of AHRQ, applies to all data collected for research that is supported by AHRQ. All data products listed below must fully comply with the data confidentiality statute under which the raw data was collected as well as any additional confidentiality provisions that apply.

Data Products

Data will be produced in three forms: (1) files derived from the Household Sample, which can be linked back to other information from household respondents in the MEPS–HC, will be available to researchers at the AHRQ Research Data Center; (2) files containing employer information from the List Sample will be available for use by researchers at the Census Bureau's Research Data Centers; and (3) a large compendium of tables of estimates, also based on List Sample data, will be produced and made available on the

AHRQ website. These tables will contain descriptive statistics, such as, numbers of establishments offering health insurance, average premiums, average contributions, total enrollments, numbers of self insured establishments and other related statistics for a large number of population subsets defined by firm size, state, industry and establishment characteristics, such as, age, profit/nonprofit status and union/nonunion.

The data are intended to be used for purposes such as:

- Generating national and State estimates of employer health care offerings;
- Producing estimates to support the Bureau of Economic Analysis and the Center for Medicare and Medicaid Services in their production of health care expenditure estimates for the National Health Accounts and the Gross Domestic Product;
- Producing national and State estimates of spending on employer-sponsored health insurance to study the results of national and State health care policies;
- Supplying data for modeling the demand for health insurance; and
- Providing data on health plan choices, costs, and benefits that can be linked back to households' use of health care resources in the MEPS–HC for studies of the consumer health care selection process.

These data provide the basis for researchers to address important questions for employers and policymakers alike.

Method of Collection

The data will be collected using a combination of modes. The Census Bureau's first contact with employers will be made by telephone. This contact will provide information on the availability of health insurance from the employer and essential persons to contact. Based upon this information, the Census Bureau will mail a questionnaire to the employer. In order to assure high response rates, the Census Bureau will follow-up with a second mailing after an interval of approximately 30 working days, followed by a telephone call to collect data from those who have not responded by mail.

As part of this process, for larger respondents with high burdens, such as State employers and very large firms, the Census Bureau will, if needed, perform personal visits and do customized collection, such as, acceptance of data in computerized formats and use of special forms.

ESTIMATED ANNUAL RESPONDENT BURDEN

Survey years	Annual number of respondents	Estimated time per respondent in hours	Estimated total annual burden hours	Estimated annual cost to the government
2001	33,855	.6	20,307	$8,250,000
2002	35,769	.6	21,663	8,840,000
2003	33,855	.6	20,307	8,810,000

Request for Comments

In accordance with the above cited Paperwork Reduction Act legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 18, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–26838 Filed 10–24–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–176]

Notice of the Revised Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), requires that ATSDR and the Environmental Protection Agency (EPA) revise the Priority List of Hazardous Substances. This list includes substances most commonly found at facilities on the CERCLA National Priorities List (NPL) which have been determined to be of greatest concern to public health at or around these NPL hazardous waste sites. This announcement provides notice that the agencies have developed and are making available a revised CERCLA Priority List of 275 Hazardous Substances, based on the most recent information available. Each substance on the priority list is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequently a candidate for the identification of priority data needs.

In addition to the Priority List of Hazardous Substances, ATSDR has developed a Completed Exposure Pathway Site Count Report. This report lists the number of sites or events with ATSDR activities where a substance has been found in a completed exposure pathway (CEP). This report is included in the Support Document of the Priority List.

ADDRESSES: Requests for a copy of the report, the 2001 CERCLA Priority List of Hazardous Substances That Will Be The Subject of Toxicological Profiles and Support Document, including the CEP report, should bear the docket control number ATSDR–176, and should be submitted to: ATSDR Information Center, Division of Toxicology, Mail Stop E–29, 1600 Clifton Rd., NE., Atlanta, GA 30333. Requests must be in writing.

Electronic Availability: The 2001 Priority List of Hazardous Substances will be posted on ATSDR's World-Wide Web server on the Internet located at http://www.atsdr.cdc.gov.clist.html.

The CEP Report will also be posted at http://www.atsdr.cdc.gov.cep.html.

This is an informational notice only, and comments are not being solicited at this time. However, any comments received will be considered for inclusion in the next revision of the list and placed in a publicly accessible docket; therefore, please do not submit confidential business or other confidential information.

FOR FURTHER INFORMATION CONTACT: ATSDR, Division of Toxicology, Emergency Response and Scientific Assessment Branch, 1600 Clifton Road N.E., Mail Stop E–29, Atlanta, GA 30333, telephone 888–422–8737.

SUPPLEMENTARY INFORMATION: CERCLA establishes certain requirements for ATSDR and EPA with regard to hazardous substances that are most commonly found at facilities on the CERCLA NPL. Section 104(i)(2) of CERCLA, as amended [42 U.S.C. 9604(i)(2)], required that the two agencies prepare a list, in order of priority, of at least 100 hazardous substances that are most commonly found at facilities on the NPL and which, in their sole discretion, have been determined to pose the most significant potential threat to human health (see 52 FR 12866, April 17, 1987). CERCLA also required the agencies to revise the priority list to include 100 or more additional hazardous substances (see 53 FR 41280, October 20, 1988), and to include at least 25 additional hazardous substances in each of the three successive years following the 1988 revision (see 54 FR 43619, October 26, 1989; 55 FR 42067, October 17, 1990; 56 FR 52166, October 17, 1991). CERCLA also requires that ATSDR and EPA shall, at least annually thereafter, revise the list to include additional hazardous substances that have been determined to pose the most significant potential threat to human health. In 1995, the agencies altered the publication schedule of the priority list by moving to a 2-year publication schedule, reflecting the stability of this listing activity (60 FR 16478, March 30, 1995). As a result, the priority list is now on a 2-year publication schedule with a yearly informal review and revision. Each substance on the CERCLA Priority List of Hazardous Substances is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequently a candidate for the identification of priority data needs.

The initial priority lists of hazardous substances (1987–1990) were based on the most comprehensive and relevant information available when the lists were developed. More comprehensive sources of information on the frequency of occurrence and the potential for human exposure to substances at NPL sites became available for use in the 1991 priority list with the development of ATSDR's HazDat database. Utilizing this database, a revised approach and algorithm for ranking substances was developed in 1991, and a notice announcing the intention of ATSDR and EPA to revise and rerank the Priority List of Hazardous Substances was published on June 27, 1991 (56 FR 29485). The subsequent 1991 Priority List and revised approach used for its compilation was summarized in the "Revised Priority List of Hazardous Substances" **Federal Register** notice published October 17, 1991 (56 FR 52166). The same approach and the same basic algorithm have been used in all subsequent activities, including the 2001 listing activity. The algorithm used in ranking hazardous substances on the priority list consists of three criteria, which are combined to result in the total score. The three criteria are: frequency of occurrence at NPL sites; toxicity; and potential for human exposure.

Since HazDat is a dynamic database with ongoing data collection, additional information from the HazDat database became available for the 2001 listing activity. This additional information has been entered into HazDat since the development of the 1999 Priority List of Hazardous Substances. The site-specific information from HazDat that is used in the listing activity has been collected from ATSDR public health assessments, health consultations, and from site file data packages that are used to develop these public health assessments. The new information may include more recent NPL frequency of occurrence data, additional concentration data, and more information on exposure to substances at NPL sites. With these additional data and with a refinement made in assigning toxicity scores to radionuclides for this listing purpose, 18 substances have been replaced on the list of 275 substances since the 1999 publication. Of the 18 replacement substances, 5 are new candidate substances, and 13 are substances that were previously under consideration. These replacement substances and changes in the order of substances appearing on the CERCLA Priority List of Hazardous Substances will be reflected in the program activities that rely on the list for future direction.

The 2001 Priority List of Hazardous Substances includes 275 substances that have been determined to be of greatest concern to public health based on the criteria of CERCLA section 104(i)(2) [42 U.S.C. 9604(i)(2)]. A total of 840 candidate substances have been analyzed and ranked with the current algorithm. Of these candidates, the 275 substances on the priority list may become the subject of toxicological profiles in the future. The top 25 substances on the 2001 Priority List of Hazardous Substances are listed below.

Rank	Substance name
1	Arsenic
2	Lead
3	Mercury
4	Vinyl Chloride
5	Polychlorinated Biphenyls
6	Benzene
7	Cadmium
8	Benzo (A) Pyrene
9	Polycyclic Aromatic HYDROCARBONS
10	Benzo (B) Fluoranthene
11	Chloroform
12	DDT, P,P'-
13	Aroclor 1254
14	Aroclor 1260
15	Trichloroethylene
16	Dibenzo (A,H) Anthracene
17	Dieldrin
18	Chromium, Hexavalent
19	Chlordane
20	Hexachlorobutadiene
21	DDE, P,P'-
22	Coal Tar Creosote
23	Aldrin
24	Phosphorus, White
25	Benzidine

ATSDR and EPA intend to publish the next revised list of hazardous substances in two years, with an informal review and revision performed in one year. These revisions will reflect changes and improvements in data collection and availability. Additional information on the existing methodology used in the development of the CERCLA Priority List of Hazardous Substances can be found in the Support Document to the List and in the **Federal Register** notices mentioned above.

In addition to the revised priority list, ATSDR is also releasing a Completed Exposure Pathway Site Count Report. A completed exposure pathway (CEP) is an exposure pathway that links a contaminant source to a receptor population. The CEP ranking is very similar to a sub-component of the potential-for-human-exposure component of the listing algorithm. The CEP ranking is based on a site frequency count, and thus lists the number of sites at which a substance has been found in a CEP. ATSDR's HazDat database contains this information which is derived from ATSDR public health assessments and health consultations.

Because exposure to hazardous substances is of significant concern, ATSDR has been tabulating the substances to which people have been exposed at hazardous waste sites. Much interest has been focused on this tabulation. Therefore, ATSDR is announcing the publishing of this CEP report along with the CERCLA Priority List of Hazardous Substances. Since this CEP report focuses on documented exposure, it provides an important prioritization based on substances to which people are exposed.

The substances on the CEP report are similar to the substances on the CERCLA Priority List of Hazardous Substances. However, there are some substances that are on the CEP report, because they are frequently found in completed exposure pathways, but are not on the CERCLA Priority List because they have a very low toxicity (e.g., sodium). Since the CERCLA Priority List incorporates three different components (toxicity, frequency of occurrence, and potential for human exposure) to determine its priority substances, substances with very low toxicity are not on the CERCLA Priority List and consequently are not the subject of toxicological profiles. In addition, since the Priority List is mandated by CERCLA, it only uses data from sites on the CERCLA National Priorities List, whereas the CEP report uses data from all sites with ATSDR activities that have a CEP. Of the 100 substances on the CEP report, the 25 substances found at the most number of sites in a CEP are presented below.

NUMBER OF SITES WITH SUBSTANCE IN A CEP

Substance name	All sites	NPL sites
Lead	359	238
Trichloroethylene	319	271
Arsenic	267	176
Tetrachloroethylene	236	190
Cadmium	176	123
Benzene	174	128
Chromium	169	113
Volatile Organic Compounds, Unspecified	162	118
Polychlorinated Biphenyls	152	104
Mercury	136	82
Zinc	134	83
Manganese	134	80
1,1,1–Trichloroethane	125	106
Copper	118	67
Chloroform	113	88
1,1–Dichloroethene	105	91
Methylene Chloride	103	72
Toluene	102	68
Vinyl Chloride	99	84
Nickel	98	63
Benzo (A) Pyrene	98	54
Polycyclic Aromatic Hydrocarbons	97	68
Barium	96	54
Antimony	88	57
1,2–Dichloroethane	86	71

Note: Sorted by the All Sites column. All Sites = all sites with ATSDR activities that have a CEP; NPL Sites = current and former sites on the National Priorities List, as mandated.

Dated: October 18, 2001.

Donna Garland,

Deputy Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–26875 Filed 10–24–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health; Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Applying Genetics and Public Health Strategies to Primary Immunodeficiency Diseases.

Times and Dates:

8 a.m.—6 p.m., November 8, 2001
8 a.m.—1 p.m., November 9, 2001

Place: Hyatt Regency, 285 Peachtree Street, Atlanta, Georgia 30309, Phone: 404–577–1234.

Status: Open to the public for observation and comment, limited only by the space available. The meeting room accommodates approximately 60 people.

Purpose: The purpose of the meeting is to identify a public health strategy for Primary Immunodeficiency (PI) Disease, including a public health assessment, examine laboratory issues including uses of genetic tests, to identify public health interventions to increase early recognition, to review efforts to increase awareness about these diseases among providers and the public, and to identify future public health strategies for assessment, intervention, and education.

Matters to be Discussed: The meeting objectives, although focused specifically on PI, also establish a framework useful for developing public health strategies for other common complex diseases. The objectives are: (1) To make a public health assessment of primary immunodeficiency diseases; (2) To examine uses of genetic tests and role in clinical practice; (3) To identify public health interventions to enhance early identification and intervention; (4) To review efforts to educate providers, patients and the public about primary immunodeficiency; and (5) To identify next steps for public health, including research priorities and workshop recommendations.

Agenda items are tentative and subject to change.

CONTACT PERSON FOR MORE INFORMATION: Mary Lou Lindegren, M.D., Designated Federal Official, CDC, 4770 Buford Highway, NE, MS K–28, Atlanta, Georgia 30341–3724; telephone 770–488-3235, fax 770–488–3236; e-mail: mll3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 20, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–26873 Filed 10–24–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0459]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling; Notification Procedures for Statements on Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the regulation requiring manufacturers, packers, and distributors of dietary supplements to notify FDA that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Submit written or electronic comments on the collection of information by dECEMBER 24, 2001.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Labeling; Notification Procedures for Statements on Dietary Supplements—21 CFR Part 101.93 (OMB Control Number 0910–0331)—Extension

Description: Section 403(r)(6) of the act (21 U.S.C. 343(r)(6)) requires that the agency be notified by manufacturers, packers, and distributors of dietary supplements that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in section 403(r)(6) of the act. Section 403(r)(6) of the act requires that the agency be notified, with a submission about such statements, no later than 30 days after the first marketing of the dietary supplement. Information that is required in the submission includes: (1) The name and address of the manufacturer, packer, or distributor of the dietary supplement product; (2) the text of the statement that is being made; (3) the name of the dietary ingredient or supplement that is the subject of the statement; (4) the name of the dietary supplement (including the brand name); and (5) a signature of a responsible individual who can certify the accuracy of the information presented.

The agency established § 101.93 (21 CFR 101.93) as the procedural regulation for this program. Section 101.93 provides details of the procedures associated with the submission and identifies the information that must be included in order to meet the requirements of section 403 of the act.

Description of Respondents: Businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
101.93	2,500	1	2,500	.75	1,875

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate information to meet the requirements of section 403 of the act in submitting information regarding section 403(r)(6) of the act statements on labels or labeling of dietary supplements. The agency is requesting only information that is immediately

available to the manufacturer, packer, or distributor of the dietary supplement that bears such a statement on its labeling or in its labeling. This estimate is based on the average number of notification submissions received by the agency in the preceding 18 months.

Dated: October 19, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–26885 Filed 10–24–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Participants at the Process Analytical Technologies Subcommittee of the Advisory Committee for Pharmaceutical Science

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting names of qualified persons to participate on the Process Analytical Technologies Subcommittee (the Subcommittee) of the Advisory Committee for Pharmaceutical Science. The Subcommittee will identify and report to the Advisory Committee for Pharmaceutical Science on scientific issues related to application and validation of online process technologies such as near infrared and Raman spectroscopy and imaging methods for application in the manufacture of drug substances and drug products. The Subcommittee will also report on the potential benefits and risks associated with the application of these new technologies to public health and, as part of this analysis, evaluate the feasibility of the parametric release concept.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented and, therefore encourages recommendations of qualified candidates from these groups. Final selections from among qualified candidates will be based on the expertise demonstrated and previous experience with online process technologies.

DATES: All applications should be received by November 30, 2001.

ADDRESSES: Submit applications to David Morley (address below).

FOR FURTHER INFORMATION CONTACT: David Morley, Office of Testing and Research (HFD–900), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5186, FAX 301–827–3787, e-mail: morleyd@cder.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is seeking qualified persons to participate on the Process Analytical Technologies Subcommittee being formed under the Advisory Committee for Pharmaceutical Science. The Subcommittee will identify and report on the current state of technology, validation procedures, and the mechanistic basis of online process controls in both drug development and scaleup. These participants are not members of the Subcommittee and will not be voting on any issues, but they are encouraged to participate in the discussion of the issues. The Subcommittee will evaluate the potential for enhancing product quality and providing public health benefit.

II. Selection Criteria

Persons from government, industry, academia, and other organizations (such as research institutes) applying to participate on the Subcommittee should have exceptional accomplishments and be leading technical experts in the appropriate fields. In particular, expertise in application of the following scientific disciplines to pharmaceutical development and pharmaceutical manufacturing processes is desired: Process analytical chemistry, pharmaceutics, industrial pharmacy, chemical engineering, pharmaceutical analysis, chemometrics, pattern recognition, computer expert systems, information technology, and statistics.

III. Application Procedures

Any interested person should submit appropriate biographical material and a list of scientific publications relevant to the Subcommittee to the contact person listed above.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 17, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–26834 Filed 10–24–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Organ Procurement and Transplantation Network

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of meeting of the Advisory Committee on Organ Transplantation.

SUMMARY: Pursuant to Public Law 92–463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the first meeting of the Advisory Committee on Organ Transplantation (ACOT), Department of Health and Human Services (HHS). The meeting will be held from approximately 8:15 a.m. to 6 p.m. on December 3, 2001, and from 8 a.m. to 5:15 p.m. on December 4, 2001, at the Hyatt Dulles, at Dulles International Airport, 2300 Dulles Corner Boulevard, Herndon, Virginia 20171. The meeting will be open to the public; however, seating is limited and pre-registration is encouraged (see below).

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. section 217a, section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), the ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, and, thereby, increasing public confidence in the integrity and effectiveness of the transplantation system. The ACOT is composed of 41 members, including the Chair. Members are non-governmental individuals with diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

The ACOT will consider a number of subjects relating to the means of expanding the donor pool and increasing organ donation; and it will also review the organ allocation policies submitted by the Organ Procurement and Transplantation Network (OPTN) to HHS for approval. The draft meeting agenda and a registration form are available on the Division of Transplantation's Web site: *http://www.hrsa.gov/osp/dot/whatsnew.htm* or the Department's donation Web site at: *http://www.organdonor.gov/news.htm*. The completed registration form should be submitted by facsimile to McFarland and Associates, Inc., the logistic support contractor for the meeting, at FAX number (301) 589–2567. Individuals without access to the Internet who wish to register may call McFarland and Associates, Inc., at 301–562–5362. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACOT Executive Director, Jack Kress, in advance of the meeting. Mr. Kress may be reached by telephone at 301–443–8653, by e-mail at: *jkress2@hrsa.gov*, or in writing at the address of the Division of Transplantation provided below. Management and support services for ACOT functions are provided by the Division of Transplantation, Office of Special Programs, HRSA, Room 7C–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone 301–443–7577.

There will be a limited period of time for presentation of selected public comments before the Committee considers each allocation policy and donation issue. The public may review the current and proposed modified OPTN policies on the Division of Transplantation's Web site at: *http://www.hrsa.gov/osp/dot/whatsnew.htm* and may also obtain this material, as well as reports of committee discussions of these policies by contacting the Division of Transplantation at 301–443–7577. While public comments are welcome for possible presentation, please note that the Committee will be working with a full agenda and a limited amount of time. Therefore, to facilitate this process, we recommend that individuals interested in providing public comments submit those comments in writing by November 16, 2001, to the Executive Director of the Committee (address above). The Department reserves the right to select comments from among those submitted for oral presentation within the time available, although it will include all comments in the record of the ACOT meeting.

Dated: October 19, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–26932 Filed 10–24–01; 8:45 am]

BILLING CODE 4165–15–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meeting

TIME AND DATE: October 29, 2001, 9:00 a.m.–3:30 p.m.

PLACE: Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

STATUS: Open session.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the April 23, 2001, Meeting of the Board of Directors
- President's Report
- Country Priorities Presentation
- Overview of IAF
- IAF Strategic Plan for Fiscal Years 2002–2007
- IAF 2000 Results Report
- IAF Web Site
- Review of a Sample of Successful Closed-out Grants
- IAF Experience with Corporate Partners
- Improving the Role, Mission, and Operations of the IAF

CONTACT PERSON FOR MORE INFORMATION: Carolyn Karr, General Counsel, (703) 306–4350.

Dated: October 22, 2001.

Carolyn Karr,

General Counsel.

[FR Doc. 01–27061 Filed 10–23–01; 3:02 pm]

BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: Karl W. Widl, Los Altos, OH, PRT–048967.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Thomas Heideman, Lockport, NY, PRT–049027.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Scott Starbard, Edmonds, WA, PRT–049031.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Daniel Dienstbier, Omaha, NE, PRT–049032.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: October 12, 2001.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–26876 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Habitat Conservation Plan and Notice of Receipt of Applications for Incidental Take Permits by Gulf Highlands LLC and Fort Morgan Paradise Joint Venture on Privately Owned Lands in Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Gulf Highlands LLC and Fort Morgan Paradise Joint Venture (Applicants) seek incidental take permits (ITP) from the Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed take would be incidental to otherwise lawful activities, including construction of residential condominiums, commercial facilities, and recreational amenities on adjoining tracts of land owned by the Applicants. The proposed action would involve approval of the Habitat Conservation Plan (HCP) jointly developed by the Applicants, as required by Section 10(a)(2)(B) of the Act, to minimize and mitigate for incidental take of the Federally-listed, endangered Alabama beach mouse (*Peromyscus polionotus ammobates*)(ABM), the endangered Kemp's ridley sea turtle (Lepidochelys kempii), the threatened green sea turtle (*Chelonia mydas*), and the threatened loggerhead sea turtle (*Caretta caretta*). The subject permits would authorize take of ABM and the three sea turtles along 2,844 linear feet of coastal dune habitat fronting the Gulf of Mexico in Baldwin County, Alabama. The Applicants' properties total 180.5 acres, but only 62 acres would be developed. Additionally, about 16 acres of platted road rights-of-way are encompassed by the project and bring the total area to 196.4 acres. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the ABM and sea turtles is provided in the Applicants' HCP, the Service's Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service announces the availability of an Environmental Assessment (EA) and Habitat Conservation Plan/Applications for Incidental Take. The permit applications incorporate the Applicants' HCP as the proposed action for evaluation in the Service's EA. Copies of the EA on compact disk and the HCP may be obtained by making a request to the Regional Office (*see* **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has not made a preliminary determination of whether issuance of the ITPs would be a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The Service must decide whether issuance of the proposed ITPs constitutes a major Federal action and whether to prepare a Finding of No Significant Impact based on the EA and public comment, or if preparation of an Environmental Impact Statement (EIS) is appropriate. The final determination will be made no sooner than 45 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the Service's EA. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit numbers TE007985–0 and TE031307–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to *"david_dell@fws.gov"*. Please submit comments over the Internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (*see* **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (*see* **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the ITP application, EA, and HCP should be sent to the Service's Regional Office (*see* **ADDRESSES**) and should be received on or before December 10, 2001.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain an electronic copy on compact disk by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), Ecological Services Field Office, 1208-B Main Street, Daphne, Alabama 36526, or Bon Secour National Wildlife Refuge, 12295 State Highway 180, Gulf Shores, Alabama 35603. Written data or comments concerning the application or HCP should be submitted to the Regional Office. Please reference permit numbers TE007985–0 and TE031307–0 in requests for the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (*see* **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Ms. Celeste South, Fish and Wildlife Biologist, Daphne Field Office, Alabama (*see* **ADDRESSES** above), telephone: 251/441–5181.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles).

ABM habitat on the Applicants' properties consists of approximately 38 acres of primary/secondary dunes, 21.7 acres of escarpment, 21.8 acres of adjacent scrub and 90 acres of interior scrub. The total area of designated critical habitat among these habitats is 32.4 acres, consisting of open beach dunes and swales within the southern portions of the properties, extending from the mean high water line of the Gulf of Mexico northward for 500 feet.

The green turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests, four of which were found on shoreline beaches along the Applicants' properties.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the period 1994–2001 report no nests of the Kemp's ridley sea turtle on beaches along the Applicants' properties. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The two projects, Gulf Highlands Condominiums (GHC) and Beach Club West (BCW), are separate developments but are being considered together at the request of Gulf Highlands LLC and Fort Morgan Paradise Joint Venture, the respective Applicants. The two Applicants have joined together to produce a single Habitat Conservation Plan (HCP), as required by the Endangered Species Act, for their projects. The Applicants hope to obtain their permits and jointly implement the provisions of the HCP.

The EA considers the effects of six project alternatives, including a no-action alternative that would result in no new construction on the Project site, and a single family home alternative that would result in build out of the properties as originally platted. Neither of these alternatives would be economically feasible for the applicants. The remaining four alternatives involve various arrangements of high-rise condominiums. The important differences among these four alternatives relate to the amount of beach front developed, the width and placement of an undeveloped ABM "corridor" to allow ABM movements to and from the dune and escarpment habitats, and the placement of the condominium towers. One of these alternatives was suggested by the Service as a "less-take" alternative and would move the development approximately 300 feet north of the escarpment. The applicants have cited legal and economical reasons for why the less-take alternative could not be implemented.

In the Applicant's preferred alternative, the two projects involve construction of large condominium developments near the Gulf of Mexico on approximately 62 of the total 180.5 acres of wet beach, coastal dune, escarpment, wetlands, and scrub habitats owned by the applicants. An additional 16 acres of platted road rights-of-way, owned by Baldwin County, exist within the project boundary. The project area therefore encompasses about 196.4 acres. Applicant land holdings extend from the Gulf to Alabama Highway 180. Only part of this acreage would actually be developed, totaling about 62.7 acres of ABM habitat. The remaining area, some of which is ABM habitat, would be conserved in perpetuity. Six 20-story condominium towers (two for BCW and four for GHC), thirteen single family units, and a commercial development including about 20 housing units on the upper level would be constructed. Collectively this development would contain 973 living units. Other facilities would include parking lots, access roads, swimming pools, tennis courts, patios, a club house, shops, a proposed medical facility, sidewalks, landscaped areas, small freshwater lakes-detention ponds, trails, and dune walkovers for access to the Gulf of Mexico. The condominium structures would be oriented on an east-west alignment starting approximately 660 to 730 feet north of the Gulf of Mexico. The applicants own approximately 2,844 feet of Gulf frontage. As proposed in the Applicants' preferred alternative, 1,835 feet of that frontage would be developed and 909 feet conserved in perpetuity. The area south of the structures would be sloped by the applicants and native vegetation planted.

All proposed alternatives include measures designed to avoid or minimize take. In addition to these measures, in the applicant's preferred alternative, a planned development adjoining the western boundary of the project, the French Caribbean, would not be constructed and would remain undeveloped as an ABM conservation area. Fort Morgan Paradise Joint Venture owns the French Carribean development, and has offered to forego its construction. As this development has received a Corps of Engineers wetland permit, and was subject to review under section 7 of the Endangered Species Act, there is no ITP required for it.

Based on trapping data and other research, the ABM uses portions (some on a permanent basis, others episodically) of the entire tract of land, except for wetlands, heavily vegetated areas, and northern sections that lack suitable soil for burrowing. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators, permanent human disturbances and fragmentation of habitat and ABM populations. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and misorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicants have prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has not made a preliminary determination whether the issuance of the ITPs is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This determination will be made incorporating public comment received in response to this notice and will be based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of section 10(a)(1)(B) ITPs complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: October 15, 2001.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 01–26874 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Comanche Indian Tribe Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Comanche Indian Tribe Liquor Control Ordinance. The Ordinance regulates the control, possession, and sale of liquor on Comanche trust lands, in conformity with the laws of the State of Oklahoma, where applicable and necessary. Although the Ordinance was adopted on April 7, 2001, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on October 25, 2001.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Under the Act of August 15, 1953, Public Law 277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in Rice v. Rehner, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Comanche Indian Tribe Liquor Control Ordinance, Resolution No. 32–01, was duly adopted by the Comanche Business Committee on April 7, 2001. The Comanche Indian Tribe, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Comanche Indian Tribe.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Department Manual 8.1.

I certify that by resolution No. 32–01, the Comanche Indian Tribe Liquor Control Ordinance was duly adopted by the Comanche Business Committee on April 7, 2001.

Dated: October 10, 2001.

Neal A. McCaleb,

Assistant Secretary—Indion Affairs.

The Comanche Indian Tribe Liquor Control Ordinance, Resolution No. 32–01, reads as follows:

Comanche Indian Tribe Liquor Control Ordinance

Article I. Declaration of Public Policy and Purpose

(1) The Comanche Business Committee finds that exclusive tribal control and regulation of liquor is necessary to protect the health and welfare of tribal members, to address specific concerns relating to alcohol use in Comanche Indian Country, and to achieve maximum economic benefit to the Tribe.

(2) The introduction, possession and sale of liquor in Comanche Indian Country is a matter of special concern to the Comanche Business Committee.

(3) The Comanche Business Committee finds that a complete ban on liquor within Comanche Indian Country is ineffective and unrealistic. However, it recognizes the need for strict regulation and control over liquor transactions within Comanche Indian Country because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution and consumption of liquor.

(4) Federal law forbids the introduction, possession, and sale of liquor in Indian country except when the same is in conformity both with the laws of the State and the Tribe, 18 U.S.C. 1161. As such, compliance with this ordinance shall be in addition to, and not substitute for, compliance with the laws of the State of Oklahoma.

(5) It is in the best interests of the Tribe to enact a tribal ordinance governing liquor sales in Comanche Indian Country and which provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of Comanche Indian Country. Further, the Tribe has determined that said purchase, distribution and sale shall take place on designated Comanche tribal land only.

Article II. Definitions

As used in this title, the following words shall have the following meanings unless the context clearly require otherwise:

(a) *Alcohol.* That substance known as ethyl alcohol, hydrated oxide of ethyl, alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

(b) *Alcoholic Beverage.* This term is synonymous with the term liquor as defined in paragraph (1)(g) of this Article.

(c) *Bar.* Any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

(d) *Beer.* Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

(e) *Business Committee.* The governing body of the Comanche Indian Tribe, as defined in Article VI of the Comanche Constitution approved by the Commissioner of Indian Affairs on January 9, 1967, as ratified by the tribal membership on November 19, 1966.

(f) *Comanche Indian Country.* For the purposes of this ordinance, Comanche Indian Country means all lands within the exterior boundaries of the former Kiowa, Comanche and Apache reservation over which the Comanche Indian Tribe exercises jurisdiction; provided, that it shall not include lands held jointly in trust for the Kiowa, Comanche and Apache tribes.

(g) *Liquor.* All fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, run, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one half of one percent of alcohol.

(h) *Liquor Control Board.* The Comanche Indian Tribe Liquor Control Board as established by Article III of this Ordinance.

(i) *Liquor Store.* Any store at which liquor is sold and, for the purpose of this Ordinance, includes stores where only a portion of which are devoted to sale of liquor or beer.

(j) *Malt Liquor.* Beer, strong beer, ale, stout or porter.

(k) *Package.* Any container or receptacle used for holding liquor.

(l) *Public Place.* Federal, state, county, or tribal highways and roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining room of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filing stations which are open to and/or generally used by the public and to which the public is permitted to have generally unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(m) *Sale and Sell.* The exchange, barter and traffic, including the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(n) *Spirits.* Any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(o) *Tribal Court.* Refers to the Comanche Tribal Court or a court of competent jurisdiction.

(p) *Wine.* Any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelia, not exceeding seventeen percent of alcohol by weight.

Article III. Comanche Indian Tribe Liquor Control Board

(1) There is hereby established a Comanche Indian Tribe Liquor Control Board, composed of a Chairperson, Vice-Chairperson, Secretary-Treasurer, and four (4) members.

(2) The Comanche Indian Tribe Liquor Control Board shall consist of the officers and members of the Comanche Business Committee.

(3) Officers and members of the Comanche Business Committee shall hold the same positions on the Comanche Indian Tribe Liquor Control Board as such officers and members hold on the Business Committee.

(4) The Comanche Indian Tribe Liquor Control Board shall meet on call, but not less than once each calendar quarter, provided ten (10) days public notice of its meetings is given.

(5) The Comanche Indian Tribe Liquor Control Board shall receive a stipend in lieu of expenses in an amount set by resolution of the Comanche Business Committee.

(6) A quorum of the Board shall consist of five (5) members and no fewer members are required to transact business.

Article IV. Powers and Duties of the Comanche Indian Tribe Liquor Control Board

(1) *Powers and Duties.* In furtherance of this ordinance, the Liquor Control Board shall have the following powers and duties:

(a) Publish and enforce rules and regulations adopted by the Comanche Business Committee governing the sale, manufacture, distribution, and possession of alcoholic beverages within Comanche Indian Country.

(b) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Liquor Control Board to perform its function.

(c) Issue licenses permitting the sale or manufacture or distribution of liquor within Comanche Indian Country.

(d) Hold hearings on violations of this Ordinance or for the issuance of revocation of licenses hereunder.

(e) Bring suit in the Tribal Court or other appropriate court to enforce this Ordinance as necessary.

(f) Determine and seek damages for violation of this Ordinance.

(g) Make such reports as may be required by the Comanche Business Committee.

(h) Collect taxes and fees levied or set by the Comanche Business Committee and keep accurate records, books and accounts.

(i) Adopt procedures which supplement these regulations and facilitate their enforcement. Such procedures shall include limitations on sales to minors, places where liquor may be consumed, identity of persons not permitted to purchase alcoholic beverages, hours and days when outlets may be open for business, and other appropriate matters and controls.

(2) *Limitation on Powers.* In the exercise of its powers and duties under this Ordinance, the Liquor Control Board and its individual members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor or from any licensee.

(b) Waive the immunity of the Comanche Indian Tribe from suit without the express written consent and resolution of the Business Committee.

(3) *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Liquor Control Board and/or its staff at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Business Committee and this ordinance are being complied with.

Article V. Sales of Liquor

(1) *License Required.* A person or entity who is licensed by the Comanche Indian Tribe may make retail sales of liquor in their facility and the patrons of the facility may consume said liquor within the facility. The introduction and possession of liquor consistent with this Article shall also be allowed. All other purchases and sales of liquor within Comanche Indian Country shall be prohibited. Sales of liquor and alcoholic beverages within Comanche Indian Country may only be made at businesses that hold a Comanche Indian Tribe Liquor License.

(2) *Sales for Cash.* All liquor sales within Comanche Indian Country shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the payment for purchases with use of credit cards such as Visa, Master Card, American Express, etc.

(3) *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverages with

Comanche Indian Country is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within Comanche Indian Country and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Comanche Indian Tribe as set forth herein.

Article VI. Licensing and Application

(1) *Procedure.* In order to control the proliferation of establishments within Comanche Indian Country that sell or serve liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within Comanche Indian Country must apply to the Comanche Indian Tribe Liquor Control Board for a license to sell or serve liquor.

(2) *Application.* Any enrolled member of the Comanche Tribe twenty-one (21) years of age and older, or an enrolled member of a federally-recognized tribe twenty-one (21) years of age and older, or other person twenty-one years of age and older, may apply to the Liquor Control Board for a license to sell or serve liquor. Any person or entity applying for a license to sell or serve liquor within Comanche Indian Country must fill in the application provided for this purpose by the Comanche Indian Tribe and pay such application fee as may be set from time to time by the Business Committee. Said application must be filled out completely in order to be considered. A separate application and license will be required for each location where the applicant intends to serve liquor.

(3) *Licensing Requirements.* The person applying for such license must make a showing once a year, and must satisfy the Liquor Control Board that he/she is a person of good moral character, that he/she has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of any of the gambling laws of the State, or any other state of the United States, or has a felony conviction preceding the date of his/her application for a license, or any of the laws commonly called "prohibition laws," or had any permit or license to sell any intoxicating liquors revoked in any county of this State and that at the time of his/her application for a license, he/she is not the holder of a retail liquor dealer's permit or license from the United States Government to engage in the sale of intoxicating liquor.

(4) *Processing of Application.* The Liquor Control Board shall receive and process applications and related matters. All actions by the Liquor Control Board shall be by majority vote. A quorum of the Liquor Control Board is that number of members set forth in Article III, paragraph (6) of this Ordinance. The Liquor Control Board may, by resolution, authorize a staff representative to issue licenses for the sale of liquor and beer products.

(5) *Issuance of License.* The Liquor Control Board may issue a license if it believes that such issuance is in the best interests of the Comanche Indian Tribe. The purpose of this Ordinance is to permit liquor sales and consumption at facilities located on designated Comanche Country lands. Issuance of a license for any other purposes will not be considered to be in the best interests of the Comanche Indian Tribe.

(6) *Period of License.* Each license shall be issued for a period not to exceed one (1) year from the date of issuance.

(7) *Renewal of License.* A licensee may renew its license if the licensee has complied in full with this Ordinance; provided however, that the Liquor Control Board may refuse to renew a license if it finds that doing so would not be in the best interests of health and safety of the Comanche Indian Tribe.

(8) *Revocation of License.* The Liquor Control Board may suspend or revoke a license due to one or more violations of this Ordinance upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

(9) *Hearings.* Within fifteen (15) days after a licensee is mailed written notice of a proposed suspension or revocation of the license, of the imposition of fines or of other adverse action proposed by the Liquor Control Board under this Ordinance, the licensee may deliver to the Liquor Control Board a written request for a hearing on whether the proposed action should be taken. A hearing on the issues shall be held before a person or persons appointed by the Liquor Control Board and a written decision will be issued. Such decisions will be considered final unless an appeal is filed with the Tribal Court within fifteen (15) calendar days of the date of mailing the decision to the licensee. The Tribal Court will then conduct a hearing and will issue an order, which is final with no further right of appeal. All proceedings conducted under all sections of this Ordinance shall be in accord with due process of law.

(10) *Non-transferability of Licenses.* Licenses issued by the Liquor Control Board shall not be transferable and may only be utilized by the person or entity in whose name it is issued.

Article VII. Taxes

(1) *Sales Tax.* The Liquor Control Board shall have the authority, as may subsequently be specified under tribal law, to collect tax on each retail sale of alcoholic beverages within Comanche Indian Country based upon a percent of the retail sale price. All taxes from the sale of alcoholic beverages within Comanche Indian Country shall be deposited in the General Treasury of the Comanche Indian Tribe.

(2) *Taxes Due.* All taxes for the sale of liquor and alcoholic beverages within Comanche Indian Country are due on or before the 15th day of the month following the end of the calendar quarter for which the taxes are due.

(3) *Delinquent Taxes.* Past due taxes shall accrue interest at 2% per month.

(4) *Reports.* Along with payment of the taxes imposed herein, the taxpayers shall submit, in the form specified by the Liquor Control Board, a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

(5) *Audit.* As a condition of obtaining a license, an applicant must agree to the review or audit of its books and records relating to the sale of liquor and alcoholic beverages within Comanche Indian Country. Said review or audit may be done periodically, or when deemed necessary by the Tribe, to verify the accuracy of reports.

Article VIII. Rules, Regulations and Enforcement

(1) In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

(2) Any person who shall in any manner sell or offer for sale or distribution or transport liquor in violation of this Ordinance shall be subject to civil damages assessed by the Liquor Control Board.

(3) Any person within the boundaries of Comanche Indian Country who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this ordinance.

(4) Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this Article, shall be guilty of a violation of this Ordinance.

(5) Any person who knowingly sells liquor to a person under the influence of liquor shall be guilty of a violation of this Ordinance.

(6) Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this Ordinance.

(7) No person under the age of twenty-one (21) years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of twenty-one (21) years to consume liquor on his premises or any premises under his control. Any person violating this prohibition shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

(8) Any person who shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each sale or drink provided.

(9) Any person who transfers in any manner an identification of age to a person under the age of twenty-one (21) years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this Ordinance.

(10) Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification that falsely purports to show the individual to be over the age of twenty-one (21) years shall be guilty of violating this Ordinance.

(11) Any person guilty of violation of this Ordinance shall be liable to pay the Comanche Indian Tribe the amount of $1,000 per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance.

(12) When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

(a) Driver's license or identification card issued by any state department of motor vehicles;

(b) United States Active Duty Military identification card; or

(c) Passport.

(13) The consumption or possession of liquor on premises where such consumption or possession is contrary to the terms of this Ordinance will result in a declaration that such liquor is contraband. Any tribal agent, employee or officer who is authorized by the Liquor Control Board to enforce this Ordinance shall seize all contraband and preserve it in accordance with provisions established for the preservation of impounded property.

Upon being found in violation of the ordinance, the party owning or in control of the premises where contraband is found shall forfeit all right, title and interest in the items seized which shall become the property of the Comanche Indian Tribe.

Article IX. Abatement

(1) Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared a nuisance.

(2) The Chairman of the Liquor Control Board or, if the Chairman fails or refuses to do so, by a majority vote, the Liquor Control Board shall institute and maintain an action in the Tribal Court in the name of the Comanche Indian Tribe to abate and perpetually enjoin any nuisance declared under this Article. In addition to the other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond or sufficient sum from $1,000 to $15,000, depending upon the severity of past offenses, the risk of offenses in the future, and any other appropriate criteria, payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other applicable tribal laws. If any conditions of the bond be violated, the bond may be applied to satisfy any amounts due to the Tribe under this Ordinance.

(3) In all cases where any person has been found in violation of this Ordinance relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the Ordinance and violation of this Ordinance shall be prima facie evidence that the room, house, vehicle, building, structure, or place against which such action is brought is a public nuisance.

Article X. Revenue

Revenue provided for under this Ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this Ordinance. Excess funds shall be subject to appropriation by the Business Committee for essential and social services.

Article XI. Severability and Effective Date

(1) If any provision under this Ordinance is determined by court review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

(2) This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

(3) Any and all previous liquor control enactments of the Business Committee which are inconsistent with this Ordinance are hereby rescinded.

Article XII. Amendment and Construction

(1) This Ordinance may only be amended by vote of the Comanche Business Committee.

(2) Nothing in this Ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Comanche Indian Tribe or its tribal government.

[FR Doc. 01–26839 Filed 10–24–01; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendments to a Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the

Amendments between the Standing Rock Sioux Tribe and the State of South Dakota, which was executed on August 30, 2001.

DATES: This action is effective October 25, 2001.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 319–4066.

Dated: October 12, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–26877 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places, Notice on NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specified boundary was identified at the time of designation and therefore are without a clear delineation of the property involved.

In accordance with the National Historic Landmark program regulations 36 CFR 65, the National Park Service notifies owners, public officials and other interested parties and gives them an opportunity to comment on the proposed boundary documentation.

Comments on the proposed documentation for the National Historic Landmark listed below and the boundaries it defines will be received for 60 days from the date of this notice. Please address comments to Carol D. Shull, Chief of the National Historic Landmarks Survey and Keeper of the National Register of Historic Places, National Register, History and Education, National Park Service, 1849 C Street, NW, Suite NC 400, Washington, DC 20240, Attention: Sarah Pope (e-mail: sarah_pope@nps.gov). Copies of the documentation, including maps, may be obtained from that same office.

Grant-Kohrs Ranch National Historic Landmark, Deer Lodge, Powell County, Montana. Designated a Landmark on December 19, 1960.

Carol D. Shull,

Chief of the National Historic Landmarks Survey and Keeper of the National Register of Historic Places, National Register, History and Educotion.

[FR Doc. 01–26887 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 29, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by November 9, 2001.

Beth L. Savage,

Acting Keeper of the National Register Of Historic Places.

CALIFORNIA

San Francisco County

New Mission Theater, 2550 Mission St., San Francisco, 01001206

COLORADO

Montezuma County

Mitchell Springs Archeological Site, (Great Pueblo Period of the McElmo Drainage Unit MPS) 7755 Road 25, Cortez, 01001207

FLORIDA

Polk County

Baynard, Ephriam M., House, 208 W. Lake Ave., Auburndale, 01001208

LOUISIANA

East Feliciana Parish

Heyman—Stewart House, 10943 Bank St., Clinton, 01001211

Ouachita Parish

Key—Mize House, 118 Copley St., West Monroe, 01001212

St. Mary Parish

Lancon, Hilaire, House, 3934 Irish Bend Rd., Franklin, 01001210

Vernon Parish

Ferguson, G.R., Sr. House, 406 N. 6th St., Leesville, 01001209

MARYLAND

Baltimore Independent City

Franklintown Historic District, 5100–5201 N. Franklintown Rd.;1707–1809 N. Forest Park Ave., 5100 Hamilton Ave., 5100 Fredwall Ave., Baltimore (Independent City), 01001214

South Central Avenue Historic District, Approx. 8 blks. centering Central Ave. Bet. Pratt and Fleet Sts., Baltimore, 01001213

MASSACHUSETTS

Middlesex County

West Main Street Historic District, West Main, Pleasant, Winthrop and Witherbee Sts., Marlborough, 01001215

MICHIGAN

Allegan County

Navigation Structures at Saugatuck Harbor, West End of Riverside Dr., Saugatuck, 01001216

SOUTH DAKOTA

Brookings County

Sexauer Seed Company Historic District, Roughly bounded by Main Ave., DM & E RR tracks, 2nd St., and 6th Ave., Brookings, 01001225

Clay County

Prentis Park, (Federal Relief Construction in South Dakota MPS) Plum and Main Sts., Vermillion, 01001218

South Dakota Department of Trans. Br. No. 14–130–176, (Historic Bridges in South Dakota MPS) Local Rd. over Vermillion R., Vermillion, 01001220

South Dakota Department of Trans. Br. No. 14–133–170, (Historic Bridges in South Dakota MPS) Local Rd. over Vermillion R., Vermillion, 01001222

Codington County

Jones, Mabel and David, House, 425 N Park, Watertown, 01001221

Dewey County

Forest City Bridge, (Historic Bridges in South Dakota MPS) US trunk 212, La Plant, 01001217

Minnehaha County

Berg and Estensen Store, 110 Zeliff Ave., Sherman, 01001224

Moody County

Ward Hall, Main St., Ward, 01001223

Spink County

Spink County Courthouse, (County Courthouses of South Dakota MPS) 210 E. Seventh Ave., Redfield, 01001219

VERMONT

Chittenden County

Butler, Rosell, House, 6 Carmichael St., Essex, 01001226

Washington County

Waitsfield Common Historic District, Joslin Hill Rd, North Rd., East Rd., and Common Rd., Waitsfield, 01001227

Windsor County

Jericho Rural Historic District, Jericho St., Jericho Rd., Wallace Rd., Sugartop Rd., Joshua Rd., Hartford, 01001228

A request for Removal has made for the following resource:

SOUTH DAKOTA

Lawrence County

Selbie Building, 1101 Meade St., Whitewood

86003013

[FR Doc. 01–26888 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 1, 2001.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by November 9, 2001.

Beth M. Boland,

Acting Keeper of the National Register.

ARKANSAS

Woodruff County

Jess Norman Post 166 American Legion Hut, 222 S. First St., Augusta, 01001100

CALIFORNIA

San Bernardino County

Goff Schoolhouse, 37198 Lanfair Rd., Goffs, 01001102

San Francisco County

Fuller Company Glass Warehouse, 50 Green St., San Francisco, 01001101

Long Syrup Refinery, 2701 Sixteenth St., San Francisco, 01001103

COLORADO

El Paso County

Cottonwood Creek Bridge, On Vincent Dr. over Cottonwood Creek., Colorado Springs, 01001104

Jefferson County

Barnes—Peery House, 622 Water St., Golden, 01001105

Montrose County

Shavano Valley Rock Art Site, Address Restricted, Montrose, 01001106

FLORIDA

Jefferson County

Bethel School, Cty Rd. 149, Monticello, 01001084

Nassau County

Hippard House, 5406 Ervin St., American Beach, 01001087

Polk County

North Avenue Historic District, 100 Blk. of North Ave., Lake Wales, 01001086

St. Johns County

Sanchez Farmstead, 7270 Old State Rd. 207, Elkton, 01001083

St. Lucie County

Arcade Building, 101 US 1, N, Fort Pierce, 01001085

Wakulla County

Sopchoppy School, 164 Yellow Jacket Ave., Sopchoppy, 01001088

GEORGIA

Chatham County

Gordonston Historic District, Roughly bounded by Skidaway Rd., Goebel Ave., Gwinnett St. and Pennsylvania Ave., Savannah, 01001107

IOWA

Woodbury County

Alhambra Apartments, 801 8th St., Sioux City, 01001089

KANSAS

Atchison County

Atchinson Santa Fe Freight Depot, (Railroad Resources of Kansas MPS) 200 S. Tenth St., Atchison, 01001090

Clay County

Auld Stone Barn, 255 Utah Rd., Wakefield, 01001108

Harvey County

Halstead Santa Fe Depot, (Railroad Resources of Kansas MPS) 116 E. First St., Halstead, 01001094

Kingman County

Kingman Santa Fe Depot, (Railroad Resources of Kansas MPS) 201 East Sherman, Kingman, 01001091

Morris County

Council Grove Missouri, Kansas and Texas Depot, (Railroad Resources of Kansas MPS) 512 E. Main St., Council Grove, 01001092

Osborne County

Downs Missouri Pacific Depot, (Railroad Resources of Kansas MPS) 710 Railroad St., Downs, 01001093

MISSOURI

Greene County

Benton Avenue AME Church, 830 N. Benton Ave., Springfield, 01001109

NORTH CAROLINA

Martin County

Williamston Historic District, Roughly bounded by Franklin, Harrell, Williams, South Haughton, North Railroad, Roberson, and White Sts., Williamston, 01001095

Northampton County

Holoman—Outland House, Address Restricted, Rich Square, 01001114

Pender County

Ashe, Gov. Samuel, Grave, Farm Ln., from S side of NC 1411, 0.7 mi. E of crossing of Pike Creek, Rocky Point, 01001096

Pitt County

Oakmont, 2909 S. Memorial Dr., Greenville, 01001115

Rutherford County

Watson, T. Max, House, 297 E. Main St., Forest City, 01001110

Transylvania County

Brombacher, Max and Claire, House, 571 E. Main St., Brevard, 01001111

Wake County

North Carolina Agricultural Experiment Station Cottage, 2714 Vanderbilt Ave., Raleigh, 01001112

Sunnyside, (Wake County MPS) 210 S. Selma Rd., Wendell, 01001113

OKLAHOMA

Carter County

Lake Murray State Park, 1.9 mi. SE of jct. of US 77 and US 70, Ardmore, 01001097

PENNSYLVANIA

Washington County

Monongahela Cemetery, Cemetery Hill Rd. at Gregg St., Monongahela City, 01001116

SOUTH CAROLINA

Calhoun County

Haigler House, Winding Brook Dr., Cameron, 01001099

Florence County

Mt. Zion Rosenwald School, 5040 Liberty Chapel Rd., Florence, 01001098

[FR Doc. 01–26889 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 8, 2001. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St., NW., NC400 Washington, DC 20240. Written comments should be submitted by November 9, 2001.

Beth Savage,

Acting Keeper of the National Register.

ALASKA

Nome Borough—Census Area

Teller Mission Orphanage, Jct. of Shelman Creek Rd. and Mission St., Brevig Mission, 01001117

ARKANSAS

Cleveland County

New Edinburg Commercial Historic District, AR 8, New Edinburg, 01001118

COLORADO

La Plata County

Durango High School, 201 E. 12th St., Durango, 01001119

Las Animas County

Trinchera Cave Archeological District, Address Restricted, Trinchera, 01001120

Logan County

Sterling Public Library, 210 S. 4th St., Sterling, 01001121

KANSAS

Douglas County

Bailey Hall, Jct. of Jayhawk Dr. and Sunflower Rd., Lawrence, 01001122
Goodrich, Eugene F., House, (Lawrence, Kansas MPS), 1711 Massachusetts St., Lawrence, 01001123
McCurdy, Witter S., House, (Lawrence, Kansas MPS), 909 W. 6th St., Lawrence, 01001124

Morris County

Little John Creek Reserve, E. ½, Sec. 29, T 16 S, R 9 E, Council Grove, 01001125

Shawnee County

Curtis Junior High, 316 NW Grant St., Topeka, 01001126

MISSISSIPPI

Wilkinson County

Woodville Historic District (Boundary Increase III), Roughly bounded by Old Prentiss Hwy., US 61 and City Limits, Woodville, 01001127

MISSOURI

Green County

Walnut Street Historic District (Boundary Decrease), 1100 and 1000 blks. of E. Elm St., Springfield, 01001128

NORTH CAROLINA

Craven County

New Bern-Battlefield Site, US 70 E., approx. 4.5 mi. SE. of New Bern, New Bern, 01001129

Forsyth County

Winston-Salem City Hall, 101 S. Main St., Winston-Salem, 01001130

Gaston County

Loray Mill Historic District, Roughly bounded by W. Franklin Blvd., S. Vance and S. Trenton Sts., and W. 6th Ave. B, Gastonia, 01001131

Granville County

Taylor, Archibald, Plantation House, 5632 Tabbs Creek Rd., Oxford, 01001132

Johnston County

Clayton Graded School and Clayton Grammar School—Municipal Auditorium, 101 and 111 2nd St., Clayton, 01001133

Martin County

Griffin, W.W., Farm, 1871 Wendell Griffin Rd., Williamston, 01001134

Hanover County

Delgrado School, 1930 Colwell Ave., Wilmington, 01001135

OREGON

Josephine County

Allen Gulch Mill, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1 mi. SE of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001148
Allen Gulch Townsite (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1 mi. SE. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001136
Cameron Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 2 mi. S. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001144
Deep Gravel Mine, (Upper Illinois Valley Oregon Mining Resources MPS) Approx. 1 mi. N. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001141
Esterly Pit. No. 2—Llano De Oro Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1.5 mi. N. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001145
Fry Gulch Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. .75 mi. S. from Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001143
High Gravel Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1.3 mi. S. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001142
Logan Cut, (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Logan Cut, Cave Junction, 01001154
Logan Drain Ditches, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 2 mi. N. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction 01001155
Logan Wash Ditch, (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Logan Wash Ditch, Cave Junction, 01001153
Middle Ditch, (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Logan-Esterly Middle Ditch, Cave Junction, 01001150
Old Placer Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 65 mi. W. of Jct. of Rockydale Rd. and BLM Rd. 40–8–15, Cave Junction, 01001140
Osgood Ditch, (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Osgood Ditch, Cave Junction, 01001151
Plataurica Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 75 mi. SE. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001146
St. Patrick's Roman Catholic Cemetery, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1 mi. SE. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001137
Upper Ditch, (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Logan-Esterly Upper Ditch, Cave Junction, 01001149
Waldo Cemetery, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 5 mi. SW. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001138
Waldo Chinese Cemetery, (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 5 mi. SW. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001139
Waldo Mine, (Upper Illinois Valley, Oregon Mining Resources MPS) SW. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001147
Wimer Ditch, (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Wimer Ditch, Cave Junction, 01001152

RHODE ISLAND

Kent County

Massie Wireless Station, 1300 Frenchtown Rd., East Greenwich, 01001157

Newport County

Fort Hamilton Historic District, (Lighthouses of Rhode Island TR) Rose Island, Newport, 01001158

Washington County

Hygeia House, (New Shoreham (Block Island), Rhode Island MPS) Beach Ave., New Shoreham, 01001156

SOUTH CAROLINA

Cherokee County

Magness-Humphries House, 101 Grassy Pond Rd., Gaffney, 01001159

Pickens County

Griffin-Christopher House, 208 Ann St., Pickens, 01001160
Stribling, J.C., Barn, 220 Issaqueena Tr., Clemson, 01001161

WASHINGTON

San Juan County

Tacoma Building, 1015–1021 A St., Tacoma, 01001162

A request for removal has been made for the following:

ARKANSAS

Crawford County

Mountainburg High School (Public Schools in the Ozarks MPS) AR 71, Mountainburg, 92001216

[FR Doc. 01–26890 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 15, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by November 9, 2001.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Covington County

Opp Commercial Historic District, Roughly bounded by Covington Ave., Hart, Main, Whaley and College Sts., Opp, 01001164

Jefferson County

Norwood Boulevard Historic District, 2800–3624 Norwood Blvd., Birmingham, 01001166

Madison County

Lowry House, 1205 Kildare Ave., Huntsville, 01001165

Montgomery County

Cleveland Court Apartments 820–638, 620–638 Cleveland Ct., Montgomery, 01001167

Shelby County

Chancellor House, 51 Chancellor Ferry Rd., Harpersville, 01001168

St. Clair County

Pell City Downtown Historic District, 1900–2111 Cogwell Ave., 2008 1st Ave. S., 8 N. 21st St., 10 S. 20th St., Pell City, 01001169

Tuscaloosa County

Druid City Historic District (Boundary Increase), 3,4,5,6,7,8,10,11 College Park, 711–721 Queen City Ave., Tuscaloosa, 01001170

Wilcox County

Prairie Mission, ¼ mi. SE. of Jct. of AL 28 and McCall Rd., Catherine, 01001171

ARIZONA

Maricopa County

Tubercular Cabin, 6140 Skyline Dr., Cave Creek, 01001172

Pima County

Indian House Community Residential Historic District, Roughly bounded by 5th St., E. Wash, Kane Estates, and Sahura St., Tucson, 01001173

ARKANSAS

Mississippi County

Burdette School Complex Historic District, 153 E. Park Ln., Burdette, 01001174
Three States Lumber Company Mill Powerhouse, Old Mill Rd., Burdette, 01001175
Tompkins, Chris, House, 144 South Oak Dr., Burdette, 01001176
United States Highway 61 Arch, (Arkansas Highway History and Architecture MPS) US 61, Blytheville, 01001177

CALIFORNIA

Riverside County

Estudillo Mansion, 150 S. Dillon, San Jacinto, 01001178

San Francisco County

Lee, Don, Building, 1000 Van Ness Ave., San Francisco, 01001179

FLORIDA

Sarasota County

Southwick—Harmon House, 1830 Lincoln Dr., Sarasota, 01001180

GEORGIA

Union County

Raburn—Casteel House, US 129, 4 mi. N. of Blairsville, Blairsville, 01001181

MARYLAND

Baltimore Independent City

Tuscany-Canterbury Historic District, Roughly bounded by Charles St., University Pkwy., Stony Run, and Warrenton Rd., Baltimore, 01001182

Washington County

Keedysville Historic District, Along Main St., Keedysville, 01001183
Williamsport Historic District, Roughly bounded by C and O Canal, Conococheague Cr., Springfield Ln., and W. Frederick St., Williamsport, 01001184

MASSACHUSETTS

Worcester County

North Brookfield Town House, 185 N. Main St., North Brookfield, 01001185
Old Douglas Center Historic District, Roughly bounded by Church, Common, Main, NW Main, SW Main and Webster Sts., Douglas, 01001186

NORTH CAROLINA

Orange County

Montrose, 320 St. Mary's Rd., Hillsborough, 01001187

NORTH DAKOTA

Burleigh County

Downtown Bismarck Historic District, Roughly bounded by Broadway and Thayer Aves., 5th St., Burlington and Santa Fe RR corridor, Washington and 2nd Sts., Bismarck, 01001188

[FR Doc. 01–26891 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 22, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by November 9, 2001.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Maricopa County

Cavness, William Edward, House, 606 N. 4th Ave., Phoenix, 01001191

ARKANSAS

Bradley County

Blankinship Motor Company Building, (Arkansas Highway History and Architecture MPS) 120 E. Cypress St., Warren, 01001190

CALIFORNIA

Los Angeles County

Congregation Talmud Torah of Los Angeles, 247 N. Breed St., Los Angeles, 01001192

Sacramento County

McClatchy, C.K., Senior High School, 3066 Freeport Blvd., Sacramento, 01001193

COLORADO

Morgan County

Central Platoon School, 411 Clayton St., Brush, 01001194

FLORIDA

Palm Beach County

Boca Raton Fire Engine No. 1, 100 S. Ocean Blvd., Boca Raton, 01001195

LOUISIANA

Ascension Parish

Jacob House, LA 22, near I–10, Sorrento, 01001196

MARYLAND

Carroll County

Biggs, William and Catherine, Farm, 8212 Sixes Bridge Rd., Detour, 01001197

MASSACHUSETTS

Middlesex County

St. Paul's Parish Church, 26 Washington St., Malden, 01001199

Suffolk County

Dorchester Heights Historic District, Roughly a one block area surrounding Telegraph Hill, Dorchester, 01001198

MISSISSIPPI

Hinds County

Illinois Central Railroad Depot, 102 Railroad Ave., Terry, 01001200

NEW JERSEY

Bergen County

Bogert—Wilkens Factory Site and the Sandy Beach Swim Club, Address Restricted, Oakland, 01001201

SOUTH CAROLINA

York County

Sharon Downtown Historic District, York St. and Woodlawn Ave., Sharon, 01001202

SOUTH DAKOTA

Hanson County

Saint Peter's Grotto, 24245 Joe St., Farmer, 01001203

WASHINGTON

King County

SCHOONER MARTHA, 1010 Valley St., Suite 100, Seattle, 01001205

Spokane County

Fairmont Hotel, (Single Room Occupancy Hotels in Central Business District of Spokane MPS) 315 W. Riverside Ave., 314 W. Sprague Ave., Spokane, 01001204

WEST VIRGINIA

Jefferson County

St. George's Chapel, N. side VA 51, about 2 mi. W. of Charles Town, Charles Town, 01001189

[FR Doc. 01–26892 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Potomac Heritage National Scenic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 124(a) and 1246(c) and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail market insignia of the Potomac Heritage National Scenic Trail. The insignia for this trail was completed June 2001. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Donald E. Briggs, Superintendent, Potomac Heritage National Scenic Trail

The insignia depicted below is prescribed as the official trail market logo for the Potomac Heritage National Scenic Trail, administered by the National Park Service. Authorization for use of this trail marker is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Donald E. Briggs, Superintendent, Potomac Heritage National Scenic Trail, National Park Service, Post Office Box B, Harpers Ferry, WV 25425, 304–535–4014.

Dated: August 1, 2001.

Donald E. Briggs,

Superintendent, Potomac Heritage National Scenic Trail.



[FR Doc. 01–26893 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on August 6, 2001. The March 5, 2001, notice should be used as a reference point to identify changes. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in *52 FR 11954*, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in *47 FR 7763*, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 2001. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

BON—Basis of Negotiation
BCP—Boulder Canyon Project
Reclamation—Bureau of Reclamation
CAP—Central Arizona Project
CUP—Central Utah Project
CVP—Central Valley Project
CRSP—Colorado River Storage Project
D&MC—Drainage and Minor Construction
FR—Federal Register
IDD—Irrigation and Drainage District
ID—Irrigation District
M&I—Municipal and Industrial
NEPA—National Environmental Policy Act
O&M—Operation and Maintenance
P–SMBP—Pick-Sloan Missouri Basin Program
PPR—Present Perfected Right
RRA—Reclamation Reform Act
R&B—Rehabilitation and Betterment
SOD—Safety of Dams
SRPA—Small Reclamation Projects Act
WCUA—Water Conservation and Utilization Act
WD—Water District

Pacific Northwest Region

Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5223.

New contract action:

23. Roza ID, Yakima Project, Washington: Deferment contract for the deferment of the District's 2001 construction obligation under the Drought Act of 1959.

Modified contract action:

14. Farmer's and Buck and Jones Ditch Associations or the Applegate Irrigation Corporation, Rogue River Basin Project, Oregon: Long-term irrigation water service contract for provision of up to 4,475 acre-feet of stored water from Applegate Reservoir (a Corps of Engineers' project) in exchange for the assignment of Little Applegate River natural flow rights to Reclamation for instream flow use. Contract may be executed with Applegate Irrigation Corporation representing and comprising the

participating members of the Ditch Associations.

Mid-Pacific Region

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

Modified contract action:

13. Santa Barbara County Water Agency, Cachuma Operations and Maintenance Board (as acknowledged by the Santa Barbara County Water Agency), Cachuma Project, California: Temporary interim contract (not to exceed 1 year) to transfer responsibility of certain Cachuma Project facilities to member units.

Completed contract actions:

15. East Bay Municipal Utility District, CVP, California: Amendment to long-term water service contract No. 14–06–200–5183A to change the points of diversion and adjust water quantities. The amended contract will conform to current Reclamation law. Amendatory contract No. 14–06–200–5183A–1 was executed July 20, 2001.

36. Monterey County Water Resources Agency, SRPA, California: Proposed contract amendment to provide for deferral of installments of construction charges under a SRPA loan repayment contract. Amendatory contract No. 5–07–20–W1283A was executed September 5, 2001.

37. Monterey Regional Water Pollution Control Agency, SRPA, California: Proposed contract amendment to provide for deferral of installments of construction charges under a SRPA loan repayment contract. Amendatory contract No. 5–07–20–W1284A was executed September 5, 2001.

39. Truckee-Carson ID, Newlands Project, Nevada: Amendment to O&M contract No. 7–07–20–X0348 to include mutually agreed upon Consumer Price Index for the current year and incorporation of a new Consumer Price Index as determined by the Contracting Officer applicable to Fallon, Nevada (or the nearest urban area in the event that such index is not determined for Fallon, Nevada). Amendatory contract No. 7–07–20–X0348A was executed September 10, 2001.

Lower Colorado Region

Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

Modified contract action:

3. Brooke Water Company, BCP, Arizona: Contract amendment for additional Colorado River water to entities located along the Colorado River in Arizona for up to 120 acre-feet per year for domestic uses as recommended by the Arizona Department of Water Resources.

Discontinued contract actions:

54. City of Chandler, CAP, Arizona: Proposed amendment of CAP water delivery subcontract to delete provision requiring offsetting reduction of Chandler's CAP water entitlement for quantities of water received in a direct effluent exchange with an Indian community. This action was combined with item No. 55 of the March 5, 2001, report and is now item No. 63 as published in the August 6, 2001, report.

55. City of Mesa, CAP, Arizona: Proposed amendment of CAP water delivery subcontract to delete provision requiring offsetting reduction of Mesa's CAP water entitlement for quantities of water received in a direct effluent exchange with an Indian community. This action was combined with item No. 54 of the March 5, 2001, report and is now item No. 63 as published in the August 6, 2001, report.

Completed contract actions:

3. Havasu Water Co., BCP, Arizona: Contracts for additional Colorado River water to entities located along the Colorado River in Arizona for up to 1,420 acre-feet per year for domestic uses as recommended by the Arizona Department of Water Resources.

23. Southern Nevada Water Authority, Robert B. Griffith Water Project, BCP, Nevada: Amend the repayment contract to provide for the incorporation of the Griffith Project into the expanded Southern Nevada Water System, funded and built by Southern Nevada Water Authority, to facilitate the diversion, treatment, and conveyance of additional water out of Lake Mead for which the Authority has an existing entitlement to use.

37. Southern Nevada Water Authority, Robert B. Griffith Water Project, Nevada: Title transfer of physical facilities with interest in acquired lands and grant or assignment of perpetual rights or easements over Federal lands.

41. BHP Copper, Inc., CAP, Arizona: Proposed agreement and amendments to CAP water delivery subcontracts to transfer BHP Copper's CAP water allocation to the City of Scottsdale, Town of Carefree, and Tonto Hills Utility Company.

59. Yuma County Water Users Association, Colorado River Front Work and Levee System, Arizona: Contract providing for operation, maintenance, and replacement of drainage facilities.

60. North Baja Pipeline, BCP, Arizona: Contract assignment of agricultural water from Jamar Produce Corporation to North Baja Pipeline.

Upper Colorado Region:

Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147, telephone 801–524–3691.

New contract actions:

24. Provo River Water Users Association, Provo River Project, Utah: Contract to provide for repayment of reimbursable portion of construction costs of SOD modifications to Deer Creek Dam.

25. Village of Taos Ski Valley, San Juan-Chama Project, New Mexico: Conversion of M&I water service contract for 15 acre-feet per year to a repayment contract.

26. City of Espanola, San Juan-Chama Project, New Mexico: Conversion of M&I water service contract for 1,000 acre-feet per year to a repayment contract.

Modified contract action:

11. Sanpete County Water Conservancy District, Narrows Project, Utah: Application for a SRPA loan and grant to construct a dam, reservoir, and pipeline to annually supply approximately 5,000 acre-feet of water through a transmountain diversion from upper Gooseberry Creek in the Price River drainage (Colorado River Basin) to the San Pitch—Sevier River (Great Basin).

Completed contract action:

16. Twining Water and Sanitation District, San Juan-Chama Project, New Mexico: Assignment of M&I water service contract for 15 acre-feet per year to the Village of Taos Ski Valley and conversion of contract from water service to repayment contract. Assignment executed September 6, 2001.

Great Plains Region:

Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

New contract actions:

48. Lower Marias Unit, P–SMBP, Montana: Initiating 25-year water service contract for up to 910 acre-feet of storage from Tiber Reservoir to irrigate 303.2 acres. A 1-year temporary contract has been issued to allow additional time to complete necessary actions required for the long-term contract. Another 1-year temporary has been issued to continue delivery of water until the long-term renewal process can be completed.

49. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: The District has requested deferment of its 2002 repayment obligation. A BON has been prepared requesting approval to amend contract No. 14–06–500–369.

Modified contract actions:

42. Lower Marias Unit, P–SMBP, Montana: City of Chester water service contract expires January of 2002. Initiating negotiation for renewal of a water service contract for an annual supply of raw water for domestic use from the Milk River not to exceed 500 acre-feet. A 1-year interim contract may be issued to continue delivery of water from the Milk River below Fresno Reservoir until the necessary actions can be completed to renew the long-term contract.

47. City of Dickinson, P–SMBP, North Dakota: In accordance with Public Law 106–566, a BON has been prepared to amend Contract No. 9–07–60–W0384 which will allow the City to pay a lump-sum payment in lieu of its remaining repayment obligation for construction costs associated with the bascule gate. The BON has been approved by the Commissioner.

Dated: October 17, 2001.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 01–26871 Filed 10–24–01; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 26, 2001, Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed Schedule II.

The firm plans to import phenylacetone for the production of amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 27, 2001.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 12, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–26880 Filed 10–24–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice date December 21, 2000, and published in the **Federal Register** on January 10, 2001, (66 FR 2005), Orpharm, Inc., 4815 Dacoma, Houston, Texas 77092, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
levo-alphacetylmethadol (9648)	II

The firm plans to bulk manufacture the listed controlled substances for formulation into finished pharmaceuticals.

No comments or objections have been received. DEA has considered the factors, in title 21, United States Code, Section 823(a) and determined that the registration of Orpharm, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Orpharm, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 12, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–26878 Filed 10–24–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 27, 2001, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The institute will manufacture small quantities of cocaine derivatives and marihuana derivatives for use by their customers primarily in analytical kits, reagents and standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 24, 2001.

Dated: October 12, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–26879 Filed 10–24–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 19, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or e-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Bloodborne Pathogen Standard (Needle Stick Safety and Prevention Act).

OMB Number: 1218–0246.

Affected Public: Business or other for-profit, Not-for-profit institutions; Federal Government; and State, local, or tribal government.

Type of Response: Recordkeeping; Reporting; and Third-party disclosure.

Number of Respondents: 502,724.

Requirement	Number of annual responses	Frequency	Average response time (hours)	Annual burden hours
Exposure Control Plan—29 CFR 1910.1030(c)(1)				
Employee Solicitation	502,724	Annual & On occasion	.25	125,681
Employee Response	3,744,887	Annual & On occasion	.25	936,222
Written Update of Plan	502,724	Annual & On occasion	.25	125,681
Recordkeeping—29 CFR 1910.1030(h)(5)				
Sharp Injury Log	590,164	On occasion	.08333	49,180
Total	5,340,499			1,236,764

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Needlestick Safety and Prevention Act (NSPA) directs OSHA to amend the Bloodborne Pathogens standard to require that employers update their exposure control plans to reflect how employers implement new developments in control technology; solicit input from employees responsible for direct patient care in the identification, evaluation, and the selection of engineering and work practice controls; and, for certain employers, to establish and maintain a log of percutaneous injuries from contaminated sharps.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–26925 Filed 10–24–01; 8:45 am]

BILLING CODE 4510–26–M

MERIT SYSTEMS PROTECTION BOARD

Return to Normal Procedures-Filings With New York Field Office

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that variations from the Boards normal case processing procedures at the New York Field Office as the result of the September 11, 2001 attacks on the World Trade Center are rescinded. The other variations in normal case processing procedures announced on September 26, 2001 remain in effect.

DATES: October 25, 2001.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, (202) 653–7200.

SUPPLEMENTARY INFORMATION: By Federal Register Notice of September 26, 2001 (66 FR 49213) the Board announced variations in its normal case processing procedures. Specifically, filings due to the New York Field Office were to be made with the MSPB Northeastern Regional Office in Philadelphia, Pennsylvania. The New York Field Office is now open for business, however, admittance to the office, including for administrative hearings, must be approved in advance. The office is open to Federal employees with proper identification; non Federal employees must show identification and proof that they have an appointment. The address of the New York Field Office is: 26 Federal Plaza, Room 3137A, New York, New York 10278. The telephone number is (212) 264–9372 and the fax number is (212) 264–1417.

Dated: October 19, 2001.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 01–26797 Filed 10–24–01; 8:45 am]

BILLING CODE 7400–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 7, 2001, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, November 7, 2001—3:00 p.m. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Howard J. Larson (telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 17, 2001.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 01–26833 Filed 10–24–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27454]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 19, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 13, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 13, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Holyoke Water Power Company (70–9943)

Holyoke Water Power Company ("HWP"), an electric utility company subsidiary of Northeast Utilities ("NU"), a registered holding company, and Holyoke Power and Electric Company (lrdquo;HP&E"), a wholly owned subsidiary of HWP, both located at 1 Canal Street, Holyoke, Massachusetts 01040, have filed a declaration under section 12(d) and rules 44 and 54 under the Act.

HWP and HP&E seek authorization to sell to the City of Holyoke Gas and Electric Department ("HG&E") certain hydroelectric generating facilities, associated distribution assets, and other related assets. The sale is a result of both an agreement settling certain litigation between the applicants and HG&E and a Federal Energy Regulatory Commission hydroelectric plant relicensing proceeding. The assets consist of (i) the Holyoke Dam and related units; (ii) related inventory and units, including poles and wires; (iii) certain of HWP's properties in the city of Holyoke, along with certain properties in the cities of Chicopee and South Hadley, Massachusetts; (iv) contracts with all of HWP's retail customers; and (v) all millpowers, water exchange agreements, licenses, and other agreements related to the acquired assets (collectively, "HWP Assets"). The HWP Assets comprise between 78–80% of HWP's total assets and between 22–23% of HWP's total generating capacity. The sale will dispose of HWP's entire hydroelectric generating capacity. HG&E will also assume certain liabilities associated with the HWP Assets and reassume HWP's position as licensee for the hydroelectric facilities under a license issued by the Federal Regulatory Energy Commission ("FERC"). The license is subject to various FERC rehearing requests.

HG&E will pay HWP $17.55 million, subject to closing adjustments, for the HWP Assets. Various FERC-jurisdictional transmission assets will be included with the HWP Assets and are the subject of various filings made by HWP with FERC.[1] HG&E will

[1] These filings include a request for approval for the transfer of a hydro license under Part I of the Federal Power Act, for the sale of the hydroelectric

Continued

continue to use the HWP Assets to generate electricity.

The net proceeds of the sale will be invested by HWP in the NU System Money Pool ("NU Money Pool")[2] and/or other short-term investments until later in 2001 when the proceeds will be paid to NU as a dividend or used to retire some of HWP's debt.

NiSource Inc., et al. (70–9945)

NiSource Inc. ("NiSource"), a registered holding company, its utility subsidiaries: Northern Indiana Public Service Company ("Northern Indiana"), Kokomo Gas and Fuel Company ("Kokomo"), Northern Indiana Fuel and Light Company ("NIFL"), all located at 801 East 86th Avenue, Merrillville, Indiana 46410–6272; Bay State Gas Company ("Bay State"), Northern Utilities, Inc. ("Northern Utilities"), both located at 300 Friberg Parkway, Westborough, Massachusetts 01581–5039; Columbia Gas of Kentucky, Inc. ("Columbia Kentucky"), Columbia Gas of Ohio, Inc. ("Columbia Ohio"), Columbia Gas of Maryland, Inc. ("Columbia Maryland"), Columbia Gas of Pennsylvania, Inc. ("Columbia Pennsylvania"), and Columbia Gas of Virginia, Inc. ("Columbia Virginia"), all located at 200 Civic Center Drive, Columbia, Ohio 43215; Columbia Energy Group ("Columbia"), a subsidiary registered holding company of NiSource, 801 East 86th Avenue, Merrillville, Indiana 46410–6272; and NiSource's nonutility subsidiaries: NiSource Corporate Services Company, EnergyUSA, Inc., (an Indiana corporation), EnergyUSA–TPC Corp., Energy USA, Inc. (a Massachusetts corporation), Primary Energy, Inc., NiSource Capital Markets, Inc. ("NiSource Capital"), NiSource Finance Corp. ("NiSource Finance"), NiSource Development Company, Inc., NI Energy Services, Inc., NiSource Energy Technologies, Inc., Columbia Assurance Agency, Inc., Columbia Accounts Receivable Corporation, Columbia Atlantic Trading Corporation, Columbia Electric Remainder Corporation, Columbia Energy Services Corporation, Columbia Insurance Corporation, Ltd., Columbia LNG Corporation, Columbia Energy Retail Marketing Corporation, Columbia Service Partners, Inc., all located at 801 East 86th Avenue, Merrillville, Indiana 46410–6272; Columbia Energy Resources, Inc., Alamco-Delaware, Inc., Hawg Hauling & Disposal, Inc., Columbia Natural Resources, Inc., all located at 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Gas Transmission Corporation, Columbia Transmission Communications Corporation, NiSource Pipeline Group, Inc., Crossroads Pipeline Company, Columbia Pipeline Corporation, Columbia Energy Group Capital Corporation, Columbia Deep Water Services Company, all located at 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146; IWC Resources Corporation, 1220 Waterway Boulevard, Indianapolis, Indiana 46202; SM&P Utility Resources, Inc., 11455 North Meridian Street, Suite 200, Carmel, Indiana 46032; and Columbia Gulf Transmission Company, 2603 Augusta, Suite 125, Houston, Texas 77057 (collectively "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and rules 45, 53 and 54 under the Act.

Applicants request authority to establish a new NiSource system money pool ("Money Pool") that will replace the current Columbia system money pool and, to the extent not exempted by rule 52, Applicants request authorization for the period through December 31, 2003 (the "Authorization Period") to make unsecured short-term borrowings from the Money Pool, to contribute surplus funds to the Money Pool, and to lend and extend credit to (and acquire promissory notes from) one another through the Money Pool. To the extent not exempted by rule 45(b) or rule 52(d), as applicable, NiSource, directly or indirectly through NiSource Finance, requests authorization to invest surplus funds and/or to lend and extend credit to the participating subsidiaries through the Money Pool.

In addition, Columbia Maryland requests authorization to issue additional shares of its common stock and long-term debt securities to Columbia from time to time during the Authorization Period in an aggregate amount not to exceed $40 million.

NiSource Money Pool

NiSource, Columbia, NiSource Finance, and NiSource Capital will participate in the Money Pool as investors only and not as borrowers. Exempt wholesale generators ("EWGs"), foreign utility companies ("FUCOs"), and exempt telecommunications companies ("ETCs") will be specifically excluded from participating in the money Pool as borrowers.

Under the proposed terms of the Money Pool Agreement, short-term funds would be available from the following sources for short-term loans to the participating subsidiaries from time to time: (1) Surplus funds in the treasuries of Money Pool participants, and (2) proceeds received by NiSource Finance from the sale of commercial paper, borrowings from banks and other lenders, and other financing arrangements ("External Funds"), as authorized by order of the Commission dated November 1, 2000 (HCAR No. 27265). Funds would be made available from these sources in the order NiSource Corporation Services Company, as the Administrative Agent, may determine would result in a lower cost of borrowing, consistent with the individual borrowing needs and financial standing of Money Pool participants that invest finds in the Money Pool. The Commission is requested to reserve jurisdiction over the participation as a borrower of any other direct or indirect, current or future, non-utility subsidiary of NiSource.

Proceeds of any short-term borrowings from the Money Pool may be used by a participant (i) for the interim financing of its construction and capital expenditure programs; (ii) for its working capital needs; (iii) for the repayment, redemption or refinancing of its debt and preferred stock; (iv) to meet unexpected contingencies, payment and timing differences, and cash requirements; and (v) to otherwise finance its own business and for other lawful general corporate purposes.

The utility subsidiaries (other than Columbia Virginia)[3] request authority to make borrowings through the Money Pool in the following maximum amounts at any time outstanding:

Northern Indiana	$1,000,000,000
Kokomo	50,000,000
NIFL	50,000,000
Bay State	250,000,000
Northern Utilities[4]	50,000,000
Columbia Ohio	700,000,000
Columbia Kentucky	80,000,000
Columbia Pennsylvania	300,000,000
Columbia Maryland	50,000,000

Borrowing under the Money Pool by participating subsidiaries that are authorized to borrow, other than the utility subsidiaries, will be exempt pursuant to Rule 52(b).

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facilities and assignment of related agreements under Section 203 of the Federal Power Act, and for the modification or termination of certain power contracts by HWP under Section 205 of the Federal Power Act.

[2] The NU Money Pool was originally approved in SEC File No. 70–9755, HCAR No. 27328 (December 28, 2000).

[3] Borrowings under the Money Pool by Columbia Virginia will be exempt under rule 52(a).

[4] Any borrowings by Northern Utilities under the Money Pool that are in excess of 10% of its net fixed plant must be approved by the New Hampshire Public Utilities Commission and, therefore, would be exempt under rule 52(a).

Long-Term Securities of Columbia Maryland

Columbia Maryland requests authorization to issue and sell from time to time during the Authorization Period, and Columbia requests authorization to acquire, additional shares of Columbia Maryland's common stock and long-term debt securities. The aggregate amount of common stock and/or long-term debt securities to be issued by Columbia Maryland during the Authorization Period will not to exceed $40 million. The funds required by Columbia in order to make loans to Columbia Maryland will be derived from borrowings from NiSource Finance.

The interest rate on long-term debt securities issued by Columbia Maryland to Columbia will be designed to match the interest rate on borrowings made by Columbia from NiSource Finance in order to fund the purchase of such long-term securities, which, in turn, will be equal to the effective rate (i.e., interest rate plus issuance costs) for the most recent long-term debt securities issued by NiSource finance during the previous calendar quarter. If no such long-term debt securities were issued by NiSource finance during the previous calendar quarter, then the interest rate on long-term debt securities issued by Columbia Maryland to Columbia will be either the estimated new long-term rate that would be in effect if NiSource Finance were to issue long-term debt securities, as projected by a major investment bank, or the prevailing market rate for a newly issued "BBB"-rated utility bond. Long-term notes issued by Columbia Maryland to Columbia may have maturities of up to 30 years and may be either secured or unsecured.

NiSource commits to maintain common equity of Columbia Maryland, as a percentage of Columbia Maryland's consolidated capitalization (including short-term debt), at or above 30%.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26898 Filed 10–24–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25216; 812–12606]

WNC Housing Tax Credit Fund VI, L.P., Series 9 and Series 10, and WNC & Associates, Inc.; Notice of Application

October 19, 2001.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (the "Act") granting relief from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

Applicants: WNC Housing Tax Credit Fund VI, L.P., Series 9 and WNC Housing Tax Credit Fund VI, L.P., Series 10 (each a "Series," and collectively, the "Fund"), and WNC & Associates, Inc. (the "General Partner").

Summary of the Application: Applicants request an order to permit each Series to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

Filing Date: The application was filed on August 17, 2001. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 9, 2001, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, 3158 Redhill Avenue, Suite 120, Costa Mesa, California 92626–3416.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, (202) 942–0634, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (Telephone (202) 942–8090).

Applicants' Representations

1. Each Series was formed in 2001 as a California limited partnership. Each Series will operate as a "two-tier" partnership, i.e., each Series will invest as a limited partner in other limited partnerships ("Local Limited Partnerships"). The Local Limited Partnerships in turn will engage in the ownership and operation of apartment complexes expected to be qualified for low income housing tax credit under the Internal Revenue Code of 1986, as amended.

2. The objectives of each Series are (a) to provide current tax benefits primarily in the form of low income housing credits which investors may use to offset their Federal income tax liabilities, (b) to preserve and protect capital, and (c) to provide cash distributions from sale or refinancing transactions.

3. On August 16, 2001, the Fund filed a registration statement under the Securities Act of 1933, pursuant to which the Fund intends to offer publicly, in two series of offerings, 25,000 units of limited partnership interest ("Units") at $1,000 per unit. The minimum investment will be five Units for most investors, although employees of the General Partner and its affiliates and/or investors in syndications previously sponsored by the General Partner may purchase a minimum of two Units. Purchasers of the Units will become limited partners ("Limited Partners") of the Series offering the Units.

4. A Series will not accept any subscriptions for Units until the requested exemptive order is granted or the Series receives an opinion of counsel that it is exempt from registration under the Act. Subscriptions for Units must be approved by the General Partner. Such approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in a Series is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings, and automobiles), of at least $35,000 and an annual gross income of at least $35,000, or (b) irrespective of annual income, has a net worth (exclusive of home, furnishings, and automobiles) of at least $75,000.

Units will be sold only to investors who meet these suitability standards, or such more restrictive suitability standards as may be established by certain states for purchasers of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed on the transferor Limited Partner.

5. Although a Series' direct control over the management of each apartment complex will be limited, the Series' ownership of interests in Local Limited Partnerships will, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. A Series normally will acquire at least a 90% interest in the profits, losses, and tax credits of the Local Limited Partnerships. However, in certain cases, the Series may acquire a lesser interest in such partnerships. Each Local Limited Partnership's partnership agreement will provide that distributions of proceeds from a sale or refinancing of an apartment complex will be paid to a Series in the range of from 10% to 50%.

6. Each Series will have certain voting rights with respect to each Local Limited Partnership. The voting rights will include the right to dismiss and replace the local general partner on the basis of performance, to approve or disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the Local Limited Partnership agreement materially and adversely affecting the Series' investment.

7. Each Series will be controlled by the General Partner, pursuant to a partnership agreement (the "Partnership Agreement"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Series. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement, and to dissolve the Series. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Series.

8. Applicants state that the Partnership Agreement and prospectus of the Series contain provisions designed to ensure fair dealing by the General Partner with the Limited Partners. Applicants also state that all compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus. Applicants believe that the fees and other forms of compensation that will be paid to the General Partner and its affiliates are fair and on terms no less favorable to the Series than would be the case if such arrangements had been made with independent third parties.

9. During the offering and organizational phase, the General Partner and its affiliates will receive a dealer-manager fee and a nonaccountable expense reimbursement in amounts equal to 2% and 4%, respectively, of capital contributions. The General Partner has agreed to pay all organizational and offering expenses (excluding selling commissions, the dealer-manager fee, and the nonaccountable expense reimbursement).

10. During the acquisition phase, each Series will pay the General Partner or its affiliates a fee equal to 7% of capital contributions for analyzing and evaluating potential investments in Local Limited Partnerships and for various other services. The General Partner and its affiliates will receive a nonaccountable acquisition expense reimbursement equal to 2% of capital contributions in consideration of which the General Partner will pay all acquisition expenses of each Series. Aggregate fees and expenses paid in connection with the organization of each Series, the offering of Units, and the acquisition of Local Limited Partnership interests by each Series will be limited by the Partnership Agreement and will comply with guidelines published by the North American Securities Administrators Association. These guidelines require that a specified percentage (generally 80%, but subject to reduction) of the aggregate Limited Partners' capital contributions to the Fund be committed to Local Limited Partnership interests.

11. During the operating phase, the General Partner will receive 0.1% of any cash available for distribution, and each Series may pay certain fees and reimbursements to the General Partner or its affiliates. An asset management fee will be payable for services related to the administration of the affairs of each Series and ongoing management of each Series. Other fees may be paid in consideration of property management services provided by the General Partner or its affiliates as the management and leasing agents for some of the apartment complexes. In addition, the General Partner and its affiliates generally will be allocated 0.1% of profits and losses of each Series for tax purposes and tax credits.

12. During the liquidation phase, and subject to certain prior payments to the Limited Partners, each Series will pay the General Partner or its affiliates a fee equal to 1% of the sales price of the apartment complexes sold in which the General Partner or its affiliates have provided a substantial amount of services. The General Partner also will receive 10% of any additional sale or refinancing proceeds.

13. All proceeds from a Series' public offering of Units initially will be placed in an escrow account with USbank ("Escrow Agent"). Pending release of offering proceeds to the Series, the Escrow Agent will deposit escrowed funds in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum amount of capital contributions for a Series, funds in escro will be released to the Series and held by it pending investment in Local Limited Partnerships.

14. If more than one entity that the General Partner or its affiliates advises or manages may invest in a particular investment opportunity, the decision as to the entity that will be allocated the investment will be based upon such factors as the effect of the acquisition on diversification of each entity's portfolio, the estimated income tax effects of the purchase on each entity, the amount of funds of each entity available for investment, and the length of time such funds have been available for investment. Priority generally will be given to the entity having uninvested funds for the longest period of time. However, any entity that was formed to invest primarily in apartment complexes eligible for state low income housing tax credits ("state tax credits") as well as for Federal low income housing tax credits will be given priority with respect to any investment that is eligible for state tax credits over entities which are not seeking to provide state tax credits.

Applicants' Legal Analysis

1. Applicants believe that the Fund and its Series will not be "investment companies" under sections 3(a)(1)(A) or 3(a)(1)(C) of the Act. If the Fund and its Series are deemed to be investment companies, however, applicants request an exemption under section 6(c) and 6(e) of the Act from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

2. Section 3(a)(1)(A) of the Act provides that an issuer is an "investment company" if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants believe that the Fund will not be an investment company under section 3(a)(1)(A) because the Fund will be in the business of investing in and being beneficial owner of apartment complexes, not securities.

3. Section 3(a)(1)(C) of the Act provides that an issuer is an "investment company" if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire "investment securities" having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items). Applicants state that although the Local Limited Partnership interests may be deemed "investment securities," they are not readily marketable, cannot be sold without severe adverse tax consequences, and have no value apart from the value of the apartment complexes owned by the Local Limited Partnerships.

4. Applicants believe that the two-tier structure is consistent with the purposes and criteria set forth in the SEC's release concerning two-tier real estate partnership (the "Release").[1] The Release states that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act pursuant to section 6(c). Section 6(c) provides that the SEC may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(c) permits the SEC to require companies exempted from the registration requirements of the Act to comply with certain specified provisions of the Act as though the company were a registered investment company.

5. The Release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to qualify for the exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants assert, among other things, that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provide protection to investors in Units. In addition, applicants assert that the requested exemption is both necessary and appropriate in the public interest.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26897 Filed 10–24–01; 8:45 am]

BILLING CODE 8010–01–M

[1] Investment Company Act Release No. 8465 (Aug. 9, 1974).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [66 FR 53282, October 19, 2001]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, October 23, 2001 at 9:30 a.m.

CHANGE IN THE MEETING: Cancellation of meeting.

The closed meeting scheduled for Tuesday, October 23, 2001, has been cancelled.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 23, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–27016 Filed 10–23–01; 2:11 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44952; File No. SR–BSE–2001–01]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change Relating to the Trading of Nasdaq Securities on the Floor of the Exchange

October 18, 2001.

I. Introduction

On May 15, 2001, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding the trading of Nasdaq securities on the floor of the Exchange, pursuant to unlisted trading privileges ("UTP"). On June 15, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended by Amendment by Amendment No. 1, was published in the **Federal Register** on July 3, 2001.[4] The Commission received two comment letters on the proposed rule change.[5] On October 4, 2001, the BSE submitted Amendment No. 2 to the proposed rule change.[6] This order approves the proposed rule change, as amended. In addition, the Commission solicits comment on Amendment No. 2 to the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated June 14, 2001 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 44476 (June 26, 2001), 66 FR 35293.

[5] *See* letters to Jonathan G. Katz, Secretary, SEC, from Kevin J.P. O'Hara, General Counsel, Archipelago, L.L.C., dated July 13, 2001 ("Archipelago Letter"); and Eugene A. Lopez, Senior Vice President, Nasdaq Stock Market, Inc., dated August 15, 2001 ("Nasdaq Letter").

[6] *See* letter from John Boese, Assistant Vice President, Legal and Regulatory, BSE, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated October 3, 2001 ("Amendment No. 2"). In Amendment No. 2, the Exchange clarified language in the rule text and deleted a sentence in proposed Section 3 that required that transactions that could not be submitted to ACT be reported to the NASD's Market Regulations Department. According to BSE, this sentence was deleted because it reflected a NASD requirement that does not apply to UTP exchanges.

II. Description of the Proposal

The Exchange proposes to trade certain over-the-counter ("OTC") securities. *i.e.*, Nasdaq securities, on the floor of the Exchange, pursuant to UTP under Section 12(f) of the Act.[7] Therefore, to accommodate these new securities on the Exchange floor, the Exchange proposes to add Chapter XXXV, Trading in Nasdaq Securities, to the Rules of Board of Governors of the Boston Stock Exchange ("BSE rules"). The rules set forth in Chapter XXXV specifically govern the trading of Nasdaq securities, with references to various sections of other BSE Rules relating to the trading of equity securities, as well as references to selected NASD rules, where appropriate. In addition, the BSE proposes a stock allocation program for Nasdaq securities, which phases out over a two year period.

III. Summary of Comments

The Commission received two comments on the proposed rule change.[8] One commenter supported the proposal.[9] One commenter requested that the comment period be extended and requested clarification of certain issues.[10] BSE submitted a letter responding to Nasdaq's question.[11]

In its letter, Nasdaq requested further clarification of BSE's proposed Section 4(c), which permits specialists to switch from automatic execution to manual execution in unusual trading situations and how this section relates to BSE's intention to participate in the Nasdaq National Market Execution System ("SuperSoes").[12] Moreover, Nasdaq believed that the reference to "price volatility" to be vague and did not clearly define when a BSE specialist could turn off the auto-execution functionality. Finally, Nasdaq questioned whether BSE specialists were planning on quoting away from the BBO because Nasdaq believed that such practices may result in BSE specialists' *de facto* withdrawal from the market.

The BSE responded that specialists will only be permitted to turn off the auto-execution functionality on their workstation in rare circumstances, such as following a regulatory halt. Further, the Exchange stated that its surveillance and front desk floor operations departments will protect against unwarranted and unfettered use of the ability to switch to manual execution. Specifically, the Exchange stated that a specialist will be required to get the approval of two floor officials to request that the auto-execution functionality be turned off and that the ability to switch to manual mode rests solely with the Exchange's surveillance and front desk floor operations departments. The Exchange, therefore, believed that the ability to switch to manual mode will not result in a *de facto* withdrawal from the market because it will be used only in extreme situations and will be controlled by the Exchange.

Nasdaq also requested information regarding BSE's audit trail requirements. BSE responded that as a part of the Intermarket Surveillance Group ("ISG"), all quotes and trades from the Exchange are captured by ISG's PATRINA system, which establishes an audit trail. The BSE also noted that the Exchange would be reporting its Nasdaq trades through ACT, which should further enhance the audit trail for BSE trades.

Nasdaq requested information regarding BSE's enforcement and surveillance capabilities regarding trading of Nasdaq securities. BSE noted that it had submitted its procedures to the Commission's Office of Compliance Inspections and Examinations for review.

Nasdaq also noted that BSE's examination and qualification requires are different than those applicable to Nasdaq market makers and requested information on how BSE intends to ensure that its members have a thorough understanding of the trading of Nasdaq securities. BSE responded that it had modified its floor examination to include sections relating to Nasdaq trading. Further, BSE noted that, although not required, every specialist who will be trading Nasdaq securities on the Exchange upon commencement of the process has voluntarily taken and passed the NASD Series 55 exam relating to the trading of Nasdaq securities, as well as the Series 63, NASAA Uniform State Law Examination.

Finally, Nasdaq questioned whether BSE would voluntarily comply with NASD Rule 4613 regarding locked/crossed markets before the open. BSE responded that it would not be trading before the opening.

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5) of the Act.[13] The Commission believes that BSE's proposal to trade Nasdaq securities should promote competition, consistent with Section 6 of the Act.[14] In addition, the Commission believes that BSE has proposed rules that should ensure that trading in Nasdaq securities on its floor occurs in an orderly fashion, consistent with the requirements of the Act. The Commission, therefore, believes that the proposal should remove impediments to and perfect the mechanism of a free and open market in a manner that is consistent with the protection of investors and the public interest.[15] The Commission also notes that BSE's responses to the comments raised in the Nasdaq letter were sufficient.[16]

Furthermore, the proposed rule change is consistent with Section 12(f)(2) of the Act,[17] which grants the Commission explicit authority to approve UTP in OTC securities. Section 12(f)(2) of the Act requires the Commission, prior to approving UTP, to determine that the granting of UTP is consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission believes that the proposed rule change is consistent with these goals and thus, the Commission is approving the proposed rule change, subject to the BSE complying with the requirements of the OTC/UTP Plan.[18]

[7] 15 U.S.C. 78l(f).

[8] *See* note 5 *supra*.

[9] *See* Archipelago Letter.

[10] *See* Nasdaq Letter.

[11] *See* letter to Adena Friedman, Senior Vice President, Data Products, Nasdaq, from George W. Mann, Senior Vice President and General Counsel, BSE, dated August 29, 2001.

[12] According to Nasdaq, participants in SuperSoes are required to provide automatic execution when they are at the BBO.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f.

[15] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] The Commission notes that proposed Section 28 of the BSE's rules, Short Sales, does not require an exemption form the Commission's short sales rule, Rule 10a–1, since Nasdaq securities currently are excluded from the Rule. *See* 17 CFR 240.10a–1(a)(1)(ii). However, Nasdaq has applied to become a national securities exchange. *See* Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001). If Nasdaq becomes a registered exchange, Nasdaq securities will be exchange listed and subparagraph (ii) of Rule 10a–1 will no longer be available. Accordingly, BSE specialists trading Nasdaq securities would be subject to Rule 10a–1 unless BSE obtains an exemption from the Rule. Nasdaq has requested an exemption from Rule 10a–1.

[17] 15 U.S.C. 78l(f)(2).

[18] The OTC/UTP Plan refers to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities and for Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privileges Basis. The Commission notes that on August 29, 2001, BSE became a full participant in the OTC/UTP Plan. The other participants of the OTC/UTP Plan are the American Stock Exchange LLC, the Chicago Stock Exchange, Inc, the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc., the Pacific Exchange, Inc, and the Philadelphia Stock Exchange, Inc.

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78s.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

Finally, the Commission finds good cause to accelerate approval of Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register.** The Commission notes that Amendment No. 2 merely clarifies the rule language and deletes inapplicable language. The amendment, therefore, does not substantively change the meaning or intent of the proposed rule change. For these reasons, the Commission believes that good cause exists, consistent with Sections 6(b)(5)[19] and 19(b)[20] of the Act, to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2001–01 and should be submitted by November 15, 2001.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–BSE–2001–01), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26864 Filed 10–24–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44950; File No. SR–NASD–00–02]

Self-Regulatory Organizations; Notice of Filing of Amendments to Proposed Rule Change by National Association of Securities Dealers, Inc. Amending NASD Code of Arbitration Rules 10335 and 10205(h) Relating to Injunctive Relief

October 18, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2000, May 17, 2001 and August 10, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("Commission") Amendment No. 3, Amendment No. 4 and Amendment No. 5 to the proposed rule change respectively, as described in Items I, II, and III below, which items have been prepared by NASD Dispute Resolution.[3] On April 7, 2000, the proposed rule change, which incorporated Amendment No. 1 and Amendment No. 2,[4] was published for comment in the **Federal Register.**[5] The Commission is publishing this notice to solicit comments on Amendment Nos. 3, 4, and 5 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend Rules 10335 and 10205(h) of the Code of Arbitration Procedure of the NASD ("Code"), to simplify and clarify the procedures for obtaining injunctive relief in certain disputes subject to arbitration. Below is the text of the proposed rule change. Changes to the proposed rule text added since the proposed rule change was published in the **Federal Register** on April 7, 2000 are in italics; deletions from the previously published rule change are in brackets.[6]

Rules of the Association

* * * * *

10000. Code of Arbitration Procedure

* * * * *

10300. Uniform Code of Arbitration

Rule 10335. Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

(a) Temporary Injunctive Orders.

(1) In industry or clearing disputes required to be submitted to arbitration pursuant to Rule 10201, parties may seek a temporary injunctive order, as defined in paragraph (a)(2) of this Rule, from a court of competent jurisdiction. Parties to a pending arbitration may seek a temporary injunctive order from a court of competent jurisdiction even if another party has already field a claim arising from the same dispute in arbitration pursuant to this paragraph, provided that an arbitration hearing on a request for permanent injunctive relief *pursuant to paragraph (b) of this* Rule has not yet *begun* [commenced].

(2) For purposes of this Rule, temporary injunctive order means a temporary restraining order, preliminary injunction or other form of initial, temporary injunctive relief.

(3) A party seeking a temporary injunctive order from a court with respect to an industry or clearing dispute required to be submitted to arbitration pursuant to Rule 10201 shall simultaneously file with the Director a Statement of Claim requesting permanent *injunctive and all other* relief with respect to the same dispute in the manner specified under this Code[, and shall simultaneously]. *The party seeking temporary injunctive relief shall also* serve the Statement of Claim requesting permanent *injunctive and all other* relief on all *other* parties *in the same manner and at the same time as the Statement of Claim is filed with the Director.* Filings and service under this Rule *shall* [may] be made by facsimile, overnight delivery service or messager. *Service shall be made on all parties at the same time and in the same manner, unless*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 18, 2000 ("Amendment No. 3"); letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution to Florence Harmon, Senior Special Counsel, Division, Commission, dated May 17, 2001 ("Amendment No. 4"); and letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution to Florence Harmon, Senior Special Counsel, Division, Commission, dated August 10, 2001 ("Amendment No. 5").

[4] *See* letters from Patrice Gliniecki, Vice President and Deputy General Counsel, NASD Dispute Resolution, to Katherine A. England, Assistant Director, Division, Commission, dated March 7, 2000 ("Amendment No. 1") and March 24, 2000 (A"Amendment No. 2").

[5] *See* Securities Exchange Act Release No. 42606 (April 3, 2000), 65 FR 18405 (April 7, 2000) ("Original Proposal").

[6] NASD Disputes Resolution represents that the proposal, and all amendments thereto are available at its web site, *www.nasdadr.com.*

the parties agree otherwise. A party obtaining a court-issued temporary injunctive order shall notify the Director and the other parties of the issuance of the order within one business day.

(4) Unless otherwise stated, for purposes of computation of time under any paragraph of this Rule, any reference to days means calendar days, including Saturdays, Sundays or any NASD holiday. However, if a party must provide notice or a response to the Director and the day on which that notice or response to the Director must be given falls on a Saturday, Sunday or any NASD holiday, then the time period is extended until the next business day.

(b) Hearing on Request for Permanent Injunctive Relief.

(1) Scheduling of Hearing.

If a court issues a temporary injunctive order, an arbitration hearing on the request for permanent injunctive relief shall *begin* [commence] within 15 days of the date the court issues the temporary injunctive order. If the 15th day falls on a Saturday, Sunday, or NASD holiday, the 15-day period shall expire on the next business day. *Unless the parties agree otherwise, a hearing lasting more than one day shall be held on consecutive days when reasonably possible.* The Director shall provide to all parties notice of the date, time and place of the hearing at least three days prior to the *beginning* [commencement] of the hearing.

(2) Composition of Arbitration Panel.

The hearing on the request for permanent injunctive relief shall be heard by a panel of three arbitrators, who shall either be all non-public arbitrators as defined in Rule 10308(a)(4), or, if the underlying dispute would be heard by a public arbitrator or panel consisting of a majority of public arbitrators under Rule 10202, a majority of public arbitrators as defined in Rule 10308(a)(5).

(3) Selection of Arbitrators and Chairperson.

(A) *(i)* In cases in which all of the members of the arbitration panel are non-public under paragraph (b)(2) of this Rule, the Director shall generate and provide to the parties a list of seven arbitrators from a national roster of arbitrators. *The Director shall send to the parties the employment history for the past 10 years for each listed arbitrator and other background information.* At least [a majority] *three* of the arbitrators listed shall be lawyers [specializing in] *with experience litigating cases involving* injunctive relief.

(ii) Each party may exercise one strike to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrator, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. *The Direct shall consolidate the parties' rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.*

(B) *(i)* In cases in which the panel of arbitrators consists of a majority of public arbitrators under paragraph (b)(2) of this Rule, the Director shall generate and provide to the parties a list of nine arbitrators from a national roster of arbitrators. *The Director shall send to the parties employment history for the past 10 years for each listed arbitrator and other background information.* At least a majority of the arbitrators listed shall be [(1)] public arbitrators [and (2)], *and at least four of the arbitrators listed shall be* lawyers [specializing in] *with experience litigating cases involving* injunctive relief.

(ii) Each party may exercise two strikes to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrators, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. *The Director shall consolidate the parties' rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.*

(C) *(i)* Each party shall inform the Director of its preference of chairperson of the arbitration panel by the close of business on the next business day after receiving notice of the panel members.

(ii) If the parties do not agree on a chairperson within that time, the Director shall select the chairperson. In cases in which the panel consists of a majority of public arbitrators, the *Director shall select a public arbitrator as* chairperson. [shall be one of the public arbitrators who is a lawyer specializing in] *with experience litigating cases involving* injunctive relief. [In cases in which the panel consists of non-public arbitrators, the chairperson shall be a lawyer specializing in injunctive relief.] Whenever possible, the Director shall select as chairperson the lawyer [specializing in] *with experience litigating cases involving* injunctive relief whom the parties have ranked the highest.

(D) The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this Rule and Rule 10308 to facilitate the appointment of arbitration panels and the selection of chairperson.

(4) Applicable Legal Standard.

The legal standard for granting or denying a request for permanent injunctive relief is that of the state where the events upon which the request is based occurred, or as specified in an enforceable choice of law agreement between the parties.

(5) Effect of Pending Temporary Injunctive Order.

Upon a full and fair presentation of the evidence from all relevant parties on the request for permanent injunctive relief, the panel may prohibit the parties from seeking an extension of any court-issued temporary injunctive order remaining in effect, or, if appropriate, order the parties jointly to move to modify or dissolve any such order. In the event that a panel's order conflicts with a pending court order, the panel's order will become effective upon expiration of the pending court order.

(2) Fees, Costs and Expenses, and Arbitrator Honorarium.

(A) The parties shall jointly bear [the] *reasonable* travel-related costs and expenses *incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in* [of the arbitrators appointed to hear] *the hearing on* the request for permanent injunctive relief. [The arbitrators shall not reallocate such costs and expenses among the parties.] *The arbitrators may reallocate such costs and expenses among the parties in the award.*

(B) The party seeking injunctive relief shall pay the expedited hearing fees pursuant to Rule 10205(h), or, where both sides seek such relief, both parties shall pay such fees. In either event, however, the arbitrator(s) [shall have the authority to] *may* reallocate such fees among the parties *in the award.*

(C) Notwithstanding any other provision in the Code, the chairperson of the panel hearing a request for permanent injunctive relief pursuant to this Rule shall receive an honorarium of $375 for each single session, and $700 for each double session, of the hearing. Each other member of the panel shall receive an honorarium of $300 for each single session, and $600 for each double session, of the hearing. The parties shall equally pay the difference between these amounts and the amounts panel members and the chairperson receive under the Code pursuant to IM–10104. The arbitrators [shall not] *may* reallocate such amount among the parties *in the award.*

(c) Hearing on Damages or other Relief.

(1) Upon completion of the hearing on the request for permanent relief, the panel, may, if necessary, set a date for any subsequent hearing on damages or other relief, which shall be held before the same panel or arbitrators and which shall include, but not be limited to, the same record.

(2) The parties shall jointly bear [the] *reasonable* travel-related costs and expenses [of the arbitrators resulting from] *incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in* any subsequent hearings on damages or other relief. The arbitrators [shall not] *may* reallocate such costs and expenses among the parties *in the award.*

(d) Unchanged.

* * * * *

10200. INDUSTRY AND CLEARING CONTROVERSIES

10205. Schedule of Fees for Industry and Clearing Controversies

(a)–(k) Unchanged.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NASD Dispute Resolution has filed three amendments to the proposed rule change since it was published for comment by the Commission on April 7, 2000.[7] In the amendments filed with the Commission, NASD Dispute Resolution included statements concerning the purpose of and basis for the amendments to the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Dispute Resolution has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 10335 of the Code is a pilot rule providing procedures for obtaining interim and permanent injunctive relief in arbitration. The pilot rule is currently due to expire on January 4, 2002. The purpose of the proposed rule change is to streamline the process for obtaining injunctive relief, and to expedite the disposition of the merits of cases in which injunctive relief is ordered.

The Commission published the proposed rule change for comment on April 7, 2000.[8] On December 19, 2000, NASD Dispute Resolution filed Amendment No. 3 and a Response to Comments responding to a majority of the comment letters.[9] On December 21, 2000, NASD Dispute Resolution filed a second Response to Comments responding to the remaining comment letters subsequently received by NASD Dispute Resolution.[10] Since then, NASD Dispute Resolution has amended the proposed rule change twice more in response to comments from the Commission staff.[11] The amendments to the proposed rule change made since the proposed rule change was published for comment are summarized below.

Panel Composition

The proposed rule change originally required that a majority of arbitrators hearing requests for permanent injunctive relief be lawyers specializing in injunctive relief. A number of commenters expressed the view that this requirement was overly vague, would result in more arbitrators with a bias in favor of member firms and would give the staff too much discretion in determining who met the criteria. In response, NASD Dispute Resolution amended the proposed rule change to provide that a majority of arbitrators hearing a request for permanent injunctive relief be lawyers "with experience litigating cases involving" injunctive relief, rather than lawyers "specializing in" injunctive relief. In response to additional comments from the Commission staff based on commenters' concerns about panel composition, the proposed rule change was further amended to provide that less than a majority of the arbitrators listed would be required to be lawyers with experience litigating cases involving injunctive relief. Therefore, the proposed rule now provides that at least three of seven, or four of nine, rather than a majority, of the listed arbitrators in non-public and public cases, respectively, shall be lawyers with experience litigating cases involving injunctive relief.[12]

Allocation of Fees and Costs

In order to fill a panel to hear requests for permanent relief within the shortened time frame provided by the proposed rule, arbitrators will occasionally be required to travel to hearing locations other than their primary hearing location. The proposed rule change originally provided that the parties would jointly bear the travel-related costs and expenses of the arbitrators hearing the request for permanent relief or any subsequent hearing on other relief, as well as the additional honoraria required by the rule, and prohibited arbitrators from reallocating costs and expenses among the parties.

In response to comments, NASD Dispute Resolution amended the text of the proposed rule change to delete all prohibitions on reallocation of the costs, expenses, fees, and honoraria. In addition, the proposed rule change was amended to expressly provide that the arbitrators may reallocate these costs, expenses, and honoraria in the award. NASD Dispute Resolution also amended the provisions relating to travel costs and expenses to clarify that the parties are only responsible for reasonable travel-related costs and expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in the hearing on the request for permanent injunctive relief or subsequent hearings on other forms of relief.

Appointment of Arbitrators

At the suggestion of the Commission staff, NASD Dispute Resolution amended the proposed rule change to make clear that certain procedures in Rule 10308 under the Code for providing parties with background information regarding the listed arbitrators, and for appointing arbitrators based on the consolidated list of the parties' rankings, apply in the context of the proposed rule. Specifically, the proposed rule change now provides that the Director shall send to the parties the employment history for each listed arbitrator for the past 10 years and other background information. This language mirrors language in Rule 10308(b)(6) under the Code. The proposed rule change also now provides that once the lists are ranked and returned by the parties, the Director shall consolidate the parties' rankings and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to availability and disqualification. This language

[7] *See* Amendment No. 3, Amendment No. 4 and Amendment No. 5, *supra* note 3.

[8] *See* note 5.

[9] *See* Amendment No. 3 for a detailed summary of the comments and NASD Dispute Resolutions' response, *supra* note 3.

[10] *See supra* note 5.

[11] *See* Amendment No. 4 and Amendment No. 5, *supra* note 3.

[12] *See* letter from John W. Shaw and Jeffrey A. Ziesman, Berkowitz, Feldmiller, Stanton, Brandt, Williams & Stueve, LLP, counsel to Sutro & Co. Incorporated, to Secretary, Commission, dated April 28, 2000 ("Sutro Comment Letter"), and letter from Dan Jamieson, Public Investor, to Jonathan Katz, Secretary, Commission, dated May 1, 2000.

mirrors language in Rule 10308(c)(3) and (c)(4) under the Code.

Filing and Service of Statement of Claim

NASD Dispute Resolution amended the proposed rule change to clarify that when parties file a Statement of Claim in arbitration pursuant to paragraph (a)(3) of the proposed rule, the Statement of Claim must include requests for all permanent relief, whether injunctive or otherwise. The same provision was also amended to clarify that service under the rule must be made on all parties at the same time and in the same manner, unless the parties agree otherwise, and that the Statement of Claim must be filed with the Director in the same manner as it is served on the other parties. The provision was also amended to clarify, because of the short time frames provided by the rule, that service and filings under the rule must be either by facsimile, overnight delivery service or messenger. These changes reflect the intent of the original rule filing and are merely intended to remove any ambiguity from the original filing.

Consecutive Hearing Days

To further ensure prompt presentation of evidence in such cases, the proposed rule was amended to provide that, to the extent possible, hearings on requests for permanent injunctive relief lasting more than one day would be held on consecutive days, unless the parties agree otherwise.

(b) *Timing of Requests for Temporary Injunctive Orders in Court:* The proposed rule provides that parties to a pending arbitration may seek temporary injunctive relief in court even if another party has already filed a claim arising from the same dispute in arbitration, provided that an arbitration hearing on the request for permanent injunctive relief has not yet begun. NASD Dispute Resolution amended this provision to clarify that this provision refers to the arbitration hearing on the merits of the request for permanent injunctive relief, and not to any pre-hearing conferences related to the hearing on the request for permanent injunctive relief.

(c) *Commence v. Begin:* At the request of the Commission staff, NASD Dispute Resolution replaced the word "commence" with the word "begin," or the appropriate form thereof, throughout the proposed rule to respond to a commenter's request to clarify that the relevant provisions refer to the arbitration hearing on the merits.[13]

[13] *See* Sutro Comment Letter, *supra* note 12.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change as amended is consistent with the provisions of Section 15A(b) of the Exchange Act,[14] in general, and furthers the objectives of Section 15A(b)(6),[15] in particular, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that it is in the best interest of investors and the parties involved in intra-industry disputes to provide for fast and efficient resolution of requests for temporary injunctive relief, and to provide clear and simple rules governing the integration of court-ordered relief with the arbitration of the underlying disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change as amended will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD submitted Amendment No. 3, Amendment No. 4 and Amendment No. 5 to the proposed rule change ("Current Amendments") in response to written comments it received on the Original Proposal. Written comments regarding the Current Amendments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

[14] 15 U.S.C. 78o–3(b).

[15] 15 U.S.C. 78o–3(b)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3, 4, and 5, including whether Amendment Nos. 3, 4, and 5 are consistent with the Act. The Commission notes in particular that, under the proposal, the parties shall jointly bear the reasonable travel-related costs and expenses resulting from any subsequent hearings on damages or other relief. In addition, the parties shall equally pay the difference between the honorarium under proposed paragraph (b)(6)(C) of Rule 10335 and the amounts the arbitrators are otherwise entitled to receive under the Code. The arbitrators may reallocate these costs and expenses among the parties. The Commission seeks comments on this fee structure, including whether the proposal is consistent with the Act which, among other things, prohibits the imposition of inappropriate and unnecessary burdens on competition[16] and requires that fees and charges be reasonable and equitably allocated.[17]

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–02 and should be submitted by November 15, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[16] *See* 15 U.S.C. 78o–3(b)(9).

[17] *See* 15 U.S.C. 78o–3(b)(5).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44960; File No. SR–NSCC–2001–14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Data Services Only Members

October 19, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT")[1], notice is hereby given that on September 24, 2001, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow NSCC to add a new membership category ("Data Services Only Member") to its rules. Data Services Only Members would be able to use certain non-clearing services available at NSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, for Proposed Rule Change

The proposed rule change creates a new category of member that its eligible to access certain limited data and information services of NSCC. Such entities will be known as "Data Services Only Members" and would only be permitted access to those services specifically enumerated under NSCC's rules. They would not be permitted to settle any transactions through NSCC's facilities.

Entities seeking access as a Data Services Only Member must only meet the requirements of any of clauses (i) through (vi) of Section 1 of Rule 2; that is, they must be either a registered broker-dealer, bank or trust company, registered clearing agency, insurance company or entity licensed to sell insurance products, an investment company registered under the Investment Company Act of 1940, as amended, or an entity that has demonstrated to NSCC's Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from access to such services in order to be accepted as a Data Services Only Member.[3]

Initially, the only NSCC service that Data Services Only Members would be permitted to access the networking service provided as part of NSCC's Mutual Fund Services.

This new membership category is being added at the request of NSCC's Fund Members and the Investment Company Institute, in order to permit broker-dealers who otherwise do not qualify to be NSCC members to obtain access to customers' account data in an automated format.

NSCC's Rule 52 (Mutual Fund Services) is being amended to permit Data Services Only Members to utilize networking only to request and transmit mutual fund, investment fund and UIT customer account data. (They would not, however, be permitted to settle dividend or other networking payments through NSCC.)[4]

The proposed rule change also makes technical conforming changes to other existing rules in order to include references to Data Services Only Members. In addition, certain technical corrections are being made to update certain cross-references as a result of other recent rule changes.[5]

A proposed fee schedule for Data Services Only Members' use of networking is being developed and will be the subject of a separate rule filing.[6]

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to NSCC because the rule change will increase the automation of data transmission between fund members, broker-dealers, and other entities and will permit greater access to such information, thus facilitating the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC has, however, worked closely with the Investment Company Institute and a representative group of mutual fund industry participants in developing the proposed Data Services Only Membership category. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(f)(4) thereunder because the proposed rule change effects a change in an existing service that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and it does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Since Data Services Only Members will not be inputting transactions for settlement through NSCC's facilities and since NSCC will thus not be subject to settlement exposure by these members. Data Services Only Members will not be required to make a clearing fund deposit, and they will not be subject to NSCC's current membership standards.

[4] Subsequently, it is anticipated that such members would also be permitted to transmit data regarding mutual fund purchase and redemption transaction, which transactions would be settled outside the Corporation's facilities. Such extension would be the subject of a separate rule filing.

[5] Since recently Addendum M has been deleted (with the applicable provisions now being contained in Addendum K), the reference to Addendum M in Rule 18 has been corrected to refer to Addendum K. In addition, the reference to "TPA Member" in Rule 29 has been deleted as an incorrect reference.

[6] Until such time as a fee schedule has been agreed upon, this limited service will be provided free.

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file fix copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–2001–14 and should be submitted by November 15, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26896 Filed 10–24–01; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer and at the following addresses:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503

(SSA), Social Security Administration, DCFAM, Attn: SSA Reports Clearance Officer, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235–6401

I. The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–4145, or by writing to him at the address listed above.

Railroad Employment Questionnaire—0960–0078. The Social Security Administration (SSA) uses Form SSA–671 to secure sufficient information to effect the required coordination with the Railroad Retirement Board for Social Security claims processing. It is completed whenever claimants give indications of having been employed in the railroad industry. The respondents are applicants for Social Security benefits, who have had railroad employment, or dependents of railroad workers.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 2,500 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. Statement Regarding Students' School Attendance—0960–0113. Form SSA–2434 is used by the Social Security Administration to determine student entitlement status of the children of coal miners, children of their widows or the brothers of deceased miners eligible for Black Lung benefits. This form collects information from students about to attain age 18, for the express purpose of evaluating their continuing eligibility for program benefits under the Federal Mine Safety Act of 1977. The respondents are entitled black lung children of coal miner's or their widow, or the brother of deceased black lung coal miners.

Number of Respondents: 50.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 8 hours.

2. The Internet Social Security Benefits Application (ISBA)—0960–0618. One of the requirements for obtaining Social Security benefits is the filing of an application so that a determination may be made on the applicant's eligibility for monthly benefits. ISBA, which is available at the Social Security Administration's (SSA) Internet site, is one method that an individual can choose to file an application for benefits. In order to make a determination on eligibility for benefits, it is necessary to elicit from the applicant information about the date and place of birth, current and recent work, receipt of non-covered pensions etc. Currently, the ISBA can only be used to apply for retirement and spouse's benefits. SSA plans to expand ISBA to encompass Disability Insurance Benefits (DIB). SSA has used information collected by ISBA to entitle individuals to retirement insurance benefits and/or spouse's benefits. The information collected by the expanded ISBA will be used to entitle individuals to DIB as well. The respondents are applicants for retirement insurance benefits, spouse's benefits and disability benefits. Below is an estimate of the public reporting burden:

Type of benefit	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden
RIB	130,000	1	20 minutes	43,333 hours.
DIB	39,000	1	25–30 minutes	16,542 hours.

[7] 17 CFR 200.30–3(a)(12).

Type of benefit	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden
Total	169,000			59,875 hours.

Dated: October 18, 2001.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 01–26883 Filed 10–24–01; 8:45 am]

BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner

Cost-of-Living Increase and Other Determinations for 2002

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Commissioner has determined—

(1) A 2.6 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 2001;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 2002 to $545 for an eligible individual, $817 for an eligible individual with an eligible spouse, and $273 for an essential person;

(3) The student earned income exclusion to be $1,320 per month in 2002 but not more than $5,340 in all of 2002;

(4) The dollar fee limit for services performed as a representative payee to be $30 per month ($57 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2002;

(5) The national average wage index for 2000 to be $32,154.82;

(6) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be $84,900 for remuneration paid in 2002 and self-employment income earned in taxable years beginning in 2002;

(7) For beneficiaries who will not have reached their normal retirement age by the end of 2002, the monthly exempt amount under the Social Security retirement earnings test for taxable years ending in calendar year 2002 to be $940;

(8) The dollar amounts ("bend points") used in the benefit formula for workers who become eligible for benefits in 2002 to be $592 and $3,567;

(9) The dollar amounts ("bend points") used in the formula for computing maximum family benefits for workers who become eligible for benefits in 2002 to be $756, $1,092, and $1,424;

(10) The amount of taxable earnings a person must have to be credited with a quarter of coverage in 2002 to be $870;

(11) The "old-law" contribution and benefit base to be $63,000 for 2002;

(12) The monthly amount deemed to constitute substantial gainful activity for statutorily blind individuals in 2002 to be $1,300, and the corresponding amount for non-blind disabled persons to be $780;

(13) The earnings threshold establishing a month as a part of a trial work period to be $560 for 2002; and

(14) Coverage thresholds for 2002 to be $1,300 for domestic workers and $1,200 for election workers.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3013. For information on eligibility or claiming benefits, call 1–800–772–1213. Information relating to this announcement is available on the Internet at *http://www.ssa.gov/OACT/COLA/index.html.*

SUPPLEMENTARY INFORMATION: In accordance with the Act, the Commissioner must publish within 45 days after the close of the third calendar quarter of 2001 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Commissioner must publish on or before November 1 the national average wage index for 2000 (section 215(a)(1)(D)), the OASDI fund ratio for 2001 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2002 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 2002 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2002 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 2002 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2002 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The next cost-of-living increase, or automatic benefit increase, is 2.6 percent for benefits under titles II and XVI of the Act. Under title II, OASDI benefits will increase by 2.6 percent for individuals eligible for December 2001 benefits, payable in January 2002. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)). Under title XVI, Federal SSI payment levels will also increase by 2.6 percent effective for payments made for the month of January 2002 but paid on December 31, 2001. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f).

Automatic Benefit Increase Computation

Under section 215(i) of the Act, the third calendar quarter of 2001 is a cost-of-living computation quarter for all the purposes of the Act. The Commissioner is, therefore, required to increase benefits, effective for December 2001, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 2001, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 2000 to the third quarter of 2001.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. We round the arithmetic mean, if necessary, to the nearest 0.1. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 2000, is: for July 2000, 169.4; for August 2000, 169.3; and for September 2000, 170.4. The arithmetic mean for this calendar quarter is 169.7. The corresponding Consumer Price Index for each month in the quarter ending September 30, 2001, is: for July 2001, 173.8; for August 2001, 173.8; and for September 2001, 174.8. The arithmetic mean for this calendar quarter is 174.1. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 2001, exceeds that for the

calendar quarter ending September 30, 2000 by 2.6 percent (rounded to the nearest 0.1), a cost-of-living benefit increase of 2.6 percent is effective for benefits under title II of the Act beginning December 2001.

Section 215(i) also specifies that an automatic benefit increase under Title II, effective for December of any year, will be limited to the increase in the national average wage index for the prior year if the "OASDI fund ratio" for that year is below 20.0 percent. The OASDI fund ratio for a year is the ratio of the combined assets of the Old-Age and Survivors Insurance and Disability Insurance Trust Funds at the beginning of that year to the combined expenditures of these funds during that year. (The expenditures in the ratio's denominator exclude transfer payments between the two trust funds, and reduce any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.) For 2001, the OASDI fund ratio is assets of $1,049,445 million divided by estimated expenditures of $439,464 million, or 238.8 percent. Because the 238.8-percent OASDI fund ratio exceeds 20.0 percent, the automatic benefit increase for December 2001 is not limited.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, in the case of workers and family members for whom eligibility for benefits (*i.e.*, the worker's attainment of age 62, or disability or death before age 62) occurred before 2002, benefits will increase by 2.6 percent beginning with benefits for December 2001 which are payable in January 2002. In the case of first eligibility after 2001, the 2.6 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, we determine benefits by means of a benefit table. You may obtain a copy of this table by writing to: Social Security Administration, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235. The table is also available on the Internet at address *http://www.ssa.gov/OACT/ProgData/tableForm.html*.

Section 215(i)(2)(D) of the Act requires that, when the Commissioner determines an automatic increase in Social Security benefits, the Commissioner will publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). We refer to these benefits as "special minimum" benefits. These benefits are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 "years of coverage." To earn a year of coverage for purposes of the special minimum benefit, a person must earn at least a certain proportion (25 percent for years before 1991, and 15 percent for years after 1990) of the "old-law" contribution and benefit base. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 2.6 percent automatic benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2001

Number of years of coverage	Primary insurance amount	Maximum family benefit
11	$30.10	$45.80
12	61.00	92.20
13	92.10	138.50
14	122.70	184.60
15	153.50	230.70
16	184.40	277.40
17	215.40	323.90
18	246.30	370.10
19	277.10	416.40
20	307.90	462.60
21	339.00	509.30
22	369.60	555.40
23	400.90	602.40
24	431.80	648.40
25	462.60	694.20
26	493.80	741.50
27	524.40	787.50
28	555.30	833.70
29	586.10	880.30
30	617.00	926.20

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled will increase by 2.6 percent effective January 2002. For 2001, we derived the monthly benefit amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—$531, $796, and $266, respectively—from corresponding yearly unrounded Federal SSI benefit amounts of $6,375.88, $9,562.74, and $3,195.24. (*See* the **Federal Register** notice (66 FR 28589) published May 23, 2001, for information on how we determined these amounts.)

For 2002, these yearly unrounded amounts increase by 2.6 percent to $6,541.65, $9,811.37, and $3,278.32, respectively. Each of these resulting amounts must be rounded, when not a multiple of $12, to the next lower multiple of $12. Accordingly, the corresponding annual amounts, effective for 2002, are $6,540, $9,804, and $3,276. Dividing the yearly amounts by 12 gives the corresponding monthly amounts for 2002—$545, $817, and $273, respectively. We reduce the monthly amount by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, we equally divide the amount payable between the two spouses.

Title VIII of the Act provides for special benefits to certain World War II veterans residing outside the United States. Section 805 provides that "[t]he benefit under this title payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate [for an eligible individual] under title XVI for the month, reduced by the amount of the qualified individual's benefit income for the month." Thus the monthly benefit for 2002 under this provision is 75 percent of $545, or $408.75.

Student Earned Income Exclusion

A blind or disabled child, who is a student regularly attending school, college, or university, or a course of vocational or technical training, can have limited earnings that are not counted against his or her SSI benefits. The maximum amount of such income that may be excluded in 2001 is $1,290 per month but not more than $5,200 in all of 2001. For years after 2001, these amounts will increase based on a formula set forth in our regulation (20 CFR 416.1112, as revised on December 29, 2000, at 65 FR 82905).

To compute each of the monthly and yearly maximum amounts for 2002, we increase the corresponding unrounded amount for 2001 by the latest cost-of-living increase. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10. The unrounded monthly amount for 2001 is $1,290.00 (the same as the rounded amount because the adjustment for 2002 is the first automatic adjustment). We increase this amount by 2.6 percent to $1,323.54, which we then round to $1,320. Similarly, the unrounded yearly amount for 2001 is $5,200.00. We increase this amount by 2.6 percent to $5,335.20, which we then round to $5,340. Thus the maximum amount of the income exclusion applicable to a student in 2002 is $1,320 per month but not more than $5,340 in all of 2002.

Fee for Services Performed as a Representative Payee

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect from an individual a monthly fee for expenses incurred in providing services performed as such individual's representative payee. Currently the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2) $29 per month ($56 per month in any case in which the individual is entitled to disability benefits and the Commissioner has determined that payment to the representative payee would serve the interest of the individual because the individual has an alcoholism or drug addiction condition and is incapable of managing such benefits). The dollar fee limits are subject to increase by the automatic cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Thus we increase the current amounts by 2.6 percent to $30 and $57 for 2002.

National Average Wage Index for 2000

General

Under various provisions of the Act several amounts increase automatically with annual increases in the national average wage index. The amounts are: (1) The OASDI contribution and benefit base; (2) the retirement test exempt amounts; (3) the dollar amounts, or "bend points," in the primary insurance amount and maximum family benefit formulas; (4) the amount of earnings required for a worker to be credited with a quarter of coverage; (5) the "old-law" contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (6) the substantial gainful activity amount applicable to statutorily blind individuals; and (7) the coverage threshold for election officials and election workers. Also, section 3121(x) of the Internal Revenue Code requires that the domestic employee coverage threshold be based on changes in the national average wage index.

In addition to the amounts required by statute, two amounts increase automatically under regulatory requirements. The amounts are (1) the substantial gainful activity amount applicable to non-blind disabled persons, and (2) the monthly earnings threshold that establishes a month as part of a trial work period for disabled beneficiaries.

Computation

The determination of the national average wage index for calendar year 2000 is based on the 1999 national average wage index of $30,469.84 announced in the **Federal Register** on October 24, 2000 (65 FR 63663), along with the percentage increase in average wages from 1999 to 2000 measured by annual wage data tabulated by the Social Security Administration (SSA). The wage data tabulated by SSA include contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $29,229.69 and $30,846.09 for 1999 and 2000, respectively. To determine the national average wage index for 2000 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 1999 national average wage index of $30,469.84 by the percentage increase in average wages from 1999 to 2000 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent).

Amount

The national average wage index for 2000 is $30,469.84 times $30,846.09 divided by $29,229.69, which equals $32,154.82. Therefore, the national average wage index for calendar year 2000 is $32,154.82.

OASDI Contribution and Benefit Base

General

The OASDI contribution and benefit base is $84,900 for remuneration paid in 2002 and self-employment income earned in taxable years beginning in 2002.

The OASDI contribution and benefit base serves two purposes:

(a) It is the maximum annual amount of earnings on which OASDI taxes are paid. The OASDI tax rate for remuneration paid in 2002 is 6.2 percent for employees and employers, each. The OASDI tax rate for self-employment income earned in taxable years beginning in 2002 is 12.4 percent. (The Hospital Insurance tax is due on remuneration, without limitation, paid in 2002, at the rate of 1.45 percent for employees and employers, each, and on self-employment income earned in taxable years beginning in 2002, at the rate of 2.9 percent.)

(b) It is the maximum annual amount of earnings used in determining a person's OASDI benefits.

Computation

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2002 shall be the larger of: (1) the 1994 base of $60,600 multiplied by the ratio of the national average wage index for 2000 to that for 1992; or (2) the current base ($80,400). If the resulting amount is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 OASDI contribution and benefit base amount ($60,600) by the ratio of the national average wage index for 2000 ($32,154.82 as determined above) to that for 1992 ($22,935.42) produces the amount of $84,959.51. We round this amount to $84,900. Because $84,900 exceeds the current base amount of $80,400, the OASDI contribution and benefit base is $84,900 for 2002.

Retirement Earnings Test Exempt Amounts

General

We withhold Social Security benefits when a beneficiary under the normal retirement age (NRA) has earnings in excess of the applicable retirement earnings test exempt amount. (NRA is the age of initial benefit entitlement for which the benefit, before rounding, is equal to the worker's primary insurance amount. The NRA is age 65 for those born before 1938, and it will gradually increase to age 67.) A higher exempt amount applies in the year in which a person attains his/her NRA, but only with respect to earnings in months prior to such attainment, and a lower exempt amount applies at all other ages below NRA. Section 203(f)(8)(B) of the Act, as amended by section 102 of Pub. L. 104–121, provides formulas for determining the monthly exempt amounts. The amendment set the higher annual exempt amount to $30,000 for 2002. After 2002, the higher exempt amount will increase under the applicable formula. The corresponding monthly exempt amounts are exactly one-twelfth of the annual amounts.

For beneficiaries attaining NRA in the year, we withhold $1 in benefits for every $3 of earnings in excess of the annual exempt amount for months prior to such attainment. For all other beneficiaries under NRA, we withhold $1 in benefits for every $2 of earnings in excess of the annual exempt amount.

Computation

Under the formula applicable to beneficiaries who are under NRA and who will not attain NRA in 2002, the lower monthly exempt amount for 2002 shall be the larger of: (1) the 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 2000 to that for 1992; or (2) the 2001 monthly exempt amount ($890). If the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Lower Exempt Amount

Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1992 ($22,935.42) produces the amount of $939.32. We round this to $940. Because $940 is larger than the corresponding current exempt amount of $890, the lower retirement earnings test monthly exempt amount is $940 for 2002. The corresponding lower annual exempt amount is $11,280 under the retirement earnings test.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a method for computing benefits which generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's "average indexed monthly earnings" to compute the primary insurance amount. We adjust the computation formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or "index," a worker's earnings to reflect the change in general wage levels that occurred during the worker's years of employment. Such indexation ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the average indexed monthly earnings, we first determine the required number of years of earnings. Then we select that number of years with the highest indexed earnings, add the indexed earnings, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the average indexed monthly earnings.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 2002, we divide the national average wage index for 2000, $32,154.82, by the national average wage index for each year prior to 2000 in which the worker had earnings. Then we multiply the actual wages and self-employment income, as defined in section 211(b) of the Act and credited for each year, by the corresponding ratio to obtain the worker's indexed earnings for each year before 2000. We consider any earnings in 2000 or later at face value, without indexing. We then compute the average indexed monthly earnings for determining the worker's primary insurance amount for 2002.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. We call the dollar amounts in the formula governing the portions of the average indexed monthly earnings the "bend points" of the formula. Thus, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2002, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2000 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1977 ($9,779.44) produces the amounts of $591.84 and $3,567.48. We round these to $592 and $3,567. Accordingly, the portions of the average indexed monthly earnings to be used in 2002 are the first $592, the amount between $592 and $3,567, and the amount over $3,567.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2002, or who die in 2002 before becoming eligible for benefits, their primary insurance amount will be the sum of

(a) 90 percent of the first $592 of their average indexed monthly earnings, plus

(b) 32 percent of their average indexed monthly earnings over $592 and through $3,567, plus

(c) 15 percent of their average indexed monthly earnings over $3,567.

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the long established policy of limiting the total monthly benefits that a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. We refer to such dollar amounts in the formula as the "bend points" of the family-maximum formula.

To obtain the bend points for 2002, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2000 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1977 ($9,779.44) produces the amounts of $756.24, $1,091.62, and $1,423.70. We round these amounts to $756, $1,092, and $1,424. Accordingly, the portions of the primary insurance amounts to be used in 2002 are the first $756, the amount between $756 and $1,092, the amount between $1,092 and $1,424, and the amount over $1,424.

Consequently, for the family of a worker who becomes age 62 or dies in 2002 before age 62, we will compute the total amount of benefits payable to them so that it does not exceed

(a) 150 percent of the first $756 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $756 through $1,092, plus

(c) 134 percent of the worker's primary insurance amount over $1,092 through $1,424, plus

(d) 175 percent of the worker's primary insurance amount over $1,424.

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Quarter of Coverage Amount

General

The amount of earnings required for a quarter of coverage in 2002 is $870. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of $50 or more were paid, or with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages on an annual basis instead of a quarterly basis. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year.

Computation

Under the prescribed formula, the quarter of coverage amount for 2002 shall be the larger of: (1) the 1978 amount of $250 multiplied by the ratio of the national average wage index for 2000 to that for 1976; or (2) the current amount of $830. Section 213(d) further provides that if the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1976 ($9,226.48) produces the amount of $871.26. We then round this amount to $870. Because $870 exceeds the current amount of $830, the quarter of coverage amount is $870 for 2002.

"Old-Law" Contribution and Benefit Base

General

The "old-law" contribution and benefit base for 2002 is $63,000. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. We compute the base under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(a) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Social Security Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the "old-law" base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The "old-law" contribution and benefit base shall be the larger of: (1) the 1994 "old-law" base ($45,000) multiplied by the ratio of the national average wage index for 2000 to that for 1992; or (2) the current "old-law" base ($59,700). If the resulting amount is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 "old-law" contribution and benefit base amount ($45,000) by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1992 ($22,935.42) produces the amount of $63,088.75. We round this amount to $63,000. Because $63,000 exceeds the current amount of $59,700, the "old-law" contribution and benefit base is $63,000 for 2002.

Substantial Gainful Activity Amounts

General

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in substantial gainful activity (SGA). (A finding of disability under title XVI for a child is based on a different standard, not related to SGA.) A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals while Federal regulations (20 CFR 404.1574 and 416.974, as revised on December 29, 2000, at 65 FR 82905) specify a lower SGA amount for non-blind individuals. Both SGA amounts increase in accordance with increases in the national average wage index.

Computation

The monthly SGA amount for statutorily blind individuals for 2002 shall be the larger of: (1) such amount for 1994 multiplied by the ratio of the national average wage index for 2000 to that for 1992; or (2) such amount for

2001. The monthly SGA amount for non-blind disabled individuals for 2002 shall be the larger of: (1) such amount for 2000 multiplied by the ratio of the national average wage index for 2000 to that for 1998; or (2) such amount for 2001. In either case, if a resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals

Multiplying the 1994 monthly SGA amount for statutorily blind individuals ($930) by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1992 ($22,935.42) produces the amount of $1,303.83. We then round this amount to $1,300. Because $1,300 is larger than the current amount of $1,240, the monthly SGA amount for statutorily blind individuals is $1,300 for 2002.

SGA Amount for Non-Blind Disabled Individuals

Multiplying the 2000 monthly SGA amount for non-blind individuals ($700) by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1998 ($28,861.44) produces the amount of $779.88. We then round this amount to $780. Because $780 is larger than the current amount of $740, the monthly SGA amount for non-blind individuals is $780 for 2002.

Trial Work Period Earnings Threshold

General

During a trial work period, a beneficiary receiving Social Security disability benefits may test his or her ability to work and still be considered disabled. We do not consider services performed during the trial work period as showing that the disability has ended until services have been performed in at least 9 months (not necessarily consecutive) in a rolling 60-month period. In 2001, any month in which earnings exceed $530 is considered a month of services for an individual's trial work period. In 2002, this monthly amount increases to $560.

Computation

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b), as revised on December 29, 2000, at 65 FR 82905. Monthly earnings in 2002, used to determine whether a month is part of a trial work period, is such amount for 2001 multiplied by the ratio of the national average wage index for 2000 to that for 1999, or, if larger, such amount for 2001. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10.

Amount

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1999 ($30,469.84) produces the amount of $559.31. We then round this amount to $560. Because $560 is larger than the current amount of $530, the monthly earnings threshold is $560 for 2002.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2002, this threshold is $1,300. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2002 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2000 to that for 1993. If the resulting amount is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold amount ($1,000) by the ratio of the national average wage index for 2000 ($32,154.82) to that for 1993 ($23,132.67) produces the amount of $1,390.02. We then round this amount to $1,300. Accordingly, the domestic employee coverage threshold amount is $1,300 for 2002.

Election Worker Coverage Threshold

General

The minimum amount an election worker must earn so that such earnings are covered under Social Security or Medicare is the election employee coverage threshold. For 2002, this threshold is $1,200. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

Computation

Under the formula, the election worker coverage threshold amount for 2002 shall be equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 2000 to that for 1997. If the amount so determined is not a multiple of $100, it shall be rounded to the nearest multiple of $100.

Election Worker Coverage Threshold Amount

Multiplying the 1999 election worker coverage threshold amount ($1,000) by the ratio of the national average wage index for 2000 ($32,154.82) compared to that for 1997 ($27,426.00) produces the amount of $1,172.42. We then round this amount to $1,200. Accordingly, the election worker coverage threshold amount is $1,200 for 2002.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income)

Dated: October 19, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

[FR Doc. 01–26911 Filed 10–24–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3823]

Bureau of Educational and Cultural Affairs, Office of Citizen Exchanges (ECA/PE/C); 60-Day Notice of Proposed Information Collection: Evaluation of DOS-Sponsored Citizen Exchange Programs

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: New collection.

Originating Office: Bureau of Educational and Cultural Affairs, Office of Citizen Exchanges (ECA/PE/C).

Title of Information Collection: Evaluation of DOS-Sponsored Citizen Exchange Programs.

Frequency: Information is collected on a per exchange program or exchange project basis.

Form Number: N/A [Multiple survey questionnaires may be used for exchange programs on an on-going and per-program basis.]

Respondents: Respondents of evaluation and/or program monitoring information collections may include U.S. and foreign applicants, current grantee exchange visitor participants (J–1 visa) and alumni of the ECA/PE/C exchange programs, program administrators, domestic grantee organizations, foreign partner organizations, domestic and foreign hosts of exchange visitor participants, and other similar types of respondents associated with ECA/PE/C exchange programs.

Estimated Number of Respondents: 1,485.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 743 (1,485 total annual response x 30 minutes).

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Tamara L. Martin, U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, 301 4th Street, SW., (SA–44), Room 357, Washington, DC 20547, who may be reached on (202) 619–5307.

Dated: August 15, 2001.

David Whitten,

Executive Director, Bureau of Educational and Cultural Affairs (ECA), U.S. Department of State.

[FR Doc. 01–26904 Filed 10–24–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 3822]

Bureau of Educational and Cultural Affairs, Office of Citizen Exchanges (ECA/PE/C); 60-Day Notice of Proposed Information Collection: Evaluation of DOS-Sponsored Academic Exchange Programs

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: New collection.

Originating Office: Bureau of Educational and Cultural Affairs, Office of Academic Exchanges (ECA/A).

Title of Information Collection: Evaluation of DOS-Sponsored Academic Exchange Programs.

Frequency: Information is collected on a per exchange program or exchange project basis.

Form Number: N/A [Multiple survey questionnaires may be used for exchange programs on an on-going and per-program basis.]

Respondents: Respondents of evaluation and/or program monitoring information collections may include U.S. and foreign applicants, current grantee exchange visitor participants (J–1 visa) and alumni of the ECA/A exchange programs, program administrators, domestic grantee organizations, foreign partner organizations, domestic and foreign hosts of exchange visitor participants, and other similar types of respondents associated with ECA/A exchange programs.

Estimated Number of Respondents: 2,386.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 1,193 (2,386 total annual responses x 30 minutes).

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Tamara L. Martin, U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, 301 4th Street, SW (SA–44), Room 357, Washington, DC 20547, who may be reached on (202) 619–5307.

Dated: October 15, 2001.

David Whitten,

Executive Director, Bureau of Educational and Cultural Affairs (ECA), U.S. Department of State.

[FR Doc. 01–26905 Filed 10–24–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice #3796]

Overseas Buildings Operations; Industry Advisory Panel: Notice of Establishment

The Department of State is establishing an Industry Advisory Panel to serve the Director/Chief Operating Officer and staff of Overseas Buildings Operations in an advisory capacity with respect to industry and academia's latest concepts, methods, best practices, and ideas related to property management and oversight of the Department's real property assets at U.S. missions overseas. The objective is to ensure the most efficient processes and optimal solutions are utilized. The Panel will advise with respect to areas such as research and development, design, construction, the environment, seismic issues, emergency operations, security, planning and development, and banking and finance. The Under Secretary for Management has determined that the Committee is necessary and in the public interest.

The Director of Overseas Buildings Operations will appoint members that represent a cross-section of interested and qualified professionals with significant, relevant experience and diverse opinions. The Panel will follow the procedures prescribed by the Federal Advisory Committee Act (FACA).

Meetings will be open to the public, unless a determination is made in accordance with section 10(d) of FACA (Pub. L. 92–463) that a meeting or a portion of the meeting should be closed to the public. Notice of each Panel meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Sandra J. Piech, 703–516–1968.

Dated: October 3, 2001.

Charles E. Williams,

Director/Chief Operating Officer, Overseas Buildings Operations, Department of State.

[FR Doc. 01–26906 Filed 10–24–01; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During Week Ending October 12, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–10802.
Date Filed: October 9, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0413 dated 9 October 2001; Mail Vote 151— Resolution 010p; TC2 Within Europe Special Passenger Amending Resolution between Germany and Europe; Intended Effective Date: 1 November 2001.

Docket Number: OST–2001–10803.
Date Filed: October 9, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0411 dated 9 October 2001; Mail Vote 152— Resolution 010q; TC2 Within Europe Special Passenger Amending Resolution between Switzerland and Europe; Intended Effective Date: 15 October 2001.

Docket Number: OST–2001–10804.
Date Filed: October 9, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0414 dated 9 October 2001; Mail Vote 153— Resolution 010r; TC2 Within Europe Special Passenger Amending Resolution between Belgium and Europe; Intended Effective Date: 15 October 2001.

Docket Number: OST–2001–10805.
Date Filed: October 9, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0415 dated 9 October 2001; Mail Vote 155— Resolution 010t; TC2 Within Europe Special Passenger Amending Resolution between Spain and Europe; Intended Effective Date: 15 October 2001.

Docket Number: OST–2001–10806.
Date Filed: October 9, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0417 dated 9 October 2001; Mail Vote 156— Resolution 010u; TC2 Within Europe Special Passenger Amending Resolution from France to Europe; Intended Effective Date: 15 October 2001.

Docket Number: OST–2001–10807.
Date Filed: October 10, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0418 dated 12 October 2001; Mail Vote 158— Resolution 010w; TC2 Within Europe Special Passenger Amending Resolution between Portugal and Europe; Intended Effective Date: 21 October 2001.

Docket Number: OST–2001–10821.
Date Filed: October 10, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0419 dated 12 October 2001; Mail Vote 159— Resolution 010x; TC2 Within Europe Special Passenger Amending Resolution between Netherlands and Europe; Intended Effective Date: 15 October 2001.

Docket Number: OST–2001–10822.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0420 dated 12 October 2001; Mail Vote 160— Resolution 010y; TC2 Within Europe Special Passenger Amending Resolution from Luxembourg to Europe; Intended effective date: 22 October 2001.

Docket Number: OST–2001–10823.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0421 dated 12 October 2001; Mail Vote 161— Resolution 010z; TC2 Within Europe Special Passenger Amending Resolution from Morocco to Europe; Intended effective date: 22 October 2001.

Docket Number: OST–2001–10824.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0422 dated 12 October 2001; Mail Vote 162— Resolution 010a; TC2 Within Europe Special Passenger Amending Resolution between Malta and Europe; Intended effective date: 1 November 2001.

Docket Number: OST–2001–10825.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0423 dated 12 October 2001; Mail Vote 163— Resolution 010b; TC2 Within Europe Special Passenger Amending Resolution between Estonia and Europe; Intended effective date: 22 October 2001.

Docket Number: OST–2001–10826.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0416 dated 12 October 2001; Mail Vote 157— Resolution 010v; TC2 Within Europe Special Passenger Amending Resolution from Slovenia to Europe; Intended effective date: 1 November 2001.

Docket Number: OST–2001–10827.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0425 dated 12 October 2001; Mail Vote 165— Resolution 010d; TC2 Within Europe Special Passenger Amending Resolution from Finland to Europe; Intended effective date: 1 November 2001.

Docket Number: OST–2001–10828.
Date Filed: October 11, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0424 dated 12 October 2001; Mail Vote 164— Resolution 010c; TC2 Within Europe Special Passenger Amending Resolution from Poland to Europe; Intended effective date: 1 November 2001.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 01–26917 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the week ending October 12, 2001.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1996–2016.
Date Filed: October 11, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 1, 2001.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 41102 and 41108 and Subpart B, requesting renewal of its certificate of public convenience and necessity for Route 740 to engage in scheduled foreign air transportation of persons, property and mail between Atlanta, Georgia, and the coterminal points Sao Paulo and Rio de Janeiro, Brazil.

Docket Number: OST–2001–10834.
Date Filed: October 12, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 2, 2001.
Description: Application of G5 Executive AG, pursuant to 49 U.S.C. Section 41302 and Subpart B, requesting charter foreign air transportation of persons, property and mail: (1) Between any point or points in Switzerland and any point or points in the United States; (2) between any point or points in the United States and any point or points in a third country or countries, provided that such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to Switzerland for the purpose of carrying local traffic between Switzerland and the United States; and, (3) between any point or points in the United States and any point or points in third countries in accordance with the provisions of part 212 of the DOT Economic Regulations.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 01–26918 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–84]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of the Title 14 Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 16, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dma.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on October 19, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–9874.
Petitioner: Civil Air Patrol.
Section of 14 CFR Affected: 14 CFR 61.113(e).
Description of Relief Sought: To (1) provide relief from § 61.113(a) rather than 61.113(e) so that the exemption applies to CAP missions other than search and locate missions, (2) revise condition No. 1 to delete the phrase "when the CAP is acting as an instrumentality of the United States", (3) revise condition No. 2 to add that CAP members who hold a private pilot certificate may log flight time when operating under this exemption, and (4) revise condition No. 3 to include that CAP members holding a private pilot certificate may use a CAP aircraft without charge and log flight time when operating under the exemption.

Docket No.: FAA–2001–10391.
Petitioner: Dr. Bert Hoare.
Section of 14 CFR Affected: 14 CFR 65.104.
Description of Relief Sought: To permit Dr. Hoare to be eligible to apply for a repairman certificate for his Seaward aircraft (Registration No. N20W) without being a citizen of the United States or a lawful permanent resident of the United States.

[FR Doc. 01–26914 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–85]

Petitions for Exemption; Summary of Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington DC on October 19, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10509.
Petitioner: Eagle Air Corp.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Eagle Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7639

Docket No.: FAA–2001–10280.
Petitioner: Sierra Transportation Group dba Sierra Charters.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Sierra to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7640

Docket No.: FAA–2001–9164.
Petitioner: Skinner Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Skinner to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7635

Docket No.: FAA–2001–10732.
Petitioner: Bishop Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit BAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7638

Docket No.: FAA–2001–10592.
Petitioner: Seattle Jet Services, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit SJS to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7636

Docket No.: FAA–2001–10441.
Petitioner: Taylor Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit TAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7637

Docket No.: FAA–2001–10542.
Petitioner: SkyLane Helicopters, LLC.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit SkyLane to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/05/2001, Exemption No. 7634

[FR Doc. 01–26915 Filed 10–24–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aircraft Repair and Maintenance Advisory Committee; Notice of Meeting

AGENCY: Federal Aviation Administration (FAA) DOT.
ACTION: Notice.

SUMMARY: The FAA is issuing this notice to advise the public of the date for the sixth meeting of the FAA Aircraft Repair and Maintenance Advisory Committee. The purpose of the meeting is for the Committee to continue working towards accomplishing the goals and objectives pursuant to its congressional mandate.

DATES: The meeting will be held Tuesday, November 20, 2001, 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Bessie Coleman Conference Center, Washington, DC 20591, (202) 267–9952; fax (202) 267–5115; e-mail Ellen *Bowie@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Bowie, Federal Aviation Administration (AFS–300), 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267–9952; fax (202) 267–5115; e-mail Ellen *Bowie@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aircraft Repair and Maintenance Advisory Committee to be held on November 20, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

The agenda will include:

- Introduction of any new designated alternate members
- Committee administration
- Reading and approval of minutes
- Review of open/additional action items
- Review of final draft report
- Statements by members of the public
- Plan/discuss next steps/agenda and timeline
- Closing remarks and adjournment

Attendance is open to the public but will be limited to the availability of meeting room space. Persons desiring to present a verbal statement must provide a written summary of remarks. Please focus your remarks on the tasks, specific activities, projects or goals of the Advisory Committee, and benefits to the aviation public. Speakers will be limited to 5-minute presentations. Please contact Ms. Ellen Bowie at the number listed above if you plan to attend the meeting or to present a verbal statement.

Individuals making verbal presentations at the meeting should bring 25 copies to give to the Committee's Executive Director. These copies may be provided to the audience at the discretion of the submitter.

Issued in Washington, DC, on October 22, 2001.

James J. Ballough,
Acting Manager, Continuous Airworthiness Maintenance Division.

[FR Doc. 01–26922 Filed 10–24–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Aircraft Certification Procedures Issues Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss Aircraft Certification Procedures issues.

DATES: The meeting will be held on November 16, 2001, from 8:30 a.m. to 11:30 a.m. Arrange for oral presentations by November 2, 2001.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave. SW., room 827, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, FAA, Office of Rulemaking (ARM–205), 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7653, fax: (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on November 16, 2001, from 8:30 a.m. to 11:30 a.m. at the Federal Aviation Administration, 800 Independence Ave. SW., room 827, Washington, DC. The agenda will include:

1. Opening Remarks.
2. Committee Administration.
3. A discussion and vote on the Parts and Production Certification Working Group draft advisory documents, entitled "Working Group Guidance Material Recommendations Approval Holder Quality System Requirements" and "Replacement And Modification Part Design Approval Procedures."
4. A status report on the Parts and Production Certification Working Group's remaining tasks.
5. Future Meetings.

Attendance is open to the interested public, but will be limited to the space available. The FAA will arrange teleconference capability for individuals wishing to participate by teleconference if we receive notification before November 2, 2001. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

The public must make arrangements by November 2, 2001, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director, or by bringing the copies to the meeting. Public statements will only be considered if time permits. In addition, sign and oral interpretation, as well as an assistive listening device, can be made available at the meeting, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 18, 2001.

Brian Yanez,
Assistant Executive Director for Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–26913 Filed 10–24–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine issues.

DATES: The meeting is scheduled for November 9, 2001, from 11 a.m. to 1 p.m. Arrange for oral presentations by November 2, 2001.

ADDRESSES: Federal Aviation Administration, 800 Independence Avenue, SW, Room 810, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Effie Upshaw, Office of Rulemaking, ARM–209, Federal Aviation Administration, 800 Independence Avenue, SW., Room 810, Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075, or e-mail at *effie.upshaw@faa.gov*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held on November 9, 2001, in Washington, DC. The purpose of the meeting is to review and recommend to the FAA two proposed advisory circulars developed by the Design for Security Harmonization Working Group: (1) flight deck intrusion, and (2) bulkhead penetration.

Attendance is open to the public, but it will be limited to the availability of meeting room space and telephone lines. Details for participation in the teleconference will be available after November 1, 2001, on the ARAC calendar at *http://www.faa.gov/avr/arm/aracal/htm*, or by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Callers outside the Washington metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by November 2, 2001, to present oral statements at the meeting. Written statements may be presented to the committee at anytime by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by providing copies at the meeting. Copies of the documents to be presented by ARAC for decision as recommendations to the FAA may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on October 19, 2001.

Anthony F. Fazio,
Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–26916 Filed 10–24–01 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 199: Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of RTCA Special Committee 199 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 199: Airport Security Access Control Systems.

DATES: The meeting will be held on November 8, 2001 starting at 9:00 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.ftca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 199 meeting. The agenda will include:

- November 8:
- Opening Session (Welcome, Introductory and Administrative Remarks, Agenda Overview, Review Minutes of Previous Meeting)
- Workgroups Reports and Discussions on Submitted Changes and Edits (Sections 1–4)
- Industry Presentations
- Other Action Items
- Closing Session (Establish Agenda for Next Meeting, Date and Place of Next Meeting)

Note: *SC–199 is seeking to review vendor presentations of their products at this meeting. Each vendor seeking to present a short (10 to 15 min.) presentation should provide a briefing package to Mr. Paul S. Ruwaldt (paul.s.ruwaldt@tc.faa.gov) by November 1, 2001, outlining the following:*

- *How their product(s) would be utilized in an automated access control systems suitable under Federal Aviation Regulation (FAR) Parts 107 & 108,*
- *How their product(s) would provide for (or enhance) the security objectives of the airport and airline, and*
- *How their product(s) would be integrated into the airline and airport comprehensive security system.*

It is strongly suggested that the vendors requesting presentation time be fully cognizant of the airline and airport operational requirements as they apply to automated access control systems, as well as the performance requirements such a system will impose on the discrete components of the automated access control systems. Further, it is suggested that the vendor be

fully aware of how these operational and performance conditions will affect their product(s) and the access control procedures.

The vendor presentation must strictly be pertinent to their product(s) and the FAR Part 107 & 108 requirements for automated access control systems. The vendor must demonstrate their product's suitability to airline and airport operational access control conditions and illustrate how their product(s) would be deployed in an automated access control systems and/or how their product(s) can be integrated into the automated access control systems.

The committee emphasizes that this RTCA standard pertains only to access control systems, although there may be opportunities for future integration with other airport information and/or communication technologies. Further, the committee is interested in proven and available Commercial-Off-The-Shelf (COTS) technologies, not untested developmental concepts or proprietary systems.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 16, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 01–26920 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 194 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation.

DATES: The meeting will be held November 5–8, 2001, starting at 1:00 pm on November 5, and at 9:00 am November 6–8.

ADDRESSES: The meeting will be held at RTCA, Inc. 1828 L Street, NW, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 194 meeting. The agenda will include:

- November 5:
- Opening Plenary Session (Welcome and Introductory Remarks, Agenda Overview, Approve Minutes of Previous Meeting, Working Group Reports, Other Business)
- November 6:
- Working Group 1, Data Link Ops Concept and Implementation Plan
- Working Group 2, Flight Operations and Air Traffic Management (ATM) Integration
- Working Group 3, Human Factors
- Working Group 4, Service Provider Interface
- November 7:
- Working Group 1, Data Link Ops Concept & Implementation Plan
- Working Group 2, Flight Operations and ATM Integration
- Working Group 3, Human Factors
- November 8:
- Closing Plenary Session (Agenda Overview, Working Group Reports, Other Business, Data and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 16, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 01–26921 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–12–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34101]

Bethlehem Steel Corporation, Keystone Railroad Inc., and Lake Michigan & Indiana Railroad Company LLC-Corporate Family Transaction Exemption

Bethlehem Steel Corporation (BSC), Keystone Railroad Inc. (Keystone), and Lake Michigan & Indiana Railroad Company LLC (LMIC) have jointly filed a verified notice of exemption. BSC is forming a new Delaware limited liability company (LLC) named LMIC.[1] The exempt transaction involves a proposed corporate restructuring that will result in Keystone's division, known as Lake Michigan & Indiana Railroad Company (LM&IRC), being spun off into the new LLC and becoming an independent direct subsidiary of BSC. Keystone, a Class III rail carrier formerly known as Philadelphia, Bethlehem and New England Railroad Company, is a direct subsidiary of BSC, that was authorized to lease and operate a rail line in Burns Harbor, IN, under the name of LM&IRC.[2]

The transaction was scheduled to be consummated on or after October 2, 2001, the effective date of the exemption (7 days after the notice was filed).

The transaction is a part of the proposed current refinancing and restructuring by BSC. BSC and Keystone have determined that the Burns Harbor rail line should be operated by a stand alone direct subsidiary of BSC instead of a division of Keystone. After the corporate restructuring, the rail operations at Burns Harbor and at Bethlehem, PA, will be performed by separate corporate entities, each owned directly by BSC, similar to all other BSC operations. The corporate restructuring will facilitate replacement of BSC's current credit arrangements and is intended to provide increased financial liquidity and flexibility.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties stated that the transaction will not result in adverse changes in service levels, operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c) however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under that statue, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and ten copies of all pleadings, referring to STB Finance Docket No. 34101, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: October 19, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–26908 Filed 10–24–01; 8:45 am]

BILLING CODE 4915–00–P

[1] BSC is a noncarrier holding company that controls, directly, eight Class III subsidiary railroads, including Keystone. In support of the statement, counsel for BSC cites *Bethlehem Steel Corporation-Common Control Exemption-Brandywine Valley Railroad Corporation, Upper Merion and Plymouth Railroad Company*, STB Finance Docket No. 33602 (served June 16, 1998), which authorized BSC's indirect control of two Class III railroads (and noted BSC's direct control of six other Class III railroads); however, in a subsequent letter dated October 18, 2001, counsel states that "any control previously indicated to be indirect control has since been changed to direct control."

[2] *See Keystone Railroad, Inc. d/b/a Lake Michigan and Indiana Railroad Company—Lease and Operation Exemption—Bethlehem Steel Corporation*, STB Finance Docket No. 33797 (STB served Sept. 23, 1999 and Dec. 13, 1999, respectively).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33877]

Illinois Central Railroad Company—Construction and Operation Exemption—in East Baton Rouge Parish, LA

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by Illinois Central Railroad Company of a line of railroad, approximately 3.2 miles in length, in East Baton Rouge Parish, LA.[1]

DATES: The exemption will not become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental impacts, and if appropriate, make the exemption effective at that time, thereby allowing construction to begin. Petitions to reopen must be filed by November 14, 2001.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 33877, to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Myles L. Tobin, 455 North Cityfront Plaza Drive, Chicago, IL 60601–5317 and William C. Sippel and Thomas J. Litwiler, Two Prudential Plaza, Suite 3125, 180 North Stetson Ave., Chicago, IL 60601–6721.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600 [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da 2 Da Legal, 1925 K Street NW, Suite 405, Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.]

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: October 18, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–26909 Filed 10–24–01; 8:45 am]

BILLING CODE 4915–00–P

[1] On July 16, 2001, IC filed a petition under 49 U.S.C. 10901(d) to require KCS to allow IC's proposed construction to cross KCS's track. The proceeding is docketed as STB Finance Docket No. 33877 (Sub-No. 1), *Illinois Central Railroad Company—Petition for Crossing Authority—In East Baton Rouge Parish, LA.* By decision served in that proceeding today, KCS's motion to dismiss the crossing petition has been denied and a procedural schedule has been established to develop the record in that proceeding.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 17, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 26, 2001 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1378.

Regulation Project Number: PS–4–89 Final.

Type of Review: Extension.

Title: Disposition of an Interest in a Nuclear Power Plant.

Description: The regulations require that certain information be submitted as part of a request for a schedule of ruling amounts. The regulations also require certain taxpayers to file a request for a revised schedule of ruling amounts.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 70.

Estimated Burden Hours Per Respondent: 8 hours, 13 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 575 hours.

OMB Number: 1545–1629.

Form Number: IRS Form 8867.

Type of Review: Extension.

Title: Paid Taxpayer's Earned Income Credit Checklist.

Description: Form 8867 helps preparers meet the due diligence requirements of Code section 6695(g), which was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997. Paid preparers of Federal income tax returns or claims for refund involving the earned income credit (EIC) must meet the due diligence requirements in determining if the taxpayer is eligible for the EIC and the amount of the credit. Failure to do so could result in a $100 penalty for each failure. Completion of Form 8867 is one of the due diligence requirements.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 min.

Learning about the law or the form—8 min.

Preparing the form—24 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 9,707,399 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 01–26902 Filed 10–24–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 18, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 26, 2001 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0083.

Form Number: ATF F 1582–B (5130.6).

Type of Review: Extension.

Title: Drawback on Beer Exported.

Description: When taxpaid beer is removed from a brewery and ultimately exported, the brewer exporting the beer is eligible for a drawback (refund) of Federal taxes paid. By completing this form and submitting documentation of exportation, the brewer may receive a refund of Federal taxes paid.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 5,000 hours.

OMB Number: 1512–0164.

Form Number: ATF F 3069 (5200.7).

Type of Review: Extension.

Title: Schedule of Tobacco Products, Cigarette Papers or Tubes Withdrawn from the Market.

Description: ATF F3069 (5200.7) is used by persons who intend to withdraw tobacco products from the market for which the taxes has already been paid or determined. The form describe the products that are to be withdrawn to determine the amount of tax to be claimed later as a tax credit or refund. The form notifies ATF when withdrawal or destruction is to tax place, and ATF may elect to supervise withdrawal or destruction.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 119.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,071 hours.

OMB Number: 1512–0543.

Form Number: ATF F 5300.11A.

Type of Review: Extension.

Title: Annual Firearms Manufacturing and Exportation Report of Semiautomatic Assault Weapons.

Description: The purpose for which the information is collected includes witness qualifications, congressional investigations, court decisions and disclosure, furnishing information to other Federal agencies and compliance inspections. The form will capture information on semiautomatic assault weapons that is not currently capture on ATF F 5300.11.

Respondents: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1,556.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 156 hours.

Clearance Officer: Frank Bowers (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 01–26903 Filed 10–24–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount and rebate evaluation.

SUMMARY: Pursuant to Section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6–8000) prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. In addition, 5 CFR part 1315.8 of the Prompt Payment rule on "Rebates" requires that this rate be used in determining when agencies should pay purchase card invoices when the card issuer offers a rebate. Notice is hereby given that the applicable rate is 5 percent for calendar year 2002.

DATES: The rate will be in effect for the period beginning on January 1, 2002 and ending on December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Risk Management Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW, Washington, DC 20227 (Telephone: 202) 874–6650).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Pub. L. 95–147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending, every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on a moving basis, changes by 2 per centum. The rate is effect for the calendar year 2002 reflects the average investment rates for the 12-month period that ended September 30, 2001.

Dated: October 16, 2001.

Bettsy H. Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 01–26926 Filed 10–24–01; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register

Vol. 66, No. 207

Thursday, October 25, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

Office of Communications

Cancellation of an Optional Form by the Office of Personnel Management (OPM)

Correction

In notice document 01–26342 appearing on page 53223 in the issue of Friday, October 19, 2001, make the following correction:

On page 53223, in the first column, in the **SUMMARY:** section, in the second line, "of" should read "OF".

[FR Doc. C1–26342 Filed 10–24–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

45 CFR CH. V

Commission's Structures, Functions, Rules of Procedure, and Responsibilities

Correction

In rule document 01–24399 beginning on page 49844 in the issue of Monday, October 1, 2001, make the following correction:

On page 49857, in the second column, in the fourth complete paragraph, beginning in the seventh line"§ 506.18 Entitlement of survivors to award in case of death of prisoner of war" should have appeard as a section heading:

§506:18 Entitlement of survivors to award in case of death of prisoner of war. [Corrected]

[FR Doc. C1–24399 Filed 10–24–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Admnistration

21 CFR Part 1310

[DEA Number 198F1]

RIN 1117–AA57

Control of Red Phosphorus, White Phosphorus and Hypophosphorous Acid (and its salts) as List I Chemicals

Correction

In rule document 01–26013 beginning on page 52670 in the issue of Wednesday, October 17, 2001, make the following correction:

§ 1310.04 [Corrected]

On page 52675, in the first column, in §1310.04, paragraph (1) should be corrected to read as follows:" * * *".

[FR Doc. C1–26013 Filed 10–24–01; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 15

RIN 3150–AG80

Debt Collection Procedures

Correction

In proposed rule document 01–25000 beginning on page 50860 in the issue of Friday, October 5, 2001, make the following correction:

§ 15.21 [Corrected]

On page 50864, in the third column, under §15.21, in paragraph (ii), in the last line, "designed" should read,"designated".

[FR Doc. C1–25000 Filed 10–24–01; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44888; File No. SR–NYSE–2001–38]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing and Trading Ordinary Shares of Deutsche Bank on the Exchange

September 28, 2001.

Correction

In notice document 01–25385 beginning on page 51713 in the issue of Wednesday, October 10, 2001, make the following correction:

On page 51715, in the first column, under

III. Solicitation of Comments

heading, beginning in the second to the last line of that section, "[insert date 21 days from date of publication]" should read, "October 31, 2001".

[FR Doc. C1–25385 Filed 10–24–01; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44867; File No. SR–NASD–2001–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending NASD Code of Procedure Rule 9216 and NASD Code of Procedure Rule 9270 To Substitute the Office of Disciplinary Affairs for the Office of General Counsel for Review of Proposed Acceptance, Waivers and Consents, Proposed Minor Rule Violation Letters, and Offers of Settlement

September 27, 2001.

Correction

In notice document 01–24808 beginning on page 50699 in the issue of Thursday, October 4, 2001, make the following corrections:

(1) On page 50700, in the first column, in the sixth line from the bottom, "Subcommittee of the [General Counsel]" should read "Subcommittee or the [General Counsel]".

(2)On the same page, in the second column, under the

II. Self-Regulatory Organization's Statement of the Purpose of, and Statuatory Basis for, the Proposed Rule Change

heading, in the first paragraph, in the second line "Regulations" should read "Regulation".

[FR Doc. C1–24808 Filed 10–24–01; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44921; File No. SR–Phlx–00–70]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc. Relating to TheStreet.com Internet Index

October 11, 2001.

Correction

In notice document 01–26085 beginning on page 52823 in the issue of Wednesday, October 17, 2001, make the following correction:

On page 52823, in the second column, the date line should be as set forth above.

[FR Doc. C1–26085 Filed 10–24–01; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44391; File No. SR–NASD–2001–72]

Self Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Nasdaq National Market Execution System Fees Charged to Non-Members

Correction

In notice document 01–26401 beginning on page 53276 in the issue of Friday, October 19, 2001, make the following correction:

On page 53276, in the second column, the Release No., File No., and subject title should be as set forth above.

[FR Doc. C1–26401 Filed 10–24–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM175; Special Conditions No. 25–01–01–SC]

Special Conditions: Boeing Model 777–200 Series Airplanes; Overhead Crew Rest Compartment

Correction

In rule document 01–12106 beginning on page 26971 in the issue of Tuesday, May 15, 2001, make the following correction:

On page 26873 in the second column, under

The Special Conditions

heading, in paragraph 1(a)(3), "permitted" should read, "prohibited".

[FR Doc. C1–12106 Filed 10–24–01; 8:45 am]

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Federal Register

Thursday,
October 25, 2001

Part II

Department of Agriculture

7 CFR Part 1000, et al.
Milk in the Northeast and Other Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A69, et al.: DA–00–03]

Milk in the Northeast and Other Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A69
1005	Appalachian	AO–388–A11
1006	Florida	AO–356–A34
1007	Southeast	AO–366–A40
1030	Upper Midwest	AO–361–A34
1032	Central	AO–313–A43
1033	Mideast	AO–166–A67
1124	Pacific Northwest	AO–368–A27
1126	Southwest	AO–231–A65
1131	Arizona-Las Vegas	AO–271–A35
1135	Western	AO–380–A17

SUMMARY: This decision recommends changes to Federal milk orders based on the record of a hearing held May 8–12, 2000, to consider proposals submitted by the industry to change the pricing formulas included in the final rule for the consolidation and reform of Federal milk orders and on comments filed in response to a tentative final decision issued November 29, 2000. The proceeding was undertaken in response to a Congressional mandate included in the Consolidated Appropriations Act, 2000, to reconsider the Class III and Class IV pricing formulas. The material issues on the record of the hearing relate to the elements of the Class III and Class IV pricing formulas, including: commodity prices, manufacturing (make) allowances, factors related to product yield, role of producer costs of production, and the issue of whether to omit a recommended decision. After issuance of the tentative final decision, approval of the proposed order amendments by producers, and issuance of an interim final rule, some of the provisions of the interim final rule were enjoined by the U.S. District Court for the District of Columbia. This decision considers comments filed in response to the tentative final decision and recommends changes that are consistent with the Court's ruling. Changes from the tentative final decision would increase the dry whey make allowance and remove a snubber used in the other solids component price calculation, revise the Class III butterfat and protein component price formulas consistent with the Court's ruling, eliminate the pooling of butterfat values in paying producers in component pricing orders, and change the classification of several high-fat products from Class IV back to Class III.

DATES: Comments should be submitted on or before November 26, 2001.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, Room 1081, South Building, U.S. Department of Agriculture, Washington, DC 20250. Reference should be made to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address *connie.brenner@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

These proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. The amendments are not intended to have a retroactive effect. If adopted, the proposed amendments will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Analysis

This decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501).

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this regulatory flexibility analysis. When preparing such analysis an agency shall address: the reasons, objectives, and legal basis for the anticipated proposed rule; the kind and number of small entities which would be affected; the projected recordkeeping, reporting, and other requirements; and federal rules which may duplicate, overlap, or conflict with the proposed rule. Finally, any significant alternatives to the proposal should be addressed. This regulatory flexibility analysis considers these points and the impact of this proposed regulation on small entities. The legal basis for this action is discussed in the preceding section.

The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if

the local plant has fewer than 500 employees.

USDA has identified as small businesses approximately 66,327 of the 71,716 dairy producers (farmers) that have their milk pooled under a Federal order. Thus, small businesses constitute approximately 92.5 percent of the dairy farmers in the United States. On the processing side, there are approximately 1,200 plants associated with Federal orders, and of these plants, approximately 720 qualify as "small businesses," constituting about 60 percent of the total.

During January 2000, there were approximately 240 fully regulated handlers (of which 186 were small businesses), 43 partially regulated handlers (of which 28 were small businesses), and 71 producer-handlers of which all were considered small businesses for the purpose of this regulatory flexibility analysis, submitting reports under the Federal milk marketing order program. This volume of milk pooled under Federal orders represents 72 percent of all milk marketed in the U.S. and 74 percent of the milk of bottling quality (Grade A) sold in the country. Forty-four distributing plants were exempt from Federal order regulation on the basis of their small volume of distribution.

Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 3.965 billion pounds in January 2000—38.8 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas—approximately 77 percent of the total U.S. population.

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that these proposed amendments would have little or no impact on reporting, recordkeeping, or other compliance requirements because these would remain identical to the current Federal order program. No new forms have been proposed, and no additional reporting would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on these proposed amendments, consideration was given to mitigating negative impacts.

A comment filed by the managing partner of a large dairy farm argued that dairy producers selling less than 326,000 pounds of milk per month may comprise the majority of dairy farms, but not the majority of milk sold. The comment further stated that it is not appropriate to identify one sector and imply that they are most in need of protection and preservation.

The production guideline of 326,000 pounds per month in identifying small dairy farms is an attempt to relate a measure of size for which data is available (pounds of production per farm) with the criteria specified by the Small Business Administration (revenue from sales), for which data is not readily available to USDA on an individual farm basis. The Regulatory Flexibility Analysis does not represent an attempt to create special privileges for farms defined as small, but to examine the regulations to assure that they do not create a disproportionate burden or competitive disadvantage for such farms.

One of the principal issues considered at the hearing was the source of price data that should be used to generate prices for milk components and, thereby, prices to be paid to producers. The options considered were the National Agricultural Statistics Service (NASS) surveys of selling prices of manufactured dairy products, Chicago Mercantile Exchange (CME) prices, and producer costs of production. The decision selects the NASS-reported prices as the most appropriate for use in determining product prices because of the considerably larger volume of product represented in those price series than in the CME price data. Producer cost of production was not included in the calculation of prices because assuring dairy farmers that their costs of production will be covered addresses only the milk supply side of the market and ignores factors underlying demand or changes in demand for milk and milk products.

Various proposals to reduce or increase the levels of the manufacturing (make) allowances of butter, nonfat dry milk, cheddar cheese and dry whey were considered. This decision adjusts these make allowances from the levels adopted under Federal order reform on the basis of data and testimony contained in the hearing record. Most of the adjustments are minimal. Primarily, manufacturing cost surveys done by USDA's Rural Cooperative Business Service (RBCS) and the California Department of Food and Agriculture (CDFA) were used to determine the most appropriate levels of make allowance for the products used in calculating Federal order class prices.

The only other actual collection of manufacturing cost data for cheddar cheese and dry whey that was cited in the hearing record was a survey of cheddar cheese and dry whey manufacturing costs arranged for by the National Cheese Institute (NCI). This survey was conducted by persons unfamiliar with the dairy industry among cheese processors who did not testify about the data that they submitted for the survey, and entered into the hearing record by a witness who had no firsthand knowledge of the data included. As a result, the NCI survey should be relied upon to a lesser degree than the two studies used to determine the cheddar cheese make allowance. In the case of the RBCS study, the person who gathered the data testified about its collection and what it represented. In the case of the CDFA-collected data, a manual detailing the method by which the data was collected and presented was made available, and several witnesses familiar with the survey testified about it.

In addition, one nonfat dry milk manufacturer testified to costs of manufacture that exceeded those of the two studies by a significant amount, mostly in the areas of return on investment and marketing costs. The data did not include any information about the pounds of product manufactured and could not have been weighted with the data from the two other studies.

Several proposals to change the factor reflecting the yield of nonfat dry milk from nonfat solids in milk would have increased the nonfat solids price and the Class IV skim price, but ignored the need to reflect the generally lower price and higher manufacturing cost of buttermilk powder that also must be considered in calculating the Class IV nonfat solids price. Testimony and data in the record was used to determine a

factor more representative of nonfat dry milk yield and the effect of buttermilk powder price and cost. The alternatives to the formula adopted either did not include consideration of the price, cost, and volume of buttermilk powder relative to those of nonfat dry milk, or gave those factors too great an influence.

Proposals were made to reduce the butter and cheese product prices used in calculating the butterfat price and the Class III component prices. The record of this proceeding continues to support the use of the product prices adopted in the final rule in the Federal milk order reform process as representing accurately the values of these products. In the case of adjusting the Grade AA butter price to reflect the value of Grade A butter, the record fails to reveal any source of information for obtaining current prices for Grade A butter. In the case of proposals to remove the 3-cent adjustment between the barrel and 40-pound block cheese prices, there was no testimony about the actual difference in cost between the two types of packaging that overcame testimony that 3 cents is the actual cost difference, or any data that indicates that the customary price difference is not at least 3 cents.

Proposals to reconsider the class price relationships in the orders were considered, although a proposal to use a weighted average of the Class III and Class IV prices as a Class I price mover was not noticed for hearing in this proceeding. The hearing record supports the continued relationships between the Class IV and Class II prices and between the higher of the manufacturing class prices and the Class I price.

A proposal that the Class II differential be changed to negate any changes in the Class IV price formula that would affect the current price relationship between nonfat dry milk and Class II failed to consider that the Class II-Class IV price difference adopted in Federal order reform is based on the difference in the value of milk used to make dry milk and the value of milk used to make Class II products.

Proposals that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices did not address the rationale for the current Class I price differentials above the manufacturing price levels for the purpose of obtaining an adequate supply of milk for fluid (drinking) use.

The changes to the Class III and Class IV price formulas included in this decision should have no special impact on small handler entities. All handlers manufacturing dairy products from milk classified as Class III or Class IV would remain subject to the same minimum prices regardless of the size of their operations. Such handlers would also be subject to the same minimum prices to be paid to producers. These features of minimum pricing are required by the Agricultural Marketing Agreement Act and should not raise barriers to the ability of small handlers to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage to larger producers as a result of any of the proposed amendments.

Interested parties are invited to comment on the probable regulatory and informational impact of the amended provisions of this decision on small businesses. Also, parties may suggest modifications of this decision for the purpose of tailoring the applicability of the provisions to small businesses.

An analysis was done on the effects of the alternatives selected, and is summarized below.

Analysis

In order to assess the impact of changes in Federal order milk pricing formulas, the Department conducted an economic analysis. While the primary purpose of this decision is to amend the product pricing formulas used to price milk regulated under Federal milk marketing orders and classified as either Class III or Class IV milk, these product price formulas also affect the prices of regulated milk classified as Class I and Class II.

The modifications in this decision are analyzed simultaneously as a change from the set of formulas implemented on January 1, 2000. This analysis focuses on impacts on milk marketed under all Federal milk marketing orders, and treats the Federal order system as a single entity for purposes of generating system-wide price and quantity changes. Order-specific changes in uniform blend prices and blend prices plus premiums are estimated as well. Milk marketed in California, milk marketed under other state regulations and unregulated milk are treated separately. The hard manufactured dairy product markets are national.

Comments Concerning Model Analysis

In response to the tentative final decision, several commenters raised issues regarding model analysis of the effects of changes in order provisions. Select Milk Producers, Inc., et al. (Select), expressed reservations about analysis of the Federal order system as a whole, without including analysis for each order. Select asserted that use of the Model as a national evaluation masks the damage of a low Class III price in some orders, such as the Western and the Upper Midwest where Class III utilization, pooled or not, is high. Select also contended that a national model ignores the fact that the impact of higher nonfat dry milk prices and corresponding increases in Class I and Class II prices may increase national average returns, but do not have such an effect in areas where Class III use is dominant. Select claimed that national analysis violates the Agricultural Marketing Agreement Act of 1937.

The dairy industry model is a national model that includes three separate marketing areas: the aggregated Federal Milk Order system, California, and aggregated all other markets. The aggregated Federal order system includes a minimum Class I differential that is an average over the 11 orders, as well as the Federal order minimum prices for Classes II, III, and IV. Changes in the Federal order system prices adopted in the tentative final decision were reported in Table 1 of the Economic Analysis available for that decision, both for milk at 3.5 percent butterfat and at average class test. Since Class I differentials are held constant in the analysis, any changes in Class I minimum prices must be caused by changes in Class III and Class IV prices. Blend prices are affected in relation to an order's class utilizations and the changes in the class prices.

Concerns that markets with high Class III utilizations would suffer sharp declines in producer income and milk marketings were considered and dismissed without further analysis because of the minuscule price changes resulting from the formula changes. The analysis of the tentative final decision indicates that the Federal order Class III price (at test) would have decreased by an average of $0.015 per hundredweight over the five-year period. Even if an order had a Class III utilization of 100 percent, such a small price change would result in no observable change in milk supplied. The estimated changes in all the class prices at test under the tentative final decision were so small that no single order blend price could have been increased or reduced by more than about 2 cents per hundredweight, or less than .2 percent. A change of this magnitude has to be considered "approximately zero" in an analysis of milk markets. [See Table 1 of the Economic Analysis for the Tentative Final Decision on Class III and Class IV Price Formulas].

Select also raised an issue over the use of the model, asserting that its use could represent post-hearing testimony that is not subject to cross-examination by hearing participants. Select argued that changes in the model between any description of it in testimony at the hearing and analysis used in the decision would represent evidence not legitimately part of the record, and concluded that the Secretary should clearly identify any alterations in the model.

The model used to analyze the tentative final decision was modified and substantially improved between the preliminary economic analysis (a summary of which was published with the hearing notice in this proceeding) and the Economic Analysis for the Tentative Final Decision on Class III and Class IV Price Formulas. The original model accounted for milk on a butterfat basis. The improved model accounts for both nonfat solids and fat solids in milk and allocates the solids among the various milk and dairy products. The improved model's performance is much better, particularly with respect to simulating the effects of program changes on the manufactured dairy product markets which generate the prices used to drive the Federal milk order pricing system. Further improvements have been completed recently, including re-estimating the supply and demand relationships using data from 1980 forward. Previous estimates used data from 1970 forward. The economic analysis of this recommended decision uses the model as modified, with new supply and demand relationships documented in the complete Economic Analysis for the Recommended Decision on Class III and Class IV Price Formulas.

More to the point, however, is that Federal milk order decisions do not depend upon the model results. Proposals must have their own economic substantiation. Testimony and evidence relative to the issues considered in the proceeding must be submitted to support the need for changes in order provisions. Thus, the model is not the evidentiary record for the proposals in this decision. The function of the model is to evaluate the impacts of the proposed changes on the dairy industry generally, and particularly to assess if an adequate supply of milk will be forthcoming to meet the Class I needs of the order marketing areas. The preliminary economic analysis, published with the hearing notice, was performed with the intention of providing analysis that the industry might find useful. In the period between the hearing and the tentative final decision, the model was improved and an economic analysis was performed on the tentative decision and made public. The model-estimated results of implementing the tentative final decision changes were deemed to have no discernable effect on the quantity of milk supplied. Thus, it was concluded that Class I needs would continue to be met in all orders.

In comments filed in response to the tentative final decision, National Farmers Union (NFU) questioned the baseline assumption that the price support program would end on December 31, 2000. Subsequently, the support program was extended for another year, and NFU questioned whether the results of the analysis would have been different if the analysis had incorporated an extension of the support program.

The official USDA baseline considers policies and programs as given at the time of its development. The baseline provides AMS and other agencies with an official interagency forecast against which to conduct policy analysis. To have assumed continuation of the support price program would have required that a number of other assumptions be made, including the relationship of butter and nonfat dry milk support prices. Dairy Programs does not create its own baseline because it might direct debate toward the correctness of the baseline and away from the issues under consideration. With respect to the effect on the results, it is not thought that including an additional year of dairy price support would have much effect.

Scope of Analysis

Impacts are measured as changes from the model baseline as adapted from the USDA dairy baseline published in February 2001. This baseline used the Class III and IV pricing formulas implemented on January 1, 2000, as a result of Federal order reform. The USDA baseline is a national, annual projection of the supply-demand-price situation for milk and dairy products. Baseline assumptions are: (1) The price support program would end on December 31, 2001; (2) the Dairy Export Incentive Program would continue to be utilized; and (3) the Federal Milk Marketing Order Program would continue as reformed on January 1, 2000.

It was necessary to make the following simplifying assumptions in order to conduct the analysis. The Federal order share of U.S. milk marketings is about 71 percent. About 65 percent of all milk manufactured (Classes II, III, and IV) is marketed under Federal order regulation. Given the prominence of Federal order marketings in the U.S. milk manufacturing industry, prices paid for manufactured milk under Federal orders cannot get too far out of alignment with the value of milk for manufacturing in the rest of the United States. Similarly, the fluid prices in non-Federal order markets are largely reflective of Federal order minimum Class I prices.

California stands out as the state with the highest production and has its own market regulations. California milk marketings are estimated as a function of the California pool price. Non-California milk marketings are estimated as a function of an all-milk price that incorporates the Federal order pool price and over-order payment estimates. The Federal order share of those non-California marketings is estimated as a function of the Federal order blend price relative to the minimum prices of Class III and IV value of manufactured milk.

The decision's formula changes have an impact on Class I and Class II prices. Class II prices move in concert with changes in Class IV. The effects on Class I prices depend upon the effect of the formula changes on the Class III price relative to the Class IV price. Class I prices are based on the higher of the Class III or Class IV prices.

Demands for fluid milk and manufactured dairy products are functions of per capita consumption and population. Per capita consumption for the major milk and dairy products are estimated as functions of own prices, substitute prices, and income. Retail and wholesale margins are assumed unchanged from the baseline. The demands for fluid milk and soft manufactured products are satisfied by the eligible supply of milk. The milk supply for manufacturing hard products is the result of milk marketings minus the volumes demanded for fluid and soft manufactured products. The remaining volume is allocated to making cheese and making butter/nonfat dry milk according to returns to manufacturing in each class. Wholesale prices for cheese, butter, nonfat dry milk, and dry whey reflect supply and demand for these products. These prices underlie the Federal pricing system.

Summary of Results

The results of the changes to the Class III and Class IV formulas adopted under Federal order reform that are recommended in this decision are summarized using five-year, 2002–2006, average changes from the model baseline. The results presented for the Federal order system are in the context of the larger U.S. market. In particular, the Federal order price formulas use national manufactured dairy product prices.

The advanced Class I base price is the higher of the Class III or Class IV advance pricing factors. The Class I base price is the Class IV price in all years of the analytical period for the baseline, while Class III becomes the Class I base price in 2002 and 2006 under this decision. The Class I price, at the class average test of 2 percent butterfat, is slightly above the baseline in each year. This slight price increase results in small proportional reductions in the demand for skim milk and butterfat for Class I use. Milk generally shifts from Class I use to the production of butter, nonfat dry milk, and cheese in generally the same proportions as in the baseline. As a result, the wholesale prices of butter, nonfat dry milk and cheese each decrease slightly, which reduces the returns per hundredweight for U.S. milk for manufacturing.

Producers. Over the five-year period, the changes taken as a whole result in an increase of about $0.20 per hundredweight in the Federal order minimum blend price for milk at test. Including the effects of Class I premiums and the reduced returns from manufactured milk, the Federal order all-milk price is increased by $0.10 per hundredweight. Federal order marketings increase by an average 83 million pounds due to an increase in production in response to higher producer prices. Cash receipts increase by $136 million (0.8 percent) from baseline receipts of $17,194 million.

The distribution of the 2002–2006 annual average price changes across the 11 orders varies with the distribution of Class III and Class IV utilizations. Estimates of annual average price changes by order are provided in the economic analysis for this decision.

The five-year annual average U.S. all-milk price increases by $0.07 per hundredweight, and includes an average manufactured milk value decline of $0.05 per hundredweight. U.S. milk marketings increase by an average 65 million pounds annually, and cash receipts increase by $126 million (0.5 percent) from baseline receipts of $23,884 million.

Milk Manufacturers and Processors. Annual Class IV and Class II skim milk prices increase each year for an average of $0.08 per hundredweight (1.1 percent) for the 2002–2006 period. This increase results mainly from changing the conversion factor for nonfat dry milk to nonfat solids from 1.02 to 1.0. The Class I skim milk price increases by an average of $0.10 per hundredweight. Butterfat prices decline each year by an average of 1.05 cents per pound.

The Class IV price at test (about 6.82 percent butterfat) declines by an average of −$0.07 per hundredweight, mainly as the result of a slight reduction in the butterfat content of Class IV over 2002–2006. The Class II price at test is unchanged. The Class I price at test (about 2 percent butterfat) increases on average $0.07 per hundredweight (0.57 percent).

The annual average Class III price at test (3.82 percent butterfat) increases by about $0.38 per hundredweight during 2002–2006. From the 2002 and 2003 Class III price increase of $0.47 and $0.48 per hundredweight, respectively, the changes steadily decline, ending in an increase of $0.23 in 2006. The major change in the Class III price is the average protein price increase of $0.18 per pound, ranging from an increase of $0.22 in 2002 and 2003 and declining steadily to an increase of about $0.13 in 2006. The change in the Class III price results primarily from a combination of changes in the protein formula that reduces the impact of the butterfat price on the protein price. The major changes in the protein price formula are multiplying the butterfat price by 0.90, reflecting a 90 percent butterfat retention rate in the cheese, and replacing the 1.28 factor with 1.17.

Consumers. The expected $0.07 per hundredweight increase in the minimum Class I price for 2002–2006 results in an average $0.006 increase in the price per gallon of fluid milk for consumers. Annual consumer costs for fluid milk over 2002–2006 are estimated to increase on average by about $28 million in the Federal order system and by $26 million in the U.S.

The price of butter is estimated to decrease on average $0.008 per pound for the period. Cheese is estimated to decrease $0.005 per pound. Annual consumer expenditures over the five-year period are estimated to decrease by $10 million on butter, and by $16 million on American cheese.

A complete Economic Analysis for the Recommended Decision on Class III and Class IV Price Formulas is available upon request from Howard McDowell, Senior Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, Room 2753, South Building, U.S. Department of Agriculture, Washington, DC 20250, (202)720–7091, e-mail address *howard.mcdowell@usda.gov*.

Civil Rights Impact Statement

This decision is based on the record of a public hearing held May 8–12, 2000, in Alexandria, Virginia, in response to a mandate from Congress via the Consolidated Appropriations Act, 2000, that required the Secretary of Agriculture to conduct a formal rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The consolidated orders were implemented on January 1, 2000. A tentative final decision on the issues considered at the hearing was issued November 29, 2000 (65 FR 76832), and an interim final order (65 FR 82832) became effective January 1, 2001. A preliminary injunction enjoining portions of the interim final order was granted in the U.S. District Court for the District of Columbia on January 31, 2001.

Pursuant to Departmental Regulation (DR) 4300–4, a comprehensive Civil Rights Impact Analysis (CRIA) was conducted and published with the final decision on Federal milk order consolidation and reform. That CRIA included descriptions of (1) the purpose of performing a CRIA; (2) the civil rights policy of the U.S. Department of Agriculture; and (3) basics of the Federal milk marketing order program to provide background information. Also included in that CRIA was a detailed presentation of the characteristics of the dairy producer and general populations located within the former and current marketing areas.

The conclusion of that analysis disclosed no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability, who choose to deliver milk to handlers regulated under a Federal order will receive the minimum blend price. Federal orders provide the same assurance for all producers, without regard to sex, race, origin, or disability. The value of all milk delivered to handlers competing for sales within a defined marketing area is divided equally among all producers delivering milk to those handlers.

The issues addressed at the May 2000 hearing are issues that were addressed as part of Federal milk order consolidation and reform. Establishing representative make allowances in the formulas that price milk used in Class III and Class IV dairy products is an issue that affects the obligations of handlers of those products to the Federal milk order pool, and similarly the pool obligations of Class I and Class II handlers. The decision should result in no differential benefits in dividing the pool among all producers delivering milk to those regulated handlers. Therefore, USDA sees no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers.

Decisions on proposals to amend Federal milk marketing orders must be based on testimony and evidence presented on the record of the proceeding. The hearing notice in this proceeding invited interested persons to address any possible civil rights impact of the proposals being considered in testimony at the hearing. No such testimony was received.

Copies of the Civil Rights Impact Analysis done for the final decision on Federal milk order consolidation and reform can be obtained from AMS Dairy Programs at (202) 720–4392; any Milk Market Administrator office; or via the Internet at: *www.ams.usda.gov/dairy/*

Prior documents in this proceeding:

Notice of Hearing: Issued April 6, 2000; published April 14, 2000 (65 FR 20094).

Tentative Final Decision: Issued November 29, 2000; published December 7, 2000 (65 FR 76832).

Interim Final Rule: Issued December 21, 2000; published December 28, 2000 (65 FR 82832).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Northeast and other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this tentative decision with the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The Hearing Notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. To the extent that this issue was raised, it is considered in the following findings and conclusions.

This recommended decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501). The findings and conclusions set forth below are based on the record of a public hearing to consider proposals submitted by the industry to change the pricing formulas in the marketing agreements and the orders regulating the handling of milk in the Northeast and ten other marketing areas held in Alexandria, Virginia, on May 8–12, 2000. Notice of such hearing was issued on April 6, 2000 and published on April 14, 2000 (65 FR 20094).

In addition, this recommended decision is issued in response to comments received on the tentative final decision (issued November 29, 2000; 65 FR 76832) on the above hearing and is consistent with the injunction issued by the U.S. District Court for the District of Columbia on January 31, 2001.

Brief Summary of Changes to Class III and IV Formulas

As instructed by the legislation requiring this proceeding, the Class III and IV pricing formulas and all of the elements of the formulas were re-considered in developing the tentative final decision and this recommended decision. The changes made in the Class IV component formulas adopted in Federal order reform are minimal. The product prices used in the Class IV formulas (butterfat and nonfat solids) are unchanged. The make allowances for butter and nonfat dry milk are increased slightly, by .1 cents for butter and .3 cents for nonfat dry milk. The divisor used in the butterfat component formula is unchanged, while the 1.02 divisor used in the nonfat solids price formula to reflect the relative values and yields of buttermilk powder and nonfat dry milk is eliminated.

The Class III component price formulas follow the format of the formulas included in Federal order reform and made effective pursuant to the injunction granted by the Federal District Court for the District of Columbia. The formulas revert to using the same butterfat price calculated from the butter price as in Class IV, and a protein price formula that includes an adjustment to represent the differential value of butterfat used in cheese and butterfat used in butter. In the butterfat adjustment to the protein price, the amount of butterfat accounted for at its value in butter is reduced to the same amount as that accounted for at its value in cheese (90 percent), and the 1.28 multiplier is changed to 1.17. The dry whey price, for computing the other solids price, is unchanged. The whey powder make allowance is increased from the tentative final decision to recognize the somewhat greater cost of drying whey than of drying skim milk, and the snubber on the other solids price is removed.

The material issues on the record of the hearing relate to:

1. Role of producer costs of production.
2. Commodity prices (CME vs. NASS).
3. Commodity and component price issues.
   a. General approaches on make allowances.
   b. Class IV butterfat and nonfat solids prices.
   c. Class III butterfat, protein, and other nonfat solids prices.
   d. Effects of changes to Class III and Class IV price formulas.
4. Class price relationships.
5. Class I price mover.
6. Miscellaneous and conforming changes.
   a. Advance Class I butterfat price.
   b. Classification.
   c. Distribution of butterfat value to producers.
   d. Inclusion of Class I other source butterfat in producer butterfat price computation.
7. Re-opening of hearing, issuance of a final decision, or issuance of a recommended decision.

Summary of Changes to the Interim Amendments

This recommended decision differs from the tentative final decision in several respects and includes summaries of comments submitted on each of the issues within the discussion of the issue. The key changes that would be made to the interim order amendments are as follows:

1. In Issue 3c, changes are made to the formulas for calculating the protein and other solids prices, and the Class III butterfat price would be the same as that calculated for Class IV on the basis of butter.

2. In Issue 3d, the changes made in the Class III component price formulas would result in different effects on Class III component, skim, and hundredweight prices.

3. In Issue 6b, the classification of frozen cream, plastic cream and anhydrous milkfat would be changed back to Class III.

4. In Issue 6c, butterfat values would be pooled for the purpose of calculating producer butterfat prices in the orders in which producers are not paid on a component basis. In orders under which producers are paid on a multiple component basis, however, the producer

butterfat price would be the same as that for butterfat used in Classes III and IV.

5. In Issue 6d, the butterfat in other source milk used in Class I is included in calculating the producer butterfat price in marketwide pools that do not use multiple component pricing, but would continue to be included in the producer price differential calculation in multiple component pricing pools.

6. Issue 7 is changed to explain the reasons for issuing a recommended decision at this point in this proceeding, instead of a final decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Role of Producer Costs of Production

Proposal 29 in the hearing notice proposed that producers' costs of production be incorporated into the Class III and Class IV pricing formulas. A number of dairy farmer witnesses testified that, just as manufacturing processors are assured that their costs of processing milk products will be covered, dairy farmers should also have some assurance that they will be able to continue to operate their dairy farms without losing money. Under the current system, according to the National Farmers Union (NFU) witness, incorporating a make allowance for processors but not for producers leaves dairy farmers to bear the entire burden of changes in supply and demand.

Support for using cost of production in the Class III and IV pricing formulas was reiterated in the comments received in response to the tentative final decision issued November 29, 2000. The National Farmers' Union comment expressed disappointment that no portion of the milk pricing formulas was based on producer cost of production. The American Raw Milk Producers Pricing Association suggested that the USDA ignored existing law as written in the 1937 Agricultural Agreement Act, section 608c(18). Two dairy farmers also mentioned their concern about the need to follow 608c(18). Another dairy farmer advocated a producer-influenced supply control/price control system.

As explained in both the proposed rule and final decision under Federal order reform and in the tentative final decision in this proceeding, assuring producers that their costs of production will be covered addresses only the milk supply side of the market and ignores factors underlying demand or changes in demand for milk and milk products. As noted by the Dairy Farmers of America (DFA) witness, although pricing proposals incorporating cost of production have been noticed and reviewed several times in the last decade without success, if a sound mechanical concept could be advanced that overcomes the objections relative to supply and demand, it should be considered.

The proposals by NFU and National Farmers Organization (NFO) that advocated adoption of make allowances that would be adjusted for changes in indexes reflecting dairy farmers' production costs are discussed under Issue 3a, General Approaches on Make Allowances.

In this recommended decision, consideration has again been given to cost of production proposals. As noted by the NFO witness, the current pricing system uses the interaction of supply and demand for milk products as an indirect method of meeting the pricing requirements of the Agricultural Marketing Agreement Act of 1937 (the Act) for milk. The record of this proceeding contains no new dairy farmer cost of production data that could be used to reflect both the supply and demand sides of the market for dairy products. There is no evidence in the record that either USDA's Economic Research Service or the CDFA costs of production have ever been used to price milk.

The Act stipulates that the price of feeds, the availability of feeds, and other economic conditions which affect market supply and demand for milk and its products be taken into account in the determination of milk prices. This requirement currently is fulfilled by the Class III and Class IV component price calculations. If conditions increase supply costs, the quantity of milk produced would be reduced due to lower profit margins. As the milk supply declines, plants buying manufacturing milk would pay a higher price to maintain an adequate supply of milk to meet their needs. As the resulting farm profit margins increase, so should the supply of milk. Likewise, the reverse would occur if economic conditions reduce supply costs. The price of feed is not directly included in the determination of the price for milk, but rather is one economic condition which may cause a situation in which the price of milk may increase or decrease. A change in feed prices may not necessarily result in a change in milk prices. For instance, if the price of feed increases but the demand for cheese declines, the milk price may not increase since milk plants would need less milk and therefore would not bid the price up in response to lower milk supplies. Also, other economic conditions could more than offset a change in feed prices and, thus, not necessitate a change in milk prices.

The pricing system continued in this decision will continue to account for changes in feed costs, feed supplies and other economic conditions, as explained above. The product price formulas adopted in this rule should reflect accurately the market values of the products made from producer milk used in manufacturing. As supply costs increase with a resulting decline in production, commodity prices would increase as a result of manufacturers attempting to secure enough milk to meet their needs. Such increases in commodity prices would mean higher prices for milk. The opposite would be true if supply costs were declining. Additionally, since Federal order prices are minimum prices, handlers may increase their pay prices in response to changing supply/demand conditions even when Federal order prices do not increase.

Additionally, the pricing formulas developed in this decision are applicable to handlers, since handlers are the regulated parties under Federal milk order regulation. The formulas are used to establish minimum prices for milk used in making particular dairy products, not for determining payments to dairy farmers.

2. Commodity Prices (CME vs. NASS)

As adopted in the interim final rule in this proceeding (published on December 28, 2000 (65 FR 82832)), commodity prices determined by surveys conducted by USDA's National Agricultural Statistics Service (NASS) continue to be used in the component price formulas that replaced the BFP. This decision recommends no changes in the source of product price data.

Several proposals (1, 5, 10 and 19) were considered during the current proceeding that recommended using prices reported by the Chicago Mercantile Exchange (CME) instead of the NASS surveys to determine commodity prices. Both the CME and the NASS surveys were supported by testimony at the hearing and in briefs. The CME is a cash market where speculators, producers, and processors can buy and sell products. It is a mechanism for establishing prices on which the dairy industry relies. Thus, a lot of contracts to buy and sell dairy products are based on CME prices. A USDA witness testified that he is unaware of any other indices used to price cheese in the U.S. According to several witnesses, cheese and butter processors generally base their contract sales on CME prices.

The NASS price survey gathers selling prices of cheddar cheese, Grade AA butter, nonfat dry milk, and dry whey from a number of manufacturers of these products nationwide. At the time the proposed rule on Federal order reform was published (January 30, 1998), the NASS survey included prices for cheddar cheese only. This survey had begun in March 1997. In September 1998, before the final decision was published in April 1999, NASS began surveys of Grade AA butter prices, dry whey prices, and nonfat dry milk prices. In developing these commodity surveys, input was obtained from the dairy industry on appropriate types of products, packaging, and package sizes to be included for the purpose of obtaining unbiased representative prices. A sale is considered to occur when a transaction is completed, the product is shipped out, or title transfer occurs. In addition, all prices are f.o.b. the processing plant/storage center, with the processor reporting total volume sold and total dollars received or price per pound. NASS Dairy Products Prices reports wholesale cheddar cheese prices for both 500-pound barrels and 40-pound blocks, USDA Grade AA butter, USDA Extra Grade or USPH Grade A non-fortified dry milk, and USDA Extra Grade edible non-hygroscopic dry whey. A more-detailed description of the surveys can be found in the final decision of April 2, 1999 (64 FR 16093).

The proponents of proposal 1, Western States Dairy Producers Trade Association, et al. (WSDPTA), a group of several trade associations and cooperatives, proposed that the NASS commodity prices for butter, cheese, and nonfat dry milk that currently are used for computing the Federal order component prices be replaced with prices determined by trading on the CME. Dry whey was not included in the proposal because there is no dry whey cash contract traded on the CME. A witness from WSDPTA did not oppose the collection and reporting of NASS data, but expressed the opinion that while it serves an important function as information, it should not be used to establish prices. The proponents presented several benefits of using the CME over the NASS survey for commodity prices.

Proponents explained that by using CME prices in the formulas, prices would be known immediately rather than a week later when the NASS prices are published, reflecting more quickly the supply-demand conditions for dairy products. The one-week delay is caused by the time necessary to collect data. A witness for National Farmers Organization noted that interested persons are able to check the CME value of products on a daily basis and use the reported prices as a factor in establishing what they will pay, or what they will be paid, for cheese.

A witness from WSDPTA went on to explain that buyers, sellers, and speculators trade the CME, trying to obtain a price in their favor, while the price actually is determined by supply and demand forces. He described the rules as fair and the results as transparent, with participants having a number of interests. The witness continued by noting that the CME price result is instant and results cannot be altered. In contrast, he stated, NASS prices are reported by sellers only, who are not disinterested parties. He argued that NASS respondents can modify their numbers or file an initial report after calculating the price impact of the latest reports.

The proponents also concluded that the urging by many hearing participants that the NASS price series include mandatory participation and be audited proves that the NASS series is not reliable enough to be used as a price-discovery method.

Finally, the witness from WSDPTA expressed the view that the NASS price series would feed on itself and result in price setting, not price discovery. He continued by noting that plants and their buyers will obtain prices one week and sell the commodity in the following week at a price derived in large part from the price obtained in the prior week. The witness compared the NASS survey to the CDFA survey of powder prices which, he claimed, results in a circular pricing system that is mathematically incapable of fully reflecting the top of the market price for powder because so little of the survey volume is priced off of the spot market. Proponents expressed the belief that this circularity causes prices to remain lower than they would without it and that prices would increase more slowly and decrease more rapidly than would prices on the CME, causing overall lower prices for dairy farmers.

In the comments filed on the tentative final decision, the proponents of changing from NASS to CME prices commented only that USDA should reconsider the use of NASS prices. A partner/manager of a dairy farm stated that there is little correlation between the NASS and wholesale prices, and questioned the accuracy of NASS survey numbers. He also stated that block and barrel cheese is traded only between manufacturers and that they therefore have an influence on setting the price, especially if the percentage of the product traded is very low. He argued that a fair price would reflect retail prices or at least true wholesale price, not the value of the last pound of product produced.

Opponents of changing from NASS to CME prices to compute component prices included International Dairy Foods Association (IDFA), Dairy Farmers of America (DFA), and National Milk Producers Federation (NMPF). Witnesses for these parties argued that the NASS survey includes pricing based on a significantly larger volume of product than does the CME. In the case of the nonfat dry milk market, the table of 1999 monthly Chicago Mercantile Exchange Cash Markets data from the 1999 Annual Dairy Market Statistics showed that there were no sales reported for either extra grade or Grade A in the year 1999.

According to a witness from IDFA, the volume of cheddar cheese in the NASS survey is equal to 26.4 percent of all cheddar cheese production in the U.S. for the period September 1998 through February 2000. During the same period, the CME volume of cheddar cheese traded represented only 1.7 percent of U.S. cheddar cheese production. The witness stated that for the same 18-month period, the NASS survey volumes represented 14.4 percent of all U.S. butter production while CME trading consisted of only 2.6 percent. He also noted that switching from the NASS survey data to the CME data would result in a change from a very broad to an extremely thin representation of actual product transactions.

Opponents to the proposal to use CME prices also pointed out that prices at the CME are Chicago or Midwest prices based on the delivery location specification of the contract. Therefore, they argued, the scope of the reported prices for cheese, butter, and nonfat dry milk are not national. A witness for Kraft noted that reliance on the CME alone would exclude the substantial and growing volume of cheese produced in the western United States (U.S.), particularly California. A witness for Northwest Dairy Association suggested that a transportation credit would need to be used with CME prices, at least in the West, to reduce the value of the CME to a more representative level. Opponents went on to explain that since the NASS survey contains data from plants located all over the United States, NASS prices represent a national scope of the prices of each of the particular commodities.

Several of the comments filed in response to the tentative final decision supported use of the NASS price series to determine product prices.

According to the testimony in the record and a number of the briefs, cheese and butter sellers and buyers look to the CME to identify the most current price levels. As a result, prices move in response to supply and demand conditions in the marketplace as reflected at the CME. Since the transaction prices of commodities are based off of the CME, it is difficult to see how the NASS survey can cause, or result in, circularity. The NASS prices reflect the CME prices with a short lag but are based on a much greater volume, enhancing the stability of the price series. Continued use of the NASS price survey appears to be the best method of obtaining reliable data about commodity prices.

As stated in the final decision on Federal order reform, NASS data traditionally have been collected via a survey with voluntary participation. The price information, like most NASS data, has not been audited. NASS, however, applies various statistical techniques and cross-checking with other sources to provide the most reliable information available. The issue of mandatory and audited NASS data was not within the scope of the rulemaking and could not be addressed on the basis of the hearing record. At the time of the hearing NASS was not authorized to conduct such activities, but legislation has since been passed that authorizes mandatory and verified price reporting.

3. Commodity and Component Price Issues

a. General Approaches on Make Allowances

Changes to the make allowances for each of the product formulas used in calculating component prices were proposed and discussed at length during this proceeding. Except in the case of dry whey, make allowances adopted in the component price formulas in this decision are calculated using a weighted average of the most recent CDFA study and the RBCS study. A marketing cost of $.0015 per pound is added to both the CDFA costs and the RBCS costs, and the CDFA value for return on investment is used to adjust the RBCS cost. This is generally the same approach used to determine the appropriate make allowances under Federal order reform, and results in values that differ little from the formulas adopted at that time.

For the calculation of the Class III "other nonfat solids" price, neither the CDFA nor RBCS studies included information on the cost of making dry whey. The tentative final decision determined that the make allowance for dry whey should remain the same as that for nonfat dry milk. However, the results of a survey done for this proceeding under the auspices of IDFA are being recommended in this decision for use in determining the make allowance for dry whey.

A number of the proposals considered in this proceeding would change the manufacturing, or make, allowances adopted for the pricing formulas under Federal order reform. There was considerable testimony on the appropriate factors to be considered in establishing make allowances, and several sources of data were cited as the most accurate to use for such a purpose.

Two surveys of product manufacturing costs that were averaged for use in calculating make allowances under Federal order reform were the California Department of Food and Agriculture (CDFA) study, which is done annually and includes nearly 100 percent of dairy products manufactured in California, and the Rural Business Cooperative Service (RBCS) study, which is conducted annually by USDA as an in-plant benchmark study for participating cooperative associations. These two surveys had both been updated since earlier versions had been used in determining the manufacturing allowances used in the component pricing formulas adopted under Federal order reform. In addition, the National Cheese Institute (NCI), an affiliate of IDFA, contracted with a third party to conduct a survey of the costs of manufacturing cheese and whey powder for use in this proceeding.

A witness for NMPF stated that make allowances should reflect the costs incurred by average plants manufacturing the particular dairy product used in the component/Class price formulas: butter, nonfat dry milk, cheese, and dry whey. The witness went on to explain that the procedure used by the Secretary for determining the make allowances under Federal order reform, using an average of the CDFA cost of production studies and the RBCS study, was sound and that the same procedure should be used as a result of this hearing, using the updated data from both surveys. In calculating an appropriate make allowance, the witness supported addition of a marketing cost of $.0015 per pound to both the CDFA costs and the RBCS costs, as under Federal order reform, and the CDFA value for return on investment used to adjust the RBCS costs under Federal order reform. The witness explained that both of these factors should be included as they are legitimate and necessary costs incurred in operating manufacturing plants.

The witness for IDFA supported inclusion of the CDFA cost studies in the computation of the make allowance; however, the witness stated that the appropriate procedure for computing the make allowance for cheese was to compute a weighted average of the CDFA cost studies and the NCI survey. The witness explained that the RBCS study does not include all the necessary costs that must be recovered in the make allowance, and that the NCI survey is needed to determine what the additional cost values should be. The costs that the IDFA witness pointed out—those which are not included in the RBCS survey but which are included in the NCI survey—are general plant administrative costs, such as the plant manager's salary and corporate overhead; return on investment or capital costs; and marketing costs.

The IDFA representative testified that the danger inherent in regulated prices is setting the manufacturing allowance at a level too low to assure that manufacturers will be able to recover their costs of manufacturing finished products and to have the money needed to invest in new plants. The witness pointed out that an inadequate make allowance would force manufacturers either to move to areas that do not have regulated pricing or go out of business. At the very least, the witness explained, the manufacturers would not invest in new plants and equipment, which in the long run would cause a decline in the productivity of the dairy industry. A number of briefs filed on the basis of the hearing transcript emphasized the importance of covering all handlers' costs of manufacturing, and not just average costs.

The IDFA witness explained that if make allowances are established at too low a level, proprietary plants are placed at a competitive disadvantage relative to cooperative-owned plants. The witness explained that since cooperatives do not have to pay their producers the minimum order price, as proprietary plants are required to do, cooperative plants can reduce the prices paid to member producers to make up the difference in cost.

The IDFA witness explained further that the problem with a make allowance established below the amount needed to cover plant costs occurs because the plant sells the finished product at the same price that is used in the formula for establishing the minimum price the plant must pay for the raw material (milk). The manufacturing allowances are the only place the plant has the opportunity to cover its costs, and those allowances are fixed in the formula that determines the raw material price.

The witness for IDFA asserted that there is very little risk in setting a make allowance too high. He explained that if the make allowance is established at a level above plant costs, the additional revenue stream will be corrected through market forces by requiring the plant operators to pay competitive over-order premiums to milk suppliers to obtain an adequate supply of milk.

A witness for WSDPTA explained that the most important part of determining a manufacturing allowance is to pick a method and stick with that method. The witness testified that the appropriate method is to use the results of the RBCS study with adjustments to include factors for marketing costs and for capital costs. The witness pointed out that use of the RBCS study is appropriate because the study is voluntary and represents the costs of making the particular commodities, and the plants are geographically widely dispersed. The WSDPTA witness stated that including the results of the CDFA study in the computation of the make allowance for pricing Federal order milk is inappropriate since there is no logical reason for considering the manufacturing costs of plants that do not procure any of the milk that would be priced using those costs.

Witnesses testifying on behalf of NFU and NFO both supported the concept of variable make allowances, in which changes in dairy farmer production cost indexes would be used to adjust handler make allowances. The NFU proposal would use an average national cost of production, presumably as published by USDA's Economic Research Service, and the NFO proposal would use the CDFA milk production cost index. The witnesses supported such an approach as a means of addressing the problem of manufacturers being insulated from changes in supply and demand by their fixed make allowances.

The NFU and NFO witnesses explained that a fixed make allowance, as contained in the current pricing system, does not vary with market conditions and creates a situation in which manufacturers will not respond to market signals since the manufacturers will receive a profit no matter what the supply and demand is for the finished products. The witnesses testified that as long as the make allowance allows manufacturers a sufficient return, the manufacturers will continue to produce the finished product even if there is limited demand for the product, thus resulting in a continued low price paid to producers for their milk. As a result, they argued, producers are left to bear the burden of changes in supply and demand. The NFO witness characterized a variable make allowance tied to the cost of producing milk as a market-oriented system.

The NFU witness described the California milk pricing system, in which manufacturers' production costs are covered through the make allowance, as an example of the problems encountered by producers with the use of product price formulas incorporating make allowances. He testified that California continues to produce a large quantity of lower-valued products because the pricing system makes the manufacturer immune to the supply of and demand for the products. The witness blamed the California make allowance system for the traditionally low milk prices in California that, he claimed, result in expansion of dairy herds to make up for reduced cash flow. The witness predicted that if the Federal order system follows the same pricing path, the same production patterns as witnessed in California would follow in the rest of the United States.

In comments filed in response to the tentative final decision, NFU stated that producers, as well as processors, will fail if they don't attain their costs of production. NFU also argued in its comments that under a variable make allowance processors can avoid reduced make allowances by increasing product prices.

The NFU comment overlooks the fact that the make allowances included in the component price formulas do not cover all of the costs of all processors, and probably allow for greater costs than are experienced by some processors. In this sense, the margins experienced by processors under product price formulas are variable between plants. Also, it is likely that processors share some of their margin with producers in the form of over order prices. The degree to which this sharing occurs certainly may vary with producers' cost/price situations, as perceived by processors. Although increased product prices would have the effect of increasing manufacturing margins, the ability of processors to increase prices while maintaining sales is limited by the fact that the marketplace in which they sell their products is competitive.

There would appear to be no logical or economic reason for changing make allowances for processing plants because of a change in the cost of producing milk. If milk is to clear the market, plants must be willing to accept it. Make allowances that decline as a result of increasing milk production costs would squeeze plant margins, and manufacturers will have to choose between not receiving milk, refusing to receive pooled milk, or paying less than order prices to cooperative associations for milk used in manufactured products. None of these outcomes would be in the best long-term interests of dairy farmers, processors, or consumers. Many dairy farmers, facing increased costs of production, would have to find alternative outlets for their milk. Decisions on the part of many processors to cease operating, use only nonpool milk, or buy milk below order prices likely would result in very disorderly conditions among dairy farmers looking for outlets for their milk.

Most hearing participants agreed that the make allowance should cover the cost of converting milk to a finished manufactured dairy product. However, several participants disagreed with the IDFA contention that there is very little risk in setting the make allowance too high. They argued that if the make allowance is set in excess of the cost to manufacture finished products, the additional revenue would be kept by the manufacturing plants as higher profits and not distributed to the producers supplying milk to the plant. They explained that in many parts of the country there is little if any competition for the dairy farmers' milk and therefore no incentive for a plant to pay above the minimum Federal order price. These plants, according to the witnesses, could be expected to keep the extra make allowance for themselves. Comments filed by Michigan Milk Producers Association continued to urge caution against logic that suggests a low risk of setting make allowances too high. The cooperative stated that not all of its 2,700 members might survive a market adjustment period if make allowances were set too high, even if theoretically greater premiums might be returned to producers.

Several witnesses opposed the idea of setting make allowances at levels that guarantee plants a profit, or at least a return on investment, when the dairy farmers supplying milk to the manufacturing plants have no similar assurances for covering the costs of producing milk. These witnesses pointed to the Agricultural Marketing Agreement Act of 1937, Sec. 608c(18), as justification for setting a lower make allowance for plants, resulting in higher milk prices that would come closer to covering dairy farmers' costs of producing milk. This point of view was reiterated in a half-dozen comments filed in response to the tentative final decision.

As supported by most of the hearing participants, the make allowances

incorporated in the component price formulas under the Federal milk orders should cover the costs of most of the processing plants that receive milk pooled under the orders. In part, this approach is necessary because pooled handlers must be able to compete with processors whose milk receipts are not priced in regulated markets. The principal reason for this approach, however, is to assure that the market is cleared of reserve milk supplies.

In comments on the tentative final decision, IDFA continued to argue that some legitimate manufacturing costs are excluded from the RBCS survey and attacked the data gathered as "inherently suspicious and unreliable." IDFA also stated that the survey is not taken seriously by some of its participants. Both IDFA and Leprino Foods Company argued in comments on the tentative final decision that adding factors for costs excluded in the RBCS study constitutes a less accurate result than if those costs were included in a comprehensive study. IDFA also commented that the need to allow for changes in cost factors that might occur over time (such as recent increases in energy costs) also supports the need for a make allowance that is too high rather than one that is too low.

Although the RBCS survey does not include such costs as general plant administrative costs, return on investment or capital costs, and marketing costs, it is a survey that has been done for sixteen years with the same fundamental methodology and with some continuity of participants. Because the survey is done for the benefit of the participating organizations (cooperatives) to help them identify their costs and compare them with those of their peer group, there is every reason to believe that the costs provided are as accurate as possible. In addition, the years of experience with the survey have enabled USDA to shape the questions to obtain more accurate results.

When the RBCS survey results are adjusted to include the factors that were mentioned above as not included by using the values for those factors from the CDFA survey, the two surveys' costs are comparable, especially considering that the RBCS survey represents manufacturing plants with a wide distribution around the U.S., while the CDFA survey includes only California plants. The CDFA survey is also done every year and is done according to a published procedure manual, with the costs being audited by personnel employed by the State for that purpose. Although no CDFA employee was available to respond to questions about the conduct of the survey, official notice was taken of the procedure manual and of California publications associated with manufacturing cost data. In addition, several witnesses who are deeply involved with the California dairy industry testified regarding the perceived reliability of the survey results.

The use of manufacturing plant data from California plants that do not procure any of the milk that would be priced using those costs should not cause concern. The costs of manufacturing dairy products may vary slightly by region, but adoption of representative make allowances in product price formulas should not fail to use a well-documented study that includes a large amount of audited data, such as the CDFA survey.

In contrast to the RBCS and CDFA surveys, the survey of cheese and whey powder manufacturing costs arranged for by NCI was developed solely for the purpose of establishing costs to be used in determining make allowances for this proceeding. The survey was conducted by persons unfamiliar with the dairy industry among cheese processors who would benefit from the adoption of overgenerous make allowances. No one who actually conducted the survey was made available to testify, and although the IDFA witness stated that survey participants would testify regarding their responses to the survey later in the hearing, none of the participating firms' witnesses would respond to questions about their firms' results.

Although less weight must be given the NCI survey than either the RBCS or the CDFA surveys for the reasons stated above, the NCI survey's resulting manufacturing costs for cheese are not considerably different from a weighted average of the RBCS and the CDFA surveys. In fact, although the IDFA hearing participants went to great lengths to discredit the RBCS study for use in identifying an appropriate level of manufacturing costs, the hearing record reflects that the NCI survey of cheese and dry whey manufacturing costs used the RBCS 1996 survey results to identify outliers (plus or minus 10 percent) in the study commissioned by NCI.

In comments filed on the tentative final decision, IDFA urged that USDA use the NCI and CDFA studies for use in determining make allowances for cheese and whey powder rather than using the RBCS and CDFA studies. The IDFA comments stated that the characterization of the RBCS study as neutral and not developed or commissioned for use in this proceeding was inaccurate, as cooperative associations attending the National Milk Producers Federation annual meeting were encouraged to participate in the survey so the results could be used in this proceeding. Since the RBCS study was developed and has continued for sixteen years for purposes other than establishing make allowances, and the methodology did not change from past years for the study used in the hearing, it is unlikely that it was designed for any purpose other than the one for which it was developed and has been used for that period. If the comment is intended to raise concerns that cooperative associations generally favor lower make allowances, it should be noted that only manufacturing cooperatives were surveyed. The record contains ample evidence that many manufacturing cooperatives desire make allowances just as generous as those favored by proprietary manufacturers.

A comment filed on behalf of the Association of Dairy Cooperatives in the Northeast (ADCNE), some of which are national in scope, argued that use of the NCI data would demean the importance of sworn first-hand testimony that is subject to cross-examination.

As a result of the differences in conduct of the three surveys, manufacturing costs used to determine appropriate make allowances for cheddar cheese, butter, and nonfat dry milk in this proceeding are calculated primarily from a weighted average of the RBCS and CDFA surveys, with a check against the NCI survey cost of manufacturing cheddar cheese. Since the record lacks any other data regarding the cost of making whey powder, the NCI survey results are used for the make allowance in the other solids formula.

One proposal included in the hearing notice would have eliminated any marketing allowance from the make allowances, and a number of witnesses' testimony objected to the inclusion of return on investment. The American Farm Bureau witness questioned the need for a marketing allowance since producers already pay a 15-cent assessment for promotion and research. A brief filed by the proponent of eliminating the marketing allowance stated that the allowance appears to be an "adjustment" or a "hedge," since it is not defined in the final decision in the Federal order reform process.

There was general agreement among those testifying that a marketing allowance should be included in manufacturing costs, but no consensus about the appropriate number. Some of the costs covered by the marketing allowance include maintaining and staffing warehouses, supporting a marketing and sales staff, and transporting product to market, as well as accounting costs associated with the sale of products. The NCI survey identified a marketing cost of $.0011 per pound of product, while the DFA witness stated that DFA's costs were approximately $.0018. The DFA witness testified that because the costs included in the activities designated as marketing generally fall within a common department under common management, it is appropriate to apply the same allowance to each product.

A witness for Northwest Dairy Association (NDA), a cooperative association in the Pacific Northwest, stated that NDA's marketing costs are $.0026 but identified costs associated with the aging of cheese as included in that number. Since the NASS survey price does not include cheese intended for aging, the marketing allowance certainly should not include costs of aging cheese. The Associated Milk Producers, Inc. (AMPI), witness used a $.0024 marketing allowance in the calculation of AMPI's proposed make allowance for nonfat dry milk. The witness for Agri-Mark, Inc., a large Northeast cooperative association with several processing plants, stated that Agri-Mark's estimates of marketing costs ranged from $.0025 to $.005 per pound.

The costs identified as those included in a marketing allowance are necessarily incurred in getting a product to market and are not related to the consumer education and advertising activities covered by the National Dairy Board assessment. Since the marketing cost determined by NCI is the only one of the estimates included in the hearing record that is supported by a survey, and it varies from the $.0015 rate included in Federal order reform by only 4 one-hundredths of a cent and applies only to cheese and dry whey, there seems to be no solid basis for making any change to the current marketing allowance.

Some producer witnesses objected to the inclusion of any allowance for return on investment in manufacturing allowances on the basis that dairy farmers are assured of no such return. The CDFA manufacturing cost surveys include allowances for depreciation, which is included in the non-labor processing costs; and for return on investment, which represents the opportunity cost of the processors' resources invested in the business. These costs are supported by audited data.

Both the marketing allowance and return on investment factors should be included in the manufacturing allowances provided in the component price formulas at the rates supported by the CDFA data. If processors are not provided enough of a manufacturing allowance to market the product they process, or to earn any return on investment, they will not continue to provide processing capacity for producers' milk. At the same time, the manufacturing allowances incorporated in the formulas will not provide enough of an allowance to assure that every processor, no matter how inefficient or high-cost, will earn a profit. Allowances set at such a level certainly could result in the situation warned of by producer groups in which processors manufacture greater volumes of product than the market demands because they are guaranteed a profit on all their production. As a result, the only way to market all of the product would be to reduce prices, with a profit to processors still locked in through the make allowance, which would result in decreasing prices paid to producers. In addition, manufacturers who are assured a profit on all of their output would have a lesser incentive to make a sufficient quantity of milk available for fluid use—a basic goal of the Federal milk order program.

One area addressed by several hearing participants in testimony and in briefs as appropriate to consider in establishing make allowances or yields was the loss of milk components during manufacturing processes.

Two cheese manufacturers, IDFA, and Land O'Lakes (LOL) continued to argue in their comments on the tentative final decision that make allowances should be increased, or yields reduced, to reflect shrinkage between farms and warehouses.

As stated in the tentative final decision, the orders have always provided an allowance for shrinkage and continue to do so, but inflating costs of production or reducing yield factors to reflect shrinkage would not properly reflect the value of producers' milk used in manufactured products. Processing costs determined by the surveys described above, which underlie the manufacturing costs incorporated in the pricing formulas, are expressed in cents per pound of end product manufactured, not in the cost per hundredweight of converting milk to manufactured products. The component pricing formulas are based on the content of those components in the finished products for which a manufacturing cost per pound has been established. Both the CDFA and RBCS cost surveys allocate all plant costs to actual end products, a process which should take shrinkage into account. Similarly, the yield factors in the formulas refer to the amount of finished product resulting from the processing of a given volume of input or to the amount of component present in the finished product. Both of these factors in the pricing formulas include consideration of shrinkage.

A comment filed by Lamers Dairy argued that using make allowances to calculate Class III and Class IV prices but not Class I and Class II prices constitutes unequal treatment. The comment disregards the fact that the make allowances in the Class III and Class IV price calculations are used to determine prices for milk used in those classes, and that the prices for milk used in Classes I and II are based on those milk prices. The Class I and II prices are determined for the purpose of valuing milk in uses that are alternatives to manufacturing uses. Once the Class III and IV prices have been established, the Class I and II prices can be calculated using differentials from the base prices.

The detailed explanation of each product's manufacturing allowance is included with the description of its primary component's pricing formula later in this decision.

b. Class IV Butterfat and Nonfat Solids Prices

Butterfat Price. This decision continues to use the NASS price for Grade AA butter for calculating the butterfat price to be used in Class IV and to change the manufacturing allowance in the butterfat price formula by 1/10 of a cent per pound of butter from the allowance used under Federal order reform. The .82 divisor in the price formula is unchanged. The make allowance change is the same as that included in the tentative final decision, and neither it nor the other factors were affected by the injunction. However, the injunction resulted in the same butterfat price formula being used to value both Class III butterfat and Class IV butterfat.

Several proposals were heard that would reduce butterfat prices, either by reducing the butter price used in the computation of the butterfat prices for all classes or by subtracting a fixed amount from the butterfat price computed for Class IV. Proposals also were made that would change the make allowance used in calculation of the butterfat prices. There were no proposals to change the butterfat divisor of .82, although one witness representing a western cooperative association suggested that it be reconsidered as he felt it did not include a shrinkage factor.

Product Price (Butter). Several witnesses for proprietary processor proponents of the proposal to deduct six cents from the butter price before

computing the butterfat price stated that historically the value of butterfat in the Federal milk orders has been based on the price of Grade A butter. The witnesses explained that an equivalent price determination had been issued in 1998 (when the CME discontinued trading Grade A butter) that nine cents would be subtracted from the Grade AA butter price for use in calculating Federal order butterfat prices. This equivalent price, according to the witnesses, was found to be "essential" to the continued operation of the Federal milk order program. Further, they argued that its adoption continued the policy of basing butterfat pricing under the Federal milk orders on a value below that of Grade AA butter.

The witnesses complained that under Federal order reform the butterfat value is determined by using the NASS Grade AA price of butter, which effectively increases the butterfat value under Federal milk orders. According to proponents' calculations, the increase does not amount to a full nine cents but is tempered by the use of the NASS Grade AA price, which has averaged approximately three cents below the CME Grade AA price, in the butterfat pricing formula. Therefore, they stated, the actual increase in the butter price used to calculate butterfat prices is approximately six cents. According to the witnesses, subtraction of six cents from the NASS butter price would return the relationship between the butterfat value under the orders and the selling price of butter to the relationship that existed prior to Federal order reform.

Several witnesses explained that when handlers must pay for butterfat on the basis of the Grade AA butter market they cannot then sell cream or finished products at a price that would allow them to recover their costs. They testified that cream is sold at a price that is termed a "multiple" of the butter price, and that the multiples used when the butterfat price was calculated from the Grade A butter price have not adjusted to the new pricing formula using Grade AA butter.

The IDFA witness pointed out that the IDFA proposal to subtract six cents from the NASS Grade AA butter price would apply not only to the butterfat formula for Class II, Class III, and Class IV but would apply to the advance butterfat formula used for computing the Class I butterfat price. The witness testified that by applying the same formula to all classes of butterfat the current relationship between the class prices would be maintained. The witness contended that there is no justification for changing the relationships between the class prices, particularly if the adjustment would widen the class price spreads or, in effect, increase the Class I and Class II differentials.

Witnesses for NMPF and several large cooperative associations testified in support of NMPF's proposal to reduce the calculated butterfat price by six cents, with the reduction applied to Class IV butterfat only. Under this proposal, the computation of the butterfat prices for other classes would not contain the six-cent adjustment. Several witnesses representing cooperative associations that process butter explained that butter manufacturers incur additional costs when procuring cream used for manufacturing butter as opposed to the cost of converting producer milk to butter. The witnesses explained that these additional costs include transportation, additional handling, and additional pasteurization. The witness for LOL testified that the additional costs amounted to 4.57 cents per pound of butterfat for transportation and .4 cents per pound for receiving, storing, and repasteurization. A witness for Agri-Mark stated that Agri-Mark's transportation costs are slightly less than LOL's, probably due to the proximity of the Agri-Mark plant to the sources of cream, but that the other additional costs are slightly higher than the LOL costs, at .5 cents per pound of butterfat.

The proponents of reducing the Class IV butterfat value also referred to the computation of the California Class 4a butterfat price, which involves a subtraction of 4.5 cents per pound from the CME Grade AA butter price to adjust for the costs of moving butter from the west coast to the Midwest.

Those parties who favored reducing the butter price before using the butterfat price formula to calculate any of the butterfat prices disagreed vehemently with the proposal to reduce only the Class IV butterfat price. They argued that such a reduction would distort the relationship between the Class II and Class IV prices, resulting in a greatly-increased price for Class II butterfat in relation to Class IV butterfat. Specifically, the projected increase in the Class II-Class IV butterfat price difference was cited as 6.7 cents per pound (from the current difference of .7 cents). These parties argued that butterfat values would most appropriately be reduced to the same degree in all classes.

The price to be used for butterfat in Class III and Class IV should be computed by subtracting a make allowance of .115 dollars per pound from the monthly average NASS Grade AA butter price and dividing the result by .82 since 1.2213 pounds of butter can be made from 1 pound of butterfat. The Class II butterfat price should continue to be the Class IV butterfat price plus .007 cents, while the Class I butterfat price will be the advance butterfat price plus the applicable Class I differential.

Contrary to the belief stated by some witnesses, the use of the Grade AA butter price for computing the butterfat price under Federal order reform was not an "oversight." Trading of Grade A butter on the CME was ended as of June 26, 1998 (not by USDA, as implied in one brief, but by the CME) because the volume of Grade A butter traded was not great enough to warrant maintaining a trading venue. One brief argued that the Grade A butter price represents a minimum price, and that there is no need for concern that there will not be an available market for Grade A and Grade B butter. However, with the end of trading in Grade A butter on the CME, there is no published (or any other known) source for obtaining a price for Grade A butter.

The use of the Grade AA butter price for establishing butterfat prices is appropriate since that is the only grade of butter that has significant enough trading volume to warrant a publicly-reported price. Grade AA butter prices are the only butter prices regularly available and represent the vast majority (about 95 percent) of the butter sold. Although the "multiples" of the butter price apparently had not adjusted to the use of the Grade AA price during the first 4 months of experience under the revised orders and probably should not be expected to adjust during the period in which this proceeding is under consideration, the marketplace should, in time, make the needed adjustments.

Various witnesses estimated that Grade A and Grade B butter combined make up 3–7 percent of the butter in the U.S. Although a witness noted that the Minnesota-Wisconsin (M-W) price for non-Grade A milk continued to be surveyed even after the percentage of milk eligible for the survey had fallen below a 5 percent level, it was widely recognized for some time that a pricing alternative to the M-W must be found because the M-W eventually would no longer provide a representative price for a large volume of unregulated milk. Similarly, with the decline of Grade A butter (and the unavailability of prices for that product), the only alternative available for determining price is Grade AA butter. A finding in the equivalent price determination that a Grade A butter price was "essential" to continued operation of the orders referred solely to the fact that the Grade A price was specified in all of the orders at that time, not that the butterfat value under Federal milk orders could never be based on any other price.

Making an adjustment to a clearly valid price series to approximate a price series that has been discontinued for several years due to insufficient volume for trading is inappropriate. Comments to the tentative final decision from IDFA and Schreiber Foods continued to encourage the use of an estimate of the discontinued Grade A price series for the current formulas. Since it has been about four years since a publicly-traded price for Grade A butter has been available, it is impossible to determine what the current difference between these prices would be because there are no reports of the Grade A price available. The vast majority of butter made and sold in the U.S. is Grade AA, and that is the appropriate product to which to look for a value of butterfat used in butter.

The 3-cent average difference between the CME and NASS butter prices makes up ⅔ of the 4.5-cent adjustment made by CDFA in calculating the value of butterfat used in butter. An additional 6 cents deducted from the butterfat price calculated from the NASS price would much more than make up the remaining 1.5-cent difference. Also, the 4.5-cent CDFA adjustment is made for the purpose of reflecting the cost of moving butter from California to Chicago. The butterfat price calculated under the Federal order program is not intended to apply to only one state. The NASS price is a nationwide survey and likely includes a significant representation of California butter prices. If there are additional costs involved in making butter, they would more appropriately be included in the make allowance for butter.

Make Allowance (Butter). The make allowance factor in the butterfat price formula should be derived from a combination of the manufacturing costs determined by CDFA and by RBCS, as they were in the tentative final decision. The CDFA cost data is divided into two groups representing high cost and low cost butter plants, with the four plants in the high cost group manufacturing, on average, about the same average number of pounds of butter as the seven plants in the RBCS study. Use of the data for the CDFA high-cost group of butter plants is more appropriate than use of the weighted average cost for all of the California plants because it is more likely that the high-cost plants, like the plants in the RBCS survey, serve a predominately balancing function.

When the RBCS data is adjusted to reflect the same packaging cost, general and administrative costs, and return on investment as the CDFA data for the high cost group, and a marketing allowance of $0.0015 is added to both sets of data, the weighted average of the two data sets is $0.115. This butter manufacturing allowance is very close to the current allowance of $0.114 and should continue to provide a representative level of the costs of making butter in plants that serve a balancing function.

The increased costs of making butter, not including transportation, cited by the proponents of reducing the butterfat price are expected to be included in this manufacturing allowance, which exceeds the low cost group in the CDFA survey by 3 cents per pound. The only class of use for which adjustments for transportation have regularly been included under Federal order regulation is Class I. Assuring that the order provides an allowance for moving milk for use in manufactured products would interfere with provisions designed to assure an adequate supply of milk for fluid use.

Yield (Butter). Although one witness suggested that the divisor in the butter price formula that reflects the butterfat content of butter be reconsidered, he did not indicate any number more appropriate than the .82 divisor used in the current formula. There was no other testimony in the record questioning the butter content factor. In fact, the only data in the record applicable to the issue was a CDFA report on butter and powder yields at California plants in 1996 that was included in an exhibit. This report shows a 1.2213 weighted average butter yield (1 pound of butterfat results in 1.2213 pounds of butter), which corresponds to the use of the .82 divisor.

The record does not support adoption of a Class IV butterfat price that is not reflected directly in the Class II butterfat price. There was testimony from several witnesses that the current Class IV-Class II price relationship is rational and appropriate, and an adjustment to the Class IV butterfat price that is not reflected in the Class II butterfat price would disrupt the current relationship. In addition, it would seem reasonable that some of the extra costs claimed by butter manufacturers, such as transportation costs for supplemental cream supplies, butterfat standardization of outside cream sources, and additional pasteurization would be as applicable for Class II manufacturers of high-fat products using surplus cream as for butter makers. Accordingly, reduction of the Class IV butterfat price only is not considered appropriate.

Class IV Nonfat Solids Price. As in the tentative final decision, this recommended decision maintains the use of the NASS survey price reported for nonfat dry milk and increases the make allowance for nonfat dry milk from 13.7 cents to 14 cents per pound of nonfat dry milk. In addition, the tentative final decision change to eliminate the 1.02 divisor in the nonfat solids price formula to reflect the incorporation of dry buttermilk (with a lower product price and higher make allowance) is continued. This decision maintains the nonfat solids price formula continued under the injunction.

Six proposals to change some part of the nonfat solids price formula were considered at the hearing. Three of the proposals dealt with the manufacturing allowance for nonfat dry milk (NFDM), with two of the proposals advocating use of the RBCS survey results and one proposal supporting an increase in the make allowance. The other three proposals supported changes in the yield factor of the nonfat solids price formula that would reflect greater powder yield from a pound of nonfat solids. Two of the proposals to change yield factors included using CME NFDM prices instead of the NASS survey. As discussed earlier in this decision, the product prices used in the component pricing formulas should continue to be obtained from the NASS survey.

Product Price (Nonfat dry milk). No proposals were considered that would have changed the product price used in the nonfat solids price formula, and the record contains no basis for making any change in this formula factor.

Make Allowance (Nonfat dry milk). At the time the hearing notice was issued, the most recent RBCS data were not available, and those costs were not specified in the proposals. By the time the hearing was held, however, the RBCS data had been released and were included in the information introduced at the hearing. NMPF supported continued use of a weighted average of the CDFA and the RBCS manufacturing cost surveys, with inclusion of a marketing allowance and the CDFA factor for return on investment. NMPF proposed that the NFDM make allowance be $0.140 per pound.

South East Dairy Farmers Association also proposed that the RBCS survey be used to determine a make allowance for NFDM, but did not propose that a marketing allowance be included. The necessity of including a marketing allowance is discussed earlier in this decision.

Associated Milk Producers, Inc. (AMPI), proposed that the NFDM manufacturing allowance be increased

from $0.137 to $0.1563 per pound, a rate based on AMPI's cost of making NFDM at its own three plants in the upper Midwest over a 5-year period. The AMPI witness stated that in addition to a processing and packaging cost of $0.1254, the make allowance should include a marketing allowance of $0.0024 and return on investment of $0.026, for a total allowance of $0.1538 per pound, modified from the level proposed in the hearing notice. The witness testified that the three AMPI plants operate at approximately 80 percent of capacity.

No comments were filed that specifically addressed the adopted make allowance for use in the nonfat solids price.

On the basis of the data and testimony included in the hearing record, the manufacturing cost level that appears to be most appropriate for use in the pricing formula for nonfat solids is $0.14 per pound. This value is calculated by using a weighted average of the RBCS survey and the two less-cost California groups of plants, adding the CDFA General and Administrative costs and Return on Investment expenses for those two groups to the RBCS numbers, and adding a $0.0015 marketing allowance to both sets of data. The basis for using the two lower-cost groups of California plants are that the mid-cost group is of a similar average size as the group included in the RBCS survey, and that the lowest-cost California group has a very similar total cost to the mid-cost group. These three groups of plants (the RBCS plants and the two California groups) are similar enough in size and cost to consider as fairly representative, and should encompass those plants that perform a market balancing function. The highest-cost California group should not be included since its average cost is more than ten cents per pound of NFDM above the RBCS group or either of the other two California groups.

The AMPI cost numbers cannot be included in the weighted average since the number of pounds of NFDM associated with those costs is not available. When the AMPI marketing allowance and return on investment estimates are replaced with the more moderate numbers used in the make allowance calculation, the AMPI manufacturing costs do not differ much from the other two sources. This is true despite the wide discrepancy in the capacity utilization percentage estimates for the two data sets (80 percent for the AMPI plants versus less than 50 percent for the plants in the RBCS survey). Inclusion of the AMPI costs in the RBCS survey would have included a larger representation of NFDM manufactured outside California. However, the record indicates that a high percentage of the NFDM manufactured in the U.S. comes from California, and the proportion of cost data representing California in the manufacturing allowance is reasonable.

"Yield" (Nonfat solids). The elimination of the divisor of the nonfat solids price formula adopted in the tentative final decision and continued in effect after the injunction should be maintained.

A considerable portion of the testimony dealing with the nonfat solids pricing formula pertained to the 1.02 divisor. The divisor is not strictly a yield factor but is intended to reflect the amount of nonfat solids in NFDM, with an adjustment for the small amount of buttermilk powder that is made in conjunction with the manufacture of butter and NFDM. Testimony by a number of witnesses asserted that the product price minus the make allowance should be either multiplied by a number greater than 1 (such as 1.02) or divided by a number smaller than 1 (such as .99 or .975) to reflect the fact that more than 1 pound of NFDM can be expected to be manufactured from 1 pound of nonfat solids due to the moisture content of NFDM.

Many of the hearing participants supported the 1.02 divisor, adopted under Federal order reform, and expressed understanding of the approach of adjusting the "yield" of NFDM to compensate for the fact that some of the powdered product made from Class IV milk is buttermilk powder (BMP). Although 1.03 to 1.05 pounds of NFDM generally can be obtained per pound of nonfat solids, the formula also recognizes a lower value and higher manufacturing cost for BMP.

Several witnesses correctly assessed an alternate solution to the dilemma of calculating a component price from two commodities with different prices and different make allowances as one requiring addition of dry buttermilk as another component price in the Federal milk order pricing system. As described by at least one witness, such an undertaking would require adding dry buttermilk to the NASS price survey, determining a separate make allowance, and calculating a yield factor. This procedure would be a burdensome undertaking for very little benefit, since dry buttermilk represents only about 5 percent of the dry products resulting from the manufacture of butter and nonfat dry milk. The issue that remains is how best to reflect the value of nonfat solids used in both NFDM and BMP in the same component pricing formula.

The IDFA witness testified that for the 19-month period beginning with September 1998, the central states' dry buttermilk price had averaged $0.798 per pound, while the central states' "mostly" price for NFDM averaged $1.043. The LOL witness similarly testified that the 1999 Northeast "mostly" price for NFDM averaged $1.0389, while the BMP price was $0.7686 per pound. On the basis of these numbers, it would appear that the price of BMP is roughly 75% that of NFDM. However, comparison of BMP and NFDM prices for the years of 1996 through 1999 and into 2000 reflects a more complex relationship between these prices than the hearing testimony would indicate. The BMP price as a percentage of the nonfat dry milk price (using Western prices) was 100.9% in 1996, 94.5% in 1997, 88 percent in 1998, and 71% in 1999. During the first third of 2000, BMP prices generally averaged less than 70% of NFDM prices. As the year 2000 progressed, however, the percentage increased, being at levels up to 100% in late July and remaining above 85% for the second half of the year in all areas.

The witness representing Agri-Mark stated that Agri-Mark employees engaged in manufacturing operations had estimated that the costs of producing BMP range from 1 to 3 cents more per pound than those of producing NFDM. Given that the manufacturing costs estimated by the Agri-Mark witness for other products were somewhat higher than those supported by the bulk of the hearing record, it is reasonable to consider the extra cost of manufacturing BMP to be generally not more than 2 cents in excess of the cost of manufacturing NFDM. In addition, it is difficult to justify increasing the powder make allowance for all of the powdered product represented in the make allowance since the RBCS witness testified that manufacturing costs of BMP manufactured at the plants included in the RBCS survey are included in the powder costs reported by RBCS.

Testimony regarding actual yields of NFDM and BMP were provided by only one witness representing a manufacturing plant operator. The numbers provided, while not complete enough for an exact accounting of the ultimate disposition of the plant's receipts of producer milk, indicate strongly that the approximate loss of nonfat solids used in the manufacture of NFDM at the specific plant was 3 percent, with 16 percent lost in the manufacture of BMP, for a combined weighted average loss of more than 3.5 percent of nonfat solids. In comparison, data published by the State of California showed a weighted average loss of solids not fat of 2.13 percent in the manufacture of butter and powdered products.

The California data indicate a weighted average powder yield of 1.0252 pounds of NFDM and BMP from 1 pound of nonfat solids. One witness discounted this data by observing that the "high" California yield was reported as 1.0406, which would represent a higher-than-allowable moisture content. This number may be influenced by the "high" reported BMP yield of .0749.

As noted above, the general impression conveyed by testimony in the hearing record, that BMP is worth considerably less than NFDM and that the cost of processing it is significantly greater than that of processing NFDM, is misleading. The average BMP price over the period 1996–July 2000 is approximately 87 percent of the NFDM price, and the cost of manufacturing BMP is, on the basis of the information available, no more than 2 or 3 cents in excess of the $0.14 recommended as the NFDM make allowance. These small adjustments to the product price and the make allowance used in the nonfat solids formula apply to little more than 5 percent of powder manufactured. It is apparent from the information contained in the record of this proceeding that the 1.02 factor, as a divisor, is excessive.

The following information from the hearing record was used to determine a multiplier or divisor for the total nonfat solids pricing formula that would result in a minimum price for nonfat solids while incorporating the data and testimony in the record about the manufacture of NFDM and BMP. To assure that the result represents a minimum price, the low or high areas of ranges of numbers related to the manufacture of these two products were used. The CDFA report on butter and powder yield in California plants in 1996 was used in making some of the calculations regarding this factor.

a. The price of BMP represents roughly 80 percent of the price of NFDM (80 percent is less than the average historical relationship of these prices over the past 5 years).

b. The cost of manufacturing BMP is not more than 2 cents greater than the make allowance for manufacturing NFDM.

c. Using a theoretical yield of 1.03 pounds of powder containing 3 percent moisture made from milk containing 8.62 percent nonfat solids would result in .054 pounds of BMP and .976 pounds of NFDM.

d. Adjusting the theoretical yield of 1.03 pounds to the minimal yield of 1.01 pounds (the "low" yield in the CDFA report) and prorating the BMP and NFDM to 1.01 pounds instead of to 1.03 pounds, the amount of BMP manufactured from a pound of nonfat solids used in butter/powder is approximately .053 pounds. When the NFDM yield is prorated, the resulting minimum yield is .957 pounds.

Using a NFDM price of $1.03 per pound, a make allowance of $0.14 cents per pound of NFDM, and a divisor of 1, the resulting calculation is: $1.03 − $0.14 = $0.89 per pound of nonfat solids. The same result is achieved through a more complicated calculation using both product prices and make allowances, as follows:

Buttermilk powder: ($1.03 × .80) − $0.16 = $0.664; $0.664 × .053	=	$0.03519
+ Nonfat dry milk: $1.03 − $.014 = $0.89; $0.89 × .957	=	$0.85173
		$0.88692 (Rounded to $0.89)

On the basis of this analysis, no multiplier or divisor is necessary in this formula.

A number of comments were filed in response to this aspect of the tentative final decision, with some supporting the use of a divisor of "1," two comments suggesting that a divisor of 1.01 would be more appropriate (but one determining that such a change would not be possible on the record of this proceeding), and several insisting that the above analysis is flawed by use of incorrect or inappropriate data and that the divisor should be returned to the 1.02 level in effect before January 1, 2001.

The IDFA comments stated that, in the interest of establishing minimum pricing, no more than 70 percent of the NFDM value should be assumed for the BMP price and that 3 cents should be added to the BMP make allowance instead of 2. IDFA also indicated that the formula should include shrinkage. NDA and LOL criticized the use of the California yield data in determining the comparative yields of NFDM and BMP, both because some of the data reflected information that included powder with higher-than-allowable moisture and because no witnesses who had participated in the survey were present to testify about it. LOL criticized USDA's use of Western prices rather than the Northeast and Central prices quoted by witnesses who discussed the relative values of NFDM and BMP.

Comments filed by Agri-Mark protested elimination of the 1.02 divisor, arguing that USDA relied on a casual remark about the difference between the cost of manufacturing BMP and NFDM rather than on detailed cost information as in the other make allowances. Agri-Mark also stated that the role of Class IV in balancing surplus cream from Class I use increases the ratio of BMP to NFDM over that calculated from an assumption about uses of the nonfat solids in producer milk.

Criticism of use of the Western BMP and NFDM price series to analyze the relative values of BMP and NFDM in the tentative final decision did not consider the fact that the Western price (mostly) series is the only one with an uninterrupted data series for the five years considered. In addition, the percentage of the NFDM price represented by the BMP price for the Western region was lower during each of the years 1996–2000 than for the Central region; and very similar, with some years averaging higher and some lower, to the Northeast region. Criticism of the CDFA yield data ignores the fact that the yield factors used in the initial analysis for the tentative final decision adjusted the relative "weighted average" yields of BMP and NFDM to the "low" yield.

The hearing record contains enough information on the issue of the relative weights, values, and costs of manufacturing NFDM and BMP to support the conclusion reached in the tentative final decision about the appropriate divisor in the nonfat solids price formula. The .96 divisor considered in the proposed rule on Federal order reform represented the pounds of nonfat solids in NFDM rather than the yield of nonfat dry milk from nonfat solids. Use of the divisor of 1 adopted in the tentative final decision accounts for all of the nonfat solids used in Class IV and results in 3–4 cents less per pound of nonfat solids (over a NFDM price range of $.86–$1.10) than the value that would be calculated if the formula attributed all of the Class IV skim value to NFDM.

The Agri-Mark comment emphasized that the ratio of BMP to NFDM milk considered in the nonfat solids price calculation should be calculated on the basis of the butterfat content in Class IV because butterfat surplus to Class I use is used in butter. The Agri-Mark comment observed that the butterfat percentage of milk used in Class IV in the Northeast over a 3-month period averaged 5.67%.

Even if the national average of butterfat in Class IV (6.4%) is used to

determine the breakdown between nonfat solids used in BMP and nonfat solids used in NFDM, less than .8 pounds of nonfat solids out of the 8.4 contained in a hundredweight of Class IV milk at 6.4% butterfat should be attributed to use in BMP. In effect, the price of each of the 8.4 pounds would be reduced by 3–4 cents. Such a calculation results in 25.2–33.6 cents per hundredweight of milk containing 6.4% butterfat to cover the additional costs of making .8 pounds of BMP and the lower value of .8 pounds of BMP compared to the NFMP manufacturing cost and price. A 3-cent additional cost per pound of manufacturing .8 pounds of BMP would equal 2.4 cents, and a 25-percent reduction of the BMP value from that of NFDM would equal approximately 20 cents. These calculations would still leave 2.8–11.2 cents per hundredweight to cover any additional costs of making and selling BMP over those of NFDM.

It should be noted that the additional 3 cents per pound cost of making BMP is on the high end of the information in the hearing record, and that the 25% reduction in value of BMP compared to NFDM is on the low end. Over the past 5 years, only during the period cited by witnesses testifying about the relative values of BMP and NFDM and during the first 4 months of 2000 has the BMP price as a percentage of the NFDM price fallen below eighty percent. In addition, the preceding calculations assumed that all of the nonfat solids not used in NFDM were used in BMP, whereas some are used in whole milk powder, which has a higher value than either NFDM or BMP. Therefore, elimination of the 1.02 divisor is appropriate.

c. Class III Butterfat, Protein, and Other Nonfat Solids Prices

In a change from the orders promulgated under the Federal order reform process, the tentative final decision calculated a Class III butterfat price from the value of butterfat in cheese rather than using the butterfat price calculated from the value of butter for both Classes III and IV. The Class III butterfat price in the tentative final decision was calculated to represent the value of the component in the NASS cheddar cheese price, as was a revised protein price formula.

Before the interim final rule became effective on January 1, 2001, several petitions were filed requesting the Secretary to delay implementation because industry participants objected to the effects of the separate Class III butterfat price. Implementation could not be stayed because of the Congressional deadline on the rulemaking procedure, and partial implementation was not possible because the interim final rule had been approved by producers in its entirety. Before the separate Class III and Class IV butterfat prices could become effective, implementation of the separate butterfat prices was enjoined in the Federal District Court for the District of Columbia at the urging of organizations representing most of the interests in the dairy industry. The Court's order returned the price formulas for the Class III components to their earlier forms, with the new make allowances and cheese moisture adjustment incorporated.

By the end of the comment period, comments representing nearly 100 interested parties from most segments of the industry were received that objected to separating the Class III and Class IV butterfat prices and reducing the level of the protein price. The comments urged USDA to continue to calculate the Class III butterfat price on the basis of the value of butterfat in butter, and return to the Class III price formula formats in use before effectuation of the interim final rule.

Several reasons were given for rejecting the change to Class III component prices based on the contribution of butterfat and protein to cheese yield. Numerous commenters cited the negative effects of a marked increase in the cost of milk for use in high-fat cheeses and the incentive created for handlers to substitute lower-valued Class IV forms of butterfat for use in cheese-making. Others stressed the difficulties created by the decision in marketing cream. Several commenters argued that the shift in value from protein to butterfat caused by the decision did not make sense in light of the importance of protein in cheese-making, and that the reduced protein price would send incorrect economic signals to dairy farmers. One particular concern was the potential significant reduction in the Class I skim value if the Class III price at 3.5 percent butterfat became the mover for the Class I price.

Based on comments received, this decision recommends that the Class III butterfat price be the same as the Class IV butterfat price, calculated from the value of butterfat in butter. In addition, the portion of the protein price formula that adjusts the protein price to accommodate the differential value of butterfat in cheese, as opposed to butter, is incorporated in the formula. Technical corrections to the protein price formula are recommended that should make the protein price correlate somewhat more closely with the cheese price than has been the case with the earlier formula.

The tentative final decision made only one modification to the specifications of the cheese price, currently a weighted average of the prices of cheese sold in 40-pound blocks and 500-pound barrels (with a 3-cent addition to the barrel price). That change, to adjust the price of 500-pound barrels to 38 percent moisture instead of the 39 percent moisture price currently reported by NASS, is continued in this decision. Also as in the tentative final decision, this decision would reduce the make allowance for cheese from 17.02 to 16.5 cents per pound.

The other nonfat solids price would continue to be calculated by subtracting the make allowance from the NASS-reported price for dry whey and dividing by .968. However, the make allowance is increased from 13.7 cents (14 cents in the tentative final decision) to 15.9 cents per pound of dry whey.

Class III Product Price (Cheese). Several proposals included in the hearing notice would, if adopted, have changed the NASS cheese price used in the Class III pricing formulas. One proposal would limit the cheese prices included to 40-pound blocks reported by the CME, while another would add 640-pound blocks to the prices surveyed by NASS for inclusion in the cheddar cheese price. A third proposal would replace the current 3-cent price adjustment between 500-pound barrel prices and 40-pound block prices to a value that reflects the actual differential industry cost of making 40-pound blocks over 500-pound barrels. Still another proposal would adjust 40-pound block cheese prices for moisture, as 500-pound barrel prices are adjusted.

As discussed above in Issue 2, CME commodity prices should not be used as the basis for calculating component prices. Eliminating 500-pound barrels, which represent approximately two-thirds of the cheese represented in the NASS survey, from calculation of the market value of cheddar cheese would reduce greatly the degree to which the current product prices represent U.S. cheddar cheese prices. The record of this hearing provides no support for relying solely on prices for 40-pound blocks to identify a market price of cheddar cheese.

Several parties testified that the NASS weighted average cheese price should include the value of 640-pound block cheese in the cheese price computation. They contended that such inclusion would improve the reliability of the average cheese price by adding a substantial quantity of cheese to the price survey. Witnesses' estimates of the

percentage of U.S. cheddar cheese production represented by 640-pound blocks ranged from 20 to 27 percent. Witnesses testified that the increased volume would better reflect the true value of cheese and additionally would reduce the potential for price distorting manipulation by individual handlers.

In comments filed on the tentative final decision, IDFA stated that USDA had erred by excluding 640-pound blocks. IDFA reiterated the argument that 640-pound blocks represent as much as 27 percent of total cheddar cheese production. Furthermore, the comment noted that past data-collection problems are irrelevant because "all participation in NASS surveys regarding data used to calculate federal order minimum prices is now mandatory." IDFA concluded that the argument that 640-pound blocks should not be used due to their being made on a custom basis to customers' specifications is not valid because adjustments can be made, as they are for moisture in barrel cheese.

Opponents to inclusion of the 640's in the cheese price computation explained that the vast majority of 640's are made on a custom basis to customers' specifications and therefore are not sufficiently uniform to have a standard identity. One witness noted that much of the commerce in 640's is made on a long-term contractual basis and as such would rarely be reflective of changing market conditions.

ADCNE's comments on the tentative final decision reiterated USDA's position, stating that "the market in 640-pound blocks of cheddar cheese does not involve sufficient buyers and sellers in arms-length transactions to provide good data to establish the Class III price for producer milk in all federal milk orders."

As stated in the tentative final decision, standardized pricing cannot be developed without a standard identity for the product, which 640-pound blocks lack. In addition, there appears to be an insufficient volume of 640-pound block cheese transactions to warrant inclusion. At the beginning of the NASS survey, price data for 640-pound blocks was collected but was discontinued due to lack of volume and too few participants to allow disclosure of data. Even earlier (1995–96), the former National Cheese Exchange attempted to include trading in 640-pound blocks but discontinued doing so because of lack of interest. Testimony from witnesses representing organizations that manufacture cheese in 640-pound blocks, and who favored inclusion of such product in the NASS survey, stated that the 640-pound blocks manufactured by their organizations are used internally, making that cheese ineligible for inclusion. Therefore, even though price reporting is now mandatory, 640-pound blocks of cheese do not meet the criteria necessary for the prices of these products to be eligible for inclusion in the NASS survey.

Elimination or reduction to one cent of the three-cent adjustment that is added to the barrel price for computing the weighted average cheese price was advocated in testimony at the hearing, comments contained in post-hearing briefs, and comments responding to the tentative final decision. The witnesses argued that since the barrel cheese price is adjusted to 39 percent moisture and block cheese is approximately 38 percent moisture, at least 2 cents of the observed difference in price between 40-pound blocks and 500-pound barrels is due to moisture and has nothing to do with actual differences in costs. In fact, they argued that there is no difference in packaging costs between block and barrel cheese.

The witness for DFA, a cooperative that manufactures cheese packaged in both 40-pound blocks and 500-pound barrels, testified that three cents is an acceptable and reasonable spread between blocks and barrels and that there is no compelling reason to change the three-cent addition to the barrel price. The witness for LOL testified that the three cents is an appropriate difference between blocks and barrels and that adding three cents to the barrel price when computing the weighted cheese price is an appropriate adjustment. DFA and ADCNE argued, in a brief filed on behalf of both parties, that the record supports a conclusion that the 3-cent adjustment of the barrel price is attributable to volume utility and cost differences in packaging and handling.

The National Cheese Institute, which proposed reducing or eliminating the 3-cent adjustment, argued that the adjustment should include only the actual cost differences involved in manufacturing and packaging the two sizes of cheese. Although a number of witnesses representing cheese manufacturers testified in favor of reducing or eliminating the adjustment, including one whose employer makes both sizes of cheddar, none of them addressed the actual cost differences of packaging and manufacturing 40-pound blocks and 500-pound barrels. Instead, the only testimony that was offered involved attributing a 2-cent difference to the moisture-adjusted value of the two sizes of cheese packages. In comments responding to the tentative final decision, ADCNE argued that the 3-cent adjustment is representative of the historical difference in market value between barrel cheese and block cheese after adjustments for moisture.

If the difference between the block and barrel prices were due to the difference in moisture, the difference between the prices should widen as the cheese price increases since the moisture adjustment is based on the price and moisture of the cheese. An analysis of historical cheese prices indicates that the difference between the block cheese and barrel cheese prices does not change with changes in price level. In fact, three of the largest differences between the block and barrel prices occurred at approximately the 40-month NASS weighted average monthly prices.

In comments filed by Leprino Foods Company (Leprino) on the tentative final decision, Leprino argued that comparisons of the block and barrel cheese prices from May 1995 through December 1999 are not valid because of artificial market distortions. Leprino stated that valid relative price data is available only for calendar year 2000, during which the average spread is 1.54 cents. Leprino continued, in its comment, that the price spread between blocks and barrels does not move in lock-step because it is affected by many factors, and will continue to be driven by current market forces.

The record contains no basis for concluding that the actual cost of manufacturing and packaging the two sizes of cheese is not the historical 3-cent price spread. In fact, during the period September 1998 through June 2000 the difference between the block and barrel prices has been 4.4 cents per pound. The record of this proceeding supports maintaining the 3-cent addition to the barrel cheese price.

An expert witness, and several other witnesses, testified that the moisture content of the cheese used for determining the NASS cheese prices and the moisture content used in the Van Slyke cheese yield formula used for computing the "yield" coefficients in the protein formula should be the same. The witnesses explained that failure to align the formula and the moisture content represented by the cheese price survey would result in overstating or understating the formula coefficients.

The expert witness explained that the barrel cheese price is reported at 39 percent moisture after being adjusted from the actual moisture, while the block cheese price is reported at an unknown moisture level. The only testimony dealing with the actual moisture level of block cheese indicates that it averages about 38 percent.

The coefficients originally used for determining the Class III protein price and the Class III butterfat price and used in the formulas in this decision were derived from using the Van Slyke cheese yield formula at 38 percent moisture. Therefore, it is appropriate to use cheese prices that reflect cheese containing 38 percent moisture. The current practice of using the 40-pound block cheese price unadjusted for moisture and the 500-lb barrel price adjusted for moisture should be continued, but with the barrel price adjusted to 38 percent moisture instead of 39.

In several comments on the tentative final decision, commenters stated that the 38-percent moisture adjustment to the barrel price requires an adjustment to 1 cent and not 3 cents for the price spread between 500-pound barrels and 40-pound blocks. Other interested persons filed comments supporting both adjustments. DFA argued in its comment that eliminating either adjustment should result in use of only 40-pound block cheese prices.

The hearing record provides no basis for altering the composition of cheese prices surveyed for use in the Class III pricing formulas or for changing the calculation of the NASS weighted average cheese price, other than the moisture adjustment to 38 percent for 500-pound barrels.

Several witnesses testified that types of cheeses other than cheddar should be included in the NASS price survey as a more comprehensive basis for identifying a cheese price, although such a proposal was not included in the hearing notice. The cheddar cheese included in the NASS survey meets certain standard criteria that makes prices for the reported cheese sales comparable. If the survey included other descriptions of cheddar and other types of cheese, such as mozzarella, it would not be possible to consider the reported price as representative of the value of any particular product. Further, the manufacturing costs surveyed are, to a great extent, limited to the costs of processing cheddar cheese.

Class III Make Allowance (Cheese). Several proposals to adjust the manufacturing allowance for cheese were included in the hearing notice and considered at the hearing. The NMPF witness testified that the organization had determined that the most appropriate cheese make allowance would be a weighted average of the updated RBCS and CDFA surveys, with addition of a marketing allowance. Thus, the NMPF supported adoption of a cheese make allowance of $0.1536 per pound of cheese. Several witnesses representing cooperative associations supported the NMPF $0.1536 proposal but also would have included a cost factor for return on investment. One witness testified that the make allowance should be based on data from actual plant operations through the surveys conducted by RBCS and CDFA and testimony from individual plant operators; that it should include California data, as California plants represent a large proportion of cheese manufacture; and that it should be generous enough to assure adequate plant capacity for continued manufacture of cheese.

The witness representing NCI testified that the cheese make allowance should be no less that $0.1687, the weighted average of the NCI-sponsored and CDFA surveys with the addition of a marketing cost of $0.0011. He stated that such an allowance would represent the production of 24 cheese plants and 53% of U.S. cheese. Several cheese manufacturer representatives supported use of the NCI-supported make allowance, stressing the importance of adoption of an allowance that covers *all* of the costs of manufacturing cheese.

A witness representing Farmers Union and the American Farm Bureau witness both supported adoption of a make allowance of $0.1521, as a weighted average of RBCS and CDFA data; and a witness for National Farmers Organization supported a make allowance of $0.141 composed of the RBCS cost with the addition of a marketing allowance and return on investment.

Although ADCNE, in its comments on the tentative final decision, supported the use of California data as compiled and audited by a state agency, ADCNE disagreed with inclusion in the cheese make allowance of the CDFA "general and administrative expense" item, which added 1.9 cents per pound to the make allowance. ADCNE described this allowance as "generous, to say the least," as it represents $2–$3.5 million for the newest, largest, and most efficient cheese plants, and stated a preference for having some basis in testimony before building that sort of expense level into plant costs at the expense of minimum producer prices.

The general and administrative expense was one of the cost factors included in the CDFA weighted average cost study, but not in the RBCS study. Therefore, it must be added to the RBCS data to make the two cost studies comparable.

The make allowance used for computing the Class III protein and butterfat prices, $.165, was determined by combining the CDFA plant survey with the RBCS survey. As was pointed out by several witnesses at the hearing, several cost factors that are necessary to maintain the viability of processing plants are not represented in one or both of the RBCS and the CDFA studies. These cost factors include marketing costs, return on investment, and general and administrative expenses. A discussion of these expenses is included earlier in this decision. Neither the CDFA nor the RBCS survey included a marketing cost, so the $0.0015 marketing allowance was added to both studies. In addition, the CDFA return on investment cost of $0.0103 and the general and administrative expense of $0.0190, both of which were included in the CDFA weighted average cost, were added to the RBCS study, which included neither factor. The resulting adjusted costs for each survey are $0.1708 for CDFA and $0.15996 for RBCS. A weighted average of the two studies was computed using the respective adjusted make allowances and the pounds of cheese reported in each study—466,396,548 for the CDFA study and 633,142,812 for the RBCS study—to arrive at the Class III price make allowance of $0.165.

In a comment filed in response to the tentative final decision, NFU stated that the reduction in the cheese make allowance should have been greater than $.0052, but that the cooperative could support an increased make allowance if it were tied to producer cost of production and market price through implementation of a variable make allowance. The $.165 make allowance is based on actual costs discovered by two surveys, the conduct of which were open to review in the hearing record, and is very close to the results of another that was conducted in a somewhat less accessible manner. There is no basis in the record for adopting a lower make allowance and, as discussed earlier, no acceptable rationale for implementing variable make allowances.

Class III Butterfat Price. As discussed in the introductory portion of the Class III price section of this decision, above, the Class III butterfat price adopted in the tentative final decision was changed by a court injunction to be the same as the Class IV butterfat price. Based on evaluation of that decision and the comments received, this decision recommends that the butterfat prices for all classes of use be based on the value of butterfat in butter. The order will refer to both the Class III and Class IV butterfat prices as "the butterfat price," as it did previously.

The tentative final decision was based on the observation that market

distortions occur due to using the Class IV butterfat price calculated from the value of butterfat in butter to also represent the value of butterfat in cheese (Class III), and trying to incorporate the difference in value in the protein price. Analysis shows that there is very little relationship between the cheese price and either the current butterfat price or the current protein price.

As a result, instances have occurred when the protein price declines while, at the same time, the cheese price is increasing. This outcome is contrary to the concept of pricing components on the basis of the value of the products in which they are used. The same inverse price scenario has affected the butterfat price, with occurrences in which the Class III butterfat price increases because the butter price has increased while the cheese market has been declining.

Although reflection of the value of a manufactured product in the prices for the milk components that are instrumental in the yield of that product would require that the Class III protein and butterfat prices be tied more directly to their value in cheese than the result obtained from the Federal order reform price formulas, that outcome cannot be accomplished on the basis of this hearing record. However, any distortion between the Class III butterfat and protein prices and the cheese price should be ameliorated partially by the following changes recommended in the protein formula.

Protein price. The tentative final decision on the hearing record for this proceeding derived formulas for calculating a Class III butterfat price and a protein price that considered only the contribution of each of those components to cheese yield and resulted in a 100 percent correlation with the cheese market. Therefore, the individual factors in the portion of the earlier protein price formula that adjusted the contribution of protein to cheese yield to account for differences in value between butterfat used in cheese and in butter and accounted for much debate in the hearing record were not considered in any detail.

The protein price formula resulting from the tentative final decision took the following form:

(NASS weighted average cheese price—.165) × 1.405. This formula eliminated the following butterfat adjustment portion of the earlier protein price formula:

+ {[(NASS weighted average cheese price—.165) × 1.582]—[the butterfat price]} × 1.28

This butterfat adjustment portion of the formula represents the difference between the value of butterfat used in cheese and the value of butterfat used in butter. The butterfat adjustment portion became unnecessary when the Class III butterfat price was calculated from the value of butterfat in cheese in the tentative final decision.

Reconsideration of the protein formula in light of the determination that there should be only one butterfat price for Class III and Class IV results in the following recommended protein price formula:

[(NASS weighted average cheese price—.165) × 1.405] + ({[(NASS weighted average cheese price—.165) × 1.582]—[the butterfat price × .9]} × 1.17).

Leprino, in response to the tentative final decision, urged that the 1.405 factor used to reflect the yield effect of one pound of protein in milk be reduced to 1.367 because the 1.405 factor assumes that true protein contains more casein (83.3%) than is supported by testimony in the record (82.2—82.4%).

The hearing record contains much discussion of the derivation of the 1.32 cheese yield factor per pound of crude protein used to determine the 1.405 cheese yield factor per pound of true protein. Two explanations of the factor were advanced. The first involved assumption of 75 percent casein retention, 90 percent butterfat retention, and 38 percent moisture content in the cheese. Holding butterfat and moisture constant and changing the protein content by .1 results in a .1318 (rounded to .132) pound change in the cheese yield, or a one percent change in protein results in a 1.32 pound change in cheese yield. The second method assumes 78 percent casein retention, 90 percent butterfat retention, and a 38 percent moisture content in the cheese. In this second method the cheese yield is computed using a 3.2 percent protein and zero butterfat. The resulting cheese yield is divided by 3.2 to arrive at 1.316 pounds of cheese per pound of protein. The 1.316 was rounded to 1.32. Given these particular assumptions, both methods resulted in the same answer—1.32. A witness for National All Jersey testified that the second method is the appropriate procedure and was the one used to compute the 1.32 yield factor in past Federal order protein price decisions. However, if 78 percent is a more appropriate factor to use as the appropriate value for casein retention, then the first method yields a 1.37 yield factor. The 1.32 factor was used in the protein price formula in the Federal order reform proposed rule and in the five Upper Midwest markets beginning in January 1996 to compute the protein price prior to Federal order reform. The 1.32 yield factor generally has been accepted as an appropriate factor to use for computing a protein price.

When the final decision on Federal order reform was issued, the protein price computation was changed to compute the protein price on the basis of true protein rather than crude protein, which had been the basis for protein price computations in the past. As in determining the 1.32 factor, certain assumptions were made to arrive at the current 1.405 yield factor. The 1.405 factor was computed based on the assumption that milk testing 3.3 percent crude protein has an equivalent true protein test of 3.1 percent. The relationship between crude protein and true protein was based on the results of laboratory testing of producer milk for both crude and true protein. The resulting percentage change in protein is 106.4516 (3.3/3.1), which was then multiplied by 1.32 to arrive at 1.405. In addition, use of the 1.405 yield factor when pricing true protein results in a protein value equivalent to use of the 1.32 factor in pricing crude protein.

Regardless of which procedure is used, assumptions must be made with regard to the various factors used in the formulas. These assumptions directly affect the outcome of the factors used in the protein formula and the resulting protein price and value. Since use of the 1.405 factor results in an equivalent protein value to use of the 1.32—and there was no testimony or comments filed that the 1.32 factor was not appropriate—there is no reason to change the 1.405 cheese yield factor in this decision.

Leprino argued that the appropriate casein recovery should be 82.3 percent which, when using the second procedure above with a 2.99 true protein level, would result in a factor of 1.388. However, the majority (⅔) of the difference between 1.405 and the 1.367 factor advocated by Leprino accounts for shrinkage between the farm and the cheese vat. The issue of including shrinkage as an additional make allowance or yield factor in the calculation of component prices has been discussed earlier in this decision and determined to be inappropriate. Eliminating shrinkage from the 1.367 protein factor results in a factor close to the 1.405. In fact, using the second procedure above and a 82.95 casein recovery, which an expert witness testified is equivalent to the 78 percent casein recovery used for crude protein, and a true protein test of 3 percent, which is equivalent to the 3.2 percent

used in the second procedure, the protein factor would be 1.3997, not significantly less than the 1.405. Testimony from other parties stated that the 1.405 is appropriate and should be continued.

Based on the hearing record, comments filed in response to the hearing and tentative final decision, and the above analysis, there is no justification for reducing the 1.405 cheese yield factor.

Since all of the butterfat used in Class III is to be priced on the basis of its value in butter, an adjustment must be made to account for the difference in butterfat values between cheese and butter. The butterfat adjustment portion of the protein price formula is the method chosen for making that adjustment. The first part of the butterfat adjustment portion of the protein price formula calculates the value of butterfat in Cheddar cheese using the Van Slyke formula, assuming a 90 percent recovery of butterfat in the finished cheese. The resulting cheese yield factor attributable to butterfat is a multiplier of 1.582. Testimony in the hearing record and comments on the tentative final decision urged adoption of different multipliers in the butterfat adjustment portion of the protein price formula that represents the effects of butterfat on cheese yield. Suggestions to increase the butterfat recovery factor of 1.582 (to 1.6 or 1.617) were made by DFA; Select, Elite, et al.; and National All-Jersey, Inc. These commenters relied on hearing testimony that butterfat recovery in cheddar cheese generally ranges between 90 and 93 percent, although Kraft testified that their butterfat recovery is lower. The commenters favored use of a factor that reflected 91 or 92 percent fat recovery because that level of recovery is common. In a comment filed by Leprino, the cheese manufacturer urged that the 1.582 factor not be increased, as any increase would exacerbate the overvaluation of whey fat in the current formula and because the 90 percent recovery factor reflects results from many cheese vats installed prior to the late 1980's.

Even though many cheese makers may be able to achieve a higher fat retention in cheese, use of the 1.582 factor representing 90 percent fat recovery in cheese continues to be appropriate. As a result of the 90 percent level, butterfat in cheese is not overvalued, and those cheese makers who fail to recover more than 90 percent of the fat will not suffer a competitive disadvantage. The preponderance of the record indicates that most cheese manufacturers should be able to obtain a 90 percent butterfat recovery.

In testimony at the hearing and comments filed on the tentative final decision the issue was raised of whether the butterfat adjustment portion of the protein price formula in which the value of butterfat in butter is subtracted from the value of butterfat in cheese is based on equivalent amounts of butterfat. The 1.582 factor represents 90 percent recovery in cheese of one pound of butterfat used in its manufacture, while the butterfat price represents the value of one pound of butterfat used to make butter. Clearly, subtracting the value of a pound of butterfat in butter from the value of .9 pounds of butterfat in cheese reduces the actual value of butterfat used in cheese. Therefore, the value of butterfat used in butter should be reduced by 10 percent in this calculation.

Testimony at the hearing and analysis of the relationship between the current cheese, butterfat, and protein prices revealed that the current Class III pricing formulas cause inequities in producer payments based on the relationship between producers' butterfat and protein tests. The inequities were attributed to the use of the 1.28 factor used in the portion of the protein price formula that is designed to incorporate the butterfat value of milk used in cheese that is not already accounted for by the Class III and IV butterfat price. Such a factor is necessary to reflect the fact that there is more than one pound of butterfat in cheese for every pound of protein.

The record supports a conclusion that when the price of butter increases, the price paid for milk used in cheese and for milk delivered by producers will decline if the milk has a fat to protein ratio of less than 1.28, and decline at a more rapid rate than that at which the butter price increases. According to the record and numerous comments filed, most milk delivered by producers has a fat-to-protein ratio less than 1.28.

In a number of the comments filed in response to the tentative final decision, commenters argued that this factor should be reduced—to 1.22, 1.19, or 1.17—to better reflect the fat-to-protein ratio in producer milk. The factor, which originally appeared in a comment filed early in the Federal order reform process as 1.20, was calculated by dividing 1.582 by 1.32. When the change was made from crude protein to true protein, 1.20 was multiplied by 1.0645 to reflect that change, becoming 1.28. The recommended factor of 1.17 in the protein price formula represents a minimum value for the ratio of butterfat to true protein in producer milk. Its use assures that the value adjustment for butterfat in butter to butterfat in cheese included in the protein price formula accounts for the full amount of butterfat in producer milk.

The Alliance of Western Milk Producers argued in a comments filed in response to the tentative final decision that the Class III component price formulas adopted in that decision would lead to disorderly marketing and provide an incentive for processors to seek alternative sources of butterfat, resulting in negative effects on producer income. The Alliance favored a return to the Federal order reform Class III component price formulas, but suggested that a snubber to prevent the butterfat value adjustment to the protein price from becoming negative would mitigate the potential for undervaluing protein under the formula.

Although the protein formula recommended in this decision would still allow the butterfat value adjustment to have a negative effect on the protein price, use of the .9 multiplier in the butter portion of the butterfat value adjustment and reduction of the 1.28 multiplier to 1.17 should reduce the magnitude of that effect.

Class III—Other Nonfat Solids price (Dry Whey). This decision continues to calculate the price of the nonfat solids other than protein in milk used to make cheese by subtracting a manufacturing allowance from the NASS dry whey price and dividing the result by the content of these "other nonfat solids" in dry whey. No change is made or was proposed in the dry whey product price or divisor in the formula. The manufacturing allowance for dry whey is increased from the 14 cents per pound adopted in the tentative final decision to 15.9 cents per pound of dry whey to reflect a higher cost of drying whey than that at which the butter price increases. According to the record and numerous comments filed, most milk delivered by producers has a fat-to-protein ratio less than 1.28.

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Although the protein formula recommended in this decision would still allow the butterfat value adjustment to have a negative effect on the protein price, use of the .9 multiplier in the butter portion of the butterfat value adjustment and reduction of the 1.28 multiplier to 1.17 should reduce the magnitude of that effect.

Class III—Other Nonfat Solids price (Dry Whey). This decision continues to calculate the price of the nonfat solids other than protein in milk used to make cheese by subtracting a manufacturing allowance from the NASS dry whey price and dividing the result by the content of these "other nonfat solids" in dry whey. No change is made or was proposed in the dry whey product price or divisor in the formula. The manufacturing allowance for dry whey is increased from the 14 cents per pound adopted in the tentative final decision to 15.9 cents per pound of dry whey to reflect a higher cost of drying whey than that at which the butter price increases. According to the record and numerous comments filed, most milk delivered by producers has a fat-to-protein ratio less than 1.28.

The hearing included several proposals that would change the dry whey or other solids price formula by changing the make allowance. Although the hearing notice included a proposal to use the CME average dry whey price, the proponent withdrew support for the proposal when it became apparent that the CME has no cash exchange market for dry whey. The NASS survey that currently is being used to identify commodity prices has included price data on dry whey since September 1998. There were no proposals to change the 0.968 yield factor in the other solids price formula. The 0.968 factor reflects the solids content of dry whey, given a 3.2 percent moisture content.

Make Allowance (Dry Whey). Since the most recent CDFA and RBCS cost surveys did not include costs for drying whey, there is no information from those two studies to use for computing the dry whey make allowance. A witness from NMPF suggested using the nonfat dry milk manufacturing cost allowance for dry whey since both products involve similar processing equipment and then adding $0.01 per pound to reflect the additional energy and higher equipment costs incurred in drying whey. Since the make allowance for nonfat dry milk adopted under the tentative final decision is $0.140, this procedure would result in a dry whey make allowance of $0.150.

DFA proposed a dry whey make allowance of $0.1478 per pound based on costs at its plant at Smithfield, Utah. The plant is a cheddar block plant running throughout the year that condenses and dries whey from the cheese manufactured in this Smithfield plant only. The DFA costs include both direct and indirect costs, and return on investment and marketing cost data.

A witness from WSDPTA testified that there is no reason to change the other solids price computation from the current formula, and that it is a necessary component of the cheese pricing formula. He noted that the use of dry whey as a commodity is correct and that the 0.968 factor in the pricing formula reflects 96.8 pounds of solids in 100 pounds of dry whey.

Most witnesses who testified about the cost of drying whey expressed the belief that drying whey costs more than drying nonfat dry milk. Two cooperative association witnesses testified that their organizations have determined that the returns from whey powder with the current make allowance would not cover the costs associated with building and operating whey powder plants.

IDFA presented the results of the survey, discussed earlier in this decision, contracted for by NCI. The IDFA witness testified that the survey showed a dry whey manufacturing cost of at least $0.1592. The IDFA witness testified that using the nonfat dry milk make allowance significantly understates the manufacturing cost of dry whey due to the relatively higher percentage of water in liquid whey compared to skim milk and the additional crystallization process required.

A witness representing Leprino testified on the differences in the manufacturing processes for dry whey and nonfat dry milk that result in higher costs to produce whey powder. The witness concluded that the cost of making dry whey is $0.02559 above the cost of drying nonfat dry milk.

The brief submitted by Leprino argued that the additional costs of processing whey powder over those of processing nonfat dry milk should include additional staffing, cleaning, and maintenance associated with the additional equipment for whey product.

A witness from Kraft agreed that the dry whey manufacturing costs are about 2.6 cents per pound greater than the nonfat dry milk manufacturing costs. Although Kraft described its Tulare plant as large and efficient, it also represents a recent capital investment, meaning that depreciation costs are likely higher than average.

Comments on the dry whey make allowance portion of the tentative final decision generally followed the lines of the testimony in the hearing record. WSDPTA favored maintaining the 14-cent make allowance adopted in the tentative final decision, and ADCNE/DFA supported not using the NCI survey on the manufacturing cost of dry whey. IDFA, Leprino, and Northwest Dairy Association advocated adoption of a dry whey make allowance of at least 15.92 cents per pound, the level determined in the NCI survey. These comments cited testimony in the record that the cost of drying whey is as much as 2.6 cents greater than that of drying skim milk, a calculation that would result in a make allowance of 16.6 cents. Kraft favored adding a value reflecting the reduced value of butterfat in whey to the whey make allowance and increasing the make allowance by at least 2 cents.

Since information regarding the costs of drying whey was not available from the sources used for determining the other make allowances in product price formulas, the tentative final decision determined that the dry whey make allowance should remain the same as that for nonfat dry milk. However, that determination should be changed to reflect testimony and other evidence in the hearing record that the cost of drying whey is greater than that of drying nonfat dry milk.

The other solids price will be computed by subtracting the make allowance of $0.159 from the NASS weighted average dry whey price and dividing the result by .968. The differential costs of manufacturing whey powder, from one source, over those of nonfat dry milk, from others, do not provide close enough agreement with the NCI-sponsored survey to use them with any confidence. Neither of the witnesses who testified that the extra costs of drying whey are 2.6 cents greater than the costs of drying nonfat dry milk testified about the total costs of either operation.

In lieu of other studies and direct evidence of the total cost of drying whey, the NCI-commissioned study results, rounded to the nearest 1/10 cent, should be used for determining the make allowance.

Snubber/Other Solids Price. The tentative final decision snubbed the other solids price at zero. Thus, if the NASS dry whey price minus the make allowance resulted in a negative number, the other solids price would become zero. Michigan Milk Producers Association supported the inclusion of such a "snubber" concept for the whey price in a brief, citing testimony in which the DFA witness referred to the difficulty of explaining to producers a negative component price. Snubbing the other solids price to zero would have prevented it from negatively affecting the value of other Class III components or having a negative impact on the producer price differential. Support was expressed for use of the snubber in two comments.

The snubber in the other solids price formula was opposed in comments filed by two parties. Leprino stated that sound policy should allow not only positive, but negative net revenues to be reflected in the milk price to prevent overvaluing milk. IDFA opposed the snubber on the grounds that it would prevent manufacturers of dry whey from covering all manufacturing costs if wholesale prices for dry whey failed to fully cover manufacturing costs. Both commenters suggested that if the component price were to become negative, the negative value could be pooled as part of the producer price differential, as inferred by the DFA witness.

The prices calculated for the components in Class III milk are intended to reflect the value of those components in the products from which the prices are calculated. Use of a snubber to limit the other nonfat solids price would be inconsistent with the purpose of a pricing formula to reflect a component value and would appear to be an arbitrary adjustment to the price formula. After a thorough review of the record, including briefs and the comments on the tentative final decision, USDA has determined that the snubber on the other solids price should be eliminated.

d. Effects of Changes to Class III and Class IV Price Formulas

The changes to the Class III and Class IV component price formulas discussed above would result not only in changes

to the respective component prices, but also to the resulting Class III and Class IV skim milk and hundredweight milk prices at 3.5 percent butterfat. The changes discussed in this portion of the decision are relative to the formulas resulting from Federal order reform. The calculations that follow, and those included in the model analysis of this recommended decision, show some increase in the level of the Class III price. USDA believes that the Class III pricing formulas incorporated in this decision are more technically correct than those adopted as a result of Federal order reform because they are based on more complete information derived through the formal rulemaking process.

It is important to note that these calculated class price differences, or the "static effect" of the recommended changes, are based on historical product price data and not on product prices that will occur in the future. The price differences calculated in this portion of the decision cannot be used to calculate or estimate changes in revenue that would have occurred or may occur in the future because changing intersections of supply and demand for each product result in different prices.

All of the comparisons that follow are calculated based on the NASS weighted average commodity prices from January 2000 through July 2001. NASS weighted average commodity prices for this time period were available, and no estimates of the relevant commodity prices need to be made. Although this time period is relatively short, a number of interesting price relationships occurred in the data series.

For instance, during this period the cheddar cheese (39 percent moisture) market ranged from a low of $1.0245 per pound during November 2000 to a high of $1.6434 per pound during July 2001. The November low was about 7.5 cents below the $1.10 per pound support price for 40-pound blocks of cheddar. During this same 19-month period the NASS weighted average nonfat dry milk price showed little movement until July 2001, ranging from a high of $1.0165 per pound during January 2001 to $0.9634 per pound during July 2001. The July 2001 decline was the result of a reduced support price. In fact, the nonfat dry milk price stayed within about one cent of support over the January 2000 through June 2001 period.

Unlike the cheese and nonfat dry milk market, the butter price did not trade anywhere near the butter support price of $0.65 per pound or the revised support price of $0.8548 per pound. The butter price traded in a range from a low of $0.8820 per pound during January 2000 to a high of $1.9263 per pound during June 2001. It is important to keep in mind that since all milk is priced on the basis of butterfat and skim or nonfat components under Federal orders, focusing on the calculated hundredweight prices at 3.5 percent butterfat that are announced for comparison purposes may result in misleading conclusions.

The formulas used for computing the Class IV prices are unchanged from those contained in the interim final decision, which currently are being used.

Changing the butterfat price make allowance from $0.114 to $0.115 results in a calculated average decline in the Class IV butterfat price of $0.0012 over the 19-month period studied. The two changes to the Class IV nonfat solids formula—increasing the make allowance from $0.137 to $0.140 and eliminating the 1.02 divisor—would result in a net increase of $0.0141 per pound in the Class IV nonfat solids price in the absence of any other changes. Since the Class II prices are to continue to be computed on the basis of the Class IV formulas plus the Class II differential of $0.70 per hundredweight, changes to the Class II prices will be the same as the changes to the Class IV prices. The calculated Class IV skim milk price would increase by an average of $0.127 per hundredweight. The calculated 3.5 percent Class IV milk price would increase by an average of $0.118 per hundredweight, reflecting the net difference between the increase in the skim milk price and the very small decline in the Class IV butterfat price.

As a result of the 38-percent moisture adjustment to barrel cheese prices, the NASS weighted average cheese price used for computing the Class III protein price would be calculated to be higher by $0.011 per pound over the 19-month period January 2000 through July 2001. Use of this cheese price increase in the recommended protein price formula results in an increase of 3.6 cents per pound of protein. The decrease in the make allowance from $0.1702 to $0.165 in the recommended protein price formula accounts for an increase of 1.7 cents per pound of protein. The two changed factors in the protein price formula (0.9 and 1.17), using data for the 19-month period, result in an increase in the calculated protein price averaging approximately 14.8 cents. The total increase in the protein price as a result of three changes to aspects of the Federal order reform protein price formula (moisture adjustment, make allowance, and formula changes) would be approximately 20.6 cents above the price that would have been computed based on the formula prior to 2001.

At the same time, the increase from $0.137 to $0.159 in the dry whey make allowance for calculating the other solids price results in a calculated decline in the other solids price of $0.0227 over the 19-month period. Elimination of the snubber on the other solids price would have made no difference during the period considered. The combination of the changes in both the protein price and the other solids price would have resulted in an average of about $0.50 per hundredweight increase in the Class III skim milk price over the 19-month period if cheese and dry whey prices were unchanged.

The changes in the protein price formula improve significantly the relationship between the cheese price and the protein price, from a correlation coefficient of 0.54, using the Federal order reform protein formula, to a correlation coefficient of .70 using the formula recommended in this decision. In addition to improving the relationship between the cheese price and the protein price, the recommended protein formula reduces the variability of the protein price and moderates the extremes that occurred under the Federal order reform protein formula, thereby giving producers a more consistent and positive protein price signal.

The calculation of the Class III price at 3.5 percent butterfat, based on the formulas contained in this decision, would have averaged about $0.48 per hundredweight above the 3.5 percent Class III price based on the Class III formulas implemented under Federal order reform.

In comments filed in response to the tentative final decision, IDFA and Leprino urged that in no case should the Class III price be enhanced relative to price levels under Federal order reform. Leprino reiterated arguments addressed earlier as to the importance of assuring that yield factors not be too high or make allowances too low for cheese plants to make enough profit to maintain their operations. IDFA focused on the negative long-term effects on producer prices, as described in USDA's analysis, of adopting enhanced Class III and Class IV prices. As described in detail above (in Issue 3c), the factors incorporated in the Class III component price calculations are based solidly on testimony and data in the hearing record.

The record provides ample basis for believing that the margins allowed for cheesemakers under these recommended price formulas should be entirely adequate for them to maintain their operations. As observed at the hearing and in comments filed in response to the tentative final decision by the expert witness from Cornell, a break-even point would be where the value of cheese plus whey cream plus whey powder equals the value of the milk price plus the make allowances. According to the witness, under Federal order reform, and to a greater extent in the tentative final decision, the total value of these products exceeded the sum of the milk price and the make allowances.

The discussion at the hearing centered specifically on the make allowance used in the protein formula, with the implication that it represented the entire make allowance for cheese. Unlike the Class IV price formulas, where the make allowances used in the butterfat and nonfat solids price formulas can be attributed directly to butter and nonfat dry milk, the make allowances used for butterfat, protein, and other solids in the pricing formulas for Class III must be looked at in aggregate. All three components are involved in the cheesemaking process and have a significant effect on cheesemakers' costs and returns.

Gross margins (including make allowances) can be compared using both the cost of milk based on the Federal order reform Class III formulas, and the cost of milk based on the Class III formulas recommended in this decision. For this purpose, gross margins are defined as the difference between the sum of the selling price of cheese and dry whey based on monthly average NASS prices and whey butter, estimated at nine cents below the NASS AA butter price, and the cost of milk under the two sets of formulas. The gross margins therefore reflect the amount of money available to processors to procure, process, and market the end products of milk used in Class III: cheese, whey butter and dry whey.

Using Class III component tests from the Upper Midwest market to estimate product yields, the estimated gross margins would have averaged approximately $3.00 per hundredweight using the Federal order reform Class III formulas and $2.52 per hundredweight over the 19-month period of January 2000 through July 2001 if the recommended Class III formulas had been in effect. These gross margins are significantly different than the cheese make allowances of $0.1702 and $0.165 used in the formulas, which would be equivalent to approximately $1.70 and $1.65 per hundredweight of milk with a estimated yield of 10 pounds of cheese. Such a difference is expected since the make allowances for whey butter and dry whey are significantly lower than the cheese make allowance. Any residual value can be used by the handler to improve returns or increase producer pay prices. Also, the lower gross margins under the recommended formulas could lead to reduced over-order premiums to reflect increased milk costs and maintain current gross margins.

4. Class Price Relationships

The price relationships between classes established under the Federal order reform process should be maintained. One proposal heard in this proceeding would have reduced the Class IV butterfat price without affecting the computation of other butterfat or product prices. That proposal is addressed specifically in the section of this decision dealing with Class IV Butterfat price.

The current pricing system uses the same formulas for computing the advance component prices used to compute the Class I skim milk and butterfat prices and Class II skim milk price as are used to calculate the Class III and Class IV component prices. Several witnesses testified as to what the class price relationships should be if changes were made to any of the Class III or Class IV component price formulas. The witness for IDFA and several other parties stated that any changes to the Class III and Class IV formulas should also apply to the advance price formulas used for computing the Class I and Class II prices. The witness explained that failure to use the same formulas between the related classes of use would result in a direct impact on the Class I and Class II differentials which was clearly not the intent of Congress when Congress instructed the Secretary to conduct a rulemaking proceeding concerning the Class III and Class IV price formulas.

A witness for Hershey Foods pointed out that the Secretary went to great lengths to justify the 70-cent Class II differential above the Class IV price. In support of Proposal 31, the witness said that there is no justification or new evidence for changing the current price relationship that exists between the manufactured products (butter and nonfat dry milk) and the Class II price if the Class IV formulas were revised as suggested in several proposals. The witness stated that such changes in price relationships clearly were not the intent of Congress. A brief filed on behalf of IDFA in support of Proposal 31 stated that the correct price relationship between NFDM and Class II is 70 cents and that the record provides no basis for changing that relationship. Actually, as explained in the final decision on Federal order reform, 70 cents represents the correct price relationship between milk used to make dry milk powder and milk used in Class II, as nearly as can be determined from the information available.

A proposal (Proposal 30) by two parties that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices was supported in testimony by one of the parties, who argued that any increases in the Class I price mover should be balanced with reductions in Class I differentials. The witness stated that the proponents want to be sure that Class I prices are not further decoupled from Class III and Class IV pricing formulas, or that Class I prices are not artificially inflated.

Neither Proposal 30 nor Proposal 31 were adopted under the tentative final decision.

In comments on the tentative final decision filed by ADCNE and fully supported by DFA, consideration of Proposal 30 was opposed as being beyond the scope of the Congressional mandate and not fully debated at the hearing. ADCNE further opposed any modifications to Proposal 30, such as the Family Dairies' testimony supporting a weighted average Class I price mover, or to a similar proposal relative to the Class II price, that would change the basis for Class I and Class II prices or Class I and Class II differentials. ADCNE continued that there was no evidence presented at the hearing that would support the substantial revenue reductions to farmers throughout the Federal order system which Proposals 30 and 31 would cause. ADCNE urged that the conclusions of the tentative final decision to deny proposals 30 and 31 be affirmed.

Neither the price relationships established in the final decision between milk used in Class III or Class IV and milk used in Classes I and II should be changed. To the extent that there may be differences in the Class III or Class IV prices between the current prices and those adopted in this decision as a result of adjustments to the component pricing formulas, those changes should be reflected in the Class I and Class II prices. Any reevaluation of the formulas used to price the components used in manufactured products should be carried through to the class prices that are based on those component prices. A change in the computation of the nonfat solids price, for instance, is intended to better reflect

the value of those solids in dry milk products. If the new nonfat solids price formula results in an increase in the Class IV price, the record provides no basis for changing the difference in the value of the milk used in those solids between Class IV and Class II use. Similarly, the availability of milk for use in Class I is related to the higher of the alternative manufacturing values for that milk. The current relationships should be maintained.

5. Class I Price Mover

A proposal that was not included in the hearing notice was made at the hearing by a Family Dairies, USA, witness on behalf of that cooperative and the Midwest Dairy Coalition, which represents 13 additional organizations representing dairy farmers. The proposal would change the Class I price mover from the higher of the Class III and Class IV prices to a weighted average of the two. The witness for Family Dairies testified that the results of the current regulation are disturbing and unanticipated with the unexpected strength of the Class IV price relative to Class III.

In testimony at the hearing, the Family Dairies representative complained that 10 percent of production under Federal orders (milk used to make nonfat dry milk) has been driving the Class I price that applies to 40% of the milk. As a result, he testified, milk production for fluid purposes is encouraged in markets with high Class I differentials and relatively high Class I use at a time when marketing conditions (an oversupply of milk) should have the opposite effect. As fluid-oriented markets are receiving increased prices relative to markets in which cheese is the dominant use, he complained, inequities in blend prices between markets are increasing.

A group representing upper Midwest producer interests filed a brief describing the recent movement of milk from the Upper Midwest pool onto the Central and Mideast marketwide pools as disorderly marketing caused by increases of Class I prices in these higher-Class I use markets.

An argument stated in another brief stated that since the 1960's the dairy industry has used a Class I mover tied to a market-clearing price represented by a weighted average of milk used in butter, cheese, and powder.

In several briefs it was argued that the Regulatory Impact Analysis (RIA) published with the final decision on Federal order reform stated that the price formulas adopted therein were expected to generate a sufficient quantity of milk, and that both the adoption of Class I pricing option IA and use of the higher of the Class III and IV prices as the price mover have worked to enhance Class I price levels.

A brief filed by a group representing fluid milk handlers suggested that USDA should give careful consideration to the proposal to use a weighted average of the Class III and Class IV prices to move Class I prices.

Based on analysis of the hearing record and briefs filed by interested persons, the tentative final decision continued use of the higher of the advance Class III or Class IV prices as the mover for Class I prices.

In comments on the tentative final decision, the Midwest Dairy Coalition repeated its position that the existing mover should be changed to a weighted average of the advanced Class III and advanced Class IV prices, with the weight based on the portion of manufacturing milk used for Class III and Class IV during the prior year. The Coalition stated that using the higher of Class III or Class IV prices could result in setting a minimum fluid milk price that is actually above the market clearing price for milk, especially if the higher of the Class III and IV prices were not representative of manufacturing markets. The Coalition also expressed concern that the tentative final decision adopted, as an unnoticed and unsupported change, the higher of the advanced Class III or Class IV milk prices at 3.5 percent butterfat as the new Class I mover instead of using the skim value.

In comments, NMPF noted that significant fluctuation that could occur in the Class I skim milk price mover due to using the higher of the advanced Class III or Class IV prices at 3.5 percent butterfat. Several parties noted that use of the advanced price at 3.5 percent butterfat could cause the Class III price to be the Class I price mover, even with a very low Class III skim milk price, causing significant month-to-month changes in the Class I skim milk price.

Michigan Milk Producers Association (MMPA) filed comments, stating that using a weighted average to set the Class I mover would severely impact fluid users' ability to attract sufficient quantities of milk when there were large differences between Class III and Class IV prices. MMPA and NMPF supported the continued use of the higher of the Class III or Class IV prices as the Class I mover.

ADCNE's comments, fully supported by DFA, expressed opposition to the Family Dairies' proposal for a weighted average Class I price mover or any other proposal that would change the basis for Class I and Class II prices or Class I and Class II differentials. ADCNE argued that there was no evidence presented at the hearing that would support the substantial revenue reductions to farmers throughout the Federal order system which would result from adoption of the weighted average Class I price mover. ADCNE urged that the conclusions of the tentative final decision to continue to use the higher of the advanced Class III and IV prices as the basis for calculating the Class I price mover be affirmed.

The shift in the pooling of milk from the upper Midwest to higher-valued markets complained of in one upper Midwest brief has been a long-sought outcome on the part of upper Midwest producer groups. It is difficult to understand why it is now seen as a manifestation of disorderly marketing.

Those briefs that cited the sufficient level of milk production projected under the RIA for Federal order reform appeared to base their arguments in opposition to use of the "higher of" Class I price mover on that projection. It should be noted that Congressional action relative to Class I prices following issuance of the final decision on Federal order reform applied only to the Class I pricing surface. Use of the higher of the Class III and IV prices as the Class I price mover was included in Federal order reform and in the accompanying RIA.

The Upper Midwest Coalition's concern that the tentative final decision adopted the higher of the advanced Class III or Class IV milk prices at 3.5 percent butterfat instead of using the skim value as the new Class I mover, and the NMPF criticism that doing so would result in significant fluctuations in the Class I skim price is now moot because of the return to the use of one butterfat price. Use of the same butterfat price for the Class III and Class IV prices will result in the "higher of" the two being determined by the relative skim milk prices. Therefore, fluctuations in the Class I skim milk price projected under the tentative final decision should be reduced as a result of this decision.

The price referred to in the brief expressing preference for the historical use of a weighted average of prices paid for milk used in butter, cheese, and powder was, at first, the Minnesota-Wisconsin price series (the M–W). The M–W, and later the M–W adjusted by a weighted average of current product prices for manufactured products, was specific to the upper Midwest area and included very little NFDM, since that area manufactures a higher percentage of cheese, relative to NFDM, than the rest of the U.S. The current pricing system is much more representative of national supply and demand for manufactured dairy products than either of the versions of the former Class I mover.

As explained in the final decision on Federal order reform, the higher of the Class III or Class IV prices are used to move the Class I price to assure that fluid plants will be better able to attract milk away from manufacturing uses. Use of the weighted average of the two prices when there is a significant difference between them would provide no assurance that milk would be available as needed for fluid uses and would be more likely to result in Class price inversions (where the Class I price falls below one or more of the manufacturing class prices). In addition, use of a weighted average Class I price mover would increase the occurrence of the blend price falling below the Class III or IV price in markets with low Class I utilization.

Aside from the fact that the proposal to use a weighted average of the Class III and Class IV prices as the Class I mover was not noticed for consideration in this proceeding, it should be rejected on the basis of its lack of merit.

6. Miscellaneous and Conforming Changes

a. Advanced Class I Butterfat Price

Because of the change made between the interim final rule and this recommended decision—to use only one butterfat price for butterfat used in both Class III and Class IV—a conforming change made in the interim final rule to the procedure for calculating the Class I butterfat and hundredweight prices is unnecessary. The advanced butterfat price used for pricing Class I butterfat would continue to be the advanced butterfat price calculated for both classes.

b. Classification

The classification of anhydrous milkfat, butteroil, and plastic cream was changed in the tentative final decision from Class III to Class IV as a conforming change required by the adoption of separate butterfat prices for the two classes. The hearing notice contained no proposal to change the classification of these products, and there was no testimony in the record of the proceeding supporting their re-classification. Therefore, with the elimination of the separate Class III butterfat price, the sole basis for the change in classification is also eliminated. As noted in the tentative final decision, a difference between the classification of these products, which have a very high butterfat content, and butter should not cause any market dislocation in a pricing plan where butterfat used in Class III products has the same value as butterfat used in Class IV products. One commenter opposed changing the classification of these products.

In a comment filed in response to the tentative final decision, Hershey Foods urged that the Federal orders adopt a 2-class pricing system. Such a suggestion is entirely outside the scope of the current proceeding.

c. Distribution of Butterfat Value to Producers

There were several responses to the issue of whether the butterfat price paid to producers should be the result of pooling butterfat prices from the different classes or continue to reflect the value of butterfat in Class III. A witness from Northwest Dairy Association testified that being able to line up the Class III price to plants with the component value calculation for producers is helpful, especially with regard to forward pricing. In a brief filed on behalf of DFA and ADCNE, the co-op groups supported continued use of the Class III butterfat price as the producer butterfat price. According to the brief, changes in direct pricing to the producer are not prudent at this time, and any change between the Class III and Class IV butterfat price should be settled through the producer price differential mechanism in the market order pools. The brief continued that the producer price differential is a blending of various debits and credits in the pooling process and the additional equalizing of any butterfat pricing adjustments through this procedure currently makes the most sense.

In a post-hearing brief, National All-Jersey (NAJ) urged that USDA retain the current practice of using Class III milk component values to price producer component values. NAJ noted that this scenario makes it easier to use accepted hedging tools, such as Class III futures contracts, and helps simplify pricing for producers. NAJ further stated that the current procedure maintains the same producer butterfat price in all Federal orders with multiple component pricing (MCP).

Seventy-nine dairy organizations supported payment to producers on the basis of the milk components priced in Class III, including the Class III butterfat price instead of a pooled butterfat price, plus the producer price differential in a comment filed in response to the tentative final decision. The commenters argue that payment to producers on the basis of Class III components facilitates the use of risk management tools by producers and avoids wider fluctuations in Class I and producer fat, skim, and component values.

One of the principal reasons given in the tentative final decision for changing the pooling provisions of the MCP orders was that potential large differences between the Class III and Class IV/II butterfat prices would be likely to result in significant distortions in the effect of those differences on the producer price differential. In addition, the decision observed that it is possible that pool calculations in some markets would result in a negative producer price differential if the producer butterfat price is not changed to represent a blend of the values of butterfat in the four classes of use.

This reversal of the decision to calculate separate Class III and Class IV butterfat prices invalidates the principal reason for pooling butterfat under the MCP orders.

Therefore, producer payments under the MCP orders will continue to be made on the basis of the prices for milk components used in Class III rather than pooling the butterfat values of the four classes. The four orders that do not have component pricing will continue to pool the class use butterfat values and return a weighted average butterfat price to producers. As a result of this change between the tentative final decision and this recommended decision, some inconsistency between the producer butterfat prices under MCP and non-MCP orders will remain. It is not expected that this inconsistency will result in disorderly marketing.

d. Inclusion of Class I Other Source Butterfat in Producer Butterfat Price Computation

In the process of promulgating the tentative final decision, it was determined that the value associated with the occasional classification of other source milk as Class I should be included in pooling the class butterfat values to determine butterfat prices to producers. For the orders under which butterfat is pooled, this change was made in the interim final rule, and should continue, so that the value of all of the butterfat in the pool will be reflected in the producer butterfat price.

In the component pricing orders, the changes made in the interim final rule to include the Class I other source butterfat value in the butterfat pool should be reversed. Although the District Court's injunction had the effect of reversing these changes and the Federal order reform language has continued in effect, the order language

in the Code of Federal Regulations reflects the provisions adopted in the interim final rule. The proposed order language amendments accompanying this decision will reflect the language that is currently in effect in the MCP orders, reversing the changes that were made to include Class I other source butterfat in the butterfat pool.

7. Re-opening of Hearing, Issuance of a Final Decision, or Issuance of a Recommended Decision

The statute requiring that this proceeding be held to reconsider the Class III and Class IV pricing formulas also required that a final decision be published by December 1, 2000, with any amendments to the orders to be effective January 1, 2001.

The hearing record reflected unanimity among those addressing the issue that the industry should be afforded the opportunity to comment on a decision before its content results in a final rule. Consequently, a tentative final decision was issued, affording interested persons an opportunity to comment, even though the amendments adopted in the decision were to become effective January 1, 2001. Subsequently, an injunction was issued to prevent some of the provisions adopted in the interim final rule from becoming effective.

One option for dealing with the injunction would be to reopen the hearing for the purpose of considering additional testimony on the issue of pricing the components of milk used in cheese in such a way that the component prices track the cheese price more closely than they have done under the Federal order reform pricing formulas, or would continue to do under the formulas recommended in this decision.

Several interested parties commented in opposition to any reopening of the proceeding with regard to the Class III butterfat and protein price formulas. The only commenter that favored revisiting any of the issues involved stated that some way of reflecting increased energy costs to make allowances should be explored. The commenter seemed to refer to conducting a new proceeding rather than reopening the current proceeding. Given the present lack of interest in pursuing development of Class III component prices that are more closely correlated with cheese prices, reopening this proceeding should not be considered.

Two commenters on the Tentative Final Decision urged that USDA act quickly to conclude this proceeding. The most rapid conclusion to this proceeding would be through issuance of a Final Decision, followed by a determination of producer approval and issuance of a Final Rule for the orders approved. However, significant changes were made to the Tentative Final Decision by the District Court order and this decision. Interested parties should have an additional opportunity to comment on those changes as well as other changes from the tentative final decision that are included in this decision. Therefore, USDA is issuing this Recommended Decision, which will allow comments (a 30-day comment period is provided) on the changes to be filed and considered before issuing a Final Decision, which producers will be asked to approve.

Rulings on Proposed Findings and Conclusions

Briefs, proposed findings and conclusions, and comments on the tentative final decision were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, comments filed, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid interim marketing agreements and orders;

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the interim marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Northeast and other marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 are proposed to be amended as follows:

1. The authority citation for 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 continues to read as follows:

Authority: 7 U.S.C. 601–674, 7253, Pub. L. 106–113, 115 Stat. 1501.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

1. Section 1000.40 is amended by adding paragraph (c)(1)(ii) and revising paragraph (d)(1)(i) to read as follows:

§ 1000.40 Classes of Utilization.

* * * * *

(c) * * *

(1) * * *

(ii) Plastic cream, anhydrous milkfat, and butteroil; and

* * * * *

(d) * * *

(1) * * *

(i) Butter; and

* * * * *

2. Section 1000.50 is amended by revising the last sentence of the introductory text and paragraphs (a), (b), (c), (g), (h), (j), (l), (n), (o), (p)(1), and (q)(3); and removing paragraph (q)(4) to read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight, rounded to the nearest cent, shall be .965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

* * * * *

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the butterfat price plus $.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be .965 times the Class III skim milk price plus 3.5 times the butterfat price.

* * * * *

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be .965 times the Class IV skim milk price plus 3.5 times the butterfat price.

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less 11.5 cents, with the result divided by .82.

* * * * *

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month plus 3 cents;

(2) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.582; and

(ii) Subtract .9 times the butterfat price computed pursuant to paragraph (l) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (n)(3)(ii) of this section by 1.17.

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 15.9 cents, with the result divided by 0.968.

(p) * * *

(1) Multiply .0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5th decimal place;

* * * * *

(q) * * *

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 11.5 cents from this average, and dividing the result by 0.82.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

1. In § 1001.60 paragraphs (c)(3), (d)(2), and (h) are revised to read as follows:

§ 1001.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1001.61 is revised to read as follows:

§ 1001.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the

producer price differential for the month.

3. In § 1001.62 paragraphs (e) and (g) are revised to read as follows:

§ 1001.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

4. Section 1001.71 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1001.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1001.60(h) by the producer price differential as adjusted pursuant to § 1001.75 for the location of the plant from which received.

5. Section 1001.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(vi) to read as follows:

§ 1001.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received by the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(vi) Multiply the pounds of butterfat in Class III and Class IV milk by the butterfat price for the month;

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

1. In § 1030.60 paragraphs (c)(3), (d)(2), and (i) are revised to read as follows:

§ 1030.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1030.61 is revised to read as follows:

§ 1030.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1030.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1030.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1030.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer butterfat price differential.

4. Section 1030.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(i) by the producer price differential as adjusted pursuant to § 1030.75 for the location of the plant from which received.

5. Section 1030.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

PART 1032—MILK IN THE CENTRAL MARKETING AREA

1. In § 1032.60 paragraphs (c)(3), (d)(2), and (i) are revised to read as follows:

§ 1032.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1032.61 is revised to read as follows:

§ 1032.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1032.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1032.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1032.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1032.71 is amended by revising paragraphs (b)(2) and (4) to read as follows:

§ 1032.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential as adjusted pursuant to § 1032.75 for the location of the plant from which received.

5. Section 1032.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1032.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

1. In § 1033.60 paragraphs (c)(3), (d)(2), and (i) are revised to read as follows:

§ 1033.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and

is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1033.61 is revised to read as follows:

§ 1033.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1033.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1033.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1033.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1033.71 is amended by revising paragraphs (b)(2) and (4) to read as follows:

§ 1033.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential as adjusted pursuant to § 1033.75 for the location of the plant from which received.

5. Section 1033.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1033.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. In § 1124.60 paragraphs (c)(3), (d)(2), and (h) are revised to read as follows:

§ 1124.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1124.61 is revised to read as follows:

§ 1124.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1124.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1124.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1124.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1124.71 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1124.60(h) by the producer price differential as adjusted pursuant to § 1124.75 for the location of the plant from which received.

5. Section 1124.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

1. In § 1126.60 paragraphs (c)(3), (d)(2), and (i) are revised to read as follows:

§ 1126.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1126.61 is revised to read as follows:

§ 1126.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1126.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1126.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1126.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1126.71 is amended by revising paragraphs (b)(2) and (4) to read as follows:

§ 1126.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential as adjusted pursuant to § 1126.75 for the location of the plant from which received.

5. Section 1126.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1126.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

PART 1135—MILK IN THE WESTERN MARKETING AREA

1. In § 1135.60 paragraphs (c)(3), (d)(2) and (h) are revised to read as follows:

§ 1135.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1135.61 is revised to read as follows:

§ 1135.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1135.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1135.60 for all handlers required to file reports prescribed in § 1135.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1135.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1135.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1135.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1135.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1135.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

* * * * *

4. Section 1135.71 is amended by revising paragraph (b)(2) and removing and reserving paragraph (b)(3) to read as follows:

§ 1135.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) [Reserved]

* * * * *

5. Section 1135.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

Dated: October 19, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 01–26901 Filed 10–24–01; 8:45 am]

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 925, 930, 931, 932, and 933

[No. 2001–24]

RIN 3069–AB06

Capital Requirements for Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is modifying the capital and related regulations that were adopted on December 20, 2000. Many of the changes were identified in response to an advance notice of proposed rulemaking (ANPR) relating to unforeseen issues that were not addressed by the final capital rule. In addition to making certain conforming amendments, the Finance Board is clarifying that the Federal Home Loan Banks (Banks) may pay dividends on Class A stock from retained earnings; providing Banks with discretion to prohibit members from transferring Bank stock; defining the phrase "charges against the capital of the Bank;" clarifying the off-balance sheet conversion factors for commitments to make advances and commitments to acquire loans; changing the provision governing the membership termination date for members seeking to voluntarily withdraw from the Bank System; and adding a requirement that a Bank make certain disclosures to its members before its capital plan can be implemented. The Finance Board is also: providing Banks with authority to suspend the redemption of Class A or Class B stock if continued redemption would seriously affect the Bank's capital position or raise other safety or soundness concerns and adopting a provision requiring Banks to establish a deadline in their capital plans by which a member must opt-out of the stock conversion process.

DATES: The final rule is effective November 26, 2001.

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SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 133 Stat. 1338 (November 12, 1999) (GLB Act), amended the Federal Home Loan Bank Act (Bank Act) to change, among other things, the capital structure of the Banks from a "subscription" structure to one that includes both risk-based and minimum leverage requirements. The GLB Act also required the Finance Board to prescribe uniform capital standards for the Banks and required each Bank to adopt and implement a capital plan consistent with provisions of the GLB Act and Finance Board regulations.

On March 2, 2001, the Finance Board approved an ANPR to help identify issues or uncertainties that had not been contemplated by, or fully addressed in, the final capital rule or that had arisen only after the Banks had begun to develop their capital plans. *See* 66 FR 14093 (Mar. 9, 2001). On August 8, 2001, the Finance Board published for notice and comment a notice of proposed rulemaking (proposed rule) addressing a small number of modifications to the capital and related regulations. *See* 66 FR 41462 (Aug. 8, 2001). Many of the changes proposed were identified in response to the ANPR. In addition to proposing certain conforming amendments, the Finance Board proposed to: clarify that the Banks may pay dividends on Class A stock from retained earnings; provide Banks with discretion to prohibit members from transferring Bank stock; define the phrase "charges against the capital of the Bank;" clarify the off-balance sheet conversion factor for commitments to make advances and commitments to acquire loans; change the provision governing the membership termination date for members seeking to withdraw voluntarily from the Bank System; and add a requirement that a Bank make certain disclosures to its members before its capital plan can be implemented. The proposed rule also addressed other issues arising under the capital rule that, based on the ANPR comments, appeared to require additional explanation, even though no amendment to the regulation with respect to these issues was proposed.

After considering the comments on the proposed rule, the Finance Board is adopting many of the changes as proposed, and is substantially modifying a number of others. The Finance Board is also adopting a few changes after commenters prompted the Finance Board to reconsider issues that, when proposing the rule amendments, the Finance Board had indicated such issues would not require rule changes. The final rule being adopted herein will become effective 30 days from its date of publication in the **Federal Register**, in accordance with the Administrative Procedure Act. *See* 5 U.S.C. 553(d). Banks, however, may immediately rely on the changes adopted herein in developing their capital plans. Further, because some Banks have already submitted their respective capital plans to the Finance Board for approval or others may not have sufficient time to alter a capital plan already approved by the their boards of directors before October 29, 2001 (when final plans are to be submitted to the Finance Board), the Finance Board emphasizes that Banks' boards of directors may amend their capital plan submissions at any time up until the time the Finance Board considers the capital plan for approval.

II. Comments on and Changes to the Proposed Regulations

The Finance Board received seven comment letters related to the proposed rule. One comment, from a Bank, was sent on behalf of all twelve Banks. Four Banks submitted separate comments. Comment letters were also submitted by

two trade associations. On August 20, 2001, Finance Board staff met with representatives of three Banks, along with a law firm representing the Banks, to discuss disclosure requirements in the proposed rule. A summary of this meeting was designated as a comment. After considering these comments the Finance Board has made a number of changes to the proposed regulations. In other cases, the Finance Board believes that no change to the proposed rule is warranted or that the Finance Board could address the comment by clarifying the meaning of regulatory text or a statutory provision. The Finance Board discusses below those comments that referenced provisions in the proposed rule amendments or that raised issues that the Finance Board has not previously fully or clearly addressed.

Voluntary withdrawal from membership. In the proposed rule, the Finance Board proposed amending § 925.26(b) to address a membership termination issue raised by a scenario described in comments to the ANPR. *See* 66 FR at 41463, 41473. Under that scenario, a member was required to hold Class B shares to support outstanding borrowing from a Bank and to hold Class A shares as a condition of membership. As adopted in December 2000, § 925.26(b) set the effective date of a member's termination as of the date on which the last of the applicable stock redemption periods ended for the member's stock, whether the stock in question was held as membership stock, as activity-based stock, or as excess stock. Thus, this provision prevented the Bank from redeeming Class A stock at the end of the six-month redemption period because that stock would have been required to be held as a condition of continued membership in the Bank until the membership terminated at the end of the five-year redemption period applicable to the member's outstanding Class B stock.

Because the rule appeared effectively to extend the redemption notice period for Class A stock in the situation described above by linking the membership termination to activity-based stock purchase requirements, thereby burdening members unnecessarily, the Finance Board proposed to change it. Under the proposed change, the membership of an institution that had submitted a notice of withdrawal would have terminated as of the date on which the last of the applicable stock redemption periods ended for the stock held as a condition of membership, as that requirement was set out in the Bank's capital plan, unless the institution decided not to withdraw and cancelled its notice of withdrawal prior to that date. This proposed change would have, in situations like those described above, enabled the Bank to redeem the Class A shares that were held as a condition of membership at the end of six months, unless a Bank also required a member to hold Class B stock as a condition of membership. In most cases, however, the Finance Board believed that the rule change would have helped assure that the redemption date for the Class A stock held as a condition of membership would have corresponded to the date on which the member's withdrawal became effective.

No commenter objected to the proposed change. One commenter, however, raised a question about how the effective date of a member's voluntary withdrawal would be affected by the member's purchase, after it had submitted its notice of withdrawal, of additional stock to satisfy an increase in its membership stock requirement. Under 925.26(b) as proposed, if a Bank's capital plan required a member to hold Class B stock as a condition of membership, voluntary termination of membership would ordinarily occur five years from the date the member submitted its notice to withdraw. However, if two years into the five-year redemption period, the membership requirement increased and the member purchased additional Class B stock to satisfy the increase, the language in § 925.26(b), as proposed, could be read to suggest that the effective date of the member's voluntary withdrawal would become five years after the purchase of the additional stock, or in effect, seven years after the member first submitted its notice of voluntary withdrawal. Such an outcome was not intended by the Finance Board. Therefore, the Finance Board, in adopting this provision, has altered the proposed language to make clear that the effective date of termination for a member that voluntarily withdraws from membership is the date on which the last of the applicable stock redemption periods ends for membership stock that the member held on the date it submitted its withdrawal notice.

An example illustrates how a member's voluntary termination would operate under the amendment to section 925.26(b). At the time it submits its notice of voluntary withdrawal, a member holds 100 shares of Class B stock to satisfy its membership stock requirement. Two years into its five-year redemption period, the member purchases 20 shares of Class B stock to satisfy an increase in its membership stock requirement. The effective date of the member's voluntary withdrawal would be unchanged by the purchase of additional stock, and on that date, the membership stock held as of the date the member filed the notice to withdraw would become subject to redemption while, as explained below, the additional 20 shares purchased to satisfy the increase in the membership stock requirement would become excess.

Stock purchased by withdrawing member. In response to the proposed rule, a commenter raised two concerns regarding stock purchased by a withdrawing member. First, the commenter raised the scenario of a member that, after filing its withdrawal notice, purchased additional stock, either to satisfy its membership stock purchase requirement, or to support additional business activity. Assuming such stock were Class B stock, unless the redemption period for such stock were deemed to have begun on the date of the member's withdrawal notice, the commenter argued, the redemption period for such stock could extend well after the termination of the institution's membership.

The Finance Board believes that, with respect to stock purchased by a withdrawing member to support additional business activity, such a scenario does not require a regulatory change. It is true that in this scenario, if the stock purchased to support additional activity is Class B stock, the redemption period would extend beyond the effective date of the member's voluntary withdrawal. However, once the activity related to the stock was liquidated, the stock would become excess and subject to repurchase at the Bank's discretion.

For example, assume that two years into its five-year redemption period, a withdrawing member takes down a four-year advance, supporting it by purchasing additional Class B stock on which it immediately files a notice of redemption. When the membership expires in year five, there would still be one year left on the member's advance. When the advance is paid off one year later, the stock supporting that activity would become excess, subject to repurchase at the Bank's discretion, even though one year still remains to run on that stock's five-year redemption period.

Similarly, with respect to Class B stock that a withdrawing member purchases to satisfy an increase in its membership stock requirement, such stock would not be subject to redemption until some time after the effective date of the member's voluntary termination. However, as explained more fully below, this stock would be considered excess stock as of the effective date of the member's voluntary termination. As excess, such stock could be repurchased at the Bank's discretion under the terms of the capital plan.

The example used previously also illustrates how a member's voluntary termination would operate under the amendment to § 925.26(b). At the time it submits its notice of voluntary withdrawal, a member holds 100 shares of Class B stock to satisfy its membership stock requirement. Two years into its five year redemption period, the member purchases 20 shares of Class B stock to satisfy an increase in its membership stock requirement. The effective date of the member's voluntary withdrawal would be unchanged by the purchase of additional stock, and would remain five years from the date it submitted its notice to withdraw from the Bank.[1] Further, assuming the member filed a redemption notice for the additional 20 shares at the time they were purchased, such shares could be redeemed three years after the member's voluntary termination was effective. Such shares could be repurchased by the Bank under the terms of its capital plan, however, at any time after the effective date of voluntary termination because after such date, such shares would be considered excess.

With regard to this latter point, some question may arise as to whether membership stock held after membership has been voluntarily terminated may be considered excess because of a provision in section 6(e)(2) of the Bank Act which provides:

> Excess Stock: Shares of stock held by a member shall not be deemed to be "excess stock" for purposes [of a Bank's discretion to repurchase excess stock under section 6(e)(1)] by virtue of a member's submission of a notice of intent to withdraw from membership or termination of its membership in any other manner.

The Finance Board, however, believes that section 6(e)(2) of the Bank Act does not preclude membership stock becoming excess upon the termination of membership pursuant to a member's voluntary withdrawal. Instead, the Finance Board interprets section 6(e)(2) as preventing a Bank from deeming excess the membership stock of a member that voluntarily withdraws from membership merely because the member has filed a notice of withdrawal. Nothing precludes a Bank, however, from considering stock as excess when membership actually terminates pursuant to a voluntary withdrawal because, under the statute, the stock is no longer required as a condition of membership. The Finance Board believes this interpretation is also consistent with the statutory provision governing voluntary termination of membership which sets forth that the applicable stock redemption notice period begins when the member files its notice to withdraw and that stock may be redeemed at the end of that period. *See* 12 U.S.C. 1426(d)(1).

Furthermore, the Finance Board believes that use of the phrase "termination * * * in any other manner" means that the second restriction in Section 6(e)(2) of the Bank Act applies to termination of membership by a process other than the filing of a voluntary notice of withdrawal, in other words as applying to members that are involuntarily terminated, or terminated through merger or consolidation with a nonmember or member of another Bank. Thus, section 6(e)(2) of the Bank Act prevents a Bank from deeming stock as excess because a member is involuntarily terminated or its membership terminates because of a merger or consolidation. This interpretation is consistent with the clear legislative intent, expressed in section 6(d)(2)(B)(i) of the Bank Act, 12 U.S.C. 1426(d)(2)(B)(i), that a Bank pay a member whose membership was terminated involuntarily "* * * in cash the par value of [its] stock, *upon the expiration of the applicable notice period* * * *" (emphasis added)." *Id.* *See also*, 12 U.S.C. 1426(d)(2)(C) (automatically commencing redemption period for stock upon involuntary termination of membership). The wording concerning excess stock in section 6(e)(2) of the Bank Act in conjunction with the termination provisions of section 6(d) of the Bank Act, therefore, effectively establishes different points at which stock may be deemed excess during the membership termination process for institutions that withdraw from membership voluntarily and for institutions whose membership is terminated through other means.

It should also be noted that, unlike with voluntary terminations, when a membership is terminated involuntarily or because of a merger or consolidation, termination is effective immediately. Thus a Bank would never face the scenario where increases in the Bank's membership stock requirement would result in an involuntarily terminated member purchasing additional stock while it awaited redemption of its stock.

The commenter also expressed a second concern about dividends received as Bank stock (stock dividends) during the period after a member had filed a withdrawal notice. The commenter believed that unless the redemption period for such stock dividends were deemed to have begun on the date of the notice of withdrawal, a member would never be able to redeem all its stock because it would continue to receive stock dividends, and stock dividends on the stock dividends, *ad infinitum*.

The Finance Board does not believe that the above scenario requires an amendment to the capital rule because a Bank could address this issue in its capital plan. For example, a capital plan could provide that withdrawing members would receive cash dividends instead of stock dividends or that such dividends be paid in Class A stock, which would allow redemption after six months. More importantly, to the extent that shares received as stock dividends exceed the amount a member is required to hold under a capital plan's minimum investment provisions, the stock would be excess, subject to repurchase under the terms of a Bank's capital plan.

Merger and excess stock calculation. One commenter expressed concern about statements in the proposed rule regarding whether stock held by a member of one Bank may be considered to be excess stock, which would be eligible for repurchase by the Bank, whenever that institution merges into a member of another Bank or into a non-member. *See* 66 FR at 41471. The Finance Board indicated that, under the Bank Act such a merger could not, in and of itself, cause the disappearing member's stock to be deemed excess stock. The Finance Board also stated, however, that as a practical matter, some or all of the stock owned by that member could become excess stock as a result of the Bank's next calculation of each member's minimum stock purchase requirement, depending on the terms of a Bank's membership requirements.[2] *Id.* The commenter indicated that at a Bank where Class B stock was used to satisfy the membership stock requirement, the membership stock of a disappearing member should remain at the same level

[1] Of course, a Bank could provide in its capital plan a provision which automatically commences the redemption period upon purchase, for stock purchased after a member submits a notice of voluntary withdrawal. *See* 66 FR at 41463.

[2] For example, an institution that had its charter cancelled because of a merger or consolidation would no longer exist as a separate eqtity, and upon normal recalculation of the membership requirement, a Bank would have no basis to apply the membership requirement. The membership requirement, therefore, would become zero upoon recalculation not because membership was terminated, but because the former member no longer existed. This reasoning would not be applicable to an institution that continued to exist as a separate entity after termination of its membership.

during the stock's five-year redemption period, and should not be subject to being deemed excess stock.

The Finance Board does not believe that the comment requires any regulatory change. Even if the Bank stock of a withdrawing member were deemed excess stock, it would remain part of the Bank's capital for the duration of the redemption period, unless the Bank exercised its discretion to repurchase it. Thus, whether such stock ceases to be part of the Bank's capital before the end of the redemption period is a decision that is at the complete discretion of the Bank.

Rolling redemption. In the proposed rule, the Finance Board responded to a concern raised by a Bank that § 931.7(a) could permit a member to file a redemption notice against all of its stock, even while such stock was needed to support membership or activity requirements, allowing what the commenter described as a "rolling redemption." The Finance Board concluded that members would not have had a great deal of incentive to engage in rolling redemptions, especially if the Bank intended to aggressively manage its excess stock position. Further, the Finance Board pointed out that § 931.7(a) permitted a Bank to impose a fee, to be specified in its capital plan, on a member that canceled a pending notice of redemption, and that fee could have also reduced the incentive to engage in rolling redemptions. Thus, the Finance Board did not propose any changes to its rules in response to the concern about rolling redemptions. *See* 66 FR at 41471.

The Finance Board received one comment on this issue. The commenter disagreed with the Finance Board's conclusion that the redemption notice cancellation fee would deter a member from maintaining standing notices to redeem all their stock and provided examples of how the fee could be evaded. The commenter recommended amending the capital rule to permit the Banks to require a member to cancel a redemption notice associated with stock when the member seeks to use such stock to support a business activity that extends beyond, or matures after, the original redemption period.

The Finance Board has reconsidered its previous reasoning and finds merit in the arguments put forth by the commenter. To address the commenter's concerns, the Finance Board is adopting an amendment to § 931.7(a) of its rules to provide that a member's redemption request will be automatically cancelled if the Bank is unable to redeem the member's stock within five business days after the completion of the statutory redemption period. For example, under this change, if Class B stock specified for redemption were being used to support an activity at the completion of the five-year redemption period, the redemption notice would be cancelled if the activity were not liquidated within five business days and a new notice would have to be filed, starting anew the waiting period, if the member still wished to redeem the stock. This cancellation would still be subject to applicable fees specified in the Bank's capital plan. The five-day business period which a Bank must wait before canceling the redemption notice is intended to allow a member the option of liquidating the activity which is supported by the stock, if such early liquidation of the transaction is allowed under agreements with the Bank.

The automatic cancellation of a redemption request, of course, would also be applied to stock if the stock were required to be held as a condition of membership at the time the applicable redemption period ended. The Finance Board notes, however, that this provision only applies if the stock cannot be redeemed because it must be held by the member to fulfill one of its minimum investment requirements. Thus, the provision would not apply where the Bank could not redeem stock because the Bank would be below its regulatory capital requirements after the redemption or for a reason set forth in § 931.8 of the Finance Board rules, as that rule is being amended today, 12 CFR 931.8.

Discretionary redemption of stock. In response to the ANPR, a few commenters noted that Finance Board rules appeared to require a Bank to redeem a member's excess stock at the end of the statutory redemption period, unless certain statutory or regulatory restrictions applied. These commenters stated their belief that this approach was contrary to the Bank Act. *See* 66 FR at 41470–71. The Finance Board disagreed with this assessment and noted the discretion maintained by the Banks to repurchase stock and reiterated its position that it was not apparent from the GLB Act that a Bank could deny a redemption request if certain statutory or regulatory limitations on redemption did not apply. *Id.*

One commenter urged the Finance Board again to reconsider its position on this issue, citing concerns that the redemption rules, as written, may affect tax treatment of stock dividends and accounting treatment of Bank stock. In response to this comment, the Finance Board has carefully reconsidered its position on discretionary redemption. The Finance Board, however, continues to believe its earlier statements on this issue are correct. *Id.* at 41470. Further, the Finance Board's view is based in part on the fact that Congress in considering the GLB Act specifically rejected a class of non-redeemable stock. *See* H.R. Conf. Rep. No. 106–434 (discussing section 608 of the GLB Act). Interpreting the statute to allow the Banks sole discretion to redeem excess stock would effectively give the Banks the right to create a class of non-redeemable stock.

The Finance Board also believes that the Bank Act provides a large degree of discretion to a Bank to affect the amount of stock that it must redeem. In this respect, a Bank may adjust minimum investment provisions in its capital plan to require members to hold additional stock, effectively rendering such stock ineligible for redemption. This is especially true in light the amendments to § 931.7(a) being adopted herein, and discussed above. Further, the Finance Board has interpreted its rules to allow a Bank to provide minimum investment ranges in its capital plan so a Bank may adjust its minimum investment requirement within such range quickly. In cases where a Bank must amend its capital plan to change the minimum investment requirements, the Bank would need to seek Finance Board approval of the amendment, but the Finance Board intends to consider such requests expeditiously.

Authority for Banks to suspend redemption of stock. In considering the issue of a Bank's discretion to redeem stock, the Finance Board carefully reviewed its current regulations and weighed whether its current regulations were sufficiently flexible to allow a Bank to address an unforeseen or quickly arising situation in which the cash out-flow associated with redemptions would affect the Bank's ability to continue operating in a safe and sound manner or would weaken its capital position. In this respect, Finance Board regulations clearly prohibit the redemption of stock in situations where a Bank would be below its regulatory capital requirements after such redemption or where a Bank has experienced losses or projects future losses that would impair capital. *See* 12 CFR 931.7(c) and 931.8. The Finance Board also retains the right for reasons of safety and soundness to require the Banks to hold capital above the minimum total capital or risk-based capital requirements. *See* 12 CFR 932.2(b) and 932.3(b). By exercising such right, the Finance Board would effectively reduce the amount of stock that the Bank could redeem.

However, it is less clear whether the rules give a Bank clear authority to suspend redemption if it believes that its capital requirement may be rising in the future or if it believes that the capital requirements do not fully reflect the risk on the Bank's balance sheet. For example, the risk of certain newly-developed financial instruments may not become apparent until certain market conditions evolve, and a Bank may feel that such newly-apparent risks are not fully captured in the Finance Board credit or market-risk rules, or will result in a steady rise in a Bank's regulatory capital requirements over a period of time. While the Finance Board has authority to address such situations by raising capital requirements or changing its rules, it may be more prudent for the Banks to act immediately to stop redemptions in particularly volatile situations and let the Finance Board adjust its regulatory requirements in a more deliberate fashion.

The Bank Act also clearly provides certain statutory prohibitions on the redemption or repurchase of Bank stock so that the redemption or repurchase of such stock does not endanger a Bank's capital position. *See* 12 U.S.C. 1426(f). The Finance Board interprets this goal as applying both to immediate situations in which redemption or repurchase would bring a Bank below regulatory capital requirements and to situations in which a Bank has a reasonable belief that current redemption or repurchase of stock would cause the Bank to fail to maintain adequate capital in the near-term. It is less clear, however, that the Finance Board regulations address this latter situation.

In addition, the Bank Act imposes various obligations on the Banks and on the Finance Board. Among the duties imposed on the Finance Board are the requirements that it ensures that the Banks operate in a financially safe and sound manner, that the Banks remain adequately capitalized, and that the Banks carry out their housing finance mission. *See* 12 U.S.C. 1422a(a)(3). The Finance Board recognizes that cash out-flow associated with redemption of stock could affect the Banks' ability to carry out other obligations or otherwise operate in a safe and sound manner. The Finance Board believes that, given its statutory duties and obligations, it maintains full authority to restrict the redemption or repurchase of stock on safety and soundness grounds: Again, however, the Finance Board is concerned that its rules do not clearly give a Bank flexibility to exercise their judgment in situations that are fast evolving and moving in directions that cannot be readily ascertained.

To assure that its regulations address these situations, the Finance Board is, pursuant to authority in 12 U.S.C. 1422a, 1422b and 1426(a), adopting § 931.8(b). This regulation provides a Bank's board of directors, or a subcommittee of the board, with authority and discretion to suspend the redemption of stock if the continued redemption of stock would cause (at some future date) the Bank to fail to meet its regulatory capital requirements, would prevent the Bank from maintaining adequate capital against a risk or potential risk not fully captured in the Finance Board's regulations, or would otherwise prevent the Bank from operating in a safe and sound manner. Moreover, as safety and soundness regulator, the Finance Board believes that it would need to be informed of any condition that caused a Bank to invoke the authority granted by this provision. Thus, the provision requires a Bank to inform the Finance Board in writing within two business days that it has invoked the authority granted it under § 931.8(b). In addition, the Bank must provide the Finance Board with its reasons for suspending stock redemptions, including a description of the conditions that led to the suspension, and describe the Bank's strategies and time frame for addressing those conditions. The regulation also makes clear that in granting the Banks this discretion, the Finance Board retains authority to require the Banks to re-institute redemptions subject to whatever terms and conditions the Finance Board may set. The rule also prohibits a Bank from exercising its discretion to repurchase excess stock without the Finance Board's written permission during such time as a suspension of redemption under § 931.8(b) is in effect.

The Finance Board believes that the rule is needed for contingency purposes. In addition, the Finance Board emphasizes that the condition related to the failure to meet a minimum capital requirement in § 931.8(b) differs from the limitation set forth in § 931.7(c) in that it is forward looking and is intended to address a situation in which the Bank projects that continued redemptions over the near term will leave the Bank without sufficient capital to meet its regulatory requirements in the future. Thus, if current redemptions would cause a Bank to fall below regulatory capital requirements, the limitations in § 931.7(c) would apply and the Bank would not need to comply with the conditions of § 931.8(b).

Opt-out provision. In their joint comment letter, the twelve Banks urged the Finance Board to address the question of members who would be in the process of withdrawing on the effective date of the capital plan. The issue arose in part because of the proposed requirement in the disclosure rule that a Bank provide the required disclosure at least 20 days before the effective date of its capital plan. The Banks pointed out that they had wanted to put in their capital plans a firm opt-out date by which a member must submit its notice to withdraw if the member did not want to have its existing capital stock converted into Class A or Class B stock. If a capital plan contained such an opt-out date, the Banks stated, disclosure should be made before that date.

Some Banks, in their individual comment letters, also pointed out that Finance Board staff's position concerning draft capital plans was that the Banks could not use an opt-out provision to restrict the members' rights to withdraw from the System upon six-months prior notice. Thus, Finance Board staff believed a member could withdraw from the System and, in effect, opt out of the conversion process up until the effective date of the capital plan. Further, the staff believed that if the withdrawal notice were submitted before the effective date of a capital plan, the member's right to withdraw on six-months notice would have been reserved and should have been applied to any Class A or Class B stock received by the member upon conversion. One Bank's comment letter expressed concern about the operational problems related to conversion procedures and capital stock programming requirements if members were allowed to opt out of conversion up to the effective date. The Banks in their joint comment letter also questioned whether there would be statutory authority to allow Banks to redeem Class B stock on less than five years notice, as the Finance Board staff suggested.

The Banks reviewed various options for addressing the opt-out issue, but they believed some of these approaches raised legal or operational issues. They pointed out, however, that the Finance Board previously determined that it had authority to waive the six-month notice period for withdrawal and urged the Finance Board to use this authority to address the unique circumstances associated with the transition to the new capital structure. Specifically, the Banks wished to be able to adopt a flexible opt-out deadline and allow all members who withdrew from a Bank before this deadline to terminate membership and

have their old stock redeemed on or before the effective date of a Bank's capital plan. The Banks also suggested that the Finance Board adopt a rule requiring members that did not file a notice of withdrawal before the opt-out date to have their existing stock converted into Class A or Class B stock as required under a capital plan and to be subject to the new, applicable notice periods associated with those classes of stock. One Bank also urged the Finance Board explicitly to allow the Banks to convert to cash the stock of institutions whose membership would be terminated as of the effective date, but nevertheless had outstanding advances, and to hold that cash as collateral against the outstanding advances.[3] The Bank also urged the Finance Board to deem receipt by a Bank of a notice to withdraw as receipt by the Finance Board of that notice.

The Finance Board has carefully considered the Banks' comments and finds many of the Banks arguments persuasive. As a starting point, the Finance Board recognizes that the Bank Act does not explicitly address how a Bank is to handle a member that, as of the effective date of a capital plan, has submitted a notice to withdraw from the Bank but for which the statutory six-month notice period has not yet been completed. *See* 12 U.S.C. 1426(e)(1994). Nor has the Finance Board previously addressed how this withdrawal issue should be addressed by the Banks in light of the statutory silence on this issue. The Finance Board does believe, however, that the preliminary position voiced by its staff that the statute allows a member to withdraw from the System on six-months notice up until the effective date of the capital plan raises questions from both an operational and a legal perspective, and, therefore, declines to adopt that position.

The GLB Act holds that a Bank shall apply the stock purchase and retention requirements that were in effect immediately prior to its enactment until the capital plan of that Bank is implemented. Under the regulatory structure adopted by the Finance Board, a Bank's capital plan is considered implemented on its effective date when the stock purchase and retention requirements (*i.e.*, the minimum investment requirements) for members adopted in the capital plan and the capital requirements (and transition provisions) adopted by the Finance Board under the authority set forth in the GLB Act would be applied. *See* 12 CFR 931.9. *See also* 66 FR 8262, 8279–80 (Jan. 30, 2001)(discussing 12 CFR 931.9). Thus, while the six month notice period for withdrawal from membership are applied up until the effective date of a Bank's capital plan, the withdrawal provisions set forth in the GLB Act amendments to the Bank Act should be applied after the capital plan's effective date. *See* 12 U.S.C. 1426(d).

The Finance Board believes that this view is also the most consistent with other provisions of the GLB Act. The GLB Act provides that the Finance Board may permit Banks to issue only those classes of stock authorized thereunder, and sets forth specific redemption periods for both Class A and Class B stock. *See* 12 U.S.C. 1426(a)(4). Deeming the six-month notice period for withdrawal to apply to Class B stock issued on the effective date of the capital plan would raise questions whether the Finance Board were allowing an unauthorized class of "old" stock to be issued, or alternatively, allowing a redemption period that differs from the statutory requirement. Thus, the approach that requires the pre-GLB Act withdrawal provision to apply up to the effective date but that applies the withdrawal provision set forth in the GLB Act to membership termination and the accompanying redemption of stock after such date appears to be the most consistent with the Bank Act, as amended.

The Finance Board also has, on at least one occasion, waived the statutory six-month notice period for withdrawal. *See* Fin. Bd. Res. No. 97–89 (Dec. 30, 1997). In that case, the Finance Board noted that it acted pursuant to an opinion of the Office of General Counsel that the Finance Board had authority as a matter of law, to waive the statutory six-month notice period provided that the waiver did not: (1) endanger the financial stability of the Bank from which the member was withdrawing; (2) endanger the safety and soundness of the Bank System as a whole, or (3) frustrate the purposes of the statutory provision. *Id.* In this regard, the Finance Board recognizes that some Banks may wish to allow members to opt out of the conversion process on less than six-months notice, either to speed up the transition process or to allow members to make their decision closer to the effective date. Thus, as a general matter, the Finance Board recognizes that applying its waiver authority to allow the Banks some flexibility in managing the unique issues related to the transition from the old subscription-based capital to the new risk-based capital system may strengthen the transition process and advance the overall statutory goals of the Bank Act as amended by the GLB Act.

To codify its view of the withdrawal provisions discussed above and in response to the concerns raised in comments on the proposed rule, the Finance Board has decided to adopt § 933.2(e) as part of this final rulemaking to require each Bank to establish in its capital plan an opt-out date by which a member that does not wish to convert to the new Class A or Class B stock must file its notice to withdraw with the Finance Board. This opt-out date can be no more than six months prior to the effective date of the capital plan, assuring that a Bank does not extend the withdrawal notice period beyond the six months currently required under the Bank Act.

The rule, however, in reliance on the Finance Board's waiver authority discussed above, will allow a Bank to set its opt-out date less than six months prior to the effective date of the capital plan. The Finance Board, by approving a capital plan that has an opt-out date that is less than six months before the effective date of the capital plan, will be simultaneously waiving the six-month notice period for withdrawal contained in § 6(e) of the Bank Act prior to its amendment by the GLB Act. When considering a capital plan with such an opt-out date, the Finance Board, therefore, will have to be satisfied that the opt-date will not endanger the safety and soundness of the Bank in question or the Bank System more generally nor be contrary to the withdrawal provision in the statute. Among the factors the Finance Board will consider in this regard are whether the opt-out date provides the Bank with sufficient time to adjust to unexpected withdrawals prior to the effective date and whether the Bank expects or is reasonably certain that member withdrawal will not negatively affect its conversion plans. The Finance Board also wishes to emphasize that it expects the opt-out date to be a specific date keyed to the effective date (e.g., four months before the effective date) and will not consider a range of dates.

Section 933.2(e), as adopted, also requires each Bank's capital plan to provide that a member that does not file its notice to withdraw from the Bank on or before the opt-out date will be subject to the withdrawal requirements set forth in the Bank's capital plan. For a member of a Bank that requires an institution to hold Class B stock as a condition of membership, this would mean that the member would become subject to the five-year redemption period associated with Class B stock upon the conversion of its existing stock to Class B stock, even though the member may have filed its notice to withdraw prior to the effective date of the capital plan. In this regard, the Finance Board will consider using its waiver authority to allow members that missed an opt-out date filing to terminate their membership on the effective date of the capital plan, upon a request of the Bank. In considering such a waiver, the Finance Board will review the effects of letting the member leave the System on its Bank's capital position, as well as review other safety and soundness implications of the request.

Section 933.2(e), as adopted, also makes clear that a Bank shall consider the period of time after the member files its notice to withdraw but before the effective date of the capital plan in calculating the applicable stock redemption periods for the Class A or Class B stock that are converted from existing stock on the effective date of the capital plan. The voluntary withdrawal provisions in the Bank Act both before and after its amendment by the GLB Act required the withdrawal notice period to commence upon the member's filing of its notice to withdraw. *Cf.* 12 U.S.C. 1426(e)(1994) and 12 U.S.C. 1426(d)(1). The Finance Board, therefore, believes that it is consistent with the GLB Act provisions to allow the date that the member's notice of withdrawal was first filed with the Finance Board to carry over when existing stock is converted into Class A or Class B stock. This approach also results in the applicable stock redemption periods remaining five years from the date the notice was filed for Class B stock and six months from the date the notice was filed for Class A stock, as required by the GLB Act. Section 933.2(e), as adopted, does not alter current procedures which require that a notice to withdraw be filed with the Finance Board to become effective. This long standing practice is required by the Bank Act and has not generally resulted in delays in member filings. Of course, on the effective date of a Bank's capital plan, voluntary withdrawal from that Bank would be governed by § 925.26 of the Finance Board's rules, 12 CFR 925.26, which requires that members provide their notices of withdrawal to the Bank.

This final provision being adopted by the Finance Board also does not alter the current practices for calculating the effective date of termination of membership. Under these procedures, a member whose notice of withdrawal is received by the Finance Board on February 1 would be given a membership termination date of August 1 (i.e., the count is six months not 180 days). Thus, by the same token, a Bank that wished to have an effective date of August 1, 2003, could set its opt-out date no earlier than February 1, 2003.

In adopting § 933.2(e), the Finance Board is requiring all Banks to set an opt-out date in their capital plans. The Finance Board fully expects this change may require some Banks to amend the plans that they initially submitted and has no objection to a Bank's altering its capital plan after the submission date.

The Finance Board also agrees with the Banks' comments that the disclosure requirement should be tied to the opt-out date to assure that members have information that would aid in their decisions whether to convert existing stock to the new Class A and/or Class B stock. Therefore, the Finance Board is adopting in the final disclosure rule (more fully discussed below) a requirement that all information required to be provided to members by § 933.5 be transmitted, sent, or given to members between forty-five and sixty days before the opt-out date established in a Bank's capital plan. The Finance Board believes that this deadline will provide members sufficient time to review the information provided by the Bank and to make follow-up inquiries if necessary while still being sufficiently close to the opt-out date.

Furthermore, to assure that members fully understand the ramifications of the opt-out provision, § 933.5(c)(4)(iv) of the final disclosure rule requires a Bank to provide the opt-out date in the disclosure materials. Because a Bank will know the intended effective date of its capital plan by the time the disclosure document is provided, the Finance Board expects that Bank to provide the calendar date for the opt-out deadline. Along with disclosing this opt-out date, the Bank also must explain the consequences to members of not filing the withdrawal notice on or before the opt-out date.

Disclosure to members. In proposing § 933.5, the Finance Board intended to provide a baseline for a Bank's disclosure about its financial condition, its capital plan, and the capital conversion process. The Finance Board decided to propose this rule after the Banks requested further clarification of Finance Board staff guidance that had outlined the types of communications with members that staff believed would help the Banks demonstrate the feasibility of implementation of their capital plans, as is required by § 933.2(g) of the Finance Board's rules, 12 CFR 933.2(g). The Finance Board noted that because use of disclosure documents could play an important role in member outreach and that the quality of a Bank's disclosure on a number of issues would play an important role in the Finance Board's review of the Banks' capital plans, there was merit in responding to the requests for additional guidance by adopting a rule in this area. *See* 66 FR at 41467–68.

Proposed § 933.5 would have required a Bank to provide a member with certain specified information at least 20 days before the effective date of the capital plan. In developing this proposed requirement, the Finance Board looked to disclosure standards established by the Securities and Exchange Commission (SEC), and specifically, the rule would have required the Banks to provide disclosure meeting the requirements of Item 11(a) through (d) and Item 12(a) and (e) of Schedule 14A of the SEC's proxy rules (17 CFR 240.14a–101, Items 11 and 12). The Finance Board noted that Items 11 and 12 are "usually thought of as mutually exclusive provisions," but given the unique nature of the Banks and the conversion process, the Finance Board believed that appropriate disclosures from both Items should be provided to members. *Id.* The proposed rule would also have required the Banks to provide certain specific financial information to the members that was in scope, form, and content consistent with SEC's regulations S–X and S–K (17 CFR parts 210 and 229), as well as to provide pro forma balance sheet and income statements. The proposal would have allowed the Banks to incorporate by reference any of the financial information that had been incorporated in any Bank or Bank System report or that had been filed along with the capital plan with the Finance Board. Under proposed § 933.5, the Banks would also have had to provide members with a brief statement as to the anticipated accounting treatment and the federal income tax consequences of the transaction and with other information.

The Finance Board received four comment letters on various aspects of the disclosure requirements. One of the letters was on behalf of all twelve Banks. Three Banks also commented separately on specific aspects of the proposed disclosure rule. To the extent that the commenters addressed the same issues, the comment letters were generally consistent in their requests for changing the proposed rule.

In their joint comment letter, the twelve Banks stated that it was important for the Finance Board to clarify the premise under, which it was adopting the disclosure regulation. They noted that the Finance Board had explained that the proposed disclosure

[3] The Finance Board will consider addressing this situation on a case-by-case basis should it arise.

regulations were intended to help the Banks satisfy the disclosure criteria suggested by Finance Board staff in the Capital Plan Feasibility Guidance that had been provided by letter to the Bank presidents in May 2001. The Banks, however, viewed the staff guidance as applicable only to the outreach process which should be completed before the Banks filed their capital plans on October 29, 2001, while the disclosure required under the proposed rule would not occur until after approval of the capital plan.

The Finance Board agrees that clarification on this point is necessary. The criteria contained in the staff's guidance concerning the Banks' communications with their members indicated that a Bank was expected to disclose information about specific requirements in its capital plan. Because the Finance Board expects that the review process of a capital plan is likely to result in changes to the capital plan as originally submitted, information about specific provisions cannot be disclosed with certainty until after the Finance Board actually approves the plan.[4] This fact creates a timing problem under the staff guidance in that a Bank cannot submit complete information about its outreach effort until after a capital plan is approved, but at the same time, the guidance suggested that a capital plan could not be approved until after such information was submitted. Section 933.5(a), as adopted, addresses this timing problem by stating that a capital plan cannot become effective until the disclosure required under the rule is provided to the members. In this respect, the disclosure rule is intended to replace the staff guidance concerning a Bank's communication with its membership.

The Finance Board notes, however, that a Bank may wish to provide a narrative as supplemental information supporting the approval of the capital plan which describes member reaction to the version of the capital plan that it submits for approval and describes any issues that members saw as key to their acceptance of the capital plan. The Finance Board also emphasizes that § 933.5 as adopted only sets forth the minimum disclosure requirements, and does not prevent the Banks from undertaking additional outreach or disclosing additional information at any time.

The Banks in their joint comment letter also raised concerns about the approach to disclosure proposed in § 933.5 and about some of the specific information that the Finance Board was proposing be disclosed under the rule. Most importantly, the Banks emphasized that the wholesale incorporation of the SEC's rules was problematic for several reasons. First, the Banks stated that the specific proxy disclosure items from the SEC rules cited by the Finance Board were in some cases mutually exclusive and in other cases overlapping. This fact, the Banks believed, made it difficult to determine what information had to be disclosed and could lead to different Banks applying different standards. Moreover, the Banks believed that the SEC regulations were not designed to address either the unique capital structure of the Banks or the unique circumstances surrounding the re-capitalization which created additional difficulties in discerning what disclosure would be required. The Banks also questioned whether SEC precedent would be applied to its disclosure and cited the expense and difficulties for the Banks, which have not been subject to the SEC requirements, to develop the expertise in this area necessary to prepare their disclosure documents.

The Banks also objected to the provisions in proposed § 933.5(b)(1)(ii) which would have required the Banks to provide members with quarterly pro forma balance sheet and income statements. The Banks believed that this information would be so highly speculative and be based on such a detailed set of assumptions so as to be of little use to members. The Banks also voiced concern about the liability associated with requiring disclosure of such highly speculative financial information. As an alternative to the disclosure of the pro forma financial information, the Banks suggested that they be required to provide members with a pro forma capitalization table that would reflect the new capital structure of a Bank and with a narrative discussion of known material trends that could affect the liquidity, capital resources or continuing operations of the Bank. Two Banks also submitted separate comment letters emphasizing these points with one of the Banks suggesting that the narrative discussion may also include a statement of management's plans and objectives for future operations.

In developing the proposed disclosure rule, the Finance Board had turned to the SEC proxy rules (and related precedent) because it believed these rules provide a valuable model and a degree of certainty for the Banks as to the disclosure requirements. The Finance Board continues to believe that the SEC rules provide the best model for disclosure requirements but also understands the Banks' concerns that their unique capital structure makes the wholesale adoption of these rules confusing. The Finance Board has also reconsidered the proposed requirement that the Banks provide specific pro forma financial information to their members in light of the Banks' comments. As a result, the Finance Board has restructured the final disclosure rule to address the Banks' concerns and to more closely relate the SEC disclosure requirements to the capital plans of the Banks and is adopting § 933.5 as discussed below.

First, the Finance Board has deleted the specific references in its rules to the SEC proxy requirements. Instead, the Finance Board now describes in § 933.5(b) of the final rule the specific information that a Bank must disclose about the Class A and/or Class B stock that the Bank intends to issue on the effective date of its plan. (Thus, to the extent that a Bank's capital plan does not call for the issuance of Class A stock, the Bank's disclosure document would not be required to address Class A stock.) Specifically, § 933.5(b), as adopted, requires a Bank to briefly outline with regard to the Class A and/or Class B stock that it intends to issue: dividend rights, the terms of the conversion, the terms and conditions of a member's rights to have the Class A and/or Class B stock redeemed or repurchased, voting rights and preferences associated with the stock, liquidation rights, and a member's liability to further calls or to assessments by the Banks. The final disclosure provision also requires the Banks to describe any differences with regard to these rights between existing Bank stock and the new Class A and Class B stock. The Banks will also be required to discuss briefly the reasons for the conversion, the general effect of the conversion on a member's rights, and outline any other material features concerning the conversion.

Further, to assure that each Bank adequately discloses how provisions in its capital plan may affect a member's rights, the Finance Board has adopted § 933.5(c)(4) to require a Bank to disclose certain additional information related to its capital plan to the extent that the information was not provided to fulfill the requirements of § 933.5(b). Specifically, § 933.5(c)(4) requires each Bank to describe the minimum stock investment requirements set forth in the capital plan, to review the procedures for the Bank to amend the capital plan, to describe any restrictions (not disclosed elsewhere) on a member's right to redeem or to have its stock repurchased or to make use of its stock to fulfill its minimum stock investment requirement, and to describe a member's rights to have its stock redeemed or repurchased upon the member's voluntary or involuntary termination of membership.

As already discussed above, § 933.5(c)(4), as adopted, also requires a Bank to disclose the last date by which a member's written notice to withdraw from membership must be received by the Finance Board for the member not to have its existing stock converted to Class A and/or Class B stock and to explain the ramifications of not filing a notice to withdraw on or before that date. As also discussed more fully above, the date by which a Bank must make the disclosure required by § 933.5 is tied to the opt-out date set in a Bank's capital plan, and under § 933.5(a), as adopted, a Bank must transmit the required disclosure to members between forty-five and sixty days before the opt-out date.

The Finance Board has also modified § 933.5 with regard to the proposed disclosure of pro forma financial information, and, as requested by the Banks, § 933.5, as adopted, no longer requires the Banks to provide members with quarterly pro forma balance sheets and income statements. Instead, § 933.5(c)(1)(ii) requires each Bank to provide a pro forma capitalization table that reflects the expected new capital structure of the Bank, an estimate of the Bank's risk-based capital requirement under § 932.3 of the Finance Board rules, and an estimate of the Bank's total capital-to-asset ratio (where total capital would be regulatory total capital as defined in part 930 of the Finance Board's rules, 12 CFR part 930). This information should be based on actual financial data as of the date of the latest balance sheet required to be provided by § 933.5(c)(1)(i) of the disclosure regulation. Thus, the rule requires a Bank to show an estimate of what its capitalization, risk-based capital requirement, and total capital-to-asset ratio would have been, if the conversion process had occurred as of the applicable year-end date. The Banks are also required to disclose any material assumptions, and the basis for these assumptions, underlying the pro forma capitalization table, the estimated risk-based capital requirement, and the total capital-to-asset ratio.

Furthermore, § 933.5(c)(2) has been added to the final rule to require the Banks to provide members with a narrative discussing anticipated developments that could materially affect the liquidity, capital, earnings or continuing operations of a Bank, including those developments that could affect dividends, product volumes, investment volumes, new business lines, and risk profile. Because this narrative is viewed as a replacement for the proposed disclosure of the pro forma financial information, the Finance Board expects that the narrative will be forward looking. At the same time, however, the Finance Board used the term "anticipated developments" to indicate that it expects the Banks to discuss in its narrative those developments that, in the Bank's opinion, may be likely to unfold, given important trends, the Bank's business strategies, and the general economic conditions existing at the time the disclosure is made. The Finance Board also expects that the narrative will provide members with sufficient information to understand the underlying reasons for a Bank's views.

The Banks also requested that the Finance Board make some additional changes to the proposed rule to clarify some of the disclosure requirements. With regard to the requirement in proposed § 933.5(b)(1)(i) that the audited balance sheets and statements of income and cash flows be consistent in scope, form, and content with Regulation S–X and S–K, the Banks commented in their joint letter that this standard may be viewed as different from the current standard required of the Banks. In this respect, they pointed out that § 989.4 of the Finance Board rules, 12 CFR 989.4, stated that quarterly or annual statements issued by an individual Bank should be consistent in both form and content with the financial statements presented in the combined Bank System annual or quarterly financial reports. Two Banks reiterated this point in their individual letters. The Finance Board did not intend that the financial disclosure required under § 933.5 be different in form or content from what is currently required for an individual Bank's or the Bank System's financial reports. Thus, § 933.5(c)(1)(i), as adopted, requires that the audited balance sheets and statements of income and cash flow meet the requirements of § 989.4 of the Finance Board rules in form and content. As did the proposed rule, the final disclosure regulation still requires the Banks to provide members with audited balance sheets as of the end of the two most recent fiscal years, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being presented, and unaudited interim financial statements as of and for appropriate interim dates.

The disclosure rule, as adopted, also allows the Banks to incorporate by reference any of the financial information required to be disclosed under § 933.5(c)(1), if that information was contained in an annual or quarterly Bank report, so long as that report conformed with the requirements of § 989.4 of the Finance Board rules, or an annual or quarterly Bank System report. *See* § 933.5(c)(1)(iii). To incorporate this information by reference, the final rule, as proposed, requires a Bank only to identify the incorporated information in the disclosure to members, and no other steps need be taken by a Bank. The final rule, as adopted, however, did not carry over from the proposed rule the right to incorporate by reference information that would have been filed with the Finance Board along with the Bank's capital plan. This provision had been proposed mainly to facilitate the incorporation by reference of the pro forma financial information that the proposed rule would have required Banks to provide to members. Because the pro forma financial information no longer must be disclosed to members and because filing information with the Finance Board would not necessarily mean the information is readily available to Bank members, the Finance Board has deleted this provision from the final rule.

The Banks in their joint comment letter also expressed concern with the wording of proposed § 933.5(b)(4), which would have required the Banks to provide members with a brief statement as to the anticipated accounting treatment and the federal income tax consequences of the conversion transaction. The Banks felt that the use of the phrase "federal income tax consequences" raised the issue of whether the Finance Board intended the Banks to provide tax advice to their members. The Banks suggested that the rule be rewritten to require the Banks to provide a statement of the federal income tax considerations that may be relevant to members as a result of the transaction. The Finance Board notes that it is common practice in disclosure documents to provide information on the potential tax implications of a transaction and such disclosure does not generally raise concerns that the disclosing party is acting as a tax advisor. The Finance Board, however, also did not intend to imply that the Banks were to act, or would in any way be acting, as tax advisors to the members with regard to the conversion transaction. Thus, in adopting the final disclosure rule, the wording of this

[4] These changes may result from comments made by the Finance Board staff or from a Bank's reconsideration of its capital plan.

requirement, now set forth at § 933.5(c)(6), has been changed to state that a Bank shall provide its members with a statement as to the anticipated accounting treatment for the conversion transaction and the federal income tax implications of the transaction that members should consider in consultation with their own accounting and tax advisors.

A number of disclosure requirements have also been adopted as proposed, although the requirements appear in a different section of the final rule. Thus, a Bank is required to provide members, if applicable, with a description of any amendments that it anticipates making to its by-laws or other governance documents as a result of the implementation of its capital plan. *See* § 933.5(c)(3).The Bank must also state in its disclosure document a name, address and telephone number for members to direct a written or oral request to obtain, free of charge, a copy of the capital plan and any other instrument or document that defines the member's rights. *See* § 933.5(c)(5). The final disclosure rule also makes clear (in § 933.5(d)) that nothing in § 933.5 shall create or shall be deemed to create any rights in any third party. As the Finance Board explained when proposing this provision, the disclosure rule is meant to add consistency, clarity, and precision to the disclosure process, and it is not the Finance Board's intention to impose liability under the federal securities laws on the Banks, or to create any private right of action in any third party. See 66 FR at 41468.

The Finance Board also notes that it is not prescribing a form to be used by Banks in providing the disclosure, which provides a great deal of flexibility to the Banks in this respect. However, the Finance Board expects that no matter what form is chosen, the disclosure documents will provide the required information to members in clear narratives and will not merely incorporate language taken directly from a capital plan or the Finance Board rules. The disclosure should also be referenced to the specific rights or obligations set forth in the Bank's capital plan. For example, a Bank that requires that only Class A stock be held as a condition of membership would be expected to discuss its withdrawal provisions in terms of the six month applicable notice period related to that class of stock while Banks that require Class B stock be held as a condition of membership would discuss withdrawal as requiring a five-year notice period.

III. Other Provisions Adopted in the Final Rule

The Finance Board did not receive any comments or received only favorable comments on a number of the rule changes that it proposed in August 2001. As discussed below, these provisions are being adopted in substance, as proposed.

Charges against capital. In comments to the ANPR, seven Banks stated that the phrase "charges against the capital of the Bank" as used in § 931.8 of the Finance Board rules was ambiguous. The main concern was that the phrase could be read to require the Banks to seek written permission of the Finance Board to redeem or repurchase stock anytime a Bank expected to incur, or actually had incurred, even a small loss. *See* 66 FR at 41465–66. As the Finance Board pointed out, the phrase itself was used in the Bank Act. *See* 12 U.S.C. 1426(f). After applying rules of statutory construction and considering the goals of and other relevant provisions in the Bank Act, the Finance Board concluded that the phrase was not meant to trigger the requirements of § 931.8 whenever a Bank projected or experienced loss. *See* 66 FR at 41465–66. The Finance Board therefore proposed to define in § 930.1 the phrase "charges against the capital of the Bank" as meaning an other than temporary decline in the Bank's total equity that causes the value of total equity to fall below the Bank's aggregate capital stock amount. This definition would effectively trigger the requirements of § 931.8 (which given other changes adopted as part of this final rulemaking are now found at § 931.8(a)) only when a Bank experiences a charge against its capital stock.

The Finance Board received one comment on this matter in response to the proposed rule, and that comment supported adoption of the definition as proposed. Therefore, for the reasons set forth in the **SUPPLEMENTARY INFORMATION** section of the preamble of the proposing release for this rule, the Finance Board is adopting in § 930.1 the definition of "charges against the capital of the Bank," as proposed.

Dividends on Class A stock. In the proposed rule, the Finance Board proposed to amend § 931.4 to state expressly that a Bank may pay dividends on both Class A and Class B stock from either of the sources specified in 12 U.S.C. 1436(a), *i.e.*, retained earnings and current net earnings. *See* 66 FR at 41464, 41473. This change was proposed to address concern that because section 6(h) of the Bank Act, 12 U.S.C. 1426(h), granted Class B stockholders an ownership interest in their Bank's retained earnings, the Bank's authority to pay dividends on Class A stock from retained earnings could be called into question.

In the proposed rule, the Finance Board concluded that, given the intent of Congress to allow an individual Bank, subject to Finance Board regulation, to determine the dividend rights for any class of stock that it issues, it appeared unlikely that the Congress also intended to preclude a Bank from paying any dividends on the Class A stock. The Finance Board further indicated that if the Congress had intended that result, it was more likely that the Congress would have done so expressly, rather than indirectly by enacting a new provision that was somewhat at odds with a long-standing provision of the Bank Act regarding the available sources of dividends for Bank stock. Moreover, the Finance Board continued, construing these provisions of the Bank Act in a manner that would effectively have precluded the payment of dividends on the Class A stock could have made it difficult, if not impossible, for a Bank to sell Class A stock to its members. That would have been an absurd result, in light of the clear intent of the Congress to create a new capital structure for the Banks and ultimately, the Finance Board determined that it should construe these provisions to allow the payment of dividends on Class A stock from retained earnings, as those amounts may be calculated under GAAP. *See* 66 FR at 41464.

The Finance Board received no comments objecting to the proposed change to § 931.4, and adopts it as proposed for the reasons set forth in the preamble of the proposing release.

Transfer of capital stock. In the proposed rule, the Finance Board proposed amending § 931.6 to allow a Bank the option of generally prohibiting its members from transferring Bank stock. If a Bank chose to allow transfers, the transfers clearly would have been subject to the Bank's approval. *See* 66 FR at 41465, 41473. A conforming change regarding transfer of stock was also proposed to §§ 933.2(e)(3) and (4). *Id.* at 41465, 41474.

This proposal arose out of a comment received in response to the ANPR. Upon consideration of this comment, the Finance Board stated that it would have been consistent with the discretion afforded a Bank in the GLB Act "to establish standards, criteria, and requirements for the * * * transfer * * * of stock issued by that bank," *id.* at 12 U.S.C. 1426(c)(5)(B), to allow a Bank, as part of its capital plan, either to prohibit any transfers of its stock among its members or to permit these transfers subject to the conditions currently set forth in § 931.6.

Under the proposed change, each Bank would have been required to state in its capital plan whether a member may transfer capital stock of the Bank, and, if such transfers were allowed, to specify the procedures that a member must follow to effect the transfer, and to specify that any transfer may only have been undertaken in the limited circumstances set forth in § 931.6. The proposed amendment also expressly provided that a Bank, in its capital plan, may have required a member to obtain the Bank's approval to effect the transfer of stock.

The Finance Board received no comment opposing the amendment to § 931.6, and is adopting it as proposed. The Finance Board also adopted in substance the conforming changes proposed to §§ 933.2(e)(3) and (4), although, because of other amendments adopted in this final rule, these amended paragraphs have been redesignated and adopted as §§ 933.2(f)(3) and (f)(4).

Off-balance sheet credit conversion factors. In the proposed rule, the Finance Board proposed amending Table 2 of § 932.4(f) so that the 100 percent credit conversion factor for off-balance sheet items would have applied only to commitments to make advances with certain drawdowns and commitments to acquire loans subject to certain drawdown. Further, the Finance Board proposed to define certain drawdown in § 930.1 to mean a legally binding agreement that committed the Bank to make an advance or to acquire a loan, at or by a specified date in the future. *See* 66 FR at 41466–67.

These changes were proposed in response to concerns that the 100 percent credit conversion factor for commitments to make advances and to acquire loans as adopted in Table 2 in December 2000 were broader than the requirements of other federal bank regulators. For instance, Table 2 as adopted appeared to require a 100 percent conversion factor for "master commitments" to acquire loans under Acquired Member Asset (AMA) programs even though such commitments were not an accurate indicator of future acquisition. It was pointed out that other federal bank regulators would have applied a 100 percent conversion factor only to commitments subject to certain drawdown, (i.e., commitments that an institution is legally obligated to honor at a specified future date no matter what change may have occurred in the counterparty's financial situation.) Because it was generally the intent of the Finance Board to conform to the extent possible its credit risk charges to the Basle Accord as currently incorporated by the federal bank regulatory agencies, the Finance Board proposed to revise the credit conversion factors of Table 2 so that the 100 percent credit conversion factor applies only to commitments subject to certain drawdown and to provide a definition of certain drawdown to assure this result.

The Finance Board received one comment from a Bank supporting the proposed changes to §§ 930.1 and 932.4(f) and, therefore, adopts them as proposed.

Conforming changes. No comments were received on the conforming changes as described in the **SUPPLEMENTARY INFORMATION** section of the proposed rule. *See* 66 FR at 41468. These conforming changes are being adopted by the Finance Board as proposed.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic effect on a substantial number of small entities.

V. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

Lists of Subjects

12 CFR Part 925

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Parts 930, 931, 932, and 933

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board amends title 12, chapter IX of the Code of Federal Regulations as follows:

PART 925—MEMBERS OF THE BANKS

1. The authority citation for part 925 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

2. Amend § 925.26 by revising paragraph (b) to read as follows:

§ 925.26 Voluntary withdrawal from membership.

* * * * *

(b) *Effective date of withdrawal.* The membership of an institution that has submitted a notice of withdrawal shall terminate as of the date on which the last of the applicable stock redemption periods ends for the stock that the member is required to hold, as of the date that the notice of withdrawal is submitted, under the terms of a Bank's capital plan as a condition of membership, unless the institution has cancelled its notice of withdrawal prior to the effective date of the termination of its membership.

* * * * *

3. Amend § 925.27 by revising paragraph (c) to read as follows:

§ 925.27 Involuntary termination of membership.

* * * * *

(c) *Membership rights.* An institution whose membership is terminated involuntarily under this section shall cease being a member as of the date on which the board of directors of the Bank acts to terminate the membership, and the institution shall have no right to obtain any of the benefits of membership after that date, but shall be entitled to receive any dividends declared on its stock until the stock is redeemed or repurchased by the Bank.

PART 930—DEFINITIONS APPLYING TO RISK MANAGEMENT AND CAPITAL REGULATIONS

4. The authority citation for part 930 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

5. In § 930.1 add, in correct alphabetical order the definitions for *Certain drawdown* and *Charges against the capital of the Bank*, to read as follows:

§ 930.1 Definitions.

* * * * *

Certain drawdown means a legally binding agreement that commits the Bank to make an advance or acquire a loan, at or by a specified future date.

Charges against the capital of the Bank means an other than temporary decline in the Bank's total equity that causes the value of total equity to fall below the Bank's aggregate capital stock amount.

* * * * *

PART 931—FEDERAL HOME LOAN BANK CAPITAL STOCK

6. The authority citation for part 931 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

7. Amend § 931.4 by revising the first sentence of paragraph (a) to read as follows:

§ 931.4 Dividends.

(a) * * * A Bank may pay dividends on Class A or Class B stock, including any subclasses of such stock, only out of previously retained earnings or current net earnings, and shall declare and pay dividends only as provided by its capital plan. * * *

* * * * *

8. Amend § 931.6 by revising the first sentence of the section and adding a new sentence at the end of the section to read as follows:

§ 931.6 Transfer of capital stock.

A Bank in its capital plan may allow a member to transfer any excess capital stock of the Bank to another member of that Bank or to an institution that has been approved for membership in that Bank and that has satisfied all conditions for becoming a member, other than the purchase of the minimum amount of Bank stock that it is required to hold as a condition of membership. * * * The Bank may, in its capital plan, require a member to receive the approval of the Bank before a transfer of the Bank's stock, as allowed under this section, is completed.

9. Amend § 931.7 by adding, before the last sentence of paragraph (a), two new sentences to read as follows:

§ 931.7 Redemption and repurchase of capital stock.

(a) * * * A request by a member (whose membership has not been terminated) to redeem specific shares of stock shall automatically be cancelled if the Bank is prevented from redeeming the member's stock by paragraph (c) of this section within five business days from the end of the expiration of the applicable redemption notice period because the member would fail to maintain its minimum investment in the stock of the Bank after such redemption. The automatic cancellation of a member's redemption request shall have the same effect as if the member had cancelled its notice to redeem stock prior to the end of the redemption notice period, and a Bank may impose a fee (to be specified in its capital plan) for automatic cancellation of a redemption request. * * *

* * * * *

10. Amend § 931.8 by revising the heading of the section, redesignating the current text as paragraph (a), adding a new heading to paragraph (a), and adding new paragraph (b) to read as follows:

§ 931.8 Other restrictions on the repurchase or redemption of Bank stock.

(a) *Capital impairment.* * * *

(b) *Bank discretion to suspend redemption.* A Bank, upon the approval of its board of directors, or of a subcommittee thereof, may suspend redemption of stock if the Bank reasonably believes that continued redemption of stock would cause the Bank to fail to meet its minimum capital requirements as set forth in §§ 932.2 or 932.3 of this chapter, would prevent the Bank from maintaining adequate capital against a potential risk that may not be adequately reflected in its minimum capital requirements, or would otherwise prevent the Bank from operating in a safe and sound manner. A Bank shall notify the Finance Board in writing within two business days of the date of the decision to suspend the redemption of stock, informing the Finance Board of the reasons for the suspension and of the Bank's strategies and time frames for addressing the conditions that led to the suspension. The Finance Board may require the Bank to re-institute the redemption of member stock. A Bank shall not repurchase any stock without the written permission of the Finance Board during any period in which the Bank has suspended redemption of stock under this paragraph.

PART 932—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS

11. The authority citation for part 932 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

12. Amend § 932.4 by revising paragraph (d) heading, revising the first sentence in paragraph (e)(2)(ii)(E) and revising Table 2, which follows paragraph (f)(1), to read as follows:

§ 932.4 Credit risk capital requirement.

* * * * *

(d) *Credit risk capital charge for derivative contracts.* * * *

(e) * * *

(2) * * *

(ii) * * *

(E) The credit risk percentage requirement for mortgage assets that are acquired member assets described in § 955.2 of this chapter shall be assigned from Table 1.2 of this part based on the rating of those assets after taking into account any credit enhancement required by § 955.3 of this chapter.

* * *

* * * * * *

(f) * * *

(1) * * *

TABLE 2.—CREDIT CONVERSION FACTORS FOR OFF-BALANCE SHEET ITEMS

Instrument	Credit conversion factor (In percent)
Asset sales with recourse where the credit risk remains with the Bank	100
Commitments to make advances subject to certain drawdown.	
Commitments to acquire loans subject to certain drawdown.	
Standby letters of credit	50
Other commitments with original maturity of over one year.	
Other commitments with original maturity of one year or less	20

* * * * *

PART 933—BANK CAPITAL STRUCTURE PLANS

13. The authority citation for part 933 continues to read:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

14. Amend § 933.2 by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g), and (h), respectively, adding new paragraph (e), redesignating newly designated paragraphs (f)(4), (f)(5) and (f)(6) as paragraphs (f)(5), (f)(6) and (f)(7), respectively, revising newly designated paragraph (f)(3), and adding new paragraph (f)(4) to read as follows:

§ 933.2 Contents of plan.

* * * * *

(e) *Members wishing not to convert existing stock.* The capital plan shall establish an opt-out date on or before which a member that does not wish to convert its existing stock into Class A and/or Class B stock must file a written notice to withdraw from membership with the Finance Board. This opt-out date shall not be more than six months before the effective date of the capital plan. (For purposes of applying this provision, the membership of an institution that files its notice to withdraw with the Finance Board on or before the opt-out date established in a capital plan shall terminate six months from the date that the notice of withdrawal was filed with the Finance Board or on the effective date of the Bank's capital plan, whichever date is earlier.) The capital plan shall further provide that any member that is in the process of withdrawing on the effective date of the capital plan but did not file its written notice to withdraw from membership with the Finance Board on or before this opt-out date, shall have its existing stock converted into Class A and/or Class B stock as required by the capital plan, and that the effective date of withdrawal for such member shall be established in accordance with §§ 925.26(b) and (c) of this chapter, provided, however, that the applicable stock redemption periods calculated under § 925.26(c) of this chapter shall commence on date the member first submitted its written notice to withdraw to the Finance Board.

(f) * * *

(3) Shall specify whether the stock of the Bank may be transferred among members, and, if such transfer is allowed, shall specify the procedures that a member should follow to effect such transfer, and that the transfer shall be undertaken only in accordance with § 931.6 of this chapter;

(4) Shall specify that the stock of the Bank may be traded only between the Bank and its members;

* * * * *

15. Add new § 933.5 to read as follows:

§ 933.5 Disclosure to members concerning capital plan and capital stock conversion.

(a) No capital plan shall become effective until disclosure required by paragraphs (b) and (c) of this section has been provided to members. All disclosure required under this section shall be transmitted, sent or given to members not less than 45 days and not more than 60 days prior to the opt-out date established in the Bank's capital plan in accordance with § 933.2(e).

(b) The following information shall be provided to members about the Class A and/or Class B stock that a Bank intends to issue on the effective date of its capital plan:

(1) With regard to each class or subclass of authorized stock, a description of:

(i) Dividend rights;

(ii) The terms of conversion;

(iii) Redemption and repurchase rights;

(iv) Voting rights and preferences,

(v) Liquidation rights; and

(vi) Any liability to further calls or to assessments by the Banks;

(2) A description of any material differences between the securities to be converted into Class A and/or Class B stock and the Class A and/or Class B stock with regard to the rights addressed in paragraph (b)(1) of this section.

(3) A statement of the reasons for the conversion to Class A and/or Class B stock and of the general effect thereof upon the rights of existing members; and

(4) A description of any other material features concerning the Bank's initial issuance of Class A and/or Class B stock.

(c) In addition to the disclosure about Class A and/or Class B stock, the following information shall be provided to members:

(1) The Bank shall disclose financial information as follows:

(i) Audited balance sheets as of the end of the two most recent fiscal years, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being presented, and unaudited interim balance sheets and statements of income and cash flows as of and for appropriate interim dates that in form and content meet the requirements of § 989.4 of this chapter;

(ii) A pro forma capitalization table that reflects the Bank's projected new capital structure relative to its actual capitalization as of the date of the latest balance sheet required to be provided to members by paragraph (c)(1)(i) of this section. The Bank shall also provide a description of any material assumptions underlying the pro forma capitalization table and the basis for these assumptions, and shall provide estimates of its risk-based capital requirement, calculated in accordance with § 932.3 of this chapter, and of its total capital-to-asset ratio (both of which shall be based on the same financial data used for the capitalization table), along with a discussion of material assumptions underlying these estimates and the basis for these assumptions; and

(iii) Any of the financial information required to be disclosed by paragraph (c)(1) of this section may be incorporated by reference, provided the information being incorporated is contained in an annual or quarterly Bank report prepared in accordance with § 989.4 of this chapter or an annual or quarterly Bank System report, and the disclosure identifies the information being incorporated by reference;

(2) A narrative discussion of anticipated developments that could materially affect the liquidity, capital, earnings or continuing operations of the Bank, including those affecting dividends, product volumes, investment volumes, new business lines and risk profile.

(3) A description of any amendments anticipated to be made to the Bank's by-laws, policies or other governance documents as a result of the implementation of the capital plan;

(4) To the extent that such information has not been provided under paragraph (b) of this section, the Bank shall disclose information related to the capital plan as follows:

(i) A description of the minimum stock investment requirements set forth in the capital plan;

(ii) A statement outlining the requirements for amending the capital plan;

(iii) A description of any restrictions or limitations under a Bank's capital plan on a member's rights to buy, or redeem its class A or class B stock, to have such stock repurchased, or otherwise to make use of such stock to fulfill the member's minimum stock investment requirement;

(iv) A statement setting forth the opt-out date, on or before which a member's written notice to withdraw must be filed with the Finance Board (as established in accordance with § 933.2(e) of this part) for the member not to have its existing Bank stock converted to Class A or Class B stock on the effective date of the Bank's capital plan and describing the effect on a member's effective date of withdrawal of failing to file its notice to withdraw on or before the opt-out date; and

(v) A description of a member's rights under the capital plan to have its stock redeemed or repurchased upon voluntary or involuntary termination of its membership;

(5) The Bank should state the name, address and telephone number where members may direct written or oral requests for a copy of the capital plan and any other instrument or document that defines the rights of the member/stockholders. This information shall be provided to the members without charge; and

(6) The Bank shall provide a statement as to the anticipated accounting treatment for the transaction and the federal income tax implications of the transaction that members should consider in consultation with their own accounting and tax advisors.

(d) Nothing in this section shall create or be deemed to create any rights in any third party.

Dated: October 19, 2001.

By the Board of Directors of the Federal Housing Finance Board.

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–26963 Filed 10–25–01; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–116–AD; Amendment 39–12480; AD 2001–12–08 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment corrects and clarifies information in an existing airworthiness directive (AD) that applies to certain Boeing Model 767 series airplanes. That AD currently requires removing the two existing escape ropes in the flight compartment; installing new escape ropes, bags, and placards; and replacing the nylon straps with new straps; as applicable. This document clarifies and corrects the affected airplane line numbers. This correction is necessary to ensure that operators do not misinterpret which airplanes are subject to the requirements of this AD.

DATES: Effective July 20, 2001.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of July 20, 2001 (66 FR 32531, June 15, 2001).

FOR FURTHER INFORMATION CONTACT: John Picolla, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1509; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On June 6, 2001, the Federal Aviation Administration (FAA) issued AD 2001–12–08, amendment 39–12263 (66 FR 32531, June 15, 2001), which applies to certain Boeing Model 767 series airplanes. That AD requires removing the two existing escape ropes in the flight compartment; installing new escape ropes, bags, and placards; and replacing the nylon straps with new straps; as applicable. That action was necessary to ensure that flight crew members safely reach the ground from a flight compartment window in the event of an emergency evacuation. That action is intended to address the identified unsafe condition.

Need for the Correction

Information obtained recently by the FAA indicates that the applicability of AD 2001–12–08 and the applicability of paragraph (a)(2) of that AD need to be clarified and corrected.

As published, the applicability of the AD references Boeing Alert Service Bulletin 767–25A0265, dated May 27, 1999, as the appropriate source of service information for determining the affected Model 767 series airplanes. The service bulletin references Service Bulletin Index Document D624T001, Part 3, for airplane variable number, line number, and serial number data. Because some operators may not readily have access to this secondary source of service information, the FAA has determined that the applicability of the AD should specify the affected airplane line numbers (i.e., line numbers 1 through 334, excluding line numbers 265, 281, 284, 286, 288, 293, and 298), which were identified in the Summary of Boeing Alert Service Bulletin 767–25A0265.

Paragraph (a)(2) of AD 2001–12–08 affects airplanes having "serial numbers 1 through 107 inclusive." However, the reference to "serial numbers" is incorrect. The FAA's intent was to list "line numbers 1 through 107 inclusive," as indicated in the referenced Boeing Alert Service Bulletin 767–25A0265, dated May 27, 1999.

The FAA has determined that a correction to AD 2001–12–08 is necessary. The correction will clarify and correct the affected airplane line numbers.

Correction of Publication

This document corrects and clarifies the errors of AD 2001–12–08 and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains July 20, 2001.

Since this action only clarifies and corrects a current requirement, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subject in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12263 (66 FR 32531, June 15, 2001), and by adding a new airworthiness directive (AD), amendment 39–12480, to read as follows:

2001–12–08 R1 Boeing: Amendment 39–12480. Docket 2000–NM–116–AD. Revises AD 2001–12–08, Amendment 39–12263.

Applicability: Model 767 series airplanes, line numbers 1 through 334, certificated in any category; excluding those airplanes having line numbers 265, 281, 284, 286, 288, 293, and 298.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flight crew members safely reach the ground from a flight compartment window in the event of an emergency evacuation, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, per Boeing Alert Service Bulletin 767–25A0265, dated May 27, 1999.

(1) For all airplanes: Remove the two existing escape ropes and install new escape ropes, bags, and placards, as applicable, in the flight compartment.

(2) For airplanes having line numbers 1 through 107 inclusive; on which Boeing Service Bulletin 767–25–0149, dated March 7, 1991, has been accomplished; or on which neither Boeing Service Bulletin 767–25–0149, dated March 7, 1991, nor 767–25A0242, dated October 31, 1996, has been accomplished: Replace the nylon straps with new straps.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–25A0265, dated May 27, 1999. This incorporation by reference was approved previously by the Director of the Federal Register as of July 20, 2001 (66 FR 32531, June 15, 2001). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) The effective date of this amendment remains July 20, 2001.

Issued in Renton, Washington, on October 18, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26861 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–15–AD; Amendment 39–12485; AD 2001–22–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model B–17E, F, and G Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model B–17E, F, and G airplanes, that requires inspections to detect cracking and corrosion of the wing spar chords, bolts and bolt holes of the spar chords, and wing terminals; and correction of any discrepancy found during these inspections. This amendment is prompted by reports of cracking and corrosion of the wing spar. The actions specified by this AD are intended to prevent reduced structural integrity of the wing of the airplane due to the problems associated with corrosion and cracking of the wing spar.

EFFECTIVE DATE: November 30, 2001.

ADDRESSES: Information concerning this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model B–17E, F, and G airplanes was published in the **Federal Register** on March 16, 1995 (60 FR 14233). That action proposed to require inspections to detect cracking and corrosion of the wing spar chords, bolts and bolt holes of the spar chords, and wing terminals; and correction of any discrepancy found during these inspections.

Of the approximately 12,600 Boeing Model B–17E, B–17F, and B–17G bombers produced during World War II, only about a dozen remain in operation. Since the last B–17 was completed in April 1945, each is now at least 56 years old. Those remaining are flown primarily in various forms of airshow displays.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests To Withdraw Proposed Rule

Many commenters contend that the proposed AD is unjustified and that it should be withdrawn accordingly. The commenters present various reasons for this request.

Several commenters assert that cracking in the spar chord is not a safety issue because no wing or structural failures, incidents, or accidents have resulted from the cracking addressed by the proposed AD. One commenter states that the documented support for the necessity of the proposed AD (as described in the proposal) is flawed and without technical or event-based merit. Another states that no proper basis or need for the issuance of an AD has been established.

Several commenters also refer to B–17s flying with known cracks without incident, some of which are subject to an unspecified type of inspection. One commenter notes that cracks were present in some B–17s during World War II, and limits on the degree of cracking that was acceptable were described in the Structural Repair Manual. The same commenter notes that battle damage was corrected with strap or angle reinforcements. Another commenter reports finding corroded or cracked spars on several airplanes under major restoration, and on one that ran off a runway into a ravine, consequently requiring major repairs. The commenter indicates that, despite the extreme conditions that this latter airplane encountered, and the implied severity of the spar cracks, no components failed. One commenter reports inspecting the cracks on a particular B–17 and noticing surface corrosion in the cracked area of one B–17. The commenter concludes that since corrosion takes a period of time (sometimes years) to form, the cracks must have been there for several years. Another commenter reports that a hairline crack was observed in the left wing of an airplane in 1979, and that there has been no change or increase in the size of the crack during years of subsequent flying. (The commenter did not specify which structural member contained the crack.) The commenter indicates that a B–17 engineer indicates that there is no safety problem with hairline cracks.

The FAA acknowledges that no accidents are known to have occurred as a result of the conditions addressed by the proposed AD. Nevertheless, the FAA, as well as the operators, are aware of cracks in the wing spar chords of certain B–17 airplanes. To date five of the B–17s either flying or capable of being restored to flight status are known to have cracks in their wing spar chords. The FAA has determined that there is no design feature to prevent the crack propagation from becoming transverse and severing the spar chord. The integrity of this structure is, therefore, essential for continued safe flight and landing.

Several commenters point to the service history of the B–17 as evidence that the proposed actions are not necessary. A few commenters state that, in proposing this rule, the FAA failed to take into account the ruggedness of the B–17, and they reference occurrences during World War II in which some B–17s returned with all four spars broken

as a result of combat damage. One commenter states that the reason for the airplanes being able to return safely in spite of the degree of damage is that 90 percent of the wing strength is in the skin and ribs of the airplane.

Several commenters justify their requests to withdraw the proposal based on the fact that the current usage of the airplane is far less demanding—in terms of weights, altitudes, and environments—than the conditions encountered during wartime operations. Several commenters note that none of the subject airplanes fly at gross weight, with most of them, according to one commenter, flying at 10,000 to 15,000 pounds under gross. One commenter states that the airplanes subject to the proposed AD are flown only 50 to 250 hours per year. Additionally, the commenters assert that the current pilots of these airplanes are more schooled and proficient than those flying them 50 years ago.

Several commenters also cite the excellent maintenance record on the B–17s as a reason that the proposal should be withdrawn. They point out that the subject airplanes are under "constant surveillance," and are well maintained. The commenters also suggest that the remaining B–17s are better maintained now than when they were new, with many of them having been completely restored and many of them being hangared during the airshow off-season.

The FAA concurs with the commenters' assertions that the subject airplanes are operating in environments much more favorable than those encountered during World War II. In addition, the FAA recognizes that, for the most part, these airplanes are meticulously maintained. However, the FAA does not concur with the request to withdraw the proposal based on the conditions in which B–17s operate today, because such conditions are only partially relevant. Of much greater significance are the conditions to which any particular airplane has been exposed over its life-span. While most B–17s may be hangared and well-maintained now, most, if not all, of the affected airplanes have been exposed to years of grueling operations such as fire-fighting, aerial application, etc. Furthermore, even if the airplanes had been hangared continuously since World War II, moisture could accumulate from condensation. In fact, most of the subject airplanes have spent much of their life-span in open storage with no particular protection from the elements.

One commenter indicates that applicable military technical orders (the basis to which these aircraft are maintained) allow flights with known cracks in the spar chord if the cracks meet specified criteria. The commenter reports that this allowance has been validated by combat operations, current usage of the airplanes, and the type certificate.

Contrary to the commenters' assertions, continued flight with known structural defects, such as those addressed by the proposed AD, is considered a violation of section 91.7 of the Federal Aviation Regulations (14 CFR 91.7), which requires the pilot in command to discontinue a flight when an unairworthy structural condition occurs. The FAA finds that a military technical order written almost 60 years ago during wartime conditions (when emphasis was placed on short-term airworthiness risks as opposed to long-term risks such as fatigue and corrosion) is not an appropriate basis for allowing continued flight with cracks of this nature. The FAA also is not aware of any specific FAA approval, either directly or by reference, of a military technical order that allowed continued flight operations for B–17s with unrepaired cracked spar chords. In any event, this AD would supersede such an approval.

One commenter justifies its objection to the proposed rule on the fact that B–17s are not operated for hire. (The Limited Category type certification basis prohibits using B–17 airplanes for carriage of passengers or cargo for compensation or hire.) The FAA infers that the commenter is implying that a lesser safety standard is therefore acceptable. The FAA does not concur with the commenter's justification. The corrective action specified in this AD is needed to ensure the safety of not only the crew members and any other persons on board, but also of the many spectators that are in proximity to the affected airplanes as they participate in airshows.

Several commenters report that removal of the wings requires significant disassembly and express concern that such removal could reduce the structural integrity of the spar chord-to-terminal fitting joints. Two commenters state that it has not been determined that these cracks reduce the structural integrity of the wing assembly. One commenter states that replacement of used aircraft hardware with new hardware will affect the aircraft's "preset" and "harmonics," and may establish a stress concentration, which would reduce the integrity of the aircraft.

The FAA does not concur. The wings have already been removed and repaired on at least three B–17 airplanes. The FAA has received no comments indicating the removal and subsequent reinstallation of the wings reduced the structural integrity of those airplanes. Nevertheless, wing removal is not required in all instances, as discussed below. No change to the final rule in this regard is necessary.

Clarification of Discussion Section of Proposed Rule

Certain commenters request clarification and correction of language that appears in the Discussion section of the preamble to the notice of proposed rulemaking (NPRM). One commenter presents an analysis of the Discussion section, which includes a number of questions and suggestions for editorial changes. The commenters specifically request that the FAA correct certain language related to the description of the wing spar chord to wing terminal fitting joint. One commenter asks for clarification regarding the description of the wing spar chord to wing terminal fitting through bolts being "seized" in the joint. Additionally, the commenters request correction of the discussion of spar loading that appeared in the NPRM. Additionally, the commenters pose various questions, such as:

—When was the cracking problem discovered by the FAA?
—On how many airplanes was the cracking discovered?
—How many cracked spars have been found?
—How was the cause of the bolt corrosion and spar chord cracking attributed to moisture entrapment? Was the moisture accumulation observed or "is this a guess?"

The FAA finds that clarification of these issues is necessary. The commenters note correctly that spar chords mate with the cylindrical, tapering inner wing attach fitting inserts. Each of the eight joints is held together by eight close-tolerance bolts. The FAA was informed of the cracking of the wing spar chord and corrosion of these bolts on April 26, 1994. One B–17 had been inspected at that time, and approximately one-third of the 64 bolts in the eight joints were replaced due to corrosion. At least two bolts had lost almost half of the cross-sectional area. Some of the eight spar chords were cracked, and one chord end was broken into pieces. Since receiving that report, the FAA has learned that cracks have been discovered in the wing spar chord-to-wing terminal fittings of five of the 12 airplanes either flying or capable of being restored to flight status.

The FAA notes that cracks have propagated to observed lengths greater than seven inches. As the cracks propagate outboard into the region of increasing longitudinal tensile and compressive stresses, there is no design feature to prevent the crack propagation from becoming transverse and severing the spar chord. Because this area is subject to high axial loads and this structure is necessary for the continued safe flight of the airplane, cracking in this area is critical.

Evidence that the bolt corrosion and spar chord cracking were due to moisture entrapment came from several sources. The first operator to report this condition found corrosion of the joint bolts and the spar chords. By design, the spar chord tubes are open at the outboard end, and the presence of the wing terminal fittings inside the spar chords traps water at the inboard ends. Cracks known to date run longitudinally along the spars, which indicates that circumferential loads are cracking the spars. Pressure from corrosion products between the spar chord-to-terminal joints would create such circumferential loads.

Commenters correctly note that the bolts in these fittings are not seized. Rather, moisture trapped in the inner wing spars has caused some of the bolts to corrode, which makes removal difficult.

Since the Discussion section of the preamble of an NPRM is not restated in a final rule, no change to this final rule is necessary in this regard.

Questions Concerning Applicability of Proposed Rule

One commenter asserts that all B–17 aircraft with large, visible cracks were built by Douglas, and all had history of damage or severe use. The commenter states that Vega- and Boeing-built B–17s do not have a problem with cracking.

The FAA infers from these remarks that the commenter requests that Vega- and Boeing-built airplanes be excluded from the applicability of this AD. The FAA does not concur. The FAA notes that, of the approximately 12,600 Model B–17E, B–17F, and B–17G airplanes produced, nearly 3,000 were manufactured under license by Douglas, and approximately 2,750 were manufactured under license by Vega, a subsidiary of Lockheed.

The dozen or so airplanes still in operation—only about one of every 1,000 produced—comprise a statistically insignificant sample; therefore, no conclusions can be drawn statistically from the origin of the particular airplanes in which cracks have been discovered. Additionally, the commenter fails to present any evidence, such as differences in design or production methods, that would suggest airplanes manufactured by Boeing or Vega are less likely to experience the unsafe condition addressed by this AD. Further, the FAA is not aware of any such differences. No change to the applicability of this final rule is necessary.

Another commenter requests that the applicability of the proposed AD exclude certain airplanes that have already undergone wing removal, removal of terminals, replacement of close tolerance bolts, and repair of spar tubes.

The FAA does not concur that a general exclusion should be made for those airplanes since the previous actions accomplished on those airplanes may not provide the necessary level of safety. Operators have not submitted formal documentation to the FAA describing such previous actions, and so cannot establish that any actions accomplished previously on these airplanes definitively meet the criteria of this AD. In addition, it appears likely that there may be repairs accomplished previously, such as stop-drilling of cracks found in the spar chords, that do not adequately address the unsafe condition.

However, paragraph (d) of this final rule provides operators with the opportunity to present the FAA with data to justify approval of an inspection or repair accomplished previously as an alternative method of compliance. This provision enables the FAA to review such inspections and repairs and determine whether further action is necessary. Also, NOTE 2 of this AD states specifically that operators of airplanes on which the terminal fitting-to-spar chord joint was separated prior to the effective date of this AD, and on which inspection(s) of and/or repair(s) to the wing terminals-to-spar chords were accomplished prior to the effective date of this AD, should submit requests for approval of alternative methods of compliance to the FAA.

Question Concerning Cause of Cracking

Several commenters question whether the cracks have been caused by corrosion. The commenters state there is no documented proof that corrosion between the steel wing terminal fitting and the aluminum spar chord is the cause of the cracking. Several commenters state that the cracks are due to operational abuses (*e.g.*, heavy landings, operating above gross weights). Another commenter states that the cracks known to be present on B–17s have not been attributed to any single cause. That commenter states that environmental stresses (i.e., temperature changes between the aluminum spar and the steel trunnion) contributed to the cracking. One commenter states that moisture accumulation and consequent corrosion cannot be the cause of the cracking addressed by this AD because most B–17 owners store their airplanes indoors where moisture cannot accumulate on the spars. Other commenters suggest that observed cracking is due to a reported manufacturing procedure in which the terminal fittings, as well as the spar chord-to-terminal fitting bolts, were driven into place with hammers.

The FAA clarifies that cracking that has been discovered is not consistent with the damage that would result from overstresses such as those suggested by the commenters. However, on the other hand, the cracking is consistent with the pressure that would result from products of corrosion in the joints. The FAA finds that the longitudinal nature of the cracks discovered so far is indicative of expansion due to corrosion products in the spar chord to terminal fitting joints. It should be noted that the wing terminal fittings are steel, while the spar chords are constructed of aluminum. Because steel and aluminum are dissimilar metals, aluminum will tend to galvanically corrode if in direct contact with steel, as it is in the B–17 design. The faying surfaces of these joints have not been the subject of routine maintenance inspections because of the age of the subject airplanes.

Requests Concerning Separation of Wing Spar Chord-to-Wing Terminal Joint

Several commenters indicate that separation of the wing spar chord-to-wing terminal joint is unnecessary, and that the proposed requirement to remove all 64 bolts in the eight wing spar chord-to-wing terminal joints is likewise unnecessary. These commenters offer various proposals with regard to alternative inspection and repair procedures and compliance times, which are discussed in the following paragraphs.

Several commenters request that the FAA change the requirements to remove the most inboard bolt in each wing spar chord joint and to remove all 64 bolts, as specified in proposed paragraphs (a)(2) and (b)(2)(i), respectively, so that the three most inboard fasteners in each joint would not have to be removed. One commenter states that the most inboard bolt in each of the eight wing spar chord-to-wing terminal joints should not be removed due to interference with other wing structure and the fact that the bolt is only 5/8 inch

from the end of the spar. Some commenters state that the three most inboard bolts should not be removed for the reason mentioned previously (for the most inboard bolt), and because removal of the next two most inboard bolts would necessitate disassembly of a wing rib to access those bolts.

The FAA finds that some commenters were apparently misled by the preamble of the proposed AD as to whether the inspections specified in paragraph (b) of the AD could be accomplished without actually separating the wing spar-to-wing terminal joint.

The FAA acknowledges that significant disassembly would be required to remove the three most inboard bolts on the front and rear spars. The FAA clarifies that the intent of paragraph (b)(2) of the proposed rule (designated as paragraph (b)(2)(i) of this final rule) is that the use of equivalent inspections that do not involve separating the terminal fitting from the spar chord to detect cracking and corrosion may be acceptable. The FAA has determined that an acceptable level of safety can be achieved without removing the three most inboard bolts of a joint provided: (1) The dye penetrant inspection of the spar-chord tube-end reveals no cracks; (2) the other five bolts are removed and an eddy current inspection verifies that the holes are free of cracks; and (3) a borescope inspection using 10-power magnification reveals that the first, second, and third most inboard bolts are free of corrosion. These inspections must be performed on a repetitive basis at 36-month intervals. Paragraph (b) of this final rule has been reformatted, and this new alternative procedure is specified in paragraph (b)(2)(ii) of this AD.

Further, the FAA has made editorial changes to paragraphs (b)(2)(ii), (b)(2)(ii)(B), and (b)(2)(ii)(C) of the final rule to more clearly specify which bolts are being referred to in those paragraphs.

In addition, the FAA has determined that the requirement to perform the high frequency eddy current inspection in accordance with paragraph (a)(2) of the proposed AD (which included removing the most inboard bolt during the initial inspection) can be omitted from this AD without unduly affecting aviation safety, since this inspection is adequately addressed by paragraph (b) of this AD. Therefore, paragraph (a) of this AD has been re-structured and re-numbered accordingly.

One commenter that has accomplished extensive repairs on a Model B–17 airplane in the area that is the subject of this AD states that separating the terminal fitting from the spar chord is the only method that will adequately address the unsafe condition (corrosion and cracking of the wing spar, which could result in reduced structural integrity of the wing of the airplane). The FAA infers that this commenter is requesting that the FAA revise paragraph (b)(2) of the proposed AD to eliminate reference to alternative inspection procedures that may not include separating the terminal fitting from the spar chord.

The FAA partially concurs with the commenter's request. The FAA concurs that inspections that involve separating the terminal fitting from the spar chord are required for all airplanes with cracks that are unacceptable for repair. The FAA points out that it also has not approved any alternative inspection procedures for airplanes that have no cracks or repairable cracks. The FAA also points out that this AD does not grant blanket approval for alternative inspection procedures. All inspections in accordance with this AD are required to be accomplished in accordance with a method approved by the FAA.

However, the FAA does not concur that inspections must include separation of the terminal fitting from the spar chord. The FAA finds that it may be possible, depending on the degree of cracking detected, for alternative inspection procedures to provide an acceptable level of safety, even if such procedures do not involve separating the terminal fitting from the spar chord. Paragraph (b)(2)(i) of this AD specifies that alternative inspection procedures must meet certain minimum requirements, which are specified in paragraphs (b)(2)(i)(A), (b)(2)(i)(B), and (b)(2)(i)(C) of this AD. However, the FAA does not have the resources to develop these procedures for operators. No change to the final rule is necessary in this regard.

Requests Concerning Proposed Compliance Time

One commenter requests that the proposed 18-month compliance time specified in paragraph (b) of the AD be changed to allow the inspections and any needed repairs to be performed during the winter months away from the airshow season.

The FAA does not concur that the compliance time should be revised. An 18-month compliance time, as proposed, does allow compliance during the winter months; therefore, no change to paragraph (b) is necessary in that regard.

However, in light of the concern raised by the commenter, the FAA has determined that the compliance time for the initial inspections specified in paragraph (a) of this AD can be changed to 180 days without a significant adverse effect on aviation safety. Paragraph (a) of this AD has been revised accordingly.

Discussion of Repairs

One commenter suggests that each spar chord should be treated with corrosion inhibitor after bolt removal, replacement, or remedial action. The FAA infers that the commenter is requesting that a requirement for application of corrosion inhibitor be added to applicable paragraphs in the final rule.

The FAA concurs with the commenter's suggestion that each spar chord should be treated with corrosion inhibitor. Therefore, paragraph (a)(2) of the final rule (formerly paragraph (a)(3) in the NPRM) has been revised to include a requirement for application of a corrosion inhibitor as suggested. The FAA has determined that such a requirement will increase the long-term corrosion resistance characteristics of the affected structure without imposing a significant burden on the operators of the affected airplanes.

One commenter requests that the FAA require that repairs be performed in accordance with published repair manuals for the B–17. For those repairs not covered by a published repair manual, the commenter believes that repairs should be accomplished with the aid of FAA Designated Engineering Representatives (DER) or other recognized experts.

The FAA does not concur. All repairs required by this AD must be approved by the Manager of the Seattle Aircraft Certification Office, FAA, regardless of whether those repairs are addressed in a published B–17 repair manual. Although a World War II-era repair manual may be of some assistance in that regard, it must be recognized that the value of such a manual is very limited. The primary concern was short-term airworthiness; that is, that an airplane was to be repaired sufficiently to safely complete further combat missions. Long-term considerations, such as fatigue and corrosion, were secondary.

The FAA also recognizes that there have been considerable advances in repair and corrosion-prevention practices over the last half-century. As suggested by the commenter, the FAA encourages review of any needed repair by an appropriately qualified DER since that would undoubtedly hasten FAA approval of the repair. (Because the repair would be related to compliance with an airworthiness directive, a DER would be authorized only to recommend its approval.) However, no change to this final rule is necessary in this regard.

One commenter requests that the final rule be revised to require replacement of bolts only "as needed," rather than requiring replacement of any corroded bolt. The commenter states that it has accomplished a repair that involved removal of the wings and the terminal attach fittings. In the course of the repair, approximately one-third of the wing terminal-to-spar bolts were found to be corroded to the point where replacement was required. However, the commenter points out that there was no corrosion of the shear plane of any bolt. Based on the commenter's statements, the FAA infers that the commenter is requesting that the final rule be revised to require replacement of bolts only if corrosion is found at the shear plane area.

The FAA does not concur with the commenter's request. The FAA finds that it would be inappropriate to allow a bolt found to be corroded to remain installed on an airplane. The FAA has determined that bolts in wing spar chord-to-wing terminal joints are critical to the safety of flight; therefore, those bolts must be free of discrepancies, including corrosion. In addition to the criticality of the bolts to flight safety, the bolts must be removed to be inspected fully, and the FAA has determined that it is more cost effective for operators to replace corroded bolts with new bolts, rather than to perform frequent repetitive inspections of corroded, or corrosion-reworked, bolts. No change to the final rule is necessary in this regard.

In lieu of repairing any cracks found, one commenter requests that the FAA allow operators to attach 4130 steel straps to the outside of the wing using existing rivet holes. The FAA does not concur that this would be an acceptable alternative because steel straps fastened to the outside of the wings would not provide adequate load paths for the spar-chord loads. No change to the final rule is necessary in this regard.

Economic Considerations

Some commenters question the cost impact information presented in the preamble of the NPRM. These commenters take offense to assumptions made in that section that "no operator has yet accomplished any of the proposed requirements" and that "no operator would accomplish those actions if this AD were not adopted." One commenter states that all owners/operators have already voluntarily undertaken inspections and repairs as a community. The commenter adds that results of those inspections revealed that virtually all cracks have been discovered using detailed visual inspection and non-destructive test (NDT) inspection methods that did not involve de-mating of the spar/wing terminal. Other commenters also submit information concerning previously accomplished inspections and corrective actions.

The FAA finds that clarification of language presented in the cost impact information of this AD is necessary. The FAA and other federal agencies are required to propose or adopt a regulation only upon reasoned determination that the benefits of the intended regulation justify its costs. The two assumptions mentioned above merely represent a degree of conservatism taken by the FAA in determining that this AD will, in fact, be cost effective. They are in no way intended to be judgmental of what a particular operator would or would not do in the absence of this AD.

Nevertheless, the FAA has not been provided with specific data indicating that any of the previously accomplished repairs and inspections provide the level of safety intended by this AD to adequately address the identified unsafe condition. It also must be recognized that, in the absence of an AD, operators of B–17s would not be required to perform the needed inspections and repairs. If there is no binding requirement to do so, the statutory responsibility of the FAA to ensure the safety of the occupants of those airplanes and persons on the ground watching the airplanes during airshows would not be fulfilled.

Another commenter states that the statement in the proposal that indicates the proposed AD "would not have a significant economic impact on a substantial number of small entities" is inconsistent with the estimated cost of $90,000 per airplane.

The FAA notes that the phrase referenced by the commenter refers to a statutory requirement imposed by the Regulatory Flexibility Act. That act is intended to protect small businesses and organizations from federal rulemaking by requiring agencies to develop and analyze information concerning the effect of rules on small entities. When the effects of a rule are likely to be "significant" on a "substantial number of small entities," the agency is expected to take steps that will reduce the burden. Regarding regulatory flexibility findings in conjunction with the requirements of ADs, very few ADs will ever reach the level of having a "significant economic impact, positive or negative, on a substantial number of small entities," since either most aircraft operators do not meet the agency's criteria for small entities, or because the cost of an individual AD usually does not exceed the agency limit for significant impact (which is $100 million per year). A statement concerning the impact, or lack of it (as in the case of this AD), is required to be included in the certification statement of each AD.

Some commenters state that they cannot afford to separate the wing spar chord-to-terminal joints to perform the inspection. The commenters state that the AD, as proposed, would create severe economic hardship, result in grounding of airplanes, and force the sale of non-flying airplanes at a financial loss. One commenter acknowledges that the cost estimates fall within federal guidelines for a rule that is "not a significant impact;" however, the commenter contends that, for the most part, these airplanes are owned by non-profit organizations that do not have $90,000 in discretionary funds. Another commenter states that, under the circumstances, issuance of a precautionary manufacturer's service bulletin or an FAA Advisory Circular would be more than adequate.

The FAA recognizes the economic impact of the proposed rule. However, the FAA notes that an unsafe condition exists in regard to the integrity of the affected joints, which are essential for safe flight. The FAA also points out that, as explained previously, paragraph (b)(2) of the AD provides operators the option of performing an alternative inspection without separating the joints. The FAA expects that costs for accomplishment of the alternative inspection will likely be lower than $90,000 per airplane.

Some commenters believe that the cost of compliance will be much greater than the estimated $90,000 per airplane. One commenter states that a consensus of affected owners/operators is that the wing spar/terminal de-mate would require 2,250 to 2,500 work hours. The commenter notes that this requirement entails removal and reinstallation of four engines, and complete de-rigging of the control, electrical wiring, engine control, and fuel systems. Therefore, the commenter estimates that costs would be from $125,000 to $150,000 per airplane and a four-to six-month cessation in aircraft financial support activities.

However, one commenter that has actually performed the alternative inspections outlined in paragraph (b) of the proposed AD states that the cost impact was much lower than the estimated amount.

The FAA finds that no change to the cost impact information, below, is necessary. The FAA based the cost impact information presented in this AD on the best data available to date for airplanes on which the wing spar chord-to-wing terminal fitting separation has been accomplished. Although the costs may vary somewhat, the actual cost for a particular airplane is not expected to differ greatly from the estimated cost of $90,000 per airplane.

Issues Related to Inspection Methods and Procedures

One commenter proposes an alternative to the inspection requirements of paragraph (a) of the proposed AD. The commenter suggests that within 90 days, and annually thereafter, a dye penetrant check be accomplished on the inboard butt of each of the eight spar tubes. The commenter adds that within 12 months, and tri-annually thereafter, the interior of all eight spar tubes should be treated with a moisture and corrosion inhibitor.

The commenter also proposes that within 12 months, and thereafter at 10-year or 1,000-flight-hour intervals, a detailed inspection designed to detect cracking in the wing spar tubes or terminal bolt holes should be accomplished. This inspection would include removal and inspection of the terminal attach bolts at the fifth and seventh most inboard locations. The commenter also suggests that operators should inspect annually and report on the status, migration (or lack thereof), and condition of any cracks determined to be within acceptable tolerance criteria.

The FAA does not concur with this request. Since corrosion is believed to be the cause of the cracking, the FAA finds that the proposed inspection program at the intervals suggested by the commenter would not ensure such timely detection of cracking. In addition, an inspection interval based on flight hours is inappropriate because damage resulting from corrosion is related to calendar time, not flight time.

Two commenters indicate that no bolts should be removed during the inspections required by this proposed AD unless there is obvious damage to the bolt.

One of these commenters states that no bolts should be removed "without due cause," because the bolts have been in the holes of the joint for more than 50 years, and molecular transfer will have taken place between the mating surfaces. The commenter asserts that replacement of the bolts is likely to cause reduced structural integrity of the wing terminal-to-spar joints.

Another commenter states that replacement of hardware or parts from an airplane with new parts or hardware changes the harmonics of the airplane's vibration frequency and establishes a stress point at the location of the replacement. This commenter states that the engineers and master mechanics consulted did not recommend replacement of hardware unless major damage is detected during a visual inspection, because the stress created by removal could cause significant damage.

The FAA infers that these commenters are requesting that paragraph (b) of the proposed rule be revised to eliminate the requirement to remove the bolts that join the wing terminals to the spar chords.

The FAA does not concur with the request to eliminate the requirement to remove the bolts. The FAA has determined that performing inspections of the bolts and bolt holes without removing the bolts does not ensure that corrosion or cracking would be detected. The FAA finds that, to ensure the continued safety of the fleet of airplanes, it is necessary to require at least a one-time removal of five of the bolts in each joint to inspect the shear planes of the bolts for corrosion and to inspect the bolt holes for cracks. However, as discussed previously, the FAA has revised this final rule to allow for the three inboard fasteners in each joint to remain in place, provided that certain conditions are met.

One commenter inquires as to what eddy current inspection methods are approved. The FAA is unaware of any military or industry standards for eddy current inspections. As stated in paragraph (b)(1) of this AD, eddy current inspections must be approved by the Manager of the Seattle Aircraft Certification Office, FAA. The manufacturer, The Boeing Company, has agreed to allow its specifications to be used for the eddy current inspections. The FAA has added a new NOTE 9 to this final rule to indicate that this information is available to operators as needed.

One commenter requests that the FAA develop criteria containing acceptance/rejection standards of cracks characterized (by the commenter) as insignificant, monitorable, and unacceptable. The commenter believes that "blanket condemnation of any cracking is unwarranted."

The FAA does not concur that continued flight with any cracking is acceptable. As specified in paragraph (c) of this final rule, any cracking discovered as a result of the required inspections must be repaired prior to further flight. Such repairs may or may not require separating the wing spar chord-to-wing terminal joint, depending upon the severity of the cracking. However, if cracking is found and repaired without separating the wing spar chord-to-wing terminal joint, repetitive inspections would be required. The FAA expects that the operator would propose its inspection program as part of the documentation needed to secure approval of the proposed repair, in accordance with paragraph (c) of this AD. Continued crack growth following repair requires separation of the wing spar chord-to-wing terminal joint in order to positively address continued cracking problems. No change to the final rule is required in this regard.

Two commenters question the reference to "acceptance/rejection criteria contained in sensitivity level Group IV, MIL–I–25135" which is contained in paragraph (a)(1) of the proposed rule. One commenter notes that the referenced military specification does not contain acceptance/rejection criteria pertaining to cracks, nor was the specification intended to do so.

The FAA finds that clarification is necessary. The commenter correctly notes that the military specification cited in the proposed rule does not contain acceptance/rejection criteria on cracking. The FAA clarifies that the intent of paragraph (a)(1) is that the dye penetrant inspection be performed in accordance with MIL–STD–6866, using a fluorescent Type 1 penetrant, Method C, Sensitivity Level 3, inspection. Any cracking that is detected must be repaired in accordance with a method approved by the Manager of the Seattle Aircraft Certification Office, FAA, prior to further flight. To eliminate any confusion in this regard, the wording of paragraph (a)(1) of this final rule has been revised accordingly.

In addition, the FAA recognizes that a variety of dye penetrant inspection procedures may be acceptable. Therefore, the FAA has added **Note 4** to the final rule to clarify that operators wanting to use an alternative procedure may request approval from the Seattle Aircraft Certification Office per the provision of paragraph (d) of this AD.

Clarification of Visual Inspections

The FAA has revised the final rule to clarify that the type of visual inspection required by paragraphs (a)(2), (b)(1), and (b)(2)(i)(C) is a "detailed visual inspection." Further, the definition of this inspection has been included in a new **Note 8** of the final rule.

Addition of Other New Notes

The FAA has also revised the final rule to include new **Notes** 1 and 11:

As a result of communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of ADs on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. Therefore, a new **Note** 1 has been added to this final rule to clarify this long-standing requirement.

In addition, a new **Note** 11 has been added to the final rule to strongly encourage owners and operators of the affected airplanes to coordinate their requests for approvals of alternative methods of compliance or adjustment of the compliance times pertaining to this AD. Coordination of a single request (in lieu of a separate request from each owner/operator) will allow the FAA to more quickly review and respond.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 12 airplanes of the affected design in the worldwide fleet. The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1,500 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $900,000, or $90,000 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–22–06 Boeing: Amendment 39–12485. Docket 95–NM–15–AD.

Applicability: All Model B–17E, F, and G airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: For airplanes on which the terminal fitting-to-spar chord joints were separated prior to the effective date of this AD, and inspections of and/or repairs to the wing terminals-to-spar chords were accomplished prior to the effective date of this AD: Applications for approval of an alternative method of compliance to the requirements of paragraphs (a) and (b) of this AD must be submitted to the FAA in accordance with the provisions of paragraph (d) of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing of the airplane, accomplish the following:

Inspections and Corrective Actions

(a) Within 180 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform a dye penetrant inspection to detect cracking of each inboard end of the eight aluminum wing spar chords, in accordance with MIL–STD–6866, using a fluorescent Type 1 penetrant, Method C, Sensitivity Level 3, inspection. If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Note 3: The part number (P/N) for the upper wing spar chords is 3–14231–0, and the P/N for the lower wing spar chords is 3–14231–1.

Note 4: Operators desiring to use an alternative dye penetrant procedure may request approval from the Seattle ACO in accordance with paragraph (d) of this AD.

Note 5: The following are the P/N's for the terminal fitting-to-spar chord joint assemblies:

Assemblies	Assembly part number
Left Upper Front Spar Joint Assembly	75–4781–0
Right Upper Front Spar Joint Assembly	75–4781–1
Left Lower Front Spar Joint Assembly	65–4782–512
Right Lower Front Spar Joint Assembly	65–4782–513
Left Upper Rear Spar Joint Assembly	75–4783–0
Right Upper Rear Spar Joint Assembly	75–4783–1
Left Lower Rear Spar Joint Assembly	75–4784–0
Right Lower Rear Spar Joint Assembly	75–4784–1

Note 6: The following are the P/N's for the bolts for the spar chords:

Bolts for:	Bolt part number
Upper and Lower Front Spar Chords	NAS56A36
Upper Rear Spar Chord	NAS56A34
Lower Rear Spar Chord	NAS56A40–5

(2) Perform a detailed visual inspection to detect corrosion of the bolts, as installed, and replace any corroded bolt with a new bolt having a P/N in the NAS 6606 series in accordance with Army Technical Order Number 01–20EF–2. Prior to further flight, for all bolt replacements, accomplish the requirements of paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), and (a)(2)(iv) of this AD in accordance with Army Technical Order Number 01–20EF–2.

Note 7: The following are the P/N's for the replacement bolts for the spar chords:

Replacement bolts for:	Replacement bolt part number
Upper and Lower Front Spar	NAS 6606–51
Upper Rear Spar	NAS 6606–47
Lower Rear Spar	NAS 6606–56

Note 8: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(i) Install a washer having P/N MS 20002C6 under the head of the bolt, a self-locking nut having P/N NAS 1804–6, and a washer having P/N MS 200026 under the nut, for each replacement bolt.

(ii) Torque any replacement bolt to 95–105 inch-pounds.

(iii) Oversize replacement bolts by 1/16 inch, as necessary.

(iv) Apply corrosion inhibiting compound (using BMS 3–23, Type II or equivalent compound) to the spar chord after bolt removal, replacement, or other remedial action.

(b) Within 18 months after the effective date of this AD, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD.

(1) Perform detailed visual and high frequency eddy current inspections, that include separating all eight wing terminal-to-spar chord joints, to detect cracking and corrosion of the wing terminals and spar chords, in accordance with a method approved by the Manager, Seattle ACO; or

(2) Accomplish either paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Perform an equivalent inspection(s) to that required by paragraph (b)(1) of this AD in accordance with a method approved by the Manager, Seattle ACO. To be considered acceptable, the equivalent inspection(s) must include, at a minimum, the criteria specified in paragraphs (b)(2)(i)(A), (b)(2)(i)(B), and (b)(2)(i)(C) of this AD.

(A) The inspection must include removal of all 64 bolts that join the eight wing terminals to the eight spar chords; and

(B) The inspection must adequately detect cracking of the spar chord, and corrosion between the terminal fitting and the spar chord; and

(C) The inspection must include a detailed visual inspection to detect corrosion of the attachment bolts; and a high frequency eddy current, and borescope inspection at 10-power magnification, of the bolt holes common to the spar chord-to-wing terminal interface.

(ii) Perform a dye penetrant inspection to detect cracking of the spar chord tube end; remove the most outboard five bolts in the joint and perform an eddy current inspection to detect cracking of the holes; and perform a 10-power magnification borescope inspection to detect corrosion of the most inboard three bolts. If the criteria specified in paragraphs (b)(2)(ii)(A), (b)(2)(ii)(B), and (b)(2)(ii)(C) of this AD are met, removal of the three most inboard bolts of each terminal-to-spar chord joint is not required. Repeat the requirements of this paragraph thereafter at intervals not to exceed 36 months.

(A) Results of the dye penetrant inspection of the spar chord tube end indicate that there is no cracking; and

(B) Results of the eddy current inspection indicate that the holes of the five most outboard bolts in the joint are free of cracks; and

(C) Results of the 10-power magnification borescope inspection indicate that the most inboard three bolts are free of corrosion.

Note 9: The Boeing Company will make its specifications for eddy current inspections available to operators as needed.

(c) If any cracking and/or corrosion is detected during any of the inspections required by paragraphs (a) and (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 10: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Note 11: The FAA strongly encourages owners and operators of the affected airplanes to coordinate their requests for approvals of alternative methods of compliance or adjustment of the compliance times pertaining to this AD. Coordination of a single request (in lieu of a separate request from each owner/operator) will allow the FAA to more quickly review and respond.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(f) This amendment becomes effective on November 30, 2001.

Issued in Renton, Washington, on October 19, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26951 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–16–AD; Amendment 39–12486; AD 2001–22–07]

RIN 2120–AA64

Airworthiness Directives; Honeywell International, Inc. LTP 101 Series Turboprop and LTS101 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to certain Honeywell International, Inc. (formerly AlliedSignal, Inc. and Textron Lycoming) LTP 101 series turboprop and LTS101 series turboshaft engines. This amendment requires a new life limitation and removal of rigid tube fuel manifold assemblies and replacement with serviceable assemblies. This amendment is prompted by reports of cracking and fuel leakage of rigid tube fuel manifolds. The actions specified by this AD are intended to prevent engine fuel leakage due to low-cycle fatigue (LCF) cracking of the rigid tube fuel manifold, which could result in an in-flight fire.

DATES: Effective date November 30, 2001.

ADDRESSES: The information in this AD may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to certain Honeywell International, Inc. (formerly AlliedSignal, Inc. and Textron Lycoming) LTP 101 series turboprop and LTS101 series turboshaft engines was published in the **Federal Register** on March 12, 2001 (66 FR 14346). That action proposed to require a new life limitation and removal of rigid tube fuel manifold assemblies and replacement with serviceable assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 1,600 engines of the affected design in the worldwide fleet. The FAA estimates that 670 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,100,400.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2001–22–07 Honeywell International, Inc.: Amendment 39–12486. Docket 99–NE–16–AD.

Applicability: This airworthiness directive (AD) is applicable to Honeywell International, Inc. (formerly AlliedSignal Inc. and Textron Lycoming) LTP 101 series turboprop and LTS101 series turboshaft engines with the following part numbers (P/N's) rigid tube fuel manifolds installed:

TABLE 1.—P/N'S OF AFFECTED RIGID TUBE FUEL MANIFOLDS

4–301–042–02	4–301–042–06	4–301–236–03	4–301–286–02
4–301–042–04	4–301–236–01	4–301–236–04	4–301–376–01
4–301–042–05	4–301–236–02	4–301–286–01	

These engines are installed on, but not limited to Aerospatiale AS350, Eurocopter MBB–BK117 and HH–65A, Bell 222, Page Thrush, Air Tractor AT–302, Piaggio P.166–DL3, Riley International R421, and Pacific Aero 08–600 aircraft.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as specified below, unless already done.

To prevent engine fuel leakage due to low-cycle fatigue (LCF) cracking of the rigid tube fuel manifold, which could result in an in-flight fire, do the following:

(a) Replace fuel manifolds that have accumulated the following gas generator rotor (Ng) cycles-since-new (CSN) on the effective date of this AD or Ng cycles-in-service (CIS) on the effective date of this AD since all tubes were replaced:

TABLE 2.—FUEL TUBE REPLACEMENT SCHEDULE

Ng CSN, or Ng CIS since total tube replacement	Replacement schedule
(1) 2,750 or less	Before accumulating 3,000 total Ng cycles.
(2) More than 2,750	Within 250 CIS after the effective date of this AD.
(3) Unknown	(i) Within 2,000 CIS after the effective date of this AD; or (ii) At the next engine removal; or (iii) At the removal of the fuel manifold for cause, whichever is first.

New Life Limitation

(b) Do not install fuel manifolds with P/N's that are listed in Table 1 of this AD after the effective date of this AD if they meet ANY of the following conditions:

(1) The manifold has accumulated 3,000 or more total Ng cycles; or

(2) The manifold has had partial tube replacements; or

(3) The manifold has an unknown number of Ng cycles.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Effective Date

(e) This amendment becomes effective on November 30, 2001.

Issued in Burlington, Massachusetts, on October 19, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–26967 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

NASA Grant and Cooperative Agreement Handbook—Miscellaneous Changes

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA Grant and Cooperative Agreement Handbook to make administrative and editorial changes; clarify internal documentation requirements; delete the requirement for quarterly forecasts of recipient cash requirements; and clarify the submission requirements for NASA Form 1206, "Assurance of Compliance with the National Aeronautics and Space Administration Regulations Pursuant to Nondiscrimination in Federally Assisted Programs".

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Eugene Johnson, NASA Headquarters, Office of Procurement, Analysis Division (Code HC), (202) 358–4703, e-mail: ejohnson@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The current provision at § 1260.26, Financial Management, advised recipients that NASA would phase-in the adoption of an automated SF 272 system not requiring forecast estimates with a projected date of October 1, 2001, for implementation. This automated system change will be effective October 1, 2001, and the submission requirements for forecast estimates is revised to reflect this implementation. Clarification of submission requirements for NASA Form 1206 "Assurance of Compliance with the National Aeronautics and Space Administration Regulations Pursuant to Nondiscrimination in Federally Assisted Programs" as well as editorial changes to Part 1260, Exhibit E—Special Conditions for Cooperative Agreements between NASA and Commercial Space Centers are made. Internal documentation required by the grant officer prior to award is amended to include any data deliverables that may be required when potentially hazardous operations, such as those related to flight and/or mission critical ground systems have been proposed. Lastly, § 1260.10 is amended to clarify that signature by the Authorizing Institutional Representative on the proposal Cover Page may confirm that all necessary certifications and assurances are met.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the changes made by this rule are only clarifications of existing requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 14 CFR Part 1260

Grant Programs—Science and Technology.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 14 CFR part 1260 is amended as follows:

1. The authority citation for 14 CFR 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and OMB Circular A–110.

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

2. Amend § 1260.10 by revising paragraphs (c)(1) and (4) to read as follows:

§ 1260.10 Proposals.

* * * * *

(c) * * *

(1) Grant officers are required to ensure that all necessary certifications, disclosures, and assurances have been obtained prior to awarding a grant or cooperative agreement. In order to reduce paper work required by the submitting institutions, and as directed by NASA; signature by the Authorizing Institutional Representative on the proposal Cover Page may confirm that all necessary certifications and assurances are met.

* * * * *

(4) Each application for funding must contain assurances on NASA Form 1206, or specifically identify and make reference to an assurance that the recipient's programs and activities comply with civil rights and nondiscrimination statutes specified in 14 CFR parts 1250 through 1253. The assurances provided on NASA Form 1206 shall suffice for all proposals of an applicant, if they remain current and accurate. An applicant may incorporate these assurances by reference in subsequent applications to NASA.

§ 1260.11 [Amended]

3. In § 1260.11, amend the last sentence in paragraph (b) by adding "and any data deliverables that may be required when potentially hazardous operations, such as those related to flight and/or mission critical ground systems have been proposed (e.g. Payload Safety Data Review Package)" directly after the word "documentation,".

§ 1260.22 [Amended]

4. In the introductory text to § 1260.22, amend the last sentence by adding "(e.g. Payload Safety Data Review)" directly after the word "requirements".

5. Section 1260.26 is amended by revising the date of the provision and paragraph (a) to read as follows:

§ 1260.26 Financial management.

Financial Management

October 2001

(a) Effective October 1, 2001, advance payments by electronic funds transfer will be made by the Financial Management Office of the NASA Center which issued the grant in accordance with procedures provided to the recipient. The Recipient shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office and to the Administrative Grant Officer (if NASA has delegated administration) within 15 working days following the end of each Federal Fiscal quarter. The final SF 272 is due within 90 days after the expiration date of the grant. The final SF 272 shall be submitted to the Financial Management Office, with copies sent to the NASA Grant Officer.

* * * * *

6. In the Appendix to Subpart A of Part 1260, add Exhibit E to read as follows:

Exhibit E—Special Conditions for Cooperative Agreement Between NASA and the Commercial Space Centers

The following Space Development and Commercial Research (SDCR) Special Conditions are required to be included in full text for all SDCR Grants and Cooperative Agreements in addition to the General Conditions in the NASA Grant and Cooperative Agreement Handbook. Any changes or additions to these Special Conditions must be approved by the Office of Procurement, NASA Headquarters, Procurement Operations Division, Code HS, prior to the award of the agreement.

Commercial Space Centers Program Grants/ Cooperative Agreements

Intellectual Property

Patent Rights

October 2001

(a) Definitions.

(1) "Administrator" means the Administrator or Deputy Administrator of NASA.

(2) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(3) "Made" when used in relation to any invention means the conception or first actual reduction to practice such invention.

(4) "Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) "Practical application" means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) "Recipient" means:

(i) The signatory Recipient party or parties; or

(ii) The Consortium, where a Consortium has been formed for carrying out Recipient responsibilities under this agreement.

(7) "Small Business Firm" means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13CFR 121.901 through 121.911 will be used.)

(8) "Subject Invention" means any invention of a Recipient and/or Government employee conceived or first actually reduced to practice in the performance of work under this Agreement.

(b) Allocation of Principal Rights.

(1) Patent Rights: Retention by Grantee—CSC Program.

This Patent Rights Special Condition applies only to Commercial Space Centers Program Grants/Cooperative Agreements and takes precedence over any other patent provisions for NASA grants and cooperative agreements.

This grant is subject to the Patent Rights (Small Business Firms and Nonprofit Organizations) clause at 37 CFR 401.14 ("the clause") with the following modifications:

(i) Where the term "contract" or "contractor" is used in the clause, those terms shall be read as "grant" and "grantee," respectively.

(ii) Where the term "Federal Agency," "agency" or "funding Federal Agency" is used in the clause, the term shall be read as "NASA."

(iii) The following sentence is added to paragraph (d)(2) of the clause:

Notwithstanding the above, the Grantee shall not be required to convey title to an invention in a foreign country if the contractor has filed for patent applications in a substantial number of industrialized countries.

(iv) The NASA regulation applicable to paragraph (e) of the clause is at 37 CFR part 404 "Licensing of Government OwnedInventions."

(v) The following subparagraphs are added to paragraph (e) of the clause:

(4) NASA agrees that in accordance with 35 U.S.C. 205 it will not disclose or release to third parties pursuant to requests under the Freedom of Information Act or otherwise copies of any document which NASA obtained under this clause which is part of an application for patent with the U.S. Patent and Trademark Office or any foreign patent office filed by the Grantee (or its assignees, licensees, or employees) on a subject invention to which the Grantee has elected to retain title.

(5) NASA agrees that in accordance with 35 U.S.C. 205 it will not disclose or release to third parties pursuant to requests under the Freedom of Information Act or otherwise any invention disclosure submitted under paragraph (c), above, for a reasonable time in order for the Grantee to file a patent application on any subject invention in which it has elected or retains the right to elect retention of title. For purposes of this paragraph, a reasonable time shall be the time during which an initial patent application may be filed under paragraph (c) of this clause; provided, however, that NASA may make disclosure at its discretion if it finds that the same information has been previously published by the inventor, Grantee, or otherwise.

(6) Nothing in subparagraphs (4) and (5) of this paragraph (e) shall preclude NASA's publishing or distributing as part of its regular technical information dissemination programs materials describing a subject invention to the extent such materials were provided as part of a technical report or other submissions of the Grantee which were submitted without restrictions independently of the requirements of this clause. Furthermore, nothing in subparagraphs (4) and (5) of this paragraph (e) shall preclude NASA from releasing the subparagraphs to other contractors of NASA on a confidential or restricted distribution basis if such documents are relevant to the work being performed by those contractors.

(vi) The following subparagraph is added to paragraph (f) of the clause:

(5) the Grantee shall include a list of all subject inventions required to be disclosed during the preceding year in the technical progress report, renewal proposal, or annual status report, and a complete list (or a negative statement) for the entire award period shall be included in the final report.

(vii) Pursuant to paragraph (g)(2) of the clause, the following subparagraphs (3) and (4) are added to paragraph (g), and shall be used in all subcontracts, regardless of tier, for the performance of research, experimental, developmental, design or engineering work in the United States, its possessions, or Puerto Rico, by other than a nonprofit organization or small business firm.

(3) Notwithstanding subparagraph (1), above, the Grantee will consult and obtain the approval of NASA for the Patent Rights clause to be used in any subcontract to be performed outside of the United States, its possessions, or Puerto Rico.

(4) Notwithstanding subparagraph (1), above, and in recognition of the Grantee's obligation to obtain and maintain private support for the CSC established under this Cooperative Agreement, the Grantee is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(a) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Grantee may deem necessary to obtaining and maintaining of such private support; and

(b) Request, in the event of inability to reach agreement pursuant to (a), above, that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or nonprofit organization, or for all other organizations, request that such rights for the Grantee be included as an additional reservation in a waiver granted pursuant to 14 CFR 1245.1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the Grants Officer (see also paragraph (9)).

(i) Exceptional circumstances: A request that NASA make an "exceptional circumstances" determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Grantee pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(ii) Waiver petition: The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR 1245.1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, Sec. 305). If a waiver is not requested or granted, the Grantee may request a license from NASA (see Licensing of NASA inventions, 14 CFR 1245.3). A subcontractor requesting a waiver must follow the procedures set forth in the NASA FAR Supplement clause at 18–52.227–71 (48 CFR 1852.227–71), "Requests for Waiver of Rights to Inventions." The terms "Contractor" and "contracting officer" shall be read as "Grantee" and "Grants Officer," as appropriate. Should the Grantee desire that an additional reservation regarding Grantee's rights, in accordance with paragraph (4)(b) of this Special Condition, be considered with the waiver request, both the potential subcontractor and the Grants Officer should be informed.

(viii) Paragraph (l) Communications, is completed to read as follows:

(l) Communications.

A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications, or similar material bearing on patent matters, shall be sent to the installation Patent Counsel in addition to any other submission requirements in the Grant provisions. If any reports contain information describing a subject invention for which the Grantee has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, for six months from the date of receipt, in order for patent applications to be filed, provided that the Grantee identifies the information and the subject invention to which is relates at the time of submittal. If required by the Grants Officer, the Grantee shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any subject invention in any country in which the Grantee has applied for patents.

(ix) With respect to paragraph (l) of the clause, Grantee is hereby given permission to assign rights to subject inventions in the United States, provided the assignee agrees that any products embodying an assigned subject invention or produced through use of a subject invention will be manufactured substantially in the United States. However, an individual clause by the requirement for such an agreement may be waived by NASA upon a showing that reasonable but unsuccessful efforts have been made to assign rights on similar terms to potential assignees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(2) Patent Rights: NASA Inventions.

NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this cooperative agreement and, upon timely request, NASA will use all reasonable efforts to grant the Recipient or designated Consortium Member (if applicable) an exclusive or partially exclusive, revocable, royalty-bearing license, on terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(i) of this section. Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(3) Patent Rights: NASA Contractor Inventions.

In the event NASA contractors are tasked to perform work in support of specified NASA activities under this cooperative agreement and inventions are made by contractor employees, and NASA has the right to acquire or has acquired title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, NASA will use all reasonable efforts to grant the Recipient or designated Consortium Member (if applicable) an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(ii) of this section. Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(4) Patent Rights: Joint NASA and Recipient Inventions.

NASA and Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA contractors) and employees of Recipient.

(i) For other than small business firms and nonprofit organizations the Administrator may agree that the United States will refrain from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest and to cooperate with Recipient in obtaining patent protection on its undivided interest on any waived inventions subject, however, to the condition that Recipient makes its best efforts to bring the invention to the point of practical application at the earliest practicable time. In the event that such efforts are not undertaken, the Administrator may void NASA's agreement to refrain from exercising its undivided interest and grant licenses for the practice of the invention so as to further its development. In the event that the Administrator decides to void NASA's agreement to refrain from exercising its undivided interest and grant licenses for this reason, notice shall be given to the Inventions and Contributions Board as to why such action should not be taken. Either alternative will be subject to the applicable license or licenses reserved in paragraph (b)(5) of this section.

(ii) For small business firms and nonprofit organizations, NASA may assign or transfer whatever rights it may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e).

(5) Minimum rights reserved by the Government. Any license or assignment granted Recipient pursuant to paragraphs (b)(2), (b)(3), or (b)(4) of this section will be subject to the reservation of the following licenses:

(i) As to inventions made solely or jointly by NASA employees, the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the United States; and

(ii) As to inventions made solely by, or jointly with, employees of NASA contractors, the rights in the Government of the United States as set forth in paragraph (b)(5)(i) of this section, as well as the revocable, nonexclusive, royalty-free license in the contractor as set forth in 14 CFR 1245.108.

(6) Preference for United States manufacture. The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(7) Work performed by the Recipient under this cooperative agreement is considered undertaken to carry out a public purpose of support and/or stimulation rather than for acquiring property or services for the direct benefit or use of the Government. Accordingly, such work by the Recipient is not considered "by or for the United States" and the Government assumes no liability for infringement by the Recipient under 28 U.S.C. 1498.

(8) Property Rights in Inventions—CSC Program.

(i) This cooperative agreement or any subcontracts issued thereunder with other than a nonprofit organization or small business firm as defined in 35 U.S.C. 201, are subject to Section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) relating to property rights in inventions. The term "invention" includes any invention, discovery, improvement, or innovation. Any invention made in the performance of work under this cooperative agreement or any subcontract issued thereunder shall be presumed to have been made under the conditions of and subject to Section 305(a) of the Act and becomes the exclusive property of the United States subject, however, to the retention by the recipient or subcontractor of a royalty-free license to practice the invention pursuant to, and of the scope defined in, 14 CFR 1245.108. This license may be revoked under the conditions set forth in the Patent Licensing Regulations (37 CFR part 404). The recipient or applicable subcontractor may petition for waiver of title to the invention in accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1.

(ii) The recipient or applicable subcontractor shall furnish to NASA a written report containing full and complete technical information concerning any invention made in the performance of any work under this cooperative agreement or any applicable subcontract promptly upon the making of such invention; and if waiver of title has been granted, shall state whether or not the recipient or subcontractor intends to file or has filed patent applications thereon. Upon written request by NASA, the recipient or applicable subcontractor shall furnish additional information available to it, and shall secure the execution of such documents as may be necessary to enable the Administrator, NASA, to file and prosecute patent applications on any such invention for which NASA has retained title. Upon completion of the work under this cooperative agreement, the recipient or applicable subcontractor, shall furnish to NASA a report as to whether or not the recipient or subcontractor has filed, or intends to file, patent applications on such inventions.

(iii) All reports required by this clause, and its application, should be directed to the Patent Counsel or Intellectual Property Counsel of the NASA installation that has been assigned the responsibility of administering (technical monitoring and performance evaluation) the CSC grant/cooperative agreement of which this contract or subcontract is a part.

(End of Provision)

Rights in Data—CSC Program

October 2001

This Rights in Data Special Condition applies only to the Commercial Space Centers (CSC) Grants and Cooperative Agreements and takes precedence over any other Rights in Data provisions for NASA grants and cooperative agreements.

(a) Definitions. As used in this provision:

"CSC Data" means data first produced by a Grantee in the performance of this cooperative agreement, which data are not generally known, and which data without obligation as to its confidentiality have not been made available to others by the Grantee or are not already available to the Government.

"CSC Rights" means the respective rights of the Grantees and the Government in the CSC data as set forth in paragraph (d) of this provision.

"Computer Software" means computer programs, computer databases, and documentation thereof.

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to grant administration, such as financial, administrative, cost or pricing or management information.

"Form, Fit, and Function Data" means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements, except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited-Rights Data" means data (other than computer software) developed at private expense that embody trade secrets or are

commercial or financial and confidential or privileged.

"Restricted Computer Software" means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published, copyrighted computer software, including modifications of such computer software.

"Technical Data" means that data which are of a scientific or technical nature.

"Unlimited Rights" means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, perform publicly, display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

(1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this grant as data to be delivered without restriction;

(ii) All other data delivered under this grant unless provided otherwise for CSC data in accordance with paragraph (d) below or for limited-rights data or restricted computer software in accordance with paragraph (f) below.

(2) The Government shall have a royalty-free license to use, and to authorize support service contractors acting on its behalf to use, delivered CSC data to the extent permitted, and consistent with the disclosure prohibitions, set forth in paragraph (d) below.

(3) The Grantee shall have the rights to—

(i) Protect CSC rights in any CSC data delivered under this grant in the manner and to the extent provided in paragraph (d) below:

(ii) Withhold from delivery those data which are limited-rights data or restricted computer software to the extent provided in paragraph (f) below;

(iii) Substantiate use of, add, or correct CSC rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) below; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) below.

(4) Data first produced by NASA: As to Data first produced by NASA in carrying out NASA's responsibilities under this cooperative agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it had been obtained from the Recipient, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to ( ) years [insert a period up to 5 years] after development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such Data to any third party without NASA's written approval, until the aforementioned restricted period expires.

(5) Oral and visual information. If information which the Recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA such information must be reduced to tangible recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to NASA within 10 (ten) days after such oral or visual disclosure, or NASA shall have no duty to limit or restract, and shall not incur any liability for, any disclosure and use of such information.

(6) Disclaimer of Liability. Notwithstanding the above, NASA shall not be restricted in, nor incur any liability for, disclosure and use of:

(i) Data not identified with a suitable notice or legend as set in paragraph (d)(2) of this section; nor

(ii) Information contained in any Data for which disclosures and use are restricted under paragraphs (b)(2) or (3) of this section, if such information is or becomes generally known without breach of the above, is known to or generated by NASA independently of carrying out responsibilities under this agreement, is rightfully received from a third party without restriction, or is included in data which Participant has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(7) Marking of Data. Any Data delivered under this cooperative agreement, by NASA or the Recipient, shall be marked with a suitable notice or legend indicating the Data was generated under this cooperative agreement.

(c) Copyright.

(1) Data first produced in the performance of this agreement. Except as otherwise specifically provided in this agreement, the Grantee may establish claim to copyright subsisting in any data first produced in the performance of this grant. If claim to copyright is made, the Grantee shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including grant number) to the data when such data are delivered or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Grantee grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data. For computer software, the Grantee grants to the Government, and others acting on its behalf a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this agreement. The Grantee shall not, without prior written permission of the Grants Officer, incorporate in data delivered under this grant any data that are not first produced in the performance of this grant and that contain the copyright notice of 17 U.S.C. 401 and 402, unless the Grantee identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c) and to include such notices on all reproductions of the data.

(d) Rights in CSC Data.

(1) The rights of the Government and the Grantee in CSC data shall be as set forth below.

(2) NASA shall have the right, at any time up to the two years after completion or termination of this agreement to obtain delivery of CSC data, either by express requirement in this grant or specific request by the Grants Officer. If such requirement or request for delivery is made, the Grantee is authorized to affix the following "CSC Rights Notice" to any CSC data delivered under this agreement and the Government will thereafter treat the data, subject to the provisions of paragraph (e) below, in accordance with such Notice.

CSC Rights Notice

October 2001

These CSC data are furnished with CSC rights under Grant/Cooperative Agreement No.__. The Government agrees to use these data only for government purposes for five years effective November 1, 1996. These data shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without the express written permission of the Grantee, except that, subject to the limitations of this Notice, such data may be disclosed for use by support service contractors. After the aforesaid period the Government shall have unlimited rights in these data.

(End of Notice)

(3)(i) The Grantee shall assure that the CSC Rights Notice is placed on the data as soon as practicable after the data is generated and reduced to some tangible, recorded form as defined by the term "data" in paragraph (a), but in any event no later than the earlier of either the date of delivery of the data to NASA or the release of the data by the Grantee or its CSC organization, including any subcontractors thereof where applicable to others outside of the Grantee's, its CSC, or subcontractor's organization.

(ii) The Grantee is authorized to insert up to 7 (seven) years (from the date certain) in the Notice. Longer periods may be authorized by NASA, case-by-case, for specifically identified data items, upon approval of the Grants Officer. Such longer periods will normally require that NASA have the right to make the data available to other responsible parties, on reasonable terms and conditions, in the event the Grantee, its licensees, or assigns have not taken, or are not expected to take in a reasonable time, effective steps to achieve commercial utilization of any item, component, or process to which the data pertains. The "date certain" to be inserted in the Notice shall be no later than the date the Notice is affixed to the data.

(iii) The Grantee is authorized to make the CSC Rights Notice October 2001 applicable to previously produced data (that qualifies as CSC data), provided that such data has not been released to others or furnished to NASA with any previously prescribed Notice. Further, the Grantee is authorized to substitute the July 1990 Notice for any previously prescribed Notice for any data that has been released to others or delivered to NASA provided that: (A) The Grantee identifies the data; (B) the protection afforded such data under the previously described Notice is still in force; and (C) the recipient (other than NASA) agrees to the substitution, or in the case of NASA, the Grants Officer is requested to make the substitution for specifically identified data. In this latter, event, the effective data inserted in the Notice shall be the Grantee's best estimate of the date the data was released to others or furnished to NASA.

(4) The Government shall have unlimited rights at the end of the period set forth in the "CSC Rights Notice," as to any CSC data delivered in accordance with subparagraph (2), above, provided, however, that if the Grantee or any of its licensees or assigns have plans and intentions to pursue commercial utilization of any items, components or processes (including computer software) which any delivered CSC data discloses, the aforesaid period will be expended for such data up to an additional 5 (five) years upon request made at any time prior to the end of the period provided in the "CSC Rights Notice."

(e) Omitted or Incorrect Markings.

(1) Data delivered to the Government without any notice authorized by paragraph (d) above, and without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data have not been disclosed without restriction outside the Government, the Grantee may request, within 6 (six) months (or a longer time approved by the Grants Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Grantee's expense, and the Grants Officer may agree to do so if the Grantee—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Grants Officer may also (i) permit correction, at the Grantee's expense, of incorrect notices if the Grantee identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(f) Protection of Limited Rights Data and Restricted Computer Software. When data other than that listed in paragraph (b)(1) are specified to be delivered under this grant and such data qualify as either limited-rights data or restricted computer software, the Grantee, if the Grantee desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this grant. As a condition to this withholding, the Grantee shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(g) Subcontracting. The Grantee has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Grantee's obligations to the Government under this grant. If a subcontractor refuses to accept terms affording the Government such rights, the Grantee shall promptly bring such refusal to the attention of the Grants Officer and not proceed with subcontract award without further authorization.

(h) Relationship to Patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(i) Transfer of Rights.

(1) Notwithstanding any other provisions of this clause, the Grantee agrees that it will neither assign any rights nor grant any exclusive rights in the United States to CSC data or copyrighted data first produced in the performance of this Agreement unless the assignee or licensee agrees that any products or processes depicted by the CSC data or expressed by the copyrighted data will be manufactured or practiced substantially in the United States. However, in individual cases the requirement for such an agreement may be waived by NASA upon a showing that reasonable but unsuccessful efforts have been made to assign grants or rights on similar terms to potential assignees or licensees that would be likely to manufacture or practice substantially in the United States or that under the circumstances domestic manufacture or practice is not commercially feasible.

(2) The Grantee agrees that it will not grant to any person or entity any exclusive right to use or sell in the United States any product or process that embodies CSC data or is expressed by copyrighted data first produced in the performance of this Agreement unless the person or entity agrees that such products or processes will be manufactured or practiced substantially in the United States. However, in individual cases the requirement for such may be waived by NASA upon a showing that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture or practice substantially in the United States or that under the circumstances, domestic manufacture or practice is not commercially feasible.

§ 1260.134 [Amended]

7. Amend § 1260.134 in paragraph (a) by removing "§ 1260.33(b)" and adding "§ 1260.133(b)" in its place.

§ 1260.152 [Amended]

8. Amend § 1260.152 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

[FR Doc. 01–26623 Filed 10–25–01; 8:45 am]

BILLING CODE 7510–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 204

[Release No. 34–44965]

RIN 3235–AI34

Debt Collection—Amendments to Collection Rules and Adoption of Wage Garnishment Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (Commission) is amending its debt collection rules. The amendments update procedures and make technical amendments to the Commission's rules for debt collection by administrative offset, federal salary offset, and tax refund offset, and add new rules for administrative wage garnishment. The changes are required by the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Hall, Office of Chief Counsel, Division of Enforcement at (202) 942–4635, or at 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: We are amending the Commission's debt collection rules to conform them to the Debt Collection Improvement Act of 1996 (DCIA) and related rules adopted by federal agencies with responsibilities for government-wide debt collection. Currently, the Commission has rules for collecting its unpaid debts through three offset methods: administrative, salary and tax offset.[1] The Commission also has rules concerning contracts for collection services to recover delinquent debts. The Commission adopted all of its debt collection rules in 1993 in accordance with then existing provisions of the Debt Collection Act, the Federal Claims Collection Standards (FCCS), and other authorities governing the collection of federal debts. On September 17, 1996, the Commission entered into an agreement with the Financial Management Service (FMS), a bureau of the Department of the

[1] 17 CFR part 204.

Treasury (Treasury), by which FMS performs collection services pursuant to the DCIA on the Commission's behalf. In November 2000, the Treasury and the Department of Justice (Justice) adopted a new version of the FCCS, governing the collection of federal debts generally.[2] As a result of the promulgation of a series of rules issued since the passage of the DCIA, the Commission's existing rules for debt collection by offset need to be conformed and updated. In particular, the DCIA and revised government-wide regulations contemplate that Treasury will conduct centralized offset against amounts owed by the government to debtors. Under this centralized Treasury Offset Program (TOP), federal agencies are to refer delinquent debts to Treasury, which compares them to amounts to be paid out by the government. Treasury can then cause those amounts to be withheld in satisfaction of the debts. To participate in TOP, federal agencies are required to conform their debt collection rules to government-wide regulations regarding administrative, salary and tax refund offset.

The most significant change to the Commission's debt collection rules is the addition of administrative wage garnishment for non-federal employee wages.[3] Previously, administrative wage garnishment was available only against federal employees, through federal salary offset. To garnish the wages of non-federal employees, federal agencies had to obtain a court order. As a result of the DCIA and Treasury's implementing rules,[4] the Commission, or a federal agency collecting debts on behalf of the Commission, has the authority to issue a wage garnishment order. Such an order could direct an employer to withhold an employee's wages and pay the amount withheld to the Commission, or the appropriate agency, to satisfy the delinquent debt. The DCIA authorizes federal agencies to garnish up to 15% of the disposable pay of a debtor to satisfy delinquent nontax debts owed to the United States.

Other changes to the Commission's debt collection rules are primarily technical in nature. The changes conform the Commission's rules to make them consistent with changes to federal debt collection law and regulations promulgated by Treasury, Justice, and the Office of Personnel Management (OPM).

I. Discussion of Amendments

A. Administrative Offset

The Commission adopting amendments to Subpart A of its debt collection rules, which set forth procedures for collection by administrative offset.[5] Administrative offset is the general procedure by which debts are collected through the withholding of funds payable to the debtor by the government.[6] The Commission is amending its regulations to make clear that debts can be processed through TOP.[7] As amended, Subpart A is consistent with the statutory procedures for administrative offset[8] and the FCCS.[9]

B. Federal Salary Offset

The Commission is amending Subpart B of its debt collection rules, which sets forth procedures for collection by federal salary offset.[10] Federal salary offset is the collection of a debt owed by a federal employee by withholding up to 15% of the employee's disposable pay.[11] The procedures for salary offset are governed by 5 U.S.C. 5514, and by OPM regulations.[12] OPM amended its rules to make clear that salary offset should be conducted through TOP,[13] and the Commission is amending its regulations to reflect this preference. OPM also requires agencies to specify in their regulations that the notice and hearing provisions that are otherwise applicable to not apply when offset is effected within four pay periods to correct clerical errors or to collect amounts of $50 or less,[14] and requires that agency rules specify the maximum percentage (15% of disposable pay) that can be withheld.[15] As amended, the Commission's rules add conforming language. As amended, Subpart B is consistent with government-wide salary offset authorities.

C. Tax Refund Offset

The Commission is amending Subpart C of its rules for collection by tax refund offset,[16] which is the collection of a debt through the withholding of federal tax refunds owed to the debtor.[17] This form of offset previously was addressed by Internal Revenue Service regulations, but is now governed by Treasury regulations,[18] with which agency regulations must be consistent.[19] As amended, the Commission's rules make clear that debts will be referred to Treasury, and hence may be processed through TOP. As amended, Subpart C is consistent with the DCIA and Treasury's regulations.

D. Garnishment of Non-Federal Wages

The Commission is adopting new administrative wage garnishment regulations,[20] authorized by the DCIA.[21] Prior law required federal agencies to obtain a court order for garnishment of non-federal wages, but the DCIA permits agencies to collect debts by ordering a non-federal employer to deduct amounts up to 15% of an employee's disposable pay (or a greater amount to which the employee consents). Treasury regulations require agencies to adopt regulations for the conduct of administrative wage garnishment hearings,[22] The Commission's rules essentially track Treasury's regulations. A debtor will be provided 30 days notice of the Commission's intent to collect by garnishment, and will be provided an opportunity to inspect and copy records relating to the debt, an opportunity to enter into a written repayment agreement, and an opportunity for a hearing on the existence or amount of the debt. If the debtor does not request a hearing, a wage garnishment order will be sent to the debtor's employer within 30 days after the end of the 15-day period allowed for the debtor's response. If the debtor requests a hearing within 15 days of mailing of the Commission's initial notice, a hearing will be provided, and a decision will be rendered within 60 days after the hearing. If the Commission determines after the hearing to proceed with garnishment, a garnishment order will be sent to the debtor's employer within 30 days of its decision. The Commission's regulations are consistent with the DCIA and Treasury regulations.[23]

[2] 65 FR 70390 (Nov. 22, 2000) (adopting 31 CFR parts 900 through 904).

[3] Garnishment refers to the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a debt. 31 CFR 285.11(c).

[4] The DCIA authorized Treasury to issue rules governing administrative wage garnishment. 31 U.S.C. 3720D. Treasury's implementing rules went into effect on June 5, 1998. 63 FR 25136 (May 6, 1998) (adopting 31 CFR 285.11).

[5] 17 CFR 204.1 through 204.11.

[6] 31 U.S.C. 3701(a)(1), 3716.

[7] 17 CFR 204.3 and 204.9.

[8] 31 U.S.C. 3716.

[9] 31 CFR 901.3.

[10] 17 CFR 204.30 through 204.44.

[11] 5 U.S.C. 5514(a).

[12] 5 CFR part 550, subpart K, 63 FR 72098 (Dec. 31, 1998).

[13] 5 CFR 550.1108, 1109.

[14] 5 CFR 550.1104(c).

[15] 5 CFR 550.1104(d).

[16] 17 CFR 204.50 through 204.56.

[17] 31 U.S.C. 3720A.

[18] 31 CFR 285.2.

[19] 31 CFR 285.2(c).

[20] 17 CFR 204.60 through 204.65.

[21] 31 U.S.C. 3720D.

[22] 31 CFR 285.11(f)(1).

[23] Under Treasury's garnishment rules, an employer receiving a garnishment order must return a certification, in a form determined by Treasury, that addresses matters such as information about the debtor's employment status and disposable pay available for withholding. 5 CFR 285.11(h). In addition, employers are forbidden to discharge, refuse to employ, or take disciplinary action against a debtor due to the issuance of a withholding order. 5 CFR 285.11(m).

E. Miscellaneous

The Commission is adopting technical amendments to its regulations concerning use of collection services and reporting of debts to consumer reporting agencies. These changes are principally to update statutory and regulatory references, and to conform to the DCIA and the FCCS.

II. Section-by-Section Analysis

A. Administrative Offset

The following summarizes the contents of 17 CFR 204, Subpart A, as amended.

1. Section 204.1 Applicability and Scope

This section states the authority for the administrative offset regulations. It is amended solely to update statutory references and to substitute the Department of the Treasury for the General Accounting Office as an agency responsible for the implementation of the FCCS.

2. Section 204.2 Definitions

This section provides definitions of "administrative offset" and "person." It is amended solely to track the definition of "administrative offset" in the Debt Collection Act.

3. Section 204.3 General

This section sets forth the conditions for administrative offset. The considerations to be weighed in deciding whether to use administrative offset originally tracked requirements in the pre-DCIA version of the FCCS, which required agencies to determine the appropriateness of offset on a case-by-case basis. Because the TOP system contemplates automatic use of this form of offset, these conditions are removed. The regulation is also amended to permit referral of debts to Treasury for administrative offset through TOP.

4. Section 204.4 Demand for Payment—Notice

The FCCS requires agencies to adopt regulations regarding notice to the debtor. The pre-DCIA version of the FCCS required three progressively stronger letters to the debtor prior to administrative offset, a requirement that has been dropped in the current FCCS as too restrictive. This requirement is deleted from the Commission's regulations as well, and the content of notice letters is conformed to the current FCCS.

5. Section 204.5 Debtor's Failure to Respond

This provision alerts debtors that offset will be effected if no timely response is made. No substantive changes have been made.

6. Section 204.6 Agency Review

This section is amended to make clear that no attempts to reargue or collaterally attack the findings that resulted in a judicial or administrative order establishing a debt will be considered. With respect to debts established by a judicial or administrative order, a debtor may request a hearing limited to consideration of the issue of payment or other discharge of the debt.

7. Section 204.7 Hearing

This section describes the circumstances under which an oral hearing may be required. No substantive change has been made.

8. Section 204.8 Written Agreement for Repayment

This section states that a debtor will be provided an opportunity to enter into a written repayment agreement. No substantive change has been made.

9. Section 204.9 Administrative Offset Procedures

This section provides the basic procedures for effecting administrative offset after the debtor's due process rights have been exhausted. The rule continues to permit the Commission to engage in non-centralized offset with other federal agencies. Section 204.9(b), regarding travel advances, reflects a separate provision of law under which the Commission may offset such advances against other amounts due an employee. The rule is amended to permit the Commission to request that FMS collect the debt through TOP.

10. Section 204.10 Civil and Foreign Service Retirement Fund

Prior to the DCIA, federal retirement payments were subject to separate offset rules. Such payments are now subject to the general rules for administrative offset, and thus there is no longer a need to address these payments separately. The entire section has been deleted.

11. Section 204.11 Jeopardy Procedure

In some cases, there may be insufficient time to effect offset through TOP before a payment has been made to the debtor. In such cases, the FCCS permits a creditor agency to seek offset directly from the agency that is about to make the payment, and to omit the notice and opportunity for review otherwise required prior to offset. After offset is effected, the agency must provide notice and an opportunity for review, and must refund amounts found not to be owing to the government. Under the revised FCCS, this jeopardy provision applies only when an agency is conducting non-centralized offset under 31 CFR 901.3(c). The section is amended to indicate that it applies only to non-centralized offset.

B. Salary Offset

The following summarizes the contents of 17 CFR 204, Subpart B, as amended.

1. Section 204.30 Purpose and Scope

This purpose section describes federal salary offset generally, and indicates that it applies both to the Commission's own employees and to employees of other agencies.

2. Section 204.31 Excluded Debts or Claims

This section exempts certain types of debts from salary offset. The DCIA amended the Social Security Act to permit the Commissioner of Social Security to collect delinquent claims by salary offset; OPM has conformed its regulations by deleting the exemption for debts arising under the Social Security Act. The effect of the changes it that the Social Security Administration can now offset debts owed by Commission employees, either through TOP or by submitting a request directly to the Commission. The rule is amended to delete reference to the prior Social Security exemption.

3. Section 204.32 Definitions

This section contains definitions applicable to this subpart. No substantive changes have been made.

4. Section 204.33 Pre-Offset Notice

This section describes the rights of the debtor that must be included in the pre-offset notice. The DCIA amended the salary offset statute to permit agencies to omit notice when correcting a minor error within four pay periods of the error, or when collecting amounts of $50 or less. OPM also amended its regulations to make clear that the amount of a salary offset may be expressed in the pre-offset notice to the debtor as a percentage of pay, not to exceed 15%, and to remove the requirement that agencies include in their notices information about the commencement date and duration of deductions. The amendments to the

Commission's rules adopt the language of the OPM amendments.

5. Section 204.34 Employee Response

This section provides guidance on employee responses to pre-offset notices. Employees must be given 15 days to request a hearing, and a timely request stays offset until after the hearing. The employee must be given an opportunity to enter into a written repayment agreement. No amendments to this section have been made.

6. Section 204.35 Petition for Pre-Offset Hearing

this section provides that an employee's request for pre-offset review must state with reasonable specificity the basis for the employee's belief that the Commission's determination on the debt is in error, and must identify facts, evidence and witnesses. This section is amended solely to clarify that no attempts to reargue or collaterally attack the findings that resulted in a judicial or administrative order establishing a debt will be considered. With respect to debts established by a judicial or administrative order, a debtor may request a hearing limited to consideration of the issue of payment or other discharge of the debt.

7. Section 204.36 Granting of a Pre-offset Hearing

This section provides that the Commission will arrange for an independent hearing official (who may be an Administrative Law Judge) to conduct pre-offset hearings. No substantive amendments have been made.

8. Section 204.37 Extensions of time

This section provides the hearing official with discretion to control the time limits set in the Commission's salary offset regulations, except for the 30-day initial notice and 60-day final decision periods that are established by law. No amendments have been made.

9. Section 204.38 Pre-offset Hearing

This section permits the hearing official to determine the form and content of hearings, consistent with the FCCS. No substantive amendments have been made.

10. Section 204.39 Written Decision

This section provides that the hearing official must issue a written opinion within 60 days of he filing of a petition for a pre-offset hearing. No amendments have been made.

11. Section 204.40 Deductions

This section provides guidance on when deductions may begin, the source of deductions, and the duration of deductions. It also provides that any interest, penalties or administrative costs of collection will be imposed according to provisions of the FCCS. No substantive amendments have been made.

12. Section 204.41 Non-waiver of Rights.

The section provides that involuntary collection by offset does not constitute a waiver of an employee's rights under the offset law or any other applicable law. No amendment has been made.

13. Section 204.42 Refunds

This section provides that the Commission will promptly refund amounts if a debt is waived or found not to be owing, but that such refunds will not bear interest unless required by law. No amendments have been made.

14. Section 204.43 Coordinating Offset with Another Federal Agency

This section provides guidance on requesting offset by another federal employer. The DCIA contemplates that agencies will normally process requests for salary offset through TOP, and OPM has amended its regulations to require that preference be given to centralized offset through TOP. However, there may be circumstances in which direct coordination with another agency may be preferable, and this method of conducting offset has been retained. This section is amended to make clear that centralized offset under the OPM regulations is to be attempted whenever possible; no other substantive changes have been made.

15. Section 204.44 Interest, Penalties, and Administrative Costs

This section provides that interest, penalties and administrative costs of collection are to be assessed in accordance with the FCCS. No substantive amendments have been made.

C. Tax Refund Offset.

The following summarizes the contents of CFR part 204, Subpart C, as amended.

1. Section 204.50 Purpose

This purpose section is amended to reflect the requirement that tax refunds be sought through Treasury and not directly through the IRS. References to pre-DCIA provisions are deleted.

2. Section 204.51 Past-due Legally Enforceable Debt

This section stated the preconditions for referral to IRS under prior law. Because tax refund offset will be processed through the TOP system, these provisions are no longer needed. The section is deleted in its entirety.

3. Section 204.52 Notification of Intent to Collect

This section describes the content of the Commission's notice to the debtor. This section is amended to make clear that no attempts to reargue or collaterally attack the findings that resulted in a judicial or administrative order establishing a debt will be considered. With respect to debts established by a judicial or administrative order, a debtor may request a hearing limited to consideration of the issue of payment or other discharge of the debt.

4. Section 204.53 Reasonable Attempt to Notify

This section reflects prior IRS regulations that required agencies to rely solely upon addresses obtained from the IRS when sending pre-offset notices. Treasury has determined that agencies may in fact have better addresses in their debt files, and thus has not make this a requirement in its regulations. This section is deleted in its entirety.

5. Section 204.54 Commission Action as a Result of Consideration of Evidence Submitted in Response to the Notice of Intent

Before a tax refund offset can be effected, agencies are required to consider evidence submitted by the debtor, and to determine that the debt is in fact past due and legally enforceable. Prior IRS regulations required that debtors be provided with the opportunity to dispute a debt before the debt was referred to IRS for tax refund offset. Agencies are now to refer all delinquent debt to Treasury for processing through TOP. This regulation is amended to reflect the changes in processing of requests for tax refund offset.

6. Section 204.55 Change in Notification to Internet Revenue Service

In some cases, the amount referred for tax refund offset may be subject to change (for example, as a result of payments by the debtor or clerical errors by an agency). This section governs the Commission's requests for changes in the amount referred for tax refund offset. Treasury's regulations permit upward adjustments, so long as the debtor is provided additional notice and opportunity to be heard as to the amount of the increase. The Section has been amended to remove references to the IRS and to conform to Treasury regulations.

7. Section 204.56 Administrative Charges

The DCIA requires Treasury to specify in government-wide regulations that agencies are to pay a fee to reimburse Treasury for conducting tax refund offset. Treasury's tax refund offset fee provision allows agencies, to the extent permitted by law, to add this fee to the amount of the debt. This section is amended to conform to Treasury's regulation.

D. Administrative Wage Garnishment.

The following summarizes the contents of 17 CFR part 204, Subpart D.

1. Section 204.60 Purpose.

This purpose section states that the Commission may use administrative wage garnishment to collect debts. The provisions tracks the language of the corresponding purpose section in Treasury's regulations.

2. Section 204.61 Scope.

This scope section makes clear that administrative wage garnishment may be conducted in conjunction with other methods of collection, including other forms of offset. The section excludes collection from the salaries of federal employees governed by the federal salary offset statute.

3. Section 204.62 Definitions

Key definitions of "disposable pay," "employer," "garnishment," and "withholding order" are taken verbatim from the Treasury regulations. A definition of "debt or delinquent nontax debt" has been added.

4. Section 204.63 Notice

This section requires notice to the debtor at least 30 days prior to the initiation of garnishment, and specifies the contents of the notice and the rights to be provided the debtor. This section provides that no attempts to reargue or collaterally attack the findings that resulted in a judicial or administrative order establishing a debt will be considered. With respect to debts established by a judicial or administrative order, a debtor may request a hearing limited to consideration of the issue of payment or other discharge of the debt.

5. Section 204.64 Hearing

This section describes the form and content of the hearing that may be sought by a debtor to contest administrative wage garnishment. A hearing must be sought within 15 days of the Commission's notice to the debtor. A hearing may be presided over by the Commission or by a hearing official such as an administrative law judge. It is anticipated that should any hearings be sought, they would routinely be assigned to an administrative law judge. A decision must be rendered within 60 days after the request for a hearing. These provisions are derived from the corresponding hearing provisions in Treasury's regulations.

6. Section 204.65 Wage Garnishment Order

This section describes the procedures for issuing a wage garnishment order. If the debtor does not respond within 15 days of the Commission's initial notice, the Commission may send a garnishment order to the debtor's employer. The order must be sent within 30 days after the end of the 15-day period allowed for the debtor's response. Alternatively, if the debtor requests a hearing, the garnishment order must be sent to the debtor's employer within 30 days of the final decision to proceed with garnishment. These provisions, as well as the provisions regarding the form of the withholding order, the guidance on the amounts to be withheld, exclusions, financial hardship, ending garnishment, and refunds are derived from the corresponding provisions in Treasury's regulations.

E. Miscellaneous: Credit Bureau Reporting, Collection Services

The following summarizes the contents of 17 CFR part 204, Subpart E, as amended.

1. Section 204.75 Collection Services

This section states generally that the Commission may enter into collection contracts, provided that authority to resolve disputes about debts or to end collection rests with the Commission, and that any contractor will be subject to the Privacy Act of 1974 and other debt collection statutes. No substantive amendments have been made.

2. Section 204.76 Use of Credit Bureau or Consumer Reporting Agencies

This section provides that the Commission may refer debts to consumer reporting agencies. No substantive amendments have been made.

3. Section 204.77 Referrals to Collection Agencies.

This section provides that the Commission may employ collection agencies. The section is revised to clear that contractors must provide any data requested by the Commission in connection with a referral to Justice. The section has also been revised to delete a provision stating that the Commission would not use collection agencies to collect a debt from current or retired employees when salary or annuity offset was available. Annuity offset is no longer a distinct form of offset, and requests for salary offset are to be processed through Treasury, which is authorized to employ collection agencies to act on the Commission's behalf.

III. Related Matters

A. Administrative Procedure Act

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because these rules relate solely to agency procedure and practice.[24]

B. Regulatory Flexibility Act

A regulatory flexibility analysis under the Regulatory Flexibility Act (RFA)[25] is required only when an agency must publish a general notice of proposed rulemaking. As already noted, the APA's notice and comment procedures are not required for these amendments. Thus, the RFA does not require a regulatory flexibility analysis.[26]

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to collections of information during the conduct of administrative actions by an agency against specific individuals or entities. Commissions debt collection actions are taken only against specifically identified individuals or entities. Thus, Office of Management and Budget review is not required.

D. Cost-Benefit Analysis

The Commission's amendments to its debt collection rules merely conform those rules in accordance with the requirements of the DCIA and related federal regulations including rules adopted by the Department of the Treasury and the Department of Justice. Upon adoption of the DCIA, Congress determined that the adopted changes would maximize collection of delinquent debts while minimizing the costs of debt collections.[27]

Any costs that might be incurred are attributable to changes in the statutory provisions. Because the Commission

[24] 5 U.S.C. 553(b)(3)(A).
[25] 5 U.S.C. 603.
[26] 5 U.S.C. 601–12.
[27] Debt Collection Improvements, Pub. L. No. 104–134, § 31001(b), 110 Stat. 1321 (1996).

already has in place rules for administrative offset of debts owed, the principal costs of the rule will be in connection with administrative wage garnishment rules and will mainly be imposed on employers.[28] An employer served with a withholding order will be required to complete and return a certification form to the agency.[29]

The Commission reviewed civil and administrative judgments in enforcement actions in which a monetary sanction was ordered in calendar year 2000, to approximate the number of employers that might receive garnishment orders in a given year.[30] In 2000, the Commission obtained orders for 707 monetary sanctions, including disgorgement, penalties assessed under the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, and/or insider trading penalties. Currently, 146 individuals owing monetary sanctions have yet to pay either all or some portion of the amounts imposed upon them. Thus, if each unpaid sanction pertained to an employee of a different employer, no more than 146 employers could potentially receive garnishment orders.

In its analysis of the DCIA's administrative wage garnishment program for the entire federal government, the Department of the Treasury determined that even if an employer were served withholding orders on several employees over the course of a year, the cost imposed on the employer to comply with the orders would not have a significant impact on that entity.[31] In adopting government-wide regulations, Treasury also stated that although a substantial number of employees from small entities will be subject to the garnishment regulations,[32] its rules "will not have a significant economic impact on these entities."[33] Based on the Department of Treasury's analysis, we do not anticipate that the Commission's regulations will result in significant costs to employers. The benefit provided by administrative wage garnishment will be enhanced recovery of delinquent debts owned to the government.

[28] Administrative offset applies when collecting debt owned both by entities and individuals. Administrative wage garnishment applies only when collecting debts from individuals.

[29] 31 CFR 285.11(h).

[30] We choose calendar year 2000 as the appropriate base year because these amendments require a minimum of 180 days non-payment before the case can be transferred to the TOP program. Therefore, monetary sanctions imposed in December 2000 would only have become eligible for the program in June 2001.

[31] 63 FR 25136, 25139 (May 6, 1998).

[32] *Id.*

[33] *Id.*

List of Subjects in 17 CFR Part 204

Claims, Debt collection, Government employees, Wages.

Text of Amendments

For the reasons stated in the preamble, part 204 of title 17 of the Code of Federal Regulations is amended as follows:

PART 204—RULES RELATING TO DEBT COLLECTION

Subpart A—Administrative Offset

1. The authority citation for Subpart A is revised to read as follows:

Authority: 31 U.S.C. 3716, 31 CFR 901.3.

2. Section 204.1 is amended by revising paragraph (b) to read as follows:

§ 204.1 Applicability and scope.

* * * * *

(b) The provisions of this subpart apply to the collection of debts owed to the United States arising from transactions with the Securities and Exchange Commission (Commission). These regulations are consistent with the Debt Collection Act and the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the Department of the Treasury (31 CFR 901.3).

§ 204.2 [Amended]

3. Section 204.2 is amended by revising paragraph (a) to read as follows:

(a) *Administrative offset* as defined in 31 U.S.C. 3701(a)(1) means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

* * * * *

4. Section 204.3 is amended by:

a. Removing paragraph (a);

b. Redesignating paragraphs (b) through (f) as paragraphs (a) through (e); and

c. Revising newly redesignated paragraphs (b), (c), and (e) to read as follows:

§ 204.3 General.

* * * * *

(b) The Chairperson (or designee) may notify the Department of the Treasury of delinquent debts for purposes of administrative offset, and may request another agency which holds funds payable to a Commission debtor to offset that debt against the funds held; the Commission will provide certification that:

(1) The debt is past due and legally enforceable; and

(2) The person has been afforded the necessary due process rights.

(c) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering the debt. This limitation does not apply to debts reduced to judgment.

* * * * *

(e) The procedures for administrative offset in this subpart do not apply to the offset of Federal salaries under 5 U.S.C. 5514 or Federal tax refunds under 31 U.S.C. 3720A and 31 CFR 285.2.

5. Section 204.4 is amended by:

a. Removing paragraphs (a) and (b);

b. Redesignating paragraphs (c) and (d) as paragraphs (a) and (b); and

c. Revising newly redesignated paragraph (a) to read as follows:

§ 204.4 Demand for payment—notice.

(a) Before offset is made, a written notice will be sent to the debtor. This notice will include:

(1) The type and amount of the debt;

(2) The date when payment is due (not less than thirty days from the date of mailing or hand delivery of the notice);

(3) The agency's intention to collect the debt by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;

(4) The right of the debtor to inspect and copy the Commission's records related to the claim;

(5) The right of the debtor to request a review of the determination of indebtedness and, in the circumstances described in § 204.7, to request an oral hearing from the Commission's designee; and

(6) The right of the debtor to enter into a written agreement with the agency to repay the debt in some other way.

* * * * *

6. The introductory text of § 204.5 is revised to read as follows:

§ 204.5 Debtor's failure to respond.

If the debtor fails to respond to the notice described in § 204.4(a) by the proposed effective date specified in the notice, the Commission may take further

action under this section or under the Federal Claims Collection Standards (31 CFR 901.3). The commission may collect by administrative offset if the debtor:

* * * * *

7. Section 204.6 is amended by revising paragraphs (a) and (d) to read as follows:

§ 204.6 Agency reviews.

(a) To the extent that a debt owed has not been established by judicial or administrative order, a debtor may request a hearing concerning the existence or amount of the debt or the terms of repayment. With respect to debts established by a judicial or administrative order, a debtor may request a hearing concerning the payment or other discharge of the debt. A request to review a disputed debt must be submitted to the Commission official who provided notification within 30 calendar days of the receipt of the written notice described in § 204.4(c).

* * * * *

(d) During the review period, interest, penalties, and administrative costs will continue to accrue.

8. Section 204.7 is amended by revising the word "creditability" to read "credibility" in paragraph (a)(1)(iii).

9. Section 204.8 is amended by revising the first and last sentences of the section to read as follows:

§ 204.8 Written agreement for repayment.

If the debtor requests a repayment agreement in place of offset, the Commission has discretion to determine whether to accept a repayment agreement in place of offset. * * * Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by the Debt Collection Act, 31 U.S.C. 3711–3720E, and the Federal Claims Collection Standards, 31 CFR 900.1–904.4.

10. Section 204.9 is amended by revising paragraphs (c) and (d) to read as follows:

§ 204.9 Administrative offset procedures.

* * * * *

(c) *Requests for offset to the Department of the Treasury or other Federal agencies.* The Chairperson (or his or her designee) may notify the Department of the Treasury of delinquent debts for purposes of administrative offset, and may request that a debt owed to the Commission be administratively offset against funds due and payable to a debtor by another Federal agency. In requesting administrative offset, the Commission, as creditor, will certify in writing to the Federal agency holding funds of the debtor that:

(1) The debtor owes the past due and legally enforceable debt; and

(2) The debtor has been afforded the necessary due process rights.

(d) *Requests for offset from other Federal agencies.* Any Federal agency may request that funds due and payable to its debtor by the Commission be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Commission shall initiate the requested offset only upon:

(1) Receipt of written certification from the crecitor agency that:

(i) The debtor owes the past due and legally enforceable debt; and

(ii) The debtor has been afforded the necessary due process rights.

(2) A determination by the Commission that collection by offset against funds payable by the Commission would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such offset would not otherwise be contrary to law.

11. Section 204.10 is removed and reserved.

§ 204.10 [Removed]

12. Section 204.11 is amended by revising the reference "§ 204.4(c)" in the first sentence to read "§ 204.4(a)", and by adding a sentence to the end of the section to read as follows:

§ 204.11 Jeopardy procedure.

* * * This section applies only to administrative offset pursuant to 31 CFR 901.3(c), and does not apply when debts are referred to the Department of the Treasury for mandatory centralized administrative offset under 31 CFR 901.3(b)(1).

Subpart B—Salary Offset

13. The authority citation for Subpart B is revised to read as follows:

Authority: 5 U.S.C. 5514, 5 CFR 550.1104.

14. Section 204.31(a) is amended by removing the words "the Social Security Act (42 U.S.C. 301)".

§ 204.32 [Amended]

15. Section 204.32 is amended by revising the phrase "General Accounting Office at 4 CFR part 101" in the definition of FCCS to read "Department of the Treasury at 31 CFR parts 900–904".

16. Section 204.33 is amended by revising the introductory text and paragraph (c) and, in the second sentence of paragraph (f), by revising the reference "4 CFR 102.2(e)" to read "31 CFR 901.3(b)". The revisions read as follows:

§ 204.33 Pre-offset notice.

A program official must provide an employee with written notice at least 30 calendar days prior to offseting his/her salary. A program official need not notify an employee of: any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, it the amount to be recovered was accumulated over four pay periods or less; a routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment. When required, the written notice must include the following:

* * * * *

(c) The frequency and amount of the intended deductions (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

* * * * *

17. Section 204.35, paragraph (a) is amended by adding two sentences to the end to read as follows:

§ 204.35 Petition for pre-offset hearing.

(a) * * * To the extent that a debt has not been established by judicial or administrative order, a debtor may request a pre-offset hearing concerning the existence or amount of the debt or the terms of repayment. With respect to debts established by a judicial or administrative order, a debtor may request a pre-offset hearing concerning the payment or other discharge of the debt.

§ 204.36 [Amended]

18. Section 204.36, paragraph (b), second sentence, is amended by revising

the reference "4 CFR 102.3(c)" to read "31 CFR 901.3(e)".

§ 204.38 [Amended]

19. Section 204.38, paragraph (a), first sentence, is amended by revising the reference "4 CFR 102.3(c)" to read "31 CFR 901.3(e)".

§ 204.40 [Amended]

20. Section 204.40 is amended by:

a. Revising the reference "4 CFR part 101" in the introductory text of paragraph (b) to read "the FCCS";

b. Revising the reference "4 CFR 102.13" in paragraph (b)(2) to read "the FCCS"; and

c. Revising the reference "4 CFR 102.13" in paragraph (e) to read "31 CFR 901.9".

21. Section 204.43 is amended by revising the reference "4 CFR part 101" in paragraph (a)(6) to read "the FCCS", and by revising the introductory text of paragraph (a) to read as follows:

§ 204.43 Coordinating offset with another federal agency.

(a) *Responsibility of the Commission as the Creditor Agency.* When possible, salary offset through the centralized administrative offset procedures in 5 CFR 550.1108 shall be attempted before applying the procedures in this section. If centralized administrative offset is not possible, the Commission shall request recovery from the current paying agency. Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, 5 CFR 550.1109 the Commission must:

* * * * *

§ 204.44 [Amended]

22. Section 204.44 is amended by revising the reference "4 CFR 102.13" to read "31 CFR 901.9".

Subpart C—Tax Refund Offset

23. The authority citation for Subpart C is revised to read as follows:

Authority: 31 U.S.C. 3720A, 31 CFR 285.2(c).

24. Section 204.50 is revised to read as follows:

§ 204.50 Purpose.

This subpart establishes procedures for the Commission's referral of past-due legally enforceable debts to the Department of the Treasury's Financial Management Service (FMS) for offset against the income tax refunds of the debtor.

25. Section 204.51 is removed and reserved.

§ 204.51 [Reserved]

26. Section 204.52 is amended by:

a. Revising paragraph (a);

b. Removing "IRS" in the introductory text of paragraph (b);

c. Revising the phrase "the IRS to reduce" to read "a reduction of" in paragraph (b)(2); and

d. Adding paragraph (c) to read as follows:

§ 204.52 Notification of intent to collect.

(a) *Notification before tax refund offset.* Reduction of an income tax refund will be made only after the Commission makes a determination that an amount is owed and past-due and gives or makes a reasonable attempt to give the debtor 60 days written notice of the intent to collect by tax refund offset.

* * * * *

(C) To the extent that a debt owed has not been established by judicial or administrative order, a debtor may dispute the existence or amount of the debt or the terms of repayment. With respect to debts established by a judicial or administrative order, Commission review will be limited to issues concerning the payment or other discharge of the debt.

27. Section 24.53 is removed and reserved.

§ 204.53 [Removed and reserved]

28. Section 204.54 is amended by:

a. Revising the phrase "any notice to the IRS" "tax refund offset" in the introductory text of paragraph (a);

b. Removing paragraph (b); and

c. Redesignating paragraph (c) as paragraph (b) and revising newly redesignated paragraph (b) to read as follows:

§ 204.54 Commission action as a result of consideration of evidence submitted in response to the notice of intent.

* * * * *

(b) *Commission action on the debt.* (1) The Commission will notify the debtor of its intent to offset against the debtor's Federal income tax refund if it sustains its decision that the debt is past-due and legally enforceable. The Commission will also notify the debtor whether the amount of debt remains the same or is modified; and

(2) The Commission will not request offset against the debtor's Federal income tax refund if it reverses its decision that the debt is past due and legally enforceable.

29. Section 204.55 is revised to read as follows:

§ 204.55 Change in notification to Financial Management Service.

After the Commission sends FMS notification of an individual's liability for a debt, the Commission will promptly notify FMS of any change in the notification, if the Commission:

(a) Determines that an error has been made with respect to the information contained in the notification;

(b) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to FMS for offset; or

(c) If the debt amount is otherwise incorrect, except that the amount of a debt referred to FMS will not be increased unless the Commission has complied with the due process requirements of this subpart and the Federal Claims Collection Standards as to the amount of the increase.

30. Section 204.56 is revised to read as follows:

§ 204.56 Administrative charges.

To the extent permitted by law, all administrative charges incurred in connection with the referral of the debts for tax refund offset will be assessed on the debt and thus increase the amount of the offset.

§§ 204.57–204.59 [Reserved]

31. Subpart D is redesignated as Subpart E, and new Subpart D is added to read as follows:

Subpart D—Administrative Wage Garnishment

Sec.
204.60 Purpose.
204.61 Scope.
204.62 Definitions.
204.63 Notice.
204.64 Hearing.
204.65 Wage Garnishment Order.

Authority: 31 U.S.C. 3720D, 31 CFR 285.11(f).

§ 204.60 Purpose.

This subpart provides procedures for the Commission to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy a delinquent nontax debt owed to the United States.

§ 204.61 Scope.

(a) The receipt of payments pursuant to this subpart does not preclude the Commission from pursuing other debt collection remedies, including the offset of Federal payments to satisfy a delinquent nontax debt owed to the United States. The Commission may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(b) This subpart does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

§ 204.62 Definitions.

The following definitions apply to this subpart:

Debt or *delinquent nontax debt* means any money, funds or property that has been determined to be owed to the Commission by an individual that has not been paid by the date specified in the demand or order for payment, or applicable agreement. For purposes of this subpart, the terms "debt" and "claim" are synonymous.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this subpart, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

Garnishment means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this subpart, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

§ 204.63 Notice.

(a) At least 30 days before the initiation of garnishment proceedings, the Commission will mail, by first class mail to the debtor's last known address, a written notice informing the debtor of:

(1) The nature and amount of the debt;

(2) The Commission's intention to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(3) An explanation of the debtor's rights, including those set forth in paragraph (b) of this section, and the time frame within which the debtor may exercise these rights.

(b) The debtor will be afforded the opportunity:

(1) To inspect and copy records related to the debt;

(2) To enter into a written repayment agreement with the Commission, under terms agreeable to the Commission; and

(3) To the extent that a debt owed has not been established by judicial or administrative order, to request a hearing concerning the existence or amount of the debt or the terms of the debt's repayment schedule. With respect to debts established by a judicial or administrative order, a debtor may request a hearing concerning the payment or other discharge of the debt. The debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (b)(2) of this section.

(c) The notice required by this section may be included with the Commission's demand letter required by subpart A of this part.

(d) The Commission will keep a copy of the certificate of service indicating the date of mailing of the notice.

§ 204.64 Hearing.

(a) *Request for hearing.* The Commission will order a hearing, which at the Commission's option may be oral or written, if the debtor submits a written request for a hearing concerning, for debts not previously established by judicial or administrative order, the existence or amount of the debt or the terms of the repayment schedule (for repayment schedules established other than by written agreement under § 204.63(b)(2)), or for debts established by judicial or administrative order, the payment or other discharge of the debt.

(b) *Type of hearing or review.* (1) For purposes of this subpart, whenever the Commission is required to afford a debtor a hearing, the Commission will provide the debtor with a reasonable opportunity for an oral hearing when the Commission determined that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(2) If the Commission determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the Commission. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(3) In those cases when an oral hearing is not required by this section, the Commission will nevertheless accord the debtor a "paper hearing," that is, the Commission will decide the issues in dispute based upon a review of the written record.

(c) *Effect of timely request.* Subject to paragraph (l) of this section, if the debtor's written request is received by the Commission on or before the 15th business day following the mailing of the notice of the Commission's intent to seek garnishment, the Commission will not issue a withholding order until the debtor has been provided the requested hearing, and a decision in accordance with paragraphs (i) and (j) of this section has been rendered.

(d) *Failure to timely request a hearing.* If the debtor's written request is received by the agency after the 15th business day following the mailing of the notice of the Commission's intent to seek garnishment, the Commission shall provide a hearing to the debtor. However, the Commission will not delay issuance of a withholding order unless the Commission determines that the delay in filing the request was caused by factors over which the debtor had no control, or the Commission receives information that the Commission believes justifies a delay or cancellation of the withholding order.

(e) *Hearing official.* All hearings shall be presided over by the Commission, or if the Commission so orders, by a hearing official. When the Commission designates that the hearing official shall be an administrative law judge, the Chief Administrative Law Judge shall select, pursuant to 17 CFR 200.30–10, the administrative law judge to preside.

(f) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

(1) The date and time of a telephonic hearing;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a written hearing.

(g) *Burden of proof.* (1) The Commission will have the burden of going forward to prove the existence or amount of the debt.

(2) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the

debtor, or that collection of the debt may not be pursued due to operation of law.

(h) *Record.* The hearing official will maintain a record of any hearing provided under this section. A hearing is not required to be a formal evidentiary-type hearing, however, witnesses who testify in oral hearings will do so under oath or affirmation.

(i) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the Commission. If the Commission is unable to provide the debtor with a hearing and a decision is not rendered within sixty (60) days after the receipt of the request for such hearing:

(1) A withholding order will not be issued until the hearing is held and a decision rendered; or

(2) If a withholding order had previously been issued to the debtor's employer, the withholding order will be suspended beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(j) *Content of decision.* The written decision shall include:

(1) A summary of the facts presented;

(2) The findings, analysis and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(k) *Finality of agency action.* Unless the Commission on its own initiative orders review of a decision by a hearing official pursuant to 17 CFR 201.431(c), a decision by a hearing official shall become the final decision of the Commission for the purpose of judicial review under the Administrative Procedure Act.

(l) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a scheduled hearing will be deemed as not having timely filed a request for a hearing.

§ 204.65 Wage garnishment order.

(a) Unless the Commission receives information that the Commission believes justifies a delay or cancellation of the withholding order, the Commission will send, by first class mail, a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (*i.e.*, within 15 business days after the mailing of the notice of the Commission's intent to seek garnishment) or, if a timely request for a hearing is made by the debtor, within 30 days after a decision to issue a withholding order becomes final.

(b) The withholding order sent to the employer will be in the form prescribed by the Secretary of the Treasury, on the Commission's letterhead, and signed by the Chairperson or his or her delegatee. The order will contain the information necessary for the employer to comply with the withholding order. This information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(c) The Commission will keep a copy of the certificate of service indicating the date of mailing of the order.

(d) *Certification by employer.* Along with the withholding order, the Commission will send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the Commission within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

(e) *Amounts withheld.* (1) After receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (e)(2) of this section.

(2) Subject to the provisions of paragraphs (e)(3) and (e)(4) of this section, the amount of garnishment shall be the lesser of:

(i) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(ii) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at U.S.C. 1673(a)(2) is the amount by which the debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage *See* 29 CFR 870.10.

(3) When a debtor's pay is subject to withholding orders with priority, the following shall apply:

(i) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (e)(2) of this section and shall have priority over other withholding orders which are served later in time. However, withholding orders for family support shall have priority over withholding orders issued under this section.

(ii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(A) The amount calculated under paragraph (e)(2) of this section; or

(B) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(iii) If a debtor owes more than one debt to the Commission, the Commission may issue multiple withholding orders. The total amount garnished from the debtor's pay for such orders will not exceed the amount set forth in paragraph (e)(2) of this section.

(4) An amount greater than that set forth in paragraphs (e)(2) and (e)(3) of this section may be withheld upon the written consent of the debtor.

(5) The employer shall promptly pay to the Commission all amounts withheld in accordance with the withholding order issued pursuant to this section.

(6) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(7) Any assignment or allotment by the employee of the employee's earnings shall be void to the extent it interferes with or prohibits execution of the withholding order under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(8) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the Commission to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

(f) *Exclusions from garnishment.* The Commission will not garnish the wages of a debtor it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing the Commission of the circumstances surrounding an involuntary separation from employment.

(g) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the Commission of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(2) A debtor requesting a review under this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation.

(3) If a financial hardship is found, the Commission will downwardly adjust, by an amount and for a period of time agreeable to the Commission, the amount garnished to reflect the debtor's financial condition. The Commission will notify the employer of any adjustments to the amounts to be withheld.

(h) *Ending garnishment.* (2) Once the Commission has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the Federal Claims Collection Standards (31 CFR 901.9), the Commission will send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, the Commission will review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(i) *Actions prohibited by the employer.* The Debt Collection Act prohibits an employer from discharging, refusing to employ, or taking disciplinary action against the debtor due to the issuance of a withholding order under this section (31 U.S.C. 3720D(e)).

(j) *Refunds.* (1) If a hearing official determines that a debt is not legally due and owing to the United States, the Commission shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(k) *Right of action.* The Commission may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with this section. However, a suit will not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations. For purposes of this section, "termination of the collection action" occurs when the agency has terminated collection action in accordance with the Federal Claims Collection Standards (31 CFR 903.1–903.5) or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the Commission has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

Subpart E—Miscellaneous: Credit Bureau Reporting, Collection Services

32. The authority citation for newly redesignated Subpart E continues to read as follows:

Authority: 31 U.S.C. 3701, 3711, 3718.

§ 204.76 [Amended]

33. Section 204.76, paragraph (a), fourth sentence, is amended by revising the reference "31 U.S.C. 3711(f)" to read "31 U.S.C. 3711(e)".

34. Section 204.77 is amended by removing paragraph (c) and by revising paragraphs (a) and (b)(5) to read as follows:

§ 204.77 Referrals to collection agencies.

(a) The Commission has authority to contract for collection services to recover delinquent debts in accordance with 31 U.S.C. 3718(a) and the Federal Claims Collection Standards (31 CFR 901.5).

(b) * * *

(5) The contractor must agree to provide any data in its files requested by the Commission upon returning the account to the Commission for subsequent referral to the Department of Justice for litigation.

By the Commission.

Dated: October 22, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26960 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 3814]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act—Diversity Visas

AGENCY: Bureau of Consular Affairs, State.

ACTION: Final rule.

SUMMARY: This rule makes final (with minor modification) the Department of State's interim regulations published in the **Federal Register** on July 31, 2001 (66 FR 39435).The July 31st rule amended the Department's regulations regarding registration for the Diversity Visa (DV) Program. The regulations were amended to clarify the Department's interpretation of the statute with respect to the DV Program and to further enhance the Department's ability to combat fraudulent practices in the DV Program. The rule also amended the regulations as they pertain to the use of the "Dictionary of Occupational Titles" formerly used to determine the required work experience since the document is no longer current. Consular officers must now make determinations regarding work experience based upon the U.S. Department of Labor's O*Net OnLine. [Further information may be found on the Consular Affairs website at *http://travel.state.gov.*] This rule makes final the Department's interim regulations with slight modification to the photograph requirements.

DATES: Effective date: This rule takes effect on October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Office of Legislation and Regulations, Visa Office, by phone (202) 663–1206, or by e-mail at *chavezpr@state.gov.*

SUPPLEMENTARY INFORMATION:

What Is the Background for This Final Rule?

In an effort to eliminate fraudulent applications in the Diversity Visa (DV) Program, the Department published an interim rule [66 FR 39435], with a request for comments, which amended the regulations at 22 CFR 42.33 regarding registration for the DV Program. The interim rule amended the Department's regulations by requiring that the applicant sign the DV entry in his or her native alphabet as this more naturally fulfills the requirement for a usual and customary signature on the DV entry. The interim regulations also required that, beginning with the DV 2003 registration, the entry must include photographs of the applicant, the applicant's spouse, and all of his or her unmarried children under age 21 years (including natural children as well as legally-adopted children and stepchildren). Photographs for all dependents must be submitted regardless of their nationality. Photographs are required even though the spouse or child no longer resides with the applicant and regardless of whether or not the dependent will accompany or follow to join the applicant in the United States. The name and date of birth of the family member must be printed on the back of his or her photograph. The Department is publishing this final rule to make final the interim regulations.

What Comments Were Received in Response to the Interim Rule?

The Department's interim rule solicited comments regarding the regulatory changes. During the comment

period, the Department received only two comments. Both commenters felt that the Department should clarify further the photograph requirement for dependent children. The Department's interim regulation requires that the entry must include photographs of ALL children who are unmarried and under age of 21 years. The word "all" implies any child of the alien, regardless of nationality, and regardless of whether the child resides with the applicant and whether or not the child intends to immigrate to the United States.

In past years, the Diversity Visa Program has been plagued by a high incidence of fraudulent derivatives applying with the principal DV applicant. This causes delays in DV issuances at many posts as much time is spent by consular staff investigating alleged family relationships. For this reason, it was determined that for DV–2003, photos of all unmarried children under age 21 would be required on the DV entry. With this rule, the Department hopes to avoid a complicated range of exceptions to the photo requirement, and the regulations regarding photographs for dependents shall remain as published in the interim rule.

One of the commenters also expressed concern about the size of the photograph, indicating that it may be difficult in some countries to obtain a photograph of the required size. While the Department does not have any reason to believe that applicants will have difficulty obtaining photographs of the required size, for DV 2003, photographs ranging in size from 37 mm x 37 mm to 50 mm x 50 mm will be accepted on the DV entries. Any DV 2003 entry submitted with photos that do not conform to the sizes in this range will be disqualified at the Kentucky Consular Center. The commenter also feels that some of the specifications are redundant. The Department believes that the specifications for acceptable photographs are sufficiently detailed, and although perhaps redundant, are specific as to what meets the Department's needs, and are probably, as the commenter points out, the most common requirements for producing a photograph for any type of official documents. The Department has, therefore, determined that the photograph specifications indicated in the interim rule shall remain as published.

How Will This Final Rule Affect the Regulations in the Interim Rule?

The Department has reviewed the comments submitted during the comment period and has made some modification to the interim rule regarding the photograph size requirements.

List of Subjects in 22 CFR Part 42

Aliens, Documentation, Immigrants, Passports and visas.

In light of the foregoing the Department is amending the interim regulations at 22 CFR 42.33 as follows:

PART 42—[AMENDED]

1. The authority citation for Part 42 continues to read as follows:

Authority: 8 U.S.C. 1104.

2. Amend § 42.33 by revising paragraph (b)(3) introductory text and paragraph (b)(3)(i) to read as follows:

§ 42.33 Diversity immigrants.

* * * * *

(b) * * *

(3) *Photographs.* The alien shall also affix to the entry a photograph of himself or herself and photographs of his or her spouse and all unmarried children under the age of 21 years. The photographs shall meet the following specifications:

(i) The photograph shall range in size from 37 mm x 37 mm to 50mm x 50mm.

* * * * *

Dated: October 9, 2001.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, U.S. Department of State.

[FR Doc. 01–27013 Filed 10–25–01; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 231

RIN 0790–AG74

Procedures Governing Banks, Credit Unions and Other Financial Institutions on DoD Installations; Correction

AGENCY: Department of Defense.

ACTION: Final rule; correction.

SUMMARY: On September 7, 2001 (66 FR 46707), the Department of Defense published a final rule on Procedures Governing Banks, Credit Unions and Other Financial Institutions on DoD Installations. This rule makes administrative corrections to the rule.

DATES: This rule is effective June 1, 2001.

FOR FURTHER INFORMATION CONTACT: T. Summers, 703–602–0299.

Accordingly, 32 CFR part 231 is corrected as follows:

In rule FR Doc 01–22173 published on September 7, 2001 (66 FR 46709), make the following corrections:

1. Page 46715, §§ 231.5(g)(5) (i) through (ix), add a period at the end of each paragraph.

2. Page 46720, § 231.8. correct the heading "Overseas credit unions" to read "Procedures—overseas credit unions"

3. On page 46722, first column, § 231.8(f) is corrected to read § 231.9—Definitions.

4. Newly corrected § 231.9 (1) through (16)(i) and (ii) are redesignated as § 231.9 (a) through (p)(1) and (2) and § 231.9 (17) through (29) are redesignated as § 231.9 (q) through (cc)

Dated: October 16, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–26527 Filed 10–25–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–01–119]

RIN 2115–AE46

Special Local Regulations; Charleston Christmas Boat Parade and Fireworks Display, Charleston Harbor, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the Charleston Christmas Boat Parade and Fireworks Display in Charleston Harbor, Charleston SC. These regulations restrict the movement of non-participating vessels in the regulated areas established around the parade route and fireworks barge in Charleston Harbor. These regulations are needed to provide for the safety of life on navigable waters during the event and to reduce the impact on commercial traffic in Charleston Harbor.

DATES: This rule is effective from 5 p.m. to 8 p.m. on December 1, 2001.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of [CGD07–01–119] and are available for inspection or copying at Coast Guard Group Charleston, 196 Tradd St, Charleston SC 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS William C. Walsh, Coast Guard Group Charleston at 843 724 7600 x203.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public. There will be numerous spectator and participant vessels in close proximity to each other. Moreover, publishing an NPRM is unnecessary since this regulation will only be in effect for 3 hours.

Background and Purpose

Each year a Christmas boat parade is held in Charleston Harbor, South Carolina. We previously issued a permanent special local regulation for this event, at 33 CFR 100.721. Under that regulation the parade was permitted for a specific series of dates. Those dates only covered the years 1996 through 2000. The event remains the same this year with the exception of the addition of a fireworks display. These temporary regulations will help control vessel traffic for the boat parade and fireworks display.

Discussion of Rule

The special local regulations for this event prohibit non-participant vessels from entering the regulated areas along the parade route and near the fireworks barge in Folly Island Channel. During the Christmas Boat Parade, non-participant vessels are required to stay 500 yards away from the lead parade vessel and 100 yards away from the last parade vessel. Non-participant vessels are also required to keep 50 yards away from the outermost parade vessel as the flotilla proceeds along the parade route.

The parade route begins in the Middle Ground, North of Charleston South Channel. The parade will proceed northeasterly along the west edge of Commercial Anchorage A, entering Rebellion Reach in the vicinity of Charleston Harbor Channel Lighted Buoy 2 (Light List Number 2520), thence proceeding northwesterly up Shutes Folly and Horse Reach to approximately two-tenths of a nautical mile north of USS Yorktown at position 32°47.7′N, 079°47.6′W, thence westerly across Hog Island Reach near Charleston Harbor North Channel Lighted Buoy 11 (Light List Number 2529) at approximate position 32°47.6′N, 079°55.1′W, entering Town Creek Lower reach near Town Creek Channel Lighted Buoy 2 (Light List Number 2715) at approximate position 32°47.7′N, 079°55.5′W thence south to 32°45.7′N, 079°55.3′W (approximately one half nautical mile southeast of Battery Point), thence northwesterly up the Ashley River, and continuing to the finishing point at City Marina at approximate position 32°46.6′N, 079°57.2′W.

Vessels are also prohibited from entering the regulated area encompassing the fireworks barge in Folly Island Channel. The regulated area encompasses a 300 yard radius around a fireworks barge in approximate position 32°46.192N, 079°54.327W. All coordinates referenced use datum: NAD 1983. This rule is effective from 5 p.m. to 8 p.m. on December 1, 2001.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because this rule is only in effect for 3 hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Charleston Harbor from 5 p.m. to 8 p.m. on December 1, 2001. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because this regulation is only in effect for 3 hours.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pubic Law 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandate Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. This rule will not result in such an expenditure.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1D, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast guard amends 33 CFR Part 100 as follows:

PART 100—[SAFETY OF LIFE ON NAVIGABLE WATERS]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236, 49 CFR 1.46, and 33 CFR 100.35.

2. Add § 100.35T–07–119 to read as follows:

§ 100.35T–07–119 Charleston Christmas Boat Parade and Fireworks Display, Charleston Harbor, Charleston SC.

(a) *Regulated areas.* (1) *Charleston Christmas Boat Parade.* A regulated area is established to include the waters 500 yards ahead of the lead parade vessel, 100 yards astern of the last parade vessel, and 50 yards to either side of all parade vessels along the parade route described in paragraph (b) of this section.

(2) *Fireworks display.* A regulated area is established for all waters in Folly Island Channel, Charleston Harbor, Charleston SC encompassing a 300 yard radius around a fireworks barge in approximate position 32°46.192N, 079°54.327W. All coordinates referenced use datum: NAD 1983.

(b) *Parade route.* The parade will organize in the Middle Ground, North of Charleston South Channel. The parade will proceed northeasterly along the west edge of Commercial Anchorage A, entering Rebellion Reach in the vicinity of Charleston Harbor Channel Lighted Buoy 2 (Light List Number 2520), thence proceeding northwesterly up Shutes Folly and Horse Reach to approximately two-tenths of a nautical mile north of USS Yorktown at position 32°47.7′N, 079°47.6′W, thence westerly across Hog Island Reach near Charleston Harbor North Channel Lighted Buoy 11 (Light List Number 2529) at approximate position 32°47.6′N, 079°55.1′W, entering Town Creek Lower reach near Town Creek Channel Lighted Buoy 2 (Light List Number 2715) at approximate position 32°47.7′N, 079°55.5′W thence south to 32°45.7′N, 079°55.3′W (approximately one half nautical mile southeast of Battery Point), thence northwesterly up the Ashley River, and continuing to the finishing point at City Marina at approximate position 32°46.6′N, 079° 57.2′W.

(c) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated in writing by the Commander, Coast Guard Group Charleston, South Carolina.

(d) *Special local regulations.* Non-participating vessels are prohibited from entering the regulated areas unless authorized by the Coast Guard Patrol Commander. Spectator craft may remain in the designated spectator area to be established by the event sponsor, The Charleston Cultural Affairs Office.

(e) *Dates:* This section is effective from 5 p.m. to 8 p.m. on December 1, 2001.

Dated: October 18, 2001.

D.B. Peterman,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 01–26992 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–01–121]

RIN 2115–AE46

Special Local Regulations; Waverly Hotel Fireworks Display, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for a fireworks display for the Waverly Hotel Opening in Biscayne Bay, Miami, FL. These regulations prohibit unauthorized vessels from entering the regulated area. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 7 p.m. to 10 p.m. on November 16, 2001.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD07–01–121 and are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida, 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM1 Daniel C. Vaughn, Coast Guard Group Miami, at 305–535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the effective date of this regulation would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public because there will be numerous spectator craft in the area where fireworks will be launched. Moreover, a NPRM is unnecessary because the regulation will have a minimal impact on the public because the regulated area is outside of the shipping channel and the regulation is only in effect for 3 hours.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters because of the inherent danger associated with storing and launching fireworks near spectator craft. This fireworks display is to celebrate the opening of the Waverly Hotel in Miami, FL. These regulations prohibit unauthorized vessels from entering the regulated area around a fireworks barge in Biscayne Bay on November 16, 2001.

Discussion of Rule

This rule creates a regulated area around a fireworks barge in Biscayne Bay, Miami, Florida. All vessels are required to keep out of the regulated area, 1600 feet in diameter around the fireworks barge in Biscayne Bay, FL, at approximate position 25°46.618N, 080°08.4W unless specifically authorized by the Coast Guard Patrol Commander. All coordinates referenced use Datum NAD: 83. This rule is effective from 7 p.m. until 10 p.m. on November 16, 2001.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because this temporary rule will only be in effect for 3 hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the regulated area in Biscayne Bay, FL from 7 p.m. to 10 p.m. on November 16, 2001. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the regulation will only be in effect for 3 hours.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHUR INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandate Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[SAFETY OF LIFE ON NAVIGABLE WATERS]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236, 49 CFR 1.46, and 33 CFR 100.35.

2. Add § 100.35T–07–121 to read as follows:

§ 100.35T–07–121 Waverly Hotel Opening Fireworks Display, Biscayne Bay, Miami, FL.

(a) *Regulated area.* A regulated area is established 1600 feet in diameter around a barge in Biscayne Bay, FL, at approximate position 25°46.618N, 080°08.4W. All coordinates referenced use Datum NAD: 83.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Station Miami Beach.

(c) *Special local regulations.* Unauthorized vessels are prohibited from entering the regulated area without the permission of the Coast Guard Patrol Commander.

(d) *Dates:* This rule is effective from 7 p.m. until 10 p.m. on November 16, 2001.

Dated: October 18, 2001.

D.B. Peterman,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 01–26993 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–142]

RIN 2115–AE47

Drawbridge Operation Regulations:Dorchester Bay, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations that govern the William T. Morrisey Boulevard Bridge, at mile 0.0, across Dorchester Bay at Boston, Massachusetts. This temporary change to the drawbridge operation regulations will allow the bridge to remain in the closed position from November 1, 2001 through May 10, 2002. This action is necessary to facilitate necessary maintenance at the bridge.

DATES: This rule is effective from November 1, 2001 through May 10, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–01–142) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 11, 2001, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Dorchester Bay, Massachusetts, in the **Federal Register** (66 FR 47123). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held. Pursuant to 5 U.S.C. 553, good cause exists for making this regulation effective in less than 30 days after publication in the **Federal Register**. The Coast Guard discussed the bridge closure with the members of the only marine facility, the Dorchester Yacht Club, effected by this change in operating regulations prior to publication of the notice of proposed rulemaking and no objections were received.

The NPRM specified that we anticipated that the final rule would become effective less than 30 days following publication. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed to perform this project during the winter months when there have been few requests to open the bridge.

Background and Purpose

The William T. Morrisey Boulevard Bridge, at mile 0.0, across Dorchester Bay has a vertical clearance of 12 feet at mean high water and 22 feet at mean low water. The existing regulations at 33 CFR 117.597 require the draw to open on signal from April 16 through October 14; except that, the draw need not open for vessel traffic from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. except on Saturdays, Sundays, or holidays observed in the locality. From October 15 through April 15, the draw shall open on signal if at least twenty-four hours notice is given.

The bridge owner, the Metropolitan District Commission (MDC), asked the Coast Guard to temporarily change the drawbridge operation regulations to allow the bridge to remain in the closed position from November 1, 2001 through May 10, 2002, to facilitate rehabilitation construction at the bridge. The bridge owner and the Coast Guard contacted all known waterway users to advise them of the proposed closure. No objections or negative comments were received in response to this proposal.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the only marine facility affected by this rule has agreed to the closure period for the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the only marine facility affected by this rule has agreed to the closure period for the bridge.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this final rule.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.597 [Suspended]

2. From November 1, 2001 through May 10, 2002, § 117.597 is suspended.

3. From November 1, 2001 through May 10, 2002, § 117.T602 is temporarily added to read as follows:

§ 117.T602 Dorchester Bay.

The draw of the William T. Morrisey Boulevard Bridge, mile 0.0, at Boston, need not open for the passage of vessel traffic.

Dated: October 12, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–26994 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–140]

RIN 2115–AA97

Security Zone; Sault Locks, St. Mary's River, Sault Ste. Marie, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone around the Sault Locks in Sault Ste. Marie, Michigan. This regulation is necessary to provide additional protection for the locks due to terrorist attacks that occurred on September 11, 2001. The security zone is intended to restrict vessel traffic movement through and around the Sault Locks.

DATES: This rule is effective from 1 p.m. October 11, 2001 until 1 p.m. June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–140] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Sault Ste. Marie, 337 Water St., Sault Ste. Marie, MI 49783, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Joe Cost, Chief, Coast Guard Marine Safety Office Sault Ste. Marie, MI, (906) 635–3220.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. The Coast Guard for good cause finds that, under 5 U.S.C. 553(b)(B) and (d)(3), notice and public comment on the rule before the effective date of the rule and advance publication are impracticable and contrary to public interest. Immediate action is necessary to ensure the safety of life, property, the environment, as well as safe passage for vessels transiting this area. The conduct of notice and comment rulemaking proceedings and compliance with advance notice requirements present significant public security and safety concerns that outweigh the public interest in compliance with these provisions. Public rulemaking proceedings and advance publication could provoke consequences that would pose a risk of harm to the public, military personnel, and law

enforcement personnel charged with enforcement of the security zone. This regulation is geographically limited so that it meets the needs of national security with a minimal burden on the public.

Background and Purpose

The security zone is established to provide additional protection of the locks in response to the September 11, 2001 terrorist attacks on the World Trade Center buildings in New York City and on the Pentagon in Arlington, Virginia. The security zone is intended to restrict vessel traffic movement through and around the Sault Locks. All persons and vessels shall comply with the instructions of the Captain of the Port Sault Ste. Marie or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the security zone is prohibited unless authorized by the Captain of the Port Sault Ste. Marie or his designated on scene representative. The Captain of the Port Sault Ste. Marie may be contacted via the VTS at telephone number (906) 635–3232 or on VHF channel 12 (156.6 MHz) or VHF channel 14 (156.7 MHz).

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The security zone covers a vital portion of the St. Mary's River transited by commercial and recreational vessels and is being created to protect the Sault locks. The Coast Guard does foresee minor interruption to the passage of vessels through this area. While vessels will need authorization to transit the zone, the Coast Guard expects minimal interference with or delay in their passage.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and government jurisdictions with populations less than 50,000.

The Coast Guard certifies under section 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the St. Mary's River up-river, between, and down-river of the Sault Locks immediately until terminated by COTP Sault Ste. Marie.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic will be allowed to pass through the zone with the permission of the COTP or his designated on scene representative.

Assistance for Small Entities

Under section 213(a) of the small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. If your small business or organization is affected by this rule, and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for Federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–118 is added to read as follows:

§ 165.T09–118 Security Zone; St. Mary's River and St. Mary's Falls Canal, Sault St. Marie, MI.

(a) *Location.* The following area is a security zone: beginning at a line drawn from 46° 29.94′ N, 084° 20′ W to 46° 30.21′ N, 084° 20′ W (these coordinates are on opposite sides of the St. Mary's River and east of the Sault Locks); proceeding in a westerly direction, encompassing all waters in the river along the St. Mary's River and St. Mary's Falls Canal past the Sault Locks, to a line drawn from 46°29.86′ N, 084° 23′ W to 46° 30.27′ N, 084° 23′ W (these coordinates are on opposite sides of the St. Mary's River, west of the Sault locks). These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective dates.* This section is effective from 1 p.m. October 11, 2001 until 1 p.m. June 15, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Sault Ste. Marie, Michigan. The general regulations of § 165.33 of this part apply.

(2) Persons desiring to transit the area of the security zone must first notify the Captain of the Port Sault Ste. Marie via the Vessel Traffic Service (VTS) at telephone number (906) 635–3232 or on VHF channel 12 (156.6 MHz) or VHF channel 14 (156.7 MHz) and receive permission to transit the area. Approval will be made on a case-by-case basis.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Sault Ste. Marie or the designated on-scene patrol personnel.

Dated: October 11, 2001.

C. S. Gordon,

Captain, U.S. Coast Guard, Captain of the Port Sault Ste. Marie, MI.

[FR Doc. 01–27053 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4185; FRL–7089–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Post 1996 Rate-of-Progress Plan and One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the State Implementation Plans (SIPs) consisting of the Post 1996 rate-of-progress (ROP) plans and the one-hour ozone attainment demonstration for the Philadelphia-Wilmington-Trenton severe nonattainment area (the Philadelphia area). These control strategy plans were submitted by the Pennsylvania Department of Environmental Protection (PADEP). The measures that have been adopted by the Commonwealth which comprise the control strategies of the Post-1996 ROP plans and the one-hour ozone attainment demonstration have and will result in significant emission reductions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the Philadelphia area. The intended effect of this action is to approve these SIP revisions as meeting the requirements of the Clean Air Act (CAA or the Act). The Philadelphia area is comprised of two counties in Delaware, one county in Maryland, seven counties in New Jersey, and five counties in Pennsylvania, namely Bucks, Chester, Delaware, Montgomery, and Philadelphia counties.

DATES: This final rule is effective on November 26, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Jill Webster, (215) 814–2033 at the EPA Region III office above or by e-mail at Webster.Jill@epa.gov.

SUPPLEMENTARY INFORMATION:

This **SUPPLEMENTARY INFORMATION** section is organized to address the following questions:

A. What action is EPA taking in this final rulemaking?
B. What previous action has been proposed on these SIP Revisions?
C. What were the conditions for approval provided in the Notice of Proposed Rulemaking for the attainment demonstration?
D. What amendments to the attainment demonstration SIP did Pennsylvania submit for the Philadelphia area since December 16, 1999?
E. What did the Supplemental Notices of Proposed Rulemaking cover?
F. When did EPA make a determination regarding the adequacy of the Motor Vehicle Emissions Budgets for the Philadelphia area?
G. Upon what SIP elements did EPA need to take final action before or concurrently with full approval of the attainment demonstration could be granted?
H. What measures are in the control strategy for the Post 1996 plan and the attainment demonstration?
I. What are the approved transportation conformity budgets, and what effects does this action have on transportation planning?
J. What happens to the approved 2005 budgets when States change their budgets using the MOBILE6 Model?
K. What is the Status of Pennsylvania's New Source Review (SIP)?
L. What comments were received on the proposed approvals and how has EPA responded to them?

A. What Action Is EPA Taking in This Final Rulemaking?

EPA is fully approving as meeting the requirements of section 182(c)(2) and (d) of the Act, the Post 1996 ROP plans and the one-hour attainment demonstration SIP, demonstrating attainment by November 2005, which were submitted by Pennsylvania for the Philadelphia area. The following tables identify submittal dates and amendment dates for the Post 1996 ROP plans and the attainment demonstration:

TABLE 1.—SUMMARY OF ATTAINMENT DEMONSTRATION SUBMITTAL DATES

	Date	Content
Initial submittal	April 30, 1998	Attainment demonstration.
Amendment	August 21, 1998	Supplement to the Attainment Demonstration for Regional Scale Modeling.
Amendment	February 25, 2000	Revised Motor Vehicle Emissions Budgets to Include Benefits from the National Low Emission Vehicle (NLEV) Program and Heavy Duty Diesel Engine (HDDE) Rule.

TABLE 1.—SUMMARY OF ATTAINMENT DEMONSTRATION SUBMITTAL DATES—Continued

	Date	Content
Amendment	July 31, 1998 & February 25, 2000	Commitments to Adopt Needed Measures for Attainment.
Amendment	July 19, 2001	Revised Motor Vehicle Emission Budgets to Include the Benefits from the Tier 2/Sulfur-in-fuel Rule.
Amendment	July 19, 2001	Reasonably Available Control Measures Analysis.

TABLE 2.—SUMMARY OF POST–1996 ROP SUBMITTAL DATES

	Date	Content
Initial submittal	July 31, 1998	ROP thorough 1999.
Initial submittal	April 30, 1998	ROP thorough 2005.
Amendment	February 25, 2000	Revised Motor Vehicle Emissions Budgets to Include Benefits from the NLEV Program and HDDE Rule.

B. What Previous Action Has Been Proposed on These SIP Revisions?

In a December 16, 1999 (64 FR 70428) notice of proposed rulemaking (the December 16, 1999 NPR), we proposed approval of Pennsylvania's 2005 attainment demonstration for the Philadelphia area.

On February 22, 2000 (65 FR 8703), EPA published a notice of availability on guidance memoranda relating to the ten one-hour ozone attainment demonstrations (including the Philadelphia area) proposed for approval or conditional approval on December 16, 1999. The guidance memoranda are entitled: "Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations" dated November 3, 1999, and "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas" dated November 30, 1999.

On July 28, 2000 (65 FR 46383), EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration. In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in attainment demonstration SIP revisions. This supplemental notice is discussed in Section I.E. of this document.

On August 24, 2001 (66 FR 44568), EPA published a NPR proposing to approve Pennsylvania's Post 1996 plans for the Philadelphia area. We did not receive any comments on that NPR. In this final rulemaking action, we are approving the Post 1996 ROP plans submitted by Pennsylvania from 1996 through the 2005 attainment year.

On August 30, 2001 (66 FR 45797), EPA published a SNPR on the attainment demonstration. In that supplemental notice, we proposed to approve Pennsylvania's analysis and determination that there are no additional reasonably available control measures (RACM) for the area. We received no comments on that SNPR.

Comments received on the December 16, 1999 (64 FR 70428) and July 28, 2000 (65 FR 46383) proposed actions listed in this section relevant to the Philadelphia area attainment demonstration are discussed in Sections I. K. and II.

C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemaking for the Attainment Demonstration?

On December 16, 1999 (64 FR 70428), we proposed approval of the attainment demonstration submitted by the Commonwealth of Pennsylvania for the Philadelphia area. Our approval was contingent upon certain actions by Pennsylvania. These actions were to:

(1) Adopt and submit adequate motor vehicle emissions budgets.

(2) Submit a list of control measures that, when implemented, would be expected to provide sufficient additional emission reductions to further reduce emissions to support the attainment test and a commitment that these measures would not involve additional limits on highway construction beyond those that could be imposed under the submitted motor vehicle emissions budget.

(3) Adopt and submit a rule(s) for the regional NO_X reductions consistent with the modeling demonstration.

(4) Adopt and submit an enforceable commitment(s), or a reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and for additional emission reduction measures developed through the regional process, submit an enforceable commitment for the additional measures and a backstop commitment to adopt and submit intrastate measures for the emission reductions in the event the regional process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP & motor vehicle emissions budget by October 31, 2001 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP and motor vehicle emissions budgets 1 year after MOBILE6 issued.

(d) Perform a mid-course review by December 31, 2001.

D. What Amendments to the Attainment Demonstration SIP Did Pennsylvania Submit for the Philadelphia Area Since December 16, 1999?

Since December 16, 1999, Pennsylvania has submitted a number of amendments to the Pennsylvania SIP for Philadelphia:

(1) On February 25, 2000, the Commonwealth submitted the "State Implementation Plan Revision to the Philadelphia Ozone Nonattainment Area" dated January, 2000. This submittal contained the revised motor vehicle emissions budgets for the Post 1996 ROP plans and the attainment demonstration. The revised motor vehicle emissions budgets reflected the benefits achieved from the NLEV program and the HDDE rule.

(2) In the February 25, 2000 submittal, the Commonwealth included a commitment to revise the motor vehicle emissions budgets within one year after the official release of the MOBILE 6 model.

(3) On February 25, 2000, the Commonwealth also submitted a letter reaffirming a previous commitment to adopt additional measures needed to reach attainment by October 31, 2001 and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory in accordance with the requirements of the CAA. In its February 25, 2000 letter, the Commonwealth enclosed a copy of the Southeastern Pennsylvania's Stakeholder's report which includes a list of potential control measures that the work group identified and considered during the Stakeholder's process.

(2) On July 19, 2001 the Commonwealth submitted a revision to its 2005 attainment demonstration SIP which includes revised attainment year motor vehicle emissions budgets for the Philadelphia area. The revised motor vehicle emissions budgets reflect the benefits of the Tier 2/Sulfur rule estimated for the Philadelphia area. The Commonwealth also included in the July 19, 2001 submittal a formal SIP commitment to perform a mid course review by December 31, 2003.

(3) On July 19, 2001, the Commonwealth also submitted a supplement to its 2005 attainment demonstration SIP submittal consisting of a RACM analysis and determination.

E. What Did the Supplemental Notices of Proposed Rulemaking Cover?

(1) On July 28, 2000, EPA published a supplemental notice of proposed rulemaking (SNPR) on the 2005 attainment demonstration (65 FR 46383). In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in this attainment demonstration SIP revision:

(a) First, we proposed a clarification of what occurs if we finalize conditional or full approval of this and certain other attainment demonstration SIP revisions based on a state commitment to revise the SIP's motor vehicle emissions budgets in the future. Under the proposal, the motor vehicle emissions budgets in the approved SIP will apply for transportation conformity purposes only until the budgets are revised consistent with the commitment and we have found the new budgets adequate. Once we have found the newly revised budgets adequate, then they would apply instead of the previous conditionally or fully approved budgets. Normally, revisions to approved budgets cannot be used for conformity purposes until we approve the revised budgets into the SIP. Therefore, we proposed to clarify that when our approval of this and certain other 1-hour ozone attainment demonstrations is based on a commitment to future revisions to the budget, our approval of the budget lasts only until revisions to satisfy those conditions are submitted and we find them adequate.

(b) Second, we proposed that States may opt to commit to revise their emissions budgets 1 year after the release of the MOBILE6 model, as originally proposed on December 16, 1999; or, States may commit to a new option, i.e., to revise their budgets 2 years following the release of the MOBILE6 model, provided that conformity is not determined without adequate MOBILE6-derived SIP budgets during the second year. This second option did not affect the Philadelphia area because Pennsylvania has submitted an enforceable commitment to revise the motor vehicle emissions budgets within one year after the official release of the MOBILE6 model.

(c) In addition, we reopened the comment period to take comment on these two issues and to allow comment on *any* additional materials that were placed in the dockets for the proposed actions, close to or after the initial comment period closed on February 14, 2000 (65 FR at 46383, July 28, 2000). For many of the areas, additional information had been placed in the docket close to or since the initial comment period concluded. In general, these materials were identified as consisting of motor vehicle emissions budgets, and revised or additional commitments or reaffirmations submitted by the States (65 FR at 46387, July 28, 2000).

(2) On August 24, 2001 (66 FR 44571), EPA published a SNPR for Pennsylvania's attainment demonstration for the Philadelphia area. In that supplemental notice, we proposed to approve Pennsylvania's revision to the motor vehicle emissions budgets for the attainment year of 2005 which reflected the benefits of the Federal Tier 2/Sulfur rule. In that SNPR, we also proposed to approve the Commonwealth's formal SIP commitment to perform a mid-course review by December 31, 2003. We received no comments on that SNPR.

(3) As noted earlier, on August 24, 2001 (66 FR 44568), EPA published a NPR proposing to approve Pennsylvania's Post 1996 plans for the Philadelphia area. We did not receive any comments on that NPR. In this final rulemaking action, we are approving the Post 1996 ROP plans submitted by Pennsylvania from 1996 through the 2005 attainment year.

(4) On August 30, 2001 (66 FR 45797), EPA published a SNPR on the attainment demonstration. In that supplemental notice, we proposed to approve Pennsylvania's RACM analysis and determination for the Philadelphia area. We received no comments on that SNPR.

F. When Did EPA Make a Determination Regarding the Adequacy of the Attainment Motor Vehicle Emissions Budgets for the Philadelphia Area?

Pennsylvania submitted a revision to the attainment plan SIP for the Philadelphia area on July 19, 2001. This revision contained revised motor vehicle emissions budgets for the attainment year of 2005 that reflected the benefits of the Federal Tier 2/Sulfur rule.[1]

On August 24, 2001 (66 FR 44571), we proposed to approve and proposed to find adequate the budgets in Pennsylvania's July 19, 2001 submittal of the revised attainment plan. Our August 24, 2001 proposed rulemaking opened a public comment period to take comment on the approvability and adequacy of the budgets. No public comments were received pursuant to the August 24, 2001 proposed rulemaking. We are fully approving and making a determination of adequacy in this final rule for the budgets for the Pennsylvania portion of the Philadelphia area submitted on July 19, 2001.

Pennsylvania has an acceptable commitment to revise the attainment year motor vehicle emissions budgets using the MOBILE6 model within one year after the release of the MOBILE6 model, and EPA is approving that commitment in this final rulemaking.

G. Upon What SIP Elements Did EPA Need to Take Final Action Before Full Approval of the Attainment Demonstration Could be Granted?

In the December 16, 1999 NPR for the Pennsylvania attainment demonstration SIP, EPA noted in Tables 3 through 6 the status of many of the control measures or part D requirements of the Act for serious and severe areas. The following provides the status of those SIP elements which are relied on in the attainment demonstration but which

[1] In the December 16, 1999 NPR, we proposed to disapprove the attainment demonstration if Pennsylvania did not submit motor vehicle emissions budgets for this area that EPA could find adequate by May 31, 2000 (see 64 FR at 70433). The budgets subject to this May 31, 2000 deadline did not necessarily have to account for Federal Tier 2/Sulfur rle reductions. On February 25, 2000 Pennsylvania submitted a SIP revision that included motor vehicle emissions budgets for the 2005 attainment year that did not include the benefits of the Federal Tier 2/Sulfur rule. EPA had determined that these budgets were adequate by the May 31, 2000 deadline (June 8, 2000 at 65 FR 36438). Our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the "conformity" button).

were not fully approved as of December 16, 1999:

(1) On December 28, 1999, EPA approved Pennsylvania's NLEV SIP (64 FR 72564).

(2) On June 6, 2000, EPA approved Pennsylvania's NO_X OTC MOU Phase II rule(65 FR 35842).

(3) On August 21, 2001, EPA approved Pennsylvania's NO_X Budget Rule (66 FR 43795).

(4) On August 24, 2001, EPA approved Pennsylvania's, 15 percent VOC Reduction Plan (66 FR 44547).

(5) On October 15, 2001, EPA signed a final rule converting its limited approval of Pennsylvania's generic NO_X and VOC RACT regulations to a full approval as they apply in the Philadelphia area. This final rule has been or will be published in the **Federal Register** in the near future.

As stated previously, in this final rulemaking action, we are approving the Post 1996 ROP plans submitted by Pennsylvania from 1996 through the 2005 attainment year. These plans demonstrate ROP for milestone years 1999, 2002, and 2005.

H. What Measures Are in the Control Strategy for the Post-1996 Plans and the Attainment Demonstration?

TABLE 3.—CONTROL MEASURES IN THE 1-HOUR OZONE POST–1996 ROP AND ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA NONATTAINMENT AREA

Control measure	Type of measure	Credited in post–1996 plan for which milestone years	Credited in attainment plan
Enhanced Inspection & Maintenance.	Approved SIP	Yes—1999 through 2005	Yes
Federal Motor Vehicle Control program.	Federal	Tier 1—1999 through 2005	Tiers 1 and 2
NLEV [1]	Approved SIP opt-in	Yes—1999 through 2005	Yes
Reformulated Gasoline (Phase 1 & 2).	Federal	Phase 1—1999 Phase 2—2002 and 2005	Phase 2
Federal Non-road Gasoline Engine standards.	Federal	Yes—1999 through 2005	Yes
Federal Non-road Heavy Duty diesel engine standards.	Federal	Yes—1999 through 2005	Yes
NO_X RACT	Approved SIP	Yes—1999 through 2005	Yes
VOC RACT	Approved SIP	Yes—1999 through 2005	Yes
Stage II Vapor Recovery & Onboard Refueling Vapor Recovery (ORVR).	Approved SIP Federal	Yes—1999 through 2005	Yes
AIM Surface Coatings	Federal	Yes—1999 through 2005	Yes
Consumer & commercial products	Federal	Yes—1999 through 2005	Yes
Rule Effectiveness for Point Sources [2].	Approved SIP	Yes—1999 through 2005	Yes
Shutdowns [2]	Approved SIP	Yes—1999 through 2005	Yes
Autobody refinishing	Federal/Approved SIP	Yes—1999 through 2005	Yes
Treatment, Storage, and Disposal Facilities.	Federal	Yes—1999 through 2005	Yes
Heavy Duty Diesel Engines (On-road).	Federal	Yes—2005	Yes
Beyond RACT NO_X Requirements on Utilities.	Approved SIP	Yes—1999 through 2005	Yes

Notes:
1. To the extent NLEV not superseded by Tier 2.
2. These state initiatives and credits are approved as part the of the Post–96 ROP plan.

I. What Are the Approved Transportation Conformity Budgets, and What Effects Does This Action Have on Transportation Planning?

(1) What Are the Approved Transportation Conformity Budgets in the Post-1996 ROP Plan and the Attainment Demonstration?

EPA has determined that the budgets in the Post–1996 ROP plan and the attainment demonstration are adequate. In this action EPA is approving these budgets which are listed in Table 4. by type of control strategy SIP.[2] Table 4. also provides the amounts of the budgets in tons per day (TPD), the year associated with the budgets, and the effective date of EPA's adequacy determination for those budgets.

[2] Note that the 2005 ROP budgets do not include the Federal Tier2/sulfur rule benefits. The 2005 attainment budgets do include the Federal Tier2/sulfur rule benefits.

TABLE 4.—TRANSPORTATION CONFORMITY BUDGETS FOR THE PHILADELPHIA AREA

Control strategy SIP	Year	VOC TPD	NO_X	Date of adequacy determination
Post–1996 ROP Plan	1999	88.6	109.6	June 23, 2000 (65 FR 36438, June 8, 2000)
Post–1996 ROP Plan	2002	69.52	93.13	June 23, 2000 (65 FR 36438, June 8, 2000)
Post–1996 ROP Plan	2005	61.76	86.42	June 23, 2000 (65 FR 36438, June 8, 2000)
Attainment Demonstration	2005	60.18	77.46	November 26, 2001

For a conformity analysis for year 2005, conformity must be shown to both sets of 2005 budgets, which effectively means that conformity must be demonstrated to the lower of the 2005 budgets. For conformity analysis year for any year after 2005, the attainment demonstration budgets are the applicable budgets.

EPA has concluded that these SIP revisions meet the requirements of the CAA applicable to the type of control strategy SIP, that is, demonstrates attainment or ROP, with the applicable budgets and contains the measures necessary to support these budgets. In this final action, EPA is approving these budgets.

(2) Is a Requirement to Redetermine Conformity Within 18-months Under Section 93 104 of the Conformity Rule Triggered?

Our conformity rule establishes the frequency by which transportation plans and transportation improvement programs must be found to conform to the SIP and includes trigger events tied to both submittal and approval of a SIP (40 CFR 93.104(e)). Both initial submission and initial approval trigger a redetermination of conformity. This final rule approves motor vehicle emissions budgets contained in the attainment demonstration and the Post 1996 ROP plans. We are advising affected transportation planning agencies that this final approval of the budgets in listed in Table 3 will require a re-determination that existing transportation plans and TIPs conform within 18 months of the effective date listed in the DATE Section of this document. See 40 CFR 93.104(e).

(3) What Happens to the Prior Restrictions on the Use of the Benefits of Federal Tier 2/Sulfur Rule in Conformity Determinations

In our December 16, 1999 NPR, we allowed States to submit motor vehicle emissions budgets that did not reflect the benefits of EPA's Tier 2/Sulfur rule. In that NPR, we explained that conformity analyses in the Pennsylvania portion of the Philadelphia area could begin including Tier 2/Sulfur program benefits once EPA's Tier 2/Sulfur rule was promulgated, provided that the attainment demonstration SIP and associated motor vehicle emissions budgets include the Tier 2/Sulfur benefits. For an area that requires all or some portion of the Tier 2/Sulfur benefits to demonstrate attainment but had not yet included the benefits in the motor vehicle emissions budgets, we noted that our adequacy finding will include a condition that conformity determinations may not take credit for Tier 2/Sulfur until the SIP budgets are revised to reflect Tier 2/Sulfur benefits.

On February 25, 2000, the Commonwealth submitted 2005-year motor vehicle emissions budgets for the Pennsylvania portion of the Philadelphia area that did not include the benefits from the Tier 2/Sulfur rule. These 2005-year motor vehicle emissions budgets applied to two separate types of control strategy SIP revisions: (1) rate-of-progress and (2) attainment. On May 31, 2000 (Letter from Katz to Salvaggio), EPA notified PADEP that the motor vehicle emissions budgets submitted on February 25, 2000 were adequate (see 65 FR 36438, June 8, 2000). That adequacy finding included a condition precluding the use of the emission reduction benefits from the Tier 2/Sulfur rule in conformity determinations.

As previously explained, on July 19, 2001, the Commonwealth submitted revised motor vehicle emissions budgets for the 2005 attainment demonstration SIP for the Pennsylvania portion of the Philadelphia area that did include the benefits from the Tier 2/Sulfur rule. We are approving the revised motor vehicle emissions budgets submitted by the Commonwealth on July 19, 2001 (which now reflect the Tier 2/Sulfur rule benefits). On November 26, 2001, the effective date of this approval of the 2005-year attainment motor vehicle emissions budgets submitted by Pennsylvania on July 19, 2001, supplant those attainment motor vehicle emissions budgets submitted on February 25, 2000, and become the budgets for the Pennsylvania portion of the Philadelphia area to which all future transportation plans and transportation improvement programs (TIPs) must conform (until replaced by the revised budgets discussed in Section I. J.); and the restriction on the use of the benefits from the Federal Tier 2/Sulfur rule in a conformity determination is removed.

J. What Happens to the Approved 2005 Budgets When States Change Their Budgets Using the MOBILE6 Model?

All states whose attainment demonstration includes the effects of the Tier 2/sulfur program have committed to revise and resubmit their motor vehicle emissions budgets after EPA releases the MOBILE6 model. On February 25, 2000, Pennsylvania submitted a commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. In this action, EPA is approving this commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. If Pennsylvania fails to meet its commitment to submit revised budgets using the MOBILE6 model, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

As we proposed in our July 28, 2000 SNPR (65 FR 46383), today's final approval of the budgets contained in the 2005 attainment plan will be effective for conformity purposes only until such time as revised motor vehicle emissions budgets are submitted (pursuant to the commitment to submit revised budgets using the MOBILE6 model within one year of EPA's release of that model) and we have found those revised budgets adequate. We are only approving the attainment demonstration and its current budgets because Pennsylvania has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its current budgets because Pennsylvania has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP

consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of our approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

K. What Is the Status of Pennsylvania's New Source Review (SIP)?

The EPA approved the Commonwealth's NSR program on December 9, 1997 (62 FR 64722). As stated in the preamble of the proposed (62 FR 25060, May 2,1997) and final rulemaking notices, EPA's approval was limited in nature. EPA's sole reason for granting limited approval rather than full approval of Pennsylvania's NSR regulations was that they do not contain certain restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets. These restrictions, however, only apply in nonattainment areas without an approved attainment demonstration [see 40 CFR part 51.165(a)(ii)(C)]. As EPA is, today, taking final action to approve Pennsylvania's attainment demonstration SIP for the Philadelphia area, the Commonwealth's SIP-approved NSR program's lack of restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets, applicable only in nonattainment areas *without* an approved attainment demonstration, is a moot issue. EPA has already removed the limited nature of its approval of Pennsylvania's NSR program in all areas of the Commonwealth except for its portion of the Philadelphia area (Philadelphia, Delaware, Chester, Montgomery, and Bucks counties). Now that we have approved the attainment demonstration for the Philadelphia area, we intend to remove the limited nature of our approval of the Pennsylvania NSR program in Philadelphia, Delaware, Chester, Montgomery, and Bucks counties as well.

L. What Comments Were Received On the Proposed Approvals and How Has EPA Responded to Them?

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on December 16, 1999 (64 FR 70428) for Pennsylvania's ozone attainment demonstration. Comments were received from Robert E. Yuhnke on behalf of Environmental Defense and Natural Resources Defense Council; the Midwest Ozone Group; the Clean Air Council; The Pennsylvania Chapter of the Sierra Club; and from PECO Energy. See Section II. of this document for a summary of these comments and EPA responses relevant to our approval of the Commonwealth's 2005 attainment demonstration.

EPA also received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383) on the attainment demonstrations, in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. Comments were received from Environmental Defense, from ELM Packaging Co. and Citizens for Pennsylvania's Future (PennFuture). See Section II. of this document for a summary of these comments and EPA responses relevant to our approval of the Commonwealth's 2005 attainment demonstration for the Philadelphia area.

We did not receive comments on our August 24, 2001 (66 FR 44568) proposed approval of the Commonwealth's Post 1996 plans. Nor did we receive comments on our August 24, 2001(66 FR 44571) SNPR for Pennsylvania's 2005 attainment demonstration, wherein we proposed to approve Pennsylvania's revision to the motor vehicle emissions budgets for the attainment year of 2005 which reflected the benefits of the Federal Tier 2/Sulfur rule and the Commonwealth's formal SIP commitment to perform a mid-course review by December 31, 2003. Last, we did not receive comments on our August 30, 2001 (66 FR 45797) SNPR on the Commonwealth's 2005 attainment demonstration, wherein we proposed to approve Pennsylvania's RACM analysis and determination for the area.

II. Response to Comments

The following discussion summarizes and responds to the comments received on December 16, 1999 (64 FR 70428) and July 28, 2000 (65 FR 46383) proposed actions on the Commonwealth's 2005 attainment demonstration SIP for the one hour ozone standard. These are the only proposed actions for which we received comments.

A. Attainment Demonstration—Weight of Evidence

Comment 1: The weight of evidence approach does not demonstrate attainment or meet CAA requirements for a modeled attainment demonstration. Commenters added several criticisms of various technical aspects of the weight of evidence approach, including certain specific applications of the approach to particular attainment demonstrations. These comments are discussed in the following response.

Response 1: Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the 1-hour standard. Section 182(c)(2)(A) provides that "[t]his attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective." As described in more detail below, the EPA allows states to supplement their photochemical modeling results, with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration "be based on photochemical grid modeling," because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, "The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models)."[3] 40 CFR 51.112(a)(1). However, the regulations further provide, "Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment. * * *" Appendix W, in turn, provides that, "The Urban Airshed Model (UAM) is recommended for photochemical or

[3] The August 12, 1996 version of "Appendix W to Part 51—Guideline on Air Quality Models" was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

reactive pollutant modeling applications involving entire urban areas," but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR 51 App. W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to *not* exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[4]

In 1996, EPA issued guidance[5] to update the 1991 guidance referenced in 40 CFR 51 Appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e. analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance[6] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be "no exceedances" in the future model predictions.

The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three "design values" represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors.

A commenter criticized the 1999 guidance as flawed on grounds that it allows the averaging of the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing lower air quality concentrations to be averaged against higher concentrations thus reducing the total emission reduction needed to attain at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by

[4] Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA–454/B–95–007, June 1996.

[5] Ibid.

[6] "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web Site: *http://www.epa.gov/ttn/scram.*

accounting for growth and controls) to determine whether attainment results. These 1990 emissions would contribute to three design value periods (1988–90, 1989–91 and 1990–92).

Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions-those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that States must model all control measures being implemented. Moreover, a component of this technique—the estimation of future design value—should be considered a model—predicted estimate. Therefore, results from this technique are an extension of "photochemical grid" modeling and are consistent with Section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 NPRs will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 ppb on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to 3 exceedances in 3 years in every grid cell. If the model over predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the weight of evidence determination.

When reviewing a SIP, the EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the States and available to EPA. This information includes model results for the majority of the control measures. Although not all measures were modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. EPA's decision was further strengthened by each State's commitment to check progress towards attainment in a mid-course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a "rollback" modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR 51 App. W section 6.2.1.e. provides, "Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies." Section 14.0 of appendix W defines "rollback" as "a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately." Under this approach if 20% improvement in ozone is needed for the area to reach attainment, it is assumed a 20% reduction in VOC would be required. There was no approach for identifying NO_x reductions.

The "proportional rollback" approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone.

For example, if monitoring or modeling results indicate that ozone was reduced by 25 ppb during a particular period, and that VOC and NO_x emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_x. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a "proportional rollback" technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies.

This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: it obviates the need to expend more time and resources to perform additional modeling. In addition, the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and /or modeling which is more consistent with recommendations referenced by Appendix W and does not assume a direct proportional relationship between ozone and its precursors. Last, the requirement that areas perform a mid-course review (a check of progress toward attainment) provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51 Appendix W, without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely upon a proportional rollback technique in this rulemaking, but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an "alternative model" to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose the use the November 1999 guidance "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled" in the December 16, 1999 NPR and has responded to all comments received on that guidance elsewhere in this document.

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) Only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values. These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington, DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO_x SIP call domain, results from the EPA regional modeling for NO_x controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate nonattainment, and not when they indicate attainment. First, we disagree with the premise of this comment: EPA does not apply the WOE factors to adjust model results. EPA applies the WOE factors as additional analysis to compensate for uncertainty in the air quality modeling. Second, EPA has applied WOE determinations to all of the attainment demonstrations proposed for approval in December 1999. Although for most of them, the air quality modeling results by themselves indicated nonattainment, for two metropolitan areas—Chicago and Milwaukee, including parts of the States of Illinois, Indiana, and Wisconsin, the air quality modeling did indicate attainment on the basis of the statistical test.

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter. The 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. These values do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, these controls are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect reductions anticipated by control measures, that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether or not the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), States have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is released. EPA will work with States on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration. If analysis indicates additional measures are needed, EPA will take the appropriate action.

Comment 2: We received comments asserting that the attainment demonstration for the Philadelphia area did not model the requisite number of episodes. The comments state that only two episodes were modeled.

Response 2: EPA did note that only two episodes were modeled in our December 16, 1999 proposed rule and in the TSD prepared for the proposed rule. EPA did not consider the lack of a third episode to be a deficiency due to the severity of the two episodes modeled. In both the December 16, 1999 proposed rulemaking and the associated TSD, we noted the following:

(1) Both of the episodes in the local UAM modeling represent very severe ozone events with meteorological ozone forming potential rankings of less than 80 out of all days over the last fifty years (Cox and Chu 1996).

(2) Given the severity of these episodes, they are likely to be the controlling episodes in the Philadelphia area in the determination of emission reductions needed for attainment.

(3) These episodes also represent the meteorological regime most frequently responsible for elevated ozone concentrations in the Philadelphia area.

B. Reliance on the NO_X SIP Call and the Tier 2/Sulfur Rule

Comment: Several commenters stated that given the uncertainty surrounding the NO_X SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO_X SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_X SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier 2 tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_X SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_X SIP Call. *Michigan* v. *United States Env. Prot. Agency*, 213 F.3d 663 (D.C. Cir. 2000), cert. denied, U.S., 121 S.Ct. 1225, 149 L.Ed. 135 (2001); Appalachian Power v. EPA, 251 F.3d 1026 (D.C. Cir. 2001), *cert. denied*, ___ U.S. ___, 121 S.Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA*, 251 F.3d 1026 (D.C. Cir. 2001). In those cases, the court largely upheld the NO_X SIP Call. Although a few issues were vacated or remanded to EPA for further consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the SIP Call. Moreover, contrary to the commenter's suggestion, the SIP Call modeling data bases were not used to develop estimates of reductions from the Tier 2/Sulfur program for the severe area one-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the SIP Call modeling lead to inaccurate results for the severe-area one-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the States to achieve the full level of the SIP Call reductions by May 2003. First, the court vacated the rule as it applied to two states—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these States and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the *Appalachian Power* case remanded an issue concerning computation of the EGU growth factor, it is EPA's view that States should assume that the SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the States are moving forward to implement the SIP Call.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_X SIP call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michigan*.

C. RACM (Including Transportation Control Measures)

Comment: Several commenters have stated that there is no evidence in several states that they have adopted reasonably available control measures (RACM) or that the SIPs have provided for attainment as expeditiously as practicable. Specifically, the lack of Transportation Control Measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls. One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate a motor vehicle emission budget (MVEB) that is derived from a SIP that is inadequate for the purpose for which it is submitted. The commenter alleges that none of the MVEBs submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM; nor are they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the State must provide a justification for why they were determined to not be RACM.

Response: EPA reviewed the initial SIP submittals for the Philadelphia area and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued policy guidance memorandum to have these States address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: "Additional Submission on RACM from States with Severe 1-hour Ozone Nonattainment Area SIPs").

On July 19, 2001 the Commonwealth of Pennsylvania formally submitted a supplement to its 2005 attainment demonstration SIP consisting of an analysis and determination of RACM. On August 30, 2001 (66 FR 45797), EPA proposed to approve this supplement to the attainment demonstration SIP as meeting the RACM requirements. EPA did not receive any comments on its August 30, 2001 proposal. Please see the discussion in I.E. of this document.

Section 172(c)(1) of the Act requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM.

Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. The EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, "Guidance on

the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

The analysis submitted by Pennsylvania on July 19, 2001, as a supplement to its attainment demonstration SIP for the Philadelphia area, addresses the RACM requirement. Pennsylvania convened a stakeholders group (the Southeastern Pennsylvania Ozone Stakeholders Group) to examine a wide variety of potential stationary and mobile source controls. The stationary/area source controls that were considered included the adoption of South Coast Air Quality Management District/California Air Resources Board's (SCAQMD/CARB) limits for certain VOC source categories that are more stringent than the already adopted control technique guideline (CTG) limits, e.g., fabric/paper, magnet wire, vinyl, miscellaneous metal parts, coil and metal furniture coating; limits on area source categories not covered by a CTG, e.g., adhesives, motor vehicle refinishing, surface/cleaning degreasing, underground storage tank vents; rule effectiveness improvements; wood furniture coating (Pennsylvania has a SIP-approved rule consistent with RACT limits recommended under the CTG; under consideration for the RACM analysis was expanding the applicability of those limits to sources smaller than those covered by the CTG); "beyond RACT" controls on major stationary sources of NO_X; and other potential measures.

The mobile source control measures considered included the national low emission vehicle program, accelerated replacement of older buses with cleaner buses, compressed natural gas (CNG) fueled buses, and emissions-based vehicle registration fees. Mobile source controls also included control measures aimed at reducing vehicle trips, travel or congestion via land use planning, traffic flow improvements (signalization, ramp metering, speed limit restriction enforcement), improved mass transit, expanded parking at rail stations, telecommuting, bicycle lanes or access improvements at rail stations, parking taxes/surcharge, and increased gasoline taxes or miles travel based fees.

Pennsylvania considered an extensive list of potential control measures and chose measures for implementation which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. From the list of measures considered, the rules and measures adopted and submitted by Pennsylvania, as analyzed and examined by the stakeholders group, are as follows:

(1) Pennsylvania has adopted, and EPA has SIP-approved, the Commonwealth's rule for vehicle refinishing. The rule includes VOC content limits for motor vehicle refinishing coatings, application standards and storage and housekeeping work practices. This rule goes beyond the Federal rule in content limits and application and work practices standards. Compliance with this rule was required in 2000.

(2) Pennsylvania has adopted, and EPA has SIP-approved, the Commonwealth's rule requiring the sale of vehicles under the national low-emission vehicle program.

(3) Pennsylvania has adopted, and EPA has SIP-approved, the Commonwealth's rule to implement Phase II NO_X controls under the Ozone Transport Commission's (OTC) Memorandum of Understanding (MOU). This rule established a fixed cap on ozone-season NO_X emissions from major point sources of NO_X. The rule grants each source a fixed number of NO_X allowances, applies state-wide, and requires compliance during the ozone season. The implementation of this rule commenced May 1, 1999 and reduces NO_X emissions both inside and outside the Philadelphia area.

(4) Pennsylvania has adopted, and EPA has SIP-approved, the Commonwealth's rule to implement the NO_X SIP call. The Pennsylvania rule requires compliance commencing with the start of the 2003 ozone season. (This measure was identified as Phase III control under the OTC MOU on NO_X control in the RACM submittal because the evaluation occurred in 1996, well before the SIP call proposal.)

(5) Pennsylvania has also adopted rule effectiveness improvements for the implementation of regulations through the attainment year of 2005 for its portion of the Philadelphia area as part of its post 1996 Rate of Progress Plans which EPA is approving in this final rulemaking.

Pennsylvania considered a number of measures that have the potential to achieve benefits but concluded that some were not cost effective, that others have the potential for substantial widespread and long-term adverse impacts and that one measure, a mandatory ban on residential lawn care activities on high ozone days, was infeasible due to the impracticability of effective enforcement. These are explained in further detail in the docket for this rulemaking. For the reasons explained in our August 30, 2001 SNPR, EPA concluded that no additional measures could advance the attainment date for the Philadelphia area prior to full implementation of all controls scheduled for implementation by 2005.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the Philadelphia area, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that States consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. See, e.g., *http://www.epa.gov/otaq/transp.htm*. In order to demonstrate that they will attain the 1-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures—including the kind that Pennsylvania itself evaluated in its RACM analysis—that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term—even if such measures do not advance the attainment date—since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the CAA's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date, EPA concludes that the attainment date being approved is expeditiously as practicable.

The motor vehicle emissions budgets are adequate. The SIP includes all necessary RACM and provides for expeditious attainment as explained herein.

D. Approval of Attainment Demonstrations That Rely on State Commitments or State Rules For Emission Limitations to Lower Emissions in the Future not yet Adopted by a State and/or Approved by EPA

Comment: Several commenters disagreed with EPA's proposal to approve states' attainment and rate of progress demonstrations because (a) not all of the emissions reductions assumed in the demonstrations have actually taken place, (b) are reflected in rules yet to be adopted and approved by a state and approved by EPA as part of the SIP, (c) are credited illegally as part of a demonstration because they are not approved by EPA as part of the SIP, or (d) the commenter maintains that EPA does not have authority to accept enforceable state commitments to adopt measures in the future in lieu of current adopted measures to fill a near-term shortfall of reductions.

Response: EPA disagrees with the comments, and believes—consistent with past practice—that the CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[7] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.

It is also noted that while the Commonwealth does rely on commitments to adopt additional measures for the purpose of demonstrating attainment, it does not rely on commitments to demonstrate ROP. See 66 FR 44568, August 24, 2001. The Commonwealth's Post 1996 plans demonstrate ROP with VOC and NO_x emission reductions achieved within the nonattainment area by the implementation of fully promulgated Federal and fully adopted, SIP-approved state measures.

As an initial matter, EPA believes that present circumstances for the New York City, Philadelphia, Baltimore and Houston nonattainment areas warrant the consideration of enforceable commitments. The Northeast states that make up the New York, Baltimore, and Philadelphia nonattainment areas submitted SIPs that they reasonably believed demonstrated attainment with fully adopted measures. After EPA's initial review of the plans, EPA recommended to these areas that additional controls would be necessary to ensure attainment. Because these areas had already submitted plans with many fully adopted rules and the adoption of additional rules would take some time, EPA believed it was appropriate to allow these areas to supplement their plans with enforceable commitments to adopt and submit control measures to achieve the additional necessary reductions. For Pennsylvania's attainment demonstration for the Philadelphia area, EPA has determined that the submission of enforceable commitments in place of adopted control measures for these limited sets of reductions will not interfere with each area's ability to meet its 2005 attainment obligations.

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. See, e.g., 62 FR 1150, 1187, Jan. 8, 1997 (ozone attainment demonstration for the South Coast Air Basin; 65 FR 18903, Apr. 10, 2000 (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326, Aug. 3, 1998 (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (state implementation plan for New Jersey). Nothing in the Act speaks directly to the approvability of enforceable commitments.[8] However, EPA believes that its interpretation is consistent with provisions of the CAA. For example, section 110(a)(2)(A) provides that each SIP "shall include enforceable emission limitations and other control measures, means or techniques * * * *as well as schedules and timetables for compliance*, as may be necessary or appropriate to meet the applicable requirement of the Act." (Emphasis added). Section 172(c)(6) of the Act requires, as a rule generally applicable to nonattainment SIPs, that the SIP "include enforceable emission limitations and such other control measures, means or techniques * * * *as may be necessary or appropriate* to provide for attainment * * * by the applicable attainment date * * * " (Emphasis added). The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to attain. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments EPA is approving today—as long as the entire package of measures and rules provides for attainment.

As provided, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the Philadelphia area—EPA would consider three factors in determining whether to approve the submitted commitments. First, EPA believes that the commitments must be limited in scope. In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow States to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994). While EPA does not believe that case is directly applicable here, EPA agrees with the Court that other provisions in the Act contemplate that a SIP submission will consist of more than a mere commitment. *See NRDC*, 22 F.3d at 1134.

In the present circumstances, the commitments address only a small portion of the plan. For the Philadelphia area, the commitment addresses only 10.6% of the VOC and 0.7% of the NO_x emissions reductions necessary to attain the standard. A summary of the adopted control measures and other components credited in Pennsylvania's attainment demonstration submission are discussed in Sections G. and H. of this document. These adopted and implemented control measures are the majority of the

[7] These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. *See, e.g., American Lung Ass'n of N.J. v. Kean*, 670 F. Supp. 1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC v. N.Y. State Dept. of Envs. Cons.*, 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't v. Deukmejian*, 731 F. Supp. 1448, *recon. granted in part*, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air v. South Coast Air Quality Mgt. Dist.*, No. CV 97–6916 HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under section 179(a) of the Act, which starts an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

[8] Section 110(k)(4) provides for "conditional approval" of commitments that need not be enforceable. Under that section, a State may commit to "adopt specific enforceable measures" within one-year of the conditional approval. Rather than enforcing such commitments against the State, the Act provides that the conditional approval will convert to a disapproval if "the State fails to comply with such commitment."

emissions reductions needed to demonstrate attainment.

As to the second factor, whether the State is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This is supported by the recent recommendation of the Ozone Transport Commission (OTC) regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the States will be able to find sources of reductions to meet the shortfall. The States that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC has met and on March 29, 2001 recommended a set of control measures. Currently, the States are working through their adoption processes with respect to those, and in some cases other, control measures.

The Commonwealth is well into the adoption process for these measures. Although EPA has evidence that the Commonwealth may not make the submission on or before the date to which it has committed, EPA believes that it is making sufficient progress to support approval of the commitment because the Commonwealth will adopt and implement the measures within a time period fully consistent with the Philadelphia area attaining the standard by its approved attainment date.

The third factor, EPA has considered in determining to approve limited commitments for the Philadelphia attainment demonstration is whether the commitment is for a reasonable and appropriate period. EPA recognizes that both the Act and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors—such as the need to consider innovative control strategies—support the consideration of an enforceable commitment in place of adopted control measures, the commitment should provide for the adoption of the necessary control measures on an expeditious, yet practicable, schedule.

As provided above, for New York, Baltimore and Philadelphia, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months to complete the OTC and state-adoption processes—a fairly ambitious schedule—i.e., until October 31, 2001. As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA "SIP Call" provision of the CAA—section 110(k)(5)—which provides States with up to 18 months to submit a SIP after EPA requests a SIP revision. While EPA may have ended its inquiry there, and provided for the States to submit the measures within 18 months of it's proposed approval of the attainment demonstrations, EPA further considered that these areas were all located with the Northeast Ozone Transport Region (OTR) and determined that it was appropriate to provide these areas with additional time to work through the OTR process to determine if regional controls would be appropriate for addressing the shortfall. See e.g., 64 FR 70428. EPA believed that allowing these States until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007. EPA still believes that this a reasonable schedule for the states to submit adopted control measures that will achieve the additional necessary reductions.

The enforceable commitments submitted by Pennsylvania for the Philadelphia nonattainment area, in conjunction with the other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment and the commitments will not interfere with the area's ability to make reasonable progress under section 182(c)(2)(B) and (d). EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because the Commonwealth has obligated itself to submit the rules by specified short-term dates, and that obligation is enforceable by EPA and the public. Moreover, as discussed in the December 16, 1999 proposal, its Technical Support Document (TSD), and Sections G. and H. of this document, the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

EPA believes that the Pennsylvania SIP meets the NRDC consent decree definition of a "full attainment demonstration." The consent decree defines a "full attainment demonstration" as a demonstration according to CAA section 182(c)(2). As a whole, the attainment demonstration—consisting of photochemical grid modeling, adopted control measures, an enforceable commitment with respect to a limited portion of the reductions necessary to attain, and other analyses and documentation—is approvable since it "provides for attainment of the ozone [NAAQS] by the applicable attainment date." See section 182(c)(2)(A).

E. Adequacy of Motor Vehicle Emissions Budgets

Comment: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes.

Response: EPA's adequacy process for most of these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy of the ROP budgets that we are approving in this action, when we issued our adequacy findings, and therefore we are not listing the individual comments or responding to them here.

On August 24, 2001 (66 FR 44571), we proposed to approve and to determine adequate the revised 2005 attainment budgets, shown in Table 4, which were submitted by the Commonwealth on July 19, 2001. We received no comments on the August 24, 2001 proposal. In this final rule we are finding the revised budgets of the 2005 attainment demonstration SIP submitted by the Commonwealth adequate, and are approving them.

All of our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the "conformity" button). At the web site, EPA regional contacts are identified.

Comment 2: We received comments asserting that Pennsylvania has not provided a clear indication of how the conformity requirements of the Clean Air Act are being met. Conformity is an important tool to ensure that transportation programs or policies are fully developed with Clean Air Act obligations in mind.

Response 2: The attainment demonstration SIP is not required to describe how conformity requirements are being met. Demonstrations of conformity are a separate process and mandate upon certain recipients of Federal funds that are independently enforceable under the CAA and EPA regulations. See 42 U.S.C. 7506. The SIP does identify motor vehicle emissions budgets that will be used for the purposes of determining conformity in the future. EPA has found all the budgets adequate for conformity purposes as discussed in Sections I.F. and I.I. and in this action is approving the attainment demonstration and ROP plans each of which contain motor vehicle emissions budgets.

Comment 3: We received comments asserting that Pennsylvania's motor vehicle emissions budgets do not provide sufficient emission reductions to demonstrate attainment.

Response 3: In our December 16, 1999 NPR, we proposed to approve Pennsylvania's attainment demonstration for the Philadelphia area. For the reasons outlined in our December 16, 1999 NPR and in responses to comments regarding the weight of evidence, EPA concluded that Pennsylvania had adequate modeling demonstrating attainment for the Philadelphia area provided that Pennsylvania commit to adopting additional measures to strengthen the weight of evidence. Pennsylvania has adopted such an enforceable commitment and EPA is approving this commitment. In addition, approval under the December 16, 1999 NPR was contingent upon approval into the SIP of rules upon which the modeling demonstration and upon adoption of adequate motor vehicle emissions budgets that reflected the benefits from the Federal Tier 2/Sulfur rule. EPA has approved into the SIP the needed rules and is determining in this action that Pennsylvania has adopted and submitted adequate budgets incorporating the benefits from the Federal Tier 2/Sulfur rule. The adequacy criteria include a determination that the motor vehicle emissions budgets, when considered together with all other emissions sources, is consistent with applicable requirements for attainment. See 40 CFR 93.118(e)(4)(iv). EPA is approving Pennsylvania's attainment demonstration because it is supported by an adequate modeling demonstration and because the measures upon which the modeling demonstration is based are creditable and because the motor vehicle emissions budgets are consistent with the measures in the SIP and the attainment demonstration.

F. Attainment Demonstration and Rate of Progress Motor Vehicle Emissions Inventories

Comment: Several commenters stated that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix. Commenters stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. Also, a commenter stated that EPA and states have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. For these reasons, commenters recommend disapproving the SIPs.

Response: All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update. The Commonwealth modeled vehicle age distributions from 1993. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Nevertheless, we do expect that revisions to these SIPs that are submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6.

G. VOC Emission Reductions

Comment: For States that need additional VOC reductions, one commenter recommends a process to achieve these VOC emission reductions, which involves the use of HFC–152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. The commenter states that HFC–152a could be used instead of hydrocarbons, a known pollutant, as a blowing agent. Use of HFC–152a, which is classified as VOC exempt, would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC–152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC–152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs such a pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively. It is each State's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, States may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology which States may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected State. Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under CAA § 612, EPA has identified acceptable foam blowing agents man of which are not VOCs (http://www.epa.gov/ozone/title6/snap/).

H. Credit for Measures not Fully Implemented

Comment: States should not be given credit for measures that are not fully implemented. For example, the States are being given full credit for Federal coating, refinishing and consumer product rules that have been delayed or weakened.

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum [9] that provided that States could claim a 20% reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, States relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR Part 59 Subpart D. In the preamble to EPA's final AIM coatings regulation, EPA

[9] Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules," March 22, 1995, from John S. Seitz, Director, Office of air Quality Planning and Standards to Air Division Directors, Regions I–X.

estimated that the regulation will result in 20% reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, States have assumed a 20% reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to "use up existing label stock" and "adjust inventories" to conform to the rule. 63 FR 48848 (September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway.

Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the States to take credit for a 20% emission reduction in their SIPs.

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy [10], many States claimed a 37% reduction from this source category based on a proposed rule. However, EPA's final rule, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33% overall nationwide. The 37% emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40%. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36% for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1% difference between the 37% estimate of reductions assumed by States, following EPA guidance based on the proposal, and the 36% reduction actually achieved by the final rule for previously unregulated areas. EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled "Emissions Calculations for the Automobile Refinish Coatings Final Rule" from Mark Morris to Docket No. A–95–18. The Commonwealth revised the autobody rule in 1999, and EPA approved the revisions on August 14, 2000 (65 FR 49501). The revised rule will achieve the 37% assumed reduction from the measure. EPA found the PADEP achieves a 36% reduction for milestone 1999 and 37% for years 2002 and 2005.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance [11], States claimed a 20% reduction from this source category based on EPA's proposed rule. The final rule, "National Volatile Organic Compound Emission Standards for Consumer Products," (63 FR 48819), published on September 11, 1998, has resulted in a 20% reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the consumer products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to State regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the States to take credit for a 20% emission reduction for the consumer products rule in their SIPs.

I. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit.

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the Clean Air Act. Once approved by the EPA, there is no need for states to readopt and resubmit these programs with each and every SIP revision generally required by other sections of the Act. Pennsylvania has previously received approval of its section 110(a)(2) SIPs. In a final rulemaking action published on February 26, 1985, EPA approved Pennsylvania's financial and manpower resource commitments for Southeast Pennsylvania (50 FR 7772, 7775), after having proposed approval of these commitments on February 3, 1983 (48 FR 5096, 5099). In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by the EPA. To the extent that the ozone attainment demonstration depends on specific state emission control regulations, these individual regulations have undergone review by the EPA in past approval actions.

J. MOBILE6 and Motor Vehicle Emissions Budgets (MVEBS)

Comment 1: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE models are released.

Response 1: The attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor vehicle emissions budgets after MOBILE6 is released.

Comment 2: The revised budgets calculated using MOBILE6 will likely be submitted after the MOBILE5 budgets have already been approved. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response 2: This is the reason that EPA proposed in the July 28, 2000, SNPR (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate.

[10] "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," November 29, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

[11] "Regulatory Schedule for Consumer and Commercial Products under section 183(e) of the Clean Air Act," June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

Comment 3: If a State submits additional control measures that affect the motor vehicle emissions budget, but does not submit a revised motor vehicle emissions budget, EPA should not approve the attainment demonstration.

Response 3: EPA agrees. The motor vehicle emissions budgets in the Philadelphia attainment demonstration reflect the motor vehicle control measures in the attainment demonstration. In addition, Pennsylvania has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions.

Comment 4: EPA should make it clear that the motor vehicle emissions budgets to be used for conformity purposes will be determined from the total motor vehicle emissions reductions required in the SIP, even if the SIP does not explicitly quantify a revised motor vehicle emissions budget.

Response 4: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The Philadelphia attainment demonstration contains explicitly quantified motor vehicle emissions budgets.

Comment 5: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179.

Response 5: If a state fails to meet its commitment, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Clean Air Act.

Comment 6: If the budgets recalculated using MOBILE6 are larger than the MOBILE5 budgets, then attainment should be demonstrated again.

Response 6: As EPA proposed in its December 16, 1999 notices, we will work with States on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

Comment 7: If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should not be available for reallocation to other sources unless air quality data show that the area is attaining, and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (while MOBILE6 is being used for conformity demonstrations) unless the above conditions are met.

Response 7: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. In addition, Pennsylvania will be submitting new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

K. MOBILE6 Grace Period

Comment 1: We received a comment on whether the grace period before MOBILE6 is required in conformity determinations will be consistent with the schedules for revising SIP motor vehicle emissions budgets within 1 or 2 years of MOBILE6's release.

Response 1: This comment is not germane to this rulemaking, since the MOBILE6 grace period for conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum 2-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is released.

Comment 2: One commenter asked EPA to clarify in the final rule whether MOBILE6 will be required for conformity determinations once new MOBILE6 budgets are submitted and found adequate.

Response 2: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when the final MOBILE6 model is released. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

L. Two-Year Option To Revise the MVEBs

Comment: One commenter did not prefer the additional option for a second year before the state has to revise the conformity budgets with MOBILE6, since new conformity determinations and new transportation projects could be delayed in the second year.

Response: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the 1-year option, if desired, or submit a new commitment consistent with the alternative 2-year option. EPA expects that state and local agencies have consulted on which option is appropriate and have considered the impact on future conformity determinations. Pennsylvania has committed to revise its budgets within one-year of MOBILE6's release.

M. Unapproved Measures

Comment 1: We received comments that objected to crediting the SIP with reductions from measures not approved into the SIP. The comments specifically mentioned conditionally approved RACT rules and asserted that credit should not be given for this program until EPA completes review and approval of all case-by-case RACT. The comments also specifically mentioned Phase II NO_X controls under the OTC MOU. We also received comments, which stated that NO_X RACT should be extended to 25 ton-per-year sources.

Response 1: On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in the conditional limited approval of its generic NO_X and VOC RACT regulations. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. On October 15, 2001, the Regional Administrator of Region III signed a final rule converting our limited approval of the Pennsylvania generic VOC and NO_X RACT regulation to a full approval as it applies in the Philadelphia area. This final rule has been recently or will be shortly published in the **Federal Register**. On June 6, 2000, EPA approved Pennsylvania's rule that implements the Phase II controls under the OTC MOU (65 FR 35840). Finally, the applicability threshold for RACT in Pennsylvania's SIP-approved generic NO_X and VOC RACT regulations for the Philadelphia area is 25 ton per year as required in a severe nonattainment area thus NO_X RACT extends to sources that emit 25 tons-per-year.

Comment 2: We received comments asserting that because Pennsylvania had not adopted Phase II NO_X reductions as agreed to in the OTC MOU, has abandoned the NO_X SIP call strategy, and was behind in submitting its RACT submittals the SIP should not be credited with these measures.

Response 2: As discussed in the response to the previous comment, EPA has approved Pennsylvania's NO_X RACT and OTC MOU rules. As discussed in Section I.I. of this document, Pennsylvania submitted a revision to its SIP to address the requirements of the NO_X SIP Call. EPA fully approved this SIP (66 FR 43795, August 21, 2001).

N. Attainment and Post-1999 Rate of Progress Demonstrations

Comment 1: One commenter claims that the plans fail to demonstrate emission reductions of 3 percent per year over each 3-year period between November 1999 and November 2002; and November 2002 and November 2005; and the 2-year period between November 2005 and November 2007, as required by 42 U.S.C. section 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have been met. The commenter states that EPA has absolutely no authority to waive the statutory mandate for 3 percent annual reductions and that the statute does not allow EPA to use the NO_X SIP call or 126 orders as an excuse for waiving ROP deadlines. The commenter asserts that the statutory ROP requirement is for emission reductions—not ambient reductions. The commenter asserts that emission reductions in upwind states do not waive the statutory requirement for 3 percent annual emission reductions within the downwind nonattainment area.

Response 1: Under no condition is EPA waiving the statutory requirement for 3 percent annual emission reductions. For many areas, EPA did not propose approval of the post-99 ROP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. EPA proposed to approve the Commonwealth Post 1996 ROP plans, which include ROP demonstrations for milestone years 1999, 2002, and 2005, on August 24, 2001 (66 FR 44568). We received no comments on that proposal. In this final rulemaking, EPA is approving the Commonwealth's Post 1996 ROP plans. Pennsylvania's Post 1996 plans demonstrate ROP by relying upon VOC and NO_X emissions reductions achieved within the nonattainment area from fully promulgated Federal and fully adopted SIP-approved state measures.

Comment 2: We received comment that the "limited approval" status of the Commonwealth's Post 1996 ROP plan is not authorized under the CAA.

Response 2: The comment is now moot, because EPA withdrew its previous action proposing "limited approval" of the Commonwealth's Post 1996 plan in the NPR it published on August 24, 2001 (66 FR 44568). EPA re-proposed full approval of the Post-1996 plan on August 24, 2001, and did not receive any comments on this proposal. In this final rulemaking, EPA is fully approving Pennsylvania's Post 1996 plan which relies only upon VOC and NO_X emissions reductions achieved within the nonattainment area from fully promulgated Federal and fully adopted SIP-approved state measures.

O. Comments on Specific Area and Point Source Measures

Comment 1: We received comments asserting that Pennsylvania has not adopted the OTC NO_X MOU's Phase II/III reductions and the NO_X SIP Call requirements.

Response 1: EPA has fully approved the Pennsylvania's NO_X Allowance Requirements as a SIP revision (65 FR 35840, June 6, 2000). These requirements implement Phase II of the OTC's MOU to control NO_X for the years 1999–2002. The Phase III reductions under the OTC MOU have been superceded by Pennsylvania's SIP-approved NO_X SIP Call rule. Compliance with that rule is required starting in 2003. EPA has fully approved the Pennsylvania Interstate Ozone Transport Reduction Plan as meeting the non-remanded portions of the NO_X SIP Call rule (66 FR 43795, August 21, 2001). Pennsylvania's Interstate Ozone Transport Reduction Plan establishes a NO_X budget trading program for fossil-fired combustion boilers with a maximum design heat input greater than 250 MMBTU per hour and electric utility generators with a capacity greater than 25 megawatts. Pennsylvania's Phase I NO_X SIP Call trading rule is consistent with the reductions modeled in the attainment demonstration and with EPA's requirements to establish an emission rate of 0.15 lb/MMBtu for electric generating units and 0.17 lb/MMBTU for non-electric generating units.

On March 3, 2000, the D.C. Circuit issued its decision on the NO_X SIP Call ruling in favor of EPA on all the major issues. See *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000). However, the Court remanded certain matters for further rulemaking by EPA. EPA expects to publish a proposal that addresses the remanded portion of the NO_X SIP Call Rule. Pennsylvania will adopt and submit controls to meet the portions of the SIP call budget reflected by reduction from both internal combustion engines and cement kilns in the remanded portions of the NO_X SIP Call rule consistent with any schedule EPA establishes in response to the remand.

Comment 2: We received comments that express concerns about the accountability of the reductions from the implementation of the 126 petitions as compared to those assumed in the attainment demonstration.

Response 2: As noted in the December 16, 1999 proposal, Pennsylvania's attainment demonstration assumed NO_X reductions consistent with those called for by EPA's NO_X SIP Call. In consideration of recent court decisions on the NO_X SIP Call as previously described and as explained in EPA's response to comments on "Reliance on NO_X SIP Call and Tier 2 Modeling", EPA believes it is appropriate to allow states to continue to assume the reductions from the NO_X SIP Call. The fact that EPA has granted section 126 petitions does not remove the obligations of states subject to the NO_X SIP Call to reduce NO_X emissions as called for in that rule. Furthermore, implementation of either the section 126 rules (described in later Sections) or the NO_X SIP Call achieves emission reductions prior to the applicable attainment deadline, 2005. Under recent rulings by the U.S. Court of Appeals for the District of Columbia Circuit both the 126 rule and the NO_X SIP Call must be implemented early in the ozone season in 2004.

On August 14–15, 1997, we received petitions submitted individually by eight Northeastern States under section 126 of the CAA. Each petition requests us to make a finding that sources in certain categories of stationary sources in upwind States emit or would emit NO_X in violation of the prohibition in section 110(a)(2)(D)(i) on emissions that contribute significantly to nonattainment, or interfere with maintenance, in the petitioning State. On May 25, 1999, we promulgated a final rule (May 1999 Rule) determining that portions of the petitions are approvable under the one-hour and/or eight-hour ozone NAAQS based on their technical merit (64 FR 28250). Based on the affirmative technical determinations for the one-hour ozone NAAQS made in the May 1999 Rule, we promulgated a final rule on January 18, 2000 (January 2000 Rule) making section 126 findings that a number of large electric generating units (EGUs) and large industrial boilers and turbines named in

the petitions emit in violation of the CAA prohibition against significantly contributing to nonattainment or maintenance problems in the petitioning States (65 FR 2674). In the January 2000 Rule, we also finalized the Federal NO_X Budget Trading Program as the control remedy for sources affected by the rule. This requirement replaces the default remedy in the May 1999 Rule. The January 2000 Rule establishes Federal NO_X emissions limits that sources must meet through a cap-and-trade program by May 1, 2003. The January 2000 rule affects sources located in the District of Columbia, Delaware, Maryland, North Carolina, New Jersey, Ohio, Pennsylvania, Virginia, West Virginia, and parts of Indiana, Kentucky, Michigan, and New York. All of the affected sources are located in States that are subject to the NO_X SIP Call.

On October 27, 1998 (63 FR 57356), EPA promulgated the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," commonly referred to as the NO_X SIP Call. On March 3, 2000, the D.C. Circuit issued its decision on the NO_X SIP Call largely upholding the rule. See *Michigan* v. *EPA*, supra. On June 22, 2000, the Court ordered that we allow the States and the District of Columbia 128 days from June 22, 2000 to submit their SIPs. Accordingly, 19 States and the District of Columbia were required to submit SIPs in response to the NO_X SIP Call by October 30, 2000.[12] On August 30, 2000, the D.C. Circuit ordered that the June 22, 2000 Order be amended to extend the deadline for implementation of the NO_X SIP Call from May 1, 2003 to May 31, 2004. In a separate rulemaking, we are addressing the Court's remand of the definition of electricity generating units, the control level for large stationary internal combustion engines and the SIP submittal and compliance dates for these actions, which affect less than 10 percent of the total emission reductions called for by the NO_X SIP Call.

Furthermore, as noted in the response to a previous comment in this document, Pennsylvania has a state regulation in place to implement the SIP Call requirements. This state rule is in the approved Pennsylvania SIP and requires compliance commencing May 1, 2003.

Comment 3: We received comments asserting that Pennsylvania has failed to implement RACT in an expeditious manner.

Response 3: The Pennsylvania SIP has long included approved RACT regulations for sources and source categories of VOCs covered by the CTGs issued prior to 1990, by CAA section 182(b)(2)(A) and by the CTGs issued after 1990 as required by CAA section 182(b)(2)(B). Additional RACT regulations requiring RACT for all major sources of VOC, not covered by a CTG (non-CTG), and of NO_X were to be submitted to EPA as SIP revisions by November 15, 1992 and compliance required by May of 1995. On February 4, 1994, PADEP submitted a revision to its SIP (25 Pa Code Chapters 129.91 through 129.95) requiring major sources of NO_X and non-CTG VOC sources to implement RACT. These regulations require major sources of NO_X and VOC to submit to PADEP, by no later than July 15, 1994, a written RACT proposal.

In the Philadelphia area, Pennsylvania's RACT regulations require non-CTG sources that have the potential to emit 25 tpy or more of VOC and sources which have the potential to emit 25 tpy or more of NO_X comply with RACT. The regulations contain technology-based or operational "presumptive RACT emission limitations" for certain major NO_X sources. For other major NO_X sources, and all major VOC sources (not otherwise already subject to RACT pursuant to a source category regulation under the Pennsylvania SIP), the regulations contain a "generic" RACT provision. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead allows for case-by-case RACT determinations. The generic provisions of Pennsylvania's regulations allow for PADEP to make case-by case RACT determinations that are then to be submitted to EPA as revisions to the Pennsylvania SIP. The Commonwealth's rule requires that the covered sources, upon PADEP's notification of approval of their RACT proposal, must implement the RACT "as expeditiously as practicable", but no later than May 31, 1995.

EPA granted conditional limited approval of the Commonwealth's VOC and NO_X RACT regulations on March 23, 1998 (63 FR 13789), and removed the conditional aspect of the approval on May 3, 2001 (66 FR 22123). On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania generic VOC and NO_X RACT regulations as they apply in the Philadelphia area on the basis that EPA would have approved source-specific or category-specific RACT rules for all sources subject to the CAA RACT requirement. We received no comments on that proposal. On October 15, 2001, the Regional Administrator of Region III signed a final rule converting our limited approval of Pennsylvania's generic VOC and NO_X RACT regulations to a full approval because EPA has SIP-approved all of the case-by-case RACT determinations submitted by PADEP for affected major sources of NO_X and/or VOC sources located in Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, the five counties that comprise the Pennsylvania portion of the Philadelphia area.

Comment 3: We received comments criticizing the use of rule effectiveness as part of the demonstration. The comments assert that EPA should be skeptical of the reductions from this program based on the Commonwealth's past enforcement history. Other comments claim that with implementation of RACT on a case-by-case basis the change in rule effectiveness from 80 percent to 90 percent is unrealistic. These comments have been submitted in the form of statements with no accompanying analyses to support them.

Response 3: The EPA disagrees that it is inappropriate to allow credit for improved rule effectiveness (RE) in the attainment demonstration. The Commonwealth has supplied to EPA a protocol that has been implemented at the sources for which increased RE credits have been claimed. EPA conducted its evaluation of Pennsylvania's RE credits as part of our proposed approval of the Post-1996 ROP plans. That supporting documentation, namely the TSD for the Post-1996 ROP plan approval, is part of the docket for this final rulemaking. No comments were received on EPA's proposed action to approve the Commonwealth's Post 1996 ROP plans which included our proposed approval of the RE credits claimed by the Commonwealth. No one has brought to EPA's attention credible evidence that Pennsylvania is not implementing RE at the sources for which RE improvement credits are claimed. It would not be appropriate for EPA to discount credit from a state initiatives based upon unsubstantiated speculation that such a state will not enforce its own SIP.

EPA disagrees with the comment asserting that implementation of RACT on case-by-case basis, is reason to assume that 90 percent RE is unrealistic. To the contrary, EPA believes that RACT rules tailored to specific sources are much more likely to be implemented successfully because any factors that could interfere with implementation of RACT would be considered by the Commonwealth under the SIP-approved provisions of 25 Pa Code Chapters 129.91 through 129.95 when imposing the source-specific RACT determinations.

Comment 4: We received comments expressing the opinion that Stage II controls in Pennsylvania are performing far below the stated efficiency. Therefore, EPA is granting too much credit to Pennsylvania for its Stage II controls. EPA should determine the present efficiency of these controls and use that level in the attainment demonstration. These comments have been submitted in the form of statements with no accompanying analyses to support them.

Response 4: Pennsylvania has adopted the Stage II control program recommended by EPA. No one has brought to EPA's attention any credible evidence that Pennsylvania is implementing their program in a manner inconsistent with EPA guidance, which might lower the expected reductions below levels which are conforming to past EPA estimates of Stage II efficiency.

P. Comments on Specific Mobile Source Measures

Comment: We received comments asserting that Pennsylvania is not fully implementing its SIP approved enhanced vehicle inspection and maintenance program and that EPA should not approve a demonstration that includes benefits from a program that is not fully implemented. The comments claim that Pennsylvania has not implemented all pass-fail standards on schedule in the Philadelphia area.

Response: EPA advised the Commonwealth, in a letter dated April 12, 2001 (Oge to Serian), that it should not implement final acceleration simulation mode (ASM) cutpoints on 1995 and older vehicles. EPA is currently conducting additional research on the effects of implementation of final ASM cutpoints on 1995 and older vehicles and will issue guidance in the near future. The issuance of this guidance will allow the Commonwealth to implement final ASM cutpoints for 1995 and older vehicles at least one year prior to the area's attainment date. This will allow the Commonwealth to complete at least one full cycle of tests at final cutpoints prior to the areas' attainment date. The Commonwealth has already implemented final cutpoints for 1996 and newer vehicles. Since all vehicles subject to the program will receive at least one inspection at final cutpoints prior to the area's attainment date, the Commonwealth will achieve the emission reductions that it has planned for in its attainment demonstration. At this time, EPA does not believe that it is necessary or justifiable to delay approval of the Commonwealth's attainment demonstration due to the fact that the Commonwealth has not implemented all pass-fail standards on schedule in the Philadelphia area. The Commonwealth has provided EPA assurances that it will implement the final cutpoints upon issuance of the guidance referenced herein. The Commonwealth has implemented a successful enhanced I/M program and continues to work with EPA on technical issues regarding the ASM program. EPA believes that the Commonwealth has achieved and will continue to gain air quality benefits from its enhanced I/M program as necessary for the Philadelphia area to achieve attainment of the ozone NAAQS.

Q. NO_X Substitution

Comment: We received comments that suggest that EPA should not allow States the opportunity to substitute NO_X reductions for the VOC reductions specifically required by section 182(c)(2)(B) of the CAA. In general, the commenter contends that methodology in EPA's NO_X Substitution Guidance is not "at least as effective" as photochemical grid modeling for making attainment demonstrations. The comment states that NO_X substitution ignores one of the Ozone Transport Assessment Group's (OTAG) key conclusions that "VOC controls are effective in reducing ozone locally and are most advantageous to urban nonattainment areas." Additionally, the commenter notes that some data suggest that progress towards attainment in urban areas may not take place, or may even be reversed, by the substitution of NO_X reductions for required VOC reductions. Finally, the commenter states that EPA should not allow NO_X substitution as part of the attainment demonstration under section 182 (c)(2)(A). In particular, the commenter is opposed to the States being allowed to utilize, *carte blanche*, NO_X substitution for section 182(c)(2)(A) attainment demonstrations without undergoing an additional, more rigorous analytic test that considers local conditions and potential impacts to real world attainment.

Response: The EPA disagrees with the comment that the Agency should not allow NO_X substitution under section 182(c)(2)(B), Reasonable Further Progress Demonstration. Section 182(c)(2)(C) specifically allows NO_X substitution where the resulting reductions "in ozone concentrations" are "at least equivalent" to that which would result from the VOC reductions required in the demonstration of reasonable further progress (RFP) under section 182(c)(2)(B). The second sentence of section 182(c)(2)(C) requires EPA to issue guidance "concerning the conditions under which NO_X control may be substituted for [or combined with] VOC control." In particular, the Agency is authorized to address in the guidance the appropriate amounts of VOC control and NO_X control needed, in combination, "in order to maximize the reduction in ozone air pollution." Further, the Act explicitly provides that the guidance may permit RFP demonstrations which allow a lower percentage of VOC emission reductions. In light of the entire set of language and Congress's evident intent under this subsection to maximize the opportunity for ozone reductions, EPA believes that section 182(c)(2)(C) confers on the Agency the discretion to select, for purposes of determining equivalent reductions, a percentage of NO_X emission reductions which is reasonably calculated to achieve both the ozone reduction and attainment progress goals intended by Congress. This approach is described in detail in EPA's 1993 NO_X Substitution Guidance. Based on our review of all the information submitted in these attainment demonstrations and consistent with the 1993 NO_X Substitution Guidance, EPA believes that the percentage of ozone reduction benefits achieved by application of NO_X controls is at least equivalent as that achieved by application of VOC controls because both the NO_X and VOC controls are necessary if the areas are to attain the NAAQS. That is, the basis for equivalency is the ability of a given control strategy (i.e., any particular mix of NO_X and VOC emission reductions) to effect attainment of the ozone NAAQS by the designated attainment year (NO_X Substitution Guidance, EPA–452/R–93–015, January 1994, at page 2).

In addition to the OTAG conclusion as noted by the commenter, the States further concluded that widespread NO_X reductions are needed in order to enable many areas to attain the ozone NAAQS. EPA subsequently made the same determination through the NO_X SIP Call rulemaking. Thus, NO_X substitution is generally consistent with OTAG's and EPA's conclusions that NO_X reductions are effective in reducing ozone concentrations.

As described in the NO_X SIP call rulemaking, the OTAG process included

[12] October 30, 2000 is the first business day following the expiration of the 128-day period.

lengthy discussions on the potential increase in local ozone concentrations in some urban areas that might be associated with a decrease in local NO_X emissions. The OTAG modeling results indicate that urban NO_X emissions decreases produce increases in ozone concentrations locally, but the magnitude, time, and location of these increases generally do not cause or contribute to high ozone concentrations. In particular, for the NO_X emissions reductions due to the NO_X SIP call budgets, EPA determined that any disbenefits are expected to be very limited compared to the extent of the air quality benefits expected from these budgets.

Regarding section 182(c)(2)(A), Attainment Demonstration, EPA believes that NO_X substitution for VOC emissions deemed to be required as "additional emission reductions" is permissible as part of the Weight of Evidence analysis. The EPA agrees with the comment that such NO_X substitution must be justified through additional analyses. For example, if model-predicted peaks show greater improvement when low level NO_X emissions are reduced versus VOC or elevated NO_X emissions, then substituting an equal amount of low level NO_X reductions for the otherwise required "additional emissions reductions" of VOC would be acceptable.

R. Measures Under Legal Review

Comment: We received comments asserting that because the Tier 2/Sulfur and NO_X SIP call rules are under legal review EPA should not credit the attainment demonstrations with reductions from these programs.

Response: EPA disagrees with the comment. On October 27, 1998 (63 FR 57356), EPA promulgated the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," commonly referred to as the NO_X SIP call. On March 3, 2000, the DC Circuit issued its decision on the NO_X SIP Call regarding the 1-hour ozone NAAQS ruling in favor of EPA on all the major issues. See *Michigan* v. *EPA*, *supra*. On June 22, 2000, the Court ordered that we allow the States and the District of Columbia 128 days from June 22, 2000 to submit their SIPs. Accordingly, 19 States and the District of Columbia were required to submit SIPs in response to the NO_X SIP Call by October 30, 2000.[13] On August 30, 2000, the D.C. Circuit ordered that the June 22, 2000 Order be amended to extend the deadline for implementation of the NO_X SIP Call from May 1, 2003 to May 31, 2004. In a separate rulemaking, we are addressing the Court's remand of the definition of electricity generating units, the control level for large stationary internal combustion engines and the SIP submittal and compliance dates for these actions, which affect less than 10 percent of the total emission reductions called for by the NO_X SIP Call. Likewise, on February 10, 2000 (65 FR 6698), EPA promulgated the "Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements," commonly referred to as the Tier 2/ Sulfur rule.

S. Contingency Measures

Comment: We received comments asserting that the Post-1996 ROP and the attainment demonstration SIP lacks contingency measures as required under the CAA.

Response: EPA believes the contingency measure requirements of sections172(c)(9) and 182(c)(9) of the CAA are independent requirements from the rate-of-progress requirements under sections 172(c)(2) and 182(c)(2)(B) and the attainment demonstration requirements of sections 172(c)(1) and 182(c)(2)(A). The contingency measure requirements are to address the possibility that an area will fail to meet a rate-of-progress milestone or will fail to attain. The contingency measure requirements have no bearing on whether a state has submitted a SIP that projects that the SIP contains enough control measures to achieve sufficient rate-of-progress towards attainment or to attain the NAAQS. The ROP SIP provides a demonstration that the ROP requirement ought to be fulfilled, but the contingency measure SIP requirements concern what will happen only if ROP is not actually achieved. The attainment demonstration SIP provides a demonstration that the attainment requirement ought to be fulfilled, but the contingency measure SIP requirements concern what will happen only if the area fails to attain. EPA acknowledges that contingency measures are a required SIP revision, but does not believe that these measures must be approved as part of an attainment demonstration. Consequently, EPA believes it can approve this attainment demonstration even though the required contingency measures have not yet been submitted. Pennsylvania will still be required to submit contingency measures and EPA will act upon them when submitted.

T. Measures for the 1-Hour NAAQS and for Progress Toward 8-Hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised eight-hour ozone National Ambient Air Quality Standard (NAAQS) because the Administrator deemed attaining the one-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the one-hour standard and that make as much progress toward implementing the eight-hour ozone standard as the requirements of the CAA and implementing regulations allow.

Response: The one-hour standard remains in effect for all of these areas and the SIPs that have been submitted are for the purpose of achieving that NAAQS. Congress has provided the States with the authority to choose the measures necessary to attain the NAAQS and EPA cannot second guess the States' choice if EPA determines that the SIP meets the requirements of the CAA. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the one-hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the eight-hour standard. However, EPA generally believes that emission controls implemented to attain the one-hour ozone standard will be beneficial towards attainment of the eight-hour ozone standard as well. This is particularly true regarding the implementation of NO_X emission controls resulting from EPA's NO_X SIP Call. Finally, EPA notes that although the eight-hour ozone standard has been adopted by the EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The States and the EPA have yet to define the eight-hour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the eight-hour ozone standard.

U. Other Comments

Comment: We received comments that oppose the removal of any of Pennsylvania's 67 counties from the Ozone Transport Region on the grounds that the south-central and central counties have a significant impact on intrastate transport and attainment in Philadelphia.

[13] October 30, 2000 is the first business day following the expiration of the 128-day period.

Response: The comment is not germane to this action. EPA is approving the attainment demonstration and Post1996 ROP plans for the Philadelphia area. EPA is not approving removal of any Pennsylvania counties from the Ozone Transport Region.

III. Final Action

A. Attainment Demonstration

EPA is fully approving the Pennsylvania's one hour ozone attainment demonstration for the Philadelphia area which was submitted on April 30, 1998, and supplemented on August 21, 1998, February 25, 2000, and July 19, 2001, including its RACM analysis and determination. The attainment demonstration meets the requirements of section 182 (c)(2) and (d) of the Act and establishes an attainment date of November 15, 2005 for the Philadelphia area.

B. Commitments

EPA is approving the Pennsylvania commitments made on July 31, 1998, February 25, 2000, and July 19, 2001. The commitments are to:

(1) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory,

(2) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued, and

(3) Perform a mid-course review by December 31, 2003.

C. Post-1996 ROP Plan

EPA is approving Pennsylvania's Post1996 ROP plans as a SIP revision for the Philadelphia area. These revisions were submitted on April 30, 1998, July 31, 1998, and supplemented on February 25, 2000.

D. Mobile Budgets of the Control Strategy Plans

EPA is approving the following mobile budgets of the Post-1996 ROP plans and the 2005 attainment demonstration plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE PHILADELPHIA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Date of adequacy determination
Post-1996 ROP Plan	1999	88.6	109.6	June 23, 2000 (65 FR 36438, June 8, 2000).
Post-1996 ROP Plan	2002	69.52	93.13	June 23, 2000 (65 FR 36438, June 8, 2000).
Post-1996 ROP Plan	2005	61.76	86.42	June 23, 2000 (65 FR 36438, June 8, 2000).
Attainment Demonstration	2005	60.18	77.46	November 26, 2001.

Please note that EPA is only approving the 2005 attainment demonstration and its current budgets because the Commonwealth has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its current budgets because Pennsylvania provided enforceable commitments to adopt additional measures to strengthen the attainment demonstration by October 31, 2001 and to submit revised budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory. Therefore, we are limiting the duration of our approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve the Post-1996 ROP plan, and the one hour ozone attainment demonstration as SIP revisions for the Philadelphia-Wilmington-Trenton ozone nonattainment area submitted by the Commonwealth may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—PA

2. Section 52.2037 is amended by revising the section heading and adding paragraphs (i), (j) and (k) to read as follows:

§ 52.2037 Control strategy and rate-of-progress plans: ozone.

* * * * *

(i) EPA approves the Commonwealth of Pennsylvania's Post 1996 (ROP) plan SIP revision for milestone years 1999, 2002, and 2005 for the Pennsylvania portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. These revisions were submitted by the Pennsylvania Department of Environmental Protection on April 30, 1998, July 31, 1998 and supplemented on February 25, 2000.

(j) EPA approves the one hour ozone attainment demonstration SIP for the Philadelphia-Wilmington-Trenton area submitted by the Pennsylvania Department of Environmental Protection on April 30, 1998, August 21, 1998, February 25, 2000 and July 19, 2001 including its RACM analysis and determination. EPA is approving the enforceable commitments made to the attainment plan for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area submitted by the Pennsylvania Department of Environmental Protection on July 31, 1998, February 25, 2000 and July 19, 2001. The enforceable commitments are to:

(1) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory,

(2) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued, and

(3) Perform a mid-course review by December 31, 2003.

(k) EPA approves the following mobile budgets of the Post-1996 plans and the 2005 attainment plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE PHILADELPHIA AREA

Type of Control Strategy SIP	Year	VOC (TPD)	NO_x (TPD)	Date of adequacy determination
Post-1996 ROP Plan	1999	88.6	109.6	June 23, 2000 (65 FR 36438, June 8, 2000).
Post-1996 ROP Plan	2002	69.52	93.13	June 23, 2000 (65 FR 36438, June 8, 2000).
Post-1996 ROP Plan	2005	61.76	86.42	June 23, 2000 (65 FR 36438, June 8, 2000).
Attainment Demonstration	2005	60.18	77.46	November 26, 2001.

(1) Please note that EPA is only approving the 2005 attainment demonstration and its current budgets because the Commonwealth has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

(2) Similarly, EPA is only approving the 2005 attainment demonstration and its current budgets because Pennsylvania provided enforceable commitments to adopt additional measures to strengthen the attainment demonstration by October 31, 2001 and to submit revised budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory. Therefore, we are limiting the duration of our approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

[FR Doc. 01–26679 Filed 10–25–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 92–105; FCC 00–257]

Require 711 Dialing for Nationwide Access to Telecommunications Relay Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document corrects certain rules of the Federal Communications Commission (Commission) that concern access to telecommunications relay services (TRS). Regulations are corrected to add a definition for "711" telephone service, and to renumber the other definitions in the section. This definition, promulgated in CC Docket No. 92–105, was inadvertently omitted by the conflicting effective dates of amendments promulgated in CC Docket No. 98–67. Regulations are corrected to add a sentence in the undesignated introductory paragraph that was promulgated in CC Docket No. 92–105 but that was inadvertently omitted by the conflicting effective date of amendments promulgated in CC Docket No. 98–67.

DATES: Effective on October 12, 2000.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, (202) 418–2320 (voice), (202) 418–0484 (TTY), *smagnott@fcc.gov*, Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Background

The Commission promulgated new rules to increase the type and quality of telephone relay service available to individuals with hearing and speech disabilities in CC Docket No. 98–67, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, (released March 6, 2000), 65 FR 38432 (June 18, 2000). Some of these rules were subject to a delayed effective date of December 18, 2000. Shortly after these rules were published, the Commission promulgated new rules to establish "711" as a uniform, abbreviated dialing code for telephone relay service in CC Docket No. 92–105, *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, (released August 9, 2000), 65 FR 54799 (September 11, 2000). The new "711" rules were not subject to a delayed effective date, and became effective on October 11, 2000.

Need for Correction

Section 64.601's definition for "711" telephone service, added in CC Docket No. 92–105, was omitted by the later effective date of amendments to § 68.601 promulgated in CC Docket No. 98–67. This corrected amendment adds the definition back into the rule and renumbers the definitions (1) through (13) to (2) through (14).

Section 64.603 was amended in CC Docket No. 92–105 to add a sentence in the undesignated introductory paragraph that was omitted by the later effective date of amendments to § 64.603 promulgated in CC Docket No. 98–67. Accordingly, a new third sentence should be added to the undesignated introductory text of § 64.603 as follows:" * * * In addition, each common carrier providing telephone voice transmission services shall provide, not later than October 1, 2001, access via the 711 dialing code to all relay services as a toll free call * * *."

List of Subjects in 47 CFR Part 64

Communications common carriers, Individuals with disabilities, Relay service, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Accordingly, 47 CFR part 64 is corrected by making the following correcting amendments:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1).

2. In § 64.601, redesignate the definitions in paragraphs (1) through (13) as paragraphs (2) through (14) and add new paragraph (1) to read as follows:

§ 64.601 Definitions.

* * * * *

(1) *711.* The abbreviated dialing code for accessing all types of relay services anywhere in the United States.

* * * * *

3. In § 64.603, revise the undesignated introductory text to read as follows:

§ 64.603 Provision of services.

Each common carrier providing telephone voice transmission services shall provide, not later than July 26, 1993, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. Speech-to-speech relay service and interstate Spanish language relay service shall be provided by March 1, 2001. In addition, each common carrier providing telephone voice transmission services shall provide, not later than October 1, 2002, access vial the 711 dialing code to all relay services as a toll free call. A common carrier shall be considered to be in compliance with these regulations:

* * * * *

[FR Doc. 01–26942 Filed 10–25–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 102201D]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Coastwide General category closure.

SUMMARY: NMFS has determined that the 2001 fishing year Atlantic bluefin tuna (BFT) coastwide General category quota will be attained by October 23, 2001. Therefore, the coastwide General category fishery will be closed effective 11:30 p.m. on October 23, 2001. This action is being taken to prevent overharvest of the adjusted coastwide General category quota of 816.7 metric tons (mt).

DATES: Effective 11:30 p.m. local time on October 23, 2001, through May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Pat Scida, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various

domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27(a)(1). The 2001 fishing year General category quota and effort control specifications were issued on July 13, 2001 (66 FR 37421, July 18, 2001).

Coastwide General Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the Federal Register for publication notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notification.

The adjusted 2001 fishing year BFT quota specifications issued pursuant to § 635.27 set a coastwide General category quota of 816.7 metric tons (mt) of large medium and giant BFT to be harvested from the regulatory area during the 2001 fishing year. Based on reported landings and effort, NMFS projects that this quota will be reached by October 23, 2001. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or Charter/Headboat categories must cease at 11:30 p.m. local time October 23, 2001. The intent of this closure is to prevent overharvest of the coastwide quota established for the General category.

General category permit holders may tag and release BFT while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26. Vessels permitted in the Charter/Headboat category that are still eligible for the Angling category trophy fish allowance under § 635.23(c)(1) and (2) may land one large medium or giant BFT prior to May 31, 2002.

Classification

This action is taken under § 635.28(a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 22, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26978 Filed 10–23–01; 11:23 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 001215358–0358–01; I.D. 101601A]

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reallocation of Pacific Sardine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation of Pacific Sardine.

SUMMARY: NMFS announces the reallocation of the remaining Pacific sardine harvest guideline in the exclusive economic zone off the Pacific coast. As of October 3, 2001, 72,306 metric tons (mt) of the 134,737 mt harvest guideline remains unharvested. The Coastal Pelagics Species Fishery Management Plan (FMP) requires that a review of the fishery be conducted 9 months after the beginning of the fishing season and any uncaught portion of the harvest guideline totaled and reallocated, with 50 percent allocated north and 50 percent allocated south of Pt. Piedras Blancas, CA; therefore, 36,153 mt is allocated to each area. The intended effect of this action is to ensure that a sufficient amount of the resource is available to all harvesters on the Pacific coast and to achieve optimum yield.

DATES: Effective October 26, 2001, through December 31, 2001, unless NMFS publishes a superseding document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, 562–980–4036.

SUPPLEMENTARY INFORMATION: On December 27, 2000, NMFS published notice of a harvest guideline of 134,737 mt for Pacific sardine in the Federal Register (65 FR 81766) for the fishing season January 1, 2001, through December 31, 2001. The harvest guideline was allocated as specified in the FMP, that is, one-third (44,912 mt) for Subarea A, which is north of 35° 40' N. lat. (Pt. Piedras Blancas, California) to the Canadian border; and two-thirds (89,825 mt) for Subarea B, which is south of 35° 40' N. lat. to the Mexican border.

Section 5.2.2 of the FMP requires that a review of the fishery be conducted 9 months after the beginning of the fishing season and any uncaught portion of the harvest guideline totaled and divided equally between Subarea A and Subarea B. At its September 2001 meeting, the Pacific Fishery Management Council (Council) received a report on the sardine fishery from its Coastal Pelagic Species Management Team and heard statements about the harvest of Pacific sardine on the Pacific coast from representatives of California, Oregon, and Washington. Based on this testimony, the Council recommended that NMFS reallocate the remaining portion of the harvest guideline as specified in the FMP. Therefore, the 72,306 mt of the uncaught portion of the harvest guideline is reallocated in the following manner: 36,153 mt north of Pt. Piedras Blancas (Subarea A), and 36,153 mt south of Pt. Piedras Blancas (Subarea B).

Classification

This action is authorized by the FMP in accordance with 50 CFR 660.517 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds for good cause under 5 U.S.C. 553(b)(3)(B) that providing prior notice and an opportunity for public comment on this action is unnecessary and impracticable. It is unnecessary because redistribution of the harvest guideline in this proportion is a ministerial act required by the FMP. It is impracticable because affording prior notice and opportunity for public comment would preclude NMFS from quickly taking action to redistribute the sardine quotas in the north and south areas in order to prevent the quotas in these areas from being exceeded.

Because this rule provides a redistribution of a harvest guideline to meet the requirements of the FMP and does not require any participants in the fishery to take action or to come into compliance, the AA finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effective date of this rule for 30 days is unnecessary.

Because prior notice and opportunity for public comment are not required for this action by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 19, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26930 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 208
Friday, October 26, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Investment and Deposit Activities

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NCUA is soliciting public comment on whether it should revise its rules governing federal credit union (FCU) investment authorities and practices. As part of its regulatory review process, NCUA has identified provisions that may warrant clarification or revision. NCUA is also considering permitting certain activities that are currently prohibited by its rules.

DATES: Comments must be received on or before January 24, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may fax comments to (703) 518–6319, or e-mail comments to *regcomments@NCUA.gov. Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Scott Hunt, Senior Investment Officer, Office of Investment Services at the above address or telephone (703) 518–6620; Dan Gordon, Senior Investment Officer, Office of Investment Services at the above address or telephone (703) 518–6620; Kim Iverson, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360; or Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The NCUA has identified areas of part 703 that it is considering revising or clarifying and believes it would be helpful to receive public comment before preparing proposed changes to the rule. NCUA also welcomes comments on other issues related to part 703 not specifically addressed in this advance notice.

B. Areas for Review

As explained more fully below, NCUA seeks comment on the following issues: broker requirements, safekeeper requirements, expanded investment authorities, limitations on accounts under discretionary control of an investment advisor, investment credit ratings, borrowing repurchase agreements, variable rate investments, and purchasing options to offer equity-linked certificates of deposit.

In addition, NCUA is also seeking comment on ways to change the format of part 703 to make it more user friendly. To that end, NCUA seeks comment on whether the current "Question and Answer" format is beneficial. We also seek comment on whether part 703 would be easier to read if existing sections were divided into smaller sections each covering fewer topics, and whether incorporating additional topic headings would make information easier to find.

Broker Requirements

Section 703.50(a) describes the minimum criteria a broker must meet in order for an FCU to purchase and sell investments using a broker. 12 CFR 703.50(a). NCUA is considering more clearly defining these requirements to remove ambiguity and establish suitable minimum standards. NCUA is concerned that the current language may permit a broker to engage in purchasing and selling activities with an FCU without having demonstrated it possesses the skills, knowledge, and understanding to conduct investment transactions. In particular, NCUA has identified cases where brokers have engaged in deceptive practices in the sale of investments to FCUs, such as misrepresenting yields, providing misleading information about the terms of the investment, and inducing purchases of unsuitable investments. FCUs have asked NCUA to intervene and pursue remedies on their behalf.

NCUA is considering setting standards for FCUs so that any brokerage firm that transacts purchases or sales of investments with an FCU must have at least one General Securities Principal (refer to the National Association of Securities Dealers'(NASD) Manual, section 1022 (a)) registered with the NASD. Alternatively, if a depository institution transacts purchases and sales of securities with an FCU, its broker-dealer activities must be regulated by a federal or state regulatory agency. An individual broker (whether the broker works for a brokerage firm with a General Securities Principal or a depository institution where its brokerage activities are regulated by a state or federal regulatory agency) who conducts purchases or sales of investments with an FCU must be registered with the NASD as a General Securities Representative (refer to the NASD Manual, section 1032 (a)). These requirements would extend to an FCU using an introducing broker or a person who receives financial remuneration from a broker for referring an FCU to a broker to transact a purchase or sale of an investment.

NCUA would not require an FCU that uses a person or firm to purchase and sell investments to comply with the above requirements if the person or firm acts only as a certificate of deposit or share certificate finder. In this regard, a finder would only identify the institution offering the certificate of deposit or share certificate and would not take custody of funds or the investment at any time. The FCU would be required to remit payment to the financial institution directly, the account would be established in the FCU's name at the financial institution, and all principal and interest payments would be remitted directly to the FCU or the FCU's designated account.

NCUA seeks comments on whether these standards represent prudent minimum criteria for FCUs to adopt when using a broker or whether there are other standards NCUA could put in place. NCUA is interested in commenters' views on the effect these standards would have on an FCU's ability to purchase and sell securities at competitive prices.

Safekeeper Requirements

Section 703.60 states the minimum criteria for safekeeping firms FCUs may use. 12CFR 703.60. Because safekeepers that do not operate safely and scrupulously can pose a risk to FCUs, NCUA is considering clarifying these requirements to remove ambiguity and establish suitable standards. NCUA is concerned that the current language may not fulfill its intended purpose to ensure that the safekeeper is an independent entity, either in form or in function, that protects the FCU's beneficial ownership interest in its investments. FCUs incur significant risk of loss when a safekeeping firm does not maintain independence from the broker, is not bound by prudent practices, or is not subject to sufficient supervisory oversight. Therefore, NCUA is considering requiring that a safekeeper must be either a clearing broker-dealer (i.e., a broker-dealer that clears trades from its own inventory) that is registered, regulated, and supervised by the Securities Exchange Commission, or a depository institution regulated by a state or federal depository institution regulatory agency, if it is used to hold investments for an FCU.

NCUA seeks comments on whether this standard represents prudent minimum criteria and if this standard affords FCUs protection from dealings with safekeepers that have not adopted prudent practices. NCUA is also interested in understanding how this standard may impede an FCU's ability to engage a safekeeping firm at a reasonable cost, and if there are alternative standards NCUA could establish to reduce the risk an FCU would face if it engages a safekeeper that has not adopted prudent practices.

Expanded Investment Authorities

The Federal Credit Union Act specifies the statutory investment powers for FCUs. 12 U.S.C. 1757. NCUA has adopted regulatory prohibitions against certain investments and investment activities on the basis of safety and soundness concerns. 12 CFR 703.100 and 703.110. These include variable rate instruments where the interest rate is not tied to a domestic interest rate (e.g., foreign currencies or interest rates, commodity prices, equity prices, or inflation rates), financial derivatives, short sales, mortgage-backed security interest and principal strips, residual interests in collateralized mortgage obligations, mortgage servicing rights, commercial mortgage-related securities, and zero coupon securities with remaining maturities greater than 10 years.

Section 703.140 provides for investment pilot programs permitting FCUs, on a limited basis, to engage in investment activities permitted by statute, but prohibited by part 703. 12 CFR 703.140. Currently, pilot programs have been approved such as permitting credit unions to engage in derivative activities and to purchase equity-linked options in order to offer their members share certificates where the dividend is tied to the performance of the S&P 500 equity index. In keeping with the agency's objective of providing regulatory relief while maintaining safety and soundness standards, NCUA is considering streamlining the process and expanding investment authorities.

While expanding the authorities would permit more flexibility for FCUs, these transactions bear considerable risks. NCUA is not considering granting blanket approval to all FCUs. Instead, NCUA would consider permitting an FCU to engage in an activity after it has demonstrated it has the ability and expertise to manage these investments or investment transactions in a safe and sound manner. This approach is similar to the procedures for corporate credit unions applying for expanded authorities.12 CFR part 704, Appendix B.

NCUA is considering developing minimum standards and criteria that an FCU would have to meet to gain approval through an application process. By developing these standards for credit unions, NCUA believes it may encourage credit unions to seek expanded investment authorities. These standards would be made publicly available to assist FCUs in preparing an application for approval. This differs from the current pilot program approach where a credit union submits proposed standards to NCUA for approval.

NCUA would develop standards based on the experience gained from previously approved pilot programs and standard industry practices. By way of example, a credit union that requests approval to engage in derivative authority to hedge interest rate risk may be subject to standards such as:

1. Thorough policies and procedures pertaining to derivatives and risk management.
2. Minimum reporting requirements including a pre-execution analysis of risk, monthly evaluation of hedge effectiveness, and quarterly analysis of the earnings and value impact from +/− 100, 200, and 300 basis point interest rate shocks.
3. Approved counterparties must have a rating of AAA, or equivalent, and the credit union must perform annual credit reviews.
4. Pre-execution approval of each derivative transaction by executive management.
5. Maximum notional amounts of derivatives in total and by counterparty.
6. Staff experienced with analyzing and purchasing derivatives, including requirements for on-going training.
7. An independent audit of accounting systems to ensure compliance with generally accepted accounting principles pertaining to derivatives (i.e., FAS 138).
8. Risk measurement systems capable of measuring the interest rate risk associated with derivatives (e.g., option pricing or option-adjusted spread functionality).
9. Sound internal control systems that provide for adequate segregation of duties, independence of the risk measurement and risk taking functions, and performance monitoring by executive management and the board.

These standards and criteria may differ for each type of investment dependent upon the pertinent risks.

NCUA seeks comments on whether there are investments or investment transactions identified in §§ 703.100 and 703.110 that NCUA should continue to prohibit. NCUA seeks comments on whether the proposal to develop an application and approval process to engage in the currently prohibited activities is appropriate and reasonable, and what criteria or standards NCUA should require to participate in these activities.

NCUA is also interested in commenters' views on whether certain investments or investment transactions should be permitted without having to submit an application for approval and reasons supporting such a position.

Discretionary Control of Investments

Currently, an FCU may delegate discretionary control of investments to an investment advisor so long as the aggregate amount does not exceed 100 percent of the FCU's net capital at the time of delegation. 12 CFR 703.40. NCUA is considering raising the cap to provide FCUs more flexibility in managing their investments. An investment adviser can augment an FCU's investment expertise and assist the FCU in making sound and prudent investment decisions. However, NCUA also recognizes that raising the cap can lead to safety and soundness concerns for FCUs that may abdicate responsibility for making responsible investment decisions, and fail to understand and manage the risks associated with these investments.

Should NCUA raise the cap, it may set minimum criteria FCUs must meet or require FCUs to seek approval prior to exceeding the limit. Criteria that may be considered include the FCU's financial performance, policies and procedures governing the investment advisor, an assessment of management's ability to monitor the investment advisor's

actions, and the quality of the credit union's risk management procedures.

NCUA is seeking comments whether the cap should be raised. If the cap should be raised, commenters should address whether it is appropriate for NCUA to set minimum criteria in its rules or require FCUs to seek NCUA approval prior to exceeding the current cap. For those commenters supporting minimum criteria, NCUA is interested in specific criteria that would be appropriate.

Investment Credit Ratings

Currently, an FCU must conduct a credit analysis for any investment that is not issued by or fully guaranteed as to principal and interest by the U.S. government or its agencies, enterprises, or corporations, or fully insured by the NCUA or the FederalDeposit Insurance Corporation. 12 CFR 703.40(d). FCUs are not required to express credit exposure in terms of risk to capital and, except for municipal bonds and privately issued mortgage related securities, FCUs are not required to obtain or monitor credit ratings on the issue or issuer.

FCUs are not exposed to significant credit risk if they invest in obligations of or guaranteed by the U.S. government or its agencies, or if investments are insured by federal deposit insurance or are collateralized by high quality assets. However, credit risk exposure increases as FCUs purchase certificates of deposit and deposit notes exceeding insured limits, and invest in obligations that are not insured or guaranteed, such as bank notes and sales of federal funds. Also, in 2001, the Federal NationalMortgage Association (FNMA) and Federal Home Loan Mortgage Corporation (FHLMC) began issuing subordinated debt. While national credit rating organizations have assigned high quality ratings to both FNMA's and FHLMC's subordinated debt, the subordinated debt rating is lower than the senior unsecured debt rating.

NCUA is contemplating refining the requirements for evaluating credit risk, such as requiring FCUs to establish limits in terms of capital at risk or setting minimum credit criteria for all investments not fully guaranteed or insured. Many FCUs have adopted one or both practices as part of their credit analysis procedures. By establishing a regulatory requirement, NCUA would establish consistency in approach for all FCUs.

NCUA is seeking comments on whether it is reasonable to require credit risk to be expressed in terms of minimum credit ratings, risk to capital, or other standards. For those commenters supporting credit ratings, NCUA is interested in their views on acceptable minimum credit ratings and if FCUs should be permitted to define the minimum acceptable credit ratings. For those commenters in support of requiring credit exposure to be stated in terms of capital-at-risk, NCUA is seeking comments on whether NCUA or the FCU should establish the minimum capital-at-risk standards.

Borrowing Repurchase Agreements

Borrowing repurchase agreements enable an FCU to sell securities under an agreement to repurchase in order to borrow funds. Section 703.100(j)(2) prohibits an FCU from purchasing an investment with the proceeds from a borrowing repurchase agreement if the purchased investment matures after the maturity of the borrowing repurchase agreement. 12 CFR 703.100(j)(2). This restriction was initially adopted years ago to address problems where FCUs incurred significant interest rate risk by borrowing funds at short-term interest rates and investing in long-term fixed rate instruments. 44 FR 42673, July 20, 1979. Problems resulted when changes in interest rates adversely impacted earnings and capital.

NCUA has not established similar prohibitions for other borrowing arrangements. For example, if an FCU borrowed funds without engaging in a borrowing repurchase agreement, it would not be limited by the maturity limit of § 703.100(j)(2) when it invests the proceeds. Also, many FCUs have improved their understanding and management of balance sheet risk since the time the restriction was enacted, and NCUA can address safety and soundness concerns pertaining to borrowing during supervisory examinations. For these reasons, NCUA is considering removing this prohibition so that an FCU has the flexibility to invest the proceeds from a borrowing repurchase agreement at its discretion.

NCUA seeks comments on whether removing this restriction would raise any liquidity or safety and soundness concerns. If an approval process is recommended instead of removing the restriction, NCUA seeks comments on suggested standards that an FCU should meet in order to be excluded from the current restriction.

Purchase of Equity-Linked Options

While § 703.110(a) prohibits an FCU from purchasing financial derivatives, including options,12 CFR 703.110(a), NCUA has approved an investment pilot program permitting a vendor to act as an agent for FCUs to purchase equity-based options. In the pilot program, FCUs can offer share certificates where the dividend rate is tied to the performance of the S&P 500 stock index. NCUA established constraints to minimize risks, and prohibit FCUs from investing in options for their own accounts.

NCUA is considering expanding part 703 to permit FCUs to purchase equity options for the sole purpose of offering equity-linked dividends to their members. Because options bear considerable risks, NCUA would likely develop regulatory guidelines and constraints based on the experience gained from the pilot program. Based on NCUA's experience in overseeing the pilot program, these guidelines and constraints may include the following:

The FCU may purchase financial options contracts to fund the payment of dividends on member share accounts provided:

a. The option is a European option;

b. The option is based on a domestic equity index;

c. Dividends on the share accounts are derived solely from the change in the domestic equity index over a specified period;

d. Proceeds from the option are only used to fund dividends on the share accounts, and counterparty expenses and broker commissions associated with the option transaction.

e. The counterparty to the transaction is a domestic counterparty with a long-term senior unsecured debt rating from a nationally recognized statistical rating organization in one of the two highest rating categories (e.g., higher than A+ by Standard & Poors or higher than A1 by Moody's) and,

f. The program must be structured such that there can be no loss of principal to the member as a result of changes in the value of the option; and,

g. The options must be entered into pursuant to written policies and procedures pertaining to this program.

NCUA is interested in receiving comments on these and other standards an FCU should meet to engage in this activity. Also, NCUA would like to receive comments on what other indices would be appropriate for FCUs.

By the National Credit Union Administration Board on October 18, 2001.

Becky Baker,

Secretary of the Board.

[FR Doc. 01–26934 Filed 10–25–01; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–409–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200, –300, and –300F series airplanes. This proposal would require a one-time inspection for discrepancies of certain wire bundles in the forward cargo compartment, and corrective actions, if necessary. This action is necessary to prevent damage to wire bundles, particularly those of the fuel quantity indication system (FQIS), which are located in the subject area. Damage of FQIS wires could cause arcing between those wires and power wires in the damaged wire bundle, and may lead to transmission of electrical energy into the fuel tank, which would result in a potential source of ignition in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 10, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–409–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–409–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1279; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–409–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–409–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, prior to engine start-up on a Boeing Model 767 series airplane, several circuit breakers tripped and the flight crew observed unusual messages (i.e., STATUS, ADVISORY, and CAUTION) on the engine indication and crew alerting system display. An investigation by the maintenance crew revealed that numerous wires in wire bundles W738, W766, and W1256 had melted and burned. The affected wire bundles were located on the ceiling of the forward cargo compartment, and had chafed against stand-offs that attach the cargo ceiling lining to the floor beams. An unrelated water leak from a galley in the area may have contributed to the severity of this incident.

Such chafing and damage of wire bundles could lead to arcing of the damaged wires. Wires for the fuel quantity indication system (FQIS), which penetrate the fuel tank, are routed through one of the wire bundles that was damaged in the reported incident. Though the FQIS wires were not damaged in this incident, damage of FQIS wires could cause arcing between those wires and power wires in the damaged wire bundle, and may lead to electrical energy being transmitted into the fuel tank, which would result in a potential source of ignition in the fuel tank.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–24A0128, dated May 11, 2000. That service bulletin describes procedures for a one-time inspection for discrepancies of wire bundles routed along the ceiling of the forward cargo compartment, and corrective actions, if necessary. The discrepancies consist of chafing or damage of wire bundles near stand-offs that attach the cargo ceiling liner to the floor beams, and inadequate clearance between the wire bundles and stand-offs. If chafing or damage is found, corrective actions consist of repair of damaged wire bundles. If clearance is not within the limits specified in the service bulletin, corrective actions include installing protective sleeving on the wire bundles, as well as cable tie mounts and panduit straps. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and Proposed AD

Operators should note that, while the service bulletin refers only to an "inspection" for chafing or damage of wire bundles, this proposed AD would require a "detailed visual inspection." The FAA has determined that the procedures in the service bulletin should be described as a detailed visual inspection. Note 2 has been included in this proposed AD to define this type of inspection.

Operators also should note that the service bulletin recommends accomplishing the inspection "at the earliest opportunity when manpower and facilities are available." However, we have determined that such a compliance time will not ensure that operators address the unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (1 hour). In light of all of these factors, the FAA finds a 15-month compliance time for completing the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, while the service bulletin specifies installation of cable tie mounts and panduit straps "as needed," we find that the Work Instructions and Figure 1 of the service bulletin do not make clear when such installation is needed. Therefore, paragraph (a) of this proposed AD would require installation of cable tie mounts and panduit straps on all wire bundles on which protective sleeving is installed due to inadequate clearance.

Cost Impact

There are approximately 774 airplanes of the affected design in the worldwide fleet. The FAA estimates that 303 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $36,360, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–409–AD.

Applicability: Model 767–200, –300, and –300F series airplanes, as listed in Boeing Alert Service Bulletin 767–24A0128, dated May 11, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage of wire bundles in the forward cargo compartment, particularly wires of the fuel quantity indication system (FQIS) installed in that area, which could cause arcing between the FQIS wires and power wires in the damaged wire bundle, lead to transmission of electrical energy into the fuel tank, and result in a potential source of ignition in the fuel tank, accomplish the following:

One-Time Inspection

(a) Within 15 months after the effective date of this AD, do a one-time detailed visual inspection to find discrepancies of wire bundles in the forward cargo compartment, according to Boeing Alert Service Bulletin 767–24A0128, dated May 11, 2000. The discrepancies consist of chafing or damage of wire bundles near stand-offs that attach the cargo ceiling liner to the floor beams, and inadequate clearance between the wire bundles and stand-offs. Inspect all wire bundles routed along the ceiling of the forward cargo compartment from station 368 through 742 inclusive, at right buttock lines 43, 49, and 54.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(b) If any discrepancy is found during the inspection required by paragraph (a) of this AD, before further flight, do paragraphs (b)(1) and (b)(2) of this AD, as applicable, according to Boeing Alert Service Bulletin 767–24A0128, dated May 11, 2000.

(1) Repair chafed or damaged wire bundles.

(2) If clearance between wire bundle and stand-off is outside the limits specified in the service bulletin: Install protective sleeving over the affected wire bundle, and install cable tie mounts and panduit straps.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 19, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26954 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–132–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require a one-time inspection of the forward and aft lower bogies of the left- and right-hand sliding windows of the flightcrew compartment for the presence of a lock pin. If the lock pin is missing, this proposal would require corrective action. This action is necessary to prevent the inability of the flightcrew to open the left- or right-hand sliding window for evacuation in an emergency, due to a window jamming in the closed position. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 26, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–132–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket Number 2001–NM–132–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–132–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–132–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that there has been an incident of the right-hand sliding window jamming in the closed position on an in-service airplane. Investigation revealed that the jamming was due to a missing lock pin in the aft lower bogie on the affected airplane and that the bogie body had no hole for installation of the lock pin. The manufacturer has indicated that there may be a batch of airplanes which are missing the lock pin in the forward or aft lower bogie. This action is necessary to prevent the inability of the flightcrew to open the left- or right-hand sliding window for evacuation in an emergency, due to a window jamming in the closed position.

Explanation of Relevant Service Information

Airbus Industrie has issued Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001, which describes procedures for a one-time detailed visual inspection of the forward and aft lower bogies of the left- and right-hand sliding windows for the presence of a lock pin. The service bulletin also describes procedures for replacement or temporary repair of the bogie, if the lock pin is missing. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2000–518–157(B), dated December 13, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 77 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,620, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2001–NM–132–AD.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category, as listed in Airbus Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the flightcrew to open the left- or right-hand sliding window for evacuation in an emergency, due to a window jamming in the closed position, accomplish the following:

Inspection

(a) Within one year after the effective date of this AD: Perform a one-time detailed visual inspection of the forward and aft lower bogie of the left-hand and right-hand sliding windows to check for the presence of a lock pin, in accordance with Airbus Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(b) If the inspection required by paragraph (a) of this AD reveals that a lock pin is missing: Prior to further flight, perform the action required by either paragraph (b)(1) or (b)(2) of this AD.

(1) Install a new bogie equipped with a lock pin, in accordance with paragraph C.(1) of the Accomplishment Instructions of Airbus Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001, or

(2) Perform a temporary repair in accordance with paragraph C.(2) of the Accomplishment Instructions of Airbus Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001. Within 500 flight hours of the temporary repair, install a new bogie equipped with a lock pin, in accordance with paragraph C.(1) of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–518–157(B), dated December 13, 2000.

Issued in Renton, Washington, on October 19, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26955 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

31 CFR Part 1

[Docket No. 00–19]

RIN 1557–AB83

Office of the Comptroller of the Currency; Privacy Act of 1974; Proposed Implementation

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: With the concurrence of the Department of the Treasury (Department), the Office of the Comptroller of the Currency (OCC) issues a proposed rulemaking to amend this part to exempt five Privacy Act systems of records from certain provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(j)(2) and/or 5 U.S.C. 552a(k)(2).

DATES: Comments will be accepted until November 26, 2001.

ADDRESSES: You should direct comments to the Office of the Comptroller of the Currency, Public Information Room, Docket No. 01–19, 250 E Street, SW., Mailstop 1–5, Washington, DC 20219. You may inspect comments received at the same location. You may send your comments by facsimile transmission to FAX number 202–874–4448 or by electronic mail to *regs.comments@occ.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Harold J. Hansen, Assistant Director, Administrative and Internal Law Division, (202) 874–4460 or Ellen S. Warwick, Special Counsel, Administrative and Internal Law Division, (202) 874–4460.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974, 5 U.S.C. 552a, as amended, a Federal agency is required, among other things, to: (1) Maintain only information about an individual that is relevant and necessary to accomplish an authorized purpose; (2) Notify an individual whether information about him or her is maintained in a system of records; (3) Provide an individual with access to the records containing information about him or her, including an accounting of disclosures made of that information; (4) Permit an individual to request amendment of records about him or her; and (5) Describe in system notices the sources of information maintained about individuals and the procedures under which notice, access and amendment rights may be exercised. Under certain circumstances, however, the head of a Federal agency may issue rules to exempt a particular system of records from these requirements (5 U.S.C. 552a(j) and (k)). Two of the six systems that the OCC proposes to alter are currently exempt from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). These systems, Treasury/Comptroller .013-Enforcement and Compliance Information System (to be renamed "Reports of Suspicious Activities") and Treasury/Comptroller .500-Chief Counsel's Management Information System will remain exempt from certain of the Privacy Act's requirements.

Notices of Proposed New and Altered Systems of Records

The Department and the OCC have published separately in the **Federal Register** a notice establishing five new systems of records, and a notice altering six existing systems of records.

In further regard to the proposal to alter six existing systems, the OCC proposes by this rulemaking to exempt two of the remaining four systems from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and/or (k)(2). These systems are: (1) Treasury/Comptroller .510-Litigation Information System; and (2) Treasury/Comptroller .600-Consumer Complaint and Inquiry Information System.

Additionally, the OCC has proposed to establish five new systems of records, three of which are proposed by this rulemaking to be exempted from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and/or (k)(2). The new systems of records that are proposed to be exempted by this rulemaking are: (1) Treasury/Comptroller .100—Enforcement Action Report System; (2) Treasury/Comptroller .120—Bank Fraud Information System; and (3) Treasury/Comptroller .220—Section 914 Tracking System.

Proposed Exemptions

The systems of records that are proposed to be exempted under 5 U.S.C. 552a(j)(2) are: (1) Treasury/Comptroller .510—Litigation Information System; and (2) Treasury/Comptroller .120—Bank Fraud Information System.

The provisions of the Privacy Act of 1974 from which exemption is proposed pursuant to 5 U.S.C. 552a(j)(2) are:

5 U.S.C. 552a(c)(3) and (4);
5 U.S.C. 552a(d)(1), (2), (3), and (4);
5 U.S.C. 552a(e)(1), (2), and (3);
5 U.S.C. 552a(e)(4)(G), (H), and (I);
5 U.S.C. 552a(f); and
5 U.S.C. 552a(g).

The systems of records that are proposed to be exempted under 5 U.S.C. 552a(k)(2) are: (1) Treasury/Comptroller .100—Enforcement Action Report System; (2) Treasury/Comptroller .120—Bank Fraud System; (3) Treasury/Comptroller .220—Section 914 Tracking System; (4) Treasury/Comptroller .510—Litigation Information System; and (5) Treasury/Comptroller .600—Consumer Complaint and Inquiry Information System.

The provisions of the Privacy Act of 1974 from which exemption is proposed pursuant to 5 U.S.C. 552a(k)(2) are:

5 U.S.C. 552a(c)(3);
5 U.S.C. 552a(d)(1), (2), (3), and (4);
5 U.S.C. 552a(e)(1); (e)(4)(G), (H), and (I); and
5 U.S.C. 552a(f).

Reasons for Exemptions Under 5 U.S.C. 552a(j)(2) and (k)(2)

(1) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would allow individuals to learn whether they have been identified as suspects or subjects of investigation. Access to such knowledge would impair the OCC's ability to carry out its mission, since individuals could:

(a) Take steps to avoid detection;

(b) Inform associates that an investigation is in process;

(c) Learn the nature of the investigation;

(d) Learn whether they are only suspects or identified as law violators;

(e) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(f) Destroy evidence needed to prove the violation.

(2)(a) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the OCC's ability to utilize and provide useful tactical and strategic information to law enforcement agencies.

(b) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(i) Discovering the facts that would form the basis for their detection or apprehension;

(ii) Enabling them to destroy or alter evidence of illegal conduct that would form the basis for their detection or apprehension;

(iii) Using knowledge that investigators had reason to believe that a violation of law was about to be committed, to delay the commission of the violation or commit it at a location that might not be under surveillance;

(c) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning illegal acts to structure their operations so as to avoid detection or apprehension;

(d) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the OCC's ability to carry out its mandate.

(e) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers or other persons who compiled information regarding the individual's illegal activities and thereby endanger the physical safety of those officers, persons, or their families by exposing them to possible reprisals.

(f) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (b) through (e) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the OCC and thus would restrict the OCC's access to information necessary to accomplish its mission most effectively.

(g) Finally, the dissemination of certain information that the OCC may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in subparagraphs (b) through (g) of paragraph (2), above, these provisions should not apply to the systems of records.

(4)(a) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(b) The application of this provision would impair the ability of the OCC, the Department, and law enforcement agencies outside the Department of the Treasury to make effective use of information maintained by the OCC. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that an agency is conducting an investigation into their illegal activities and could reveal the geographic location of the investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their illegal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for detection or apprehension.

(c) Providing accountings to the subjects of investigations would alert them to the fact that the OCC has information regarding their illegal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the OCC's information gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(5)(a) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain" as defined in 5 U.S.C. 552a(a)(3), includes "collect" and "disseminate." The application of this provision to the system of records could impair the OCC's ability to collect, utilize, and disseminate valuable law enforcement information.

(b) At the time that the OCC collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish an OCC purpose.

(c) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(d) Not all violations of law discovered by OCC analysts fall within the investigative jurisdiction of the OCC. To promote effective law enforcement, the OCC will have to disclose such violations to other law enforcement agencies, including State, local, and foreign agencies that have jurisdiction over the offenses to which the information relates. Otherwise, the OCC might be placed in the position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to the OCC's attention during the collation and analysis of information in its records.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the OCC's ability to complete or continue investigations or inquiries or to provide useful information to law enforcement agencies, since revealing sources for the information could:

(a) Disclose investigative techniques and procedures;

(b) Result in threats or reprisals against informers by the subjects of an investigation; and

(c) Cause informers to refuse to give full information to investigators for fear of having their identities as sources disclosed.

Reasons for Additional Exemptions Claimed Solely Under 5 U.S.C. 552a(j)(2)

(1) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, this provision should not apply to the systems of records.

(2)(a) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the systems of records would impair the OCC's ability to collate, analyze, utilize, and disseminate investigative, intelligence, and enforcement information.

(b) Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his or her criminal activities.

(c) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(d) In certain instances, the subject of a criminal investigation is not required to supply information to investigators as a matter of legal duty.

(e) During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(3)(a) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, of the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The systems of records should be exempted from this provision to avoid impairing the OCC's ability to collect and collate investigative and enforcement information. Confidential sources or law enforcement officials often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress.

(c) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation.

(d) Individuals may be contacted during preliminary information gathering before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would impede or compromise subsequent investigations.

(e) Finally, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity.

(4)(a) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(b) Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the systems of records would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the OCC's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies, it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination, because the OCC may not have the expertise with which to make such determinations.

(c) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators in the exercise of their judgment in reporting results obtained during criminal investigations.

(5) 5 U.S.C. 552a(e)(8) requires that an agency make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The systems of records should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(6) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The system of records should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which these rules exempt the systems of records, since there should be no civil remedies for failure to comply with provisions from which the OCC is exempted. Exemption from this provision will also protect the OCC from baseless civil court actions that might hamper its ability to collate, analyze,

utilize, and disseminate investigative, intelligence, and law enforcement data.

The Regulatory Flexibility Act (RFA) requires Federal agencies either to certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or to prepare an initial regulatory flexibility analysis of the proposal and publish the analysis for comment (5 U.S.C. 603, 605). This regulation will exempt five systems of records from the Privacy Act. Because this regulation affects only internal agency administration, these exemptions are not expected to generate any costs for banks of any size. Therefore, the OCC and the Department certify that the proposed rule, if adopted in final form, will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the OCC and the Department have determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and the Department have determined that the proposed rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC and Department have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

The OCC and the Department have determined that this proposed rule, if adopted as a final rule, would not constitute a "significant regulatory action" under Executive Order 12866 and, therefore, does not require a Regulatory Impact Analysis.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, Subpart C of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 of Subpart C is amended as follows:

a. Paragraph (c)(1)(iii) is amended by adding "CC .120 Bank Fraud Information System" and "CC .510 Litigation Information System" to the table in numerical order.

b. Paragraph (g)(1)(iii) is amended by adding "CC .100 Enforcement Action Report System," "CC .120 Bank Fraud Information System," "CC .220 Section 914 Tracking System," "CC .510 Litigation Information System," and "CC .600 Consumer Complaint and Inquiry Information System" to the table in numerical order.

The additions to § 1.36 read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U. S. C. 552a and this part.

* * * * *

(c) * * *
(1) * * *
(iii) * * *

Number	System name
. .	. .
CC .120	Bank Fraud Information System.
CC .510	Litigation Information System.
. .	. .

(g) * * *
(1) * * *
(iii) * * *

Number	System name
. .	. .
CC .100	Enforcement Action Report System.
CC .120	Bank Fraud Information System.
CC .220	Section 914 Tracking System.
CC .510	Litigation Information System.
CC .600	Consumer Complaint and Inquiry Information System.
. .	. .

Dated: September 10, 2001.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 01–27003 Filed 10–25–01; 8:45 am]

BILLING CODE 4810–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 3, 51, 60, 63, 70, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745, and 763

[FRL–7090–9]

RIN 2025–AA07

Public Hearings on the Proposed Establishment of Electronic Reporting; Electronic Records Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; public hearings.

SUMMARY: This document announces dates and locations for two public hearings EPA is holding to take comments on the Agency's proposed rule for establishment of electronic reporting and electronic records, published on August 31, 2001. These public hearings are being held during the ninety-day public comment period for the proposed rule, which ends on November 29, 2001. The meeting will be structured by topics as follows: 9:30–10:00 a.m.—Welcome and Introduction; 10:00–11:00 a.m.—General Requirements for Electronic Reporting/Electronic Signature; 11:00 a.m.–12:30 p.m.—EPA's Electronic Reporting System: "The Central Data Exchange"; 1:30–4:00 p.m.—Electronic Recordkeeping Requirements; and 4:00–5:30 p.m.—Criteria for State Electronic Reporting and Recordkeeping Programs.

DATES: The hearings will be held on:

1. Monday, October 29, 2001, 9:30 a.m. to 5:30 p.m. (EST);
2. Friday, November 9, 2001, 9:30 a.m. to 5:30 p.m. (CST).

ADDRESSES: The hearings will be held at:

1. The U.S. EPA Auditorium at 401 M Street, SW., Washington, DC;
2. The Ralph H. Metcalfe Federal Building, 3rd Floor, 77 West Jackson Blvd., Chicago, IL.

FOR FURTHER INFORMATION CONTACT: David Schwarz (2823), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 260–2710, *schwarz.david@epa.gov*, or Evi Huffer (2823), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC, 20460, (202) 260–8791, huffer.evi@epa.gov.

SUPPLEMENTARY INFORMATION: EPA published its proposed rule for Establishment of Electronic Reporting; Electronic Records in the **Federal Register** on August 31, 2001 (66 FR 46162–46195). EPA proposes to allow electronic reporting and electronic recordkeeping under the environmental regulations in Title 40 of the Code of Federal Regulations. It proposes to remove regulatory obstacles to electronic reporting and recordkeeping and sets forth the conditions for the submission of electronic documents or maintenance of electronic records in lieu of paper documents or records. EPA is proposing the rule, in part, under the authority of the Government Paperwork Elimination Act (GPEA) of 1998, Public Law 105–277.

The proposed rule is available electronically on the Internet at http://www.epa.gov/fedrgstr/EPA-GENERAL/2001/August/Day-31/g21810.htm. The proposed rule and supporting materials are also available for viewing in the Enforcement and Compliance Docket and Information Center, located at 1200 Pennsylvania Avenue, NW., (Ariel Rios Building), 2nd Floor, Room 2213, Washington, DC 20460. The documents are available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 564–2614 or (202) 564–2119.

Dated: October 18, 2001.

Janette Petersen,

Acting Director, Collection Services Division, Office of Information Collection, Office of Environmental Information.

[FR Doc. 01–27059 Filed 10–23–01; 4:21 pm]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 416, 418, 460, 462, and 483

[CMS–3047–P]

RIN 0938–AK35

Medicare and Medicaid Programs; Fire Safety Requirements for Certain Healthcare Facilities

AGENCY: Centers for Medicare & Medicaid Services, (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule replaces the proposed rule of August 1, 1990, on the same subject, which we are withdrawing. This proposed rule would amend the fire safety standards for hospitals, long-term care facilities, intermediate care facilities for the mentally retarded (ICFs/MR), ambulatory surgery centers (ASCs), hospices which provide in-patient services, religious non-medical health care institutions, and Programs of All-Inclusive Care for the Elderly (PACE) facilities. Further, this proposed rule would adopt the 2000 edition of the Life Safety Code (LSC) and eliminate references in our regulations to all earlier editions.

DATES: In order to ensure that comments will be considered, all comments should be mailed to the appropriate address as provided below, postmarked by December 26, 2001.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3047–P, P.O. Box 8018, Baltimore, MD 21244–8010.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW, Washington, D.C. 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244.

Because of staffing and resource limitation, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–3047–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, contact Ms. Freddie Wilder at (410) 786–7195 or (410) 786–0082.

FOR FURTHER INFORMATION CONTACT: Mayer Zimmerman, 410–786–6839, Jim Merrill, 410–786–6998, or Tamara Syrek, 410–786–3529.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Proposed Rule of August 1, 1990 (55 FR 31196)

On August 1, 1990, we published a proposed rule that would have applied to hospitals, long term care (LTC) facilities, and intermediate care facilities for the mentally retarded (ICFs/MR). It would have eliminated the use of the 1967 and 1973 editions of the Life Safety Code (LSC), which is updated and published periodically by the National Fire Protection Association (NFPA), a private, non-profit organization created in 1896, dedicated to reducing loss of life and property due to fire. That rule would have required all Medicare and Medicaid participating providers and suppliers subject to the LSC to meet either the 1981 or 1985 edition of the LSC, depending on the date the provider first entered the program. The August 1, 1990 proposed rule did not include references to ambulatory surgery centers (ASCs) or hospices because they were already required to meet either the 1981 or 1985 edition of the LSC. Additionally, no reference was made to Programs of the All-Inclusive Care for the Elderly (PACE) facilities and Religious Non-Medical Health Care Institutions (RNHCIs) because these provider and supplier types did not exist when the August 1, 1990 proposed rule was published. However, in this proposed rule we are proposing PACE and RNHCIs comply with the requirements of the 2000 LSC along with other providers.

We proposed deletion of the 1967 and 1973 editions of the LSC because they relied heavily on "compartmentation," a construction technique that divides buildings into separate compartments or rooms so as to limit the spread of fire and smoke. Moreover, earlier editions of the LSC did not encourage the use of sprinklers. However, subsequent editions of the LSC have encouraged sprinklers and, as a trade-off, less costly construction material may be used if sprinklers are installed. The authors of the newer editions of the LSC no longer believe compartmentation is effective and rely on early detection and extinguishment. Further, every year fewer facilities rely on the concept of compartmentation, and as older, less efficient buildings are upgraded or replaced and newer editions of the LSC are applied, which use early fire detection and extinguishment rather than compartmentation.

In the past, our authority to grant waivers was critical to our ability to continuously improve fire safety in the Medicare and Medicaid programs and not impose an undue burden on providers. The Secretary has broad authority to grant waivers to hospitals under Section 1861(e)(9) of the Social Security Act (the Act), and to LTC facilities at sections 1819(d)(2)(B) and 1919(d)(2)(B) of the Act. Currently, the Secretary allows for a waiver to be granted on a case-by-case basis if specific provisions of the LSC would result in unreasonable hardship on the provider, and if the safety of patients

would not be compromised. In addition, the Secretary may accept a State's fire and safety code instead of the LSC if the State's fire and safety code adequately protects patients. Further, the NFPA's Fire Safety Evaluation System (FSES), an equivalency system, provides alternatives to meeting various provisions of the LSC, thereby achieving the same level of fire protection as the LSC. Application of the FSES for either health care or board and care, as applicable, also mitigated the effects of the proposed rule.

In the August 1, 1990 proposed rule, we relied heavily on our waiver authority, the application of the FSES, and existing regulations "grandfathering" providers that were already in compliance with the 1967 and 1973 editions of the LSC. We asserted that the deletion of the references to the 1967 and 1973 editions of the LSC would not impose an undue burden on most facilities because the 1981 and 1985 LSC updated provisions were minor, and because most facilities would be able to comply with little expense.

B. Analysis of Comments on the August 1, 1990 Proposed Rule

We received 52 timely comments on the August 1, 1990 proposed rule, from nursing homes, State health departments, associations and organizations representing SNFs, NFs, and ICFs/MR. Since we are withdrawing this NPRM, we will not detail each comment and response. We will summarize the major concern those parties raised about the proposed rule and address our approach to meeting this concern in a later section detailing the provisions of this new proposed rule.

A majority of commenters expressed concern regarding the deletion of references to the 1967 and 1973 editions of the LSC, and requested that we codify specific waiver and prior compliance provisions in the regulations to prevent possible arbitrary and inconsistent application of waivers and the FSES. We do not believe it is possible to provide blanket waivers to an entire class of requirements because waivers and the FSES are intended as a response to specific situations and are granted on a case-by-case basis.

C. Decision To Withdraw the August 1, 1990 Proposed Rule

Since the August 1, 1990 proposed rule was published, the 1991, 1994, 1997 and, 2000 editions of the LSC have been published. The 1997 edition has been adopted by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), which accredits over 4,000 hospitals, as well as ASCs, LTC facilities, and hospices that provide inpatient services. In addition, individual States have adopted various editions of the LSC.

The 2000 edition of the LSC includes new provisions that we believe are vital to the health and safety of all beneficiaries. We are not proposing to grandfather any facility under these new provisions because we believe the provisions will not impose an undue burden. This proposed rule is intended to ensure beneficiaries continue to experience the highest degree of fire safety possible.

In addition to developing a notice of proposed rulemaking (NPRM) to adopt the 2000 edition of the LSC, we were intending to propose a more efficient process to allow CMS to adopt future editions of the LSC in a more timely manner. We explored incorporating, by reference, the NFPA LSC without specific dates in the regulation text and publishing a **Federal Register** notice, instead of a NPRM, each time we planned to adopt the next edition. The **Federal Register** notice would ask for public comment. We worked closely with the Office of Federal Register (OFR) staff and counsel on our draft proposed approach; however, it has become clear that adoption of multiple successive editions of the LSC via reference is not possible. The rationale is that the changes in the future LSCs may be substantial, necessitating that we go through a NPRM and public comment period. Moreover, we can not automatically incorporate successive versions of the LSC because of the statutory restrictions of 5 U.S.C. section 552(a) and accompanying regulations at 1 CFR part 51. All LSC editions we adopt must include a specific edition and a copy of the edition cited must be on file at the Office of the Federal Register. Based on this new information we are revising the draft NPRM to propose to adopt the 2000 LSC only.

II. Provisions of the Proposed Regulations

A. General Description

We are proposing to (1) require that all providers and suppliers meet the provisions of the 2000 edition of the LSC with certain exceptions; and (2) delete references to all previous editions of the LSC.

B. The 2000 Edition of the Life Safety Code

Some requirements in the 2000 edition of the LSC are substantially different than earlier LSC editions. We believe the standards set out in the 2000 edition of the LSC should be met by health care providers, as applicable, depending on provider type.

We are soliciting comments regarding whether to adopt Chapter 5, Performance Based Option, of the LSC. We would like to know (1) are health care facilities using performance based design; and (2) what benefits the facility receives by using performance based design (i.e., better fire safety).

The LSC fire safety goals establish overall outcomes to be achieved with regards to fire safety. These overall outcomes are communicated through specific requirements in the LSC. Performance based design option, Chapter 5, translate fire safety goals into performance objectives and performance criteria. Performance based design establishes broad goals and objectives with a team effort. The performance-based design is applied to make the building safe as well as functional. The design is specific to the building. Computer fire models and other calculation methods are used in combination with the building design specifications, specified fire scenarios and assumptions to calculate the overall performance criteria and whether it meets the fire life safety goals and is in compliance with the intent of the code.

Chapter 19, Existing Health Care Occupancies, Section 19–3.6.3.2 (exception No. 2), roller latches is the only provision of the LSC we propose not to adopt for any provider. A roller latch is a type of door latching mechanism to keep a door closed. The 2000 edition of the LSC prohibits the use of roller latches on corridor doors in buildings not fully protected by an approved sprinkler system. Exception number 2, however, allows for the use of roller latches notwithstanding this prohibition, if the latch can withstand a specific level of force applied to it. Nonetheless, we are proposing not to CMS adopt exception No. 2 regarding existing roller latches. Through fire investigations by, roller latches have proven to be an unreliable door latching mechanism requiring extensive maintenance to operate properly. Many roller latches in fire situations failed to provide adequate protection to residents in their rooms during an emergency. The estimated cost to be in compliance with this provision is $30,754,540 ($190 per door for 161,866 doors). The cost estimate was derived from information given to us by the American Health Care Association (AHCA).

C. Analysis of Selected New Provisions in the 2000 Edition of the LSC

The following are new provisions in the 2000 edition of the LSC from Chapter 19, "Existing Health Care Occupancies." We are providing the LSC citation, a description of the requirement, an explanation of why we believe it is critical to the safety of beneficiaries to require it, and a brief discussion of our analysis of the burden imposed by the requirement. The cost estimates were derived from information given to us by the American Health Care Association (AHCA).

(1) 19.1.1.4.5—Renovations, Alterations, and Modernization—This provision requires that renovations, alterations, and modernizations must comply with standards applicable to new construction when possible. Existing facilities that are extensively renovated must meet the requirements of a newly constructed facility, including the installation of sprinkler systems in non-sprinklered buildings. The Fire Analysis & Research Division of the NFPA has shown that sprinklers have been the most important life safety system installed in health care facilities. The LSC generally requires sprinkler systems in renovations, regardless of construction techniques or materials used in constructing the facility. The estimated cost of installing sprinkler systems in buildings that presently do not have them is $2.50 per square foot, or approximately $125,000 for a 50,000 square foot building. This requirement is not imposed on facilities not undergoing renovations. There is a total of 255 facilities who currently do not have sprinkler systems. Because a facility does not have to comply with this provision unless the facility chooses to renovate an existing building we estimate approximately 128 facilities may renovate in a year. The total amount to implement this provision would be $16,000,000 annually.

(2) 19.2.9—Emergency Lighting—This provision requires emergency lighting for a period of 1½ hours in health care facilities, enabling those inside to move about safely in an emergency. We are phasing in this requirement over a three year period, to allow for the normal replacement cycle of batteries used in emergency lighting systems. We believe this phase-in period will not adversely impact the health and safety of the beneficiaries. The cost to install this equipment is estimated to be $600 per light. Approximately 790 existing facilities do not have emergency lighting for 1½ hours. To be in compliance we estimate each building will need twelve emergency light units for a total of 9,482 units. This provision will be phased-in over three years. The total amount to implement this provision over a three-year period will be $5,452,150 or $1,817,383 annually.

(3) 19.3.1—Protection of vertical openings—Unprotected vertical openings (e.g., open stairwells) permit fire and toxic gases to spread from one level to another in a building, making evacuation difficult, if not impossible. The estimated cost of compliance with this requirement is $2,938 per vertical opening. Approximately 9,877 vertical openings in 1,976 facilities will need to be upgraded for compliance. Total cost of compliance of this provision is $29,018,626.

(4) 19.3.4.3.2—Emergency Forces Notification—This provision requires the fire alarm system to provide automatic notification of a fire to emergency forces. This is of great importance to the protection of all patients/residents. Any delay in the notification of fire or rescue personnel could adversely impact the health and safety of patients/residents and expose them to a fire or toxic gases created by the fire. Approximately 2,750 buildings at $900 per facility would need to be connected to a fire alarm retransmission system. The cost is estimated to be a total of $2,475,000.

(5) 19.3.6.1—Corridors—This provision requires all areas in non-sprinklered buildings must be separated from the corridor by corridor walls that are fire-rated. This requirement, which provides a protected passageway for movement during an emergency, is necessary to increase the safety of the beneficiaries. The cost to upgrade a facility to meet this requirement is estimated to be approximately $7,124 for 1,976 buildings that currently meet the 1967 LSC and approximately $5,735 for 46 buildings meeting the 1973 code. The total estimated cost for compliance is $14,341,000.

(6) 19.7.5.2 & 19.7.5.3—Upholstered furniture—These provisions allow patient/resident-owned furniture to be brought into the facility without meeting the requirements of 10.3.2(2) and 10.3.3 (regarding fire resistant furniture) if a single station smoke detector is placed in the sleeping room where the furniture is located. This gives the facility a more home-like atmosphere. The cost to the facility is estimated at $100 per sleeping room in which patient/resident-owned furniture is located. We estimate approximately 18,498 smoke detectors will need to be installed at a total cost of $1,849,800.

We are also proposing to retain our existing authority to waive provisions of the LSC, on a case-by-case basis, further reducing the exposure to additional cost and burden for facilities with unique situations that can justify the application of waivers, which we determine will not endanger the health and safety of patients. A waiver may be granted for a specific LSC requirement if: (1) We determine that the waiver would not adversely affect patient/staff health and safety; and (2) we determine that it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. Generally, a provider may request a waiver from its State Agency. The State Agency will review the request and make a recommendation to the appropriate CMS Regional Office. The CMS Regional Office will review the waiver request and the State Agency's recommendation and make a final decision. A waiver cannot be granted if patient safety is compromised in any way. A State may request that the State LSC be applicable to all facilities rather than the LSC proposed in this rule. The State must submit the request to the appropriate CMS Regional Office and the Regional Office will forward the request to CMS central office for final determination.

We will also retain our authority to apply the Fire Safety Evaluation System (FSES) as an alternative approach to meeting the requirements of the LSC, as well as accept alternative State Codes (discussed above) as provided in this proposed regulation.

D. Discussion of Fire Safety Requirements for Individual Providers and Suppliers

In addition to the proposed changes to the requirements that affect all provider types, as described in sections II. A. and II. B. of this preamble, we propose the following changes which are specific to distinct types of providers:

1. Religious Nonmedical Health Care Institutions: 42 CFR 403.744 Condition of Participation: Life Safety From Fire

We propose to retain the provisions of the existing interim final regulation for Religious Nonmedical Health Care Institutions (RNHCI) published in the **Federal Register** on November 30, 1999 (64 FR 67028), except insofar as they conflict with the 2000 LSC and are not within the exceptions detailed in section II. B. of this preamble (regarding our exceptions to the LSC).

2. Ambulatory Surgery Centers: 42 CFR 416.44 Condition of Participation: Environment

For the sake of clarity, we propose to change the terminology in paragraph (b)(1) of 42 CFR 416.44 to reflect that the Life Safety Code refers to ASCs as

Ambulatory Health Care Centers. We propose that all ASCs meet the provisions applicable to Ambulatory Health Care Centers in the 2000 edition of the LSC, except as detailed in section II. B. of this preamble, regardless of the number of patients the facility serves.

We believe the protection provided in the Ambulatory Health Care Centers chapter is necessary to protect the health and safety of patients who are incapable of caring for themselves. We do not believe that the Business Occupancy chapter of the LSC (applied by some authorities having jurisdiction to ASCs treating fewer than 4 patients at a time) affords an adequate level of protection to patients in an ASC.

We are also proposing to retain the discretion to accept compliance with fire and safety codes imposed by a State, if we determine that the state's code will adequately protect patients in ASCs. We have included this provision in paragraph (b)(3) of this section.

3. Hospices: 42 CFR 418.100(d) Condition of Participation: Hospices That Provide Inpatient Care Directly

We propose that all inpatient hospices meet the provisions applicable to nursing homes in the 2000 edition of the LSC, with the exceptions discussed in section II. B. of this preamble, regardless of the number of patients they serve. This is not a change in requirements, but merely a clarification that, for LSC purposes, an inpatient hospice is considered a nursing home, and not another type of occupancy.

We also propose not to adopt for hospices Chapter 18—Section 3.4.5.3 of the 2000 LSC. This section requires new nursing homes to be equipped with corridor smoke detection systems. We believe there is no technical justification for this requirement because the 2000 LSC requires that newly constructed patient sleeping zones be provided with quick-response sprinklers. Quick response sprinklers activate quickly enough to serve a detection function, thus making corridor smoke detection unnecessary. The 1991 and 1994 editions of the LSC required quick response sprinklers in new nursing homes but did not require smoke detection. Therefore, we see no technical reason to require detection in new facilities and thus increase the cost of new construction without a parallel increase in safety.

We are also proposing in paragraph (d)(3) to permit a hospice to meet a fire and safety code imposed by the State in lieu of the LSC if we determine that the State code adequately protects patients. We propose to do this for two reasons: (1) To afford hospices the benefit of meeting a state code in lieu of the federal requirements where the state code offers adequate protection; and (2) because we recognize that hospices are often located within buildings containing other providers already subject to this provision. For example, a hospice may be located entirely within a skilled nursing facility (SNF). If the SNF is exempt from the LSC by virtue of meeting a state code, other participating providers within the same building should also be afforded this exception.

We also propose to delete § 418.100(d)(4), the requirement that blind and nonambulatory patients may not be housed above the street level floor unless the building is fully sprinklered or has achieved a passing score on the Fire Safety Evaluation System (FSES) comparison, which is less stringent than the LSC. We are proposing this for several reasons. This requirement was deleted from the SNF regulations in 1989; however, CMS did not delete it from the parallel hospice regulations. In addition, the provision is redundant since any facility which meets the requirements of the LSC would, by definition, achieve a passing score on the FSES comparison.

4. Programs of All-Inclusive Care for the Elderly: 42 CFR 460.72 Condition of Participation: Physical Environment

We propose to retain most of the provisions of the existing interim final regulation for Programs of All-Inclusive Care for the Elderly (PACE) published in the **Federal Register** on November 24, 1999 (64 FR 66234). PACE providers will continue to be required to meet LSC specifications for the type of facilities in which the programs are located (i.e., hospitals, office buildings, etc.).

We are proposing to require the PACE center to meet the requirements for use of fire alarm systems in accordance with the occupancy section of the LSC that applies to its building. Each occupancy section of the LSC also requires evacuation plans, fire exit drills, and fire procedures, and these will be applicable to the PACE program.

Moreover, we propose to retain paragraph (b)(2)(i) of 42 CFR 460.72, which permits a PACE center to meet fire and safety requirements imposed by the State in lieu of the LSC if we determine that the State code adequately protects patients. We have done this for two reasons: (1) To afford a PACE center the benefit of meeting a state code in lieu of the federal requirements where the state code offers adequate protection; and (2) because we recognize that PACE centers are often located within buildings containing other providers already subject to this provision. For example, a PACE center may be located within a hospital. If the hospital is exempt from the LSC by virtue of meeting a state code, other participating providers within the same building should also be afforded this exemption.

Further, in some buildings it may be impractical or impossible to provide a specific feature due to the construction of the building. Therefore, we propose to retain paragraph (b)(2)(ii), which allows for the waiver of specific provisions of the LSC which, if rigidly applied, might result in unreasonable hardship on the organization. We may waive specific provisions only if the waiver does not adversely affect the health and safety of the participants and staff.

5. Hospitals: 42 CFR 482.41 Condition of Participation: Physical Environment

We propose only the changes to this section described in sections II. A. and II. B. of this preamble, for the reasons described therein.

6. Long Term Care Facilities: 42 CFR 483.70 Condition of Participation: Physical Environment

As with hospices, we propose not to adopt Chapter 18-Section 3.4.5.3 of the 2000 LSC for long term care (LTC) facilities such as skilled nursing facilities (SNFs). This section requires new nursing homes to have corridor smoke detection systems. We believe there is no technical justification for this new requirement because the 2000 LSC requires that new construction patient sleeping zones be provided with quick response sprinklers. We believe that quick response sprinklers activate quickly enough to serve a detection function, thus making corridor smoke detection unnecessary. Further, the 1991, 1994 and 1997 editions of the LSC required quick response sprinklers in new nursing homes, but did not require smoke detection. Therefore, we do not see any technical reason to require detection in new facilities and thus increase the cost of new construction without a parallel increase in safety.

7. Intermediate Care Facilities for the Mentally Retarded: 42 CFR 483.470 Condition of Participation: Physical Environment

We propose to retain most of the provisions of the existing regulation for Intermediate Care Facilities for the Mentally Retarded (ICFs/MR). ICFs/MR will continue to be permitted to meet either the Residential Board and Care Occupancies chapter or the Health Care Occupancy chapter of the Life Safety Code, as appropriate.

We propose to retain the provision in paragraph (j)(1)(ii) that allows the State survey agency to apply different chapters of the LSC to different buildings or parts of buildings so as not to place an undue burden on providers to have an entire building comply with the more stringent provisions of the Health Care chapter when they could instead meet the Board and Care for part of their facility, when appropriate.

We also propose that, for ICFs/MR under Board and Care, the Evacuation Difficulty Index (EDI) must be determined by use of the Fire Safety Evaluation System for Board and Care Facilities (FSES/BC). In referring to the EDI, we propose to delete from paragraph (j)(1)(iii) the reference to Appendix F, since the FSES/BC is no longer an appendix of the LSC, but appears as its own NFPA document in the NFPA 101A Guide on Alternative Approaches to Life Safety. Additionally, we propose to delete the reference to facilities of 16 beds or less from this paragraph to clarify that a larger facility could be subject to the Board and Care Chapter, and that its EDI would have to be calculated based on the FSES/BC. Again, this provision would allow certain ICFs/MR to meet the less restrictive Board and Care Chapter rather than the health care chapter.

In paragraph (j)(2)(ii), we propose to change "the Secretary" to "CMS" to more accurately reflect the statutory authority (this provision currently appears in paragraph (j)(2)(i)(B)).

We propose in paragraph (j)(3) that waivers of specific provisions of the LSC apply only to facilities that meet the LSC definition of a Health Care occupancy. There are no waivers for facilities under Board and Care, since the FSES/BC affords the flexibility of alternative arrangements for compliance.

III. Regulatory Impact Statement

This proposed rule, adopting the 2000 edition of the LSC, whose objective is to provide safety to life during fires and other emergencies. Adoption and use of the 2000 edition of the LSC will bring us up to date in requiring the latest and best technology in fire protection for our beneficiaries. These requirements are designed to protect people, both staff and beneficiaries. The 2000 edition of the LSC also protects property and can reduce the dollar loss associated with a fire. For example, this edition of the LSC requires that any new construction must install quick response sprinkler systems increasing the level of protection to our beneficiaries. By adopting the 2000 edition of the LSC and deleting references to all older editions of the LSC this will decrease confusion. Currently, the provider community must comply with a variety of editions of the LSC. By adopting the 2000 edition of the LSC we will eliminate any confusion as to which edition a health care facility must follow. This is particularly important when a facility has multiple buildings constructed at differing times or a single building with multiple wings/additions constructed at different times. Instead of each building complying with different editions of the LSC, the proposed rule will require all the buildings to comply with the same edition of the LSC. The use of a single edition of the code should also contribute to lowering the cost of complying with the requirements for testing and maintenance of fire protection systems.

We have examined the impact of this proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). This proposed rule is neither expected to meet the criteria to be considered economically significant, nor do we believe it will meet the criteria for a major rule. Therefore, an initial regulatory impact analysis is not required.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million or less annually (see 65 FR 69432).

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds.

There are several reasons it was determined that this rule will not meet the criteria to be considered economically significant, or the criteria for a major rule. Each new edition of the LSC builds on prior editions, changes from one edition to the next have been relatively minor since 1985. The 1985 Code, for the first time, required newly constructed facilities which met the health care occupancy requirements and which were over 75 feet or higher to be fully equipped with sprinklers. The 1991, 1994, 1997 and 2000 editions require mandatory universal sprinklers in new construction for health care occupancies. While we do not know how many new facilities will be built under this requirement, the provision of sprinkler systems in health care facilities is standard practice today. In addition, for those facilities constructed prior to 1985, the use of the FSES and Secretary approved waivers has enabled older buildings to meet requirements that ensure patient safety from fire without undue cost burdens on providers. The vast majority of facilities that needed to make major physical environment changes to comply with LSC requirements have long since done so or are no longer in service. We estimate the annual regulatory impact of this rule to be approximately $96,356,599. While $96 million seems high, this cost does not take into account any waiver the Secretary may grant to waive provisions of the LSC. We are proposing to retain the existing authority of the Secretary to waive provisions of the LSC, further reducing the exposure to additional cost and burden for facilities with unique situations that can justify the application of waivers, and which the Secretary determines will not endanger the health and safety of patients. We also note that the 2000 LSC permits the use of the FSES as an alternative approach which may also reduce the cost of compliance significantly. The FSES is an equivalency design system. The FSES may allow a facility to comply with the LSC without having to make changes to the facility due to other offsetting or compensating fire protection features that exist in the facility. We do not know the amount this may save a health care facility because each facility must be reviewed individually to determine compliance under the FSES.

Finally, the cost does not estimate any reductions if the Secretary accepts a State's fire and safety code instead of the NFPA's LSC if the State's fire and safety code adequately protects patients. The cost we estimated, $96 million, for

all health care facilities to come into compliance with the 2000 LSC is the total cost without factoring in any waivers that may be granted which could significantly reduce the total amount to the industry.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. This rule will not have an effect on the governments mentioned, and the private sector costs will not be greater than the $100 million threshold.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the office of Management and Budget.

IV. Federalism

Executive Order 13132 establishes requirements an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined this final rule and have determined that this final rule will not have a substantial direct impact on the rights, rules and responsibilities of State, local or tribal governments.

V. Collection of Information Requirements

This rule does not impose any information collection and record keeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 42 CFR

Part 403

Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

Part 416

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

Part 460

Aged, Health, Incorporation by reference, Medicare, Medicaid, Reporting and record keeping requirements.

Part 482

Grant programs-health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

Part 483

Grant programs-health , Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, 42 CFR Chapter IV would be amended as follows:

PART 403—RELIGIOUS NON-MEDICAL HEALTH CARE INSTITUTIONS

A. Part 403 is amended as set forth below:

1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart E—Conditions of Participation: Other Services

2. Amend § 403.744 as follows:

a. The introductory text to paragraph (a) is republished.

b. Paragraph (a)(1) is revised.

§ 403.744 Condition of participation: Life safety from fire.

(a) *General.* An RNHCI must meet the following conditions:

(1) Except as otherwise provided in this section, the RNHCI must meet the new or existing health care occupancies provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association. (The Director of the Office of the Federal Register has approved the NFPA® 101 2000 edition of the Life Safety Code (issued January 14, 2000) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish a notice in the **Federal Register** to announce the changes.) The following provisions of the adopted Life Safety Code do not apply to an RHNCI:

(i) Chapter 5—Performance Based Option.

(ii) Chapter 19.3.6.3.2, exception number 2.

* * * * *

PART 416—AMBULATORY SURGICAL SERVICES

B. Part 416 is amended as set forth below:

1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Specific Conditions for Coverage

2. Amend § 416.44 by revising paragraphs (b)(1) and (b)(3) to read as follows:

§ 416.44 Condition for coverage—Environment.

* * * * *

(b) *Standard: Safety from fire.* (1) Except as otherwise provided in this section, the ASC must meet the provisions applicable to Ambulatory Health Care Centers of the 2000 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference in § 403.744(a)(1)(i) of this chapter), regardless of the number of patients served. The following provisions of the adopted edition of the LSC do not apply to an ASC:

(i) Chapter 5—Performance Based Option.

(ii) Chapter 19.3.6.3.2, exception number 2.

* * * * *

(3) The provisions of the Life Safety Code do not apply in a State if CMS finds that a fire and safety code imposed by State law adequately protects patients in an ASC.

* * * * *

PART 418—HOSPICE CARE

C. Part 418 is amended as set forth below:

1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart E—Conditions of Participation: Other Services

2. Amend § 418.100 as follows:

a. Paragraphs (d)(1) and (d)(3) are revised.

b. Paragraph (d)(4) is removed.

§ 418.100 Condition of participation: Hospices that provide inpatient care directly.

* * * * *

(d) *Standard: Fire protection.* (1) Except as otherwise provided in this section, the hospice must meet the

provisions applicable to nursing homes of the 2000 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference in § 403.744(a)(1)(i) of this chapter), regardless of the number of patients served. The following provisions of the adopted edition of the LSC do not apply to a hospice:

(i) Chapter 5—Performance Based Option.

(ii) Chapter 18.3.4.5.3.

(iii) Chapter 19.3.6.3.2, exception number 2.

* * * * *

(3) The provisions of the Life Safety Code do not apply in a State if CMS finds that a fire and safety code imposed by State law adequately protects patients in hospices.

* * * * *

PART 460—PROGRAMS FOR ALL-INCLUSIVE CARE FOR THE ELDERLY

D. Part 460 is amended as set forth below:

1. The authority citation for part 460 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395).

Subpart E—PACE Administrative Requirements

2. Revise § 460.72(b)(1) to read as follows:

§ 460.72 Physical Environment.

* * * * *

(b) *Fire safety*— (1) *General rule.* (i) Except as otherwise provided in this section, a PACE center must meet the occupancy provisions of the 2000 edition of the Life Safety Code (LSC) of the National Fire Protection Association (which is incorporated by reference in § 403.744(a)(1)(i) of this chapter) that apply to the type of setting in which the center is located.

(ii) The following provisions of the adopted edition of the LSC do not apply to PACE centers:

(A) Chapter 5—Performance Based Option.

(B) Chapter 19.3.6.3.2, exception number 2.

* * * * *

Subchapter E—Standards and Certification

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

E. Part 482 is amended as set forth below:

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Basic Hospital Functions

2. Amend § 482.41 by revising paragraph (b)(1) to read as follows:

§ 482.41 Condition of participation: Physical environment.

* * * * *

(b) *Standard: Life safety from fire.* (1) Except as otherwise provided in this section, the hospital must meet the applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference in § 403.744(a)(1)(i) of this chapter).

(i) The following provisions of the adopted edition of the LSC do not apply to hospitals:

(A) Chapter 5—Performance Based Option.

(B) Chapter 19.3.6.3.2, exception number 2.

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

F. Part 483 is amended as set forth below:

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Requirements for Long Term Care Facilities

2. Amend § 483.70 by revising paragraph (a)(1) to read as follows:

§ 483.70 Physical environment.

* * * * *

(a) *Life safety from fire.* (1) Except as otherwise provided in this section, the facility must meet the applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference in § 403.744(a)(1)(i) of this chapter). The following provisions of the adopted edition of the LSC do not apply to long term care facilities:

(i) Chapter 5—Performance Based Option.

(ii) Chapter 18.3.4.5.3.

(iii) Chapter 19.3.6.3.2, exception number 2.

* * * * *

Subpart I—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

3. Amend § 483.470 as follows:

a. Paragraph (j)(1)(i) is revised.

b. Paragraph (j)(1)(iii) is revised.

c. Paragraph (j)(2) is revised.

d. Paragraph (j)(3) is added.

§ 483.470 Condition of participation: Physical environment.

* * * * *

(j) *Standard: Fire protection*—(1) *General.* (i) Except as otherwise provided in this section, the facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the 2000 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference in § 403.744(a)(1)(i) of this chapter).

* * * * *

(iii) A facility that meets the LSC definition of a residential board and care occupancy must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the Fire Safety Evaluation System for Board and Care facilities (FSES/BC).

(2) *Exceptions for all facilities.* (i) The following provisions of the adopted LSC do not apply to a facility:

(A) Chapter 5—Performance Based Option.

(B) Chapter 19.3.6.3.2, exception number 2.

(ii) If CMS finds that the State has a code imposed by State law that adequately protects a facility's clients, CMS may allow the State survey agency to apply the State's fire and safety code instead of the LSC.

(3) *Facilities that meet the LSC definition of a health care occupancy.*

(i) After consideration of State survey agency recommendations, CMS may waive, for appropriate periods, specific provisions of the Life Safety Code if the following requirements are met:

(A) The waiver would not adversely affect the health and safety of the clients; and

(B) Rigid application of specific provisions would result in an unreasonable hardship for the facility.

(ii) [Reserved]

* * * * *

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395). (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: September 17, 2001.
Thomas A. Scully,
Administrator, Centers for Medicare & Medicaid Services.
Dated: October 1, 2001.
Tommy G. Thompson,
Secretary.
[FR Doc. 01–25422 Filed 10–25–01; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 408

[CMS–4007–P]

RIN 0938–AK42

Medicare Program; Supplementary Medical Insurance Premium Surcharge Agreements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement legislation contained in section 1839(e) of the Social Security Act, as amended by section 144 of the Social Security Act Amendments of 1994 and section 4582 of the Balanced Budget Act of 1997. That legislation created a new Medicare premium payment arrangement whereby States and local government agencies can enter into an agreement with the Secretary to make periodic lump sum payments for the Supplementary Medical Insurance (SMI) late enrollment premium surcharge amounts due for a designated group of eligible enrollees. Under this proposal, we would define and set out the basic rules for the new SMI premium surcharge billing agreement.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 26, 2001.

ADDRESSES: Mail written comments (one original and three copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4007–P, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver, by courier, your written comments (one original and three copies) to one of the following addresses:

Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW, Washington, DC 20201, or

Centers for Medicare and Medicaid Services, C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to those addresses designated for courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please refer to file code CMS–4007–P on each comment.

Comments received timely will be available for public inspection as they are received, beginning approximately 3 weeks after publication of this document, in room C5–12–08 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland, Monday through Friday of each week from 8:30 a.m. to 5 p.m. Please call (410) 786–7197 to make an appointment to view comments.

FOR FURTHER INFORMATION CONTACT: Sandy Clarke, (410) 786–7451.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1839(e) of the Social Security Act (the Act), as amended by section 144 of the Social Security Act Amendments of 1994 (Pub. L. 103–432, October 31, 1994), allows States to enter into agreements with us to pay a lump sum for the Part B premium late enrollment surcharge amounts due for a designated group of eligible enrollees. Section 4582 of the Balanced Budget Act of 1997 (Pub. L. 105–33) (BBA) amended the Act by adding new language that allows local government agencies to also pay the surcharge. Under section 4582 of the BBA, any appropriate State or local government agency specified by the Secretary may enter into a Supplementary Medical Insurance (SMI) premium surcharge agreement.

This legislation was requested to enable State and local government agencies that are discontinuing to offer a health benefits package to their retirees, and requesting that the retirees utilize Medicare for their health insurance, to pay the ensuing SMI premium surcharge on a lump sum basis.

While covered by the State or local government agency health care plans, some retirees, who believed that these health plans were sufficient to cover their health care needs, chose not to enroll in Medicare when they first became eligible, or enrolled and subsequently canceled their Medicare coverage. When these retirees were notified by their State or local government agency retirement offices that those agencies would no longer offer a health benefit package (and that it therefore would be necessary for the retirees to enroll or reenroll in Medicare) they learned that they were subject to the late enrollment premium surcharge. State and local government agency retirement offices contacted us and requested either a waiver of the surcharge or establishment of a special enrollment period for the affected retirees. We denied these requests and determined that the affected retirees were subject to the late enrollment premium surcharge. This prompted some State and local government agency retirement offices to offer to pay the surcharge portion of the Supplemental Medical Insurance premium on behalf of their affected retirees. It also prompted a request from a local government agency to enter into a special billing and payment arrangement with us in order periodically to receive a single bill and pay a lump sum for the surcharge amounts due from a specified group of its retirees.

Since there was no law or regulation in place that would have allowed us to send a State or local government agency a single bill to pay a lump sum for the SMI premium surcharge portion for a group of enrollees, we initially denied the request. Subsequently, the Congress enacted legislation that allowed States to pay the Secretary, on a quarterly or other periodic basis, a lump sum for the total amount of the SMI premium surcharges for a group of Medicare enrollees (section 1839(e) of the Act, section 144 of the Social Security Act Amendments (Pub. L. 103–432)). Section 4582 of the BBA subsequently amended section 1839(e) of the Act by adding language that would also allow any appropriate State or local government agency specified by the Secretary to enter into an agreement to pay the SMI premium surcharges on a periodic lump sum basis. Because the CMS third party billing system, which will be used for billing and payment of these surcharge amounts, was developed to accommodate monthly billing and payments, all SMI premium surcharge amounts would be billed and paid on a monthly basis.

The election to make lump sum payments of SMI premium surcharges by a State or local government agency under an SMI premium surcharge agreement would be strictly voluntary and would be provided as a convenience to the State or local government agency.

II. Provisions of the Proposed Regulations

We are proposing rules to implement section 1839(e) of the Act, section 144 of the Social Security Act Amendments of 1994 (Pub. L. 103–432), and section 4582 of the BBA. We would make the following changes in 42 CFR part 408:

We would add a new subpart H to the regulations in part 408 (Premiums for Supplementary Medical Insurance). The new subpart would be entitled Supplementary Medical Insurance Premium Surcharge Agreements.

Within the subpart, we propose to add a section that would contain the authority for allowing States and local government agencies to enter into an agreement with us to pay, on a periodic basis, a lump sum for the total amount of the SMI premium surcharges for a group of eligible Medicare enrollees.

Since there are no existing regulations that prescribe or describe the basic rules for making periodic lump sum payments of the SMI premium surcharge under a special billing arrangement, we propose to add sections entitled Definitions, Conditions for participation, Application procedures, Billing and payment procedures, and Termination of SMI premium surcharge agreements. In the Definitions section, we would define SMI premium surcharge and SMI premium surcharge agreement. SMI premium surcharge would be defined as the amount that the standard monthly SMI premium would be increased for late enrollment and for reenrollment as specified in §§ 408.22 through 408.25. SMI premium surcharge agreement would be defined as an agreement entered into between a State or local government agency and us whereby the State or local government agency would periodically pay a lump sum for the premium surcharge amounts due from a specified group of eligible enrollees.

The Conditions for participation section would identify individuals who could be included under an SMI premium surcharge agreement, identify individuals excluded from coverage under an agreement, and state the need to secure the written consent of each enrollee covered under the agreement. This section would also state that as a condition for participation, the State or local government agency would be required to establish an automated data exchange with us to electronically transmit accretion, deletion, and change records and make all monthly SMI premium surcharge payments via electronic funds transfer.

We would identify eligible individuals as those who are currently enrolled under Medicare Part B (SMI) and are currently billed for SMI base premiums and surcharges either through direct remittance or benefit withholding. Eligible individuals may also be those who receive a Railroad Retirement Board or Civil Service annuity and are having the SMI premium and surcharge withheld.

We would identify individuals excluded from coverage under an SMI premium surcharge agreement as those who are not currently enrolled in SMI, those whose SMI premiums are currently being paid by a State Welfare Agency under a State buy-in agreement, or those whose SMI premiums and surcharges are currently being paid under a group billing agreement.

In the Application procedures section, we would describe how the State or local government agency may contact its regional office, obtain an application, and return it for approval.

The Billing and payment section would state that the State or local government agency must pay the SMI premium surcharge for each eligible enrollee who is included in the agreement for the time period beginning with the month the enrollee is accreted and continuing through the month the State or local government agency notifies us to delete the enrollee, the month the enrollee's Part B coverage terminates, or the month of the enrollee's death, whichever comes first.

In the Termination of SMI premium surcharge agreement section, we would say that a State or local government agency may voluntarily terminate an SMI premium surcharge agreement by notifying us, in writing, at least 30 days before the termination date.

We would also state that we may terminate an SMI premium surcharge agreement with 30 days notice if the State or local government agency fails to comply with the terms of the agreement, is delinquent in payment 60 days or more three times in any calendar year, or fails to comply with regulations or instructions the Secretary may prescribe.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA 1995), we are required to provide 60 days notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- The minimization of the information collection burden on the affected public, including automated collection techniques.

We are seeking comments on these issues for the provisions discussed below:

Section 408.202 Conditions for Participation

Under this section, a State or local government agency must secure from each enrollee a written signed, written authorization statement that contains authorizations for us to send billing notices directly to the State or local government agency and for the release to us of information required under the SMI premium surcharge agreement. The burden associated with this requirement is the time and effort for the enrollee to sign the required authorization statement. It is anticipated that for the two States affected by this requirement, each State will be required to obtain an average of 1,175 authorizations per State. Since this requirement will be standardized and incorporated into the enrollment process, we anticipate that it will take each enrollee 5 minutes to provide the necessary authorization. Therefore, the total burden associated with this requirement is 196 hours (5 minutes × 1,175 enrollees × 2 entities = 196 total hours)..

This section also requires that the States maintain the authorization statement for each enrollee in the State or local government agency files for so long as the enrollee is covered by the agreement. Given that this requirement affects only two States, it is not subject to the PRA under 5 CFR 1320.3(c).

Lastly, this section requires a State or local government agency to certify to us, in writing, that an authorization statement is on file for each enrollee covered under the SMI premium surcharge agreement. Only one certification is necessary for the entire group of covered enrollees. Given that this this requirement affects only two States, it is not subject to the PRA under 5 CFR 1320.3(c).

Section 408.205 Application Procedures

Under this section, a State interested in entering into an agreement must return to the Regional Office (RO) two

copies of the signed agreement, the third party information form, and a description of the enrollees who will be covered by the agreement, showing that they meet the conditions for participation described in § 408.202(a).

We estimate that two States/agencies will apply for an agreement. Thus, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c).

Section 408.207 Billing and Payment Procedures

Under paragraph (a), *Accreting and deleting enrollees,* of this section, the State or local government agency must electronically transmit an input file to us containing accretion and deletion records at least once each calendar month, but may transmit this information as often as once a day.

We estimate that two States/agencies will apply for an agreement and be subject to this requirement. Thus, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c).

Under paragraph (d) of this section, if a State or local government agency disagrees with the amount assessed in a billing statement or interest charge, it must notify us as required under this section. Given that this activity is conducted as part of an administrative action, audit, and/or investigation, this requirement is exempt from the PRA under 5 CFR 1320.4.

Section 408.210 Termination of SMI Premium Surcharge Agreement

Under paragraph (a) *Termination by the State or local government agency,* if the State or local government agency voluntarily terminates its agreement with us, it must notify us, in writing, at least 30 days before the effective date of the termination.

We estimate that two States/agencies will be subject to the provisions of this section. Thus, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c).

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirement in § 408.202. This requirement is not effective until it has been approved by the OMB.

If you have any comments on any of these information collection and recordkeeping requirements, please mail one original and three copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Standards and Security Group, Division of CMS Enterprise Standards, 7500 Security Boulevard, Room N2–14–26, Baltimore, MD 21244–1850, Attn: Julie Brown, CMS 4007–P.

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This is not a major rule. It would have no economic impact, on either costs or savings, because either the enrollee or the State or local government agency would remit the same amount to us whether or not there is an SMI premium surcharge agreement in effect. The only difference is that under this proposed rule, the State or local government agency would be allowed to voluntarily elect to remit SMI premium surcharge amounts in a lump sum payment on behalf of eligible Medicare enrollees.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of small entities. Therefore, we have determined, and we certify, that this proposed regulation would not result in a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside of a Metropolitan Statistical Area with fewer than 50 beds. This rule would have no impact on any small rural hospitals. Therefore, we have determined, and we certify, that this proposed regulation would not have a significant effect on the operations of a substantial number of small rural hospitals.

B. The Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This proposed rule would have no effect on the annual expenditures of any State, local, or tribal government, or the private sector. Participation in an SMI premium surcharge agreement is strictly voluntary and would not change the total amount of SMI premium surcharges paid by a State or local government agency. Therefore, we have determined, and we certify, that this proposed regulation would not result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million.

C. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule would impose no direct requirement costs on State and local governments, would not preempt State law, or have any Federalism implications. Participation is strictly voluntary and would not change the total amount of SMI premium surcharges paid by a State or local government agency.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget. This proposed rule is not a major rule as defined at 5 USC 804(2).

List of Subjects in 42 CFR Part 408

Medicare.

Accordingly, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV, part 408 as follows:

PART 408—PREMIUMS FOR SUPPLEMENTAL MEDICAL INSURANCE

1. The authority citation for part 408 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Add a new subpart H , consisting of §§ 408.200 through 408.210, to part 408 to read as follows:

Subpart H—Supplementary Medical Insurance Premium Surcharge Agreements

Sec.

408.200 Statutory basis.
408.201 Definitions.
408.202 Conditions for participation.
408.205 Application procedures.
408.207 Billing and payment procedures.
408.210 Termination of SMI premium surcharge agreement.

Subpart H—Supplementary Medical Insurance Premium Surcharge Agreements

§ 408.200 Statutory basis.

This subpart implements provisions of section 1839(e) of the Social Security Act (the Act) as amended by section 4582 of the Balanced Budget Act of 1997 (BBA). Section 1839(e) of the Act, as amended, allows State or local government agencies to enter into an agreement with the Secretary to pay, on a quarterly or other periodic basis, a lump sum for the total of the Supplementary Medical Insurance (SMI) premium late enrollment surcharge amounts due for a group of eligible enrollees.

§ 408.201 Definitions.

For purposes of this subpart, the following definitions apply:

SMI premium surcharge means the amount that the standard monthly SMI premium is increased for late enrollment and for reenrollment as specified in §§ 408.22 through 408.25.

SMI premium surcharge agreement means a written arrangement between the Secretary and a State or local government agency to pay, on a quarterly, monthly, or other periodic basis, a lump sum for the SMI premium surcharge amounts due for a designated group of eligible enrollees.

§ 408.202 Conditions for participation.

(a) A State or local government agency may apply to CMS to enter into an SMI premium surcharge agreement if the following conditions are met:

(1) Each individual designated for coverage under the agreement must be currently enrolled in Medicare Part B at the time the individual is accreted.

(2) Each enrollee designated for coverage under the agreement must be paying the base premium and surcharge through direct remittance or benefit withholding from social security or railroad retirement benefits or a civil service annuity at the time of accretion.

(3) Each enrollee designated for coverage under the agreement must not have premiums currently paid by a State Welfare Agency under a State buy-in agreement as described in § 407.40 of this chapter or under a group billing arrangement as described in § 408.80.

(b) The State or local government agency must secure from each enrollee a signed, written authorization statement that must contain authorization for CMS to send billing notices directly to the State or local government agency and for the release to CMS of information required under the SMI premium surcharge agreement.

(c) The authorization statement for each enrollee must be retained in the State or local government agency files for so long as the enrollee is covered by the agreement. These authorization statements need not be forwarded to CMS.

(d) The State or local government agency must certify to CMS, in writing, that an authorization statement is on file for each enrollee covered under the SMI premium surcharge agreement. Only one certification is necessary for the entire group of covered enrollees.

(e) A State or local government agency must establish an automated data exchange with CMS using the Third Party Premium Collection System, in order to electronically transmit an input file that will be used to accrete or delete enrollees from the billing system.

§ 408.205 Application procedures.

(a) A State or local government agency must contact its CMS regional office (RO) to request an information packet, consisting of the Premium Surcharge Payment Handbook, the Agreement, and the Third Party Agency Information Form.

(b) If interested in entering into an agreement, the State or local government agency must return to the RO two copies of the signed Agreement, two completed copies of the Third Party Information Form, and two copies of a description of the enrollees who will be covered by the agreement, showing that they meet the conditions for participation described in § 408.202(a).

(c) CMS reviews the application documents, and, when approved, sends the State or local government agency, and the RO, a signed copy of the agreement and instructions for initiating the electronic funds transfer process.

§ 408.207 Billing and payment procedures.

(a) *Accreting and deleting enrollees.* The State or local government agency must electronically transmit an input file to CMS containing accretion and deletion records as follows:

(1) Input files must be transmitted at least once each calendar month, but may be transmitted as often as once a day.

(2) With the exception of a deletion because of the death of an enrollee, CMS will not accrete or delete enrollees retroactively.

(3) The State or local government agency must pay the SMI premium surcharge for each eligible enrollee who is included in the agreement for the time period beginning with the month the enrollee is accreted and continuing through the month the State or local government agency notifies CMS to delete the enrollee, the month the enrollee's Part B coverage terminates, or the month of the enrollee's death, whichever comes first.

(b) *Payment and grace period.* Payment must be made to CMS as follows:

(1) Payment to CMS must be received by CMS by the 1st day of each month.

(2) There is a 25-day grace period for receipt of payment.

(3) Payment must be made to CMS via electronic funds transfer.

(c) *Late payment penalties.* CMS will assess interest for any payment it does not receive by the 1st day of the month as follows:

(1) Interest will be assessed at the Supplementary Medical Insurance trust fund rate as computed for new investments in accordance with section 1841(c) of the Social Security Act.

(2) Interest will be waived if the full payment is received by the 25th day of the month in which it is due.

(3) Interest will be calculated and assessed in 30-day increments.

(4) Interest will be assessed on the balance of the amount billed that remains unpaid at the expiration of the grace period and unpaid balances from prior periods.

(5) Interest will continue to accrue on unpaid amounts until the balance is paid in full.

(d) *Disagreement over billing amounts or interest.* If the State or local government agency disagrees with the amount assessed in a billing statement or interest charge, it must notify CMS as follows:

(1) The State or local government agency must provide evidence suitable to CMS to substantiate its claim.

(2) The State or local government agency must continue to make full payment while CMS evaluates the evidence provided.

(3) Credit for payment amounts or interest that CMS determines to be due to the State or local government agency will be reflected as an adjustment in subsequent bills, effective on the date the corrected amount would have been due.

§ 406.210 Termination of SMI premium surcharge agreement.

(a) *Termination by the State or local government agency.* The State or local government agency may voluntarily terminate its agreement with CMS as follows:

(1) The State or local government agency must notify CMS, in writing, at least 30 days before the effective date of the termination.

(2) The State or local government agency must pay any unpaid premium surcharge amounts and interest due within 30 days after the effective date of the termination.

(3) Interest will continue to accrue until all amounts due are paid in full.

(b) *Termination by CMS.* CMS may terminate the agreement with a State or local government agency as follows:

(1) If CMS finds that the State or local government agency is not acting in the best interest of the enrollees, or CMS, or for any other reason, the arrangement may be terminated at any time.

(2) If a State or local government agency's payments are delinquent 60 days or more, 3 times in any calendar year, CMS may terminate the agreement with 30 days advance notice.

(3) If the State or local government agency fails to comply with the terms of the agreement and/or procedures promulgated by CMS, CMS may terminate the agreement with 30 days advance notice.

(4) The State or local government agency must pay all outstanding premium surcharge and interest amounts due within 30 days after the effective date of the termination.

(5) Interest will continue to accrue until all amounts due are paid in full.

(6) After the agreement is terminated, CMS will resume collection of the premium surcharge from the enrollees covered under the terminated agreement.

(7) If an agreement is terminated by CMS, the State or local government agency must wait 3 years from the effective date of the termination before it can request to enter into another SMI premium surcharge agreement.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: September 21, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 24, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–27120 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2437, MM Docket No. 01–301, RM–10207]

Digital Television Broadcast Service; Mississippi State, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by the Mississippi Authority for Educational Television, licensee of noncommercial station WMAB–TV, NTSC channel *2, Mississippi State, Mississippi, requesting the substitution of DTV *10 for station WMAB–TV's assigned DTV channel *38. DTV Channel *10 can be allotted to Mississippi State, Mississippi, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (33–21–14 N. and 89–09–00 W.). As requested, we propose to allot DTV Channel *10 to Mississippi State with a power of 6.5 and a height above average terrain (HAAT) of 349 meters.

DATES: Comments must be filed on or before December 14, 2001, and reply comments on or before December 31, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert A. Woods, Schwartz, Woods & Miller, Suite 300, 1350 Connecticut Avenue, NW, Washington, DC 20036–1717 (Counsel for the Mississippi Authority for Educational Television).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–301, adopted October 18, 2001, and released October 23, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Mississippi is amended by removing DTV Channel "*38" and adding DTV Channel "*10" at Mississippi State.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–26943 Filed 10–25–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2379, MM Docket No. 01–296, RM–10299]

Radio Broadcasting Services; Rosecommon, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 246A at Rosecommon, Michigan, providing the community with additional local FM service. The coordinates for Channel 246A at Rosecommon are 44–30–55 and 84–38–21. There is a site restriction 4.2 kilometers (2.6 miles) northwest of the community. Since Rosecommon is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for the allotment at Rosecommon.

DATES: Comments must be filed on or before December 3, 2001, and reply comments on or before December 18, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–296, adopted October 3, 2001 and released October 12, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *sex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1.The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 246A at Rosecommon.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–26986 Filed 10–25–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2380, MM Docket No. 01–297, RM–10297]

Radio Broadcasting Services; Paragould, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 257A at Paragould, Arkansas, providing the community with additional local FM service. The coordinates for Channel 257A at Paragould are 36–06–55 and 90–26–53. There is a site restriction 7.9 kilometers (4.9 miles) northeast of the community.

DATES: Comments must be filed on or before December 3, 2001, and reply comments on or before December 18, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–297, adopted October 3, 2001 and released October 12, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint @ aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Channel 257A at Paragould.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–26987 Filed 10–25–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 102201B]

Magnuson-Stevens Act Provisions; Essential Fish Habitat; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of public meeting.

SUMMARY: The North Pacific Fishery Management Council (NPFMC) will hold an essential fish habitat (EFH) committee meeting on November 5 and 9, 2001, to review the NMFS draft summary of EFH scoping comments and issues, to identify significant issues and preliminary alternatives, and to review the mission of the EFH Committee. NMFS will hold a workshop November 6 through 9, 2001, to develop a range of alternatives for the designation of EFH and habitat areas of particular concern (HAPC), and to determine the steps necessary to develop a range of alternatives for the minimization of the effects of fishing on EFH.

DATES: The EFH committee will meet from 10:30 p.m. to 5 p.m. on Monday, November 5, 2001, and from 8:30 a.m. to noon on Friday, November 9, 2001. The NMFS EFH workshop will be held Tuesday, November 6 through Friday, November 9. The workshop will start at 10 a.m. Tuesday and at 8 a.m. Wednesday through Friday.

ADDRESSES: The EFH Committee meetings and the NMFS workshop will meet in Juneau, AK, at the Juneau Federal Building, 709 West 9th Street in Room 445. On Friday, the EFH Committee will meet in Room 150.

Questions should be addressed to NMFS, Habitat Conservation Division, Attn: Cindy Hartmann, 709 West 9th Street, Suite 461, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, NMFS, (907) 586–7585, e-mail: *Cindy.Hartmann@noaa.gov*; or David Witherell, North Pacific Fishery Management Council (NPFMC), (907) 271–2809, e-mail: *David.Witherell@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The NPFMC EFH committee was formally established by the NPFMC's acting executive director in May 2001. The committee was established in response to the need to prepare a supplemental environmental impact statement (SEIS) for the EFH fishery management plan amendments. For further information about the SEIS, see the notice of intent to prepare an SEIS published in the Proposed Rules section of the **Federal Register** (66 FR 30396, June 6, 2001).

The function of the EFH Committee is to serve as a steering committee for the EFH EIS process. The Committee's overarching goal is to facilitate input by the industry, conservation community, NPFMC, and general public to the EFH EIS process. This will be the fourth meeting of the EFH Committee. Prior meetings were held May 30, August 13 & 14, and October 4, 2001.

Agenda items for the EFH Committee meeting include:

1. Discussion of NEPA requirements and objectives;

2. Discussion of Draft Purpose and Need statement;

3. Discussion of issues including issue statements, issue categories and key or significant issues;

4. Discussion of alternatives for EFH and HAPC;

5. Selection of EFH and HAPC Alternatives to recommend to the NPFMC; and

6. EFH Committee tasks, timetable and next meeting.

Although other issues not contained in this agenda may come before the Committee for discussion, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in this notification.

Agenda items for the NMFS EFH workshop include the above listed tasks. Participants at the workshop will also discuss data sources and availability, discuss criteria for selecting an EFH and HAPC alternative, screen EFH and HAPC concepts, evaluate potential EFH and HAPC alternatives, and map and describe EFH by life history stage for managed species. There will be an evaluation of the workshop and a discussion of the steps necessary to determine effects of fishing on EFH and measures to minimize effects of fishing to the extent practicable. Tasks will be discussed and possibly assigned and the next workshop date set.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cindy Hartmann, (907) 586–7235, at least 5 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 23, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27040 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 208
Friday, October 26, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 26, 2001.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 7, 2001, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (66 FR 46770) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of the qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is added to the Procurement List:

Service

Grounds Maintenance
Naval Air Warfare Center Weapons Division, Buildings 456 (N97) and 1438 (Main Post Area), White Sands Missile Range, New Mexico

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–27038 Filed 10–25–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 26, 2001.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each commodity and service will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Commodities

Shelf Assembly, Top, 3920–00–000–8908
NPA: Rauch Rehabilitation & Developmental Services, Inc., New Albany, Indiana
GOVERNMENT AGENCY: U.S. Postal Service, Topeka, Kansas
Ballistic Protection Carrier, 8470–00–NSH–0001
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York
GOVERNMENT AGENCY: U.S. Army Acquisition Center, Natick, Massachusetts
Insert, Flotation, Hardcell, 8470–00–NSH–0002
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York

GOVERNMENT AGENCY: U.S. Army Acquisition Center, Natick, Massachusetts
Pocket, Helicopter Aviation Breathing Device, 8470–00–NSH–0003
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York
GOVERNMENT AGENCY: U.S. Army Acquisition Center, Natick, Massachusetts

Services

File Maintenance, VA Medical Center, Northport, New York
NPA: The Corporate Source, Inc., New York, New York
GOVERNMENT AGENCY: VA Medical Center
Office Supply Store, Federal Building, 700 W. Capitol, Little Rock, Arkansas
NPA: The Arkansas Lighthouse for the Blind, Little Rock, Arkansas
GOVERNMENT AGENCY: GSA, Public Building Services
Operation of Support Services, National Advocacy Center, 1620 Pendleton Street, Columbia, South Carolina
NPA: CCAR Services, Inc., Green Cove Springs, Florida
GOVERNMENT AGENCY: National Advocacy Center

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–27039 Filed 10–25–01; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 011012250–1250–01]

Service Annual Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with title 13, United States Code (U.S.C.), sections 182, 224, and 225, the Bureau of the Census (Census Bureau) has determined that limited financial data (revenue, expenses, and the like) for selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies, and that these data also apply to a variety of public and business needs. To obtain the desired data, the Census Bureau announces the administration of the Service Annual Survey.

FOR FURTHER INFORMATION CONTACT: Ruth A. Bramblett, Chief, Current Services Branch, Service Sector Statistics Division, on (301) 457–2766.

SUPPLEMENTARY INFORMATION: The Census Bureau conducts surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, U.S.C. The Service Annual Survey provides continuing and timely national statistical data each year. Data collected in this survey are within the general scope, type, and character of those inquiries covered in the economic census. These data are not publicly available from nongovernment or other governmental sources.

The Census Bureau needs reports only from a limited sample of service sector firms in the United States. Selected service industries include professional, scientific, and technical services; administrative and support services; healthcare and social assistance; telecommunications, publishing, broadcasting and other information service industries; trucking, courier, messenger, and warehousing; financial services; and arts, entertainment, and recreation. The probability of a firm's selection is based on its revenue size (estimated from payroll). We are mailing report forms to the firms covered by this survey and require their submission within thirty days after receipt.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the OMB approved the Service Annual Survey under OMB Control Number 0607–0422. Copies of the proposed forms are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: October 19, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 01–26944 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Certified Trade Fair Program: Application

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c) (2) (A)).

DATES: Written comments must be submitted on or before December 26, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Don Huber, U.S. & Foreign Commercial Service, Export Promotion Services, Room 2212, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–2525, and fax number: (202) 482–0115.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Trade Fair Certification (TFC) program is a service of the U.S. Department of Commerce (DOC) that provides DOC endorsement and support for high quality international trade fairs that are organized by private-sector firms. The TFC program seeks to broaden the base of U.S. firms, particularly new-to-market companies by introducing them to key international trade fairs where they can achieve their export objectives. Those objectives include one or more of the following: direct sales; identification of local agents or distributors; market research and exposure; and joint venture and licensing opportunities for their products and services. The objective of the application is to make a determination that the trade fair organizer is qualified to organize and manage U.S. exhibitions at a foreign trade show, and to ensure that the show is a viable marketing opportunity for U.S. companies.

II. Method of Collection

Form ITA–4100P is sent by request to organizers of international trade fairs.

III. Data

OMB Number: 0625–0130.
Form Number: ITA–4100P.
Type of Review: Regular.
Affected Public: Companies applying to participate in Commerce Department Certified Trade Fair program events.

Estimated Number of Respondents: 90.
Estimated Time Per Response: 10 hours.
Estimated Total Annual Burden Hours: 900 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $40,500.00 ($31,500.00 for respondents and $9,000.00 for the Federal Government).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 22, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–27004 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Certified Trade Mission Program: Application

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 26, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Nancy Hesser, U.S. & Foreign Commercial Service, Export Promotion Services, Room 2810, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–4663, and fax number: (202) 482–2718.

SUPPLEMENTARY INFORMATION:

I. Abstract

Certified Trade Missions are overseas events that are planned, organized and led by both Federal and non-Federal government export promotion agencies such as industry trade associations, agencies of State and local governments, Congressional representatives, chambers of commerce, regional groups and other export-oriented groups. Certified Trade Mission Program Application form is the vehicle by which individual mission organizers apply, and if accepted agree, to participate in the Department of Commerce (DOC) trade promotion events program, recruit U.S. companies, identify the products or services they intend to sell or promote, and report on results. The collection of information is required for DOC to properly assess the credentials of the missions and applicants.

II. Method of Collection

Form ITA 4127P is sent by request to U.S. export oriented organizations seeking DOC certification of their trade mission . Applicant firms complete the form and return it to the Department of Commerce.

III. Data

OMB Number: 0625–0215.
Form Number: ITA–4127P.
Type of Review: Regular Submission.
Affected Public: Mission organizers applying to participate in trade missions facilitated but not led by Department of Commerce officials.
Estimated Number of Respondents: 60.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Burden Hours: 60 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $5,100.00 ($2,100.00 for respondents and $3,000.00 for the federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 22, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–27005 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke one antidumping duty order in part.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2000), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Large Newspaper Printing Presses and Components Thereof from Germany .

Initiation of Reviews

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 2002.

	Period to be reviewed
Antidumping Duty Proceedings	
Germany:	
Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, A–428–821	9/1/00–8/31/01
Koenig & Bauer Albert,AG	
MAN Roland Druckmaschinen AG	
Japan:	
Large Newspaper Printing Pressess and Components Thereof, Whether Assembled or Unassembled, A–588–837	9/1/00–8/31/01
Mitsubishi Heavy Industries, Ltd.	
Tokyo Kikai Seisakusho, Ltd.	
Mexico:	
Certain Cut-to-Length Carbon Steel Plate,[1] A–201–809	8/1/00—7/31/01
Altos Hornos de Mexico, S.A. de C.V.	
Sweden:	
Stainless Steel Wire Rod, A–401–806	9/1/00—8/31/01
Fagersta Stainless AB	
Taiwan:	
Stainless Steel Wire Rod, A–583–828	9/1/00—8/31/01
Walsin Lihwa Corporation	
The People's Republic of China:	
Freshwater Crawfish Tail Meat,[2] A–570–848	9/1/00—8/31/01
China Everbright.	
China Kingdom Import & Export Co., Ltd., aka China Kingdoma Import & Export Co., Ltd., aka Zhongda Import & Export Co., Ltd.	
Coastal (Jiang Su) Foods Co., Ltd.	
Fujian-Pelagic Fishery Group Co.	
Hefei Zhongbao Aquatic Co., Ltd.	
Huaiyin Foreign Trade Corporation (5), aka Jiangsu Hilong International Trading	
Huaiyin Foreign Trade Corporation (30)	
Jiangsu Cereals, Oils, & Foodstuffs Import & Export Corp.	
Nantong Delu Aquatic Food Co., Ltd.	
Nantong Shengfa Frozen Food Co., Ltd.	
Ningbo Nanlian Frozen Foods Co., Ltd.	
North Supreme Seafood (Zhejiang) Co., Ltd.	
Qingdao Rirong Foodstuff Co., Ltd., aka Qingdao Rirong Foodstuffs.	
Qingdao Zhengri Seafood Co., Ltd., aka Qingdao Zhengri Seafoods.	
Rizhao Riyuan Marine and Food Products Co., Ltd.	
Shanghai Toaen International Trading Co., Ltd.	
Shantou SEZ Yangfeng Marine Products Co.	
Shouzhou Huaxiang Foodstuffs Co., Ltd.	
Suqian Foreign Trade Corp., aka Suqian Foreign Trading	
Taizhou Tianhe Aquatic Products Co., Ltd.	
Weishan Fukang Foodstuffs Co., Ltd.	
Yancheng Baolong Biochemical Products Co., Ltd.	
Yancheng Foreign Trade Corp., aka Yancheng Foreign Trading, aka Yang Chen Foreign Trading.	
Yancheng Haiteng Aquatic Products & Foods Co., Ltd.	
Yancheng Yaou Seafoods.	
Yangzhou Lakebest Foods Co., Ltd.	
Yixing Ban Chang Foods Co.	
Countervailing Duty Proceedings	
Italy:	
Stainless Steel Wire Rod, C–475–821	1/1/00—12/31/00
Acciaierie Valbruna S.p.A.	
Suspension Agreements	
None.	

[1] Case inadvertently omitted from previous initiation notice.
[2] If one of the above named companies does not qualify for a separate rate, all other exporters of freshwater crawfish tail meat from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: October 23, 2001.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, AD/CVD Enforcement.

[FR Doc. 01–27058 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–816]

Notice of Initiation of Inquiry Into the Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duty Laws

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and request for comments.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Albert Hsu, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4491.

SUMMARY: The Department of Commerce is initiating an inquiry into the status of the Russian Federation as a non-market economy country under the antidumping and countervailing duty laws.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department's") regulations are to 19 CFR part 351 (2001).

Background

On July 26, 2001, the Department of Commerce ("the Department") received a letter from Novolipetsk Iron & Steel Corporation ("NLMK") requesting a review of the status of Russia as a non-market economy ("NME") country in the proceeding on hot-rolled flat-rolled carbon-quality steel products from the Russian Federation (A–821–813) ("Hot-Rolled Steel from Russia"). On August 3, 2001, the Government of the Russian Federation formally submitted NLMK's request on the record of the hot-rolled steel proceeding. On September 7, 2001, JSC Severstal submitted, also in the Hot-Rolled Steel from Russia proceeding, a formal request that the Department revoke the Russian Federation's status as a NME country. In response to these requests, the Department is initiating an inquiry into the Russian Federation's status as an NME in a separate proceeding pursuant to section 771(18)(C)(ii) of the Act.

The Department has treated Russia as a nonmarket economy (NME) country in all past antidumping duty investigations and administrative reviews. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); *Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review*, 64 FR 1599 (Jan. 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787 (Nov. 19, 1997); *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (Mar. 30, 1995). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act.

Opportunity for Public Comment

As part of this inquiry to determine whether to revoke Russia's NME status, the Department is interested in receiving public comment with respect to Russia on the factors listed in section 771(18)(B) of the Act, which the Department must take into account in making a market/non-market economy determination:

(i) The extent to which the currency of the foreign country is convertible into the currency of other countries;

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management;

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country;

(iv) the extent of government ownership or control of the means of production;

(v) the extent of government control over allocation of resources and over price and output decisions of enterprises; and

(vi) such other factors as the administering authority considers appropriate.

Comments—Deadline, Format, and Number of Copies

The deadline for submission of comments will be 45 days after the date of publication of this notice in the **Federal Register**. All comments should be filed at the Department of Commerce Central Records Unit located at the address listed below. Rebuttal comments may be submitted up to 45 days after the date initial comments are due.

Each person submitting comments should include his or her name and address, and give reasons for any recommendation. To facilitate their consideration by the Department, comments should be submitted in the following format: (1) Begin each comment on a separate page; (2) concisely state the issue identified and discussed in the comment and include any supporting documentation in exhibits or appendices; (3) provide a brief summary of the comment (a maximum of 3 sentences) and label this section "summary of comment;" (4) provide an index or table of contents; and (5) include the case number A–821–816 in the top right hand corner of the submission.

To simplify the processing and distribution of comments, the Department encourages the submission of documents in electronic form accompanied by an original and 5

copies in paper form. We request that documents filed in electronic form be on DOS formatted 3.5' diskettes and prepared in either WordPerfect 9 format or a format that the Word Perfect program can convert and import into Word Perfect 9. Please submit comments in separate files on the diskette.

Comments received on diskette will be made available to the public on the Internet at Import Administration's website, *http://ia.ita.doc/gov*. Paper copies will be available for reading and photocopying in the Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Any questions concerning file formatting, document conversion, access on the Internet, or other file requirements should be addressed to Andrew Lee Beller, Import Administration Webmaster, (202) 482–0866.

Hearing

After reviewing all comments and rebuttal comments, the Department will determine if a public hearing is warranted, and, if so, will announce a place and time for that hearing.

This determination is issued and published in accordance with section 771(18)(c)(ii).

Dated: October 19, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–27056 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–870]

Notice of Postponement of Preliminary Antidumping Duty Determination: Certain Circular Welded Carbon-Quality Steel Pipe From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of preliminary determination of antidumping duty investigation.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary determination of the investigation of certain circular welded carbon-quality steel pipe from the People's Republic of China ("China").

EFFECTIVE DATES: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3434.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Postponement of Determination Results

The Department has determined that this case is extraordinarily complicated and additional time beyond the current October 31, 2001, deadline is necessary to make the preliminary determination. *See Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Faryar Shirzad, Assistant Secretary for Import Administration*, October 17, 2001. The Department is postponing the preliminary determination until 190 days after initiation in accordance with section 733(c)(1)(B) of the Act.

The deadline for the final determination will continue to be 75 days after the date of the preliminary determination.

Dated: October 18, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26938 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–816, A–602–804, A–423–811, A–351–834, A–427–822, A–428–834, A–533–826, A–588–859, A–580–848, A–421–810, A–614–803, A–570–872, A–821–815, A–791–814, A–469–812, A–401–807, A–583–839, A–549–819, A–489–810, A–307–822]

Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigations.

EFFECTIVE DATE: October 26, 2001.

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Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001).

The Petitions

On September 28, 2001, the Department of Commerce (the Department) received petitions filed in proper form by the following parties: Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation,[1] Nucor Corporation, Steel Dynamics, Inc., United States Steel LLC., WCI Steel, Inc., and Weirton Steel Corporation[2] (collectively, the petitioners). The Department received information supplementing the petitions on October 12, 2001 and on October 18, 2001, petitioners submitted additional information concerning industry support.

In accordance with section 732(b) of the Act, the petitioners allege that imports of certain cold-rolled carbon steel flat products (cold-rolled steel) from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate. (*See* the *Determination of Industry Support for the Petitions* section below.)

Scope of Investigations

For purposes of these investigations, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness, having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (HTSUS), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium (also called columbium), or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (0.001 inch), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (0.001 inch);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:
Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight%	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:
Thickness: ≤1.0 mm
Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≥162 Kgf/mm².

MECHANICAL PROPERTIES—Continued

Hardness	≥475 Vickers hardness number.

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width.

[1] National Steel Corporation is not a petitioner in the Japan case.

[2] Weirton Steel Corporation is not a petitioner in the Netherlands case.

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

Sulfide Inclusion	≤0.04
Oxide Inclusion	≤0.05%

COMPRESSIVE STRESS: 10 TO 40 KGF/MM^2

Surface Roughness

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.310	Rz≤0.7
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

• Certain ultra thin gauge steel strip, which meets the following characteristics:

Thickness: ≤0.100 mm ±7%

Width 100 to 600 mm

CHEMICAL COMPOSITION

Element / Weight %	C	Mn	P	S	Al	Fe
	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm.
Flatness (in 2.0 m)	≤0.5 mm.
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm.

• Certain silicon steel, which meets the following characteristics:

Thickness: 0.024 inch ±.0015 inch

Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element /	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish Smooth	(30–60 microinches).
Gamma Crown (in 5 inches)	0.0005 inch, start measuring one-quarter inch from slit edge.
Flatness	20 I–UNIT max
Coating	C3A–.08A max. (A2 coating acceptable).
Camber (in any 10 feet)	1/16 inch.
Coil Size I.D	20 inches.

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical, 1500 minimum.

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:

Thickness: 0.025 to 0.245 mm

Width: 381–1000 mm

CHEMICAL COMPOSITION

Element / Weight %	C	N	Al
	<0.01	0.004 to 0.007	<0.007

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element /	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02		0.08	0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA microinches (micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International ("CSI") Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element / Max Weight %	C	Mn	P	S
	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds.
Theoretical Thickness	0.0061 inch (+/ – 10 percent of theoretical thickness).
Width	31 inches.
Tensile Strength	45,000–55,000 psi.
Elongation	minimum of 15 percent in 2 inches.

• Concast cold-rolled drawing quality sheet steel, ASTM a-620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element / Max. Weight %	C	Mn	P	S
	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0058 inch ±0.0003 inch.
Hardness	T2/HR 30T 50–60 aiming.
Elongation	≥15%.

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Tensile Strength	51,000.0 psi ±4.0.

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (±0.0005 inch).
Width	10 inches (+1/4 to 3/8 inch/−0).
Tensile Strength	55,000 psi max.
Elongation	Minimum of 15 percent in 2 inches.

• Certain "blued steel" coil (also known as "steamed blue steel" or "blue oxide") with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• Certain cold-rolled steel sheet, coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≤0.019 inch

Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

• Certain cold-rolled steel, which meets the following characteristics:

Width: >66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight%	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–2.000
Min. Yield Point (MPa)	265
Max Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

• Certain band saw steel, which meets the following characteristics:

Thickness: ≤ 1.31 mm

Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:

Carbide: Fully spheroidized having >80% of carbides, which are ≤0.003 mm and uniformly dispersed

Surface finish: Bright finish free from pits, scratches, rust, cracks, or seams Smooth edges.

Edge camber (in each 300 mm of length): ≤ 7 mm arc height

Cross bow (per inch of width): 0.015 mm max.

• Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1:

CHEMICAL COMPOSITION

Element	C	Si	Mn

CHEMICAL COMPOSITION—Continued

Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive).
Min. Yield Point (MPa)	320.
Max Yield Point (MPa)	480.
Min. Tensile Strength (MPa)	590.
Min. Elongation %	24 (if 1.000–1.199 thickness range). 25 (if 1.200–1.599 thickness range). 26 (if 1.600–1.999 thickness range). 27 (if 2.000–2.300 thickness range).

Variety 2:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive).
Min. Yield Point (MPa)	340.
Max Yield Point (MPa)	520.
Min. Tensile Strength (MPa)	690.
Min. Elongation %	21 (if 1.000–1.199 thickness range). 22 (if 1.200–1.599 thickness range). 23 (if 1.600–1.999 thickness range). 24 (if 2.000–2.300 thickness range).

Variety 3:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive).
Min. Yield Point (MPa)	370.
Max Yield Point (MPa)	570.
Min. Tensile Strength (MPa)	780.
Min. Elongation %	18 (if 1.200–1.599 thickness range). 19 (if 1.600–1.999 thickness range). 20 (if 2.000–2.300 thickness range).

• Certain cold-rolled steel, which meets the following characteristics:

Variety 1:

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Yield Point (MPa)	185
Max Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation	31 (ASTM standard 31% = JIS standard 35%)

Variety 2:

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm):	0.7
Elongation %: ≥	35

• Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (U.S. Customs) purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioners to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petitions

Section 771(4)(A) of the Act defines the "industry as the producers as a whole of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[3]

[3] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation, *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petitions. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

The petitions cover certain cold-rolled steel as defined in the *Scope of the Investigation* section, above, a single class or kind of merchandise. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petitions.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Finally, section 732(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using any statistically valid sampling method to poll the industry.

The Department has determined, pursuant to section 732(c)(4)(D), that there is support for the petitions as required by subparagraph (A). Specifically, the Department made the following determinations. For Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, the petitioners established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Furthermore, because the Department received no opposition to the petitions, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. Thus, the requirements of section 732(c)(4)(A)(ii) are also met. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* the *Initiation Checklist*.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to home market price, U.S. price, constructed value (CV) and factors of production (FOP) are detailed in the *Initiation Checklist*. Where the petitioners obtained data from foreign market research, we contacted the researchers to establish their credentials and to confirm the validity of the information being provided. *See e.g., Memorandum to the File from Fred Baker: Contacts with Source of Market Research for Antidumping Petitions Regarding Imports of Cold-Rolled Steel from Australia, Belgium, France, Germany, India, Japan. Korea, the Netherlands, and Thailand* (October 18, 2001) (*Market Research for Australia, Belgium, France, Germany, India, Japan, Korea, the Netherlands, and Thailand*).

The margins alleged in the petitions are as follows: Argentina, 89.89 percent; Australia, 24.06 percent; Belgium, 25.41 percent; Brazil, 26.4 percent; France, 7.93 to 22.12 percent; Germany, 17.41 to 26.03 percent; India, 153.65 percent; Japan, 109.90 to 115.22 percent; Korea, 45.77 to 53.72 percent; the Netherlands, 58.50 to 58.61 percent; New Zealand, 21.72 percent; the People's Republic of China, 70.68 to 74.16 percent; the Russian Federation, 130.58 to 137.33 percent; South Africa, 54.59 percent; Spain, 45.88 percent; Sweden, 40.54 percent; Taiwan, 16.8 percent; Thailand, 112.09 to 142.78 percent; Turkey, 28.23 to 51.71 percent; and Venezuela, 53.9 percent.

The Department has analyzed the information in the petitions and considers the country-wide import statistics for the anticipated period of investigation (POI), price quotes, and market research information used to calculate the estimated margins for the subject countries to be sufficient for purposes of initiation. Based on the information submitted in the petitions, adjusted where appropriate, we are initiating these investigations, as discussed below and in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Period of Investigation

The anticipated POI for the market economy countries is July 1, 2000, through June 30, 2001, while the anticipated POI for the People's Republic of China and the Russian Federation, the non-market economy (NME) countries, is January 1, 2001, through June 30, 2001.

Non-Market Economies

Regarding an investigation involving an NME, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. *See, Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Moldova*, 66 FR 33525 (June 22, 2001) and *Notice of Final Determination of Sales at Less Than Fair Value: Solid Agricultural Ammonium Nitrate from Ukraine*, 66 FR 38632 (July 25, 2001). In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of the People's Republic of China's and the Russian Federation's NME status and the granting of separate rates to individual exporters.

Argentina

Export Price

The petitioners based export price (EP) on price quotes from an Argentine producer to an unaffiliated U.S. purchaser for grades and sizes of subject merchandise comparable with products falling under one HTSUS category. In order to obtain ex-factory prices, the petitioners deducted international transportation and customs duty, ocean freight, U.S. inland freight, and U.S. custom duties from the sales value.

Normal Value

With respect to normal value (NV), the petitioners provided home market prices that were obtained from foreign

market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States which serve as the basis for EP. The quoted price was given in U.S. dollars per metric ton. In order to obtain ex-factory prices, the petitioners deducted inland freight from the sales value.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Australia

Export Price

The petitioners based EP on import average unit value (AUV) data from official U.S. Census Bureau statistics for the POI for one HTSUS category. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States, which serve as the basis for EP. The home market price was in effect during the period of the AUV data. The petitioners made an adjustment for home market credit expenses.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (see Initiation Checklist).

Belgium

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners obtained home market price quotes in effect during the POI from foreign market research, for specific products representative of the HTSUS categories which served as the basis for EP. These prices were in effect during the period of the AUV data. The market researcher provided a table for calculating price extras based on the dimensions of the product. The petitioners selected products from the middle of the width and thickness ranges for the two HTSUS categories used to calculate EP. Based on the selected product dimensions, they used the table to calculate the price extras. The petitioners made no other adjustments to NV.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacturing (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and Belgium using publicly available data. To calculate SG&A and interest expense, the petitioners relied upon amounts reported in a Belgian cold-rolled producer's 2000 financial statements. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Belgian home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Belgium on CV. The petitioners calculated CV using the same COM, depreciation, SG&A and interest expense figures used to compute Belgian home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in the Belgian cold-rolled producer's 2000 financial statements.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Brazil

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for one HTSUS number. This HTSUS number encompasses the type of merchandise in the price quote used to establish NV. The petitioners state that the import statistics are ex-factory export prices. Petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for grades and sizes of cold-rolled steel encompassed by the HTSUS category in the AUV data used to establish EP. The home market price was in effect during the period of the AUV data. Because the price quote was ex-works, petitioners made no adjustments to the price quote when calculating NV.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

France

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research. The petitioners state that the home market price quotations were ex-factory, exclusive of all taxes and inclusive of quantity rebates. The market researcher provided a table for calculating price extras based on the dimensions of the product. Petitioners calculated the price extra for each HTSUS category by averaging the price extra for each length-width combination on the chart that falls within the length-width range of the HTSUS category, and adjusted the prices accordingly.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and France using publicly available data. To calculate depreciation, SG&A, and interest, the petitioners used the consolidated, 2000 financial statements of a French cold-rolled steel producer that petitioners believe to be representative of cold-rolled steel producers in France. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the French home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in France on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute French home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in the same French steel producer's consolidated 2000 financial statements.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Germany

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research. The petitioners state that the home market price quotations were ex-factory, exclusive of all taxes and inclusive of quantity rebates. The market researcher provided a table for calculating price extras based on the dimensions of the product. Petitioners calculated the price extra for each HTSUS category by averaging the price extra for each length-width combination on the chart that falls within the length-width range of the HTSUS category, and adjusted the prices accordingly. No other adjustments to prices were made.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and Germany using publicly available data. To determine depreciation, SG&A, and interest, the petitioners used the consolidated, 2000 financial statements of a German cold-rolled steel producer that petitioners believe to be representative of cold-rolled steel producers in Germany. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the German home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Germany on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute German home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. The petitioners relied upon amounts reported in the same German steel producer's consolidated 2000 financial statements to determine the amount for profit.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

India

Export Price

Petitioners obtained an offer which documents the sales terms for certain Indian cold-rolled steel in the United States. Petitioners calculated a net U.S. price by deducting port charges, freight charges, shipping charges, custom duties, and trading company mark-up. No other adjustments to prices were made.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States, which serve as the basis for EP. The petitioners made no adjustment to NV.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners used publicly available data from Ispat Industries, Ltd.'s (Ispat's) March 31, 2001 financial statements for the cost of the raw material input, hot-rolled coil. The cost of transforming the hot-rolled coil into subject merchandise was based on petitioners' own experience adjusted for known differences between costs

incurred to produce cold-rolled steel in the United States and India using publicly available data. To calculate depreciation, SG&A and interest expense, the petitioners relied upon amounts reported in Ispat's 2001 financial statements. However, because Ispat does not separately report depreciation attributable to the company's cold-rolling operations, petitioners excluded depreciation relative to the cold-rolling operations from the calculation of COP. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Indian home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in India on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute Indian home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in Tata Iron and Steel Company, Ltd.'s 2001 financial statements because Ispat reported a net loss for the year. Because the Department prefers COM, SG&A and profit to be obtained from the same source, we have included a profit rate of zero. However, if we need to rely on the use of facts otherwise available in the future, we will then pursue alternative methods for computing the profit rate.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Japan

Export Price

To calculate EP, petitioners obtained two U.S. price quotes for merchandise produced in Japan for sale to the United States. Petitioners stated that the merchandise quoted would fall under HTSUS numbers 7209.16.00.90 and 7209.17.00.90. Because terms of sale were cost, insurance, and freight (CIF), petitioners made adjustments to these prices for ocean freight, customs duties, port charges (unloading and wharfage), and a trading company mark-up to calculate net EP. No other adjustments to prices were made.

Normal Value

With respect to NV, petitioners used foreign market research to obtain home market price quotes corresponding to the merchandise for which petitioners obtained its U.S. price information. Petitioners made no adjustments to the home market price. Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Price-to-CV Comparisons

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and Japan using publicly available data. To calculate SG&A and interest expense, the petitioners relied upon amounts reported in a Japanese cold-rolled producer's 2001 financial statements. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Japanese home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Japan on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute Japanese home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in the Japanese steel producer's 2001 financial statements.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Korea

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States, which serve as the basis for EP. The home market price employed was the average of the range of Korea's transaction prices reported in the foreign market research report and are for products comparable to the HTSUS categories used for EP. The petitioners state that the price is ex-factory and have made no adjustments.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners' calculated COM based on their own experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and Korea using publicly available data. To calculate depreciation, SG&A, and interest, the petitioners used the consolidated, 2000 financial statements of a Korean cold-rolled steel producer that petitioners believe to be representative of cold-rolled steel producers in Korea. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Korean home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Korea on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute Korean home market costs. Consistent with section 773(e)(2) of the Act, the petitioners calculated an amount for profit. For profit, the petitioners relied upon amounts reported in the same Korean steel producer's consolidated 2000 financial statements. However, this amount was not included in their margin calculations.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

The Netherlands

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for grades and sizes of subject merchandise comparable with products falling under two HTSUS categories 7209.16.00.90 and 7209.17.00.90, the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotation excluded delivery charges (i.e., FOB plant) and they made an adjustment only for published price extras.

Price-to-CV Comparisons

Petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. Petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and the Netherlands using publicly available data. To calculate SG&A, petitioners relied upon amounts reported in a Dutch cold-rolled producer's consolidated 2000 financial statements. For interest expense, petitioners also used the Dutch company's consolidated 2000 financial statements. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Dutch home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, petitioners based NV for sales in the Netherlands on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute Dutch home market costs. Consistent with section 773(3)(2) of the Act, petitioners included in CV an amount for profit. For profit, petitioners relied upon figures reported in the financial statements for the cold-rolled producer's parent company, because such information was not reported in the Dutch cold-rolled producer's financial statements.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (see Initiation Checklist).

New Zealand

Export Price/Contructed Export Price

The petitioners based U.S. price on import AUV data from official U.S. Census Bureau statistics for the POI for one HTSUS category. Petitioners state that U.S. price should be based upon CEP because they believe that much if not all of the cold-rolled steel produced by New Zealand Steel Ltd. (NZS), a subsidiary of BHP Billiton, is sold by BHP Steel Americas, which is also owned by BHP Billiton. Therefore, petitioners argue that U.S. sales should be classified as CEP sales. However, as petitioners have no information regarding the nature or the amount of expenses incurred in the United States for BHP Steel Americas' sales of cold-rolled steel produced by NZS, they have made no adjustments to U.S. price to reflect CEP expenses. Therefore, we have used EP as the basis for our comparison.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from sales offers for grades and sizes of cold-rolled steel comparable to the products exported to the United States, which serve as the basis for EP. The petitioners made an adjustment for home market freight expenses.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (see *Initiation Checklist*).

The People's Republic of China

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make an adjustment to the AUV data for foreign inland freight when calculating EP, because they argued that most of the PRC producers' mills are close to the port.

Normal Value

Petitioners assert that the Department has long treated the PRC as an NME country. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as an NME remains in effect, the petitioners determined the dumping margin using a FOP analysis.

The petitioners assert that information regarding the PRC's mills' consumption rates is not available. Therefore, petitioners based the FOP, as defined by section 773(c)(3) of the Act, on the consumption rates of one U.S. producer of the subject merchandise (U.S. surrogate). Petitioners assert that both the U.S. surrogate and the Chinese producers use basic oxygen converters to make steel.

Petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to the PRC in terms of per capita GNP. Based on the information provided by the petitioners, we believe that the petitioners' use of

India as a surrogate country is appropriate for purposes of initiating this investigation.

For most raw material inputs, petitioners used the values reported in the *Monthly Statistics of the Foreign Trade of India (Indian Import Statistics)* for February 2001. The petitioners excluded the imports from NME countries in the calculation of import surrogate values. Petitioners believed that the Indian value of slag as given in the *Indian Import Statistics* was aberrational because it was over $1,000/ton. Therefore, petitioners used the price derived from *Mineral Commodity Summaries*, January 2001. Because this value was for the year 2000, petitioners inflated the value to June 2001 levels using the U.S. Producer's Price Index. Petitioners made a by-product offset to COM for coke oven gas, blast furnace gas, and salvageable scrap. They valued these by-products using the *Indian Import Statistics*. Regarding iron input costs, petitioners amended their original calculation in their amendment to the petitions dated October 12, 2001. Please see the proprietary discussion in the *Initiation Checklist*.

Petitioners valued direct labor using the labor rates indicated on the Import Administration's website *(http://ia.ita.doc.gov/wages)*.

Petitioners valued electricity using *Energy Prices and Taxes, Second Quarter 2001*, published by the Organization for Economic Cooperation and Development's International Energy Agency. Because the latest price is for the year 1997, petitioners adjusted this price to June 2001 levels using the Indian wholesale price index. Petitioner took the surrogate value for natural gas from the 1999 financial report of EOG Resources, Inc. Because this figure is denominated in U.S. dollars, petitioners inflated this figure to June 2001 levels using the U.S. wholesale price index. Petitioners derived the surrogate value for blast furnace gas from a ratio the Department calculated and utilized in *Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999) (factor value memorandum). Petitioners took the surrogate values for oxygen, argon, and nitrogen from a price quote published in 1997 on the website of Bhoruka Gases Limited, an Indian gas manufacturer, adjusted for inflation.

For depreciation, overhead, SG&A expenses, and profit, the petitioners applied rates derived from the 2000–2001 financial statement of an Indian producer of subject merchandise, Tata Iron & Steel Co., Ltd.

Petitioners did not include packing materials in its computation because it was unable to obtain information on this expense. Petitioners valued packing labor using the direct labor rate published on the Department's website.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

The Russian Federation

Export Price

The petitioners based EP on the import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. Petitioners deducted estimated foreign inland freight by applying a surrogate freight rate to the average distance from two Russian producers' mills to the nearest port. No other adjustments to prices were made.

Normal Value

Petitioners assert that the Department has long treated Russia as a NME country. Pursuant to section 771(18)(C)(i) of the Act, because Russia's status as an NME remains in effect, the petitioners determined the dumping margin using a FOP analysis.

The petitioners assert that information regarding Russian mills' consumption rates is not available. Therefore, petitioners based the FOP, as defined by section 773(c)(3) of the Act, on the consumption rates of one U.S. producer of the subject merchandise (U.S. surrogate). Petitioners assert that both the U.S. surrogate and the Russian producers use basic oxygen converters to make steel.

Petitioners assert that South Africa is the most appropriate surrogate country for the PRC, claiming that South Africa is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to Russia in terms of per capita GNP. Based on the information provided by the petitioners, we believe that the petitioners' use of South Africa as a surrogate country is appropriate for purposes of initiating this investigation.

For most raw material inputs, petitioners used the values reported in the United Nations Commodity Trade Statistics (UNCTS) for 1998. The petitioners excluded the imports from NME countries in the calculation of import surrogate values. They adjusted these prices to June 2001 levels using the South African consumer price index. Petitioners believed that the South African values for slag and limestone as given in the UNCTS were too high and were, therefore, aberrational. Therefore, petitioners used the prices reported in the *World Trade Atlas*, compiled by Global Trade Information Services, Inc. Regarding iron input costs, petitioners amended their original calculation in their amendment to the petition dated October 12, 2001. Please see the proprietary discussion in the *Initiation Checklist*. Petitioners made a by-product offset to COM for coke oven gas, blast furnace gas, and salvageable scrap. They valued these by-products using the UNCTS.

Petitioners valued direct labor using the labor rates indicated on the Import Administration's website (*http://ia.ita.doc.gov/wages*).

Petitioners valued electricity using statistics reported in the 2000 annual financial statement of Eskom, the electricity provider in South Africa. Because the latest price is for the year 2000, petitioners adjusted this price to June 2001 levels using the South African wholesale price index. Petitioners took the surrogate value for natural gas from the 1999 edition of *Key World Energy Statistics* published by OECD's International Energy Agency. Petitioners applied an inflator based on the Producer's Price Index (PPI) to adjust it to June 2001 levels. Petitioners derived the surrogate value for blast furnace gas, oxygen, argon, and nitrogen from ratios the Department calculated and utilized in *Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999) (factor value memorandum).

For depreciation, overhead, SG&A expenses, and profit, the petitioners applied rates derived from the 1999–2000 financial statement of a South African steel producer.

Petitioners did not include packing materials in its computation because it was unable to obtain information on this expense. Petitioners valued packing labor using the direct labor rate published on Import Administration's website (*http://ia.ita.doc.gov/wages*).

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

South Africa

Constructed Export Price

The petitioners identified one company that produces subject merchandise in South Africa. The petitioners state that this one producer accounts for the majority of all cold-rolled steel production in South Africa. Also, the petitioners state that this producer sells subject merchandise through its U.S. affiliate, a global trading company. The petitioners based CEP on the import AUV data from official U.S. Census Bureau statistics for the POI for one HTSUS category. This HTSUS category encompasses the type of merchandise in the price quote used to establish NV. The petitioners state that the import statistics are the ex-factory export prices and they made no adjustments for transportation to the AUV data when calculating CEP. The petitioners calculated a net U.S. price by subtracting port charges.

Normal Value

The petitioners based NV on domestic prices of cold-rolled steel comparable to the products exported during a month within the POI. The petitioners used prices for a recent offer for sale by Iscor, a South African company, to unaffiliated customers in South Africa as the starting point in calculating NV. The price quote covered the same products that were included in the HTSUS category used as the basis to establish EP. The petitioners adjusted this price by adding processing fees and by subtracting home market movement charges and home market credit expenses.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Spain

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for one HTSUS classification. This HTSUS classification encompasses the type of merchandise in the price quote used to establish NV. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States which serve as the basis for EP. The home-market price was in effect during the period of the AUV data. The price quote was ex-works so petitioners made no adjustments to the price quote when calculating NV.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Sweden

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for one HTSUS category. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

From a market researcher, petitioners obtained an affidavit reporting the home market prices based upon a price quote from SSAB Svenskt Stal AB to an unaffiliated purchaser in Sweden. The quoted price was given in Swedish kroner per metric ton. The terms of sale were delivered. The petitioner deducted freight costs from the home market prices. Conservatively, the highest freight cost (*i.e.*, maximum freight expense for longest distance) were used as stated in the given quote. The petitioners price quote did not include credit terms so no adjustment was made for credit expense. For comparisons to EP, the petitioners converted the net home market prices to U.S. dollars based on the average exchange rate in effect during the POI.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Taiwan

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for one HTSUS classification. This HTSUS classification encompasses the type of merchandise in the price quote used to establish NV. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioner obtained home market prices, through market research, for a grade of cold-rolled steel comparable to the product exported to the United States (which serves as the basis for EP). The home market price was in effect during the period of the AUV data. Petitioners made no adjustments to the price quote when calculating NV.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Thailand

Export Price

To calculate EP, petitioners used import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, petitioners provided home market prices obtained through foreign market research for various sizes of cold-rolled steel comparable to the products exported to the United States which serve as a basis for EP. As these were ex-factory prices, petitioners made no adjustments to the calculated average home market prices.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs

incurred to produce cold-rolled steel in the United States and Thailand using publicly available data. To calculate SG&A and interest, the petitioners relied upon amounts reported in a Thai producer of cold-rolled steel's 1999 financial statements. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Thai home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Thailand on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute Thai home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in the Thai cold-rolled steel producer's 1999 financial statements.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Turkey

Export Price

To calculate EP for Turkish producers of cold-rolled steel, petitioners obtained a U.S. price quote for merchandise produced in Turkey for sale to the United States. For this U.S. price quote, petitioners made adjustments to net EP for ocean freight and U.S. Customs duty. Petitioners also provided import AUV data from official U.S. Census Bureau statistics. We based net EP on the price quote obtained.

Normal Value

With respect to NV, petitioners provided home market prices obtained through foreign market research for various sizes of cold-rolled steel comparable to the products exported to the United States which serve as a basis for EP. Petitioners adjusted the ex-factory normal value to account for a quantity discount, a payment in cash discount, and rebates.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and Turkey using publicly available data. To determine depreciation, SG&A, and interest, the petitioners used the consolidated, 2000 financial statements of a Turkish cold-rolled steel producer that petitioners believe to be representative of cold-rolled steel producers in Turkey. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Turkish home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Turkey on CV. The petitioners calculated CV using the same COM, SG&A, and interest expense figures used to compute Turkish home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. The petitioners relied upon amounts reported in the same Turkish steel producer's consolidated 2000 financial statements to determine the amount for profit.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Venezuela

Export Price

To calculate EP, petitioners used import AUV data from official U.S. Census Bureau statistics for the POI for one HTSUS category. Because the import price represented a free-along-side price, no adjustments were made to calculate net EP.

Normal Value

With respect to NV, petitioners provided home market prices obtained through foreign market research for various sizes of cold-rolled steel comparable to the products exported to the United States which serve as a basis for EP. The terms of sale were ex-factory. No adjustments were made to normal value.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Initiation of Cost Investigations

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of Belgium, France, Germany, India, Japan, Korea, the Netherlands, Thailand, and Turkey were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with the requested antidumping investigations for these countries. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H. Doc. 103–316, Vol. 1, 103d Cong., 2d Session, at 833 (1994). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." Id. Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their COPs, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products in the markets of Belgium, France, Germany, India, Japan, Korea, the Netherlands, Thailand, and Turkey were made at prices below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations.

Fair Value Comparisons

The Department has examined the adequacy and accuracy of the information the petitioners used in their calculations of U.S. and home market prices and has found that it represents information reasonably available to petitioners supporting the allegations of dumping (*see Initiation Checklist*).

Based on the data provided by the petitioners, there is reason to believe that imports of certain cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in the stagnation of U.S. producers' sales volumes and profits, the decline of their capacity utilization, the increase of U.S. inventories and closures of U.S. production facilities. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have examined the accuracy and adequacy of the evidence provided in the petitions and have determined that the petitions allege the elements necessary for the imposition of a duty under section 731 of the Act and contain information reasonably available to the petitioner supporting the allegations (see Initiation Checklist, Material Injury section).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on certain cold-rolled steel and the petitioners' responses to our supplemental questionnaires clarifying the petitions, as well as our conversations with the foreign market researchers who provided information concerning various aspects of the petition, we have found that the petitions meet the requirements of section 732 of the Act. See Initiation Checklist. Therefore, we are initiating antidumping duty investigations to determine whether imports of certain cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public versions of the petitions have been provided to the representatives of the governments of Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. We will attempt to provide a copy of the public version of the petitions to each exporter named in the petitions, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, no later than November 13, 2001, whether there is a reasonable indication that imports of certain cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 18, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26937 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–009]

Industrial Nitrocellulose From France: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 7, 2001, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers one manufacturer/exporter, Bergerac, NC. The period of review is August 1, 1999, through July 31, 2000.

We have made no changes to the margin calculation used for the preliminary results of review. Therefore, the final results do not differ from the preliminary results in which we found that sales of the subject merchandise were made below normal value. The final weighted-average dumping margin for Bergerac, NC is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: David Dirstine, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4033.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

On September 7, 2001, the Department of Commerce (the Department) published in the **Federal Register** (66 FR 46773) the preliminary results of the antidumping duty order on industrial nitrocellulose (INC) from France. The review covers one manufacturer/exporter, Bergerac, NC (BNC). The period of review (POR) is August 1, 1999, through July 31, 2000. The Department is conducting this administrative review in accordance with section 751 of the Act.

We invited interested parties to comment on our preliminary results. BNC submitted a case brief on September 24, 2001, and the petitioner submitted a rebuttal brief on September 28, 2001. On October 3, 2001, the parties requested to withdraw the case and rebuttal briefs, to which there was no objection from any other party. See the October 3, 2001, letter from respondent's counsel to the Secretary of Commerce. On October 5, 2001, we withdrew the case and rebuttal briefs from the record pursuant to the requests of the parties and destroyed them. See memorandum to file from J. David Dirstine dated October 5, 2001. We have not considered or relied upon any argument or information contained in the withdrawn case and rebuttal briefs in making this determination.

Scope of Order

The product covered by this order is INC containing between 10.8 and 12.2 percent nitrogen. INC is a dry, white amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in serveral viscosities and is used to form films in lacquers, coatings, furniture finishes and printing inks. Imports of this product are classified under the *Harmonized Tariff Schedule of the United States Annotated* (HTSUS) subheadings 3912.20.00 and 3912.90.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of this proceeding remains dispositive.

Final Results of Review

We made no changes to our preliminary analysis for these final results. The final weighted-average dumping margin for BNC for the period August 1, 1999, through July 31, 2000, is 3.26 percent.

Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific ad valorem duty-assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs entered value of the sales used to calculate these duties. We will direct the Customs Service to assess the resulting percentage margin for the reviewed sales uniformly on all entries of that particular importer during the POR as well as on those entries of subject merchandise for which we applied the special rule for merchandise with value added after importation under section 772(e) of the Act. See 19 CFR 351.212(a).

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rate for BNC will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will 1.38 percent. This is the "All Others" rate from the less-than-fair-value investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 18, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–27057 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–804, A–471–806]

Notice of Initiation of Antidumping Duty Investigations: Sulfanilic Acid From Hungary and Portugal

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigations.

SUMMARY: The Department of Commerce is initiating antidumping duty investigations to determine whether producers or exporters of sulfanilic acid from Hungary and Portugal are selling sulfanilic acid to the United States at less than fair value.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder at (202) 482–0189 or John Brinkmann at (202) 482–4126, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are references to the provisions codified at 19 CFR part 351 (April 2001).

The Petitions

On September 28, 2001, the Department received petitions filed in proper form by Nation Ford Chemical Company ("the petitioner"). The Department received supplemental information to the petitions on October 9 and 12, 2001.

In accordance with section 732(b)(1) of the Act, the petitioner alleges that imports of sulfanilic acid from Hungary and Portugal are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to each of the antidumping investigations that it is requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petition."

Scope of Investigations

Imports covered by these investigations are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free-flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of Harmonized Tariff Schedule ("HTS"), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

This scope is identical to the scope of the antidumping duty order on Sulfanilic Acid from the People's Republic of China. *See Antidumping Duty Order: Sulfanilic Acid from the People's Republic of China*, 57 FR 37524 (August 19, 1992) (as currently reflected in *Sulfanilic Acid from the People's Republic of China; Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 47003 (September 10, 2001)). Nevertheless, during our review of the petition, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit ("CRU") at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law. *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the *Scope of Investigation* section above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition.

The Department has determined that the petitions contain adequate evidence of industry support; therefore, polling is unnecessary. *See Initiation Checklist* for each country at Industry Support. Information on the record demonstrates that the producer who supports the petitions account for more than 50 percent of the production of the domestic like product. Additionally, no interested party pursuant to section 771(9)(A), (C), (D), (E) or (F) of the Act has expressed opposition on the record to the petition. Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Initiation Standard for Cost Investigations

Pursuant to section 773(b) of the Act, the petitioner provided information demonstrating reasonable grounds to

believe or suspect that sales in the comparison markets for Hungary and Portugal were made at prices below the cost of production ("COP") and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with these investigations. The Statement of Administrative Action ("SAA"), submitted to the Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. *See* H.R. Doc. No. 103–316, 103d Cong., 2d Sess. 833 (1994). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that new section 773(b)(2)(A) of the Act retains the requirement that the Department have "reasonable grounds to believe or suspect" that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the comparison market in question are at below-cost prices. *Id.* We have analyzed the country-specific allegations as described below.

Export Price ("EP") and Normal Value ("NV")

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. A more detailed description of these allegations is provided in the *Initiation Checklist* for each country. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, as appropriate.

Hungary

EP

The petitioner claims that one producer, Nitrokemia 2000 Co. ("Nitrokemia"), accounts for all of the sulfanilic acid production in Hungary and, accordingly, all of the sulfanilic acid products exported to the United States from Hungary. The petitioner provided pricing and cost information for this producer. According to the petitioner, Nitrokemia sells sulfanilic acid directly to unaffiliated U.S. customers. For Nitrokemia, the petitioner based EP on the average U.S. Customs values classifiable under 2921.42.2200 of the HTS, as reported in the ITC's Dataweb (*http://dataweb.usitc.gov*), for the period of July 1, 2000 through June 30, 2001. The petitioner did not make any deductions to this FOB port of exportation price of sulfanilic acid. *See Hungary Initiation Checklist.*

NV

According to the petitioner, Nitrokemia has no home market for sulfanilic acid and, therefore, it was unable to obtain price information for sales in the home market. The Department confirmed with the U.S. Commercial Service in Budapest, Hungary ("Commercial Service Budapest") that there were no other producers of sulfanilic acid in Hungary, nor were there any known Hungarian industries which utilized commercial quantities of sulfanilic acid. *See Hungary Initiation Checklist.* Therefore, the petitioner turned to third-country sales for purposes of calculating NV. For a third-country market, the petitioner selected Germany because, based on the Hungarian export statistics, Germany is the largest export market for Nitrokemia. After examining this evidence, we found the petitibner's selection of Germany as the comparison market to be reasonable because it met the criteria for viable third-country sales pursuant to section 773(a)(1)(B)(ii) of the Act.

The petitioner used Hungarian export statistics to determine third-country prices in Germany. These export statistics pertained to a basket category, aniline derivatives, in which sulfanilic acid is included. The petitioner presented evidence that Nitrokemia is the only producer of aniline derivatives in Hungary and that this basket category provides the best approximation of Nitrokemia's sulfanilic acid exports. We confirmed with the Commercial Service Budapest that sulfanilic acid falls under the Hungarian basket category of HS #2921.42, aniline salts and derivatives, and that the volume and value of exports in the Hungarian export statistics are maintained on a DAF ("delivered to frontier") basis. Furthermore, from the description of this Hungarian basket category and discussions with the Commercial Service Budapest, we found that these products are comparable to the products exported to the United States which served as the basis for EP. The petitioner did not make any deductions to the comparison market price.

Price-to-CV Comparisons

The petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of sulfanilic acid in the comparison market (Germany) were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation in this country. *See* section 773(b)(2)(A) of the Act.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing ("COM"), selling, general, and administrative expenses, including financial expenses ("SG&A"), and packing. The petitioner calculated COM based on the petitioner's own factors of production to estimate the cost in Hungary. The petitioner valued raw materials (*i.e.*, natural gas, electricity, activated carbon, aniline, sulfuric acid, caustic soda, and hydrochloric acid) using Hungarian values obtained from a market research report prepared by the Commercial Service Budapest. The petitioner relied upon Nitrokemia's 2000 annual report to estimate labor cost as well as SG&A and financial expenses. The petitioner relied upon its own factory overhead percentage, claiming that Nitrokemia's annual report did not provide sufficient detail for this purpose.

Based upon the comparison of the prices of the foreign like product in the comparison market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, in the event that we determine that Germany is the appropriate market upon which to base NV, we will conduct a COP investigation.

Because the comparison-market price was below the COP, pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioner based NV for sales in the comparison market on CV. The petitioner calculated CV using the same COM, SG&A and financial expenses used to compute comparison market costs. Consistent with section 773(e)(2) of the Act, the petitioner included in CV an amount for profit. For profit, the petitioner relied upon its own financial experience inasmuch as Nitrokemia reported a negative profit for 2000. The petitioner did not make any other adjustments to CV for comparisons to EP.

Based upon the comparison of CV to EP, as adjusted by the Department (*see Hungary Initiation Checklist*), the petitioner calculated estimated dumping margins ranging from 43.52 to 45.14 percent. *See Hungary Initiation Checklist.*

Portugal

EP

The petitioner claims that one producer, Quimigal S.A. ("Quimigal"), accounts for all of the sulfanilic acid production in Portugal and, accordingly, all of the sulfanilic acid products exported to the United States from Portugal. The petitioner provided pricing and cost information for this producer. According to the petitioner, Quimigal sells its product through an unaffiliated reseller in the United Kingdom ("UK") to unaffiliated U.S. customers. For Quimigal, the petitioner based EP on U.S. Customs values classifiable under 2921.42.2200 of the HTS, as reported in the ITC's Dataweb (*http://dataweb.usitc.gov*) for the period of July 1, 2000 through June 30, 2001. The petitioner adjusted this FOB port of exportation price by deducting an amount for gross profit realized on the transaction by the unaffiliated UK reseller. No further adjustments were made by the petitioner.

While the petitioner provided some support for this adjustment, we have adopted the more conservative approach of using Portuguese export statistics to measure EP. This approach should avoid any inflation of the U.S. prices as reported in U.S. import statistics due to the reseller's markup, without attempting to quantify the markup. *See Portugal Initiation Checklist* for a complete discussion of the changes we made to the EP. These export statistics pertained to a basket category, aniline derivatives, in which sulfanilic acid is included. The petitioner presented evidence that Quimigal is the only producer of aniline derivatives in Portugal and that this basket category provides the best approximation of Quimigal's sulfanilic acid exports. The Portuguese export statistics were already in U.S. dollars, so there was no need to perform any conversions.

NV

According to the petitioner, Quimigal has no home market for sulfanilic acid and, therefore, it was unable to obtain price information for sales in the home market. Therefore, the petitioner turned to third-country sales for purposes of calculating NV. For third-country markets, the petitioner selected Spain, the UK, and Pakistan. After examining the evidence, we find that the UK is the most reasonable comparison market because, based on the Portuguese export statistics, the UK is the largest export market for Quimigal and because it meets the criteria for viable third-country sales pursuant to section 773(a)(1)(B)(ii) of the Act. *See Portugal Initiation Checklist.*

Price-to-CV Comparisons

According to the petitioner, the per-unit prices for the comparison market, calculated using Portuguese export statistics, are below Quimigal's estimated cost of production. Therefore, the petitioner requested that the Department conduct a country-wide sales-below-cost investigation in the comparison market. *See* section 773(b)(2)(A) of the Act.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses (which include financial expenses), and packing. Because Quimigal also produces aniline, a major input in the production of sulfanilic acid, the petitioner included estimated costs for Quimigal's aniline production in its overall calculation of COP.

As an estimation of the cost of aniline production in Portugal, the petitioner calculated Quimigal's COM for aniline based on a Stanford Research Institute ("SRI") report [1] of the estimated cost of producing aniline in Germany. The petitioner valued raw materials using the same research report except in the case of benzene, where the petitioner used prices from the Weekly DeWitte Newsletter for Benzene and Derivatives, and in the case of nitric acid and hydrogen, where the petitioner used quotes taken from suppliers to a European producer of sulfanilic acid.

To calculate Quimigal's COM for sulfanilic acid, the petitioner used its own factors of production to estimate the cost in Portugal. The petitioner valued raw materials from various sources. Sulfuric acid and activated carbon were valued based on quotes and invoices obtained from the European producer. Labor, natural gas and electricity were valued based on Portuguese values obtained from market research performed by the U.S. Commercial Service in Lisbon, Portugal. The petitioner was unable to obtain Quimigal's financial statements for purposes of deriving factory overhead, SG&A, and interest expense. Consequently, the petitioner relied upon its own experience for SG&A and interest expense, while factory overhead was calculated using the SRI report, which we found resulted in a more conservative percentage than if the petitioner had relied upon its own experience.

Based upon the comparison of the prices of the foreign like product in the comparison market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, in the event that we determine that the UK is the appropriate market upon which to base NV, we will conduct a COP investigation.

Because the comparison-market prices were below the COP, pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioner based NV for sales in the comparison market on CV. The petitioner calculated CV using the same COM, SG&A and financial expenses it used to compute comparison market costs. Consistent with section 773(e)(2) of the Act, the petitioner included in CV an amount for profit. For profit, the petitioner relied upon its own financial experience for the year for 2000 because it was unable to obtain Quimigal's financial statements. The petitioner did not make any other adjustments to CV for comparisons to EP.

Based upon the comparison of CV to EP, as adjusted by the Department, the estimated dumping margin is 91.82 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of sulfanilic acid from Hungary and Portugal are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise. The petitioner contends that the industry's injured condition is evident in the declining trends in employment, domestic prices, production, net sales volume and value, and inventory. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (*see Hungary Initiation Checklist* and *Portugal Initiation Checklist*).

[1] This report is part of SRI's Process Economics Program. It was provided to NFC on a confidential basis.

Initiation of Antidumping Investigations

Based upon our examination of the petitions on sulfanilic acid, we have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of sulfanilic acid from Hungary and Portugal are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(c)(1), we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each respective petition has been provided to the representatives of the governments of Hungary and Portugal. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under section 351.203(c)(2) of the Department's regulations.

ITC Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine no later than November 13, 2001, whether there is a reasonable indication that imports of sulfanilic acid from Hungary or Portugal are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 18, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26941 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–817, C–351–835, C–427–823, C–580–849]

Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea have received countervailable subsidies.

ACTION: Initiation of countervailing duty investigations.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam (Argentina, Brazil, and France) at (202) 482–0176 and Jonathon Lyons (Argentina and the Republic of Korea) at (202) 482–0374; Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the "Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the "Department") regulations are references to the provisions codified at 19 CFR part 351 (April 2001).

The Petitions

On September 28, 2001, the Department received petitions filed in proper form by Bethlehem Steel Corp., United States Steel LLC., LTV Steel Company, Inc., Steel Dynamics, Inc., National Steel Corp., Nucor Corp., WCI Steel, Inc., and Weirton Steel Corp. (collectively, "the petitioners"). The Department received supplemental information to support the petition for France on October 3, 2001.

In accordance with section 702(b)(1) of the Act, the petitioners allege that manufacturers, producers, or exporters of the subject merchandise from Argentina, Brazil, France, and the Republic of Korea receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and they have demonstrated sufficient industry support. *See* "Determination of Industry Support for the Petitions" section, below.

Scope of Investigations

For purposes of these investigations, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States ("HTSUS"), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by

weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium (also called columbium), or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS; Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (0.001 inch), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (0.001 inch);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm
Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≥162 Kgf/mm².
Hardness	≥475 Vickers hardness number.

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width.

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

Thickness (mm)	Roughness (μm)
Sulfide Inclusion	>0.04%
Oxide Inclusion	>0.05%

Compressive Stress: 10 to 40 Kgf/mm²

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.440	Rz≤0.7

SURFACE ROUGHNESS—Continued

Thickness (mm)	Roughness (μm)
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

• Certain ultra thin gauge steel strip, which meets the following characteristics:
Thickness: ≤0.100 mm ±7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum).
Total Elongation	<3%.
Tensile Strength	600 to 850 N/mm².

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron.
Camber (in 2.0 m)	<3.0 mm.
Flatness (in 2.0 m)	≤0.5 mm.
Edge Burr	<0.01 mm greater than thickness.
Coil Set (in 1.0 m)	<75.0 mm.

• Certain silicon steel, which meets the following characteristics:
Thickness: 0.024 inch ± .0015 inch
Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches).
Gamma Crown (in 5 inches)	0.0005 inch, start measuring one-quarter inch from slit edge.
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable).
Camber (in any 10 inch feet)	1/16.
Coil Size I.D	20 inches.

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical, 1500 minimum.

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
• Thickness: 0.025 to 0.245 mm
• Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.
Surface Treatment as follows:
The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA microinches (micrometers)		
	Aim	Min.	Max
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International ("CSI") Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds.
Theoretical Thickness	0.0061 inch (+/– 10 percent of theoretical thickness).
Width	31 inches.
Tensile Strength	45,000–55,000 psi.
Elongation	Minimum of 15 percent in 2 inches.

• Concast cold-rolled drawing quality sheet steel, ASTM a–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.
• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).
• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.
• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).
• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0058 inch ±0.0003 inch.
Hardness	T2/HR 30T 50–60 aiming.
Elongation	≥15%.
Tensile Strength	51,000.0 psi ±4.0 aiming.

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (± 0.0005 inch).
Width	10 inches (+ ¼ to ⅜ inch/– 0).
Tensile Strength	55,000 psi max.
Elongation	Minimum of 15 percent in 2 inches.

• Certain "blue steel" coil (also known as "steamed blue steel" or "blue oxide") with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;
• Certain cold-rolled steel sheet, coated with porcelain enameling prior to importation, which meets the following characteristics:
Thickness (nominal): ≤0.019 inch
Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

• Certain cold-rolled steel, which meets the following characteristics:
Width: >66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–2.000
Min. Yield Point (MPa)	265
Max Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

• Certain band saw steel, which meets the following characteristics:
Thickness: ≤ 1.31 mm
Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.00	0.3 to 0.5	0.25

Other properties:
Carbide: Fully spheroidized having >80% of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: Bright finish free from pits, scratches, rust, cracks, or seams Smooth edges.
Edge camber (in each 300 mm of length): ≤ 7 mm arc height Cross bow (per inch of width): 0.015 mm max.
• Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive).

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Yield Point (MPa)	320.
Max Yield Point (MPa)	480.
Min. Tensile Strength (MPa)	590.
Min. Elongation %	24 (if 1.000–1.199 thickness range). 25 (if 1.200–1.599 thickness range). 26 (if 1.600–1.999 thickness range). 27 (if 2.000–2.300 thickness range).

Variety 2

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive).
Min. Yield Point (MPa)	340.
Max. Yield Point (MPa)	520.
Min. Tensile Strength (MPa)	690.
Min. Elongation %	21 (if 1.000–1.199 thickness range). 22 (if 1.200–1.599 thickness range). 23 (if 1.600–1.999 thickness range). 24 (if 2.000–2.300 thickness range).

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive).
Min. Yield Point (MPa)	370.
Max. Yield Point (MPa)	570.
Min. Tensile Strength (MPa)	780.
Min. Elongation %	18 (if 1.200–1.599 thickness range). 19 (if 1.600–1.999 thickness range). 20 (if 2.000–2.300 thickness range).

• Certain cold-rolled steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %	0.10	0.40	0.10	0.15
Max. Weight %				0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800
Min. Yield Point (MPa)	185
Max. Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation	31 (ASTM standard 31% = JIS standard 35%)

Variety 2

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

Variety 3

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max. Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm):	0.7
Elongation %: ≥	35

• Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("U.S. Customs") purposes, the written description of the merchandise under investigation is dispositive.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Governments of Argentina ("GOA"), Brazil ("GOB"), France ("GOF"), the Republic of Korea ("GOK"), and the European Commission ("EC") for consultations with respect to the petitions filed. The GOK did not accept our invitation to hold consultations. On October 12, 2001, the Department held separate consultations with the GOA, GOB, and the GOF/EC. The GOA also submitted additional information on October 15, 2001. The points raised in the consultations are described in the individual country-specific consultation memoranda to the file dated October 12, 2001, which are on file in the Department's Central Records Unit, Room B–099 of the main Department of Commerce building.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petitions. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

The petitions cover certain cold-rolled steel as defined in the "Scope of the Investigations" section, above, a single class or kind of merchandise. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petitions.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Finally, section 732(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using any statistically valid sampling method to poll the industry.

The Department has determined, pursuant to section 732(c)(4)(D), that there is support for the petitions as required by subparagraph (A). Specifically, the Department made the following determinations. For Argentina, Brazil, France, and the Republic of Korea, the petitioners established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Furthermore, because the Department received no opposition to the petitions, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. Thus, the requirements of section 732(c)(4)(A)(ii) are also met. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* the Initiation Checklists for each country dated October 18, 2001 ("*Initiation Checklist*").

Injury Test

Because Argentina, Brazil, France, and the Republic of Korea are each a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from these countries materially injure, or threaten material injury to, an industry in the United States.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise. The petitioners contend that the industry's injured condition is evident in the stagnation of U.S. producers' sales volumes and profits, the decline of their capacity utilization, the increase of U.S. inventories and closures of U.S. production facilities. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have examined the accuracy and adequacy of the evidence provided in the petitions and have determined that the petitions allege the elements necessary for the imposition of a duty under section 731 of the Act and contain information reasonably available to the petitioners supporting the allegations (*see Initiation Checklists*, Injury Allegation section).

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

Period of Investigation

The period of investigation ("POI") for which we are measuring subsidies is the calendar year 2000.

Initiation of Countervailing Duty Investigations

The Department has examined the countervailing duty petitions on certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation in each country to determine whether manufacturers, producers, or exporters of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea receive countervailable subsidies (*see Initiation Checklist* for each country).

Argentina

A. *General.* The petitioners argue that the Department's current formula for allocating non-recurring subsidies understates the time value of money, and thus undervalues every non-recurring subsidy. According to the petitioners, this undervaluing is biased in favor of the respondents, inconsistent with the statute and the Department's regulations, inconsistent with commercial reality, and inconsistent with other agency practices. In its place, the petitioners propose that the Department adopt a mid-year allocation methodology, which they claim would recognize that, on average, subsidies are received in the middle of the year, as opposed to the beginning of the year (as under our current methodology).

In the past, we have considered and rejected the same argument advocated now by the petitioners that the Department's long-standing allocation formula should be replaced by a mid-year convention approach. *See* Preamble to the Department's CVD Regulations, 63 FR at 65399; 1989 Proposed Regulations, 54 FR 23366, 23375–76 (May 31, 1989); *Subsidies Appendix* in *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 49 FR 18006, 18018 (April 26, 1984); and *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 73277, 73298 (December 29, 1999) ("*French Plate*"). As we have explained on several occasions, our current allocation formula, codified at 19 CFR 351.524(d)(1), has proven to be predictable and easy to administer. It has been implemented for almost twenty years without controversy in virtually every CVD proceeding, and its reasonableness has been upheld by the Court of International Trade in *Michelin Tire Corp.* v. *United States*, 6 CIT 320 (1983), *vacated on other grounds*, 9 CIT 38 (1985). Accordingly, for purposes of this initiation, we will continue applying our allocation formula as it stands in 19 CFR 351.524(d)(1). Consequently, with respect to Argentina, we will not examine any previously investigated subsidies

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F.Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

received prior to 1986, which have already been determined to have a fifteen-year average useful life ("AUL"), because these subsidies have already been fully allocated.

B. *Equityworthiness and Creditworthiness.* The petitioners allege that the principal producer/exporter of subject merchandise in Argentina is Siderar Sociedad Anonima Industrial Y Comercial ("Siderar"). According to the petitioners, prior to 1993, Siderar was known as Sociedad Mixta Siderugica Argentina ("SOMISA"), and briefly from 1992 to 1993, was known as Aceros Parana S.A. ("APSA").

The petitioners claim that the Department previously found SOMISA to be unequityworthy from 1984 through 1990 in *Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina: Preliminary Results of Countervailing Duty Administrative Review*, 62 FR 38257, 38260 (July 17, 1997) ("*1997 Cold-Rolled Prelim*"). In addition, the petitioners allege that SOMISA was found uncreditworthy in 1992 in *Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Argentina*, 66 FR 10990, 10994 (February 21, 2001) ("*Hot-Rolled Prelim*"). The petitioners claim that, although the determination of uncreditworthiness in that case was based on adverse facts available, the Department's decision was nonetheless supported by sufficient facts presented in the petition in that case. In particular, the petitioners state that, in the two years prior to 1992, SOMISA's return on sales worsened from negative seventy-nine percent in 1991 to negative eighty-seven percent in 1992. Furthermore, according to the petitioners, SOMISA's operating margins were negative fifty-nine percent and negative eighty-one percent in 1991 and 1992, respectively, and that SOMISA's debt went from 388 million pesos in 1991 to 570 million pesos in 1992, while net worth fell from 717 million pesos to negative 913 million pesos in the same period. The petitioners note that, in the *Hot-Rolled Prelim*, we stated that SOMISA was (1) losing approximately 20 million dollars a month, (2) not a viable economic entity on its own, and (3) in a state of technical insolvency. 66 FR at 10994–95. Finally, the petitioners allege that SOMISA/APSA was unequityworthy in 1992. Citing to *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Argentina*, 66 FR 37007 (July 16, 2001) and accompanying *Issues and Decision Memorandum*, at section on "Programs Determined to Confer Subsidies: Investment Commitment," the petitioners state that the Department implicitly found the company unequityworthy in a previous case because it countervailed "committed investments" as an equity infusion made in that year. In addition, the petitioners argue that, assuming the Department determines, as it did in the *Hot-Rolled Prelim*, to treat the "committed investments" as being received in 1993 and 1994, it should open an equityworthiness/creditworthiness investigation for these years, and allow parties to comment.

Unless a company provides new information to the contrary, once a determination of unequityworthiness has been made for certain years, the Department's practice is to continue to find that company unequityworthy for those same years in subsequent cases. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Steel Products from Brazil*, 58 FR 37295, 37297 (July 9, 1993) ("*Brazil Certain Steel*"). Based on our previous finding of unequityworthiness for SOMISA in *1997 Cold-Rolled Prelim* from 1984 through 1990, we will consider this unequityworthiness in analyzing any equity infusions received in those years.

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. 19 CFR 351.505(a)(4). Regarding the uncreditworthiness allegation for 1992, the financial information submitted in the *Hot-Rolled Prelim*, and restated again here, suggests that SOMISA may have not been able to obtain such financing in 1992. Therefore, if we find that SOMISA received any non-recurring grants, loans, or loan guarantees in 1992, we will investigate its creditworthiness in that year.

In the case of a government equity infusion, the Department measures the benefit by examining the investment decision against the usual investment practice of a private investor. 19 CFR 351.507(a)(1). Specifically, the Department compares the purchase price paid by the government to prices paid for new shares by private investors, if such prices exist. 19 CFR 351.507(a)(2). If actual private investor prices are unavailable, the Department will determine the equityworthiness of a company at the time of the equity infusion. 19 CFR 351.507(a)(3). Regarding the unequityworthiness allegation for 1992, the determination that the committed investments were countervailable in the *Hot-Rolled Prelim* was based on adverse facts available. However, in this investigation, based on the same information used to determine creditworthiness in 1992, we find that the petitioners provided sufficient information demonstrating that SOMISA may have been unequityworthy in 1992. Therefore, if we find that SOMISA received any equity infusions in 1992, we will examine its equityworthiness in that year.

Finally, regarding SOMISA's equityworthiness in 1993 and 1994, the petitioners have not provided any evidence that SOMISA may have been unequityworthy during that period. Absent such evidence, we will not examine SOMISA's equityworthiness during that period.

C. *Programs.* We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Argentina:

1. Equity Infusions
2. Assumption of Debt and Liquidation Costs
3. Subsidies Under Decree 1144/92
4. "Committed Investment" Into APSA
5. Export Subsidies
6. Zero Tariff Turnkey Bill

Brazil

A. *General.* The petitioners argue that, as a result of cross-ownership between Usinas Siderurgicas de Minas Gerais ("USIMINAS") and Companhia Siderurgica Paulista ("COSIPA"), the Department should allocate subsidies received by both companies over the combined sales of both companies. In the course of this investigation, we will examine any cross-ownership between USIMINAS and COSIPA to determine how and whether to allocate subsidies among these companies.

B. *Equityworthiness and Creditworthiness.* The petitioners allege that there are three principal producers of subject merchandise in Brazil: Companhia Siderurgica Nacional ("CSN"), USIMINAS, and COSIPA.

Unless a company provides new information leading the Department to reconsider a previous finding of unequityworthiness or uncreditworthiness, once a determination of unequityworthiness or uncreditworthiness has been made for certain years, the Department's practice is to continue to find that company unequityworthy or uncreditworthy for those same years in subsequent cases. *See, e.g., Brazil Certain Steel*, 58 FR at 37297.

The petitioners claim that CSN, USIMINAS, and COSIPA were previously found unequityworthy in various years. Based on our previous determinations, we initially find the following: CSN to be unequityworthy from 1986 through 1992; USIMINAS to be unequityworthy from 1986 through 1988; and COSIPA to be unequityworthy from 1986 through 1989 and from 1992 through 1993. *See Final Affirmative Countervailing Duty Determinations: Certain Cold Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 65 FR 5536, 5546 (February 4, 2000); *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 38742, 38746 (July 19, 1999); and *Brazil Certain Steel*, 58 FR at 37297. Accordingly, we will take into account CSN's, USIMINAS's, and COSIPA's unequityworthiness if we determine that any of these companies received equity infusions in years in which they were determined to be unequityworthy.

The petitioners also state that CSN, USIMINAS, and COSIPA were previously found uncreditworthy in various years. Based on our previous determinations, we initially find the following: CSN to be uncreditworthy from 1986 through 1992; USIMINAS to be unequityworthy from 1986 through 1988; and COSIPA to be unequityworthy from 1986 through 1989 and from 1991 through 1993. *See id.* Accordingly, we will take into account CSN's, USIMINAS's, and COSIPA's uncreditworthiness if we determine that any of these companies received non-recurring grants, loans, or loan guarantees in years in which they were determined to be uncreditworthy.

C. *Programs.* We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Brazil:

1. Equity Infusions into CSN, USIMINAS, and COSIPA
2. PROEX

We are not including in our investigation the following program alleged to benefit producers and exporters of the subject merchandise in Brazil:

1. Exemption of Exports from Taxes under the Social Integration Program ("PIS") and the Social Contribution of Billings ("COFINS")

In determining not to investigate this program, we stated the following in the *Notice of Initiation of Countervailing Duty Investigations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey*, 66 FR 49931, 49934 (October 1, 2001):

> Within the context of a countervailing duty proceeding, taxes on revenues such as PIS and COFINS would generally be considered indirect taxes. (See 19 CFR 351.102(b) of the Department's regulations for the definition of an indirect tax.) In the case of these particular taxes, the Department's regulations at 19 CFR 351.517(a) state that a benefit exists to the extent that the amount remitted or exempted exceeds the amount levied. There is no information in this instance of any excessive remission.

Likewise, in this investigation, because we consider these taxes to be indirect and because there was no evidence of excessive remission presented in the petition, there is no basis to believe that a financial contribution was provided as required by section 771(5)(D) of the Act. Therefore, we will not investigate this allegation.

France

A. *General.* As they did with respect to Argentina, the petitioners propose that, in considering subsidies to France, the Department adopt a mid-year allocation methodology, which they claim would recognize that, on average, subsidies are received in the middle of the year, as opposed to the beginning of the year (as under our current methodology). For the reasons stated above, in the "General" section for Argentina, we will continue to allocate non-recurring subsidies according to 19 CFR 531.524(d). Consequently, with respect to France, we will not examine the previously investigated subsidies received prior to 1987 (*i.e.*, the "Write-Off of PACS" and "Shareholder Advances Up Through 1986" (*see* further discussion below)) which have already been determined to have a fourteen-year AUL, because these subsidies have already been fully allocated.

B. *Equityworthiness and Creditworthiness.* The petitioners allege that the principal producer/exporter of subject merchandise in France is Usinor.

The petitioners claim that Usinor was both unequityworthy and uncreditworthy up through 1988, consistent with our previous determination in *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From France*, 58 FR 37304, 37305–06 (July 9, 1993) ("*French Certain Steel*").

In *French Certain Steel*, we found Usinor to be unequityworthy from 1986 through 1988. *Id.* at 37305 In the same determination, we found Usinor to be uncreditworthy from 1982 through 1988. *Id.* at 37306; *see also French Plate*, 64 FR at 73291 (Usinor was uncreditworthy from 1985 through 1988); and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From France*, 64 FR 30774, 30779 (June 8, 1999) ("*French Stainless*") (Usinor was uncreditworthy from 1984 through 1988).

Unless a company provides new information leading the Department to reconsider a previous finding of unequityworthiness or uncreditworthiness, once a determination of unequityworthiness or uncreditworthiness has been made for certain years, the Department's practice is to continue to find that company unequityworthy or uncreditworthy for those same years in subsequent cases. *See, e.g., Brazil Certain Steel*, 58 FR at 37297. Based on our previous determinations of unequityworthiness in *French Plate, French Stainless*, and *French Certain Steel*, for those years in which we found Usinor to be unequityworthy and which remain relevant in this investigation (*i.e.*, from 1987 through 1988), we will consider its unequityworthiness if we find that any equity infusions were received during this period. Also, based on our previous determinations of uncreditworthiness, for those years in which we found Usinor to be uncreditworthy and which remain relevant in this investigation (*i.e.*, from 1987 through 1988), we will consider its uncreditworthiness if we find that any non-recurring subsidies, loans, or loan guarantees were received during this period.

C. *Programs.* We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in France (note: some of these programs have certain parts that we will not be investigating (*see Initiation Checklist* for France)):

1. FIS Bonds
2. Shareholder Advances After 1986
3. GOF Advances for SODIs
4. Investment/Operating Subsidies
5. Funding for Electric Arc Furnaces
6. Funding for Myosotis Project
7. Repayable Grant to Sollac for "Pre-Coating" Technology
8. Tax Subsidies Under Article 39
9. ESF Grants
10. ECSC Article 54 Loans
11. ECSC Article 56 Funding
12. ERDF Funding
13. Funding Under Resider and Resider II

In addition to those parts of the above programs we will not be investigating.

we are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in France:

1. Write-Off of PACS. The petitioners allege that certain debts of Usinor were converted into loans with special characteristics, or "PACS." In 1986, these PACS were converted into common stock, effectively releasing Usinor of its repayment obligations under the PACS. Consistent with our previous findings in *French Plate*, 64 FR at 73281–82 and *French Stainless*, 64 FR at 63878–79, the petitioners claim that these conversions constitute countervailable equity infusions and request that the Department continue to countervail the subsidy.

We do not intend to investigate this allegation. Because we have rejected the use of the petitioners' proposed mid-year allocation methodology (*see* "General" section above), all benefits under this program have been fully amortized over the applicable AUL prior to the POI.

2. Shareholder Advances Up Through 1986. The petitioners claim that the GOF provided Usinor with grants in the form of shareholder advances in 1985 and 1986 to finance the revenue shortfall needs of both these companies. In 1986, the GOF converted these shareholder advances into common stock. However, no shares were ever received by the GOF with the conversion. According to the petitioners, the GOF provided roughly FF 20 billion to Usinor in the years 1982 through 1986 in the form of these shareholder advances. Consistent with our previous findings in *French Plate*, 64 FR at 73282 and *French Stainless*, 64 FR at 63879, the petitioners claim that these conversions constitute countervailable equity infusions and request that the Department continue to countervail the subsidy.

We do not intend to investigate this allegation. As discussed above, under "Write-Off of PACS," because we have rejected the use of the petitioners' proposed mid-year allocation methodology (*see* "General" section above), all benefits under this program have been fully amortized over the applicable AUL prior to the POI.

The Republic of Korea

A. *General.* As they did with respect to Argentina and France, the petitioners propose that, in considering subsidies to the Republic of Korea, the Department adopt a mid-year allocation methodology, which they claim would recognize that, on average, subsidies are received in the middle of the year, as opposed to the beginning of the year (as under our current methodology). For the reasons stated above, in the "General" section for Argentina, we will continue to allocate non-recurring subsidies according to 19 CFR 531.524(d). Consequently, with respect to the Republic of Korea, we will not examine any previously investigated subsidies received prior to 1986, which have already been determined to have a fifteen-year AUL, because these subsidies have already been fully allocated.

B. *Programs.* We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the Republic of Korea (note: some of these programs have certain parts that we will not be investigating (*see Initiation Checklist* for the Republic of Korea)):

1. Loans Inconsistent with Commercial Consideration (GOK Directed Credit) Programs
2. Government Infrastructure Assistance at Kwangyang Bay
3. Asan Bay Infrastructure Subsidies
4. Other Subsidies Related to Operations at Asan Bay
5. Reserve for Export Loss (TERCL Article 16)
6. Reserve for Overseas Market Development (TERCL Article 17)
7. Technical Development Fund (TERCL Article 8)
8. Short-term Export Financing
9. Investment Tax Credits (under various TERCL Articles)
10. Electricity Discounts
11. Asset Revaluation—TERCL Article 56(2)
12. Tax Exemption for Balanced Development (TERCL Article 43)
13. Research and Development Subsidies
14. Special Depreciation for Energy-Saving Equipment
15. Export Insurance
16. POSCO's Provision of Steel Inputs at Less-Than-Adequate Remuneration (Dual Pricing Scheme for Input Products)
17. Government Grants to Dongbu
18. Special Depreciation for Union
19. Export Industry Facility Loans

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the Republic of Korea:

1. Reduction of Import Duties on Steelmaking Equipment. The petitioners allege that the GOK subsidizes steelmakers by waiving or reducing the eight percent tariff on imports of steelmaking equipment that cannot be purchased domestically. The petitioners provide a Korea Iron and Steel Report that shows that steel producers, including companies that produce cold-rolled steel, have benefitted from this program. The petitioners concede that the Department found these duty reductions not countervailable in *Final Affirmative Countervailing Duty Determination: Structural Steel Beams From the Republic of Korea*, 65 FR 41051 (July 3, 2000) ("*Structural Beams*") and in the *Remand Determination Pursuant to Bethlehem Steel Corp., v. United States*, Slip Op. 01–38, Court No.: 00–03–00116 (April 4, 2001) ("*Carbon Plate Remand*") because they were part of a broader program of duty reductions, but argue that a specificity analysis must be undertaken for cold-rolled producers, and the steel industry as a whole.

We are not investigating this allegation. The Department has examined this program in *Structural Beams* and found it not countervailable because the program did not meet any of the specificity criteria of section 771(5A) of the Act. This position was reaffirmed in the *Carbon Plate Remand*. The petitioners have provided no new information or evidence of changed circumstances to warrant a re-examination of this program.

2. Reduction of Import Duties on Hot-Rolled Steel. The petitioners allege that, in the *Final Affirmative Countervailing Duty Determination: Certain Cut-to-length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73176 (December 29, 1999) ("*Carbon Plate*"), it was discovered that the GOK subsidizes slab imports through a duty reduction program. Under the program, the petitioners assert that the GOK monitors the available supply of slabs and reduces the tariff rate on slabs when domestic supply contracts or when the domestic industry makes a request. The petitioners observe that, although the Department did not address this program in the *Carbon Plate* final determination, it did so in the *Carbon Plate Remand*, where it was found not countervailable. The petitioners allege that there is no indication that rigorous policing of the program's rules on physical incorporation and wastage takes place, and that any finding related to Korea's duty drawback system (which was investigated separately in *Carbon Plate*) would not apply to this distinct up-front duty exemption used by plate producers. The petitioners further allege that the Department must take the "time value of money" benefit associated with getting an up-front duty reduction into account when determining the program benefit.

The petitioners further assert that the Department must examine whether cold-rolled steel producers benefitted from hot-rolled steel duty reductions in the POI, given that hot-rolled steel is the main input into cold-rolled steel. As support for their claims, the petitioners provide a Ministry of Commerce, Industry and Energy announcement of a reduced duty rate for slabs in the second half of 2000. Finally, the petitioners note that the Department found a similar program to be countervailable in the *Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 20255 (April 20, 2001) ("*Thailand Prelim*"). Thus, the petitioners request that the Department initiate an investigation to examine the extent to which Korean cold-rolled steel producers may have benefitted from this program.

We are not investigating this allegation. As the petitioners note, the Department examined this program in *Carbon Plate Remand* and found it to be not countervailable because the slabs to which it applied were physically incorporated into exported products, and because producers would have been entitled to duty drawback even if the duties were not waived up front. We also found that the "time value of money" issue asserted by the petitioners does not meet the benefit criteria of section 771(5)(E) of the Act. Further, the Department's preliminary finding in *Thailand Prelim* provides no insight into the Korean program at issue here. The petitioners have provided no new information or evidence of changed circumstances relating to the benefit conferred by this program to warrant re-examination at this time.

3. R&D Aid for Anthracite Coal Technology & Related Price Stabilization Measures. The petitioners allege that the GOK subsidizes research related to technology permitting the use of sintered anthracite coal in steel production. The petitioners assert that POSCO has increased its use of anthracite coal as a result of this research and development assistance. The petitioners further allege that the GOK suppresses anthracite coal prices for users such as producers of subject merchandise through the Support Program for the Coal Industry, which was notified to the WTO in both 1997 and 1998. Petitioners also allege that the steel industry is the predominant user of anthracite coal, and thus the beneficiary of subsidized prices.

As the petitioners have provided no information on research and development subsidies linked to the production or use of anthracite coal, we are not initiating an investigation on research and development subsidies. We also are not initiating an investigation as to whether producers of subject merchandise benefit from subsidized coal prices. Because coal can be used as an input in the production of subject merchandise, petitioners must provide sufficient evidence supporting their claim of an upstream subsidy under section 771(A) of the Act. Additionally, the petitioners would have to meet the requirements outlined in 19 CFR 351.523(a) in order for the Department to initiate an investigation of an upstream subsidy.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the respective petitions has been provided to the GOA, GOB, GOF, GOK, and EC. We will attempt to provide a copy of the public version of the respective petitions to each exporter named in each petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than November 13, 2001, whether there is a reasonable indication that imports of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea are causing material injury, or threatening to cause material injury, to an industry in the United States. A negative ITC determination for any country will result in the investigation being terminated for that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 18, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26939 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–437–805]

Notice of Initiation of Countervailing Duty Investigation: Sulfanilic Acid From Hungary

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of countervailing duty investigation.

SUMMARY: The Department of Commerce is initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of sulfanilic acid from Hungary receive countervailable subsidies.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Melani Miller, AD/CVD Enforcement, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are references to the provisions codified at 19 CFR part 351 (April 2001).

The Petition

On September 28, 2001, the Department received a petition filed in proper form by Nation Ford Chemical Company ("the petitioner"). The Department received supplemental information to the petition on October 9 and 12, 2001.

In accordance with section 702(b)(1) of the Act, the petitioner alleges that manufacturers, producers, or exporters of sulfanilic acid, the subject merchandise, from Hungary receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section

771(9)(C) of the Act and has demonstrated sufficient industry support. *See Determination of Industry Support for the Petition* section, below.

Scope of Investigation

Imports covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of Harmonized Tariff Schedule ("HTS"), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

This scope is identical to the scope of the antidumping duty order on Sulfanilic Acid from the People's Republic of China. *See Antidumping Duty Order: Sulfanilic Acid from the People's Republic of China*, 57 FR 37524 (August 19, 1992) (as currently reflected in *Sulfanilic Acid from the People's Republic of China; Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 47003 (September 10, 2001)). Nevertheless, during our review of the petition, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit ("CRU") at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Hungary ("GOH") for consultations with respect to the petition filed in this proceeding. The Department held consultations with the GOH on October 9, 2001. The points raised in the consultations are described in the Memorandum to the File, "CVD Consultations with Officials from the Government of Hungary," dated October 9, 2001, which is on file in the Department's CRU, Room B–099 of the main Department of Commerce building.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law. *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the *Scope of Investigation* section above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition.

The Department has determined that the petition contains adequate evidence of industry support; therefore, polling is unnecessary. *See Industry Support* section from the October 18, 2001 *Initiation Checklist*, which is on file in the Department's CRU. Information on the record demonstrates that the producer who supports the petition accounts for more than 50 percent of the production of the domestic like product. Additionally, no interested party pursuant to section 771(b)(A), (C), (D), (E) or (F) of the Act has expressed opposition on the record to the petition. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

Because Hungary is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Hungary materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise. The petitioner contends that the industry's injured condition is evident in the declining trends in employment, domestic prices, production, and net sales volume and value. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (*see Initiation Checklist*).

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

Initiation of Countervailing Duty Investigation

The Department has examined the countervailing duty petition on sulfanilic acid from Hungary and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of sulfanilic acid from Hungary receive countervailable subsidies.

A. Change in Ownership

The petitioner alleges that, in November 1997, Nitrokemia, a government-owned entity, was split into two parts: Nitrokemia 2000, which received certain of the former Nitrokemia's assets including the sulfanilic acid production facilities, and Nitrokemia Rt., which received the remainder of the former Nitrokemia's assets and the former Nitrokemia's environmental liabilities. According to its web site, Nitrokemia 2000 continued to be a fully-owned subsidiary of the former Nitrokemia (now Nitrokemia Rt.) until May 1998, at which point it became an independent stock company owned by the State Privatization Company. Subsequently, in November 2000, Nitrokemia 2000 was privatized.

The petitioner alleges that the current Nitrokemia 2000 is the same "person" as it was prior to its privatization. Thus, consistent with the Department's recent *Final Results of Redetermination Pursuant to Court Remand in Acciai Speciali Terni S.p.A.* v. *United States., et al., (Ct. No. 99–06–00364)* (December 19, 2000), the past countervailable subsidies received by pre-privatized Nitrokemia 2000 would continue to be countervailable after the change in ownership. We will examine this issue in the course of the investigation to determine whether any non-recurring subsidies provided to Nitrokemia 2000 prior to its privatization should be attributed to Nitrokemia 2000 in our period of investigation.

B. Creditworthiness

The petitioner alleges that the former Nitrokemia, Nitrokemia Rt., and Nitrokemia 2000 were uncreditworthy from 1997 through 2000. To support its allegation, the petitioner states that the financial statements for all three companies show that they have all been unprofitable since 1997, and that these companies could not possibly borrow money without government guarantees. The petitioner further claims that no company with such substantial environmental liabilities (*see Programs* section, below, as well as the *Initiation Checklist*) would be able to successfully borrow funds from any commercial institution. As additional support, the petitioner provided a current Dun and Bradstreet report for Nitrokemia 2000, as well as a financial analysis derived from Nitrokemia 2000's financial statement for 2000.

With respect to the petitioner's uncreditworthiness allegations for 1999 and 2000, as noted below in the *Programs* section, we are not initiating an investigation of any alleged subsidies bestowed in those years. Thus, we are not initiating a creditworthiness investigation for 1999 and 2000. If, however, in the course of this investigation we discover that any non-recurring subsidies, loans, or loan guarantees were bestowed during 1999 and 2000, we will consider any new uncreditworthiness allegations made at that time.

With respect to 1997 and 1998, which is the time period during which the former Nitrokemia was split and the contingent environmental liabilities were assigned to Nitrokemia Rt. (*see Programs* section, below, as well as the *Initiation Checklist*), the petitioner must establish a reasonable basis to believe or suspect that a company was uncreditworthy in each of these years in order for the Department to investigate the company's creditworthiness. Pursuant to section 351.505(a)(4)(i) of the Department's regulations, the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources.

In this instance, the only evidence provided by the petitioner relating to these years was the companies' financial statements which showed losses. While a loss in a particular year may provide some information about a company's financial position, the Department looks not only to present indicators but also to past indicators of financial health (*see* section 351.505(a)(4)(i)(B) of the Department's regulations) and to present and past indicators of the firm's ability to meet its costs and fixed financial obligations (*see* section 351.505(a)(4)(i)(C) of the Department's regulations). In both the petition and the petitioner's response to the Department's supplemental petition question with respect to the uncreditworthiness allegations, the petitioner did not provide financial ratios to support its creditworthiness argument for 1997 and 1998. Moreover, although the petitioner provided the financial statement for old Nitrokemia for 1997 from which 1997 financial ratios could be derived, the petitioner did not provide any information or financial statements that could be used to derive financial ratios for any of the preceding years. Thus, because the petitioner did not provide sufficient relevant evidence to support a reasonable basis to believe or suspect that these companies were uncreditworthy in 1997 and 1998, we are also not initiating a creditworthiness investigation for these years.

C. Programs

We are including in our investigation the following program alleged in the petition to have provided a countervailable subsidy to producers and exporters of the subject merchandise in Hungary:

Forgiveness of Environmental Liabilities

We are not including in our investigation at this time the following programs alleged to benefit producers and exporters of the subject merchandise in Hungary:

1. *Forgiveness of Short-Term Liabilities.* The petitioner alleges that, because the combined short-term liabilities listed on the 1998 financial statements from Nitrokemia Rt. and Nitrokemia 2000 are significantly smaller than the short-term liabilities listed on the former Nitrokemia's 1997 financial statements, the GOH forgave some of the former Nitrokemia's short-term liabilities when the company was split.

The petitioner has not provided sufficient evidence that any short-term debts were actually forgiven by the GOH. Although the combined short-term debts were less than the short-term debts from the former Nitrokemia's financial statements, the petitioner has provided no evidence that the short-term debt was not simply paid off or converted to long-term debt. Thus, lacking sufficient evidence of a financial contribution or a benefit from the GOH at this time, we are not including this program in our investigation.

2. *Provision of Natural Gas for Less Than Adequate Remuneration.* The petitioner alleges that the GOH subsidizes the price of natural gas to the Hungarian industry because natural gas prices in Hungary are significantly lower than they are in the rest of the world. Without this alleged subsidy, the petitioner states that the cost of natural gas for Nitrokemia 2000's sulfanilic acid production would be one percent higher.

The petitioner has provided no evidence to support its claim that the GOH provided natural gas for less than adequate remuneration to a specific enterprise or industry in Hungary. The petitioner admits that it was not able to locate any information that this alleged provision of low-priced natural gas was not generally available in Hungary. Thus, because no information was provided in support of the specificity claim, at this time we are not including this program in our investigation.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the GOH. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under section 351.203(c)(2) of the Department's regulations.

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine no later than November 13, 2001, whether there is a reasonable indication that imports of sulfanilic acid from Hungary are causing material injury, or threatening to cause material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 18, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26940 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Open Meeting.

DATE: November 15, 2001.

TIME: 9 a.m. to 12 p.m.

PLACE: U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold a plenary meeting on November 15, 2001, at the U.S. Department of Commerce.

ETTAC will hear reports on programs in the International Trade Administration, and on the status of U.S. Commercial Service support for the U.S.-Asia Pacific Environmental Partnership. ETTAC will also hold a roundtable on the effects of the September 11 terrorism attacks on the environmental industry and the industry's response. The meeting is open to the public.

ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. The ETTAC operates as an advisory committee to the Secretary of Commerce and the interagency Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee (TPCC). The ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2002.

For further information phone Jane Siegel, Office of Technologies Industries, (ETI), U.S. Department of Commerce at (202) 482–5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to ETI.

Dated: October 22, 2001.

Carlos F. Montoulieu,

Acting Deputy Assistant Secretary.

[FR Doc. 01–27055 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102201E]

Proposed Information Collection; Comment Request; Fisheries Finance Program Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 26, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Charles L. Cooper, Financial Services Division, Office of Constituent Services, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2396).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA operates a direct loan program to assist in financing certain actions relating to commercial fishing vessels, shoreside fishery facilities, aquaculture operations, and individual fishing quotas (IFQ). Application information is required to determine eligibility pursuant to 50 CFR Part 253 and to determine the type and amount of assistance requested by the applicant. An annual financial statement information is collected to monitor the financial status of the loan.

II. Method of Collection

Form submitted in paper format.

III. Data

OMB Number: 0648–0012.

Form Number: NOAA Form 88–1.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,250.

Estimated Time Per Response: 8 hours for a traditional FFP loan application; 4 hours for an IFQ loan application; and 8 hours for an annual financial statement.

Estimated Total Annual Burden Hours: 10,000.

Estimated Total Annual Cost to Public: $5,375.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 17, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–27041 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101601C]

Marine Fisheries Advisory Committee; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) from November 6–8, 2001.

DATES: The meetings are scheduled as follows:

1. November 6, 2001, 8:30 a.m.– 4:30 p.m.

2. November 7, 2001, 8:30 a.m.– 4 p.m.

3. November 8, 2001, 9 a.m.–1:30 p.m.

ADDRESSES: The meetings will be held at Wyndham Sugar Bay Resort, 6500 Estate Smith Bay, St. Thomas, U.S. Virgin Islands. Requests for special accommodations may be directed to MAFAC, Office of Operations, Management and Information, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, Designated Federal Official; telephone: (301) 713–2259.

SUPPLEMENTARY INFORMATION: As required by section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC and MAFAC Subcommittees. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1972, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of the Nation are adequate to meet the needs of commercial and recreational fisheries, and of environmental, state, consumer, academic, tribal, and other national interests.

Matters to Be Considered

November 6, 2001

General Overview, Administrative Issues, Magnuson-Stevens Act Reauthorization, and National Environmental Policy Act.

November 7, 2001

Ecosystem Management, Sustainability, Marine Protected Areas, Constituent Meeting.

November 8, 2001

Wrap-up reports and adjournment. Time will be set aside for public comment on agenda items.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

Dated: October 22, 2001.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service

[FR Doc. 01–27027 Filed 10–23–01; 2:38 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102201C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of request to modify research permits 1178 and 1295.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received a request to modify permits (1178 and 1295) from Dr. Michael Sissenwine, of Northeast Fisheries Science Center.

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on November 26, 2001.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for

review in the indicated office, by appointment:

For permits 1178, 1295: Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–1401, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10 (a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea turtles

Threatened and endangered Green turtle (*Chelonia mydas*)

Endangered Hawksbill turtle (*Eretmochelys imbricata*)

Endangered Kemp's ridley turtle (*Lepidochelys kempii*)

Endangered Leatherback turtle (*Dermochelys coriacea*)

Threatened Loggerhead turtle (*Caretta caretta*)

Modification Requests Received

Permit 1178

The applicant requests a modification to Permit 1178. Permit 1178 authorizes the tagging, handling, collection of skin biopsies, and release of the above listed turtles. Modification #3 would authorize the importing and exporting of dead turtles and turtle specimens to/from the US and to import live turtles for the purpose of rehabilitation.

Permit 1295

The applicant requests a modification to Permit 1295. Permit 1295 authorizes the tagging, handling, biopsy, and release of the above listed turtles. Modification #1 would authorize the importing and exporting of dead turtles and turtle specimens to/from the US and to import live turtles for the purpose of rehabilitation.

Dated: October 22, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–27042 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Performance Review Board (PRB)

AGENCY: United States Patent and Trademark Office.

ACTION: Notice; Update membership list of the United States Patent and Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

ADDRESSES: Director, Office of Human Resources, United States Patent and Trademark Office, One Crystal Park, Suite 707, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Sydney Rose at (703) 305–8062.

SUPPLEMENTARY INFORMATION: The membership of the United States Patent and Trademark Office Performance Review Board is as follows:

Clarence Crawford, Chair, Chief Financial Officer and Chief Administrative Officer, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Nicholas Godici, Commissioner for Patents, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Anne Chasser, Commissioner for Trademarks, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Douglas Bourgeois, Chief Information Officer, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2004.

Janice Falcone, Director, Patent Examining Group, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

James Toupin, General Counsel, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2004.

Robert Anderson, Deputy Commissioner for Trademarks, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Robert Stoll, Administrator for External Affairs, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Dieter Hoinkes, Deputy Administrator for External Affairs, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Bruce Campbell, Executive Associate Director, Operations Support Directorate, Federal Emergency Management Agency, Washington, DC 20742, Term expires September 30, 2002.

K. David Holmes, Jr., Deputy Assistant Secretary for Security, Department of Commerce, Washington, DC 20230, Term expires September 30, 2004.

Dated: October 19, 2001.

Nicholas P. Godici,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 01–27017 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0013]

Federal Acquisition Regulation; Submission for OMB Review; Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0013).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data. A notice published in the **Federal Register** at 66 FR 45014, on August 27, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, AcquisitionPolicy Division, GSA (202) 501–3221.

ADDRESSEES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Truth in Negotiations Act requires the Government to obtain certified cost or pricing data under certain circumstances. Contractors may request an exemption from this requirement under certain conditions and provide other information instead.

B. Annual Reporting Burden

Respondents: 33,332.
Responses Per Respondent: 6.
Total Responses: 199,992.
Hours Per Response: 50.51.
Total Burden Hours: 10,101,684.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FARSecretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost Pricing Data, in all correspondence.

Dated: October 23, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–27052 Filed 10–25–01; 8:45 pm]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Air Force announces the proposed reinstatement of the Accident Report form and seeks public comment on provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, unity, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 26, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to HQ Air Force Security Forces Center, SMSgt Walter P. Filipiak, 1720 Patrick Street, Suite 18, Lackland AFB, TX 78236.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to above address.

Title, Associated Form, and OMB Number: Air Force Form 1315, "Accident Report," OMB Number 0701–0133.

Needs and Uses: The information collection requirement is necessary in order to thoroughly process major motor vehicle accidents. These accidents are those where there are fatalities, injuries, there is disabling damage to a vehicle, the vehicle accident is hard to explain or the amount of damage is in excess of $10,000. Once the investigation is completed, the report is filed with the local Security Forces Reports and Analysis Section. Copies of the completed investigations/reports are available upon request to the personnel involved in the accident, which can then be used by their insurance companies. This information collection which is made for these vehicle accidents is in compliance with 10 U.S.C. 8013; 44 U.S.C. 3101; and E.O. 9397.

Affected Public: Individuals and households.

Annual Burden Hours: 5,000.

Number of Respondents: 20,000.

Responses per Respondent: Depends on the amount of times an individual is involved in a major motor vehicle accident. There will be one form completed per accident.

Average Burden per Response: 15 Minutes.

Frequency: Once per major accident.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Air Force Form 1315, Accident Report, is used solely by security forces patrol personnel who are dispatched to investigate major motor vehicle accidents. The accident report allows the patrol person to collect all vital/detailed information on a vehicle accident. The individual investigating the accident completes and signs the

form upon completion of the investigation of the accident. The completed form, along with all attachments pertaining to the accident, is then forwarded to the Security Forces Reports and Analysis Section for filing and further disposition. The completed form provides the required information for the vehicle accident to be thoroughly investigated/processed. Copies of the completed investigations/reports are available upon request to the personnel involved in the accident, which can then be used by their insurance company.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–26979 Filed 10–25–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the United States Air Force Personnel Center, Personnel Procurement and Development Divisions, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 26, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to United States Air Force Personnel Center, Line Officer Programs Section, 550C Street West, Suite 10, Randolph AFB, TX 78150.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the above address, or call United States Air Force Personnel Center, Line OfficerPrograms Section, (210) 665–2102.

Title, Associated Form, and OMB Number: Application & Evaluation For Training Leading To A Commission In The United States Air Force, Air Force Form 56, OMB Number 0701–0001.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 21,000.

Number of Respondents: 7,000.

Responses per Respondent: 1.

Average Burden per Response: 180 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Information contained on Air Force Form 56 supports the Air Force's selection for officer training programs for civilian and military applicants. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to a commissioning program. Data from this form is used to select fully qualified persons for the training leading to commissioning. Data supports the Air Force in verifying the eligibility of applicants and in the selection of those best qualified for dedication of funding and training resources. Eligibility requirements are outlined in Air Force Instruction 36–2013.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–26980 Filed 10–25–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–418–000]

B–R Pipeline Company; Notice of Application

October 22, 2001.

Take notice that on July 27, 2001, B–R Pipeline Company (B–R) tendered for filing pursuant to section 7 of the Natural Gas Act and Part 284, Subparts G and J, of the Commission's Regulations an application for blanket certificates of public convenience and necessity. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room of the Commission's offices. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

B–R also requests waiver of certain Commission regulations, as more fully set forth in its application. B–R states that the waivers are needed to avoid undue compliance burdens under the unique circumstances presented.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, on or before November 12, 2001, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26969 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–004]

Colorado Interstate Gas Company; Notice of Proposed Changesin FERC Gas Tariff

October 22, 2001.

Take notice that on October 16, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective November 1, 2001.

CIG states that the tariff sheets are being filed to address the reallocation of costs resulting from the rejection of Rate Schedules TF–2 and TSW–1 in CIG's general rate case in Docket No. RP01–350–000, et al.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26975 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–397–002]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

October 22, 2001.

Take notice that on October 17, 2001, Great Lakes Gas Transmission LimitedPartnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2001:

Substitute Third Revised Sheet No. 8A
Substitute Tenth Revised Sheet No. 9
Substitute Second Revised Sheet No. 50A

Great Lakes states that these tariff sheets are being filed to (a) remove the "Third Party Charges" language relative to Off-System Capacity from proposed section 22.1 of Great Lakes' FERC Gas Tariff, Second Revised Volume No.1, as directed in the Commission's October 15, 2001 Order Accepting Tariff Sheets with Modification and Granting Waiver and (b) reflect a sheet effective date of November 1, 2001 as directed in the Commission's May 31, 2001 Order Accepting and Suspending Tariff Filing and Requesting Additional Information.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26977 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–040]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate Filing

October 22, 2001.

Take notice that on October 17, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing certain tariff sheets to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective February 1, 2003.

Natural states that the purpose of this filing is to implement a negotiated rate transaction entered into by Natural and FPLE Forney, L.P. under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26972 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–403–001]

Northern Border Pipeline Company; Notice of Compliance Filing

October 22, 2001.

Take notice that on October 15, 2001, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, Pro Forma First Revised Volume No. 1, the pro forma tariff sheets listed in Appendix A to the filing.

Northern Border states that the pro forma tariff sheets are being filed in compliance with the Commission's Order No. 637 issued in Docket Nos. RM98–10–000 and RM98–12–000 issued May 19, 2000.

Northern Border states that it has served copies of the pro forma filing upon all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26973 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–432–000]

Northern Natural Gas Company; Notice to Abandon Service

October 22, 2001.

Take notice that on August 23, 2001, Northern Natural Gas Company (Northern) filed a request, pursuant to section 7(b) of the Natural Gas Act, requesting permission and approval to abandon service under an individually certificated agreement, all as more fully set forth in the application. Specifically, Northern proposes to abandon service with Westar Transmission Company under Rate Schedule X–45, contained in its FERC Gas Tariff, Original Volume No. 2. Northern further states that the underlying contract has not provided service for several years and has been terminated in accordance with the contract terms. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Any person desiring to be heard or to make any protest with reference to said application should on or before November 12, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26970 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–382–006]

Northern Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

October 22, 2001.

Take notice that on October 16, 2001, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective November 1, 2001.

58 Revised Sheet No. 50
59 Revised Sheet No. 51
26 Revised Sheet No. 52
Eighth Revised Sheet No. 56
Eighth Revised Sheet No. 263
Eighth Revised Sheet No. 263A
Fourth Revised Sheet No. 263B

Northern and the parties have reached a settlement in principle that resolves all issues in this proceeding as well as all issues in Northern's System Levelized Account (SLA) proceedings in Docket Nos. RP01–76 and RP01–396. The reason for this filing is to request permission to implement effective November 1, 2001, a Carlton Commodity Surcharge of $0.0175, subject to refund and subject to the outcome of Commission action on a settlement that will be filed in the near future.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26976 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–278–002]

Texas Gas Transmission Corporation; Notice of Compliance Filing

October 22, 2001.

Take notice that on October 17, 2001, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective October 1, 2001:

Primary
Third Revised Sheet No. 181
Third Revised Sheet No. 182
Third Revised Sheet No. 183
Sheet No. 184 (reserved)
Second Revised Sheet No. 185
Alternate
Alternate Third Revised Sheet No. 181
Alternate Third Revised Sheet No. 182
Alternate Third Revised Sheet No. 183

Texas Gas states that this filing is being submitted in compliance with the Commission's Order issued on September 19, 2001 in the above-referenced docket. As directed, the tariff sheets removed the daily high/low index price for cash-out. In response, Texas Gas proposes to establish a cash-out price based on a weekly high/low index price determined from the weeks within the applicable month, plus the first week of the following month. The primary and alternate sheets require in-kind make-up of imbalances up to 2% and use the same index price for imbalances above 5%. However, the primary sheets also propose to eliminate cash-out for all imbalances up to 5% by also requiring a mandatory in-kind make-up level from 2% to 5% and by eliminating any use of the 100% price index for this tier of imbalance.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–26974 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 22, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12121–000.

c. *Date filed:* September 18, 2001.

d. *Applicant:* The City of Rice Lake Utilities, Wisconsin.

e. *Name of Project:* Rice Lake Dam.

f. *Location:* On Rice Lake and Red Cedar River, in Barron County, Wisconsin. The project does not utilize Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Scott Reimer GM/CEO, Rice Lake Utilities, 320 West Coleman Street, Rice Lake, Wisconsin 54868, (715) 234–7004; Loyal Gake, North American Hydro, Inc., P.O. Box 167, Neshkoro, Wisconsin 54960, (920) 293–4628 ext. 12.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing motions to intervene, protests, and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the project number (P–12121–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 21-foot-high, 171-foot-long concrete dam owned by Barron County, (2) three proposed 4-foot-long, 54-inch-diameter steel penstocks, (3) a proposed powerhouse containing three generating units having a total installed capacity of 336 kW, (4) a proposed 200-foot-long, 15 kV transmission line, and (5) appurtenant facilities. The project would have an annual generation of 1.3 GWh.

l. Copies of this filing are on file with the Commission and are available for public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Anyone qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211,

385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street,NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–26971 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7090–6]

Request for Nominations to the National Advisory Council for Environmental Policy and Technology, Standing Committee on Compliance Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The Environmental Protection Agency is inviting nominations for membership on its National Advisory Council for Environmental Policy and Technology (NACEPT), Standing Committee on Compliance Assistance. The Agency is seeking qualified senior level decision makers from diverse stakeholder groups throughout the United States to be considered for appointments. The nominee should have an interest and experience in addressing environmental problems through compliance assistance and other alternative approaches such as environmental management systems and pollution prevention. EPA is requesting that each nominee provide a resume or short biography describing his/her educational and professional qualifications, and that contains a current business address and daytime telephone number.

DATES: Nominations will be accepted until close of business on November 26, 2001.

ADDRESSES: Submit nominations and requested documentation to Ms. Joanne Berman, Designated Federal Officer, Office of Enforcement and Compliance Assurance (OECA), U.S. Environmental Protection Agency, MC 2224A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also E-mail nominations to *berman.joanne@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Berman, Designated Federal Officer, Office of Enforcement and Compliance Assurance (OECA), U.S. Environmental Protection Agency, MC 2224A, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Phone 202/564–7064. E-mail *berman.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principal constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing. Maintaining a balance and diversity of experience, knowledge, and judgment is an important consideration in the selection of members. The Standing Committee on Compliance Assistance, a subcommittee of NACEPT, has existed for two years and provides a federal advisory forum from which the Agency can continue to receive valuable multi-stakeholder advise and recommendations on enhancing EPA's compliance assistance program. The Standing Committee on Compliance Assistance assisted EPA in the development of the Agency's National Clearinghouse (www.epa.gov/clearinghouse), the Compliance Assistance Providers Forum, and the EPA Compliance Assistance Activity Plan (*http://es.epa.gov/oeca/main/compasst/activityplan.pdf*). Most recently, the Standing Committee on Compliance, through NACEPT, provided recommendations focusing on six key areas to improve the Agency's compliance assistance program and emphasizing the point that an effective compliance assistance program will complement EPA's approach to inspections and enforcement. The complete set of recommendations can be located at *www.seattle.battelle.org/epa-icaa*.

The new Standing Committee on Compliance Assistance will, through NACEPT, assist EPA in: (1) Strengthening the national compliance assistance network by helping identify opportunities to enhance communication among compliance assistance providers and by promoting collaboration in compliance assistance planning and tool development; (2) developing and testing performance measurement systems to demonstrate the effectiveness and environmental outcomes of compliance assistance; (3) acting as a sounding board to provide feedback on compliance assistance policies, strategies or other related matters; and (4) formulating the agenda for the Agency's third annual Compliance Assistance Providers Forum currently scheduled to take place on December 4–6, 2002 in San Antonio, Texas.

We are accepting nominations for approximately 20 members. Representatives must have senior level authority for their respective organization and nominees must demonstrate experience in the following:

—Development of compliance assistance programs and/or the delivery of compliance assistance;

—Application of qualitative and quantitative performance measurement methods; and

—Working collaboratively with stakeholder groups.

Dated: October 17, 2001.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 01–27010 Filed 10–25–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6623–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5073 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements

Filed October 15, 2001 Through October 19, 2001

Pursuant to 40 CFR 1506.9.

EIS No. 010390, Draft EIS, BLM, AZ, Diamond Bar Road Improvement Project, To Pave the Road and Realign Sections through Grapevine Wash, Right-of-Way Permits, Mohave County, AZ , Comment Period Ends: December 10, 2001, Contact: Don McClure (520) 692–4400.

EIS No. 010391, Draft EIS, FHW, NY, NYS Route 17, Horseheads Project, Reconstruction from RM 17–6205–1069 to RM 14–6201–3040, Town and Village of Horseheads (P.I.N. 6239.00) Chemung County, NY, Comment Period Ends: December 10, 2001,Contact: Robert E. Arnold (518) 431–4127.

EIS No. 010392, Final EIS, NPS, CA, Alcatraz Island Historic Preservation and Safety Construction Program, Protection and Implementation, San Francisco County, CA, Wait Period Ends: November 26, 2001, Contact: Jonathan Gervars (415) 561–4936.

EIS No. 010393, Draft EIS, NPS, AR, Little Rock Central High School National Historic Site, General Management Plan, Implementation, For Future Management and Use, Little Rock, AR, Comment Period Ends: December 26, 2001, Contact: David C. Forney (501) 324–5682. This document is available on the Internet at: *http://www.nps.gov/planning/chse/dgmp/home.htm*.

EIS No. 010394, Draft EIS, AFS, NM, Viveash Fire Timber Salvage Project, Proposal to Harvest a Portion of the Fire-Killed Trees, Pecos/Las Vegas Ranger District, Santa Fe National Forest, NM, Comment Period Ends: December 10, 2001, Contact: Chris Napp (505) 757–6121.

EIS No. 010395, Draft EIS, NOA, AK, American Fisheries Act Amendments 61/61/13/8: Amendments 61 Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Amendments 61 Groundfish of the Gulf of Alaska; Amendents 13 Bering Sea and Aleutian Islands King and Tanner Crab, and Amendments 8 to the Scallop Fishery off Alaska, Fishery Management Plans, AK, Comment Period Ends: December 10, 2001, Contact: Kent Lind (907) 586–7228.

EIS No. 010396, Draft EIS, USA, Programmatic EIS —Army Transformation, Army Vision to Address the Changing Circumstances of the 21st Century, Transformation in three Phases: Initial Phase, Interim Capability Phase, and an Objective Force Phase, Comment Period Ends: December 10, 2001, Contact: Jim Lucas (703) 602–9794.

EIS No. 010397, Draft EIS, CGD, Programmatic EIS —Integrated Deepwater System Project, For Surface, Air, Logistics Communication and Sensor Systems, To Replace Its Aging Nation-Wide System, Nation-Wide, Comment Period Ends: December 10, 2001, Contact: Eric Johnson (202) 267–1665.

EIS No. 010398, Final EIS, AFS, OR, South Fork Burnt River Ranger Planning Area, Development of Five New Allotment Management Plans (AMPS), Wallowa-Whitman National Forest, Unity Ranger District, Baker County, OR, Wait Period Ends: November 26, 2001, Contact: Jean Lavell (541) 446–3351.

EIS No. 010399, Draft EIS, FHW, SC, James E. Clyburn Connector Project, Constructing a Two-Lane Rural Roadway Northeast of Orangeburg and Southwest of Sumter, Funding and COE Section 404 Permit, Calhoun, Claredon and Sumter Counties, SC, Comment Period Ends: December 14, 2001, Contact: Robert L. Lee (803) 765–5411.

EIS No. 010400, Draft EIS, MMS, AL, MS, TX, WA, AL, FL, LA, CA, OR, Outer Continental Shelf Oil and Gas Leasing Program: From Mid-2002 Through Mid-2007, 5-Year Schedule Leasing Program for 20 Sales in 8 of the Outer Continental Shelf Planning Areas, AL, AK, CA, FL, LA, MS, OR, TX and WA, Comment Period Ends: January 24, 2002, Contact: Richard Wildermann (703) 787–1670.

Amended Notices

EIS No. 010127, Draft EIS, AFS, ID, CaribouNational Forest Land and Resource ManagementPlan, Implementation Revised Forest Plan,Bannock, Bear Lake. Bingham, Bonneville, Caribou,Franklin, Oneida and Power Counties, Cache andRich Counties, UT, Lincoln County, WY , Due:November 01, 2001, Contact: Ric Rine (208)557–5766. Published FR–04–28–10—Review Period Reopened, so that Errata Sheet can be reviewed. From 08–31–01 to 11–01–2001.

EIS No. 010357, Draft EIS, SFW, Light GooseManagement Plan, Implementatin, Reducing andStabilizing Specific Populations "Light Geese" in North America , Due: December 14, 2001, Contact:Jon Andrew (703) 358–1714. Revision of FR Notice Published on 09/28/2001: CEQ Comment Period Ending 11/28/2001 has been extended to 12/14/2001.

EIS No. 010383, Draft EIS, NOA, CA, Goat CanyonEnhancement Project, Implementation, TijuanaRiver Estuary, City and County of San Diego, CA,Due: November 26, 2001, Contact: Nina Garfield(301) 563–1171. Published FR 10–12–01 Correction to Title and also changing the ContactPerson Name and Phone Number.

Dated: October 23, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–27043 Filed 10–25–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6623–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (97 FR 27647).

Draft EISs

ERP No. D–AFS–J65338–UT Rating EC2, Units National Forest Revised Land and Resource Management Plan, Implementation, Juab, Sanpete, Tooele, Utah and Wasatch Counties, UT.

Summary

EPA expressed environmental concerns with the small number of wilderness area acres recommended for

designation in the two preferred alternatives compared to the 594,350 acres that qualified and the lack of management guidelines and the analysis of potential impacts to water quality that would result from increasing motorized trail use.

ERP No. D–AFS–J65349–UT Rating EC2, Griffin Springs Resource Management Project, Implementation, Commercial Timber Harvesting, Aspen Regeneration, Management Ignited Prescribed Fire, and Road Work, Dixie National Forest, Escalante Ranger District, Garfield County, UT.

Summary

EPA expressed environmental concerns with potential adverse impacts from road upgrades and maintenance, beetle suppression and routine management activities to old growth forests, wetlands and wildlife. The FEIS should include additional site specific analysis/description of road and beetle management strategies.

ERP No. D–AFS–J65352–MT Rating EC2, Kelsey-Beaver Fire Recovery Project, Implementation of Fuel Reduction and Salvage of Fire-Killed Trees within Roderick South, Kelsey Creek, and Upper Beaver Areas, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT.

Summary

EPA supported proposed watershed and road system improvements. EPA expressed environmental concerns with the limited range of alternatives analyzed and potential adverse impacts to water quality. EPA recommended that additional winter logging be considered and stabilization of eroding banks on streams to reduce sediment production. EPA also suggests the final EIS address the consistency of proposed actions with State TMDL development needs for the 303(d) listed South Fork Yaak River.

ERP No. D–NPS–D65023–DC Rating LO, Mary McLeod Bethune Council House National Historic Site, Implementation, General Management Plan, Washington, DC.

Summary

EPA expressed lack of objections and concurs with the selection of Alternative 2.

ERP No. DS–AFS–J65288–CO Rating EC2, Uncompahgre National Forest Travel Plans Revision, and Forest Plan Amendment, Updated Information, Grand Mesa, Uncompahgre and Gunnison National Forests, Garrison, Hinsdale Mesa, Montrose, Ouray, San Juan Counties, CO.

Summary

EPA expressed environmental concerns with the lack of detail provided for the monitoring plan and its implementation and there are no adaptative management strategies discussed to address unanticipated impacts to natural resources.

ERP No. DS–MMS–L67008–ID Rating EO2, Smoky Canyon Mine Panels B and C, Propose to Mine Phosphate Ore Reserves in the Final Two Mine Panels, National Forest System Lands and Federal Mineral Leases, Caribou National Forest, Permit, Caribou County, ID.

Summary

EPA expressed environmental objections based on predicted selenium contamination of the Wells Formation aquifer exceeding the national ground water standard, the absence of a low-permeable cap design to minimize impacts to ground water, a narrow project scope which did not examine impacts from continued use of the tailings pond and possible mitigation measures, and inadequate mitigation, monitoring, and financial assurance for the entire project. EPA requested that these issues be addressed before issuing a final EIS.

Final EISs

ERP No. F–BLM–K65340–NV Reno Clay Plant Project, Construct and Operate an Open-Pit Clay Mine and Ore Processing Facility, Plan-of-Operations, Oil-Dri Corporation of Nevada, Hungry Valley, Washoe County, NV.

Summary

EPA expressed continuing environmental concerns regarding the project's potential impacts to water quality and the need for additional information regarding monitoring and mitigation to address air and water quality concerns. Any adverse impacts from the project would disproportionately affect the Reno-Sparks Indian Colony adjacent to the project site. EPA commended BLM and Oil-Dri for working with a private land owner to secure a road right-of-way that will reduce air, noise and traffic impacts to local residents. EPA will review Washoe CountyAQMD's draft minor source air permit when it becomes available for public review.

ERP No. F–FHW–G40157–TX Tyler Loop 49 West, Construction from the TX–155

Highway to I–20 Highway, Funding, NPDES and

COE Section 404 Permits, Smith County, TX.

Summary

EPA had no objections to the action as proposed.

ERP No. F–NPS–G65079–OK Washita Battlefield National Historic Site, General Management Plan, Implementation, Roger Mill County, OK.

Summary

EPA had no objections or comments on the Final EIS.

Dated: October 23, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–27044 Filed 10–25–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00734A; FRL–6809–1]

Workshop Series on Bt Corn Insect Resistance Management Framework Development; Notice of Public Meeting; Change of Meeting Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: In the **Federal Register** of August 31, 2001 (66 FR 45985) (FRL–6797–8), EPA announced that it would hold a series of workshops focusing on Bt corn insect resistance management (IRM). This notice announces a change in the date for the meeting originally scheduled for October 29 and 30, 2001. The meeting will now be held on November 5 and 6, 2001.

DATES: The meeting scheduled for October 29 and 30, 2001, will now be held on November 5 and 6, 2001, from 8 a.m. to 5 p.m. Requests for participation in the meeting must be received on or before November 2, 2001.

ADDRESSES: The meeting will be held at EPA, Crystal Station, Room C, 2800 Crystal Drive, Arlington, VA 22202. Space is limited. Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION** of the originally published notice of August 31, 2001. To ensure proper receipt by EPA, your request must identify docket control number OPP–00734A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: John Glaser; National Risk Management Research Laboratory, Environmental Protection Agency, 26 W. King Dr., Cincinnati, OH 45268; telephone number: (513) 569–7568; fax number: (513) 487–2511; e-mail address: glaser.john@epa.gov.

SUPPLEMENTARY INFORMATION: This action is directed to the public in general. This action may, however, be of interest to: Registrants and users of Bt corn under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as well as non-users of Bt corn and the public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Bt corn.

Dated: October 19, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 01–27008 Filed 10–23–01; 2:38 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7090–8]

EPA Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Economics Advisory Committee (EEAC) of the US EPA Science Advisory Board (SAB), will meet on Friday, November 30, 2001 in the Rachel Carson Great Hall of the EPA Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20005. The meeting will begin at 8:30 a.m. and adjourn no later than 3:00 p.m. Eastern Time. The meeting is open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting—The purpose of the meeting will be to: (a) Receive a status briefing on EPA's continuing efforts to enhance its practices for estimating the benefits of environmental actions that reduce mortality risks; (b) to engage in a Consultation with EPA representatives on possible opportunities for using incentives in the area of water and other areas of environmental pollution control; and (c) to engage in a Consultation with EPA representatives on the approach they wish to implement to develop their economic research strategy.

Background—(a) Value of Statistical Life (VSL) as a Measure of Benefits From Environmental Actions—The EEAC, and other Science Advisory Board Committees, have held a series of interactions with EPA representatives over the past few years on ways to estimate the benefits that are predicted to come from environmental actions. Examples of such interactions include: (a) The review of EPA's guidelines for economic analysis (see 63 FR 150:41820; 64 FR 56:14232; 64 FR 205:57452); (b) the review of EPA's white paper on Valuing Fatal Cancer Risk Reductions (see 65 FR 24:5637); (c) the SAB review of the benefits and costs of arsenic control in drinking water (see 66 FR 74:19770; 66 FR 127:34924) and (d) the SAB reviews of the benefits and costs of the Clean Air Act (e.g., see SAB reports EPA–SAB–COUNCIL–LTR–97–001, EPA–SAB–COUNCIL–ADV–00–001, EPA–SAB–COUNCIL–ADV–01–004—please see the SAB website *www.epa.gov/sab* for copies of these reports). The EPA National Center for Environmental Economics (NCEE) and other EPA offices now intend to present a draft plan to the EEAC that outlines EPA's efforts that will help EPA reach a resolution on best practices for a more complete and reliable accounting of the benefits of mortality risk reductions.

The Agency now uses a central estimate for valuation of reduced mortality risks, and makes adjustments to reflect the impact of factors such as identifiable latency periods and income growth over time. There are recognized limitations to these estimates, and these limitations provide the focus for an active research agenda for economists at EPA and outside the Agency. NCEE and other EPA offices conduct a variety of activities related to valuation of reduced mortality risks. These activities include: (a) The development of a review and assessment of the empirical literature that serves as a basis for EPA's value of statistical life (VSL) estimates, (b) development of more complete and reliable benefit transfer values for an environmental context, and (c) identification of directions for policy-relevant research.

EPA will outline its activities for collecting and disseminating new information as well as conducting and funding additional research designed to fill research needs. The Committee will consider how it might continue to interact with EPA as the Agency moves forward with this effort.

(b) Economic Incentives Consultation—The Committee will engage in a Consultation with EPA representatives on the Agency's consideration of opportunities for application of innovative and incentives-based approaches for environmental and health protection. EPA desires feedback from individual members of the Committee on criteria that might be used to select candidate areas for considering the applicability of such methods and for feedback on what topical areas might be considered as part of the agency's agenda for further development.

Over the last 20 years, and particularly during the past decade, economic incentives have been increasingly used to control pollution and improve environmental and health protection at the federal, state and local levels. Economic incentives are instruments that use financial means to motivate polluters to reduce the health and environmental risks posed by their facilities, processes, or products. Examples include pollution charges, fees, and taxes; deposit-refund systems; and trading programs. Economic incentives offer several advantages that make them attractive environmental management tools. In many cases incentives generate benefits beyond what is possible with traditional regulations; sometimes they are applied where traditional regulations might not be possible. They are particularly useful for small and geographically dispersed sources. They can also provide impetus for technological change.

EPA plans to continue to explore opportunities to use, significantly expand, or usefully support State or local governments in the use of innovative approaches, particularly market-based economic incentives. EPA will discuss possible opportunities for using incentives in the area of water pollution as well as other areas, and hope to share some recent examples of experiences where incentives have been used successfully for environmental pollution control.

(c) Research Strategy Development—The Committee will engage in a Consultation with EPA representatives on the approach they are considering for development of an environmental economics research strategy. EPA desires feedback from individual members of the Committee on whether this is an appropriate approach, given the goals of the strategy, for its development. Further, they would like to learn of additional techniques or considerations that might improve the proposed developmental approach. The Agency intends to return to the SAB for a formal peer review of their completed research strategy in late FY 2002.

EPA has discussed the need to develop an environmental economic research strategy with the EEAC on a number of occasions (see 63 FR 56:14112; 63 FR 150:41826; 64 FR 205:57452). Now, EPA's National Center for Environmental Research (NCER) and the National Center for Environmental Economics (NCEE) are initiating the development of an EPA-wide "Economic Research Strategy" with widespread program input and external consultation and peer review. The Economic Research Strategy will provide a blueprint for economic research priorities for EPA and will help coordinate dispersed but related economic research efforts throughout the Agency.

An initial effort to identify economic research strategies was undertaken by the Office of Policy, now the Office of Policy, Economics, and Innovation's NCEE, in 1997. Evaluation of this effort pointed out some needed supplemental information, such as an assessment of current research, that should be included in a comprehensive economic research strategy. In response, NCEE and NCER have decided to develop a revised research strategy. This project will build on the accomplishments of the first effort, which have provided guidance for research for the past 3 years, but will augment them with new components, such as assessments of research in priority areas, and a reassessment of program and regional priorities for economic research.

The research strategy will describe not only the priorities identified by program practitioners, but will evaluate the state of the science in the identified priority areas, so that research efforts can be focused where the incremental effort will have the greatest practical payoff. It will also provide differential foci on the short, medium and long run that will allow EPA to develop an implementation plan using its full suite of economic research tools and vehicles, such as in-house research, contracts, cooperative agreements or research grants, to meet the identified need with the most appropriate tool.

For Further Information—Any member of the public wishing further information concerning this meeting should contact Mr. Thomas O. Miller, Designated Federal Officer, EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–4558; FAX (202) 501–0582; or via e-mail at *miller.tom@epa.gov*. For a copy of the draft meeting agenda, please contact Ms. Wanda Fields, Management Assistant at (202) 564–4539, or by FAX at (202) 501–0582 or via e-mail at *fields.wanda@epa.gov*.

Background Information—is available on the EPA from: (1) For topics "a" and "b" above, Ms. Jennifer Bowen, Research and Program Support Division, National Center for Environmental Economics, U.S. EPA, 1200 Pennsylvania Avenue, Mail Code 1809, Washington, DC 20460; Phone: (202) 260–4396; or E-Mail, *bowen.jennifer@epa.gov*; (2) for topic "c" above, Dr. Matthew Clark, Economics, Social and Behavioral Science Program; National Center for Environmental Research, 1200 Pennsylvania Avenue, NW., Mail Code 8722R, Washington, DC 20460; Phone: (202) 564–6842; or E-Mail: *clark.matthew@epa.gov*.

Public Oral or Written Comments—Members of the public who wish to make a brief oral presentation (5 minutes or less) to the Committee must contact Mr. Miller *in writing* (by letter or by fax—see contact information above) no later than 12 noon Eastern Time, Wednesday, November 21, 2001 in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself. Written comments will be accepted until close of business December 7, 2001. See below for more information on providing written or oral comments.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments*: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of five minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments*: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Miller at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 18, 2001.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 01–27009 Filed 10–25–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1394–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1394–DR), dated October 12, 2001, and related determinations.

EFFECTIVE DATE: October 12, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 12, 2001, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5204c (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe storms and a tornado on August 17–18, 2001, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Gracia Szczech of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

Dakota County for Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–26985 Filed 10–25–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 13, 2001.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Jayne L. Coleman Revocable Trust, Jayne L. Coleman or Gary M. Coleman, Trustees, Valley Falls, Kansas; to acquire voting shares of Northeast Kansas Bancshares, Inc., Valley Falls, Kansas, and thereby indirectly acquire voting shares of Kendall State Bank, Valley Falls, Kansas.

Board of Governors of the Federal Reserve System, October 23, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–27029 Filed 10–25–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 19, 2001.

Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Capital Bank Corporation, Raleigh, North Carolina; to merge with First Community Financial Corporation, Burlington, North Carolina, and thereby indirectly acquire Community Savings Bank, Inc., Burlington, North Carolina.

Board of Governors of the Federal Reserve System, October 22, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26933 Filed 10–25–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 2001.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. H2H Bancshares, Inc., Hosmer, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, Hosmer, South Dakota.

2. Mesaba Bancshares, Inc., Grand Rapids, Minnesota; to merge with Bovey Financial Corporation, Bovey, Minnesota, and thereby indirectly acquire The First National Bank of Bovey, Bovey, Minnesota.

Board of Governors of the Federal Reserve System, October 23, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–27028 Filed 10–25–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: November 15, 2001–9 a.m.–6 p.m.; November 16, 2001–10:10 a.m.–1 p.m.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the first day the full Committee will be briefed by HHS staff on a number of topics including an update on activities of the HHS Data Council; Departmental responses to recent reports and recommendations from the Committee; and the status of implementation of the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 including the status of privacy and data standards regulations. The Committee will be briefed by the HHS Chief Information Officer on HHS Information Technology activities. The Committee will then review the status of its draft report on the National Health Information Infrastructure (NHII). In the afternoon of the first day the Committee will review its privacy recommendations and be briefed on a Department of Defense E-Health Initiative. The Subcommittees on Privacy and Confidentiality and on Populations will hold working sessions late in the afternoon as will the NHII Workgroup.

The Subcommittee on Standards and Security and the Workgroup on Quality will hold working sessions from 8 to 10 in the morning of the second day before the full Committee convenes. Day two of the full Committee meeting will feature an update on statistical activities of the National Center for Health Statistics from the Center's director. The Subcommittees and Working Groups will then report out from their working sessions and the remainder of the agenda will be devoted to planning future agendas.

Notice: In the interest of security, HHS has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Persons without a government identification card may need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Dated: October 23, 2001.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 01–27035 Filed 10–25–01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2133–N]

RIN 0938–ZA17

State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: Title XXI of the Social Security Act (the Act) authorizes payment of Federal matching funds to States, the District of Columbia, and U.S. Territories and Commonwealths to initiate and expand health insurance coverage to uninsured, low-income children under the State Children's Health Insurance Program (SCHIP). This notice sets forth the final allotments of Federal funding available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year 2002. States may implement SCHIP through a separate State program under title XXI of the Act, an expansion of a State Medicaid program under title XIX of the Act, or a combination of both.

EFFECTIVE DATE: This notice is effective on November 26, 2001. Final allotments are available for expenditures after October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

This notice sets forth the allotments available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year (FY) 2002 under title XXI of the Social Security Act (the Act). Final allotments for a fiscal year are available to match expenditures under an approved State child health plan for 3 fiscal years, including the year for which the final allotment was provided. That is, the FY 2002 allotments will be available to States for FY 2002, and unexpended amounts may be carried over to FYs 2003 and 2004. Federal funds appropriated for title XXI are limited, and the law specifies a formula to divide the total annual appropriation into individual allotments available for each State, the District of Columbia, and each U.S. Territory and Commonwealth with an approved child health plan.

Section 2104(b) of the Act requires States, the District of Columbia, and U.S. Territories and Commonwealths to have an approved child health plan for the fiscal year in order for the Secretary to provide an allotment for that fiscal year. All States, the District of Columbia, and U.S. Territories and Commonwealths have approved plans for FY 2002. Therefore, the FY 2002 allotments contained in this notice pertain to all States, the District of Columbia, and U.S. Territories and Commonwealths.

II. Methodology for Determining Final Allotments for States, the District of Columbia, and U.S. Territories and Commonwealths

This notice specifies, in the Table under section III, the final FY 2002 allotments available to individual States, the District of Columbia, and U.S. Territories and Commonwealths for either child health assistance expenditures under approved State child health plans or for claiming an enhanced Federal medical assistance percentage rate for certain SCHIP-related Medicaid expenditures. As discussed below, the FY 2002 final allotments have been calculated to reflect the methodology for determining an allotment amount for each State, the District of Columbia, and each U.S. Territory and Commonwealth as prescribed by the Balanced Budget Refinement Act of 1999 (BBRA) (Public Law 106–113), enacted on November 29, 1999.

Section 2104(a) of the Act provides that, for purposes of providing allotments to the 50 States and the District of Columbia, the following amounts are appropriated: $4,295,000,000 for FY 1998; $4,275,000,000 for each FY 1999 through FY 2001; $3,150,000,000 for each FY 2002 through FY 2004; $4,050,000,000 for each FY 2005 through FY 2006; and $5,000,000,000 for FY 2007. However, under section 2104(c) of the Act, 0.25 percent of the total amount appropriated each year is available for allotment to the U.S. Territories and Commonwealths of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. The total amounts are allotted to the U.S. Territories and Commonwealths according to the following percentages: Puerto Rico, 91.6 percent; Guam, 3.5 percent; the Virgin Islands, 2.6 percent; American Samoa, 1.2 percent; and the Northern Mariana Islands, 1.1 percent.

Section 2104(c)(4)(B) of the Act, as amended by the BBRA, provides for additional amounts for allotment to the Territories and Commonwealths: $34,200,000 for each FY 2000 through FY 2001; $25,200,000 for each FY 2002 through FY 2004; $32,400,000 for each FY 2005 through FY 2006; and $40,000,000 for FY 2007. Therefore, for FY 2002, title XXI of the Act provides an additional $25,200,000 for allotment to the U.S. Territories and Commonwealths. Therefore, the total amount available for allotment to the U.S. Territories and Commonwealths in FY 2002 is $33,075,000 (that is, $25,200,000 plus $7,875,000 (0.25 percent of the FY 2002 appropriation of $3,150,000,000)).

Furthermore, under sections 4921 and 4922 of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33), enacted on August 5, 1997, the total amount available for allotment to the 50 States and the District of Columbia is reduced by an additional total of $60,000,000; $30,000,000 is allocated to the Public Health Service for a special diabetes research program for children with Type I diabetes, and $30,000,000 for special diabetes programs for Indians. The diabetes programs are funded from FYs 1998 through 2002 only.

Therefore, the total amount available nationally for allotment for the 50 States and the District of Columbia for FY 2002 was determined in accordance with the following formula:

$A_T = S_{2104(a)} - T_{2104(c)} - D_{4921} - D_{4922}$

A_T = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$ = Total appropriation for the fiscal year indicated in section 2104(a) of the Act. For FY 2002, this is $3,150,000,000.

$T_{2104(c)}$ = Total amount available for allotment for the U.S. Territories and Commonwealths; determined under section 2104(c) of the Act as 0.25 percent of the total appropriation for the 50 States and the District of Columbia. For FY 2002, this is:.0025 × $3,150,000,000 = $7,875,000.

D_{4921} = Amount of grant for research regarding Type I Diabetes under section 4921 of the BBA. This is $30,000,000 for each of the fiscal years 1998 through 2002.

D_{4922} = Amount of grant for diabetes programs for Indians under section 4922 of the BBA. This is $30,000,000 for each of the fiscal years 1998 through 2002. Therefore, for FY 2002, the total amount available for allotment to the 50 States and the District of Columbia is $3,082,125,000. This was determined as follows:

A_T ($)3,082,125,000 = $S_{2104(a)}$($3,150,000,000) − $T_{2104(c)}$($7,875,000) − D_{4921}($30,000,000) − D_{4922}($30,000,000)

For purposes of the following discussion, the term "State," as defined in section 2104(b)(1)(D)(ii) of the Act, "means one of the 50 States or the District of Columbia."

Under section 2104(b) of the Act, as amended by BBRA, the determination of the Number of Children applied in determining the SCHIP allotment for a particular fiscal year is based on the three most recent March supplements to the Current Population Survey (CPS) of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The determination of the State Cost Factor is based on the Annual Average Wages Per Employee in the health services industry, which is determined using the most recent 3 years of such wage data as reported and determined as final by the Bureau of Labor Statistics (BLS) of the Department of Labor to be officially available prior to the beginning of the calendar year in which the fiscal year begins. Because FY 2002 begins on October 1, 2001, (that is, in calendar year 2001,) in determining the FY 2002 SCHIP allotments, we are using the most recent official data from the Bureau of the Census and the BLS, respectively, available before January 1 of calendar year 2001.

Number of Children

For FY 2002, as specified by section 2104(b)(2)(A)(iii) of the Act, the Number of Children is calculated as the sum of 50 percent of the number of low-income, uninsured children in the State, and 50 percent of the number of low-income children in the State. The Number of Children factor for each State is developed from data provided by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in the annual CPS on these topics. As part of a continuing formal process between the Centers for Medicare & Medicaid Services (CMS, formerly known as HCFA) and the Bureau of the Census, each fiscal year we obtain the Number of Children data officially from the Bureau of the Census.

Under section 2104(b)(2)(B) of the Act, the Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the CPS officially available from the Bureau of the Census

before the beginning of the 2001 calendar year. In particular, through December 31, 2000, the most recent official data available from the Bureau of the Census on the numbers of children were data from the three March CPSs conducted in March 1998, 1999, and 2000 (representing data for years 1997 through 1999).

State Cost Factor

The State Cost Factor is based on annual average wages in the health services industry in the State. The State Cost Factor for a State is equal to the sum of: 0.15, and 0.85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia.

Under section 2104(b)(3)(B) of the Act, as amended by the BBRA, the State Cost Factor for each State for a fiscal year is calculated based on the average of the annual wages for employees in the health industry for each State using data for each of the most recent 3 years as reported and determined as final by the BLS in the Department of Labor and available before the beginning of the calendar year in which the fiscal year begins. Therefore, the State cost factor for FY 2002 is based on the most recent 3 years of BLS data officially available as final before January 1, 2001 (the beginning of the calendar year in which FY 2002 begins); that is, it is based on the BLS data available as final through December 31, 2000. In accordance with these requirements, we used the final State Cost Factor data available from BLS for 1996, 1997, and 1998 in calculating the FY 2002 final allotments.

The State Cost Factor is determined based on the calculation of the ratio of each State's average annual wages in the health industry to the national average annual wages in the health care industry. Because BLS is required to suppress certain State-specific data in providing us with the State-specific average wages per health services industry employee due to the Privacy Act, we calculated the national average wages directly from the State-specific data provided by BLS. As part of a continuing formal process between CMS and the BLS, each fiscal year CMS obtains these wage data officially from the BLS.

Under section 2104(b)(4) of the Act, as amended by the BBRA, each State and the District of Columbia is allotted a "proportion" of the total amount available nationally for allotment to the States. The term "proportion" is defined in section 2104(b)(4)(D)(i) of the Act and refers to a State's share of the total amount available for allotment for any given fiscal year. In order for the entire total amount available to be allotted to the States, the sum of the proportions for all States must exactly equal one. Under the statutory definition, a State's proportion for a fiscal year is equal to the State's allotment for the fiscal year divided by the total amount available nationally for allotment for the fiscal year. In general, a State's allotment for a fiscal year is calculated by multiplying the State's proportion for the fiscal year by the national total amount available for allotment for that fiscal year in accordance with the following formula:

$SA_i = P_i \times A_T$

SA_i = Allotment for a State or District of Columbia for a fiscal year.

P_i = Proportion for a State or District of Columbia for a fiscal year.

A_T = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year. For FY 2002, this is $3,082,125,000.

In accordance with the amended statutory formula for determining allotments, the State proportions are determined under two steps, which are described below in further detail.

Under the first step, each State's proportion is calculated by multiplying the State's Number of Children and the State Cost Factor to determine a "product" for each State. The products for all States are then summed. Finally, the product for a State is divided by the sum of the products for all States, thereby yielding the State's preadjusted proportion.

Application of Floors and Ceiling

Under the second step, the preadjusted proportions are subject to the application of proportion floors, ceilings, and a reconciliation process, as appropriate. The amended SCHIP statute specifies three proportion floors, or minimum proportions, that apply in determining States' allotments. The first proportion floor is equal to $2,000,000 divided by the total of the amount available nationally for the fiscal year. This proportion ensures that a State's minimum allotment would be $2,000,000. For FY 2002, no State's preadjusted proportion is below this floor. The second proportion floor is equal to 90 percent of the allotment proportion for the State for the previous fiscal year; that is, a State's proportion for a fiscal year must not be lower than 10 percent below the previous fiscal year's proportion. The third proportion floor is equal to 70 percent of the allotment proportion for the State for FY 1999; that is, the proportion for a fiscal year must not be lower than 30 percent below the FY 1999 proportion.

Each State's allotment proportion for a fiscal year is limited by a maximum ceiling amount, equal to 145 percent of the State's proportion for FY 1999; that is, a State's proportion for a fiscal year must be no higher than 45 percent above the State's proportion for FY 1999. The floors and ceilings are intended to minimize the fluctuation of State allotments from year to year and over the life of the program as compared to FY 1999. The floors and ceilings on proportions are not applicable in determining the allotments of the U.S. Territories and Commonwealths; they receive a fixed percentage specified in the statute of the total allotment available to the U.S. Territories and Commonwealths.

As determined under the first step for determining the States' preadjusted proportions, which is applied before the application of any floors or ceilings, the sum of the proportions for all the States and the District of Columbia will be equal to exactly one. However, the application of the floors and ceilings under the second step may change the proportions for certain States; that is, some States' proportions may need to be raised to the floors, while other States' proportions may need to be lowered to the maximum ceiling. If this occurs, the sum of the proportions for all States and the District of Columbia may not exactly equal one. In that case, the statute requires that the proportions will need to be adjusted, under a method that is determined by whether the sum of the proportions is greater or less than one.

The sum of the proportions would be greater than one if the application of the floors and ceilings resulted in raising the proportions of some States (due to the floors) to a greater degree than the proportions of other States were lowered (due to the ceiling). If, after application of the floors and ceiling, the sum of the proportions is greater than one, the amended statute requires the Secretary to determine a maximum percentage increase limit, which, when applied to the State proportions, would result in the sum of the proportions being exactly one.

If, after the application of the floors and ceiling, the sum of the proportions is less than one, the statute requires the States' proportions to be increased in a "pro rata" manner so that the sum of the proportions again equals one. It is also possible, although unlikely, that the sum of the proportions (after the application of the floors and ceiling) will be exactly one, and therefore, the proportions would require no further adjustment.

Determination of Preadjusted Proportion

The following is an explanation of how we applied the two State-related factors specified in the statute to determine the States' preadjusted proportions for FY 2002. The term "preadjusted," as used here, refers to the States' proportions prior to the application of the floors and ceiling and adjustments, as specified in the amended SCHIP statute. The determination of each State and the District of Columbia's preadjusted proportion for FY 2002 is in accordance with the following formula:

$PP_i = (C_i \times SCF_i) \Sigma (C_i \times SCF_i)$

PP_i = Preadjusted proportion for a State or District of Columbia for a fiscal year.

C_i = *Number of children* in a State (section 2104(b)(1)(A)(i) of the Act) for a fiscal year. This number is based on the number of low-income children for a State for a fiscal year and the number of low-income uninsured children for a State for a fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the three most recent March supplements to the CPS of the Bureau of the Census, officially available before the beginning of the calendar year in which the fiscal year begins. (*See* section 2104(b)(2)(B) of the Act.)

For fiscal year 2002, the number of children is equal to the sum of 50 percent of the number of low-income uninsured children in the State for the fiscal year and 50 percent of the number of low-income children in the State for the fiscal year. (*See* section 2104(b)(2)(A)(iii) of the Act.)

SCF_i = *State cost factor for a State* (section 2104(b)(1)(A)(ii) of the Act). For a fiscal year, this is equal to:

$0.15 + 0.85 \times (W_i/W_N)$

W_i = The annual average wages per employee for a State for such year (section 2104(b)(3)(A)(ii)(I) of the Act).

W_N = The annual average wages per employee for the 50 States and the District of Columbia (section 2104(b)(3)(A)(ii)(II) of the Act).

The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health services industry (SIC 80), as reported and determined as final by the BLS of the Department of Labor for each of the most recent three years officially available before the beginning of the calendar year in which the fiscal year begins. (*See* section 2104(b)(3)(B) of the Act).

$(C_i \times SCF_i)$ = The sum of the products of $(C_i \times SCF_i)$ for each State (section 2104(b)(1)(B) of the Act).

The resulting proportions would then be subject to the application of the floors and ceilings specified in the amended SCHIP statute and reconciled, as necessary, to eliminate any deficit or surplus of the allotments because the sum of the proportions was either greater than or less than one.

Section 2104(e) of the Act requires that the amount of a State's allotment for a fiscal year be available to the State for a total of 3 years; the fiscal year for which the State child health plan is approved and the 2 following fiscal years. Section 2104(f) of the Act requires the Secretary to establish a process for redistribution of the amounts of States' allotments that are not expended during the 3-year period to States that have fully expended their allotments.

III. Table of State Children's Health Insurance Program Final Allotments for FY 2002

Key to Table

Column/Description

Column A = Name of State, District of Columbia, U.S. Commonwealth or Territory.

Column B = Number of Children. The Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income uninsured children, and is based on the three most recent March supplements to the CPS of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The FY 2002 allotments were based on the 1998, 1999, and 2000 March supplements to the CPS. These data represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are reported to be without health insurance coverage. The Number of Children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in its annual March CPS on these topics.

For FY 2002, the Number of Children is equal to the sum of 50 percent of the number of low-income uninsured children in the State and 50 percent of the number of low-income children in the State.

Column C = State Cost Factor. The State Cost Factor for a State is equal to the sum of: 0.15, and 0.85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State Cost Factor for each State was calculated based on such wage data for each State as reported and determined as final by the BLS in the Department of Labor for each of the most recent 3 years and available before the beginning of the calendar year in which the fiscal year begins. The FY 2002 allotments were based on final BLS wage data for 1996, 1997, and 1998.

Column D = Product. The Product for each State was calculated by multiplying the Number of Children in Column B by the State Cost Factor in Column C. The sum of the Products for all 50 States and the District of Columbia is below the Products for each State in Column D. The Product for each State and the sum of the Products for all States provides the basis for allotment to States and the District of Columbia.

Column E = Proportion of Total. This is the calculated percentage share for each State of the total allotment available to the 50 States and the District of Columbia. The Percent Share of Total is calculated as the ratio of the Product for each State in Column D to the sum of the products for all 50 States and the District of Columbia below the Products for each State in Column D.

Column F = Adjusted Proportion of Total. This is the calculated percentage share for each State of the total allotment available after the application of the floors and ceilings and after any further reconciliation needed to ensure that the sum of the State proportions is equal to one. The three floors specified in the amended statute are: (1) A floor of $2,000,000 divided by the total of the amount available for all allotments for the fiscal year; (2) an annual floor of 90 percent of (that is, 10 percent below) the preceding fiscal year's allotment proportion; and (3) a cumulative floor of 70 percent of (that is, 30 percent below) the FY 1999 allotment proportion. There is also a cumulative ceiling of 145 percent of (that is, 45 percent above) the FY 1999 allotment proportion.

Column G = Allotment. This is the SCHIP allotment for each State, Commonwealth, or Territory for the fiscal year. For each of the 50 States and the District of Columbia, this is determined as the Adjusted Proportion of Total in Column F for the State multiplied by the total amount available for allotment for the 50 States and the District of Columbia for the fiscal year.

For each of the U.S. Territory and Commonwealths, the allotment is determined as the Proportion of Total in Column E multiplied by the total amount available for allotment to the U.S. Territories and Commonwealths. For the U.S. Territories and Commonwealths, the Proportion of Total in Column E is specified in section 2104(c) of the Act. The total amount is then allotted to the U.S. Territories and Commonwealths according to the percentages specified in section 2104 of the Act. There is no adjustment made to the allotments of the U.S. Territories and Commonwealths as they are not subject to the application of the floors and ceiling. As a result, Column F in the table, the Adjusted Proportion of Total, is empty for the U.S. Territories and Commonwealths.

STATE CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FEDERAL FISCAL YEAR

A	B	C	D	E	F	G
State	Number of children (000)	State cost factor	Product	Proportion of total [3] (percent)	Adjusted proportion of total [3] (percent)	Allotment [1]
ALABAMA	303	0.9688	293.0755	1.5729	1.5764	$48,585,422
ALASKA	41	1.0379	42.0330	0.2256	0.2261	6,968,138
ARIZONA	501	1.0495	525.8013	2.8220	2.8281	87,166,211
ARKANSAS	244	0.8972	218.9183	1.1749	1.1775	36,291,812
CALIFORNIA	2,885	1.1051	3,187.6789	17.1082	17.1455	528,466,560
COLORADO	205	1.0083	206.7040	1.1094	1.1118	34,266,951
CONNECTICUT	141	1.1072	156.1201	0.8379	0.8434	25,993,944
DELAWARE	49	1.1164	54.1443	0.2906	0.2764	8,520,205
DISTRICT OF COLUMBIA	38	1.2626	47.3485	0.2541	0.2547	7,849,329
FLORIDA	964	1.0272	990.2267	5.3145	5.3261	164,157,649
GEORGIA	635	0.9981	633.2945	3.3989	3.4063	104,986,194
HAWAII	71	1.1617	81.8966	0.4395	0.3071	9,463,732
IDAHO	117	0.8931	104.4926	0.5608	0.5451	16,800,022
ILLINOIS	767	1.0005	767.4131	4.1187	4.1277	127,220,093
INDIANA	306	0.9286	283.6953	1.5226	1.5259	47,030,390
IOWA	158	0.8556	135.1884	0.7256	0.7271	22,411,236
KANSAS	152	0.8751	132.5787	0.7115	0.7131	21,978,619
KENTUCKY	250	0.9293	231.8518	1.2443	1.2471	38,435,891
LOUISIANA	393	0.8866	348.0072	1.8677	1.8718	57,691,885
MAINE	66	0.9134	60.2861	0.3236	0.3243	9,994,099
MARYLAND	195	1.0422	202.6996	1.0879	1.1008	33,927,307
MASSACHUSETTS	294	1.0530	309.0552	1.6587	1.4704	45,318,822
MICHIGAN	580	1.0078	584.5496	3.1373	3.1437	96,893,382
MINNESOTA	236	0.9919	233.5856	1.2537	0.9747	30,041,680
MISSISSIPPI	256	0.8934	288.7227	1.2276	1.2302	37,917,154
MISSOURI	300	0.9248	276.9879	1.4866	1.4898	45,918,455
MONTANA	78	0.8509	65.9479	0.3539	0.3547	10,932,695
NEBRASKA	99	0.8673	85.4243	0.4585	0.4595	14,161,451
NEVADA	141	1.1856	166.5704	0.8940	0.8959	27,613,689
NEW HAMPSHIRE	56	0.9881	54.8419	0.2943	0.2950	9,091,578
NEW JERSEY	374	1.1206	419.1061	2.2493	2.2542	69,478,513
NEW MEXICO	213	0.9300	197.6156	1.0606	1.0867	33,494,942
NEW YORK	1,312	1.0758	1,411.4867	7.5754	7.5919	233,993,235
NORTH CAROLINA	495	0.9897	489.3856	2.6265	2.6323	81,129,294
NORTH DAKOTA	49	0.8723	42.7421	0.2294	0.1730	5,332,879
OHIO	675	0.9663	652.2300	3.5005	3.5081	108,125,285
OKLAHOMA	224	0.8519	190.3994	1.0219	1.4789	45,583,004
OREGON	225	1.0102	226.7945	1.2172	1.2199	37,597,497
PENNSYLVANIA	616	0.9950	612.8914	3.2894	3.2966	101,603,820
RHODE ISLAND	46	0.9908	45.0812	0.2420	0.2425	7,473,463
SOUTH CAROLINA	283	1.0101	285.3444	1.5314	1.5348	47,303,777
SOUTH DAKOTA	41	0.8742	35.8415	0.1924	0.1928	5,941,727
TENNESSEE	373	1.0021	373.7781	2.0061	2.0104	61,964,136
TEXAS	1,957	0.9306	1,820.7473	9.7719	9.7932	301,839,575
UTAH	152	0.9135	138.8483	0.7452	0.7468	23,017,975
VERMONT	29	0.8730	25.3169	0.1359	0.1214	3,740,343
VIRGINIA	335	0.9858	329.7350	1.7697	1.7735	54,662,752
WASHINGTON	269	0.9518	256.0424	1.3742	1.3772	42,446,166
WEST VIRGINIA	112	0.9008	100.4372	0.5390	0.5402	16,650,270
WISCONSIN	249	0.9539	237.5144	1.2747	1.2775	39,374,631
WYOMING	36	0.8876	31.9531	0.1715	0.1719	5,297,121
TOTAL STATES ONLY			18,632.4311	100.0000	100.0000	3,082,125,000
ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES [2]						
PUERTO RICO				91.6		30,296,700
GUAM				3.5		1,157,625

STATE CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FEDERAL FISCAL YEAR—Continued

A	B	C	D	E	F	G
State	Number of children (000)	State cost factor	Product	Proportion of total [3] (percent)	Adjusted proportion of total [3] (percent)	Allotment [1]
VIRGIN ISLANDS				2.6		859,950
AMERICAN SAMOA				1.2		396,900
N. MARIANA ISLANDS				1.1		363,825
TOTAL COMMONWEALTHS AND TERRITORIES ONLY				100.0		33,075,000
TOTAL STATES AND COMMONWEALTHS AND TERRITORIES						3,115,200,000

FOOTNOTES
The numbers in Columns B–F are rounded for presentation purposes, the actual numbers used in the allotment calculations are not rounded.
[1] Total amount available for allotment to the 50 States and the District of Columbia is $3,082,125,000; determined as the fiscal year appropriation ($3,150,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories under section 2104(c) of the Act ($7,875,000) and amounts for Special Diabetes Grants under sections 4921 ($30,000,000) and 4922 ($30,000,000) of BBA.
[2] Total amount available for allotment to the Commonwealths and Territories is $7,875,000 (determined as 25 percent of $3,150,000,000, the fiscal year appropriation) plus $25,200,000, as specified in section 2104(c)(4)(B) of the Act.
[3] Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Act.

IV. Impact Statement

We have examined the impact of this notice as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rules are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). We believe that this notice is consistent with the regulatory philosophy and principles identified in the Executive Order. The formula for the allotments is specified in the statute. Since the formula is specified in the statute, we have no discretion in determining the allotments. This notice merely announces the results of our application of this formula, and therefore does not reach the economic significance threshold of $100 million in any one year.

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before publishing any notice that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted each year for inflation) in any one year. Because participation in the SCHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the Federal government are made voluntarily. This notice will not create an unfunded mandate on States, tribal, or local governments because it merely notifies states of their SCHIP allotment for FY 2002. Therefore, we are not required to perform an assessment of the costs and benefits of this notice.

Low-income children will benefit from payments under SCHIP through increased opportunities for health insurance coverage. We believe this notice will have an overall positive impact by informing States, the District of Columbia, and U.S. Territories and Commonwealths of the extent to which they are permitted to expend funds under their child health plans using their FY 2002 allotments.

Under Executive Order 13132, we are required to adhere to certain criteria regarding Federalism. We have reviewed this notice and determined that it does not significantly affect States' rights, roles, and responsibilities because it does not set forth any new policies.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1102 of the Social Security Act (42 U.S.C. 1302))
(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: August 2, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 31, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–26037 Filed 10–25–01; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8011–N]

RIN 0938–ZA19

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2002 under Medicare's hospital insurance program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts.

The inpatient hospital deductible will be $812. The daily coinsurance amounts will be: (a) $203 for the 61st through 90th day of hospitalization in a benefit period; (b) $406 for lifetime reserve days; and (c) $101.50 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

EFFECTIVE DATE: This notice is effective on January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390.

For case-mix analysis only: Gregory J. Savord, (410) 786–1521.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires us to determine and publish, between September 1 and September 15 of each year, the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year.

II. Computing the Inpatient Hospital Deductible for 2002

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year that begins on October 1 of the same preceding calendar year, and adjusted to reflect real case mix. The adjustment to reflect real case mix is determined on the basis of the most recent case mix data available. The amount determined under this formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

Under section 1886(b)(3)(B)(i) of the Act, as amended by section 4401(a) of the Balanced Budget Act of 1997 (BBA '97) (Pub. L. 105–33) and section 301(a) of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554, enacted on December 21, 2000), the percentage increase used to update the payment rates for fiscal year 2002 for hospitals paid under the prospective payment system is the market basket percentage increase minus 0.55 percentage points.

Under section 1886(b)(3)(B)(ii) of the Act, as amended by section 4411(a) of the BBA '97, the percentage increase used to update the payment rates for fiscal year 2002 for hospitals excluded from the prospective payment system depends on the hospital's allowable operating costs of inpatient hospital services. If the hospital's allowable operating costs of inpatient hospital services for the most recent cost reporting period for which information is available—

(1) Are equal to or exceed 110 percent of the hospital's target amount for that cost reporting period, the applicable percentage increase is the market basket percentage;

(2) Exceed 100 percent but are less than 110 percent of the hospital's target amount for that cost reporting period, the applicable percentage increase is the market basket percentage minus 0.25 percentage points for each percentage point by which the hospital's allowable operating costs are less than 110 percent of the target amount for that cost reporting period (but not less than 0 percent);

(3) Are equal to or less than 100 percent of the hospital's target amount for that cost reporting period, but exceed two-thirds of the target amount, the applicable percentage increase is 0 percent or, if greater, the market basket percentage minus 2.5 percentage points; or

(4) Do not exceed two-thirds of the hospital's target amount for that cost reporting period, the applicable percentage increase is 0 percent.

The market basket percentage increase for fiscal year 2002 is 3.3 percent, as announced in the final rule titled "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Rates and Costs of Graduate Medical Education: Fiscal Year 2002 Rates; Provisions of the Balanced Budget Refinement Act of 1999; and Provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000" published in the **Federal Register** on August 1, 2001 (66 FR 39828). Therefore, the percentage increase for hospitals paid under the prospective payment system is 2.75 percent. The average payment percentage increase for hospitals excluded from the prospective payment system is 0.88 percent. Weighting these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for fiscal year 2002 is 2.54 percent.

To develop the adjustment for real case mix, we first calculated for each hospital an average case mix that reflects the relative costliness of that hospital's mix of cases compared to those of other hospitals. We then computed the change in average case mix for hospitals paid under the Medicare prospective payment system in fiscal year 2001 compared to fiscal year 2000. (We excluded from this calculation hospitals excluded from the prospective payment system because their payments are based on reasonable costs and are affected only by real changes in case mix.) We used bills from prospective payment hospitals received in CMS as of July 2001. These bills represent a total of about 8.6 million discharges for fiscal year 2001 and provide the most recent case mix data available at this time. Based on these bills, the change in average case mix in fiscal year 2001 is −1.0 percent. Based on past experience, we expect the overall case mix change to be −0.8 percent as the year progresses and more fiscal year 2001 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case mix change that is determined to be real. There is a negligible change in overall case mix for fiscal year 2001. We estimate that there is no change in real case mix; that is, we estimate that the change in real case mix for fiscal year 2001 is 0.0 percent.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 2.54 percent, and the real case mix adjustment factor for the deductible is 0.0 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in calendar year 2002 is $812. This deductible amount is determined by multiplying $792 (the inpatient hospital deductible for 2001) by the payment-weighted average increase in the payment rates of 1.0254 multiplied by the increase in real case mix of 1.00, which equals $812.12 and is rounded to $812.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for 2002

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year. Thus, the increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in 2002, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be $203 (one-fourth of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be $406 (one-half of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period will be $101.50 (one-eighth of the inpatient hospital deductible).

IV. Cost to Beneficiaries

We estimate that in 2002 there will be about 8.67 million deductibles paid at $812 each, about 2.14 million days subject to coinsurance at $203 per day (for hospital days 61 through 90), about 0.99 million lifetime reserve days subject to coinsurance at $406 per day, and about 26.28 million extended care days subject to coinsurance at $101.50 per day. Similarly, we estimate that in 2001 there will be about 8.53 million deductibles paid at $792 each, about 2.11 million days subject to coinsurance at $198 per day (for hospital days 61 through 90), about 0.97 million lifetime reserve days subject to coinsurance at $396 per day, and about 25.84 million extended care days subject to coinsurance at $99 per day. Therefore, the estimated total increase in cost to beneficiaries is about $430 million (rounded to the nearest $10 million), due to (1) the increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid.

V. Waiver of Proposed Notice and Comment Period

The Medicare statute, as discussed previously, requires publication of the Medicare Part A inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services for each calendar year. The amounts are determined according to the statute. As has been our custom, we use general notices, rather than notice and comment rulemaking procedures, to make the announcements. In doing so, we acknowledge that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts is statutorily directed, and we can exercise no discretion in following those formulae. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities. We have determined that this notice will not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

As stated in section IV of this notice, we estimate that the total increase in costs to beneficiaries associated with this notice is about $430 million due to (1) the increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism. We have determined that it does not significantly affect the rights, roles, and responsibilities of States.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Sections 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e–2(b)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance).

Dated: September 7, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 27, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–26701 Filed 10–19–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMSR–3060–NR]

Medicare Program; the National and Local Coverage Determination Review Process for an Individual With Standing as Defined in Section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protections Act of 2000

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of CMS Ruling.[1]

SUMMARY: This notice announces a CMS Ruling concerning the appropriate actions to be taken upon receipt of a complaint seeking review of a national or local coverage determination under section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Public Law 106–554. The Ruling establishes the interim administrative procedures that CMS contractors, and Administrative Law Judges (ALJs) are to follow in processing such complaints until final regulations are published regarding the adjudication of the complaints and the effectuation of ALJ and Departmental Appeals Board decisions with respect to complaints.

FOR FURTHER INFORMATION CONTACT: Jim Bossenmeyer, (410) 786–9317.

[1] **EDITORIAL NOTE:** Future CMS Rulings may appear in the Rules Section of the **Federal Register** if they are interpretations of or general policy statements concerning CMS rules (See 1 CFR 5.9(b)).

SUPPLEMENTARY INFORMATION: The CMS Administrator signed Ruling CMSR–01–1 on September 24, 2001. The text of the CMS Ruling follows: The National and Local Coverage Determination Review Process for an Individual with Standing as Defined in Section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protections Act of 2000.

Summary: Under section 1869(f)(5) of the Social Security Act (the Act), as added by section 522 of BIPA, effective October 1, 2001, certain individuals ("aggrieved parties") may file a complaint to initiate a review of a national or local coverage determination. Complaints filed under section 1869(f) of the Act concerning national coverage determinations are to be reviewed by the Departmental Appeals Board (DAB) of the Department of Health and Human Services; complaints filed under section 1869(f) of the Act concerning local coverage determinations are to be reviewed by ALJs of the Social Security Administration. The purpose of this Ruling is to establish the interim administrative procedures that CMS contractors, ALJs, and the DAB are to follow in processing such complaints until final regulations are published regarding the adjudication of the complaints and the effectuation of ALJ and DAB decisions with respect to complaints.

Citations: Section 1869 of the Social Security Act (42 U.S.C. 1395ff), and section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protections Act of 2000, Pub. L. 106–554 (2000).

Background

Section 522 of BIPA amends section 1869 of the Act to create a new administrative review process that enables certain beneficiaries to challenge CMS Medicare policies, commonly referred to as national coverage determinations (NCDs) and local coverage determinations (LCDs). These administrative challenges are distinct from the existing appeal rights for the adjudication of Medicare claims.

Prior to BIPA, there was no administrative mechanism for any party to challenge a coverage policy. Section 1869(b)(3) of the Act, however, provided a remedy for judicial review of NCDs based on section 1862(a)(1) of the Act, that is, determinations as to whether an item or service is reasonable and necessary. Section 1869(f) of the Act requires that CMS establish an administrative review process for NCDs and LCDs. Under the statute, beneficiaries who are in need of a service that is the subject of a coverage determination may challenge an NCD in an administrative proceeding before the Departmental Appeals Board (DAB). Similar provisions allow aggrieved parties to challenge LCDs before an ALJ. An aggrieved party dissatisfied with the ALJ's decision may seek review by the DAB. In this type of appeal, the DAB acts as an appellate body. The decision of the DAB relating to an LCD challenge or an NCD challenge becomes a final agency action and is subject to judicial review.

The effective date for these provisions is October 1, 2001. Section 521 of BIPA sets forth additional changes to our existing claim appeals process that are to take effect on October 1, 2002.

Delay of Reviews Under Section 1869(f)

Section 522(d) of BIPA establishes an effective date of October 1, 2001 for new section 1869(f) of the Act. Although the statute thus permits aggrieved parties to file complaints with respect to NCDs and LCDs beginning October 1, 2001, we believe it is clearly in the public interest to complete notice and comment rulemaking to develop the rules and procedures for adjudicating these policy challenges. Notice and comment rulemaking will ensure that the public has an opportunity to fully participate in the development of these rules. It also will ensure that the DAB and the ALJs have a uniform adjudicative process for resolving these issues in a fair and efficient manner.

It is essential that these complaints be handled in a uniform manner for several reasons. First, the coverage determinations to be reviewed under the provisions of section 1869(f) of the Act apply to a broader group of beneficiaries than just the individual beneficiary who has raised the complaint. NCDs apply to all claims nationwide for the particular item or service in question and are binding on both the Medicare contractors and the ALJs who hear individual claims appeals. LCDs apply to beneficiaries within the jurisdiction specified by the contractor and are binding on the contractors making claims determinations. Due to the broad impact of these policies, review of these policies must be done in a consistent, predictable manner. It is important to establish final regulatory guidance on these provisions with the benefit of public notice and comment before the provisions are fully implemented. For example, regulatory guidance is necessary to ensure that the provisions identifying those beneficiaries with standing to file a complaint about an NCD or LCD are interpreted consistently and that consistent remedies be available to beneficiaries whose challenge to a coverage determination is successful.

In addition, the coverage determination reviews are a new responsibility for the ALJs and the DAB. We believe that establishing a consistent system for handling these reviews from the beginning will enable these entities to process this additional workload as efficiently as possible.

Therefore, to ensure consistent handling of NCD and LCD review requests and to ensure that all aggrieved parties are afforded equal rights and protections, CMS is delaying full implementation of section 1869(f) of the Act until final regulations are issued. This delay will avoid inefficient and ad hoc proceedings that could occur if each contractor, ALJ, and the DAB establish separate procedures.

Restrictions on Medicare Contractors in Absence of a Regulation

Until a final regulation is issued that fully implements section 1869(f) of the Act, carriers, fiscal intermediaries, and program safeguard contractors (PSCs) must *not* provide or furnish any materials, information, background, or any other pertinent information regarding the development or implementation of an NCD or LCD to either the DAB or an ALJ. Instead, any request for NCD or LCD documentation from the DAB or an ALJ should be referred immediately to the appropriate contact in the CMS central office (see below). Furthermore, if an administrative decision requiring the carrier, fiscal intermediary, or PSC to take any action with respect to a specific NCD or LCD is issued, the contractor must refer this request to CMS central office before taking any action.

Medicare Contractor Administrative Process for Any Reviews of National or Local Coverage Determinations

If a complaint under section 1869(f) of the Act is filed with a carrier, fiscal intermediary or PSC requesting a review of a national or local coverage determination under section 1869(f) of the Act, the carrier, fiscal intermediary, or PSC must within 10 business days, forward a complaint concerning an LCD to SSA's Office of Hearings and Appeals and a complaint concerning an NCD to the DAB at the addresses below. After forwarding the complaint to the Office of Hearings and Appeals or DAB, the contractor must notify the appropriate contact in the CMS central office and provide them a copy of the complaint.

LCD Referral

Office of Hearings and Appeals
Social Security Administration
One Skyline Tower
Suite 1702
Attention: LCD Complaint
5107 Leesburg Pike
Falls Church, Virginia 22041

NCD Referral

Department Appeals Board
U.S. Dept. of Health and Human Services
Room 637D, Humphrey Building
Attention: NCD Complaint
200 Independece Avenue, SW.
Washington, DC 20201

Administrative Review Process With Respect to NCDs or LCDs

If a complaint under section 1869(f) of the Act is filed with or forwarded to the DAB or an ALJ, the DAB or ALJ will:

(1) Within 10 business days, send a written response to the requestor informing them that the review process for the complaint is being delayed under this Ruling, and that the Department of Health and Human Services intends to publish regulations establishing uniform procedures.

(2) Docket any such requests.

(3) Inform the CMS of any requests received. (This should be accomplished by sending a copy of the complaint to the appropriate notification contact.)

LCD Notification Contact

Melanie Combs
7500 Security Blvd.
C3–02–16
Baltimore, MD 21244–1850
Attention: LCD Challenge Staff
Telephone Number: (410) 786–7683

NCD Notification Contact

Vadim Lubarsky
7500 Security Blvd.
C1–10–23
Baltimore, MD 21244–1850
Attention: NCD Challenge Staff
Telephone Number: (410) 786–0840

(4) Take no further action until final regulations are effective.

Once the regulation is effective, inform the requestor that processing of complaints under the new review procedures will continue.

Authority: Section 1869 of the Social Security Act (42 U.S.C. 1395ff), and section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub. L. 106–554.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 2, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–26289 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8010–N]

Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 1839 of the Social Security Act (the Act), this notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for 2002. It also announces the monthly SMI premium to be paid by all enrollees during 2002. The monthly actuarial rates for 2002 are $109.30 for aged enrollees and $123.10 for disabled enrollees. The monthly SMI premium rate for 2002 is $54.00. (The 2001 premium rate was $50.00). This compares to projections of the 2002 SMI premium of $58.50 in the 2001 Trustees Report and $54.50 in the 2000 Trustees Report. The 2002 Part B premium is not equal to 50 percent of the monthly actuarial rate because of the differential between the amount of home health that is transferred into Part B in 2002 (five-sixths) and the amount in Part B that is included in the premium calculation (five-sevenths). Included in the monthly premium rate is $3.91 for home health services being transferred into Part B.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Carter S. Warfield, (410) 786–6396.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Supplementary Medical Insurance (SMI) program is the voluntary Medicare Part B program that pays all or part of the costs for physicians' services, outpatient hospital services, home health services, services furnished by rural health clinics, ambulatory surgical centers, comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (HI) (Medicare Part A). The SMI program is available to individuals who are entitled to HI and to U.S. residents who have attained age 65 and are citizens, or aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. This program requires enrollment and payment of monthly premiums, as provided in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal Government.

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1839 of the Social Security Act (the Act) to issue two annual notices relating to the SMI program.

One notice announces two amounts that, according to actuarial estimates, will equal respectively, one-half the expected average monthly cost of SMI for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI for each disabled enrollee (under age 65) during the year beginning the following January. These amounts are called "monthly actuarial rates."

The second notice announces the monthly SMI premium rate to be paid by aged and disabled enrollees for the year beginning the following January. (Although the costs to the program per disabled enrollee are different than for the aged, the law provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Public Law 92–603), the premium rate, which was determined on a fiscal year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly Title II social security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Public Law 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Public Law 98–21), section 2302 of the Deficit Reduction Act of 1984 (DRA 1984) (Public Law 98–369), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA 1985) (Public Law 99–272), section 4080 of the Omnibus Budget Reconciliation

Act of 1987 (OBRA 1987) (Public Law 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) (Public Law 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) (Public Law 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (Public Law 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA 1997) (Public Law 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

BBA 1997 included a further provision affecting the calculation of the SMI actuarial rates and premiums for 1998 though 2003. Section 4611 of BBA 1997 modified the home health benefit payable under the HI program for individuals enrolled in the SMI program. Under this section, expenditures for home health services not considered "post-institutional" are payable under the SMI program rather than the HI program, beginning in 1998. However, section 4611(e)(1) of BBA 1997 requires that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. Section 4611(e)(2) also provides a specific yearly proportion for the transferred funds. The proportions are 1/6 for 1998, 1/3 for 1999, 1/2 for 2000, 2/3 for 2001, and 5/6 for 2002. For purposes of determining the correct amount of financing from general revenues of the Federal Government, it is necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred. Accordingly, the actuarial rates shown in this announcement reflect the net transitional cost only.

Section 4611(e)(3) of BBA 1997 also specifies, for the purposes of determining the premium, that the monthly actuarial rate for enrollees age 65 and over shall be computed as though the transition would occur for 1998 through 2003 and that 1/7 of the cost would be transferred in 1998, 2/7 in 1999, 3/7 in 2000, 4/7 in 2001, 5/7 in 2002, and 6/7 in 2003. Therefore, the transition period for incorporating this home health transfer into the premium is 7 years while the transition period for including these services in the actuarial rate is 6 years. As a result, the premium rate for this year and next year, 2003, will be less than 50 percent of the actuarial rate for aged enrollees announced by the Secretary.

New section 1933(c) of the Act, as added by section 4732(c) of BBA 1997, requires the Secretary to allocate money from the SMI trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the section 1933 qualifying low-income Medicaid beneficiaries. This allocation, while not being a benefit expenditure, will be an expenditure of the trust fund and has been included in calculating the SMI actuarial rates for this year. The allocation will be included in calculating the SMI actuarial rates through 2002.

As determined according to section 1839(a)(3) of the Act and section 4611(e)(3) of BBA 1997, the premium rate for 2002 is $54.00. Included in the premium rate is $3.91 for home health services being transferred into Part B.

A further provision affecting the calculation of the SMI premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (MCCA 1988) (Public Law 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Public Law 101–234) did not repeal the revisions to section 1839(f) made by MCCA 1988.) Section 1839(f), referred to as the hold-harmless provision, provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the SMI premiums deducted from these benefit payments, the premium increase will be reduced to avoid causing a decrease in the individual's net monthly payment. This decrease in payment occurs if the increase in the individual's social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's SMI premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits.

A check for benefits under section 202 or 223 of the Act is received in the month following the month for which the benefits are due. The SMI premium that is deducted from a particular check is the SMI payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but has the December's SMI premium deducted from it.

Generally, if a beneficiary qualifies for hold-harmless protection—that is, the beneficiary must have been in current payment status for November and December of the previous year—the reduced premium for the individual for that January and each of the succeeding 11 months for which he or she is entitled to benefits, under section 202 or 203 of the Act, is the greater of the following:

(1) The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the SMI premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the SMI premium for December; or

(2) The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount has been established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in the SMI program late or have reenrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) are made.

II. Notice of Monthly Actuarial Rates and Monthly Premium Rate

The monthly actuarial rates applicable for 2002 are $109.30 for enrollees age 65 and over, and $123.10 for disabled enrollees under age 65. Section III of this notice gives the actuarial assumptions and bases from which these rates are derived. The monthly premium rate will be $54.00 during 2002. Included in the monthly premium rate is $3.91 for home health services being transferred into Part B.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning January 2002

A. Actuarial Status of the Supplementary Medical Insurance Trust Fund

Under the law, the starting point for determining the monthly premium is the amount that would be necessary to finance the SMI program on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

The rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing has been established, but effective for the period in which the financing has been set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of variation between actual and projected costs, and the amount of incurred, but unpaid expenses. An appropriate level for assets to cover a moderate degree of variation between actual and projected costs depends on numerous factors. The most important of these factors are: (1) The difference from prior years between the actual performance of the program and estimates made at the time financing was established, and (2) the expected relationship between incurred and cash expenditures. Ongoing analysis is made of both factors as the trends vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 2000 and 2001.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

[In millions of dollars]

Financing period ending	Assets	Liabilities	Assets less liabilities
Dec. 31, 2000	44,027	5,086	38,941
Dec. 31, 2001	41,781	6,043	35,739

B. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age 65 and older is one-half of the monthly projected cost of benefits, the Medicaid transfer (for 1998 through 2002), and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of variation between actual and projected costs and to amortize any surplus or unfunded liabilities. As noted in section I of this announcement, section 4611(e)(2) of BBA 1997 requires that only 5/6 of the cost of the home health services being transferred be included in the actuarial rate for 2002, rather than the full cost of such benefits.

The monthly actuarial rate for enrollees age 65 and older for 2002 is determined by first establishing per-enrollee cost by type of service from program data through 2000 and then projecting these costs for subsequent years. The projection factors used are shown in Table 2. The projected values for financing periods from January 1, 1999 through December 31, 2002, are shown in Table 3.

The projected monthly rate required to pay for one-half of the total of benefits, the transfer to Medicaid, and administrative costs for enrollees age 65 and over for 2002 is $118.74. Included in the total of $118.74 is $9.25 for home health services and $21.64 for managed care services. The amount of $9.25 for home health services includes (1) the full cost of fee-for-service home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply ($9.02) as well as (2) the cost of furnishing all home health services to those individuals enrolled in SMI only ($0.23). The amount of $21.64 for managed care services includes (1) The full cost of managed care home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply ($1.92), as well as (2) the cost of furnishing all other SMI services to those individuals enrolled in managed care plans ($19.72). Since section 4611(e)(2) of BBA 1997 requires that only 5/6 of the cost for those services being transferred be included in the actuarial rate for 2002, the monthly actuarial rate provides for an adjustment of −$1.82, representing 1/6 of the full cost of such −$3.20 for interest earnings and −$4.42 for a contingency margin. Based on current estimates, it appears that the assets are more than sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a negative contingency margin is needed to reduce assets to a more appropriate level.

C. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons enrolled in SMI because of entitlement (before age 65) to disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease (ESRD) program. Projected monthly costs for disabled enrollees (other than those suffering from ESRD) are prepared in a fashion parallel to the projection for the aged using appropriate actuarial assumptions (see Table 2). Costs for the ESRD program are projected differently because of the different nature of services offered by the program. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits, the transfer to Medicaid, and administrative costs for disabled enrollees for 2002 is $128.43. Included in the total of $128.43 is $6.64 for home health services and $10.98 for managed care services. The amount of $6.64 is the full cost of the home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply. The amount of $10.98 for

managed care services includes (1) the full cost of managed care home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply ($1.00) as well as (2) the cost of furnishing all other SMI services to those individuals enrolled in managed care plans ($9.98). Since section 4611(e)(2) of BBA 1997 requires that only 5/6 of the cost for those services being transferred be included in the actuarial rate for 2002, the monthly actuarial rate provides for an adjustment of −$1.27, representing 1/6 of the full cost of such services. The monthly actuarial rate of $123.10 also provides an adjustment of −$2.72 for interest earnings and −$1.34 for a contingency margin. Based on current estimates, it appears that the assets are more than sufficient to cover the amount of incurred, but unpaid expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a negative contingency margin is needed to reduce assets to a more appropriate level.

D. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative assumptions. The results of those assumptions are shown in Table 5. One set represents increases that are lower and is, therefore, more optimistic than the current estimate. The other set represents increases that are higher and is therefore, more pessimistic than the current version. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates would result in an excess of assets over liabilities of $32,077 million by the end of December 2002. This amounts to 28.0 percent of the estimated total incurred expenditures for the following year. Assumptions that are somewhat more pessimistic (and therefore, test the adequacy of the assets to accommodate projection errors) produce a surplus of $18,336 million by the end of December 2002, which amounts to 14.4 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of $44,795 million by the end of December 2002, which amounts to 44.0 percent of the estimated total incurred expenditures for the following year.

E. Premium Rate

As determined by with section 1839(a)(3) of the Act and section 4611(e)(3) of BBA 1997, the monthly premium rate for 2002, for both aged and disabled enrollees, is $54.00.

TABLE 2.—PROJECTION FACTORS [1] 12-MONTH PERIODS ENDING DECEMBER 31 OF 1999–2002

[In percent]

Calendar year	Physicians' services		Durable medical equipment	Carrier lab[4]	Other carrier services[5]	Outpatient hospital	Home health agency	Hospital lab[6]	Other intermediary services[7]	Managed care
	Fees[2]	Residual[3]								
Aged:										
1999	2.7	1.3	5.0	0.0	9.8	6.5	−21.3	8.5	−20.1	4.6
2000	5.9	3.6	10.6	7.7	15.2	−4.1	3.6	5.9	18.0	5.9
2001	6.1	0.6	12.4	1.7	10.1	6.8	4.9	3.9	11.8	5.5
2002	−3.2	3.6	7.1	1.8	7.8	2.4	23.8	3.7	6.0	3.1
Disabled:										
1999	2.7	0.4	3.3	3.1	9.7	6.9	−14.5	14.4	−8.6	−0.9
2000	5.9	3.9	11.8	6.0	12.8	−3.9	−1.9	1.8	−11.3	−0.2
2001	6.1	0.5	11.1	2.7	13.6	6.5	2.7	7.5	4.2	7.9
2002	−3.2	3.6	7.1	1.8	7.6	2.4	22.5	3.7	7.2	4.4

[1] All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[5] Includes ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[6] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[7] Includes services furnished in rehabilitation and psychiatric hospitals, dialysis facilities, rural health clinics, federally qualified health centers, etc.

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FINANCING PERIODS ENDING DECEMBER 31, 1999 THROUGH DECEMBER 31, 2002

	Financing periods			
	CY 1999	CY 2000	CY 2001	CY 2002
Covered services (at level recognized):				
Physician fee schedule	$50.47	$55.51	$60.83	$61.01
Durable medical equipment	5.73	6.35	7.32	7.84
Carrier lab[1]	2.29	2.47	2.57	2.62
Other carrier services[2]	9.13	10.54	11.89	12.83
Outpatient hospital	19.26	18.51	20.28	20.77
Home health	[5]6.69	[5]6.94	[5]7.47	[5]9.25
Hospital lab[3]	1.76	1.87	1.99	2.06
Other intermediary services[4]	5.37	6.35	7.28	7.72
Managed care	[6]21.21	[6]22.26	[6]21.05	[6]21.64
Total services	121.89	130.80	140.68	145.75
Cost-sharing:				

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FINANCING PERIODS ENDING DECEMBER 31, 1999 THROUGH DECEMBER 31, 2002—Continued

	Financing periods			
	CY 1999	CY 2000	CY 2001	CY 2002
Deductible	−3.78	−3.78	−3.80	−3.81
Coinsurance	−22.72	−24.15	−25.34	−25.45
Total benefits	95.39	102.87	111.54	116.49
Transfer to Medicaid	[7]0.00	[7]0.00	[7]0.07	[7]0.07
Administrative expenses	1.77	1.95	2.03	2.18
Incurred expenditures	97.16	104.82	113.64	118.74
Value of interest	−3.52	−4.18	−3.60	−3.20
Adjustment for home health agency services transferred from HI	[8]−5.47	[8]4.21	[8]−2.95	[8]−1.82
Contingency margin for projection error and to amortize the surplus or deficit	4.13	−4.53	−6.09	−4.42
Monthly actuarial rate	$92.30	$91.90	$101.00	109.30

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in rehabilitation and psychiatric hospitals, dialysis facilities, rural health clinics, federally qualified health centers, etc.
[5] This amount includes the full cost of the fee-for-service home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply, as well as the cost of furnishing all home health services to those individuals enrolled in SMI only.
[6] This amount includes the full cost of the managed care home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply, as well as the cost of furnishing all other SMI services to individuals enrolled in managed care.
[7] Section 1933(c)(2) of the Act, as added by section 4732(c) of BBA 1997, allocates an amount to be transferred from the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the SMI premiums for certain low-income beneficiaries. It is not a benefit expenditure but is used in determining the SMI actuarial rates since it is an expenditure of the trust fund.
[8] Section 4611 of BBA 1997 specifies that expenditures for home health services not considered "post-institutional" will be payable under the SMI program rather than the HI program beginning in 1998. However, section 4611(e)(1) requires there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. For 1998, the amount transferred is 1/6 of the full cost for such services, for 1999, 1/3, for 2000, 1/2, for 2001, 2/3, and for 2002, 5/6. Therefore, the adjustment for 1999 represents 2/3 of the full cost, for 2000, 1/2, for 2001, 1/3, and for 2002, 1/6. This amount adjusts the actuarial rate to reflect the correct amount attributable to home health services.

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FINANCING PERIODS ENDING DECEMBER 31, 1999 THROUGH DECEMBER 31, 2002

	Financing periods			
	CY 1999	CY 2000	CY 2001	CY 2002
Covered services (at level recognized):				
Physician fee schedule	$51.26	$55.87	$60.12	$60.21
Durable medical equipment	9.04	10.04	11.27	12.05
Carrier lab[1]	2.70	2.85	2.95	3.01
Other carrier services[2]	10.03	11.12	12.99	14.05
Outpatient hospital	23.77	22.43	24.08	24.66
Home health	[5]5.35	[5]5.24	[5]5.43	[5]6.64
Hospital lab[3]	2.58	2.59	2.78	2.89
Other intermediary services[4]	27.84	27.11	28.61	29.37
Managed care	[6]10.28	[6]10.44	[6]10.32	[6]10.98
Total services	142.86	147.70	158.55	163.85
Cost-sharing:				
Deductible	−3.40	−3.41	−3.42	−3.43
Coinsurance	−32.69	−33.45	−34.20	−34.40
Total benefits	106.77	110.83	120.93	126.02
Transfer to Medicaid	[7]0.00	[7]0.00	[7]0.05	[7]0.05
Administrative expenses	2.00	2.10	2.20	2.36
Incurred expenditures	108.78	112.93	123.18	128.43
Value of interest	−0.91	−1.56	−1.92	−2.72
Adjustment for home health agency services transferred from HI	[8]−4.17	[8]−3.07	[8]−2.09	[8]−1.27
Contingency margin for projection error and to amortize the surplus or deficit	−0.69	12.80	13.03	−1.34
Monthly actuarial rate	$103.00	$121.10	$132.20	$123.10

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in rehabilitation and psychiatric hospitals, dialysis facilities, rural health clinics, federally qualified health centers, etc.

[5] This amount includes the full cost of the fee-for-service home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply.

[6] This amount includes the full cost of the managed care home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply, as well as the cost of furnishing all other SMI services to individuals enrolled in managed care.

[7] Section 1933(c)(2) of the Act, as added by section 4732(c) of BBA 1997, allocates an amount to be transferred from the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the SMI premiums for certain low-income beneficiaries. It is not a benefit expenditure but is used in determining the SMI actuarial rates since it is an expenditure of the trust fund.

[8] Section 4611 of BBA 1997 specifies that expenditures for home health services not considered "post-institutional" will be payable under the SMI program rather than the HI program beginning in 1998. However, section 4611(e)(1) requires there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. For 1998, the amount transferred is 1/6 of the full cost for such services, for 1999, 1/3, for 2000, 1/2, for 2001, 2/3, and for 2002, 5/6. Therefore, the adjustment for 1999 represents 2/3 of the full cost, for 2000, 1/2, for 2001, 1/3, and for 2002, 1/6. This amount adjusts the actuarial rate to reflect the correct amount attributable to home health services.

TABLE 5.—ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2002

As of December 31,	2000	2001	2002
This projection:			
Actuarial status (in millions):			
Assets	$44,027	$41,781	$38,514
Liabilities	5,086	6,043	6,438
Assets less liabilities	$38,941	$35,739	$32,077
Ratio (in percent) [1]	38.3	33.0	28.0
Low cost projection:			
Actuarial status (in millions):			
Assets	$44,027	$46,007	$50,877
Liabilities	5,086	5,573	6,082
Assets less liabilities	$38,941	$40,434	$44,795
Ratio (in percent) [1]	40.1	40.4	44.0
High cost projection:			
Actuarial status (in millions):			
Assets	$44,027	$37,012	$25,174
Liabilities	5,086	6,572	6,838
Assets less liabilities	$38,941	$30,439	$18,336
Ratio (in percent) [1]	36.4	25.9	14.4

[1] Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent.

IV. Regulatory Impact Analysis

We have examined the impacts of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually (65 FR 69432). For purposes of the RFA, States and individuals are not considered to be small entities.

In addition, section 1102(b) of the Act requires us to prepare a RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on a substantial number of small entities nor on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

This notice announces that the monthly actuarial rates applicable for 2002 are $109.30 for enrollees age 65 and over, and $123.10 for disabled enrollees under age 65. It also announces that the monthly SMI premium rate for calendar year 2002 is $54.00. The SMI premium rate of $54.00 is 8% higher than the $50.00 premium rate for 2001. We estimate that the cost of this increase from the current premium to the approximately 38 million SMI enrollees will be about $1.831 billion for 2002. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

V. Waiver of Proposed Notice

The Medicare statute requires the publication of the monthly actuarial rates and the Part B premium amounts in September. We ordinarily use general notices, rather than notice and comment rulemaking procedures, to make such announcements. In doing so, we note that under the Administrative Procedure Act interpretive rules; general statements of policy; and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find, for good cause, that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formula used to calculate the SMI premium is statutorily directed, and we can exercise no discretion in applying that formula. Moreover, the statute establishes the time period for which the premium rates will apply, and delaying publication of the SMI premium rate such that it would not be published before that time would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

(Section 1839 of the Social Security Act; 42 U.S.C. 1395r)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: September 17, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 27, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–26700 Filed 10–19–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3061–NC]

RIN 0938–AH15

Medicare Program; Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers

AGENCY: Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces the request we received from Alcon Laboratories seeking review of the appropriateness of the Medicare payment amount for new technology intraocular lenses furnished by an ambulatory surgical center. This document also announces the 30-day period for the public to comment on the appropriateness or the payment amount of the IOL for which a review was requested.

DATES: We will consider comments regarding the lenses listed in this notice if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 26, 2001.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services (HHS), Attention: CMS–3061–NC, P.O. Box 8017, Baltimore, MD 21244–8017.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201, or Mailstop S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244.

Because of the staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–3061–NC. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Betty Shaw, (410) 786–6100.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments:

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–14–03 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone (410) 786–7195 or (410) 786–7201.)

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I. Background

On June 16, 1999, we published a final rule in the **Federal Register** titled "Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers' (64 FR 32198), which added subpart F to 42 CFR part 416.

In accordance with the June 16, 1999 final rule, we published a notice in the **Federal Register**, titled "Annual Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical" (66 FR 18959) on April 12, 2001. In this notice, we solicited interested parties to submit requests for review of the appropriateness of the payment amount with regard to a particular intraocular lens.

II. Provisions of this Notice

On May 16, 2001, the following request was submitted to the Centers for Medicare & Medicaid Services for review:

Manufacturer: Alcon Laboratories.

Model Numbers: ACRYSOF® Acrylic Foldable Sterile UV-Absorbing Multipiece Posterior Chamber Lenses, Models MA30BA ,MA60BM, MA50BM, MA60MA, MA30AC, MA60AC.

Reason for Requesting Review: The manufacturer states that these lenses provide the following:

—Reduced risk of intra- or post-operative complications or trauma by a reduction in the area of lens epithelial cells (LEC), a major contributor to posterior capsule opacification (PCO) when compared with silicone and PMMA lenses, as evidenced by reduced Sommering's Ring scores.

—Ability to fold smaller, requiring a smaller incision than required for PMMA lenses, inducing less astigmatism thereby promoting accelerated postoperative recovery. Smaller size allows the lens to be easily explanted through the original incision.

—Reduced induced astigmatism because the lens can be inserted into the anterior ocular chamber with an average incision size of 3.5mm.

—Improved postoperative visual acuity due to their findings that the loss of visual acuity associated with

biocompatibility and inflammatory response was statistically significantly greater in patients with polymethylmethacrylate (PMMA) as compared to silicone or ACRYSOF® lenses.
—More stable postoperative vision by reducing need for Nd:YAG capsulotomy. There is a difference in ND:YAG capsulotomy rates between ACRYSOF® and a similar designed PMMA lens but not between ACRYSOF® and a silicone lens.
—A high refractive index material that allows the thinner ACRYSOF® lens to impart the same optical correction as a comparable diopter silicone or PMMA IOL.
—A clinical advantage for diabetic patients requiring posterior segment surgery to manage visual problems related to condensation and silicone oil. ACRYSOF® Lens allows removal of silicone oil with relative ease.
—A clinical advantage for pediatric and uveitic patients due to the combination of foldability and size of the ACRYSOF® lens.
—A decrease in anterior capsule movement when compared to similarly designed silicone PMMA lenses.

This notice solicits comments on the appropriateness of the payment amount for the IOL for which a review was requested.

Authority: Sections 1832 (a)(2)(F)(i) and 1833(i)(2)(A) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i) and 13951(i)(2)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 25, 2001.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–26036 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Medicare & Medicaid Services

[CMS–3076–PN]

Medicare Program: Application by the Indian Health Service for Recognition as a National Accreditation Organization for Accrediting American Indian and Alaska Native Entities To Furnish Outpatient Diabetes Self-Management Training

AGENCY: Center for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: In this proposed notice, we announce the receipt of an application from the Indian Health Service (IHS) for CMS recognition as a national accreditation organization for accrediting American Indian and Alaska Native entities that wish to furnish outpatient diabetes self-management training to Medicare beneficiaries. Section 1865(b)(3) of the Social Security Act requires that the Secretary publish a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 26, 2001.

ADDRESSES: In commenting, please refer to file code CMS–3076–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Center for Medicare and Medicaid Services, Department of Health and Human Services, Attention: HCFA–3076–PN, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Eva Fung, (410) 786–7539, or Joan A. Brooks, (410) 786–5526.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments:

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Center for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7195 or (410) 786–5241.

I. Background

Section 4105 of the Balanced Budget Act of 1997 authorized expanded Medicare coverage for outpatient diabetes self-management training when ordered by the physician (or qualified non-physician practitioner) treating the beneficiary's diabetes, provided certain requirements are met. We sometimes use national accrediting organizations to determine whether an entity meets some or all of the requirements that are necessary to provide a service for which Medicare payment can be made. Reliance on accreditation organizations is authorized by section 1865 of the Social Security Act (the Act) and our regulations in 42 CFR part 410, subpart H. A national accreditation organization must have an agreement in effect with the Secretary and must meet the standards and requirements specified in section 1865(b)(2) of the Act and 42 CFR part 410. The applicable regulations require a national organization applying to become a body accrediting entities that furnish such training to use one of three types of quality standards: CMS's own standards, the standard developed by a national advisory group (referred to as the NSDSMEP), or other standards that we determine meet or exceed our standards. The accreditation organization, after being approved and recognized by CMS, may accredit an entity to meet one of the sets of quality standards in § 410.144 (Quality standards for deemed entities).

The regulations pertaining to application procedures for national accreditation organizations for diabetes self-management training services are at § 410.142 (CMS process for approving national accreditation organizations). We may approve and recognize a nonprofit or not-for-profit organization with demonstrated experience in representing the interests of individuals with diabetes to accredit entities to furnish training.

A national accreditation organization applying for deeming authority must provide us with reasonable assurance that the accrediting organization requires accredited entities to meet requirements that are at least as stringent as CMS's. Section 1865(b)(1) of the Act provides that if the Secretary finds that accreditation of an entity by a national accreditation body demonstrates that all of the applicable conditions and requirements are met or exceeded, the Secretary will deem those entities as meeting the applicable Medicare requirements. Section 1865(b)(2) of the Act further requires that the Secretary's findings consider the applying accreditation organization's requirements for accreditation, its survey procedures, its ability to provide adequate resources for conducting required surveys and supplying information for use in enforcement activities, its monitoring procedures for entities found out of compliance with the conditions or requirements, and its ability to provide the Secretary with necessary data for validation. The Secretary then examines the national accreditation organization's accreditation requirements to determine if they meet or exceed the Medicare conditions as we would have applied them.

Section 1865(b)(3)(A) of the Act requires that the Secretary publish within 60 days of receipt of a completed application, a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period. In addition, the Secretary has 210 days from receipt of the request to publish a finding of approval or denial of the application. If the Secretary recognizes an accreditation organization in this manner, any entity accredited by the national accreditation body's CMS-approved program for that service will be "deemed" to meet the Medicare conditions of coverage.

II. Purpose

The purpose of this notice is to notify the public of the Indian Health Service's (IHS) request for the Secretary's approval as a national accreditation organization for accrediting American Indian and Alaska Native entities to furnish outpatient diabetes self-management training services. The IHS proposes to endorse the NSDSMEP as its quality standards. This notice also solicits public comments on the ability of the IHS to develop and apply its standards to entities furnishing outpatient diabetes self-management training services that meet or exceed the Medicare conditions for coverage.

We understand the current template for the proposed notice includes only the identity of the organization seeking to become an accrediting body, but no other information on its proposed program to inform those proposing to comment in response to the notice. Since our regulation highlights the quality standards as a key factor in our determination of whether or not to accept an entity as an accrediting body, some basic information on this subject would make comments we receive more useful and relevant to our decision, both in the IHS case and in other cases.

III. Outpatient Diabetes Self-Management Training ServicesConditions for Coverage and Requirements

The regulations specifying the Medicare conditions for coverage for outpatient diabetes self-management training services are located in 42 CFR part 410, subpart H. These conditions implement section 1861(qq) of the Act, which provides for Medicare Part B coverage of outpatient diabetes self-management training services specified by the Secretary.

Under section 1865(b)(2) of the Act and our regulations at §§ 410.142 (CMS process for approving national accreditation organizations) and 410.143 (Requirements for approved accreditation organizations), we evaluate a national accreditation organization based on (but not necessarily limited to) the criteria set forth in § 410.142(b), and we review the ongoing responsibilities of an approved accreditation organization.

We may visit the prospective organization's offices to verify information in the organization's application, including, but not limited to, review of documents, and interviews with the organization's staff. For oversight activities, we may conduct an onsite visit to inspect the approved accreditation organization's operations and office in order to assess its compliance with its own policies and procedures. The onsite inspection may include, but is not limited to, reviewing documents, auditing documentation of meetings concerning the accreditation process, evaluating accreditation results or the accreditation status decision making process, and interviewing the organization's staff.

IV. Notices Upon Completion of Evaluation

The process for becoming an accrediting body, as outlined in the regulation, includes two **Federal Register** notices. The first notice would solicit comments on the accreditation organization's proposed accreditation program. Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish the second notice announcing CMS's approval or disapproval of the organization as an accrediting body.

V. Responses to Public Comments

Because of the large number of comments we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this notice and will respond to them in a forthcoming notice document.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this notice.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: October 1, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–25770 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3072–FN]

Medicare Program; Approval of Application by the American Diabetes Association (ADA) for Recognition as a National Accreditation Program for Accrediting Entities to Furnish Outpatient Diabetes Self-Management Training

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the approval of the American Diabetes Association (ADA) as a national accreditation organization for purposes of determining that an entity meets the necessary quality standards to furnish outpatient diabetes self-management and training services under Part B of the Medicare program. Therefore, diabetes self-management training (DSMT) programs accredited by the ADA will receive deemed status under the Medicare program.

EFFECTIVE DATE: This accreditation is effective on October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Joan A. Brooks, (410) 786–5526; Eva L. Fung, (410) 786–7539.

SUPPLEMENTARY INFORMATION:

I. Background

To participate in the Medicare program, diabetes self-management training (DSMT) programs must meet conditions for coverage specified in our

regulations at 42 CFR part 410, subpart H. One requirement is that entities must satisfy required quality standards. Currently, one way of satisfying the quality standards under 42 CFR 410.145 is to be approved by an approved accrediting body. The regulations pertaining to the application procedures for national accreditation organizations for DSMT are at 410.142. After we approve and recognize the accreditation organization, it may accredit an entity to meet one of the sets of quality standards described in 410.144.

II. Review Process and Findings

A. Review Process

In evaluating an application from an accrediting organization, we consider the following factors under section 1865(b)(2) of the Act:

- Accreditation requirements.
- Survey procedures.
- Ability to provide adequate resources for conducting required surveys and to supply information for use in enforcement activities.
- Monitoring procedures.
- Ability to provide us with the necessary data for validation.

We are required by 410.142(d) to publish a proposed notice in the **Federal Register** after the receipt of a written request for approval from a national accreditation organization. After review of the national accreditation organization's application, the regulations require that we publish a notice of our approval or disapproval after we receive a complete package of information and the organization's deeming application.

B. Review Findings

We received a complete application from the American Diabetes Association (ADA) on April 20, 2001. On June 27, 2001, we published a proposed notice in the **Federal Register**, (66 FR 34223) announcing the application of the ADA for approval as an accreditation program for diabetes self-management training programs. We reviewed their application to determine if the ADA used one of the sets of quality standards described in 410.144.

III. Analysis of and Responses to Public Comments and Provisions of the Final Notice

We received no public comments on our proposed notice. Therefore, we have approved the ADA's application as an accreditation program for diabetes self-management training programs under 410.142(d). The ADA is the first accreditation organization that we have approved for accrediting diabetes self-management training programs.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: September 19, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–26288 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8012–N]

RIN 0938–ZA20

Medicare Program; Part A Premium for 2002 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the hospital insurance premium for calendar year 2002 under Medicare's hospital insurance program (Part A) for the uninsured, not otherwise eligible aged (hereafter known as the "uninsured aged") and for certain disabled individuals who have exhausted other entitlement. The monthly Medicare Part A premium for the 12 months beginning January 1, 2002 for these individuals is $319. The reduced premium for certain other individuals as described in this notice is $175. Section 1818(d) of the Social Security Act specifies the method to be used to determine these amounts.

EFFECTIVE DATE: This notice is effective January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare hospital insurance program (Medicare Part A), subject to payment of a monthly premium, of certain persons aged 65 and older who are uninsured under the Old Age Survivors and Disability Insurance Program (OASDI) or Railroad Retirement Acts and do not otherwise meet the requirements for entitlement to Medicare Part A. (Persons insured under the OASDI or Railroad Retirement Acts and certain others do not have to pay premiums for hospital insurance.)

Section 1818(d) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in the following calendar year with respect to individuals aged 65 and over who will be entitled to benefits under Medicare Part A. We must then determine, during September of each year, the monthly actuarial rate for the following year (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding calendar year. If the premium is not a multiple of $1, the premium is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1). The 2001 premium under this method was $300 and was effective January 1, 2001. (See 65 FR 62733, October 19, 2000.)

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium, of certain disabled individuals who have exhausted other entitlement. These are individuals who are not currently entitled to Part A coverage, but who were entitled to coverage due to a disabling impairment under section 226(b) of the Act, and who would still be entitled to Part A coverage if their earnings had not exceeded the statutorily defined substantial gainful activity amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums under section 1818(d) through (f) of the Act for the aged will also apply to certain disabled individuals as described above.

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L.103–66) amended section 1818(d) of the Act to provide for a reduction in the premium amount for certain voluntary (section 1818 and 1818A) enrollees. The reduction applies to an individual who is eligible to buy into the Medicare Part A program and who, as of the last day of the previous month—

- Had at least 30 quarters of coverage under title II of the Act;
- Was married, and had been married for the previous 1-year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person and had been married to the person for at least 10 years at the time of the divorce if, at the time of the divorce, the person had at least 30 quarters of coverage.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for calendar year 2002 will be equal to the premium for uninsured aged enrollees reduced by 45 percent.

II. Monthly Premium Amount for 2002

- The monthly premium for the uninsured aged and certain disabled individuals who have exhausted other entitlement, for the 12 months beginning January 1, 2002, is $319.
- The monthly premium for those individuals subject to the 45 percent reduction in the monthly premium is $175.

III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for 2002 rounded to the nearest multiple of $1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of individuals aged 65 and over entitled to hospital insurance and the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are:

- Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;
- Projecting increases in payment amounts for each of the service types; and
- Projecting increases in administrative costs.

We base our projections for 2002 on (a) current historical data, and (b) projection assumptions derived from current law and the Midsession Review of the President's Fiscal Year 2002 Budget.

We estimate that in calendar year 2002, 33.852 million people aged 65 and over will be entitled to benefits (without premium payment) and that they will incur $129.550 billion of benefits and related administrative costs. Thus, the estimated monthly average per capita amount is $318.91 and the monthly premium is $319. The full monthly premium reduced by 45 percent is $175.

IV. Costs to Beneficiaries

The 2002 premium of $319 is about 6.3 percent higher than the 2001 premium of $300.

We estimate that approximately 392,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. We estimate an additional 5,000 enrollees will pay the reduced premium. We estimate that the aggregate cost to enrollees paying these premiums will increase by about $90 million in 2002 over 2001.

V. Waiver of Notice of Proposed Rulemaking

We are not using notice and comment rulemaking in this notification of Part A premiums for 2002, as that procedure is unnecessary because of the lack of discretion in the statutory formula that is used to calculate the premium and the solely ministerial function that this notice serves. The Administrative Procedure Act permits agencies to waive notice and comment rulemaking when this notice and public procedure thereon are unnecessary. Furthermore, given that we are statutorily bound to make these estimates and promulgate these rates all in the month of September, the Congress clearly did not envision the use of notice and comment rulemaking, as it is not feasible to conduct such a process in a 30-day period. On this basis, we waive publication of a proposed notice and a solicitation of public comments.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually.) The estimated overall effect of the changes in the premium will be a cost to voluntary (section 1818 and 1818A) enrollees of about $90 million. Therefore, this notice is not a major rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million (see 65 FR 69432.) For purposes of the RFA, individuals are not considered to be small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Authority: Sections 1818(d)(2) and 1818A(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2) and 1395i–2a(d)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 17, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 27, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–26702 Filed 10–19–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1197–N]

Medicare Program; December 10–11, 2001, Meeting of the Practicing Physicians Advisory Council and Request for Nominations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council and invites all organizations representing physicians to submit nominees for membership on the Council. There will be several vacancies on the Council as of February 28, 2002. The meetings are open to the public.

Meeting Registration: Persons wishing to attend this meeting must call the meeting coordinator Diana Motsiopoulos at (410) 786–3379 at least 72 hours in advance to register. Persons who are not registered in advance will not be permitted into the Federal Building and thus not be able to attend the meeting. Persons attending the meeting will be required to show a photographic identification, preferably a valid drivers' license before entering the building. Please note that if the meeting is cancelled we will post that information on our website.

DATES: The meeting is scheduled for December 10, 2001 from 8:30 a.m. until 5 p.m. e.s.t. and December 11, 2001 from 8:30 a.m. until 12 noon e.s.t.

Nominations: Nominations will be considered if received at the appropriate address, provided below no later than 5 p.m. e.s.t., December 17, 2001.

ADDRESSES: The meeting will be held in Room 800, 8th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Nominations: Mail or deliver nominations to the following address: Centers for Medicare and Medicaid Services, Center for Medicare Management, Office of Professional Relations, Attention: Paul Rudolf, M.D. JD, Executive Director, Practicing Physicians Advisory Council,7500 Security Boulevard, Mail Stop C5–17–14, Baltimore, MD 21244–1850.

Website: You may access the Internet at *http://www.hcfa.gov/fac/* for additional information and updates on committee activities.

Advisory Committees Information Line: (1–877–449–5659 toll free)/(410–786–9379 local).

FOR FURTHER INFORMATION CONTACT: Paul Rudolf, M.D., J.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Blvd., Mail Stop C5–17–14, Baltimore, MD 21244–1850, (410) 786–3379. News media representatives should contact the CMS Press Office, (202) 690–6145.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physician services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 of the members of the Council shall be physicians described in Section 1861(r)(1) of the Social Security Act. The remaining members may include dentists, podiatrists, optometrists and chiropractors. Members serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the Council by appropriate action prior to its termination. Section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are: Jerold M. Aronson, M.D.; Richard Bronfman, D.P.M.; Joseph Heyman, M.D.; Sandral Hullett, M.D.; Stephen A. Imbeau, M.D.; Jerilynn S. Kaibel, D.C.; Angelyn L. Moultrie-Lizana, D.O.; Derrick K. Latos, M.D. (Pending re-appointment); Dale Lervick, O.D.; Sandra B. Reed, M.D.; Amilu Rothhammer, M.D.; Maisie Tam, M.D.; Victor Vela, M.D.; Kenneth M. Viste, Jr., M.D.; and Douglas L. Wood, M.D.

Council members will be updated on the status of recommendations made during the past year.

The agenda will provide for discussion and comment on the following topics:

- Advanced Beneficiary Notice (provider education materials/carrier instructions)
- Documentation Requirements for Teaching Physicians
- Physician Regulatory Issues Team (the team will seek advice on physician issues and elicit suggestions for improving agency responsiveness)
- Role of the Carrier Medical Director
- HIPAA (Health Insurance Portability and Accountability Act)

For additional information and clarification on the topics listed, call the contact person in the "For Further Information Contact" section of this notice. Individual physicians or medical organizations that represent physicians wishing to make 5-minute oral presentations on agenda issues should contact the Executive Director by 12 noon, November 19, 2001, to be scheduled. Testimony is limited to agenda topics. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks should be submitted to the Executive Director no later than 12 noon, November 19, 2001 for distribution to Council members for review prior to the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and Council members. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact Diana Motsiopoulos at (410) 786–3379 at least 10 days before the meeting.

This notice also serves as an invitation to all organizations representing physicians to submit nominees for membership on the Council. Current members whose terms expire on February 28, 2002 will be considered for reappointment, if renominated, subject to the Department's administrative guidelines for advisory committee management. Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts. Section

1868(b) of the Act provides that the Council meet quarterly, as requested by the Secretary, to discuss proposed changes in regulations and manual issuance's that relate to physicians' services. Council members are expected to participate in all meetings. Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human Services/Center for Medicare and Medicaid Services provides management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 24, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–27121 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the National Longitudinal Study of Environmental Effects on Child Health and Development Advisory Committee (Committee).

This Committee shall advise, consult with, and make recommendations to the Director, National Institute of Child Health and Human Development, and the Interagency Coordinating Committee of the National Longitudinal Study, on the planning and implementation of the Longitudinal Cohort Study.

Unless renewed by appropriate action prior to its expiration, the charter for the National Longitudinal Study of Environmental Effects on Child Health and Development Advisory Committee will expire two years from the date of establishment.

Dated: October 22, 2001.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 01–27025 Filed 10–25–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Macromolecular Imaging Agents for Liver Imaging

Martin W. Brechbiel (NCI) and Hisataka Kobayashi (EM)

[DHHS Reference No. E–240–01/0 filed 25 June 2001]

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov.*

The invention is a macromolecular imaging agent comprising a polyalkylenimine dendrimer conjugated to a metal chelate that has been shown to be an excellent agent for imaging liver micrometastases as small as about 0.3 mm in a magnetic resonance image of the human liver. In a particular embodiment, the imaging agent is a diaminobutane-core polypropylenimine dendrimer having surface amino groups conjugated to gadolinium metal chelates. The invention makes possible the earlier detection of metastatic disease, leading to earlier application of a therapeutic regime and an improved prognosis.

Nucleic Acid and Amino Acid Sequences of Hemoglobin-Response Genes in *Candida albicans* and the Use of Reagents Derived from these Sequences in the Diagnosis of Disseminated *Candida albicans* Infections

David D. Roberts, Sizhuang Yan (NCI)

[Serial No. 09/258,634 filed 26 Feb 1999]

Licensing Contact: Uri Reichman; 301/496–7736 ext. 240; e-mail: *reichmau@od.nih.gov.*

This invention relates to diagnostic methods and kits for the detection of disseminated candidiasis. *Candida albicans (C. albicans)* is the most common pathogen involved in fungal infections in immunocompromised individuals, including AIDS, cancer patients, and organ transplant recipients. Systemic candidiasis is life-threatening in immunosuppressed patients and candidemia results in high morbidity and mortality. Within the last decade candidemia has increased ten-fold and is the third most common cause of positive blood cultures according to the Centers for Disease Control and Prevention. Accurate diagnosis of *C. albicans* and adequate treatment are of a great importance as disseminated infections are prevalent in hospitalized populations. However, a rapid and accurate diagnostic test for candidemia is not yet available. The traditional fungal culture is cumbersome and time consuming. Existing diagnostic kits based on serological ELISA tests detect antibodies against Candida cytoplasmic proteins but cannot differentiate between past and present infections. Diagnostic tests based on the present invention will be more accurate and will provide additional information related to the current status of hospitalized patients. The invention is based on the identification of three novel genes of *C. albicans*, which are expressed in the presence of hemoglobin. The expression and detection of these genes in patients would indicate disseminated candidiasis and is highly specific for *C. albicans* infection.

Dated: October 17, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–27026 Filed 10–25–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.
Date: November 8, 2001.
Time: 2 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: 6120 Executive Blvd. Suite 350, Rockville, MD 20892, (Telephone Conference Call).
Contact Person: Jeanette M. Hosseini, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, (301) 496–5561.

Name of Committee: National Eye Institute Special Emphasis Panel.
Date: November 27–28, 2001.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Ave, Bethesda, MD 20814.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, 301–496–5561.

Name of Committee: National Eye Institute Special Emphasis Panel.
Date: December 5, 2001.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD.
Contact Person: Jeanette M. Hosseini, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, (301) 496–5561.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 17, 2001.
LaVerne L. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 01–27021 Filed 10–25–01; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Midcareer Investigator Award in Patient-Oriented Research (PA–00–005).
Date: November 15, 2001.
Time: 2 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: 6701 Rockledge Dr, Room 4100, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Diane M. Reid, MD, Review Branch, Room 7182, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0277.
(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 18, 2001.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 01–27023 Filed 10–25–01; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: November 12, 2001.
Time: 3 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David I. Sommers, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6740, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: November 14, 2001.
Time: 11 AM to 12 PM.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David I. Sommers, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6770, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: November 19, 2001.
Time: 2 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Houmam H Araj, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: November 28, 2001.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Houmam H Araj, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.
(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 17, 2001.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 01–27020 Filed 10–25–01; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Minority RFA's.
Date: November 4–5, 2001.
Time: 7:30 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Town Center Hotel, 8727 Colesville Road, Silver Spring, MD 20910.
Contact Person: Roy L. White, PhD, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 18, 2001.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 01–27024 Filed 10–25–01; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 29, 2001.
Time: 12 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH. Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 31, 2001.
Time: 12 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 6, 2001.
Time: 3 PM to 6 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 7, 2001.
Time: 2 PM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 2001.
Time: 11 AM to 12:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 9, 2001.
Time: 12 PM. to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel R. Kenshalo, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 12, 2001.

Time: 8 AM to 9 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: AIDS and Related Research Integrated Review Group. AIDS and Related Research 4.
Date: November 12–13, 2001.
Time: 8 AM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Eduardo A. Montalvo, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 12–13, 2001.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.
Contact Person: Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 12, 2001.
Time: 1 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MS 7814, Bethesda, MD 20892, (301) 435–6809, *wagnerp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13–14, 2001.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.
Contact Person: Sharon K. Pulfer, BA, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *pulfers@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 2001.
Time: 11 AM to 12 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 2001.
Time: 11 AM to 1 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 2001.
Time: 11:30 AM to 1:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, 301–435–0902, *mkrause@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel.
Date: November 13, 2001.
Time: 1 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda MD 20892 (Telephone Conference Call).
Contact Person: George W. Chacko, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 2001.
Time: 1:30 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda MD 20892 (Telephone Conference Call).
Contact Person: Victor A. Fung, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, *fungv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 2001.
Time: 12 PM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301)435–1786.

Name of Committee: Center Scientific Review Special Emphasis Panel.
Date: November 14, 2001.
Time: 8:30 AM to 11 AM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Cardiovascular Sciences Integrated Review Group. Hematology Subcommittee 2. .
Date: November 14–15, 2001.
Time: 8:30 AM to 12 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jerrold Fried, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, 301–435–1777, friedj@csr.nib.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 14, 2001.
Time: 11 AM to 11:30 AM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165. .

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 14, 2001.
Time: 11:30 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892 (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 2001.
Time: 8 AM to 6 PM.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.
Contact Person: Arnold Revzin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: AIDS and Related Research Integrated Review Group. AIDS and Related Research 6.
Date: November 15–16, 2001.

Time: 8 AM to 1 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Sami A. Mayyasi, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892 (301) 435–1169.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15–16, 2001.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Embassy Square, 2000 N Street, NW, Washington, DC 20036.
Contact Person: Michael R. Schaefer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2205, MSC 7890, Bethesda, MD 20892, 301–435–2477, *schaefem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 2001.
Time: 8:30 AM to 6 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15–16, 2001.
Time: 8:30 AM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Ave, Weshington, DC 20036.
Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890, (301) 435–1159 *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 2001.
Time: 3 PM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5118, Bethesda, MD 20892, (301) 435–1259, *orrt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 2001.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.
Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 2001.
Time: 8:30 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 2001.
Time: 8:30 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Sharon K. Pulfer, BA, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *pulfers@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 2001.
Time: 1 PM to 2:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 18, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27022 Filed 10–25–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4649–N–21]

Notice of Proposed Information Collection: Comment Request, Loan Guarantee Recovery Fund

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: December 26, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jackie W. Mitchell, Director, Office of Rural Housing and Economic Development, Room 7136, Washington, DC 20410, telephone: (202) 708–2290, (this is not a toll-free number) for copies of the proposed forms and other available documents:

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Loan Guarantee Recovery Fund.

OMB Control Number, if applicable: 2506–0159.

Description of the need for the information and proposed use: To appropriately determine whether entities that submit applications for assistance under the Loan Guarantee Recovery Fund (Section 4 of the Church Arson Prevention Action of 1996) are eligible applicants and submit applicants otherwise in compliance with the regulations, certain information is required. Among other necessary criteria, HUD must determine whether; the (1) financial institution is eligible as defined at 24 CFR 573.2 of the regulation; (2) the borrower is eligible as defined under 24 CFR 573.2; (3) the loan will assist in addressing damage or destruction caused by acts of arson or terrorism; (4) the activities which will be assisted by the guaranteed loans are eligible activities under § 573.3; (5) the financial institution utilizes sufficient underwriting standards; and (6) the assisted activities will comply with all applicable environmental laws and requirements.

Agency form numbers, if applicable: Form HUD–40076–LGA (1/200).

Members of affected public: Financial institutions such as banks, trust companies, savings and loan associations, credit unions, mortgage companies, or other issues regulated by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Credit Union Administration, or the U.S. Comptroller of the Currency. Certain not-for-profit organizations affected by acts of arson or terrorism.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: A total of 100 respondents are expected and the total estimated burden hours is 9440.

Status of the proposed information collection: The Department does not have a critical mass of respondents to serve as a source of information from which conclusions can be drawn with respect to the accuracy of its current estimates.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 18, 2001.

Donna M. Abbenante,

General Deputy Assistant, Secretary for Community Planning and Development.

[FR Doc. 01–26949 Filed 10–25–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–77]

Notice of Submission of Proposed Information Collection to OMB: Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 26, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval (2506–0087) number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities.

OMB Approval Number: 2506–0087.

Form Numbers: HUD–7015.15.

Description of the Need for the Information and its Proposed Use: This information collection is used to document compliance with the National Environmental Policy Act (NEPA) and the related environmental statutes, executive orders, and authorities in accordance with the procedures identified in 24 CFR part 58. Recipients certify compliance and make request for the released of funds.

Respondents: Not-for-profit institutions, State, or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	18,785		1		0.6		11,271

Total Estimated Burden Hours: 11,271.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 19, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–26948 Filed 10–25–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–43]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATES: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 18, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 01–26710 Filed 10–25–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of the Draft Environmental Impact Statement for the Proposed Truckee River Water Quality Settlement Agreement, Federal Water Rights Acquisition Program, for Washoe, Storey, and Lyon Counties, NV

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice provides the public with supplemental information, and announces public hearings to receive comments on a draft Environmental Impact Statement (DEIS) for the Truckee River Water Quality Settlement Agreement, Federal Water Rights Acquisition Program, that the Bureau of Indian Affairs filed with the Environmental Protection Agency (EPA). The EPA published its notice of availability for the DEIS on Friday, October 5, 2001, in the **Federal Register** (66 FR 51036). This DEIS analyzes the potential impacts of implementing the provisions of the Truckee River Water Quality Settlement Agreement (WQSA), signed in 1996 by the U.S. Department of Justice (DOJ), U.S. EPA, U.S. Department of the Interior (DOI), Nevada Division of Environmental Protection (NDEP), Washoe County, Nevada , City of Reno, Nevada, City of Sparks, Nevada and the Pyramid Lake Paiute Tribe (Tribe).

DATES: Written comments on the DEIS must arrive by December 3, 2001. The public hearings will be held from 5 to 8 p.m. on Tuesday, November 27, 2001, Wednesday, November 28, 2001, and Friday, November 30, 2001.

ADDRESSES: You may mail or hand carry written comments to Steve Alcorn, Bureau of Reclamation, Lahontan Basin Area Office, 705 North Plaza Street, Room 320, Carson City, Nevada 89701; or Tom Strekal, Bureau of Indian Affairs, Western Nevada Agency, 1677 Hot Springs Road, Carson City, Nevada 89706.

The November 27, 2001, public hearing will be in the Fernley City Complex, 595 Silver Lace Boulevard, Fernley, Nevada. The November 28, 2001, public hearing will be in the Pyramid Lake Tribal Council Chambers, 208 Capital Hill (Highway 447), Nixon, Nevada. The November 30, 2001, public hearing will be in the Sparks City Council Chambers, 431 Prater Way, Sparks, Nevada.

To obtain a copy the DEIS, you may contact Steve Alcorn or Tom Strekal at the respective addresses provided above. Copies of the DEIS are also available for review at these addresses, as well as at the following locations: Bureau of Indian Affairs, Western Regional Office, 400 North 5th Street, Two Arizona Center, Phoenix, Arizona; Washoe County Public Library, 301 South Center Street, Reno, Nevada; Fernley City Hall, 595 Silver Lace Blvd., Fernley, Nevada; and Pyramid Lake Tribe Water Resources Office, 208 Capital Hill, Nixon, Nevada. In addition, the DEIS is available electronically on the BIA Internet Web site at *http://phxao.az.bia.gov/branches/environment/eis/htm.*

FOR FURTHER INFORMATION CONTACT: Steve Alcorn, 775–882–3436, or Tom Strekal, 775–887–3500.

SUPPLEMENTARY INFORMATION: On October 10, 1996, DOJ, EPA, and DOI joined NDEP, Washoe County, Reno, Sparks, and the Tribe in signing WQSA. This agreement resulted in dismissal of litigation brought by the Tribe against Reno, Sparks, the State of Nevada, and the United States over approval and operation of the Truckee Meadows Wastewater Reclamation Facility (TMWRF), owned jointly by Reno and Sparks. WQSA establishes a joint program to improve Truckee River water quality by increasing flows in the river through the purchase and dedication of Truckee River water rights for instream flow. WQSA also provides for the use of treatment plant effluent in place of river water for certain purposes.

WQSA grew from negotiations among the signatory parties during 1994–1995 to resolve litigation in a mutually agreeable manner. DOI, EPA, NDEP, and the Tribe had concerns about the quality and quantity of water in the lower Truckee River downstream from Reno and Sparks, as well as the water flowing to Pyramid Lake. Reno, Sparks, and Washoe County were concerned about those issues as well, but were primarily focused on securing permits to expand TMWRF while achieving water quality standards in the Truckee River with their discharge. Public scoping meetings for this project were held in Reno, Carson City, Fallon and Fernley, Nevada, in September 1995, and in Reno, Fallon and Fernley, Nevada, in March 1997.

Non-point sources of water pollution, such as agricultural return flows and urban runoff, as well as point sources, such as effluent from TMWRF, affect Truckee River water quality. Violations of the Federal Clean Water Act's dissolved oxygen standard (minimum of 5 mg/l) occur in the lower river as a consequence of algae production

stimulated by high concentrations of total dissolved solids, nitrogen and phosphorus. This condition is exacerbated during periods of low flow.

WQSA is an effort to address Truckee River water quality conditions by directly increasing river flow during the period of the year characterized by low flow. WQSA obligates the United States to allocate $12 million to acquire Truckee River water rights for water quality purposes. Whenever possible, water associated with the exercise of such rights will be stored in Truckee River reservoirs managed by BOR. Stored water-quality water is anticipated to be released primarily during periods of low flow (normally July, August and September). The resulting flow augmentation is expected to increase the nutrient assimilative capacity of the Truckee River and to dilute pollutants.

BIA, the U.S. Fish and Wildlife Service and BOR will be responsible for implementing the federal commitments identified in WQSA. Federal funds for this program have been fully appropriated by Congress and are managed by BIA. Accordingly, BIA is the lead agency in preparing this DEIS. BIA has contracted the acquisition program with the Tribe and the Tribe has, in turn, subcontracted with a broker to acquire water rights. Water rights acquired using federal money pursuant to WQSA are expected to be held in trust by the United States for the Tribe.

Public Comment Solicitation

Comments, including names and home addresses of respondents, will be available for public review at the Bureau of Reclamation office mailing address shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: October 9, 2001.

Neal A. McCaleb,

Assistant Secretary,—Indian Affairs.

[FR Doc. 01–26950 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ030–2800–ER–00; AZA–28734]

Notice of Availability of a Draft Environmental Impact Statement for the Diamond Bar Road Improvement Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of a Draft Environmental Impact Statement for the Diamond Bar Road Improvement Project.

SUMMARY: The Bureau of Land Management, Kingman Field Office, Arizona, has prepared a draft environmental impact statement (EIS) to analyze the effect of a proposal to realign and improve 11 miles of the Diamond Bar Road across public lands to access the Hualapai Indian Reservation.

DATES: The comment period for the draft EIS will end 60 days from the date of the notice of filing in the **Federal Register** by the Environmental Protection Agency. Public meetings will be held in Meadview, Arizona, and in Dolan Springs, Arizona. The letter accompanying the draft EIS will give the date, time, and location of these meetings. BLM's Kingman Field Office can also provide this information.

ADDRESSES: Copies of the EIS may be obtained from the Bureau of Land Management, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401. If you wish to comment, please mail or hand deliver comments to the Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401. The public may review the comments, including names and street addresses of respondents, at the above address from 7:30 am to 4:30 pm, Monday through Friday, except holidays. The comments may be published as part of the final EIS or other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or disclosure under the Freedom of Information Act, you must state this request prominently at the beginning of your written comment. BLM will honor such requests to the extent allowed by law. The public may inspect in its entirety any submission from organizations or businesses or from representatives or officials of organizations or businesses.

FOR FURTHER INFORMATION CONTACT: Don McClure, phone: (520) 692–4400; e-mail, *don_mcclure@blm.gov.*; address, BLM, Kingman Field Office, 2475 Beverly Ave., Kingman, Arizona 86401.

SUPPLEMENTARY INFORMATION: Diamond Bar Road provides access to Grand Canyon West, mainly for commercial and private vehicles originating from Las Vegas. Grand Canyon West is a development on the Hualapai Indian Reservation near the rim of the Grand Canyon. This development now consists of an airport and terminal building, a food service facility, restrooms, and a permits office. Implementing the 1994 Master Plan for Grand Canyon West is expected to increase the number of visitors up to sixfold over a 10-year period. This increase would greatly increase the number of vehicles on Diamond Bar Road. The proposed road improvement would accommodate this increased volume by providing a roadway designed for up to 2,400 vehicles per day.

Management concerns that have been addressed in the draft EIS include impacts on vegetation, visual quality, recreation, cultural resources, socioeconomic conditions, public safety, and the Joshua Tree Forest Area of Critical Environmental Concern. Studies conducted include a native plant inventory, biological evaluation, cultural resource survey, traffic study, and visual impact analysis. Tribal consultation is ongoing under Section 106 of the National Historic Preservation Act of 1966, as amended. The EIS has been prepared by an interdisciplinary team of resource specialists in vegetation (including salvage), wildlife, visual quality, archaeological and traditional cultural resources, soils, range management, realty, and roadway design.

Dated: September 19, 2001.

Willie R. Taylor,

Director, Office of Environmental, Policy and Compliance.

[FR Doc. 01–24943 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1430–EQ; N–36212]

Termination of Airport Lease; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Airport Lease N–36212 in its entirety. The land will be opened to the public land laws generally, including the mining and mineral leasing laws.

EFFECTIVE DATE: November 26, 2001.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gene A. Kolkman, Field Manager, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Doris A. Metcalf, Realty Specialist, at the above address or telephone (775) 289–1852.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by appendix 5 of Bureau of Land Management Manual Supplement 1203 dated November 25, 1998, Private Airport Lease N–36212 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 4 S., R. 63 E.,
Section 24, E½E½;
T. 4 S., R. 64 E.,
Section 7, Lots 3–4, E½SW¼, SE¼, 18, Lots 1–2, NE¼, E½NW¼, E½SW¼, 19, Lot 1.
The area described contains 197acres in Lincoln County.

The classification made pursuant to the Act of May 24, 1928, segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws and the mineral leasing laws. Airport Lease N–36212 is no longer required and has been closed in accordance with BLM and FAA requirements.

Dated: September 26, 2001.

Gene A. Kolkman,

Field Manager.

[FR Doc. 01–26983 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1430–EQ; N–52775]

Termination of Private Airstrip Lease; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Private Airstrip Lease N–52775 in its entirety. The land will be opened to the public land laws generally, including the mining and mineral leasing laws.

EFFECTIVE DATE: November 26, 2001.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gene A. Kolkman, Field Manager, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Doris A. Metcalf, Realty Specialist, at the above address or telephone (775) 289–1852.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by appendix 5 of Bureau of Land Management Manual Supplement 1203 dated November 25, 1998, Private Airstrip Lease N–52775 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 24 N., R. 56 E.,
Section 23, S½, SE¼;
Section 26, NW¼NE¼, E½NW¼, SW¼NW¼, N½SW¼.
The area described contains 38.863 acres in White Pine County.

The classification made pursuant to Section 302 of the Federal Land Policy and Management Act of October 21, 1976, as amended, segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws and the mineral leasing laws. The Airstrip is no longer required and has been closed in accordance with BLM and FAA requirements.

Dated: September 26, 2001.

Gene A. Kolkman,

Field Manager.

[FR Doc. 01–26984 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[DES 01–37]

Notice of availability of the Draft Environmental Impact Statement (EIS) for the Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2002 to 2007

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the draft EIS for the proposed OCS Oil and Gas Leasing Program for 2002 to 2007.

SUMMARY: The MMS has prepared a draft EIS on the Proposed OCS 5-Year Oil andGas Leasing Program for 2002 to 2007 pursuant to section 102(2)(C) of the NationalEnvironmental Policy Act of 1969.

DATES: Please submit comments on the draft EIS to the MMS by January 24, 2002. In accordance with 30 CFR 256.2(b), public hearings related to the draft EIS will be held in the Gulf of Mexico and Alaska Regions. The exact dates, times, and locations of the hearings will be announced by **Federal Register** notice in the near future.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Wildermann, Minerals Management Service, Branch of Environmental Assessment, at (703) 787–1670.

SUPPLEMENTARY INFORMATION: This draft EIS addresses a proposed Federal action that will establish a schedule of oil and gas lease sales on the OCS for the years 2002 to 2007. The proposed program schedules a total of 20 lease sales in 8 areas. In the Gulf of Mexico Region, 2 sales are scheduled in the Eastern, 5 in the Central, and 5 in the Western Gulf Planning Areas. In the Alaska Region, 3 sales are scheduled in the Beaufort Sea Planning Area, 2 in the Chukchi Sea/ Hope Basin Planning Areas, 2 in the Cook Inlet Planning Area, and 1 in the Norton Basin Planning Area. Three alternatives are also analyzed which would slow the pace of leasing by reducing the numbers of sales proposed in some planning areas, exclude some planning areas from the program, or accelerate leasing in some areas by adding sales. Also evaluated is a no action alternative which would consist of no leasing during the 2002 to 2007 period.

ADDRESSES: Comments on the draft EIS and written materials prepared as part of testimony at the public hearings should be mailed to the Minerals Management Service, Attention: Mr. Richard Wildermann, 381 Elden Street,

Mail Stop 4042, Herndon, Virginia 20170–4817. Hand deliveries may be made to the Department of the Interior, Main Interior Building, 1849 C Street, NW., Room 4227, Washington, DC 20240. Envelopes or packages should be marked "2002–2007 Oil and Gas Program Draft EIS." The MMS will also accept comments submitted by e-mail to *MMS5-year.eis@mms.gov*.

Public Comment Procedures: Our practice is to make comments, including the names and home address of respondents, available for public review. An individual commenter may ask that we withhold name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission.

We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses.

EIS Availability: To learn which libraries in Alaska have copies of the draft EIS contact the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99508–4363, telephone 1–800–764–2627 or (907) 271–6438. On the Pacific coast contact the Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Camarillo, California 93010–6064, telephone (805) 389–7520. For availability of the draft EIS along the Gulf of Mexico and Atlantic coasts contact the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2595. Information on the availability of the draft EIS can also be obtained from the Minerals Management Service, Attention: Mr. Richard Wildermann, 381 Elden Street, Mail Stop 4042, Herndon, Virginia 20170–4817, telephone (703) 787–1670.

The list of libraries and their locations is also available on the MMS Homepage on the Internet at *http://www.mms.gov*.

After the public hearing testimony and written comments on the draft EIS have been reviewed and analyzed, a final EIS will be prepared.

Dated: October 16, 2001.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

Dated: October 17, 2001.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 01–27033 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of the Dates, Times, and Locations of Public Hearings on the Draft Environmental Impact Statement (EIS) for the Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2002 to 2007

AGENCY: Minerals Management Service, Interior.

ACTION: Announcing the dates, times, and locations of public hearings on the Draft EIS for the Proposed OCS 5-Year Oil and Gas Leasing Program for 2002 to 2007.

SUMMARY: The MMS has prepared a draft EIS on the Proposed 5-Year OCS Oil and Gas Leasing Program for 2002 to 2007 pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. Public hearings will be held in Alaska, Texas, Louisiana, and Alabama to receive comments from the public on the contents of the EIS.

DATES: Public hearings are scheduled for the following dates and times at the following locations:

December 3, 2001

Anchorage, Alaska from 7 to 10 PM in the Wilda Marston Theater, ZJ Loussac Public Library, phone contact: Robin Cacy at (907) 271–6070.

December 4, 2001

Soldotna, Alaska from 7 to 10 PM in the Kenai Peninsula Borough Conference Room, phone contact: Robin Cacy at (907) 271–6070;

Kotzebue, Alaska from 7 to 10 PM in the North West Arctic Borough Assembly Room, phone contact: Robin Cacy at (907) 271–6070.

December 5, 2001

Homer, Alaska from 7 to 10 PM in the Homer City Council Chamber, 491 E. Pioneer Avenue, phone contact: Robin Cacy at (907) 271–6070;

Nome, Alaska from 7 to 10 PM at the North West Campus, University of Alaska Fairbanks, phone contact: Robin Cacy at (907) 271–6070.

December 7, 2001

Kodiak, Alaska from 7 to 10 PM in the Kodiak Island Borough Assembly Chambers, phone contact: Robin Cacy at (909) 271–6070;

Barrow, Alaska from 7 to 10 PM in the North Slope Borough Assembly Room, phone contact: Robin Cacy at (907) 271–6070.

December 10, 2001

Houston, Texas from 1 to 3 PM at the Houston Airport Marriott, 18700 Kennedy Boulevard, phone contact: Janet Diaz at (504) 736–2540.

December 11, 2001

New Orleans, Louisiana from 1 to 3 PM at the Minerals Management Service, 1201 Elmwood Park Boulevard, phone contact: Janet Diaz at (504) 736–2540.

December 12, 2001

Mobile, Alabama from 1 to 3 PM and 6:30 to 8:30 PM at the Adams Mark Hotel, 64 South Water Street, phone contact; Janet Diaz at (504) 736–2540.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Wildermann, Minerals Management Service, Branch of Environmental Assessment, at (703) 787–1670.

SUPPLEMENTARY INFORMATION: Interested individuals, representatives of organizations, and public officials who wish to testify at the hearings are requested to contact the person listed as the contact for the hearing at the particular location they wish to attend at least 5 days prior to the hearings. Time limitations may make it necessary to limit the length of each oral presentation to 10 minutes or less. An oral statement may be supplemented, however, by a more complete written statement that should be submitted to the hearing panel at the time of the oral presentation. After the presentation of oral statements by those who have pre-registered, if time is still available other individuals will be given an opportunity to be heard. Each hearing will begin at the specified time and will recess when all speakers have had an opportunity to testify. If there are no additional speakers, the hearing will adjourn immediately after the recess. Written comments on the draft EIS, including comments from individuals unable to present oral statements or to attend the hearings, will be accepted until January 24, 2002.

ADDRESSES: Comments on the draft EIS and written materials prepared as part of testimony at the public hearings should be mailed to the Minerals Management Service, Attention: Mr.

Richard Wildermann, 381 Elden Street, Mail Stop 4042, Herndon, Virginia 20170–4817. Hand deliveries may be made to the Department of the Interior, Main Interior Building, 1849 C Street, NW., Room 4227, Washington, DC 20240. Envelopes or packages should be marked "2002–2007 OCS Oil and Gas Program Draft EIS." The MMS will also accept comments submitted by e-mail to MMS5-year.eis@mms.gov.

Public Comment Procedures: Our practice is to make comments, including the names and home addresses of respondents, available for public review. An individual commenter may ask that we withhold name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission. We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses.

After the public hearing testimony and written comments on the draft EIS have been reviewed and analyzed, a final EIS will be prepared. The comment period for the draft EIS closes January 24, 2002.

Dated: October 18, 2001.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 01–27034 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Eastern Gulf of Mexico, Oil and Gas Lease Sale 181

AGENCY: Minerals Management Service, Interior.

ACTION: Final notice of sale 181.

SUMMARY: On December 5, 2001, the Minerals Management Service will open and publicly announce bids received for blocks offered in Sale 181, Eastern Gulf of Mexico, pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR part 256). Bidders can obtain a "Final Notice of Sale 181 Package" containing this Notice of Sale and several supporting and essential documents referenced herein, from the MMS Gulf of Mexico Region's Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or via the MMS Gulf of Mexico Region's Internet site at *http://www.gomr.mms.gov*. The "Final Notice of Sale 181 Package" contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the package.

Location and Time

Public bid reading will begin at 9 a.m., Wednesday, December 5, 2001, in the Versailles Ballroom of the Riverside Hilton Hotel, 2 Poydras Street, New Orleans, Louisiana. All times referred to in this document are local New Orleans time.

Filing of Bids

Bidders must submit sealed bids to the Regional Director, MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m. on normal working days, prior to the Bid Submission Deadline at 10 a.m., Tuesday, December 4, 2001. If the bids are mailed, mark on the envelope containing all the sealed bids the following:

Attention: Mr. John Rodi, Contains Sealed Bids for Sale 181

If the RD receives bids later than the time and date specified above, he will return the bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, December 4, 2001. In the event of widespread flooding or other natural disaster, the MMS Gulf of Mexico Regional Office may extend the bid submission deadline. Bidders may call (504) 736–0557 for information about the possible extension of the bid submission deadline due to such an event.

Areas Offered for Leasing

The MMS is offering for leasing all the blocks listed in the document "List of Blocks Available for Leasing, Sale 181" included in the Final Sale Notice Package. All of these blocks lie west of 87°30′ West Longitude and are more than 100 miles south of Alabama. See the map in the Final Sale Notice Package: "Lease Terms, Economic Conditions, Stipulations, and Deferred Blocks, Final". All of these blocks are shown on the following Official Protraction Diagrams (which may be purchased from the MMS Gulf of Mexico Regional Office Public Information Unit).

Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for $2.00 each:

NG16–02 Lloyd Ridge (revised November 1, 2000)

NH16–11 De Soto Canyon (revised November 1, 2000)

Note: A CD–ROM (in ARC/INFO and Acrobat (.pdf) formats) containing all of the Gulf of Mexico Leasing Maps and Official Protraction Diagrams, except for those not yet revised to digital format, is available from the MMS Gulf of Mexico Regional Office Public Information Unit for a price of $15.00. The Leasing Maps and Official Protraction Diagrams are also available on our Internet site. See also 66 FR 28002, published on May 21, 2001, for the current status of Central and Western Gulf of Mexico Leasing Maps and Official Protraction Diagrams.

Acreage of all blocks is shown on these Official Protraction Diagrams. The available Federal acreage of all blocks in this sale is shown in the document "List of Blocks Available for Leasing, Sale 181" included in the Final Sale Notice Package.

Areas Not Available for Leasing

The following blocks west of 87°30″ West Longitude and more than 100 miles south of Alabama in the Sale 181 area are not available for leasing:

Blocks currently under lease:

De Soto Canyon Blocks 133, 177, 446, 447, 622, 666, 793, 794, 837, 838, 840, 883, 927, 929, 970, 971

Lloyd Ridge Blocks 1, 2, 133, 134, 136, 267, 268

Leasing Terms and Conditions

Primary lease terms, minimum bids, annual rental rates, royalty rates, and royalty suspension areas are shown on the map "Lease Terms, Economic Conditions, Stipulations, and Deferred Blocks, Final" for leases resulting from this sale:

Primary lease terms: 10 years;

Minimum bids: $37.50 per acre;

Annual rental rates: $7.50 per acre, to be paid on or before the first day of each lease year until a discovery in paying quantities of oil or gas is made, then at the expiration of each lease year until the start of royalty-bearing production;

Royalty rates: 12½ percent, except during periods of royalty suspension, to be paid monthly on the last day of the month next following the month in which the production is obtained;

Minimum royalty: After the start of royalty-bearing production: $7.50 per acre per year, to be paid at the expiration of each lease year;

Royalty Suspension Areas: All leases in this sale are being offered subject to

the regulations in 30 CFR part 260, published in the **Federal Register** at 66 FR 11512 on February 23, 2001. Royalty suspension per lease of 12 million barrels of oil equivalent will apply to all leases in this sale (for oil and gas). Supplemental royalty relief may be available for leases in this area in accordance with 30 CFR part 203. [See the document contained within the Sale 181, Final Sale Notice Package titled "Royalty Suspension Provisions, Sale 181" for the specific details regarding royalty suspension eligibility and implementation.]

Stipulations: Four lease stipulations (Military Areas, Evacuation, Coordination, and Marine Protected Species) will apply to all leases resulting from this sale. The texts of the stipulations are contained in the document "Lease Stipulations for Oil and Gas Lease Sale 181, Final" included in the Final Sale Notice Package.

Rounding

The following procedure must be used to calculate minimum bid, rental, and minimum royalty. If the calculation results in a decimal figure, round up to the next whole dollar amount (see next paragraph). The minimum bid calculation, including all rounding, is shown in the document "List of Blocks Available for Leasing, Sale 181" included in the Final Sale Notice Package.

Method of Bidding

For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 181, not to be opened until 9 a.m., Wednesday, December 5, 2001." The total amount bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document "Bid Form and Envelope" contained in the Final Sale Notice Package.

The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 66 FR 52150, on October 12, 2001. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Regional Office. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the 1/5th bonus on all high bids. A statement to this effect must be included on each bid (see the document "Bid Form and Envelope" contained in the Final Sale Notice Package).

Bid Deposit

Submitters of high bids must deposit the 1/5th bonus by using electronic funds transfer procedures, following the detailed instructions contained in the document "Instructions for Making EFT Bonus Payments" included in the Final Sale Notice Package. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

Note: Certain bid submitters (i.e., those that do NOT currently own or operate an OCS mineral lease OR those that have ever defaulted on a ⅕th bonus payment (EFT or otherwise)) are required to guarantee (secure) their ⅕th bonus payment. For those who must secure the EFT ⅕th bonus payment, one of the following options may be used: 1. Provide a third-party guaranty; 2. Amend Development Bond Coverage; 3. Provide a Letter of Credit; or 4. Provide a lump sum payment via EFT prior to the submission of bids. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated Final Sale Notice Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of the current procedures, "Modifications to the Bid Adequacy Procedures" (64 FR 37560 of July 12, 1999), is available from the MMS Gulf of Mexico Regional Office Public Information Unit and is also on our Internet site.

Successful Bidders

As required by MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the cash bonus bid along with the first year's annual rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR part 256, subpart I, as amended. Each bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Regional Office Adjudication Unit, a currently valid certification (Debarment Certification Form) certifying that the bidder is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR part 12, subpart D. A copy of the Debarment Certification Form is contained in the Final Sale Notice Package.

Affirmative Action

The MMS *requests* that the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) be on file in the MMS Gulf of Mexico Regional Office Adjudication Unit prior to bidding. In any event, these forms are *required* to be on file in the MMS Gulf of Mexico Regional Office Adjudication Unit prior to execution of any lease contract. Bidders must also comply with the requirements of 41 CFR part 60.

Information to Lessees

The Final Sale Notice Package contains a document titled "Information to Lessees." These Information to Lessees items provide information on various matters of interest to potential bidders.

Notice of Bidding Systems

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to Congress and published in the **Federal Register**. This Notice of Bidding Systems is for Sale 181, Eastern Gulf of Mexico, scheduled to be held in December 2001.

In Sale 181, all blocks are being offered under a bidding system that uses a cash bonus and a fixed royalty of 12.5 with a royalty suspension volume of 12 million barrels of oil equivalent per lease. This bidding system is authorized under 30 CFR 260.110(a)(7), which allows use of a cash bonus bid with a royalty rate of not less than 12.5 percent and with suspension of royalties for a period, volume, or value of production, and an annual rental. Analysis performed by the MMS indicates that use of this system provides an incentive for development of this area while ensuring that a fair sharing of revenues will result if major discoveries are made and produced.

Specific provisions for Sale 181 are contained in the document "Royalty Suspension Provisions, Sale 181" and a map "Lease Terms, Economic Conditions, Stipulations and Deferred Blocks, Final" depicting blocks and applicable royalty suspension volumes. Both documents are included in the Sale Notice Package.

Dated: October 23, 2001.

Thomas R. Kitsos,

Acting Director, Minerals Management Service.

[FR Doc. 01–27032 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Request for Comments on the Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2002–2007

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the Proposed 5-Year OCS Oil and Gas Leasing Program for 2002–2007.

SUMMARY: The Minerals Management Service requests comments on the Proposed 5-Year OCS Oil and Gas Leasing Program for 2002–2007. This is the second draft of a new program to succeed the current program that expires on June 30, 2002. The first proposal—the draft proposed program—was issued in July for a 60-day comment that closed on September 21, 2001.

DATES: Please submit comments and information to the MMS no later than January 24, 2002.

ADDRESSES: Respondents should mail comments and information to: Ralph V. Ainger, Minerals Management Service (MS–4010), Room 2324, 381 Elden Street, Herndon, Virginia 20170. The MMS will accept hand deliveries at 1849 C Street, NW., Room 4230, Washington, DC. Envelopes or packages should be marked "Comments on the Proposed 5-Year OCS Oil and Gas Leasing Program for 2002–2007." When submitting any privileged or proprietary information, respondents should mark the envelope, "Contains Proprietary Information."

The MMS will accept comments submitted by electronic mail. Send email comments to *MMS5-year.document@mms.gov*. The proposed program decision document may be downloaded from the MMS internet website at *www.mms.gov*, and copies of all comments received will be posted at that website after the comment period closes.

FOR FURTHER INFORMATION CONTACT: Ralph V. Ainger at (703) 787–1215.

SUPPLEMENTARY INFORMATION: Section 18 of the OCS Lands Act (43 U.S.C 1344) specifies a multi-step process of consultation and analysis that must be completed before the Secretary of the Interior may approve a new 5-year program. The required steps following this notice include the development of a proposed final program to be submitted to the Congress and the President, with Secretarial approval of a new program no sooner than 60 days afterward. Pursuant to the National Environmental Policy Act, the MMS also is preparing an Environmental Impact Statement (EIS) for the new 5-year program. The draft EIS is being issued with this proposed program, and a final EIS will be issued with the proposed final program.

The MMS requests comments from states, local governments, native groups, tribes, the oil and gas industry, Federal agencies, environmental and other interest organizations, and all other interested parties to assist in the preparation of a 5-Year OCS oil and gas leasing program for 2002–2007 and applicable EIS.

Background

Section 18 of the OCS Lands Act requires the Secretary of the Interior to prepare and maintain a schedule of proposed OCS oil and gas lease sales determined to "best meet national energy needs for the 5-year period following its approval or reapproval." The proposed program carries forward the same schedule of proposed OCS lease sales that was published in the draft proposed program (July 2001).

Summary of the Proposed Program

The proposed program schedules a total of 20 OCS lease sales in 8 areas (5 off Alaska and 3 in the Gulf of Mexico). Maps A and B show the areas proposed for leasing, and Table A lists the location and timing of the proposed lease sales.

Alaska Region

In the Alaska Region, the proposed program schedules multiple lease sales in the Beaufort Sea and Cook Inlet Planning Areas, which are the two areas of most interest to the oil and gas industry. Multiple offerings are consistent with the Governor of Alaska's recommendations and the state's administration of its offshore oil and gas program. Portions of these areas that have been excluded from previous OCS programs and sales are excluded as recommended by the Governor. The proposed program makes a technical correction to the Beaufort Sea area that was proposed for leasing in the draft program, removing 23 blocks in the vicinity of Point Barrow that had been recommended for exclusion but were inadvertently included. The Chukchi Sea and Hope Basin Planning Areas are combined for leasing as they have been in previous programs. Two lease sales are proposed to pursue the high resource potential of the Chukchi Sea area in conjunction with potential natural gas resources extending into the adjacent Hope Basin area.

The Norton Basin Planning Area is included on the schedule as a potential source of natural gas for local residents and businesses, and it would be offered under a new approach to OCS leasing. The Norton Basin sale is proposed for 2003, but before the MMS proceeds, it will issue a request for nominations and comments and will move forward only if environmentally acceptable blocks are nominated by industry. If this does not occur, the sale will be postponed and a request for nominations and comments will be issued again the following year (and so on through the 5-year schedule

until the sale is held or the schedule expires).

Gulf of Mexico Region

In the Central and Western Gulf of Mexico Planning Areas, which are the two areas of highest resource potential and interest, the proposed program would continue the long-running policy of scheduling annual areawide lease sales to which the industry has become accustomed. In the Eastern Planning Area, the program proposes two lease sales in a portion of the area that was identified for Sale 181 in the 5-year program for 1997–2002. The portion of that area proposed for leasing in this proposed program consists of 256 blocks in deeper waters adjacent to the Central Gulf Planning Area. Selection of this area reflects the Secretary's decision in the proposed Notice of Sale for Sale 181 to exclude areas in the original Sale 181 area to address concerns expressed by the State of Florida and to minimize potential conflicts with military operations.

TABLE A.—PROPOSED PROGRAM FOR 2002–2007—LEASE SALE SCHEDULE

Sale No.	Area	Year
184	Western Gulf of Mexico.	2002
185	Central Gulf of Mexico.	2003
186	Beaufort Sea	2003
187	Western Gulf of Mexico.	2003
188	Norton Basin	2003
189	Eastern Gulf of Mexico.	2003
190	Central Gulf of Mexico.	2004
191	Cook Inlet/Shelikof Strait.	2004
192	Western Gulf of Mexico.	2004
193	Chukchi Sea/Hope Basin.	2004
194	Central Gulf of Mexico.	2005
195	Beaufort Sea	2005
196	Western Gulf of Mexico.	2005
197	Eastern Gulf of Mexico.	2005
198	Central Gulf of Mexico.	2006
199	Cook Inlet/Shelikof Strait.	2006
200	Western Gulf of Mexico.	2006
201	Central Gulf of Mexico.	2007
202	Beaufort Sea	2007
203	Chukchi Sea/Hope Basin.	2007

Assurance of Fair Market Value

Section 18 of the OCS Lands Act requires receipt of fair market value for OCS oil and gas leases and the rights they convey. The proposed program carries forward the provisions published in the draft proposed program: setting minimum bid levels by individual lease sale based on market conditions and continuing use of a two-phase bid evaluation process.

Information Requested

We request all interested and affected parties to comment on the size, timing, and location of leasing and the procedures for assuring fair market value that are included in the Proposed 5-Year OCS Oil and Gas Leasing Program for 2002–2007. Respondents who submitted information in response to previous requests for comments on the preparation of this 5-year program may wish to reference that information, as appropriate, rather than repeating it in their comments on the proposed program. We also invite comments and suggestions on how to proceed with the section 18 analysis for the proposed final program.

Section 18(g) authorizes confidential treatment of privileged or proprietary information that is submitted. In order to protect the confidentiality of such information, respondents should include it as an attachment to other comments submitted and mark it appropriately. On request, the MMS will treat such information as confidential from the time of its receipt until 5 years after approval of the new leasing program, subject to the standards of the Freedom of Information Act. MMS will not treat as confidential any aggregate summaries of such information, the names of respondents, and comments not containing such information.

Next Steps in the Process

MMS plans to issue the proposed final program and final EIS in the spring of 2002. Sixty days later, the Secretary may approve the new 5-year program to go into effect as of July 1, 2002.

Public Comment Procedures

Our practice is to make comments, including the names and home addresses of respondents, available for public review. An individual commenter may ask that we withhold name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission.

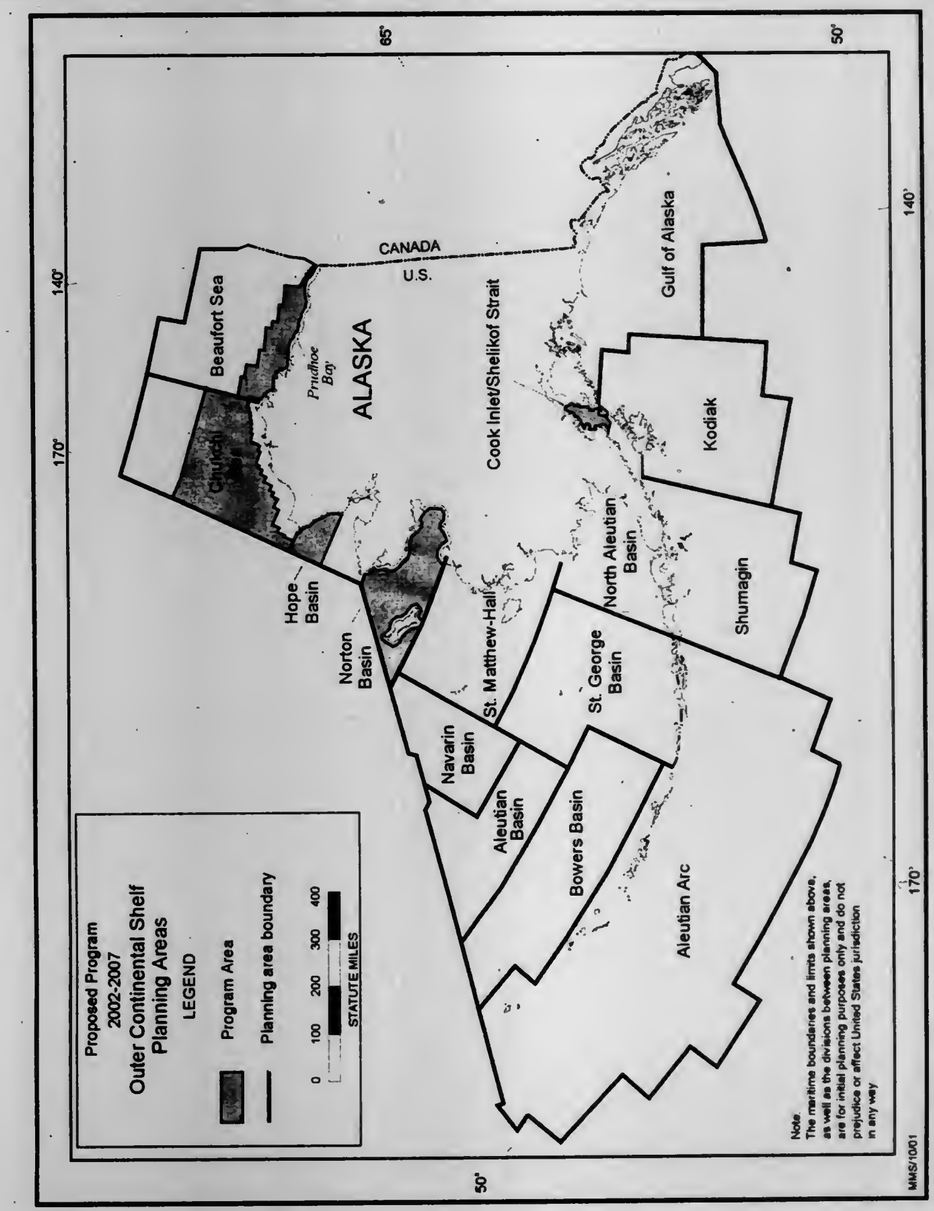
We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses.

Dated: October 19, 2001.

Thomas R. Kitsos,

Acting Director, Minerals Management Service.

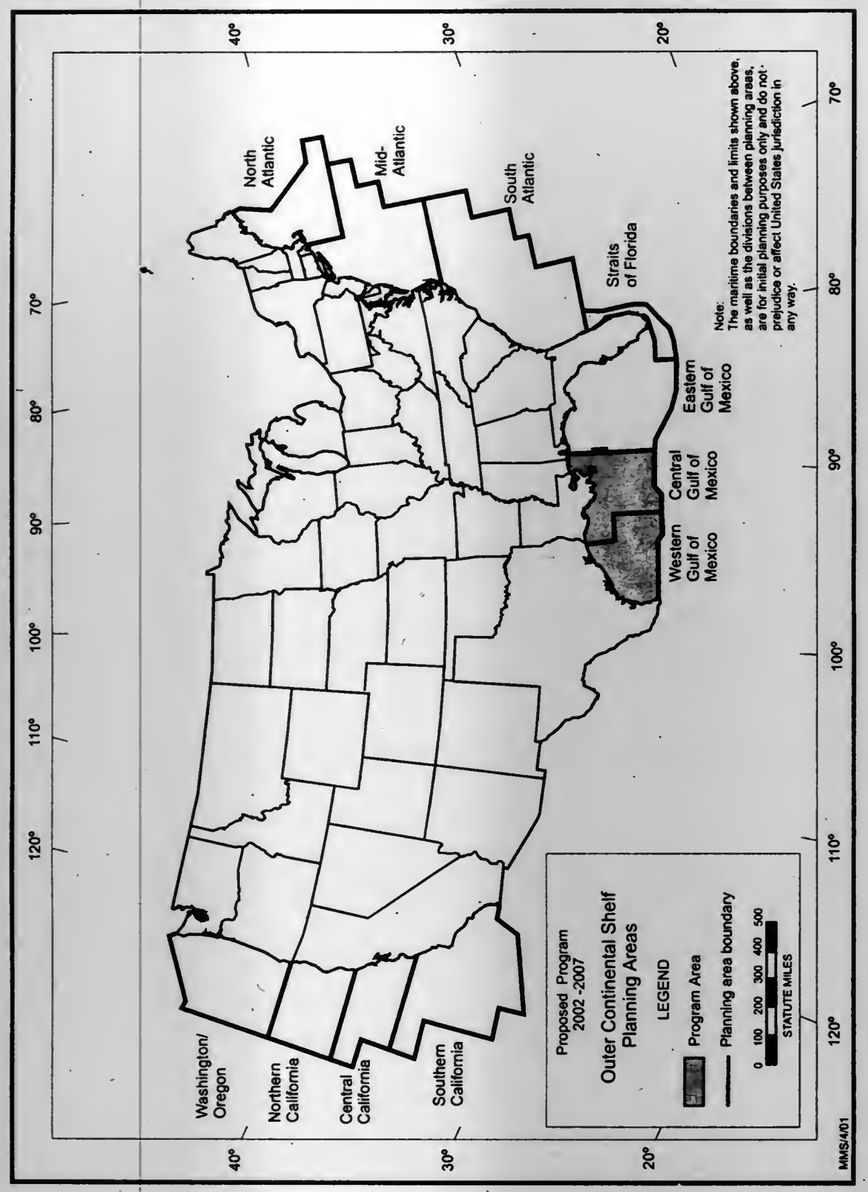
BILLING CODE 4310-MR-P



Map A. Alaska

65
50
140
140
170
170
50
CANADA
U.S
ALASKA
Beaufort Sea
Chukchi Sea
Hope Basin
Norton Basin
Navarin Basin
Aleutian Basin
Bowers Basin
Aleutian Arc
St. Matthew-Hall
St George Basin
North Aleutian Basin
Cook Inlet/Shelikof Strait
Gulf of Alaska
Kodiak
Shumagin
Proposed Program
2002-2007
Outer Continental Shelf
Planning Areas
LEGEND
Program Area
Planning area boundary
0 100 200 300 400
STATUTE MILES
Note
The maritime boundaries and limits shown above as well as the divisions between planning areas are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way.
MMS/1001

Map A. Alaska



Map B. Lower 48 States

[FR Doc. 01–27031 Filed 10–25–01; 8:45 am]
BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting: The Christmas Pageant of Peace

The National Park Service is seeking public comments and suggestions on the planning of the 2001 Christmas Pageant of Peace, which opens on December 6, 2001, on the Ellipse (President's Park), south of the White House. The meeting will be held at 11 a.m. on Tuesday, November 6, in room 234 of the National Capital Region Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park).

Persons who would like to comment at the meeting should notify the National Park Service by November 2 by calling the White House Visitor Center weekdays between 9 a.m. and 4 p.m. at (202) 208–1631. Written comments may be sent to the Park Manager, White House Visitor Center 1100 Ohio Drive, SW., Washington, DC 20242, and can be accepted until November 1.

Dated: September 21, 2001.

Stan E. Lock,

Deputy Director, White House Liaison.

[FR Doc. 01–27048 Filed 10–25–01; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA; and in the Control of the California Department of Transportation, Sacramento, CA

AGENCY: National Park Service Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA; and in the control of the California Department of Transportation, Sacramento, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.9 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Anthropological Studies Center professional staff in consultation with representatives of the Elem Tribal Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Scotts Valley Band of Pomo Indians of California; and Middletown Rancheria of Pomo Indians of California.

In 1961, human remains representing 14 individuals were recovered from site CA-LAK-261 in Lake County, CA, during authorized excavations conducted by David A. Fredrickson of Sonoma State University in conjunction with improvements along California Highway 53. No known individuals were identified. The 39 associated funerary objects include ground stone, shell beads, projectile points, polished bone, and blade fragments.

Based on osteological and archeological evidence, these individuals have been identified as Native American. Nine individuals are believed to be associated with the earliest component of the site, dating from 3000-1000 B.C., and five individuals are believed to be associated with a later component of the site, dating from 500 A.D. and ending prior to European contact. Based on geographical and ethnographic evidence, site CA-LAK-261 is believed to have been the village of Tuleyome.

In 1964, human remains representing 23 individuals were recovered from site CA-LAK-271 (Kelseyville/Glebe site) in Lake County, CA, during authorized excavations conducted by the Department of Parks and Recreation as part of a salvage initiative associated with the California Department of Transportation realignment of California Highway 29, between Lakeport and Kelseyville, CA. No known individuals were identified. The 56 associated funerary objects include projectile points, flakes, cobbles, shells, groundstone, cores, charmstones, faunal remains, scrapers, an obsidian knife, and an awl.

Based on osteological and archeological evidence, these human remains have been identified as Native American. Point typologies date the site to between 1500-3000 B.P. Based on geographical and ethnographic accounts, site CA-LAK-271 is believed to have been the ethnographic village of Licuikalixowa.

In 1975, human remains representing one individual were recovered from site CA-LAK-435 in Lake County, CA, by the Anthropological Studies Center during authorized test excavations prior to widening California Highway 20 east of Upper Lake, CA. No known individuals was identified. No associated funerary objects are present.

Based on archeological evidence, these human remains have been identified as Native American dating to between 500 B.C.-A.D. 0. Based on artifact typology, site CA-LAK-435 has been identified as an occupation site dating from 6000 B.C.-A.D. 1800.

In 1982, human remains representing 14 individuals were recovered from site CA-LAK-510 (Allsop/Creager site) in Lake County, CA, during archeological investigations sponsored by the California Department of Transportation to mitigate an eroding cutbank along Dam Road and reconstruct Old Highway 53. No known individuals were identified. The 56 associated funerary objects include Macoma clam disk beads, projectile points, bone tools, pendants, and pestles.

Based on osteological and archeological evidence, these human remains have been identified as Native American. Based on point typologies and obsidian hydration analysis of associated artifacts, the remains are estimated to date between 500 B.C.-A.D. 0.

During 1978-1981, human remains representing four individuals were recovered from site CA-LAK-510 (Allsop/Creager site) in Lake County, CA, during three separate field projects sponsored by the California Department of Transportation in conjunction with improvements to California Highway 53. No known individuals were identified. The 27 associated funerary objects include Macoma clam disk beads, a projectile point, and a slate pendant.

Based on osteological and archeological evidence, these human remains have been identified as Native American. Based on point typologies and obsidian hydration analysis, the remains are estimated to date between 500 B.C.-A.D. 0. Based on geographical and ethnographic evidence, site CA-LAK-510 has been identified as located near the ethnographic village of Bedai or Creek Home.

Geographical, ethnographic, linguistic, and historical evidence indicates that these archeological sites are located within the traditional territories of the Elem Tribal Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Scotts Valley Band of Pomo Indians of California; and Middletown Rancheria of Pomo Indians

of California. Based on archeological evidence, continuity of occupation and material culture, and ethnographic accounts, the Elem Tribal Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Scotts Valley Band of Pomo Indians of California; and Middletown Rancheria of Pomo Indians of California have been culturally affiliated with these sites.

Based on the above mentioned information, the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University professional staff has determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 56 individuals of Native American ancestry. The Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University professional staff also has determined that, pursuant to 43 CFR 10.2 (d)(2), the 173 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University professional staff has determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Elem Tribal Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Scotts Valley Band of Pomo Indians of California; and Middletown Rancheria of Pomo Indians of California.

This notice has been sent to officials of the Elem Tribal Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Scotts Valley Band of Pomo Indians of California; and Middletown Rancheria of Pomo Indians of California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Tina Biorn, Environmental Program, Department of Transportation, P.O. Box 942874 (M.S. 27), Sacramento, CA 94274-0001, telephone (916) 653–0013, before November 26, 2001. Repatriation of the human remains and associated funerary objects to the Elem Tribal Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Scotts Valley Band of Pomo Indians of California; and Middletown Rancheria of Pomo Indians of California may begin after that date if no additional claimants come forward.

Dated: July 3, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–27049 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Denver Department of Anthropology and Museum of Anthropology professional staff in consultation with representatives of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Between 1972 and 1976, human remains representing eight individuals (catalog numbers 29VA1 4–11, 29VA1 63–2, 29VA1 77–6, 29VA1 77–10, 29VA1 85–2, and 29VA1 85–6) were recovered from the Pettit site, near Ramah, Cibola County, NM, by faculty and students of Wake Forest University, Winston-Salem, NC, during an archeological fieldschool. In 1988, the human remains and associated funerary objects were transferred to the University of Denver Museum of Anthropology for permanent curation, and in 1996, Gordon and Elsa Pettit, the owners of the land, signed a deed of gift transferring all rights to the University of Denver Museum of Anthropology. No known individuals were identified. The 178 associated funerary objects are 94 sherds (including cord-marked, Black-on-Red, and Black-on-White), 42 chipped stones, 3 chipped stone flakes, 3 rocks, 1 ground stone, 22 nonhuman bones, 2 shell fragments, 7 charcoal samples, 2 pollen samples, and 2 soil samples.

The Pettit site, 29VA1 (LA 59484), is in Togeye Canyon, a few kilometers southeast of Ramah, NM, near the Pueblo of Zuni. It is a pueblo of at least 154 rooms and has been dated to A.D. 1190–1250. The Pettit site is generally considered to be a PIII period (circa A.D. 1150–1350) site, or, in some chronologies, a Reorganization period site. Both refer to a time period just prior to the large population aggregations of the PIV and Aggregation periods on the Colorado Plateau. PIII and PIV are Ancestral Puebloan time periods, and in the scientific literature the Ancestral Puebloans are widely accepted as culturally affiliated to modern Puebloan peoples. The Reorganization period is a concept attributed to Cordell and Gumerman's 1989 book "Dynamics of Southwestern Prehistory." This refers to a time period characterized by population displacements and migrations, reconfiguration of trade networks, the beginnings of population aggregation into larger sites, and experimentation with new forms of social organization.

Oral and written testimony from the Hopi Tribe, Pueblo of Acoma, and Navajo Nation supported cultural affiliation between those Indian tribes and these human remains and associated funerary objects. Pueblo of Jemez presented oral testimony supported by maps that suggested that the Pettit site is beyond the Pueblo of Jemez' traditional territory, but the museum believes that Pueblo of Jemez is culturally affiliated with these human remains and associated funerary objects because the scientific literature supports cultural affiliation of Ancestral Puebloans with all modern Puebloan peoples: Hopi, Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Santo Domingo, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Ysleta del Sur, Pueblo of Zia, and Pueblo of Zuni.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 178 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: August 8, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–27050 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–73]

Steel

AGENCY: United States International Trade Commission.

ACTION: Scheduling of public hearings for the remedy phase of the investigation.

SUMMARY: This notice sets forth the schedule for the public hearings to be conducted during the remedy phase of the Commission's investigation. For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206).

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Media should contact Peg O'Laughlin (202–205–1819), Office of External Relations. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

Following receipt of a request from the United States Trade Representative on June 22, 2001, the Commission instituted investigation No. TA–201–73 under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) to determine whether certain steel products[1] are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.[2] On October 22, 2001, the

[1] The June 22, 2001, request letter from the United States Trade Representative and the accompanying annexes listing the covered products by HTS categories are on the Commission's website (*http://www.usitc.gov*).

[2] On July 26, 2001, the Commission received a resolution from the Committee on Finance of the United States Senate for an investigation of steel products with the same scope. Pursuant to section 603 of the Trade Act, the Commission consolidated the investigation requested by the Committee with the ongoing investigation.

Commission made an affirmative determination or was equally divided with respect to the products identified below.

Hearings on Remedy

The following tabulation shows the dates and starting times of the hearings to be held in connection with the remedy phase of this investigation, the product(s) or issues to be addressed, the time allotted to parties for their presentations, and the filing deadlines for the list of witnesses to appear at the hearings. Commission rule 201.13(d) will be strictly enforced.

Oral testimony and written materials to be submitted at the hearings are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the dates of the hearings.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Regardless of the product, the deadline for filing prehearing briefs on remedy is October 29, 2001. Parties may also file posthearing briefs. The deadlines for filing posthearing briefs on remedy are as follows: November 13, 2001, for briefs regarding products and issues addressed at the November 6 hearing; November 14, 2001, for briefs regarding products and issues addressed at the November 8 hearing; and November 15, 2001, for briefs regarding products and issues addressed at the November 9 hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of remedy by November 15, 2001. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Date of hearing	Starting time	Product(s)/issues to be addressed and time allocations	Deadline to file list of witnesses
Tuesday, November 6, 2001	9:30 a.m	Opening arguments 5 minutes: Parties in support of relief 5 minutes: Parties in opposition to relief Carbon and alloy steel slabs; plate; hot-rolled sheet, strip, and coils; cold-rolled sheet and strip other than grain-oriented electrical steel; corrosion-resistant and other coated sheet and strip; and tin mill products. 60 minutes: Parties in support of relief 60 minutes: Parties in opposition to relief.	November 1.
Thursday, November 8, 2001	9:30 a.m	Opening arguments 5 minutes: Parties in support of relief 5 minutes: Parties in opposition to relief Carbon and alloy steel hot-rolled bar and light shapes; cold-finished bar; and rebar. 45 minutes: Parties in support of relief 45 minutes: Parties in opposition to relief. Opening arguments 5 minutes: Parties in support of relief 5 minutes: Parties in opposition to relief. Carbon and alloy steel welded tubular products other than oil country tubular goods; and flanges, fittings, and tool joints. 45 minutes: Parties in support of relief 45 minutes: Parties in opposition to relief.	November 5.
Friday, November 9, 2001	9:30 a.m	Opening arguments 5 minutes: Parties in support of relief 5 minutes: Parties in opposition to relief Stainless steel bar and light shapes; stainless steel rod; tool steel; stainless steel wire; and stainless steel flanges and fittings. 60 minutes: Parties in support of relief 60 minutes: Parties in opposition to relief.	November 6.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 202 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.

Issued: October 24, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27133 Filed 10–25–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Reinstatement, with change, of a previously approved collection for which approval has expired; Universal Hiring Program (UHP) and COPS In Schools (CIS) Grant Applications.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted December 26, 2001. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, 202–305–7780, Office of Community Oriented Policing Services, U.S. Department of Justice, 1100 Vermont NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection instrument.

(2) *Title of the Form/Collection:* Universal Hiring Program and COPS In Schools Grant Applications.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* none, Office of Community Oriented Policing Services, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government *Other:* none *Abstract:* The application will be used by state, local and tribal law enforcement agencies to apply for Federal funding which will be used to increase the number of sworn law enforcement positions in their agencies. These grants are meant to enhance law enforcement infrastructures and community policing efforts in both local communities (Universal Hiring Program) and local schools (COPS in Schools).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 2,000 respondents for UHP, and 1,500 for the CIS program. The amount of estimated time required for the average respondent to respond is: 9 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 18,000 burden hours annually for UHP and 13,500 for CIS, for a total of 31,500 hours.

If additional information is required contact: Mrs. Brenda Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: October 23, 2001.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–27036 Filed 10–26–01; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of Information Collection Under Review; (Extension of a currently approved collection; comment request).

The National Judicial Reporting Program, Form NJRP–1

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 26, 2001.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Matthew Durose, 202–307–6119, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice; 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection; comment request.

(2) *The title of the form/collection:* National Judicial Reporting Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is NJRP–1, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State Court authorities. The National Judicial Reporting Program (NJRP) is the only collection effort that provides an ability to maintain important statistics on felons convicted and sentenced in state courts. The NJRP enables the Bureau, Federal, State, and local correctional administrators; legislators; researchers; and planners to track change in the numbers and types of offenses and sentences felons convicted in state courts receive; as well as track changes in the demographics, conviction type, number of charges, sentence length, and time between arrest and conviction and sentencing of felons convicted in state courts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 344 respondents will take 8.1 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual burden hours are 2,788.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: October 19, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–27037 Filed 10–25–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute to minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work on the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determination as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, NW., Room S–3104, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determinations Nos. CA010032 and CA010034. See CA010031.

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled "General Wage Determination Issued Under and Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Rhode Island
- RI010001 (Mar. 2, 2001)
- RI010002 (Mar. 2, 2001)
- RI010003 (Mar. 2, 2001)

Volume II

West Virginia
- WV010002 (Mar. 2, 2001)

Volume III

Florida
- FL010001 (Mar. 2, 2001)
- FL010002 (Mar. 2, 2001)
- FL010009 (Mar. 2, 2001)
- FL010011 (Mar. 2, 2001)
- FL010012 (Mar. 2, 2001)
- FL010015 (Mar. 2, 2001)
- FL010017 (Mar. 2, 2001)
- FL010046 (Mar. 2, 2001)
- FL010049 (Mar. 2, 2001)
- FL010053 (Mar. 2, 2001)
- FL010055 (Mar. 2, 2001)
- FL010066 (Mar. 2, 2001)

Georgia
- GA010003 (Mar. 2, 2001)
- GA010022 (Mar. 2, 2001)
- GA010032 (Mar. 2, 2001)
- GA010040 (Mar. 2, 2001)
- GA010053 (Mar. 2, 2001)
- GA010058 (Mar. 2, 2001)
- GA010066 (Mar. 2, 2001)
- GA010073 (Mar. 2, 2001)
- GA010085 (Mar. 2, 2001)
- GA010086 (Mar. 2, 2001)
- GA010087 (Mar. 2, 2001)
- GA010088 (Mar. 2, 2001)

Volume IV

Michigan
- MI010002 (Mar. 2, 2001)
- MI010005 (Mar. 2, 2001)
- MI010060 (Mar. 2, 2001)
- MI010062 (Mar. 2, 2001)
- MI010081 (Mar. 2, 2001)
- MI010082 (Mar. 2, 2001)
- MI010083 (Mar. 2, 2001)
- MI010084 (Mar. 2, 2001)
- MI010088 (Mar. 2, 2001)

Volume V

Kansas
- KS010008 (Mar. 2, 2001)
- KS010009 (Mar. 2, 2001)
- KS010010 (Mar. 2, 2001)
- KS010011 (Mar. 2, 2001)
- KS010013 (Mar. 2, 2001)
- KS010015 (Mar. 2, 2001)
- KS010016 (Mar. 2, 2001)
- KS010019 (Mar. 2, 2001)
- KS010022 (Mar. 2, 2001)
- KS010025 (Mar. 2, 2001)
- KS010026 (Mar. 2, 2001)
- KS010069 (Mar. 2, 2001)
- KS010070 (Mar. 2, 2001)

Nebraska
- NE010007 (Mar. 2, 2001)
- NE010009 (Mar. 2, 2001)
- NE010010 (Mar. 2, 2001)
- NE010011 (Mar. 2, 2001)

Oklahoma
- OK010013 (Mar. 2, 2001)
- OK010014 (Mar. 2, 2001)
- OK010031 (Mar. 2, 2001)
- OK010032 (Mar. 2, 2001)

Texas
- TX010003 (Mar. 2, 2001)
- TX010005 (Mar. 2, 2001)
- TX010007 (Mar. 2, 2001)
- TX010010 (Mar. 2, 2001)
- TX010014 (Mar. 2, 2001)
- TX010019 (Mar. 2, 2001)
- TX010033 (Mar. 2, 2001)
- TX010034 (Mar. 2, 2001)
- TX010037 (Mar. 2, 2001)
- TX010053 (Mar. 2, 2001)
- TX010054 (Mar. 2, 2001)
- TX010059 (Mar. 2, 2001)
- TX010060 (Mar. 2, 2001)
- TX010061 (Mar. 2, 2001)
- TX010069 (Mar. 2, 2001)
- TX010096 (Mar. 2, 2001)

Volume VI

Colorado
- CO010001 (Mar. 2, 2001)
- CO010003 (Mar. 2, 2001)
- CO010018 (Mar. 2, 2001)
- CO010021 (Mar. 2, 2001)
- CO010022 (Mar. 2, 2001)

Volume VII

Arizona
- AZ010002 (Mar. 2, 2001)

California
- CA010002 (Mar. 2, 2001)
- CA010009 (Mar. 2, 2001)
- CA010028 (Mar. 2, 2001)
- CA010029 (Mar. 2, 2001)
- CA010030 (Mar. 2, 2001)
- CA010031 (Mar. 2, 2001)
- CA010033 (Mar. 2, 2001)
- CA010035 (Mar. 2, 2001)
- CA010036 (Mar. 2, 2001)
- CA010037 (Mar. 2, 2001)
- CA010038 (Mar. 2, 2001)
- CA010039 (Mar. 2, 2001)
- CA010040 (Mar. 2, 2001)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers valued-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of Interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 18th day of October 2001.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–26870 Filed 10–25–01; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of two currently approved information collections: (1) 3095–0016, Researcher Application, NA Forms 14003 and 14003A, used by individuals applying for a research card; and (2) 3095–0027, National Archives Trust Fund (NATF) Order Forms for Genealogical Research in the National Archives. The NATF forms included in this information collection are: NATF 81, National Archives Order for Copies of Ship Passenger Arrival Records; NATF 82, National Archives Order of Copies of Census Schedules; NATF 83, National Archives Order for Copies of Eastern Cherokee Applications; NATF 84, National Archives Order for Copies of Land Entry Files; NATF 85, National Archives Order for Copies of Pension or Bounty Land Warrant Applications; and NATF 86, National Archives Order for Copies of Military Service Records. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before December 26, 2001 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730, ext. 226, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Researcher Application.
OMB number: 3095–0016.
Agency form number: NA Forms 14003 and 14003A.
Type of review: Regular.

Affected public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal, state, local or tribal government.

Estimated number of respondents: 22,728.

Estimated time per response: 8 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 3,030 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.6. The collection is an application for a research card. Respondents are individuals who wish to use original archival records in a NARA facility. NARA uses the information to screen individuals, to identify which types of records they should use, and to allow further contact.

2. *Title:* Order Forms for Genealogical Research in the National Archives.

OMB number: 3095–0027.

Agency form numbers: NATF Forms 81, 82, 83, 84, 85, and 86.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 97,600.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 16,267 (rounded up).

Abstract: Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records (approximately 12,000 per year for the NATF 81, approximately 600 per year for the NATF 82, approximately 1,000 per year for the NATF 83, approximately 6,000 per year for the NATF 84, approximately 46,000 per year for the NATF 85, and approximately 32,000 per year for the NATF 86) and the need to obtain specific information from the researcher to search for the records sought. The form will be printed on carbonless paper as a multi-part form to allow the researcher to retain a copy of his request and NARA to respond to the researcher on the results of the search or to bill for copies if the researcher wishes to order the copies. As a convenience, the form will allow researchers to provide credit card information to authorize billing and expedited mailing of the copies.

Dated: October 22, 2001.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 01–26936 Filed 10–25–01; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Allowance for Loan and Lease Losses Methodologies and Documentation for Federally-Insured Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of Proposed Interpretive Ruling and Policy Statement (IRPS) 01–3, with request for comments.

SUMMARY: The National Credit Union Administration (NCUA) is proposing to adopt an Interpretive Ruling and Policy Statement on Allowance for Loan and Lease Losses (ALLL) Methodologies and Documentation for Federally-Insured Credit Unions (the proposed IRPS). The federal banking agencies recently issued a final policy statement intended to clarify the banking agencies' expectations regarding methodologies and documentation support for the ALLL. The Securities and Exchange Commission (SEC) issued parallel guidance in a Staff Bulletin. Likewise, it is necessary for the NCUA to issue analogous guidelines for federally-insured credit unions in order clarify the NCUA's expectations regarding methodologies and documentation support for the ALLL. This proposed IRPS is intended to provide the necessary parallel guidance for federally-insured credit unions.

The proposed IRPS provides guidance on the design and implementation of ALLL methodologies and supporting documentation practices. The guidance recognizes that credit unions should adopt methodologies and documentation practices that are appropriate for their size and complexity.

DATES: NCUA welcomes comments on the proposed IRPS. Comments must be received on or before January 24, 2002.

ADDRESSES: Send comments to Becky Baker, Secretary to the NCUA Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may also fax comments to (703) 837–2823, or e-mail comments to *regcomments@ncua.gov*. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Karen Kelbly, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6389.

SUPPLEMENTARY INFORMATION:

I. Keypoints

- Credit union management is responsible for establishing an appropriate ALLL and documenting their methodology.
- Credit union methodologies should conform to generally accepted accounting principles (GAAP).
- Credit unions with lending portfolios comprised of homogeneous pools of consumer loans (such as credit card and automobile loans) and mortgage loans will find methodology and documentation requirements discussed herein to be less burdensome than those for credit unions with lending portfolios comprised of larger-balance, non-homogeneous loans. Simply put, credit unions must review all loans (by groups as appropriate) for relevant internal and external factors, loss history, collateral values, and methods to ensure they are applied consistently when estimating probable existing losses but, when appropriate, modify loss estimates for new factors affecting collectibility.
- The FAS 5 discussions throughout this document will be most relevant to the majority of credit unions.
- Independent review of management's methodology and documentation practices by the supervisory committee, internal or external auditors is emphasized.
- Illustrations are provided that may be useful to a credit union in enhancing their own ALLL estimation methodology and documentation practices.

II. Background

On March 10, 1999, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Securities and Exchange Commission (the Agencies) issued a joint letter to financial institutions on the allowance for loan and lease losses (the Joint Letter). In the Joint Letter, the Agencies agreed to establish a Joint Working Group to study ALLL issues and to assist financial institutions by providing them with improved guidance on this topic. The Agencies agreed that the Joint Working Group would develop and issue parallel guidance for two key areas regarding the ALLL:

- Appropriate methodologies and supporting documentation, and
- Enhanced disclosures.

As a result, the banking agencies issued a final Policy Statement providing guidance to banks and savings institutions relating to methodologies and supporting documentation for the ALLL. The Securities and Exchange Commission staff has issued parallel guidance on this topic for public companies in Staff Accounting Bulletin No. 102.[1] This proposed IRPS is intended to provide parallel guidance for federally-insured credit unions.

This proposed IRPS clarifies the NCUA's expectations regarding methodologies and documentation support for the ALLL. For financial reporting purposes, including regulatory reporting, the provision for loan and lease losses and the ALLL must be determined in accordance with generally accepted accounting principles (GAAP). GAAP requires that a credit union maintain written documentation to support the amounts of the ALLL and the provision for loan and lease losses reported in the financial statements.

The proposal does not change existing accounting guidance in, or modify the documentation requirements of, GAAP. It is intended to supplement, not replace, current guidance. The proposed IRPS does not address or change current guidance regarding loan charge-offs; therefore, credit unions should continue to follow existing regulatory guidance that addresses the timing of charge-offs.

The guidance in this proposed IRPS recognizes that credit unions should adopt methodologies and documentation practices that are appropriate for their size and complexity. For credit unions with fewer and less complex loan products, the amount of supporting documentation for the ALLL may be less exhaustive than for credit unions with more complex loan products or portfolios.

Recognizing that a primary mission of the NCUA is to support a safe and sound credit union system, examiners will continue to evaluate the overall adequacy of the ALLL, including the adequacy of supporting documentation, to ensure that it is appropriate. While the proposed IRPS generally does not provide guidance to examiners in conducting safety and soundness examinations, examiners may take exception to credit union practices that fail to document and maintain an adequate ALLL in accordance with this IRPS, and other NCUA guidance. In such cases, credit union management may be cited for engaging in unsafe and unsound practices and may be subject to further supervisory action.

III. The Proposed IRPS

Four of the FFIEC agencies including the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) sought public comment on a proposed policy statement on ALLL Methodologies and Documentation for Banks and Savings Institutions on September 7, 2000 (65 FR 54268). The proposal indicated that the purpose of the policy statement was to provide financial institutions with enhanced guidance on appropriate ALLL methodologies and documentation practices. This IRPS proposes parallel guidance for federally-insured credit unions. The following is a summary of the proposal:

The proposed IRPS explains that the board of directors of each credit union is responsible for ensuring that controls are in place to determine the appropriate level of the ALLL. It also emphasizes the NCUA's long-standing position that credit unions should maintain and support the ALLL with documentation that is consistent with their stated policies and procedures, GAAP, and applicable supervisory guidance.

The proposed IRPS describes significant aspects of ALLL methodologies and documentation practices. Specifically, the proposal provides guidance on maintaining and documenting policies and procedures that are appropriately tailored to the size and complexity of the credit union and its loan portfolio. The proposed IRPS states that a credit union's ALLL methodology must be a thorough, disciplined, and consistently applied process that incorporates management's current judgments about the credit quality of the loan portfolio.

The proposal also discusses the methodology and documentation needed to support ALLL estimates prepared in accordance with GAAP, which requires loss estimates based upon reviews of individual loans and groups of loans. The proposal states that after determining the allowance on individually reviewed loans and groups of loans, management should consolidate those loss estimates and summarize the amount to be reported in the financial statements for the ALLL. To verify that the ALLL methodology is effective and conforms to GAAP and supervisory guidance, the supervisory committee, the internal or external auditors or some other designated party who is independent from the ALLL estimation process should review the methodology and its application in a manner appropriate to the size and complexity of the credit union.

The proposal includes illustrations of implementation practices that credit unions may find useful for enhancing their own ALLL practices; a summary of applicable GAAP guidance; an appendix that provides examples of certain key aspects of ALLL guidance; and a bibliographical list of relevant GAAP guidance, joint interagency statements, and other literature on ALLL issues.

IV. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that NCUA prepare an analysis describing any significant economic impact agency rulemaking may have on a substantial number of small credit unions. 5 U.S.C. 601 et seq. For purposes of this analysis, NCUA considers credit unions under $1 million in assets as small credit unions.

Credit unions over $10 million in assets must follow GAAP in the call reports they file with the NCUA Board. All other credit unions must comply with GAAP in relation to the ALLL in order to meet regulatory requirements of full and fair disclosure. This proposed IRPS describes simplified ALLL requirements for the less complex loan activities that small credit unions engage in. For example, small credit unions may satisfy their ALLL responsibilities with consolidated documentation, the use of standardized checklists and worksheets, and simplified loan categorizations and segmentation. Accordingly, the NCUA has determined and certifies that this proposed IRPS will not have a significant economic impact on a substantial number of small credit unions beyond what is already required of them.

Paperwork Reduction Act

NCUA has determined that this proposed IRPS does not increase paperwork requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order.

This proposed IRPS applies to all credit unions, but does not have substantial direct effect on the states, on the relationship between the national

[1] In addition, the American Institute of Certified Public Accountants (AICPA) is developing guidance on the accounting for loan losses and the techniques for measuring probable incurred losses in a loan portfolio.

government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed IRPS does not constitute a policy that has federalism implications for purposes of the executive order.

By the National Credit Union Administration Board, on October 18, 2001.

Becky Baker,

Secretary of the Board.

Authority: 12 U.S.C. 1782a; 12 CFR 702.402.

Proposed Interpretive Ruling and Policy Statement No. 01–3

Allowance for Loan and Lease Losses Methodologies and Documentation for Federally-Insured Credit Unions (IRPS 01–3)

Boards of directors of federally-insured credit unions are responsible for ensuring that their credit unions have controls in place to consistently determine the allowance for loan and lease losses (ALLL) in accordance with the credit union's stated policies and procedures, generally accepted accounting principles (GAAP), and ALLL supervisory guidance.[2] To fulfill this responsibility, boards of directors instruct management to develop and maintain an appropriate, systematic, and consistently applied process to determine the amounts of the ALLL and provisions for loan losses. Management should create and implement suitable policies and procedures to communicate the ALLL process internally to all applicable personnel. Regardless of who develops and implements these policies, procedures, and the underlying controls, the board of directors should assure themselves that the policies specifically address the credit union's unique goals, systems, risk profile, personnel, and other resources before approving them. Additionally, by creating an environment that encourages personnel to follow these policies and procedures, management improves procedural discipline and compliance.

The determination of the amounts of the ALLL and provisions for loan and lease losses should be based on management's current judgments about the credit quality of the loan portfolio, and should consider all known relevant internal and external factors that affect loan collectibility as of the reporting date. The amounts to be reported each period for the provision for loan and lease losses and the ALLL should be reviewed and approved by the board of directors. To ensure the methodology remains appropriate for the credit union, the board of directors should have the methodology periodically validated and, if appropriate, revised. Further, the supervisory or audit committee[3] should oversee and monitor the internal controls over the ALLL determination process.[4]

The NCUA has a long-standing examination policy that calls for examiners to review a credit union's lending and loan review functions and recommend improvements, if needed. Agency guidance assists a credit union in estimating and establishing a sufficientALLL supported by adequate documentation. Additionally, guidance requires operational and managerial standards that are appropriate for a credit union's size and the nature and scope of its activities.

For financial reporting purposes, including regulatory reporting, the provision for loan and lease losses and the ALLL must be determined in accordance with GAAP. GAAP requires that allowances be well documented, with clear explanations of the supporting analyses and rationale.[5] This IRPS describes but does not increase the documentation requirements already existing within GAAP. Failure to maintain, analyze, or support an adequate ALLL in accordance with GAAP and supervisory guidance is generally an unsafe and unsound credit union practice.[6]

This guidance applies equally to all credit unions, regardless of the size. However, credit unions with less complex lending activities and products may find it more efficient to combine a number of procedures (*e.g.*, information gathering, documentation, and internal approval processes) while continuing to ensure the credit union has a consistent and appropriate methodology. Thus, much of the supporting documentation required for a credit union with more complex products or portfolios may be combined into fewer supporting documents in a credit union with less complex products or portfolios. For example, simplified documentation can include spreadsheets, check lists, and other summary documents that many credit unions currently use. Illustrations B and D provide specific examples of how less complex credit unions may determine and document portions of their loan loss allowance.

Documentation Standards

Appropriate written supporting documentation facilitates review of the ALLL process and reported amounts, builds discipline and consistency into the ALLL determination process, and improves the process for estimating loan and lease losses by helping to ensure that all relevant factors are appropriately considered in the ALLL analysis. A credit union should document the relationship between the findings of its detailed review of the loan portfolio and the amount of the ALLL and the provision for loan and lease losses reported in each period.

At a minimum, credit unions should maintain written supporting documentation for the following decisions, strategies, and processes:

1. Policies and procedures:
   a. Over the systems and controls that maintain an appropriate ALLL, and
   b. Over the ALLL methodology,
2. Loan grading system or process,
3. Summary or consolidation of the ALLL balance,
4. Validation of the ALLL methodology, and
5. Periodic adjustments to the ALLL process.

The following sections of this IRPS provide guidance on significant aspects of ALLL methodologies and documentation practices. Specifically, this IRPS provides documentation guidance on:

1. Application of GAAP,
2. Policies and Procedures,
3. Methodology,
4. ALLL Under FASB Statement of Financial Accounting Standards No. 114,Accounting by Creditors for Impairment of a Loan (FAS 114),
5. ALLL Under FASB Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (FAS 5),
6. Consolidating the Loss Estimates, and
7. Validating the ALLL Methodology.

Application of GAAP

An ALLL recorded pursuant to GAAP is a credit union's best estimate of the probable amount of loans and lease-financing receivables that it will be unable to collect based on current information and events.[7] A creditor should record an ALLL when the criteria for accrual of a loss contingency as set forth in GAAP have been met. Estimating the amount of an ALLL involves a high degree of management judgment and is inevitably imprecise. Accordingly, a credit union may determine that the amount of loss falls within a range. A credit union should record its best estimate within the range of loan losses.[8]

Under GAAP, Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (FAS 5), provides the basic guidance for recognition of a loss contingency, such as the collectibility of loans (receivables), when it is probable that a loss has been incurred and the amount can be reasonably estimated. Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of a Loan (FAS 114) provides more specific guidance about the measurement and disclosure of impairment for certain types of loans.[9] Specifically, FAS 114 applies to loans that are identified for evaluation on an individual basis. Loans are considered impaired when, based on current information and events, it is probable that the creditor will be unable to collect all interest and principal payments due according to the contractual terms of the loan agreement.

For individually impaired loans, FAS 114 provides guidance on the acceptable methods to measure impairment. Specifically, FAS 114 states that when a loan is impaired, a creditor should measure impairment based on the present value of expected future principal and interest cash flows discounted at the loan's effective interest rate, except that as a practical expedient, a creditor may measure impairment based on a loan's observable market price or the fair value of collateral, if the loan is collateral dependent.

When developing the estimate of expected future cash flows for a loan, a credit union should consider all available information reflecting past events and current conditions, including the effect of existing environmental factors. The Illustration A provides an example of a credit union estimating a loan's impairment when the loan has been partially charged-off.[10]

ILLUSTRATION A

INTERACTION OF FAS 114 WITH AN ADVERSELY CLASSIFIED LOAN, PARTIAL CHARGE-OFF, AND THE OVERALL ALLL

A credit union determined that a collateral dependent loan, which it identified for evaluation, was impaired. In accordance with FAS 114, the credit union established an ALLL for the amount that the recorded investment in the loan exceeded the fair value of the underlying collateral, less costs to sell.

Consistent with relevant regulatory guidance, the credit union classified as "Loss," the portion of the recorded investment deemed to be the confirmed loss, and classified the remaining recorded investment as "Substandard." For this loan, the amount classified "Loss" was less than the impairment amount (as determined under FAS 114). The credit union charged off the "Loss" portion of the loan. After the charge-off, the portion of the ALLL related to this "Substandard" loan (1) reflects an appropriate measure of impairment under FAS 114, and (2) is included in the aggregate FAS 114 ALLL for all loans that were identified for evaluation and individually considered impaired. The aggregate FAS 114 ALLL is included in the credit union's overall ALLL.

[2] A bibliography is attached that lists applicable ALLL GAAP guidance, interagency policy statements, and other reference materials that may assist in understanding and implementing an ALLL in accordance with GAAP. See "Application of GAAP" section for additional information on applying GAAP to determine the ALLL.

[3] All credit unions should establish a supervisory or audit committee.

[4] Credit union supervisory or audit committees and their auditors should refer to Statement on Auditing Standards No. 61, Communication With Audit Committees (as amended by Statement on Auditing Standards No. 90, Audit Committee Communications), which requires certain discussions between the auditor and the audit committee. These discussions should include items, such as accounting policies and estimates, judgments, and uncertainties, that have a significant impact on the accounting information included in the financial statements.

[5] The documentation guidance within this IRPS is predominantly based upon the GAAP guidance from Financial Accounting Standards Board Statement Numbers 5 and 114 (FAS 5 and FAS 114, respectively); Emerging Issues Task Force Topic No. D–80 (EITF Topic D–80 and attachments), Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio (which includes the Viewpoints Article—an article issued in 1999 by FASB staff providing guidance on certain issues regarding the ALLL, particularly on the application of FAS 5 and FAS 114 and how these statements interrelate); and Chapter 6—Allowance for Loan Losses, the American Institute of Certified Public Accountants' (AICPA) Audit and Accounting Guide, Audits of Credit Unions 2000 edition (AICPA Audit Guide).

[6] Failure to maintain adequate supporting documentation does not relieve a credit union of its obligation to record an appropriate ALLL.

[7] This section provides guidance on the ALLL and does not address allowances for credit losses for off-balance sheet instruments (e.g., loan commitments, guarantees, and standby letters of credit). Credit unions should record liabilities for these exposures in accordance with GAAP. Further guidance on this topic is presented in the American Institute of Certified Public Accountants' Audit and Accounting Guide, Audits of Credit Unions, 2000 edition (AICPA Audit Guide). Additionally, this section does not address allowances or accounting for assets or portions of assets sold with recourse, which is described in Statement of Financial Accounting Standards No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities—a Replacement of FASB Statement No. 125 (FAS 140).

[8] Refer to FASB Interpretation No. 14, Reasonable Estimation of the Amount of a Loss, and Emerging Issues Task Force Topic No. D–80, Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio (EITF Topic D–80).

[9] Emerging Issues Taskforce (EITF) Topic D–80 includes additional guidance on the requirements of FAS 5 and FAS 114 and how they relate to each other. The AICPA is currently developing a Statement of Position (SOP) that will provide more specific guidance on accounting for loan losses.

[10] The referenced "gray box" illustrations are presented to assist credit unions in evaluating how to implement the guidance provided in this document. The methods described in the illustrations may not be suitable for all credit unions and are not considered required processes or actions. For additional descriptions of key aspects of ALLL guidance, a series of ALLL Questions and Answers (Q&As) are included in Appendix A of this paper.

2. Policies and Procedures,
3. Methodology,
4. ALLL Under FASB Statement of Financial Accounting Standards No. 114,Accounting by Creditors for Impairment of a Loan (FAS 114),
5. ALLL Under FASB Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (FAS 5),
6. Consolidating the Loss Estimates, and
7. Validating the ALLL Methodology.

Application of GAAP

An ALLL recorded pursuant to GAAP is a credit union's best estimate of the probable amount of loans and lease-financing receivables that it will be unable to collect based on current information and events.[7] A creditor should record an ALLL when the criteria for accrual of a loss contingency as set forth in GAAP have been met. Estimating the amount of an ALLL involves a high degree of management judgment and is inevitably imprecise. Accordingly, a credit union may determine that the amount of loss falls within a range. A credit union should record its best estimate within the range of loan losses.[8]

Under GAAP, Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (FAS 5), provides the basic guidance for recognition of a loss contingency, such as the collectibility of loans (receivables), when it is probable that a loss has been incurred and the amount can be reasonably estimated. Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of a Loan (FAS 114) provides more specific guidance about the measurement and disclosure of impairment for certain types of loans.[9] Specifically, FAS 114 applies to loans that are identified for evaluation on an individual basis. Loans are considered impaired when, based on current information and events, it is probable that the creditor will be unable to collect all interest and principal payments due according to the contractual terms of the loan agreement.

For individually impaired loans, FAS 114 provides guidance on the acceptable methods to measure impairment. Specifically, FAS 114 states that when a loan is impaired, a creditor should measure impairment based on the present value of expected future principal and interest cash flows discounted at the loan's effective interest rate, except that as a practical expedient, a creditor may measure impairment based on a loan's observable market price or the fair value of collateral, if the loan is collateral dependent.

When developing the estimate of expected future cash flows for a loan, a credit union should consider all available information reflecting past events and current conditions, including the effect of existing environmental factors. The Illustration A provides an example of a credit union estimating a loan's impairment when the loan has been partially charged-off.[10]

ILLUSTRATION A

INTERACTION OF FAS 114 WITH AN ADVERSELY CLASSIFIED LOAN, PARTIAL CHARGE-OFF, AND THE OVERALL ALLL

A credit union determined that a collateral dependent loan, which it identified for evaluation, was impaired. In accordance with FAS 114, the credit union established an ALLL for the amount that the recorded investment in the loan exceeded the fair value of the underlying collateral, less costs to sell.

Consistent with relevant regulatory guidance, the credit union classified as "Loss," the portion of the recorded investment deemed to be the confirmed loss, and classified the remaining recorded investment as "Substandard." For this loan, the amount classified "Loss" was less than the impairment amount (as determined under FAS 114). The credit union charged off the "Loss" portion of the loan. After the charge-off, the portion of the ALLL related to this "Substandard" loan (1) reflects an appropriate measure of impairment under FAS 114, and (2) is included in the aggregate FAS 114 ALLL for all loans that were identified for evaluation and individually considered impaired. The aggregate FAS 114 ALLL is included in the credit union's overall ALLL.

[7] This section provides guidance on the ALLL and does not address allowances for credit losses for off-balance sheet instruments (e.g., loan commitments, guarantees, and standby letters of credit). Credit unions should record liabilities for these exposures in accordance with GAAP. Further guidance on this topic is presented in the American Institute of Certified Public Accountants' Audit and Accounting Guide, Audits of Credit Unions, 2000 edition (AICPA Audit Guide). Additionally, this section does not address allowances or accounting for assets or portions of assets sold with recourse, which is described in Statement of Financial Accounting Standards No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities—a Replacement of FASB Statement No. 125 (FAS 140).

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[9] Emerging Issues Taskforce (EITF) Topic D–80 includes additional guidance on the requirements of FAS 5 and FAS 114 and how they relate to each other. The AICPA is currently developing a Statement of Position (SOP) that will provide more specific guidance on accounting for loan losses.

[10] The referenced "gray box" illustrations are presented to assist credit unions in evaluating how to implement the guidance provided in this document. The methods described in the illustrations may not be suitable for all credit unions and are not considered required processes or actions. For additional descriptions of key aspects of ALLL guidance, a series of ALLL Questions and Answers (Q&As) are included in Appendix A of this paper.

Large groups of smaller-balance homogeneous loans that are collectively evaluated for impairment are not included in the scope of FAS 114.[11] Such groups of loans may include, but are not limited to, credit card, residential mortgage, and consumer installment loans. FAS 5 addresses the accounting for impairment of these loans. Also, FAS 5 provides the accounting guidance for impairment of loans that are not identified for evaluation on an individual basis and loans that are individually evaluated but are not individually considered impaired.

Credit unions should ensure that they do not layer their loan loss allowances. Layering is the inappropriate practice of recording in the ALLL more than one amount for the same probable loan loss. Layering can happen when a credit union includes a loan in one segment, determines its best estimate of loss for that loan either individually or on a group basis (after taking into account all appropriate environmental factors, conditions, and events), and then includes the loan in another group, which receives an addition ALLL amount.[12]

While different credit unions may use different methods, there are certain common elements that should be included in any loan loss allowance methodology. Generally, a credit union's methodology should:[13]

1. Include a detailed analysis of the loan portfolio, performed on a regular basis;
2. Consider all loans (whether on an individual or group basis);
3. Identify loans to be evaluated for impairment on an individual basis under FAS 114 and segment the remainder of the portfolio into groups of loans with similar risk characteristics for evaluation and analysis under FAS 5;
4. Consider all known relevant internal and external factors that may affect loan collectibility;
5. Be applied consistently but, when appropriate, be modified for new factors affecting collectibility;
6. Consider the particular risks inherent in different kinds of lending;
7. Consider current collateral values (less costs to sell), where applicable;
8. Require that analyses, estimates, reviews and other ALLL methodology functions be performed by competent and well-trained personnel;
9. Be based on current and reliable data;
10. Be well documented with clear explanations of the supporting analyses and rationale; and
11. Include a systematic and logical method to consolidate the loss estimates and ensure the ALLL balance is recorded in accordance with GAAP.

A systematic methodology that is properly designed and implemented should result in a credit union's best estimate of the ALLL. Accordingly, credit unions should adjust their ALLL balance, either upward or downward, in each period for differences between the results of the systematic determination process and the unadjusted ALLL balance in the general ledger.[14]

Policies and Procedures

Credit unions use a wide range of policies, procedures, and control systems in their ALLL process. Sound policies should be appropriately tailored to the size and complexity of the credit union and its loan portfolio.

In order for a credit union's ALLL methodology to be effective, the credit union's written policies and procedures for the systems and controls that maintain an appropriate ALLL should address but not be limited to:

(1) The roles and responsibilities of the credit union's departments and personnel (including the lending function, credit review, financial reporting, internal audit, senior management, audit committee, board of directors, and others, as applicable) who determine, or review, as applicable, the ALLL to be reported in the financial statements;

(2) The credit union's accounting policies for loans and loan losses, including the policies for charge-offs and recoveries and for estimating the fair value of collateral, where applicable;

(3) The description of the credit union's systematic methodology, which should be consistent with the credit union's accounting policies for determining its ALLL;[15] and

(4) The system of internal controls used to ensure that the ALLL process is maintained in accordance with GAAP and supervisory guidance.

An internal control system for the ALLL estimation process should:

(1) Include measures to ensure the reliability and integrity of information and compliance with laws, regulations, and internal policies and procedures;

(2) Reasonably ensure that the credit union's financial statements (including regulatory reports) are prepared in accordance with GAAP and ALLL supervisory guidance; and

(3) Include a well-defined loan review process containing:

(a) An effective loan grading system that is consistently applied, identifies differing risk characteristics and loan quality problems accurately and in a timely manner, and prompts appropriate administrative actions;

(b) Sufficient internal controls to ensure that all relevant loan review information is appropriately considered in estimating losses. This includes maintaining appropriate reports, details of reviews performed, and identification of personnel involved; and

(c) Clear formal communication and coordination between a credit union's credit administration function, financial reporting group, management, board of directors, and others who are involved in the ALLL determination process or review process, as applicable (e.g., written policies and procedures, management reports, audit programs, and committee minutes).

Methodology

An ALLL methodology is a system that a credit union designs and implements to reasonably estimate loan and lease losses as of the financial statement date. It is critical that ALLL methodologies incorporate management's current judgments about the credit quality of the loan portfolio through a disciplined and consistently applied process.

A credit union's ALLL methodology is influenced by credit union-specific factors, such as a credit union's size, organizational structure, business environment and strategy, management style, loan portfolio characteristics, loan administration procedures, and management information systems. However, there are certain common elements a credit union should incorporate in its ALLL methodology. A summary of common elements was provided in Application of GAAP section of this IRPS.[16]

Documentation of ALLL Methodology in Written Policies and Procedures

A credit union's written policies and procedures should describe the primary elements of the credit union's ALLL methodology, including portfolio segmentation and impairment measurement. In order for a credit union's ALLL methodology to be effective, the credit union's written policies and procedures should describe the methodology:

(1) For segmenting the portfolio:

(a) How the segmentation process is performed (i.e., by loan type, industry, risk rates, etc.),

(b) When a loan grading system is used to segment the portfolio:

(i) The definitions of each loan grade,

(ii) A reconciliation of the internal loan grades to supervisory loan grades, and

(iii) The delineation of responsibilities for the loan grading system.

(2) For determining and measuring impairment under FAS 114:

(a) The methods used to identify loans to be analyzed individually;

(b) For individually reviewed loans that are impaired, how the amount of any impairment is determined and measured, including:

(i) Procedures describing the impairment measurement techniques available and

(ii) Steps performed to determine which technique is most appropriate in a given situation.

(c) The methods used to determine whether and how loans individually evaluated under FAS 114, but not considered to be individually impaired, should be grouped with other loans that share common characteristics for impairment evaluation under FAS 5.

(3) For determining and measuring impairment under FAS 5:

(a) How loans with similar characteristics are grouped to be evaluated for loan collectibility (such as loan type, past-due status, and risk);

(b) How loss rates are determined (*e.g.*, historical loss rates adjusted for environmental factors or migration analysis) and what factors are considered when establishing appropriate time frames over which to evaluate loss experience; and

(c) Descriptions of qualitative factors (*e.g.*, industry, geographical, economic and political factors) that may affect loss rates or other loss measurements.

The supporting documents for the ALLL may be integrated in a credit union's credit files, loan review reports or worksheets, board of directors' and committee meeting minutes, computer reports, or other appropriate documents and files.

ALLL Under FAS 114

A credit union's ALLL methodology related to FAS 114 loans begins with the use of its normal loan review procedures to identify whether a loan is impaired as defined by the accounting standard. Credit unions should document:

(1) The method and process for identifying loans to be evaluated under FAS 114 and

(2) The analysis that resulted in an impairment decision for each loan and the determination of the impairment measurement method to be used (i.e., present value of expected future cash flows, fair value of collateral less costs to sell, or the loan's observable market price).

Once a credit union has determined which of the three available measurement methods to use for an impaired loan under FAS 114, it should maintain supporting documentation as follows:

(1) When using the present value of expected future cash flows method:

(a) The amount and timing of cash flows,

(b) The effective interest rate used to discount the cash flows, and

(c) The basis for the determination of cash flows, including consideration of current environmental factors and other information reflecting past events and current conditions.

(2) When using the fair value of collateral method:

(a) How fair value was determined, including the use of appraisals, valuation assumptions, and calculations,

(b) The supporting rationale for adjustments to appraised values, if any,

(c) The determination of costs to sell, if applicable, and

(d) Appraisal quality, and the expertise and independence of the appraiser.

(3) When using the observable market price of a loan method:

(a) The amount, source, and date of the observable market price.

Illustration B describes a practice used by a small credit union to document its FAS 114 measurement of impairment using a comprehensive worksheet. Q&A #1 and #2 in Appendix A provide examples of applying and documenting impairment measurement methods under FAS 114.

Some loans that are evaluated individually for impairment under FAS 114 may be fully collateralized and therefore require no ALLL. Q&A #3 in Appendix A presents an example of a credit union whose loan portfolio includes fully collateralized loans and describes the documentation maintained by that credit union to support its conclusion that no ALLL was needed for those loans.

ILLUSTRATION B

DOCUMENTING AN ALLL UNDER FAS 114

Comprehensive worksheet for the impairment measurement process

A small credit union uses a comprehensive worksheet for each loan being reviewed individually under FAS 114. Each worksheet includes a description of why the loan was selected for individual review, the impairment measurement technique used, the measurement calculation, a comparison to the current loan balance, and the amount of the ALLL for that loan. The rationale for the impairment measurement technique used (e.g., present value of expected future cash flows, observable market price of the loan, fair value of the collateral) is also described on the worksheet.

[11] In addition, FAS 114 does not apply to loans measured at fair value or at the lower of cost or fair value, leases, or debt securities.

[12] According to the Federal Financial Institutions Examination Council's Federal Register Notice, Implementation Issues Arising from FASB Statement No. 114, Accounting by Creditors for Impairment of a Loan, published February 10, 1995, institution-specific issues should be reviewed when estimating loan losses under FAS 114. This analysis should be conducted as part of the evaluation of each individual loan reviewed under FAS 114 to avoid potential ALLL layering.

[13] Refer to paragraph 6.04–6.10 of the AICPA Audit Guide.

[14] For informational purposes, credit unions may want to refer to the guidance on materiality provided in SEC Staff Accounting Bulletin No. 99, Materiality.

[15] Further explanation is presented in the Methodology section that appears beow.

[16] Also, refer to paragraph 6.04–6.10 of the AICPA Audit Guide, 2000 edition.

elements of the credit union's ALLL methodology, including portfolio segmentation and impairment measurement. In order for a credit union's ALLL methodology to be effective, the credit union's written policies and procedures should describe the methodology:

(1) For segmenting the portfolio:

(a) How the segmentation process is performed (i.e., by loan type, industry, risk rates, etc.),

(b) When a loan grading system is used to segment the portfolio:

(i) The definitions of each loan grade,

(ii) A reconciliation of the internal loan grades to supervisory loan grades, and

(iii) The delineation of responsibilities for the loan grading system.

(2) For determining and measuring impairment under FAS 114:

(a) The methods used to identify loans to be analyzed individually;

(b) For individually reviewed loans that are impaired, how the amount of any impairment is determined and measured, including:

(i) Procedures describing the impairment measurement techniques available and

(ii) Steps performed to determine which technique is most appropriate in a given situation.

(c) The methods used to determine whether and how loans individually evaluated under FAS 114, but not considered to be individually impaired, should be grouped with other loans that share common characteristics for impairment evaluation under FAS 5.

(3) For determining and measuring impairment under FAS 5:

(a) How loans with similar characteristics are grouped to be evaluated for loan collectibility (such as loan type, past-due status, and risk);

(b) How loss rates are determined (*e.g.*, historical loss rates adjusted for environmental factors or migration analysis) and what factors are considered when establishing appropriate time frames over which to evaluate loss experience; and

(c) Descriptions of qualitative factors (*e.g.*, industry, geographical, economic and political factors) that may affect loss rates or other loss measurements.

The supporting documents for the ALLL may be integrated in a credit union's credit files, loan review reports or worksheets, board of directors' and committee meeting minutes, computer reports, or other appropriate documents and files.

ALLL Under FAS 114

A credit union's ALLL methodology related to FAS 114 loans begins with the use of its normal loan review procedures to identify whether a loan is impaired as defined by the accounting standard. Credit unions should document:

(1) The method and process for identifying loans to be evaluated under FAS 114 and

(2) The analysis that resulted in an impairment decision for each loan and the determination of the impairment measurement method to be used (i.e., present value of expected future cash flows, fair value of collateral less costs to sell, or the loan's observable market price).

Once a credit union has determined which of the three available measurement methods to use for an impaired loan under FAS 114, it should maintain supporting documentation as follows:

(1) When using the present value of expected future cash flows method:

(a) The amount and timing of cash flows,

(b) The effective interest rate used to discount the cash flows, and

(c) The basis for the determination of cash flows, including consideration of current environmental factors and other information reflecting past events and current conditions.

(2) When using the fair value of collateral method:

(a) How fair value was determined, including the use of appraisals, valuation assumptions, and calculations,

(b) The supporting rationale for adjustments to appraised values, if any,

(c) The determination of costs to sell, if applicable, and

(d) Appraisal quality, and the expertise and independence of the appraiser.

(3) When using the observable market price of a loan method:

(a) The amount, source, and date of the observable market price.

Illustration B describes a practice used by a small credit union to document its FAS 114 measurement of impairment using a comprehensive worksheet. Q&A #1 and #2 in Appendix A provide examples of applying and documenting impairment measurement methods under FAS 114.

Some loans that are evaluated individually for impairment under FAS 114 may be fully collateralized and therefore require no ALLL. Q&A #3 in Appendix A presents an example of a credit union whose loan portfolio includes fully collateralized loans and describes the documentation maintained by that credit union to support its conclusion that no ALLL was needed for those loans.

ILLUSTRATION B
DOCUMENTING AN ALLL UNDER FAS 114

Comprehensive worksheet for the impairment measurement process

A small credit union uses a comprehensive worksheet for each loan being reviewed individually under FAS 114. Each worksheet includes a description of why the loan was selected for individual review, the impairment measurement technique used, the measurement calculation, a comparison to the current loan balance, and the amount of the ALLL for that loan. The rationale for the impairment measurement technique used (e.g., present value of expected future cash flows, observable market price of the loan, fair value of the collateral) is also described on the worksheet.

ALLL Under FAS 5

Segmenting the Portfolio

For loans evaluated on a group basis under FAS 5, management should segment the loan portfolio by identifying risk characteristics that are common to groups of loans. Credit unions typically decide how to segment their loan portfolios based on many factors, which vary with their business strategies as well as their information system capabilities. Smaller credit unions that are involved in less complex activities often segment the portfolio into broad loan categories. This method of segmenting the portfolio is likely to be appropriate in only small credit unions offering a narrow range of loan products. Larger credit unions typically offer a more diverse and complex mix of loan products. Such credit unions may start by segmenting the portfolio into major loan types but typically have more detailed information available that allows them to further segregate the portfolio into product line segments based on the risk characteristics of each portfolio segment. Regardless of the segmentation method used, a credit union should maintain documentation to support its conclusion that the loans in each segment have similar attributes or characteristics.

As economic and other business conditions change, credit unions often modify their business strategies, which may result in adjustments to the way in which they segment their loan portfolio for purposes of estimating loan losses. Illustration C presents an example in which a credit union refined its segmentation method to more effectively consider risk factors and maintains documentation to support this change.

Credit unions use a variety of documents to support the segmentation of their portfolios.

ILLUSTRATION C
DOCUMENTING SEGMENTING PRACTICES

Documenting a refinement in a segmentation method

A credit union with a significant portfolio of consumer loans performed a review of its ALLL methodology. The credit union had determined its ALLL based upon historical loss rates in the overall consumer portfolio. The ALLL methodology was validated by comparing actual loss rates (charge-offs) for the past two years to the estimated loss rates. During this process, the credit union decided to evaluate loss rates on an individual product basis (e.g., auto loans, unsecured loans, or home equity loans). This analysis disclosed significant differences in the loss rates on different products. With this additional information, the methodology was amended in the current period to segment the portfolio by product, resulting in a better estimation of the loan losses associated with the portfolio. To support this change in segmentation practice, the credit review committee records contain the analysis that was used as a basis for the change and the written report describing the need for the change.

Some of these documents include:

- Loan trial balances by categories and types of loans,
- Management reports about the mix of loans in the portfolio,
- Delinquency and nonaccrual reports, and
- A summary presentation of the results of an internal or external loan grading review.

Reports generated to assess the profitability of a loan product line may be useful in identifying areas in which to further segment the portfolio.

Estimating Loss on Groups of Loans

Based on the segmentation of the portfolio, a credit union should estimate the FAS 5 portion of the ALLL. For those segments that require an ALLL,[17] the credit union should estimate the loan and lease losses, on at least a quarterly basis, based upon its ongoing loan review process and analysis of loan performance. The credit union should follow a systematic and consistently applied approach to select the most appropriate loss measurement methods and support its conclusions and rationale with written documentation. Regardless of the method used to measure losses, a credit union should demonstrate and document that the loss measurement methods used to estimate the ALLL for each segment are determined in accordance with GAAP as of the financial statement date.[18]

One method of estimating loan losses for groups of loans is through the application of loss rates to the groups' aggregate loan balances. Such loss rates typically reflect historical loan loss experience for each group of loans, adjusted for relevant environmental factors (*e.g.*, industry, geographical, economic, and political factors) over a defined period of time. If a credit union does not have loss experience of its own, it may be appropriate to reference the loss experience of other credit unions, provided that the credit union demonstrates that the attributes of the loans in its portfolio segment are similar to those of the loans included in the portfolio of the credit union providing the loss experience.[19] Credit unions should maintain supporting documentation for the technique used to develop their loss rates, including the period of time over which the losses were incurred. If a range of loss is determined, credit unions should maintain documentation to support the identified range and the rationale used for determining which estimate is the best estimate within the range of loan losses. An example of how a small credit union performs a comprehensive historical loss analysis is provided as the first item in Illustration D.

[17] An example of a loan segment that does not generally require an ALLL is loans that are fully secured by deposits maintained at the lending credit union.

[18] Refer to paragraph 8(b) of FAS 5. Also, the AICPA is currently developing a Statement of Position that will provide more specific guidance on accounting for loan losses.

[19] Refer to paragraph 23 of FAS 5.

ILLUSTRATION D
DOCUMENTING THE SETTING LOSS RATES

Comprehensive loss analysis in a small credit union

A small credit union determines its loss rates based on loss rates over a three-year historical period. The analysis is conducted by type of loan and is further segmented by originating branch office. The analysis considers charge-offs and recoveries in determining the loss rate. The credit union also considers the loss rates for each loan grade and compares them to historical losses on similarly rated loans in arriving at the historical loss factor. The credit union maintains supporting documentation for its loss factor analysis, including historical losses by type of loan, originating branch office, and loan grade for the three-year period.

Adjustment of loss rates for changes in local economic conditions

A credit union develops a factor to adjust loss rates for its assessment of the impact of changes in the local economy. For example, when analyzing the loss rate on business real estate loans, the assessment identifies changes in recent commercial building occupancy rates. The credit union generally finds the occupancy statistics to be a good indicator of probable losses on these types of loans. The credit union maintains documentation that summarizes the relationship between current occupancy rates and its loss experience.

Before employing a loss estimation model, a credit union should evaluate and modify, as needed, the model's assumptions to ensure that the resulting loss estimate is consistent with GAAP. In order to demonstrate consistency with GAAP, credit unions that use loss estimation models typically document the evaluation, the conclusions regarding the appropriateness of estimating loan losses with a model or other loss estimation tool, and the support for adjustments to the model or its results.

In developing loss measurements, credit unions should consider the impact of current environmental factors and then document which factors were used in the analysis and how those factors affect the loss measurements. Factors that should be considered in developing loss measurements include the following:[20]

(1) Levels of and trends in delinquencies and impaired loans;

(2) Levels of and trends in charge-offs and recoveries;

(3) Trends in volume and terms of loans;

(4) Effects of any changes in risk selection and underwriting standards, and other changes in lending policies, procedures, and practices;

(5) Experience, ability, and depth of lending management and other relevant staff;

(6) National and local economic trends and conditions;

(7) Industry conditions; and

(8) Effects of changes in credit concentrations.

For any adjustment of loss measurements for environmental factors, the credit union should maintain sufficient, objective evidence to support the amount of the adjustment and to explain why the adjustment is necessary to reflect current information, events, circumstances, and conditions in the loss measurements.

The second item in Illustration D provides an example of how a credit union adjusts its business real estate historical loss rates for changes in local economic conditions. Q&A #4 in Appendix A provides an example of maintaining supporting documentation for adjustments to portfolio segment loss rates for an environmental factor related to an economic downturn in the borrower's primary industry. Q&A #5 in Appendix A describes one credit union's process for determining and documenting an ALLL for loans that are not individually impaired but have characteristics indicating there are loan losses on a group basis.

Consolidating the Loss Estimates

To verify that ALLL balances are presented fairly in accordance with GAAP and are auditable, management should prepare a document that summarizes the amount to be reported in the financial statements for the ALLL. The board of directors should review and approve this summary.

Common elements in such summaries include:

(1) An estimate of the probable loss or range of loss incurred for each category evaluated (*e.g.*, individually evaluated impaired loans, homogeneous pools, and other groups of loans that are collectively evaluated for impairment);

(2) The aggregate probable loss estimated using the credit union's methodology;

(3) A summary of the current ALLL balance;

(4) The amount, if any, by which the ALLL is to be adjusted;[21] and

(5) Depending on the level of detail that supports the ALLL analysis, detailed sub-schedules of loss estimates that reconcile to the summary schedule.

Illustration E describes how a credit union documents its estimated ALLL by

[20] Refer to paragraph 6.06 in the AICPA Audit Guide.

[21] Subsequent to adjustments, there should be no material differences between the consolidated loss estimate, as determined by the methodology, and the final ALLL balance reported in the financial statements.

ALLL Under FAS 5

Segmenting the Portfolio

For loans evaluated on a group basis under FAS 5, management should segment the loan portfolio by identifying risk characteristics that are common to groups of loans. Credit unions typically decide how to segment their loan portfolios based on many factors, which vary with their business strategies as well as their information system capabilities. Smaller credit unions that are involved in less complex activities often segment the portfolio into broad loan categories. This method of segmenting the portfolio is likely to be appropriate in only small credit unions offering a narrow range of loan products. Larger credit unions typically offer a more diverse and complex mix of loan products. Such credit unions may start by segmenting the portfolio into major loan types but typically have more detailed information available that allows them to further segregate the portfolio into product line segments based on the risk characteristics of each portfolio segment. Regardless of the segmentation method used, a credit union should maintain documentation to support its conclusion that the loans in each segment have similar attributes or characteristics.

As economic and other business conditions change, credit unions often modify their business strategies, which may result in adjustments to the way in which they segment their loan portfolio for purposes of estimating loan losses. Illustration C presents an example in which a credit union refined its segmentation method to more effectively consider risk factors and maintains documentation to support this change.

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Documenting a refinement in a segmentation method

A credit union with a significant portfolio of consumer loans performed a review of its ALLL methodology. The credit union had determined its ALLL based upon historical loss rates in the overall consumer portfolio. The ALLL methodology was validated by comparing actual loss rates (charge-offs) for the past two years to the estimated loss rates. During this process, the credit union decided to evaluate loss rates on an individual product basis (e.g., auto loans, unsecured loans, or home equity loans). This analysis disclosed significant differences in the loss rates on different products. With this additional information, the methodology was amended in the current period to segment the portfolio by product, resulting in a better estimation of the loan losses associated with the portfolio. To support this change in segmentation practice, the credit review committee records contain the analysis that was used as a basis for the change and the written report describing the need for the change.

Some of these documents include:

- Loan trial balances by categories and types of loans,
- Management reports about the mix of loans in the portfolio,
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- A summary presentation of the results of an internal or external loan grading review.

Reports generated to assess the profitability of a loan product line may be useful in identifying areas in which to further segment the portfolio.

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Based on the segmentation of the portfolio, a credit union should estimate the FAS 5 portion of the ALLL. For those segments that require an ALLL,[17] the credit union should estimate the loan and lease losses, on at least a quarterly basis, based upon its ongoing loan review process and analysis of loan performance. The credit union should follow a systematic and consistently applied approach to select the most appropriate loss measurement methods and support its conclusions and rationale with written documentation. Regardless of the method used to measure losses, a credit union should demonstrate and document that the loss measurement methods used to estimate the ALLL for each segment are determined in accordance with GAAP as of the financial statement date.[18]

One method of estimating loan losses for groups of loans is through the application of loss rates to the groups' aggregate loan balances. Such loss rates typically reflect historical loan loss experience for each group of loans, adjusted for relevant environmental factors (*e.g.*, industry, geographical, economic, and political factors) over a defined period of time. If a credit union does not have loss experience of its own, it may be appropriate to reference the loss experience of other credit unions, provided that the credit union demonstrates that the attributes of the loans in its portfolio segment are similar to those of the loans included in the portfolio of the credit union providing the loss experience.[19] Credit unions should maintain supporting documentation for the technique used to develop their loss rates, including the period of time over which the losses were incurred. If a range of loss is determined, credit unions should maintain documentation to support the identified range and the rationale used for determining which estimate is the best estimate within the range of loan losses. An example of how a small credit union performs a comprehensive historical loss analysis is provided as the first item in Illustration D.

[17] An example of a loan segment that does not generally require an ALLL is loans that are fully secured by deposits maintained at the lending credit union.

[18] Refer to paragraph 8(b) of FAS 5. Also, the AICPA is currently developing a Statement of Position that will provide more specific guidance on accounting for loan losses.

[19] Refer to paragraph 23 of FAS 5.

ILLUSTRATION D
DOCUMENTING THE SETTING LOSS RATES

Comprehensive loss analysis in a small credit union

A small credit union determines its loss rates based on loss rates over a three-year historical period. The analysis is conducted by type of loan and is further segmented by originating branch office. The analysis considers charge-offs and recoveries in determining the loss rate. The credit union also considers the loss rates for each loan grade and compares them to historical losses on similarly rated loans in arriving at the historical loss factor. The credit union maintains supporting documentation for its loss factor analysis, including historical losses by type of loan, originating branch office, and loan grade for the three-year period.

Adjustment of loss rates for changes in local economic conditions

A credit union develops a factor to adjust loss rates for its assessment of the impact of changes in the local economy. For example, when analyzing the loss rate on business real estate loans, the assessment identifies changes in recent commercial building occupancy rates. The credit union generally finds the occupancy statistics to be a good indicator of probable losses on these types of loans. The credit union maintains documentation that summarizes the relationship between current occupancy rates and its loss experience.

Before employing a loss estimation model, a credit union should evaluate and modify, as needed, the model's assumptions to ensure that the resulting loss estimate is consistent with GAAP. In order to demonstrate consistency with GAAP, credit unions that use loss estimation models typically document the evaluation, the conclusions regarding the appropriateness of estimating loan losses with a model or other loss estimation tool, and the support for adjustments to the model or its results.

In developing loss measurements, credit unions should consider the impact of current environmental factors and then document which factors were used in the analysis and how those factors affect the loss measurements. Factors that should be considered in developing loss measurements include the following:[20]

(1) Levels of and trends in delinquencies and impaired loans;

(2) Levels of and trends in charge-offs and recoveries;

(3) Trends in volume and terms of loans;

(4) Effects of any changes in risk selection and underwriting standards, and other changes in lending policies, procedures, and practices;

(5) Experience, ability, and depth of lending management and other relevant staff;

(6) National and local economic trends and conditions;

(7) Industry conditions; and

(8) Effects of changes in credit concentrations.

For any adjustment of loss measurements for environmental factors, the credit union should maintain sufficient, objective evidence to support the amount of the adjustment and to explain why the adjustment is necessary to reflect current information, events, circumstances, and conditions in the loss measurements.

The second item in Illustration D provides an example of how a credit union adjusts its business real estate historical loss rates for changes in local economic conditions. Q&A #4 in Appendix A provides an example of maintaining supporting documentation for adjustments to portfolio segment loss rates for an environmental factor related to an economic downturn in the borrower's primary industry. Q&A #5 in Appendix A describes one credit union's process for determining and documenting an ALLL for loans that are not individually impaired but have characteristics indicating there are loan losses on a group basis.

Consolidating the Loss Estimates

To verify that ALLL balances are presented fairly in accordance with GAAP and are auditable, management should prepare a document that summarizes the amount to be reported in the financial statements for the ALLL. The board of directors should review and approve this summary.

Common elements in such summaries include:

(1) An estimate of the probable loss or range of loss incurred for each category evaluated (*e.g.*, individually evaluated impaired loans, homogeneous pools, and other groups of loans that are collectively evaluated for impairment);

(2) The aggregate probable loss estimated using the credit union's methodology;

(3) A summary of the current ALLL balance;

(4) The amount, if any, by which the ALLL is to be adjusted;[21] and

(5) Depending on the level of detail that supports the ALLL analysis, detailed sub-schedules of loss estimates that reconcile to the summary schedule.

Illustration E describes how a credit union documents its estimated ALLL by

[20] Refer to paragraph 6.08 in the AICPA Audit Guide.

[21] Subsequent to adjustments, there should be no material differences between the consolidated loss estimate, as determined by the methodology, and the final ALLL balance reported in the financial statements.

adding comprehensive explanations to its summary schedule.

ILLUSTRATION E
SUMMARIZING LOSS ESTIMATES

Descriptive comments added to the consolidated ALLL summary schedule

To simplify the supporting documentation process and to eliminate redundancy, a credit union adds detailed supporting information to its summary schedule. For example, this credit union's board of directors receives, within the body of the ALLL summary schedule, a brief description of the credit union's policy for selecting loans for evaluation under FAS 114. Additionally, the credit union identifies which FAS 114 impairment measurement method was used for each individually reviewed impaired loan. Other items on the schedule include brief descriptions of loss factors for each segment of the loan portfolio, the basis for adjustments to loss rates, and explanations of changes in ALLL amounts from period to period, including cross-references to more detailed supporting documents.

Generally, a credit union's review and approval process for the ALLL relies upon the data provided in these consolidated summaries. There may be instances in which individuals or committees that review the ALLL—methodology and resulting allowance balance identify adjustments that need to be made to the loss estimates to provide a better estimate of loan losses. These changes may be due to information not known at the time of the initial loss estimate (e.g., information that surfaces after determining and adjusting, as necessary, historical loss rates, or a recent decline in the marketability of property after conducting a FAS 114 valuation based upon the fair value of collateral). It is important that these adjustments are consistent with GAAP and are reviewed and approved by appropriate personnel. Additionally, the summary should provide each subsequent reviewer with an understanding of the support behind these adjustments. Therefore, management should document the nature of any adjustments and the underlying rationale for making the changes. This documentation should be provided to those making the final determination of the ALLL amount. Q&A #6 in Appendix A addresses the documentation of the final amount of the ALLL.

Validating the ALLL Methodology

A credit union's ALLL methodology is considered valid when it accurately estimates the amount of loss contained in the portfolio. Thus, the credit union's methodology should include procedures that adjust loss estimation methods to reduce differences between estimated losses and actual subsequent charge-offs, as necessary.

To verify that the ALLL methodology is valid and conforms to GAAP and supervisory guidance, a credit union's directors should establish internal control policies, appropriate for the size of the credit union and the type and complexity of its loan products. These policies should include procedures for a review, by a party who is independent of the ALLL estimation process, of the ALLL methodology and its application in order to confirm its effectiveness.

In practice, credit unions employ numerous procedures when validating the reasonableness of their ALLL methodology and determining whether there may be deficiencies in their overall methodology or loan grading process. Examples are:

(1) A review of trends in loan volume, delinquencies, restructurings, and concentrations.

(2) A review of previous charge-off and recovery history, including an evaluation of the timeliness of the entries to record both the charge-offs and the recoveries.

(3) A review by a party that is independent of the ALLL estimation process. This often involves the independent party reviewing, on a test basis, source documents and underlying assumptions to determine that the established methodology develops reasonable loss estimates.

(4) An evaluation of the appraisal process of the underlying collateral. This may be accomplished by periodically comparing the appraised value to the actual sales price on selected properties sold.

Supporting Documentation for the Validation Process

Management usually supports the validation process with the workpapers from the ALLL review function. Additional documentation often includes the summary findings of the independent reviewer. The credit union's board of directors, or its designee, reviews the findings and acknowledges its review in its meeting minutes. If the methodology is changed based upon the findings of the validation process, documentation that describes and supports the changes should be maintained.

Appendix A—ALLL Questions and Answers

Introduction

The Questions and Answers (Q&As) presented in this appendix serve several purposes, including (1) to illustrate the NCUA's views, as set forth in this IRPS, about the types of decisions, determinations, and processes a credit union should document with respect to itsALLL methodology and amounts; and (2) to illustrate the types of ALLL documentation and processes a credit union might prepare, retain, or use in a particular set of circumstances. The level and types of documentation described in the Q&As should be considered neither the minimum acceptable level of documentation nor an all-inclusive list. Credit unions are expected to apply the guidance in this IRPS to their individual facts, circumstances, and situations. If a credit union's fact pattern differs from the fact patterns incorporated in the following Q&As, the credit union may decide to prepare and maintain different

adding comprehensive explanations to its summary schedule.

ILLUSTRATION E
SUMMARIZING LOSS ESTIMATES

Descriptive comments added to the consolidated ALLL summary schedule

To simplify the supporting documentation process and to eliminate redundancy, a credit union adds detailed supporting information to its summary schedule. For example, this credit union's board of directors receives, within the body of the ALLL summary schedule, a brief description of the credit union's policy for selecting loans for evaluation under FAS 114. Additionally, the credit union identifies which FAS 114 impairment measurement method was used for each individually reviewed impaired loan. Other items on the schedule include brief descriptions of loss factors for each segment of the loan portfolio, the basis for adjustments to loss rates, and explanations of changes in ALLL amounts from period to period, including cross-references to more detailed supporting documents.

Generally, a credit union's review and approval process for the ALLL relies upon the data provided in these consolidated summaries. There may be instances in which individuals or committees that review the ALLL methodology and resulting allowance balance identify adjustments that need to be made to the loss estimates to provide a better estimate of loan losses. These changes may be due to information not known at the time of the initial loss estimate (e.g., information that surfaces after determining and adjusting, as necessary, historical loss rates, or a recent decline in the marketability of property after conducting a FAS 114 valuation based upon the fair value of collateral). It is important that these adjustments are consistent with GAAP and are reviewed and approved by appropriate personnel. Additionally, the summary should provide each subsequent reviewer with an understanding of the support behind these adjustments. Therefore, management should document the nature of any adjustments and the underlying rationale for making the changes. This documentation should be provided to those making the final determination of the ALLL amount. Q&A #6 in Appendix A addresses the documentation of the final amount of the ALLL.

Validating the ALLL Methodology

A credit union's ALLL methodology is considered valid when it accurately estimates the amount of loss contained in the portfolio. Thus, the credit union's methodology should include procedures that adjust loss estimation methods to reduce differences between estimated losses and actual subsequent charge-offs, as necessary.

To verify that the ALLL methodology is valid and conforms to GAAP and supervisory guidance, a credit union's directors should establish internal control policies, appropriate for the size of the credit union and the type and complexity of its loan products. These policies should include procedures for a review, by a party who is independent of the ALLL estimation process, of the ALLL methodology and its application in order to confirm its effectiveness.

In practice, credit unions employ numerous procedures when validating the reasonableness of their ALLL methodology and determining whether there may be deficiencies in their overall methodology or loan grading process. Examples are:

(1) A review of trends in loan volume, delinquencies, restructurings, and concentrations.

(2) A review of previous charge-off and recovery history, including an evaluation of the timeliness of the entries to record both the charge-offs and the recoveries.

(3) A review by a party that is independent of the ALLL estimation process. This often involves the independent party reviewing, on a test basis, source documents and underlying assumptions to determine that the established methodology develops reasonable loss estimates.

(4) An evaluation of the appraisal process of the underlying collateral. This may be accomplished by periodically comparing the appraised value to the actual sales price on selected properties sold.

Supporting Documentation for the Validation Process

Management usually supports the validation process with the workpapers from the ALLL review function. Additional documentation often includes the summary findings of the independent reviewer. The credit union's board of directors, or its designee, reviews the findings and acknowledges its review in its meeting minutes. If the methodology is changed based upon the findings of the validation process, documentation that describes and supports the changes should be maintained.

Appendix A—ALLL Questions and Answers

Introduction

The Questions and Answers (Q&As) presented in this appendix serve several purposes, including (1) to illustrate the NCUA's views, as set forth in this IRPS, about the types of decisions, determinations, and processes a credit union should document with respect to itsALLL methodology and amounts; and (2) to illustrate the types of ALLL documentation and processes a credit union might prepare, retain, or use in a particular set of circumstances. The level and types of documentation described in the Q&As should be considered neither the minimum acceptable level of documentation nor an all-inclusive list. Credit unions are expected to apply the guidance in this IRPS to their individual facts, circumstances, and situations. If a credit union's fact pattern differs from the fact patterns incorporated in the following Q&As, the credit union may decide to prepare and maintain different types of documentation than did the credit unions depicted in these Q&As.

Q&A #1—ALLL Under FAS 114—Measuring and Documenting Impairment

Facts: Approximately one-third of Credit Union A's business loan portfolio consists of large balance, non-homogeneous loans. Due to their large individual balances, these loans meet the criteria under Credit Union A's policies and procedures for individual review for impairment under FAS 114. Upon review of the large balance loans, Credit Union A determines that certain of the loans are impaired as defined by FAS 114.

Question: For the business loans reviewed under FAS 114 that are individually impaired, how should Credit Union A measure and document the impairment on those loans? Can it use an impairment measurement method other than the methods allowed by FAS 114?

Interpretive Response: For those loans that are reviewed individually under FAS 114 and considered individually impaired, Credit Union A must use one of the methods for measuring impairment that is specified by FAS 114 (that is, the present value of expected future cash flows, the loan's observable market price, or the fair value of collateral). Accordingly, in the circumstances described above, for the loans considered individually impaired under FAS 114, it would not be appropriate for Credit Union A to choose a measurement method not prescribed by FAS 114. For example, it would not be appropriate to measure loan impairment by applying a loss rate to each loan based on the average historical loss percentage for all of its business loans for the past five years.

Credit Union A should maintain, as sufficient, objective evidence, written documentation to support its measurement of loan impairment under FAS 114. If Credit Union A uses the present value of expected future cash flows to measure impairment of a loan, it should document the amount and timing of cash flows, the effective interest rate used to discount the cash flows, and the basis for the determination of cash flows, including consideration of current environmental factors[1] and other information reflecting past events and current conditions. When Credit Union A uses the fair value of collateral to measure impairment, Credit Union A should document how it determined the fair value, including the use of appraisals, valuation assumptions and calculations, the supporting rationale for adjustments to appraised values, if any, and the determination of costs to sell, if applicable, appraisal quality, and the expertise and independence of the appraiser. Similarly, Credit Union A should document the amount, source, and date of the observable market price of a loan, if that method of measuring loan impairment is used.

Q&A #2—ALLL Under FAS 114—Measuring Impairment for a Collateral Dependent Loan

Facts: Credit Union B has a $750,000 loan outstanding to Member X that is secured by real estate, which Credit Union B individually evaluates under FAS 114 due to the loan's size. Member X is delinquent in its loan payments under the terms of the loan agreement. Accordingly, Credit Union B determines that its loan to Member X is impaired, as defined by FAS 114. Because the loan is collateral dependent, Credit Union B measures impairment of the loan based on the fair value of the collateral. Credit Union B determines that the most recent valuation of the collateral was performed by an appraiser eighteen months ago and, at that time, the estimated value of the collateral (fair value less costs to sell) was $900,000.

Credit Union B believes that certain of the assumptions that were used to value the collateral eighteen months ago do not reflect current market conditions and, therefore, the appraiser's valuation does not approximate current fair value of the collateral. Several buildings, which are comparable to the real estate collateral, were recently completed in the area, increasing vacancy rates, decreasing lease rates, and attracting several tenants away from the borrower. Accordingly, credit review personnel at Credit Union B adjust certain of the valuation assumptions to better reflect the current market conditions as they relate to the loan's collateral.[2] After adjusting the collateral valuation assumptions, the credit review department determines that the current estimated fair value of the collateral, less costs to sell, is $575,000. Given that the recorded investment in the loan is $750,000, Credit Union B concludes that the loan is impaired by $175,000 and records an allowance for loan losses of $175,000.

Question: What type of documentation should Credit Union B maintain to support its determination of the allowance for loan losses of $175,000 for the loan to Member X?

Interpretive Response: Credit Union B should document that it measured impairment of the loan to Member X by using the fair value of the loan's collateral, less costs to sell, which it estimated to be $575,000. This documentation should include the credit union's rationale and basis for the $575,000 valuation, including the revised valuation assumptions it used, the valuation calculation, and the determination of costs to sell, if applicable.

Because Credit Union B arrived at the valuation of $575,000 by modifying an earlier appraisal, it should document its rationale and basis for the changes it made to the valuation assumptions that resulted in the collateral value declining from $900,000 eighteen months ago to $575,000 in the current period.[3]

Q&A #3—ALLL Under FAS 114—Fully Collateralized Loans

Facts: Credit Union C has $500,000 in business loans that are fully collateralized by purchased business equipment. The loan agreement for each of these loans requires the borrower to provide qualifying collateral sufficient to fully secure each loan. The member borrowers have physical control of the collateral. Credit Union C perfected its security interest in the collateral when the funds were originally distributed. On an annual basis,Credit Union C determines the market value of the collateral for each loan using two independent market quotes and compares the collateral value to the loan carrying value. Semiannually or more frequently as needed, the Credit Union C's credit administration function physically inspects the equipment. If there are any collateral deficiencies, CreditUnion C notifies the borrower and requests that the borrower immediately remedy the deficiency. Due in part to its efficient operation, Credit Union C has historically not incurred any material losses on these loans. Credit Union C believes these loans are fully-collateralized and therefore does not maintain any ALLL balance for these loans.

Question: What documentation does Credit Union C maintain to adequately support its determination that no allowance is needed for this group of loans?

Interpretive Response: Credit Union C's management summary of the ALLL includes documentation indicating that, in accordance with the credit union's ALLL policy, the collateral protection on these loans has been verified by the credit union, no probable loss has been incurred, and no ALLL is necessary. Documentation in Credit Union C's loan files includes the two independent market quotes obtained annually for each loan's collateral amount, the documents evidencing the perfection of the security interest in the collateral, and other relevant supporting documents. Additionally, Credit Union C's ALLL policy includes a discussion of how to determine when a loan is considered "fully collateralized" and does not require an ALLL. Credit Union C's policy requires the following factors to be considered and the credit union's findings concerning these factors to be fully documented:

1. Volatility of the market value of the collateral;
2. Recency and reliability of the appraisal or other valuation;
3. Recency of the credit union or other third party inspection of the collateral;
4. Historical losses on similar loans;
5. Confidence in the credit union's lien or security position including appropriate:
   a. Type of security perfection (e.g., physical possession of collateral or secured filing);
   b. Filing of security perfection (i.e., correct documents and with the appropriate officials), and
   c. Relationship to other liens.
6. Other factors as appropriate for the loan type

[1] Question #16 in Exhibit D–80A of EITF Topic D–80 and attachments indicates that environmental factors include existing industry, geographical, economic, and political factors.

[2] When reviewing collateral dependent loans, Credit Union B may often find it more appropriate to obtain an updated appraisal to estimate the effect of current market conditions on the appraised value instead of internally estimating an adjustment.

[3] In accordance with the FFIEC's **Federal Register** Notice, Implementation Issues Arising from FASB No. 114, "Accounting by Creditors for Impairment of a Loan," published February 10, 1995 (60 FR 7966, February 10, 1995), impaired, collateral-dependent loans must be reported at the fair value of collateral, less costs to sell, in regulatory reports. This treatment is to be applied to all collateral-dependent loans, regardless of type of collateral.

Q&A #4—ALLL Under FAS 5—Adjusting Loss Rates

Facts: Credit Union D's field of membership (lending area) includes a metropolitan area that is financially dependent upon the profitability of a number of sponsor manufacturing businesses. These businesses use highly specialized equipment and significant quantities of rare metals in the manufacturing process. Due to increased low-cost foreign competition, several of the parts suppliers servicing these sponsor manufacturing firms declared bankruptcy. The foreign suppliers have subsequently increased prices and the sponsor manufacturing firms have suffered from increased equipment maintenance costs and smaller profit margins. Additionally, the cost of the rare metals used in the manufacturing process increased and has now stabilized at double last year's price. Due to these events, the sponsor manufacturing businesses are experiencing financial difficulties and have recently announced downsizing plans.

Although Credit Union D has yet to confirm an increase in its loss experience as a result of these events, management knows that the credit union lends to a significant number of member's for business and individual purposes whose repayment ability depends upon the long-term viability of the sponsor manufacturing businesses. Credit Union D's management has identified particular segments of its business and consumer member bases that include member borrowers highly dependent upon sales or salary from the sponsor manufacturing businesses. Credit Union D's management performs an analysis of the affected portfolio segments to adjust its historical loss rates used to determine the ALLL. In this particular case, Credit Union D has experienced similar business and lending conditions in the past that it can compare to current conditions.

Question: How should Credit Union D document its support for the loss rate adjustments that result from considering these manufacturing firms' financial downturns?

Interpretive Response: Credit Union D should document its identification of the particular segments of its business and consumer loan portfolio for which it is probable that the sponsor manufacturing business' financial downturn has resulted in loan losses. In addition, Credit Union D should document its analysis that resulted in the adjustments to the loss rates for the affected portfolio segments. As part of its documentation, Credit Union D maintains copies of the documents supporting the analysis, including relevant newspaper articles, economic reports, and economic data, and notes from discussions with individual member borrowers.

Because in this case Credit Union D has had similar situations in the past, its supporting documentation also includes an analysis of how the current conditions compare to its previous loss experiences in similar circumstances. As part of its effective ALLL methodology, Credit Union D creates a summary of the amount and rationale for the adjustment factor, which management presents to the audit committee and board for their review and approval prior to the issuance of the financial statements.

Q&A #5—ALLL Under FAS 5—Estimating Losses on Loans Individually Reviewed for Impairment but Not Considered Individually Impaired

Facts: Credit Union E has outstanding loans of $875,000 to Member Y and $725,000 to Member Z, both of which are paying as agreed upon in the loan documents. The credit union's ALLL policy specifies that all loans greater than $700,000 must be individually reviewed for impairment under FAS 114. Member Y's financial statements reflect a strong net worth, good profits, and ongoing ability to meet debt service requirements. In contrast, recent information indicates Member Z's profitability is declining and its cash flow is tight. Accordingly, this loan is rated substandard under the credit union's loan grading system. Despite its concern, management believes Member Z will resolve its problems and determines that neither loan is individually impaired as defined by FAS 114.

Credit Union E segments its loan portfolio to estimate loan losses under FAS 5. Two of its loan portfolio segments are Segment 1 and Segment 2. The loan to Member Y has risk characteristics similar to the loans included in Segment 1 and the loan to Member Z has risk characteristics similar to the loans included in Segment 2.[4]

In its determination of the ALLL under FAS 5, Credit Union E includes its loans to Member Y and Member Z in the groups of loans with similar characteristics (i.e., Segment 1 for Member Y's loan and Segment 2 for Member Z's loan). Management's analyses of Segment 1 and Segment 2 indicate that it is probable that each segment includes some losses, even though the losses cannot be identified to one or more specific loans. Management estimates that the use of its historical loss rates for these two segments, with adjustments for changes in environmental factors provides a reasonable estimate of the credit union's probable loan losses in these segments.

Question: How does Credit Union E adequately support and document an ALLL under FAS 5 for these loans that were individually reviewed for impairment but are not considered individually impaired?

Interpretive Response: As part of Credit Union E's effective ALLL methodology, it documents the decision to include its loans to Member Y and Member Z in its determination of its ALLL under FAS 5. It also documents the specific characteristics of the loans that were the basis for grouping these loans with other loans in Segment 1 and Segment 2, respectively. Credit Union E maintains documentation to support its method of estimating loan losses for Segment 1 and Segment 2, including the average loss rate used, the analysis of historical losses by loan type and by internal risk rating, and support for any adjustments to its historical loss rates. The credit union also maintains copies of the economic and other reports that provided source data.

[4] These groups of loans do not include any loans that have been individually reviewed for impairment under FAS 114 and determined to be impaired as defined by FAS 114.

Q&A #6—Consolidating the Loss Estimates—Documenting the Reported ALLL

Facts: Credit Union F determines its ALLL using an established systematic process. At the end of each period, the accounting department prepares a summary schedule that includes the amount of each of the components of the ALLL, as well as the total ALLL amount, for review by senior management, the Credit Committee, and, ultimately, the board of directors. Members of senior management and the Credit Committee meet to discuss the ALLL. During these discussions, they identify changes to be made to certain of the ALLL estimates. As a result of the adjustments made by senior management, the total amount of the ALLL changes. However, senior management (or its designee) does not update the ALLL summary schedule to reflect the adjustments or reasons for the adjustments. When performing their audit of the financial statements, the independent accountants are provided with the original ALLL summary schedule that was reviewed by management and the Credit Committee, as well as a verbal explanation of the changes made by senior management and the Credit Committee when they met to discuss the loan loss allowance.

Question: Are Credit Union F's documentation practices related to the balance of its loan loss allowance appropriate?

Interpretive Response: No. A credit union must maintain supporting documentation for the loan loss allowance amount reported in its financial statements. As illustrated above, there may be instances in which ALLL reviewers identify adjustments that need to be made to the loan loss estimates. The nature of the adjustments, how they were measured or determined, and the underlying rationale for making the changes to the ALLL balance should be documented. Appropriate documentation of the adjustments should be provided to the board of directors (or its designee) for review of the final ALLL amount to be reported in the financial statements. For credit unions subject to external audit, this documentation should also be made available to the supervisory committee and its independent accountants. If changes frequently occur during management or committee reviews of the ALLL, management may find it appropriate to analyze the reasons for the frequent changes and to reassess the methodology the credit union uses.

Bibliography

GAAP and Auditing Guidance

American Institute of Certified Public Accountants' Audit and Accounting Guide, Audits of Credit Unions, 2000 edition

Auditing Standards Board Statement on Auditing Standards No. 61, Communication With Audit Committees (AICPA, Professional Standards, vol. 1, AU sec. 380)

Emerging Issues Task Force Topic No. D–80, Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio (EITF Topic D–80 and attachments), discussed on May 19–20, 1999

Financial Accounting Standards Board Interpretation No. 14, Reasonable Estimation of the Amount of a Loss (An Interpretation of FASB Statement No. 5)

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 5, Accounting for Contingencies

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of A Loan (An Amendment of FASB Statements No. 5 and 15)

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 118, Accounting by Creditors for Impairment of a Loan—Income Recognition and Disclosures (An Amendment of FASB Statement No. 114)

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities—a Replacement of FASB Statement No. 125

Regulatory Guidance

Interagency Policy Statement on the Allowance for Loan and Lease Losses (ALLL), December 21, 1993

United States General Accounting Office Report to Congressional Committees, Depository Institutions: Divergent Loan Loss Methods Undermine Usefulness of Financial Reports, (GAO/AIMD–95–8), October 1994

[FR Doc. 01–26935 Filed 10–25–01; 8:45 am]

BILLING CODE 7535–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company, Inc. et al.; Notice of Consideration of Issuance of Amendments toFacility Operating License, Proposed No Significant HazardsConsideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NFP–5 issued to Southern Nuclear Operating Company, Inc. et al., (the licensee) for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

The proposed amendments would revise the Technical Specifications to allow the main control room boundary to be opened intermittently under administrative controls and to allow 24 hours to restore the main control room boundary to Operable status before requiring the plant to perform an orderly shutdown.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve the Main Control Room Environmental (MCREC) system which provides a radiologically controlled environment from which the plant can be operated following a design basis accident (DBA). Therefore, the MCREC system is not assumed to be the initiator of any analyzed accident. The proposed changes allow the main control room boundary to be opened intermittently under administrative control, and allow 24 hours to restore the main control room boundary to Operable status before requiring the plant to perform an orderly shutdown. The 24 hour Completion Time is reasonable based on the low probability of a DBA occurring during this time period and SNC's commitment to implement, via administrative controls, appropriate compensatory measures consistent with the intent of 10 CFR 50, Appendix A, General Design Critieria (GDC) 19. These compensatory measures minimize the consequences of an open main control room boundary and assure that MCREC system can continue to perform its function. As such, these changes will not affect the function or operation of any other systems, structures, or components.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluted.

The proposed changes allow the main control room boundary to be opened intermittently under administrative control, and allow 24 hours to restore the main control room boundary to Operable status before requiring the plant to perform an orderly shutdown. The 24 hour Completion Time is reasonable based on the low probability of a DBA occurring during this time period and SNC's commitment to implement, via administrative controls, appropriate compensatory measures consistent with the intent of 10 CFR 50, Appendix A, GDC 19. These compensatory measures minimize the consequences of an open main control room boundary and assure that the MCREC system can continue to perform its function. As such, these changes will not affect the function or operation of any other systems, structures, or components.

3. The propose changes do not involve a significant reduction in a margin of safety.

The proposed changes allow the main control room boundary to be opened intermittently under administrative control, and allow 24 hours to restore the main control room boundary to Operate status before requiring the plant to perform an orderly shutdown. The 24 hour Completion Time is reasonable based on the low probability of a DBA occurring during this time period and SNC's commitment to implement, via administrative controls, appropriate compensatory measures consistent with the intent of 10 CFR 50, Appendix A, GDC 19. These compensatory measures minimize the consequences of an open main control room boundary and assure that the MCREC system can continue to perform its function such that compliance with GDC 19 is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and

Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 26, 2001, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before issuance of the amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw Pittman, Pott and Trowbridge, 2300 N Street, NW., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 8, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMSor if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 19th day of October 2001.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–26945 Filed 10–25–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Final Decision Related to the U.S. Department of Energy's General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories and its Yucca Mountain Site Suitability Guidelines

AGENCY: Nuclear Regulatory Commission.

ACTION: Concurrence on the U.S. Department of Energy's revision of its general guidelines for the recommendation of sites for nuclear waste repositories, and on its guidelines for determining the suitability of the site at Yucca Mountain, Nevada.

SUMMARY: This final decision sets forth the reasons of the U.S. Nuclear Regulatory Commission ("NRC" or the "Commission") for concurring on the revised "General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories" and on the "Yucca Mountain Site Suitability Guidelines," designated 10 CFR part 963, proposed by the U.S. Department of Energy ("DOE" or the "Department"). These draft final guidelines were submitted by DOE to the Commission for review and concurrence on May 4, 2000.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION, CONTACT: Michael P. Lee, Division of Waste Management, Environmental and Performance Assessment Branch, telephone 301/415–6677, e-mail: mpl@NRC.gov; or C. William Reamer, Division of Waste Management, High-Level Waste Branch, telephone 301/415–6537, e-mail: cbr@NRC.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 112(a) of the Nuclear Waste Policy Act of 1982 (NWPA) directed DOE to develop general siting guidelines for the recommendation of sites for characterization as potential repositories for the disposal of spent nuclear fuel and other high-level radioactive wastes (HLW). Section 112(a) also called for NRC to concur on those guidelines. DOE issued its final guidelines, in the form of 10 CFR part 960, on December 6, 1984 (49 FR 47715). The DOE guidelines defined the technical requirements that candidate sites must meet, and specified how DOE would implement its HLW repository site-selection process. The guidelines also recognized NRC jurisdiction for the resolution of differences between the guidelines and NRC's regulations governing the disposal of HLW in geologic repositories at 10 CFR part 60 and provided that DOE would obtain NRC concurrence on future revisions to the siting guidelines. NRC concurred on DOE's general siting guidelines in July 1984 (49 FR 28130).

In 1987, Congress amended the NWPA and directed DOE to characterize only the Yucca Mountain site, in Nye County, Nevada. In 1992, in the Energy Policy Act (EnPA—Public Law 102–486), Congress directed the National Academy of Sciences (NAS) to conduct a study to provide findings and recommendations on reasonable standards for protection of the public health and safety, from releases of radioactive materials stored or disposed of in a repository at the Yucca Mountain site. The EnPA also required the U.S. Environmental Protection Agency (EPA) to issue public health and safety standards consistent with the findings and recommendations of the NAS, and the NRC to modify its technical requirements and criteria to be consistent with EPA's standards. The NAS published its recommendations in August 1995.

On December 16, 1996, DOE published proposed modifications to its original 1984 guidelines (61 FR 66158). DOE's proposed amendments would have created a new subpart to part 960, addressing only the Yucca Mountain site, and were designed to concentrate the regulatory review on the analyses of overall repository performance. EPA published its final site-specific radiation standards for Yucca Mountain (40 CFR part 197) on June 13, 2001 (66 FR 32073). After publication of proposed site-specific disposal regulations for public comment on February 22, 1999 (64 FR 8640), NRC considered and affirmed NRC's final regulations on September 7, 2001.

II. DOE's Revised Siting Guidelines

In 1999, DOE decided to issue a revised proposal amending its general guidelines, in lieu of finalizing the 1996 proposed revised guidelines. Its revised proposal limited the general guidelines to the preliminary screening of potential sites for a nuclear waste repository, and added a new part 963 for determining the suitability of the Yucca Mountain site for a potential geologic repository (64 FR 67054).

DOE gave three principal reasons for its new proposal: (a) The need to provide more specificity for the criteria and methodology to be used in evaluating the suitability of the Yucca Mountain site and to better explain the legal bases for the proposal; (b) DOE's issuance, in December 1998, of the report entitled, "Viability Assessment of a Repository at Yucca Mountain," which sets forth the bases for the site suitability criteria DOE is proposing to use and the methodology for applying the criteria to a design for a proposed repository at the Yucca Mountain site; and (c) the need for better alignment with EPA's and NRC's site-specific regulations, under development at the time. *See* 64 FR 67054, 67055. The public comment period for the proposed rule ended on February 14, 2000. In addition, DOE conducted two public hearings in Nevada as part of the public comment process. Overall, DOE received about 125 comments, questions, and concerns on its proposal from 45 entities and members of the public, including comments from the NRC staff, dated March 3, 2000.

In the new part 963, DOE proposes two separate determinations for evaluating the suitability of the Yucca Mountain site. Using information and data developed through its site characterization programs to date, DOE would conduct both a preclosure and a postclosure safety evaluation. The two separate, risk-based assessments are consistent with NRC's final site-specific regulation for the proposed Yucca Mountain site, 10 CFR part 63, which calls for an Preclosure Safety Assessment and Total System Performance Assessment for the two respective phases of repository activities. DOE would compare the results from each of the two analyses with the applicable EPA standards and the NRC regulations. 10 CFR part 963 also specifies the evaluation methods and criteria to be used, as well as the specific determinations to be reached by DOE. Although the revised draft final siting guidelines at part 963 are closely linked to certain licensing criteria and requirements in NRC's part 63 regulation, DOE has noted that meeting part 963 would not be the equivalent of a determination that the candidate site and the proposed design will meet all the NRC licensing requirements necessary to receive authorization to construct the proposed repository at Yucca Mountain.

In a letter dated May 4, 2000, DOE sent to the Commission, for its review and concurrence, the revised draft final siting guidelines, in the form of a proposed **Federal Register** notice

amending part 960 and containing the new part 963. Also included as part of the proposed **Federal Register** notice were a DOE analysis and response to the comments.

III. Concurrence Criteria

The Commission considered what criteria were appropriate for its concurrence in its 1984 decision-making on DOE's siting guidelines and believes that these criteria should continue to be used, to the extent that they are still appropriate. The 1984 concurrence criteria were:

1. The siting guidelines must not be in conflict with NRC's geologic disposal regulations.
2. The siting guidelines must not contain provisions that might lead DOE to select sites that would not be reasonable alternatives for an Environmental Impact Statement (EIS).
3. The siting guidelines should not contain provisions that are in conflict with NRC responsibilities embodied in NWPA, as amended.

The Commission finds that the first and the third criteria remain relevant. The second criterion is no longer relevant because the 1987 amendments to the NWPA eliminated the need for consideration of alternative repository sites in an EIS. Moreover, in providing its 1984 concurrence, DOE agreed to meet seven conditions, of which the principal two [1] were:

1. DOE was to amend its siting guidelines to recognize NRC jurisdiction over resolution of differences between the Department's siting guidelines and NRC's geologic disposal regulations.
2. DOE was to commit to obtain NRC concurrence on future siting guideline revisions.

These two conditions remain valid for the present concurrence decision.

IV. Commission Decision

The NRC staff raised three issues in its March 3, 2000, comments on DOE's 1999 proposed revised guidelines. First, the staff pointed out that there appeared to be no discussion addressing the potential matter of a conflict between the proposed revisions and the applicable NRC regulations and recommended that this issue be addressed in the statement of considerations (SOC) for the guidelines. Second, the staff noted that the SOC inappropriately included a reference to NRC's quality assurance (QA) criteria of Appendix B in 10 CFR part 50 as "considerations" rather than as "pass/fail standards" in DOE's discussion of how it has defined "criteria." Staff underscored that NRC's QA criteria are factors that must be present if DOE's QA program is to be judged adequate and that any implication that NRC's QA criteria are not required should be avoided, lest confusion result as to their standing as regulatory requirements. Third, the staff noted that DOE's proposed definition of "cladding" conveyed the inaccurate notion that all cladding is corrosion-resistant, whereas, in reality, some spent nuclear fuels are clad in aluminum, which is not generally considered corrosion-resistant.

DOE has addressed these comments in its draft final revisions to its guidelines. With respect to the first comment, DOE has added material in its SOC explaining that the necessary consistency between the DOE and NRC regulations is obtained through the careful crafting of its regulation to conform to pertinent parts of NRC's part 63, and that any conflicts between the two are resolved through the concurrence process. With respect to the second comment, DOE's SOC now acknowledges that NRC's QA criteria are factors that must be present for anyone's QA program to be judged adequate, and that NRC's QA criteria are mandatory despite their lack of quantitative, pass-fail references. Finally, DOE has revised its definition of "cladding" to indicate that it is generally made of corrosion-resistant zirconium alloy or stainless steel, thereby eliminating the implication that it is always made of such material. The Commission finds that DOE acceptably addressed the NRC staff's comments.

Further, the Commission has not identified anything in DOE's revised siting guidelines that conflicts with NRC's 10 CFR part 63 regulation, as modified to be consistent with the final EPA standard for Yucca Mountain, nor has the Commission identified anything in DOE's revised siting guidelines that would conflict with NRC's responsibilities under the NWPA, as amended. With respect to the two conditions, DOE has responded acceptably, as described above, to the concerns that NRC jurisdiction be recognized for the resolution of any potential conflicts between DOE and NRC regulations. Regarding the second condition, DOE continues to commit [see 10 CFR 963.10(b)] to seek NRC concurrence on future revisions, if any, to its siting guidelines.

In summary, the Commission has determined that DOE has acceptably addressed the issues raised by the NRC staff in its March 3, 2000, letter. Further, the Commission finds: (a) that the siting guidelines are not in conflict with NRC's geologic disposal regulations at 10 CFR part 63; and (b) the siting guidelines do not contain provisions that are in conflict with NRC responsibilities embodied in the NWPA, as amended. Therefore, the Commission concurs on DOE's revised general guidelines for the recommendation of sites for nuclear waste repositories (part 960) and on its guidelines for determining the suitability of the Yucca Mountain site (part 963).

The Commission recognizes that DOE could make further changes to its revised draft final siting guidelines submitted to the Commission, for concurrence, prior to the publication of the guidelines. Consequently, the Commission's concurrence is conditional on DOE's agreement to notify NRC of any changes to the draft final guidelines (including changes to the Supplemental Information) and its agreement to retransmit the revised rulemaking package to the Commission, if any substantive changes are made, for a determination as to whether re-concurrence is needed.[2]

V. Commission Concurrence Process

Neither the NWPA nor its amendments specify any particular procedure for NRC concurrence on DOE's siting guidelines. In an earlier ruling on a petition by the Yakima Indian Nation, the Commission found that NRC's concurrence responsibility is not a rulemaking and does not require notice and opportunity for public comment (48 FR 39536). The State of Nevada and Nye County (Nevada), in May 2000, requested that the Commission provide the opportunity for public comment by interested stakeholders.

DOE's siting guidelines at part 963 are similar to, and consistent with, NRC's site-specific disposal regulations for Yucca Mountain at Part 63. Extensive public comment was obtained, on the proposed part 63,[3] through a **Federal Register** notice and the conduct of five public meetings in Nevada. Moreover, the Commission has reviewed the record of public comments on the proposed part 963 as well. Consequently, the Commission has determined that sufficient information is available in the record regarding stakeholder concerns such that further stakeholder involvement before the Commission's concurrence on part 963 is not necessary.

Dated this 19th day of October, 2001, at Rockville, Maryland.

For the Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–26946 Filed 10–25–01; 8:45 am]

BILLING CODE 7590–01–P

[1] The remaining conditions pertained to specific languate in the siting criteria, themselves, as well as clarifications and additional specificity regarding their application.

[2] We also note that DOE needs to modify the reference to "the quality assurance (QA)criteria of Appendix B in 10 CFR part 50 * * *"in the Supplenmental Information of its May 4, 2000, proposed **Federal Register** notice. This reference is no longer warranted in light of the incorporation of applicable part 50 QA criteria in the final part 63 rule.

[3] On September 7, 2001, the Commission approved the final rule at part 63.

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

Board Votes To Close October 22, 2001, Meeting

By telephone vote on October 22, 2001, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held in Washington, DC, via teleconference. The Board determined that prior public notice was not possible.

ITEM CONSIDERED: 1. Emergency Capital Funding—Hazardous Materials.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, David G. Hunter, at (202) 268–4800.

David G. Hunter,

Secretary.

[FR Doc. 01–27175 Filed 10–24–01; 2:28 am]

BILLING CODE 7710–12–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 10:30 a.m., Monday, November 5, 2001; 3:30 p.m., Monday, November 5, 2001.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: November 5—10:30 a.m. (Closed); November 5—3:30 p.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, November 5—10:30 a.m. (Closed).

1. Financial Performance.
2. Strategic Planning.
3. Personnel Matters and Compensation Issues.

Monday, November 5—3:30 p.m. (Open)

1. Minutes of the Previous Meeting, October 1–2, 2001.
2. Remarks of the Postmaster General and CEO.
3. Tentative Agenda for the December 3–4, 2001, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: David G. Hunter, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

David G. Hunter,

Secretary.

[FR Doc. 01–27176 Filed 10–24–01; 2:28 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25217; 812–11592]

Evergreen Select Fixed Income Trust, *et al.*; Notice of Application

October 22, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act") under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Applicants: Evergreen Selected Fixed Income Trust; Evergreen Select Equity Trust; Evergreen Select Money Market Trust; Evergreen Municipal Trust; Evergreen Equity Trust; Evergreen Fixed Income Trust; Evergreen International Trust; Evergreen Money Market Trust; Evergreen Variable Annuity Trust (collectively, the "Evergreen Trusts"); Evergreen Investment Management Company, LLC ("Evergreen"); any person controlling, controlled by or under common control with Evergreen (together with Evergreen, an "Evergreen Adviser"); any other open-end management investment company and its series registered under the Act for which an Evergreen Adviser serves as investment adviser ("Future Trusts" and together with the Evergreen Trusts, the "Trusts").[1]

FILING DATES: The application was filed on April 22, 1999, and amended on August 1, 2001. Applicants have agreed to file another amendment during the notice period, the substance of which is reflected in this notice.

Notice or Notification Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 16, 2001 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants: Catherine Foley, Esq., Wachovia Corporation, c/o Evergreen Funds, 200 Berkeley Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942–0646, or Nadya B. Roytblat, Assistant Director, at (202) 945–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Each Evergreen Trust is registered under the Act as an open-end management investment company and is organized as a Delaware business trust. Currently, there are nine Evergreen Trusts comprised of one hundred and five series (together with the series of the FutureTrusts, the "Funds"). Evergreen, a subsidiary of Wachovia Corporation ("Wachovia"),

[1] All Trusts that currently intend to rely on the order are named as applicants, and any other Trust that subsequently relies on the order will comply with the terms and conditions of the application.

and each of the Evergreen Advisers, is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). Each Evergreen Trust has entered into an investment advisory agreement with an Evergreen Adviser. Evergreen Investment Services, Inc. serves as administrator for the Funds.

2. The Funds and the Evergreen Advisers have obtained an order under section 17(d) and rule 17d–1 permitting the Funds to deposit uninvested cash balances that remain at the end of a trading day in one or more joint trading accounts (each a "Joint Account") to be used to enter into short-term investments.[2] The Funds and their advisers have also obtained an order permitting the Funds to invest their cash balance in one or more of the Funds that are money market funds that comply with rule 2a–7 of the Act (the "Money Market Funds").[3]

3. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments, either directly or through the Joint Account. Other Funds may borrow money from the same or similar banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade "fail" in which cash payment for a security sold by a Fund has been delayed. Currently, the Funds have credit arrangements with their custodians (*i.e.*, overdraft protection) under which the custodians may, but are not obligated to, lend money to the Funds to meet the Funds' temporary cash needs.

4. If the Funds were to borrow money from their custodians under their current arrangements or under other credit facility arrangements with a bank, the Funds would pay interested on the borrowed cash at a rate which would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit, would require the Funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Fund.

[2] Investment Company Act Release Nos. 19827 (Nov. 1, 1993) (notice) and 19908 (Nov. 29, 1993) (order).

[3] Investment Company Act Release Nos. 24213 (Dec. 21, 1999) (notice) and 24260 (Jan. 24, 2000) (order).

5. Applicants request an order that would permit the Trusts, on behalf of the Funds, to enter into lending agreements ("Interfund Lending Agreements") under which the Funds would lend money and borrow money for temporary purposes directly to and from each other through a credit facility ("Interfund Loan"). Applicants believe that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain overdraft protection currently provided by their customers.

6. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are affected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. Applications also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experience a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft changes. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

8. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash through the Joint Account in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

9. The interest rate charged to the Funds on any Interfund Loan (the "Interfund Loan Rate") would be the average of the "Repo Rate" and the "Bank Loan Rate," both as defined below. The Repo Rate for any day would be the highest rate available from investments in overnight repurchase agreements through the Joint Account. The Bank Loan Rate for any day would be calculated by an Evergreen Adviser each day an Interfund Loan is made according to a formula established by the Board of Trustees for each Trust (the "Trustees") designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (e.g., Federal Funds plus 25 basic points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Trustees periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Trustees.

10. The credit facility would be administered by an Evergreen Adviser's money market investment professionals (including the portfolio manager for the Money Market Funds) and fund accounting department (collectively, the "Cash Management Team"). Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. The Evergreen Adviser on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Team would allocate loans among borrowing Funds without any further communication from portfolio managers (other than the Money Market Fund portfolio managers on the Cash Management Team). Applicants expect far more available uninvested cash each day than borrowing demand. All allocations will require the approval of at least one member of the Cash Management Team who is not a Money Market Fund portfolio manager. After allocating cash for Interfund Loans, the Evergreen Adviser will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio managers of the Money Market Funds. The Money Market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

11. The Cash Management Team will allocate borrowing demand and cash available for lending among the Funds on what the Cash Management Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by the Trustees on behalf of each Fund, including a majority of Trustees who are not "interested persons" of the Funds, as defined in section 2(a)(19) of the Act ("Independent Trustees"), to ensure that both borrowing and lending Funds participate on an equitable basis.

12. The Evergreen Adviser would (a) monitor the Interfund Loan Rate and the other terms and conditions of the loans, (b) ensure compliance with each Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to the Trustees concerning any transactions by the Funds under the credit facility and the Interfund Loan Rate charged in the transactions.

13. The Evergreen Adviser would administer the credit facility as part of its duties under its existing investment advisory agreement with each Fund and would receive no additional fee as compensation for its services. Wachovia or companies affiliated with it may collect standard pricing and bookkeeping fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable loan transactions.

14. Each Fund's participation in the proposed credit facility will be consistent with its organizational documents and its investment policies and limitations. The prospectus of each Fund discloses that the Fund may borrow money and lend portfolio securities. The Statement of Additional Information ("SAI") of each Fund discloses that the Fund may borrow money in the amount of 33⅓% of its total assets, and that the Fund may also borrow up to an additional 5% of its assets from banks or others. Each Fund, including the Money Market Funds, may also mortgage or pledge their securities with the same restrictions as the borrowing policy. As a fundamental policy, each Fund may lend securities or other assets if, as a result, no more than 33⅓% of its total assets would be lent to other parties.

15. Prior to establishing the credit facility, the Trustees will solicit a shareholder vote allowing certain approved Funds to lend money, within the lending limitations set forth in the application. The SAI of each Fund participating in the interfund lending arrangements will disclose all material facts about the Fund's intended participation in the credit facility.

16. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having an Evergreen Adviser as their common investment adviser.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (a) an Evergreen Adviser would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through the Joint Account or in the Money Market Funds; (c) the Interfund Loans would not involve a greater risk than other similar investments; (d) the lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property

to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that the Evergreen Adviser would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided that, immediately after the borrowing, there is an asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting the relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated persons of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d–1 provides that in passing upon applications for exemptive relief, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies, and purposes of the Act in that if offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Evergreen Adviser will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate; (b) more favorable to the lending Fund than the yield on the Money Market Funds ("MMF Yield") (for those Funds that invest in the Money Market Funds); and (c) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, the event of that default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such a call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including, but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would exceed the limits imposed by section 18 of the Act.

5. Before any Fund that has outstanding interfund borrowing may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all of its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 will no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of collateral to market each day and will pledge such additional collateral as is necessary to maintain market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No equity, taxable bond or Money Market Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 5%, 7.5% or 10% respectively, of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund will not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Cash Management Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds, without the intervention of any portfolio manager of the Funds (except any portfolio manager of the Money Market Funds acting in her or his capacity as a member of the Cash Management Team). All allocations will require the approval of at least one member of the Cash Management Team who is not a Money Market Fund portfolio manager. The Cash Management Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the portfolio manager of the Money Market Funds has access to loan demand data). The Evergreen Adviser will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio manager of the Money Market Funds.

13. An Evergreen Adviser will monitor the Interfund Loan Rates charged and the other terms and conditions of the Interfund Loans and will make quarterly reports to the Trustees concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit thereunder.

14. The Trustees, on behalf of each Fund, including a majority of the Independent Trustees will: (a) Review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) establish the Bank Loan Rate formula used to determine the Interfund Loan Rate and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Evergreen Adviser will promptly refer such a loan for arbitration to an independent arbitrator selected by the Trustees on behalf of any Fund involved in the loan who will also serve as arbitrator of disputes concerning Interfund Loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit at least annually a written report to the Trustees setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount and maturity of the loan, the Interfund Loan Rate, the rate of interest available at the time on short-term repurchase agreements, commercial bank borrowings, the MMF Yield and such other information presented to the Trustees in connection with the review required by conditions 13 and 14.

17. The Evergreen Adviser will prepare and submit to the Trustees for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all the Funds are treated fairly. After the commencement of the operations of the credit facility, Evergreen will report on the operations of the credit facility at the Trustees' quarterly meetings.

In addition, for two years following the commencement of the use of the credit facility, the independent public accountant for each Fund will prepare an annual report that evaluates Evergreen's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report will be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it will be filed pursuant to item 77Q3 of Form N–SAR. In particular, the report will address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, and the MMF Yield, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with the procedures established by the Trustees; and (e) that the Interfund Loan Rate does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility unless it has fully disclosed in its SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26961 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25219; File No. 812–12252]

Great American Life Insurance Company of New York, et al.

October 22, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder for the recapture of certain bonus credits.

APPLICANTS: Great American Life Insurance Company of New York ("GALIC NY"), Annuity Investors Life Insurance Company ("Annuity Investors," and together with GALIC NY, the "Insurance Companies"), GALIC of New York Separate Account I ("Separate Account I"), Annuity Investors Variable Account A ("Variable Account A"), Annuity Investors Variable Account B ("Variable Account B," and together with Separate Account I and Variable Account A, the "Current Accounts"), and Great American Advisors, Inc. (together with Insurance Companies and Current Accounts, the "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order to permit, under specified circumstances, the recapture of certain bonuses applied to purchase payments made under: (1) Certain deferred variable annuity contracts and certificates, described herein, that the Insurance Companies issue through any of their Current Accounts (the contracts and certificates, including certain data pages and endorsements, are collectively referred to herein as the "Bonus Contracts"); and (2) contracts and certificates, including certain data pages and endorsements, that the Insurance Companies may issue in the future ("Future Bonus Contracts," and together with the Bonus Contracts, "Contracts") through any of their Current Accounts or through any future separate account of the Insurance Companies ("Future Accounts," and together with the Current Accounts, the "Accounts"). Such Future Bonus Contracts will be substantially similar to the Bonus Contracts in all material respects. Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with the Insurance Companies, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts offered through the Accounts (collectively, "Future Underwriters").

FILING DATE: The application was filed on September 13, 2000, and amended and restated on October 15, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 16, 2001, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Carol Edwards Dunn, Esq., Great American Life Insurance Company of New York, Annuity Investors Life Insurance Company, P.O. Box 5420, Cincinnati, Ohio 45201–5420.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Fang, Attorney at (202) 942–0685, or Keith E. Carpenter, Branch Chief, at (202) 942–0679, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

Applicants

1. GALIC NY is a stock life insurance company organized under the laws of the State of New York. GALIC NY is a wholly-owned subsidiary of Great American Life Insurance Company, a life insurance company domiciled in the State of Ohio, that is a wholly-owned subsidiary of Great American Financial Resources, Inc. (formerly known as American Annuity Group, Inc.), a publicly-traded insurance holding company. Great American Financial Resources, Inc. is indirectly controlled by American Financial Group, Inc., a publicly-traded holding company. GALIC NY serves as depositor of Separate Account I, which was established in May 1999. GALIC NY may establish one or more Future Accounts for which it will serve as depositor.

2. Annuity Investors is a stock life insurance company organized under the laws of the State of Ohio. Annuity Investors also is a wholly-owned subsidiary of Great American Life Insurance Company. Annuity Investors serves as depositor of both Variable Account A and Variable Account B, which were established in May 1995 and December 1996, respectively. Annuity Investors may establish one or more Future Accounts for which it will serve as depositor.

3. Great American Advisors, Inc. ("GAA") (formerly known as, "AAG Securities, Inc.") is the principal underwriter of the Current Accounts and is the distributor of the variable annuity contracts funded through those Current Accounts. GAA is a wholly-owned subsidiary of Great American Financial Resources, Inc. GAA is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and is a member of the NASD. The variable annuity contracts issued by the Current Accounts are offered or will be offered through registered representatives of GAA or others who are registered broker-dealers under the Exchange Act and NASD members and who have entered into selling agreements with GAA or any Future Underwriter. GAA or any Future Underwriter may act as principal underwriter for any Future Account and distributor for any Future Bonus Contracts. A Future Underwriter also may act as principal underwriter for any of the Accounts and distributor for any of the Contracts.

4. Separate Account I is a segregated asset account of GALIC NY, and Variable Account A and Variable Account B are each segregated asset accounts of Annuity Investors. Each Account is or will be registered with the Commission as a unit investment trust under the Act. Each Account funds or will fund the variable benefits available under the Contracts issued through that Account. Units of interest in each Account are registered or will be registered under the Securities Act of ("1933 Act").

5. GALIC NY and/or Annuity Investors may issue Future Bonus Contracts through their respective Current Accounts or Future Accounts. That portion of the respective assets of the Current Accounts that is equal to the reserves and other contract liabilities with respect to the Current Accounts is not chargeable with liabilities arising out of any other business of GALIC NY or Annuity Investors, as the case may be. Any income, gains or losses, realized or unrealized, from assets allocated to any Current Account are, in accordance with the Bonus Contracts, credited to or charged against the Current Account, without regard to other income, gains or losses of GALIC NY or Annuity Investors, as the case may be. The same will be true of any Future Accounts of either Insurance Company.

The Bonus Contracts

6. The Bonus Contracts are individual or group flexible premium deferred annuity contracts that may be issued on a tax-qualified or non-tax-qualified basis. Currently, the Bonus Contracts may be purchased: (1) With a minimum initial payment of $2,000 for tax-qualified Bonus Contracts and $5,000 for non-tax-qualified Bonus Contracts, or (2) under a periodic payment program in minimum installments of $50 per month for tax-qualified Bonus Contracts and $100 per month for non-tax-qualified Bonus Contracts. A Bonus Contract owner may make additional payments, which require a $50 minimum for either tax-qualified or non-tax-qualified Bonus Contracts, subsequent to the initial payment. The maximum single purchase payment on either a tax-qualified or non-tax-qualified Bonus Contract is $500,000 without prior approval from the respective Insurance Companies. These maximums and minimums may be different for Future Bonus Contracts, and may be prospectively changed by rider or endorsement for Bonus Contracts. Any such changes would be disclosed in the applicable prospectus(es). Future Bonus Contracts will be substantially similar in all material respects to the Bonus Contracts.

7. Each time one of the Insurance Companies receives a purchase payment from an owner of a Bonus Contract, it will credit to the owner's account value a bonus ("Bonus") equal to 4% of each purchase payment. The Bonus will be allocated according to the allocation instructions in effect for purchase payments under the particular Bonus Contract and will generally be deemed to be a purchase payment under a Bonus Contract. This means that a contingent deferred sales charge ("CDSC"), to the extent applicable to the purchase payment, will be deducted from the Bonus amount if the Bonus is returned to the Bonus Contract owner (rather than being recaptured) on a full or partial surrender after the first Contract year. A CDSC would not be imposed with respect to any Bonus amounts that are recaptured upon cancellation during the free-look period. A CDSC is also not imposed with respect to any Bonus amounts upon full or partial surrender during the first Contract year. The CDSC is calculated separately for each purchase payment surrendered, based on the number of full years elapsed between the date of receipt of the purchase payment and the date that the request for surrender was received. No portion of the Bonus will be recaptured on a partial surrender.

8. The Insurance Companies will fund Bonus amounts from their respective general account assets. The Insurance Companies will recapture from a Bonus Contract owner: (1) Any Bonus previously credited if the owner returns the Bonus Contract for a refund during the free-look period; and (2) any Bonus previously credited to any purchase payment made during the First Contract year, if the Bonus Contract is surrendered in full during the first Contract year.

9. The owner of an individual Bonus Contract may cancel the Bonus Contract before midnight of the 20th day following the date the owner receives the Bonus Contract unless a longer period is required by state law. If the owner cancels the Bonus Contract during the applicable time period, the Bonus Contract will be void, and the Insurance Companies will refund the purchase payment(s) in full, less the Bonus amounts credited to the purchase payment(s) and plus or minus any investment gains or losses under the Bonus Contract as of the end of the valuation period during which the returned Bonus Contract or the cancellation request is received by the Insurance Company (unless a full return of purchase payments is required under state law).

10. Owners of the Bonus Contracts may allocate their purchase payments to any of the available sub-accounts or fixed account options. Each sub-account invests in shares of a corresponding registered investment company or series thereof (each, a "Portfolio").

11. The Bonus Contracts provide for various surrender options, annuity benefits, and annuity payout options, as well as transfer privileges among the Portfolios, dollar cost averaging, and other features. The Bonus Contracts contain the following charges: (1) a CDSC based on the number of full years elapsed between the date of receipt of the purchase payment and the date that the request for surrender was received equal to a maximum of 8% of purchase payments surrendered (including, after the first contract year, any Bonuses credited thereto), declining to 0% after seven years, which may be waived in certain circumstances as disclosed in the prospectus for the Bonus Contract; (2) a $30 annual Bonus Contract maintenance fee, which may be waived in certain circumstances as disclosed in the prospectus for the Bonus Contract; (3) a mortality and expense risk fee at an effective annual rate of 1.25%; (4) an administration charge at an effective annual rate of 0.15%, which may be waived where the Insurance Company incurs reduced sales and servicing expenses; (5) a transfer fee of $25 for each transfer in excess of twelve in any Bonus Contract year; and (6) any applicable state and local government premium taxes. In addition, assets invested in the Portfolios are charged with annual operating expenses of those Portfolios. All such fees and charges, and circumstances under which such fees and charges may be reduced or waived, are described in greater detail in the "CHARGES AND DEDUCTIONS" section of the prospectus contained in the Form N–4 Registration Statements of the Insurance Companies and the Current Accounts.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the policy and provisions of the Act.

2. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions summarized above with respect to the Bonus Contracts and any Future Bonus Contracts funded by the Current Accounts or Future Accounts, which are issued by GALIC NY or Annuity Investors and underwritten or distributed by GAA or Future Underwriters. Applicants state that Future Bonus Contracts funded by the Current Accounts or Future Accounts will be substantially similar in all material respects to the Bonus

Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that it is not administratively feasible to track the Bonus amount in any of the Accounts after the Bonus is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amounts held in the respective Accounts, including the Bonus amount, including during the period when the Bonus is not completely vested (i.e., upon cancellation during the free-look period or upon full surrender during the first contract year). As a result, during such periods, the aggregate asset-based charges assessed against a Contract owner's account value will be higher than those that would be charged if the Contract owner's account value did not include the Bonus.

4. Section 27(i) of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a "redeemable security." Section 2(a)(32) of the Act defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

5. Applicants submit that the Bonus recapture provisions described herein would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets. Applicants state that a Contract owner's interest in the amount of the Bonus allocated to his or her annuity account value upon receipt of an initial purchase payment is not vested if the Contract is returned during the applicable free-look period. Similarly, Applicants submit that a Contract owner's interest in the amount of any Bonuses allocated upon receipt of any purchase payments made during the first contract year is not vested if the Contract is surrendered in full during the first Contract year. Until or unless the amount of any Bonus is vested, Applicants argue that the applicable Insurance Company retains the right and interest in the Bonus amount, although not in the earnings attributable to that amount. Thus, when any Bonus amounts are recaptured, the Insurance Companies are simply retrieving their own assets. Because the Contract owner's interest in the Bonus is not vested, Applicants contend that the Contract owner has not been deprived of a proportionate share of the applicable Account's assets.

6. Applicants state that, with respect to the Bonus recapture upon the exercise of the free-look privilege, it would be patently unfair to allow a Contract owner to exercise that privilege and retain a Bonus amount under a Contract that has been returned for a refund after a period of a few weeks or days. If the Insurance Company could not recapture the Bonus, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

7. Applicants also state that the recapture of Bonuses relating to all purchase payments made within the first Contract year if the Contract is surrendered in full during that year is designed to afford the Insurance Companies with a measure of protection from anti-selection. The risk here is that the Contract owner could make very large purchase payments throughout the first year of the Contract and then fully surrender the Contract, thereby leaving GALIC NY or Annuity Investors less time to recover the cost of the Bonuses, to its financial detriment.

8. For the foregoing reasons, Applicants submit that the provisions for recapture of any applicable Bonus under the Bonus Contracts do not, and any provisions in Future Bonus Contracts will not, violate Section 2(a)(32) and 27(i)(2)(A) of the Act. Indeed, Applicants believe that a contrary conclusion would be inconsistent with a stated purpose of the National Securities Markets Improvement Act of 1996 ("NSMIA"), which is "to amend the [act] to * * * provide more effective and less burdensome regulation." Sections 26(e) and 27(i), of course, were added to the Act pursuant to Section 205 of NSMIA to implement the purposes of NSMIA and the Congressional intent. Thus, the recapture of a Bonus credited to purchase payments made under the Contracts should not raise any questions as to the Insurance Companies' compliance with the provisions of Section 27(i). Nevertheless, to avoid any uncertainties as to full compliance with the Act, Applicants request exemptions from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Bonus under the circumstances described herein with respect to the Bonus Contracts and any Future Bonus Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

9. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. Applicants state that the Insurance Companies' recapture of the Bonus might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Accounts. Applicants contend, however, that recapture of the Bonus does not violate Section 22(c) and Rule 22c–1.

11. Applicants maintain that the recapture does not involve either of the problems that Rule 22c–1 was designed to prevent, namely (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair practices such as speculative trading practices. These problems were the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases in net asset value that were not yet reflected in the price, thereby diluting the value of outstanding mutual fund shares.

12. Applicants also maintain that the proposed recapture of the Bonus poses no such threat of dilution. To effect a recapture of a Bonus, the Insurance Companies will redeem interests in the Contract owner's annuity account at a price determined on the basis of current net asset value of the respective Accounts. The amount recaptured will equal the amount of the Bonus that the applicable Insurance Company paid or will pay out of its general account assets. Although Contract owners will be entitled to retain any investment gain attributable to the Bonus, the amount of such gain will be determined on the basis of the current net asset value of the respective Accounts. Thus, no dilution will result from the recapture of the Bonus. The second problem that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, also will not occur as a result of the recapture of the Bonus.

13. Applicants argue that, because neither of the problems that Rule 22c–1 was designed to address is found in the recapture of the Bonus, Rule 22c–1 and Section 22(c) should have no application to any Bonus under the Bonus Contracts or Future Bonus Contracts. However, to avoid any uncertainty as to full compliance with the Act, Applicants request exemptions from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Bonus under the Bonus Contracts and Future Bonus Contracts.

Conclusion

For the reasons summarized above, Applicants submit that their request for exemptions from Section 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-thereunder meets the standards set out in Section 6(c) of the Act. Applicants submit that the requested order should therefore be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27019 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25218; 812–12604]

Putnam American Government Income Fund, et al.; Notice of Application

October 22, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(d) of the Investment Company Act of 1940 (the "Act" and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek an order to permit certain registered management investment companies to pay to an affiliated lending agent, and the lending agent to accept, fees based on a share of the revenues generated from securities lending transactions.

Applicants: Putnam American Government Income Fund, Putnam Arizona Tax Exempt Income Fund, Putnam Asia Pacific Growth Fund, Putnam Asset Allocation Funds, Putnam Balanced Retirement Fund, Putnam California Investment Grade Municipal Trust, Putnam California Tax Exempt Income Fund, Putnam California Tax Exempt Money Market Fund, Putnam Capital Appreciation Fund, Putnam Classic Equity Fund, Putnam Convertible Income-Growth Trust, Putnam Convertible Opportunities And Income Trust, Putnam Diversified Income Trust, Putnam Equity Income Fund, Putnam Europe Growth Fund, Putnam Florida Tax Exempt Fund. The Putnam Fund For Growth And Income Putnam Funds Trust, The George Putnam Fund Of Boston, Putnam Global Equity Fund, Putnam Global Government Income Trust, Putnam Global Growth Fund, Putnam Global Natural Resources Fund, The Putnam Fund For Growth And Income, Putnam Health Sciences Trust, Putnam High Income Convertible And Bond Fund, Putnam High Yield Advantage Fund, Putnam High Yield Municipal Trust, Putnam High Yield Trust, Putnam Income Fund, Putnam Intermediate U.S. Government Income Trust, Putnam International Growth Fund, Putnam Investment Funds, Putnam Investment Grade Municipal Trust, Putnam Investors Fund, Putnam Managed High Yield Trust, Putnam Managed Municipal Income Trust, Putnam Massachusetts Tax Exempt Income Fund, Putnam Master Income Trust, Putnam Master Intermediate Income Trust, Putnam Michigan Tax Exempt Income Fund, Putnam Minnesota Tax Exempt Income Fund, Putnam Money Market Fund, Putnam Municipal Bond Fund, Putnam Municipal Income Fund, Putnam Municipal Opportunities Trust, Putnam New Jersey Tax Exempt Income Fund, Putnam New Opportunities Fund, Putnam New York Investment Grade Municipal Trust, Putnam New York Tax Exempt Income Fund, Putnam New York Tax Exempt Money Market Fund, Putnam New York Tax Exempt Opportunities Fund, Putnam Ohio Tax Exempt Income Fund, Putnam OTC & Emerging Growth Fund, Putnam Pennsylvania Tax Exempt Income Fund, Putnam Preferred Income Fund, Putnam Premier Income Trust, Putnam Strategic Income Fund, Putnam Tax Exempt Income Fund, Putnam Tax Exempt Money Market Fund, Putnam Tax-Free Health Care Fund, Putnam Tax-Free Income Trust, Putnam Tax Smart Funds Trust, Putnam U.S. Government Income Fund, Putnam Utilities Growth And Income Fund, Putnam Variable Trust, Putnam Vista Fund, Putnam Voyager Fund, and Putnam Voyager Fund II (each a "Fund," collectively the "Funds"), Putnam Investment Management, LLC (the "Adviser") and Putnam Fiduciary Trust Company ("PFTC").

FILING DATES: The application was filed on August 16, 2001, and amended on September 18, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 15, 2001, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Applicants, c/o John W. Gerstmayr, Esq., Ropes & Gray, One International Place, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Royblat, Assistant Director, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Funds, each a Massachusetts business trust, are registered under the Act as management investment companies. Some of the Funds consist of multiple investment portfolios. The Adviser serves as investment adviser to each Fund. PFTC is the custodian and the shareholder servicing and distribution agent for each Fund.

Applicants also request relief for any other registered management investment companies and series thereof that in the future are advised by the Adviser, or an entity controlling, controlled by, or under common control with, the Adviser ("Future Funds"). The Funds and the Future Funds are collectively referred to as the "Funds".[1]

2. Each Fund is authorized to lend its portfolio securities. The Funds currently participate in a securities lending program using unaffiliated third-party lending agents. The Funds seek to participate from time to time as a lender in a securities lending program administered by PFTC as lending agent (the "Program"). Under the Program, PFTC enters into securities lending agreements on behalf of a Fund with certain unaffiliated borrowers that wish to borrow securities owned by the Fund and that have been pre-approved by that Fund or the Adviser (each a "Borrower"). Applicants represent that the duties performed by PFTC as lending agent will not exceed those set forth in *Norwest Bank, N.A.* (pub. avail. May 25, 1995).

3. Securities lending collateral will take different forms. With respect to loans that are collateralized by cash, the Borrower will be entitled to receive a fee based on the amount of cash collateral. The Fund is compensated on the spread between the net amount earned on the investment of cash collateral and the Borrower's fee. In the case of collateral other than cash, the Fund will receive a loan fee paid by the Borrower equal to a percentage of the market value of the loaned securities specified in the loan program. Applicants seek relief to permit Funds to pay, and PFTC to accept, fees based on a share of the revenues generated from securities lending transactions pursuant to the Program.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or an affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participant of the investment companies is on a basis different from or less advantageous than that of the other participants.

2. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person and, if the other person is an investment company, its investment adviser. The Adviser is an affiliated person of each Fund. Because PFTC and the Adviser are under the common control of Putnam Investments, LLC, PFTC is an affiliated person of an affiliated person of each Fund. Accordingly, applicants request an order under section 17(d) and rule 17d–1 under the act to the extent necessary to permit each Fund to pay, and PFTC to accept, fees based on a share of the revenues generated from securities lending transactions.

3. Applicants propose that each Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with PFTC, as lending agent, will meet the standards of rule 17d–1:

(a) In connection with the approval of PFTC as lending agent for a Fund and implementation of the proposed fee arrangement, a majority of the board of trustees of the Fund ("Board") (including a majority of the trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act (the "Disinterested Trustees") will determine that (i) the contract with PFTC is in the best interests of the Fund and its shareholders; (ii) the services to be performed by PFTC are required for the Fund; (iii) the nature and quality of the services provided by PFTC are at least equal to those provided by other offering the same or similar services; and (iv) the fees charged by PFTC are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) Each Fund's contract with PFTC for lending agent services will be reviewed at least annually and will be approved for continuation only if a majority of the Board of the Fund (including a majority of the Disinterested Trustees) make the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of the proposed fee arrangement whereby PFTC will be compensated as lending agent based on a percentage of the revenue generated by a Fund's participation in the Program, the Board of the Fund will obtain competing quotes with respect to lending agencies fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(d) The Board of each Fund, including a majority of the Disinterested Trustees, will (i) determine quarterly the loan transactions during the prior quarter were affected in compliance with the conditions and procedures set forth in the application; and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and any modifications) described in the application; and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the Borrower, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The securities lending program of each Fund will comply with all present and future applicable guidelines of the Commission and staff regarding securities lending arrangements.

2. The approval of a Fund's Board, including a majority of Disinterested Trustees, shall be required for the initial and subsequent approvals of PFTC's service as lending agent for the Fund pursuant to the Program, for the institution of all procedures relating to the Program as it relates to the Fund, and for any periodic review of loan transactions for which PFTC acted as lending agent pursuant to the Program.

[1] All existing entities that currently intend to rely on the requested relief have been named as applicants. Any existing or future entity that will rely on the relief in the future will comply with the terms and conditions contained in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 01–27018 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 29, 2001: closed meetings will be held on Monday, October 29, 2001 and Tuesday, October 30, 2001, at 10:00 a.m.

Commissioner Unger, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i) 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meetings scheduled for Monday, October 29, 2001 and Tuesday, October 30, 2001, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Formal orders.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 23, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–27106 Filed 10–24–01; 12:20 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44958; File No. SR-Amex-2001–71]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to Priority on Multiple Price Transactions

October 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 6, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 950 to add Commentary .05 relating to priority on multiple price transactions. The following is the text of proposed Commentary .05 (all new language):

.05 Purchase Priority. If a member purchases one or more option contracts of a particular series at a particular price or prices such member shall, at the next lower price at which a member other than an Exchange Broker or specialist representing a customer agency order entitled to priority pursuant to Rule 950(c), have priority in purchasing up to the equivalent number (or a reasonably large number) of option contracts of the same series that he purchased at the higher price or prices, but only if his bid is made promptly and the purchase so effected represents the opposite side of a transaction with the same order or offer as the earlier purchase or purchases. Sale Priority. If a member sells one or more option contracts of a particular series at a particular price or prices, he shall, at the next higher price at which a member other than a Exchange Broker or specialist representing a customer agency order entitled to priority pursuant to Rule 950(c), have priority in selling up to the equivalent number (or a reasonably larger number) of option contracts of the same series that he sold at the lower price or prices, but only if his offer is made promptly and the sale so effected represents the opposite side of a transaction with the same order or bid as the earlier sale or sales.

Two or more members entitled to priority. If the bids or offers of two or more members are both entitled to priority in accordance with paragraph (a) or paragraph (b), it shall be afforded them insofar as practicable, on a pro-rate basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 950 by adding Commentary .05 to provide for multiple price priority in the execution of equity option transactions. The Exchange believes that the proposal is designed to promote price improvement in the execution of equity option orders and provide incentives to registered options traders ("ROTs") and specialists in the execution of such orders by providing ROTs and specialists with priority in the execution of those orders in which a ROT or specialist improves upon the displayed quotation.

In particular, proposed Commentary .05 provides for member price priority with respect to purchases (sales) up to an equivalent number of options contracts of the same series purchased at the higher price or prices (or sold at the lower price or prices for sales) if the bid (offer) is made promptly and the purchase (sale) effected represents the opposite side of a transaction with the same order or offer (bid) as the earlier purchases (sale). A floor broker or specialist representing a public customer order entitled to priority pursuant to Amex Rule 950(c) will continue to retain such priority under proposed Commentary .05.

For example, application of the proposal would operate as follows: If the displayed quotation is 6 (bid), 6.50

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(asked), and a market or marketable limit order to sell 100 contracts is received, a ROT or specialist that executes part of the 100 contract order at the improved price of 6.20 would be granted priority in executing additional contracts in a quantity up to the number of contracts executed at the improved price. Therefore, in this example, because the ROT stepped up to bid 20 contracts at a price of 6.20, he would be granted priority in the execution of up to 20 contracts at 6. In each instance, the specialist or ROT that betters the market would be able to receive a fill at the next lower or inferior price. Moreover, if two (2) or more members were entitled to priority for certain multiple price transactions, such priority would be provided on a pro rata basis to the extent practicable.

The Exchange believes the proposal will provide incentive for both ROTs and specialists to improve upon displayed quotations. As a result, the Exchange believes the proposal will enhance competitive market making on the Exchange and offer additional price improvement for customer orders. The Exchange believes that the proposed rule is similar to rules that are currently in place at other options exchanges.[3]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of section 6(b)(5),[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade. to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Amex has neither solicited nor received written comments with respect to the proposed rule change.

[3] *See* CBOE Rule 6.47 and PCX Rule 6.76.
[4] 15 U.S.C. 78f(b).
[5] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from September 6, 2001, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR–Amex–2001–71 and should be submitted by November 16, 2001.

[6] 15 U.S.C. 78s(b)(3)(A).
[7] 17 CFR 240.19b–4(f)(6).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26957 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44961; File No. SR–NYSE–2001–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 103A To Delete an Unused Measure of Specialist Performance

October 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 29, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to delete one of the performance measures for specialists under Exchange Rule 103A. The test of the proposal is below. Deletions are in brackets. Specialist Stock Reallocation and Member Education and Performance Rule 103A(a)(1) In order to ensure that a high level of market quality and performance in Exchange listed securities is achieved and maintained, the Market Performance Committee, under the authority granted in its Charter, shall develop and administer systems and procedures, including the determination of specific kinds of data to be reviewed and the establishment of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not all or particular specialist units need to take actions to improve their performance. Based on such determinations, the Market Performance

[8] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

Committee shall take steps as described in this rule, to encourage performance improvement and to improve or sustain market quality in appropriate cases.

* * * * *

Supplementary Material

.10 Performance Improvement Action Criteria.—The Market Performance Committee shall initiate a Performance Improvement Action as described in paragraph (b) above whenever a specialist unit does not meet any standard of acceptable performance as specified below.

(A) No change.
(B) No change.
(C) No change.
(D) Market Share
(i) in any case where the Market Performance Committee finds that a specialist unit's overall percentage of the total share volume as reported on the Consolidated Transaction Reporting System in any of its registered securities has declined significantly within two consecutive quarters and further determines that the reason(s) for the decline can be attributed to factors within the control of the specialist unit.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 103A to delete an unused measure of specialist performance.

Currently, NYSE Rule 103A provides authority for the Market Performance Committee ("MPC") to establish and administer measures of specialist performance, conduct performance improvement actions where a specialist unit does not meet the performance standards in the Rule, and reallocate stocks if a unit does not achieve its specified goals when subject to a performance improvement action. The performance standards in the Rule include the Specialist Performance Evaluation Questionnaire, timeliness of stock openings, SuperDot order turnaround, administrative message responses and market share. This latter provision refers to a significant decline in market share, as measured by share volume, in two consecutive quarters where the decline is determined to be attributable to factors within the control of the specialist unit.

At the time the Exchange adopted the market share measure, it was intended that the Exchange would develop criteria as to what constitutes a "significant decline" before the market share performance standard could be enforced. However, criteria were never developed, and the MPC has never used the market share standard as a performance measure. The Exchange, therefore, is proposing to eliminate the provision from NYSE Rule 103A.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of section 6(b)(5),[4] in particular, because it should promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

[3] 15 U.S.C. 78f(b)
[4] 15 U.S.C. 78f(b)(5).

(A) By order approve the proposed rule change, or
(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Pubic Reference Room Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2001–34 and should be submitted by November 16, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 01–26958 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44963; File No. SR–PHLX–2001–84]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Fee for Installing and Maintaining Tethers on the Options Trading Floor

October 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange")

[5] 17 CFR 200.30–2(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Phlx amended the proposed rule change on October 15, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to adopt a Tether[4] Initial Connectivity Fee of $1,100 and a Tether Monthly Service Fee of $150 for installing and thereafter maintaining tethers that allow a hardwire connection to an existing communication network (local area network) on the Exchange's options trading floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of dues, fees and charges to adopt a Tether Initial Connectivity Fee of $1,100 and a Tether Monthly Service Fee of $150 for installing and thereafter maintaining tethers that allow a hardwire connection to an existing communication network (local area network) on the Exchange's options trading floor. Each tethering device will incur one initial connectivity fee, and thereafter may be transferred to another user as well as to another location on the floor without incurring any additional connectivity fee. The connectivity and monthly fees will be imposed on the users of such tethers and communication network, namely registered options traders and floor brokers (but not specialists) on the options trading floor.

The Exchange has had a wireless communication network on its options and other trading floors. Due to increases in bandwidth demands and the use of applications by traders, namely on the options floor, that are not designated to effectively operate on a shared wireless network, the Exchange has determined to augment its wireless network with hardwire access to an existing local area network that would allow users on the options trading floor to connect with communications networks of Exchange member firms. The Exchange is installing hardwire tethers at trading posts across the options trading floor and will maintain an existing communication network at considerable cost to the Exchange.[5] The Exchange believes that the proposed fees are equitable and reasonable in that they are based on actual and estimated expenses incurred in installing and maintaining the tethered connections.[6]

In the case of a newly installed tether, the initial connectivity fee commences upon installation and the monthly fee commences in the first full calendar month after installation is completed.[7] For instance, installation on September 1 would trigger a connectivity fee on September 1 and a monthly fee beginning October 1 (but not September 1).

2. Statutory Basis

The Exchange believes that is proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(4),[9] in particular, in that it is an equitable allocation of reasonable fees among the Exchange's members because the members who pay the additional amount for the tethers incur the benefit of their use and access to a communication network.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder.[11] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying it the principal office of the Phlx. All submissions should refer to the File No. SR–Phlx–2001–84 and should be submitted by November 16, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26959 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

[3] The Phlx submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety ("Amendment No. 1").

[4] A tether is a hardwire connection to an existing Exchange communication network. It would augment the current wireless network on the options floor and allow users to connect their handheld devices to the existing Exchange communication network and thereby interface with member firm communication networks.

[5] The decision to install tethers and augment a network on a trading floor is solely within the Exchange's discretion.

[6] The restrictions of Exchange Rule 606 and any other rules applicable to communications would apply to all communications via the tethers. The Exchange intends in the near future to propose amendments to Rule 606 and any other relevant rules to clarify their applicability to tethers.

[7] This fee is eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owned to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

AGENCY: Small Business Administration.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before December 26, 2001.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW, Suite 8300, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, (202) 205–7528 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: 7(a) Loan Closing Forms.
Form No's: 159, 160, and 160A.
Description of Respondents: 7(a) Participants.
Annual Responses: 45,000.
Annual Burden: 135,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–27045 Filed 10–25–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Announcement of the Extension of the LowDoc and SBAExpress Pilot Loan Programs

AGENCY: Small Business Administration.

ACTION: Notice of pilot extension.

SUMMARY: The U.S. Small Business Administration (SBA) announces extension of the LowDoc and SBAExpress pilot loan programs until July 1, 2002. This will allow time for the Agency to fully examine possible modifications and enhancements and to further consult with regulatory and lending institutions and with the small business community about desirable changes to the program.

The LowDoc and SBAExpress pilot loan programs were established in 1993 and 1995, respectively, to increase the number of smaller SBA loans by streamlining the application process for those loans, and to test the portfolio impact of transferring additional authority to SBA lenders.

FOR FURTHER INFORMATION CONTACT: LeAnn Oliver, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Suite 8300, Washington, DC 20416; telephone (202) 205–6490.

Dated: October 22, 2001.

Jane Palsgrove Butler,

Associate Administrator for Financial Assistance.

[FR Doc. 01–27046 Filed 10–25–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies; Increase in Maximum Leverage Ceiling

13 CFR 107.1150(a) sets forth the maximum amount of Leverage (as defined in 13 CFR 107.50) that a Small Business Investment Company may have outstanding at any time. The maximum Leverage amounts are adjusted annually based on the increase in the Consumer Price Index published by the Bureau of Labor Statistics. The cited regulation states that SBA will publish the indexed maximum Leverage amounts each year in a notice in the **Federal Register**.

Accordingly, effective the date of publication of this Notice, and until further notice, the maximum Leverage amounts under 13 CFR 107.1150(a) are as stated in the following table:

If your leverageable capital is:	Then your maximum leverage is:
(1) Not over $18,600,000	300 percent of Leverageable Capital.
(2) Over $18,600,000 but not over $37,200,000	$55,800,000 + [2 x (Leverageable Capital – $18,600,000)].
(3) Over $37,200,000 but not over $55,900,000	$93,000,000 + (Leverageable Capital – $37,200,000).
(4) Over $55,900,000	$111,700,000.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: October 22, 2001.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 01–27047 Filed 10–25–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3800]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Thursday, 6 December, 2001, in Room 6319 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, 20593. The purpose of this meeting will be to report the results of the International Conference on the Control of Harmful Anti-fouling Systems for Ships (AFS Conference) held at the International Maritime Organization headquarters in London, October 2001. In addition, the Subcommittee will discuss plans to prepare a ratification package for transmittal to the Senate supporting the Convention resulting from the AFS Conference.

Documents associated with the AFS Conference may be requested by writing to the address below or via the Internet at:*http://www.uscg.mil/hq/g-m/mso/mso4/mepc.html.*

Members of the public are invited to attend this meeting up to the seating capacity of the room. For further

information, or to submit views in advance of the meeting, please contact Lieutenant Beck, U.S. Coast Guard, Environmental Standards Division (G–MSO–4), 2100 Second Street, SW., Washington, DC 20593–0001; telephone: (202) 267–0713; fax: (202) 267-4690; or e-mail: *dbeck@comdt.uscg.mil.*

Dated: October 18, 2001.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, U.S. Department of State.

[FR Doc. 01–27011 Filed 10–25–01; 8:45 am]

BILLING CODE 4710–70–P

DEPARTMENT OF STATE

[Public Notice 3801]

Shipping Coordinating Committee Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Thursday, December 20, 2001, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting will be to review the U.S. positions on the thirty-third session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) to be held at IMO headquarters in London, January 21–25, 2002.

The primary matters to be considered include:

1. Training and certification of maritime pilots;
2. Unlawful practices associated with certificates of competency (*i.e.*, forged certificates);
3. Follow-up Action to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 (STCW 95) Conference;
4. Training of crew in Launching/Recovering Operations of Fast Rescue Boats and Means of Rescue in Adverse Weather Conditions;
5. Large Passenger Vessels;
6. Validation of an IMO model course on assessment of competence; and
7. Follow-up Action to the 1995 International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (1995 STCW F) Conference.

Documents associated with this Conference may be requested by writing to the address below. Please note that hard copies of documents associated with this Conference will not be available at this meeting.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. For further information, or to submit views in advance of the meeting, please contact Lieutenant Commander Harden, U.S. Coast Guard, Maritime Personnel Qualifications Division (G–MSO–1), 2100 Second Street, SW., Washington, DC 20593–0001; telephone: (202) 267–0229; fax: (202) 267–4570; or e-mail: *lharden@comdt.uscg.mil.*

Dated: October 18, 2001.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, U.S. Department of State.

[FR Doc. 01–27012 Filed 10–25–01; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 3824]

Privacy Act of 1974, as Amended; Creation of a New System of Records

Notice is hereby given that the Department of State proposes to create a new system of records, STATE–03, pursuant to the provisions of the Privacy Act of 1974, as amended [5 U.S.C. 552a(r)], and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on October 16, 2001.

STATE–03 is being implemented by the Department of State to facilitate its responsibility for advising the domestic and foreign communities about United States international economic policy.

Any persons interested in commenting on this new system of records may do so by submitting comments in writing to Margaret Peppe, Chief; Programs and Policies Division; Office of IRM Programs and Services; A/RPS/IPS/PP; U.S. Department of State, SA–2; Washington, DC 20522–6001.

This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

This new system description, "Bureau of Economic and Business Affairs Contact List, STATE–03" will read as set forth below.

Dated: October 16, 2001.

William A. Eaton,

Assistant Secretary for the Bureau of Administration, Department of State.

STATE–03

SYSTEM NAME:

Bureau of Economic and Business Affairs Contact List.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State; 2201 C Street, NW.; Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Bureau of Economic and Business Affairs' contacts from business, labor, agricultural and non-government organizations, and others working in the international economic arena as well as individuals who are interested in or request information about economic issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records may include identifying information, such as, but not limited to name, mailing address, e-mail address, telephone number, fax number and the profession of the individuals covered by the system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 (Management of the Department of State); 22 U.S.C. 2651a (Organization of the Department of State); 22 U.S.C. 3921 (Management of service).

PURPOSE(S):

The information contained in this system of records is collected and maintained by the Bureau of Economic and Business Affairs, Office of Policy Analysis and Public Diplomacy in the administration of its responsibility for disseminating information regarding U.S. international economic policy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in the Bureau of Economic and Business Affairs Contact List is used for:

- Inviting individuals to Department briefings on international economic issues;
- Disseminating speeches and articles on economic issues by Department officials; and
- Providing U.S. government fact sheets on major international economic issues.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published records schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director; Office of IRM Programs and Services; SA–2; Department of State; 515 22nd Street, NW.; Washington, DC 20522–6001.

SYSTEM MANAGER(S) AND ADDRESS:

Director; Systems Administration; Bureau of Economic and Business Affairs; Department of State; 2201 C Street, NW.; Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Office of Policy Analysis and Public Diplomacy might have records pertaining to themselves should write to the Director; Office of IRM Programs and Services; Department of State; SA–2; 515 22nd Street NW.; Washington, DC 20522–6001. The individual must specify that he/she wishes the Bureau of Economic and Business Affairs Contact List to be checked. At a minimum, the individual should include: name, date and place of birth, current mailing address and zip code, signature, and preferably his/her social security number.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of IRM Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records. The records may also include information obtained from the Bureau of Economic and Business Affairs officials who have an association or working relationship with the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 01–27014 Filed 10–25–01; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of an opened Meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold an opened meeting on November 13, 2001, from 9 a.m. to 3 p.m.

DATES: The meeting is scheduled for November 13, 2001, unless otherwise notified.

ADDRESSES: The meeting will be held in Conference Room 3720, of the Minority Business Development Agency (MBDA), located at 26 Federal Plaza, New York, NY, 10278.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg, Pam Wilbur or Kelly Parsons (principal contacts), at (202) 482–4792, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or myself on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the agenda topics to be addressed will be:

- Presentation by officials from the Small Business Administration (SBA), MBDA, U.S. Customs, Federal Emergency Management Agency (FEMA), the New York City Mayor's office, the New York City Comptroller, the New York City public advocate, the New York City Fire Department, and a Wall Street Journal journalist; and
- Presentation by a New York City USFCS officer.

Elizabeth A. Gianini,

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 01–27007 Filed 10–25–01; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on Potential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for comments on what action the President should take under section 203 of the Trade Act of 1974, as amended, (19 U.S.C. 2253) to facilitate efforts by the domestic industries producing certain steel products to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

SUMMARY: This publication gives notice that the Trade Policy Staff Committee (TPSC) is requesting comments from interested persons related to the recommendation that the interagency group established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) (interagency group) makes as to what action the President should take under section 203(a) of the Trade Act of 1974, as amended, (19 U.S.C. 2253(a)) (Trade Act) to facilitate efforts by the domestic industries producing certain steel products to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

The steel products covered by this notice are: (1) Carbon and alloy steel slabs, plate (including cut-to-length plate and clad plate), hot-rolled sheet and strip (including plate in coils), cold-rolled sheet and strip (other than grain-oriented electrical steel), and corrosion-resistant and other coated sheet and strip; (2) carbon and alloy hot-rolled bar and light shapes; (3) carbon and alloy cold-finished bar; (4) rebar; (5) carbon and alloy welded tubular products (other than oil country tubular goods); (6) carbon and alloy flanges, fittings, and tool joints; (7) stainless steel bar and light shapes; (8) stainless steel rod; (9) carbon and alloy tin mill products; (10) tool steel, all forms; (11) stainless steel wire; and (12) stainless steel flanges and fittings. On October 22, the U.S. International Trade Commission (ITC) found that increased imports of the products listed in (1) through (8) are a substantial cause of serious injury or the threat of serious injury to the domestic industries producing those products. The Commissioners voting were equally divided with respect to the determination whether increased imports of products listed in (9) through (12) are a substantial cause of serious

injury or the threat of serious injury to the domestic industry producing those products.

The TPSC is requesting comments on actions that the commenting person or entity intends to take to facilitate the positive adjustment to import competition; requests for exclusions of products from any increased duty, tariff-rate quota, or quantitative restriction that the President may impose under section 203(a) of the Trade Act; and comments on what action, if any, the President should take under section 203(a) of the Trade Act in response to each affirmative finding of serious injury or threat thereof to a domestic industry announced by the ITC.

DATES: Written proposals on adjustment actions should be submitted no later than November 5, 2001; responses to proposals should be submitted no later than November 19, 2001. Requests for the exclusion of specific products from any action under section 203(a) should be submitted by noon on November 13, 2001; responses to requests should be submitted no later than November 27, 2001. Written comments on what action, if any, the President should take under section 203(a) of the Trade Act should be submitted no later than noon on December 28, 2001; responses to written comments should be submitted no later than noon on January 8, 2002.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 600 17th Street, NW., Washington, DC 20508 (202) 395–3475. All other questions should be addressed to Andrew Stephens, Director for Steel Trade Policy, Office of the USTR (202) 395–6160.

SUPPLEMENTARY INFORMATION: On October 22, 2001, the ITC issued affirmative determinations under section 202(b) of the Trade Act (22 U.S.C. 2252(b)) that (1) carbon and alloy steel slabs, plate (including cut-to-length plate and clad plate), hot-rolled sheet and strip (including plate in coils), cold-rolled sheet and strip (other than grain-oriented electrical steel), and corrosion-resistant and other coated sheet and strip; (2) carbon and alloy hot-rolled bar and light shapes; (3) carbon and alloy cold-finished bar; (4) rebar; (5) carbon and alloy welded tubular products (other than oil country tubular goods); (6) carbon and alloy flanges, fittings, and tool joints; (7) stainless steel bar and light shapes; and (8) stainless steel rod are being imported in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing those products. The Commissioners voting were equally divided with respect to the determination under section 202(b) of the Trade Act as to whether increased imports of (9) carbon and alloy tin mill products; (10) tool steel, all forms; (11) stainless steel wire; and (12) stainless steel flanges and fittings are being imported in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing those products. The ITC is in the process of deciding what action under section 202(e) of the Trade Act to recommend that would address the serious injury, or threat thereof, to the domestic industries and most effectively facilitate the efforts of the domestic industries to make positive adjustments to import competition. The ITC must issue a report on its determinations and recommendations to the President no later than December 19, 2001.

Pursuant to section 203(a)(1)(C) of the Trade Act, the interagency group will subsequently make a recommendation to the President as to what action, if any, to take under section 203(a)(1)(A) of the Trade Act. In making its recommendation, the interagency group will take into account the factors listed in Section 203(a)(2), including the objectives and actions specified in any adjustment plans submitted under section 202(a)(4) of the Trade Act and any individual commitments under section 202(a)(6) of the Trade Act. The interagency group will also consider and make a recommendation with regard to any request for exclusion of a product from any import relief provided under section 203.

In light of the number of articles subject to the ITC's determination, the number of persons who may wish to comment on the action that the President may take under section 203, and the complexity of the issues involved, the TPSC has decided to adopt special guidelines for the submission of comments and the conduct of meetings with interested persons.

Written Proposals on Adjustment Actions

The TPSC invites written proposals from any

- Firm in the domestic industries;
- Certified or recognized union or group of workers in the domestic industries;
- State or local community;
- Trade association representing the domestic industries; or
- Any other interested person or group of interested persons

regarding the actions that the commenting person or entity intends to take to facilitate the positive adjustment to import competition.

Written proposals on adjustment actions should be as specific as possible and should:

(a) Assess current problems affecting the industries' ability to compete with imports;

(b) Indicate the types of actions that workers and firms will undertake during a period of import relief to improve the ability of the industries to compete after relief terminates or to facilitate adjustment to increased import competition;

(c) Recommend types of actions that may be taken by Federal agencies or departments to assist the domestic industries' efforts either to enhance their competitiveness or to adjust to import competition; and

(d) Explain how import relief will assist in achieving these objectives.

Written proposals on adjustment actions should be submitted no later than noon on November 5, 2001.

The TPSC also invites any person or entity listed above to submit a written comment on any written proposal on positive adjustment actions. Written comments should be as specific as possible, including recommendations, and should be submitted no later than noon on November 19, 2001.

Requests To Exclude Products From Import Relief Under Section 203

The TPSC will consider requests by a producer, importer, or purchaser of certain steel products for the exclusion of a particular product, defined in terms of its unique physical characteristics, from any increased duty, tariff-rate quota, or quantitative restriction that the President may impose under section 203(a) of the Trade Act. Any such request must be made in writing, and contain the following information:

(a) The designation of the product under a recognized standard or certification (*e.g.*, ASTM, DIN), or the commercial name for the product and the HTS number under which the product enters the United States;

(b) A description of the product based on physical characteristics (*e.g.*, chemical composition, metallurgical properties, dimensions, surface quality) so as to distinguish the product from products for which exclusion is not sought;

(c) The basis for requesting an exclusion;

(d) The names and locations of any producers, in the United States and foreign countries, of the product;

(e) Total U.S. consumption of the product, if any, by quantity and value for each year from 1996 to 2000, and projected annual consumption for each year from 2001 to 2005, with an explanation of the basis for the projection;

(f) Total U.S. production of the product for each year from 1996 to 2000, if any; and

(g) The identity of any U.S.-produced substitute for the product, total U.S. production of the substitute for each year from 1996 to 2000, and the names of any U.S. producers of the substitute.

Requests should be as specific as possible. If precise data are not available, the request should include estimates, and describe in detail the basis for making the estimate. All requests should be submitted by noon on November 13, 2001.

The TPSC invites responses to any request for exclusion submitted in accordance with this notice. Responses should provide, with as much specificity as possible, any data, views or recommendations relevant to the TPSC's consideration of the request. All responses should be submitted by noon on November 27, 2001.

The TPSC may disregard any request for exclusion or response to a request for exclusion submitted after the specified time and date.

TPSC Evaluation of Options for Action Under Section 203

The TPSC will begin its evaluation of options for action by the President under section 203 after the ITC issues its report on serious injury and recommended remedy. As part of that process, the TPSC invites written comments from interested persons on what action, if any, the President should take under section 203(a) of the Trade Act in response to each affirmative determination of injury or threat thereof to a domestic industry made by the ITC. Written comments should be as specific as possible, including data, views and recommendations, and may address the following options authorized under section 203(a)(3):

(a) Whether to take an action in the form of an increase in duties, a tariff-rate quota, a quantitative restriction, or some combination of such actions on an imported article covered by an affirmative determination by the ITC and, if so, the rate of any duty, rate and affected quantity of any tariff-rate quota, or level of any quantitative restriction;

(b) The duration of any action;

(c) Whether to provide trade adjustment assistance under chapter 2 of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*), or any other form of adjustment assistance, to the domestic industries and, if so, the nature of the assistance;

(d) Whether to proclaim procedures to allocate among importers by the auction of import licenses quantities of any product that are permitted to be imported into the United States;

(e) Whether to negotiate agreements with foreign countries limiting the export from those countries and import into the United States of an article subject to the ITC's affirmative determination;

(f) Whether to initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat thereof;

(g) Whether to submit to Congress legislative proposals to facilitate the efforts of the domestic industries to make positive adjustments to import competition; and

(h) Whether the President should take any other action under the authority of law.

Written comments should be submitted no later than noon on December 28, 2001.

The TPSC invites responses to any written comments submitted in accordance with this notice. Responses should provide, with as much specificity as possible, any data, views or recommendations relevant to the TPSC's consideration of the comments. All responses should be submitted no later than noon on January 8, 2002.

Written Comments

Persons submitting written comments, requests, or other information in accordance with this notice should, no later than the date and time listed above, either send twenty (20) copies by U.S. mail, first class, postage prepaid, to Gloria Blue at the address listed above or transmit a single copy electronically to *FR0001@ustr.gov*. A document sent by U.S. mail will be considered timely only if it is postmarked on or before the relevant date and time. A document transmitted electronically will be considered timely if received on or before the relevant date and time. The TPSC will not accept submissions delivered by messenger or commercial overnight delivery service. Any submission more than five (5) pages long should be accompanied by a table of contents and a concise executive summary. The TPSC also suggests that requests for exclusion and responses to requests for exclusion be no more than ten (10) pages in length, and that all other submissions be no more than twenty-five (25) pages in length.

Written comments, requests, or other information submitted by U.S. mail should be accompanied by a computer disk containing an electronic copy of the public or non-confidential version of the submission in a commercial word processing or spreadsheet format. The disk should have a label identifying the software used, the submitter, and the title of the submission. In addition, submitters should take steps to ensure that they delete *all* business confidential information from the electronic copy of any public or non-confidential document.

Written comments, requests, or other information submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 3, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10:00 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday. These submissions will also be available on the USTR web site, *www.ustr.gov*.

Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof, in the form specified above. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. The TPSC requests interested persons to summarize any deleted business confidential information by (1) providing a written characterization of any business confidential information in narrative form; and (2) aggregating, ranging, or indexing any numerical business confidential information.

If a document containing business confidential information is submitted by U.S. mail, twenty (20) copies of the business confidential submission and twenty (20) copies of a public version that does not contain business confidential information must be submitted. Any submissions containing business confidential information must be clearly marked "Business Confidential" at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain business confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential." If a document containing business confidential information is

submitted by electronic transmission, one copy of the business confidential version and one copy of a public version must be submitted. The name of the business confidential version should begin with the characters "BC-", and the name of the public version should begin with the characters "P-." The electronic copy of each document should have a header and footer on each page indicating whether it is "Business Confidential" or "public version" or "non-confidential."

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 01–27134 Filed 10–24–01; 3:03 pm]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–01–038]

Proposed Faciane Canal Bridge Project; Faciane Canal Near Slidell, St. Tammany Parish, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Coast Guard will hold a public hearing to receive comments on an application by Waterfront Developers L.L.C. for Coast Guard approval of the location and plans for a proposed bridge. The proposed location of the bridge is across the Faciane Canal, mile 0.1, near Slidell, St. Tammany Parish, Louisiana. The hearing will allow interested persons to present comments and information concerning the impact of the proposed bridge project on navigation and the human environment.

DATES: This hearing will be held on November 28, 2001, commencing at 7 p.m. Comments must be received by December 13, 2001. Requests to speak and requests for services must be received in the office of Bridge Administration at the address given under **ADDRESSES** by November 21, 2001.

ADDRESSES: The hearing will be held at the cafetorium of Salmen High School, 4040 Berkley Drive, Slidell, Louisiana 70458.

Written comments may be submitted to, and will be available for examination between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obc), 501 Magazine Street, New Orleans, Louisiana 70130–3396. Please submit all comments in an unbound format, no larger than 8 x 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Project Officer, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Background

The proposed project consists of constructing a movable bridge from Carr Drive to Paradise Island across the Faciane Canal. The proposed bridge will be 135 feet long and will have a clear roadway width of 12 feet. The applicant, based upon comments from interested persons, has moved the location of the draw of the bridge to the approximate center of the channel and has increased the horizontal clearance to 30 feet between the fender system. The vertical clearance of the proposed bridge in the closed-to-navigation position is 5.7 feet above mean high water, elevation 1.3 feet above Mean Sea Level (MSL) and unlimited in the open-to-navigation position.

The proposed bridge, if approved, will be operated and lighted in accordance with the requirements of Title 33, Code of Federal Regulations, Parts 117 and 118. The bridge will be maintained in the open-to-navigation position and close for vehicular traffic by code control panels accessible only to authorized personnel.

The Coast Guard, as lead federal agency for the proposed project, has reviewed the applicant-prepared Environmental Assessment (EA). Based upon the EA, the Coast Guard has tentatively determined that the proposed action will not have a significant impact on the environment for purposes of the National Environmental Policy Act (NEPA). A Coast Guard Finding of No Significant Impact (FONSI) will be prepared as the final environmental document for the proposed project unless significant impacts are identified as a result of this public notification process to warrant the preparation of an Environmental Impact Statement (EIS).

Only two alternatives are currently being considered for this project. These alternatives are defined as the "build" and "no-build" alternatives.

Procedural

Individuals and representatives of organizations that wish to present testimony at the hearing or who want to be placed on the project mailing list, may submit a request to this office at the address listed under **ADDRESSES** clearly indicating name and organization represented, if applicable. Requests to speak should be received no later than November 21, 2001 in order to ensure proper scheduling for the hearing. Attendees at the hearing who wish to present testimony and have not previously made a request to do so, will follow those attendees who have made a request as time permits. Speakers will be called in the order of receipt of their request. Depending upon the number of scheduled statements, the Coast Guard may limit the amount of time allowed for each speaker. Written statements and other exhibits in lieu of, or in addition to, oral statements made at the hearing may be submitted to this office at the address listed under **ADDRESSES** until December 13, 2001, for inclusion in the public hearing transcript.

Information on Services for Individuals With Disabilities

For information about facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Commander, Eighth Coast Guard District (obc). Please request these services by contacting this office at the phone number under **FOR FURTHER INFORMATION CONTACT** or in writing at the address listed under **ADDRESSES.** Any requests for an oral or sign language interpreter must be received by November 21, 2001.

Authority: 33 U.S.C. 513, 49 CFR 1.46.

Dated: October 17, 2001.

J.R. Whitehead,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 01–26995 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–8229]

Notice of Availability, Draft Programmatic Environmental Impact Statement for the Integrated Deepwater System Project

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard (USCG) announces the availability of the Draft Programmatic Environmental Impact Statement (PEIS) on the Integrated Deepwater System Project. This PEIS covers general issues in a broad program-oriented analysis encompassing the replacement systems proposed by industry and the No-action alternative. The Coast Guard seeks public and agency input on the Draft PEIS.

DATES: The PEIS will be available on October 26, 2001. Comments must reach the Coast Guard on or before December 10, 2001.

ADDRESSES: Comments may be submitted in several ways. To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2000–8229), US Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available along with the Draft Programmatic Environmental Impact Statement for inspection or copying at Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. You may also view this docket, including this notice and comments, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated statement, call LCDR Eric Johnson, Deepwater Environmental & Facilities Planner by telephone at 202–267–1665, or by email at *ejohnson@comdt.uscg.mil* or at the Coast Guard's Deepwater EIS Web page at *http://www.deepwaterEIS.com.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request For Comments

We encourage you to submit comments on this Draft PEIS. Persons submitting comments should include their names and addresses, identify this notice (USCG–2000–8229), and the reason for each comment. You may submit your comments by mail, hand delivery, fax or electronic means to the Docket Management Facility at the address given under **ADDRESSES;** but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail, and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period. For additional information about this notice or the Programmatic Environmental Impact Statement, contact Joan Lang, Deepwater Project NEPA Coordinator (under contract to the Coast Guard), 202–267–0284 or via e-mail at *jlang@comdt.uscg.mil.*

Public Hearings

Based on the minimal number of comments received during the scoping period, public hearings for this stage of the PEIS development will be held only if there is sufficient interest shown. Because this is a programmatic document, meetings, if held, will be at a district or national level. If public hearings are held, the time and place of the hearings will be announced in the **Federal Register** and other media. Please contact LCDR Eric Johnson as described in the **FURTHER INFORMATION** section of this notice regarding possible public hearings.

Proposed Action

In accordance with section 102[2][c] of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), Department of Transportation (DOT) Order 5610.1C (Procedures for Considering Environmental Impacts), and Coast Guard Policy (NEPA: Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1D), the Coast Guard has prepared a Draft PEIS on the Deepwater Project. The purpose of a PEIS is to develop a high-level approach and direction for implementing a broad policy or program. The Deepwater Project meets those criteria. As a first tier EIS, this PEIS covers general issues in a broader program-oriented analysis encompassing the replacement systems proposed by industry and the No-action alternative. Subsequent NEPA documentation will concentrate on specific implementing actions, such as home basing of new ships and aircraft, as required.

The Coast Guard published a Notice of Intent and Request for Public Comments on November 9, 2000 (65 FR 67441). That same Notice included the dates and locations of several meetings that were held around the country to accept comments on what the Coast Guard should consider in its PEIS. During this scoping process, and based on Federal Agency comments, it was determined that the PEIS should address two alternatives: Action and No-action. The Action Alternative includes the proposed system replacements discussed in the NOI. The Coast Guard determined that the best way to describe the impacts of the Action Alternative in the programmatic EIS was by combining all of the proposals into ranges of asset quantities and types and ranges of environmental impacts. This approach protects the procurement-sensitive information regarding the specific number and types of assets proposed by each industry team. However, to more accurately identify potential environmental impacts, the actual numbers and types of each teams' assets were used in the impact models.

The Coast Guard's ability to predict future environmental impacts of this multi-decade acquisition with 100% accuracy is drastically reduced by uncertainties with regard to funding, technology, political, social and logistics changes. When viewed from a programmatic level, these uncertainties more than outweigh any differences that may exist among the various proposed system replacements. Therefore, the use of ranges to show possible impacts from the two alternatives provides an analysis commensurate with the level of detail of the decision being made, protects procurement-sensitive information, and provides the public with sufficient information to submit informed comments.

The specific industry team proposal information will be maintained in the administrative record for Coast Guard agency use only, as described in the NOI.

The public comment period will provide the public with an opportunity to review the PEIS and to offer appropriate comments. Comments received during the Draft PEIS review period will be published in the Final PEIS. A Notice of Availability of the Final PEIS will be published in the **Federal Register.** NEPA provides for a 30-day comment period after publication of the Final PEIS, during which the public may comment on the adequacy of responses to comments and the Final PEIS. After that time, a Record of Decision (ROD) detailing the Coast

Guards' decision of the selected alternative will be prepared and published in the **Federal Register** and other public notices. The entire ROD will be made available for public review at that time.

Dated: October 16, 2001.

P.M. Stillman,

Rear Admiral, USCG, Deepwater Program Executive Officer.

[FR Doc. 01–26813 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. FRA–1999–6689, Notice No. 2]

Reflectorization of Rail Rolling Stock

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of availability.

SUMMARY: FRA announces that a preliminary analysis evaluating the costs and benefits of placing retro-reflective material on certain rail rolling stock in order to reduce collisions at highway-rail crossings has been placed in the public docket established to receive information on this topic. Public comment is invited.

ADDRESSES: The public is invited to submit both relevant information and relevant comments to the docket. Written comments should refer to the docket number of this notice and be submitted in duplicate to: DOT Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. All docket material will be available for inspection at the Central Docket Management Facility during regular business hours and on the Internet at *http://dms.dot.gov*. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

SUPPLEMENTARY INFORMATION: In 1982, FRA conducted a study to determine whether reflective materials would enhance railcar conspicuity and thereby reduce the number of accidents involving railcars. That study demonstrated that, although the use of reflective material enhanced railcar conspicuity, the reflective material was not durable enough to withstand the harsh railroad environment.

Beginning in 1990, FRA initiated additional research in response to improvements in the retroreflective qualities and durability of reflective materials. Subsequently, under the Federal Railroad Safety Authorization Act of 1994 ("the Act"), Pub. L. No. 103–440, 108 Stat. 4622–23 (November 2, 1994), Congress required FRA to revisit the issue of railcar conspicuity. The statute, codified at 49 U.S.C. 20148, provides that if the review establishes that enhanced railroad car visibility would likely improve safety in a cost-effective manner, the Secretary of Transportation shall initiate a rulemaking to prescribe regulations requiring enhanced visibility standards for railroad cars. FRA has completed its review of costs and benefits and is now placing it in the docket.

After extensive analysis, FRA has concluded that, because of technological advances developed since 1982, the reflectorization of railroad freight equipment appears to be a viable and cost-effective method of reducing the number of collisions at highway-rail grade crossings and the casualties and property damages which result from those collisions. FRA's analysis supports the conclusion that declines in the cost of reflective material, in combination with better performance and lower maintenance costs, have created a situation in which the benefits of reflectorization now appear to exceed its costs.

FRA invites all interested parties to review the cost-benefit analysis and to comment on the information contained therein and conclusions drawn from that information. FRA will review information that is submitted prior to the date on which FRA determines whether to institute rulemaking. Any responses can be sent to the docket. Instructions for doing so are described above under **ADDRESSES.**

FOR FURTHER INFORMATION CONTACT: Mary Plache, Industry Economist, Office of Safety, FRA, 1120 Vermont Ave., NW., Mailstop 17, Washington, DC 20590 (telephone 202–493–6297) or John A. Winkle, Esq., Office of Chief Counsel, FRA, 1120 Vermont Ave., NW., Mailstop 10, Washington, DC 20590 (telephone 202–493–6067).

Issued in Washington, DC on October 22, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–26991 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Seventh Quarterly Meeting of the Crash Injury Research and Engineering Network (CIREN)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the Seventh Quarterly Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at nine Level 1 Trauma Centers linked by a computer network. Researchers can review data and share expertise, which could lead to a better understanding of crash injury mechanisms and the design of safer vehicles.

DATE AND TIME: The meeting is scheduled from 9 a.m. to 5 p.m. on Thursday, December 6, 2001.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation headquarters, 400 Seventh Street, SW., Room 2230, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The CIREN System has been established and crash cases have been entered into the database by each Center. CIREN cases may be viewed from the NHTSA/CIREN Web site at: *http://www-nrd.nhtsa.dot.gov/include/bio_and_trauma/ciren-final.htm.* NHTSA has held three Annual Conferences where CIREN research results were presented. Further information about the three previous CIREN conferences is also available through the NHTSA Web site. NHTSA held the first quarterly meeting on May 5, 2000, with a topic of lower extremity injuries in motor vehicle crashes; the second quarterly meeting on July 21, 2000, with a topic of side impact crashes; the third quarterly meeting on November 30, 2000, with a topic of thoracic injuries in crashes; the fourth quarterly meeting on March 16, 2001, with a topic of offset frontal collisions; the fifth quarterly meeting on June 21, 2001, on CIREN outreach efforts; and the sixth quarterly meeting (held in Ann Arbor, Michigan) with a topic of injuries involving sport utility vehicles. Presentations from these meetings are available through the NHTSA Web site.

NHTSA plans to continue holding quarterly meetings on a regular basis to disseminate CIREN information to interested parties. This is the seventh such meeting. The topic for this meeting is Age-Related Injuries. Subsequent meetings have tentatively been scheduled for April 2002 and August 2002. These quarterly meetings are in lieu of an annual CIREN conference.

Please be aware that this is a closed building. Attendees to this meeting must present photo identification, pass through the xray and magnetometer, and be escorted to the meeting room so please allow sufficient time to complete this process.

Should it be necessary to cancel the meeting due to inclement weather or to any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site *http://www.nhtsa.dot.gov/nhtsa/announce/meetings/*. If you do not have access to the Web site, you may call the contact listed below and leave your telephone or fax number. You will be called only if the meeting is postponed or canceled.

FOR FURTHER INFORMATION CONTACT: Mrs. Donna Stemski, Office of Human-Centered Research, 400 Seventh Street, SW, Room 6220, Washington, DC 20590, telephone: (202) 366–5662.

Issued on: October 19, 2001.

Raymond P. Owings,

Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 01–27054 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34075]

Six County Association of Governments—Construction and Operation Exemption—Rail Line Between Levan and Salina, UT

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by the Six County Association of Governments of a 43-mile line of railroad between Salina, UT, and a connection with a line of the Union Pacific Railroad Company in the vicinity of Levan, UT.

DATES: The exemption will not become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental impacts and, if appropriate, will make the exemption effective at that time, thereby allowing construction to begin. Petitions to reopen must be filed by November 15, 2001.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 34075, to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Sandra L. Brown and D. Michael Hurst, Jr., Troutman Sanders LLP, 401 9th Street, NW., Suite 1000, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da 2 Da Legal, Room 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [TDD for the hearing impaired: 1–800–877–8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 18, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–26774 Filed 10–25–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 00–18]

Privacy Act of 1974, as Amended; System of Records

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed new Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Office of the Comptroller of the Currency (OCC) gives notice of five proposed new Privacy Act systems of records.

DATES: The proposed new systems of records will become effective November 26, 2001 unless comments are received which would result in a contrary determination.

ADDRESSES: You should send your comments to the Office of the Comptroller of the Currency, Public Information Room, Docket No. 00–18, 250 E Street, SW, Washington, DC 20219. You may inspect comments received at the same location. You may send your comments by facsimile transmission to FAX number 202–874–4448 or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Frank Vance, Jr., Disclosure Officer, Communications Division, (202) 874–4700 or Harold J. Hansen, Assistant Director, Administrative and Internal Law Division, (202) 874–4460.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the OCC is proposing to establish the following new systems of records:

(1) Treasury/Comptroller .100—Enforcement Action Report System

Records relating to enforcement actions taken by the OCC against individuals that will be maintained in this proposed new system are currently maintained in an existing Privacy Act system of records, Treasury/Comptroller .013-Enforcement Compliance Information System. Records maintained in the Enforcement and Compliance Information System have been exempted by rule from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

Information in the Enforcement Action Report System will be used by the OCC for supervisory and licensing purposes, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operation of OCC-regulated entities. The system will contain records of enforcement actions taken by the OCC and other federal financial regulatory agencies against individuals and pending OCC enforcement actions. It will also contain information about individuals who require the Federal Deposit Insurance Corporation's approval to participate in the affairs of an insured depository institution pursuant to 12 U.S.C. 1829, including information about criminal convictions involving dishonesty or breach of trust.

The OCC proposes to exempt records maintained in the Enforcement Action Report System from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(k)(2).

(2) Treasury/Comptroller .120—Bank Fraud Information System

To assist the OCC in its supervisory function, this system will track complaints and inquiries concerning fraudulent or suspicious financial instruments and transactions. The

information maintained in this system of records will serve the OCC's mission of ensuring safety and soundness of the banking system by assisting the OCC in its efforts to protect banks and their customers from fraudulent or suspicious banking activities.

The OCC proposes to exempt records maintained in the Bank Fraud Information System from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(3) Treasury/Comptroller .220—Section 914 Tracking System

Pursuant to rulemaking authority under 12 U.S.C. 93a and 1831i, certain categories of national banks, District of Columbia banks operating under the OCC's regulatory authority, and federal branches of foreign banks are required by 5 CFR 5.51 to file notices for the OCC's review when they propose to add individuals to their boards of directors or propose to employ senior executive officers. The OCC is establishing the Section 914 Tracking System as a system of records to track the processing of these notices.

The information in this system also will be used in carrying out OCC's other regulatory and licensing responsibilities, including other reviews of the qualifications and fitness of individuals who propose to become responsible for the business operations of OCC-regulated entities.

The OCC proposes to exempt records maintained in the Section 914 Tracking System from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(k)(2).

(4) Treasury/Comptroller .340—Access Control System

The records maintained in this system will assist the OCC in maintaining the security of its premises and permit it to identify those individuals who are on OCC premises at particular times.

Access Control System records are currently part of an existing Privacy Act system of records, Treasury/Comptroller .300-Administrative Personnel System. The notice for the Administrative Personnel System was last published in the **Federal Register** at 63 FR 69761, dated December 17, 1998.

(5) Treasury/Comptroller .700—Correspondence Tracking System

These records assist offices within the OCC to receive and respond to correspondence. Correspondence information will be maintained within the proposed new system of records for the purpose of tracking the Comptroller of the Currency's or the Chief Counsel's correspondence. The system will contain information about individuals whose correspondence is submitted to the Comptroller of the Currency or the Chief Counsel.

In the notice of proposed rulemaking, which is published separately in the **Federal Register**, the OCC has proposed to exempt records maintained in the Treasury/Comptroller .100-Enforcement Action Report System; Treasury/Comptroller .120-Bank Fraud Information System, and Treasury/Comptroller .220-Section 914 Tracking System from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and/or (k)(2). Comments relating to this proposed action should be directed to the OCC as provided in the notice of proposed rulemaking to amend 31 CFR part 1.

The new system of records reports, required by the Privacy Act, 5 U.S.C. 552a(r), have been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix 1 to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996.

The five proposed new systems of records, described above, are published in their entirety below.

Dated: September 10, 2001.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

TREASURY/COMPTROLLER .100

SYSTEM NAME:

Enforcement Action Report System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Enforcement and Compliance Division, 250 E Street, SW, Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are: (1) Current and former directors, officers, employees, shareholders, and independent contractors of financial institutions who have had enforcement actions taken against them by the OCC, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration;

(2) Current and former directors, officers, employees, shareholders, and independent contractors of financial institutions who are the subjects of pending enforcement actions initiated by the OCC; and

(3) Individuals who must obtain the consent of the Federal Deposit Insurance Corporation pursuant to 12 U.S.C. 1829 to become or continue as an institution-affiliated party within the meaning of 12 U.S.C. 1813(u) of a federally-insured depository institution, a direct or indirect owner or controlling person of such an entity, or a direct or indirect participant in the conduct of the affairs of such an entity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the names of individuals, their positions or titles with financial institutions, descriptions of offenses and enforcement actions, and descriptions of offenses requiring Federal Deposit Insurance Corporation approval under 12 U.S.C. 1829.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 481, 1817(j), 1818, 1820, and 1831i.

PURPOSES:

This system of records is used by the OCC to monitor enforcement actions and to assist it in its regulatory responsibilities, including review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of OCC-regulated entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity when the information is relevant to the entity's operations;

(2) Third parties to the extent necessary to obtain information that is relevant to an examination or investigation;

(3) The news media in accordance with guidelines contained in 28 CFR 50.2;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of such providers;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding

in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Enforcement and Compliance Division, Law Department, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from OCC personnel, OCC-regulated entities, other federal financial regulatory agencies, and criminal law enforcement authorities.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). *See* 31 CFR 1.36.

TREASURY/COMPTROLLER .120

SYSTEM NAME:

Bank Fraud Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Bank Supervision Operations, 250 E Street, SW, Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who submit complaints or inquiries about fraudulent or suspicious financial instruments or transactions or who are the subjects of complaints or inquiries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain: the name, address, or telephone number of the individual who submitted a complaint or inquiry; the name, address, or telephone number of the individual or entity who is the subject of a complaint or inquiry; the types of activity involved; the date of a complaint or inquiry; and numeric codes identifying a complaint or inquiry's nature or source. Supporting records may contain correspondence between the OCC and the individual or entity submitting a complaint or inquiry, correspondence between the OCC and an OCC-regulated entity, or correspondence between the OCC and other law enforcement or regulatory bodies. Other records maintained in this system may contain arrest, indictment and conviction information, and information relating to administrative actions taken or initiated in connection with complaints or inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 481, 1817(j), 1818, 1820, and 1831i; 31 U.S.C. 5318.

PURPOSES:

This system of records tracks complaints or inquiries concerning fraudulent or suspicious financial instruments and transactions. These records assist the OCC in its efforts to protect banks and their customers from fraudulent or suspicious banking activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to.

(1) An OCC-regulate entity to the extent that such entity is the subject of a complaint, inquiry, or fraudulent activity;

(2) Third parties to the extent necessary to obtain information that is relevant to the resolution of a complaint or inquiry, an examination, or an investigation;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(4) An appropriate governmental, international, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically, in card files, and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Special Supervision/Fraud, Bank Supervision Operations, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from individuals and entities who submit complaints or inquiries, OCC personnel, OCC-regulated entities, criminal law enforcement authorities, and governmental or self-regulatory bodies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). *See* 31 CFR 1.36.

TREASURY/COMPTROLLER .220

SYSTEM NAME:

Section 914 Tracking System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Special Supervision, 250 E Street, SW, Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who are named in notices filed under 12 CFR 5.51 as proposed directors or senior executive officers of national banks, District of Columbia banks operating under the OCC's regulatory authority, or federal branches of foreign banks (OCC-regulated entities). OCC-regulated entities file notices if they:

(1) Have a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System;

(2) Are subject to cease and desist orders, consent orders, or formal written agreements;

(3) Have been determined by the OCC to be in "troubled condition;"

(4) Are not in compliance with minimum capital requirements prescribed under 12 CFR Part 3; or

(5) Have been advised by the OCC, in connection with its review of an entity's capital restoration plan, that such filings are appropriate.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this electronic database may contain: the names, charter numbers, and locations of the OCC-regulated entities that have submitted notices pursuant to 5 CFR 5.51; the names, addresses, dates of birth, and social security numbers of individuals proposed as either directors or senior executive officers; and the actions taken by the OCC in connection with these notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 93a, 481, 1817(j), 1818, 1820, and 1831i.

PURPOSE(S):

Information maintained in this system is used by the OCC to carry out its statutory and other regulatory responsibilities, including other reviews of the qualifications and fitness of individuals who propose to become responsible for the business operations of OCC-regulated entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity in connection with review and action on a notice filed by that entity pursuant to 12 CFR 5.51;

(2) Third parties to the extent necessary to obtain information that is pertinent to the OCC's review and action on a notice received under 12 CFR 5.51;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of such providers;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is

relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director, Special Supervision/Fraud, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from OCC-regulated entities, individuals named in notices filed pursuant to 5 CFR 5.51, federal or state financial regulatory agencies, criminal law enforcement authorities, credit bureaus, and OCC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). *See* 31 CFR 1.36.

TREASURY/COMPTROLLER .340

SYSTEM NAME:

Access Control System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Security Office, Administrative Services Division, 250 E Street, SW, Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are OCC employees, contractors, agents, and volunteers who have been issued an OCC identification card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain an individual's name, social security number, picture, and authorizations to use the OCC's fitness facility or its headquarters parking garage, if applicable. This system of records also may contain time records of entrances and exits and attempted entrances and exits of OCC premises.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, and 482; 5 U.S.C. 301.

PURPOSES:

The OCC has an electronic security system linked to identification cards which limits access to its premises to authorized individuals and records the time that individuals are on the premises. This system of records is used to assist the OCC in maintaining the security of its premises and to permit the OCC to identify individuals on its premises at particular times.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) Third parties to the extent necessary to obtain information that is relevant to an investigation concerning access to or the security of the OCC's premises;

(2) An appropriate governmental authority if the information is relevant to a known or suspected violation of a law within that organization's jurisdiction;

(3) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(4) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(5) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(6) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGERS AND ADDRESS:

Security Officer, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals and the OCC's official personnel records. Information concerning entry and exit of OCC premises is obtained from identification card scanners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/COMPTROLLER .700

SYSTEM NAME:

Correspondence Tracking System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Office of Chief Counsel, 250 E Street, SW, Washington, DC 20219–0001. Components of this record system are maintained in the Comptroller of the Currency's Office and the Chief Counsel's Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those whose correspondence is submitted to the Comptroller of the Currency or the Chief Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the names of individuals who correspond with the OCC, information concerning the subject matter of the correspondence, correspondence disposition information, correspondence tracking dates, and internal office assignment information. Supporting records may contain correspondence between the OCC and the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1; 5 U.S.C. 301.

PURPOSES:

This system of records is used by the OCC to track the Comptroller of the Currency's or the Chief Counsel's correspondence, including the progress and disposition of the OCC's response.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) The OCC-regulated entity involved in correspondence;

(2) Third parties to the extent necessary to obtain information that is relevant to the response;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Electronic and other records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESSES:

Deputy to the Chief of Staff, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

Special Assistant to the Chief Counsel, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature (such as credit cards).

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals who submit correspondence and OCC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–27001 Filed 10–25–01; 8:45 am]
BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 00–17]

Privacy Act of 1974, as amended; System of Records

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed alterations to six Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Office of the Comptroller of the Currency (OCC) gives notice of proposed alterations to six Privacy Act systems of records.

DATES: The proposed altered systems of records will become effective November 26, 2001 unless comments are received which would result in a contrary determination.

ADDRESSES: You should send your comments to the Office of the Comptroller of the Currency, Public Information Room, Docket No. 00–17, 250 E Street, SW, Washington, DC 20219. You may inspect comments received at the same location. You may send your comments by facsimile transmission to FAX number 202–874–4448 or by electronic mail to *regs.comments@occ.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Vance, Jr., Disclosure Officer, Communications Division, (202) 874–4700 or Ellen M. Warwick, Special Counsel, Administrative and Internal Law Division, (202) 874–4460.

SUPPLEMENTARY INFORMATION: The OCC has conducted a review of its Privacy Act systems of records for compliance with the Privacy Act (5 U.S.C. 552a) and with Appendix 1 to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated November 30, 2000, and is proposing to alter six of its current systems of records. In addition to the changes noted below, the proposed alterations also update the notices by restating many of the other data elements, such as "notification procedure," for each of the notices. More specific alterations to the six current systems of records are as follows:

(1) Treasury/Comptroller .013—Enforcement and Compliance Information System

The proposed alterations to this system of records include:

(a) To change the title and number of the system to "Treasury/Comptroller .110—Reports of Suspicious Activities;"

(b) To add witnesses to the categories of individuals covered by the system;

(c) To consolidate and restate existing routine uses and add two routine uses.

Records maintained in the Enforcement and Compliance Information System have been exempted by rule, and the records maintained in the altered Treasury/Comptroller .110—Reports of Suspicious Activities system will continue to be exempted by rule from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). The notice for this system of records was last published in the **Federal Register** at 63 FR 69757 dated December 17, 1998.

(2) Treasury/Comptroller .015—Chain Banking Organizations System

The OCC is proposing to alter this system of records covering chain banking organization records for the following reasons:

(a) To renumber the system as "Treasury/Comptroller .200;"

(b) To more fully describe, by addition of a definition for chain banking, the categories of individuals covered by the system; and

(c) To consolidate and restate existing routine uses and add three routine uses.

The notice for this system of records was last published in the **Federal Register** at 63 FR 69758 dated December 17, 1998.

(3) Treasury/ Comptroller .221—Registration Records for Municipal and United States Government Securities Dealers

The OCC proposes to alter this system of records covering bank securities dealer records:

(a) To change the title and number of the system to "Treasury/Comptroller .210—Bank Securities Dealers System;" and

(b) To consolidate and restate existing routine uses and add five routine uses.

The notice for this system of records was last published in the **Federal Register** at 63 FR 69760 dated December 17, 1998.

(4) Treasury/Comptroller .500—Chief Counsel's Management Information System

The OCC proposes to alter this system of records covering the Chief Counsel's management information records to restate existing routine uses and add six routine uses.

Records maintained in the Chief Counsel's Management Information System have been, and will continue to be, exempted by rule from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). The notice for this system of records was last published in the **Federal Register** at 63 FR 69763 dated December 17, 1998.

(5) Treasury/Comptroller .016—Litigation Information System

The OCC is proposing to alter its current system of records covering litigation records to consolidate and restate existing routine uses and add four routine uses. This system of records is to be renumbered Treasury/Comptroller .510.

The OCC proposes to exempt records maintained in the Litigation Information System from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). The notice for this system was last published in the **Federal Register** at 63 FR 69759 dated December 17, 1998.

(6) Treasury/Comptroller .004—Consumer Complaint and Inquiry Information System

The proposed alterations to this system of records include:

(a) To renumber the system as "Treasury/Comptroller .600;"

(b) To add individuals who submit inquiries to the categories of individuals covered by the system; and

(c) To restate an existing routine use and add seven routine uses.

The OCC proposes to exempt records maintained in the Consumer Complaint and Inquiry Information System from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(k)(2). The notice for this system was last published in the **Federal Register** at 63 FR 69956 dated December 17, 1998.

In the notice of proposed rulemaking, which is published separately in the **Federal Register**, the Department and the OCC are giving public notice of a proposed rule to add exemptions to two existing systems of records (Treasury/Comptroller .016—Litigation Information System, and Treasury/Comptroller .004—Consumer Complaint and Inquiry Information System) from certain provisions of 5 U.S.C. 552a pursuant to subsection (j)(2) and/or (k)(2). Comments relating to this proposed rulemaking may be directed to the OCC as provided in the notice for that proposed action.

The altered system of records reports, required by the Privacy Act, 5 U.S.C. 552a(r), have been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix 1 to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996.

The six proposed altered systems of records, described above, are published in their entirety below.

Dated: September 10, 2001.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

TREASURY/COMPTROLLER .110

SYSTEM NAME:

Reports of Suspicious Activities—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Enforcement and Compliance Division, 250 E Street, SW., Washington, DC 20219–0001.

Suspicious Activity Reports (SARs) are managed by the Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182, and stored at the IRS Computing Center in Detroit, Michigan. Information extracted from or relating to SARs or reports of crimes and suspected crimes filed by OCC personnel or by national banks, District of Columbia banks operating under the OCC's regulatory authority, or federal branches or agencies of foreign banks (OCC-regulated entities) is maintained in an OCC electronic database. This database, as well as the database managed by FinCEN, is accessible to designated OCC headquarters and district office personnel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who have been designated as suspects or witnesses in SARs or reports of crimes and suspected crimes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the name of the entity to which a report pertains, the names of individual suspects and witnesses, the types of suspicious activity involved, and the amounts of known losses. Other records maintained in this system may contain arrest, indictment and conviction information, and information relating to administrative actions taken or initiated in connection with activities reported in a SAR or a report of crime and suspected crime.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 481, 1817(j), 1818, 1820, and 1831i; 31 U.S.C. 5318.

PURPOSE:

This system of records is used by the OCC to monitor criminal law enforcement actions taken with respect to known or suspected criminal activities affecting OCC-regulated entities. System information is used to determine whether matters reported in SARs warrant the OCC's supervisory action. Information in this system also may be used for other supervisory and licensing purposes, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of OCC-regulated entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) The Department of Justice through periodic reports containing the identities of individuals suspected of having committed violations of criminal law;

(2) An OCC-regulated entity if the SAR relates to that institution;

(3) Third parties to the extent necessary to obtain information that is relevant to an examination or investigation;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation and supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of such providers;

(5) An appropriate governmental, international, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(6) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGERS AND ADDRESS:

Director, Enforcement and Compliance Division, Law Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from OCC personnel, OCC-regulated entities, other financial regulatory agencies, criminal law enforcement authorities, and FinCEN.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), and (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/COMPTROLLER .200

SYSTEM NAME:

Chain Banking Organizations System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Core Policy Development, 250 E Street, SW, Washington, DC 20219–0001, and the OCC's district offices, as follows:

(1) Northeastern District Office, 1114 Avenue of the Americas, Suite 3900, New York, NY 10036–7780;

(2) Southeastern District Office, Marquis One Tower, Suite 600, 245 Peachtree Center Ave., NE, Atlanta, GA 30303–1223;

(3) Central District Office, One Financial Plaza, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605–1073;

(4) Midwestern District Office, 2345 Grand Boulevard, Suite 700, Kansas City, MO 64108–2683;

(5) Southwestern District Office, 500 North Akard Street, Suite 1600, Dallas, TX 75201–3394; and

(6) Western District Office, 50 Fremont Street, Suite 3900, San Francisco, CA 94105–2292.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who directly, indirectly, or acting through or in concert with one or more other individuals, own or control a chain banking organization. A chain banking organization exists when two or more independently chartered financial institutions, including at least one OCC-regulated entity, are controlled either directly or indirectly by the same individual, family, or group of individuals closely associated in their business dealings. Control generally exists when the common ownership has the ability or power, directly or indirectly, to:

(1) Control the vote of 25 percent or more of any class of an organization's voting securities;

(2) Control in any manner the election of a majority of the directors of an organization; or

(3) Exercise a controlling influence over the management or policies of an organization. A registered multibank holding company and its subsidiary banks are not ordinarily considered a chain banking group unless the holding company is linked to other banking organizations through common control.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system contain the names of individuals who, either alone or in concert with others, own or control a chain banking organization. Other information may contain: the name, location, charter number, charter type, and date of last examination of each organization comprising a chain; the percentage of outstanding stock owned or controlled by controlling individuals or groups; and the name of any intermediate holding entity and the percentage of such entity owned or controlled by the individual or group.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, 1817(j), and 1820.

PURPOSE:

Information maintained in this system is used by the OCC to carry out its supervisory responsibilities with respect to national banks and District of Columbia banks operating under the OCC's regulatory authority, including the coordination of examinations, supervisory evaluations and analyses, and administrative enforcement actions with other financial regulatory agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity when information is relevant to the entity's operation;

(2) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(3) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within the organization's jurisdiction;

(4) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(5) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(6) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(7) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGERS AND ADDRESS:

Director, Core Policy Development, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from OCC personnel, other Federal financial regulatory agencies, and individuals who file notices of their intention to acquire control over an OCC-regulated financial institution.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/COMPTROLLER .210

SYSTEM NAME:

Bank Securities Dealers System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Treasury and Market Risk Division, 250 E Street, SW, Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who are or seek to be associated with a municipal securities dealer or a government securities broker/dealer that is a national bank, a District of Columbia bank operating under the OCC's regulatory authority, or a department or division of any such bank in the capacity of a municipal securities principal, municipal securities representative, or government securities associated person.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain an individual's name, address history, date and place of birth, social security number, educational and occupational history, certain professional qualifications and testing information, disciplinary history, or information about employment termination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, 1818, and 1820; 15 U.S.C. 78o–4, 78o–5, 78q, and 78w.

PURPOSES:

This system of records will be used by the OCC to carry out its responsibilities under the Federal securities laws relating to the professional qualifications and fitness of individuals who engage or propose to engage in securities activities on behalf of national banks and District of Columbia banks operating under the OCC's regulatory authority.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH SYSTEMS:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity in connection with its filing relating to the qualifications and fitness of an individual serving or proposing to serve the entity in a securities-related capacity;

(2) Third parties to the extent needed to obtain additional information concerning the professional qualifications and fitness of an individual covered by the system;

(3) Third parties inquiring about the subject of an OCC enforcement action;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become involved in the provider's securities business;

(5) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(6) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(7) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(8) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(9) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to the electronic database is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Treasury and Market Risk Division, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from OCC-regulated entities that are: municipal securities dealers and/or government securities brokers/dealers; individuals who are or propose to become municipal securities principals, municipal securities representatives, or government securities associated persons; or governmental and self-regulatory organizations that regulate the securities industry.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/COMPTROLLER .500

SYSTEM NAME:

Chief Counsel's Management Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Office of Chief Counsel, 250 E Street, SW, Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are: individuals who have requested information or action from the OCC; parties or witnesses in civil proceedings or administrative actions; individuals who have submitted requests for testimony and/or production of documents pursuant to 12 CFR Part 4, Subpart C; individuals who have been the subjects of administrative actions or investigations initiated by the OCC, including current or former shareholders, directors, officers, employees and agents of OCC-regulated entities, current, former, or potential bank customers, and OCC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the names of: banks; requestors; parties; witnesses; current or former shareholders; directors, officers, employees and agents of OCC-regulated entities; current, former or potential bank customers; and current or former OCC employees. These records contain summarized information concerning the description and status of Law Department work assignments. Supporting records may include pleadings and discovery materials generated in connection with civil proceedings or administrative actions, and correspondence or memoranda related to work assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 93(d)(second), 481, 1818, and 1820.

PURPOSE(S):

This system of records is used to track the progress and disposition of OCC Law Department work assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity involved in an assigned matter;

(2) Third parties to the extent necessary to obtain information that is relevant to the resolution of an assigned matter;

(3) The news media in accordance with guidelines contained in 28 CFR 50.2;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(5) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(6) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(7) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(8) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(9) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable

access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Assistant to the Chief Counsel, Law Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from individuals who request information or action from the OCC, individuals who are involved in legal proceedings in which the OCC is a party or has an interest, OCC personnel, and OCC-regulated entities and other entities, including governmental, tribal, self-regulatory, and professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). *See* 31 CFR 1.36.

TREASURY/COMPTROLLER .510

SYSTEM NAME:

Litigation Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Office of Chief Counsel, Litigation Division, 250 E Street, SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are parties or witnesses in civil proceedings or administrative actions, and individuals who have submitted requests for testimony or the production of documents pursuant to 12 CFR part 4, subpart C.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system are those generated in connection with civil proceedings or administrative actions, such as discovery materials, evidentiary materials, transcripts of testimony, pleadings, memoranda, correspondence, and requests for information pursuant to 12 CFR part 4, subpart C.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 93(d)(second), 481, 1818, and 1820.

PURPOSE:

This system of records is used by the OCC in representing its interests in legal actions and proceedings in which the OCC, its employees, or the United States is a party or has an interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) Third parties to the extent necessary to obtain information that is relevant to the subject matter of civil proceedings or administrative actions involving the OCC;

(2) The news media in accordance with guidelines contained in 28 CFR 50.2;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

System records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGERS AND ADDRESS:

Director, Litigation Division, Law Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from: individuals or entities involved in legal proceedings in which the OCC is a party or has an interest; OCC-regulated entities; and governmental, tribal, self-regulatory or professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). *See* 31 CFR 1.36.

TREASURY/COMPTROLLER .600

SYSTEM NAME:

Consumer Complaint and Inquiry Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Customer Assistance Group, 1301 McKinney Street, Suite 3725, Houston, Texas 77010–3034.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who submit complaints or inquiries about national banks, District of Columbia banks operating under OCC's regulatory authority, federal branches and agencies of foreign banks, or subsidiaries of any such entity (OCC-regulated entities), and other entities that the OCC does not regulate. This includes individuals who file complaints and inquiries directly with the OCC or through other parties, such as attorneys, members of Congress, or other governmental organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain: the name and address of the individual who submitted the complaint or inquiry; when applicable, the name of the individual or organization referring a matter; the name of the entity that is the subject of the complaint or inquiry; the date of the incoming correspondence and its receipt; numeric codes identifying the complaint or inquiry's nature, source, and resolution; the OCC office and personnel assigned to review the correspondence; the status of the review; the resolution date; and, when applicable, the amount of reimbursement. Supporting records may contain correspondence between the OCC and the individual submitting the complaint or inquiry, correspondence between the OCC and the regulated entity, and correspondence between the OCC and other law enforcement or regulatory bodies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, and 1820; 15 U.S.C. 41 *et seq.*

PURPOSE(S)

This system of records is used to administer the OCC's Customer Assistance Program and to track the processing and resolution of complaints and inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity that is the subject of a complaint or inquiry;

(2) Third parties to the extent necessary to obtain information that is relevant to the resolution of a complaint or inquiry;

(3) The appropriate governmental, tribal, self-regulatory or professional organization if that organization has jurisdiction over the subject matter of the complaint or inquiry, or the entity that is the subject of the complaint or inquiry;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Ombudsman, Office of the Comptroller of the Currency, 1301 McKinney Street, Suite 3725, Houston, Texas 77010–3034.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications

Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from individuals and entities filing complaints and inquiries, other governmental authorities, and OCC-regulated entities that are the subjects of complaints and inquiries.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). *See* 31 CFR 1.36.

[FR Doc. 01–27002 Filed 10–25–01; 8:45 am]

BILLING CODE 4810–33–P

INSTITUTE OF PEACE

Announcement of the Spring 2002 Solicited Grant Competition Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its Upcoming Spring 2002 Solicited Grant Competition. The Solicited Grant competition is restricted to projects that fit specific themes and topics identified in advance by the Institute of Peace.

The themes and topics for the Spring 2002 Solicited competition are:

- Solicitation A: Strategic Nonviolent Conflict
- Solicitation B: The Middle East and South Asia
- Solicitation C: Training

Deadline for Receipt of Applications: March 1, 2002.

Notification of Awards: Late September 2002.

Applications Material: Available upon request.

ADDRESSES: For more information and an application package: United States Institute of Peace Grant Program, Solicited Grants, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 429–6063 (fax), (202) 457–1719 (TTY), E-mail: *grant_program@usip.org.*

Application material available on-line starting October 31: *www.usip.org/grant.html.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202) 429–3842.

Dated: October 23, 2001.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 01–27030 Filed 10–25–01; 8:45 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0620]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the regulation that allows veterans, veterans representatives and health care providers to submit data to request reimbursement from the Federal Government for emergency services at a private institution.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 2001.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *ann.bickoff@mail.va.gov.* Please refer to "OMB Control No. 2900–0620" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Emergency Care Authorization Regulations.

OMB Control Number: 2900–0620.

Type of Review: Extension of a currently approved collection.

Abstract: This information would be needed for VA to decide claims for reimbursement or payment from a veterans, a hospital or other entity that furnished non-VA emergency treatment or transportation to the veteran or a person or organization that paid for such treatment or transportation on behalf of the veterans. VA would use the information and certifications submitted to process claims for such reimbursement or payment.

Affected Public: Individuals or households, business or other for-profit and not-for-profit institutions.

Estimated Total Annual Burden: 120,729 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 241,457.

Dated: October 11, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–26996 Filed 10–25–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0601]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments to determine the reasons for delinquency on the original loan no longer exits and that the veteran is a satisfactory credit risk.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to "OMB Control No. 2900–0601" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Loan Guaranty: Requirements for Interest Rate Reduction Refinancing Loans.

OMB Control Number: 2900–0601.

Type of Review: Extension of a currently approved collection.

Abstract: VA is authorized to guarantee loans to veterans to refinance existing mortgage loans previously guaranteed by VA provided the veteran still owns the property used as security for the loan. Lenders must collect certain information concerning the veteran and the veteran's credit history (and spouse or other co-borrow, as applicable) in order to properly underwrite delinquent Interest Rate Reduction Refinancing Loan (IRRRLs). Under these proposed requirements, VA proposes to require that the lender provide VA with the credit information to assure itself that IRRRLs to refinance delinquent loans are underwritten in reasonable and prudent manner.

Affected Public: Business or other for profit.

Estimated Annual Burden: 85 hours.

Estimated Annual Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 170.

Dated: October 11, 2001.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–26997 Filed 10–25–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0179]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to establish eligibility to change insurance plans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to "OMB Control No. 2900–0179" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Change of Permanent Plan (Medical) (Change to a policy with a lower reserve value), VA Form 29–1549.

OMB Control Number: 2900–0179.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to establish his/her eligibility to change insurance plans from a higher reserve to a lower reserve value.

Affected Public: Individuals or households.

Estimated Annual Burden: 14 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 28.

Dated: October 11, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–26998 Filed 10–25–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0422]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Materiel Management (OA&MM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each reinstatement, with change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information to administer construction contracts.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 2001.

ADDRESSES: Submit written comments on the collection of information to Donald E. Kaliher, Office of Acquisition and Materiel Management (95A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *donald.kaliher@mail.va.gov*. Please refer to "OMB Control No. 2900–0422" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Donald E. Kaliher at (202) 273–8819.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OA&MM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&MM's functions, including whether the information will have practical utility; (2) the accuracy of OA&MM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–72, Performance of Work by the Contractor.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–81, Work Coordination. (This Clause will be renumbered as "Alternate 1" to VAAR Clause 852.236–80.)

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Supplement 1 (which will be renamed as "Alternate 1").

d. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Supplement 1 (which will be renamed as "Alternate 1").

e. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–84, Schedule of Work Progress.

f. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes.

OMB Control Number: 2900–0422.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The information is necessary for VA to administer construction contracts and to carry out its responsibility to construct, maintain and repair real property for VA.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 4,802 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,311.

Estimated Number of Total Respondents: 3,534.

Dated: October 16, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27000 Filed 10–25–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0252]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 26, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0252."

SUPPLEMENTARY INFORMATION:

Title: Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders, VA Form 26–8736.

OMB Control Number: 2900–0252.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8736 is used by nonsupervised lenders requesting approval to close loans on an automatic basis. Automatic lending privileges eliminate the requirement for submission of loans to VA for prior approval. Lending institutions with automatic loan privileges may process and disburse such loans and subsequently report the loan to VA for issuance of guaranty. The form requests information considered crucial for VA to make acceptability determinations as to lenders who shall be approved for this privilege.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 6, 2001 at page 35701.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 50 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 120.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0252" in any correspondence.

Dated: October 11, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–26999 Filed 10–25–01; 8:45 am]

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Federal Register

Friday,
October 26, 2001

Part II

Federal Reserve System

12 CFR Parts 211 and 265

International Banking Operations; Rules Regarding Delegation of Authority and International Lending Supervision; Final Rule and Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 211 and 265

[Regulation K; Docket No. R–0994]

International Banking Operations; Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (the Regulatory Improvement Act), the Federal Reserve Act, and the International Banking Act of 1978 (the IBA), the Board has reviewed Regulation K, which governs international banking operations, and is amending subparts A, B, and C. A proposed rule to amend subpart D of Regulation K is being published in this same issue of the **Federal Register**.

Subpart A of Regulation K governs the foreign investments and activities of all member banks (national banks as well as state member banks), Edge and agreement corporations, and bank holding companies. The amendments streamline foreign branching procedures for U.S. banking organizations, authorize expanded activities in foreign branches of U.S. banks, and implement recent statutory changes authorizing a bank to invest up to 20 percent of capital and surplus in Edge corporations. Changes also have been made to the provisions governing permissible foreign activities of U.S. banking organizations, including securities activities, and investments by U.S. banking organizations under the general consent procedures.

Subpart B of Regulation K (Foreign Banking Organizations) governs the U.S. activities of foreign banking organizations. The amendments include revisions aimed at streamlining the applications procedures applicable to foreign banks seeking to expand operations in the United States, changes to provisions regarding the qualification of foreign banking organizations for exemption from the nonbanking prohibitions of section 4 of the Bank Holding Company Act (the BHC Act), and implementation of provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the Interstate Act) that affect foreign banks.

In addition, there are a number of technical and clarifying amendments to subparts A and B, as well as subpart C, which deals with export trading companies. There are also certain amendments to the Board's Rules Regarding Delegation of Authority.

EFFECTIVE DATE: November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452–3786), regarding all subparts: Jon Stoloff, Senior Counsel (202/452–3269), or Alison MacDonald, Counsel (202/452–3236), regarding Subpart A; Ann Misback, Assistant General Counsel (202/452–3788), Janet Crossen, Senior Counsel (202/452–3281), or Melinda Milenkovich, Counsel (202/452–3274), regarding Subparts B and C; Legal Division; or Michael G. Martinson, Associate Director (202/452–2798), or Betsy Cross, Deputy Associate Director (202/452–2574), regarding all subparts; Division of Banking Supervision and Regulation. For users of Telecommunications Device for the Deaf (TDD) only, please contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Subpart A: International Operations of U.S. Banking Organizations

Statutory Framework

The Board is issuing amendments to Regulation K that will eliminate unnecessary regulatory burden, increase transparency, and streamline the approval process for U.S. banking organizations seeking to expand their operations abroad. The Federal Reserve Act, as amended by the IBA, requires the Board to review its regulations issued under section 25A of the Federal Reserve Act (the Edge Act) at least once every five years and make any changes necessary to ensure that the purposes of the Edge Act are being served in light of prevailing economic conditions and banking practices.[1] The Board has reviewed the provisions of Subpart A, which govern the operations of Edge corporations, with this statutory mandate in mind.

Edge corporations are international banking and financial vehicles through which U.S. banking organizations offer international banking or other foreign financial services and through which they compete with similar foreign-owned institutions in the United States and abroad. The purposes of the Edge Act, which amended the Federal Reserve Act in 1919, include enabling U.S. banking organizations to compete effectively with foreign-owned institutions; providing the means to finance international trade, especially U.S. exports; fostering the participation of regional and smaller U.S. banks in providing international banking and financing services to U.S. business and agriculture; and stimulating competition in the provision of international banking and financing services throughout the United States.

Congress, in enacting this legislation, recognized that U.S. banks needed vehicles that could exercise wider financial powers abroad than were permitted domestically in order to be competitive internationally and to serve the international needs of U.S. firms. At the same time, the Edge Act places limits on U.S. banks' exposure to these broader foreign activities, by limiting the amount that U.S. banks may invest in Edge corporations, establishing a number of statutory safety and soundness constraints, and granting the Board wide discretion in determining what activities should be permissible for such entities. In exercising its authority in this area, the Board is required by the IBA to implement the objectives of the Edge Act consistent with supervisory standards relating to the safety and soundness of U.S. banking organizations.

In December 1997, following a comprehensive review of the regulation, the Board requested public comment on proposed revisions to Regulation K (62 FR 68423) (the '97 Proposal). The Board received 28 comments from outside the Federal Reserve System on the proposed Subpart A revisions. Comments were received from twelve U.S. banks or bank holding companies; one Edge corporation; one bank-owned insurance agency; and thirteen trade associations. The Board also received comments from one state bank supervisory agency.

Subsequent to the Board issuing the '97 Proposal, financial modernization legislation was enacted. The Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338 (1999) (GLB or the GLB Act) was enacted on November 12, 1999. Many of the activities the Board had proposed to liberalize in the '97 Proposal are covered under the expanded authority available to financial holding companies (FHCs) under GLB. More specifically, under GLB, a bank holding company (BHC) that elects to become an FHC may engage in a broad range of financial activities, including securities underwriting and dealing, insurance sales and underwriting, and merchant banking.

Final action on the '97 Proposal was deferred pending implementation of the expanded authority available under GLB. The Board has issued a number of rules implementing GLB authority, including, for example, those governing

[1] The Board last issued final revisions to Subpart A of Regulation K in December 1995, at which time the investment authority for strongly capitalized and well-managed U.S. banking organizations was expanded significantly.

FHC elections and activities (66 FR 400, Jan. 3, 2001), real estate brokerage activities by FHCs (66 FR 307, Jan. 3, 2001), merchant banking activities (66 FR 8466, Jan. 31, 2001), the capital treatment of nonfinancial equity investments (66 FR 10212, Feb. 14, 2001), transactions between banks and their affiliates (66 FR 24186, May 11, 2001), and financial subsidiaries of state member banks (66 FR 42929, Aug. 16, 2001).

The Board has now reviewed its '97 Proposal in light of the significantly changed landscape in relation to provision of financial services post-GLB, as well as all comments filed on the '97 Proposal. The Board has concluded that a few of the changes proposed in 1997 that would have allowed expansion of activities now authorized under GLB no longer are appropriate, primarily those relating to equity dealing, portfolio investment, and insurance activities. However, consistent with the '97 Proposal, the Board has concluded that a number of provisions relating to foreign activities of U.S. banking organizations should be amended, including changes that would: (1) Expand permissible government bond trading by foreign branches of member banks; (2) streamline procedures for establishment of foreign branches by U.S. banking organizations; (3) expand permissible equity underwriting activities abroad for well-capitalized and well-managed U.S. banking organizations; (4) expand general consent authority for well-capitalized and well-managed U.S. banking organizations; (5) amend the debt/equity swaps authority to reflect changes in circumstances of eligible countries; and (6) implement the statutory provision allowing member banks to invest, with the Board's approval, up to 20 percent of capital and surplus in the stock of Edge and agreement corporations. Additional technical and clarifying amendments were also made. These changes to Regulation K, and the comments received on the '97 Proposal, are discussed below.

The Board also indicated in the '97 Proposal that it had not identified any changes to the permissible U.S. activities of Edge corporations that appeared necessary or appropriate to fulfill the purposes of the Edge Act, but sought comment on whether there was a need for any such changes. One commenter urged the Board to permit Edge corporations to provide incidental services generating insignificant revenues in the United States to U.S. persons affiliated with a foreign person or a foreign organization that is principally engaged in foreign business. The Board does not believe this change is necessary or appropriate or otherwise consistent with the purposes of the Edge Act.

Expansion of Government Bond Trading by Foreign Branches

Section 25 of the Federal Reserve Act permits the Board to authorize foreign branches of member banks to conduct abroad activities that are not permitted domestically. However, the statute states that the Board shall not "except to such limited extent as the Board may deem necessary with respect to securities issued by any 'foreign state' * * * authorize a foreign branch to engage or participate, directly or indirectly, in the business of underwriting, selling, or distributing securities."

Given the statutory language, the Board, to date, has only permitted foreign branches to underwrite and sell obligations of (i) the national government of the country in which the branch is located, (ii) an agency or instrumentality of the national government where supported by the taxing authority, guarantee, or full faith and credit of the national government, and (iii) a political subdivision of the country. This was determined to be appropriate on the basis that it is often necessary in the ordinary course of banking business for a branch to participate in the selling of the bonds of the host country.

In recent years, U.S. banking organizations have become more active in trading and underwriting foreign government securities. Increasingly, such business, where possible, is being conducted in the foreign branches of U.S. banks. Centralizing trading for all or for certain groups of countries in a single branch can be desirable to facilitate management and funding of this business. For example, a banking organization might wish to centralize government securities trading for all countries in the European Union in one European branch.

For these reasons, the Board proposed that banks be permitted to underwrite and deal through their foreign branches in obligations of governments other than the host government, provided that the obligations are of investment grade and the business is otherwise subject to sound banking practices and prudential regulations. The Board considered the requirement that the obligations must be investment grade would limit cross-border transfer risk to the bank because trading of government securities giving rise to such risk would be required to be conducted either directly through a local branch that is funded locally or through a subsidiary, instead of through the bank. The Board also proposed to retain the existing authority of foreign branches of member banks to underwrite and deal in host government bonds regardless of whether they are investment grade. The Board sought comment on these proposals, as well as on what ratings should be considered to be investment grade for these purposes.

Commenters expressed general support for the Board's proposal. Some commenters suggested that the Board treat any government obligation, investment grade or otherwise, of any country or, alternatively, any country in which a bank has a foreign branch, as eligible to be underwritten and traded in branches located outside of that country. Other commenters argued that safety and soundness is enhanced by having centralized underwriting and dealing of *all* government securities, since the local branch which has authority to engage in non-investment grade underwriting and dealing may not have the appropriate experience to manage such operations.

The Board continues to believe the investment grade requirement for obligations of governments other than the host government is appropriate for the reason set out in the proposal, namely, limitation of cross-border transfer risk to the bank. Non-investment grade government securities issued by foreign governments other than the host government are more likely to give rise to such risks. For this reason, the Board continues to be of the view that trading of non-investment grade securities should be conducted either directly through a local branch that is funded locally or through a subsidiary, instead of through the bank. Accordingly, in the final rule, the Board has retained the investment grade requirement for obligations of governments other than the host government.

A few commenters recommended that the Board permit foreign branches of U.S. banks to underwrite and deal in investment grade obligations of all political subdivisions, and of agencies and instrumentalities whether or not backed by the national government. After further consideration, the Board has determined that it is appropriate to adopt this suggestion at least in part, so long as all such obligations are investment grade. As at present, obligations of agencies and instrumentalities will be required to be supported by the taxing authority, guarantee, or full faith and credit of the national government.

Commenters also requested that foreign branches be permitted to

underwrite and deal in all securities guaranteed by a foreign government. The Board notes that the authority granted in section 25 of the Federal Reserve Act in relation to this activity is with respect to securities "issued by 'foreign state'," and declines to adopt this change.

With respect to the Board's request for comment on which ratings should be considered to be investment grade for these purposes, commenters urged the Board to adopt the definition of "investment grade" set out in the Office of the Comptroller of the Currency's (OCC) investment securities regulation. 12 CFR 1.2(d). The OCC defines the term to mean a security that is rated in one of the four highest rating categories by two or more "nationally recognized statistical rating organizations" (NRSROs) as designated by the Securities and Exchange Commission (SEC), or one such agency if the security has been rated by only one NRSRO. The Board considers this definition to be appropriate for purposes of this activity of foreign branches of U.S. banks; accordingly, that definition is incorporated into the final rule.

A few commenters also urged the Board to adopt a procedure that would permit the addition of agencies to the list of permissible rating agencies beyond those that have been approved by the SEC because of concern that a rating by a NRSRO may not be available for some foreign government securities. The Board is not inclined to adopt such a procedure at this time in view of the number of NRSROs that rate foreign government securities. Board staff should be consulted if any issues arise in relation to application of the "investment grade" requirement. If it appears that additional guidance is warranted, the Board will consider the matter further.

Comments also suggested that securities that are not speculative in nature and are deemed by the investor to be the credit equivalent of a security that is rated investment grade should be considered "investment grade" under this provision of Regulation K. The Board believes that such an approach would essentially mean that there would be no requirement that the obligations be investment grade and rejects it for this reason. Finally, commenters sought clarification as to whether the limits applicable to government obligations, whether as a percentage of capital or of local deposits, may be calculated on a net basis rather than a gross basis. The limits applicable to government obligations under this section may be calculated on a net basis, provided that the banking organization otherwise has received no objection to its internal models being employed for purposes of compliance with these limits.

Foreign Branching

The Board's responsibilities as home country supervisor under the *Minimum Standards for the Supervision of International Banking Groups and their Cross-border Establishments* issued by the Basle Committee on Banking Supervision (the Minimum Standards) call for its specific authorization of a U.S. banking organization's outward expansion. Outward expansion for these purposes means the initial establishment of a banking presence in a country by the bank or any affiliate.

Regulation K currently requires the specific consent of the Board for the establishment of branches by a member bank, an Edge or agreement corporation, or a foreign bank subsidiary in its first two foreign countries. The Board proposed to amend Regulation K to require only 30 days' prior notice to the Board before establishment of branches in the first two countries, on the basis that such a requirement also would fulfill the Board's responsibilities under the Minimum Standards. The Board also proposed that 30 days' prior notice would be required, consistent with the Minimum Standards, if the initial banking presence abroad would be in the form of a subsidiary bank; such notice would be required even if the amount to be invested were below the general consent limits.

Under Regulation K at present, no prior Board approval is required for a banking entity to establish additional branches in any foreign country where it already operates one or more branches. However, a banking entity must give the Board prior notice before establishing a branch in a foreign country where it has no branches even though a banking affiliate operates a branch in that country.

The Board proposed to liberalize Regulation K such that if any of the member banks, their Edge or agreement corporation subsidiaries, or a foreign bank subsidiary (whether a subsidiary of the bank or of the bank holding company) already has a branch in a particular foreign country, a banking affiliate would be authorized to branch there without prior notice to the board. After-the-fact notice, however, would still be required.

The Board also proposed that the 45 days' prior notice currently required in order to branch into additional countries where there is no affiliated banking presence (after the organization has branches engaged in banking in two foreign countries) should be reduced to 12 business days. In taking this approach, the foreign branching establishments of the entire banking organization would be taken into account in determining whether the banking entity would be subject to the 30 day or 12 day prior notice procedure. Where a U.S. banking organization as a whole already operates foreign branches of banking entities in two countries, any banking affiliate would be able to open a branch in a country where such organization has no banking presence, pursuant to the 12 days' prior notice procedure.

Finally, currently under Regulation K, nonbanking subsidiaries may branch into any country in which any affiliate has a branch without prior notice, but a 45-day prior notice must be submitted to establish a branch in a country where no affiliate has a presence. The Board proposed permitting nonbanking subsidiaries held pursuant to Regulation K to establish foreign branches without prior review, subject only to an after-the-fact notice requirement.

The Board sought comment on these proposed changes, including in particular whether the proposed modified notice periods would sufficiently accommodate foreign expansion plans. Commenters supported the Board's proposed changes. Accordingly, the Board is adopting the foreign branching provisions as proposed. The Board wishes to clarify that filing Form FR 2058 fulfills the after-the-fact notice requirements of the foreign branching provisions. Additionally, the Board notes that the streamlined procedures for establishment of foreign branches are not limited to well-capitalized, well-managed institutions. However, the Board retains the authority to suspend general consent authority in whole or in part should circumstances warrant.

Permissible Activities of Foreign Subsidiaries of U.S. Banking Organizations

One aspect of bank regulation to which the Federal Reserve subscribes is the fostering of a level competitive playing field for financial intermediaries. Thus, in the United States, the Board has advocated that expansion by banking organizations into nonbanking activities should generally occur through the bank holding company and not the bank. Banks in the United States benefit from the implicit support of the national government and its sovereign credit rating through federal deposit insurance, Federal Reserve discount window access, and final riskless settlement of payment

system transactions. Extension of this system would make the existing playing field in the United States unlevel for nonbank competitors and create unnecessary distortions in competition.

The same principle applies to U.S. banking organizations abroad. Other nations have chosen to allow their banks to engage in a broad array of financial activities, especially investment banking activities, thereby extending to these activities the implicit support of their governments. In those markets, U.S. banking organizations would be at a disadvantage if unable to offer their customers an equivalent range of key services with the convenience and efficiency of their local bank competitors. In many of these markets, banks are the only significant providers of capital markets services. Independent securities firms are not generally substantial competitors in these markets, both for historical reasons and because they may be unable to compete effectively with banks that have the explicit and implicit support of their governments.

Congress has recognized the existence of conflicting policy objectives and competitive pressures faced by U.S. banking organizations operating abroad and through legislation has struck a balance. In relation to the United States, Congress in enacting GLB demonstrated a strong preference that expanded nonbanking financial activities be conducted in a structure that does not involve the federal bank subsidy. Expanded activities authorized by GLB are required to be conducted either in nonbank subsidiaries of a financial holding company or in a financial subsidiary of a bank, which would be subject to the restrictions on funding by a parent bank set out in sections 23A and 23B of the Federal Reserve Act. In relation to competitive pressures arising from abroad, Congress preserved the Board's authority under the Edge Act to permit Edge corporations, which may be owned by U.S. banks, to engage in a wider range of activities outside the United States than permitted to U.S. banks domestically, where such powers are considered necessary to enable them to compete effectively with similar foreign-owned institutions in the United States and abroad and liberalization otherwise is consistent with safety and soundness considerations. Congress, in enacting the Edge Act, recognized that U.S. banks in some circumstances may need vehicles that could exercise broader financial powers abroad in order to remain competitive internationally and to serve the needs of U.S. firms. Congress granted the Board similar broad discretion to allow bank holding companies to engage in activities outside the United States.

In exercising its statutory authority under the Edge Act, the Board has sought to balance the need for U.S. banking organizations to be competitive abroad with the public interest in assuring the safety and soundness of the banks, protecting the deposit insurance fund, and limiting the extension of the federal safety net. In adopting final revisions to Regulation K, the Board has sought to grant expanded authority only in relation to those activities where: (i) The existing restrictions of Regulation K appear to result in a competitive harm to the ability of an Edge corporation to provide financial services necessary to attract and retain customers; and (ii) requiring the activities to be conducted outside the bank chain of ownership appears to compromise significantly the competitive position of U.S. banking organizations. The Board has concluded that equity underwriting is one such activity, and the expansion of authority proposed in 1997 with regard to this activity has been adopted, as discussed further below. The Board has concluded, however, that liberalization set out in the '97 Proposal in relation to other activities, such as equity dealing, venture capital investments and insurance activities, should not be adopted at this time in light of the passage of GLB. These latter activities appear to be able to be conducted competitively outside the bank chain of ownership under authority granted in GLB.

Two-Tier Capital Test for Edge Corporations

As the Board noted in the '97 Proposal, tying applicable limits to the capital of the parent bank is particularly important for subsidiaries of Edge corporations. Congress has limited a member bank's investment in Edge and agreement corporations to 20 percent of the bank's capital.[2] However, for various reasons, Edge corporations historically have tended to retain their earnings rather than dividending them to the parent bank. In some cases due to such retained earnings, the capital of a bank's Edge and agreement corporations may be in excess of 20 percent of the parent bank's consolidated capital, even though its *investment* in the Edge subject to the above-referenced statutory limit is below 20 percent.

In these circumstances, the Board considered that the capital of an Edge corporation that is in excess of 20 percent of the parent bank's consolidated capital, when retained earnings are counted, generally should be excluded for purposes of determining applicable limits for activities of the Edge and its subsidiaries. Accordingly, the Board proposed that Edge and agreement corporations, as well as foreign bank subsidiaries of member banks (which are treated as Edge corporations for purposes of their limits), would be subject to two limits, one tied to a percentage of the Edge corporation's tier 1 capital and the other tied to a percentage of the parent bank's tier 1 capital. Limits tied to the parent bank's capital would be 20 percent of the limits otherwise applicable to Edge corporations, and the lower limit would be binding. For example, if a limit proposed for a given activity of an Edge corporation is 10 percent of the Edge corporation's capital but the Edge corporation's capital is in excess of 20 percent of the bank's total capital, the binding limit for the Edge corporation would be two percent of the parent bank's tier 1 capital. For those U.S. banks that do not have significant levels of retained earnings at the Edge, the binding limit more than likely would be the separate limit tied to the Edge corporation's capital.

The Board considered that this approach would be consistent with the intent underlying the provisions of the Edge Act limiting the total amount of capital a bank may invest in Edge corporations. This approach effectively would place a cap on the percentage of total *bank* capital that could be placed at risk through activities or investments not otherwise permitted to the bank directly, regardless of the capital level of the Edge corporation. This approach also would reduce any regulatory incentive to retain earnings at the Edge because any regulatory benefit from such retained earnings, in terms of expanded limits on activities abroad, would be denied.

The Board proposed that all limits applicable to Edge corporations under the '97 Proposal would proceed on this basis. Comment was requested on these proposals and whether any other approach might achieve similar objectives.

One commenter opposed the Board's proposal to impose a two-tier capital test on Edge corporations, arguing that the proposal penalized organizations that achieve strong earnings in a

[2] The Edge Act prohibited member banks from investing more than 10 percent of their capital and surplus in the capital stock of Edge and agreement corporations. In September 1996, congress amended this limit to permit investments in excess of 10 percent of capital and surplus with the specific approval of the Board, provided the amount invested shall not exceed 20 percent of capital and surplus of the bank. *See* The Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA), Pub. L. 104–208, sec. 2307 (12 U.S.C. 618).

subsidiary of a bank rather than a subsidiary of the holding company. It further maintained that the limitation on the amount a bank can invest in an Edge corporation creates a practical limit on the risk to the bank's own capital. Therefore, it argued the Board should look only at the capital of the Edge corporation in setting limits as a percentage of capital. The Board continues to believe this two-tier approach is consistent with the intent underlying provisions of the Edge Act that limit the total amount of capital a bank may invest in Edge corporations. The Board notes that, due to the accumulation of large amounts of retained earnings in Edge corporations, the limitation on the amount a bank can invest in an Edge corporation may not limit the overall risk to the bank's consolidated capital.

Two other commenters argued the Board should look only at the capital of the parent bank in setting limits under the Edge corporation. The Board believes, however, that activity limits for Edge corporations should be tied to the capital of both the Edge corporation and the parent member bank, in order to ensure that Edge corporations are not a source of potential weakness to the U.S. parent bank.

Securities Activities

Current Restrictions on Securities Activities

Foreign subsidiaries of U.S. banking organizations have been permitted broad authority to underwrite and deal in debt securities for over 25 years, subject to the provision that the securities must be included with loans for purposes of compliance with the parent bank's lending limit. No separate dollar limits have been placed on underwriting and dealing in debt securities.

Since 1979, Regulation K also has specifically authorized foreign subsidiaries of both U.S. banks and bank holding companies to underwrite and deal in equity securities outside the United States, subject to certain limitations and restrictions. These activities were determined to be permissible, within the applicable limits, on two bases. First, it became clear that it was necessary for U.S. banking organizations to be able to engage in these activities abroad, if they were to compete successfully with foreign banks in the provision of services to foreign customers. Indeed, for some time, virtually all the major foreign competitors of U.S. banking organizations have been foreign banks that conduct equity securities activities either directly in the bank or in a subsidiary of the bank. Thus, consistent with the purposes underlying the Edge Act and the BHC Act, there is clear statutory authority for U.S. banking organizations to engage in these activities through subsidiaries abroad. Second, in any event, the provisions of the Glass-Steagall Act did not apply extra-territorially to the operations of foreign subsidiaries of U.S. banking organizations.

While equity underwriting and dealing have been permissible activities for U.S. banking organizations' foreign subsidiaries for some time, as noted above, the level of such activity is subject to limits under Regulation K. Restrictions *currently* applied to equity securities underwriting and dealing activities under Regulation K include the following.

Underwriting limits—Through a foreign subsidiary, an investor [3] may underwrite equity securities in amounts up to the lesser of $60 million or 25 percent of its tier 1 capital. These limits do not include amounts covered by binding commitments from sub-underwriters or other purchasers. If the underwriting is done in a subsidiary of the member bank, the amount of the uncovered underwriting must be included in computing the bank's single borrower lending limit with respect to the issuer.

Dealing limits—Through a foreign subsidiary, an investor may hold a dealing position in the equity securities of any one issuer in amounts up to the lesser of $30 million or 10 percent of its tier 1 capital. An investor must include any shares of a company held in an affiliate's dealing account in determining compliance with any percentage limits placed on ownership of that company.

Aggregate limit—There is an aggregate limit on the total amount of equity securities that may be held in investment and dealing accounts, aggregating all shares held by subsidiaries: for a bank holding company, the limit is 25 percent of tier 1 capital; for an Edge corporation,[4] the limit is 100 percent of the Edge's tier 1 capital.[5]

Prior review—Banking organizations must submit to a review of their foreign securities operations prior to engaging in foreign equity securities activities to the extent of these limits. They may also seek Board approval for higher underwriting limits, subject to certain conditions.

Revisions of Equity Securities Authority

Equity Underwriting

'97 Proposal

Although, as discussed above, the existing limits on underwriting equity securities in Regulation K are expressed both in terms of percentages of tier 1 capital of the investor and absolute dollar limits, as a practical matter it has been the dollar limits that have constrained the extent to which U.S. banking organizations may engage in these activities through their foreign subsidiaries. In the '97 Proposal, the Board noted the $60 million limit on underwriting equity securities significantly impedes the ability of U.S. banking organizations to compete for this business in foreign markets, where securities underwriting is a service routinely offered by local banks. At the same time, the risks associated with the activity suggest that such a stringent limit is not required for safety and soundness purposes for well-capitalized and well-managed banking organizations. While initial underwriting commitments may involve large sums, in most cases by the time the underwriting goes to market, large portions of the exposure have been passed on to sub-underwriters or presold. Thus, in most cases, the initial underwriting commitment substantially overstates the risk being assumed.

In order to reduce further these constraints, the Board proposed in 1997 to replace the dollar limits for underwriting activity with limits based solely on percentages of the investor's tier 1 capital for well-capitalized and well-managed organizations. The Board considered that, if a banking organization is well-capitalized and well-managed, tying the underwriting limits solely to capital levels would have the benefit of more closely linking the limits to the ability of the company to support the activity. It would also provide U.S. banking organizations with greater flexibility in responding to changing market conditions, because the amount of capital devoted to an activity is, after meeting regulatory constraints, determined by the firm.

Accordingly, the Board proposed to amend Regulation K in relation to those banking organizations that are well-capitalized and well-managed by removing the existing dollar limits applicable to equity underwriting

[3] An investor for these purposes means an Edge corporation, agreement corporation, bank holding company, member bank and any foreign bank owned directly by a member bank.

[4] Any foreign bank directly owned by a U.S. bank is treated as an Edge corporation for purposes of its limits.

[5] Investments in companies must be added to any shares of such companies held in the dealing account for purposes of this limit.

activities, and instead providing that such activities would be limited to percentages of the investor's tier 1 capital. For well-capitalized and well-managed organizations, the Board proposed applicable limits to be determined as follows.[6] In relation to securities activities of subsidiaries of bank holding companies, their limits would be determined by reference to percentages of the tier 1 capital of the holding company. The Board proposed that limits applicable to such activities undertaken by subsidiaries of Edge and agreement corporations, as well as foreign banks that may be direct subsidiaries of member banks, would be determined by reference to the tier 1 capital of the parent bank as well as to the tier 1 capital of the bank subsidiary. More specifically, limits for underwriting exposure to a single company would be established at 15 percent of the bank holding company's tier 1 capital for its subsidiaries and, for subsidiaries of Edge corporations, the lesser of three percent of tier 1 capital of the bank or 15 percent of the tier 1 capital of the Edge.

Under the '97 Proposal, these limits on underwriting exposure to a single company would be applied on an aggregate basis. A bank holding company's limit would include all underwriting exposure to one issuer by all of the holding company's direct and indirect subsidiaries, including exposures held through its bank subsidiaries. The bank's and Edge's limits would include all exposures held by their respective subsidiaries. The Board proposed, however, that this expanded underwriting authority would be available to U.S. banking organizations only if each of the bank holding company, bank, and Edge or agreement corporation qualify as well-capitalized and well-managed.[7]

For organizations that fail to meet the well-capitalized and well-managed criteria, the Board proposed that the existing dollar limits (*i.e.*, $60 million) on commitments by an investor and its affiliates for the shares of an organization would be retained.

The Board proposed that, in order to engage in such activities, all banking organizations would be required to implement internal systems and controls adequate to ensure proper risk management. Controls would have to be in place to assure that underwriting positions do not result in violations of limits on securities held in the trading account or exceed the parent bank's lending limits when the underwriting positions are combined with other credit exposures. Sanctions (such as temporary suspension of underwriting authority) may be imposed for violations of such limits.

Final Rule on Equity Underwriting Limits.

The Board continues to believe that there is a strong competitive need for liberalization of the $60 million Regulation K limit on equity underwriting. Subsidiaries of Edge corporations have been able to gain some underwriting business through obtaining commitments in advance from subunderwriters in order to reduce their own exposure to $60 million, but the limit clearly is a material constraint. Underwriting abroad continues to be a business that is conducted by local banking firms and does not lend itself readily to cross-border activity, thus requiring foreign subsidiaries of U.S. banks to compete with much larger local competitors.

Further, as noted above, the risks associated with equity underwriting activities suggest that stringent limits are not required for safety and soundness purposes for well-capitalized and well-managed banking organizations. Although the percentage limits proposed in the '97 Proposal would significantly increase the amount of underwriting authorized under Regulation K, underwriting is a shorter term activity than, *e.g.*, dealing. Moreover, under Regulation K, positions undertaken in connection with an underwriting and unplaced after 90 days must be moved to the dealing account and counted against the dealing limit. Consequently, the exposure of the banking organization to the activity is minimized.

Commenters strongly supported the Board's proposed liberalization of the equity underwriting limits, and made a few additional suggestions. One commenter recommended that the proposed underwriting limits be doubled. Another expressed concern that the proposed limits might result in some Edge corporations having less underwriting authority than the existing $60 million limit. Some commenters also objected to the disparity between the limits proposed for BHC and bank subsidiaries.

The Board does not believe further expansion of the underwriting limits beyond those proposed is warranted, particularly given that portions of an underwriting that are covered by binding commitments obtained from subunderwriters or other purchasers are not counted in determining compliance with the limits. U.S. banking organizations wishing to engage in underwriting equity securities in amounts larger than those permitted under Regulation K may do so by qualifying for GLB authority. The Board also continues to believe it is appropriate to tie the expanded limits to the investor's capital. If the underwriting limit resulting from an Edge's capital is considered to be too low, it is of course open to the organization to increase its capital and thereby increase its limit.[8]

Commenters also suggested that the existing additional Regulation K underwriting authority, whereby an organization may request the Board's approval to exceed the $60 million underwriting limit so long as the excess amount is deducted from capital and the organization would remain strongly capitalized after such deduction, also should be extended to the expanded limits. The Board does not believe it is appropriate to retain this authority in view of the significant increase in the underwriting limits that would be otherwise authorized under the expanded limits. Moreover, because the limits are determined by reference to capital, banking organizations seeking greater underwriting authority may expand their limits by increasing their capital.

For these reasons, the Board is adopting the expanded underwriting limits for well-capitalized and well-managed banking organizations set out in the '97 Proposal essentially without change. As proposed, the limits would apply to all underwriting exposures held under authority of Regulation K by the relevant entity and all of its subsidiaries (*e.g.*, a BHC's limit would include all underwriting exposures to one issuer by all of the holding company's direct and indirect subsidiaries, including exposures held through its bank subsidiaries, and a

[6] The Board proposed that existing dollar limits would be retained for companies that are not well-capitalized and well-managed.

[7] The Board proposed that what, if any, action should be taken in relation to banking organizations' limits if they ceased to be well-capitalized and well-managed would be addressed on a case-by-case basis through supervisory action.

[8] Commenters recommended that banking organizations also should be able to net underwriting exposures for purposes of determining compliance with the limits. As a practical matter, Regulation K presently essentially authorizes netting for these purposes given that, where the underwriter is covered by binding commitments from subunderwriters or other purchasers, such commitments are excluded in determining compliance with the limits. Compliance with the limits will continue to proceed on this basis. The Board does not believe a persuasive case has been made for any additional netting authority in relation to equity underwriting at this time.

bank subsidiary's limits would include all exposures held by its subsidiaries).[9]

Equity Dealing

'97 Proposal

The Board also proposed for comment liberalization of dealing activities for well-capitalized and well-managed banking organizations. As with underwriting limits, the proposed expansion of dealing limits would have been based on percentages of capital of the organization and, thus, on the ability of the organization to accommodate risk. The Board also noted its belief that dealing activities presented somewhat greater risk of loss than underwriting, which resulted in somewhat more restrictive limits being proposed for dealing activities relative to underwriting activities.

For well-capitalized and well-managed organizations, the Board proposed to remove the current dollar limits and revise the existing percentage of capital limits as follows. First, in order to provide diversification in the trading account, the Board proposed a limit on holdings of any one stock in the trading account of 10 percent of the tier 1 capital of the bank holding company for its subsidiaries and, for subsidiaries of an Edge corporation, the lesser of two percent of the bank's tier 1 capital or 10 percent of the Edge corporation's tier 1 capital.

Second, the Board proposed an aggregate limit applicable to all holdings of equities in the trading accounts of all direct and indirect subsidiaries authorized pursuant to Subpart A.[10] Without such an aggregate ceiling, the Board was concerned that a banking organization could have excessive exposure to movements in equity markets. The Board proposed aggregate limits of 50 percent of the bank holding company's tier 1 capital for its subsidiaries and, in the case of an Edge's subsidiaries, the lesser of 10 percent of the tier 1 capital of the bank or 50 percent of the Edge's tier 1 capital.

The Board proposed that the limits on equity dealing would apply to net positions across legal vehicles held, directly or indirectly, by the regulated entity to which the limit applied (that is, the bank holding company, the bank or the Edge corporation). Long equity positions in a single stock could be netted against short positions in the same stock and against derivatives referenced to the same stock.[11] For purposes of the aggregate limits, all physical and derivative long positions could be netted against physical and derivative short positions. It was further proposed that, for purposes of measuring compliance with these limits, banks would be permitted to use internal models to calculate the value of derivative positions used to offset exposures and net dealing positions in individual stocks, as well as the value of total net equity holdings in the trading account.[12] The Board considered that the adequacy of such models is subject to review during the exam process, and proposed that no special review would be required for their use in connection with the proposed limits on dealing activities.

For organizations that failed to satisfy the well-capitalized and well-managed criteria, the Board proposed to retain the existing dollar limit on individual shares held in the trading account (*i.e.*, $30 million), which would be calculated in the same manner as at present. As noted, it is generally the dollar limits that currently constrain organizations in their ability to conduct these activities. This is because, at present, only the largest banking organizations are engaged in these activities. The Board noted, however, that in the future a relatively small organization may seek to enter these lines of business and, for it, exposures of $30 or $60 million may be large relative to its capital. The Board therefore also sought comment on whether, in addition to dollar limits, limits based on percentage of capital also should be adopted for organizations that are not well-capitalized and well-managed in order to address the relative exposure of such organizations to these activities.

In addition, for organizations that are not well-capitalized and well-managed, the Board also proposed an aggregate limit on shares held in the trading account, including all dealing positions and investments held pursuant to Regulation K authority, of 25 percent of the holding company's capital for its subsidiaries and, for subsidiaries of Edges and any foreign bank held directly by a member bank, the lesser of 5 percent of the bank's tier 1 capital or 25 percent of the Edge's tier 1 capital. These limits were proposed on the basis that they would be half of those applicable to organizations that were well-capitalized and well-managed.

The Board also sought comment on whether, instead of imposing the limits discussed above in relation to equity underwriting and dealing activities by subsidiaries of well-capitalized and well-managed bank holding companies, it would be appropriate to lift all limits on these activities for such entities except for the limits on individual stocks held in the trading account discussed above (*i.e.*, 10 percent of the holding company's tier 1 capital). The Board considered that, at a minimum, this limit should be imposed on holding companies in order to assure diversification in individual stock holdings. Under this alternative, banking organizations also would be required to implement internal systems and controls adequate to ensure proper risk management and that underwriting positions do not result in violations of limits on investments in any one company.

Developments Since the '97 Proposal

Since the time the Board issued the '97 Proposal for public comment. the statutory and regulatory environment governing the equity dealing activities of U.S. banking organizations, as well as the market demand for such services, have changed significantly. One significant change noted above was the enactment and implementation of GLB. Under GLB, FHCs may engage in unlimited equity dealing activities. While the GLB Act did not make any revisions to the Edge Act, the Board believes that it demonstrates a Congressional intent that significant equity dealing activities should be conducted through FHC powers, absent a competitive need for U.S. banking organizations to engage in such activities through bank subsidiaries.

A second important change since the '97 Proposal has been the dramatic growth in the equity markets over the past few years. The growth in demand in the U.S. market for equity securities since the early 1990s, growing acceptance of equity investments by European investors since the establishment of the Euro, and the global equity market volatility of the past several years have combined with advances in financial engineering to create significant customer demand for

[9] Additional comments relevant to the Board's final action on equity underwriting authority also were submitted with regard to the Board's proposed criteria for determining whether banking organizations would be considered to be well-capitalized and well-managed for purposes of the expanded authority, as well as with regard to the two-tiered capital test for Edge corporations for purposes of determining eligibility. Each of these issues is discussed separately.

[10] As at present, shares held as an investment pursuant to Subpart A also would be included in determining compliance with the applicable aggregate limits.

[11] The Board also proposed that a basket of stocks, specifically segregated by the banking organization as an offset to a position in a stock index derivative product, as computed by the bank's internal model, may be netted as a whole against the stock index.

[12] Currently, the use of internal models in computing net positions in stocks is subject to prior Board review and the limitation that no net long position in a security shall be deemed to have been reduced through netting by more than 75 percent.

equity derivative instruments. In particular, the wide variety of sophisticated investment strategies employed by institutional investors and hedge funds, as well as the increasing focus of financial institutions on providing high net worth private banking clients with sophisticated portfolio diversification, hedging, and stock option monetization services, have translated into increasing volumes of equity derivatives at global banking organizations. For example, from December 31, 1996 to December 31, 2000, the notional value of equity derivatives held by U.S. banking organizations has more than tripled to roughly $940 billion. In meeting this demand, institutions generally avoid taking significant net open equity positions and hedge their customer equity derivative transactions either with other equity derivatives or with physical securities.

Finally, although, as noted above, GLB did not expand the authority of banks to acquire equity securities, the Office of the Comptroller of the Currency (OCC) determined last year that several national banks could take positions in equity securities solely to hedge bank permissible, customer-driven equity derivative transactions, as an activity incidental to the business of banking. The OCC imposed no quantitative limit on such equity positions, but rendered the banks' authority to take such positions subject to the following constraints:

(a) The banks committed that they will use equities solely for hedging and not for speculative purposes;

(b) The banks will not take anticipatory or maintain residual positions in equities except as necessary to the orderly establishment or unwinding of a hedging position;

(c) The banks may not acquire equities for hedging purposes that constitute more than 5 percent of a class of stock of any issuer; and

(d) Banks must obtain OCC supervisory approval prior to engaging in this activity in order to demonstrate that they have an appropriate risk management process in place.

These developments, along with all comments received on the '97 Proposal, have been taken into account by the Board in taking action on the final rule.

Final Rule on Equity Dealing Limits

Equity Securities Acquired To Hedge Equity Derivatives

Existing Regulation K and the '97 Proposal both proceed generally on the basis that acquisition of shares of a company by a subsidiary of a U.S. bank must be authorized by and conform to limits established for dealing in shares of a single issuer and limits applicable to portfolio investments. In other words, both presume that all such acquisitions of equity securities must conform to Regulation K limits because, absent the authority of the Federal Reserve Act and Regulation K, such acquisitions of shares of nonfinancial companies would be impermissible for the bank and its subsidiaries. The OCC's recent determinations, however, render the Regulation K limits largely irrelevant for national banks with respect to their equity derivatives business.

Regulation K, however, also presently authorizes for both subsidiaries of bank holding companies and subsidiaries of member banks abroad "commercial and other banking activities", which encompass all activities in which banks are permitted to engage in the United States. 12 CFR 211.5(d)(1). Accordingly, the Board takes this opportunity to clarify that the effect of the determination that banks may take positions in equity securities solely to hedge bank permissible, customer-driven equity derivative transactions as an activity incidental to the business of banking is to render this activity "commercial or other banking activity" for purposes of Regulation K. The consequence of this change is that, as an otherwise permissible banking activity, positions taken in equity securities for this purpose may be excluded in determining compliance with the separate Regulation K dealing limits, so long as taking such positions continues to be bank permissible and all constraints placed upon the conduct of this activity in determining its permissibility are observed, namely:

(a) The equities are used solely for hedging and not for speculative purposes;

(b) no anticipatory or residual positions in equities will be acquired or maintained, except as necessary to the orderly establishment or unwinding of a hedging position;

(c) no equities may be acquired for hedging purposes that constitute more than 5 percent of a class of stock of any issuer; and

(d) the banking organization has obtained approval from its primary federal regulator prior to engaging in such hedging practices in order to demonstrate that they have appropriate risk management processes in place.

The Board is concerned, however, that the first two constraints imposed by the OCC on the conduct of this activity (specifically, requiring the equities to be used solely for hedging and not for speculative purposes, and limiting residual positions to those necessary to the orderly establishment or unwinding of a hedging position) are ambiguous and potentially difficult to apply, particularly in light of the generally integrated nature of equity derivatives business. Indeed, the Board notes that it is usually the case that, even where a bank seeks to fully hedge equity derivatives with physical securities, residual positions will arise. It also is not unusual for traders in this line of business to seek to maximize returns by taking a view on price movements of the underlying security at the same time as putting in place the hedges necessary to cover the unwanted portion of derivative exposures. For this reason, the Board has concluded that, where after full netting and offset of equity securities against derivatives any residual positions in a single issuer remain, the value of all such residual positions as calculated by the organization's internal models must be included in determining the organization's compliance with the dealing limit, as discussed further below.

The Board notes that the effect of this clarification is to place the constraints of the Regulation K dealing limits on those activities involving the acquisition of equity securities that are not bank permissible. Any subsequent regulatory or legislative determination that acquiring equity securities to hedge bank permissible equity derivatives is not a bank permissible activity would have the effect of rendering all such positions subject again to the dealing limits.

Equity Dealing Limits

Comments on the '97 Proposal generally supported the Board's proposed expansion of the equity dealing limits for well-capitalized, well-managed organizations.[13] As noted above, however, in light of the enactment of the GLB Act expanding authority to engage in this activity, the

[13] Some commenters argued that banking organizations should be able to exceed individual and aggregate dealing limits, provided the amount in excess of the limits was deducted from capital and, after deduction, the organization remained well-capitalized. Other commenters were concerned that the proposed limits tied to capital might actually result in a decrease in dealing authority, and recommended higher limits. Another commenter noted that the terms "shares" and "equity" are both used in the '97 Proposal and recommended using "shares" to ensure that convertible debt and participating loans are not included in the limits. In view of its conclusions regarding the absence of justification for any significant expansion of dealing authority under Regulation K, the Board rejects these suggestions. The Board does wish to clarify that convertible debt prior to conversion and participating loans are not encompassed within the dealing limit.

Board no longer believes it is appropriate to increase the equity dealing limits under Regulation K. Instead, the Board considers that GLB authority should be the vehicle for any significant increase in equity dealing authority for subsidiaries of bank holding companies and of banks, unless concerns regarding the ability of U.S. banking organizations to compete in the provision of financial services abroad otherwise support additional liberalization under Regulation K. The Board is of the view that no such concerns appear to be raised in relation to dealing activities such as market-making and proprietary trading.

To the contrary, with respect to market-making, a limit of $30–40 million per single issuer appears generally consistent with being able to make a market in a stock, which is necessary to being competitive in foreign securities markets. With respect to proprietary or speculative positions, the Board considers that this is not an area that should be the subject of liberalization under Regulation K. Any banking organization that wishes to take larger speculative positions than Regulation K allows can do so without limit in an FHC subsidiary or a financial subsidiary of the bank.

Accordingly, the Board does not consider that there is sufficient justification at this time for any significant increase in the single issuer dealing limit. However, the Board believes it would be appropriate to make a small incremental increase in the equity dealing limit, raising it from $30 million to $40 million, in recognition of the increased experience of organizations engaged in this activity and the fact that the $30 million limit was adopted 10 years ago. This approach is consistent with the Board's action in the past.

As noted above, all residual positions in equity securities of a single issuer resulting from bank-permissible equity derivatives business must be included in calculating compliance with the $40 million limit. Additionally, while underwriting commitments and shares held for up to 90 days in connection with an underwriting would be excluded from these limits, positions unplaced after 90 days must be moved to the dealing account and counted against the dealing limit.

Otherwise, the Board has determined that the existing dealing authority should remain essentially unchanged.[14] This would include the existing 25 percent constraint on the availability of derivative hedges as a means of reducing net long positions in physical securities for purposes of compliance with the single issuer limit. More specifically, under existing Regulation K, even if an organization has full netting authority and its net long positions in physical securities of a single company are fully hedged by derivative instruments referenced to the same security, $.25 of each $1 in net long physical securities nevertheless continues to count toward the $30 million single issuer limit. As at present, this additional limit or constraint will only apply to net long positions in physical securities after longs and shorts are netted, and additional derivative hedges may reduce net long positions in physical securities by up to 75 percent. The increase in dealing limit to $40 million will result in an overall cap on net long positions in physical securities of $160 million even where the positions are fully hedged. The Board has determined that, going forward, this additional constraint on dealing activity will only apply to net long positions in physical securities held under Regulation K dealing authority, not to physical securities acquired in connection with bank permissible hedging transactions.

[14] As discussed further below, however, the Board has adopted the expanded netting authority proposed in 1997 with a few minor changes.

Netting and Otherwise Determining Compliance With Dealing Limits

The Board has determined that it should adopt one additional aspect of the '97 Proposal as it would apply to equity securities activities, namely, allowing netting based on internal models for purposes of determining compliance with the single issuer dealing limit. Comments submitted were overwhelmingly in support of the use of internal models for this purpose.

Thus, consistent with the '97 Proposal, the equity dealing limit will apply to net positions across legal vehicles held, directly or indirectly, by the regulated entity to which the limit is applicable (that is, the bank holding company or the bank subsidiary). Long equity positions in a single stock may be netted against short positions in the same stock and against derivatives referenced to the same stock. Also consistent with the '97 Proposal, a basket of stocks, specifically segregated by the banking organization as an offset to a position in a stock index derivative product, as computed by the bank's internal model, may be netted as a whole against the stock index. For purposes of the aggregate equity limits, all physical and derivative long positions may be netted against physical and derivative short positions. Organizations may use their internal models to calculate the value of derivative positions used to offset exposures and net dealing positions in individual stocks, as well as the value of total net equity holdings in the trading account.

For those banking organizations that wish to rely on netting based on their internal models for purposes of determining compliance with the dealing limits, the valuations generated by those models based upon current market values of the organization's residual positions in a single issuer will count toward the single issuer dealing limit. The Board considers it only appropriate that, if a banking organization uses its internal models for purposes of netting and valuing residual exposures in its equity derivatives line of business, it must use current market values (and not historical cost) for calculating compliance with the dealing limits under Regulation K for all of its equities lines of business. The organization may not "mix and match" the use of historical cost and mark-to-market valuations where internal models are used for these purposes.

However, the Board notes that netting based on internal models is not the mandatory method of compliance with the dealing limit. In this regard, Regulation K dealing limits presently encompass only net long positions in physical securities, after netting long and short positions in the same security. As is presently the case, organizations not wishing to determine compliance with the dealing limits by netting and offsetting positions in physical securities against positions in derivatives referenced to the same security may continue to determine compliance with the $40 million dealing limit solely by reference to the historical cost of its net long physical positions.

Commenters requested clarification of one aspect of the '97 Proposal regarding netting, namely, whether positions in a single stock would qualify for netting so long as the hedge for the position is held directly or indirectly by the entity to which the limit applies (*i.e.*, somewhere within the investor chain, but not necessarily in the same legal entity holding the related investment.) The Board confirms that netting of positions on this basis will be permissible. This approach reflects the market or economic risk of positions held by the entity on a consolidated basis.

Finally, the '97 Proposal would have allowed netting based on a banking organization's internal models without prior Board approval. The Board continues to believe that prior approval should not be required to engage in netting through the use of internal models for this purpose. After further consideration, however, the Board believes prior notice of an organization's intention to use its internal models for this purpose is appropriate so that the Board may object if it considers the models inadequate for any reason. Banking organizations that have previously received approval under Regulation K to engage in netting through the use of their internal models may continue to do so without additional notice to the Board.[15]

Authority To Engage in Equity Underwriting and Dealing Activities

In the '97 Proposal, the Board noted that its approval currently is required to engage in underwriting and dealing in equity securities pursuant to Regulation K and sought comment on whether banking organizations that are well-capitalized and well-managed should be allowed to engage in equity securities activities at the proposed expanded levels without seeking prior Board approval. In response to this request, commenters urged allowing U.S. banking organizations meeting the well-capitalized, well-managed criteria to engage in the expanded activities without Board approval, particularly if the organization already has experience in such activities under Regulation Y or K.

As discussed above, the Board has adopted the '97 Proposal with regard to expanded equity underwriting authority for organizations that are well-capitalized and well-managed, but has only increased the equity dealing authority from $30 to $40 million. The latter increase in authority will be available to all organizations regardless of whether they meet the well-capitalized, well-managed criteria. The Board has concluded that, in view of the significant liberalization in underwriting authority under Regulation K, all organizations that wish to engage in the expanded underwriting activities must first provide 30 days' prior notice to the Board. With regard to the increased dealing authority, all organizations that wish to engage in dealing activities under the $40 million limit also must provide 30 days' prior notice to the Board, unless the organization already has received the Board's consent to engage in dealing activities under the $30 million limit. Organizations presently engaging in dealing activities under the $30 million limit may avail themselves of the additional $10 million in dealing authority without prior notice to the Board.

[15] In response to comments, the Board notes that organizations would not be required to create a new model separate from existing internal models used for purposes of market risk assessment in order to engage in netting under Regulation K. Indeed, the Board would expect that organizations would use for this purpose the same internal models otherwise currently employed for purposes of risk management.

Venture Capital Activities Through Portfolio Investments

Current Restrictions

Regulation K currently allows U.S. banking organizations to make portfolio investments, that is, limited, noncontrolling investments in foreign commercial and industrial companies. This authority was adopted to enhance the competitiveness of U.S. banking organizations by increasing the range of financial services they may provide abroad. Many foreign financial institutions, including foreign banks, engage in venture capital activities, at times in connection with the provision of other financial services to the company.

'97 Proposal

The Board proposed in the '97 Proposal that existing dollar limits on portfolio investments made by well-capitalized, well-managed bank holding companies under the Board's general consent authority would be replaced by limits tied solely to a percentage of the holding company's tier 1 capital. More specifically, such bank holding companies (and their nonbanking subsidiaries) would be permitted to invest up to 2 percent of the holding company's tier 1 capital in any individual investment and would be subject to an aggregate limit of 25 percent of the holding company's tier 1 capital for all such investments. In determining compliance with the individual limit, shares in such companies held in the trading account by the investor and its affiliates under Regulation K would be included.

For all other investors (*i.e.*, Edge corporations, foreign bank subsidiaries of member banks, and bank holding companies that are adequately capitalized but fail to meet the well-capitalized and well-managed standards), the Board proposed retaining limits of $25 million on investments in any one organization under general consent authority, although larger investments would continue to be eligible for prior notice or specific approval treatment on a case-by-case basis. An aggregate limit on such investments would be imposed. For bank holding company investors, that limit would be 25 percent of tier 1 capital, and for Edge or foreign bank investors, it would be the lesser of 5 percent of the parent bank's tier 1 capital or 25 percent of the Edge's tier 1 capital.

With respect to the limit on voting shares in the target company, the Board proposed that investors would be permitted to make noncontrolling investments in up to 24.9 percent of a company's voting shares. These investments would only be permissible if, as at present, the investor does not control the company in which the investment is made. Accordingly, the Board noted an investor may not: (i) Control a majority of the board of directors or have disproportionate representation on the board; (ii) have a management contract with the company or exercise veto power over its actions; or (iii) use any other means to control the operations of the company.

The Board requested comment on all of the foregoing revisions to the portfolio investment authority. It specifically requested comment on the relative risk of portfolio investments and whether there is a competitive need for foreign subsidiaries of banks also to have expanded authority in relation to such investments.

Final Rule on Portfolio Investment Authority

Comments submitted on this aspect of the Board's '97 Proposal strongly supported the liberalization proposed in relation to limits applicable to portfolio investments made by bank holding companies, as well as in relation to the proposed increase in permissible individual investments up to 24.9 percent of voting shares. Certain of the comments argued that the proposed liberalization for bank holding companies also should be extended to bank subsidiaries, and various clarifications were requested on the interaction between the proposed changes and the existing rule. Clarification of these matters is provided below.

As discussed above, however, the major development in this area since the Board issued the '97 Proposal was enactment of the GLB Act, which authorizes FHCs to make merchant banking investments without regard to dollar limits or geographic restrictions. The Board notes that expanded merchant banking authority under GLB is only available to holding company subsidiaries; such authority may not be exercised in the bank chain.

The Board has therefore reconsidered the '97 Proposal in the light of passage of GLB and has determined not to adopt

the proposal to increase the general consent limit and the permissible percentage of shares for portfolio investments. The Board considers that the GLB Act established the framework for engaging in merchant banking activities generally, and Regulation K should not establish an alternative framework for expansion of this activity absent a compelling competitive need. The Board does not believe that any such compelling competitive need has been demonstrated. Bank holding companies wishing to engage in merchant banking activities other than under the existing constraints of Regulation K should seek FHC status.

Investment Limits

A number of additional comments were submitted that are also relevant to the operation of existing provisions of Regulation K in relation to portfolio investments. In particular, certain commenters suggested that investors should be permitted to make portfolio investment under Regulation K in excess of the $25 million general consent limit, so long as the amount in excess were deducted from capital. Other commenters suggested that organizations should be permitted to use netting for purposes of calculating compliance with portfolio investment limits. The Board considers that neither of these changes would be appropriate in view of the nature of portfolio investments and the availability of other authority for making such investments.

A few commenters also requested clarification regarding whether the calculation of limits on portfolio investments will continue to be on an historical cost basis. One expressed the concern that an increase in the aggregate portfolio limit would be necessary if these investments would be valued at current market value, not historical cost. The Board considers that limits on portfolio investments should be calculated consistent with their treatment for capital purposes. More specifically, the amount of the investment subject to the Regulation K limit will equal the carrying value of the investment, or the value of the investment on the balance sheet, reduced by any unrealized gains on the investment that are reflected in the carrying value but are excluded from the organizations' tier 1 capital.

Commenters also opposed combining portfolio investments with dealing positions, either for purposes of a single company limit or aggregate limit, noting that these activities have important differences and are managed through separate lines of business. They argued that portfolio investments generally are made with longer time horizons and tend to involve privately held companies, whereas dealing positions generally are taken for short periods of time and involve public companies. The Board considers these points to be well-founded. In view of these comments and the Board's determination not to adopt any significant liberalization either in relation to portfolio investments or dealing authority, the Board believes it is appropriate to amend the single company limits for purposes of portfolio investments and for equity dealing such that the limits will apply to each activity separately. However, the Board notes that *all* equity shares held in a single company, including those held in connection with dealing activity (but excluding underwriting commitments and shares held for up to 90 days pursuant to an underwriting), must be combined for purposes of determining compliance with the control limitations of: (i) section 4(c)(6) of the BHC Act (with respect to U.S. companies); and (ii) the voting and total equity limits for portfolio investments under Regulation K (with respect to foreign companies).

Additionally, the Board is retaining an overall aggregate equity limit that will apply to all shares held under Regulation K portfolio investment and dealing authority, for the reasons discussed in the section below entitled "Aggregate Equity Limits for Dealing and Portfolio Investments."

Finally, commenters recommended that the Board specifically grandfather any investments that might be rendered impermissible by revision to Regulation K, or include a phase-in period for divestiture of such investments. The Board notes that, in view of the fact that it is not diminishing in any way existing authority in relation to these investments, no issues relating to the need for grandfathering arise.

Percentage of Permissible Voting Shares

Commenters expressed support for the '97 Proposal which would have increased the percentage of voting shares permissible for portfolio investments from 19.9 percent to 24.9 percent. A few commenters recommended higher levels of permissible voting shares, as well as increasing the 40 percent nonvoting equity limit, arguing that such increases would better enable U.S. banking organizations to compete with foreign financial institutions.

As noted above, FHCs may now make investments in nonfinancial companies under merchant banking authority without limitation as to the percentage of voting or nonvoting shares held and without restriction geographically. Consequently, the Board believes it is no longer appropriate to alter in any way the existing Regulation K limits on voting and nonvoting shares of portfolio investment companies. U.S. banking organizations wishing to invest in nonfinancial companies outside the United States beyond the existing limits of Regulation K should do so through obtaining FHC status. In these circumstances, the existing Regulation K voting and nonvoting equity limits on qualifying portfolio investments do not appear to affect the ability of U.S. banking organizations to compete abroad.

As noted above, portfolio investments are only permissible within these limits if the investor otherwise also does not control the company in which the investment is made. In this regard, several commenters urged the Board to clarify that restrictive and negative covenants, such as are commonly found in senior debt, also are permissible in connection with portfolio investments on the basis that they would not give the investor control over the company. The Board believes that such covenants may be permissible so long as their purpose is to protect the minority rights of the investor. However, such covenants may not be used as a means to obtain control over a portfolio investment by preventing the company from making normal business decisions. For example, the Board considers that it would be inconsistent with the mandatory noncontrolling nature of portfolio investments for investors to have the right to veto a company's choices for senior management positions. Should questions of this nature arise in connection with a proposed portfolio investment, banking organizations should seek the views of Board staff as to whether the proposed investment would qualify as a portfolio investment.

In this regard, commenters suggested that the Board should adopt for Regulation K a process similar to that adopted in Regulation Y in relation to advisory opinions regarding the scope of financial activities. The Board has adopted this suggestion and will seek to respond to requests for advisory opinions under Regulation K within 45 days of receipt of a complete written request, unless the request raises significant policy issues.

Finally, another commenter sought clarification as to whether the proportionality test for directors should be measured against the investor's voting interest or economic interest, favoring the latter measure. The Board believes that an investor in a portfolio investment should have representation on the board proportionate to its voting interest, and not economic interest, in the company. More specifically, in view of the restriction on voting shares held to 19.9 percent, the Board would expect that an investor would have no more than one director for every five seats on the board. In addition, an investor may not have a disproportionate participation on a board's executive committee.

"Incidental" Activities in the United States

'97 Proposal

In the '97 Proposal, the Board proposed one additional change related to portfolio investments, primarily to provide some relief to U.S. banking organizations with regard to the U.S. activities of their foreign portfolio investments. As a result of limitations in the Federal Reserve Act and the BHC Act, U.S. banking organizations are prohibited from investing in more than 5 percent of the voting shares of foreign companies that engage in impermissible activities in the United States other than those activities that are an incident to their international or foreign business.[16] The Board previously has taken the view that such permissible incidental activities in the United States are limited to those activities that the Board has determined are permissible for Edge corporations to conduct in the United States.[17]

However, as discussed above, companies in which portfolio investments are made generally are engaged in industrial or commercial activities, which are not permissible activities for Edge corporations. Consequently, under Regulation K at present, if a portfolio investment company decides to engage in activities in the United States, the U.S. banking organization is forced to sell its interest in the portfolio investment, even if market considerations are inconsistent with selling the shares at that time. This divestiture would be required despite the fact that the U.S. banking organization, by reason of the mandatory noncontrolling nature of portfolio investments, is unlikely to be in a position to influence the decision to enter the U.S. market. In the '97 Proposal, the Board expressed the concern that, with the increasing globalization of economies around the world, this situation may become more common in the future.

In order to address these changes in circumstances and in view of the minority nature of portfolio investments, the Board proposed that, consistent with the Federal Reserve Act and the BHC Act, investors may retain portfolio investment companies that derive no more than 10 percent of their total revenue from activities in the United States that are not permissible for Edge corporations to conduct in the United States.

In proposing this change, the Board noted the nature of portfolio investments. In particular, most portfolio investments are venture capital investments that are not intended to be permanent holdings of the banking organization and instead are intended to be sold after a period of time. In addition, the preponderance of the value of portfolio investments is derived from their foreign business.

The Board invited comment on this proposed change. It also sought comment on what might be regarded as an appropriate period for divestiture of non-conforming investments, as well as on whether a time limit should be placed on the period for holding these types of investments in view of their supposedly medium-term nature.

Final Action

Commenters strongly endorsed the Board's proposed change in interpretation of U.S. activities considered "incidental" to international or foreign activities for this purpose, although some comments recommended that Regulation K should allow portfolio companies to derive a larger percentage of their total revenues (*e.g.*, 20 or 25 percent) from activities in the United States. Some commenters recommended that the Board employ a percentage of total tangible assets test either in lieu of or as an alternative to the revenues test, suggesting that tangible assets are a more stable indicator of the extent of a company's business in the United States and are easier to measure.

The Board adopts the change as set forth in the '97 Proposal. Thus, for purposes of determining whether a portfolio investment may continue to be held or must be divested, portfolio investment companies that derive no more than 10 percent of their total revenue in the United States may be considered to be engaged only in business that is an incident to their international or foreign business and therefore may continue to be held under portfolio investment authority. The Board continues to believe that the 10 percent revenue limit is appropriate to address globalization concerns and is consistent with the provisions of the Federal Reserve Act and the BHC Act. The Board further considers that the revenue test is a better indicator of the level of U.S. activity, rather than the amount of tangible assets in the United States which may be more susceptible to manipulation.

A few commenters requested clarification of the operation of this limit. In response to these requests, the Board notes that revenue derived from activities in the United States in its view would include all revenue derived from activities performed in U.S. offices, but not business that may originate from the United States but is performed offshore. It is, of course, also the case that this revenue test would only be applied to U.S. activities of portfolio investments that are *not* otherwise permissible for Edge corporations to conduct in the United States.

In response to the Board's request for comment on an appropriate divestiture period for investments that exceed the 10 percent revenue limit, a number of suggestions were made, including allowing U.S. revenues of up to 40 percent for up to five years. Other commenters variously suggested that the Board should adopt existing debts previously contracted ("DPC") time periods for divestiture; allow some other specified period to divest (*e.g.*, a six month period, with an opportunity for extensions of up to a total of two years); or establish divestiture deadlines on a case-by-case basis. The Board is retaining the current Regulation K requirement of a "prompt" divestiture of all nonqualifying portfolio investments, which allows for a case-by-case determination as to the appropriate period of time within which an impermissible investment must be divested.

Aggregate Equity Limits for Dealing and Portfolio Investments

In the '97 Proposal, in view of the significant liberalization in authority proposed for bank holding companies in relation to portfolio investments, an aggregate limit on all portfolio investments was proposed. The Board also proposed an additional aggregate equity limit that would apply to all shares held as portfolio investments and in connection with dealing activities. The proposed aggregate limit for all such investments for banking organizations meeting the well-capitalized and well-managed tests was:

BHC Subsidiaries: 50 percent of tier 1 capital.

[16] In particular, the Federal Reserve Act prohibits investments in companies engaging in "the general business of buying or selling goods, wares, merchandise or commodities in the United States." 12 U.S.C. 615. Section 4(c)(13) investments under the BHC Act are limited only by a requirement that the company do "no business in the United States except as incident to its international or foreign business."

[17] *See* 12 CFR 211.4(e).

Bank Subsidiaries: The lesser of 10 percent of tier 1 capital of the bank, or 50 percent of the bank subsidiary's tier 1 capital.

Underwriting commitments and shares acquired pursuant to an underwriting commitment and held for less than 90 days were excluded from the proposed aggregate equity limit.[18]

Commenters opposed the aggregation of shares held as portfolio investments with those held in connection with dealing activity in determining compliance with this limit, again arguing that these are two separate lines of business that should not be aggregated. Commenters also opposed the proposed reduction in the combined aggregate limit for Edge corporation investors, from the current 100 percent of tier 1 capital to 50 percent of tier 1 capital, notwithstanding the ability to net dealing positions and the exclusion of underwriting commitments and shares held for up to 90 days pursuant to an underwriting.

In view of the fact that the Board has determined that it will not adopt the liberalization proposed in relation to portfolio investments, it has also decided not to adopt the separate limit on total portfolio investments for any given banking organization. In the absence of expanded authority in this area, no need arises for such a limit.

However, consistent with the provisions of current Regulation K, the Board continues to believe that an aggregate equity limit is necessary with respect to all shares held under Regulation K (whether held under portfolio investment authority or in connection with dealing activity) in companies engaged in activities that would be impermissible for a subsidiary or a joint venture under Regulation K. Accordingly, the Board generally is adopting the aggregate limits on equity securities held under Regulation K previously proposed. Consistent with the '97 Proposal, underwriting commitments and shares held pursuant to an underwriting commitment for up to 90 days would be excluded from the aggregate equity limit.

However, in light of comments received, the Board is not adopting the proposed reduction in the aggregate limit for investors that are subsidiaries of a member bank. Nevertheless, the Board continues to believe it is important to tie the aggregate limit for bank subsidiaries to the capital levels of both the member bank and the bank subsidiary investor. Accordingly, the aggregate equity limit for subsidiaries of banks will be the lesser of 20 percent of the tier 1 capital of the member bank or 100 percent of the tier 1 capital of the bank subsidiary.[19]

Commenters also requested clarification on whether the aggregate equity limits include: (i) only equity securities held by the investor and its downstream subsidiaries or securities held by all its affiliates; and (ii) only shares held under the authority of Regulation K . The Board notes that, with respect to a particular investor, these limits will include all equity securities held by the investor and its downstream subsidiaries under Regulation K authority, whether arising in connection with portfolio investments or dealing activity.[20] Thus, the aggregate equity limit will not include investments in joint ventures or subsidiaries under Regulation K, or merchant banking or any other investments made under authority other than Regulation K.

One commenter recommended that the Board permit aggregate dealing positions to be calculated on a quarterly average and suggested a "preclearance" program for additional authority beyond the regulatory limits. The Board considers that determining compliance with these limits on the basis of a quarterly average would be inappropriate and potentially be subject to considerable manipulation. As noted above, should an organization wish to engage in equity securities activities without limit it should do so under FHC status subject to the FHC qualifying criteria. For these reasons, the Board declines to adopt these proposals.

Insurance Activities

Reinsurance Proposal

Section 211.5(d)(16) of Regulation K presently authorizes bank holding companies to own foreign companies that underwrite and reinsure life, annuity, pension-fund related, and other types of insurance, where the associated risks have been previously determined by the Board to be actuarially predictable. Prompted by the Board's consideration in 1997 of a bank holding company's request, the Board requested comment on whether the reinsurance (via a retrocession agreement with an unaffiliated offshore reinsurer) by a foreign subsidiary of U.S. bank holding company of all or a portion of the risk of policies or annuities sold in the United States by U.S. affiliates of the bank holding company or unrelated parties could be considered to fall within this authority. It queried whether the fact that the risk to be reinsured is in the United States could cause the activity to be considered located in the United States, particularly given the potentially significant involvement of the bank holding company's U.S. affiliates.

Several insurance trade associations opposed any expansion of authority in this area. They argued that the reinsurance activity necessarily would be domestic because of its complete dependence on U.S. insurance sales. In addition, they suggested the reinsurance activity would expose U.S. banks to unnecessary risk and conflicts of interests, be contrary to Board precedent, transfer regulatory scrutiny of domestically-originated risks from the state regulators to less rigorous and untested international regimes, and set the stage for U.S. banking organizations to underwrite and reinsure all types of insurance through foreign subsidiaries. Ultimately, they argued, any liberalization in this area should come from Congress, not the Board.

Several U.S. banking trade associations and banking organizations expressed support for expanded authority as described in the '97 Proposal. They emphasized that the proposal would only modestly extend an activity (i.e., underwriting and reinsuring life insurance abroad) long regarded as permissible by the Board. In addition, they maintained that the permissible U.S. insurance sales would be only an incidental, and not a primary, feature of an activity—reinsurance—having an essentially foreign character. They noted that many activities in which U.S. banking organizations are permitted to engage abroad are related to their U.S. activities (*e.g.*, securities activities) and asserted that the relation in this instance between the reinsurance activity and the U.S. insurance sales similarly should not result in rejection of the proposed activity. These commenters also argued that the proposal would further the Edge Act's stated purpose of enhancing U.S. banking organizations' competitiveness abroad.

As noted above, the GLB Act was enacted subsequent to the issuance of the Board's reinsurance proposal. The GLB Act allows FHCs to conduct insurance activities on a worldwide basis and demonstrates a Congressional preference for conducting such activities through subsidiaries of FHCs. The Board does not believe, and the comments on the Board's proposal have not shown, that competitive concerns require U.S. banking organizations to proceed under Regulation K in the conduct of this activity rather than GLB authority. Accordingly, the Board declines to adopt the reinsurance proposal. As at present, however, a banking organization may seek the Board's specific consent to engage in insurance activities more expansive than those expressly authorized under the regulation.

Other Comments

Supporters of the Board's reinsurance proposal urged the Board to liberalize Regulation K's insurance provisions further in several respects. First, they recommended that the Board eliminate the requirement that U.S. banks obtain Board approval before engaging in insurance activity through foreign subsidiaries, asserting that banking organizations should be given maximum flexibility to determine how to structure these activities. One commenter suggested that the Board replace the proposed prior approval requirement with a 30-day prior notice requirement. On balance, the Board believes it is appropriate to continue to require prior Board approval for such activities. Further, absent demonstration of a compelling need for competitive reasons, the Board expects insurance underwriting (other than credit life insurance and credit accident and health insurance) to be conducted through subsidiaries of the holding company, or otherwise under the expanded authority provided in GLB.

The commenters also argued that U.S. banking organizations should not be required to deconsolidate and deduct investments in foreign insurance companies from the holding company's capital for capital adequacy purposes, arguing that such a requirement is inappropriate and disproportionate to the risks involved. The Board disagrees and declines to eliminate this requirement. The consolidation of insurance activities may result in overstated capital ratios because the risk-based capital adequacy framework does not take into account traditional insurance risks. Although FHCs currently may consolidate their insurance companies for purposes of their capital ratios, for supervisory purposes their capital ratios also are analyzed after deconsolidation and deduction of such companies. Retaining the deconsolidation and deduction requirement in Regulation K also would be consistent with proposed revisions to the Basel Capital Accord.

In addition, the commenters urged the Board to expand the types of insurance foreign subsidiaries of bank holding companies may underwrite and reinsure, to encompass all credit-related insurance (including insurance incidental to leasing activities or mortgage transactions, and motor vehicle comprehensive insurance in connection with car loans). In the Board's view, in light of passage of GLB, there should be no general expansion of permissible types of insurance underwriting under Regulation K. As at present, however, application may be made on a case-by-case basis for the Board's approval to engage in additional types of insurance activities usual in connection with the business of banking abroad.

Debt/Equity Swaps

Regulation K currently permits banking organizations to swap certain developing country debt for equity interests in companies of any type. Established in 1987 to assist banking organizations in managing large amounts of nonperforming, illiquid sovereign debt, these foreign investment provisions are more liberal than Regulation K's other investment provisions. Under certain conditions set out in Regulation K, investors may invest under general consent authority up to one percent of their tier 1 capital in up to 40 percent of the shares, including voting shares, of private sector companies in eligible countries. Such an investment must be held through the bank holding company, unless the Board specifically permits it to be held through the bank or a bank subsidiary. Eligible countries are defined as those that have rescheduled their debt since 1980, or any country the Board deems to be eligible.

Since the debt/equity swap provisions were introduced, a well developed secondary market in developing country debt has emerged. The vast bulk of developing country problem debt has been repackaged in the form of long-term Brady bonds, mostly denominated in U.S. dollars and fully collateralized as to principal by U.S. government bonds. Many banking organizations actively trade these instruments in the secondary market.

Due to the development of the secondary markets for emerging market debt, U.S. banks now have the same options with regard to many of these assets as they have with other bank assets—namely, they can hold the asset with a view toward collecting at maturity or sell the asset for cash to invest in other bank eligible assets. Indeed, the sovereign debt of most of the historically "eligible countries" is no longer illiquid, and those eligible countries that account for the vast share of rescheduled debt have largely regularized their relations with commercial banks.

In light of these changed circumstances and to redirect this special authority to the asset quality problem it was originally intended to help resolve, in the '97 Proposal the Board proposed to redefine the term "eligible country." Under the proposed definition, only countries with currently impaired sovereign debt (*i.e.*, debt for which an allocated transfer risk reserve would be required under the International Lending Supervision Act and for which there is no liquid market) would be eligible for investments through debt/equity swaps under Regulation K. Existing holdings of such investments would be grandfathered, subject to the existing divestiture periods applicable to such investments (*i.e.*, generally, 10 years from the date of acquisition).

The Board solicited comment on these proposed changes. It also sought comment on whether, alternatively, the debt/equity swap authority should be eliminated as obsolete.

Several commenters supported the proposed changes. Only one comment opposed the change to the definition of an "eligible country". Another commenter urged the Board to extend the general consent authority for debt/equity swaps to such investments made by banks and bank subsidiaries. The Board continues to believe the additional authority granted under the debt/equity swap provisions should be limited to countries with currently impaired debt, in light of the developments described above and, accordingly, adopts the proposed change to the definition of an "eligible country." The Board also considers that general consent authority for engaging in debt/equity swaps under the bank continues to be inappropriate. As at present, a bank or bank subsidiary may seek authority from the Board to hold such an investment on a case-by-case basis.

[18] The Board also proposed aggregate limits for investors that do not meet the well-capitalized and well-managed standards of half that applicable to well-capitalized and well-managed organizations (*i.e.*, 25 percent of tier 1 capital for bank holding company subsidiaries, and, for bank subsidiaries, the lesser of 5 percent of the parent bank's tier 1 capital or 25 percent of the bank subsidiary's tier 1 capital.

[19] An additional comment recommended that the aggregate equity limit should be expressed as a percentage of assets, rather than as a percentage of tier 1 capital. The Board believes that tying the equity limit to tier 1 capital is a more appropriate restriction on the level of aggregate equity activities under Regulation K and therefore is not adopting this recommendation.

[20] The Board also notes that application of the dealing limit on shares held in a single issuer will also proceed on this same basis, except that shares held as a portfolio investment will not be included in determining compliance with the single company dealing limit as discussed above.

Streamlining Application Procedures

General Consent Limits

The Board noted in the '97 Proposal that, although existing Regulation K procedures have proved effective in maintaining the safety and soundness of U.S. banks' international operations, they have become increasingly complex over the years. For example, under prior notice procedures, the Board has reviewed all foreign investments made by banking organizations above a *de minimis* level as a principal mechanism for overseeing the safety and soundness of the investing organization. In view of the shift in emphasis to supervision based upon risk management capabilities, the Board believes that prior review of relatively small investments is no longer useful as a fundamental supervisory tool, especially where the investor is well-capitalized and well-managed. Accordingly, the Board proposed that only significant investments, as determined solely on the basis of the investor's capital, would be subject to prior review by the Board, provided that the investors are well-capitalized and well-managed.[21] The proposed changes to the general consent procedures attempt to balance safety and soundness considerations with the objective of enhancing the ability of U.S. banking organizations to compete with foreign banks overseas.

Limits on Investments in One Company

Historically, all general consent investments under Regulation K were subject to absolute dollar limits. Currently, the general consent limit for most investments is $25 million. However, as a result of amendments to Regulation K implemented in December 1995, certain investments by strongly capitalized and well-managed banks are subject to Board review only to the extent they exceed a percentage of the investor's capital.

In the '97 Proposal, the Board proposed expanding upon this approach by eliminating the absolute dollar limits on foreign investments permissible under general consent authority for well-capitalized and well-managed investors (with the exception of those applicable to portfolio investments made under the bank). Under the proposal, general consent limits for all investors (bank holding companies, banks, and Edge corporations) would be based solely on a percentage of their tier 1 capital.[22]

The limits on individual investments made under general consent authority would vary according to the investor (bank holding company, bank, or Edge corporation) and the type of entity in which the investment is made. For well-capitalized and well-managed investors, the Board proposed the following percentage limits.

General consent limits on investment in a subsidiary

Bank holding company: 10 percent of tier 1 capital of the bank holding company.

Bank: 2 percent of tier 1 capital of the bank.

Bank subsidiaries: the lesser of 2 percent of tier 1 capital of the bank or 10 percent of tier 1 capital of the bank subsidiary.

General consent limits on investment in a joint venture

Bank holding company: 5 percent of tier 1 capital of the bank holding company.

Bank: 1 percent of tier 1 capital of the bank.

Bank subsidiaries: the lesser of 1 percent of tier 1 capital of the bank or 5 percent of tier 1 capital of the bank subsidiary.

These limits were proposed on the basis that they reflected the risk involved in the type of investment. A higher percentage of capital would be permitted in the case of an investment in a subsidiary as opposed to an investment in a joint venture because the latter is considered to carry a greater risk of loss. Thus, with joint ventures, investors acquire less than full control, and the record on such investments has shown that they experience a higher rate of loss. As a result, most U.S. banks do not now make sizeable joint venture investments. In light of these considerations, the Board believed that lower general consent limits may be appropriate for joint venture investments.

For investors that fail to meet the well-capitalized or well-managed standards, the Board proposed the following limits. Individual investments under general consent authority would be limited to the lesser of $25 million or 5 percent of tier 1 capital in the case of an investor that is a bank holding company, and the lesser of $25 million or 1 percent of tier 1 capital if the investor is a member bank. Limits on individual investments for an Edge corporation would be $25 million or the lesser of 1 percent of the parent bank's tier 1 capital or 5 percent of the Edge's tier 1 capital. The Board also proposed, however, that authority would be delegated to the Director of Banking Supervision and Regulation to approve higher investment limits on a case-by-case basis or as part of an investment program as described further below.

The Board sought comment on these proposed limits, noting that these limits would only cover investments made under general consent authority; larger investments may continue to be made with 30 days' prior notice. Noting that an argument could be made that, in cases involving investments by an Edge corporation, the well-capitalized and well-managed tests should be based on a review of the parent bank, not the Edge corporation, the Board also sought comment on the Board's proposal to impose limits tied to the condition of the Edge.

Commenters expressed general support for the Board's percentage-of-capital limits approach and proposal to reserve the greatest liberalization to well-capitalized and well-managed investors. Several, however, objected to the proposed general consent limits for bank subsidiaries, arguing that they will have the effect of reducing the general consent investment authority of some investors. Comments advanced a number of rationales for either retaining the existing limits, at least for well-capitalized and well-managed bank subsidiaries, or for increasing the proposed limits.

The Board believes the proposed general consent limits for investments by bank subsidiaries are sufficient. The Board therefore is adopting the limits as proposed. Should investors desire increased general consent authority, they may increase capital levels at the bank and/or bank subsidiary level, as warranted. Additionally, as noted above, an investment in excess of the general consent limits may still be made following prior notice procedures or with the specific consent of the Board. In any event, the Board notes that, in most instances, the binding constraint is the member bank's capital.

Two commenters, however, noted that the proposed general consent limits might be especially constraining for organizations whose Edge corporations are minimally capitalized. They recommended that the Board allow a well-capitalized, well-managed parent bank to make *de minimis* general consent investments through its Edge corporation, even if that investment would be greater than otherwise would be allowed under the limits applicable to the Edge. The Board disagrees and continues to be of the view that it is important to retain the well-capitalized and well-managed tests for the Edge corporation itself as one of the bases for determining limits applicable to general consent investments. This approach will help to ensure the safety and soundness of Edge corporations in their own right and is consistent with the statutory (and supervisory) rationale underlying Edge corporations. As discussed above, Congress limited the amount of capital that banks could invest in Edge corporations, which in turn could invest in activities otherwise prohibited to banks that were perceived to be higher risk. Congress also subjected Edge corporations to regulation and examination by the Federal Reserve. For these reasons, the Board considers that Edge corporations should themselves be operating satisfactorily and not be a source of potential weakness to its parent bank. The Board therefore is adopting in final the proposed general consent limits that are tied to the condition of the Edge.

In response to the Board's request for comment on the imposition of different general consent limits on investments in subsidiaries and joint ventures, two commenters maintained that imposing different limits on these investments is unjustified, arguing that the activities present similar risks. The Board disagrees and continues to be of the view stated in the '97 Proposal that investments in joint ventures involve greater risks than investments in subsidiaries. Consequently, the Board adopts the limits on investments in subsidiaries and joint ventures as proposed.

Two commenters noted the lack of a general consent mechanism for incremental investments in a subsidiary or joint venture once the individual company investment limit is reached. They recommended the inclusion of such a provision to allow investors to make additional small investments quickly, without encumbering both the investor and the Board with a case-by-case regulatory review. They further suggested that such investments be excluded from the 12-month rolling aggregate general consent limits. The Board does not believe that these changes should be made to the proposal. As noted above, an investor may increase its investment limit by increasing its capital. Moreover, an investor that has reached its individual company investment limit may apply to the Director of the Division of Banking Supervision and Regulation for appropriate relief or may submit a long-range investment plan for preclearance, as discussed further below. Accordingly, the Board is retaining the requirement that investments beyond those permissible under general consent authority must be made under the prior notice procedures unless relief is otherwise granted.

One commenter proposed allowing investors to carry forward and accumulate for five years unused investments of cash dividends, as is presently authorized under Regulation K. The Board believes that this provision is no longer necessary in light of the expansion of the general consent limits and the ability of investors to seek waivers or obtain preclearance of an investment program.

Another commenter noted that the Board's proposal would render investments in general partnerships and unlimited liability companies in amounts of less than $25 million ineligible for the general consent provisions and recommended that the Board preserve the general consent status quo for such investments by well-capitalized, well-managed banking institutions. The final rule adopts this recommendation.

Commenters also urged the Board to clarify that investments in single-purpose subsidiaries formed solely for the purpose of facilitating a specific financing transaction (*e.g.*, special purpose corporations formed by Edge corporations engaged in specific leasing transactions with a single customer) would not be subject to the individual or aggregate general consent limits. The Board will continue to exclude such investments from the application or prior notice procedures provided the investment serves solely to finance a leasing transaction.

Aggregate Limits

The limits on general consent investments in any one company are intended to address the fact that individual foreign investments above a certain size may be a source of potential concern, and therefore prior review of such investments should be required. In addition, the Board is also concerned with any rapid increase in an organization's foreign investments overall, made without prior review. Accordingly, in the '97 Proposal, the Board proposed that when the cumulative investments made under general consent reach a certain amount over a given period, new or additional investments would become subject to prior review. Investments by all affiliates of a bank holding company would be taken into account in determining compliance of the holding company with the aggregate limits; investments of subsidiaries of a bank or of an Edge, respectively, would be aggregated in determining compliance with their limits. Under the proposed liberalized general consent procedures, the new aggregate limit for all investments during any 12-month period for investors meeting the well-capitalized and well-managed tests would be:

Bank holding companies: 20 percent of tier 1 capital.

Bank: 10 percent of tier 1 capital of the bank.

Bank subsidiaries: the lesser of 10 percent of tier 1 capital of the bank or 50 percent of the bank subsidiary's tier 1 capital.

The Board considered that, because the bank would have the exposure on a consolidated basis for investments by either the bank or the Edge, these investments should have a combined aggregate limit. However, the Board proposed that this limit could be waived, in whole or in part, by the Director of the Division of Banking Supervision and Regulation under delegated authority, based upon a review of the financial strength of the investor and its investment strategy and business plans.

For bank holding companies, banks or Edge corporations that are adequately capitalized but do not meet the well-capitalized and well-managed standards, the Board proposed that the aggregate limits on all investments made under authority of general consent in any 12-month period would be half that applicable to well-capitalized and well-managed organizations (*i.e.*, 10 percent of tier 1 capital for bank holding companies, 5 percent of tier 1 capital for banks, and, for Edge corporations, the lesser of 5 percent of the parent bank's tier 1 capital or 10 percent of the Edge's tier 1 capital). In determining compliance with the aggregate limits, investments under Regulation K by all subsidiaries of the investor would be taken into account.

A number of comments were submitted regarding these provisions. Some argued that there should be separate rolling 12-month aggregate limits for portfolio investments and investments in subsidiaries and joint ventures. Other commenters objected to the inclusion of dealing positions in the rolling 12-month limits, and one argued that the percentage limits should be increased if portfolio investments and dealing activities are both included in

[21] The proposed definitions of well-managed and well-capitalized for these purposes are discussed *infra* under the heading "Well-capitalized/Well-managed Standards."

[22] Under the proposal, if the Edge corporation were making the investment, then the Edge corporation, the member bank, and the bank holding company would be required to meet the well-capitalized and well-managed tests. If the member bank were making the investment, then the bank and the bank holding company would be required to meet the tests.

determining compliance with the limits. A few commenters also requested clarification of whether additional investments in a company equal to cash dividends from the company, investments acquired from an affiliate, and investments made under the prior notice and specific consent provisions would be included within the proposed rolling 12-month aggregate limits. They recommended that the final regulation explicitly exclude these investments from the aggregate limits.

As discussed above, the aggregate limits are designed to address concerns that a banking organization may use expanded general consent investment authority, including that available in relation to portfolio investments, to expand excessively within a short time period. The Board notes that these limits are set at fairly high levels as a percentage of tier 1 capital. In order to provide a meaningful constraint on excessively rapid growth, in the Board's view all amounts invested during the rolling 12-month period should be included in the aggregate limit. The Board does not consider that any action should be taken to exclude portfolio investments from other investments in subsidiaries and joint ventures for purposes of the aggregate general consent limit. After further consideration, however, the Board considers that shares acquired in connection with Regulation K dealing activity should be excluded from the rolling 12-month aggregate limit, in view of the important differences in the nature of dealing activity. Aside from this change, in view of the ability of a banking organization to increase its general consent limits by increasing capital, and the availability of other procedures for securing authority to make investments should the limits prove constraining (such as seeking a waiver of limits on a case-by-case basis or obtaining preclearance for an investment program), the Board adopts the proposed aggregate general consent limits.

Preclearance of Investment Program

In connection with the foregoing, the Board also in 1997 proposed establishing a procedure that would allow U.S. banking organizations to obtain preclearance of an investment program, even though one or more of the investments would be in excess of the individual or aggregate general consent investment limits and would be made over a time period longer than one year. Preclearance authority would be delegated to the Director of Banking Supervision and Regulation, with the consent of the General Counsel. The Board solicited comment on whether such a program would be useful to U.S. banking organizations and whether it should be available to all banking organizations, including those organizations that are not well-capitalized and well-managed.

In response to the Board's request for comment, several commenters recommended that the Board adopt the proposed preclearance investment program as enhancing U.S. banking organizations' international competitiveness. Commenters believed that the preclearance process should focus on the merits of the applicant, rather than the specifics of the investment program. They argued that, for the preclearance option to be effective, the regulatory review process must be rapid and must not impose excessively narrow parameters on the types of investments permitted.

The Board is adopting the proposed preclearance program that would allow investors to seek authority to exceed the individual or rolling 12-month aggregate general consent investment limits. Because of the differing foreign investment needs of U.S. banking organizations, the Board is not at this time placing specific limitations on the scope of the preclearance process, but rather will assess each proposal on a case-by-case basis. The Board believes this approach provides maximum flexibility and will increase the utility of the process to all investors. Any preclearance request should be in writing and should indicate: (i) The amount of preclearance authority sought; (ii) the period of time for which such authority is sought; (iii) the strategic plan detailing the reasons for seeking preclearance authority; (iv) whether the applicant satisfies the well-capitalized and well-managed criteria; and (v) capital projections based upon anticipated investments made under the preclearance authority.

Commenters also recommended that investors be permitted to present their investment programs as prior notices, rather than as applications for specific consent. One commenter recommended that such authority be delegated to individual Reserve Banks, rather than to the Director of Banking Supervision and Regulation. In light of the fact that the preclearance process under Regulation K is new, the Board believes that it is important, at least initially, for these requests to be processed at the Board under specific consent. The procedures for obtaining preclearance authority will be reviewed after the Board gains experience with the process.

Authorization To Invest More Than Ten Percent of a Bank's Capital in Its Edge and Agreement Corporation Subsidiaries

Under a September 1996 amendment to section 25A of the Federal Reserve Act, member banks may invest more than 10 percent and up to 20 percent of capital and surplus in the stock of Edge and agreement corporation subsidiaries with the Board's prior approval. The Board may not approve such investments unless it determines that the investment of an additional amount by the bank would not be unsafe or unsound.

The Board proposed to implement this provision by adding an application requirement to Regulation K for banks to obtain the Board's approval to invest in excess of 10 percent of a bank's capital in the stock of Edge and agreement corporations. The Board noted that it would take the following criteria into account in reaching a decision on such an application: (i) The composition of the assets of the bank's Edge and agreement corporations; (ii) the total capital invested by the bank in its Edge and agreement corporations when combined with retained earnings of the Edge and agreement corporations (including retained earnings of any foreign bank subsidiaries) as a percentage of the bank's capital; (iii) whether the bank, bank holding company, and Edge and agreement corporations are well-capitalized and well-managed; and (iv) whether the bank is adequately capitalized after deconsolidating and deducting the aggregate investment in and assets of all Edge or agreement corporations and all foreign bank subsidiaries.

The Board invited comment on whether the enumerated criteria are appropriate for determining whether these investments are unsafe or unsound. Additionally, the Board sought comment on whether only the well-capitalized and well-managed criteria should apply in those instances in which the total Edge and agreement corporation capital (including retained earnings) on a pro forma basis would not exceed 20 percent of the bank's capital. As discussed above, due to the accumulation of retained earnings in Edge corporations, some member banks now have over 20 percent of their consolidated capital in Edge corporations.

Comments submitted generally supported this proposal. One commenter urged the Board to state that the evaluative criteria are not all-inclusive, to permit the Board to consider other issues as they may arise on a case-by-case basis. Another commenter recommended that the Board include among the criteria an evaluation of the reasons for the proposed capital increase. The Board believes these suggestions are implicit in the enumerated criteria. The Board therefore adopts the regulation as proposed, including applying only the well-capitalized and well-managed criteria in those instances in which the total Edge and agreement corporation capital (including retained earnings) on a pro forma basis would not exceed 20 percent of the bank's capital. While the Board expects the enumerated criteria will be sufficient in most circumstances, the Board may take into account additional criteria if necessary to fully evaluate a proposal and ensure safety and soundness of member banks.

Finally, commenters recommended that a well-capitalized, well-managed bank should not be required to obtain prior approval for these investments but, instead, should be subject only to a prior notice requirement in order to make such an investment. The Board considers, however, that the prior approval requirement should be maintained even for well-capitalized, well-managed banks in light of the significant amounts of retained earnings that may be held through Edge or agreement corporations.

Well-Capitalized/Well-Managed Standards

As discussed above, the Board's '97 Proposal generally allowed well-capitalized and well-managed banking organizations to engage in expanded securities activities and to make larger general consent investments. The Board proposed criteria for determining whether banking organizations would be considered well-capitalized [23] and well-managed.[24] Whether an institution is well-capitalized and well-managed also was proposed as a factor in the Board's determination regarding whether investments in Edge corporations greater than 10 percent of a member bank's capital and surplus should be permitted.

Commenters expressed widespread support for additional flexibility for well-capitalized, well-managed investors. However, they noted that the well-managed test under Regulation K differs from that for expedited action under Regulation Y by including a requirement that an institution not be subject to any supervisory enforcement action. They expressed concern that this provision would not provide the Board with sufficient flexibility to determine when an institution is not well-managed, as some enforcement actions may involve matters that would not be considered material. Commenters also noted that the existence of supervisory enforcement actions could be reflected in either the management rating or the composite rating of an institution, and that such ratings may be changed at any time during an examination cycle. In response to these concerns, the Board is amending the proposed definition of well-managed to delete the reference to supervisory enforcement actions and, instead, to require that the organization's management rating must be at least satisfactory. Accordingly, a U.S. banking organization meets the well-managed definition if its composite and management ratings are at least satisfactory.

Some commenters suggested that the Board should provide transitional periods and arrangements for institutions disqualified from well-capitalized and/or well-managed status to conform to the lower limits. Since the circumstances of disqualification may vary, the Board believes transitional periods and arrangements should be addressed on a case-by-case basis. Other commenters suggested that grandfathering should be available for institutions that no longer qualify as well-capitalized or well-managed, particularly where activities at issue are being conducted prudently and profitably and are not a factor in the failure to meet the eligibility tests. The Board does not believe grandfathering is appropriate in this context, as the well-capitalized, well-managed status of an institution is designed to mitigate the additional risks created by the expanded authority granted to such institutions. Moreover, the ability to conduct expanded activities should also be an incentive for achieving and maintaining well-capitalized, well-managed status.

Several commenters objected to application of the well-capitalized test to Edge corporations. They argued that, since the capital of an Edge corporation is consolidated with that of the parent bank, an independent well-capitalized test for Edge corporations would not add to safety and soundness within the bank chain. They also maintained that an independent capital test for Edge corporations may encourage uneconomic booking decisions between the bank and the Edge corporation. The Board, however, continues to believe it is important to retain these tests with reference to both the Edge corporation and the member bank in order to be eligible for the expanded authority granted to well-capitalized institutions. As noted above, this approach would help to ensure the safety and soundness of the Edge corporation in its own right and is consistent with the statutory (and supervisory) rationale underlying Edge corporations. The Board considers that Edge corporations should themselves be operating satisfactorily and not be a source of potential weakness to the U.S. parent bank.

Other Revisions to Subpart A

Harmonization of Regulation K With Other Regulatory Changes

The '97 Proposal noted that, as a result of liberalizations of other Board regulations, authority under Regulation K is now more restrictive than the authority available to engage in certain activities domestically. The Board proposed changes to address these disparities and has determined to adopt all such harmonizing changes.

Leasing Activities

The Board proposed to interpret Regulation K's leasing provision consistent with a revision to Regulation Y's authority for BHCs, eliminating the requirement that leasing activities conducted under authority of Regulation K serve as the functional equivalent of an extension of credit to the lessee with respect to high residual value leasing. Commenters expressed support for this proposal and recommended that the change be made explicit in the text of the final rule. The Board is adopting this proposal, and a conforming change has been made to Regulation K. As required under Regulation Y, however, the estimated residual value of real property must be limited to 25 percent of the value of the property at the time of the initial lease.

[23] Under the proposal, a bank holding company would be considered well-capitalized if, on a consolidated basis, it maintains total and tier 1 risk-based capital ratios of at least 10 percent and 6 percent, respectively. In the case of an insured depository institution, well-capitalized means that the institution maintains at least the capital levels required to be well-capitalized under the capital adequacy regulations or guidelines applicable to the institution that have been adopted under section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o. The Board proposed that an Edge or agreement corporation would be considered well-capitalized if it maintains total and tier 1 capital ratios of 10 and 6 percent, respectively.

[24] Under the proposal, a bank holding company or insured depository institution would be considered well-managed if, at its most recent inspection or examination or subsequent review, the holding company or institution received at least a satisfactory composite rating. The Board noted that, under standards adopted by the Board in connection with the December 1995 expansion of Regulation K's general consent authority, an Edge or agreement corporation would be considered to be well-managed for these purposes if it received a composite rating of 1 or 2 at its most recent examination or review and it is not subject to any supervisory enforcement action.

to distinguish real property leasing from real estate development and investment activities.

Commodities Swaps Activities

In light of changes to Regulation Y, the Board proposed to eliminate the requirement that commodity-related swaps must provide an option for cash settlement that must be exercised upon settlement. Comments generally supported this proposed revision, and the Board has adopted the change in final.

Other commenters recommended that the commodities swaps provision be expanded to include activities relating to the trading, sale, or investment in commodities and underlying physical properties (and, hence, to make it fully consistent with the corresponding provision of Regulation Y). The Board rejects these additional changes at this time as inconsistent with section 25A of the Federal Reserve Act, 12 U.S.C. 617, which prohibits Edge corporations from engaging in commerce or trade in commodities except as specifically provided therein.

Loans to Officers at Foreign Branches

In the '97 Proposal, the Board noted that existing Regulation K imposes limits on mortgage loans to executive officers of foreign branches of member banks that are more restrictive than limits imposed under analogous provisions in Regulation O. The Board proposed to eliminate the Regulation K provision to address this disparity. None of the public commenters addressed this proposed change, and it is adopted as proposed. Accordingly, the limits in Regulation O apply with respect to such loans.

Data Processing Activities

The Board expressly declined to alter or expand Regulation K's data processing provision. It noted, however, that this authority extends only to the processing of information and does not authorize the general manufacture of hardware for such services. Some commenters presumed that the activity of data processing pursuant to Regulation K is unrestricted rather than limited to banking, financial, or economic data to the extent such data processing is limited in Regulation Y.[25] Moreover, some commenters read the language in the preamble to the proposed revisions to Regulation K to preclude the offering of hardware in connection with software that is designed and marketed for the processing of financial, banking, or economic data where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering. The Board notes that an interpretation issued in 1999 clarified that the scope of the data processing authority of Regulation K is coextensive with the data processing authority of Regulation Y, absent Board authorization for additional activities. 64 FR 58780, Nov. 1, 1999.

Additional Areas of Liberalization

Authorizing Foreign Branches of Operating Subsidiaries of Member Banks

The Board proposed to codify prior Board determinations permitting member banks to establish foreign branches of domestic operating subsidiaries with the Board's approval (under the prior notice or general consent procedures, as appropriate), provided that those branches would engage only in activities directly permissible for the member bank parents. Commenters expressed support for this proposal, and the Board is adopting the revision as proposed.

FCM Activities

The Board proposed to eliminate the requirement that an investor seek Board approval before acting as a futures commission merchant (FCM) for financial instruments, and on exchanges, not previously approved by the Board. The Board also proposed to eliminate the requirement that investors obtain prior Board approval for FCM activities conducted on any exchange or clearing house that requires members to guarantee or otherwise to contract to cover losses suffered by other members (*i.e.*, a mutual exchange).[26] The Board sought comment on whether the prior notice requirement should be eliminated where: (i) the activity is conducted through a separately incorporated subsidiary; and (ii) the parent bank does not provide a guarantee or otherwise become liable to the exchange or clearing house for an amount in excess of the applicable general consent limits. One commenter agreed that a prior notice requirement should not be imposed in these circumstances. The Board is adopting the revisions to the FCM authority under Regulation K as proposed.

Changes With Respect to Edge and Agreement Corporations: Voluntary Liquidation Procedures

The Board proposed changes relating to the liquidation and receivership of Edge and agreement corporations, including adding provisions: (i) Providing for 45 days' prior notice to the Board of an Edge or agreement corporation's intent to dissolve; (ii) specifying the grounds for determining that an Edge corporation is insolvent; and (iii) specifying the powers of a receiver of an Edge corporation. One commenter expressed general support for the voluntary liquidation proposal, and this provision is adopted as proposed. In light of the recent amendment of the Edge Act's receivership provision, 12 U.S.C. 624, the Board is not adopting the regulatory proposal with respect to receivership.

Additional Commenter Recommendations Under Subpart A

Commenters urged the Board to revise Subpart A of Regulation K in the following respects not addressed by the Board's proposals.

Advisory Opinions Under Regulation K

A commenter suggested that the Board harmonize Regulations Y and K further by establishing a procedure in Regulation K whereby questions arising under the regulation could be submitted by any person and the Board would issue an advisory opinion within 45 days. The Board agrees that this procedure would enhance regulatory transparency and facilitate regulatory compliance. As noted above in the section on portfolio investment authority, the Board is adopting the recommendation and including a procedure in the final rule under which advisory opinions may be requested on the scope of activities permissible under Regulation K. Board staff will endeavor to respond to any such requests within 45 days of receipt of all relevant information, provided the request does not raise significant supervisory issues.

Divestiture Period for Debts Previously Contracted ("DPC") Assets

Commenters recommended that the Board adopt the OCC's DPC divestiture rules, which provide for an initial holding period of up to five years, with an opportunity to extend for up to an additional 5 years. Existing Regulation K, which the Board did not propose to amend, requires divestiture within two years after acquisition, unless the Board authorizes retention for a longer period. The Board believes the existing DPC divestiture period is adequate given that investors may request extensions of time

[25] Regulation Y allows up to 30 percent of data processing revenues to be derived from data processing that is not financial, banking, or economic in nature.

[26] In this regard, Regulation Y has been revised to allow subsidiaries of BHCs to act as FCMs for futures contracts traded on an exchange provided the parent BHC does not provide a guarantee or otherwise become liable to the exchange or clearing association other than for proprietary trades.

and therefore declines to adopt this proposal.

Changes to Capitalization Requirements for Edge Corporations

Commenters recommended that the Board revise the provisions regarding the capitalization of Edge corporations to facilitate their clearing activities by either exempting sales of Fed funds to parent banks from the 10 percent capital adequacy guideline applicable to Edge corporations or eliminating the 10 percent capital limitation applicable to Edges. The Board does not believe this proposal is consistent with the safety and soundness concerns the capital adequacy guidelines for Edge corporations are designed to address. Accordingly, it declines to adopt this proposal.

Subpart B: Foreign Banking Organizations

Subpart B of Regulation K governs the U.S. activities of foreign banking organizations. It implements the IBA and provisions of the BHC Act that affect foreign banks.

This final rule for Subpart B seeks to eliminate unnecessary regulatory burden, increase transparency, and streamline the application/notice process for foreign banks operating in the United States based on the Board's recent experience with foreign bank applications. The final rule also would liberalize the standards under which certain foreign banking organizations qualify for exemptions from the nonbanking prohibitions of section 4 of the BHC Act.

The rule also implements a number of statutory changes including certain application-related provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (the 1996 Act) and several provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the Interstate Act) and the Gramm Leach Bliley Act (the GLB Act) that affect foreign banks. The Board is also requesting comment on issues that arise in connection with the change in the definition of representative office made in the GLB Act. Finally, several technical changes to various other provisions in Subpart B are being adopted.

Streamlining the Regulatory Process

The Board is required to approve the establishment by foreign banks of branches, agencies, commercial lending companies, and representative offices in the United States. This authority is contained in the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA), which amended the IBA, and was intended to close perceived gaps in the supervision and regulation of foreign banks. Prior to FBSEA, there was no federal approval required for the establishment of most types of direct U.S. offices of foreign banks, nor were uniform standards applicable to these offices.

In the ten years since the enactment of FBSEA, the Board has gained substantial experience with the issues presented by applications by foreign banks to establish direct offices. The revisions streamline the applications process based on experience gained over this period. In addition, the final rule implements new discretionary authority and time limits contained in the 1996 Act.

Adoption of a Single Standard for Representative Offices

Under FBSEA, in order to approve an application by a foreign bank to establish a branch, agency or commercial lending company, the Board generally is required to determine, among other things, that the applicant bank, and any parent bank, are subject to comprehensive supervision on a consolidated basis by its home country authorities (the CCS determination).[27] A lesser standard, however, applies under FBSEA to representative office applications. While the Board is required to "take into account" home country supervision in evaluating an application by a foreign bank to establish a representative office, a CCS determination is not required to approve such an application. The law simply requires the Board to consider the extent to which the applicant bank is subject to CCS. A lesser standard applies because representative offices do not conduct a banking business, such as taking deposits or making loans, and therefore present less risk to U.S. customers and markets than do branches or agencies.

Regulation K currently restates the statutory "take into account" standard and does not define a minimum supervision standard that a foreign bank must meet in order to establish a representative office. Instead, the Board has developed standards in the context of specific cases. To date, the Board has used two different supervision standards in approving applications by foreign banks to establish representative offices.[28]

Under one, the Board has permitted a foreign bank to establish a representative office able to exercise all powers available under applicable law and regulation on the basis of a finding that the home country supervisors exercise a significant degree of supervision over the bank.[29] Under the second, the Board has approved the establishment of the office on the basis of a finding that the foreign bank is subject to a supervisory framework that is consistent with approval of the application, taking into account any limits placed on the activities of the proposed office and the operating record of the bank.[30]

Based on experience in dealing with representative office applications, the Board believes that the existence of two standards can be confusing and is unnecessary, particularly in light of the generally minimal risk presented to U.S. customers or markets by representative offices. Consequently, the Board proposed Regulation K be amended to establish only one flexible standard. Under the proposal, assuming all other factors were consistent with approval, the Board could approve an application to establish a representative office if it were able to make a finding that the applicant bank was subject to a supervisory framework that is consistent with the activities of the proposed office, taking into account the nature of such activities and the operating record of the applicant.

The record necessary to support the required finding would depend on the nature of the activities the applicant proposed to conduct in the representative office and the level of home country supervision. The Board expects that most applicants would be able to conduct all permissible activities. In those instances in which the Board had particular concerns regarding the consistency of the applicant's home country supervision with the proposed activities of the office, the applicant could commit to restrict the activities. A less comprehensive record on home country supervision would be required where the applicant committed to limit the activities of the office to those posing minimal risk to the U.S. customers.

[27] As discussed later, the law was amended in 1996 to allow the Board to approve an application if the bank is not subject to CCS under certain conditions.

[28] Wherever the record submitted by an applicant in a representative office case is sufficient to support a CCS finding, the Board generally has done so. *See, e.g., Caisse Nationale de Credit Agricole*, 81 Fed. Res. Bull. 1055 (1995). The two representative office standards have been applied in those cases where the record is not sufficient to support a CCS finding.

[29] *See, e.g., Citizens National Bank*, 79 Fed. Res. Bull. 805 (1993).

[30] *See, e.g., Promstroybank of Russia*, 82 Fed. Res. Bull. 599 (1966).

Commenters generally supported this proposal and the Board is adopting the proposal as set forth above.

Reduced Filing Requirements for the Establishment of U.S. Offices

A major thrust of the proposed revisions was reduction of burden in the application process by streamlining existing application procedures for the establishment of new U.S. offices of foreign banks. Under the current Subpart B, the establishment by a foreign bank of a U.S. branch, agency, commercial lending company subsidiary, or representative office generally requires the Board's specific approval. Once the Board has approved the establishment of a foreign bank's first office under the standards set out in FBSEA, additional offices with the same or lesser powers may be approved by the Reserve Banks under delegated authority. Prior notice and general consent procedures are currently available for the establishment of certain kinds of representative offices. The Board's proposed revisions would allow additional types of applications to be processed under prior notice and general consent procedures. The Board has determined to adopt the revisions as proposed. The specific instances in which additional prior notice and general consent authority will be available are discussed below.

Prior Notice Available for Additional Offices After First CCS Determination

The Board proposed that any foreign bank which the Board has determined to be subject to CCS in a prior application or determination under FBSEA or the BHC Act may establish additional branches (other than interstate branches), agencies, commercial lending company subsidiaries, and representative offices pursuant to a 45 day prior notice procedure.[31] This time frame would allow for review of whether any material changes had occurred with respect to home country supervision, a determination of whether the bank continues to meet capital requirements, and a review of any other relevant factors. The current delegation to the Reserve Banks for such applications would be deleted as no longer necessary.

Four commenters expressed support for the Board's proposal. In response to the comments submitted, the Board is adopting the proposal with language clarifying that the prior notice procedure ordinarily would be available for foreign banks with a CCS determination that seek to establish additional branches (other than interstate branches under section 5(a)(3) of the IBA (12 U.S.C. 3103(a)(3))), limited branches, agencies, commercial lending company subsidiaries, and representative offices.[32]

Prior Notice Available for Certain Representative Offices

Many foreign banks have a U.S. banking presence and therefore are subject to the provisions of the BHC Act, but have not received a CCS determination. If a foreign bank is subject to the provisions of the BHC Act through ownership of a bank or commercial lending company or operation of a branch or agency, it is also subject to supervision and oversight through the Board's Foreign Banking Organization (FBO) program. Through the FBO program, the Board gains knowledge of the bank, its policies and procedures, and forms a general view on home country supervision. In these instances, the Board believes that an expedited procedure may be adopted for the establishment of representative offices by these banks, even where the foreign bank had not previously been reviewed under the standards of FBSEA.

The Board proposed that these foreign banks be permitted to establish representative offices using a 45-day prior notice procedure. In addition, the Board also proposed to permit the establishment by prior notice of additional representative offices by any foreign bank not subject to the BHC Act but previously approved by the Board to establish a representative office, regardless of the type of supervision finding made by the Board in the prior case. Such applications are currently delegated to the Reserve Banks. The Board sees no reason to continue to require full applications from such banks. The Board proposed that banks in these two categories be permitted to use the 45-day prior notice procedure for opening a representative office, rather than requiring them to use the application procedure.

Commenters generally supported this proposal. One commenter additionally requested that foreign banks that have been approved to establish branches and agencies under the limited exception to the CCS standard—which permits the Board to approve applications to establish branches and agencies if it is able to find, among other things, that the home country supervisor of the applicant bank is "actively working" toward achieving CCS—be permitted to use a 45 day prior notice procedure for additional offices with the same or lesser powers.

The Board is adopting the proposed revisions. In addition, the Board is adopting the commenter's proposal to permit establishment by prior notice of representative offices, but not additional branches, agencies or commercial lending companies, by foreign banks previously approved under the "actively working" standard. This would be consistent with the Board's proposal.

New General Consent Authority

The Board proposed to permit the establishment by general consent of a representative office by a foreign bank that is both subject to the BHC Act and has been previously determined by the Board to be subject to CCS. Establishment of a representative office by such a foreign bank is currently subject to the prior notice procedure. The proposal was based on an assessment that a foreign bank that is subject to supervision under the FBO program and has been judged subject to CCS should generally qualify to establish a representative office. The Board also proposed that a foreign bank that is subject to the BHC Act could establish a regional administrative office by general consent, whether or not the Board had determined the bank to be subject to CCS. Regional administrative offices currently can be established using the prior notice procedure. Commenters generally supported this proposal and the Board is adopting the revisions as proposed.

One commenter requested that the general consent procedure also be available for additional offices with the same or lesser powers in a state in which the foreign bank already operates an office where the foreign bank is subject to the BHC Act and has a CCS determination. The Board does not believe it would be appropriate to adopt the commenter's proposal because the proposal implicitly assumes that a CCS determination would never need to be reconsidered. In addition, in connection with each branch and agency case, the Board also must confirm that the foreign bank's capital meets the statutory requirements.

Suspension of Prior Notice and General Consent Procedures

The proposed revisions also provided that the Board, upon notice, may modify or suspend the prior notice and general consent procedures described above for any foreign bank. For example, modification or suspension of these procedures might be appropriate if the composite rating of the foreign bank's combined U.S. operations was less than satisfactory,[33] if the foreign bank were subject to supervisory action, or if questions were raised about the foreign bank's home country supervision or anti-money laundering policy and procedures. The proposal would ensure that any streamlining of the applications process would not compromise the Board's ability to make the determinations necessary in connection with the establishment of offices.

The proposed revision did not elicit specific comment and it is adopted as proposed.

After-the-Fact Approvals

In implementing FBSEA in 1993, the Board recognized that it would be impractical to require prior approval for the establishment of foreign bank offices acquired in certain types of overseas transactions, such as a merger of two foreign banks, and provided for an after-the-fact approval in such cases. The regulation currently requires the foreign banks involved to commit to file an application to retain acquired U.S. offices as soon as possible after the occurrence of such transactions.

Since the enactment of FBSEA, a number of applicants using the after-the-fact procedure have chosen to wind down and close acquired offices or consolidate them with existing offices, in each case within a reasonable time frame. In most instances, no regulatory purpose was served by requiring the filing of an application. The regulation currently does not address this possibility. The Board proposed to amend the rule to address both after-the-fact applications to retain, as well as decisions to wind-down and close, U.S. offices acquired in a transaction eligible for the after-the-fact approval process. Where the foreign bank chooses to close the acquired U.S. office, the Board generally would not require the filing of an application but could impose appropriate conditions on the U.S. operations until the winding-down is completed.

The proposed revision did not elicit specific comment and it is adopted as proposed.

Implementation of the 1996 Act

As noted above, FBSEA generally requires the Board to determine that a foreign bank applicant is subject to CCS in order to approve the establishment of a branch, agency, or commercial lending company. The 1996 Act gave the Board discretion to approve the establishment of such offices by a foreign bank where the application record is insufficient to support a finding that the bank is subject to CCS, provided the Board finds that the home country supervisor is actively working to establish arrangements for the consolidated supervision of the bank, and all other factors are consistent with approval. This discretion gives the Board flexibility to approve applications on an exceptional basis where the home country authorities are making progress in upgrading the bank supervisory regime but the record may not yet be sufficient to support a full CCS finding. The Board has stated that this authority should be viewed as a limited exception to the general requirement relating to CCS.[34] The statutory standards are being included in the final rule.

Two commenters expressed support for the Board's proposed revision.

The Board has proposed to incorporate into Regulation K the statutory time limits in the 1996 Act for Board action on applications for branches, agencies, and commercial lending companies. The 1996 Act provided that the Board must act on such an application within 180 days of its receipt. The time period may be extended once for an additional 180 days, provided notice of the extension and the reasons for it are provided to the applicant and the licensing authority; the applicant may also waive the time periods. Although the regulation will reflect these statutory time periods, the Board will maintain existing internal time schedules that would require faster processing where possible.

New Standard

In light of the increasing attention being paid to the problem of money laundering, the Board currently requests that a foreign bank applying to establish U.S. offices provide information on the measures taken to prevent the bank from being used to launder money, the legal regime to prevent money laundering in the home country, and the extent of the home country's participation in multilateral efforts to combat money laundering. The Board considers this information in reaching its decision on applications. In light of this practice, the proposed revision included as a standard for the establishment of U.S. offices by foreign banks that the Board may consider the adequacy of measures for the prevention of money laundering.

One commenter expressed support for this proposal and it is adopted as proposed.

Qualifications of Foreign Banks for Nonbank Exemptions

Changes to the QFBO Test

Regulation K implements statutory exemptions from the BHC Act for certain activities of foreign banks. These exemptions are available to qualifying foreign banking organizations (QFBOs) and are found in sections 2(h) and 4(c)(9) of the BHC Act. Section 2(h) allows a foreign company principally engaged in banking business outside the United States to own foreign affiliates that engage in impermissible nonfinancial activities in the United States, subject to certain requirements. These include that the foreign affiliate must derive most of its business from outside the United States and it may engage in the United States only in the same lines of business it conducts outside the United States. Section 4(c)(9) allows the Board to grant foreign companies an exemption from the nonbank activity restrictions of the BHC Act where the exemption would not be substantially at variance with the BHC Act and would be in the public interest. Under this authority, the Board has exempted, among other things, all foreign activities of QFBOs from the nonbanking prohibitions of the BHC Act.

In order to qualify as a QFBO, a foreign banking organization must demonstrate that more than half of its business is banking and more than half of its banking business is outside the United States. Banking business is defined to include the activities permissible for a U.S. banking organization to conduct, directly or indirectly, outside of the United States.[35] Under the current regulations

[31] An editing error in the draft regulatory language unintentionally limited the types of offices eligible for the prior notice procedure. Commenters requested that the proposed 45-day prior notice provision be extended to the establishment of limited branches outside the foreign bank's home state. This was the intent of the proposal.

[32] As described further in the preamble, upgrades of limited branches and agencies outside the foreign bank's home state would be eligible for prior notice if other requirements were met. In response to a comment, the Board considered whether it might be possible to process under the 45-day notice procedure proposals to establish full interstate branches. Approval of full interstate branches requires consideration of factors in addition to those required to be considered in a normal FBSEA application, as well as consultation with the Department of the Treasury. For this reason, an application requirement is being retained for the establishment of full interstate branches under section 5(a)(3) of the IBA.

[33] *See* 12 CFR 225.2(s) (definition of "well-managed" foreign banking of such transactions organization).

[34] *See Housing & Commercial Bank*, 83 Fed. Res. Bull. 935 (1997); *National Bank of Egypt*, 86 Fed. Res. Bull. 344 (2000); *Banco de Bogota*, 87 Fed. Res. Bull. 552 (2001).

[35] These activities include, in addition to traditional banking activities, underwriting various types of insurance (credit life, life, annuity, pension fund-related, and other types of insurance where the associated risks are actuarially predictable); underwriting, distributing, and dealing in debt and equity securities outside the United States; providing data processing, investment advisory,

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such activities can be counted as banking business for the purposes of the QFBO test only if they are conducted in the foreign bank ownership chain; that is, by the foreign bank or a subsidiary of the foreign bank. Activities conducted by a parent holding company or sister affiliate do not count toward qualification.

Modification of Proposal To Remove the Banking Chain Requirement from One Prong of the QFBO Test

The Board proposed liberalizing the QFBO test by removing the banking chain requirement from the prong of the QFBO test that measures whether more than half of a foreign banking organization's business is banking. By eliminating the banking chain requirement from that prong of the test, a foreign banking organization that has, for example, substantial life insurance activities outside of the banking chain would be able to count such activities toward meeting the QFBO test. The commenters supported this liberalization.

When this proposal was made in 1997, the Board was aware of relatively few foreign banking organizations, primarily those engaged in insurance, that would have benefitted from such liberalization. Significantly, at that time, the BHC Act would have prevented such a foreign insurance company from conducting insurance activities in the United States. Accordingly, the proposed change was expected to have limited application and not to provide any significant competitive advantage for foreign banking organizations.

The enactment of the Gramm-Leach-Bliley Act has changed the regulatory landscape and the consequences of the proposed QFBO test. The BHC Act is no longer a legal bar to companies that wish to engage in insurance and merchant banking activities in the United States, and a broader range of foreign companies may acquire foreign banks with U.S. activities than was possible in 1997. If the proposed test were adopted, a foreign insurance group that qualified as a financial holding company would be able to make commercial and industrial investments in the United States beyond those permissible under insurance or merchant banking authority even though a domestic insurance company with financial holding company status could not. In light of these changes, the Board has reconsidered its proposed change to the QFBO test and determined to adopt a modified form of the 1997 proposal.

The existing QFBO test has been retained and foreign banking organizations that are able to qualify under that test will continue to be eligible for all of the exemptions. A new provision will permit those foreign banking organizations that meet only the test proposed by the Board in 1997 nevertheless to be eligible for all of the exemptions other than the exemption for limited commercial and industrial activities provided under § 211.23(f)(5)(iii).[36] Such a foreign banking organization will, however, be eligible for the limited exemptions only if the foreign banking organization includes a foreign bank that could itself meet the current QFBO test.

Although the foreign banking organization that is able to meet only the modified test generally would be limited in its ability to make investments under the exemption in section 2(h)(2) of the BHC Act, the Board considers that a foreign bank within the group should not be so limited. In this regard, the Board notes that, in enacting section 2(h)(2), Congress recognized that banks in other countries have traditionally been permitted to make commercial and industrial investments. Accordingly, any foreign bank within such a group that itself is able to meet the current QFBO test by reference to its and its subsidiaries' assets, revenues and net income, will be eligible for all of the exemptions.

Limiting the eligibility for exemptions in this way is consistent with the statutory language in section 2(h)(2) of the BHC Act, which provides that it applies to shares held by a foreign company that is "principally engaged in the banking business outside the United States." At the same time, modifying the test in this manner would limit the extraterritorial effect of the BHC Act on foreign firms, and would not penalize a consolidated group that engages mostly in activities permissible for a U.S. banking organization.

Applications for Special Determination of Eligibility for QFBO Treatment

The Board recognizes that there may be types of ownership structures above foreign banks that would not meet even the modified QFBO test. It also is possible that foreign banking organizations that meet only the modified test might need limited relief for commercial and industrial activities in the United States. In addition, there may be foreign financial organizations that do not include a foreign bank and wish to acquire a U.S. bank. Such financial organizations would fail the QFBO test, and it is not possible to know the extent to which requiring such an organization to conform its worldwide operations to those permissible for a U.S. financial holding company would interfere, in particular, with its foreign business. The Board is prepared to consider requests beyond the current QFBO authority on a case-by-case basis. In considering such cases, the Board will take into account the principles of national treatment and equality of competitive opportunity and may grant exemptions that are not substantially at variance with the purposes of the BHC Act and are in the public interest.

Regulation K currently permits a foreign banking organization that ceases to qualify as a QFBO to request a special determination of eligibility. That provision has been modified to give the Board greater flexibility to grant special determinations that will permit foreign banking organizations and foreign organizations that do not include foreign banks to be eligible for some or all of the exemptions in appropriate cases.

The Board has also adopted the proposal made in 1997 that would permit a former QFBO that has applied for a specific determination of eligibility to continue to conduct its business as if it were a QFBO, except with respect to making investments in U.S. companies under section 2(h)(2) of the BHC Act for which Board consent would be required. The proposal reflects the approach taken in a prior case considered by the Board, and no comments were received on the proposal.

Other Comments on the QFBO Test

The QFBO test in Regulation K permits foreign banking organizations to count in the measurement of "banking" only those assets, revenues, or net income related to activities that are permissible for a U.S. banking organization to conduct outside of the United States. The Board requested comment with respect to a possible expansion of the list of activities that would be considered banking for purposes of the QFBO test. Three commenters suggested some expansion in the list. Two proposed that the QFBO test be expanded to include all financial activities which are usual in connection with the banking business in those countries in which the foreign banking organization is active. One proposed that the Board consider other activities on a case-by-case basis to reflect changes in foreign financial markets.

To date, there have been very few cases in which a foreign banking organization failed the QFBO test because certain types of financial activities were not included on the list. In light of this, and in view of the modified QFBO test and the ability of the Board to make special determinations of eligibility for some or all of the QFBO exemptions, the Board has determined not to make any changes at this time to the list of activities that would be considered banking for purposes of the QFBO test.

Two commenters suggested that the requirement that a QFBO conduct more banking than nonbanking activities is not required by the statute. These same commenters also proposed that even if that requirement is retained, the QFBO test should be revised to allow U.S. banking business to be included when calculating the extent of an organization's banking business. The Board has not adopted these proposals because they would be inconsistent with section 2(h)(2) of the BHC Act, which provides exemptions for foreign companies principally engaged in banking business outside the United States. Moreover, a U.S. nonfinancial company is not permitted to own a U.S. bank, and altering the test to permit a predominantly nonfinancial foreign group to engage in banking in the United States would be inconsistent with the principle of national treatment.

U.S. Activities of QFBOs

Securities Activities. Subpart B currently provides that a foreign banking organization may not own or control shares of a foreign company that directly underwrites, sells or distributes, or that owns or controls more than 5 percent of the shares of a company that underwrites, sells or distributes, securities in the United States, except to the extent permitted bank holding companies. The Board proposed that the 5 percent limit be raised to 10 percent. Two commenters suggested that the limit be raised to 24.9 percent and one proposed that no change be made. The Board has determined to adopt the 10 percent limit as proposed. The Board continues to hold the view expressed in the 1997 proposal that a foreign bank should not be able to exert a significant influence over such a securities firm. Investments above the 10 percent level would be permitted if the foreign bank met the requirements to be treated as a financial holding company under the GLB Act.

Change in meaning of "incidental". Two commenters requested that the Board apply an expanded definition of "incidental" U.S. activities in Subpart B. Under the current rule in Regulation K, a QFBO is permitted to own up to 100 percent of a foreign company that conducts activities in the United States that are "incidental" to the foreign company's international or foreign business. The Board's longstanding interpretation, for purposes of both Subparts A and B of Regulation K, has been that such incidental activities in the United States are limited to those activities that the Board has determined are permissible for Edge corporations to conduct in the United States. The Board proposed changes to Subpart A governing foreign portfolio investments by U.S. banking organizations to expand the interpretation of "incidental" for such investments to permit U.S. banking organizations to hold foreign portfolio investments (maximum of 19.9 percent of voting and 40 percent of total equity) that derive no more than 10 percent of their total consolidated revenue in the United States. The commenters proposed that the Board apply the same expanded definition of "incidental" U.S. activities to permit a QFBO to hold up to 100 percent of a foreign company with U.S. activities so long as those activities account for no more than 10 percent of the total consolidated revenue of the company.[37] The change to Subpart A, which has been adopted, is intended to deal with investments in companies over which the U.S. banking organization has no control. The commenters are proposing liberalized treatment for investments by foreign banks where the foreign bank is in a position to prevent the company from entering the United States. There does not appear to be any public interest justification for the request and the Board has not adopted the commenters' proposal.

Determining Extent of Non-U.S. operations

Under Regulation K, a foreign bank may own or control voting shares of a foreign company that is engaged in business in the United States, subject to a number of restrictions. The first of these restrictions is that more than 50 percent of the foreign company's consolidated assets must be located, and consolidated revenues derived from, outside the United States. One commenter proposed that this assets plus revenues test be replaced with a requirement that more than 50 percent of the organization's business be outside the United States as measured by two out of three indicia: location of assets, derivation of revenues, and derivation of net income. There have been very few cases of an investment failing to comply with the assets/revenue test as currently applied, and the commenter gave no indication that any foreign bank has been harmed by it. The Board did not propose such a revision and, in the absence of an actual problem, has determined not to adopt it.

Increasing Amount of Equity in Noncontrolling Investments

One commenter suggested increasing the equity interest limit on non-controlling portfolio investments made by QFBOs from 24.9 percent of voting stock and total equity to 24.9 percent of voting stock and 40 percent of total equity to comport with limits applicable to U.S. banking organizations. Foreign banking organizations already are able to conduct a greater range of activities both in and outside the United States than are U.S. banking organizations. The analogy to portfolio investments of U.S. banking organizations is not valid; the new authority for U.S. organizations in this area is more limited than the existing authority for QFBOs. The Board does not consider that the additional authority proposed by this commenter for investments by foreign banking organizations is warranted.

Exception for Line-of-Business Requirement

Section 2(h)(2) requires that the U.S. commercial and industrial holdings of a foreign banking organization be in the same general line of business as the foreign investor company, or in a business related to the business conducted outside the United States. Consistent with the intent of Congress when it adopted this provision, Regulation K uses the Standard Industrial Classification (SIC) system for determining the comparability of U.S. and foreign nonbanking activities. One

and management consulting services; and organizing, sponsoring, and managing a mutual fund.

[36] The exemption in § 211.23(f)(5)(iii) implements section 3(h)(2) of the BHC Act. Any foreign banking organization that qualifies as a financial holding company would be able to make merchant banking investments, and investments in connection with its insurance business, in the United States to the extent permitted for a financial holding company. The lack of eligibility for the exemption provided in § 211.23(f)(5)(iii) would not negate or otherwise affect such authority.

[37] Foreign banking organizations already have greater leeway than U.S. banking organizations with respect to their noncontrolling investments in foreign companies engaged in U.S. activities that are not "incidental". The U.S. assets of such foreign companies can account for up to 49.9 percent of total consolidated assets, and the foreign companies can derive up to 49.9 percent of their consolidated revenues from the United States. Accordingly, the commenters' proposal would only affect the foreign banking organization's ability to make controlling investments in foreign companies with U.S. activities.

commenter noted that the provision does not permit any exceptions and suggested that the Board establish a procedure to permit a QFBO, when SIC establishment categories are not matching, to demonstrate on a case-by-case basis that the U.S. activities of a foreign subsidiary are nonetheless the same kind of activities, or related to the activities, engaged in directly or indirectly by the foreign subsidiary outside the United States.

The Board is not aware of a significant number of cases where U.S. and foreign investments of QFBOs have not met the requirements of this provision and sees no reason to modify it at this time. However, in view of the fact that the SIC classification system is being replaced by the North American Industry Classification System, the Board will be reviewing the provision and may consider if a procedure to exempt investments that do not comply with the relevant classification system would be appropriate.

This same commenter suggested that the Board review its reporting requirements to seek ways to address the difficulty of monitoring compliance with the requirements of section 211.23(f) of Regulation K within a complex, multi-tiered global organization. In the aftermath of the Gramm-Leach-Bliley Act, the Board is undertaking a review of reporting requirements for foreign banking organizations and is seeking to reduce burden where appropriate.

The Conduct of Unregulated Activities Abroad through U.S. Companies

Pursuant to section 4(c)(9) of the BHC Act, Regulation K currently exempts from the BHC Act any activity conducted by a QFBO outside the United States. In 1997, the Board noted the growing trend by foreign banks to use this exemption to conduct unregulated activities abroad through foreign subsidiaries of U.S. companies operating under section 4(c)(8) of the BHC Act. U.S. bank holding companies, in contrast, are not able to conduct unrestricted activities abroad through foreign subsidiaries of their section 4(c)(8) companies. Under the BHC Act, a U.S. bank holding company may own foreign subsidiaries only under the authority of Subpart A of Regulation K which set limits on the activities that can be conducted in such subsidiaries. The Board requested comment on whether it is consistent with the policy of national treatment to permit QFBOs to continue to use the exemption to conduct unrestricted activities abroad in foreign subsidiaries of companies regulation by the Board under section 4(c)(8).

The commenters generally favored permitting foreign banks to have unrestricted 4(c)(9) foreign subsidiaries of 4(c)(8) companies. A number of commenters stated that a foreign banking organization should be permitted to organize its non-U.S. activities in the manner that best suits its business, and that the home country supervisor and not the Federal Reserve is regarded by the market as the supervisor of the activities of such foreign companies. None of the commenters expressed any views as to whether such practice may provide foreign banks with a competitive advantage over U.S. banking organizations in using and marketing the name and operations of the regulated U.S. company, but they did state that foreign banks could achieve the same benefits by establishing a foreign affiliate of the 4(c)(8) company with a similar or identical name.

The Board has determined to take no action at this time to prevent the practice from continuing, but reserves the right to review any of these situations as the facts warrant and require a change in the relationship if the structure in fact results in competitive inequality.[38]

Implementation of New Interstate Rules

In addition to application procedures and rules on nonbanking activities, Regulation K implements the restrictions on interstate operations of foreign banks provided in the IBA and the BHC Act. The Interstate Act amended the IBA and the BHC Act to remove geographic restrictions on interstate acquisitions of banks by foreign banks, permitted foreign banks to branch interstate by merger and *de novo* on the same basis as domestic banks with the same home state as the foreign bank, and modified the definition of a foreign bank's home state for purposes of interstate branching. The Interstate Act became fully effective in June 1997.

In May 1996, the Board published a final rule to implement certain of the changes made by the Interstate Act. The rule required certain foreign banks to select a home state for the first time, or have a home state designated by the Board, removed obsolete provisions of Regulation K that restricted the ability of a foreign bank to effect major bank mergers through U.S. subsidiary banks located outside the foreign bank's home state, and deleted certain other obsolete rules governing home state selection.

The Board's 1997 proposal sought to implement and interpret certain other changes made by the Interstate Act. The proposal would permit foreign banks to make additional changes in home state under certain circumstances and clarified the extent to which a foreign bank changing its home state would be required to conform its existing network of bank subsidiaries and banking offices.

In addition, the proposal set forth the additional standards for approval of applications by foreign banks to establish interstate branches. It also clarified that the "upgrade" of agencies and limited branches to full branches required Board approval and that the Board would approve such upgrades (absent a merger transaction) only if the host state had enacted laws permitting *de novo* interstate branching. Finally, the proposal deleted the Board's home state attribution rule, which provides that a foreign bank (or other company) and all other foreign banks which it controls must have the same home state.

The commenters were generally supportive of the Board's proposals in the interstate area. With the exception of the "upgrades" proposal which, as described below, has been mooted by subsequent legislation, the Board has adopted the changes as proposed.

Changes of Home State

In 1980, the Board allowed foreign banks a single change of home state as a compromise between the need for comparable treatment with domestic banks and Congress' intent, in adopting the IBA, that foreign banks be allowed some flexibility to change home state. The basic framework for interstate banking, however, has changed substantially since 1980, when domestic banks generally could not branch interstate and rarely, if ever, could change home states. Domestic and foreign banks may now branch into other states either *de novo* or by merger in certain circumstances; interstate branching by merger between banks is now possible in all but one state (all states will allow interstate branching by merger as of year end 2001), and *de novo* interstate branching is permitted in 17 states. As a result, many domestic banks with interstate branches now have significant opportunities to change home state, although these opportunities are not available to all banks under all circumstances.

In light of these changes, the Board proposed giving foreign banks additional opportunities to change home state in a way that affords

[38] The Board notes that material alterations in nonbanking activities carried on by a particular section 4(c)(8) company may require notice to the Board. 12 CFR 225.25(c)(3).

comparable treatment to foreign and domestic banks. The proposal retained the ability of foreign banks under current rules to change their home state once by filing a notice with the Board. Changes made by foreign banks prior to the entry into effect of the final rule would count toward this one-time limit. The proposal also established a new procedure for foreign banks to change home state an unlimited number of times, by applying for the prior approval of the Board for each such change. A foreign bank applying to change its home state under the new procedure would be required to show that a domestic bank with the same home state would be able to make the same change.

The Board has adopted the change in home state provision as proposed. The commenters supported the provision but questioned the need for prior Board approval; instead they recommended a 45 day notice requirement. The Board has considered whether the issues presented by a request for an additional change of home state could be dealt with adequately during a 45 day prior notice period. The Board expects such changes to be comparatively rare. In addition, each such request presents unique facts. For these reasons, the Board has elected to retain the prior approval requirement set forth in the proposal. As the Board gains experience processing such requests, it may consider replacing the prior approval with a prior notice requirement.

One of the commenters sought assurance that the Board would be flexible in interpreting the requirement that a foreign bank seeking to make an additional change of home state demonstrate that a domestic bank with the same home state would be able to make the same change. The Board believes the new procedure advances the policies of national treatment and equality of competitive opportunity underlying the IBA by allowing foreign banks to take advantage of changes in laws concerning interstate branching in order to change home state, when and to the extent those laws make it possible for similarly situated domestic banks to change home state. Although the Interstate Act made it possible for domestic banks to change home state in some cases, there are other cases where such a change in home state may be difficult or impossible. The new procedure also seeks to prevent foreign banks from gaining an unfair competitive advantage over domestic banks. Accordingly, the new procedure would allow foreign banks to change home state only in cases where a domestic bank could effect a comparable change.

Changes in home state would generally have no impact on which Reserve Bank will supervise the operations of a foreign bank nor on which Reserve Bank will receive a foreign bank's reports and applications.

Conforming U.S. Operations Upon Change in Home State

Regulation K currently requires a foreign bank that changes its home state to conform its banking operations outside the new home state to what would have been permissible at the time of the bank's original home state selection. The requirement, adopted in 1980, implemented section 5 of the IBA which sought to prevent foreign banks from using a home state change to acquire and maintain subsidiary banks or branches in more than one state in circumstances where a domestic bank or bank holding company would be unable to do so.

The Interstate Act liberalized the rules on interstate branches and eliminated the geographic restrictions on the purchases of banks by domestic bank holding companies and foreign banks under the BHC Act and the IBA. Consequently, the Board proposed that the provisions on conforming operations upon a foreign bank's change of home state be revised to reflect changes made by the Interstate Act. For example, with respect to subsidiary banks, a foreign bank would no longer be required to divest a subsidiary bank outside its new home state; the Interstate Act authorizes interstate acquisitions of bank subsidiaries.

With respect to conforming branches outside the foreign bank's new home state, the proposal reflected the liberalized interstate branching rules applicable to foreign and domestic banks as a result of the Interstate Act. A foreign bank changing its home state would be permitted to retain all branches which the foreign bank could establish (under current law) if it already had its new home state. This relaxation is appropriate given that domestic, as well as foreign banks, now have significant opportunities to establish and retain interstate branches.

The commenters supported this proposal and the Board adopted it as proposed. One commenter was concerned, however, that a rigid interpretation of the limitation on retention of existing branch operations outside the new home state to only those branches that the foreign bank could establish under current law if it already had its new home state would severely limit changes of home state by banks with established, nongrandfathered operations in the old home state. The Board intends to apply the rule consistent with the scope of the changes to the interstate rules. The Board also notes that the GLB Act provides opportunities for banks to upgrade existing operations outside the home state. These opportunities should reduce the need for foreign banks to change home states.

Additional Standards for Interstate Offices

The proposal also contained the additional standards required by the Interstate Act for approval by the Board of the establishment by a foreign bank of branches located outside of the bank's home state. These standards were designed to insure that foreign banks seeking to establish interstate branches meet requirements comparable to those imposed on domestic banks seeking to operate interstate. The Board received no comments on this aspect of the interstate proposal and has adopted it as proposed.

Upgrading of Agencies and Limited Branches to Full Branches

Section 5 of the IBA, as amended by the Interstate Act, generally allows a foreign bank to establish full branches outside its home state only if a domestic bank with the same home state could establish branches in the same host state under the Interstate Act. The GLB Act contained a new exception to this general limitation. The new provision allows a foreign bank, with the Board's approval, to upgrade an existing agency or limited branch outside the bank's home state to a full service branch provided the state would permit the upgrade and the office has been is existence the minimum amount of time that the state requires for the acquisition of an interstate bank.

In response to inquiries and requests from trade groups, the Board, in its 1997 proposal, stated its view that upgrades of existing agencies and limited branches outside of a foreign bank's home state constituted a "change in status" of an office requiring Board approval under FBSEA. In addition, the Board stated that such upgrades would be approved only in situations where the state in which the upgraded office was located permitted *de novo* branching.

The Board's proposal elicited responses from three commenters, each of which urged liberalization and/or flexibility to some degree. The proposal and the comments received have been superseded to a significant degree by the GLB Act provision permitting upgrades. The new statutory provision confirmed that upgrades require Board approval

but made such upgrades more widely available than the Board had proposed. Upgrades may now be approved provided the state permits the upgrade and the office to be upgraded has been in existence in that state for the minimum amount of time (no more than 5 years) required for the acquisition of an interstate bank. The Board is amending its interstate rules to implement the GLB provision. Upgrades, like other branch proposals under FBSEA, generally require full applications. Prior notice may be available, as provided elsewhere in this final rule, if the foreign bank has previously received a CCS determination from the Board.

Home State Attribution Rule Deleted

Regulation K currently provides that a foreign banking organization and all its affiliates are entitled to only one home state. This would be true even if the foreign banking organization owned several different foreign banks with operations in the United States.

At the time the rule was adopted, domestic banks generally could not branch into states other than the ones in which they were located, nor could bank holding companies generally acquire banks outside their home state. In that context, the Regulation K provision was structured to prevent affiliated groups of foreign banks from gaining an unfair advantage over domestic banks by having each of the affiliated foreign banks select a different home state. Having done so, the foreign banks would be able to open and operate branches in more than one state. The rule sought to prevent this by stating that a foreign banking organization and any foreign bank that it controls would be entitled to only one home state.

The Interstate Act has substantially changed the rules on interstate expansion since this provision was originally adopted. Under current law, a bank holding company may own many banks in different states; each of these banks is entitled to its own home state regardless of the home states of its affiliates. Consequently, in 1997 the Board proposed that Regulation K be amended to eliminate the requirement that a foreign bank and all its affiliates are entitled to only one home state. The proposal would preserve national treatment for foreign banks and would not put U.S. banking organizations at any competitive disadvantage. The commenters supported the proposal, and the Board has adopted it.

Representative Offices

Definition of Representative Office

The GLB Act amended the definition of representative office such that a subsidiary of a foreign bank may now be considered a representative office. The definition of representative office in Regulation K has been modified to conform with the change in law. The statutory amendment closed a potential "loophole" that made it possible for foreign banks to set up subsidiaries to engage in representative activities, thus avoiding both the FBSEA application process and ongoing supervision of such subsidiary as a representative office. However, the fact that subsidiaries can now be deemed to be representative offices raises new issues.

The Board is aware of only a few cases in which banks sought to make use of this loophole and does not believe that there are significant current issues with respect to representative functions being conducted out of subsidiaries. It is possible that a foreign bank could attempt to evade the IBA's requirements by using a nonbank subsidiary; it would be difficult, however, to anticipate and try to prohibit all potential schemes. The Board thus is not proposing to amend Regulation K to clarify all situations in which a nonbank subsidiary or affiliate would be considered a representative office. Rather the Board is providing general guidance and seeks views on whether more explicit guidance is warranted.

As a general matter, any subsidiary established for the purpose of acting as a representative office clearly would be a representative office. Similarly, a subsidiary would be considered to be a representative office when it holds itself out to the public as a representative of the foreign bank, acting on behalf of the foreign bank, even if the subsidiary engages in other nonbank business. In addition, an individual or a unit of a subsidiary that acts as a representative of a foreign bank from the location of the nonbank subsidiary would be treated as a representative office. An important limitation on this general approach is that a subsidiary generally would *not* be considered a representative office if it makes customer referrals or cross-markets the foreign bank's services in a manner that would be permissible for a nonbank affiliate of a U.S. bank.

The Board is also interested in receiving views on whether a money transmitter subsidiary of a foreign bank should be prohibited from also engaging in representative functions or employing individuals who act as bank representatives. A money transmitter is a nonbank company that for a fee will send funds to persons outside the United States. Often, the funds are first transmitted to the affiliated foreign bank for the benefit of the ultimate recipient. A foreign bank is not entitled to use the money transmitter to engage in deposit-taking. If a representative office were combined with a money transmitter, it would be extremely difficult if not impossible to monitor or enforce compliance with this restriction. Customers could also be confused about the status of funds given to the money transmitter.

Registration of Existing Incorporated Representative Offices

There may be some subsidiaries of foreign banks that will fall within the definition of "representative office" for the first time, and these subsidiaries will need to be identified. The Board has determined to impose a registration requirement similar to that imposed following the enactment of FBSEA, which subjected representative offices of foreign banks to Board approval requirements and supervision for the first time. All subsidiaries that are acting as representative offices will be required to complete a brief informational report. The form will be issued separately. Subsidiaries and affiliates of foreign banks that have been conducting representative functions on behalf of the foreign bank will be "grandfathered" and not required to apply to "re-establish" a representative office.[39]

Approval of Loans at a Representative Office

Regulation K currently includes as permissible activities for a representative office those in which a "loan production office" of a state member bank may engage as set forth in a 1978 Board interpretation. The portion of the interpretation restricting loan approvals at such offices has been superceded, and loan origination facilities of state member banks may approve loans in certain circumstances. The Board considers that representative offices of foreign banks that are subject to the BHC Act, and thus subject to supervision in the United States, should be permitted to engage in the same activities as such facilities. The Board is

[39] The grandfathering would be effective as of the date of the proposal but only for those affiliates engaged in activities clearly permissible to conduct in combination with representative office functions. Thus, should the Board determine that representative functions may not be conducted in a money transmitter subsidiary, such activities would have to be discontinued.

therefore amending Regulation K to remove the reference to the interpretation and clarify that representative offices may make credit decisions if (i) the foreign bank also operates one or more branches or agencies in the United States, (ii) the loans approved at the representative office are made by a U.S. branch or agency of the bank, and (iii) the loan proceeds are not disbursed in the representative office.

Additional Matters

Temporary Additional Office Location

From time to time, the Board has received requests from foreign banks that desire to have an additional temporary location, usually as an interim measure before moving into new office space that can accommodate the entire staff of the branch or agency. The earliest inquiries were prompted by space constraints at the existing office and the need to relocate some employees until renovations could be completed at a new larger location. To accommodate such situations, the Board proposed a new provision in Regulation K permitting the Board, in its discretion, to determine that a well-managed foreign bank would not be considered to have established an office if certain conditions were met. Since the proposal was made, staff has received additional inquiries where the proposed relocation of employees would not fit within the provision as proposed. These more recent requests have involved mergers or consolidations of bank and nonbank entities within a banking group. The Board therefore, has adopted a broadened form of the provision to cover these additional types of temporary relocation situations. Any foreign bank taking advantage of this authority would be required to advise the Board prior to the relocation, make certain commitments,[40] and provide periodic information, as requested. The Board generally would not make such determinations if the reason for the request is the bank's failure to file on a timely basis a notice or application for the additional office, and the bank could not maintain the temporary location for more than twelve months.

Changes to Definition Section

The revision makes certain technical changes in the definition section of Subpart B, including in the definitions of "appropriate Federal Reserve Bank," "change in status," "foreign banking organization," "regional administrative office," and "representative office."

Conforming Changes To Termination Provisions

The Board proposed to amend the provisions of Subpart B dealing with termination of a U.S. office of a foreign bank to add as a grounds for termination a finding that the home country supervisor of a foreign bank is not making demonstrable progress in establishing arrangements for the comprehensive supervision or regulation of such foreign bank on a consolidated basis. This change has been adopted.

Reduction of Reporting Requirements

The Board proposed reducing the periodicity of reporting of all acquisitions of shares in companies engaged in business in the United States from quarterly to annually. Since the issuance of the proposal, the Board has reconsidered this issue in connection with the development and issuance of a new Form FR Y–10F. On this form, foreign banking organizations are required to report some of the investments covered by the old quarterly report on an event-generated basis. Remaining U.S. investments will be reportable only annually in connection with the FR Y–7. The final rule reflects the decisions on reporting made in connection with the issuance of the FR Y–10F.

Subpart C: Export Trading Companies

Subpart C of Regulation K sets out the rules governing investments and participation in export trading companies (ETCs) by bank holding companies and other eligible investors. ETCs are companies in which bank holding companies and certain other eligible investors may invest for the purpose of promoting U.S. exports.

Currently, an eligible investor must give the Board 60 days prior written notice of an investment of any amount in an ETC. The Board proposed adding a general consent provision under which an eligible investor that is well-capitalized and well-managed may invest in an ETC without prior notice. Such an investor would have to provide certain information to the Board in a post-investment notice. The terms well-capitalized and well-managed, as used for this purpose, would have the same meanings as in the Board's Regulation Y.

The Board further proposed allowing an eligible investor, also under general consent authority, to reinvest an amount equal to dividends received from the ETC in the prior year and to acquire an ETC from an affiliate at net asset value. Other proposed revisions included moving all defined terms into a new definitions section; removing an obsolete provision relating to the calculation of an ETC's revenues; and making certain minor, technical amendments.

One commenter expressed general support for the Board's proposal. The Board is adopting the revisions as proposed.

Delegations of Authority

The Board proposed additional and modified delegations of authority with respect to certain matters arising under Regulation K. Foremost, the Board proposed to delegate additional authority to the Director of the Division of Banking Supervision and Regulation with respect to foreign branching by member banks, general consent investments under Subpart A, and the general consent procedures of Subpart C. The Board also proposed to delegate to the Director and to the Reserve Banks additional authority with respect to prior notice investments and the establishment of prior notice U.S. offices by foreign banks. In addition, the Board proposed to delete as no longer necessary the delegation to the Reserve Banks to approve an application by a foreign bank to establish an additional U.S. office or a commercial lending company under certain circumstances. These proposals did not elicit negative comment, and they are adopted as proposed.

The Board also is authorizing several additional delegations of authority, relating generally to the processing and approval of applications under all Subparts of Regulation K; investments in Edge and agreement corporation subsidiaries; amendments to Edge corporation charters; the establishment of agreement corporations; "special-purpose foreign government-owned bank" determinations under section 211.24(d)(3); the approval of requests arising under section 4(c)(9) of the BHC Act; and FHC elections by foreign banks. The delegations of authority and modifications to existing delegations authorized by this final rulemaking will be variously codified in Regulation K and the Board's Rules Regarding Delegation of Authority (12 CFR part 265).

Regulatory Flexibility Act

The Board has reviewed the final rule in accordance with the Regulatory Flexibility Act. This final rule makes amendments to subparts A, B and C of Regulation K based upon a review of the regulation consistent with section 303 of

[40] As a general rule, the Board would require that there be no signs at any temporary location identifying it as an office of the bank, and that no client meetings take place at a temporary location.

the Riegle Community Development and Regulatory Improvement Act of 1994 (the Regulatory Improvement Act) and the International Banking Act of 1978 (the IBA). The rule streamlines procedures for U.S. and foreign banking organizations, implements portions of the Interstate Act, EGRPRA and GLB, and authorizes expanded activities for U.S. banking organizations abroad. The overall effect of the final rule will be to reduce regulatory burden. Pursuant to the Regulatory Flexibility Act, the Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the Board displays a currently valid OMB control number. The Board's OMB control numbers for the collections revised by this rule are 7100–0107 (the International Applications and Prior Notifications under Subparts A and C of Regulation K; FR K–1), 7100–0110 (the Notification Required Pursuant to Section 211.23(h) of Regulation K on Acquisitions by Foreign Banking Organizations; FR 4002), and 7100–0284 (the International Applications and Prior Notifications under Subpart B of Regulation K; FR K–2).

The collections of information that are revised by this rulemaking are found in 12 CFR 211.3, 211.5, 211.7, 211.9 through 211.11, 211.13, 211.22 through 211.24, and 211.34. These information collections are required to evidence compliance with the requirements of Regulation K. The respondents are for-profit financial institutions, including small businesses.

No comments specifically addressing the burden estimate were received. The current estimated annual burden for the 7100–0107 is 636 hours. The final rule would result in an estimated 25 percent reduction in the number of applications filed. The final rule would permit strongly capitalized and well-managed U.S. banking organizations making investments pursuant to general consent authority to file an abbreviated post-investment notice with the Board. This notice would take the place of certain requirements for prior notices or applications to the Board before any such investment could be made. The current estimated annual burden for the 7100–0284 is 600 hours. It is estimated that the final rule would reduce the burden by 10 percent due to a decrease in the average number of hours required to complete an application. The Board expects to publish a separate notice to revise these two applications to comply with the final rule's reporting requirements. In the interim, institutions may submit any new information requested in this rule in a letter format. The current estimated annual burden for the 7100–0110 is 80 hours. The final rule eliminates the need for this separate information collection. Similar information is collected on the Annual Report of Foreign Banking Organizations (FR Y–7; OMB No. 7100–0125) and the Report of Changes in FBO Organizational Structure (FR Y–10F; OMB No. 7100–0297). The Board estimates there would be no cost burden in addition to the annual hour burden.

For the 7100–0107 and the 7100–0284, the applying organization has the opportunity to request confidentiality for information that it believes will qualify for an FOIA exemption.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0107 or 7100–0284), Washington, DC 20503.

List of Subjects

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 265

Authority delegations (Government agencies), Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, the Board of Governors amends 12 CFR parts 211 and 265 as set forth below:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, 3109 *et seq.*

2. Subparts A, B, and C (consisting of §§ 211.1 through 211.34) are revised to read as follows:

Subpart A—International Operations of U.S. Banking Organizations

Sec.

211.1 Authority, purpose, and scope.
211.2 Definitions.
211.3 Foreign branches of U.S. banking organizations.
211.4 Permissible investments and activities of foreign branches of member banks.
211.5 Edge and agreement corporations.
211.6 Permissible activities of Edge and agreement corporations in the United States.
211.7 Voluntary liquidation of Edge and agreement corporations.
211.8 Investments and activities abroad.
211.9 Investment procedures.
211.10 Permissible activities abroad.
211.11 Advisory opinions under Regulation K.
211.12 Lending limits and capital requirements.
211.13 Supervision and reporting.

Subpart B—Foreign Banking Organizations

211.20 Authority, purpose, and scope.
211.21 Definitions.
211.22 Interstate banking operations of foreign banking organizations.
211.23 Nonbanking activities of foreign banking organizations.
211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.
211.25 Termination of offices of foreign banks.
211.26 Examination of offices and affiliates of foreign banks.
211.27 Disclosure of supervisory information to foreign supervisors.
211.28 Provisions applicable to branches and agencies: limitation on loans to one borrower.
211.29 Applications by state branches and state agencies to conduct activities not permissible for federal branches.
211.30 Criteria for evaluating U.S. operations of foreign banks not subject to consolidated supervision.

Subpart C—Export Trading Companies

211.31 Authority, purpose, and scope.
211.32 Definitions.
211.33 Investments and extensions of credit.
211.34 Procedures for filing and processing notices.

Subpart A—International Operations of U.S. Banking Organizations

§ 211.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) under the authority of the Federal Reserve Act (FRA) (12 U.S.C. 221 *et seq.*); the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978 (IBA) (12 U.S.C. 3101 *et seq.*).

(b) *Purpose.* This subpart sets out rules governing the international and foreign activities of U.S. banking organizations, including procedures for establishing foreign branches and Edge and agreement corporations to engage in international banking, and for investments in foreign organizations.

(c) *Scope.* This subpart applies to:

(1) Member banks with respect to their foreign branches and investments in foreign banks under section 25 of the FRA (12 U.S.C. 601–604a);[1] and

(2) Corporations organized under section 25A of the FRA (12 U.S.C. 611–631) (Edge corporations);

(3) Corporations having an agreement or undertaking with the Board under section 25 of the FRA (12 U.S.C. 601–604a) (agreement corporations); and

(4) Bank holding companies with respect to the exemption from the nonbanking prohibitions of the BHC Act afforded by section 4(c)(13) of that act (12 U.S.C. 1843(c)(13)).

§ 211.2 Definitions.

Unless otherwise specified, for purposes of this subpart:

(a) An *affiliate* of an organization means:

(1) Any entity of which the organization is a direct or indirect subsidiary; or

(2) Any direct or indirect subsidiary of the organization or such entity.

(b) *Capital Adequacy Guidelines* means the "Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure" (12 CFR part 208, app. A) or the "Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure" (12 CFR part 225, app. A).

(c) *Capital and surplus* means, unless otherwise provided in this part:

(1) For organizations subject to the Capital Adequacy Guidelines:

(i) Tier 1 and tier 2 capital included in an organization's risk-based capital (under the Capital Adequacy Guidelines); and

(ii) The balance of allowance for loan and lease losses not included in an organization's tier 2 capital for calculation of risk-based capital, based on the organization's most recent consolidated Report of Condition and Income.

(2) For all other organizations, paid-in and unimpaired capital and surplus, and includes undivided profits but does not include the proceeds of capital notes or debentures.

(d) *Directly* or *indirectly*, when used in reference to activities or investments of an organization, means activities or investments of the organization or of any subsidiary of the organization.

(e) *Eligible country* means any country:

(1) For which an allocated transfer risk reserve is required pursuant to § 211.43 of this part and that has restructured its sovereign debt held by foreign creditors; and

(2) Any other country that the Board deems to be eligible.

(f) An Edge corporation is *engaged in banking* if it is ordinarily engaged in the business of accepting deposits in the United States from nonaffiliated persons.

(g) *Engaged in business* or *engaged in activities* in the United States means maintaining and operating an office (other than a representative office) or subsidiary in the United States.

(h) *Equity* means an ownership interest in an organization, whether through:

(1) Voting or nonvoting shares;

(2) General or limited partnership interests;

(3) Any other form of interest conferring ownership rights, including warrants, debt, or any other interests that are convertible into shares or other ownership rights in the organization; or

(4) Loans that provide rights to participate in the profits of an organization, unless the investor receives a determination that such loans should not be considered equity in the circumstances of the particular investment.

(i) *Foreign* or *foreign country* refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

(j) *Foreign bank* means an organization that:

(1) Is organized under the laws of a foreign country;

(2) Engages in the business of banking;

(3) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations;

(4) Receives deposits to a substantial extent in the regular course of its business; and

(5) Has the power to accept demand deposits.

(k) *Foreign branch* means an office of an organization (other than a representative office) that is located outside the country in which the organization is legally established and at which a banking or financing business is conducted.

(l) *Foreign person* means an office or establishment located outside the United States, or an individual residing outside the United States.

(m) *Investment* means:

(1) The ownership or control of equity;

(2) Binding commitments to acquire equity;

(3) Contributions to the capital and surplus of an organization; or

(4) The holding of an organization's subordinated debt when the investor and the investor's affiliates hold more than 5 percent of the equity of the organization.

(n) *Investment grade* means a security that is rated in one of the four highest rating categories by:

(1) Two or more NRSROs; or

(2) One NRSRO if the security has been rated by only one NRSRO.

(o) *Investor* means an Edge corporation, agreement corporation, bank holding company, or member bank.

(p) *Joint venture* means an organization that has 20 percent or more of its voting shares held directly or indirectly by the investor or by an affiliate of the investor under any authority, but which is not a subsidiary of the investor or of an affiliate of the investor.

(q) *Loans and extensions of credit* means all direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds.

(r) *NRSRO* means a nationally recognized statistical rating organization as designated by the Securities and Exchange Commission.

(s) *Organization* means a corporation, government, partnership, association, or any other entity.

(t) *Person* means an individual or an organization.

(u) *Portfolio investment* means an investment in an organization other than a subsidiary or joint venture.

(v) *Representotive office* means an office that:

(1) Engages solely in representational and administrative functions (such as

[1] Section 25 of the FRA (12 U.S.C. 601–604a), which refers to national banking associations, also applies to state member banks of the Federal Reserve System by virtue of section 9 of the FRA (12 U.S.C. 321)

soliciting new business or acting as liaison between the organization's head office and customers in the United States); and

(2) Does not have authority to make any business decision (other than decisions relating to its premises or personnel) for the account of the organization it represents, including contracting for any deposit or deposit-like liability on behalf of the organization.

(w) *Subsidiary* means an organization that has more than 50 percent of its voting shares held directly or indirectly, or that otherwise is controlled or capable of being controlled, by the investor or an affiliate of the investor under any authority. Among other circumstances, an investor is considered to control an organization if:

(1) The investor or an affiliate is a general partner of the organization; or

(2) The investor and its affiliates directly or indirectly own or control more than 50 percent of the equity of the organization.

(x) *Tier 1 capital* has the same meaning as provided under the Capital Adequacy Guidelines.

(y) *Well capitalized* means:

(1) In relation to a parent member or insured bank, that the standards set out in § 208.43(b)(1) of Regulation H (12 CFR 208.43(b)(1)) are satisfied;

(2) In relation to a bank holding company, that the standards set out in § 225.2(r)(1) of Regulation Y (12 CFR 225.2(r)(1)) are satisfied; and

(3) In relation to an Edge or agreement corporation, that it has tier 1 and total risk-based capital ratios of 6.0 and 10.0 percent, respectively, or greater.

(z) *Well managed* means that the Edge or agreement corporation, any parent insured bank, and the bank holding company received a composite rating of 1 or 2, and at least a satisfactory rating for management if such a rating is given, at their most recent examination or review.

§ 211.3 Foreign branches of U.S. banking organizations.

(a) *General*—(1) *Definition of banking organization.* For purposes of this section, a *banking organization* is defined as a member bank and its affiliates.

(2) A banking organization is considered to be operating a branch in a foreign country if it has an affiliate that is a member bank, Edge or agreement corporation, or foreign bank that operates an office (other than a representative office) in that country.

(3) For purposes of this subpart, a foreign office of an operating subsidiary of a member bank shall be treated as a foreign branch of the member bank and may engage only in activities permissible for a branch of a member bank.

(4) At any time upon notice, the Board may modify or suspend branching authority conferred by this section with respect to any banking organization.

(b) (1) *Establishment of foreign branches.* (i) Foreign branches may be established by any member bank having capital and surplus of $1,000,000 or more, an Edge corporation, an agreement corporation, any subsidiary the shares of which are held directly by the member bank, or any other subsidiary held pursuant to this subpart.

(ii) The Board grants its general consent under section 25 of the FRA (12 U.S.C. 601–604a) for a member bank to establish a branch in the Commonwealth of Puerto Rico and the overseas territories, dependencies, and insular possessions of the United States.

(2) *Prior notice.* Unless otherwise provided in this section, the establishment of a foreign branch requires 30 days' prior written notice to the Board.

(3) *Branching into additional foreign countries.* After giving the Board 12 business days prior written notice, a banking organization that operates branches in two or more foreign countries may establish a branch in an additional foreign country.

(4) *Additional branches within a foreign country.* No prior notice is required to establish additional branches in any foreign country where the banking organization operates one or more branches.

(5) *Branching by nonbanking affiliates.* No prior notice is required for a nonbanking affiliate of a banking organization (*i.e.*, an organization that is not a member bank, an Edge or agreement corporation, or foreign bank) to establish branches within a foreign country or in additional foreign countries.

(6) *Expiration of branching authority.* Authority to establish branches, when granted following prior written notice to the Board, shall expire one year from the earliest date on which the authority could have been exercised, unless extended by the Board.

(c) *Reporting.* Any banking organization that opens, closes, or relocates a branch shall report such change in a manner prescribed by the Board.

(d) *Reserves of foreign branches of member banks.* Member banks shall maintain reserves against foreign branch deposits when required by Regulation D (12 CFR part 204).

(e) *Conditional approval; access to information.* The Board may impose such conditions on authority granted by it under this section as it deems necessary, and may require termination of any activities conducted under authority of this section if a member bank is unable to provide information on its activities or those of its affiliates that the Board deems necessary to determine and enforce compliance with U.S. banking laws.

§ 211.4 Permissible activities and investments of foreign branches of member banks.

(a) *Permissible activities and investments.* In addition to its general banking powers, and to the extent consistent with its charter, a foreign branch of a member bank may engage in the following activities and make the following investments, so far as is usual in connection with the business of banking in the country where it transacts business:

(1) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events (including, but not limited to, nonpayment of taxes, rentals, customs duties, or costs of transport, and loss or nonconformance of shipping documents) if the guarantee or agreement specifies a maximum monetary liability; however, except to the extent that the member bank is fully secured, it may not have liabilities outstanding for any person on account of such guarantees or agreements which, when aggregated with other unsecured obligations of the same person, exceed the limit contained in section 5200(a)(1) of the Revised Statutes (12 U.S.C. 84) for loans and extensions of credit;

(2) *Government obligations.* (i) Underwrite, distribute, buy, sell, and hold obligations of:

(A) The national government of the country where the branch is located and any political subdivision of that country;

(B) An agency or instrumentality of the national government of the country where the branch is located where such obligations are supported by the taxing authority, guarantee, or full faith and credit of that government;

(C) The national government or political subdivision of any country, where such obligations are rated investment grade; and

(D) An agency or instrumentality of any national government where such obligations are rated investment grade and are supported by the taxing authority, guarantee or full faith and credit of that government.

(ii) No member bank, under authority of this paragraph (a)(2), may hold, or be under commitment with respect to, such obligations for its own account in relation to any one country in an amount exceeding the greater of:

(A) 10 percent of its tier 1 capital; or

(B) 10 percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or the date of acquisition of the branch, in the case of a branch that has not been so reported);

(3) *Other investments.* (i) Invest in:

(A) The securities of the central bank, clearinghouses, governmental entities other than those authorized under paragraph (a)(2) of this section, and government-sponsored development banks of the country where the foreign branch is located;

(B) Other debt securities eligible to meet local reserve or similar requirements; and

(C) Shares of automated electronic-payments networks, professional societies, schools, and the like necessary to the business of the branch;

(ii) The total investments of a bank's branches in a country under this paragraph (a)(3) (exclusive of securities held as required by the law of that country or as authorized under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh)) may not exceed 1 percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or on the date of acquisition of the branch, in the case of a branch that has not been so reported);

(4) *Real estate loans.* Take liens or other encumbrances on foreign real estate in connection with its extensions of credit, whether or not of first priority and whether or not the real estate has been improved;

(5) *Insurance.* Act as insurance agent or broker;

(6) *Employee benefits program.* Pay to an employee of the branch, as part of an employee benefits program, a greater rate of interest than that paid to other depositors of the branch;

(7) *Repurchase agreements.* Engage in repurchase agreements involving securities and commodities that are the functional equivalents of extensions of credit;

(8) *Investment in subsidiaries.* With the Board's prior approval, acquire all of the shares of a company (except where local law requires other investors to hold directors' qualifying shares or similar types of instruments) that engages solely in activities:

(i) In which the member bank is permitted to engage; or

(ii) That are incidental to the activities of the foreign branch.

(b) *Other activities.* With the Board's prior approval, engage in other activities that the Board determines are usual in connection with the transaction of the business of banking in the places where the member bank's branches transact business.

§ 211.5 Edge and agreement corporations.

(a) *Board Authority.* The Board shall have the authority to approve:

(1) The establishment of Edge corporations;

(2) Investments in agreement corporations; and

(3) A member bank's proposal to invest more than 10 percent of its capital and surplus in the aggregate amount of stock held in all Edge and agreement corporations.

(b) *Organization of an Edge corporation*—(1) *Permit.* A proposed Edge corporation shall become a body corporate when the Board issues a permit approving its proposed name, articles of association, and organization certificate.

(2) *Name.* The name of the Edge corporation shall include *international, foreign, overseas,* or a similar word, but may not resemble the name of another organization to an extent that might mislead or deceive the public.

(3) *Federal Register notice.* The Board shall publish in the **Federal Register** notice of any proposal to organize an Edge corporation and shall give interested persons an opportunity to express their views on the proposal.

(4) *Factors considered by Board.* The factors considered by the Board in acting on a proposal to organize an Edge corporation include:

(i) The financial condition and history of the applicant;

(ii) The general character of its management;

(iii) The convenience and needs of the community to be served with respect to international banking and financing services; and

(iv) The effects of the proposal on competition.

(5) *Authority to commence business.* After the Board issues a permit, the Edge corporation may elect officers and otherwise complete its organization, invest in obligations of the U.S. government, and maintain deposits with depository institutions, but it may not exercise any other powers until at least 25 percent of the authorized capital stock specified in the articles of association has been paid in cash, and each shareholder has paid in cash at least 25 percent of that shareholder's stock subscription.

(6) *Expiration of unexercised authority.* Unexercised authority to commence business as an Edge corporation shall expire one year after issuance of the permit, unless the Board extends the period.

(c) *Other provisions regarding Edge corporations*—(1) *Amendments to articles of association.* No amendment to the articles of association shall become effective until approved by the Board.

(2) *Shareholders' meeting.* An Edge corporation shall provide in its bylaws that:

(i) A shareholders' meeting shall be convened at the request of the Board within five business days after the Board gives notice of the request to the Edge corporation;

(ii) Any shareholder or group of shareholders that owns or controls 25 percent or more of the shares of the Edge corporation shall attend such a meeting in person or by proxy; and

(iii) Failure by a shareholder or authorized representative to attend such meeting in person or by proxy may result in removal or barring of the shareholder or representative from further participation in the management or affairs of the Edge corporation.

(3) *Nature and ownership of shares*—(i) *Shares.* Shares of stock in an Edge corporation may not include no-par-value shares and shall be issued and transferred only on its books and in compliance with section 25A of the FRA (12 U.S.C. 611 *et seq.*) and this subpart.

(ii) *Contents of share certificates.* The share certificates of an Edge corporation shall:

(A) Name and describe each class of shares, indicating its character and any unusual attributes, such as preferred status or lack of voting rights; and

(B) Conspicuously set forth the substance of:

(*1*) Any limitations on the rights of ownership and transfer of shares imposed by section 25A of the FRA (12 U.S.C. 611 *et seq.*); and

(*2*) Any rules that the Edge corporation prescribes in its bylaws to ensure compliance with this paragraph (c).

(4) *Change in status of shareholder.* Any change in status of a shareholder that causes a violation of section 25A of the FRA (12 U.S.C. 611 *et seq.*) shall be reported to the Board as soon as possible, and the Edge corporation shall take such action as the Board may direct.

(d) *Ownership of Edge corporations by foreign institutions*—(1) *Prior Board approval.* One or more foreign or foreign-controlled domestic institutions referred to in section 25A(11) of the

FRA (12 U.S.C. 619) may apply for the Board's prior approval to acquire, directly or indirectly, a majority of the shares of the capital stock of an Edge corporation.

(2) *Conditions and requirements.* Such an institution shall:

(i) Provide the Board with information related to its financial condition and activities and such other information as the Board may require;

(ii) Ensure that any transaction by an Edge corporation with an affiliate[2] is on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions by the Edge corporation with nonaffiliated persons, and does not involve more than the normal risk of repayment or present other unfavorable features;

(iii) Ensure that the Edge corporation will not provide funding on a continual or substantial basis to any affiliate or office of the foreign institution through transactions that would be inconsistent with the international and foreign business purposes for which Edge corporations are organized; and

(iv) Comply with the limitation on aggregate investments in all Edge and agreement corporations set forth in paragraph (h) of this section.

(3) *Foreign institutions not subject to the BHC Act.* In the case of a foreign institution not subject to section 4 of the BHC Act (12 U.S.C. 1843), that institution shall:

(i) Comply with any conditions that the Board may impose that are necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States; and

(ii) Give the Board 30 days' prior written notice before engaging in any nonbanking activity in the United States, or making any initial or additional investments in another organization, that would require prior Board approval or notice by an organization subject to section 4 of the BHC Act (12 U.S.C. 1843), in connection with such notice, the Board may impose conditions necessary to prevent adverse effects that may result from such activity or investment.

(e) *Change in control of an Edge corporation*—(1) *Prior notice.* (i) Any person shall give the Board 60 days' prior written notice before acquiring, directly or indirectly, 25 percent or more of the voting shares, or otherwise acquiring control, of an Edge corporation.

(ii) The Board may extend the 60-day period for an additional 30 days by notifying the acquiring party.

(iii) A notice under this paragraph (e) need not be filed where a change in control is effected through a transaction requiring the Board's approval under section 3 of the BHC Act (12 U.S.C. 1842).

(2) *Board review.* In reviewing a notice filed under this paragraph (e), the Board shall consider the factors set forth in paragraph (b)(4) of this section, and may disapprove a notice or impose any conditions that it finds necessary to assure the safe and sound operation of the Edge corporation, to assure the international character of its operation, and to prevent adverse effects, such as decreased or unfair competition, conflicts of interest, or undue concentration of resources.

(f) *Domestic branching by Edge corporations*—(1) *Prior notice.* (i) An Edge corporation may establish branches in the United States 30 days after the Edge corporation has given written notice of its intention to do so to its Reserve Bank, unless the Edge corporation is notified to the contrary within that time.

(ii) The notice to the Reserve Bank shall include a copy of the notice of the proposal published in a newspaper of general circulation in the communities to be served by the branch.

(iii) The newspaper notice may appear no earlier than 90 calendar days prior to submission of notice of the proposal to the Reserve Bank. The newspaper notice shall provide an opportunity for the public to give written comment on the proposal to the appropriate Federal Reserve Bank for at least 30 days after the date of publication.

(2) *Factors considered.* The factors considered in acting upon a proposal to establish a branch are enumerated in paragraph (b)(4) of this section.

(3) *Expiration of authority.* Authority to establish a branch under prior notice shall expire one year from the earliest date on which that authority could have been exercised, unless the Board extends the period.

(g) *Agreement corporations*—(1) *General.* With the prior approval of the Board, a member bank or bank holding company may invest in a federally or state-chartered corporation that has entered into an agreement or undertaking with the Board that it will not exercise any power that is impermissible for an Edge corporation under this subpart.

(2) *Factors considered by Board.* The factors considered in acting upon a proposal to establish an agreement corporation are enumerated in paragraph (b)(4) of this section.

(h) (1) *Limitation on investment in Edge and agreement corporations.* A member bank may invest up to 10 percent of its capital and surplus in the capital stock of Edge and agreement corporations or, with the prior approval of the Board, up to 20 percent of its capital and surplus in such stock.

(2) *Factors considered by Board.* The factors considered by the Board in acting on a proposal under paragraph (h)(1) of this section shall include:

(i) The composition of the assets of the bank's Edge and agreement corporations;

(ii) The total capital invested by the bank in its Edge and agreement corporations when combined with retained earnings of the Edge and agreement corporations (including retained earnings of any foreign bank subsidiaries) as a percentage of the bank's capital;

(iii) Whether the bank, bank holding company, and Edge and agreement corporations are well-capitalized and well-managed;

(iv) Whether the bank is adequately capitalized after deconsolidating and deducting the aggregate investment in and assets of all Edge or agreement corporations and all foreign bank subsidiaries; and

(v) Any other factor the Board deems relevant to the safety and soundness of the member bank.

(i) *Reserve requirements and interest rate limitations.* The deposits of an Edge or agreement corporation are subject to Regulations D and Q (12 CFR parts 204 and 217) in the same manner and to the same extent as if the Edge or agreement corporation were a member bank.

(j) *Liquid funds.* Funds of an Edge or agreement corporation that are not currently employed in its international or foreign business, if held or invested in the United States, shall be in the form of:

(1) Cash;

(2) Deposits with depository institutions, as described in Regulation D (12 CFR part 204), and other Edge and agreement corporations;

(3) Money-market instruments (including repurchase agreements with respect to such instruments), such as bankers' acceptances, federal funds sold, and commercial paper; and

(4) Short- or long-term obligations of, or fully guaranteed by, federal, state, and local governments and their instrumentalities.

[2] For purposes of this paragraph (d)(2), *affiliate* means any organization that would be an affiliate under section 23A of the FRA (12 U.S.C. 371c) if the Edge corporation were a member bank.

(k) *Reports by Edge and agreement corporations of crimes and suspected crimes.* An Edge or agreement corporation, or any branch or subsidiary thereof, shall file a suspicious-activity report in accordance with the provisions of § 208.62 of Regulation H (12 CFR 208.62).

§ 211.6 Permissible activities of Edge and agreement corporations in the United States.

(a) *Activities incidental to international or foreign business.* An Edge or agreement corporation may engage, directly or indirectly, in activities in the United States that are permitted by section 25A(6) of the FRA (12 U.S.C. 615) and are incidental to international or foreign business, and in such other activities as the Board determines are incidental to international or foreign business. The following activities will ordinarily be considered incidental to an Edge or agreement corporation's international or foreign business:

(1) *Deposit-taking activities*—(i) *Deposits from foreign governments and foreign persons.* An Edge or agreement corporation may receive in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposits) from foreign governments and their agencies and instrumentalities, and from foreign persons.

(ii) *Deposits from other persons.* An Edge or agreement corporation may receive from any other person in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposit) if such deposits:

(A) Are to be transmitted abroad;

(B) Consist of funds to be used for payment of obligations to the Edge or agreement corporation or collateral securing such obligations;

(C) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(D) Consist of the proceeds of extensions of credit by the Edge or agreement corporation;

(E) Represent compensation to the Edge or agreement corporation for extensions of credit or services to the customer;

(F) Are received from Edge or agreement corporations, foreign banks, and other depository institutions (as described in Regulation D (12 CFR part 204)); or

(G) Are received from an organization that by its charter, license, or enabling law is limited to business that is of an international character, including foreign sales corporations, as defined in 26 U.S.C. 922; transportation organizations engaged exclusively in the international transportation of passengers or in the movement of goods, wares, commodities, or merchandise in international or foreign commerce; and export trading companies established under subpart C of this part.

(2) *Borrowings.* An Edge or agreement corporation may:

(i) Borrow from offices of other Edge and agreement corporations, foreign banks, and depository institutions (as described in Regulation D (12 CFR part 204));

(ii) Issue obligations to the United States or any of its agencies or instrumentalities;

(iii) Incur indebtedness from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof that the Edge or agreement corporation is obligated to repurchase; and

(iv) Issue long-term subordinated debt that does not qualify as a *deposit* under Regulation D (12 CFR part 204).

(3) *Credit activities.* An Edge or agreement corporation may:

(i) Finance the following:

(A) Contracts, projects, or activities performed substantially abroad;

(B) The importation into or exportation from the United States of goods, whether direct or through brokers or other intermediaries;

(C) The domestic shipment or temporary storage of goods being imported or exported (or accumulated for export); and

(D) The assembly or repackaging of goods imported or to be exported;

(ii) Finance the costs of production of goods and services for which export orders have been received or which are identifiable as being directly for export;

(iii) Assume or acquire participations in extensions of credit, or acquire obligations arising from transactions the Edge or agreement corporation could have financed, including acquisition of obligations of foreign governments;

(iv) Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events (including, but not limited to, nonpayment of taxes, rentals, customs duties, or cost of transport, and loss or nonconformance of shipping documents), so long as the guarantee or agreement specifies the maximum monetary liability thereunder and is related to a type of transaction described in paragraphs (a)(3)(i) and (ii) of this section; and

(v) Provide credit and other banking services for domestic and foreign purposes to foreign governments and their agencies and instrumentalities, foreign persons, and organizations of the type described in paragraph (a)(1)(ii)(G) of this section.

(4) *Payments and collections.* An Edge or agreement corporation may receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other instruments for collection abroad, and collect such instruments in the United States for a customer abroad; and may transmit and receive wire transfers of funds and securities for depositors.

(5) *Foreign exchange.* An Edge or agreement corporation may engage in foreign exchange activities.

(6) *Fiduciary and investment advisory activities.* An Edge or agreement corporation may:

(i) Hold securities in safekeeping for, or buy and sell securities upon the order and for the account and risk of, a person, provided such services for U.S. persons are with respect to foreign securities only;

(ii) Act as paying agent for securities issued by foreign governments or other entities organized under foreign law;

(iii) Act as trustee, registrar, conversion agent, or paying agent with respect to any class of securities issued to finance foreign activities and distributed solely outside the United States;

(iv) Make private placements of participations in its investments and extensions of credit; however, except to the extent permissible for member banks under section 5136 of the Revised Statutes (12 U.S.C. 24(Seventh)), no Edge or agreement corporation otherwise may engage in the business of underwriting, distributing, or buying or selling securities in the United States;

(v) Act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real-property interests, and other investment assets,[3] and by providing advice on mergers and acquisitions, provided such services for U.S. persons are with respect to foreign assets only; and

(vi) Provide general economic information and advice, general economic statistical forecasting services, and industry studies, provided such

[1] For purposes of this section, management of an investment portfolio does not include operational management of real property, or industrial or commercial assets.

services for U.S. persons shall be with respect to foreign economies and industries only.

(7) *Banking services for employees.* Provide banking services, including deposit services, to the officers and employees of the Edge or agreement corporation and its affiliates; however, extensions of credit to such persons shall be subject to the restrictions of Regulation O (12 CFR part 215) as if the Edge or agreement corporation were a member bank.

(b) *Other activities.* With the Board's prior approval, an Edge or agreement corporation may engage, directly or indirectly, in other activities in the United States that the Board determines are incidental to their international or foreign business.

§ 211.7 Voluntary liquidation of Edge and agreement corporations.

(a) *Prior notice.* An Edge or agreement corporation desiring voluntarily to discontinue normal business and dissolve, shall provide the Board with 45 days' prior written notice of its intent to do so.

(b) *Waiver of notice period.* The Board may waive the 45-day period if it finds that immediate action is required by the circumstances presented.

§ 211.8 Investments and activities abroad.

(a) *General policy.* Activities abroad, whether conducted directly or indirectly, shall be confined to activities of a banking or financial nature and those that are necessary to carry on such activities. In doing so, investors [4] shall at all times act in accordance with high standards of banking or financial prudence, having due regard for diversification of risks, suitable liquidity, and adequacy of capital. Subject to these considerations and the other provisions of this section, it is the Board's policy to allow activities abroad to be organized and operated as best meets corporate policies.

(b) *Direct investments by member banks.* A member bank's direct investments under section 25 of the FRA (12 U.S.C. 601 *et seq.*) shall be limited to:

(1) Foreign banks;

(2) Domestic or foreign organizations formed for the sole purpose of holding shares of a foreign bank;

(3) Foreign organizations formed for the sole purpose of performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the member bank; and

(4) Subsidiaries established pursuant to § 211.4(a)(8) of this part.

(c) *Eligible investments.* Subject to the limitations set out in paragraphs (b) and (d) of this section, an investor may, directly or indirectly:

(1) *Investment in subsidiary.* Invest in a subsidiary that engages solely in activities listed in § 211.10 of this part, or in such other activities as the Board has determined in the circumstances of a particular case are permissible; provided that, in the case of an acquisition of a going concern, existing activities that are not otherwise permissible for a subsidiary may account for not more than 5 percent of either the consolidated assets or consolidated revenues of the acquired organization;

(2) *Investment in joint venture.* Invest in a joint venture; provided that, unless otherwise permitted by the Board, not more than 10 percent of the joint venture's consolidated assets or consolidated revenues are attributable to activities not listed in § 211.10 of this part; and

(3) *Portfolio investments.* Make portfolio investments in an organization, provided that:

(i) *Individual investment limits.* The total direct and indirect portfolio investments by the investor and its affiliates in an organization engaged in activities that are not permissible for joint ventures, when combined with all other shares in the organization held under any other authority, do not exceed:

(A) 40 percent of the total equity of the organization; or

(B) 19.9 percent of the organization's voting shares.

(ii) *Loans and extensions of credit.* Any loans and extensions of credit made by an investor or its affiliates to the organization are on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the investor or its affiliates and nonaffiliated persons; and

(iii) *Protecting shareholder rights.* Nothing in this paragraph (c)(3) shall prohibit an investor from otherwise exercising rights it may have as shareholder to protect the value of its investment, so long as the exercise of such rights does not result in the investor's direct or indirect control of the organization.

(d) *Investment limit.* In calculating the amount that may be invested in any organization under this section and §§ 211.9 and 211.10 of this part, there shall be included any unpaid amount for which the investor is liable and any investments in the same organization held by affiliates under any authority.

(e) *Divestiture.* An investor shall dispose of an investment promptly (unless the Board authorizes retention) if:

(1) The organization invested in:

(i) Engages in impermissible activities to an extent not permitted under paragraph (c) of this section; or

(ii) Engages directly or indirectly in other business in the United States that is not permitted to an Edge corporation in the United States; provided that an investor may:

(A) Retain portfolio investments in companies that derive no more than 10 percent of their total revenue from activities in the United States; and

(B) Hold up to 5 percent of the shares of a foreign company that engages directly or indirectly in business in the United States that is not permitted to an Edge corporation; or

(2) After notice and opportunity for hearing, the investor is advised by the Board that such investment is inappropriate under the FRA, the BHC Act, or this subpart.

(f) *Debts previously contracted.* Shares or other ownership interests acquired to prevent a loss upon a debt previously contracted in good faith are not subject to the limitations or procedures of this section; provided that such interests shall be disposed of promptly but in no event later than two years after their acquisition, unless the Board authorizes retention for a longer period.

(g) *Investments made through debt-for-equity conversions.*

(1) *Permissible investments.* A bank holding company may make investments through the conversion of sovereign-or private-debt obligations of an eligible country, either through direct exchange of the debt obligations for the investment, or by a payment for the debt in local currency, the proceeds of which, including an additional cash investment not exceeding in the aggregate more than 10 percent of the fair value of the debt obligations being converted as part of such investment, are used to purchase the following investments:

(i) *Public-sector companies.* A bank holding company may acquire up to and including 100 percent of the shares of (or other ownership interests in) any foreign company located in an eligible country, if the shares are acquired from the government of the eligible country or from its agencies or instrumentalities.

(ii) *Private-sector companies.* A bank holding company may acquire up to and including 40 percent of the shares, including voting shares, of (or other ownership interests in) any other foreign company located in an eligible country subject to the following conditions:

(A) A bank holding company may acquire more than 25 percent of the voting shares of the foreign company only if another shareholder or group of shareholders unaffiliated with the bank holding company holds a larger block of voting shares of the company;

(B) The bank holding company and its affiliates may not lend or otherwise extend credit to the foreign company in amounts greater than 50 percent of the total loans and extensions of credit to the foreign company; and

(C) The bank holding company's representation on the board of directors or on management committees of the foreign company may be no more than proportional to its shareholding in the foreign company.

(2) *Investments by bank subsidiary of bank holding company.* Upon application, the Board may permit an indirect investment to be made pursuant to this paragraph (g) through an insured bank subsidiary of the bank holding company, where the bank holding company demonstrates that such ownership is consistent with the purposes of the FRA. In granting its consent, the Board may impose such conditions as it deems necessary or appropriate to prevent adverse effects, including prohibiting loans from the bank to the company in which the investment is made.

(3) *Divestiture*—(i) *Time limits for divestiture.* A bank holding company shall divest the shares of, or other ownership interests in, any company acquired pursuant to this paragraph (g) within the longer of:

(A) Ten years from the date of acquisition of the investment, except that the Board may extend such period if, in the Board's judgment, such an extension would not be detrimental to the public interest; or

(B) Two years from the date on which the bank holding company is permitted to repatriate in full the investment in the foreign company.

(ii) *Maximum retention period.* Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) Divestiture shall occur within 15 years of the date of acquisition of the shares of, or other ownership interests in, any company acquired pursuant to this paragraph (g); and

(B) A bank holding company may retain such shares or ownership interests if such retention is otherwise permissible at the time required for divestiture.

(iii) *Report to Board.* The bank holding company shall report to the Board on its plans for divesting an investment made under this paragraph (g) two years prior to the final date for divestiture, in a manner to be prescribed by the Board.

(iv) *Other conditions requiring divestiture.* All investments made pursuant to this paragraph (g) are subject to paragraph (e) of this section requiring prompt divestiture (unless the Board upon application authorizes retention), if the company invested in engages in impermissible business in the United States that exceeds in the aggregate 10 percent of the company's consolidated assets or revenues calculated on an annual basis; provided that such company may not engage in activities in the United States that consist of banking or financial operations (as defined in § 211.23(f)(5)(iii)(B)) of this part, or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)), except under regulations of the Board or with the prior approval of the Board.

(4) *Investment procedures*—(i) *General consent.* Subject to the other limitations of this paragraph (g), the Board grants its general consent for investments made under this paragraph (g) if the total amount invested does not exceed the greater of $25 million or 1 percent of the tier 1 capital of the investor.

(ii) All other investments shall be made in accordance with the procedures of § 211.9(f) and (g) of this part, requiring prior notice or specific consent.

(5) *Conditions*—(i) *Name.* Any company acquired pursuant to this paragraph (g) shall not bear a name similar to the name of the acquiring bank holding company or any of its affiliates.

(ii) *Confidentiality.* Neither the bank holding company nor its affiliates shall provide to any company acquired pursuant to this paragraph (g) any confidential business information or other information concerning customers that are engaged in the same or related lines of business as the company.

§ 211.9 Investment procedures.

(a) *General provisions.*[5] Direct and indirect investments shall be made in accordance with the general consent, limited general consent, prior notice, or specific consent procedures contained in this section.

(1) *Minimum capital adequacy standards.* Except as the Board may otherwise determine, in order for an investor to make investments pursuant to the procedures set out in this section, the investor, the bank holding company, and the member bank shall be in compliance with applicable minimum standards for capital adequacy set out in the Capital Adequacy Guidelines; provided that, if the investor is an Edge or agreement corporation, the minimum capital required is total and tier 1 capital ratios of 8 percent and 4 percent, respectively.

(2) *Composite rating.* Except as the Board may otherwise determine, in order for an investor to make investments under the general consent or limited general consent procedures of paragraphs (b) and (c) of this section, the investor and any parent insured bank must have received a composite rating of at least 2 at the most recent examination.

(3) *Board's authority to modify or suspend procedures.* The Board, at any time upon notice, may modify or suspend the procedures contained in this section with respect to any investor or with respect to the acquisition of shares of organizations engaged in particular kinds of activities.

(4) *Long-range investment plan.* Any investor may submit to the Board for its specific consent a long-range investment plan. Any plan so approved shall be subject to the other procedures of this section only to the extent determined necessary by the Board to assure safety and soundness of the operations of the investor and its affiliates.

(5) *Prior specific consent for initial investment.* An investor shall apply for and receive the prior specific consent of the Board for its initial investment under this subpart in its first subsidiary or joint venture, unless an affiliate previously has received approval to make such an investment.

(6) *Expiration of investment authority.* Authority to make investments granted under prior notice or specific consent procedures shall expire one year from the earliest date on which the authority could have been exercised, unless the Board determines a longer period shall apply.

(7) *Conditional approval; Access to information.* The Board may impose such conditions on authority granted by it under this section as it deems necessary, and may require termination of any activities conducted under authority of this subpart if an investor is unable to provide information on its activities or those of its affiliates that the

[4] For purposes of this section and §§ 211.9 and 211.10 of this part, a direct subsidiary of a member bank is deemed to be an investor.

[5] When necessary, the provisions of this section relating to general consent and prior notice constitute the Board's approval under section 25A(8) of the FRA (12 U.S.C. 616) for investments in excess of the limitations therein based on capital and surplus.

Board deems necessary to determine and enforce compliance with U.S. banking laws.

(b) *General consent.* The Board grants its general consent for a well capitalized and well managed investor to make investments, subject to the following:

(1) *Well capitalized and well managed investor.* In order to qualify for making investments under authority of this paragraph (b), both before and immediately after the proposed investment, the investor, any parent insured bank, and any parent bank holding company shall be well capitalized and well managed.

(2) *Individual limit for investment in subsidiary.* In the case of an investment in a subsidiary, the total amount invested directly or indirectly in such subsidiary (in one transaction or a series of transactions) does not exceed:

(i) 10 percent of the investor's tier 1 capital, where the investor is a bank holding company; or

(ii) 2 percent of the investor's tier 1 capital, where the investor is a member bank; or

(iii) The lesser of 2 percent of the tier 1 capital of any parent insured bank or 10 percent of the investor's tier 1 capital, for any other investor.

(3) *Individual limit for investment in joint venture.* In the case of an investment in a joint venture, the total amount invested directly or indirectly in such joint venture (in one transaction or a series of transactions) does not exceed:

(i) 5 percent of the investor's tier 1 capital, where the investor is a bank holding company; or

(ii) 1 percent of the investor's tier 1 capital, where the investor is a member bank; or

(iii) The lesser of 1 percent of the tier 1 capital of any parent insured bank or 5 percent of the investor's tier 1 capital, for any other investor.

(4) *Individual limit for portfolio investment.* In the case of a portfolio investment, the total amount invested directly or indirectly in such company (in one transaction or a series of transactions) does not exceed the lesser of $25 million, or

(i) 5 percent of the investor's tier 1 capital in the case of a bank holding company or its subsidiary, or Edge corporation engaged in banking; or

(ii) 25 percent of the investor's tier 1 capital in the case of an Edge corporation not engaged in banking.

(5) *Investment in a general partnership or unlimited liability company.* An investment in a general partnership or unlimited liability company may be made under authority of paragraph (b) of this section, subject to the limits set out in paragraph (c) of this section.

(6) *Aggregate investment limits*—(i) *Investment limits.* All investments made, directly or indirectly, during the previous 12-month period under authority of this section, when aggregated with the proposed investment, shall not exceed:

(A) 20 percent of the investor's tier 1 capital, where the investor is a bank holding company;

(B) 10 percent of the investor's tier 1 capital, where the investor is a member bank; or

(C) The lesser of 10 percent of the tier 1 capital of any parent insured bank or 50 percent of the tier 1 capital of the investor, for any other investor.

(ii) *Downstream investments.* In determining compliance with the aggregate limits set out in this paragraph (b), an investment by an investor in a subsidiary shall be counted only once; notwithstanding that such subsidiary may, within 12 months of the date of making the investment, downstream all or any part of such investment to another subsidiary.

(7) *Application of limits.* In determining compliance with the limits set out in this paragraph (b), an investor is not required to combine the value of all shares of an organization held in trading or dealing accounts under § 211.10(a)(15) of this part with investments in the same organization.

(c) *Limited general consent*—(1) *Individual limit.* The Board grants its general consent for an investor that is not well capitalized and well managed to make an investment in a subsidiary or joint venture, or to make a portfolio investment, if the total amount invested directly or indirectly (in one transaction or in a series of transactions) does not exceed the lesser of $25 million or:

(i) 5 percent of the investor's tier 1 capital, where the investor is a bank holding company;

(ii) 1 percent of the investor's tier 1 capital, where the investor is a member bank; or

(iii) The lesser of 1 percent of any parent insured bank's tier 1 capital or 5 percent of the investor's tier 1 capital, for any other investor.

(2) *Aggregate limit.* The amount of general consent investments made by any investor directly or indirectly under authority of this paragraph (c) during the previous 12-month period, when aggregated with the proposed investment, shall not exceed:

(i) 10 percent of the investor's tier 1 capital, where the investor is a bank holding company;

(ii) 5 percent of the investor's tier 1 capital, where the investor is a member bank; and

(iii) The lesser of 5 percent of any parent insured bank's tier 1 capital or 25 percent of the investor's tier 1 capital, for any other investor.

(3) *Application of limits.* In calculating compliance with the limits of this paragraph (c), the rules set forth in paragraphs (b)(6)(ii) and (b)(7) of this section shall apply.

(d) *Other eligible investments under general consent.* In addition to the authority granted under paragraphs (b) and (c) of this section, the Board grants its general consent for any investor to make the following investments:

(1) *Investment in organization equal to cash dividends.* Any investment in an organization in an amount equal to cash dividends received from that organization during the preceding 12 calendar months; and

(2) *Investment acquired from affiliate.* Any investment that is acquired from an affiliate at net asset value or through a contribution of shares.

(e) *Investments ineligible for general consent.* An investment in a foreign bank may not be made under authority of paragraphs (b) or (c) of this section if:

(1) After the investment, the foreign bank would be an affiliate of a member bank; and

(2) The foreign bank is located in a country in which the member bank and its affiliates have no existing banking presence.

(f) *Prior notice.* An investment that does not qualify for general consent under paragraph (b), (c), or (d) of this section may be made after the investor has given the Board 30 days' prior written notice, such notice period to commence at the time the notice is received, provided that:

(1) The Board may waive the 30-day period if it finds the full period is not required for consideration of the proposed investment, or that immediate action is required by the circumstances presented; and

(2) The Board may suspend the 30-day period or act on the investment under the Board's specific consent procedures.

(g) *Specific consent.* Any investment that does not qualify for either the general consent or the prior notice procedure may not be consummated without the specific consent of the Board.

§ 211.10 Permissible activities abroad.

(a) *Activities usual in connection with banking.* The Board has determined that the following activities are usual in connection with the transaction of banking or other financial operations abroad:

(1) Commercial and other banking activities;

(2) Financing, including commercial financing, consumer financing, mortgage banking, and factoring;

(3) Leasing real or personal property, or acting as agent, broker, or advisor in leasing real or personal property consistent with the provisions of Regulation Y (12 CFR part 225);

(4) Acting as fiduciary;

(5) Underwriting credit life insurance and credit accident and health insurance;

(6) Performing services for other direct or indirect operations of a U.S. banking organization, including representative functions, sale of long-term debt, name-saving, holding assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible domestically for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the BHC Act (12 U.S.C. 1843(a)(2)(A), (c)(1)(C));

(7) Holding the premises of a branch of an Edge or agreement corporation or member bank or the premises of a direct or indirect subsidiary, or holding or leasing the residence of an officer or employee of a branch or subsidiary;

(8) Providing investment, financial, or economic advisory services;

(9) General insurance agency and brokerage;

(10) Data processing;

(11) Organizing, sponsoring, and managing a mutual fund, if the fund's shares are not sold or distributed in the United States or to U.S. residents and the fund does not exercise managerial control over the firms in which it invests;

(12) Performing management consulting services, if such services, when rendered with respect to the U.S. market, shall be restricted to the initial entry;

(13) Underwriting, distributing, and dealing in debt securities outside the United States;

(14) Underwriting and distributing equity securities outside the United States as follows:

(i) *Limits for well-capitalized and well-managed investor*—(A) *General.* After providing 30 days' prior written notice to the Board, an investor that is well capitalized and well managed may underwrite equity securities, provided that commitments by an investor and its subsidiaries for the shares of a single organization do not, in the aggregate, exceed:

(*1*) 15 percent of the bank holding company's tier 1 capital, where the investor is a bank holding company;

(*2*) 3 percent of the investor's tier 1 capital, where the investor is a member bank; or

(*3*) The lesser of 3 percent of any parent insured bank's tier 1 capital or 15 percent of the investor's tier 1 capital, for any other investor;

(B) *Qualifying criteria.* An investor will be considered well-capitalized and well-managed for purposes of paragraph (a)(14)(i) of this section only if each of the bank holding company, member bank, and Edge or agreement corporation qualify as well-capitalized and well-managed.

(ii) *Limits for investor that is not well capitalized and well managed.* After providing 30 days' prior written notice to the Board, an investor that is not well capitalized and well managed may underwrite equity securities, provided that commitments by the investor and its subsidiaries for the shares of an organization do not, in the aggregate, exceed $60 million; and

(iii) *Application of limits.* For purposes of determining compliance with the limitations of this paragraph (a)(14), the investor may subtract portions of an underwriting that are covered by binding commitments obtained by the investor or its affiliates from sub-underwriters or other purchasers;

(15) Dealing in equity securities outside the United States as follows:

(i) *Grandfathered authority.* By an investor, or an affiliate, that had commenced such activities prior to March 27, 1991, and subject to the limitations in effect at that time (See 12 CFR part 211, revised January 1, 1991); or

(ii) *Limit on shares of a single issuer.* After providing 30 days' prior written notice to the Board, an investor may deal in the shares of an organization where the shares held in the trading or dealing accounts of an investor and its affiliates under authority of this paragraph (a)(15) do not in the aggregate exceed the lesser of:

(A) $40 million; or

(B) 10 percent of the investor's tier 1 capital;

(iii) *Aggregate equity limit.* The total shares held directly and indirectly by the investor and its affiliates under authority of this paragraph (a)(15) and § 211.8(c)(3) of this part in organizations engaged in activities that are not permissible for joint ventures do not exceed:

(A) 25 percent of the bank holding company's tier 1 capital, where the investor is a bank holding company;

(B) 20 percent of the investor's tier 1 capital, where the investor is a member bank; [6] and

(C) The lesser of 20 percent of any parent insured bank's tier 1 capital or 100 percent of the investor's tier 1 capital, for any other investor;

(iv) *Determining compliance with limits*—(A) *General.* For purposes of determining compliance with all limits set out in this paragraph (a)(15):

(*1*) Long and short positions in the same security may be netted; and

(*2*) Except as provided in paragraph (a)(15)(iv)(B)(*4*) of this section, equity securities held in order to hedge bank permissible equity derivatives contracts shall not be included.

(B) *Use of internal hedging models.* After providing 30 days' prior written notice to the Board the investor may use an internal hedging model that:

(*1*) Nets long and short positions in the same security and offsets positions in a security by futures, forwards, options, and other similar instruments referenced to the same security, for purposes of determining compliance with the single issuer limits of paragraph (a)(15)(ii) of this section;[7] and

(*2*) Offsets its long positions in equity securities by futures, forwards, options, and similar instruments, on a portfolio basis, and for purposes of determining compliance with the aggregate equity limits of paragraph (a)(15)(iii) of this section.

(*3*) With respect to all equity securities held under authority of paragraph (a)(15) of this section, no net long position in a security shall be deemed to have been reduced by more than 75 percent through use of internal hedging models under this paragraph (a)(15)(iv)(B); and

(*4*) With respect to equity securities acquired to hedge bank permissible equity derivatives contracts under authority of paragraph (a)(1) of this section, any residual position that remains in the securities of a single issuer after netting and offsetting of positions relating to the security under the investor's internal hedging models shall be included in calculating compliance with the limits of this paragraph (a)(15)(ii) and (iii).

(C) *Underwriting commitments.* Any shares acquired pursuant to an underwriting commitment that are held for longer than 90 days after the payment date for such underwriting shall be subject to the limits set out in

[6] For this purpose, a direct subsidiary of a member bank is deemed to be an investor.

[7] A basket of stocks, specifically segregated as an offset to a position in a stock index derivative product, as computed by the investor's internal model, may be offset against the stock index.

paragraph (a)(15) of this section and the investment provisions of §§ 211.8 and 211.9 of this part.

(v) *Authority to deal in shares of U.S. organization.* The authority to deal in shares under paragraph (a)(15) of this section includes the authority to deal in the shares of a U.S. organization:

(A) With respect to foreign persons only; and

(B) Subject to the limitations on owning or controlling shares of a company in section 4(c)(6) of the BHC Act (12 U.S.C. 1843(c)(6)) and Regulation Y (12 CFR part 225).

(vi) *Report to senior management.* Any shares held in trading or dealing accounts for longer than 90 days shall be reported to the senior management of the investor;

(16) Operating a travel agency, but only in connection with financial services offered abroad by the investor or others;

(17) Underwriting life, annuity, pension fund-related, and other types of insurance, where the associated risks have been previously determined by the Board to be actuarially predictable; provided that:

(i) Investments in, and loans and extensions of credit (other than loans and extensions of credit fully secured in accordance with the requirements of section 23A of the FRA (12 U.S.C. 371c), or with such other standards as the Board may require) to, the company by the investor or its affiliates are deducted from the capital of the investor (with 50 percent of such capital deduction to be taken from tier 1 capital); and

(ii) Activities conducted directly or indirectly by a subsidiary of a U.S. insured bank are excluded from the authority of this paragraph (a)(17), unless authorized by the Board;

(18) Providing futures commission merchant services (including clearing without executing and executing without clearing) for nonaffiliated persons with respect to futures and options on futures contracts for financial and nonfinancial commodities; provided that prior notice under § 211.9(f) of this part shall be provided to the Board before any subsidiaries of a member bank operating pursuant to this subpart may join a mutual exchange or clearinghouse, unless the potential liability of the investor to the exchange, clearinghouse, or other members of the exchange, as the case may be, is legally limited by the rules of the exchange or clearinghouse to an amount that does not exceed applicable general consent limits under § 211.9 of this part;

(19) Acting as principal or agent in commodity-swap transactions in relation to:

(i) Swaps on a cash-settled basis for any commodity, provided that the investor's portfolio of swaps contracts is hedged in a manner consistent with safe and sound banking practices; and

(ii) Contracts that require physical delivery of a commodity, provided that:

(A) Such contracts are entered into solely for the purpose of hedging the investor's positions in the underlying commodity or derivative contracts based on the commodity;

(B) The contract allows for assignment, termination or offset prior to expiration; and

(C) Reasonable efforts are made to avoid delivery.

(b) *Regulation Y activities.* An investor may engage in activities that the Board has determined in § 225.28(b) of Regulation Y (12 CFR 225.28(b)) are closely related to banking under section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)).

(c) *Specific approval.* With the Board's specific approval, an investor may engage in other activities that the Board determines are usual in connection with the transaction of the business of banking or other financial operations abroad and are consistent with the FRA or the BHC Act.

§ 211.11 Advisory opinions under Regulation K.

(a) *Request for advisory opinion.* Any person may submit a request to the Board for an advisory opinion regarding the scope of activities permissible under any subpart of this part.

(b) *Form and content of the request.* Any request for an advisory opinion under this section shall be:

(1) Submitted in writing to the Board;

(2) Contain a clear description of the proposed parameters of the activity, or the service or product, at issue; and

(3) Contain a concise explanation of the grounds on which the submitter contends the activity is or should be considered by the Board to be permissible under this part.

(c) *Response to request.* In response to a request received under this section, the Board shall:

(1) Direct the submitter to provide such additional information as the Board may deem necessary to complete the record for a full consideration of the issue presented; and

(2) Provide an advisory opinion within 45 days after the record on the request has been determined to be complete.

§ 211.12 Lending limits and capital requirements.

(a) *Acceptances of Edge corporations.* (1) Limitations. An Edge corporation shall be and remain fully secured for acceptances of the types described in section 13(7) of the FRA (12 U.S.C. 372), as follows:

(i) All acceptances outstanding in excess of 200 percent of its tier 1 capital; and

(ii) All acceptances outstanding for any one person in excess of 10 percent of its tier 1 capital.

(2) *Exceptions.* These limitations do not apply if the excess represents the international shipment of goods, and the Edge corporation is:

(i) Fully covered by primary obligations to reimburse it that are guaranteed by banks or bankers; or

(ii) Covered by participation agreements from other banks, as described in 12 CFR 250.165.

(b) *Loans and extensions of credit to one person*—(1) *Loans and extensions of credit defined. Loans and extensions of credit* has the meaning set forth in § 211.2(q) of this part [8] and, for purposes of this paragraph (b), also include:

(i) Acceptances outstanding that are not of the types described in section 13(7) of the FRA (12 U.S.C. 372);

(ii) Any liability of the lender to advance funds to or on behalf of a person pursuant to a guarantee, standby letter of credit, or similar agreements;

(iii) Investments in the securities of another organization other than a subsidiary; and

(iv) Any underwriting commitments to an issuer of securities, where no binding commitments have been secured from subunderwriters or other purchasers.

(2) *Limitations.* Except as the Board may otherwise specify:

(i) The total loans and extensions of credit outstanding to any person by an Edge corporation engaged in banking, and its direct or indirect subsidiaries, may not exceed 15 percent of the Edge corporation's tier 1 capital;[9] and

(ii) The total loans and extensions of credit to any person by a foreign bank or Edge corporation subsidiary of a member bank, and by majority-owned subsidiaries of a foreign bank or Edge corporation, when combined with the total loans and extensions of credit to the same person by the member bank and its majority-owned subsidiaries, may not exceed the member bank's limitation on loans and extensions of credit to one person.

(3) *Exceptions.* The limitations of paragraph (b)(2) of this section do not apply to:

(i) Deposits with banks and federal funds sold;

(ii) Bills or drafts drawn in good faith against actual goods and on which two or more unrelated parties are liable;

(iii) Any banker's acceptance, of the kind described in section 13(7) of the FRA (12 U.S.C. 372), that is issued and outstanding;

(iv) Obligations to the extent secured by cash collateral or by bonds, notes, certificates of indebtedness, or Treasury bills of the United States;

(v) Loans and extensions of credit that are covered by bona fide participation agreements; and

(vi) Obligations to the extent supported by the full faith and credit of the following:

(A) The United States or any of its departments, agencies, establishments, or wholly owned corporations (including obligations, to the extent insured against foreign political and credit risks by the Export-Import Bank of the United States or the Foreign Credit Insurance Association), the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association, the Inter-American Development Bank, the African Development Bank, the Asian Development Bank, or the European Bank for Reconstruction and Development;

(B) Any organization, if at least 25 percent of such an obligation or of the total credit is also supported by the full faith and credit of, or participated in by, any institution designated in paragraph (b)(3)(vi)(A) of this section in such manner that default to the lender would necessarily include default to that entity. The total loans and extensions of credit under this paragraph (b)(3)(vi)(B) to any person shall at no time exceed 100 percent of the tier 1 capital of the Edge corporation.

(c) *Capitalization.* (1) An Edge corporation shall at all times be capitalized in an amount that is adequate in relation to the scope and character of its activities.

(2) In the case of an Edge corporation engaged in banking, the minimum ratio of qualifying total capital to risk-weighted assets, as determined under the Capital Adequacy Guidelines, shall not be less than 10 percent, of which at least 50 percent shall consist of tier 1 capital.

(3) For purposes of this paragraph (c), no limitation shall apply on the inclusion of subordinated debt that qualifies as tier 2 capital under the Capital Adequacy Guidelines.

§ 211.13 Supervision and reporting.

(a) *Supervision.* (1) *Foreign branches and subsidiaries.* U.S. banking organizations conducting international operations under this subpart shall supervise and administer their foreign branches and subsidiaries in such a manner as to ensure that their operations conform to high standards of banking and financial prudence.

(i) Effective systems of records, controls, and reports shall be maintained to keep management informed of their activities and condition.

(ii) Such systems shall provide, in particular, information on risk assets, exposure to market risk, liquidity management, operations, internal controls, legal and operational risk, and conformance to management policies.

(iii) Reports on risk assets shall be sufficient to permit an appraisal of credit quality and assessment of exposure to loss, and, for this purpose, provide full information on the condition of material borrowers.

(iv) Reports on operations and controls shall include internal and external audits of the branch or subsidiary.

(2) *Joint ventures.* Investors shall maintain sufficient information with respect to joint ventures to keep informed of their activities and condition.

(i) Such information shall include audits and other reports on financial performance, risk exposure, management policies, operations, and controls.

(ii) Complete information shall be maintained on all transactions with the joint venture by the investor and its affiliates.

(3) *Availability of reports and information to examiners.* The reports specified in paragraphs (a)(1) and (2) of this section and any other information deemed necessary to determine compliance with U.S. banking law shall be made available to examiners of the appropriate bank supervisory agencies.

(b) *Examinations.* Examiners appointed by the Board shall examine each Edge corporation once a year. An Edge or agreement corporation shall make available to examiners information sufficient to assess its condition and operations and the condition and activities of any organization whose shares it holds.

(c) *Reports*—(1) *Reports of condition.* Each Edge or agreement corporation shall make reports of condition to the Board at such times and in such form as the Board may prescribe. The Board may require that statements of condition or other reports be published or made available for public inspection.

(2) *Foreign operations.* Edge and agreement corporations, member banks, and bank holding companies shall file such reports on their foreign operations as the Board may require.

(3) *Acquisition or disposition of shares.* Member banks, Edge and agreement corporations, and bank holding companies shall report, in a manner prescribed by the Board, any acquisition or disposition of shares.

(d) *Filing and processing procedures*—(1) *Place of filing.* Unless otherwise directed by the Board, applications, notices, and reports required by this part shall be filed with the Federal Reserve Bank of the District in which the parent bank or bank holding company is located or, if none, the Reserve Bank of the District in which the applying or reporting institution is located. Instructions and forms for applications, notices, and reports are available from the Reserve Banks.

(2) *Timing.* The Board shall act on an application under this subpart within 60 calendar days after the Reserve Bank has received the application, unless the Board notifies the investor that the 60-day period is being extended and states the reasons for the extension.

Subpart B—Foreign Banking Organizations

§ 211.20 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) under the authority of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1841 *et seq.*) and the International Banking Act of 1978 (IBA) (12 U.S.C. 3101 *et seq.*).

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act and the IBA. It applies to foreign banks and foreign banking organizations with respect to:

(1) The limitations on interstate banking under section 5 of the IBA (12 U.S.C. 3103);

(2) The exemptions from the nonbanking prohibitions of the BHC Act and the IBA afforded by sections 2(h) and 4(c)(9) of the BHC Act (12 U.S.C. 1841(h), 1843(c)(9));

[8] In the case of a foreign government, these includes loans and extensions of credit to the foreign government's departments or agencies deriving their current funds principally from general tax revenues. In the case of a partnership or firm, these include loans and extensions of credit to its members and, in the case of a corporation, these include loans and extensions of credit to the corporation's affiliates, where the affiliate incurs the liability for the benefit of the corporation.

[9] For purposes of this pargraph (b), *subsidiaries* includes subsidiaries controlled by the Edge corporation, but does not include companies otherwise controlled by affiliates of the Edge corporation.

(3) Board approval of the establishment of an office of a foreign bank in the United States under sections 7(d) and 10(a) of the IBA (12 U.S.C. 3105(d), 3107(a));

(4) The termination by the Board of a foreign bank's representative office, state branch, state agency, or commercial lending company subsidiary under sections 7(e) and 10(b) of the IBA (12 U.S.C. 3105(e), 3107(b)), and the transmission of a recommendation to the Comptroller to terminate a federal branch or federal agency under section 7(e)(5) of the IBA (12 U.S.C. 3105(e)(5));

(5) The examination of an office or affiliate of a foreign bank in the United States as provided in sections 7(c) and 10(c) of the IBA (12 U.S.C. 3105(c), 3107(c));

(6) The disclosure of supervisory information to a foreign supervisor under section 15 of the IBA (12 U.S.C. 3109);

(7) The limitations on loans to one borrower by state branches and state agencies of a foreign bank under section 7(h)(2) of the IBA (12 U.S.C. 3105(h)(2));

(8) The limitation of a state branch and a state agency to conducting only activities that are permissible for a federal branch under section (7)(h)(1) of the IBA (12 U.S.C. 3105(h)(1)); and

(9) The deposit insurance requirement for retail deposit taking by a foreign bank under section 6 of the IBA (12 U.S.C. 3104).

(10) The management of shell branches (12 U.S.C. 3105(k)).

(c) *Additional requirements.* Compliance by a foreign bank with the requirements of this subpart and the laws administered and enforced by the Board does not relieve the foreign bank of responsibility to comply with the laws and regulations administered by the licensing authority.

§ 211.21 Definitions.

The definitions contained in §§ 211.1 and 211.2 apply to this subpart, except as a term is otherwise defined in this section:

(a) *Affiliate* of a foreign bank or of a parent of a foreign bank means any company that controls, is controlled by, or is under common control with, the foreign bank or the parent of the foreign bank.

(b) *Agency* means any place of business of a foreign bank, located in any state, at which credit balances are maintained, checks are paid, money is lent, or, to the extent not prohibited by state or federal law, deposits are accepted from a person or entity that is not a citizen or resident of the United States. Obligations shall not be considered credit balances unless they are:

(1) Incidental to, or arise out of the exercise of, other lawful banking powers;

(2) To serve a specific purpose;

(3) Not solicited from the general public;

(4) Not used to pay routine operating expenses in the United States such as salaries, rent, or taxes;

(5) Withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and

(6) Drawn upon in a manner reasonable in relation to the size and nature of the account.

(c)(1) *Appropriate Federal Reserve Bank* means, unless the Board designates a different Federal Reserve Bank:

(i) For a foreign banking organization, the Reserve Bank assigned to the foreign banking organization in § 225.3(b)(2) of Regulation Y (12 CFR 225.3(b)(2));

(ii) For a foreign bank that is not a foreign banking organization and proposes to establish an office, an Edge corporation, or an agreement corporation, the Reserve Bank of the Federal Reserve District in which the foreign bank proposes to establish such office or corporation; and

(iii) In all other cases, the Reserve Bank designated by the Board.

(2) The appropriate Federal Reserve Bank need not be the Reserve Bank of the Federal Reserve District in which the foreign bank's home state is located.

(d) *Banking subsidiary,* with respect to a specified foreign bank, means a bank that is a subsidiary as the terms *bank* and *subsidiary* are defined in section 2 of the BHC Act (12 U.S.C. 1841).

(e) *Branch* means any place of business of a foreign bank, located in any state, at which deposits are received, and that is not an agency, as that term is defined in paragraph (b) of this section.

(f) *Change the status* of an office means to convert a representative office into a branch or agency, or an agency or limited branch into a branch, but does not include renewal of the license of an existing office.

(g) *Commercial lending company* means any organization, other than a bank or an organization operating under section 25 of the Federal Reserve Act (FRA) (12 U.S.C. 601–604a), organized under the laws of any state, that maintains credit balances permissible for an agency, and engages in the business of making commercial loans. *Commercial lending company* includes any company chartered under article XII of the banking law of the State of New York.

(h) *Comptroller* means the Office of the Comptroller of the Currency.

(i) *Control* has the same meaning as in section 2(a) of the BHC Act (12 U.S.C. 1841(a)), and the terms *controlled* and *controlling* shall be construed consistently with the term *control.*

(j) *Domestic branch* means any place of business of a foreign bank, located in any state, that may accept domestic deposits and deposits that are incidental to or for the purpose of carrying out transactions in foreign countries.

(k) A foreign bank *engages directly in the business of banking outside the United States* if the foreign bank engages directly in banking activities usual in connection with the business of banking in the countries where it is organized or operating.

(l) To *establish* means:

(1) To open and conduct business through an office;

(2) To acquire directly, through merger, consolidation, or similar transaction with another foreign bank, the operations of an office that is open and conducting business;

(3) To acquire an office through the acquisition of a foreign bank subsidiary that will cease to operate in the same corporate form following the acquisition;

(4) To change the status of an office; or

(5) To relocate an office from one state to another.

(m) *Federal agency, federal branch, state agency,* and *state branch* have the same meanings as in section 1 of the IBA (12 U.S.C. 3101).

(n) *Foreign bank* means an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside the United States. The term *foreign bank* does not include a central bank of a foreign country that does not engage or seek to engage in a commercial banking business in the United States through an office.

(o) *Foreign banking organization* means:

(1) A foreign bank, as defined in section 1(b)(7) of the IBA (12 U.S.C. 3101(7)), that:

(i) Operates a branch, agency, or commercial lending company subsidiary in the United States;

(ii) Controls a bank in the United States; or

(iii) Controls an Edge corporation acquired after March 5, 1987; and

(2) Any company of which the foreign bank is a subsidiary.

(p) *Home country,* with respect to a foreign bank, means the country in which the foreign bank is chartered or incorporated.

(q) *Home country supervisor,* with respect to a foreign bank, means the governmental entity or entities in the foreign bank's home country with responsibility for the supervision and regulation of the foreign bank.

(r) *Licensing authority* means:

(1) The relevant state supervisor, with respect to an application to establish a state branch, state agency, commercial lending company, or representative office of a foreign bank; or

(2) The Comptroller, with respect to an application to establish a federal branch or federal agency.

(s) *Limited branch* means a branch of a foreign bank that receives only such deposits as would be permitted for a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611–631).

(t) *Office* or *office of a foreign bank* means any branch, agency, representative office, or commercial lending company subsidiary of a foreign bank in the United States.

(u) A *parent* of a foreign bank means a company of which the foreign bank is a subsidiary. An *immediate parent* of a foreign bank is a company of which the foreign bank is a direct subsidiary. An *ultimate parent* of a foreign bank is a parent of the foreign bank that is not the subsidiary of any other company.

(v) *Regional administrative office* means a representative office that:

(1) Is established by a foreign bank that operates two or more branches, agencies, commercial lending companies, or banks in the United States;

(2) Is located in the same city as one or more of the foreign bank's branches, agencies, commercial lending companies, or banks in the United States;

(3) Manages, supervises, or coordinates the operations of the foreign bank or its affiliates, if any, in a particular geographic area that includes the United States or a region thereof, including by exercising credit approval authority in that area pursuant to written standards, credit policies, and procedures established by the foreign bank; and

(4) Does not solicit business from actual or potential customers of the foreign bank or its affiliates.

(w) *Relevant state supervisor* means the state entity that is authorized to supervise and regulate a state branch, state agency, commercial lending company, or representative office.

(x) *Representative office* means any office of a foreign bank which is located in any state and is not a Federal branch, Federal agency, State branch, State agency, or commercial lending company subsidiary.

(y) *State* means any state of the United States or the District of Columbia.

(z) *Subsidiary* means any organization that:

(1) Has 25 percent or more of its voting shares directly or indirectly owned, controlled, or held with the power to vote by a company, including a foreign bank or foreign banking organization; or

(2) Is otherwise controlled, or capable of being controlled, by a foreign bank or foreign banking organization.

§ 211.22 Interstate banking operations of foreign banking organizations.

(a) *Determination of home state.* (1) A foreign bank that, as of December 10, 1997, had declared a home state or had a home state determined pursuant to the law and regulations in effect prior to that date shall have that state as its home state.

(2) A foreign bank that has any branches, agencies, commercial lending company subsidiaries, or subsidiary banks in one state, and has no such offices or subsidiaries in any other states, shall have as its home state the state in which such offices or subsidiaries are located.

(b) *Change of home state*—(1) *Prior notice.* A foreign bank may change its home state once, if it files 30 days' prior notice of the proposed change with the Board.

(2) *Application to change home state.* (i) A foreign bank, in addition to changing its home state by filing prior notice under paragraph (b)(1) of this section, may apply to the Board to change its home state, upon showing that a national bank or state-chartered bank with the same home state as the foreign bank would be permitted to change its home state to the new home state proposed by the foreign bank.

(ii) A foreign bank may apply to the Board for such permission one or more times.

(iii) In determining whether to grant the request of a foreign bank to change its home state, the Board shall consider whether the proposed change is consistent with competitive equity between foreign and domestic banks.

(3) *Effect of change in home state.* The home state of a foreign bank and any change in its home state by a foreign bank shall not affect which Federal Reserve Bank or Reserve Banks supervise the operations of the foreign bank, and shall not affect the obligation of the foreign bank to file required reports and applications with the appropriate Federal Reserve Bank.

(4) *Conforming branches to new home state.* Upon any change in home state by a foreign bank under paragraph (b)(1) or (b)(2) of this section, the domestic branches of the foreign bank established in reliance on any previous home state of the foreign bank shall be conformed to those which a foreign bank with the new home state could permissibly establish or operate as of the date of such change.

(c) *Prohibition against interstate deposit production offices.* A covered interstate branch of a foreign bank may not be used as a deposit production office in accordance with the provisions in § 208.7 of Regulation H (12 CFR 208.7).

§ 211.23 Nonbanking activities of foreign banking organizations.

(a) *Qualifying foreign banking organizations.* Unless specifically made eligible for the exemptions by the Board, a foreign banking organization shall qualify for the exemptions afforded by this section only if, disregarding its United States banking, more than half of its worldwide business is banking; and more than half of its banking business is outside the United States.[10] In order to qualify, a foreign banking organization shall:

(1) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed total worldwide nonbanking assets;

(ii) Revenues derived from the business of banking outside the United States exceed total revenues derived from its worldwide nonbanking business; or

(iii) Net income derived from the business of banking outside the United States exceeds total net income derived from its worldwide nonbanking business; and

(2) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed banking assets held in the United States;

(ii) Revenues derived from the business of banking outside the United States exceed revenues derived from the business of banking in the United States; or

[10] None of the assets, revenues, or net income, whether held or derived directly or indirectly, of a subsidiary bank, branch, agency, commercial lending company, or other company engaged in the business of banking in the United States (including any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands) shall be considered held or derived from the business of banking "outside the United States".

(iii) Net income derived from the business of banking outside the United States exceeds net income derived from the business of banking in the United States.

(b) *Determining assets, revenues, and net income.* (1)(i) For purposes of paragraph (a) of this section, the total assets, revenues, and net income of an organization may be determined on a consolidated or combined basis.

(ii) The foreign banking organization shall include assets, revenues, and net income of companies in which it owns 50 percent or more of the voting shares when determining total assets, revenues, and net income.

(iii) The foreign banking organization may include assets, revenues, and net income of companies in which it owns 25 percent or more of the voting shares, if all such companies within the organization are included.

(2) Assets devoted to, or revenues or net income derived from, activities listed in § 211.10(a) shall be considered banking assets, or revenues or net income derived from the banking business, when conducted within the foreign banking organization by a foreign bank or its subsidiaries.

(c) *Limited exemptions available to foreign banking organizations in certain circumstances.* The following shall apply where a foreign bank meets the requirements of paragraph (a) of this section but its ultimate parent does not:

(1) Such foreign bank shall be entitled to the exemptions available to a qualifying foreign banking organization if its ultimate parent meets the requirements set forth in paragraph (a)(2) of this section and could meet the requirements in paragraph (a)(1) of this section but for the requirement in paragraph (b)(2) of this section that activities must be conducted by the foreign bank or its subsidiaries in order to be considered derived from the banking business;

(2) An ultimate parent as described in paragraph (c)(1) of this section shall be eligible for the exemptions available to a qualifying foreign banking organization except for those provided in § 211.23(f)(5)(iii).

(d) *Loss of eligibility for exemptions—*(1) *Failure to meet qualifying test.* A foreign banking organization that qualified under paragraph (a) or (c) of this section shall cease to be eligible for the exemptions of this section if it fails to meet the requirements of paragraphs (a) or (c) of this section for two consecutive years, as reflected in its annual reports (FR Y–7) filed with the Board.

(2) *Continuing activities and investments.* (i) A foreign banking organization that ceases to be eligible for the exemptions of this section may continue to engage in activities or retain investments commenced or acquired prior to the end of the first fiscal year for which its annual report reflects nonconformance with paragraph (a) or (c) of this section.

(ii) *Termination or divestiture.* Activities commenced or investments made after that date shall be terminated or divested within three months of the filing of the second annual report, or at such time as the Board may determine upon request by the foreign banking organization to extend the period, unless the Board grants consent to continue the activity or retain the investment under paragraph (e) of this section.

(3) *Request for specific determination of eligibility.* (i) A foreign banking organization that ceases to qualify under paragraph (a) or (c) of this section, or an affiliate of such foreign banking organization, that requests a specific determination of eligibility under paragraph (e) of this section may, prior to the Board's determination on eligibility, continue to engage in activities and make investments under the provisions of paragraphs (f)(1), (2), (3), and (4) of this section.

(ii) The Board may grant consent for the foreign banking organization or its affiliate to make investments under paragraph (f)(5) of this section.

(e) *Specific determination of eligibility for organizations that do not qualify for the exemptions—*(1) *Application.* (i) A foreign organization that is not a foreign banking organization or a foreign banking organization that does not qualify under paragraph (a) or (c) of this section for some or all of the exemptions afforded by this section, or that has lost its eligibility for the exemptions under paragraph (d) of this section, may apply to the Board for a specific determination of eligibility for some or all of the exemptions.

(ii) A foreign banking organization may apply for a specific determination prior to the time it ceases to be eligible for the exemptions afforded by this section.

(2) *Factors considered by Board.* In determining whether eligibility for the exemptions would be consistent with the purposes of the BHC Act and in the public interest, the Board shall consider:

(i) The history and the financial and managerial resources of the foreign organization or foreign banking organization;

(ii) The amount of its business in the United States;

(iii) The amount, type, and location of its nonbanking activities, including whether such activities may be conducted by U.S. banks or bank holding companies;

(iv) Whether eligibility of the foreign organization or foreign banking organization would result in undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices; and

(v) The extent to which the foreign banking organization is subject to comprehensive supervision or regulation on a consolidated basis or the foreign organization is subject to oversight by regulatory authorities in its home country.

(3) *Conditions and limitations.* The Board may impose any conditions and limitations on a determination of eligibility, including requirements to cease activities or dispose of investments.

(4) *Eligibility not granted.* Determinations of eligibility generally would not be granted where a majority of the business of the foreign organization or foreign banking organization derives from commercial or industrial activities.

(f) *Permissible activities and investments.* A foreign banking organization that qualifies under paragraph (a) of this section may:

(1) Engage in activities of any kind outside the United States;

(2) Engage directly in activities in the United States that are incidental to its activities outside the United States;

(3) Own or control voting shares of any company that is not engaged, directly or indirectly, in any activities in the United States, other than those that are incidental to the international or foreign business of such company;

(4) Own or control voting shares of any company in a fiduciary capacity under circumstances that would entitle such shareholding to an exemption under section 4(c)(4) of the BHC Act (12 U.S.C. 1843(c)(4)) if the shares were held or acquired by a bank;

(5) Own or control voting shares of a foreign company that is engaged directly or indirectly in business in the United States other than that which is incidental to its international or foreign business, subject to the following limitations:

(i) More than 50 percent of the foreign company's consolidated assets shall be located, and consolidated revenues derived from, outside the United States; provided that, if the foreign company fails to meet the requirements of this paragraph (f)(5)(i) for two consecutive years (as reflected in annual reports (FR Y–7) filed with the Board by the foreign banking organization), the foreign company shall be divested or its activities terminated within one year of the filing of the second consecutive annual report that reflects nonconformance with the requirements of this paragraph (f)(5)(i), unless the Board grants consent to retain the investment under paragraph (g) of this section;

(ii) The foreign company shall not directly underwrite, sell, or distribute, nor own or control more than 10 percent of the voting shares of a company that underwrites, sells, or distributes securities in the United States, except to the extent permitted bank holding companies;

(iii) If the foreign company is a subsidiary of the foreign banking organization, the foreign company must be, or must control, an operating company, and its direct or indirect activities in the United States shall be subject to the following limitations:

(A) The foreign company's activities in the United States shall be the same kind of activities, or related to the activities, engaged in directly or indirectly by the foreign company abroad, as measured by the "establishment" categories of the Standard Industrial Classification (SIC). An activity in the United States shall be considered related to an activity outside the United States if it consists of supply, distribution, or sales in furtherance of the activity;

(B) The foreign company may engage in activities in the United States that consist of banking, securities, insurance, or other financial operations, or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)), only under regulations of the Board or with the prior approval of the Board, subject to the following:

(*1*) Activities within Division H (Finance, Insurance, and Real Estate) of the SIC shall be considered banking or financial operations for this purpose, with the exception of acting as operators of nonresidential buildings (SIC 6512), operators of apartment buildings (SIC 6513), operators of dwellings other than apartment buildings (SIC 6514), and operators of residential mobile home sites (SIC 6515); and operating title abstract offices (SIC 6541); and

(*2*) The following activities shall be considered financial activities and may be engaged in only with the approval of the Board under paragraph (g) of this section: credit reporting services (SIC 7323); computer and data processing services (SIC 7371, 7372, 7373, 7374, 7375, 7376, 7377, 7378, and 7379); armored car services (SIC 7381); management consulting (SIC 8732, 8741, 8742, and 8748); certain rental and leasing activities (SIC 4741, 7352, 7353, 7359, 7513, 7514, 7515, and 7519); accounting, auditing, and bookkeeping services (SIC 8721); courier services (SIC 4215 and 4513); and arrangement of passenger transportation (SIC 4724, 4725, and 4729).

(g) *Exemptions under section 4(c)(9) of the BHC Act.* A foreign banking organization that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(9) of the BHC Act (12 U.S.C. 1843(c)(9)) may apply to the Board for such a determination by submitting to the appropriate Federal Reserve Bank a letter setting forth the basis for that opinion.

(h) *Reports.* The foreign banking organization shall report in a manner prescribed by the Board any direct activities in the United States by a foreign subsidiary of the foreign banking organization and the acquisition of all shares of companies engaged, directly or indirectly, in activities in the United States that were acquired under the authority of this section.

(i) *Availability of information.* If any information required under this section is unknown and not reasonably available to the foreign banking organization (either because obtaining it would involve unreasonable effort or expense, or because it rests exclusively within the knowledge of a company that is not controlled by the organization) the organization shall:

(1) Give such information on the subject as it possesses or can reasonably acquire, together with the sources thereof; and

(2) Include a statement showing that unreasonable effort or expense would be involved, or indicating that the company whose shares were acquired is not controlled by the organization, and stating the result of a request for information.

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

(a) *Board approval of offices of foreign banks—*(1) *Prior Board approval of branches, agencies, commercial lending companies, or representative offices of foreign banks.* (i) Except as otherwise provided in paragraphs (a)(2) and (a)(3) of this section, a foreign bank shall obtain the approval of the Board before it:

(A) Establishes a branch, agency, commercial lending company subsidiary, or representative office in the United States; or

(B) Acquires ownership or control of a commercial lending company subsidiary.

(2) *Prior notice for certain offices.* (i) After providing 45 days' prior written notice to the Board, a foreign bank may establish:

(A) An additional office (other than a domestic branch outside the home state of the foreign bank established pursuant to section 5(a)(3) of the IBA (12 U.S.C. 3103(a)(3))), provided that the Board has previously determined the foreign bank to be subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (*comprehensive consolidated supervision* or *CCS*); or

(B) A representative office, if:

(*1*) The Board has not yet determined the foreign bank to be subject to consolidated comprehensive supervision, but the foreign bank is subject to the BHC Act, either directly or through section 8(a) of the IBA (12 U.S.C. 3106(a)); or

(*2*) The Board previously has approved an application by the foreign bank to establish a branch or agency pursuant to the standard set forth in paragraph (c)(1)(iii) of this section; or

(*3*) The Board previously has approved an application by the foreign bank to establish a representative office.

(ii) The Board may waive the 45-day notice period if it finds that immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is received by the appropriate Federal Reserve Bank. The Board may suspend the period or require Board approval prior to the establishment of such office if the notification raises significant policy or supervisory concerns.

(3) *General consent for certain representative offices.* (i) The Board grants its general consent for a foreign bank that is subject to the BHC Act, either directly or through section 8(a) of the IBA (12 U.S.C. 3106(a)), to establish:

(A) A representative office, but only if the Board has previously determined that the foreign bank proposing to establish a representative office is subject to consolidated comprehensive supervision;

(B) A regional administrative office; or

(C) An office that solely engages in limited administrative functions (such as separately maintaining back-office support systems) that:

(*1*) Are clearly defined;

(*2*) Are performed in connection with the U.S. banking activities of the foreign bank; and

(3) Do not involve contact or liaison with customers or potential customers, beyond incidental contact with existing customers relating to administrative matters (such as verification or correction of account information).

(4) *Suspension of general consent or prior notice procedures.* The Board may, at any time, upon notice, modify or suspend the prior notice and general consent procedures in paragraphs (a)(2) and (3) of this section for any foreign bank with respect to the establishment by such foreign bank of any U.S. office of such foreign bank.

(5) *Temporary offices.* The Board may, in its discretion, determine that a foreign bank has not established an office if the foreign bank temporarily operates at one or more additional locations in the same city of an existing branch or agency due to renovations, an expansion of activities, a merger or consolidation of the operations of affiliated foreign banks or companies, or other similar circumstances. The foreign bank must provide reasonable advance notice of its intent temporarily to utilize additional locations, and the Board may impose such conditions in connection with its determination as it deems necessary.

(6) *After-the-fact Board approval.* Where a foreign bank proposes to establish an office in the United States through the acquisition of, or merger or consolidation with, another foreign bank with an office in the United States, the Board may, in its discretion, allow the acquisition, merger, or consolidation to proceed before an application to establish the office has been filed or acted upon under this section if:

(i) The foreign bank or banks resulting from the acquisition, merger, or consolidation, will not directly or indirectly own or control more than 5 percent of any class of the voting securities of, or control, a U.S. bank;

(ii) The Board is given reasonable advance notice of the proposed acquisition, merger, or consolidation; and

(iii) Prior to consummation of the acquisition, merger, or consolidation, each foreign bank, as appropriate, commits in writing either:

(A) To comply with the procedures for an application under this section within a reasonable period of time; to engage in no new lines of business, or otherwise to expand its U.S. activities until the disposition of the application; and to abide by the Board's decision on the application, including, if necessary, a decision to terminate the activities of any such U.S. office, as the Board or the Comptroller may require; or

(B) Promptly to wind-down and close any office, the establishment of which would have required an application under this section; and to engage in no new lines of business or otherwise to expand its U.S. activities prior to the closure of such office.

(7) *Notice of change in ownership or control or conversion of existing office or establishment of representative office under general-consent authority.* A foreign bank with a U.S. office shall notify the Board in writing within 10 days of the occurrence of any of the following events:

(i) A change in the foreign bank's ownership or control, where the foreign bank is acquired or controlled by another foreign bank or company and the acquired foreign bank with a U.S. office continues to operate in the same corporate form as prior to the change in ownership or control;

(ii) The conversion of a branch to an agency or representative office; an agency to a representative office; or a branch or agency from a federal to a state license, or a state to a federal license; or

(iii) The establishment of a representative office under general-consent authority.

(8) *Transactions subject to approval under Regulation Y.* Subpart B of Regulation Y (12 CFR 225.11–225.17) governs the acquisition by a foreign banking organization of direct or indirect ownership or control of any voting securities of a bank or bank holding company in the United States if the acquisition results in the foreign banking organization's ownership or control of more than 5 percent of any class of voting securities of a U.S. bank or bank holding company, including through acquisition of a foreign bank or foreign banking organization that owns or controls more than 5 percent of any class of the voting securities of a U.S. bank or bank holding company.

(b) *Procedures for application*—(1) *Filing application.* An application for the Board's approval pursuant to this section shall be filed in the manner prescribed by the Board.

(2) *Publication requirement*—(i) *Newspaper notice.* Except with respect to a proposed transaction where more extensive notice is required by statute or as otherwise provided in paragraphs (b)(2)(ii) and (iii) of this section, an applicant under this section shall publish a notice in a newspaper of general circulation in the community in which the applicant proposes to engage in business.

(ii) *Contents of notice.* The newspaper notice shall:

(A) State that an application is being filed as of the date of the newspaper notice; and

(B) Provide the name of the applicant, the subject matter of the application, the place where comments should be sent, and the date by which comments are due, pursuant to paragraph (b)(3) of this section.

(iii) *Copy of notice with application.* The applicant shall furnish with its application to the Board a copy of the newspaper notice, the date of its publication, and the name and address of the newspaper in which it was published.

(iv) *Exception.* The Board may modify the publication requirement of paragraphs (b)(2)(i) and (ii) of this section in appropriate circumstances.

(v) *Federal branch or federal agency.* In the case of an application to establish a federal branch or federal agency, compliance with the publication procedures of the Comptroller shall satisfy the publication requirement of this section. Comments regarding the application should be sent to the Board and the Comptroller.

(3) *Written comments.* (i) Within 30 days after publication, as required in paragraph (b)(2) of this section, any person may submit to the Board written comments and data on an application.

(ii) The Board may extend the 30-day comment period if the Board determines that additional relevant information is likely to be provided by interested persons, or if other extenuating circumstances exist.

(4) *Board action on application.* (i) *Time limits.* (A) The Board shall act on an application from a foreign bank to establish a branch, agency, or commercial lending company subsidiary within 180 calendar days after the receipt of the application.

(B) The Board may extend for an additional 180 calendar days the period within which to take final action, after providing notice of and reasons for the extension to the applicant and the licensing authority.

(C) The time periods set forth in this paragraph (b)(4)(i) may be waived by the applicant.

(ii) *Additional information.* The Board may request any information in addition to that supplied in the application when the Board believes that the information is necessary for its decision, and may deny an application if it does not receive the information requested from the applicant or its home country supervisor in sufficient time to permit adequate evaluation of the information within the time periods set forth in paragraph (b)(4)(i) of this section.

(5) *Coordination with other regulators.* Upon receipt of an application by a foreign bank under this section, the Board shall promptly notify, consult with, and consider the views of the licensing authority.

(c) *Standards for approval of U.S. offices of foreign banks*— (1) *Mandatory standards*—(i) *General.* As specified in section 7(d) of the IBA (12 U.S.C. 3105(d)), the Board may not approve an application to establish a branch or an agency, or to establish or acquire ownership or control of a commercial lending company, unless it determines that:

(A) Each of the foreign bank and any parent foreign bank engages directly in the business of banking outside the United States and, except as provided in paragraph (c)(1)(iii) of this section, is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor; and

(B) The foreign bank has furnished to the Board the information that the Board requires in order to assess the application adequately.

(ii) *Basis for determining comprehensive consolidated supervision.* In determining whether a foreign bank and any parent foreign bank is subject to comprehensive consolidated supervision, the Board shall determine whether the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. In making such a determination, the Board shall assess, among other factors, the extent to which the home country supervisor:

(A) Ensures that the foreign bank has adequate procedures for monitoring and controlling its activities worldwide;

(B) Obtains information on the condition of the foreign bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise;

(C) Obtains information on the dealings and relationship between the foreign bank and its affiliates, both foreign and domestic;

(D) Receives from the foreign bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the foreign bank's financial condition on a worldwide, consolidated basis;

(E) Evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

(iii) *Determination of comprehensive consolidated supervision not required in certain circumstances.* (A) If the Board is unable to find, under paragraph (c)(1)(i) of this section, that a foreign bank is subject to comprehensive consolidated supervision, the Board may, nevertheless, approve an application by the foreign bank if:

(*1*) The home country supervisor is actively working to establish arrangements for the consolidated supervision of such bank; and

(*2*) All other factors are consistent with approval.

(B) In deciding whether to use its discretion under this paragraph (c)(1)(iii), the Board also shall consider whether the foreign bank has adopted and implemented procedures to combat money laundering. The Board also may take into account whether the home country supervisor is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering. In approving an application under this paragraph (c)(1)(iii), the Board, after requesting and taking into consideration the views of the licensing authority, may impose any conditions or restrictions relating to the activities or business operations of the proposed branch, agency, or commercial lending company subsidiary, including restrictions on sources of funding. The Board shall coordinate with the licensing authority in the implementation of such conditions or restrictions.

(2) *Additional standards.* In acting on any application under this subpart, the Board may take into account:

(i) *Consent of home country supervisor.* Whether the home country supervisor of the foreign bank has consented to the proposed establishment of the branch, agency, or commercial lending company subsidiary;

(ii) *Financial resources.* The financial resources of the foreign bank (including the foreign bank's capital position, projected capital position, profitability, level of indebtedness, and future prospects) and the condition of any U.S. office of the foreign bank;

(iii) *Managerial resources.* The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors; the integrity of its principal shareholders; management's experience and capacity to engage in international banking; and the record of the foreign bank and its management of complying with laws and regulations, and of fulfilling any commitments to, and any conditions imposed by, the Board in connection with any prior application;

(iv) *Sharing information with supervisors.* Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

(v) *Assurances to Board.* (A) Whether the foreign bank has provided the Board with adequate assurances that information will be made available to the Board on the operations or activities of the foreign bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other applicable federal banking statutes.

(B) These assurances shall include a statement from the foreign bank describing the laws that would restrict the foreign bank or any of its parents from providing information to the Board;

(vi) *Measures for prevention of money laundering.* Whether the foreign bank has adopted and implemented procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering;

(vii) *Compliance with U.S. law.* Whether the foreign bank and its U.S. affiliates are in compliance with applicable U.S. law, and whether the applicant has established adequate controls and procedures in each of its offices to ensure continuing compliance with U.S. law, including controls directed to detection of money laundering and other unsafe or unsound banking practices; and (viii) The needs of the community and the history of operation of the foreign bank and its relative size in its home country, provided that the size of the foreign bank is not the sole factor in determining whether an office of a foreign bank should be approved.

(3) *Additional standards for certain interstate applications.* (i) As specified in section 5(a)(3) of the IBA (12 U.S.C. 3103(a)(3)), the Board may not approve an application by a foreign bank to establish a branch, other than a limited branch, outside the home state of the foreign bank under section 5(a)(1) or (2) of the IBA (12 U.S.C. 3103(a)(1), (2)) unless the Board:

(A) Determines that the foreign bank's financial resources, including the capital level of the bank, are equivalent to those required for a domestic bank to

be approved for branching under section 5155 of the Revised Statutes (12 U.S.C. 36) and section 44 of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831u);

(B) Consults with the Department of the Treasury regarding capital equivalency;

(C) Applies the standards specified in section 7(d) of the IBA (12 U.S.C. 3105(d)) and this paragraph (c); and

(D) Applies the same requirements and conditions to which an application by a domestic bank for an interstate merger is subject under section 44(b)(1), (3), and (4) of the FDIA (12 U.S.C. 1831u(b)(1), (3), (4)); and

(ii) As specified in section 5(a)(7) of the IBA (12 U.S.C. 3103(a)(7)), the Board may not approve an application to establish a branch through a change in status of an agency or limited branch outside the foreign bank's home state unless:

(A) The establishment and operation of such branch is permitted by such state; and

(B) Such agency or branch has been in operation in such state for a period of time that meets the state's minimum age requirement permitted under section 44(a)(5) of the Federal Deposit Insurance Act (12 U.S.C. 183u(a)(5)).

(4) *Board conditions on approval.* The Board may impose any conditions on its approval as it deems necessary, including a condition which may permit future termination by the Board of any activities or, in the case of a federal branch or a federal agency, by the Comptroller, based on the inability of the foreign bank to provide information on its activities or those of its affiliates that the Board deems necessary to determine and enforce compliance with U.S. banking laws.

(d) *Representative offices*—(1) *Permissible activities.* A representative office may engage in:

(i) *Representational and administrative functions.* Representational and administrative functions in connection with the banking activities of the foreign bank, which may include soliciting new business for the foreign bank; conducting research; acting as liaison between the foreign bank's head office and customers in the United States; performing preliminary and servicing steps in connection with lending; [11] or performing back-office functions; but shall not include contracting for any deposit or deposit-like liability, lending money, or engaging in any other banking activity for the foreign bank;

(ii) *Credit approvals under certain circumstances.* Making credit decisions if the foreign bank also operates one or more branches or agencies in the United States, the loans approved at the representative office are made by a U.S. office of the bank, and the loan proceeds are not disbursed in the representative office; and

(iii) *Other functions.* Other functions for or on behalf of the foreign bank or its affiliates, such as operating as a regional administrative office of the foreign bank, but only to the extent that these other functions are not banking activities and are not prohibited by applicable federal or state law, or by ruling or order of the Board.

(2) *Standards for approval of representative offices.* As specified in section 10(a)(2) of the IBA (12 U.S.C. 3107(a)(2)), in acting on the application of a foreign bank to establish a representative office, the Board shall take into account, to the extent it deems appropriate, the standards for approval set out in paragraph (c) of this section. The standard regarding supervision by the foreign bank's home country supervisor (as set out in paragraph (c)(1)(i)(A) of this section) will be met, in the case of a representative office application, if the Board makes a finding that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities and the operating record of the applicant.

(3) *Special-purpose foreign government-owned banks.* A foreign government-owned organization engaged in banking activities in its home country that are not commercial in nature may apply to the Board for a determination that the organization is not a foreign bank for purposes of this section. A written request setting forth the basis for such a determination may be submitted to the Reserve Bank of the District in which the foreign organization's representative office is located in the United States, or to the Board, in the case of a proposed establishment of a representative office. The Board shall review and act upon each request on a case-by-case basis.

(4) *Additional requirements.* The Board may impose any additional requirements that it determines to be necessary to carry out the purposes of the IBA.

(e) *Preservation of existing authority.* Nothing in this subpart shall be construed to relieve any foreign bank or foreign banking organization from any otherwise applicable requirement of federal or state law, including any applicable licensing requirement.

(f) *Reports of crimes and suspected crimes.* Except for a federal branch or a federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation (FDIC), a branch, agency, or representative office of a foreign bank operating in the United States shall file a suspicious activity report in accordance with the provisions of § 208.62 of Regulation H (12 CFR 208.62).

(g) *Management of shell branches.* (1) A state-licensed branch or agency shall not manage, through an office of the foreign bank which is located outside the United States and is managed or controlled by such state-licensed branch or agency, any type of activity that a bank organized under the laws of the United States or any state is not permitted to manage at any branch or subsidiary of such bank which is located outside the United States.

(2) For purposes of this paragraph (g), an office of a foreign bank located outside the United States is "managed or controlled" by a state-licensed branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that non-U.S. office, resides at the state-licensed branch or agency.

(3) The types of activities that a state-licensed branch or agency may manage through an office located outside the United States that it manage or controls include the types of activities authorized to a U.S. bank by state or federal charters, regulations issued by chartering or regulatory authorities, and other U.S. banking laws, including the Federal Reserve Act, and the implementing regulations, but U.S. procedural or quantitative requirements that may be applicable to the conduct of such activities by U.S. banks shall not apply.

(h) *Government securities sales practices.* An uninsured state-licensed branch or agency of a foreign bank that is required to give notice to the Board under section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) and the Department of the Treasury rules under section 15C (17 CFR 400.1(d) and part 401) shall be subject to the provisions of 12 CFR 208.37 to the same extent as a state member bank that is required to give such notice.

(i) *Protection of customer information.* An uninsured state-licensed branch or agency of a foreign bank shall comply with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information prescribed pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805), set forth in appendix D–2 to part 208 of this chapter.

[11] *See* 12 CFR 250.141(h) for activities that constitute preliminary and servicing steps.

§ 211.25 Termination of offices of foreign banks.

(a) *Grounds for termination*—(1) *General.* Under sections 7(e) and 10(b) of the IBA (12 U.S.C. 3105(d), 3107(b)), the Board may order a foreign bank to terminate the activities of its representative office, state branch, state agency, or commercial lending company subsidiary if the Board finds that:

(i) The foreign bank is not subject to comprehensive consolidated supervision in accordance with § 211.24(c)(1), and the home country supervisor is not making demonstrable progress in establishing arrangements for the consolidated supervision of the foreign bank; or

(ii) Both of the following criteria are met:

(A) There is reasonable cause to believe that the foreign bank, or any of its affiliates, has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

(B) As a result of such violation or practice, the continued operation of the foreign bank's representative office, state branch, state agency, or commercial lending company subsidiary would not be consistent with the public interest, or with the purposes of the IBA, the BHC Act, or the FDIA.

(2) *Additional ground.* The Board also may enforce any condition imposed in connection with an order issued under § 211.24.

(b) *Factor.* In making its findings under this section, the Board may take into account the needs of the community, the history of operation of the foreign bank, and its relative size in its home country, provided that the size of the foreign bank shall not be the sole determining factor in a decision to terminate an office.

(c) *Consultation with relevant state supervisor.* Except in the case of termination pursuant to the expedited procedure in paragraph (d)(3) of this section, the Board shall request and consider the views of the relevant state supervisor before issuing an order terminating the activities of a state branch, state agency, representative office, or commercial lending company subsidiary under this section.

(d) *Termination procedures*—(1) *Notice and hearing.* Except as otherwise provided in paragraph (d)(3) of this section, an order issued under paragraph (a)(1) of this section shall be issued only after notice to the relevant state supervisor and the foreign bank and after an opportunity for a hearing.

(2) *Procedures for hearing.* Hearings under this section shall be conducted pursuant to the Board's Rules of Practice for Hearings (12 CFR part 263).

(3) *Expedited procedure.* The Board may act without providing an opportunity for a hearing, if it determines that expeditious action is necessary in order to protect the public interest, When the Board finds that it is necessary to act without providing an opportunity for a hearing, the Board, solely in its discretion, may:

(i) Provide the foreign bank that is the subject of the termination order with notice of the intended termination order;

(ii) Grant the foreign bank an opportunity to present a written submission opposing issuance of the order; or

(iii) Take any other action designed to provide the foreign bank with notice and an opportunity to present its views concerning the order.

(e) *Termination of federal branch or federal agency.* The Board may transmit to the Comptroller a recommendation that the license of a federal branch or federal agency be terminated if the Board has reasonable cause to believe that the foreign bank or any affiliate of the foreign bank has engaged in conduct for which the activities of a state branch or state agency may be terminated pursuant to this section.

(f) *Voluntary termination.* A foreign bank shall notify the Board at least 30 days prior to terminating the activities of any office. Notice pursuant to this paragraph (f) is in addition to, and does not satisfy, any other federal or state requirements relating to the termination of an office or the requirement for prior notice of the closing of a branch, pursuant to section 39 of the FDIA (12 U.S.C. 1831p).

§ 211.26 Examination of offices and affiliates of foreign banks.

(a) *Conduct of examinations*—(1) *Examination of branches, agencies, commercial lending companies, and affiliates.* The Board may examine:

(i) Any branch or agency of a foreign bank;

(ii) Any commercial lending company or bank controlled by one or more foreign banks, or one or more foreign companies that control a foreign bank; and

(iii) Any other office or affiliate of a foreign bank conducting business in any state.

(2) *Examination of representative offices.* The Board may examine any representative office in the manner and with the frequency it deems appropriate.

(b) *Coordination of examinations.* To the extent possible, the Board shall coordinate its examinations of the U.S. offices and U.S. affiliates of a foreign bank with the licensing authority and, in the case of an insured branch, the Federal Deposit Insurance Corporation (FDIC), including through simultaneous examinations of the U.S. offices and U.S. affiliates of a foreign bank.

(c) *Frequency of on-site examination*—(1) *General.* Each branch or agency of a foreign bank shall be examined on-site at least once during each 12-month period (beginning on the date the most recent examination of the office ended) by—

(i) The Board;

(ii) The FDIC, if the branch of the foreign bank accepts or maintains insured deposits;

(iii) The Comptroller, if the branch or agency of the foreign bank is licensed by the Comptroller; or

(iv) The state supervisor, if the office of the foreign bank is licensed or chartered by the state.

(2) *18-month cycle for certain small institutions*—(i) *Mandatory standards.* The Board may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as required in paragraph (c)(1) of this section, if the branch or agency—

(A) Has total assets of $250 million or less;

(B) Has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination;

(C) Satisfies the requirement of either the following paragraph (c)(2)(i)(C)(*1*) or (*2*):

(*1*) The foreign bank's most recently reported capital adequacy position consists of, or is equivalent to, tier 1 and total risk-based capital ratios of at least 6 percent and 10 percent, respectively, on a consolidated basis; or

(*2*) The branch or agency has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third-party liabilities (determined consistent with applicable federal and state law) and sufficient liquidity is currently available to meet its obligations to third parties;

(D) Is not subject to a formal enforcement action or order by the Board, FDIC, or OCC; and

(E) Has not experienced a change in control during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(ii) *Discretionary standards.* In determining whether a branch or agency of a foreign bank that meets the standards of paragraph (c)(2)(i) of this section should not be eligible for an 18-month examination cycle pursuant to this paragraph (c)(2), the Board may consider additional factors, including whether—

(A) Any of the individual components of the ROCA supervisory rating of a branch or agency of a foreign bank is rated "3" or worse;

(B) The results of any off-site surveillance indicate a deterioration in the condition of the office;

(C) The size, relative importance, and role of a particular office when reviewed in the context of the foreign bank's entire U.S. operations otherwise necessitate an annual examination; and

(D) The condition of the foreign bank gives rise to such a need.

(3) *Authority to conduct more frequent examinations.* Nothing in paragraphs (c)(1) and (2) of this section limits the authority of the Board to examine any U.S. branch or agency of a foreign bank as frequently as it deems necessary.

§ 211.27 Disclosure of supervisory information to foreign supervisors.

(a) *Disclosure by Board.* The Board may disclose information obtained in the course of exercising its supervisory or examination authority to a foreign bank regulatory or supervisory authority, if the Board determines that disclosure is appropriate for bank supervisory or regulatory purposes and will not prejudice the interests of the United States.

(b) *Confidentiality.* Before making any disclosure of information pursuant to paragraph (a) of this section, the Board shall obtain, to the extent necessary, the agreement of the foreign bank regulatory or supervisory authority to maintain the confidentiality of such information to the extent possible under applicable law.

§ 211.28 Provisions applicable to branches and agencies: limitation on loans to one borrower.

(a) *Limitation on loans to one borrower.* Except as provided in paragraph (b) of this section, the total loans and extensions of credit by all the state branches and state agencies of a foreign bank outstanding to a single borrower at one time shall be aggregated with the total loans and extensions of credit by all federal branches and federal agencies of the same foreign bank outstanding to such borrower at the time; and shall be subject to the limitations and other provisions of section 5200 of the Revised Statutes (12 U.S.C. 84), and the regulations promulgated thereunder, in the same manner that extensions of credit by a federal branch or federal agency are subject to section 4(b) of the IBA (12 U.S.C. 3102(b)) as if such state branches and state agencies were federal branches and federal agencies.

(b) *Preexisting loans and extensions of credit.* Any loans or extensions of credit to a single borrower that were originated prior to December 19, 1991, by a state branch or state agency of the same foreign bank and that, when aggregated with loans and extensions of credit by all other branches and agencies of the foreign bank, exceed the limits set forth in paragraph (a) of this section, may be brought into compliance with such limitations through routine repayment, provided that any new loans or extensions of credit (including renewals of existing unfunded credit lines, or extensions of the maturities of existing loans) to the same borrower shall comply with the limits set forth in paragraph (a) of this section.

§ 211.29 Applications by state branches and state agencies to conduct activities not permissible for federal branches.

(a) *Scope.* A state branch or state agency shall file with the Board a prior written application for permission to engage in or continue to engage in any type of activity that:

(1) Is not permissible for a federal branch, pursuant to statute, regulation, official bulletin or circular, or order or interpretation issued in writing by the Comptroller; or

(2) Is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction.

(b) *Exceptions.* No application shall be required by a state branch or state agency to conduct any activity that is otherwise permissible under applicable state and federal law or regulation and that:

(1) Has been determined by the FDIC, pursuant to 12 CFR 362.4(c)(3)(i) through (c)(3)(ii)(A), not to present a significant risk to the affected deposit insurance fund;

(2) Is permissible for a federal branch, but the Comptroller imposes a quantitative limitation on the conduct of such activity by the federal branch;

(3) Is conducted as agent rather than as principal, provided that the activity is one that could be conducted by a state-chartered bank headquartered in the same state in which the branch or agency is licensed; or

(4) Any other activity that the Board has determined may be conducted by any state branch or state agency of a foreign bank without further application to the Board.

(c) *Contents of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall contain the following information:

(1) A brief description of the activity, including the manner in which it will be conducted, and an estimate of the expected dollar volume associated with the activity;

(2) An analysis of the impact of the proposed activity on the condition of the U.S. operations of the foreign bank in general, and of the branch or agency in particular, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(3) A resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by senior management, authorizing the conduct of such activity and the filing of this application;

(4) If the activity is to be conducted by a state branch insured by the FDIC, statements by the applicant:

(i) Of whether or not it is in compliance with 12 CFR 346.19 (Pledge of Assets) and 12 CFR 346.20 (Asset Maintenance);

(ii) That it has complied with all requirements of the FDIC concerning an application to conduct the activity and the status of the application, including a copy of the FDIC's disposition of such application, if available; and

(iii) Explaining why the activity will pose no significant risk to the deposit insurance fund; and

(5) Any other information that the Reserve Bank deems appropriate.

(d) *Factors considered in determination.* (1) The Board shall consider the following factors in determining whether a proposed activity is consistent with sound banking practice:

(i) The types of risks, if any, the activity poses to the U.S. operations of the foreign banking organization in general, and the branch or agency in particular;

(ii) If the activity poses any such risks, the magnitude of each risk; and

(iii) If a risk is not de minimis, the actual or proposed procedures to control and minimize the risk.

(2) Each of the factors set forth in paragraph (d)(1) of this section shall be evaluated in light of the financial condition of the foreign bank in general and the branch or agency in particular and the volume of the activity.

(e) *Application procedures.* Applications pursuant to this section shall be filed with the appropriate Federal Reserve Bank. An application shall not be deemed complete until it contains all the information requested by the Reserve Bank and has been accepted. Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific conditions or limitations.

(f) *Divestiture or cessation.* (1) If an application for permission to continue to conduct an activity is not approved by the Board or, if applicable, the FDIC, the applicant shall submit a detailed written plan of divestiture or cessation of the activity to the appropriate Federal Reserve Bank within 60 days of the disapproval.

(i) The divestiture or cessation plan shall describe in detail the manner in which the applicant will divest itself of or cease the activity, and shall include a projected timetable describing how long the divestiture or cessation is expected to take.

(ii) Divestiture or cessation shall be complete within one year from the date of the disapproval, or within such shorter period of time as the Board shall direct.

(2) If a foreign bank operating a state branch or state agency chooses not to apply to the Board for permission to continue to conduct an activity that is not permissible for a federal branch, or which is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction, the foreign bank shall submit a written plan of divestiture or cessation, in conformance with paragraph (f)(1) of this section within 60 days of the effective date of this part or of such change or decision.

§ 211.30 Criteria for evaluating U.S. operations of foreign banks not subject to consolidated supervision.

(a) *Development and publication of criteria.* Pursuant to the Foreign Bank Supervision Enhancement Act, Pub. L. 102–242, 105 Stat. 2286 (1991), the Board shall develop and publish criteria to be used in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive consolidated supervision.

(b) *Criteria considered by Board.* Following a determination by the Board that, having taken into account the standards set forth in § 211.24(c)(1), a foreign bank is not subject to CCS, the Board shall consider the following criteria in determining whether the foreign bank's U.S. operations should be permitted to continue and, if so, whether any supervisory constraints should be placed upon the bank in connection with those operations:

(1) The proportion of the foreign bank's total assets and total liabilities that are located or booked in its home country, as well as the distribution and location of its assets and liabilities that are located or booked elsewhere;

(2) The extent to which the operations and assets of the foreign bank and any affiliates are subject to supervision by its home country supervisor;

(3) Whether the home country supervisor of such foreign bank is actively working to establish arrangements for comprehensive consolidated supervision of the bank, and whether demonstrable progress is being made;

(4) Whether the foreign bank has effective and reliable systems of internal controls and management information and reporting, which enable its management properly to oversee its worldwide operations;

(5) Whether the foreign bank's home country supervisor has any objection to the bank continuing to operate in the United States;

(6) Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

(7) The relationship of the U.S. operations to the other operations of the foreign bank, including whether the foreign bank maintains funds in its U.S. offices that are in excess of amounts due to its U.S. offices from the foreign bank's non-U.S. offices;

(8) The soundness of the foreign bank's overall financial condition;

(9) The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors, and the integrity of its principal shareholders;

(10) The scope and frequency of external audits of the foreign bank;

(11) The operating record of the foreign bank generally and its role in the banking system in its home country;

(12) The foreign bank's record of compliance with relevant laws, as well as the adequacy of its anti-money-laundering controls and procedures, in respect of its worldwide operations;

(13) The operating record of the U.S. offices of the foreign bank;

(14) The views and recommendations of the Comptroller or the relevant state supervisors in those states in which the foreign bank has operations, as appropriate;

(15) Whether the foreign bank, if requested, has provided the Board with adequate assurances that such information will be made available on the operations or activities of the foreign bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other U.S. banking statutes; and

(16) Any other information relevant to the safety and soundness of the U.S. operations of the foreign bank.

(c) *Restrictions on U.S. operations—*

(1) *Terms of agreement.* Any foreign bank that the Board determines is not subject to CCS may be required to enter into an agreement to conduct its U.S. operations subject to such restrictions as the Board, having considered the criteria set forth in paragraph (b) of this section, determines to be appropriate in order to ensure the safety and soundness of its U.S. operations.

(2) *Failure to enter into or comply with agreement.* A foreign bank that is required by the Board to enter into an agreement pursuant to paragraph (c)(1) of this section and either fails to do so, or fails to comply with the terms of such agreement, may be subject to:

(i) Enforcement action, in order to ensure safe and sound banking operations, under 12 U.S.C. 1818; or

(ii) Termination or a recommendation for termination of its U.S. operations, under § 211.25(a) and (e) and section (7)(e) of the IBA (12 U.S.C. 3105(e)).

Subpart C—Export Trading Companies

§ 211.31 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) under the authority of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1841 *et seq.*), the Bank Export Services Act (title II, Pub. L. 97–290, 96 Stat. 1235 (1982)) (BESA), and the Export Trading Company Act Amendments of 1988 (title III, Pub. L. 100–418, 102 Stat. 1384 (1988)) (ETC Act Amendments).

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act, the BESA, and the ETC Act Amendments, the latter two statutes

being designed to increase U.S. exports by encouraging investments and participation in export trading companies by bank holding companies and the specified investors. The provisions of this subpart apply to eligible investors as defined in this subpart.

§ 211.32 Definitions.

The definitions in §§ 211.1 and 211.2 of subpart A apply to this subpart, subject to the following:

(a) *Appropriate Federal Reserve Bank* has the same meaning as in § 211.21(c).

(b) *Bank* has the same meaning as in section 2(c) of the BHC Act (12 U.S.C. 1841(c)).

(c) *Company* has the same meaning as in section 2(b) of the BHC Act (12 U.S.C. 1841(b)).

(d) *Eligible investors* means:

(1) Bank holding companies, as defined in section 2(a) of the BHC Act (12 U.S.C. 1841(a));

(2) Edge and agreement corporations that are subsidiaries of bank holding companies but are not subsidiaries of banks;

(3) Banker's banks, as described in section 4(c)(14)(F)(iii) of the BHC Act (12 U.S.C. 1843(c)(14)(F)(iii)); and

(4) Foreign banking organizations, as defined in § 211.21(o).

(e) *Export trading company* means a company that is exclusively engaged in activities related to international trade and, by engaging in one or more export trade services, derives:

(1) At least one-third of its revenues in each consecutive four-year period from the export of, or from facilitating the export of, goods and services produced in the United States by persons other than the export trading company or its subsidiaries; and

(2) More revenues in each four-year period from export activities as described in paragraph (e)(1) of this section than it derives from the import, or facilitating the import, into the United States of goods or services produced outside the United States. The four-year period within which to calculate revenues derived from its activities under this section shall be deemed to have commenced with the first fiscal year after the respective export trading company has been in operation for two years.

(f) *Revenues* shall include net sales revenues from exporting, importing, or third-party trade in goods by the export trading company for its own account and gross revenues derived from all other activities of the export trading company.

(g) *Subsidiary* has the same meaning as in section 2(d) of the BHC Act (12 U.S.C. 1841(d)).

(h) *Well capitalized* has the same meaning as in § 225.2(r) of Regulation Y (12 CFR 225.2(r)).

(i) *Well managed* has the same meaning as in § 225.2(s) of Regulation Y (12 CFR 225.2(s)).

§ 211.33 Investments and extensions of credit.

(a) *Amount of investments.* In accordance with the procedures of § 211.34, an eligible investor may invest no more than 5 percent of its consolidated capital and surplus in one or more export trading companies, except that an Edge or agreement corporation not engaged in banking may invest as much as 25 percent of its consolidated capital and surplus but no more than 5 percent of the consolidated capital and surplus of its parent bank holding company.

(b) *Extensions of credit*—(1) *Amount.* An eligible investor in an export trading company or companies may extend credit directly or indirectly to the export trading company or companies in a total amount that at no time exceeds 10 percent of the investor's consolidated capital and surplus.

(2) *Terms.* (i) An eligible investor in an export trading company may not extend credit directly or indirectly to the export trading company or any of its customers or to any other investor holding 10 percent or more of the shares of the export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extensions of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(ii) For the purposes of this section, an investor in an export trading company includes any affiliate of the investor.

(3) *Collateral requirements.* Covered transactions between a bank and an affiliated export trading company in which a bank holding company has invested pursuant to this subpart are subject to the collateral requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c), except where a bank issues a letter of credit or advances funds to an affiliated export trading company solely to finance the purchase of goods for which:

(i) The export trading company has a bona fide contract for the subsequent sale of the goods; and

(ii) The bank has a security interest in the goods or in the proceeds from their sale at least equal in value to the letter of credit or the advance.

§ 211.34 Procedures for filing and processing notices.

(a) *General policy.* Direct and indirect investments by eligible investors in export trading companies shall be made in accordance with the general consent or prior notice procedures contained in this section. The Board may at any time, upon notice, modify or suspend the general-consent procedures with respect to any eligible investor.

(b) *General consent*—(1) *Eligibility for general consent.* Subject to the other limitations of this subpart, the Board grants its general consent for any investment an export trading company:

(i) If the eligible investor is well capitalized and well managed;

(ii) In an amount equal to cash dividends received from that export trading company during the preceding 12 calendar months; or

(iii) That is acquired from an affiliate at net asset value or through a contribution of shares.

(2) *Post-investment notice.* By the end of the month following the month in which the investment is made, the investor shall provide the Board with the following information:

(i) The amount of the investment and the source of the funds with which the investment was made; and

(ii) In the case of an initial investment, a description of the activities in which the export trading company proposes to engage and projections for the export trading company for the first year following the investment.

(c) *Filing notice*—(1) *Prior notice.* An eligible investor shall give the Board 60 days' prior written notice of any investment in an export trading company that does not qualify under the general consent procedure.

(2) *Notice of change of activities.* (i) An eligible investor shall give the Board 60 days' prior written notice of changes in the activities of an export trading company that is a subsidiary of the investor if the export trading company expands its activities beyond those described in the initial notice to include:

(A) Taking title to goods where the export trading company does not have a firm order for the sale of those goods;

(B) Product research and design;

(C) Product modification; or

(D) Activities not specifically covered by the list of activities contained in section 4(c)(14)(F)(ii) of the BHC Act (12 U.S.C. 1843(c)(14)(F)(ii)).

(ii) Such an expansion of activities shall be regarded as a proposed investment under this subpart.

(d) *Time period for Board action.* (1) A proposed investment that has not been disapproved by the Board may be made 60 days after the appropriate Federal Reserve Bank accepts the notice for processing. A proposed investment may be made before the expiration of the 60-day period if the Board notifies the investor in writing of its intention not to disapprove the investment.

(2) The Board may extend the 60-day period for an additional 30 days if the Board determines that the investor has not furnished all necessary information or that any material information furnished is substantially inaccurate. The Board may disapprove an investment if the necessary information is provided within a time insufficient to allow the Board reasonably to consider the information received.

(3) Within three days of a decision to disapprove an investment, the Board shall notify the investor in writing and state the reasons for the disapproval.

(e) *Time period for investment.* An investment in an export trading company that has not been disapproved shall be made within one year from the date of the notice not to disapprove, unless the time period is extended by the Board or by the appropriate Federal Reserve Bank.

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: 12 U.S.C. 248(i) and (k).

2. Section 265.5 is amended by adding a new paragraph (d)(3) to read as follows:

§ 265.5 Functions delegated to Secretary of the Board.

* * * * *

(d) * * *

(3) *Investments in Edge and Agreement Corporations.* To approve an application by a member bank to invest more than 10 percent of capital and surplus in Edge and agreement corporation subsidiaries.

* * * * *

3. Section 265.6 is amended by revising paragraph (f) to read as follows:

§ 265.6 Functions delegated to General Counsel.

* * * * *

(f) *International banking*—(1) *After-the-fact applications.* With the concurrence of the Board's Director of the Division of Banking Supervision and Regulation, to grant a request by a foreign bank to establish a branch, agency, commercial lending company, or representative office through certain acquisitions, mergers, consolidations, or similar transactions, in conjunction with which:

(i) The foreign bank would be required to file an after-the-fact application for the Board's approval under § 211.24(a)(6) of Regulation K (12 CFR 211.24(a)(6)); or

(ii) The General Counsel may waive the requirement for an after-the-fact application if:

(A) The surviving foreign bank commits to wind down the U.S. operations of the acquired foreign bank; and

(B) The merger or consolidation raises no significant policy or supervisory issues.

(2) To modify the requirement that a foreign bank that has submitted an application or notice to establish a branch, agency, commercial lending company, or representative office pursuant to § 211.24(a)(6) of Regulation K (12 CFR 211.24(a)(6)) shall publish notice of the application or notice in a newspaper of general circulation in the community in which the applicant or notificant proposes to engage in business, as provided in § 211.24(b)(2) of Regulation K (12 CFR 211.24(b)(2)).

(3) With the concurrence of the Board's Director of the Division of Banking Supervision and Regulation, to grant a request for an exemption under section 4(c)(9) of the Bank Holding Company Act (12 U.S.C. 1843(c)(9)), provided that the request raises no significant policy or supervisory issues that the Board has not already considered.

(4) To return applications and notices filed under the International Banking Act for informational deficits.

(5) To determine that an entity qualifies as a "special-purpose foreign government-owned bank" for purposes of § 211.24(d)(3) (12 CFR 211.24(d)(3)).

* * * * *

4. Section 265.7 is amended by:

a. Revising paragraph (d)(4); and

b. Adding new paragraphs (d)(9), (d)(10), (d)(11), (d)(12), (d)(13), and (d)(14).

The revision and additions read as follows:

§ 265.7 Functions delegated to Director of Division of Banking Supervision and Regulation.

* * * * *

(d) * * *

(4) *Authority under general-consent and prior-notice procedures.* (i) With regard to a prior notice to establish a branch in a foreign country under § 211.3 of Regulation K (12 CFR 211.3):

(A) To waive the notice period;

(B) To suspend the notice period;

(C) To determine not to object to the notice; or

(D) To require the notificant to file an application for the Board's specific consent.

(ii) With regard to a prior notice to make an investment under § 211.9(f) of Regulation K (12 CFR 211.9(f)):

(A) To waive the notice period;

(B) To suspend the notice period; or

(C) To require the notificant to file an application for the Board's specific consent.

(iii) With regard to a prior notice of a foreign bank to establish certain U.S. offices under § 211.24(a)(2)(i) of Regulation K (12 CFR 211.24(a)(2)(i)):

(A) To waive the notice period;

(B) To suspend the notice period; or

(C) To require the notificant to file an application for the Board's specific consent.

(iv) To suspend the ability:

(A) Of a foreign banking organization to establish an office under the prior-notice procedures in § 211.24(a)(2)(i) of Regulation K (12 CFR 211.24(a)(2)(i)) or the general-consent procedures in § 211.24(a)(3) of Regulation K (12 CFR 211.24(a)(3));

(B) Of a U.S. banking organization to establish a foreign branch under the prior-notice or general-consent procedures in § 211.3(b) of Regulation K (12 CFR 211.3(b));

(C) Of an investor to make investments under the general-consent or prior-notice procedures in § 211.9 of Regulation K (12 CFR 211.9); and

(D) Of an eligible investor to make an investment in an export trading company under the general-consent procedures in § 211.34(b) of Regulation K (12 CFR 211.34(b)).

* * * * *

(9) *Allowing use of general-consent procedures.* To allow an investor that is not well-capitalized and well-managed to make investments under the general-consent procedures in § 211.9 or 211.34(b) of Regulation K (12 CFR 211.9 or 211.34(b)), provided that:

(i) The investor has implemented measures to become well-capitalized and well-managed;

(ii) Granting such authority raises no significant policy or supervisory concerns; and

(iii) Authority granted by the Director under this paragraph (d)(9) expires after one year, but may be renewed.

(10) *Exceeding general-consent investment limits.* To allow an investor to exceed the general-consent investment limits under § 211.9 of Regulation K (12 CFR 211.9), provided that:

(i) The investor demonstrates adequate financial and managerial strength;

(ii) The investor's investment strategy is not unsafe or unsound;

(iii) Granting such authority raises no significant policy or supervisory concerns; and

(iv) Authority granted by the Director under this paragraph (d)(10) expires after one year, but may be renewed.

(11) *Approval of temporary U.S. offices.* To allow a foreign bank to operate a temporary office in the United States, pursuant to § 211.24 of Regulation K (12 CFR 211.24), provided that:

(i) There is no direct public access to such office, with respect to any branch or agency function; and

(ii) The proposal raises no significant policy or supervisory issues.

(12) With the concurrence of the General Counsel, to approve applications, notices, exemption requests, waivers and suspensions, and other related matters under Regulation K (12 CFR part 211), where such matters do not raise any significant policy or supervisory issues.

(13) With the concurrence of the General Counsel, to approve:

(i) The establishment by a bank holding company or member bank of an agreement corporation under section 25 of the Federal Reserve Act; and

(ii) Any initial investment associated with the establishment of such agreement corporation.

(14) With the concurrence of the General Counsel, to determine that an election by a foreign bank to become or to be treated as a financial holding company is effective, provided that:

(i) The foreign bank meets the criteria for becoming or being treated as a financial holding company; and

(ii) The election raised no significant policy or supervisory issues.

* * * * *

5. Section 265.11 is amended by:

a. Revising paragraphs (d)(8) and (d)(11); and

b. Adding a new paragraph (d)(12).

The revisions and addition read as follows:

§ 265.11 Functions delegated to Federal Reserve Banks.

* * * * *

(d) * * *

(8) *Authority under prior-notice procedures.* (i) With regard to a prior notice to make an investment under § 211.9(f) of Regulation K (12 CFR 211.9(f)):

(A) To suspend the notice period; or

(B) To require the notificant to file an application for the Board's specific consent.

(ii) With regard to a prior notice of a foreign bank to establish certain U.S. offices under § 211.24(a)(2)(i) of Regulation K (12 CFR 211.24(a)(2)(i)):

(A) To suspend the notice period; or

(B) To require that the foreign bank file an application for the Board's specific consent.

* * * * *

(11) *Investments in Edge and agreement Corporation subsidiaries.* To approve an application by a member bank to invest more than 10 percent of capital and surplus in Edge and agreement corporation subsidiaries.

(12) *Amendments to Edge corporation charters.* To approve amendments to Edge corporation charters.

By order of the Board of Governors of the Federal Reserve System, October 16, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26513 Filed 10–25–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R–1114]

International Banking Operations; International Lending Supervision

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is seeking public comment on a proposal to amend its regulations relating to international lending by simplifying the discussion concerning the accounting for fees on international loans to make the regulation consistent with generally accepted accounting principles (GAAP).

DATES: Comments should be submitted on or before December 1, 2001.

ADDRESSES: Comments, which should refer to Docket No. R–1114, may be mailed to the Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551, to the attention of Jennifer J. Johnson, Secretary. Comments addressed to the attention of Ms. Johnson may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Michael G. Martinson, Associate Director (202/452–3640), Division of Banking Supervision and Regulation; or Ann Misback, Assistant General Counsel (202/452–3788), Legal Division, Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf ("TDD") only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The International Lending Supervision Act of 1983 (ILSA), 12 U.S.C. 3901, *et seq.*, requires each federal banking agency to evaluate the foreign country exposure and transfer risk of banking institutions within its jurisdiction for use in examination and supervision of such institutions. To implement ILSA, the federal banking agencies, through the Interagency Country Exposure Review Committee (ICERC), assess and categorize countries on the basis of conditions that may lead to increased transfer risk. Transfer risk may arise due to the possibility that an asset of a banking institution cannot be serviced in the currency of payment because of a lack of, or restraints on, the availability of foreign exchange in the country of the obligor. Section 905(a) of ILSA directs each federal banking agency to require banking institutions within its jurisdiction to establish and maintain a special reserve whenever the agency determines that the quality of an institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness, or no definite prospects exist for the orderly restoration of debt service. 12 U.S.C. 3904(a). In keeping with the requirements of ILSA, on February 13, 1984, the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (collectively, the federal banking agencies) issued a joint notice of final rulemaking requiring banking institutions to establish special reserves, the allocated transfer risk reserve (ATRR), against the risks presented in certain international assets. (49 FR 5594).

ILSA also requires the federal banking agencies to promulgate regulations for accounting for fees charged by banking institutions in connection with international loans. Section 906(a) of ILSA (12 U.S.C. 3905(a)) deals specifically with the restructuring of international loans to avoid excessive debt service burden on debtor countries. This section requires banking institutions, in connection with the restructuring of an international loan, to amortize any fee exceeding the administrative cost of the restructuring over the effective life of the loan. Section 906(b) of ILSA (12 U.S.C. 3905(b)) deals with all international loans and requires the federal banking agencies to promulgate regulations for accounting for agency, commitment, management and other fees in connection with such loans to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan.

The Board's current regulation provides a separate accounting treatment for each type of fee charged by banking institutions in connection with their international lending. When ILSA was enacted in 1983 and the current regulation on accounting for international loan fees was promulgated on March 29, 1984, Congress and the federal banking agencies considered that the application of the broad fee accounting principles for banks contained in GAAP were insufficient to accomplish adequate uniformity in accounting principles in this area. Since that time, the Financial Accounting Standards Board (FASB) has revised the GAAP rules for fee accounting for international loans in a manner that accommodates the specific requirements of section 906 of ILSA. In order to reduce the regulatory burden on banking institutions, and simplify its regulations, the Board proposes to eliminate from the revised version of Subpart D the requirements as to the particular accounting method to be followed in accounting for fees on international loans and to require instead that institutions follow GAAP in accounting for such fees. The Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency have revised their regulations to eliminate the requirements as to the particular accounting method to be followed in accounting for fees on international loans and to require instead that banking institutions follow GAAP in accounting for such fees. In the event that the FASB changes the GAAP rules on fee accounting for international loans, the Board will reexamine its regulation in light of ILSA to assess the need for a revision to the regulation.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an initial regulatory flexibility analysis with any notice of proposed rulemaking. No analysis is required, however, if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small business entities. 5 U.S.C. 605(b). A description of the reasons why the action by the agency is being considered and a statement of the objectives of, and the legal basis for, the proposed rule are contained in the supplementary information above. As described more fully above, the proposed rule revises accounting mechanisms for fees associated with international loans and harmonizes their treatment with accounting principles set forth in other regulations. Both the underlying regulation and the rule proposed herein primarily affect financial institutions engaged in significant international loan transactions, and the overall impact of the proposed rule will be to reduce regulatory burden. Accordingly, pursuant to 5 U.S.C. 605(b), the Board hereby certifies that the rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget.

The collections of information associated with this proposed rulemaking are found in 12 CFR 211.43 and 211.44. This information is required to evidence compliance with the requirements of Regulation K and the International Lending Supervision Act. The respondents/recordkeepers are for-profit financial institutions, including small businesses.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The information on the allocated transfer risk reserve requested in 211.43 is collected in the Consolidated Reports of Condition and Income (FFIEC 031 and 041; OMB No. 7100–0036), the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128), and the Report of Condition for Edge and Agreement Corporations (FR 2886B; OMB No. 7100–0086). The proposed rule would not change the burden associated with these reports. The information requested in 211.44 on international assets is collected in the Country Exposure Reports (FFIEC 009/009a; OMB No. 7100–0035) and the burden for this report also remains unchanged.

Comments are invited on: a. whether the collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the information collections, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to Mary M. West, Chief, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0036, 7100–0128, 7100–0086, or 7100–0035), Washington, DC 20503.

Solicitation of Comments Regarding Use of "Plain Language"

Section 722 of the GLB Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments about how to make the proposed rule easier to understand, including answers to the following questions:

(1) Has the Board organized the material in an effective manner? If not, how could the material be better organized?

(2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated?

(3) Does the rule contain technical language or jargon that is unclear? If so, which language requires clarification?

(4) Would a different format (with respect to grouping and order of sections and use of headings) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would increasing the number of sections (and making each section shorter) clarify the rule? If so, which portions of the rule should be changed in this respect?

(6) What additional changes would make the rule easier to understand?

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR part 211 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, 3109 *et seq.*

2. Sections 211.41 through 211.45 are revised to read as follows:

§ 211.41 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) under the authority of the International Lending Supervision Act of 1983 (Pub. L. 98–181, title IX, 97 Stat. 1153) (International Lending Supervision Act); the Federal Reserve Act (12 U.S.C. 221 *et seq.*) (FRA), and the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) (BHC Act).

(b) *Purpose and scope.* This subpart is issued in furtherance of the purposes of the International Lending Supervision Act. It applies to State banks that are members of the Federal Reserve System (State member banks); corporations organized under section 25(A) of the FRA (12 U.S.C. 611 through 631) (Edge Corporations); corporations operating subject to an agreement with the Board under section 25 of the FRA (12 U.S.C. 601 through 604a) (Agreement Corporations); and bank holding companies (as defined in section 2 of the BHC Act (12 U.S.C. 1841(a)) but not including a bank holding company that is a foreign banking organization as defined in § 211.21(n).

§ 211.42 Definitions.

For the purposes of this subpart:

(a) *Administrative cost* means those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(b) *Banking institution* means a State member bank; bank holding company; Edge Corporation and Agreement Corporation engaged in banking. Banking institution does not include a foreign banking organization as defined in § 211.21(n).

(c) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(d) *International assets* means those assets required to be included in banking institutions' *Country Exposure Report* forms (FFIEC No. 009).

(e) *International loan* means a loan as defined in the instructions to the *Report of Condition and Income* for the respective banking institution (FFIEC Nos. 031 and 041) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(f) *Restructured international loan* means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) The terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) A new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(g) *Transfer risk* means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

§ 211.43 Allocated transfer risk reserve.

(a) *Establishment of allocated transfer risk reserve.* A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the Board in accordance with this section.

(b) *Procedures and standards*—(1) *Joint agency determination.* At least annually, the Federal banking agencies shall determine jointly, based on the standards set forth in paragraph (b)(2) of this section, the following:

(i) Which international assets subject to transfer risk warrant establishment of an ATRR;

(ii) The amount of the ATRR for the specified assets; and

(iii) Whether an ATRR established for specified assets may be reduced.

(2) *Standards for requiring ATRR*—(i) *Evaluotion of assets.* The Federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(A) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(*1*) Such obligors have failed to make full interest payments on external indebtedness; or

(*2*) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(*3*) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(B) Whether no definite prospects exist for the orderly restoration of debt service.

(ii) *Determination of amount of ATRR.* (A) In determining the amount of the ATRR, the Federal banking agencies shall consider:

(*1*) The length of time the quality of the asset has been impaired;

(*2*) Recent actions taken to restore debt service capability;

(*3*) Prospects for restored asset quality; and

(*4*) Such other factors as the Federal banking agencies may consider relevant to the quality of the asset.

(B) The initial year's provision for the ATRR shall be ten percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be fifteen percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies.

(3) *Board notification.* Based on the joint agency determinations under paragraph (b)(1) of this section, the Board shall notify each banking institution holding assets subject to an ATRR:

(i) Of the amount of the ATRR to be established by the institution for specified international assets; and

(ii) That an ATRR established for specified assets may be reduced.

(c) *Accounting treatment of ATRR*—(1) *Charge to current income.* A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(2) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Loan and Lease Losses, and shall deduct the ATRR from "gross loans and leases" to arrive at "net loans and leases." The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(3) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. For banks, consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of *Consolidated Reports of Condition and Income* (FFIEC Nos. 031 and 041). For bank holding companies, the consolidation shall be in accordance with the principles set forth in the "Instructions to Consolidated Financial Statements for Bank Holding Companies" (Form F.R. Y–9). Edge and Agreement corporations engaged in banking shall report in accordance with instructions for preparation of the Report of Condition for Edge and Agreement Corporations (Form F.R. 2886b).

(4) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for Loan and Lease Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset; provided, that only those international assets that may be charged to the Allowance for Loan and Lease Losses pursuant to generally accepted accounting principles may be written down by a charge to the Allowance for Loan and Lease Losses. However, the Allowance for Loan and Lease Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan portfolio.

(5) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the Board or, at any time, by writing down such amount of the international asset for which the ATRR was established.

§ 211.44 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98–181, 97 Stat. 1153) (ILSA), a banking institution shall submit to the Board, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA, a banking institution shall submit to the Board information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the Board on request.

(b) *Procedures.* The format, content and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the Federal banking agencies. The requirements to be prescribed by the Federal banking agencies may include changes to existing reporting forms (such as the Country Exposure Report, form FFIEC No. 009) or such other requirements as the Federal banking agencies deem appropriate. The Federal banking agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the Federal banking

agencies' judgment, have *de minimis* holdings of international assets.

(c) *Reservation of authority.* Nothing contained in this rule shall preclude the Board from requiring from a banking institution such additional or more frequent information on the institution's holding of international assets as the Board may consider necessary.

§ 211.45 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative cost of the restructuring unless it amortizes the amount of the fee exceeding the administrative cost over the effective life of the loan.

(b) *Accounting treatment.* Subject to paragraph (a) of this section, banking institutions shall account for fees on international loans in accordance with generally accepted accounting principles.

By order of the Board of Governors of the Federal Reserve System, October 18, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–26731 Filed 10–25–01; 8:45 am]

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Federal Register

Friday,
October 26, 2001

Part III

Department of the Treasury

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Additional Designations of Terrorism–Related Blocked Persons; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Additional Designations of Terrorism-Related Blocked Persons

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is amending appendix A to 31 CFR chapter V by adding the names of 45 individuals and 21 entities who are listed on the annex to Executive Order 13224 of September 23, 2001 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or have been designated pursuant to Executive Order 13224 as blocked persons and by amending the notes to the appendices to 31 CFR chapter V to reflect the revisions to appendix A.

DATES: This amendment to the CFR is effective October 24, 2001. With regard to those persons named in its annex, Executive Order 13224 was effective at 12:01 a.m. eastern daylight time on September 24, 2001. The determinations made by the Secretary of State and the Secretary of the Treasury were effective at 8:00 a.m. on October 12, 2001.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: http://www.treas.gov/ofac, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

Appendix A to 31 CFR chapter V contains the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC").

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order. This final rule adds those individuals and entities, along with additional identifying information, to appendix A.

This final rule also adds to appendix A 8 individuals who, pursuant to subsection 1(b) of the Order, have been determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

This final rule also adds to appendix A 25 individuals and 6 entities that, pursuant to subsections 1(c) and 1(d) of the Order, have been determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General: to be owned or controlled by, or to act for or on behalf of, persons listed on the annex to the Order or designated pursuant to subsection 1(b), 1(c), or 1(d)(i) of the Order; to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, acts of terrorism or persons listed on the annex or designated pursuant to the Order; or to be otherwise associated with persons listed on the annex to the Order or designated pursuant to subsection 1(b), 1(c), or (1)(d)(i) of the Order.

All property and interests in property of these listed persons that are in the United States, that come within the United States, or that come within the possession or control of United States persons, including their overseas branches, are blocked. All transactions by U.S. persons or within the United States in property or interests in property of these listed persons are prohibited unless licensed by the Office of Foreign Assets Control or exempted by statute.

OFAC is also amending note 6 to the notes to the appendices to 31 CFR chapter V to reflect the revisions to appendix A.

For those persons named in its annex, Executive Order 13224 was effective at 12:01 a.m. eastern daylight time on September 23, 2001. Designation of other persons blocked pursuant to the Order by the Secretary of State or the Secretary of the Treasury were effective at 8:00 a.m. eastern daylight time on October 12, 2001. Public notice of blocking is effective upon the date of filing with the **Federal Register**, or upon prior actual notice.

Because this rule involves a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of 3 U.S.C. 301, 50 U.S.C. 1601–1651, 50 U.S.C. 1701–1706, 22 U.S.C. 287c, and E.O. 13224 of September 23, 2001, the appendices to 31 CFR chapter V are amended as set forth below:

Appendices to Chapter V

1. The notes to the appendices to 31 CFR chapter V are amended by amending note 6 to add the following entry inserted in alphabetical order to read as follows:

Notes: * * *

6. * * *

[SDGT]: Executive Order 13224, 66 FR 49079, September 25, 2001.

* * * * *

Appendix A—[Amended]

2. Appendix A to 31 CFR chapter V is amended by adding the following names inserted in alphabetical order to read as follows:

ABDALLA, Fazul (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].

ABDALLAH, Tarwat Salah (see SHIHATA, Thirwat Salah) (individual) [SDGT].

ABDEL RAHMAN (see ATWAH, Muhsin Musa Matwalli) (individual) [SDGT].

ABDUL RAHMAN (see ATWAH, Muhsin Musa Matwalli) (individual) [SDGT].

ABDULLAH, Abdullah Ahmed (a.k.a. ABU MARIAM; a.k.a. AL–MASRI, Abu Mohamed; a.k.a. SALEH), Afghanistan (DOB 1963; POB Egypt; Citizen Egypt) (individual) [SDGT].

ABDULLAH, Sheikh Taysir (see ATIF, Muhammad) (individual) [SDT] [SDGT].

ABDUREHMAN, Ahmed Mohammed (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].

ABU ABDALLAH (see AL–IRAQI, Abd al-Hadi) (individual) [SDGT].

ABU FATIMA (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].

ABU HAFS (see ATIF, Muhammad) (individual) [SDT] [SDGT].

ABU HAFS THE MAURITANIAN (a.k.a. AL–SHANQITI, Khalid; a.k.a. AL–WALID, Mafouz Walad; a.k.a. AL–WALID, Mahfouz Ould; a.k.a. SLAHI, Mahamedou Ould) (DOB 1 Jan 1975) (individual) [SDGT].

ABU ISLAM (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].

ABU ISMAIL (see UTHMAN, Omar Mahmoud) (individual) [SDGT].

ABU KHADIJAH (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].

ABU MARIAM (see ABDULLAH, Abdullah Ahmed) (individual) [SDGT].

ABU OMRAN (see AL–MUGHASSIL, Ahmad Ibrahim) (individual) [SDGT].

ABU SAYYAF GROUP (a.k.a. AL HARAKAT AL ISLAMIYYA) [FTO] [SDGT].

ABU SITTA, Subhi (see ATIF, Muhammad) (individual) [SDT] [SDGT].

ABU UMAR, Abu Omar (see UTHMAN, Omar Mahmoud) [SDGT].

ABU ZUBAIDA (see ABU ZUBAYDAH) (individual) [SDGT].

ABU ZUBAYDAH (a.k.a. ABU ZUBAIDA; a.k.a. AL-WAHAB, Abd Al-Hadi; a.k.a. HUSAIN, Zain Al-Abidin Muhahhad; a.k.a. HUSAYN, Zayn al-Abidin Muhammad; a.k.a. TARIQ) (DOB 12 Mar 1971; POB Riyadh, Saudi Arabia) (individual) [SDGT].

ADBALLAH, Fazul (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].

AGHA, Haji Abdul Manan (a.k.a. SAIYID, Abd Al-Man'am), Pakistan (individual) [SDGT].

AH HAQ, Dr. Amin (see AL-HAQ, Amin) (individual) [SDGT].

AHMAD, Abu Bakr (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].

AHMAD, Mufti Rasheed (see LADEHYANOY, Mufti Rashid Ahmad) (individual) [SDGT].

AHMAD, Mustafa Muhammad (see SAI'ID, Shaykh) (individual) [SDGT].

AHMAD, Tariq Anwar al-Sayyid (a.k.a. FARAG, Hamdi Ahmad; a.k.a. FATHI, Amr Al-Fatih) (DOB 15 Mar 1963; POB Alexandria, Egypt) (individual) [SDGT].

AHMED, A. (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].

AHMED, Abubakar (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].

AHMED, Abubakar K. (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].

AHMED, Abubakar Khalfan (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].

AHMED, Abubakary K. (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].

AHMED, Ahmed (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].

AHMED, Ahmed Khalfan (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].

AHMED HAMED (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].

AHMED THE EGYPTIAN (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].

AHMED THE TALL (see SWEDAN, Sheikh Ahmed Salim) (individual) [SDGT].

"AHMED THE TANZANIAN" (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].

AIADI, Ben Muhammad (see BIN MUHAMMAD, Ayadi Chafiq) (individual) [SDGT].

AIADY, Ben Muhammad (see BIN MUHAMMAD, Ayadi Chafiq) (individual) [SDGT].

AIAI (see AL-ITIHAAD AL-ISLAMIYA) [SDGT].

AISHA, Abu (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].

AL HARAKAT AL ISLAMIYYA (see ABU SAYYAF GROUP) [FTO] [SDGT].

AL MASRI, Abd Al Wakil (see FADHIL, Mustafa Mohamed) (individual) [SDGT].

AL QA'IDA (see AL QAIDA) [SDT] [FTO] [SDGT].

AL QAEDA (see AL QAIDA) [SDT] [FTO] [SDGT].

AL QAIDA (a.k.a. ISLAMIC ARMY; a.k.a. "THE BASE"; a.k.a. AL QA'IDA; a.k.a. AL QAEDA; a.k.a. INTERNATIONAL FRONT FOR FIGHTING JEWS AND CRUSADES; a.k.a. ISLAMIC ARMY FOR THE LIBERATION OF HOLY SITES; a.k.a. ISLAMIC SALVATION FOUNDATION; a.k.a. THE GROUP FOR THE PRESERVATION OF THE HOLY SITES; a.k.a. THE ISLAMIC ARMY FOR THE LIBERATION OF THE HOLY PLACES; a.k.a. THE WORLD ISLAMIC FRONT FOR JIHAD AGAINST JEWS AND CRUSADERS; a.k.a. USAMA BIN LADEN NETWORK; a.k.a. USAMA BIN LADEN ORGANIZATION) [SDT] [FTO] [SDGT].

AL RASHEED TRUST (see AL RASHID TRUST) [SDGT].

AL RASHID TRUST (a.k.a. AL RASHEED TRUST; a.k.a. AL-RASHEED TRUST; a.k.a. AL-RASHID TRUST), Kitab Ghar, 4 Dar-el-Iftah, Nazimabad, Karachi, Pakistan; Jamia Masjid, Sulaiman Park, Begum Pura, Lahore, Pakistan; Office Dha'rb-i-M'unin, opposite Khyber Bank, Abbottabad Road, Mansehra, Pakistan; Office Dha'rb-i-M'unin, Z.R. Brothers, Katchehry Road, Chowk Yadgaar, Peshawar, Pakistan; Office Dha'rb-i-M'unin, Room no. 3, Third Floor, Moti Plaza, near Liaquat Bagh, Murree Road, Rawalpindi, Pakistan; Office Dha'rb-i-M'unin, Top Floor, Dr. Dawa Khan Dental Clinic Surgeon, Main Baxar, Mingora, Swat, Pakistan (Operations in Afghanistan: Herat, Jalalabad, Kabul, Kandahar, Mazar Sharif. Also operations in: Kosovo, Chechnya) [SDGT].

AL SUDANI, Abu Seif (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].

AL TANZANI, Ahmad (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].

AL WAFA (see WAFA HUMANITARIAN ORGANIZATION) [SDGT].

AL WAFA ORGANIZATION (see WAFA HUMANITARIAN ORGANIZATION) [SDGT].

AL ZAWAHIRI, Dr. Ayman (see AL-ZAWAHIRI, Ayman) (individual) [SDT] [SDGT].

AL-'ADIL, Saif (see AL-ADL, Sayf) (individual) [SDGT].

AL-ADL, Sayf (a.k.a. AL-'ADIL, Saif) (DOB 1963; POB Egypt) (individual) [SDGT].

AL-AHDAL, Mohammad Hamdi Sadiq (see AL-HAMATI, Muhammad) (individual) [SDGT].

AL-AMRIKI, Abu-Ahmad (see HIJAZI, Riad) (individual) [SDGT].

AL-FILISTINI, Abu Qatada (see UTHMAN, Omar Mahmoud) (individual) [SDGT].

AL-HAMATI, Muhammad (a.k.a. AL-AHDAL, Mohammad Hamdi Sadiq; a.k.a. AL-MAKKI, Abu Asim), Yemen (individual) [SDGT].

AL-HAMATI SWEETS BAKERIES, Al-Mukallah, Hadhramawt Governorate, Yemen [SDGT].

AL-HAQ, Amin (a.k.a. AMIN, Muhammad; a.k.a. AH HAQ, Dr. Amin; a.k.a. UL-HAQ, Dr. Amin) (DOB 1960; POB Nangahar Province, Afghanistan) (individual) [SDGT].

AL-HAWEN, Abu-Ahmad (see HIJAZI, Riad) (individual) [SDGT].

AL-HOURI, Ali Saed Bin Ali (see EL-HOORIE, Ali Saed Bin Ali) (individual) [SDGT].

AL-IRAQI, Abd al-Hadi (a.k.a. ABU ABDALLAH; a.k.a. AL-IRAQI, Abdal al-Hadi) (individual) [SDGT].
AL-IRAQI, Abdal al-Hadi (see AL-IRAQI, Abd al-Hadi) (individual) [SDGT].
AL-ITIHAAD AL-ISLAMIYA (a.k.a. AIAI) [SDGT].
AL-JADAWI, Saqar (DOB 1965) (individual) [SDGT].
AL-JAMA'AH AL-ISLAMIYAH AL-MUSALLAH (see ARMED ISLAMIC GROUP) [FTO] [SDGT].
AL-JIHAD (a.k.a. EGYPTIAN AL-JIHAD; a.k.a. EGYPTIAN ISLAMIC JIHAD; a.k.a. JIHAD GROUP; a.k.a. NEW JIHAD) [SDT] [FTO] [SDGT].
AL-KADR, Ahmad Sa'id (a.k.a. AL-KANADI, Abu Abd Al-Rahman) (DOB 01 Mar 1948; POB Cairo, Egypt) (individual) [SDGT].
AL-KANADI, Abu Abd Al-Rahman (see AL-KADR, Ahmad Sa'id) (individual) [SDGT].
AL-KINI, Usama (see MSALAM, Fahid Mohammed Ally) (individual) [SDGT].
AL-LIBI, Anas (see AL-LIBY, Anas) (individual) [SDGT].
AL-LIBI, Ibn Al-Shaykh (individual) [SDGT].
AL-LIBY, Anas (a.k.a. AL-LIBI, Anas; a.k.a. AL-RAGHIE, Nazih; a.k.a. AL-RAGHIE, Nazih Abdul Hamed; a.k.a. AL-SABAI, Anas), Afghanistan (DOB 30 Mar 1964; alt. DOB 14 May 1964; POB Tripoli, Libya; Citizen Libya) (individual) [SDGT].
AL-MAGHRIBI, Rashid (see HIJAZI, Riad) (individual) [SDGT].
AL-MAKKI, Abu Asim (see AL-HAMATI, Muhammad) (individual) [SDGT].
AL-MASRI, Abu Hafs (see ATIF, Muhammad) (individual) [SDT] [SDGT].
AL-MASRI, Abu Mohamed (see ABDULLAH, Abdullah Ahmed) (individual) [SDGT].
AL-MASRI, Ahmad (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
AL-MUGHASSIL, Ahmad Ibrahim (a.k.a. AL-MUGHASSIL, Ahmed Ibrahim; a.k.a. ABU OMRAN) (DOB 26 Jun 1967; POB Qatif—Bab al Shamal, Saudi Arabia; Citizen Saudi Arabia) (individual) [SDGT].
AL-MUGHASSIL, Ahmed Ibrahim (see AL-MUGHASSIL, Ahmad Ibrahim) (individual) [SDGT].
AL-MUHAJIR, Abdul Rahman (see ATWAH, Muhsin Musa Matwalli) (individual) [SDGT].
AL-NAMER, Mohammed K.A. (see ATWAH, Muhsin Musa Matwalli) (individual) [SDGT].
AL-NASSER, Abdelkarim Hussein Mohamed (POB Al Ihsa, Saudi Arabia; Citizen Saudi Arabia) (individual) [SDGT].
AL-NUBI, Abu (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
AL-NUR HONEY CENTER (see AL-NUR HONEY PRESS SHOPS) [SDGT].
AL-NUR HONEY PRESS SHOPS (a.k.a. AL-NUR HONEY CENTER), Sanaa, Yemen [SDGT].
AL-QADI, Yasin (a.k.a. KADI, Shaykh Yassin Abdullah; a.k.a. KAHDI, Yasin), Jeddah, Saudi Arabia (individual) [SDGT]
AL-RAGHIE, Nazih (see AL-LIBY, Anas) (individual) [SDGT].
AL-RAGHIE, Nazih Abdul Hamed (see AL-LIBY, Anas) (individual) [SDGT].
AL-RASHEED TRUST (see AL RASHID TRUST) [SDGT].
AL-RASHID TRUST (see AL RASHID TRUST) [SDGT].
AL-SABAI, Anas (see AL-LIBY, Anas) (individual) [SDGT].
AL-SHAHID, Abu-Ahmad (see HIJAZI, Riad) (individual) [SDGT].
AL-SHANQITI, Khalid (see ABU HAFS THE MAURITANIAN) (individual) [SDGT].
AL-SHARIF, Sa'd (DOB 1969; POB Saudi Arabia) (individual) [SDGT].
AL-SHIFA' HONEY PRESS FOR INDUSTRY AND COMMERCE, P.O. Box 8089, Al-Hasabah, Sanaa, Yemen; By the Shrine Next to the Gas Station, Jamal Street, Ta'iz, Yemen; Al-rudh Square, Khur Maksar, Aden, Yemen; Al-Nasr Street, Doha, Qatar [SDGT].
AL-SURIR, Abu Islam (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
AL-WAHAB, Abd Al-Hadi (see ABU ZUBAYDAH) (individual) [SDGT].
AL-WALID, Mafouz Walad (see ABU HAFS THE MAURITANIAN) (individual) [SDGT].
AL-WALID, Mahfouz Ould (see ABU HAFS THE MAURITANIAN) (individual) [SDGT].
AL-YACOUB, Ibrahim Salih Mohammed (DOB 16 Oct 1966; POB Tarut, Saudi Arabia; Citizen Saudi Arabia) (individual) [SDGT].
AL-ZAWAHIRI, Aiman Muhammad Rabi (see AL-ZAWAHIRI, Ayman) (individual) [SDT] [SDGT].
AL-ZAWAHIRI, Ayman (a.k.a. AL ZAWAHIRI, Dr. Ayman; a.k.a. AL-ZAWAHIRI, Aiman Muhammad Rabi; a.k.a. SALIM, Ahmad Fuad), Operational and Military Leader of JIHAD GROUP (DOB 19 Jun 1951; POB Giza, Egypt; Passport No. 1084010 (Egypt); alt. Passport No. 19820215) (individual) [SDT] [SDGT].
ALI, Ahmed Khalfan (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
ALI, Ahmed Mohammed (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
ALI, Ahmed Mohammed Hamed (a.k.a. ABDUREHMAN, Ahmed Mohammed; a.k.a. ABU FATIMA; a.k.a. ABU ISLAM; a.k.a. ABU KHADIJAH; a.k.a. AHMED, Ahmed; a.k.a. AHMED HAMED; a.k.a. Ahmed The Egyptian; a.k.a. ALI, Hamed; a.k.a. ALI, Ahmed Mohammed; a.k.a. AL-MASRI, Ahmad; a.k.a. AL-SURIR, Abu Islam; a.k.a. HEMED, Ahmed; a.k.a. SHIEB, Ahmed; a.k.a. SHUAIB), Afghanistan (DOB 1965; POB Egypt; Citizen Egypt) (individual) [SDGT].
ALI, Fadel Abdallah Mohammed (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
ALI, Hamed (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
ALI, Hassan (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
ALI, Salem (see MOHAMMED, Khalid Shaikh) (individual) [SDGT].
ALLY, Ahmed (see SWEDAN, Sheikh Ahmed Salim) (individual) [SDGT].
ALLY, Fahid Mohammed (see MSALAM, Fahid Mohammed Ally) (individual) [SDGT].
AMIN, Muhammad (see AL-HAQ, Amin) (individual) [SDGT].
ANIS, Abu (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
ARMED ISLAMIC GROUP (a.k.a. AL-JAMA'AH AL-ISLAMIYAH AL-MUSALLAH; a.k.a. GIA; a.k.a. GROUPEMENT ISLAMIQUE ARME) [FTO] [SDGT].
ARMY OF MOHAMMED (see JAISH-I-MOHAMMED) [SDGT].
ASBAT AL-ANSAR [SDGT].
ATEF, Muhammad (see ATIF, Muhammad) (individual) [SDT] [SDGT].
ATIF, Mohamed (see ATIF, Muhammad) (individual) [SDT] [SDGT].
ATIF, Muhammad (a.k.a. AL-MASRI, Abu Hafs; a.k.a. ABDULLAH, Sheikh Taysir; a.k.a. ABU HAFS; a.k.a. ABU SITTA, Subhi; a.k.a. ATEF, Muhammad; a.k.a. ATIF, Mohamed; a.k.a. EL KHABIR, Abu Hafs el Masry; a.k.a. TAYSIR) (DOB 1951; alt. DOB 1956 alt. DOB 1944; POB Alexandria, Egypt) (individual) [SDT] [SDGT].
ATWA, Ali (a.k.a. BOUSLIM, Ammar Mansour; a.k.a. SALIM, Hassan Rostom), Lebanon (DOB 1960; POB Lebanon; Citizen Lebanon) (individual) [SDGT].
ATWAH, Muhsin Musa Matwalli (a.k.a. ABDEL RAHMAN; a.k.a. ABDUL RAHMAN; a.k.a. AL-MUHAJIR, Abdul Rahman; a.k.a. AL-NAMER, Mohammed K.A.), Afghanistan (DOB 19 Jun 1964; POB Egypt; Citizen Egypt) (individual) [SDGT].
AYADI CHAFIK, Ben Muhammad (see BIN MUHAMMAD, Ayadi Chafiq) (individual) [SDGT].

AYADI SHAFIQ, Ben Muhammad (see BIN MUHAMMAD, Ayadi Chafiq) (individual) [SDGT].
BAHAMAD (see SWEDAN, Sheikh Ahmed Salim) (individual) [SDGT].
BAHAMAD, Sheik (see SWEDAN, Sheikh Ahmed Salim) (individual) [SDGT].
BAHAMADI, Sheikh (see SWEDAN, Sheikh Ahmed Salim) (individual) [SDGT].
BAKR, Abu (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
"THE BASE" (see AL QAIDA) [SDT] [FTO] [SDGT].
BIN KHALID, Fahd Bin Adballah (see MOHAMMED, Khalid Shaikh) (individual) [SDGT].
BIN LADEN, Osama (see BIN LADEN, Usama) (individual) [SDT] [SDGT].
BIN LADEN, Usama (a.k.a. BIN LADIN, Usama bin Muhammad bin Awad; a.k.a. BIN LADEN, Osama; a.k.a. BIN LADIN, Osama; a.k.a. BIN LADIN, Osama bin Muhammad bin Awad; a.k.a. BIN LADIN, Usama) (DOB 30 Jul 57; alt. DOB 1958; POB Jeddah, Saudi Arabia; alt. POB Yemen) (individual) [SDT] [SDGT].
BIN LADIN, Osama (see BIN LADEN, Usama) (individual) [SDT] [SDGT].
BIN LADIN, Osama bin Muhammad bin Awad (see BIN LADEN, Usama) (individual) [SDT] [SDGT].
BIN LADIN, Usama (see BIN LADEN, Usama) (individual) [SDT] [SDGT].
BIN LADIN, Usama bin Muhammad bin Awad (see BIN LADEN, Usama) (individual) [SDT] [SDGT].
BIN MARWAN, Bilal (DOB 1947) (individual) [SDGT].
BIN MUHAMMAD, Ayadi Chafiq (a.k.a. AYADI SHAFIQ, Ben Muhammad; a.k.a. AYADI CHAFIK, Ben Muhammad; a.k.a. AIADI, Ben Muhammad; a.k.a. AIADY, Ben Muhammad), Helene Meyer Ring 10–1415–80809, Munich, Germany; 129 Park Road, NW8, London, England; 28 Chaussee de Lille, Mouscron, Belgium; Darvingasse 1/2/58–60, Vienna, Austria; Tunisia (DOB 21 Jan 1963; POB Safais (Sfax), Tunisia) (individual) [SDGT].
BOUSLIM, Ammar Mansour (see ATWA, Ali) (individual) [SDGT].
DARKAZANLI, Mamoun, Uhlenhorster Weg 34 11, Hamburg, 22085 Germany (DOB 4 Aug 1958; POB Aleppo, Syria; Passport No. 1310636262 (Germany)) (individual) [SDGT].
DARKAZANLI COMPANY (see MAMOUN DARKAZANLI IMPORT-EXPORT COMPANY) [SDGT].
DARKAZANLI EXPORT-IMPORT SONDERPOSTEN (see MAMOUN DARKAZANLI IMPORT-EXPORT COMPANY) [SDGT].
EGYPTIAN AL-JIHAD (see AL-JIHAD) [SDT] [FTO] [SDGT].
EGYPTIAN ISLAMIC JIHAD (see AL-JIHAD) [SDT] [FTO] [SDGT].
EL KHABIR, Abu Hafs el Masry (see ATIF, Muhammad) (individual) [SDT] [SDGT].
EL-HOORIE, Ali Saed Bin Ali (a.k.a. AL-HOURI, Ali Saed Bin Ali; a.k.a. EL-HOURI, Ali Saed Bin Ali) (DOB 10 Jul 1965; alt. DOB 11 Jul 1965; POB El Dibabiya, Saudi Arabia; Citizen Saudi Arabia) (individual) [SDGT].
EL-HOURI, Ali Saed Bin Ali (see EL-HOORIE, Ali Saed Bin Ali) (individual) [SDGT].
ELBISHY, Moustafa Ali (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
FADHIL, Mustafa Mohamed (a.k.a. ELBISHY, Moustafa Ali; a.k.a. MOHAMMED, Mustafa; a.k.a. FAZUL, Mustafa; a.k.a. HUSSEIN; a.k.a. ALI, Hassan; a.k.a. FADIL, Mustafa Muhamad; a.k.a. AL MASRI, Abd Al Wakil; a.k.a. ANIS, Abu; a.k.a. YUSSRR, Abu; a.k.a. ALI, Hassan; a.k.a. MAN, Nu; a.k.a. KHALID; a.k.a. JIHAD, Abu; a.k.a. AL-NUBI, Abu) (DOB 23 Jun 1976; POB Cairo, Egypt; Citizen Egypt; alt. Citizen Kenya; Kenyan ID No. 12773667; Serial No. 201735161) (individual) [SDGT].
FADIL, Mustafa Muhamad (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
FARAG, Hamdi Ahmad (see AHMAD, Tariq Anwar al-Sayyid) (individual) [SDGT].
FATHI, Amr Al-Fatih (see AHMAD, Tariq Anwar al-Sayyid) (individual) [SDGT].
FAZUL, Abdalla (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
FAZUL, Abdallah (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
FAZUL, Abdallah Mohammed (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
FAZUL, Haroon (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
FAZUL, Harun (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
FAZUL, Mustafa (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
"FOOPIE" (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
"FUPI" (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
GARBAYA, Ahmed (see IZZ-AL-DIN, Hasan) (individual) [SDGT].
GHAILANI, Abubakary Khalfan Ahmed (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
GHAILANI, Ahmed (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
GHAILANI, Ahmed Khalfan (a.k.a. GHILANI, Ahmad Khalafan; a.k.a. AHMED, Ahmed Khalfan; a.k.a. AHMED, Abubakar K.; a.k.a. AHMED, Abubakary K.; a.k.a. AHMED, Abubakar; a.k.a. AHMAD, Abu Bakr; a.k.a. AHMED, A.; a.k.a. KHALFAN, Ahmed; a.k.a. ALI, Ahmed Khalfan; a.k.a. AHMED, Abubakar Khalfan; a.k.a. GHAILANI, Ahmed; a.k.a. AL TANZANI, Ahmad; a.k.a. KHABAR, Abu; a.k.a. BAKR, Abu; a.k.a. GHAILANI, Abubakary Khalfan Ahmed; a.k.a. HUSSEIN, Mahafudh Abubakar Ahmed Abdallah; a.k.a. MOHAMMED, Shariff Omar; a.k.a. "FOOPIE"; a.k.a. "FUPI"; a.k.a. "AHMED THE TANZANIAN") (DOB 14 Mar 1974; alt. DOB 13 Apr 1974; alt. DOB 14 Apr 1974; alt. DOB 1 Aug 1970; POB Zanzibar, Tanzania; Citizen Tanzania) (individual) [SDGT].
GHILANI, Ahmad Khalafan (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
GIA (see ARMED ISLAMIC GROUP) [FTO] [SDGT].
THE GROUP FOR THE PRESERVATION OF THE HOLY SITES (see AL QAIDA) [SDT] [FTO] [SDGT].
GROUPEMENT ISLAMIQUE ARME (see ARMED ISLAMIC GROUP) [FTO] [SDGT].
GSPC (see SALAFIST GROUP FOR CALL AND COMBAT) [SDGT].
HARAKAT UL-ANSAR (see HARAKAT UL-MUJAHIDIN) [FTO] [SDGT].
HARAKAT UL-MUJAHIDEEN (see HARAKAT UL-MUJAHIDIN) [FTO] [SDGT].
HARAKAT UL-MUJAHIDIN (a.k.a. HARAKAT UL-MUJAHIDEEN; a.k.a. HARAKAT UL-ANSAR; a.k.a. HUA; a.k.a. HUM) [FTO] [SDGT].
HAROON (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
HAROUN, Fadhil (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
HARUN (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
HASANAYN, Nasr Fahmi Nasr (see SALAH, Muhammad) (individual) [SDGT].
HEMED, Ahmed (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
HENIN, Ashraf Refaat Nabith (see MOHAMMED, Khalid Shaikh) (individual) [SDGT].
HIJAZI, Raed M. (see HIJAZI, Riad) (individual) [SDGT].
HIJAZI, Riad (a.k.a. HIJAZI, Raed M.; a.k.a. AL-HAWEN, Abu-Ahmad; a.k.a. AL-MAGHRIBI, Rashid; a.k.a. AL-AMRIKI, Abu-Ahmad; a.k.a. AL-SHAHID, Abu-Ahmad), Jordan (DOB 1968; POB California, U.S.A.; SSN 548–91–5411) (individual) [SDGT].
HUA (see HARAKAT UL-MUJAHIDIN) [FTO] [SDGT].
HUM (see HARAKAT UL-MUJAHIDIN) [FTO] [SDGT].
HUSAIN, Zain Al-Abidin Muhahhad (see ABU ZUBAYDAH) (individual) [SDGT].
HUSAYN, Zayn al-Abidin Muhammad (see ABU ZUBAYDAH) (individual) [SDGT].
HUSSEIN (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
HUSSEIN, Mahafudh Abubakar Ahmed Abdallah (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
IMU (see ISLAMIC MOVEMENT OF UZBEKISTAN) [FTO] [SDGT].

INTERNATIONAL FRONT FOR FIGHTING JEWS AND CRUSADES (see AL QAIDA) [SDT] [FTO] [SDGT].
ISLAMIC ARMY (see AL QAIDA) [SDT] [FTO] [SDGT].
THE ISLAMIC ARMY FOR THE LIBERATION OF THE HOLY PLACES (see AL QAIDA) [SDT] [FTO] [SDGT].
ISLAMIC ARMY FOR THE LIBERATION OF HOLY SITES (see AL QAIDA) [SDT] [FTO] [SDGT].
ISLAMIC ARMY OF ADEN [SDGT].
ISLAMIC MOVEMENT OF UZBEKISTAN (a.k.a. IMU) [FTO] [SDGT].
ISLAMIC SALVATION FOUNDATION (see AL QAIDA) [SDT] [FTO] [SDGT].
IZZ-AL-DIN, Hasan (a.k.a. GARBAYA, Ahmed; a.k.a. SA-ID; a.k.a. SALWWAN, Samir), Lebanon (DOB 1963; POB Lebanon; Citizen Lebanon) (individual) [SDGT].
JAISH-I-MOHAMMED (a.k.a. ARMY OF MOHAMMED), Pakistan [SDGT].
JAM'IYAT AL TA'AWUN AL ISLAMIYYA (see JAM'YAH TA'AWUN AL-ISLAMIA) [SDGT].
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LADEHYANOY, Mufti Rashid Ahmad (a.k.a. LUDHIANVI, Mufti Rashid Ahmad; a.k.a. AHMAD, Mufti Rasheed; a.k.a. WADEHYANOY, Mufti Rashid Ahmad), Karachi, Pakistan (individual) [SDGT].
LE GROUPE SALAFISTE POUR LA PREDICATION ET LE COMBAT (see SALAFIST GROUP FOR CALL AND COMBAT) [SDGT].
LIBYAN ISLAMIC FIGHTING GROUP [SDGT].
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LUQMAN, Abu (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
MAKHTAB AL-KHIDAMAT/AL KIFAH, House no. 125, Street 54, Phase II, Hayatabad, Peshawar, Pakistan [SDGT].
MAMOUN DARKAZANLI IMPORT-EXPORT COMPANY (a.k.a. DARKAZANLI COMPANY; a.k.a. DARKAZANLI EXPORT-IMPORT SONDERPOSTEN), Uhlenhorsterweg 34 11, Hamburg, Germany [SDGT].
MAN, Nu (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
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MOHAMMED, Fouad (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
MOHAMMED, Khalid Shaikh (a.k.a. HENIN, Ashraf Refaat Nabith; a.k.a. WADOOD, Khalid Adbul; a.k.a. ALI, Salem; a.k.a. BIN KHALID, Fahd Bin Adballah) (DOB 14 Apr 1965; alt. DOB 01 Mar 1964; POB Kuwait; Citizen Kuwait) (individual) [SDGT].
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MSALAM, Fahid Mohammed Ally (a.k.a. ALLY, Fahid Mohammed; a.k.a. MUSALAAM, Fahid Mohammed Ali; a.k.a. MSALAM, Fahid Mohammed Ali; a.k.a. SALEM, Fahid Muhamad Ali; a.k.a. MSALAM, Mohammed Ally; a.k.a. AL-KINI, Usama; a.k.a. MSALAM, Fahad Ally) (DOB 19 Feb 1976; POB Mombasa, Kenya; Citizen Kenya) (individual) [SDGT].
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MUHAMAD, Fadil Abdallah (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
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NEW JIHAD (see AL-JIHAD) [SDT] [FTO] [SDGT].
RABITA TRUST, Room 9A, 2nd Floor, Wahdat Road, Education Town, Lahore, Pakistan; Wares Colony, Lahore, Pakistan [SDGT].
SA-ID (see IZZ-AL-DIN, Hasan) (individual) [SDGT].
SAI'ID, Shaykh (a.k.a. AHMAD, Mustafa Muhammad) (POB Egypt) (individual) [SDGT].
SAIYID, Abd Al-Man'am (see AGHA, Haji Abdul Manan) (individual) [SDGT].
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SHIEB, Ahmed (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
SHIHATA, Thirwat Salah (a.k.a. ABDALLAH, Tarwat Salah; a.k.a. THIRWAT, Salah Shihata; a.k.a. THIRWAT, Shahata) (DOB 29 Jun 60; POB Egypt) (individual) [SDGT].
SHUAIB (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
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SOCIETY OF ISLAMIC COOPERATION (see JAM'YAH TA'AWUN AL-ISLAMIA) [SDGT].
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SWEDAN, Sheikh Ahmed Salim (a.k.a. SUWEIDAN, Sheikh Ahmad Salem; a.k.a. SWEDAN, Sheikh Ahmed Salem; a.k.a. SWEDAN, Sheikh; a.k.a. BAHAMADI, Sheikh; a.k.a. ALLY, Ahmed; a.k.a. BAHAMAD; a.k.a. BAHAMAD, Sheik; a.k.a. Ahmed the Tall) (DOB 09 Apr 1969; alt. DOB 09 Apr 1960; POB Mombasa, Kenya; Citizen Kenya) (individual) [SDGT].
TAHA, Abdul Rahman S. (see YASIN, Abdul Rahman) (individual) [SDGT].
TAHER, Abdul Rahman S. (see YASIN, Abdul Rahman) (individual) [SDGT].
TAKFIRI, Abu "Umr (see UTHMAN, Omar Mahmoud) (individual) [SDGT].
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UTHMAN, Umar (see UTHMAN, Omar Mahmoud) (individual) [SDGT].
WADEHYANOY, Mufti Rashid Ahmad (see LADEHYANOY, Mufti Rashid Ahmad) (individual) [SDGT].
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THE WORLD ISLAMIC FRONT FOR JIHAD AGAINST JEWS AND CRUSADERS (see AL QAIDA) [SDT] [FTO] [SDGT].
YASIN, Abdul Rahman (a.k.a. TAHA, Abdul Rahman S.; a.k.a. TAHER, Abdul Rahman S.; a.k.a. YASIN, Abdul Rahman Said; a.k.a. YASIN, Aboud) (DOB 10 Apr 1960; POB Bloomington, Indiana, U.S.A.; SSN 156–92–9858 (U.S.A.); Passport No. 27082171 (U.S.A. [issued 21 Jun 1992 in Amman, Jordan]); alt. Passport No. M0887925 (Iraq); Citizen U.S.A. (individual) [SDGT].
YASIN, Abdul Rahman Said (see YASIN, Abdul Rahman) (individual) [SDGT].
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YULDASHEV, Takhir (see YULDASHEV, Tohir) (individual) [SDGT].
YULDASHEV, Tohir (a.k.a. YULDASHEV, Takhir), Uzbekistan (individual) [SDGT].
YUSSRR, Abu (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
ZIA, Ahmad (see ZIA, Mohammad) (individual) [SDGT].
ZIA, Mohammad, (a.k.a. ZIA, Ahmad) c/o Ahmed Shah s/o Painda Mohammad al-Karim Set, Peshawar, Pakistan; c/o Alam General Store Shop 17, Awami Market, Peshawar, Pakistan; c/o Zahir Shah s/o Murad Khan Ander Sher, Peshawar, Pakistan (individual) [SDGT].

Dated: October 16, 2001.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 16, 2001.

Jimmy Gurulé,

Under Secretary (Enforcement), Department of the Treasury.

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LIST OF PUBLIC LAWS

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S.J. Res. 19/P.L. 107–54

Providing for the reappointment of Anne d'Harnoncourt as citizen regent of the Board of Regents of the Smithsonian Institution. (Oct. 24, 2001; 115 Stat. 270)

S.J. Res. 20/P.L. 107–55

Providing for the appointment of Roger W. Sant as citizen regent of the Board of Regents of the Smithsonian Institution. (Oct. 24, 2001; 115 Stat. 271)

Last List October 24, 2001

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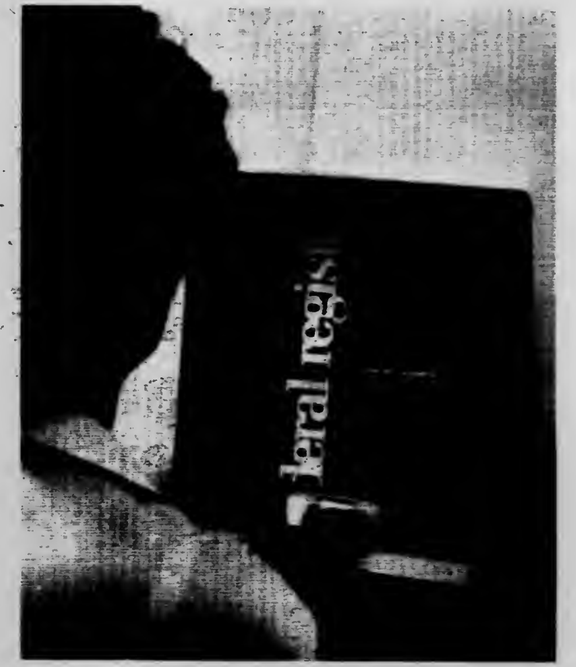
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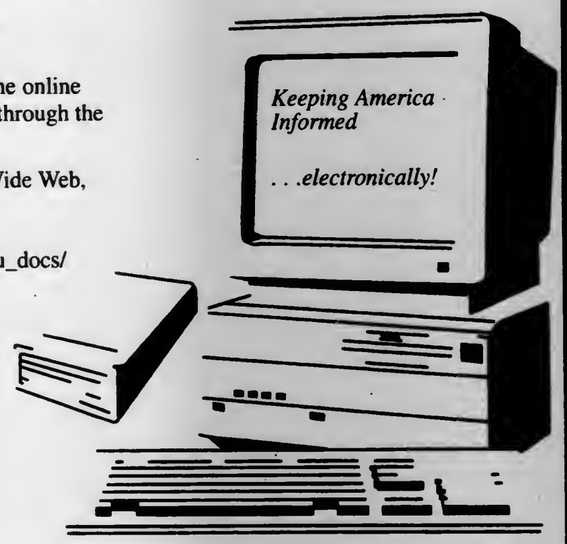
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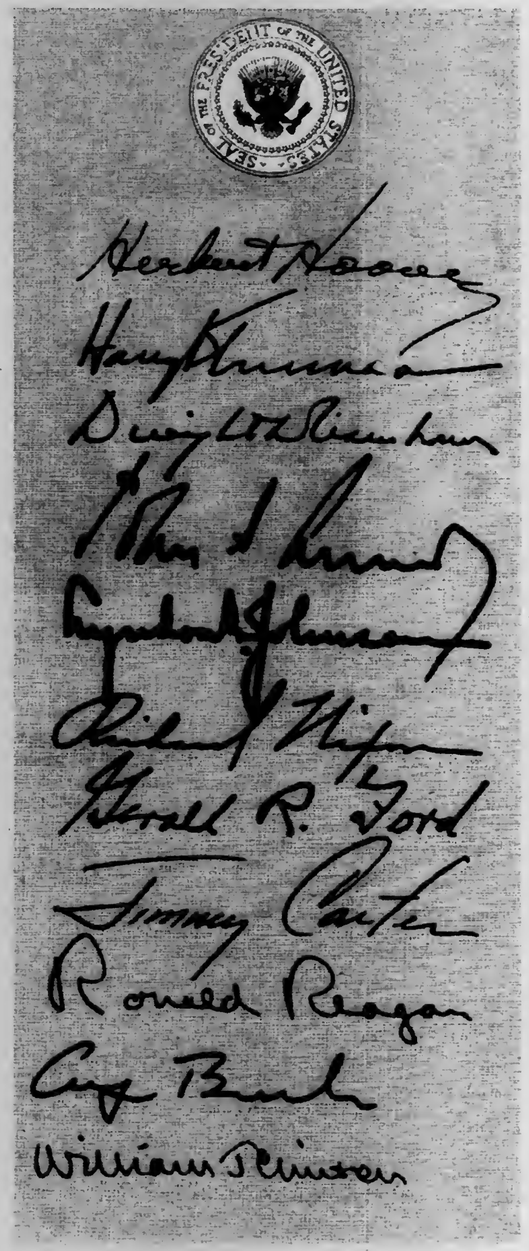
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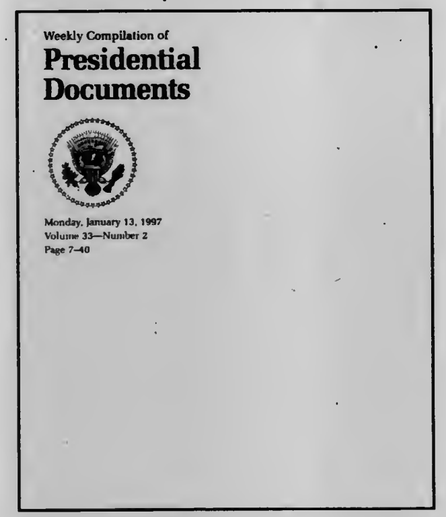
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Federal Register

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–1 IFR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes the pack requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule allows handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, eliminates one size designation, and adds two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

DATES: Effective October 24, 2001. Comments received prior to December 28, 2001 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–8938; or e-mail: *moabdocketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http//www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, fax: (202) 205–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, fax: (202) 205–8938 or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule allows handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, eliminates one size designation, and adds two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit. Section 920.302(a)(4)(iv) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992–93 season. In addition, grower prices have steadily declined in spite of a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. In 1997–1998, the Committee reviewed FOB values and determined that the average FOB value for the 1992–93 season through the 1997–98 season was $0.55 per pound.

The Committee met on July 8, 1998, and decided to address the confusion in the marketplace and the differences in size designations between California kiwifruit and imported kiwifruit, by revising the numerical counts per size designation. Section 920.302(a)(iv) of the order's administrative rules and regulations was revised by an interim

final rule issued on September 3, 1998 (63 FR 46861).

While this rule increased the number of fruit that could be packed in size designations 30 through 42, experience has shown that further refinement of the California kiwifruit size designations is needed to help California handlers compete more effectively with imported fruit in the marketplace. Handlers want to better meet buyer preferences and buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. This relaxation of pack requirements will permit handlers to pack more individual pieces of fruit in an 8-pound sample for various size designations, and, thus, better meet buyer preferences.

During the spring of 2001, the production area was hit with a severe frost, heavy winds and hail storms. A shortened bloom period in late spring reduced the pollination of the crop and resulted in less fruit development and growth. Unusually hot temperatures during the summer months added further stress to the vines.

On July 11, 2001, the Committee considered the impact of the severe weather conditions, and estimated the 2001–2002 crop would be 6.5 million tray equivalents. During September the Committee staff conducted a pre-harvest check for sizing, quality, and maturity and found the crop was not sizing as expected. Based on the more recent observations, the field staff estimated that the amount of packable fruit would be approximately 5 million tray equivalents, versus the 6.5 million estimated at the July 11, 2001, meeting.

Because of these factors, the Committee called an emergency meeting on September 19, 2001, to discuss the marketing of the short crop and smaller sized fruit. As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume fill, or bulk containers. To enable the industry to better market the short 2001 crop, the Committee unanimously recommended relaxing the pack regulations under § 920.302(a)(iv) by increasing the maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding new size designations 20 and 23. These changes are shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	27* 32
27/28	30* 35
30	33* 38
33	36* 43
36	42* 45
39	48* 49
42	53* 54
45	55

*Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the "Size Designation Chart" in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule allows one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25 respectively.

Additionally, handlers have the option of packing fruit as size designations 23, 20, or 45. This rule reduces the percentage of fruit packed in the 40 series and increases the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for size designation 39 would move approximately 600,000 pounds of kiwifruit from the former size designation 42 into the new size 39 designation. Increasing the maximum number of fruit per 8-pound sample for size designation 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into the new size 33 designation. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered "undersized" to be shipped. The Committee further believes that increasing the maximum number of fruit in the 8-pound sample will help reduce the sizing differences between California and imported kiwifruit. This should help California handlers compete more effectively in the marketplace.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of California kiwifruit subject to regulation under the marketing order and approximately 360 growers in the production area. Small agricultural service firms are defined as those whose annual receipts are less than $5,000,000, and small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $750,000. None of the 50 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. In addition, 354 of the 360 growers have annual sales less than $500,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule allows handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, eliminates one size designation, and adds two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace. Authority for this action is provided in § 920.52 of the order.

The Committee unanimously recommended relaxing the pack requirements by increasing the maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding size designations 20 and 23 as shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	27* 32
27/28	30* 35

Size designation	Maximum number of fruit per 8-pound sample
30	33* 38
33	36* 43
38	42* 45
39	48* 49
42	53* 54
45	55

*Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the "Size Designation Chart" in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule allows one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25.

Additionally, handlers have the option of packing fruit in size designations 23 and 20, as well as size designation 45. This rule reduces the percentage of fruit packed in the 40 series and increases the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for Size 39 would move approximately 600,000 pounds of fruit from the former size designation 42 into the new size 39 designation. U.S. retailers prefer size 33 kiwifruit. Increasing the maximum number of fruit per 8-pound sample for size 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into the new size 33 designation. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered "undersized" to be shipped. Imports from Europe have increased 1,409 percent since 1992–93. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe.

The Committee further believes that relaxing the pack requirements to permit more individual pieces of fruit in an 8-pound sample for various size designations will reduce the sizing differences between California and imported kiwifruit. Reducing the size designation differences should help California handlers compete more effectively in the marketplace, as buyers apparently choose to purchase containers with more pieces of fruit per container, and this relaxation permits increases in the number of pieces of fruit in bags, volume-fill, and bulk containers. The Committee has estimated that utilizing the new size designations will yield the California kiwifruit industry $24,407,981 in FOB value versus the $22,442,648 received for the 2000–2001 season. This is an additional $1.9 million in FOB value for the 2001–2002 season.

The Committee wants to maintain the reputation California has established for uniformly packed containers of kiwifruit and believe that these changes will not significantly impact uniformity. The increase in the maximum number of fruit per 8-pound sample is not so significant that consumers or retailers will notice a visual size difference in the fruit being offered. The California Kiwifruit Commission, which administers a State program utilized to promote kiwifruit grown in California, conducted kiwifruit-sizing studies several years ago. These studies show that there is only an average of 3/32-inch to 4/32-inch difference in fruit length between sizes, and 2/32-inch to 3/32-inch difference in fruit width. These differences are indistinguishable to the eye.

These changes address the marketing and shipping needs of the kiwifruit industry and are in the interest of growers, handlers, buyers, and consumers. The impact of these changes is expected to be beneficial to all growers and handlers, regardless of size. There is widespread agreement in the industry to relax the pack requirements.

The Committee considered other alternatives to relaxing packing requirements but determined that these suggestions will not adequately address the industry problems.

One suggestion was to change the minimum size. The Committee did not adopt this suggestion because it believes that lowering the minimum size will diminish the quality image of California kiwifruit.

Another suggestion presented was to leave the size designation chart unchanged. The Committee did not adopt this suggestion because it believes that handlers would benefit from the size designation changes.

After considering these alternatives, the Committee recommended relaxing the pack requirements for seven size designations, eliminating one size designation, and adding two new size designations. Small and large growers and handlers are expected to benefit from this relaxation. It is estimated that grower returns will increase by approximately $1.00 per box.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

In addition, the USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 19, 2001, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on relaxing a pack requirement currently prescribed under the California marketing order. Any comments received prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes pack requirements; (2) the 2001–02 harvest is expected to begin during October and this relaxation should cover as much of the harvest as possible; (3) the Committee unanimously recommended these changes to provide handlers more marketing flexibility at a public meeting

and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 920.302 the table at the end of paragraph (a)(4)(iv) is revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *
(4) * * *
(iv) * * *

Size designation	Maximum number of fruit per 8-pound sample
20	27
23	29
25	32
27/28	35
30	38
33	43
36	45
39	49
42	54
45	55

* * * * *

Dated: October 24, 2001.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–27205 Filed 10–25–01; 1:46 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM200; Special Conditions No. 25–189–SC]

Special Conditions: Boeing Model 727–100/–200 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 727–100/–200 series airplanes modified by Aircraft Systems & Manufacturing. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of new electronic air data systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 19, 2001. Comments must be received on or before November 28, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), *Docket No. NM200,* 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM200.* Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM200." The postcard will be date stamped and returned to the commenter.

Background

On June 5, 2001, Aircraft Systems & Manufacturing, Georgetown, Texas, applied for a Supplemental Type Certificate (STC) to modify Boeing Model 727–100/–200 series airplanes. These airplanes are low-wing, pressurized transport category airplanes with three fuselage-mounted jet engines. They are capable of seating between 120 and 189 passengers, depending upon the model and configuration. The modification incorporates the installation of new electronic air data systems consisting of a single air data computer, electronic altimeter for display of No. 1 altitude data and an air data display unit for display of No. 2 altitude data. These systems have a potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Aircraft Systems & Manufacturing must show that the Boeing Model 727–100/–200 series airplanes, as modified to include the new electronic air data systems, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The specific regulations included in the certification basis for the Boeing Model 727–100/–200 series airplanes include Civil Air Regulations (CAR) 4b, as amended by amendment 4b–1 through 4b–11.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 4b, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 727–100/–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29, and become part of the airplane's type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Aircraft Systems & Manufacturing apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the Boeing 727–100/–200 series airplanes modified by Aircraft Systems & Manufacturing will incorporate new electronic air data systems that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be a novel or unusual design features.

Discussion

There is no specific regulation that addresses requirements for protection of electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 727–100/–200 series airplanes modified by Aircraft Systems & Manufacturing. These special conditions will require that these systems, which perform critical functions, must be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 727 –100/–200 series airplanes modified by Aircraft Systems & Manufacturing to install new electronic air data systems. Should Aircraft Systems & Manufacturing apply at a later date for a design change approval to modify any other model included on Type Certificate A3WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Boeing Model 727 –100/–200 series airplanes modified by Aircraft Systems & Manufacturing to include the new electronic air data systems. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 727–100/–200 series airplanes as modified by Aircraft Systems & Manufacturing.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 19, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27160 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–300–AD; Amendment 39–12481; AD 2001–22–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4 series airplanes. This action requires determining the part and amendment numbers of the variable lever arm (VLA) of the rudder control system to verify the parts were installed using the correct standard, and corrective actions, if necessary. This action is necessary to prevent failure of both spring boxes of the VLA due to corrosion damage, which could result in loss of rudder control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 13, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 2001.

Comments for inclusion in the Rules Docket must be received on or before November 28, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–300–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via the Internet must contain "Docket No. 2001–NM–300–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2 and B4 series airplanes. The DGAC advises that two reports were received which indicated that, during regularly scheduled maintenance, damage to the variable lever arm (VLA) of the rudder control system was found. Further investigation revealed that the VLA spring box mountings, the mounting trunnion, and a tie rod also were damaged. Such damage was attributed to corrosion of the spring boxes. Both affected spring boxes were installed per the pre-vendor service bulletin (VSB) 27–21–1H standard, causing stiff operation of the springs and subsequent damage. Failure of one spring box of the VLA does not affect safety of flight, but failure of both spring boxes could result in loss of rudder control and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) A300–27A0196, dated September 20, 2001, which describes procedures for determining the part and amendment numbers of the variable lever arm (VLA) of the rudder control system to verify the spring boxes were installed using the post-VSB 27–21–1H standard, and corrective actions, if necessary. The corrective actions include a detailed visual inspection of the VLA tie rod for damage (bent or ruptured rod) if the part and amendment numbers of the VLA are incorrect, and replacement of any damaged tie rod with a new tie rod.

The DGAC classified this AOT as mandatory and issued French telegraphic airworthiness directive T 2001–447(B), dated September 24, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of both spring boxes of the variable lever arm (VLA) due to corrosion damage, which could result in jammed rudder pedals, loss of rudder control, and consequent reduced controllability of the airplane. This AD requires a one-time inspection to determine the part number of the VLA of the rudder control system, and follow-on actions, if necessary. The actions are required to be accomplished in accordance with the AOT described previously.

Interim Action

This is considered to be interim action. The manufacturer is gathering data that will enable it to obtain better insight into the nature, cause, and extent of the corrosion damage, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–300–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–22–02 Airbus Industrie: Amendment 39–12481. Docket 2001–NM–300–AD.

Applicability: Model A300 B2 and B4 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of both spring boxes of the variable lever arm (VLA) due to corrosion damage, which could result in loss of rudder control and consequent reduced controllability of the airplane, accomplish the following:

Inspection/Corrective Actions

(a) Within 10 days after the effective date of this AD: Determine the part and amendment numbers of the VLA of the rudder control system to verify the parts were installed using the correct standard, per Airbus All Operators Telex (AOT) A300–27A0196, dated September 20, 2001.

(1) If the part and amendment numbers shown are not correct, as specified in the AOT, before further flight, do a detailed visual inspection of the VLA tie rod for damage (bent or ruptured rod) per the AOT.

(i) If the tie rod is damaged, replace the VLA with a new VLA per the AOT. Such replacement ends the requirements of this AD.

(ii) If the tie rod is not damaged, no further action is required by this AD.

(2) If the part and amendment numbers shown are correct, no further action is required by this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus All Operators Telex A300–27A0196, dated September 20, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French telegraphic airworthiness directive T 2001–447(B), dated September 24, 2001.

Effective Date

(e) This amendment becomes effective on November 13, 2001.

Issued in Renton, Washington, on October 18, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26860 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–28–AD; Amendment 39–12479; AD 2001–22–01]

RIN 2120–AA64

Airworthiness Directives; Enstrom Helicopter Corporation Model F–28, F–28A, F–28C, F–28F, 280, 280C, 280F and 280FX Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for Enstrom Helicopter Corporation (EHC) Model F–28, F–28A, and 280 helicopters. That AD currently requires inspecting the main rotor shaft (shaft) for a crack or other evidence of damage until appropriately modifying or replacing the shaft with an airworthy shaft at specified time intervals. This amendment adds EHC Model F–28C, F–28F, 280C, 280F, and 280FX helicopters and establishes life limits after which all unmodified shafts must be retired. This amendment requires determining the radius of the shaft fillet, certain visual and dye-penetrant inspections before further flight, and replacing certain main rotor transmissions. This amendment is prompted by the failure of a shaft on an EHC Model F–28A helicopter due to a fatigue crack. The actions specified by this AD are intended to prevent shaft failure and subsequent loss of control of the helicopter.

DATES: Effective November 13, 2001.

Comments for inclusion in the Rules Docket must be received on or before December 28, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–28–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9–asw–adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph McGarvey, Fatigue Specialist, FAA, Chicago Aircraft Certification Office, Airframe and Administrative Branch, 2300 East Devon Ave., Des Plaines, Illinois 60018, telephone (847) 294–7136, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: On August 16, 1976, the FAA issued AD 76–17–08, Amendment 39–2700 (41 FR 36015, August 26, 1976). On September 16, 1976, the FAA revised that AD issuing AD 76–17–08 R1, Amendment 39–3043 (42 FR 51563, September 29, 1977), for EHC Model F–28, F–28A, and 280 helicopters to establish service time limits after which all unmodified shafts must be replaced. That AD was prompted by FAA's determination, after a review of the service experience, that shaft crack sites may be introduced by allowing the shafts to remain in service for extended periods without modification. That condition, if not corrected, could result in shaft failure and subsequent loss of control of the helicopter.

Since the issuance of that AD, EHC has issued Service Directive Bulletin No. 0094, Revision 1, dated May 31, 2001, specifying certain inspections for a crack in certain shafts due to failure of a shaft on an EHC Model F–28A helicopter.

The FAA and the National Transportation Safety Board (NTSB) investigated the accident involving the failure of a shaft on the EHC Model F28A helicopter. The shaft was designed with a small upper fillet radius of 0.13 inch and failed due to a fatigue crack. Such a shaft design causes a high stress concentration. That, coupled with the occurrence of more frequent than anticipated high flight load conditions, can accelerate the development of fatigue cracks. Preliminary investigation revealed that the shaft installed in the transmission, P/N 28–13101–1-R, failed because of a fatigue crack in the fillet area of the shaft directly beneath the main rotor hub. The FAA concluded, based on its investigation and after reviewing NTSB Report 01–052, dated April 13, 2001, that an inspection should be made of such shafts for cracks before further flight. The FAA determined that since inspections for cracks are imprecise and detection of all existing cracks is uncertain, a shaft with a small radius fillet should be replaced with an airworthy shaft with a large radius fillet on certain model helicopters within 300 hours time-in-service (TIS).

We have identified an unsafe condition that is likely to exist or develop on other helicopters of the same type designs. This AD supersedes AD 76–17–08 and 76–17–08 R1 for EHC Model F–28, F–28A, and 280 helicopters to add Model F–28C, F–28F, 280C, 280F, and 280FX helicopters, to require the following:

- Before further flight, determine the transmission P/N and the radius of the shaft fillet.
- For certain models, replace any transmission having a shaft with a small radius fillet with an airworthy transmission before further flight.
- For certain other models, replace the transmission having a small radius shaft fillet that is not P/N 28–13101–1 or –1–R with an airworthy transmission before further flight.
- For certain models with transmission, P/N 28–13101–1 or –1–R, having a small radius shaft fillet installed:
- Before further flight and at recurring intervals, visually inspect the shaft for a crack. If a crack is suspected, dye penetrant inspect the shaft before further flight.
- Within 5 hours TIS and thereafter at specified intervals, dye penetrant inspect the shaft for a crack, and polish out specified nicks and scratches.
- If a crack is found or if a nick or scratch exceeds a specified limit, replace the transmission with an airworthy transmission before further flight.
- Within 300 hours TIS or at the next transmission overhaul after the effective date of this AD, whichever occurs first, replace transmission, P/N 28–13101–1 or –1–R, with an airworthy transmission having a large radius shaft fillet.

Installing a transmission with a shaft, P/N 28–13104–1–1 or –1–R, Revision K, L, M, N, P, R, or S or P/N 28–13140–1 or –1–R, any revision, is terminating action for the requirements of this AD.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, determining the transmission P/N and the shaft fillet radius, conducting the required inspections, and replacing any unairworthy transmission with an airworthy transmission are required before further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 17 helicopters will be affected by this AD, that it will take approximately 1.4 work hours to accomplish the inspections and that the average labor rate is $60 per work hour. A replacement shaft will cost approximately $3,000 per helicopter, and overhauling the transmission and replacing the shaft will cost approximately $12,000. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $256,428 assuming replacement of the transmission after an inspection of every helicopter affected by this AD.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–28–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–2700 (41 FR 36015, August 26, 1976) and Amendment 39–3043 (42 FR 51563, September 29, 1977), and by adding a new airworthiness directive (AD), Amendment 39–12479, to read as follows:

2001–22–01 Enstrom Helicopter Corporation: Amendment 39–12479. Docket No. 2001–SW–28–AD. Supersedes AD 76–17–08, Amendment 39–2700, and AD 76–17–08 R1, Amendment 39–3043, Docket 76–GL–15.

Applicability: Model F–28, F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent main rotor shaft (shaft) failure and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, determine the part number (P/N) of the main rotor transmission (transmission) and the radius of the upper fillet of the shaft (see Figure 1).

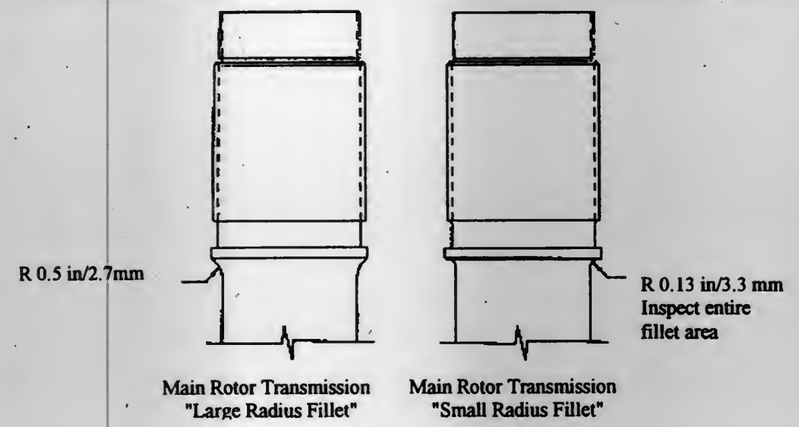


Figure 1. Main Rotor Shaft Inspection

(b) For EHC Model F–28C, F–28F, 280C, 280F, and 280FX helicopters, before further flight, replace any transmission having a small radius shaft fillet with an airworthy transmission having a large radius shaft fillet as specified in Table 1 of this AD.

(c) For EHC Model F–28, F–28A and 280 helicopters:

(1) If the transmission has a shaft with a small radius fillet and the transmission P/N is not listed in Table 1, before further flight, replace the transmission with an airworthy transmission specified in Table 1 of this AD.

TABLE 1.—MAIN ROTOR TRANSMISSION EFFECTIVITY

Description	Transmission P/N	Qty per assy	Models effectivity						
			F–28, F–28A	280	F–28C	280C	F–28F	280F	280FX
(i) Main Rotor Gearbox (0.13 in. radius fillet M/R shaft).	28–13101–1 or –1–R.	1	X	X					
(ii) Main Rotor Gearbox (0.5 in. radius fillet M/R shaft).	28–13101–5 or –5–R*.	1	X	X	X	X			
(iii) Main Rotor Gearbox (0.5 in. radius fillet M/R shaft).	28–13101–8 or –8–R.	1	X	X	X	X	X	X	
(iv) Main Rotor Gearbox (0.5 in. radius fillet M/R shaft).	28–13101–9 or –9–R.	1	X	X	X	X	X	X	
(v) Main Rotor Gearbox (0.5 in. radius fillet, heavy M/R shaft).	28–13101–101 or –101–R*.	1	X	X	X	X			
(vi) Main Rotor Gearbox (0.5 in. radius fillet M/R shaft).	28–13170–1 or –1–R.	1	X	X	X	X	X	X	
(vii) Main Rotor Gearbox (0.5 in. radius fillet M/R shaft).	28–13170–3 or –3–R*.	1	X	X	X	X	X	X	
(viii) Main Rotor Gearbox (0.5 in. radius fillet, heavy M/R shaft).	28–13170–7 or –7–R*.	1	X	X	X	X	X	X	
(ix) Main Rotor Gearbox (0.5 in. radius fillet, heavy M/R shaft, magnetic chip detector, and low rotor RPM pick-up).	28–13101–9 or –9–R*.	1	.....	.....	.....	.....	X	.....	X

Note: "–R" indicates an overhauled transmission.
*Transmissions currently available from EHC.

(2) If the installed transmission is P/N 28–13101–1 or –1–R and has a small radius shaft, before further flight and thereafter at intervals not to exceed 25 hours TIS, visually inspect each transmission for a crack in the shaft upper fillet using a 10X or higher magnifying glass.

(i) If a crack is suspected, before further flight, a level II nondestructive inspector must dye-penetrant inspect the shaft using materials approved by MIL–I–25135.

(ii) If the shaft is cracked, before further flight, replace the transmission with an airworthy transmission having a large radius shaft fillet.

(3) If the transmission is P/N 28–13101–1 or –1–R, within 5 hours TIS, and thereafter at intervals not to exceed 100 hours TIS:

(i) Dye-penetrant inspect the shaft upper fillet for a crack, a nick, or a scratch.

(ii) Polish out nicks or scratches less than 0.005-inch deep.

(iii) If the shaft is cracked or has a nick or scratch 0.005 inch or more deep, replace the transmission with an airworthy transmission having a large radius shaft fillet before further flight.

(4) Within 300 hours TIS or at the next overhaul after the effective date of this AD, whichever occurs first, replace transmission, P/N 28–13101–1 or –1–R, with an airworthy transmission having a large radius shaft fillet.

(d) Installing an airworthy transmission with a shaft, P/N 28–13104–1 or –1–R, Revision K, L, M, N, P, R or S, or P/N 28–13140–1 or –1–R, is terminating action for the requirements of this AD.

Note 2: Enstrom Helicopter Corporation Service Directive Bulletin No. 0094, Revision 1, dated May 31, 2001, pertains to the subjet of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago, Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Chicago ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago ACO.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished provided an inspection in accordance with paragraph (c)(2) of this AD reveals no crack in the shaft.

(g) This amendment becomes effective on November 13, 2001.

Issued in Fort Worth, Texas, on October 16, 2001.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–26965 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–348–AD; Amendment 39–12482; AD 2001–22–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes, that requires modifying the oxygen flow control valve. This action is necessary to ensure that proper oxygen flow will be available to passengers when needed. This action is intended to address the identified unsafe condition.

DATES: Effective December 3, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes was published in the **Federal Register** on August 23, 2001 (66 FR 44322). That action proposed to require modifying the oxygen flow control valve.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 150 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost for required parts will be negligible. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $9,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close-up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is

contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–22–03 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–12482. Docket 2000–NM–348–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes; certificated in any category; as listed in Bombardier Service Bulletin 8–35–19, dated August 17, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that proper oxygen flow will be available to passengers when needed, accomplish the following:

Modification

(a) Within 90 days after the effective date of this AD, modify the flow control valve (including removing the selector stop; installing two new screws of a shorter length in the vacated holes; and, for airplanes having a two-position label, replacing the label with a new three-position label having an OFF position). Perform the modification in accordance with Bombardier Service Bulletin 8–35–19, dated August 17, 2000 (Bombardier Modification 8/2989).

Spares

(b) As of the effective date of this AD, no person may install a selector stop having part number 8Z2070 or H85320099 on the flow control valve of any affected airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The modification shall be done in accordance with Bombardier Service Bulletin 8–35–19, dated August 17, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–26, dated August 28, 2000.

Effective Date

(f) This amendment becomes effective on December 3, 2001.

Issued in Renton, Washington, on October 19, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26953 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–220–AD; Amendment 39–12483; AD 2001–22–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, that currently requires a one-time inspection of the fuselage skin adjacent to the drag splice fitting to detect cracking, and follow-on actions, if necessary. This amendment requires new repetitive inspections for cracking of the fuselage skin adjacent to the drag splice fitting. This amendment is prompted by reports of fatigue cracking in the fuselage skin and adjacent structure. The actions specified by this AD are intended to detect and correct such cracking, which could result in reduced structural integrity of the fuselage, and consequent rapid depressurization of the airplane.

DATES: Effective December 3, 2001.

The incorporation by reference of Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of December 3, 2001.

The incorporation by reference of Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 28, 2000 (65 FR 43219, July 13, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–14–04, amendment 39–11813 (65 FR 43219, July 13, 2000), which is applicable to all Boeing Model 747 series airplanes, was published in the **Federal Register** on June 5, 2001 (66 FR 30109). The action proposed to require a one-time inspection of the fuselage skin adjacent to the drag splice fitting to detect cracking, and follow-on actions, if necessary. The action also proposed to mandate new repetitive inspections for cracking of the fuselage skin adjacent to the drag splice fitting.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Add Service Information

One commenter asks that Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001 (referenced as the appropriate source of service information for accomplishment of certain actions in the proposed rule), be added to paragraph (a) of the proposed rule, which referenced Revision 1 of the bulletin, as another source of service information for accomplishment of the external detailed visual inspection. The FAA agrees that Revision 2 of the service bulletin can be added to paragraph (a) of the final rule, and we have revised the final rule accordingly.

Change Note 5 and Title

One commenter asks that Note 5 of the proposed rule, which gives credit for inspections and repairs accomplished before July 28, 2000, be changed to also give credit for previous accomplishment of the determination of a secondary inspection, as specified in paragraph (c) of the proposed rule. The commenter does not provide a reason for this request. The FAA agrees and we have changed Note 5 of the final rule, for clarification, to include previous accomplishment of the determination of a secondary inspection. We also have removed "repairs" from the note because the original release of the service bulletin does not provide instructions for repairs.

The same commenter asks that the title "Repetitive Inspections," which precedes paragraph (d) of the final rule, be changed to "Initial and Repetitive Inspections." We agree and have changed the title accordingly.

Previously Accomplished Inspections

One commenter asks for clarification of the compliance time for the repetitive inspections specified in paragraph (d) of the proposed rule for operators who previously accomplished the initial inspections in that paragraph per Figure 4 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2444, dated May 25, 2000, or Revision 1, dated June 15, 2000. The commenter wants clarification that if it did the inspections per either of those service bulletins, it is only required to continue the repetitive inspections per Figures 4, 5, 6, or 7 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001, at 3,000 flight cycle intervals.

The FAA infers that the commenter is asking to do the repetitive inspections specified in paragraph (d) of the final rule within 3,000 flight cycles after doing the initial inspections per Boeing Alert Service Bulletin 747–53A2444, dated May 25, 2000, or Revision 1, dated June 15, 2000. We do not concur because the inspections specified in Revision 2 involve more comprehensive inspection procedures than those in the previous versions of the service bulletin. Operators that have done the initial inspections per previous versions of the service bulletin do not meet the requirements for the repetitive inspection intervals specified in paragraph (d) of the final rule until the initial inspections have been done per Revision 2. As specified in the preamble of the proposed rule, since the issuance of AD 2000–14–04, we received a report of severe cracking on a Model 747 series airplane, and Revision 2 of the service bulletin was issued to address that additional cracking. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is interim action. The manufacturer has advised that it is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 1,301 airplanes of the affected design in the worldwide fleet. The FAA estimates that 260 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 2000–14–04 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $31,200, or $120 per airplane.

The new inspections that are required by this AD action will take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $109,200, or $420 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11813 (65 FR 43219, July 13, 2000), and by adding a new airworthiness directive (AD), amendment 39–12483, to read as follows:

2001–22–04 Boeing: Amendment 39–12483. Docket 2000–NM–220–AD. Supersedes AD 2000–14–04, Amendment 39–11813.

Applicability: All Model 747 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of certain areas of the fuselage skin, which could result in reduced structural integrity of the fuselage, and consequent rapid depressurization of the airplane, accomplish the following:

Restatement of Requirements of AD 2000–14–04

One-Time Detailed Visual Inspection

(a) Prior to the accumulation of 13,000 total flight cycles or within 60 days after July 28, 2000 (the effective date of AD 2000–14–04, amendment 39–11813), whichever occurs later: Perform a one-time external detailed visual inspection of the fuselage skin adjacent to the drag splice fitting as illustrated in Figure 2 of Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000, or Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001. If no cracking is detected, no further action is required by this paragraph.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(b) If any cracking is detected during any inspection required by this AD, prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001. Where the service bulletin specifies to contact Boeing for repair instructions, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Note 3: Repairs accomplished prior to the effective date of this AD in accordance with a method approved by the Manager, Seattle ACO, FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER, are considered acceptable for compliance with the repair specified in paragraph (b) of this AD.

Note 4: Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001, references the 747 Structural Repair Manual (SRM) as an appropriate source of service information for accomplishment of the repair of the fuselage skin. However, the use of 7075-T6 aluminum as specified in certain revisions of the SRM is not an option for skin replacement when accomplishing the subject repair.

Secondary Inspection

(c) For airplanes on which cracking is detected during any inspection required by paragraph (a) or (d) of this AD, prior to further flight after accomplishment of paragraph (b) of this AD: Determine if a secondary inspection of adjacent structure is required, using the Logic Diagram illustrated in Figure 1 of Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000, or Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001. If required, prior to further flight, accomplish the inspection in accordance with the service bulletin.

Note 5: Inspections (including secondary inspection determination) accomplished prior to July 28, 2000, in accordance with Boeing Alert Service Bulletin 747–53A2444, dated May 25, 2000, are considered acceptable for compliance with paragraphs (a) and (c) of this AD.

New Requirements of This AD

Initial and Repetitive Inspections

(d) Perform ultrasonic, high frequency eddy current, and detailed visual inspections in accordance with the Work Instructions of Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001, at the applicable times specified in Figure 1 of the Logic Diagram of the service bulletin; except where the compliance time in the logic diagram specifies an interval of "after the release date of the service bulletin," this AD requires compliance within the interval specified in the service bulletin "after the effective date of this AD." Repeat the applicable inspections at the intervals shown in Figure 1 of the Logic Diagram of the service bulletin. Accomplishment of the inspections required by this paragraph ends the inspections required by paragraph (a) of this AD.

Note 6: Where there are differences between the AD and the service bulletin, the AD prevails.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–14–04, amendment 39–11813, are approved as alternative methods of compliance with this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000; or Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000, was approved previously by the Director of the Federal Register as of July 28, 2000 (65 FR 43219, July 13, 2000).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on December 3, 2001.

Issued in Renton, Washington, on October 19, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26952 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–10–AD; Amendment 39–12489; AD 2001–22–10]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes, that requires revising the Emergency Procedures and Abnormal Procedures sections of the airplane flight manual to advise the flightcrew to immediately don oxygen masks in the event of significant pressurization or oxygen level changes. The actions specified by this AD are intended to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in their inability to continue to control the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 3, 2001.

ADDRESSES: Information pertaining to this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes was published in the **Federal Register** on April 17, 2001 (66 FR 19727). That action proposed to require revising the Emergency Procedures and Abnormal Procedures sections of the airplane flight manual to advise the flightcrew to immediately don oxygen masks in the event of significant pressurization or oxygen level changes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Include Certain Changes to the Airplane Flight Manual (AFM)

The manufacturer reports the issuance of certain AFM changes, which correspond to the Figures associated with paragraphs (a) through (f) of this AD. The following AFM changes have been issued:

Figure in AD	Model/ Series	Type of change	Change No.
1	MF900	AFM routine revision	24
1	MF50	AFM routine revision	32
2	MF50	AFM routine revision	32
3	MF900	AFM routine revision	24
4	F900EX	AFM routine revision	6
5	F900C	AFM routine revision	2
6	F50EX	AFM routine revision	5

The FAA has accordingly revised the final rule to replace Note 1 of the proposed AD with new paragraph (g) of the final rule. Paragraph (g) specifies that the insertion of those AFM changes (also listed in Table 1 of this AD) into the AFM are acceptable for compliance with the corresponding requirements of this AD.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 137 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $8,220, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not

have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–22–10 Dassault Aviation: Amendment 39–12489. Docket 2001–NM–10–AD.

Applicability: All Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, which could result in their inability to continue to control the airplane, accomplish the following:

Revision of Airplane Flight Manual (AFM) Emergency Procedures

(a) For Model Mystere-Falcon 50 series airplanes having serial numbers (S/Ns) 1 through 250 inclusive and 252, and Mystere-Falcon 900 series airplanes having S/Ns 1 through 178 inclusive: Within 10 days after the effective date of this AD, revise the Emergency Procedures section of the FAA-approved AFM to include the procedures listed in Figure 1 of this AD. This revision may be done by inserting a copy of Figure 1 into the AFM.

Figure 1

"In case of rapid cabin depressurization, apply the following procedure:

1. Crew oxygen masks ..... 100% - Donned
2. Microphone selector ..... MASK
3. FASTEN BELTS and no smoking light pushbuttons ..... On
4. Oxygen controller and passenger masks ..... OVERRIDE – Donned
5. Emergency descent ..... Initiated"

Revision of AFM Abnormal Procedures Section

(b) For Model Mystere-Falcon 50 series airplanes as identified in paragraph (a) of this AD: Within 10 days after the effective date of this AD, revise the Abnormal Procedures section of the AFM to include the procedures listed in Figure 2 of this AD. This revision may be done by inserting a copy of Figure 2 into the AFM.

Figure 2

"PRESSURIZATION – TOO HIGH CABIN ALTITUDE OR SLOW DEPRESSURIZATION

WARNING – CABIN light on and warning horn sounds.

– Cabin altitude higher than 10,000 ft.

– Crew oxygen masks ..... Donned – Normal

– Microphone selector ..... MASK and test

– Bleed air CREW, CABIN and PRV ..... ON or AUTO

– UP – DN control ..... Between 1 and 2 o'clock

– Cabin pressure selector switch ..... MAN (as required)

– UP – DN control ..... DN (as required)

_____ If necessary:

-  ..... On
- Passenger oxygen masks ..... Donned – Checked
- NOSE ..... Closed

_____ If necessary:

- Execute an EMERGENCY DESCENT (see page 2.10.1) down to 14,000 ft or safe altitude."

BILLING CODE 4910–13–U

(c) For Model Mystere-Falcon 900 series airplanes as identified in paragraph (a) of this AD: Within 10 days after the effective date of this AD, revise the Abnormal Procedures section of the AFM by including the procedures listed in Figure 3 of this AD. This revision may be done by inserting a copy of Figure 3 into the AFM.

Figure 3

"PRESSURIZATION – TOO HIGH CABIN ALTITUDE OR SLOW DEPRESSURIZATION

WARNING – CABIN light on and aural warning.

– Cabin altitude higher than 10,000 ft.

– Crew oxygen masks ..... Donned/Normal

– Microphone selector ..... MASK

– Bleed air CREW and PASSENGER switches ..... Checked

– PRV 2 and PRV 3 switches ..... Checked

– BAG switch ..... ISOL

• BAG ISOL light ..... On

– *NOSE control lever* ..... *CLOSED*

– UP – DN control ..... Between 1 and 2 o'clock

– AUTO/MAN pressure selector switch ..... MAN

– UP – DN control .....DN (as required)

———— If cabin pressure cannot be restored:

• Isolation valve knob ..... ISOLATION

• ISOL light checked .....On

———— If cabin pressure is restored:

• Cycle bleed air CREW and/or PASSENGER switches alternatively to OFF and ON. Retain condition for which cabin pressure is maintained.

• COND control lever *or crossfeed valve* ..... TIED

———— If cabin pressure is not restored:

• NORM/EMERG pressure selector switch .....EMERG

Figure 3 continued

———— If cabin pressure is restored:

• Continue flight at highest possible altitude.

• CREW temperature controller ..... As required

———— If temperature gets too high during descent:

• Bleed air CREW switch ..... OFF

———— If cabin pressure cannot be restored:

•  .....On

• Passenger oxygen masks.....Donned

———— If necessary:

• Execute an emergency descent down to the safe altitude or to 14,000 ft."

(d) For all Model Falcon 900EX series airplanes: Within 10 days after the effective date of this AD, revise the Abnormal Procedures section of the AFM by including the procedures listed in Figure 4 of this AD. This revision may be done by inserting a copy of Figure 4 into the AFM.

Figure 4

"PRESSURIZATION – TOO HIGH CABIN ALTITUDE

WARNING – MASTER with CABIN lights on and "CABIN" voice warning.

– Cabin altitude higher than 10,000 ft.

– Crew oxygen masks ..... Donned/Normal

– Microphone selector ..... MASK

– CREW and PASSENGER air conditioning valve switches ..... AUTO - Checked

– HP BLEED AIR switches ..... Auto - Checked

– BAG switch ..... ISOL

• BAG ISOL light ..... On - Checked

– UP – DN control knob ..... White range

– AUTO/MAN pressure selector switch ..... MAN

– UP – DN control knob .....DN (as required)

———— If cabin pressure cannot be restored:

• Isolation rotary switch.....ISOL

• ISOL light..... On - Checked

———— If cabin pressure is restored:

• Cycle PASSENGER and/or CREW air conditioning valve switches alternatively to OFF and ON. Retain condition for which cabin pressure is maintained.

———— If cabin pressure is not restored:

• NORM/EMERG pressure selector switch .....EMERG

Figure 4 continued

———— If cabin pressure is restored:

• Continue flight at highest possible altitude.

• CREW temperature controller .....As required

———— If temperature gets too high during descent:

• CREW air conditioning valve switch ..... OFF

———— If cabin pressure cannot be restored:

•  light pushbutton .....On

• Passenger oxygen masks.....OVERRIDE/Donned

———— If necessary:

• Execute an emergency descent down to the safe altitude or to 14,000 ft."

(e) For Model Mystere-Falcon 900 series airplanes having serial numbers 179 and subsequent: Within 10 days after the effective date of this AD, revise the Abnormal Procedures section of the AFM by including the procedures listed in Figure 5 of this AD. This revision may be done by inserting a copy of Figure 5 into the AFM.

Figure 5

"PRESSURIZATION – TOO HIGH CABIN ALTITUDE OR SLOW DEPRESSURIZATION

WARNING – MASTER with CABIN lights on and "CABIN" voice warning.

– Cabin altitude higher than 10,000 ft.

– Crew oxygen masks ..... Donned/Normal

– Microphone selector ..... MASK

– CREW and PASSENGER air conditioning switches . AUTO - Checked

– PRV 2 and PRV 3 BLEED AIR switches ..... On - Checked

– BAG switch ..... ISOL

• BAG ISOL light ..... On - Checked

– UP – DN control ..... Between 1 and 2 o'clock

– AUTO/MAN pressure selector switch ..... MAN

– UP – DN control ..... DN (as required)

———— If cabin pressure cannot be restored:

• Isolation rotary switch ..... ISOLATION

• ISOL light ..... On - Checked

———— If cabin pressure is restored:

• Cycle PASSENGER and/or CREW air conditioning valve switches alternatively to OFF and ON. Retain condition for which cabin pressure is maintained.

• Crossfeed valve *or COND control lever* ..... TIED

———— If cabin pressure is not restored:

• NORM/EMERG pressure selector switch ..... EMERG

Figure 5 continued

———— If cabin pressure is restored:

• Continue flight at highest possible altitude.

• CREW temperature controller ..... As required

———— If temperature gets too high during descent:

• CREW air conditioning valve switch ..... OFF

———— If cabin pressure cannot be restored:

•  ..... On

• Passenger oxygen masks ..... OVERRIDE - Donned

———— If necessary:

• Execute an emergency descent down to the safe altitude or to 14,000 ft."

(f) For Model Mystere-Falcon 50 series airplanes having serial numbers 251, 253, and subsequent: Within 10 days after the effective date of this AD, revise the Abnormal Procedures section of the AFM by including the procedures listed in Figure 6 of this AD. This revision may be done by inserting a copy of Figure 6 into the AFM.

Figure 6

"PRESSURIZATION – TOO HIGH CABIN ALTITUDE OR SLOW DEPRESSURIZATION

WARNING – MASTER light on + aural warning with CABIN light on.

– Cabin altitude higher than 10,000 ft.

– Crew oxygen masks .....Donned – Normal

– Microphone selector.....MASK and test

– HP 1, 2 and 3 BLEED AIR switches ..... AUTO – Checked

– BLEED AIR: CREW and CABIN switches .....On

———— If depressurization persists:

• UP – DN control .....Between 1 and 2 o'clock

• Cabin pressure selector switch.....MAN (as required)

• UP – DN control .....DN (as required)

———— If necessary:

• 🚭 .....On

• Passenger oxygen masks.....Donned – Checked

• NOSE ..... Closed

———— If necessary:

• Execute an EMERGENCY DESCENT (see page 2–120–1) down to 14,000 ft or safe altitude."

BILLING CODE 4910–13–U

(g) Insertion into the AFM of the applicable AFM revision in Table 1 of this AD, or insertion of a subsequent AFM revision that contains procedures identical to those in the applicable Figure of this AD, is acceptable for compliance with the corresponding requirements of this AD. Table 1 of this AD follows:

TABLE 1.—ALTERNATIVE SOURCES OF SERVICE INFORMATION

Figure in AD	Model/ Series	AFM revision
1	MF900	24
1	MF50	32
2	MF50	32
3	MF900	24
4	F900EX	6
5	F900C	2
6	F50EX	5

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 2: The subject of this AD is addressed in French airworthiness directives 2000–536–032(B), dated December 27, 2000; and 2000–536–032(B) R1, dated February 7, 2001.

Effective Date

(j) This amendment becomes effective on December 3, 2001.

Issued in Renton, Washington, on October 22, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27070 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2001–8683; Airspace Docket No. 01–ASW–2]

RIN 2120–AA66

Modification of Restricted Area R–6312 Cotulla, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action raises the upper limit of Restricted Area 6312 (R–6312) Cotulla, TX, from the current 12,000 feet above mean sea level (MSL) to Flight Level 230 (FL 230) to provide airspace for high altitude release bombing training. This rule makes no other changes to R–6312.

EFFECTIVE DATE: 0901 UTC, December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 2001, the FAA proposed (66 FR 18055) to amend 14 CFR part 73 to increase the vertical limits of R–6312 from 12,000 feet above MSL to FL 230. The FAA took this action in response to a request from the U.S. Navy indicating that current upper limit of R–6312 (12,000 feet above MSL) is not suitable for their training requirements. Specifically, altitudes up to FL230 are essential to fulfill their requirement to conduct high altitude release bombing training. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on this proposal to the FAA.

Discussion of Comment

In response to the Notice of Proposed Rule-making, the FAA received one comment in opposition to the change. The commenter indicated that the proposed increase to the ceiling from 12,000 feet MSL to FL 230 would cause visual flight rules (VFR) operations transiting the area to circumnavigate the restricted area. They requested an increase in the height of the east/west corridor through the restricted area from 1,000-feet AGL to 4,500 feet MSL to preclude the compression of transiting VFR aircraft into the corridor. The FAA disagrees with this comment because the predominant flow of VFR traffic in the area is north to south and visa versa. The affected aircraft would be higher than 12,000 feet and would not be likely to descend to 4,500 feet and circle to the east or west to pass through the east/west corridor rather than flying approximately 10nm to circumnavigate the restricted area. Further, increasing the height of the corridor would have a significant negative impact on military training without a significant benefit to civil VFR traffic in that it would prohibit low altitude awareness training.

Additionally, the commenter requests that the controlling agency's contact frequency be published in the tabular portion of the sectional aeronautical chart. The FAA agrees that it would be beneficial to display the contact frequency on the chart and will publish the contact frequency either in the tabular area or on the face of the sectional aeronautical chart.

The Rule

This amendment to 14 CFR part 73 raises the vertical limits of R–6312 from 12,000 feet above MSL to FL 230. This additional altitude is required in order to meet the Navy's requirement for high altitude release bombing training. No other change to R–6312 is made by this action. Section 73.63 of 14 CFR part 73 was republished in FAA Order 7400.6H, dated September 1, 2000.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The United States Navy (USN) determined that this amendment of the restricted area's designated altitude qualifies for a categorical exclusion. The FAA has reviewed the USN's environmental documentation and concludes that this action is

categorically excluded in accordance with FAA Order 1050.1D, Procedures for Handling Environmental Impacts, and the FAA/DOD Memorandum of Understanding of 1998 regarding Special Use Airspace actions.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Section 73.63 [Amended]

2. Section 73.63 is amended as follows:

* * * * *

R–6312 Cotulla, TX [Amended]

By removing the current designated altitudes and substituting the following:

Designated altitudes. Surface to FL 230, excluding the area west of a line between lat. 28°141″ N., long. 98°47′56″ W.; and lat. 28°11′56″ N., long. 98°48′01″ W.; and the area along Highway 624 extending ¼ mile each side where the floor is 1,000 feet AGL.

* * * * *

Issued in Washington, DC, on October 19, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–27159 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Order No. 1322; Docket No. RM2001–3]

Adoption of Sunset Rules

AGENCY: Postal Rate Commission.

ACTION: Notice and order adopting final rules with sunset provisions.

SUMMARY: Several sets of Commission rules of practice have expired. They addressed Express Mail rates and fees and certain limited classification changes. The Commission is adopting these rules again, on the same terms. The rules will be effective for 5 years. This action will allow established practices to continue, subject to sunset provisions.

DATES: These rules take effect November 28, 2001.

ADDRESSES: Send correspondence regarding this document to the attention of Steven W. Williams, acting secretary, 1333 H Street NW., suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION:

Regulatory History

Previous related rulemakings: Express Mail market response rules: 60 FR 12119; expedited minor classification cases, market test rules for classification changes; limited provisional service changes; and multi-year test period rules: 61 FR 24453—61 FR 24457.

Current rulemaking: 66 FR 39560 (7/13/01) and 66 FR 38602 (7/25/01).

Introduction

In order no. 1319, the Commission requested interested persons to comment on the advisability of reissuing five sets of rules of practice that had expired through operation of five-year sunset provisions. PRC Order No. 1319 (July 18, 2001). These rules, which provide for expedited consideration of certain Postal Service requests for a recommended decision, are of two types. The first concerns changes in Express Mail rates and fees;[1] the second encompasses four sets of rules addressing certain limited classification changes.[2]

Four sets of comments were filed. The comments reflect no unanimity, ranging from the Postal Service's suggestion that, at a minimum, each rule be reissued, to United Parcel Service's (UPS's) position that none of the rules be reissued. The comments, which are briefly summarized below, are available for public inspection at the Commission's offices and via the Commission's Web site, *www.prc.gov*.

Upon consideration of the comments and an assessment of the rules, the Commission has determined to reissue the rules for an additional five-year period. The Commission, however, declines to broaden the scope of this proceeding beyond the affected rules.

[1] See 39 CFR 3001.57–57c (1999). The Express Mail Service rules were adopted in 1989 and reissued in 1995. See PRC Order No. 836 (August 10, 1989) and PRC Order No. 1042 (February 17, 1995). These rules expired March 6, 2000. 60 FR 12116.

[2] See 39 CFR 3001.161–166 (concerning market tests), 39 CFR 3001.171–176 (concerning provisional service changes), 39 CFR 3001.69–69c, (concerning minor classification changes), and 39 CFR 3001.181–182 (concerning multi-year test periods for new services). These rules became effective in May 1996 and expired May 15, 2001. See PRC Order No. 1110 (May 7, 1996); see also 61 FR 24447.

I. Comments

A. Postal Service

The Postal Service urges the Commission to reissue and to consider broadening the scope of the rules. The Postal Service asserts that, at a minimum, the limited classification rules should be reissued, suggesting further that the Commission should consider expanding the concept of multi-year test periods, rule 181, to include alternative test periods in rate and classification proceedings before the Commission. Postal Service Comments at 1–2, 12.

Second, the Postal Service advocates that the Express Mail rules be reissued, while suggesting the possibility that those procedures be expanded to other services. Id. at 2–3. Recognizing that this suggestion may be beyond the reach of this proceeding, the Postal Service concludes that the concept "is worthy of consideration at some point in the future." Id. at 3.

Third, the Postal Service raises issues not covered by the expired rules, i.e., rate bands and negotiated service agreements, concluding that "these and other measures of ratemaking flexibility would be worthwhile topics of a future rulemaking." Ibid.

In support of reissuing the rules, the Postal Service focuses on the flexibility they afford, particularly the limited classification rules. The infrequency with which these rules have been invoked is not, according to the Postal Service, an indication that they lack value. Rather, a combination of events has lessened the Postal Service's ability to invoke the rules, e.g., its caseload before the Commission. Id. at 4–5. Underscoring the point, it notes that the Commission's rules governing experimental classification proposals, 39 U.S.C. 3001.67–67d, were employed only once in the first fifteen years of their existence. Id. at 4. Beginning in 1996, however, they have been invoked numerous times.

Turning to the rules, the Postal Service discusses the instances in which the limited classification rules have been invoked. It concludes that these rules, involving market tests, provisional services, and minor classification changes, while from its perspective somewhat imperfect, worked sufficiently well to warrant their renewal. Id. at 7–11. Concerning multi-year test periods, a rule that it has yet to invoke, the Postal Service notes the importance of having an opportunity to recover start-up costs over an appropriate period. In addition, it broaches the issue of expanding the Commission's rules to permit alternate

test periods "in all Commission proceedings conducted pursuant to 39 U.S.C. 3622 and 3623." Id. at 12. Noting that this issue has been previously considered, the Postal Service states that such an expansion would promote rate proposals based on phased rate schedules "over a predetermined rate cycle." Id. at 13.

Finally, citing their potential utility, the Postal Service urges the Commission to renew the Express Mail rules. It would prefer, however, if the rules were expanded "to other services facing market pressures similar to Express Mail." Id. at 15. As noted above, the Postal Service recognizes that this suggestion may exceed the scope of this rulemaking. Id. at 2–3.

B. Newspaper Association of America (NNA)

The NNA submitted brief comments advocating that each of the expired rules be reissued.

C. Office of Consumer Advocate (OCA)

The OCA frames the issue whether to reissue the rules by posing several questions, e.g., whether the rules were invoked, whether they are likely to be used, and whether the rules need to be revised. OCA Comments at 2. Having considered these questions, the OCA recommends against reissuing the Express Mail rules, but favors renewing those involving limited classification changes.

Citing the history of the rules, i.e., their never being invoked and the Postal Service's failure to seek their renewal, the OCA claims that the Express Mail rules are unnecessary. In addition, the OCA asserts that the Commission can, on an ad hoc basis, accommodate requests for expedition should it be warranted. Id. at 3.

In general, the OCA finds renewal of the limited classification rules is justified because the rules have proved useful, workable, and practical. Id. at 3–6. The OCA supports reissuing rule 181, multi-year test periods, because among other things, the rule signals the Commission's willingness to consider new services requiring a longer test period. Id. at 7.[3]

D. UPS

UPS opposes reissuing the rules, contending that they are neither necessary nor useful. UPS Comments at 1–2. UPS advances three arguments against reissuing the Express Mail rules. First, it notes that they have never been employed by the Postal Service. Id. at 2. Second, it asserts that the market for expedited letters is mature, implying that there is no need for the Express Mail rules. Ibid. Third, UPS argues that the Commission's regular rules are adequate to address requests for expedition. Id. at 3; see also 6–9.

Citing their infrequent use, UPS also opposes reissuing the rules concerning limited classification changes. Id. at 3–4. Further, UPS asserts that the rules for minor classification cases, provisional changes, and market tests are ambiguous and thus "invite litigation over whether the proper set of rules is being applied." Id. at 5.

UPS argues that the Commission's regular rules are sufficiently flexible to address the Postal Service's rate and classification requests. In support, it cites, inter alia, rule 1 (the rules are to be liberally construed to achieve a just and speedy result), rule 23(a)(1) (concerning the presiding officer's hearing authority), and rule 22 (concerning waivers). Id. at 6–7. In addition, UPS suggests that the rules governing experimental changes provide sufficient flexibility "to accommodate situations that the regular rules do not cover." Id. at 8.

Finally, UPS contends that reissuing the rules poses certain risks. These include: predetermined procedural tracks that may not be appropriate, more rules add complexity and confusion and, assuming the rules are unnecessary, raising the "potential for implicating due process concerns." Id. at 10.

II. Discussion

The Commission's decision to reissue the rules is influenced by several factors. First, the rules were previously enacted. Thus not only are they well known to participants, there has been ample opportunity to consider and to comment on the rules. Second, the rules are narrowly drawn and have not engendered significant controversy. Third, they afford the Postal Service procedural flexibility while, concomitantly, protecting intervenors' rights to participate meaningfully in any such proceeding. Fourth, the rules have proven to be workable, or provide an option that, on balance, continues to have merit. Finally, renewing the rules, including the sunset provisions, will enable the Postal Service and parties to gain further experience while also tolling their existence should they become unnecessary or obsolete.

The limited classification rules have proven to be workable and useful. See OCA Comments at 3 *et seq.*, Postal Service Comments at 7 *et seq.* For example, the market test rules, 39 CFR 3001.161–166, were successfully invoked in docket no. MC98–1, Mailing Online. The rules permitting minor classification changes, 39 CFR 3001.69–69c, were successfully employed in docket no. MC99–4, Bulk Parcel Return Service. The settlement which resulted in that proceeding was facilitated, at least in part, by the operation of the rules. The Postal Service invoked the rules concerning provisional services, 39 CFR 3001.171–176, in docket no. MC97–5. While the packaging service proposal in that proceeding was never implemented, the rules operated effectively, allowing the Postal Service to introduce a new product. Similarly, the multi-year test period rules, 39 CFR 3001.181–182, while not yet invoked, provide a useful tool for assessing new services. Taken as a whole, the rules provide a simplified means for the Postal Service to present and the Commission to consider innovations and refinements in its service offerings.

UPS's claim that the rules are ambiguous is not sufficient reason not to reissue them. First, the claim has not been borne out in practice. The rules have worked reasonably well. Second, UPS's suggestion that the regular rules are an adequate ad hoc surrogate for the instant rules is not persuasive. The argument implicitly assumes that were the Postal Service to request a waiver of the regular rules it would engender no controversy in its own right. In practice, such a result would appear to be unlikely. On occasion, controversy may be an unavoidable byproduct of any rules, but this does not establish a legitimate basis to discard the instant rules.[4]

The Express Mail market rules, 39 CFR 3001.57–57c (1999), present a closer question.[5] Two commenters favor and two commenters oppose their renewal. Those opposing note that the rule has never been invoked. UPS Comments at 2; OCA Comments at 2.

[3] The OCA also notes the need to conform the instant rules to rules currently under consideration in docket no. RM2001–2, Filing Online. This is a matter to be addressed in a subsequent order since that docket remains pending.

[4] UPS's due process concerns are neither well founded nor well developed. They proceed from the flawed assumption that the rules are unneeded, and even with that assumption, give rise only to "the potential for implicating due process concerns." UPS Comments at 10. The Commission has previously addressed potential due process problems associated with the instant rules. Among other things the Commission assured "all parties that it will not allow (the limited classification) rules to be used to alter the normally applicable standards of proof, curtail legitimate discovery and hearing practice, or otherwise deprive interested parties of their procedural rights." PRC order no. 1110 (May 7, 1995) at 7.

[5] The Express Mail rules in the attachment reflect renumbering. Former rule 57a is now rule 58; former rule 57b is now rule 59; and former rule 57c is now rule 60.

They assert this demonstrates that the rule is unnecessary. Lack of use, however, is not necessarily dispositive. As the Postal Service notes, the rules governing experimental classification changes were used but once in their first 15 years of existence, but have been employed seven times in the last six years.[6] Furthermore, the Postal Service cites various factors that weighed on its use of these rules. Postal Service Comments at 14. In addition, the Postal Service touts the potential value of the rules.

The Commission concludes that reissuing the Express Mail Service rules is appropriate. Lack of use is not, in this instance, compelling enough to foreclose the flexibility afforded by this option. The rules provide adequate safeguards to protect the interests of all interested persons. Furthermore, inclusion of the sunset provision will ensure that these rules will be reviewed again within five years or expire on their own accord.

The Commission declines to act on the Postal Service's suggestion that its rules be expanded. See, *e.g.*, Postal Service Comments at 2–3. This proceeding was commenced solely to consider the status of the expired rules. Expanding it to include new issues would raise concerns about timing and notice. This is not to suggest that the topics do not merit further attention, but simply that this is not the appropriate vehicle.

In conclusion, pursuant to the foregoing discussion, the Commission hereby amends its rules of practice as set forth in the attachment to this order.

III. Ordering Paragraphs

It is ordered:

1. The Commission's rules of practice are amended as set forth in the attachment.

2. The attached rules are effective November 28, 2001.

3. The acting secretary shall cause this order to be published in the **Federal Register**.

Dated: September 24, 2001.

Steven W. Williams,

Acting Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

[6] Docket no. MC2001–1 (regarding presorted priority mail), docket No. MC2000–2 (regarding Mailing Online), docket no. MC2000–1 (regarding ride-along changes for publications), docket no. MC99–1 (regarding non-letter-size business reply-mail), docket no. MC98–1 (regarding Mailing Online), docket no. MC97–1 (regarding non-letter size business reply mail), and docket no. MC96–1 (regarding small parcel automation rate).

For the reasons stated in the preamble, the Postal Rate Commission amends 39 CFR part 3001 as follows:

PART 3001—[AMENDED]

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622–24; 3661; 3662; 3663.

2. Amend subpart B, Rules Applicable to Requests for Changes in Rates or Fees, by adding §§ 3001.57–3001.60 to read as follows:

§ 3001.57 Market response rate requests for express mail service—purpose and duration of rules.

(a) This section and §§ 3001.58 through 3001.60 only apply in cases in which the Postal Service requests an expedited recommended decision pursuant to section 3622 of the Postal Reorganization Act on changes in rates and fees for Express Mail service, where the proposed changes are intended to respond to a change in the market for expedited delivery services for the purpose of minimizing the loss of Express Mail contribution to institutional costs recommended in the most recent omnibus rate case. These rules set forth the requirements for filing data in support of such rate proposals and for providing notice of such requests, and establish an expedited procedural schedule for evaluating Market Response Rate Requests. These rules may not be used when the Postal Service is requesting changes in Express Mail rates as part of an omnibus rate case.

(b) This section and §§ 3001.58 through 3001.60 are effective November 28, 2001 through November 28, 2006.

§ 3001.58 Market response rate requests—data filing requirements.

(a) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by such information and data as are necessary to inform the Commission and the parties of the nature and expected impact of the change in rates proposed. Except for good cause shown, the information specified in paragraphs (c) through (i) shall also be provided with each request.

(b) Except as otherwise expressly provided in this section, the information required by § 3001.54 (b) through (r) must be filed only for those subclasses and services for which the Postal Service requests a change in rates or fees. Test period volume, cost, and revenue estimates presented in satisfaction of rule 58 shall be for four postal quarters beginning after the filing date of the request. The cost roll-forward may be developed by extending the cost forecasting model used in the last omnibus rate case (utilizing available actual data). Volume and revenue estimates required by these rules shall utilize, to the extend practicable, the factors identified in rule 54(j)(6), and must be fully explained, with all available supporting documentation supplied, but they need not be econometrically derived.

(c) Every formal request made under the provisions of §§ 3001.57 through 3001.60 shall contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond.

(d) Every formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by the then effective Domestic Mail Classification Schedule sections which would have to be altered in order to implement the changes proposed by the Postal Service, and, arranged in a legislative format, the text of the replacement Domestic Mail Classification Schedule sections the Postal Service proposes.

(e) In addition to the required test period cost estimates, every formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by a statement of the attributable costs by segment and component for Express Mail service determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case, for the base year used in that case, and for each fiscal year thereafter for which cost data is available. If the Postal Service believes that an adjustment to that methodology is warranted it may also provide costs using alternative methodologies as long as a full rationale for the proposed changes is provided.

(f) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall include a description of all operational changes, occurring since the most recent omnibus rate case, having an important impact on the attributable cost of Express Mail. Postal Service shall include an analysis and estimate of the cost impact of each such operational change.

(g) Every formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by a statement of the actual Express Mail revenues of the Postal Service from the then effective Express Mail rates and fees for the most recent four quarters for which information is available.

(h) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by a complete description of the change in the market for expedited delivery services to which the Postal Service proposal is in response, a statement of when that change took place, the Postal Service's analysis of the anticipated impact of that change on the market, and a description of characteristics and needs of customers and market segments affected by this change which the proposed Express Mail rates are designed to satisfy.

(i) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall include estimates, on a quarterly basis, of test period volumes, revenues, and attributable costs determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case for each Express Mail service for which rate changes are proposed assuming:

(1) rates remain at their existing levels, and

(2) rates are changed after 90 days to the levels suggested in the request.

(j)(1) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by the following information, for each quarter following the base year in the most recent omnibus rate case:

(i) Estimated volume by rate cell, for each Express Mail service;

(ii) Total postage pounds of Express Mail rated at:

(A) up to ½ pound,

(B) ½ pound up to 2 pounds,

(C) 2 pounds up to 5 pounds; and

(iii) Total pounds of Express Mail and of each other subclass of mail carried on hub contracts.

(2) In each instance when rates change based on a proceeding under the provisions of §§ 3001.57 through 3001.60 the Postal Service shall provide, one year after the conclusion of the test period, the data described in section 3001.58(j)(1)(i–iii), for each of the four quarters of the test period.

(k) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall include analyses to demonstrate:

(1) that the proposed rates are consistent with the factors listed in 39 U.S.C. 3622(b),

(2) that the proposed rate changes are in the public interest and in accordance with the policies and applicable criteria of the Act, and

(3) that the proposed rates will preserve, or minimize erosion of, the Express Mail contribution to institutional costs recommended in the most recent omnibus rate case.

(l) Each formal request made under the provisions of §§ 3001.57 through § 3001.60 shall be accompanied by a certificate that service of the filing in accordance with § 3001.59(c) has been made.

§ 3001.59 Market Response Rate Requests—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings when a trial-type hearing is required in a proceeding in which the Postal Service proposes to adjust rates for Express Mail service in order to respond to a change in the market for expedited delivery services.

(b) The Postal Service shall not propose for consideration under the provisions of §§ 3001.57 through 3001.60 rates lower than:

(1) The average per piece attributable cost for Express Mail service determined in the most recent omnibus rate case, or

(2) The average per piece attributable cost for Express Mail service as determined by the Postal Service in accordance with section 3001.58(e) for the most recent fiscal year for which information is available, whichever is higher. Neither shall the Postal Service propose a rate for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service.

(c)(1) Persons who are interested in participating in Express Mail Market Response Rate Request cases may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such Express Mail Market Response registrants. Persons whose names appear on this list will automatically become parties to each Express Mail Market Response rate proceeding. Other interested persons may intervene pursuant to section 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.60. Parties may withdraw from the register or a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.60 it shall on that same day effect service by hand delivery of the complete filing to each Express Mail Market Response registrant who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other registrants. Each registrant is responsible for insuring that his or her address remains current.

(3) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.60, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.60, and identify the last day for filing a notice of intervention with the Commission.

(d) In the absence of a compelling showing of good cause, the Postal Service and parties shall calculate Express Mail costs in accordance with the methodologies used by the Commission in the most recent omnibus rate case. In the analysis of customers' reactions to the change in the market for expedited delivery services which prompts the request, the Postal Service and parties may estimate the demand for segments of the expedited delivery market and for types of customers which were not separately considered when estimating volumes in the most recent omnibus rate case.

(e)(1) In the event that a party wishes to dispute as an issue of fact whether the Postal Service properly has calculated Express Mail costs or volumes (either before or after its proposed changes), or wishes to dispute whether the change in the market for expedited delivery services cited by the Postal Service has actually occurred, or wishes to dispute whether the rates proposed by the Postal Service are a reasonable response to the change in the market for expedited delivery services or are consistent with the policies of the Postal Reorganization Act, that party shall file with the Commission a request for a hearing within 28 days of the date that the Postal Service files its request. The request for hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

(2) The Commission will not hold hearings on a request made pursuant to §§ 3001.57 through 3001.60 unless it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve this issue.

(3) Whether or not a hearing is held, the Commission may request briefs and/or argument on an expedited schedule, but in any circumstance it will issue its recommended decision as promptly as

is consistent with its statutory responsibilities.

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Objections to such discovery requests must be made within 10 days in the form of a motion to excuse from answering, with service on the questioning participant made by hand, facsimile, or expedited delivery. Responses to motions to excuse from answering must be submitted within seven days, and should such a motion be denied, the answers to the discovery in question are due within seven days of the denial thereof. It is the Commission's intention that parties resolve discovery disputes informally between themselves whenever possible. The Commission, therefore, encourages the party receiving discovery requests considered to be unclear or objectionable to contact counsel for the party filing the discovery requests whenever further explanation is needed, or a potential discovery dispute might be resolved by means of such communication.

(5) If, either on its own motion, or after having received a request for a hearing, the Commission concludes that there exist one or more genuine issues of material fact and that a hearing is needed, the Commission shall expedite the conduct of such record evidentiary hearings to meet both the need to respond promptly to changed circumstances in the market and the standards of 5 U.S.C. 556 and 557. The procedural schedule, subject to change as described in paragraph (e)(6) of this section, is as follows: Hearings on the Postal Service case will begin 35 days after the filing of an Express Mail Market Response rate request; parties may file evidence either in support of or in opposition to the Postal Service proposal 49 days after the filing; hearings on the parties' evidence will begin 56 days after the filing; briefs will be due 70 days after the filing; and reply briefs will be due 77 days after the filing.

(6) The presiding officer may adjust any of the schedule dates prescribed in (e)(5) of this section in the interests of fairness, or to assist in the development of an adequate evidentiary record. Requests for the opportunity to present evidence to rebut a submission by a participant other than the Postal Service should be filed within three working days of the receipt of that material into the evidentiary record, and should include a description of the evidence to be offered and the amount of time needed to prepare and present it. Requests for additional time will be reviewed with consideration as to whether the requesting participant has exercised due diligence, and whether the requesting participant has been unreasonably delayed from fully understanding the proposal.

§ 3001.60 Express mail market response—rule for decision.

The Commission will issue a recommended decision in accordance with the policies of 39 U.S.C., and which it determines would be a reasonable response to the change in the market for expedited delivery services. The purpose of §§ 3001.57 through 3001.60 is to allow for consideration of Express Mail Market Response rate requests within 90 days, consistent with the procedural due process rights of interested persons.

3. Amend Subpart C, Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule, by adding §§ 3001.69–69c to read as follows:

§ 3001.69 Expedited minor classification cases—applicability.

(a) This section and §§ 3001.69a through 3001.69c apply in cases where the Postal Service requests a recommended decision pursuant to section 3623 and seeks expedited review on the ground that the requested change in mail classification is minor in character. The requirements and procedures specified in these sections apply exclusively to the Commission's consideration of requested mail classification changes which the Postal Service denominates as, and the Commission finds to be, minor in character. A requested classification change may be considered to be minor in character if it:

(1) Would not involve a change in any existing rate or fee;

(2) Would not impose any restriction in addition to pre-existing conditions of eligibility for the entry of mail in an existing subclass or category of service, or for an existing rate element or work sharing discount; and

(3) Would not significantly increase or decrease the estimated institutional cost contribution of the affected subclass or category of service.

(b) This section and §§ 3001.69a through 3001.69c are effective November 28, 2001 through November 28, 2006.

§ 3001.69a Expedited minor classification cases—filing of formal request and prepared direct evidence.

(a) Whenever the Postal Service determines to request that the Commission submit a decision recommending a mail classification change, and to seek expedited review on the ground that the requested change is minor in character, it shall file a request for a change in mail classification pursuant to section 3623 that comports with the requirements of this section and of subpart C of this part. Each such formal request shall include the following particular information:

(1) A description of the proposed classification change or changes, including proposed changes in the text of the Domestic Mail Classification Schedule and any pertinent rate schedules;

(2) A thorough explanation of the grounds on which the Postal Service submits that the requested change in mail classification is minor in character; and

(3) An estimate, prepared in the greatest level of detail practicable, of the overall impact of the requested change in mail classification on postal costs and revenues, mail users, and competitors of the Postal Service.

(b) If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability, as required by § 3001.64(a)(2)(i), (ii), and (iv). If the Postal Service believes that any of the data or other information required to be filed under § 3001.64 should not be required in light of the minor character of the requested change in mail classification, it shall move for a waiver of that requirement, stating with particularity the reasons why the character of the request and its circumstances justify a waiver of the requirement. A satisfactory explanation of the unavailability of information required under § 3001.64, or of why it should not be required to support a particular request, will be grounds for excluding from the proceeding a contention that the absence of the information should form a basis for rejection of the request, unless the party desiring to make such contention

(1) Demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the information and submitted it in accordance with § 3001.64; or

(2) Demonstrates other compelling and exceptional circumstances requiring that the absence of the information in question be treated as bearing on the merits of the proposal.

§ 3001.69b Expedited minor classification cases—expedition of procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings in which the Postal Service requests that the Commission recommend a change in mail classification and expedite consideration of that request on the ground that the change is minor in character.

(b) Persons who are interested in participating in proceedings to consider Postal Service requests for minor changes in mail classification may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such registrants. Persons whose names appear on this list will automatically become parties to each proceeding in which the Postal Service requests a minor mail classification change pursuant to §§ 3001.69 through 3001.69c. Parties may withdraw from the register or a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of §§ 3001.69 through 3001.69c, it shall on that same day effect service by hand delivery of the complete filing to each person registered pursuant to subsection (b) who maintains an address for service within the Washington metropolitan area and serve the complete filing by Priority Mail service on all other registrants. Each registrant is responsible for insuring that his or her address remains current.

(d) When the Postal Service files a request under the provisions of §§ 3001.69 through 3001.69c, it shall on that same day send by First-Class Mail to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a request for a minor change in mail classification to be considered under §§ 3001.69 through 3001.69c, and identify the last day for filing a notice of intervention with the Commission.

(e) Within 5 days after receipt of a Postal Service request invoking the operation of §§ 3001.69 through 3001.69c, the Commission shall issue a notice of proceeding and provide for intervention by interested parties pursuant to § 3001.20. The notice of proceeding shall state that the Postal Service has denominated the mail classification change it requests a minor change, and has requested expedited consideration pursuant to §§ 3001.69 through 3001.69c. The notice shall further state the grounds on which the Postal Service submits that the requested change in mail classification is minor in character, and shall afford all interested parties 26 days after filing of the Postal Service's request within which to intervene, submit responses to the Postal Service's request for consideration of its proposed mail classification change under the terms of §§ 3001.69 through 3001.69c, and request a hearing.

(f) Within 28 days after publication of the notice of proceeding pursuant to subsection (e), the Commission shall decide whether to consider the request of the Postal Service as a minor classification change request under §§ 3001.69 through 3001.69c, and shall issue an order in the proceeding incorporating that ruling. The Commission shall order a request to be considered under §§ 3001.69 through 3001.69c if it finds that:

(1) The requested classification change is minor in character, and

(2) The effects of the requested change are likely to be appropriately limited in scope and overall impact.

(g) If the Commission determines that the request of the Postal Service is not appropriate for consideration as a minor classification change request, no further procedures under §§ 3001.69 through 3001.69c shall be ordered, and the request will be considered in accordance with other appropriate provisions of Subpart C of this part.

(h) If the Commission determines that the Postal Service request is appropriate for consideration under §§ 3001.69 through 3001.69c, those respondents who request a hearing shall be directed to state with specificity within 14 days after publication of the notice the issues of material fact that require a hearing for resolution. Respondents shall also identify the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

(i) The Commission will hold hearings on a Postal Service request which is considered under §§ 3001.69 through 3001.69c when it determines that there are genuine issues of material fact to be resolved, and that a hearing is needed to resolve those issues. Hearings on the Postal Service request will commence within 21 days after issuance of the Commission order pursuant to subsection (f). Testimony responsive to the Postal Service request will be due 14 days after the conclusion of hearings on the Postal Service request.

§ 3001.69c Expedited minor classification cases—time limits.

The Commission will treat cases to which §§ 3001.69 through 3001.69c apply as subject to the maximum expedition consistent with procedural fairness. The schedule for adoption of a recommended decision will therefore be established, in each such case, to allow for issuance of such decision not more than 90 days after the filing of the request of the Postal Service if no hearing is held, and not more than 120 days after the filing of the request if a hearing is scheduled.

4. Amend part 3001 by adding subpart I, Rules for Expedited Review to Allow Market Tests of Proposed Mail Classification Changes, §§ 3001.161 -3001.166 to read as follows:

Subpart I—Rules for Expedited Review to Allow Market Tests of Proposed Mail Classification Changes

§ 3001.161 Applicability.

(a) This section and §§ 3001.162 through 3001.166 apply in cases in which the Postal Service requests a recommended decision pursuant to section 3623 preceded by testing in the market in order to develop information necessary to support a permanent change. The requirements and procedures specified in these sections apply exclusively to the Commission's determination to recommend in favor of or against a market test proposed by the Postal Service, and do not supersede any other rules applicable to the Postal Service's request for recommendation of a permanent change in mail classification. In administering this subpart, it shall be the policy of the Commission to recommend market tests that are reasonably calculated to produce information needed to support a permanent change in mail classification, and that are reasonably limited in scope, scale, duration, and potential adverse impact. Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend market tests of more than one year in duration; however, this limitation is not intended to bar the Postal Service from conducting more than one market test in support of a potential permanent change in mail classification in appropriate circumstances.

(b) This section and §§ 3001.162 through 3001.166 are effective November 28, 2001 through November 28, 2006.

§ 3001.162 Filing of market test proposal and supporting direct evidence.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on a change in mail classification preceded by testing in the market, the Postal Service shall file with the Commission, in addition to its request for a permanent change in mail classification pursuant to section 3623, a request for a recommended decision in favor of its proposed market test of the requested change in mail classification. Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed market test, and to show that it is in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. Each formal request shall also include the following particular information:

(a) A description of the services to be provided in the market test, and the relationship between the services to be provided and the permanent change or changes in the mail classification schedule requested by the Postal Service;

(b) A statement of each rate or fee to be charged for each service to be provided during the market test, together with all information relied upon to establish consistency of those rates and fees with the factors specified in section 3622(b);

(c) A description of the number and extent of the service areas in which the market test will be conducted, including the number and type of postal facilities which will be used;

(d) A statement of the planned duration of the market test;

(e) Proposed Domestic Mail Classification Schedule provisions which incorporate the information required in paragraphs (a) through (d) of this section;

(f) A statement of the goals and objectives of the proposed market test, supported by quantitative projections of anticipated results to the extent practicable.

(g) A statement of those features of the proposed market test that, in the opinion of the Postal Service, cannot be modified without significantly impairing the value of the test;

(h) An estimate of the number of customers who will participate in the market test to the extent that such an estimate is practicable, together with a description of the means by which the Postal Service plans to provide equal access to all potential users in the test market service areas; and

(i) A plan for testing the proposed change or changes in the market, including a plan for gathering the data needed to support a permanent change in mail classification and for reporting the test data to the Commission. If periodic reporting of the test data would be harmful to the purposes of the test, such as by revealing information that might encourage competitors or mailers to take actions that would affect the test results, the plan may provide for presentation of the test data as part of the subsequent filing of data supporting a permanent mail classification change.

§ 3001.163 Procedures—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings in which the Postal Service proposes to conduct a market test of a requested change in mail classification it has submitted to the Commission pursuant to section 3623.

(b) Persons who are interested in participating in proceedings to consider Postal Service requests to conduct a market test may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such registrants. Persons whose names appear on this list will automatically become parties to each proceeding in which the Postal Service requests to conduct a market test pursuant to this subpart. Other interested persons may intervene pursuant to § 3001.20 within 28 days after the filing of a formal request made under the provisions of this subpart. Parties may withdraw from the register or a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of this subpart, it shall on that same day effect service by hand delivery of the complete filing to each person registered pursuant to subsection (b) who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other registrants. Each registrant is responsible for insuring that his or her address remains current.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day send by Express Mail to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a market test request to be considered under §§ 3001.161 through 3001.166, and identify the last day for filing a notice of intervention with the Commission.

(e) Within 5 days after receipt of a Postal Service request under the provisions of this subpart, the Commission shall issue a notice of proceeding and provide for intervention by interested parties pursuant to § 3001.20. In the event that a party wishes to dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

§ 3001.164 Rule for decision.

The Commission will issue a decision on the Postal Service's proposed market test in accordance with the policies of the Postal Reorganization Act, but will not recommend modification of any feature of the proposed market test which the Postal Service has identified in accordance with § 3001.162(g). The purpose of this subpart is to allow for consideration of proposed market tests within 90 days, consistent with the procedural due process rights of interested persons.

§ 3001.165 Data collection and reporting requirements.

In any case in which the Commission has issued a recommended decision in favor of a market test requested by the Postal Service, and the Board of Governors has put the market test recommended by the Commission into effect, the Postal Service shall gather test data and report them to the Commission in accordance with the plan submitted pursuant to § 3001.162(h). If the Postal Service's plan for reporting test data does not provide for periodic reporting during the conduct of the test, the Postal Service shall submit all test data to the Commission no later than 60 days following the conclusion of the test.

§ 3001.166 Suspension, continuation or termination of proceeding.

(a) In any case in which the Commission has issued a recommended decision in favor of a market test requested by the Postal Service, and the Board of Governors has put the market test recommended by the Commission into effect, the Postal Service may move for suspension of the proceeding in which its request for a permanent change in mail classification is to be considered. The Commission shall grant the Postal Service's motion for suspension if, in the Commission's opinion, it would be reasonable under the circumstances to defer consideration of the request until the information to be produced in connection with the market test becomes available.

(b) At any time during the pendency of a market test recommended by the Commission pursuant to this subpart, or following the completion of such a market test, the Postal Service may move to revise or withdraw its request for a permanent change in mail classification. If the Postal Service moves to revise its request, it shall file with the Commission all data necessary to support its amended request. If the Postal Service moves to withdraw its request, it shall explain the circumstances leading to its motion, but need not produce the test data that would otherwise be submitted pursuant to § 3001.165.

5. Amend Part 3001 by adding Subpart J, Rules for Expedited Review of Requests for Provisional Service Changes of Limited Duration, §§ 3001.172 through 3001.176 to read as follows:

Subpart J—Rules for Expedited Review of Requests for Provisional Service Changes of Limited Duration

§ 3001.171 Applicability.

(a) This section and §§ 3001.172 through 3001.176 apply in cases in which the Postal Service requests that the Commission recommend the establishment of a provisional service which will supplement, but will not alter, existing mail classifications and rates for a limited and fixed duration. The requirements and procedures specified in these sections apply exclusively to the Commission's determination to recommend in favor of or against a provisional service proposed by the Postal Service, and do not supersede the rules applicable to requests for permanent changes in rates, fees, mail classifications, and in the nature of postal services. In administering this subpart, it shall be the policy of the Commission to recommend the introduction of provisional services that enhance the range of postal services available to the public, without producing a material adverse effect overall on postal revenues or costs, and without causing unnecessary or unreasonable harm to competitors of the Postal Service. Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend provisional services of more than two years in duration; however, the Commission may grant a request to extend a provisional service for an additional year if a Postal Service request to establish the provisional service as a permanent mail classification is pending before the Commission.

(b) This section and §§ 3001.172 through 3001.176 are effective November 28, 2001 through November 28, 2006.

§ 3001.172 Filing of formal request and prepared direct evidence.

(a) Whenever the Postal Service determines to request that the Commission submit a decision recommending the establishment of a provisional service of limited and fixed duration, it shall file a request for a change in mail classification pursuant to section 3623 that comports with the requirements of this subpart and of subpart C of the rules of practice. Each formal request shall include the following particular information:

(1) A description of the proposed classification, including proposed Domestic Mail Classification Schedule language and rate schedules;

(2) A statement of the goals and objectives of introducing the proposed provisional service, supported by quantitative projections of anticipated results to the extent practicable.

(3) A statement of those features of the proposed provisional service that, in the opinion of the Postal Service, cannot be modified without significantly reducing the benefits of introducing the proposed service;

(4) An explanation and complete documentation of the development of the rates proposed for the provisional service;

(5) A termination date on which the proposed provisional service will be discontinued;

(6) An estimate of the effect of implementing the proposed provisional service on overall Postal Service costs and revenues during the period in which it is in effect; and

(7) A plan for meeting the data collection and reporting requirements specified in § 3001.175.

(b) If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability, as required by § 3001.64(a)(2)(i), (ii), and (iv). In particular, if the provisional character of the request bears on the unavailability of the data in question, the Postal Service shall explain in detail the nexus between these circumstances. A satisfactory explanation of the unavailability of data will be grounds for excluding from the proceeding a contention that the absence of the data should form a basis for rejection of the request, unless the party desiring to make such contention

(1) Demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the data which are unavailable, or

(2) Demonstrates other compelling circumstances requiring that the absence of the data in question be treated as bearing on the merits of the proposal.

§ 3001.173 Procedures—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings in which the Postal Service requests that the Commission recommend the establishment of a provisional service which will supplement, but will not alter, existing mail classifications and rates for a limited and fixed duration.

(b) Persons who are interested in participating in proceedings to consider Postal Service requests to establish a provisional service may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such registrants. Persons whose names appear on this list will automatically become parties to each proceeding in which the Postal Service requests establishment of a provisional service pursuant to this subpart. Other interested persons may intervene pursuant to § 3001.20 within 28 days after the filing of a formal request made under the provisions of this subpart. Parties may withdraw from the register or a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of this subpart, it shall on that same day effect service by hand delivery of the complete filing to each person registered pursuant to subsection (b) who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other registrants. Each registrant is responsible for insuring that his or her address remains current.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of a Request for Establishment of a Provisional Service to be considered under §§ 3001.171 through 3001.176, and identify the last day for filing a notice of intervention with the Commission.

(e) Within 5 days after receipt of a Postal Service request under the provisions of this subpart, the Commission shall issue a notice of proceeding and provide for intervention by interested parties pursuant to § 3001.20. In the event that a party wishes to dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

§ 3001.174 Rule for decision.

The Commission will issue a decision on the Postal Service's proposed provisional service in accordance with the policies of the Postal Reorganization Act, but will not recommend modification of any feature of the proposed service which the Postal Service has identified in accordance with § 3001.172(a)(iii). The purpose of this subpart is to allow for consideration of proposed provisional services within 90 days, consistent with the procedural due process rights of interested persons.

§ 3001.175 Data collection and reporting requirements.

In any case in which the Commission has issued a recommended decision in favor of a provisional service of limited duration requested by the Postal Service, and the Board of Governors has put the provisional service recommended by the Commission into effect, the Postal Service shall collect and report data pertaining to the provisional service during the period in which it is in effect in accordance with the periodic reporting requirements specified in § 3001.102. If the Postal Service's regular data reporting systems are not revised to include the provisional service during the period of its effectiveness, the Postal Service shall perform, and provide to the Commission on a schedule corresponding to § 3001.102 reports, special studies to provide equivalent information to the extent reasonably practicable.

§ 3001.176 Continuation or termination of provisional service.

At any time during the period in which a provisional service recommended by the Commission and implemented by the Board of Governors is in effect, the Postal Service may submit a formal request that the provisional service be terminated, or that it be established, either as originally recommended by the Commission or in modified form, as a permanent mail classification. Following the conclusion of the period in which the provisional service was effective, the Postal Service may submit a request to establish the service as a mail classification under any applicable subpart of the Commission's rules.

6. Amend Part 3001 by adding Subpart K, Rules for Use of Multi-Year Test Periods, §§ 3001.181–3001.182 to read as follows:

Subpart K—Rules for Use of Multi-Year Test Periods

§ 3001.181 Use of multi-year test period for proposed new services.

(a) The rules in §§ 3001.181 and 3001.182 apply to Postal Service requests pursuant to section 3623 for the establishment of a new postal service, with attendant rates, which in the estimation of the Postal Service cannot generate sufficient volumes and revenues to recover all costs associated with the new service in the first full fiscal year of its operation. In administering these rules, it shall be the Commission's policy to adopt tests periods of up to 5 fiscal years for the purpose of determining breakeven for newly introduced postal services where the Postal Service has presented substantial evidence in support of the test period proposed.

(b) This section and § 3001.182 are effective November 28, 2001 through November 28, 2006.

§ 3001.182 Filing of formal request and prepared direct evidence.

In filing a request for establishment of a new postal service pursuant to section 3623, the Postal Service may request that its proposal be considered for a test period of longer duration than the test period prescribed in § 3001.54(f)(2). Each such request shall be supported by the following information:

(a) The testimony of a witness on behalf of the Postal Service, who shall provide:

(1) A complete definition of the multi-year test period requested for the proposed new service;

(2) A detailed explanation of the Postal Service's preference of a multi-year test period, including the bases of the Service's determination that the test period prescribed in § 3001.54(f)(2) would be inappropriate; and

(3) A complete description of the Postal Service's plan for achieving an appropriate contribution to institutional costs from the new service by the end of the requested test period.

(b) Complete documentary support for, and detail underlying, the test period requested by the Postal Service, including:

(1) Estimated costs, revenues, and volumes of the proposed new service for the entire requested test period;

(2) Return on investment projections and all other financial analyses prepared in connection with determining the cost and revenue impact of the proposed new service; and

(3) Any other analyses prepared by the Postal Service that bear on the overall effects of introducing the proposed new service during the requested test period.

[FR Doc. 01–27090 Filed 10–26–01; 8:45 am]
BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AL–T5–2001–02; FRL–7091–2]

Clean Air Act Final Full Approval of Operating Permit Programs; Alabama, City of Huntsville, and Jefferson County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: EPA is promulgating full approval of the operating permit programs of the Alabama Department of Environmental Management, the City of Huntsville's Division of Natural Resources, and the Jefferson County Department of Health. These programs were submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. On November 15, 1995, EPA granted interim approval to the Alabama, Huntsville, and Jefferson County title V operating permit programs. These agencies revised their programs to satisfy the conditions of the interim approval, and EPA proposed full approval in the **Federal Register** on August 28, 2001. EPA did not receive any comments on the proposed action, so this action promulgates final full approval of the Alabama, Huntsville, and Jefferson County operating permit programs.

EFFECTIVE DATE: November 28, 2001.

ADDRESSES: Copies of the Alabama, Huntsville, and Jefferson County submittals and other supporting documentation used in developing the final full approval are available for inspection during normal business hours at EPA, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Interested persons wanting to examine these documents, which are contained in EPA docket number AL–T5–2001–01, should make an appointment at least 48 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Pierce, EPA Region 4, at (404) 562–9124 or *pierce.kim@epa.gov/*.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
Why is EPA taking this action?
What is involved in this final action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the title V operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under the title V program include: "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds (VOCs), carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "serious," major sources include those with the potential of emitting 50 tons per year or more of VOCs or NO_X.

Why Is EPA Taking This Action?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct the deficiencies. Because the Alabama, Huntsville, and Jefferson County programs substantially, but not fully, met the requirements of part 70, EPA granted interim approval to these programs in a rulemaking (60 FR 57346) published on November 15, 1995. The interim approval notice described the conditions that had to be met in order for the Alabama, Huntsville, and Jefferson County programs to receive full approval. Interim approval of these programs expires on December 1, 2001.

What Is Involved in This Final Action?

The Alabama Department of Environmental Management, the City of Huntsville's Division of Natural Resources, and the Jefferson County Department of Health have fulfilled the conditions of the interim approval granted on November 15, 1995. On August 28, 2001, EPA published a notice in the **Federal Register** (see 66 FR 45253) proposing full approval of the Alabama, Huntsville, and Jefferson County title V operating permit programs, and proposing approval of other program revisions. Since EPA did not receive any comments on the proposal, this action promulgates final full approval of the Alabama, Huntsville, and Jefferson County programs and final approval of the other program changes described in the proposal.

Administrative Requirements

A. Docket

Copies of the Alabama, Huntsville, and Jefferson County submittals and other supporting documentation used in developing the final full approval are contained in docket files maintained at the EPA Region 4 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. The docket files are available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

This rule does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the CAA.

E. Executive Order 13175

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000).

F. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because operating permit program approvals under section 502 of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In reviewing operating permit programs, EPA's role is to approve state choices, provided that they meet the criteria of the CAA and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the state to use VCS, EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of NTTAA do not apply.

J. Paperwork Reduction Act

This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

K. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 18, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For reasons set out in the preamble, Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix A to part 70 is amended by revising the entry for Alabama to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Alabama

(a) Alabama Department of Environmental Management:

(1) Submitted on December 15, 1993, and supplemented on March 3, 1994; March 18, 1994; June 5, 1995; July 14, 1995; and August 28, 1995; interim approval effective on December 15, 1995; interim approval expires on December 1, 2001.

(2) Revisions submitted on July 19, 1996; April 9, 1997; August 4, 1999; January 10, 2000; and May 11, 2001. The rule revisions contained in the July 19, 1996; January 10, 2000; and May 11, 2001 submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. The State is hereby granted final full approval effective on November 28, 2001.

(b) City of Huntsville Division of Natural Resources:

(1) Submitted on November 15, 1993, and supplemented on July 20, 1995; interim approval effective on December 15, 1995; interim approval expires on December 1, 2001.

(2) Revisions submitted on March 21, 1997; July 21, 1999; December 4, 2000; February 22, 2001; April 9, 2001; and September 18, 2001. The rule revisions contained in the March 21, 1997; April 9, 2001; and September 18, 2001 submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. The City is hereby granted final full approval effective on November 28, 2001.

(c) Jefferson County Department of Health:

(1) Submitted on December 14, 1993, and supplemented on July 14, 1995; interim approval effective on December 15, 1995; interim approval expires on December 1, 2001.

(2) Revisions submitted on February 5, 1998; September 20, 1999; August 8, 2000; March 30, 2001; May 18, 2001; and September 11, 2001. The rule revisions contained in the August 8, 2000; May 18, 2001; and September 11, 2001 submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. The County is hereby granted final full approval effective on November 28, 2001.

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[FR Doc. 01–27105 Filed 10–26–01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 97–82; FCC 01–270]

Competitive Bidding Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission adopts modifications to its competitive bidding "anti-collusion" rule. These modifications codify Commission practices with respect to application of the anti-collusion rule and require applicants to report to the Commission prohibited communications.

DATES: Effective November 28, 2001.

FOR FURTHER INFORMATION CONTACT: David Hu of the Auctions and Industry Analysis Division at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Seventh Report and Order (*7th R&O*) in WT Docket No. 97–82, adopted on September 19, 2001 and released on September 27, 2001. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

I. Introduction

1. In the *7th R&O*, the Commission adopts modifications to § 1.2105(c) of the Commission's rules, the competitive bidding "anti-collusion rule." Specifically, the Commission amends the rule so that its language clearly reflects the Commission's practice of prohibiting communications regarding bids or bidding strategies only between auction applicants that have applied to bid on licenses in any of the same geographic areas. In addition, the Commission amends the rule to (i) clarify that it prohibits an auction applicant from discussing a competing applicant's bids or bidding strategies even if the first applicant does not discuss its own bids or bidding strategies, and (ii) require auction applicants that make or receive a prohibited communication of bids or bidding strategies to report the communication immediately to the Commission in writing.

II. Background

2. The Commission adopted § 1.2105(c)(1) to deter anticompetitive conduct during auctions of spectrum licenses and to ensure the competitiveness of post-auction markets. The Commission's anti-collusion rule seeks to foster a level competitive playing field during auctions and to "ensure that the government receives a fair market price for the use of the spectrum." In promulgating the rule, the Commission was particularly concerned that some firms might engage in behavior that would unfairly disadvantage other bidders. Communications that violate § 1.2105(c)(1) have the potential to undermine the competitiveness of our auction process and public confidence in the integrity of that process.

3. In the Third Further Notice of Proposed Rule Making (*FNPRM*), 65 FR 6113 (February 8, 2000) the Commission proposed to amend § 1.2105(c)(1) to prohibit an auction applicant from discussing another applicant's bids or bidding strategies even if the first applicant does not discuss or disclose its own bids or bidding strategies. The Commission also proposed to amend § 1.2105(c) to require any auction applicant that makes or receives a communication of bids or bidding strategies prohibited under § 1.2105(c)(1) to report such a communication to the Commission promptly. In addition, the Commission sought comment on whether other changes to § 1.2105(c)(1) may be warranted at this time in light of Congress's mandate that the Commission ensure competitive auctions. The Commission received one comment on the amendments proposed in the *FNPRM*.

III. Discussion

A. Amendments to § 1.2105(c)(1)

4. *Background.* Subject to certain exceptions, § 1.2105(c)(1) prohibits auction applicants that have applied to bid on any common license area from communicating their bids or bidding strategies with each other from the short-form application filing deadline to the post-auction down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding agreement reported on their short-form applications. In other words, if two auction applicants (that have not entered into an agreement and identified each other on the FCC Form 175) are each eligible to bid on numerous license areas but there is only one license area for which they are both eligible to bid, they may not discuss or disclose to each other their bids or bidding strategies relating to any license area that either of them is eligible to bid on.

5. *Discussion. Applicants subject to § 1.2105(c)(1).* Section 1.2105(c)(1) of the Commission's rules states that "all applicants" are prohibited from discussing or disclosing their bids or bidding strategy from the short-form application filing deadline until after the down payment deadline. Notwithstanding the term "all applicants," the Commission has applied the prohibitions of the rule only to auction applicants that have applied to bid for licenses in any of the same geographic license areas, and thus are competing applicants. Thus, as noted, even if two auction applicants that have not identified each other as parties to an agreement on the FCC Form 175 are each eligible to bid on only one license area in common, they may not discuss or disclose to each other their bids or bidding strategies relating to any license area that either of them is eligible to bid

on. For example, two applicants not listed on each other's short-form applications for an auction of broadband PCS licenses may not discuss bids or bidding strategies with each other if they are bidding for licenses in any of the same MTAs or BTAs, even if they are not bidding for the same frequency blocks. On the other hand, auction applicants that have not applied to bid on licenses in any of the same geographic areas, and thus are not competing applicants, are not subject to the prohibitions of § 1.2105(c)(1).

6. The Commission finds that it would be helpful to auction applicants to amend § 1.2105(c)(1) so that it accurately reflects the Commission's application of the rule. Thus, the Commission amends § 1.2105(c)(1) to make clear that only auction applicants that have applied for licenses in any of the same geographic license areas are prohibited from discussing with or disclosing to each other their bids or bidding strategy. The Commission also cautions auction applicants that apply to bid for licenses in any of the same geographic license areas (and that are not listed on each other's FCC Form 175) against indirectly communicating their bids or bidding strategies to each other through third-party discussions or disclosures to other auction applicants that have not applied to bid on licenses in any of the same geographic license areas.

7. *Communications regarding other applicants' bids or bidding strategies.* In the *Western PCS Order*, 14 FCC Record 21571 (1999), the Commission provided auction applicants with official notice that § 1.2105(c)(1) prohibits an auction applicant from cooperating or collaborating with respect to, or discussing or disclosing, another applicant's bids or bidding strategies. Thus, an auction applicant may violate § 1.2105(c)(1) even if it does not discuss its own bids or bidding strategies. Nevertheless, the Commission stated in the *FNPRM* that it believes that auction applicants would benefit if the text of the rule plainly stated that it prohibits an auction applicant from discussing another applicant's bids or bidding strategies even if it does not discuss or disclose its own bids or bidding strategies.

8. The Commission amends § 1.2105(c)(1) to clarify the prohibition against an auction applicant cooperating or collaborating with respect to, discussing with, or disclosing to a competing applicant the substance of the bids or bidding strategies of any competing applicant. The Commission believes that the rule's prohibition against discussing, or disclosing, bids or bidding strategy would have minimal deterrent force if an applicant to whom a competing applicant's bidding information is disclosed could discuss such information with either that or another competing applicant without violating the rule. For instance, absent such a prohibition, it would be easy to circumvent the rule's prohibitions as Bidder A could pass on to competing Bidder C bidding strategy information of Bidder B with whom Bidder A has a bidding agreement. The Commission believes that an applicant's discussion with a competing applicant of any other competing applicant's bids or bidding strategy could have a deleterious effect on the integrity and competitiveness of our auctions and that it is therefore essential to explicitly prohibit such discussions.

B. Required Disclosure of Communications Regarding Bids or Bidding Strategies

9. *Background.* Whenever the information furnished in a pending application is no longer substantially accurate and complete in all significant respects, § 1.65(a) of the Commission's rules requires the applicant to amend the application so as to furnish additional or corrected information "as promptly as possible and in any event within 30 days * * *." Pursuant to § 1.65(a), auction applicants are required to maintain the accuracy and completeness of their pending short-form applications. Because the short-form application contains a certification under penalty of perjury that the applicant has not entered and will not enter into any agreements other than those identified in its application, auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications are required to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. Thus, even though competing applicants are prohibited by § 1.2105(c)(1) from communicating their bids or bidding strategies to each other after the short-form application filing deadline, applicants that engage in such prohibited discussions are nonetheless required by § 1.65(a) to promptly disclose any resulting agreements or understandings by amending their pending applications. Failure to make the notification required by § 1.65(a) would constitute a separate violation of our rules in addition to the underlying violation of § 1.2105(c)(1).

10. In the *FNPRM*, the Commission sought comment on whether the integrity and competitiveness of its auction process would be enhanced if it required auction applicants that make or receive communications prohibited under § 1.2105(c)(1) to report promptly such communications to the Commission even if the communications do not result in an agreement, arrangement or understanding that must be reported to the Commission under § 1.65(a). The Commission invited comment on whether would-be disseminators of prohibited bidding or bidding strategy information, knowing that recipients of such prohibited information would have an affirmative duty to disclose promptly such communications to the Commission, would be deterred from making such communications. The Commission also solicited comment on any potential burden that may be associated with such a reporting requirement, and the appropriate deadline for making such a report.

11. *Discussion.* The Commission amends § 1.2105(c) to require auction applicants that make or receive a communication of bids or bidding strategies prohibited under § 1.2105(c)(1) to report such a communication to the Commission immediately, even if the communication does not result in an agreement, arrangement or understanding that must be reported under § 1.65(a). As it noted in the *FNPRM*, the Commission has found that even when a prohibited communication of bids or bidding strategies is limited to one applicant's bids or bidding strategies, it may unfairly disadvantage the other bidders in the market by creating an impermissible asymmetry of information. Thus, when one bidder is privy to a competing bidder's strategic bidding information without reporting this fact, it may use such information to manipulate the auctions process and gain an unfair competitive advantage over other bidders in the market who are unable to access, analyze, and act upon this strategic information in making bidding decisions. Section 1.2105(c)(1) of the Commission's rules attempts to address this concern by prohibiting all auction applicants that have applied to bid on any of the same geographic areas from cooperating or collaborating with respect to, discussing or disclosing to each other in any manner the substance of their bids or bidding strategies. The Commission has encountered instances of violations of § 1.2105. In some instances, there has been concern expressed about a bidder's obligation to report information received from another bidder that potentially violates the Commission's rule, and it has previously counseled applicants that the safest course of action for a recipient of a prohibited communication during the period in which § 1.2105(c) prohibitions are in effect would be to terminate the discussion and promptly report the communication to the Commission. Therefore, the Commission further clarifies the anti-collusion rule by including a reporting requirement, as a deterrent to would-be disseminators of prohibited information regarding bids or bidding strategies. This will, the Commission believes, make clear the responsibility to report such behavior and will thereby enhance the competitiveness and fairness of our spectrum auctions.

12. Thus, an applicant's duty under § 1.2105(c) is two-fold. Applicants may not engage in prohibited communications with competing applicants, and they are obligated to report to the Commission all communications prohibited under § 1.2105(c)(1). Thus, an applicant's failure to report a prohibited communication pursuant to § 1.2105(c)(6) may constitute a rule violation distinct from any act of collusion that violates § 1.2105(c)(1). Moreover, the § 1.2105(c)(6) reporting requirement the Commission adopts today applies even if the communication of bids or bidding strategies does not result in a bidding arrangement, agreement or understanding that must be reported to the Commission under § 1.65(a). As explained previously, applicants have always had, under § 1.65(a), an affirmative duty to report any communications of bids or bidding strategies that result in a bidding arrangement, agreement or understanding after the filing of a short-form application. By requiring applicants to update pending applications to reflect such prohibited collusive agreements and communications, the Commission has sought to ensure the integrity and transparency of its auction processes. By now amending its rules to include an affirmative reporting requirement that applies even if a communication does not rise to the level of that which must be reported under § 1.65(a), the Commission can ensure that all bidders remain on a level playing field throughout the course of an auction. The reporting requirement the Commission adopts today does not relieve any applicant from its duty pursuant to § 1.65(a) to update its pending application any time a communication of bids or bidding strategies results in an arrangement, agreement, or understanding. Of course, the fact that a party complies with the reporting requirements of § 1.65(a) and § 1.2105(c)(6) will not insulate it from any sanctions that may be appropriate in connection with a violation of the § 1.2105(c)(1) prohibition against collusive communications.

13. The Commission disagrees with one commenter's suggestion that recipients of bidding information should be exempt from the requirement to report such communications to the Commission. Section 1.2105(c) does not distinguish between initiators and recipients in terms of their duty to avoid a collusive communication. Rather, the anti-collusion rule focuses on the content of the communication (i.e., the discussion or disclosure must involve direct or indirect information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements) that occurs between auction applicants for any of the same geographic license areas after the short-form filing deadline. Thus, all auction applicants that have applied for a license in the same geographic area, and have not reported in their short-form applications that they have an agreement with each other, must affirmatively avoid all communications with each other that disclose their or a competing applicant's bids or bidding strategy. In light of the fact that the Commission's current rules do not focus on whether a party is initiating or receiving a communication, the Commission does not believe that it should limit the reporting requirement it adopts today to initiators of prohibited communications. Moreover, because initiators of collusive communications are less likely to report such communications, the Commission considers recipients of prohibited oral or written communications regarding bids or bidding strategies to be an important deterrent against collusive behavior. The Commission also believes that recipients should be held to the same reporting standard as initiators because, even if a recipient does not reach an agreement or understanding with the initiator, a recipient nevertheless derives substantial benefit from obtaining details of a competitor's bids or bidding strategy prior to or during an auction. If the Commission were to allow recipients to possess strategic bidding information that other applicants are not privy to, it would unfairly disadvantage other bidders in the market by sanctioning an asymmetry of information that could be used to manipulate the auction process. Therefore, the mere occurrence of a communication by or among auction applicants for the same geographic license area about their own or a competing applicant's bids or bidding strategy triggers the reporting requirement.

14. The Commission does not believe that there is any merit to one commenter's assertion that compliance with this reporting requirement will expose recipients of communications to substantial legal liability. In the past the Commission has indicated that auction applicants, rather than the Commission, are in the best position to determine in the first instance when communications may constitute potential violations of the rule. The Commission continues to believe that this is the case and that, rather than requiring it to take on the impossible task of screening all applicant communications, it should place the responsibility for identifying potentially unauthorized communications on auction applicants. Applicants, during the course of their day-to-day operations, are better equipped to identify and report such communications. Nonetheless, the Commission emphasizes that applicants are not responsible for deciding whether a violation of the anti-collusion rule has occurred. Thus, the purpose of the reporting requirement the Commission adopts today is to obligate parties to notify the Commission of communications that appear to violate the anti-collusion rule and to allow the Commission to determine whether a violation has occurred. The determination of whether a violation of the rule has occurred rests with the Commission, not with bidders. Thus, while the reporting requirement places an affirmative duty on all auction applicants to report what they perceive to be prohibited communications, auction applicants are required only to act in good faith and to report truthfully the facts and circumstances of what they perceive to be a communication covered by § 1.2105(c). The Commission will then investigate these reports and reach a judgment as to whether a violation has occurred. By simply reporting the facts, auction applicants can insulate themselves from liability.

15. The Commission also finds that any burden associated with the reporting requirement it establishes today will be slight, particularly in comparison with the potential benefits to the auction process and bidders. Applicants will be required only to submit a letter to the Commission

describing the facts of a communication that appears to be prohibited.

16. In sum, the Commission amends § 1.2105(c) to require all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs. Thus, an auction applicant must report a prohibited communication within five business days even if the communication does not result in an agreement or understanding regarding bids or bidding strategy. Although the Commission believes that applicants generally should need less than five business days to make such reports, it will not impose a shorter deadline because it finds that there may be circumstances in which applicants, particularly small businesses, may need five business days to file a report. An auction applicant that receives a communication prohibited under § 1.2105(c)(1) orally should respond immediately and unequivocally that it is unwilling to participate in any violation of § 1.2105(c)(1). If a prohibited communication is received other than orally, an auction applicant should respond immediately in writing that it is unwilling to participate in any violation of § 1.2105(c)(1). In either case, the auction applicant must report the improper communication to the Commission in writing within five business days after the communication occurs.

IV. Conclusion

17. In the *7th R&O*, the Commission amends § 1.2105(c)(1) of the Commission's rules to clarify that the rule prohibits only auction applicants that have applied to bid for licenses in any of the same geographic license areas from cooperating or collaborating with respect to, or discussing or disclosing to each other bids or bidding strategies. The Commission also amends the rule to clarify that it prohibits such auction applicants from cooperating or collaborating with respect to, or discussing or disclosing to each other any competing applicant's bids or bidding strategies. Thus, the rule may be violated even if an applicant does not discuss or disclose its own bids or bidding strategies. Finally, the Commission amends § 1.2105(c) to require any auction applicant that makes or receives a communication of bids or bidding strategies prohibited under § 1.2105(c)(1) of our rules to report such communication to the Commission in writing immediately, but in no case later than five business days after the communication occurs.

V. Procedural Matters

A. Regulatory Flexibility Act

18. The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") of the possible significant economic impact on small entities of the rule amendments adopted herein. The Commission's Reference Information Center, Consumer Information Bureau, will send a copy of the *7th R&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Final Paperwork Reduction Act of 1995 Analysis

19. The *7th R&O* contains a new information collection, which was proposed in the *FNPRM*. As required by the Paperwork Reduction Act of 1995, the Commission sought comment from the public and from the Office of Management and Budget (OMB) on this proposed change to the Commission's information collection requirements. This new information collection was submitted to OMB for approval, as prescribed by the Paperwork Reduction Act. On October 17, 2001, the Commission received emergency approval from OMB for the information collection contained in the rules (OMB No. 3060–0995).

C. Ordering Clauses

20. Authority for issuance of the *7th R&O* is contained in sections 4(i), 4(j), 303(r), 309(j) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 309(j) and 403.

21. Accordingly, it is ordered that part 1 of the Commission's rules is amended as specified herein and shall become effective November 28, 2001.

22. It is further ordered that the Commission's Reference Information Center, Consumer Information Bureau, shall send a copy of the *7th R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *FNPRM* in this proceeding. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

24. An RFA certification, rather than an analysis, is appropriate where "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The Commission believes that the rule amendments it has adopted will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless voluntarily performs this FRFA in order to thoroughly explain this conclusion and to address concerns raised in comments submitted by the Small Business Administration ("SBA"). The Commission discusses our conclusion further in section B, *infra*.

A. Need for and Objectives of the Report and Order

25. The amendments to 47 CFR 1.2105(c) adopted in the *7th R&O* are intended to enhance the competitiveness and integrity of the Commission's auctions. First, the Commission amends § 1.2105(c)(1) so that its language clearly reflects the Commission's application of the rule to prohibit communications regarding bids or bidding strategies only between applicants that have applied to bid on licenses in any of the same geographic areas. Second, the Commission clarifies § 1.2105(c)(1) to explicitly prohibit auction applicants that have applied to bid on licenses in any of the same geographic areas from discussing with or disclosing to each other any competing applicant's bids or bidding strategies. Although the Commission has previously interpreted the rule to prohibit an applicant's discussion of a competing applicant's bids or bidding strategies, it believes that all auction applicants would benefit from this amendment, which ensures that the text of the rule is unambiguous. Third, the Commission amends § 1.2105(c) to require any auction applicant that makes or receives a communication of bids or bidding strategies prohibited by 47 CFR 1.2105(c)(1) to report such communication to the Commission. The Commission believes that this reporting requirement will act as a deterrent to would-be disseminators of prohibited information and will thereby enhance the competitiveness and fairness of our auctions.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

26. The SBA filed comments in response to the IRFA. The SBA asserts that the Commission failed to describe the impact its proposed rules would have on small businesses as required by the RFA. Further, the SBA states that the Commission's proposals would expand the obligations that applicants must meet when they participate in an auction. The SBA states that the amended anti-collusion rule would impose reporting requirements on applicants, cover a broader range of communications, and increase the risk of punitive action, including monetary forfeitures. The SBA asserts that small businesses have far fewer financial resources than their larger counterparts and they are therefore less able to absorb the costs of forfeitures. According to the SBA, the Commission did not discuss the potential burden posed by the risk of punishment as it should have. The SBA also states that the Commission failed to propose any alternatives designed to minimize the impact of its proposed rules on small business, as the RFA requires.

27. The Commission acknowledges that the amendment to § 1.2105(c) that it proposed in the *FNPRM*, and that it adopts today, imposes a reporting requirement on all auction participants, including small businesses. However, the Commission has previously urged parties to report communications prohibited under § 1.2105(c)(1) to the Commission, and parties have done so in the past. Thus, the Commission views the adoption of this requirement as consistent with conduct that the Commission has urged on applicants in the past. Further, the amendment to § 1.2105(c)(1) that the Commission adopts today to prohibit auction applicants from discussing the bids or bidding strategies of competing applicants merely clarifies the text of the rule to make it consistent with the interpretation it announced in the *Western PCS Order*. Nonetheless, the Commission recognizes that these amendments to our anti-collusion rule impose increased duties and present the possibility of sanctions against auction applicants, including small entities, that do not comply with the revised rules.

28. Based on past experience, however, the Commission does not believe the impact of these amendments on small businesses will be significant. In all of its auctions held to date except for the auctions for broadcast licenses, 1,513 out of a total of 1,881 qualified bidders have been small businesses as that term has been defined under rules adopted by the Commission for specific services, but only two forfeitures have been assessed in all, *i.e.*, against businesses of all sizes. Thus, despite the large number of small businesses that have participated in the auctions program since its inception, an extremely small percentage of auction participants have made or received communications that have violated the anti-collusion rule. The Commission believes that the vast majority of applicants comply with the its rules and do not engage in prohibited behavior, and that this will continue to be the case. Therefore, the Commission expects these amendments to have little impact on small businesses generally. The amended rules will deter the few that would try to gain an advantage unfairly by creating an asymmetry of information that is detrimental to other participants.

29. Moreover, while the Commission acknowledges that the reporting requirement it adopts today constitutes a potential burden, it expects the actual burden to be slight. In addition to the fact that the Commission expects there to be few instances of prohibited communications to be reported, it notes that the new filing requirement will place a *de minimis* reporting burden upon auction participants because it merely requires those who make or receive a communication of bids or bidding strategies prohibited by § 1.2105(c)(1) to send a letter to the Secretary. Furthermore, section 223 of the SBREFA allows agencies to reduce or eliminate fines or other enforcement actions taken against small entities. Indeed, section 223 requires agencies to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities. In amending § 1.80 of its rules in 1997 to incorporate guidelines for assessing forfeitures, the Commission also made clear that its forfeiture policies are consistent with this approach. The Commission cannot in good conscience alter the uniform standards of behavior required of all auction participants, even if to do so might assist small businesses. Public confidence in the fairness of our auction process could be undermined if all entities were not subject to the same standards of behavior. However, in light of the provisions of the SBREFA and for the other reasons discussed, the Commission concludes that the amendments it adopts today are not likely to have a significant economic impact on a substantial number of small entities.

30. The Commission also believes generally that any burden associated with these rule amendments is outweighed by the advantages presented by a fair auction process that does not allow some bidders to gain an advantage over others through collusive behavior. Thus, the Commission finds that the rule amendments that it adopts today will benefit all bidders, including small businesses. First, the Commission believes that the amendments will enhance the competitiveness and fairness of its auction process to the benefit of small auction applicants. Second, under the amendments, general confidence in the integrity of our auctions should increase. In short, the Commission concludes that the public policy benefits of the amendments substantially outweigh the minimal impact the reporting requirement imposes on small entities.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

31. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small organization," "small business," and "small governmental jurisdiction." The term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.

32. The amendments to § 1.2105(c) adopted in the *7th R&O* will apply to all entities that apply to participate in Commission auctions, including small

entities. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. As stated previously, small businesses, as defined under the Commission's rules, have accounted for 1,513 out of a total of 1,881 qualified bidders in all prior auctions, not including broadcast auctions. Given these statistics, the Commission expects a large percentage of participants in its auctions program generally to be small businesses in the future, although this may not be the case in each individual auction.

D. Description of Reporting, Recordkeeping and Other Compliance Requirements

33. As a result of the actions taken in the *7th R&O*, disseminators and recipients of communications prohibited by § 1.2105(c)(1) will be required to report such communications to the Commission, in writing, within five business days after the communication occurs.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. In the *7th R&O*, the Commission amends § 1.2105(c) to require auction applicants that make or receive a communication of bids or bidding strategies prohibited by § 1.2105(c)(1) of its rules to report such a communication in writing to the Commission immediately, but in no case later than five business days after the communication occurs. The Commission considered, but decided against, imposing a shorter deadline for such reports. The Commission believes that five business days will lessen the burden of the reporting requirement, particularly for small businesses. The Commission also considered not applying the requirement to recipients of prohibited communications. However, the Commission believes that recipients of prohibited communications are more likely to report such communications and thus serve as an important deterrent against collusive behavior. Moreover, the Commission believes that recipients of prohibited communications must be held to the same enforcement standard as initiators, because a recipient may derive substantial unfair benefit from obtaining details of a competitor's bids or bidding strategy.

F. Report to Congress

35. The Commission will send a copy of the *7th R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *7th R&O*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 1.2105 is amended by revising paragraph (c)(1), redesignating paragraph (c)(6) as (c)(7) and adding new paragraph (c)(6) to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of collusion.

* * * * *

(c) *Prohibition of collusion.* (1) Except as provided in paragraphs (c)(2), (c)(3), and (c)(4) of this section, after the short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other's, or any other competing applicants' bids or bidding strategies, or discussing or negotiating settlement agreements, until after the down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to § 1.2105(a)(2)(viii).

* * * * *

(6) Any applicant that makes or receives a communication of bids or bidding strategies prohibited under paragraph (c)(1) of this section shall report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Such reports shall be filed with the Office of the Secretary, and a copy shall be sent to the Chief of the Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

* * * * *

[FR Doc. 01–27103 Filed 10–26–01; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 66, No. 209

Monday, October 29, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–17–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc.—Manufactured Model OH–13E, OH–13H, and OH–13S Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for Model OH–13E, OH–13H, and OH–13S helicopters manufactured by Bell Helicopter Textron, Inc. (BHTI). That AD currently requires either recurring liquid penetrant or eddy current inspections of the main rotor blade grip (grip) threads for a crack. If a crack is detected, that AD requires, before further flight, replacing the cracked grip with an airworthy grip. That AD also establishes a retirement life of 1200 hours time-in-service (TIS) for each grip. This proposed AD would add two part numbers (P/N) to the applicability and requires only recurring eddy current inspections of the grip threads. This proposed AD would also require reporting any results of the grip inspections to the FAA Rotorcraft Certification Office. This proposal is prompted by the issuance of an AD for the civil BHTI Model 47 helicopters and the results of an accident investigation, an operator survey conducted by a trade association, various comments concerning the subject of the current AD, and a further analysis of field service data related to the BHTI Model 47 helicopters. The actions specified by this AD are intended to prevent failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before December 28, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marc Belhumeur, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5177, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–17–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On May 12, 1987, the FAA issued AD 86–06–08R1, Amendment 39–5260 (52 FR 24135, June 29, 1987) that amended AD 86–06–08, Amendment 39–5626 (51 FR 11300, April 2, 1986) for BHTI Model 47 helicopters. Those ADs required certain fluorescent dye penetrant inspections of each grip. On August 31, 2000, the FAA issued Emergency AD 2000–18–51 for BHTI Model 47 helicopters that superseded AD 86–06–08 and the revision of that AD, 86–06–08R1. AD 2000–18–51 required certain liquid penetrant or eddy current inspections of the grip threads for a crack and, before further flight, replacing any cracked grip with an airworthy grip. That AD also established a retirement life of 1200 hours TIS for each grip. To address the same unsafe condition as addressed for the Model 47 series helicopters, the FAA issued Emergency AD 2001–18–52 on September 1, 2000, for Model OH–13E, OH–13H, and OH–13S helicopters manufactured by BHTI.

Those actions were prompted by the results of an investigation of an August 1998 Canadian accident in which a grip failed on a BHTI Model 47G–2 helicopter due to a fatigue crack. An analysis of field service data revealed fatigue cracks in the majority of the grips inspected. The requirements of AD 2000–18–52 are intended to prevent failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

Since issuing AD 2000–18–52, other cracked grips with less than 1200 hours TIS have been discovered, including one grip with a 2-inch crack through the grip. Since then, the FAA has determined that the liquid penetrant inspection is inadequate for finding smaller cracks in the grip threads. Additionally, two parts produced under a Parts Manufacturer Approval (PMA), P/Ns R74–120–252–11 and R74–120–135–5, were inadvertently omitted from the applicability of AD 2000–18–52. Based on these findings, an accident

investigation, a further analysis of field service data, and the results of an operator survey conducted by a trade association, the FAA is proposing to supersede AD 2000–18–52. Also, some of these proposals are based on the comments received in response to AD 2000–18–51 and addressed by the FAA in AD 2001–17–17, Amendment 39–12408 (66 FR 45584, August 29, 2001). Those comments pertain to the Model 47 series helicopters as well as the Model OH–13E, OH–13H, and OH–13S helicopters that have the same blade grips installed.

We have identified an unsafe condition that is likely to exist or develop on Model OH–13E, OH–13H, and OH–13S helicopters. The proposed AD would supersede AD 2000–18–52 to require the following:

• For grips, P/N 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, 47–120–252–11, and for grips manufactured under PMA, P/N 74–120–252–11, 74–120–135–5, R74–120–252–11, and R74–120–135–5, conduct eddy current inspections of the threads of both grips as follows:

• Within 300 hours TIS since initial installation on any helicopter or within 10 hours TIS for grips with 300 or more hours TIS, or within 200 hours TIS since last liquid penetrant or eddy current inspection, whichever comes first, conduct an eddy current inspection in accordance with the procedures in Appendix 1 of this AD or an equivalent FAA-approved procedure that contains the requirements of the procedure in Appendix 1. Thereafter, conduct the eddy current inspection at intervals not to exceed 300 hours TIS.

• Report the results of each inspection to the FAA Rotorcraft Certification Office by providing the information requested in the sample format report in Appendix 3 of this AD. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

• Before further flight, replace any cracked grip with an airworthy grip.

The proposed AD would require maintaining the current retirement life of 1200 hours TIS for each affected grip.

The FAA estimates that 300 helicopters of U.S. registry would be affected by this AD, that it would take approximately 10 work hours per helicopter to accomplish the disassembly, inspection, and reassembly of the grips from the helicopter, and that the average labor rate is $60 per work hour. Required parts, if a grip needs to be replaced, would cost approximately $4,000 per grip. There are two grips on each helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,580,000, assuming one inspection per helicopter and replacement of both grips on each helicopter.

The regulations adopted herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11984 and by adding a new airworthiness directive to read as follows:

Continental Copters, Inc.; Gifton McCreay (Formerly Aerodyne Systems Engineering, Ltd., Formerly Texas Helicopter Corp.); Hawkeye Rotor and Wing Flight School; and Teryjon Aviation Inc.: Docket No. 2001–SW–17–AD. Supersedes AD 2000–18–52, Amendment 39–11984, Docket No. 2000–SW–36–AD.

Applicability: Model OH–13E, OH–13H, and OH–13S helicopters manufactured by Bell Helicopter Textron, Inc. (BHTI), with main rotor blade grips, part number (P/N) 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, 47–120–252–11, 74–120–252–11, 74–120–135–5, R74–120–252–11, or R74–120–135–5, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main rotor blade grip (grip), separation of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Conduct an eddy current inspection of the threads of both grips for a crack in accordance with Appendix 1 of this AD or an equivalent FAA-approved procedure containing the requirements of the procedure in Appendix 1 within 300 hours time-in-service (TIS) since initial installation on any helicopter or within 10 hours TIS for grips with 300 or more hours TIS or within 200 hours TIS since the last liquid penetrant or eddy current inspection of grip threads, whichever comes first.

(1) Thereafter, conduct the eddy current inspection in accordance with Appendix 1 of this AD or an equivalent FAA-approved procedure containing the requirements of the procedure in Appendix 1 at intervals not to exceed 300 hours TIS.

(2) Report the results of each inspection to the FAA Rotorcraft Certification Office within 7 calendar days. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

Note 2: See Appendix 2 of this AD for a list of known eddy current inspection facilities.

(b) If a crack is detected, before further flight, replace any cracked grip with an airworthy grip.

(c) On or before 1200 hours TIS, replace each grip with an airworthy grip.

(d) This AD establishes a retirement life of 1200 hours TIS for the grips, P/N 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, 47–120–252–11, 74–120–252–11, 74–120–135–5, R74–120–252–11, and R74–120–135–5.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Appendix 1

BILLING CODE 4910–13–U

NONDESTRUCTIVE INSPECTION PROCEDURE

TASK: EDDY CURRENT (ET) INSPECTION OF MAST THREADS FOR CRACKS

1.0 AREA OF INSPECTION

1.1 The inboard inside diameter machined threads (reference Figure 1).

2.0 EQUIPMENT

2.1 Zetec Miz-20/22, Phasec 2200 or equivalent piece of equipment.
2.2 Match molded ET probe SPC-193 (100kHz) or equivalent. (See Figure 3.)
2.3 Reference standard EC-010-021, or equivalent. (See Figures 4 and 5.)
2.4 Light oil.

3.0 PERSONNEL REQUIREMENTS

3.1 Personnel performing the ET inspection must be minimally qualified to a Level II in ET inspection, certified in accordance with an industry accepted standard (such as ATA-105, NAS-410, or MIL-STD-410) or an FAA accepted company procedure.

4.0 STANDARDIZATION

4.1 Connect probe to flaw detector and turn power on.

4.2 Adjust the Phasec 2000 as shown in Table 1. Adjust all other equipment as necessary.

4.3 Adjust the V:H gain ratio to 1.5:1 - 2:1.

4.4 Monitor the crack response when moving the probe in one direction only across each EDM notch of the standard. Adjust the coarse gain for a crack response of 2 - 3 units from the smallest (0.04") notch. Record the number units of displacement and noise level for each of the EDM notches.

5.0 PRE INSPECTION

5.1 The part shall be clean and free of loose debris.

5.2 A thin coating of clean oil may be applied to the teeth to help the ET probe slide easily.

6.0 INSPECTION

6.1 Place the probe into the threaded area and slide it in the same direction as was done on the standard while monitoring the screen for root cracks. Moving the probe in the same direction produces a repeatable display that allows for more accurate flaw size determination. Scan the probe along each individual thread until all the threads are inspected. (See Figures 2 and 3.)

NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)

7.0 EVALUATION

7.1 Repeat standardization and rescan any areas where there is a vertical crack-like deflection.

7.2 If indication persists, mark the location on the part. Record the number units of displacement, phase orientation, and noise level.

8.0 ACCEPT/REJECT CRITERIA

8.1 All repeatable crack-like indications above the noise level detected shall be cause for rejection.

Zetec M12 - 20/22, Phasec 2200 Settings

Dialogue: English	Alarm Stretch: 1S	Probe: Standard
Printer: HP PCL	Alarm Shape: Off	Drive: +10dB 6.3V
◀Bright Bal▶ Low Split	Apply to: Trace 1	Analogue 1:Out Off
Graticule: Rect. A	◀Alarm action▶ Run Silent	Analogue 2: Out Off

Ser'l Conf. Alarm I/0 Time Batt.

Hi-pass: DC	CH1 Freq: 100KHz	◀ Mode: Diff 1Ch
Lo-pass: 20 Hz	CH1 PHASE: 193.0°	Display: XY
Inp. Gain: +20dB	CH1 GAIN: 46.0Db	View: Ch1
Optimize: ◀ + ▶	CH1 X:Y: X -3.0dB	Persist: Permn't

Table 1, Appendix 1

NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)

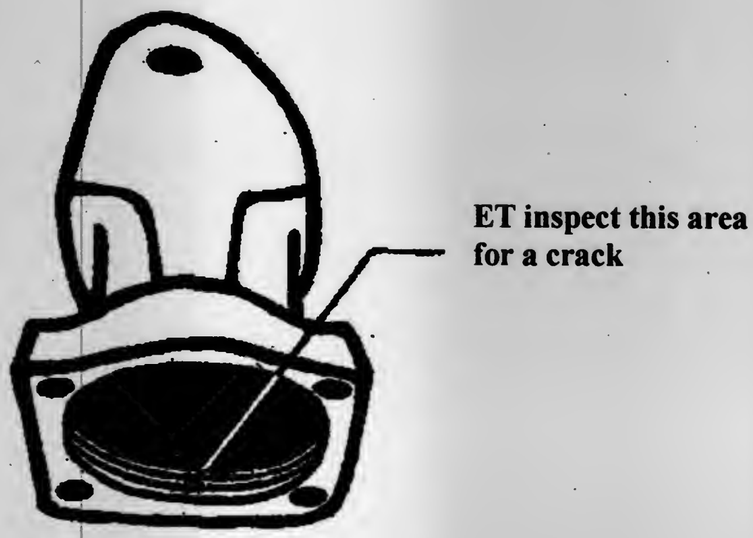
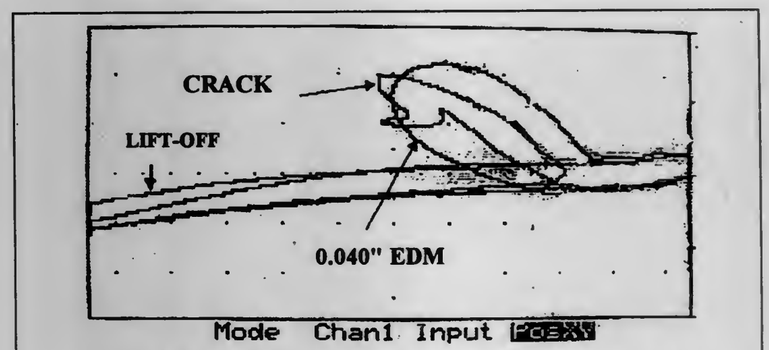


Figure 1, Appendix 1

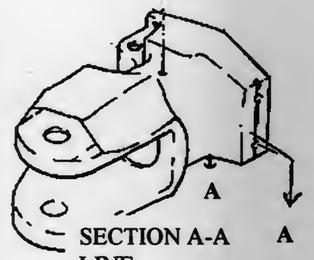
NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)



A typical flaw indication appears on the eddy current monitor as shown above.

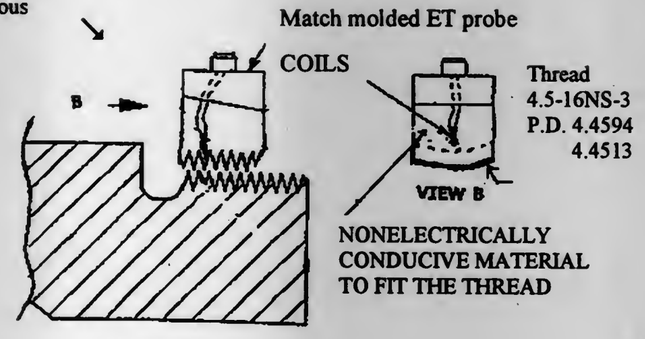
Figure 2, Appendix 1

NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)



SECTION A-A LINE

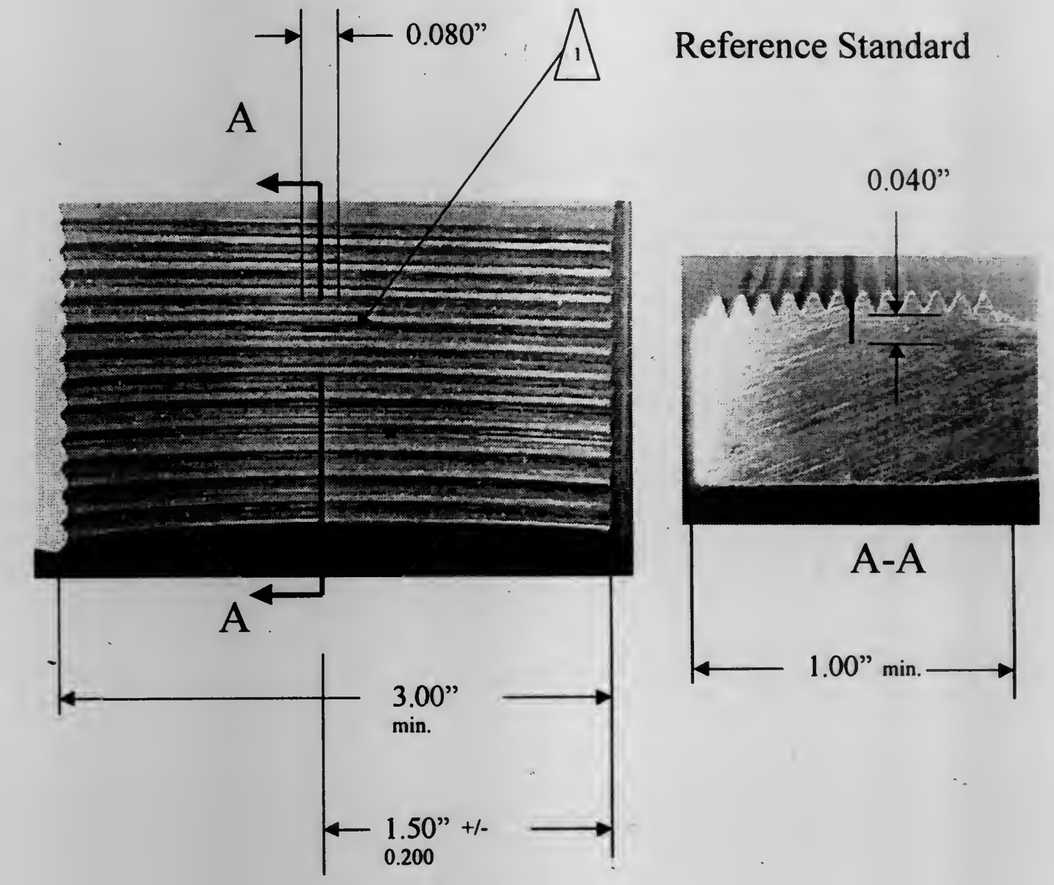
A special eddy current probe shaped to fit the thread and containing a coil positioned so that its ferrite core is contiguous with the root of the thread.



SECTION A-A

Figure 3, Appendix 1

NONDESTRUCTIVE TESTING PROCEDURE (CONT.)



1 EDM 1 place only in thread root.
Notch width shall be 0.004 max.
All other dimensions to be +/- 0.004 from indicated.

Figure 4, Appendix 1

NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)

Reference Standard

MACHINING NOTES:

1. Standard may be machined from aluminum tube stock.
2. The standard shall contain a minimum of four teeth per the tooth dimensions specified.
3. The EDM notch shall be placed in the center most tooth root as measured across the width of the standards. There shall be no less than two teeth and one root on either side of the EDM notch.

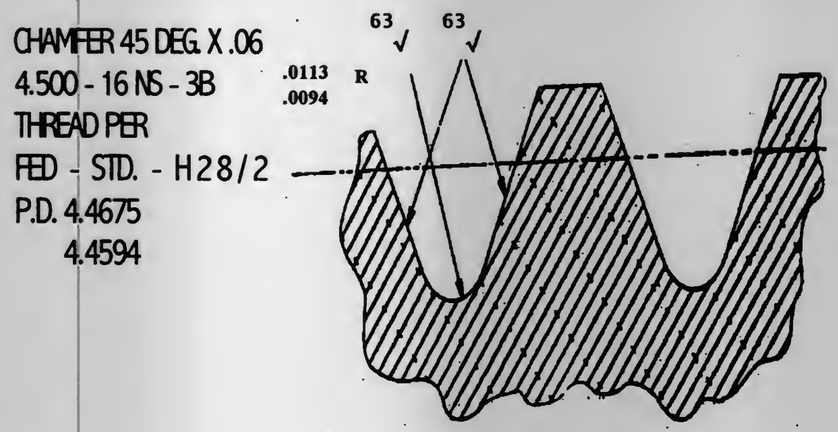


Figure 5, Appendix 1

BILLING CODE 4910-13-C

Appendix 2

Partial List of Nondestructive Inspection Testing Facilities Identified by Operators and FAA

Met Chem Testing Laboratories Inc., 369 W. Gregson Ave. (3085 S.), Salt Lake City, Utah 84115–3440, Phone: (801) 487–0801, Fax: (801) 466–8790, *www.metchemtesting.com.*

Galactic NDT Services, 10728 D. South Pipeline RD, Hurst, Texas 76053, Phone: (800) 458–6387.

Global Testing Technologies, 1173 North Service Rd. Unit D3, Oakville Toronto Canada, Phone: (905) 847–9300, Fax: (905) 847–9330.

Paragon Services, Inc., 1015 S. West St., Wichita, KS 67213, Phone: (316) 945–5285, Fax: (316) 945–0629.

NOE Services, 8775 E. Orchard Rd. #809, Englewood, CO, Phone: (303) 741–0518, Fax: (303) 741–0519.

Applied Technical Services, Inc., 1190 Atlanta Industrial Drive, Marietta, GA 30066, Phone: (770) 423–1400, Fax: (770) 514–3299.

Rotorcraft Support, Van Nuys CA 91406, Phone: (818) 997–7667, Fax: (818) 997–1513.

Other FAA Approved repair facilities may be used.

Appendix 3

AD Compliance Inspection Report (Sample Format) Model OH–13 Main Rotor Blade Grip

Provide the following information and mail or fax it to: Manager, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas, 76193–0170, USA, Fax: 817–222–5783.

Aircraft Registration No:
Helicopter Model:
Helicopter Serial Number:
Owner and Operator of the Helicopter:

Grip #1 Grip #2

Part Number:
Serial Number:

Hours TIS on the part at Inspection:
Crack Found (Y/N)
If yes, describe below.

Description of Findings

Who performed the inspections?

If a crack was found, describe the crack size, location, and orientation (provide a sketch or pictures with the grip part and serial number).

Provide any other comments.

Issued in Fort Worth, Texas, on October 11, 2001.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–26966 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–14–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. LTS101 Series Turboshaft Engines and LTP101 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc.) LTS101 series turboshaft engines; and LTP101 series turboprop engines. This proposal would require a one-time visual inspection for surface finish and a one-time fluorescent penetrant inspection for cracks of certain impellers installed on LTS101 series turboshaft and LTP101 series turboprop engines. This proposal is prompted by a report of a machining discrepancy that may have occurred during manufacture of the affected impellers. The actions specified by the proposed AD are intended to prevent impeller failure from cracks in the impeller back face area, which could result in an uncontained engine failure.

DATES: Comments must be received by December 28, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–14–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected, by appointment, at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in the proposed rule may be obtained from Honeywell International Inc. (formerly AlliedSignal) Aerospace Services Attn.: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–14–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–14–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA has received a report of two impellers that failed while being tested by the manufacturer. It is believed that the failures are a result of a machining discrepancy that may have occurred during manufacture of the affected impellers. This condition, if not corrected, could result in the development of cracks in the impeller

back face area and possibly an uncontained engine failure.

Evaluation of the Unsafe Condition

Since an unsafe condition has been identified that is likely to exist or develop on other LTS101 series turboshaft engines; and LTP101 series turboprop engines of the same type design, the proposed AD would require a one-time visual inspection for surface finish and a one-time fluorescent penetrant inspection for cracks of certain impellers as described in AlliedSignal Service Bulletin (SB) LT 101–72–30–0186, dated October 1, 1999, or Honeywell International SB LT 101–72–30–0186, Revision 1, dated April 25, 2000.

Differences Between the Proposed AD and the Manufacturers' Service Bulletins

To assure that the unsafe condition is addressed in a timely fashion, this amendment will require a one-time visual inspection for surface finish and a one-time fluorescent penetrant inspection for cracks of impellers part numbers (P/N's) 4–101–052–57/–62 within 900 gas generator (Ng) cycles after the effective date of this AD.

Economic Impact

The FAA estimates that 600 engines installed on aircraft of U.S. registry would be affected by this proposed AD and that it would take approximately 4 work hours per engine to accomplish the proposed inspection. The average labor rate is $60 per work hour. There are no required parts costs. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $144,000.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Honeywell International Inc.: Docket No. 2000–NE–14–AD.

Applicability: This airworthiness directive (AD) is applicable to LTS101 series turboshaft and LTP101 series turboprop engines with the following centrifugal compressor impeller part numbers (P/N's) installed: 4–101–052–57 and 4–101–052–62, except those with a P/N or serial number (SN) listed in paragraphs 1.A.(1) through 1.A.(3) of AlliedSignal SB LT 101–72–30–0186, dated October 1, 1999, or Honeywell International Inc. SB LT 101–72–30–0186, Revision 1, dated April 25, 2000. These engines are installed on, but not limited to Aerospatiale AS350, Eurocopter MBB–BK117 and HH–65A, Bell 222, Page Thrush, Air Tractor AT–302, Piaggio P.166–DL3, Riley International R421, and Pacific Aero 08–600 aircraft.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already done.

To prevent impeller failure from cracks in the impeller back face area, which could result in an uncontained engine failure, do the following:

(a) Within 900 gas generator (Ng) cycles after the effective date of this AD, conduct a one-time visual inspection for surface finish and fluorescent penetrant inspection of impellers P/N 4–101–052–57 and 4–101–052–62 for cracks in accordance with 3.A through 3.F. of the Accomplishment Instructions of AlliedSignal Service Bulletin (SB) LT 101–72–30–0186, dated October 1, 1999, or Honeywell International Inc. SB LT 101–72–30–0186, Revision 1, dated April 25, 2000.

(b) Replace all impellers that exceed the acceptable limits of the Accomplishment Instructions of AlliedSignal Service Bulletin (SB) LT 101–72–30–0186, dated October 1, 1999, or Honeywell International Inc. SB LT 101–72–30–0186, Revision 1, dated April 25, 2000 with a serviceable impeller.

(c) After the effective date of this AD, do not install impeller P/N's 4–101–052–57 or 4–101–052–62, except those with an impeller P/N or SN listed in paragraphs 1. A.(1) through 1. A.(3) of AlliedSignal SB LT 101–72–30–0186, dated October 1, 1999, or Honeywell International Inc. SB LT 101–72–30–0186, Revision 1, dated April 25, 2000.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angles Aircraft Certification Office (LAACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on October 18, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–26968 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1124 and 1124A, and Model 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Israel Aircraft Industries Model 1124 and 1124A series airplanes, and certain Model 1125 Westwind Astra series airplanes. This proposal would require a one-time inspection of the attachment bolts installed on the engine inlet cowl and aft nacelle attachment flanges to verify correct part numbers of the bolts, and replacement of any discrepant/incorrect bolt with a correct attachment bolt. This action is necessary to prevent failure of attachment bolts due to fatigue, which could result in separation of the engine inlet cowl and aft nacelle, and consequent damage to the horizontal or vertical stabilizer. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 28, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2001–NM–200–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–200–AD." The postcard will be dated stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, has notified the FAA that an unsafe condition may exist on all Israel Aircraft Industries, Ltd., Model 1124 and 1124A series airplanes, and certain Model 1125 Westwind Astra series airplanes. The CAAI advises that it has received reports of certain incorrect attachment bolts being used to attach the inlet cowl and the aft nacelle to the engine flanges. For that attachment function, those incorrect bolts (having part number AN3) are considered to be fatigue critical bolts. Failure of such attachment bolts due to fatigue, could result in separation of the engine inlet cowl and aft nacelle and consequent damage to the horizontal or vertical stabilizer.

Explanation of Relevant Service Information

Israel Aircraft Industries has issued 1124–Westwind Alert Service Bulletin 1124–54A–138, and Astra Alert Service Bulletin 1125–54A–247, both dated March 29, 2001, which describe procedures for inspection of the attachment bolts installed on the engine inlet cowl and aft nacelle attachment flanges to verify correct part numbers of the bolts, and replacement of any discrepant/incorrect bolt with a correct attachment bolt. Accomplishment of the actions specified in the alert service bulletins is intended to adequately address the identified unsafe condition. The CAAI classified these alert service bulletins as mandatory and issued Israeli airworthiness directive 54–01–05–02, dated May 13, 2001, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or

develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletins described previously.

Cost Impact

The FAA estimates that 299 Model 1124, 1124A, and Model 1125 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $17,940, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries, Ltd.: Docket 2001–NM–200–AD.

Applicability: All Model 1124 and 1124A series airplanes, and Model 1125 Westwind Astra series airplanes, having serial numbers 004 through 072 inclusive, and 074 through 078 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of attachment bolts due to fatigue, which could result in separation of the engine inlet cowl and aft nacelle, and consequent damage to the horizontal or vertical stabilizer, accomplish the following:

Inspection and Replacement, If Necessary

(a) Within 50 flight hours from the effective date of this AD, perform a one-time inspection of the bolts installed on the engine inlet cowl and aft nacelle attachment flanges to verify correct part numbers of the bolts. Before further flight, replace any discrepant bolts with the correct bolts, per 1124-Westwind (Israeli Aircraft Industries) Alert Service Bulletin 1124–54A–138, and Astra (Israeli Aircraft Industries) Alert Service Bulletin 1125–54A–247, both dated March 29, 2001; as applicable.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Israeli airworthiness directive 54–01–05–02, dated May 13, 2001.

Issued in Renton, Washington, on October 22, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27071 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146–200A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model BAe 146–200A series airplanes. This proposal would require replacement of the signal summing units (SSUs) for the stall identification system with new, improved parts. This action is necessary to prevent stall identification and stall warning signals from occurring at the same time, leading the flight crew to take action based on erroneous information, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 28, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001-NM–150-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM–150-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain BAE Systems (Operations) Limited Model BAe 146–200A series airplanes. The CAA advises that certain signal summing units (SSUs) for the stall identification system have an incorrect speed law calibration in the range of 200 to 230 knots. This condition, if not corrected, could result in stall identification and stall warning signals occurring at the same time, leading the flight crew to take action based on erroneous information, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Modification Service Bulletin SB.27–109–00503C, Revision 3, dated March 19, 2001, which describes procedures for replacing SSUs having part number C81606–3 with new SSUs having part number C81606–5. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 009–06–90 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of FAA's Determination

British airworthiness directive 009–06–90 was originally issued in May 1991. To assist in our determination of whether it is necessary to propose a parallel action, the FAA has reviewed the available information relevant to the identified unsafe condition. We also have contacted the single operator known to have affected U.S.-registered airplanes and determined that the identified unsafe condition has been addressed on those airplanes. However, to ensure that all affected airplanes are accounted for, we find that issuance of a proposed AD is warranted. The proposed AD would also ensure that the unsafe condition would be addressed on any subject airplane currently operated by a non-U.S. operator under foreign registry if that airplane is imported and placed on the U.S. Register in the future.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and Service Bulletin

This proposed AD differs from the service bulletin with regard to compliance time. The service bulletin recommends that the replacement of SSUs be accomplished (based on the original issue of the service bulletin) before May 31, 1991. This proposed AD would require the replacement of SSUs with new SSUs within one year after the effective date of this AD. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with

addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the replacement (estimated at one hour). In light of all of these factors, the FAA finds a one-year compliance time for completing the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost between $23,747 and $29,688 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $285,684 and $356,976, or between $23,807 and $29,748 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2001–NM–150–AD.

Applicability: Model BAe 146–200A series airplanes, as listed in BAE Systems Modification Service Bulletin SB.27–109–00503C, Revision 3, dated March 19, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent stall identification and stall warning signals from occurring at the same time, leading the flight crew to take action based on erroneous information, which could result in reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 1 year after the effective date of this AD, replace signal summing units (SSUs), part number C81606–3, for the stall identification system with new SSUs having part number C81606–5, according to BAE Systems Modification Service Bulletin SB.27–109–00503C, Revision 3, dated March 19, 2001.

Note 2: Replacement of SSUs having part number C81606–3 with new SSUs having part number C81606–5 accomplished according to British Aerospace Service Bulletin SB.27–109–00503C, Revision 1, dated November 12, 1990; or Revision 2, dated February 4, 2000; is acceptable for compliance with paragraph (a) of this AD.

Spares

(b) As of the effective date of this AD, no person shall install an SSU, part number C81606–3, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in British airworthiness directive 009–06–90.

Issued in Renton, Washington, on October 22, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certificotion Service.

[FR Doc. 01–27072 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1260 and 1274

NASA Grant and Cooperative Agreement Handbook—Rewrite of Section D—Cooperative Agreements With Commercial Firms and Implementation of Section 319 of Public Law 106–391, Buy American Encouragement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule amends NASA's Grant and Cooperative Agreement Handbook by revising Section D, Cooperative Agreements with Commercial Firms, to clarify current management policies, incorporate process improvements, conform with recent changes in legislation, and institute risk management as part of source selection. This proposed rule also implements Section 319, Buy American Encouragement, of Public Law 106–391, NASA Authorization Act of 2000.

DATES: Interested parties should submit comments in writing on or before December 28, 2001 to be considered in formulation of a final rule.

ADDRESSES: Submit written comments to: Eugene Johnson, NASA Headquarters, Office of Procurement, Analysis Division (Code HC), Washington, DC 20546–0001. Submit electronic comments via the Internet to: *ejohnson@hq.nasa.gov*.

FOR FURTHER INFORMATION CONTACT: Eugene Johnson, Procurement Analyst, (202) 358–4703, or e-mail: *ejohnson@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule is a comprehensive revision to NASA grant and cooperative agreement policies codified at 14 CFR part 1274, Grants and Cooperative Agreements with Commercial Firms. The revision was initiated by NASA as part of the Agency's effort to re-engineer its processes for awarding and administering grants and cooperative agreements. Changes are chiefly aimed at clarifying NASA policies for publication of requirements, evaluating and selecting proposals, and implementation of a process for managing the performance risks associated with certain types of cooperative agreements with commercial firms. Scientific breakthroughs based on NASA or NASA mission related projects have greatly benefited the American society, and the world as a whole. In realizing these successes, NASA's technological pursuits involve research and experimental projects, where risks are simply unavoidable. Some recognition of the risks and liability issues associated with some of these projects is reflected in recent legislation (Section 431 of Pub. L. 105–276), which provides for NASA indemnification of the developers of experimental aerospace vehicles performing under Cooperative Agreements. This proposed rewrite of Section D of the Grant and Cooperative Agreement Handbook implements a process that requires early identification, assessment, and management by NASA and the recipient, of risk and safety issues associated with a given research project.

Additionally, this proposed rule will promulgate the requirements of Section 319, "Buy American Encouragement," of the NASA Authorization Act of 2000 (Pub. L. 106–391) for recipients of non-profit grants and cooperative agreements.

B. Regulatory Flexibility Act

NASA does not expect this proposed rule to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule primarily clarifies existing requirements and refocusing attention on risk management.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 14 CFR Parts 1260 and 1274

Grant Programs—Science and Technology.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 14 CFR Ch. V is proposed to be amended as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

1. The authority citation for 14 CFR Part 1260 continue to read as follows:

Authority: Part 1260: 42 U.S.C.2374(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and OMB Circular A–110.

§ 1260.20 [Amended]

2. In § 1260.20, amend paragraphs (a), (d), (e), (f), and (h) by removing "1260.38" and adding "1260.39" in its place.

3. Add § 1260.39 to read as follows:

§ 1260.39 Buy American encouragement.

Buy American Encouragement (XX/XX)

(a) As stated in Section 319 of Public Law 106–391, the NASA Authorization Act of 2000, Recipients are encouraged to purchase only American-made equipment and products.

(b) The Recipient will observe property standards and provisions set forth in §§ 1260.131 through 1260.137.

[End of Provision]

4. Revise part 1274 to read as follows:

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

Subpart 1274.1—General

Sec.

1274.101 Purpose.
1274.102 Scope.
1274.103 Definitions.
1274.104 Effect on other issuances.
1274.105 Review requirements.
1274.106 Deviations.
1274.107 Publication of requirements.

Subpart 1274.2—Pre-Award Requirements

1274.201 Purpose.
1274.202 Methods of award.
1274.203 Solicitations/Cooperative Agreement Notices.
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Authority: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451 et seq.

Subpart 1274.1—General

§ 1274.101 Purpose.

The following policy guidelines establish uniform requirements for NASA cooperative agreements awarded to commercial firms.

§ 1274.102 Scope.

(a) The business relationship between NASA and the recipient of a cooperation agreement differs from the relationship that exists between NASA and the recipient of a grant. Under the auspices of a grant, there is very little involvement and interaction between NASA and the grantee (other than a few administrative, funding, and reporting requirements, or in some cases matching of funds). Under a cooperative agreement, because of its substantial involvement, NASA assumes a higher degree of responsibility for the technical performance outcomes and associated financial costs of research activities. In some cooperative agreement projects, NASA may be required to indemnify the recipient (to the extent authorized by Congress). While the principal purpose of NASA's involvement and commitment of resources is to stimulate or support research activity, a major incentive for involvement by commercial firms (particularly where costs are shared) is the profit potential from marketable products expected to result from the cooperative agreement project.

(b) Cooperative Agreements (in areas or research relevant to NASA's mission) are ordinarily entered into with commercial firms to—

(1) Support research and development;

(2) Provide technology transfer from the Government to the recipient;.

(3) Develop a capability among U.S. firms to potentially enhance U.S. competitiveness; or

(4) Stimulate interest from profit-oriented businesses that may have the best technical resources available, but have little interest or incentive to apply those resources to a particular area of research.

(c) Projects that normally result in a Cooperative Agreement award to a commercial entity are those:

(1) Not intended for the direct benefit of NASA;

(2) Are expected to benefit the general public;

(3) Require substantial cost sharing; and

(4) Have commercial applications and profit generating potential.

§ 1274.103 Definitions.

Administrator. The Administrator or Deputy Administrator of NASA.

Agreement Officer. A Government employee (usually a Contracting Officer or Grant Officer) who has been delegated the authority to negotiate, award, or administer the cooperative agreement. Most often Contracting Officers are delegated this authority for the more complex cooperative agreement projects.

Associate Administrator for Procurement. The head of the Office of Procurement, NASA Headquarters (Code H).

Cash contributions. The cash invested in a given program or project by the Federal Government and/or recipient. The recipient's cash contributions may include money contributed by third parties.

Closeout. The process by which NASA determines that all applicable administrative actions and all required work of the award have been completed by the recipient and NASA.

Commercial item. The definition in FAR 2.101 is applicable.

Cooperative agreement. As defined by 31 U.S.C. 6305, cooperative agreements are financial assistance instruments used to stimulate or support activities for authorized purposes and in which the Government participates substantially in the performance of the effort. This Part 1274 covers only cooperative agreements with commercial firms where resource sharing is involved. Cooperative agreements with other types of organizations are covered by 14 CFR part 1260.

Cost sharing. Agreement whereby the Government and recipient share the funding requirements of a program or project at an agreed upon ratio or percentage (normally 50/50). Normally, the Government's payment of its share of the costs is contingent upon the accomplishment of tangible milestones (preferred method). Any payment arrangement that is based on a method other than the accomplishment of tangible milestones (e.g., a reimbursable arrangement where NASA pays a share of incurred costs, regardless of the accomplishment of tangible milestones) must be approved through the deviation process discussed in § 1274.106.

Date of completion. The date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which NASA sponsorship ends.

Days. Calendar days, unless otherwise indicated.

General purpose equipment. Equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

Government furnished equipment. Equipment in the possession of, or acquired directly by, the Government and subsequently delivered, or otherwise made available, to a recipient and equipment procured by the recipient with Government funds under a cooperative agreement.

Incremental funding. A method of funding a cooperative agreement where the funds initially allotted to the cooperative agreement are less than the award amount. Additional funding is added as described in § 1274.918.

Non-cash or In-kind contributions. May be in the form of personnel resources (where cost accounting methods allow accumulation of such costs), real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program. Costs incurred by NASA to provide the services of one of its support contractors to perform part of NASA's requirements under a cooperative agreement shall be included as part of NASA's cost share, and will be counted as an in-kind contribution to the cooperative agreement.

Recipient. An organization receiving financial assistance under a cooperative agreement to carry out a project or program. A recipient may be an individual firm, including sole proprietor, partnership, corporation, or a consortium of business entities.

Resource contributions. The total value of resources provided by either party to the cooperative agreement including both cash and non-cash contributions.

Subcontracting dollar threshold. The dollar amount of the cooperative agreement subject to the small business subcontracting policies (includes small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority educational institutions). For cooperative agreements, the dollar threshold to which the small business subcontracting policies apply, is established by the total amount of NASA's cash contributions.

Suspension. An action by NASA or the recipient that temporarily discontinues efforts under an award, pending corrective action or pending a decision to terminate the award.

Technical officer. The official of the cognizant NASA office who is responsible for monitoring the technical aspects of the work under a cooperative agreement. A Contracting Officer's Technical Representative may serve as a Technical Officer.

Termination. The cancellation of a cooperative agreement in whole or in part, by either party at any time prior to the date of completion.

§ 1274.104 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this Part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 1274.106.

§ 1274.105 Review requirements.

(a) Once the decision is made by a Headquarters program office or Center procurement personnel, to pursue the Cooperative Agreement Notice (CAN) process, for which the total NASA resources to be expended equal or exceed $10 million (cash plus non-cash contributions), a notification shall immediately be provided to the Associate Administrator for Procurement (HS). The notification(s) shall be forwarded by the cognizant Headquarters program office or the Center procurement office (as applicable). For any CAN where NASA's *cash* contributions are expected to equal or exceed $10 million, Headquarters program office or Center procurement personnel shall also notify the Associate Administrator for Small and Disadvantaged Business Utilization (Code K). All such notifications, as described in paragraph (b) of this section, shall evidence concurrence by the cognizant Center Procurement Officer. These review requirements also apply where an unsolicited proposal is received from a commercial firm (or from a team of recipients where one of more team members is a commercial firm), and the planned award document is a cooperative agreement.

(b) The notification shall be accomplished by sending an electronic mail (e-mail) message to the following address at NASA Headquarters: *can@hq.nasa.gov*. The notification must include the following information, as a minimum—

(1) Identification of the cognizant Center and program office;

(2) Description of the proposed program for which proposals are to be solicited;

(3) Rationale for decision to use a CAN rather than other types of solicitations;

(4) The amount of Government funding to be available for awards;

(5) Estimate of the number of cooperative agreements to be awarded as a result of the CAN;

(6) The percentage of cost-sharing to be required;

(7) Tentative schedule for release of CAN and award of cooperative agreements;

(8) If the term of the cooperative agreement is anticipated to exceed 3 years and/or if the Government cash contribution is expected to exceed $20M, address anticipated changes, if any, to the provisions (see § 1274.204(m)); and

(9) If the cooperative agreement is for programs/projects that provide aerospace products or capabilities, (e.g., provision of space and aeronautics, flight and ground systems, technologies and operations), a statement that the requirements of NASA Policy Directive (NPD) 7120.4 and NASA Policy Guidance (NPG) 7120.5 have been met. This affirmative statement will include a specific reference to the signed Program Commitment Agreement.

(c) Code HS will respond by e-mail message to the sender, with a copy of the message to the Procurement Officer and the Office of Small and Disadvantaged Business Utilization, within five (5) working days of receipt of this initial notification. The response will address the following:

(1) Whether Code HS agrees or disagrees with the appropriateness for using a CAN for the effort described,

(2) Whether Code HS will require review and approval of the CAN before its issuance,

(3) Whether Code HS will require review and approval of the selected offeror's cost sharing arrangement (e.g., cost sharing percentage; type of contribution (cash, labor, etc.)).

(4) Whether Code HS will require review and approval of the resulting cooperative agreement(s).

(d) If a response from Code HS is not received within 5 working days of notification, the program office or Center may proceed with release of the CAN and award of the cooperative agreements as described.

§ 1274.106 Deviations.

(a) The Associate Administrator for Procurement may grant exceptions for classes of, or individual cooperative agreements and deviations from the requirements of this Regulation when exceptions are not prohibited by statute.

(b) A deviation is required for any of the following:

(1) When a prescribed provision set forth in this regulation for use verbatim is modified or omitted.

(2) When a provision is set forth in this regulation, but not prescribed for use verbatim, and the installation substitutes a provision which is

inconsistent with the intent, principle, and substance of the prescribed provision.

(3) When a NASA form or other form is prescribed by this regulation, and that form is altered or another form is used in its place.

(4) When limitations, imposed by this regulation upon the use of a provision, form, procedure, or any other action, are not adhered to.

(c) Requests for authority to deviate from this regulation will be forwarded to Headquarters, Program Operations Division (Code HS). Such requests, signed by the Procurement Officer, shall contain as a minimum—

(1) A full description of the deviation and identification of the regulatory requirement from which a deviation is sought;

(2) Detailed rationale for the request, including any perti nent background information;

(3) The name of the recipient and identification of the cooperative agreement affected, including the dollar value.

(4) A statement as to whether the deviation has been re quested previously, and, if so, circumstances of the previous request(s);and

(5) A copy of legal counsel's concurrence or comments.

§ 1274.107 Publication of requirements.

Cooperative agreements may result from recipient proposals submitted in response to the publication of a NASA Research Announcement (NRA), a Cooperative Agreement Notice (CAN), or other Broad Agency Announcement (BAA). BAA's, NRA's and CAN's are normally promulgated through publicly accessible Government-wide announcements such as those published under the Federal Business Opportunities (FedBizOpps), and/or the NASA Acquisition Internet Service (NAIS). Prior to publicizing the CAN, see § 1274.105.

Subpart 1274.2—Pre-Award Requirements

§ 1274.201 Purpose.

This subpart provides pre-award guidance, prescribes forms and instructions, and addresses other pre-award matters.

§ 1274.202 Methods of award.

(a) Competitive Agreements. Consistent with 31 U.S.C. 6301(3), NASA uses competitive procedures to award cooperative agreements whenever possible.

(b) Awards using other than competitive procedures. Solicitations for award of a Cooperative Agreement shall not be issued to, nor negotiations conducted with a single source unless—

(1) Use of such actions is documented in writing in accordance with NFS 1806.303; and

(2) Concurrence and approvals in accordance with the requirements stated in NFS 1806.304–70 are obtained. The dollar thresholds will be determined by the total value of the resources committed to the Cooperative Agreement (cash and quantifiable in-kind contributions).

§ 1274.203 Solicitations/Cooperative Agreement Notices.

(a) The evaluation section of the CAN shall notify potential recipients of the relative importance of factors, and any subfactors or other criteria that will be evaluated during the selection process.

(b) Publication of draft documentation may serve to prevent unnecessary expenditure of resources and unproductive time that may be spent by NASA and potential recipients. Release of draft documentation also serves to assist NASA in refining program objectives and requirements, and maximizes the quality of research proposals submitted for formal evaluation and source selection. Agreement Officers should use every effort to issue draft pre-award cooperative agreement information. Any draft documentation released for comment shall contain all factors/subfactors to be evaluated for award. Draft documents should be as close to the final product as possible. Draft CAN's or Cooperative Agreements (CA) should include terms and conditions, special requirements and expected cash and non-cash (in-kind) contributions.

(c) During the information gathering process, comments may be invited from potential recipients on all aspects of the draft documentation, including the requirements, schedules, proposal instructions and evaluation approaches. Potential recipients should be specifically requested to identify unnecessary or inefficient requirements. Comments should also be requested on any perceived safety, occupational health, security (including information technology security), environmental, export control, and/or other programmatic risk issues associated with performance of the CA.

(1) Agreement Officers should include in the award schedule of the assistance vehicle adequate time for the process to include industry review and comments, and NASA's evaluation and disposition of comments received.

(2) When providing draft documents for comment, the CAN shall advise interested parties that any issued draft documentation shall not be considered as a solicitation for award, and that NASA is not requesting proposals in response to the draft publication.

(3) Whenever feasible, Agreement Officers should include a summary of the disposition of significant comments when issuing the final CAN and/or CA.

(4) For its research projects, NASA may publish the expected project goals and objectives in terms of "What" the commercial recipient is expected to accomplish. The commercial recipient *may* be required to submit a proposed statement of work with its proposal stating "How" the recipient will accomplish the task(s). Depending on its importance to the success of the project, for some projects the recipient's statement of work may be included as an evaluation criterion for award. In these instances, the requirement for submission of the recipient's statement of work will be clearly identified as a subfactor or criterion that will be evaluated, and its relative weight or ranking in relation to other evaluation criteria shall be stated.

(5) Where performance-based milestone payments are planned, the potential recipient should be encouraged to suggest in its statement of work (which incorporates the project goals and objectives), or elsewhere in its proposal, terms and/or performance events upon which milestone payments can be negotiated. In all cases, where the recipient submits a statement of work in response to NASA project objectives, NASA shall have final approval of the acceptability of the statement of work.

(d) To protect the integrity of the competitive process, upon release of the formal CAN the Agreement Officer shall direct that all personnel associated with the source selection refrain from communicating with prospective recipients and to refer all inquiries to the Agreement Officer or other authorized representative. The notification to potential recipients may be sent in any format (e.g., letter or electronic) appropriate to the complexity of the acquisition. It is not intended that all communication with potential recipients be terminated. Agreement officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal proprietary data.

§ 1274.204 Costs and payments.

(a) *Cooperative agreements are financial assistance vehicles.* Cooperative agreements awarded to commercial firms are subject to the cost accounting standards and principles of

48 CFR chapter 99, as implemented by FAR parts 30 and 31.

(b) *Payment structure.* Cooperative agreements are solicited, awarded and administered in accordance with the method whereby fixed payments are made by NASA based on the accomplishment of predetermined tangible milestones by the recipient. Any arrangement where payments are made on a basis other than accomplished tangible milestones must be approved in accordance the requirements of § 1274.106 "Deviations".

(c) *Cost and payment matters*—(1) For cooperative agreements where commercial firms are the recipients, the accounting principles and the business relationship with the Government sponsor (*e.g.*, allowability of costs incurred), shall be governed by the cost accounting standards of 48 CFR Chapter 99, and implemented by FAR parts 30 and 31. If the recipient is a consortium which includes non-commercial entities as members, cost allowability for those members will be determined as follows:

(i) Allowability of costs incurred by state, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments."

(ii) The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations."

(iii) The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions."

(iv) The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals."

(2) Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

(d) *Cost sharing*—(1) Given the mutually beneficial nature, in particular, potential commercially marketable products, expected to result from the research activities of the cooperative agreement, resource contributions are required from the recipient. The commercial recipient is expected to contribute at least 50 percent of the total resources necessary to accomplish the cooperative agreement effort. Recipient contributions may be cash, non-cash (in-kind) or both. Acceptable non-cash or in-kind resources include such items as equipment, facilities, labor, office space, etc. In determining the incentive to the Recipient to share costs, agreement officers must consider a variety of factors. For example, while the future profitability of intellectual property may serve as incentive for involvement of the commercial firm in the cooperative agreement, the actual or imputed value of intellectual property, that includes such items as patent rights, data rights, trade secrets, etc., are generally not considered reliable sources for computation of the recipient's contributions. In most cases these costs are not readily quantifiable. Thus, the value of intellectual property rights should be factored into the incentive for the recipient to share at least 50 percent of costs, but intellectual property rights do not serve as quantifiable amounts to determine the equitable dollar amounts of costs to be shared.

(2) As will be expected from the commercial partner, the Government's cost share should reflect certain non-cash as well as cash contributions to the most practicable extent possible. Where quantifiable, NASA will include in the calculation of the Government's cost share, non-cash or in-kind contributions, which includes the value of equipment, personnel, and facilities (this approach is also supported by the initiative to implement full cost accounting methods within the Federal Government).

(3) When other Government agencies act as partners along with NASA (e.g., Department of Defense or Federal Aviation Administration), the resources contributed by any Government agency shall be counted as part of the Governments' total cost share under the cooperative agreement.

(4) In cases where a contribution of less than 50 percent is anticipated from the commercial recipient, approval of the Associate Administrator for Procurement (Code HS) is required prior to award. The request for approval should address the evaluation factor in the solicitation and how the proposal accomplishes those objectives to such a degree that a share ratio of less than 50 percent is warranted.

(5) For every cooperative agreement, there should be evidence of the recipient's strong commitment and self-interest in the success of the research project. A very strong indicator of a recipient's self-interest is its willingness to commit to a meaningful level of cost sharing. Before considering whether it is impracticable for the recipient to share 50 percent of the performance costs, agreement officers should also consider whether other factors exist that demonstrate the recipient's financial stake or self-interest in the success of the cooperative agreement.

(6) Acceptable cash and in-kind contributions, including IR&D costs, may not be included as contributions for any other federally assisted project or program.

(e) *Fixed Funding*—(1) Cooperative agreements are funded by NASA in a fixed amount. NASA makes disbursement of funds to the recipient as "Milestone Payments" discussed in paragraph (f) of this section. If the recipient achieves the final milestone, final payment is made, which completes NASA's financial responsibilities under the agreement.

(2) If the cooperative agreement is terminated prior to achievement of all milestones, NASA's funding is limited to milestone payments already made plus NASA's share of costs incurred to meet commitments of the recipient, which had in the judgment of NASA become firm prior to the effective date of termination. In no event, however, shall the amount of NASA's share of these additional costs exceed the amount of the next scheduled milestone payment.

(f) *Milestone obligations and payments.* A liability is created when costs are incurred, which may be earlier than the payment due date. There must always be sufficient funds obligated to cover the next milestone payment. In addition, funds must be made available (but not necessarily obligated) to cover all milestone payments expected to be made during the current fiscal year of performance.

(1) Agreement officers, technical officers, and other responsible Center personnel shall ensure that funds for milestone payments are obligated, billed and expended in accordance with the guidance set forth by the NASA Financial Management Manual (FMM 9000).

(2) Disbursement of funds to the recipient is based on the achievement of milestones or performance-related benchmarks. The milestone must represent the accomplishment of verifiable, significant event(s) and may not be based upon the mere passage of time or the performance of a particular level effort.

(3) The amount of funds to be disbursed by NASA in recognition of the achievement of milestones ("milestone payments") shall be established consistent with the ratio of resource sharing agreed upon under the cooperative agreement (see paragraph (e)(2) of this section). While the

schedule for milestone achievement must reflect the project being undertaken, the frequency should not be greater than one payment per month. For many projects, scheduling milestones to be accomplished about every 60 to 90 days appears to be most workable. Partial or interim milestone payments may not be made.

(i) The final milestone payment should be structured so that the associated payment is large enough to provide incentive to the recipient to complete its responsibilities under the cooperative agreement. Alternatively, funds may be reserved for disbursement after completion of the effort.

(ii) The Government technical officer must verify to and advise the agreement officer that each milestone has been achieved prior to authorizing the corresponding payment.

(g) Incremental funding. Whenever the period of performance for the cooperative agreement crosses fiscal years, the agreement shall be incrementally funded using appropriations from different fiscal years. In other circumstances, incremental funding may be appropriate. The total amount of funds obligated during the course of a fiscal year must be sufficient to cover the Government's share of the costs anticipated to be incurred by the recipient during that fiscal year. NASA may allot funds to an agreement at various times during a fiscal year in anticipation of the occurrence of costs. However, there must always be sufficient funds obligated to cover all milestone payments expected to be made during the current fiscal year.

(h) Profit applicability. Recipients shall not be paid a profit under cooperative agreements. Profit may be paid by the recipient to subcontractors, if the subcontractor is not part of the offering team and the subcontract is an arms-length relationship.

(i) Independent Research and Development (IR&D) Costs. When determining the applicable dollar amounts or reasonableness of proposed IR&D costs to be included as part of the recipient's cost share, agreement officers should seek assistance from DCAA or the cognizant audit agency.

(1) In accordance with FAR 31.205–18(e), IR&D costs may include costs contributed by contractors in performing cooperative research and development agreements or similar arrangements, entered into under sections 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42.U.S.C. 2473(c)(5) and (6). IR&D costs incurred by a contractor pursuant to these types of cooperative agreements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

(2) IR&D costs (or an agreed upon portion of IR&D costs) incurred by the recipient's organization and deemed by NASA as the same type of research being undertaken by the cooperative agreement between NASA and the recipient may serve as part of the recipient's contribution of shared costs under the cooperative agreement to the extent that such costs have not been reimbursed through other Federally funded contracts or financial assistance vehicles. When considering the use of IR&D costs as part of the recipient's cost share, the IR&D costs offered by the recipient shall meet the requirements of 31.205–18. Any IR&D costs incurred in a prior period, and offered as part of the recipient's cost share shall meet the criteria established by FAR 31.205–18(d), "Deferred IR&D Costs".

(j) Contributions. The CAN should provide a description and value for any quantifiable non-cash or in-kind Government resources (personnel, equipment, facilities, etc.), in addition to any cash funds that will be offered by the Government as part of its contributions to the cooperative agreement. As part of its proposal package, the recipient may also identify additional non-cash or in-kind resources it wishes NASA to contribute. The recipient shall verify the suitability of the requested resource to the work to be performed under the cooperative agreement. Any additional verifiable and suitable non-cash or in-kind resources requested, shall be added to NASA's shared cost of performing the cooperative agreement, and may require increased cash or in-kind contributions from the recipient to meet its percentage of the cost share.

§ 1274.205 Consortia as recipients.

(a) The use of consortia as recipients for cooperative agreements is encouraged. Such arrangements tend to bring a broader range of capabilities and resources to the cooperative agreement. In addition, consortium members can better share the projects financial costs (e.g., the 50 percent recipient's cost share or other costs of performance). A consortium is a group of organizations that enter into an agreement to collaborate for the purposes of the cooperative agreement with NASA. The agreement to collaborate can take the form of a legal entity such as a partnership or joint venture but it is not necessary that such an entity be created. A consortium may be made up of firms that normally compete for commercial or Government business or may be made up of firms that perform complementary functions in a given industry. NASA enters into an agreement with only one entity (as identified by the consortium members). (Also see § 1274.940). The inclusion of non-profit or educational institutions, small businesses, or small disadvantaged businesses in the consortium could be particularly valuable in ensuring that the results of the consortium's activities are disseminated.

(b) Key to the success of the cooperative agreement with a consortium is the consortium's Articles of Collaboration, which is a definitive description of the roles and responsibilities of the consortium's members. The Articles of Collaboration must designate a lead firm to represent the consortium and authority to sign on the consortium's behalf. It should also address to the extent appropriate—

(1) Commitments of financial, personnel, facilities and other resources;

(2) A detailed milestone chart of consortium activities;

(3) Accounting requirements;

(4) Subcontracting procedures;

(5) Disputes;

(6) Term of the agreement;

(7) Insurance and liability issues;

(8) Internal and external reporting requirements;

(9) Management structure of the consortium;

(10) Obligations of organizations withdrawing from the consortia;

(11) Allocation of data and patent rights among the consortia members

(12) Agreements, if any, to share existing technology and data;

(13) The firm which is responsible for the completion of the consortium's responsibilities under the cooperative agreement and has the authority to commit the consortium and receive payments from NASA, and address employee policy or other personnel issues.

(c) The consortium's charter or by-laws may be substituted for the Articles of Collaboration only if they are inclusive of all of the required information.

(d) An outline of the Articles of Collaboration should be required as part of the proposal and evaluated during the source selection process. Articles of Collaboration do not become part of the resulting cooperative agreement.

§ 1274.206 Metric Conversion Act.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. NASA's policy with respect to the metric measurement system is stated in NPD 8010.2, Use of the Metric System of Measurement in NASA Programs.

§ 1274.207 Extended agreements.

The provisions set forth in § 1274.901 are generally considered appropriate for agreements not exceeding 3 years and/or a Government cash contribution not exceeding $20M. For cooperative agreements expected to be longer than 3 years and/or involve Government cash contributions exceeding $20M, consideration should be given to provisions, which place additional restrictions on the recipient in terms of validating performance and accounting for funds expended.

§ 1274.208 Intellectual property.

(a) *Intellectual Property Rights.* A cooperative agreement covers the disposition of rights to intellectual property between NASA and the recipient. If the recipient is a consortium or partnership, rights flowing between multiple organizations in a consortium must be negotiated separately and formally documented, preferably in the Articles of Collaboration.

(b) *Rights in Patents.* Patent rights clauses are required by statute and regulation. The clauses exist for recipients of the agreement whether they are—

(1) Other than small business or nonprofit organizations (generally referred to as large businesses) or

(2) Small businesses or nonprofit organizations.

(c) *Inventions.* There are five situations in which inventions may arise under a cooperative agreement—

(1) Recipient Inventions;

(2) Subcontractor Inventions;

(3) NASA Inventions;

(4) NASA Support Contractor Inventions; and

(5) Joint Inventions with Recipient.

(d) *Recipient inventions.*—(1) A recipient, if a large business, is subject to section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) relating to property rights in inventions. The term "invention" includes any invention, discovery, improvement, or innovation. Title to an invention made under a cooperative agreement by a large business recipient initially vests with NASA. The recipient may request a waiver under the NASA Patent Waiver Regulations to obtain title to inventions made under the agreement. Such a request may be made in advance of the agreement (or 30 days thereafter) for all inventions made under the agreement. Alternatively, requests may be made on a case-by-case basis any time an individual invention is made. Such waivers are liberally and expeditiously granted after review by NASA's Invention and Contribution Board and approval by NASA's General Counsel. When a waiver is granted, any inventions made in the performance of work under the agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(2) A recipient, if a small business or nonprofit organization, may elect to retain title to its inventions. The term "nonprofit organization" is defined in 35 U.S.C. 201(i) and includes universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code. The Government obtains an irrevocable, nonexclusive, royalty-free license.

(e) *Subcontractor inventions.*—(1) *Large business.* If a recipient enters into a subcontract (or similar arrangement) with a large business organization for experimental, developmental, research, design or engineering work in support of the agreement to be performed in the United States, its possessions, or Puerto Rico, section 305 of the Space Act applies. The clause applicable to large business organizations is to be used (suitably modified to identify the parties) in any subcontract. The subcontractor may request a waiver under the NASA Patent Waiver Regulations to obtain rights to inventions made under the subcontract just as a large business recipient can (see paragraph (d)(1) of this section). It is strongly recommended that a prospective large business subcontractor contact the NASA installation Patent Counsel or Intellectual Property Counsel to assure that the right procedures are followed. Just like the recipient, any inventions made in the performance of work under the agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(2) *Non-profit organization or small business.* In the event the recipient enters into a subcontract (or similar arrangement) with a domestic nonprofit organization or a small business firm for experimental, developmental, or research work to be performed under the agreement, the requirements of 35 U.S.C. 200 *et seq.* regarding "Patent Rights in Inventions Made With Federal Assistance," apply. The subcontractor has the first option to elect title to any inventions made in the performance of work under the agreement, subject to specific reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations that are specifically set forth.

(3) Work outside the United States. If the recipient subcontracts for work to be done outside the United States, its possessions or Puerto Rico, the NASA installation Patent Counsel or Intellectual Property Counsel should be contacted for the proper patent rights clause to use and the procedures to follow.

(4) Notwithstanding paragraphs (e)(1), (2), and (3) of this section, and in recognition of the recipient's substantial contribution, the recipient is authorized, subject to rights of NASA set forth elsewhere in the agreement, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the recipient may deem necessary; or

(ii) If unable to reach agreement pursuant to paragraph (e)(4)(i) of this section, request that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or nonprofit organization, or for all other organizations, request that such rights for the recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR 1245.1. The exercise of this exception does not change the flow down of the applicable patent rights clause to subcontractors. Applicable laws and regulations require that title to inventions made under a subcontract must initially reside in either the subcontractor or NASA, not the recipient. This exception does not change that. The exception does authorize the recipient to negotiate and reach mutual agreement with the subcontractor for the grant-back of rights. Such grant-back could be an option for an exclusive license or an assignment, depending on the circumstances.

(f) *NASA inventions.* NASA will use reasonable efforts to report inventions made by its employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under an agreement. Upon timely request, NASA will use its best efforts to a grant recipient first option to acquire either an exclusive or partially-exclusive, revocable, royalty-bearing license, on terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the recipient will be subject to the

retention of rights by or on behalf of the Government for Government purposes.

(g) *NASA support contractor inventions.* It is preferred that NASA support contractors be excluded from performing any of NASA's responsibilities under an agreement since the rights obtained by a NASA support contractor could work against the rights needed by the recipient. In the event NASA support contractors are tasked by NASA to work under the agreement and inventions are made by support contractor employees, the support contractor will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR part 1245, and E.O. 12591. In the event the recipient decides not to pursue right to title in any such invention and NASA obtains title to such inventions, upon timely request, NASA will use its best efforts to grant the recipient first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(h) *Joint inventions*—(1) NASA and the recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA support contractors) and employees of Recipient. For large businesses, the Associate General Counsel (Intellectual Property) may agree that the United States will refrain, for a specified period, from exercising its undivided interest in a manner inconsistent with the recipient's commercial interest. For small business firms and nonprofit organizations, the Associate General Counsel (Intellectual Property) may agree to assign or transfer whatever rights NASA may acquire in a subject invention from its employee to the recipient as authorized by 35 U.S.C. 202(e). The agreement officer negotiating the agreement with small business firms and nonprofit organizations can agree, up front, that NASA will assign whatever rights it may acquire in a subject invention from its employee to the small business firm or nonprofit organization. Requests under this paragraph shall be made through the Center Patent Counsel.

(2) NASA support contractors may be joint inventors. If a NASA support contractor employee is a joint inventor with a NASA employee, the same provisions apply as those for NASA support contractor inventions (see paragraph (g) of this section). The NASA support contractor will retain or obtain nonexclusive licenses to those inventions in which NASA obtains title. If a NASA support contractor employee is a joint inventor with a recipient employee, the NASA support contractor and recipient will become joint owners of those inventions in which they have elected to retain title or requested and have been granted waiver of title. Where the NASA support contractor has not elected to retain title or has not been granted waiver of title, NASA will jointly own the invention with the Recipient.

(i) *Licenses to recipient(s)*—(1) Any exclusive or partially exclusive commercial licenses are to be royalty-bearing consistent with Government-wide policy in licensing its inventions. It also provides an opportunity for royalty-sharing with the employee-inventor, consistent with Government-wide policy under the Federal Technology Transfer Act.

(2) Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, all recipients shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title. Because cooperative agreements are cost sharing cooperative arrangements with a purpose of benefiting the public by improving the competitiveness of the recipient and the Government receives an irrevocable, nonexclusive, royalty-free license in each recipient subject invention, it is only equitable that the recipient receive, at a minimum, a revocable, nonexclusive, royalty-free license in NASA inventions and NASA contractor inventions where NASA has acquired title.

(3) Once a recipient has exercised its option to apply for an exclusive or partially exclusive license, a notice, identifying the invention and the recipient, is published in the **Federal Register**, providing the public opportunity for filing written objections for 60 days.

(j) *Preference for United States manufacture.* Despite any other provision, the recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. "Manufactured substantially in the United States" means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. In making this determination, only the product and its components shall be considered. The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty whether or not a duty-free entry certificate is issued. Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.101(a) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. The intent of this provision is to support manufacturing jobs in the United States regardless of the status of the recipient as a domestic or foreign controlled company. However, in individual cases, the requirement to manufacture substantially in the United States, may be waived by the Associate Administrator for Procurement (Code HS) upon a showing by the recipient that under the circumstances domestic manufacture is not commercially feasible.

(k) *Space Act Agreements.* Invention and patent rights in cooperative agreements must comply with statutory and regulatory provisions. Where circumstances permit, a Space Act Agreement is available as an alternative instrument which can be more flexible in the area of invention and patent rights.

(l) *Data Rights.* Data rights provisions can and should be tailored to best achieve the needs and objectives of the respective parties concerned.

(1) The data rights clause at § 1274.905 assumes a substantially equal cost sharing relationship where collaborative research, experimental, developmental, engineering, demonstration, or design activities are to be carried out, such that it is likely that "proprietary" information will be developed and/or exchanged under the agreement. If cost sharing is unequal or no extensive research, experimental, developmental, engineering, demonstration, or design activities are likely, a different set of clauses may be appropriate.

(2) The primary question that must be answered when developing data clauses is what does each party need or intend to do with the data developed under the agreement. Accordingly, the data rights clauses may be tailored to fit the circumstances. Where conflicting goals of the parties result in incompatible data provisions, agreement officers for the Government must recognize that private companies entering into cooperative agreements bring resources to that relationship and must be allowed to reap an appropriate benefit for the expenditure of those resources. However, since serving a public purpose is a major objective of a cooperative agreement, care must be exercised to ensure the recipient is not established as a long term sole source supplier of an item or service and is not in a position to take unfair advantage of the results of the cooperative agreement. Therefore, a reasonable time period (i.e., depending on the technology, two to five years after production of the data) may be established after which the data first produced by the recipient in the performance of the agreement will be made public.

(3) Data can be generated from different sources and can have various restrictions placed on its dissemination. Recipient data furnished to NASA can exist prior to, or be produced outside of, the agreement or be produced under the agreement. NASA can also produce data in carrying out its responsibilities under the agreement. Each of these areas must be covered.

(4) For data, including software, first produced by the recipient under the agreement, the recipient may assert copyright. Data exchanged with a notice showing that the data is protected by copyright must include appropriate licenses in order for NASA to use the data as needed.

(5) Recognizing that the dissemination of the results of NASA's activities is a primary objective of a cooperative agreement, the parties should specifically delineate what results will be published and under what conditions. This should be set forth in the clause of the cooperative agreement entitled "Publication and Reports: Non-Proprietary Research Results." Any such agreement on the publication of results should be stated to take precedence over any other clause in the cooperative agreement.

(6) Section 1274.905(b)(3) requires the recipient to provide NASA a government purpose license for data first produced by the Recipient that constitutes trade secrets or confidential business or financial information. NASA and the recipient shall determine the scope of this license at the time of award of the cooperative agreement. In addition to the purposes given as examples in § 1274.905(b)(3), the license should provide NASA the right to use this data under a separate cooperative agreement or contract issued to a party other than the Recipient for the purpose of continuing the project in the event the cooperative agreement is terminated by either party.

(7) In accordance with section 303(b) of the Space Act, any data first produced by NASA under the agreement which embodies trade secrets or financial information that would be privileged or confidential if it had been obtained from a private participant, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to five years (the maximum allowed by law). This does not apply to data other than that for which there has been agreement regarding publication or distribution. The period of time during which data first produced by NASA is maintained in confidence should be consistent with the period of time determined in accordance with paragraph (h)(2) of this section, before which data first produced by the recipient will be made public. Also, NASA itself may use the marked data (under suitable protective conditions) for agreed-to purposes.

§ 1274.209 Evaluation and selection.

(a) *Factor development.* The agreement officer, along with the NASA evaluation team has discretion to determine the relevant evaluation criteria based upon the project requirements, and the goals and objectives of the cooperative agreement.

(b) *Communications during non-competitive awards.* For cooperative agreements awarded non-competitively (see § 1274.202(b)), there are no restrictions on communications between NASA and the recipient. In addition, there is no requirement for the development and publication of formal evaluation or source selection criteria.

(c) *Communication during competitive awards.* As discussed in § 1274.203(c), when a competitive source selection process will be followed to select the recipient, an appropriate level of care shall be taken by NASA personnel in order to protect the integrity of the source selection process. Therefore, upon release of the formal CAN, the agreement officer shall direct all procurement personnel associated with the source selection to refrain from communicating with perspective recipients and that all inquiries be referred to the agreement officer, or other authorized representative.

(d) *Selection factors and subfactors.*—(1) At a minimum, the selection process for the competitive award of cooperative agreements to commercial entities shall include evaluation of potential recipients' proposals for merit and relevance to NASA's mission requirements through their responses to the publication of NASA evaluation factors. The evaluation factors may include technical and management capabilities (mission suitability), past performance, and proposed costs (including proposed cost share).

(2) For programs that may involve potentially hazardous operations related to flight, and/or mission critical ground systems), NASA's selection factors and subfactors shall include evaluation of the recipient's proposed approach to managing risk (e.g., technology being applied or developed, technical complexity, performance specifications and tolerances, delivery schedule, etc.).

(3) As part of the evaluation process, the factors, subfactors, or other criteria should be tailored to properly address the requirements of the cooperative agreement.

(e) *Other factors and subfactors.* Other factors and subfactors may include:

(1) The composition or appropriateness of the business relationship of proposed team members or consortium, articles of collaboration. participation of an appropriate mix of small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, and women-owned business concerns, as well as non-profits and educational institutions, including historically black colleges and universities and minority institutions).

(2) Other considerations may include enhancing U.S. competitiveness, developing a capability among U.S. firms, identification of potential markets, appropriateness of business risks.

(f) *Evaluation*—(1) The proposals shall be evaluated in accordance with the criteria published in the CAN. Proposals selected for award will be supported by documentation as described in § 1274.211(b). When evaluation results in a proposal not being selected, the proposer will be notified in accordance with the CAN.

(2) The technical evaluation of proposals may include peer reviews. Because the business sense of a cooperative agreement proposal is critical to its success, NASA may reserve the right to utilize appropriate outside evaluators to assist in the evaluation of such proposal elements as the business base projections, the market for proposed products, and/or the impact of anticipated product price reductions.

(g) *Cost evaluation*—(1) Prior to award of a cooperative agreement, agreement officers shall ensure that proposed costs are accurate and reasonable. In order to do so, cost and pricing data may be

required. The level of cost and pricing data to be requested shall be commensurate with the analysis necessary to reach agreement on overall proposed project costs. The evaluation of costs shall lead to the determination and verification of total project costs to be shared by NASA and the recipient, as well as establishment of NASA's milestone payment schedule based on its 50 percent cost share. The guidance at FAR 15.4 and NFS 1815.4 can assist in determining whether cost and pricing data are necessary and the level of analysis required. While competition may be present (i.e., more than one proposal is received), in most cases companies are proposing competing technologies and varying approaches that reflect very different methods (and accompanying costs) to satisfy NASA's project objectives. Consequently, this type of competitive environment is very different from an environment where competitive proposals are submitted in response to a request for proposals leading to award of a contract for relatively well-defined program or project requirements.

(2) During evaluation of the cost proposal, the agreement officer, along with other NASA evaluation team members and/or pricing support personnel, shall determine the reasonableness of the overall proposed project costs, including verifying the value of the recipient's proposed non-cash and in-kind contributions. Commitments should be obtained and verified to the extent practicable from the recipient or any associated team members, from which proposed contributions will be made.

(3) If the recipient's proposed contributions include application of IR&D costs, see § 1274.204(i).

(h) *Award to Foreign firms.* An award may not be made to a foreign government. However, if selected as the best available source, an award may be made to a foreign firm. If a proposal is selected from a foreign firm sponsored by their respective government agency, or from entities considered quasi-governmental, approval must be obtained from Headquarters, Program Operations Division (Code HS). Such requests must include detailed rationale for the selection, to include the funding source of the foreign participant. The approval of the Associate Administrator for Procurement is required to exclude foreign firms from submitting proposals. Award to a foreign firm shall be on a no-exchange-of-funds basis (see NPD 1360.2).

(i) The Office of External Affairs (Code I), shall be notified prior to any announcement of intent to award to a foreign firm. Additionally, pursuant to section 126 of Pub.L. 106–391, as part of the evaluation of costs and benefits of entering into an obligation to conduct a space mission in which a foreign entity will participate as a supplier of the spacecraft, spacecraft system, or launch system, NASA shall solicit comment on the potential impact of such participation, through notice published in the FedBizOpps or NAIS.

(j) *Safe-guarding proposals.* Competitive proposal information shall be protected in accordance with FAR 15.207, Handling proposals and information. Unsolicited proposals shall be protected in accordance with FAR 15.608, Prohibitions, and FAR 15.609, Limited use of data.

(1) Evaluation team members, the source selection authority, and Agreement Officers are responsible for protecting sensitive information on the award of a grant or cooperative agreement and for determining who is authorized to receive such information. Sensitive information includes: information contained in proposals; information prepared for NASA's evaluation of proposals; the rankings of proposals for an award; reports and evaluations of source selection panels, boards, or advisory councils; and other information deemed sensitive by the source selection authority or by the Agreement Officer.

(2) No sensitive information shall be disclosed to persons not on the evaluation team or evaluation panel, unless the Selecting Official or the Agreement Officer has approved disclosure based upon an unequivocal "need-to-know" and the individual receiving the information has signed a Non-Disclosure Certificate. All attendees at formal source selection presentations and briefings shall be required to sign an Attendance Roster and a Disclosure Certificate. The attendance rosters and certificates shall be maintained in official files for a minimum of six months after award.

(3) The improper disclosure of sensitive information could result in criminal prosecution or an adverse action.

(k) *Controls on the use of outside evaluators.* The use of outside evaluators shall be approved in accordance with NFS 1815.207–70(b). A cover sheet with the following legend shall be affixed to data provided to outside evaluators:

Government Notice for Handling Proposals

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with.

(l) *Consortium awards.* If the cooperative agreement is to be awarded to a consortium, a completed, formally executed Articles of Collaboration is required prior to award.

(m) *Printing, binding, and duplicating.* Proposals for efforts that involve printing, binding, and duplicating in excess of 25,000 pages are subject to the regulations of the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO) to ensure compliance with NPD 1490.1. The Agreement Officer will be advised in writing of the results of the ICPMO review.

§ 1274.210 Unsolicited proposals.

(a) For a proposal to be considered a valid unsolicited proposal, the submission must;

(1) Be innovative and unique;

(2) Be independently originated and developed by the recipient;

(3) Be prepared without Government supervision, endorsement, direction or direct Government involvement;

(4) Include sufficient technical and cost detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities; and

(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.

(b) For each unsolicited proposal selected for award, the cognizant technical office will prepare and furnish to the Agreement Officer, a justification for acceptance of an unsolicited proposal (JAUP). The JAUP shall be submitted for the approval of the Agreement Officer after review and concurrence at a level above the technical officer. The evaluator shall consider the following factors, in addition to any others appropriate for the particular proposal:

(1) Unique and innovative methods, approaches or concepts demonstrated by the proposal.

(2) Overall scientific or technical merits of the proposal.

(3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(4) The qualifications, capabilities, and experience of the proposed key personnel who are critical in achieving the proposal objectives.

(5) Current, open solicitations under which the unsolicited proposal could be evaluated.

(c) Unsolicited proposals shall be handled in accordance with NFS 1815.606, "Agency Procedures".

(d) Unsolicited proposals from foreign sources are subject to NPD 1360.2, "Development of International Cooperation in Space and Aeronautics Programs".

(e) There is no requirement for a public announcement of the award of a cooperative agreement. However, in those instances where a public announcement is planned, per NFS 1805.303–71(a)(3), the NASA Administrator shall be notified at least five (5) workdays prior to a planned public announcement for award of a cooperative agreement (regardless of dollar value), if it is thought the Agreement may be of significant interest to Headquarters.

(f) Additional information regarding unsolicited proposals is available in the handbook entitled, "Guidance for the Preparation and Submission of Unsolicited Proposals", which is available on the NASA Acquisition Internet Service Website at: *http://ec.msfc.nasa.gov/hq/library/unSol-Prop.html.*

§ 1274.211 Award procedures.

(a) In accordance with NFS 1805.303–71(a)(3), the NASA Administrator shall be notified at least five (5) workdays prior to a planned public announcement for award of a cooperative agreement (regardless of dollar value), if it is thought the agreement may be of significant interest to Headquarters.

(b) For awards that are the result of a competitive source selection, the technical officer will prepare and furnish to the agreement officer a signed selection statement based on the selection criteria stated in the solicitation.

(1) *General.* Multiple year cooperative agreements are encouraged, but normally they should extend no more than three years.

(2) *Bilateral award.* All cooperative agreements shall be awarded on a bilateral basis.

(3) *Central Contractor Registration (CCR).* Prior to implementation of the Integrated Financial Management (IFM) System at each center, all grant and cooperative agreement recipients are required to register in the Department of Defense (DOD) Central Contractor Registration (CCR) database. Registration is required in order to obtain a Commercial and Government Entity (CAGE) code, which will be used as a grant and cooperative agreement identification number for the new system. The agreement officer shall verify that the prospective awardee is registered in the CCR database using the DUNS number or, if applicable, the DUNS+4 number, via the Internet at http://www.ccr2000.com or by calling toll free: 888–227–2423, commercial: 616–961–5757.

(4) *Certifications, Disclosures, and Assurances.*—(i) Agreement officers are required to ensure that all necessary certifications, disclosures, and assurances have been obtained prior to awarding a cooperative agreement.

(ii) Each new proposal shall include a certification for debarment and suspension under the requirements of 14 CFR 1265.510 and 1260.117.

(iii) Each new proposal for an award exceeding $100,000 shall include a certification, and a disclosure form (SF LLL) if required, on Lobbying under the requirements of 14 CFR 1271.110 and 1260.117.

(iv) Unless a copy is on file at the NASA center, recipients must furnish an assurance on NASA Form (NF) 1206 on compliance with Civil Rights statutes specified in 14 CFR parts 1250 through 1253.

§ 1274.212 Document format and numbering.

(a) *Formats.* Agreement Officers are authorized to use the format set forth in Exhibit B (available via the Internet at: *http://ec.msfc.nasa.gov/hq/qrcover.htm)* to subpart A of part 1260 of this chapter, with minimum modification, as the standard cooperative agreement cover page for the award of all cooperative agreements (until such time that a revised replacement form is approved, and/or designation is made of a bilateral award letter format to supplement the format set forth in Exhibit B to subpart A of part 1260 of this chapter).

(b) *Cooperative agreement numbering system.* Cooperative agreement numbering may be changed once the Integrated Financial Management (IFM) is implemented. Until IFM is implemented, cooperative agreement numbering shall conform to NFS 1804.7102, except that a NCC prefix will be used in lieu of the NAS prefix. Along with the prefix NCC, a one or two digit Center Identification Number, and a sequence number of up to five digits will be used. Inclusive of the prefix and fiscal year, the total number of characters, digits, and spaces cannot exceed 11.

§ 1274.213 Distribution of cooperative agreements.

Copies of cooperative agreements and modifications will be provided to: payment office, technical officer, administrative agreement officer when delegation has been made (particularly when administrative functions are delegated to DOD or another agency), NASA Center for Aerospace Information (CASI), Attn: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076, and any other appropriate recipient. Copies of the statement of work, contained in the Recipient's proposal and accepted by NASA, will be provided to the administrative agreement officer and CASI. The cooperative agreement file will contain a record of the addresses for distributing agreements and supplements.

§ 1274.214 Inquiries and release of information.

NASA personnel shall follow the procedures established in NFS 1805.402 prior to releasing information to the news media or the general public. The procedures established by NFS 1805.403 shall be followed when responding to inquiries from members of Congress.

Subpart 1274.3—Administration

§ 1274.301 Delegation of administration.

Normally, cooperative agreements will be administered by the awarding activity. NASA Form 1678, NASA Technical Officer Delegation for Cooperative Agreements with Commercial Firms, will be used to delegate responsibilities to the NASA Technical Officer.

§ 1274.302 Transfers, novations, and change of name agreements.

(a) Transfer of cooperative agreements. Novation is the only means by which a cooperative agreement may be transferred from one recipient to another.

(b) Novation and change of name. NASA legal counsel, shall review for legal sufficiency, all novation agreements or change of name agreements of the recipient, prior to formal execution by the agreement officer.

Subpart 1274.4—Property

§ 1274.401 Government Furnished Property.

Property or equipment owned by the Government that will be used in the performance of a cooperative agreement shall be included as part of the Government's percentage (usually 50 percent) of shared costs. In most cases the property or equipment will be categorized as non-cash contributions. Agreement officers may use the procedures promulgated by FAR subpart

45.2, as guidelines to calculate the value of the property or equipment.

§ 1274.402 Contractor acquired property.

As provided in § 1274.923(c), title to property acquired with government funds vests in the government. Under a cost shared cooperative agreement, joint ownership of property equal to the cost-sharing ratio will result if the parties make no specific arrangements regarding such property. The disposition of acquired property should be addressed in the cooperative agreement at the time of award. The cooperative agreement may provide that all such property be contributed by the recipient as a non-cash contribution. A reasonable dollar value must be specified and adequately supported. In this case, title will vest in the recipient. Alternatively, NASA and the recipient may include in the cooperative agreement any other appropriate arrangement for the disposition of acquired property upon completion of the effort.

Subpart 1274.5—Procurement Standards

§ 1274.501 Purpose of procurement standards.

(a) The procurement standards stated in §§ 1274.502 through 1274.510, may not apply to or may supplement the procedures of a commercial recipient that has a purchasing system approved in accordance with the requirements of FAR Subpart 44.3 and NFS 1844.3.

(b) Sections 1274.502 through 1274.510 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders.

§ 1274.502 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to NASA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 1274.503 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 1274.504 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall normally be excluded from competing for such procurements, unless conflicts or apparent conflicts of interest issues have been resolved. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 1274.505 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide at a minimum, that the conditions in paragraphs (a)(1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features that unduly restrict competition.

(ii) Requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority educational institutions as subcontractors to the maximum extent practicable. Recipients of NASA awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (*e.g.*, fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by 14 CFR part 1265, the implementation of Executive Orders 12549 and 12689, "Debarment and Suspension."

(e) Recipients shall, on request, make available for NASA, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in NASA's implementation of this subpart.

(2) The procurement is expected to exceed the small purchase threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 1274.506 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicies, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 1274.507 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection.

(b) Justification for lack of competition when competitive bids or offers are not obtained.

(c) Basis for award cost or price.

§ 1274.508 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 1274.509 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts:

(a) Contracts in excess of the simplified acquisition threshold (currently $100,000) shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, NASA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(d) For Construction and facility improvements, except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, NASA may accept the bonding policy and requirements of the recipient, provided NASA has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described in this section, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR

Part 223, "Surety companies doing business with the United States."

§ 1274.510 Subcontracts.

Recipients (individual firms or consortia) are not authorized to issue grants or cooperative agreements to subrecipients. All entities that are involved in performing the research and development effort that is the purpose of the cooperative agreement shall be part of the recipient's consortium and not subcontractors. All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Exhibit A to this part, as applicable and may be subject to approval requirements cited in § 1274.925.

Subpart 1274.6—Reports and Records

§ 1274.601 Retention and access requirements for records.

(a) This subpart sets forth requirements for record retention and access to records for awards to recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final invoice. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by NASA, the 3-year retention requirement is not applicable to the Recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by NASA.

(d) NASA shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, NASA may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) NASA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of Recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, NASA shall not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when NASA can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to NASA.

(g) Indirect cost rate proposals, cost allocations plans, etc., applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to NASA or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the Recipient is not required to submit to NASA or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Subpart 1274.7—Suspension or Termination

§ 1274.701 Suspension or termination.

(a) *Suspension.* NASA or the recipient may suspend the cooperative agreement for a mutually agreeable period of time, if an assessment is required to determine whether the agreement should be terminated.

(b) Termination—(1) A cooperative agreement provides both NASA and the recipient the ability to terminate the Agreement if it is in their best interests to do so, by giving the other party prior written notice. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

(2) NASA may, for example, terminate the Agreement if the recipient is not making anticipated technical progress, if the recipient materially changes the objectives of the agreement, or if appropriated funds are not available to support the program.

(3) Similarly, the recipient may terminate the agreement if, for example, technical progress is not being made, if the commercial recipient shifts its technical emphasis, or if other technological advances have made the effort obsolete.

(4) If the cooperative agreement is terminated by either NASA or the recipient and NASA elects to continue the project with a party other than the recipient, the right of the government to use data first produced by either NASA or the recipient in the performance of this agreement is covered by § 1274.905(b). See § 1274.208(l)(6) to assure that appropriate language is contained in § 1274.905(b).

Subpart 1274.8—Post-Award/ Administrative Requirements

1274.801 Adjustments to performance costs.

In order to accomplish program objectives, there may be occasions where additional contributions (cash and/or in-kind contributions) by NASA and the recipient beyond the initial agreement may be needed. There may also be occasions where actual costs of NASA and the recipient may be less than initially agreed. In cases where program costs are adjusted, prior to execution of a modification to the agreement, mutual agreement between NASA and the Recipient shall also be reached on the corresponding changes in program requirements such as schedule, work statements and milestone payments. Funding for any work required beyond the initial funding level of the cooperative agreement, shall require submission by the Recipient of a detailed proposal to the Agreement Officer. Prior to execution of a modification increasing NASA's cost share or funding levels, detailed cost analysis techniques may be applied, which may include requests for audits services and/or application of other pricing support techniques.

1274.802 Modifications.

Modifications to the cooperative agreement, in particular, modifications that affect funding, milestone payments, program schedule and statement of work requirements shall be executed on a bilateral basis.

1274.803 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the cooperative agreement, all financial, performance, and other reports as required by the terms and conditions of the award. Extensions may be approved when requested by the recipient.

(b) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with § 1274.923.

1274.804 Subsequent adjustments and continuing responsibilities.

The closeout of an award does not affect any of the following:

(a) Audit requirements in § 1274.932.

(b) Government Furnished and Contractor Acquired Property requirements in §§ 1274.401 and 1274.402.

(c) Records retention as required in § 1274.601.

Subpart 1274.9—Other provisions and Special Conditions

1274.901 Other provisions and special conditions.

Where applicable, the provisions set forth in this subpart are to be incorporated in and made a part of all cooperative agreements with commercial firms. When included, the provisions at § 1274.902 through § 1274.909 and the provisions at § 1274.933 through § 1274.942 are to be incorporated in full text substantially as stated in this regulation. When required, the provisions at § 1274.910 through § 1274.932, may be incorporated by reference in an enclosure to each cooperative agreement. For inclusion of provisions in subcontracts, see Exhibit A of this part, and § 1274.925.

§ 1274.902 Purpose.

Purpose (XX/XX)

The purpose of this cooperative agreement is to conduct a shared resource project that will lead to _____. This cooperative agreement will advance the technology developments and research which have been performed on _____. The specific objective is to _____. This work will culminate in _____.

(End of provision)

§ 1274.903 Responsibilities.

Responsibilities (XX/XX)

(a) This Cooperative Agreement will include substantial NASA participation during performance of the effort. NASA and the Recipient agree to the following Responsibilities, a statement of cooperative interactions to occur during the performance of this effort. NASA and the Recipient shall exert all reasonable efforts to fulfill the responsibilities stated below.

(b) NASA Responsibilities. The following NASA responsibilities are hereby set forth effective upon the start date, which unless stated otherwise, shall be the execution date of this bilateral Cooperative Agreement. The end date stated below, may be changed by a written bilateral modification:

Responsibilities
Start *Date*/End *Date*

(c) Recipient Responsibilities. The Recipient shall be responsible for particular aspects of project performance as set forth in the technical proposal dated _____, attached hereto (or Statement of Work dated _____, attached hereto). The following responsibilities are hereby set forth effective upon the start date, which unless stated otherwise, shall be the execution date of this bilateral Cooperative Agreement. The end date stated below, may be changed by a written bilateral modification:

Responsibilities
Start *Date*/End *Date*

(d) Since NASA contractors may obtain certain intellectual property rights arising from work for NASA in support of this agreement, NASA will inform Recipient whenever NASA intends to use NASA contractors to perform technical engineering services in support of this agreement.

(e) Unless the Cooperative Agreement is terminated by the parties, end date can only be changed by execution of a bilateral modification

(End of provision)

§ 1274.904 Resource sharing requirements.

Resource Sharing Requirements (XX/XX)

Where NASA and other Government agencies are involved in the cooperative agreement, "NASA" shall also mean "Federal Government".

(a) NASA and the Recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or non-cash contribution will be on a _____ (NASA)-_____ (Recipient) basis. Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by FAR Parts 30 and 31, and NFS Parts 1830 and 1831.

(b) The Recipient's share shall not be charged to the Government under this Agreement or under any other contract, grant, or cooperative agreement, except to the extent that the Recipient's contribution may be allowable IR&D costs pursuant to FAR 31.205–18(e).

(End of provision)

§ 1274.905 Rights in data.

As noted in 1274.208(l)(1), the following provision assumes a substantially equal cost sharing relationship where collaborative research, experimental, developmental, engineering, demonstration, or design activities are to be carried out, such that it is likely that "proprietary" information will be developed and/or exchanged under the agreement. If cost sharing is unequal or no extensive research, experimental, developmental, engineering, demonstration, or design activities are likely, a different set of provisions may be appropriate. The Agreement Officer is expected to complete and/or select the appropriate bracketed language under the provision for those paragraphs dealing with data first produced under the cooperative agreement. In addition, the Agreement Officer may, in consultation with the Center's Patent or Intellectual Property Counsel, tailor the provision to fit the particular circumstances of the program and/or the recipient's need to protect specific proprietary information.

Rights in Data (XX/XX)

(a) Definitions

Data, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software end documentation thereof, and data comprising commercial and financial information.

(b) Data Categories

(1) *General:* Data exchanged between NASA and Recipient under this cooperative agreement will be exchanged without restriction as to its disclosure, use or duplication except as otherwise provided below in this provision.

(2) *Background Data:* In the event it is necessary for Recipient to furnish NASA with Data which existed prior to, or produced outside of, this cooperative agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out NASA's responsibilities under this cooperative agreement. Upon completion of activities under this agreement, such Data will be disposed of as requested by Recipient.

(3) *Data first produced by Recipient:* In the event Data first produced by Recipient in carrying out Recipient's responsibilities under this cooperative agreement is furnished to NASA, and Recipient considers such Data to embody trade secrets or to

comprise commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence for a period of [insert "two" to "five"] years after development of the data and be disclosed and used by ["NASA" or "the Government," as appropriate] and its contractors (under suitable protective conditions) only for [insert appropriate purpose; for example: experimental; evaluation; research; development, etc.] by or on behalf of ["NASA" or "the Government" as appropriate] during that period. In order that ["NASA" or the "Government", as appropriate] and its contractors may exercise the right to use such Data for the purposes designated above, NASA, upon request to the Recipient, shall have the right to review and request delivery of Data first produced by Recipient. Delivery shall be made within a time period specified by NASA.

(4) *Data first produced by NASA:* As to Data first produced by NASA in carrying out NASA's responsibilities under this cooperative agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it had been obtained from the Recipient, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to ( ) years [INSERT A PERIOD UP TO 5 YEARS] after development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such Data to any third party without NASA's written approval until the aforementioned restricted period expires. Use of this data under a separate cooperative agreement or contract issued to a party other than the Recipient for the purpose of continuing the project in the event this cooperative agreement is terminated by either party shall constitute a government purpose.

(5) Copyright—(i) In the event Data is exchanged with a notice indicating the Data is protected under copyright as a published copyrighted work, or are deposited for registration as a published work in the U.S. Copyright Office, the following paid-up licenses shall apply:

(A) If it is indicated on the Data that the Data existed prior to, or was produced outside of, this agreement, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the purpose of carrying out the receiving party's responsibilities under this cooperative agreement; and

(B) If the furnished Data does not contain the indication of paragraph (b)(5)(i)(A) of this section, it will be assumed that the Data was first produced under this agreement, and the receiving party and others acting on its behalf, shall be granted a paid up, nonexclusive, irrevocable, world-wide license for all such Data to reproduce, distribute copies to the public, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the receiving party. For Data that is computer software, the right to distribute shall be limited to potential users in the United States.

(ii) When claim is made to copyright, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government.

(6) *Oral and visual information.* If information which the Recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to NASA within 10 days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(7) *Disclaimer of Liability.* Notwithstanding the above, NASA shall not be restricted in, nor incur any liability for, the disclosure and use of:

(i) Data not identified with a suitable notice or legend as set in paragraph (b)(2) of this section; nor

(ii) Information contained in any Data for which disclosure and use is restricted under paragraphs (b)(2) or (3) of this section, if such information is or becomes generally known without breach of the above, is known to or is generated by NASA independently of carrying out responsibilities under this agreement, is rightfully received from a third party without restriction, or is included in data which Participant has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(c) *Marking of Data.* Any Data delivered under this cooperative agreement, by NASA or the Recipient, shall be marked with a suitable notice or legend indicating the data was generated under this cooperative agreement.

(d) *Lower Tier Agreements.* The Recipient shall include this provision, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

(End of provision)

1274.906 Designation of New Technology Representative and Patent Representative.

Designation of New Technology Representative and Patent Representative (XX/XX)

(a) For purposes of administration of the clause of this cooperative agreement entitled "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" or "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" the following named representatives are hereby designated by the Agreement Officer to administer such clause:

Title/Office Code/Address

New Technology Representative

Patent Representative

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" clause or "PATENT RIGHTS -RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" clause, unless otherwise authorized or directed by the Agreement Officer. The respective responsibilities and authorities of the above-named representatives are set forth in NFS 1827.305–370.

(End of provision)

§ 1274.907 Disputes.

Disputes (XX/XX)

(a) In the event that a disagreement arises, representatives of the parties shall enter into discussions in good faith and in a timely and cooperative manner to seek resolution. If these discussions do not result in a satisfactory solution, the aggrieved party may seek a decision from the Dispute Resolution Official under paragraph (b) of this provision. This request must be presented no more than (3) three months after the events giving rise to the disagreement have occurred.

(b) The aggrieved party may submit a written request for a decision to the Center Ombudsman, who is designated as the Dispute Resolution Official. The written request shall include a statement of the relevant facts, a discussion of the unresolved issues, and a specification of the clarification, relief, or remedy sought. A copy of this written request and all accompanying materials must be provided to the other party at the same time. The other party shall submit a written position on the matters in dispute within thirty (30) calendar days after receiving this notification that a decision has been requested. The Dispute Resolution Official shall conduct a review of the matters in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position.

(End of provision)

§ 1274.908 Milestone payments.

Milestone Payments (XX/XX)

(a) By submission of the first invoice, the Recipient is certifying that it has an established accounting system which complies with generally accepted accounting principles, with the requirements of this agreement, and that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds received under this agreement.

(b) Payments will be made upon the following milestones: [The schedule for payments may be based upon the Recipient's completion of specific tasks, submission of specified reports, or whatever is appropriate.]

Date/Payment Milestone/Amount

(c) Upon submission by the recipient of invoices in accordance with the provisions of the agreement and upon certification by NASA of completion of the payable milestone, the Agreement Officer shall authorize payment. Payment shall be made within 30 calendar days after receipt of proper invoice. Payment shall be considered as being made on the date of electronic funds transfer. A proper invoice must include the following:

(i) Name and address of the Recipient.

(ii) Invoice date (The Recipient is encouraged to date invoices as close as possible to the date of the mailing or transmission).

(iii) Cooperative agreement number.

(iv) Description, milestone, and extended price of efforts/tasks performed.

(v) Payment terms.

(vi) Name and address of Recipient official to whom payment is to be sent. (Must be the same as that in the cooperative agreement or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of the person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the cooperative agreement.

(ix) Taxpayer identification number (TIN).

(x) While not required, the recipient is strongly encouraged to assign an identification number to each invoice.

(d) A payment milestone may be successfully completed in advance of the date appearing in paragraph (b) of this section. However, payment shall not be made prior to that date without the written consent of the Agreement Officer.

(e) The recipient is not entitled to partial payment for partial completion of a payment milestone.

(f) Unless approved by the Agreement Officer, all preceding payment milestones must be completed before payment can be made for the next payment milestone.

(g)(i) If the Recipient is authorized to submit invoices directly to the NASA paying office, the original invoice should be submitted to:

[Insert the mailing address for submission of cost vouchers]

(ii) If the Recipient is not authorized to submit invoices directly to the NASA paying office, the original invoice should be submitted to the Agreement Officer for certification.

(iii) Copies of the recipient's invoice should be submitted to the following offices:

(A) Copy 1—NASA Agreement Officer.

(B) Copy 2—Auditor.

(C) Copy 3—Contract administration office.

(D) Copy 4—Project management office.

(E) Copy 5—Other recipients as designated by the Agreement Officer.

(End of provision)

§ 1274.909 Term of agreement.

Term of Agreement (XX/XX)

(a) The agreement commences on the effective date indicated on the attached cover sheet and continues until the expiration date indicated on the attached cover sheet unless terminated by either party. If all resources are expended prior to the expiration date of the agreement, the parties have no obligation to continue performance and may elect to cease at that point. The parties may extend the expiration date if additional time is required to complete the milestones at no increase in Government resources. Requests for approval for no-cost extensions must be forwarded to the NASA Agreement Officer no later than ten days prior to the expiration of the award to be considered.

(b) Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than that specified as the agreement term, shall be given effect, notwithstanding expiration of the term of the agreement.

(End of provision)

§ 1274.910 Authority.

Authority (XX/XX)

This is a cooperative agreement as defined in 31 U.S.C. 6305 (the Chiles Act) and is entered into pursuant to the authority of 42 U.S.C. 2451, et seq. (the Space Act).

(End of provision)

§ 1274.911 Patent rights.

Patent Rights (XX/XX)

(a) Definitions.

(1) "Administrator" means the Administrator or Deputy Administrator of NASA.

(2) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(3) "Made" when used in relation to any invention means the conception or first actual reduction to practice such invention.

(4) "Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) "Practical application" means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) "Recipient" means:

(i) The signatory Recipient party or parties or;

(ii) The Consortium, where a Consortium has been formed for carrying out Recipient responsibilities under this agreement.

(7) "Small Business Firm" means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

(8) "Subject Invention" means any invention of a Recipient and/or Government employee conceived or first actually reduced to practice in the performance of work under this Agreement.

(9) "Manufactured substantially in the United States" means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) Allocation of Principal Rights.

(1) Recipient Inventions. For other than Small Business Firm or Nonprofit organization Recipients, the "PATENT RIGHTS—RETENTION BY RECIPIENT (LARGE BUSINESS)" provision applies. For Small Business Firm and Nonprofit organization Recipients, the "PATENT RIGHTS—RETENTION BY RECIPIENT (SMALL BUSINESS)" provision applies.

(2) NASA Inventions. NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this cooperative agreement and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, on terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(i) of this section. Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(3) NASA Contractor Inventions. In the event NASA contractors are tasked to perform work in support of specified NASA activities under this cooperative agreement and inventions are made by contractor employees, the recipient will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR part 1245, and E.O. 12591. In the event the recipient decides not to pursue right to title in any such invention and NASA obtains title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(ii) of this section. Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(4) Joint NASA and Recipient Inventions. NASA and Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA contractors) and employees of Recipient.

(i) For other than small business firms and nonprofit organizations the Administrator may agree that the United States will refrain from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest and to cooperate with Recipient in obtaining patent protection on its undivided interest on any waived inventions subject, however, to the condition that Recipient makes its best efforts to bring the invention to the point of practical application at the earliest practicable time. In the event that the Administrator determines that such efforts are not undertaken, the Administrator may void NASA's agreement to refrain from exercising its undivided interest and grant licenses for the practice of the invention so as to further its development. In the event that the Administrator decides to void NASA's agreement to refrain from exercising its undivided interest and grant licenses for this reason, notice shall be given to the Inventions and Contributions Board as to why such action should not be taken. Either alternative will be subject to the applicable license or licenses reserved in paragraph (b)(5) of this section.

(ii) For small business firms and nonprofit organization, NASA may assign or transfer whatever rights it may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e).

(5) Minimum rights reserved by the Government. Any license or assignment granted Recipient pursuant to paragraphs (b)(2), (b)(3), or (b)(4) of this section will be subject to the reservation of the following licenses:

(i) As to inventions made solely or jointly by NASA employees, the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the United States; and

(ii) As to inventions made solely by, or jointly with, employees of NASA contractors, the rights in the Government of the United States as set forth in paragraph (b)(5)(i) of this section, as well as the revocable, nonexclusive, royalty-free license in the contractor as set forth in 14 CFR 1245.108.

(6) Preference for United States manufacture. The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(7) Work performed by the Recipient under this cooperative agreement is considered undertaken to carry out a public purpose of support and/or stimulation rather than for acquiring property or services for the direct benefit or use of the Government. Accordingly, such work by the Recipient is not considered "by or for the United States" and the Government assumes no liability for infringement by the Recipient under 28 U.S.C. 1498.

(End of provision)

§ 1274.912 Patent Rights—Retention by the recipient (large business).

Patent Rights—Retention by the Recipient (Large Business) (XX/XX)

(a) Definitions.

(1) "Administrator," as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

(2) "Invention," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(3) "Made," as used in relation to any invention, means the conception or first actual reduction to practice such invention.

(4) "Nonprofit organization," as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) "Practical application," as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each, case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) "Reportable item," as used in this clause, means any invention, discovery, improvement, or innovation of the Recipient, whether or not the same is or may be patentable or otherwise protectable under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

(7) "Small business firm," as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

(8) "Subject invention," as used in this clause, means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(9) "Manufactured substantially in the United States" means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with Federal Acquisition Regulation 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) Allocation of principal rights—(1) Presumption of title. (i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called "the Act"), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Recipient submits to the Agreement Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Recipient may nevertheless file the statement described in paragraph (b)(1)(i) of this section. The Administrator will review the information furnished by the Recipient in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Recipient whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(2) Property rights in subject inventions. Each subject invention for which the presumption of paragraph (b)(1)(i) of this section is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this section.

(3) Waiver of rights.—(i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Recipients may petition, either prior to execution of the Agreement or within 30 days after execution of the Agreement, for advance waiver of rights to any or all of the inventions that may be made under an Agreement. If such a petition is not submitted, or if after submission it is denied, the Recipient (or an employee inventor of the Recipient may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this section or within such longer period as may be authorized in accordance with 14 CFR 1245.105. Further procedures are provided in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(c) Minimum rights reserved by the Government—(1) With respect to each Recipient subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Recipient—(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Recipient subject invention and any resulting patent in which the Government acquires title, unless the Recipient fails to disclose the subject invention within the times specified in paragraph (e)(2) of this section. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR part 1245, subpart 3, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Recipient will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with 14 CFR 1245.112, any decision concerning the revocation or modification of its license.

(e) Invention identification, disclosures, and reports—(1) The Recipient shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Recipient personnel responsible for the administration of this clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Recipient shall furnish the Agreement Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient will disclose each reportable item to the Agreement Officer within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of this clause or, if earlier, within six months after the Recipient becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to the agency shall be in the form of a written report and shall identify the Agreement under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Recipient for such invention.

(3) The Recipient shall furnish the Agreement Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Agreement Officer) from the date of the Agreement, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this section have been followed.

(ii) A final report, within three months after completion of the work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Recipient agrees, upon written request of the Agreement Officer, to furnish additional technical and other information available to the Recipient as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Recipient agrees, subject to 48 CFR (FAR) 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions—(1) The Agreement Officer or any authorized representative shall, pursuant to the Retention and Examination of Records provision of this cooperative agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to

practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Recipient has established and maintained the procedures required by paragraph (e)(1) of this section; and

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Agreement Officer learns of an unreported Recipient invention that the Agreement Officer believes may be a subject inventions, the Recipient may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Subcontracts—(1) Unless otherwise authorized or directed by the Agreement Officer, the Recipient shall—

(i) Include this Clause Patent Rights—Retention by the Recipient—(Large Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause Patent Right—Retention by the Recipient—(Small Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Agreement Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Agreement Officer.

(3) The Recipient shall promptly notify the Agreement Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Agreement Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Recipient in the clause of paragraph (g)(1)(i) or (1)(ii) of this section, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this section, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the Recipient is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this section, that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(A) *Exceptional circumstances:* A request that NASA make an "exceptional circumstances" determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Recipient pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition:* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, sec. 305). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing of NASA inventions, 14 CFR Part 1245, subpart 3). A subcontractor requesting a waiver must follow the procedures set forth in the attached clause REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS.

(h) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(i) *March-in rights.* The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(End of provision)

§ 1274.913 Patent rights—retention by the recipient (small business).

Patent Rights—Retention by the Recipient (Small Business) (XX/XX)

(a) Definitions—

(1) "Invention," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(2) "Made," as used in this clause, when used in relation to any invention means the conception or first actual reduction to practice such invention.

(3) "Nonprofit organization," as used in this clause, means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application," as used in this clause, means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) "Small business firm," as used in this clause, means a small business concern as defined at section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.901 through 121.911 will be used.

(6) "Subject invention," as used in this clause, means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this Agreement.

(7) "Manufactured substantially in the United States" means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient

of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) Allocation of principal rights. The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Recipient—(1) The Recipient will disclose each subject invention to NASA within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying NASA within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application of six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under paragraphs (c)(1), (2), and (3) of this section may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Recipient will convey to NASA, upon written request, title to any subject invention—(1) If the Recipient fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this section, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this section; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this section, but prior to its receipt of the written request of the Federal agency, the Recipient shall continue to retain title in that country.

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Recipient and protection of the Recipient right to file—(1) The Recipient will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in paragraph (c) of this section. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by NASA to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonable accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA to the extent the Subcontractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NASA will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by NASA for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and part 1245, subpart 1, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Recipient action to protect the Government's interest—(1) The Recipient agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to:

(i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title, and,

(ii) convey title to the Federal agency when requested under paragraph (d) of this section and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this section, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this section. The Recipient shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify NASA of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention the following statement, "This invention was made with Government support under (identify the agreement) awarded by NASA. The Government has certain rights in the invention."

(5) The Recipient shall provide the Agreement Officer the following:

(i) A listing every 12 months (or such longer period as the Agreement Officer may

specify) from the date of the Agreement, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the Agreement listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number, and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the Recipient has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

(g) Subcontracts—(1) Unless otherwise authorized or directed by the Agreement Officer, the Recipient shall—

(i) Include this clause (Patent Rights—Retention by the Recipient (Small Business)), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization; and

(ii) Include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause (Patent Rights—Retention by the Recipient (Large Business).

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Agreement Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Agreement Officer.

(3) The Recipient shall promptly notify the Agreement Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Agreement Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Recipient in the clause under paragraph (g)(1)(i) or (g)(1)(ii) of this section, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this section, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the Recipient is authorized, subject to the rights of NASA set forth elsewhere in this clause, to—

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this section that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract office:

(A) *Exceptional circumstances:* A request that NASA make an "exceptional circumstances" determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Recipient pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition:* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, sec. 305). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing of NASA inventions, 14 CFR Part 1245, Subpart 3). A subcontractor requesting a waiver must follow the procedures set forth in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(h) Reporting on utilization of subject inventions. The Recipient agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the agency may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding under-taken by the agency in accordance with paragraph (i) of this section. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Recipient.

(i) Preference for United States manufacture. The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this section has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for Agreements with nonprofit organizations. If the Recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has one of its primary functions the management of inventions; *provided*, that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when NASA deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; *provided* that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Recipient could take reasonable steps to more effectively implement the requirements of this paragraph.

(l) Documentation submissions. A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications, or similar material bearing on patent matters, shall be sent to the installation Patent Counsel in addition to any other submission requirements in the cooperative agreement. If any reports contain information describing a "subject invention" for which the Recipient has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, in order for a patent application to be filed, provided that the Recipient identify the information and the "subject invention" to which it relates at the time of submittal. If required by the Agreement Officer, the Recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the Recipient has applied for patents.

(End of provision)

§ 1274.914 Requests for waiver of rights—large business.

Requests For Waiver of Rights—Large Business (XX/XX)

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA agreement, contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the agreement, contract or subcontract, or within 30 days after execution by the selected Recipient. In addition, waiver of rights to an identified invention made and reported under a agreement, contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address, and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific Section or Sections of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to agreement execution, must be submitted to the Agreement Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a agreement will be forwarded by the Contracting or Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Agreement Officer of the Administrator's determination. The Agreement Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the agreement. In the latter event, the petitioner will be so notified by the Agreement Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the regulations.

(End of provision)

§ 1274.915 Restrictions on sale or transfer of technology to foreign firms or institutions.

Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions (XX/XX)

(a) The parties agree that access to technology developments under this Agreement by foreign firms or institutions must be carefully controlled. For purposes of this clause, a transfer includes a sale of the company, or sales or licensing of the technology. Transfers include:

(1) Sales of products or components,

(2) Licenses of software or documentation related to sales of products or components, or

(3) Transfers to foreign subsidiaries of the Recipient for purposes related to this Agreement.

(b) The Recipient shall provide timely notice to the Agreement Officer in writing of any proposed transfer of technology developed under this Agreement. If NASA determines that the transfer may have adverse consequences to the national security interests of the United States, or to the establishment of a robust United States industry, NASA and the Recipient shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer.

(End of provision)

§ 1274.916 Liability and risk of loss.

The following provision is applicable to all cooperative agreements with commercial firms, except programs or projects that are subject to section 431 of Public Law 105–276, which addresses insurance for, or indemnification of, developers of experimental aerospace vehicles.

Liability and Risk of Loss (XX/XX)

(a) With regard to activities undertaken pursuant to this agreement, neither party shall make any claim against the other, employees of the other, the other's related entities (e.g., contractors, subcontractors, etc.), or employees of the other's related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

(b) To the extent that a risk of damage or loss is not dealt with expressly in this agreement, each party's liability to the other party arising out of this Agreement, whether or not arising as a result of an alleged breach of this Agreement, shall be limited to direct damages only, and shall not include any loss of revenue or profits or other indirect or consequential damages.

(End of provision)

§ 1274.917 Additional funds.

Additional Funds (XX/XX)

Pursuant to this Agreement, NASA is providing a fixed amount of funding for activities to be undertaken under the terms of this cooperative agreement. NASA is under no obligation to provide additional funds. Under no circumstances shall the Recipient undertake any action which could be construed to imply an increased commitment on the part of NASA under this cooperative agreement.

(End of provision)

§ 1274.918 Incremental funding.

Incremental Funding (XX/XX)

(a) Of the award amount indicated on the cover page of this Agreement, only the obligated amount indicated on the cover page of this agreement is available for payment. NASA may supplement the Agreement, as required, until it is fully funded. Any work beyond the funding limit will be at the recipient's risk.

(b) These funds will be obligated as appropriated funds become available without any action required of the Recipient. NASA is not obligated to make payments in excess of the total funds obligated.
(End of provision)

§ 1274.919 Cost principles and accounting standards.

Cost Principles and Accounting Standards (XX/XX)

The expenditure of Government funds by the Recipient and the allowability of costs recognized as a resource contribution by the Recipient (See clause entitled "Resource Sharing Requirements") shall be governed by the FAR cost principles implemented by FAR Parts 30 and 31. (If the Recipient is a consortium which includes non-commercial firm members, cost allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.") Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.
(End of provision)

§ 1274.920 Responsibilities of the NASA technical officer.

Responsibilities of the NASA Technical Officer (XX/XX)

(a) The NASA Grant Administrator and Technical Officer for this cooperative agreement are identified on the cooperative agreement cover sheet.

(b) The Grant Specialist shall serve as NASA's authorized representative for the administrative elements of all work to be performed under the agreement.

(c) The Technical Officer shall have the authority to issue written Technical Advice which suggests redirecting the project work (e.g., by changing the emphasis among different tasks), or pursuing specific lines of inquiry likely to assist in accomplishing the effort. The Technical Officer shall have the authority to approve or disapprove those technical reports, plans, and other technical information the Recipient is required to submit to NASA for approval. The Technical Officer is not authorized to issue and the Recipient shall not follow any Technical Advice which constitutes work which is not contemplated under this agreement; which in any manner causes an increase or decrease in the resource sharing or in the time required for performance of the project; which has the effect of changing any of the terms or conditions of the cooperative agreement; or which interferes with the Recipient's right to perform the project in accordance with the terms and conditions of this cooperative agreement. In the event of perceived interference, dispute resolution procedures apply as set forth in § 1274.907.
(End of provision)

§ 1274.921 Publications and Reports: non-proprietary research results.

The requirements set forth under this provision may be modified by the Agreement Officer based on specific report needs for the particular grant or cooperative agreement.

Publications and Reports: Non-Proprietary Research Results (XX/XX)

(a) NASA encourages the widest practicable dissemination of research results at all times during the course of the investigation consistent with the other terms of this agreement.

(b) All information disseminated as a result of the cooperative agreement shall contain a statement which acknowledges NASA's support and identifies the cooperative agreement by number.

(c) Prior approval by the NASA Technical Officer is required only where the Recipient requests that the results of the research be published in a NASA scientific or technical publication. Two copies of each draft publication shall accompany the approval request.

(d) Reports shall contain full bibliographic references, abstracts of publications and lists of all other media in which the research was discussed. The Recipient shall submit the following technical reports:

(1) A progress report for every year of the cooperative agreement (except the final year). Each report is due 60 days before the anniversary date of the cooperative agreement and shall describe research accomplished during the report period.

(2) A summary of research is due by 90 days after the expiration date of the cooperative agreement, regardless of whether or not support is continued under another cooperative agreement. This report is intended to summarize the entire research accomplished during the duration of the cooperative agreement.

(e) Progress reports and summaries of research shall display the following on the first page:

(1) Title of the cooperative agreement.
(2) Type of report.
(3) Period covered by the report.
(4) Name and address of the Recipient's organization.
(5) Cooperative agreement number.

(f) An original and two copies, one of which shall be of suitable quality to permit micro-reproduction, shall be sent as follows:

(1) Original—Agreement Officer.
(2) Copy—Technical Officer
(3) Micro-reproducible copy—NASA Center for Aerospace Information (CASI), Parkway Center, Attn: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076.
(End of provision)

§ 1274.922 Suspension or termination.

Suspension or Termination (XX/XX)

(a) This cooperative agreement may be suspended or terminated in whole or in part by the Recipient or by NASA after consultation with the other party. With prior written notice, NASA may terminate the agreement, for example, if the Recipient is not making anticipated technical progress, if the Recipient materially fails to comply with the terms of the agreement, if the Recipient materially changes the objective of the agreement, or if appropriated funds are not available to support the program.

(b) Upon fifteen (15) days written notice to the other party, either party may temporarily suspend the cooperative agreement, pending corrective action or a decision to terminate the cooperative agreement. The notice should express the reasons why the agreement is being suspended.

(c) In the event of termination by either party, the Recipient shall not be entitled to additional funds or payments except as may be required by the Recipient to meet NASA's share of commitments which had in the judgment of NASA become firm prior to the effective date of termination and are otherwise appropriate. In no event, shall these additional funds or payments exceed the amount of the next payable milestone billing amount.
(End of provision)

§ 1274.923 Equipment and other property.

Equipment and Other Property (XX/XX)

(a) Under no circumstances shall cooperative agreement funds be used to acquire land or any interest therein, to acquire or construct facilities (as defined in 48 CFR (FAR) 45.301), or to procure passenger carrying vehicles.

(b) Contractor acquired equipment or property used in performance of the Cooperative Agreement shall be controlled in accordance with 48 CFR (FAR) 45.6.

(c) The government shall have title to equipment and other personal property acquired with government funds. Such property shall be disposed of pursuant to 48 CFR (FAR) 45.603. The Recipient shall have title to equipment and other personal property acquired with Recipient funds. Such property shall remain with the Recipient at the conclusion of the cooperative agreement. Under a shared cost arrangement, the Government and the Recipient have joint ownership of acquired property in accordance with the cost share ratio. Jointly owned property shall be disposed of as agreed to by the parties.

(d) Title to Government furnished equipment (including equipment, title to which has been transferred to the Government prior to completion of the work) will remain with the Government.

(e) The Recipient shall establish and maintain property management standards for Government property and otherwise manage such property as set forth in 48 CFR (FAR) 45.5 and 48 CFR (NFS) 1845.5.

(f) Recipients shall submit annually a NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form, the provisions of 48 CFR (NFS) 1845.71 and any supplemental instructions that may be issued by NASA for the current reporting period. The original NF 1018 shall be submitted to the center Deputy Chief Financial Officer, Finance, with three copies sent concurrently to the center Industrial Property Officer. The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31. Negative reports (i.e. no reportable property) are required. The information contained in the reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31. A final report is required within 30 days after expiration of the agreement.

(g) As of the date of this rewrite, process changes have been made to facilitate electronic submission of NF 1018. Recipients may use the procedures established by NASA Procurement Notice (PN) 97–64, issued on August 9, 2001.
(End of provision)

§ 1274.924 Civil rights.

Civil Rights (XX/XX)

Work on NASA cooperative agreements is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352; 42 U.S.C. 2000d–l), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and the NASA implementing regulations (14 CFR Parts 1250, 1251, 1252 and 1253).
(End of provision)

§ 1274.925 Subcontracts.

Subcontracts (XX/XX)

(a) Recipients are not authorized to issue grants or cooperative agreements.

(b) NASA Agreement Officer consent is required for subcontracts over (dollar threshold inserted by Agreement Officer) and/or subcontracts for (critical systems, subsystems, components, or services inserted by Agreement Officer and Cognizant NASA Project Office) _____.

(c) If not submitted by the Recipient and accepted by NASA in the original proposal. The Recipient shall provide the following information to the Agreement Officer:

(1) A copy of the proposed subcontract.
(2) Basis for subcontractor selection.
(3) Justification for lack of competition when competitive bids or offers are not obtained.
(4) Basis for award cost or award price.

(d) The Recipient shall utilize small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority educational institutions as subcontractors to the maximum extent practicable.

(e) All entities that are involved in performing the research and development effort that is the purpose of the cooperative agreement shall be part of the Recipient's consortium and not subcontractors.
(End of provision)

§ 1274.926 Clean Air-Water Pollution Control Acts.

Clean Air-Water Pollution Control Acts (XX/XX)

If this cooperative agreement or supplement thereto is in excess of $100,000, the Recipient agrees to notify the Agreement Officer promptly of the receipt, whether prior or subsequent to the Recipient's acceptance of this cooperative agreement, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this cooperative agreement or any subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR 15.20. By acceptance of a cooperative agreement in excess of $100,000, the Recipient—

(a) Stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance;

(b) Agrees to comply with all requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.* as amended by Pub. L. 91–604) and section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.* as amended by Pub. L. 92–500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the cooperative agreement; and

(c) Agrees to include the criteria and requirements of this clause in every subcontract hereunder in excess of $100,000, and to take such action as the Contracting or Grant Officer may direct to enforce such criteria and requirements.
(End of provision)

§ 1274.927 Debarment and Suspension and Drug-Free Workplace.

Debarment and Suspension and Drug-Free Workplace (XX/XX)

NASA cooperative agreements are subject to the provisions of 14 CFR part 1265, Government-wide Debarment and Suspension (Nonprocurement) and 14 CFR Part 1267, Government-wide requirements for Drug-Free Workplace, unless excepted by 14 CFR 1265.110 or 1265.610.
(End of provision)

§ 1274.928 Foreign national employee investigative requirements.

Foreign National Employee Investigative Requirements (XX/XX)

(a) The Recipient shall submit a properly executed Name Check Request (NASA Form 531) and a completed applicant fingerprint card (Federal Bureau of Investigation Card FD–258) for each foreign national employee requiring access to a NASA installation. These documents shall be submitted to the Installation's Security Office at least 75 days prior to the estimated duty date. The NASA Installation Security Office will request a National Agency Check (NAC) for foreign national employees requiring access to NASA facilities. The NASA Form 531 and fingerprint card may be obtained from the NASA Installation Security Office.

(b) The Installation Security Office will request from NASA Headquarters, Code I, approval for each foreign national's access to the Installation prior to providing access to the Installation. If the access approval is obtained from NASA Headquarters prior to completion of the NAC and performance of the cooperative agreement requires a foreign national to be given access immediately, the Technical Officer may submit an escort request to the Installation's Chief of Security.
(End of provision)

§ 1274.929 Restrictions on lobbying.

Restrictions on Lobbying (XX/XX)

This award is subject to the provisions of 14 CFR part 1271 "New Restrictions on Lobbying."
(End of provision)

§ 1274.930 Travel and transportation.

Travel and Transportation (XX/XX)

(a) For travel funded by the government under this agreement, section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118)(Fly America Act) requires the Recipient to use U.S.-flag air carriers for international air transportation of personnel and property to the extent that service by those carriers is available.

(b) Department of Transportation regulations, 49 CFR part 173, govern Recipient shipment of hazardous materials and other items.
(End of provision)

§ 1274.931 Electronic funds transfer payment methods.

Electronic Funds Transfer Payment Methods (XX/XX)

Payments under this cooperative agreement will be made by the Government by electronic funds transfer through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH), at the option of the Government. After award, but no later than 14 days before an invoice is submitted, the Recipient shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Agreement Officer or other Government official, as directed.

(a) For payment through FEDLINE, the Recipient shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communication System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(b) For payment through ACH, the Recipient shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Recipient is a new enrollee to the ACH system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(c) In the event the Recipient, during the performance of this cooperative agreement, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Recipient official authorized to provide it, as well as the Recipient's name and contract number.

(e) Failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of provision)

§ 1274.932 Retention and examination of records.

Retention and Examination of Records (XX/XX)

Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this cooperative agreement shall be retained for a period of 3 years, except that records for nonexpendable property acquired with cooperative agreement funds shall be retained for 3 years after its final disposition and, if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The retention period starts from the date of the submission of the final invoice. The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient and of subcontractors to make audits, examinations, excerpts, and transcripts. All provisions of this clause shall apply to any subcontractor performing substantive work under this cooperative agreement.

(End of provision)

§ 1274.933 Summary of Recipient Reporting Responsibilities.

Summary of Recipient Reporting Responsibilities (XX/XX)

This cooperative agreement requires the recipient to submit a number of reports. These reporting requirements are summarized below. In the event of a conflict between this provision and other provisions of the cooperative agreement requiring reporting, the other provisions take precedence.

[The Agreement Officer may add/delete reporting requirements as appropriate.]

Report	Frequency	Reference
Report of Joint NASA/Recipient Inventions.	As required	1274.911 Patent Rights (Paragraph (b)(4)).
Interim Report of Reportable Items.	Every 12 months	1274.912 Patent Rights—Retention by the Recipient (Large Business) (Paragraph (e)(3)(i)).
Final Report of Reportable Items.	3 months after completion	1274.912 Patent Rights—Retention by the Recipient (Large Business) (Paragraph (e)(3)(ii)).
Disclosure of Subject Inventions.	Within 2 months after inventor discloses it to the Recipient.	1274.912 Patent Rights Retention by (Large Recipient Business) (Paragraph (e)(2)) or 1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (c)(1)).
Election of Title to a Subject Invention.	1 year after disclosure of the subject invention if a statutory bar exists, otherwise within 2 years.	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (c)(2)).
Listing of Subject Inventions	Every 12 months from the date of the agreement.	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (f)(5)(i)).
Subject Inventions Final Report.	Prior to close-out of the agreement.	1274.913 Retention by the Recipient (Small Business) (Paragraph (f)(5)(ii)).
Notification of Decision to Forego Patent Protection.	30 days before expiration of the response period.	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (f)(3)).
Notification of a Subcontract Award.	Promptly upon award of a subcontract.	1274.912 Patent Rights—Retention by the Recipient (Large Business) (Paragraph (g)(3)) or 1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (g)(3)).
Utilization of Subject Invention.	Annually	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (h)).
Notice of Proposed Transfer of Technology.	Prior to transferring technology to foreign firm or institution.	1274.915 Restrictions on Sale or Transfer of Technology to Foreign Firms or institutions (Paragraph (b)).

Report	Frequency	Reference
Progress Report	60 days prior to the anniversary date of the agreement (except final year).	1274.921 Publications and reports: Non-Proprietary Research results (Paragraph (d)(1)).
Summary of Research	90 days after completion of agreement.	1274.921 Publications and Reports: Non-Proprietary Research Results (Paragraph (d)(2)).
NASA Form 1018 Property in the Custody of Contractors.	Annually by October 31	1274.923 Equipment and Other Property (Paragraph (f)).
NASA Form 1018 Property in the Custody of Contractors.	60 days after expiration date of agreement.	1274.923 Equipment and Other Property (Paragraph (f)).

§ 1274.934 Safety.

Safety (XX/XX)

NASA's safety priority is to protect: (1) The public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(a) The Recipient shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this cooperative agreement. The recipient shall comply with all applicable federal, state, and local laws relating to safety. The Recipient shall maintain a record of, and will notify the NASA Agreement Officer immediately (within one workday) of any accident involving death, disabling injury or substantial loss of property. The Recipient will immediately (within one workday) advise NASA of hazards that come to its attention as a result of the work performed.

(b) Where the work under this cooperative agreement involves flight hardware, the hazardous aspects, if any, of such hardware will be identified, in writing, by the Recipient. Compliance with this provision by subcontractors shall be the responsibility of the Recipient.

(End of provision)

§ 1274.935 Security classification requirements.

Security Classification Requirements (XX/XX)

Performance under this Cooperative Agreement will involve access to and/or generation of classified information, work in a secure area, or both, up to the level of [insert the applicable security clearance level]. Federal Acquisition Regulation clause 52.204–2 shall apply to this Agreement and DD Form 254, Contract Security Classification Specification Attachment _____ [Insert the attachment number of the DD Form 254].

(End of provision)

§ 1274.936 Breach of safety or security.

Breach of Safety or Security (XX/XX)

Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety by the Recipient entitles the Government to remedies (pending corrective measures by the Recipient) which includes, suspension or termination of the Cooperative Agreement, require removal or change of Recipient's personnel from performing under the Agreement. A major breach of safety must be related directly to the work on the Agreement. A major breach of safety is an act or omission of the Recipient that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any "willful" or "repeat" violation cited by the Occupational Health and Safety Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(a) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security by the Recipient entitles the Government to remedies (pending corrective measures by the Recipient) which includes, suspension or termination of the Cooperative Agreement, require removal or change of Recipient's personnel from performing under the Cooperative Agreement. A major breach of security may occur on or off Government installations, but must be related directly to the work on the Cooperative Agreement. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; damage or loss greater than $250,000 to the Government; or theft.

(b) In the event of a major breach of safety or security, the Recipient shall report the breach to the Agreement Officer. If directed by the Agreement Officer, the Recipient shall conduct its own investigation and report the results to the Government. The Recipient shall cooperate with the Government investigation, if conducted.

(End of provision)

§ 1274.937 Security requirements for unclassified information technology resources.

Security Requirements for Unclassified Information Technology Resources (XX/XX)

(a) The Recipient shall be responsible for Information Technology security for all systems connected to a NASA network or operated by the Recipient for NASA, regardless of location. This provision is applicable to all or any part of the cooperative agreement that includes information technology resources or services in which the Recipient must have physical or electronic access to NASA's sensitive information contained in unclassified systems that directly support the mission of the Agency. This includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include:

(1) Computer control of spacecraft, satellites, or aircraft or their payloads;

(2) Acquisition, transmission or analysis of data owned by NASA with significant replacement cost should the Recipient's copy be corrupted; and

(3) Access to NASA networks or computers at a level beyond that granted the general public, *e.g.* bypassing a firewall.

(b) The Recipient shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this cooperative agreement. The plan shall describe those parts of the cooperative agreement to which this provision applies. The Recipient's IT Security Plan shall be compliant with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 et seq.) and the Government Information Security Reform Act of 2000. The plan shall meet IT security requirements in accordance with Federal and NASA policies and procedures that include, but are not limited to:

(1) OMB Circular A–130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

(2) NASA Procedures and Guidelines (NPG) 2810.1, Security of Information Technology; and

(3) Chapter 3 of NPG 1620.1, NASA Security Procedures and Guidelines.

(c) Within _____ days after cooperative agreement award, the Recipient shall submit for NASA approval an IT Security Plan. This plan must be consistent with and further detail the approach contained in the Recipient's proposal that resulted in the award of this cooperative agreement and in compliance with the requirements stated in this provision. The plan, as approved by the Agreement Officer, shall be incorporated into the cooperative agreement as a compliance document.

(d)(1) Recipient personnel requiring privileged access or limited privileged access to systems operated by the Recipient for NASA or interconnected to a NASA network shall be screened at an appropriate level in accordance with NPG 2810.1, Section 4.5; NPG 1620.1, Chapter 3; and paragraph (d)(2) of this provision. Those Recipient personnel with non-privileged access do not require personnel screening. NASA shall provide screening using standard personnel screening National Agency Check (NAC) forms listed in paragraph (d)(3) of this provision, unless Recipient screening in accordance with paragraph (d)(4) is approved. The Recipient shall submit the required forms to the NASA Center Chief of Security (CCS) within fourteen (14) days after cooperative agreement award or assignment of an individual to a position requiring screening. The forms may be obtained from the CCS. At the option of the government, interim access may be granted pending completion of the NAC.

(2) Guidance for selecting the appropriate level of screening is based on the risk of adverse impact to NASA missions. NASA defines three levels of risk for which screening is required (IT–1 has the highest level of risk):

(i) IT–1—Individuals having privileged access or limited privileged access to systems whose misuse can cause very serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of spacecraft, satellites or aircraft.

(ii) IT–2—Individuals having privileged access or limited privileged access to systems whose misuse can cause serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of payloads on spacecraft, satellites or aircraft; and those that contain the primary copy of "level 1" data whose cost to replace exceeds one million dollars.

(iii) IT–3—Individuals having privileged access or limited privileged access to systems whose misuse can cause significant adverse impact to NASA missions. These systems include, for example, those that interconnect with a NASA network in a way that exceeds access by the general public, such as bypassing firewalls; and systems operated by the Recipient for NASA whose function or data has substantial cost to replace, even if these systems are not interconnected with a NASA network.

(3) Screening for individuals shall employ forms appropriate for the level of risk as follows:

(i) IT–1: Fingerprint Card (FC) 258 and Standard Form (SF) 85P, Questionnaire for Public Trust Positions (Information regarding financial record, question 22, and the Authorization for Release of Medical Information are not applicable);

(ii) IT–2: FC 258 and SF 85, Questionnaire for Non-Sensitive Positions; and

(iii) IT–3: NASA Form 531, Name Check, and FC 258.

(4) The Agreement Officer may allow the Recipient to conduct its own screening of individuals requiring privileged access or limited privileged access provided the Recipient can demonstrate that the procedures used by the Recipient are equivalent to NASA's personnel screening procedures. As used here, equivalent includes a check for criminal history, as would be conducted by NASA, and completion of a questionnaire covering the same information as would be required by NASA.

(5) Screening of Recipient personnel may be waived by the Agreement Officer for those individuals who have proof of—

(i) Current or recent national security clearances (within last three years);

(ii) Screening conducted by NASA within last three years; or

(iii) Screening conducted by the Recipient, within last three years, that is equivalent to the NASA personnel screening procedures as approved by the Agreement Officer under paragraph (d)(4) of this provision.

(e) The Recipient shall ensure that its employees, in performance of the cooperative agreement, receive annual IT security training in NASA IT Security policies, procedures, computer ethics, and best practices in accordance with NPG 2810.1, Section 4.3 requirements. The Recipient may use web-based training available from NASA to meet this requirement.

(f) The Recipient shall afford NASA, including the Office of Inspector General, access to the Recipient's, subcontractors' or subawardees' facilities, installations, operations, documentation, databases and personnel used in performance of the cooperative agreement. Access shall be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of NASA data or to the function of computer systems operated on behalf of NASA, and to preserve evidence of computer crime.

(g) The Recipient shall incorporate the substance of this clause in all subcontracts or subagreements that meet the conditions in paragraph (a) of this provision.

(End of provision)

§ 1274.938 Modifications.

Modifications (XX/XX)

During the term of this agreement and in the interest of achieving program objectives, the parties may agree to changes that affect the responsibility statements, milestones, or other provisions of this agreement. Any changes to this agreement will be accomplished by a written bilateral modification.

(End of provision)

§ 1274.939 Application of Federal, State, and local laws and regulations.

Application of Federal, State, and Local Laws and Regulations (XX/XX)

(a) Federal Laws and Regulations. This Cooperative Agreement shall be governed by the Federal Laws, regulations, policies, and related administrative practices applicable to this Cooperative Agreement on the date the Agreement is executed. The Recipient understands that such Federal laws, regulations, policies, and related administrative practices may be modified from time to time. The Recipient agrees to consider modifying this Agreement to be governed by those later modified Federal laws, regulations, policies, and related administrative practices that directly affect performance of the Project.

(b) State or Territorial Law and Local Law. Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in the Cooperative Agreement shall require the Recipient to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of the Cooperative Agreement violate any applicable State or territorial law, or if compliance with the provisions of the Agreement would require the Recipient to violate any applicable State or territorial law, the Recipient agrees to notify the Government (NASA) immediately in writing in order that the Government and the Recipient may make appropriate arrangements to proceed with the Project as soon as possible.

(c) Changed Conditions of Performance (Including Litigation). The Recipient agrees to notify the Government (NASA) immediately of any change in State or local law, conditions, or any other event that may significantly affect its ability to perform the Project in accordance with the terms of this Cooperative Agreement. In addition, the Recipient agrees to notify the Government (NASA) immediately of any decision pertaining to the Recipient's conduct of litigation that may affect the Government's interests in the Project or the Government's administration or enforcement of applicable Federal laws or regulations. Before the Recipient may name the Government as a party to litigation for any reason, the Recipient agrees to inform the Government; this proviso applies to any type of litigation whatsoever, in any forum.

(d) No Government Obligations to Third Parties. Absent the Government's express written consent, and notwithstanding any concurrence by the Government in or approval of the award of any Agreement of the Recipient (third party contract) or subcontract of the Recipient (third party subcontract) or the solicitation thereof, the Government shall not be subject to any obligations or liabilities to third party contractors or third party subcontractors or any other person(s).

(End of provision)

§ 1274.940 Changes in recipient's membership.

Changes in Recipient's Membership (XX/XX)

The Recipient shall notify the cognizant Agreement Officer within seven (7) days of any change in the corporate membership (ownership) structure of the Recipient, including the addition or withdrawal of any of the Recipient's affiliated members (e.g., Consortium Member). If NASA reasonably determines that any change in the corporate membership (ownership) of Recipient will conflict with NASA's objectives for the _____ Project or any statutory or regulatory restriction applicable to the agency, NASA may terminate this Agreement after giving the Agreement Recipient at least ninety (90) days prior written notice of such perceived conflict and a reasonable opportunity to cure such conflict.

(End of provision)

§ 1274.941 Insurance and Indemnification.

The following provision is applicable to all cooperative agreements with commercial firms that involve programs or projects that are subject to Section 431 of Public Law 105–276, which addresses insurance for, or indemnification of, developers of experimental aerospace vehicles.

Insurance and Indemnification (XX/XX)

(a) *General.* The Recipient has applied, under the provisions of section 431 of Public Law 105–276 (Section 431), for indemnification by the Government against certain third party damage claims that might arise under the Agreement. Under section 431, a necessary prerequisite to, and consideration for, the Government's granting such indemnification is the Recipient's obtaining insurance against an initial increment of such damages arising from certain third party claims. This provision sets forth the requirements for this insurance prerequisite to a Government grant of indemnification.

(b) *Definitions.* The definitions at 14 CFR part 1266, Cross-Waivers and Indemnification, apply to this provision.

(c) *Insurance.* The Recipient shall obtain, as part of its financial contribution, insurance that meets the following parameters:

(1) The insurance policy or policies shall insure against damages incurred by third parties arising from covered activities;

(2) The amount of insurance applicable to each launch shall be [TBD]. The Government may subsequently increase the amount of insurance the Recipient is required to maintain to qualify for indemnification, for one or more launches, and the Recipient shall pay the additional cost of such increases from its financial contribution; and

(3) The insurance policy or policies shall name the parties and their related entities, and the employees of the parties and their related entities, as named insureds.

Nothing in this provision precludes the Recipient from obtaining, at no cost to the Government, such other insurance as the Recipient determines advisable to protect its business interests.

(d) *Proof of Insurance.* The Recipient shall provide proof of insurance that meets the parameters in paragraph (c) of this provision and that is acceptable to the Agreement Officer:

(1) Within 30/60 days after the execution of the modification adding this provision to the Agreement;

(2) No later than 30 days before each launch; and

(3) Within 7 days after a request by the Agreement Officer.

Moreover, the Recipient shall promptly notify the Agreement Officer of any termination, or of any change to the terms or conditions of an insurance policy or policies for which proof of insurance was provided.

(e) *Notification of Claims.* The Recipient shall—

(1) Promptly notify the Agreement Officer of any third party claim or suit against the Recipient, one of its related entities, any employee of the Recipient or its related entities, or any insurer of the Recipient for damages resulting from covered activities;

(2) Furnish evidence or proof of any such claim, suit or damages, in the form required by NASA; and

(3) Immediately furnish to NASA, or its designee, copies of all information received by the Recipient, or by any related entity, employee or insurer that is pertinent to such claim, suit or damages.

(f) *NASA Concurrence in Settlements.* NASA shall concur or not concur in each settlement of a third party claim by the Recipient's insurer(s). For purposes of determining the amount of indemnification under this cooperative agreement. Adjudicated claims shall be deemed concurred in by NASA.

(End of provision)

§ 1274.942 Export licenses.

Export Licenses (XX/XX)

(a) The Recipient shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR parts 730 through 799, in the performance of this Cooperative Agreement. In the absence of available license exemptions/exceptions, the Recipient shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Recipient shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this Cooperative Agreement, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Recipient shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Recipient shall be responsible for ensuring that the requirements of this provision apply to its subcontractors.

(e) The Recipient may request, in writing, that the Agreement Officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Agreement Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

(End of provision)

Appendix to Part 1274—Listing of Exhibits

Exhibit A to Part 1274—Contract Provisions

All contracts awarded by a recipient, including small purchases, shall contain the following provisions if applicable:

1. Equal Employment Opportunity—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts in excess of $50,000 for construction or repair awarded by Recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each recipient or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to NASA.

3. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)—Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $50,000 for other contracts, other than contracts for commercial items, that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Subsection 102 of the Act, each recipient shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work

in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. Rights to Inventions Made Under a Contract or Agreement—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

5. Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended—Contracts, other than contracts for commercial items, of amounts in excess of $100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to NASA and the Regional Office of the Environmental Protection Agency (EPA).

6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient.

7. Debarment and Suspension (E.O.s 12549 and 12689)—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

Exhibit B to Part 1274—Reports

1. Individual Procurement Action Report (NASA Form 507)

The Agreement Officer is responsible for submitting NASA Form 507 for all cooperative agreement actions.

2. Property Reporting

As provided in paragraph (f) of § 1274.923, an annual NASA Form (NF) 1018, NASA Property in the Custody of Contractors, will be submitted by October 31 of each year. Negative annual reports are required. A final report is required within 30 days after expiration of the agreement (also see paragraph (g) of § 1274.923 for electronic submission guidance).

3. Disclosure of Lobbying Activities (SFLLL)

(a) Agreement Officers shall provide one copy of each SF LLL furnished under 14 CFR 1271.110 to the Procurement Officer for transmittal to the Director, Analysis Division (Code HC).

(b) Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to the Director, Contract Management Division (Code HK).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 648

[Docket No. 011005245–1245–01; I.D. 092401C]

RIN 0648–AP37

Fisheries of the Northeastern United States; Atlantic Herring Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2002 specifications for the Atlantic herring fishery; request for comments.

SUMMARY: NMFS proposes specifications for the 2002 Atlantic herring fishery. The regulations for the Atlantic herring fishery require NMFS to publish specifications for the upcoming year and to provide an opportunity for public comment. The intent of the specifications is to conserve and manage the herring resource and provide for sustainable fisheries. This rule would also correct and clarify the final rule implementing the Atlantic Herring Fishery Management Plan (FMP) by clarifying the vessel owners' or operators' reporting requirements.

DATES: Comments must be received no later than 5 p.m., Eastern Standard Time, on November 28, 2001.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), Essential Fish Habitat Assessment, and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2000 Atlantic Herring Fishing Year are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Comments may also be sent via fax to (978) 465–0492. The EA/RIR/IRFA is accessible via the Internet at *http://www.nefmc.org*.

Written comments on the proposed specifications should be sent to the Regional Administrator at the above address. Mark on the outside of the envelope: "Comments—2002 Herring Specifications." Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

Written comments regarding the collection-of-information requirements contained in this final rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104, e-mail at myles.raizin@noaa.gov, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP require the New England Fishery Management Council's (Council) Atlantic Herring Plan Development Team (PDT) to meet at least annually, no later than July each year, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the Council's Atlantic Herring Oversight Committee: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT also recommend the total allowable catch (TAC) for each management area and sub-area identified in the FMP. As the basis for its recommendations, the PDT reviews available data pertaining to: Commercial and recreational catch; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. Recommended specifications are presented to the Council for adoption and recommendation to NMFS.

Proposed 2002 Specifications

The Council, at its June 2001 meeting, adopted recommendations for the 2002 specifications for the Atlantic herring fishery (see Table 1). The only change from the 2001 specifications was the recommended increase in estimated DAH/DAP by 5,000 mt, and the resulting decrease in TALFF to zero. Although the specification for JVP would remain unchanged from the 2001 allocation, the Council has recommended that harvest of herring under the JVP specification be limited to Management Area 2 (Area 2), rather than both Areas 2 and 3, as specified in 2001. Based on the Council's recommendations, NMFS proposes the specifications and Area TACs contained below in Table 1.

Table 1.

SPECIFICATIONS AND AREA TACS FOR THE 2002 ATLANTIC HERRING FISHERY

Specification	Proposed Allocation (mt)
ABC	300,000
OY	250,000
DAH	250,000
DAP	226,000
JVPt	20,000
JVP	10,000 (Area 2 only)
IWP	10,000
USAP	20,000
BT	4,000
TALFF	0
Reserve	0
TAC – Area 1A	60,000
TAC – Area 1B	10,000
TAC – Area 2	50,000 (TAC reserve: 80,000
TAC – Area 3	50,000

TALFF

Recent growth in domestic utilization, as evidenced by new domestic processing capabilities, has already resulted in an increase in domestic harvesting. The increase in the domestic harvest, and future anticipated increases, resulted in the Council's recommendation for zero TALFF. The Council believes that setting TALFF at zero will further promote domestic interests in the utilization of the herring resource by providing industry with the means to continue development of additional markets.

The 2001 specifications for the Atlantic herring fishery included a small allocation for TALFF. At the time the Council made that recommendation, it was expected that the allocation of TALFF would enhance the probability that foreign vessels would engage in JVP, thus benefitting U.S. fishermen who have historically had difficulty in procuring markets for herring. The Council believed that growth in domestic utilization was inhibited by the lack of new markets, as evidenced by the lack of new processing capabilities. However, for the 2002 fishery, the Council recommended, and NMFS proposes, that setting the TALFF at zero will promote the continued growth in the domestic utilization of the herring resource. The expansion of existing processing capabilities and the opening of new domestic processor/freezer capacity suggest that domestic facilities are able to provide continued expansion in the domestic fishery, thus eliminating the allocation for directed foreign fishing. In addition, the Council recommended zero TALFF because it believed that the allocation of TALFF in 2001 damaged the working relationship between the U.S. and Canada on transboundary fishery issues.

JVP

Under the Atlantic Herring FMP, joint venture activities are allowed in all management areas, subject to an annual review process. In addition, these activities may be specified by management area. The annual review and management area allocation scheme provides the Council with the ability to consider the impact of JVP on shoreside processors. For fishing year 2001, joint ventures between domestic fishing vessels and foreign at-sea processing vessels could occur in Areas 2 and 3. However, for the 2002 specifications, the Council considered public comment and voted to recommend that such activities be limited to Area 2 only because it felt that Area 3 represents the best alternative fishing area for domestic vessels supplying shoreside domestic processors, especially when Area 1A is closed to fishing under existing state and Federal regulations. In addition, as noted in the annual Stock Assessment and Fishery Evaluation (SAFE) Report, shoreside demand is projected to increase in the near term as a result of expanded cannery production and the start-up of a freezer plant in Gloucester, MA. Area 3 represents the best opportunity for growth in the domestic harvesting sector to meet increasing demand for herring by shoreside processors. To allow JVP in Area 3 may hinder the ability of harvesters to adequately supply shoreside processors.

This rule also proposes a technical change to § 648.7 (b)(1)(iii)(B) to clarify the Council's intent concerning the reporting requirements for owners or operators of vessels who have been issued Atlantic herring permits but who are not required to have a Vessel Monitoring System (VMS) unit on board the vessel. This rule would clarify that only owners or operators of vessels that catch 2,000 lb (907.2 kg) or more of Atlantic herring on any one trip in a week must submit an Atlantic herring catch report via the Interactive Voice Response (IVR) reporting system by Tuesday of the following week. Even if the herring has not yet been landed, the operator must estimate the amount of herring on board the vessel and report that amount via the IVR system. As currently written, the regulations imply that this provision applies at all times to any owner or operator of a vessel issued a Federal permit for Atlantic herring who is not required to have a VMS unit on board the vessel. In addition, this rule would also clarify that owners or operators of vessels that catch 2,000 lb (907.2 kg) or more of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week. As currently written, the regulations require that the reporting provision also applies at all times to vessels catching herring in or from the EEZ. A review of the FMP and background material germane to the issue shows that this clarifying change is consistent with Council intent.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council and NMFS prepared an Initial Regulatory Flexibility Act analysis that describes the economic impact that this proposed rule, if adopted, would have on small entities. A summary of the analysis follows:

A description of the reasons why action by NMFS is being considered and the objectives of this proposed rule are explained in the preamble to this rule and are not repeated here. This action does not contain any additional collection-of-information, reporting, or recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules.

All of the affected businesses (fishing vessels and dealers) are considered small entities. These entities qualify as small entities under the standards described in NMFS guidelines because

they have profits that do not exceed $3 million annually. The last full year of data available for the herring fishery is the year 2000. There were 169 vessels, 6 processors, and 104 dealers participating in the fishery in 2000. Given that vessels caught less than half the current OY in 2000, the proposed status quo OY is not likely to result in any significant impact on the revenues of vessels, producer surplus or consumer surplus.

For the 2001 fishery, the Council recommended 5,000 mt of TALFF and 10,000 mt of JVPt. As part of its justification, the Council noted that if foreign vessels availed themselves of the opportunity to harvest some or all of the TALFF specification, and if those vessels are obligated to engage in JVP ventures with U.S. fishing vessels, there would be a positive impact on the revenues of those U.S. vessels participating in JVP ventures. Such economic benefits of TALFF would be indirect, since only the JVP portion of the venture would produce revenues for U.S. vessels. However, the indirect benefit of TALFF would be offset by the negative indirect impact such activity might have on the competitiveness of U.S.-exported herring on world markets.

The proposed 2002 specifications contain the same JVP specification as the 2000 fishery; hence, they have the same potential revenue impact. As noted above, TALFF itself does not directly generate any revenues to U.S. vessels. At an estimated value of $120/ton to the vessel, full utilization of the JVP would result in total revenues of $1.2 million. This would represent an increase in overall fleet revenues of 10 percent, although this is an optimistic projection, since the price paid for herring under joint ventures is generally slightly less than the average price paid by shoreside processors and dealers for non-joint venture herring.

The Council considered other options for TALFF, ranging up to 20,000 mt and JVP ranging up to 40,000 mt. In all cases, they assumed that the JVP specifications would be twice as much as the TALFF allocation. The highest TALFF level considered (20,000 mt) would increase potential revenues to U.S. vessels by as much as four times (at 40,000 mt of JVP), or up to $4.8 million, if all of the JVP specification were utilized. However, the Council concluded that if U.S.-processed herring could be sold into global markets, the economic benefits could be greater than the benefits derived from TALFF and TALFF-enhanced JVP. The Council further noted that U.S. exports of herring are minimal, with the frozen bait market in Canada being the major market. Herring caught directly by foreign vessels could compete in this market and negatively impact revenues to U.S. exporters. Eliminating TALFF would reduce foreign competition and increase the chances for U.S. market expansion, benefitting both U.S. processors and U.S. vessels delivering herring shoreside. The Council expects that, if global markets will purchase U.S. herring, the economic benefits would be far greater if those fish are processed and exported by U.S. companies, rather than by foreign ventures. Eliminating TALFF will reduce foreign competition and increase the chances for market penetration by U.S. exporters and, therefore, increase overall economic benefits through both value-added production and overall market expansion.

This action clarifies a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0212. Public reporting burden for this collection of information is estimated to average 4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Dated: October 23, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.7, paragraph (b)(1)(iii)(B) is revised, paragraph (b)(1)(iii)(C) is redesignated as paragraph (b)(1)(iii)(D), and a new paragraph (b)(1)(iii)(C) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) An owner or operator of any vessel issued a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board and that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) An owner or operator of any vessel that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

* * * * *

[FR Doc. 01–27168 Filed 10–26–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 209

Monday, October 29, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request an extension of a currently approved information collection used in support of the FSA Farm Loan Programs (FLP). This renewal does not involve any revisions to the program rules.

DATES: Comments on this notice must be received on or before December 28, 2001 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, USDA, Farm Service Agency, Loan Servicing and Property Management Division, 1400 Independence Avenue, SW, STOP 0523, Washington, DC 20250–0523; Telephone (202) 690–4014; Electronic mail: *mike_cumpton@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1951-L, Servicing Cases Where Unauthorized Loan or Other Assistance Was Received.

OMB Control Number: 0560–0160.

Expiration Date: December 31, 2001.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: FSA encounters cases where unauthorized assistance was received by a borrower. This assistance may be a loan where the borrower did not meet the eligibility requirements contained in statute or program regulations or where the borrower was eligible for loan assistance but a lower subsidized interest rate was charged on the loan, resulting in the borrower's receipt of unauthorized interest subsidy benefits. The unauthorized assistance may also be in the form of loan servicing where a borrower received an excessive or unauthorized write-down or write-off of their debt. The information collected under this regulation is provided on a voluntary basis by the borrower, although failure to cooperate to correct loan accounts may result in liquidation of the loan. The information to be collected will primarily be financial data such as amount of income, farm operating expenses, depreciation, crop yields, etc.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 200.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 800 hours.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Michael Cumpton, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW, STOP 0523, Washington, DC 20250–0523.

Comments will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC, on October 18, 2001.

James R. Little,

Acting Administrator, Farm Service Agency.

[FR Doc. 01–27073 Filed 10–26–01; 8:45 am]

BILLING CODE 3410–05–P

AMTRAK REFORM COUNCIL

Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of special public business meeting in Washington, DC.

SUMMARY: As provided in section 203 of the Amtrak Reform and Accountability Act of 1997 (Reform Act), the Amtrak Reform Council (Council) gives notice of a special public meeting of the Council. On Friday, November 9, 2001, the Council will hold a Business Meeting from 10 a.m.–4 p.m. Eastern Standard Time (EST) during which time the Council members will discuss, among other issues, Amtrak's financial performance for FY 2001, the impact of the events of September 11th on Amtrak's ridership and financial performance, and their views on whether Amtrak is likely to meet the statutory self-sufficiency requirement set forth in section 204 of the Amtrak Reform and Accountability Act of 1997 (Reform Act).

DATES: The Business Meeting will be held on Friday, November 9, 2001, from 10 a.m.–4 p.m. EST. The event is open to the public.

ADDRESSES: The Business Meeting will take place in room 2230, US DOT Headquarters, (the Nassif Building), 400 7th Street, SW., Washington, DC 20590. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW., Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. For information regarding ARC's upcoming events, the agenda for meetings, the ARC's Second Annual Report, information about ARC Council Members and staff, and much more, you can also visit the Council's website at www.amtrakreformcouncil.gov.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (Reform

Act), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the Reform Act provides: that the Council is to monitor cost savings from work rules established under new agreements between Amtrak and its labor unions; that the Council submit an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after a specified period, the Council has the authority to determine whether Amtrak can meet certain financial goals specified under the Reform Act and, if it finds that Amtrak cannot, to notify the President and the Congress.

The Reform Act prescribes that the Council is to consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and the leadership of the Congress. Members serve a five-year term.

Issued in Washington, DC on October 23, 2001.

Thomas A. Till,

Executive Director.

[FR Doc. 01–27092 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Commerce.

ACTION: To give firms an opportunity to comment.

Petitions Have Been Accepted for Filing on the Dates Indicated From the Firms Listed Below

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 9/14/00–10/19/01

Firm name	Address	Date petition accepted	Product
Matrix Tool, Inc	4976 Franklin Avenue, Fairview, PA 16415.	09/17/01	Plastic molds and plastic molded components including electical connectors for automobiles and telecommunication equipment.
Vermont Honeylights, Inc	394 Rockydale Road, Bristol, VT 05443.	09/17/01	Hand-rolled and molded beeswax candles and molded wax statuary and home decorations.
H. R. Simon Co., Inc	3515 Marmenco Court, Baltimore, MD 21230.	09/19/01	X-ray chemicals for the developing process used in the medical industry.
Eagle Bronze, Inc	130 Poppy Street, Lander, WY 82520	09/21/01	Bronze sculptures.
Micropulse, Inc	5865 E. State Road, Columbia City, IN 46725.	09/21/01	Automated manufacturing machinery.
Valbert Corporation	19300 144th Ave., N.E., Woodinville, WA 98072.	09/27/01	Instrument control panels, wire harnesses, electronic programmable controllers and other control systems for various industries.
Consolidated Steel Services, Inc	P.O. Box 369, Cresson, PA 16630	09/27/01	Railroad tracks fixtures and parts.
Orion Healthcare Technology, Inc	1823 Harney Street, Omaha, NE 68102.	09/27/01	Software to reduce medical errors and provide assessments to addiction sciences.
Intermix Distributors, Inc	1133 Barranca Drive, El Paso, TX 79935.	09/28/01	Tortillas, chorizo and barbacoa.
Circuit Services, Inc	27–24th Street, Kenner, LA 70062	09/28/01	Printed circuits.
Associated Plastics Corporation	502 Eric Wolbur Avenue, Ada, Ohio 45180.	09/28/01	Injection molded plastic components.
Magdesian Brothers, Inc	730 Fifth Avenue, Industry, CA 91746.	09/28/01	Women's shoes primarily of leather.
Moore Industries International, Inc	16650 Schoenborn Street, Sepulveda, CA 91343.	09/28/01	Electronic instrumentation used to monitor and control industrial processes.
Signup, Inc dba Multimedia	3300 Monier Circle, Rancho Cordova, CA 95742.	09/28/01	Electronic signage.
Powis-Parker, Inc	775 Heinz Avenue, Berkeley, CA 94710.	09/28/01	Binding machines and accessories i.e., covers, ink, strips and glue.
Trailer Equipment Manufacturing Co., Inc.	1326 East Street, Minden, LA 71055	10/10/01	Trailer jacks.
Helio Precision Products	601 N. Skokie Highway, Lake Bluff, IL 60044.	10/10/01	Valve guides, shafts and transmissions for diesel engines.
Cheraw Yarn Mill, Inc	U.S. Highway 1 South, Cheraw, SC 29520.	10/10/01	Cotton yarn for the apparel.
Standard Fusee Corp. d.b.a. Orion Safety Products.	28320 St. Michaels Rd., Easton, MD 21601.	10/11/01	Flares for the transportation industry.
Leedon Webbing Co., Inc	86 Tremont Street, Central Falls, RI 02863.	10/16/01	Narrow fabric webbing used in apparel and accessories, sporting goods and various industrial uses.
Chardan Corporation	9610 County Road 14, Wauseon, OH 43567.	10/16/01	Molded cross linked polyethylene foam padding for use in the athletic, industrial hospital, automative office supply and toy industries.
Nuvonyx, Ind.	3753 Pennridge Drive, Bridgeton, MO 63044.	10/17/01	Robotic direct laser welding systems.
HTM USA Holdings, Inc d.b.a. Penn Racquet Sports.	306 45th Avenue, Phoenix, AZ 85043	10/18/01	Tennis balls.
Chace Leather Products, Inc	507 Alden Street, Falls River, MA 02722.	10/18/01	Leather, simulated leather and nylon goods.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 9/14/00–10/19/01—Continued

Firm name	Address	Date petition accepted	Product
Miss Beckey Seafood, Inc, d.b.a. Safe Harbor Seafood.	4371 Ocean Street, Mayport, FL 32233.	10/19/01	Shrimp, fish and other seafood.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: October 23, 2001.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 01–27097 Filed 10–26–01; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools From the People's Republic of China: Final Results of New Shipper Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results in the antidumping duty new shipper administrative review of heavy forged hand tools from the People's Republic of China.

SUMMARY: On August 1, 2001, the Department of Commerce (Department) published the preliminary results of the new shipper review of the antidumping duty order on hammers/sledges, one of the four antidumping duty orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). This review covers one manufacturer/exporter. The period of review (POR) is February 1, 2000 through July 31, 2000.

Based on our analysis of the comments received, we have made changes to the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled *Final Results of Review.*

EFFECTIVE DATE: October 29, 2001.

FOR FURTHER INFORMATION CONTACT: Esther Chen, Tom Martin, or Ron Trentham, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2305, (202) 482–3936 and (202) 482–6320, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (Act) are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2000).

Background

The Department published in the **Federal Register** the antidumping duty orders on HFHTs from the PRC on February 19, 1991. *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China,* 56 FR 6622 (February 19, 1991). On July 20, 2000, the Department received a request from Shandong Jinma Industrial Group Co., Ltd. (Jinma) for a new shipper review of the antidumping duty order on HFHTs covering hammers/sledges pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations. These provisions state that, if the Department receives from an exporter or producer of the subject merchandise a request for review, which states that it did not export the merchandise to the United States during the period covered by the original less-than-fair-value (LTFV) investigation and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, then the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for the requesting exporter or producer, if the Department has not previously established such a margin for the exporter or producer. The regulations require the exporter or producer to include in its request: (1) Documentation establishing the date on which the merchandise was first entered, or withdrawn from the warehouse, for consumption, or, if it cannot establish the date of the first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (2) a list, with appropriate certifications, of the firms with which it is affiliated; (3) a certification from such exporter or producer, and from each affiliated firm, that they did not, under their current or former names, export the merchandise during the LTFV period of investigation (POI), and (4) in an antidumping proceeding involving inputs from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government. *See* 19 CFR 351.214(b)(2)(ii), (iii), and (iv); Statement of Administrative Action (SAA) Accompanying the URAA, H.R. Doc. No. 103–316, vol. 1 (1994) at 875.

Jinma's request was accompanied by information and certifications establishing the date on which it first shipped the subject merchandise. Jinma also claimed it had no affiliated companies which exported hammers/sledges from the PRC during the POI. In addition, Jinma certified that its export activities are not controlled by the central government. Based on the above information, the Department initiated a

new shipper review covering Jinma. *See Heavy Forged Hand Tools From the People's Republic of China; Initiation of New Shipper Antidumping Administrative Review*, 65 FR 59824 (October 6, 2000). On March 26, 2001, the Department published an extension of the deadline for completion of the preliminary results of this new shipper review until July 25, 2001. *See Notice of Extension of Time Limit for Preliminary Results of New Shipper Antidumping Review: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China*, 66 FR 16444 (March 26, 2001).

On August 1, 2001, the Department published the preliminary results of the new shipper review of Jinma with respect to the antidumping duty order on hammers/sledges from the PRC. *See Notice of Preliminary Results of Antidumping Duty New Shipper Review: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China*, 66 FR 39733 (August 1, 2001). We invited interested parties to comment on the preliminary results of this review. On September 4, 2001, we received comments from the respondent Jinma. No rebuttal comments were received. The Department has now completed this new shipper review in accordance with section 751 of the Act.

Scope of Review

HFHTs from the PRC comprise the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes. This review covers shipments of one class or kind of merchandise, hammers and sledges with heads over 1.5 kg (3.33 pounds).

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these orders is dispositive. This review covers the period February 1, 2000 through July 31, 2000.

Analysis of Comments Received

All issues raised in the briefs submitted by parties to this new shipper administrative review are addressed in the Issues and Decision Memorandum for the New Shipper Review of Heavy Forged Hand Tools from the People's Republic of China—February 1, 2000 through July 31, 2000 from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration (Decision Memorandum), dated concurrently with the review results and hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding Department positions in this public memorandum, which is on file at the U.S. Department of Commerce, in the Central Records Unit, room B–099. In addition, a complete version of the Decision Memorandum is accessible on the web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes to the margin calculation:

1. For the surrogate value of wooden tool handles, the Department used Indian import data for HTS category 4417 during the period, April 1999 through February 2000. *See* Comment 1 of the Decision Memorandum.
2. For the surrogate value of electricity, the Department used an Indian electricity surrogate value obtained from the *Energy Data Directory & Yearbook 1999–2000 (TEDDY)*. *See* Comment 2 of the Decision Memorandum
3. In calculating surrogate values for the factors of production for HFHTs, the Department included all imports of inputs weighing under 100 kilograms unless the quantity or value was found to be aberrational. *See* Memorandum From Jeff Pedersen Regarding Factors of Production Valuation/Analysis Memorandum for the Final Results of the New Shipper Review of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles (HFHTs), from the People's Republic of China (PRC) Shandong Jinma Industrial Group Co., Ltd. (Jinma) (Analysis Memorandum).

Final Results of Review

We determine that the following weighted-average margin percentage exists for the period February 1, 2000 through July 31, 2000:

Manufacturer/exporter	Time period	Margin (percent)
Shandong Jinma Industrial Group Co., Ltd.: Hammers/Sledges	2/1/00–7/31/00	0.00

Assessment

The Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. While Jinma's calculated dumping margin is 0 percent, we have calculated importer-specific assessments for Jinma's sales to the United States. Where the importer-specific assessment rate is above de minimis, we will instruct Customs to assess dumping duties on that importer's entries of subject merchandise.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the new shipper administrative review for all shipments of hammers/sledges from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a) of the Act: (1) For the exporter named above, no cash deposit will be required; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in the most recent segment of the proceeding during which they were reviewed; (3) the cash deposit rate for the PRC-wide entity (i.e., all other exporters, which have not been reviewed) will continue to be 27.71 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 23, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comments and Responses

1. Excluding aberrational data from the Indian import data used in valuing wooden tool handles
2. Use of *TEDDY* for Indian electricity surrogate values

[FR Doc. 01–27165 Filed 10–26–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Aircraft Carriers of the Future will meet in closed session on October 22–23, 2001; November 5–7, 2001; November 15–16, 2001; December 11–12, 2001; January 16–17, 2001; February 21–22, 2002; and March 13–14, 2002. All meetings will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA 22201, with the exception of the November 5–7 and November 15–16 meetings, which will be held in San Diego, CA. The Task Force will assess how aircraft carriers should serve the nation's defense needs in the 21st Century and beyond.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will examine the expected naval environment and the role of the Navy for the next 20–50 years; the role of the carrier and the carrier battle group in a joint environment in which technology has progressed at an appropriate pace for both the U.S. and its potential adversaries; the effects of Unmanned Combat Air Vehicles on the role of the carrier and the carrier battle group; how the carrier should evolve or be transformed to best meet mission requirements in a joint environment; how the role of the aircraft carrier might change and the characteristics that might affect the change; and the technology improvement barriers that need to be overcome to significantly improve the ability of the carrier to execute its missions.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1), and that accordingly these meetings will be closed to the public.

Dated: October 23, 2001.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27064 Filed 10–26–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 28, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 23, 2001.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision of a currently approved collection.

Title: The Evaluation of Exchange, Language, International and Area Studies (EELIAS), NRC, FLAS and IIPP, UISFUL, Business and International Education Program (BIE), Centers for International Business Education Program (CIBE) and American Overseas Research Centers (AORC) (JS).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 60;

Burden Hours: 2100.

Abstract: BIE, CIBE and AORC are being added for clearance to the system that already contains four other programs. Information collection assist IEGPS in meeting program planning and evaluation requirements. Program officers require performance information to justify continuation funding, and grantees use this information for self evaluations and to request continuation funding from the Department of Education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Educational Research and Improvement

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Baccalaureate and Beyond Longitudinal Study, Third Followup (B&B:93/2003).

Frequency: On occasion.

Affected Public: Businesses or other for-profit (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 830,

Burden Hours: 385.

Abstract: The Baccalaureate and Beyond Longitudinal Study, Third Followup (B&B:93/2003) will survey 1992–93 bachelor's degree recipients from public and private postsecondary institutions. The data will provide long term information on graduates' additional postsecondary education and training, employment, workforce activities, and other life experiences. The study directs special focus on sample members who began teaching.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–27093 Filed 10–26–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 14, 2001, 8:00 a.m. to 5:00 p.m., and Thursday, November 15, 2001, 8:00 a.m. to 12:00 p.m.

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Sharon Long; Office of Basic Energy Sciences; U. S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

Wednesday, November 14, 2001

- Welcome and Introduction
- News from Basic Energy Sciences
- Presentations from the Nanoscale Science Research Centers
- Molecular Foundry, Lawrence Berkeley National Laboratory
- Center for Nanophase Materials Sciences, Oak Ridge National Laboratory
- Center for Integrated Nanotechnologies, Los Alamos National Laboratory and the Sandia National Laboratory

Thursday, November 15, 2001

- BESAC Discussion of Nanoscale Science Activities
- Brief Update on the Linac Coherent Light Source

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or *sharon.long@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on October 25, 2001.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 01–27123 Filed 10–26–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 15, 2001, 5:30 p.m.—9:00 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6:00 p.m.—Call to Order; Approve Minutes
6:10 p.m.—DDFO's Comments; Board Response; Public Comments
7:00 p.m.—Presentations
8:30 p.m.—Task Force and Subcommittee Reports; Board Response; Public Comments
9:00 p.m.—Administrative Issues
9:30 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC, on October 23, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–27124 Filed 10–26–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

TransAlta Centralia Generation LLC Big Hanaford Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to offer contract terms for integrating power from the TransAlta Centralia Generation LLC Big Hanaford Project into the Federal Columbia River Transmission System. This decision is based on input from public processes and information in the BPA Business Plan Environmental Impact Statement (DOE/EIS–0183, June 1995) and the Business Plan ROD (August 15, 1995). This project is a 248-megawatt gas-fired, combined-cycle combustion turbine power generation project in Lewis County, Washington, which will help meet the immediate need for energy resources of the region and serve as a resource to meet future demand.

ADDRESSES: Copies of the TransAlta Centralia Generation LLC Big Hanaford Project ROD, Business Plan, Business Plan EIS, and Business Plan ROD may be obtained by calling BPA's toll-free document request line, 1–800–622–4520; or at our web site, *www.efw.bpa.gov*.

FOR FURTHER INFORMATION, CONTACT: Thomas C. McKinney, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *tcmckinney@bpa.gov*.

Issued in Portland, Oregon, on October 19, 2001.

Stephen J. Wright,

Acting Administrator and Chief Executive Officer.

[FR Doc. 01–27122 Filed 10–26–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Federal Energy Management Advisory Committee (FEMAC). The Federal Advisory Committee Act (Public Law 92—463, 86 Stat. 770) requires announcement of these meetings in the **Federal Register** to allow for public participation. Executive Order 13123, "Greening the Government through Efficient Energy Management," established the Federal Energy Management Advisory Committee (FEMAC) to provide public and private sector input to the Secretary of Energy on achieving new energy efficiency goals for Federal facilities. The U.S. Department of Energy's Office of Federal Energy Management Programs (FEMP) coordinates FEMAC activities.

DATES: Tuesday, November 13, 2001; 1 p.m. to 5 p.m.; Wednesday, November 14, 2001; 8:30 a.m. to 4 p.m.

ADDRESSES: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Steven Huff, Designated Federal Officer for the Committee, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–3507; *Steven.Huff@ee.doe.gov; http://www.eren.doe.gov/femp/aboutfemp/femac.html*.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a range of issues critical to meeting mandated Federal energy management goals.

Tentative Agenda: Agenda will include discussion on the following topics:

Tuesday, November 13, 2001, and Wednesday, November 14, 2001

- Federal energy management budget
- Energy-savings performance contracts
- Utility energy-efficiency service contracts
- Procurement of ENERGY STAR (Registered Trademark) and other energy efficient products
- Building design
- Process energy use
- Applications of efficient and renewable energy technology (including clean energy technology) at Federal facilities
- Other energy management issues and topics
- Public comment

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Federal Energy Management Committee. If you would like to file a written statement with the committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, contact Steven Huff at (202) 586–3507 or *Steven.Huff@ee.doe.gov*. You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The committee chair will make every effort to hear the views of all interested parties. The chair will conduct the meeting to facilitate the orderly conduct of business. With the limited time available, the committee also encourages written recommendations, suggestions, position papers, etc., combined with a short oral summary statement. Documents may be submitted either before or following the meeting. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E—190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 25, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–27125 Filed 10–26–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–1–000]

Acacia Natural Gas Corporation; Notice of Petition for Rate Approval

October 23, 2001.

Take notice that on October 9, 2001, Acacia Natural Gas Corporation (Acacia) filed, pursuant to section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.1265 per MMBtu for interruptible transportation service, on Acacia's Bridgeport Gas Header system (Bridgeport system) under section 311 of the Natural Gas Policy Act of 1987.

Acacia states that it recently commenced interruptible section 311 transportation service on behalf of Mitchell Gas Services L.P. Acacia states that the proposed rate is designed using 90% of the design capacity of the Bridgeport system, calculated on a 100% load factor basis.

Pursuant to section 284.123(b)(2), if the Commission does not act within 150 days of the filing date, this rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for providing similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford interested parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before November 7, 2001. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27086 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–1–000]

ANR Pipeline Company; Notice of Service Agreement

October 23, 2001.

Take notice that on October 18, 2001, ANR Pipeline Company (ANR) filed two service agreements entered into with Alcoa, Inc. and Alcoa Building Products, Inc. (Alcoa) under Rate Schedule FTS–1 (the Alcoa Agreements).

ANR requests the Commission to find that the Alcoa Agreements do not contain any material deviations from ANR's Form of Service Agreement, and that the Agreements need not be filed pursuant to section 154.112(b) of the Commission's regulations. Alternatively, if the Commission finds that the Agreements contain a material deviation from ANR's Form of Service Agreement, ANR requests the Commission to either accept Sixth Revised Sheet No. 190 of ANR's Second Revised Volume No. 1, which references the Agreements as non-conforming agreements, or approve the Agreements as negotiated rate agreements authorized under section 30 of the General Terms and Conditions of ANR's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 30, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27083 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–536–001]

Florida Gas Transmission Company; Notice of Compliance Filing

October 23, 2001.

Take notice that on October 9, 2001 Florida Gas Transmission Company (Florida Gas) tendered for filing with the Federal Energy Regulatory Commission (Commission) its response to an issued raised by the Florida Municipal Natural Gas Association (FMNGA) in Florida Gas' underlying filing in Docket No. RP01–536–000.

Florida Gas states that the purpose of the instant filing is to comply with the Commission's Order issued September 27, 2001, which required Florida Gas to respond to FMNGA's suggestion that Florida Gas consider developing a system that would permit parties to determine the time that bids for capacity are submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 30, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27088 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–53–001]

Great Lakes Gas Transport, LLC; Notice of Compliance Filing

October 23, 2001.

Take notice that on December 8, 2000, Great Lakes Gas Transport, LLC (GT), formerly Gas Transport, Inc., filed an explanation of imbalance trading in compliance with a Commission order issued November 9, 2000 in Docket No. RM96–1–014, *et al.* The filing provides an explanation of imbalance trading on GT's system.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 30, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27087 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–10–000 et al.]

Hydro Investors, Inc. etc; Notice of Complaint

In the matter of: *Hydro Investors, Inc.* v. *Trafalgar Power, Inc.*, Christine Falls of New York, Franklin Industrial Complex, Inc., Aetna Life Insurance Company, Algonquin Power Corporation, Algonquin Power Income Fund, and Algonquin Power Fund (Canada) Trafalgar Power, Inc.; (Docket No. EL02–10–000) Project Nos. 4900–068, 5000–064, 6878–010, 9685–026, 9709–057, 9821–097; Christine Falls of New York, Inc., formerly Christine Falls Corporation; Project No.4639–026; Franklin Industrial Complex, Inc.; Project No. 3760–011, Notice of Complaint.

October 23, 2001.

Take notice that on October 19, 2001, Hydro Investors, Inc. (HII), filed a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, and Part I of the Federal Power Act (FPA), 16 U.S.C. 791, *et seq.*, against Trafalgar Power, Inc. (Trafalgar), Christine Falls of New York (Christine Falls), Franklin Industrial Complex, Inc. (Franklin), Aetna Life Insurance Company (Aetna), Algonquin Power Corporation, Algonquin Power Income Fund and Algonquin Power Fund (Canada) (collectively Algonquin). HII alleges that Trafalgar and Algonquin have made inconsistent and contradictory statements to the Commission related to the requisite control exerted over the above-captioned projects, that Algonquin has suppressed the output from the Steven Mills Project No. 3760 in violation of section 10(h) of the FPA and removed the operating logs from the site of the project in violation of part 12 of the Commission's regulations. HII also alleges that Trafalgar, Christine Falls, and Franklin have engaged in financial misconduct in violation of the Commission's Uniform System of Accounts, 18 CFR Part 101.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 8, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Answers to the complaint shall also be due on or before November 8, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27081 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–21–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 23, 2001.

Take notice that on October 18, 2001, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of November 18, 2001:

Ninth Revised Sheet No. 24
Original Sheet No. 25
Sheet Nos. 26 through 29 (Reserved)
Fifth Revised Sheet No. 108
Third Revised Sheet No. 109
Second Revised Sheet No. 110
Fourth Revised Sheet No. 264
First Revised Sheet No. 264–A
Fifth Revised Sheet No. 274
First Revised Sheet No. 274–A
Original Sheet No. 274–B
Fifth Revised Sheet No. 275

Northwest states that the purpose of this filing is to propose three new tariff provisions related to a shipper's right to delivery point capacity when such capacity is available solely due to the construction or upgrade of meter station facilities that are requested and paid for by that shipper.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27089 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3063–000]

Southern Indiana Gas & Electric Company; Notice of Filing

October 23, 2001.

Take notice that on October 19, 2001, Southern Indiana Gas & Electric Company submitted a revised filing withdrawing its September 14, 2001 Notice of Termination of the Electric Power Agreement, FPC Rate Schedule No. 29, under which it was providing power to Alcoa Power Generating Inc. This Electric Power Agreement stemmed from its May 28, 1971 contract with Alcoa. The revised filing provides a substitute notice of termination, which has the effect of canceling the May 28, 1971 contract with Alcoa Power Generating Inc. on February 28, 2002.

Southern Indiana explains that the parties will use the additional time to attempt to reach long-term service agreements and to install metering facilities to accommodate services to Alcoa beginning on March 1, 2002.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 2, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27082 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–7–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

October 23, 2001.

Take notice that on October 15, 2001,Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's (the Commission) Regulations under the Natural Gas Act (NGA), as amended, and blanket certificate authority granted in Docket No. CP82–426–000, filed in Docket No. CP02–7–00 a request for authorization to modify all of its existing reciprocating engines at Compressor Station No. 30 in Wharton County, Texas in order to comply with the State of Texas plan to implement the Clean Air Act Amendments of 1990 (Station 30 has 7 reciprocating/compressor units), all as more fully set forth in the request, which is on file with the Commission, and open for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call 202–208–2222 for assistance).

Transco states that it plans to install turbochargers and associated equipment on all 7 of the reciprocating engines in order to reduce NO_X emissions. These engines currently do not have turbochargers on them. At all 7 engines, emissions will be reduced by achieving a true lean air-fuel ratio, injecting high pressure fuel directly into the power cylinders and making other engine adjustments. The injection of high pressure fuel directly into the power cylinders significantly improves the combustion process by producing a more homogeneous mixture of air and fuel within the power cylinder. The true lean air-fuel ratio coupled with the high pressure fuel injection works by promoting stable combustion characteristics and thus reduces the formation of NO_X. Transco further states that, following installation of the turbochargers, the 7 engines will have the potential to perform above their current operating horsepower. However, it is stated that, since Station 30 is automated, Transco has the ability to shut down certain engines or reduce their load to ensure that the station will not operate above the station's total certificated horsepower. Since Transco will install these turbochargers at Station 30 solely to achieve an environmental improvement, i.e., lower NO_X emissions, it is stated that Transco has no intent or need to operate the station above its certificated horsepower. Therefore, Transco states that when it installs these turbochargers at Station 30 it will adjust the automation program at the station so that it will not operate above its certificated horsepower. Accordingly, there will be no increase in the capacity of Transco's system in the vicinity of the station as a result of installing the 7 new turbochargers.

Transco states that installation of new turbochargers at Station 30 will require some work to be done outside of the compressor building. A fuel gas header designed to bring high pressure fuel gas to each individual reciprocating unit will extend from the yard to the building with a supply to each unit. A new power supply building with approximate dimensions of 13 feet by 35 feet will be installed in the yard to supply uninterrupted power to the new equipment and unit control panels. New fin-fan coolers will be installed in the yard to satisfy the additional cooling requirements of the new turbochargers. Modifications of the type proposed may require the installation of a new utility system which would be built within existing buildings, but may require expanding out from them. All of the proposed work described above will be built within 50 feet of existing station facilities and will be done within the confines of previously disturbed areas. Approximately 1.05 acres of previously disturbed ground will be affected by the proposed project. Restoration of this area will be conducted according to the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan.

Transco states that the above-referenced modifications are estimated to cost $11.9 million.

Transco further states that the installation and operation of the proposed facilities will have no significant impact on the quality of human health or the environment other than the positive impact of reducing NO_X emissions. Transco certifies that the proposed facilities will be designed, constructed, operated and maintained in accordance with all applicable safety standards and plans for maintenance and inspection. Accordingly, Transco submits that this project will serve the public convenience and necessity because it will (1) reduce NO_X emissions at Station 30, and (2) enable Transco to comply with the Clean Air Act Amendments of 1990 and the state implementation plan pursuant thereto. Transco states that it needs to commence the work at Station 30 in January 2002 in order to complete the work on a timely basis with respect to the requirements of the Clean Air Act Amendments of 1990 and the state implementation plan, while at the same time accommodating the operational needs of its pipeline system and ensuring that Transco's gas service obligations are met. It is stated that a state air permit will be negotiated.

Any questions regarding this filing should be directed to Tom Messick, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, call (713) 215–2772.

Any person or the Commission's staff may, within 45 day after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.gov under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account".

David P. Boergers,

Secretary.

[FR Doc. 01–27080 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–46–002, et al.]

Vermont Yankee Nuclear Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

October 22, 2001.

Take notice that the following filings have been made with the Commission:

[Docket Nos. EC00–46–002, ER00–1027–000, ER00–1028–000, ER00–1029–000, and EL00–86–001]

1. Vermont Yankee Nuclear Power Corporation; Boylston Municipal Light Department, et al. v. Vermont Yankee Nuclear Power Corporation, et al.

Take notice that on October 16, 2001, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) submitted for filing a Refund Report along with supporting materials. The refunds were made pursuant to the terms of a settlement agreement in the captioned proceeding.

Vermont Yankee states that copies of the Refund Report have been served on the persons listed on the official service list for this proceeding, affected customers, and to each state commission within whose jurisdiction the affected customers distribute and sell electric energy at retail.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Rainy River Energy Corporation—Taconite Harbor

[Docket No. EG02–9–000]

Take notice that on October 18, 2001, Rainy River Energy Corporation—Taconite Harbor (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Applicant is a wholly-owned indirect subsidiary of Minnesota Power.

Applicant stated that it served its application on the following: Minnesota Power, the Public Utilities Commission,

Wisconsin Public Service Commission and the Securities and Exchange Commission.

Comment date: November 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Elwood Expansion, LLC

[Docket No. EG02–10–000]

Take notice that on October 19, 2001, Elwood Expansion, LLC (Elwood Expansion) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Elwood Expansion, a Delaware limited liability company, is owned 50% by Dominion Elwood Expansion, Inc., a Delaware corporation, and 50% by Peoples Elwood Expansion, LLC, a Delaware limited liability company. Elwood Expansion, Inc. is a wholly owned subsidiary of Dominion Energy, Inc., which in turn is a wholly owned subsidiary of Dominion Resources, Inc. Peoples Elwood Expansion, LLC is a wholly owned subsidiary of PERC Power, LLC, which in turn is a wholly owned subsidiary of Peoples Energy Resources Corp., a wholly owned subsidiary of Peoples Energy Corporation.

Elwood Expansion, LLC will be exclusively engaged in the business of owning, operating and selling electricity exclusively at wholesale from an electric generating facility located near Elwood, Illinois. The facility, which is currently in the early stages of development, is expected to consist of two approximately 500 MW gas-fired combined-cycle generating units. In addition, the Facility may include various other as yet unidentified transmission interconnection facilities that will be necessary to interconnect the Facility to the transmission system of Commonwealth Edison Company.

Comment date: November 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Alliant Energy Corporate Services, Inc. Services, Inc.

[Docket No. ER01–312–003]

Take notice that on October 18, 2001, Alliant Energy Corporate Services, Inc. tendered for filing a Refund Report in response to the Commission's Letter Order dated September 12, 2001 in Docket Nos. ER01–312–000 and ER01–312–001.

A copy of this filing has been served upon all affected customers, the Illinois Commerce Commission, the Iowa Utilities Board, the Minnesota Public Utilities Commission and the Public Service Commission of Wisconsin.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27079 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Competing Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 23, 2001.

Take notice that the following competing hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12109–000.

c. *Date filed:* August 27, 2001.

d. *Applicant:* Greybull Valley Irrigation District.

e. *Name and Location of Project:* The Lower Sunshine Dam Project would be located on Sunshine Creek in Park County, Wyoming.

Competing Application: Project No. 11958–000, Date Filed: April 16, 2001, Date Notice Closed: July 29, 2001.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. David W. Edwards, 3542 Road 10, Emblem, WY 82422, (307) 762–3397, fax (307) 762–3771.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the project number (P–12109–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) The applicant's existing Lower Sunshine Reservoir which has a storage capacity of 56,820 acre-feet at an elevation of 6,277 feet m.s.l., (2) a proposed powerhouse with a total installed capacity of 6.6 megawatts, (3) a proposed 50-foot-long penstock, (4) a proposed one-mile-long, 13.5 kv transmission line, and (5) appurtenant facilities. The project would have an average annual generation of 13.0 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–27084 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 23, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12113–000.

c. *Date filed:* September 4, 2001.

d. *Applicant:* Big Rock Power Partners.

e. *Name and Location of Project:* The Willow Creek Project would be located on Willow Creek in Humboldt County, California at a location known as Steamboat Rock.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Patrick Shannon, P.O. Box 1275, 42042 Highway 299, Willow Creek, California 95573.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the project number (P–12113–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) A proposed 80-foot-long, 15-foot-high concrete diversion dam, (2) a proposed 2,500-foot-long, 96-inch-diameter steel

penstock, (3) a proposed powerhouse containing three generating units having a total installed capacity of 5.45 MW, (4) existing transmission lines belonging to Pacific Gas and Electric Co., and (5) appurtenant facilities. The project would have an annual generation of 15.3 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–27085 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7091–6]

Agency Information Collection Activities: Request for Comments on the Fourteen Proposed Information Collection Requests (ICRs) Listed Under Supplementary Information, Section A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the fourteen continuing Information Collection Requests (ICRs) listed in section A of this notice to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of the Supplementary Information provided in this notice.

DATES: Comments must be submitted on or before December 28, 2001.

ADDRESSES: Compliance Assessment and Media Programs Division, Office of Compliance, Office of Enforcement and Compliance Assurance, Mail Code 2223A, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A hard copy of a specific ICR may be obtained without charge by calling the identified information contact person listed in section B under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: For specific information on an individual ICR, contact the person listed in section B under Supplementary Information.

SUPPLEMENTARY INFORMATION:

For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who respond through the use of automated, electronic, mechanical, or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by New Source Performance Standards (NSPS) must be retained by the owner or operator for at least two years; records required by the National Emission Standards for Hazardous Air Pollutants (NESHAP) must be retained by the owner or operator for at least five years; and records required by the NESHAP Maximum Achievable Control Technology standards (NESHAP–MACT) must be retained by the owner or operator for at least five years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 2, 1979).

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved Information Collection Requests (ICRs). Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the Paper Work Reduction Act.

Section A: List of ICRs To Be Submitted for OMB Review and Approval

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following fourteen continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB).

(1) *NSPS Subparts Ea and Eb*: NSPS for Municipal Waste Combustors (Subparts Ea and Eb); EPA ICR Number 1506.09; OMB Control Number 2060–0210; expiration date March 31, 2002.

(2) *NSPS Subpart LL*: NSPS for Metallic Mineral Processing Plants (Subpart LL); EPA ICR Number 0982.07; OMB Control Number 2060–0016; expiration date July 31, 2002.

(3) *NESHAP–MACT Subpart TTT*: NESHAP—Primary Lead Smelting; EPA ICR Number 1856.03; OMB Control Number 2060–0414; expiration date July 31, 2002.

(4) *NESHAP–MACT Subpart CCC*: NESHAP—Steel Pickling; EPA ICR Number 1821.03; OMB Control Number 2060–0419; expiration date July 31, 2002.

(5) *NESHAP–MACT Subpart LLL*: NESHAP for the Portland Cement Manufacturing Industry; EPA ICR Number 1801.03; OMB Control Number 2060–0416; expiration date August 31, 2002.

(6) *NESHAP Subpart N*: NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants (Part 61, Subpart N); EPA ICR Number 1081.07; OMB Control Number 2060–0043; expiration date August 31, 2002.

(7) *NSPS Subpart H*: NSPS for Sulfuric Acid Plants (Subpart H); EPA ICR Number 1057.09; OMB Control Number 2060–0041; expiration date August 31, 2002.

(8) *NSPS Subpart UUU*: NSPS for Calciners and Dryers in Mineral Industries (Subpart UUU); EPA ICR Number 0746.05; OMB Control Number 2060–0251; expiration date August 31, 2002.

(9) *NSPS Subpart VV*: NSPS for volatile organic compounds (VOCs) in the Synthetic Chemical Manufacturing Industry (SOCMI)—40 CFR part 60, subpart VV; EPA ICR Number 0662.07; OMB Control Number 2060–0012; expiration date August 31, 2002.

(10) *NSPS Subparts N and Na*: NSPS for Iron and Steel Plants—Basic Oxygen Furnaces (Subparts N and Na); EPA ICR Number 1069.07; OMB Control Number 2060–0029; expiration date September 31, 2002.

(11) *NSPS Subpart XX*: NSPS for Bulk Gasoline Terminals (Subpart XX); EPA ICR Number 0664.07; OMB Number 2060–0006; expiration date September 30, 2002.

(12) *NSPS Subpart DDD*: NSPS for the Polymer Manufacturing Industry (Subpart DDD); EPA ICR Number 1150.06; OMB Control Number 2060–0145; expiration date September 30, 2002.

(13) *NESHAP–MACT Subpart YY*: National Emission Standards for Hazardous Air Pollutants—Generic Maximum Achievable Control Technology Standards; EPA ICR Number 1871.03; OMB Control Number 2060–0420; expiration date September 30, 2002.

(14) NSPS Subpart CC: NSPS for Glass Manufacturing Plants (40 CFR part 60, subpart CC); EPA ICR Number 1131.07; OMB Control Number 2060–0054; expiration date October 31, 2002.

Section B: Contact Person for Individual ICRs

(1) *NSPS Subparts Ea and Eb:* NSPS for Municipal Waste Combustors (Subparts Ea and Eb); Jonathan Binder of the Compliance Assistance Policy and Integration Branch at (202) 564–2516 or via E-mail to *binder.jonathan@epa.gov;* EPA ICR Number 1506.09; OMB Control Number 2060–0210; expiration date March 31, 2002.

(2) *NSPS Subpart LL:* NSPS for Metallic Mineral Processing Plants (Subpart LL); Gregory Fried of the Air, Hazardous Waste and Toxics Branch at (202) 546–7016 or via E-mail at *fried.gregory@epa.gov;* EPA ICR Number 0982.07; OMB Control Number 2060–0016; expiration date July 31, 2002.

(3) *NESHAP–MACT Subpart TTT:* NESHAP–Primary Lead Smelting; contact Maria Malave of the Air, Hazardous Waste and Toxics Branch at (202) 564–7027 or via E-mail to *malave.maria@epa.gov;* EPA ICR Number 1856.03; OMB Control Number 2060–0414; expiration date July 31, 2002.

(4) *NESHAP–MACT Subparts CCC:* NESHAP–Steel Pickling; contact Maria Malave of the Air, Hazardous Waste and Toxics Branch at(202) 564–7027 or via E-mail to *malave.maria@epa.gov;* EPA ICR Number 1821.03; OMB Control

Number 2060–0419; expiration date July 31, 2002.

(5) *NESHAP–MACT Subpart LLL:* NESHAP for the Portland Cement Manufacturing; Gregory Fried of the Air, Hazardous Waste and Toxics Branch at (202) 546–7016 or via E-mail at *fried.gregory@epa.gov;* EPA ICR Number 1801.03; OMB Control Number 2060–0416; expiration date August 31, 2002.

(6) *NESHAP Subpart N:* NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants (Part 61, Subpart N); Gregory Fried of the Air, Hazardous Waste and Toxics Branch at (202) 546–7016 or via E-mail at *fried.gregory@epa.gov;* EPA ICR Number 1081.07; OMB Control Number 2060–0043; expiration date August 31, 2002.

(7) *NSPS Subpart H:* NSPS for Sulfuric Acid Plants (Subpart H); Marcia Mia of the Air, Hazardous Waste and Toxics Branch at (202) 564–7042 or via E-mail at *mia.marcia@epa.gov;* EPA ICR Number 1057.09; OMB Control Number 2060–0041; expiration date August 31, 2002.

(8) *NSPS Subpart UUU:* NSPS for Calciners and Dryers in Mineral Industries (Subpart UUU); Gregory Fried of the Air, Hazardous Waste and Toxics Branch at (202) 546–7016 or via E-mail at *fried.gregory@epa.gov;* EPA ICR Number 0746.05; OMB Control Number 2060–0251; expiration date August 31, 2002.

(9) *NSPS Subpart VV:* NSPS for volatile organic compounds (VOCs) in the Synthetic Chemical Manufacturing Industry (SOCMI)–40 CFR part 60, subpart VV; Marcia Mia of the Air, Hazardous Waste and Toxics Branch at (202) 564–7042 or via E-mail at *mia.marcia@epa.gov;* EPA ICR Number 0662.06; OMB Control Number 2060–0012; expiration date August 31, 2002.

(10) *NSPS Subparts N and Na:* NSPS for Iron and Steel Plants-Basic Oxygen Furnaces (Subparts N and Na); Maria Malave of the Air, Hazardous Waste and Toxics Branch at (202) 564–7027 or via E-mail to *malave.maria@epa.gov;* EPA ICR Number 1069.07; OMB Control Number 2060–0029; expiration date September 31, 2002.

(11) *NSPS Subpart XX:* NSPS for Bulk Gasoline Terminals (Subpart XX); Julie Tankersley of the Compliance Monitoring and Water Programs Branch at (202) 564–7002 or via E-mail to *tankersley.julie@epa.gov;* EPA ICR Number 0664.07; OMB Number 2060–0006; expiration date September 30, 2002.

(12) *NSPS Subpart DDD:* NSPS for the Polymer Manufacturing Industry (Subpart DDD); Sally Sasnett, of the Sector Analysis and Implementation Branch, (202) 564–7074 or via E-mail at *sasnett.sally@epa.gov;* EPA ICR Number 1150.06; OMB Control Number 2060–0145; expiration date September 30, 2002.

(13) *NESHAP–MACT Subpart YY:* National Emission Standards for Hazardous Air Pollutants-Generic Maximum Achievable Control Technology Standards; Sally Harmon of the Air, Hazardous Waste and Toxics Branch at (202) 564–7012 or via E-mail at *harmon.sally@epa.gov;* EPA ICR Number 1871.03; OMB Control Number 2060–0420; expiration date September 30, 2002.

(14) *NSPS Subpart CC:* NSPS for Glass Manufacturing Plants (40 CFR part 60, subpart CC); Gregory Fried of the Air, Hazardous Waste and Toxics Branch at (202) 546–7016 or via email at *fried.gregory@epa.gov;* EPA ICR Number 1131.07; OMB Control Number 2060–0054; expiration date October 31, 2002.

Section C: Summaries of Individual ICRs

(1) *NSPS Subparts Ea and Eb:* NSPS for Municipal Waste Combustors (Subparts Ea and Eb); EPA ICR Number 1506.09; OMB Control Number 2060–0210; expiration date March 31, 2002.

Affected Entities: Entities potentially affected by this action are those municipal waste combustors (MWCs) subject to the standards at 40 CFR part 60, subparts Ea and Eb for which: (1) Construction commenced after December 20, 1989 and on or before September 20, 1994, or (2) modification or reconstruction commenced after December 20, 1989 and on or before June 19, 1996. Entities potentially affected by this action under 40 CFR part 60, subpart Eb are those MWCs for which: (1) construction commenced after September 20, 1994, or (2) modification or reconstruction commenced after June 19, 1996. Both of these standards apply to MWCs with unit capacities greater than 225 megagrams per day.

Abstract: The Agency has determined that emissions from MWCs cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. NSPS subparts Ea and Eb require owners and operators with unit capacity above 225 megagrams per day to notify the Agency of the date of construction or reconstruction, the anticipated and actual startup dates, and notification of any physical or operation change to an existing facility which may increase the regulated pollutant emission rate. Owners and operators are also required to maintain records of the occurrence and duration of the startup, shutdown, or malfunction in the operation of an affected facility. Facilities subject to subpart Ea must install continuous monitoring systems (CMS) to monitor specified operating parameters to ensure that good combustion practices are implemented on a continuous basis. Owners and operators must submit quarterly and annual compliance reports. In addition, reporting and recordkeeping requirements for facilities subject to subpart Eb include information on cadmium, lead and mercury pollutants, and fugitive ash emissions testing and MWC siting requirements.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 40 with 212 responses per year. The annual reporting and recordkeeping hour burden for this collection was estimated to be 70,730 hours. On the average, each respondent reported 5.3 times per year and 334 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection was $563,010. This represented a $240,000 burden associated with capital/startup cost and a $323,010 burden associated with the annual operation and maintenance cost.

(2) *NSPS Subpart LL:* NSPS for Metallic Mineral Processing Plants (Subpart LL); EPA ICR Number 0982.07; OMB Control Number 2060–0016; expiration date July 31, 2001.

Affected Entities: Entities potentially affected by this action are those metallic mineral processing plants subject to the standards at 40 CFR part 60, subpart LL and include the following processes: each crusher and screen (open-pit mines); each crusher, screen, bucket, elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading and unloading station at a mill or concentrator which commenced construction, modification or reconstruction after August 24, 1992. The NSPS does not apply to facilities located in underground mines, or to facilities performing the beneficiation of uranium ore at uranium ore processing plants.

Abstract: The Agency has determined that particulate matter from metallic mineral processing plants cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners or operators of the affected facilities must make initial notifications, including notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of the demonstration of the continuous monitoring system (CMS), and notification of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which a monitoring system is inoperative.

Semiannual emission reports and monitoring systems performance reports are required. The reports include a record of any exceedance, description of the nature and cause of the problem, corrective measures taken, and identification of the period during which any CMS was inoperative.

Burden Statement: In the previously approved ICR, the average annual burden to industry was estimated to be 1,760 hours. The estimated number of existing sources subject to the NSPS for metallic mineral processing was 22. The total number of annual responses required by this regulation was estimated to be 44. Therefore, the frequency of response was 2.0 times per year with an average of 40 hours spent preparing each response.

The average annual operations and maintenance cost associated with this regulation was estimated to be $14,300. No capital costs were calculated because no new sources were expected to become subject to the standard over the three-year period covered by the ICR.

(3) *NESHAP—MACT Subpart TTT:* NESHAP—Primary Lead Smelting; EPA ICR Number 1856.03; OMB Control Number 2060–0414; expiration date July 31, 2002.

Affected Entities: Entities potentially affected by this action are those sinter machine, blast furnace, dross furnace, process fugitive, and fugitive dust sources at primary lead smelters subject to the standards at 40 CFR part 63, subpart TTT.

Abstract: The Agency has determined that emissions from primary lead smelters cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. All sources subject to this standard are required to submit: an initial report specifying the intended methods of compliance; a site-specific test plan prior to a performance test; certain Standard Operating Procedure Manuals; an initial statement of compliance that delineates the compliance methods chosen; a performance test report for lead compounds; and semiannual reports that include all monitoring results and a summary of any baghouse leak detector system alarms including a description of the corrective actions taken. Respondents must also submit reports, when applicable, regarding startup, shutdown, malfunctions, process changes, and construction or reconstruction.

In addition to the records required by 40 CFR part 63, subpart A (General Provisions), all respondents must maintain records of production for unrefined lead, copper matte, and copper speiss; the date and times of bag leak detector system alarms and the corrective action taken; and of baghouse inspection and maintenance activities.

Burden Statement: In the previously approved ICR, the reporting and recordkeeping hour burden for the information collection was 2,002 hours per year based on 3 existing respondents. The frequency of the response, except for initial requirements, is semiannual. The number of responses in the currently approved ICR is 6. Therefore, the number of hours, on the average, to prepare each response was 334. On the OMB 83–I Form in the previous ICR, 13 initial notification responses that were listed in the supporting statement were not shown in Block 13. So the correct number of responses for the previously approved ICR should have been 19 rather than 6.

The total annual recordkeeping and cost burden over the three-year period of the previously approved ICR is approximately $40,500 with $35,000 attributed to capital/startup costs and $5,500 to operation and maintenance (O&M) costs. Since no new sources are expected to startup over the next three years, the total projected annual recordkeeping and cost burden over the next three years is estimated to be $5,500 per year for O&M costs.

(4) *NESHAP–MACT Subpart CCC:* NESHAP—Steel Pickling; EPA ICR Number 1821.03; OMB Control Number 2060–0419; expiration date July 31, 2002.

Affected Entities: The entities affected by this standard are new and existing carbon steel pickling facilities which are subject to the standards at 40 CFR part 63, subpart CCC. The affected sources include batch and continuous pickling lines, acid regeneration plants, and acid storage tanks.

Abstract: The Agency has determined that emissions from steel pickling cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with the 40 CFR part 63, subpart A (General Provisions), respondents must submit a one-time notification of applicability and a one-time report on the performance test results for the primary emission control device. Respondents must develop and implement a Startup, Shutdown, and Malfunction Plan and submit semiannual reports for any occurrence where the procedures in the plan were not followed. Respondents are also required to submit semiannual reports for periods of operation during which the measured emissions exceeded that allowed by the standard and provide a written maintenance plan for each emission control device.

Respondents must also demonstrate compliance with the hydrochloric acid and chorine emission limitations and the requirements for each pickling line and acid regeneration plant by performing annual performance tests and installing devices to measure/record control device outputs and acid regeneration plant operating parameters.

Burden Statement: In the previously approved ICR, the total annual recordkeeping and reporting hourly burden was estimated at 23,190 hours. This estimate was based on 70 respondents with 1 new affected facility becoming subject to the standard over the three-year period. Based on the supporting data provided in the supporting statement of the previous ICR, the total annual responses averaged 47 per year. However, the OMB 83–I Form indicates that the total annual number of responses is 23 which was improperly calculated when compared to the supporting statement. The frequency of response should have been 0.7 responses per year rather than 0.3. Over the next three years, the reporting requirements will be semiannual, so the frequency of reporting will increase to 2.0 per respondent-year.

The annual reporting and recordkeeping cost burden was $15,687 per year. The capital/startup cost for monitoring devices was $8,217 averaged over the first three years of the ICR. The annualized cost of capital equipment is based on 80 percent of facilities purchasing monitoring equipment, and on an equipment lifetime of 15 years, an interest rate of 7 percent, and a capital recovery factor of 0.11. The operation and maintenance costs were estimated at $7,470 per year (averaged over the three-year period).

(5) *NESHAP–MACT Subpart LLL:* NESHAP for the Portland Cement Manufacturing Industry; EPA ICR Number 1801.03; OMB Control Number 2060–0416; expiration date August 31, 2002.

Affected Entities: Entities potentially affected by this action are those emission sources at new and existing portland cement plants subject to the standards at 40 CFR part 63, subpart LLL.

Abstract: The Agency has determined that emissions from portland cement

plants contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The standard applies to each new, existing or reconstructed kiln, in-line kiln/raw mill and greenfield raw material dryer at portland cement plants, except for kilns and in-line kiln/raw mills that burn hazardous waste which are subject to 40 CFR part 63, subpart EEE. In addition, the standard applies to each new, existing or reconstructed clinker cooler, raw mill, finish mill, raw material, clinker or finished product storage bin; conveying system transfer point; bagging system and bulk loading and unloading system at facilities which are major sources; and to each existing, reconstructed or new brownfield raw material dryer at facilities which are major sources.

Respondents shall submit notifications and reports of the initial performance test results. Plants must develop and implement a Startup, Shutdown, and Malfunction Plan and submit semiannual reports of any event where the plan was not followed. Plants must develop and implement an operations and maintenance plan and conduct and report the results of an annual combustion system inspection. Semiannual reports for periods of operation during which the monitoring parameters are exceeded (or reports certifying that no exceedances have occurred) also are required.

General requirements applicable to all NESHAP require records of applicability determinations; test results; exceedances; periods of startups, shutdowns, or malfunctions; monitoring records; and any other information needed to determine compliance with the applicable standard.

Subpart LLL requires respondents to install (where feasible) continuous opacity monitors and temperature monitoring systems on kilns and in-line kiln raw mills, and total hydrocarbon continuous emission monitors (CEMs) on new greenfield kilns, in-line kiln/raw mills and raw material dryers. Owners and operators are also subject to a deferred requirement to install particulate matter CEMS. Respondents are also required to maintain records of specific information needed to determine that the standards are being achieved and maintained.

Burden Statement: In the previously approved ICR, the average annual burden to industry for the last three years was estimated at 77,331 hours per year for 36 respondents (i.e., sources). The total number of annual responses required by this regulation was estimated to be 954. Thus, the frequency of response was estimated to be 27 responses per year with an average of 81 hours spent preparing each response.

In the previously approved ICR, the total capital/startup cost associated with monitoring equipment was estimated at $1,432,000 per year. This corresponds to an average annualized capital cost of $750,000 per year for the three years following promulgation. Annual operation and maintenance costs averaged $682,000 per year.

(6) *NESHAP Subpart N:* NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants (Part 61, Subpart N); EPA ICR Number 1081.07; OMB Control Number 2060–0043; expiration date August 31, 2002.

Affected Entities: Entities potentially affected by this action are each glass melting furnace that uses commercial arsenic as a raw material that is subject to the standards at 40 CFR part 61, subpart N.

Abstract: The Administrator has judged that arsenic emissions from glass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Sources subject to NESHAP subpart N are required to demonstrate initial compliance through emission tests. In addition, a continuous monitoring system (CMS) for the measurement of the opacity of emissions from any control device must be installed and operated. The regulation also requires initial notifications for construction, modification, CMS demonstration, and performance testing. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to this regulation provide information on the operation of the emissions control device and compliance with the emission limit. Records and reports addressing each approved control device bypass are required. Arsenic emission estimates and semiannual reports of uncontrolled arsenic emissions are also required.

Burden Statement: In the previously approved ICR, the average annual burden to industry over the past three years from these recordkeeping and reporting requirements was estimated at 6,769 hours per year with 47 sources subject to the standard. The total number of annual responses required by this regulation was estimated to be 43. The annual reporting and recordkeeping burden for the collection of information was estimated to average approximately 157 hours per response, and the frequency of response was estimated to be 0.9 responses per year.

In the previously approved ICR, there were no capital/startup costs because no new sources were expected to startup during the ICR renewal period. The annual operation and maintenance cost for the 47 existing sources was estimated to be $164,500.

(7) *NSPS Subpart H:* NSPS for Sulfuric Acid Plants (Subpart H); EPA ICR Number 1057.09; OMB Control Number 2060–0041; expiration date August 31, 2002.

Affected Entities: Entities potentially affected by this action are those contact sulfuric acid plants that burn elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides, mercaptans, or acid sludge subject to the standards at 40 CFR part 60, subpart H. The standards do not address facilities where conversion to sulfuric acid is used primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

Abstract: In the Administrator's judgment, sulfur dioxide (SO_2) and acid mist emissions from sulfuric acid plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test, and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

The reporting requirements for this industry include the initial notifications listed, the initial performance test results, and semiannual reports of excess emissions. Excess emission reports shall include all three-hour periods (or the arithmetic average of three consecutive one-hour periods) during which the integrated average SO_2 emission exceeded the applicable standard. Excess emission reports must include: the magnitude of excess emissions; conversion factors used; the date and time of commencement and completion of each excess emission time period; identification of excess emissions occurring during startups, shutdowns, and malfunctions; the nature and cause of the malfunction and corrective measures taken; and identification of the time period during which the CEMS was inoperative.

The reporting requirements include semiannual excess emission reports and monitoring system performance reports which include information regarding the exceedances of control device operating parameters; the date and time of the exceedance or deviance; the nature and cause of the malfunction and corrective measures taken; and identification of the time period during which the CMS was inoperative.

Burden Statement: In the previously approved ICR, the projected hour burden was 24,823. The number of respondents was 106. The total number of annual responses was estimated to be 212 which is a reporting frequency of 2 times per year with an average of 117 hours spent preparing each response.

The annual reporting and recordkeeping cost burden was estimated to be $477,000 for the operation and maintenance of the required SO_2 monitors.

(8) *NSPS Subpart UUU:* NSPS for Calciners and Dryers in Mineral Industries (Subpart UUU); EPA ICR Number 0746.05; OMB Control Number 2060–0251; expiration date August 31, 2002

Affected Entities: Entities potentially affected by this action are each calciner or dryer at a mineral processing plant subject to the standards at 40 CFR part 60, subpart UUU. The standards apply to new, modified and reconstructed calciners and dryers at mineral processing plants that process or produce any of the following minerals and their concentrates or any mixture of which the majority is any of the following minerals or a combination of these minerals: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite. There are several applicability exceptions. Feed and product conveyors are not considered part of the affected facility. Facilities subject to 40 CFR part 60, subpart LL, Metallic Mineral Processing Plants are not subject to this standard. There are additional processes and process units listed in the standard which are not subject to the provisions of this subpart.

Abstract: In the Administrator's judgement, particulate matter released from calciners and dryers cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners or operators of the affected facilities must make one-time only reports including notifications of facility startup, scheduling and results of the initial performance test; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and notification of the demonstration of the continuous monitoring system (CMS). Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Performance tests are needed as these are the Agency's records of a source's initial capability to comply with emissions standards and note the operating conditions under which compliance was achieved.

The monitoring requirements are outlined in § 60.734 of the standard. They are dependant on the type of dryers or calciner. Specific calciners and dryers are required to install, calibrate, maintain, and operate a continuous monitoring system. Semiannual reports of excess emissions are required.

Burden Statement: In the previously approved ICR, the total annual burden to industry was estimated to be 6,019 hours. The total number of sources was estimated to be 155 and the total number of annual responses required by this regulation was estimated to be 310. The annual public reporting and recordkeeping burden for this collection of information was estimated to average 19 hours per response with a frequency of response estimated to be 2.0 responses per year. Approximately 5 new sources a year become subject to the standard.

In the previously approved ICR, the capital/startup costs to comply with this standard were estimated at $20,000. This was based on 5 new sources per year multiplied by $4,000 per monitoring device. The annual operations and maintenance cost (O&M) was estimated at $97,500. Therefore, the average annual burden for capital/startup and O&M cost were, therefore, estimated to be $117,500.

(9) *NSPS Subpart VV:* NSPS for volatile organic compounds (VOCs) in the Synthetic Chemical Manufacturing Industry (SOCMI)—40 CFR part 60, subpart VV; EPA ICR Number 0662.06; OMB Control Number 2060–0012; expiration date August 31, 2002.

Affected Entities: The standards at 40 CFR part 60, subpart VV apply to specific pieces of process unit equipment used in the synthetic organic chemicals manufacturing industry including pumps in light liquid service, compressors, pressure relief devices in gas/vapor service, sampling connection systems, open-ended valves or lines, valves in gas/vapor service and light liquid service, pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service and flanges and other connectors.

Abstract: In the Administrator's judgement emissions from process unit equipment used in the synthetic organic chemicals manufacturing industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. The standard requires owners or operators of the affected facilities to make the following one-time only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual date of startup; notification of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which the standard applies; and the unit identification and number of components subject to the standards. All semiannual reports are to include process unit identification, number of components leaking and not repaired, dates of process unit shutdowns and revisions to items submitted in the initial semiannual report. The source is also required to notify the Administrator of the election to use an alternative standard for valves ninety days before implementing the provision.

Burden: In the previous ICR, the hour burden for this ICR was estimated at 104,198 hours per year for 1120 respondents (1046 existing sources and 84 new sources). The number of annual responses was 2240. On average, each respondent must report 2.0 times per year with average time of 47 hours to prepare each response.

The annual cost burden is estimated to be $18,000 per year for the capital/startup purchase of monitors to perform fugitive monitoring. There are no ongoing O&M costs for these monitors.

(10) *NSPS Subparts N and Na:* NSPS for Iron and Steel Plants—Basic Oxygen Furnaces (Subparts N and Na); EPA ICR Number 1069.07; OMB Control Number 2060–0029; expiration date September 31, 2002.

Affected Entities: Entities potentially affected by this action are each basic oxygen process furnace (BOPF) in an iron and steel plant commencing construction, modification or reconstruction after the date of proposal of the standards at 40 CFR part 60, subpart N and any top-blown basic oxygen process furnace (BOPF), hot

metal transfer station or skimming station for which construction, reconstruction, or modification commenced after the date of proposal of the standards at 40 CFR part 60, subpart Na.

Abstract: In the Administrator's judgement emissions from basic oxygen furnaces cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Under 40 CFR part 60, subparts N and Na, sources are required to meet monitoring, recordkeeping and reporting requirements listed in the General Provisions (40 CFR part 60, subpart A). In addition, sources must maintain records of time and duration of each steel production cycle; time and duration of the rates or levels of any diversion of exhaust gases from the main stack; the various rates or levels of exhaust ventilation at each phase of the cycle through each duct of the secondary emission capture system; time and duration of the visible emission data sets; particulate matter concentration exiting the control device and discharge into the atmosphere; pressure loss through the venturi constriction of the scrubber continuously; and water supply pressure to the venturi scrubber control equipment continuously.

Sources are also required to provide one-time initial notifications; and to report, on a semiannual basis, on the initial performance test results and any monitoring results that average more than 10% below the average level maintained during the most recent performance test.

Burden Statement: For the previously approved ICR, the annual reporting and recordkeeping labor burden was 1,795 hours for 13 responses from 11 sources subject to the standard. This estimate was based on 11 existing BOPF shops since we assumed that of the 25 existing BOPF shops, only three of them were subject to subpart N because they were constructed after the date of proposal, and only 8 sources were subject to Subpart Na because they had modifications related to hot metal transfer stations and skimming stations that met the NSPS definition for reconstruction or modification. We assumed that one new source became subject to NSPS, subparts N and Na, within the three-year period. The frequency of the response except for initial requirements is semiannual and the average number of hours spent preparing each response is 136.

The total annualized cost burden over the three-year period in the previous ICR was estimated at $35,000. There are no capital/startup costs anticipated over the next three years because the Agency anticipates no new sources. However, annual operation and maintenance costs (O&M) for the monitoring equipment will, of course, continue. In the previously approved ICR, the O&M cost to the regulated entities was $17,400 per year.

(11) *NSPS Subpart XX:* NSPS for Bulk Gasoline Terminals (Subpart XX); EPA ICR Number 0664.07; OMB Number 2060–0006; expiration date September 30, 2002.

Affected Entities: Entities potentially affected by this action are those subject to the standards at 40 CFR Part 60, Subpart XX which includes the owners and operators of bulk gasoline terminals (BGTs) which deliver liquid products into gasoline tank trucks. A BGT is any gasoline facility which receives gasoline by pipeline, ship or barge, and has a gasoline throughput greater than 75,700 liters per day. The affected facility includes the loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to fill delivery tank trucks.

Abstract: The Agency has judged that volatile organic chemical emissions from BGTs cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners or operators of BGTs must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test, and the results of the initial performance test.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility.

Monitoring requirements specific to bulk gasoline terminals consist mainly of identifying and documenting vapor tightness for each gasoline tank truck that is loaded at the affected facility, and notifying the owner or operator of each tank truck that is not vapor tight. The owner or operator must also perform a monthly visual inspection for liquid or vapor leaks.

Burden Statement: In the previously approved ICR, the average annual burden to the industry to meet the recordkeeping and reporting requirements was estimated at 11,420 hours per year for 40 sources reporting annually. Therefore, the number of hours spent by the sources preparing each response was 286.

There are no capital/startup or operation and maintenance costs associated with this ICR.

(12) *NSPS Subpart DDD:* NSPS for the Polymer Manufacturing Industry (Subpart DDD); EPA ICR Number 1150.06; OMB Control Number 2060–0145; expiration date September 30, 2002.

Affected Entities: Entities potentially affected by this action are subject to the standards at 40 CFR part 60, subpart DDD which manufacture polypropylene, polystyrene or polyethylene terephthalate that commence construction, modification or reconstruction after January 10, 1989.

Abstract: The Agency has determined that emissions of volatile organic compounds from polymer manufacturing facilities cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test, and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. The standards require periodic recordkeeping to document process information relating to the sources' ability to meet the requirements of the standard and to note the operation conditions under which compliance was achieved. In addition, owners/operators of the affected facilities are required to record periods of operation during which the performance standards are exceeded, results of flare pilot flame monitoring, all periods of operation of a boiler or process heater, and to continuously record the indication of any emission stream diverted away from the control device.

Burden Statement: In the previously approved ICR, approximately 105 existing sources were assumed to be subject to the standard and an estimated additional 10 new sources were expected to become subject to the standard in each of the three years addressed by the ICR. The total number of annual responses was estimated to be 250 and the total annual hours to fulfill the recordkeeping and reporting requirements was 14,691. On average, each respondent must report 2.4 times per year and average of 59 hours was spent preparing each ICR. The total annual capital/startup cost was estimated at $30,000 and the estimated annual operation and maintenance cost was estimated at $735,000 for a total annual cost of $765,000.

(13) *NESHAP-MACT Subpart YY:* National Emission Standards for Hazardous Air Pollutants—Generic Maximum Achievable Control Technology Standards; EPA ICR Number 1871.03; OMB Control Number 2060–0420; expiration date September 30, 2002.

Affected Entities: Entities potentially affected by this action are those subject to the standards at 40 CFR part 63, subpart YY which produce acetal resins, acrylic and modacrylic fibers, hydrogen fluoride, and polycarbonate(s). The types of emission points regulated include storage vessels, process vents, transfer racks, and wastewater streams.

Abstract: The Agency has judged that hazardous air pollutant (HAP) emissions from the production of acetal resins (AR), acrylic and modacrylic fibers (AMF), hydrogen fluoride (HF), and polycarbonate(s) (PC) production cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. The EPA chose to regulate the AR production, AMF production, HF production, and PC production source categories under one Subpart to streamline the regulatory burden associated with the development of separate standardmaking packages. All of these source categories have five or fewer major sources and have similar emission points and MACT control requirements. This subpart is referred to as the "generic MACT standards—Subpart YY."

The Subpart YY generic MACT standards contain generic compliance, recordkeeping, reporting, startup, shutdown, and malfunction provisions, and also identify source category-specific control, monitoring, recordkeeping, and reporting requirements for the regulated production source categories. Subpart YY also points affected sources to meet control, testing, monitoring, inspection, recordkeeping and reporting requirements contained in other generic MACT subparts depending upon the type of emission unit and the control option selected. For example, the provisions of subpart SS are invoked for sources using closed vent systems, control devices, recovery devices, and where emissions are routed to a fuel gas system or process. Subparts TT and UU apply to equipment leaks. Subpart WW contains control, recordkeeping, and reporting requirements for storage vessels. Recordkeeping and reporting burden associated with provisions of these other four generic subparts is accounted for in the subpart YY ICR for the generic MACT standards, as they apply to the AR production, AMF production, HF production, and PC production source categories.

Monitoring, inspection, recordkeeping, and reporting requirements are used to assure and document compliance with the emission standards. Monitoring, inspection, recordkeeping and reporting requirements are, where appropriate, based on monitoring, inspection, recordkeeping and reporting requirements used in standards for sources similar to those regulated under the generic MACT. Additionally, the generic MACT standards subpart cross-references §§ 63.1 through 63.5, and §§ 63.12 through 63.15 of the General Provisions for this part, and has pulled some of the regulatory text contained in §§ 63.6 through 63.11 into the standard.

As such, affected sources are required to submit applications for approval of construction or reconstruction, submit notification of initial startup, notification of compliance status, and periodic (semiannual reports), develop startup, shutdown, and malfunction plans, and submit startup, shutdown, and malfunction reports. Sources must keep records of information relating to their compliance status, such as calculations of emission rates, records of leak detection and repair, or records of control device operating parameters as monitored from continuous monitoring systems.

Affected sources must also keep records pertaining to their assessment of applicability. These include total resource effectiveness calculations, flow rate records, total organic compound or HAP concentration records, and process change records. In cases where there are overlapping requirements for storage vessels, process vents, equipment leaks, or wastewater control, the source may choose which subpart to meet. In these cases, sources report their selection in the Notification of Compliance Status.

Burden Statement: In the previously approved ICR, the average annual burden to the industry to meet the recordkeeping and reporting requirements was estimated at 6,125 hours per year. The hourly burden is based on 10 respondents and 89 annual responses. On the average, each respondent must report 8.9 times per year and spend an average of 69 hours preparing each response.

There are no annual capital/startup costs associated with this ICR and the annual operation and maintenance cost was estimated to be $1,800 per year.

(14) *NSPS Subpart CC:* NSPS for Glass Manufacturing Plants (40 CFR part 60, subpart CC); EPA ICR Number 1131.07; OMB Control Number 2060–0054; expiration date October 31, 2002.

Affected Entities: Entities potentially affected by this action are each glass melting furnace at a glass manufacturing plant subject to the standards at 40 CFR part 60, subpart CC. health or welfare. The standards do not apply to hand glass melting furnaces, glass melting furnaces designed to produce less than 4,550 kilograms of glass per day, or all-electric melters. Experimental furnaces are not subject to the emission standards.

Abstract: In the Administrator's judgement, particulate matter from glass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public. The standards set particulate matter emission limits. Owners or operators of the affected facilities must make initial reports when a source becomes subject; conduct and report on performance testing; demonstrate and report on continuous monitor performance; maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required.

Burden Statement: In the previously approved ICR, approximately 30 sources were estimated to be subject to the standard. It was estimated that no additional sources would become subject to the standard. The average annual burden to industry from the recordkeeping and reporting requirements was estimated to be 398 hours. The total number of annual responses required by this regulation was estimated to be 61. Therefore, the frequency of response was estimated to be 2.0 responses per year and the annual public reporting and recordkeeping burden for this collection of information was estimated to average 6.5 hours per response.

The annual operations and maintenance cost was estimated at $174,000. This is based on 30 existing sources multiplied by $5,800 per years for upkeep of the monitoring device.

Dated: October 22, 2001.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 01–27110 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7091–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Drinking Water Customer Satisfaction Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Drinking Water Customer Satisfaction Survey, EPA ICR number 2016.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 28, 2001.

ADDRESSES: Beth Hall, 4606, USEPA Headquarters, Office of Ground Water and Drinking Water, 1200 Pennsylvania Ave., NW., Washington DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting the Safe Drinking Water Hotline at 1–800–426–4791. Information will also be available at *http://www.epa.gov/safewater/protect/features.html.*

FOR FURTHER INFORMATION CONTACT: Beth Hall, (202) 260–5553, (202) 260–0732 (fax), hall.beth@epa.gov.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are randomly selected EPA information customers, adults 18 and older, served by public water systems.

Title: Drinking Water Satisfaction Survey EPA ICR #2016.01.

Abstract: The Office of Ground Water and Drinking Water is planning to conduct a satisfaction survey on the effectiveness of our efforts to provide drinking water information to our customers. Under the right to know provisions of the Safe Drinking Water Act, EPA is charged with helping to provide people with information about their drinking water. This survey will allow EPA to evaluate our process for disseminating this information. We will use the survey results to modify our information efforts to improve customer satisfaction. The survey will be conducted via telephone interview with 1000 randomly selected EPA information customers (adults served by public water systems) by the Gallup organization under contract to EPA. Through the survey, EPA information customers will be asked specific questions about two key sources of tap water information—consumer confidence reports (annual water quality reports) and source water assessments. Our statistical analysis of the data will assist EPA in understanding the impact of this information and whether this information is reaching to public, or if additional measures are needed to make the information available and understandable. The survey instrument is a 10 minute, voluntary telephone questionnaire covering approximately 31 questions. We intend to repeat the survey every two years so that we may evaluate the success of our right to know efforts and make adjustments accordingly. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The public reporting burden for the collection of information is estimated to average eleven (11) minutes per response. Respondents not familiar with having received EPA drinking water information will not be asked detailed questions about their satisfaction. There is no cost, other than 10 minutes or less of time, for the approximately 1000 respondents. The cost to the agency is for collecting this information including collection and analyses of survey results. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 7, 2001.

William R. Diamond,

Director, Drinking Water Protection Division.

[FR Doc. 01–27118 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–10011; FRL–6723–4]

Fall 2001 Workshop Schedules for EPCRA/TRI Training on the New Reporting Requirements for Lead and Lead Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will conduct full-day EPCRA/TRI Training workshops across the country during the fall of 2001. These workshops are intended to assist persons preparing their annual reports on release and other waste management activities of listed chemicals, particularly lead and lead compounds, as required under sections 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). These reports must be submitted to EPA and designated state officials on or before July 1 of each year. A portion of each workshop will focus on preparing annual reports on chemical releases and other waste management activities under the new reporting requirements for lead and lead compounds; these reports are due by July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen C. DeVito, (202) 260–6185, devito.steve@epa.gov for specific information on this notice. Information concerning the EPCRA/TRI Training workshops is also available on EPA's web site at http://www.epa.gov/tri.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

You may find this notice applicable if you manufacture, process, or otherwise use any EPCRA section 313 listed toxic chemical, particularly lead, lead compounds, or brass, bronze or stainless steel alloys that contain lead. Potentially applicable categories and entities may include, but are not limited to:

Category	Examples of regulated entities
Industry	Metal mining, Coal mining, Manufacturing, Electricity generating facilities, Hazardous waste treatment/TSDF, Chemicals and allied products-wholesale, Petroleum bulk plants and terminals, and Solvent recovery services.
Federal Government	Federal facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to find this notice of training workshops offerings applicable. Other types of entities not listed in the table may also find this notice applicable. To determine whether your facility could find this notice applicable, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. You may want to attend one of these workshops if:

- your facility is covered under section 313 of the Emergency Planning and Community Right-To-Know Act (EPCRA);
- your facility is a federal facility that manufactures, processes, or otherwise uses section 313 listed toxic chemicals;
- you prepare annual release and other waste management activity reports (i.e., Form R or Form A reports);
- you are a consultant who assists in the preparation of these reports; or
- you would like information on recent changes to EPCRA/TRI regulations, particularly those pertaining to lead and lead compounds.

The EPA conducts training workshops to assist you with your reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA) or Executive Order 13148 (for federal facilities). You must submit your annual release and other waste management activity reports (i.e., Form R) if your facility meets the descriptions for the following Standard Industrial Classification (SIC) codes and qualifiers, and meets other criteria specified in part 372 of Title 40 of the Code of Federal Regulations:

Metal Mining (SIC Code 10, except 1011, 1081, and 1094);

Coal Mining (SIC Code 12, except 1241);

Manufacturing (SIC Codes 20–39)

Electricity Generating Facilities (SIC Codes 4911, 4931, and 4939—limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce);

Hazardous Waste Treatment/TSDF (SIC Code 4953—limited to facilities regulated under RCRA subtitle C, 42 U.S.C. section 6921 *et seq.*);

Chemicals and Allied Products (SIC Code 5169);

Petroleum Bulk Plants and Terminals (SIC Code 5171);

Solvent Recovery (SIC Code 7389—limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); and

Federal Facilities (by Executive Order 13148).

B. What Is Presented at These Training Workshops?

The training workshops present general information on the reporting requirements of EPCRA section 313 and PPA section 6607, and detailed information on the new reporting requirements for lead and lead compounds. On January 17, 2001 EPA published a final rule entitled "Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting; Final Rule" (**Federal Register**, 66 (11), pages 4499–4547). In this rulemaking EPA concluded that lead and lead compounds are persistent and bioaccumulative and meet EPA's criteria for classification as PBTs. With this rulemaking EPA lowered the 25,000 pound and 10,000 pound reporting thresholds to 100 pounds. The lower reporting threshold applies to lead and all listed lead compounds, except for lead contained in stainless steel, brass and bronze alloys. Thus, any facility that manufactures, processes or otherwise uses 100 pounds or more of lead or any listed lead compound(s) per year must report environmental releases of these substances to EPA annually. The first year for release reporting under this new rule is calendar year 2001. Release reports are due no later than July 1, 2002. These workshops will provide clear guidance on: the specific details of this new regulation; which facilities must file release reports for lead and lead compounds; which forms of lead and lead compounds are exempt from reporting; and methods to estimate releases of lead and lead compounds into the environment following manufacture, processing, use, or waste management activities of lead and lead compounds.

A variety of hands-on exercises along with supporting materials will be used to help you understand any reporting obligations you might have under EPCRA section 313, particularly for reporting releases and other waste management activities of lead and lead compounds. The training courses are scheduled in the fall to assist you in preparing and submitting your report(s) for the Reporting Year 2001, which are due on or before July 1, 2002.

C. How Much Time Is Required for the Training Workshops?

Each workshop will run for a full business day (i.e., from approximately 8:30 am to 5:00 pm) and will consist of two half-day modules. The first module is given in the morning and is devoted to a general discussion of EPCRA section 313 and PPA section 6607 reporting requirements, with exercises used to reinforce key concepts. The second module is given in the afternoon and is devoted to discussions on the new reporting requirements and reporting changes for lead and lead compounds, as required by the new TRI lead rule.

D. When and Where Are These Training Workshops Offered, and How Do I Register?

The dates, locations and individual contact information for training workshops are provided below. You should note that although unlikely, changes to the date or location of a

given workshop may occur. Also, if there is insufficient interest for any of the workshops, those workshops may be canceled. The Agency bears no responsibility for your decision to purchase non-refundable transportation tickets or accommodation reservations. It is advisable to verify a workshop date and location prior to registering for the workshop. You may access current training workshop schedule information via the TRI Home Page (http://www.epa.gov/tri). You may also direct specific questions regarding registration, dates and locations for specific training workshops to the contact individual listed below.

FALL 2001 EPCRA/TRI TRAINING WORKSHOP SCHEDULE[1]

Date	General location	EPA contact person
November 9, 2001	San Francisco, CA (EPA Region 9)	Adam Browning, phone: 415–744–1121, e-mail: browning.adam@epa.gov
November 13, 2001	Seattle, WA (EPA Region 10)	David Somers, phone: 206–553–2571, e-mail: somers.david@epa.gov
November 16, 2001	Kansas City, KS (EPA Region 7)	Stephen Wurtz, phone: 913–551–7315, e-mail: wurtz.stephen@epa.gov
November 21, 2001	Dallas, TX (EPA Region 6)	Warren Layne, phone: 214–665–8013, e-mail: layne.warren@epa.gov
November 27, 2001	Philadelphia, PA (EPA Region 3)	William Reilly, phone: 215–814–2072, e-mail: reilly.william@epa.gov
November 28, 2001	Atlanta, GA, (EPA Region 4)	Ezequiel Velez, phone: 404–562–9191, e-mail: velez.equiel@epa.gov
December 4, 2001	Boston, MA (EPA Region 1)	Dwight Peavey, phone: 617–918–1829, e-mail: peavey.dwight@epa.gov
December 5, 2001	Chicago, IL (EPA Region 5)	Thelma Codina, phone: 312–886–6219, e-mail: codina.thelma@epa.gov

[1] This schedule may change without further notice. A schedule reflecting any changes to this notice will be posted at http://www.epa.gov/tri.

E. How Much Will the Training Course Cost?

There are generally no registration fees for the Training Workshops. If registration fees are required you will be notified at the time of registration. You should check with the contact person of a particular workshop for information regarding registration fees.

List of Subjects

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxics release inventory.

Dated: October 18, 2001.

Elaine G. Stanley,

Director, Office of Information Analysis and Access.

[FR Doc. 01–27119 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7091–7]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The United States Environmental Protection (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This Settlement is intended to resolve Piscataway Associates' and Piscataway Associates Properties Corp's. liability for response costs incurred by EPA at the Chemical Insecticide Corporation Site in Edison Township, New Jersey.

DATES: Comments must be provided on or before November 28, 2001.

ADDRESSES: Comments should be addressed to the Environmental Protection Agency, Office, of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007 and should refer to: In the Matter of the Chemical Insecticide Corporation Site, EPA Index No. II CERCLA–02–2000–2338.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007, Attention: Juan Fajardo, Esq. (212) 637–3132.

SUPPLEMENTARY INFORMATION: In accordance with section 122(h)(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Chemical Insecticide Corporation Site located in Edison Township, New Jersey. Section 122(h) of CERCLA provides EPA with the authority to consider, compromise and settle certain claims for costs incurred by the United States.

Piscataway Associates and Piscataway Associates Properties Corp. will be notified by EPA to place the property located at 30 Whitman Avenue, Edison Township, New Jersey (Property) for sale with a commercial real estate brokerage firm acceptable to EPA. Proceeds from the sale of the Property will be used to pay reasonably incurred closing costs as well as federal and state taxes owed on the proceeds of the sale. Thereafter, Piscataway Associates and Piscataway Associates Properties Corp. shall pay EPA 90% of the remaining sale proceeds as reimbursement of response costs incurred by EPA at the Chemical Insecticide Corporation Site.

A copy of the proposed administrative settlement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 100007.

Dated: September 27, 2001.

William J. Muszynki,

Acting Regional Administrator, Region 2.

[FR Doc. 01–27117 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENT PROTECTION AGENCY

[FRL–7092–5]

Proposed Past Cost Administrative Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response Compensation and Liability Act; In the Matter of M Metal Site, Indianapolis, Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the M Metal site in Indianapolis, Indiana, with PSI Energy, Inc ("PSI"). The settlement requires PSI to pay $100,000.00 to the Hazardous Substance Superfund.

Under the terms of the settlement, PSI agrees to pay the settlement amount. In exchange for its payment, the United States covenants not to sue or take administrative action pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), to recover costs that the United States paid in connection with the Site through June 20, 2001. In addition, PSI is entitled to protection from contribution actions or claims as provided by sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for response costs incurred by any person at the Site through June 20, 2001.

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Indianapolis Public Library in Indianapolis, Indiana.

DATES: Comments must be submitted on or before November 28, 2001.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Mark Geall, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 353–9538. Comments should reference the M Metal site, Indianapolis, Indiana, and EPA Docket No. V–W–01–C–649, and should be addressed to Mark Geall, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark Geall, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 353–9538.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended. 42 U.S.C. 9601, *et. seq.*

Dated: October 11, 2001.

Margaret Guerriero,

Acting Director, Superfund Division.

[FR Doc. 01–27109 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7092–6]

Notice of Proposed Administrative Order on Consent for Remedial Investigation/Feasibility Study Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122 (h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative order on consent concerning the Molycorp, Inc. Site, with potentially responsible party Molycorp, Inc.

The order requires the settling party to prepare and perform a remedial investigation and feasibility study (RI/FS) for the Molycorp, Inc. Site in Taos County, New Mexico. Molycorp must also reimburse the Environmental Protection Agency (EPA or the Agency), for all past response costs and all response costs incurred in connection with the RI/FS, subject to the reservations outlined in the order.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the cost recovery component of the order. The Agency will consider all comments received and may modify or withdraw its consent to the cost recovery component of the order if comments received disclose facts or considerations which indicate that the cost recovery component of the order is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, 7th Floor, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before November 28, 2001.

ADDRESSES: The proposed order and additional background information relating to the order are available for public inspection at 1445 Ross Avenue, 7th Floor, Dallas, Texas 75202–2733. A copy of the proposed order may be obtained from Mark Purcell, Remedial Project Manager, 1445 Ross Avenue, 6SF–LP, Dallas, Texas 75202–2733 or by calling (214) 665–6707. Comments should reference the Molycorp, Inc. Superfund Site, Taos County, New Mexico, and EPA Docket Number 06–07–01, and should be addressed to Mark Purcell at the address listed above.

FOR FURTHER INFORMATION CONTACT: Michael Boydston, Assistant Regional Counsel, US Environmental Protection Agency, 1445 Ross Avenue, 6 RC–SF, Dallas, Texas 75202–2733 or call (214) 665–8063.

Dated: October 17, 2001.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 01–27112 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7091–8]

Notice of Availability of Draft NPDES General Permits for Construction Dewatering Activity Discharges in the States of Massachusetts and New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of the Draft NPDES General Permits MAG070000 and NHG070000.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency—New England (EPA–NE), is today providing notice of the availability of the Draft National Pollutant Discharge Elimination System (NPDES) general permit for construction dewatering activity discharges to certain waters of the States of Massachusetts and New Hampshire as authorized by section 301(a) of the Clean Water Act. See also 40 CFR 122.28. The existing general permit was issued by EPA–NE and published at 61 FR 19284, May 1, 1996. The general permit expired on May 01, 2001. The reissued draft NPDES general permit establishes Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions and management practices for construction dewatering activity discharges. Construction dewatering activity is defined as pumped or drained discharges of groundwater and/or stormwater from excavations or other points of accumulation associated with a construction activity.

Owners and/or operators of sites that discharge groundwater and/or stormwater from construction dewatering activities, including those currently authorized to discharge under the expired general permit, will be required to submit an NOI to EPA–NE to be covered by the appropriate general permit and will receive a written notification from EPA–NE of permit coverage and authorization to discharge under the general permit. The general permit does not cover new sources as defined under 40 CFR 122.2.

DATES: For comment period: interested persons may submit comments on the draft general permit as part of the administrative record to the EPA–NE, at the address given below, no later than November 28, 2001.

ADDRESSES: The draft permit is based on an administrative record available for public review at EPA–NE, Office of Ecosystem Protection (CPE), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. Written comments may be hand delivered or mailed to this address. Electronic comments may be e-mailed to *frawley.austine@EPA.GOV.*

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday excluding holidays from: Austine Frawley, EPA–NE, Office of Ecosystem Protection, NPDES Permit Unit; One Congress Street, Boston, MA 02114–2023; telephone: 617–918–1065; e-mail: *frawley.austine@EPA.GOV.*

SUPPLEMENTARY INFORMATION: The Draft NPDES General Permit may be viewed over the Internet via the EPA–NE web site *www.epa.gov/region01/topics/water/permits.html.* To obtain a hard copy of the document, please call, e-mail or write to Ms. Frawley at the addresses listed above. The draft general permit includes FACT SHEET AND SUPPLEMENTARY INFORMATION sections that set forth principal facts and the significant factual, legal and policy questions considered in the development of the draft permit. A reasonable fee may be charged for copying requests.

When the general permit is reissued, it will be published in its entirety in the **Federal Register**. The general permit will be effective on the date specified in the **Federal Register** and it will expire five years from the date that the final permit is published in the **Federal Register**.

Dated: October 17, 2001.

Robert W. Varney,

Regional Administrator, EPA—New England.

[FR Doc. 01–27111 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 2001.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Community Trust Bancorp., Inc., Pikeville, Kentucky; to acquire 100 percent of the voting shares of Citizens National Bank & Trust of Hazard, Hazard, Kentucky.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Brighton Bancorp, Inc., Brighton, Tennessee; to acquire 81.34 percent of the voting shares of Parkin Bancorp, Inc., Parkin, Arkansas, and thereby indirectly acquire voting shares of First State Bank, Parkin, Arkansas.

Board of Governors of the Federal Reserve System, October 24, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27169 Filed 10–26–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 2001.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. East Texas Financial Corporation, Kilgore, Texas, and East Texas Delaware Holdings, Wilmington, Delaware; to acquire 55 percent of the voting shares of East Texas Financial Services, Inc., Tyler, Texas, and thereby indirectly acquire First Federal Savings and Loan Association, Tyler, Texas, and engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 24, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27170 Filed 10–26–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, October 31, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of the routine nature, no discussion of the following item is anticipated. The matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed 2002 Private Sector Adjustment Factor.

Discussion Agenda:

2. Proposed 2002 fee schedules for priced services.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: October 24, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27203 Filed 10–25–01; 10:56 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIMES AND DATE: Approximately 10:30 a.m., Wednesday, October 31, 2001, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 24, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27204 Filed 10–25–01; 10:56 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0262]

Submission for OMB Review; Comment Request Entitled Identification of Products with Environmental Attributes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for extension to previously approved OMB clearance. (3090–0262).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the Identification of Products with Environmental Attributes.

DATES: Comment Due Date: December 28, 2001.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Ed Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Office of Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and

approve information collection, 3090–0262, concerning the Identification of Products with Environmental Attributes.

B. Annual Reporting Burden

Respondents: 9,200.
Annual Responses: 9,200.
Burden Hours: 46,000.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0262, Identification of Products with Environmental Attributes.

Dated: October 15, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–27101 Filed 10–26–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0246]

Submission for OMB Review; Comment Request Entitled Packing List Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for extension to previously approved OMB Clearances (3090–0246).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the General Services Administration Acquisition Regulation (GSAR) Packing List Clause. A request for public comments was published at 66 FR 43014, August 16, 2001. No comments were received.

DATES: Comment Due Date: November 28, 2001.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Ed Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Office of Acquisition Policy, (202) 208–6750.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0246, concerning the GSAR Packing List clause. This clause requires a contractor to include a packing list that verifies placement of an order and identifies the items shipped. In addition to information contractors would normally include on packing lists, the identification of cardholder name, telephone number and the term "Credit Card" is required.

B. Annual Reporting Burden

Respondents: 4,000.
Annual Responses: 931,219.
Burden Hours: 7,760.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0246, GSAR Packing List Clause.

Dated: October 22, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–27102 Filed 10–26–01; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC/ATSDR Educational Loan Repayment Program

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces the implementation of the CDC/ATSDR Educational Loan Repayment Program (ELRP) intended to assist in the recruitment and retention of highly qualified health professionals for hard-to-fill positions. The ELRP is a pilot program and will be used for the period permitted by legislation (currently September 30, 2002).

EFFECTIVE DATE: November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Dale J. Indergaard, Compensation Program Manager, CDC, Human Resources Management Office, 4770 Buford Hwy, Mailstop K–07, Atlanta, Georgia, 30341, telephone (770) 488–1756, e-mail: *dxi0@cdc.gov.*

SUPPLEMENTARY INFORMATION: The Centers for Disease Control and Prevention (CDC) intends to implement an Educational Loan Repayment Program (ELRP) authorized under 42 U.S.C. sect. 247b–7 as a recruitment and retention incentive for highly qualified health professionals in hard-to-fill positions. The ELRP will be implemented on a pilot basis beginning November 1, 2001. During this time frame, up to nine (9) loans to assist in recruitment may be considered for repayment. A participant must have received a bonafide offer of employment from CDC to be eligible to participate in the ELRP. Additionally, loans to assist in the retention of current CDC employees will be considered. Approximately April 1, 2002, CDC will conduct an analysis of the effectiveness of the ELRP in its recruitment and retention efforts and will determine whether continuation of the ELRP is warranted.

Under the ELRP, a maximum of $35,000 a year (plus 39 per cent of total loan repayment for tax credit as loan repayment benefits represent taxable income) may be repaid toward a participant's outstanding eligible educational debt. The participant is responsible for a loan repayment equal to a total of 10 percent of his/her annual CDC base salary, while the ELRP will repay at a rate of ⅓ of the remaining repayable debt (up to the maximum allowable) for each of the three years. The participant must sign a contract agreeing to remain employed by CDC for a period of not less than three years. Failure to complete the minimum three-year service agreement period will be considered a breach of contract and will subject the ELRP participant to assessment of monetary penalties and damages. Actual loan repayment amounts are based on the proportion of a participant's qualifying debt relative to his/her beginning CDC base salary.

Overall ELRP eligibility requirements:

a. Be a citizen of the United States;

b. Hold a relevant Doctoral degree or equivalent;

c. Have been selected for a vacant position or is currently assigned to a covered hard-to-fill health professional occupational series at CDC/ATSDR; and,

d. Have a qualifying educational debt in excess of 20 percent of their annual CDC base salary.

Dated: October 23, 2001.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–27098 Filed 10–26–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.
Date: November 7, 2001.
Time: 8:30 a.m. to Adjournment.
Agenda: International research to develop AIDS therapeutic approaches for resource-poor areas of the world.
Place: Building 31, Conference Room 6C10, Bethesda, MD 20892.
Contact Person: Linda J. Reck, Chief, Program Planning and Evaluation, Office of Aids Research, National Institutes of Health, Building 2, Room 4W01, Bethesda, MD 20892, (301) 402–8655, *reck@od.nih.gov.*

Information is also available on the Institute's/Center's home page: www.nih.gov/od/oar/index.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27146 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended to disclosure information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Board of Scientific Advisors.
Date: November 13–14, 2001.
Open: November 13, 2001, 8:30 am to 5:15 pm.
Agenda: Director's Report; Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.
Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.
Closed: November 13, 2001, 5:20 pm to Recess.
Agenda: To review and evaluate personnel issues.
Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.
Open: November 14, 2001, 9 am to 12:15 pm.
Agenda: Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.
Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.
Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, Deputy Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8141, Bethesda, MD 20892, (301) 496–4218.

This notice is being published less than 15 days prior to the meeting due to the scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsa.htm* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 01–27154 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Cancer Institute Special Emphasis Panel. Community Clinical Oncology Program/ Minority-Based Community Clinical Oncology Program.
Date: November 16, 2001.
Time: 8:00 am to 5:00 pm.
Agendo: To review and evaluate grant applications.
Place: National Cancer Institute, 6130 Executive Boulevard, Conference Room F, Rockville, MD 20852.
Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer

Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27155 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary & Alternative Medicine Special Emphasis Panel NCCAM SEP W–01.

Date: November 28, 2001.

Time: 8: am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lawrence R Haller, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Rm. 106, Bethesda, MD 20892–5495, (301) 402–9011, ih194t@nih.gov.

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27152 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: December 9–11, 2001.

Time: 7 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Cecelia Maryland, Office of Scientific Review, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd, Ste. 106, Bethesda, MD 20892, (301) 451–6331, *cm344f@nih.gov.*

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27153 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: November 29, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Jeanette M Hosseini, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, 301–496–5561.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27144 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: November 29, 2001.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Andrea Sawczuk, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27145 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAID.

Date: December 10–12, 2001.

Time: December 10, 2001, 8 am to adjournment on December 12.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Building 4, Conference Room 433, 4 Center Drive, Bethesda, MD 20892.

Contact Person: Thomas J. Kindt, PhD, Director, Division of Intramural Research, National Inst. of Allergy & Infectious Diseases, Building 10, Room 4A31, Bethesda, MD 20892, 301–496–3006, *tk9c@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27147 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–5(J2).

Date: November 29, 2001.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 6707 Democracy Blvd., Room 756, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Francisco O. Calvo, PhD., Chief, Review Branch, DEA, NIDDK, Room 752, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8897.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–4(J1).

Date: November 30, 2001.

Time: 8:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites—BWI, 1300 Concourse Drive, Lithicum, MD 21090.

Contact Person: William E. Elzinga, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 747, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–4(J2).

Date: December 5–6, 2001.

Time: 7:00 pm to 7:00 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites—BWI, 1300 Concourse Drive, Lithicum, MD 21090.

Contact Person: Carolyn Miles, PhD., Scientific Research Administrator, Review branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–4(J3).

Date: December 6–7, 2001.

Time: 7:30 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Lithicum, MD 21090.

Contact Person: William E. Elzinga, PhD., Scientific Review Administrator, Review branch, DEA, NIDDK, Room 747, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and hematology Research, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27148 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: November 16, 2001.

Time: 10 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: 6700-B Rockledge, Room 2223, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2223, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550, *ns120v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27149 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 19, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 19, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7840, Bethesda, MD 20892, (301) 435–1195.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 19, 2001.

Time: 8:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, NW., Washington, DC 20007.

Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 20, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 20, 2001.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *dowellr@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gamil C. Debbas, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27–29, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Hanover Inn, the corner of Main Street and East Wheelock, Hanover, NH 03755.

Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, Bethesda, MD 20892, (301) 435–1259, *orrt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27, 2001.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27, 2001.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 28–29, 2001.

Time: 8:30 am. to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jay Cinque, MSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 28, 2001.

Time: 9:30 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Everett E. Sinnett, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1018, *sinnett@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 29, 2001.

Time: 8 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2560 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Teresa Nesbitt, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 29–30, 2001.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ronald J. Dubois, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 29–30, 2001.

Time: 9:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: Cathleen L. Cooper, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooper@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 29, 2001.

Time: 3:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Everett E. Sinnet, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 30, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Michael A. Land, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 30, 2001.

Time: 1 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27150 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, October 29, 2001, 11 am to October 29, 2001, 12 pm, Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701 which was published in the **Federal Register** on October 15, 2001, 66 FR 52441–52444.

The meeting is cancelled due to the applications being transferred to another meeting.

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27151 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–80]

Notice of Submission of Proposed Information Collection to OMB HOPE VI Application Requirements (Data Forms, Budget, etc), Reporting, Procurement

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 28, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval (2577–0208) number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: HOPE VI Application Requirements (Data Forms, Budget, etc.,), Reporting Procurement.

OMB Approval Number: 2577–0208.

Form Numbers: HUD–52860–A, HUD–52825–A.

Description of the Need For The Information and Its Proposed Use: HOPE VI information collections are required in connection with the HOPE VI, program and its Notice of Funding Availability (as published in the Federal Register), particularly its Revitalization and Demolition Applications, including related forms, its quarterly reporting process, and its certification of mixed-finance procurement.

Respondents: State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	80		1		372		29,773

Total Estimated Burden Hours: 29,773.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 23, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–27171 Filed 10–26–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–78]

Notice of Submission of Proposed Information Collection to OMB Third Round Designation of Seven Urban Empowerment Zones

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 28, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval (2506–0148) number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal: (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Third Round Designation of Seven Urban Empowerment Zones.

OMB Approval Number: 2506–0148.

Form Numbers: HUD–40003.

Description of the need for the Information and its Proposed Use: Eligible applications apply to HUD and USDA for designation of an eligible area in their jurisdiction as an Empowerment Zone. Applications are units of local government and states, applying jointly.

Respondents: State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Reporting Burden	176		.55		63		6,114

Total Estimated Burden Hours: 6,114.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 22, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–27172 Filed 10–26–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–79]

Notice of Submission of Proposed Information Collection to OMB; Designation of Round III Empowerment Zones and Renewal Communities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 28, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval (2506–0173) number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne__Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Designation of Round III Empowerment Zones and Renewal Communities.

OMB Approval Number: 2506–0173.

Form Numbers: HUD–40005.

Description of the Need for the Information and Its Proposed Use: Governs the designation of Round III Empowerment Zones (EZs) and Renewal Communities (RCs) nominated by States and local governments. The designation of an area as an EZ or an RC provides special Federal income tax treatment for businesses located within the area.

Respondents: State, Local or Tribal Government.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
200		.47		99		9,360

Total Estimated Burden Hours: 9,360.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 23, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–27173 Filed 10–26–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

[FA 108 2810 HT 001R]

Office of Wildland Fire Coordination; Call for Nominations for the Joint Fire Science Program Stakeholder Advisory Group

AGENCY: Office of Wildland Fire Coordination, Interior.

ACTION: Notice of Joint Fire Science Program Stakeholder Advisory Group call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for two members to the Joint Fire Science Program Stakeholder Advisory Group.

DATES: Nominations should be submitted to the address listed below under **ADDRESSES** no later than November 28, 2001.

ADDRESSES: Send nominations to Dr. Bob Clark, Joint Fire Science Program, National Interagency Fire Center, 3833 S. Development Ave., Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Tim Hartzell, Designated Federal Official; telephone (202) 606–3211; fax: (202) 606–3150; e-mail: *Tim—Hartzell@blm.gov*.

SUPPLEMENTARY INFORMATION: Recently, two members of the Joint Fire Science Program Stakeholder Advisory Group have resigned. We are seeking to fill vacancies left by these two committee members: one who represented an Indian Tribe, and one who represented a non-profit wildland management research group. In the interest of maintaining balance on the Joint Fire Science Program Stakeholder Advisory Group, we are specifically seeking to replace those two members with persons from the same types of groups. However, we will consider all nominations we receive from all types of stakeholders.

Additional information about the Joint Fire Science Program Stakeholder Advisory Group, including the charter that established it, may be found on the World Wide Web at *http://www.nifc.gov/joint__fire__sci/SHAG/facaind.htm*

Dated: October 12, 2001.

Tim Hartzell,

Director, Office of Wildland Fire Coordination.

[FR Doc. 01–27066 Filed 10–26–01; 8:45 am]

BILLING CODE 4310–DW–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Office of the Secretary, Department of Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Friday, November 9, 2001, Time 1:30 p.m. to 4 p.m.

Address: Redevelopment Authority of the County of Bucks, One North Wilson Avenue, Bristol, PA 19007.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and the Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Pub. L. 100–692, November 18, 1988 and extended through Pub. L. 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: October 23, 2001.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 01–27099 Filed 10–26–01; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–01–1020–PG]

New Mexico Resource Advisory Council Meeting

AGENCY: The Bureau of Land Management, Department of the Interior.

ACTION: Notice of Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). New Mexico Resource Advisory Council Meetings are planned in conjunction with the representative of the Governor of the State of New Mexico; the Office of the Lieutenant Governor.

DATES: The meeting will be held on December 13 and 14, 2001, with an optional Field Trip preceding on Wednesday, December 12. The meeting will begin at 8 a.m. and end by 5 p.m. both days.

ADDRESSES: The meeting will take place at the Hilton Inn, 705 South Telshor, Las Cruces, NM 88011.

AGENDA: The draft agenda for the RAC meeting on Wednesday, October 3, includes agreement on the meeting agenda, any RAC comments on the draft minutes of the last RAC meeting which was held on October 3 and 4, 2001, in Taos, New Mexico, and a check-in from the RAC members. Main topics of discussion will be Off Highway Vehicle (OHV) use on public lands and implementation of the Standards and Guidelines for Grazing. Reports from the seven Field Offices and from the two established subcommittees will be presented at various times throughout the two day meeting. The two established RAC subcommittees may have late afternoon or evening meetings on Wednesday, December 12 or on Thursday, December 13. The exact time and location of possible subcommittee meetings will be established by the chairperson of each subcommittee and be available to the public at the front desk of the hotel on those two days.

The meeting is open to the public, and starting at 2:45 p.m. on Thursday, December 13, 2001, there will be an additional 15 minute Public Comment Period for members of the public who are not able to be present to address the RAC during the regular two hour Public Comment Period on Friday, December 14, from 10 a.m. to 12 noon. The RAC may reduce or extend the end time of 12 noon depending on the number of people wishing to address the RAC.

A RAC assessment of the current meeting and development of draft agenda items and selection of a location for the next RAC meeting will take place Friday afternoon. On Friday, December 14, the ending time of the meeting may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Mary White, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7404.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: October 10, 2001.

Michelle J. Chávez,

State Director.

[FR Doc. 01–27095 Filed 10–26–01; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1920–ET–4064; CACA 43172]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service proposes to withdraw approximately 44,575 acres of National Forest System lands in the San Bernardino National Forest to maintain and conserve habitat for listed threatened and endangered species. This notice closes the lands for up to 2 years from mining. The lands will remain open to mineral leasing and the Materials Act of 1947.

DATES: Comments and requests for a public meeting must be received by January 28, 2002.

ADDRESSES: Brent Handley, Director, Lands & Minerals Management, Forest Service, Pacific Southwest Region, 1323 Club Drive, Vallejo, California 94592–1110.

FOR FURTHER INFORMATION CONTACT: Scott Eliason, San Bernardino National Forest, 909–866–3437, extension 3904.

SUPPLEMENTARY INFORMATION: On April 27, 2001, the San Bernardino National Forest, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

San Bernardino Meridian

T. 1 N., R. 1 E.,
- Sec. 1, lots 1 thru 4, inclusive, E½SE¼;
- Sec. 2, lots 1 thru 4, inclusive, SW¼NW¼, NE¼SW¼;
- Sec. 3, lots 1 and 2, SE¼NE¼, NE¼SE¼;
- Sec. 5, SE¼NW¼, NE¼SW¼, SW¼SW¼;
- Sec. 7, lots 3 and 4, NE¼NE¼, SW¼NE¼, SE¼NW¼, NE¼SW¼;
- Sec. 12, S½SE¼;
- Sec. 20, W½NW¼;
- Sec. 22, NE¼SW¼, portion of SE¼SW¼ and portion of SE¼, both outside of wilderness;
- Sec. 23, SW¼SW¼;
- Sec. 26, portion of NW¼NW¼ outside of wilderness.

T. 2 N., R. 1 E.,
- Secs. 1 to 5, inclusive;
- Sec. 6, lots 1 thru 5, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼;
- Secs. 7 to 9, inclusive;
- Sec. 10, lots 1 and 2, W½NE¼, W½, portion of MS 1491;
- Sec. 11, lots 1 and 2, N½NE½, SW¼NE¼, portion of MS 1491;
- Sec. 12, N½N½, N½SW¼NE ¼, SE¼SW¼NE¼, SE¼NE¼, N½SE¼NW¼;
- Sec. 16, Portion of NW¼ above lake;
- Sec. 17, Portion of N½ above lake;
- Sec. 18, Portion of N½ above lake;
- Sec. 23, S½NE¼, NE¼NW¼, S½NW¼;
- Sec. 25, N½NE¼, SE¼NE¼, NE¼SE¼;
- Sec. 26, S½SW¼;
- Sec. 27, NW¼NW¼, S½S½;
- Sec. 28, N½NE¼;
- Sec. 30, lots 1, 2, and 4, NW¼NE¼, SW¼SE¼;
- Sec. 31, lots 3 and 5;
- Sec. 33, E½NE¼;

- Sec. 34, N½, N½SW¼, SE¼SW¼, SE¼;
- Sec. 35, S½NE¼, W½NW¼, SE¼NW¼, S½;
- Sec. 36, NE¼NE¼, SW¼NW¼, ½.

T. 3 N., R. 1 E.,
- Sec. 17, N½SW¼, N½SW¼SW¼, SE¼SW¼, SW¼SE¼;
- Sec. 19, W½NE¼, E½SW¼, E½W½SW¼, W½SE¼;
- Sec. 20, lot 2, W½NE¼;
- Sec. 21, NW¼NW¼;
- Sec. 22, N½NW¼;
- Sec. 23, N½SW¼, SE¼SW¼;
- Sec. 25, NE¼, S½NE¼, NE¼NW¼, S½NW¼, N½SW¼ , N½SE¼;
- Sec. 26, lots 1 thru 3, inclusive, SW¼NE¼, S½NW¼, N½SW¼, portions of MS 911 and MS 320A;
- Sec. 27, NE¼, E½SW¼, SE¼;
- Sec. 28, E½NW¼, NW¼NW¼, NE¼SW¼;
- Sec. 29, S½S½;
- Sec. 30, NE¼, E½NE¼NW¼, S½NW¼, S½;
- Sec. 31, lots 1, 5, and 12, portion of lot 3, portion of lot 6, MS 2559, MS 3056, portion of MS 3055, portion of MS 6485;
- Sec. 32, lots 1 thru 5, inclusive, lots 7, 8, 10, and 18, portions of lots 13 thru 16, inclusive, S½NW¼SE¼, S½SE¼, S½S½NE¼SW¼NE¼, S½S½NW¼SE¼NW¼, portion of SW¼SE¼NE¼, portion of SE¼SW¼NE¼, portion of MS 100, portion of MS 3055,portion of MS 6409, portion of MS 6485;
- Sec. 33, SW¼NE¼ except portion of MS 95, NW¼NW¼ except portion of MS 92, S½NW¼, SW¼, W½SE¼, SE¼SE¼;
- Sec. 34, NE¼, E½NW¼, N½SE¼, SE¼SE¼;
- Sec. 35, NW¼NE¼ except portion of MS 3989 and portion of MS 3815, NW¼ except portion of MS 3988 and portion of MS 3989, NW¼SW¼, S½SW¼;
- Sec. 36, SE¼NE¼, E½SE¼.

T. 1 N., R. 2 E.,
- Sec. 1, lots 1 thru 4, inclusive, S½NE¼, SE¼NW¼, portion of N½SW¼, portion of SE¼SW¼, NE¼SE¼, S½SE¼ ;
- Sec. 2, lots 3 and 4, SW¼NE¼, S½NW¼, S½;
- Sec. 3, lots 1 thru 4, inclusive, S½NE¼, S½NW¼, SW¼, N½SE¼, SE¼SE¼;
- Sec. 4, lots 1 thru 3, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
- Sec. 5, lots 3 and 4, SE¼NE¼;
- Sec. 6, lots 1 thru 7, inclusive, E½SW¼, SE¼;
- Sec. 9, NE¼, N½ NW¼, SE¼NW¼, NE¼SW¼;
- Sec. 10, N½NW¼;
- Sec. 11, NW¼NE¼, N½NW¼, SW¼NW¼;
- Sec. 12, N½NE¼, N½S½NE¼, NW¼;
- Sec. 13, W½SW¼, SE¼SW¼, SW¼SE¼;
- Sec. 16, S½NW¼, N½SW¼, N½SE¼, SE¼SE¼ ;
- Sec. 18, NE¼SW¼, portion of S½SE¼ south of Hwy 38;
- Sec. 19, Portion of NE¼NE¼ south of Hwy 38, NW¼NE¼;
- Sec. 20, S½NE¼, portion of NW¼ south of Hwy 38, N½SE¼;
- Sec. 21, NE¼NE¼, SW¼NW¼, NW¼SW¼;
- Sec. 23, SE¼NE¼, S½SE¼;
- Sec. 24, S½NW¼, N½SW¼, NW¼SE¼;
- Sec. 26, N½NE¼, SE¼NE¼, SE¼NW¼, NE¼SW¼, NE¼SE¼, SW¼SE¼;
- Sec. 27, NW¼;
- Sec. 34, N½SE¼.

T. 2 N., R. 2 E.,
- Sec. 5, lots 1 and 2 of NW¼, N½NW¼SW¼, N½NE¼SW¼;
- Sec. 6, N½E½ lot 2 of NE¼, SE¼E½ lot 2 of NE¼, E½E½ lot 1 of NE¼, lot 2 of SW¼, S½ lot 1 of SW¼;
- Sec. 7, NE¼NE¼, S½NE¼, N½ and N½S½ lot 1 of NW¼ , N½ lot 2 of NW¼ , N½S½ lot of NW¼;
- Sec. 8, NW¼NW¼NW¼, S½NW¼NW¼, SW¼NW¼, SW¼SE¼NW¼ , NW¼SW¼ , E½SW¼SW¼ , SE¼SW¼;
- Sec. 10, NE¼SE¼;
- Sec. 13, SE¼SW¼, NW¼SE¼, S½SE¼;
- Sec. 14, S½NW¼, E½SW¼, N½SE¼, SW¼SE¼;
- Sec. 15, NW¼NW¼;
- Sec. 17, SE¼NE¼NE¼, S½NW¼NW¼, S½N½, N½S½, NE¼SE¼SW¼, N½SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼;
- Sec. 18, S½N½NE¼, N½S½NE¼, SE¼SE¼NE¼;
- Sec. 20, E½SE¼SW¼, S½NE¼SE¼, S½SE¼, S½NW¼SE¼;
- Sec. 21, N½NE¼, N½NE¼NW¼, S½N½S½, S½S½;
- Sec. 22, NE¼SW¼NW¼, NE¼SW¼, S½NW¼SW¼, S½SW¼, SW¼SE¼;
- Sec. 23, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE ¼;
- Sec. 25, SE¼NE¼, SE¼SE¼SW¼, W½SW¼, W½SE¼SW¼, SE¼SE¼SW¼ , E½NE¼SE¼, S½SW¼SE¼, SE¼SE¼;
- Sec. 26, SW¼NW¼, S½;
- Sec. 27, E½NE¼NE¼, NW¼NE¼NE¼, N½NW¼NE¼, N½N½NW¼, S½ except portion of NE¼SW¼, portion of NE¼NW¼SW¼, portion of NE¼SE¼SW¼, portion of N½SW¼SE¼;
- Sec. 28, N½N½NE¼, N½NW¼, S½;
- Sec. 29, All except NE¼NW¼NW¼, NW¼NW¼, N½SW¼NW¼, portion of NE¼SE¼NE¼, SE¼SE¼NE¼;
- Sec. 30, lots 2 of NW¼;
- Sec. 31, lots 2 thru 4, inclusive, NE¼NE¼, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼SW¼, SE¼;
- Sec. 32, N½, SW¼, N½SE¼, SW¼SE¼;
- Secs. 33 and 34, inclusive;
- Sec. 35, N½, N½SW¼, SE¼SW¼, SE¼;
- Sec. 36, all.

T. 3 N., R. 2 E.,
- Sec. 17, W½E½NE¼, W½E½, SE¼SE¼;
- Sec. 19, W½NW¼NE¼, SW¼NE¼, S½N½SE¼NE¼, S½SE¼NE¼, N½SW¼;
- Sec. 20, N½N½NE¼;
- Sec. 27, S½NW¼;
- Sec. 29, SE¼SW¼;
- Sec. 30, S½SE¼;
- Sec. 31, NE¼, S½NW¼, S½;
- Sec. 32, N½SW¼, SW¼SW¼, NW¼SE¼, SE¼SE¼, S½NW¼, NW¼NW¼, NE¼SE¼.

T. 1 N., R. 3 E.,
- Sec. 5, lot 4, SW¼NW¼, W½SW¼, SE¼SW¼;
- Sec. 6, all;
- Sec. 7, Portion of lots 1, 2, and 5, and lot 6;
- Sec. 8, NW¼, W½SW¼, NE¼SE¼;
- Sec. 19, NW¼NW¼;
- Sec. 20, SW¼NE¼, W½NW¼, NE¼SE¼, S½SE¼.

T. 2 N., R. 3 E.,
- Sec. 17, S½SW¼;
- Sec. 18, lot 4, SE¼SW¼, SE¼;
- Sec. 19, lot 1, lots 4 thru 6, inclusive, NW¼NE¼, E½NW¼, NE¼SW¼, SE¼;
- Sec. 20, lots 1,2, 4, and 5, NE¼NW¼, NE¼SW¼, S½SW¼, portion of SE¼ outside Wilderness;
- Sec. 27, W½W½;
- Sec. 28, Portion of SW¼NW¼ outside Wilderness, portion of NE¼SE¼ outside Wilderness, S½SE¼;
- Sec. 29, Portion of N½NE¼ outside Wilderness, NE¼NW¼, SW¼NW¼, W½SW¼, SE¼SW¼, SE¼NE¼;
- Sec. 30, lots 2 thru 4, inclusive, SW¼NE¼, SE¼NW¼, NE¼SW¼, SE¼SW¼, W½SE¼;
- Sec. 31, lots 1 & 2, NE¼, E½NW¼;
- Sec. 32, NW¼;
- Sec. 33, N½NE¼;
- Sec. 34, NW¼NE¼, N½NW¼.

T. 1 N., R. 1 W.,
- Sec. 12, NE¼SE¼, SW¼SE¼;
- Sec. 13, N½NE¼;
- Sec. 15, portion of SW¼SE¼;
- Sec. 22, NW¼NE¼.

T. 2 N., R. 1 W.,
- Sec. 2, SW¼SW¼;
- Sec. 3, lot 1 of NW¼, NE¼SW¼, NW¼SE¼;
- Sec. 12, NE¼, E½SE¼;
- Sec. 14, Portion of E½NE¼ west of Hwy 18, portion of NE¼SW¼ north of Hwy 18;
- Sec. 16, SW¼SW¾;
- Sec. 21, N½NW¼;
- Sec. 22, Portion of NE¼SE¼;
- Sec. 25, N½NE¼, SW¼NE¼, SW¼, W½SE¼, SE¼SE¼;
- Sec. 34, SE¼NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, N½SE¼;
- Sec. 35, W½NE¼, NW¼;
- Sec. 36, NE¼NW¼.

T. 3 N., R. 1 W.,
- Sec. 10, SE¼NE¼;
- Sec. 14, W½SE¼;
- Sec. 16, W½SW¼;
- Sec. 17, NW¼SW¼, E½SE¼;
- Sec. 18, lots 2 thru 5, inclusive, SE¼;
- Sec. 22, S½SW¼;
- Sec. 25, lots 2 and 3, W½NE¼, NE¼SW¼, NW¼SE¼;
- Sec. 26, NE¼NW¼, SW¼NW¼;
- Sec. 27, lots 1thru 4, NE¼, N½NW¼;
- Sec. 28, lots 1 and 2, E½NE¼;
- Sec. 30, lots 4 and 5;
- Sec. 31, lot 6 & 7, SW¼NE¼, N½SE¼, SE¼SE¼;
- Sec. 32, SE¼NE¼, W½NW¼;
- Sec. 33, W½NW¼;
- Sec. 36, lot 1, lots 4 thru 8, inclusive, portion of MS 2559 and MS 3059 in NE¼NE¼ and S½NE¼, portion of MS 3059 in SE¼NW¼,SW¼, portion of MS 3056 in N½SE¼;

T. 2 N., R. 2 W.,
- Sec. 25, NE¼SW¼, SE¼.

T. 3 N., R. 2 W.,

Sec. 11, SE¼SE¼;
Sec. 12, NE¼NE¼, SW¼SW¼;
Sec. 13, NW¼SW¼, SW¼NE¼, NW¼;
Sec. 14, S½NE¼, SE¼NW¼, S½, NE¼NE¼;
Sec. 15, S½SW¼, SE¼SE¼;
Sec. 21, NE¼NE¼, S½NE¼, SE¼NW¼, N½SW¼;
Sec. 22, N½NE¼, SE¼NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 23, N½NE¼, NW¼, W½SW¼ ;
Sec. 24, SW¼SW¼, NE¼SW¼;
Sec. 25, lots 2 and 3, W½NE¼, S½NW¼, N½SW¼, NW¼SE¼;
Sec. 26, lots 3 and 4, NE¼, W½NW¼, portion of HES 235;
Sec. 27, E½NE¼.
T. 3 N., R. 5 W.,
Sec. 28, S½;
Sec. 29, S½NW¼NE¼, SE¼NE¼, S½N½SE¼NE¼, S½SE¼NE¼, NW¼, S½.

The areas described aggregate approximately 44.575 acres in San Bernardino County.

The purpose of the proposed withdrawal is to conserve listed threatened and endangered species and the habitat upon which they depend. The proposed withdrawal will facilitate implementation of several provisions of a court settlement resulting from a lawsuit filed against the Bureau of Land Management regarding the Endangered Species Act.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Director, Lands & Minerals Management, Forest Service, Pacific Southwest Region, at the address listed above. Since the Forest Service is requesting this withdrawal, it is responsible for preparing any studies, analyses, and reports that are required by applicable statutes for the processing of this application. Those studies, analyses, and reports will be used by the Secretary of the Interior to make a decision as to whether this withdrawal should be authorized.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Director, Lands & Minerals Management, Forest Service, Pacific Southwest Region, at the address listed above, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are determined to be compatible with the use of the lands by Forest Service.

Dated: September 7, 2001.

Angela Williams,

Acting Chief, Branch of Lands.

[FR Doc. 01–27094 Filed 10–26–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment for Vastar Resources Inc.'s Proposed Deepwater Development Plan Offshore Louisiana (Horn Mountain Project)

AGENCY: Minerals Management Service, Interior.

ACTION: Preparation of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) is preparing an environmental assessment (EA) for a proposed deepwater development plan to develop and produce hydrocarbon reserves about 60 miles offshore Louisiana in Mississippi Canyon, Blocks 126 and 127.

This EA implements the tiering process outlined in 40 CFR 1502.20, which encourages agencies to tier environmental documents, eliminating repetitive discussions of the same issue. By use of tiering from the most recent Final Environmental Impact Statement (EIS) for the Gulf of Mexico Central Planning Area for Lease Sales 169, 172, 175, 178, and 182 and by referencing related environmental documents, this EA concentrates on environmental issues specific to the proposed action.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. G. Ed Richardson, telephone (504) 736–2605.

SUPPLEMENTARY INFORMATION: The MMS GOM Region received an Initial Development Operations Coordination Document (DOCD) from Vastar Resources Inc. (Vastar) that proposes to develop and produce hydrocarbon reserves located in Mississippi Canyon, Blocks 126 and 127. The DOCD was assigned a plan control number of N–7195 and the project is referred to as the Horn Mountain Project. Vastar will drill, complete, and produce a total of 10 wells in the subject blocks. All of the wells will share a common surface location (a truss spar floating production system) in Mississippi Canyon, Block 127.

The Horn Mountain truss spar is a manned floating production facility that will be permanently anchored on location by a 9-leg, taut catenary system composed of conventional wire, chain, and anchor piles. The hull portion of the spar measures approximately 106 feet in diameter and has an overall length of 555 feet. During the proposed operations, approximately 35–50 personnel may be engaged in designated activities.

The water depth at the truss spar location is approximately 5,423 feet. The project will use an existing onshore support base in Venice, Louisiana, to support the proposed activities.

Oil and gas produced at the Horn Mountain project will be transported off lease by right-of-way pipelines. These pipelines will connect with existing offshore infrastructure for final transport to shore.

The proposed action analyzed in the EA will be the development plan as proposed by Vastar. Alternatives will include the proposed action with additional mitigations and no action (i.e., disapproval of the plan). The analyses in the EA will examine the potential environmental effects of the proposal and alternatives.

Public Comments

The MMS requests interested parties to submit comments regarding issues that should be addressed in the EA to Minerals Management Service, Gulf of Mexico OCS Region, Office of Leasing and Environment, Attention: Regional Supervisor (MS 5410), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Comments must be submitted no later than 30 days from the publication of this Notice.

Dated: September 28, 2001.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 01–27104 Filed 10–26–01; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–417–421 and 731–TA–953–963 (Preliminary)]

Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey of carbon and certain alloy steel wire rod [2] that are alleged to be subsidized by the Governments of Brazil, Canada, Germany, Trinidad and Tobago, and Turkey. The Commission also determines, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine of carbon and certain alloy steel wire rod that are alleged to be sold in the United States at less than fair value (LTFV). The Commission also determines,[3] pursuant to section 771(24)(A) of the Act (19 U.S.C. 1677(24)(A)), that imports of carbon and certain alloy steel wire rod from Egypt, South Africa, and Venezuela that are alleged to be sold in the United States at LTFV are negligible, and its investigations with regard to those countries are thereby terminated pursuant to section 733(a) of the Act.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On August 31, 2001, a petition was filed with the Commission and Commerce by counsel on behalf of Co-Steel Raritan, Inc., Perth Amboy, NJ; GS Industries, Inc., Charlotte, NC; Keystone Consolidated Industries, Inc., Dallas TX; and North Star Steel Texas, Inc., Edina, MN, alleging that an industry in the United States is materially injured by reason of subsidized imports of carbon and certain alloy steel wire rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey and LTFV imports of carbon and certain alloy steel wire rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela. Accordingly, effective August 31, 2001, the Commission instituted investigations Nos. 701–TA–417–421 and 731–TA–953–963 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 10, 2001 (66 FR 47036). The conference was held in Washington, DC, on September 21, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 15, 2001. The views of the Commission are contained in USITC Publication 3456 (October 2001), entitled Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela: Investigations Nos. 701–TA–417–421 and 731–TA–953–963 (Preliminary).

By order of the Commission.

Issued: October 23, 2001.

Donna R. Koehnke,

Secretory.

[FR Doc. 01–27063 Filed 10–26–01; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.0 mm or more, but less than 19.0 mm, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in the scope. The subject merchandise is provided for in HTS subheadings 7213.91, 7213.99, 7227.20, and 7227.90.60.

[3] Commissioner Lynn M. Bragg, however, further finds that subject imports of wire rod from Egypt, South Africa, and Venezuela will imminently exceed the statutory negligibility threshold, and makes an affirmative threat determination with respect to such imports.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–435]

In the Matter of Certain Integrated Repeaters, Switches, Transceivers, and Products Containing Same; Notice of Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the public versions of the Commission's opinion and all other nonconfidential documents in the record of this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be

obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted on August 23, 2000, based upon a complaint filed on July 20, 2000, by Intel Corporation ("Intel") and Level One Communications, Inc. ("Level One"). 65 FR 51327 (Aug. 23, 2000). The respondent is Altima Communications, Inc. ("Altima"). A second patent-based section 337 investigation naming Altima as a respondent was instituted on April 24, 2000, based upon a complaint filed by Level One on March 23, 2000, and supplemented on April 13, 2000. 65 FR 21789 (Apr. 24, 2000). On August 24, 2000, the presiding administrative law judge (ALJ) issued an order consolidating the two investigations. From April 16, 2001, through April 30, 2001, the ALJ held an evidentiary hearing. On July 19, 2001, the ALJ issued a final initial determination (ID) finding that respondent Altima has violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by infringing certain claims of two of complainants' asserted patents. Specifically, the ALJ found that: (1) There has been importation and sale of the accused products; (2) complainants practice the patents in controversy and satisfy the domestic industry requirements of section 337; (3) certain of the claims in issue are valid; (4) the accused imported products directly infringe certain of the claims in issue; and (5) respondent has induced infringement of certain of the claims in issue. Based on these findings, the ALJ concluded there was a violation of section 337. The ALJ recommended issuance of a limited exclusion order.

Complainants Intel and Level One and respondent Altima filed petitions for review of various portions of the ALJ's final ID, and opposed each others' petitions for review. The Commission investigative attorney (IA) did not petition for review of the final ID, but opposed the other parties' petitions for review. On September 5, 2001, the Commission determined not to review the ALJ's final ID and issued a notice to that effect. 66 Fed. Reg. 47037 (Sep. 10, 2001).

Having determined that a violation of section 337 has occurred in the importation, sale for importation, or sale in the United States of the accused integrated repeaters, as well as integrated repeaters and switches in plastic ball grid array (PBGA) packages, the Commission considered the issues of the appropriate form of relief, whether the public interest precludes issuance of such relief, and the bond during the 60-day Presidential review period.

The Commission determined that a limited exclusion order prohibiting the importation of the accused integrated repeaters, and circuit boards and carriers containing such devices, as well as integrated repeaters, switches and other products in PBGA packages, and circuit boards and carriers containing such devices. and directed to respondent Altima is the appropriate form of relief. The Commission further determined that the statuturay public interest factors don not preclude the issuance of such relief, and that respondent's bond under the limited exclusion order shall be in the amount of 100 percent of the entered value of the imported articles.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

Dated: Issued: October 24, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27167 Filed 10–26–01; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities; Proposed Collections; Comments Requested

ACTION: 60—day notice of information collection under review; reinstatement, with change, of a previously approved collection for which approval has expired—National Youth Gang Survey.

The Department of Justice (DOJ), Office of Justice Programs, (OJP), Office of Juvenile Justice and Delinquency Prevention has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for "sixty days" until December 28, 2001. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Phelan Wyrick, (202) 353–9254, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* National Youth Gang Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Office of Juvenile Justice, and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal law enforcement agencies. Other: None. This collection will gather information related to youth and their activities for research and assessment purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be 3,000 respondents. It is estimated that each survey will take 15 minutes to complete.

(6) *An estimate of the total public burden (in hours) associates with the collection:* An estimate of the total hour burden to conduct this survey is 750 hours.

If additional is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: October 23, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–27091 Filed 10–26–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number: D–10616]

Proposed Amendment To Prohibited Transaction Exemption (PTE) 79–15 (44 FR 26979, May 8, 1979); PTE 80–26 (45 FR 28545, April 29, 1980); PTE 80–83 (45 FR 73189, November 4, 1980); PTE 81–6 (45 FR 7527, January 23, 1981 (as amended at 52 FR 18754, May 19, 1987)); PTE 81–8 (46 FR 7511, January 23, 1981 (as amended by 50 FR 14043, April 9, 1985)); PTE 82–63 (47 FR 14804, April 6, 1982); PTE 83–1 (48 FR 895, January 7, 1983); PTE 84–14 (49 FR 9494, March 13, 1984) PTE 88–59 (53 FR 24811, June 30, 1988); PTE 91–38 (56 FR 31966, July 12, 1991); PTE 95–60 (60 FR 35925, July 12, 1995); PTE 96–62 (61 FR 39988, July 31, 1996)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed amendment to certain class exemptions.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to certain class exemptions. The proposed amendment would define the term "employee benefit plan", as such term is used in certain class exemptions, to include plans described in section 4975(e)(1) of the Internal Revenue Code of 1986 (the Code). If adopted, the proposed amendment would affect individuals with beneficial interests in such plans, as well as the financial institutions that provide services and products to the plans.

DATES: Written comments and requests for a public hearing should be received by the Department on or before December 13, 2001. If adopted, the proposed amendment would be effective as of: May 1, 1979 with respect to PTE 79–15; January 1, 1975 with respect to PTE 80–26; December 1, 1980 with respect to Section I(B) of PTE 80–83 (the amendment would be effective January 1, 1975 with respect to the remainder of PTE 80–83); January 23, 1981 with respect to PTE 81–6; January 1, 1975 with respect to PTE 81–8; April 6, 1982 with respect to PTE 82–63; January 1, 1975 with respect to PTE 83–1; December 21, 1982 with respect to PTE 84–14; January 1, 1975 with respect to PTE 88–59; July 1, 1990 with respect to PTE 91–38; January 1, 1975 with respect to PTE 95–60; and July 31, 1996 with respect to PTE 96–62.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue, NW, Washington, DC 20210, (Attention: D–10616).

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219–8971, (this is not a toll-free number); or Paul Mannina, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor (202) 693–5600. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 79–15; PTE 80–26; PTE 80–83; PTE 81–6; PTE 81–8; PTE 82–63; PTE 83–1; PTE 84–14; PTE 88–59; PTE 91–38; PTE 95–60; and PTE 96–62. These class exemptions provide relief from certain of the restrictions described in section 406 of the Employee Retirement Income Security Act of 1974 (ERISA), and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(A) through (F) of the Code, provided that the conditions of the relevant exemption have been met. The Department is proposing to amend the above-described exemptions on its own motion, pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

The class exemptions described in this proposed amendment do not define the term "employee benefit plan". As a result, the Department has become increasingly aware of uncertainty regarding the scope of these class exemptions. To address this uncertainty, the Department has determined to amend each exemption in order to define the term "employee benefit plan" and "plan" as used therein.

Prior to the effective date of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 (1996)) (the Reorganization Plan), exemptions granted pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code were issued jointly by the Department of Labor (the Department) and the Internal Revenue Service (the Service). A number of class exemptions issued jointly by the Department and Service did not define the term "employee benefit plan" and "plan" as contained therein. Given the dual nature of the authority used to grant these exemptions, a number of practitioners believed that references to "employee benefit plan" and "plan" in these pre-Reorganization Plan class exemptions included employee benefit plans described in section 3(3) of ERISA [1] and plans described in section 4975(e)(1) of the Code.[2]

After consultation with the Service, the Department has determined that plans described in section 4975(e)(1) of the Code are included within the scope of relief provided by the following class exemptions:

PTE 75–1, 40 FR 50845 (1975);
PTE 77–4, 42 FR 18732 (1977);
PTE 77–7, 42 FR 31575 (1977), amended and redesignated as PTE 92–5 by 57 FR 5019 (1992); PTE 77–8, 42 FR 31574 (1977), amended and redesignated as PTE 92–6, 57

[1] Section 3(3) of ERISA provides that the term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

[2] Section 4975(e)(1) of the Code provides that, for purposes of that Code section, the term "plan" means: (A) A trust described in Code section 401(a) which forms a part of a plan, or a plan described in Code section 403(a), which trust or plan is exempt from tax under section 501(a); (B) an individual retirement account described in Code section 408(a); (C) an individual retirement annuity described in section Code 408(b); (D) a medical savings account described in Code section 220(d); (E) an education individual retirement account described in Code section 530, or (f) a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be described in any preceding subparagraph of this paragraph.

FR 5189 (1992); PTE 77–9, 42 FR 32395 (1977), amended and redesignated as PTE 84–24, 49 FR 13208 (1984); and PTE 78–19, 43 FR 59915 (1978), amended and redesignated as PTE 90–1, 55 FR 2891 (1990).

Exemptions issued subsequent to the effective date of the Reorganization Plan, however, were not issued pursuant to the dual authority of the Department and the Service. In this regard, section 102 of the Reorganization Plan generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. As a result, class exemptions granted after the effective date of the Reorganization Plan were issued pursuant to the sole authority of the Department.

Practitioners have noted that the Department, when issuing post-Reorganization Plan class exemptions, did not always expressly define the term "employee benefit plan" and "plan", as used therein. The practitioners noted that, given that such exemptions were issued solely by the Department, it remains unclear whether the term "employee benefit plan" includes a "plan" which is not subject to Title I of ERISA but is otherwise described in section 4975(e)(1) of the Code.

For example, practitioners cite uncertainty regarding whether IRAs and Keogh Plans are within the scope of the above-referenced exemptions. In this regard, the practitioners note that, while most IRAs and Keogh Plans are excluded from the term "employee benefit plan" for purposes of ERISA section 3(3),[3] such entities may be includable within the term "plan" for purposes of Code section 4975(e)(1). The practitioners, therefore, seek clarification as to whether IRAs and Keogh Plans are "employee benefit plans" for purposes of the relevant class exemptions.

In consideration of this uncertainty, the Department is proposing to clarify the scope of relief provided by the aforementioned class exemptions by defining the terms "employee benefit plan" and "plan" to include plans described in Code section 4975(e)(1). The Department notes that such clarification is consistent with the Department's longstanding intent to include IRA and Keogh Plans within the meaning of the terms "employee benefit plan" and "plan" with respect to the enumerated class exemptions.

[3] See 29 CFR 2510.3–2(d) and 29 CFR 2510.3–3(b).

Notice to Interested Persons

Because many participants in plans described in section 4975(e)(1) of the Code, as well as financial institutions, could conceivably be considered interested persons, the only practical form of notice is publication in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties with respect to the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of such plans.

(3) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) If granted, the proposed amendment will be applicable to a transaction only if the conditions specified in the class exemption are met.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed amendment. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Amendment

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to amend the following class exemptions as set forth below:

1. PTE 79–15 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

2. PTE 80–26 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

3. PTE 80–83 is amended by adding the following paragraph 4. to Section II. b. to read as follows: 4. For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

4. PTE 81–6 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

5. PTE 81–8 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

6. PTE 82–63 is amended by adding the following paragraph (4) to section II. Definitions to read as follows: (4) For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

7. PTE 83–1 is amended by adding the following paragraph I. to Section III. Definitions to read as follows: I. For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

8. PTE 84–14 is amended by adding the following paragraph (n) to Part V—Definitions and General Rules to read as follows: (n) The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

9. PTE 88–59 is amended by adding the following paragraph (F) to Section III. Definitions to read as follows: (F) The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

10. PTE 91–38 is amended by adding the following paragraph (k) to Section IV—Definitions and General Rules to read as follows: The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

11. PTE 95–60 is amended by adding the following paragraph (j) to Section V—Definitions to read as follows: (j) The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

12. PTE 96–62 is amended by adding paragraph (g) to Section IV: Definitions to read as follows: (g) For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

Signed at Washington, DC, this 23rd day of October 2001.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 01–27062 Filed 10–26–01; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50–285]

Omaha Public Power District; Notice of Withdrawl of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Omaha Public Power District (OPPD/the licensee) to withdraw its October 27, 2000, application for proposed amendment to Facility Operating License No. DPR–40 for the Fort Calhoun Station, Unit 1, located in Washington County, Nebraska.

The proposed amendment would have eliminated the refueling requirement for the 13.8 kV transmission line surveillance test. Fort Calhoun receives 161 kV and 345 kV off-site power from the switchyard at the plant site. Power from a 13.8 kV supply is also available in the switchgear room. The ability to use the 13.8 kV power supply, originally a construction power supply, was added to the technical specifications (TSs) during the licensing of the Fort Calhoun Station because in the NRC's review of the Fort Calhoun Final Safety Analysis Report, it was noted that the 345 kV lines passed over the 161 kV lines, and should a 345 kV line fall for any reason, the 161 kV line might also be lost. OPPD maintained that this line is not capable of supplying post-design basis accident loads and it is not credited in the licensing basis for mitigation of design basis accidents. In addition, OPPD stated the surveillance test places a significant burden upon the operating crew and involves the switching of many components. After several discussions with the staff, OPPD has decided to withdraw this request to re-evaluate the basis for this TS change.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 27, 2000 (65 FR 81927). However, by letter dated October 5, 2001, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 27, 2000, and the licensee's letter dated October 5, 2001, which withdrew the application for the license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 23rd day of October 2001.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–27158 Filed 10–26–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised

The agenda for the 487th ACRS meeting scheduled to be held on November 8–10, 2001, has been revised to reflect the changes noted below. Notice of this meeting was previously published in the **Federal Register** on Tuesday, October 23, 2001 (66 FR 53645).

FRIDAY, NOVEMBER 9, 2001

- The Committee will meet with NRC Commissioner McGaffigan between 1:30 and 2:30 p.m. to discuss items of mutual interest.

- Discussion of other items (Future ACRS Activities/Report of the Planning and Procedures Subcommittee, Reconciliation of ACRS Comments and Recommendations, Topics for Meeting the NRC Commissioners, and Proposed ACRS Reports) will be held about an hour later than previously announced in the **Federal Register** on October 23, 2001.

The agenda for Thursday, November 8 and Saturday, November 10, 2001 remains the same as previously announced in the **Federal Register** on October 23, 2001.

For further information contact: Dr. Sher Bahadur (telephone 301–415–0138) between 7:30 a.m. and 4:15 p.m., EDT.

Dated: October 23, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–27156 Filed 10–26–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form 3, OMB Control No. 3235–0104, SEC File No. 270–125

Form 4, OMB Control No. 3235–0287, SEC File No. 270–126

Form 5, OMB Control No. 3235–0362, SEC File No. 270–323

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) The Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Forms 3, 4, and 5 are filed by insiders of public companies that have a class of securities registered under section 12 of the Securities Exchange Act of 1934 ("Exchange Act"). Form 3 is an initial statement of beneficial ownership of securities, Form 4 is a statement of changes in beneficial ownership of securities and Form 5 is an annual statement of beneficial ownership of securities. Approximately 29,000 issuers file form 3 for a total of 14,500 annual burden hours. Approximately 70,204 issuers file Form 4 annually for a total of 34,102 annual burden hours. Approximately 43,500 issuers file Form 5 annually for a total of 43,500 annual burden hours.

Form 3, Form 4, and Form 5 information collections are mandatory and available to the public upon request. Finally, persons who respond to these collections are not required to respond unless the collections of information display a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 19, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27126 Filed 10–26–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14609]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Excel Legacy Corporation, 9.0% Convertible Redeemable Subordinated Debentures (due 2004) and 10.0% Senior Redeemable Notes (due 2004))

October 24, 2001.

Excel Legacy corporation, a Delaware Corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 9.0% Convertible Redeemable Subordinated Debentures (due 2004) and 10.0% Senior Redeemable Notes (due 2004) ("Securities"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The issuer's application relates solely to the Securities' withdrawal from listing and registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

On September 28, 2001, the Issuer merged with Price Legacy Corporation, formerly known as Price Enterprises, Inc. On October 9, 2001, the Board of Directors of the Issuer approved resolutions to withdraw the Issuer's Securities from listing on the Amex. In making the decision to withdraw the Securities from listing on the Exchange, the Issuer considered the limited principal amount of Securities outstanding, the limited number of shareholders, and the additional expense of listing on the Amex.

Any interested person may, on or before November 13, 2001, submit by letter to the Secretary of the Securities and Exchange commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27192 Filed 10–24–01; 4:39 pm]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25220; 812–11632]

PIMCO Funds, et al.; Notice of Application

October 22, 2001.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, under section 6(c) of the Act for an exemption from sections 18(f) and 21(b) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered management investment companies to invest uninvested cash in affiliated money market funds and to participate in a joint lending and borrowing facility. The order would supersede a prior order ("Prior Order").[1]

[1] Cash Accumulation Trust, Investment Company Act Release Nos. 22894 (Nov. 18, 1997) (notice) and 22842 (Dec. 16, 1997) (order).

APPLICANTS: PIMCO Funds (d/b/a PIMCO Funds: Pacific Investment Management Series), PIMCO Variable Insurance Trust, and PIMCO Funds: Multi-Manager Series (collectively, the "Existing Funds") (each Existing Fund on its own behalf and behalf of all existing series); PIMCO Advisors L.P. ("PIMCO Advisors") and Pacific Investment Management Company LLC ("PIMCO"), and any person controlling, controlled by, or under common control with PIMCO Advisors or PIMCO that serves as an investment adviser to a Fund (as defined below) (individually, "Adviser" and collectively, the "Advisers"); and any future open-end registered management investment company and its series for which an Adviser serves as an investment adviser ("Future Funds," and together with the Existing Funds, the "Funds").

FILING DATES: The application was filed on May 28, 1999, and amended on October 2, 2000 and July 23, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 16, 2001 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants' 840 Newport Center Drive, Suite 300, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Assistant Director (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Existing Fund is registered under the Act as an open-end management investment company and is organized either as a Delaware or Massachusetts business trust.[2] The Money Market Fund, a series of PIMCO Funds, holds itself out to the public as a money market fund and is subject to the requirements of rule 2a–7 under the Act. The Money Market Fund and any other open-end Fund that in the future is subject to the requirements of rule 2a–7 under the Act, holds itself out to the public as a money market fund, and relies on the order, are referred to in this notice as the "Money Market Funds". The Short-Term Fund, a series of PIMCO Funds, is a short-term bond fund that invests in money market instruments and short maturity fixed income securities. The Short-Term Fund and any other open-end Fund that in the future holds itself out to the public as a short-term bond fund and relies upon the order requested herein, and the Money Market Funds, are referred to in this notice collectively as the "Central Funds". Any Fund that is not a Central Fund is referred to herein individually as a "Mon-Money Market Fund."

2. The Advisers are registered under the Investment Advisers Act of 1940 and serve as investments advisers to the Funds. PIMCO is a subsidiary of PIMCO Advisors.

A. Investment of Cash Balances in the Central Funds

1. Each Non-Money Market Fund has, or may be expected to have, cash reserves that have not been invested in portfolio securities ("Uninvested Cash") held by its custodian. Uninvested Cash may result from a wide variety of sources, including dividends or interest received or portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, and new monies received from investors.

2. Applicants request an order to permit: (a) each of the Non-Money Market Funds to use their Uninvested Cash to purchase shares of the Central Funds (each Non-Money Market Fund that purchases shares of the Central Funds, an "Investing Fund"); (b) each of the Investing Funds to utilize cash collateral received from borrowers in connection with its securities lending activities ("Cash Collateral" and, together with Uninvested Cash, "Cash Balances") to purchase shares of one or more Central Fund; and (c) the Central Funds to sell their shares to, and redeem their shares from the Investing Funds. The Prior Order permits certain of the Non-Money Market Funds to use their Cash Balances to purchase shares of the Central Funds (and certain other money market fund and/or short-term bond fund series), so long as the aggregate investment by a Non-Money Market Fund does not exceed 25% of its total net assets. Applicants seek an order that would supersede the Prior Order and permit an Investing Fund's aggregate investment of Cash Balances in the Central Funds not to exceed the greater of 25% of the Investing Fund's total assets or $10 million. Any such investment will be in accordance with the Investing Fund's organizational documents and investment policies and will be described in its Statement of Additional Information ("SAI") and other appropriate disclosure documents.

B. Interfund Lending Program

1. Under current arrangements, each Central Fund may lend money to banks, brokers, or other entities by entering into repurchase agreements or purchasing other short-term instruments. In addition, the Non-Money Market Funds may borrow money from the same or other banks for temporary or emergency purposes to satisfy redemption requests or to cover unanticipated cash shortfalls, such as when cash payments for a portfolio security sold by a Non-Money Market Fund has been delayed. Currently, the Non-Money Market Funds have credit arrangements with their custodian under which the custodian may, but is not obligated to, lend money to the Non-Money Market Funds to meet the Non-Money Market Funds' temporary or emergency cash needs. The Non-Money Market Funds may also borrow money from banks, brokers, and other entities by entering into reverse repurchase agreements and economically similar transactions.

2. If the Non-Money Market Funds borrow money from any bank under their current arrangements or under other credit arrangements, the Non-Money Market Funds will pay interest on the borrowed cash at a significantly higher rate that the rate that would be earned by the Central Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential

[2] All existing Funds that currently intend to rely on the order have been named as applicants, and any other Fund that subsequently may rely on the order will comply with the terms and conditions in the application.

represents the bank's profit for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit, requires the Non-Money Market Funds to pay substantial commitment fees in addition to the interest rate to be paid by the Non-Money Market Funds.

3. Applicants request an order that would permit the Funds to enter into lending agreements ("Interfund Lending Agreements") under which the Non-Money Market Funds would borrow money from the Central Funds for temporary and emergency purposes ("Interfund Loans"). Applicants believe that the proposed credit facility will substantially reduce the Non-Money Market Funds' potential borrowing costs and enhance the ability of the Central Funds to earn higher rates of interest on short-term lendings. The Non-Money Market Funds will be free to maintain any existing line of credit or other borrowing arrangement currently provided by their custodian or establish committed lines of credit or other borrowing arrangements with banks.

4. Applicants anticipate that the credit facility will provide a Non-Money Market Fund with significant savings when the cash position of the Non-Money Market Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Non-Money Market Funds have insufficient cash on hand to satisfy such redemptions. When the Non-Money Market Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility will provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

5. Applicants also propose arranging Interfund Loans when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Non-Money Market Fund's custodian or improper delivery instructions by the broker effecting the transaction (a "sales fail"). In such circumstances, a cash shortfall could result if the Non-Money Market Fund has undertaken to purchase a security within the proceeds from securities sold. When a Non-Money Market fund experiences a cash shortfall, the custodian typically extends temporary credit to cover the shortfall and the Non-Money Market Fund incurs overdraft charges. Alternatively, the Non-Money Market Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Non-Money Market Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances will enable the Non-Money Market Funds to have access to immediate, short-term liquidity without incurring custodian overdraft or other charges.

6. While borrowing arrangements with banks will continue to be available to cover sales fails and other cash shortfalls, under the proposed credit facility a Non-Money Market Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, by making short-term cash loans directly to Non-Money Market Funds, the Central Funds will earn interest at a rate higher than they otherwise could obtain from investments on repurchase agreements or other short-term instruments. Thus, Applicants assert that the proposed credit facility would benefit both the Central Funds and the Non-Money Market Funds.

7. The interest rate charged to the Non-Money Market Funds on any Interfund Loan (the "Interfund Loan Rate") will be the average of the "Repo Rate" and the "Bank Loan Rate" (both as defined below). The Repo Rate for any day will be the highest rate available to the Central Funds from investments in overnight repurchase agreements. The Bank Loan Rate for any day will be calculated by PIMCO each day an Interfund Loan is made according to a formula established by each Non-Money Market Fund's board of trustees or directors ("Board") designed to approximate the lowest interest rate at which bank short-term loans would be available to the Non-Money Market Funds. The formula would be based on the publicly available rate and would vary with this rate to reflect changing bank loan rates. Each Non-Money Market Fund's Board periodically will review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Non-Money Market Funds. The initial formula and any subsequent modifications will be subject to the approval of each Non-Money Market Fund's Board.

8. The Interfund Loans would be administered by PIMCO. Under the Interfund Lending Agreements, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. On each business day, PIMCO will collect data on the Cash Balances and borrowing requirements of all participating Funds from the Fund's customers. Once it determines the aggregate amount of cash available for loans and borrowing demand, PIMCO will allocate loans from the Central Funds among the Non-Money Market Funds without any further communication from portfolio managers. Applicants expect that there will be more available Cash Balances each day than borrowing demand. After PIMCO has allocated cash for Interfund Loans, it will invest any remaining cash in accordance with standing instructions from each Central Fund's portfolio manager or return remaining amounts for investment directly by the portfolio manager of each Central Fund. The Central Funds typically will not participate as borrowers because they rarely need to borrow cash to meet redemptions. The Central Funds typically will not participate as borrowers because they rarely need to borrow cash to meet redemptions.

9. PIMCO will allocate borrowing demand and cash available for lending among the Funds on what PIMCO believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of the directors or trustees who are not "interested person" of the Fund, as defined in section 2(a)(19) of the Act ("Independent Trustees"), to ensure that both Non-Money Market Funds and Central Funds participate in such transactions on an equitable basis.

10. PIMCO will: (a) Monitor the interest rates charged and the other terms and conditions of the Interfund Loans, (b) in consultation with a Fund's Adviser, limit to borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) prepare quarterly reports to each Fund's Board concerning any Interfund Loans in which the Funds participate and the interest rates charged.

11. PIMCO will administer the Interfund Loans as part of its duties under its existing management or advisory and service contract arrangements with each Fund and will receive no additional fee as compensation for its services.

12. Each Fund's participation in the proposed Interfund Loans will be consistent with its organizational documents and its investment policies and limitations, as disclosed in its registration statement. If required by law, each of the Non-Money Market Funds and the Central Funds will obtain shareholder approval to amend its fundamental investment policies to permit it to engage in Interfund Loans. If the requested order is granted, each Fund will disclose all material facts about its intended participation in Interfund Loans in its SAI and any other appropriate disclosure document.

13. In connection with the Interfund Loans, applicants request an order of exemption pursuant to Sections 12(d)(1)(J), 6(c), and 17(b) of the Act, and an order pursuant to Rule 17d–1 thereunder, subject to certain conditions and limitations, permitting: (a) Each of the Investing Funds to purchase and redeem shares of the Central Funds; (b) the Central Funds to sell their shares to, and to redeem their shares from, each of the Investing Funds; and (c) the Central Funds to lend money to the Non-Money Market Funds.

Applicants' Legal Analysis

A. Investment of Cash Balances in the Central Funds

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt any person, security, or transaction, or class or classes of persons, securities or transactions from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors.

3. Applicants request relief under section 12(d)(1)(J) to permit each Investing Fund to use Cash Balances to acquire shares of the Central Funds in excess of the percentage limits in section 12(d)(1)(A) of the Act. Applicants state that each Investing Fund's aggregate investment of Cash Balances in shares of the Central Funds will not exceed the greater of 25% of the Investing Fund's total assets or $10 million. Applicants' proposal also would permit the Central Funds to sell their securities to the Investing Funds in excess of the percentage limitations in section 12(d)(1)(B) of the Act. Applicants represent that, other than to effect the Interfund Lending Agreements, the Central Funds will not acquire shares of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Applicants state that none of the abuses meant to be addressed by section 12(d)(1)(A) is created by the proposed investment of Cash Balances in the Central Funds. Applicants state that the proposed arrangement will not result in an inappropriate layering of either sales charges or investment advisory fees. Shares of the Central Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD")). In addition, in connection with approving any advisory contract, the Board of each Investing Fund, including a majority of the Independent Trustees, will consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing fund by the Adviser as a result of Cash Balances being invested in the Central Funds.

5. Applicants also state that there is no threat of redemption to gain undue influence over the Investing funds. The Advisers will serve as investment advisers to each of the Investing Funds and the Central Funds. Applicants also state that due to the highly liquid nature of the Central Funds' portfolios, there will be no need to maintain any special reserve or balances to meet redemptions by the Investing Funds.

6. Sections 17(a)(1) and 17(a)(2) of the Act make it unlawful for an affiliated person of a registered investment company, or any affiliated person of the affiliated person ("Second Tier Affiliate"), acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person directly or indirectly controlling, controlled by, or under common control with the other person; and in the case of an investment company, its investment adviser.

7. Applicants state that, as members of the same complex of funds, with a common investment adviser or advisers that are under common control, the Funds may be deemed to be under common control and, thus, the Funds may be deemed to be affiliated persons. Applicants also state that because an Investing Fund may own more than 5% of a Central Fund's outstanding voting securities, the Investing Fund and the Central Fund may be deemed to be affiliated persons and the Investing Fund a Second Tier Affiliate of other Investing Funds that own more than 5% of the Central Fund's shares. As a result, the sale of shares of the Central Funds to the Investing Funds and the redemption of the shares would be prohibited under section 17(a) of the Act.

8. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

9. Section 6(c) of the Act authorizes the SEC to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provision of the Act.

10. Applicants maintain that their request for relief to permit the purchase and redemption of shares of the Central Funds by the Investing Funds satisfies the standards in sections 6(c) and 17(b). Applicants note that shares of the Central Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. In addition, applicants state that the Investing Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if

they believe they can obtain a higher rate of return or for any other reason. Each Central Fund reserves the right to discontinue selling shares to any of the Investing Funds if its Board determines that the sale will adversely affect its portfolio management and operations.

11. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Investing Funds, by purchasing shares of the Central Funds, each Adviser, by managing the assets of the Investing Funds invested in the Central Funds, and the Central Funds, by selling shares to and redeeming shares from the Investing Funds, could be deemed to be participants in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

12. Rule 17d–1 under the Act permits the SEC to approve a joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the Funds will participate in the proposed transactions on the same basis and will be indistinguishable from any other shareholder account maintained by the Central Funds and that the transactions will be consistent with the Act. Thus, Applicants submit that the proposed transactions meet the standards for relief under rule 17d–1.

B. Interfund Lending Program

1. Section 17(a)(3) of the act generally prohibits any affiliated person or Second Tier Affiliate of a registered investment company from borrowing money or other property from the company. Section 21(b) of the Act generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. As noted above, applicants state that the Funds may be under common control by virtue of having the Advisers as their common investment advisers, and may be affiliated persons also because the Non-Money Market Funds may hold more than 5% of the shares of the Central Funds. As a result, the Central Funds would be prohibited from lending to the Non-Money Market Funds under sections 17(a)(3) and 21(b) of the Act. Applicants request relief under sections 6(c) and 17(b) of the Act from sections 17(a)(3) and 21(b).

2. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with potential adverse interests to and influence over the investment decisions of a registered investment company form causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed Interfund Loans do not raise these concerns because: (a) PIMCO will administer the program as a disinterested fiduciary; (b) all Interfund Loans will consist only of uninvested cash reserves that the Central Funds otherwise would invest in short-term instruments consistent with their investment objectives and policies; (c) the Interfund Loans would not expose the Non-Money Market Funds or the Central Funds to greater risk than other similar investments; (d) the Central Funds will receive interest at a rate higher than they could obtain through other similar investments; and (e) the Non-Money Market Funds would pay interest at a rate lower than otherwise available to them and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants submit that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

3. As noted above, section 17(a)(1) generally prohibits an affiliated person or a Second their Affiliate of a registered investment company from selling any securities or other property to the company. Also as discussed above, section 12(d)(1)(A) of the Act generally makes it unlawful for a registered investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a Non-Money Market Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

4. Applicants state that section 12(d)(1)(A) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants note that there would be no duplicative costs or fees to the Funds or their shareholders, and that PIMCO would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the credit facility is to same money for all participating Funds by reducing the costs paid by Non-Money Market Funds and increasing returns for the Central Funds.

5. Section 18(f)(1) prohibits registered open-end investment companies from issuing any senior security, except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300% for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) of the Act to the limited extent necessary to implement the Interfund Loans (because the Central Funds are not banks).

6. Applicants submit that granting relief under section 6(c) is appropriate because the Non-Money Market Funds will remain subject to the requirement of section 18(f)(1) that all borrowings of each Non-Money Market Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Non-Money Market Funds to borrow from the Central Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

7. As noted above, section 17(d) of the Act and rule 17d–1 thereunder generally prohibit any affiliated person or Second Tier Affiliate of a registered investment company, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants. Applicants request an order under rule 17d–1 with respect to the proposed credit facility. Applicants submit that the proposed transactions meet these standards for the reasons discussed below.

8. Applicants maintain that the Interfund Loans are consistent with the provisions, policies and purposes of the Act in that they offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the Interfund Loans will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

Investment of Cash Balances in the Central Funds

1. The shares of the Central Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with Rule 12b–1 under the Act, or service fee (as defined in Rule 2830(b)(9) of the National Association of Securities Dealers' Conduct Rules).

2. No Central Fund will acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act, except as permitted by an SEC order governing interfund loans.

3. Before the next meeting of the Board of an Investing Fund that invests in the Central Funds is held for the purpose of reviewing, voting on, and renewing an investment advisory contract of the Investing Fund, the Adviser of the Investing Fund, as part of its presentation to the Board pursuant to Section 15(c) of the Act, will provide the Board with specific information regarding the approximate cost to the Adviser of, or the portion of the investment advisory fee under the existing investment advisory agreement attributable to, managing the Uninvested Cash of the Investing Fund that may be invested in the Central Funds. Before approving any investment advisory contract for an Investing Fund, the Board of the Investing Fund, including a majority of the Independent Trustees, shall consider to what extent, if any, the investment advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Central Funds. The minute books of the Investing Fund will record fully the Board's consideration in approving the investment advisory contract, including the consideration relating to the fees referred to above.

4. An Investing Fund may invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the Investing Fund's aggregate investment of Uninvested Cash in the Central Funds does not exceed the greater of 25% of the Investing Fund's total assets or $10 million. For purposes of this limitation, each Investing Fund will be treated as a separate investment company.

5. Each Investing Fund and Central Fund shall be advised by an Adviser.

6. Investment of Cash Balances by an Investing Fund in shares of the Central Funds will be consistent with each Investing Fund's respective investment restrictions and policies as set forth in its prospectus and SAI.

7. Before an Investing Fund may participate in a securities lending program, a majority of the Board, including a majority of the Independent Trustees, will approve the Investing Fund's participation in the securities lending program. Such Trustees also will evaluate the securities lending program and its results no less frequently than annually and determine that any investment of Cash Collateral in the Central Funds is in the best interest of the shareholders of the Investing Fund.

Interfund Lending Agreements

1. The interest rate to be charged to the Non-Money Market Funds under the Interfund Lending Agreements will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, PIMCO will compare the Interfund Loan Rate with the Bank Loan Rate and the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is more favorable to the Central Funds than the Repo Rate and more favorable to the Non-Money Market Fund than the Bank Loan Rate.

3. If a Non-Money Market Fund has outstanding borrowings, any Interfund Loans to the Non-Money Market (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan values as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Non-Money Market Fund, that event of default will automatically (without need for action or notice by the lending Central Funds) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Central Funds to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the Non-Money Market Fund.

4. A Non-Money Market Fund may make an unsecured borrowing through an Interfund Lending Agreement if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets; provided that if the Non-Money Market Fund has a secured loan outstanding from any other lender, including but not limited to the Central Funds, the Non-Money Market Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Non-Money Market Fund's total outstanding borrowings immediately after the interfund borrowing will be greater than 10% of its total assets, the Fund may borrow on a secured basis only. A Non-Money Market Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would exceed the limits imposed by Section 18 of the Act.

5. Before any Non-Money Market Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Non-Money Market Fund much first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value equal to at least 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Non-Money Market Fund with outstanding Interfund Loans exceed 10% of its assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Non-Money Market Fund will within one business day thereafter: (a) Repay all its outstanding Interfund

Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value equal to at least 102% of the outstanding principal value of the loan until the Non-Money Market Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Non-Money Market Fund's total outstanding borrowings exceeds 10% is repaid or the Non-Money Market Fund's total outstanding borrowings exceed 10% of its total assets, Non-Money Market Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan to at least 102% of the outstanding principal value of the loan.

6. A Central Fund may not lend to a Non-Money Market Fund if the loan will cause the Central Fund's aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Central Fund's Interfund Loans to any one Non-Money Market Fund shall not exceed 5% of the Central Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold to cover either shareholder redemptions or "sales fails," but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Non-Money Market Fund's borrowings through Interfund Loans, as measured on the day the most recent loan was made, will not exceed the greater of 125% of the Non-Money Market Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by the Central Fund and may be repair on any day by the Non-Money Market Fund.

11. A Fund's participation in the Interfund Loans must be consistent with its investment policies and limitations and organizational documents.

12. PIMCO will calculate total Fund borrowing and lending demand, and allocate loans on an equitable basis among the Non-Money Market Funds without intervention of the portfolio manager of the Funds. PIMCO will not solicit cash for Interfund Loans from the Central Funds or prospectively publish or disseminate loan demand data to portfolio managers. PIMCO will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from the Central Funds' portfolio managers or return remaining amounts for investment directly by the portfolio manager of each Central Fund.

13. PIMCO will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to each Fund's Board concerning the participation of the Fund in the Interfund Loans and the terms and other conditions of any extensions of credit thereunder.

14. The Board of each Fund, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly the Fund's participation in the Interfund Loans during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) will establish the formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the Interfund Loans.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the Central Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, PIMCO will promptly refer such loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan, who will serve as arbitrator of any disputes concerning Interfund Loans. The arbitrator will resolve any problem promptly, and the abritrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute. If the dispute involves Funds with separate Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any Interfund Loans occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. PIMCO will prepare and submit to each Fund's Board for review an initial report describing the operations of the Interfund Loans and the procedures to be implemented to ensure that all Funds are treated fairly. After the Interfund Loans commence, PIMCO will report on the operations of the Interfund Loans at the Board's quarterly meetings.

In addition, for two years following the commencement of the Interfund Loans, the independent public accountant for each Fund shall prepare an annual report that evaluates PIMCO's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statement on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board of each Fund; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate available on any third party borrowings of the Fund at the time of the Interfund Loan.

After the final report is filed, the Funds' external auditors, in connection with their Fund audit examinations, will continue to review the Interfund Loans for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the Interfund Loans unless it has fully disclosed in its SAI and any other appropriate disclosure document all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27078 Filed 10–26–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25222; File No. 812–12606]

Hartford Life Insurance Company, et al., Notice of Application

October 23, 2001.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of an application for an order pursuant to section 11(a) of the Investment Company Act of 1940 (the "Act") approving the terms of an offer of a longevity reward rider (the "LRR") to owners of certain variable annuity contracts (the "Contracts").

SUMMARY OF APPLICATION: Hartford Life Insurance Company ("Hartford Life"), Hartford Life and Annuity Insurance Company ("Hartford Life and Annuity," together with Hartford Life, "Hartford"), Hartford Life Insurance Company Separate Account Three ("HL Account Three"), Hartford Life and Annuity Insurance Company Separate Account Three ("HLA Account Three," together with the HL Account Three, the "Separate Accounts"), and Hartford Securities Distribution Company, Inc. ("HSD") seek an order approving the terms of a proposed offer of a rider for certain existing variable annuity contract (the "Contracts") issued by Hartford Life and Hartford Life and Annuity that reduces or waives certain charges and imposes a new Contingent Deferred Sales Charge ("CDSC") on premium payments made before or after the rider's issue date (the "Rider Date").

APPLICANTS: Hartford Life, Hartford Life and Annuity, HL Account Three, HLA Account Three, and HSD (collectively, "Applicants").

FILING DATE: This application was filed on August 21, 2001.

HEARING OR NOTIFICATION HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 14, 2001, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609. Applicants, Michael Stobart, Esq., Hartford Life Insurance Company, Inc., 200 Hopmeadow Street, Simsbury, CT 06089.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Hartford Life is a stock life insurance company originally incorporated under the laws of Massachusetts on June 5, 1902, and subsequently re-domiciled to Connecticut. Hartford life is engaged in the business of writing individual and group life insurance and annuity contracts in the District of Columbia and all states. Hartford Life is a subsidiary of Hartford Fire Insurance Company. Hartford Life is ultimately controlled by The Hartford Financial Services Group, Inc., a Delaware corporation whose stock is traded on the New York Stock Exchange. For purposes of the Act, Hartford Life is the depositor and sponsor of the HL Account Three, as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

2. Hartford Life and Annuity is a stock life insurance company originally incorporated under the laws of Wisconsin on January 9, 1956, and subsequently redomiciled to Connecticut. Hartford Life and Annuity is engaged in the business of writing individual and group life insurance and annuity contracts in Puerto Rico, the District of Columbia and all states but New York. Hartford Life and Annuity is a subsidiary of Hartford Fire Insurance Company. Hartford Life and Annuity is ultimately controlled by The Hartford Financial Services Group, Inc., a Delaware corporation whose stock is traded on the New York Stock Exchange. For purposes of the Act, Hartford Life and Annuity is the depositor and sponsor of the HLA Account Three, as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

3. Hartford Life established the HL Account Three on June 22, 1994, and Hartford Life and Annuity established the HLA Account Three on June 22, 1994, as segregated investment accounts under Connecticut law. Under Connecticut law, the assets of the HL Account Three attributable to the Contracts, through which interests in HL Account Three are issued, are owned by Hartford Life, but are held separately from all other assets of Hartford Life for the benefit of the owners of, and the persons entitled to payment under, Contracts. Similarly, the assets of the HLA Account Three attributable to the Contracts, through which interests in the HLA Account Three are issued, are owned by Hartford Life and Annuity, but are held separately from all other assets of Hartford Life and Annuity for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Consequently, such assets in each Separate Account are not chargeable with liabilities arising out of any other business that Hartford Life and Hartford Life and Annuity may conduct. Income, gains and losses, realized and unrealized, from the assets of each of these Separate Accounts are credited to or charged against that Separate Account without regard to the income, gains or loses arising out of any other business that Hartford Life and Hartford Life and Annuity may conduct. Each Separate Account is a "separate account" as defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust.

4. The assets of the HL Account Three support variable annuity Contracts, and interests in the HL Account Three offered through such Contracts have been registered under the Securities Act of 1933 (the "1933 Act") on Form N–4. The assets of the HLA Account Three support variable annuity Contracts, and interests in the HLA Account Three offered through such Contracts have been registered under the 1933 Act on Form N–4.

5. HSD is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. HSD is the principal underwriter for the Contracts and for other Hartford variable insurance products. HSD is an affiliate

of Hartford Life and Hartford Life and Annuity.

6. The Contracts are flexible premium deferred variable annuity contracts. The annuity Contract provide for the accumulation of values on variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a variable basis, fixed basis, or both.

7. At the end of the accumulation period, the Contract owner elects whether to receive a "lumb sum" payment of the Contract's accumulated value, or to receive that value under one of several other payment options that Hartford offers. While some of these payment options provide payments for a period that includes the life of an "annuitant," others do not.

8. The Contracts incorporate many other features, including several "death benefit" options, partial and full surrender rights, transfer privileges, and other optional rider benefits.

9. In addition to any charges associated with the underlying mutual funds, the charges under the Contracts are as follows:

• A Contingent Deferred Sales Charge ("CDSC") may be assessed against each premium payment withdrawn or surrendered from a contract. The length of time from receipt of the premium payment to the time of withdrawal or surrender determines the amount of the CDSC. During the first seven Contract years, withdrawals or surrenders are deemed to be withdrawn first from premiums paid, in the order in which such premiums were received, and then from earnings. After the seventh Contract year, all withdrawals or surrenders are deemed to be withdrawn first from earnings, then from premium payments in the order in which such premiums were received. The CDSC is applied to premiums withdrawn in the percentage shown in the following table:

Length of time (in years) from premium payment	Surrender charge (percent)
1	6
2	6
3	5
4	5
5	4
6	3
7	2
8 or more	0

• Each Contract year, an amount equal to a specific percentage of total premium payments paid as of the date of the withdrawal ("Annual Withdrawal Amount") may be withdrawn without being subject to any otherwise applicable CDSC. The Annual Withdrawal Amount under a Contract is currently 10%.

• An annual contract maintenance charge of $30 is assessed on each Contract anniversary date or, when applicable, the date on which the Contract is fully surrendered. This fee will be waived if the Contract's account value exceeds $50,000 on the Contract's anniversary date.

• An administrative charge is assessed on a daily basis at an annualized rate of 0.15% of the Contract's account value invested in the Separate Accounts.

• A mortality and expense risk charge is assessed on a daily basis at an annualized rate of 1.25% of the Contract's account value invested in the Separate Accounts.

• An optional Death Benefit Rider is available for an additional charge assessed on a daily basis at an annualized rate of 0.15% of the Contract's account value invested in the Separate Accounts.

• A charge corresponding to any applicable state premium taxes.

10. Hartford now proposes to offer a Longevity Reward Rider (the "LRR") to owners of certain existing Contracts. The additional benefits under the LRR include:

• A reduced mortality and expense risk charge assessed on a daily basis at an annualized rate of 1.15% of a Contract's account value invested in the Separate Accounts; and

• A new CDC schedule with a lower maximum percentage (5%) and of shorter duration (5 years), applies to the withdrawal or surrender of any premium payments made after the LRR is added to the Contract.

11. After the LRR is added to a Contract ("Rider Date"), a new five-year CDSC schedule ("New Schedule") applies to all withdrawals or surrenders made after the Rider Date and supplants the original CDSC schedules for the Contacts. Under the New Schedule, withdrawals or surrenders made during the first five years from the Rider Date are taken first from premiums paid, in the order such premiums were received, and then from earnings. After the fifth year from the Rider Date, all withdrawals or surrenders are taken first from earnings, then from premium payments, in the order such payments were received.

12. The New Schedule applies to all premium payments withdrawn or surrendered, whether made before or after the Rider Date, as shown in the following table. For premium payments made after the Rider Date, the five-year period runs from the date of that premium payments. For premium payments made before the Rider Date, the five-year period runs from the Rider Date.

Length of time (in years) from premium payment	Surrender charge (percent)
1	5
2	4
3	3
4	2
5	1
6	0

13. The same exceptions that apply to the Contract's basic CDSC will also apply to the New Schedule. Specifically, no CDSC will be imposed: (a) At the time an Annuity Payment Option commences; (b) upon the death of a Contract owner or annuitant; (c) upon amounts withdrawn to satisfy any applicable minimum distribution requirements under the Internal Revenue Code; or (d) for amounts withdrawn which are within the limits of the Annual Withdrawal Amount. The Annual Withdrawal Amount is currently 10%.

14. If withdrawn or surrendered after the Rider Date, premium payments made before the Rider Date are subject to a CDSC for an additional five years, even if they were no longer subject to a CDSC under the Contracts. For example, if the LRR were purchased in the eighth Contract year, the initial premium would no longer be subject to a CDSC under the Contract. However, upon purchase of the LRR, the initial premium becomes subject to a CDSC for five years after the Rider Date. Moreover, until withdrawals or surrenders are taken first from "earnings" and then from premiums (*i.e.*, five years after the Rider Date) more of the amount withdrawn or surrendered may be subject to a CDSC that would be the case under Contracts without the LRR because the surrender is deemed to be withdrawn first from premiums and then from earnings.

15. Except for the New Schedule, the LRR will not result in any increase in or imposition of any charge. Except for the potential application of the New Schedule to premium made before the Rider Date to which no CDSC would apply under the Contracts absent the LRR, every aspect of a Contract will be at least as favorable after the LRR is added as it was before.

16. Further, adding the LRR to a Contract will have no adverse tax consequences to Contract owners.

17. The LRR will only be available to Contract owners who: (a) Have maintained their Contracts for at least seven years, and either (b) have not made any premium payments within the previous two years or (c) have a CDSC less than or equal to two percent of current Contract value. For those Contract owners electing the LRR who made premium payments prior to the Rider Date, that remain subject to a CDSC on the Rider Date, that charge will be waived and the New Schedule will apply. Contract owners will not be permitted to elect for the LRR to apply to part of a Contract and not to the rest. Any election of the LRR must apply to the whole Contract.

18. After an initial notification of the offer in prospectuses for the Contracts or other communication to Contract owners, the LRR will be offered by providing eligible owners who express an interest in learning the details of the offer, in addition to such prospectus, a separate document explaining the offer ("the Offering Document").

19. The Offering Document will advise Contract owners that the offer is specifically designed for those Contract owners who intend to continue to hold their Contracts as long-term investment vehicles. The Offering Document will state that the offer is not intended for all Contract owners, and that it is not appropriate for any Contract owner who anticipates surrendering all or a significant part of his or her Contract within the next five years. The Offering Document will encourage Contract owners to carefully evaluate their personal financial situation when deciding whether to accept or reject the offer of the LRR. In addition, the Offering Document will explain that the New Schedule will not apply to amounts withdrawn in a Contract year that do not exceed the Annual Withdrawal Amount, or to premium payments maintained until expiration of the New Schedule. In this regard, the Offering Document will state in plain English that, if a significant amount of the Contract's value is surrendered or withdrawn during the five years following the Rider Date, (a) the LRR's benefits may be more than offset by the New Schedule; and (b) a Contract owner may be worse off than if he or she had rejected the offer.

20. To accept the LRR, an owner must complete an election form. This election form will include the disclosure set forth in Condition No. 1 under "Conditions" below.

Applicants' Legal Analysis

1. Section 11(a) of the Act makes it unlawful for any registered open-end company, or any principal underwriter for such a company, to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company, to exchange that security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities, unless the terms of the offer have first been submitted to and approved by the Commission.

2. Section 11(c) of the Act, in pertinent part, effectively requires that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company be approved by the Commission, regardless of the basis of the exchange.

3. Congress enacted Section 11 to prevent "switching" (*i.e.*, "the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company) 'solely for the purpose of exacting additional selling charges.'" According to the Commission, "[I]nvestors in 'fixed trusts,' now known as unit investment trusts, were found to be particularly vulnerable to switching operations. In order to earn another sales commission, a UIT sponsor would often pressure unit holders into exchanging their units for those of another of the sponsor's trusts."

4. Applicants assert that the LRR would not involve "switching." Rather, the purpose of the LRR, as with other optional riders, is to enable Contract owners to enhance their Contracts without having to purchase a new variable annuity contract. In addition, because the LRR offers benefits to Contract owners, as described above, Applicants believe it cannot fairly be argued that the LRR's sole purpose is to exact additional selling charges (or any other type of charge).

5. Further, applicants assert that election of the LRR will not result in any duplicative charges and that the limited CDSC provided under the LRR is reasonable in relation to the benefits that the rider provides and the costs that Applicants will incur in providing those benefits. Applicants represent that those costs will include costs of developing and administering the LRR, the direct dollar costs of the charges that will be waived or reduced, the benefits that will be paid under the LRR, and the costs of distributing the LRR to Contract owners and educating them about it.

6. Applicants note that the New Schedule imposes a lower maximum CDSC and is shorter in duration than the schedules under the Contracts without the LRR. If the Contract owner makes no surrenders during the five years after the Rider Date, there is no possibility that a CDSC will be deducted that exceeds what would have been deducted absent the LRR. Moreover, even if premium payments are withdrawn during that five-year period, the New Schedule will apply only if the amount withdrawn exceeds the Annual Withdrawal Amount.

7. Applicants argue that the LRR will be offered only to Contract owners who already have demonstrated an ability to maintain their Contracts for substantial periods of time. The income taxes that are generally payable when earnings are withdrawn from a Contract, as well as the potential tax penalties that may apply to withdrawals made prior to an owner reaching age 59½, serve as additional motivations that encourage most owners to hold their Contracts for a substantial number of years. Any CDSC will be waived with respect to any amounts necessary to meet the minimum distribution requirements applicable to the Contract under federal tax law.

8. Applicants assert that, given the conditions described above, few Contract owners who add the LRR to their Contracts will ever be assessed any additional CDSC.

9. Applicants state that the primary benefit of the LRR is the .010% reduction in mortality and expense risk charge to Contract owners, which benefit is guaranteed and cannot be reduced or withdrawn.

10. Further, Applicants state that additional premium payments made after the LRR is added to a Contract will be subject only to the 5%/5-year New Schedule rather than the Contract's regular 6%/7-year CDSC schedule that would have applied to those same premium payments under the Contracts if the LRR had not been added to the Contract. Applicants assert that this is a substantial benefit to any Contract owner—including a surviving spouse of the Contract owner who is eligible to continue the Contract after the Contract owner's death—who may have an interest in making further premium payments.

11. In light of these considerations, Applicants assert that there is not any public policy or purpose under Section 11 (or otherwise) that would preclude offering the LRR under the terms and conditions stated herein.fund.

Applicants' Conditions

Applicants have consented to the following conditions:

1. The Offering Document will contain concise, plain English statements that: (a) The LRR is suitable only for Contract owners who expect to hold their Contract as long term investments; and (b) if a significant amount of the Contract's Value is

surrendered or withdrawn during the first five years after the Rider Date, the LRRs' benefits may be more than offset by that charge, and a Contract owner may be worse off if he or she had rejected the LRR.

2. The Offering Document will disclose in concise plain English the only aspect in which adding the LRR rider could disadvantage a Contract owner (*i.e.*, through the possible imposition of the New Schedule of CDSC).

3. A Contract owner choosing to add the LRR will complete and sign the election form, which will prominently restate in concise plain English the statements required in Condition No. 1, and return it to Hartford. If the election form is more than 2 pages long, Hartford will use a separate document to obtain the Contract owner's acknowledgement of the statements referred to in Condition No. 1 above.

4. Applicants will maintain and make available the following separately identifiable records, for the time periods specified below, for review by the Commission upon request: (a) Records showing the level of LRR purchases and how it relates to the total number of Contract owners eligible to acquire the LRR (at least quarterly as a percentage of the number eligible); (b) copies of any form of Offering Document, prospectus disclosure, election form, acknowledgement form, or offering letter, regarding the offering of the LRR including the dates(s) used, and copies of any other written materials or scripts for presentations used by registered representatives regarding the LRR, including dates used; (c) records showing information about each LRR purchase that occurs, including the Contract number; the election form (and separate acknowledgement form, if any, used to obtain the Contract owner's acknowledgement of the statements required in Condition No. 1 above); the date such election or acknowledgement form was signed; the date of birth; address and telephone number of the Contract owner; the issue date of the LRR; the amount of the Contract's value on that date; persistency information relating to the Contract (date of any subsequent CDSCs and CDSC paid); the registered representative's name, CRD number, firm affiliation, branch office address and telephone number; the name of the registered representative's broker-dealer; and thea mount of commission paid to the registered representative that relates to the LRR; and (d) logs showing any Contract owner complaints received by it about the LRR, state insurance department inquiries to it about the LRR, or litigation, arbitration or other proceedings to which it is a party regarding the LRR.

5. Applicants will include the following information on the logs referred to in Condition No. 4(d) above: date of complaint or commencement of proceeding; name and address of the person making the complaint or commencing the proceeding; nature of the complaint or proceeding; and persons names or involved in the complaint or proceeding.

6. Applicants will retain (i) the records specified in Conditions Nos. 4(a) and 4(d) above for six years from creation of the record; (ii) the records specified in Condition No. 4(b) above for six years after the date of last use; and (iii) the records specified in Condition No. 4(c) for seven years from the Rider Date.

Conclusion

For the reasons discussed above, Applicants assert (1) that the LRR offers substantial benefits to Contract owners, will be advantageous for the majority of owners to whom it will be offered, and does not contravene any policy or purpose of Section 11 and (2) that approval of Applicant's offer of the LRR as described, and subject to the conditions set forth, in the application is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants submit that the requested order should therefore be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27077 Filed 10–26–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25221; File No. 812–12464]

Golden American Life Insurance Company, et al.

October 23, 2001.

AGENCY: The Securities and Exchange Commission ("SEC" OR "Commission").

Summary of the Application

Applicants seek an order pursuant to Section 26(b) of the Investment Company Act of 1940 ("1940 Act"), approving substitution of shares of one registered management investment company with shares of another registered management investment company or transfer in-kind of securities held by one registered management investment company. Applicants also seen an order, pursuant to Section 17(b) of the 1940 Act, granting exemptions from Section 17(a) to permit Applicants to carry out the above-reference substitution by means of in-kind redemption and purchase.

APPLICANTS: Golden American Life Insurance Company ("Golden American"), Golden American Life Insurance Company Separate Account B ("Golden Separate Account B"), Equitable Life Insurance Company of Iowa ("Equitable"), Equitable Life Insurance Company of Iowa Separate Account A ("Equitable Separate Account A"), United Life and Annuity Insurance Company ("United"), United Life and Annuity Insurance Company Account One ("United Separate Account One"), and The GCG Trust (the "GCG Trust") (collectively, the "Applicants").

FILING DATE: The application ("Application") was filed originally on March 1, 2001. It was subsequently amended and restated on September 26, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 19, 2001, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: For the Commission: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. For Applicants: Marilyn Talman, Esquire, Golden American Life Insurance Company, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Staff Attorney, or Lorna MacLeod, Branch Chief, Division of Investment Management, Office of Insurance Products, at 202–942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application

is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Golden American, Equitable and United are stock life insurance companies organized under the insurance laws of Delaware, Iowa, and Texas, respectively. Each is authorized to write variable annuity contracts in at least 47 states and the District of Columbia. Golden American, Equitable and United (collectively, "Applicant Insurance Companies") are wholly owned subsidiaries of ING Groep N.V. ("ING"), a global financial services holding company.

2. Golden Separate Account B, Equitable Separate Account A and United Separate Account One (collectively "Applicant Separate Accounts") are separate accounts for which one of the Applicant Insurance Companies serves as the sponsor and depositor. Golden American serves as sponsor and depositor of Golden Separate Account B; Equitable serves as sponsor and depositor of Equitable Separate Account A; United serves as the sponsor and depositor of United Separate Account One. Each Applicant Separate Account is a segregated asset account of its insurance company sponsor and each is registered under the 1940 Act as a unit investment trust. Each Applicant Separate Account is administered and accounted for as part of the general business of the Applicant Insurance Company of which it is a part. The income, gains or losses of such Separate Accounts are credited to or charged against the assets of each such separate account, without regard to income, gains or losses of such Applicant Insurance Company.

3. Each Applicant Separate Account serves as a funding vehicle for certain variable annuity and/or variable life contracts ("collectively, Variable Contracts") written by the respective Applicant Insurance Companies. Applicant Separate Accounts are divided into separate subaccounts, each dedicated to owning shares of one of the investment options available under the Variable Contracts. The Variable Contracts are structured such that holders of any of the Variable Contracts ("Contractholders") may select one or more of the investment options available under the contract held by allocating premiums payable under such contract to that subaccount of the relevant Applicant Separate Account that corresponds to the investment option desired. Thereafter, Contractholders accumulate funds, on a tax-deferred basis, based on the investment experience of the selected subaccount(s). Contractholders may, during the life of the contract, make unlimited transfers of accumulation values among the subaccounts available under the contract held, subject to any applicable administrative and/or transfer fees.

4. The Credit Suisse Warburg Pincus Trust, formerly the Warburg Pincus Trust, is registered under the 1940 Act as an open-end, management, series investment company. As of the date of the Application, the Credit Suisse Warburg Pincus Trust offers shares of four separate investment series, which are included in separate prospectuses each dated May 1, 2001.

5. The GCG Trust is registered under the 1940 Act as an open-end, management, series investment company. As of the date of the Application, the GCG Trust offers shares of 27 separate investment series, which are included in prospectuses dated May 1, 2001.

6. Under the terms of an investment advisory agreement between the GCG Trust and Directed Services, Inc. ("DSI") ("Trust Management Agreement"), DSI manages the business and affairs of each of the several series of the Trust, subject to the control of the Board of Trustees. Under the Trust Management Agreement, DSI is authorized to exercise full investment discretion and make all determinations with respect to the investment of the assets of the respective series, but may, at its own cost and expense, retain portfolio managers for the purpose of making investment decisions and research information available to the Trust. DSI has retained ING Pilgrim Investments, Inc. ("ING Pilgrim") as portfolio manager of the International Equity Series of the GCG Trust.

7. Pursuant to the Trust Management Agreement, DSI is responsible for providing the GCG Trust (or arranging and paying for the provision to the Trust) a comprehensive package of administrative and other services necessary for the ordinary operation of certain selected series of the GCG Trust, including the International Equity Series. This fee ("Unified Fee") is calculated for the participating GCG Trust series based on a percentage of assets basis and in accordance with schedules that provide, for some of the GCG Trust series, including the International Equity Series, fee reductions at specified asset levels or "break points."

8. Applicant Insurance Companies have approved a proposal whereby the International Equity subaccounts would substitute securities issued by the International Equity Series of the GCG Trust for securities issued by the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust, and the GCG Trust Board of Trustees has approved the transfer in-kind of portfolio securities from the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust to the International Equity Series of the GCG Trust. Redemptions in kind will be handled in a manner consistent with the investment objectives, policies and diversification requirements of the International Equity Series of the GCG Trust. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees or other remuneration will be paid by the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust, the International Equity Series of the GCG Trust, or Affected Contractholders in connection with the in-kind transactions.

9. Applicants state that although not identical, the investment objective and policies of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust best fit with those of the International Equity Series of the GCG Trust, as opposed to any other GCG Trust series, to assure that the essential objectives of Affected Contractholders can continue to be met. The International Equity Portfolio of the Credit Suisse Warburg Pincus Trust has a primary investment objective of long-term capital appreciation and the International Equity Series of the GCG Trust has a virtually identical primary investment objective of long-term growth of capital. Both portfolios are managed as diversified portfolios as defined under the 1940 Act. The International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and the International Equity Series of the GCG Trust have substantially similar investment strategies of at least 65% of net assets in equity securities of issuers located in countries outside of the United States. Both may be invested significantly in securities of emerging markets. Applicant Insurance Companies have, therefore, concluded that the overall investment objectives of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and the International Equity Series of the GCG Trust are sufficiently similar such that the International Equity Series of the GCG Trust is appropriate for substitution.

10. Applicants state that the Substitution is part of an overall business plan of Applicants to make its products, including the Variable Contracts, more competitive and more efficient to administer and oversee.

Applicants represent that the Substitution is appropriate because it will allow the Applicants to eliminate a portfolio with poor performance and place Contractholders in a position to participate in a portfolio with much better performance and lower overall expenses.

11. Applicants state that, as of the effective date of the Substitution ("Effective Date"), shares of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust held by the applicable subaccounts will be redeemed for cash or in-kind by Applicant Insurance Companies as follows: Applicant Insurance Companies on behalf of the international Equity Division of Applicant Separate Accounts will simultaneously place a redemption request with the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and a purchase order with the International Equity Series of the GCG Trust so that the purchase will be for the exact amount of the redemption proceeds. As a result, monies attributable to Contractholders currently invested in the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust will be fully invested. Applicant Insurance Companies state that the Applicant Insurance Companies or their affiliates will pay all expenses and transactional costs related to the Substation, including brokerage fees which may arise from sales of portfolio securities by the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and purchases of new portfolio investments made by the International Equity Series of the GCG Trust with the proceeds from the Substitution which brokerage fees would normally be borne by the Fund and/or the Series, any legal and/or accounting fees. Affected Contractholders will not incur any additional fees or charges as a result of the Substitution, nor will their rights or the obligations under any of the Variable Contracts diminish in any way. Applicants further state that all redemption of shares of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and purchases of shares of the International Equity Series of the GCG Trust will be effected at net asset value and in accordance with Rule 22c–1 under the 1940 Act.

12. Applicants state that shareholders of the affected Variable Contracts were mailed a prospectus supplement notifying them of the Applicants' filing of the Application. Prior to the Effective Date, each Affected Contractholder will be furnished with a second supplement setting forth the Effective Date and advising Affected Contractholders of their right to reconsider the Substitution and, if they so chose, at any time prior to the Effective Date, they may reallocate or withdraw amounts under their affected Variable Contract or otherwise terminate their interest thereof in accordance with the terms and conditions of their Variable Contract. All current Contractholders have received a prospectus containing a description of the International Equity Series of the GCG Trust and upon request another copy will be forwarded any Contractholder who requests one. Within five days after the Effective Date, Affected Contractholders will receive a notice ("Substitution Notice") stating that shares of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust have been redeemed and that the shares of the International Equity Series of the GCG Trust have been substituted. The Substitution Notice will include a written confirmation showing the before and after accumulation values (which will not have changed as a result of the substitution) and detailing the transactions effected on behalf of the Affected Contractholder.

Terms of the Substitution

1. The International Equity Series of the GCG Trust has objectives and policies sufficiently similar to the objectives and policies of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust so that the objective of the Affected Contractholders can continue to be met.

2. The expense ratio of the International Equity Series of the GCG Trust will, immediately following the Effective Date and for a period of at least two years following the Effective Date, not exceed 1.28% of the average daily assets of the GCG Fund, which is 0.02% below the 2000 expense ratio of the Warburg Fund.

3. Affected Contractholders may reallocate, without incurring a reallocation charge or adding to their number of reallocations, or withdraw amounts under any affected variable Contract held or otherwise terminate their interest thereof at any time prior to the Effective Date, or within 30 days after the Effective Date, in accordance with the terms and conditions of such Variable Contract.

4. The Substitution will be effected at the net asset value of the respective shares in conformity with section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge by Applicants.

5. The Substitution will take place at respective net asset value without change in the amount or value of any Variable Contract held by Affected Contractholders. Affected Contractholders will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of Applicant Insurance Companies under such Variable Contracts be altered in any way. In addition, the Applicant Insurance Companies will not increase the Contract fees and charges currently being assessed by the Variable Contracts for a period of at least two years following the Substitutions.

6. The Substitution will be effected so that investment of securities will be consistent with the investment objectives, policies and diversification requirements of the International Equity Series of the GCG Trust. The International Equity Series of the GCG Trust will not be responsible for any brokerage commissions and fees for purchase of investments for the portfolio, except for those fees and commissions from purchase or sales of investment securities not directly related to the Substitution. No brokerage commissions, fees or other remuneration will be paid by the International Equity Series of the GCG Trust or the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust or Affected Contractholders in connection with the Substitution.

7. Neither the Substitution nor the subsequent transactions will alter in any way the annuity, life or tax benefits afforded under the Variable Contracts held by any Affected Contractholder.

8. Applicant Insurance Companies will send to its Affected Contractholders within five (5) business days of the Substitution a copy of the Substitution Notice which will include a written confirmation showing the before and after accumulation values (which will not have changed as a result of the Substitution) and detailing the transactions effected on behalf of the respective Affected Contractholder with regard to the Substitution.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(b) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the 1940 Act.

2. Applicants request an order pursuant to section 26(b) of the 1940 Act approving the Substitution and related transactions. Applicants assert that the purposes, terms, and conditions of the proposed Substitution and related transactions are consistent with the protection of investors and the purposes fairly intended by the 1940 Act. Applicants further assert that the Substitution will not result in the type of costly forced redemption against which section 26(b) was intended to guard.

3. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above, from purchasing any security or other property from such registered investment company.

4. If Substitution is effected through an in-kind transfer of securities from the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust to the International Equity Series of the GCG Trust through transfers to and from the Separate Accounts, the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust could be said to be selling portfolio securities to an affiliate and the International Equity Series of the GCG Trust could be said to be purchasing portfolio securities from an affiliate.

5. Applicants request an order pursuant to section 17(b) of the 1940 Act exempting said redemptions and purchases or the in-kind transfer of portfolio securities from the provision of section 17(a) of that Act. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a proposed transaction from section 17(a) if evidence establishes that; (i) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the investment policy of each registered investment company concerned; and (iii) the proposed transaction is consistent with the general purposes of the 1940 Act.

6. Applicants represent that the terms of the redemptions and purchases or the in-kind transfer are reasonable and fair and do not involve overreaching on the part of any person concerned and that the interest of Contractholders will not be diluted. The redemptions and purchases or the in-kind transfer will be done at values consistent with the policies of both the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and the International Equity Series of the GCG Trust. Applicant Insurance Companies and DSI will review all asset transfers to assure that the assets meet the objectives of the International Equity Series of the GCG Trust and that they are valued under the appropriate valuation procedures of the Series. The Applicants represent that the transactions are consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees or other remuneration will be paid by the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust or the International Equity Series of the GCG Trust or Affected Contractholders in connection with the transactions, and that the transactions are consistent with the policies of each investment company involved and the general purposes of the 1940 Act, and comply with the requirements of section 17(b) of the 1940 Act.

7. Applicants represent that the purchase and sale transactions described in the Application will be effected based on the net asset value of the investment company shares held in the subaccounts and the value of the units of the subaccount involved. Therefore, there will be no change in value to any Contractholder.

Applicants' Conditions

The Substitution and related transactions described in the Application will not be completed unless all of the following conditions are met.

1. The Commission shall have issued an order (i) approving the Substitution under section 26(b) of the 1940 Act; and (ii) exempting the in-kind redemptions from the provisions of section 17(a) of the 1940 Act as necessary to carry out the transactions described in this Application.

2. Each Affected Contractholder will have been sent a copy of (i) a supplement informing shareholders of the Application; (ii) a prospectus for the International Equity Series of the GCG Trust; and (iii) a second supplement setting forth the Effective Date and advising Affected Contractholders of their right to reconsider the Substitution and, if they so choose, any time prior to the Effective Date, they may reallocate or withdraw amounts under their affected Variable Contract or otherwise terminate their interest thereof in accordance with the terms and conditions of their variable Contract.

3. Applicant Insurance Companies shall have satisfied themselves, that (i) the Variable Contracts allow the substitution of investment in the manner contemplated by the Substitution and related transactions described herein; (ii) the transactions can be consummated as described in this Application under applicable insurance laws; and (iii) that any regulatory requirements in each jurisdiction where the Variable Contracts are qualified for sale, have been complied with to the extent necessary to complete the transactions.

Within five business days of the Effective Date of the Substitutions, the Applicants will forward to Affected Contractholders a copy of the Substitution Notice.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and related transactions involving redemptions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27127 Filed 10–26–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44971; File No. SR–BSE–2001–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Amending the Transaction Fee Schedule and the Floor Operations Fee Schedule

October 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2001, the Boston Stock Exchange ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Transaction Fee Schedule to revise the monthly transaction related revenue the BSE must generate before it shares excess revenue with eligible firms. Additionally, the Exchange proposes to amend the Exchange's current Floor Operations Fee Schedule to include fees for the trading of securities listed on The Nasdaq Stock Market, Inc. ("Nasdaq").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSE included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Revenue Sharing Program highlighted on the BSE's Transaction Fee Schedule. Currently, the minimum amount of monthly transaction related revenue the BSE must generate before it shares excess revenue with eligible member firms is $1,500,000. The BSE proposes to revise this amount to $1,700,000 to meet the budgeted costs of operating the Exchange in the upcoming fiscal year.

The Exchange also proposes to implement a transaction fees schedule for the trading of Nasdaq securities, similar to the transaction fee schedule currently in place for exchange-listed securities. However, three exceptions will apply. First, all Specialist Trade Processing Fees will be capped for all Nasdaq specialists for a period of two years, commencing with the inception of Nasdaq trading on the BSE. Presently, the Exchange caps these fees in instances in which there are competing specialists, under the Exchange's Competing Specialist Initiative, in listed securities. The BSE is not seeking to extend the Competing Specialist Initiative to the trading of Nasdaq securities at this time. Nevertheless, the Exchange proposes to extend similar Specialist Trade Processing Fee caps to Nasdaq specialists to allow the Nasdaq trading program to develop and mature over a two-year period.

The second exception applies to the way in which securities are ranked for transaction fee caps. Presently, the Exchange categorizes listed securities into various tiers for this purpose. The securities are categorized based on Consolidated Tape Association ("CTA") Trade Rank. Obviously, this measure is not applicable to Nasdaq securities, so the Exchange is proposing to use Nasdaq share volume as an equivalent standard. The Nasdaq share volume will serve the same purposes as the CTA Trade Rankings, and will allow the Exchange to categorize Nasdaq securities in a similar fashion to listed securities, in various tiers.

Lastly, the Exchange proposes to "pass through" all third party fees billed to the Exchange on behalf of the specialists who are trading Nasdaq securities. The fees will pass through on a pro rata basis for all fixed fees, and on an actual basis for all variable fees.

2. Statutory Basis

BSE believes that the proposed rule change is consistent with the provisions of section 6(b)(4)[3] and section 6(b)(5)[4] of the Act, which require, among other things, that the BSE's rules be designed to provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and other persons using its facilities, that the BSE's rules must be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

BSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78f(b)(5).

[5] The Commission added Section 6(b)(4) of the Act to the Statutory Basis Section of the notice at the request of the BSE. Telephone discussion between John Boese, Attorney, BSE, and Christopher B. Stone, Attorney Advisor, Division of Market Regulation, Commission (Oct. 19, 2001).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)[6] of the Act and Rule 19b–4(f)(2) thereunder[7] as establishing or changing a due, fee, or other charge paid solely by members of the BSE. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–2001–06 and should be submitted by November 19, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44964; File No. SR–CBOE–2001–29]

Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to the Exchange's Delisting Criteria

October 19, 2001.

I. Introduction

On May 29, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposed rule change amending the Exchange's delisting criteria. On August 3, 2001, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on August 21, 2001.[4] The Commission received no comments on the proposal. On October 5, 2001, the CBOE submitted Amendment No. 2 to the proposed rule change.[5] This order approves the proposed rule change, as amended. In addition, the Commission solicits comments on Amendment No. 2 from interested persons.

II. Description of the Proposal

The proposed rule change, as amended, would modify Interpretation .01 to CBOE Rule 5.4, which governs the withdrawal of approval for securities underlying options traded on the Exchange, by reducing from $5 to $3 the guideline price used to determine whether an underlying security previously approved for Exchange options transactions continues to meet the exchange's listing requirements.[6] The proposed rule change would also amend Interpretation .02 to CBOE Rule 5.4 to reduce from $5 to $3 the price above which an underlying security must be traded before the Exchange may add additional series of options intra-day.[7] In addition, the proposed rule change would modify Interpretation .01 and Interpretation .02 to CBOE Rule 5.4, by reducing from six calendar months to one day, the amount of time the CBOE would be required to look back at the closing market price of the underlying security when determining if an underlying security previously approved for options transactions no longer meets the requirements for the continuance of such approval. Lastly, the proposed rule change would eliminate Interpretation .04 to CBOE Rule 5.4, which will no longer be needed in light of the above mentioned changes the instant proposed rule change would implement.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[8] and, in particular, the requirements of section 6 of the Act[9] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission believes that by limiting the determination of the closing price to trades occurring on the primary market and requiring that the stock price meet the minimum price on the primary market both at the close the day before and at the time the Exchange determines to add an intra-day series, the delisting criteria should continue to ensure that options traded on the CBOE are based on securities of companies that are financially sound and are still subject to adequate minimum standards. Therefore, the Commission believes that the CBOE's proposed rule change, as amended, should serve to protect investors and the public interest.

The Commission notes that the proposal and Amendment No. 1 were noticed for the full 21-day comment period and the Commission received no comments regarding the proposal, as amended. The Commission further notes that Amendment No. 2 made technical changes to the proposed rule change; accordingly, the Commission finds good cause pursuant to section 19(b)(2) of the Act[11] to accelerate approval of Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2001–29 and should be submitted by November 19, 2001.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 1, 2001 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 44693 (August 13, 2001), 66 FR 43937.

[5] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated October 4, 2001 ("Amendment No. 2"). In Amendment No. 2, the CBOE clarified in Interpretation .01 and Interpretation .02 to CBOE Rule 5.4 that it will look to the primary market in which the underlying security trades in determining whether the underlying security satisfies the price requirements for adding additional series of option contracts.

[6] The Exchange will use the closing price per share in the primary market in which the underlying security trades for purposes of determining the guideline price. *See* Amendment No. 2, *supra* note 5.

[7] The Exchange will use the closing price per share in the primary market in which the underlying security trades and the price per share of the last reported trade in the primary market in which the underlying security trades at the time the Exchange determines to add the series intra-day. *Id.*

[8] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change, as amended, (File No. SR–CBOE–2001–29), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27130 Filed 10–26–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44967; File No. SR–CHX–2001–02]

Self-Regulatory Organizations; Chicago Stock Exchange; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Processing of Depository Eligible Transactions by Clearing Agencies Exempt From Registration and by Qualified Vendors

October 22, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 18, 2001, the Chicago Stock Exchange ("CHX") filed with the Securities and Exchange Commission ("Commission") and on August 31, October 10, and October 18, 2001, amended a proposed rule change as described in Items I and II below, which items have been prepared primarily by the CHX. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX is amending its rules governing the entities qualified to process electronic confirmations and affirmations of depository eligible transactions. Specifically, the CHX proposes to amend portions of Article XV, Rule 5 and related published interpretations and policies to provide that no members shall accept an order from a customer pursuant to an arrangement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer unless the facilities of a registered clearing agency, a clearing agency that is exempt from registration, or a qualified vendor shall be utilized for the electronic confirmation and affirmation of all depository eligible transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CHX is amending portions of Article XV, Rule 5 and related published interpretations and policies pertaining to the types of entities that may process confirmations and affirmations of depository eligible transactions. Under current CHX rules, CHX members may only accept an order from a customer pursuant to an agreement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer if that customer or its agent utilizes the facilities of a "securities depository" for comparison, acknowledgement, and book entry settlement of depository eligible transactions.[3] CHX rules define a "securities depository" as a clearing agency registered with the Commission pursuant to section 17A(b)(2) of the Act.

The Depository Trust Company ("DTC") is a clearing agency registered with the Commission. DTC has combined its TradeSuite family of institutional trade processing services with the institutional trade processing services offered by Thomson Financial ESG[4] in a proposed joint venture, Omgeo, between The Depository Trust & Clearing Corporation ("DTCC"),[5] Thomson Financial Inc.,[6] and Interavia, A.G. ("Interavia").[7] Omgeo provides through its wholly owned subsidiary, Global Joint Venture Matching Services-US, LLC ("GJVMS"), post-trade, presettlement related services, including execution notification, allocation, confirmation, central matching service, operational and standing databases (*i.e.*, trade enrichment), and communication facilities among trading parties and their settlement agents.

GJVMS has been granted an exemption from registration as a clearing agency under section 17A of the Exchange Act and thus would not constitute a "securities depository" under current CHX rules.[8] Currently, GJVMS is the only U.S. provider of confirmation and affirmation services.

In order to permit CHX members and order sending firms to utilize the services of GJVMS, other exempt clearing agencies, or qualified vendors, several CHX rules must be amended.[9] The CHX believes that use of an exempt entity or qualified vendor would not pose any threat to the integrity of processing depository eligible transactions given the significant technological and other requirements that such an exempt clearing agency or qualified vendor would need to satisfy under the proposed rule.

The CHX believes that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) in that it is designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by the CHX.

[2] CHX Rules, Article XV, Rule 5.

[4] Thomson Financial ESG is a division of Thomson Financial, a Thomson Corporation subsidiary.

[5] DTCC was created in 1999 as a holding company for DTC and the National Securities Clearing Corporation ("NSCC").

[6] Thomson Financial Inc. is a wholly owned indirect subsidiary of Thomson Corporation. Thomson Corporation is a global electronic information company.

[7] Interavia is a Swiss corporate affiliate of Thomson Financial Inc.

[8] Securities Exchange Act Release Nos. 44188 (April 17, 2001) (File No. 600–32) (order granting GJVMS an exemption from registration as a clearing agency) and 43540 (November 9, 2000), 65 FR 69582 [File No. 600–32] (notice of filing of application for exemption from clearing agency registration).

[9] "Qualified vendor" is defined by Art. XV, Rule 5 to mean a vendor of electronic confirmation and affirmation services that meets a series of specific requirements set forth in the rule.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

After careful consideration, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act.[10] Section 6(b)(5) of the Act requires that the rules of a national securities exchange promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal is consistent with section 6(b)(5) because it will permit CHX members and order sending firms to utilize the services of GJVMS and other exempt clearing agencies to process depository eligible transactions.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because approval prior to the thirtieth day after publication of notice will allow CHX members and order sending firms to be able to use the confirmation and affirmation services of GJVMS. Because GJVMS has received an exemption from registration as a clearing agency, it does not constitute a "securities depository" under current CHX rules. Therefore, the CHX rules must be amended to allow CHX members and order sending firms to utilize the services of GJVMS, which is the only U.S. provider of confirmation and affirmation services. In addition, this rule change will make the CHX rule consistent with New York Stock Exchange Rule 387, National Association of Securities Dealers Rule 11860, and Municipal Securities Rulemaking Board Rule G–15.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–02 and should be submitted by November 19, 2001.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–CHX–2001–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27129 Filed 10–26–01; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44968; File No. SR–NSCC–2001–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Buy-In Rules and Procedures

October 22, 2001.

On April 27, 2001, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–2001–07) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On April 30, 2001, NSCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on August 29, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NSCC is modifying its buy-in rules and procedures to further automate and improve the processing of buy-ins of CNS positions.[3] The revised procedures provide that a Buy-In Notice may be filed by an originator on successive days provided the succeeding Buy-In Notice does not specify a quantity of securities covered by the prior Buy-In Notice and the quantity of securities representing the sum of all Buy-In Notices does not exceed the member's total long position.[4]

The Retransmittal Notice is being revised to include the identity of the originator on the Retransmittal Notice so that the member owing securities can contact the originator to arrange delivery.[5] Regardless of any agreements that may have been entered into between a member owing securities and an originator, unless the originator notifies NSCC in a timely manner that its Buy-In Order should not be executed, members who receive Retransmittal Notices and do not satisfy them assume liability for the loss, if any, which occurs as a result of an originator's Buy-In Order.[6]

The revisions also require members to electronically transmit Buy-In Notices and Buy-In Orders through an automated format determined by NSCC thereby eliminating the practice of hand and facsimile deliveries. Similarly, NSCC will transmit through an automated format Retransmittal Notices to members.[7]

Members will be advised of the specific implementation date of the Buy-In changes prior to implementation.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[8] The Commission believes that NSCC's rule change is consistent with this section because it will facilitate the prompt and accurate clearance and settlement of buy-in transactions by further automating and improving the processing of buy-ins.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44736 (August 22, 2001), 66 FR 45715.

[3] Changes are being made to: NSCC Rule 11, Sections 7(b) and (c); NSCC Procedure VII, section J; and NSCC Procedure X, section A. Also, proposed changes to NSCC Procedure VII, section E3 to conform its language to the language proposed in NSCC Procedure VII, section J.

[4] NSCC Procedure VII, section J.

[5] NSCC Rule 11, section 7(b).

[6] NSCC Procedure X, section A1.

[7] NSCC Rule 11, sections 7(b) and (c).

[8] 15 U.S.C. 78q–1(b)(3)(F).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2001–07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

[FR Doc. 01–27128 Filed 10–26–01; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44962; File No. SR–NYSE–2001–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Establishing the Fees for NYSE OpenBook™

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder[2] notice is hereby given that on October 15, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to establish a set of fees in its NYSE OpenBook service, a new service in which subscribers may view limit orders contained in the NYSE limit order book.

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE OpenBook is a compilation of limit order data that the Exchange will provide to market data vendors, broker-dealers, private network providers, and other entities through a data feed. By enhancing the quality of the Exchange's market data, the Exchange believes that NYSE OpenBook would preserve and increase the benefits that the Exchange offers to its constituents. At the same time, the Exchange believes that the innovation of NYSE OpenBook serves two of the public policy goals of enhancing market transparency and fostering competition among orders and markets.

The Exchange represents that for every limit price, NYSE OpenBook will include the aggregate order volume. The Exchange will make the NYSE OpenBook data feed available through the Exchange's Common Access Point ("CAP") network. Initially, the Exchange will update NYSE OpenBook every ten seconds.

The Exchange is proposing two fees. First, the Exchange proposes to collect a fee equal to $5,000 per month from each entity that elects to receive the NYSE OpenBook data feed. Second, the Exchange proposes to collect an end-user fee of $50.00[3] per month for each terminal through which the end user is able to display the NYSE OpenBook.

The Exchange believes that NYSE OpenBook responds to the demand of trading desks of broker-dealers and institutional investors for depth-of-market data, a demand that results from decimalization's six-fold increase in the number of price points. Thus, initially, the Exchange anticipates that these trading desks will be the primary users of NYSE OpenBook. As the Exchange gains experience with NYSE OpenBook, the Exchange notes that it may design a data product that is more suitable for use by registered representatives. Eventually, if a demand develops, the Exchange would consider designing a limit order data product suited for the retail, nonprofessional customer.

The Exchange represents that it will require each NYSE OpenBook data feed recipient to enter into the existing form of "vendor" agreement. That agreement will authorize the data feed recipient to provide NYSE OpenBook display services to its customers or to distribute the data internally. In addition, the Exchange represents that it will require each end-user that receives NYSE OpenBook displays from a vendor or broker-dealer to execute the existing NYSE "subscriber" agreement for that purpose.

The Exchange, acting for the Consolidated Tape Association ("CTA") and Consolidated Quotation ("CQ") Plan Participants, currently uses the vendor and subscriber agreements to make available equity quotes and prices. In addition, the Exchange, acting on its own behalf, uses the vendor and subscriber agreements to make available bond quotes and prices. Since the agreements are generic, the Exchange believes that the agreements would accommodate NYSE OpenBook. When the CTA and CQ Plan Participants adopted the current vendor forms of agreement, the Commission published the forms for public comment and approved them.[4]

The Exchange intends to supplement the vendor and subscriber agreements with additional terms that are unique to NYSE OpenBook. The first additional term to the vendor and subscriber agreements that the Exchange would provide requires a data-feed recipient that redisseminates NYSE OpenBook outside of its organization may not integrate the limit orders of other markets or trading systems into the NYSE limit orders (*i.e.*, the data-feed recipient must display the NYSE's compilation in a separate "window"[5] marked "NYSE OpenBook™"). The Exchange notes that the window requirement is designed to maintain the integrity of the NYSE's data compilation so that it is uniquely identified to the NYSE. A vendor could place other markets' limit order displays on the same page as the NYSE OpenBook window.

Further, the Exchange represents that the window requirement applies solely to vendors and not to trading desks that may display NYSE OpenBook for its own use. Because of the window requirement's limited reach, the Exchange notes that mere receipt of the data feed does not in itself convert a broker-dealer into a vendor. According to the Exchange, if a broker-dealer redistributes data to its customers, the broker-dealer would be subject to the window requirement like any other vendor. The Exchange believes that the dichotomy follows conventional licensing distinctions that treat vending and rebroadcasting differently from internal consumption. According to the Exchange, these distinctions are based in part on the practical difficulties inherent in policing internal consumption.

In addition, the Exchange believes that the dichotomy tracks current practices among market data vendors. According to the Exchange, vendors typically control the formats of their display services, but do not control the formats of their data feed services. The Exchange believes that this vendor practice follows a common business stratification approach of providing branded products to one market segment, and licensing customized offerings to another market segment.

The second additional term to the vendor and subscriber agreements that the Exchange would provide initially precludes data-feed customers from retransmitting the NYSE OpenBook data feed. The Exchange believes that this is a prudent safeguard in introducing the new product into the marketplace, particularly since NYSE OpenBook may be the subject of several releases in its first year. Furthermore, the Exchange notes that precluding retransmission of the NYSE OpenBook data feed reflects the Exchange's negative experience with retransmission of the CTA and CQ high speed lines. In recent years, some new entrants into the data-feed business have failed to adopt the administrative controls necessary to assure that their data-feed customers are entitled to receive indirect access to the CTA and CQ high speed lines. The Exchange represents that once the NYSE and the marketplace gain experience with the product, the Exchange will permit retransmission of the NYSE OpenBook data feed.

2. Statutory Basis

The Exchange believes that the basis under the act for the proposed rule change are the requirements under section 6(b)(4) of the Act,[6] which provides that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities; and the requirements under section 6(b)(5) of the Act,[7] which provides, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

A. Description of Proposed Restrictions on NYSE OpenBook

As described above, the NYSE proposes to provide a new service that will permit subscribers to view limit orders contained in the NYSE limit order book. The NYSE envisions two main categories of subscribers to this information: (1) broker-dealers and institutions; and (2) traditional market data vendors that disseminate information to market participants, including broker-dealers, institutions, and other customers. The NYSE's proposed restrictions on re-dissemination of OpenBook data would appear to affect these two types of subscribers differently. While a broker-dealer or institution would be prohibited from enhancing, integrating, or consolidating the OpenBook data with other markets' data for re-dissemination outside of the firm, it could enhance, integrate, or consolidate OpenBook data for its internal use, including distribution to specific trading desks and branch offices within the firm. In this way, a broker-dealer or institution would have the flexibility to fine-tune its OpenBook data feed in a manner that would maximize its usefulness for its trading operations. On the other hand, vendors would be unable to disseminate the data to their customers in a form other than the form prescribed by the NYSE (i.e., they must display the information in a separate window marked NYSE Open Book). Moreover, the Exchange represents that all recipients of the data-feed, including broker-dealers, vendors, institutions, and others, would initially be precluded from retransmitting the OpenBook data-feed in any form. The NYSE represents that "this is a prudent safeguard in introducing the new product into the marketplace, particularly since NYSE OpenBook may be the subject of several releases in its first year. Furthermore, the Exchange notes that precluding retransmission of the NYSE OpenBook data feed reflects the Exchange's negative experience with retransmission of the CTA and CQ high speed lines."

The Commission recognizes that the NYSE's OpenBook proposal would provide market participants with potentially valuable information about the limit orders on specialists' books. This service may be particularly useful in the current decimal pricing environment by providing more information concerning buy or sell interest at various price levels outside of the current inside quotations posted by the Exchange. Nevertheless, the NYSE's proposed restrictions on OpenBook data may potentially raise issues concerning unfair discrimination against different types of subscribers. Moreover, the NYSE's proposed restrictions on consolidating OpenBook information with limit order information available from other market centers may raise questions concerning the fairness and usefulness of the form and content of such information.

B. Statutory Standards

Section 11A generally sets forth the standards under which an SRO may

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[9] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

[3] The Exchange notes that although no other market participant currently offers a limit order data compilation, a few markets offer services that provide a point of reference. According to the Exchange, the NASDAQ Stock Market charges $50 per terminal for its Nasdaq Level II service, which provides the best bid and offer from all market makers and ECNs (although it does not otherwise provide depth-of-book or depth-of-market information). The Exchange also believes that the London Stock Exchange charges $144–$219 per terminal for the price and size of limit orders in stocks that are included in the FTSE 250 index. Further, the Exchange believes that the Toronto Stock Exchange charges $30 per terminal for its order books.

[4] See Securities Exchange Act Rel Nos. 22851 (January 31, 1986), 51 FR 5135 (February 11, 1986); 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990).

[5] The Exchange notes that it is referring to a "window" for conceptual clarity. The requirement does not literally require a separate window, only separate displays. In other words, a vendor could format multiple displays in a single window.

[6] 15 U.S.C. 78f(b)(4).
[7] 15 U.S.C. 78f(b)(5).

distribute *information with respect to* quotations, including limit orders.[8]

1. Section 11A(c)(1) (D) and (C)

Section 11A(c)(1)(D) of the Act[9] requires, among other things, that exchange members, brokers, dealers, and securities information processors be able to obtain information with respect to quotations for and transactions in securities on terms that are not unreasonably discriminatory. The Commission requests comment on whether the NYSE's proposal is consistent with this provision. Commenters are requested to address whether the restrictions on vendor re-dissemination of the data, including the prohibition on providing the full data feed and providing enhanced, integrated, or consolidated data, are unfairly discriminatory. Commenters are also asked to identify any other aspect of the proposal that may be unfairly discriminatory.

The Commission also requests comment on whether the proposal is consistent with the requirements of section 11A(c)(1)(C) of the Act,[10] which requires among other things, that all securities information processors be able to obtain information with respect to quotations and transactions for purposes of distribution and publication on fair and reasonable terms. Specifically, are the contract terms that restrict the use and redissemination of the OpenBook fair and reasonable?

2. Section 11A(c)(1)(B)

Section 11A(c)(1)(B) of the Act[11] requires, among other things, that a SRO distribute information with respect to quotations in such a manner as to assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities, and the fairness and usefulness of he form and content of such information. In this regard, the Commission requests commenters' views on whether the form and content of the OpenBook data are useful and fair in light of the restrictions on the form of display (*i.e.*, the Exchange requirement that a subscriber that redisseminates the data must display it in a separate window marked NYSE Open Book).

3. Other Issues

Finally, the Commission requests comment on the proposal's potential impact on competition. Specifically, the Commission requests comment on whether the proposal imposes any burden on competition that is not necessary or appropriate.[12] In this regard, the Commission requests commenters' views on whether the prohibition on redisseminating OpenBook in an enhanced, integrated, or consolidated form prevents vendors from competing with the NYSE.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2001–42 and should be submitted by November 19, 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27131 Filed 10–26–01; 8:45 am]

BILLING CODE 8010–01–M

[8] In 1975, Congress gave the Commission authority under section 11A to regulate information with respect to quotations, including limit orders. *See* S. Rep. 94–75 94th Cong., 1st Sess. 93 at 8 (1975) (stating in relevant part, "[t]here are two paramount objectives in the development of a national market system. * * * And second, the centralization of *all* buying and selling interest so that each investor will have the opportunity for the best possible execution of his order regardless of where in the system it originates.") (Emphasis added); *Id.* at 9 (stating in relevant part, "[the] regulation of securities communication systems would be accomplished under S. 249 by adding a new section 11A to the Exchange Act. This section is intended to bring under the SEC's direct jurisdiction all organizations engaged in the business of collecting, processing, or publishing information relating to quotations for, indications of interest to purchase and sell, and transactions in securities.") In 1996, the Commission adopted the customer limit order display rule to further the principles of a national market system. *See* Securities Exchange Act Release No. 37619A (August 29, 1996), 61 FR 48290, 48297 (September 12, 1996) (noting that "[t]he Commission has consistently recognized since 1975 that, in order to satisfy this Congressional vision, multiple-market display of limit orders was an important component for qualified securities.")

[9] 15 U.S.C. 78k–1(c)(D).

[10] 15 U.S.C. 78k–1(c)(1)(C).

[11] 15 U.S.C. 78k–1(c)(1)(B).

[12] *See, e.g.*, sections 6(b)(8) and (5) of the Act. 15 U.S.C. 78ff(b)(8) and (5).

[13] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

President's Commission To Strengthen Social Security

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of meeting location.

DATES: November 9, 2001, 10 a.m.–3:30 p.m.

ADDRESSES: Park Hyatt Ballroom, Park Hyatt Washington, 24th at M Street NW., Washington, DC 20037, (202) 789–1234.

SUPPLEMENTARY INFORMATION: The October 23, 2001 **Federal Register** notice (Volume 66, Number 205, Pages 53650–53651) announcing the November 9 meeting of the President's Commission to Strengthen Social Security did not include a meeting location. The purpose of this announcement is to provide the meeting location.

The Commission will meet commencing Friday, November 9, at 10 a.m. and ending at 3:30 p.m., with a break for lunch between 1 p.m. and 2 p.m. The Commission will be deliberating on Social Security reform options, including how to administer personal accounts.

Dated: October 23, 2001.

Michael A. Anzick,

Designated Federal Officer.

[FR Doc. 01–27224 Filed 10–26–01; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administrtion (FAA), DOT.

ACTION: Note.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collections and the expected burdens. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 26, 2001, pages 2017–2138.

DATES: Comments must be submitted on or before November 29, 2001. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Send comments to the Office of Information and Regulatory affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention FAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. *Title:* Safety Improvement Report, Accident Prevention Counselor Activity Reports.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0057.

Forms(s) FAA Forms 89740–5 and 8740–6.

Affected Public: 4,792 Individuals and Businesses.

Abstract: Airmen use Safety Improvement Reports to notify the FAA of Hazards to flight operations. Counselors use Accident Prevention Counselor Activity Reports to advise the FAA of accomplishments of the accident prevention program. The affected public includes pilots, airport operators, and charter and commuter aircraft operators engaging in air transportation.

Estimated Annual Burden Hours: 1,769 hours annually.

2. *Title:* Implementation of the Equal Access to Justice Act.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0539.

Forms(s) NA.

Affected Public: Estimated 15 applicant petitioning for an award of attorney's fees and other expenses under the Equal Access to Justice Act (EAJA).

Abstract: The information will be used to determine whether the applicant is eligible to receive an award under the EAJA.

Estimated Annual Burden Hours: An estimated 600 hours annually.

3. *Title:* Office of Dispute Resolution Procedures for Protests and Contract Disputes, 14 CFR part 17.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0632.

Forms(s) NA.

Affected Public: A combined estimated 40 respondents (businesses, individuals, not-for-profit institutions, and state and local governments).

Abstract: These are procedural requirements for the conduct of protests and contract disputes before the Office of Dispute Resolution for Acquisition. 14 CFR 17.15 and 17.25 provide the procedures for filing protests and contract claims with the ODRA. The regulations seek factual and legal information from protesters or claimants.

Estimated Annual Burden Hours: An estimated 820 hours annually.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection ways to enhance the quality, utility and clarity of the information be be collected; and ways to minimize the burden of the collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: Issued Washington, DC, on October 16, 2001.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 01–27164 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–86]

Petitions for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 8, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on: October 24, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–10191.

Petitioner: Department of the Air Force.

Section of 14 CFR Affected: 14 CFR 91.209(a)(1) and (b).

Description of Relief Sought: To permit the United States Air Force to conduct night-vision goggle lights-out training in the Alaskan military operating areas (MOA's), and selected MOA's

within the lower 48 contiguous United States and Puerto Rico.

[FR Doc. 01–27161 Filed 10–26–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–87]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions and a correction.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received and a correction. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 24, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8190.
Petitioner: Atlas Air, Inc.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Atlas to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least on flight leg that includes a takeoff and a landing. *Grant, 10/16/2001, Exemption No. 7641*

Docket No.: 26826.
Petitioner: AAR Corp.
Section of 14 CFR Affected: 14 CFR 21.327(e)(4).
Description of Relief Sought/ Disposition: To permit AAR to export repaired products using FAA Form 8130–3, Airworthiness Approval Tag, without obtaining a written statement from the importing country listing the conditions under § 21.331(a)(1) that have been met. *Denial, 10/02/2001, Exemption No. 7632*

Docket No.: FAA–2001–10070.
Petitioner: Aerolineas Centrales de Colombia, S.A.
Section of 14 CFR Affected: 14 CFR 121.344(e).
Description of Relief Sought/ Disposition: To permit ACES to operate two Avions de Transport Regional ATR 42–500 airplanes without an approved digital flight data recorder installed. *Denial, 10/16/2001, Exemption No. 7644*

Correction

Docket No.: FAA–2001–10045.
Petitioner: Mountain Air Cargo, Inc.
Section of 14 CFR Affected: 14 CFR 91.203(a) and (b), 121.153(a)(1), and 135.25(a)(1).
Description of Relief Sought/ Disposition: To permit MAC to temporarily operate U.S.-registered aircraft in domestic airline operations under part 121 or part 135 without the airworthiness or registration certificate onboard. *Grant, 09/10/2001, Exemption No. 7620*

[FR Doc. 01–27162 Filed 10–26–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–88]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 24, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10841.
Petitioner: Great Rivers Pilots Association.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit GRPA to conduct local sightseeing flights at Pittsfield Penstone Municipal Airport for the Pike County Color Drive Fly In during October 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/17/2001, Exemption No. 7646*

Docket No.: FAA–2001–10850.
Petitioner: Western North Carolina Pilots Association, Inc.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit WNCPA to conduct local sightseeing flights at Asheville Regional Airport for Fall Color Scenic Rides during October 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/17/2001, Exemption No. 7645*

Docket No.: FAA–2001–10357.
Petitioner: Executive Aviation Logistics, Inc.
Section of 14 CFR Affected: 14 CFR 135.152.
Description of Relief Sought/ Disposition: To permit EAL to operate its 1975 Gulfstream American Gulfstream II airplane (serial No. 173) under part 135 without the airplane being equipped with an approved digital flight data recorder. *Grant, 10/16/2001, Exemption No. 7643*

Docket No.: FAA–2001–9787.
Petitioner: Alpine Aviation, Inc., dba Alpine Air.
Section of 14 CFR Affected: 14 CFR 61.51(f).
Description of Relief Sought/ Disposition: To permit Alpine Air pilots to log second-in command flight time for cargo flights under instrument flight rules in certain multiengine aircraft when more than one pilot is not required by either the aircraft type certificate or the regulations under which the flight is conducted. *Denial, 10/16/2001, Exemption No. 7642*

Docket No.: FAA–2001–10761.
Petitioner: Mr. Mark Fryburg.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit Mr. Fryburg to conduct local sightseeing flights in the vicinity of Portland, Oregon, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. The flights will be auctioned on October 27, 2001, to benefit the Unitarian-Universalist Community Church of Washington County. The flights are expected to occur between October 28, 2001, and December 31, 2001. *Grant, 10/17/2001, Exemption No. 7647*

[FR Doc. 01–27163 Filed 10–26–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Modification of Single Car Air Brake Test Procedures

In accordance with part 232 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for modification of the single car air brake test procedures as prescribed in 232.305(a).

The Association of American Railroads

[Docket Number FRA–2001–10819]

Pursuant to 49 CFR 232.307, the Association of American Railroads (AAR) seeks modification of the single car air brake test procedures, S–486, as prescribed in § 232.305(a) of the Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment.

The sections, paragraphs and parts of S–486, that AAR request to be modified are as follows:

3.1.2.9—original If the car is equipped with an empty/load device, the device must be set to the LOADED position.

(Modification—3.1.2.9) If the car is equipped with an empty/load device, the device must be set to the LOADED position. For side frame sensing devices, place a block (2 inch minimum thickness) under the sensing arm. For slope sheet sensing devices, insert a pin (supplied by Ellcon-National for their empty/load device) or push in a plunger (WABTEC).

The following Note is being added to Section 3.5 System Leakage Test:

(Modification)—

Note: The hand brake Inspection (3.6) can be made while the car brake system is being charged or during the System Leakage Test (3.5)

3.5.2—original If any part of the ball is above the condemning line, it indicates that the brake system is not charged or that excessive leakage exists. Open the flowrator by-pass cock and make a complete check for leakage of all pipe connections, reservoir separation plate gasket, control valve covers and exhausts, service and emergency portion to pipe bracket gaskets, quick service exhaust valves, and vent valve exhausts. Correct any leakage found and repeat the system leakage test.

(Modification—3.5.2) If any part of the ball is above the condemning line, it indicates that the brake system is not charged or that excessive leakage exists. Open the flowrator by-pass cock and make a complete check for leakage. Check all pipe connections, reservoir separation plate gasket, control valve covers, and service and emergency portion mounting gaskets. Correct any leakage found and repeat the system leakage test. If excessive leakage still exists, check all control valve cover gaskets, quick service, manual release valve and vent valve exhausts. Correct any excessive leakage found and repeat the system leakage test.

3.6.1—original Lubricate the hand brake winding shaft and oil cups, if so equipped, with a good grade of 30W oil. With the hand brake in released position, note that the brake cylinder piston push rod(s) have returned into the brake cylinder(s). Apply the hand brake. Observe that the bell crank is in normal working range. Using a bar, determine that all shoes applied by the hand brake are firmly set against the wheels to verify that associated linkage does not bind or foul. On cars with WABCOPAC/NYCOPAC type truck mounted brakes and a hand brake that operates the brake beams on one or both trucks, a minimum of one shoe on each beam must be firmly set against the wheel to verify that associated linkage does not bind or foul. Release hand brake using operating wheel and/or lever. Note that drum chain is fully unwound, that bell crank, if so equipped, drops to lower limit, and that there is minimal slack in the horizontal chain.

(Modification—3.6.1) Lubricate the hand brake winding shaft and oil cups, if so equipped, with a good grade of 30W oil. With the hand brake in released position, note that the brake cylinder piston push rod(s) have returned into the brake cylinder(s). Apply the hand brake. Observe that bell crank, if so equipped, is in normal working range. Using a bar, determine that all shoes applied by the hand brake are firmly set against the wheels to verify that associated linkage does not bind or foul. On cars with WABCOPAC/NYCOPAC type truck mounted brakes and a hand brake that operates the brake beams on one or both trucks, a minimum of one shoe on each beam must be firmly set against the wheel to verify that associated linkage does not bind or foul. Release hand brake using operating wheel and/or lever. Note that drum chain is fully unwound, that bell crank, if so equipped, drops to lower limit, and that there is minimal slack in the horizontal chain.

Original—3.8.1 Measure and note brake cylinder piston travel and check all brake levers for angularity. Piston travel on standard (single capacity) 12-inch stroke body mounted brake cylinders is 7 to 9 inches. Other than standard, cars must be adjusted per badge plate or stenciling on car.

(Modification—3.8.1) Measure and note brake cylinder piston travel and check all brake levers for angularity. If piston travel is outside of the nominal range in Rule 3, piston travel must be adjusted to the initial set up dimension.

Original—3.8.2 On cars with direct acting truck mounted brakes without slack adjusters, observe that the piston travel does not exceed 3 inches (without brake shoe renewal). If piston travel exceeds 3 inches, adjustment in accordance with Instruction Pamphlet 2391 Sup.1, Paragraph 1.3.3 is required.

(Modification—The contents of this paragraph are deleted.)

Original—3.8.3 Check the entire rigging system for any binding or fouling.

(Modification—The contents of this paragraph will become the new 3.8.2. There will not be a 3.8.3.)

Original—3.9.1 On cars with less than 100 feet of brake pipe, reduce the brake pipe pressure 50 psi in Position 4 or 5, and then move the device handle to Position 3. (This must not produce an emergency application.) With the brake pipe pressure no lower than 40 psi,

quickly open the test device 3/8-inch cock. This test must produce a control valve emergency application as indicated by the rapid venting of the brake pipe pressure to zero. The brake cylinder pressure must be higher than the final full service pressure noted in Paragraph 3.7.7. If the brake cylinder pressure is not higher, first soap the gauge and pressure tap before replacing any brake components. No leakage is allowed. If leakage exists at the gauge connection, release the brake, repair or replace tap or gauge and repeat this test. If emergency brake cylinder pressure still does not increase over the full service pressure, the most likely cause is a defective emergency portion, which must be replaced.

(Modification—3.9.1) Reduce the brake pipe pressure to 50 psi in Position 4 or 5, and then move the device handle to Position 3. (This must not produce an emergency application.) With the brake pipe pressure no lower than 40 psi, quickly open the test device 3/8-inch cock. On cars with brake pipe length of over 100 feet, place the device in position 4 and quickly open the test device 3/8 inch cock. This test must produce a control valve emergency application as indicated by the rapid venting of the brake pipe pressure to zero. The brake cylinder pressure must be higher than the final full service pressure noted in Paragraph 3.7.7. If the brake cylinder pressure is not higher, first soap the gauge and pressure tap before replacing any brake components. No leakage is allowed. If leakage exists at the gauge connection, release the brake, repair or replace tap or gauge and repeat this test. If emergency brake cylinder pressure still does not increase over the full service pressure, the most likely cause is a defective emergency portion, which must be replaced.

Original—3.12.3.1 Flowrator Method

(Modification—title change) Brake Cylinder Leakage Test—Flowrator Method

Original-3.12.3.2 Brake Cylinder Gauge Method

(Modification—title change) Brake Cylinder Leakage Test—Gauge Method

Original—3.15.3 If the brake cylinder gauge was installed in 3.1.2.6, MAKE CERTAIN THAT GAUGE IS REMOVED AT THIS TIME. Soap male brake cylinder pressure tap. No leakage allowed. If leakage is present, release brake and replace the brake cylinder pressure tap per section 4.4.

Original—3.15.4If the slack adjuster is found to be defective, make necessary repairs and/or replace the slack adjuster and test the slack adjuster according to Paragraph 4.1.

(Modification—The contents of 3.15.3 have been eliminated. 3.15.4 has been reworded and is now found in 3.15.3. There will no longer be a 3.15.4. **3.15.3)** If slack adjuster is found to be defective, continue with the single car test. After the single car test is completed, make necessary repairs and/or replace the slack adjuster and test the slack adjuster according to Paragraph 4.1.

(Modification—A new paragraph is added. **3.16.2.1)** Make certain that any block(s) that were installed between brake shoe(s) and wheel(s) in section 3.13.6 are removed at this time. If a pin was inserted into a slope sheet empty/load sensor, make certain that the pin is removed.

Original—3.16.3 Move device handle to Position 1. Note that the brake cylinder piston remains in the release position during charging.

Original—3.16.4 When the brake pipe pressure has reached a minimum of 80 psi, move the device handle to Position 5. Allow brake pipe pressure to decrease to zero psi. Note that the brakes apply thereby indicating that the brake cylinder release feature has reset.

(Modification—3.16.3 and 3.16.4 has been changed, renumbered, with additional paragraphs as follows:)

(Modification—3.16.3) Completing test on a Loaded Car or on a Car not equipped with a brake cylinder test gauge

(Modification—3.16.3.1) Move device handle to Position 1. Note the brake cylinder piston remains in the release position during charging.

(Modification—3.16.3.2) When the brake pipe pressure has reached a minimum of 80 psi, move the device handle to Position 5. Allow the brake pipe pressure to decrease to zero psi. Note that the brakes apply thereby indicating that the brake cylinder release feature has reset. Go to section 3.16.5

(Modification—3.16.4) Completing Test on an empty car equipped with empty/load and a brake cylinder test gauge.

Note: If car has defective slack adjuster, change slack adjuster and test according to Sect 4.1, and then continue test with section 3.16.4.1.

(Modification—3.16.4.1) Place the device handle in Position 1 and recharge the car until the flowrator ball floats below the top of the tube. Note that the brake cylinder piston remains in the release position during charging.

(Modification—3.16.4.2) Place the handle in Position 5 and allow the brake pipe pressure to decrease to zero psi. Note that the brakes apply thereby indicating that the cylinder release feature has reset. The brake cylinder pressure must be at least 20 psi lower than the final full service pressure noted in Paragraph 3.7.7. Probable cause for failure of the empty/load equipment, if the equipment has a separate sensing device, is in the adjustment of the sensor device or the sensor device itself, and the next likely cause is the empty/load valve itself.

(Modification—3.16.5) If brake cylinder gauge was installed in 3.1.2.6, MAKE CERTAIN THAT GAUGE IS REMOVED AT THIS TIME. Soap male brake cylinder pressure tap. No leakage is allowed. If leakage is present, drain brake cylinder, release brake and replace the brake cylinder pressure tap per section 4.4.

(Mod—3.16.6) If the empty/load was tested, soap the empty/load device, the equalizing reservoir and associated piping. If leakage is present, drain brake cylinder, release and replace the defective empty/load equipment and test per section 4.6.

Original—3.17.2 If empty/load device on an empty car was set to loaded position, return to empty position.

Original—3.17.3 To prevent possible overcharge problems, drain car reservoirs.

Original—3.17.4 Shut off air supply to test device, or place device handle in Position 3.

Original—3.17. Open 3/8-inch cock, and disconnect test device. Remove the dummy coupling

Original—3.17.6 Make certain that any block(s) that were installed or brake shoe(s) that were removed in section 3.13.6 are removed or replaced.

Original—3.17.7 If required, secure the car to prevent movement.

(Modification—3.17.2 through 3.17.7 has been changed as follows:)

(Modification—3.17.2) To prevent possible overcharge problems, drain car reservoirs. If empty/load device on an empty car was set to loaded position and was not set to empty position in section 3.16.2, return setting to empty position.

(Modification—3.17.3) Shut off air supply to test device, or place device handle in Position 3.

(Modification—3.17.4) Open 3/8-inch cock, and disconnect test device. Remove dummy coupling.

(Modification—3.17.5) If required, secure the car to prevent movement.

original—4.1.20 Measure piston travel. Piston travel should be nominally 7½ inches or as described on badge plate.

(Modification—4.1.2) Measure piston travel. Piston travel should be nominally 7½ inches or as described in Rule 3.

Original—4.1.4 Install block(s) between brake shoe and wheel or remove brake shoe(s) at one end of car. Cars with multiple slack adjusters must have blocks installed at each slack adjuster location.

(Modification—4.1.4) Install block(s) between brake shoe and wheel at one end of car. Cars with multiple slack adjusters must have blocks installed at each slack adjuster location.

Original—4.1.8 Place device handle in Position 1 and completely recharge car. Remove block(s) or reinstall brake shoe(s).

(Modification—4.1.8) Place device handle in Position 1 and completely recharge car. Remove block(s) between shoe(s) and wheel(s).

Original—4.4.3 Complete air brake test as described in 3.17.

(Modification—4.4.3) If empty/load device on an empty car was set to loaded position, return to empty position. Complete air test as described in 3.17.

(Modification—The following paragraphs have been added:)

(Modification—4.5) Brake Cylinder Leakage Test Using Gauge.

Note: If the car is equipped with an empty/load device, the car must be set to the LOADED position. If the car is equipped with a brake cylinder pressure tap, install a brake cylinder pressure gauge. If the car does not have a tap, go to section 4.2, Retaining Valve Test.

(Modification—4.5.1) With the control valve cut in, move test device handle to Position 1 and fully charge the system to 90 psi. Move the reducing valve handle to the low-pressure position while leaving device handle in Position 1. Brake pipe pressure will continue to drop to 80 psi. After the brake pipe pressure has stabilized at 80 psi, wait 3 minutes, then note pressure on brake cylinder gauge. Wait another one minute, then recheck brake cylinder gauge. No more than 1 psi increase or decrease in brake cylinder pressure is allowed. If brake cylinder pressure decreases, probable cause is a leak in the brake cylinder or its associated piping. If brake cylinder pressure increases, probable cause is either a defective service portion or a defective emergency portion, finish test as described in Paragraph 3.17.

Note: To determine which portion may be defective, move the device handle to position 5 and increase the brake application to a 30 psi reduction, then return the device handle to position 3. After the brake pipe pressure has stabilized, wait 2 minutes, then note brake cylinder gauge. Wait another one minute, then check brake cylinder gauge. If the brake cylinder pressure has increased, the emergency portion is defective, or an internal leak exists in the reservoir separation plate between the auxiliary and emergency reservoirs. If the brake cylinder pressure did not increase, then the service portion is defective.

(MODIFICATION—4.6) Empty/Load Test.

Note: When empty/load equipment is installed on a car, the equipment must be installed and adjusted according to OEM instructions. The following test is to be used after empty/load equipment has been replaced.

(MODIFICATION—4.6.1) Install brake cylinder pressure tap on car unless the car is already so equipped. Install brake cylinder pressure gauge. Begin test with car fully charged and device handle in Position 1. Make sure the empty/load equipment is set for LOADED position.

(MODIFICATION—4.6.2) Move the reducing valve handle to the low-pressure position while leaving device handle in Position 1. Brake pipe pressure will continue to drop to 80 psi. After the brake pipe pressure has stabilized at 80 psi, wait 3 minutes, then note pressure on brake cylinder gauge. Wait another one minute, then recheck brake cylinder gauge. No more than a 1 psi increase or decrease in brake cylinder is allowed. If brake cylinder pressure decreases, probable cause is a leak in the brake cylinder or its associated piping. Correct leakage and continue test. If brake cylinder pressure increases, probable cause is either a defective service portion or a defective emergency portion. Replace service and/or emergency portion and make a complete single car test.

Note: To determine which portion may be defective, move the device handle to Position 5 and increase the brake application to a 30 psi reduction , then return the handle to Position 3. After the brake pipe pressure has stabilized, wait 2 minutes, then note brake cylinder gauge. Wait another one minute, then recheck brake cylinder gauge. If brake cylinder pressure has increased, the emergency portion is defective, or an internal leak exists in the reservoir separation plate between the auxiliary and emergency reservoirs. If the brake cylinder pressure did not increase, then the service portion is defective.

(MODIFICATION—4.6.3) Place the reducing valve handle to the high-pressure position and recharge the car until the flowrator ball floats below the top of the tube. Apply the brakes with a 30 psi reduction with device handle in Position 5. Record the brake cylinder pressure.

(MODIFICATION—4.6.4) Place the device handle to Position 1 and recharge the car until the flowrator ball floats below the top of the tube. Set the empty/load equipment to EMPTY position.

(MODIFICATION—4.6.5) Place device handle in Position 5 and allow the brake pipe pressure to decrease to zero psi. The brake cylinder pressure must be at least 20 psi lower than the final full service pressure noted in Paragraph 4.6.3. Probable cause for failure to the empty/load equipment, if the equipment has a separate sensing device, is in the adjustment of the sensor device or the sensor device itself, and the next most likely cause is the empty/load valve itself. Finish test as described in Paragraph 3.17.

Interested parties are invited to submit written views, data, or comments. All communications concerning these proceedings should identify the appropriate docket number (e.g., Docket Number FRA–2001–10819) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW., Washington, DC 20590–0001. Comments received within *60 days* of the date of this notice will be considered by FRA before final action is taken. Pursuant to § 232.307(d), if no comment objecting to the requested modification is received during the 60-day comment period or if FRA does not issue a written objection to the requested modification, the modification will become effective 15 days after the close of the 60-day comment period. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC on October 23, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–27140 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval

for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2001–10658

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the Number 1 Main Track and Side Track, at Gauley, West Virginia, milepost CA–415.50 on the New River Subdivision, C&O Division, consisting of the discontinuance and removal of the controlled electric locks from the hand-operated switch and derail at the location, while retaining the derail and dwarf signal.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 23, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–27138 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket Number FRA–2001–10659

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the single main track, at N.E. Minturn, milepost SH–282.2 and S.E. Minturn, milepost SH–283.2, South Carolina, on the Andrews Subdivision, Florence Service Lane, consisting of the discontinuance and removal of controlled absolute signals H2821 and H2822 at N.E. Minturn, and controlled absolute signals H2831 and H2832 at S.E. Minturn

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, S.W., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 23, 2001.

Grady C. Cothen, Jr.

Deputy Associate Administrator for Safety Standards and, Program Development.

[FR Doc. 01–27141 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2001–10657

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system on the single main track at North End Market, milepost S–823.90, on the Yeoman Subdivision, Florida Business Unit, consisting of the discontinuance and removal of the electric lock from switch 113, and removal of associated signals R114, LA114, and LD114.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on October 23, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and, Program Development.

[FR Doc. 01–27143 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2001–10655

Applicant: Long Island Rail Road Company, Mr. Dennis C. George, PE, Chief Engineer, Jamaica Station, Jamaica, New York 11435

The Long Island Rail Road Company seeks relief from the requirements of the Rules, Standards and Instructions, Title 49 CFR, part 236, section 236.408, to the extent that route locking need not be provided for the proposed installation of three, train crew controlled, power-operated switches in the existing traffic control system, toward the replacement of the existing S119, S118A, and S118B electrically locked, hand-operated switches, near milepost 12.0 between Hall and Valley Interlockings on the Montauk Branch, at St. Albans, New York.

Applicant's justification for relief: To reduce injuries and switching times in pursuit of improvements in safety and operations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 23, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–27139 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket Number FRA–2001–10656]

Applicant: Union Pacific Railroad Company, Mr. Phil M. Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company seeks approval of the proposed modification of the traffic control system, on three main tracks and two yard tracks, between mileposts 0.5 and 2.0 on the Omaha Subdivision, at Council Bluffs, Iowa, associated with track rearrangement and changes in train operation. The proposed changes consist of the following:

1. At CPB–000, milepost 0.5, removal of the power-operated crossover and controlled signals 662, 664, 670, and 672;

2. At CPB–001, milepost 1.0, installation of one power-operated switch, relocation of one power-operated switch, conversion of three power-operated switches to hand operation, and removal of controlled signals 606, 608, 610, 612, 614, 616, 618, 636, 640, 644, 646, 648, and 650;

3. At milepost 1.4, removal of automatic signals 13–5 and 14–5 on yard track 4; and

4. At CPB–002, milepost 2.0, revision of signal 512 to provide for a lunar aspect into non signaled yard tracks 4 and 5.

The reason given for the proposed changes is that track revisions and changes in operating practices make the signals redundant, because many of the signals were originally installed to protect switches that no longer exist. In addition dispatching duties and train

operations will be simplified, and removal of the signals from yard tracks 4 and 5 will facilitate switching operations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 23, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 01–27142 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–10654]

Michelin North America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc., (Michelin) has determined that approximately 1,400 11R24.5 Michelin XDY–EX LRH tires are not in full compliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Michelin has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

According to the application, "During the period of the 29th week of 2001 through the 36th week of 2001, the Spartanburg, South Carolina plant of Michelin North America produced a number of tires with a portion of the DOT tire identification number marking (as required on one side of the tire by 49 CFR 571.119 S6.5b) which did not meet the usual specifications as described by 49 CFR 574.5."

Instead of a required marking that reads: "DOT B6 4F BVR X NN01", the tires were marked: "DOT B6 4F NN01 X BVR" where NN is the week of fabrication and 01 is the year. All other performance requirements of FMVSS No. 119 are met or exceeded. Up to 1200 noncompliant tires have been delivered to end-users. The remaining noncompliant tires have been isolated in Michelin's warehouses and will be either brought into full compliance with the marking requirements of FMVSS No. 119 or scrapped.

Michelin supports its application for inconsequential noncompliance by stating that they do not believe the marking error will impact motor vehicle safety because the tires meet all Federal motor vehicle safety performance standards and the non-compliance is one of labeling.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 28, 2001.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on October 23, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–27135 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulation (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger—carrying aircraft.

DATES: Comments must be received on or before November 28, 2001.

ADDRESSES COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC. 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590 or at *http://dms.dot.gov*.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 23, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12838–N	RSPA–01–10859	City Machine & Welding, Inc., Amarillo, TX.	49 CFR 173.302, 173.34.	To authorize the transportation in commerce of certain DOT Specification 3AA, 3AAX and 3T cylinders which have been alternatively ultrasonically retested. (modes 1, 2, 3)
12840–N	RSPA–01–10858	GreenField Compression, Inc., Richardson, TX.	49 CFR 173.314	To authorize the transportation in commerce of DOT–107A specification seamless steel tank car tanks containing hydrogen, compressed, Division 2.1. (mode 1)
12841–N	RSPA–01–10860	FIBA Technologies, Inc., Westboro, MA.	49 CFR 172.101, 178.338–10, 178.338–13, 178.338–2(c), 178.338–6(a), 178.338–9(b).	To authorize the manufacture, marking, sale and use of an IMO Type 7/US DOT MC 338 tank permanently fitted within an ISO frame for use in transporting various hazardous materials. (modes 1, 2)
12842–N	RSPA–01–10751	Giant Resource Recovery Aerosols, Inc. (GRR), Summerville, SC.	49 CFR 175.10(b)(2)	To authorize the transportation in commerce of aerosols, in specially designed containers for use in transporting Division 2.1 and 2.2 gases to collection site for recycling. (mode 1)
12843–N	RSPA–01–10752	United States Enrichment Corporation, Bethesda, MD.	49 CFR 173.420(a) (b) & (c).	To authorize the transportation in commerce of 48X and 48Y cylinders, which deviate from the ANSI 14.1 standards, containing uranium hexafluoride, Class 7. (modes 1, 3)
12844–N	RSPA–01–10753	Delphi Automotive Systems, Troy, MI.	49 CFR 173.301(h), 173.302(a), 175.3.	To authorize the manufacture, marking, sale and use of non-DOT specification pressure vessels for use as components of automobile vehicle safety systems. (mode 1)
12845–N	4.	Quantas Airways Limited, Los Angeles, CA.	49 CFR 175.10(b)(2)	To authorize the transportation in commerce of cylinders containing medical use compressed oxygen that exceed the present quantity limitation. (mode 5)

[FR Doc. 01–27136 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Material Safety Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before November 13, 2001.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at *http://dms.dot.gov*.

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 23, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemption and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
8915–M		Air Liquide America Corporation (See Footnote 1)	8915

Application No.	Docket No.	Applicant	Modification of exemption
10705–M		Baker Petrolite, Victoria, TX (See Footnote 2)	10705
10833–M		Health Care Waste Services, Bronx, NY (See Footnote 3)	10833
11327–M		Phoenix Services, Inc., Pasadena, MD (See Footnote 4)	11327
11344–M		E.I. DuPont de Nemours and Company, Wilmington, DE (See Footnote 5)	11344
11952–M	RSPA–97–3101	Department of Defense (MTMC), Alexandria, VA (See Footnote 6)	11952
12296–M	RSPA–99–5879	Clean Earth Systems, Inc., Tampa, FL (See Footnote 7)	12296
12473–M	RSPA–00–7431	Old Bridge Metals & Chemicals, Inc., Old Bridge, NJ (See Footnote 8)	12473
12772–M	RSPA–01–10155	Air Cruisers, Inc., Belmar, NJ (See Footnote 9)	12772

[1] To modify the exemption to authorize the addition of certain Division 2.1 and 2.2 materials transported in certain manifolded DOT Specification cylinders.
[2] To modify the exemption to authorize the use of contract carriers for the transportation of a Division 6.1 material, without the segregation requirements, by highway motor vehicle.
[3] To modify the exemption to authorize an additional non-DOT specification steel container for use as bulk outer packaging transporting Division 6.2 materials in dual packagings.
[4] To modify the exemption to authorize a change to the packaging requirements when transporting co-mingled medical waste and municipal solid waste and marking of the inner packaging.
[5] To modify the exemption to authorize the transportation of additional Class 3 materials in DOT Specification tank cars.
[6] To modify the exemption to authorize the use of a new laser guided training round configuration with a quantity increase of pressure vessels in the aluminum and wooden outer containers.
[7] To modify the exemption to authorize certain DOT Specification UN11HH2 composite Intermediate Bulk Containers as outer packaging for lab packs when transporting various classes of hazardous materials.
[8] To modify the exemption to authorize rail freight as an additional mode of transportation for the transportation of Class 8 materials in DOT Specification UN1H1 and UN1H2 plastic drums.
[9] To reissue an exemption originally issued on an emergency basis for the transportation of non-DOT specification cylinders, filled in excess of their marked service pressure, containing a Division 2.2 material.

[FR Doc. 01–27137 Filed 10–26–01; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34103]

New Mexico Gateway Railroad Limited Liability Company-Operation Exemption—Santa Teresa Limited Partnership

New Mexico Gateway Railroad Limited Liability Company, a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 3.5 miles of rail line owned by Santa Teresa Limited Partnership, at Santa Teresa, NM, as follows: (1) A 4,412-foot spur identified as Track A; (2) a 3,375-foot spur identified as Track B; (3) a 3,884-foot spur identified as Track C; (4) a 4,338-foot spur identified as Track D; and (5) a 2,728-foot runaround track.[1]

The transaction was expected to be consummated on or about October 15, 2001.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34103, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 555 Twelfth Street, NW., Washington, DC 20004.

Board decisions and notices are available on our website at *"WWW.STB.DOT.GOV."*

Decided: October 18, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–26907 Filed 10–26–01; 8:45 am]
BILLING CODE 4915–00–P

[1] Applicant states that the actual right-of-way occupied by the tracks is approximately 3700 feet or .70 miles in length.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before November 28, 2001.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, or e-mail to *ahunt@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, fax to (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Sally W. Watts at sally.watts@ots.treas.gov, (202) 906–7380, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Procedures for Monitoring Bank Secrecy Act.

OMB Number: 1550–0041.

Form Number: N/A.

Regulation Requirement: 31 CFR part 103, 12 CFR 563.177 and 563.180.

Description: Necessary to enable OTS to determine whether a savings association has implemented a program reasonably designed to assure and monitor compliance with the currency recordkeeping and reporting requirements established by Federal statute and U.S. Department of Treasury regulations.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 1,035.

Estimated Frequency of Response: Annually..

Estimated Burden Hours per Response: 2 hours.

Estimated Total Burden: 2,070 hours.

Clearance Officer: Sally W. Watts, (202) 906–7380, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 23, 2001.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 01–27166 Filed 10–26–01; 8:45 am]
BILLING CODE 6720–01–P

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Federal Register

Monday,
October 29, 2001

Part II

Environmental Protection Agency

40 CFR Part 52
Approval and Promulgation of Air Quality Implementation Plans; Maryland; One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD–074–3085; FRL–7089–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the attainment demonstration for the one-hour ozone national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington-Trenton severe nonattainment area (the Philadelphia area) as a revision to the Maryland State Implementation Plan (SIP). This control strategy plan was submitted by the Maryland Department of the Environment (MDE). The measures that have been adopted by the State which comprise the control strategy of the one-hour ozone attainment demonstration have and will result in significant emission reductions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the Philadelphia area. The Philadelphia area is comprised of two counties in Delaware, one county in Maryland (namely, Cecil County), seven counties in New Jersey, and five counties in Pennsylvania. The intended effect of this action is to approve this SIP revision as meeting the requirements of the Clean Air Act (CAA or the Act).

DATES: This final rule is effective on November 28, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, at EPA Region III office above or by e-mail at *fernandez.cristina@epa.gov.*

SUPPLEMENTARY INFORMATION: This **SUPPLEMENTARY INFORMATION** section is organized to address the following questions:

A. What Action Is EPA Taking In This Final Rulemaking?
B. What Previous Action Has Been Proposed on These SIP Revisions?
C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemakings for the Attainment Demonstration?
D. What Amendments to the Attainment Demonstration SIP Did Maryland Submit for the Philadelphia Area Since December 16, 1999?
E. What Did EPA's Supplemental Notices of Proposed Rulemaking Cover?
F. When Did EPA Make a Determination Regarding the Adequacy of the Motor Vehicle Emissions Budgets for the Maryland Portion of the Philadelphia Area?
G. What SIP Elements Did EPA Take Final Action on Concurrently or Before the Full Approval of the Attainment Demonstration Could Be Granted?
H. What Measures Are in the Control Strategy for the Attainment Demonstration?
I. What Are the Approved Transportation Conformity Budgets, and What Effect Does This Action Have on Transportation Planning?
J. What Happens to the Approved 2005 Budgets When States Change Their Budgets Using the MOBILE6 Model?
K. What Is the Status of Maryland's New Source Review (SIP)?
L. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Those?

I. Background

A. What Action Is EPA Taking In This Final Rulemaking?

EPA is approving the one-hour attainment demonstration submitted by Maryland for the Philadelphia area as fully meeting the requirements of CAA section 182(c)(2) and (d). The following table identifies submittal dates and amendment dates for the attainment demonstration:

TABLE 1.—SUMMARY OF ATTAINMENT DEMONSTRATION SUBMITTAL DATES

	Date	Content
Initial Submittal	April 29, 1998	Attainment Demonstration.
Amendment	August 18, 1998	Attainment Demonstration Revision Including Supplemental Regional Scale Modeling.
Amendment	December 21, 1999	Attainment Demonstration Revisions to Include Revised Motor Vehicle Emission Budgets.
Amendment	December 28, 2000	Attainment Demonstration Revision to Include Revised Motor Vehicle Emission Budgets to Reflect Tier 2 and Commitments.
Amendment	August 31, 2001	Attainment Demonstration Revision to Include Reasonably Available Control Measures Analysis.

B. What Previous Action Has Been Proposed on These SIP Revisions?

In a December 16, 1999 notice of proposed rulemaking (the December 16, 1999 NPR), we proposed approval of the attainment demonstration for the Philadelphia area (64 FR 70412).

On February 22, 2000 (65 FR 8703), EPA published a notice of availability on guidance memoranda relating to the ten one-hour ozone attainment demonstrations (including the Philadelphia area) proposed for approval or conditional approval on December 16, 1999. The guidance memoranda are entitled: "Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations" dated November 3, 1999, and "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas" dated November 30, 1999.

On July 28, 2000, EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration (65 FR 46383). In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in attainment demonstration SIP revisions. This supplemental notice is discussed in Section I.E. of this document.

On July 16, 2001, EPA published a SNPR on the attainment demonstration (66 FR 36964). In that supplemental notice, we proposed to approve the revised attainment demonstration that contains revised motor vehicle emissions budgets for the attainment year of 2005 which incorporate the benefits of the Federal Tier 2/Low Sulfur-in-fuel rule; and enforceable commitments to (1) submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if additional measures affect the motor vehicle emissions inventory, (2) submit revised SIP and motor vehicle emissions budgets within one year after MOBILE6 is issued, and (3) perform a mid-course review by December 31, 2003. We received no comments on the July 16, 2001 SNPR.

On September 7, 2001, EPA published a SNPR on the attainment demonstration (66 FR 46758). In that supplemental notice, we proposed to approve Maryland's analysis and determination, submitted on August 20, 2001, that there are no additional RACM for the area. We received no comments on that September 7, 2001 SNPR.

Comments received on the December 16, 2001 and July 28, 2000 proposed notices listed in this section relevant to the Philadelphia area attainment demonstration are discussed in Sections I.L. and II. of this document.

C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemaking for the Attainment Demonstration?

On December 16, 1999 (64 FR 70412) we proposed approval of the attainment demonstration submitted by the State of Maryland for the Philadelphia area. Our approval was contingent upon certain actions by Maryland. These actions were to:

(1) Adopt and submit adequate motor vehicle emissions budgets.

(2) Submit a list of control measures that, when implemented, would be expected to provide sufficient additional emission reductions to further reduce emissions to support the attainment test and a commitment that these measures would not involve additional limits on highway construction beyond those that could be imposed under the submitted motor vehicle emissions budget.

(3) Adopt and submit a rule for the regional NO_X reductions consistent with the modeling demonstration.

(4) Adopt and submit an enforceable commitment, or a reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and for additional emission reduction measures developed through the regional process; submit an enforceable commitment for the additional measures and a backstop commitment to adopt and submit intrastate measures for the emission reductions in the event the regional process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP and motor vehicle emissions budget by October 31, 2001 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP and motor vehicle emissions budgets one year after MOBILE6 is issued.

(d) Perform a mid-course review by December 31, 2003.

D. What Amendments to the Attainment Demonstration SIP Did Maryland Submit for the Philadelphia Area Since December 16, 1999?

The following is a summary of such submittals which includes the submittal dates of revisions, the content of these submissions and other pertinent facts regarding these submissions:

(1) On December 21, 1999, Maryland submitted the "State Implementation Plan (SIP) Revision: Modification to the Phase II Attainment Plan for the Baltimore Nonattainment Area and Cecil County: Revising the Mobile Source Emission Budgets." This submittal contained the revised 2005 motor vehicle emission budgets for the Attainment Plans for the Baltimore Nonattainment Area and for Maryland's portion of the Philadelphia area, namely Cecil County.

(2) On December 28, 2000, Maryland submitted the "State Implementation Plan (SIP) Revision: Modification to the Phase II Attainment Plan for Cecil County: Revising the Mobile Source Emission Budgets, Adding Tier 2 Standards." This submittal contained the revised 2005 motor vehicle emissions budgets for the attainment demonstration that reflect the benefits of the Tier 2/Low Sulfur-in-fuel rule benefits and revised commitments to do the following:

(a) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets if the additional measures affect the motor vehicle emissions inventory,

(b) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued.

(c) Perform a mid-course review by December 31, 2003.

(3) On August 31, 2001, Maryland submitted the "State Implementation Plan (SIP) Revision: Reasonably Available Control Measures Analysis for the Baltimore Region." This submittal supplements the attainment demonstration SIP for Cecil County by including a RACM analysis.

E. What Did EPA's Supplemental Notices of Proposed Rulemaking Cover?

(1) On July 28, 2000, EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration (65 FR 46383). In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in this attainment demonstration SIP revision:

(a) First, we proposed a clarification of what occurs if we finalize conditional or full approval of this and certain other attainment demonstration SIP revisions based on a state commitment to revise the SIP's motor vehicle emissions budgets in the future. Under the proposal, the motor vehicle emissions budgets in the approved SIP will apply for transportation conformity purposes only until the budgets are revised consistent with the commitment and we have found the new budgets adequate. Once we have found the newly revised budgets adequate, then they would apply instead of the previous conditionally or fully approved budgets. Normally, revisions to approved budgets cannot be used for conformity purposes until we approve the revised budgets into the SIP. Therefore, we proposed to clarify that when our approval of this and certain other one-hour ozone attainment demonstrations is based on a commitment to future revisions to the budget, our approval of the budget lasts only until revisions to satisfy those conditions are submitted and we find them adequate.

(b) Second, we proposed that states may opt to commit to revise their emissions budgets one year after the release of the MOBILE6 model, as originally proposed on December 16, 1999; or states may commit to a new option, i.e., to revise their budgets two years following the release of the MOBILE6 model, provided that conformity is not determined without adequate MOBILE6-derived SIP budgets during the second year. This second option did not affect the Maryland's attainment demonstration SIP for the Philadelphia area because Maryland has submitted an enforceable commitment to revise the motor vehicle emissions budgets within one year after the official release of the MOBILE6 model. EPA is approving that commitment in this final rulemaking.

(c) In addition, we reopened the comment period to take comment on these two issues and to allow comment on any additional materials that were placed in the dockets for the proposed actions close to or after the initial

comment period closed on February 14, 2000 (65 FR at 46383, July 28, 2000). For many of the areas, additional information had been placed in the docket close to or since the initial comment period concluded. In general, these materials were identified as consisting of motor vehicle emissions budgets, and revised or additional commitments or reaffirmations submitted by the states (65 FR at 46383, July 28, 2000).

(2) On July 16, 2001, EPA published a SNPR on the attainment demonstration (66 FR 36964). In that supplemental notice, we proposed to approve:

(a) The revised attainment demonstration that contains revised motor vehicle emissions budgets for the attainment year of 2005 which incorporate the benefits of the Federal Tier 2/Low Sulfur-in-fuel rule, and,

(b) Enforceable commitments to submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, revise the SIP and motor vehicle emissions budgets by October 31, 2001 if additional measures affect the motor vehicle emissions inventory, submit revised SIP and motor vehicle emissions budgets within one year after MOBILE6 is issued, and to perform a mid-course review by December 31, 2003. In this final rulemaking, EPA is approving the attainment demonstration which contains the revised motor vehicle emissions budgets for the attainment year of 2005 which incorporate the benefits of the Federal Tier 2/Low Sulfur-in-fuel rule and all three of these commitments.

(3) On September 7, 2001, EPA published a SNPR on the attainment demonstration (66 FR 46758). In that supplemental notice, we proposed to approve Maryland's analysis and determination, submitted on August 20, 2001, that there are no additional RACM for the area. We received no comments on that September 7, 2001 SNPR. In this final rule, EPA is approving Maryland's 2005 attainment demonstration plan for the Philadelphia area including this RACM analysis.

F. When Did EPA Make a Determination Regarding the Adequacy of the Motor Vehicle Emissions Budgets for the Maryland Portion of the Philadelphia Area?

Maryland submitted a revision to the attainment plan SIP for the Philadelphia area on December 28, 2000. This revision contained revised motor vehicle emissions budgets for the attainment year of 2005 that reflected the benefits of the Federal Tier 2/Low Sulfur rule.[1]

We began our adequacy review process on the budgets in the December 28, 2000 submittal under our adequacy process with a posting on EPA's Web site *(www.epa.gov/otaq/transp/conform/adequacy.htm)* that started a public comment period on the adequacy of the motor vehicle emissions budgets in the December 28, 2000 SIP revision submitted by Maryland for the Philadelphia area. We then prepared a technical support document for our adequacy determination that included responses to any public comments received during the adequacy process comment period. In an April 12, 2001 **Federal Register** notice we announced that we had determined the budgets contained in the December 28, 2000 submission were adequate (66 FR 18928). (The proposed approval of the budgets in the December 28, 2000 submission is discussed in Section I.E. of this document and the response to any comments received on the proposed approval are in Section II.) Our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the "conformity" button). As stated previously, Maryland has made an enforceable commitment to revise the attainment year motor vehicle emissions budgets using the MOBILE6 model within one year after the release of the MOBILE6 model, and EPA is approving that commitment in this final rulemaking.

G. What SIP Elements Did EPA Take Final Action on Concurrently or Before the Full Approval of the Attainment Demonstration Could Be Granted?

In the December 16, 1999 NPR for the Philadelphia attainment demonstration SIP, EPA noted in Table 4, the status of many of the control measures or SIP elements that are required under part D of the Act for serious and severe areas. The following provides the status of those SIP elements which are prerequisites for approval of the attainment demonstration but which were not fully approved on December 16, 1999 or not listed as fully approved in Table 4 of the December 16, 1999 NPR:

(1) On July 29, 1997 (62 FR 40457), EPA approved Maryland's 15 percent VOC Reduction Plan for the Cecil County as a revision to the Maryland SIP.

(2) On October 29, 1999, EPA approved Maryland's enhanced vehicle inspection and maintenance program as a SIP revision (64 FR 58340).

(3) On December 28, 1999, EPA approved Maryland's national low emission vehicle (NLEV) program as a SIP revision (64 FR 72564).

(4) On December 15, 2000, EPA approved Maryland's NO_X budget rule, which is consistent with the Ozone Transport Commission's (OTC) NO_X Memorandum of Understanding (MOU) Phase II as a SIP revision (65 FR 78416).

(5) On January 10, 2001, EPA approved Maryland's NO_X trading rule which complies with the NO_X SIP Call as a revision to the Maryland SIP (66 FR 1866).

(6) On February 8, 2001, EPA approved Maryland's NO_X RACT rule as a SIP revision (66 FR 9522).

(7) On September 19, 2001, EPA approved Maryland's Post-1996 Rate-of-Progress (ROP) plan (from 1996 through the 2005 attainment year) for the Philadelphia area, namely, Cecil County (66 FR 48209).

To comply with the VOC RACT requirements, Maryland has developed source category rules. Sources of VOC in the Maryland portion of the Philadelphia area, namely Cecil County, which emit more than 25 tons per year (TPY) and that are not subject to any specific source category rule are then subject to Maryland's SIP-approved regulation COMAR 26.11.06.06—Volatile Organic Compounds. Such sources may apply on a case-by case basis for an alternative RACT under COMAR 26.11.19.02G—Control of Major Stationary Sources of Volatile Organic Compounds. But until such a case-by-case RACT determination is made by the MDE and approved by EPA as a SIP revision, the source remains subject to COMAR 26.11.06.06. The following provides the status of those VOC source category rules which are prerequisites for approval of the attainment demonstration but which were not fully approved, as of December 16, 1999, as revisions to the Maryland SIP:

(1) On August 19, 1999, EPA approved Maryland's Fiberglass Manufacturing Rule (64 FR 45182).

(2) On January 14, 2000, EPA approved Maryland's Flexographic Printing and Plastic Bottle Coating Rule (65 FR 2334).

[1] In December 16, 1999 NPR, we proposed to disapprove the attainment demonstration if Maryland did not submit motor vehicle emissions budgets for this area that EPA could find adequate by May 31, 2000 (See 64 FR 70417). The budgets subject to this May 31, 2000 deadline did not necessary have to account for Federal Tier 2/Low Sulfur rule reductions. On December 21, 1999, Maryland submitted a SIP revision that included motor vehicle emissions budgets for the 2005 attainment year that did not include the benefits of the Federal Tier 2/Low Sulfur rule. EPA had determined that these budgets were adequate by the May 31, 2000 deadline (65 FR 36441, June 8, 2000).

(3) On May 7, 2001, EPA approved Maryland's Bread and Snack Food Drying Operations and Expandable Polystyrene Operations Rules (66 FR 22924).

(4) On September 5, 2001, EPA approved Maryland's Marine Vessel Coating Rule (66 FR 46379).

(5) On September 20, 2001, EPA approved Maryland's Synthetic Organic Chemicals Rule (66 FR 37914).

(6) On October 5, 2001, the Regional Administrator of EPA Region III signed a final rule approving Maryland's VOC RACT rules for Iron & Steel Operations. That action has been or soon will be published in the **Federal Register**.

(7) On October 9, 2001, the Regional Administrator of EPA Region III signed a final rule approving Maryland's VOC RACT rules for Aerospace Coating, Kraft Pulp Mills, and Distilled Spirits Facilities. That action has been or soon will be published in the **Federal Register**.

H. What Measures Are in the Control Strategy for the Attainment Demonstration?

TABLE 2.—CONTROL MEASURES IN THE ONE-HOUR OZONE ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA NONATTAINMENT AREA

Control measure	Type of measure	Credited in attainment plan
Enhanced Inspection & Maintenance	SIP Approved	Yes.
Federal Motor Vehicle Control Program	Federal	Tiers 1 and 2.
NLEV[1]	SIP Approved	Yes.
Reformulated Gasoline (Phases 1 & 2)	Federal	Phase 2.
Federal Non-road Gasoline Engine Standards	Federal	Yes.
Federal Non-road Heavy Duty Diesel Engine Standards	Federal	Yes.
Rail Road Locomotive Controls	Federal	Yes.
Stage II Vapor Recovery & On-board Refueling Vapor Recovery (ORVR).	SIP Approved; Federal	Yes.
AIM Surface Coatings	Federal	Yes.
Consumer & Commercial Products	Federal	Yes.
Autobody Refinishing	SIP Approved	Yes.
Surface Cleaning/Degreasing Controls	SIP Approved	Yes.
Open Burning Ban	SIP Approved	Yes.
Marine Engine Emission Standards	Federal	Yes.
Stage I Vapor Recovery	SIP Approved	Yes.
Graphic Art Controls	SIP Approved	Yes.
Heavy Duty Diesel Engines (On-road)	Federal	Yes.
VOC RACT to 25 tpy	SIP Approved	Yes.

Notes:
[1] To the extent NLEV not superceded by Tier 2.

I. What Are the Approved Transportation Conformity Budgets, and What Effect Does This Action Have on Transportation Planning?

(1) What Are the Approved Transportation Conformity Budgets in the Attainment Demonstration?

EPA has determined that the budgets in the attainment demonstration are adequate. The approved motor vehicle emissions budgets of the attainment demonstration are listed in Table 3. Table 3 also provides the amounts by pollutant in tons per day (TPD), the year associated with the budgets, and the effective date of EPA's adequacy determination.

TABLE 3.—TRANSPORTATION CONFORMITY BUDGETS FOR THE MARYLAND PORTION OF THE PHILADELPHIA AREA

Control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Date of adequacy determination
Attainment Demonstration	2005	2.6	5.6	April 27, 2001 (See 66 FR 18928, published on April 12, 2001).

EPA has concluded that Maryland's 2005 attainment demonstration SIP for the Philadelphia area, including its associated budgets for Cecil County, meets the requirements of the CAA. EPA has also determined that Maryland's SIP contains the measures necessary to support these budgets. In this final action, EPA is approving these budgets which were submitted on December 28, 2000 by the State of Maryland as a formal revision to its attainment demonstration SIP for the Philadelphia area.

(2) Is a Requirement to Redetermine Conformity Within 18 months Under Section 93.104 of the Conformity Rule Triggered?

Our conformity rule establishes the frequency by which transportation plans and transportation improvement programs must be found to conform to the SIP and includes trigger events tied to both submittal and approval of a SIP [40 CFR 93.104(e)]. Both initial submission and initial approval trigger a redetermination of conformity. This final rule approves motor vehicle emissions budgets contained in the attainment demonstration. We are advising affected transportation planning agencies that this final

approval of the budgets is listed in Table 3 will require a redetermination that existing transportation plans and TIPs conform within 18 months of the effective date listed in the **DATES** section of this document. See 40 CFR 93.104(e).

J. What Happens to the Approved 2005 Budgets When States Change Their Budgets Using the MOBILE6 Model?

All states whose attainment demonstration includes the effects of the Tier 2/Low Sulfur program have committed to revise and resubmit their motor vehicle emissions budgets after EPA releases the MOBILE6 model. On December 28, 2000, Maryland submitted a commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. In this action, EPA is approving this commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. If Maryland fails to meet its commitment to submit revised budgets using the MOBILE6 model, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

As we proposed in our July 28, 2000 SNPR (65 FR 46383), today's final approval of the budgets contained in the 2005 attainment plan will be effective for conformity purposes only until such time as revised motor vehicle emissions budgets are submitted (pursuant to the commitment to submit revised budgets using the MOBILE6 model within one year of EPA's release of that model) and we have found those revised budgets adequate. We are only approving the attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its currents budgets because Maryland has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

K. What Is the Status of Maryland's New Source Review (SIP)?

EPA approved Maryland's NSR program on February 12, 2001 (66 FR 9766). As stated in the proposed (65 FR 62675, October 19, 2000) and final rulemaking notices, EPA granted limited approval of Maryland's NSR regulations as they apply in the Baltimore area and the Maryland portion of the Philadelphia area, and granted full approval throughout the remainder of Maryland. EPA's sole reason for granting limited approval in the Baltimore area and in Cecil County rather than full approval was that Maryland's NSR regulations do not contain certain restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets. These restrictions, however, only apply in nonattainment areas without an approved attainment demonstration [See 40 CFR section 51.165(a)(ii)(C)]. As EPA today is taking final action to approve Maryland's attainment demonstration SIPs for the Baltimore and Philadelphia areas, Maryland's SIP-approved NSR program's lack of restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets, applicable only in nonattainment areas without an approved attainment demonstration, is moot. Now that we have approved Maryland's attainment demonstration SIPs for the Baltimore and Philadelphia areas, we intend to remove the limited nature of our approval of the State's NSR program in those areas of Maryland as well.

L. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Them?

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on December 16, 1999 (64 FR 70412) for Maryland's ozone attainment demonstration for the Philadelphia area. Comments were received from Robert E. Yuhnke on behalf of Environmental Defense and Natural Resources Defense Council; the Midwest Ozone Group; and from the University of Maryland Law School on behalf of 1000 Friends of Maryland.

EPA also received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383), in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. Comments were received from Environmental Defense and from ELM Packaging Co.

II. Response to Comments

The following discussion summarizes and responds to the comments received on the December 16, 1999 (64 FR 70412) and July 28, 2000 (65 FR 46383) proposed actions summarized in Sections I.B. and I.E.

A. Attainment Demonstration—Weight of Evidence

Comment: The weight of evidence approach does not demonstrate attainment or meet CAA requirements for a modeled attainment demonstration. Commenters added several criticisms of various technical aspects of the weight of evidence approach, including certain specific applications of the approach to particular attainment demonstrations. These comments are discussed in the following response.

Response: Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the one-hour standard. Section 182(c)(2)(A) provides that "[t]his attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective." As described in more detail below, EPA allows states to supplement their photochemical modeling results, with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration "be based on photochemical grid modeling," because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, "The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models)."[2] 40 CFR 51.112(a)(1). However, the regulations further provide, "Where an air quality model specified in Appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment. * * *" Appendix W, in turn, provides that, "The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas," but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. See 40 CFR part 51 Appendix W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted one-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) one-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[3]

In 1996, EPA issued guidance[4] to update the 1991 guidance referenced in 40 CFR part 51 Appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (*e.g.*, changes in the predicted frequency and pervasiveness of one-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e. analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance[5] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the one-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be "no exceedances" in the future model predictions.

The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three "design values" represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors.

[2] The August 12, 1996 version of "Appendix W to part 51—Guideline on Air Quality Models" was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

[3] Guidance on the Use Of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA–454/B–95–007, June 1996.

[4] Ibid.

[5] "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: *http://www.epa.gov/ttn/scram.*

A commenter criticized the 1999 guidance as flawed on grounds that it allows the averaging of the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing lower air quality concentrations to be averaged against higher concentrations thus reducing the total emission reduction needed to attain at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by accounting for growth and controls) to determine whether attainment results. These 1990 emissions would contribute to three design value periods (1988–90, 1989–91 and 1990–92).

Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions—those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that states must model all control measures being implemented. Moreover, a component of this technique—the estimation of future design value—should be considered a model-predicted estimate. Therefore, results from this technique are an extension of "photochemical grid" modeling and are consistent with section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 NPRs will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 ppb on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to 3 exceedances in 3 years in every grid cell. If the model over predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the weight of evidence determination.

When reviewing a SIP, EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the states and available to EPA. This information includes model results for the majority of the control measures. Although not all measures were modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. EPA's decision was further strengthened by each state's commitment to check progress towards attainment in a mid-course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a "rollback" modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR part 51 Appendix W section 6.2.1.e. provides, "Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies." Section 14.0 of Appendix W defines "rollback" as "a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately." Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC would be required. There was no approach for identifying NO_x reductions.

The "proportional rollback" approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone.

For example, if monitoring or modeling results indicate that ozone was reduced by 25 ppb during a particular period, and that VOC and NO_x emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_x. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a "proportional rollback" technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies.

This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: It obviates the need to expend more time and resources to perform additional modeling. In addition, the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which is more consistent with recommendations referenced by Appendix W and does not assume a direct proportional relationship between ozone and its precursors. Lastly, the requirement that areas perform a mid-course review (a check of progress toward attainment) provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51 Appendix W, without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely upon a proportional rollback technique in this rulemaking, but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an "alternative model" to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose the use the November 1999 guidance "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled" in the December 16, 1999 NPR and has responded to all comments received on that guidance elsewhere in this document.

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) Only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values. These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO_x SIP call domain, results from the EPA regional modeling for NO_x controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate nonattainment, and not when they indicate attainment. First, we disagree with the premise of this comment: EPA does not apply the WOE factors to adjust model results. EPA applies the WOE factors as additional analysis to compensate for uncertainty in the air quality modeling. Second, EPA has applied WOE determinations to all of the attainment demonstrations proposed for approval in December 1999. Although for most of them, the air quality modeling results by themselves indicated nonattainment, for two metropolitan areas—Chicago and Milwaukee, including parts of the States of Illinois, Indiana, and Wisconsin, the air quality modeling did indicate attainment on the basis of the statistical test.

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter. The 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. These values do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, these controls are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect reductions anticipated by control measures, that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether or not the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Low Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), states have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is released. EPA will work with states on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration. If analysis indicates additional measures are needed, EPA will take the appropriate action.

B. Reliance on the NO_X SIP Call and Tier 2

Comment: Several commenters stated that given the uncertainty surrounding the NO_X SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO_X SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_X SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier 2 tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the NO_X SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_X SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_X SIP Call. *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000), *cert. denied*, U.S. _, 121 S. Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA*, 251 F.3d 1026 (D.C. Cir. 2001) . In those cases, the court largely upheld the NO_X SIP Call. Although a few issues were vacated or remanded to EPA for further consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the NO_X SIP Call. Moreover, contrary to the commenter's suggestion, the NO_X SIP Call modeling data bases were not used to develop estimates of reductions from the Tier 2 program for the severe-area one-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the NO_X SIP Call modeling lead to inaccurate results for the severe-area one-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the states to achieve the full level of the SIP Call reductions by May 2003. First, the court vacated the rule as it applied to two states—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these states and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the *Appalachian Power* case remanded an issue concerning computation of the electric generating units (EGU) growth factor, it is EPA's view that states should assume that the SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the states are moving forward to implement the NO_X SIP Call.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_X SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michigan*.

C. Approval of Demonstrations That Rely on State Commitments or State Rules for Emission Limitations to Lower Emissions in the Future Not Yet Adopted by a State and/or Approved By EPA

Comment: Several commenters disagreed with EPA's proposal to approve states' attainment demonstrations because: (a) Not all of the emissions reductions assumed in the demonstrations have actually taken place, (b) are reflected in rules yet to be adopted and approved by a state and approved by EPA as part of the SIP, (c) are credited illegally as part of a demonstration because they are not approved by EPA as part of the SIP, or (d) the commenter maintains that EPA does not have authority to accept enforceable state commitments to adopt measures in the future in lieu of current adopted measures to fill a near-term shortfall of reductions.

Response: EPA disagrees with the comments, and believes—consistent with past practice—that the CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[6] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.

As an initial matter, EPA believes that present circumstances for the New York City, Philadelphia, Baltimore and Houston nonattainment areas warrant the consideration of enforceable commitments. The Northeast states that make up the New York, Philadelphia and Baltimore nonattainment areas submitted SIPs that they reasonably believed demonstrated attainment with fully adopted measures. After EPA's initial review of the plans, EPA recommended to these areas that additional controls would be necessary to ensure attainment. Because these areas had already submitted plans with many fully adopted rules and the adoption of additional rules would take some time, EPA believed it was appropriate to allow these areas to supplement their plans with enforceable commitments to adopt and submit control measures to achieve the additional necessary reductions. For Maryland's attainment demonstration for the Philadelphia area, EPA has determined that the submission of enforceable commitments in place of adopted control measures for this limited set of reductions will not interfere with the area's ability to meet its 2005 attainment obligations.

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See, e.g.*, 62 FR 1150, 1187, January 8, 1997 (ozone attainment demonstration for the South Coast Air Basin); 65 FR 18903, April 10, 2000 (revisions to attainment

[6] These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. *See, e.g., American Lung Ass'n of N.J.* v. *Kean*, 670 F. Supp.1285 (D.N.J. 1987), *aff'd*, 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc.* v. *N.Y. State Dept. of Env. Cons.*, 668 F. Supp. 848 (S.D.N.Y.1987); *Citizens for a Better Env't* v. *Deukmejian*, 731 F. Supp. 1448, *recon. granted in part*, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.*, No. CV 97—6916—HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under section 179(a) of the Act, which starts an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

demonstration for the South Coast Air Basin); 63 FR 41326, August 3, 1998 (federal implementation plan for PM–10 for Phoenix); (48 FR 51472, state implementation plan for New Jersey). Nothing in the Act speaks directly to the approvability of enforceable commitments.[7] However, EPA believes that its interpretation is consistent with provisions of the CAA. For example, section 110(a)(2)(A) provides that each SIP "shall include enforceable emission limitations and other control measures, means or techniques . . . *as well as schedules and timetables for compliance*, as may be necessary or appropriate to met the applicable requirement of the Act." (Emphasis added). Section 172(c)(6) of the Act requires, as a rule generally applicable to nonattainment SIPs, that the SIP "include enforceable emission limitations and such other control measures, means or techniques . . . *as may be necessary or appropriate* to provide for attainment . . . by the applicable attainment date . . ." (Emphasis added). The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to attain. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments EPA is approving today—as long as the entire package of measures and rules provides for attainment.

As provided above, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the Philadelphia area—EPA would consider three factors in determining whether to approve the submitted commitments. First, EPA believes that the commitments must be limited in scope. In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow States to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994). While EPA does not believe that case is directly applicable here, EPA agrees with the Court that other provisions in the Act contemplate that a SIP submission will consist of more than a mere commitment. *See NRDC*, 22 F.3d at 1134.

In the present circumstances, the commitments address only a small portion of the plan. For the Philadelphia area, Maryland's commitment addresses only 10.7 percent VOC and 0.7 percent NO_X of the emission reductions necessary to attain the standard. Please see Sections I.G. and I.H. of this document for a comprehensive description of all of the adopted control measures and other components of the Maryland attainment demonstration SIP's control strategy for the Philadelphia area.

As to the second factor, whether the State is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This is supported by the recent recommendation of the OTC regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the States will be able to find sources of reductions to meet the shortfall. The States that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC has met and on March 28, 2001 recommended a set of control measures. Currently, the States are working through their adoption processes with respect to those, and in some cases other, control measures.

Although EPA has evidence that the State may not make the submission on or before the date to which it has committed, EPA believes that it is making sufficient progress to support approval of the commitment. The State of Maryland has indicated that it would adopt, submit and implement the measures within a time period fully consistent with the Philadelphia area attaining the standard by its 2005 attainment date.

The third factor, EPA has considered in determining to approve limited commitments for the Philadelphia area attainment demonstrations is whether the commitment is for a reasonable and appropriate period. EPA recognizes that both the Act and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors—such as the need to consider innovative control strategies—support the consideration of an enforceable commitment in place of adopted control measures, the commitment should provide for the adoption of the necessary control measures on an expeditious, yet practicable, schedule.

As provided above, for the New York, Baltimore and Philadelphia areas, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months to complete the OTC and state-adoption processes—a fairly ambitious schedule—i.e., until October 31, 2001. As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA "SIP Call" provision of the CAA—section 110(k)(5)—which provides States with up to 18 months to submit a SIP after EPA requests a SIP revision. While EPA may have ended its inquiry there, and provided for the States to submit the measures within 18 months of its proposed approval of the attainment demonstrations, EPA further considered that these areas were all located with the Northeast Ozone Transport Region and determined that it was appropriate to provide these areas with additional time to work through the OTR process to determine if regional controls would be appropriate for addressing the shortfall. EPA believed that allowing these States until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007. EPA still believes that this a reasonable schedule for the states to submit adopted control measures that will achieve the additional necessary reductions

The enforceable commitments submitted by Maryland for the Philadelphia nonattainment area, in conjunction with the other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment. EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because the State has obligated itself to submit the rules by

[7] Section 110(k)(4) provides for "conditional approval" of commitments that need not be enforceable. Under that section, a State may commit to "adopt specific enforceable measures" within one-year of the conditional approval. Rather than enforcing such commitments against the State, the Act provides that the conditional approval will convert to a disapproval if "the State fails to comply with such commitment."

specified short-term dates, and that obligation is enforceable by EPA and the public. Moreover, as discussed in the December 16, 1999 proposal, its TSD, other rulemaking actions (cited herein) taken by EPA since December 16, 1999, and in this document; the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

D. RACM (Including Transportation Control Measures)

Comment: Several commenters have stated that there is no evidence in several states that they have adopted reasonably available control measures (RACM) or that the SIPs have provided for attainment as expeditiously as practicable. Specifically, the lack of Transportation Control Measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls. One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate motor vehicle emission budget (MVEB) that is derived from a SIP that is inadequate for the purpose for which it is submitted. The commenter alleges that none of the MVEBs submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM; nor are they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the states must provide a justification for why they were determined to not be RACM.

Response: EPA reviewed the initial SIP submittals for the Maryland portion of the Philadelphia area, namely Cecil County, and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued policy guidance memorandum to have these states address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: "Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs").

On August 20, 2001, Maryland submitted its proposed analysis and determination that there are no additional reasonably available control measures (RACM) for the area and requested that EPA approve it as a SIP revision using a form of Federal rulemaking known as parallel-processing. On September 7, 2001 (66 FR 46758), EPA published a SNPR proposing to approve this supplement to the SIP as meeting the RACM requirements. We received no comments on that September 7, 2001 SNPR.

That proposed approval was done under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its SIP. If the final, adopted revision is substantially changed from the version EPA proposed to approve, and which was available for public review during EPA's comment period, EPA will evaluate those changes and may publish another supplemental notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking notice on the revision. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the state and submitted formally to EPA for incorporation into the SIP.

On August 31, 2001, the State of Maryland supplemented its original attainment demonstration SIP with a formal submittal of an analysis of RACM. EPA has determined that there are no changes between Maryland's formally submitted RACM analysis and the proposed version for which we proposed approval on September 7, 2001. Based upon this SIP supplement, EPA concluded that Maryland's attainment demonstration SIP for the Philadelphia area meets the requirement for adopting RACM. In this final rule, EPA is approving Maryland's 2005 attainment demonstration plan for the Philadelphia area including this RACM analysis.

Section 172(c)(1) of the Act requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *www.epa.gov/ttn/oarpg/t1pgm.html*.

As stated previously, the analysis submitted by Maryland on August 31, 2001 as a supplement to its attainment demonstration SIP for the Philadelphia area, addresses the RACM requirement. Maryland has considered a variety of potential stationary/area source controls such as limits on area source categories not covered by a control technique guideline (e.g., motor vehicle refinishing, and surface/cleaning degreasing); rule effectiveness improvements; controls on major stationary sources of NO_X that are beyond that required under reasonably available control technology (RACT); and other potential measures. Maryland considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; low emission vehicle standards; and other measures such as trip reduction ordinances, value pricing and highway ramp metering.

The State has implemented measures which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. Maryland has adopted and submitted rules for the following categories of area sources which go beyond the Federally mandated controls. The State has implemented measures which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. Maryland has adopted and submitted rules for the following categories of area sources which go beyond the Federally mandated controls. The following are examples and not an exhaustive list:

(1) Maryland has adopted, and EPA has SIP approved, a rule for motor vehicle refinishing. The rule includes volatile organic compound (VOC) content limits for motor vehicle refinishing coatings, application standards and storage and house keeping work practices. This rule goes beyond the Federal rule in content limits, and sets application and work practices standards.

(2) Maryland has adopted, and EPA has approved, a rule for control of VOC emissions from screen printing on plywood used for signs, and untreated sign paper.

(3) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from screen printing, lithographic printing, drying ovens, adhesive application, and laminating equipment used to produce a credit card or similar plastic card product.

(4) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from "digital imaging"—printers that use a computer driven machine to transfer an electronically stored image onto the substrate through the use of inks, toners, or other similar color graphic materials via ink jet, electrostatic, and spray jet technologies.

(5) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from cold and vapor degreasing that includes requirements that go beyond the applicable CTG. Maryland restricts the vapor pressure of solvents used to 1 mm Hg at 20 C (0.019 psia) or less for and cold degreasing, including cold or vapor degreasing at: service stations; motor vehicle repair shops; automobile dealerships; machine shops; and any other metal refinishing, cleaning, repair, or fabrication facility.

(6) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC and NO_X emissions by banning open burning activities from June 1 through August 31 of each year.

(7) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from lithographic printing.

(8) Maryland has adopted, and EPA has SIP approved, a rule to implement Phase II NO_X controls under the OTC's MOU. This rule established a fixed cap on ozone-season NO_X emissions from specified major point sources of NO_X. The rule grants each source a fixed number of NO_X allowances, applies state-wide, and required compliance starting during the 2000 ozone season. It reduces NO_X emissions both inside and outside the Philadelphia area.

(9) Maryland has adopted, and EPA has SIP approved, a rule to implement the NO_X SIP Call. The Maryland rule requires compliance commencing with the start of the 2003 ozone season. (This measure is identified as Phase II/III control under the OTC MOU on NO_X control in the attainment demonstration).

(10) Maryland has also adopted, and EPA has SIP approved, a rule requiring the sale of vehicles under the national low-emission vehicle program (NLEV).

Maryland has considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; and other measures such as trip reduction ordinances, value pricing and highway ramp metering. The Maryland portion of the Philadelphia area, Cecil County, has unique local characteristics that affect the effectiveness of many mobile source measures. The first is that the majority of the vehicle travel occurs on the Interstate 95 highway; much of this traffic is through traffic that would not be affected by locally adopted transportation control measures. Cecil County is a rural area without much of the mass transit infrastructure found in Maryland's other major nonattainment areas (Baltimore, Metropolitan Washington, DC). The area has few point sources of VOC emissions and no major sources of NO_X. Most of the area source VOC emissions are already subject to regulation. Maryland determined that many of the considered measures were not to be RACM due to the potential for substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. A large number of the considered measures were rejected on these grounds or on the grounds that they could not be implemented by 2005 much less any earlier. Some were rejected because they would not advance attainment because the measure had benefits outside the ozone season or would be sporadically implemented (not episodically) such as the "try transit week" items. These explanations are provided in further detail in the docket for this rulemaking.

On September 7, 2001, EPA published an SNPR proposing to approve the RACM analysis submitted by Maryland on August 31, 2001 as a supplement to its 2005 attainment demonstration SIP for the Philadelphia area. We received no comments on that SNPR. In this final rule, EPA is approving Maryland's 2005 attainment demonstration plan for the Philadelphia area including this RACM analysis.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the Maryland portion of the Philadelphia area, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that states consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. *See, e.g., www.epa.gov/otaq/transp.htm.* In order to demonstrate that they will attain the one-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures—including the kind that the Maryland portion of the Philadelphia area, Cecil County itself evaluated in its RACM analysis—that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term—even if such measures do not advance the attainment date—since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the Clean Air Act's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date, EPA concludes that the attainment date being approved is as expeditious as practicable.

E. Adequacy of the Motor Vehicle Emissions Budgets

Comment 1: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes.

Response 1: EPA's adequacy process for these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy when we issued our adequacy findings, and therefore we are not listing the individual comments or responding to them here. Our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the "conformity" button). At the Web site, EPA regional contacts are identified.

Comment 2: We received comments that assert that EPA cannot approve Maryland's motor vehicle emissions budgets because Maryland has not submitted the latest periodic inventory which the comments claim was due three years after June 30, 1997, and because there is no demonstration that Maryland is meeting rate of progress requirements.

Response 2: EPA believes the milestone compliance demonstration requirements of CAA section 182(g) and the periodic inventory requirements under section 182(a)(3)(A) each are independent requirements from the attainment demonstration requirements under CAA sections 172(c)(1) and 182(c)(2)(A). The periodic emissions inventory and milestone compliance demonstration requirements have no bearing on whether a state has submitted a SIP that projects attainment of the ozone NAAQS. EPA acknowledges that milestone compliance demonstration and periodic emission inventory requirements are an independently required action, but does not believe that these have any bearing on whether Maryland has submitted an approvable attainment demonstration SIP. EPA certainly expects that the periodic emissions inventory for 1999 would reflect the 1999 fleet data used in the final motor vehicle emissions budgets found in the final attainment demonstration SIP.

F. MOBILE6 and the Motor Vehicle Emissions Budgets (MVEBs)

Comment 1: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE models are released.

Response 1: The Phase II attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor vehicle emissions budgets after MOBILE6 is released.

Comment 2: The revised budgets calculated using MOBILE6 will likely be submitted after the MOBILE5 budgets have already been approved. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response 2: This is the reason that EPA proposed in the July 28, 2000, SNPR (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate.

Comment 3: If a State submits additional control measures that affect the motor vehicle emissions budget, but does not submit a revised motor vehicle emissions budget, EPA should not approve the attainment demonstration.

Response 3: EPA agrees. The motor vehicle emissions budgets in Maryland's 2005 attainment demonstration SIP for the Philadelphia area reflect the motor vehicle control measures in the attainment demonstration. In addition, Maryland has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions.

Comment 4: EPA should make it clear that the motor vehicle emissions budgets to be used for conformity purposes will be determined from the total motor vehicle emissions reductions required in the SIP, even if the SIP does not explicitly quantify a revised motor vehicle emissions budget.

Response 4: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The Maryland attainment demonstration for the Philadelphia area contains explicitly quantified motor vehicle emissions budgets.

Comment 5: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179.

Response 5: If a state fails to meet its commitment, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Clean Air Act.

Comment 6: If the budgets recalculated using MOBILE6 are larger than the MOBILE5 budgets, then attainment should be demonstrated again.

Response 6: As EPA proposed in its December 16, 1999 notices, we will work with States on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

Comment 7: If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should not be available for reallocation to other sources unless air quality data show that the area is attaining, and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (while MOBILE6 is being used for conformity demonstrations) unless the above conditions are met.

Response 7: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. In addition, Maryland will be submitting new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

G. MOBILE6 Grace Period

Comment 1: We received a comment on whether the grace period before MOBILE6 is required in conformity determinations will be consistent with the schedules for revising SIP motor vehicle emissions budgets within 1 or 2 years of MOBILE6's release.

Response 1: This comment is not germane to this rulemaking, since the MOBILE6 grace period for conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum two-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is released.

Comment 2: One commenter asked EPA to clarify in the final rule whether MOBILE6 will be required for conformity determinations once new MOBILE6 budgets are submitted and found adequate.

Response 2: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when the final MOBILE6 model is released. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

H. Two-Year Option To Revise the MVEBs

Comment: One commenter did not prefer the additional option for a second year before the state has to revise the conformity budgets with MOBILE6, since new conformity determinations and new transportation projects could be delayed in the second year.

Response: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the one-year option, if desired, or submit a new commitment consistent with the alternative two-year option. EPA expects that state and local agencies have consulted on which option is appropriate and have considered the impact on future conformity determinations. Maryland has committed to revise its budgets within one year of MOBILE6's release.

I. Motor Vehicle Emissions Inventory

Comment: Several commenters stated that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix. Commenters stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. Also, a commenter stated that EPA and states have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. For these reasons, commenters recommend disapproving the SIPs.

Response: All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update. Maryland used 1999 vehicle registration data in the final motor vehicle emissions budgets found in its attainment demonstration SIP for the Philadelphia area. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Nevertheless, we do expect that revisions to these SIPs that are submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6.

J. VOC Emission Reductions

Comment: For States that need additional VOC reductions, one commenter recommends a process to achieve these VOC emission reductions, which involves the use of HFC–152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. The commenter states that HFC–152a could be used instead of hydrocarbons, a known pollutant, as a blowing agent. Use of HFC–152a, which is classified as VOC exempt, would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC–152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC–152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs such a pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively. It is each State's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, States may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology which States may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected State. Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under CAA section 612, EPA has identified acceptable foam blowing agents man of which are not VOCs (*www.epa.gov/ozone/title6/snap/*).

K. Credit for Measures Not Fully Implemented

Comment: States should not be given credit for measures that are not fully implemented. For example, the States are being given full credit for Federal coating, refinishing and consumer product rules that have been delayed or weakened.

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum [8] that provided that States could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, States relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59 subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum.

In accordance with EPA's final regulation, States have assumed a 20 percent reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to "use up existing label stock" and "adjust inventories" to conform to the rule. (63

[8] "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules," March 22, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to Air Division Directors, Regions I–X.

FR 48848, September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the States to take credit for a 20 percent emission reduction in their SIPs.

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy[9], many States claimed a 37 percent reduction from this source category based on a proposed rule.

However, EPA's final rule, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide. The 37 percent emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1 percent difference between the 37 percent estimate of reductions assumed by States, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas. EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled "Emissions Calculations for the Automobile Refinish Coatings Final Rule" from Mark Morris to Docket No. A–95–18.

[9] "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," November 29, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance[10], States claimed a 20 percent reduction from this source category based on EPA's proposed rule. The final rule, "National Volatile Organic Compound Emission Standards for Consumer Products," (63 FR 48819), published on September 11, 1998, has resulted in a 20 percent reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the consumer products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to State regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the States to take credit for a 20 percent emission reduction for the consumer products rule in their SIPs.

L. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit.

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the Clean Air Act. Once approved by EPA, there is no need for states to re-adopt and resubmit these programs with each and every SIP revision generally required by other sections of the Act. Maryland had previously received approval of their section 110(a)(2) SIPs. In a final rulemaking action published on March 8, 1984 (49 FR 8610), EPA approved Maryland's financial and manpower resource commitments, after having proposed approval of these commitments on February 3, 1983 (48 FR 5048, 5052). In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by EPA. To the extent that the ozone attainment demonstration and ROP plan depend on specific state emission control regulations these individual regulations have undergone review by EPA in past approval actions.

[10] "Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act," June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

M. Maryland's NO_X Measures Are Not Approved

Comment: We received comments that objected to crediting the attainment plan with reductions from measures not approved into the SIP. The comments specifically mentioned the NO_X RACT rule and the Phase II NO_X controls under the OTC MOU. We also received comments on these programs which stated that the applicability of the NO_X RACT requirement should extend down to sources with emissions of 25 tons per year or more.

Response: These comments are no longer germane to Maryland's attainment plan for the Philadelphia area. On, February 8, 2001, EPA fully approved Maryland's NO_X RACT rule (66 FR 9522). On December 15, 2000, EPA fully approved Maryland's rule that implements the Phase II controls under the OTC MOU to control NO_X (65 FR 78416). The comment regarding extending the applicability of RACT down to 25 ton per year sources is moot because the applicability threshold for NO_X RACT in Maryland's SIP-approved rule for the Philadelphia severe nonattainment area is 25 tons per year or more as required by the Act.

N. Attainment and Post-1999 Rate of Progress Demonstrations

Comment: One commenter claims that the plans fail to demonstrate emission reductions of 3 percent per year over each 3-year period between November 1999 and November 2002; and November 2002 and November 2005; and the 2-year period between November 2005 and November 2007, as required by 42 U.S.C. section 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have been met. EPA has absolutely no authority to waive the statutory mandate for 3 percent annual reductions. The statute does not allow EPA to use the NO_X SIP call or 126 orders as an excuse for waiving rate-of-progress (ROP) deadlines. The statutory ROP requirement is for emission reductions—not ambient reductions. Emission reductions in upwind states do not waive the statutory requirement for 3 percent annual emission reductions within the downwind nonattainment area.

Response: Under no condition is EPA waiving the statutory requirement for 3 percent annual emission reductions. For many areas, EPA did not propose approval of the post-99 ROP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. On July 13, 2001 (66 FR 36717), EPA published a NPR for the State of Maryland. The NPR proposed approval of the post 1996 ROP plans for milestone years 1999, 2002 and 2005 for the Cecil County portion of the Philadelphia ozone nonattainment area submitted by the State of Maryland on December 24, 1997, as revised on April 24, 1998, August 18, 1998, December 21, 1999 and December 28, 2000. We received no comments on that NPR. EPA has approved Maryland's Post 1996 ROP plans for this area for all years after 1996 through the attainment year of 2005. See 66 FR 48209, September 19, 2001.

As provided in EPA's final action on the Maryland's ROP plan (66 FR 48209), the state is relying on emission reductions achieved in its portion of the Philadelphia area from fully promulgated Federal and fully adopted, SIP-approved NO_X and VOC measures for meeting the ROP requirement.

O. Specific Point Source Measures

Comment 1: We received comments in response to the December 16, 1999 NPR that asserted NO_X emission reduction estimates claimed by Maryland are unreliable for Maryland's Phase II and Phase III control under the OTC NO_X MOU. The comments note that in February 1999, a Maryland Court remanded the implementation schedule in Maryland's regulation and thus claim without definitive emission reduction schedules from one of the largest NO_X producing utilities in the state, the SIP reduction estimates are unreliable.

Response 1: Regarding the Phase II reductions under the OTC NO_X MOU, Maryland has reached settlement agreements with the pertinent utilities. The settlements indicate that the estimated NO_X reductions projected for the years 2002 and 2005 will not be affected. Maryland has provided copies of those agreements to EPA. EPA fully approved the Maryland NO_X Budget Rule to implement the Phase II controls as a SIP revision. See 65 FR 78416, December 15, 2000. This approval includes these agreements. By the ozone season of the year 2002, under the terms of those settlement agreements, both utilities are required to be in compliance with the Maryland's NO_X Budget Program under all circumstances.

Regarding the Phase III reductions, EPA disagrees with the comments because the comments were based upon a Maryland rule has been superceded by a SIP approved rule that applies to all years after 2003 and that contains none of the alleged defects identified in the comments. On January 10, 2001, EPA approved Maryland's SIP to address EPA's NO_X SIP Call rule into the Maryland SIP (66 FR 1866). This rule requires reductions of NO_X from major stationary sources equivalent to EPA's NO_X SIP Call regulation and requires sources to achieve compliance with the final seasonal NO_X allocations commencing with the 2003 ozone season. This rule contains no provisions which allow sources to avoid compliance in the event that the NO_X allowance market fails to materialize or if the price of these allowances is unreasonable. EPA has determined that this rule substantively provides for the NO_X reductions that Maryland modeled in their local scale modeling submitted to EPA in support of Maryland's attainment demonstration for the Philadelphia Area.

Comment 2: We received comments asserting that on December 17, 1999, EPA granted section 126 petitions filed by four states to reduce ozone through reductions in NO_X emissions from other states, and that under those petitions, fifteen (15) facilities located in Maryland will have to reduce NO_X emissions by a total of 19,466 tons by May 1, 2003. The comments express concerns about the accountability of these reductions as compared to those assumed in the attainment demonstration. The comments assert that EPA's decision on the 126 petitions will clearly change state and Ozone Transport Group implementation schedules and should be addressed by the state prior to SIP approval.

Response 2: As noted in the December 16, 1999 proposal, Maryland's attainment demonstration plan assumed NO_X reductions consistent with those called for by EPA's NO_X SIP Call. In consideration of recent court decisions on the NO_X SIP Call described in this document and as explained in EPA's response to comments on "Reliance on NO_X SIP Call and Tier 2 Modeling," EPA believes it is appropriate to allow states to continue to assume the reductions from the NO_X SIP Call. The fact that EPA has granted section 126 petitions does not remove the obligations of states subject to the NO_X SIP Call to reduce NO_X emissions as called for in that rule. Furthermore, implementation of either the section 126 rules (described in this document) or the NO_X SIP Call achieves emission reductions prior to the applicable attainment deadline, 2005. Under recent rulings by the U.S. Court of Appeals for the District of Columbia Circuit both the 126 rule and the NO_X SIP Call must be implemented early in the ozone season in 2004. Therefore, EPA does not agree that there is a need for the states to address its implementation schedule in light of the section 126 petition action.

On August 14–15, 1997, we received petitions submitted individually by eight Northeastern states under section 126 of the CAA. Each petition requested us to make a finding that sources in certain categories of stationary sources in upwind states emit or would emit NO_X in violation of the prohibition in section 110(a)(2)(D)(i) on emissions that contribute significantly to nonattainment, or interfere with maintenance, in the petitioning states. On May 25, 1999, we promulgated a final rule (May 1999 Rule) determining that portions of the petitions are approvable under the one-hour and/or eight-hour ozone NAAQS based on their technical merit (64 FR 28250). Based on the affirmative technical determinations for the one-hour ozone NAAQS made in the May 1999 Rule, we promulgated a final rule on January 18, 2000 (January 2000 Rule) making section 126 findings that a number of large electric generating units (EGUs) and large industrial boilers and turbines named in the petitions emit in violation of the CAA prohibition against significantly contributing to nonattainment or maintenance problems in the petitioning states (65 FR 2674). In the January 2000 Rule, we also finalized the Federal NO_X Budget Trading Program as the control remedy for sources affected by the rule. This requirement replaces the default remedy in the May 1999 Rule. The January 2000 Rule establishes Federal NO_X emissions limits that sources must meet through a cap-and-trade program by May 1, 2003. The January 2000 rule affects sources located in the District of Columbia, Delaware, Maryland, North Carolina, New Jersey, Ohio, Pennsylvania, Virginia, West Virginia, and parts of Indiana, Kentucky, Michigan, and New York. All of the affected sources are located in states that are subject to the NO_X SIP Call.

On October 27, 1998 (63 FR 57356), EPA promulgated the "Finding of Significant Contribution and Rulemaking for Certain s in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone;" commonly referred to as the NO_X SIP Call. On March 3, 2000, the D.C. Circuit issued its decision on the NO_X SIP Call

regarding the one-hour ozone NAAQS ruling in favor of EPA on all the major issues. *Michigan* v. *EPA, supra.* On June 22, 2000, the Court ordered that we allow the states and the District of Columbia 128 days from June 22, 2000 to submit their SIPs. Accordingly, 19 states and the District of Columbia were required to submit SIPs in response to the NO_X SIP Call by October 30, 2000.[11] On August 30, 2000, the D.C. Circuit ordered that the June 22, 2000 Order be amended to extend the deadline for implementation of the NO_X SIP Call from May 1, 2003 to May 31, 2004. In a separate rulemaking, we are addressing the Court's remand of the definition of electricity generating units, the control level for large stationary internal combustion engines and the SIP submittal and compliance dates for these actions, which affect less than 10 percent of the total emission reductions called for by the NO_X SIP Call.

Furthermore, as noted above in response to the previous comment in this document, Maryland has a state regulation in place to implement the SIP Call requirements. This state rule is in the approved Maryland SIP and requires compliance commencing May 1, 2003.

Comment 3: We received comments in response to the December 16, 1999 NPR asserting that the NO_X Phase II/III emissions reduction estimates asserted by the Maryland Department of the Environment are unreliable because the NO_X trading rule may not work. The comments raise the following concerns: If a NO_X allowance market "fails to materialize" or if the price of these allowances is "unreasonable" the "safe harbor provision" will allow a utility to avoid purchasing credits. Without definitive emission reduction schedules from one of the largest NO_X producing utilities in the state, the SIP reduction estimates are unreliable, at best, and misleadingly optimistic at worst. There is no guarantee that the OTC NO_X Budget Program will function and achieve its emissions target. The price of allowances may be prohibitively high allowing Maryland sources to avoid purchasing credits.

Response 3: EPA disagrees with the comments and maintains that cap-and-trade programs are an effective remedy for achieving emissions reductions in a cost-effective manner. Under cap-and-trade programs, total emissions are limited at the regional level. Sources are then given individual emissions limits expressed in the form of allowances, i.e., tradable permits equal to one ton of NO_X. A source has the option of reducing its emissions to or beyond its initial allowance level or of reducing to less than its initial allocation level and purchasing allowances from another source. Regardless of the compliance strategy a source employs, the environmental integrity of the program and of the emissions reductions remain intact because the total number of allowances remains capped. Every allowance available on the allowance market represents a ton of NO_X another plant did not emit.

The Acid Rain Program is a similar cap-and-trade program which has been in effect since 1995. Each year since 1995, emissions have been reduced beyond the required level and sources have achieved 100 percent compliance. The experience of the Acid Rain Program has been that the larger, higher emitting units reduced the most because they had the most cost-effective reductions to make.

Regarding comments that the OTC NO_X Budget Program will fail to function and achieve its emissions target, EPA disagrees for the following reasons: In 1999, the initial year of the Phase II, the OTC NO_X Budget Program was a success. According to EPA's OTC NO_X compliance report, 99 percent of the sources achieved full compliance. Furthermore, sources in the OTC over controlled during the 1999 ozone season, reducing their emissions 20 percent beyond the required control level. These allowances may be traded on the allowances market in future years and used for compliance.

Moreover, a viable NO_X allowances market was created; during the 15 months between the onset of allowance trading and 1999 reconciliation (December 30, 1999), 138,790 allowances were transferred. Of these transactions, EPA estimated that nearly 40 percent of them (53,563) were transferred between non-affiliated parties. Over 28 percent of the allowances traded were future year allowances (2000–2002 vintage years) not available for compliance in 1999; another indication that the NO_X allowance market is strong.

EPA notes that the concerns about the price of allowances did not materialize. During the first year of the OTC NO_X Budget Program, there was significant price volatility. Before the start of the program allowance prices generally fluctuated between $1500 and $3000 and peaked at $7500/ton in February, 1999. However, once it became apparent that there would be more than enough allowances available for compliance in 1999, allowance prices dropped steadily. Since October 1999, the prices have been more or less steady at $600-$800 a ton. As the second control period begins, there is no indication that either allowance prices or price volatility are on the rise again.

P. Specific Area and Mobile Source Measures

Comment 1: We received comments asserting that Maryland appears to have relied upon an EPA memorandum dated November 28, 1994 when calculating emission reduction credits for control measures for nonroad small gasoline engines (NSGE). The comments state that because the NSGE Phase II rules were not published until 1998, the accuracy of the emissions reductions anticipated in the 1994 guidance is questionable and that the memorandum upon which MDE appears to have relied suggests that states include a safety margin in their emission reduction estimates for NSGE. The comments conclude that there is no evidence in the SIP that MDE incorporated a safety margin into the reductions.

Response 1: The State of Maryland acted consistent with guidance provided by EPA. However, in a December 28, 2000 revision, Maryland updated its attainment demonstration and ROP plans to include the benefits expected to accrue from the final Federal rules and thus is no longer relying on the guidance cited by the comments when determining the benefits for the Federal NSGE rule. (The cited guidance does provide guidance based upon final rules for one category of nonroad sources.)

Comment 2: We received comments asserting that Maryland needs to produce up-to-date emissions reduction calculations for surface cleaning/degreasing and automobile refinishing. The comments claim that the MDE asserts that new state rules for these source categories will result in 70 percent and 45 percent reductions in VOC from degreasing and automobile refinishing products, respectively, and that these claims are not supported with reliable data and it is impossible for the public to evaluate the reliability of these predictions.

Response 2: The Maryland degreasing regulation went beyond the draft-CTG requirements (which are estimated to be around 60 percent reduction) and so should generate deeper reductions when compared to reductions anticipated from the CTG. EPA estimates the efficiency of the automobile refinishing national rule to be around 36 percent in areas which did not previously have a rule. Maryland's autobody reductions are based upon a state rule which has state limits and additional requirements such as application equipment requirements discussed in a previous response to a previous comment in Section II.K.

Q. Measures for the One-Hour NAAQS and for Progress Requirements Toward the Eight-Hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised eight-hour ozone National Ambient Air Quality Standard (NAAQS) because the Administrator deemed attaining the one-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the one-hour standard and that make as much progress toward implementing the eight-hour ozone standard as the requirements of the CAA and implementing regulations allow.

Response: The one-hour standard remains in effect for all of these areas and the SIPs that have been submitted are for the purpose of achieving that NAAQS. Congress has provided the States with the authority to choose the measures necessary to attain the NAAQS and EPA cannot second guess the states' choice if EPA determines that the SIP meets the requirements of the CAA. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the one-hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the eight-hour standard. However, EPA generally believes that emission controls implemented to attain the one-hour ozone standard will be beneficial towards attainment of the eight-hour ozone standard as well. This is particularly true regarding the implementation of NO_X emission controls resulting from EPA's NO_X SIP Call.

Finally, EPA notes that although the eight-hour ozone standard has been adopted by EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The states and EPA have yet to define the eight-hour ozone nonattainment areas and EPA has yet to issue guidance and requirements for the implementation of the eight-hour ozone standard.

III. Final Action

A. Attainment Demonstration

EPA is fully approving Maryland's attainment demonstration SIP revisions for the Philadelphia area, namely Cecil County, which was submitted on April 29, 1998, and revised on August 18, 1998, December 21, 1999, December 28, 2000, and August 31, 2001 including its analysis and determination of RACM.

B. Commitments

EPA is approving the enforceable commitments made to the Maryland's attainment plan for the Philadelphia severe ozone nonattainment area, which were submitted on December 28, 2000. The enforceable commitments are to:

(1) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory,

(2) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued, and

(3) Perform a mid-course review by December 31, 2003.

C. Mobile Budgets of the Attainment Plan for the Philadelphia Area

EPA is approving the following mobile budgets of the Maryland's attainment plan for the Philadelphia area:

TRANSPORTATION CONFORMITY BUDGETS FOR THE MARYLAND PORTION OF THE PHILADELPHIA AREA

Control Strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Date of adequacy determination
Attainment Demonstration	2005	2.6	5.6	April 27, 2001 (See 66 FR 18928, published on April 12, 2001).

We are only approving the attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its currents budgets because Maryland has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the new additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning regulations That significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the

[11] October 30, 2000 is the first business day following the expiration of the 128-day period.

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the states to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 28, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve the ozone attainment demonstration SIP revision for the Philadelphia-Wilmington-Trenton area submitted by Maryland may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 15, 2001.

James W. Newsom,

Regional Administrator, Region III.

CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1076 is amended by revising the section heading and by adding paragraphs (h) and (i) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: ozone.

* * * * *

(h) EPA approves the attainment demonstration for the Philadelphia area submitted as a revision to the State Implementation Plan by the Maryland Department of the Environment on April 29, 1998, August 18, 1998, December 21, 1999, December 28, 2000, and August 31, 2001 including its RACM analysis and determination. EPA is also approving the revised enforceable commitments made to the attainment plan for the Baltimore severe ozone nonattainment area which were submitted on December 28, 2000. The enforceable commitments are to submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory; to revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued; and to perform a mid-course review by December 31, 2003.

(i) EPA approves the following mobile budgets of Maryland's attainment plan for the Philadelphia area:

TRANSPORTATION CONFORMITY BUDGETS FOR THE MARYLAND PORTION OF THE PHILADELPHIA AREA

Control Strategy SIP	Year	VOC (TPD)	NO_x (TPD)	Date of Adequacy Determination
Attainment Demonstration	2005	2.6	5.6	April 27, 2001 (See 66 FR 18928, published on April 12, 2001).

(1) We are only approving the attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

(2) Similarly, EPA is only approving the 2005 attainment demonstration and its currents budgets because Maryland has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the new additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

[FR Doc. 01–26680 Filed 10–26–01; 8:45 am]

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Federal Register

Monday,
October 29, 2001

Part III

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Post-1996 Rate-of-Progress Plans and One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE–1033; FRL–7089–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Post-1996 Rate-of-Progress Plans and One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the attainment demonstration for the one-hour ozone national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington-Trenton severe nonattainment area (the Philadelphia area) as a revision to the Delaware State Implementation Plan (SIP). EPA is also approving the Post-1996 rate-of-progress (ROP) plans for the Delaware portion of the Philadelphia area, namely Kent and New Castle Counties. These control strategy plans were submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). The measures that have been adopted by the State which comprise the control strategies have and will result in significant emission reductions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the Philadelphia area. Two counties in Delaware, one county in Maryland, seven counties in New Jersey, and five counties in Pennsylvania comprise the Philadelphia area. The intended effect of this action is to approve this SIP revision as meeting the requirements of the Clean Air Act (CAA or the Act).

DATES: This final rule is effective on November 28, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182 at the EPA Region III office above or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: This **SUPPLEMENTARY INFORMATION** section is organized to address the following questions:

I. Background
A. What Action Is EPA Taking in this Final Rulemaking?
B. What Previous Action Has Been Proposed on These SIP Revisions?
C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemakings for the Attainment Demonstration?
D. What Amendments to the Attainment Demonstration SIP did Delaware Submit for the Philadelphia Area Since EPA's December 16, 1999 Proposed Action?
E. What Did the Supplemental Notices of Proposed Rulemaking Cover?
F. When Did EPA Make a Determination Regarding the Adequacy of the Motor Vehicle Emissions Budgets for the Delaware Portion of the Philadelphia Area?
G. What SIP Elements Must be Approved Before Full Approval of the Attainment Demonstration Can be Granted?
H. What Measures are in the Control Strategies for the Post-1996 Plan and the Attainment Demonstration?
I. What Are the Approved Transportation Conformity Budgets, and What Effects Does This Action Have on Transportation Planning?
J. What Happens to the Approved 2005 Budgets When States Change Their Budgets Using the MOBILE6 Model?
K. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Them?
II. Response to Comments
III. Final Action
IV. Administrative Requirements

I. Background

A. What Action Is EPA Taking in This Final Rulemaking?

EPA is fully approving the Post-1996 ROP plans and the one-hour attainment demonstration submitted by Delaware for the Philadelphia area as meeting the requirements of 182(c)(2) and (d) of the Act. The following tables identify submittal dates and amendment dates for the Post-1996 ROP plans and the attainment demonstration.

TABLE 1.—SUBMITTAL DATES OF THE ATTAINMENT DEMONSTRATION PLAN

	Date	Summary of content
Initial submittal	May 22, 1998	Attainment Demonstration Plan.
Amendment	October 8, 1998	Attainment Demonstration Revised to Supplement Regional Scale Modeling.
Amendment	January 24, 2000	Attainment Plan Revised for Budgets to Reflect Tier 2/Sulfur Rule Benefits, and to Include Enforceable Commitments.
Amendment	December 20, 2000	Attainment Plan Revised to Amend Enforceable Commitments.
Amendment	October 9, 2001	Attainment Plan Revised to Include Reasonably Available Control Measures Analysis (RACM).

TABLE 2.—SUBMITTAL DATES OF THE POST-1996 ROP PLANS FOR KENT AND NEW CASTLE COUNTIES

	Date	Content
Initial submittal	December 29, 1997	ROP through 1999.
Amendment	June 17, 1999	ROP through 1999.
Initial submittal	February 3, 2000	ROP through 2002.
Amendment	December 20, 2000	ROP through 2002.
Initial submittal	December 20, 2000	ROP through 2005.

B. What Previous Action Has Been Proposed on These SIP Revisions?

In a December 16, 1999 (64 FR 70444) notice of proposed rulemaking (the December 16, 1999 NPR), we proposed approval of Delaware's attainment demonstration for the Philadelphia area.

In our December 16, 1999 NPR, we also proposed approval of Delaware's enforceable commitment to submit an adopted ROP plan through the attainment year for the Delaware portion of the Philadelphia area. Delaware has fulfilled that enforceable commitment.

On August 30, 2001 (66 FR 45800), EPA proposed approval of the Post-1996 ROP plans adopted and submitted by Delaware to demonstrate ROP from 1996 through the attainment year. In that same notice, EPA also proposed approval of Delaware's contingency measures for ROP. EPA received no comments on any of the actions it proposed to approve in the August 30, 2001 NPR. In this final rulemaking action, we are approving the Post-1996 ROP plans submitted by Delaware which demonstrate ROP from 1996 through the 2005 attainment year and Delaware's contingency measures for ROP.

On February 22, 2000 (65 FR 8703), EPA published a notice of availability on guidance memoranda relating to the ten one-hour ozone attainment demonstrations (including the Philadelphia area) proposed for approval or conditional approval on December 16, 1999. The guidance memoranda are entitled: "Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations" dated November 3, 1999, and "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas" dated November 30, 1999.

On July 28, 2000 (65 FR 46383), EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration. In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in attainment demonstration SIP revisions. This supplemental notice is discussed in Section I.E.(1) of this document.

In its August 30, 2001 NPR (66 FR 45800) referenced earlier in this document, EPA also proposed approval of Delaware's revisions to its 2005 attainment plan consisting of commitments to: (1) submit by October 31, 2001, additional measures to achieve the additional reductions necessary for attainment, and (2) revise the SIP and the motor vehicle emissions budgets within a year of the release of MOBILE6. EPA received no comments on any of the actions it proposed to approve in the August 30, 2001 NPR. In this final rulemaking action, we are approving Delaware's revised commitments.

The comments EPA did receive on the December 16, 1999 (64 FR 70444) and July 28, 2000 (65 FR 46383) proposals listed in this section, relevant to the Philadelphia area's attainment demonstration, are discussed in Sections I. K. and II. of this document.

C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemaking for the Attainment Demonstration?

On December 16, 1999 (64 FR 70444), EPA proposed approval of the attainment demonstration submitted by the State of Delaware for the Philadelphia area. Our approval was contingent upon certain actions by Delaware. These actions were:

(1) Adopt and submit adequate motor vehicle emissions budgets.

(2) Submit a list of control measures that, when implemented, would be expected to provide sufficient additional emission reductions to further reduce emissions to support the attainment test and a commitment that these measures would not involve additional limits on highway construction beyond those that could be imposed under the submitted motor vehicle emissions budget.

(3) Adopt and submit a rule(s) for the regional NO_X reductions consistent with the modeling demonstration.

(4) Adopt and submit an enforceable commitment, or a reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and for additional emission reduction measures developed through the regional process; submit an enforceable commitment for the additional measures and a backstop commitment to adopt and submit intrastate measures for the emission reductions in the event the regional process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP and motor vehicle emissions budget by October 31, 2001 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP and motor vehicle emissions budgets one year after MOBILE6 is issued.

(d) Perform a mid-course review by December 31, 2003.

D. What Amendments to the Attainment Demonstration SIP did Delaware Submit for the Philadelphia Area Since EPA's December 16, 1999 Proposed Action?

The following is a summary of such submittals which includes the submittal dates of revisions, the content of these submissions and other pertinent facts regarding these submissions:

(1) On January 24, 2000, Delaware submitted an addendum to its attainment demonstration plan for the Philadelphia area. This submittal contains the revised motor vehicle emissions budgets that reflect the benefits from EPA's Tier 2/Low Sulfur rule, and enforceable commitments to:

(a) Adopt control measures consistent with the reductions assumed in the attainment plan, and assume reductions in transported NO_X consistent with EPA's NO_X SIP Call;

(b) Adopt additional measures that can be adopted regionally such as in the OTR, or locally;

(c) Submit a revised SIP and motor vehicle emissions budget by October 31, 2001, if the additional measures affect the motor vehicle emissions inventory; and

(d) Conduct a mid-course review by December 31, 2003.

(2) On December 20, 2000, Delaware submitted an amendment to the January 24, 2000 addendum to its attainment demonstration plan for the Philadelphia area. This submittal addresses two commitments that were not clearly listed in the January 24, 2000 addendum, namely:

(a) To revise SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued.

(b) To adopt and submit additional control measures for the additional emission reductions as required in the attainment demonstration test by October 31, 2001.

(3) On October 9, 2001, the State of Delaware formally submitted a supplement to its 2005 attainment demonstration SIP consisting of an analysis and determination of RACM.

E. What Did the Supplemental Notices of Proposed Rulemaking Cover?

(1) On July 28, 2000, EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration (65 FR 46383). In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in this attainment demonstration SIP revision.

(a) First, we proposed a clarification of what occurs if we finalize conditional or full approval of this and certain other attainment demonstration SIP revisions based upon a state's commitment to revise the SIP's motor vehicle emissions budgets in the future. Under the proposal, the motor vehicle emissions budgets in the approved SIP will apply for transportation conformity purposes only until the budgets are revised consistent with the commitment, and we have found the new budgets adequate. Once we have found the newly revised budgets adequate, then they would apply instead of the previous conditionally or fully approved budgets. Normally, revisions to SIP-approved budgets cannot be used

for conformity purposes until we approve those revised budgets as a SIP revision. Therefore, we proposed to clarify that when our approval of this and certain other one-hour ozone attainment demonstrations is based upon a commitment to future revisions to the budget, our approval of the budget lasts only until revisions to satisfy those conditions are submitted and we find them adequate.

(b) Second, we proposed that states may opt to commit to revise their emissions budgets one year after the release of the MOBILE6 model, as originally proposed on December 16, 1999. Or, states may commit to a new option, *i.e.*, to revise their budgets two years following the release of the MOBILE6 model, provided that conformity is not determined without adequate MOBILE6-derived SIP budgets during the second year. This second option is not germane to Delaware's attainment plan for the Philadelphia area because Delaware has submitted an enforceable commitment to revise the motor vehicle emissions budgets within one year after the official release of the MOBILE6 model.

(c) In addition, on July 28, 2000 (65 FR at 46383), we reopened the comment period to take comment on these two issues and to allow comment on any additional materials that were placed in the dockets for the proposed actions close to or after the initial comment period on the December 16, 1999 closed on February 14, 2000. For many of the areas, additional information had been placed in the docket close to the time or since the initial comment period concluded. In general, these materials were identified as consisting of motor vehicle emissions budgets, and revised or additional commitments or reaffirmations submitted by the states.

(2) On August 30, 2001 (66 FR 45800), EPA proposed approval of all of the Post-1996 ROP plans adopted by Delaware to demonstrate ROP from 1996 through the attainment year. In that same notice, EPA also proposed approval of Delaware's contingency measures for ROP. In that August 30, 2001 NPR, EPA also proposed approval of Delaware's revisions to its 2005 attainment SIP consisting of commitments to: (1) Submit by October 31, 2001, additional measures to achieve the additional reductions necessary for attainment, and (2) revise the SIP and the motor vehicle emissions budgets within a year of the release of MOBILE6. EPA received no comments on any of the actions it proposed to approve in the August 30, 2001 NPR.

(3) On September 7, 2001 (66 FR 46755), EPA published a SNPR on Delaware's 2005 attainment demonstration. In that supplemental notice, we proposed to approve Delaware's RACM analysis and determination for the Philadelphia area. We received no comments on the September 7, 2001 SNPR.

F. When Did EPA Make a Determination Regarding the Adequacy of the Attainment Motor Vehicle Emissions Budgets for the Delaware Portion of the Philadelphia Area?

Delaware submitted a revision to the attainment plan SIP for the Philadelphia area on January 24, 2000. This submittal contains revised motor vehicle emissions budgets for the attainment year of 2005 that reflect the benefits of the Heavy Duty Diesel Engine (HDDE) rule, the National Low Emission Vehicle (NLEV) program and the Federal Tier 2/ Low Sulfur rule.

We began our adequacy review process on the budgets in the January 24, 2000 submittal under our adequacy process by a posting on EPA's Web site (*www.epa.gov/otaq/transp/conform/adequacy.htm*) that started a public comment period on the adequacy of the motor vehicle emissions budgets in the January 24, 2000 SIP revision for the Philadelphia area. We prepared a technical support document for our adequacy determination that included responses to any public comments received during the adequacy process comment period. On May 31, 2000, EPA found the budgets of Delaware's attainment demonstration plan for the Philadelphia area adequate (Letter from Katz to Tyler dated May 31, 2000). In a June 8, 2000, **Federal Register** notice we announced that we had found the budgets of the January 24, 2000 submission adequate (65 FR 36440). (The proposed approval of the budgets in the January 24, 2000 submission is discussed in Section I.B. of this document; and the response to any comments received on the proposed approval are in Section II. of this document.) Our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the "conformity" button).

On December 20, 2000, Delaware submitted, as a formal SIP revision, an acceptable commitment to revise the attainment year motor vehicle emissions budgets using the MOBILE6 model within one year after the release of the MOBILE6 model. As stated earlier in this document, on August 30, 2001 (66 FR 45800), EPA published a NPR proposing to approve Delaware's revised commitments to revise the SIP and the motor vehicle emissions budgets within a year of the release of MOBILE6. EPA received no comments on the August 30, 2001 NPR. In this final rulemaking action, we are approving Delaware's commitment.

G. What SIP Elements Must be Approved Before Full Approval of the Attainment Demonstration Can Be Granted?

In the December 16, 1999 NPR for Delaware's attainment demonstration SIP for the Philadelphia area, EPA noted in Table 4, the submission and approval status of many of the control measures or part D requirements of the Act for serious and severe areas. The following provides the current status of those SIP elements which are prerequisite for approval of the attainment demonstration but which were not fully approved as of December 16, 1999 (or which were not listed in Table 4 in the NPR as fully approved):

(1) On September 17, 1999, EPA approved Delaware's sanitary landfills SIP (64 FR 50453).

(2) On December 28, 1999, EPA approved Delaware's National Low Emission Vehicle (NLEV) SIP (64 FR 72564).

(3) On March 9, 2000, EPA approved Delaware's NO_X budget rule consistent with the Ozone Transport Commission's (OTC) Memorandum of Understanding (MOU) Phase II (65 FR 12481).

(4) On February 7, 2001, EPA approved Delaware's New Source Review Rule (66 FR 9209).

(5) On May 17, 2001, EPA approved Delaware's NO_X trading rule consistent with the NO_X SIP call (66 FR 27549).

(6) On June 14, 2001, EPA approved Delaware's NO_X RACT rule (66 FR 32231).

H. What Measures Are in the Control Strategy for the Post-1996 Plan and the Attainment Demonstration?

TABLE 3.—CONTROL MEASURES IN THE ONE-HOUR OZONE POST-1996 ROP AND ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA OZONE NONATTAINMENT AREA

Control measure	Type of measure	Credited in Post-1996 plan for which milestone years	Credited in attainment plan
Enhanced Inspection & Maintenance	Approved SIP	Yes—1999 through 2005	Yes
Federal Motor Vehicle Control program	Federal	Tier 1—1999 through 2005	Tier 1 and 2
NLEV [1]	Approved SIP opt-in	Yes—1999 through 2005	Yes
Reformulated Gasoline (Phase 1 & 2)	Federal	Phase 1—1999 Phase 2—2002 and 2005	Phase 2
Federal Non-road Gasoline Engine standards	Federal	Yes—1999 through 2005	Yes
Federal Non-road Heavy Duty diesel engine standards.	Federal	Yes—1999 through 2005	Yes
Rail Road Locomotive Controls	Federal	Yes—2002 and 2005	Yes
NO_X RACT	Approved SIP	Yes—1999 through 2005	Yes
OTR Regional NO_X MOU	Approved SIP	Yes—1999 and 2002	NO_X SIP Call
Federal NO_X SIP Call Regional Control	Approved SIP	Yes—2005	Yes
Non-CTG RACT to 50 tpy	Approved SIP	Yes—1999 through 2005	Yes
Stage II Vapor Recovery & On-board Refueling Vapor Recovery (ORVR)	Approved SIP Federal.	Yes—1999 through 2005	Yes
AIM Surface Coatings	Federal	Yes—2002 and 2005	Yes
Consumer & Commercial products	Federal	Yes—2002 and 2005	Yes
Autobody Refinishing	Federal/Approved SIP	Yes—1999 through 2005	Yes
Industrial Cleaning Solvents	Approved SIP	Yes—1999 through 2005	Yes
Open Burning Ban	Approved SIP	Yes—1999 through 2005	Yes
Stage I Vapor Recovery	Approved SIP	Yes—1999 through 2005	Yes
Offset Lithography	Approved SIP	Yes—1999 through 2005	Yes
Heavy Duty Diesel Engines (On-road)	Federal	Yes—2005	Yes
VOC RACT	Approved SIP	Yes—1999 through 2005	Yes
Sanitary Landfills	Approved SIP	Yes—1999 through 2005	Yes
Benzene Waste Rule	Federal	Yes—1999 through 2005	Yes

[1] To the extent NLEV not superceded by Tier 2.

I. What Are the Approved Transportation Conformity Budgets, and What Effects Does This Action Have on Transportation Planning?

(1) What Are the Approved Transportation Conformity Budgets in the Post 1996 ROP Plans and the Attainment Demonstration?

EPA has determined that the budgets in the Post-1996 ROP plans and the attainment demonstration plan are adequate, and is approving these budgets in this final action. These Delaware plans establish separate VOC and NO_X budgets for Kent and New Castle Counties, in the Philadelphia area (these are commonly referred to as sub-budgets). The motor vehicle emissions budgets that EPA is approving for each of the two counties are listed in Table 4 by type of control strategy SIP, the amounts in tons per day (TPD), the year associated with the budgets, and the effective date of EPA's adequacy determination.

TABLE 4.—TRANSPORTATION CONFORMITY BUDGETS OF DELAWARE'S CONTROL STRATEGY SIPS FOR THE PHILADELPHIA AREA

Type of control strategy SIP	Year	Kent County		New Castle County		Effective date of adequacy determination
		VOC	NO_X	VOC	NO_X	
Post 1996 ROP Plan	1999	7.55	11.17	22.49	29.41	April 29, 1999 (64 FR 31217, published June 10, 1999).
Post 1996 ROP Plan	2002	6.30	9.81	18.44	27.29	June 23, 2000, (65 FR 36440, published June 8, 2000).
Post 1996 ROP Plan	2005	4.84	7.90	14.76	22.92	May 2, 2001 (66 FR 19769, published April 17, 2001).
Attainment Demonstration	2005	4.84	7.90	14.76	22.92	June 23, 2000, (65 FR 36440, published June 8, 2000).

EPA has concluded that these SIP revisions meet the requirements of the Act applicable to the type of control strategy SIP, that is, demonstrates attainment or ROP with the applicable budgets and contains the measures necessary to support these budgets.

(2) Is a Requirement To Redetermine Conformity Within 18-months Under Section 93.104 of the Conformity Rule Triggered?

Our conformity rule establishes the frequency by which transportation plans and transportation improvement programs must be found to conform to the SIP and includes trigger events tied to both submittal and approval of a SIP [40 CFR 93.104(e)]. Both initial submission and initial approval trigger a redetermination of conformity. This final rule has the effect of approving motor vehicle emissions budgets contained in the attainment demonstration and the Post-1996 ROP plans. We are advising affected transportation planning agencies that this final approval of the budgets listed in Table 4 will require a redetermination that existing transportation plans and TIPs conform

within 18 months of the effective date listed in the DATES section of this document. See 40 CFR 93.104(e).

J. What Happens to the Approved 2005 Budgets When States Change Their Budgets Using the MOBILE6 Model?

All states whose attainment demonstration includes the effects of the Tier 2/Low Sulfur program have committed to revise and resubmit their motor vehicle emissions budgets after EPA releases the MOBILE6 model. On December 20, 2000, Delaware submitted a commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. In this final rulemaking action, EPA is approving, as a SIP revision, Delaware's commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. If Delaware fails to meet its commitment to submit revised budgets using the MOBILE6 model, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

As we proposed in our July 28, 2000 SNPR (65 FR 46383), today's final approval of the budgets contained in the 2005 attainment plan will be effective for conformity purposes only until such time as revised motor vehicle emissions budgets are submitted (pursuant to the commitment to submit revised budgets using the MOBILE6 model within one year of EPA's release of that model) and we have found those revised budgets adequate. We are only approving the attainment demonstration and its current budgets because Delaware has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its current budgets because Delaware has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of our approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

K. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Them?

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on December 16, 1999 (64 FR 70444) for Delaware's ozone attainment demonstration for the Philadelphia area. Comments were received from Robert E. Yuhnke on behalf of Environmental Defense and Natural Resources Defense Council and from the Midwest Ozone Group.

EPA also received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383), in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. Comments were received from Environmental Defense and from ELM Packaging Co.

As previously noted, EPA received no comments on either its August 30, 2001 (66 FR 45800) or September 7, 2001 (66 FR 46755) proposed actions as discussed in Section I.E. of this document.

II. Response to Comments

The following discussion summarizes and responds to the comments received on EPA's December 16, 1999 (64 FR 70444) and July 28, 2000 (65 FR 46383) proposals to approve Delaware's 2005 attainment demonstration. These are the only proposed actions for which we received comments.

A. Attainment Demonstrations—Weight of Evidence

Comment: The weight of evidence approach does not demonstrate attainment or meet the Act requirements for a modeled attainment demonstration. Commenters added several criticisms of various technical aspects of the weight of evidence approach, including certain specific applications of the approach to particular attainment demonstrations. These comments are discussed in the following response.

Response: Under section 182(c)(2) and (d) of the Act, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the one-hour standard. Section 182(c)(2)(A) provides that "[t]his attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective." As described in more detail below, EPA allows states to supplement their photochemical modeling results, with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration "be based on photochemical grid modeling," because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, "The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51, Appendix W] (Guideline on Air Quality Models)."[1] 40 CFR 51.112(a)(1). However, the regulations further provide, "Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment. * * *" Appendix W, in turn, provides that, "The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas," but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR part 51, App. W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in

[1] The August 12, 1996 version of "Appendix W to Part 51—Guideline on Air Quality Models" was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted one-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) one-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[2]

In 1996, EPA issued guidance[3] to update the 1991 guidance referenced in 40 CFR part 51, App. W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of one-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (*i.e.*, analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance[4] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model-predicted future design value is expected to be at or below the level of the standard. Since the form of the one-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be "no exceedances" in the future model predictions.

The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three "design values" represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors.

A commenter criticized the 1999 guidance as flawed on grounds that it allows the averaging of the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing lower air quality concentrations to be averaged against higher concentrations thus reducing the total emission reduction needed to attain at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by accounting for growth and controls) to determine whether attainment results. These 1990 emissions would contribute to three design value periods (1988–90, 1989–91 and 1990–92).

Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the

[2] Guidance on the Use Of Modeled Results to Demonstrate Attainment of the Ozone NAAQS EPA–454/B–95–007, June 1996.

[3] Ibid.

[4] "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: *http://www.epa.gov/ttn/scram.*

three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions-those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that states must model all control measures being implemented. Moreover, a component of this technique-the estimation of future design value—should be considered a model predicted estimate. Therefore, results from this technique are an extension of "photochemical grid" modeling and are consistent with section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 NPRs will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 ppb on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to 3 exceedances in 3 years in every grid cell. If the model over predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the weight of evidence determination.

When reviewing a SIP, EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the states and available to EPA. This information includes model results for the majority of the control measures. Although not all measures were modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. EPA's decision was further strengthened by each state's commitment to check progress towards attainment in a mid-course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a "rollback" modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR part 51, App. W section 6.2.1.e. provides, "Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies." Section 14.0 of Appendix W defines "rollback" as "a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately." Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC would be required. There was no approach for identifying NO_X reductions.

The "proportional rollback" approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone.

For example, if monitoring or modeling results indicate that ozone was reduced by 25 ppb during a particular period, and that VOC and NO_X emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_X. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a "proportional rollback" technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies. This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP.

The limited use of adjustment factors is acceptable for practical reasons: it obviates the need to expend more time and resources to perform additional modeling. In addition, the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which is more consistent with recommendations referenced by Appendix W, and does not assume a direct proportional relationship between ozone and its precursors. Lastly, the requirement that areas perform a mid-course review (a check of progress toward attainment), provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51, Appendix W, without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely upon a proportional rollback technique in this rulemaking, but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an "alternative model" to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose to use the November 1999 guidance, "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled," in the December 16, 1999 NPR and has responded to all comments received on that guidance elsewhere in this document.

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) there are inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values. These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington, DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO_X SIP call domain, results from the EPA regional modeling for NO_X controls as well as the Tier 2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate nonattainment, and not when they indicate attainment. First, we disagree with the premise of this comment: EPA does not apply the WOE factors to adjust model results. EPA applies the WOE factors as additional analysis to compensate for uncertainty in the air quality modeling. Second, EPA has applied WOE determinations to all of the attainment demonstrations proposed for approval in December 1999. Although for most of them, the air quality modeling results by themselves indicated nonattainment, for two metropolitan areas—Chicago and Milwaukee, including parts of the States of Illinois, Indiana, and Wisconsin, the air quality modeling did indicate attainment on the basis of the statistical test.

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter. The 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. These values do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, these controls are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect reductions anticipated by control measures, that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether or not the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Low Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), states have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is released. EPA will work with states on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration. If analysis indicates additional measures are needed, EPA will take the appropriate action.

B. Reliance on the NO_X SIP Call and Tier II

Comment: Several commenters stated that given the uncertainty surrounding the NO_X SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO_X SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_X SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier II tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_X SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_X SIP Call. *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000), *cert. denied*, __ U.S. __, 121 S.Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA*, 251 F.3d 1026 (D.C. Cir. 2001). In those cases, the court largely upheld the NO_X SIP Call. Although a few issues were vacated or remanded to EPA for further

consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the SIP Call. Moreover, contrary to the commenter's suggestion, the SIP Call modeling data bases were not used to develop estimates of reductions from the Tier II program for the severe-area one-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the SIP Call modeling lead to inaccurate results for the severe-area one-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the states to achieve the full level of the SIP Call reductions by May 2003. First, the court vacated the rule as it applied to two states—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these states and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the *Appalachian Power* case remanded an issue concerning computation of the EGU growth factor, it is EPA's view that states should assume that the SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the states are moving forward to implement the SIP Call.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_X SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michgan.*

C. Attainment and Rate-of-Progress Demonstrations—Approval of Demonstrations that Rely on State Commitments or State Rules for Emission Limitations to Lower Emissions in the Future not Yet Adopted by the State and/or Approved by EPA

Comment: Several commenters disagreed with EPA's proposal to approve states' attainment and ROP demonstrations because, (a) not all of the emissions reductions assumed in the demonstrations have actually taken place, (b) are reflected in rules yet to be adopted and approved by a state and approved by EPA as part of the SIP, (c) are credited illegally as part of a demonstration because they are not approved by EPA as part of the SIP, or (d) the commenter maintains that EPA does not have authority to accept enforceable state commitments to adopt measures in the future in lieu of current adopted measures to fill a near-term shortfall of reductions.

Response: EPA disagrees with the comments, and believes—consistent with past practice—that the Act allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[5] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.

As an initial matter, EPA believes that present circumstances for the New York City, Philadelphia, Baltimore and Houston nonattainment areas warrant the consideration of enforceable commitments. The Northeast states that make up the New York, Baltimore, and Philadelphia nonattainment areas submitted SIPs that they reasonably believed demonstrated attainment with fully adopted measures. After EPA's initial review of the plans, EPA recommended to these areas that additional controls would be necessary to ensure attainment. Because these areas had already submitted plans with many fully adopted rules and the adoption of additional rules would take some time, EPA believed it was appropriate to allow these areas to supplement their plans with enforceable commitments to adopt and submit control measures to achieve the additional necessary reductions. For Delaware's attainment demonstration for the Philadelphia area, EPA has determined that the submission of enforceable commitments in place of adopted control measures for these limited sets of reductions will not interfere with each area's ability to meet its 2005 attainment obligations.

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See e.g.,* 62 FR 1150, 1187, January 8, 1997 (ozone attainment demonstration for the South Coast Air Basin); 65 FR 18903, April 10, 2000 (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326, August 3, 1998 (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (state implementation plan for New Jersey). Nothing in the Act speaks directly to the approvability of enforceable commitments.[6] However, EPA believes that its interpretation is consistent with provisions of the Act. For example, section 110(a)(2)(A) provides that each SIP "shall include enforceable emission limitations and other control measures, means or techniques * * * *as well as schedules and timetables for compliance,* as may be necessary or appropriate to meet the applicable requirement of the Act." (Emphasis added). Section 172(c)(6) of the Act requires, as a rule generally applicable to nonattainment SIPs, that the SIP "include enforceable emission limitations and such other control measures, means or techniques * * * *as may be necessary or appropriate* to provide for attainment * * * by the applicable attainment date * * *" (Emphasis added). The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to attain. Rather, the emissions limitations

[5] These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. *See, e.g., American Lung Ass'n of N.J.* v. *Kean,* 670 F. Supp. 1285 (D.N.J. 1987), *aff'd,* 871 F.2d 319 (3rd Cir. 1989); *NRDC* v. *N.Y. State Dept. of Env. Cons.,* 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't* v. *Deukmejian,* 731 F. Supp. 1448, *recon. granted in part,* 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.,* No. CV 97–6916–HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under section 179(a) of the Act, which starts an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

[6] Section 110(k)(4) provides for "conditional approval" of commitments that need not be enforceable. Under that section, a State may commit to "adopt specific enforceable measures" within one-year of the conditional approval. Rather than enforcing such commitments against the State, the Act provides that the conditional approval will convert to a disapproval if "the State fails to comply with such commitment."

and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments EPA is approving in this final action—as long as the entire package of measures and rules provides for attainment.

As provided above, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the Philadelphia area—EPA would consider three factors in determining whether to approve the submitted commitments. First, EPA believes that the commitments must be limited in scope. In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow states to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA,* 22 F.3d 1125 (D.C. Cir. 1994). While EPA does not believe that case is directly applicable here, EPA agrees with the Court that other provisions in the Act contemplate that a SIP submission will consist of more than a mere commitment. *See NRDC,* 22 F.3d at 1134.

In the present circumstances, the commitments address only a small portion of the 2005 attainment plan. For the Philadelphia area, the commitment addresses only 10.6 percent of the VOC and 0.7 percent of the NO_X emission reductions necessary to attain the standard. A summary of the adopted control measures and other components credited in Delaware's attainment demonstration submission are discussed in Sections I.G. and I.H. of this document.

As to the second factor, whether the state is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This is supported by the recent recommendation of the OTC regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the states will be able to find sources of reductions to meet the shortfall. The states that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC has met and on March 29, 2001, recommended a set of control measures. Currently, Delaware has proposed the regulations for all OTC recommended control measures and has gone to public hearings on those control measures. Delaware has indicated that it would submit the measures no later than October 31, 2001. This time period is fully consistent with the Philadelphia area attaining the standard by its approved attainment date.

The third factor EPA has considered in determining to approve limited commitments for the Philadelphia area attainment demonstration is whether the commitment is for a reasonable and appropriate period. EPA recognizes that both the Act and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors—such as the need to consider innovative control strategies—support the consideration of an enforceable commitment in place of adopted control measures, the commitment should provide for the adoption of the necessary control measures on an expeditious, yet practicable, schedule.

As previously provided, for New York, Baltimore and Philadelphia, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months to complete the OTC and state-adoption processes—a fairly ambitious schedule—i.e., until October 31, 2001. As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA "SIP Call" provision of the Act—section 110(k)(5)—which provides states with up to 18 months to submit a SIP after EPA requests a SIP revision. While EPA may have ended its inquiry there, and provided for the states to submit the measures within 18 months of its proposed approval of the attainment demonstrations, EPA further considered that these areas were all located with the Northeast Ozone Transport Region (OTR) and determined that it was appropriate to provide these areas with additional time to work through the OTC process to determine if regional controls would be appropriate for addressing the shortfall. EPA believed that allowing these states until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007. EPA still believes that this is a reasonable schedule for the states to submit adopted control measures that will achieve the additional necessary reductions.

The enforceable commitments submitted by Delaware for the Philadelphia nonattainment area, in conjunction with its other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment. EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because the State has obligated itself to submit the rules by specified short-term dates, and that obligation is enforceable by EPA and the public. Moreover, as discussed in the December 16, 1999 proposal, its Technical Support Document (TSD), and Sections I.G. and I.H. of this document, the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

The comment is not germane to Delaware's Post 1996 ROP plans. The State of Delaware is relying only on NO_X and VOC emission reductions achieved within its portion of the Philadelphia nonattainment area for demonstrating ROP from 1996 through the 2005 attainment year. These reductions result from the implementation of fully promulgated Federal or fully adopted and SIP-approved state measures.

D. RACM (Including Transportation Control Measures)

Comment: Several commenters have stated that there is no evidence in several states that they have adopted reasonably available control measures (RACM) or that the SIPs have provided for attainment as expeditiously as practicable. Specifically, the lack of Transportation Control Measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls. One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate a motor vehicle emission budget (MVEB) that is derived from a SIP that is inadequate for the purpose for which it is submitted.

The commenter alleges that none of the MVEBs submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM; nor are they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the state must provide a justification for why they were determined not to be RACM.

Response: EPA reviewed the initial SIP submittals for the Philadelphia area and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued policy guidance memorandum to have these states address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: "Additional Submission on RACM from States with Severe One-hour Ozone Nonattainment Area SIPs").

On August 3, 2001, Delaware submitted its proposed analysis and determination that there are no additional reasonably available control measures (RACM) as a supplement to its 2005 attainment demonstration for the Philadelphia area and requested that EPA approve it as a SIP revision using a form of Federal rulemaking known as parallel-processing. On September 7, 2001, EPA published a SNPR on the attainment demonstration (66 FR 46755). In that supplemental notice, we proposed approval of Delaware's RACM analysis and determination. See Section I.E. of this document. We received no comments on that SNPR.

That proposed approval was done under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its SIP. If the final, adopted revision is substantially changed from the version EPA proposed to approve, and which was available for public review during EPA's comment period, EPA will evaluate those changes and may publish another supplemental notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking notice on the revision. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the state and submitted formally to EPA for incorporation into the SIP.

On October 9, 2001, the State of Delaware supplemented its original attainment demonstration SIP with a formal submittal of an analysis of RACM. EPA has determined that there are no changes between Delaware's formally submitted RACM analysis and the proposed version for which we proposed approval on September 7, 2001. We received no comments on the September 7, 2001 SNPR. EPA concluded that Delaware's 2005 attainment demonstration SIP for the Philadelphia area, as formally supplemented on October 9, 2001, meets the requirement for RACM.

Section 172(c)(1) of the Act requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance, that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *www.epa.gov/ttn/oarpg/t1pgm.html*.

The analysis submitted by the Delaware on October 9, 2001, as a supplement to its attainment demonstration SIP for the Philadelphia area, addresses the RACM requirement. Delaware has examined a wide variety of potential stationary source and mobile source controls. The stationary and area source controls that were considered were limits on area source categories not covered by a control technique guideline (CTG), e.g., motor vehicle refinishing, and surface/cleaning degreasing; rule effectiveness improvements; expanding the applicability of VOC RACT limits to sources smaller than those mandated under the CTG; "beyond RACT" controls on major stationary sources of nitrogen oxides (NO_X); and other potential measures. The mobile source control measures considered included measures such as the national low emission vehicle program; high occupancy vehicle (HOV) lanes; employer based programs; trip reduction ordinances; bicycle and pedestrian improvements; programs to restrict extended idling of vehicles; early retirement of older motor vehicles; traffic flow improvements; and alternative fuel vehicles. Delaware considered an extensive list of potential control measures and chose measures for implementation which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. From the list of measures considered, the rules and measures adopted and submitted by Delaware include the following:

(1) Delaware has adopted, and EPA has SIP-approved, a rule for vehicle refinishing. The rule includes VOC content limits for motor vehicle refinishing coatings at least equivalent to the Federal requirements and required compliance with this rule in 1996 versus in 1998 as required under the Federal rule.

(2) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from offset lithographic printing operations.

(3) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from aerospace coating operations with an applicability threshold well below that required by the applicable CTG.

(4) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from graphic arts operations (packaging rotogravure, publication rotogravure, or flexographic printing press) with an applicability threshold well below that required by the applicable CTG.

(5) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from use of organic cleaning solvents that includes additional requirements beyond those of applicable CTG for surface cleaning and degreasing.

(6) Delaware has adopted, and EPA has SIP approved, a rule requiring the sale of vehicles under the national low-emission vehicle program (NLEV).

(7) Delaware has adopted, and EPA has SIP approved, a rule to implement Phase II NO_X controls under the OTC MOU. This rule established a fixed cap on ozone-season NO_X emissions from major point sources of NO_X. The rule grants each source a fixed number of NO_X allowances, applies state-wide, and requires compliance during the ozone season. The implementation of this rule commenced May 1, 1999 in Delaware and reduces NO_X emissions both inside and outside the Philadelphia area.

(8) Delaware has adopted, and EPA has SIP approved, a rule to implement the NO_X SIP call. Delaware's rule requires compliance commencing with the start of the 2003 ozone season.

Other potential measures are not considered to be cost effective or are considered to have implementation difficulties due to the intensive and costly effort that would be involved in regulating numerous, small area source categories. These explanations are provided in further detail in the docket for this rulemaking. Delaware concluded that a number of potential transportation control measures were considered feasible, but would not, in aggregate, advance the attainment date.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the Philadelphia area, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that states consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. See, *e.g., www.epa.gov/otaq/transp.htm*. in order to demonstrate that they will attain the one-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures, including the kind that Delaware itself evaluated in its RACM analysis, that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term, even if such measures do not advance the attainment date, since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the Act's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date. EPA concludes that the attainment date being approved is as expeditiously as practicable.

EPA previously responded to comments concerning the adequacy of MVEBs when EPA took final action determining the budgets adequate and does not address those issues again here. The responses are found at *www.epa.gov/oms/transp/conform/pastsips.htm*.

E. Adequacy of Motor Vehicle Emissions Budgets

Comment: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes.

Response: EPA's adequacy process for these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy when we issued our adequacy findings, and therefore we are not listing the individual comments or responding to them here. Our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the "conformity" button). At the Web site, EPA regional contacts are identified.

F. Motor Vehicle Emissions Inventory

Comment: Several commenters stated that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix. Commenters stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. Also, a commenter stated that EPA and states have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. For these reasons, commenters recommend disapproving the SIPs.

Response: All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update. The Delaware's SIP is based on vehicle registration data from 1994, which is the most recent data available at the time the SIP was prepared and submitted. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Nevertheless, we do expect that revisions to these SIPs that are submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6.

G. VOC Emission Reductions

Comment: For states that need additional VOC reductions, one commenter recommends a process to achieve these VOC emission reductions, which involves the use of HFC–152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. The commenter states that HFC–152a could be used instead of hydrocarbons, a known pollutant, as a blowing agent. Use of HFC–152a, which is classified as VOC exempt, would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC–152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC–152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs such as pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively. It is each state's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, states may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology which

states may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected state. Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under the Act, section 612, EPA has identified acceptable foam blowing agents man of which are not VOCs *(www.epa.gov/ozone/title6/snap/)*.

H. Credit for Measures Not Fully Implemented

Comment: States should not be given credit for measures that are not fully implemented. For example, the states are being given full credit for Federal coating, refinishing and consumer product rules that have been delayed or weakened.

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum [7] that provided that states could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR Part 59 Subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum.

In accordance with EPA's final regulation, states have assumed a 20 percent reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to "use up existing label stock" and "adjust inventories" to conform to the rule. 63 FR 48848 (September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the states to take credit for a 20 percent emission reduction in their SIPs.

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy,[8] many states claimed a 37 percent reduction from this source category based on a proposed rule. However, EPA's final rule, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide. The 37 percent emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately one percent difference between the 37 percent estimate of reductions assumed by states, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas. EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled "Emissions Calculations for the Automobile Refinish Coatings Final Rule" from Mark Morris to Docket No. A–95–18.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance,[9] states claimed a 20 percent reduction from this source category based on EPA's proposed rule. The final rule, "National Volatile Organic Compound Emission Standards for Consumer Products," (63 FR 48819), published on September 11, 1998, has resulted in a 20 percent reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the fall of 1999. In the consumer products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to state regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the fall of 1999. It was appropriate for the states to take credit for a 20 percent emission reduction for the consumer products rule in their SIPs.

I. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit.

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the Act. Once approved by the EPA, there is no need for states to re-adopt and resubmit their enforcement programs with each and every SIP revision generally required by other sections of the Act. In a final rulemaking action published on October 17, 1983 (48 FR 46986), EPA approved Delaware's financial and manpower resource commitments, after having proposed approval of these commitments on February 3, 1983 (48 FR 5093,5095). In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by EPA. To the extent that the ozone attainment demonstration depends on specific state emission control regulations, these individual regulations have undergone review by the EPA in past approval actions.

J. MOBILE6 and the Motor Vehicle Emissions Budgets (MVEBs)

Comment 1: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE models are released.

Response 1: The attainment demonstration SIPs that rely on Tier 2 emission reduction credit contain commitments to revise the motor vehicle emissions budgets after MOBILE6 is released. EPA is approving Delaware's commitment in this final rulemaking.

Comment 2: The revised budgets calculated using MOBILE6 will likely be submitted after the MOBILE5 budgets have already been approved. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response 2: This is the reason that EPA proposed in the July 28, 2000, SNPR (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate. See the discussion at Section I.B. of this document.

Comment 3: If a state submits additional control measures that affect the motor vehicle emissions budget, but does not submit a revised motor vehicle emissions budget, EPA should not approve the attainment demonstration.

Response 3: EPA agrees. The motor vehicle emissions budgets for the Delaware portion of the Philadelphia area attainment demonstration reflect the motor vehicle control measures in the attainment demonstration. In addition, Delaware has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions. EPA is approving that commitment in this final rulemaking. See the discussion at Section I.B. of this document.

Comment 4: EPA should make it clear that the motor vehicle emissions budgets to be used for conformity purposes will be determined from the total motor vehicle emissions reductions required in the SIP, even if the SIP does not explicitly quantify a revised motor vehicle emissions budget.

Response 4: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. Delaware's attainment demonstration SIP for the Philadelphia area contains explicitly quantified motor vehicle emissions budgets for its portion of the area which have been even further explicitly quantified as sub-budgets for each of Kent and New Castle Counties. See Section I.I.(1) of this document.

Comment 5: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179 of the Act.

Response 5: We agree that if a state fails to meet its SIP-approved commitment, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

Comment 6: If the budgets recalculated using MOBILE6 are larger than the MOBILE5 budgets, then attainment should be demonstrated again.

Response 6: As EPA proposed in its December 16, 1999 notices, we will work with states on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

Comment 7: If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should not be available for reallocation to other sources unless air quality data show that the area is attaining, and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (while MOBILE6 is being used for conformity demonstrations) unless the above conditions are met.

Response 7: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. In addition, Delaware will be submitting new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

K. MOBILE6 Grace Period

Comment 1: We received a comment on whether the grace period before MOBILE6 is required in conformity determinations will be consistent with the schedules for revising SIP motor vehicle emissions budgets within one or two years of MOBILE6's release.

Response 1: This comment is not germane to this rulemaking, since the MOBILE6 grace period for the conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum two-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is released.

Comment 2: One commenter asked EPA to clarify in the final rule whether MOBILE6 will be required for conformity determinations once new MOBILE6 budgets are submitted and found adequate.

Response 2: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when the MOBILE6 model is released. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

L. Two-Year Option To Revise the MVEBs

Comment: One commenter did not prefer the additional option for a second year before the state has to revise the conformity budgets with MOBILE6 since new conformity determinations and new transportation projects could be delayed in the second year.

Response: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the one-year option, if desired, or submit a new commitment consistent with the alternative two-year option. EPA expects that state and local agencies have consulted on which option is appropriate and considered the impact on the future conformity determinations. Delaware has committed to revise its budgets within

[7] "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules," March 22, 1995, from John S. Seitz, Director, Office of air Quality Planning and Standards to Air Division Directors, Regions I–X.

[8] "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," November 29, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

[9] "Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act," June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

one-year of MOBILE6's release. EPA is approving that commitment in this final rulemaking.

M. Comments Contending That Delaware's NO_X Measures Are Not Approved

Comment: We received comments asserting that credit had been assumed from measures not approved into the SIP. The comments specifically mentioned the NO_X RACT rule and the Phase II controls under the OTC's MOU. We also received comments that NO_X RACT applicability should be extended to 25 tons per year sources.

Response: EPA has approved the Delaware's NO_X RACT regulations for this area (66 FR 32231, June 14, 2001). The comment regarding extension of the applicability of RACT to 25 tons per year sources is moot because the Delaware NO_X RACT regulations's applicability threshold is 25 tons per year as is required in a severe ozone nonattainment area. EPA has fully approved Delaware's rule that implements the Phase II controls under the OTC MOU (65 FR 12481, March 9, 2000).

N. Attainment and Rate-of-Progress Demonstrations

Comment: One commenter claims that the plans fail to demonstrate emission reductions of 3 percent per year over each 3-year period between November 1999 and November 2002, and November 2002 and November 2005, as required by 42 U.S.C. section 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have been met. The EPA has absolutely no authority to waive the statutory mandate for 3 percent annual reductions. The statute does not allow EPA to use the NO_X SIP call or 126 orders as an excuse for waiving ROP deadlines. The statutory ROP requirement is for emission reductions—not ambient reductions. Emission reductions in upwind states do not waive the statutory requirement for 3 percent annual emission reductions within the downwind nonattainment area.

Response: Under no condition is EPA waiving the statutory requirement for 3 percent annual emission reductions. For many areas, EPA did not propose approval of the Post-99 ROP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. On August 30, 2001 (66 FR 45800), EPA proposed full approval of all of the Post-1996 ROP plans adopted by Delaware to demonstrate ROP from 1996 through the 2005 attainment year. We received no comments on that NPR. (See the discussion in Section I.B. of this document.) Delaware is only relying on NO_X and VOC reductions from within its portion of the Philadelphia nonattainment area for meeting the ROP requirements from 1996 through the 2005 attainment year. These reductions are the result of fully promulgated Federal and fully adopted and SIP-approved state measures.

O. Measures for the One Hour NAAQS and for Progress Toward the Eight Hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised eight hour ozone NAAQS because the Administrator deemed attaining the one-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the one hour standard and that make as much progress toward implementing the 8 hour ozone standard as the requirements of the Act and implementing regulations allow.

Response: The one hour standard remains in effect for all of these areas and the SIPs that have been submitted are for the purpose of achieving that NAAQS. Congress has provided the states with the authority to choose the measures necessary to attain the NAAQS. EPA cannot second guess a state's choice if EPA determines that the SIP meets the requirements of the Act. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the one hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the eighthour standard. However, EPA generally believes that emission controls implemented to attain the one hour ozone standard will be beneficial towards attainment of the eighthour ozone standard as well. This is particularly true regarding the implementation of NO_X emission controls resulting from EPA's NO_X SIP Call.

Finally, EPA notes that although the eighthour ozone standard has been adopted by the EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The states and the EPA have yet to define the eighthour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the eighthour ozone standard.

III. Final Action

A. Attainment Demonstration

EPA is fully approving as meeting sections 182(c)(2) and (d) of the Act, the attainment demonstration for the Philadelphia-Wilmington-Trenton area as submitted by the State of Delaware on May 22, 1998, and amended October 8, 1998, January 24, 2000, December 20, 2000, and October 9, 2001, including its RACM analysis and determination.

B. Commitments

EPA is approving the enforceable commitments made to the attainment plan for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area submitted on January 24, 2000 and revised on December 20, 2000. The enforceable commitments are to:

(1) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory,

(2) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued, and

(3) Perform a mid-course review by December 31, 2003.

C. Post-1996 ROP Plans

(1) EPA is approving the Post-1996 ROP plans for milestone years 1999, 2002, and 2005 for the Delaware portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area, namely Kent and New Castle Counties, which were submitted on December 29, 1997, June 17, 1999, February 3, 2000, and December 20, 2000.

(2) EPA is also approving Delaware's contingency plans for failure to meet ROP in the Delaware portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area, namely Kent and New Castle Counties which were submitted on December 29, 1997, June 17, 1999, February 3, 2000, and December 20, 2000.

D. Mobile Budgets of the Control Strategy Plans

EPA is approving the following mobile budgets, explicitly quantified as sub-budgets for each of Kent and New Castle Counties, of the Post-96 ROP plans and the Attainment Plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA

Type of control strategy SIP	Year	Kent County		New Castle County		Effective date of adequacy determination
		VOC	NO_X	VOC	NO_X	
Post-1996 ROP Plan	1999	7.55	11.17	22.49	29.41	April 29, 1999 (64 FR 31217, published June 10, 1999).
Post-1996 ROP Plan	2002	6.30	9.81	18.44	27.29	June 23, 2000, (65 FR 36440, published June 8, 2000).
Post-1996 ROP Plan	2005	4.84	7.90	14.76	22.92	May 2, 2001 (66 FR 19769, published April 17, 2001).
Attainment Demonstration	2005	4.84	7.90	14.76	22.92	June 23, 2000 (65 FR 36440, published June 8, 2000).

Please note that EPA is only approving the 2005 attainment demonstration and its current budgets because Delaware has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its current budgets because Delaware provided enforceable commitments to adopt additional measures to strengthen the attainment demonstration by October 31, 2001 and to submit revised budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory. Therefore, we are limiting the duration of our approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 28, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve the Post-1996 ROP plans and the one-hour ozone attainment demonstration SIP for the Philadelphia-Wilmington-Trenton area submitted by the State of Delaware may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. Section 52.426 is amended by revising the section heading and designating the existing text as paragraph (a) and adding paragraphs (b), (c) and (d) to read as follows:

§ 52.426 Control strategy plans for attainment and rate-of-progress: ozone.

* * * * *

(b)(1) EPA approves revisions to the Delaware State Implementation Plan consisting of the Post 1996 ROP plans for milestone years 1999, 2002, and 2005 for the Delaware portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area, namely Kent and New Castle Counties. These revisions were submitted by the Secretary of Delaware Department of Natural Resources and Environmental Control on December 29, 1997, and revised on June 17, 1999, February 3, 2000, and December 20, 2000.

(2) EPA approves Delaware's contingency plans for failure to meet ROP in the Delaware portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area, namely Kent and New Castle Counties, for milestone years 1999, 2002 and 2005. These revisions were submitted by the Secretary of Delaware Department of Natural Resources and Environmental Control on December 29, 1997, June 17, 1999, February 3, 2000, and December 20, 2000.

(c) EPA approves the attainment demonstration SIP for the Philadelphia-Wilmington-Trenton area submitted by the Secretary of the Delaware Department of Natural Resources and Environmental Control on May 22, 1998, and amended October 8, 1998, January 24, 2000, December 20, 2000, and October 9, 2001 including its RACM analysis and determination. EPA is approving the enforceable commitments made to the attainment plan for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area submitted by the Secretary of Delaware Department of Natural Resources and Environmental Control on January 24, 2000 and December 20, 2000. The enforceable commitments are to:

(1) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory,

(2) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued, and

(3) Perform a mid-course review by December 31, 2003.

(d) EPA is approving the following mobile budgets, explicitly quantified as sub-budgets for each of Kent and New Castle Counties, of the Post-96 ROP plans and the Attainment Plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA

Type of control strategy SIP	Year	Kent County		New Castle County		Effective Date of Adequacy Determination
		VOC	NO_X	VOC	NO_X	
Post-1996 ROP Plan	1999	7.55	11.17	22.49	29.41	April 29, 1999 (64 FR 31217, published June 10, 1999).
Post-1996 ROP Plan	2002	6.30	9.81	18.44	27.29	June 23, 2000, (65 FR 36440, published June 8, 2000).
Post-1996 ROP Plan	2005	4.84	7.90	14.76	22.92	May 2, 2001 (66 FR 19769, published April 17, 2001).
Attainment Demonstration	2005	4.84	7.90	14.76	22.92	June 23, 2000, (65 FR 36440, published June 8, 2000).

(1) EPA is only approving the 2005 attainment demonstration and its current budgets because Delaware has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

(2) Similarly, EPA is only approving the attainment demonstration and its current budgets because Delaware has provided enforceable commitments to adopt additional measures to strengthen the attainment demonstration by October 31, 2001 and to submit revised budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

[FR Doc. 01–26768 Filed 10–26–01; 8:45 am]

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Part IV

Department of Transportation

Office of the Secretary

14 CFR Part 330

Procedures for Compensation of Air Carriers; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD06

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; request for comments.

SUMMARY: On September 22, 2001, President Bush signed into law the Air Transportation Safety and System Stabilization Act ("the Act"). The Act makes available to the President funds to compensate air carriers, as defined in the Act, for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, resulting from the September 11 terrorist attacks on the United States. In order to fulfill Congress' intent to expeditiously provide compensation to eligible air carriers, the Department used procedures set out in Program Guidance Letters to make initial payments amounting to about 50 percent of the authorized funds. This rule establishes application procedures for air carriers interested in requesting compensation under this statute.

DATES: This rule is effective October 29, 2001. Comments should be received by November 13, 2001.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket OST–2001–10885, Department of Transportation, 400 7th Street, SW, Room PL–401, Washington, DC 20590. Applicants for compensation should NOT send their applications to the docket; the Department will accept only those complete applications sent to the address listed in the text of this rule. We request that, in order to minimize burdens on the dockets staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/*. Commenters who wish to file comments electronically should follow the instructions on the DMS web site. Interested persons can also review comments through this same web site.

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington DC, 20590. Telephone 202–366–1213.

SUPPLEMENTARY INFORMATION: As a consequence of the terrorist attacks on the United States on September 11, 2001, the U.S. commercial aviation industry suffered severe financial losses. These losses placed the financial survival of many air carriers at risk. Acting rapidly to preserve the continued viability of the U.S. air transportation system, President Bush and Congress enacted the Air Transportation Safety and System Stabilization Act ("the Act"), Public Law 107–42.

The Act provided financial assistance to air carriers to address a short-term liquidity crisis in the wake of the September 11 attacks. This primary objective of the Act was clearly recognized by members of both the House and Senate. See, for example, statements of Representatives Frost, Lampson, Buyer, Green and Dicks (*Daily Congressional Record*, September 21, 2001, at H5884–5891) and Senators Bond, Hutchinson, Rockefeller, Boxer, McCain, Feingold, and Domenici (*Daily Congressional Record*, September 21, 2001, at S9589—9597). The Act provided financial assistance in two main ways. First, the Act authorized $5 billion in compensation to air carriers for direct and incremental losses incurred as a result of the September 11 attacks. Second, the Act authorized the issuance of up to $10 billion in loan guarantees to air carriers. This regulation concerns only the first type of financial assistance. The latter is covered by regulations issued on October 5, 2001 (66 FR 52270, October 12, 2001), by the Office of Management and Budget (14 CFR part 1300).

Under section 101(a)(2)(A–B) of the Act, a total of $5 billion in compensation is provided for "direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such stoppage; and the incremental losses incurred beginning September 11, 2001 and ending December 31, 2001, by air carriers as a direct result of such attacks." The Department of Transportation has already disbursed initial estimated payments of nearly $2.5 billion of the $5 billion amount that Congress authorized, using procedures set forth in the Department's Program Guidance Letters that were widely distributed and posted on the Department's web site. These payments represent about one-half of the sums estimated to be due to air carriers, and they are subject to adjustment and audit. Applicants can still receive the full amounts for which they are eligible, even if they did not apply previously. However, *all* applicants should note the strict 14-day (general) or 28-day (air taxi) application deadlines, as explained below.

Section-by-Section Analysis

Section 330.1 What Is the Purpose of This Part?

This section states the purpose of part 330, which is to carry out the statutory provisions of the Act with respect to compensating air carriers.

Section 330.3 What Do the Terms Used in This Part Mean?

This definitions section incorporates terms from the Act or other existing sources. The definition of "air carrier" in the Act refers to any U.S. air carrier, as defined in 49 U.S.C. 40102. This statutory definition is "a citizen of the United States undertaking, by any means, directly or indirectly, to provide air transportation." This definition includes not only entities that operate aircraft ("direct" air carriers) but also other entities that are involved in air transportation but do not operate aircraft ("indirect" air carriers, such as freight forwarders and some public charter operators). As noted in section 330.11, not all "air carriers" are eligible for compensation, however.

The definitions of available seat-miles (ASMs) and revenue ton-miles (RTMs) are derived from the air carrier reporting requirements of 14 CFR part 241. We note that, under the statutory formula of section 103(b)(2) of the Act, combined cargo/passenger flights are eligible for compensation only on the basis of ASMs. Only RTMs flown on all-cargo freighter aircraft are eligible for compensation on the basis of RTMs.

The definition of "air taxi operator" is an air carrier, other than a commuter air carrier, that holds authority under 14 CFR part 298 and 14 CFR part 121 or 135. We believe that the Congress intended that air taxis be eligible for compensation, as long as they are able to accurately report the ASMs they have flown or the RTMs they have transported, as well as clearly document direct and incremental losses resulting from the attacks, to the Department. We are including provisions in the regulation to facilitate their participation in the program. At the same time, we understand that many air taxi companies are likely to have flown relatively few ASMs or RTMs, compared to the universe of ASMs or RTMs flown by the entire industry. For example, in CY 2000, the industry flew over 973 billion ASMs. Consequently, the statutory formula may result in very small amounts of compensation being payable to companies that fly relatively few ASMs.

Section 330.5 What Funds Will the Department Distribute Under This Part?

The Department plans to disburse the remaining funds available under the Act in two additional installments. In the second installment, covered by the procedures of Part 330, we plan to disburse an amount that, cumulatively with the funds we have already disbursed, will not exceed 85 percent of the amount authorized for carriers. The Department is not establishing, in this regulation, a specific percentage of authorized funds that will be disbursed as part of this second installment. The Department anticipates having a clearer picture of the collective losses of air carriers after we review the submissions from carriers under this rule.

We will subsequently establish a uniform across-the-board percentage figure that will determine the percentage of authorized funds that all eligible carriers will receive in this second installment. The Department wishes to avoid any situation in which a carrier is "overpaid," resulting in our having to recoup payments from a carrier.

The timing of the third installment must comport with the statutory directive that compensation relate to actual losses "incurred" through the end of December 2001. The Department will announce at a later date the procedures applicable to the third installment.

Section 330.7 How Much of An Eligible Air Carrier's Estimated Compensation Will Be Distributed Under This Part?

Consistent with section 330.5, individual carriers will receive compensation not to exceed 85 percent of the estimated compensation for which they demonstrate that they are eligible, cumulatively with payments they have previously received. The amount will depend on the percentage amount of total available compensation the Department determines to make available through this second installment. As the example in the rule text points out, a carrier that had already received 50 percent of the estimated compensation for which it is eligible would receive an additional 35 percent as part of the second installment, if the Department had determined that all carriers would receive 85 percent of their estimated compensation through the second installment.

We emphasize that carriers will only receive compensation for which they demonstrate they are eligible. To be eligible to receive any compensation at all, an air carrier must demonstrate to the satisfaction of the Department that it has actually incurred direct or incremental losses as defined in the Act. The burden of proof with respect to eligibility rests with carriers applying for compensation.

The Department is retaining discretion to make a disbursement of funds before December 31, 2001, to individual carriers of the full amount of compensation for which they are eligible under the Act. If a carrier is able to demonstrate to the satisfaction of the Department, before December 31, 2001, that it has already suffered actual losses that exceed the formula amount of compensation for which it demonstrates and documents it is eligible in accordance with the requirements set forth in this rule, the Department could disburse the complete amount of compensation for which the carrier is eligible under the statutory formula without waiting for December 31.

A carrier which requests disbursement of a final installment before December 31, 2001 must submit an independent auditor's review of the reasonableness and accuracy of its claim of actual losses for the period of the claim, a forecast for the same period which was prepared before September 11, 2001, and an independent auditor's review of the reasonableness and accuracy of its forecasts and data. The consideration of requests for final payment before December 31, 2001 is contingent upon the Department's ability to establish a fixed, comprehensive total of the ASMs and RTMs flown by all eligible air carriers during the relevant period to be used as the final basis for the total compensation formula for all eligible air carriers as established in the Act.

Section 330.9 What Are the Limits on Compensation to Air Carriers?

This section restates the Act's provision that a carrier is eligible for the lesser of its direct and incremental losses, as defined in the Act, or the amount calculated through the following formula, set forth in section 103(b)(2) of the Act:

(2) in the case of—

(A) flights involving passenger-only or combined passenger and cargo transportation, the product of—

(i) $4,500,000,000; and

(ii) the ratio of—

(I) the available seat miles of the carrier for the month of August 2001 as reported to the Secretary; to

(II) the total available seat miles of all such carriers for such month as reported to the Secretary; and

(B) flights involving cargo-only transportation, the product of—

(i) $500,000,000; and

(ii) the ratio of—

(I) the revenue ton miles or other auditable measure of the air carrier for cargo for the latest quarter for which data is available as reported to the Secretary; to

(II) the total revenue ton miles or other auditable measure for all such air carriers for cargo for such quarter as reported to the Secretary.

If any air carrier receives more compensation than it demonstrates to the satisfaction of the Department that it is eligible for under the Act, the carrier will be required to repay the excess amount to the Department.

Section 330.11 Which Carriers Are Eligible To Apply for Compensation Under This Part?

Direct air carriers that engage in air transportation operations, including certificated air carriers, commuter air carriers, and air taxis, are eligible to apply for compensation. Entities that are outside the definition of "air carrier," such as foreign air carriers, commercial operators, travel and ticket agents, and general aviation operators (including corporate air services and flight training schools), are not.

As noted above, the general statutory definition of "air carrier" includes both direct and indirect air carriers. However, under the specific statutory language setting forth the "Special Rules for Compensation," we believe that Congress intended compensation only for those entities that actually operate "flights." Moreover, entities that actually fly aircraft were the overwhelming focus of the Congressional discussion of the purpose of compensation under the Act. A reading of the statute to extend compensation payments to other entities and individuals that do not actually fly aircraft would make it difficult, if not impossible, to distinguish among the many different kinds of contractual arrangements that exist for providing air transportation. We believe that, although a variety of air carriers and other entities suffered losses as a result of the terrorist attacks—public charter operators, travel agents, freight forwarders, employees, concessionaires,

etc.—Congress limited the Act to provide financial assistance to help keep air carriers that actually operate flights flying.

Congress designed the compensation system of § 102(b)(2) consistent with its intent in this regard. The Act provides that air carriers would be eligible to receive the lesser of the amount of their direct and incremental losses or an amount calculated by using the statutory formula. Any air carrier, direct or indirect, may be able to demonstrate direct and incremental losses. However, unless the amount of compensation that would be payable to an air carrier under the statutory formula can be calculated, there is no way of implementing Congress' direction that the lesser of direct and incremental losses on one hand, or the formula-based payment on the other, be payable to the air carrier.

The Act does not permit the Department to disburse compensation based solely on a showing of direct and incremental losses, absent the application of the formula. Doing so could permit a carrier to receive a greater amount of compensation than that to which the Act entitles it (i.e., because there would be no formula "cap" to limit the amount of compensation below the amount of direct and incremental damages). Such a result would be inconsistent with the Department's task of implementing the Act responsibly in accordance with the intent of Congress.

With respect to carriers providing "*flights* involving passenger-only or combined passenger and cargo transportation" (emphasis added), the formula is calculated based on a ratio involving an individual carrier's ASMs, as reported to the Secretary, to those for all such carriers. Indirect air carriers (e.g., public charter operators) do not report ASMs to the Department under 14 CFR parts 241 or 298. Since they do not operate aircraft, they cannot be said to have ASMs of their own at all. Indeed, the regulatory definition of "available seat-miles" refers in part to "the aircraft miles *flown* on each flight stage" (emphasis added), and indirect air carriers do not "fly" miles on flight stages. Any ASMs that these indirect air carriers might calculate would be duplicative of direct air carrier ASMs. For these reasons, we believe that the formula cannot be calculated for indirect air carriers, who are therefore ineligible to receive compensation. This is consistent with Congress' focus on providing compensation to carriers who actually operate aircraft.

For carriers providing "*flights* involving cargo-only transportation" (emphasis added), the Act calculates the formula in a similar way, with the basic measure being RTMs reported to the Department under 14 CFR part 291. The same points made above with respect to passenger-only or combined passenger/cargo carriers apply to cargo carriers as well. An indirect air carrier in the cargo transportation field, such as an air freight forwarder, does not operate flights with aircraft and neither generates nor reports RTMs. Revenue ton-miles are defined as a ton of revenue traffic "transported" one mile, not "placed" or "contracted for." Any RTMs it would report would necessarily duplicate those of the direct air carrier that actually operated the flights involved. Indeed, an air freight forwarder could reasonably be viewed as a purchaser, rather than a provider, of air transportation services.

This interpretation is also consistent with the general purposes of the Act. To the extent that the compensation program helps direct air carriers remain operating, indirect air carriers such as air freight forwarders clearly benefit. Paying compensation to indirect air carriers would reduce the funds available to direct air carriers, making it more likely that direct air carriers would not get all of the compensation that would otherwise be payable to them. This could contribute to failures of direct air carriers that, in turn, would harm the interests of indirect air carriers.

Section 330.13 If An Air Carrier Received Compensation Under the Act Previously, Does it Have To Apply Now?

Section 330.15 If An Air Carrier Did Not Apply for Compensation Under the Act Previously, May it Apply For the First Time Now?

Section 330.17 Must An Air Carrier Apply for Compensation Under This Part Now To Be Eligible for Funds That Will Be Distributed in the Future?

These three related sections make a series of important points that air carriers should understand. All air carriers who want compensation under the Act must apply under this rule. This includes carriers who previously applied for and received funds from the first installment. A carrier who received funds under the first installment must submit an application under this rule even if it does not intend to seek further compensation. If a carrier did not apply for funds from the first distribution, it can apply now. Application under this part is mandatory, not only for carriers which wish to receive this second installment of compensation, but also from the third installment of funds to be distributed next year.

Section 330.21 When Must Air Carriers Apply for Compensation?

Section 330.23 To What Address Must Air Carriers Send Their Applications?

Section 330.25 What Are the Components of An Air Carrier's Application for Compensation?

These sections give air carriers, other than air taxis, 14 days from the effective date of the rule to ensure that their complete applications reach the Department. In order to facilitate the participation of air taxis, the regulation provides them 28 days. These are firm deadlines. Unless a carrier can demonstrate to the satisfaction of the Department that extremely unusual extenuating circumstances, completely beyond its control, prevented it from making a timely submission, the Department will not accept a late submission.

Likewise, the use of the address stated in the rule is mandatory. The Department will not accept applications sent elsewhere. In addition, applications must be in hard copy. Faxes and e-mails are not acceptable, because of the difficulties they create in handling large volumes of documents. In discussions with DOT staff, many carriers have indicated their intention to hand-carry applications to the Department. The Department will make arrangements to receive such packages in a way consistent with current Departmental office security procedures. Applications also must be complete, containing all the required information. The Department will not accept incomplete applications.

Section 330.27 What Information Must Certificated and Commuter Air Carriers Submit?

Section 330.29 What Information Must Air Taxi Operators Submit?

Forms 330–A, 330–B, and 330–C on which carriers must submit data to support their applications, are found in the Appendices to part 330. Carriers should note that forms for certificated and commuter passenger and combination passenger/cargo carriers are found in Appendix A, forms for certificated cargo carriers are found in Appendix B, and forms for air taxis are found in Appendix C. Certificated and commuter carriers which operate both passenger/combination aircraft and all-cargo aircraft and routinely report to the Department ASMs and RTMs separately for both types of flights and which are seeking compensation on both an ASM and an RTM basis must submit both sets of forms in Appendices A and B to seek compensation on both an ASM and

RTM basis. Financial and operational data (both actual and forecasted) must be disaggregated and correlate exclusively to one or the other type of operation.

In submitting the information on these forms, carriers must report total net income after taxes, based on application of standard corporate income tax rates, as well as other financial information. The Department has, however, tentatively determined to accept applications for compensation of losses calculated on the basis of pre-tax data. The rationale for this tentative determination is that the Act is intended to compensate air carriers for losses related to their actual operations, realized prior to taxation. Under the Act, compensation received is taxable income. The Act subjects this income to taxation at the end of the fiscal year when air carriers compute their corporate taxes, as they would had the carrier earned that income from the marketplace if the terrorist attacks had not occurred. In addition, we believe that this approach avoids prejudice to eligible air carriers based on their varied tax positions. Actual losses must be net of savings on a number of items, however (*e.g.*, fuel consumption, reductions in staff).

Section 330.31 What Data Must Air Carriers Submit Concerning ASMs or RTMs?

There are three points in this section that the Department wishes to emphasize. First, since the statute relies on ASMs and RTMs "reported to the Secretary" (§ 103(b)(2) of the Act), we must rely on the reports of these statistics already made to the Department. Carriers are not at liberty to modify their reports, except as directed by the Department (e.g., to correct over-reported data) and to avoid double counting or the reporting of activity by code-sharing or alliance partners.

Second, we recognize that, unlike certificated and commuter air carriers that file Form 41 or part 298–C reports, air taxis do not routinely file with the Department ASM or RTM reports or traffic, financial, and other operational data. The Department is therefore requiring additional information from air taxis that is necessary to verify their claims for compensation. We are asking such carriers to provide information about their operations with their applications for compensation which will allow for a calculation of ASMs or RTMs, consistent with Bureau of Transportation Statistics (BTS) requirements and guidance (see 14 CFR part 298). If there are any direct air carriers, other than air taxis, that legitimately have not submitted ASMs or RTMs to the Department, they would also have to provide such information.

Any air carrier that calculates its ASMs or RTMs in connection with its applications must certify under penalty of law that the calculation is accurate and must fully "show its work" (i.e., submit the data and assumptions on which the calculation is based and describe how the result was reached). The Department provides more detailed guidance on the form in Appendix C. The Department, after reviewing such submissions, has the discretion to modify or reject the carrier's calculation.

Third, we have been asked how the Department views the situation of carriers that operate under "wet-lease" arrangements. In a wet lease, a carrier (the "lessor") leases its aircraft and crew to another carrier (the "lessee") for an operation. The question arises as to whether the lessor or the lessee can claim the ASMs or RTMs resulting from the operation for purposes of an application for compensation.

The statute bases the compensation formula on ASMs or RTMs "as reported to the Secretary." Consequently, the Department believes that the lessor can appropriately claim the ASMs or RTMs resulting from an operation only when that is how the ASMs or RTMs were reported to the Department, in accordance with BTS regulations and guidance. Under 14 CFR 241.25, Appendix, (m)(2)(ii), "Wet-lease arrangements shall be reported by the lessee as though the leased aircraft and crew were part of the lessee's own fleet." BTS discussed this requirement in Office of Airline Information Accounting and Reporting Directive No. 217, issued July 28, 1997. This BTS guidance document stated the following:

> Under the Form 41 and T–100 traffic reporting systems, wet-lease operations are reported by a lessee as though the leased aircraft and crew were a part of the lessee's own fleet and crew. [citation to § 241.25 omitted] This principle removes the uncertainty of which carrier, the lessee or the lessor, reports the detailed traffic and financial information from a wet-lease arrangement, and precludes two carriers reporting the same traffic movement while assuring that the traffic is reported by one carrier. This principle also applies for wet-lease operations involving commuter air carriers.

This approach is consistent with the Act and other provisions of this regulation.

We are aware that section 102(b)(2)(B)(ii) of the Act provides that the formula calculation is to be based on "revenue ton-miles *or other auditable measure* of the air carrier for the latest quarter for which data is available as reported to the Secretary" (emphasis added). Neither the language of the statute nor its legislative history provides any information on what such an "other auditable measure" would be. To fulfill the purpose of the statutory formula, such a measure would have to be readily verifiable, could not be duplicative of RTMs reportable by direct air carriers, and would have to be comparable to RTMs so that it could be part of the basis for the formula "cap" on the compensation payable to a carrier for its direct and incremental losses. The Department also believes that any "other auditable measure" would have to be a measure applicable to air carriers for cargo generally. It would not be feasible to attempt to make the comparison referred to above on the basis of individual, carrier-specific measures.

The language of the statute requires the Department to apply such an "other auditable measure" in the same way that it applies RTMs that are "reported to the Secretary." It may be possible, for example, that a calculation of RTMs, based on auditable information regarding flights actually flown by the air carrier and prepared in accordance with Bureau of Transportation Statistics regulations and guidance, but that were not required to be reported to the Secretary, could meet these criteria. On the other hand, for example, financial data evidencing losses, without regard to RTMs actually flown by the air carrier, are clearly not such a measure. The Department will review comments that propose "other auditable measures" and could, if warranted, add language to this rule permitting submissions by cargo carriers who actually operate aircraft based on such measures, if they meet the criteria discussed above. Because the Department does not now know of specific "other auditable measures" that meet the criteria for such a measure, however, we are not including any provisions to this effect in today's rule.

Section 330.33 Must Carriers Certify the Truth and Accuracy of Data They Submit?

This section provides the form of a certification that the Chief Executive Officer, Chief Financial Officer, or Chief Operating Officer, or equivalent official, of a carrier must make with respect to applications for compensation and participation in the compensation program.

Section 330.35 What Records Must Carriers Retain?

Section 330.37 Are Air Carriers That Participate in This Program Subject To Audit?

In order to maintain the Department's ability to audit the compensation program, we must require air carriers to retain a significant amount of information for review by the Department (including the Office of Inspector General), the Comptroller General, or other Federal agencies.

Carriers will have to provide an independent auditor's review of their forecasts before becoming eligible for the final installment of compensation. We also want air carriers to be aware that, before becoming eligible to receive payment from the final installment of compensation under the Act, they must report to the Department actual losses for the period September 11, 2001—December 31, 2001 that are the result of the terrorist attacks.

Carriers that can demonstrate and document to the Department's satisfaction that they suffered actual losses before December 31, 2001 that exceed the formula amount of compensation may request a final installment in CY 2001 subject to the terms and conditions discussed in connection with § 330.7 above. Carriers will have to support these reports of losses with audited financial statements or, for carriers who do not normally prepare audited financial statements, relevant tax records and supporting documents. In addition, the Department may require the carrier to provide whatever documents or other supporting data are necessary to verify the carriers' reported losses. All claims by carriers are subject to audit both by the Department (including the Office of Inspector General), the Comptroller General, or other Federal agencies.

Regulatory Analyses and Notices

This rule is an economically significant rule under Executive Order 12886, since it will facilitate the distribution of more than a billion dollars into the economy during the 12-month period following its issuance. Because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, we are not required to provide an assessment of the potential cost and benefits of this regulatory action. The Department has determined that this rule is being issued in an emergency situation, within the meaning of Section 6(a)(3)(D) of Executive Order 12866. However, this impact is expected to be a favorable one: making these funds available to air carriers to compensate them for losses resulting from the terrorist attacks of September 11. In accordance with Section 6(a)(3)(D), this rule was submitted to the Office of Management and Budget for a brief review.

Because a notice of proposed rulemaking is not required for this rulemaking under 5 U.S.C. 553, we are not required to prepare a regulatory flexibility analysis under 5 U.S.C. 604. However, we do note that this rule may have a significant economic effect on a substantial number of small entities. Among the entities in question are air taxis, as well as some commuters and small certificated air carriers. In analyzing small entity impact for purposes of the Regulatory Flexibility Act, we believe that, to the extent that the rule impacts small air carriers, the impact will be a favorable one, since it will consist of receiving compensation. We have facilitated the participation of small entities in the program by allowing a longer application period for air taxis, which are generally the smallest carriers covered by this rule and which do not otherwise report traffic or financial data to the Department. The Department has also concluded that this rule does not have sufficient Federalism implications to warrant the consultation requirements of Executive Order 13132.

We are making this rule effective immediately, without prior opportunity for public notice and comment. Because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, prior notice and comment would be impractical, unnecessary, and contrary to the public interest. Consequently, prior notice and comment under 5 U.S.C. 553 and delay of the effective date under 5 U.S.C. 801, *et. seq*, are not being provided. On the same basis, we have determined that there is good cause to make the rule effective immediately, rather than in 30 days. We are providing for a 14-day comment period following publication of the rule, however. The Department will subsequently respond to comments we receive.

This rule contains information collection requirements subject to the Paperwork Reduction Act (PRA), specifically the application documents that air carriers must submit to the Department to obtain compensation. The title, description, and respondent description of the information collections are shown below as well as an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Procedures (and Forms) for Compensation of Air Carriers.

Need for Information: The information is required to administer the requirements of the Act.

Use of Information: The Department of Transportation would use the data submitted by the air carriers to determine each carrier's compensation for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, resulting from the September 11, 2001, terrorist attacks on the United States as defined in the Act.

Frequency: For this final rule, the Department will collect the information once, with air carriers reporting on Forms 330–A, 330–B, and 330–C.

Respondents: The respondents include an estimated 430 air carrier applicants. This number is based on an estimate of 300 air taxis (about twice as many as have contacted the Department to date in connection with this program) and 130 other carriers choosing to submit applications.

Burden Estimate: Total air carrier burden of $146,000 based on total burden hours of 5,320 for 430 applicants and a weighted average cost per hour of $27.44.

Form(s): The data would be collected on Forms 330–A, 330–B, and 330–C as shown in the Appendices to this rule.

Average Burden Hours per Respondent: A weighted average of 12.4 hours per application.

The Office of Management and Budget has approved this information collection on an emergency basis, with Control Number 2105–0546.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued this 24th day of October, 2001, at Washington, DC.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

For the reasons set forth in the preamble, the Department adds a new part 330 to Title 14, Code of Federal Regulations, to read as follows:

PART 330—PROCEDURES FOR COMPENSATION OF AIR CARRIERS

Sec.

Subpart A—General Provisions

330.1 What is the purpose of this part?
330.3 What do the terms used in this part mean?
330.5 What funds will the Department distribute under this part?
330.7 How much of an eligible air carrier's estimated compensation will be distributed under this part?
330.9 What are the limits on compensation to air carriers?
330.11 Which air carriers are eligible to apply for compensation under this part?
330.13 If an air carrier received compensation under the Act previously, does it have to apply now?
330.15 If an air carrier did not apply for compensation under the Act previously, may it apply for the first time now?
330.17 Must an air carrier apply for compensation under this part now to be eligible for funds that will be distributed in the future?

Subpart B—Application Procedures

330.21 When must air carriers apply for compensation?
330.23 To what address must air carriers send their applications?
330.25 What are the components of an air carrier's application for compensation?
330.27 What information must certificated and commuter air carriers submit?
330.29 What information must air taxi operators submit on Form 330–C?
330.31 What data must air carriers submit concerning ASMs or RTMs?
330.33 Must carriers certify the truth and accuracy of data they submit?
330.35 What records must carriers retain?
330.37 Are carriers which participate in this program subject to audit?
Appendix A to Part 330—Forms for Certificated and Commuter Air Carriers
Appendix B to Part 330—Forms for Certificated Cargo Carriers
Appendix C to Part 330—Forms for Air Taxi Operators

Authority: Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note).

Subpart A—General Provisions

§ 330.1 What is the purpose of this part?

The purpose of this part is to establish procedures to implement section 101(a)(2) of the Air Transportation Safety and System Stabilization Act ("the Act"), Public Law 107–42, 115 Stat. 230 (49 U.S.C. 40101 note). This statutory provision is intended to compensate air carriers for direct losses incurred as a result of the Federal ground stop order issued by the Secretary of Transportation, and any subsequent orders, following the terrorist attacks of September 11, 2001, and incremental losses incurred from September 11 through December 31, 2001, as the result of those attacks.

§ 330.3 What do the terms used in this part mean?

The following terms apply to this part:

Air carrier means any U.S. air carrier, as defined in 49 U.S.C. 40102.

Air taxi operator means an air carrier, other than a commuter air carrier, that holds authority issued under 14 CFR part 298 and 14 CFR part 121 or part 135.

Available seat-miles (ASMs) means the aircraft miles flown on each flight stage by an air carrier multiplied by the number of seats available for revenue use on that stage.

Certificated air carrier means an air carrier holding a certificate issued under 49 U.S.C. 41102 or 41103.

Commuter air carrier means an air carrier as defined in 14 CFR 298.2(e) that holds a commuter air carrier authorization issued under 49 U.S.C. 41738.

Incremental loss means a loss incurred by an air carrier in the period of September 11, 2001—December 31, 2001, as a result of the terrorist attacks on the United States of September 11, 2001. It does not include any loss that would have been incurred if the terrorist attacks on the United States of September 11, 2001, had not occurred.

Revenue ton-miles (RTMs) means the aircraft miles flown on each flight stage by the air carrier multiplied by the number of tons of revenue cargo transported on that stage. For purposes of this part, RTMs include only those resulting from all-cargo flights flown by the air carrier submitting the claim for compensation.

§ 330.5 What funds will the Department distribute under this part?

Through the regulations in this part, the Department is distributing compensation not to exceed 85 percent of the total funds available, cumulatively with funds distributed previously.

§ 330.7 How much of an eligible air carrier's estimated compensation will be distributed under this part?

(a) If you are an eligible air carrier that has not previously received compensation under the Act, you will receive compensation not to exceed 85 percent of the compensation for which you demonstrate you are eligible under the Act.

(b) If you are an eligible air carrier that has previously received compensation under the Act, you will receive compensation not to exceed 85 percent of the estimated compensation for which you demonstrate you are eligible under the Act, less the amount of estimated compensation you received previously. For example, suppose you have already received 50 percent of the estimated compensation for which you are eligible. If, under this part, the Department determined that all carriers would receive 85 percent of the compensation for which they are eligible as part of the second installment of compensation, your payment for the second installment would be an additional 35 percent of the estimated compensation for which you are eligible under the Act.

(c) If, as an air carrier, you are able to submit data, subsequent to your application under this part but before December 31, 2001, demonstrating and documenting conclusively that you have incurred actual losses as defined in section 101(a)(2) of the Act that exceed the amount of compensation for which you demonstrate you are eligible under the formula of section 103(b)(2) of the Act, the Department may disburse to you, without waiting for a submission in Calendar Year (CY) 2002, the remainder of the formula amount of compensation for which you are eligible. A carrier that requests a final installment before December 31, 2001 must submit an independent auditor's review of the reasonableness and accuracy of its claim of actual losses for the period of the claim, a forecast for the same period which was prepared before September 11, 2001, and an independent auditor's review of the reasonableness and accuracy of its forecasts and data. The consideration of requests for final payment before December 31, 2001 is contingent upon the establishment by the Department of a fixed comprehensive universe of ASMs and RTMs for all eligible air carriers to be used as the basis of the final compensation formula for all eligible air carriers as established in the Act.

§ 330.9 What are the limits on compensation to air carriers?

(a) You are eligible to receive compensation equaling the lesser of your direct and incremental losses or the amount calculated by the formula set forth in section 103(b)(2) of the Act.

(b) In the event that the compensation for which we determine you are finally eligible as provided in paragraph (a) of this section is less than the amount the Department has disbursed to you, you are required to repay the excess amount to the Department.

§ 330.11 Which carriers are eligible to apply for compensation under this part?

(a) If you are a certificated air carrier, a commuter air carrier, or an air taxi, you are eligible to apply for

compensation under Subpart B of this part.

(b) If you are an air freight forwarder (as described in 14 CFR part 296), public charter operator (as described in 14 CFR part 380), or other indirect air carrier (such as a contract bulk fare operator), you are eligible to apply for compensation under this part.

(c) If you are a foreign air carrier, commercial operator, flying club, fractional owner, general aviation operator, fixed base operator, flight school, or ticket agent, you are not eligible to apply for compensation under this part.

§ 330.13 If an air carrier received compensation under the Act previously, does it have to apply now?

Yes, if, as an air carrier, you previously received compensation under section 101(a)(2) of the Act, you must, in all cases, submit an application under this part. You must do so even if you are not seeking additional compensation.

§ 330.15 If an air carrier did not apply for compensation under the Act previously, may it apply for the first time now?

Yes, if you are an air carrier that did not apply for compensation previously under the Act, you may apply for the first time under this part.

§ 330.17 Must an air carrier apply for compensation under this part now to be eligible for funds that will be distributed in the future?

Yes, as an air carrier, you must apply under this part to be eligible to receive funds from the second and third installments of compensation. If you do not apply under this part, you will not be eligible to receive funds distributed in this or subsequent installments including those distributed in CY 2002.

Subpart B—Application Procedures

§ 330.21 When must air carriers apply for compensation?

(a) If you are an eligible air carrier other than an air taxi, you must ensure that your application for compensation reaches the Department by no later than close of business November 13, 2001.

(b) If you are an eligible air taxi, you must ensure that your application for compensation reaches the Department by no later than close of business November 26, 2001.

(c) If you do not meet the applicable deadline for submitting your application for compensation, the Department will not accept it, unless you document extremely unusual extenuating circumstances, completely beyond your control, that prevented you from submitting your application in a timely manner.

§ 330.23 To what address must air carriers send their applications?

(a) You must submit your application, and all required supporting information, in hard copy (not by fax or electronic means) to the following address:

U.S. Department of Transportation
Aviation Relief Desk (X–50)
400 7th Street, SW
Room 6401
Washington, DC 20590

(b) If your complete application is not sent to the address in paragraph (a) of this section as required in this section, the Department will not accept it.

§ 330.25 What are the components of an air carrier's application for compensation?

As an air carrier applying for compensation under this part, you must provide to the Department all materials described in §§ 330.27–330.33. The Department will not accept your application if it does not comply fully with the requirements of this subpart.

§ 330. 27 What information must certificated and commuter air carriers submit?

(a) If you are a certificated or commuter air carrier that provides passenger and/or combination passenger/cargo service and are applying for compensation under this part, you must submit Form 330–A, found in Appendix A to this part.

(b) If you are a certificated carrier operating all-cargo service and are applying for compensation under this part, you must submit Form 330–B, found in Appendix B to this part. Data for all-cargo carriers supplied on the forms in Appendix B to this part must be tied only to the airline portion of their businesses and must exclude activities usually associated with indirect air carriers or with ground services.

(c) Certificated and commuter carriers which operate both passenger/combination aircraft and all-cargo aircraft and routinely report to the Department ASMs and RTMs separately for both types of flights must submit both sets of forms in Appendices A and B to this part (Forms 330–A and 330–B) to seek compensation on both an ASM and RTM basis. Financial and operational data (both actual and forecasted) must be disaggregated and correlate exclusively to one or the other type of operation.

(d) You must include the following financial information in Part 1 of Forms 330–A and 330–B and the Operational Data as required by Part 2 of that form for the period September 11 through September 30, 2001:

(1) Your pre-September 11, 2001, profit/loss forecast for the period beginning on that date and ending September 30, 2001. This forecast must reflect seasonal reductions in capacity and the cost savings associated with such reductions. Documentation verifying that the pre-September 11, 2001, forecast was, in fact, completed before that date must also be submitted with your application.

(2) Your actual results for that same period reflecting any losses that were a direct result of the terrorist attacks of September 11, 2001.

(3) The difference between your forecast profits/losses and actual results for that period (*i.e.*, the difference between the figures in paragraphs (d) (1) and (2) of this section).

(4) The actual losses you report must be net losses, before taxes, taking into account savings from such items as reductions in passenger and cargo handling costs, fuel consumption, landing fees, revenue/traffic-related expenses (*e.g.*, commissions, food and beverage, booking fees, credit card fees), and savings of other costs due to the ground stop and subsequent schedule/capacity/staff reductions (including savings from layoffs of employees, adjusted for severance payments), as well as proceeds from business recovery insurance or other insurance payments. You must not report as losses insurance premium increases that have been or will be compensated by the Government under the Act, or other losses that have been or will be compensated by other subsidies or assistance provided by Federal, state, or local governments. You must also report after tax profit/losses as required on the forms in the Appendices to this part.

(e) You must include the following financial information in Part 3 of Form 330–A and 330–B and the Operational Data as required by Part 4 of those forms for the period October 1 through December 31, 2001:

(1) Your pre-September 11, 2001, profit/loss forecast for the period beginning October 1, 2001, and ending December 31, 2001. This forecast must reflect seasonal reductions in capacity and the cost savings associated with such reductions. Documentation verifying that the pre-September 11, 2001 forecast was, in fact, completed before that date must also be submitted with your application.

(2) Your post-September 11, 2001, forecast of incremental losses estimated to be incurred for the period beginning October 1, 2001, and ending December 31, 2001 as a result of the September 11, 2001, terrorist attacks. This forecast must incorporate all cost reductions associated with capacity reductions and furloughs you made due to the reduced demand for air service after the September 11th attacks (*e.g.*, employee pay adjustments and furloughs, changes in aircraft fleet in service, schedule and capacity changes, etc.).

(3) The difference between your pre-September 11 forecast profit-loss forecast for the October 1—December 31, 2001, period and your post-September 11 forecast for incremental losses for that period (i.e., the difference between the figures in paragraphs (e) (1) and (2) of this section).

(f) Estimated losses you report for the October 1—December 31 period must be net losses, before taxes, taking into account savings from such items as reductions in passenger and cargo handling costs, fuel consumption, landing fees, revenue/traffic-related expenses (*e.g.*, commissions, food and beverage, booking fees, credit card fees), and savings of other costs due to the ground stop and subsequent schedule/capacity/staff reductions (including savings from layoffs of employees, adjusted for severance payments), as well as proceeds from business recovery insurance or other insurance payments. You must not report as losses insurance premium increases that have been or will be compensated by the Government under the Act, or other losses that have been or will be compensated by other subsidies or assistance provided by Federal, state, or local governments. You must also report after tax profit/losses as required on the forms in the Appendices to this part.

§ 330.29 What information must air taxi operators submit on Form 330–C?

Air taxi operators are required to complete Form 330–C as shown in Appendix C to this part. Explanatory notes are included on that Form.

§ 330.31 What data must air carriers submit concerning ASMs or RTMs?

(a) Except as provided in paragraph (c) of this section, if you are applying for compensation as a passenger or combination passenger/cargo carrier, you must have submitted your August 2001 total completed ASM report to the Department for your systemwide air service (*e.g.*, scheduled, non-scheduled, foreign, and domestic).

(b) Except as provided in paragraph (c) of this section, if you are applying for compensation as an all-cargo carrier, you must have submitted your RTM reports to the Department for the second calendar quarter of 2001.

(c) If you have not reported ASMs or RTMs as provided in paragraphs (a) and (b) of this section, you may submit your calculation of ASMs or RTMs to the Department with your application. Your calculation must include only your own completed flights, and not flights flown for you by other air carriers. You must certify the accuracy of this calculation and submit with your application the data and assumptions on which the calculation is based. After reviewing your submission, the Department may modify or reject your calculation.

(d) In calculating and submitting ASMs and RTMs for purposes of this section, there are certain things you must not do:

(1) Except as necessary to comply with paragraphs (d)(2) and (d)(3) of this section or at the direction of the Department, you must not alter the ASM or RTM reports you earlier submitted to the Department or add previously unreported ASMs or RTMs to your total. Your ASMs or RTMs for purposes of this part are as you have reported them to the Department according to existing standards, requirements, and methodologies established by the Office of Airline Information (Bureau of Transportation Statistics).

(2) You must not include ASMs or RTMs resulting from operations by your code-sharing or alliance partners.

(3) You must not include ASMs or RTMs that are reported by or attributable to flights by another carrier.

(4) If you are an air carrier that "wet leases" aircraft and crews to other carriers, your calculations and submissions of ASMs and RTMs must be based on ASMs or RTMs as reported to the Secretary in accordance with previously established reporting requirements of the Bureau of Transportation Statistics (see paragraphs (a) and (b) of this section). Like other carriers, you must demonstrate your losses through the data submitted in order to be eligible for compensation.

§ 330.33 Must carriers certify the truth and accuracy of data they submit?

Yes, with respect to all information submitted or retained under §§ 330.27–330.31 and 330.35, your Chief Executive Officer (CEO), Chief Financial Officer (CFO), or Chief Operating Officer (COO) or, if those titles are not used, the equivalent officer, must certify that the submitted information was prepared under his or her supervision and is true and accurate, under penalty of law.

§ 330.35 What records must carriers retain?

As an air carrier that applies for compensation under this part, you must retain records as follows:

(a) You must retain all books, records, and other source and summary documentation supporting your claims for compensation of direct and incremental losses pursuant to Sections 101, 103, and 106 of the Act. This requirement includes, but is not limited to, the following:

(1) You must retain supporting evidence and documentation demonstrating the validity of the data you provide under §§ 330.27–330.31.

(2) You must retain documentation verifying that your pre-September 11, 2001, forecast was the most recent forecast available to that date.

(3) You must also retain documentation outlining the assumptions made for all forecasts and the source of the data and other inputs used in making the forecasts.

(4) You must obtain and retain all reports, working papers, and supporting documentation pertaining to audits or review conducted by independent auditors under the requirements of this part.

(b) You must preserve and maintain this documentation in a manner that readily permits its audit and examination by representatives of the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

(c) You must retain this documentation for five years.

(d) You must make all requested data available within one week from a request by the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

§ 330.37 Are carriers which participate in this program subject to audit?

(a) All payments you receive from the Department of Transportation under this program are subject to audit. All information you submit with your applications and all records and documentation that you retain are also subject to audit.

(b) Before you are eligible to receive payment from the final installment of compensation under the Act, there must be an independent auditor's review of the reasonableness and accuracy of your forecasts and data. You must submit the results of this audit to the Department with your application for payment of the final installment.

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Appendix A to Part 330—Forms for Certificated and Commuter Air Carriers

FORM 330-A
Page 1 of 5

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT

APPLICATION FOR COMPENSATION FOR CERTIFICATED AND COMMUTER AIR CARRIERS (PROVIDING PASSENGER AND COMBINATION PASSENGER/CARGO SERVICE)

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD

SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001

FINANCIAL DATA
(in whole dollars)

Passenger Carrier Financial Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 9-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

FORM 330-A
Page 2 of 5

NAME OF AIR CARRIER	

PART 2: OPERATIONAL DATA
(in whole numbers)

Passenger Carrier Operating Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 9-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Revenue Passengers Carried			
Revenue Passenger Miles (RPMs)			
Available Seat Miles (ASMs)			
Load Factor (%)			
Breakeven Load Factor (%)			
Average Length of Passenger Haul			
Departures Performed (actual) or Planned (forecast)			
Average Passenger Fare ($)			
Passenger Revenue Yield per RPM (cents)			
Operating Revenue per ASM (cents)			
Operating Expense per ASM (cents)			

FORM 330-A
Page 3 of 5

NAME OF AIR CARRIER	

PART 3: ESTIMATE OF LOSS FOR THE PERIOD

OCTOBER 1, 2001 TO DECEMBER 31, 2001

FINANCIAL DATA
(in whole dollars)

Passenger Carrier Financial Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

FORM 330-A
Page 4 of 5

NAME OF AIR CARRIER	

PART 4: OPERATIONAL DATA
(in whole numbers)

Passenger Carrier Operating Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Revenue Passengers Carried			
Revenue Passenger Miles (RPMs)			
Available Seat Miles (ASMs)			
Load Factor (%)			
Breakeven Load Factor (%)			
Average Length of Passenger Haul			
Departures Performed (actual) or Planned (forecast)			
Average Passenger Fare ($)			
Passenger Revenue Yield per RPM (cents)			
Operating Revenue per ASM			
Operating Expense per ASM			

FORM 330-A
Page 5 of 5

NAME OF AIR CARRIER	

Part 5: ACCOUNT INFORMATION AND CERTIFICATION

Compensation payments will be made via Electronic Funds Transfer. The Department of Transportation can process this type of payment only if air carrier applicants submit the following banking information with their requests:

Air Carrier Bank Routing Number	_ _ _ _ _ _ _ _ _ (9 positions)
Air Carrier Bank Account Number	
Name on Account	
Type of Account (*e.g.*, checking, savings)	
Taxpayer ID Number	

I CERTIFY THAT THE INFORMATION CONTAINED IN PARTS 1 THROUGH 5 OF THIS FORM (FROM 330-A) IS TRUE AND ACCURATE UNDER PENALTY OF LAW. FALSIFICATION OF A CLAIM FOR COMPENSATION/PAYMENTS UNDER PUB. L. 107-42 MAY RESULT IN CRIMINAL PROSECUTION RESULTING IN FINE AND/OR IMPRISONMENT (18 U.S.C. 1001)

Certifying Officer (signature) **Date**

Print Name and Title (CEO, CFO or COO) **Telephone Number**

Appendix B to Part 330—Forms for Certificated Cargo Carriers

FORM 330-B
Page 1 of 5

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT

APPLICATION FOR COMPENSATION FOR CERTIFICATED CARRIERS THAT PROVIDE ALL CARGO OPERATIONS ONLY

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD

SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001

FINANCIAL DATA
(in whole dollars)

Cargo Carrier Financial Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

FORM 330-B
Page 2 of 5

NAME OF AIR CARRIER	

Part 2: OPERATIONAL DATA
(in whole numbers)

Cargo Carrier Operating Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 9-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Revenue Tons Enplaned			
Revenue Ton Miles (RTMs)			
Available Ton Miles (ATMs)			
Load Factor (%)			
Departures Performed (actual) or Planned (forecast)			
Cargo Revenue Yield per RTM			

FORM 330-B
Page 3 of 5

NAME OF AIR CARRIER	

Part 3: ESTIMATE OF LOSS FOR THE PERIOD

OCTOBER 1, 2001 TO DECEMBER 31, 2001

FINANCIAL DATA
(in whole dollars)

Cargo Carrier Financial Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

FORM 330-B
Page 4 of 5

NAME OF AIR CARRIER	

PART 4: OPERATIONAL DATA
(in whole numbers)

Cargo Carrier Operating Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Revenue Tons Enplaned			
Revenue Ton Miles (RTMs)			
Available Ton Miles (ATMs)			
Load Factor (%)			
Departures Performed (actual) or Planned (forecast)			
Cargo Revenue Yield per RTM			

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NAME OF AIR CARRIER	

Part 5: ACCOUNT INFORMATION AND CERTIFICATION

Compensation payments will be made via Electronic Funds Transfer. The Department of Transportation can process this type of payment only if air carrier applicants submit the following banking information with their requests:

Air Carrier Bank Routing Number	_ _ _ _ _ _ _ _ _ (9 positions)
Air Carrier Bank Account Number	
Name on Account	
Type of Account (*e.g.*, checking, savings)	
Taxpayer ID Number	

I CERTIFY THAT THE INFORMATION CONTAINED IN PARTS 1 THROUGH 5 OF THIS FORM (FROM 330-B) IS TRUE AND ACCURATE UNDER PENALTY OF LAW. FALSIFICATION OF A CLAIM FOR COMPENSATION/PAYMENTS UNDER PUB. L. 107-42 MAY RESULT IN CRIMINAL PROSECUTION RESULTING IN FINE AND/OR IMPRISONMENT. (18 U.S.C. 1001)

Certifying Officer (signature) **Date**

Print Name and Title (CEO, CFO or COO) **Telephone Number**

Appendix C to Part 330—Forms for Air Taxi Operators

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AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT APPLICATION FOR COMPENSATION FOR AIR TAXI OPERATORS

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR TAXI OPERATOR	
DATE OF MOST RECENT PART 298 REGISTRATION OR AMENDMENT	
FAA PART 135 OR 121 CERTIFICATE NUMBER	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001 (in whole dollars)

Air Taxi Financial Data	Contracted/Planned Operations for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

The operations for hire for which losses are claimed in this chart must have been cancelled entirely, resulting in a complete loss of revenue for those operations. Revenue for these operations must not have been re-captured through subsequent re-accommodation of the same trips. Such non-recovered losses in revenues had associated countervailing reductions in operating expenses that have also been incorporated in the data and calculations in this chart.

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NAME OF AIR CARRIER	

PART 2: REPORT OF OPERATING STATISTICS FOR AIR TRANSPORTATION FOR HIRE* (in whole numbers)

FOR AIRCRAFT USED IN PASSENGER, PASSENGER/CARGO & OTHER TRANSPORT SERVICES FOR THE MONTH OF AUGUST 2001

Aircraft Type	Number of Type in Use for Transport Services**	Number of Seats Available per Aircraft for Use by Paid Passengers	Revenue Aircraft Miles Flown in Transport Services	Available Seat Miles in Transport Services	Revenue Airborne Hours in Transport Services	Revenue Aircraft Departures in Transport Services
1)						
2)						
3)						
4)						
5)						
6)						

FOR AIRCRAFT USED ONLY FOR ALL-CARGO OPERATIONS* FOR THE QUARTER ENDED JUNE 30, 2001**

Aircraft Type	Number of Type in Use for Transport Services**	Available Payload Capacity (in pounds)	Revenue Aircraft Miles Flown in Transport Services	Cargo Revenue Ton Miles in Transport Services (if known)	Revenue Airborne Hours in Transport Services	Revenue Aircraft Departures in Transport Services
1)						
2)						
3)						
4)						
5)						
6)						

* Air transportation for hire includes only commercial services operated under Part 121 or Part 135 operating certificates. Other services operated under Part 91, as well as dry leases and flights operated for the purpose of flight instructions, maintenance testing and aircraft positioning are excluded.
** This number should be the same number as listed on the operator's current Part 298 registration and current FAA-issued operations specifications.
*** For all-cargo operations, please note aircraft that are operated under contract for another express or all-cargo carrier and identify those carriers and provide details on a separate, attached sheet.

NOTE: If the operator records and reports aircraft miles, the operator should compute and enter available seat miles by multiplying the number of seats times the aircraft miles. If the operator does not report aircraft miles, DOT will compute the available seat miles. If the operator records and reports cargo RTMs, the operator should enter the amounts directly on the form. If not, DOT will estimate the RTMs based on the other data submitted. All carriers, however, must report airborne hours and departures.

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NAME OF AIR CARRIER	

PART 3: ESTIMATE OF LOSS FOR THE PERIOD OCTOBER 1, 2001 TO DECEMBER 31, 2001 (in whole dollars)

Air Taxi Financial Data	Pre 09-11-01 Forecast* for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 09-11-01 Forecast and the Current Forecast for the period 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

* For those air taxi operators that do not typically prepare forecasts, use contracted/scheduled services that were scheduled before September 11, 2001 and can be documented.

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PART 4: OPERATIONAL DATA (in whole numbers or dollars)

Air Taxi Operational Data		Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Forecast for 10-01-01 through 12-31-01
Total operating revenues				
Total operating expenses				
Total operations for hire (departures)				
Total available seat miles OR				
Total revenue ton miles				
Total aircraft in fleet:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Seats available per aircraft:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Total aircraft miles flown:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Total airborne hours:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Available payload capacity (in lbs.) (all-cargo operations only):				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			

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NAME OF AIR CARRIER	

PART 5: HISTORICAL OPERATIONAL DATA
(in whole numbers or dollars)

Air Taxi Operational Data		Month of Sept 2000	Month of Oct 2000	Month of Nov 2000	Month of Dec 2000	Month of July 2001	Month of Aug 2001
Total operating revenues							
Total operating expenses							
Total operations for hire (departures)							
Total available seat miles **OR**							
Total revenue ton miles							
Total aircraft in fleet:							
(Show aircraft types in the next column)	1)						
	2)						
	3)						
	4)						
	5)						
	6)						
Seats available per aircraft:							
(Show aircraft types in the next column)	1)						
	2)						
	3)						
	4)						
	5)						
	6)						
Total aircraft miles flown:							
(Show aircraft types in the next column)	1)						
	2)						
	3)						
	4)						
	5)						
	6)						
Total airborne hours:							
(Show aircraft types in the next column)	1)						
	2)						
	3)						
	4)						
	5)						
	6)						
Available payload capacity (in lbs.) (all-cargo operations only):							
(Show aircraft types in the next column)	1)						
	2)						
	3)						
	4)						
	5)						
	6)						

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Part 6: ACCOUNT INFORMATION AND CERTIFICATION

Compensation payments will be made via Electronic Funds Transfer. The Department of Transportation can process this type of payment only if air carrier applicants submit the following banking information with their requests:

Air Carrier Bank Routing Number	_ _ _ _ _ _ _ _ _ (9 positions)
Air Carrier Bank Account Number	
Name on Account	
Type of Account (*e.g.*, checking, savings)	
Taxpayer ID Number	

I CERTIFY THAT THE INFORMATION CONTAINED IN PARTS 1 THROUGH 5 OF THIS FORM (FROM 330-C) IS TRUE AND ACCURATE UNDER PENALTY OF LAW. FALSIFICATION OF A CLAIM FOR COMPENSATION/PAYMENTS UNDER PUB. L. 107-42 MAY RESULT IN CRIMINAL PROSECUTION RESULTING IN FINE AND/OR IMPRISONMENT(18 U.S.C. 1001).

Certifying Officer (signature) **Date**

Print Name and Title (CEO, CFO or COO) **Telephone Number**

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EXPLANATORY NOTES:

1. In order to avoid the possibility of misinterpretation, we are requiring that numbers or notations (for example, "N/A") be entered into all data blocks on all forms even if those numbers are zero. We also note that all amounts are to be reported in whole numbers.

2. The required forecasted amounts should be based on a forecasting and/or budgeting approach or similar accounting system if the air carrier routinely uses that method. For those carriers whose accounting systems or methodologies rely more on actual or short run projections, we ask that they make a "good faith" effort to categorize their revenues and expenses according to the required forms. In this regard, the following may provide additional assistance.

3. As general guidance, we include the following information that has been adapted from 14 CFR Part 298 (Section 298.62) or 14 CFR Part 241. Air transportation for hire includes only commercial services operated under Part 121 or Part 135 operating certificates. Other services operated under Part 91, as well as dry leases and flights operated for the purpose of flight instructions, maintenance testing and aircraft positioning are excluded.

4. Total operating revenues generally include gross revenues accruing from services ordinarily associated with air transportation. It is meant to include revenue derived from scheduled service, on demand and nonscheduled service operations.

5. In general, total operating expenses include expenses of the type usually and ordinarily incurred in the performance of air transportation. It includes expenses incurred: directly in the in-flight operation of aircraft; in the holding of aircraft and aircraft personnel in readiness for assignment to an in-flight status; on the ground, in controlling and protecting the in-flight movement of aircraft; landing and handling aircraft on the ground; selling transportation, servicing and handling passenger and cargo traffic; promoting the development of traffic; and administering operations generally. It shall also include expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation and all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services.

6. Non-operating income includes such items as interest income and other similar investments. It may also include capital gains (for example, aircraft sales). Non-operating expenses include interest expense and other expenses attributable to financing or other activities that are extraneous to and not an integral part of air transportation or its incidental services. It may also include capital losses (for example, aircraft sales).

7. We note that claims for compensation cannot be based solely on lost revenues, that is, the total revenue that an air taxi operator expected to receive from flights that would have been flown but were cancelled due to the DOT-mandated flight stoppage. While these amounts would provide information on the changes in total operating revenues, it is important to recognize that changes in total operating expenses must also be considered in calculating operating income and net income which is ultimately used to determine compensation. Also, for those carriers with less sophisticated accounting systems, the calculation of forecasted total operating expenses might be based on an analysis of fixed costs (those that stay the same regardless of the number of flights or changes in passenger and cargo traffic) and variable costs (those that change in proportion to the level of operations and traffic volume).

8. All carriers should be able to provide actual financial results for the period of September 11 to September 30, 2001, as required. We will not accept incomplete forms or reports that are submitted in lieu of the required forms and we will not accept the submission of invoices, flight logs, sales records, calendar notations of events or other similar documents in lieu of the required forms. However, supporting documentation must be retained for audit purposes.

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S.J. Res. 19/P.L. 107–54

Providing for the reappointment of Anne d'Harnoncourt as citizen regent of the Board of Regents of the Smithsonian Institution. (Oct. 24, 2001; 115 Stat. 270)

S.J. Res. 20/P.L. 107–55

Providing for the appointment of Roger W. Sant as citizen regent of the Board of Regents of the Smithsonian Institution. (Oct. 24, 2001; 115 Stat. 271)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

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Federal Register
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Tuesday, October 30, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 302

[Docket No. 00–085–2]

District of Columbia; Movement of Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that established regulations concerning the application for and issuance of certificates for the interstate movement of plants and plant products from the District of Columbia. The certificates provided for by the interim rule address the plant health status of plants and plant products moving interstate from the District of Columbia. In this final rule, we are revising the contact information for persons seeking certification in order to facilitate the application for certificates.

EFFECTIVE DATE: October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Jones, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on January 5, 2001 (66 FR 1015–1016, Docket No. 00–085–1), we established regulations in 7 CFR part 302 concerning the application for and issuance of certificates for the interstate movement of plants and plant products from the District of Columbia. The interim rule was necessary to facilitate the interstate movement of plants and plant products from the District of Columbia.

We solicited comments concerning the interim rule for 60 days ending March 6, 2001. We did not receive any comments.

However, in this document, we are revising the contact information for persons seeking certification. In the interim rule, we designated the Plant Protection and Quarantine (PPQ) office at the Port of Baltimore, MD, as the point of contact for persons interested in obtaining District of Columbia Plant Health Certificates. We have determined that the PPQ State Plant Health Director's office in Annapolis, MD, is in a better position to serve the needs of persons requiring the inspection and certification provided for by the regulations. Accordingly, in this final rule we are revising § 302.2 to designate the Annapolis, MD, PPQ office as the point of contact for persons seeking certification.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988 and the economic analysis under Executive Order 12866 and the Regulatory Flexibility Act.

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register.** The interim rule adopted as final by this rule was effective on January 5, 2001. This final rule revises the point of contact for obtaining inspection or documentation of the plant health status of plants or plant products to be moved interstate from the District of Columbia. Immediate action is necessary to revise the contact information in order to facilitate the application for certificates for the interstate movement of plants and plant products from the District of Columbia. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register.**

Paperwork Reduction Act

In accordance with section 3507 (j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in the interim rule were granted emergency approval by the Office of Management and Budget (OMB) under control number 0579–0166. OMB has approved the continuation of that approval for 3 years.

List of Subjects in 7 CFR Part 302

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, the interim rule establishing 7 CFR part 302 which was published at 66 FR 1015–1016 on January 5, 2001, is adopted as a final rule with the following changes:

PART 302—DISTRICT OF COLUMBIA; MOVEMENT OF PLANTS AND PLANT PRODUCTS

1. The authority citation for part 302 continues to read as follows:

Authority: 7 U.S.C. 7712, 7714, 7715, 7731, 7732, 7735, 7736, 7745, and 7754–7756; 7 CFR 2.22, 2.80, and 371.3.

2. Section 302.2 is revised to read as follows:

§ 302.2 Movement of plants and plant products

Inspection or documentation of the plant health status of plants or plant products to be moved interstate from the District of Columbia may be obtained by contacting the State Plant Health Director, Plant Protection and Quarantine, APHIS, Wayne A. Cawley, Jr. Building, Room 350, 50 Harry S. Truman Parkway, Annapolis, MD 21401–7080; phone: (410) 224–3452; fax: (410) 224–1142.

Done in Washington, DC, this 24th day of October 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–27262 Filed 10–29–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–065–1]

Change in Disease Status of Greece Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by adding Greece to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in a native-born animal in that region. Greece is currently listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States. Therefore, the effect of this action is a continued restriction on the importation of ruminants that have been in Greece and meat, meat products, and certain other products of ruminants that have been in Greece. This action is necessary in order to update the disease status of Greece regarding bovine spongiform encephalopathy.

DATES: This interim rule is effective retroactively to July 2, 2001. We invite you to comment on this docket. We will consider all comments that we receive by December 31, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–065–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–065–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Senior Staff Veterinarian, National Center for Import and Export, Products Program, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of cattle and is not known to exist in the United States. It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants, are imported into the United States and are fed to ruminants in the United States. BSE could also become established in the United States if ruminants with BSE are imported into the United States.

Sections 94.18, 95.4, and 96.2 of the regulations prohibit or restrict the importation of certain meat and other animal products and byproducts from ruminants that have been in regions in which BSE exists or in which there is an undue risk of introducing BSE into the United States. Paragraph (a)(1) of § 94.18 lists the regions in which BSE exists. Paragraph (a)(2) lists the regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance. Paragraph (b) of § 94.18 prohibits the importation of fresh, frozen, and chilled meat, meat products, and most other edible products of ruminants that have been in any region listed in paragraphs (a)(1) or (a)(2). Paragraph (c) of § 94.18 restricts the importation of gelatin derived from ruminants that have been in any of these regions. Section 95.4 prohibits or restricts the importation of certain byproducts from ruminants that have been in any of those regions, and § 96.2 prohibits the importation of casings, except stomach casings, from ruminants that have been in any of these regions. Additionally, the regulations in 9 CFR part 93 pertaining to the importation of live animals provide that the Animal and Plant Health Inspection Service may deny the importation of ruminants from regions where a communicable disease such as BSE exists and from regions that present risks of introducing communicable diseases into the United States (see § 93.404(a)(3)).

Currently, Greece is among the regions listed in § 94.18(a)(2), which are regions that present an undue risk of introducing BSE into the United States. However, on July 2, 2001, a case of BSE was confirmed in a native-born animal in Greece. Therefore, in order to update the disease status of this region regarding BSE, we are amending the regulations by removing Greece from the list in § 94.18(a)(2) of regions that present an undue risk of introducing BSE into the United States and adding Greece to the list in § 94.18(a)(1) of regions where BSE is known to exist. The effect of this action is a continued restriction on the importation of ruminants that have been in Greece and on the importation of meat, meat products, and certain other products and byproducts of ruminants that have been in Greece. We are making these amendments effective retroactively to July 2, 2001, which is the date that BSE was confirmed in a native-born animal in that region.

Emergency Action

This rulemaking is necessary on an emergency basis to update the disease status of Greece regarding BSE. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations by adding Greece to the list of regions where BSE exists because the disease has been detected in native-born animals in that region. Greece is currently listed among the regions that present an undue risk of introducing BSE into the United States. Regardless of which of the two lists a region is on, the same restrictions apply to the importation of ruminants and meat, meat products, and most other products and byproducts of ruminants that have been in the region. Therefore, this action, which is necessary in order to update the disease status of Greece regarding BSE, will not result in any change in the restrictions that apply to the importation of ruminants and meat, meat products, and certain other products and byproducts of ruminants that have been in Greece.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to July 2, 2001; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.18 [Amended]

2. Section 94.18 is amended as follows:

a. In paragraph (a)(1), by adding, in alphabetical order, the word "Greece,".

b. In paragraph (a)(2), by removing the word "Greece,".

Done in Washington, DC, this 24th day of October 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–27263 Filed 10–29–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF ENERGY

10 CFR Part 1044

[Docket No. SO–RM–00–3164]

RIN 1992–AA26

Office of Security and Emergency Operations; Security Requirements for Protected Disclosures Under Section 3164 of the National Defense Authorization Act for Fiscal Year 2000

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) adopts, with minor change, an interim final rule published on January 18, 2001, which prescribed the security procedures that a DOE employee or DOE contractor employee, including an employee or contractor employee of the National Nuclear Security Administration, must follow to make a protected disclosure of classified or other controlled information under section 3164 of the National Defense Authorization Act for Fiscal Year 2000.

EFFECTIVE DATE: This final rule is effective November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Raymond C. Holmer, Office of Safeguards and Security (SO–211.3), U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, (301) 903–7325 or by electronic mail *raymond.holmer@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 18, 2001, DOE published an interim final rule in the **Federal Register** (66 FR 4639). The interim final rule added a new part 1044 to title 10 of the Code of Federal Regulations to establish security requirements for the disclosure of classified and other controlled information under section 3164 of the National Defense Authorization Act for Fiscal Year 2000 (NDAA for FY 2000) (42 U.S.C. 7239). Section 3164 directed the Secretary of Energy to establish a program to ensure that DOE employees or DOE contractor employees engaged in defense activities may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures. The Secretary was required by section 3164(g) to prescribe regulations to ensure the security of any information disclosed under the program (42 U.S.C. 7239(g)). To qualify as a "protected disclosure" of classified or other controlled information, a covered employee must take appropriate steps to protect the security of the information in accordance with guidance provided by the DOE Inspector General, and reveal the information only to a person or entity specified in the statute (42 U.S.C. 7239(c)).

DOE provided a 30-day public comment period for the interim final rule, and the rule was to become effective on February 20, 2001. In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001, (66 FR 7702) DOE temporarily delayed for 60 days the effective date of the interim final rule (66 FR 8747, February 2, 2001). Upon completion of its review of the regulation, DOE published a notice in the **Federal Register** on May 10, 2001, (66 FR 23833) confirming the effective date of the interim final rule as April 23, 2001.

II. Discussion of Public Comment

DOE received one comment during the public comment period provided for the interim final rule. The Special Counsel of the U.S. Office of Special Counsel stated her concern that the interim final rule failed to include any reference to section 3164(l) of the NDAA for FY 2000, which provides that the protections of section 3164 are independent of, and not subject to any limitations that may be provided in, the Whistleblower Protection Act of 1989 (Pub. L. 101–12) or any other law that may provide protection for disclosures of information by an employee of DOE or of a DOE contractor. The Special Counsel requested DOE to clarify this issue in the final rule by making clear that whistleblower disclosures of classified or controlled information by DOE employees, including disclosures to the Special Counsel or to the DOE Inspector General, are also protected under the Whistleblower Protection Act of 1989.

DOE agrees that the scope of the section 3164 whistleblower protection program should be addressed in the

final rule to avoid confusion by employees of DOE and its contractors. Therefore, DOE is amending section 1044.01 to include a new paragraph (b) that tracks the language of section 3164(l) of the NDAA for FY 2000.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule will not have a "significant economic impact on a substantial number of small entities." This final rule prescribes the security procedures that a DOE or DOE contractor employee engaged in defense activities must follow when making a protected disclosure of classified or other controlled information under section 3164 of the NDAA for FY 2000. DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose this rule for public comment. Accordingly, the Regulatory Flexibility Act requirements do not apply to this rulemaking, and no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No additional information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

Today's rule describes the security requirements a DOE or DOE contractor employee engaged in defense activities must follow when making a protected disclosure of classified or other controlled information under section 3164 of the NDAA for FY 2000. Implementation of this rule will not affect whether such information might cause or otherwise be associated with an environmental impact. The Department has, therefore, determined that this rule is covered under the Categorical Exclusion found at paragraph A.6. of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 13132

Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999) requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. DOE published its intergovernmental consultation policy and procedures on March 14, 2000, (65 FR 13735). "Policies that have federalism implications" is defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. DOE has examined this final rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE's intergovernmental consultation process under the Unfunded Mandates Reform Act of 1995 is described in a statement of policy published by DOE on March 18, 1997, (62 FR 12820). The final rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposed action be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's final rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

I. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the final rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 1044

Administrative practice and procedure, Classified information, Energy, Government contracts, National security information, Security information, Whistleblowing.

Issued in Washington, DC, on October 4, 2001.

Spencer Abraham,

Secretary of Energy.

Accordingly, the interim final rule adding 10 CFR part 1044, which was published at 66 FR 4639 on January 18, 2001, is adopted as a final rule with the following changes:

PART 1044—SECURITY REQUIREMENTS FOR PROTECTED DISCLOSURES UNDER SECTION 3164 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2000

1. The authority citation for part 1044 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*, 7239, and 50 U.S.C. 2401 *et seq.*

2. Section 1044.01 is revised to read as follows:

§ 1044.01 What are the purpose and scope of this part?

(a) *Purpose.* This part prescribes the security requirements for making protected disclosures of classified or unclassified controlled nuclear information under the whistleblower protection provisions of section 3164 of the National Defense Authorization Act for Fiscal Year 2000.

(b) *Scope.* The security requirements for making protected disclosures in this part are independent of, and not subject to any limitations that may be provided in, the Whistleblower Protection Act of 1989 (Public Law 101–12) or any other law that may provide protection for disclosures of information by employees of DOE or of a DOE contractor.

[FR Doc. 01–27230 Filed 10–29–01; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AC49

Engaged in The Business of Receiving Deposits Other Than Trust Funds

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: This final rule amends the FDIC's regulations covering filing procedures and delegations of authority, to clarify the meaning of the phrase "engaged in the business of receiving deposits other than trust funds" in the Federal Deposit Insurance Act. Under the rule, an insured depository institution must maintain one or more non-trust deposit accounts in the aggregate amount of $500,000 in order to be "engaged in the business of receiving deposits other than trust funds". Each newly insured depository institution will be deemed to be "engaged in the business of receiving deposits other than trust funds" for a period of one year from the date it opens for business. If a newly insured depository institution fails to achieve the minimum deposit standard by the end of that time period, it will be subject to a determination by the FDIC that the institution is not "engaged in the business of receiving deposits other than trust funds", and to appropriate administrative action to terminate its insured status. Similarly, each insured depository institution, other than a newly insured depository institution, that is below the minimum deposit standard on two consecutive call report dates will be subject to a determination by the FDIC that the institution is not "engaged in the business of receiving deposits other than trust funds", and to appropriate administrative action to terminate its insured status. The final rule also clarifies that the maintenance of one or more non-trust deposit accounts in the aggregate amount of $500,000 is not a "safe harbor", but rather the minimum standard in order for an institution to be considered "engaged in the business of receiving deposits other than trust funds" under the Federal Deposit Insurance Act.

EFFECTIVE DATE: November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, (202) 898–8839, or Robert C. Fick, Counsel, (202) 898–8962, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. The Statute

The FDIC is authorized to approve or disapprove applications by depository institutions for federal deposit insurance. *See* 12 U.S.C. 1815. In determining whether to approve deposit insurance applications, the FDIC considers the seven factors set forth in section 6 of the Federal Deposit Insurance Act (FDI Act). These factors are (1) the financial history and condition of the depository institution; (2) the adequacy of the institution's capital structure; (3) the future earnings prospects of the institution; (4) the general character and fitness of the management of the institution; (5) the risk presented by the institution to the Bank Insurance Fund or the Savings Association Insurance Fund; (6) the convenience and needs of the community to be served by the institution; and (7) whether the institution's corporate powers are consistent with the purposes of the FDI Act. 12 U.S.C. 1816. Also, under the FDI Act, the FDIC must determine as a threshold matter that an applicant is a "depository institution which is engaged in the business of receiving deposits other than trust funds * * *" 12 U.S.C. 1815(a)(1). Applicants that do not satisfy this threshold statutory requirement are ineligible for deposit insurance.

The FDIC applies the seven statutory factors in accordance with its "Statement of Policy on Applications for Deposit Insurance". *See* 63 FR 44752 (August 20, 1998). The Statement of Policy discusses each of the factors at length; however, it does not address the threshold requirement that an applicant be "engaged in the business of receiving deposits other than trust funds".

The threshold requirement for obtaining federal deposit insurance is set forth in section 5 of the FDI Act. *See* 12 U.S.C. 1815(a)(1). The language used by section 5 ("engaged in the business of receiving deposits other than trust funds") also appears in section 8 and section 3 of the FDI Act. Under section 8, the FDIC is obligated to terminate the insured status of any depository institution "not engaged in the business of receiving deposits, other than trust funds * * *" 12 U.S.C. 1818(p). In section 3, the term "State bank" is defined in such a way as to include only those State banking institutions

"engaged in the business of receiving deposits, other than trust funds * * *" 12 U.S.C. 1813(a)(2).

The phrase "engaged in the business of receiving deposits other than trust funds" as used in the FDI Act is ambiguous. For example, the statute does not specify whether a depository institution must hold a particular dollar amount of deposits in order to be "engaged in the business of receiving deposits other than trust funds." Similarly, it does not specify whether a depository institution must accept a particular number of deposits within a particular period in order to be "engaged in the business of receiving deposits other than trust funds." In addition, it does not specify whether a depository institution must accept non-trust deposits from the general public as opposed to accepting deposits only from one or more members of a particular group (such as the institution's trust customers, its employees or affiliates).

In applying this statutory requirement ("engaged in the business of receiving deposits other than trust funds") for over thirty years, the FDIC has approved applications from many institutions that did not intend to accept non-trust deposits from the general public. Also, the FDIC has approved applications from institutions that only intended to hold one type of deposit account (*e.g.*, certificates of deposit) or that did not intend to hold more than one or a few non-trust deposit accounts. However, the FDIC's long-standing practice of approving applications from such non-traditional depository institutions has not been formally codified in such a way as to remove public uncertainty as to the meaning of the phrase "engaged in the business of receiving deposits other than trust funds."

II. General Counsel Opinion No. 12

In order to clarify this ambiguity in the statute, the FDIC published General Counsel Opinion No. 12. *See* 65 FR 14568 (March 17, 2000). In that opinion, the FDIC's General Counsel stated that the statutory requirement of being "engaged in the business of receiving deposits other than trust funds" can be satisfied by the continuous maintenance of one or more non-trust deposit accounts in the aggregate amount of $500,000.

The purpose of General Counsel Opinion No. 12 was to remove uncertainty as to the meaning of being "engaged in the business of receiving deposits other than trust funds." However, as indicated by a recent court ruling, issuance of the General Counsel's opinion did not achieve that purpose. In *Heaton* v. *Monogram Credit Card Bank of Georgia*, 2001 WL 15635 (E.D. La. January 5, 2001) the statutory interpretation set forth in General Counsel Opinion No. 12 was rejected by a federal district court. As a result of the court's ruling, uncertainty continues to exist as to the meaning of being "engaged in the business of receiving deposits other than trust funds."

The phrase "engaged in the business of receiving deposits other than trust funds" should not be subject to differing and, perhaps, inconsistent judicial interpretations. Uniformity is needed. Both banks and the public need to know that the applicable Federal banking laws will be applied consistently throughout the United States. Moreover, they need assurance that once the FDIC grants insurance to a bank or thrift, the deposits at that bank or thrift will remain insured so long as it satisfies the legal requirement of being "engaged in the business of receiving deposits other than trust funds," and the FDIC has not terminated its insurance.

III. The Petition

The Conference of State Bank Supervisors (CSBS), an organization representing state officials responsible for chartering, regulating and supervising state-chartered banks, petitioned the FDIC's Board of Directors to promulgate a regulation to clarify the meaning of the phrase "engaged in the business of receiving deposits other than trust funds" as used in the FDI Act.

An opposing letter submitted by the plaintiff in the *Heaton* v. *Monogram* litigation questioned the timing of the regulation. In this opposing letter, the plaintiff argued that the promulgation of a regulation while litigation relating to this issue is pending would represent an "abuse of discretion" and a "conflict of interest." The plaintiff believes that no regulation should be promulgated until the litigation is completed.

The FDIC does not agree that rulemaking would constitute an "abuse of discretion." On the contrary, the FDIC believes that rulemaking is necessary in order to remove the existing uncertainty, confusion and the potential for inconsistent interpretations. *See Smiley* v. *Citibank, N.A.*, 517 U.S. 735, 116 S. Ct. 1730 (1996).

IV. Questions And Comments

When the FDIC's Board of Directors (Board) published its notice of proposed rulemaking, *Being Engaged in the Business of Receiving Deposits Other Than Trust Funds*, 66 FR 20102, (April 19, 2001) it sought comments from the public on all aspects of the rule and also sought responses on nine specific questions. The FDIC received twenty-one timely comment letters and two comment letters submitted after the end of the comment period. Also, one letter objected to the FDIC's consideration of comment letters thought to be filed late. Overall, eighteen timely comment letters were in favor of the regulation and three were opposed.

The nine questions and a summary of the comments/responses to those questions are detailed below.

1. Should the FDIC Adopt a Regulatory Standard for Determining Whether a Depository Institution is "Engaged in the Business of Receiving Deposits Other Than Trust Funds"?

Eighteen comment letters were in favor of the FDIC's adoption of a regulatory standard: eight depository institutions or depository institution holding companies, three financial institution trade associations, three law firms, two state banking supervisors, the Office of Thrift Supervision, and VISA U.S.A., Inc. Three commenters objected to the adoption of any regulatory standard by the FDIC. These objections are addressed in detail in the following section.

2. If so, Should the Standard be Based on a Particular Number and/or Amount of Non-Trust Deposits? Or Should the Standard be Based on Other Factors, Such as the Institution's Legal Authority to Accept Non-Trust Deposits or the Institution's Policies with Respect to the Acceptance of Non-Trust Deposits?

Three commenters responded on this question. One thought that the standard could be based on a particular number and amount of non-trust deposits. Another thought that the standard should not be based on any particular number of non-trust deposits as long as the institution had the capacity to accept even one non-trust deposit. The third commenter thought that an institution only needs to have the legal authority to receive non-trust deposits in order to be engaged in the business of receiving deposits other than trust funds.

The FDIC has considered the suggestions that legal authority or capacity to accept non-trust deposits alone is sufficient, but believes that its standard is the better approach. Bare legal authority or capacity to receive non-trust deposits without the actual receipt or holding of any deposits evidences only a potential ability to receive deposits, and this potential may never be realized. If an institution can be engaged in the business of receiving deposits other than trust funds simply by having the legal authority or capacity to receive deposits, it would be able to enjoy all of the benefits of being an insured institution *e.g.*, the ability to export interest rates, without ever actually providing any deposit services. We do not believe that such a standard would be consistent with the purposes of federal deposit insurance. Consequently, the FDIC has declined to adopt that standard.

3. Assuming a Minimum Amount of Non-Trust Deposits is Required, Should the Standard be Based on a Particular Number of Non-Trust Deposit Accounts? If so, Should that Number Be One? If not, What Should be the Minimum Number of Non-Trust Deposit Accounts? Why?

Of the thirteen commenters responding on this question, none thought that an institution should be required to maintain more than one deposit account.

4. Assuming That the Standard Should Be Based on a Particular Amount of Non-Trust Deposits, Should That Amount Be $500,000? If Not, What Should Be the Minimum Amount of Non-Trust Deposits? Why?

Of the eleven commenters responding on this question, ten thought the minimum amount of non-trust deposits should be $500,000; the other commenter thought it should be a "modest amount."

5. Should a Depository Institution Be Required To Accept Deposits from the Public at Large (as Opposed to Accepting Deposits From a Particular Group Such as the Institution's Trust Customers or Employees or Affiliates) in Order To Be "Engaged in the Business of Receiving Deposits Other Than Trust Funds"? If So, Why?

Of the eleven commenters responding on this question, all thought that a depository institution should not be required to accept deposits from the public at large (as opposed to accepting deposits from a particular group such as the institution's trust customers, employees or affiliates).

6. Should a Depository Institution be Required To Offer a Selection of Different Types of Deposits (e.g., Demand Deposits, Savings Deposits, Certificates of Deposit) in Order To Be "Engaged in the Business of Receiving Deposits Other Than Trust Funds"? If So, Why?

Of the eleven commenters responding on this question, all thought that a depository institution should not be required to offer a selection of different types of deposits (e.g., demand deposits, savings deposits, certificates of deposit).

7. Should the FDIC Create Any Exceptions for Special Circumstances? For Example, Should a New Institution Be Given a Certain Period of Time to Reach the Minimum Number of Non-Trust Deposit Accounts or To Attain the Minimum Amount of Non-Trust Deposits?

Of the eight commenters responding on this question, all thought that the FDIC should permit exceptions for special circumstances. Four commenters specifically mentioned permitting an exception for newly insured depository institutions; two also thought that there should be an exception for institutions (other than the newly insured institutions) that fall below the minimum to regain sufficient deposits; and one thought the FDIC should allow some time for banks, particularly in small communities, to meet the minimum deposit standard.

The FDIC believes that these suggestions raise significant issues. At the time they apply for deposit insurance some newly chartered institutions, for example, those organized by individuals, may not have received $500,000 in non-trust deposits. Indeed, potential depositors may not want to put their money in an institution that is not yet insured. Absent some modification to the rule, this disincentive could prolong the time it takes an institution to reach the minimum deposit standard or possibly even prevent it from reaching the minimum deposit standard. Consequently, the FDIC has decided to modify the rule to provide that an applicant for deposit insurance would be deemed to be "engaged in the business of receiving deposits other than trust funds" for one year from the date it opens for business. If such an institution does not meet the minimum deposit standard at the end of that period, it would be subject to a determination by the FDIC that the institution is not "engaged in the business of receiving deposits other than trust funds" and to termination of its insured status under section 8(p) of the FDI Act, 12 U.S.C. 1818(p).

However, certain other newly chartered depository institutions should be able to meet the $500,000 minimum deposit standard from the outset. In particular, a newly chartered depository institution that is organized by, or intended to be owned by, an existing company (whether or not a bank holding company), typically does not need a grace period to reach the $500,000 minimum deposit standard. Therefore, the FDIC intends to include a condition in any order granting deposit insurance to such a depository institution that the depository institution have the $500,000 minimum deposit before deposit insurance becomes effective.

Similarly, several commenters suggested a grace period for operating insured depository institutions that are not newly insured. The rationale for such a grace period is that any insured depository institution may, on occasion, fall below the minimum deposit standard, and it would be extremely disruptive and harmful if the institution's status were to immediately and automatically change as a result. For example, an institution's insured status might be called into doubt if it fell below the minimum deposit standard even for an instant. Furthermore, an institution that qualified as a "State bank" might abruptly lose that status if its total non-trust deposits fell below the minimum deposit standard. Of course, an institution's deposit insurance continues until terminated by the FDIC.

The FDIC believes, however, that any perception that an institution might abruptly lose its insured status or its status as a "State bank" may cause uncertainty and disruption. Consequently, the FDIC has decided to modify the proposed rule to avoid such a result. The final rule provides that an insured depository institution (other than a newly insured institution) will be subject to a determination by the FDIC that the institution is not "engaged in the business of receiving deposits other than trust funds" and to termination of its insured status through administrative proceedings under section 8(p) of the FDI Act if the institution is below the minimum deposit standard on two consecutive call report dates. The term "call report" is used herein to refer collectively to the Consolidated Reports of Condition and Income, the Thrift Financial Report, and the Report of Assets and Liabilities of US Branches and Agencies of Foreign Banks. The call report dates are March 31st, June 30th, September 30th, and December 31st.

A brief discussion about section 8(p) as it relates to the institution's depositors is warranted. Under section 8(p) of the FDI Act, the FDIC is obligated to terminate the insured status of a depository institution that is not "engaged in the business of receiving deposits other than trust funds." 12 U.S.C. 1818(p). A finding by the FDIC's Board of Directors that a depository institution is not "engaged in the business of receiving deposits other than trust funds" is conclusive. *Id.* Such

a finding, however, does not result in the immediate loss of deposit insurance. On the contrary, the institution remains insured for a period of time during which depositors are provided with notification of the date on which the institution's deposits will cease to be insured. See 12 CFR 308.124.

8. Should Operating Insured Depository Institutions Be Held to the Same Standard as Applicants for Deposit Insurance? In Other Words, Should the Standard Under Section 8 of the FDI Act (Involving Terminations) Be the Same as the Standard Under Section 5 (Involving Applications)? Should the FDIC Terminate the Insured Status of Any Operating Institution That Does Not Meet the Chosen Standard? Should an Operating Insured Institution Be Given a Certain Period of Time To Regain the Level of $500,000 After Falling Below That Level?

Of the five commenters responding on this question, all thought that operating insured depository institutions should be held to the same standard as applicants for deposit insurance. As noted above, two commenters thought that operating insured institutions should be given a period of time to regain the $500,000 minimum deposit standard after falling below it.

The FDIC agrees that operating insured depository institutions should be held to the same standard as applicants for deposit insurance, and the final rule is consistent with that principle. With regard to the grace period suggestion, the FDIC has modified the rule, as discussed above, to provide a period of time for an institution to regain the minimum deposit standard if the institution should fall below it.

9. Should the Same Standard Apply to the Definition of "State bank" Under Section 3 of the FDI Act? If not, What standard Should Apply? Why?

Of the seven commenters responding on this question, all thought that the same standard should apply to the definition of "State bank" under section 3 of the FDI Act, and four of the seven thought that the same standard should apply throughout the FDI Act.

In addition to the responses to the nine questions, one commenter suggested that the rule should be a "safe harbor" as opposed to a minimum standard. The FDIC intends a minimum standard. The FDIC does not believe that a safe harbor approach will adequately clarify the meaning of the phrase "engaged in the business of receiving deposits other than trust funds." Under a safe harbor approach uncertainty would exist as to the status of an institution that did not satisfy the $500,000 standard. A primary purpose of the rule is to remove ambiguity and uncertainty in this area, and the safe harbor approach does not achieve that purpose. Consequently, the FDIC has modified the rule to make it clear that the rule's requirements are a minimum standard, not a safe harbor. However, the rule is also structured so that a failure to satisfy the $500,000 standard will not result in an automatic termination of an institution's status as an insured institution or as a "State bank." Rather, such a failure would make the institution subject to termination proceedings under section 8(p).

V. Objections to the Rule

As noted above three commenters opposed the regulation. One opponent simply disagreed with the FDIC's interpretation of section 5 of the FDI Act. Another opponent, U.S. Senator Mary L. Landrieu, was opposed to the FDIC's adoption of the regulation and thought it inappropriate to promulgate a regulation while the *Heaton* v. *Monogram* litigation was pending.

The FDIC believes that it has acted properly in formalizing its interpretation of the FDI Act at this time. Because of the FDIC's statutory responsibility as a federal banking regulator, the FDIC has a strong interest in interpreting the FDI Act and in providing courts and private parties with guidance concerning its interpretation. Agencies often interpret their governing statutes during the course of litigation in order to provide courts and private litigants with needed guidance. Indeed, it is often litigation that discloses the need for such guidance. The Supreme Court cited this practice with approval in *Smiley* v. *Citibank (South Dakota), N.A.*, 517 U.S. 735 (1996), when it gave deference under the *Chevron* doctrine to a regulation interpreting the statutory term "interest" that was promulgated by the Comptroller of the Currency during the course of litigation. Additionally, it is appropriate for the FDIC to promulgate its statutory interpretation in the form of a formal regulation, in view of recent Supreme Court decisions restricting judicial deference in situations involving less formal interpretations of a statute. *See Christensen* v. *Harris County*, 529 U.S. 576 (2000); *U.S.* v. *Mead Corp.*, 121 S. Ct. 2164 (2001).

Indeed, this regulation presents a classic example of a federal agency acting appropriately in furtherance of its statutory responsibility. The FDIC decided many years ago, in the course of approving applications for deposit insurance, to interpret the statutory phrase "engaged in the business of receiving deposits" to include banking institutions with limited deposit-taking activity. Accordingly, the FDIC approved numerous applications for deposit insurance from such institutions over a period of more than thirty years. Because the ongoing litigation has disclosed a need for a more formal interpretation, the FDIC is adopting this rule interpreting the statutory phrase consistent with both the FDIC's longstanding interpretation and other federal and state banking law.

As noted above, the regulation is being issued to eliminate the current uncertainty and provide for consistency in the interpretation of the FDI Act. Consequently, the FDIC believes that it is not only appropriate but essential for the FDIC to issue a regulation clarifying the meaning of the phrase "engaged in the business of receiving deposits other than trust funds."

The third opposition letter was submitted by a law firm on behalf of five consumer advocacy groups. These consumer groups are the National Consumer Law Center, the Consumer Federation of America, Consumers Union, U.S. Public Interest Research Group and the National Association of Consumer Advocates. In their letter, the consumer groups presented three arguments against the adoption of the proposed regulation. Each of these arguments is addressed in turn below.

First, the consumer groups argued that the integrity of the regulatory process will be undermined by asserting a position that supports the defendant in the *Heaton* v. *Monogram* litigation. This argument ignores the nature and extent of the FDIC's statutory duties under the FDI Act. The FDIC cannot discharge its duties, for example, under section 5 of the FDI Act (involving applications for deposit insurance) and section 8 of the Act (involving terminations of insurance) without interpreting the statutory phrase. For this reason, the FDIC cannot be neutral. The FDIC must interpret the phrase "engaged in the business of receiving deposits other than trust funds" in order to carry out its duties. Otherwise, the FDIC would be unable to make any decisions on any applications for deposit insurance. As pointed out above, it is important to note that the FDIC's interpretation has existed for many years prior to this litigation. It was not established with the purpose of either helping or hurting any party; rather, it was established with the purpose of fairly and consistently administering the statute.

Second, the consumer groups argued that the FDIC's interpretation as codified in the proposed regulation conflicts with the FDI Act. This argument is based upon the statute's use of the word "business" and the words "receiving deposits." According to the consumer groups, these words mean that a depository institution must receive an "ongoing" stream of deposits in order to be "engaged in the business of receiving deposits other than trust funds."

The FDIC does not believe that the interpretation offered by the consumer groups is correct. The statute refers to "business," not "primary business." See *Royal Foods Co. Inc.* v. *RJR Holdings Inc.*, 252 F.3d 1102 (9th Cir. 2001). The statute also recognizes that a single deposit can be accepted or "received" many times through rollovers. See 12 U.S.C. 1831f(b). Thus, the word "receiving" in the statute is consistent with the holding—and periodic renewal or rollover—of a single certificate of deposit. Similarly, the plural word "deposits" is not inconsistent with the holding of a single deposit account because multiple deposits of funds can be made into a single account. In addition, the periodic accrual of interest represents the "receiving" of "deposits." Moreover, the statute defines "deposit" in such a way as to treat "receiving" and "holding" with equal significance for purposes of the definition of "deposit." See 12 U.S.C. 1813(l)(1).

In short, the proposed regulation is consistent with the FDI Act. This conclusion is confirmed by *Meriden Trust and Safe Deposit Company* v. *FDIC*, 62 F.3d 449 (2d Cir. 1995). In that case, the court found that a bank was "engaged in the business of receiving deposits other than trust funds" even though the bank held only two accounts with a combined balance of only $200,000. Both of those accounts were from affiliates: one from the bank's parent company and one from its sister bank.

In presenting their second argument, the consumer groups asserted that the *Meriden* case is distinguishable from the *Heaton* case. They noted that the two cases involved separate sections of the FDI Act (though both cases involved the same definition of "State bank"). However, the meaning of being "engaged in the business of receiving deposits other than trust funds" should not vary depending upon which section of the FDI Act is under consideration and the consumer groups have presented no argument justifying such variation. Such an approach would lead to inconsistencies, uncertainties and confusion and would be contrary to the main purpose of the regulation which is to clarify the law for the benefit of depository institutions as well as the general public.

Third, the consumer groups argued that the regulation will harm the public. This argument is based upon the proposition that an out-of-state bank should not be able to avoid the host state's consumer protection laws. This argument is inconsistent with the express language of section 27 of the FDI Act, 12 U.S.C. 1831d. Through section 27, Congress has specifically provided that an out-of-state "State bank" may export interest rates into a host state notwithstanding the host state's laws. This section was enacted to provide state banks competitive equality with national banks.

Finally, the law firm representing the plaintiff in the *Heaton* v. *Monogram* litigation submitted a letter objecting to the FDIC's consideration of two other letters (both supporting the proposed regulation). The law firm argued that the two letters in question had been received by the FDIC after the expiration of the comment period.

In fact, one of the two letters was received by the FDIC on the last day of the comment period (July 18, 2001). This letter was timely. The second letter supported the proposed regulation but in broad, general terms. Substantively, it was similar to a number of other letters. The FDIC did not rely upon this letter or another late-filed letter in its consideration of the final rule.

The FDIC has carefully considered all of the timely comments received; most of the comments received are consistent with the FDIC's views and suggest no changes to the rule. However, as noted above, the FDIC has modified the proposed rule to incorporate certain grace periods suggested in the comments received in response to questions 7 and 8, and has clarified the fact that the rule is not a safe harbor.

VI. Reasons for the Minimum Deposit Standard

There are a number of substantial reasons for adopting the final rule. First, the statute is ambiguous (as discussed above). The FDIC in General Counsel Opinion 12 (GC12) discussed the statutory language at length. *See* 65 FR 14568, 14569 (March 17, 2000). The statute recognizes that a single deposit can be accepted or "received" many times through rollovers. *See* 12 U.S.C. 1831f(b) (dealing with the acceptance of brokered deposits). Thus, the word "receiving" in the statute can be reconciled with the holding—and periodic renewal or rollover—of a single deposit. Similarly, the plural word "deposits" is not inconsistent with the holding of a single deposit account because multiple deposits of funds can be made into a single account. A depositor might, for example, make a deposit of funds every month into the same account. The accrual of interest would represent an additional deposit into the same account. In the case of a certificate of deposit, the deposit would be replaced with a new deposit at maturity. Moreover, the statute defines "deposit" in such a way as to treat "receiving" and "holding" with equal significance for purposes of the definition of "deposit." See 12 U.S.C. 1813(l)(1).

Second, as discussed at length in General Counsel Opinion No. 12, the legislative history is inconclusive. *See* H.R. Rep. No. 2564, reprinted in 1950 U.S.C.C.A.N. 3765, 3768. Third, the FDIC has approved applications from many non-traditional depository institutions that intended to maintain only one or a very limited number of non-trust deposit accounts. This practice began at least as early as 1969 with Bessemer Trust Company (Bessemer) located in Newark, New Jersey. Bessemer offered checking accounts to its own trust customers but did not offer checking accounts or any other type of non-trust accounts to the general public. Despite this limitation on Bessemer's deposit-taking activities, the FDIC approved Bessemer's application for deposit insurance. The FDIC continued to approve such applications (*i.e.*, applications from institutions with very limited deposit-taking activities) from the 1970s to the present. These non-traditional depository institutions have included trust companies, credit card banks and other specialized institutions. For example, one depository institution planned to hold no accounts except escrow accounts relating to mortgage loans. Another depository institution planned to offer deposits only to its affiliate's customers.

Fourth, the Bank Holding Company Act (BHCA) contemplates the existence of depository institutions that are insured by the FDIC even though they do not accept a continuing stream of non-trust deposits from the general public. *See* 12 U.S.C. 1841(c). In the BHCA, the definition of "bank" includes banks insured by the FDIC. *See* 12 U.S.C. 1841(c)(1). A list of exceptions includes institutions functioning solely in a trust or fiduciary capacity if several conditions are satisfied. The conditions related to deposit-taking are: (1) All or

substantially all of the deposits of the institution must be trust funds; (2) insured deposits of the institution must not be offered through an affiliate; and (3) the institution must not accept demand deposits or deposits that the depositor may withdraw by check or similar means. *See* 12 U.S.C. 1841(c)(2)(D)(i)–(iii). The significant conditions are (1) and (2). The first condition provides that all or substantially all of the deposits of the institution must be trust funds; the second condition involves "insured deposits." Thus, the statute contemplates that a trust company—functioning solely as a trust company and holding no deposits (or substantially no deposits) except trust deposits—could hold "insured deposits." In other words, the BHCA contemplates (without requiring) that an institution could be insured by the FDIC even though the institution does not accept non-trust deposits from the general public.

Fifth, the leading case indicates that a depository institution may be "engaged in the business of receiving deposits other than trust funds" even though the institution holds a very small amount of non-trust deposits. See *Meriden Trust and Safe Deposit Company* v. *FDIC*, 62 F.3d 449 (2d Cir. 1995). Indeed, this case indicates that an amount as small as $200,000 is a sufficient amount of non-trust deposits.

Sixth, some state banking statutes contemplate the existence of FDIC-insured depository institutions that are severely restricted in their ability to accept non-trust deposits from the general public. For example, a Virginia statute provides that a general business corporation may acquire the voting shares of a "credit card bank" only if certain conditions are satisfied. See Va. Code 6.1–392.1.A. These conditions comprise the definition of a "credit card bank." See Va. Code 6.1–391. These conditions include the following: (1) The bank may not accept demand deposits; and (2) the bank may not accept savings or time deposits of less than $100,000. Indeed, the statute provides that a "credit card bank" may accept savings or time deposits (in amounts in excess of $100,000) only from affiliates of the bank having their principal place of business outside the state. See Va. Code 6.1–392.1.A.3–4. In other words, the Virginia statute prohibits the acceptance of any deposits from the general public. At the same time, the statute requires the deposits of the bank to be federally insured. See Va. Code 6.1–392.1.A.4.

The figure of $500,000 is being utilized for several reasons. First, it is more than a nominal sum. Indeed, it is greater than the amount involved in the leading case of *Meriden Trust and Safe Deposit Company* v. *FDIC*, 62 F.3d 449 (2d Cir. 1995). In that case, the court found that only $200,000 of non-trust deposits was a sufficient amount. Second, the figure of $500,000 is not so great that it would prevent non-traditional depository institutions from obtaining FDIC insurance. As previously mentioned, the Bank Holding Company Act contemplates the existence of depository institutions that are insured by the FDIC even though they do not accept a continuing stream of non-trust deposits from the general public. *See* 12 U.S.C. 1841(c). Also, some state banking statutes contemplate the existence of FDIC-insured depository institutions that are severely restricted in their ability to accept non-trust deposits from the general public. See, e.g., Va. Code 6.1–392.1.A.4. Third, $500,000 is the amount of non-trust deposits allowed by the FDIC in recent years in connection with a number of applications for deposit insurance. Applications involving the precise amount of $500,000 can be traced as far back as 1991.

As previously explained, the purpose of the regulation is to create uniformity and certainty. The choice of any specific dollar figure would serve this purpose. For the reasons set forth above, the FDIC has chosen $500,000.

Paperwork Reduction Act

The final rule does not involve any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the FDIC hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will apply to all FDIC-insured depository institutions and will impose no new reporting, recordkeeping or other compliance requirements. Although the final rule specifies that depository institutions must hold non-trust deposits in the amount of $500,000 or more in order to be "engaged in the business of receiving deposits other than trust funds," the rule does not create a new requirement. Rather, the final rule clarifies an existing requirement. Moreover, the final rule is consistent with the standard already applied to depository institutions by the FDIC. Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

Impact on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA. The Office of Management and Budget has determined that this final rule does not constitute a "major rule" as defined by SBREFA.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Bank merger, Branching, Foreign investments, Golden parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements, Savings associations.

The Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 303 of title 12 of the Code of Federal Regulations as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1835a, 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

2. New § 303.14 is added to subpart A to read as follows:

§ 303.14 Being "engaged in the business of receiving deposits other than trust funds."

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a depository institution shall be "engaged in the business of receiving deposits other than trust funds" only if it maintains one or more non-trust deposit accounts in the minimum aggregate amount of $500,000.

(b) An applicant for federal deposit insurance under section 5 of the FDI Act, 12 U.S.C. 1815(a), shall be deemed to be "engaged in the business of receiving deposits other than trust funds" from the date that the FDIC approves deposit insurance for the institution until one year after it opens for business.

(c) Any depository institution that fails to satisfy the minimum deposit standard specified in paragraph (a) of this section as of two consecutive call report dates (i.e., March 31st, June 30th, September 30th, and December 31st) shall be subject to a determination by the FDIC that the institution is not "engaged in the business of receiving deposits other than trust funds" and to termination of its insured status under section 8(p) of the FDI Act, 12 U.S.C. 1818(p). For purposes of this paragraph, the first three call report dates after the institution opens for business are excluded.

(d) Notwithstanding any failure by an insured depository institution to satisfy the minimum deposit standard in paragraph (a) of this section, the institution shall continue to be "engaged in the business of receiving deposits other than trust funds" for purposes of section 3 of the FDI Act until the institution's insured status is terminated by the FDIC pursuant to a proceeding under section 8(a) or section 8(p) of the FDI Act. 12 U.S.C. 1818(a) or 1818(p).

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of October 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–27198 Filed 10–29–01; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–175–AD; Amendment 39–12484; AD 2001–22–05]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3 series airplanes, that requires an inspection to find discrepancies of the hydraulic pipelines to the 7P panel and adjacent electrical wiring harnesses, and corrective action, if necessary. This action is necessary to find and fix such discrepancies, which could result in electrical arcing between the hydraulic lines and adjacent wiring, and a potential fire. This action is intended to address the identified unsafe condition.

DATES: Effective December 4, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3 series airplanes was published in the **Federal Register** on August 17, 2001 (66 FR 43126). That action proposed to require an inspection to find discrepancies of the hydraulic pipelines to the 7P panel and adjacent electrical wiring harnesses, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 75 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,500, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–22–05 Short Brothers, PLC: Amendment 39–12484. Docket 2001–NM–175–AD.

Applicability: This AD applies to the airplanes listed in Table 1, certificated in any category:

TABLE 1.—APPLICABILITY

Short Brothers model	Description
1. SD3–SHERPA series airplanes.	On which Short Brothers Modification K2239 has not been accomplished.
2. SD3–60 SHERPA series airplanes.	On which Short Brothers Modification K6109 has not been accomplished.
3. SD3–60 series airplanes.	On which Short Brothers Modification A8684 has not been accomplished.
4. SD3–30 series airplanes.	On which Short Brothers Modification P4810 has not been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix discrepancies of the hydraulic pipelines to the 7P panel and adjacent electrical wiring harnesses, which could result in electrical arcing between the hydraulic lines and adjacent wiring, and a potential fire, accomplish the following:

Inspection/Corrective Action

(a) Within 90 days after the effective date of this AD, do a detailed visual inspection to find discrepancies (inadequate clearance, chafing, or damage) of the hydraulic pipelines to the 7P panel and adjacent electrical wiring harnesses, per the Accomplishment Instructions of Shorts Service Bulletins SD3 SHERPA–24–5, SD330–24–29, SD360–24–25, or SD360 SHERPA–24–4, all dated April 30, 2001; as applicable. Before further flight, fix any discrepancies found per the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Shorts Service Bulletin SD3 SHERPA–24–5, dated April 30, 2001; Shorts Service Bulletin SD330–24–29, dated April 30, 2001; Shorts Service Bulletin SD360–24–25, dated April 30, 2001; or Shorts Service Bulletin SD360 SHERPA–24–4, dated April 30, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directives 006–04–2001, 007–04–2001, 008–04–2001, and 009–04–2001.

Effective Date

(e) This amendment becomes effective on December 4, 2001.

Issued in Renton, Washington, on October 19, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26956 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–317–AD; Amendment 39–12478; AD 2001–21–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, that currently requires, for certain airplanes, revising the Airplane Flight Manual, and, for all airplanes, performing repetitive inspections for wear or damage of the inlet check valves and inlet adapters of the override/jettison pumps, and corrective actions, if necessary. This amendment applies to fewer airplanes than the existing AD and requires rework of certain components, which ends the repetitive inspection requirement. These actions are necessary to ensure that the flight crew is advised of the hazards of dry operation of the override/jettison pumps of the center wing fuel tank, and to prevent wear or damage to the inlet check valves and inlet adapters of the override/jettison pumps, which could result in a fire or explosion in the fuel tank during dry (no fuel) operation. This action is intended to address the identified unsafe condition.

DATES: Effective December 4, 2001.

The incorporation by reference of Boeing Service Bulletin 747–28A2212, Revision 3, dated August 3, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of December 4, 2001.

The incorporation by reference of Boeing Alert Service Bulletin 747–28A2212, Revision 2, dated May 14, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 24, 1998 (63 FR 42210, August 7, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–16–19, amendment 39–10695 (63 FR 42210, August 7, 1998), which is applicable to all Boeing Model 747 series airplanes, was published in the **Federal Register** on February 15, 2000 (66 FR 10393). The action proposed to continue to require, for certain airplanes, revising the Airplane Flight Manual, and; for all airplanes, performing repetitive inspections for wear or damage of the inlet check valves and inlet adapters of the override/jettison pumps, and corrective actions, if necessary. The action also proposed to apply to fewer airplanes than the existing AD and require rework of certain components, which would end the repetitive inspection requirement.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Extend Compliance Time/Delay Terminating Action

Several commenters ask that the compliance time of 18 months after the effective date of the AD, as specified in paragraph (d) of the proposed rule, be extended as follows:

Three commenters state that the compliance time should be extended to within 60 months after the effective date of the AD. One of the commenters asks for an extension to 10,000 flight cycles if a 6-year compliance time is too long. The commenters note that the current repetitive inspections are adequate to address the described unsafe condition by ensuring the integrity of the inlet check valves and override/jettison pump inlet adapters. One commenter adds that the wear limits established and contained in Boeing Alert Service Bulletins 747–28A2212, Revision 1, dated April 23, 1998, and Revision 2, dated May 14, 1998 (referenced in the proposed rule as two of the correct sources of service information for doing the specified actions), are conservative and provide an adequate margin to prevent contact between the inlet check valve and the override/jettison pump inlet inducer/impeller until the modification is accomplished.

Additionally, one commenter (the airplane manufacturer) states that it is not aware of any reports since the issuance of AD 98–16–19, of loosening of the inlet check valve, which is the more significant failure mode per the referenced service bulletin, because it could lead to steel-on-steel contact. AD 98–16–19 requires, among other things, repetitive inspections for wear or damage of the inlet check valves and inlet adapters of the override/jettison pumps. The commenters state that because the unsafe condition in the proposed rule is adequately addressed by the repetitive inspection requirements in that AD, the requested 60-month compliance time is reasonable. This would allow operators to complete the rework of the override/jettison pump housing (installation of the new check valve), which requires fuel tank entry, during a regular maintenance visit when a tank entry is included as part of the maintenance program for most operators. This would minimize the need for multiple tank entries and collateral fuel tank component damage that could result from the entries. An 18-month compliance period would result in unscheduled maintenance visits and increased costs associated with airplane out-of-service time.

The airplane manufacturer also is working with the parts manufacturer to develop an improved override/jettison pump electrical connector that will be proposed as an alternative method of compliance to AD 97–03–17, amendment 39–9922 (62 FR 5748, February 7, 1997). That AD requires an inspection of fuel boost pumps and fuel override/jettison pumps for leakage and checking the electrical resistance of the override/jettison pump wiring insulation. The improved pump electrical connector should be available for retrofit early in the fourth quarter of 2001. A 60-month compliance time would allow the override/jettison pump motor impeller assembly to be reworked during a maintenance visit, at which time both the new inlet adapter and new electrical connector could be installed.

A fourth commenter asks that the compliance time be extended to 54 months after the effective date of the AD to allow for the incorporation of new check valves and inlet adapters in the other airplane fuel tanks, an action not specifically required by this AD, but recommended by the airplane manufacturer. The commenter states that, in the long term, this will prevent the inadvertent installation of an unmodified override/jettison pump in a center wing tank pump housing with a modified inlet check valve, leading to a more rapid failure than is currently occurring. The commenter also states that enhanced endurance testing should be allowed to validate the 30,000 hour wear rate claims and extend that rate to 60,000 hours for the original equipment manufacturer's specified design life limit of the override/jettison pump.

A fifth commenter, the parts manufacturer, states that it is the sole manufacturer of the subject override/jettison pumps, housings, and repair kits and has some constraints on providing the kits, as well as performing the repair and override/jettison pump modification at its overhaul facility. The commenter notes that the maximum monthly production capacity for each kit type is approximately 500 kits per month. All kits are subject to a 12-week lead time following customer order placement. The override/jettison pump overhaul and repair facility can accommodate approximately 200 pump upgrades per month over and above existing pump repair activities. The commenter adds that, in prior discussions with operators, it was noted that the upgrade of the override/jettison pumps on the affected 747 fleet would take up to six years to accomplish. The commenter questions the viability of accomplishing such an upgrade within the proposed 18 months. The commenter states that, although it could deliver the parts required in the time specified, the extensive maintenance tasks necessary to assess and modify the override/jettison pump housings would impose a massive logistics and scheduling burden on the operators.

A sixth commenter states that, due to the spares shortage and possible additional changes in AD 97–03–17, until a final decision is made, it prefers to continue with the repetitive inspections and replacement of any defective override/jettison pumps as required by AD 98–16–19. The commenter notes that after a final decision is made it will comply with all the requirements at one time. The commenter adds that complying with all the requirements at one time will resolve the problems related to spares shortage, long turnaround time for modification by the manufacturer, pump interchangeability, flight

schedule interruptions, and extensive ground time.

A seventh commenter asks that the compliance time be extended to 6 years after the effective date of the AD, on the condition that the repetitive inspection interval is reduced to 5,000 flight hours or 1 year. The commenter gives 3 reasons for this extension:

(1) Replacing the housing inlet check valve necessitates entering the center wing fuel tank, which requires a minimum of 2 days of airplane immobilization, and partially prevents concurrent routine maintenance on the airplane.

(2) The parts manufacturer has proposed that operators extend the modification to 6 years so the inside tank modification can be implemented during heavy maintenance. Thus the parts manufacturer can have more time to supply parts for the world fleet.

(3) The parts manufacturer is working with the airplane manufacturer to develop an improved fuel pump electrical connector that will be proposed as an alternative method of compliance to the insulation resistance check required by AD 97–03–17. The commenter asks to be allowed to wait and do all the terminating actions at one time.

The FAA agrees with the commenters that the compliance time required by paragraph (d) of the final rule should be extended somewhat to ensure that enough parts are available to do the required actions within the specified compliance time. In developing an appropriate compliance time for the terminating action required by the final rule, we considered not only the degree of urgency associated with addressing the unsafe condition, but the practical aspect of incorporating the required rework of the existing override/jettison pump housing and impeller motor assembly on the Model 747 fleet in a timely manner. It is our intent in this final rule to have the terminating action done within the time frame of a regular maintenance interval. We took the commenters' recommendations into account, as well as the time necessary to do the specified actions, and we find that a 3-year compliance time should correspond with the regular maintenance schedules of the majority of affected operators. An extension of the compliance time to 3 years will not adversely affect safety because the inspections required by paragraph (b) of the final rule will provide an acceptable level of safety until the terminating action required by paragraph (d) is done. Paragraph (d) of the final rule has been changed accordingly.

The FAA does not agree that the terminating action in this final rule can be delayed in order to do the actions concurrently with AD 97–03–17. These two ADs address different unsafe conditions of the same fuel override/jettison pump, and the associated modifications differ as well. Although the override/jettison pumps for the center wing fuel tank are removed to do the modifications associated with both ADs, the functional tests after installation of the modified pump should identify any problems with the override/jettison pump before the airplane is released for revenue service. Therefore, removing those pumps twice to accomplish the terminating actions for AD 97–03–17 and this AD separately, does not have an adverse effect on the safety of the 747 fleet.

Clarify Wording in Paragraphs (d) and (e)

One commenter asks that paragraphs (d) and (e) of the proposed rule be changed to clarify that the actions are applicable to the center wing tanks only, as specified in the referenced service bulletin. We agree and have changed the wording in paragraphs (d) and (e) of this final rule for clarification.

Change/Delete Paragraph (e)

Two commenters ask that paragraph (e) of the proposed rule; which specifies that, as of the effective date of the AD, no unmodified override/jettison pump housings or impeller motor assemblies may be installed; be changed. The commenter notes that this would require replacement of the override/jettison pump inlet check valve on airplanes not scheduled for maintenance. This would ground airplanes and necessitate a fuel tank entry. The commenter adds that unscheduled fuel tank entries present potential problems with collateral damage and additional out-of-service time for the airplanes. The commenter asks that paragraph (e) be changed to state, "No part number listed in the Existing Part Number column of the table in Paragraph 2.E. of Boeing Service Bulletin 747–28A2212, Revision 3, shall be installed after the effective date of the AD. An existing part number motor impeller assembly can be used on aircraft that have existing part number housings installed, until the sunset date of the AD."

Another commenter asks that it be allowed to use "Existing Part Numbers" for the center wing tank positions, and for the main 2, main 3, and horizontal stabilizer tank positions during the compliance time specified in the proposed rule. The commenter states that the paragraph (e) of the proposed rule requires a tank entry to modify the override/jettison pump housing each time an unmodified impeller motor assembly has to be replaced.

One commenter, the airplane manufacturer, asks that paragraph (e) of the proposed rule be deleted. The commenter states that the described unsafe condition has been adequately mitigated and that the old parts (with a part number listed in the Existing Part Number column of the table in Paragraph 2.E), should be allowed for installation until the compliance period ends, subject to the limitations described in paragraph 2.E., Existing Parts Accountability, of the referenced service bulletin. The commenter adds that this is necessary for motor impeller assemblies because an operator would install a new inlet check valve in the event a check valve had to be replaced. Installation of a new valve would necessitate installation of a new motor impeller assembly, if not already installed. The commenter notes that once a new part is installed, the replacement part must be of the new configuration.

After careful review of the comments provided, specifically the comment from the airplane manufacturer, the FAA has concluded that paragraph (e) of this final rule should be deleted. We have determined that paragraph (e) can be removed without adversely affecting safety, in that the terminating action specified in Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747–28A2212, Revision 3, cautions that operators should not install reworked components with non-reworked components because rapid wear of those components will occur. Paragraph (e) of this final rule has been deleted accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,100 airplanes of the affected design in the worldwide fleet. The FAA estimates that 250 airplanes of U.S. registry will be affected by this AD.

For affected airplanes, the AFM revision currently required by AD 98–16–19 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the FAA estimates that the cost impact of this action is $60 per airplane.

The inspections currently required by AD 98–16–19 take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the FAA estimates that the cost impact of this action on U.S. operators is $180,000, or $720 per airplane, per inspection cycle.

The rework required in this AD action will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,978 per airplane. Based on these figures, the FAA estimates that the cost impact of the required replacement on U.S. operators is $584,500, or $2,338 per airplane. The FAA has been advised that manufacturer warranty remedies may be available for labor costs and parts associated with accomplishing the required rework. Therefore, the future economic cost impact of this action on U.S. operators may be less than the cost impact figure indicated above.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10695 (63 FR 42210, August 7, 1998), and by adding a new airworthiness directive (AD), amendment 39–12478, to read as follows:

2001–21–07 Boeing: Amendment 39–12478. Docket 2000–NM–317–AD. Supersedes AD 98–16–19, Amendment 39–10695.

Applicability: Model 747 series airplanes, line numbers 1 through 1251 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is advised of the hazards of dry operation of the override/jettison pumps of the center wing fuel tank, and to prevent wear or damage to the inlet check valves and inlet adapters of the override/jettison pumps, which could result in a fire or explosion in the fuel tank during dry operation, accomplish the following:

Restatement of Requirements of AD 98–16–19:

Airplane Flight Manual Revision

(a) For airplanes that have accumulated 20,000 total hours time-in-service or more as of August 24, 1998 (the effective date of AD 98–16–19, amendment 39–10695): Within 14 days after August 24, 1998, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

"If the center tank override/jettison fuel pumps are to be used, there must be at least 17,000 pounds (7,720 kilograms) of fuel in the center tank prior to engine start.

Do not operate the center tank override/jettison fuel pumps with less than 7,000 pounds (3,200 kilograms) of fuel in the center tank. For airplanes with an inoperative center tank scavenge system, this 7,000 pounds of center tank fuel must be considered unusable.

If the center tank override/jettison fuel pumps circuit breakers are tripped, do not reset."

Repetitive Inspections and Corrective Actions

(b) Prior to the accumulation of 10,000 total hours time-in-service, or within 90 days after August 24, 1998, whichever occurs later, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD, in accordance with the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–28A2212, Revision 2, dated May 14, 1998, or Revision 3, dated August 3, 2000.

(1) Perform a detailed visual inspection for wear or damage of the inlet check valve of the left and right override/jettison pumps of the center wing fuel tank.

(i) If the inlet check valve passes all wear and damage criteria, as specified in Figure 3 of the service bulletin, accomplish the actions specified in paragraph (b)(1)(i)(A), (b)(1)(i)(B), or (b)(1)(i)(C) of this AD, as applicable.

(A) If the wear to the stainless steel disk is less than or equal to 0.70 inch, and does not penetrate the disk, repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(B) If the wear to the stainless steel disk is greater than 0.70 inch, and does not penetrate the disk, repeat the inspection thereafter at intervals not to exceed 1,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(C) If the wear penetrates the stainless steel disk of the inlet check valve, prior to further flight, accomplish the actions specified in paragraph (b)(1)(ii) of this AD.

(ii) If the inlet check valve fails any wear or damage criteria, as specified in Figure 3 of the service bulletin, prior to further flight, replace the existing check valve with a new or serviceable check valve, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(2) Perform a detailed visual inspection for wear or damage of the inlet adapter of the left and right override/jettison pumps of the center wing fuel tank.

(i) If the wear to the inlet adapter is less than or equal to 0.50 inch, prior to further flight, reinstall the existing override/jettison pump, in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(ii) If the wear to the inlet adapter is greater than 0.50 inch, but less than 0.60 inch, prior to further flight, accomplish the actions required by either paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B), in accordance with the service bulletin:

(A) Install a new or serviceable override/jettison pump, and repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done; or

(B) Reinstall the existing override/jettison pump, and repeat the inspection thereafter at intervals not to exceed 1,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(iii) If the wear to the inlet adapter is greater than or equal to 0.60 inch, prior to further flight, install a new or serviceable override/jettison pump, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

Note 2: Boeing Alert Service Bulletin 747–28A2212, Revision 2, dated May 14, 1998, and Revision 3, dated August 3, 2000, include figures that illustrate specific areas to inspect for wear and damage.

Note 3: Accomplishment of the actions specified in paragraph (b) of this AD prior to August 24, 1998, in accordance with Revision 1 of Boeing Alert Service Bulletin 747–28A2212, dated April 23, 1998, is considered acceptable for compliance with paragraph (b) of this AD.

Terminating Action for Paragraph (a)

(c) Accomplishment of the actions specified by paragraph (b) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD. Following accomplishment of those actions, the AFM revision may be removed from the AFM.

New Requirements of this AD:

Replacement of Pump Housing and Impeller Motor Assembly

(d) Within 36 months after the effective date of this AD: Rework the existing pump housing and impeller motor assembly, including replacing the existing inlet check valve and inlet adapter in the center wing fuel tank with new, improved parts; in accordance with Boeing Service Bulletin 747–28A2212, Revision 3, dated August 3, 2000. This replacement ends the requirements of paragraphs (a) and (b) of this AD.

Note 4: Boeing Service Bulletin 747–28A2212, Revision 3, references Crane Hydro-Aire Service Bulletins 60–703–28–33, 60–703–28–35, 60–721–28–5, and 60–723–28–5, as secondary sources of information for the rework of the pump housing and impeller motor assembly.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–16–19, amendment 39–10695, are approved as alternative methods of compliance with the corresponding requirements of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–28A2212, Revision 2, dated May 14, 1998; and Boeing Service Bulletin 747–28A2212, Revision 3, dated August 3, 2000; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 747–28A2212, Revision 3, dated August 3, 2000, is approved by the Director of the Federal Register as of December 4, 2001.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–28A2212, Revision 2, dated May 14, 1998, was approved previously by the Director of the Federal Register as of August 24, 1998 (63 FR 42210, August 7, 1998).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on December 4, 2001.

Issued in Renton, Washington, on October 17, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26712 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–122–AD; Amendment 39–12475; AD 2001–21–04]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, that requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes. This action is intended to address the identified unsafe condition.

DATES: Effective December 4, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes was published in the **Federal Register** on October 13, 2000 (65 FR 60897). That action proposed to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Requests To Revise the Cost Estimate

On behalf of one of its members, the Air Transport Association (ATA) of America states that it considers that the inspections require access to multiple areas of the airplane and are scheduled at different time intervals. Therefore, the 1-hour time estimate in the proposed AD is not valid and needs to be adjusted. The member airline also made that same statement.

The FAA does not concur that the proposed cost estimate should be revised. We based our estimate on the fact that the action in paragraph (a) of the proposed AD requires only a revision to the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness by incorporating certain instructions into the ALS. This action should take no longer than 1 hour to accomplish. Although this AD requires only a revision to the ALS, we point out that the inspections included in the ALS will then be required by 14 CFR parts 43 and 91. Because operators must comply with the inspections included in the ALS to maintain the airplane properly, it is unnecessary for our cost estimate to include the time required for such inspections. Of course, operators that have previously incorporated the ALS revision into their maintenance programs are given credit for having previously accomplished the requirements of this AD, as allowed by the phrase, "unless accomplished previously." No change to the cost estimate in the final rule is necessary in this regard.

Request To Revise the Compliance Time for the Inspections

The ATA and the same member airline state that the proposed AD must include provisions for airplanes that have exceeded the limits specified in Report SE–623, "Airworthiness Limitation Items and Safe Life Items," of Appendix 1 of the Fokker 70/100 Maintenance Review Board Document. The provisions should be such that the tests can be accomplished during a normally scheduled out-of-service maintenance.

The FAA does not concur that a grace period needs to be included in the proposed AD for compliance with the Fokker report. Although we agree that some airplanes may have exceeded certain inspection thresholds in the report, the 30-day compliance time for revising the ALS of the Instructions for Continued Airworthiness allows operators sufficient time to accomplish the revision to the ALS. However, if scheduling conflicts occur and adjustments must be made for airplanes that exceed certain thresholds, operators may request an alternative method of compliance, as specified in paragraph (c) of this AD. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule.

Cost Impact

The FAA estimates that 131 Model F.28 Mark 0070 and 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,860, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference. Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–21–04 Fokker Services B.V.: Amendment 39–12475. Docket 98–NM–122–AD.

Applicability: All Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

Airworthiness Limitations Revision

(a) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness by incorporating Report SE–623, "Fokker 70/100 Airworthiness Limitation Items and Safe Life Items," of Appendix 1 of Fokker 70/100 Maintenance Review Board Document, both dated June 1, 2000.

(b) Except as provided in paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the document listed in paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The ALS revision shall be done in accordance with Fokker Services B.V. Report SE–623, "Fokker 70/100 Airworthiness Limitation Items and Safe Life Items," dated June 1, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA No. 1997–065 (A), dated July 31, 1997.

Effective Date

(f) This amendment becomes effective on December 4, 2001.

Issued in Renton, Washington, on October 22, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27067 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–68–AD; Amendment 39–12488; AD 2001–22–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes, that requires repetitive eddy current inspections for cracking of the main landing gear (MLG) main fittings, and replacement with a new or serviceable MLG, if necessary. This action also requires servicing the MLG shock struts; inspecting the MLG shock struts for nitrogen pressure, visible chrome dimension, and oil leakage; and performing corrective actions, if necessary. The actions specified by this AD are intended to prevent failure of the MLG main fitting, which could result in collapse of the MLG upon landing. This action is intended to address the identified unsafe condition.

DATES: Effective December 4, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 23, 2001 (66 FR 16156). That action proposed to require repetitive eddy current inspections for cracking of the main landing gear (MLG) main fittings, and replacement with a new or serviceable MLG, if necessary. That action also proposed to require servicing the MLG shock struts; inspecting the MLG shock struts for nitrogen pressure, visible chrome dimension, and oil leakage; and performing corrective actions, if necessary.

Public Comment

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise the Applicability

One commenter points out that the inspection specified in paragraph (a) of the NPRM requires compliance with Part "B" of Bombardier Alert Service Bulletin A601R–32–079, dated December 1, 2000; however, Appendix 1 of that alert service bulletin states that the inspection is necessary only for MLG main fittings having part numbers (P/Ns) 17064–101, 17064–102, 17064–103, and 17064–104, not to all airplanes having serial numbers 7003 and subsequent. The commenter explains that airplanes currently being delivered have MLG main fittings having P/Ns 17064–105 and 17064–106. The FAA infers that the commenter is requesting that we revise the applicability of the final rule.

The FAA agrees with the commenter. We have verified with Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, that airplanes having MLG main fittings having P/Ns 17064–105 and 17064–106 are not subject to the requirements of this final rule. Therefore, we have revised the applicability of the final rule to clarify that the final rule applies to Bombardier Model CL–600–2B19 series airplanes, certificated in any category, having serial number 7003 and subsequent, and equipped with a MLG main fitting having P/N 17064–101, 17064–102, 17064–103, or 17064–104.

Requests To Withdraw the NPRM

1. One commenter requests that the NPRM be withdrawn. The commenter states that, since the reason for the NPRM was one event of a misserviced strut by a foreign air carrier, it is not necessary to issue an AD. In addition,

the commenter suggests that requiring repetitive strut servicing could be done by mandating that the strut inspection be added to the operators' inspection programs. The commenter contends that incorporating such inspection requirements into the inspection program is preferred by operators.

2. Another commenter states that it has conducted 1,496 eddy current inspections in accordance with the alert service bulletin referenced in the NPRM and has found no discrepancies. This same commenter also states that it has been servicing the shock struts beyond the requirements specified in paragraph (b) of the NPRM by performing a complete reservicing of the shock strut with oil and nitrogen every 12 months. The FAA infers that the commenter is requesting that the NPRM be withdrawn.

3. Another commenter suggests that an annual complete reservicing of the MLG shock strut performed in conjunction with an annual eddy current inspection is an equivalent or better level of safety than the actions proposed in the NPRM. The commenter notes that the brake lines are clamped to the MLG main fittings and must be moved or removed to gain access to the inspection area. Therefore, the commenter asserts that its proposed actions would have the benefit of reducing the adverse affects on reliability and safety impact caused by frequent disturbance of the brake lines.

The FAA does not concur that the NPRM should be withdrawn for the following reasons:

1. TCCA, has advised us that three cases of premature failures of the MLG have been reported. Because implementation and quality of various existing maintenance programs may differ, we have determined that by issuing an AD to require eddy current inspections for cracks and replacement, if necessary, with a new or serviceable fitting, (and, as required by paragraph (b) of this AD, servicing and inspecting the MLG shock struts to determine the nitrogen pressure, visible chrome dimension and any oil leakage), the identified unsafe condition will be addressed appropriately.

2. In requiring the actions specified in this final rule, the FAA has not precluded an operator's prerogative to perform additional actions to further increase the safety level that an operator may wish to take. As stated previously, we acknowledge that some operators' maintenance programs may be of a higher quality than others. However, our obligation remains to issue an AD to address the identified unsafe condition; and the rule must apply to everyone to ensure that all affected airplanes are covered, regardless of who operates them. However, under the provisions of paragraph (g) of the final rule, we may approve requests for an alternate method of compliance if data are submitted to substantiate that such a method would provide an acceptable level of safety.

3. The FAA does not agree that an annual complete reservicing of the MLG shock strut performed in conjunction with an annual eddy current inspection is equivalent to or a better level of safety than the actions required by this final rule. Since the airplane model accumulates an average of approximately 2,500 flight cycles per year, that would require the eddy current inspection only every 2,500 flight cycles. However, according to the investigation that was conducted by the original equipment manufacturer (OEM), it took only 2,000 flight cycles for the cracking to develop from initiation to critical size. Therefore, we have determined that it is necessary to require inspections at intervals not to exceed 500 flight cycles.

As to the adverse affects on the reliability and safety impact caused by frequent disturbance of the brake lines, we point out that the inspection and its repetitive interval are not only consistent with the OEM service bulletin, but also include specific procedures for handling the brake lines with minimal disturbance. No change is necessary to the final rule regarding these requests.

Requests To Remove Certain Paragraphs of the NPRM

Two commenters state that the requirements of paragraphs (c) and (d) of the NPRM are unnecessary. One commenter states that paragraphs (c) and (d) of the NPRM, which require "inspection of shock strut servicing," per Bombardier Alert Service Bulletin A601R–32–079, are already incorporated into the Maintenance Review Board (MRB) document, Task 32–00–00–09 (100 flight hours/routine check) and Task 32–00–00–11 (400 flight hours/A check). The FAA infers that the commenters are requesting that paragraphs (c) and (d) of the NPRM be removed.

The FAA does not agree. Although the inspection and servicing of the shock struts required by paragraphs (c) and (d) of the final rule may be the same as the MRB document, our obligation remains to issue an AD to address the identified unsafe condition. However, under the provisions of paragraph (g) of the final rule, we may approve requests for an alternate method of compliance if data are submitted to substantiate that such a method would provide an acceptable level of safety.

One of those commenters also notes that paragraph (e) of the NPRM "requires extension of repetitive inspection." The commenter states that, based on the results of 1,496 negative eddy current inspections, and the fact that the inspections are incorporated into the MRB document, paragraph (e) of the NPRM is not necessary.

The FAA does not concur that paragraph (e) of the NPRM is unnecessary. We point out that in paragraph (e) of this final rule, the extension of the inspection interval from every 500 flight cycles to every 1,000 flight cycles is not "required," but "may" be extended if the conditions specified in paragraph (e) of the final rule are met. In accordance with the provisions of that paragraph, if an operator does not wish to extend the repetitive inspection interval, there is no requirement to do so.

Requests To Revise the Requirements of Paragraph (a) of the NPRM

One commenter requests that paragraph (a) of the NPRM be revised to add the visual inspection that is specified in the alert service bulletin, which is referenced as the source of service information in the NPRM. The commenter notes that the alert service bulletin only specifies an eddy current inspection if cracking is detected during the visual inspection. This same commenter also requests that paragraph (a) of the NPRM be revised to reflect a compliance threshold of 1,000 hours with escalation to a "C" check (currently 4,000 flight hours for that operator's operations).

The FAA does not agree with either of the commenter's requests. The three instances of premature failures of the MLG main fittings indicates that the crack propagation is rapid in high-strength steel material. In fact, investigation into those three failure cases revealed that the crack growth from initiation to critical crack size was about 2,000 flight cycles. Since eddy current inspections are more reliable in detecting such rapid crack growth, we find that the repetitive inspection interval of 500 flight cycles required by paragraph (a) of the final rule to be appropriate.

Requests To Extend the Repetitive Inspection Intervals

Two commenters request that the repetitive inspection interval of 500 flight cycles specified in paragraph (a) of the NPRM be extended. One commenter asks that the repetitive

inspection interval be revised to require the inspection every "C" check. This commenter justifies an extension of the repetitive inspections based on the fact that it has already accomplished three consecutive inspections (500 flight cycles) per the Bombardier alert service bulletin specified in the NPRM, and has found no defects. The commenter states that the current maintenance program effectively prevents improper servicing. The other commenter requests that the repetitive inspection interval be extended to every "C" check after a reasonable number of non-destructive testing (NDT) inspections (perhaps two) are done at the 1,000 flight cycle interval. Both commenters state that, since they are aware of only one cracking occurrence, there is no proof that there is an inherent flaw in the MLG main fitting.

The FAA does not concur that the repetitive inspection interval may be extended. We stated previously that TCCA has advised us that three cases of premature failures of the MLG have been reported. In addition, we also stated previously that the repetitive inspection interval was based on the findings of the investigation into the rapid crack growth that occurred on the MLG main fittings. No change to the final rule in this regard is necessary. However, under the provisions of paragraph (g) of the final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider additional rulemaking.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 339 Bombardier Model CL–600–2B19 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 236 airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 3 work hours per airplane to accomplish an eddy current inspection, and the servicing actions, and inspections specified in paragraphs (a), (b), and (c) of this AD. We estimate that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $42,480, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–22–09 Bombardier, Inc. (Formerly Canadair): Amendment 39–12488. Docket 2000–NM–68–AD.

Applicability: Model CL–200–2B19 series airplanes, certificated in any category, having serial numbers 7003 and subsequent, and equipped with a main landing gear (MLG) main fitting having part number (P/N) 17064–101, 17064–102, 17064–103, or 17064–104.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of MLG main fitting, which could result in collapse of the MLG upon landing, accomplish the following:

Inspection and Replacement

(a) Prior to the accumulation of 1,500 total flight cycles, or within 150 flight cycles after the effective date of this AD, whichever occurs later: Perform an eddy current inspection to detect cracking of the MLG main fittings, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–32–079, Revision D, dated December 1, 2000. If any cracking is found, prior to further flight, replace the cracked fitting with a new or serviceable fitting in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 500 flight cycles.

Servicing the Shock Struts

(b) Prior to the accumulation of 1,500 total flight cycles since the date of manufacture, or within 500 flight cycles after the effective date of this AD, whichever occurs later: Perform a servicing (Oil and Nitrogen) of the MLG shock struts (left and right main landing shock struts), in accordance with Part C (for airplanes on the ground) or Part D (for airplanes on jacks) of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–32–079, Revision D, dated December 1, 2000.

Other Inspections

(c) Within 500 flight cycles after completing the actions required by paragraph (b) of this AD: Perform an inspection of the MLG left and right shock struts for nitrogen pressure, visible chrome dimension, and oil leakage, in accordance with Part E of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–32–079, Revision D, dated December 1, 2000. Thereafter, repeat the inspection at intervals not to exceed 500 flight cycles.

Corrective Actions for Certain Inspections

(d) If the chrome extension dimension of the shock strut pressure reading is outside the limits specified in the Airplane Maintenance Manual, Task 32–11–05–220–801, or any oil leakage is found: Prior to further flight, service the MLG shock strut in accordance with Part C (for airplanes on the ground) or Part D (for airplanes on jacks) of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–32–079, Revision D, dated December 1, 2000.

Extension of the Repetitive Interval

(e) After the effective date of this AD: After a total of five consecutive inspections of the MLG shock struts that verify that the shock struts are serviced properly, and a total of five consecutive eddy current inspections of the MLG main fitting has been accomplished that verify there is no cracking of the main fitting, in accordance with Bombardier Alert Service Bulletin A601R–32–079, Revision D, dated December 1, 2000, the repetitive interval for the eddy current inspections required by paragraph (a) of this AD may be extended from every 500 flight cycles to every 1,000 flight cycles.

Reporting Requirement

(f) Within 30 days after each inspection and servicing required by paragraphs (a), (b), and (c) of this AD, report all findings, positive or negative, to: Bombardier Aerospace, Regional Aircraft, CRJ Action Desk, fax number 514–855–8501. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) The actions shall be done in accordance with Bombardier Alert Service Bulletin A601R–32–079, Revision D, dated December 1, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–1999–32R1, dated January 22, 2001.

Effective Date

(j) This amendment becomes effective on December 4, 2001.

Issued in Renton, Washington, on October 22, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27068 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–208–AD; Amendment 39–12487; AD 2001–22–08]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 series airplanes, that requires replacing the main landing gear (MLG) torque link dampers with modified and reidentified dampers. This action is necessary to prevent degradation of the dampers, which could result in MLG high amplitude oscillation in a lateral torsional mode, and consequent MLG damage or separation of the MLG from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 4, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 series airplanes was published in the **Federal Register** on August 17, 2001 (66 FR 43124). That action proposed to require replacing the main landing gear (MLG) torque link dampers with modified and reidentified dampers.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Allow Use of New-Configuration Dampers

The commenter requests that the FAA revise paragraph (a) of the proposed rule to allow an operator to install a torque link damper with a dash number higher than (23700)–5. The commenter states that it has already modified its entire inventory of torque link dampers to the configuration of part number 23700–7. The commenter states that revising the proposed AD to allow installation of parts modified to a configuration subsequent to that of part number 23700–5 would relieve it and other operators of the need to request approval of alternative methods of compliance (AMOCs).

The FAA partially concurs with the commenter's request. Because we cannot approve installation of dampers that do not exist, we do not concur to revise paragraph (a) of the proposed AD in the specific way the commenter suggests.

However, since the issuance of the proposed rule, we have reviewed Fokker

Service Bulletins SBF28/32–159, dated October 1, 1999 (for Models F.28 Mark 1000 through 4000 series airplanes), and SBF100–32–116, dated February 1, 2000 (for Model F.28 Mark 0070/0100 series airplanes). Those service bulletins specify replacement of existing torque link dampers with modified dampers, and refer to Menasco Aerospace Service Bulletin 23700–32–15, dated September 3, 1999, as an appropriate source of service information for modifying torque link dampers with part number 23700–1, –3, or –5, to part number 23700–7. In consideration of these service bulletins, we have added a new Note 2 to this final rule to state that installation of torque link dampers with part number 23700–7 in accordance with Fokker Service Bulletin SBF28/32–159 or SBF100–32–116, as applicable, is acceptable for compliance with paragraph (a) of this AD.

Operators should note that, for installation of dampers with part numbers other than 23700–5 or –7, they must submit a request for approval of an AMOC in accordance with paragraph (c) of this AD.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 147 Model F.28 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,910 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $333,690, or $2,270 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–22–08 Fokker Services B.V.: Amendment 39–12487. Docket 2001–NM–208–AD.

Applicability: All Model F.28 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the main landing gear (MLG) from the airplane due to performance degradation of the torque link damper, accomplish the following:

Modification and Reidentification

(a) Replace MLG torque link dampers having part numbers (P/N) 23700–1 or –3 with dampers having P/N 23700–5, in accordance with the Accomplishment Instructions of Fokker Service Bulletin (SB) SBF28/32–157 (for Models F.28 Mark 1000 through 4000 series airplanes) or Fokker Service Bulletin SBF100–32–114 (for Model F.28 Mark 0070/0100 series airplanes), both dated October 1, 1999, as applicable; at the times specified in the following table:

TABLE 1.—COMPLIANCE TIMES

Fokker F.28 model (mark) designation	MLG manufactured by	MLG mod. status	Compliance required after the effective date of this AD
(1) Mk.0100	Dowty Aerospace; MD	Pre-Mod SB F100–32–50	Within 15 months.
(2) Mk.0100	Dowty Aerospace; MD	Post-Mod SB F100–32–50	Within 21 months.
(3) Mk.0100	Menasco Aerospace	[Reserved]	Within 24 months.
(4) Mk.0070	Menasco Aerospace	[Reserved]	Within 24 months.
(5) Mk.1000 through Mk.4000 series	Dowty Aerospace; MD	[Reserved]	Within 24 months.

Note 2: Installation of torque link dampers with P/N 23700–7 in accordance with Fokker Service Bulletin SBF28/32–159, dated October 1, 1999 (for Models F.28 Mark 1000 through 4000 series airplanes), or SBF100–32–116, dated February 1, 2000 (for Model F.28 Mark 0070/0100 series airplanes), as applicable, is acceptable for compliance with paragraph (a) of this AD.

Spares

(b) As of the effective date of this AD, no person shall install torque link damper having P/N 23700–1 or –3, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Fokker Service Bulletin SBF28/32–157, dated October 1, 1999; or Fokker Service Bulletin SBF100–32–114, dated October 1, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1999–138, dated October 29, 1999.

Effective Date

(f) This amendment becomes effective on December 4, 2001.

Issued in Renton, Washington, on October 22, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27069 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR PART 16

[AAG/A Order No. 246–2001]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice currently exempts the following system of records from subsection (d) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2): Controlled Substances Act Nonpublic Records (JUSTICE/JMD–002). This final rule makes changes to reflect the current statutory authority, as well as the primary reason for exempting the system.

EFFECTIVE DATE: This final rule is effective October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Cahill at 202–307–1823.

SUPPLEMENTARY INFORMATION: On July 20, 2001 (66 FR 37939), a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows:

PART 16—AMENDED

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.76 by revising paragraph (b)(1) as follows:

§ 16.76 Exemption of Justice Management Division.

* * * * *

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Access to and use of the nonpublic records maintained in this system are restricted by law. Section 3607(b) of Title 18 U.S.C. (enacted as part of the Sentencing Reform Act of 1984, Pub. L. 98–473, Chapter II) provides that the sole purpose of these records shall be for use by the courts in determining whether a person found guilty of violating section 404 of the Controlled Substances Act qualifies:

(i) for the disposition available under 18 U.S.C. 3607(a) to persons with no prior conviction under a Federal or State law relating to controlled substances, or

(ii) for an order, under 18 U.S.C. 3607(c), expunging all official records (except the nonpublic records to be retained by the Department of Justice) of the arrest and any subsequent criminal proceedings relating to the offense.

* * * * *

Dated: October 17, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

[FR Doc. 01–27202 Filed 10–29–01; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 01–009]

RIN 2115–AA97

Security Zones; San Francisco Bay, San Francisco, CA and Oakland, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing two temporary security zones in areas of the San Francisco Bay adjacent to San Francisco International Airport and Oakland International Airport. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts at these airports. Persons and vessels are prohibited from entering into or remaining in these security zones without permission of the Captain of the Port, or his designated representative.

DATES: This rule is effective from 5 p.m. (PDT) on September 21, 2001 to 4:59 p.m. (PDT) on March 21, 2002. Comments and related material must reach the Coast Guard on or before December 31, 2001.

ADDRESSES: Send comments to: U.S. Coast Guard Marine Safety Office, San Francisco Bay, Coast Guard Island, Alameda, CA 94501. Any comments and material received from the public, as

well as documents indicated in this preamble as being available in the docket, will become part of docket COTP San Francisco Bay 01–009, and will be available for inspection or copying at the same address between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and that under 5 U.S.C. 553 (d)(3), good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**.

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. On the same day, a similar attack was conducted on the Pentagon in Arlington, Virginia. Also, on the same date, a fourth commercial passenger airplane was hijacked, this one from Newark, New Jersey, and later crashed in Pennsylvania. National security officials warn that future terrorist attacks against civilian targets may be anticipated. A heightened level of security has been established concerning all vessels transiting in the San Francisco Bay, and particularly in waters adjacent to San Francisco International Airport and Oakland International Airport. These security zones are needed to protect the United States and more specifically the people, ports, waterways, and properties of the San Francisco Bay area.

The delay inherent in the NPRM process, and any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to the San Francisco and Oakland airports vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to these west coast airports. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

Request for Comments

Although the Coast Guard has good cause in implementing this regulation, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP San Francisco Bay 01–009, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to the person identified in the **FOR FURTHER INFORMATION CONTACT** section, or to the address under **ADDRESSES** explaining why a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating near the airports adjacent to the San Francisco Bay present possible platforms from which individuals may gain unauthorized access to the airports. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001 have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing two temporary security zones in the navigable waters of the United States surrounding San Francisco International Airport and Oakland International Airport.

San Francisco International Airport

This security zone will extend 2000 yards seaward from the shoreline of the San Francisco International Airport. This distance from the shoreline is estimated to be an adequate zone size to provide increased security for San Francisco International Airport.

Oakland International Airport

This security zone will extend 1800 yards seaward from the shoreline of the Oakland International Airport. This distance from the shoreline is estimated to be an adequate zone size to provide increased security for Oakland International Airport.

The size of each security zone is tailored to each airport and their specific navigational limitations, and therefore, are not the same exact size. The two security zones are uniform, however, in their purpose—to provide increased security for the airports, while minimizing the impact to vessel traffic on the San Francisco Bay.

These temporary security zones are necessary to provide for the safety and security of the United States of America and the people, ports, waterways and properties within the San Francisco Bay area. These security zones will be enforced by Coast Guard patrol craft or any patrol craft enlisted by the COTP. Persons and vessels are prohibited from entering into or remaining in these security zones without permission of the Captain of the Port, or his designated representative. Each person and vessel in a security zone shall obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the COTP.

Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions. Any person who violates this regulation, using a dangerous weapon, or who engages in conduct that causes

bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years (class C felony).

Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Due to the recent terrorist actions against the United States the implementation of these security zones are necessary for the protection of the United States and its people. Because these security zones are established in an area of the San Francisco Bay that is seldom used, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

These security zones will not have a significant impact on a substantial number of small entities because these security zones will not occupy an area of the San Francisco Bay that is frequently transited. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Office San Francisco Bay at (510) 437–3073.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation, because we are establishing security zones. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add new § 165.T11–095 to read as follows:

§ 165.T11–095 Security Zones; Waters surrounding San Francisco International Airport and Oakland International Airport, San Francisco Bay, California.

(a) *Locations.* (1) *San Francisco International Airport Security Zone.* This security zone extends 2000 yards seaward from the shoreline of the San Francisco International Airport and encompasses all waters in San Francisco Bay within an area drawn from the following coordinates beginning at a point latitude 37°39′06″ N and longitude 122°22′37″ W; thence to 37°38′28″ N and 122°21′04″ W; thence to 37°36′59″ N and 122°19′52″ W; thence to 37°35′33″ N and 122°20′44″ W; and along the shoreline back to the beginning point.

(2) *Oakland International Airport Security Zone.* This security zone extends 1800 yards seaward from the shoreline of the Oakland International Airport and encompasses all waters in San Francisco Bay within an area drawn from the following coordinates beginning at a point latitude 37°44′21″ N and longitude 122°15′34″ W; thence to 37°43′51″ N and 122°16′09″ W; thence to 37°43′12″ N and 122°16′17″ W; thence to 37°41′00″ N and 122°13′29″ W; thence to 37°41′13″ N and 122°12′09″ W; thence to 37°41′37″ N and 122°11′38″ W; and along the shoreline back to the beginning point.

(b) *Effective dates.* This section is in effect from 5 p.m. (PDT) on September 21, 2001 to 4:59 p.m. (PDT) on March 21, 2002. If the need for these security zones ends before the scheduled termination time, the Captain of the Port will cease enforcement of these security zones and will also announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in the security zone established by this temporary section, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zone established by this temporary section.

Dated: September 21, 2001.

L.L. Hereth,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 01–27255 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 072–3086; FRL–7088–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; One-Hour Ozone Attainment Demonstration for the Baltimore Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) consisting of the attainment demonstration for the one-hour ozone national ambient air quality standard (NAAQS) for the Baltimore severe nonattainment area (the Baltimore area). This control strategy plan was submitted by the Maryland Department of the Environment (MDE). The measures that have been adopted by the State which comprise the control strategy of the one-hour ozone attainment demonstration have and will result in significant emission reductions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the Baltimore area. The intended effect of this action is to approve these SIP revisions as meeting the requirements of the Clean Air Act (CAA or the Act).

DATES: This final rule is effective on November 29, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178 at EPA Region III office above or by e-mail at *fernandez.cristina@epa.gov.*

SUPPLEMENTARY INFORMATION: This **SUPPLEMENTARY INFORMATION** section is organized to address the following questions:

A. What Action Is EPA Taking In This Final Rulemaking?
B. What Previous Action Has Been Proposed on These SIP Revisions?
C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemakings for the Attainment Demonstration?
D. What Amendments to the Attainment Demonstration SIP Did Maryland Submit for the Baltimore Area Since December 16, 1999?
E. What Did the Supplemental Notices of Proposed Rulemaking Cover?
F. When Did EPA Make a Determination Regarding the Adequacy of the Motor Vehicle Emissions Budgets for the Baltimore Area?
G. What SIP Elements Did EPA Take Final Action on Concurrently or Before the Full Approval of the Attainment Demonstration Could Be Granted?
H. What Measures Are in the Control Strategy for the Attainment Demonstration?
I. What Are the Approved Transportation Conformity Budgets, and What Effect Does This Action Have on Transportation Planning?
J. What Happens to the Approved 2005 Budgets When States Change Their Budgets Using the MOBILE6 Model?
K. What is the Status of Maryland's New Source Review Program?
L. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Those?

I. Background

A. What Action Is EPA Taking in This Final Rulemaking?

EPA is approving the one-hour attainment demonstration submitted by Maryland for the Baltimore area as fully meeting the requirements of CAA section 182(c)(2) and (d). The following table identifies submittal dates and amendment dates for the attainment demonstration:

TABLE 1.—SUMMARY OF ATTAINMENT DEMONSTRATION SIP SUBMITTAL DATES

	Date	Summary of content
Initial Submittal	April 29, 1998	Attainment Demonstration.
Amendment	August 18, 1998	Attainment Demonstration Revision to Include Supplemental Regional Scale Modeling.
Amendment	December 21, 1999	Attainment Demonstration Revision to Include Revised Motor Vehicle Emission Budgets.
Amendment	December 28, 2000	Attainment Demonstration Revision to Include Revised Motor Vehicle Emission Budgets to Reflect Tier 2 and Commitments.
Amendment	August 20, 2001	Attainment Demonstration Revision to Include Reasonably Available Control Measures Analysis.

TABLE 1.—SUMMARY OF ATTAINMENT DEMONSTRATION SIP SUBMITTAL DATES—Continued

	Date	Summary of content
Amendment	December 28, 2000	Attainment Demonstration Revision to Include Revised Motor Vehicle Emission Budgets to Reflect Tier 2 and Commitments.
Amendment	August 20, 2001	Attainment Demonstration Revision to Include Reasonably Available Control Measures Analysis.

B. What Previous Action Has Been Proposed on These SIP Revisions?

In a December 16, 1999 notice of proposed rulemaking (the December 16, 1999 NPR), we proposed approval of the attainment demonstration for the Baltimore area (64 FR 70397).

On February 22, 2000 (65 FR 8703), EPA published a notice of availability on guidance memoranda relating to ten one-hour ozone attainment demonstrations (including the Baltimore area) proposed for approval or conditional approval on December 16, 1999. The guidance memoranda are entitled: "Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations' dated November 3, 1999, and "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas' dated November 30, 1999.

On July 28, 2000, EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration (65 FR 46383). In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIP revisions. This supplemental notice is discussed in Section I.E.

On July 16, 2001, EPA published a SNPR on the attainment demonstration (66 FR 36964). In that supplemental notice, we proposed to approve a revision that contains revised motor vehicle emissions budgets for the attainment year of 2005 which incorporate and reflect the benefits of the Federal Tier 2/Low Sulfur rule; and enforceable commitments to: (1) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory, (2) submit revised SIP and motor vehicle emissions budgets within one year after MOBILE6 is issued, and (3) perform a mid-course review. We received no comments on that SNPR.

On September 7, 2001, EPA published a SNPR on the attainment demonstration (66 FR 44760). In that supplemental notice, we proposed to approve an Maryland's RACM analysis and determination for the Baltimore area. We received no timely comments on that SNPR.

Comments received on the December 16, 1999 and July 28 , 2000 proposed notices listed in this section relevant to the Baltimore area attainment demonstration are discussed in Sections I.L. and II.

C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemakings for the Attainment Demonstration?

On December 16, 1999 (64 FR 70397), we proposed approval of the attainment demonstration for the Baltimore area. Our approval was contingent upon certain actions by Maryland. These actions were that Maryland:

(1) Adopt and submit adequate motor vehicle emissions budgets;

(2) Submit a list of control measures that, when implemented, would be expected to provide sufficient additional emission reductions to further reduce emissions to support the attainment test and a commitment that these measures would not involve additional limits on highway construction beyond those that could be imposed under the submitted motor vehicle emissions budget;

(3) Adopt and submit a rule for the regional NO_X reductions consistent with the modeling demonstration; and

(4) Adopt and submit an enforceable commitment, or a reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and for additional emission reduction measures developed through the regional process, submit an enforceable commitment for the additional measures and a backstop commitment to adopt and submit intrastate measures for the emission reductions in the event the regional process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP and motor vehicle emissions budget by October 31, 2001 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP and motor vehicle emissions budgets one year after MOBILE6 is issued.

(d) Perform a mid-course review by December 31, 2003.

D. What Amendments to the Attainment Demonstration SIP Did Maryland Submit for the Baltimore Area Since December 16, 1999?

The following is a summary of such submittals which include submittal dates of revisions, the content of these submissions and other pertinent facts regarding these submissions:

(1) On December 21, 1999, Maryland submitted the "State Implementation Plan (SIP) Revision: Modification to the Phase II Attainment Plan for the Baltimore Nonattainment Area and Cecil County: Revising the Mobile Source Emission Budgets." This submittal contained revisions to the 2005 motor vehicle emission budgets for the attainment plan for the Baltimore Area and for Cecil County, Maryland which is part of the Philadelphia-Wilmington-Trenton ozone nonattainment area.

(2) On December 28, 2000, Maryland submitted the "State Implementation Plan (SIP) Revision: Modification to the Phase II Attainment Plan for Cecil County: Revising the Mobile Source Emission Budgets, Adding Tier 2 Standards." This submittal contained the revised 2005 motor vehicle emissions budgets for the attainment demonstration that reflect the benefits of the Tier 2/Low Sulfur-in-fuel rule benefits and revised commitments to do the following:

(a) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets if the additional measures affect the motor vehicle emissions inventory,

(b) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued.

(c) Perform a mid-course review by December 31, 2003.

(3) On August 20, 2001, Maryland submitted the "State Implementation Plan (SIP) Revision: Reasonably Available Control Measures Analysis for the Baltimore Region." This submittal supplements the attainment demonstration for the Baltimore Area by including a RACM analysis.

E. What Did EPA's Supplemental Notices of Proposed Rulemaking Cover?

(1) On July 28, 2000, EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration (65 FR 46383). In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in this attainment demonstration SIP revision:

(a) First, we proposed a clarification of what occurs if we finalize conditional or full approval of this and certain other attainment demonstration SIP revisions based on a state commitment to revise the SIP's motor vehicle emissions budgets in the future. Under the proposal, the motor vehicle emissions budgets in the approved SIP will apply for transportation conformity purposes only until the budgets are revised consistent with the commitment and we have found the new budgets adequate. Once we have found the newly revised budgets adequate, then they would apply instead of the previous conditionally or fully approved budgets. Normally, revisions to approved budgets cannot be used for conformity purposes until we approve the revised budgets into the SIP. Therefore, we proposed to clarify that when our approval of this and certain other one-hour ozone attainment demonstrations is based on a commitment to future revisions to the budget, our approval of the budget lasts only until revisions to satisfy those conditions are submitted and we find them adequate.

(b) Second, we proposed that states may opt to commit to revise their emissions budgets one year after the release of the MOBILE6 model, as originally proposed on December 16, 1999; or, states may commit to a new option, *i.e.*, to revise their budgets two years following the release of the MOBILE6 model, provided that conformity is not determined without adequate MOBILE6-derived SIP budgets during the second year. This latter proposal is not germane to the Baltimore area because Maryland has submitted an enforceable commitment to revise the motor vehicle emissions budgets within one year after the official release of the MOBILE6 model.

(c) In addition, we re-opened the comment period to take comment on these two issues and to allow comment on any additional materials that were placed in the dockets for the proposed actions close to or after the initial comment period closed on February 14, 2000 (65 FR at 46383, July 28, 2000). For many of the areas, additional information had been placed in the docket close to or since the initial comment period concluded. In general, these materials were identified as consisting of motor vehicle emissions budgets, and revised or additional commitments or reaffirmations submitted by the states (65 FR at 46383, July 28, 2000).

(2) On July 16, 2001, EPA published a SNPR on the attainment demonstration (66 FR 36964). We received no comments on that SNPR. In that supplemental notice, we proposed to approve:

(a) a revision that contains revised motor vehicle emissions budgets for the attainment year of 2005 which incorporate and reflect the benefits of the Federal Tier 2/Low Sulfur rule; and

(b) enforceable commitments to submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, revise the SIP and motor vehicle emissions budgets by October 31, 2001 if additional measures affect the motor vehicle emissions inventory, submit revised SIP and motor vehicle emissions budgets within one year after MOBILE6 is issued, and to perform a mid-course review.

(3) On September 7, 2001, EPA published a SNPR on the attainment demonstration (66 FR 44760). In that supplemental notice, we proposed to approve Maryland's RACM analysis and determination for the Baltimore area. We received no timely comments on that SNPR.

F. When Did EPA Make a Determination Regarding the Adequacy of the Motor Vehicle Emissions Budgets for the Baltimore Area?

Maryland submitted a revision to the attainment plan SIP for the Baltimore area on December 28, 2000. This revision contained revised motor vehicle emissions budgets for the attainment year of 2005 that reflect the benefits of the Federal Tier 2/Low Sulfur rule.[1]

We began our adequacy review process on the budgets in the December 28, 2000 submittal under our adequacy process by a posting on EPA's Web site (*www.epa.gov/otaq/transp/conform/adequacy.htm*) that started a public comment period on the adequacy of the motor vehicle emissions budgets in the December 28, 2000 SIP revision for the Baltimore area. We prepared a technical support document for our adequacy determination that included responses to any public comments received during the adequacy process comment period. In a July 5, 2001, **Federal Register** notice we announced that we had determined that the budgets contained in the December 28, 2000 submission were adequate (66 FR 35421). The proposed approval of the budgets in the December 28, 2000 submission is discussed in Section I.B., and the response to any comments received on the proposed approval are in Section II. of this document. Our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the "conformity" button).

G. What SIP Elements Did EPA Take Final Action on Concurrently or Before the Full Approval of the Attainment Demonstration Could Be Granted?

In the December 16, 1999 NPR for the Baltimore attainment demonstration SIP, EPA noted in Table 4 the status of many of the control measures or part D requirements of the Act for serious and severe areas. The following provides the status of those SIP elements which are prerequisite for approval of the attainment demonstration but which were either not fully approved on December 16, 1999 or not listed in Table 4 of the December 16, 1999 NPR as fully approved:

(1) On October 29, 1999, EPA approved Maryland's enhanced vehicle inspection and maintenance SIP (64 FR 58340).

(2) On December 28, 1999, EPA approved Maryland's national low emission vehicle (NLEV) SIP (64 FR 72564).

(3) On February 3, 2000, EPA approved Maryland's, 15 percent VOC Reduction Plan (65 FR 5242).

(4) On December 15, 2000, EPA approved Maryland's NO_X Budget Rule consistent with the Ozone Transport Commission's (OTC) NO_X Memorandum of Understanding (MOU) Phase II controls (65 FR 78416).

(5) On January 10, 2001, EPA approved Maryland's NO_X trading rule consistent with the NO_X SIP Call (66 FR 1866).

(6) On, February 8, 2001, EPA approved Maryland's NO_X RACT rule (66 FR 9522).

(7) On September 26, 2001, EPA approved Maryland's Post-1996 Rate-of-Progress Plans (ROP) for the Baltimore area (66 FR 49108).

To comply with the VOC RACT requirements, Maryland has developed source category rules. Sources of VOC in the Baltimore area that emit more than 25 tons per year (TPY) and that are not subject to any specific source category RACT rule are then subject to Maryland's SIP-approved regulation COMAR 26.11.06.06—Volatile Organic Compounds. Such sources may apply on a case-by case basis for an alternative RACT under COMAR 26.11.19.02G—Control of Major Stationary Sources of Volatile Organic Compounds. But until such a case-by-case RACT determination is made by the MDE and approved by EPA as a SIP revision, the source remains subject to COMAR 26.11.06.06. The following provides the status of those source category RACT rules which were either not fully approved on December 16, 1999. December 16, 1999 as fully approved:

(1) On August 19, 1999, EPA approved Maryland's Fiberglass Manufacturing Rule (64 FR 45182).

(2) On January 14, 2000, EPA approved Maryland's Flexographic Printing and Plastic Bottle Coating Rule (65 FR 2334).

(3) On May 7, 2001, EPA approved Maryland's Bread and Snack Food Drying Operations and Expandable Polystyrene Operations Rules (66 FR 22924).

(4) On September 5, 2001, EPA approved Maryland's Marine Vessel Coating Rule (66 FR 46379).

(5) On September 20, 2001, EPA approved Maryland's Synthetic Organic Chemicals Rule (66 FR 37914).

(6) On October 5, 2001, the Regional Administrator signed a final action approving the Maryland's Iron & Steel Operations rule. That action has been or soon will be published in the **Federal Register**.

(7) On October 9, 2001, the Regional Administrator signed a final action approving the Maryland's Aerospace Coating, Kraft Pulp Mills, and Distilled Spirits Facilities rules. That action has been or soon will be published in the **Federal Register**.

H. What Measures Are in the Control Strategy for the Attainment Demonstration?

TABLE 2.—CONTROL MEASURES IN THE ONE-HOUR OZONE ATTAINMENT DEMONSTRATION FOR THE BALTIMORE NONATTAINMENT AREA

Control measure	Type of measure	Credited in attainment plan
Enhanced Inspection & Maintenance	SIP Approved	Yes.
Federal Motor Vehicle Control Program	Federal	Tier 1 and 2.
National Low Emission Vehicle (NLEV) [1]	SIP Approved opt-in	Yes.
Reformulated Gasoline (Phase 1 & 2)	Federal	Phase 2.
Federal Non-Road Gasoline Engines	Federal	Yes.
Federal Non-Road Heavy Duty Diesel Engines	Federal	Yes.
Railroad Locomotive Controls	Federal	Yes.
NO_X RACT	SIP Approved	Yes.
VOC RACT to 25 tpy	SIP Approved	Yes.
Stage II Vapor Recovery & On-Board Refueling Vapor Recovery (ORVR).	SIP Approved Federal	Yes.
AIM Surface Coatings	Federal	Yes.
Consumer & Commercial Products	Federal	Yes.
Autobody Refinishing	Federal/SIP Approved	Yes.
Surface Cleaning/Degreasing	SIP Approved	Yes.
Open Burning Ban	SIP Approved	Yes.
Municipal Landfills	SIP Approved	Yes.
Expandable Polystyrene Products	SIP Approved	Yes.
Yeast Manufacturing	SIP Approved	Yes.
Commercial Bakery Ovens	SIP Approved	Yes.
Screen Printing	SIP Approved	Yes.
Marine Engine Standards	Federal	Yes.
Graphic Arts	SIP Approved	Yes.
Heavy Duty Diesel Engines (On-Road)	Federal	Yes.
Beyond RACT NO_X Requirements on Utilities	SIP Approved	Yes.

Notes:
[1] To the extent NLEV not superceded by Tier 2.

I. What Are the Approved Transportation Conformity Budgets, and What Effect Does This Action Have on Transportation Planning?

(1) What Are the Approved Transportation Conformity Budgets in the Attainment Demonstration?

EPA has determined that the budgets in the 2005 attainment demonstration are adequate. The approved motor vehicle emissions budgets of the 2005 attainment demonstration SIP are listed in Table 3. Table 3 also provides the amounts by pollutant in tons per day (TPD), the year associated with the budgets, and the effective date of EPA's adequacy determination.

[1] In the December 16, 1999 NPR, we proposed to disapprove the attainment demonstration if Maryland did not submit motor vehicle emissions budgets for this area that EPA could find adequate by May 31, 2000 (See 64 FR 70402). The budgets subject to this May 31, 2000 deadline did not necessarily have to account for Federal Tier 2/Low Sulfur rule reductions. On December 21, 1999, Maryland submitted a SIP revision that included motor vehicle emissions budgets for the 2005 attainment year that did not include the benefits of the Federal Tier 2/Low Sulfur rule. EPA had determined that these budgets were adequate by the May 31, 2000 deadline (65 FR 8701, February 22, 2000).

TABLE 3.—TRANSPORTATION CONFORMITY BUDGETS FOR THE BALTIMORE AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_x (TPD)	Effective date of adequacy determination
Attainment Demonstration	2005	45.5	96.9	July 20, 2001, (See 66 FR 35421, published July 5, 2001).

EPA has concluded that the 2005 attainment demonstration SIP, including its associated budgets, meets the requirements of the CAA. EPA has also determined that the Baltimore area ozone SIP contains the measures necessary to support these budgets. In this final action, EPA is approving these budgets.

(2) Is the Requirement To Redetermine Conformity Within 18-Months Under Section 93.104 of the Conformity Rule Triggered?

Our conformity rule establishes the frequency by which transportation plans and transportation improvement programs must be found to conform to the SIP and includes trigger events tied to both submittal and approval of a SIP (40 CFR 93.104(e)). Both initial submission and initial approval trigger a redetermination of conformity. This final rule approves motor vehicle emissions budgets contained in the attainment demonstration. We are advising affected transportation planning agencies that this final approval of the budgets is listed in Table 3 will require a redetermination that existing transportation plans and TIPs conform within 18 months of the effective date listed in the **DATES** section of this document. See 40 CFR 93.104(e).

J. What Happens to the Approved 2005 Budgets When States Change Their Budgets Using the MOBILE6 Model?

All states whose attainment demonstration includes the effects of the Tier 2/Low Sulfur program have committed to revise and resubmit their motor vehicle emissions budgets after EPA releases the MOBILE6 model. On December 28, 2000, Maryland submitted a commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. In this final rulemaking action, EPA is approving this commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. If Maryland fails to meet its commitment to submit revised budgets using the MOBILE6 model, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

As we proposed in our July 28, 2000 SNPR (65 FR 46383), today's final approval of the budgets contained in the 2005 attainment plan will be effective for conformity purposes only until such time as revised motor vehicle emissions budgets are submitted (pursuant to the commitment to submit revised budgets using the MOBILE6 model within one year of EPA's release of that model) and we have found those revised budgets adequate. We are only approving the attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its currents budgets because Maryland has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

K. What is the Status of Maryland's New Source Review Program?

EPA approved Maryland's NSR program on February 12, 2001 (66 FR 9766). As stated in the proposed (65 FR 62675, October 19, 2000) and final rulemaking notices, EPA granted limited approval of Maryland's NSR regulations as they apply in the Baltimore area and the Maryland portion of the Philadelphia area, and granted full approval throughout the remainder of Maryland. EPA's sole reason for granting limited approval in the Baltimore area and in Cecil County rather than full approval was that Maryland's NSR regulations do not contain certain restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets. These restrictions, however, only apply in nonattainment areas without an approved attainment demonstration [See 40 CFR section 51.165(a)(ii)(C)]. As EPA today is taking final action to approve Maryland's attainment demonstration SIPs for the Baltimore and Philadelphia areas, the Maryland's SIP-approved NSR program's lack of restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets, applicable only in nonattainment areas *without* an approved attainment demonstration, is moot. Now that we have approved Maryland's attainment demonstration SIPs for the Baltimore and Philadelphia areas, we intend to remove the limited nature of our approval of the State's NSR program in those areas of Maryland as well.

L. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Them?

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on December 16, 1999 (64 FR 70397) for Maryland's ozone attainment demonstration for the Baltimore area. Comments were received from Robert E. Yuhnke on behalf of Environmental Defense and Natural Resources Defense Council; the Midwest Ozone Group; and from the University of Maryland Law School on behalf of 1000 Friends of Maryland.

EPA also received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383), in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. Comments were received from Environmental Defense and from ELM Packaging Co.

EPA receive no timely comments on the SNPRs published on July 16, 2001 (66 FR 36964) and on September 7, 2001 (66 FR 44760) for the Baltimore area's 2005 attainment demonstration SIP.

II. Response to Comments

The following discussion summarizes and responds to the comments received on the proposed actions published on December 16, 1999 (64 FR 70397) and July 28, 2000 (65 FR 46383).

A. Attainment Demonstration—Weight of Evidence

Comment 1: The weight of evidence approach does not demonstrate attainment or meet CAA requirements for a modeled attainment demonstration. Commenters added several criticisms of various technical aspects of the weight of evidence approach, including certain specific applications of the approach to particular attainment demonstrations. These comments are discussed in the following response.

Response 1: Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the one-hour standard. Section 182(c)(2)(A) provides that "[t]his attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective." As described in more detail below, EPA allows states to supplement their photochemical modeling results, with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration "be based on photochemical grid modeling," because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, "The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models)."[2] 40 CFR 51.112(a)(1). However, the regulations further provide, "Where an air quality model specified in Appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment. * * *" Appendix W, in turn, provides that, "The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas," but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. See 40 CFR part 51 Appendix W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted one-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) one-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[3]

In 1996, EPA issued guidance[4] to update the 1991 guidance referenced in 40 CFR part 51 Appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of one-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e. analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance[5] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor

[2] The August 12, 1996 version of "Appendix W to part 51—Guideline on Air Quality Models" was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

[3] Guidance on the Use Of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA–454/B–95–007, June 1996.

[4] *Ibid.*

[5] "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group. Research Triangle Park, NC 27711. November 1999. Web site: *http://www.epa.gov/ttn/scram.*

attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the one-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be "no exceedances" in the future model predictions.

The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three "design values" represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (*i.e.*, average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (*i.e.*, average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors.

A commenter criticized the 1999 guidance as flawed on grounds that it allows the averaging of the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing lower air quality concentrations to be averaged against higher concentrations thus reducing the total emission reduction needed to attain at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by accounting for growth and controls) to determine whether attainment results. These 1990 emissions would contribute to three design value periods (1988–90, 1989–91 and 1990–92).

Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions-those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, i.e.—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that states must model all control measures being implemented. Moreover, a component of this technique—the estimation of future design value—should be considered a model-predicted estimate. Therefore, results from this technique are an extension of "photochemical grid" modeling and are consistent with section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 NPRs will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 ppb on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to 3 exceedances in 3 years in every grid cell. If the model over predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the weight of evidence determination.

When reviewing a SIP, EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the states and available to EPA. This information includes model results for the majority of the control measures. Although not all measures were modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. EPA's decision was further strengthened by each state's commitment to check progress towards attainment in a mid-course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a "rollback" modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR part 51 Appendix W section 6.2.1.e. provides, "Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies." Section 14.0 of Appendix W defines "rollback" as "a simple model that assumes that if

emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately." Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC would be required. There was no approach for identifying NO_X reductions.

The "proportional rollback" approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone.

For example, if monitoring or modeling results indicate that ozone was reduced by 25 ppb during a particular period, and that VOC and NO_X emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_X. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a "proportional rollback" technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies.

This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: it obviates the need to expend more time and resources to perform additional modeling. In addition, the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which is more consistent with recommendations referenced by Appendix W and does not assume a direct proportional relationship between ozone and its precursors. Lastly, the requirement that areas perform a mid-course review (a check of progress toward attainment) provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51 Appendix W, without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely upon a proportional rollback technique in this rulemaking, but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an "alternative model" to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose the use the November 1999 guidance "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled" in the December 16, 1999 NPR and has responded to all comments received on that guidance elsewhere in this document.

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) Only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values. These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO_X SIP call domain, results from the EPA regional modeling for NO_X controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate nonattainment, and not when they indicate attainment. First, we disagree with the premise of this comment: EPA does not apply the WOE factors to adjust model results. EPA applies the WOE factors as additional analysis to compensate for uncertainty in the air quality modeling. Second, EPA has applied WOE determinations to all of the attainment demonstrations proposed for approval in December 1999. Although for most of them, the air quality modeling results by themselves indicated nonattainment, for two metropolitan areas—Chicago and Milwaukee, including parts of the States of Illinois, Indiana, and Wisconsin, the air quality modeling did indicate attainment on the basis of the statistical test.

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter. The 1999 monitor values do

not constitute substantial evidence indicating that the SIPs will not provide for attainment. These values do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, these controls are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect reductions anticipated by control measures, that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether or not the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Low Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), states have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is released. EPA will work with states on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration. If analysis indicates additional measures are needed, EPA will take the appropriate action.

Comment 2: Comments were raised asserting that monitored air quality and air quality trends as late as 1999 do not support attainment in the Baltimore area.

Response 2: At the time of the 1999 monitored readings, the Baltimore area had not implemented certain measures that were required to be implemented as part of the attainment demonstration. Moreover, neither the Baltimore area (nor areas upwind of the Baltimore area) have yet implemented the NO_X reductions required under the NO_X SIP Call (63 FR 57356, October 27, 1998). (EPA has, however, approved Maryland's SIP revision which contains regulations to implement the NO_X SIP Call.) Implementation of all these controls may be expected to reduce ozone levels in the Baltimore area resulting in a downward trend in ozone concentrations. Meteorology also was an important factor in the high ozone levels of 1999. In 1999 the entire Northeastern United States was gripped in a severe drought characterized by clear skies and hot temperatures leading to higher than normal ozone concentrations. For these reasons, air quality trends do not constitute a meaningful factor for the WOE analysis for the Baltimore area.

Comment 3: A comment was received that asserts that EPA has chosen to ignore unmistakable calculations that indicated violations of the one-hour standard in the Baltimore area.

Response 3: When reviewing a SIP, EPA must make a reasonable determination that the control measures identified are reasonably likely to attain. Under the WOE determination, EPA has made these determinations based on all of the information presented by the states and available to EPA. This included model results for the majority of the control measures. Though all measures were not modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. The State of Maryland has made a commitment to adopt the additional measures needed for attainment that were identified through the application of EPA's 1999 guidance (See footnote 4). EPA's decision to propose approval of the attainment demonstrations for the Baltimore area was further strengthened by Maryland's commitment to a mid-course review to check progress towards attainment in 2003 along with a commitment to take corrective action if the anticipated progress is not being made.

Comment 4: A comment raised the issue that the Maryland Department of the Environment (MDE) modeled only one episode while the modeling guidance requirement is three episodes. The comment also asserts that the grid resolution of the Ozone Transport Assessment Group (OTAG) modeling would preclude its use in the determination of urban attainment.

Response 4: EPA's 1991 guidance recommends modeling three different episodes representing three predominant meteorological regimes conducive to high ozone. However, due to time constraints and model performance problems, MDE only analyzed one episode with local scale modeling (July 18–20, 1991). The third day of this episode July 20, 1991 is a very severe ozone episode day with a meteorological ozone forming potential ranking of 10 (Cox and Chu 1996). The Cox and Chu analysis ranked all summer days over the past 50 years according to the severity of each day's meteorological ozone forming potential. The most severe day would receive a ranking of one. Given the severity of the July 1991 episode, it is likely to be the controlling episode in the Baltimore area in the determination of reductions needed for attainment. This episode represents one of the most frequently occurring weather patterns conducive to elevated levels of ambient ozone in the Baltimore area as described in the Maryland Department of the Environment document entitled, "Phase II Attainment Plan for the Baltimore Region and Cecil County."

EPA shared the concerns expressed in the comment in regard to the limitations of analyses for a single episode and its associated set of meteorological conditions. Therefore, to supplement the review, EPA considered other analyses. For consideration of other meteorological conditions EPA relied on the modeling described in the Supplemental Notice of Proposed Rulemaking for the NO_X SIP Call. Three NO_X SIP call episodes (1991, 1993, 1995) were analyzed using methodologies very similar to the methodologies outlined in EPA's 1999 guidance (See footnote 7). EPA was able to determine that the NO_X SIP call results supported the MDE analyses and that controls identified in the SIP would make progress towards attainment, and with the "additional measures" identified by EPA, would provide for attainment. In regard to the geographic resolution of the NO_X SIP call modeling, EPA performed a review of the sensitivity of the estimates of future design values to reduction factors derived from 12km grid cells versus 4 km grid cells and was able to show that very little model accuracy is lost when grid size is increased from 5 kilometers (MDE grid resolution) to 12 kilometers (NO_X SIP call grid resolution).

Comment 5: A commenter takes issue with EPA's conclusion that the model over-predicted by 22 percent, yet the Modeling Technical Support Document for Baltimore's Attainment SIP concluded that UAM–IV's validation performance with respect to the July 18–20 episode was within EPA recommended tolerances.

Response 5: Model performance within EPA recommended tolerances is used as a screening analysis to determine if the model is performing acceptably. If performance is unacceptable, EPA recommends selection of another episode. In this case the performance was acceptable and the results of the modeling analyses were used. However, EPA model performance criteria are such that systematic model over-prediction in peak concentrations is possible despite overall compliance with EPA model performance criteria. In EPA's view, consideration of the over-prediction is one way to assess modeling uncertainty. To further address uncertainty, EPA applied the 1999 guidance to estimate the Baltimore area future ozone design value using the same technique that was applied to all of the other attainment demonstrations received. Both the assessment of over-prediction and the estimated future design value were used in the WOE determination.

Comment 6: A commenter asserts that model over-prediction in the base case does not necessarily translate to the same model over-prediction in the future case.

Response 6: It is very probable that if the model over predicts peak ozone concentrations in the base case it will over predict peak ozone concentrations in the future or attainment year. EPA agrees that there is no scientific method for evaluating model performance in the future. However, EPA can review the possible implications of model over prediction. EPA's assessment of the impact that the over-prediction may have on future predictions was an attempt to determine if model over-prediction was not a factor would the model predict attainment. In this case, when the magnitude of possible over-prediction is considered, the modeling results indicate attainment is likely, which, therefore, supports EPA's decision to approve the SIP.

Comment 7: A comment was received that asserts it is extremely inappropriate for EPA to adjust the model results downward by 22 percent so that the peak ozone concentration in 2005 is 129 ppb rather than 147 ppb as the model predicted in the Baltimore area modeling.

Response 7: EPA believes that it is appropriate to make the adjustment in the model results as an additional WOE argument in support of attainment for the following reasons. EPA guidance recommends assessment of model performance (both over- and under-prediction) as one of the factors affecting the model results. In general performance measures that fall within EPA recommended ranges are considered as an indication that the model is performing acceptably. For the Baltimore area, EPA more closely reviewed and used this review as part of the WOE. The technique is described in Technical Support Document for the One-Hour Ozone Attainment Demonstration submitted by the State of Maryland for the Baltimore Ozone Nonattainment Area.(see footnote 5). The modeled peak ozone results (the ozone plume) generally correlated (in geographic proximity) with the monitored peak ozone except that the peak modeled ozone levels averaged approximately 22% higher than the peak monitored levels. This led EPA to conclude that adjusting the model predicted peak concentration by 22% was a reasonable approach for accounting for model uncertainty/over-prediction. If the peak modeled and monitored ozone plumes had not occurred in the same location, EPA would not have had adequate information to reasonably judge that the model is actually over-predicting peak ozone concentration. Even if the modeled peak ozone concentration for the July 1991 episode is not adjusted for model over-prediction, the peak concentration of 147 ppb is only 7 ppb greater than the concentration that would be allowed (140 ppb) on a day with an ozone forming potential as severe as that of July 20, 1991 (Cox and Chu, 1996). Therefore, given the control measures modeled, coupled with the "additional measures" identified by EPA, and given the Court's support for the NO_X SIP call, EPA feels Baltimore will attain the standard, as expeditiously as practicable.

Comment 8: A comment asserts that the Baltimore area local attainment modeling predicts ozone concentrations so far in excess of the ozone NAAQS that a weight of evidence analysis should not even be considered in the demonstration of attainment.

Response 8: As discussed in the technical support document that EPA prepared in support of its proposed action on Maryland's April 24, 1998 SIP revision (See 64 FR 70397, December 16, 1999), EPA disagrees that the Baltimore area local modeling predicts ozone concentrations so far in excess of the ozone NAAQS that a weight of evidence analysis should not even be considered in the demonstration of attainment.[6] Maryland's ozone attainment demonstration is primarily based on photochemical grid modeling of a July 1991 episode. Because of the severity of the July 1991 episode, photochemical grid modeling for the Baltimore area predicts values above the standard. However, the July 1991 episode is a very severe ozone episode with a meteorological ozone forming potential ranking of 10 (Cox and Chu 1996). The Cox and Chu analysis ranked all summer days over the past 50 years according to the severity of each day's meteorological ozone forming potential. In 1996, EPA issued additional guidance[7] to update the 1991 guidance referenced in 40 CFR 50 Appendix W by making the modeled attainment test more closely reflect the form of the NAAQS and in doing so allowing some modeled exceedances on very severe episode days in addition to allowing the consideration of other evidence to address uncertainties in the modeling databases and application. Due to the severity of the July 1991 episode, a peak modeled concentration of 140 ppb is, according to EPA's 1996 modeling guidance, consistent with attainment. While the peak modeled concentration for the July 1991 episode in the Baltimore area was 147 ppb, this was likely to be an over-prediction, and in any event, was close enough to 140 ppb for Maryland to consider other information to determine the likelihood of attainment. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is the WOE determination.

Maryland used WOE to show that the Baltimore area is likely to attain. Maryland's primary WOE analysis is

[6] Technical Support Document for the Maryland One-Hour Ozone Attainment Demonstration for the Baltimore Ozone Nonattainment Area (MD 074–3046). November 30, 1999.

[7] Guidance on the Use Of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA-454/B–95–007, June 1996.

based on EPA's 1999 guidance[8] in which an attainment year design value is predicted using relative changes in peak ozone concentration from the base year to the attainment year using local scale modeling results. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. In the case where the calculated attainment year design value is above the standard, the 1999 guidance provides a methodology for identifying additional emission reductions not modeled, that are or will be approved into the SIP, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between monitored ozone and precursors. The resulting attainment year design value meets the NAAQS. Even though an exceedance of the NAAQS was modeled, Maryland's WOE demonstration shows that the Baltimore area is projected to experience enough air quality improvement to demonstrate attainment in 2005, *i.e.*, provides for a 2005 year projected design value below the standard.

B. Reliance on the NO_X SIP Call and Tier 2

Comment: Several commenters stated that given the uncertainty surrounding the NO_X SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO_X SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_X SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier 2 tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the NO_X SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_X SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_X SIP Call. *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000), *cert. denied*, _U.S._, 121 S. Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA*, 251 F.3d 1026 (D.C. Cir. 2001) . In those cases, the court largely upheld the NO_X SIP Call. Although a few issues were vacated or remanded to EPA for further consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the NO_X SIP Call. Moreover, contrary to the commenter's suggestion, the NO_X SIP Call modeling data bases were not used to develop estimates of reductions from the Tier 2 program for the severe-area one-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the NO_X SIP Call modeling lead to inaccurate results for the severe-area one-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the states to achieve the full level of the SIP Call reductions by May 2003. First, the court vacated the rule as it applied to two states—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these states and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the *Appalachian Power* case remanded an issue concerning computation of the electric generating units (EGU) growth factor, it is EPA's view that states should assume that the SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the states are moving forward to implement the NO_X SIP Call.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_X SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michigan*.

C. Approval of Demonstrations That Rely on State Commitments or State Rules for Emission Limitations To Lower Emissions in the Future Not Yet Adopted by a State and/or Approved By EPA

Comment: Several commenters disagreed with EPA's proposal to approve states' attainment demonstrations because: (a) Not all of the emissions reductions assumed in the demonstrations have actually taken place, (b) are reflected in rules yet to be adopted and approved by a state and approved by EPA as part of the SIP, (c) are credited illegally as part of a demonstration because they are not approved by EPA as part of the SIP, or (d) the commenter maintains that EPA does not have authority to accept enforceable state commitments to adopt measures in the future in lieu of current adopted measures to fill a near-term shortfall of reductions.

Response: EPA disagrees with the comments, and believes—consistent with past practice—that the CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[9] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.

As an initial matter, EPA believes that present circumstances for the New York City, Philadelphia, Baltimore, and Houston nonattainment areas warrant

[8] "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711, November 1999. Web site: *www.epa.gov/ttn/scram.*

[9] These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. *See, e.g., American Lung Ass'n of N.J.* v. *Kean*, 670 F. Supp. 1285 (D.N.J. 1987), *aff'd*, 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc.* v. *N.Y. State Dept. of Env. Cons.*, 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't* v. *Deukmejian*, 731 F. Supp. 1448, *recon. granted in part*, 748 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.*, No. CV 97—6916—HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under section 179(a) of the Act, which starts an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

the consideration of enforceable commitments. The Northeast states that make up the New York, Philadelphia and Baltimore nonattainment areas submitted SIPs that they reasonably believed demonstrated attainment with fully adopted measures. After EPA's initial review of the plans, EPA recommended to these areas that additional controls would be necessary to ensure attainment. Because these areas had already submitted plans with many fully adopted rules and the adoption of additional rules would take some time, EPA believed it was appropriate to allow these areas to supplement their plans with enforceable commitments to adopt and submit control measures to achieve the additional necessary reductions. For Maryland's attainment demonstration for the Baltimore area, EPA has determined that the submission of enforceable commitments in place of adopted control measures for this limited set of reductions will not interfere with the area's ability to meet its 2005 attainment obligations.

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See, e.g.*, 62 FR 1150, 1187, January 8, 1997 (ozone attainment demonstration for the South Coast Air Basin); 65 FR 18903, April. 10, 2000 (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326, August 3, 1998 (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (state implementation plan for New Jersey). Nothing in the Act speaks directly to the approvability of enforceable commitments.[10] However, EPA believes that its interpretation is consistent with provisions of the CAA. For example, section 110(a)(2)(A) provides that each SIP "shall include enforceable emission limitations and other control measures, means or techniques* * * *as well as schedules and timetables for compliance*, as may be necessary or appropriate to met the applicable requirement of the Act." (Emphasis added). Section 172(c)(6) of the Act requires, as a rule generally applicable to nonattainment SIPs, that the SIP "include enforceable emission limitations and such other control measures, means or techniques * * * *as may be necessary or appropriate* to provide for attainment * * * by the applicable attainment date * * * " (Emphasis added). The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to attain. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments EPA is approving today—as long as the entire package of measures and rules provides for attainment.

As provided previously, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the Baltimore area—EPA would consider three factors in determining whether to approve the submitted commitments. First, EPA believes that the commitments must be limited in scope. In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow states to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994). While EPA does not believe that case is directly applicable here, EPA agrees with the Court that other provisions in the Act contemplate that a SIP submission will consist of more than a mere commitment. *See NRDC*, 22 F.3d at 1134.

In the present circumstances, the commitments address only a small portion of the plan. For the Baltimore area, Maryland's commitment addresses only 9.5 percent VOC and 0 percent NO_X of the emission reductions necessary to attain the standard. Please see Sections I.G. and I.H. of this document for a comprehensive description of all of the adopted control measures and other components of the Maryland attainment demonstration SIP's control strategy for the Baltimore area.

As to the second factor, whether the state is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This is supported by the recent recommendation of the OTC regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the states will be able to find sources of reductions to meet the shortfall. The states that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC has met and on March 28, 2001 recommended a set of control measures. Currently, the states are working through their adoption processes with respect to those, and in some cases other, control measures.

Although EPA has evidence that the state may not make the submission on or before the date to which it has committed, EPA believes that it is making sufficient progress to support approval of the commitment. The State of Maryland has indicated that it would submit and implement the measures within a time period fully consistent with the Baltimore area attaining the standard by its approved attainment date.

The third factor, EPA has considered in determining to approve limited commitments for the Baltimore area attainment demonstrations is whether the commitment is for a reasonable and appropriate period. EPA recognizes that both the Act and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors—such as the need to consider innovative control strategies—support the consideration of an enforceable commitment in place of adopted control measures, the commitment should provide for the adoption of the necessary control measures on an expeditious, yet practicable, schedule.

As provided above, for the New York, Baltimore and Philadelphia areas, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months to complete the OTC and state-adoption processes—a fairly ambitious schedule—i.e., until October

[10] Section 110(k)(4) provides for "conditional approval" of commitments that need not be enforceable. Under that section, a state may commit to "adopt specific enforceable measures" within one-year of the conditional approval. Rather than enforcing such commitments against the state, the Act provides that the conditional approval will convert to a disapproval if "the state fails to comply with such commitment."

31, 2001. As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA "SIP Call" provision of the CAA—section 110(k)(5)—which provides states with up to 18 months to submit a SIP after EPA requests a SIP revision. While EPA may have ended its inquiry there, and provided for the states to submit the measures within 18 months of its proposed approval of the attainment demonstrations, EPA further considered that these areas were all located with the Northeast Ozone Transport Region and determined that it was appropriate to provide these areas with additional time to work through the OTR process to determine if regional controls would be appropriate for addressing the shortfall. EPA believed that allowing these states until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007 or the ability of these areas to meet their ROP requirement. EPA still believes that this a reasonable schedule for the states to submit adopted control measures that will achieve the additional necessary reductions.

The enforceable commitments submitted by Maryland for the Baltimore nonattainment area, in conjunction with the other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment. EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because the state has obligated itself to submit the rules by specified short-term dates, and that obligation is enforceable by EPA and the public. Moreover, as discussed in the proposal and TSD, the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

D. RACM (Including Transportation Control Measures)

Comment: Several commenters have stated that there is no evidence in several states that they have adopted reasonably available control measures (RACM) or that the SIPs have provided for attainment as expeditiously as practicable. Specifically, the lack of Transportation Control Measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls. One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate a motor vehicle emission budget (MVEB) that is derived from a SIP that is inadequate for the purpose for which it is submitted. The commenter alleges that none of the MVEBs submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM; nor are they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the states must provide a justification for why they were determined to not be RACM.

Response: EPA reviewed the initial SIP submittals for the Baltimore area and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued policy guidance memorandum to have these states address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: "Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs").

On August 20, 2001, the State of Maryland submitted a revision to its 2005 attainment demonstration SIP for the Baltimore area which consists of an analysis of RACM. On September 7, 2001 (66 FR 46758), EPA published a SNPR proposing to approve this supplement to the SIP as meeting the RACM requirements. We received no timely comments on that September 7, 2001 SNPR. Based on this SIP supplement, EPA has concluded that the SIP for the Baltimore area meets the requirement for adopting RACM. In this final rule, EPA is approving Maryland's 2005 attainment demonstration plan for the Baltimore area including its RACM analysis and determination. This action that EPA is taking to approve the RACM analysis and determination of Maryland's attainment demonstration SIP for the Baltimore area is consistent with similar actions EPA is taking in final rules also signed on October 15, 2001 (which have been or soon will be published in the **Federal Register**) to approve attainment demonstrations and RACM analyses for other severe ozone nonattainment areas, specifically that for the Houston-Galveston area.

Section 172(c)(1) of the Act requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM.

Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *www.epa.gov/ttn/oarpg/t1pgm.html*.

As stated previously, the analysis submitted by Maryland on August 20, 2001, as a supplement to its attainment demonstration SIP for the Baltimore area, addresses the RACM requirement. Maryland has considered a variety of potential stationary/area source controls such as limits on area source categories not covered by a control technique guideline (e.g., motor vehicle refinishing, and surface/cleaning degreasing); rule effectiveness improvements; controls on major stationary sources of NO_X that are beyond that required under reasonably available control technology (RACT); and other potential measures. Maryland considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; low emission vehicle standards; and other measures such as trip reduction ordinances, value pricing and highway ramp metering.

The State has implemented measures which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. Maryland has adopted and submitted rules for the following categories of area sources which go beyond the Federally mandated controls. The State has implemented measures which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. Maryland has adopted and submitted rules for the following categories of area sources which go beyond the Federally mandated controls. The following are examples and not an exhaustive list:

(1) Maryland has adopted, and EPA has SIP approved, a rule for motor vehicle refinishing. The rule includes volatile organic compound content limits for motor vehicle refinishing coatings, application standards and storage and house keeping work practices. This rule goes beyond the Federal rule in content limits, and sets application and work practices standards.

(2) Maryland has adopted, and EPA has approved, a rule for control of VOC emissions from screen printing on plywood used for signs, and untreated sign paper.

(3) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from screen printing, lithographic printing, drying ovens, adhesive application, and laminating equipment used to produce a credit card or similar plastic card product.

(4) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from "digital imaging"—printers that use a computer driven machine to transfer an electronically stored image onto the substrate through the use of inks, toners, or other similar color graphic materials via ink jet, electrostatic, and spray jet technologies.

(5) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from cold and vapor degreasing that includes requirements that go beyond the applicable CTG. Maryland restricts the vapor pressure of solvents used to 1 mm Hg at 20 C (0.019 psia) or less for and cold degreasing, including cold or vapor degreasing at: service stations; motor vehicle repair shops; automobile dealerships; machine shops; and any other metal refinishing, cleaning, repair, or fabrication facility.

(6) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC and NO_X emissions by banning open burning activities from June 1 through August 31 of each year.

(7) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from lithographic printing.

(8) Maryland has adopted, and EPA has SIP approved, a rule to implement Phase II NO_X controls under the OTC's MOU. This rule established a fixed cap on ozone-season NO_X emissions from specified major point sources of NO_X. The rule grants each source a fixed number of NO_X allowances, applies state-wide, and required compliance starting during the 2000 ozone season. It reduces NO_X emissions both inside and outside the Philadelphia area.

(9) Maryland has adopted, and EPA has SIP approved, a rule to implement the NO_X SIP Call. The Maryland rule requires compliance commencing with the start of the 2003 ozone season. (This measure is identified as Phase II/III control under the OTC MOU on NO_X control in the attainment demonstration).

(10) Maryland has also adopted, and EPA has SIP approved, a rule requiring the sale of vehicles under the national low-emission vehicle program (NLEV).

Maryland has considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; and other measures such as trip reduction ordinances, value pricing and highway ramp metering.

Maryland determined that many of the considered measures were not to be RACM due to the potential for substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. A large number of the considered measures were rejected on these grounds or on the grounds that they could not be implemented by 2005 much less any earlier. Some were rejected because they would not advance attainment because the measure had benefits outside the ozone season or would be sporadically implemented (not episodically) such as the "try transit week" items. These explanations are provided in further detail in the docket for this rulemaking. On September 7, 2001, EPA published an SNPR proposing to approve the RACM analysis submitted by Maryland on August 20, 2001 as a supplement to its 2005 attainment demonstration SIP for the Baltimore area. We received no timely comments on that SNPR. In this final rule, EPA is approving Maryland's 2005 attainment demonstration plan for the Baltimore area including its RACM analysis and determination.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the Maryland portion of the Baltimore area, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that states consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. *See, e.g., www.epa.gov/otaq/transp.htm.* In order to demonstrate that they will attain the one-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures-including the kind that the Baltimore area itself evaluated in its RACM analysis—that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term-even if such measures do not advance the attainment date-since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the Clean Air Act's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date, EPA concludes that the attainment date being approved is as expeditious as practicable.

E. Adequacy of the Motor Vehicle Emissions Budgets

Comment 1: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes.

Response 1: EPA's adequacy process for these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy when we issued our adequacy findings, and, therefore, we are not listing the individual comments or responding to them here. Our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the "conformity" button). At the Web site, EPA regional contacts are identified.

Comment 2: There were several comments submitted related to the revised motor vehicle emission budgets of the December 21, 1999 submittal of the revised 2005 attainment plan. We received comments which asserted that when Maryland submitted a SIP revising the motor vehicle emissions budgets on December 21, 1999, that submittal is equivalent to submitting a new attainment demonstration and would therefore require a new photochemical grid modeling demonstration. Other commenters asserted that EPA could not determine that the motor vehicle emissions budgets of the December 21, 1999 submittal were adequate and could not, therefore, approve the attainment demonstration, unless the SIP demonstrated that increasing the motor vehicle emissions budgets will not interfere with any control strategy SIP's attainment requirements. Similar comments asserted that such a demonstration can only be based upon a current inventory of emissions from all sources and the emission reductions associated with the control strategies identified in the SIP are accurate under current circumstances. Other comments asserted that when Maryland submitted revised motor vehicle emissions budgets to reflect updated fleet data to EPA on December 21, 1999, that submittal demonstrated that motor vehicle emissions, due to aggregate motor vehicle mileage and other relevant parameters, were no longer consistent with the demonstration of attainment. Another comment contended that Maryland must revise the SIP to include transportation control measures (TCMs) for the area, including but not limited to, those listed in section 108(f) of the CAA, or, alternatively Maryland could submit a new attainment demonstration accounting for the increased vehicle emissions projections. A similar comment questioned why the SIP revision submitted on December 21, 1999 did not explain why the motor vehicle emissions budgets will not require corresponding reductions in emissions from other sources, or the adoption of additional TCMs. A comment specifically asserted that the Baltimore area is subject to CAA section 182(c)(5), which requires periodic submission of a demonstration that current aggregate vehicle milage and other relevant parameters are consistent with those in the attainment demonstration.

Response 2: EPA interprets CAA section 185(c)(2)(A) to require that the attainment demonstration for a serious or worse area to be based upon photochemical grid modeling. However, EPA never interpreted this section to require a new modeling demonstration to be necessary with every revision, such as revised budgets, to an attainment SIP. EPA believes that section 110(a)(2)(I) only requires SIP revisions for nonattainment areas to comply with the applicable part D requirements and does not require each of the part D requirements to be performed anew—especially in the case of amendments to previously submitted SIP revisions. For the reasons outlined in the December 16, 1999 NPR and in response to other comments regarding the attainment demonstration and weight of evidence, EPA has concluded that the photochemical grid modeling submitted prior to December 21, 1999 for the attainment demonstration is sufficient.

The revision to the attainment demonstration plan submitted by Maryland on December 21, 1999 included, *among other things,* revised mobile budgets. That December 21, 1999 submittal also included an enforceable commitment by the state to adopt additional measures to reduce, ton/day for ton/day, the increases in motor vehicle emissions of NO_x and VOC resulting from the use of updated vehicle registration data. Those budgets were declared adequate on February 15, 2000 (Letter from Katz to DeBiase). The effective date of that adequacy finding for those budgets was March 8, 2000. See 65 FR 8701, February 22, 2000.

Most relevant to final approval of the attainment plan is the fact that the revision to the attainment demonstration submitted by Maryland on December 28, 2000, made to reflect the benefits of the Tier2/sulfur in fuel rulemaking, included revised mobile budgets. The budgets of the December 28, 2000 submittal were found adequate June 19, 2001 (Letter from Katz to DeBiase). The effective date of that adequacy finding for those budgets was July 20, 2001 (See 66 FR 35421, published July 5, 2001). The revised budgets of the December 28, 2000 submittal are lower than all previous budgets submitted in conjunction with the attainment demonstration SIP for the Baltimore area. These budgets are based upon a current inventory of emissions from all sources and the emission reductions associated with the control strategies identified in the SIP. The revised budgets of the2005 attainment demonstration SIP for the Baltimore area, submitted on December 28, 2000, are the budgets being approved with this final rule.

EPA interprets the Act's section 182(c)(5) requirement to apply only after there is an approved attainment demonstration or a promulgated Federal implementation plan. Therefore, this requirement is not a prerequisite for approval.

EPA has concluded that the budgets that are being approved in this action are adequate, and hence approvable, because these motor vehicle emissions budgets, when considered together with all other emissions sources, are consistent with applicable requirements for attainment. See 40 CFR 93.118(e)(4)(iv). EPA is approving Maryland's attainment demonstration because it is supported by an adequate modeling demonstration and enforceable commitments, the measures upon which the modeling demonstration are based are creditable, and the motor vehicle emissions budgets are low enough in comparison to those consistent with the control strategy's emission reductions necessary for attainment.

Comment 3: We received comments that assert that EPA cannot approve Maryland's motor vehicle emissions budgets because Maryland has not submitted the latest periodic inventory which was due three years after June 30, 1997 and because there is no demonstration that Maryland is meeting rate of progress requirements.

Response 3: EPA believes that the milestone compliance demonstration requirements of CAA section 182(g) and the periodic inventory requirements under section 182(a)(3)(A) each are independent requirements from the attainment demonstration requirements under CAA sections 172(c)(1) and 182(c)(2)(A). The periodic emissions inventory and milestone compliance demonstration requirements have no bearing on whether a state has submitted a SIP that projects attainment of the ozone NAAQS. EPA acknowledges that milestone compliance demonstration and periodic emission inventory requirements are independently required actions, but does not believe that these have any bearing on whether Maryland has submitted an approvable attainment demonstration SIP. EPA certainly expects that the periodic emissions inventory for 1999 would reflect the 1999 fleet data used in the final motor vehicle emissions budgets found in the final attainment demonstration SIP.

Comment 4: Maryland should not be permitted to initiate irrevocable transportation projects when its attainment demonstration is based on questionable shortfall calculations.

Response 4: The transportation conformity process is intended to prevent irrevocable investments in transportation projects that would worsen air quality. EPA has determined that Maryland's attainment demonstration includes motor vehicle emissions budgets that are adequate for this purpose. EPA is approving Maryland's enforceable commitment to adopt additional measures, that will not limit highway construction consistent with that permitted under the budget EPA has found adequate, to strengthen the attainment demonstration.

F. MOBILE6 And the Motor Vehicle Emissions Budgets (MVEBs)

Comment 1: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE models are released.

Response 1: The attainment demonstration for the Baltimore area includes a commitment to revise the motor vehicle emissions budgets within one year after MOBILE6 is released. EPA is approving that commitment in this final rulemaking.

Comment 2: The revised budgets calculated using MOBILE6 will likely be submitted after the MOBILE5 budgets have already been approved. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response 2: This is the reason that EPA proposed in the July 28, 2000, SNPR (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate. See the discussion at Section I.J. of this document.

Comment 3: If a state submits additional control measures that affect the motor vehicle emissions budget, but does not submit a revised motor vehicle emissions budget, EPA should not approve the attainment demonstration.

Response 3: EPA agrees. The motor vehicle emissions budgets in the Baltimore attainment demonstration reflect the motor vehicle control measures in the attainment demonstration. In addition, Maryland has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions. See the discussion at Section I.J. of this document.

Comment 4: EPA should make it clear that the motor vehicle emissions budgets to be used for conformity purposes will be determined from the total motor vehicle emissions reductions required in the SIP, even if the SIP does not explicitly quantify a revised motor vehicle emissions budget.

Response 4: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The Baltimore attainment demonstration contains explicitly quantified motor vehicle emissions budgets.

Comment 5: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179.

Response 5: If a state fails to meet its SIP-approved commitment, EPA agrees that it could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Clean Air Act.

Comment 6: If the budgets recalculated using MOBILE6 are larger than the MOBILE5 budgets, then attainment should be demonstrated again.

Response 6: As EPA proposed in its December 16, 1999 notices, we will work with states on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

Comment 7: If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should not be available for reallocation to other sources unless air quality data show that the area is attaining, and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (while MOBILE6 is being used for conformity demonstrations) unless the above conditions are met.

Response 7: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. In addition, Maryland will be submitting new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

G. MOBILE6 Grace Period

Comment 1: We received a comment on whether the grace period before MOBILE6 is required in conformity determinations will be consistent with the schedules for revising SIP motor vehicle emissions budgets within 1 or 2 years of MOBILE6's release.

Response 1: This comment is not germane to this rulemaking, since the MOBILE6 grace period for conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum two-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is released.

Comment 2: One commenter asked EPA to clarify in the final rule whether MOBILE6 will be required for conformity determinations once new MOBILE6 budgets are submitted and found adequate.

Response 2: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when the final MOBILE6 model is released. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

H. Two-Year Option To Revise the MVEBs

Comment: One commenter did not prefer the additional option for a second year before the state has to revise the conformity budgets with MOBILE6.

since new conformity determinations and new transportation projects could be delayed in the second year.

Response: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the one-year option, if desired, or submit a new commitment consistent with the alternative two-year option. EPA expects that state and local agencies have consulted on which option is appropriate and have considered the impact on future conformity determinations. Maryland has committed to revise its budgets using MOBILE6 within one year of its release.

I. Motor Vehicle Emissions Inventory

Comment: Several commenters stated that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix. Commenters stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. Also, a commenter stated that EPA and states have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. For these reasons, commenters recommend disapproving the SIPs.

Response: All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update. Maryland used 1999 vehicle registration data in the final motor vehicle emissions budgets found in the attainment demonstration SIP for the Baltimore area. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Nevertheless, we do expect that revisions to these SIPs that are submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6.

J. VOC Emission Reductions

Comment: For states that need additional VOC reductions, one commenter recommends a process to achieve these VOC emission reductions, which involves the use of HFC–152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. The commenter states that HFC–152a could be used instead of hydrocarbons, a known pollutant, as a blowing agent. Use of HFC–152a, which is classified as VOC exempt, would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC–152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC–152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs such as pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively. It is each state's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, states may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology which states may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected state. Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under CAA section 612, EPA has identified acceptable foam blowing agents man of which are not VOCs (*www.epa.gov/ozone/title6/snap/*).

K. Credit for Measures Not Fully Implemented

Comment 1: States should not be given credit for measures that are not fully implemented. For example, the states are being given full credit for Federal coating, refinishing and consumer product rules that have been delayed or weakened.

Response 1: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum [11] that provided that states could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59 subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum.

In accordance with EPA's final regulation, states have assumed a 20 percent reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to "use up existing label stock" and "adjust inventories" to conform to the rule (63 FR 48848, September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the states to take credit for a 20 percent emission reduction in their SIPs.

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy [12], many states claimed a 37 percent reduction from this source category based on a proposed rule.

However, EPA's final rule, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide. The 37 percent emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1 percent difference between the 37 percent estimate of reductions assumed by states, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas. EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled "Emissions Calculations for the Automobile Refinish Coatings Final Rule" from Mark Morris to Docket No. A–95–18.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance [13], states claimed a 20 percent reduction from this source category based on EPA's proposed rule. The final rule, "National Volatile Organic Compound Emission Standards for Consumer Products," (63 FR 48819, September 11, 1998), has resulted in a 20 percent reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the consumer products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to state regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the states to take credit for a 20 percent emission reduction for the consumer products rule in their SIPs.

Comment 2: We received comments that EPA should not approve Maryland's attainment demonstration because Maryland relied upon an EPA guidance memorandum that was based upon the proposed rulemaking's estimates for reductions for architectural and industrial maintenance coatings.

Response 2: EPA's March 22, 1995 memorandum [14] allowed states to claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59 subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, states have correctly assumed a 20 percent reduction from AIM coatings source categories in its attainment and ROP plans. The basis for the 20 percent reductions achieved by the final rule is documented in the rulemaking docket for the AIM coatings final rule in a memorandum "VOC Emissions Reductions from the Final National Architectural Coatings Rule" from Chris Sarsony, ERG, to Linda Herring, U. S. EPA, dated July 27, 1998 (docket A–92–18, item number IV–B–2).

L. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit.

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the Clean Air Act. Once approved by the EPA, there is no need for states to re-adopt and resubmit these programs with each and every SIP revision generally required by other sections of the Act. Maryland had previously received approval of their section 110(a)(2) SIPs. In a final rulemaking action published on March 8, 1984 (49 FR 8610), EPA approved Maryland's financial and manpower resource commitments, after having proposed approval of these commitments on February 3, 1983 (48 FR 5048, 5052). In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by EPA. To the extent that the ozone attainment demonstration and ROP plan depend on specific state emission control regulations these individual regulations have undergone review by EPA in past approval actions.

M. Maryland's NO_X Measures Are Not Approved

Comment: We received comments that objected to crediting the attainment plan with reductions from measures not approved into the SIP. The comments specifically mentioned the NO_X RACT rule and the Phase II NO_X controls under the OTC MOU. We also received comments on these programs which stated that the applicability of the NO_X RACT requirement should extend down to sources with emissions of 25 tons per year or more.

Response: These comments are no longer germane to the Baltimore area. On, February 8, 2001, EPA fully approved Maryland's NO_X RACT rule (66 FR 9522). On December 15, 2000, EPA fully approved Maryland's rule that implements the Phase II controls under the OTC MOU to control NO_X (65 FR 78416). The comment regarding extending the applicability of RACT down to 25 ton per year sources is moot because the applicability threshold for NO_X RACT in Maryland's SIP-approved rule for the Baltimore severe nonattainment area is 25 tons per year or more as required by the Act.

[11] "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) coating Rules," March 22, 1995, from John S. Seitz, director Office of air Quality Planning and Standards to Air Division directors, Regions I–X.

[12] "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating rule and the Autobody Refinishing Rule," November 29, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

[13] "Regulatory Schedule for Consumer and Commercial Products under section 183(e) of the Clean Air Act," June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

[14] "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules," March 22, 1995, from John S. Seitz, Director Office of Air Quality Planning and Standards to Air Division Directors, Regions I–X.

N. Attainment and Post-1999 Rate of Progress Demonstration

Comment: One commenter claims that the plans fail to demonstrate emission reductions of 3 percent per year over each 3-year period between November 1999 and November 2002; and November 2002 and November 2005; and the 2-year period between November 2005 and November 2007, as required by 42 U.S.C. section 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have been met. EPA has absolutely no authority to waive the statutory mandate for 3 percent annual reductions. The statute does not allow EPA to use the NO_X SIP call or 126 orders as an excuse for waiving rate-of-progress (ROP) deadlines. The statutory ROP requirement is for emission reductions—not ambient reductions. Emission reductions in upwind states do not waive the statutory requirement for 3 percent annual emission reductions within the downwind nonattainment area.

Response: Under no condition is EPA waiving the statutory requirement for 3 percent annual emission reductions. For many areas, EPA did not propose approval of the post-99 ROP demonstrations at the same time as EPA proposed action on the area's attainment demonstration.

On August 6, 2001 (66 FR 40947), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of the post 1996 ROP plans for milestone years 1999, 2002 and 2005 for the Baltimore ozone nonattainment area submitted by the State of Maryland on December 24, 1997, as revised on April 24, 1998, August 18, 1998, December 21, 1999 and December 28, 2000. We received no comments on that NPR. EPA has approved Maryland's rate of progress plan for this area for all years after 1996 through the attainment year of 2005. See 66 FR 49108, September 26, 2001.

As provided in EPA's final action on the Maryland's ROP plan (66 FR 49108), the state is relying on emission reductions achieved within the Baltimore area from fully promulgated Federal and fully adopted, SIP-approved NO_X and VOC measures for meeting the ROP requirement.

O. Specific Point Source Measures

Comment 1: We received comments in response to the December 16, 1999 NPR that asserted NO_X emission reduction estimates claimed by Maryland are unreliable for Maryland's Phase II and Phase III control under the OTC NO_X MOU. The comments note that in February 1999, a Maryland Court remanded the implementation schedule in Maryland's regulation and thus claim without definitive emission reduction schedules from one of the largest NO_X producing utilities in the state, the SIP reduction estimates are unreliable.

Response 1: Regarding the Phase II reductions under the OTC NO_X MOU, Maryland has reached settlement agreements with the pertinent utilities. The settlements indicate that the estimated NO_X reductions projected for the years 2002 and 2005 will not be affected. Maryland has provided copies of those agreements to EPA. EPA fully approved the Maryland NO_X Budget Rule to implement the Phase II controls as a SIP revision. See 65 FR 78416, December 15, 2000. This approval includes these agreements. By the ozone season of the year 2002, under the terms of those settlement agreements, both utilities are required to be in compliance with the Maryland's NO_X Budget Program under all circumstances.

Regarding the Phase III reductions, EPA disagrees with the comments because the comments were based upon a Maryland rule has been superceded by a SIP approved rule that applies to all years after 2003 and that contains none of the alleged defects identified in the comments. On January 10, 2001, EPA approved Maryland's SIP to address EPA's NO_X SIP Call rule into the Maryland SIP (66 FR 1866). This rule requires reductions of NO_X from major stationary sources equivalent to EPA's NO_X SIP Call regulation and requires sources to achieve compliance with the final seasonal NO_X allocations commencing with the 2003 ozone season. This rule contains no provisions which allow sources to avoid compliance in the event that the NO_X allowance market fails to materialize or if the price of these allowances is unreasonable. EPA has determined that this rule substantively provides for the NO_X reductions that Maryland modeled in their local scale modeling submitted to EPA in support of Maryland's attainment demonstration for the Baltimore Area.

Comment 2: We received comments asserting that on December 17, 1999, EPA granted section 126 petitions filed by four states to reduce ozone through reductions in NO_X emissions from other states, and that under those petitions, fifteen (15) facilities located in Maryland will have to reduce NO_X emissions by a total of 19,466 tons by May 1, 2003. The comments express concerns about the accountability of these reductions as compared to those assumed in the attainment demonstration. The comments assert that EPA's decision on the 126 petitions will clearly change state and Ozone Transport Group implementation schedules and should be addressed by the state prior to SIP approval.

Response 2: As noted in the December 16, 1999 proposal, Maryland's attainment demonstration plan assumed NO_X reductions consistent with those called for by EPA's NO_X SIP Call. In consideration of recent court decisions on the NO_X SIP Call, described herein and as explained in EPA's response to comments on "Reliance on NO_X SIP Call and Tier 2 Modeling," EPA believes it is appropriate to allow states to continue to assume the reductions from the NO_X SIP Call. The fact that EPA has granted section 126 petitions does not remove the obligations of states subject to the NO_X SIP Call to reduce NO_X emissions as called for in that rule. Furthermore, implementation of either the section 126 rules (described in the following paragraphs) or the NO_X SIP Call achieves emission reductions prior to the applicable attainment deadline, 2005. Under recent rulings by the U.S. Court of Appeals for the District of Columbia Circuit both the 126 rule and the NO_X SIP Call must be implemented early in the ozone season in 2004. Therefore, EPA does not agree that there is a need for the state to address its implementation schedule in light of the section 126 petition action.

On August 14–15, 1997, we received petitions submitted individually by eight Northeastern States under section 126 of the CAA. Each petition requested us to make a finding that sources in certain categories of stationary sources in upwind states emit or would emit NO_X in violation of the prohibition in section 110(a)(2)(D)(i) on emissions that contribute significantly to nonattainment, or interfere with maintenance, in the petitioning state. On May 25, 1999, we promulgated a final rule (May 1999 Rule) determining that portions of the petitions are approvable under the one-hour and/or eight-hour ozone NAAQS based on their technical merit (64 FR 28250). Based on the affirmative technical determinations for the one-hour ozone NAAQS made in the May 1999 Rule, we promulgated a final rule on January 18, 2000 (January 2000 Rule), making section 126 findings that a number of large electric generating units (EGUs) and large industrial boilers and turbines named in the petitions emit in violation of the CAA prohibition against significantly contributing to nonattainment or maintenance problems in the petitioning states (65 FR 2674). In the January 2000 Rule, we also finalized the Federal NO_X Budget Trading Program as the control remedy for sources affected by the rule. This requirement replaces the default remedy in the May 1999 Rule. The January 2000 Rule establishes Federal NO_X emissions limits that sources must meet through a cap-and-trade program by May 1, 2003. The January 2000 rule affects sources located in the District of Columbia, Delaware, Maryland, North Carolina, New Jersey, Ohio, Pennsylvania, Virginia, West Virginia, and parts of Indiana, Kentucky, Michigan, and New York. All of the affected sources are located in states that are subject to the NO_X SIP Call.

On October 27, 1998 (63 FR 57356), EPA promulgated the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," commonly referred to as the NO_X SIP Call. On March 3, 2000, the D.C. Circuit issued its decision on the NO_X SIP Call regarding the one-hour ozone NAAQS ruling in favor of EPA on all the major issues. *Michigan* v. *EPA*, supra. On June 22, 2000, the Court ordered that we allow the states and the District of Columbia 128 days from June 22, 2000 to submit their SIPs. Accordingly, 19 states and the District of Columbia were required to submit SIPs in response to the NO_X SIP Call by October 30, 2000.[15] On August 30, 2000, the D.C. Circuit ordered that the June 22, 2000 Order be amended to extend the deadline for implementation of the NO_X SIP Call from May 1, 2003 to May 31, 2004. In a separate rulemaking, we are addressing the Court's remand of the definition of electricity generating units, the control level for large stationary internal combustion engines and the SIP submittal and compliance dates for these actions, which affect less than 10 percent of the total emission reductions called for by the NO_X SIP Call.

Furthermore, as noted in this document in response to the previous comment in this document, Maryland has a state regulation in place to implement the SIP Call requirements. This State rule has been approved into the Maryland SIP and requires compliance commencing May 1, 2003.

Comment 3: We received comments in response to the December 16, 1999 NPR asserting that the NO_X Phase II/III emissions reduction estimates asserted by the Maryland Department of the Environment are unreliable because the NO_X trading rule may not work. The comments raise the following concerns: If a NO_X allowance market "fails to materialize" or if the price of these allowances is "unreasonable" the "safe harbor provision" will allow a utility to avoid purchasing credits. Without definitive emission reduction schedules from one of the largest NO_X producing utilities in the state, the SIP reduction estimates are unreliable, at best, and misleadingly optimistic at worst. There is no guarantee that the OTC NO_X Budget Program will function and achieve its emissions target. The price of allowances may be prohibitively high allowing Maryland sources to avoid purchasing credits.

Response 3: EPA disagrees with the comments and maintains that cap-and-trade programs are an effective remedy for achieving emissions reductions in a cost-effective manner. Under cap-and-trade programs, total emissions are limited at the regional level. Sources are then given individual emissions limits expressed in the form of allowances, i.e., tradable permits equal to one ton of NO_X. A source has the option of reducing its emissions to or beyond its initial allowance level or of reducing to less than its initial allocation level and purchasing allowances from another source. Regardless of the compliance strategy a source employs, the environmental integrity of the program and of the emissions reductions remain intact because the total number of allowances remains capped. Every allowance available on the allowance market represents a ton of NO_X another plant did not emit.

The Acid Rain Program is a similar cap-and-trade program which has been in effect since 1995. Each year since 1995, emissions have been reduced beyond the required level and sources have achieved 100 percent compliance. The experience of the Acid Rain Program has been that the larger, higher emitting units reduced the most because they had the most cost-effective reductions to make.

Regarding comments that the OTC NO_X Budget Program will fail to function and achieve its emissions target, EPA disagrees for the following reasons: In 1999, the initial year of the Phase II, the OTC NO_X Budget Program was a success. According to EPA's OTC NO_X compliance report, 99 percent of the sources achieved full compliance. Furthermore, sources in the OTC over controlled during the 1999 ozone season, reducing their emissions 20 percent beyond the required control level. These allowances may be traded on the allowances market in future years and used for compliance.

Moreover, a viable NO_X allowances market was created; during the 15 months between the onset of allowance trading and 1999 reconciliation (December 30, 1999), 138,790 allowances were transferred. Of these transactions, EPA estimated that nearly 40 percent of them (53,563) were transferred between non-affiliated parties. Over 28 percent of the allowances traded were future year allowances (2000–2002 vintage years) not available for compliance in 1999; another indication that the NO_X allowance market is strong.

EPA notes that the concerns about the price of allowances did not materialize. During the first year of the OTC NO_X Budget Program, there was significant price volatility. Before the start of the program allowance prices generally fluctuated between $1500 and $3000 and peaked at $7500/ton in February, 1999. However, once it became apparent that there would be more than enough allowances available for compliance in 1999, allowance prices dropped steadily. Since October 1999, the prices have been more or less steady at $600–$800 a ton. As the second control period begins, there is no indication that either allowance prices or price volatility are on the rise again.

P. Specific Area and Mobile Source Measures

Comment 1: We received comments asserting that Maryland appears to have relied upon an EPA memorandum dated November 28, 1994 when calculating emission reduction credits for control measures for nonroad small gasoline engines (NSGE). The comments state that because the NSGE Phase II rules were not published until 1998, the accuracy of the emissions reductions anticipated in the 1994 guidance is questionable and that the memorandum upon which MDE appears to have relied suggests that states include a safety margin in their emission reduction estimates for NSGE. The comments conclude that there is no evidence in the SIP that MDE incorporated a safety margin into the reductions.

Response 1: The State of Maryland acted consistent with guidance provided by EPA. However, in a December 28, 2000 revision, Maryland updated its attainment demonstration and ROP plans to include the benefits expected to accrue from the final Federal rules and thus is no longer relying on the guidance cited by the comments when determining the benefits for the Federal NSGE rule. (The cited guidance does

[15] October 30, 2000 is the first business day following the expiration of the 128-day period.

provide guidance based upon final rules for one category of nonroad sources.)

Comment 2: We received comments asserting that Maryland needs to produce up-to-date emissions reduction calculations for surface cleaning/degreasing and automobile refinishing. The comments claim that the MDE asserts that new state rules for these source categories will result in 70 percent and 45 percent reductions in VOC from degreasing and automobile refinishing products, respectively and that these claims are not supported with reliable data and it is impossible for the public to evaluate the reliability of these predictions.

Response 2: The Maryland degreasing regulation went beyond the draft-CTG requirements (which are estimated to be around 60 percent reduction) and so should generate deeper reductions when compared to reductions anticipated from the CTG. EPA estimates the efficiency of the automobile refinishing national rule to be around 36 percent in areas which did not previously have a rule. Maryland's autobody reductions are based upon a its state rule which has its own state limits and additional requirements such as application equipment requirements as discussed in a previous response to previous comment in Section II.K.

Q. Measures for the One-Hour NAAQS and for Progress Requirements Toward the Eight-Hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised eight-hour ozone National Ambient Air Quality Standard (NAAQS) because the Administrator deemed attaining the one-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the one-hour standard and that make as much progress toward implementing the eight-hour ozone standard as the requirements of the CAA and implementing regulations allow.

Response: The one-hour standard remains in effect for all of these areas and the SIPs that have been submitted are for the purpose of achieving that NAAQS. Congress has provided the states with the authority to choose the measures necessary to attain the NAAQS and EPA cannot second guess the states' choice if EPA determines that the SIP meets the requirements of the CAA. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the one-hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the eight-hour standard. However, EPA generally believes that emission controls implemented to attain the one-hour ozone standard will be beneficial towards attainment of the eight-hour ozone standard as well. This is particularly true regarding the implementation of NO_X emission controls resulting from EPA's NO_X SIP Call.

Finally, EPA notes that although the eight-hour ozone standard has been adopted by EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The states and EPA have yet to define the eight-hour ozone nonattainment areas and EPA has yet to issue guidance and requirements for the implementation of the eight-hour ozone standard.

III. Final Action

A. Attainment Demonstration

EPA is fully approving Maryland's one-hour ozone attainment demonstration SIP revision for the Baltimore area which was submitted on April 29, 1998, and revised on August 18, 1998, December 21, 1999, December 28, 2000, and August 20, 2001 including its analysis and determination of RACM.

B. Commitments

EPA is approving the enforceable commitments made to the Maryland's attainment plan for the Baltimore severe ozone nonattainment area, which were submitted on December 28, 2000. The enforceable commitments are to:

(1) Submit measures by October 31, 2001 for additional emission reductions necessary for attainment in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory,

(2) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued, and

(3) Perform a mid-course review by December 31, 2003.

C. Mobile Budgets of the Attainment Plan for the Baltimore Area

EPA is approving the following mobile budgets of the Baltimore area 2005 attainment plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE BALTIMORE AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Effective date of adequacy determination
Attainment Demonstration	2005	45.5	96.9	July 20, 2001, (See 66 FR 35421, published July 5, 2001).

We are only approving the attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its currents budgets because Maryland has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the new additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning regulations That significantly Affect Energy Supply, Distribution, or Use' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **Note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve the ozone attainment demonstration SIP revision for the Baltimore severe nonattainment area submitted by the Maryland Department of the Environment may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1076 is amended by adding paragraphs (k) and (l) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: ozone.

* * * * *

(k) EPA approves the attainment demonstration for the Baltimore area submitted as a revision to the State Implementation Plan by the Maryland Department of the Environment on April 29, 1998, August 18, 1998, December 21, 1999, December 28, 2000, and August 20, 2001 including its RACM analysis and determination. EPA is also approving the revised enforceable commitments made to the attainment plan for the Baltimore severe ozone nonattainment area which were submitted on December 28, 2000. The enforceable commitments are to submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory; to revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued; and to perform a mid-course review by December 31, 2003.

(l) EPA approves the following mobile budgets of the Baltimore area attainment plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE BALTIMORE AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Effective date of adequacy determination.
Attainment Demonstration	2005	45.5	96.9	July 20, 2001, (See 66 FR 35421, published July 5, 2001).

(1) We are only approving the attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

(2) Similarly, EPA is only approving the 2005 attainment demonstration and its currents budgets because Maryland has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the new additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

[FR Doc. 01–26681 Filed 10–29–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–129–1–7471a; FRL–7091–3]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution from Volatile Organic Compounds, Solvent Using Processes, Surface Coating Processes, Aerospace Manufacturing and Rework Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on revisions to the Texas State Implementation Plan (SIP). These revisions concern Control of Air Pollution from Volatile Organic Compounds (VOC), Solvent Using Processes, Surface Coating Processes, Aerospace Manufacturing and Rework Operations. The EPA is approving these revisions to regulate emissions of VOCs in accordance with the requirements of the Federal Clean Air Act (the Act). The EPA is approving these revisions as meeting the Reasonably Available Control Technology (RACT) requirements under the provisions of the Act. The EPA is also removing three site-specific alternate RACT (ARACT) determinations from the Texas SIP, since the VOC revisions we are approving today into the Texas SIP are now RACT for the three sites.

DATES: This rule is effective on December 31, 2001 without further notice, unless EPA receives adverse comment by November 29, 2001. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

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Throughout this document "we," "us," and "our" means EPA.

1. What Action Is EPA Taking?

On July 13, 2000, the Governor of Texas submitted a revised Chapter 115, "Control of Air Pollution From Volatile Organic Compounds," as a revision to the SIP. The July 13, 2000, SIP submittal concerned Solvent Using Processes, Surface Coating Processes, Aerospace Manufacturing and Rework Operations. The Governor also requested that the revised Chapter 115 replace three site-specific ARACT determinations EPA previously approved as part of the Texas SIP.

On March 27, 1998, EPA amended the National Emission Standards for Hazardous Air Pollutants (NESHAP) final rule and released the final CTG Document for Aerospace Manufacturing and Rework Facilities. *See* 63 FR 15006. The EPA released the draft CTG for this source category at the same time as we proposed to amend the NESHAP for Aerospace Manufacturing and Rework Facilities. *See* 61 FR 55842, published October 29, 1996. Earlier, we had established the final NESHAP standards for Aerospace Manufacturing and Rework Facilities. *See* 60 FR 45948, published on September 1, 1995.

On January 20, 1994, we approved an Alternate Reasonably Available Control Technology (ARACT) demonstration for Air Force Plant 4, operated by the Lockheed Corporation of Fort Worth, Texas. *See* 59 FR 2991.

On May 30, 1997, we approved an ARACT demonstration for Bell Helicopter Textron, Incorporated; Bell Plant 1 Facility of Fort Worth, Texas. *See* 62 FR 29297.

On February 9, 1998, we approved an ARACT demonstration for Raytheon TI Systems, Inc., (RTIS) of Dallas, Texas. *See* 63 FR 6491.

The final NESHAP rule revision and the CTG document for Aerospace Manufacturing and Rework Operations, as published on March 27, 1998, are more comprehensive and detailed than the existing SIP approved ARACTs for these companies.

The TNRCC has incorporated the contents of the Aerospace Manufacturing and Rework Operations' CTG into Chapter 115, and is requesting that EPA remove the existing SIP ARACTs for the three Aerospace Manufacturing and Rework companies from the approved Texas SIP, and replace them with the revised Chapter 115 rules.

The State also made non-substantive revisions to the Chapter 115 rules, *e.g.*, substituting federal definitions. The following Table contains title of the rule, rule's log number, and a summary of the affected sections, under the proposed rule revision.

TABLE I.—LOG NUMBER, TITLE, AND AFFECTED SECTIONS OF THE RULE

Rule log No.	Title	Affected sections
1999–023–115–AI	Surface Coating	115.420 Surface Coating Definitions. 115.421 Emission Specification. 115.422 Control Requirements. 115.423 Alternate Control Requirements. 115.424 Inspection Requirements. 115.425 Testing Requirements. 115.426 Monitoring and Recordkeeping Requirements. 115.427 Exemptions. 115.429 Counties and Compliance Schedules.

We are approving revisions to the Texas SIP concerning control of VOC emissions from Surface Coating Processes, Aerospace Manufacturing and Rework Operations. We are approving the rule revisions under sections 110(k)(3) and 183(b)(3) of the Act, as meeting the RACT requirements under section 182(b)(2) of the Act. We are of the opinion that these rule revisions will reduce the aggregate VOC emissions, and are consistent with our CTGs and other applicable RACT guidance. Therefore, we are removing from the Texas SIP, the ARACTS for Lockheed Air Force Plant 4, Bell Helicopter Textron Plant 1, and Raytheon TI Systems. These three sources will now, for purposes of federal enforcement under the Texas SIP, be subject to the requirements of the SIP-approved Chapter 115, rather than the previously approved ARACT determinations. For more information on this SIP revision and our evaluation, please refer to our Technical Support Document (TSD) dated November 2000.

2. Where Can I Find EPA Guidelines for Aerospace Manufacturing and Rework Operations?

You can find our guidelines on Aerospace Manufacturing and Rework Operations in 63 FR 15006, published on March 27, 1998. We have attached a copy of this document with our TSD dated July 2001.

3. What Is a CTG?

A CTG is an EPA document that establishes a "presumptive norm" for RACT for a specific VOC source category. Under the pre-amended Act, EPA issued CTG documents for 29 categories of VOC sources. Section 183 of the amended Act requires that EPA issue 13 new CTGs. Appendix E of the General Preamble of Title I (57 FR 18077) lists the categories for which EPA plans to issue new CTGs.

4. What Is the Aerospace CTG?

We issued a CTG pursuant to section 183 to reduce VOC emissions from aerospace coatings and solvents on March 27, 1998. *See* 63 FR 15006. This CTG applies to aerospace coating operations with the minimum potential to emit of 50 tons per year (tpy) of VOC. This CTG addresses RACT for control of VOC emissions from aerospace and rework facilities. Emission limits for processes also addressed in the final revised NESHAP are identical to the NESHAP limits.

5. Why Do We Regulate VOCs?

Oxygen in the atmosphere reacts with VOCs and Oxides of Nitrogen to form ozone, a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It also can worsen bronchitis and asthma. Exposure to ozone can also reduce lung capacity in healthy adults.

6. Why Is Texas Adopting EPA's Guidelines for the Aerospace Manufacturing and Rework Operations?

Texas adopted EPA's guidelines for the Aerospace Manufacturing and Rework Operations into its Chapter 115 rules, because (1) our guidelines are more comprehensive and detailed than the existing SIP approved ARACTs for Aerospace Manufacturing and Rework Operations, and (2) those companies with a SIP-approved ARACT determination will not have to comply with two different sets of regulations, *i.e.*, the SIP's ARACT requirements versus the NESHAP rule, for their surface coating processes.

For detailed evaluation of the specific provisions of this rule revision, please see our TSD dated November 2000.

7. Will These Changes Meet the Act's RACT Requirements?

Yes, the new aerospace rules and the non-substantive, administrative changes will continue to meet the RACT requirements, because they will (1) delete and remove unnecessary requirements, (2) reduce confusion, (3) streamline regulations, (4) improve applicability determination, and (5) enhance compliance determination for enforcement purposes. They are consistent with EPA's CTGs and other RACT guidance. For these reasons we are approving the proposed rule revisions into the Texas SIP.

8. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the National Ambient Air Quality Standards (NAAQS) that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State may submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

9. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action,

provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the Code of Federal Regulations at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations that we approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

10. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, EPA has the authority to take enforcement action against violators of these regulations. Citizens have also legal recourse to address violations as described in section 304 of the Act.

11. What Areas in Texas Will These Rules Affect?

These rules will affect the companies with surface coatings associated with the Aerospace Manufacturing and Rework Operations within the State of Texas that have a potential to emit at least 50 tpy of VOCs; specifically, Bell Helicopter Textron, Raytheon TI Systems, Inc., and Lockheed Corporation, which are in the Dallas/Fort Worth 1-hour ozone nonattainment area. If you are one of such companies, you need to refer to these rules to find out if and how these rules will affect you.

Final Action

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on December 31, 2001 without further notice unless we receive adverse comment by November 29, 2001. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **Note**) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective December 31, 2001 unless EPA receives adverse written comments by November 29, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)of the Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 10, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. In § 52.2270 the table in paragraph (c) is amended under Chapter 115, Subchapter E, by removing the entry for "Section 115.421 to 115.429" and adding in its place a new heading "Division 2: Surface Coating Processes" and individual entries for Sections 115.420, 115.421, 115.422, 115.423, 115.424, 115.425, 115.426, 115.427, and 115.429 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State submittal/approval date	EPA approval date	Explanation
• •	•	•	•	•
Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds				
• •	•	•	•	•
Subchapter E: Solvent-Using Processes				
• •	•	•	•	•
Division 2: Surface Coating Processes				
Section 115.420	Surface Coating Definitions	June 29, 2000	October 29, 2001	
Section 115.421	Emission Specifications	June 29, 2000	October 29, 2001	
Section 115.422	Control Requirements	June 29, 2000	October 29, 2001	
Section 115.423	Alternate Control Requirements	June 29, 2000	October 29, 2001	
Section 115.424	Inspection Requirements	June 29, 2000	October 29, 2001	
Section 115.425	Testing Requirements	June 29, 2000	October 29, 2001	
Section 115.426	Monitoring and Recordkeeping Requirements.	June 29, 2000	October 29, 2001	
Section 115.427	Exemptions	June 29, 2000	October 29, 2001	
Section 115.429	Counties and Compliance Schedules.	June 29, 2000	October 29, 2001	

3. Section 52.2299 is amended by adding a new paragraph (c)(121) to read as follows:

§ 52.2299 Original identification of plan section.

* * * * *

(C) * * *

(121) Revisions submitted by the Governor on July 13, 2000, that remove approval of the Alternate Reasonably Available Control Technology (ARACT) for Lockheed Corporation, Bell Helicopter Textron, Incorporated; Bell Plant 1, and Raytheon TI Systems, Inc., (RTIS).

[FR Doc. 01–27107 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4188; FRL–7090–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for 14 Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for fourteen major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO_X). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to the SIP in accordance with the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on November 14, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and

Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink (215) 814–2014 or by e-mail at spink.marcia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 7, 1998, February 2, 1999, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001, PADEP submitted revisions to the Pennsylvania SIP to establish and impose RACT for several sources of VOC and/or NO_X. This rulemaking pertains to fourteen (14) of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of plan approvals and operating permits which impose VOC and/or NO_X RACT requirements for each source. These sources are all located in the Philadelphia area and include Aldan Rubber Company; Arbill Industries, Inc.; Bethlehem Lukens Plate; Braceland Brothers, Inc.; Graphic Arts, Inc.; International Business Systems; McWhorter Technologies; Montenay Montgomery Ltd.; Newman and Company; Northeast Foods; Northeast Water Pollution Control Plant (Philadelphia Water Department); O'Brien (Philadelphia) Cogeneration, Inc.—Northeast Water Pollution Control Plant; O'Brien (Philadelphia) Cogeneration, Inc.—Southwest Water Pollution Control Plant; and Pearl Pressman Liberty.

On September 10, 2001 (66 FR 46953), EPA published a direct final rule and a companion notice of proposed rulemaking (66 FR 46971) to approve these SIP revisions. On October 9, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On October 10, 2001, EPA signed a timely withdrawal for publication in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our September 10, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 46971). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the September 10, 2001 direct final rule and will not be restated here. A summary of the comments submitted and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

On October 9, 2001, the Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on September 10, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. We also received letters of clarification from Montenay Energy Resources of Montgomery County; Pepper Hamilton LLP on behalf of its client, Bethlehem Steel Corporation; and from PADEP. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas*, 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs*, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list each of subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92(b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that "* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour "are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States" [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by-case RACT submissions, EPA has not demonstrated that these large boilers are subject to "numeric emission limitations" under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories. PennFuture contends that the case-by-case approach for establishing and approving RACT is unacceptable under a statutory scheme that specifically requires category-wide RACT regulations for sources covered by CTGs. PennFuture's comment cites to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir.)(Cincinnati ozone redesignation and RACT) and goes on the state that EPA should reject any proposed case-by-case VOC RACT for a source in a category for

which there is a CTG but no Pennsylvania RACT regulation.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options" (September 1993) and "Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options" (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account. EPA disagrees with the commenter's citing to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir. Sept. 11, 2001) (Cincinnati ozone redesignation and RACT) as indicative of his contentions regarding states' obligations to adopt category-wide RACT regulations for sources covered by CTGs. The opinion rendered in the cited case neither requires states to adopt category-wide RACT regulations for sources covered by CTGs, nor does it preclude states from exercising their option to impose RACT for CTG-subject sources, on a case-by-case basis. Rather, it speaks only to the Act's requirement that states must implement RACT for CTG-subject sources in ozone nonattainment areas; and not to any specific regulatory construct by which they must do so. Pennsylvania has implemented RACT for all CTG-subject sources in the Philadelphia area, and, EPA has approved all such RACT determinations as revisions to the Pennsylvania SIP. As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the "automatic" selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish "bright line" or "cook-book" approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions," March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to "all source categories." PennFuture notes that EPA later objected to the $1500 per ton methodology as "not generically acceptable to EPA" [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a "dollar per ton threshold" is "inconsistent with the definition of RACT" [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other "bright line" approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions." March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55 %) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69 %) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton " Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an "automatic" rejection of a control technology as RACT for a source."

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under State or Federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear

in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that "Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT." [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

G. Clarification: On October 8, 2001, Montenay Energy Resources of Montgomery County, Inc. (Montenay) submitted a letter on EPA's September 10, 2001 rulemaking as it pertains to its facility. Montenay does not adversely comment on the rulemaking. Rather, its letter clarifies that the conditions imposed in operating permit (OP) OP–46–0010A which specify that air contaminant emissions from the two municipal waste combustors must be controlled through the use of individual Research-Cottrell spray dryer absorber using Sorbalit 1 reagent to control mercury and acid gases, Research-Cottrell fabric collectors and a selective non-catalytic reduction (SNCR) control system; and that NO_X emissions per combustor (expressed as NO_2) shall not exceed a 24-hour daily arithmetic average of 205 parts per million by volume, corrected to 7 percent oxygen, dry basis and, in accordance with 40 CFR part 60 Section 60.33b(d), 109 pounds per hour, and 477.4 tons per year were imposed by PADEP pursuant to the applicable NO_X requirements of 40 CFR part 60, subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994)—and not as RACT. Montenay agrees that it is subject to all of the provisions imposed in OP–46–0010A but calls attention to the distinction between the permit's NO_X RACT provisions and its NO_X provisions imposed pursuant to 40 CFR Part 60, Subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994). Montenay's letter also clarifies that the compliance date for 40 CFR Part 60, Subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994) is September of 1999 versus its RACT compliance date under the Pennsylvania approved SIP.

Response: The letter of clarification submitted by Montenay has been placed in the administrative record for this final rule. EPA agrees that OP–46–0010A issued by PADEP serves to impose on Montenay both its applicable NO_X RACT requirements as determined under 25 Pa. Code 129.91–129.95 and the applicable NO_X requirements of 40 CFR Part 60, Subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994). EPA also agrees that OP–46–0010A, which is being approved as a SIP revision, makes the distinction between Montenay's NO_X RACT requirements and its applicable NO_X requirements of 40 CFR Part 60, Subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994) have now passed and are fully effective, Montenay's distinction between the RACT requirements and those of 40 CFR Part 60, Subpart Cb as imposed in OP–46–0010A has no environmental effect. Moreover, it is important to note that in the event that a determination of eligible ERCs were to be sought for NO_X reductions at the facility in the future, any emission reductions would have to surplus to all applicable requirements of the Act in order to qualify as ERCs under the Pennsylvania SIP.

H. Clarification: On October 10, 2001, EPA received a letter from Pepper Hamilton LLP on behalf of its client Bethlehem Steel regarding OP–46–0011 issued to Bethlehem Lukens Plate by PADEP on December 11, 1998. The letter states that it is not making adverse comments to EPA's September 10, 2001 rulemaking. Rather, the letter states that Pepper Hamilton LLP supports approval of the case-by-case RACT determination imposed as NO_X RACT in OP–46–0011, but notes that there is an error in an emission factor cited in OP–46–0011. The comment letter explains that an amended version of OP–46–0011 was issued by PADEP on July 31, 2001 correcting the emission factor and leaving the NO_X RACT limit unchanged. The letter from Pepper Hamilton LLP states that PADEP shortly intends to submit the revised version of OP–46–0011 to EPA as a SIP revision. On October 10, 2001, PADEP submitted a letter to EPA confirming the contents of the October 10, 2001 letter from Pepper Hamilton LLP. The PADEP letter requests that EPA proceed at this time to approve OP–46–0011, as proposed on September 10, 2001, but informs us that it will expeditiously prepare and submit a SIP revision for Bethlehem Lukens Plate to correct the reference to the emission factor in OP–46–0011. The PADEP confirms that the NO_X RACT emission limit shall remain unchanged.

Response: The letter submitted by Pepper Hamilton LLP on behalf of its client Bethlehem Steel regarding OP–46–0011 has been placed in the administrative record for this final rule. As requested by PADEP, EPA will proceed to approve the version of OP–46–0011, as proposed on September 10, 2001, in this final rule. As also requested by PADEP, we will act upon the soon to be submitted SIP revision for Bethlehem Lukens Plate via the Federal rulemaking process for amending the SIP as expeditiously as practicable.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for fourteen major sources located in the Philadelphia area. EPA is approving these SIP submittals because the Philadelphia AMS and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The AMS and PADEP have also imposed record keeping, monitoring, and/or testing requirements sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **Note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for 14 named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and/or NO_X RACT for 14 sources located in the Philadelphia area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(185) to read as follows:

§ 52.2020 Identification of plan.

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(c) * * *

(185) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and NO_X RACT for 14 sources located in the Philadelphia area, submitted by the Pennsylvania Department of Environmental Protection on December 7, 1998, February 2, 1999, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals and operating permits December 7, 1998, February 2, 1999, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001.

(B) Plan approvals (PA), Operating permits (OP) issued to the following sources:

(*1*) International Business Systems, Inc., OP–46–0049, effective October 29, 1998 and as revised December 9, 1999, except for the expiration date.

(*2*) Bethlehem Lukens Plate, OP–46–0011, effective December 11, 1998, except for the expiration date.

(*3*) Montenay Montgomery Limited Partnership, OP–46–0010A, effective April 20, 1999 and as revised June 20, 2000, except for the expiration date.

(*4*) Northeast Foods, Inc., OP–09–0014, effective April 9, 1999, except for the expiration date.

(*5*) Aldan Rubber Company, PA–1561, effective July 21, 2000, except for conditions 1.A.(1), 1.A.(2) and 1.A.(4); and conditions 2.A. and 2.C.

(*6*) Braceland Brothers, Inc., PA–3679, effective July 14, 2000.

(*7*) Graphic Arts, Incorporated, PA–2260, effective July 14, 2000.

(*8*) O'Brien (Philadelphia) Cogeneration, Inc.—Northeast Water Pollution Control Plant, PA–1533, effective July 21, 2000.

(*9*) O'Brien (Philadelphia) Cogeneration, Inc.—Southwest Water

Pollution Control Plant, PA–1534, effective July 21, 2000.

(*10*) Pearl Pressman Liberty, PA–7721, effective July 24, 2000.

(*11*) Arbill Industries, Inc., PA–51–3811, effective July 27, 1999, except for condition 5.

(*12*) McWhorter Technologies, PA–51–3542, effective July 27, 1999, except for condition 2.B. and condition 5.

(*13*) Northeast Water Pollution Control Plant, PA–51–9513, effective July 27, 1999, except for condition 1.A.(1), conditions 2.A. and 2.B., and condition 7.

(*14*) Newman and Company, PA–3489, effective June 11, 1997.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(185)(i)(B) of this section.

[FR Doc. 01–26761 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA041–4180; FRL–7089–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is removing the limited status of its approval of the Commonwealth of Pennsylvania State Implementation Plan (SIP) revision that requires all major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) to implement reasonably available control technology (RACT) as it applies in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is converting its limited approval of Pennsylvania's VOC and NO_X RACT regulations to full approval because EPA has approved all of the case-by-case RACT determinations submitted by Pennsylvania for the affected sources located in the Philadelphia area. The intended effect of this action is to remove the limited nature of EPA's approval of Pennsylvania's VOC and NO_X RACT regulations as they apply in the Philadelphia area.

EFFECTIVE DATE: This final rule is effective on November 29, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink, (215) 814–2104 or by e-mail at *spink.marcia@epa.gov*.

SUPPLEMENTARY INFORMATION

I. Background

On September 6, 2001 (66 FR 46571), EPA published a notice of proposed rulemaking (NPR) for the State of Pennsylvania. The NPR proposed to remove the limited status of EPA's approval of the Commonwealth of Pennsylvania SIP revision that requires all major sources of VOC and NO_X to implement reasonably available control technology (RACT) as it applies in the Philadelphia area. The rationale for EPA's action is explained in the NPR and will not be restated here. No comments were received on the NPR.

II. Final Action

EPA is converting its limited approval of Pennsylvania's generic VOC and NO_X RACT regulations, 25 Pa Code Chapter 129.91 through 129.95, to full approval as they apply in the five-county Philadelphia-Wilmington-Trenton ozone nonattainment area. EPA has approved all of the case-by-case RACT determinations submitted by PADEP for affected major sources of NO_X and/or VOC sources located in Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, the five counties that comprise the Pennsylvania portion of the Philadelphia area.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action converting EPA's limited approval of Pennsylvania's generic VOC and NO_X RACT regulations, 25 Pa Code Chapter 129.91 through 129.95, to full approval as they apply in the five-county Philadelphia-Wilmington-Trenton ozone nonattainment area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2027 is amended by adding paragraph (b) to read as follows:

§ 52.2027 Approval Status of Pennsylvania's Generic NO_X and VOC RACT Rules.

* * * * *

(b) Effective November 29, 2001, EPA removes the limited nature of its approval of 25 PA Code of Regulations, Chapter 129.91 through 129.95 [see § 52.2020 (c)(129)] as those regulations apply to the Philadelphia-Wilmington-Trenton area. Chapter 129.91 through 129.95 of Pennsylvania's regulations are fully approved as they apply in Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, the five counties that comprise the Pennsylvania portion of the Philadelphia area.

[FR Doc. 01–26767 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4187; FRL–7090–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Seven Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for seven major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO_X). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to the SIP in accordance with the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on November 14, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink (215) 814–2104 or by e-mail at *spink.marcia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 1995, February 2, 1999, July 27, 2001, and August 8, 2001, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several sources of VOC and/or NO_X. This rulemaking pertains to seven of those sources. The remaining sources are or have been the subject of separate rulemakings. All seven sources are located in the Philadelphia area and include: G-Seven, Ltd.; Kimberly-Clark Corporation; Leonard Kunkin Associates; PECO Energy Company—Cromby Generating Station; Sunoco, Inc. (R&M)—Marcus Hook Plant; Waste Management Disposal Services of Pennsylvania, Inc. (GROWS Landfill); Waste Resource Energy, Inc. (Operator) and Shawmut Bank, Conn. National Assoc. (Owner)—Delaware County Resource Recovery Facility.

On September 11, 2001 (66 FR 47078), EPA published a direct final rule and a companion notice of proposed rulemaking (66 FR 47129) to approve these SIP revisions. On October 9, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On October 10, 2001, EPA signed a timely withdrawal for publication in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our September 11, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 47129). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the September 11, 2001 direct final rule and will not be restated here. A summary of the comments submitted and EPA's responses are provided in Section II.

II. Public Comments and Responses

On October 9, 2001, the Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on September 11, 2001

to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

A. *Comment:* PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas*, 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs*, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that "* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt).*

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour "are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States" [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to "numeric emission limitations" under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories. PennFuture contends that the case-by-case approach for establishing and approving RACT is unacceptable under a statutory scheme that specifically requires category-wide RACT regulations for sources covered by CTGs. PennFuture's comment cites to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir.)(Cincinnati ozone redesignation and RACT). EPA should reject any proposed case-by-case VOC RACT for a source in a category for which there is a CTG but no Pennsylvania RACT regulation.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options" (September 1993) and "Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options" (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations.

The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources

are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account. EPA disagrees with the commenter's citing to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir. Sept.11, 2001) (Cincinnati ozone redesignation and RACT) as indicative of his contentions regarding states' obligations to adopt category-wide RACT regulations for sources covered by CTGs. The opinion rendered in the cited case neither requires states to adopt category-wide RACT regulations for sources covered by CTGs, nor does it preclude states from exercising their option to impose RACT for CTG-subject sources, on a case-by-case basis. Rather, it speaks only to the Act's requirement that states must implement RACT for CTG-subject sources in ozone nonattainment areas; and not to any specific regulatory construct by which they must do so. Pennsylvania has implemented RACT for all CTG-subject sources in the Philadelphia area, and, EPA has approved all such RACT determinations as revisions to the Pennsylvania SIP. As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the "automatic" selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish "bright line" or "cook-book" approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions," March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to "all source categories." PennFuture notes that EPA later objected to the $1500 per ton methodology as "not generically acceptable to EPA" [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** document that a "dollar per ton threshold" is "inconsistent with the definition of RACT" [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other "bright line" approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions." March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55 %) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69 %) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton "Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an 'automatic' rejection of a control technology as RACT for a source."

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met in *addition to* any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that "Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT." [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for seven major of sources located in the Philadelphia area. EPA is approving these SIP submittals because PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The PADEP has also imposed record keeping, monitoring, and/or testing requirements sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 Note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for seven named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and/or NO_X RACT for seven sources located in the Philadelphia area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(179) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(179) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and/or NO_X RACT for seven sources located in the Philadelphia-Wilmington-Trenton ozone nonattainment area submitted by the Pennsylvania Department of Environmental Protection on August 1, 1995, February 2, 1999, July 27, 2001, and August 8, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals, operating permits, or compliance permits on the following dates: August 1, 1995, February 2, 1999, July 27, 2001, and August 8, 2001.

(B) Operating permits (OP), or Compliance Permits (CP) issued to the following sources:

(*1*) PECO Energy Company, Cromby Generating Station, OP–15–0019, effective April 28, 1995.

(*2*) Waste Resource Energy, Inc. (Operator); Shawmut Bank, Conn. National Assoc. (Owner); Delaware County Resource Recovery Facility, OP–23–0004, effective November 16, 1995.

(*3*) G-Seven, Ltd., OP–46–0078, effective April 20, 1999.

(*4*) Leonard Kunkin Associates, OP–09–0073, effective June 25, 2001.

(*5*) Kimberly-Clark Corporation, OP–23–0014A, effective June 24, 1998 as revised August 1, 2001.

(*6*) Sunoco, Inc. (R&M); Marcus Hook Plant; CP–23–0001, effective June 8, 1995 as revised August 2, 2001, except for the expiration date.

(*7*) Waste Management Disposal Services of Pennsylvania, Inc. (GROWS Landfill), Operating Permit OP–09–0007, effective December 19, 1997 as revised July 17, 2001.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(179)(i)(B) of this section.

[FR Doc. 01–26762 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4184; FRL–7089–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Three Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for three major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO_X). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on November 14, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink (215) 814–2104 or by e-mail at *spink.marcia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 20, 1999, June 28, 2000, and August 8, 2001, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several sources of VOC and/or NO_X. This rulemaking pertains to three of those sources. These three sources are all located in the Philadelphia area and include: Exelon Generation Company—Richmond Generating Station; FPL Energy MH 50, L.P.; and Waste Management Disposal Services of Pennsylvania, Inc. (Pottstown Landfill).

On August 31, 2001, EPA published a direct final rule (66 FR 45938) and a companion notice of proposed rulemaking (66 FR 45954) to approve these SIP revisions. On October 1, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On October 11, 2001, we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 31, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 45954). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 31, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

On October 1, 2001, PennFuture submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on August 31, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas*, 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs*, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements*. Under subsection 129.92, that proposal is to include, among other information: (1) A list each of subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that "...RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining

subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt).*

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour "are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to "numeric emission limitations" under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories. PennFuture contends that the case-by-case approach for establishing and approving RACT is unacceptable under a statutory scheme that specifically requires category-wide RACT regulations for sources covered by CTGs. PennFuture's comment cites to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir.)(Cincinnati ozone redesignation and RACT). EPA should reject any proposed case-by-case VOC RACT for a source in a category for which there is a CTG but no Pennsylvania RACT regulation.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options' (September 1993) and "Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options" (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations.

The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules. Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

EPA disagrees with the commenter's citing to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir. Sept. 11, 2001) (Cincinnati ozone redesignation and RACT) as indicative of his contentions regarding states' obligations to adopt category-wide RACT regulations for sources covered by CTGs. The opinion rendered in the cited case neither requires states to adopt category-wide RACT regulations for sources covered by CTGs, nor does it preclude states from exercising their option to impose RACT for CTG-subject sources, on a case-by-case basis. Rather, it speaks only to the Act's requirement that states must implement RACT for CTG-subject sources in ozone nonattainment areas; and not to any specific regulatory construct by which they must do so. Pennsylvania has implemented RACT for all CTG-subject sources in the Philadelphia area, and, EPA has approved all such RACT determinations as revisions to the Pennsylvania SIP.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the "automatic" selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish "bright line" or "cook-book" approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions," March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to "all source categories." PennFuture notes that EPA later objected to the $1500 per ton methodology as "not generically acceptable to EPA" [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a "dollar per ton threshold" is "inconsistent with the definition of RACT" [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other "bright line" approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions." March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control

options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69 %) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton, "* * * Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an "automatic" rejection of a control technology as RACT for a source."

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did sc on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that "Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT." [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for three major of sources located in the Philadelphia area. EPA is approving these RACT SIP submittals because the Philadelphia Air Management Services (AMS) and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The AMS and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 NOTE) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for three named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and/or NO_X RACT for three sources located in the Philadelphia area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(182) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(182) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and NO_X RACT, for three sources located in the Philadelphia area submitted by the Pennsylvania Department of Environmental Protection on April 20, 1999, June 28, 2000, and August 8, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of

Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals and operating permits on April 20, 1999, June 28, 2000, and August 8, 2001.

(B) Plan approvals (PA), Operating permits (OP) issued to the following sources:

(*1*) Waste Management Disposal Services of Pennsylvania, Inc. (Pottstown Landfill), OP–46–0033, effective April 20, 1999.

(*2*) FPL Energy MH 50, L.P., PA–23–0084, effective July 26, 1999, except for the expiration date.

(*3*) Exelon Generation Company—Richmond Generating Station, PA–51–4903, effective July 11, 2001.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(182) (i)(B) of this section.

[FR Doc. 01–26763 Filed 10–29–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4183; FRL–7089–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Eight Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for eight major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 14, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink (215) 814–2104 or by e-mail at *spink.marcia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On May 2, 1996, June 10, 1996, January 21, 1997, April 9, 1999, August 9, 2000, and March 23, 2001, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several sources of VOC and/or NO_X. This rulemaking pertains to eight of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of plan approvals and operating permits which impose VOC and/or NO_X RACT requirements for each source. These eight sources are all located in the Philadelphia area and include: Brown Printing Company, Cardone Industries (Chew Street), Cardone Industries (Rising Sun Avenue), Naval Surface Warfare Center—Carderock Division, SUN CHEMICALS—General Printing Ink Division, Sunoco Chemicals—Frankford Plant, U.S. Steel Group/USX Corporation, and Wheelabrator Falls, Incorporated.

On August 31, 2001, EPA published a direct final rule (66 FR 45933) and a companion notice of proposed rulemaking (66 FR 45954) to approve these SIP revisions. On October 1, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On October 11, 2001, we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 31, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 45954). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 31, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

On October 1, 2001, the Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on August 31, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list each of subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23. 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that "* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt).*

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour "are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States" [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to "numeric emission limitations" under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93). As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan

approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories. PennFuture's comment cites to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir.) (Cincinnati ozone redesignation and RACT). EPA should reject any proposed case-by-case VOC RACT for a source in a category for which there is a CTG but no Pennsylvania RACT regulation.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options" (September 1993) and "Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options" (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account. EPA disagrees with the commenter's citing to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir. Sept. 11, 2001) (Cincinnati ozone redesignation and RACT) as indicative of his contentions regarding states' obligations to adopt category-wide RACT regulations for sources covered by CTGs. The opinion rendered in the cited case neither requires states to adopt category-wide RACT regulations for sources covered by CTGs, nor does it preclude states from exercising their option to impose RACT for CTG-subject sources, on a case-by-case basis. Rather, it speaks only to the Act's requirement that states must implement RACT for CTG-subject sources in ozone nonattainment areas; and not to any specific regulatory construct by which they must do so. Pennsylvania has implemented RACT for all CTG-subject sources in the Philadelphia area and EPA has approved all such RACT determinations as revisions to the Pennsylvania SIP. As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the "automatic" selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish "bright line" or "cook-book" approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions," March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to "all source categories." PennFuture notes that EPA later objected to the $1500 per ton methodology as "not generically acceptable to EPA" [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a "dollar per ton threshold" is "inconsistent with the definition of RACT" [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other "bright line" approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions." March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton "Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an "automatic" rejection of a control technology as RACT for a source."

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania

Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that "Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT." [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for eight major sources located in the Philadelphia area. EPA is approving these RACT SIP submittals because the Philadelphia Air Management Services (AMS) and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The AMS and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **Note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for eight named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and/or NO_X RACT for eight sources located in the Philadelphia area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(174) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(174) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and/or NO_X RACT for sources located in the Philadelphia area submitted by the Pennsylvania Department of Environmental Protection on May 2, 1996, June 10, 1996, January 21, 1997, April 9, 1999, August 9, 2000, and two submittals on March 23, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals and operating permits, on May 2, 1996, June 10, 1996, January 21, 1997, April 9, 1999, August 9, 2000, and two letters on March 23, 2001.

(B) Plan approvals (PA), Operating permits (OP) issued to the following sources:

(*1*) Cardone Industries, PA–51–3887, for PLID 3887, effective May 29, 1995.

(*2*) Cardone Industries, PA–51–2237, for PLID 2237, effective May 29, 1995.

(*3*) Naval Surface Warfare Center—Carderock Division, PA–51–9724, for PLID 9724, effective December 27, 1997.

(*4*) Wheelabrator Falls, Inc., OP–09–0013, effective January 11, 1996 (as amended May 17, 1996).

(*5*) U.S. Steel Group/USX Corporation, OP–09–0006, effective April 8, 1999, except for the expiration date.

(*6*) Brown Printing Company, OP–46–0018A, effective May 17, 2000, except for the expiration date and condition 12.

(*7*) SUN CHEMICAL—General Printing Ink Division, PA–51–2052, for PLID 2052, effective July 14, 2000.

(*8*) Sunoco Chemicals, Frankford Plant, PA–51–1551, for PLID 1551, effective July 27, 1999, except for conditions 1.A.(2)–(4), 1.A.(6), 1.A.(8); conditions 1.B.(1), 1.B. (3)–(6); the last sentence of condition 2.A.; conditions 2.B.–D.; 2.G., the last sentence of 2.H., 2.I.; and condition 7.

(ii) Additional materials. Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(174) (i)(B) of this section.

[FR Doc. 01–26764 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. PR6–233a, FRL–7093–9]

Approval and Promulgation of State Plans for Designated Facilities; Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Commonwealth of Puerto Rico. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing small municipal waste combustion (MWC) units. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing small MWC units in the state and if it submits a negative declaration letter in place of the State Plan.

DATES: This direct final rule is effective on December 31, 2001 without further notice, unless EPA receives adverse comment by November 29, 2001.

If an adverse comment is received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

A copy of the Commonwealth submittal is available for inspection at the Region 2 Office in New York City. Those interested in inspecting the submittal must arrange an appointment in advance by calling (212) 637–4249. Alternatively, appointments may be arranged via e-mail by sending a message to Ted Gardella at *Gardella.Anthony@epa.gov*. The office address is 290 Broadway, Air Programs Branch, 25th Floor, New York, New York 10007–1866.

A copy of the Commonwealth submittal is also available for inspection at the respective offices:

Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico 00917.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone, (212) 637–4249.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

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E. Where can you find the EG requirements for small MWC units?

F. Who must comply with the EG requirements?
G. What are EPA's conclusions?
H. Administrative Requirements

A. What Action Is EPA Taking Today?

The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Commonwealth of Puerto Rico dated August 2, 2001. This negative declaration concerns existing small municipal waste combustors throughout the Commonwealth of Puerto Rico. The negative declaration satisfies the federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled "Emission Guidelines for Existing Small Municipal Waste Combustion Units" (65 FR 76378, December 6, 2000). The negative declaration officially certifies to EPA that, to the best of the Commonwealth's knowledge, there are no small MWC units in operation in the Commonwealth of Puerto Rico.

B. Why Is EPA Approving Puerto Rico's Negative Declaration?

EPA has evaluated the negative declaration submitted by Puerto Rico for consistency with the Clean Air Act (Act), EPA guidelines and policy. EPA has determined that Puerto Rico's negative declaration meets all the requirements and, therefore, EPA is approving the Commonwealth's certification that there are no existing small MWC units in operation throughout the Commonwealth. Puerto Rico has certified in its negative declaration that it searched island wide all the facilities that operate solid waste combustors. Puerto Rico's search included permits and EPA's Aerometric Information Retrival System (AIRS).

EPA's approval of Puerto Rico's negative declaration is based on the following:

(1) Puerto Rico has met the requirements of § 60.23(b) in Title 40, part 60, subpart B of the *Code of Federal Regulations* (40 CFR part 60) for submittal of a letter of negative declaration that certifies there are no existing facilities in the Commonwealth. Such certification exempts Puerto Rico from the requirements to submit a plan.

(2) EPA's own source inventory indicates there are no existing small MWC units operating in the Commonwealth of Puerto Rico. During July 1998, EPA compiled an inventory of small MWC units as a required element of the small MWC EG.

C. What if an Existing Small MWC Unit Is Discovered After Today's Action Becomes Effective?

Section 60.1530 of 40 CFR part 60, subpart BBBB (page 76386, 65 FR 76378, December 6, 2000) requires that if, after the effective date of today's action, an existing small MWC unit is found in the State, the Federal Plan implementing the EG would automatically apply to that small MWC unit until a State Plan is approved by EPA.

The Federal Plan was proposed on June 14, 2001 (66 FR 32484) and is expected to be promulgated in early 2002. The Federal Plan will apply to small MWCs in states, commonwealths, and territories (1) where the EPA inventory identifies small MWCs and a plan is required and has not been submitted and approved by EPA and (2) where the EPA inventory did not identify any small MWC and a negative declaration has been received and approved by EPA (such as Puerto Rico) and a small MWC is subsequently identified in the State or territory. If and when a State Plan (or in this case a Commonwealth Plan) is submitted and approved that applies to the small MWC, the Federal Plan would no longer apply.

D. What Is the Background for Emission Guidelines and State Plans?

Section 111(d) of the Act requires that pollutants controlled under New Source Performance Standards (NSPS) must also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EG into their body of regulations.

Under section 129 of the Act, the EG is not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become federally enforceable upon EPA approval. The procedures for adopting and submitting State Plans, as well as state requirements for a negative declaration, are in 40 CFR part 60, subpart B.

EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules (60 FR 65414).

E. Where Can You Find the EG Requirements for Small MWC Units?

On December 6, 2000, under sections 111 and 129 of the Act, EPA issued the NSPS applicable to new MWC units and the EG applicable to existing small MWC units. The NSPS and EG are codified at 40 CFR part 60, subparts AAAA (65 FR 76350) and BBBB (65 FR 76378), respectively.

F. Who Must Comply With the EG Requirements?

A small MWC unit having the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse derived fuel that commenced construction on or before August 30, 1999 ("existing small MWC unit") must comply with these requirements. See § 60.1555 of 40 CFR part 60, subpart BBBB for a list of small MWC units exempt from the federal requirements.

G. What Are EPA's Conclusions?

EPA has determined that Puerto Rico's negative declaration meets all the requirements and, therefore, EPA is approving Puerto Rico's certification that no small MWC units are in operation in the Commonwealth of Puerto Rico. If any existing small MWC units are discovered in the future, the Federal Plan implementing the EG would automatically apply to that small MWC unit until the State Plan is approved by EPA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the negative declaration should relevant adverse comments be filed. This rule will be effective December 31, 2001 without further notice unless the Agency receives significant, material adverse comments by November 29, 2001.

If EPA receives significant, material adverse comments by the above date, the Agency will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

H. Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this rule may have federalism implications. The only reason why this rule may have federalism implications is if in the future a small MWC unit is found in the Commonwealth of Puerto Rico the unit will become subject to the Federal Plan until a State Plan is approved by EPA. However, it will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do not apply to this rule.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because as a negative declaration it is not subject to the small MWC EG requirements. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, commonwealth, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, commonwealth, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective December 31, 2001 unless EPA receives material adverse written comments by November 29, 2001.

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: October 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 62 U.S.C. 7401–7671q.

Subpart BBB—Puerto Rico

2. Part 62 is amended by adding new § 62.13105 and an undesignated heading to subpart BBB to read as follows:

Air Emissions From Existing Small Municipal Waste Combustion Units With The Capacity To Combust At Least 35 Tons Per Day But No More Than 250 Tons Per Day Of Municipal Solid Waste Or Refuse Derived Fuel and Constructed on or Before August 30, 1999.

§ 62.13105 Identification of plan—negative declaration.

Letter from the Puerto Rico Environmental Quality Board, submitted August 2, 2001, certifying that there are no existing small municipal waste combustion units in the Commonwealth of Puerto Rico subject to part 60, subpart BBBB of this chapter.

[FR Doc. 01–27283 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7771]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW., Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to

the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Maine:				
Dixfield, Town of, Oxford County	230092	June 23, 1975, Emerg.; March 4, 1985, Reg. November 7, 2001.	November 11, 2001	November 21, 2001.
Greenville, Town of, Piscataquis County.	230409	July 17, 1975, Emerg.; March 4, 1987, Reg. November 7, 2001.	.....do	Do.
Kingfield, Town of, Franklin County	230058	August 21, 1975, Emerg.; June 5, 1989, Reg. November 7, 2001.	.....do	Do.
Region II				
New York:				
Larchmont, Village of, Westchester County.	360915	February 4, 1972, Emerg.; September 1, 1977, Reg. November 7, 2001.	.....do	Do.
Utica, City of, Oneida County	360558	October 2, 1974, Emerg.; February 1, 1984, Reg. November 7, 2001.	.....do	Do.
Region III				
Pennsylvania:				
Alburtis, Borough of, Lehigh County	420584	August 7, 1975, Emerg.; December 15, 1978, Reg. November 7, 2001.	.....do	Do.
Allentown, City of, Lehigh County	420585	October 15, 1971, Emerg.; June 1, 1982, Reg. November 7, 2001.	.....do	Do.
Catasauqua, Borough of, Lehigh County.	420586	December 3, 1971, Emerg.; November 1, 1979, Reg. November 7, 2001.	.....do	Do.
Coopersburg, Borough of, Lehigh County.	420587	January 12, 1977, Emerg.; July 30, 1982, Reg. November 7, 2001.	.....do	Do.
Coplay, Borough of, Lehigh County	421807	October 14, 1975, Emerg.; June 25, 1976, Reg. November 7, 2001.	.....do	Do.
Emmaus, Borough of, Lehigh County.	420588	July 26, 1973, Emerg.; September 1, 1977, Reg. November 7, 2001.	.....do	Do.
Fountain Hill, Borough of, Lehigh County.	421808	July 31, 1975, Emerg.; May 15, 1986, Reg. November 7, 2001.	.....do	Do.
Hanover, Township of, Lehigh County.	422261	July 2, 1974, Emerg.; January 6, 1982, Reg. November 7, 2001.	.....do	Do.
Heidelberg, Township of, Lehigh, County.	421809	February 21, 1975, Emerg.; June 15, 1981, Reg. November 7, 2001.	.....do	Do.
Lower Macungie, Township of, Lehigh County.	420589	September 29, 1972, Emerg.; February 2, 1977, Reg. November 7, 2001.	.....do	Do.
Lower Milford, Township of, Lehigh County.	421039	February 1, 1974, Emerg.; April 17, 1978, Reg. November 7, 2001.	.....do	Do.
Lowhill, Township of, Lehigh County	421811	March 1, 1977, Emerg.; October 15, 1985, Reg. November 7, 2001.	.....do	Do.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in special flood hazard areas
Lynn, Township of, Lehigh County ..	421812	July 21, 1976, Emerg.; September 30, 1987, Reg. November 7, 2001.	.....do	Do.
Macungie, Borough of, Lehigh County.	420590	April 18, 1974, Emerg.; April 15, 1980, Reg. November 7, 2001.	.....do	Do.
North Whitehall, Township of, Lehigh County.	421813	July 26, 1974, Emerg.; September 30, 1981, Reg. November 7, 2001.	.....do	Do
Salisbury, Township of, Lehigh County.	420591	April 22, 1975, Emerg.; September 24, 1984, Reg. November 7, 2001.	.....do	Do.
Slatington, Borough of, Lehigh County.	420592	June 4, 1975, Emerg.; March 16, 1981, Reg. November 7, 2001.	.....do	Do.
South Whitehall, Township of, Lehigh County.	420593	January 26, 1973, Emerg.; February 1, 1978, Reg. November 7, 2001.	.....do	Do.
Upper Macungie, Township of, Lehigh County.	421044	February 12, 1974, Emerg.; April 2, 1979, Reg. November 7, 2001.	.....do	Do.
Upper Milford, Township of, Lehigh County.	421815	October 10, 1974, Emerg.; May 19, 1981, Reg. November 7, 2001.	.....do	Do.
Upper Saucon, Township of, Lehigh County.	420594	February 25, 1972, Emerg.; July 15, 1977, Reg. November 7, 2001.	.....do	Do.
Washington, Township of, Lehigh County.	421816	August 21, 1974, Emerg.; April 15, 1981, Reg. November 7, 2001.	.....do	Do.
Weisenberg, Township of, Lehigh County.	421817	February 3, 1976, Emerg.; October 15, 1985, Reg. November 7, 2001.	.....do	Do.
Whitehall, Township of, Lehigh County.	420595	April 30, 1974, Emerg.; October 28, 1977, Reg. November 7, 2001.	.....do	Do.
Region IV				
Edisto Beach, Town of, Colleton County.	455414	March 19, 1971, Emerg.; April 9, 1971, Reg. November 7, 2001.	.....do	Do.
Walterboro, City of, Colleton County	450058	April 2, 1975, Emerg.; April 17, 1987, Reg. November 7, 2001.	.....do	Do.
Williams, Town of, Colleton County	450059	February 3, 1976, Emerg.; July 17, 1986, Reg. November 7, 2001.	.....do	Do.
Region VI				
Texas:				
Fort Bend County, Unincorporated Areas.	480228	March 19, 1987, Reg.; November 7, 2001.	.....do	Do.
Wharton County, Unincorporated Areas.	480652	February 27, 1987, Reg.; November 7, 2001.	.....do	Do.
Region VII				
Kansas:				
Baldwin, City of, Douglas County	200088	June 23, 1975, Emerg.; January 2, 1980, Reg. November 7, 2001.	.....do	Do.
Douglas County, Unincorporated Areas.	200087	May 30, 1975, Emerg.; March 2, 1981, Reg. November 7, 2001.	.....do	Do.
Eudora, City of, Douglas County	200089	June 12, 1975, Emerg.; January 16, 1981, Reg. November 7, 2001.	.....do	Do.
Lawrence, City of, Douglas County	200090	June 15, 1973, Emerg.; March 2, 1981, Reg. November 7, 2001.	.....do	Do.
Lecompton, City of, Douglas County	200091	July 2, 1975, Emerg.; March 15, 1979, November 7, 2001.	.....do	Do
Region I				
Vermont:				
Wells, Town of, Rutland County	500271	June 25, 1975, Emerg.; June 15, 1988, Reg. November 21, 2001.	November 21, 2001	November 21, 2001.
Region III				
New Jersey:				
Berkeley Heights, Township of, Union County.	340459	December 30, 1971, Emerg.; March 1, 1978, Reg. November 21, 2001.	.....do	Do.
Region V				
Ohio:				
Adams County Unincorporated Areas.	390001	March 14, 1978, Emerg.; November 21, 2001, Reg.	.....do	Do.
Manchester, Village of, Adams County.	390002	October 25, 1974, Emerg.; August 1, 1978, Reg. November 21, 2001.	.....do	Do.
Aberdeen, Village of, Brown County	390675	July 2, 1975, Emerg.; August 15, 1983, Reg. November 21, 2001.	.....do	Do.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in special flood hazard areas
Brown County, Unincorporated Areas County.	390034	May 9, 1977, Emerg.; November 21, 2001, Reg.	.....do	Do.
Higginsport, Village of, Brown County.	390677	January 29, 1976, Emerg.; September 15, 1983, Reg. November 21, 2001.	.....do	Do.
Mount Orab, Village of, Brown County.	390621	January 16, 2001, Emerg.; November 21, 2001, Reg.	.....do	Do.
Ripley, Village of, Brown County	390036	June 12, 1975, Emerg.; July 18, 1983, Reg. November 21, 2001.	.....do	Do.
Rome, Village of, Brown County	390003	February 16, 1977, Emerg.; October 18, 1983, Reg. November 21, 2001.	.....do	Do.
Region VI				
Oklahoma:				
Logan County, Unincorporated Areas.	400096	October 26, 1984, Emerg.; December 5, 1989, Reg. November 21, 2001.	.....do	Do.
Region IX				
California:				
Hidden Hills, City of, Los Angeles County.	060125	May 24, 1974, Emerg.; September 7, 1984, Reg. November 21, 2001.	.....do	Do.
Lassen County, Unincorporated Areas.	060092	June 26, 1986, Emerg.; September 4, 1987, Reg. November 21, 2001.	.....do	Do.
Palos Verdes Estates, City of, Los Angeles County.	060145	January 29, 1971, Emerg.; September 7, 1984, Reg. November 21, 2001.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 23, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–27208 Filed 10–29–01; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 001226367–0367–01; I.D. 102201A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Recreational Fishery Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishery closure; request for comments.

SUMMARY: NMFS announces closure of the recreational fishery for rockfish and lingcod in Federal waters (3–200 nautical miles offshore) south of 40°10′ N lat. and seaward of the 20–fathom (36.9–m) depth contour off the coast of California from October 29 through December 31, 2001. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations, is intended to protect overfished species.

DATES: Changes to management measures are effective 0001 hours local time (l.t.) October 29, 2001, through 1159 hours l.t. December 31, 2001, unless modified, superseded, or rescinded. Comments on this rule will be accepted through November 14, 2001.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Jamie Goen, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's Web site at *http://www.access.gpo.gov/su—docs/aces/aces140.html.*

Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for 82 species of groundfish off the coasts of Washington, Oregon, and California. Annual groundfish specifications and management measures are initially developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. The specifications and management measures for the current fishing year (January 1 - December 31, 2001) were published at 66 FR 2338 (January 11, 2001), as amended at 66 FR 10208 (February 14, 2001), at 66 FR 18409 (April 9, 2001), at 66 FR 22467 (May 4, 2001), at 66 FR 28676 (May 24, 2001), at 66 FR 35388 (July 5, 2001), at 66 FR 38162 (July 23, 2001), and 66 FR 50851, (October 5, 2001).

Of the 82 species managed under the FMP, seven have been declared overfished under the Magnuson-Stevens Fishery Conservation and Management Act, including bocaccio and canary rockfish. The Council is developing rebuilding plans for these two species. Both bocaccio and canary rockfish are found primarily on the Continental shelf, and are classified as "shelf" rockfish species. They are caught directly and incidentally in the Pacific Coast groundfish (and non-groundfish) fisheries.

Canary rockfish is the most difficult overfished species to manage as its management places great constraint on managing other groundfish species. Its optimum yield (OY) was reduced from 1,045 mt in 1999 to 200 mt in 2000, and to 93 mt for 2001. From the 93 mt OY, 44 mt are set aside for the coastwide recreational catch, with 26 mt (22 mt

south of Cape Mendocino, 40°30′ N lat.) of the 44 mt expected to be taken in the California recreational fisheries for rockfish and lingcod.

Bocaccio is another overfished species of concern in the California recreational fisheries for rockfish and lingcod. The bocaccio rebuilding plan applies to bocaccio occurring off California south of Cape Mendocino (40°30′ N lat.). Bocaccio's 2001 OY for that area is 100 mt, with 52 mt expected to be taken as recreational harvest. Bocaccio north of 40°30′ N lat. are included in the OY for minor shelf rockfish north (70 mt).

At its September 10–14, 2001, meeting in Portland, OR, the Council, in consultation with the State of California, recommended closure of the California recreational fisheries in Federal waters when the preseason estimates for recreational harvest are reached, following anticipated action by the California Fish and Game Commission (Commission) at its October 4–5, 2001, meeting to close California state waters.

Currently, recreational catches of both canary and bocaccio rockfish are projected to have exceeded their preseason estimates, based on estimates from the Marine Recreational Fisheries Statistical Survey (MRFSS) through June and on projections of total annual catch based on MRFSS 1999 and 2000 catch levels. The recreational catch of canary rockfish off of California was at 16 mt of the 22 mt preseason estimate through June 2001 and at 22 mt of the 44 mt preseason estimate coastwide. During the remainder of the year (July – December), the recreational fisheries north of Cape Mendocino are expected to stay within the preseason estimate of canary rockfish in that area (22 mt), but the California recreational fishery south of Cape Mendocino is projected to take another 45 mt of canary rockfish.

Bocaccio recreational catch approached the 52–mt preseason estimate in June, weighing in at 50 mt. If current regulations continue, the projected recreational catch alone of bocaccio could reach 111 mt by the end of 2001. By adding the estimated commercial catch of 30 mt through the end of the year, the total bocaccio catch could total 141 mt, 41 mt over the 100 mt OY.

As a result of projections that recreational harvest of canary rockfish and bocaccio will exceed the annual preseason estimates for these species, at its October 4–5, 2001, meeting in San Diego, CA, the Commission closed the California recreational fisheries for rockfish and lingcod (a co-occurring species) in California state waters from October 29 through December 31, 2001, and requested that NMFS also close Federal waters.

NMFS Actions

NMFS concurs with the Council's and the Commission's recommendations, and hereby announces closure of the recreational fisheries for rockfish and lingcod in Federal waters (3-200 miles offshore) south of 40°10′ N lat. and seaward of the 20–fathom (36.9–m) depth contour off the coast of California from October 29 through December 31, 2001. Fishing for minor nearshore rockfish inside the 20-fathom (36.9 m) depth contour south of 40°10′ N lat. remains open. However, retention of shelf rockfish (including bocaccio and canary rockfish) taken in this area is prohibited. Recreational fishing measures for the areas north of 40°10′ N lat. remain unchanged. (*NOTE*: The stock assessment areas for groundfish were modified in 2000 such that the ABCs and OYs apply to areas north and south of 40°30′ N lat. (Cape Mendocino) to better align with the trip limit areas and management actions that apply north and south of 40°10′ N lat.)

Accordingly, at 66 FR 2338, January 11, 2001, as subsequently amended, in Section IV, under D. Recreational Fishery, paragraphs (1)(a)(ii), (1)(a)(iii) and (1)(b)(i) are revised to read as follows:

IV. NMFS Actions

D. Recreational Fishery

* * * * *

(1) * * *

(a) * * *

(ii) *Seasons.* North of 40o10′ N lat., recreational fishing for rockfish is open from January 1 through December 31. South of 40°10′ N latitude and north of Point Conception (34°27′ N lat.), recreational fishing for rockfish is closed from March 1 through April 30. This area is also closed to recreational rockfish fishing from May 1 through June 30 and from October 29 through December 31, except that fishing for minor nearshore rockfish is permitted inside the 20–fathom (36.9–m) depth contour. South of Point Conception (34°27′ N lat.), recreational fishing for rockfish is closed from January 1 through February 28 and from October 29 through December 31., except that fishing for minor nearshore rockfish is permitted inside the 20–fathom (36.9–m) depth contour. Recreational fishing for cowcod is prohibited all year in all areas.

(iii) *Bag limits, boat limits, hook limits.* North of 40°10′ N lat., when the recreational fishery is open, there is a 2–hook limit per fishing line, and the bag limit is 10 rockfish per day, of which no more than 2 may be bocaccio and no more than 1 may be canary rockfish. South of 40°10′ N lat., in times and areas when the recreational season is open, there is a 2-hook limit per fishing line, and the bag limit is 10 rockfish per day. From October 29 through December 31, retention of shelf rockfish (including bocaccio and canary rockfish) is prohibited south of 40°10′ N lat. Cowcod retention is prohibited coastwide throughout 2001. [Note: California scorpionfish, *Scorpaena guttata*, are subject to California's 10–fish bag limit per species, but are not counted toward the 10-rockfish bag limit.] Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

(1) * * *

(b) * * *

(i) *Seasons.* South of 40°10′ N lat. and north of Point Conception (34°27′ N lat.), recreational fishing for lingcod is closed from March 1 through June 30 and from October 29 through December 31. South of Point Conception (34°27′ N lat.). recreational fishing for lingcod is closed from January 1 through February 28 and from October 29 through December 31.

Classification

These actions are authorized by the regulations implementing the FMP and the annual specifications and management measures published at 66 FR 2338 (January 11, 2001), as amended at 66 FR 10208 (February 14, 2001), at 66 FR 18409 (April 9, 2001), at 66 FR 22467 (May 4, 2001), at 66 FR 28676 (May 24, 2001), at 66 FR 35388 (July 5, 2001), at 66 FR 38162 (July 23, 2001), and 66 FR 50851, (October 5, 2001) and are based on the most recent data available. The aggregate data upon which this action is based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

NMFS finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because this action is necessary to protect overfished species that are managed under Council-approved rebuilding plans, and affording additional advance notice would reduce the agency's ability to protect those overfished species in a timely manner.

This action is taken under the authority of 50 CFR 660.323 (b)(2), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 25, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27274 Filed 10–25–01; 3:14 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 102401A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Commercial Red Snapper Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the fall portion of the annual commercial quota for red snapper will be reached at noon, local time, November 10, 2001. This closure is necessary to protect the red snapper resource.

EFFECTIVE DATES: Closure is effective at noon, local time, November 10, 2001, until noon, local time, on February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–570–5305, fax 727–570–5583, e-mail *Phil.Steele@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2001. The red snapper commercial fishing season is split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.10 million lb (1.41 million kg)) available, and the second commencing at noon on October 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available commercial quota of 4.65 million lb (2.11 million kg) for red snapper for this fishing year will be reached when the fishery closes at noon, local time, November 10, 2001. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, on February 1, 2002. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, November 10, 2001.

During the closure, the bag and possession limits specified in 50 CFR 622.39 (b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, November 10, 2001, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Dated: October 24, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27310 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 102201F]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Suspension of Minimum Surf Clam Size for 2002

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Suspension of surf clam minimum size limit.

SUMMARY: NMFS suspends the minimum size limit of 4.75 inches (12.07 cm) for Atlantic surf clams for the 2002 fishing year. This action is taken under the authority of the implementing regulations for this fishery, which allow for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary, as the majority of surf clams harvested are larger than the minimum size limit.

DATES: Effective January 1, 2002, through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Walter J. Gardiner, Fishery Management Specialist, 978–281–9326.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the regulations implementing the Fishery Management Plan (FMP) for the Atlantic Surf Clam and Ocean Quahog Fisheries allows the Administrator, Northeast Region, NMFS (Regional Administrator) to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surf clams. This action may be taken unless discard, catch, and survey data indicate that 30 percent of the Atlantic surf clam resource is smaller than 4.75 inches (12.07 cm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its July 2001, meeting, the Mid-Atlantic Fishery Management Council (Council) voted to recommend that the

Regional Administrator suspend the minimum size limit. Commercial surf clam shell length data for 2001 was analyzed using modified procedures from what was used in 1999 and 2000. The analysis indicated that between 2.1 to 22.2 percent of the samples taken overall were composed of surf clams that were less than 4.75 inches (12.07 cm). Based on these data, the Regional Administrator adopts the Council's recommendation and suspends the minimum size limit for Atlantic surf clams from January 1, 2002, through December 31, 2002.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 24, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27312 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 210
Tuesday, October 30, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–155–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes. This proposal would require repetitive inspections for cracking of the left and right lower wing planks, and repair, if necessary. This action is necessary to find and fix such cracking, which could result in reduced structural integrity of the wing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 29, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–155–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–155–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–155–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–155–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 series airplanes. TCCA advises that cracks have been found on the left and right lower wing planks on several airplanes. The cracks were located aft of the rear spar, near the jacking pads, in line with wing station (WS) 148.019. The cause of the cracks has not been determined. This condition, if not corrected, could result in reduced structural integrity of the wing.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–57–031, Revision "A," including Appendix A, dated March 28, 2001. That service bulletin describes procedures for repetitive external detailed visual inspections for cracking of the left and right lower wing planks in the area of the rear spar and WS 148.019. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2001–15, dated March 30, 2001, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has

examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below. The proposed AD also would require that operators report inspection findings to Bombardier.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Differences Between Proposed Rule, Foreign AD, and Service Bulletin

Operators should note that, although the service bulletin and TCCA airworthiness directive specify that the manufacturer may be contacted for repair instructions, this proposal would require repairs to be accomplished per a method approved by either the FAA or TCCA (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or TCCA would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 214 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $12,840, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 2001–NM–155–AD.

Applicability: Model CL–600–2B19 series airplanes, serial numbers 7003 through 7999 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the left and right lower wing planks, which could result in reduced structural integrity of the wing, accomplish the following:

Repetitive Inspections

(a) Perform an external detailed visual inspection for cracking of the left and right lower wing planks in the area of the rear spar and wing station 148.019, according to Part 2, Accomplishment Instructions, of Bombardier Alert Service Bulletin A601R–57–031, Revision "A," including Appendix A, dated March 28, 2001. Do the initial inspection at the time shown in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable; and repeat the inspection at least every 5,000 flight cycles.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Compliance Times for Inspection

(1) For airplanes that have accumulated 6,500 total flight cycles or less as of the effective date of this AD: Inspect prior to the accumulation of 7,000 total flight cycles.

(2) For airplanes that have accumulated 6,501 total flight cycles, but fewer than 13,500 total flight cycles, as of the effective date of this AD: Inspect prior to the accumulation of 13,700 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs first.

(3) For airplanes that have accumulated 13,500 total flight cycles or more as of the effective date of this AD: Inspect within 200 flight cycles after the effective date of this AD.

Note 3: Inspections accomplished prior to the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–57–031, dated March 22, 2001, are considered acceptable for compliance with paragraph (a) of this AD.

Note 4: There is no terminating action available at this time for the repetitive inspections required by paragraph (a) of this AD.

Repair

(b) If any crack is found during any inspection according to paragraph (a) of this AD: Before further flight, repair per a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (or its delegated agent).

Reporting Requirement

(c) Submit a report of inspection findings (both positive and negative) to Bombardier Aerospace Technical Help Desk, fax (514) 855–8500, at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 30 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 6: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–15, dated March 30, 2001.

Issued in Renton, Washington, on October 24, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27216 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–93–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes Equipped With General Electric Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 777–200 series airplanes equipped with General Electric engines. This proposal would require installation of a high-temperature silicone foam seal on the aft fairing of the strut. This action is necessary to prevent primary engine exhaust from entering the aft fairing of the strut, elevating the temperature in the aft fairing of the strut, and creating a potential source of ignition, which could lead to an uncontrolled fire in the aft fairing of the strut. Such a fire would expose the wing fuel tank to high-temperature gasses and flames and result in a potential ignition source for the fuel tank, and reduced structural integrity of the wing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 14, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–93–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–93–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1024; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–93–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–93–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that, during routine inspections of the aft fairing of the strut, evidence of an elevated temperature in the interior cavity of the aft fairing has been found on several Boeing Model 777–200 series airplanes equipped with General Electric engines. The evidence includes charred seals, soot build-up, and discoloration. Investigation revealed that primary engine exhaust entering through a gap in the heat shield of the aft fairing of the strut elevates the temperature in the aft fairing. The aft fairing of the strut is a flammable leakage zone. An elevated temperature in this area would create a potential source of ignition, and an ignition source is not allowed to exist in a flammable leakage zone because there is no provision for detecting or extinguishing a fire in these zones. A potential source of ignition due to an elevated temperature in the aft fairing of the strut, if not corrected, could result in an uncontrolled fire in the aft fairing of the strut. Such a fire would expose the wing fuel tank to high-temperature gasses and flames and result in a potential ignition source for the fuel tank, and reduced structural integrity of the wing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–54A0015, dated January 18, 2001, which describes procedures for installation of a high-temperature silicone foam seal to fill the gap in the heat shield of the aft fairing of the strut on the left- and right-hand sides of the airplane. The procedures involve removing certain heat shield castings for the aft fairing of the strut, cleaning the area, bonding a foam seal to the upper surface of the heat shield cover plates, re-installing the heat shield castings, restoring the leveling compound and seal application, and doing a leak check of the aft fairing.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and Service Bulletin

The referenced service bulletin states that all actions for which the Boeing 777 Airplane Maintenance Manual (AMM) is specified as the appropriate source of service information for work instructions may instead be done according to an "operator's equivalent procedure." However, the FAA finds that Chapter 54–55–01 of the AMM must be used to accomplish the leak check of the aft fairing of the strut, which is specified in the Work Instructions in the service bulletin. For this leak check, an "operator's equivalent procedure" may be used only if approved as an alternative method of compliance per paragraph (c) of this AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 97 airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $16,200, or $900 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–93–AD.

Applicability: Model 777–200 series airplanes equipped with General Electric engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent primary engine exhaust from entering the aft fairing of the strut, elevating the temperature in the aft fairing of the strut, and creating a potential source of ignition, which could lead to an uncontrolled fire in the aft fairing of the strut and exposure of the wing fuel tank to high-temperature gasses and flames, and result in a potential ignition source for the fuel tank and reduced structural integrity of the wing, accomplish the following:

Installation of Seal

(a) Within 1,000 flight hours after the effective date of this AD, install a high-temperature silicone foam seal to fill the gap in the heat shield of the aft fairing of the strut on the left- and right-hand sides of the airplane. Do the installation according to Boeing Alert Service Bulletin 777–54A0015, dated January 18, 2001, except as provided by paragraph (b) of this AD. (Procedures for the installation include removing certain heat shield castings for the aft fairing of the strut, cleaning the area, bonding a foam seal to the upper surface of the heat shield cover plates, re-installing the heat shield castings, restoring the leveling compound and seal application, and doing a leak check of the aft fairing.)

"Operator's Equivalent Procedure"

(b) Though Boeing Alert Service Bulletin 777–54A0015, dated January 18, 2001, specifies that an "operator's equivalent procedure" may be used for the leak check described in the service bulletin, that leak check must be done according to Chapter 54–55–01 of the Boeing 777 Airplane Maintenance Manual, as specified in the service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 23, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27189 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–377–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require repetitive inspections for cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, and repair, if necessary. This proposal also provides, for certain airplanes, an optional modification of the lower lobe cargo door cutout, which ends the pre-modification repetitive inspections, but would necessitate new post-modification repetitive inspections after a certain time. This action is necessary to find and fix cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, which could lead to reduced structural integrity of the lower lobe cargo door cutout, and result in rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 14, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–377–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–377–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–377–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–377–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that cracking has been found in the upper corners of the lower lobe cargo door cutout on certain Boeing Model 747 series airplanes. Fatigue cracking of the skin, bear strap, and sill chord of the cargo door initiates at the fuselage skin fastener holes common to the hinge fairing strip. Such cracking, if not corrected, could lead to reduced structural integrity of the lower lobe, cargo door cutout, and result in rapid depressurization of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2448, including Appendix A, dated September 28, 2000, which describes procedures for repetitive detailed visual and high frequency eddy current inspections for cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout. If any cracking is found, the service bulletin specifies to contact the airplane manufacturer for repair instructions. For airplanes with no cracking and with adequate edge margins, the service bulletin also describes procedures for an optional modification of the lower lobe cargo door cutout. The optional modification involves removal of the hinge fairing and its fasteners, oversizing fastener holes, and replacing existing fasteners and the grounding strap with new fasteners and a new strap. Accomplishment of this optional modification eliminates the need to do the repetitive inspections described previously. However, Figure 5 of the service bulletin describes procedures for new post-modification repetitive detailed visual and high frequency eddy current inspections for cracking of the skin adjacent to the lower lobe cargo door cutout. If the optional modification is done, the post-modification inspections are eventually necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of repairs, this proposed AD would require all repairs to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Operators should note that the requirements of this proposed AD would apply only to airplanes with line numbers 1 through 1255 inclusive, as listed in Group 1 in the service bulletin. Airplanes with line numbers 1256 through 1297 inclusive, which are identified as Group 2 in the service bulletin, have cold-worked fastener holes near the edge of the skin panel at the upper corners of the door cutout. Thus, they are not as susceptible to the fatigue cracking addressed by this proposed AD. (Airplanes with line numbers 1298 and subsequent have a redesigned skin panel and increased edge margin at fastener locations. These airplanes are also not subject to the unsafe condition addressed by this proposed AD.)

Cost Impact

There are approximately 1,129 airplanes of the affected design in the worldwide fleet. The FAA estimates that 275 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $49,500, or $180 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–377–AD.

Applicability: Model 747 series airplanes, line numbers 1 through 1255 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, which could lead to reduced structural integrity of the lower lobe cargo door cutout, and result in rapid depressurization of the airplane, accomplish the following:

Repetitive Inspections

(a) Perform detailed visual and high frequency eddy current inspections to find cracking of the skin, bear strap, and sill chord at the upper aft and forward corners of the lower lobe cargo door cutout, according to Boeing Alert Service Bulletin 747–53A2448, including Appendix A, dated September 28, 2000. Do the initial inspections at the time shown in paragraph (a)(1) or (a)(2) of this AD, as applicable, and repeat the inspections at least every 3,000 flight cycles until paragraph (c) of this AD is accomplished.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For airplanes with fewer than 13,000 total flight cycles as of the effective date of this AD: Do the inspection prior to the accumulation of 13,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes with 13,000 or more total flight cycles as of the effective date of this AD: Do the inspection within 1,000 flight cycles or 1 year after the effective date of this AD, whichever is first.

Repair

(b) If any crack is found during any inspection required by paragraph (a) of this AD: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Optional Modification

Note 3: If edge margin distance is outside the limits specified in Figure 4 of Boeing Alert Service Bulletin 747–53A2448, including Appendix A, dated September 28, 2000, no modification is available.

(c) If no crack is found during any inspection required by paragraph (a) of this AD, AND edge margin distance is within the limits specified in Figure 4 of Boeing Alert Service Bulletin 747–53A2448, including Appendix A, dated September 28, 2000: Do paragraphs (c)(1) and (c)(2) of this AD.

(1) Do the optional modification of the lower lobe cargo door cutout (including removing the hinge fairing and its fasteners, oversizing fastener holes, and replacing existing fasteners with new fasteners and the grounding strap with a new strap) described in the service bulletin. Such modification ends the repetitive inspections required by paragraph (a) of this AD.

(2) Within 16,000 flight cycles after doing the modification in paragraph (c)(1) of this AD, perform detailed visual and high frequency eddy current inspections to find cracking of the skin at the upper aft and forward corners of the lower lobe cargo door cutout, according to Figure 5 of Boeing Alert Service Bulletin 747–53A2448, including Appendix A, dated September 28, 2000. Repeat these inspections at least every 3,000 flight cycles.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 23, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27190 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–33–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–45 and CF6–50 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to GE CF6–45 and CF6–50 series turbofan engines. This proposal would require a reduction of the cyclic life limit for certain low pressure turbine rotor (LPTR) stage 2 disks, and would require removing certain LPTR stage 2 disks from service before exceeding the new, lower cyclic life limit. In addition, the proposal would require removing from service certain LPTR stage 2 disks that currently exceed, or will exceed, the new, lower cyclic life limit according to the compliance schedule described in this proposal. This proposal is prompted by a report of a cracked LPTR stage 2 disk found during a visual inspection. The actions specified by the proposed AD are intended to prevent an uncontained engine failure and damage to the airplane, resulting from cracks in the LPTR stage 2 disk.

DATES: Comments must be received by December 31, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–33–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected, by appointment, at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Ann Mollica, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7740; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The

proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–33–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–33–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

An LPTR stage 2 disk cracked in the forward slot area was discovered during a shop visit visual inspection. The manufacturer has determined that the crack is a result of low cycle fatigue failure. As a result, the manufacturer has reevaluated the 15,500 cycles-since-new (CSN) cyclic life limit for LPTR stage 2 disks part numbers (P/N's) 9061M22P08 and 9061M22P10, and has recalculated the cyclic life limit. This proposal would establish a new, lower cyclic life limit of 10,400 CSN for LPTR stage 2 disks P/N's 9061M22P08 and 9061M22P10 and would require removing certain LPTR stage 2 disks from service before exceeding the new, lower cyclic life limit. In addition, the proposal would require removing from service certain LPTR stage 2 disks that currently exceed, or will exceed, the new, lower cycle life limit according to a compliance schedule based on accumulated cycles on the disk on the effective date of the AD. The compliance schedule is established on the basis of a risk analysis that the FAA has reviewed. The FAA has determined that the compliance schedule based on that risk analysis establishes an acceptable level of safety for those disks operated beyond the new life limit. The actions specified by the proposed AD are intended to prevent an uncontained engine failure and damage to the airplane, resulting from cracks in the LPTR stage 2 disk.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other GE CF6–45 and CF6–50 series turbofan engines of the same type design, the proposed AD would establish a new, lower cyclic life limit of 10,400 CSN for LPTR stage 2 disks P/N's 9061M22P08 and 9061M22P10 and would require removing certain LPTR stage 2 disks from service before exceeding the new, lower cyclic life limit. In addition, the proposal would require removing from service certain LPTR stage 2 disks that currently exceed, or will exceed, the new, lower cycle life limit according to a compliance schedule based on accumulated cycles on the disk on the effective date of this AD.

Economic Analysis

There are approximately 1,376 GE CF6–45 and CF6–50 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 664 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The proposed action does not impose any additional labor costs. A new disk would cost approximately $72,870 per engine. Based on these figures, and on the prorating for the usage of the disks, the cost effect of the proposed AD on U.S. operators is estimated to be $10,385,724.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 2001–NE–33–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–45 and CF6–50 series turbofan engines. These engines are installed on, but not limited to, Airbus Industrie A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent an uncontained engine failure and damage to the airplane, resulting from cracks in the low pressure turbine rotor (LPTR) stage 2 disk, do the following:

(a) Remove from service LPTR stage 2 disks, part numbers (P/N's) 9061M22P08 and 9061M22P10 in accordance with Table 1 as follows:

TABLE 1.—LPTR STAGE 2 DISK REMOVAL SCHEDULE

If disk cycles-since-new (CSN) on the effective date of this AD are:	Then remove disk:
(1) Fewer than 5,300 CSN	Before exceeding 10,400 CSN.
(2) 5,300 CSN or more, but fewer than 10,400 CSN	Within 5,100 additional cycles-in-service from the effective date of this AD.
(3) 10,400 CSN or more	At next LPTR stage 2 disk exposure, or by 15,500 CSN, whichever occurs earlier.

(b) After the effective date of this AD, do not install any LPTR stage 2 disk, P/N 9061M22P08 or 9061M22P10, that has 10,400 or more CSN into an engine.

(c) Except for as provided in paragraph (a) of this AD, this action establishes a new, cyclic life limit of 10,400 CSN for LPTR stage 2 disk, P/N 9061M22P08 and 9061M22P10, which is published in Chapter 05–10–00 of CF6–45 and CF6–50 Engine Shop Manual, GEK 50481.

Definition

(d) For the purpose of this AD, LPTR stage 2 disk exposure is defined as disassembly and removal of the LPTR stage 2 disk from the LPTR structure, regardless of whether any blades, bolts, nuts, bolt retainers, blade retainers, blade inserts, balance weights, wear strips, or seals remain assembled to the disk.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(f) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on October 22, 2001.

Thomas Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–27191 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–129–1–7471b; FRL–7091–4]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Volatile Organic Compounds, Solvent Using Processes, Surface Coating Processes, Aerospace Manufacturing and Rework Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action on revisions to the Texas State Implementation Plan (SIP). These revisions concern Control of Air Pollution from Volatile Organic Compounds (VOC), Solvent Using Processes, Surface Coating Processes, Aerospace Manufacturing and Rework Operations. The EPA is proposing to approve these revisions to regulate emissions of VOCs as meeting the Reasonably Available Control Technology (RACT) requirements in accordance with the requirements of the Federal Clean Air Act. The EPA is also proposing to remove three site-specific alternate RACT determinations from the Texas SIP and replacing them with the VOC revisions.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comments, the EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Our Technical Support Document for this rule revision contains more information about this action.

DATE: Written comments must be received by November 29, 2001.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

SUPPLEMENTARY INFORMATION: This document concerns Control of Air Pollution from VOC, Solvent Using Processes, Surface Coating Processes, Aerospace Manufacturing and Rework Operations. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 10, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 01–27108 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. PR6–233b; FRL–7093–8]

Approval and Promulgation of State Plans for Designated Facilities; Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the Commonwealth of Puerto Rico. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing small municipal waste combustion (MWC) units. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing small MWC units in the state and it submits a negative declaration letter in place of the State Plan.

DATES: Written comments must be received on or before November 29, 2001.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

A copy of the Commonwealth submittal is available for inspection at the Region 2 Office in New York City. Those interested in inspecting the submittal must arrange an appointment in advance by calling (212) 637–4249. Alternatively, appointments may be arranged via e-mail by sending a message to Ted Gardella at *Gardella.Anthony@epa.gov*. The office address is 290 Broadway, Air Programs Branch, 25th Floor, New York, New York 10007–1866.

A copy of the Commonwealth submittal is also available for inspection at the respective offices:

Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico 00917.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules section of this **Federal Register**.

The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the Commonwealth of Puerto Rico on August 2, 2001. The negative declaration officially certifies to EPA that, to the best of the Commonwealth's knowledge, there are no small municipal waste combustion units in operation in the Commonwealth of Puerto Rico. This negative declaration concerns existing small municipal waste combustion units throughout the Commonwealth of Puerto Rico. The negative declaration satisfies the federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled "Emission Guidelines for Existing Small Municipal Waste Combustion Units" (65 FR 76378, December 6, 2000).

Dated: October 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 01–27284 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[WI; FRL–7094–4]

Clean Air Act Proposed Full Approval Of Operation Permits Program; WI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to fully approve the Wisconsin title V Federal Operation Permits Program, submitted by Wisconsin pursuant to subchapter V of the Clean Air Act, which requires states to develop, and to submit to EPA for approval, programs for issuing operation permits to all major stationary sources and to certain other sources.

DATES: EPA must receive comments on this proposed action on or before November 21, 2001.

ADDRESSES: Comments should be addressed to: Robert Miller, Chief, Permits and Grants Section, at the address noted below. Copies of the state's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Beth Valenziano at (312) 886–2703 or Susan Siepkowski at (312) 353–2654 to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano or Susan Siepkowski, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Numbers: (312) 886–2703/353–2654 (respectively), e-mail addresses: *valenziano.beth@epa.gov* or *siepkowski.susan@epa.gov*.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is being addressed in this document?
What are the program changes that EPA proposes to approve?
What is involved in this proposed action?

What Is Being Addressed in This Document?

As required under Subchapter V of the Clean Air Act ("the Act"), EPA has promulgated regulations that define the minimum elements of an approvable state operation permits program and the corresponding standards and procedures by which the EPA will approve, oversee, or withdraw approval of the state programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V of the Act, generally known as title V, and the implementing regulations, states developed, and submitted to EPA, programs for issuing operation permits to all major stationary sources and to certain other sources. Where a program substantially, but not fully, met the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a program by the expiration of its interim approval period, EPA must establish and implement a federal program under 40 CFR part 71 in that state.

EPA promulgated final interim approval of the Wisconsin title V program on March 6, 1995 (60 FR 12128), and the program became effective on April 5, 1995.

Wisconsin submitted revisions to its title V program for EPA approval on March 28, 2001, and submitted supplemental packages on September 5, 2001 and September 17, 2001. The submittals included corrections to the interim approval issues identified in the March 6, 1995 interim approval action and additional program revisions and updates.

What Are the Program Changes That EPA Proposes To Approve?

A. Title V Interim Approval Corrections

In the March 6, 1995 action, EPA identified eight interim approval issues. The following is a description of the issues and their subsequent resolution.

1. Criminal Fines

Wisconsin's operation permit program regulations did not provide for criminal fines against any person who knowingly makes any false material statement, representation, or certification in a permit application, as required by 40 CFR 70.11(a)(3)(iii). To correct this program deficiency, the Wisconsin Department of Natural Resources (WDNR) created section Natural Resources (s. NR) 407.05(10), Wisconsin Administrative Code (Wis. Adm. Code), to require all material statements, representations, and certifications in a permit application to be truthful. This provision is in turn subject to the state's criminal enforcement authority, section (s.) 285.87(2), Wisconsin Statutes (Wis. Stats.) [s. 144.426(2)(a) [1]], which provides criminal penalty authority for violations of state regulations. Wisconsin's revised Attorney General's opinion of January 5, 2001, Section XIX, confirms the state's authority to impose criminal fines for false statements in permit applications.

2. Application Shield for New and Modified Sources

40 CFR 70.7(b) requires that the application shield must apply to all part 70 sources that meet the application shield requirements. The following Wisconsin legislation and regulations did not provide an application shield for "new" and "modified sources" (as defined by ss. 285.01(27) and (29), Wis. Stats. [ss.144.30(20s) and (20e)]): s. 285.60(1)(b), Wis. Stats. [s.144.391(1)(b)]; s. 285.62(8), Wis. Stats. [s.144.3925(7)]; s. NR 407.06(2), Wis. Adm. Code; and s. NR 407.08, Wis. Adm. Code.

To correct these program deficiencies, the state amended the four provisions to provide the application shield to new and modified sources. Wisconsin amended s. 285.60(1)(b), Wis. Stats. [s. 144.391(1)(b)], to include the reference to the application shield provision in s. 285.62(8), Wis. Stats. [s. 144.3925(7)]. The state corrected the application shield provision in s. 285.62(8), Wis. Stats. [s. 144.3925(7)], by replacing the term "existing source" with "stationary source", which encompasses new, modified, and existing sources. Wisconsin also revised s. NR 407.06(2), Wis. Adm. Code, by replacing the term "existing source" with "stationary source". Finally, the state corrected s. NR 407.08(2) by referencing the application shield provisions in s. 285.62(8), Wis. Stats., [s. 144.3925(7)] for new and modified sources. Wisconsin's revised Attorney General's opinion, Section XX, confirms the state's authority to provide an application shield for new and modified sources.

3. Operational Flexibility for New and Modified Sources

The following legislation and regulation did not provide for operational flexibility, as required by 40 CFR 70.4(b)(12)(i), for "new" and "modified sources": s. 285.60(4), Wis. Stats. [s.144.391(4m)]; and s. NR 407.025, Wis. Adm. Code. 40 CFR 70.4(b)(12)(i) must apply to all part 70 sources. To correct these program deficiencies, the state revised s. 285.60(4), Wis. Stats. [s. 144.391(4m)], and s. NR 407.025, Wis. Adm. Code., by replacing the term "existing source" with "stationary source". The term stationary source encompasses new, modified, and existing sources. Wisconsin's revised Attorney General's opinion, Section XIII, confirms the state's authority to provide operational flexibility for new and modified sources.

4. Authority To Deny a Renewal Application for a Noncomplying Source

40 CFR 70.6(a)(6)(i) requires that any permit noncompliance is grounds for denial of a permit renewal application. Wisconsin's legislation and regulations did not provide the authority to deny a renewal application for a source that is not in compliance. To correct this deficiency, Wisconsin added s. 285.66(3)(c), Wis. Stats, [s. 144.396(3)(c)] to provide the authority to deny a renewal application for a noncomplying source. The WDNR also revised s. NR 407.09(1)(f)1, Wis. Adm. Code, to state that noncompliance with an operation permit is grounds for denial of a permit renewal application. Wisconsin's revised Attorney General's opinion, Section IV, confirms the state's authority to deny a renewal application for a noncomplying source.

5. Reopening for Cause

40 CFR 70.7(f)(1) establishes the conditions under which reopening a permit for cause is mandatory. Wisconsin's regulations, ss. NR 407.14(1)(b), (c), (d), and (h), Wis. Adm. Code, allowed discretion in triggering the permit reopening for cause provisions. To correct these deficiencies, WDNR revised s. NR 407.14 to require the department to reopen a permit for cause pursuant to the conditions in 40 CFR 70.7(f)(1). The requirement for reopening the acid rain portion of the permit (40 CFR 70.7(f)(1)(ii)) is contained in the state's acid rain rule, under s. NR 409.12(6). The state regulations also retain discretionary reopening for cause authority for conditions beyond those required by 40 CFR 70.7(f)(1). Wisconsin's revised Attorney General's opinion, Sections XI and XV, confirms the state's authority for permit reopenings.

6. Duty To Supplement or Correct Applications

Wisconsin's regulations, s. NR 407.05, Wis. Adm. Code, did not include the duty to supplement or correct application provisions, as required under 40 CFR 70.5(b). To correct this deficiency, WDNR added these application requirements to s. NR 407.05(9), Wis. Adm. Code. Wisconsin's revised Attorney General's opinion, Section XII, confirms the duty to supplement or correct applications.

7. Permit Requirements for New and Modified Noncomplying Sources

Wisconsin had numerous statutory and regulatory deficiencies related to the lack of authority to issue operation permits to new and modified part 70 sources that are not in compliance. Wisconsin's revised Attorney General's opinion, Section III, addresses all of the following new and modified noncomplying source permit requirements. First, 40 CFR 70.3(a) requires that the permitting agency must have authority to issue permits to all part 70 sources. S. 285.64(1)(a), Wis. Stats. [s.144.3935(1)(a)], did not provide WDNR the authority to issue operation permits to "new" and "modified" part 70 sources that are not in compliance. Wisconsin corrected this deficiency by replacing the term "existing source" with "stationary source" in s. 285.64(1)(a), Wis. Stats. [s. 144.3935(1)(a)]. The term stationary source encompasses new, modified, and existing sources.

Second, 40 CFR 70.5(c)(8)(ii)(C) includes specific compliance plan

[1] Since EPA promulgated interim approval of Wisconsin's operation permit program, the state recodified the environmental chapters of the Wisconsin statutes. This recodification became effective on January 1, 1997. To address the recodification, this proposal references the current Wisconsin statutory citations, but acknowledges the old citations (which were in effect when EPA granted Wisconsin interim approval) in brackets.

application requirements for all part 70 sources that are not in compliance. S. NR 407.05(4)(h)2.c., Wis. Adm. Code, did not provide that compliance plan application requirements for noncomplying new and modified sources include a narrative description of how the sources will achieve compliance. Wisconsin corrected this deficiency by replacing the term "existing source" with "stationary source" in s. NR 407.05(4)(h)2.c, Wis. Adm. Code.

Third, 40 CFR 70.5(c)(8)(iii)(C) requires schedules of compliance in all noncomplying part 70 source applications. S. NR 407.05(4)(h)3.c., Wis. Adm. Code, did not provide for schedule of compliance application requirements for noncomplying new and modified sources. Wisconsin corrected this deficiency by removing the term "for existing sources" in s. NR 407.05(4)(h)3.c, Wis. Adm. Code. The provision now applies to all noncomplying sources.

Fourth, 40 CFR 70.5(c)(8)(iv) requires progress report schedules in all noncomplying part 70 source applications. S. NR 407.05(4)(h)4, Wis. Adm. Code, did not provide for progress report application requirements for noncomplying new and modified sources. Wisconsin corrected this deficiency by replacing the term "existing sources" with "stationary sources" in s. NR 407.05(4)(h)4., Wis. Adm. Code.

Fifth, 40 CFR 70.6(c)(3) and (4) require schedule of compliance and progress report requirements in all part 70 permits that are issued to noncomplying sources. S. NR 407.09(4)(b), Wis. Adm. Code, did not provide for schedule of compliance and progress report requirements in permits issued to noncomplying new and modified sources. Wisconsin corrected this deficiency by replacing the term "existing sources" with "stationary sources" in s. NR 407.09(4)(b), Wis. Adm. Code.

8. Source Exemptions

A "major source," as defined at 40 CFR 70.2, among other things, is a source whose potential to emit is above specific emission threshold levels. A source can avoid major source status by accepting limits on its potential to emit.

As discussed in the March 6, 1995 final interim approval, ss. NR 407.03(1)(d), (g), (h), (o), (s), and (sm) exempted certain sources from permitting requirements without providing adequate procedures to limit their potential to emit [2]. In addition, s. NR 407.03(1)(t), Wis. Adm. Code, potentially exempted certain major part 70 sources from the program, depending on the type of source. Therefore, s. NR 407.03(1)(d), (g), (h), (o), (s), (sm), and (t) improperly limited WDNR's ability to permit all major sources, as required by 40 CFR 70.3.

The WDNR corrected ss. NR 407.03(1)(d), (g), (h), (o), and (s) by creating "prohibitory rules" that include specific recordkeeping requirements for each exemption in s. NR 407.03(4). See EPA's January 25, 1995 memorandum from John Seitz and Robert Van Heuvelen entitled: "Options for Limiting the Potential to Emit of a Stationary Source under Section 112 and Title V of the Clean Air Act", and EPA's August 27, 1996 guidance from John Seitz and Robert Van Heuvelen entitled: "Extension of January 25, 1995 Potential to Emit Transition Policy". The state corrected s. NR 407.03(1)(sm), Wis. Adm. Code, by specifically excluding major sources, sources subject to sections 111 or 112 of the Act, and sources subject to certain state toxics requirements from being eligible for the exemption. The WDNR also corrected s. NR 407.03(1)(t) by specifically excluding major sources from being eligible for the exemption. Wisconsin's revised Attorney General's opinion, Section II, confirms the state's authority to require operation permits for all part 70 sources.

B. Other Title V Program Revisions

The WDNR has made changes to its title V program in addition to the interim approval corrections. The EPA will address the additional program revisions in a separate rulemaking action.

What Is Involved in This Proposed Action?

A. Proposed Action

The EPA proposes full approval of the Wisconsin operation permits program based on the corrective program revisions the state submitted on March 28, 2001, September 5, 2001, and September 17, 2001. This proposed full approval of Wisconsin's corrective operation permit program submittal addresses only the requirements of title V and part 70, and does not apply to any other federal program requirements, such as State Implementation Plans pursuant to section 110 of the Act. The EPA finds that Wisconsin has satisfactorily addressed the program deficiencies identified in EPA's March 6, 1995 interim approval rulemaking.

B. Citizen Comment Letter on Wisconsin Title V Program

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operation permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group. In settling the litigation, EPA agreed to publish a notice in the **Federal Register**, so that the public would have the opportunity to identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs. In turn, EPA would respond to the public's allegations within specified time periods, if the comments were made within 90 days of publication of the **Federal Register** document.

The EPA received one timely comment letter pertaining to the Wisconsin title V program. The EPA takes no action on those comments in today's action. As stated in the **Federal Register** document published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. The EPA will publish a notice of deficiency (NOD) if the Agency determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, because it merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law.

[2] Note that the interim approval action on Wisconsin's program required limits on potential to emit to be federally enforceable. However, several court cases have vacated the federally enforceable requirement in certain Act programs, including title V. See EPA's August 27, 1996 guidance from John Seitz and Robert Van Heuvelen entitled: "Extension of January 25, 1995 Potential to Emit Transition Policy".

This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), because it proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have federalism implications, because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal Government established in the Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs pursuant to title V of the Act, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove an operating permit program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of an operating permit program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operation permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 18, 2001.

Thomas V. Skinner,

Regional Administrator, Region V.

[FR Doc. 01–27257 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MI; FRL–7094–6]

Clean Air Act Proposed Full Approval Of Operating Permits Program; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to fully approve the Michigan Title V Federal Operating Permits Program, submitted by Michigan pursuant to subchapter V of the Clean Air Act, which requires states to develop, and to submit to EPA for approval, programs for issuing operating permits to all major stationary sources and to certain other sources.

DATES: EPA must receive comments on this proposed action on or before November 21, 2001.

ADDRESSES: Comments should be addressed to: Robert Miller, Chief, Permits and Grants Section, at the address noted below. Copies of the state's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Beth Valenziano at (312) 886–2703 to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886–2703, e-mail Addresses: *valenziano.beth@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is being addressed in this document?
What are the program changes that EPA proposes to approve?
What is involved in this proposed action?

What Is Being Addressed in This Document?

As required under Subchapter V of the Clean Air Act (the Act), EPA has promulgated regulations that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, or withdraw approval of the state programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V of the Act, generally known as Title V, and the implementing regulations, states developed, and submitted to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. Where a program substantially, but not fully, met the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a state operating permit program by the expiration of its interim approval period, EPA must establish and

implement in that State a Federal program under 40 CFR part 71.

EPA promulgated final interim approval of the Michigan Title V program on January 10, 1997 (62 FR 1387), and the program became effective on February 10, 1997. On June 18, 1997 (62 FR 34010), EPA granted Michigan source category limited interim approval, approving Michigan's 4 year initial permit issuance schedule. Source category limited interim approval allows EPA to approve an initial state permit issuance schedule up to 2 years past the 3 year phase in period required by 40 CFR 70.4(b)(11)(ii).

Michigan submitted revisions to its Title V program for EPA approval on June 1, 2001, and submitted a supplemental package on September 20, 2001. The submittals included corrections to the interim approval issues identified in the January 10, 1997 interim approval action and additional program revisions and updates.

What Are the Program Changes That EPA Proposes To Approve?

A. Title V Interim Approval Corrections

In the January 10, 1997 action, EPA identified eight interim approval issues. The following is a description of the issues and their subsequent resolution.

1. Schedule of Compliance

40 CFR 70.5(c)(8)(iii)(C) requires that a schedule of compliance for a source that is not in compliance with all applicable requirements at the time of permit issuance "resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject." Michigan's original rules did not include these provisions. MDEQ corrected this deficiency by adding the above quoted requirements to the definition of "schedule of compliance" in Rule (R) 336.1119(a).

2. Stationary Source

The 40 CFR 70.2 definition of "major source" requires a stationary source or any group of stationary sources to include all pollutant emitting activities located on one or more contiguous or adjacent properties (in addition to other requirements). Although MDEQ's definition addressed adjacency, it did not include the provision addressing contiguousness. MDEQ corrected this deficiency by adding the contiguous requirement to the definition of "stationary source" in R 336.1119(q).

3. Solid Waste Incineration Units

40 CFR 70.3 requires non-major solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act to obtain a Title V permit. These units are not eligible for a permit deferral under 40 CFR 70.3(b). Michigan's applicability rules did not include non-major solid waste incineration units required to obtain permit pursuant to section 129(e). MDEQ corrected this deficiency by revising the state's Title V applicability rule (336.1211(1)(c)) to specifically include all solid waste incineration units required to obtain a permit under section 129(e). In addition, MDEQ revised R 336.1211(2) to specifically require that all emissions be counted in determining a stationary source's potential to emit.

4. Major Source Determinations

R 336.1212(1) allowed emissions from certain insignificant activities to be exempted from determining sources' major source status. 40 CFR part 70 does not provide for any such exemptions. MDEQ corrected this deficiency by revising R 336.1212 to eliminate the portions of the rule that created the exemptions from determining major source status. In addition, MDEQ revised R 336.1211(2) to specifically require that all emissions are counted in determining a stationary source's potential to emit.

5. Compliance Certification

40 CFR 70.5(c)(9)(i), (ii), and (iv) require permit applications to include a certification of compliance with all applicable requirements and a statement of the methods used for determining compliance. Michigan's statutes and rules did not specifically include these provisions. MDEQ corrected this deficiency by revising R 336.1210(2) to explicitly include the requirements in 40 CFR 70.5(c)(9)(i), (ii), and (iv).

6. Penalties and Fines

Section 324.5534 of Michigan's Natural Resources and Environmental Protection Act (NREPA) provided exemptions from penalties or fines for violations caused by an act of God, war, strike, riot, catastrophe, or other conditions where negligence or willful misconduct was not the proximate cause. Title V does not provide for such broad penalty and fine exemptions. Michigan corrected this deficiency by repealing Section 324.5534 from the state statute.

7. Startup, Shutdown, Malfunction (SSM) Rules

Michigan's SSM rules [R 336.1913 and R 336.1914) provided an affirmative defense that was broader than that provided by 40 CFR 70.6(g), and that was also inconsistent with Section 110 of the Act, as interpreted in EPA's enforcement discretion policy. The state SSM rules therefore affected the state's enforcement and compliance assurance authorities required by 40 CFR 70.4(b)(3)(i), 70.4(b)(3)(vii), and 70.11. MDEQ corrected these deficiencies by rescinding R 336.1913 and R 336.1914.

8. Audit Privilege and Immunity Law

Michigan's audit privilege and immunity law, part 148 of NREPA, impermissibly affected numerous requirements of the state's Title V operating permit program, including: assuring compliance [70.4(b)(3)(i)]; enforcing permits and the requirement to obtain a permit [70.4(b)(3)(vii)]; and the general enforcement authorities [70.11(a) and (c)]. The EPA's final interim approval of Michigan's part 70 operating permit program outlined the changes and demonstrations required for full approval. Michigan corrected these deficiencies by amending part 148 of NREPA in accordance with EPA's recommendations, and by providing state Attorney General interpretations and an additional commitment regarding confidentiality agreements.[1]

B. Other Title V Program Revisions

The MDEQ has made changes to its Title V program in addition to the interim approval corrections. The EPA will address the additional program revisions in a separate rulemaking action.

What Is Involved in This Proposed Action?

A. Proposed Action

The EPA proposes full approval of the Michigan operating permits program based on the corrective program revisions the state submitted on June 1, 2001 and September 20, 2001. This proposed full approval of Michigan's corrective operating permit program submittal addresses only the requirements of Title V and part 70, and does not apply to any other federal program requirements, such as State Implementation Plans pursuant to section 110 of the Act. The EPA finds

[1] See the following correspondence for further information: a letter dated June 11, 1997 from Frank J. Kelley, Michigan Attorney General, to Russell J. Harding, MDEQ, regarding audit law interpretations; a memorandum dated June 20, 1997 from A. Michael Leffler, Michigan Department of Attorney General, to Russell J. Harding regarding audit law interpretations; a letter dated July 1, 1997 from Russell J. Harding to Steven A. Herman, USEPA, outlining agreed upon statutory revisions; a letter dated November 21, 1997 from Russell J. Harding, MDEQ, to Steven A. Herman, USEPA, submitting the revised audit privilege law; a letter dated December 12, 1997 from Steven A. Herman to Russell J. Harding stating that Michigan's title V audit law issues are resolved.

that Michigan has satisfactorily addressed the program deficiencies identified in EPA's January 10, 1997 interim approval rulemaking.

B. Citizen Comment Letters on Michigan Title V Program

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The Sierra Club and the New York Public Interest Research Group challenged this action. In settling the litigation, EPA agreed to publish a notice in the **Federal Register**, so that the public would have the opportunity to identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs. In turn, EPA would respond to the public's allegations within specified time periods, if the comments were made within 90 days of publication of the **Federal Register** document.

The EPA received two timely comment letters pertaining to the Michigan Title V program. The EPA takes no action on those comments in today's action. As stated in the **Federal Register** document published on December 11, 2000 (65 FR 77376), EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. The EPA will publish a notice of deficiency (NOD) if the Agency determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, because it merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have federalism implications, because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal Government established in the Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs pursuant to Title V of the Act, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove an operating permit program submission for failure to such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of an operating permit program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 19, 2001.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 01–27259 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MN; FRL–7094–5]

Clean Air Act Proposed Full Approval of the Air Operation Permits Program; MN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to fully approve the Minnesota Title V Federal Operating Permits Program, submitted

by Minnesota on June 9, 2000, July 21, 2000, and June 12, 2001 pursuant to subchapter V of the Clean Air Act, which requires States to develop, and submit to EPA for approval, programs for issuing operation permits to all major stationary sources, and to certain other sources.

DATES: EPA must receive written comments on this proposed action on or before November 21, 2001.

ADDRESSES: Comments should be addressed to: Robert Miller, Chief, Permits and Grants Section, EPA (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois, 60604. Copies of the State's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Robert Miller at (312) 353–0396 to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Telephone Number: (312) 886–7017, e-mail address: rineheart.rachel@epa.gov; or Robert Miller, EPA (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois, 60604, Telephone Number (312) 353–0396, e-mail address: *miller.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What Is Being Addressed In This Document?
What Are The Program Changes That EPA Proposes To Approve?
What Is Involved In This Proposed Action?

What Is Being Addressed in This Document?

As required under Title V of the Clean Air Act ("the Act"), EPA promulgated regulations which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, or withdraw approval of the State programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Title V of the Act and the implementing regulations, states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. Where a program substantially, but not fully, meets the requirements of part 70, EPA grants the program interim approval. If EPA has not fully approved a program by the expiration of the interim approval period, EPA must establish and implement a Federal program under 40 CFR part 71 in that state.

EPA promulgated final interim approval of the Minnesota Title V program on June 16, 1995 (60 FR 31637), and the program became effective on July 16, 1995. In the final interim approval, EPA identified certain program deficiencies that Minnesota would be required to address in order for EPA to fully approve the Minnesota Title V program. The interim approval for Minnesota's program expires on December 1, 2001.

Minnesota submitted to EPA revisions to its Title V program on June 9, 2000, July 21, 2000, and June 12, 2001. These submittals included corrections to the interim approval issues identified in the June 16, 1995 interim approval, and additional program revisions and updates.

What Are The Program Changes That EPA Proposes To Approve?

A. Title V Interim Approval Corrections

In the June 16, 1995 interim approval, EPA identified five deficiencies to be corrected for the program to receive full approval. The following is a description of the issues and their subsequent resolution.

1. Monitoring Reports

In the June 16, 1995 action, EPA found that pursuant to part 70 Minnesota must require, at a minimum, semi-annual monitoring reports from all sources required to monitor at least every 6 months and annual monitoring reports from sources required to monitor less frequently than every 6 months. Minnesota has added language requiring all sources subject to part 70 permitting requirements to submit a deviation report every 6 months, using the State's deviation reporting form. EPA has reviewed this form and compared the content to the requirements for semi-annual monitoring reports in 40 CFR part 70.

Minnesota Rule 7007.0800 requires that the deviation report be certified by a responsible official. For each monitoring parameter, the form requires: a brief summary of the monitoring performed; a statement describing compliance; and a summary of any deviation that occurred which includes the number of deviations, the date and time of each deviation, the actual recorded value, a statement of why the deviation occurred, and a description of corrective actions taken. EPA believes that the rule and the required reporting forms meet the semi-annual monitoring report requirement of part 70.

2. Administrative Permit Amendment Procedures

The program originally submitted to EPA for approval allowed the use of administrative amendment procedures to "clarify" a permit term. EPA felt that the term "clarify" was ambiguous and that the State's rule could be interpreted to include changes outside the scope of the administrative amendment procedures outlined in part 70. The following change to Minnesota Rule 7007.1400 was effective on January 19, 1998 (added text has been underlined), "An amendment to clarify *the meaning of* a permit term." By adding the phrase "the meaning of," MPCA has limited the scope of changes that could qualify for the administrative amendment process. It prevents changes in the limitation itself and better reflects the types of permit revisions that the State had envisioned for this process. As an example, a permit might contain a requirement for daily monitoring of temperature for a unit stating that the temperature must be between 100 and 150 degrees Fahrenheit. The State could add language through the administrative amendment process clarifying that "daily" means "any day the unit is in operation." In contrast, if an error had been made in the permit such as the wrong temperature range or the limit should have been degrees Celsius rather than Fahrenheit, the administrative amendment process could not be used because the correction of that error would result in a change in the meaning of the limitation.

3. Incorporation by Reference

In the June 16, 1995 interim approval, EPA stated that as a condition for full approval Minnesota Rule 7007.0800, subpart 16, must be revised to require that all conditions required by 40 CFR 70.6(a) contained in Minnesota Rule 7007.0800, subpart 16, be expressly stated in part 70 permits. The conditions contained in this subpart are general conditions applicable to all part 70 sources such as the severability clause. Since that time, EPA has clarified its position on permit content requirements. The March 5, 1996 document "White Paper Number 2 for Improved Implementation of the part 70 Operating Permits Program," addresses the issue of incorporation by reference on pages 36–41. Because the requirements contained in Minnesota Rule 7007.0800, subpart 16, are not source specific and are clearly identifiable in the state rules, EPA finds that incorporation by reference of these terms is consistent with EPA's interpretation of the permit content requirements of part 70.

4. Fees

In reviewing Minnesota's initial program submittal, EPA found that Minnesota had not demonstrated it was collecting adequate fees and required Minnesota to submit a detailed fee demonstration or to increase the types of pollutant for which fees are charged in order to collect an amount equivalent to the presumptive minimum. This problem arose because Minnesota had not included all the pollutants in the definition of "any regulated pollutant for presumptive fee calculation." In an October 16, 1995, memorandum, "Definition of Regulated Pollutant for Particulate Matter for Purposes of Title V," EPA stated that only PM10 is considered a regulated pollutant under Title V; therefore, Minnesota no longer needs to include particulate matter greater than 10 microns in diameter in fee calculations. A November 10, 1994, letter from MPCA addresses the remaining pollutants. The November 10, 1994, letter provides a summary of total reduced sulfur, hydrogen chloride, and sulfuric acid mist emissions from the Minnesota Emission Inventory. The State shows that fees for these pollutants would increase fees collected in the State by less than 0.18 percent. The State takes the position that the costs associated with monitoring, reporting, and tracking these emissions outweigh the benefit of any additional revenue that would be collected. EPA believes that the additional revenue from including these pollutants in the fee calculation would have no more than a trivial benefit. Therefore, EPA has decided to accept Minnesota's rule as meeting the presumptive minimum.

5. Timelines for Permit Issuance

The initial program submittal required Minnesota to take final action on minor modifications to permits within 180 days from the receipt of the application. Part 70 requires final action within 90 days of receiving a complete application for this type of permit modification. Minnesota has revised Minnesota Rule Chapter 7007 to address this issue. Minn. R. 7007.0750 Subpart 2.C now requires MPCA to take final action on a minor permit amendment within 90 days of receiving a complete application. This is now consistent with the requirements of 40 CFR 70.5(e)(2)(iv). The rule change was adopted on June 1, 1999.

B. Other Title V Program Revisions

The MPCA has made changes to its Title V program in addition to the interim approval corrections. The EPA will address the additional program revisions in a separate rulemaking action.

What Is Involved in This Proposed Action?

A. Proposed Action

The EPA proposes full approval of the Minnesota operating permits program based on the corrective program revisions the State submitted on June 9, 2000, July 21, 2000, and June 12, 2001. This proposed full approval of Minnesota's corrective operating permit program submittal is solely for the purpose of meeting the requirements of Title V and part 70, and makes no judgement concerning any other Federal program requirements, such as State Implementation Plans pursuant to section 110 of the Clean Air Act. The EPA finds that Minnesota has satisfactorily addressed the program deficiencies that EPA identified in the June 16, 1995 interim approval.

B. Citizen Comment Letter on Minnesota Title V Program

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

The EPA received one comment letter pertaining to the Minnesota Title V program. The EPA takes no action on those comments in today's action. As stated in the **Federal Register** document published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. The EPA will publish a notice of deficiency (NOD) if the Agency determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, because it merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), because it proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have federalism implications, because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the Federal Government established in the Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under

Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs pursuant to Title V of the Act, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove an operating permit program submission for failure to such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of an operating permit program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 19, 2001.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 01–27258 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50644; FRL–6798–7]

RIN 2070–AB27

Proposed Modification of Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 5(a)(2) of the Toxic Substances Control Act (TSCA) and 40 CFR 721.185, EPA is proposing to amend three significant new use rules (SNURs) to allow certain uses without requiring a significant new use notice (SNUN). EPA is proposing these amendments based on review of new toxicity test data on one chemical and review of SNUNs for the other two chemicals. The proposed amended SNURs would continue to require a SNUN for new uses that may involve significant changes in human or environmental exposure.

DATES: Comments, identified by docket control number OPPTS–50644 must be received on or before November 29, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50644 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: James Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics (7405), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1857; e-mail address: *alwood.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this proposed rule. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov/*. You may also obtain copies of the notice of availability documents for the 835 (63 FR 4259, January 28, 1998) (FRL–5761–7), 850 (61 FR 16486, April 15, 1996) (FRL–5363–1), and 870 (63 FR 41845, August 5, 1998) (FRL–5740–1) series OPPTS Harmonized Test Guidelines at this same site. To access this document, on the homepage select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. The OPPTS Harmonized Test Guidelines referenced in this document are available on EPA's Internet homepage at *http://www.epa.gov/opptsfrs/home/guidelin.htm*. A frequently updated electronic version of 40 CFR part 721 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html*, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–50644. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50644 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–50644. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of January 22, 1998, OPPTS–50628 (63 FR 3393) (FRL–5720–3) EPA issued a SNUR for P–95–1411. In the **Federal Register** of August 20, 1998, OPPTS–50632 (63 FR 44562) (FRL–5788–7) EPA issued SNURs for P–97–520 and P–97–21. On January 7, 2000, EPA received SNUNs for P–97–520 and P–97–521. Because of additional data EPA has received for these substances, EPA is proposing to modify the significant new use and recordkeeping requirements under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each substance, including its premanufacture notice (PMN) number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the modification of the TSCA section 5(e) consent order for the substance, and the CFR citation. Further background information for the substance is contained in Unit I.B.2 of this document.

PMN Number P–95–1411

Chemical name: Propanedioic acid, [(4-methoxyphenyl)methylene]-, bis(1,2,2,6,6-pentamethyl-4-piperdinyl) ester (9CI).

CAS number: 147783–69–5.

Federal Register *publication date and reference:* January 22, 1998 (63 FR 3393).

Docket number: OPPTS–50628.

Basis for revocation of section 5(e) consent order/SNUR modification: Based on the results of a 90-day subchronic oral toxicity study in rats and expected worker exposures, EPA no longer concludes that the PMN substance may present an unreasonable risk of injury to human health, and consequently revoked the consent order. EPA is eliminating the SNUR provisions for worker protection, hazard communication, and industrial, commercial, and consumer activities as it no longer finds these provisions necessary to prevent significant changes

in human exposure. The SNUR provisions for release to water will remain as EPA still finds that releases to water could result in significant changes in environmental exposure.
CFR citation: 40 CFR 721.4589.

PMN Numbers P–97–520/521 and S–00–397/398
Chemical name: 2-Piperdinone, 1,3-dimethyl-, (P–97–520/S–00–397); 2-Piperdinone, 1,5-dimethyl-, (P–97–521/S–00–398).
CAS number: 1690–76–2 (P–97–520/S–00–397); 86917–58–0 (P–97–521/S–00–398).
Federal Register *publication date and reference:* August 20, 1998 (63 FR 44562).
Docket number: OPPTS–50632.
Basis for section 5(e) consent order/SNUR modification: In response to the original two PMNs for these substances, EPA issued a TSCA section 5(e) consent order based on a finding that these substances would be produced in substantial quantities and there may be significant or substantial human exposure to the substances. Based on information from the two SNUNs for these same chemicals from the original PMN submitter, EPA issued a modified TSCA section 5(e) consent order to allow the new uses with certain precautionary restrictions under section 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II) of TSCA, based on a finding that these substances may present an unreasonable risk of injury to human health, that the PMN substances will be produced in substantial quantities, and there may be significant or substantial environmental and human exposure to the substances. EPA is hereby proposing to modify these two SNURs to allow other manufacturers and processors to engage in those new uses provided the protective restrictions are observed.
Toxicity concerns: Based on structural activity analogy to 2-piperdinone, *N*-methylpyrrolidone, and other similarly analogous substances, there is concern for neurotoxicity, developmental toxicity, and reproductive toxicity. Additionally, based on chemical-specific toxicity data, there is concern for systemic toxicity and developmental toxicity.
Recommended testing: EPA has determined that a chronic toxicity study (40 CFR 798.3260 or OPPTS 870.4100 test guideline) and a reproduction/fertility effects study (40 CFR 798.4700 or OPPTS 870.3800 test guideline) would help to characterize the health effects of the substances. EPA has also determined that an inherent biodegradability study in soil (OPPTS 835.3300 test guideline), anerobic biodegradation of organic chemicals (OPPTS 835.3400 test guideline), fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), and a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. The PMN submitter has agreed to conduct the environmental effects test before exceeding the production volume limit.
CFR citations: 40 CFR 721.6175 (P–97–520/S–00–397); 40 CFR 721.6176 (P–97–521/S–00–398).

B. What is the Agency's Authority for Taking this Action?

TSCA section 5(a)(2) and 40 CFR part 721 authorize EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA promulgates a rule designating "significant new uses" for a given chemical substance, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

Section 5(a)(1) of TSCA (15 U.S.C. 2604(a)(1)) and its implementing regulations at 40 CFR parts 720 and 721 require that any person intending to manufacture a new chemical substance, or to manufacture or process any chemical substance for a significant new use, must give EPA 90-days advance written notice in the form of a PMN or SNUN, respectively.

Upon reviewing those notices, if EPA makes certain determinations regarding potential exposures and risks that may be presented by the activities associated with the chemical, EPA may regulate the chemical by issuing an order under TSCA section 5(e) and/or a SNUR under TSCA section 5(a)(2) and 40 CFR part 721. The TSCA section 5(e) order governs only the entity who submitted the PMN, whereas the section 5(a)(2) SNUR applies to all manufacturers and processors of the same chemical.

EPA may respond to SNUNs by issuing or modifying a TSCA section 5(e) consent order and/or amending the SNUR promulgated under TSCA section 5(a)(2). Amendment of the SNUR will often be necessary to allow companies other than the SNUN submitter to engage in the newly authorized use(s), because even after a manufacturer submits a SNUN and the review period expires, processors of the same substance still must submit a SNUN before engaging in the significant new use. Provisions regarding EPA's authority to modify or revoke SNUR requirements appear at 40 CFR 721.185.

EPA responded to PMN P–95–1411 by issuing a TSCA section 5(e) consent order and TSCA section 5(a)(2) SNUR to address concerns for both human health and the environment. Based on data from a 90-subchronic oral toxicity study in rats, submitted pursuant to the terms of the 5(e) consent order, EPA however, no longer concludes that the PMN substance may present an unreasonable risk to human health. Therefore, EPA has revoked the section 5(e) consent order entirely and, pursuant to TSCA section 5(a)(2) and 40 CFR 721.185, is proposing to amend the SNUR to remove the human health related notice requirements, leaving only the notification requirements related to environmental releases.

EPA responded to PMNs P–97–520/521 by issuing a TSCA section 5(e) consent order requiring certain testing based on expected substantial human and environmental exposures and promulgating a TSCA section 5(a)(2) SNUR to address concerns for human health. In response to SNUNs S–00–397/398 by the same manufacturer proposing new uses for the same chemicals, EPA modified the section 5(e) consent order to allow certain new uses, but with restrictions to mitigate potential risks to human health. Accordingly, pursuant to TSCA section 5(a)(2) and 40 CFR 721.185, EPA is hereby proposing to amend the corresponding SNURs to modify the significant new uses consistent with the terms of the modified section 5(e) consent order and to provide EPA an opportunity to assess the potential for significant changes in human or environmental exposure.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the proposed rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the proposed rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of

TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a "significant regulatory action" subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with proposing and finalizing SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This proposed rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 276755, May 19, 1998), do not apply to this proposed rule. Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001, revokes Executive Order 13084 as of that date. EPA developed this rulemaking, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. For the same reasons stated for Executive Order 13084, the requirements of Executive Order 10175 do not apply to this proposed rule either. Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) Pub. L. 104–113 section 12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the proposed rule as a "significant new use." By definition of the word "new," and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 530 SNURs, the Agency has received fewer than 15 SNUNs. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN is minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented it's general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required significant new use notice.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OP Regulatory Information Division (2137), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

This proposed rule is not subject to Executive Order 13211, *"Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"* (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 22, 2001.

William H. Sanders, III

Office Director, Office of Pollution Prevention and Toxics.

Therefore it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. Section 721.4589 is amended as follows:

a. By revising the section heading.

b. By revising paragraphs (a)(1), (a)(2)(i), and (b)(1).

c. By removing and reserving paragraph (a)(2)(ii).

d. By removing paragraphs (a)(2)(iii), (a)(2)(iv), and (b)(3).

§ 721.4589 Propanedioic acid, [(4-methoxyphenyl)methylene]-, bis(1,2,2,6,6-pentamethyl-4-piperdinyl) ester (9CI).

(a) * * * (1) The chemical substance identified as propanedioic acid, [(4-methoxyphenyl]methylene]-, bis(1,2,2,6,6-pentamethyl-4-piperdinyl) ester (9CI) (PMN P–95–1411; CAS No. 147783–69–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) * * *

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

3. Section 721.6175 is amended as follows:

a. By revising the section heading.

b. By revising paragraphs (a)(1), (a)(2)(i), and (b)(1).

c. By adding paragraphs (a)(2)(ii), (a)(2)(iii), and (b)(3).

§ 721.6175 2-Piperdinone, 1,3-dimethyl-,.

(a) * * * (1) The chemical substance identified as 2-Piperdinone, 1,3-dimethyl-, (PMN P–97–520 and SNUN 00–397; CAS No. 1690–76–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(iii), (g)(1)(iv), (g)(1)(ix), (g)(2)(i), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k), (use or processing other than: in enclosed systems (such as hydrocarbon extraction, polymer synthesis, wire enamel resin); electronic industry cleaning solvent; and other precision industry cleaning (such as automobile manufacturing, aerospace, and optics)), (o), and (q).

(b) * * *

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this substance.

4. Section 721.6176 is amended as follows:

a. By revising the section heading.

b. By revising paragraphs (a)(1), (a)(2)(i), and (b)(1).

c. By adding paragraphs (a)(2)(ii), (a)(2)(iii), and (b)(3).

§ 721.6176 2-Piperdinone, 1,5-dimethyl-,.

(a) * * * (1) The chemical substance identified as 2-Piperdinone, 1,5-dimethyl-, (PMN P–97–521 and SNUN 00–398; CAS No. 86917–58–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(iii), (g)(1)(iv), (g)(1)(ix), (g)(2)(i), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k), (use or processing other than: in enclosed systems (such as hydrocarbon extraction, polymer synthesis, wire enamel resin); electronic industry cleaning solvent; and other precision industry cleaning (such as automobile manufacturing, aerospace, and optics)), (o), and (q).

(b) * * *

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this substance.

[FR Doc. 01–27291 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–S

Notices

Federal Register

Vol. 66, No. 210

Tuesday, October 30, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Forest Service, intends to grant to Weckworth Manufacturing, Inc. of Wichita, Kansas, an exclusive license to U.S. Patent No. 5,921,388, "Quick Deployment Fire Shelter," issued on July 13, 1999. Notice of Availability of this invention for licensing was published in the **Federal Register** on August 23, 1999.

DATES: Comments must be received by November 29, 2001.

ADDRESSES: Send comments to: Janet I. Stockhausen, USDA Forest Service, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398.

FOR FURTHER INFORMATION CONTACT: Janet I. Stockhausen of the USDA Forest Service at the Madison address given above; telephone: 608–231–9502; fax: 608–231–9508; or e-mail: *jstockhausen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Weckworth Manufacturing, Inc. has submitted a complete and sufficient application for a license. The prospective license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Forest Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 01–27100 Filed 10–29–01; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspaper that will be used by all ranger district, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR Part 215 and 36 CFR Part 217. The intended effect of this action is to inform interested members of the public which newspaper will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspaper will begin with decisions subject to appeal that are made on or after December 1, 2000. The list of newspaper will remain in effect until June 1, 2001, when another notice will be published in the **Federal Register**

FOR FURTHER INFORMATION CONTACT: Barbara Schuster, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, and Phone (801) 625–5301.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR part 215 and 36 CFR part 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspaper to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho:

The Idaho Statesman, Boise, Idaho.

For decisions made by the Regional Forester affecting National Forests in Nevada:

The Reno Gazette-Journal, Reno, Nevada.

For decisions made by the Regional Forester affecting National Forests in Wyoming:

Casper Star-Tribune, Casper, Wyoming.

For decisions made by the Regional Forester affecting National Forests in Utah:

Salt Lake Tribune, Salt Lake City, Utah.

If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:

Salt Lake Tribune, Salt Lake, Utah.

Ashley National Forest

Ashley Forest Supervisors decisions:
Vernal Express, Vernal, Utah.
Vernal District Ranger decisions:
Vernal Express, Vernal, Utah.
Flaming Gorge District Ranger for decisions affecting Wyoming:
Casper Star Tribune, Casper, Wyoming.
Flaming Gorge District Ranger for decisions affecting Utah:
Vernal Express, Vernal, Utah.
Roosevelt and Duchesne District Ranger decisions:
Uintah Basin Standard, Roosevelt, Utah.

Boise National Forest

Boise Forest Supervisor decisions:

The Idaho Statesman: Boise, Idaho.
Mountain Home District Ranger decisions:
The Idaho Statesman: Boise, Idaho.
Idaho City District Ranger decisions:
The Idaho Statesman, Boise, Idaho.
Cascade District Ranger decisions:
The Long Valley Advocate, Cascade, Idaho.
Lowman District Ranger decisions:
The Idaho World, Garden Valley, Idaho.
Emmett District Ranger decisions:
The Messenger-Index, Emmett, Idaho.

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions:
Casper Star-Tribune, Casper, Wyoming.
Jackson District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Buffalo District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Big Piney District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Pinedale District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Greys River District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Kemmerer District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion:
Idaho State Journal, Pocatello, Idaho.
Soda Springs District Ranger decisions:
Idaho State Journal, Pocatello, Idaho.
Montpelier District Ranger decisions:
Idaho State Journal, Pocatello, Idaho.
Westside District Ranger decisions:
Idaho State Journal, Pocatello, Idaho.
Caribou-Targhee Forest Supervisor decisions for the Targhee Portion:
The Post Register, Idaho Falls, Idaho.
Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho.
Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho.
Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho.
Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho.
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho.

Dixie National Forest

Dixie Forest Supervisor decisions:
The Daily Spectrum, St. George, Utah.
Pine Valley District Ranger decisions:
The Daily Spectrum, St. George, Utah.
Cedar City District Ranger decisions:
The Daily Spectrum, St. George, Utah.
Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah.
Escalante District Ranger decisions:
The Daily Spectrum, St. George, Utah.
Teasdale District Ranger decisions:
The Daily Spectrum, St. George, Utah.

Fishlake National Forest

Fishlake Forest Supervisor decisions:
Richfield Reaper, Richfield, Utah.
Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah.
Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah.
Beaver District Ranger decision:
Richfield Reaper, Beaver, Utah.
Fillmore District Ranger decisions:
Richfield Reaper, Fillmore, Utah.

Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion:
Elko Daily Free Press, Elko, Nevada.
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion:
Reno Gazette-Journal, Reno, Nevada.
Sierra Ecosystem Coordination Center (SECO):
Carson District Ranger decisions:
Mammoth Times, Mammoth Lakes, California.
Bridgeport District Ranger, decisions:
The Review-Herald, Mammoth Lakes, California.
Spring Mountain National Recreation Area Ecosystem (SMNRAE):
Spring Mountain National Recreation Area District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada.
Central Nevada Ecosystem (CNECO):
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada.
Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News, Tonopah, Nevada.
Ely District Ranger decisions:
Ely Daily Times, Ely, Nevada.
Northeast Nevada Ecosystem (NNECO):
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada.
Ruby Mountains District Ranger decisions:
Elko Daily Free Press, Elko, Nevada.
Jarbidge District Ranger decisions:
Elko Daily Free Press, Elko, Nevada.
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada.

Manti-LaSal National Forest

Manti-LaSal Forest Supervisor decisions:
Sun Advocate, Price, Utah.
Sanpete District Ranger decisions:
The Pyramid, Mt. Pleasant, Utah.
Ferron District Ranger decisions:
Emery County Progress, Castle Dale, Utah.
Price District Ranger decisions:
Sun Advocate, Price, Utah.
Moab District Ranger decisions:
The Times Independent, Moab, Utah.
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah.

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho.
Weiser District Ranger decisions:
Signal American, Weiser, Idaho.
Council District Ranger decisions:
Council Record, Council, Idaho.
New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho.

Salmon-Challis National Forests

Salmon-Challis Forest Supervisor decisions for the Salmon portion:
The Recorder-Herald, Salmon, Idaho.
Salmon-Challis Forest Supervisor decisions for the Challis portion:
The Challis Messenger, Challis, Idaho.
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho.
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho.
Salmon/Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho.
Middle Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho.
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho.
Yankee Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho.
Lost River District Ranger decisions:
The Challis Messenger, Challis, Idaho.

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho.
Burley District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit.
South Idaho Press, Burley, Idaho, for decisions issued on the Idaho portions of the Burley District.
Twin Falls District Ranger decisions:
The Times News, Twin Falls, Idaho.
Ketchum District Ranger decisions:
Idaho Mountain Express, Ketchum, Idaho.
Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho.
Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho.

Uinta National Forest

Uinta Forest Supervisor decisions:
The Daily Herald, Provo, Utah.
Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah.
Heber District Ranger decisions:
The Daily Herald, Provo, Utah, and Spanish Fork District Ranger decisions:
The Daily Herald, Provo, Utah.

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions:
Salt Lake Tribune, Salt Lake City, Utah.
Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah.
Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah.
Evanston District Ranger decisions:
Uintah County Herald, Evanston, Wyoming.
Mountain View District Ranger decisions:
Uintah County Herald, Evanston, Wyoming.
Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah.
Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah.

Dated: May 31, 2001.

Jack A. Blackwell,

Regional Forester.

[FR Doc. 01–27096 Filed 10–29–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tonto, Prescott, and Coconino National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to developing a Comprehensive River Management Plan for the Verde Wild and Scenic River.

SUMMARY: The Tonto, Prescott, and Coconino National Forests are initiating the development of a Comprehensive River Management Plan for the Verde Wild and Scenic River. A portion of the Verde River was adopted into the Wild and Scenic River System by act of Congress in the Arizona Wilderness Act (Pub. L. 98–406) on August 28, 1984.

The Verde Wild and Scenic River is a 40.4 mile section (14.5 miles Scenic—upper section and 25.9 miles Wild—lower section) of the Verde River beginning near an area known as Beasley Flat (T.13N., R.5E., S.26) and ending at the mouth of Red Creek (T.11N., R.6E., S. 11 Gila and Salt River Base Meridian). The land area comprising the river includes reserved public domain inside a one-quarter mile wide corridor on both sides of the centerline of the Verde River between the end points above.

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis should be received in writing by December 28, 2001, at the address listed below.

ADDRESSES: Send written comments to USDA Forest Service, Tonto National Forest, ATTN: Carl Taylor, 2324 E. McDowell Road, Phoenix, Arizona 85006.

Responsible Official: The Forest Supervisors for the Coconino, Prescott, and Tonto National Forests will be the responsible officials and will decide on the elements of a Comprehensive River Management Plan for the Verde Wild and Scenic River.

FOR FURTHER INFORMATION CONTACT: Carl Taylor, Tonto National Forest, 2324 E. McDowell Road, Phoenix, Arizona 85006, (602) 225–5230.

SUPPLEMENTARY INFORMATION: The Verde Wild and Scenic River is part of a much larger complex watershed. The Wild and Scenic River segment itself is in the lower portions of the watershed and can be characterized as a rich riparian and aquatic zone surrounded by Upper Sonoran and Sonoran desert vegetation—desert shrub featuring pinyon and juniper interspersed with a few grasslands. I has many tributaries exhibiting very diverse characteristics and creating many broadly diverse habitats.

The outstandingly remarkable values for the Verde Wild and Scenic River are scenic, fish and wildlife, and historic and cultural. Additionally, although not classified as outstandingly remarkable values, the river also has geologic and recreational values. The Comprehensive River Management Plan will focus on protecting the river's free-flowing conditions and water quality in addition to its outstanding remarkable values.

The planning process involves a number of steps over the next 30 months:

A. Publish Proposed Action for public review by the end of January 2002.

B. Release Draft Comprehensive River Management Plan and environmental document for public review by the end of June 2003.

C. Publish Final Comprehensive River Management Plan by March 2004. In addition to these planning steps, the Forest Service will also be providing 6-month progress reports to all who express an interest in being kept informed.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

Dated: October 24, 2001.

Eleanor S. Towns,

Regional Forester.

[FR Doc. 01–27211 Filed 10–29–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information System Technical Advisory Committee (ISTAC) will meet on November 14 & 15, 2001, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC. The ISTAC advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Agenda

November 14

Public Session

1. Opening remarks and introductions.
2. Comments or presentations from the public.
3. Membership coverage of Control List Categories 3 (electronics), 4 (computers), and 5 (telecommunications and information security).
4. Intel IA64 Roadmap.

5. Applied Micro Devices (AMD) Roadmap.
6. Ultra-Wide Band (UWB) technology.

November 14–15

Closed Session

7. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the ISTAC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the ISTAC suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 7, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of this Committee and of any Subcommittees thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of this Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Department of Commerce, Washington, DC. For more information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: October 24, 2001.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 01–27178 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2001) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of November 2001, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Periods
Antidumping Duty Proceedings	
Argentina: Barbed Wire & Barbless Fencing Wire A–357–405	11/1/00—10/31/01
Brazil: Circular Welded Non-Alloy Steel Pipe A–351–809	11/1/00—10/31/01
Mexico: Circular Welded Non-Alloy Steel Pipe A–201–805	11/1/00—10/31/01
Republic of Korea: Circular Welded Non-Alloy Steel Pipe A–580–809	11/1/00—10/31/01
Taiwan: Circular Welded Non-Alloy Steel Pipe A–583–814	11/1/00—10/31/01
Collated Roofing Nails A–583–826	11/1/00—10/31/01
The People's Republic of China:	
Collated Roofing Nails A–570–850	11/1/00—10/31/01
Fresh Garlic A–570–831	11/1/00—10/31/01
Paper Clips A–570–826	11/1/00—10/31/01
Countervailing Duty Proccedings	
None.	
Suspension Agreements	
Mexico:	
Fresh Tomatoes A–201–820	11/1/00—10/31/01

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of November 2001. If the Department does not receive, by the last day of November 2001, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 18, 2001.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, AD/CVD Enforcement.

[FR Doc. 01–27296 Filed 10–26–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091801C]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification 2 to permit 1067.

SUMMARY: NMFS has issued modification 2 to permit 1067 to the California Department of Fish and Game (CDFG) that authorizes takes of Endangered Species Act-listed anadromous fish species for the purpose of scientific research and enhancement, subject to certain conditions set forth therein.

ADDRESSES: Copies of the permits may be obtained from Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, California 95404–6528, Phone: (707) 575–6053, Fax: (707) 578–3434.

FOR FURTHER INFORMATION CONTACT: Daniel Logan, Protected Resources Division, NMFS, Santa Rosa, California, (707) 575–6053, e-mail: *dan.logan@noaa.gov.*

SUPPLEMENTARY INFORMATION: The following species and evolutionary significant units (ESUs) are covered in this notice:

Coho salmon (*Oncorhynchus kisutch*): Threatened, naturally produced and artificially propagated, Central California Coast (CCC), and naturally produced Southern Oregon/Northern California Coast (SONCC).

Permit Modifications Issued

Notice was published on May 10, 2001, that the CDFG applied for a modification to permit 1067 to take threatened CCC coho salmon, in addition to previously authorized takes of coho salmon. Modification 2 to Permit 1067 was issued on August 31, 2001, authorizing takes of adult and juvenile, threatened, CCC coho salmon for six scientific research and enhancement activities: (1) a pilot study to examine the efficacy of a captive broodstock program using naturally-produced coho salmon, (2) develop indexes of abundance, (3) carcass counts, (4) redd surveys, (5) acquisition of tissue and scale samples for genetic analysis; and (6) habitat quality evaluation.

The original permit authorized the CDFG to capture, handle, take tissues, and release up to 16,500 juvenile CCC coho salmon, and to take tissue samples from up to 1,000 adult CCC coho salmon. Indirect mortalities associated with the CDFG research activities were not to exceed 500 juvenile CCC coho salmon. Modification 1 of Permit 1067 contained only minor modifications to permit format and notification requirements, however, no changes in take limits.

For Modification 2, the following changes were incorporated into the take limits for the Permit: (1) the CDFG is authorized to capture, rear, and retain 300 juvenile CCC coho salmon for the purpose of developing an experimental captive broodstock; (2) the CDFG is authorized to release up to 200,000 ESA-listed juvenile CCC coho salmon derived from the pilot captive broodstock program; (3) the number of adult coho salmon carcasses that can be collected and sampled for tissues has been increased to 1,500 fish; (4) the number of indirect mortalities associated with research activities has been increased to 700 juvenile CCC coho salmon; and (5) the expiration date of Permit 1067 has been extended 5 years until June 30, 2007.

The issuance of the permit modifications and the new permit is based on a finding that such permits: (1) were applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 24, 2001.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–27311 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Bulgaria

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 442 is being increased for swing, reducing the limit for Categories 410/624 to account for the swing being applied to Category 442.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66719, published on November 7, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 27, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Bulgaria and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 30, 2001, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
410/624	3,129,249 square meters of which not more than 877,262 square meters shall be in Category 410.
442	19,188 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27220 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 75674, published on December 4, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 28, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 30, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group I	
200–227, 300–326, 360–363, 369(1) [2], 369pt. [3], 400–414, 464, 469pt. [4], 600–629, 666, 669pt. [5] and 670, as a group.	252,759,667 square meters equivalent.
Group II	
237, 239pt. [6], 331–348, 350–352, 359(1) [7], 359(2) [8], 359pt. [9], 431, 433–438, 440–448, 459pt. [10], 631, 633–652, 659(1) [11], 659(2) [12], 659pt. [13], and 443/444/643/644/843/844(1), as a group.	909,825,220 square meters equivalent.
Sublevels in Group II	
359(1) (coveralls, overalls and jumpsuits).	700,257 kilograms.
659(1) (coveralls, overalls and jumpsuits).	752,576 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 369(1): only HTS number 6307.10.2005.

[3] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 6406.10.7700 and HTS number in 369(1).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[5] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[8] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[9] Category 359pt.: all HTS numbers except 6406.99.1550 and HTS numbers in 359(1) and 359(2).

[10] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–27221 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift, carryforward and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69911, published on November 21, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 30, 2001, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
618–O [7]	4,781,490 square meters.
619/620	12,429,273 square meters.
625/626/627/628/629–O [8].	28,816,191 square meters.
638/639	1,980,060 dozen.
641	3,355,774 dozen.
643	444,057 numbers.
645/646	1,158,288 dozen.
Group II	
201, 218, 220, 222–224, 226, 227, 237, 239pt. [9], 332, 333, 352, 359–O [10], 362, 363, 369–O [11], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [12], 464, 469pt. [13], 603, 604–O [14], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [15], 666, 669–O [16], 670–O [17], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [16], as a group.	146,249,008 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt., 464 and 469pt., as a group	3,308,326 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 604–A: only HTS number 5509.32.0000.

[7] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[8] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[9] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[10] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S) and 6406.99.1550 (Category 359pt.).

Levels in Group I	
219	12,167,650 square meters.
313–O [2]	24,079,690 square meters.
314–O [3]	72,895,964 square meters.
317–O [4]/326–O [5]/617	32,687,988 square meters of which not more than 5,220,052 square meters shall be in Category 326–O.
331/631	3,458,408 dozen pairs.
334/335	344,963 dozen.
340/640	2,208,129 dozen.
341	1,256,446 dozen.
347/348	2,512,951 dozen.
351/651	742,461 dozen.
360	1,875,823 numbers.
361	1,915,696 numbers.
433	13,223 dozen.
445/446	67,214 dozen.
447	20,661 dozen.
448	24,096 dozen.
604–A [6]	1,029,418 kilograms.
613/614/615	29,092,809 square meters.

[11] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[12] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[13] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[14] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[15] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[16] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[17] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[18] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–27219 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of customs adjusting limits.

EFFECTIVE DATE: October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66972, published on November 8, 2000.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 2, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 30, 2001, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal:

Category	Adjusted twelve-month limit [1]
341	909,077 dozen.
363	8,698,466 numbers.
369–S [2]	1,073,735 kilograms.
641	440,931 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27222 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66972, published on November 8, 2000.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 2, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 30, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Specific limits	
314	9,103,492 square meters.
347/348	1,245,231 dozen.
625/626/627/628/629	109,427,527 square meters of which not more than 54,992,485 square meters shall be in Category 625; not more than 54,992,485 square meters shall be in Category 626; not more than 54,992,485 square meters shall be in Category 627; not more than 11,377,756 square meters shall be in Category 628; and not more than 54,992,485 square meters shall be in Category 629.
647/648	1,067,545 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–27223 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 5, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and the undoing of special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69503, published on November 17, 2000.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 13, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 5, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	372,808 dozen.
351/651	536,582 dozen.
352/652	2,139,052 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27217 Filed 10–29–01; 8:45 a.m.

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 5, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 66 FR 11003, published on February 21, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 15, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 5, 2001, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

Category	Twelve-month limit [1]
Sublevels in Group II	
331	518,826 dozen pairs.
347/348	1,371,787 dozen of which not more than 1,167,336 dozen shall be in Categories 347–W/348–W [2].
631	5,549,141 dozen pairs.
647/648	5,473,212 dozen of which not more than 5,210,035 dozen shall be in Categories 647–W/648–W [3].
Within Group II Subgroup	
350/650	149,222 dozen.
351	337,868 dozen.
651	522,731 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[3] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27218 Filed 10–29–01; 8:45 am]
BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 221. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 221 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: November 1, 2001.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 220. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 221 UPDATES RATES FOR COLD BAY, ALASKA, GUAM, AND SAIPAN, NORTHERN MARIANNA ISLANDS.						
ALASKA						
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	161		65		226	09/01/2001
09/16 - 04/30	89		57		146	09/01/2001
BARROW	140		75		215	05/01/2000
BETHEL	90		63		153	09/01/2001
CLEAR AB	80		55		135	09/01/2001
COLD BAY	153		60		213	11/01/2001
COLDFOOT	135		71		206	10/01/1999
COPPER CENTER	85		49		134	09/01/2001
CORDOVA	80		72		152	03/01/2000
CRAIG						
05/01 - 08/31	90		65		155	09/01/2001
09/01 - 04/30	77		64		141	09/01/2001
DEADHORSE	80		67		147	03/01/1999
DELTA JUNCTION	79		50		129	09/01/2001
DENALI NATIONAL PARK						
06/01 - 08/31	125		66		191	09/01/2001
09/01 - 05/31	90		63		153	09/01/2001
DILLINGHAM	95		60		155	09/01/2001
DUTCH HARBOR-UNALASKA	110		67		177	09/01/2001
EARECKSON AIR STATION	80		55		135	09/01/2001
EIELSON AFB						
05/01 - 09/15	149		66		215	09/01/2001
09/16 - 04/30	75		58		133	09/01/2001
ELMENDORF AFB						
05/01 - 09/15	161		65		226	09/01/2001
09/16 - 04/30	89		57		146	09/01/2001
FAIRBANKS						
05/01 - 09/15	149		66		215	09/01/2001
09/16 - 04/30	75		58		133	09/01/2001
FT. GREELY	79		50		129	09/01/2001
FT. RICHARDSON						
05/01 - 09/15	161		65		226	09/01/2001
09/16 - 04/30	89		57		146	09/01/2001
FT. WAINWRIGHT						
05/01 - 09/15	149		66		215	09/01/2001
09/16 - 04/30	75		58		133	09/01/2001
GLENNALLEN						
05/01 - 09/30	137		61		198	09/01/2001
10/01 - 04/30	89		56		145	09/01/2001
HEALY						
06/01 - 08/31	125		66		191	09/01/2001
09/01 - 05/31	90		63		153	09/01/2001
HOMER						
05/15 - 09/15	119		67		186	09/01/2001
09/16 - 05/14	79		63		142	09/01/2001

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
JUNEAU	109	65	174	09/01/2001
KAKTOVIK	165	75	240	01/01/2000
KAVIK CAMP	125	69	194	03/01/1999
KENAI-SOLDOTNA				
04/01 - 10/31	131	69	200	09/01/2001
11/01 - 03/31	86	65	151	09/01/2001
KENNICOTT	159	71	230	09/01/2001
KETCHIKAN	98	64	162	09/01/2001
KING SALMON				
05/01 - 10/01	160	80	240	09/01/2001
10/02 - 04/30	95	73	168	09/01/2001
KLAWOCK				
05/01 - 08/31	90	65	155	09/01/2001
09/01 - 04/30	77	64	141	09/01/2001
KODIAK	99	70	169	09/01/2001
KOTZEBUE				
09/01 - 04/30	95	62	157	10/01/2001
05/01 - 08/31	137	69	206	09/01/2001
KULIS AGS				
05/01 - 09/15	161	65	226	09/01/2001
09/16 - 04/30	89	57	146	09/01/2001
MCCARTHY	159	71	230	09/01/2001
METLAKATLA				
05/30 - 10/01	98	56	154	09/01/2001
10/02 - 06/01	78	54	132	09/01/2001
MURPHY DOME				
05/01 - 09/15	149	66	215	09/01/2001
09/16 - 04/30	75	58	133	09/01/2001
NOME	89	64	153	09/01/2001
NUIQSUT	175	53	228	09/01/2001
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PRUDHOE BAY	80	67	147	03/01/1999
SEWARD				
05/31 - 09/30	119	66	185	09/01/2001
10/01 - 05/30	74	61	135	09/01/2001
SITKA-MT. EDGECOMBE				
05/16 - 09/16	139	73	212	01/01/2000
09/17 - 05/15	129	72	201	01/01/2000
SKAGWAY	98	64	162	09/01/2001
SPRUCE CAPE	99	70	169	09/01/2001
TANANA	89	64	153	09/01/2001
UMIAT	172	78	250	09/01/2001
VALDEZ				
05/01 - 10/01	109	69	178	09/01/2001
10/02 - 04/30	99	68	167	09/01/2001
WAINWRIGHT	124	51	175	09/01/2001
WASILLA	95	60	155	01/01/2000
WRANGELL	98	64	162	09/01/2001
YAKUTAT	110	68	178	03/01/1999

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	69	204	11/01/2001
HAWAII				
CAMP H M SMITH	112	65	177	06/01/2000
EASTPAC NAVAL COMP TELE AREA	112	65	177	06/01/2000
FT. DERUSSEY	112	65	177	06/01/2000
FT. SHAFTER	112	65	177	06/01/2000
HICKAM AFB	112	65	177	06/01/2000
HONOLULU (INCL NAV & MC RES CTR)	112	65	177	06/01/2000
ISLE OF HAWAII: HILO	84	58	142	05/01/2000
ISLE OF HAWAII: OTHER	89	54	143	05/01/2000
ISLE OF KAUAI				
05/01 - 11/30	143	69	212	06/01/2000
12/01 - 04/30	176	73	249	06/01/2000
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	143	72	215	05/01/2000
ISLE OF OAHU	112	65	177	06/01/2000
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 - 11/30	143	69	212	06/01/2000
12/01 - 04/30	176	73	249	06/01/2000
KILAUEA MILITARY CAMP	84	58	142	05/01/2000
LUALUALEI NAVAL MAGAZINE	112	65	177	06/01/2000
MCB HAWAII	112	65	177	06/01/2000
NAS BARBERS POINT	112	65	177	06/01/2000
PEARL HARBOR [INCL ALL MILITARY]	112	65	177	06/01/2000
SCHOFIELD BARRACKS	112	65	177	06/01/2000
WHEELER ARMY AIRFIELD	112	65	177	06/01/2000
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	13	16	29	12/01/2000
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	149	72	221	04/01/2000
SAIPAN	150	88	238	11/01/2001
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

[FR Doc. 01–27183 Filed 10–29–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board; Meeting

AGENCY: Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10 (a) (2) of the Federal Advisory Committee Act, Public Law (92–463), announcement is made of the next meeting of the Inland Waterways Users Board. The meeting will be held on November 30, 2001, in Dania, Florida, Sheraton Fort Lauderdale Airport Hotel (near to the Ft. Lauderdale-Hollywood International Airport), 1825 Griffin Road, (Tel. (954) 920-3500). Registration will begin at 7:30 am and the meeting is scheduled to adjourn at 1 pm. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, 441 G Street, NW, Washington, DC 20314–1000; Ph: 202–761–4559.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–27317 Filed 10–29–01; 8:45 am]
BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.128G]

Migrant and Seasonal Farmworkers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: To provide grants for vocational rehabilitation services to individuals with disabilities who are migrant or seasonal farmworkers, (individuals who have been determined in accordance with rules prescribed by the Secretary of Labor), and to the family members who are residing with those individuals (whether or not those family members are individuals with disabilities).

Eligible Applicants: State designated agencies; nonprofit agencies working in collaboration with a State agency; and local agencies working in collaboration with a State agency.

Applications Available: November 5, 2001.

Deadline for Transmittal of Applications: February 5, 2002.

Deadline for Intergovernmental Review: April 6, 2002.

Estimated Available Funds: $639,498.

Estimated Range of Awards: $150,000—$170,000.

Estimated Average Size of Awards: $165,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Invitational Priority

We are particularly interested in applications that meet the following priority:

Applications for projects that provide vocational rehabilitation services including, but not limited to, vocational skills development, job placement, job training, occupational skills training programs, cultural awareness, language skills development, life skills (e.g., health, education, socialization), English as a Second Language, dissemination of employment information, and training workshops.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the priority a competitive or absolute preferences over other applications.

Competitive Preference Priority

This competition focuses on projects designed to meet the priority in the notice of final competitive preference for this program, published in the **Federal Register** on November 22, 2000 (65 FR 70408). Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on the extent to which the application includes effective strategies for employing and advancing in employment qualified individuals with disabilities as project employees in projects awarded under this program. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

The maximum score under the selection criteria for this program is 100 points; however, we will also use the competitive preference so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

For Applications Contact

Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.128G.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Mary E. Chambers, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322, Switzer Building, Washington, DC 20202–2647. Telephone (202) 205–8435. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html.

Program Authority: 29 U.S.C. 774.

Dated: October 25, 2001.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 01–27265 Filed 10–29–01; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: This notice is being issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Canada, and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy.

This subsequent arrangement concerns the retransfer of eighteen 36-element fuel bundles and twelve 18-element fuel bundles, totaling 55,000 grams uranium (19.75 percent enriched U–235), from the AECL Chalk River Laboratories, Chalk River, Ontario, Canada, to the Korea Atomic Energy Research Institute (KAERI) Hanaro Reactor Center. The material, which is currently located Chalk River, Ontario, will be used by KAERI for additional fueling for the Hanaro Reactor Center.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the publication of this notice.

Dated: October 24, 2001.

For the National Nuclear Security Administration.

Trisha Dedik,

Director, Office of Nonproliferation Policy.

[FR Doc. 01–27233 Filed 10–29–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–167–B]

Application to Export Electric Energy; PG&E Energy Trading—Power, L.P.

AGENCY: Office of Fossil Energy, DOE

ACTION: Notice of application.

SUMMARY: PG&E Energy Trading—Power, L.P. ("PGET-Power") has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 29, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 25, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized PGET-Power to transmit electric energy from the United States to Mexico using the international electric transmission facilities of San Diego Gas & Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. That two-year authorization was renewed on February 25, 2000, in Docket EA–167-A and will expire on February 23, 2002. On October 1, 2001, PGET-Power filed an application with FE for renewal of this export authority and requested that the order be issued for a 2-year term.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with sections 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the PG&E Energy Trading—Power, L.P. application to export electric energy to Mexico should be clearly marked with Docket EA–167–B. Additional copies are to be filed directly with Christopher A. Wilson, Assistant General Counsel, PG&E Energy Trading—Power, L.P., 7500 Old Georgetown Rd., Suite 1300, Bethesda, MD 20914–6161 *and* Ms. Sarah Barpoulis, Senior Vice President, PG&E Energy Trading—Power, L.P., 7500 Old Georgetown Rd., Suite 1300, Bethesda, MD 20814–6161.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–179. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–167 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy homepage at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy homepage, select "Electricity Regulation", then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on October 24, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–27231 Filed 10–30–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Solicitation for Expressions of Interest; Low-Cost Prototype Inverters

AGENCY: Department of Energy.

ACTION: Notice of solicitation for participation in competition to create low-cost inverters.

SUMMARY: The U.S. Department of Energy (DOE), in partnership with the National Association of State Energy Officials (NASEO), the Institute of Electrical and Electronics Engineers (IEEE), and other sponsors announces an opportunity for qualified colleges and university engineering programs to submit proposals to compete for a cash prize in a contest to build prototype, low-cost inverters. The contest is titled the 2003 Future Energy Challenge. This competition is open to schools with ABET-accredited engineering programs or the equivalent.

DATES: The due date for receipt of application requirements is November 30, 2001. Schools selected to compete in the 2001 Future Energy Challenge will be notified by January 1, 2002. The competition will be scheduled for the 2002 calendar year. Awards will be presented during Engineers Week in February 2003.

ADDRESSES: Additional information on this competition and application requirements are posted at *http://www.energychallenge.org*. The application requirements package will also provide information on how you might qualify for seed money from other sponsors. (**NOTE:** The agency or organization providing the seed money will solicit and evaluate the application requirements for seed funding, not DOE.)

SUPPLEMENTARY INFORMATION: The 2003 Future Energy Challenge seeks to dramatically improve the design and reduce the cost of DC–AC inverters and interface systems for use in distributed generation systems. DOE is joining with NASEO, and possibly others, to sponsor this competition with the goal of making these interface systems practical and cost effective. The objectives are to design elegant, manufacturable systems that would reduce the costs of commercial interface systems to $40 per kilowatt or less and, thereby, accelerate the deployment of distributed generation systems in homes and buildings. Schools with the capability to undertake the challenging task of designing complete systems or modifying commercial inverters to achieve design and manufacturability improvements that lead to achievement of the target cost reductions or better are invited to submit proposals to DOE to compete. A full prototype is sought that leads to a comprehensive hardware system. Schools should plan to form multi-disciplinary teams to address the energy source characteristics, design the power electronics, design packaging and thermal management systems, develop filtering and other interface sub-systems, analyze process costs and manufacturability, and perform economic and life-cycle cost analyses. The hardware prototypes judged as best will be tested by fuel cell manufacturers, at DOE's National Energy Technology Center as interfaces for a fuel cell source. The school with the most cost-effective, fully functional design that can meet the aggressive cost target will win a prize of at least $50,000. Proposals will be judged by a distinguished panel of experts from the IEEE.

Issued in Washington, DC, on October 24, 2001.

Robert S. Kripowicz,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 01–27232 Filed 10–29–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–110–002]

Northern Natural Gas Company; Notice of Compliance Filing

October 24, 2001.

Take notice that on September 17, 2001, Northern Natural Gas Company (Northern) filed Sixty-Sixth Revised Sheet No. 1 to Northern's FERC Gas Tariff, Original Volume No. 2, to reflect the correct pagination to Sheet No. 1. Further, Sheet No. 1 has been updated to reflect the currently effective Table of Contents. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27194 Filed 10–29–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–2–000, et al.]

Commonwealth Atlantic Limited Partnership, *et al.*; Electric Rate and Corporate Regulation Filings

October 23, 2001.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Atlantic Limited Partnership and Commonwealth Atlantic Power LLC

[Docket Nos. EC02–2–000, ER91–215–001 and ER90–24–002]

Take notice that on October 17, 2001, Commonwealth Atlantic Limited Partnership and Commonwealth Atlantic Power LLC filed the last page of Mr. Heironymus' affidavit that was inadvertently excluded from his affidavit in Attachment 3 of the Application filed on October 9, 2001.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Rockland Electric Company and PJM Interconnection L.L.C.

[Docket Nos. EC02–7–000 and ER02–109–000]

Take notice that on October 17, 2001 Rockland Electric Company and PJM Interconnection, LLC (collectively, Applicants) tendered for filing a Joint Application for Approval of Transfer of Operational Control over Jurisdictional Facilities and Acceptance for Filing of Tariff Revisions, Executed Signature Pages, and Membership Agreement under sections 203 and 205 of the Federal Power Act. In addition, Applicants filed a correction to Page 4 of the Application on October 18, 2001.

Rockland requests approval of the transfer by November 30, 2001, and PJM seeks an effective date of February 1, 2002 for the tariff revisions, the executed signature pages, and the Membership Agreement.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. American Transmission Systems, Inc.

[Docket No. ER02–110–000]

Take notice that on October 16, 2001, American Transmission Systems, Inc. filed with the Federal Energy Regulatory Commission (Commission) a Service Agreement to provide Firm Point-to-Point Transmission Service for CMS Marketing, Services and Trading Company, the Transmission Customer. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000. The proposed effective date under the Service Agreement is October 1, 2001 for the above mentioned Service Agreement in this filing.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–111–000]

Take notice that on October 16, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission) proposed revisions to the Midwest ISO Open Access Transmission tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1.

The Midwest ISO has electronically served copies of its filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners, and Non-transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading "FERC Filings" for other interested parties in this matter.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Mid-Continent Area Power Pool

[Docket No. ER02–112–000]

Take notice that on October 16, 2001, the Mid-Continent Area Power Pool, on behalf of its public utility members, filed with the Federal Energy Regulatory Commission (Commission) transmission service agreements for non-firm and short-term firm service with MAPP members.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Liberty Electric Power, LLC, Twelvepole Creek, LLC, Orion Power MidWest, L.P.

[Docket No. ER02–113–000]

Take notice that on October 16, 2001, Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Liberty Electric Power, LLC, Twelvepole Creek, LLC, and Orion Power MidWest, L.P. (collectively, the Orion Affiliates) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 205 of the Federal Power Act, 16 USC 824d (1994), and Part 35 of the Commission's regulations, 18 CFR 35 (2001), revisions to their market-based rate tariffs to prohibit transactions with the franchised service territory utility affiliates of their proposed merger partner, Reliant Resources, Inc. while the proposed transaction is pending.

The Orion Affiliates request waiver of the prior notice requirements of Section 35.3 of the Commission's regulations, 18 CFR 35.3 (2001), to permit their filing to become effective September 27, 2001.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER02–114–000]

Take notice that on October 16, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), filed with the Federal Energy Regulatory Commission (Commission) the Interconnection Agreement (Agreement) between Mobile Energy Services Company, L.L.C. and APC. The Agreement allows Mobile Energy to interconnect its facility in Mobile, Alabama to and operate in parallel with APC's electric system. The Agreement was executed on September 18, 2001 and terminates in one (1) year. An effective date of September 18, 2001 has been requested.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Exelon Generation Company, LLC

[Docket No. ER02–115–000]

Take notice that on October 16, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing with the Federal Energy Regulatory Commission (Commission) a power sales service agreement between Exelon Generation and Madison Gas & Electric Company under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 1.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Michigan Electric Transmission Company

[Docket No. ER02–116–000]

Take notice that on October 16, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service with California Electric Marketing, LLC (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). Michigan Transco is requesting an effective date of October 1, 2001 for the Agreements.

Copies of the filed agreements were served upon the Michigan Public Service Commission, ITC, and the Customer.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER02–117–000]

Take notice that on October 17, 2001, Ameren Services Company (ASC) tendered for filing with the Federal Energy Regulatory Commission (Commission) Service Agreements for Firm Point-to-Point Transmission Service between ASC and Aquila Energy Marketing Corporation. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to Aquila Energy Marketing Corporation pursuant to Ameren's Open Access Transmission Tariff.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER02–118–000]

Take notice that on October 17, 2001, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission) a unilaterally executed Interconnection and Operating Agreement with Bayou Cove Peaking Power, LLC (Bayou Cove), and a Generator Imbalance Agreement with Bayou Cove.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Unitil Power Corp.

[Docket No. ER02–119–000]

Take notice that on October 17, 2001, Unitil Power Corp. (UPC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement between UPC and Engage Energy America L.L.C. for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000. UPC requests an effective date of October 1, 2001 for the service agreement with Engage Energy America L.L.C.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Fitchburg Gas and Electric Light Company

[Docket No. ER02–120–000]

Take notice that on October 17, 2001 Fitchburg Gas and Electric Light Company (Fitchburg) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of termination of a service agreement with Engage Energy US, L.P. under Fitchburg's FERC Electric Tariff No. 3.

Fitchburg requests an effective date of December 12, 2001.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Orange and Rockland Utilities, Inc.

[Docket No. ER02–121–000]

Take notice that on October 17, 2001, Orange and Rockland Utilities, Inc. and Rockland Electric Company (collectively Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Revised Power Supply Agreement. The Applicants request that the Commission permit the rate schedule to become effective on December 1, 2001.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER02–122–000]

Take notice that on October 17, 2001, Cinergy Services, Inc. (Cinergy) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Name Change from New Energy, Inc. to AEWS New Energy, Inc. Cinergy respectfully requests waiver of notice to permit the Notice of Name Change to be made effective as of the date of the Notice of Name Change.

A copy of the filing was served upon AES New Energy, Inc.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. FirstEnergy Solutions Corp.

[Docket No. ER02–123–000]

Take notice that on October 18, 2001, FirstEnergy Solutions Corp. (Solutions) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Confirmation Form for sale of off-peak energy to Jersey Central Power & Light Company and Pennsylvania Electric Company from October 1 through December 31, 2001. Solutions has asked for waiver of any applicable requirements in order to make the Confirmation Form effective as of October 1, 2001.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Rainy River Energy Corporation—Taconite Harbor

[Docket No. ER02–124–000]

Take notice that on October 18, 2001, Rainy River Energy Corporation—Taconite Harbor (RRTH) filed with the Federal Energy Regulatory Commission (Commission) an application for an order authorizing RRTH to make wholesale sales of electric power at market-based rates.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Progress Energy, Inc. on behalf of Florida Power Corporation

[Docket No. ER02–125–000]

Take notice that on October 18, 2001, Florida Power Corporation (FPC) filed with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Ameren Energy, Inc. under FPC's Short-Form Market-Based Wholesale Power Sales Tariff (SM–1), FERC Electric Tariff No. 10. A copy of this filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

FPC is requesting an effective date of September 19, 2001 for this Agreement.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Mid-Continent Area Power Pool

[Docket No. ER02–126–000]

Take notice that on October 18, 2001, the Mid-Continent Area Power Pool, on behalf of its public utility members, filed with the Federal Energy Regulatory Commission (Commission) a service agreement with ENMAX Energy Marketing, Inc. under MAPP Schedule R.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Mid-Continent Area Power Pool

[Docket No. ER02–127–000]

Take notice that on October 18, 2001, the Mid-Continent Area Power Pool, on behalf of its public utility members, filed with the Federal Energy Regulatory Commission (Commission) a long term, short-term firm and non-firm transmission service agreements under MAPP Schedule F.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. PPL Electric Utilities Corporation

[Docket No. ER02–128–000]

Take notice that on October 18, 2001, PPL Electric Utilities Corporation (PPL Electric) and Williams Generation Company—Hazleton (WGC) filed with the Federal Energy Regulatory Commission (Commission) an Interconnection Agreement between PPL Electric and WGC. PPL Electric and WGC request an effective date of October 19, 2001 for the Interconnection Agreement.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Southern California Edison Company

[Docket No. ER02–129–000]

Take notice that on October 18, 2001, Southern California Edison Company (SCE) tendered for filing with the Federal Energy Regulatory Commission (Commission) revisions to the Amended and Restated Radial Lines Agreement (RLA) between SCE and Reliant Energy Coolwater, L.L.C. (Reliant).

The revisions to the RLA reflect the costs for removal and installation of capital equipment on the Kramer-Coolwater No. 1 Line at SCE's Kramer Substation, which are planned to be in service in November 2001. Copies of this filing were served upon the Public Utilities Commission of the State of California and Reliant.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Entergy Services, Inc.

[Docket No. ER02–130–000]

Take notice that on October 18, 2001, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission) a unilaterally executed Interconnection and Operating Agreement with CII Carbon LLC (CII Carbon), and a Generator Imbalance Agreement with CII Carbon.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–27193 Filed 10–29–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 24, 2001.

a. *Application Type:* Application to Amend License for the Ozark Beach Project.

b. *Project No:* 2221–027.

c. *Date Filed:* August 08, 2001.

d. *Applicant:* Empire District Electric Company.

e. *Name of Project:* Ozark Beach Project.

f. *Location:* The project is located on the White River in Taney County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Tom Snyder, Empire District Electric Company, 3135 State Highway "Y", Forsyth, MO 65653. Tel: (417) 625–5100 ext. 2580.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 219–3273 or by e-mail at *vedula.sarma@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* November 30, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the project number (2221–027) on any comments or motions filed.

k. *Description of Filing:* The licensee proposes to replace the four 1930 vintage Francis waterwheels, with new stainless steel waterwheels that are being designed to fit in the same hole and bolt to the same shaft and generator as the original wheel. The new waterwheel will pass approximately 300 cfs and thereby increases the total hydraulic capacity of the plant from 5,800 to 7,200 cfs. Even though, the turbine capacity would be increased by 30 percent, the installed capacity would not change since there are no plans to upgrade the generators.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–27195 Filed 10–29–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures In Preparing a License Application

October 24, 2001.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare an original license application.

b. *Project No.:* 11894.

c. *Date filed:* October 19, 2001.

d. *Applicant:* Rugraw, Inc.

e. *Name of Project:* Lassen Lodge Project.

f. *Location:* On the South Fork Of Battle Creek, near the town of Mineral in Tehama County, California. The project would not be located on federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Arthur Hagood, Vice President, Synergics Centre, Synergics Energy Services (Synergics), 191 Main Street, Annapolis, MD 21401; 410–268–8820.

i. *FERC Contact:* Alan Mitchnick at (202) 219–2826; e-mail *Alan.Mitchnick@ferc.fed.us.*

j. *Deadline for Comments:* November 23, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

k. The proposed project would require the construction of: (1) An 80-foot-long diversion structure with a maximum height of 6 feet; (2) about 7,000 feet of low-pressure pipeline and about 12,000 feet of high-pressure pipeline; (3) a powerhouse with an installed capacity of 7 megawatts; and (4) 10 miles of 60-kilovolt transmission line.

l. A copy of the request to use alternative procedures is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Synergics, on behalf of Rugraw, Inc. has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. Synergics has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. Synergics has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on Synergics' request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. Synergics will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Synergics has contacted federal and state resources agencies, NGOs, elected officials, environmental groups, and the public regarding the Lassen Lodge Project. Synergics intends to file 6-month progress reports during the alternative procedures process.

David P. Boergers,

Secretary.

[FR Doc. 01–27196 Filed 10–29–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 24, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Preliminary Permit Application.

b. *Project No.:* 12060–000.

c. *Date filed:* July 2, 2001, amended October 15, 2001.

d. *Applicant:* Mark R. Frederick.

e. *Name of Project:* Rock Creek Hydroelectric Energy Project.

f. *Location:* Would utilize the existing Wise Canal and Rock Creek Lake of Pacific Gas & Electric Company's Drum-Spaulding Project No. 2310, in Placer County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Mark R. Frederick, 17825 Crother Hills Road, Meadow Vista, CA 95722, (530) 887–1984.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Deadline for filing comments and or motions:* 60 days from the issue date of this notice. Filings already made in this proceeding need not be refiled.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the project number (P–12060–000) on any comments or motions filed.

k. *Description of Project:* The Applicant has withdrawn his preliminary permit application for the Rock Creek Lake Outlet Project No. 12069 and combined that project with the one first proposed as the PG&E Wise Canal Project No. 12060. The proposed project, as amended, using PG&E's existing Wise Canal and Rock Creek Lake, would consist of: (1) A proposed remotely controlled gated intake structure at an existing diversion dam on the canal above the lake, (2) a proposed 4,000-foot-long, 6-foot-diameter penstock, (3) a proposed powerhouse containing a 1,400-kilowatt generating unit, (4) a proposed draft tube emptying into the canal below the lake, (5) a proposed connection to an overhead transmission line, and (6) appurtenant facilities. The project would have an annual generation of 11.3 gigawatthours that would be sold to PG&E or a power distributor.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–27197 Filed 10–29–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7094–9]

EPA Science Advisory Board Environmental Health Committee Review of the Trichloroethylene (TCE) Health Risk Assessment Synthesis and Characterization Draft Document; Request for Nominations

ACTION: Request for nominations to the Environmental Health Committee (EHC) of the Environmental Protection Agency's (EPA) Science Advisory Board (SAB) for its review of the Agency's draft Trichloroethylene (TCE) Health Risk Assessment.

SUMMARY: The U.S. Environmental Protection Agency Science Advisory Board (SAB) is announcing the formation of a Panel to review the Agency's draft Trichloroethylene (TCE) Health Risk Assessment. The SAB is soliciting nominations to augment the existing EHC to form this Panel. The EPA Science Advisory Board was established to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA regulations. In this sense, the Board functions as a technical peer review panel.

Any interested person or organization may nominate qualified individuals for membership on the panel. Individuals should have expertise in one or more of the following areas: risk assessment and the application of the Agency's risk assessment guidelines; toxicology including carcinogenicity, with a focus on mechanisms of action and pharmacokinetic models; and molecular genetics. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience and qualifications.

Background

EPA's Office of Research and Development (ORD) has completed an external review draft assessing the health risks of trichloroethylene. TCE is a major contaminant of concern in EPA's air, water, and waste programs. This draft was published for public comment on September 19, 2001 at 66 FR 48257–48258. EPA's regulatory program and regional offices have identified TCE as among the highest priorities for a new assessment.

This assessment was also shaped by several new developments in risk assessment. The practice of risk assessment is evolving from a focus on one toxic effect of one pollutant in one environmental medium toward integrated assessments covering multiple effects and multiple media and incorporating information about mode of action, uncertainty, human variation, and cumulative effects of multiple pollutants in different media. This evolution responds to recommendations of the National Research Council, which have been embraced in EPA's proposed cancer guidelines.

This draft assessment takes on the new directions in risk assessment that EPA and others have advocated. The assessment discusses the possibility that children, infants, and the developing fetus may differ from adults with respect to susceptibility to TCE's toxic effects. The assessment addresses cumulative risks by discussing the implications of other chlorinated solvents and agents that have metabolic pathways, potential modes of action, and toxic effects similar to TCE. The assessment implements principles of the proposed cancer guidelines by emphasizing characterization discussions, using mode-of-action information, and identifying susceptible populations.

The issues surrounding TCE are quite complex, with extensive information in some areas and relatively little information in others. The ORD initiated development of 16 peer-reviewed state-of-the-science papers that were published in Environmental Health Perspectives (vol. 108, suppl. 2, May 2000). These papers, which provide the primary scientific support for the assessment, were written by well-recognized scientists carrying out research on TCE or its metabolites.

To accomplish this review, the Science Advisory Board (SAB) will convene a Panel to address the following draft Charge:

(a) Does the assessment adequately discuss the likelihood that trichloroethylene (TCE) acts through multiple metabolites and multiple modes of action?

(b) Is the cancer weight-of-evidence characterization adequately supported?

(c) A new feature of the cancer database is molecular information on the von Hippel-Lindau tumor suppressor gene. Is this information adequately discussed and are the conclusions appropriate?

(d) Does the assessment adequately discuss the use of multiple critical effects in developing an oral reference dose (RfD) and inhalation reference concentration (RfC) for effects other than cancer? Are the uncertainty factors well discussed and well supported?

(e) Does the assessment adequately discuss the derivation of a range of estimates for the cancer risk? Are there any studies that should/should not have been included?

(f) Please comment on the use of calibrated models and uncertainty analysis to address the question of pharmacokinetic model uncertainty.

(g) Is it appropriate to consider background exposures and other characteristics of an exposed population as modulating the risk of TCE exposure in that population?

(h) Do the data support identifying risk factors that may be associated with increased risks from TCE exposure? Are there any risk factors that should/should not have been included?

(i) Do the data support the possibility that TCE can affect children and adults differently? Should this be reflected in the quantitative assessment?

The criteria for selecting Panel members are that these persons be recognized experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); and that they be available to participate fully in the review, which will be conducted over a relatively short time frame (*i.e.*, within approximately four months). Panel members will be asked to attend at least one public meeting followed by at least one public telephone conference meeting over the course of four months; they will be asked to participate in the discussion of key issues and assumptions at these meetings, and they will be asked to review and to help finalize the products and outputs of the panel. The panel will make recommendations to the Executive Committee (EC) of the SAB for approval of the Board's report and transmittal to the Administrator.

Nominations should be submitted to Mr. Samuel Rondberg, Designated Federal Officer, EPA Science Advisory Board via e-mail to *Rondberg.Sam@epamail.epa.gov* followed by "hard copy" via U.S. mail addressed to Mr. Samuel Rondberg, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (301) 812–2560, no later than November 9, 2001. The Agency will not formally acknowledge or respond to nominations.

General Information

Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in the *Science Advisory Board FY2000 Annual Staff Report* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: October 22, 2001.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 01–27285 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7094–2]

2002 Resource Conversation and Recovery Act National Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of public invitation to Resource Conservation and Recovery Act National Meeting.

SUMMARY: Notice is hereby given of public invitation to the 2002 Resource Conservation and Recovery Act (RCRA) National Meeting, "Partnerships for Cleaner Communities." This meeting, January 15–18, 2002, brings together RCRA program representatives from the Environmental Protection Agency (EPA), States, Tribes and the community. The National Meeting will explore future management issues of hazardous and nonhazardous (industrial, municipal and other) waste. The RCRA National Meeting is a great opportunity to share with, and learn from, each other. It promotes new EPA initiatives and fosters discussion and education concerning Regional, State and tribal issues.

DATES: For the first time, attendance at the National Meeting will be fully open to the general public. The RCRA National Meeting will start at 8:30 a.m. on Tuesday, January 15, 2002 and end at 12 p.m. on Friday, January 18, 2002.

ADDRESSES: The 2002 RCRA National Meeting will be held at the Hyatt Regency Washington on Capitol Hill at 400 New Jersey Avenue, NW., Washington, DC. More information will be made available upon registration.

FOR FURTHER INFORMATION CONTACT: Anita Cummings (703–308–8303), Office of Solid Waste, Mail Code 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460. You may also contact Anita by e-mail at cummings.anita@epa.gov.

SUPPLEMENTARY INFORMATION:

Status

Preregistration is required for meeting attendance. There is no cost to register. No registration will occur at the door. The number of participants will be limited and registrations will be confirmed in the order in which they are received. To reduce costs and save paper, we encourage you to register electronically for the meetings and for overnight accommodations using the meeting Web site: *http://www.epa.gov/osw/meeting/index.htm*. If electronic registration is not possible, please telephone Anita Cummings or Melissa Galyon.

Dated: October 5, 2001.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 01–27286 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7093–5]

Proposed CERCLA Administrative Order on Consent for Removal Action—Service First Barrel and Drum Site, Salt Lake City, Salt Lake County, Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements of section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(h)(1), notice is hereby given of the proposed administrative settlement under section 122(h) of CERCLA, 42 U.S.C. 9622(h), concerning the Service First Barrel and Drum site, between EPA and Redwood Development, LLC ("Settling Party"). The Service First Barrel and Drum Site is located at 1066 South Redwood Road, in Salt Lake City, Salt Lake County, Utah (the "Site"). The settlement, embodied in the proposed Administrative Order on Consent for Removal Action, EPA Docket No. CERCLA–8–2002–01 ("AOC"), is designed to resolve the Settling Party's liability at the Site through work to be performed and a covenant not to sue for all response costs incurred and to be incurred by EPA in connection with removal activities at the Site.

Redwood Development, LLC is the owner of a parcel of land which was impacted by business operations at Service First Barrel and Drum and is included within the defined boundaries of the Site. The proposed AOC will settle Settling Party's liability under section 107(a)(1) of CERCLA, 42 U.S.C. 9607(a)(1). Under the terms of the proposed AOC, the Settling Party agrees to conduct a cleanup of the contamination on the Settling Party's property. In exchange, the Settling Party will settle its liability for all response costs incurred at the Site in connection with removal activities and will receive contribution protection from other parties associated with the Site.

Opportunity for Comment: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received on the covenant not to sue portion of the AOC only (section XIII) and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado.

DATES: Comments must be submitted on or before November 29, 2001.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, in Denver, Colorado. Comments and requests for a copy of the proposed settlement should be addressed to Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, and should reference the Service First Barrel and Drum Site, Salt Lake City, Utah, and the EPA Docket

No. CERCLA–8–2002–01 (Redwood Development AOC).

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6970.

Dated: October 12, 2001.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 01–27288 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7094–1; CWA–HQ–2001–6022; RCRA–HQ–2001–6022; CAA–HQ–6022]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding Standard Steel, a Division of Freedom Forge Corporation; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On September 27, 2001, EPA published in the **Federal Register**, (66 FR 49379) information concerning a proposed settlement with Standard Steel, a Division of Freedom Forge Corporation ("Standard Steel") to resolve violations of the Clean Water Act ("CWA"), Resource Conservation and Recovery Act ("RCRA"), Clean Air Act ("CAA"), and their implementing regulations. On October 10, 2001, EPA published additional information concerning this proposed settlement in the **Federal Register**, (66 FR 51667). The purpose of this extension is to offer interested parties the opportunity to comment on all aspects of this consent agreement and proposed final order. This notice extends the public comment period to November 9, 2001.

DATES: Comments are due on or before November 9, 2001.

ADDRESSES: Mail written comments to the Enforcement & Compliance Docket and Information Center (2201A), Docket Number EC–2001–006, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Mail Code 2201A, Washington, DC 20460. (Comments may be submitted on disk in WordPerfect 8.0 or earlier versions.) Written comments may be delivered in person to: Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW, Washington, DC. Submit comments electronically to *docket.oeca@epa.gov*. Electronic comments may be filed online at many Federal Depository Libraries.

The consent agreement, the proposed final order, and public comments, if any, may be reviewed at the Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW, Washington, DC. Persons interested in reviewing these materials must make arrangements in advance by calling the docket clerk at 202–564–2614. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Beth Cavalier, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–3271; fax: (202) 564–9001; e-mail: *cavalier.beth@epa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Copies

Electronic copies of this document are available from the EPA homepage under the link "Laws and Regulations" at the **Federal Register**—Environmental Documents entry (*http://www.epa.gov/fedrgstr*).

Dated: October 23, 2001.

David A. Nielsen,

Director, Multimedio Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 01–27287 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 23, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 31, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0856.

Title: Universal Service—Schools and Libraries Universal Service Program Reimbursement Forms.

Form No.: FCC Forms 472, 473 and 474.

Type of Review: Extension.

Respondents: Business or Other for Profit; Not for Profit Institutions.

Number of Respondents: 61,800.

Estimated Time Per Response: 1.42 hours per response (avg).

Total Annual Burden: 88,050 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion, Annually, Third Party Disclosure.

Needs and Uses: The Telecommunications Act of 1996 contemplates that discounts on eligible services shall be provided to schools and libraries, and that service providers shall seek reimbursement for the amount of the discounts. FCC Form 472, Billed Entity Applicant Reimbursement Form. The information collected in FCC Form 472 is necessary to enable the fund administrator to pay universal service support to service providers who provide discounted services to eligible schools, libraries, and consortia of those entities. The information collected on the FCC Form 472 is be completed by an applicant to seek reimbursement for payments on approved services and/or products delivered to the applicant from the actual service start date. This information is necessary to identify the amount of the discounts due and owing from the service provider to the applicant, so that the service provider may reimburse this amount to the applicant. FCC Form 473, Service Provider Annual Certification Form. FCC Form 473 is submitted by each service provider or vendor that was assigned a service provider identification number (SPIN) and that participates in the universal service support mechanism for schools and libraries. The purpose of the form is to confirm that, for each Service Provider Invoice Form submitted by the service provider, the Form is in compliance with the FCC's rules governing the schools and libraries universal service support mechanism, and that the Form is true, accurate and complete. FCC Form 474, Service Provider Invoice Form. The Service Provider Invoice Form is to be used by all service providers or vendors who are assigned a SPIN and participate in the universal service support mechanism for schools and libraries. The purpose of FCC Form 474 is for the service provider/vendor to seek reimbursement for the cost of discounts. FCC Form 474 must be received before a service provider participating in the universal service program for schools and libraries can receive payment for the discounted portion of its bill for eligible services to eligible entities.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–27226 Filed 10–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–01–31–D (Auction No. 31); DA 01–2394]

Auction of Licenses for 747–762 and 777–792 MHz Bands (Auction No. 31) Scheduled for June 19, 2002

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that Auction No. 31 is scheduled for June 19, 2002 and provides important dates and deadlines for pre-auction events.

DATES: Auction No. 31 is scheduled for June 19, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Bomberger, Auctions Operations Branch; Howard Davenport, Legal Branch at (202) 418–0660; or Lisa Stover, Auctions Operations Branch at (717) 338–2888.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released October 15, 2001. The complete text of the Public Notice is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. The Public Notice may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

By the Public Notice, the Wireless Telecommunications Bureau announces that the auction of licenses for 747–762 and 777–792 MHz bands (Auction No. 31) is scheduled to begin June 19, 2002. The dates and deadlines for important pre-auction events are provided.

Pre-Auction Seminar: April 30, 2002
Short-Form Application (FCC Form 175) Filing Window Opens: April 30, 2002
Short-Form Application (FCC Form 175) Deadline: May 8, 2002
Upfront Payments Deadline: May 28, 2002
Mock Auction: June 14, 2002
Auction Start Date: June 19, 2002

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 01–27228 Filed 10–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–2405]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Brooklyn, NY. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the fourteenth meeting of the Public Safety National Coordination Committee.

DATES: November 16, 2001 at 9:30 a.m.–3:30 p.m.

ADDRESSES: New York Marriott Brooklyn, 333 Adams Street, Brooklyn, NY 11201.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail *mwilhelm@fcc.gov*. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail *mmccarri@fcc.gov*.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the fourteenth meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Brooklyn, NY. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: November 16, 2001.

Meeting Time: General Membership Meeting—9:30 a.m.–3:30 p.m.

Address: New York Marriott Brooklyn, 333 Adams Street, Brooklyn, NY 11201.

The NCC Subcommittees will meet from 9:00 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 3:30 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Presentation by New York Public Safety Representatives on Interoperability Factors Affecting the Response to the World Trade Center Incident.
3. Presentation by Steve Souder, Arlington County, Virginia, Emergency Communications Center on Interoperability Factors Affecting the Response to the Pentagon Incident.
4. Presentation by John Oblak of the Telecommunications Industries Association on 700 MHz Wideband Data Transmission Standards.
5. Presentation by John Bynum, Pinellas County, Florida, on the "Greenhouse" mobile data transmission system.
6. Presentation by a Public Safety Wireless Network representative on a recommended Incident Response System.
7. Public participation.

8. Selection of sites and dates for upcoming NCC meetings.
9. Other Business.
10. Adjournment.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. *See* The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the fourteenth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by e-mailing at *jalford@fcc.gov*. Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this fourteenth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at *jalford@fcc.gov*. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC Web site located at: *http://www.fcc.gov/wtb/publicsafety/ncc.html*.

Federal Communications Commission.

Jeanne Kowalski,

Deputy Division Chief for Public Safety, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 01–27227 Filed 10–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Monday, November 5, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 26, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27360 Filed 10–26–01; 12:21 pm]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0235]

Submission for OMB Review; Comment Request Entitled Price Reductions Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance 3090–0235, Price Reductions Clause.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Price Reductions Clause.

DATES: Comment Due Date: December 31, 2001.

ADDRESSES: Comments regarding this collection of information should be submitted to: Ed Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Office of GSA Acquisition Policy (202) 208–6750.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0235, The Price Reductions Clause. The Price Reductions Clause used in multiple award schedule contracts ensures that the Government maintains its relationship with the contractor's customer or category of customers, upon which the contract is predicated.

B. Annual Reporting Burden

Number of Respondents: 9,547.
Total Annual Responses: 19,094.
Percentage of these responses collected electronically: 100.
Average hours per response: 7.5 hours.
Total Burden Hours: 143,205.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4744. Please cite OMB Control No. 3090–0235, Price Reductions Clause.

Dated: October 22, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–27305 Filed 10–29–01; 8:45 am]

BILLING CODE 6220–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. National Study of Culturally and Linguistically Appropriate Services in Managed Care Organizations—NEW—The Office of Minority Health proposes to conduct a survey of a random sample of managed care organizations. The survey will provide data on the prevalence of policies and practices that promote the delivery of culturally and linguistically appropriate services, and identify factors that may facilitate or impede the implementation of such policies and practices. The information will inform the Office of Minority Health in the development of technical assistance materials. *Respondents:* Business or other for-profit, Non-profit organizations; *Number of Respondents:* 720; *Frequency of Response:* one time; *Burden per Response:* .42 hours; *Total Burden:* 300 hours.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC 20201. Written comments should be received within 30 days of this notice.

Dated: October 22, 2001.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 01–27309 Filed 10–29–01; 8:45 am]

BILLING CODE 4150–29–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Breast and Cervical Cancer Early Detection and Control Advisory Committee.

Times and Dates: 1 p.m.–5 p.m., November 14, 2001; 9 a.m.–5 p.m., November 15, 2001.

Place: The Doubletree Club Hotel—Atlanta Airport, 3400 Norman Berry Road, Atlanta, Georgia 30344, Telephone: (404) 763–1600.

Status: Open to the public limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Secretary, and the Director of CDC, regarding the need for early detection and control of breast and cervical cancer and to evaluate the Department's current breast and cervical cancer early detection and control activities.

Matters to be Discussed: The discussion will primarily focus on evaluating the CDC National Breast and Cervical Cancer Early Detection Program.

Members of the public who wish to make a brief oral presentation at the meeting should contact Ms. Cecilia Nkabinde at 770–488–4880 or Ms. Regina Seider at (770) 488–3078 by 4 p.m. on November 1, 2001 to have time reserved on the agenda. Each individual or group making an oral presentation will be limited to 5 minutes. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 25 copies of the presentation and 25 copies of the visual aids used at the meeting are to be given to Ms. Nkabinde no later than the time of the presentation for distribution to the Committee and the interested public.

Contact Person for Additionol Information: Ms. Cecilia Nkabinde, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., M/S K–57, Atlanta, Georgia 30341–3724, telephone 770/488–4880.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 24, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–27212 Filed 10–29–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01C–0486]

LycoRed Natural Products Industries; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that LycoRed Natural Products Industries has filed a petition proposing that the color additive regulations be amended to provide for the safe use of tomato lycopene extract to color foods generally.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 1C0273) has been filed by LycoRed Natural Products Industries, c/o TC Associates, Inc., P.O. Box 285, West Boxford, MA 01885. The petition proposes to amend the color additive regulations in 21 CFR part 73 to provide for the safe use of tomato lycopene extract to color foods generally.

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: October 17, 2001.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–27252 Filed 10–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4655–N–23]

Notice of Proposed Information Collection: Comment Request; Mortgagor's Certificate of Actual Cost

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: December 31, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–2866 (this is not a toll-free number), for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgagor's Certificate of Actual Cost.

OMB Control Number, if applicable: 2502–0112.

Description of the need for the information and proposed use: HUD Form–92330 is used to obtain data from the mortgagor relative to the actual cost of the project. The mortgagor is required by law to create and maintain records necessary to audit project costs at final endorsement. The actual data is reviewed by HUD staff to determine that the mortgagor's originally endorsed mortgage is supported by the applicable percentage of approved costs. Failure to receive and review the cost certification data would result in the Department's over insurance of the mortgage in violation of the law.

Agency form numbers, if applicable: HUD–92330.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 4,000. The number of respondents is 500. The number of hours per response is 8. The form is submitted only once during the final endorsement period of the mortgage.

Status of the proposed information collection: Reinstatement, without change, of previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 12, 2001.

Sean Cassidy,

General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 01–27315 Filed 10–29–01; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–07]

Credit Watch Termination Initiative

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St. SW., Room B133–P3214, Washington, DC 20410; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement

Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause

HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the seventh review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 300 percent of the field office rate.

Effect

Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as set forth by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024.

Action

The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD Office jurisdictions	Terminataion effective date	Home ownership centers
American Charter Mortgage	8141 E 2nd Street Suite 206 Downey CA 90241	Los Angeles, CA	07/17/2001	Santa Anna.
American Financial MTG Corp	1011 Noteware Drive Traverse City, MI 49686	Grand Rapids, MI.	07/17/2001	Philadelphia.
Bankers First Mortgage Co	9505 Reisterstown Rd Suite 100S Owings Mills, MD 21117.	Baltimore, MD	04/28/2001	Philadelphia.
Capital State Mortgage	2646 Southloop West Suite 110 Houston, TX 77054.	Houston, TX	05/24/2001	Denver.
First Guaranty Mortgage Corp	8180 Greensboro Dr Suite 1175 Mclean, VA 22102	Washington, DC	04/28/2001	Philadelphia.
Mortgage Edge Corporation	3475 Sheridan St Suite 301 Hollywood, FL 33031	Florida State Off, FL.	07/17/2001	Atlanta.
Mortgage Edge Corporation	150 Westpark Way #304 Euless, TX 76040	Fort Worth, TX	07/17/2001	Denver.
North Star Mortgage	416 Ponce De Leon Avenue #6 Hato Rey, PR 00918.	San Juan, PR	07/17/2001	Atlanta

Dated: October 22, 2001.

John C. Weicher,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 01–27313 Filed 10–29–01; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Draft Restoration Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish & Wildlife Service (Service), on behalf of the U.S. Department of the Interior (DOI), as a Natural Resource Trustee (Trustee), announces the release for public review of the Draft Restoration Plan and Environmental Assessment (RP/EA) for the Charles George Landfill Superfund Site in Tyngsborough, Massachusetts. The Draft RP/EA describes the DOI's proposal to restore natural resources injured as a result of chemical contamination at the Charles George Landfill Superfund Site.

DATES: Written comments must be submitted on or before December 14, 2001.

ADDRESSES: Requests for copies of the Draft RP/EA may be made to: Laura Eaton-Poole, U.S. Fish and Wildlife Service, New England Field Office c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts, 01776. Copies are also available on the internet at: *http://greatmeadows.fws.gov/charlesgeorge.html.*

Written comments or materials regarding the Draft RP/EA should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Laura Eaton-Poole, U.S. Fish and Wildlife Service, New England Field Office c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts, 01776. Interested parties may also call 978–443–4661, extension 17, or send email to *Laura_Eaton@fws.gov* for further information.

SUPPLEMENTARY INFORMATION: Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*), "* * * (Trustees) may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * *

and may seek to recover those damages." Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste site, and provide a process whereby the Trustees can determine the proper compensation to the public for injury to natural resources.

Three natural resource trustees settled with the Potentially Responsible Parties for injuries to natural resources due to releases of hazardous substances from the Charles George Landfill Superfund Site: DOI recovered $299,916 for injuries to migratory birds that use wetlands; the National Oceanic and Atmospheric Administration recovered $134,624 for potential injuries to anadromous and catadromous fish in the Merrimack River; and the Commonwealth of Massachusetts recovered $918,900 for injuries to wetlands and groundwater. The total recovery of damages and future oversight expenses for all the Trustees was $1,353,440. The three Trustees signed a Memorandum of Agreement (MOA) in recognition of the common interests to restore, replace and/or acquire the equivalent natural resources which were injured, destroyed, or lost by the releases of hazardous substances. The MOA provides a framework for the development of a Trustee Council that cooperatively develops and implements a Restoration Plan.

The Draft RP/EA is being released in accordance with section 111(i) of CERCLA, 42 U.S.C. 9611(i) and the National Environmental Policy Act. The Draft RP/EA describes a number of natural resource restoration, acquisition, and protection alternatives identified by the Charles George Natural Resources Trustee Council (Trustee Council), and evaluates each of the possible alternatives based on all relevant considerations. The Trustee Council's Preferred Alternative has two parts: (1) The settlement funds will be used to protect properties adjacent to or near the areas of impact and; (2) the settlement funds will be used to contribute to the anadromous fish restoration effort in the Merrimack River Watershed through the funding of stocking and monitoring of alewife in the Concord River in Massachusetts, and contributing to the funding of the construction of a fish ladder at a dam on the Concord River which is an impediment to upstream migration of migratory fish. Details regarding the proposed projects are contained in the Draft RP/EA.

Interested members of the public are invited to review and comment on the Draft RP/EA. Copies of the Draft RP/EA are available from the Service's New England Field Office c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts, 01776, or from the Tyngsborough Public Library, 25 Bryants Lane, Tyngsborough, Massachusetts, 01879. All comments received on the Draft RP/EA will be considered and a response provided either through revision of the Draft RP/EA and incorporation into the Final Restoration Plan and Environmental Assessment, or by letter to the commentor.

Author: The primary author of this notice is Laura Eaton-Poole, U.S. Fish and Wildlife Service, New England Field Office, c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts, 01776.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*).

Dated: October 10, 2001.

Joseph J. Dowhan,

Acting Regional Director, Region 5, U.S. Fish & Wildlife Service.

[FR Doc. 01–26988 Filed 10–29–01; 8:45 am]

BILLING CODE 4310–55–P]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Candidate Conservation Agreement with Assurances and Permit Application for a Proposed Reintroduction of the Robust Redhorse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service has received an application from Georgia Power Company (Applicant) for an enhancement of survival permit (ESP) pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). With the assistance of the Georgia Department of Natural Resources (GDNR) and the Service, Georgia Power Company proposes to reintroduce the robust redhorse (*Moxostoma robustum*) into a portion of the upper Ocmulgee River in central Georgia and conduct related research and monitoring activities. We are announcing our receipt of the permit application as well as the availability of a proposed Candidate Conservation Agreement with Assurances (CCAA) for the robust redhorse that is intended to facilitate the implementation of conservation measures for the species by the Applicant, GDNR, and the Service in support of on-going efforts to reintroduce the species into areas where it historically occurred.

DATES: Written comments on the CCAA and ESP application should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before November 29, 2001.

ADDRESSES: Persons wishing to review the CCAA and ESP application may obtain copies by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 247 South Milledge Avenue, Athens, Georgia 30605. Written data or comments concerning the CCAA or ESP application should be submitted to the Regional Office at the address listed above and must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE038547–0 in your comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Andrews, Regional CCAA Coordinator, (see **ADDRESSES** above), telephone: 404/679–7217, facsimile: 404/679–7081; or Mr. Mark Bowers, Fish and Wildlife Biologist, Georgia Field Office, Athens, Georgia (see **ADDRESSES** above), telephone: 706/613–9493.

SUPPLEMENTARY INFORMATION: The robust redhorse is a large, rare sucker that was originally described from the Yadkin River, North Carolina, in 1869 by Edward Cope. Few specimens were collected and the species' status was uncertain until 1991 when a single population of robust redhorse was discovered by GDNR biologists along a 70-mile reach of the Oconee River in central Georgia. The robust redhorse is the largest North American sucker species and historically occurred in medium to large rivers of the South Atlantic Coastal Plain where it spawned on clean, rocky shoals. It is listed by the State of Georgia as endangered and is considered a species of management concern by the Service.

Since the rediscovery of the species, a number of management and conservation efforts for the robust redhorse have been implemented by the Robust Redhorse Conservation Committee (RRCC), which was established in 1995 through a Memorandum of Understanding among State and Federal agencies, private interests, research scientists, industry, and conservation organizations. The RRCC works voluntarily and cooperatively to determine the status of known robust redhorse populations, establish additional populations, and implement necessary research and other actions to maintain or enhance the survival of this species within its historic range. The Applicant, GDNR, and the Service are each members of the RRCC.

The RRCC has made significant conservation advances relative to the robust redhorse since 1995, including the development of propagation techniques, progress in the understanding of the species' life history and habitat requirements, and the discovery of three additional natural populations. In addition, three refugial populations have been established based on techniques developed through this cooperative effort. The RRCC has also secured funding necessary to continue and expand collaborative conservation efforts and research for the robust redhorse.

The RRCC has also developed a Conservation Strategy for the robust redhorse that includes short- and long-term goals for the conservation of the species. The short-term goals of the Conservation Strategy include, but are not limited to: (1) Establishing refugial populations to reduce the impact of potential catastrophic events on the species' survival; (2) Determining habitat and life history requirements of robust redhorse; and (3) Establishing reintroduction plans or agreements to facilitate conservation actions for specific sites. The long-term goal of the Conservation Strategy is to establish or maintain at least six self-sustaining populations of robust redhorse distributed throughout the species' historic range. These conservation goals are based on the recommendations of the RRCC, fishery biologists, research scientists, and State and Federal resource agencies, and are based on research reviewed by members of the RRCC. The activities covered by the proposed CCAA complement the efforts of the RRCC and support the RRCC's goals of establishing refugial and self-sustaining populations throughout the species' historic range.

CCAAs encourage private and other non-Federal property owners to implement conservation efforts and reduce threats to unlisted but declining species by assuring those landowners that they will not be subjected to increased land and water use restrictions if a species covered by a CCAA is listed in the future. By focusing on species which are not currently listed under the Act, including species proposed for listing, species which are formal candidates for listing, and species which may become proposed or candidate species in the future, CCAAs provide the opportunity to conserve declining species prior to or instead of listing. The robust redhorse is considered to be a species of management concern, and, as such, could become a proposed or candidate species in the future. Efforts such as those proposed in conjunction with the proposed CCAA will expedite reintroduction of robust redhorse into the Ocmulgee River by providing the Applicant with a regulatory incentive for participation that would not likely exist except for this CCAA. In this way, the proposed CCAA will address both the needs of the species and those of the Applicant.

The proposed CCAA represents a significant milestone in the cooperative conservation efforts for the species and is consistent with section 2(a)(5) of the Act, which encourages creative partnerships among public, private, and government entities to conserve imperiled species and their habitats. Consistent with our CCAA policy, the proposed CCAA is intended to facilitate conservation actions for robust redhorse that will remove or reduce the threats to the species. The CCAA is also intended to provide the Applicant with regulatory certainty related to its electric power generation operations at Lloyd Shoals Dam, which controls flows within that portion of the Ocmulgee River where the conservation actions will occur, should the robust redhorse become federally listed as threatened or endangered in the future.

The conservation measures in the CCAA would be implemented by the Applicant, with the assistance of GDNR and the Service, and would consist of reintroducing robust redhorse into a portion of the upper Ocmulgee River in central Georgia, monitoring the effectiveness of reintroduction efforts, conducting research on critical life history and habitat requirements for the species within the project area, and working collaboratively to identify and protect important robust redhorse habitats within the project area through existing laws and regulations. These objectives support the Conservation Strategy for the species developed by the RRCC.

The Applicant has committed to implement the conservation measures specified in the CCAA and requests issuance of the ESP in order to address the take prohibitions of section 9 of the Act should the species become listed in the future. When determining whether to issue the requested ESP, the Service will consider a number of factors and information sources including the project's administrative record, any public comments received, and the application requirements and issuance criteria for CCAAs contained in 50 CFR part 17.22(d) and part 17.32(d). The Service will also evaluate whether the issuance of the ESP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, regulations, and public comments, will be used in the final analysis to determine whether or not to issue the requested ESP.

In a CCAA, we will provide that if any species covered by the CCAA is listed, and the CCAA has been implemented in good faith by the Applicant, we will not require additional conservation measures nor impose additional land, water, or resource use restrictions beyond those the property owner voluntarily committed to under the terms of the CCAA. We have made the preliminary determination that the Applicant's conservation measures will likely meet the intent of the CCAA policy, primarily due to the potential establishment of another self-sustaining population of the species within its historic range. The proposed CCAA would be in effect for a period of 22 years in that portion of the Ocmulgee River lying downstream of Lloyd Shoals Dam (river mile 250.2) and upstream of a low-head dam at Juliette, Georgia (river mile 230.9). Habitat conditions within this portion of the Ocmulgee River have been evaluated by the Applicant, GDNR, and the Service and are believed to be suitable for the robust redhorse such that there is a high likelihood that a refugial or reproducing population will become established.

We are providing this notice pursuant to section 10(c) of the Endangered Species Act and implementing regulations for the National Environmental Policy Act (40 CFR part 1506). We will not make our final determination until after the end of the 30-day comment period and will fully consider all comments received during the comment period. If the final analysis shows the CCAA to be consistent with the Service's policies and applicable regulations, the Service will sign the CCAA and issue the ESP. The proposed ESP would, in compliance with the CCAA policy, only become valid on such date as the robust redhorse is listed as a threatened or endangered species under the Act.

This notice also advises the public that the Service has made a preliminary determination that issuance of the ESP will not result in significant environmental, economic, social, historical or cultural impacts and is, therefore, categorically excluded from review under the National Environmental Policy Act of 1969, as amended (NEPA), pursuant to 516 Departmental Manual 2, Appendix 1 and 516 Departmental Manual 6, Appendix 1. This notice is provided pursuant to section 10 of the Act and our CCAA Policy (**Federal Register** Vol. 64, No. 116, June 17, 1999, pp. 32726–32736). The Service specifically requests information, views, and opinions from the public via this notice. Further, the Service is specifically soliciting information regarding the adequacy of the CCAA as measured against the Service's CCAA Policy.

Dated: October 22, 2001.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 01–27213 Filed 10–29–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment for Shell Offshore Inc.'s Proposed Deepwater Development Plan Offshore Alabama (NaKika Project)

AGENCY: Minerals Management Service, Interior.

ACTION: Preparation of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) is preparing an environmental assessment (EA) for a proposed deepwater development plan to develop and produce hydrocarbon reserves 115–118 miles offshore Alabama in Mississippi Canyon Blocks 474 and 520.

This EA implements the tiering process outlined in 40 CFR 1502.20, which encourages agencies to tier environmental documents, eliminating repetitive discussions of the same issue. By use of tiering from the most recent Final Environmental Impact Statement (EIS) for the Gulf of Mexico Central Planning Area for Lease Sales 169, 172, 175, 178, and 182 and by referencing related environmental documents, this EA concentrates on environmental issues specific to the proposed action.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Clay Pilie', telephone (504) 736–2443.

SUPPLEMENTARY INFORMATION: The MMS GOM Region received an Initial Development Operations Coordination Document (DOCD) from Shell Offshore Inc. (Shell) that proposes to develop and produce hydrocarbon reserves using facilities located in Mississippi Canyon Blocks 474 and 520. The DOCD was assigned a plan control number of N–7166 and the project is referred to as the NaKika Project. Shell proposes to complete the previously drilled Mississippi Canyon Block 520 No. 1 Well (Herschel) and install the centrally-located floating semisubmersible-shaped host facility (NaKika) in Mississippi Canyon Block 474. The NaKika host facility will support the facilities, equipment, flowline risers, and export pipelines necessary to develop the reserves from 10 satellite subsea wells located in five independent fields—Kepler (Mississippi Canyon Block 383), Ariel (Mississippi Canyon 429 Unit), Fourier (Mississippi Canyon 522 Unit), Herschel (Mississippi Canyon 522 Unit), and East Anstey (Mississippi Canyon 607 Unit).

The NaKika host facility will be permanently moored by a 16-point, semi-taut wire rope, chain, and suction pile mooring system. The hull portion of the NaKika host facility is comprised of four square steel columns, 56 feet wide and 142 feet high, and four rectangular steel pontoons, 41 feet wide and 35 feet high, which connect the bottoms of the four columns. Topside facilities are comprised of four modules—quarters, process, east receiving, and west receiving. The quarters module will house up to 60 people.

The water depth at the NaKika host facility is approximately 6,340 feet. The project will use existing onshore support bases in Venice (air transportation) and Port Fourchon (marine transportation), Louisiana, to support the proposed activities.

Oil and gas produced at the NaKika project will be transported by right-of-way pipelines. These pipelines will connect with existing offshore infrastructure for final transport to shore.

The proposed action analyzed in the EA will be the development plan as proposed by Shell. Alternatives will include the proposed action with additional mitigations and no action (i.e., disapproval of the plan). The analyses in the EA will examine the potential environmental effects of the proposal and alternatives.

Public Comments: The MMS requests interested parties to submit comments regarding issues that should be addressed in the EA to the Minerals Management Service, Gulf of Mexico OCS Region, Office of Leasing and Environment, Attention: Regional Supervisor (MS 5410), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Comments must be submitted no later than 30 days from the publication of this notice.

Dated: October 9, 2001.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 01–27253 Filed 10–29–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR
DEPARTMENT OF TRANSPORTATION

National Park Service

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group

AGENCY: National Park Service, Interior, and Federal Aviation Administration, Transportation.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and Federal Aviation Administration (FAA) in accordance with the National Parks Air Tour Management Act of 2000; established the National Parks Overflights Advisory Group (NPOAG). The NPOAG was formed to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks. This notice informs the public of the addition of three new members to the NPOAG.

FOR FURTHER INFORMATION CONTACT: Howard Nesbitt, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 493–4981, or Marvin Jensen, Soundscapes Office, National Park Service, 1201 Oak Ridge Drive, Suite 200, Ft. Collins, Colorado, 80525, telephone: (970) 225–3563.

SUPPLEMENTARY INFORMATION: The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes.

The advisory group provides "advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands."

Members of the advisory group may be allowed certain travel expenses as authorized by section 5703 of title 5, United States Code, for intermittent Government service.

An initial assignment was made to the group of seven members representing aviation, environmental and Native American cultural interests: Chip Dennerlein and Charles Maynard (environmental), Andy Cebula and Joe Corrao (aviation) and Germaine White (Native American). (See 66 FR 32974; June 19, 2001.) At the first meeting of the NPOAG, on August 28, 2001, the group decided that the addition of three new members would achieve a better balance of interests representing the group. The additional members would represent fixed wing air tour operators, environmental interests and Native American cultural interests.

By **Federal Register** notice of September 25, 2001, the FAA and NPS invited members of the public from the desired areas and interested in serving on the advisory group, to contact either the FAA or NPS contact person. Five persons expressed an interest in serving on the NPOAG in addition to the original names submitted earlier when the group was formed. The FAA and NPS have selected three persons to serve as additional members of the NPOAG: Alan Stephens will represent aviation interests, in particular those of fixed-wing operators; Richard Deertrack will represent Native American interests; and Susan Gunn will represent environmental interests. There are now a total of 10 members of the NPOAG.

The next meeting of the NPOAG is being planned for late 2001.

Issued in Washington, DC, on October 24, 2001.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 01–27294 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lower Santa Ynez River Fish Management Plan and Cachuma Project Biological Opinion, Santa Barbara County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/report (EIS/R).

SUMMARY: The Bureau of Reclamation (Reclamation) and the Cachuma Operation and Maintenance Board (COMB) will prepare a joint EIS/R on the management actions and projects included in the: (1) Lower Santa Ynez River Fish Management Plan (FMP) prepared by Reclamation and other agencies and parties involved in the Cachuma Project; and (2) the Biological Opinion (BO) prepared by the National Marine Fisheries Service (NMFS) on the Cachuma Project relative to the endangered southern steelhead population that resides in the Santa Ynez River. Management actions in the FMP and BO are designed to improve habitat for the steelhead along the river downstream of Lake Cachuma through mandated flow, habitat, and passage improvements.

DATES: Reclamation and COMB will hold a scoping meeting at 7 p.m. on November 19, 2001, in Solvang, California to seek public input on alternatives, possible impacts, and issues to be addressed in the EIS/R. Written comments on the scope of the alternatives and impacts to be considered should be sent to the address below by December 3, 2001.

ADDRESSES: The scoping meeting will be at the Veteran's Memorial Building, 1745 Mission Drive in Solvang. Written comments on the scope of the EIS/R should be sent to Mr. David Young, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, or by phone at 559–487–5127, or by fax to 559–487–5130.

FOR FURTHER INFORMATION CONTACT: Mr. David Young at the above address, telephone: (559) 487–5127.

SUPPLEMENTARY INFORMATION: In June 1994, the Memorandum of Understanding for Cooperation in Research and Fish Maintenance (Fish MOU) was executed among various parties with interests along the Santa Ynez River, and is currently being continued through the 2001 Fish MOU. The MOU provides water for fish studies and fish habitat and passage. Since 1993, the Santa Ynez River Technical Advisory Committee (SYRTAC), comprised of various biologists and resource agency personnel, has directed the studies and releases. Signatories to the 1994 MOU include Reclamation, the Santa Barbara County Water Agency, California Department of Fish and Game, U.S. Fish and Wildlife Service, Santa Ynez Water River Conservation District—Improvement District #1 (SYRWCD ID#1), Cachuma Conservation Release Board (CCRB), City of Lompoc, and Santa Ynez River Water Conservation District.

One of the primary objectives of the Fish MOU is to identify management actions to improve conditions for native fish and other aquatic resources, including southern steelhead. A draft FMP was prepared by the SYRTAC and issued for public comment in 2000. A final FMP was issued in October 2000. It incorporated the requirements in the BO for the Cachuma Project independently issued by NMFS in September 2000, which includes mandatory terms and conditions that require Reclamation to implement 15 specific reasonable and prudent measures to minimize take of the southern steelhead. Reclamation is currently implementing these measures in coordination with COMB. The 2001 Fish MOU supports the implementation of the BO and the FMP.

The FMP and BO management actions have been designed to benefit steelhead and other aquatic species directly and indirectly by: (1) Creating new habitat and improving existing habitat in the lower river and tributaries; (2) improving access to spawning and rearing habitats in the lower river and tributaries; and (3) increasing public awareness and support for beneficial actions on private lands. Many management actions can be implemented independent of others and as such, can be considered individual "projects."

The FMP management actions or projects would be implemented by one or more agencies, depending upon funding sources, location of a project on federal versus non-federal land, and whether the project is also a mandatory requirement of the steelhead BO. Agencies that may implement projects separately or jointly include

Reclamation, COMB, CCRB, SYRWCD ID#1, and Caltrans.

The EIS/R will address the following management actions and projects contained in the FMP and BO:

Actions by Reclamation and/or COMB, CCRB, SYRWCD ID#1, & Caltrans

- Surcharging the reservoir to 3.0 feet to provide water for fish accounts
- Mainstem rearing releases to achieve downstream target flows for rearing habitat; maintain residual pools; revise ramping; use Hilton Creek for releases; conjunctive use of water rights releases with releases for fish; using water from surcharging
- Fish passage supplementation using water from surcharging
- Adaptive Management Account for discretionary releases, using water from surcharging
- Hilton Creek habitat enhancement and fish passage projects: (1) Releases to Hilton Creek; (2) supplemental watering system; (3) cascade chute passage improvement; and (4) channel extension. In addition, Caltrans passage improvement at Hwy 154 culvert will be included.
- Fish rescue program

Actions That Require Cooperation of Other Agencies and Private Landowners

- Tributary passage impediment removal. Sites on public and private property on Quiota (6), El Jaro (1), Nojoqui (1) creeks.
- Tributary enhancement measures—riparian restoration; instream habitat enhancement; and conservation easements. These measures are located on private property on Quiota, Alisal, Salsipuedes, El Jaro, Nojoqui, and San Miguelito creeks.
- Mainstem habitat enhancement and protection.

The management actions described in the FMP/BO will be implemented in a phased manner over the next 7 years. Projects that will be implemented in the next 2–3 years include: modifying spillgates for 3-foot surcharge; implementing releases using long-term rearing, passage, and Adaptive Management accounts; installing pump system and variable intake facility for the Hilton Creek supplemental watering system; and completing the modification of passage impediments on Hilton Creek.

The EIS/R will evaluate the environmental impacts of the projects in the FMP/BO, as a whole, in a programmatic manner. As the FMP/BO is implemented over time, the EIS/R can be used for tiering project-specific Environmental Assessments. The EIS/R will address impacts of certain FMP/BO management actions at a project level such as surcharging Lake Cachuma to 3.0 feet and several of the Hilton Creek projects.

The FMP/BO is designed to improve environmental conditions for fish and aquatic and riparian habitats. As such, the EIS/R will be focused on incidental adverse impacts associated with implementing the FMP/BO projects. Most of these impacts would be temporary, and associated with construction and access. However, other unintended impacts would be addressed such as loss of oak trees at Lake Cachuma due to surcharging, displacement or disruption of recreational facilities at the lake due to surcharging, increased need for flood control maintenance in the river, and possible conversion of more arid habitats to aquatic habitats.

The following alternatives would be addressed in the EIS/R, as well as any others identified in the scoping process:

- No project alternative
- No surcharging alternative
- Phased surcharging: 1.8 feet, then 3.0 feet
- Smaller surcharging (1.8 feet)

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: October 11, 2001.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 01–27206 Filed 10–29–01; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Availability for public comment of the Draft Municipal and Industrial (M&I) Water Shortage Policy, Central Valley Project (CVP), California

SUMMARY: The Bureau of Reclamation (Reclamation) has developed, in consultation with the CVP municipal and industrial (M&I) Water Service contractors, a draft CVP M&I Water Shortage Policy. The purposes of the M&I Water Shortage Policy are to (1) define water allocations applicable to all CVP M&I contractors during times of reduced water supplies, (2) establish a minimum water supply level that with the M&I contractor's drought water conservation measures and other water supplies should sustain urban areas during drought situations, and (3) during severe or continuing droughts would, as much as possible, protect public health and safety, and (4) provide information to help M&I Contractors develop drought contingency plans. This policy is in furtherance of the June 9, 1997 Central Valley Project Improvement Act Administrative Proposal on Urban Water Supply Reliability.

DATES: Submit written comments on the Draft CVP M&I Water Shortage Policy on or before November 29, 2001 to the address below.

ADDRESSES: Copies of the Draft CVP M&I Water Shortage Policy may be requested by writing Alisha Sterud at the above address or by calling (916) 978–5195 or retrieved from the Web site at *www.mp.usbr.gov/cvpia/3404c/mi_shortage.html*. Written comments on the Draft CVP M&I Water Shortage Policy should be addressed to the Bureau of Reclamation, Attention: Alisha Sterud, MP–400, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Alisha Sterud at (916) 978–5195, or e-mail: *asterud@mp.usbr.gov*.

SUPPLEMENTARY INFORMATION: The CVP (Central Valley Project) is operated under Federal statutes authorizing the CVP and by the terms and conditions of water rights acquired pursuant to California law. During any year, there may occur constraints on the availability of CVP water for an M&I (municipal and industrial) contractor under its contract. The cause of the water shortage may be drought, unavoidable causes, or restricted operations resulting from legal obligations or mandates. Those legal obligations include but are not limited to the Endangered Species Act, the Central Valley Project Improvement Act (CVPIA), and conditions imposed on CVP's water rights by the State of California. This policy establishes the terms and conditions regarding the constraints on availability of water supply for the CVP M&I water service contracts.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: October 12, 2001.

Kirk Rodgers,

Acting Regional Director.

[FR Doc. 01–27207 Filed 10–29–01; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–01–037]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 2, 2001 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701-TA–403 and 731-TA–895–896 (Final)(Pure Magnesium from China and Israel)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on November 9, 2001).
5. Inv. Nos. 701-TA–405–408 and 731-TA–899–904 and 906–908 (Final)(Hot-Rolled Steel Products from China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on November 13, 2001).
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 25, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27338 Filed 10–26–01; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *New Castle County, Delaware, Delaware Department of Transportation, and the State of Delaware*, Civil Action No.01:586–SLR, was lodged with the United States Court for the District of Delaware on August 29, 2001.

The proposed consent decree pertains to alleged violations of the Clean Water Act, 33 U.S.C. 1311 *et seq.* for the unpermitted discharge of pollutants into the navigable waters of the United States via New Castle County's and Delaware Department of Transportation's municipal separate storm sewer systems, and for failure to obtain an effective National Pollution Discharge Elimination System Response ("NPDES") permit in violation of section 402 of the Clean Water Act, 33 U.S.C. 1342.

The proposed consent decree provides for the payment of $275,000 in civil penalties in the following amounts: $150,000 by defendant New Castle County, and $125,000 by defendant Delaware Department of Transportation. In addition, the consent decree requires New Castle County to extend a sanitary sewer to a group of New Castle County homes with failing septic systems and hooking up a minimum of 40 residential properties, up to a possible 85 properties. The consent decree requires the Delaware Department of Transportation to complete a stormwater retrofit project for a 5.58 mile long section of Interstate Highway 95.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the United States Attorney's Office for the District of Delaware, 1201 N. Market Street, Suite 1100, Box 2046, Wilmington, Delaware 19899–2046, Attn. Judith M. Kinney, Assistant United States Attorney.

The proposed consent decree may be examined at the office of the United States Attorney, District of Delaware, 1201 N. Market Street, Wilmington, DE and at the Region III Office of the Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $11.50 ($.25 per page reproduction cost), payable to the Consent Decree Library.

Dated: October 23, 2001.

Colm F. Connolly,

United States Attorney for the District of Delaware.

[FR Doc. 01–27200 Filed 10–29–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 247–2001]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice is establishing a new system of records entitled "Department of Justice Staffing and Classification System, Justice/JMD–021."

The Department of Justice Staffing and Classification System is a system of records that allows certain bureaus within DOJ to recruit, examine, and hire applicants. The system is being established to enable Human Resource supervisors and managers to streamline the process for applicants applying for federal employment, and for applicant hiring.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by November 29, 2001. The public, OMB, and the Congress are invited to submit written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to

OMB and the Congress on the proposed new system of records.

Dated: October 19, 2001.

Janis Sposato,

Acting Assistant Attorney General for Administration.

JUSTICE/JMD–021

SYSTEM NAME:

Department of Justice (DOJ) Staffing and Classification System, Justice/JMD–021.

SYSTEM LOCATION:

The primary location of the system's server is at a DOJ contractor site in Tacoma, Washington; sub-systems are located in various offices within the Department of Justice (DOJ).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Non-Federal applicants applying for Federal employment; current and former Federal employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: applicant's name, social security number, residence address, phone number, employment history, and other personal information provided by the applicant in connection with applying for Federal employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority of sections 1104, 1302, 3301, 3304, 3320, and 3361, of Title 5 of the United States Code; and Executive Order 9397.

PURPOSE OF THE SYSTEM:

This system is being established to evaluate applicants' qualifications and to facilitate selection of positions, through a subscription service to an internet based electronic recruitment system. Supervisors and managers will review a list of eligible applicants to fill position vacancies. Under the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), Federal agencies are required by October 21, 2003, to provide the public with alternate ways for submitting and disclosing paperwork, such as, electronically, when practicable. This streamlined process will be used primarily by Human Resource offices to produce lists of eligibles for position vacancies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Pursuant to subsection (b)(3) of the Privacy Act, relevant and necessary information may be disclosed from this system as follows:

A. In an appropriate proceeding before a court, grand jury, or administrative or regulatory body when records are determined by DOJ to be arguably relevant to the proceeding.

B. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

C. To the Office of Personnel Management for internal audits of case files under the authority of 5 CFR 5.2(b).

D. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

E. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of an individual who is the subject of the record.

F. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

G. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, to any civil or criminal law enforcement authority or other appropriate agency, whether Federal, State, local, foreign, or tribal, charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing a statute, rule, regulation, or order.

H. To a Federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the conduct of a security or suitability investigation, or pursuit of other appropriate personnel matter.

I. To a Federal, State, local, or tribal agency or entity that requires information relevant to a decision concerning the letting of a license or permit, the issuance of a grant or benefit, or other need for the information in performance of official duties.

J. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

K. To a former employee of the Department for purposes of: responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

L. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records will be stored electronically at a DOJ contract site in Tacoma, Washington, and a back-up tape will be stored at each DOJ office site.

RETRIEVABILITY:

Records are retrieved by the applicant name, social security number, or other unique identifier.

SAFEGUARDS:

The electronic records are secured with state-of-the art security management and firewall technology and are protected on a twenty-four hours a day basis with intrusion detection monitoring using Internet Security Systems (ISS) Real Secure. Data is protected by encryption. Access is restricted to those who have a user identification, password, certificate of authentication, and permissions created and maintained by the JMD Personnel Staff.

RETENTION AND DISPOSAL:

Records are to be retained and disposed of in accordance with the agency retention plan; the National Archives and Records Administration, General Records Schedule 1; and Part 293 of Title 5, Code of Federal Regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Human Resources, JMD Personnel Staff, U.S. Department of Justice, 950 Pennsylvania Ave, NW., Washington, DC 20530.

NOTIFICATION PROCEDURES:

To determine whether the system may contain records relating to you, write to the Director of Human Resources, JMD Personnel Staff, identified above.

RECORD ACCESS PROCEDURES:

Address access requests to the Director of Human Resources, JMD Personnel Staff, at the address provided above. Include the name or number of the system of records; your full name and address and other information as instructed in 28 CFR 16.41(d); a description of information being sought; and a time frame during which the records may have been generated.

CONTESTING RECORDS PROCEDURE:

Individuals contesting or amending information should direct their request to the Director of Human Resources, JMD Personnel Staff, listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information contained within the Department of Justice Classification and Staffing System is obtained from applicants or current/former employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 01–27199 Filed 10–29–01; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Bankruptcy Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed Stipulation Between Reorganized Debtor and the Environmental Protection Agency Regarding Settlement of Dispute Related to Any and All Claims of the Environmental Protection Agency (hereinafter "Bankruptcy Settlement Agreement") in *In re Velie Circuits, Inc.*, Chap. 11, Case No. SA 96–11768 LR, was lodged on or about October 9, 2001, with the United States Bankruptcy Court for the Central District of California, Santa Ana Division. The proposed Bankruptcy Settlement Agreement would resolve the United States' claims under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, against the debtor related to response costs incurred by the Environmental Protection Agency in connection with the release of hazardous substances at the Omega Chemical Superfund Site ("Site") in Whittier, California. In its proof of claim, the United States alleged that the debtor is liable as a person who, by contract, agreement, or otherwise, arranged for the disposal of hazardous substances at the Site. Under the proposed Bankruptcy Settlement Agreement, the debtor will grant the United States an allowed general unsecured claim in the bankruptcy in the amount of $80,000. The United States will be made current relative to past distributions made to general unsecured claimants, and will thereafter share, pro-rate in all future distributions made to general unsecured payments.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Bankruptcy Settlement Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20530, and should refer to *In re Velie Circuits, Inc.*, Chap. 11, Case No. SA 96–11768 LR (USBC C.D. Cal.), DOJ Ref. #90–11–3–06529/1.

The Consent Decree may be examined at the Region 9 Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Bankruptcy Settlement Agreement may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044. In requesting copies please refer to the referenced case and enclose a check in the amount of $1.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–27201 Filed 10–29–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,454; Coe Manufacturing Co., Painesville, OH

TA–W–40,122; Texfi Industries, Haw River, NC

TA–W–39,351; AP Green Industries, Mexico, MO

TA–W–38,962; Smith Systems Manufacturing, Inc., Plano, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,782; Con Agra Flour Milling Plant, North Kansas City, MO

TA–W–39,855; The Xerox Corp., Oklahoma City, OK

TA–W–39,830; Werner Co., Keller Ladder Div., Swainsboro, GA

TA–W–39,859; Fonda Group, Inc., Maspeth, NY

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–39,934; Techbooks Shippinsburg, PA

TA–W–39,870; Grupo Mexico ASARCO, Inc., El Paso, TX

TA–W–39,746 & A; Cody Energy LLC, Denver, CO and Houston, TX

The investigation revealed that criteria (2) and (3) has not been met. Sales or production did not decline during the relevant period as required for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,110; Standard Register, Rocky Mount, VA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–40,047; Carol Ann Fashions, Inc., Hastings, PA: August 31, 2000.
TA–W–39,966; Blue Water Fiber L.P., Port Huron, MI: August 17, 2000.
TA–W–39,745; Hilti, Inc., Hilti Steel Industry Div., Employed at CSC Ltd, Warren, OH: July 13, 2000.
TA–W–39,529; Quaker Oats Co., St. Joseph, MO: June 14, 2000.
TA–W–39,867; Glaxo Smith Kline, Piscataway, NJ: August 7, 2000.
TA–W–39,655; International Components Technology Corp., San Jose, CA: June 29, 2000.
TA–W–39,462; Monticello Manufacturing Co., Inc., Monticello, KY: June 1, 2000.
TA–W–39,833; Plymouth Garment Co., Plymouth, NC: August 3, 2000.
TA–W–39,344; Americ Disc, Inc., Clinton, TN: May 15, 2000.
TA–W–39,999; Gerber Childrenswear, Inc., Pelzer, SC: August 20, 2000.
TA–W–39,477; NYCO Minerals, Inc., Wilsboro, NY: May 31, 2000.
TA–W–39,753; Cumberland Wood Products, Inc., Helenwood, TN: July 18, 2000.
TA–W–39,971; Rundel Products, Inc., Portland, OR: August 22, 2000.
TA–W–39,951; Rotorex Co., Inc., Walkersville, MD: August 20, 2000.
TA–W–39,844; Paramount Headwear, Inc., Marble Hill, MO: August 9, 2000.
TA–W–39,890; Cutler-Hammer, Power Management Products Center, Eaton Corp., Pittsburgh, PA: August 6, 2001.
TA–W–39,729; Evenflo Co., Inc., Jasper, AL: July 10, 2000.
TA–W–39,327; Simpson Timber Co., Commencement Bay Sawmill, Tacoma, WA: May 8, 2000.
TA–W–39,795; Garland Shirt Co., Garland, NC: June 30, 2000.
TA–W–39,671; Fiber Optic Network Solutions, Northboro, MA: July 9, 2000.
TA–W–39,113; Petticoat Junction, Inc., North Bergen, NJ: April 11, 2000.
TA–W–39,755 & A, B; Ethan Allen, Island Pont, VT, Frewsburg, NY and Asheville, NC: July 12, 2000.
TA–W–39,549; Chicago Miniature Lamps, Wynnewood, OK: June 11, 2000.
TA–W–39,702; Southern Furniture Reproductions, Inc., Elizabethtown, NC: July 12, 2000.
TA–W–39,665; IMS, Employed at CSC Ltd, Warren, OH: June 19, 2000.
TA–W–39,543; Tyco Electronics, Fiber Optics Div., Menlo Park, CA: June 10, 2000.
TA–W–39, 405; Vishay Roederstein Electronics, Inc., Statesville, NC: May 23, 2000.
TA–W–39,590; Lees Curtain Co., The Arlee Group, Bridgeport, CT: June 22, 2000.
TA–W–39,130; ECM Motor Co., Div. Of Invensys Motor Systems, Elkhorn, WI: April 12, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(b), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05066; Carol Ann Fashions, Inc., Hastings, PA.
NAFTA–TAA–05334; Texfi Industries, Haw River, NC.
NAFTA–TAA–05292; Rotorex Co., Inc., Walkersville, MD.
NAFTA–TAA–05156; Con Agra Flour Milling Plant, Buffalo, NY.
NAFTA–TAA–05155; Con Agra Flour Milling Plant, North Kansas City, MO.
NAFTA–TAA–04709; Orion Bus Industries, Inc., Oriskany, NY.
NAFTA–TAA–04963; Monticello Manufacturing Co., Inc., Monticello, KY.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

NAFTA–TAA–05286; I2 Technologies, Yorba Linda, CA.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05194; Robert Bosch Corp., Ashland, OH: august 3, 2000.
NAFTA–TAA–05080; Great Western International, Portland, OR: July 3, 2000.
NAFTA–TAA–05094; Contempora Fabrics, Inc., Lumberton, NC: July 16, 2000.
NAFTA–TAA–04940; Bradford Electronics, Inc., Bradford, PA: May 17, 2000.
NAFTA–TAA–04772; ECM Motor Co., Div. Of Invensys Motor Systems, Elkhorn, WI: April 9, 2000.
NAFTA–TAA–05323; Armada, Inc., Zinc Die Cast Department, Secondary Department, Leland, NC: September 12, 2000.
NAFTA–TAA–05256; Blue Water Fiber L.P., Port Huron, MI: August 17, 2000.
NAFTA–TAA–05270; Gerber Childrenswear, Inc., Pelzer, SC: August 20, 2000.
NAFTA–TAA–05318; United Tool and Die, Inc., Meadville, PA: August 22, 2000.
NAFTA–TAA–05008; Tyco Electronics, Fiber Optics Div., Menlo Park, CA: June 10, 2000.
NAFTA–TAA–05222; Cutler-Hammer, Power Management Products Center, Eaton Corp., Pittsburgh, PA: August 6, 2000.
NAFTA–TAA–05177; Shermag Corp. d/b/a/ Woodtek, North Anson, ME: June 27, 2000.
NAFTA–TAA–05211; New Holland North American, Inc., Belleville, PA: August 10, 2000.
NAFTA–TAA–05199; Plymouth Garment Co., Plymouth, NC: August 3, 2000.
NAFTA–TAA–04913; Americ Disc, Inc., Clinton, TN: May 15, 2000.

I hereby certify that the aforementioned determinations were issued during the month of October, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 19, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27234 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39, 632 & NAFTA–5059; TA–W–39, 632A & NAFTA–5059A; TA–W–39, 632B & NAFTA–5059B; TA–W–39, 632C & NAFTA–5059C]

JPS Apparel Fabrics Corporation Greenville, SC; JPS Apparel Fabrics Corporation South Boston, VA; JPS Apparel Fabrics Corporation New York, NY; JPS Apparel Fabrics Corporation Laurens, SC: Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of August 28, 2001, the company requested administrative reconsideration of the Department of Labor's Notices of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance JPS Apparel Fabrics Corporation, Greenville, South Carolina (TA–W–39, 632) including the following locations: South Boston, Virginia (TA–W–39, 632A); New York, New York (TA–W–39, 632B) and Laurens, South Carolina (TA–W–39, 632C) and NAFTA-Transitional Adjustment Assistance (NAFTA–5059 & (A–C) respectively) for workers of the subject firm. The denial notices applicable to workers of JPS Apparel Fabrics Corporation, were signed on August 21, 2001, and published in the **Federal Register** on September 11, 2001, TA–W–39, 632 (66 FR 47242) and NAFTA–5059 (66 FR 47243).

The company presents new information regarding the customer survey conducted by the Department of Labor. The company believes a major customer may be importing spun and filament greige woven apparel fabric, while decreasing their purchases from the subject plant during the relevant period.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefor, granted.

Signed at Washington, DC, this 10th day of October, 2001.

Edward A. Tomchick,

Director, Division of, Trade Adjustment Assistance.

[FR Doc. 01–27244 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,936]

American Smelting and Refinery Company (ASARCO), El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 4, 2001 in response to a worker petition, which was filed on August 14, 2001, on behalf of workers at American Smelting and Refinery Company (ASARCO), El Paso, TX.

The petitioning group of workers is subject to an ongoing petition investigation, GRUPO Mexico Asarco, Inc., El Paso, Texas (TA–W–39,870). That petition was processed under the name. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of October 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27238 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,642]

Global Tex LLC Doing Business as Bates of Maine, Lewiston, MW; Amended Notice of Revised Determination on Reconsideration

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Notice of Revised Determination on Reconsideration on September 18, 2001, applicable to workers of Global Tex LLC, doing business as Bates of Maine, Lewiston, ME. The notice was published in the **Federal Register** on October 4, 2001 (66 FR 50687).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of cotton blankets, throws and bedspreads.

New findings show that there was a previous certification, TA–W–33,913, issued on March 25, 1998, for workers of Bates of Maine, Lewiston, Maine who were engaged in employment related to the production of cotton blankets, throws and bedspreads. That certification expired March 25, 2000. To avoid an overlap in worker group coverage, this certification is being amended to change the impact date from January 23, 2000 to March 26, 2000, for workers of the subject firm.

The amended notice applicable to TA–W–38,642 is hereby issued as follows:

All workers of Global Tex LLC, doing business as Bates of Maine, Lewiston, Maine, who became totally or partially separated from employment on or after March 26, 2000, through September 18, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of October, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27241 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38, 427]

M.H. Rhodes (Now Known as Cramer Company, Division of Chestnut Group, Inc.) Avon, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 9, 2001, applicable to workers of M.H. Rhodes, Avon, Connecticut. The notice was published in the **Federal Register** on August 23, 2001 (66 FR 44378).

At the request of the State agency, the Department reviewed the certification

for workers of the subject firm. The workers are engaged in the production of meters and timers. New information received from the company shows that in September, 2001, M.H. Rhodes, Cramer Company was sold to the Chestnut Group, Inc. and became known as Cramer Company, Division of Chestnut Group, Inc.

Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for M.H. Rhodes, now known as Cramer Company, Division of Chestnut Group, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–38, 427 is hereby issued as follows:

All workers of Cramer Company, Division of Chestnut Group, Inc., (formerly M.H., Rhodes), Avon, Connecticut who became totally or partially separated from employment on or after December 1, 1999, through August 9, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, the 16th day of October 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27247 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,079]

Glenmore Plastic Industries, Inc., Professional Employer Group Services LLC Brooklyn, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 174 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 4, 2001, applicable to workers of Glenmore Plastic Industries, Inc., Brooklyn, New York. The notice was published in the **Federal Register** on June 27, 2001 (66 FR 34257).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of printed material for shower curtains, table covers and awnings. The State and company reports that all workers at Glenmore Plastic Industries, Inc. had their wages reported under a separate unemployment insurance (UI) tax account for Professional Employer Group Services LLC.

The intent of the Department's certification is to include all workers of Glenmore Plastic Industries, Inc. who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–39,079 is hereby issued as follows:

All workers of Glenmore Plastic industries, Inc., Professional Employer Group Services LLC, Brooklyn, New York, who became totally or partially separated from employment on or after March 30, 2000, through June 4, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27246 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,027]

Hayward Pool Products, Inc. a/k/a Hayward Industries, Inc., Kings Mountain, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 17, 2001, in response to a worker petition which was filed by the company on behalf of its workers at Hayward Pool Products, Inc., a/k/a Hayward Industries, Inc., Kings Mountain, North Carolina. The workers produce products related to the swimming pool industry, i.e. filters, skimmers, spare parts, etc.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27237 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,129 and TA–W–39, 129A]

International Specialty Alloys, Inc. Edinburg; and International Specialty Alloys, Inc. New Castle: Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 30, 2001 in response to a petition filed on the same date by company officials on behalf of workers at International Specialty Alloys, Inc., Edinburg and New Castle, Pennsylvania.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27239 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,903]

New Holland North America, Inc. Belleville, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 27, 2001, in response to a petition filed by a company official on behalf of workers at New Holland North America, Inc., Belleville Pennsylvania.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27235 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39, 085]

Samuel Bent Llc, Gardner, MA; Notice of Termination of Investigation.

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 23, 2001, in response to a petition, which was filed by workers on behalf of all workers at Samuel Bent Llc, Gardner, Massachusetts.

The Department has been unable to locate an official of the company to provide the information necessary to issue a determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27248 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 9, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 9, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 24th day of September, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 09/24/2001]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
40,059	Valeo (IUE)	Rochester, NY	09/10/2001	Automotive Components.
40,060	Interment Corp (Wrks)	Radford, VA	09/06/2001	Automotive Parts.
40,061	Parker Hannifer (Wrks)	Otsego, Mi	09/04/2001	Assemble Manifold.
40,062	Tradewinds Cleaning (Co.)	Neosho, MO	09/04/2001	Oasis Vacuums.
40,063	Laclede Steel Co (Wrks)	St. Louis, MO	09/05/2001	Semifinished Billets.
40,064	H and H Tool (Wrks)	Meadville, PA	09/06/2001	Components for Plastic Molds
40,065	Haemer-Wright Tool (Wrks)	Sawgertown, PA	09/04/2001	Spare Machine Parts.
40,066	Stewart Connector Systems (Wrks)	Glen Rock, PA	09/10/2001	Molded, Shielded Modular Components.
40:067	Stanly Knitting Mills (Co)	Oakboro, NC	09/11/2001	Embroidery of Caps—Headwear.
40,068	Damy Industries (Co.)	Athens, TN	07/19/2001	Ladies' Apparel.
40,069	Westvaco Corp. (PACE)	Tyrone, PA	09/11/2001	Fine Paper.
40,070	Engelhard Corp. (Co.)	McIntyre, GA	09/07/2001	Mining & Kaolin Products.
40,071	PTC Alliance (USWA)	Darlington, PA	09/04/2001	Mechanical Draw Tubing.
40,072	Converter Concepts (Wrks)	Memphis, MO	09/11/2001	Electronic Components.
40,073	Micro Tool & Mfg. (Co.)	Meadville, PA	09/07/2001	Plastic Injection Molds and Components.
40,074	Kentucky Apparel (Co.)	Tompkinsville, KY	09/05/2001	Blue Jeans.
40,075	Pohlman Foundry Co., Inc. (Wrks)	Buffalo, NY	09/06/2001	Compressor Housings.
40,076	Rockwell Automation (IUE)	Milwaukee, WI	09/06/2001	Industrial Controls, Switches.
40,077	Prime Tanning (Co.)	Rochester, NH	09/04/2001	Side Leather—Footwear.
40,078	Guilford Mills (Co.)	Pine Grove, PA	09/10/2001	Finished Fabrics.
40,079	Zilog, Inc. (Co.)	Nampa, ID	08/31/2001	Integrated Circuits.
40,080	Lyon Fashions, Inc. (Co.)	McAlisterville, PA	09/13/2001	Ladies' Dresses.
40,081	Goss Graphics (IAM&AW)	Cedar Rapids, IA	09/05/2001	Web Offset Printing Presses.
40,082	Millennium Inorganic (USWA)	Baltimore, MD	09/04/2001	Titanium Dioxide.
40,083	Hooker Furniture (Co.)	Martinsville, VA	09/07/2001	Bedroom Funiture.
40,084	Mettler Toledo Process (Co.)	Woburn, MA	09/07/2001	Glass Blowing and Assembly.
40,085	NACCO Materials (Wrks)	Sulligent, AL	09/07/2001	Steel Axles, Drive Axles.
40,086	Mail Well Envelope (Wrks)	Portland, OR	09/07/2001	Envelopes.
40,087	Spicer Axle (Co.)	Columbia, MO	09/07/2001	Rear Axles.
40,088	Shape Global Technology (Wrks)	Sanford, ME	08/08/2001	Video Cassettes and Accessories.
40,089	Bank Manufacturing Co. (Co.)	Havelock, NC	09/04/2001	Medical Apparel & Patient Gowns.
40,090	New England Castings (Wrks)	Hiram, ME	09/07/2001	Investment Castings.
40,091	Bolivar Tees (Wrks)	Bolivar, MO	09/04/2001	T-Shirts.
40,092	MICTEC, Inc. (Co.)	Canonsburg, PA	09/07/2001	Refractory Materials for Steel Industry.
40,093	Revere Ware Corp. (Wrks)	Clinton, IL	09/04/2001	Stainless Steel Cookware.
40,094	Heraeus QuartzTech (Co.)	Buford, GA	09/30/2001	Quartz Glass Components.

APPENDIX—Continued
[Petitions Instituted on 09/24/2001]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
40,095	Galina Bonquet, Inc. (Co.)	New York, NY	08/31/2001	Bridal Gowns.
40,096	Crenlo, Inc, (Wrks)	Rochester, MN	09/05/2001	Metal Enclosures.
40,097	Ismeca USA (Co.)	Vista, CA	08/25/2001	Semi-Conductors.
40,098	Toastmaster, Inc.	Boonville, MO	09/04/2001	Warehousing—Small Appliances.
40,099	Shasta Paper Co. (PACE)	Anderson, CA	09/04/2001	Specialty Paper.
40,100	FMC Technologies (Wrks)	Homer City, PA	08/10/2001	Bowl Feeders.
40,101	Lee Dyeing Co. of NC (Co.)	Gloversville, NY	07/07/2001	Fabric Dyeing.
40,102	Joplin Manufacturing c	Joplin, MO	09/03/2001	Explosive—Mining.
40,103	ASARCO, Inc. (Co.)	Sahuartia, AZ	08/31/2001	Copper Concentrate.
40,104	ASARCO, Inc. (Co.)	Hayden AZ	08/03/2001	Copper Concentrate.
40,105	CTS Reeves Frequency (Co.)	Sandwich, IL	08/21/2001	Crystal Oscillators.

[FR Doc. 01–27240 Filed 10–29–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,330]

Volunteer Leather, Milan, Tennessee; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 29, 2001, the company requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Volunteer Leather, Milan, Tennessee was issued on June 4, 2001, and was published in the **Federal Register** on June 27, 2001 (66 FR 34256).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings revealed that criterion (3) of the group eligibility requirements of Section 222 of the Trade Act of 1974 was not met. Increased imports did not contribute importantly to worker separations at the subject firm. The preponderance in the declines in employment at the Volunteer Leather, Milan, Tennessee is the direct result of plant production being shifted to another domestic location. Reported company sales and production increased during the relevant period.

The request for reconsideration claims that the reported company-wide sales and production during the original investigation, would have reflected a decline in sales and production if it were not for the acquisition of the subject firm during June 2000. The petitioner supplied specific data pertaining to the Milan, Tennessee plant production during the first quarter of 2001. The application also supplies estimated company-wide production, if the subject plant was included in the company figures for the first quarter of 2000. Extrapolating the estimated production figures from the original reported production depicts stable plant production during the two comparable periods. The findings of the original investigation indicated that "the preponderance in the declines in employment at Volunteer Leather, Milan, Tennessee is the direct result of plant production being shifted to another domestic location. The domestic shift is due to company-wide excess capacity." The information the claimant provides depicts excess capacity at another company location, in combination of steady production at the subject plant, thus supporting the original decision.

The petitioner further states that the increasing cost of cattle hides (raw material) and imports of shoes (the product the leather is produced for) are contributing factors to layoffs at the subject plant. Neither factor is a basis for certifying the worker group at Volunteer Leather producing finished leather.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington DC, this 15th day of October 2001.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27243 Filed 10–29–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,654]

Wilcox Forging Company, Mechanicsburg, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 17, 2001, applicable to workers of Wilcox Forging Company, Mechanicsburg, Pennsylvania. The notice was published in the **Federal Register** on October 4, 2001 (FR 66 50685).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce drop forgings for the automotive industry.

New findings show that there was a previous certification, TA–W–36,179, issued on May 21, 1999, for workers of Wilcox Forging Corporation, Mechanicsburg, Pennsylvania who were engaged in employment related to the production of drop forgings for the automotive industry. That certification expired May 21, 2001. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from July 1, 2000 to May 22, 2001, for workers of the subject firm.

The amended notice applicable to TA–W–39,654 is hereby issued as follows:

All workers of Wilcox Forging Company, Mechanicsburg, Pennsylvania, who became totally or partially separated from employment on or after May 22, 2001, through September 17, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of October, 2001.

Linda G. Poole,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27245 Filed 10–24–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,313]

Lynn Electronics Feasterville, Pennsylvania; Notice of Negative Determination on Reconsideration

On September 5, 2001, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on September 21, 2001 (66 FR 48714).

The Department initially denied TAA to workers of Lynn Electronics, Feasterville, Pennsylvania because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm were engaged in employment related to the production of wire and cable and cordsets.

The petitioner provided evidence that further survey may be warranted regarding customer purchases of communication wire products.

On reconsideration, the Department contacted the company for additional customers of the subject firm. The company indicated that the products produced at the subject plant are shopped to a sister facility (warehouse). Those products produced at the subject plant account for approximately one-fourth of the total sales at the sister facility. The remainder of the products sold at the sister facility are in fact imported. Only a negligible portion of the imports are like or directly competitive with products produced at the subject plant.

The investigation further revealed that the overwhelming preponderance in the declines in employment leading to the closure of the plant is related to the company being able to purchase domestically produced products at a lower cost than those produced at the subject plant.

Any declines in sales are the direct result of the phase down of the plant prior to the closure of the plant.

A customer survey was not conducted due to the conditions as described above.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Lynn Electronics, Feasterville, Pennsylvania.

Signed at Washington, DC, this 16th day of October, 2001.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27242 Filed 10–29–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5309]

Hayward Pool Products, Inc., a/k/a Hayward Industries, Inc., Kings Mountain, North Carolina, Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act and in accordance with section 250(a), Subchapter D, Chapter 2, title II of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on September 4, 2001, in response to a worker petition which was filed by the company on behalf of its workers at Hayward Pool Products, Inc., a/k/a/ Hayward Industries, Inc., Kings Mountain, North Carolina. The workers produce products related to the swimming pool industry, i.e. filters, skimmers, spare parts, etc.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of October, 2001.

Linda G. Poole,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27236 Filed 10–29–01; 8:45 am]
BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2001–7 CARP SD 2000]

Ascertainment of Controversy for the 2000 and 2001 Satellite Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments and notices of intention to participate.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected under the section 119 statutory license in 2000 to submit comments as to whether a Phase I or Phase II controversy exists as to the distribution of those fees, and a Notice of Intention to Participate in a royalty distribution proceeding. Parties who submit a Notice of Intention to Participate may submit comments on the motion for a partial distribution filed by the Public Broadcasting Service.

DATES: Comments and Notices of Intention to Participate are due by November 29, 2001. Reply comments are due by December 31, 2001.

ADDRESSES: If sent by mail, an original and five copies of written comments and a Notice of Intention to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Each year satellite carriers submit royalties to the Copyright Office for the retransmission of over-the-air broadcast signals to their subscribers. 17 U.S.C. 119. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a

retransmission of an over-the-air broadcast signal and who timely filed a claim for royalties with the Copyright Office. The copyright owners may either negotiate the terms of a settlement as to the division of the royalty fees, or the Librarian of Congress may convene a Copyright Arbitration Royalty Panel ("CARP") to determine the distribution of the royalty fees that remain in controversy. *See* 17 U.S.C. chapter 8.

During the pendency of any proceeding, the Librarian of Congress may distribute any amounts that are not in controversy, provided that sufficient funds are withheld to cover reasonable administrative costs and to satisfy all claims with respect to which a controversy exists under his authority set forth in section 119(b)(4)(C) of the Copyright Act, title 17 of the United States Code. *See*, e.g., Orders, Docket No. 97–1 CARP SD 92–95 (dated March 17, 1997) and Docket No. 2000–7 CARP SD 96–98 (dated February 23, 2001). Therefore, the Copyright Office must, prior to any distribution of the royalty fees, ascertain who the claimants are and the extent of any controversy over the distribution of the royalty fees.

The CARP rules provide that:

> In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the time period for filing claims, publish in the **Federal Register** a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

37 CFR 251.45(a). The Copyright Office may publish this notice on its own initiative, *see*, e.g., 64 FR 23875 (May 4, 1999); in response to a motion from an interested party, *see*, e.g., 65 FR 56941 (September 20, 2000), or in response to a petition requesting that the Office declare a controversy and initiate a CARP proceeding. In this case, the Office has received a motion for distribution of PBS National Satellite Feed royalty funds for 2000 and 2001.

However, before considering the merits of the motion for a partial distribution of the 2000 and 2001 satellite royalty fees, the Office must first determine who has a significant interest in participating in any proceeding concerning the distribution of these fees. Therefore, the Office is directing any claimant to 2000 satellite royalty fees collected under the section 119 statutory license to file a Notice of Intention to Participate in a royalty distribution proceeding, the purpose of which will be to consider the proper distribution of these fees. Only a party who files a Notice of Intention to Participate may submit comments on the PBS motion for a distribution of the PBS National Satellite Feed Royalty Funds for Calendar Years 2000 and 2001.

Parties are reminded that informal service of a pleading to any party prior to the publication of a notice in the **Federal Register** requesting Notices of Intention to Participate in a CARP proceeding is for informational purposes only. The "official service list" for any distribution or rate adjustment proceeding is compiled by the Librarian of Congress from the notices of intention filed with this office in response to the notice published in the **Federal Register**. Section 251.44 of title 37 of the Code of Federal Regulations provides that:

> The Librarian of Congress shall compile and distribute to those parties who have filed a notice of intent to participate, the official service list of the proceeding, which shall be composed of the names and addresses of the representatives of all the parties to the proceeding. In all filings, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself.

37 CFR 251.44(f) (emphasis added). Consequently, no party has been properly served in this proceeding because the official service list has yet to be created. Nevertheless, the Copyright Office will consider the oppositions already filed with the Copyright Office by SESAC, Inc.; Program Suppliers and Joint Sports, jointly; and the American Society of Composers, Authors and Publishers ("ASCAP") and Broadcast Music, Inc. ("BMI") (collectively, the "Music Claimants") in response to the Public Broadcasting Service ("PBS") motion. These parties may also submit supplemental filings to their oppositions up to the due date set forth in this notice. Similarly, any response to an opposition already filed with the Office will be considered a reply comment for purposes of this proceeding, provided that the submitting party has filed a timely Notice of Intention to Participate

1. Notice of Intention To Participate

Section 251.45(a) of the rules, 37 CFR, requires that a Notice of Intention to Participate be filed in order to participate in a CARP proceeding, but it does not prescribe the contents of the Notice. Recently, in another proceeding, the Library has been forced to address the issue of what constitutes a sufficient Notice and to whom it is applicable. *See* Orders in Docket No. 2000–2 CARP CD 93–97 (June 22, 2000, and August 1, 2000); *see also* 65 FR 54077 (September 6, 2000). These rulings will result in a future amendment to §251.45(a) to specify the content of a properly filed Notice. In the meantime, the Office advises those parties filing Notices of Intention to Participate in this proceeding to comply with the following instructions.

Each claimant that has a dispute over the distribution of the 2000 satellite royalty fees, either at Phase I or Phase II, shall file a Notice of Intention to Participate that contains the following: (1) The claimant's full name, address, telephone number, and facsimile number (if any); (2) identification of whether the Notice covers a Phase I proceeding, a Phase II proceeding, or both; and (3) a statement of the claimant's intention to fully participate in a CARP proceeding.

Claimants may, in lieu of individual Notices of Intention to Participate, submit joint Notices. In lieu of the requirement that the Notice contain the claimant's name, address, telephone number and facsimile number, a joint Notice shall provide the full name, address, telephone number, and facsimile number (if any) of the person filing the Notice and it shall contain a list identifying all the claimants that are parties to the joint Notice. In addition, if the joint Notice is filed by counsel or a representative of one or more of the claimants identified in the joint Notice, the joint Notice shall contain a statement from such counsel or representative certifying that, as of the date of submission of the joint Notice, such counsel or representative has the authority and consent of the claimants to represent them in the CARP proceeding.

Notices of Intention to Participate are due no later than November 29, 2001. Failure to file a timely Notice of Intention to Participate may preclude a claimant or claimants from participating in a CARP proceeding.

2. Comments on the Existence of Controversies

Before commencing a distribution proceeding or making a partial distribution, the Librarian of Congress must first ascertain whether a controversy exists as to the distribution of the royalty fees and the extent of those controversies. 17 U.S.C. 803(d). Therefore, any comments filed in response to the PBS motion must address the existence and extent of any controversies, at Phase I and Phase II, as to the distribution of the 2000 satellite fees. For the reasons stated herein, comments on the existence and extent of controversy over the distribution of the 2001 satellite royalty fees are premature and will not be considered at this time.

In Phase I of a satellite royalty distribution, royalties are distributed to certain categories of broadcast programming that has been retransmitted by satellite carriers. The categories have traditionally been syndicated programming and movies, sports, commercial and noncommercial broadcaster-owned programming, religious programming, and music programming. The Office seeks comments as to controversies between these categories for royalty distribution.

In Phase II of a satellite royalty distribution, royalties are distributed to claimants within a program category. If a claimant anticipates a Phase II controversy, the claimant must state each program category in which he or she has an interest that has not, by the end of the comment period, been satisfied through a settlement agreement.

The Copyright Office must be advised of the existence and extent of all Phase I and Phase II controversies by the end of the comment period. It will not consider any controversies that come to our attention after the close of that period.

3. Motion of Public Broadcasting Service for Distribution of PBS National Satellite Feed Royalty Funds for Calendar Years 2000 and 2001

On June 21, 2001, PBS filed a motion for distribution of PBS national satellite feed royalty fees for calendar years 2000 and 2001 and sent a copy of the motion to those entities that have participated in past satellite distribution proceedings. The Office has determined that, as a matter of law, consideration of a distribution of the 2001 satellite royalty fees is premature. A distribution of the 2001 satellite royalty fees cannot occur until those persons who are entitled to a share of the royalties have an opportunity to file their claims with the Copyright Office. Claims to the 2001 satellite royalty fees will not be filed with the Copyright Office until the month of July, 2002. *See* 17 U.S.C. 119(b)(4). Consequently, the Office will consider the motion only so far as it concerns the distribution of the 2000 satellite royalty fees and only after all interested parties have been identified by filing the Notices of Intention requested herein and such parties have had an opportunity to respond to the motion.

A claimant who is not a party to the motion may file a response to the motion no later than the due date set forth in this notice, provided that the respondent files a Notice of Intention to Participate in this proceeding in accordance with this notice. The PBS motion for distribution of PBS national satellite feed royalty funds for 2000–2001 is posted on the Copyright Office Web site (*http://www.loc.gov/copyright/carp/pbsmotion.pdf*) and is available for copying in the Office of the General Counsel. Additional responsive filings are also available for copying in the Office of the General Counsel.

Dated: October 17, 2001.

David O. Carson,

General Counsel.

[FR Doc. 01–27318 Filed 10–29–01; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue NW., Washington, DC 20506, in Room 714, from 9:00 a.m. to 5:00 p.m., on Monday, November 19, 2001.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after October 1, 2001.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Laura S. Nelson, 1100 Pennsylvania Avenue NW., Washington, DC 20506, or call 202/606–8322.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 01–27180 Filed 10–29–01; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts (Access and Heritage/Preservation categories) will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

Visual Arts: November 15–16, 2001, Room 716. A portion of this meeting, from 3:30 p.m. to 4:30 p.m. on November 16th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on November 15th and from 9 a.m. to 3:30 p.m. and 4:30 p.m. to 5:30 p.m. on November 16th, will be closed.

Design: November 19–20, 2001, Room 730. A portion of this meeting, from 11 a.m. to 12 p.m. on November 20th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on November 19th and from 9 a.m. to 11 a.m. and 12 p.m. to 2 p.m. on November 20th, will be closed.

Theater/Musical Theater: November 26–29, 2001, Room 730. A portion of this meeting, from 2 p.m. to 3:30 p.m. on November 28th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on November 26th, from 9:30 a.m. to 7 p.m. on November 27th, from 9:30 a.m. to 2 p.m. and 3:30 p.m. to 6:30 p.m. on November 28th, and from 9:30 a.m. to 2:30 p.m. on November 29th, will be closed.

Multidisciplinory/Presenting: December 3–6, 2001, Room 716. A portion of this meeting, from 2:45 p.m. to 4 p.m. on December 6th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 7 p.m. on December 3rd, from 9 a.m. to 6 p.m. on December 4th and 5th, and from 9 a.m. to 2:45 p.m. and 4 p.m. to 5:30 p.m. on December 6th, will be closed.

The closed portions of these meetings are for the purpose of Panel review,

discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 22, 2001, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: October 24, 2001.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 01–27249 Filed 10–29–01; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* November 6, 2001.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2001 deadline.

2. *Date:* November 9, 2001.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2001 deadline.

3. *Date:* November 13, 2001.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2001 deadline.

4. *Date:* November 27, 2001.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for National Heritage Preservation, submitted to the Division of Preservation and Access at the July 1, 2001 deadline.

5. *Date:* November 30, 2001.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2001 deadline.

Laura S. Nelson,

Advisory Committee, Management Officer.

[FR Doc. 01–27179 Filed 10–29–01; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Consideration of approval of a Decommissioning Plan for the Kaiser Aluminum and Chemical Corporation Facility in Tulsa, Oklahoma, and an Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Consideration of Approval of a Decommissioning Plan for the Kaiser Aluminum and Chemical Corporation Facility in Tulsa, Oklahoma, and an opportunity for a hearing.

The U.S. Nuclear Regulatory Commission (NRC) is considering approval of the Phase 2 Decommissioning Plan (DP) for the Kaiser Aluminum and Chemical Corporation (Kaiser) Facility in Tulsa, Oklahoma. Decommissioning of the Kaiser facility is being conducted in two Phases. In Phase 1, Kaiser remediated the land adjacent to the Kaiser property. In Phase 2, Kaiser will remediate its facility. On May 25, 2001, Kaiser submitted the Phase 2 DP. NRC performed an acceptance review, and on August 7, 2001, notified Kaiser that the information provided in the DP was sufficient to begin a technical review.

Contamination at the Kaiser facility consists of metallic dross/soil containing Th-228, Th-230, and Th-232, generated from smelting and manufacturing processes conducted from 1958 through 1970. The Phase 2 DP identifies the decommissioning activities that will be undertaken to remediate the Kaiser facility and make the site suitable for unrestricted release.

The NRC will require Kaiser to remediate its facility to meet NRC's decommissioning criteria in 10 CFR part 20, subpart E, "Radiological Criteria for License Termination," and during the decommissioning activities, to maintain effluents and doses within NRC requirements, and as low as reasonably achievable.

Prior to approving the DP, NRC will make findings in accordance with the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment. Approval of the DP will be documented in the public record.

Although Kaiser is no longer a licensee, as a matter of discretion, NRC has decided to treat approval of the DP as a proceeding under subpart L, "Informal Hearing Procedures for Adjudication in Material Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Discretion is being exercised in this case because of: (1) The unusually large volume of soil to be removed from the site; (2) the significant complexity of this project; and, (3) the close proximity of the site to a major population center. Pursuant to 10 CFR 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with part 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

Pusuant to 10 CFR 2.1203(b), the request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Rulemaking and Adjudications Staff of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in part 2.1205(h);

3. The requestor's area of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with part 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Kaiser Aluminum and Chemical Corporation, Attention: Mr. J. W. Vinzant

2. The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the Phase 2 DP is available for inspection at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

Dated at Rockville, Maryland, this 23rd day of October 2001.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–27260 Filed 10–29–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–9401]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (Thermwood Corporation, Common Stock, No Par value)

October 24, 2001.

Thermwood Corporation, an Indiana corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and rule 12d2–2(d) thereunder[2] to withdraw its Common Stock, no par value ("Security") from listing and registration on the Pacific Exchange, Inc. ("PCX").

The Board of Directors ("Board") of the Issuer approved a resolution on October 12, 2001 to withdraw its Security from listing on the Exchange. The Board represents that the advantages of being a reporting company under the Act do not offset the cost associated with the SEC's reporting requirements. In addition, the Security is thinly traded and is held by less than 100 shareholders.

The Issuer states in its application that it has met the requirements of the PCX by complying with all applicable laws in effect in the state of Indiana, in which it is incorporated, and with the PCX's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the withdrawal of the Security from the PCX and registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before November 14, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.[5]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–27306 Filed 10–29–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–9401]

Issuer Delisting; Notice of Application To Withdraw From listing and Registration on the American Stock Exchange LLC (Thermwood Corporation, Common Stock No Par Value and 12% Subordinated Debentures (Due 2014))

October 24, 2001.

Thermwood Corporation, an Indiana corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act" [1] and rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value, and 12% Subordinated Debentures (due 2014) ("Securities") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The Board of Directors ("Board") of the Issuer approved a resolution on October 12, 2001 to withdraw its Securities from listing on the Exchange. The Board represents that the advantages of being a reporting company under the Act do not offset the cost associated with the SEC's reporting requirements. In addition, the Securities

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).

are thinly traded and are held by less than 100 shareholders.

The Issuer states in its application that it has met the requirements of the Amex Rule 18 by complying with all applicable laws in effect in the state of Indiana, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the withdrawal of the Securities from the Amex and registration under section 12(b) of the Act [3] and shall not affect its obligation to be register under section 12(g) of the Act.[4]

Any interested person may, on or before November 14, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–27307 Filed 10–29–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44973; File No. SR–NASD–2001–74]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Change in the Length of the Term of Office of National Adjudicatory Council Members

October 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 [2] thereunder, notice is hereby given that on October 18, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b–4 under the Act, NASD Regulation is herewith filing a proposed rule change to change the term of office of its National Adjudicatory Council ("NAC") members from two years to three years.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

* * * * *

By-Laws of NASD Regulation, Inc.

Article V

National Adjudicatory Council

Term of Office

Sec. 5.4

(a) Except as otherwise provided in this Article, each National Adjudicatory Council member shall hold office for a term of [two] *three* years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(b) [In 1998, each National Adjudicatory Council member shall hold office for a term of one year or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(c) [Beginning in January [1999] *2002* [and thereafter], the National Adjudicatory Council shall be divided into [two] *three* classes. The term of office of those of the first class shall expire in January [2000] *2003*, [and] the term of office of those of the second class shall expire [one year thereafter] *in January 2004, and the term of office of those of the third class shall expire in January 2005.* Beginning in January [2000] *2003*, members shall be appointed for a term of [two] *three* years to replace those whose terms expire.

[(d)*(c)* Beginning in [2000] *2002*, no member may serve [more than two] consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve [up to two consecutive] *a single three year* term[s] following the expiration of such member's initial term.

* * * * *

Article VI

National Adjudicatory Council Regional Nominations for Industry Members

Notice to Chair

Sec. 6.8 [On or before August 1, 1998, the Secretary of NASD Regulation shall send a written notice to the Chair of each Regional Nominating Committee to initiate the process for nominating an individual to represent the region on the National Adjudicatory Council for a term of office of one or two years, as determined by the Board, beginning in 1999.] On or before August 1, 1999, and annually thereafter, the Secretary of NASD Regulation shall send a written notice to the Chair of a Regional Nominating Committee if the term of Office of the National Adjudicatory Council member representing the region shall expire in the next calendar year. The notice shall describe the nomination procedures for filling the office.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Association states that the NAC is a balanced committee of the NASD consisting of 14 members—seven industry members and seven non-industry members. Two industry members are at-large, and five are nominated to represent one of the NASD's five geographic regions. All members must be nominated by the NASD's National Nominating Committee and must be appointed by the NASD Regulation Board.

The NAC hears appeals and calls for review of disciplinary matters; acts on applications in statutory disqualification and membership proceedings; acts on certain disciplinary settlement proposals; exercises exemptive authority; and acts in other proceedings as set forth in the NASD Code of Procedure. The NAC also advises NASD Regulation staff and the Board on enforcement policy and proposed rules relating to the business and sales practices of NASD members and associated persons.

Currently, NAC members serve terms of two years, with no member allowed to serve more than two consecutive two-year terms. In 2000, the outgoing NAC Chair requested staff to consider the feasibility of extending the term of NAC members to three years. During 2001, Association staff solicited input from several District Committees, the NASD Advisory Council (the Chairs of all NASD District Committees and the Market Regulation Committee), and the NAC, all of which favored making the change. Association staff developed a proposal, which was reviewed and supported by the NASD Small Firm Advisory Board. On September 20, 2001, the NASD Board of Governors voted unanimously in favor of the change.

The Association states that the purpose for extending the NAC term from two to three years is to provide for greater continuity and to make better use of the experience and expertise of NAC members with respect to the specialized work of the NAC, particularly industry members. Increasingly, incumbent NAC members eligible for a second consecutive two-year term have not been renominated by their Regional Nominating Committees, thus capping their service on the NAC at two years. The Association staff believes that a three-year term would enable members to make more effective contributions to the work of the NAC, and it would make the term of service of NAC members consistent with the terms of members of NASD District Committees and the NASD Regulation Board. To assure appropriate turnover, NAC members would be restricted from serving consecutive terms.

The Association further states that the transition from two-year to three-year NAC terms will be implemented by the NASD National Nominating Committee and the NASD Regulation Board beginning in January 2002. The current NAC membership will be divided into three classes, as nearly equal in number and as evenly divided between industry and non-industry seats as possible. Class 1 NAC members will serve until January 2003; Class II members will serve until January 2004; and Class III members will serve until January 2005. Commencing in January 2003, newly elected members will assume three-year terms. The Association states that the designation of current NAC members into these three classes is designed to assure an orderly transition by (a) providing appropriate continuity in the composition of the NAC (both industry and non-industry members) during the transition period; and (b) minimizing, to the greatest possible extent, the number of current NAC members whose terms would be reduced by the transition.

(2) Statutory Basis

The Association believes that the proposed rule change is consistent with section 15A(b)(4) [3] of the Act, which requires, among other things, that the Association's rules must be designed to assure a fair representation of its members in the administration of its affairs. The NASD believes that the proposed rule change enhances the Association's ability to assure fair representation on the NAC and the NASD Board of Governors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.[4]

III. Date of Effectiveness of the proposed Rule change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [5] and subparagraph (f)(6) of rule 19b–4 [6] thereunder because it does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Association gave the Commission written notice of its intention to file the proposed rule change at least five business days before filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission notes that under rule 19b–4(f)(6)(iii),[7] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In accordance with rule 19b–4(f)(6)(iii),[8] before the filing date, NASD Regulation submitted written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change. In that notice, NASD Regulation requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing, as consistent with the protection of investors and the public interest. The NASD has stated that the NASD National Nominating Committee will meet on October 26, 2001 to nominate a slate of NAC candidates for appointment by the NASD Regulation Board. The NASD Regulation Board will consider the nominations to the NAC on December 5, 2001. The NASD states that it is thus necessary for the rule change to be both effective and operative on filing in order to meet this timetable.

The Commission finds that accelerating the operative date of the rule change as proposed will aid the NASD in meeting the above timetable for nominations to the NAC and is consistent with the protection of investors and the public interest, and thus designates the date hereof as the operative date.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

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[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78l(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78*o*–3(b)(4).

[4] This proposed By-Law change was not published for comment by the NASD through its Notice to Members process, but as noted above was endorsed by several NASD District Committees, the NASD Advisory Council, the Small Firm Advisory Board, and the NAC.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] 17 CFR 240.19b–4(f)(6)(iii).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2001–74 and should be submitted by November 20, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27308 Filed 10–29–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3361]

Commonwealth of Kentucky; (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, dated October 23, 2001, the above numbered Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to October 22, 2001.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is May 16, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 23, 2001.

Herbert L. Mitchell,

Associate Administrator, For Disaster Assistance.

[FR Doc. 01–27209 Filed 10–29–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3362]

State of Tennessee; (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency, dated October 23, 2001, the above numbered Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to October 26, 2001.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is May 16, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 23, 2001.

Herbert L. Mitchell,

Associate Administrator, For Disaster Assistance.

[FR Doc. 01–27210 Filed 10–29–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #3803]

Advisory Committee on Labor Diplomacy; Notice of Meeting

The Advisory Committee on Labor Diplomacy (ACLD) will hold a meeting from 9:00 a.m. to 1:00 p.m. on November 14, 2001, in room 5533, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. Committee Chairman Thomas Donahue, former President of the AFL-CIO, will chair the meeting.

The ACLD is comprised of prominent persons with expertise in the area of international labor policy and labor diplomacy. The ACLD advises the Secretary of State and the President on the resources and policies necessary to implement labor diplomacy programs efficiently, effectively and in a manner that ensures U.S. leadership before the international community in promoting the objectives and ideals of U.S. labor policies in the 21st century. The ACLD will make recommendations on how to strengthen the Department of State's ability to respond to the many challenges facing the United States and the federal government in international labor matters. These challenges include the protection of worker rights, the elimination of exploitative child labor, and the prevention of abusive working conditions.

The agenda for the November 14 meeting includes discussion of the interagency process on international labor policy formulation.

Members of the public are welcome to attend the meeting as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting must be pre-cleared by calling or faxing the following information, by open of business November 13, to Eric Barboriak at (202) 647–3664 or fax (202) 647–0431 or e-mail *barboriakem@state.gov:* name; company or organization affiliation (if any); date of birth; and social security number. Pre-cleared persons should use the C Street entrance to the State Department and have a driver's license with photo, a passport, a U.S. Government ID or other valid photo identification.

Members of the public may, if they wish, submit a brief statement to the Committee in writing. Those wishing further information should contact Mr. Barboriak at the phone and fax numbers provided above.

Dated: October 24, 2001.

Lorne W. Craner,

Assistant Secretary, Bureau of Democracy, Human, Rights and Labor, U.S. Department of State.

[FR Doc. 01–27361 Filed 10–29–01; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10485]

Oily Water Separation Systems

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The Coast Guard has established the Oily Water Separation Systems Task Force to examine a wide range of issues relating to machinery and equipment used to manage oily bilge water on commercial vessels. The task force plans to assess the operational requirements, reliability, and capability of oily water separators in actual operating environments; identify ways to improve the Coast Guard's inspection and evaluation of oily water separation systems; and develop recommendations for the maritime industry on how to reach its environmental goals and ensure compliance with the International Convention for the Prevention of Pollution from Ships (MARPOL) and the Clean Water Act. Your answers to this questionnaire will help the task force gather the necessary information to meet these objectives.

DATES: Comments and related materials must reach the Docket Management Facility on or before December 31, 2001.

ADDRESSES: To make sure your comments and related materials are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–10485), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) By electronic means through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and materials received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice and request for comments, call Ken Olsen, Casualty Analyst/Chief Engineer, Office of Investigation and Analysis, Coast Guard Headquarters, telephone 202–267–1417. If you have questions on viewing or submitting materials to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this Coast Guard study by submitting comments and related materials. You may submit comments anonymously or include your name and address, you must identify the docket number for this notice (USCG–2001–10485), indicate the specific question of the questionaire to which each comment applies, and give the reason for each comment. You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. Your comments are important to this study and will enhance the Coast Guard's understanding of oily water separation systems and bilge water management issues. We will consider all comments received during the comment period.

Background and Purpose

The regulations governing all vessel particulars regarding Oily Water Separators are found in Title 33 Code of Federal Regulations, part 155. Through a mechanical process, an Oily Water Separator (OWS) will remove the oil from water that accumulates in the bilge of a vessel. As the oil is separated from the water, the water can be discharged from the vessel. If the oil content of the water being discharged reaches 15 parts per million (ppm), the OWS will automatically cease discharging the oily water and retain the oily bilge water on board the vessel. In the last few years, the Coast Guard has discovered numerous instances of improper operation of OWS equipment under the authority of 33 CFR 1.07–10. In some cases, oily water separators simply were not used in the discharge of bilge water. In other instances, sensitive monitoring devices were disabled. Also, certain vessels installed bypass piping, and other vessels routinely used the bilge pumping systems to discharge overboard.

In alignment with the Coast Guard's Prevention Through People Initiatives, the task force recognizes that, within the maritime industry, vessel engineers, operators, equipment designers, technicians, and manufacturers can provide significant insight into the operation of OWS equipment and the management of oily bilge water onboard foreign and domestic commercial vessels. To gain that understanding, the task force has developed the following questionnaire for members of the maritime industry to provide comments. The questionnaire is intended to obtain a status of current industry practices. Respondents are also encouraged to disseminate this information and the questionnaire to industry associates.

Questions

We especially need your assistance in answering the following questions. Every question does not need to be answered. Any additional information provided on this topic is welcome. In responding to each question, please explain your reasons for each answer as specifically as possible. You do not need to provide any information identifying you or your organization.

1. Indicate the categories that best describe your function:

Chief or Assistant Engineer.
Unlicensed Vessel Engineer.
Other Vessel Personnel: Captain, Mate, or Crew
Vessel Owner or Operator.
Vessel Manager or Superintendent.
Port Captain or Engineer.
Naval Architect, Marine Engineer, Manufacturer or Consultant.
Other: Please describe

2. Indicate the types of vessels that you have worked on or that you have experience with:

Passenger Vessels.
Cruise Ships.
Cargo Ships.
Tank Ships.
Pushboats or Tugboats.
Offshore Crew or Supply.
Ferries.
Dredges.
Drill Rigs.
Research vessels.
Government Vessels: Navy, Coast Guard, etc.

3. Based on your experience, what types of equipment, components, tanks, and other machinery are used in handling bilge water?

4. What kinds of problems occur in the handling of bilge water?

5. Is the oily water separation (OWS) equipment always used?

6. What other systems are used to discharge bilges?

7. Generally, has your experience shown that OWS and oil content monitoring equipment (PPM sensors and controls) are reliable in actual operating environments?

8. Are redundant OWS systems necessary? If so, why?

9. Have modifications been made to originally installed OWS equipment by the vessel's crew or others to ensure operation? Please explain.

10. On average, do vessel bilge loads (influx of water and contaminates) typically exceed the capacity of the OWS equipment?

11. Are sufficient operating manuals, information, and guidance provided by the vessel operating company or shipboard management?

12. Does your organization have an environmental policy, and is it understood by all employees?

13. How does your organization ensure that environmental equipment, such as OWS equipment, has the proper maintenance, spare parts, and other items necessary to ensure effective operation?

14. What is your organization's policy on reducing and eliminating engine room waste?

15. Does your company employ any additional mechanical measures to reduce or eliminate waste?

16. Has your experience shown that OWS equipment is typically installed in a manner that permits effective operational testing of controls and alarms, and verification of three-way or process control valve operations?

[9] 17 CFR 200.30–3(a)(12).

17. Are discharge sample points usually provided, and do methods exist to process contaminated samples during testing?

18. What practices can be shared industry wide to best ensure proper and effective long-term operation of OWS and bilge management equipment?

19. Please provide any additional comments.

You may mail, deliver, fax, or electronically submit your responses to the questionnaire, as well as any concerns, to the addresses listed under the **ADDRESSES** section of this notice.

If you would like to receive a copy of the task force report upon completion, please provide an e-mail or mailing address.

Thank you for participating in this survey.

Dated: October 23, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 01–27250 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on July 18, 2001, pages 37514–37515.

DATES: Comments must be submitted on or before November 29, 2001. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: 119—Certification: Air Carrier and Commercial Operator.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0593.

Forms(s): FAA Form 8400–6.

Affected Public: 3,031 FAR part 135 and part 121 operators.

Abstract: This request for clearance reflects requirements necessary under parts 135, 121, and 125 to comply with part 119. The FAA will use the information it collects and reviews to insure compliance and adherence to regulations and, if necessary, take enforcement action on violators of the regulations.

Estimated Annual Burden Hours: 8,856 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 24, 2001.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 01–27295 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held November 13–15, 2001 starting at 9:00 am each day.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, SW., Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- November 13:
- Opening Plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting)
- Form Working Group 2: Begin Review of Minimum Aviation System Performance Standard (MASPS) work to be done
- Form Working Group 3: VHF Data Link 2 Minimum Operational Performance Standard (MOPS) work
- November 14:
- Working Group 3: VHF Data Link 2 MOPS work continues
- November 15:
- Plenary Reconvenes (Review Status of Working Groups 2 and 3: Voice Data Link [VDL] Mode 2 and Mode 3 MOPS)
- Review of Relevant International Activities (AMCP Working Groups, Working Group 47 Status and Issues)
- Report on Digital Activities (NEXCOM, AEEC status, Others as appropriate)
- Closing Plenary Session (Other Business, Date and Place of Next Meeting, Working Group 3 continues as required, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 25, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 01–27293 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2001–10120]

Agency Information Collection Activities; Announcement of OMB Approval; Major Capital Investment Projects

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) is announcing that the collection of information required under 49 CFR part 611, Major Capital Investment Projects, has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: John Day, Office of Policy Development (TBP–10), Federal Transit Administration, 400 7th Street SW., Washington, DC 20590, (202) 366–1671.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 16, 2001 (66 FR 37088), FTA announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 2132–0561. The approval expires on August 31, 2004.

Issued: October 23, 2001.

Jennifer L. Dorn,

Administrator.

[FR Doc. 01–27272 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: MARAD–2001–10903]

Commercial War Risk Hull and Protection and Indemnity Insurance on Title XI Mortgaged Vessels Operated Exclusively on the Inland Rivers and Intercoastal Waterways of the United States and on the Great Lakes

AGENCY: Maritime Administration, Transportation.

ACTION: Policy Review with request for comments.

DATES: Interested parties are requested to submit comments on or before November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, U.S. Department of Transportation, Maritime Administration, Director, Office of Insurance and Shipping Analysis, Telephone (202) 366–2400, Room 8117, 400 Seventh Street, SW., Washington, DC 20590.

Comments regarding this policy review should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. {Due to current U.S. Postal Service (U.S.P.S.) delivery problems in Washington, DC, commenters are urged to use one of the following: mail via non-U.S.P.S. delivery service (e.g. FedEx, UPS, DHL etc.); or fax their comment to MARAD at 202/366–9206; or use electronic filing as explained below}. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION: Some experts are predicting a possible marine threat, either as a means or as a target or both, if another terrorist attack were to occur against the U.S. In light of this and the September 11th events, the Maritime Administration (MARAD, we, our, or us) believes it should revisit the existing inland/Great Lakes war risk insurance waiver policy and requests public comment on whether we should change our current waiver policy. We have the authority to rescind or revise the existing waiver policy and to impose the full war risk cover on all Title XI vessels if we determine that it is now necessary.

Currently, we waive the Security Agreement requirement for commercial war risk hull and Protection and Indemnity insurance on Title XI mortgaged vessels, which are operated exclusively on the inland rivers and intercoastal waterways of the United States and on the Great Lakes. This policy was approved by the Assistant Secretary of Commerce for Maritime Affairs on June 30, 1971, and has remained in effect ever since. Most Title XI companies operating exclusively inland or on the Great Lakes have taken advantage of this waiver. MARAD estimates that approximately 20 companies with over 500 vessels (including a large number of inland barges) are not insured for war risks.

The standard war risk insurance policy covers a number of non-marine perils risks, including warlike operations, strikes, civil unrest and acts of terrorism. The basic underlying assumption for the war risk waiver for inland/Great Lakes was that the threat of attack within the continental 48 states or Great Lakes was very slight. Events of September 11, 2001, have called this basic assumption into question.

As a consequence, we may begin to require that some or all of the inland Title XI vessels have war risk cover. We may not require war risk cover for all inland Title XI vessels because significant groups or fleets of inland barges are widely dispersed on the inland waters at any point in time. This wide distribution limits our inland/Great Lakes Title XI exposure. Therefore, the risk of a significant loss from any one event or target may be relatively small.

Dated: October 25, 2001.

By Order of the Acting Deputy Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–27276 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–511 (Sub–No. 2X)]

Central Railroad Company of Indianapolis—Discontinuance Exemption—In Grant County, IN

On October 10, 2001, the Central Railroad Company of Indianapolis (CERA) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over a 5.22-mile line of railroad, known as the Marion Branch, between milepost TS–152.22, near Marion, and milepost TS–157.44, near West Marion Belt, in Grant County, IN.[1] The discontinuance includes 0.3 miles of trackage rights over Pennsylvania Lines LLC (PL) between PL milepost MP–78.3 and milepost MP–78.6.[2] The line traverses U.S. Postal Service Zip Codes 46952 and 46953. It

[1] The line is owned by Norfolk Southern Railway Company (NSR) and was operated under lease by CERA. NSR will replace CERA and provide service on the line.

[2] The PL mileposts equate to NSR mileposts TS–153.1 and TS–153.4, respectively.

includes the station of Marion at milepost TS–152.22.

The line does not contain federally granted rights-of-way. Any documentation in CERA's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 28, 2002.

Any offer of financial assistance to subsidize continued rail service under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. See 49 CFR 1002.2(f)(25).

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under section 1105.8(b).

All filings in response to this notice must refer to STB Docket No. AB–511 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies are due November 19, 2001.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

Board decisions and notices are available on our web site at *www.stb.dot.gov*.

Decided: October 24, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–27254 Filed 10–29–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 22, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the **Paperwork Reduction Act of 1995, Public Law 104–13.** Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 2001 to be assured of consideration.

Departmental Offices/Office of Community Adjustment and Investment Programs

OMB Number: 1505–0181.
Form Number: None.
Type of Review: Reinstatement.
Title: Community Adjustment and Investment Program Grant Program Application.
Description: The Department of the Treasury (Treasury), as Chair of the inter-agency committee established by Executive Order No. 12916, dated May 13, 1994, is sponsoring the North American Development Bank's (NADBank) collection of application information from applicants for United States Community Adjustment and Investment Program (USCAIP) grant funds. Respondents will be State and Local Governments, Institutions of Higher Education, and Non-Profit Organizations. NADBank disburses USCAIP grants using monies transferred from Treasury. The information collected will be used to review and selected projects for NADBank USCAIP grants.
Respondents: Not-for-profit institutions, State, Local or Tribal Government.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Respondent: 20 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 3,000 hours.
Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–27269 Filed 10–29–01; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 19, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the **Paperwork Reduction Act of 1995, Public Law 104–13.** Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 2001 to be assured of consideration.

Customs Service (CUS)

OMB Number: New.
Form Number: Customs Form 442.
Type of Review: New collection.
Title: Application for Exemption from Special Landing Requirements Overflight (Southern Border Only); and General Aviation Telephonic Entry (GATE) (Northern Border Only).
Description: This collection is an application for exemption from special landing requirements (Overflight) and General Aviation Telephonic Entry (GATE) will e used required by private flyers to participate in Customs designated privilege program which provides a waiver for landing requirements and normal Customs processing along the Southern Border, or provides clearance telephonically when pilots report their international arrivals from Canada.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 5,500.
Estimated Burden Hours Per Respondent: 2 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 218 hours.
Clearance Officer: Tracey Denning, (202) 927–1429, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–27270 Filed 10–29–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 23, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the **Paperwork Reduction Act of 1995, Public Law 104–13.** Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.
Form Number: None.
Type of Review: Extension.
Title: Cognitive and Psychological Research.
Description: The proposed research will improve the quality of the data collection by examining the psychological and cognitive aspects of methods and procedures such as: interviewing processes, forms redesign, survey and tax collection technology and operating procedures (internal and external in nature).
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 30,000.
Estimated Burden Hours Per Respondent: 35 minutes.
Frequency of Response: Other (one-time only).
Estimated Total Reporting Burden: 17,500 hours.
OMB Number: 1545–1351.
Form Number: None.
Type of Review: Extension.
Title: Statistics of Income (SOI) Corporate Survey.
Description: This is a request to conduct a yearly survey on a small portion of the very largest U.S. corporations. The data will be used to improve the quality of the Statistics of Income's (SOI) advance tax data. The survey will allow SOI to collect existing tax information earlier than regular IRS processing currently allows. Advance tax data has been requested by the Bureau of Economic Analysis, the Office of Tax Analysis, the Office of Tax Analysis and the Joint Committee on Taxation for tax analysis purposes.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 175.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 88 hours.
OMB Number: 1545–1462.
Regulation Project Number: PS–268–82 Final.
Type of Review: Extension.
Title: Definitions Under Subchapter S of the Internal Revenue Code.
Description: The regulations provide definitions and special rules under Code section 1377 which affect S corporations and their shareholders.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 4,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion, Other (once).
Estimated Total Reporting Burden: 1,000 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–27271 Filed 10–29–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0474]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0474."

SUPPLEMENTARY INFORMATION:

Title: A Computer Generated Funding Fee Receipt (formerly VA Form 26–8986 and 26–8986–1).
OMB Control Number: 2900–0474.
Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.
Abstract: A funding fee must be paid to VA before a loan can be guaranteed. The funding fee is payable on all guaranteed loans, i.e., Assumptions, Manufactured Housing, Refinances, and Real Estate purchases and construction loans. The funding fee is not required from veterans in receipt of compensation for service connected disability. Loans made to the unmarried surviving spouses of veterans (who died in service or from a service connected disability) are exempt from payment of the funding fee, regardless of whether the spouse has his/her own eligibility, provided that the spouse has not used his/her eligibility to obtain a VA guaranteed loan. For a loan to be eligible for guaranty, lenders must provide a copy of the Funding Fee Receipt or evidence the veteran is exempt from the requirement of paying the funding fee. The receipt is computer generated and

mailed to the lender ID number address that was entered into a Automated Clearing House service.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 7, 2001, at page 41311.

Affected Public: Individuals or households and business or other for-profit.

Estimated Annual Burden: 6,667 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 200,000.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0474" in any correspondence.

Dated: October 10, 2001.
By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27299 Filed 10–29–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0041]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0041."

SUPPLEMENTARY INFORMATION:

Title: Compliance Inspection Report, VA Form 26–1839.

OMB Control Number: 2900–0041.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by fee compliance inspectors to report acceptability of residential construction and conformity with standards prescribed for new housing proposed as security for loans guaranteed. The information is used by VA to determine whether completion of all onsite and offsite improvements are completed in accordance with plans and specifications used in the appraisal of the property.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 7, 2001, at pages 41311 and 41312.

Affected Public: Individuals or households.

Estimated Annual Burden: 1 hour is being requested since the compliance inspection report is common to the industry.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 31,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0041" in any correspondence.

Dated: October 10, 2001.
By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27297 Filed 10–29–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0045]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0045."

SUPPLEMENTARY INFORMATION:

Title: Request for Determination of Reasonable Value (Real Estate), VA Form 26–1805.

OMB Control Number: 2900–0045.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1805 is used to collect data necessary for VA compliance with requirements of Title 38, U.S.C., 3710 (b)(4), (5), and (6). These requirements prohibit the VA guaranty or making of any loans unless the suitability of the security property for dwelling purposes is determined; the loan amount does not exceed the reasonable value; and if the loan is for purposes of alteration, repair, or improvements, the work substantially improves the basic livability of the property. The data supplied by persons and firms completing VA Form 26–1805 is used by VA personnel to identify and locate properties for appraisal and to make assignments to appraisers. VA is required to notify potential veteran-purchasers of such properties of the VA-established reasonable value. VA will also use VA Form 26–1843, Certificate of Reasonable Value, (included in the VA Form 1805 Package) as a notice to requesters of the reasonable (appraised) value or an authorized lender will issue a notice of value in connection with the Lender Appraisal Processing Program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 7, 2001, on page 41312.

Affected Public: Individuals or households.

Estimated Annual Burden: 60,000 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0045" in any correspondence.

Dated: October 10, 2001.
By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27298 Filed 10–29–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0059]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900–0059."

SUPPLEMENTARY INFORMATION:

Title: Statement of Person Claiming to Have Stood in Relation of a Parent, VA Form 21–524.

OMB Control Number: 2900–0059.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used to secure information about the relationship of the claimant to the veteran from those claiming compensation as parents of veterans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2001 at pages 42706–42707.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,000 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: One-time.

Estimated Number of Respondents: 2,000.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0059" in any correspondence.

Dated: October 16, 2001.
By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27300 Filed 10–29–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0510]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0510."

SUPPLEMENTALRY INFORMATION:

Title: Application for Exclusion of Children's Income, VA Form 21–0571.

OMB Control Number: 2900–0510.

Type of Review: Extension of a currently approved collection.

Abstract: A veteran's or surviving spouse's rate of Improved Pension is determined by family income. Normally, income of children who are members of the household is included in this determination. However, children's income may be excluded if it is unavailable or if consideration of that income would cause hardship. The information collected is used by VA to determine whether children's income can be excluded from consideration in determining a parent's eligibility for non-service-connected pension.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2001, at page 42709.

Affected Public: Individuals or households.

Estimated Annual Burden: 18,750 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On time.

Estimated Number of Respondents: 25,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235,

Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0510" in any correspondence.

Dated: October 16, 2001.
By direction of the Secretary.
Barbara H. Epps,
Management Analyst, Information Management Service.
[FR Doc. 01–27301 Filed 10–29–01; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0114]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0114."

SUPPLEMENTARY INFORMATION:

Title: Statement of Marital Relationship, VA Form 21–4170.

OMB Control Number: 2900–0114.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4170 is used to develop the evidence to determine a claimed common law marriage can be recognized by VA. Without this information, VA would have no means of determining the proper marital status of the veteran.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2001, at pages 42707–42708.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 6,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0114" in any correspondence.

Dated: October 16, 2001.
By direction of the Secretary:
Barbara H. Epps,
Management Analyst, Information Management Service.
[FR Doc. 01–27302 Filed 10–29–01; 8:45 am]
BILLING CODE 2320–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0355]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8015, FAX (202) 273–5981 or *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0355."

SUPPLEMENTARY INFORMATION:

Title: Verification of Pursuit of Course (Leading to a Standard College Degree Under Chapters 32, 34, and 35, Title 38, U.S.C., and Section 903 of Public Law 96–342), VA Form 22–6553.

OMB Control Number: 2900–0355.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–6553 is used to verify continued enrollment or report changes in enrollment status for students receiving educational benefits in pursuit of a college course. Schools are required to report, without delay to VA, when a student fails to enroll, has interrupted, terminated a program, has unsatisfactory progress or conduct. VA uses the information from the current collection to ensure that schools promptly report changes in training and if a student's education benefits are to be continued unchanged, increased, decreased, or terminated. Without this information, VA might underpay or overpay benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on July 11, 2001, at page 36366.

Affected Public: State, local or tribal government and not-for-profit institutions.

Estimated Annual Burden: 9,333 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Frequency of Response: The frequency of responses for each educational institution will vary according to the number of students who receive VA education benefits at that school. VA estimates an annual average of 10 responses per educational institution.

Estimated Number of Respondents: The number of respondents is arrived at based on the average number of educational institutions using VA Form 22–6553 which had veterans or eligible persons enrolled during the last 12 months, and a projected number of trainees. VA currently has an average of 5,600 active educational institutions (colleges, universities, or other institutions of higher learning).

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0355" in any correspondence.

Dated: October 16, 2001.

By direction of the Secretary:
Barbara H. Epps,
Management Analyst, Information Management Service.
[FR Doc. 01–27303 Filed 10–29–01; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0089]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0089."

SUPPLEMENTARY INFORMATION

Title: Statement of Dependency of Parent(s), VA Form 21–509.

OMB Control Number: 2900–0089.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–509 is used to gather income and dependency information from applicants who are seeking payment of benefits as or for a dependent parent. The information is necessary to determine dependency of the parent.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2001 at page 42707.

Affected Public: Individuals or households.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 40,000.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0089" in any correspondence.

Dated: October 16, 2001.
By direction of the Secretary:
Barbara H. Epps,
Management Analyst, Information Management Service.
[FR Doc. 01–27304 Filed 10–29–01; 8:45 am]
BILLING CODE 8320–01–P

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Federal Register

Tuesday,
October 30, 2001

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Plant and Animal Species That Are Candidates or Proposed for Listing as Endangered or Threatened, Annual Notice of Findings on Recycled Petitions, and Annual Description of Progress on Listing Actions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Plant and Animal Species That Are Candidates or Proposed for Listing as Endangered or Threatened, Annual Notice of Findings on Recycled Petitions, and Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review of species which are candidates or proposed for listing, findings on recycled petitions, and progress on listing actions.

SUMMARY: In this notice of review, we, the U.S. Fish and Wildlife Service (Service), present an updated list of plant and animal species native to the United States that we regard as candidates or have proposed for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if we subsequently list a candidate species, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to the species.

We request additional status information that may be available for the identified candidate species and information on species that we should include as candidates in future updates of this list. We will consider this information in preparing listing documents and future revisions to the notice of review. This information will help us in monitoring changes in the status of candidate species and in conserving candidate species.

We announce the availability of listing priority assignment forms for candidate species. These documents describe the status and threats that we evaluated in order to assign a listing priority number to each species. We also announce our findings on recycled petitions and describe our progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the period January 8, 2001, to October 17, 2001.

DATES: We will accept comments on the candidate notice of review at any time.

ADDRESSES: Submit your comments regarding a particular species to the Regional Director of the Region identified in **SUPPLEMENTARY INFORMATION** as having the lead responsibility for that species. You may submit comments of a more general nature to the Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 (703/358–2171). Written comments and materials received in response to this notice of review will be available for public inspection by appointment at the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION.**

Information regarding the range, status, and habitat needs of and listing priority assignment for a particular species is available for review at the appropriate Regional Office listed below in **SUPPLEMENTARY INFORMATION,** at the Division of Conservation and Classification, Arlington, Virginia (see address above), or on our Web site *(http://www.fws.gov).*

FOR FURTHER INFORMATION CONTACT: The Endangered Species Coordinator(s) in the appropriate Regional Office(s) or Chris Nolin, Chief, Division of Conservation and Classification (703/358–2171).

SUPPLEMENTARY INFORMATION:

Candidate Notice of Review

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. Through the Federal rulemaking process, we add these species to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered or Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened but for which preparation and publication of a proposal is precluded by higher-priority listing actions. We maintain this list for a variety of reasons, including: to notify the public that these species are facing threat to their survival; to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; to solicit input from interested parties to identify those candidate species that may not require protection under the Act or additional species that may require the Act's protections; and to solicit information needed to prioritize the order in which we will propose species for listing.

Table 1 of this notice includes 252 species that we regard as candidates for addition to the Lists of Endangered and Threatened Wildlife and Plants (Lists), as well as 35 species for which we have published proposed rules to list as threatened or endangered species, most of which we identified as candidates in the October 25, 1999, Candidate Notice of Review (64 FR 57534). We encourage consideration of these species in environmental planning, such as in environmental impact analysis under the National Environmental Policy Act of 1969 (implemented at 40 CFR parts 1500–1508) and in local and statewide land use planning. Table 2 of this notice contains 74 species we identified as candidates or as proposed species in the October 25, 1999, Candidate Notice of Review that we now no longer consider candidates. This includes 21 species that we removed from candidate status (including 8 species we are removing from candidate status through this notice) and 53 species we listed as threatened or endangered since October 25, 1999. The Regional Offices identified as having lead responsibility for the particular species will continually revise and update the information on candidate species. We intend to publish an updated combined notice of review for animals and plants, that will include our findings on recycled petitions and a description of our progress on listing actions, annually in the **Federal Register.**

Previous Notices of Review

The Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant species, which was published as House Document No. 94–51. We published a notice in the **Federal Register** on July 1, 1975 (40 FR 27823), in which we announced that we would review more than 3,000 native plant species named in the Smithsonian's report and other species added by the 1975 notice for possible addition to the List of Endangered and Threatened Plants. A new comprehensive notice of review for native plants, which took into account the earlier Smithsonian report and other accumulated information, superseded the 1975 notice on December 15, 1980 (45 FR 82479). On November 28, 1983 (48 FR 53640), a supplemental plant notice of review noted changes in the status of various species. We published complete updates of the plant notice on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), September 30, 1993 (58 FR 51144), and, as part of combined animal and plant notices, on February 28, 1996 (61 FR 7596), September 19, 1997 (62 FR 49398), and October 25, 1999 (64 FR 57534). On January 8, 2001 (66 FR 1295), we published our recycled petition finding for one plant species that had outstanding warranted but precluded findings.

Previous animal notices of review included a number of the animal species in the accompanying Table 1. We published earlier comprehensive reviews for vertebrate animals in the **Federal Register** on December 30, 1982 (47 FR 58454), and on September 18, 1985 (50 FR 37958). We published an initial comprehensive review for invertebrate animals on May 22, 1984 (49 FR 21664). We published a combined animal notice of review on January 6, 1989 (54 FR 554), and with minor corrections on August 10, 1989 (54 FR 32833). We again published comprehensive animal notices on November 21, 1991 (56 FR 58804), November 15, 1994 (59 FR 58982), and, as part of combined animal and plant notices, on February 28, 1996 (61 FR 7596), September 19, 1997 (62 FR 49398), and October 25, 1999 (64 FR 57534). On January 8, 2001 (66 FR 1295), we published our recycled petition findings for 25 animal species that had outstanding warranted but precluded findings as well as notice of 1 candidate removal. This revised notice supersedes all previous animal, plant, and combined notices of review.

Current Notice of Review

We gather data on plants and animals native to the United States that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants. This notice identifies those species (including, by definition, biological species; subspecies of fish, wildlife, or plants; and distinct population segments (DPS) of vertebrate animals) that we currently regard as candidates for addition to the Lists. In issuing this compilation, we rely on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other State and Federal agencies (such as the Forest Service and the Bureau of Land Management), knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2 are arranged alphabetically by names of genera, species, and relevant subspecies and varieties under the major group headings for animals first, then plants. Animals are grouped by class or order. Plants are subdivided into three groups: flowering plants, conifers and cycads, and ferns and their allies. Useful synonyms and subgeneric scientific names appear in parentheses (the synonyms preceded by an equals sign). Several species that have not yet been formally described in the scientific literature are included; such species are identified by a generic or specific name (in italics) followed by "sp." or "ssp." We incorporate standardized common names in these notices as they become available. We sorted plants by scientific name due to the inconsistencies in common names, the inclusion of vernacular and composite subspecific names, and the fact that many plants still lack a standardized name.

Table 1 lists all species that we regard as candidates for listing and all species proposed for listing under the Act. Candidate species are those species for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded by other higher priority listing actions. We emphasize that we are not proposing these candidate species for listing by this notice, but we anticipate developing and publishing proposed listing rules for these species in the future. We encourage State agencies, other Federal agencies, and other parties to give consideration to these species in environmental planning. Proposed species are those species for which we have published a proposed rule to list as endangered or threatened in the **Federal Register** (exclusive of species for which we have withdrawn or finalized the proposed rule).

Species in Table 1 of this notice are assigned to several status categories, noted in the "Category" column at the left side of the table. We explain the codes for the category status column of species in Table 1 below:

PE—Species proposed for listing as endangered.

PT—Species proposed for listing as threatened.

C—Candidates: Species for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these species is precluded at present by other higher priority listing actions. This category includes species for which we made a "warranted but precluded" 12-month finding on a petition to list. We made new findings on all petitions for which we previously made "warranted but precluded" findings. We identify the species for which we made a continued "warranted but precluded" finding on a recycled petition by the code "C*" in the category column (see Findings on Recycled Petitions section for additional information). We anticipate developing and publishing proposed rules for candidate species in the future. We encourage State and other Federal agencies as well as other parties to give consideration to these species in environmental planning.

The column labeled "Priority" indicates the listing priority number for each candidate species that we use to determine the most appropriate use of our available resources. We assign this number based on the immediacy and magnitude of threats as well as on taxonomic status. We published a complete description of our listing priority system in the **Federal Register** on September 21, 1983 (48 FR 43098).

The third column identifies the Regional Office to which you should direct comments or questions (see **ADDRESSES** section). We provided the comments received in response to the 1999 notice of review to the Region having lead responsibility for each candidate species mentioned in the comment. We will likewise consider all information provided in response to this notice of review in deciding whether to propose species for listing and when to undertake necessary listing actions. Comments received will become part of the administrative record for the species.

Following the common name (fourth column) is the scientific name (fifth column) and the family designation (sixth column). The seventh column provides the known historical range for the species or vertebrate population, indicated by postal code abbreviations for States and U.S. territories (many species no longer occur in all of the areas listed).

Species in Table 2 of this notice are species we included either as proposed species or as candidates in the 1999 notice of review but have since removed from such status for a variety of reasons. We added many of the species identified as proposed in the last notice of review to the Lists of Endangered and Threatened Wildlife and Plants. Table 2 also includes species that became candidates or were proposed for listing since the 1999 notice of review and are no longer classified as either candidates or proposed species (for example candidates or proposed species that we listed or withdrew since the 1999 notice of review). The first column indicates the present status of the species, using the following codes:

E—Species we listed as endangered.
T—Species we listed as threatened.
Rc—Species we removed from the candidate list because currently available information does not support issuance of a proposed listing.
Rp—Species we removed from the candidate list because we have withdrawn the proposed listing.

The second column provides a coded explanation of why we no longer regard the species as a candidate or proposed species. Descriptions of the codes are as follows:

A—Species that are more abundant or widespread than previously believed and species that are not subject to the degree of threats sufficient to warrant continuance of candidate status, issuance of a proposed listing, or a final listing. The reduction in threats could be due, in part, or all, to actions taken under a conservation agreement.
F—Species whose range is no longer a U.S. Territory.
I—Species for which we have insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list.
L—Species we added to the Lists of Endangered or Threatened Wildlife and Plants.
M—Species we mistakenly included as candidates or proposed species in the last notice of review.
N—Species that are not a listable entity (do not meet the Act's definition of "species") based on current taxonomic understanding.
X—Species we believe to be extinct.

The columns describing lead region, scientific name, family, common name, and historic range include information as previously described for Table 1.

Summary

Since publication of the 1999 notice of review, we reviewed the available information on candidate species to ensure that issuance of a proposed listing is justified for each species and to reevaluate the relative listing priority assignment of each species. We undertook this effort to ensure we focus conservation efforts on those species at greatest risk. As of October 17, 2001, 9 plants and 19 animals are proposed for endangered status; 2 plants and 5 animals are proposed for threatened status; and 139 plant and 113 animal candidates are awaiting preparation of proposed rules (see Table 1). Table 2 includes 74 species that we classified as either proposed for listing or candidates that we no longer classify in those categories.

Summary of New Candidates

Below we present brief summaries of new candidates. Complete information, including references, are found in the candidate forms. You may obtain a copy of these forms from the Regional office that has the lead for the species or from our Website (*http://endangered.fws.gov*).

Mammals

Island fox (*Urocyon littoralis catalinae, U. l. santacruzae, U. l. littoralis, and U. l. santarosae*)—The Santa Catalina Island fox, Santa Cruz Island fox, San Miguel Island fox, and Santa Rosa Island fox numbers have declined drastically in the last 4 years. Total island fox numbers have fallen from approximately 6,000 individuals to less than 2,000 in the last 4 years. Island fox populations on San Miguel and Santa Cruz islands declined by an estimated 80 to 90 percent, and, based on studies conducted as recently as 1999, the island fox has a 50 percent chance of extinction over the next 5 to 10 years. Long-term island fox population monitoring has not been undertaken on Santa Rosa Island; however, anecdotal observations and limited trapping efforts strongly suggest that a similar decline has occurred for this population as well. The primary causes of the decline of these island fox subspecies are the degradation of habitat by introduced herbivores, the increased predation by golden eagles, the rapid transmission of canine distemper through the Santa Catalina subspecies, and the lack of regulation to address the threats. Based on imminent threats of a high magnitude, we assigned these island fox subspecies a listing priority number of 3.

Mazama pocket gopher (*Thomomys mazama*—all subspecies)—The Mazama pocket gopher is strongly associated with glacial outwash prairies in western Washington. The prairie of South Puget Sound is one of the rarest habitats in the United States. We assessed the current distribution of the Mazama pocket gopher and found that many of the historic populations have disappeared or diminished substantially enough in size that their presence was not obvious. Because the remaining populations tend to be small and isolated and the pocket gophers have a limited ability to disperse, further isolation could cause their eventual extinction. Threats include urbanization, loss of basic ecological processes such as fire, nonnative vegetation, domestic cat predation, and lack of regulation to protect the habitat. Because these threats are high but non-imminent, we assigned a listing priority number of 6 to this subspecies.

Southern Idaho ground squirrel (*Spermophilus brunneus endemicus*)—During the past 30 years, a dramatic population decline of the southern Idaho ground squirrel has occurred. We now believe that the southern Idaho ground squirrel occupies approximately 44 percent of its historical range. Surveys indicate a precipitous decline in squirrel population since the mid-1980s. A 1999 survey of 145 of the 180 known historical population sites indicated that only 53 sites (37 percent) were still occupied. Furthermore, 52 of the 53 occupied sites had what biologists characterized as "remarkably low levels of activity". Scientists attribute the decline to the following factors: invasive nonnative plants associated with a change in fire frequency, and lack of reclamation or restoration of habitat by various land management agencies and private landowners; and an increase in the risk of extinction due to a reduced distribution. Based on our evaluation that these threats pose an imminent risk of a high magnitude, this subspecies warrants a listing priority number of 3.

Birds

Yellow-billed cuckoo, western continental U.S. DPS (*Coccyzus americanus*)—While the cuckoo is still relatively common east of the crest of the Rocky Mountains, biologists estimate that more than 90 percent of the bird's riparian (streamside) habitat in the West has been lost or degraded. These modifications, and the resulting decline in the distribution and abundance of yellow-billed cuckoos throughout the western states, is believed to be due to conversion to agriculture; grazing; competition from nonnative plants, such as tamarisk; river management, including altered flow and sediment regime; and flood control practices, such as channelization and bank protection. Based on non-imminent threats of a high magnitude, we assigned a listing priority number of 6 to this DPS of yellow-billed cuckoo.

Streaked horned lark (*Eremophila alpestris strigata*)—The streaked horned lark is considered rare. Currently, we estimate that fewer than 200 breeding pairs remain in Oregon. In Washington, it has been extirpated from north Puget Sound and the San Juan Islands, and less than 100 pairs remain in south Puget Sound and along the coast. The greatest threat to the streaked horned lark is loss of habitat. Biologists estimate that less than 1 percent of native grassland and savanna remains. Conversion of grassland to other uses, such as agriculture and homes, and the encroachment of nonnative plants have been the primary factors contributing to the species' decline. Because these threats are of a high magnitude but are non-imminent, we assigned a listing priority number of 6 to this subspecies.

Western sage grouse, Washington DPS (*Centrocercus urophasianus phaios*)—The Washington DPS (Columbia basin) of the western sage grouse currently occupies approximately 10 percent of its historic distribution in the state in two relatively small areas in central Washington. The abundance of this DPS has declined between 66 percent and 99 percent from historic levels (using low and high estimates). Primary threats to this population include conversion or degradation of native shrub-steppe habitats and small population size, which makes this population more susceptible to inbreeding depression (reduced reproductive vigor) and extirpation from stochastic events (inclement weather, population demographics, altered predation patterns, etc.). Because these threats are low to moderate in magnitude but imminent, we assigned this DPS of western sage grouse a listing priority number of 9.

Reptiles

Sand dune lizard (*Sceloporus arenicolus*)—The sand dune lizard is endemic to a small area in New Mexico and Texas. The primary threats to this species are herbicides used to remove shinnery oak, various activities that destroy and fragment shinnery oak habitat, and overcollection. Currently no Federal or State regulations in New Mexico or Texas protect against take of individuals or their habitat. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to this species.

Amphibians

Georgetown salamander (*Eurycea naufragia*)—The Georgetown salamander is an entirely aquatic salamander approximately 5.1 centimeters (cm) (2.0 inches (in)) long. It is known to occur in springs along five tributaries of the San Gabriel River and one cave in the city of Georgetown, Texas. Primary threats include degradation of water quality and reduced available water quantity due to urbanization. Currently no State or Federal regulations provide protection for this salamander. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to this species.

Ozark hellbender (*Cryptobranchus alleganiensis bishopi*)—The Ozark hellbender is a large, aquatic salamander native to streams of the Ozark Plateau in Arkansas and Missouri. Records indicate that much of the habitat for the species has been lost or fragmented due to habitat alteration from gravel mining, construction of impoundments, timber harvest and associated erosion, and contamination from pesticides and historic lead and zinc mining. Currently, State regulations make it illegal to take the Ozark Hellbender, but little or no regulation protects the habitat. As a result, most known populations have experienced significant declines and there is little documentation of reproduction. We believe that the current combination of population fragmentation and habitat degradation may prohibit this species from recovering without the intervention of protection and conservation measures afforded under the Act. Due to non-imminent threats of a high magnitude, we assigned a listing priority number of 6 to this subspecies.

Fish

Yellowcheek darter (*Etheostoma moorei*)—The yellowcheek darter is an endemic species of the Little Red River in Arkansas. Construction of Greers Ferry Lake destroyed most of the species' preferred habitat and isolated the species in four tributaries. Factors affecting the remaining populations include loss of suitable breeding habitat, habitat degradation, population isolation, and severe population declines. Recent studies have documented significant declines in the numbers of this fish in the remaining populations. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to this species.

Zuni bluehead sucker (*Catostomus discobolus yarrowi*)—The Zuni bluehead sucker is a 20.3-cm (8.0-in) freshwater fish found only in Arizona and New Mexico. The primary threats to this subspecies are road construction, logging, over-grazing, reservoir construction, irrigation withdrawals, and stocking of exotic fishes. Once common in the Little Colorado and Zuni River drainages, it is now thought to be reduced to about 10 percent of historical range. Although considered endangered by the State of New Mexico and a species of special concern by the State of Arizona and the U.S. Forest Service, these designations lack habitat protections needed for long-term conservation. Due to imminent threats of a high magnitude, we assigned a listing priority number of 3 to this subspecies.

Clams

Neosho mucket (*Lampsilis rafinesqueana*)—The Neosho mucket is a freshwater mussel native to Arkansas, Kansas, Missouri, and Oklahoma. The species has declined throughout much of its historic range due to habitat degradation attributed to impoundments, sedimentation, and agricultural pollutants. Currently, it is believed that only one viable population exists; a few remnant populations may remain. Although State regulations limit harvest of this species, there is little protection for habitat. Due to non-imminent threats of a high magnitude, we assigned a listing priority number of 5 to this species.

Texas hornshell (*Popenaias popei*)—The Texas hornshell is a freshwater mussel that is found in New Mexico, Texas, and Mexico. The primary threats are habitat alterations such as impoundments and diversions for agriculture and flood control, contamination of water from the oil and gas industry, and increased sedimentation from prolonged overgrazing and loss of native vegetation. Currently, no Federal or State regulations protect the Texas hornshell from these threats. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to this species.

Snails

Phantom Cave snail (*Cochliopa texana*) and Phantom springsnail (*Tryonia cheatumi*)—Both of these aquatic snails occur in only three spring systems and associated outflows in Texas. The primary threat to both species is the loss of surface flows due to declining groundwater levels from drought and pumping for agricultural production. Although the land surrounding their habitat is owned and managed by The Nature Conservancy, Bureau of Reclamation, and Balmorhea State Park, the water needed to maintain their habitat has declined due to a reduction in the spring flows, primarily as result of private groundwater pumping in areas beyond that controlled by these landowners. Currently, there is no protection for either of these aquatic cave snails by either State or Federal law. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to these species.

Insects

Nine cave beetles (*Pseudanophthalmus caecus, P. cataryctos, P. frigidus, P. inexpectatus, P. inquistor, P. major, P. pholeter, P. parvus, and P. troglodytes*)—Seven of these nine cave beetles (*Pseudanophthalmus caecus, P. cataryctos, P. frigidus, P. major, P. pholeter, P. parvus, and P. troglodytes*) are currently known to occur in one cave each in Kentucky. *Psuedanophthalmus inexpectatus*, is known to occur in more than one cave

in Kentucky and *P. inquistor* only occurs in Tennessee. Historically, *P. inexpectatus* occurred in three caves; however, it is now considered extirpated from one of these caves and is declining in numbers in one of the remaining two sites. The primary threats to these cave beetles include toxic chemical spills, discharges of large amounts of polluted water, closure or alterations of cave entrances, and disruption of cave energy processes by industrial, residential, commercial, or highway construction. There is currently little or no protection for these species by either the State or Federal regulations. Due to non-imminent threats of a high magnitude, we assigned a listing priority number of 5 to these species.

Whulge checkerspot butterfly (*Euphydryas editha taylori*)—Historically, the subspecies was known from more than 50 locations in British Columbia, Washington, and Oregon. The current range is believed to have declined significantly to less than 15 populations. Threats include changes in vegetation structure and composition of native grassland-dominated prairies due to agricultural conversion, urbanization, and invasion by nonnative woody shrubs; the use of pesticides to control Asian gypsy moths; and inadequacy of regulatory protection against these threats. We have determined that, although the threats are of high magnitude, they are non-imminent; therefore, we are assigning a listing priority number of 6 to this subspecies.

Ferns and Allies

Botrychium lineare (slender moonwort)—*Botrychium lineare* is a small perennial fern that is currently known from a total of nine populations in Colorado, Oregon, Montana, and Washington. In addition to these currently known populations, there are four historic population sites in California, Colorado, Idaho, and Montana and two in Canada. These historic populations have not been seen for at least 20 years and may be extirpated. Identifiable threats to various populations of this species include road maintenance, herbicide spraying, recreation, timber harvest, trampling and grazing by wildlife and livestock, exotic species, and development. Because we concluded that the overall magnitude of threats to *Botrychium lineare* throughout its range is moderate and the overall immediacy of these threats is non-imminent, we assigned this species a listing priority number of 11.

Summary of Listing Priority Changes in Candidates

Mammals

Coachella Valley round-tailed ground squirrel (*Spermophilus tereticaudus chlorus*)—In the 1999 CNOR, we mistakenly assigned the Coachella Valley round-tailed squirrel a listing priority number of 5. This was an incorrect number under the listing priority system for a subspecies, like the Coachella Vally round-tailed ground squirrel. In this notice, we have corrected the listing priority number to a 6.

Washington ground squirrel (*Spermophilus washingtoni*)—Since the designation of the species as a candidate on October 25, 1999, more information has become available regarding the types of soils used by Washington ground squirrels, the effects of agriculture on Washington ground squirrel colonies, the status of the species throughout its range, and the significance of the Oregon population to the species as a whole. The soil types used by the squirrels are distributed sporadically within the species' range, and have been seriously fragmented by human development in the Columbia Basin, particularly conversion to agricultural use. Where agriculture occurs, little evidence of ground squirrel use has been documented, and reports indicate that ongoing agricultural conversion permanently eliminates Washington ground squirrel habitat. The most contiguous, least-disturbed expanse of suitable Washington ground squirrel habitat, and likely the densest distribution of colonies within the range of the species, occurs on the Boeing site and Boardman Bombing Range in Oregon. Substantial threats to the species occur throughout its range, including the remaining populations in Oregon. Even on State-owned lands in Oregon, the loss of known sites is likely. The City of Ione and Morrow County have proposed the construction of a highway through the largest area of suitable and occupied habitat in the range of the species. The loss of significant numbers of colonies in Oregon would be detrimental to the continued existence of the Washington ground squirrel. In Washington, recent declines have been precipitous and for unknown reasons. In 2001, entire colonies of ground squirrels have been lost on the Columbia National Wildlife Refuge and Seeps Lake Management Area near Othello, Washington, despite the protected status of the species in the area. Biologists observed significant declines in body mass, and many adult squirrels experienced a complete failure to reproduce in 2001, likely as a result of starvation. Individuals that lacked sufficient body weight are not likely to survive the seven to eight month hibernation period this species experiences. All of these threats have been observed in the past year, are likely to continue, and appreciably reduce the likelihood of survival of many Washington ground squirrel colonies across the range of the species. Based on this evaluation, we changed the listing priority number from a 5 to a 2 due to the imminent threats of a high magnitude.

Birds

Rota bridled white-eye (*Zosterops rotensis*)—Recent authorities on the taxonomy of Micronesian white-eyes agree that the Rota population is distinct from others in the Marianas and should be recognized as a separate species. Therefore, we refer to this bird as the Rota bridled white-eye (*Z. rotensis*). Recent genetic evidence from mitochondrial DNA sequences showed that two distinct lineages occur within the Marianas, one on Guam, Saipan, Tinian, and Aguijan, and the other on Rota. Threats include introduced birds, rats, habitat destruction, alien plants and habitat alteration, and typhoons. Although the relative importance of the threats to the Rota bridled white-eye are not completely understood, based on the large (89%) and rapid decline in population size that has occurred since 1982 and appears to be continuing; these threats must be imminent and of high magnitude. In addition, since we now recognize the Rota bridled white-eye as a separate species, we changed the listing priority from a 6 to a 2. Based, in part, on this change in priority, on October 3, 2001 (66 FR 50383) we published a proposed rule to list this species as endangered.

Clams

Alabama pearlshell (*Margaritifera marrianae*)—We changed the listing priority number from a 5 to a 2 since the threats are now imminent for this species based on the apparent loss of one of the three known extant populations in 1999 and drought stress to the surviving populations in 2000.

Snails

Diamond Y springsnail (*Tryonia adamantina*) and Gonzales springsnail (*Tryonia circumstriata* (= *stocktonensis*))—We changed the listing priority number from a 5 to a 2 for both of these species due to new imminent threats from the recent introduction of a nonnative snail (*Melanoides* sp.) into the native snails' habitat. The nonnative snail is likely competing with the native snails for space and resources.

Tumbling Creek cavesnail (*Antrobia culveri*)—We changed the listing priority number from a 7 to a 1 due to new data obtained in 2000 and 2001 that indicate the threat to this species is much greater than originally estimated. The continued downward trend, including the documentation of no snails in study plots on January 11, 2001, provides a strong indication that whatever threats are causing the decline, they are imminent and of a high magnitude. It is likely that this species, the only known representative of its genus, will become extinct within the foreseeable future without appropriate conservation measures.

Insects

Carson wandering skipper (*Pseudocopaeodes eunus obscurus*)—We are changing the listing priority number from a 12 to a 3 because threats we previously considered to be ameliorated now appear imminent. A Cooperative Agreement was signed by the Service, Nevada Department of Transportation, Federal Highways Administration, and Bureau of Land Management in October 1999. This agreement was developed to outline the actions necessary for the conservation and management of Carson wandering skipper. A draft conservation plan for the Carson wandering skipper was prepared in 2000 to address potential conservation measures which could be implemented at occupied sites. However, implementation of this agreement and a final conservation plan now appear unlikely in the foreseeable future due to the unwillingness of the private and public landowners to support conservation efforts. We are also concerned about proposed water development plans near the Pyramid Lake site and the spread of whitetop, a nonnative plant species, on private property at the Honey Lake site, as this invasive species could eliminate habitat for the Carson wandering skipper. Since Carson wandering skipper became a candidate species, further evidence supports the likely extirpation of the subspecies from the Carson Hot Springs site. Therefore, based on the high magnitude of imminent threats, we assigned this subspecies a listing priority number of 3. See additional information on this species below under Petition of a Candidate Species section.

Highlands tiger beetle (*Cicindela highlandensis*)—We changed the listing priority number for the Highlands tiger beetle from a 2 to a 5 because the immediacy of the threats to its scrub habitats on the Lake Wales Ridge in central Florida have decreased. In particular, the State of Florida and conservation groups have acquired and are actively acquiring occupied and unoccupied scrub habitats for the species such that most quality habitats for the species have been acquired. There has also been an increase in prescribed burning on the Lake Wales Ridge that resulted in improved habitat conditions for the species. Therefore, based on a high magnitude of non-imminent threats, we assigned this species a listing priority number of 5.

Salt Creek tiger beetle (*Cicindela nevadica lincolniana*)—We changed the listing priority number from a 6 to a 3 because the immediacy of the threats to the isolated wetlands where the beetle occurs continues to increase due to the planned widening of the interstate highway, construction of a new interchange, and the anticipated developments that will occur along the highway corridor. In addition, the apparent reduction in U.S. Army Corps of Engineers jurisdiction over isolated wetlands may hamper the State's ability to protect the wetland habitats essential to the beetle's survival since the Nebraska Department of Environmental Quality will not have a nexus to implement review under the State section 401 water quality certification program. Therefore, based on a high magnitude of now imminent threats, we assigned this subspecies a listing priority number of 3.

Arachnids

Warton Cave meshweaver (*Cicurina wartoni*)—We changed the listing priority number from an 8 to a 2 due to continued, imminent threats of a high magnitude from nearby development and fire ants. In two previous CNORs, we assigned a listing priority number of 2 to this species, but based on the development of a conservation agreement to protect this cave, we changed the listing priority number to an 8 in the 1999 CNOR. Since this conservation agreement is still under development and recommended management actions (including fire ant control and complete fencing) are not yet in place to adequately protect the only known location of the species, we are now assigning a listing priority number of 2 to this species.

Plants

Astragalus tortipes (Milk-vetch, Sleeping Ute)—We changed the listing priority number for *Astragalus tortipes* from a 2 to an 8 because Spring 2000 surveys indicated an increase in the number of individual plants from the original estimate of 2,000–3,000 individual plants to 3,744 plants, and there has been an increase in range. In addition, we believe the threats, although not entirely eliminated, have been reduced; oil and gas development may occur in the future, but only a few plant locations are on terrain that would be affected. Consequently, *A. tortipes* should be retained on the candidate list, but with a reduced listing priority, based on reduced threats to a plant with a limited range.

Bidens conjuncta (Kóokóolau)—We changed the listing priority number for *Bidens conjuncta* from 5 to 8 because the number of individuals has increased from 300 to 2,200 individuals. While the original threats remain imminent and rats are also now known to be a threat, the overall magnitude of the threat is somewhat reduced with the large increase in numbers.

Cyanea calycina (HaHa)—Due to taxonomic changes, *Cyanea calycina* is now considered a separate species; therefore, we are changing the listing priority number to a 5 (previously we designated it a 6).

Cyanea lanceolata (formerly *Cyanea lanceolata* ssp. *lanceolata*, and prior to that *Rollandia lanceolata*)—Originally treated as a subspecies of *C. lanceolata*, this entity has been elevated to full species status. As such, we are changing the listing priority number to a 5 (previously we designated it a 6).

Cyclosorus boydiae var. *boydiae* (formerly *Thelypteris boydiae*)—This plant species has been moved from the genus *Thelypteris* to the genus *Cyclosorus*, and is also now considered a subspecies. As a result, we changed the listing priority number to a 6 (previously we designated it a 5).

Cyclosorus boydiae var. *kipahuluensis* (formerly *Thelypteris boydiae*)—This plant species has been moved from the genus *Thelypteris* to the genus *Cyclosorus*, and is also now considered a subspecies. As a result, we changed the listing priority to 6 (previously it was designated 5).

Erigeron basalticus (Basalt daisy)—*Erigeron basalticus* is of extremely limited distribution, and is found only in a very narrow habitat type. Although several smaller subpopulations of the species have declined precipitously in the past decade, the major portion of the population appears to have remained stable during this same period. Currently, the cause of the decline is unknown, as is the risk to the larger subpopulations. While we identified various potential threats to the species, these threats do not appear to be imminent and are of a moderate to low magnitude. Therefore, we are assigning

this plant species a listing priority of 11 (previously we assigned the species a listing priority of 8).

Leavenworthia texana (Texas golden gladecress)—We changed the listing priority number from a 5 to a 2 based on recent survey information that shows the known sites are now restricted to two. A third site is currently closed to visitors, and its status is unknown. Of the two known sites, a significant reduction in the number of plants has occurred, probably due to the extreme drought in the area.

Pleomele forbesii (Hala pepe)—Additional surveys have increased the known number of individuals in the 16 populations from 80–180 to 500. Based on this new information, we now believe the threat is non-imminent. Because of this, we are changing the listing priority number from a 2 to a 5.

Schiedea pubescens (formerly *Schiedea pubescens* var. *pubescens*)—*Schiedea pubescens* was originally treated as a subspecies. Recently, however, it has been elevated to full species status. Therefore, we changed the priority number from a 3 to a 2.

Solanum nelsonii (Popolo)—There has been a rapid decline of the populations of *Solanum nelsonii* on the islands within the remote Hawaiian Islands National Wildlife Refuge. The number of individuals has decreased from 3,000 to 300 individuals. Therefore, we changed the priority number from an 11 to a 5.

Candidate Removals

Snails

Wet Canyon talussnail (*Sonorella macrophallus*)—We removed this species from candidate status since the greatest threat to the species, impact from recreation, was eliminated through a 1999 Conservation Agreement with the Coronado National Forest, Arizona. The National Forest closed a trail that traversed the species' habitat and prohibits campfires in the Wet Canyon picnic area during periods of fire closure. National Forest staff are also implementing a monitoring program to ensure the trail closure remains in place and to evaluate its effectiveness.

Plants

Cyanea pseudofauriei (Haha)—Originally thought to be a newly discovered species, known from one population totaling a few hundred individuals, this population is now considered part of a more widespread species (*Cyanea fauriei*) that is considered relatively stable.

Melicope macropus (Alani)—This now extinct species was thought to be rediscovered in 1990. However, this "rediscovered" population is now known to be misidentified and is actually *Melicope kauaiensis*, which is a more common species.

Opuntia whipplei var. *multigeniculata* (Blue diamond cholla)—Active management of lands supporting the blue diamond cholla and its habitat and the execution of the conservation agreement has led to our decision to remove the species from the candidate list. This agreement includes conservation actions that specifically address and diminish or eliminate threats to the species. Therefore, we are removing this species from the candidate list.

Phyllostegia helleri (no common name)—This population was originally thought to be *Phyllostegia helleri*, but was actually a misidentification of *Phyllostegia electra*. *Phyllostegia helleri* has not been seen since 1916, and therefore, we believe it to be extinct.

Phyllostegia imminuta (no common name)—Historically known from Maui and Lanai and thought to be extinct since 1920, this species was thought to be rediscovered in 1 population totaling approximately 10 individuals in Waikamoi, Maui. However, further study revealed that the plants were misidentified and are actually *Phyllostegia macrophylla*. Therefore, we believe this species to be extinct.

Cyperus odoratus (formally *Torulinium odoratum* ssp. *auriculatum*) (pu'uka'a (= kili'o'opu, kiolohia, mau'u pu'u, puko'a))—This subspecies is no longer recognized, and the species has been incorporated into the more widespread species *Cyperus odoratus*.

Lysimachia venosa (no common name)—The historic range of this species was throughout the island of Kauai. While there are no historic records of numbers of populations or individuals, qualitative accounts indicate that the species was relatively widespread and abundant on Kauai. The last known population of only a few individuals could not be relocated in 1999. Therefore, we believe this species to be extinct.

Petition for a Candidate Species

The Act provides two mechanisms for considering species for listing. First, the Act requires us to identify and propose for listing those species that require listing under the standards of section 4(a)(1). We implement this through the candidate program, discussed above. Second, the Act provides a mechanism for the public to petition us to add a species to the Lists. Under section 4(b)(3)(A), when we receive such a petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information that listing is warranted (a "90-day finding"). If we make a positive 90-day finding, under section 4(b)(3)(B) we must make one of three possible findings within 12 months of the receipt of the petition (a "12-month finding").

The first possible 12-month finding is that listing is not warranted, in which case we need take no further action on the petition. Second, we may find that listing is warranted, in which case we must promptly publish a proposed rule to list the species. Once we publish a proposed rule for a species, section 4(b)(5) and (6) govern further procedures, regardless of whether or not we issued the proposal in response to a petition. Third, we may find that listing is "warranted but precluded." Such a finding means that immediate publication of a proposed rule to list the species is precluded by higher priority listing proposals, and that we are making expeditious progress to add and remove species from the Lists, as appropriate.

The standard for making a 12-month warranted but precluded finding on a petition to list a species is identical to our standard for making a species a candidate for listing. Therefore, we add all petitioned species subject to such a finding to the candidate list. Similarly, we can treat all candidates as having been subject to both a positive 90-day finding and a warranted but precluded 12-month finding. This notice constitutes publication of such findings pursuant to section 4(b)(3) for each candidate species listed in Table 1 that is the subject of a subsequent petition to list as threatened or endangered. Under our Petition Management Guidance, made available on July 9, 1996 (61 FR 36075), we consider a petition to list a species already on the candidate list to be a second petition and, therefore, redundant. We do not interpret the petition provisions of the Act to require us to make a duplicative finding. Therefore, we are not making additional 90-day findings or initial 12-month findings on petitions to list species that are already candidates.

Pursuant to section 4(b)(3)(C)(i) of the Act, when, in response to a petition, we find that listing a species is warranted but precluded, we must make a new 12-month finding each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent 12-month findings are referred to as recycled petition findings. As discussed below, we will make recycled petition findings for petitions on such species via our

Candidate Notices of Review such as this one.

On June 20, 2001, the United States Court of Appeals for the Ninth Circuit held that the 1999 CNOR (64 FR 57534 (Oct. 25, 1999)) did not constitute valid warranted but precluded 12-month petition findings for the Gila chub and Chiracahua leopard frog. *Center for Biological Diversity* v. *Norton*, 2001 U.S. App. LEXIS 13736 (9th Cir. 2001). In particular, the Court found that inclusion of these species as one line each on the table of candidates in the 1999 CNOR, with no further explanation, did not satisfy the section 4(b)(3)(B)(iii)'s requirement that the Service publish "a description and evaluation of reasons and data on which the finding was based" in the **Federal Register**. The Court found that this one-line statement of candidate status also precluded meaningful judicial review. Moreover, the Court found that candidate status did not guarantee that annual reviews of warranted but precluded petitioned species would take place pursuant to section 4(b)(3)(C)(i). Finally, the Court suggested, but did not decide, that the 1999 CNOR met the Act's requirements for positive 90-day petition findings.

Although we do not agree with the conclusions of the Ninth Circuit, we have revised this CNOR to address the Court's concerns. We have included below a description of why the listing of every petitioned candidate species is both warranted and precluded at this time. Pursuant to section 4(b)(3)(C)(ii), any party with standing may challenge the merits of one of the our petition findings incorporated in this CNOR. The analysis included herein, together with the administrative record for the decision at issue, will provide an adequate basis for a court to review the petition finding. Finally, nothing in this document or any of our policies should be construed as in any way modifying the Act's requirement that we make a new 12-month petition finding for each petitioned candidate within one year of the date of publication of this CNOR. If we fail to make any such finding on a timely basis, whether through publication of a new CNOR or some other form of notice, we may be subject to a deadline law suit pursuant to section 11(g)(1)(C), as it would be with respect to any other failure to comply with a section 4 deadline.

We reviewed the current status of and threats to the 37 species regarding which we have found petitioned action to be warranted but precluded. As a result of this review, we made continued warranted but precluded findings on the petitions for all 37 species. For the 32 of these species that are candidates, we maintain them as candidates and identify them by the code "C*" in the category column on the left side of Table 1. As discussed above, this finding means that the immediate publication of a proposed rule to list these species is precluded by the following higher priority listing actions: Court ordered or settlement agreements to complete the critical habitat determinations for San Bernardino kangaroo rat, Monterey and robust spineflowers, Quino checkerspot butterfly, 57 Hawaii Island plants, Otay tarplant, Oahu elepaio, Blackburn sphinx moth, Newcomb's snail, 2 Kauai invertebrates, 81 Kauai and Niihau plants, yellow and Baker's larkspurs, 3 Southern California coastal plants, Keck's checkermallow, purple amole, 69 Maui and Kahoolawe plants, Santa Cruz tarplant, 37 Lanai plants, 49 Molokai plants, 6 Northwestern Hawaiian Islands plants, 101 Oahu plants, 4 fairy shrimp, Carolina heelsplitter and Appalachian elktoe, and a final determination for the Sacramento splittail. In addition, the following are higher priority statutory deadlines: final listing for Mississippi gopher frog, golden sedge, mountain plover, and desert yellowhead.

In addition to identifying these species in Table 1, we also present brief summaries of why these candidates warrant listing. More complete information, including references, are found in the candidate forms. You may obtain a copy of these forms from the Regional office that has the lead for the species or from the Fish and Wildlife Service's *Web site: http://endangered.fws.gov/*.

We find that the immediate issuance of a proposed rule and timely promulgation of a final rule for each of these actions has for the preceding year been and will over the next year be precluded by higher priority listing actions. During the preceding year, almost all of our limited listing budget has been needed to take various listing actions to comply with court orders and court-approved settlement agreements. For a list of the listing actions taken over the last year, see the discussion of "Expeditious Progress," below.

Regarding the following year, although we do not yet have a final budget, the majority of that budget will again likely be needed to take listing actions to comply with court orders and court-approved settlement agreements. Currently, we will need to work on or complete the following actions: proposed critical habitat designations—4 fairy shrimp (and 11 plants), 6 plants from Northwestern Hawaiian Islands, reproposal for plants from Kauai and Niihau, reproposal for plants from Maui and Kahoolawe, reproposal for plants from Lanai, reproposal for plants from Molokai, 57 plants from Hawaii, 5 carbonate plants from California, 103 Oahu plants, 6 Guam species (following prudency re-determinations), Keck's checkermallow, yellow and Baker's larkspur, Ventura Marsh milk-vetch, Rio Grande silvery minnow, 4 invertebrates from New Mexico, 9 invertebrates from Bexar County, Texas, Gila chub, Topeka shiner, gulf sturgeon, and Prebles meadow jumping mouse; final critical habitat designations—quino checkerspot butterfly, Monterey spineflower, robust spineflower, Oahu elepaio, San Bernardino kangaroo rat, 3 southern California plants, Kneeland Prairie pennycress, purple amole, Santa Cruz tarplant, Otay tarplant, 81 plants from Kauai and Niihau, 2 Kauai invertebrates, Blackburn's sphinx moth, Newcomb's snail, 4 fairy shrimp (and 11 plants), 69 plants from Maui and Kahoolawe, 37 plants from Lanai, 5 carbonate plants from California, 49 plants from Molokai, 6 plants from northwest Hawaiian Islands, 57 plants from Hawaii, Keck's checkermallow, yellow and Bakers larskspurs, and 101 plants from Oahu, Rio Grande silvery minnow, 9 invertebrates from Bexar County, Texas; Carolina heelsplitter, gulf sturgeon, Appalachian elktoe, and Great Plains breeding population of piping plover; 90-day petition findings—Miami blue butterfly; 12-month petition findings—Big Cypress fox squirrel, and Columbia spotted frog; proposed listing rules—island fox; final listing determinations—flat-tailed horned lizard, showy stickseed, San Diego ambrosia, southern California DPS of mountain yellow-legged frog, coastal cutthroat trout, Chiricahua leopard frog, vermilion darter, Mississippi gopher frog, and golden sedge; emergency listings—pygmy rabbit, Carson's wandering skipper, and Tumbling Creek cavesnail.

Issuance of proposed listing rules for most of the candidates even with the highest listing priority numbers (i.e., 1, 2, or 3) will continue to be precluded next year due to the need to take actions to comply with court orders and court-approved settlement agreements, as well as the need to comply (or end non-compliance) with the unqualified statutory deadlines for making 12-month petition findings and final listing determinations on proposed rules. Currently, in addition to those final determinations required by court orders and settlement agreements, we will also need to work in the next year on final determinations for at least 23 species:

Cowhead Lake tui chub, meadowfoam, lomatium, 3 Mariana Islands plants, 12 pomace flies, Mariana fruit bat, Dolly Varden trout, desert yellowhead, and mountain plover. Again, in addition to those 12-month findings required by court orders and settlement agreements, we must make initial 12-month findings for at least 7 species: Yosemite toad, California spotted owl, mountain yellow-legged frog (entire population), Henderson's horkelia, Mt. Ashland lupine, and 2 Puerto Rican plants. If over the next year we can devote any resources to issuing proposed rules for the highest priority candidates without jeopardizing our ability to comply with court orders, court-approved settlement agreements, or unqualified statutory deadlines, we will do so.

Finally, with respect to those candidates with lower priority (i.e., those that have listing priority numbers of 4–12), work on proposed rules for those species is also precluded by the need to issue proposed rules for those species that are higher priorities, particularly those facing high magnitude, imminent threats (i.e., listing priority numbers of 1, 2, or 3). Table 1 lists the listing priority number for each candidate species.

Mammals

Black-tailed prairie dog (*Cynomys ludovicianus*)—As described in our February 4, 2000, 12-month finding (65 FR 5476), black-tailed prairie dog populations have been significantly reduced and are subject to many persistent threats. We believe that various threats (especially plague and pest control efforts via chemical agents) continue to cause local extirpations that could lead to the species becoming vulnerable in a significant portion of its range. Additionally, the species may have difficulty coping with challenges without the advantage of its historic abundance and wide distribution. Accordingly, the vulnerability of the species to population reductions may be related less to its absolute numbers than to the number of colonies in which it exists, their size, their geospatial relationship, existing barriers to immigration and emigration, and the number and nature of the direct threats to the species. While positive first steps to conserve and manage black-tailed prairie dogs have been made by some States and Tribes, more conservation work will be needed by all States, Tribes, and Federal agencies to sufficiently reduce threats to the species. The overall magnitude and immediacy of threats to this species remain unchanged since the 12-month finding was published with a listing priority number of 8.

Island fox (*Urocyon littoralis*)—See above summary of new species for discussion on why this species warrants listing. The above summary is based on information contained in our files, including information from the petition received on June 6, 2000. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact this species has a listing priority of 2, we recently entered into a settlement agreement on October 2, 2001, (*Center for Biological Diversity, et al.* v. *Norton*, Civ. No. 01–2063 (JR) (D.D.C.)) that will require us to deliver by November 30, 2001, a proposed rule to the **Federal Register** for publication.

Sea otter, Aleutian Islands DPS (*Enhydra lutris kenyoni*)—The following summary is based on information contained in our files, including information from the petition received on October 26, 2000. The worldwide population of sea otters in the early 1700s has been estimated at 150,000 to 300,000. Extensive commercial hunting of sea otters in Alaska began following the arrival of Russian explorers in 1741 and continued during the 18th and 19th centuries. By the time sea otters were afforded protection from commercial harvests by international treaty in 1911, the species was nearly extinct throughout its range, and may have numbered only 1,000 to 2,000 individuals. Today three subspecies of sea otter have been identified. The northern sea otter contains two subspecies: *Enhydra lutris kenyoni*, which occurs from the Aleutian Islands to Oregon, and *Enhydra lutris lutris*, which occurs in the Kuril Islands, Kamchatka Peninsula, and Commander Islands in Russia. The third subspecies, *Enhydra lutris nereis*, occurs in California and is known as the southern sea otter. Until recently, southwest Alaska had been considered a stronghold for sea otters. In the mid-1980s, biologists believed that 80% of the world population of sea otters occurred in southwest Alaska. Recent aerial surveys document drastic population declines (up to 90%) have occurred throughout this area during the past 10–15 years. Today as few as 9,000 sea otters may remain in the Aleutian Islands. Potential threats include both natural fluctuations and human activities, which may have caused changes in the Bering Sea ecosystem. Subsistence hunting occurs at very low levels and does not appear to be a factor in the decline. While disease, starvation, and contaminants have not been implicated at this time, additional evaluation of these factors is warranted. The hypothesis that predation by killer whales is causing the sea otter decline should also be further studied. Due to the precipitous and rapid nature of the ongoing population decline, we have assigned the Aleutian Islands DPS of *Enhydra lutris kenyoni* a listing a priority of 3 under our listing priority system. Additionally, we have no indication that the decline has reached an endpoint, and therefore immediate action is needed.

Sheath-tailed bat, American Samoa and Aguijan DPS (*Emballonura semicaudata*)—The following summary is based on information contained in our files, including information from the petition received on March 3, 1986. Historically the sheath-tailed bat was known from the southern Mariana Islands, Palau, and Western and American Samoa. Populations on the Mariana Islands of Guam and Rota have been extirpated and the Mariana population on Aguijan has been reduced to approximately 10 individuals. A similar drastic decline has occurred in American Samoa where populations of this bat were estimated at over 10,000 in 1976. In 1993, only four bats were recorded. This species resides in caves and is very susceptible to disturbance. The populations in American Samoa and the Mariana Islands are at the extreme limits of the species' range. Roost sites have been rendered unsuitable for bats by human intrusion into caves and the use of some caves as garbage dumps. Typhoons have also damaged some caves by blocking entrances or by flooding coastal caves. The loss of roost sites has severely restricted population size, especially in American Samoa, where few caves exist. In addition, small populations and limited numbers of populations place this distinct population segment at great risk of extinction from inbreeding, stochastic events, and storms. Based on immediate threats of a high magnitude, we assigned the American Samoa and Aguijan DPS of the sheath-tailed bat a listing priority number of 3.

Southern Idaho ground Squirrel (*Spermophilus brunneus endemicus*)—See above summary of listing priority changes for discussion on why this species warrants listing. The above summary is based on information contained in our files, including information from the petition received on January 29, 2001.

Washington ground squirrel (*Spermophilus washingtoni*)—See above summary of new species for discussion on why this species warrants listing. The above summary is based on information contained in our files,

including information from the petition received on March 2, 2000.

Birds

Band-rumped storm-petrel, Hawaii DPS (*Oceanodroma castro*)—The following summary is based on information contained in our files, including information from the petition received on May 8, 1989. Breeding season surveys on Hawaii, Maui, and Kauai, as well as reports of fledglings picked up on Hawaii and Kauai, confirm that small populations still exist on these Hawaiian islands. Estimates of the total State-wide population could exceed 100 pairs if viable breeding populations exist on Maui and Hawaii. Although small populations do occur on Maui and Hawaii, we have been unable to determine if they are viable; certainly they are not large and they represent a fraction of pre-historic distribution. Predation by introduced species is believed to have played a significant role in reducing storm-petrel numbers and in exterminating colonies in the Pacific and other locations worldwide. Additionally, artificial lights have had a significant negative effect on fledgling young and, to a lesser degree, adults. Artificial lighting of roadways, resorts, ballparks, residences, and other development in lower elevation areas attracts and confuses night-flying, storm-petrel fledglings, resulting in "fall-out" and collisions with buildings and other objects. Currently, the species is not known to be taken or used for commercial, recreational, scientific, or educational purposes. During surveys on Mauna Loa, Hawaii, in 1992, several caches of Hawaiian dark-rumped petrel carcasses associated with feral cat predation were recorded in areas where band-rumped storm-petrel vocalizations were recorded. Based on imminent threats of a high magnitude, we assigned this Hawaii DPS of the band-rumped storm-petrel a listing priority number of 3.

Gunnison sage grouse (*Centrocercus minimus*)—The following summary is based on information contained in our files, including information from the petition received on January 25, 2000. The range of the Gunnison sage grouse has been reduced to less than 25 percent of its historic range. Size of the range and quality of its habitat have been reduced by direct habitat loss, fragmentation, and degradation from building development, road and utility corridors, fences, energy development, conversion of native habitat to hay or other crop fields, alteration or destruction of wetland and riparian areas, inappropriate livestock management, competition for winter range by big game, and creation of large reservoirs. Other factors affecting the Gunnison sage grouse include fire suppression, overgrazing by elk (*Cervus elaphus*) and deer (*Odocoileus hemionus*), drought, disturbance or death by off-highway vehicles, harassment from people and pets, noise that impairs acoustical quality of leks, genetic depression, pesticides, pollution, and competition for habitat from other species. For greater detail as to why listing is warranted, see 65 FR 82310. We consider all of these threats to be of high magnitude but non-imminent; therefore, we assigned the Gunnison sage grouse a listing priority of 5.

Lesser prairie-chicken (*Tympanuchus pallidicinctus*)—The following summary is based on information contained in our files, including information from the petition received on October 5, 1995. Biologists estimate that the occupied range has declined at least 78% since 1963 and 92% since the 1800s. The most serious threats to the lesser prairie-chicken are loss of habitat from conversion of native rangelands to introduced forages and cultivation, and cumulative habitat degradation caused by severe grazing, fire suppression, herbicides, and structural developments. Many of these threats may exacerbate the normal effects of periodic drought on lesser prairie-chicken populations. In many cases, the remaining suitable habitat has become fragmented by the spatial arrangement of properties affected by these individual threats. We view current and continued habitat fragmentation to be a serious ongoing threat that facilitates the extinction process through several mechanisms: remaining habitat patches may become smaller than necessary to meet the yearlong requirements of individuals and populations; necessary habitat heterogeneity may be lost to large areas of monoculture vegetation and/or homogenous habitat structure; areas between habitat patches may harbor high levels of predators or brood parasites; and the probability of recolonization decreases as the distance between suitable habitat patches expands. Inadequacy of existing regulatory mechanisms to protect lesser prairie-chicken habitat was cited as a potential threat to the species in the Service's 12-month finding. Most occupied lesser prairie-chicken habitat throughout its current range occurs on private land, where States continue to have little authority to protect the species or its habitat, with the exception of setting harvest regulations. Although some federal lands within occupied range have voluntarily accommodated some needs of the lesser prairie-chicken, we believe that the prairie-chicken cannot be sufficiently conserved only on Federal lands to prevent extinction. Concern exists that recreational hunting and harassment are also potential threats to the species. While we do not believe that overutilization through recreational hunting is a primary cause of lesser prairie-chicken decline, we are concerned that small and fragmented populations may be vulnerable to local extirpations caused by repeated harvest pressure, especially near leks. Therefore, we suggest conservative harvest limits and careful oversight of harvest pressure on small and fragmented populations. Similarly, the effect of recreational viewing at leks is unknown, although likely to be minimal if disturbance is avoided by observers remaining in vehicles or blinds until birds disperse naturally from the lek, and observations are limited to robust leks in close proximity to other active leks. Based on all currently available information, we find that ongoing threats to the lesser prairie-chicken, as outlined in the 12-month finding, remain unchanged and lesser prairie-chickens continue to warrant federal listing as threatened. We have determined that the overall magnitude of threats to the lesser prairie-chicken throughout its range are moderate, and that the threats are ongoing, thus they are considered imminent. Consequently, a listing priority of 8 remains appropriate for the species. The magnitude of threats to lesser prairie-chickens rest primarily on the quality of existing habitat. At present, all States within occupied range of the lesser prairie-chicken are committing significant resources via personnel, outreach, and habitat improvement incentives to landowners to recover the species. We recognize that measurable increases in populations often come years after certain habitat improvements occur. We believe that barring prolonged drought, the species' status is improving overall and should continue to improve in future years. Therefore, we cannot at this time justify elevating the listing priority of the lesser prairie-chicken based on magnitude of threats. Finally, we maintain that remaining populations are becoming increasingly fragmented, and therefore vulnerable to local extinctions. This is particularly true for isolated populations of lesser prairie-chickens in the Permian Basin/western panhandle of Texas and areas south of highway 380 in southeastern New Mexico. The impending loss of

these populations is of major concern to us and efforts to address this are ongoing. However, we believe that, given all currently available information, the net benefits of ongoing conservation activities by the States, Federal agencies, and private groups, combined with the recent increase in both range and numbers in Kansas, exceed the latest negative trends of local populations in the southern periphery of occupied range. However, should the current conservation momentum fail to stabilize and increase existing populations throughout significant portions of the remaining range, we will consider elevating the listing priority of the species.

Yellow-billed cuckoo, western continental U.S. DPS (*Coccyzus americanus*)—See above summary of new candidate species for discussion on why this DPS of the yellow-billed cuckoo warrants listing. The above summary is based on information contained in our files, including information from the petition received on February 9, 1998. Also see our 12-month finding (66 FR 38611) published on July 25, 2001.

Reptiles

Louisiana pine snake (*Pituophis ruthveni*)—The following summary is based on information contained in our files, including information from the petition received on July 19, 2000. The Louisiana pine snake historically occurred in portions of west-central Louisiana and extreme east-central Texas. Louisiana pine snakes have not been documented in over a decade in some of the best remaining habitat within their historical range. Surveys and results of Louisiana pine snake trapping and radio-telemetry suggest that extensive population declines and local extirpations have occurred during the last 50 to 80 years. The quality of remaining Louisiana pine snake habitat has been degraded due to logging, fire suppression, short-rotation silviculture, and conversion of habitat to other uses such as grazing. Other factors affecting Louisiana pine snakes include low fecundity (reproductive output), which magnifies other threats and increases the likelihood of local extinctions, and vehicle mortality, which may cause significant impacts to the Louisiana pine snake's population numbers and community structure. Due to non-imminent threats of a high magnitude, we assigned a listing priority number of 5 to this species.

Cagle's map turtle (*Graptemys caglei*)—The following summary is based on information contained in our files, including information from the petition received on April 26, 1991. Cagle's map turtle occurs in scattered sites in seven counties in Texas on the Guadalupe, San Marcos, and Blanco Rivers. Loss and degradation of riverine habitat from large and/or small impoundments (dams or reservoirs) is the primary threat to Cagle's map turtle. One detrimental effect of impoundment is the loss of riffle and riffle/pool transition areas used by males for foraging. Depending on its size, a dam itself may be a partial or complete barrier to Cagle's map turtle movements and could fragment a population. Construction of smaller impoundments and human activities on the river have likely eliminated or reduced foraging and basking habitats. Cagle's map turtle is also vulnerable to over-collecting and target shooting, and current regulations are inadequate to protect this species. Due to non-imminent threats of a high magnitude, we assigned a listing priority number of 5 to this species.

Amphibians

Columbia spotted frog, Great Basin DPS (*Rana luteiventris*)—The following summary is based on information contained in our files, including information from the petition received on May 1, 1989. Recent work by researchers in Idaho and Nevada has documented the loss of historically known sites, reduced numbers of individuals within local populations, and declines in the reproduction of those individuals. Since 1996, extensive surveys throughout southern Idaho and eastern Oregon have led to increases in the number of known spotted frog sites. Although efforts to survey for spotted frogs have increased the available information regarding known species locations, most of these sites support only small numbers of frogs. Extensive monitoring at 10 of the 46 occupied sites since 1997 indicates a decline in the number of adult spotted frogs encountered. All known populations in southern Idaho and in eastern Oregon appear to be functionally isolated. Spotted frog habitat degradation and fragmentation is probably a combined result of past and current influences of heavy livestock grazing, spring alterations, agricultural development, urbanization, and mining activities. Based on imminent threats of high magnitude, we assigned a listing priority number of 3 to this DPS of the Columbia spotted frog.

Oregon spotted frog, West Coast DPS (*Rana pretiosa*)—The following summary is based on information contained in our files, including information from the petition received on May 4, 1989. Based on surveys of historic sites, this DPS of the Oregon spotted frog is now absent from at least 76 percent of its former range. The west coast DPS may be absent from as much as 90 percent of its former range because the collections of historic specimens did not adequately reflect its actual geographic and elevational range. Threats to the species' habitat include development, livestock grazing, introduction of nonnative plant species, changes in hydrology due to construction of dams and alterations to seasonal flooding, poor water quality, and water contamination. Additional threats to the species are predation by nonnative fish and introduced bullfrogs. Based on these threats, we assigned this DPS of Oregon spotted frog a listing priority number of 3.

California tiger salamander (entire population except where listed) (*Ambystoma californiense*)—The following summary is based on information contained in our files, including information from the petition received on February 26, 1992. The California tiger salamander has been eliminated from 54 percent of its historic breeding sites, and has lost an estimated 65 percent of its habitat. The distribution of the species is now discontinuous and fragmented throughout its range. All of the estimated seven genetic populations of this species have declined significantly because of urban and agricultural development, and other human-caused factors in breeding and upland habitat used for estivation and migration. Existing regulatory mechanisms are inadequate to protect California tiger salamander habitat. Based on non-imminent threats of a high magnitude, we assigned this species a listing priority number of 5.

Boreal toad, Southern Rocky Mountains DPS (*Bufo boreas boreas*)—The following summary is based on information contained in our files, including information from the petition received on September 30, 1993. Boreal toads of the Southern Rocky Mountain DPS were once common throughout much of the high elevations in Colorado, in the Snowy and Sierra Madre Ranges of southeast Wyoming, and at three breeding localities at the southern periphery of their range in the San Juan Mountains of New Mexico. In the late 1980s boreal toads were found to be absent from 83 percent of breeding localities in Colorado and 94 percent of breeding localities in Wyoming previously known to contain toads. In 1999, the number of known breeding localities increased to 50, with 1 in Wyoming, none in New Mexico, and the remaining sites in Colorado. This increase in known breeding localities, however, was likely due to survey efforts rather than expansion of the population. Land use in boreal toad habitat includes recreation, timber harvesting, livestock grazing, and watershed alteration activities. Though declines in toad numbers have not been directly linked to habitat alteration, activities that destroy, modify, or curtail habitat likely contribute to the continued decline in toad numbers. The current and future use of water rights in the Southern Rocky Mountains may impact boreal toads. Increased demands on limited water resources can result in water level drops in reservoirs that toads are using. Transferring rights from one user group to another (e.g., agricultural to municipal) also could reduce toad habitat, particularly if dewatering of reservoir sites resulted from these transfers. Additional threats to the boreal toad include a chytrid fungus, which likely caused the boreal toad to decline in the 1970s and continues to cause declines. Based on these threats, we assigned this DPS of boreal toad a listing priority number of 3.

Fishes

Gila chub (*Gila intermedia*)—The following summary is based on information contained in our files, including information from the petition received on June 10, 1998. The Gila chub has been extirpated or reduced in numbers and distribution in the majority of its historical range. Over 70 percent of the Gila chub's habitat has been degraded or destroyed, and much of it is unrecoverable. Of the 15 remaining populations, most are small, isolated, and threatened, and only one population is considered secure. Wetland habitat degradation and loss is a major threat to the Gila chub. Human activities such as groundwater pumping, surface water diversions, impoundments, channelization, improper livestock grazing, vegetation manipulation, agriculture, mining, road building, nonnative species introductions, urbanization, and recreation all contribute to riparian loss and degradation in southern Arizona, thereby, threatening this species. Based on imminent threats of a high magnitude, we assigned this species a listing priority number of 2. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact that this species has a listing priority number of 2, we recently entered into a settlement agreement on October 2, 2001 (*Center for Biological Diversity, et al.* v. *Norton*, Civ. No. 01–2063 (JR) (D.D.C.)) that will require us to deliver by July 31, 2002, a proposed rule to the **Federal Register** for publication.

Arctic grayling, upper Missouri River DPS (*Thymallus arcticus*)—The following summary is based on information contained in our files, including information from the petition received on October 2, 1992. Presently, the only self-sustaining remnant of the indigenous fluvial Arctic grayling population exists in the Big Hole River, estimated to represent 5 percent or less of the historic range for this species in Montana and Wyoming. Reestablishment efforts are underway in four streams within the historic range. The grayling faces threats primarily from a decrease in available habitat as a result of dewatering of streams for irrigation and stock water, ongoing drought conditions, and habitat degradation from dams and reservoirs. Landowners and other interests are implementing actions to ensure adequate water conditions in the Big Hole River. Additionally, predation on or competition with Arctic grayling by nonnative trout are thought to be factors limiting grayling populations. Due to imminent threats of a low to moderate magnitude, we assigned this DPS of Arctic grayling a listing priority number of 9.

Snails

Koster's tryonia snail (*Tryonia kosteri*)—The following summary is based on information contained in our files, including information from the petition received on November 20, 1985. Koster's tryonia snail is an aquatic species known only from North Spring (private land) and four spring/seepage areas on Bitter Lake National Wildlife Refuge in Chaves County, New Mexico. This snail was found at several other springs in the Roswell area, but these habitats are no longer suitable due to groundwater pumping. Koster's tryonia snail is imperilled by local and regional ground water depletion, habitat destruction, direct manipulation of lotic habitat (moving water), surface and ground water pollution such as sewage, pesticides, and oil and gas industry operations. The geographically restricted distribution of Koster's tryonia snail makes the species vulnerable to human-caused or natural events that could destroy a significant portion of the species' remaining populations and habitat. Because of these threats, we assigned this species a listing priority number of 2. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact that this species has a listing priority number of 2, we recently entered into a settlement agreement on October 2, 2001 (*Center for Biological Diversity, et al.* v. *Norton*, Civ. No. 01–2063 (JR) (D.D.C.)), that will require us to deliver by February 6, 2002, a proposed rule to the **Federal Register** for publication.

Pecos assiminea snail (*Assiminea pecos*)—The following summary is based on information contained in our files, including information from the petition received on November 20, 1985. The Pecos assiminea snail is a semiaquatic mollusc known from two spring/seepage areas on Bitter Lake National Wildlife Refuge in Chaves County, New Mexico; Diamond Y Springs complex in Pecos County, Texas; and East Sandia Spring in Reeves County, Texas. This snail was found at other springs in the Roswell, New Mexico, area, but these habitats are no longer suitable due to groundwater pumping. The Pecos assiminea snail is imperilled by habitat destruction, local and regional ground water depletion, direct manipulation of lotic habitat, and surface and ground water pollution, such as sewage, pesticides, and oil and gas industry operations. Steps are needed to protect and maintain the vegetative cover in which the snail lives. Based on imminent threats of a high magnitude, we assigned this species a listing priority of 2. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact that this species has a listing priority number of 2, we recently entered into a settlement agreement on October 2, 2001 (*Center for Biological Diversity, et al.* v. *Norton*, Civ. No. 01–2063 (JR) (D.D.C.)), that will require us to deliver by February 6, 2002, a proposed rule to the **Federal Register** for publication.

Chupadera springsnail (*Pyrgulopsis chupaderae*)—The following summary is based on information contained in our files, including information from the petition received on November 20, 1985. This aquatic species is endemic to Willow Spring on the Willow Spring Ranch (formerly Cienega Ranch) at the south end of the Chupadera Mountains in Socorro County, New Mexico. The Chupadera springsnail has been documented from two hillside groundwater discharges that flow through grazed areas among rhyolitic gravels containing sand, mud, and hydrophytic plants. Regional and local groundwater depletion, springrun dewatering, and riparian habitat degradation represent the principal threats. The survival and recovery of the Chupadera springsnail is contingent upon protection of the riparian corridor immediately adjacent to Willow Spring,

and the availability of perennial, oxygenated flowing water within the species' thermal range. Existing regulatory mechanisms are not sufficient to protect this species. New Mexico State law provides limited protection to the Chupadera springsnail, but this law does not provide for habitat protection. Because these threats are imminent but of a low to moderate magnitude, we assigned this species a listing priority number of 8.

Gila springsnail (*Pyrgulopsis gilae*)—The following summary is based on information contained in our files, including information from the petition received on November 20, 1985. The Gila springsnail is an aquatic species known from 13 populations in New Mexico. The long-term persistence of the Gila springsnail is contingent upon protection of the riparian corridor immediately adjacent to springhead and springrun habitats, thereby ensuring the maintenance of perennial, oxygenated flowing water within the species' required thermal range. Sites on both private and Federal lands are subject to uncontrolled recreational use and livestock grazing (Mehlhop 1993), thus rendering the long-term survival of the Gila springsnail questionable. Natural events such as drought, forest fire, sedimentation, and flooding; wetland habitat degradation by recreational bathing in thermal springs; and poor watershed management practices such as overgrazing and inappropriate silviculture, represent the primary threats to the Gila springsnail. Fire suppression and retardant chemicals have potentially deleterious effects on this species. Existing regulatory mechanisms are not sufficient to protect the Gila springsnail. New Mexico State law provides limited protection to the Gila springsnail, but this law does not provide for habitat protection. Based on these non-imminent threats of a low magnitude, we assigned this species a listing priority number of 11 to this species.

New Mexico springsnail (*Pyrgulopsis thermalis*)—The following summary is based on information contained in our files, including information from the petition received on November 20, 1985. The New Mexico springsnail is an aquatic species known from only two separate populations associated with a series of spring-brook systems along the Gila River in the Gila National Forest in Grant County, New Mexico. The long-term persistence of the New Mexico springsnail is contingent upon protection of the riparian corridor immediately adjacent to springhead and springrun habitats, thereby ensuring the maintenance of perennial, oxygenated flowing water within the species' required thermal range. While the New Mexico springsnail populations may be stable, the sites inhabited by the species are subject to uncontrolled recreational use and livestock grazing. Wetland habitat degradation via recreational use and overgrazing in or near the thermal springs and/or poor watershed management practices represent the primary threats to the New Mexico springsnail. Natural events such as drought, forest fire, sedimentation, and flooding may further imperil populations. Additionally, fire suppression and retardant chemicals have potentially deleterious effects on this species. Existing regulatory mechanisms are also not sufficient to protect the New Mexico springsnail. New Mexico State law provides limited protection to the New Mexico springsnail, but this law does not provide for habitat protection. Based on these non-imminent threats of a low magnitude, we assigned this species a listing priority number of 11.

Roswell springsnail (*Pyrgulopsis roswellensis*)—The following summary is based on information contained in our files, including information from the petition received on November 20, 1985. The Roswell springsnail is an aquatic species only known from North Spring (private land) and three spring/seepage areas on Bitter Lake National Wildlife Refuge in Chaves County, New Mexico. This snail was found at several other springs in the Roswell area, but these habitats have become unsuitable due to groundwater pumping. The Roswell springsnail is imperilled by local and regional ground water depletion, habitat destruction, direct manipulation of lotic habitat (moving water), surface and ground water pollution (such as sewage), pesticides, and oil and gas industry operations. Existing regulatory mechanisms are not sufficient to protect the Roswell springsnail. New Mexico State law provides limited protection to the Roswell springsnail, but this law does not provide for habitat protection. Due to imminent threats of a high magnitude, we assigned this species a listing priority number of 2. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact that this species has a listing priority number of 2, we recently entered into a settlement agreement on October 2, 2001 (*Center for Biological Diversity, et al.* v. *Norton*, Civ. No. 01–2063 (JR) (D.D.C.)), that will require us to deliver by February 6, 2002, a proposed rule to the **Federal Register** for publication.

Insects

Carson wandering skipper (*Pseudocopaeodes eunus obscurus*)—The following summary is based on information contained in our files, including information from the petition received on November 14, 2000. We believe that this skipper has been extirpated from the Carson Hot Springs site. As a result, this subspecies currently occurs at three locations in two areas: Pyramid and Honey Lakes. Threats at the Pyramid Lake site include grazing and potential future water development. At the two Honey Lake sites, the invasion of nonnative plant species such as whitetop (*Lepidium latifolium*), which outcompetes native nectar plants, threatens the skipper. Grazing in this area may also pose a threat to the skipper's habitat. Additional potential future threats include exportation of water from Honey Lake to other locations. Due to imminent threats of a high magnitude, we assigned this subspecies a listing priority number of 3. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact that this species has a listing priority number of 3, we recently entered into a settlement agreement on October 2, 2001 (*Center for Biological Diversity, et al.* v. *Norton*, Civ. No. 01–2063 (JR) (D.D.C.)), that will require us to deliver by November 23, 2001, a decision on whether to emergency list to the **Federal Register** for publication.

Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albinssima*)—The following summary is based on information contained in our files, including information from the petition received on April 21, 1994. The Coral Pink Sand Dunes (CPSD) tiger beetle is known to occur only at CPSD, about 7 miles west of Kanab, Kane County, in south-central Utah. It is restricted mostly to a small part of the approximately 13-kilometer (8-mile) long dune field, situated at an elevation of about 1,820 meters (6,000 feet). The subspecies' habitat is being adversely impacted by ongoing recreational off-road vehicle (ORV) use. The ORV activity is destroying and degrading the species' habitat, especially the inter-dunal swales used by the larval population. Having the greatest abundance of suitable prey species, the inter-dunal swales are the most biologically productive areas in the CPSD ecosystem. The continued survival of the species depends on the preservation of the species and its habitat at its only breeding reproductive site and the probable need to establish

or reestablish additional reproductive subpopulations in other suitable habitat sites within CPSD. The species population is also vulnerable to overcollecting by professional and hobby tiger beetle collectors, although quantification of this threat is difficult without continuous monitoring of the species population. Based on imminent threats of a low to moderate magnitude, we assigned this subspecies a listing priority number of 9.

Flowering plants

Christ's paintbrush (*Castilleja christii*)—The following summary is based on information contained in our files, including information from the petition received on January 2, 2001. *Castilleja christii* is endemic to subalpine meadow and sagebrush habitats in the upper elevations of the Albion Mountains, Cassia County, Idaho. The single population of this species, which covers only 81 hectares (ha) (200 acres (ac)), is restricted to the summit of Mount Harrison. The population appears to be stable, although the species is threatened by a variety of activities including frequent unauthorized off-road vehicle use that results in erosion of the plant's habitat and mortality of individual plants. Livestock grazing can adversely affect *C. christii* by trampling and/or consuming plants, which results in reduced reproductive success; grazing occurred in the area where *C. christii* exists during 1999, but not in 2000. In addition, road maintenance activities and trampling by hikers potentially impact this species. Because the threats are of a low to moderate magnitude and non-imminent, we assigned this species a listing priority number of 11.

San Fernando Valley spineflower (*Chorizanthe parryi fernandina*)—The following summary is based on information contained in our files, including information from the petition received on December 14, 1999. *Chorizanthe parryi* var. *fernandina* was thought to be extinct, but its rediscovery was disclosed in the late spring of 1999. The plant currently is known from two disjunct localities. The first locality is in the southeastern portion of Ventura County, on a site approved for development, where it was found and identified by consultants employed by the developer. The second is located in southwestern Los Angeles County on a site with approved development plans. As currently planned, it is likely that construction of proposed development will extirpate the first population in Ventura County. It is unclear how the development in Los Angeles will affect that population. The majority of the historical collections of this plant, from the greater Los Angeles metropolitan area, were made from areas where urban, agricultural, and industrial development have replaced native habitats. During the last few decades, numerous field botanists have been unable to locate the species, even where historically recorded, largely due to the alteration and loss of suitable habitat. San Fernando Valley spineflower is also threatened by invasive nonnative plants, including grasses, that potentially fragment suitable habitat; displace it from available habitat; compete for light, water, and nutrients; and reduce survival and establishment. This plant is particularly vulnerable to extinction due to its two isolated populations. Species with few populations and disjunct distributions are vulnerable to naturally occurring, random events. Because of imminent threats of a high magnitude, we assigned a listing priority number of 3 to this plant.

Slick spot peppergrass (*Lepidium papilliferum*)—The following summary is based on information contained in our files, including information from the petition received on April 9, 2001. *Lepidium papilliferum* is an annual or biennial that occurs in sagebrush-steppe habitats at approximately 670 meters (m) (2,200 feet (ft)) to 1,615 m (5,300 ft) elevation in southwestern Idaho. The total amount of currently occupied *L. papilliferum* habitat is less than 31.8 ha (78.4 ac), and the amount of high-quality occupied habitat for this species is less than 1.3 ha (3.3 ac). The documented extirpation rate for this taxon is the highest known of any Idaho rare plant species. This species is threatened by a variety of activities including urbanization, gravel mining, irrigated agriculture, habitat degradation due to cattle and sheep grazing, fire and fire rehabilitation activities, and continued invasion of habitat by nonnative plant species. Because the majority of populations are extremely small and existing habitat is fragmented by agricultural conversion, fire, grazing, roads, and urbanization, local extirpation is a threat to this species. Based on immediate threats of a high magnitude, we assigned this species a listing priority number of 2.

White River beardtongue (*Penstemon scariosus albifluvis*)—The following summary is based on information contained in our files, including information from the petition received on October 27, 1983. The White River beardtongue is restricted to calcareous soils derived from oil shale barrens of the Green River Formation in the Uinta Basin of northeastern Utah and adjacent Colorado. Most of the occupied habitat of the White River beardtongue is within developed and expanding oil and gas fields. Several wells and access roads are within the species' occupied habitat. The location of the species' habitat exposes it to destruction from off-road vehicle use, and road, pipeline, and well-site construction in connection with oil and gas development. With such a small population and limited occupied habitat, any destruction, modification, or curtailment of the habitat would have a highly negative impact on the species. Additionally, the species is heavily grazed by wildlife and livestock and is vulnerable to livestock trampling. Currently, no Federal or State laws specifically protect the White River beardtongue. Based on non-imminent threats of a high magnitude, we assigned this subspecies a listing priority number of 6.

Tahoe yellow cress (*Rorippa subumbellata*)—The following summary is based on information contained in our files, including information from the petition received on December 27, 2000. Tahoe yellow cress is a small, perennial herb known only from the shores of Lake Tahoe in California and Nevada. Based on presence/absence information, it has been determined that the Tahoe yellow cress has been extirpated from 10 of 52 historic locations. Tahoe yellow cress occurs in a dynamic environment affected by both natural processes and human activities. Under natural conditions, Tahoe yellow cress is apparently tolerant of the dynamic nature of its habitat and is adapted for survival in a disturbance regime. However, due to the combination of unnatural lake level fluctuation due to dam operations and other human activities, habitat conditions are no longer considered natural. Heavy recreational use of the beaches may result in the direct loss of individual plants as well as the degradation of habitat through compaction and mixing of sandy substrates. Based on imminent threats of a high magnitude, we assigned this species a listing priority number of 2.

Petition To Reclassify Species Already Listed

We have also previously made warranted but precluded findings on five petitions that sought to reclassify to endangered status species already listed as threatened. Because these species are already listed, they are not technically candidates for listing and are not included in Table 1. However, this notice also constitutes the recycled petition findings for these species. We find that reclassification to endangered status is currently warranted but

precluded by work identified above (see Petition of a Candidate Species) for the:

(1) North Cascades ecosystem grizzly bear (*Ursus arctos horribilis*) DPS (Region 6) (see 64 FR 30453 for a discussion on why reclassification is warranted);

(2) Cabinet-Yaak grizzly bear DPS (Region 6) (see 64 FR 26725 for a discussion on why reclassification is warranted);

(3) Selkirk grizzly bear DPS (Region 6) (see 64 FR 26725 for a discussion on why reclassification is warranted);

(4) Spikedace (*Meda fulgida*) (Region 2) (see 59 FR 35303 for a discussion on why reclassification is warranted); and

(5) Loach minnow (*Tiaroga cobitis*) (Region 2) (see 59 FR 35303 for a discussion on why reclassification is warranted).

Progress in Revising the Lists

As described in section 4(b)(3)(B)(iii) of the Act, in order for us to make a warranted but precluded finding on a petitioned action, we must be making expeditious progress to add qualified species to the Lists and to remove from the Lists species for which the protections of the Act are no longer necessary. This notice describes our progress in revising the lists during the last two fiscal years since our October 25, 1999 publication of the last CNOR. We intend to publish these descriptions annually.

Our progress in listing and delisting qualified species during fiscal years 1999 and 2000 is represented by the publication in the **Federal Register** of final listing actions for 52 species, proposed listing actions for 33 species, final delisting actions for 2 species, and proposed delisting actions for 3 species. In addition, we proposed critical habitat for 174 listed species, and finalized critical habitat for 21 listed species. Given the Service's limited budget for implementing section 4, these achievements constitute expeditious progress.

Request for Information

We request you submit any further information on the species named in this notice as soon as possible or whenever it becomes available. We are particularly interested in any information:

(1) Indicating that we should add a species to the list of candidate species;

(2) Indicating that we should remove a species from candidate status;

(3) Recommending areas that we should designate as critical habitat for a species, or indicating that designation of critical habitat would not be prudent for a species;

(4) Documenting threats to any of the included species;

(5) Describing the immediacy or magnitude of threats facing candidate species;

(6) Pointing out taxonomic or nomenclature changes for any of the species;

(7) Suggesting appropriate common names; or

(8) Noting any mistakes, such as errors in the indicated historical ranges.

Submit your comments regarding a particular species to the Regional Director of the Region identified as having the lead responsibility for that species. The regional addresses follow:

Region 1. California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands.
Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6158).

Region 2. Arizona, New Mexico, Oklahoma, and Texas.
Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, New Mexico 87102 (505/248–6920).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.
Regional Director (TE), U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056 (612/713–5334).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.
Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (404/679–4156).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.
Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589 (413/253–8615).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.
Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486 (303/236–7400).

Region 7. Alaska.
Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199 (907/786–3505).

Our practice is to make comments, including names and home addresses of respondents, available for public inspection. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. In some circumstances, we can also withhold from the public record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Authority

This notice of review is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: October 17, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
Mammals						
PT	3	R1	Bat, Mariana fruit	*Pteropus mariannus mariannus.*	Pteropodidae	Western Pacific Ocean U.S.A. (GU, MP).
C*	3	R1	Bat, sheath-tailed (American Samoa, Aguijan DPS).	*Emballonura semicaudata.*	Emballonuridae	U.S.A. (AS, GU, MP), Caroline Islands .
C*	3	R1	Fox, island (Santa Catalina, Santa Cruz, San Miguel, Santa Rosa Islands).	*Urocyon littoralis catalinae, U. l. santacruzae, U. l. littoralis, and U. l. santarosae.*	Canidae	U.S.A. (California).
C*	3	R7	Otter, northern sea (Aleutian Islands DPS).	*Enhydra lutris kenyoni.*	Mustelidae	U.S.A. southwest AK).
C	6	R1	Pocket Gopher, Mazama	*Thomomys mazama*	Geomyidae	U.S.A. (Washington).
C*	8	R6	Prairie dog, black-tailed	*Cynomys ludovicianus.*	Sciuridae	U.S.A. (AZ, CO, KS, MT, NE, NM, ND, OK, SD, TX, WY), Canada, Mexico.
PE	3	R1	Shrew, Buena Vista Lake	*Sorex ornatus relictus.*	Soricidae	U.S.A. (CA).
C	6	R1	Squirrel, Coachella Valley round-tailed.	*Spermophilus tereticaudus chlorus.*	Soricidae	U.S.A. (CA).
C*	3	R1	Squirrel, Southern Idaho ground	*Spermophilus brunneus endemicus.*	Sciuridae	U.S.A. (ID).
C*	2	R1	Squirrel, Washington ground	*Spermophilus washingtoni.*	Sciuridae	U.S.A. (WA, OR).
Birds						
C	6	R1	Crake, spotless	*Porzana tabuensis*	Rallidae	U.S.A. (AS), Figi, Marquesas, Polynesia, Philippines, Australia, Society Islands, Tonga, Western Samoa.
C	5	R1	Creeper, Kauai	*Oreomystis bairdi*	Fringillidae	U.S.A. (HI).
C*	6	R1	Cuckoo, yellow-billed (Western cont. U.S. DPS).	*Coccyzus americanus.*	Cucilidae	U.S.A. (AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, WY)
C	6	R1	Dove, friendly ground	*Gallicolumba stairi*	Columbidae	U.S.A. (AS), Fiji, Tonga, Western Samoa.
C	6	R1	Dove, many-colored fruit	*Ptilinopus perousii perousii.*	Columbidae	U.S.A. (AS).
C*	5	R6	Grouse, Gunnison sage	*Centrocercus minimus.*	Phasianidae	U.S.A. (AZ, CO, KS, OK, NM, UT).
C*	9	R1	Grouse, western sage (Washington DPS = Columbia basin).	*Centrocercus urophasianus phaios.*	Phasianidae	U.S.A. (WA).
C	6	R1	Horned lark, streaked	*Eremophila alpestris strigata.*	Alaudidae	U.S.A. (WA, OR), Canada (BC).
PT	2	R6	Plover, mountain	*Charadrius montanus*	Charadriidae	U.S.A. (western), Canada, Mexico.
C*	8	R2	Prairie-chicken, lesser	*Tympanuchus pallidicinctus.*	Phasianidae	U.S.A. (CO, KA, NM, OK, TX).
C*	3	R1	Storm-petrel, band-rumped (Hawaii DPS).	*Oceanodroma castro*	Hydrobatidae	U.S.A. (HI).
C	5	R4	Warbler, elfin woods	*Dendroica angelae*	Emberizidae	U.S.A. (PR).
PE	2	R1	White-eye, Rota bridled	*Zosterops rotensis*	Zosteropidae	U.S.A. (MP).
Reptiles						
C	2	R2	Lizard, sand dune lizard	*Sceloporus arenicolus.*	Iguanidae	U.S.A. (TX, NM).
C	9	R3	Snake, eastern Massasauga	*Sistrurus catenatus catenatus..*	Viperidae U.S.A. (IA, IL, IN, MI, MO, MN, NY, OH, PA, WI), Canada (Ont.)..	
C	6	R4	Snake, black pine	*Pituophis*	Colubridae melanoleucus ssplodingi..	U.S.A. (AL, LA, MS).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
C*	5	R4	Snake, Louisiana pine	*Pituophis ruthveni*	Colubridae	U.S.A. (LA, TX).
C*	5	R2	Turtle, Cagle's map	*Graptemys caglei*	Emydidae	U.S.A. (TX).
C	3	R2	Turtle, Sonoyta mud	*Kinosternon sonoriense longifemorale.*	Kinosternidae	U.S.A. (AZ), Mexico.
			Amphibians			
PT	2	R2	Frog, Chiricahua leopard	*Rana chiricahuensis*	Ranidae	U.S.A. (AZ, NM), Mexico.
C*	3	R1	Frog, Columbia spotted (Great Basin DPS).	*Rana luteiventris*	Ranidae	U.S.A. (ID, NV, OR).
PE	2	R4	Frog, Mississippi gopher (wherever found west of Mobile and Tombigbee Rivers in AL, MS, and LA.	*Rana capito sevosa*	Ranidae	U.S.A. (AL, LA, MS).
PE	N/A	R1	Frog, mountain yellow-legged (southern California DPS).	*Rana muscosa*	Ranidae	U.S.A. (CA, NV) including San Diego, Orange, Riverside, San Bernardino, and Los Angeles Counties.
C*	3	R1	Frog, Oregon spotted (West Coast DPS).	*Rana pretiosa*	Ranidae	U.S.A (CA, OR, WA), Canada (BC).
C	6	R4	Hellbender, Ozark	*Cryptobranchus alleganiensis bishopi.*	Crytobranchidae	U.S.A. (AR, MO).
C*	5	R1	Salamander tiger California (entire except where listed).	*Ambystoma californiense.*	Ambystomatidae	U.S.A. (CA).
C	2	R2	Salamander, Georgetown	*Eurycea naufragia*	Plethodontidae	U.S.A. (TX).
C*	3	R6	Toad, boreau (Southern Rocky Mountains DPS).	*Bufo boreas boreas*	Bufonidae	U.S.A. (CO, NM, WY).
C	5	R4	Waterdog, black warrior	*Necturus alabamensis.*	Proteidae	U.S.A. (AL).
			Fishes			
PE	3	R1	Chub, Cowhead Lake tui	*Gila bicolor vaccaceps.*	Cyprinidae	U.S.A. (CA).
C*	2	R2	Chub, Gila	*Gila intermedia*	Cyprinidae	U.S.A. (AZ, NM), Mexico.
C	5	R6	Darter, Arkansas	*Etheostoma cragini*	Percidae	U.S.A. (AR, CO, KS, MO, OK).
C	6	R4	Darter, Cumberland johnny	*Etheostoma nigrum susanae.*	Percidae	U.S.A. (KY, TN).
PE	N/A	R4	Darter. Vermilion	*Etheostoma chermocki.*	Percidae	U.S.A. (AL).
C	2	R4	Darter, yellowcheek	*Etheostoma moorei*	Percidae	U.S.A. (AK).
C	5	R4	Darter. Pearl	*Percina aurora*	Percidae	U.S.A. (LA, MS)
C*	9	R6	Grayling, Arctic (upper Missouri River DPS).	*Thymallus arcticus*	Salmonidae	U.S.A. (MT, WY)
C	3	R2	Sucker, Zuni bluehead	*Catostomus discobolus yarrowi.*	Catostomidae	U.S.A. (AZ, NM)
PT	6	R1	Trout, coastal cutthroat (southwestern WA/Columbia River DPS).	*Oncorhynchus clarki clarki.*	Salmonidae	U.S.A. (AK, CA, OR, WA), Canada.
PT	N/A	R1	Trout, Dolly Varden	*Salvelinus malma*	Salmonidae	U.S.A. (AK, OR, WA), Canada, East Asia.
			Clams			
C	5	R4	Clubshell, Alabama	*Pleurobema troshelianum.*	Unionidae	U.S.A. (AL, GA, TN).
C	5	R4	Clubshell, painted	*Pleurobema chattanoogaense.*	Unionidae	U.S.A. (AL, GA, TN).
C	2	R2	Hornshell, Texas	*Popenaias popei*	Unionidae	U.S.A. (NM, TX), Mexico.
C	5	R4	Kidneyshell, fluted	*Ptychobranchus subtentum.*	Unionidae	U.S.A. (AL, KY, TN, VA.
C	5	R4	Mucket, Neosho	*Lampsilis rafinesqueana.*	Unionidae	U.S.A. (AR, KS, MO, OK).
C	2	R4	Pearlshell, Alabama	*Margaritifera marrianae.*	Margaritiferidae	U.S.A. (AL).
C	5	R4	Pearlymussel, slabside	*Lexingtonia dolabelloides.*	Unionidae	U.S.A. (AL, KY, TN, VA).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
C	5	R4	Pigtoe, Georgia	*Pleurobema hanleyanum.*	Unionidae	U.S.A. (AL, GA, TN).
			Snails			
C	1	R3	Cavesnail, Tumbling Creek	*Antrobia culveri*	Hydrobiidae	U.S.A. (MO).
C	9	R6	Mountainsnail, Ogden Deseret	*Oreohelix, perpherica wasatchensis.*	Oreohelicidae	U.S.A. (UT).
C	2	R6	Pondsnail, Bonneville	*Stagnicola bonnevillensis.*	Lymnaeidae	U.S.A. (UT).
C	5	R4	Rocksnail, Georgia	*Leptoxis downei*	Pleuroceridae	U.S.A. (GA, AL).
C	2	R1	Sisi	*Ostodes strigatus*	Potaridae	U.S.A. (AS).
C	2	R2	Snail, Diamond Y Spring	*Tryonia adamantina*	Hydrobiidae	U.S.A. (TX).
C	2	R1	Snail, fragile tree	*Samoana fragilis*	Partulidae	U.S.A. (GU, MP).
C	2	R1	Snail, Guam tree	*Partula radiolata*	Partulidae	U.S.A. (GU).
C	2	R1	Snail, Humped tree	*Partula gibba*	Partulidae	U.S.A. (GU, MP).
C*	2	R2	Snail, Koster's tryonia	*Tryonia kosteri*	Hydrobiidae	U.S.A. (NM).
C	2	R1	Snail, Lanai tree	*Partulina semicarinata.*	Achatinellidae	U.S.A. (HI).
C	2	R1	Snail, Lanai tree	*Partulina variabilis*	Achatinellidae	U.S.A. (HI).
C	2	R1	Snail, Langford's tree	*Partula langfordi*	Partulidae	U.S.A. (MP).
C*	2	R2	Snail, Pecos	*Assiminea pecos*	Assimineidae	U.S.A. (NM, TX), Mexico.
C	2	R2	Snail, Phantom cave	*Cochliopa texana*	Hydrobiidae	U.S.A. (TX).
C	2	R1	Snail, Tutuila tree	*Eua zebrina*	Partulidae	U.S.A. (AS).
C*	8	R2	Springsnail, Chupadera	*Pyrgulopsis chupaderae.*	Hydrobiidae	U.S.A. (NM).
C*	11	R2	Springsnail, Gila	*Pyrgulopsis gilae*	Hydrobiidae	U.S.A. (NM).
C	2	R2	Springsnail, Gonzales	*Tryonia circumtriata (=stocktonensis).*	Hydrobiidae	U.S.A. (TX).
C	5	R2	Springsnail, Huachuca	*Pyrgulopsis thompsoni.*	Hydrobiidae	U.S.A. (AZ), Mexico.
C*	11	R2	Springsnail, New Mexico	*Pyrgulopsis thermalis*	Hydrobiidae	U.S.A. (NM).
C	2	R2	Springsnail, Page	*Pyrgulopsis morrisoni*	Hydrobiidae	U.S.A. (AZ).
C	2	R2	Springsnail, Phantom	*Tryonia cheaturni*	Hydrobiidae	U.S.A. (TX).
C*	2	R2	Springsnail, Roswell	*Pyrgulopsis roswellensis.*	Hydrobiidae	U.S.A. (NM).
C	2	R2	Springsnail, Three Forks	*Pyrgulopsis trivialis*	Hydrobiidae	U.S.A. (AZ).
C	5	R1	Tree snail, Newcomb's	*Newcombia cumingi*	Achatinellidae	U.S.A. (HI).
			Insects			
C	5	R5	Beetle, Holsinger's cave	*Pseudanophthalmus holsingeri.*	Carabidae	U.S.A. (VA).
C	11	R6	Beetle, warm springs zaitzevian riffle.	*Zaitzevia thermae*	Elmidae	U.S.A. (MT).
C	2	R1	Bug, Wekiu	*Nysius wekiuicola*	Lygaeidae	U.S.A. (HI).
C	3	R1	Butterfly, Mariana eight-spot	*Hypolimnas octucula mariannensis.*	Nymphalidae	U.S.A. (GU, MP).
C	2	R1	Butterfly, Mariana wandering	*Vagrans egestina*	Nymphalidae	U.S.A. (GU, MP).
PE	N/A	R2	Butterfly, Sacramento Mountains checkerspot.	*Euphydryas anicia cloudcrofti.*	Nymphalidae	U.S.A. (NM).
C	6	R1	Butterfly, Whulge checkerspot	*Euphydryas editha taylor.*	Nymphalidae	U.S.A. (OR, WA) Canada (BC).
C	5	R4	Caddisfly, Sequatchie	*Glyphopsyche sequatchie.*	Limnephilidae	U.S.A. (TN).
C	5	R4	Cave beetle, beaver	*Pseudanophthalmus major.*	Carabidae	U.S.A. (KY).
C	5	R4	Cave beetle, Clifton	*Pseudanophthalmus caecus.*	Carabidae	U.S.A. (KY).
C	5	R4	Cave beetle, icebox	*Pseudanophthalmus frigidus.*	Carabidae	U.S.A. (KY).
C	5	R4	Cave beetle greater Adams	*Pseudanophthalmus pholeter.*	Carabidae	U.S.A. (KY).
C	5	R4	Cave beetle, inquirer	*Pseudanophthalmus inquistor.*	Carabidae	U.S.A. (TN).
C	5	R4	Cave beetle, lesser Adams	*Pseudanophthalmus cataryctos.*	Carabidae	U.S.A. (KY).
C	5	R4	Cave beetle, Louisville	*Pseudanophthalmus troglodytes.*	Carabidae	U.S.A. (KY).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
C	5	R4	Cave beetle, surprising	*Pseudanophthalmus inexpectatus.*	Carabidae	U.S.A. (KY).
C	5	R4	Cave beetle, Tatum	*Pseudanophthalmus parvus.*	Carabidae	U.S.A. (KY).
C	9	R1	Damselfly, blackline Hawaiian	*Megalagrion nigrohamatum nigrolineatum.*	Coenagrionidae	U.S.A. (HI).
C	2	R1	Damselfly, crimson Hawaiian	*Megalagrion leptodemus.*	Coenagrionidae	U.S.A. (HI).
C	2	R1	Damselfly, flying earwig Hawaiian.	*Megalagrion nesiotes*	Coenagrionidae	U.S.A. (HI).
C	2	R1	Damselfly, oceanic Hawaiian	*Megalagrion oceanicum.*	Coenagrionidae	U.S.A. (HI).
C	8	R1	Damselfly, orangeblack Hawaiian.	*Megalagrion xanthomelas.*	Coenagrionidae	U.S.A. (HI).
C	2	R1	Damselfly, Pacific Hawaiian	*Megalagrion pacificum.*	Coenagrionidae	U.S.A. (HI).
C	5	R1	Gall fly, Po'olanui	*Phaeogramma sp.*	Tephritidae	U.S.A. (HI).
C	1	R1	Moth, fabulous green sphinx	*Tinostoma smaragditis.*	Sphingidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila aglaia*	Drosophilidae	U.S.A. (HI).
C	2	R1	Pomace fly, [unnamed]	*Drosophila attigua*	Drosophilidae	U.S.A. (HI).
C	2	R1	Pomace fly, [unnamed]	*Drosophila Digressa*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila heteroneura.*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila montgomeryi.*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila mulli*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila musaphila*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila neoclavisetae.*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila obatai*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila substenoptera.*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila tarphytrichia.*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila hemipeza*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila ochrobasis.*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila differens*	Drosophilidae	U.S.A. (HI).
C*	3	R1	Skipper, Carson wandering	*Pseudocopaeodes eunus obscurus.*	Hesperiidae	U.S.A. (CA, NV).
C	5	R1	Skipper, Mardon	*Polites mardon*	Hesperiidae	U.S.A. (CA, OR, WA).
C*	9	R6	Tiger beetle, Coral Pink sand dunes.	*Cindelidae limbata albinssima.*	Cicindela	U.S.A. (UT).
C	5	R4	Tiger beetle, highlands	*Cicindela highlandensis.*	Cicindelidae	U.S.A. (FL).
C	3	R6	*Tiger beetle, Salt Creek*	*Cicindela nevadica lincolniana.*	Cicindelidae	U.S.A. (NE).
			Arachnids			
C	2	R2	*Meshweaver, Warton cave*	*Cicurina wartonia*	Dictynidae	U.S.A. (TX).
			Crustaceans			
C	11	R4	Crayfish, Camp Shelby burrowing.	*Fallicambarus gordoni.*	Cambaridae	U.S.A. (MS).
C	2	R1	Shrimp, anchialine pool	*Metabetaeus lohena*	Alpheidae	U.S.A. (HI).
C	2	R1	Shrimp, anchialine pool	*Antecaridina lauensis*	Atyidae	U.S.A. (HI), Mozambique, Saudi Arabia, Japan.
C	2	R1	Shrimp, anchialine pool	*Calliasmata pholidota*	Alpheidae	U.S.A. (HI), Funafuti Atol, Saudi Arabia, Sinai Penninsula, Tuvalu.
C	2	R1	Shrimp, anchialine pool	*Palaemonella burnsi*	Palaemonidae	U.S.A. (HI).
C	2	R1	Shrimp, anchialine pool	*Procaris hawaiana*	Procarididae	U.S.A. (HI).
C	2	R1	Shrimp, anchialine pool	*Vetericaris chaceorum.*	Procaridae	U.S.A. (HI).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
C	5	R4	Shrimp, troglobitic groundwater	*Typhlatya monae*	Atyidae	U.S.A. (PR), Barbuda, Dominican Republic.
			Flowering Plants			
C	11	R1	Sand-verbena, Ramshaw Meadows.	*Abronia alpina*	Nyctaginaceae	U.S.A. (CA).
PE	N/A	R1	Ambrosia, San Diego	*Ambrosia pumila*	Asteraceae	U.S.A. (CA), Mexico.
C	11	R4	Rockcress, Georgia	*Arabis georgiana*	Brassicaceae	U.S.A. (AL, GA).
C	11	R4	Silverbrush, Blodgett's	*Argythamnia blodgettii.*	Euphorbiaceae	U.S.A. (FL).
C	3	R1	Wormwood, Northern	*Artemisia campestris wormskioldii.*	Asteraceae	U.S.A. (OR, WA).
C	2	R1	Painiu	*Astelia waialealae*	Liliaceae	U.S.A. (HI).
C	5	R4	Aster, Georgia	*Aster georgianus*	Asteraceae	U.S.A. (AL, FL, GA, NC, SC).
C	8	R6	Milk-vetch, horseshoe	*Astragalus equisolensis.*	Fabaceae	U.S.A. (UT).
C	8	R6	Milk-vetch, Sleeping Ute	*Astragalus tortipes*	Fabaceae	U.S.A. (CO).
C	5	R1	Ko'oko'olau	*Bidens amplectens*	Asteraceae	U.S.A. (HI).
C	6	R1	Ko'oko'olau	*Bidens campylotheca pentamera.*	Asteraceae	U.S.A. (HI).
C	3	R1	Ko'oko'olau	Bidens campylotheca waihoiensis.	Asteraceae	U.S.A. (HI).
C	8	R1	Ko'oko'olau	*Bidens conjuncta*	Asteraceae	U.S.A. (HI).
C	6	R1	Ko'oko'olau	*Bidens micrantha ctenophylla.*	Asteraceae	U.S.A. (HI).
C	5	R4	Brickell-bush, Florida	*Brickellia mosieri*	Asteraceae	U.S.A. (FL).
C	5	R1	Reedgrass, [unnamed]	*Calamagrostis expansa.*	Poaceae	U.S.A. (HI).
C	5	R1	Reedgrass, [unnamed]	*Calamagrostis hillebrandii.*	Poaceae	U.S.A. (HI).
C	5	R4	No common name	*Calliandra locoensis*	Mimosaceae	U.S.A. (PR).
C	5	R4	No common name	*Calyptranthes estremerae.*	Myrtaceae	U.S.A. (PR).
C	5	R1	Àwikiwiki	*Canavalia napaliensis.*	Fabaceae	U.S.A. (HI).
C	2	R1	Àwikiwiki	*Canavalia pubescens*	Fabaceae	U.S.A. (HI).
PE	5	R4	Sedge, golden	*Carex lutea*	Cyperaceae	U.S.A. (NC).
C	8	R6	Paintbrush, Aquarius	*Castilleja aquariensis*	Scrophulariaceae.	U.S.A. (UT).
C*	11	R1	Paintbrush, Christ's	*Castilleja christii*	Scrophulariaceae.	U.S.A. (ID).
C	6	R4	Pea, Big Pine partridge	*Chamaecrista lineata keyensis.*	Fabaceae	U.S.A. (FL).
C	6	R4	Sandmat, pineland	*Chamaesyce deltoidea pinetorum.*	Euphorbiaceae	U.S.A. (FL).
C	6	R4	Spurge, wedge	*Chamaesyce deltoidea serpyllum.*	Euphorbiaceae	U.S.A. (FL).
C	5	R1	Àkoko	*Chamaesyce eleanoriae.*	Euphorbiaceae	U.S.A. (HI).
C	6	R1	Àkoko	*Chamaesyce remyi kauaiensis.*	Euphorbiaceae	U.S.A. (HI).
C	6	R1	Àkoko	*Chamaesyce remyi remyi.*	Euphorbiaceae	U.S.A. (HI).
C	5	R1	Papala	*Charpentiera densiflora.*	Amaranthaceae	U.S.A. (HI).
C*	3	R1	Spineflower, San Fernando Valley.	*Chorizanthe parryi fernandina.*	Polygonaceae	U.S.A. (CA).
C	5	R4	Thoroughwort, Cape Sable	*Chromolaena frustata*	Asteraceae	U.S.A. (FL).
C	2	R4	No common name	*Cordia rupicola*	Boraginaceae	U.S.A. (PR), Anegada.
C	2	R1	Haha	*Cyanea asplenifolia*	Campanulaceae	U.S.A. (HI).
C	5	R1	Haha	*Cyanea calycina*	Campanulaceae	U.S.A. (HI).
C	2	R1	Haha	*Cyanea eleeleensis*	Campanulaceae	U.S.A. (HI).
C	2	R1	Haha	*Cyanea kuhihewa*	Campanulaceae	U.S.A. (HI).
C	5	R1	Haha	*Cyanea kunthiana*	Campanulaceae	U.S.A. (HI).
C	5	R1	Haha	*Cyanea lanceolata*	Campanulaceae	U.S.A. (HI).
C	2	R1	Haha	*Cyanea obtusa*	Campanulaceae	U.S.A. (HI).
C	5	R1	Haha	*Cyanea tritomantha*	Campanulaceae	U.S.A. (HI).
C	2	R1	Haiwale	Cyrtandra filipes	Gesneriaceae	U.S.A. (HI).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
C	5	R1	Haiiwale	*Cyrtandra kaulantha*	Gesneriaceae	U.S.A. (HI).
C	5	R1	Haiiwale	*Cyrtandra oenobarba*	Gesneriaceae	U.S.A. (HI).
C	2	R1	Haiiwale	*Cyrtandra oxybapha*	Gesneriaceae	U.S.A. (HI).
C	2	R1	Haiiwale	*Cyrtandra sessilis*	Gesneriaceae	U.S.A. (HI).
C	6	R4	Prairie-clover, Florida	*Dalea carthagenensis floridana.*	Fabaceae	U.S.A. (FL).
C	5	R4	Crabgrass, Florida pineland	*Digitaria pauciflora*	Poaceae	U.S.A. (FL).
C	6	R1	Na'ena'e	*Dubautia imbricata imbricata.*	Asteraceae	U.S.A. (HI).
C	3	R1	Na'ena'e	*Dubautia plantaginea magnifolia.*	Asteraceae	U.S.A. (HI).
C	5	R1	Na'ena'e	*Dubautia waialealae*	Asteraceae	U.S.A. (HI).
C	6	R2	Cacuts, acuna	*Echinomastus erectocentrus acunensis.*	Cactaceae	U.S.A. (AZ), Mexico.
C	11	R1	Daisy, basalt	*Erigeron basalticus*	Asteraceae	U.S.A. (WA).
C	5	R2	Fleabane, Lemmon	*Erigeron lemmonii*	Asteraceae	U.S.A. (AZ).
C	5	R1	Desert-buckwheat, Umtanum	*Eriogonum codium*	Polygonaceae	U.S.A. (WA).
C	5	R1	Buckwheat, Red Mountain	*Eriogonum kelloggii*	Polygonaceae	U.S.A. (CA).
C	5	R1	No common name	*Festuca hawaiiensis*	Poaceae	U.S.A. (HI).
C	11	R2	Fescue, Guadalupe	*Festuca ligulata*	Poaceae	U.S.A. (TX), Mexico.
C	5	R1	Nanu	*Gardenia remyi*	Rubiaceae	U.S.A. (HI).
C	5	R1	Nohoanu	*Geranium hanaense*	Geraniaceae	U.S.A. (HI).
C	8	R1	Nohoanu	*Geranium hillebrandii*	Geraniaceae	U.S.A. (HI).
C	2	R1	Nohoanu	*Geranium kauaiense*	Geraniaceae	U.S.A. (HI).
C	11	R6	Alice-flower, wonderland	*Gilia caespitosa*	Polemoniaceae	U.S.A. (UT).
C	5	R4	No common name	*Gonocalyx concolor*	Ericaceae	U.S.A. (PR).
PE	N/A	R1	Stickseed, showy	*Hackelia venusta*	Boraginaceae	U.S.A. (WA).
C	5	R1	Kampuaàa	*Hedyotis fluviatilis*	Rubiaceae	U.S.A. (HI).
C	5	R4	Sunflower, whorled	*Helianthus verticillatus.*	Asteraceae	U.S.A. (AL, GA, TN).
C	5	R2	Rose-mallow, Neches River	*Hibiscus dasycalyx*	Malvaceae	U.S.A. (TX).
C	6	R4	Indigo, Florida	*Indigofera mucronata keyensis.*	Fabaceae	U.S.A. (FL).
C	3	R1	hè	*Joinvillea ascendens ssp. ascendens.*	Joinvilleaceae	U.S.A. (HI).
C	5	R1	Hulumoa	*Korthalsella degeneri*	Viscaceae	U.S.A. (HI).
C	5	R1	Kamakahala	*Labordia helleri*	Loganiaceae	U.S.A. (HI).
C	5	R1	Kamakahala	*Labordia pumila*	Loganiaceae	U.S.A. (HI).
C	5	R1	No common name	*Lagenifera erici*	Asteraceae	U.S.A. (HI).
C	5	R1	No common name	*Lagenifera helenae*	Asteraceae	U.S.A. (HI).
C	5	R4	Gladecress, [unnamed]	*Leavenworthia crassa.*	Brassicaceae	U.S.A. (AL).
C	2	R2	Gladecress, Texas golden	*Leavenworthia texana.*	Brassicaceae	U.S.A (TX).
C*	2	R1	Peppergrass, Slick spot	*Lepidium papilliferum*	Brassicaceae	U.S.A. (ID).
C	5	R4	Bladderpod, Short's	*Lesquerella globosa*	Brassicaceae	U.S.A. (IN, KY, TN).
C	5	R1	Bladderpod, White Bluffs	*Lesquerella tuplashensis.*	Brassicaceae	U.S.A. (WA).
PE	3	R1	Meadowfoam, large-flowered wooly.	*Limnanthes floccosa grandiflora.*	Limnanthaceae	U.S.A. (OR).
C	2	R4	Flax, sand	*Linum arenicola*	Linaceae	U.S.A. (FL).
C	3	R4	Flax, Carter's small-flowered	*Linum carteri carteri*	Linaceae	U.S.A. (FL).
PE	2	R1	Lomatium Cook's	*Lomatium cookii*	Apiaceae	U.S.A. (OR).
C	5	R1	Makanoe lehua	*Lysimachia daphnoides.*	Primulaceae	U.S.A. (HI).
C	5	R1	Alani	*Melicope christophersenii.*	Rutaceae	U.S.A. (HI).
C	2	R1	Alani	*Melicope degeneri*	Rutaceae	U.S.A. (HI).
C	2	R1	Alani	*Melicope hiiakae*	Rutaceae	U.S.A. (HI).
C	2	R1	Alani	*Melicope makahae*	Rutaceae	U.S.A. (HI).
C	2	R1	Alani	*Melicope paniculata*	Rutaceae	U.S.A. (HI).
C	5	R1	Alani	*Melicope puberula*	Rutaceae	U.S.A. (HI).
C	5	R1	Kolea	*Myrsine fosbergii*	Myrsinaceae	U.S.A. (HI).
C	2	R1	Kolea	*Myrsine mezii*	Myrsinaceae	U.S.A. (HI).
C	5	R1	Kolea	*Myrsine vaccinioides*	Myrsinaceae	U.S.A. (HI).
C	8	R5	Asphodel, bog	*Narthecium americanum.*	Liliaceae	U.S.A. (DE, NJ, NC, NY, SC).
PE	1	R1	No common name	*Nesogenes rotensis*	Verbenaceae	U.S.A. (MP).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
C	5	R1	'Aiea	*Nothocestrum latifolium.*	Solanaceae	U.S.A. (HI).
C	2	R1	Holei	*Ochrosia haleakalae*	Apocynaceae	U.S.A. (HI).
C	5	R4	Cactus, Florida semaphore	*Opuntia corallicola*	Cactaceae	U.S.A. (FL).
PE	2	R1	No common name	*Osmoxylon mariannense.*	Araliaceae	U.S.A. (MP).
C	5	R5	Panic grass, Hirsts'	*Panicum hirstii*	Poaceae	U.S.A. (DE, GA, NC, NJ).
C	11	R2	Whitlow-wort, bushy	*Paronychia congesta*	Caryophyllaceae	U.S.A. (TX).
C	6	R2	Cactus, Fickeisen plains	*Pediocactus peeblesianus fickeiseniae.*	Cactaceae	U.S.A. (AZ).
C	5	R6	Beardtongue, Parachute	*Penstemon debilis*	Scrophulariaceae.	U.S.A. (CO).
C	5	R6	Beardtongue, Graham	*Penstemon grahamii*	Scrophulariaceae.	U.S.A. (CO, UT).
C*	6	R6	Beardtongue, White River	*Penstemon scariosus albifluvis.*	Scrophulariaceae.	U.S.A. (CO, UT).
C	2	R1	'Ala 'ala wai nui	*Peperomia subpetiolata.*	Piperaceae	U.S.A. (HI).
C	11	R6	Phacelia, DeBeque	*Phacelia submutica*	Hydrophyllaceae	U.S.A. (CO).
C	2	R1	No common name	*Phyllostegia bracteata.*	Lamiaceae	U.S.A. (HI).
C	5	R1	No common name	*Phyllostegia floribunda.*	Lamiaceae	U.S.A. (HI)
C	2	R1	No common name	*Phyllostegia hispida*	Lamiaceae	U.S.A. (HI).
C	5	R1	Ho'awa	*Pittosporum napaliense.*	Pittosporaceae	U.S.A. (HI).
C	5	R4	Orchid, white fringeless	*Platanthera integrilabia.*	Orchidaceae	U.S.A. (AL, GA, KY, MS, NC, SC, TN, VA).
C	6	R1	No common name	*Platydesma cornuta ssp. cornuta.*	Rutaceae	U.S.A. (HI).
C	6	R1	No common name	*Platydesma cornuta ssp. decurrens.*	Rutaceae	U.S.A. (HI).
C	2	R1	No common name	*Platydesma remyi*	Rutaceae	U.S.A. (HI).
C	5	R1	Pilo kea lau li'i	*Platydesma rostrata*	Rutaceae	U.S.A. (HI).
C	5	R1	Hala pepe	*Pleomele fernaldii*	Agavaceae	U.S.A. (HI).
C	5	R1	Hala pepe	*Pleomele forbesii*	Agavaceae	U.S.A. (HI).
PE	2	R1	Polygonum, Scotts Valley	*Polygonum hickmanii*	Polygonaceae	U.S.A. (CA).
C	5	R1	Lo'ulu,(=Na'ena'e)	*Pritchardia hardyi*	Asteraceae	U.S.A. (HI).
C	6	R1	'Ena'ena	*Pseudognaphalium (Formerly Gnaphalium) sandwicensium molokaiense.*	Asteraceae	U.S.A. (HI).
C	2	R1	Kopiko	*Psychotria grandiflora.*	Rubiaceae	U.S.A. (HI).
C	3	R1	Kopiko	*Psychotria hexandra oahuensis.*	Rubiaceae	U.S.A. (HI).
C	2	R1	Kopiko	*Psychotria hobdyi*	Rubiaceae	U.S.A. (HI).
C	5	R1	Kaulu	*Pteralyxia macrocarpa.*	Apocynaceae	U.S.A. (HI).
C	5	R1	Makou	*Ranunculus hawaiensis.*	Ranunculaceae	U.S.A. (HI).
C	2	R1	Makou	*Ranunculus mauiensis.*	Ranunculaceae	U.S.A. (HI).
C*	2	R1	Cress, Tahoe yellow	*Rorippa subumbellata.*	Brassicaceae	U.S.A. (CA, NV).
C	2	R1	No common name	*Schiedea attenuata*	Caryophyllaceae	U.S.A. (HI).
C	2	R1	Ma'oli'oli	*Schiedea pubescens*	Caryophyllaceae	U.S.A. (HI).
C	2	R1	No common name	*Schiedea salicaria*	Caryophyllaceae	U.S.A. (HI).
C	5	R1	Stonecrop, Red Mountain	*Sedum eastwoodiae*	Crassulaceae	U.S.A. (CA).
C	5	R1	'Anunu	*Sicyos macrophyllus*	Cucurbitaceae	U.S.A. (HI).
C	9	R1	Checkerbloom, Parish's	*Sidalcea hickmanii ssp. parishii.*	Malvaceae	U.S.A. (CA).
C	5	R1	Popolo	*Solanum nelsonii*	Solanaceae	U.S.A. (HI).
C	2	R1	No common name	*Stenogyne cranwelliae.*	Lamiaceae	U.S.A. (HI).
C	2	R1	No common name	*Stenogyne kealiae*	Lamiaceae	U.S.A. (HI).
PE	2	R1	No common name	*Tabernaemontana rotensis.*	Apocynaceae	U.S.A. (GU, MP).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
PT	1	R6	Yellowhead, desert	*Yermo xanthocephalus.*	Asteraceae	U.S.A. (WY).
C	2	R1	A'e	*Zanthoxylum oahuense.*	Rutaceae	U.S.A. (HI).
			Ferns and Allies			
C	11	R1	Moonwort, slender	*Botrychium lineare*	Ophioglossaceae	U.S.A. (CA, CO, ID, MT, OR, WA), Canada.
C	6	R1	No common name	*Cyclosorus boydiae boydiae.*	Thelypteridaceae	U.S.A. (HI).
C	6	R1	No common name	*Cyclosorus boydiae kipahuluensis.*	Thelypteridaceae	U.S.A. (HI).
C	2	R1	No common name	*Doryopteris takeuchii*	Dryopteridaceae	U.S.A. (HI).
C	2	R1	No common name	*Dryopteris tenebrosa*	Dryopteridaceae	U.S.A. (HI).
C	2	R1	No common name	*Microlepia mauiensis*	Dennstaedtiaceae.	U.S.A. (HI).
C	2	R1	Wawae'iole	*Phlegmariurus stemmermanniae.*	Lycopodiaceae	U.S.A. (HI).

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS

Status		Lead region	Common name	Scientific name	Family	Historic range
Code	Expl.					
			Mammals			
Rc	A	R6	Fox, swift (U.S. population)	*Vulpes velox*	Canidae	U.S.A. (CO, IA, KS, MN, MT, ND, NE, NM, OK, SD, TX, WY), Canada.
T	L	R6	Lynx, Canada	*Lynx canadensis*	Felidae	U.S.A. (AK, CO, ID, ME, MI, MN, MT, ND, NH, NY, OR, PA, UT, VT, WA, WI, WY), Canada, circumboreal.
E	L	R1	Rabbit, riparian brush	*Sylvilagus bachmani riparius.*	Leporidae	U.S.A. (CA).
E	L	R1	Sheep, bighorn	*Ovis canadensis californiana.*	Bovidae	U.S.A. (Western conterminous states), Canada (southwestern).
T	L	R1	Squirrel, northern Idaho ground	*Spermophilus brunneus brunneus.*	Sciuridae	U.S.A. (ID).
E	L	R1	Woodrat, riparian	*Neotoma fuscipes riparia.*	Muridae	U.S.A. (CA).
			Birds			
E	L	R7	Albatross, short-tailed	*Phoebastria albatrus*	Diomedeidae	North Pacific Ocean and Bering Sea, Canada, China, Japan, Mexico, Russia, Taiwan, U.S.A. (AK, CA, HI, OR, WA).
E	L	R1	Elepaio, Oahu	*Chasiempis sandwichensis ibidus.*	Musicapidae	U.S.A. (HI).
			Amphibians			
E	L	R1	Salamander, California tiger (Santa Barbara population).	*Ambystoma californiense.*	Ambystomatidae	U.S.A. (CA).
			Fishes			
Rc	A	R6	Chub, sicklefin	*Macrhybopsis meeki*	Cyprinidae	U.S.A. (AR, IA, IL, KS, KY, LA, MO, MS, MT, NE, ND, SD, TN).
Rc	A	R6	Chub, sturgeon	*Macrhybopsis gelida*	Cyprinidae	U.S.A. (AR, IA, IL, KY, KS, LA, MO, MS, MT, NE, ND, SD, TN, WY).
T	L	R2	Minnow, Devils River	*Dionda diaboli*	Cyprinidae	U.S.A. (TX), Mexico.

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead region	Common name	Scientific name	Family	Historic range
Code	Expl.					
Rp	A	R2	Pupfish, Pecos	*Cyprinodon pecosensis.*	Cyprinodontidae	U.S.A. (NM, TX).
E	L	R5	Salmon, Atlantic (Gulf of Maine population).	*Salmo salar*	Salmonidae	U.S.A., Canada, Greenland, western Europe.
E	L	R4	Sturgeon, Alabama	*Scaphirhynchus suttkusi.*	Acipenseridae	U.S.A. (AL, MS).
T	L	R1	Sucker, Santa Ana	*Catostomus santaanae.*	Catostoidae	U.S.A. (CA).
T	L	R1	Trout, bull	*Salvelinus confluentus.*	Salmonidae	U.S.A. (Pacific NW), Canada (NW Territories).
Rc	A	R1	Trout, McCloud R redband	*Oncorhynchus mykiss* ssp.	Salmonidae	U.S.A. (CA).
			Clams			
E	L	R3	Mussel, scaleshell	*Leptodea leptodon*	Unionidae	U.S.A. (AL, AR, IL, IN, IA, KY, MN, MO, OH, OK, SD, TN, WI).
			Snails			
E	L	R4	Campeloma, slender	*Campeloma decampi*	Viviparidae	U.S.A. (AL).
E	L	R4	Snail, armored	*Pyrgulopsis pachyta*	Hydrobiidae	U.S.A. (AL).
T	L	R1	Snail, Newcomb's	*Erinna newcombi*	Lymnaeidae	U.S.A. (HI).
Rc	A	R2	Talussnail, Wet Canyon	*Sonorella macrophallus.*	Helminthoglyptida.	U.S.A. (AZ).
			Insects			
E	L	R1	Butterfly, Fender's blue	*Icaricia icarioides fenderi.*	Lycaenidae	U.S.A. (OR).
E	L	R2	Ground beetle, [unnamed]	*Rhadine infernalis*	Carabidae	U.S.A. (TX).
E	L	R2	Ground beetle, [unnamed]	*Rhadine exilis*	Carabidae	U.S.A. (TX).
E	L	R2	Mold beetle, Helotes	*Batrisodes venyivi*	Pselaphidae	U.S.A. (TX).
E	L	R1	Moth, Blackburn's sphinx	*Manduca blackburni*	Sphingidae	U.S.A. (HI).
E	L	R1	Tiger beetle, Ohlone	*Cicindela ohlone*	Cicindelidae	U.S.A. (CA).
			Arachnids			
E	L	R2	Harvestman, Robber Baron Cave.	*Texella cokendolpheri.*	Phalangodidae	U.S.A. (TX).
E	L	R2	Spider, Government Canyon cave.	*Neoleptoneta microps.*	Leptonetidae	U.S.A. (TX).
E	L	R1	Spider, Kauai cave wolf or pe'e pe'e maka 'ole.	*Adelocosa anops*	Lycosidae	U.S.A. (HI).
E	L	R2	Spider, Madla's cave	*Cicurina madla*	Dictynidae	U.S.A. (TX).
E	L	R2	Spider, Robber Baron cave	*Cicurina baronia*	Dictynidae	U.S.A. (TX).
E	L	R2	Spider, Vesper cave	*Cicurina vespera*	Dictynidae	U.S.A. (TX).
E	L	R2	Spider, [unnamed]	*Cicurina venii*	Dictynidae	U.S.A. (TX).
			Crustaceans			
E	L	R1	Amphipod, Kauai cave	*Spelaeorchestia koloana.*	Talitridae	U.S.A. (HI).
			Flowering Plants			
Rc	A	R2	Onion, Goodding's	*Allium gooddingii*	Liliaceae	U.S.A. (AZ, NM).
Rc	A	R6	Rock-cress, small	*Arabis pusilla*	Brassicaceae	U.S.A. (WY).
E	L	R6	Milk-vetch, Shivwitz	*Astragalus ampullarioides.*	Fabaceae	U.S.A. (UT).
T	L	R6	Milk-vetch, Deseret	*Astragalus desereticus.*	Fabaceae	U.S.A. (UT).
E	L	R6	Milk-vetch, Holmgren	*Astragalus holmgreniorum.*	Fabaceae	U.S.A. (AZ, UT).
E	L	R1	Milk-vetch, Ventura Marsh	*Astragalus pycnostachyus lanosissimus.*	Fabaceae	U.S.A. (CA).
Rc	A	R1	Lily, umpqua mariposa	*Calochortus umpquaensis.*	Liliaceae	U.S.A. (OR).

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

Status			Common name	Scientific name	Family	Historic range
Code	Expl.	Lead region				
Rc	A	R2	Bugbane, Arizona	*Cimicifuga arizonica*	Ranunculaceae	U.S.A. (AZ).
E	L	R1	Thistle, La Graciosa	*Cirsium loncholepis*	≤Asteraceae	U.S.A. (CA).
Rc	N	R1	Haha	*Cyanea pseudofauriei.*	Campanulaceae	U.S.A. (HI).
Rc	A	R1	pu'uka'a	*Cyperus odoratus*	Cyperaceae	U.S.A. (HI).
E	L	R1	Larkspur, Baker's	*Delphinium bakeri*	Ranunculaceae	U.S.A. (CA).
E	L	R1	Larkspur, yellow	*Delphinium luteum*	Ranunculaceae	U.S.A. (CA).
E	L	R1	Daisy, Willamette	*Erigeron decumbens decumbens.*	Asteraceae	U.S.A. (OR).
E	L	R1	Yerba santa, Lompoc	*Eriodictyon capitatum*	Hydrophyllaceae	U.S.A. (CA).
Rc	A	R1	Buckwheat, Sulphur Springs	*Eriogonum argophyllum.*	Polygonaceae	U.S.A. (NV).
E	L	R1	Fritillary, Gentner's	*Fritillaria gentneri*	Liliaceae	U.S.A. (OR).
T	L	R6	Butterfly plant, Colorado	*Gaura neomexicana coloradensis.*	Onagraceae	U.S.A. (CO, NE, WY).
T	L	R2	Sunflower, Pecos	*Helianthus paradoxus.*	Asteraceae	U.S.A. (NM, TX).
E	L	R1	Tarplant, Gaviota	*Hemizonia increscens villosa.*	Asteraceae	U.S.A. (CA).
T	L	R1	Tarplant, Santa Cruz	*Holocarpha macradenia.*	Asteraceae	U.S.A. (CA).
Rc	A	R1	Lathyrus, two-flowered	*Lathyrus biflorus*	Fabaceae	U.S.A. (CA).
E	L	R2	Bladderpod, Zapata	*Lesquerella thamnophila.*	Brassicaceae	U.S.A. (TX).
E	L	R1	Lupine, Nipomo Mesa	*Lupinus nipomensis*	Fabaceae	U.S.A. (CA).
T	L	R1	Lupine, Kincaid's	*Lupinus sulphureus kincaidii.*	Fabaceae	U.S.A. (OR, WA).
Rc	X	R1		*Lysimachia venosa*	Primulaceae	U.S.A. (HI).
Rc	X	R1	Alani	*Melicope macropus*	Rutaceae	U.S.A. (HI).
Rc	A	R1	Cholla, Blue Diamond	*Opuntia whipplei multigeniculata.*	Cactaceae	U.S.A. (NV).
E	L	R1	Phlox, Yreka	*Phlox hirsuta*	Polemoniaceae	U.S.A. (CA).
Rc	X	R1		*Phyllostegia helleri*	Lamiaceae	U.S.A. (HI).
Rc	X	R1		*Phyllostegia imminuta.*	Lamiaceae	U.S.A. (HI).
E	L	R1	Popcornflower, rough	*Plagiobothrys hirtus*	Boraginaceae	U.S.A. (OR).
E	L	R1	Checker-mallow, Keck's	*Sidalcea keckii*	Malvaceae	U.S.A. (CA).
E	L	R1	Checkermallow, Wenatchee Mountains.	*Sidalcea oregana calva.*	Malvaceae	U.S.A. (WA).
Rc	I	R1	Catchfly, Red Mountain	*Silene campanulata campanulata.*	Caryophyllaceae	U.S.A. (CA).
T	L	R1	Catchfly, Spalding's	*Silene spaldingii*	Caryophyllaceae	U.S.A. (ID, MT, OR, WA).
E	L	R1	Penny-cress, Kneeland Prairie	*Thlaspi californicum*	Brassicaceae	U.S.A. (CA).
Rc	A	R2	Tickle-tongue, Shinner's	*Zanthoxylum parvum*	Rutaceae	U.S.A. (TX).

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Federal Register

Tuesday,
October 30, 2001

Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3800

Mining Claims Under the General Mining Laws; Surface Management; Final Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO–300–1990–PB–24 1A]

RIN 1004–AD44

Mining Claims Under the General Mining Laws; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM or "we") amends its regulations governing mining operations involving metallic and some other minerals on public lands. We are amending the regulations by removing certain provisions of the regulations and returning others to those in effect on January 19, 2001. We intend these regulations to prevent unnecessary or undue degradation of BLM-administered lands by mining operations authorized under the mining laws. The approach BLM takes today balances the nation's need to maintain reliable sources of strategic and industrial minerals, while ensuring protection of the environment and natural resources on public lands. The hardrock mining regulations, including the changes adopted today, are consistent with the recommendations of the National Research Council (NRC), and protect the Federal Government from financial risk if operators are unable to perform reclamation.

EFFECTIVE DATE: This rule is effective December 31, 2001.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, 401 LS, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert M. Anderson, 202/208–4201; or Michael Schwartz, 202/452–5198. Individuals who use a telecommunications device for the deaf (TDD) may contact us through the Federal Information Relay Service at 1–800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. What is the Background of this Rulemaking?
II. How did BLM Change the Proposed Rule in Response to Comments?
III. How did BLM Fulfill its Procedural Obligations?

I. What Is the Background of This Rulemaking?

On March 23, 2001, BLM published a proposed rule (66 FR 16162) to suspend, in whole or in part, the regulations we issued on November 21, 2000 (65 FR 69998), which became effective on January 20, 2001 (hereinafter, the 2000 rule), and put in their place, in whole or in part, the regulations that existed on January 19, 2001, which, for the most part, BLM adopted in 1980 (hereinafter, the 1980 rule). As stated in the proposal, the suspension would provide BLM the opportunity to review some of the requirements of the 2000 rule in light of issues the plaintiffs raised in legal challenges to the rule and concerns expressed by others, including several states. We also requested comment on whether we should retain some combination of the 2000 regulations and the 1980 regulations. The 45-day comment period on the proposal closed on May 7, 2001. BLM received approximately 49,000 comments.

On June 15, 2001 (66 FR 32571), we published a final rule revising section 3809.505, which addressed how the new financial guarantee requirements of the 2000 rule affect existing approved plans of operations. The final rule made no substantive change in the requirements except to postpone the date by which operators must comply with the financial guarantee requirements. The rule changes the date by which operators with plans of operation approved by BLM before January 20, 2001, must provide a new financial guarantee—from July 19, 2001, to November 20, 2001, and to September 13, 2001, for operations without any financial guarantee. The extension was intended to give BLM field offices and state government agencies time to prepare to administer the requirements. We also announced in that rule that it is our intention to retain the financial guarantee provisions of the 2000 rule.

Congress also directed BLM as to how to conduct the rulemaking and what provisions BLM could include in a final rule. In particular, Congress provided express guidance to BLM in the FY 2000 and FY 2001 Interior Appropriations Acts as follows:

> None of the funds in this Act or any other Act shall be used by the Secretary of the Interior to promulgate final rules to revise 43 CFR subpart 3809, except that the Secretary, following the public comment period required by section 3002 of Public Law 106–31, may issue final rules to amend 43 CFR Subpart 3809 which are not inconsistent with the recommendations contained in the National Research Council report entitled "Hardrock Mining on Federal Lands" so long as these regulations are also not inconsistent with existing statutory authorities. Nothing in this section shall be construed to expand the existing statutory authority of the Secretary. (Public Law 106–113, 113 Stat. 1501, App. C., 113 Stat. 1501A–210 sec. 357 (1999).)

(See the National Research Council Report , entitled *Hardrock Mining on Federal Lands* (NRC Report), September, 1999).

An identical provision was enacted in Sec. 156 of the FY 2001 Interior Appropriations Act (Public Law 106–291, sec. 156, 114 Stat. 922, 962–63 (Oct. 11, 2000)).

Following issuance of the 2000 rule four lawsuits were filed challenging the rule, three in the U.S. District Court for the District of Columbia (brought by the National Mining Association (NMA), the Newmont Mining Corporation, and the Mineral Policy Center and two other environmental groups), and one in the U.S. District Court for Nevada (brought by the State of Nevada). These cases include *National Mining Association* v. *Department of the Interior*, No. 00CV–2998 (D.D.C. filed December 15, 2000); *Newmont Mining Corporation* v. *Department of the Interior*, No. 01CV–23 (D.D.C. filed January 5, 2001); *Mineral Policy Center* v. *Department of the Interior*, No. 01CV–73 (D.D.C. filed January 16, 2001); and *State of Nevada* v. *DOI*, No. CV–N01–0040–ECR–VPC (D. NV filed January 19, 2001).

The industry plaintiffs and the State of Nevada assert that BLM improperly issued the 2000 rule and violated numerous statutes, including:

- The specific congressional provisions cited above applicable to promulgation of the revised 3809 rule;
- The notice and comment provisions of the Administrative Procedure Act, particularly with regard to the "substantial irreparable harm'(SIH) standard of the final regulatory definition of the term "unnecessary or undue degradation;'
- The National Environmental Policy Act;
- The Regulatory Flexibility Act;
- The Federal Land Policy and Management Act; and
- The General Mining Law.

The environmental plaintiffs assert that the 3809 regulations are not sufficiently stringent and improperly allow mining operations on lands without valid mining claims or mill sites.

On January 19, 2001, the Federal District Court in the National Mining Association suit denied NMA's motion for a preliminary injunction to stay the effective date of the final rules, holding that the plaintiff did not successfully meet its burden of showing that the revised 3809 rule becoming effective would cause irreparable harm. As to the merits of the plaintiff's claims, the Court concluded that, although such claims may or may not have merit, it was unclear at the preliminary injunction stage of the proceeding that the NMA would eventually prevail. The litigation is currently stayed pending this rulemaking.

On February 2, 2001, the Nevada Governor sent a letter to the Secretary of the Interior requesting postponement of the effective date and the implementation of the revised 3809 rule based on legal deficiencies associated with promulgation of the new regulations and the assertion that the revised 3809 rules were unnecessary. In his February 2, 2001, letter, the Governor expressed concern that:

> These new regulations will, if not overturned, impose significant new and unnecessary regulatory burdens on Western States and will preclude mining companies from engaging in operations they might otherwise pursue, thereby leading to a dramatic decrease in employment and revenue in the mining sector and a corresponding decrease in tax revenue and other economic benefits to Western states. BLM's own Final Environmental Impact statement concludes that the new rules will result in a loss of up to 6,050 jobs, up to $396 million in total income and up to $877 million in total industry output.

The Governor was particularly concerned because Nevada would bear the greatest impact of the revised 3809 regulations.

In the March 23, 2001, proposal, BLM acknowledged that the plaintiffs, including the State of Nevada, raised serious concerns regarding the revised 3809 regulations. These factors were, in part, the basis for BLM's proposal to suspend the 2000 rule.

In the March 23, 2001, proposal we stated:

> If BLM were to implement the new regulations, and then be required to change back again if the new rules are found deficient, the impact on both large and small miners is of substantial concern. Many of the latter, particularly, may not be sophisticated in dealing with changing regulatory requirements. On a larger scale, implementation of the 2000 rule could create an uncertain economic environment. (66 FR 10164)

In addition we also stated:

> * * * we specifically solicit comments as to whether some provisions of the revised 3809 rules should not be suspended while BLM conducts its review of the issues. For example, rather than suspending all of the revised 3809 rules, BLM could leave in place some or all of the new revisions that address the specific regulatory gaps identified by the National Research Council (as identified in Alternative 5, the "NRC Alternative," in BLM's final environmental impact statement), which most commenters agreed are warranted. BLM requests comments on this approach or others, e.g., whether all of the revised rules should be suspended until either BLM completes further rulemaking or until the litigation is resolved.

Basis and Purpose of the Rule

After reviewing comments, we have decided that acting in phases provides the best approach to achieving the overall objective of preventing unnecessary or undue degradation while providing opportunities to explore, develop, and produce minerals.

The first phase was to postpone the deadlines in the financial guarantee requirements for those operating under plans of operations approved before January 20, 2001, to enable both BLM and states to prepare to implement the requirements. At the same time we affirmed our intention to retain the substantive financial guarantee requirements of the 2000 rule. We published a final rule to this effect in the **Federal Register** on June 15, 2001 (66 FR 32571).

Today's action is the second step in the process. We are amending the regulations in a way that removes from the regulatory scheme the components of the 2000 rule that created the most uncertainty regarding proper regulatory standards, while leaving in place the remainder of the rule. BLM continues to believe that undertaking implementation of certain provisions of the new regulatory program applicable to hardrock mining on public lands before additional examination of the legal, economic, and environmental concerns that plaintiffs raise could prove unnecessarily disruptive and confusing to the mining industry and the states that, together with BLM, regulate the mining industry. We removed these provisions in today's rulemaking.

The provisions we are retaining reflect the many comments that support retention of the 2000 rules. The retained provisions will not unnecessarily disrupt the mining industry and will prevent unnecessary or undue degradation of the public lands while the agency considers whether further changes to the rules are warranted. For the most part, the rationale for retaining many sections of the 2000 rules is set forth in the November 2000 **Federal Register** preamble to those rules. The provisions we are leaving in place implement recommendations of the NRC Report, although we are continuing to consider whether we should modify specific provisions.

In an effort to avoid a regulatory vacuum, the March 23 notice proposed a regulatory scheme wherein the 2000 rules would have been suspended in one part of the Code of Federal Regulations (proposed subpart 3809a) and the 1980 rules would have been reinstated as subpart 3809. We do not need such an approach in these final rules because, for the most part, we are retaining the overall regulatory structure of the 2000 rules. With such a scheme in place we avoid a regulatory vacuum by removing specific provisions of the 2000 rules, replacing such provisions by corresponding provisions of the 1980 rules, or by continuing provisions from the 2000 rule that reflect the previous status quo that existed in the absence of specific provisions in the 1980 rules. We explain this latter situation in the discussion of specific sections.

As the next phase, we are also publishing in the **Federal Register** a proposed rule containing the same changes as in this final rule, as well as some additional changes we had not considered previously. The proposed rule we published on March 23, 2001, provides a logical and legally sufficient basis for today's action which changes only a few sections of the 2000 rules. However, we recognize that because of the high level of interest in this rule among affected industry groups, environmental organizations, and states, we might benefit from providing an opportunity to comment on the specific changes we are adopting today. As a result of those comments we may make further adjustments to the rules.

While we considered providing an opportunity for further public comment before issuing this final rule, we decided that it is more important to resolve as much uncertainty as to the status of the 2000 rules as quickly as possible. This benefits all affected parties by clarifying the Department's position on several issues involved in the litigation challenging the 2000 rules. However, if comments in the companion proposed rule indicate that additional changes to the rules are warranted, we will make these changes in a subsequent final rule.

This final rule is authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) (FLPMA) and the Mining Law of 1872, as amended (hereinafter "mining laws"). Section 302(b) of FLPMA, 43 U.S.C. 1732(b), directs the Secretary to manage development of the public lands. In addition, the final rule we are adopting today carries out the FLPMA directive that, "[i]n managing the public lands, the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the public lands." See 43 U.S.C. 1732(b).

The final rule we are adopting today is consistent with the FLPMA directive. We issue it under the general rulemaking authorities of FLPMA and the mining laws (43 U.S.C. 1733 and 1740 and 30 U.S.C. 22, respectively).

Consistency With the NRC Report Recommendations

As described earlier, in the fiscal year 2001 appropriations act for the Department of the Interior (Pub. L. 106–113, Sec. 357), Congress prohibited the Secretary from spending money to issue final 3809 rules other than those "which are not inconsistent with the recommendations contained in the [NRC Report] so long as these regulations are also not inconsistent with existing statutory authorities." Comments we received during this and earlier comment periods indicate that there are divergent views on the consistency question. Some respondents strongly believe that the "not inconsistent with" provision sets strict limits on what we can include in this rule. That is, we can promulgate only regulations that conform exactly to specific NRC Report recommendations, and no more. Commenters on the March 23 proposal made extensive arguments in support of their views. Much discussion reiterated the positions and comments received before the November 2000 rules were published.

In the **Federal Register** preamble of the 2000 rule (65 FR 69999), we discussed this issue at length, and we continue to stand by the points we made in that discussion. There is no need to repeat those discussions here. It is clear that "not inconsistent with" is a more lenient standard than others that Congress could have chosen to use. For instance, Congress could have expressly said that the BLM rules could not "go beyond" the NRC recommendations, but it did not. Accordingly, BLM continues to interpret the Appropriations Act as not barring BLM from promulgating rules that address matters not expressly covered by the NRC Report. Nevertheless, BLM has carefully considered the entire NRC Report in deciding what course of action to take.

Today's rule continues in place those sections that specifically address NRC recommendations. As a practical matter, however, it is not feasible to publish a regulation which so narrowly interprets the Appropriation Act that BLM could not promulgate rules with provisions necessary to implement the specific overall recommendation. For example, the public and the regulated industry are better served if the financial guarantee requirements the NRC recommends include a description of acceptable instruments, and provisions on release and forfeiture, to mention a few components of a sound financial guarantee program.

In addition, we continue to leave in place portions of the 2000 rule that specific NRC recommendations do not address. We do so because BLM needs such provisions for sound land management. For example, this rule retains section 3809.101, which addresses what an operator may do with mineral materials on mining claims. Although the NRC did not discuss this issue, the problem has existed for years and the rule helps alleviate industry concerns and improves the Bureau's ability to manage mineral resources. We are still considering whether we need to make additional changes. However, today's action removes those provisions that created the most questions regarding consistency with the NRC Report. We now see ourselves in a position to learn more through the implementation of these rules before we engage in additional rulemaking.

Summary of Rule Adopted

Today's rule makes several changes to the 2000 rule. The rule continues to address regulatory gaps identified in the NRC Report. Today's changes do not affect that.

We are changing the definition of "operator," found at section 3809.5. We are restoring the definition contained in the 1980 regulations.

We are also changing the definition of "unnecessary or undue degradation" found at section 3809.5. The proposal leading to the 2000 rule did not contain the "substantial irreparable harm" clause in the definition of unnecessary or undue degradation (paragraph 4). As discussed above, all but one of the lawsuits contended that the SIH provision in the definition of unnecessary or undue degradation violated the Administrative Procedure Act, NEPA, and FLPMA. Today's action removes that provision.

We also amend section 3809.116 by revising paragraph (a), which established a joint and several liability provision. This also was a provision generating numerous comments suggesting that (1) BLM had exceeded its authority and (2) liability should be proportional. As with the SIH provision, the comments we received were highly critical of the policy itself and also questioned its legality. In its revised form, the paragraph provides that mining claimants and operators are liable for obligations that accrue while they hold their interests. In effect, this returns the regulation to that in place prior to the 2000 rule.

We also amend the standards contained in section 3809.420. We removed most of the 2000 rules' environmental and operational performance standards and replaced them with the 1980 rule standards. We chose to maintain the general standards in section 3809.420(a), because these standards form a foundation upon which operators should base their plans of operations. We are unaware of widespread concern addressing these broad standards. From the 2000 rule we have retained and renumbered sections 3809.420(c)(3) and (4). These sections codify the longstanding BLM policies on acid mine drainage and use of cyanide.

The last substantive changes are the elimination of sections 3809.702 and 3809.703, which established administrative civil penalties. Throughout the process of preparing the 2000 rule, BLM was aware, as was the NRC, that BLM's authority to impose civil penalties is uncertain. Therefore, we have decided to remove these sections. At the same time, we intend to work with the Congress to clarify our authority. BLM's authority to establish an administrative penalty scheme is uncertain and, until such authority is clearly established, administrative penalties should not be part of subpart 3809.

In addition, we made a few technical changes to correct errors which appeared in the November publication of the 2000 rules. All these are discussed in more detail below.

II. How Did BLM Change the Proposed Rule in Response to Public Comments?

BLM received approximately 49,000 comments on the March 23, 2001, proposal. Mail campaigns generated the majority of the comments, as 3 repeated messages constituted over 95 percent of the comments. Each comment succinctly asked us to retain the 2000 regulations because they would better protect the environment than the previous regulations. The comments also pointed out that the 2000 rule followed years of public comment and congressional debate, and deserve a chance to work. This last point clearly disputes the uncertainty argument BLM noted in the March 23, 2001, proposal.

In response to these comments, we are retaining intact most of the 2000 regulations. We are removing several provisions that seem particularly and unnecessarily onerous and raise clear legal and policy issues. Some industry comments made recommendations as to particular sections of the 2000 regulations that we should retain. Since we are retaining most of those regulations, we do not need to discuss

these recommendations individually, and rely on the November 21, 2000, **Federal Register** preamble to support individual sections. On June 15, 2001 (66 FR 32571), we published the final rule saying that we would retain the financial guarantee provisions from the 2000 regulations, but postponing their effective date for operations BLM approved prior to January 20, 2001.

We received comments in support of the March 23, 2001, proposal that generally contained arguments that were made in opposition to the 2000 rule when it was proposed. We also received new arguments concerning the SIH provision. These detailed comments generally came from state governments, industry associations, and mining companies. A limited number of individuals also submitted detailed comments. A joint comment from several environmental organizations included a detailed analysis opposing the proposal. Responses to these specific comments follow in the next paragraphs.

Section 3809.5 How Does BLM Define Certain Terms Used in This Subpart?

Casual Use

Several comments from persons who engage in small scale placer mining objected to language in the definition of "casual use" allowing employment of only hand or battery-powered dry washers, as part of casual use. Many recreational miners use dry washers powered by small gasoline motors that are roughly equivalent to lawn mower motors. The comments said that this definition would bar these miners from using public lands for their activities due to the cost of acquiring battery-powered dry washers. We are not making this change in the final rule. However, in the proposed rule that we are issuing today, we will propose amending the definition of "casual use" to accommodate this small-scale use.

Operator

This final rule revises the definition of the term "operator" to say that it means any person who is conducting or proposing to conduct operations. This is a return to the definition set forth in the 1980 regulations. It does not contain the 2000 rule provisions that expressly include persons who manage or direct operations and corporate parents and affiliates who materially participate in the operations. We also removed the statement that the operator can also be the claimant. Of course, the claimant may operate his or her mining claim, but stating that in the definition is unnecessary, and confusing as it could be interpreted to mean that BLM will always treat the claimant as the operator.

BLM is concerned that the 2000 rule definition of the term "operator," by referencing "parent" entities and affiliates, appeared to authorize BLM routinely to breach the corporate veil that generally is established under state corporate laws to protect such entities. As explained in the **Federal Register** preamble to the 2000 rule (65 FR 70013), BLM adopted the "material participation" standard in the 2000 rules based on a concept authorized under CERCLA, as enunciated in a recent Supreme Court decision. However, there is no indication that Congress intended to override state laws in this regard under FLPMA. Unlike statutes such as the Surface Mining Control and Reclamation Act (*see, e.g.,* 30 U.S.C. 1260(c)) that expressly focus on "ownership" and "control" of entities, neither the mining laws nor FLPMA expressly holds parent entities and affiliates responsible for activities which occur at mining operations conducted by other entities. Thus, we decided we will not include the concept of "parent" or "affiliate" responsibility in the definition of the term "operator" in subpart 3809. Under these final rules, we will hold the appropriate entity liable through established state common law principles.

Commenters objected to the 2000 rules' definition of the term "operator" because of their concern that the definition, working together with the principle of joint and several liability in section 3809.116(a), would create a presumption that parents and affiliates of an entity conducting mining operations at a mine site each would be 100 percent liable for activities at the mine site. Many stakeholders consider this standard to be inequitable in its application. As described below, the principle of joint and several liability has been removed from subpart 3809, and merely characterizing an entity as an "operator" does not establish a particular level of responsibility, absent a specific and significant degree of involvement with the mining operation that we must determine on a case-specific basis, guided by common law principles.

At this time, the least confusing course of action is to reinstate the definition that BLM used for 20 years and is familiar to BLM and the states, while considering whether changes are appropriate.

Unnecessary or Undue Degradation

The final rule amends the definition of the term "unnecessary or undue degradation" by removing paragraph (4) which included in the definition conditions, activities, or practices that occur on mining claims or millsites located after October 21, 1976, (or on unclaimed lands) and result in substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be mitigated (the "SIH" standard). This paragraph, which was included in the final rule without first appearing in either of BLM's proposals which preceded the November 2000 final rules, gave BLM authority to deny plans of operation even if all of the other standards could be satisfied. Of all the provisions in the 2000 rules, this one paragraph had more projected economic impacts than all of the other sections combined. It is this provision that the Nevada Governor most strenuously objects to, and various plaintiffs have challenged. BLM has concluded that, as a matter of basic fairness, we should not have adopted this truly significant provision without first providing affected entities an opportunity to comment both as to its substance and as to its potential impacts. Because the potential impacts of the SIH standard are so dramatic, BLM is reluctant to continue to include such a provision at all. BLM is also concerned that it would be very difficult to implement the standard fairly as it relates to significant cultural resource values. In addition, the Interior Department Solicitor has issued an opinion (M–37007) addressing the legal authority of the SIH standard. This opinion has been placed in the Administrative Record.

Persons commenting on the March 23 proposed rule objected to the SIH standard. Commenters said that including the "substantial irreparable harm" standard in the final rule was not lawful for the following reasons:

(1) The introduction of the term "substantial irreparable harm" in the final rule did not constitute a legal rulemaking. Commenters stated that its inclusion violated the Administrative Procedure Act as it had not been directly used in the proposed rule and therefore did not receive adequate public scrutiny. Most of these commenters also noted their belief that the economic analysis and NEPA analysis of SIH in support of the 2000 rule was inadequate. Comments also asserted that the SIH standard is contrary to the Appropriations Act provision regarding consistency with the NRC Report; and,

(2) SIH would improperly give the BLM the right to disapprove plans of operations after an applicant has spent

considerable sums. Comments said that this creates uncertainty for the industry and its financing, and therefore provides a strong disincentive against conducting exploration and development activities in the United States. As mentioned above, commenters such as the Governor of Nevada were concerned about the dramatic economic impacts the SIH standard might cause.

Comments supporting the 2000 rule endorsed the reasoning behind the SIH provision, namely that some locations contain resources which BLM should protect from the impacts of mining. Some of these comments came from Indian tribes, which were concerned about the impact of mining on cultural resources.

One of the primary factors prompting the March 23, 2001, proposed rule was the concern about the SIH provision. Regardless of whether this provision was legally promulgated in the 2000 rule, BLM has determined that we should remove the provision, since other means exist to protect the resources covered by the SIH standard.

Because the term "unnecessary or undue degradation" is not defined in FLPMA, BLM has substantial discretion in defining the term and in establishing the appropriate means to prevent unnecessary or undue degradation of the public lands. BLM does not need an SIH standard in its rules either to protect against unnecessary degradation or to protect against undue degradation. FLPMA does not define either concept to mean substantial irreparable harm. Moreover, BLM has other statutory and regulatory means of preventing irreparable harm to significant scientific, cultural, or environmental resource values. These include the Endangered Species Act, the Archaeological Resources Protection Act, withdrawal under Section 204 of FLPMA (43 U.S.C. 1714), the establishment of areas of critical environmental concern (ACECs) under Section 202(c)(3) of FLPMA (43 U.S.C. 1712(c)(3)), and the performance standards in section 3809.420, to recite a partial list.

In particular, FLPMA defines ACECs as "areas within the public lands where special management attention is required * * * to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. 1702(a). Thus, FLPMA established a specific means to protect resources on the public lands from irreparable damage. Congressional intent to protect these resources can clearly be satisfied by using the statutorily created land use planning process of establishing ACECs, without creating an additional overlay in the definition of "unnecessary or undue degradation." It should be understood that, although 43 U.S.C. 1712, which provides for the designation of ACECs, does not impair the rights of claimants under the mining law, BLM may establish protective conditions to prevent irreparable damage within ACECs.

Another comment supporting the reinstatement of the 1980 unnecessary or undue degradation definition containing a "prudent operator" standard noted that the NRC Report did not advocate abandoning the prudent operator standard. BLM carefully considered reinstating the previous definition. On balance, however, BLM decided simply to strike paragraph (4) from the definition in the 2000 rule rather than completely reinstating the 1980 rule. Thus the definition of unnecessary or undue degradation resulting from today's action does not use the term "prudent operator." In effect, paragraph (1) of the definition of unnecessary or undue degradation sets forth how a prudent operator would conduct operations. Such an operator would comply with the performance standards in this subpart and other environmental protection statutes, which describe a prudent way to conduct operations to prevent surface disturbance greater than necessary. This is the basis of the previous definition. The NRC Report (p. 121) discusses the ambiguity resulting from the 1980 rule definition of unnecessary or undue degradation. The current definition has the benefit of being a clearer exposition of what constitutes unnecessary or undue degradation than the definition in the 1980 regulations. To comply with NRC Report recommendation 15, BLM intends to develop guidance manuals to communicate the agency's authority under the definition of unnecessary or undue degradation to protect resources that may not be protected under other laws. For these reasons, we believe the definition in the 2000 rule is not inconsistent with the NRC Report and, other than removing paragraph 4, we did not change it in today's rule.

Section 3809.11 When Do I Have To Submit a Plan of Operations?

One comment from an industry trade association generally approved of this section, saying that the NRC had recommended most of its provisions. However, the comment stated that BLM should remove paragraphs (c)(6) and (7). These paragraphs require a plan of operations for operations causing surface disturbance greater than casual use in lands or waters known to contain Federally proposed or listed threatened or endangered species or critical habitat, or in any of BLM's National Monuments or National Conservation Areas. The comment stated that "[t]he NRC Report did not recommend any additions to the list of 'special status areas,'" and that "requiring a plan because the mining activity will take place in a 'so called' special status area is in violation of the withdrawal procedures of FLPMA."

No change was made in response to these comments. These same points were made in comments on the 1999 proposed rule (*see* 65 FR 70021). Our response in the preamble of the 2000 rule still applies: these provisions do not withdraw any land from the operation of the mining law. They merely establish a threshold for requiring a plan of operations for exploration activities. (All mining operations are required to submit a plan of operations under the 2000 rule, regardless of whether they are located in a special status area.) The NRC Report, which focused only on the 1980 regulations, acknowledged that certain lands require a greater degree of protection than others. In 1980, BLM did not manage National Monuments and therefore could not have included them as lands requiring a plan of operations. With respect to threatened and endangered species, as a practical matter, even under the 1980 regulations BLM looked carefully at any activity in lands or waters where surface disturbance could cause an impact to species or habitat. This scrutiny helps the operator avoid inadvertently violating the Endangered Species Act.

Section 3809.31 Are There Any Special Situations That Affect What Submittals I Must Make Before I Conduct Operations?

We added the phrase "For other than Stock Raising Homestead Act lands" to the beginning of paragraph (e) to make it clear that paragraph (c) does not apply to Stock Raising Homestead Act lands, which we address in paragraph (d). We made the change because it was possible to construe paragraph (e) in such a way that it could be read to include Stock Raising Homestead Act lands. This was not our intent in the 2000 rule, as demonstrated by the presence of paragraph (d), which applies only to Stock Raising Homestead Act lands.

Section 3809.100 What Special Provisions Apply to Operations on Segregated or Withdrawn Lands?

One comment from a state government agency said, "The requirement for validity determinations of mining claims on withdrawn or segregated lands prior to approval of a Plan of operations is unwarranted and will present an unnecessary and burdensome cost to many small independent miners* * *"

We appreciate the concern expressed by the state. BLM recognizes that conducting validity determinations is a resource intensive process that can take a considerable amount of time, particularly given the competing demands on BLM's mineral examiners. We also understand that the resulting delays could affect small operators. However, we made no change in this provision. Lands are withdrawn or segregated from the operation of the Mining Law, except for valid existing rights, for many resource protection reasons. The withdrawal or segregation would be seriously weakened if there were no process for determining whether a mining claim is valid and was valid at the time of withdrawal or segregation. The requirement for validity determinations before approval of plans of operations ensures that the withdrawn areas will not suffer resource damage from operations on invalid claims. This tradeoff provides an additional measure of protection for the public lands while allowing mining to proceed once a determination is made that the claims are valid (and BLM could otherwise approve the plans). In many instances, operators planning to operate in withdrawn areas should be able to allow in advance for the time necessary for a validity examination to be performed. The process in this section is similar to that in BLM's wilderness management regulations. We note that the impacts the state is concerned about may not occur in segregated areas because the validity process is discretionary in such areas (for reasons described in the preamble to the 2000 rule).

Section 3809.116 As a Mining Claimant or Operator What Are my Responsibilities Under This Subpart for my Project Area?

The 2000 rules stated expressly that mining claimants and operators were "jointly and severally" liable for obligations arising under subpart 3809. Together with the revised definition of the term "operator," the 2000 rules expressly established the principle that all claimants and operators would each be 100 percent liable for all obligations that accrued while they held their interests.

The 1980 rules contained no express provision addressing the apportionment of liability among operators and mining claimants. Under the previous (1980) regulatory scheme, liability was established on a case-by-case basis under state common law principles. The BLM Manual in effect since 1985 reflected that under the 1980 rules both operators and mining claimants could be liable for reclamation. The Manual provided: "Reasonable reclamation of surface disturbance is required of all operators, regardless of the level of operations. Mining claims are commonly leased and the claimants are often unaware of the level of operations occurring on the claims. The mining claimants are ultimately responsible for reclamation if the operator abandons the operation." BLM Manual, Section 3809.11. Thus, even without an express regulatory provision, BLM considered operators and mining claimants responsible for reclamation.

In this final rule, we eliminated the reference in section 3809.116(a) to "joint and several" liability. The 2000 rules provided a series of examples. These are also removed in this final rule. Revised section 3809.116(a) thus provides that mining claimants and operators (if other than the mining claimant) are liable for obligations under this subpart that accrue while they hold their interests. BLM recognizes that neither FLPMA nor the Mining Laws expressly provide for joint and several liability, and such an approach has not been shown to be necessary to prevent unnecessary or undue degradation of the public lands. Establishment of adequate financial guarantees should be the first line of defense against incomplete of reclamation responsibilities. The underlying liability scheme serves as a backstop and has not been demonstrated to be inadequate.

BLM intends the effect of this new provision to be equivalent to the situation that existed under the 1980 rules. The apportionment of liability among various responsible persons, including operators and mining claimants, will be established on a case-by-case basis under state common law principles, depending on the specific actions and express responsibilities of the entities involved. In some instances, mining claimants, as the entities who located the claims and have the development rights associated with the mining claims, could have the ultimate responsibility for reclamation if an operator is not available to complete its obligations.

BLM considered removing section 3809.116(a) completely, replacing it with nothing (as existed in 1980), but rejected that option because it would have been more confusing and left all liability questions unanswered. The final rule adopted today codifies the scheme in effect under the 1980 rules, but removes the standard that operators and mining claimants will always be jointly and severally liable.

One comment stated that this section's imposition of joint and several liability on claimants and operators has no statutory basis, since no provisions of FLPMA contemplate or support the imposition of such a liability scheme. It went on that there are both practical and due process problems with imposing joint and several liability for civil and criminal penalties, because such penalties could be considered "obligations under this subpart."

The comment stated that only operators should be liable for compliance with operator requirements. Claimants who have leased claims, sold them reserving a royalty, or contributed them to a joint venture, have no control over operations other than those conferring operator status on claimants. The comment said that making claimants liable for the acts of others would chill, and probably eliminate, these types of transactions in mining claims.

The comment concluded that the imposition of joint and several liability is inconsistent with the NRC Report recommendations, saying that the NRC Report did not endorse this approach. In fact, according to the comment, a joint and several liability scheme undermines the NRC recommendation to remove barriers to reclaiming abandoned mine sites through limiting the liability of the new operator as relates to previous contamination. The imposition of joint and several liability will discourage such cleanups.

In light of these arguments and the equity issues involved, the final rule no longer expressly provides that claimants and operators are jointly and severally liable for damage caused by the operator. If the operator is bankrupt or out of business, and damage needs to be repaired, BLM will rely on other financial resources to perform the clean-up. The resources of first resort will normally be the bond or other financial guarantee posted by the operator. Liability may extend to parent companies, in some cases, under state common law principles. As mentioned earlier, claimants may also be ultimately responsible because they are the ones

who have rights and responsibilities under the mining laws.

Some comments compared the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, to mining operations. In response, we note that subpart 3809 only covers liability for reclamation of mining operations under FLPMA and the mining laws. Unlike CERCLA, these statutes do not establish joint and several liability. To the extent obligations associated with mining operations arise under CERCLA or any other statute, such obligations are independent of those that subpart 3809 establishes. Subpart 3809 is not intended to affect any obligations established under other statutes, and liability schemes under such other statutes do not determine the entities responsible under subpart 3809. BLM will determine the appropriate degree of liability on a case-specific basis, guided by common-law principles.

Section 3809.401 Where Do I File my Plan of Operations and What Information Must I Include With It?

This final rule does not amend section 3809.401 except to change a cross-reference to a renumbered performance standard. Section 3809.401(b), which specifies the required content of a plan of operations, contains more detail than its equivalent in the 1980 regulations did, former section 3809.1–5(c). For example, section 3809.1–5(c)(4) of the 1980 regulations required:

> Information sufficient to describe or identify the type of operations proposed, how they will be conducted, and the period during which the proposed activity will take place.

This previous requirement was vague and left a considerable amount of discretion to the BLM field manager. This created problems both with consistency among the BLM offices and uncertainty among operators as to which information to submit. Section 3809.401 in the 2000 rules specifies exactly what BLM needs: designs, cross-sections, and operating plans for mining areas, processing facilities, and waste disposal facilities; water management plans; rock characterization and handling plans; quality assurance plans; a schedule of operations; and access plans.

One comment from an industry trade association specifically addressed this section, saying that it imposed "[c]onsiderable new and burdensome information gathering and application requirements for proposed mining plans of operations." The respondent included this section in a list of provisions it considered "inconsistent with the NRC Report." BLM disagrees with this comment. All the material specified in section 3809.401 is information that a field manager requires to analyze whether the plan of operations will comply with the performance standards and the National Environmental Policy Act. Many operators were already providing this level of detail under BLM's 1980 regulations and under corresponding state rules. An important factor in industry decision-making is uncertainty, in this case as to whether BLM will approve a plan of operations. Spelling out the information requirements in the regulations goes a long way toward removing this uncertainty. Rather than being inconsistent with the NRC Report, section 3809.401 facilitates compliance with Recommendation 9 of the report, which endorses BLM use of the NEPA process in its permitting decisions. (See NRC Report at pp. 108–109.) The information BLM collects under section 3809.401 assists us in performing the analyses NEPA requires.

Section 3809.411 What Action Will BLM Take When it Receives my Plan of Operations?

This final rule amends section 3809.411 by removing a portion of paragraph 3809.411(d)(3)(iii), which would have implemented the substantial irreparable harm standard. This is a corresponding change, part of the removal of the SIH standard from the definition of unnecessary or undue degradation.

Section 3809.415 How Do I Prevent Unnecessary or Undue Degradation While Conducting Operations on Public Lands?

This final rule amends section 3809.415 by removing paragraph (d), which would have implemented the substantial irreparable harm standard. This is a corresponding change, part of the removal of the SIH standard from the definition of unnecessary or undue degradation.

Section 3809.420 What Performance Standards Apply to my Notice or Plan of Operations?

The performance standards of subpart 3809 are key to establishing the adequacy of environmental protection that the rules require. In deciding which performance standards to include in the final rule, we carefully considered the NRC Report. The general conclusion of the NRC Report is that the existing regulations are generally effective; although some changes are necessary. (NRC Report, p. 5.) The NRC Report continues that the "overall structure of the federal and state laws and regulations that provide mining-related environmental protection is complicated but generally effective." *Id.* This conclusion and the material in the NRC Report that follows has led BLM to conclude that we should not have adopted an entire new set of performance standards, and that we should reinstate the performance standards from the 1980 rules. Thus, this final rule reinstates the standards that were formerly set forth in sections 3809.1–3(d) and 3809.2–2. These have been incorporated into section 3809.420, as paragraph (a)(6) and paragraphs (b)(1) through (b)(10) and (b)(13).

In addition to reinstating the 1980 performance standards, we decided to retain the general performance standards (paragraphs (a)(1) through (a)(5)) from the 2000 rule because they provide an overview of how an operator should conduct operations under an approved plan of operations and clarify certain basic responsibilities, including the operator's responsibility to comply with applicable land use plans and BLM's responsibility to specify necessary mitigation measures. We included paragraph (a)(6) in the general standards to make clear that operators must comply with pertinent state and Federal laws and regulations. This paragraph derives from the introductory text of former section 3809.2–2. These standards of final section 3809.420, while general in nature, provide ample guidance on how to conduct operations. In addition, we decided to retain from the 2000 rule the performance standards which address acid-forming, toxic, and deleterious materials and the standards governing leaching operations and impoundments. These latter standards reflect BLM's acid rock and cyanide policies, which have been in effect since before the 2000 rule was published. They have been redesignated as sections 3809.420(c)(11) and (c)(12).

In general, we believe there is merit in the comments criticizing the 2000 rule for imposing requirements that differ from those imposed by states and other Federal agencies. The approach BLM now prefers to take is to avoid establishing new and unnecessary standards that apply to resources that are already covered by another agency's standards. Except in those instances we cite below, the 1980 regulations provide an appropriate level of protection without imposing a duplicative set of standards.

The large majority of individual comments, most generated by mailing campaigns, supported the performance standards in the 2000 regulations. However, numerous comments opposed the standards in this section. For example, one comment said that'

> new §§ 3809.420(a)(4), (b)(2), (b)(3), (b)(6), (c)(3), (c)(4), (c)(5), and 3809.5 require compliance with environmental or reclamation standards different from those imposed by states and other federal agencies, even though the NRC Report did not recommend that compliance with such standards was needed to prevent unnecessary or undue degradation of public lands.

This comment went on to cite specific instances in this section where the regulations established more stringent environmental protection measures than required by law or other Federal agency or state regulations. The comment concluded that this section in the 2000 rule lets BLM disregard EPA and state permits that an operator may have obtained and impose additional requirements upon mining operations that do not apply to other industrial activities.

We understand that it is our responsibility to implement FLPMA and prevent unnecessary or undue degradation. To the extent that compliance with other Federal and state requirements will prevent unnecessary or undue degradation, BLM prefers to rely on such standards. Contrary to the assertion in the comment, neither this final rule nor the 2000 rule was intended to allow operators to operate in a manner out of compliance with EPA and state discharge or other requirements. In areas such as the handling of acid-forming, toxic, and other deleterious materials, and leaching operations and impoundments, BLM previously determined that a need for BLM surface management guidance existed and established policies, which we codify in this rule. These standards, as well as the reinstated 1980 standards, are authorized by FLPMA, and can be implemented in a manner to harmonize with standards established by the states, EPA, and other Federal agencies. Section 3809.420(a)(4) requires operators to comply with NEPA, and to protect public land resources where adequate resource protection may not exist under other laws. This is precisely what the NRC Report was concerned about in Recommendation 15 (NRC Report, pp. 120–122).

The comment also questioned BLM's authority to establish environmental protection performance standards under the unnecessary or undue degradation standard of section 302(b) of FLPMA, 43 U.S.C. 1732(b), other than in the California Desert Conservation Area and in wilderness study areas. The comment noted that the text of a proviso to an exception in FLPMA section 603(c), 43 U.S.C. 1782(c), concerning wilderness study areas treats "unnecessary or undue degradation" differently from "environmental protection" and that the protection standard for the California Desert Conservation area in FLPMA section 601(f), 43 U.S.C. 1781(f), protects scenic, scientific, and environmental values of the public lands against "undue impairment" and against pollution of streams and waters. In comparing these two sections of FLPMA to Sec. 302(b), the comment concluded that Congress plainly differentiates between preventing unnecessary or undue degradation of the lands, and protecting resources and the environment.

BLM rejects the comment's analysis. FLPMA section 601(f) does not use the unnecessary or undue degradation standard of FLPMA section 302(b) and thus does not provide any indication of the meaning of section 302(b). The "afford environmental protection" language of FLPMA section 603(c) does not contain the modifiers "unnecessary" or "undue" and thus cannot be directly compared either. Moreover, BLM's subpart 3809 rules are based not only on the last sentence of FLPMA section 302(b), but are also based on the general management mandate of section 302(b), the rulemaking authority of 43 U.S.C. 1733 and 1740, congressional policy set forth in FLPMA section 102(a)(8), 43 U.S.C. 1701(a)(8), and the rulemaking authority of the 1872 Mining Law, 30 U.S.C. 22. Clearly, FLPMA's overall structure protecting the public lands from unnecessary or undue degradation reflects congressional intent that unnecessary or undue environmental impacts not occur. For the past 20 years, BLM's 3809 regulations have been in place to protect the public lands against unnecessary or undue degradation, including environmental protection considerations, and they continue to do so in this rule.

The comment also asserted that in other provisions of FLPMA, Congress directed BLM to "provide for compliance with applicable pollution control laws" in developing land use plans (Sec. 202(c)(8), 43 U.S.C. 1712(c)(8)). The comment interpreted this to mean that Congress imposed limits on BLM's environmental protection responsibilities, instructing BLM to defer to other agencies, Federal and state.

Although BLM rules do provide for compliance with applicable pollution control laws, the land use planning requirements do not control the interpretation of the unnecessary or undue degradation standard. However, we believe these arguments miss the point. The Secretary may exercise discretion to protect the environment through the process of approving a plan of operations under section 3809.411 of these regulations. The salient question is whether BLM's protection scheme should extend beyond the requirements state and other Federal agencies establish. Our response is that, as a general matter, it should not, for those areas and subjects adequately addressed by other agencies' requirements. Therefore, we do not intend to include environmental protection measures or resource protection measures in this subpart, where we can rely on those imposed by environmental protection laws such as the Clean Water Act, or regulations promulgated by the Environmental Protection Agency or jurisdictional state agencies. Thus, we concluded that the 1980 performance standards generally were more appropriate than those in section 3809.420(b) and (c) in the 2000 rule, if we include those in paragraphs (c)(3) and (c)(4) in the 2000 rule.

A number of other comments repeated this theme, and asserted that under the 2000 rule, "operators must comply with performance standards that go beyond federal and state environmental requirements. Among other things, operators must minimize all impacts to the environment and to public lands, even if those impacts do not result in degradation of the lands and even if such impacts are specifically authorized by permits issued by other federal or state agencies." In response to these concerns and the conclusion of the NRC Report that environmental protection under the 1980 rules was generally effective, BLM has removed the environmental performance standards and most of the operational performance standards of sections 3809.420(b) and (c) of the 2000 rules. In their place BLM has reinstated the standards of the 1980 rules.

Despite the critical comments, BLM has decided to retain section 3809.420 (c)(3) and (c)(4), on acid-forming, toxic, or other deleterious materials ("acid rock"), and leaching operations and materials ("cyanide"), respectively. Although the acid rock and cyanide standards were first inserted into BLM's regulations as part of the 2000 rule, the reality is that BLM instituted these policies many years ago and they have become standard industry practice on the public lands. Thus, they should be considered the baseline requirements the NRC Report considered. As mentioned earlier, these are redesignated in this rule as sections

3809.420 (c)(11) and (c)(12). The provision on acid rock drainage implements water pollution control laws by stating the preferred venues for control: (1) Prevent or minimize the formation of the acid-forming toxic or deleterious materials; (2) if that can't be done, prevent such materials from migrating; and (3) if that can't be done, capture and treat the materials. This is a common-sense approach, but it is limited or mitigated by the statement in paragraph (c)(3)(iii) that operators do not have to go to lengths that are beyond "reasonable" for source and migration control. As to treatment, discharges of pollutants must meet state and EPA standards.

On the other hand, comments from individuals opposing the suspension of the 2000 rule, along with some Indian tribes, said that "[t]he old rule contained no environmental performance standards while the current [2000] rule requires protection of rivers, streams and groundwater." These comments mis-characterize the 1980 regulations. Former section 3809.2–2(b), which we restore in this rule as section 3809.420(b)(5), required all operators to "comply with applicable Federal and state water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*)." Further, as we explained in the preceding paragraph, we are retaining the "acid rock" and "cyanide" provisions from the 2000 rule, which are partly intended as water protection measures.

Along with the water quality provisions from the 1980 regulations, to accompany the "acid rock" and "cyanide" provisions from the 2000 rule, we are restoring from the 1980 rule the paragraphs on air quality, solid wastes, fisheries, wildlife and plant habitat protection, cultural and paleontological resource protection, as well as cadastral survey monument protection. Thus, it is abundantly clear that today's regulations ensure protection of the environment and of natural and cultural resources.

One comment addressed the cost allocation paragraph of the provision on cultural, paleontological, and cave resources, in which the 2000 rule gave BLM the responsibility for deciding who should pay for investigation, recovery, and preservation of such resources. The comment suggested an alternative scheme under which BLM would lease or sell the rights to recover and preserve such resources. The comment is moot because we are removing the provision in question and restoring the 1980 provision, which charged the costs to BLM.

Restoring provisions from the 1980 regulations will cause the removal of the specific reference to protection of cave resources in paragraph (b)(7), since caves were not mentioned in the 1980 regulations. However, paragraph (a)(6) in today's rule requires operator compliance with all pertinent Federal and state laws, which includes the Federal Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*).

BLM expects that implementation of the performance standards of this rule will be straightforward because this final rule does not introduce new performance standards. We recognize that some confusion could exist as to which performance standards apply to particular operations. The following table clarifies which set of performance standards you should follow:

If	Then
BLM approved your plan of operations prior to the effective date of this rule.	Continue to operate under your approved plan.
Your plan of operations was pending prior to January 20, 2001	If approved, you must conduct your plan of operations under the performance standards in place before January 20, 2001.
You filed an application on or after January 20, 2001, and BLM has not acted on it as of the effective date of this rule.	If approved, you must conduct your plan of operations under the performance standards in place as of the effective date of this rule.

We should also note we did not change the plan content requirements in Section 3809.401.

Section 3809.421 Enforcement of Performance Standards

In restoring provisions from the 1980 regulations containing performance standards, we have added section 3809.421 containing language on enforcing the performance standards. This section is taken from section 3809.1–3 of the 1980 regulations. The new section is helpful to remind operators that failure to comply with the performance standards subjects them to enforcement under this subpart. We included this as a separate section because it does not fit into the structure of section 3809.420 of this final rule.

Section 3809.500 In General, What Are BLM's Financial Guarantee Requirements?

Numerous comments, including those of Indian tribes, supported the bonding and other financial guarantee provisions in the 2000 rule. Industry comments also acknowledged the need for financial guarantee requirements for all mining activities beyond casual use, as recommended by the NRC Report. As stated in our final rule of June 15, 2001 (66 FR 32571), we are not changing the overall financial guarantee requirements in the 2000 rule.

At this time we want to reiterate the Department's commitment to allow the use of existing state bond pools, if the BLM State Director determines that they provide an adequate level of protection to meet the requirements of this subpart. In particular, we wish to respond to comments suggesting that the State of Alaska bond pool would no longer be available for operations on BLM lands. That is an erroneous interpretation. Under these regulations, BLM could continue to use the State of Alaska bond pool to satisfy the requirements of subpart 3809. BLM and the State of Alaska are currently negotiating a revised Memorandum of Understanding to continue use of the bond pool. The previous Memorandum of Understanding allowing use of the bond pool has been extended until January 6, 2002 and may be extended twice again for a total of two years at the request of the State Governor. Thus negotiations can take place through the year 2003 before there would be a question as to whether BLM will accept a financial guarantee that uses the bond pool. In addition, you should note that BLM can accept other instruments, such as insurance.

Section 3809.554 How Do I Estimate the Cost To Reclaim My Operation?

One comment stated that the 2000 rule should have adopted standard bond amounts for certain activities and types of terrain. The comment said that some of the new financial assurance requirements do not properly reflect the NRC recommendations or would have counterproductive consequences. For example, it said that the 2000 rule does not incorporate the NRC Report statement that standard bond amounts be established for certain types of activities in specific kinds of terrain, especially for the activities of prospectors, small exploration companies, and small miners. Specifically, the NRC Report states:

> Standard bond amounts for certain types of activities on specific kinds of terrain should be established by the regulatory agencies. It should be recognized that certain types of activities are less costly to reclaim than others. A set of activity- and terrain-dependent standard bond amounts (by state, BLM district, or forest) should be established for typical activities, especially those of prospectors, small exploration companies, and small miners, so that adequate bonds are posted for activities under 5 acres and so that the permitting process is expedited. Standard bond amounts (a certain number of dollars per acre of land disturbed for a particular type of activity) should be used in lieu of detailed calculations of bond amounts based on the engineering design of a mine or mill.
>
> (NRC Report at pp. 94–95.)

According to the NRC Report, BLM should use these standard bond amounts, which would be in the form of a certain number of dollars per acre of land disturbed, instead of detailed calculations of bond amounts based on the engineering design of a mine or mill.

As we stated on November 21, 2000 65 FR 70070), "[T]he rule is flexible enough to permit the BLM field manager to establish fixed amounts for activities under his or her jurisdiction, but also allows the field manager to require a financial guarantee in an amount over or under the fixed amount if the cost of reclamation of a specific operation deviates from the fixed amount." This is in keeping with our continued belief, which the NRC Report endorses, that good management principles require that an operator post a financial guarantee covering actual reclamation costs. A national rule is impractical for the establishment of fixed bond amounts, because costs of reclamation would vary from state to state and by terrain. BLM will consider whether fixed bond amounts can be set during the implementation process for this final rule.

Section 3809.598 What if the Amount Forfeited Will Not Cover the Cost of Reclamation?

In section 3809.598, we removed a reference to joint and several liability to conform to changes we made to section 3809.116. This change is supported by the discussion of the corresponding change in section 3809.116. We will determine on a case-by-case basis the apportionment of liability between operators and mining claimants to cover the full cost of reclamation.

Section 3809.604 What Happens if I Do Not Comply With a BLM Order?

In today's final rule we remove a reference in paragraph (a) of this section to civil penalties in former section 3809.702. As BLM is removing the provisions for civil penalties this cross reference is no longer necessary.

Section 3809.702 What Civil Penalties Apply to Violations of This Subpart?/ Section 3809.703 Can BLM Settle a Proposed Civil Penalty?

Two comments from mining interests—a company and a trade association—addressed these sections. Both expressly stated that it would be a good idea for BLM to have civil penalty authority, and noted that the NRC recommended that we seek this authority from Congress, if statutory authority is necessary. One of the comments stated flatly that FLPMA does not provide authority for administrative penalties, and that BLM cannot retain these provisions without the appropriate statutory authority, and the other said that it would be prudent for BLM to ascertain whether it has administrative penalty authority before retaining these provisions.

In light of these comments, we have decided to remove these two sections in the final rule. We agree that FLPMA does not contain a section expressly addressing administrative penalties. Although in the November 2000, **Federal Register** preamble we made an argument in support of the agency's authority to assess administrative penalties, this is an unsettled area for which it is prudent to await clear guidance from Congress before promulgating rules. Leaving the administrative penalty rules in effect will no doubt lead to continued litigation on the issue which the agency believes can be avoided by future legislation.

Removing these provisions should not hamper our efforts to protect human health and the environment in the event that an operator misuses a mining claim or public lands and poses an immediate threat to these values. While it would be extremely useful to be able to impose civil penalties administratively, especially as a tool to penalize delayed compliance, we can pursue alternate remedies.

We have retained the enforcement provisions of sections 3809.601 through 3809.605. This contains a significant expansion of enforcement remedies available to BLM beyond those available under the 1980 rules. Under Sec. 303(b) of FLPMA, BLM, through the Secretary of the Interior, can request the Attorney General to seek injunctive relief or other appropriate remedy, which would include a temporary restraining order in an emergency, to prevent unnecessary or undue degradation, and the collection of monetary damages resulting from unlawful acts. In appropriate circumstances, monetary damages can be large, and provide a disincentive to unlawful conduct. Section 3809.604(a) of the 2000 regulations, which we do not amend in this final rule except to correct a cross-reference, describes this statutory authority.

We have additional remedies under 43 CFR subpart 3715. The use and occupancy regulations apply to all uses of mining claims and public lands. A use must be reasonably incident (as defined in section 3715.0–5) and in compliance with all applicable Federal and state environmental standards. Further, the operator must have obtained all required permits before beginning a use, including approvals under 43 CFR part 3800 and subpart 3809. Thus, a failure to be in compliance allows BLM to issue an immediate suspension order under section 3715.7–1(a), and, where appropriate, to arrest individuals who fail to comply with such an order. At trial, the United States can demand monetary compensation for damages.

Finally, BLM may seek cooperative enforcement by a state or other Federal agency that unquestionably has civil penalty authority.

Other Comments Not Directed at Particular Sections

One comment urged that BLM, in its reconsideration of these regulations during the time they are suspended, add provisions to allow and promote the cleanup of abandoned mine sites in or adjacent to new mine areas without causing mine operators to incur additional environmental liabilities, which was an NRC recommendation. Our response to a similar comment in the 2000 rule was that "subpart 3809 applies to active operations, not to cleaning up previously abandoned mines."

We are also correcting a cross-reference in section 3809.2 by removing the term "§ 3809.31(c)" at the end of the first sentence of paragraph (a), and adding in its place the term "§ 3809.31(d) and (e)." This change is merely ministerial, to correct a mistake in the reference to section 3809.31, whose relevant paragraphs are (d) and (e), not (c). The discussion under section 3809.31 contains a more complete explanation.

III. How Did BLM Fulfill its Procedural Obligations?

Executive Order 12866, Regulatory Planning and Review

BLM found in the 2000 rule that the new subpart 3809 regulations were a significant regulatory action under section 3(f) of Executive Order 12866 and require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order. Since we are retaining most of the 2000 rule, while amending selected provisions, we rely in today's rule on the regulatory impact analysis and benefit-cost analysis prepared for the 2000 rule and summarized in that rule. The full analyses remains on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. In the following paragraphs, we describe how the changes presented in today's rule affect this analysis.

The estimated costs associated with this rule are significantly lower than those associated with the 2000 rule. Over the 10 year period that we analyzed, we do not expect today's rule to have significant annual impacts on the economy.

The lower expected costs arise primarily from removing the SIH provision of the 2000 rule. Relative to the 2000 rule, substantial production benefits could accrue as a result of eliminating the SIH standard. However, uncertainly exists with respect to how eliminating the SIH provision will affect net economic benefits. Uncertainty about how the SIH provision would be implemented, site specific factors, and any exploration and production effects (and the timing of these effects) make evaluating net economic benefits very difficult.

The net economic effects associated with eliminating joint and several liability, civil penalties, and revising the performance standards (with the exception of the acid rock drainage and cyanide standards, which would be retained) are equally difficult to quantify but are not significant because the economic costs associated with these provisions are likely to be overshadowed by the potential economic costs associated with the SIH provision. We estimated the net effect of modifying the performance standards from the 1980 rule to the 2000 rule as being limited. Similarly, changing the 2000 standards back to the 1980 standards will result in negligible impact.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these final regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the final regulations clearly stated?

(2) Do the final regulations contain technical language or jargon that interferes with their clarity?

(3) Does the format of the final regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading, for example "§ 3809.420 What performance standards apply to my notice or plan of operations?")

(5) Is the description of the final regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the final regulations? How could this description be more helpful in making the final regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The 2000 rule found that the new subpart 3809 regulations constituted a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM prepared an environmental impact statement (EIS), which remains on file and is available to the public in the BLM Administrative Record at the address specified in the **ADDRESSES** section. Because this final rule retains most of the provisions of the 2000 rule, we rely on the findings in the EIS. In the following paragraphs, we discuss the extent to which we expect this rule to change the impacts on the human environment that we anticipated in the 2000 rule.

Record of Decision Under the National Environmental Policy Act

This preamble constitutes BLM's record of decision required under the Council on Environmental Quality regulations at 40 CFR 1505.2. The decision is based on the proposed action and alternatives presented in the Final Environmental Impact Statement, "Surface Management Regulations for Locatable Mineral Operations," (BLM, October 2000).

BLM has since reevaluated its policy direction. The action BLM is taking today is to choose a new alternative as the preferred alternative, but which is made up entirely of elements from the range of alternatives in the FEIS, whose impacts have already been analyzed. Therefore, the existing FEIS provides adequate support and will serve as the basis of today's decision. This document contains a determination of NEPA adequacy with respect to each provision that has been altered from the 2000 regulation.

After reconsidering all relevant issues, alternatives, potential impacts, and management constraints, BLM is modifying its decision of November 21, 2000, which selected Alternative 3 of the Final EIS for implementation. BLM is reissuing its Record of Decision and selecting a modified Alternative 3 from the Final EIS. The selected alternative retains many aspects of the regulations issued in 2000 while incorporating other elements of Alternative 1 (the 1980 surface management regulations) and Alternative 5 (the NRC Recommendation Alternative).

The new selected alternative (the 2001 regulations) changes the 1980 surface management regulations, which were the baseline for analysis in the EIS, in several general areas. The changes include:

(1) Modifying the definition of unnecessary or undue degradation to provide a closer link between the performance standards and prevention of unnecessary or undue degradation;

(2) Requiring mineral operators to file a Plan of Operations for any mining activity beyond casual use regardless of disturbance size;

(3) Requiring operators to provide reclamation bonds for any disturbance greater than casual use;

(4) Specifying outcome-based performance standards for conducting operations on public lands; and,

(5) Providing options for Federal-state coordination in implementing the regulations.

We present a side-by-side comparison of the 2001 regulations alternative with the regulations that were issued in 1980 (Alternative 1), 2000 (Alternative 3), and the NRC Recommendations Alternative 5 in this Record of Decision under the section titled, "Determination of NEPA Adequacy."

Alternatives Considered

BLM considered a full range of program alternatives when developing the 2000 rule. Chapter 2 of the Final EIS provides a description of how key issues drove the formulation of the alternatives. BLM developed the five alternatives considered in the EIS in response to issues the public raised during the EIS scoping period and comments we received on the Draft EIS. The alternatives ranged from the required "no action" alternative (Alternative 1), which would have retained the 1980 regulations, to Alternative 4, the "maximum protection" alternative. We added a fifth alternative, Alternative 5, to the Final EIS in response to comments that BLM should only make changes to the 3809 regulations that were specifically recommended in the NRC Report. The following is a brief description of the alternatives we presented in the FEIS and the rationale behind their formulation:

Alternative 1, No Action—This alternative would have retained the 1980 surface management regulations for management of locatable mineral operations. This alternative served as the baseline for the EIS analysis. The No Action alternative encompasses the view expressed by many in industry and state governments that changes in the regulations are not needed, and that BLM should make non-regulatory changes to improve the program prior to proposing any regulatory changes.

Alternative 2, State Management—The State Management alternative would have required rescinding the 1980 regulations and returning to the prior surface management program strategy, under which state or other Federal regulations governed locatable mineral operations on public land. Compliance with these other regulations would have been deemed adequate to prevent unnecessary or undue degradation under Alternative 2. We developed this alternative in response to comments that BLM should evaluate ways to encourage mineral development through less regulation, and that a BLM regulatory role was not needed since the respective state regulatory programs were adequate to protect the environment.

Alternative 3, Year 2000 Regulations—This alternative considered the implementation of the proposed regulations developed by the 3809 Task Force. Alternative 3 was the BLM's proposed action and the agency's "preferred alternative" in the Final EIS. The alternative was changed between the draft and final EIS in order to incorporate conclusions and recommendations from the NRC Report and in response to public comments. This alternative was selected for implementation in November 2000, but no longer represents the preferred regulatory approach.

Alternative 4, Maximum Protection—We developed the maximum protection alternative presuming that the 3809 regulations could not change the basic mineral resource allocations made by the mining laws, and that the public lands are open to entry, location, and development of valuable mineral deposits unless segregated or withdrawn. While a total prohibition on mining activity would also achieve a higher level of environmental protection, it would be beyond the scope of the action, which is to manage activity authorized by the mining laws in a way that prevents unnecessary or undue degradation. A surface management program under Alternative 4 would allow BLM to give the highest priority to protecting resource values and impose design-based performance criteria. We developed this alternative in response to comments that stronger environmental requirements were needed, that BLM should have total discretion to deny certain mining operations, and that design-based performance standards should be developed as a nationwide minimum best management practice.

Alternative 5, NRC Recommendations—Alternative 5, like Alternative 3, incorporates the recommendations made by the NRC Report. However, Alternative 5 limits changes in the regulations to those specifically recommended by the NRC. See the NRC Report, especially pages 7 to 9. We developed this alternative in response to public comments and a then-pending appropriations bill provision that would have restricted BLM to issuing a rule covering the regulatory gaps identified in pages 7–9 of the Report.

New Selected Alternative, Year 2001 Regulations—The 2001 regulation alternative retains most of the regulatory language of Alternative 3. The 2001 regulation alternative incorporates changes in five general areas to Alternative 3 to create the new preferred and selected alternative. The changes:

(1) Revise the definition of "operator" by reinstating the 1980 definition;

(2) Remove paragraph four from the definition of unnecessary or undue degradation, which defined unnecessary or undue degradation, in part, as "substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be effectively mitigated';

(3) Remove the joint and several liability provision to ensure fairness to all persons;

(4) Revise the section on performance standards to retain the general performance standards and the standards on acid-forming materials and leaching operations but to replace the other specific standards with those from the 1980 regulations;

(5) Remove the sections on civil penalties for noncompliance; and,

(6) Include minor editing of other sections to correct errors or provide references to appropriate sections.

This alternative was developed after reconsidering legal authority, the policy direction that will best serve the public interest, weighing the environmental benefit (including implementation burdens) and impacts to industry from Alternative 3, while ensuring that the result will not be inconsistent with the NRC recommendations.

Environmentally Preferred Alternative

Although we did not select it, the environmentally preferred alternative is Alternative 4, the maximum protection alternative. While many of the environmental protection measures contained in Alternative 4 were included in the 2001 regulations, the BLM decided not to select Alternative 4 due to its adverse economic impact and administrative cost compared to the environmental benefit.

Decision Rationale

BLM has included all practical means to avoid or minimize environmental harm in the new selected alternative. The following is a summary of the rationale for selection of the preferred alternative as compared to the other alternatives with respect to the key regulation issues. A detailed rationale for the selection of each regulatory provision, and the changes made to the 2000 regulations, is discussed elsewhere in this preamble.

Definition of "Unnecessary or Undue Degradation'

The selected alternative satisfactorily addresses the overall program issue of improving BLM's ability to prevent unnecessary or undue degradation, as required by FLPMA. The regulations change the definition of "unnecessary or undue degradation" to clarify that operations on public lands must be reasonably incident to prospecting, mining or milling activities, that operators must meet the performance standards, follow their Notice or Plan of Operations, and comply with other state and Federal laws related to environmental protection. The new regulations more closely tie the prevention of "unnecessary or undue degradation" to objective performance standards rather than the approach in the 1980 regulations, which tended to

rely upon standard industry practices to protect public resources.

As we have stated earlier in this preamble we did not select the portion of the definition of "unnecessary or undue degradation" under Alternative 3, which contained the SIH provision. Although some comments with regard to this provision were received at the time that it was analyzed in the FEIS, BLM asked for further comments in its March 23, 2001, notice in order to enlist the aid of the public in its review of the rule, as well as ensure that the public has had ample opportunity to review and comment on the impact of the prohibition in paragraph (4) against substantial irreparable harm to significant resources. After reviewing the comments received and evaluating BLM's policy direction in order to better implement its mission in the manner that will best serve the public interest, BLM decided that implementation and enforcement of the SIH standard would be difficult and potentially subjective, as well as expensive for both BLM and the industry. The remainder of the 2000 definition of unnecessary or undue degradation, based more closely upon performance standards, will accomplish this goal in a more objective and practical manner.

The impacts upon the level of protection afforded to sensitive resources by this change from the 2000 definition will not differ significantly from the range of alternatives analyzed in the FEIS, and will probably fall between Alternatives 1 and 3.

In comparison, Alternatives 1 and 5 would not provide BLM with the maximum ability to determine necessary resource protection measures with its "prudent operator" standard for what constitutes "unnecessary or undue degradation." BLM believes that the "prudent operator" standard in these Alternatives gives the operator too great a role in determining the appropriate level of protection of public resources.

Alternative 2 would remove the definition of "unnecessary or undue degradation" as a regulatory criterion and rely on the requirement for operators to comply with state regulations and other environmental laws to protect public lands. BLM decided not to select this alternative since certain resources, wildlife not proposed or listed as threatened or endangered, cultural resources, and riparian areas would, not receive the same level of consideration in planning and conducting mineral operations at the state level as under other alternatives. Alternative 2 did not provide a reasonable assurance that unnecessary or undue degradation would be prevented for a variety of public resources without a BLM role in the review of individual projects.

Alternative 4 would tie the definition of "unnecessary or undue degradation" to use of design-based standards and best available technology. BLM does not believe such standards are flexible enough for application to the wide variety of mining operations and environmental conditions on public lands, resulting in over- or under-regulation of some operations.

Performance Standards

The new alternative retains the general performance standards from Alternative 3 but replaces the specific and environmental standards , except those relating to acid rock and cyanide, with those in Alternative 1. The new selected alternative provides performance standards that enumerate specific outcomes or conditions, yet do not mandate specific designs. This type of performance standard provides BLM with the level of detail needed to ensure that all environmental components are addressed, and at the same time preserves flexibility to consider site-specific conditions and allows for innovation in environmental protection technology. The performance standards developed under the selected alternative often require compliance with, or achievement of, the applicable Federal or state standard. We believe this is appropriate as it facilitates coordination with the states and reduces the potential for a single operation to be subject to conflicting standards. The 2001 regulations also provide that BLM may take enforcement actions where the performance standards are not being met. We included these requirements because without enforcement the performance standards may not be effective in protecting or reclaiming public resources.

We did not select Alternatives 1 or 5, which would retain only the performance standards in the 1980 regulations, because the regulations did not include recent program guidance related to the performance of operations using cyanide, or operations where acid rock drainage is an issue. This alleviates any concerns that policy and guidance documents may not provide an adequate basis for enforcement if either Alternative were selected.

We did incorporate the 1980 performance standards into the selected alternative, but have added language linking the standards to existing state and Federal law and tied compliance with these standards more closely to the definition of unnecessary or undue degradation.

Under Alternative 2, operators would have to comply with the performance standards of the state in which their operations are located. While BLM has found the standards in many states generally adequate in the areas they cover, BLM believes that minimum Federal standards are needed for operations on public lands in order to prevent unnecessary or undue degradation. Relying on individual state standards which may vary widely, which may not address all resources of concern to BLM, or which are subject to change or varying application would not, in our judgment, allow BLM to prevent unnecessary or undue degradation. Therefore, Alternative 2 was not been selected.

The performance standards under Alternative 4 would have been design-based and would not be flexible enough to account for the variety of mining operations and environmental conditions on public lands. The performance standards under Alternative 4 would have been overly stringent for some operations or possibly not stringent enough in other cases. In addition, the NRC Report recommended against adoption of prescriptive, design-based, standards such as those in Alternative 4. Adoption of these standards would be inconsistent with the NRC Report.

Notice Plan of Operations Threshold

BLM's main mechanism for preventing unnecessary or undue degradation is through the review of Notices and the review and approval of Plans of Operations. The threshold for when to file a Plan, what it must contain, and how it is reviewed, are part of this mechanism. After considering a variety of approaches for setting the notice/plan of operations threshold, including the NRC Report recommendations, BLM has decided the threshold should generally be set between the exploration and mining levels of activity. In special category lands, BLM has decided to set the threshold at any activity greater than "casual use." By using these thresholds, the selected alternative focuses the detailed review upon the site-specific environmental analysis process conducted for a Plan of Operations. The basis is the level of harm likely to result from the activity, rather than its purpose or intended result, and so a distinction has been drawn between exploration activities and mining operations. Exploration generally has not created major environmental impacts, nor is it difficult to mitigate. Casual use generally results in no or negligible disturbance of the public lands. The requirement to file a Notice for operations involving exploration activities, combined with the selected alternative's financial guarantee requirements and performance standards, will prevent unnecessary or undue degradation while focusing agency resources at the activity with the greatest potential to cause impacts.

BLM has also included other changes to the regulations applicable to Plans of Operations in the selected alternative. We have developed a more comprehensive list of content requirements, as compared to Alternative 1, to ensure that critical items, such as plans and standards for reclamation, interim management and environmental monitoring, are not overlooked. We have added a mandatory public notice and comment requirement to the process of reviewing proposed Plans of Operations to ensure the public has an opportunity to comment prior to approval of plan activity that may impact public resources. The provisions in the selected alternative are the same as those found in Alternative 3.

We did not choose Alternative 1 because to do so would have been inconsistent with the NRC Report. Some small mining operations disturbing less than 5 acres have created significant environmental impacts or compliance problems. These problems could have been avoided or reduced if BLM had required the operator to submit a Plan of Operations and the plan had been subject to NEPA review..

Alternative 2 would not have addressed this issue satisfactorily. While generally all states have some permit review process, most do not have a comprehensive review process similar to NEPA. Other states may have permits geared towards specific media like air or water, but may not address concerns such as cultural resources, or may not always include a public involvement process.

Conversely, Alternative 4 would require a Plan of Operations for any activity greater than casual use, including exploration. Use of agency resources to process Plans of Operations for exploration projects, which have a low environmental risk, would not be efficient and would result in unnecessary delay to the mineral operator. In addition, this requirement would not be consistent with the NRC Report, which recommended that Plans of Operations be required for mining and milling operations (but not exploration activities), even if the area disturbed is less than 5 acres.

While Alternative 5 has the same notice/plan of operations threshold as the selected alternative, it does not contain the more specific Plan of Operations content or public notice and comment requirements. BLM believes these requirements are necessary for the identification, prevention, or mitigation, of environmental impacts associated with mining. These additional requirements are not inconsistent with the NRC Report.

Financial Guarantees

The posting of a financial guarantee for performance of the required reclamation is a major component of the regulatory program under all the alternatives BLM considered. The new selected alternative is the same as Alternative 3. It requires all notice- and plan-level operators to post a financial guarantee adequate to cover the cost as if BLM were to contract with a third party to complete reclamation according to the reclamation plan, including construction and maintenance costs for any treatment facilities necessary to meet Federal and state environmental standards. BLM decided to require financial guarantees for all Notices and Plans of Operations because of the inability or unwillingness of some operators to meet their reclamation obligations. At present, the potential taxpayer liability for reclamation of operations conducted under the 3809 regulations and not having a financial guarantee is in the millions of dollars. BLM has decided that to protect and restore the environment and to limit taxpayer liability, financial guarantees for reclamation should be required at 100 percent of the estimated cost for BLM to have the reclamation work performed. This includes any costs that may be necessary for long-term water treatment or site care and maintenance.

The 1980 regulations (Alternative 1) do not contain financial guarantee requirements adequate to achieve this level of protection. Under the 1980 regulations, notice-level operators are not required to provide a financial guarantee for reclamation, and financial guarantees for plan-level operations are discretionary. A number of notice-level operations have been abandoned by operators, leaving the reclamation responsibilities to BLM. In addition, the existing regulations are silent on the need to provide bonding for any necessary water treatment or site maintenance. BLM believes it is necessary to specify this requirement to eliminate any argument about requiring such resource protection measures.

Alternative 2 would rely on state financial guarantee programs. While BLM intends to work with the states under the selected alternative to avoid double bonding, relying exclusively on state bonding may not provide adequate protection of the public resources. Not all states require a financial guarantee for all disturbance at 100 percent of the estimated reclamation cost.

Alternative 4 requires financial guarantees for reclamation of all disturbance at 100 percent of the estimated reclamation costs. Alternative 4 would also require bonding for undesirable events, accidents, failures, or spills. BLM believes it would be overly burdensome on the operator to require a financial guarantee for the remediation of events with a low probability of occurrence and therefore did not select the Alternative 4 financial guarantee provisions. Such potential problems are best addressed by a thorough review of the operating plans and the development of contingency measures, which are part of the selected alternative.

Alternative 5 would impose financial guarantee requirements similar to the selected alternative. However, under Alternative 5, the procedural requirements for establishing the amount of a financial guarantee are more limited than those followed under the selected alternative. For example, there is no public notification before release of the financial guarantee, as there is in the selected alternative. BLM believes these procedures are of value in arriving at a final reclamation financial guarantee amount and has therefore not selected the Alternative 5 financial guarantee requirements.

Enforcement

The new selected alternative for enforcement of the regulations does not include the civil penalties provisions that were contained in Alternative 3. Throughout the process of preparing the 2000 rules, BLM was aware, as was the NRC, that it is not clear FLPMA provides BLM the authority to impose civil penalties is uncertain. In light of comments questioning BLM's authority to assess civil penalties the new selected alternative does not include provisions for assessment of civil penalties. We intend to work with the Congress, as recommended by the NRC Report, to clarify our authority with respect to civil penalties. While it would be extremely useful to be able to impose civil penalties administratively, especially as a tool to penalize delayed compliance in cases where unnecessary or undue degradation is ongoing or imminent, BLM can pursue alternate remedies such as injunctive relief, suspension orders under the regulations at 43 CFR 3715, and cooperative

enforcement agreements with states that do have civil penalty authority.

The new selected alternative retains the language from Alternative 3 regarding procedures for enforcement orders and criminal penalties. BLM believes the language regarding enforcement orders clarifies the sometimes cumbersome procedure related to notices of noncompliance in the 1980 regulations. The selected alternative also makes clear what constitutes prohibited acts under the regulations. BLM has decided to include language regarding criminal penalties in the selected alternative to make clear the potential criminal penalties for violation of the regulations. These penalties existed before the rulemaking.

Relying exclusively on the states' enforcement programs under Alternative 2 may have limited utility in achieving Federal land management or reclamation objectives. Conversely, state enforcement in such delegated programs as air quality or water quality may be more effective than BLM enforcement action. The selected alternative provides for cooperation with the state in order to quickly resolve noncompliance in these delegated programs areas.

Alternative 4 contains a requirement for mandatory enforcement. This means when a violation is observed in the field, the BLM inspector must issue a noncompliance and must assess a penalty. The problem with this approach is that there may be extenuating circumstances that an inspector should consider before taking an enforcement action, or it may be possible to resolve the violation in the field without issuing a notice of noncompliance. We did not select this mandatory enforcement provision. BLM believes the regulatory approach to compliance in Alternative 4 may actually hinder the resolution of compliance problems by providing an incentive for their concealment.

Federal/State Coordination

Most of the activity under the 3809 program occurs in the Western States. These states have regulatory programs applicable to mineral operations in the form of either specific regulations that apply to mining, overall environmental protection regulations for a specific resource such as water quality, or both. How the BLM surface management program is coordinated with the state programs is an issue that crosses all elements of the alternatives we considered. After consultation with the states, consideration of BLM resource protection needs, and evaluation of the various alternatives, we have decided to use the Federal/state coordination approach in Alternative 3.

The selected alternative provides a combination of Federal/state agreements that we can use to coordinate efforts, reduce duplication, and improve resource protection while not overly burdening the operator. The selected alternative provides for two types of Federal/state agreements, those that provide for joint administration of the program, and those in which BLM defers part or all of the program to the state (with BLM retaining minimum involvement). BLM selected this alternative to provide flexibility for the BLM field offices to develop their own Federal/state program specific to their states' operating and regulatory environment. By also incorporating state performance standards into the BLM performance standards, as described above, this alternative facilitates coordination between BLM and the state regulatory agencies when it comes to development and implementation of Federal/state agreements.

While the 1980 regulations (Alternative 1) provide for Federal/state agreements, we did not select it because such agreements do not require BLM to concur in the state's approval of each Plan of Operations; or in the approval, release, or forfeiture of a financial guarantee. In the 2000 rule, BLM concluded that retaining at least a concurrence role in these actions is the minimum we need to prevent unnecessary or undue degradation of the public lands.

Alternative 2 would leave review, approval, and enforcement for mineral operations to the respective state programs. Total reliance on state regulation may not be adequate to protect all the public land resources from unnecessary or undue degradation. BLM as a land manager has to meet a comprehensive requirement to protect all the resources on public lands from unnecessary or undue degradation. In addition, this would be a burden on the state for which BLM would not be able to provide compensation. For these reasons, we did not select Alternative 2.

BLM did not select Alternative 4 because it would assert Federal control over operations with only a minimal BLM effort to coordinate with state regulatory agencies. Such an approach could lead to conflicting, or at least confusing, standards for operators, and duplication of effort. Independent BLM standards would be difficult to administer because of the intermingling of private and public land that occurs at many mining operations. Alternative 4 could result in situations where two different performance requirements apply within the same operating area depending upon the land status. Nor does Alternative 4 result in substantial environmental benefits. Where the states have developed performance standards for mineral operations, they are generally considered adequate for operations on public lands. Where there are regulatory gaps in state standards or programs, development of a specific BLM requirement is warranted, but without wholesale replacement of the state standard.

Federal/state coordination under Alternative 5 would not differ greatly from the 1980 regulations. Alternative 5 would provide procedures for referral of enforcement actions to the state. However, it would not provide for retention of a minimal level of involvement by BLM in individual project approvals or financial guarantees. In the 2000 rule, BLM concluded this minimal level of participation is needed to meet its obligation to prevent unnecessary or undue degradation.

Consistency With the NRC Report

Since release of the NRC Report, "Hardrock Mining on Federal Lands," recent Congressional appropriations acts have contained a requirement that any final 3809 regulations must be "not inconsistent with" the recommendations in the NRC Report. This Congressional requirement places some management constraints on the selection of a final alternative. Of the five alternatives in the Final EIS, only Alternatives 3 and 5 are not inconsistent with the recommendations in the NRC Report.

Alternative 1, retaining the 1980 regulations completely, would be inconsistent with the recommendations of the NRC Report. The NRC report identified specific gaps in the regulations and made six recommendations for regulatory changes. See the NRC Report, pages 7–9. BLM could not now decide to select the 1980 regulations, en toto, without being inconsistent with the NRC recommendations.

Alternative 2 would be inconsistent with most of the NRC recommendations. Alternative 2 does not provide reclamation bonding for all disturbance greater than casual use, does not provide for a Plan of Operations for all mining activity, does not provide for clear procedures for modifying plans of operations, and does not require interim management plans. The NRC report clearly recommends regulatory changes that are inconsistent with the decreased BLM role inherent in Alternative 2.

BLM has decided not to select Alternative 3, as presented in the Final EIS, due to legal and policy considerations and in light of the comments received. BLM has determined that we should remove the SIH standard as unnecessary and possibly needlessly burdensome to industry since other means exist to protect the resources covered by the SIH standard. In addition, BLM may not have the authority to implement the civil penalties provisions. Other changes to Alternative 3 reflect new policy choices.

Regulations developed under Alternative 4 would be more stringent than those suggested by the NRC and therefore would be inconsistent with the NRC recommendations. The Alternative 4 requirement to file a Plan of Operations for all activity greater than casual use would be inconsistent with the NRC finding that exploration involving less than 5 acres of disturbance should be allowed under a Notice. The use of design-based standards and mandatory pit backfilling under Alternative 4 would be inconsistent with the NRC recommendation that BLM use performance-based standards. It is also not in harmony with a discussion (which was not incorporated in a specific recommendation) of the NRC Report which suggested that pit backfilling should be determined on a case-by-case basis.

Alternative 5 was designed specifically to compare the impacts resulting from, and limited to, incorporating the specific recommendations in the NRC Report. Both Alternative 5 and the new selected alternative incorporate the NRC recommendations into the 3809 regulations. The main difference between these two alternatives is that Alternative 5 limits the changes in the regulations to the specific NRC recommendations, while Alternative 3 includes both the changes recommended by NRC and some additional regulatory changes that BLM believes are necessary to address program issues.

The new selected alternative for the 2001 regulations incorporates most of the requirements from Alternative 3, but removes the substantial irreparable harm provision in the definition of unnecessary or undue degradation. Other changes made to Alternative 3 are included in the new selected alternative. These additional changes reflect the Secretary's judgment as to what BLM requires to prevent unnecessary or undue degradation of the public lands. Because many regulatory sections are not addressed in the NRC Report, they would not be inconsistent with it. In addition, selection of the alternative for the 2001 regulations does not preclude BLM from pursuing the NRC suggestions for non-regulatory improvements to the surface management program.

In other portions of the preamble you can find additional discussion of how the NRC Report and Appropriations Act provisions affect today's final rule.

Determination of NEPA Adequacy

Since the final selected alternative represents a combination of several alternatives, this Record of Decision includes a review of the adequacy of the Final EIS in addressing the potential impacts that would occur under the 2001 regulations as compared to the impacts we analyzed under the range of alternatives in the FEIS. The table presented below shows how key regulatory provisions of the 2001 regulations are included in the analysis under one or more of the alternatives, and notes how impacts under the selected alternative compare with those predicted in the Final EIS. We have found that the impacts resulting from the new 2001 alternative, with respect to the baseline established by the 1980, as well as the change from the 2000 regulations, would fall within the range of impacts analyzed, and thus are not significantly different. All the provisions adopted in 2001 were options that could have been adopted in 2000. No significant new information or change in circumstances has occurred that would alter the analysis or findings in the FEIS. Based on this review, it is our determination that the Final EIS prepared in November 2000 provides adequate analysis of the impacts that would occur from implementation of the new selected alternative.

Changes From the 2000 Regulations

The determination of NEPA adequacy is prepared for this Record of Decision based upon the following changes to the 3809 regulations that were promulgated in 2000 under Alternative 3:

1. Revision of the definition of "operator," and changes in the section on responsibilities under § 3809.116 to eliminate the joint and several liability provisions.

2. Removal of paragraph (4) of the definition of "unnecessary or undue degradation," which defined unnecessary or undue degradation, in part, as causing substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be effectively mitigated. Also removal of similar language from sections 3809.415(d) and 3809.411(d)(3)(iii).

3. Revision of section 3809.420 on performance standards. Retain the general performance standards and the standards on acid-forming materials and leaching operations. Replace the other specific standards with performance standards from the 1980 regulations.

4. Removal of sections 3809.702 and 3809.703 regarding civil penalties from the 2000 regulations.

5. Other minor edits to correct errors or provide references to appropriate sections.

Comparison of EIS Alternatives and 2001 Regulations

The following table compares provisions of the 1980 regulations alternative, the 2000 regulations alternative, the NRC recommendation alternative and the 2001 regulation alternative. Immediately below the side-by-side comparison is an evaluation of the adequacy of the Final EIS in identifying and analyzing impacts that would result from selecting the 2001 regulations.

3809 Regulation Alternatives Comparison and Determination of NEPA Adequacy

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Casual Use Definition/Suction Dredging [3809.5].	Activities resulting only in negligible surface disturbance and not involving mechanized earthmoving equipment, explosives, or vehicle use in areas closed to off-road vehicles. Interior Board of Land Appeals (IBLA) has ruled that suction dredges are not casual use under the 1980 regulations.	Cumulative impacts could not exceed casual use level. Regulations would specify that small suction dredges could be casual use. BLM would not require a Notice or Plan for suction dredging if a state permit is required and BLM has a MOU with the state on suction dredging.	Same as Alternative 1.	Same as Alt. 3.
Adequacy of NEPA analysis: The 2001 regulations are the same as the 2000 regulations regarding casual use and suction dredging. Impacts from casual use activities are described in the Final EIS under Alternative 3. Requiring suction dredge operators to contact BLM would delay activity, increase operation costs, and restrict access of small miners and recreationists to minerals. There would be an estimated 5 to 10% decrease in overall casual use activity, with an up to 25% decrease in suction dredging activity. Anticipated environmental benefits include prevention of impacts to T&E species and their habitat, and a decrease in cumulative impacts from large numbers of casual use operators working in a single area.				
Definition of Project Area [3809.5].	A tract of land upon which operations are conducted. Includes area required for building or maintaining roads, powerlines, pipelines, or other means of access. Project area may include one or more mining claims, but claims must be under one ownership.	Changed to not specify that mining claims involved in a project be under single ownership.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: The definition of "project area" is covered under the analysis of Alt. 3 in the Final EIS. The definition was not identified during the EIS process as a significant impact to the environment or the operator. Intent of "project area" definition is to make sure that all support facilities are considered in the review and analysis processes.				
Definition of Operator [3809.5].	Operator means a person conducting or proposing to conduct operations.	Operator means any person who manages, directs or conducts operations at a project area, ... including a parent entity or an affiliate who materially participates in such management, direction, or conduct. An operator on a particular mining claim may also be the mining claimant.	Same as Alternative 1.	Same as Alternative 1. Remove 2000 Operator definition and joint and several liability in 3809.116. Return to 1980 operator definition. Operator means a person conducting or proposing to conduct operations.
Adequacy of NEPA analysis: The definition of "operator" is covered under the analysis of Alts. 1 and 5 in the Final EIS; although it was not identified as a significant EIS issue. The impact of the change in "operator" definition from the 2000 regulations to the 2001 regulations would only be significant where a reclamation liability existed that was not covered by a bond and BLM had to pursue legal action to obtain reclamation. The change in "operator" definition would make obtaining reclamation more difficult in these situations. However, we predict the number of such occurrences will be quite low given the improved financial guarantee regulations that were put in place with the 2000 regulations and would remain under the 2001 regulations.				
Definition of Public Lands (Lands where regulations would apply) [3809.5].	BLM-administered lands subject to the Mining Law. Does not include lands where only minerals or surface is federal, except that amendments to the Stock Raising Homestead Act require BLM involvement when surface owner does not consent to mineral development.	Expand definition to include lands where mineral estate is federal, subject to the Mining Law, and surface estate is private. Lands with reserved minerals from a sale or exchange could be open to operation of the Mining Law through a land use plan.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS. Impacts to minerals are both positive, with the potential to open lands with reserved minerals to exploration and development; and negative, by increasing the amount of future operations that fall under the 3809 regulations. Impacts to non-mineral resources are generally positive, with additional environmental review for projects on the split-estate lands which were previously regulated by the states without BLM involvement.				
Unnecessary or Undue Degradation Definition (UUD) [3809.5].	Prudent operator standard. Follow "usual, customary, and proficient" measures. Mitigate impacts. Comply with environmental laws. Perform reclamation. Do not create a nuisance.	Replace prudent operator standard with requirement to comply with performance standards. Activity must be reasonably incident to prospecting, mining, or processing operations. Could not create substantial irreparable harm to significant scientific, cultural, or environmental resources that cannot be effectively mitigated.	Same as Alternative 1.	Definition of UUD is similar to 2000 regulations except delete paragraph (4) which defined unnecessary or undue degradation in part as causing substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be effectively mitigated. Also removal of similar language from § 3809.415(d) and § 3809.411(d)(3)(iii).
Adequacy of NEPA analysis: The change in the definition of "unnecessary or undue degradation" is covered by the analysis in the Final EIS of Alternative 5, with some impacts reflected in the Alternative 3 analysis. The 2001 definition would not be exactly the same as Alt. 5, which would have retained the 1980 UUD definition. The addition of the link to the performance standards in the UUD definition falls between Alt. 1 and Alt. 3. Impacts of the 2001 Alternative's definition of UUD is within the range of alternatives analyzed in the Final EIS, but not substantially different from those described for Alt. 5. The "substantial irreparable harm" provision in the UUD definition was responsible for a large portion of the reduction in mineral activity predicted for the 2000 regulations. Removal of this provision would result in mineral activity levels at slightly less than predicted under Alternative 5 (see Final EIS Table 2.3). The slightly lower activity levels from Alt. 5 are due to other provisions from the 2000 regulations which were retained in the 2001 regulations that would contribute to a reduction in mineral activity.				

3809 Regulation Alternatives Comparison and Determination of NEPA Adequacy—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
The overall acreage disturbed by mineral activity under the 2001 regulations would be at the lower end of the range described in Final EIS Table 2.3 for Alt. 5 at 8,120 to 9,630 acres per year. This would be less than the estimated 8,700 acres per year of disturbance that occurred under the 1980 regulations, but is greater than the 6,700 to 7,580 acres per year of disturbance that was predicted to occur under the 2000 regulations. While the intent was to invoke the "substantial irreparable harm" provision of the 2000 regulations only rarely, it was recognized that when it came to American Indian traditional cultural practices and resources the provision might be applied quite frequently. The Final EIS determined that the 2000 regulations would result in a moderate decrease in impacts to traditional cultural practices and resources, due at least in part to the definition of UUD (Final EIS, Table 2–3). Selection of the 2001 definition of UUD would instead result in impacts similar to those described for Alt. 5, which include a reduction in impacts from Notice operations to traditional cultural practices and resources when compared to the 1980 regulations.				
Notice vs. Plan of Operations Threshold [3809.11].	Surface disturbance less than 5 acres per calendar year requires a Notice. Plans required for more than 5 acres a year of disturbance or for any activity above casual use in special status areas such as ACECs, California Desert Conservation Area, wild and scenic rivers, wilderness areas, and areas closed to off-road vehicles.	Change threshold on the basis of division between exploration and mining. All mining, milling, and bulk sampling over 1,000 tons would require Plans. Exploration disturbing less than 5 acres would require Notices. Exploration in special status lands or disturbing more than 5 acres would require Plans. Expand special status lands to include: national monuments/conservation areas, and lands containing proposed or listed T&E species or their critical habitat.	Same as Alternative 3. Use 1980 special status lands.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: Since there would be no change from the 2000 regulations, the impacts of the 2001 regulations are covered by the analysis in the Final EIS of Alt. 3. Impacts would not be quite the same as Alt. 5 due to the expansion of special category lands in the 2000 and 2001 regulations to include monuments and T&E species areas. Previously described impacts in the Final EIS note that: Notices only for exploration would drive up costs for small mine operators, bonding of Notices would increase exploration costs and reduce exploration activity, using a Plan of Operations to review all mines would increase likelihood that operations would meet the performance standards, costs and workload for operators and BLM would increase, and the bonds for reclamation would be adequate to ensure reclamation performance. These same impacts would occur under the 2001 regulations.				
Mining Claim Validity, Existing Rights, and Mine Economics [3809.100].	Not addressed in 3809 regs. Validity exams are required before Plan approval in wilderness areas per 8560 regulations. BLM has option of determining valid existing rights before approving Plans in segregated or withdrawn areas.	Require that validity exams determine valid existing rights before approval of Plans in areas withdrawn from operation of mining laws. Discretion to perform validity exams for segregated lands.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS. BLM would conduct such exams to ensure that surface disturbance did not occur without prior existing valid mining claims on lands where a withdrawal was protecting nonmineral resources.				
Common Variety Minerals [3809.101].	Not addressed in 3809 regs. Policy provides for holding escrow during operations if materials to be mined may be of a common variety and subject to payment of fair market value.	Regulations would provide for holding escrow during operations if materials to be mined may be of a common variety and subject to payment of fair market value.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS. BLM would protect potential Federal income from common variety minerals by establishing an escrow account.				
State and Federal Government Coordination [3809.201–204].	MOUs in each state provide for coordination for review, approval, bonding, monitoring, and enforcement. State may have lead for some program elements. Most restrictive requirements (BLM or state) apply.	When requested, BLM must give states the lead where state program is as strict as BLM requirements. BLM must concur on Plan approvals. BLM retains inspection and enforcement option and NEPA, NHPA, Tribal Govt.-Govt. coordination and T&E species responsibilities.	Same as Alternative 1. MOUs would be developed or modified to provide clear procedures for BLM to refer certain noncompliance actions to other federal and state agencies for enforcement.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				

3809 Regulation Alternatives Comparison and Determination of NEPA Adequacy—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Applying Regulation Changes to Existing Operations or Facilities [3809.300] [3809.400] [3809.433–434].	Not applicable	Existing Notices expire in 2 years unless bonded and extended. Existing Notices for mining are not required to refile as a Plan if disturbance area does not increase. Existing Plans, pending Plans, or Plan modifications need not comply with new performance standards if filed before effective date of new regulations. All existing Plans would have to meet new bonding requirements. New mine facilities added to existing Plans after effective date would have to meet new regulation requirements. Modifications to existing mine facilities after effective date would have to comply with new regulations unless shown not practical for economic, environmental, safety, or technical reasons.	Same as Alternative 3 but without new performance standards. Existing Plans, pending Plans, or Plan modifications would be subject to new regula-tions and would have to meet new bonding requirements within 180 days of effective date of new regulations. Modifications to existing mines after effective date would have to comply with new regulations unless shown not practical for economic, environmental, safety, or technical reasons.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				
Notice and Plan of Operations Contents and Processing [3809.301–313] [3809.401–412].	BLM review of Notices required in 15 calendar days. Plans, 30 days, with option of 60 more days. Open-ended time frame for Plans for NEPA (EIS), NHPA, and T&E species compliance. Public comment period on EA if BLM determines there is substantial public interest.	Expanded detail on Notice and Plan contents. Includes plans for interim management during temporary closures. Operators also required to provide all studies/data BLM needs to comply with NEPA. Review Plan for completeness within 30 days. Notice time frame 15 days. Clarify review time frames begin when complete Notice or Plan is received. Mandatory public comment period on all Plans for at least 30 days.	Same as Alternative 1. Must provide interim management plans for periods of temporary closure.	Retain language in 2000 regulations. Edits to reflect other changes in definition of unnecessary or undue degradation.
Adequacy of NEPA analysis: The impact of the Notice or Plan content and review requirements is covered under the existing analysis of Alt. 3 in the Final EIS. The regulatory language regarding denial on the basis a plan violating the SIH standard is revised from the 2001 regulations to reflect the change in definition of UUD described previously. However, the processing steps would remain the same as described for the 2000 regulations up to the decision point where the option of denial due to substantial irreparable harm is no longer available. The potential for denial or non-acceptance of Plans and Notices was the main reason for the number of projected Notices and Plans in Final EIS Table 2–3 to be lower for Alt. 3 compared to Alt. 5. With the new UUD definition in the 2001 regulations the number of Notices and Plans processed is anticipated to be between the numbers shown under Alt. 3 and Alt. 5 in Final EIS Table 2–3, but probably much closer to Alternative 5. It is therefore estimated that the 2001 regulations would result in an average of 360 to 380 Notices per year and 340 to 360 Plan per year. The content and processing requirement for these Plans and Notices would result in a more comprehensive review and better protection of resources than would occur using the 1980 regulations, and would be nearly the same as that which would occur under the 2000 regulations.				
Modifications [3809.330–331] [3809.430–431].	Operator-initiated modifications are processed similar to original Notice or Plan. Agency-required modifications must show need and that the issue was unforeseen at the time of initial Plan approval.	Eliminated requirement for BLM to show unforeseen issues that warrant modification. BLM may require operator to modify Notice or Plan to prevent unnecessary or undue degradation (UUD). Only test is that the modification is needed to prevent UUD. Plan modifications required at final closure to address unanticipated conditions or new information.	Same as Alternative 3.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				

3809 Regulation Alternatives Comparison and Determination of NEPA Adequacy—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Temporary or Permanent Closure [3809.334] [3809.336] [3809.424].	Site must be maintained in safe and clean condition. May require removal of all structures and equipment, and site reclamation after unspecified period of nonoperating.	Must follow interim management plans during periods of temporary closure. Notices expire after 2 years. BLM may consider projects abandoned, depending on time and condition of sites and equipment. Plans are similar to Notices. After 5 consecutive years of inactivity, Plans may be terminated.	Same as Alternative 3.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				
Financial Guarantee Requirement (Bonding) [3809.500—.599].	Bonds required only for Plans at BLM's discretion. Expired policy limits bond amounts to $1,000/acre for exploration and $2,000/acre for mining, except for areas with cyanide use or BEEN potential which are bonded at 100% estimated BLM reclamation cost. Use state bonding programs to meet these requirements through agreements.	Actual-cost bonding required for all Notices and Plans. Operator would provide initial reclamation cost estimate. Financial guarantee must cover 100% of reclamation costs, including any post-closure water treatment or other site maintenance. Equivalent state bonding instruments could be used to meet requirements, but must be redeemable by the Secretary of the Interior. Discontinue accepting corporate guarantees.	Same as Alternative 3.	Retain language in 2000 regulations; and the changes made in the time frames under regulations promulgated on June 15, 2001 for existing operations to meet the new bonding requirements.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				
Inspection and Monitoring [3809.600]. Public Mine Visits [3809.900].	Operators must allow BLM to inspect operations. Policy is for inspections four times annually where cyanide is used or significant potential for acid rock drainage and twice annually for all other operations. Monitoring programs are developed during Plan review. The operator conducts environmental testing (water, air, soil, etc.) and submits the results to BLM. BLM may take check samples during inspections.	Same as Alternative 1. Add: Mandate current policy of inspections four times annually where cyanide is used or potential exists for acid rock drainage. Upon prior notification to BLM, in certain circumstances, may allow the public to annually tour mines.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: The inspection, monitoring, and public mine tour provisions of the regulations are covered under the existing analysis of Alt. 3 in the Final EIS.				
Type and Adequacy of Penalties for Non-compliance [3809.700].	BLM issues notices and records of noncompliance. Federal injunctions and criminal prosecution may be used.	Similar to Alternative 1. Add: BLM would issue discretionary administrative penalties ($5,000/day), suspensions, revocation of Plan approval, and nullification of Notice for failure to comply with enforcement orders. Under MOUs, BLM would refer certain noncompliance actions to other federal and state agencies for enforcement.	Same as Alternative 3. No additional regulations on criminal penalties. Use current criminal penalties process (Alt. 1).	Delete the civil administrative penalties in sections 3809.702 and 3809.703 Add reminder in 3809.421 that failure of the operator to prevent undue or unnecessary degradation or to complete reclamation to the standards described in this subpart may cause the operator to be subject to enforcement actions. This was in the 1980 regulations.
Adequacy of NEPA analysis: The penalties provision of the regulations is covered under the existing analysis of Alt. 1 in the Final EIS. The deletion of civil penalties from the 2000 regulations leaves only a criminal penalty framework which most closely resembles that which was used in the 1980 regulations per Alt. 1. Difficulties with enforcement using only criminal penalty provisions would continue as described in the Final EIS under Alt. 1. New section 3809.421 does not change any operator requirements or create any additional level of environmental protection over that presented in the 2000 regulations.				

3809 Regulation Alternatives Comparison and Determination of NEPA Adequacy—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Appeals Process [3809.800].	BLM decisions must be appealed within 30 days. Operators must appeal to BLM state director, then to the Interior Board of Land Appeals (IBLA). Third-party appeals of BLM decisions are made to IBLA. BLM's decision is in full force and effect during an appeal, unless IBLA grants a written request for a stay.	Both operator and third parties could request a state director review of any decisions, or appeal directly to IBLA. State Director decisions could also be appealed to IBLA. All decisions would be in full force and effect unless a written request for a stay is granted by the reviewing entity (state director or IBLA).	No Change. Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				
Performance Standards, Generally [3809.420].	Prevent unnecessary or undue degradation. Follow requirements at 3809.1–3(d). Other site-specific requirements may be developed during individual project review.	Outcome-based standards with site-specific allowances. Includes BLM cyanide and acid rock drainage requirements. Use proper equipment, devices, and practices. Follow reasonable and customary sequence of exploration, development, and reclamation.	Same as Alternative 1.	Retain language in 2000 regulations regarding general performance standards. Add reminder that operations must be conducted in compliance with all Federal and state laws Retain the performance standards in the 2000 rule related to BEEN and cyanide management. Combine them with the 1980 performance standards.
Adequacy of NEPA analysis: The rewritten performance standards in the 2001 regulations are covered by analysis under either Alts. 1, 3, or 5 in the Final EIS. In overall effect, the performance standards most closely resemble those put forward in Alt. 3, the 2000 regulations, with some of the performances standards from the 1980 regulation rewritten in Plain English and presented as they would be used under Alt. 5. There would not be a substantial change in environmental protection, environmental impact, or operator requirements in going from the 2000 regulations to the 2001 regulations for several reasons. One, the two sets of regulations have performance requirements that are very similar, and in some cases identical. And two, performance requirements for mineral operations are not set until completion of the individual project review process. The actual performance standards in the regulations serve mostly as a guide for the site specific requirements. This is especially true with "outcome-based" performance standards such as those in Alts. 1, 3, and 5. A comparison of the individual performance standards follows:				
Land Use Plans	Not addressed	Consistent with the Mining Law, operations and postmining land use must comply with land use plans and coastal zone management plans.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				
Surface and Ground Water Protection.	All operators must comply with federal and state water quality standards.	Same as Alternative 1, plus pit water quality must not endanger wildlife, public water supplies, or users.. To meet this standard, operators would use operation and reclamation practices that minimize water pollution and changes in flow in preference to water treatment or replacement.	Similar to Alt. 1 plus:. Project approvals would establish acceptable postclosure water quality conditions for pit lakes suitable to long-term use of the site and those needed to adequately protect ground and surface waters, as well as wildlife and waterfowl.	Water quality. All operators shall comply with applicable Federal and state water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 et seq.).
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 1 in the Final EIS.				
Wetlands and Riparian Area Protection.	Not specified. State and 404 permits (from the Army Corps of Engineers) must be acquired for dredging or filling in U.S. waters.	Same as Alternative 1 with specific site-selection criteria added:. Operator must: (1) avoid locating operations in wetlands and riparian areas where possible, (2) minimize impacts to wetlands and riparian areas, and (3) mitigate damage to wetlands and riparian areas through measures such as restoration or offsite replacement.	Same as Alternative 1.	Same as Alt. 1. No specific standard for a riparian area.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				

3809 Regulation Alternatives Comparison and Determination of NEPA Adequacy—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Soil or Growth Media Handling.	Where reasonably practicable, topsoil must be saved and reapplied to disturbed areas after areas have been reshaped.	Topsoil or other growth media must be removed, segregated, and preserved for later use in revegetation during reclamation. Must transport soil from original location to point of reclamation without stockpiling where economically and technically feasible.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Revegetation Requirements.	Where reasonable and practicable, disturbed areas must be revegetated. Revegetation is to provide a diverse vegetation cover and is a component of the requirement to rehabilitate wildlife habitat. Ban on creating a nuisance would be used to address noxious weed control.	Same as Alternative 1 with more specifics on outcome. All disturbed lands must be revegetated to establish a stable and long-lasting cover that is self-sustaining and comparable in both diversity and density to preexisting natural vegetation. Use native species to the extent feasible and establish success according to schedule in reclamation plan. Operations must prevent and control noxious weed infestations.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Fish, Wildlife and Plant Protection and Habitat Restoration.	Operator must act to prevent adverse impacts to threatened and endangered species and their habitats that might be affected by operations.. Reclamation must include rehabilitating fisheries and wildlife habitat.	Similar to Alternative 1, plus: ..... Operators must minimize disturbances and adverse impacts to fish, wildlife, and related environmental values.. All processing solutions, reagents, or mine drainage toxic to wildlife must be fenced or netted to prevent wildlife access.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Protecting Cultural Resources.	National Historic Preservation Act Section 106 process used to develop mitigation for cultural resources found before Plan approval. Operators cannot knowingly disturb, alter, injure, or destroy any historical or archaeological site, structure, building, object, or cultural site discovered during operations. Operators must immediately notify BLM of any cultural resources found during operations and must leave such discoveries intact. BLM has 10 working days to protect or remove discovery at the government's cost, after which operations may proceed.	Same as Alternative 1, except 30 calendar days instead of 10 working days would be allowed for data recovery. BLM would determine who bears cost of recovery on a case-by-case basis.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Protecting Paleontological Resources.	Operators cannot knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains. Operators must immediately notify BLM of any paleontological resources discovered during operations and must leave such discoveries intact. BLM has 10 working days to protect or remove discoveries at the government's cost, after which operations may proceed.	Same as Alternative 1, except 30 calendar days instead of 10 working days would be allowed for data recovery. BLM would determine who bears cost of recovery on a case-by-case basis.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				

3809 Regulation Alternatives Comparison and Determination of NEPA Adequacy—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Protecting Cave Resources.	Not specified.	Inventories and mitigation plans would be required before disturbance of cave resources. Operators must immediately notify BLM of any significant cave resources found during operations and leave such discoveries intact. BLM has 30 calendar days to protect a discovery, after which operations may proceed. BLM would determine who bears the cost for protecting cave resources.	Not specified. Same as Alternative 1.	Not specified. Same as Alt. 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
American Indian Traditional Cultural Values, Practices, and Resources.	Not specified in regulations. Consultation with American Indians is used to develop mitigation on a case-by-case basis.	Consultation with American Indians is specified as part of Plan review process. (3809.411(a)(3)). Consultation would be used to develop mitigation on a case-by-case basis where mitigation is possible.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				
Roads and Structures.	Access routes for only the minimum width needed for operations and shall follow natural contours to minimize cut and fill. Require the use of existing roads to minimize the number of access routes, and to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved on public road the operator may be required to make arrangements for use and maintenance. Operators must consult with BLM for roadcuts greater than 3 feet on inside edge. All structures must be built and maintained according to state and local codes. Structures are addressed in separate rules at 43 CFR 3715.	Generally the same as Alt. 1 without the requirement to consult with BLM for roadcuts greater than 3-feet.	Same as Alternative 1.	Same as Alt. 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1, 3, and 5 in the Final EIS.				
Handling of Potentially Acid-Forming, Toxic, or Other Deleterious Materials.	Reclamation must include measures to isolate, remove, or control toxic or deleterious materials. Other requirements imposed would be based on site-specific review according to BLM policies [acid rock drainage (BEEN) policy].	Includes requirements from BEEN policy. Static or kinetic testing must be used to identify and guide handling and placement of potentially acid-forming materials. BEEN control measures must be fully integrated with operational procedures, facility design, and environmental monitoring programs. BEEN control must focus on prevention or control of acid-forming reaction. If formation of BEEN cannot be prevented, its potential migration must be prevented or controlled. Capture and treatment of BEEN or other undesirable effluent is required if source controls and migration controls do not prove effective. Effluent treatment could be used only after source control has been employed.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS. Retaining the performance requirements for handling of potentially acid-forming, toxic, or other deleterious materials in the 2001 regulations, along with the Plan content requirements for information on acid drainage potential, would maintain protection of environmental resources at essentially the same level as the 2000 regulations.				

3809 Regulation Alternatives Comparison and Determination of NEPA Adequacy—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Leaching and Processing Operations and Impoundment.	Reclamation must include measures to isolate, remove, or control toxic or deleterious materials. Other requirements imposed would be based on site-specific review according to BLM policies [cyanide management policy, BLM state cyanide management plans, and acid rock drainage (BEEN) policy].	Incorporated requirements of BLM's cyanide policy: Cyanide facilities must be able to contain maximum operating solution with capacity for the 100-year, 24-hour storm event, including snowmelt events and expected draindown from heaps during power outages. Secondary containment required for vats, tanks, or recovery circuits to prevent release of toxic solutions. Heaps and other solution containment structures must be monitored for leaks. Cyanide solution and heaps must be detoxified upon release to the environment, at temporary closure, or at final reclamation. Operations must not cause wildlife mortality. Exposed cyanide solutions must be fenced and covered to prevent access by public, wildlife, and livestock. Neutralization may be used in lieu of fencing tailings impoundments.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS. Retaining the performance requirements for leaching and processing operations in the 2001 regulations, along with the Plan content requirements for information facility design and reclamation, would maintain protection of environmental resources at essentially the same level as the 2000 regulations.				
Stability, Grading, and Erosion Control.	Reclamation must include measures to control erosion, landslides, and runoff.	Erosion must be minimized during all phases of operations. All disturbed areas must be graded or otherwise engineered to a stable condition to minimize erosion and facilitate revegetation. All areas must be recontoured to blend in with the premining natural topography to the extent practical.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Pit Backfilling and Reclamation.	Not specified. Stable highwall might be left where required to preserve evidence of mineralization. Current practice is to determine amount of pit backfilling on case-by-case basis.	BLM would determine degree of backfilling required, if any, from a site-specific operator demonstration of feasibility based on economic, environ-mental, and safety considerations. Mitigation would be required for pit areas that are not backfilled.	Same as Alternative 1. Amount of pit backfilling determined on a case-by-case basis.	Same as Alternative 1. Amount of pit backfilling determined on a case-by-case basis.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Waste Rock, tailings, and leach pads.	Mining wastes. All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and state laws.	Must locate, design, construct, operate and reclaim to minimize infiltration and contamination of water, achieve stability; and to the extent economically and technically feasible, blend with the pre-mining natural topography.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Drill Holes	Exploration operations and drill hole plugging are not specified. Decided on case-by-case basis during Notice or Plan review.	All drill cuttings and mud must be contained onsite. All exploration drill holes must be plugged to prevent mixing of waters from aquifers, impacts to beneficial uses, downward water loss, or upward loss from artesian conditions. Bore holes must be plugged on the surface to prevent direct inflow of surface water and to eliminate the open hole as a hazard.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				

3809 REGULATION ALTERNATIVES COMPARISON AND DETERMINATION OF NEPA ADEQUACY—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Solid Wastes	All operators shall comply with applicable Federal and state standards for the disposal and treatment of solid wastes. All garbage, refuse or waste shall either be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the lands.	Must comply with Federal, state, and where delegated by the state, local standards for the disposal and treatment of solid wastes. Must remove from the project area, dispose of, or treat all non-mine garbage, refuse or waste to minimize their impact.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Protection of survey monuments.	To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.	To the extent economically and technically feasible, you must protect all survey monuments, witness corners, reference monuments, bearing trees, and line trees against damage or destruction. If you damage or destroy a monument, corner, or accessory, you must immediately report the matter to BLM. BLM will tell you in writing how to restore or re-establish a damaged or destroyed monument, corner or accessory.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the regulations is essentially covered under the existing analysis of Alts. 1, 3, and 5 in the Final EIS.				
Fire Prevention and control.	The operator shall comply with all applicable Federal and state fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.	You must comply with all applicable Federal and state fire laws and regulations, and take all reasonable measures to prevent and suppress fires in your area of operations.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1, 3, and 5 in the Final EIS.				
Air Quality	All operators shall comply with applicable Federal and state air quality standards, including the Clean Air Act (42 U.S.C. 1857 et seq.).	Your operations must comply with applicable Federal, Tribal, state, and where delegated by the state, local government laws and requirements.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1, 3, and 5 in the Final EIS.				

One comment stated that the joint and several liability provision in section 3809.116(a) would cause severe disincentives to mineral exploration activities, a "significant factor" that should have been analyzed in the draft environmental impact statement. We have removed this provision from paragraph (a).

The Environmental Protection Agency commented on the proposed suspension of the 2000 rule, focusing on two main issues:

(1) EPA suggested "that the new financial assurance requirements not be suspended but be continued"; and

(2) EPA stated that by amending the definition of "unnecessary or undue degradation" to include "a proposed activity that would cause substantial irreparable harm," the 2000 rule "significantly enhanced BLM's ability to prevent serious and foreseeable environmental harm." EPA requested BLM to "consider these important measures and protections in its review of the 3809 regulations."

The final rule of June 15, 2001, as stated earlier in this preamble, maintains the financial assurance provisions of the 2000 rule.

Although this final rule removes the substantial irreparable harm provision in the definition of unnecessary or undue degradation, BLM retains ample authority to protect surface resources and the environment. As we stated earlier, in the discussion of public comments, BLM has ample statutory and regulatory means of preventing harm to significant scientific, cultural, or environmental resource values: The Endangered Species Act, the Archaeological Resources Protection Act, withdrawal under Section 204 of FLPMA, the performance standards in section 3809.420, and so forth. Many statutory protections are invoked in the performance standards in section 3809.420.

The revision of section 3809.420 removes duplicative requirements for environmental protection. For example, paragraph (b)(7), on fisheries, wildlife, and plant habitat explicitly protects only threatened and endangered species, while the 2000 rule required that the operator "must minimize disturbances and adverse impacts on [all] fish, wildlife, and related environmental values." However, the requirements that the operator must comply with the Clean Water Act, Clean Air Act, and other environmental laws and regulations will have the same effect. The final rule removes unnecessary language.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM prepared a regulatory flexibility analysis on the expected impact of the final 2000 rule on small entities and determined that the final regulations will have a significant economic effect on a substantial number of small entities, and summarized it in the 2000 rule (65 FR 69998, 70103). The regulatory flexibility analysis remains on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. In this final rule we have made changes that should reduce the burdens on small entities. The regulations no longer provide for joint and several liability for violations of the regulations, no longer provide for civil liability for violations, simplify the definition of "operator," and reduce the burdens of performance standards.

The Small Business Administration (SBA) commented in support of the proposed rule to suspend the 2000 rule. The principal substantive objection of the SBA was to the definition of "unnecessary or undue degradation" and the inclusion in it of "substantial irreparable harm" as an element. Removing this element from the definition in this final rule should obviate this objection.

One comment stated that BLM must consider "the impact of the new regulations on small farmers and ranchers, as well as recreation-based businesses," in our regulatory flexibility analyses. Since these regulations have little or nothing to do, per se, with the operations of these kinds of business, the unstated implication of this comment is that changing the compliance standards for mining operators might somehow degrade the environment upon which these businesses largely depend.

As discussed earlier in the preamble, we are not abandoning surface resource protection and environmental protection by removing some onerous provisions in the 2000 rule and replacing them with provisions that functioned well for 20 years. Operators must maintain air and water quality to the standards established by Congress in the Clean Air Act and the Clean Water Act, and must manage solid wastes in accordance with the Solid Waste Disposal Act and the Resource Conservation and Recovery Act. These concerns are those most vital to the business interests mentioned in the comment.

Small Business Regulatory Enforcement Fairness Act

Evaluated against the baseline of the 2000 rule, BLM has concluded that today's rule will not have a significant economic impact on a substantial number of small entities. This rule should reduce the costs borne by small entities relative to the 2000 rule. However, the magnitude of the cost reductions depends on site and operation specific factors. The removal of the SIH provision will benefit small entities. As stated earlier, the SBA objected to the 2000 rules primarily because of the SIH provision. Today's action obviates that objection and benefits small entities.

Unfunded Mandates Reform Act

In the 2000 final rule (65 FR 69998, 70109), BLM found that those final regulations do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these final regulations have a significant or unique effect on state, local, or tribal governments or the private sector. The impacts of this final rule do nothing to change that finding. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*). None of the comments we received from state governmental entities or associations of such entities alleged any unfunded mandates in the 2000 rule.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

In the 2000 final rule (65 FR 69998, 70109), BLM found that those final regulations do not represent a government action capable of interfering with constitutionally protected property rights. We stated that it doesn't affect property rights or interests in property, such as mining claims; it governs how an individual or corporation exercises those rights. However, one comment on the proposed suspension of the 2000 rule stated that the joint and several liability provision in section 3809.116(a) would diminish the property value by severely restraining alienation and thus amount to a taking in violation of the Fifth Amendment of the Constitution. We have removed this provision in this final rule. Because this final rule does not make any changes that increase the burdens on mining claim owners or other property owners, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

In the 2000 rule, BLM found (65 FR 69998, 70109) that it would have federalism implications in that in certain circumstances it may preempt state law. However, we found further that it would not have a substantial direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. The 2000 rule describes the consultation BLM engaged in with the states and the results of that consultation. The changes made in this final rule and in the final rule of June 15, 2001 (66 FR 32571), will not increase burdens on states, and will facilitate cooperation between states and the United States in the area of surface management of mining claims. This final rule does not change the findings in the 2000 rule. This rule does not change the regulations in a manner contrary to the interests of the states as found from consultation with the states.

Further, we received comments from governors, agencies, or legislatures of or Members of Congress from the following Western States, as well as the Western Governors' Association: Alaska, Idaho, Nevada, Utah, and Wyoming. These comments were critical of the 2000 regulations and supported their suspension and revision. Only one of these provided detailed recommendations that largely tracked those of the NRC. To the extent that those specific recommendations pertain to BLM, or are within the legal responsibility of BLM, we believe this final rule follows those recommendations.

BLM's full Federalism assessment, performed on the 2000 rule, remains on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this final rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

We rely in part on Tribal consultation that occurred before publication of the 2000 rule. In accordance with Executive

Order 13175, we have also found that this final rule does not include policies that have significant tribal implications. We have made clear that plans of operations under these regulations must comply with state, local, Tribal, and other Federal requirements. Although removing the SIH standard could potentially affect Native American cultural resources on the public lands, in most instances mitigation measures will be possible to reduce such impacts.

In public comments, two tribes strongly opposed the idea of rescinding the 2000 regulations and reverting to the 1980 regulations. In this final rule, we are not reissuing the 1980 regulations. Rather, we are removing or revising a limited number of provisions that:

(a) Courts have been asked to find legally untenable;

(b) Are expected to have severe impacts on employment in Western States where mining is an important industry and a source of employment for Indians and non-Indians alike; and

(c) BLM does not need in the regulations in order to prevent unnecessary or undue degradation of the public lands or to limit the impact of mining on Tribes.

One of the comments said that members of the Tribe in question "regard salmon as essential to their spiritual and physical well-being," and said that maintenance of environmental resources, especially water quality and salmon, is of great importance. Although we have removed the SIH provision from the definition of unnecessary or undue degradation because of the uncertainty and possible economic disruption it causes for the mining industry, we have retained the performance standards in section 3809.420 that are designed to preserve water quality: paragraph (b)(5) which requires operators to comply with Federal and state water quality standards; paragraph (b)(11), which is designed to prevent acid rock drainage into the watershed; and paragraph (b)(12), which is intended to prevent cyanide leaching into the watershed. These provisions provide ample protection to western streams that are habitat for salmon. Retaining these provisions should fully address the Tribe's concerns.

E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. The principal changes proposed in the rule address (1) the definition of an operator, what entities are responsible for reclamation and other duties, (2) the definition of unnecessary or undue degradation, and (3) performance standards that operators must follow. To the extent that the rule affects the mining of energy minerals (*i.e.*, uranium and other fissionable metals), they will tend to increase production marginally.

Paperwork Reduction Act

The 2000 final rule (65 FR 69998, 70111) stated that it required collection of information from 10 or more persons. It went on to discuss our compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and the public comments that discussed the information collection requirements. We continue to rely on the discussion in the 2000 rule as to information collection requirement matters. The Office of Management and Budget has approved those information collection requirements in the final rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004–0194. This final rule does not contain additional information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995.

Author

The principal authors of this rule are members of the Departmental 3809 Task Force, chaired by Robert M. Anderson, Deputy Assistant Director, Minerals, Realty, and Resource Protection, Bureau of Land Management.

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

P. Lynn Scarlett,

Assistant Secretary, Policy Management, and Budget.

Accordingly, for the reasons stated in the Preamble, and under the authorities cited below, BLM amends Title 43 of the Code of Federal Regulations part 3800 as set forth below:

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

Subpart 3809—Surface Management

1. The authority citation for subpart 3809 continues to read as follows:

Authority: 16 U.S.C. 1280; 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1201; and 43 U.S.C. 1732, 1733, 1740, 1781, and 1782.

2. Amend § 3809.2 by removing the term "§ 3809.31(c)" at the end of the first sentence of paragraph (a), and adding in its place the term "§ 3809.31(d) and (e)."

3. Amend § 3809.5 by revising the definitions of "operator" and "unnecessary or undue degradation" to read as follows:

§ 3809.5 How does BLM define certain terms used in this subpart?

* * * * *

Operator means a person conducting or proposing to conduct operations.

* * * * *

Unnecessary or undue degradation means conditions, activities, or practices that:

(1) Fail to comply with one or more of the following: the performance standards in § 3809.420, the terms and conditions of an approved plan of operations, operations described in a complete notice, and other Federal and state laws related to environmental protection and protection of cultural resources;

(2) Are not "reasonably incident" to prospecting, mining, or processing operations as defined in § 3715. 0–5 of this chapter; or

(3) Fail to attain a stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas.

4. Amend § 3809.31(e) by removing the word "If" and adding the phrase "For other than Stock Raising Homestead Act lands, if" at the beginning of the first sentence.

5. Amend § 3809.116 by revising paragraph (a) to read as follows:

§ 3809.116 As a mining claimant or operator, what are my responsibilities under this subpart for my project area?

(a) Mining claimants and operators (if other than the mining claimant) are liable for obligations under this subpart that accrue while they hold their interests.

* * * * *

6. Amend § 3809.401 (b)(5)(ii) by removing the term "§ 3809.420(c)(4)(vii)", and adding in its place the term "§ 3809.420(c)(12)(vii)."

7. Amend § 3809.411 by revising paragraph (d)(3)(iii) to read:

§ 3809.411 What action will BLM take when it receives my plan of operations?

* * * * *

(d) * * *

(3) * * *

* * * * *

(iii) Proposes operations that would result in unnecessary or undue degradation of public lands.

8. Amend § 3809.415 by removing paragraph (d).

9. Revise § 3809.420 to read as follows:

§ 3809.420 What performance standards apply to my notice or plan of operations?

The following performance standards apply to your notice or plan of operations:

(a) *General performance standards.* (1) *Technology and practices.* You must use equipment, devices, and practices that will meet the performance standards of this subpart.

(2) *Sequence of operations.* You must avoid unnecessary impacts and facilitate reclamation by following a reasonable and customary mineral exploration, development, mining and reclamation sequence.

(3) *Land-use plans.* Consistent with the mining laws, your operations and post-mining land use must comply with the applicable BLM land-use plans and activity plans, and with coastal zone management plans under 16 U.S.C. 1451, as appropriate.

(4) *Mitigation.* You must take mitigation measures specified by BLM to protect public lands.

(5) *Concurrent reclamation.* You must initiate and complete reclamation at the earliest economically and technically feasible time on those portions of the disturbed area that you will not disturb further.

(6) *Compliance with other laws.* You must conduct all operations in a manner that complies with all pertinent Federal and state laws.

(b) *Specific standards.* (1) *Access routes.* Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable to minimize cut and fill. When the construction of access routes involves slopes that require cuts on the inside edge in excess of 3 feet, the operator may be required to consult with the authorized officer concerning the most appropriate location of the access route prior to commencing operations. An operator is entitled to access to his operations consistent with provisions of the mining laws. Where a notice or a plan of operations is required, it shall specify the location of access routes for operations and other conditions necessary to prevent unnecessary or undue degradation. The authorized officer may require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

(2) *Mining wastes.* All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and state Laws.

(3) *Reclamation.* (i) At the earliest feasible time, the operator shall reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization, by taking reasonable measures to prevent or control on-site and off-site damage of the Federal lands.

(ii) Reclamation shall include, but shall not be limited to:

(A) Saving of topsoil for final application after reshaping of disturbed areas have been completed;

(B) Measures to control erosion, landslides, and water runoff;

(C) Measures to isolate, remove, or control toxic materials;

(D) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and

(E) Rehabilitation of fisheries and wildlife habitat.

(iii) When reclamation of the disturbed area has been completed, except to the extent necessary to preserve evidence of mineralization, the authorized officer shall be notified so that an inspection of the area can be made.

(4) *Air quality.* All operators shall comply with applicable Federal and state air quality standards, including the Clean Air Act (42 U.S.C. 1857 *et seq.*).

(5) *Water quality.* All operators shall comply with applicable Federal and state water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*).

(6) *Solid wastes.* All operators shall comply with applicable Federal and state standards for the disposal and treatment of solid wastes, including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). All garbage, refuse or waste shall either be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the lands.

(7) *Fisheries, wildlife and plant habitat.* The operator shall take such action as may be needed to prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.

(8) *Cultural and paleontological resources.* (i) Operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building or object on Federal lands.

(ii) Operators shall immediately bring to the attention of the authorized officer any cultural and/or paleontological resources that might be altered or destroyed on Federal lands by his/her operations, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his/her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days after notification to the authorized officer of such discovery.

(iii) The Federal Government shall have the responsibility and bear the cost of investigations and salvage of cultural and paleontology values discovered after a plan of operations has been approved, or where a plan is not involved.

(9) *Protection of survey monuments.* To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated, or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.

(10) *Fire.* The operator shall comply with all applicable Federal and state fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.

(11) *Acid-forming, toxic, or other deleterious materials.* You must incorporate identification, handling, and placement of potentially acid-forming, toxic or other deleterious materials into your operations, facility design, reclamation, and environmental monitoring programs to minimize the formation and impacts of acidic, alkaline, metal-bearing, or other deleterious leachate, including the following:

(i) You must handle, place, or treat potentially acid-forming, toxic, or other

deleterious materials in a manner that minimizes the likelihood of acid formation and toxic and other deleterious leachate generation (source control);

(ii) If you cannot prevent the formation of acid, toxic, or other deleterious drainage, you must minimize uncontrolled migration of leachate; and

(iii) You must capture and treat acid drainage, or other undesirable effluent, to the applicable standard if source controls and migration controls do not prove effective. You are responsible for any costs associated with water treatment or facility maintenance after project closure. Long-term, or post-mining, effluent capture and treatment are not acceptable substitutes for source and migration control, and you may rely on them only after all reasonable source and migration control methods have been employed.

(12) *Leaching operations and impoundments.* (i) You must design, construct, and operate all leach pads, tailings impoundments, ponds, and solution-holding facilities according to standard engineering practices to achieve and maintain stability and facilitate reclamation.

(ii) You must construct a low-permeability liner or containment system that will minimize the release of leaching solutions to the environment. You must monitor to detect potential releases of contaminants from heaps, process ponds, tailings impoundments, and other structures and remediate environmental impacts if leakage occurs.

(iii) You must design, construct, and operate cyanide or other leaching facilities and impoundments to contain precipitation from the local 100-year, 24-hour storm event in addition to the maximum process solution inventory. Your design must also include allowances for snowmelt events and draindown from heaps during power outages in the design.

(iv) You must construct a secondary containment system around vats, tanks, or recovery circuits adequate to prevent the release of toxic solutions to the environment in the event of primary containment failure.

(v) You must exclude access by the public, wildlife, or livestock to solution containment and transfer structures that contain lethal levels of cyanide or other solutions.

(vi) During closure and at final reclamation, you must detoxify leaching solutions and heaps and manage tailings or other process waste to minimize impacts to the environment from contact with toxic materials or leachate. Acceptable practices to detoxify solutions and materials include natural degradation, rinsing, chemical treatment, or equally successful alternative methods. Upon completion of reclamation, all materials and discharges must meet applicable standards.

(vii) In cases of temporary or seasonal closure, you must provide adequate maintenance, monitoring, security, and financial guarantee, and BLM may require you to detoxify process solutions.

(13) *Maintenance and public safety.* During all operations, the operator shall maintain his or her structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and state laws and regulations.

10. Add section 3809.421 to read as follows:

§ 3809.421 Enforcement of performance standards.

Failure of the operator to prevent unnecessary or undue degradation or to complete reclamation to the standards described in this subpart may cause the operator to be subject to enforcement as described in §§ 3809.600 through 3809.605 of this subpart.

11. Revise section 3809.598 to read as follows:

§ 3809.598 What if the amount forfeited will not cover the cost of reclamation?

If the amount forfeited is insufficient to pay for the full cost of reclamation, the operators and mining claimants are liable for the remaining costs as set forth in § 3809.116. BLM may complete or authorize completion of reclamation of the area covered by the financial guarantee and may recover from responsible persons all costs of reclamation in excess of the amount forfeited.

§ 3809.604 [Amended]

12. Amend § 3809.604 revising the phrase "§§ 3809.700 and 3809.702" to read "§ 3809.700" at the end of the last sentence of paragraph (a).

§ 3809.702 [Removed]

13. Remove § 3809.702.

§ 3809.703 [Removed]

14. Remove § 3809.703.

[FR Doc. 01–27074 Filed 10–29–01; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO–300–1990–PB–24 1A]

RIN 1004–AD44

Mining Claims Under the General Mining Laws; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM or "we") proposes to amend its regulations governing mining operations involving metallic and some other minerals on public lands. The purpose of the proposed rule is to obtain further public comment on changes to these regulations that BLM is adopting in a final rule that appears elsewhere in today's **Federal Register**. We are also seeking comment on other changes in the hardrock mining surface management regulations that were not directly addressed in today's final rule.

DATES: You should submit your comments by December 31, 2001. BLM will not necessarily consider comments postmarked or received by messenger or electronic mail after the above date in the decisionmaking process on the proposed rule.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240.

Personal or messenger delivery: Room 401, 1620 L Street, NW, Washington, DC 20036.

Internet e-mail: *WOComment@blm.gov.* (Include "Attn: AD44")

FOR FURTHER INFORMATION CONTACT: Robert M. Anderson, 202/208–4201; or Michael Schwartz, 202/452–5198. Individuals who use a telecommunications device for the deaf (TDD) may contact us through the Federal Information Relay Service at 1–800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

A. How Do I Comment on the Proposed Rule?

If you wish to comment, you may submit your comments by any one of several methods.

- You may mail comments to Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240.
- You may deliver comments to Room 401, 1620 L Street, NW, Washington, DC 20036.
- You may also comment via the Internet to *WOComment@blm.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: AD44" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact us directly at 202/452–5030.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under "**ADDRESSES:** Personal or messenger delivery" during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

On November 21, 2000 (65 FR 69998), BLM adopted a final rule revising the hardrock mining surface management regulations in 43 CFR subpart 3809 (hereinafter referred to as the "2000 rule"). These regulations became effective on January 20, 2001. On March 23, 2001 (66 FR 16162), BLM proposed to make changes to the 2000 rule because of substantial concerns raised by the mining industry, the western states and environmental groups. The preamble to that proposed rule explains in detail the nature of the concerns. The regulatory text in this proposed rule, with exceptions we will discuss later in this preamble, is identical to that in a final rule published elsewhere in today's **Federal Register**. You should refer to that document for a complete discussion of the background of the final rule.

While we are providing this additional opportunity for interested parties to comment on changes to the hardrock mining regulations, we decided that it was important to make final some changes today in order to resolve uncertainties resulting from pending legal challenges. This will ensure a continued reliable supply of minerals. This benefits all affected parties by clarifying the Department's position on several issues involved in the litigation challenging the 2000 rules. However, we recognize that because of the high level of interest in this rule among affected industry groups, environmental organizations, and states, we might benefit from providing a further opportunity to comment on the specific changes we are adopting today. If comments on this proposed rule indicate that additional changes to the regulations are warranted, we will make these changes in a subsequent final rule.

In addition to the specific issues addressed in the proposed rule language, we are particularly interested in comments on the following topics:

- Whether we should amend the regulations regarding BLM's relationship to states and the delegations these rules provide.
- Whether additional innovative means are available to provide sound and reliable financial guarantees.
- Whether BLM should always perform a validity examination before approving a plan of operations on withdrawn lands.
- Whether we should add a specific reference to cave resources in the performance standards.
- Whether the 3809 regulations published today contain other provisions which are either overly burdensome or fail to provide adequate environmental protection.

We may address these issues and others in a future proposed rule.

III. The Proposed Rule

This proposed rule gives you an additional opportunity to comment on the provisions contained in the final rule published elsewhere in today's

Federal Register. See that document for a more complete discussion of the changes to the 2000 rule and our rationale for not making additional changes. Because the rule we are proposing today also was the subject of the March 23, 2001, proposed rule, you do not need to resubmit comments that you sent in response to that proposal. We will include all comments submitted in response to the March 23, 2001, proposed rule in the administrative record for today's proposed rule.

In addition to the same language that is also contained in the final rule published today, this proposed rule includes several technical or clerical changes and other modifications. One is the provision for including drywashers under 10 horsepower in casual use as defined in section 3809.5. Following is a section-by-section summary of the provisions that have changed from the 2000 rule. Today's final rule contains additional discussion of those provisions.

Section 3809.5 How Does BLM Define Certain Terms Used In this Subpart?

We are proposing changes in the definition of "casual use," "operator," and "unnecessary or undue degradation" found at section 3809.5.

Casual Use

Several comments on the March 23, 2001, proposed rule from persons who engage in small scale placer mining objected to the definition of "casual use" in the 2000 rule allowing employment of only hand or battery-powered dry washers as casual use. Many recreational miners use dry washers powered by small gasoline motors that are roughly equivalent to lawn mower motors. The comments said that this definition would bar these miners from using public lands for their activities due to the cost of either having to file a plan of operations or acquiring battery-powered drywashers. In this rule we propose to amend the definition of "casual use" to accommodate this use of small motorized drywashers (under 10 horsepower) that cause negligible disturbance. To ensure that such disturbances are negligible, we propose a 10-horsepower engine limit. The use of drywashers powered by motors of less than 10 horsepower would be considered casual use. The use of any drywasher powered by an engine with 10 or more horsepower would not be casual use. This change was not included in today's final rule.

Today's final rule contains the same language as the 2000 rule, which in turn was consistent with the 1980 regulations, which stated that casual use does not include the use of "mechanized earth-moving equipment." However, the purpose of this change is to reflect BLM's agreement with comments that said that the disturbance created by these small drywashers, largely used by individual recreational miners, is negligible in most areas, and thus should qualify as casual use. This type of dry washing activity would be unfairly burdened under the 2000 rule, under which all activities that are not classified as casual use must file a plan of operations and a bond. Since these portions of the 2000 rule have been retained, this change to the casual use definition corresponds to a similar 2000 rule treatment of some small suction dredgers, and is not significantly different in its impacts from those corresponding provisions analyzed in the Environmental Impact Statement alternative that would have retained the 1980 regulations.

Operator

We propose to define the term "operator" to mean any person who is conducting or proposing to conduct operations. This definition, which appeared in the regulations that were in effect before January 20, 2001 (the 1980 regulations), is familiar to regulators and the regulated community alike, and did not cause problems. It does not contain the 2000 rule provisions that expressly include mining claimants, persons who manage or direct operations and corporate parents and affiliates who materially participate in the operations. This proposed definition of "operator" is the same as the one in today's final rule.

BLM is concerned that the 2000 rule definition of the term "operator," by referencing "parent" entities and affiliates, appeared to authorize BLM routinely to breach the corporate veil that generally is established under state corporate laws to protect such entities. As explained in the **Federal Register** preamble to the 2000 rule (65 FR 70013), BLM adopted the "material participation" standard in the 2000 rules based on a concept authorized under CERCLA, as enunciated in a recent Supreme Court decision. However, there is no indication that Congress intended to override state laws in this regard under FLPMA. Unlike statutes such as the Surface Mining Control and Reclamation Act (*see*, e.g., 30 U.S.C. 1260(c)) that expressly focus on "ownership" and "control" of entities, neither the mining laws nor FLPMA expressly holds parent entities and affiliates responsible for activities which occur at mining operations conducted by other entities. Thus, we decided we will not include the concept of "parent" or "affiliate" responsibility in the definition of the term "operator" in subpart 3809. Under today's final rule and these proposed rules, we will hold the appropriate entity liable through established state common law principles.

The 2000 rule also included the statement that the operator can also be the claimant. That provision also is unnecessary and therefore is removed by today's final rule, and does not appear in this proposed rule. Both mining claimants and operators, however, are still responsible for any liability arising from obligations relating to the project area that accrue while they hold their interests, as stated in section 3809.116. The claimant may operate his or her mining claim, but stating that in the definition is unnecessary.

The change in this proposed rule, and in today's final rule, removes the presumption that any person who was ever associated with the site will be 100 percent liable, and allows for a case-by-case factual determination of an appropriate level of responsibility. After reviewing comments received, and re-evaluating our policy direction, we have decided that the public interest is better served by this more equitable approach to establishing liability. It will ensure fairness to all parties while allowing enforcement against responsible parties.

The definition of operator in this proposed rule is the same as the one in today's final rule, and we request comment on whether we should reinstate the definition in the 2000 rule or incorporate some other definition.

Unnecessary or Undue Degradation

We propose a definition of the term "unnecessary or undue degradation" that excludes paragraph (4) of the 2000 rule definition. That paragraph included in the definition conditions, activities, or practices that occur on mining claims or millsites located after October 21, 1976 (or on unclaimed lands), and result in substantial irreparable harm (SIH) to significant scientific, cultural, or environmental resource values of the public lands that cannot be mitigated (the "SIH" standard). This paragraph created significant uncertainty by giving BLM broad authority to deny plans of operation even if all of the other standards could be satisfied. Of all the provisions in the 2000 rule, this one paragraph had more projected economic impacts than all of the other sections combined. Further analysis of this issue is set forth in the preamble to today's final rule. In addition, the Interior Department Solicitor has issued an opinion (M–37007) addressing the legal authority of the SIH standard. This opinion has been placed in the Administration Record.

The definition of "unnecessary or undue degradation" in this proposed rule is the same as the one in today's final rule, and we request comment on whether we should continue to exclude paragraph (4) from the definition.

Section 3809.31 Are There any Special Situations That Affect What Submittals I Must Make Before I Conduct Operations?

Today's final rule adds the phrase "For other than Stock Raising Homestead Act lands" to the beginning of paragraph (e) to make it clear that paragraph (c) does not apply to Stock Raising Homestead Act lands, which we address in paragraph (d). We made the change because it was possible to construe paragraph (e) in such a way that it could be read to include Stock Raising Homestead Act lands. This was not our intent in the 2000 rule, as demonstrated by the presence of paragraph (d), which applies only to Stock Raising Homestead Act lands. You may comment on whether we should retain this change.

We also propose to change the word "submittals" in the heading of this section to "submissions." We are proposing this simply for grammatical reasons. This minor diction change in section 3809.31 was not included in today's final rule.

Section 3809.116 As a Mining Claimant or Operator What Are My Responsibilities Under This Subpart for My Project Area?

Today's final rule and this proposed rule delete the specific reference to joint and several liability that was added in the 2000 rule. Both mining claimants and operators are liable for compliance with the requirements of this rule. BLM will determine the appropriate degree of responsibility on a case-specific basis, guided by common law principles. The underlying liability scheme serves as a backstop, and allows for a case-by-case factual determination of an appropriate level of responsibility. After reviewing comments received and reevaluating our policy direction, we have decided that the public interest is better served by this more equitable approach to establishing liability, which will ensure fairness to all parties while encouraging enforcement against responsible parties.

We request comment on whether we should eliminate the reference included in section 3809.116(a) of the 2000 rule to "joint and several" liability. The 2000 rule provided a series of examples. These examples are also removed in this proposed rule and in today's final rule. Section 3809.116(a) thus would provide that "mining claimants and operators" (if other than the mining claimant) "are liable for obligations under this subpart that accrue while they hold their interests." BLM recognizes that neither FLPMA (43 U.S.C. 1701 *et seq.*) nor the mining laws expressly provide for joint and several liability, and such an approach has not been shown to be necessary to prevent unnecessary or undue degradation of the public lands. There is sufficient authority under current law and today's final rule to fully enforce the requirements of subpart 3809 against both claimants and operators. Furthermore, the establishment of adequate financial guarantees ensures that neither the government nor taxpayer will be saddled with the costs of reclamation in the event of incomplete performance of reclamation responsibilities.

We note that subpart 3809 only covers liability for reclamation of mining operations under FLPMA and the mining laws. Unlike the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, these statutes do not establish joint and several liability. To the extent obligations associated with mining operations arise under CERCLA or any other statute, such obligations are independent of those that subpart 3809 establishes. Subpart 3809 is not intended to affect any obligations established under other statutes, and liability schemes under such other statutes do not determine the entities responsible under subpart 3809. BLM will determine the appropriate degree of liability on a case-specific basis, guided by common-law principles.

Section 3809.401 Where Do I File My Plan of Operations and What Information Must I Include With It?

In today's final rule, we amend section 3809.401 only to change a cross-reference to a renumbered performance standard. You may comment on this change.

Section 3809.411 What Action Will BLM Take When It Receives My Plan of Operations?

and

Section 3809.415 How Do I Prevent Unnecessary or Undue Degradation While Conducting Operations on Public Lands?

In today's final rule, we amend sections 3809.411 and 3809.415 by removing a portion of paragraph 3809.411(d)(3)(iii) and all of paragraph 3809.415(d) of the 2000 rule, both of which would have implemented the substantial irreparable harm standard. These are corresponding changes resulting from the removal of the SIH standard from the definition of unnecessary or undue degradation. You may comment on whether we should retain these amendments.

Section 3809.420 What Performance Standards Apply to My Notice or Plan of Operations?

The performance standards of subpart 3809 are key to establishing the adequacy of environmental protection that the regulations require. In deciding which performance standards to include in the final rule, we carefully considered a congressionally-mandated report by the National Research Council (NRC), entitled *Hardrock Mining on Federal Lands* (the NRC Report). The general conclusion of the NRC Report is that the existing regulations are generally effective, although some changes are necessary. (NRC Report, p. 5.) The NRC Report further states that the "overall structure of the federal and state laws and regulations that provide mining-related environmental protection is complicated but generally effective." This conclusion and the material in the NRC Report led BLM to conclude that it was unnecessary to adopt an entire new set of performance standards in the 2000 rule, and that we should reinstate the performance standards from the 1980 regulations. Thus, today's final rule reinstates the standards that were formerly set forth in sections 3809.1–3(d), 3809.2–2, and 3809.3–3 through 3809.3–5 of the regulations in effect prior to January 20, 2001. These are to be incorporated into section 3809.420, as paragraph (a)(6) and paragraphs (b)(1) through (b)(10) and (b)(13). You may comment on whether we should retain these performance standards as they are set forth in this proposed rule and today's final rule.

In addition to reinstating the previous performance standards in today's final rule, we retain the general performance standards (paragraphs (a)(1) through (a)(5)) from the 2000 rule because they provide an overview of how an operator should conduct operations under an approved plan of operations and clarify certain basic responsibilities, including the operator's responsibility to comply with applicable land use plans and BLM's responsibility to specify necessary mitigation measures. We also included a paragraph (a)(6) in the general standards to make clear that

operators must comply with pertinent state and Federal laws and regulations. This paragraph is derived from the introductory text of former section 3809.2–2. These standards, while general in nature, provide ample guidance on how to conduct operations. In addition, in today's final rule we retain from the 2000 rule the performance standards which address acid-forming, toxic, and deleterious materials and the standards governing leaching operations and impoundments. These latter standards reflect and codify BLM's acid rock and cyanide policies, which have been in effect since before the 2000 rule was published. They have been redesignated as sections 3809.420(c)(11) and (c)(12). BLM would appreciate comment on the combination of performance standards from the 1980 regulations and the 2000 rule that is included in today's final rule.

BLM expects that implementation of the performance standards will be straightforward because today's final rule and this proposed rule do not introduce new performance standards. We recognize that some confusion could exist as to which performance standards apply to particular operations. The following table clarifies which set of performance standards you should follow:

If	Then
BLM approved your plan of operations prior to the effective date of today's final rule.	Continue to operate under your approved plan.
Your plan of operations was pending prior to January 20, 2001.	If approved, you must conduct your plan of operations under the performance standards in place before January 20, 2001.
You filed an application on or after January 20, 2001 and BLM has not acted on it as of the effective date of today's final rule.	If approved, you must conduct your plan of operations under the performance standards in place as of the effective date of today's final rule.

We should also note we did not change the plan content requirements in section 3809.401.

Section 3809.421 Enforcement of Performance Standards

Related to restoring provisions from the 1980 regulations containing performance standards, we also would add section 3809.421, which contains language on enforcing the performance standards. This section is taken from section 3809.1–3(f) of the regulations in effect prior to January 20, 2001. The new section is helpful to remind operators that failure to comply with the performance standards subjects them to enforcement under this subpart. This amendment is included in today's final rule, but you may comment on whether we should retain it. We included this provision in today's final rule and this proposed rule as a separate section because it does not fit into the structure of revised section 3809.420.

Section 3809.598 What If the Amount Forfeited Will Not Cover the Cost of Reclamation?

In today's final rule we remove a reference in section 3809.598 to joint and several liability to conform to changes in section 3809.116. Under the amended provision, we will determine on a case-by-case basis the apportionment of liability between operators and mining claimants to cover the full cost of reclamation. You may comment on whether we should retain this amendment.

Section 3809.604 What Happens If I Do Not Comply With a BLM Order?

In today's final rule we remove a reference in paragraph (a) of this section to civil penalties in section 3809.702 of the 2000 rule, because this proposed rule would remove that section, as discussed below. You may comment on whether we should retain this change.

Section 3809.702 What Civil Penalties Apply to Violations of This Subpart?

and

Section 3809.703 Can BLM Settle a Proposed Civil Penalty?

In today's final rule we remove sections 3809.702 and 3809.703 of the 2000 rule. We made this change because there is merit to the point made by comments that stated that FLPMA does not contain a section expressly addressing administrative civil penalties. Although in the November 2000 **Federal Register** preamble we made an argument in support of the agency's authority to assess administrative penalties, this is an unsettled area for which it is prudent to await clear guidance from Congress before promulgating rules. You may comment on whether we should retain this amendment of the 2000 rule.

Finally, as a technical matter, under **Federal Register** rules, we cannot publish in this proposed rule the regulatory amendments for some of the changes we made in the final rule published elsewhere in today's **Federal Register** and referred to in this preamble. Nevertheless, you may comment on these changes. These include the removal of paragraph (d) from § 3809.415, a change made to conform to the proposed revision of the definition of "unnecessary or undue degradation," and the removal of §§ 3809.702 and 3809.703 on civil penalties. In addition, you may comment on the cross-reference changes and corrections made in the final rule in §§ 3809.2, 3809.31, and 3809.604.

III. How Did BLM Fulfill Its Procedural Obligations?

Executive Order 12866, Regulatory Planning and Review

BLM found in the 2000 rule that the new subpart 3809 regulations were a significant regulatory action under section 3(f) of Executive Order 12866 and require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order. The impacts caused by today's final action and proposed action remain within the range of alternatives analyzed for the 2000 rule. Since we propose to retain most of the 2000 rule, while amending selected provisions, we rely on the regulatory impact analysis and benefit-cost analysis prepared for the 2000 rule and summarized in that rule, to evaluate today's final rule and this proposed rule. The full analyses remain on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. In the following paragraphs, we describe how the changes presented in today's rule affect these analyses.

The estimated costs associated with this rule are significantly lower than those associated with the 2000 rule. Over the 10 year period that we analyzed, we do not expect today's rule to have significant annual impacts on the economy.

The lower expected costs arise primarily from removing the SIH provision of the 2000 rule. Relative to the 2000 rule, substantial production benefits could accrue as a result of eliminating the SIH standard. However, uncertainty exists with respect to how eliminating the SIH provision will affect net economic benefits. Uncertainty about how the SIH provision would have been implemented, site specific factors, and any exploration and production effects (and the timing of these effects) make evaluating net economic benefits very difficult.

The net economic effects associated with eliminating joint and several liability, civil penalties, and revising the performance standards (with the exception of the acid rock drainage and cyanide standards, which would be retained) are equally difficult to quantify but are not significant because the economic costs associated with these provisions are likely to be overshadowed by the potential economic costs associated with the SIH provision. We estimated the net effect of modifying the performance standards from the 1980 rule to the 2000 rule as being limited. Similarly, changing the 2000 standards back to the 1980 standards will result in negligible impact.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed regulations clearly stated?

(2) Do the regulations contain technical language or jargon that interferes with their clarity?

(3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading, for example "§ 3809.420 What performance standards apply to my notice or plan of operations?")

(5) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the final regulations easier to understand?

Please send any comments you have on the clarity of the proposed regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The 2000 rule found that the new subpart 3809 regulations constituted a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM prepared an environmental impact statement (EIS), which remains on file and is available to the public in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Because today's final rule and this proposed rule retain most of the provisions of the 2000 rule, we rely on the findings in the EIS. In today's final rule, we discuss in considerable detail the extent to which we expect this rule to change the impacts on the human environment that we anticipated in the 2000 rule. The final rule also contains a discussion of comments we received on the March 23, 2001, proposal. We have found that the impacts resulting from the final rule, with respect to the baseline established by the 1980 standards as well as the change from the 2000 rule, would fall within the range of impacts analyzed, and thus are not significantly different. No significant new information or change in circumstances has occurred that would alter the analysis or findings in the final EIS.

The definition of casual use in this proposed rule, which would specify that a gas powered drywasher of less than 10 horsepower qualifies as casual use, would not change impacts appreciably.

Although today's final rule and this proposed rule remove the substantial irreparable harm provision in the definition of unnecessary or undue degradation, BLM retains ample authority to protect surface resources and the environment. As discussed in today's final rule, BLM has ample statutory and regulatory means of preventing harm to significant scientific, cultural, or environmental resource values: the Endangered Species Act, the Archaeological Resources Protection Act, establishment of areas of critical environmental concern in land use plans under the FLPMA, withdrawal under Section 204 of FLPMA, the performance standards in section 3809.420, and so forth. Many of these are invoked in the performance standards in section 3809.420 and in the requirements for submission of Plans of Operations in section 3809.401.

The revision of section 3809.420 removes requirements for environmental protection that might conflict with or duplicate existing Federal or State laws or regulations. For example, paragraph (b)(2), which provided for minimizing water pollution via source control rather than treatment, and (b)(3), on jurisdictional wetlands protection, are addressed by the Clean Water Act, and the relevant programs are administered by the Environmental Protection Agency or the state or both, and the Corps of Engineers, respectively. Therefore, the requirements that the operator must comply with the Clean Water Act, Clean Air Act, and other environmental laws and regulations will have the same effect. The final rule and this proposed rule remove unnecessary language.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, RFA to ensure that Federal Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM prepared a regulatory flexibility analysis on the expected impact of the 2000 rule on small entities, determined that the 2000 rule will have a significant economic effect on a substantial number of small entities, and summarized it in the 2000 rule (65 FR 69998, 70103). The regulatory flexibility analysis remains on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. In today's final rule and this proposed rule we have made changes that should reduce the burdens on small entities. The regulations no longer provide for joint and several liability for violations of the regulations, no longer provide for civil liability for violations, simplify the definition of "operator," and reduce the burdens of performance standards.

The Small Business Administration (SBA) commented in support of the March 23, 2001, proposed rule to suspend the 2000 rule. The principal substantive objection of the SBA to the 2000 rule was to the definition of "unnecessary or undue degradation" and the inclusion in it of "substantial irreparable harm" as an element. Removing this element from the definition in this proposed rule should obviate this objection.

Small Business Regulatory Enforcement Fairness Act

Evaluated against the baseline of the 2000 rule, BLM has concluded that today's final rule and this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule should reduce the costs borne by small entities relative to the 2000 rule. However, the magnitude of the cost reductions depends on site and operation specific factors. The removal of the SIH provision will benefit small entities. As stated earlier, the SBA objected to the 2000 rules primarily because of the SIH provision. This proposed rule obviates that objection and benefits small entities.

Unfunded Mandates Reform Act

In the 2000 final rule (65 FR 69998, 70109), BLM found that those final regulations do not impose an unfunded

mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do those final regulations have a significant or unique effect on State, local, or tribal governments or the private sector. The impacts of this proposed rule do not change that finding. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

In the 2000 final rule (65 FR 69998, 70109), BLM found that those final regulations do not represent a government action capable of interfering with constitutionally protected property rights. We stated that it doesn't affect property rights or interests in property, such as mining claims; it governs how an individual or corporation exercises those rights. However, one comment on the March 23, 2001, proposal to amend the 2000 rule stated that the joint and several liability provision in section 3809.116(a) would diminish the property value by severely restraining alienation and thus amount to a taking in violation of the Fifth Amendment of the Constitution. We have removed this provision in today's final rule and would maintain that change in this proposed rule. Because today's final rule and this proposed rule do not make any changes that increase the burdens on mining claim owners or other property owners, the Department of the Interior has determined that this proposed rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

In the 2000 rule, BLM found (65 FR 69998, 70109) that it would have federalism implications in that in certain circumstances it may preempt State law. However, we concluded that it would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The 2000 rule describes the consultation BLM engaged in with the States and the results of that consultation. The changes made in this proposed rule will not increase burdens on States, and will facilitate cooperation between States and the United States in the area of surface management of mining operations on public lands.

The 2000 rule described the consultation between BLM and the States in aid of developing that rule. This proposed rule does not change the findings in that rule. This rule does not change the regulations in a manner contrary to the interests of the States as found from consultation with the States.

Further, we received comments from governors, agencies, or legislatures of or Members of Congress from the following Western States, as well as the Western Governors' Association: Alaska, Idaho, Nevada, Utah, and Wyoming. These comments were critical of the 2000 regulations and supported their suspension and revision. Only one of these provided detailed recommendations that largely tracked those of the NRC. To the extent that those specific recommendations pertain to BLM, or are within the legal responsibility of BLM, we believe this proposed rule follows those recommendations. We are also willing to engage in further consultation with states as may be appropriate.

BLM's full Federalism assessment, performed on the 2000 rule, remains on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section, along with the written public comments on the assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

We rely in part on Tribal consultation that occurred before publication of the 2000 rule. In accordance with Executive Order 13175, we have also found that this proposed rule does not include policies that have significant tribal implications. We have made clear that plans of operations under these regulations must comply with State, local, Tribal, and other Federal requirements. Removing the SIH standard will not significantly affect Native American cultural resources on the public lands because these resources can be protected under other provisions. In addition, in most instances mitigation measures will be possible to reduce such impacts. Today's final rule responds to comments received from Tribes on the March 23, 2001, proposal. We are willing to engage in further consultation with Tribes as may be appropriate.

E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. The principal changes proposed in the rule address (1) the definition of an operator, what entities are responsible for reclamation and other duties, (2) the definition of unnecessary or undue degradation, and (3) performance standards that operators must follow. To the extent that the rule affects the mining of energy minerals (i.e., uranium and other fissionable metals), they will tend to increase production marginally.

Paperwork Reduction Act

The 2000 final rule (65 FR 69998, 70111) stated that it required collection of information from 10 or more persons. It went on to discuss our compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and the public comments that discussed the information collection requirements. We continue to rely on the discussion in the 2000 rule as to information collection requirement matters. The Office of Management and Budget has approved those information collection requirements in the final rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004–0194. This proposed rule does not contain additional information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995.

Author

The principal authors of this rule are members of the Departmental 3809 Task Force, chaired by Robert M. Anderson, Deputy Assistant Director, Minerals, Realty, and Resource Protection, Bureau of Land Management.

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and record keeping requirements, Surety bonds, Wilderness areas.

P. Lynn Scarlett,

Assistant Secretary, Policy, Management, and Budget.

Accordingly, for the reasons stated in the Preamble, and under the authorities cited below, BLM proposes to amend

Title 43 of the Code of Federal Regulations, part 3800 as set forth below:

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

Subpart 3809—Surface Management

1. The authority citation for subpart 3809 continues to read as follows:

Authority: 16 U.S.C. 1280; 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1201; and 43 U.S.C. 1732, 1733, 1740, 1781, and 1782.

2. Amend § 3809.5 by removing from paragraph (1) of the definition of "casual use" the phrase "hand and battery-powered drywashers" and adding in its place the phrase "less than 10 horsepower drywashers," and by revising the definitions of "operator" and "unnecessary or undue degradation" to read as follows:

§ 3809.5 How does BLM define certain terms used in this subpart?

* * * * *

Operator means a person conducting or proposing to conduct operations.

* * * * *

Unnecessary or undue degradation means conditions, activities, or practices that:

(1) Fail to comply with one or more of the following: the performance standards in § 3809.420, the terms and conditions of an approved plan of operations, operations described in a complete notice, and other Federal and state laws related to environmental protection and protection of cultural resources;

(2) Are not "reasonably incident" to prospecting, mining, or processing operations as defined in § 3715. 0–5 of this chapter; or

(3) Fail to attain a stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas.

3. Amend § 3809.31 by removing the word "submittals" in the section title and adding the word "submissions".

4. Amend § 3809.116 by revising paragraph (a) to read as follows:

§ 3809.116 As a mining claimant or operator, what are my responsibilities under this subpart for my project area?

(a) Mining claimants and operators (if other than the mining claimant) are liable for obligations under this subpart that accrue while they hold their interests.

* * * * *

5. Amend § 3809.411 by revising paragraph (d)(3)(iii) to read:

§ 3809.411 What action will BLM take when it receives my plan of operations?

* * * * *

(d) * * *

(3) * * *

* * * * * *

(iii) Proposes operations that would result in unnecessary or undue degradation of public lands.

6. Revise § 3809.420 to read as follows:

§ 3809.420 What performance standards apply to my notice or plan of operations?

The following performance standards apply to your notice or plan of operations:

(a) *General performance standards.*

(1) *Technology and practices.* You must use equipment, devices, and practices that will meet the performance standards of this subpart.

(2) *Sequence of operations.* You must avoid unnecessary impacts and facilitate reclamation by following a reasonable and customary mineral exploration, development, mining and reclamation sequence.

(3) *Land-use plans.* Consistent with the mining laws, your operations and post-mining land use must comply with the applicable BLM land-use plans and activity plans, and with coastal zone management plans under 16 U.S.C. 1451, as appropriate.

(4) *Mitigation.* You must take mitigation measures specified by BLM to protect public lands.

(5) *Concurrent reclamation.* You must initiate and complete reclamation at the earliest economically and technically feasible time on those portions of the disturbed area that you will not disturb further.

(6) *Compliance with other laws.* You must conduct all operations in a manner that complies with all pertinent Federal and state laws.

(b) *Specific standards.*

(1) *Access routes.* Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable to minimize cut and fill. When the construction of access routes involves slopes that require cuts on the inside edge in excess of 3 feet, the operator may be required to consult with the authorized officer concerning the most appropriate location of the access route prior to commencing operations. An operator is entitled to access to his operations consistent with provisions of the mining laws. Where a notice or a plan of operations is required, it shall specify the location of access routes for operations and other conditions necessary to prevent unnecessary or undue degradation. The authorized officer may require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

(2) *Mining wastes.* All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and state Laws.

(3) *Reclamation.* (i) At the earliest feasible time, the operator shall reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization, by taking reasonable measures to prevent or control on-site and off-site damage of the Federal lands.

(ii) Reclamation shall include, but shall not be limited to:

(A) Saving of topsoil for final application after reshaping of disturbed areas have been completed;

(B) Measures to control erosion, landslides, and water runoff;

(C) Measures to isolate, remove, or control toxic materials;

(D) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and

(E) Rehabilitation of fisheries and wildlife habitat.

(iii) When reclamation of the disturbed area has been completed, except to the extent necessary to preserve evidence of mineralization, the authorized officer shall be notified so that an inspection of the area can be made.

(4) *Air quality.* All operators shall comply with applicable Federal and state air quality standards, including the Clean Air Act (42 U.S.C. 1857 *et seq.*).

(5) *Water quality.* All operators shall comply with applicable Federal and state water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*).

(6) *Solid wastes.* All operators shall comply with applicable Federal and state standards for the disposal and treatment of solid wastes, including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). All garbage, refuse or waste shall either be removed from the affected lands or disposed of or

treated to minimize, so far as is practicable, its impact on the lands.

(7) *Fisheries, wildlife and plant habitat.* The operator shall take such action as may be needed to prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.

(8) *Cultural and paleontological resources.* (i) Operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building or object on Federal lands.

(ii) Operators shall immediately bring to the attention of the authorized officer any cultural and/or paleontological resources that might be altered or destroyed on Federal lands by his/her operations, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his/her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days after notification to the authorized officer of such discovery.

(iii) The Federal Government shall have the responsibility and bear the cost of investigations and salvage of cultural and paleontology values discovered after a plan of operations has been approved, or where a plan is not involved.

(9) *Protection of survey monuments.* To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated, or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.

(10) *Fire.* The operator shall comply with all applicable Federal and state fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.

(11) *Acid-forming, toxic, or other deleterious materials.* You must incorporate identification, handling, and placement of potentially acid-forming, toxic or other deleterious materials into your operations, facility design, reclamation, and environmental monitoring programs to minimize the formation and impacts of acidic, alkaline, metal-bearing, or other deleterious leachate, including the following:

(i) You must handle, place, or treat potentially acid-forming, toxic, or other deleterious materials in a manner that minimizes the likelihood of acid formation and toxic and other deleterious leachate generation (source control);

(ii) If you cannot prevent the formation of acid, toxic, or other deleterious drainage, you must minimize uncontrolled migration of leachate; and

(iii) You must capture and treat acid drainage, or other undesirable effluent, to the applicable standard if source controls and migration controls do not prove effective. You are responsible for any costs associated with water treatment or facility maintenance after project closure. Long-term, or post-mining, effluent capture and treatment are not acceptable substitutes for source and migration control, and you may rely on them only after all reasonable source and migration control methods have been employed.

(12) *Leaching operations and impoundments.* (i) You must design, construct, and operate all leach pads, tailings impoundments, ponds, and solution-holding facilities according to standard engineering practices to achieve and maintain stability and facilitate reclamation.

(ii) You must construct a low-permeability liner or containment system that will minimize the release of leaching solutions to the environment. You must monitor to detect potential releases of contaminants from heaps, process ponds, tailings impoundments, and other structures and remediate environmental impacts if leakage occurs.

(iii) You must design, construct, and operate cyanide or other leaching facilities and impoundments to contain precipitation from the local 100-year, 24-hour storm event in addition to the maximum process solution inventory. Your design must also include allowances for snowmelt events and drain down from heaps during power outages in the design.

(iv) You must construct a secondary containment system around vats, tanks, or recovery circuits adequate to prevent the release of toxic solutions to the environment in the event of primary containment failure.

(v) You must exclude access by the public, wildlife, or livestock to solution containment and transfer structures that contain lethal levels of cyanide or other solutions.

(vi) During closure and at final reclamation, you must detoxify leaching solutions and heaps and manage tailings or other process waste to minimize impacts to the environment from contact with toxic materials or leachate. Acceptable practices to detoxify solutions and materials include natural degradation, rinsing, chemical treatment, or equally successful alternative methods. Upon completion of reclamation, all materials and discharges must meet applicable standards.

(vii) In cases of temporary or seasonal closure, you must provide adequate maintenance, monitoring, security, and financial guarantee, and BLM may require you to detoxify process solutions.

(13) *Maintenance and public safety.* During all operations, the operator shall maintain his or her structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and state laws and regulations.

7. Revise § 3809.421 effective December 31, 2001, to read as follows:

§ 3809.421 Enforcement of performance standards.

Failure of the operator to prevent unnecessary or undue degradation or to complete reclamation to the standards described in this subpart may cause the operator to be subject to enforcement as described in §§ 3809.600 thorugh 3809.605 of this subpart.

8. Revise section 3809.598 to read as follows:

§ 3809.598 What if the amount forfeited will not cover the cost of reclamation?

If the amount forfeited is insufficient to pay for the full cost of reclamation, the operators and mining claimants are liable for the remaining costs as set forth in § 3809.116. BLM may complete or authorize completion of reclamation of the area covered by the financial guarantee and may recover from responsible persons all costs of reclamation in excess of the amount forfeited.

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Part IV

Department of Defense

Office of the Secretary

Science and Technology (S&T) Reinvention Laboratory Personnel Management Demonstration Project at the United States Army Communications-Electronics Command (CECOM), Research, Development and Engineering (RDE) Community; Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology (S&T) Reinvention Laboratory Personnel Management Demonstration Project at the United States Army Communications-Electronics Command (CECOM), Research, Development and Engineering (RDE) Community

AGENCY: DoD, Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy).

ACTION: Notice of approval of a demonstration project final plan.

SUMMARY: The National Defense Authorization Act for Fiscal Year 1995, as amended by Section 1114 of the National Defense Authorization Act for Fiscal Year 2001, authorizes the Secretary of Defense to conduct personnel demonstration projects at Department of Defense (DoD) laboratories designated as Science and Technology (S&T) Reinvention Laboratories. The above-cited legislation authorizes DoD to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such change in personnel policy or procedures would result in improved Federal personnel management.

DATES: Implementation of this demonstration project will begin by February 1, 2002, or earlier. Participating organizations will be phased into the project in accordance with the implementation time frames approved by the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).

FOR FURTHER INFORMATION CONTACT: CECOM RDE Community: Thomas Sheehan, U. S. Army Communications-Electronics Command, Research Development and Engineering Center, (AMSEL–RD–LQ), Myer Center, Fort Monmouth, New Jersey 07703–5201, (732) 427–4465. DoD: Patricia M. Stewart, CPMS–AF, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1966, many studies of Department of Defense (DoD) laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. The project involves: (1) Two appointment authorities (permanent and modified term); (2) extended probationary period for newly hired Engineering and Science employees; (3) pay banding; (4) streamlined delegated examining; (5) modified reduction-in-force (RIF) procedures; (6) simplified job classification; (7) a pay-for-performance based appraisal system; (8) academic degree and certificate training; (9) sabbaticals; and (10) a voluntary emeritus corps.

2. Overview

On June 19, 2001, DoD published the proposed demonstration project in the **Federal Register** (66 FR 32983–33012). During the public comment period ending August 11, 2001, DoD received comments from 16 individuals, including 11 individuals who presented oral comments at the public hearing held at Fort Monmouth, NJ on July 12, 2001. All comments were carefully considered. Some commenters addressed topics that lie outside the project's scope or the demonstration authority of 5 U.S.C. Chapter 47 (*e.g.*, whether or not unions choose to embrace this demonstration). These comments are not included in the summary below. The following summary addresses the pertinent comments received, provides responses, and notes resultant changes to the original project plan in the first **Federal Register** notice. Most commenters addressed several topics, which were counted separately. Thus, the total number of comments exceeds the number of individuals cited above.

A. General Positive Comments

Six commenters were totally supportive of the demonstration, saying that a performance-based system will be better than the current system, that it will make clear distinctions between top performers and mediocre ones, and that the personnel demonstration project offers a real opportunity for all employees and will work very well.

B. Pay for Performance Appraisal System

Seven comments were received about pay for performance.

(1) Reconciliation Process

Comments: Two commenters expressed concern that the reconciliation process might be influenced by non-performance factors such as the availability and leadership dynamics of the officials involved, that the process might be too subjective and removed from the employee, and that scores might be reconciled to benefit unduly those personnel working on favored programs. One commenter suggested adding some form of oversight to the process.

Response: The reconciliation process provides for a structured, group review of initial scores by raters within an organizational unit. Each employee's preliminary scores are compared, and through discussion and consensus building, ratings are reconciled. After the division chiefs have initially met and reconciled scores, the Pay Pool Manager performs an overview of the distribution of ratings and payouts in an effort to achieve consistent ratings across the organization and resolve any scoring issues. This process is similar to the informal process many managers currently use within their own organization to compare performance levels with ratings and performance awards. The demonstration's formal reconciliation process expands this comparison across organizational lines and provides a forum to share initial assessments to ensure equity and consistency.

(2) Pay Pools

Comments: Three inquiries were received regarding pay pools, as follows: Whether team leaders would be part of a supervisory pay pool or a non-supervisory pay pool; whether the guidelines for determining pay pools can be waived when circumstances prevent meeting them; and which pay pool would include Pay Band V employees.

Response: As to the first question of team leaders, language has been added that would permit those team leaders classified by the GS Leader Grade-Evaluation Guide to be included in the supervisory pay pool. Other leaders who have project responsibility but do not actually lead other workers would be appropriately placed in non-supervisory pay pools. As to the second question on how pay pools would be structured, language has been added that authorizes RDE Center Directors to deviate from the guidelines. As to the third question, a Pay Band V employee would be assigned to the supervisory pay pool within his/her organization, because Pay Band V employees by definition have full managerial and supervisory authority.

(3) Significant Accomplishment/ Contribution Rule

Comment: Two comments were received relating to this rule. The first suggested that the performance of those affected by the rule should be compared only to other engineers and scientists in the pay pool, rather than to all employees in the pay pool. The second comment suggested applying the rule to all occupational families and all pay bands at or above the GS–14 equivalent level.

Response: We have carefully considered these comments. The rule links the total performance score to the amount of base pay increase an employee can receive. All scores in the pay pool are placed in rank order. Employees whose scores fall in the top third of scores in the pay pool will receive the full allowable base pay increase portion of the performance pay out. Employees whose scores fall in the middle or bottom third will receive a base pay increase of 1 percent of salary or no base pay increase, respectively. The comment proposes that, since the rule only affects DB–III employees, only the scores of DB–III employees should be ranked to determine whose scores fall in the top, middle, or bottom third.

We performed mock rankings in order to assess the effects of the methodology originally proposed versus that suggested by the commenter. Our analysis shows that, since scores are being ranked and not individual employees, it is more advantageous for DB–III employees to be part of a larger ranking (all employees in the pay pool) than a smaller ranking (only E&S employees in the pay pool). The way the rule is currently defined enhances the potential for DB–III employees to receive a score ranked in the upper third and, hence, to receive the full base pay increase.

As to the comment that the rule should be expanded to the Business and Technical family, this rule was imposed to maintain a degree of cost discipline for DB–III employees, because their pay band uniquely spans three high grades under the Governmentwide personnel system, GS–12 through –14. Promotion to GS–14 currently requires scientists and engineers to assume supervisory responsibilities or apply highly specialized technical knowledge. The normal progression of a non-supervisory engineer or scientist is to GS–13. The rule in question allays concerns that DB–III employees would otherwise have the potential to progress to the highest salary in the band without necessarily operating at increased levels of performance or responsibility.

The bands for the Business & Technical (B&T) family were designed differently, with DE–II spanning grades 12–13 and DE–III reserved for 14–15. To go from Band II to Band III would normally require a competitive promotion to a new position of greater responsibility. Since pay progression for the B&T family is already limited by splitting the pay bands between grades 13 and 14, cost discipline is already factored into the band design.

C. Management Issues

(1) Fairness

Comment: Three comments were received addressing the need for fair and unbiased performance ratings. One commenter expressed concern about managers' ability to motivate employees to be top performers, while recognizing that there are also employees who do not perform or contribute their share of the work. Another commenter saw the potential for favoritism under both the current system and the demonstration. Still another suggested that the current performance management system be improved.

Response: The demonstration project incorporates a number of features to address these concerns. These features include a Personnel Management Board at the RDE level and the Center level to provide oversight for the project, including equity issues. Membership on the RDE board includes the CECOM Deputy Chief of Staff for Personnel, the Deputy Chief of Staff for Operations and Plans, and the Equal Employment Opportunity Officer, among others. Specific features of the pay for performance appraisal system were designed to address concerns of fairness and potential for favoritism. They include the reconciliation process as previously described, which is specifically designed to balance ratings based on comparisons of the levels and quality of performance across the organization. A feedback mechanism was designed so that, following the appraisal cycle, employees will rate their managers on a number of dimensions. This will help identify developmental needs. Additionally, a thorough training program has been designed for all supervisors associated with the demonstration project, with particular emphasis on skills needed in appraising performance. Specific modules will be offered on giving and receiving performance feedback, resolving conflict and confrontation in performance reviews, addressing developmental needs, rating performance, etc. Lastly, demonstration results will be analyzed and evaluated to determine if they are effective. Perceived fairness of the appraisal process has been identified as an item for evaluation and will be included in surveys of the workforce and focus group discussions with employees.

(2) Managerial Preparedness

Comments: A commenter questioned management's readiness to administer a complex pay for performance system.

Response: The CECOM RDE has made a significant commitment to this demonstration project. In addition to the training program previously described, automation tools have been developed to simplify procedural aspects of the new system and offer better analytical tools to support key decisions.

D. Credit for Performance

Comment: A commenter felt that the method of calculating credit for performance in reduction in force (RIF) places greater weight on performance during the past three years than on experience, which might disadvantage older workers.

Response: Under the current TAPES system, employees receive additional service credit based upon their three most recent performance ratings during the 4 years prior to a RIF. This process is unchanged. The demonstration project changes the method of computing credit for performance by linking the additional years of credit to the total performance score (rather than to the summary level, as in the traditional title 5 system) and by adding the years instead of averaging them. This new methodology does place greater emphasis on performance, which is consistent with the demonstration's pay for performance system.

E. Modifications to the Project Plan

Comment: If the project later requires modifications, one commenter asked, who determines the extent of notification requirements?

Response: The Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) will determine the extent of notification requirements.

F. Close-out Evaluations and Awards

Comment: One commenter questioned whether there would be a performance closeout rating under the current system known as TAPES, and if so, how would any award associated with the appraisal be processed and factored into the employees' pay when they convert to the demonstration project.

Response: A closeout performance appraisal will be required for some employees, depending on when their last appraisal was given. If there were a Quality Step Increase associated with the appraisal, it would be effective prior to implementation of the demonstration project. The employee would then convert into the demo at the higher salary rate. (If there were a performance award associated with the appraisal, it

would have no effect on base pay, because such awards are paid as a one-time cash bonus.)

G. Performance Improvement

Comment: One commenter asked how management will help the under-achiever to improve to an acceptable level of performance.

Response: The demonstration project plan addresses this topic in several ways. As soon as the unacceptable performance is noted, the supervisor is to inform the employee. At this point, it is appropriate to identify the possible reasons and explore some options such as counseling, training, closer supervision, or a temporary assignment to another unit in the organization. Actions that are more formal may also be taken at this point. In that case, a written notice outlining the unacceptable performance must be provided to the employee in the form of a Performance Improvement Plan (PIP). The PIP will identify the items/actions that need to be corrected or improved, outline required time frames for such improvement, and provide the employee with any available assistance as appropriate.

H. Cost Discipline

Comment: A commenter inquired about the source of funds for supervisory pay adjustments.

Response: Supervisory and team leader pay adjustments can be up to 10 percent of base pay for supervisors and up to 5 percent of base pay for team leaders. These pay adjustments are funded separately from pay pools, must be funded from project funds, and are subject to budget constraints. These adjustments will be used selectively, not routinely, to compensate only those supervisors and/or team leaders who meet detailed criteria contained in demonstration project operating procedures. They are subject to approval by the Director, RDEC, or the Director, SEC.

I. Within-Grade Increase Buy-Ins

Comment: A commenter asked if employees who enter the demonstration project after initial implementation would be awarded that portion of the next higher step they have completed.

Response: Language has been added to paragraph V.A. of the demonstration project plan to address this issue. It provides for employees who enter the demonstration project after initial implementation by lateral transfer, reassignment, or realignment to be subject to the same pay conversion rules. Specifically, adjustments to the employee's base salary for a step increase and a non-competitive career ladder promotion will be computed as a prorated share of the current value of the step or promotion increase based upon the number of weeks an employee has completed toward the next high step or grade at the time the employee moves into the project.

J. Other Changes to Project Plan

No comments were received regarding staffing supplements. However, language has been added at III. E. 8. to clarify how staffing supplements will be calculated and administered under this demonstration. Additionally, the language at III. F. 1. b., Critical Skills Training (Training for Degrees) has been amended to reflect changes in this area made necessary by section 1121 of the National Defense Authorization Act for FY 01.

Dated: October 22, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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I. Executive Summary

This project was designed by the U.S. Army Communications-Electronics Command (CECOM), Research, Development and Engineering (RDE) organizations, with participation and review by the Department of the Army (DA) and Department of Defense (DoD). CECOM RDE organizations are defined as the CECOM Research, Development and Engineering Center (RDEC) and the CECOM Software Engineering Center (SEC). Both the RDEC and SEC headquarters are located at Fort Monmouth, New Jersey.

The primary mission of the CECOM (RDE) organizations is focused on moving the 21st Century Army fully into the Information Age. Although these organizations are predominantly organized around a technology-centric theme, Information Age technologies will allow us to think in network-centric terms, i.e., the system-of-systems way of organizing, acquiring and maintaining our forces and capability. The RDE's vision is to enable commanders at all echelons to make truly informed and timely decisions, and see to it that those decisions get executed, as events require. In simple terms, getting the right information to the right place at the right time. CECOM RDE organizations support the war fighting and sustaining base communities as well as Program Executive Offices, Project Managers and other customers. We manage technology-based programs by defining, developing and acquiring superior technologies; developing, acquiring, testing and evaluating systems; and sustaining and enhancing systems and equipment for a trained and ready Army undergoing revolutionary changes. To do this, CECOM RDE organizations must be able to hire and retain enthusiastic, innovative, and highly educated scientists and engineers to meet mission needs, along with dynamic, committed technical, clerical, and administrative support personnel.

The goal of the project is to enhance the quality and professionalism of the CECOM RDE workforce through improvements in the efficiency and effectiveness of the human resource system. The project interventions will strive to achieve the best workforce for the RDE mission, adjust the workforce for change, and improve workforce satisfaction. This demonstration project builds on the concepts, and uses much of the same language, as the demonstration projects developed by the Army Research Laboratory (ARL), the Aviation and Missile Research, Development, and Engineering Center (AMCOM RDEC), the Navy's "China Lake," and the National Institute of Standards and Technology (NIST). DoD and Department of the Army (DA) will provide for an evaluation of the results of the project throughout the first 5 years after implementation. The Army has programmed a decision point 5 years into the project for permanent implementation, modification and additional testing, or termination of the entire demonstration project.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of Department of Defense (DoD) laboratories can be enhanced by expanding opportunities available to employees and by allowing greater managerial control over personnel functions through a more responsive and flexible personnel system. The quality of DoD laboratories, their people, and products has been under intense scrutiny in recent years. A common theme has emerged that Federal laboratories need more efficient, cost effective, and timely processes and methods to acquire and retain a highly creative, productive, educated, and trained workforce. This project, in its entirety, attempts to improve employees' opportunities and provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve the highest quality organization and hold them accountable for the proper exercise of this authority within the framework of an improved personnel management system.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The provisions of this project plan will not be modified, duplicated in organizations not listed in the project plan, or extended to individuals or groups of employees not included in the project plan without the approval of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy). ODASD(CPP) will inform DA of requirements for notification to stakeholders, which may include Congress, employees, labor organizations, and the public. The extent of notification requirements will depend on the nature and extent of the requested project modifications. As a minimum, however, major changes and modifications will be published in the **Federal Register**. Subject to ODASD(CPP) approval, minor modifications may be made without further notice.

B. Problems With the Present System

The current Civil Service General Schedule (GS) system has existed in essentially the same form since the 1920's. Work is classified into one of fifteen overlapping pay ranges that correspond with the 15 grades. Pay is set at one of those fifteen grades and the ten interim steps within each grade. The Classification Act of 1949 rigidly defines types of work by series and grade, with very precise qualifications for each job. This system does not quickly or easily respond to new ways of designing work and changes in the work itself.

The performance management model that has existed since the passage of the Civil Service Reform Act has come under extreme criticism. Employees frequently report there is inadequate communication of performance expectations and feedback on performance. There are perceived inaccuracies in performance ratings with general agreement that the ratings are inflated and often unevenly distributed by grade, occupation and geographic location.

The need to change the current hiring system is essential as CECOM RDE organizations must be able to recruit and retain scientific, engineering and information technology (IT) professionals. The CECOM RDE organizations must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high quality employees.

Finally, current rules on training, retraining and otherwise developing employees make it difficult to correct skill imbalances and to prepare current employees for new lines of work to meet changing missions.

C. Changes Required/Expected Benefits

The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction. The long-standing Department of the Navy China Lake and NIST demonstration projects have produced impressive statistics on increased job satisfaction and quality of employees versus that for the Federal workforce in general. This project will demonstrate that a human resource system tailored to the mission and needs of the CECOM RDE workforce will result in: (a) Increased quality in the RDE workforce and resultant products; (b) increased timeliness of key personnel processes; (c) increased retention of "excellent performers"; (d) increased success in recruitment of personnel with critical skills; (e) increased management authority and accountability; (f) increased satisfaction of RDE customers; and (g) increased workforce satisfaction with the personnel management system. An evaluation model was developed by the Director of Defense, Research and Engineering (DDR&E) in conjunction with laboratory and service representatives and the Office of Personnel Management (OPM). The model will measure the effectiveness of demonstration projects, as modified in this plan, and will be used to measure the results of specific personnel system changes.

D. Participating Organizations

The CECOM RDE is composed of two major organizational entities: the Research, Development and Engineering Center (RDEC) and the Software Engineering Center (SEC), both headquartered at Fort Monmouth, New Jersey. RDE employees are geographically dispersed at the locations shown in Appendix A. It should be noted that some sites currently employ fewer than 10 people and that the sites may change as CECOM reorganizes, realigns, or complies with Base Realignment and Closure Act requirements. Successor organizations will continue coverage in the demonstration project.

E. Participating Employees and Union Representation

This demonstration project will cover approximately 2,100 CECOM RDE civilian employees under Title 5, United States Code in the occupations listed in Appendix B. The project plan does not cover members of the Senior Executive Service (SES), Scientific and Professional (S&T) employees, Federal Wage System (FWS) employees, employees presently covered by the Defense Civilian Intelligence Personnel System (DCIPS) and Department of Army (DA) and Major Subordinate Command (MSC) centrally funded interns and co-operative education students. Employees on temporary appointments will not be covered in the demonstration project.

DA, MSC centrally funded, and local interns (hired prior to implementation of the project) will not be converted to the demonstration project until they reach the target grade of the intern program and/or convert to a CECOM RDE employee. They will also continue to follow the TAPES performance appraisal system. Local interns hired after implementation of the project will

be covered by all terms of the demonstration project.

Personnel brought into CECOM RDE organizations either through appointment, promotion, reassignment, change to a lower grade or where their functions and positions have been transferred to an RDE organization will be converted to the demonstration project.

The American Federation of Government Employees (AFGE) and the National Federation of Federal Employees (NFFE) represent many CECOM RDE employees. Of those employees assigned to the CECOM RDE organizations, approximately 50% are represented by labor unions.

In April 1997, unions representing the majority of RDE employees at Fort Monmouth were briefed, along with Directors and senior managers, on the major aspects of the Personnel Demonstration Plan. The unions have received updates as specific proposals evolved during the design phase. The unions have attended town meetings and smaller focus group briefings provided to the workforce. CECOM RDE organizations continue to fulfill our obligation to consult and/or negotiate with all labor organizations in accordance with 5 U.S.C. 4703(f) and 7117.

F. Project Design

In September 1995, a Project Leader was appointed to lead the reinvention effort. During the next several months, waivers to various restrictions in the personnel arena were discussed, and it was learned that these initiatives should be merged into the DoD S&T Reinvention Laboratory Personnel Demonstration Project. Work then began gathering information from the original five Army S&T Reinvention Laboratories. Those demonstration projects were the first to introduce major changes to improve the personnel system specifically tailored to the Army labs.

In the summer/fall of 1997, the RDEC Associate Director for Operations hosted a series of town meetings providing an overview of Personnel Demonstration Projects. These meetings were held at Fort Monmouth and Fort Belvoir, where the majority of CECOM RDE employees are located. Plans were outlined to establish teams of volunteers to design the major aspects of the project, *e.g.*, Pay/Classification, Staffing, Employee Development and Performance Management along with an additional team dedicated to Workforce Communication. All levels of employees, supervisors and the labor organizations were invited to participate. The Associate Director for Operations provided executive oversight and briefed the project to senior managers and those local unions representing a majority of employees. From October 1997 through April 1998, the teams developed their portions of the project as outlined above. During this time, feedback was provided to RDE employees through briefings, newsletters, a web site and a dedicated anonymous electronic mailbox for employees to post questions and receive answers. As the majority of the members on the teams were non-supervisory employees, the opinions and comments of the workforce are clearly reflected in the overall design of this project. A draft proposal was developed and staffed throughout the CECOM RDE organizations and the Command. Comments and requested changes have been incorporated.

To further validate the Pay for Performance (PFP) system, a test was conducted. The goals were to provide employees feedback on how they might fare under PFP, increase employee and management participation in the process and identify areas needing improvement before actual implementation. The results of the test were briefed to senior managers, provided to the unions, published in the Personnel Demo Newsletter, and placed on the website. An interactive tool is also available on the Web site which permits employees to input their current salary and calculate performance pay outs based upon projected performance scores.

G. Personnel Management Board

CECOM RDE organizations will create an RDE Personnel Management Board (PMB) to oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishment of internal controls and accountability. Permanent members of the board will include RDE senior leaders appointed by the RDE Center Directors. Other members include the CECOM Deputy Chief of Staff for Personnel (DCSPER), Deputy Chief of Staff for Operations and Plans (DCSOPS), and Equal Employment Officer (EEO) to ensure proper management and oversight of the project. Sub-boards may be established at the Center level, reporting to the RDE Personnel Management Board, to address specific issues within the scope of the separate CECOM RDE organizations. The boards will execute the following:

(a) Determine the composition of the pay-for-performance pay pools in accordance with the guidelines of this proposal and internal procedures;

(b) Review operation of pay pools and provide guidance to Pay Pool Managers;

(c) Oversee disputes in pay pool issues;

(d) Formulate and execute the civilian pay budget;

(e) Manage the awards pools;

(f) Determine hiring and promotion salaries as well as exceptions to pay for performance salary increases;

(g) Conduct classification review and oversight, monitoring and adjusting classification practices and deciding board classification issues;

(h) Approve major changes in position structure;

(i) Address issues associated with multiple pay systems during the demonstration project;

(j) Establish Standard Performance Elements and Benchmarks;

(k) Assess the need for changes to demonstration project procedures and policies;

(l) Review requests for Supervisory/Team Leader Pay Adjustments and provide recommendations to the appropriate Center Director;

(m) Ensure in-house budget discipline;

(n) Manage the number of employees by occupational family and pay band;

(o) Develop policies and procedures for administering Developmental Opportunity Programs;

(p) Ensure that all employees are treated in a fair and equitable manner in accordance with all policies, regulations and guidelines covering this demonstration project; and,

(q) Monitor the evaluation of the project.

III. Personnel System Changes

A. Pay Banding

The design of the CECOM RDE pay banding system takes advantage of the many reviews performed by DA and DoD. The design has the benefit of being preceded by exhaustive studies of pay banding systems currently practiced in the Federal sector, to include those practiced by the Navy's "China Lake" experiment and NIST. The pay banding system will replace the current General Schedule (GS) structure. Currently the 15 grades of the General Schedule are used to classify positions and, therefore, to set pay. The General Schedule covers all white-collar work-administrative, technical, clerical and professional. Changes in this rigid structure are required to allow flexibility in hiring, developing, retaining, and motivating the workforce.

1. Occupational Families

Occupations with similar characteristics will be grouped together into one of three occupational families with pay band levels designed to facilitate pay progression. Each occupational family will be composed of pay bands corresponding to recognized advancement and career progression expected within the occupations. These pay bands will replace individual grades and will not be the same for each occupational family. Each occupational family will be divided into three to five pay bands with each pay band covering the same pay range now covered by one or more GS grades. Employees track into an occupational family based on their current series as provided in Appendix B. Upon implementation employees are initially assigned to the highest band in which their grade fits. For example a Management Analyst GS–343–12 in the Business and Technical Family is assigned to Pay Band III as illustrated in Figure 1. The upper and lower salary limit of each band is defined by the salary of the GS grade and step as indicated in Figure 1. Comparison to the GS grades was used in setting the upper and lower dollar limits of the pay band levels; however, once employees are moved into the demonstration project, GS grades will no longer apply. The current occupations have been examined, and their characteristics and distribution have served as guidelines in the development of the following three occupational families:

Engineering and Science (E&S) (Pay Plan DB): This occupational family includes technical professional positions, such as engineers, physicists, chemists, mathematicians, operations research analysts and computer scientists. Specific course work or educational degrees are required for these occupations. Five bands have been established for the E&S occupational family:

Band I is a student trainee track covering GS–1, step 1 through GS–4, step 10.

Band II is a developmental track covering GS–5, step 1 through GS–11, step 10.

Band III * is a full-performance technical track covering GS–12, step 1 through GS–14, step 10.

Band IV * includes both senior technical positions along with supervisors-managers covering GS–14, step 1 through GS–15, step 10.

* Bands III and IV overlap at the end and start points. These two bands have been designed following a feature used by the Navy's "China Lake" project. Upon implementation, employees in the E&S family currently at grade GS–14 are assigned to Band IV.

Band V is a senior scientific-technical manager. The salary range is from 120 percent of the minimum rate of basic pay for a GS–15 to a maximum rate of SES level 4 (ES–4) excluding locality pay.

Business & Technical (B&T) (Pay Plan DE): This occupational family includes such positions as computer specialists, equipment specialists, quality assurance specialists, telecommunications specialists, engineering and electronics technicians, procurement coordinators, finance, accounting, administrative computing, and management analysis. Employees in these positions may or may not require specific course work or educational degrees. Four bands have been established for the B&T occupational family:

Band I is a student trainee track covering GS–1, step 1 through GS–4, step 10.

Band II is a developmental track covering GS–5, step 1 through GS–11, step 10.

Band III is a full performance track covering GS–12, step 1 through GS–13, step 10.

Band IV is a senior technical/manager track covering GS–14, step 1 through GS–15, step 10.

General Support (GEN) (Pay Plan DK): This occupational family is composed of positions for which specific course work or educational degrees are not required. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. This family includes such positions as secretaries, office automation clerks, and budget/program/computer assistants. Three bands have been established for the GEN occupational family:

Band I includes entry-level positions covering GS–1, step 1 through GS–4, step 10.

Band II includes full-performance positions covering GS–5, step 1 through GS–8, step 10.

Band III includes senior technicians/assistants/secretaries covering GS–9 step 1 through step 10.

2. Pay Band Design

The pay bands for the occupational families and how they relate to the current GS framework are shown in Figure 1.

FIGURE 1.—PAY BAND CHART

Occupational family	Equivalent GS grades				
	I	II	III	IV	V
E&S	GS–01—GS–04	GS–05—GS–11	GS–12—GS–14	GS–14—GS–15	>GS–15
Business & Technical	GS–01—GS–04	GS–05—GS–11	GS–12—GS–13	GS–14—GS–15	
General Support	GS–01—GS–04	GS–05—GS–08	GS–09		

Employees will be converted into the occupational family and pay band that corresponds to their GS/GM series and grade. Each employee is assured an initial place in the system without loss of pay. New hires will ordinarily be placed at the lowest salary in a pay band. Exceptional qualifications, specific organizational requirements, or other compelling reasons may lead to a higher entrance salary within a band. As the rates of the General Schedule are increased due to general pay increases, the upper and lower salary limits of the pay bands will also increase. Since pay progression through the bands depends directly on performance, there will be no scheduled Within-Grade Increases (WIGIs) or Quality Step Increases (QSIs) for employees once the pay banding system is in place. Special salary rates will no longer be applicable to demonstration project employees. Special provisions have been included to ensure conversion without a loss of pay (See section E, paragraph 8, Staffing Supplements).

3. Pay Band V

The CECOM RDE pay banding plan expands the pay banding concept used at China Lake and NIST by creating Pay Band V for the Engineering and Science occupational family. This pay band is designed for Senior Scientific Technical Managers (SSTM). The current definitions of Senior Executive Service (SES) and Scientific and Professional (ST) positions do not fully meet the needs of the CECOM RDE organizations.

The SES designation is appropriate for executive level managerial positions whose classification exceeds grade 15 of

the General Schedule. The primary knowledge and abilities of SES positions relate to supervisory and managerial responsibilities. Positions classified as ST are designed for bench research scientists and engineers. These positions require a very high level of technical expertise and have little or no supervisory responsibilities.

CECOM RDE organizations currently have positions that warrant classification above grade 15 of the General Schedule because of their technical expertise requirements. These positions, typically division/office chiefs, have characteristics of both SES and ST classifications. Most of these positions are responsible for supervising other GS–15 positions, including lower level supervisors, non-supervisory engineers and scientists, and in some cases ST positions. The supervisory and managerial requirements exceed those appropriate for ST positions.

Management considers the primary requirement for these positions to be knowledge of and expertise in the specific scientific and technology areas related to the mission of their organizations, rather than the executive leadership qualifications that are characteristic of the SES. Historically, incumbents of these positions have been recognized within the community as scientific and engineering leaders who possess strong managerial and supervisory abilities. Therefore, although some of these employees have scientific credentials that might compare favorably with ST criteria, classification of these positions as STs is not an option because the managerial and supervisory responsibilities cannot be ignored.

Pay Band V will apply to a new category of positions designated as Senior Scientific Technical Managers (SSTM). Positions so designated will include those requiring scientific/technical expertise and full managerial and supervisory authority. Their scientific/technical expertise and responsibilities warrant classification above the GS–15 level.

Current GS–15 division/office chiefs will convert into the demonstration project at Pay Band IV. After conversion they will be reviewed against established criteria to determine if they should be reclassified to Pay Band V. Other positions possibly meeting criteria for designation as SSTM will be reviewed on a case-by-case basis. The salary range for SSTM positions is a minimum of 120 per cent of the minimum rate of basic pay for GS–15 with a maximum rate of basic pay established at the rate of basic pay (excluding locality pay) for SES level 4 (ES–4).

Vacant SSTM positions will be filled competitively to ensure that selectees are preeminent technical leaders in specialty fields who also possess substantial managerial and supervisory abilities. The CECOM RDE organizations will capitalize on the efficiencies that can accrue from central recruiting by continuing to use the expertise of the Army Materiel Command SES Office as the recruitment agent.

Panels will be created to assist in filling SSTM positions. Panel members typically will be current or former SES members, ST employees and later those designated as SSTMs. In addition, senior military officers and recognized technical experts from outside the RDE organizations may also serve as appropriate. The panel will apply criteria developed largely from the current OPM Research Grade-Evaluation Guide for positions exceeding the GS–15 level. The purpose of the panel is to insure impartiality, breadth of technical expertise and a rigorous and demanding review.

DoD will test SSTM positions for a five-year period. SSTM positions will be subject to limitations imposed by OPM and DoD. SSTM positions will be established only in an S&T Reinvention Laboratory that employs scientists, engineers, or both. Incumbents of these positions will work primarily in their professional capacity on basic or applied research. Secondarily, they will also perform managerial or supervisory duties.

The number of SSTM positions, and the equivalent in other approved S&T reinvention laboratory personnel demonstration projects within DoD, will not exceed 40. These 40 positions will be allocated by the Assistant Secretary of Defense (Force Management Policy) and administered by the respective Services. The number of positions will be reviewed periodically to determine appropriate position requirements. SSTM (and the equivalent in other S&T reinvention laboratories demonstration projects) position allocations will be managed separately from SES, ST, and SL allocations. An evaluation of the concept for these positions will be performed during the fifth year of the demonstration project.

The final component of Pay Band V is the management of all Pay Band V assets. Specifically, this authority will be exercised at the DA level, and includes the following: authority to classify, create, or abolish positions within the limitations imposed by OPM and DoD; recruit and reassign employees in this pay band; set pay and appraise performance under this project's Pay for Performance system. The CECOM RDE organizations want to demonstrate increased effectiveness by gaining greater managerial control and authority, consistent with merit, affirmative action, and equal employment opportunity principles.

B. Classification

1. Occupational Series

The present General Schedule classification system has 434 occupational series, which are divided into 22 occupational groupings. The CECOM RDE organizations currently have positions in approximately 70 occupational series that fall into 14 occupational groupings. All positions listed in Appendix B will be in the classification structure. Provisions will be made for including other occupations in response to changing missions.

2. Classification Standards and Position Descriptions

CECOM RDE organizations will use a fully automated classification system modeled after the Navy's "China Lake" and ARL. ARL has developed a Web-based automated classification system that can create standardized, classified, position descriptions under the new pay banding system in a matter of minutes. The present system of OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. Current OPM Position Classification Standards will not be used to grade positions in this project. However, the grading criteria in those standards will be used as a framework to develop new and simplified standards for the purpose of pay band determinations. The objective is to record the essential criteria for each pay band within each occupational family by stating the characteristics of the work, the responsibilities of the position, and the knowledge, skills, and abilities required. New position descriptions will replace the current DA Form 374, Department of the Army Job Description. The classification standard for each pay band will serve as an important component in the new position description, which will also include position-specific information, and provide data element information pertinent to the job. Supervisors will follow a computer-assisted process to produce position descriptions. The new descriptions will be easier to prepare, minimize the amount of writing time and make the position description a more useful and accurate tool for other personnel management functions.

Specialty work codes will be used to further differentiate types of work and the skills and knowledge required for particular positions with an occupational family and pay band. Each code represents a specialization or type of work within the occupation.

3. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and non-exemption determinations will be consistent with criteria found in 5 CFR (Code of Federal Regulations) part 551. All employees are covered by the FLSA unless they meet the criteria for exemption. The duties and responsibilities outlined in the classification standards for each pay band will be compared to the FLSA criteria. As a general rule, the FLSA status can be matched to occupational family and pay band as indicated in Figure 2. For example, positions classified in Pay Band I of the E&S occupational family are typically nonexempt, meaning they are covered by the overtime entitlements prescribed by the FLSA. An exception to this guideline includes supervisors/managers who meet the definitions outlined in the OPM General Schedule Supervisory Guide and who spend 80 percent or more of the workweek on supervisory duties. Therefore, supervisors/managers in any of the pay bands who meet the foregoing criteria are exempt from the FLSA. Supervisors with classification authority will make the determinations on a case-by-case basis by comparing assigned duties and responsibilities to the classification standards for each pay band and the 5 CFR part 551 FLSA criteria. Additionally, the advice and assistance of the Civilian Personnel Advisory Center/Civilian Personnel Operations Center (CPAC/CPOC) will be obtained in making determinations. The benchmark position descriptions will not be the sole basis for the determination. Basis for exemption will be documented and attached to each position description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. Changes will be documented and provided to the CPAC/CPOC, as appropriate.

FIGURE 2.—FLSA STATUS

[Pay bands]

Occupational family	I	II	III	IV	V
E&S	N	N/E	E	E	E
B&T	N	N/E	E	E	
GEN	N	N	E		

N—Non-Exempt from FLSA; E—Exempt from FLSA.
N/E—Exemption status determined on a case-by-case basis.
Note: Although typical exemption status under the various pay bands is shown in the above table, actual FLSA exemption determinations are made on a case-by-case basis.

4. Classification Authority

CECOM RDE Center Directors will have delegated classification authority and may, in turn, re-delegate this authority to appropriate levels. Position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the occupational family, job series, functional code, specialty work code, pay band level, and the appropriate acquisition codes. Personnel specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. The manager will document these decisions on a form similar to the present DA Form 374.

5. Classification Appeals

Classification appeals under this demonstration project will be processed using the following procedures: An employee may appeal the determination of occupational family, occupational series, position title, and pay band of his/her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If the employee is not satisfied with the supervisory response, he/she may then appeal to the DoD appellate level. Appeal decisions rendered by DoD will be final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. Classification appeals are not accepted on positions which exceed the equivalent of a GS–15 level. Time periods for cases processed under 5 CFR, part 511 apply.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the occupational family; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure, or an alternative dispute resolution procedure.

The evaluations of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the CPAC/CPOC providing personnel service and will include copies of appropriate demonstration project criteria.

C. Pay for Performance

1. Overview

The purpose of the PFP system is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the RDE workforce. It is essential for the development of a highly productive workforce and to provide management at the lowest practical level, the authority, control, and flexibility needed to achieve a quality organization and meet mission requirements. PFP allows for more employee involvement in the assessment process, strives to increase communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, and provides an understandable and rational basis for salary changes by linking pay and performance.

The PFP system uses annual performance payouts that are based on the employee's total performance score rather than within-grade increases, quality step increases, promotions from one grade to another where both grades are now in the same pay band (i.e., there are no within-band promotions) and performance awards. The normal rating period will be one year. The minimum rating period will be 120 days. PFP payouts can be in the form of increases to base pay or in the form of bonuses that are not added to base salary but rather are given as a lump sum bonus. Other awards such as special acts, time-off awards, etc., will be retained separately from the PFP payouts.

The system will have the flexibility to be modified, if necessary, as more experience is gained under the project.

2. Performance Objectives

Performance objectives define a target level of activity, expressed as a tangible, measurable objective, against which actual achievement can be compared. These objectives will specifically identify what is expected of the employee during the rating period and will typically consist of 3 to 10 results-oriented statements. The employee and his/her supervisor will jointly develop the employee's performance objectives at the beginning of the rating period. These are to be reflective of the employee's duties/responsibilities and pay band along with the mission/organizational goals and priorities. Objectives will be reviewed annually and revised upon changes in salary reflecting increased responsibilities commensurate with salary increases. Use of generic one-size-fits-all objectives will be avoided, as performance objectives are meant to define an individual's specific responsibilities and expected accomplishments. In contrast, performance elements as described in the next paragraph, will identify generic performance characteristics, against which the accomplishment of objectives will be measured. As a part of this demonstration project, training focused on overall organizational objectives and the development of performance objectives will be held for both supervisors and employees. Performance objectives may be jointly modified, changed or deleted as appropriate during the rating cycle. As a general rule, performance objectives should only be changed when circumstances outside the employee's control prevent or hamper the accomplishment of the original objectives. It is also appropriate to change objectives when mission or workload shifts occur.

3. Performance Elements

Performance elements define generic performance characteristics that will be used to evaluate the employee's success in accomplishing his/her performance objectives. The use of generic characteristics for scoring purposes helps to ensure comparable scores are assigned while accommodating diverse individual objectives. This pay-for-performance system will utilize those performance elements provided in Appendix C. All elements are critical. A critical performance element is defined as an attribute of job performance that is of sufficient importance that performance below the minimally acceptable level requires remedial action and may be the basis for removing an employee from their position. Non-critical elements will not be used. Each of the performance elements will be assigned a weight, which reflects its importance in accomplishing an individual's performance objectives. A minimum weight is set for each performance element. The sum of the weights for all of the elements must equal 100.

A single set of performance elements will be used for evaluating the annual performance of all CECOM RDE personnel covered by this plan. This set of performance elements may evolve over time, based on experience gained during each rating cycle. This evolution is essential to capture the critical characteristics the organization encourages in its workforce toward meeting individual and organizational objectives. This is particularly true in an environment where technology and work processes are changing at an increasingly rapid pace. The RDE Personnel Management Board will annually review the set of performance elements and set them for the entire organization before the beginning of the rating period. The following is an initial set of performance elements along with the minimum weight:

(1) Technical Competence (Minimum Weight: 15%)
(2) Interpersonal Skills (Minimum Weight: 10%)
(3) Management of Time and Resources (Minimum Weight: 15%)
(4) Customer Satisfaction (Minimum Weight: 10%)
(5) Team/Project Leadership (Minimum Weight: 15%)
(6) Supervision/EEO (Minimum Weight: 25%)

All employees will be rated against the first four performance elements. Team/Project Leadership is mandatory for team leaders and Supervision/EEO is mandatory for all managers/supervisors. At the beginning of the rating period, Pay Pool Managers will review the objectives and weights assigned to employees within the pay pool, to verify consistency and appropriateness.

4. Performance Feedback and Formal Ratings

The most effective means of communication is person-to-person discussion between supervisors and employees of requirements, performance goals and desired results. Employees and supervisors alike are expected to actively participate in these discussions for optimum clarity regarding expectations and identify potential obstacles to meeting goals. In addition, employees should explain (to the extent possible) what they need from their supervisor to support goal accomplishment. The timing of these discussions will vary based on the nature of work performed, but will occur at least at the mid-point and end of the rating period. The supervisor and employee will discuss job performance and accomplishments in relation to the performance objectives and elements. At least one review, normally the mid-point review, will be documented as a formal progress review. More frequent, task specific, discussions may be appropriate in some organizations. In cases where work is accomplished by a team, team discussions regarding goals and expectations will be appropriate.

The employee will provide a list of his/her accomplishments to the supervisor at both the mid-point and end of the rating period. An employee may elect to provide self-ratings on the performance elements and/or solicit input from team members, customers, peers, supervisors in other units, subordinates, and other sources which will permit the supervisor to fully evaluate accomplishments during the rating period.

At the end of the rating period, following a review of the employee's accomplishments, the supervisor will rate each of the performance elements by assigning a score between 0 and 50. Benchmark performance standards have been developed that describe the level of performance associated with a score. Using these benchmarks, the supervisor decides where (at any point on a scale of 0 to 50) the performance of the employee fits and assigns an appropriate score. It should be noted that these scores are not discussed with the employee or considered final until all scores are reconciled and approved by the Pay Pool Manager. The element scores will then be multiplied by the element-weighting factor to determine the weighted score expressed to two decimal points. The weighted scores for each element will then be totaled to determine the employees' overall appraisal score and rounded to a whole number as follows: if the digit to the right of the decimal is between five and nine, it should be rounded to the next higher whole number; if the digit to the right of the decimal is between one and four, it should be dropped.

A total score of 10 or above will result in a rating of acceptable. A total score of 9 or below will result in a rating of unacceptable, and requires the employee be placed on a Performance Improvement Plan (PIP) immediately or following a temporary assignment. A score of 9 or below in a single element will also result in a rating of unacceptable, and requires the employee be placed on a PIP. A new rating of record will be issued if the employee's performance improves to an acceptable level at the conclusion of the PIP.

5. Unacceptable Performance

Informal employee performance reviews will be a continuous process so that corrective action, to include placing an employee on a Performance Improvement Plan (PIP), may be taken at any time during the rating cycle. Whenever a supervisor recognizes an employee's performance on one or more performance elements is unacceptable, the supervisor should immediately inform the employee. Efforts will be made to identify the possible reasons for the unacceptable performance.

As an informal first step, the supervisor and employee may explore a temporary assignment to another unit in the organization. This recognizes that conflicts sometimes occur between a supervisor and an employee, or that an employee may be assigned to a position for which they are not suited. The supervisor is under no obligation to explore this option prior to taking more formal action. If the temporary assignment is not possible or has not worked out, and the employee continues to perform at an unacceptable level or has received an unacceptable rating, written notification outlining the unacceptable performance will be provided to the employee. At this point an opportunity to improve will be structured in a PIP. The supervisor will identify the items/actions that need to be corrected or improved, outline required time frames (no less than 30 days) for such improvement, and provide the employee with any available assistance as appropriate. Progress will be monitored during the PIP, and all counseling sessions will be documented.

If the employee's performance is acceptable at the conclusion of the PIP, no further action is necessary. If a PIP ends prior to the end of the annual performance cycle and the employee's performance improves to an acceptable level, the employee is appraised again at the end of the annual performance cycle.

If the employee fails to improve during the PIP, the employee will be given notice of proposed appropriate action. This action can include removal from the Federal service, placement in a lower pay band with a corresponding reduction in pay (demotion), reduction in pay within the same pay band, or change in position or occupational family. For the most part, employees with an unacceptable rating will not be permitted to remain at their current salary and may be reduced in pay band. Reductions in salary within the same pay band or changes to a lower pay band will be accomplished with a minimum of a 5 percent decrease in an employee's base pay.

Note: Nothing in this subsection will preclude action under Title 5, United States Code, Chapter 75, when appropriate.

All relevant documentation concerning a reduction in pay or removal based on unacceptable performance will be preserved and made available for review by the affected employee or a designated representative. As a minimum, the record will consist of a copy of the notice of proposed personnel action, the employee's written reply, if provided, or a summary when the employee makes an oral reply. Additionally, the record will contain the written notice of decision and the reasons therefor along with any supporting material (including documentation regarding the opportunity afforded the employee to demonstrate improved performance).

If the employee's performance deteriorates to an unacceptable level, in any element, within two years from the beginning of a PIP, follow-on actions may be initiated with no additional opportunity to improve. If an employee's performance is at an acceptable level for two years from the beginning of the PIP, and performance once again declines to an unacceptable level, the employee will be given an additional opportunity to improve, before management proposes follow-on actions.

6. Reconciliation Process

Following the initial scoring of each employee by the rater, the rating officials in an organizational unit, along with their next level of supervision, will meet to ensure consistency and equity of the ratings. In this step, each employee's performance objectives, accomplishments, preliminary scores and current salary are compared. Through discussion and consensus building, consistent and equitable ratings are reached. Managers will not prescribe a distribution of total scores. The Pay Pool Manager will then chair a final review with the rating officials who report directly to him or her to validate these ratings and resolve any scoring issues. If consensus cannot be reached in this process, the Pay Pool Manager makes all final decisions. After this reconciliation process is complete, scores are finalized. Payouts proceeds according to each employee's final score and current salary. Upon approval of this plan, implementing procedures and regulations will provide details on this process to employees and supervisors.

7. Pay Pools

Employees within the CECOM RDE organizations will be placed into pay pools. Pay pools are combinations of organizational elements (e.g., Directorates, Divisions, Branches, Offices, etc.) that are defined for the purpose of determining performance payouts under the PFP system. The guidelines in the next paragraph are provided for determining pay pools. These guidelines will normally be followed. However, RDE Center Directors may deviate from the guidelines if they determine that there is a compelling need to do so and document their rationale in writing.

The RDE Center Directors will establish pay pools within their respective organizations. Typically, pay pools will have between 35 and 300 employees. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Supervisory personnel will be placed in a pay pool separate from subordinate non-supervisory personnel. Team leaders classified by the GS Leader Grade-Evaluation Guide will be included in a supervisory pay pool. Those team leaders who have project responsibility but who do not actually lead other workers will be included in a non-supervisory pay pool. Neither the Pay Pool Manager nor supervisors within a pay pool will recommend or set their own individual pay. Decisions regarding the amount of the performance payout are based on the established formal payout calculations.

Funds within a pay pool available for performance payouts are calculated from anticipated pay increases under the existing system and divided into two components, base pay and bonus. The funds within a Pay Pool used for base pay increases, are those that would have been available from within-grade increases, quality step increases and promotions (excluding the costs of promotions still provided under the banding system). This amount will be defined based on historical data and set between 2.0 percent " 2.4 percent of total salary annually. The funds available to be used for bonus payouts are funded separately within the constraints of the organization's overall award budget. This amount will be defined based on historical data and set between 1.0 percent—1.4 percent of total salary annually. The sum of these

two factors is referred to as the pay pool percentage factor. The RDE Personnel Management Board will annually review the pay pool funding formula and recommend adjustments to the RDE Center Directors to ensure cost discipline over the life of the demonstration project. Cost discipline is assured within each pay pool by limiting the total base pay increase to the funds available, based on what would have been available in the General Schedule system from within-grade increases, quality step increases and within-band promotions. RDE Center Directors may reallocate the amount of funds assigned to each pay pool as necessary to ensure equity and to meet unusual circumstances.

8. Performance Payout Determination

The performance payout an employee will receive is based on the total performance score from the Pay for Performance assessment process. An employee will receive a performance payout as a percentage of current salary. This percentage is based on the number of shares that equates to their final appraisal score. Shares will be awarded on a continuum as follows:

Score = Shares

50 = 3
40 = 2
30 = 1
21 = .1
10–20 = 0
<=9 = 0 (Performance Improvement Plan required)

Fractional shares will be awarded for scores that fall in between these scores. For example: a score of 38 will equate to 1.8 shares, and a score of 44 will equate to 2.4 shares.

The value of a share cannot be exactly determined until the rating and reconciliation process is completed and all scores are finalized. The share value is expressed as a percentage. The formula that computes the value of each share is based on (1) the value of pay pool, (2) the employee's pay, (3) the number of shares awarded to each employee in the pay pool, and (4) the total number of shares awarded in the pay pool. This formula assures that each employee within the pool receives a share amount equal to all others in the same pool who are at the same rate of basic pay and receiving the same score. The formula is shown in figure 3.

Figure 3. Formula

$$\text{Individual Pay Increase} = \frac{\text{Pool Value}}{\text{SUM (tSAL} * \text{tN)}}$$

Where:
F = Payout Factor; initially 3.8 percent of combined basic rates of pay of the assigned employees in a pay pool
SUM = Summation of entities within parenthesis
SAL = An individual's basic rate of pay
tSAL = Total of basic rates of pay in a pay pool
Pool Value = F * (tSAL)
N = Number of shares (0 to 3) earned by an individual employee based on his/her score (0 to 50)
tN = Total of shares earned by employees in pool

A Pay Pool Manager is accountable for staying within pay pool limits. The Pay Pool Manager makes final decisions on pay increases and/or bonuses to individuals based on rater recommendation, the final score, the pay pool funds available, and the employee's current salary. A Pay Pool Manager may request approval from the Personnel Management Board at the Center level or its designee to grant a pay increase to an employee that is higher than the one generated by the compensation formula for that employee. Examples of employees who might warrant such consideration are those making extraordinary achievements or to provide accelerated compensation for a local intern.

9. Base Pay Increases and Bonuses

The amount of money available for performance payouts is divided into two components, base pay increases and bonuses. The base pay and bonus funds are based on the pay pool funding formula established annually. Once the individual performance amounts have been determined, the next step is to determine what portion of each payout will be in the form of a base pay increase as opposed to a bonus payment. The payouts made to employees from the pay pool may be a mix of base pay and bonus, such that all of the allocated funds are disbursed as intended. To continue to provide performance incentives while also ensuring cost discipline, base pay increases may be limited or capped. Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of pay in an assigned pay band, when the mid-point rule applies (see below) or when the Significant Accomplishment/Contribution rule applies (see below). Also, for employees receiving retained rates above the applicable pay band maximum, the entire performance payout will be in the form of a bonus payment.

When capped, the total payout an employee receives will be in the form of a bonus versus the combination of base pay and bonus. Bonuses are cash payments and are not part of the basic pay for any purpose (e.g., lump sum payments of annual leave on separation, life insurance, and retirement). The maximum base pay rate under this demonstration project will be the unadjusted base pay rate of GS–15/Step 10, except for employees in Pay Band V of the E&S Occupational Family. In this case, the salary range is a minimum of 120 percent of the minimum rate of basic pay for GS–15 with a maximum rate of basic pay established at the rate of basic pay (excluding locality pay) for ES–4.

If the organization determines it is appropriate, it may re-allocate a portion (up to the maximum possible amount) of the unexpended base pay funds for capped employees to uncapped employees. This re-allocation will be determined by the Pay Pool Manager. Any dollar increase in an employee's projected base pay increase will be offset, dollar for dollar, by an accompanying reduction in the employee's projected bonus payment. Thus, the employee's total performance payout is unchanged.

10. Mid-Point Rule

To provide added performance incentives as an employee progresses through a pay band, a mid-point rule will be used to determine base pay increases. The mid-point rule dictates that any employee must receive a score of 30 or higher for their base pay to cross the salary midpoint of their pay band. Also, once an employee's base pay exceeds the salary midpoint of their band, the employee must receive a score of 30 or higher to receive any additional base pay increases. Any amount of an employee's performance payout, not paid in the form of a base pay increase because of the mid-point rule, will be paid as a bonus. This rule effectively raises the standard of performance expected of an employee once the salary midpoint of a band is crossed. This applies to all employees in every occupational family and pay band.

11. Significant Accomplishment/ Contribution Rule

The purpose of this rule is to maintain cost discipline while ensuring that employee payouts are in consonance with accomplishments and levels of responsibility. The rule will apply only to employees in E&S Band III whose base salary falls within the top 15 percent of the band. For employees meeting these criteria, the following provisions will apply:

If an employee's score falls in the top third of scores received in his/her pay pool, he/she will receive the full allowable base pay increase portion of the performance payout. The balance of the payout will be paid as a lump sum bonus.

If an employee's score falls in the middle third of scores received in his/her pay pool, the base pay increase portion will not exceed 1% of base salary. The balance of the payout will be paid as a lump sum bonus.

If an employee's appraisal score falls in the bottom third of scores received in his/her pay pool, the full payout will be paid as a lump sum bonus.

12. Awards

To provide additional flexibility in motivating and rewarding individuals and groups, some portion of the performance award budget will be reserved for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, suggestions, on the spot, and time-off. The funds available to be used for awards are separately funded within the constraints of the organization's overall award budget.

While not directly linked to the pay for performance system, this additional flexibility is important to encourage outstanding accomplishments and innovation in accomplishing the diverse mission of the CECOM RDE organizations. Additionally, to foster and encourage teamwork among its employees, organizations may give group awards. Under the demonstration project, a team may elect to distribute such awards among themselves.

Thus, a team leader or supervisor may allocate a sum of money to a team for outstanding performance, and the team may decide the individual distribution of the total dollars among themselves. The Commanding General, CECOM will have the authority to grant special act awards to covered employees of up to $10,000 IAW the criteria of AR 672–20, Incentive Awards.

13. General Pay Increase

Employees, who are on a PIP at the time pay determinations are made, do not receive performance payouts or the General Pay Increase. An employee who receives an unacceptable rating of record will not receive any portion of the General Pay Increase or RIF service credit until such time as their performance improves to the acceptable level and remains acceptable for at least 90 days. When the employee has performed acceptably for at least 90 days, the General Pay Increase will not be retroactive but will be granted at the beginning of the next pay period after the supervisor authorizes its payment.

These actions may result in a base salary that is identified in a lower pay band. This occurs because the minimum rate of basic pay in a pay band increases as the result of the General Pay Increase (5 U.S.C. 5303). This situation (a reduction in band level with no reduction in pay) will not be considered an adverse action, nor will band retention provisions apply.

14. Reverse Feedback

Employee feedback to supervisors is considered essential for the success of the Pay for Performance System. A feedback instrument for subordinates to anonymously evaluate the effectiveness of their supervisors is being developed and shall be implemented as part of the demonstration project. Supervisors and their managers will be provided the results of that feedback in a format that does not identify individual raters or ratings. The data will be aggregated into a summary and used to establish both personal and organizational performance development goals. The use of this type of instrument will help focus attention on desired leadership behaviors, structure the feedback in a constructive manner, and offset the power imbalance that often prevents supervisors from getting useful feedback from their employees.

15. Grievances and Disciplinary Actions

An employee may grieve the performance rating /score received under the PFP system. Non-bargaining unit employees, and bargaining unit employees covered by a negotiated grievance procedure that does not permit grievances over performance ratings, must file under administrative grievance procedures. Bargaining unit employees whose negotiated grievance procedures cover performance-rating grievances must file under those negotiated procedures.

Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752 remain unchanged.

D. Hiring Authority

1. Qualifications

The qualifications required for placement into a position in a pay band within an occupational family will be determined using the OPM Operating Manual for Qualification Standards for General Schedule (GS) Positions. Since the pay bands are anchored to the GS grade levels, the minimum qualification requirements for a position will be the requirements corresponding to the lowest GS grade incorporated into that pay band. For example, for a position in the E&S occupational family, Pay Band II individuals must meet the basic requirements for a GS–5 as specified in the qualification standard for Professional and Scientific Positions.

Selective factors may be established for a position in accordance with the OPM Qualification Standards Operating Manual, when determined to be critical to successful job performance. These factors will become part of the minimum requirements for the position, and applicants must meet them in order to be eligible. If used, selective factors will be stated as part of the qualification requirements in vacancy announcements and recruiting bulletins.

2. Delegated Examining

Competitive service positions with the CECOM RDE Demonstration Project will be filled through Merit Staffing or under Delegated Examining. The "Rule of Three" will be eliminated. When there are no more than 15 qualified applicants and no preference eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking will be required only when the number of qualified candidates exceeds 15 or there is a mix of preference and non-preference applicants. Statutes and regulations covering veterans' preference will be observed in the selection process and when rating and ranking are required. If the candidates are rated and ranked, a random number selection method using the application control number will be used to determine which applicants will be referred when scores are tied after the rating process. Veterans will be referred ahead of non-veterans with the same score.

3. Legal Authority

For actions taken under the auspices of the Demonstration Project, the legal authority, Public Law 103–337 will be used. For all other actions, the CECOM RDE organizations will continue to use the nature of action codes and legal authority codes prescribed by OPM, DoD, or DA.

4. Revisions to Term Appointments

The CECOM RDE organizations conduct a variety of projects that range from three to six years. The current four-year limitation on term appointments often forces the termination of term employees prior to completion of projects they were hired to support. This disrupts the research and development process and affects the organization's ability to accomplish the mission and serve its customers.

CECOM RDE organizations will continue to have career and career conditional appointments and temporary appointments not to exceed one year. These appointments will use existing authorities and entitlements. Under the demonstration project, CECOM RDE organizations will have the added authority to hire individuals under a modified term appointment. These appointments will be used to fill positions for a period of more than one year, but not more than a total of five years when the need for an employee's services is not permanent. The modified term appointments differ from term employment as described in 5 CFR part 316 in that they may be made for a period not to exceed five, rather than four years. RDE Directors are authorized to extend a term appointment one additional year.

Employees hired under the modified term appointment authority are in a non-permanent status, but may be eligible for conversion to career-conditional appointments. To be converted, the employee must (1) have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position may be eligible for conversion to a career-conditional appointment at a later date; (2) have served two years of continuous service in the term position; (3) be selected under merit promotion procedures for the permanent position; and (4) be performing at the acceptable level of performance with a current score of 30 or greater.

Employees serving under regular term appointments at the time of conversion to the demonstration project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career-conditional appointments if they (1) have served two years of continuous service in the term position; (2) are selected under merit promotion procedures for the permanent position; and (3) are performing at the acceptable level of performance with a current score of 30 or greater (or equivalent if not yet rated under the demonstration project). Time served in term positions prior to conversion to the modified term appointment is creditable, provided the service was continuous. Employees serving under modified term appointments under this plan will be covered by the plan's pay for performance system.

5. Extended Probationary Period

The current one year probationary period will be extended to three years for all newly hired permanent career-conditional employees in the Engineering and Science occupational family. The purpose of extending the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete a cycle of work and to fully assess an employee's contribution and conduct. The three-year probationary period will apply only to new hires subject to a probationary period.

If a probationary employee's performance is determined to be satisfactory at a point prior to the end of the three year probationary period, a supervisor has the option of ending the probationary period at an earlier date, but not before the employee has completed one year of continuous service. If the probationary period is terminated before the end of the three-year period, the immediate supervisor will provide written reasons for his/her decision to the next level of supervision for concurrence prior to implementing the action.

Aside from extending the time period for all newly hired permanent career-conditional employees in the Engineering and Science occupational family, all other features of the current probationary period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Any employee appointed prior to the implementation date will not be affected.

6. Termination of Probationary Employees

Probationary employees may be terminated when they fail to demonstrate proper conduct, technical competency, and/or acceptable performance for continued employment, and for conditions arising before employment. When a supervisor decides to terminate an employee during the probationary period because his/her work performance or conduct is unacceptable, the supervisor shall terminate the employee's services by written notification stating the reasons for termination and the effective date of the action. The information in the notice shall, at a minimum, consist of the supervisor's conclusions as to the inadequacies of his/her performance or conduct, or those conditions arising before employment that support the termination.

7. Supervisory Probationary Periods

Supervisory probationary periods will be made consistent with 5 CFR 315. Employees who have successfully completed the initial probationary period will be required to complete an additional one-year probationary period for initial appointment to a supervisory position. If, during this probationary period, the decision is made to return the employee to a non-supervisory position for reasons related to supervisory performance, the employee will be returned to a comparable position of no lower pay than the position from which they were promoted or reassigned.

8. Volunteer Emeritus Corps

Under the demonstration project, RDE Directors will have the authority to offer retired or separated employees voluntary positions. Voluntary Emeritus Corps assignments are not considered employment by the Federal government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service.

The Voluntary Emeritus Corps will ensure continued quality services while reducing the overall salary line by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the RDE community. The program will be beneficial during manpower reductions, as employees accept retirement and return to provide a continuing source of corporate knowledge and valuable on-the-job training or mentoring to less experienced employees.

To be accepted into the emeritus corps, a volunteer must be recommended by an RDE manager to a directorate director. Not everyone who applies is entitled to an emeritus position. The responsible director must document acceptance or rejection of the applicant. For acceptance, documentation must be retained throughout the assignment. For rejection, documentation will be maintained for two years.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated federal employees may accept an emeritus position without a break or mandatory waiting period.

Voluntary Emeritus Corps volunteers will not be permitted to monitor contracts on behalf of the Government or to participate on any contracts or solicitations where a conflict of interest exists. The volunteers may be required to submit a financial disclosure form annually. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer, the responsible director, and the Civilian Personnel Operations Center (CPOC). The agreement must be finalized before the assumption of duties and shall include:

(a) A statement that the voluntary assignment does not constitute an appointment in the Civil Service, is without compensation, and the volunteer waives any claims against the Government based on the voluntary assignment;

(b) A statement that the volunteer will be considered a federal employee only for the purpose of injury compensation;

(c) The volunteer's work schedule;

(d) Length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) Support provided by the organization (travel, administrative support, office space, and supplies);

(f) A statement of duties;

(g) A statement providing that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a volunteer;

(h) A provision allowing either party to void the agreement with 2 working days written notice;

(i) The level of security access required by the volunteer (any security clearance required by the position will be managed by the employing organization);

(j) A provision that any publication(s) resulting from his/her work will be submitted to the RDE Center Directors for review and approval;

(k) A statement that he/she accepts accountability for loss or damage to Government property occasioned by his/her negligence or willful action;

(l) A statement that his/her activities on the premises will conform to the regulations and requirements of the organization;

(m) A statement that he/she will not release any sensitive or proprietary information without the written approval of the employing organization and further agrees to execute additional non-disclosure agreements as appropriate, if required, by the nature of the anticipated services; and,

(n) A statement that he/she agrees to disclose any inventions made in the course of work performed at the RDEC/SEC. The RDE Center Directors have the option to obtain title to any such invention on behalf of the U.S. Government. Should the RDE Center Directors elect not to take title, the RDE Centers shall at a minimum retain a non-exclusive, irrevocable, paid up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government.

Exceptions to the provisions in this procedure may be granted by the RDE Center Directors on a case-by-case basis.

E. Internal Placement and Pay Setting

1. Promotions

A promotion is the movement of an employee to a higher pay band in the same occupational family or to another pay band in a different occupational family, wherein the band in the new family has a higher maximum salary than the band from which the employee is moving. The move from one band to another must result in an increase in the employee's salary to be considered a promotion. Positions with known promotion potential to a specific band within an occupational family will be identified when they are filled. Not all positions in an occupational family will have promotion potential to the same band. Movement from one occupational family to another will depend upon individual knowledge, skills, and abilities, qualifications and needs of the organization. Supervisors may consider promoting employees at any time, since promotions are not tied to the pay for performance system. Progression within a pay band is based upon performance pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section. Except as specified below, promotions will be processed under competitive procedures in accordance with merit principles and requirements and the local merit promotion plan.

To be promoted competitively or non-competitively from one band to the next, an employee must meet the minimum qualifications for the job and have a current performance rating of "acceptable" with a score of 30 or better, or equivalent under a different performance appraisal system. If an employee does not have a current performance rating, the employee will be treated the same as an employee with an "acceptable" rating as long as there is no documented evidence of unacceptable performance.

The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same pay band or GS equivalent and occupational family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by reduction in force procedures.

(d) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(e) A temporary promotion, or detail to a position in a higher pay band, of 180 days or less.

(f) A promotion due to the reclassification of positions based on accretion (addition) of duties.

(g) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

(h) Consideration of a candidate who did not receive proper consideration in a competitive promotion action.

(i) Impact of person in the job and Factor IV process (application of the Research Grade-Evaluation Guide, Equipment Development Grade-Evaluation Guide, Part III, or similar guides) promotions.

2. Supervisory and Team Leader Pay Adjustments

Supervisory and team leader pay adjustments may be approved by the RDE Center Directors based on the recommendation of the Personnel Management Board at the Center level to compensate employees with supervisory or team leader responsibilities. Only

employees in supervisory or team leader positions as defined by the OPM GS Supervisory Guide or GS Leader Grade-Evaluation Guide may be considered for the pay adjustment. These pay adjustments are funded separately from Performance Pay Pools. These pay adjustments are increases to the basic rate of pay, ranging up to 10 percent of that pay rate for supervisors and up to 5 percent of that pay rate for team leaders. Pay adjustments are subject to the constraint that the adjustment may not cause the employee's basic rate of pay to exceed the pay band maximum rate. Criteria to be considered in determining the pay increase percentage include: (1) Needs of the organization to attract, retain, and motivate high quality supervisors/team leaders; (2) budgetary constraints; (3) years and quality of related experience; (4) relevant training; (5) performance appraisals and experience as a supervisor/team leader; (6) organizational level of position; and (7) impact on the organization. The pay adjustment will not apply to employees in Pay Band V of the E&S Occupational Family.

After the date of conversion into the demonstration project, a pay adjustment may be considered under the following conditions:

(1) New hires into supervisory/team leader positions will have their initial rate of base pay set at the supervisor's discretion within the pay range of the applicable pay band. This rate of pay may include a pay adjustment determined by using the ranges and criteria outlined above.

(2) A career employee selected for a supervisory/team leader position that is within the employee's current pay band may also be considered for a pay adjustment. If a supervisor/team leader is already authorized a pay adjustment and is subsequently selected for another supervisor/team leader position within the same pay band, then the pay adjustment will be re-determined.

Upon initial conversion into the demonstration project into the same or substantially similar position, supervisors/team leaders will be converted at their existing basic rate of pay and will not be eligible for a pay adjustment.

The supervisor/team leader pay adjustment will be reviewed annually, with possible increases or decreases based on the appraisal scores for the performance elements Team/Project Leadership and Supervision/EEO. The initial dollar amount of a pay adjustment will be removed when the employee voluntarily leaves the position. The cancellation of the adjustment under these circumstances is not an adverse action and is not subject to appeal. If an employee is removed from a supervisory/team leader position for personal cause (performance or conduct), the adjustment will be removed under adverse action procedures. However, if an employee is removed from a non-probationary supervisory/team leader position for conditions other than voluntary or for personal cause, then grade and pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR part 536, except as waived or modified in section IX.

3. Supervisory/Team Leader Pay Differentials

Supervisory and team leader pay differentials may be used by RDE Center Directors to provide an incentive and reward supervisors and team leaders as defined by the OPM GS Supervisory Guide and GS Leader Grade-Evaluation Guide. Pay differentials are not funded from Performance Pay Pools. A pay differential is a cash incentive that may range up to 10 percent of base pay for supervisors and up to 5 percent of base pay for team leaders. It is paid on a pay period basis with a specified not-to-exceed (NTE) of one year or less and is not included as part of the base pay. Criteria to be considered in determining the amount of the pay differential are the same as those identified for Supervisory/Team Leader Pay Adjustments. The pay differential will not apply to employees in Pay Band V of the E&S occupational family.

The pay differential may be considered, either during conversion into or after initiation of the demonstration project, if the supervisor/team leader has subordinate employees in the same pay band. The differential must be terminated if the employee is removed from a supervisory/team leader position, regardless of cause.

After initiation of the demonstration project, all personnel actions involving a supervisory/team leader differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the discretion of the RDE Center Directors. The termination or reduction of the differential is not an adverse action and is not subject to appeal.

4. Pay Administration

Pay administration policies will be established by the RDE Personnel Management Board, which conform to basic governmental pay fixing policy; however, these policies will be exempt from Army Regulations or CECOM local pay fixing policies. Upon initial appointment, the individual's pay may be set anywhere within the band level consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, experience, or any combination thereof that is pertinent to the position in which the employee is being placed. Guidance on hiring salaries will be established by the RDE Personnel Management Board.

CECOM RDE organizations may make full use of recruitment, retention and relocation payments as currently provided for by OPM.

Highest Previous Rate (HPR) will be considered in placement actions authorized under rules similar to the HPR rules in 5 CFR 531.203 (c) and (d). Use of HPR will be at the supervisor's discretion, but if used, HPR is subject to policies established by the RDE Personnel Management Board. Pay band and pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR part 536, except as waived or modified in section IX, the waiver section of this plan. RDE Center Directors may also grant pay retention to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided they are not specifically excluded.

5. Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the basic pay of level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530 subpart B. In addition, each pay band will have its own pay ceiling, just as grades do in the current system. Pay rates for the various pay bands will be directly keyed to the GS rates, except the maximum range for Pay Band V of the Engineer and Scientist occupational family, which cannot exceed ES–4. Basic pay will be limited to the maximum rates payable for each pay band, except for retained rates.

6. Pay Setting for Promotion

The minimum basic pay increase upon promotion to a higher pay band will be 6 percent or the minimum rate of the new pay band, whichever is greater. The maximum amount of pay increases will not exceed $10,000, or other such amount as established by the RDE Personnel Management Board. However, for employees assigned to occupational categories and geographic areas covered by special rates, the minimum salary rate in the pay band to which promoted is the minimum salary for the corresponding special rate or locality rate, whichever is greater. For employees covered by a staffing supplement, the demonstration staffing adjusted pay is considered basic pay for promotion calculations. When a temporary promotion is terminated, the employee's pay entitlements will be re-determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the RDE Personnel Management Board. In no case may those adjustments increase the pay for the position of record beyond the applicable pay range maximum rate.

7. Pay Setting for Demotion or Placement in a Lower Pay Band

A demotion is a placement into a lower pay band within the same occupational family or placement into a pay band in a different occupational family with a lower salary. Demotions may be for cause (performance or conduct) or for reasons other than cause (e.g., erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements or at the employee's request, or placement actions resulting from RIF procedures). Employees demoted for cause are not entitled to pay retention. Employees demoted for reasons other than cause may be entitled to pay retention in accordance with the provisions of 5 U.S.C. 5363 and 5 CFR part 536, except as waived or modified in section IX of this plan.

Employees who receive an unacceptable rating or who are on a performance improvement plan at the time pay determinations are made, do not receive performance payouts or the general pay increase. This action may result in a base salary that is identified in a lower pay band. This occurs because the minimum rate of basic pay in a pay band increases as the result of the General Pay Increase (5 U.S.C. 5303). This situation (a reduction in band level with no reduction in pay) will not be considered an adverse performance based action, nor will band retention provisions apply.

8. Staffing Supplements

Employees assigned to occupational categories and geographic areas covered by special rates will be entitled to a staffing supplement if the maximum adjusted rate for the banded GS grades to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to the base pay, much like locality rates are added to base pay. For employees being converted into the demonstration project, total pay immediately after conversion will be the same as immediately before, but a portion of the total pay will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary.

The staffing supplement is calculated as follows. Upon conversion, the demonstration base rate will be established by dividing the employee's former GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base rate plus the staffing supplement. This amount will equal the employee's former GS adjusted rate. Simplified, the formula is this:

$$\text{Staffing factor} = \frac{\text{Maximum Special Rate for the banded grades}}{\text{GS unadjusted rate corresponding to that special rate}}$$

$$\text{Demonstration base rate} = \frac{\text{Former GS adjusted rate (special or locality rate)}}{\text{Staffing factor}}$$

$$\text{Staffing Supplement} = \text{Demonstration base rate} \times (\text{Staffing factor} - 1)$$

$$\text{Salary upon conversion} = \text{Demonstration base rate} + \text{Staffing supplement (sum will equal existing rate)}$$

Example: Assume there is a GS–854–11, step 03 employee assigned to Fort Monmouth, NJ, who is entitled to the greater of a special salary rate of $53,648 or a locality rate of $48,763 ($42,918+13.62 percent). The maximum special rate for a GS–854–11, step 10 is $65,381, and the corresponding regular rate is $52,305. The maximum GS–11 locality rate in Fort Monmouth is $59,429 ($52,305+13.62 percent), which is less than the maximum special salary rate. Thus, a staffing supplement is payable. The staffing factor is computed as follows:

Staffing factor = $65,381/$52,305 = 1.2500

Demonstration base rate = $53,648/1.2500 = $42,918

Then to determine the staffing supplement, multiply the demonstration base by the staffing factor minus 1.

Staffing supplement = $42,918 × 0.2500 = $10,730

The staffing supplement of $10,730 is added to the demonstration base rate of $42,918, and the total salary is $53,648, which is the salary of the employee before conversion.

If an employee is in a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee enters into the demonstration project, the demonstration base rate is derived by dividing the employee's former GS adjusted rate (the higher of locality rate or special rate) by the applicable locality pay factor. The employee's demonstration locality-adjusted rate will equal the employee's former GS adjusted rate. Any GS or special rate schedule adjustment will require computing the staffing supplement again. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied. Upon geographic movement, an employee who receives the staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

The calculation of a staffing supplement as previously illustrated was presented in the context of a GS employee entering the demonstration project. Application of the staffing supplement is normally intended to maintain pay comparability for GS employees entering the demonstration. However, the staffing supplement formulas must be compatible with non-Government employees entering the demonstration and also be adaptable to the special circumstances of employees already in the demonstration. The following principles will govern the modifications necessary to the previous

staffing supplement calculations to apply the staffing supplement to circumstances other than a GS employee entering the demonstration project. No adjustment under these provisions will provide an increase greater than that provided by the special salary rate. An increase provided under this authority is not an equivalent increase, as defined by 5 CFR 531.403. These principles are stated with the understanding that the necessary conditions exist that require the application of a staffing supplement.

1. If a non-Government employee is hired into the demonstration, then the employee's entry salary will be used for the term, "former GS adjusted rate" to calculate the demonstration base rate.

2. If a current employee is covered by a new or modified special salary rate table, then the employee's current demonstration base rate is used to calculate the staffing supplement percentage. The employee's new demonstration adjusted base salary is the sum of the current demonstration base rate and the calculated staffing supplement.

3. If a current employee is in an occupational category that is covered by a special salary rate table and subsequently, the occupational category becomes covered by a different special salary rate table with a higher value (e.g., a DB 854 originally covered by table 422 is subsequently covered by table 999E, which is a higher rate schedule), then the following steps must be applied to calculate a new demonstration base rate:

Step 1. To obtain a relevance factor, divide the staffing factor that will become applicable to the employee by the staffing factor that would have applied to the employee. For example, table 999E (Special Salary Rate Table for Certain Information Technology employees, containing 2001 rates for New Jersey) is applicable to a DB 854–II employee, and the applicable staffing factor is 1.25 ($65,381 /$52,305). For table 0422 (the table that would have applied if table 999E had not been implemented), the applicable staffing factor is 1.1281 ($59,010/$52,305). Thus:

Relevance factor = 1.25 / 1.281 = 1.108

Step 2. Multiply the relevance factor resulting from step 1 by the employee's current adjusted demonstration rate to determine a new adjusted demonstration rate.

Step 3. Divide the result from step 2 by the applicable staffing factor to derive a new demonstration base rate. This new demonstration base rate will be used to calculate the staffing supplement and the new demonstration adjusted base salary.

4. If, after the establishment of a new or adjusted special salary rate table, an employee enters the demonstration (whether converted from GS or hired from outside Government) prior to this intervention, then the employee's current adjusted base salary is used for the term "former GS adjusted rate" to calculate the demonstration base rate. This principle prevents double compensation due to the single event of a new or adjusted special salary rate table.

5. If an employee is in an occupational category covered by a new or modified special salary rate table, and the pay band to which assigned is not entitled to a staffing supplement, then the employee's salary may be reviewed and adjusted to accommodate the salary increase provided by the special salary rate. The review may result in a one-time pay increase if the employee's salary equals or is less than the highest special salary grade and step that exceeds the comparable locality grade and step. Demonstration project operating procedures will identify the officials responsible to make such reviews and determinations. The applicable salary increase will be calculated by determining the percentage difference between the highest step 10 special salary rate and the comparable step 10 locality rate and applying this percentage to the demonstration base rate.

An established salary including the staffing supplement will be considered basic pay for the same purposes as a locality rate under 5 CFR 531.606(b), i.e., for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

9. Simplified Assignment Process

Today's environment of downsizing and workforce fluctuations mandates that the organization have maximum flexibility to assign duties and responsibilities to individuals. Pay banding can be used to address this need, as it enables the organization to have maximum flexibility to assign an employee with no change in basic pay, within broad descriptions, consistent with the needs of the organization and the individual's qualifications and level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description. For instance, a technical expert could be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

10. Details

Under this plan employees may be detailed to a position in the same band (requiring a different level of expertise and qualifications) or lower pay band (or its equivalent in a different occupational family) for up to one year. Details may be implemented through an official personnel action to cover the one-year period. Details to a position in a higher pay band up to 180 days will be made non-competitively. Beyond 180 days requires competitive procedures.

F. Employee Development

1. Expanded Developmental Opportunity Program

The Expanded Developmental Opportunity Program will be available to all demonstration project employees. Expanded developmental opportunities complement existing developmental opportunities such as long-term training, rotational job assignments, developmental assignments to AMC/Army/DoD, and self-directed study via correspondence courses and local colleges and universities. Each developmental opportunity must result in a product, service, report or study that will benefit the RDE or customer organization as well as increase the employee's individual effectiveness. The developmental opportunity period will not result in loss of (or reduction) in basic pay, leave to which the employee is otherwise entitled, or credit for service time. The positions of employees on expanded developmental opportunities may be back-filled (i.e., with temporarily assigned, detailed or promoted employees or with term employees). However, that position or its equivalent must be made available to the employee upon return from the developmental period. The RDE Personnel Management Board will provide written guidance for employees on application procedures and develop a process that will be used to review and evaluate applicants for development opportunities.

a. Sabbaticals. RDE Center Directors will have the authority to grant paid or unpaid sabbaticals to all career employees. The purpose of a sabbatical will be to permit employees to engage in study or uncompensated work experience that will benefit the organization and contribute to the employee's development and effectiveness. Each sabbatical must result in a product, service, report, or study that will benefit the CECOM RDE mission as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching; study; research; self-directed or guided study; and on-the-job work experience with public, private, commercial, or private non-profit organizations.

Paid sabbaticals of up to 12 months in duration and unpaid sabbaticals of up to 6 months in a calendar year may be granted to an employee in any 7-year period. Employees will be eligible to request a sabbatical after completion of seven years of Federal service. Employees approved for a paid sabbatical must sign a service obligation agreement to continue in service in the CECOM RDE for a period of three times the length of the sabbatical. If an employee voluntarily leaves the CECOM RDE organization before the service obligation is completed he/she is liable for repayment of expenses associated with training during the sabbatical such as, registration fees, tuition and matriculation fees, library and laboratory fees, purchase or rental of books, materials, supplies, travel, per diem, and miscellaneous other related training program costs. Expenses do not include salary costs. The RDE Center Directors have the authority to waive this requirement.

Specific procedures will be developed for processing sabbatical applications upon implementation of the demonstration project.

b. Critical Skills Training (Training for Degrees). Training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training is also a critical tool for recruiting and retaining employees with or requiring critical skills. Until 2000, 5 U.S.C. 4107 limited degree payment to those employees in shortage occupations with a recruitment or retention problem. Degree payment was not permitted for non-shortage occupations involving critical skills. In section 1121 of the National Defense Authorization Act for FY 01, the Congress approved legislation sought by DoD to link degree payment to programs of systematic professional development, dropping the shortage occupation constraint. This demonstration project exempts CECOM from both conditions—linkage to professional development programs or to a shortage occupation.

The CECOM RDE organizations are expanding the authority to provide degree or certificate payment for non-shortage occupations for purposes of meeting critical skill requirements. This will ensure continuous acquisition of advanced specialized knowledge essential to the organization, and enhance our ability to recruit and retain personnel critical to the present and future requirements of the organization. Degree or certificate payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. Guidelines will be developed to ensure competitive approval of degree or certificate payment and that such decisions are fully documented. Employees approved for degree training must sign a service obligation agreement to continue in service in a CECOM RDE organization for a period of three times the length of the training period. If an employee voluntarily leaves the CECOM RDE organization before the service obligation is completed, the employee is liable for repayment. The repayment amount will be based on the additional expenses or direct costs of the training, such as registration fees; tuition and matriculation fees; library and laboratory fees; purchase or rental of books, materials, and supplies; travel and per diem; and miscellaneous other related training program costs. The RDE Center Directors have the authority to waive this requirement.

G. Reduction-in-Force (RIF) Procedures

RIF procedures will be used when a CECOM RDE employee faces separation or downgrading due to lack of work, shortage of funds, reorganization, insufficient personnel ceiling, the exercise of re-employment or restoration rights, or furlough for more than 30 calendar days or more than 22 discontinuous days. The procedures in 5 CFR 351 will be followed with slight modifications pertaining to the competitive areas, assignment rights, the calculation of adjusted service computation date and grade/pay band retention. Modified term appointment employees are in Tenure Group III for RIF purposes. RIF procedures are not required when separating these employees when their appointments expire.

1. Competitive Areas

Separate competitive areas for RIF purposes will be established at each geographic location. Separate RIF competitive areas for demo and non-demo employees will be established at each geographic location. Bumps and retreats will occur only within the same competitive area and only to positions for which the employee meets all qualification standards including medical and/or physical qualifications.

Within each competitive area, competitive levels will be established based on the occupational family, pay band and series which are similar enough in duties and qualifications that employees can perform the duties and responsibilities of any other position in the competitive level upon assignment to it, without any loss of productivity beyond what is normally expected.

2. Assignment Rights

An employee may displace another employee by bump or retreat to one band below the employee's existing band. A preference eligible with a compensable service-connected disability of 30 percent or more may retreat to positions two bands (or equivalent to five grades) below his/her current band.

3. Crediting Performance in Reductions in Force (RIF)

Reductions in force are accomplished using the existing procedures with the retention factors of: tenure, veteran's preference and length of service as adjusted by performance ratings, in that order. However, the additional RIF service credit for performance will be based on the last three total performance scores during the preceding 4 years and will be applied as follows:

Total Performance Scores = Years of Service Credit

48 – 50 = 10
45 – 47 = 9
42 – 44 = 8
39 – 41 = 7
36 – 38 = 6
33 – 35 = 5
30 – 32 = 4
27 – 29 = 3
24 – 26 = 2
20 – 23 = 1

A score of below 20 adds no credit for RIF retention. (Note: The additional years of service credit are added, not averaged. Ratings given under non-demonstration systems will be converted to the demonstration-rating scheme and provided the equivalent rating credit.)

Employees who have been rated under different patterns of summary

rating levels will receive RIF appraisal credit based on the following:

If there are any ratings to be credited for the RIF given under a rating system, which includes one or more levels above fully successful (Level 3), employee will receive:

10 years for Level 5
7 years for Level 4
3 years for Level 3

If an employee comes from a system with no levels above Fully Successful (Level 3), they will receive credit based on the demonstration project's modal score for the employee's competitive area.

In some cases, an employee may not have three (3) ratings of record. If an employee has less than three annual ratings of record, then for each missing rating, an average of the scores received for the past four years will be used. When the score is calculated to be a decimal, it should be rounded to the next higher whole number using the method described in paragraph III.C.4. For an employee who has no ratings of record, all credit will be based on the repeated use of a single modal rating from the most recently completed appraisal period on record.

An employee who has received a written decision that their performance is unacceptable has no bump or retreat rights. Employees who have been demoted for unacceptable performance, and as of the date of the issuance of the RIF notice have not received a performance rating in the position to which demoted, will receive the same additional retention service credit granted for a level 3 rating of record. An employee who has received an acceptable rating following a PIP will have that rating considered as the current rating of record.

An employee with a current unacceptable rating of record has assignment rights only to a position held by another employee who has an unacceptable rating of record.

4. Pay Band and Pay Retention

Pay band and pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR part 536, except as waived or modified in section IX of this plan.

IV. Implementation Training

Critical to the success of the demonstration project is the training developed to ensure understanding of the broad concepts and finer details needed to implement and successfully execute this project. Pay banding, a new job classification and performance management system all represent a significant cultural change to the organization. Training will be tailored to fit the requirements of every employee and will fully address employee concerns to ensure a comprehensive understanding of the program. Training will be required both prior to implementation and at various times during the life of the demo.

A training program will begin prior to implementation and will include modules tailored for employees, supervisors, senior managers, and administrative staff. Typical modules are:

An Overview of the Personnel System
How Employees Are Converted into and out of the System
Pay Banding
The Pay for Performance System
Defining Performance Objectives
How to Assign Weights
Assessing Performance—Giving Feedback
New Position Descriptions
Demonstration Project Administration and Formal Evaluation

Various types of training are being considered, including videos, on-line tutorials, and train the trainer concepts.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project will be accomplished through a full employee-protection approach that ensures each employee an initial place in the appropriate pay band without loss of pay. Employees serving under regular term appointments at the time of the implementation of the demonstration project will be converted to the modified term appointment if all requirements in III.D.4. (Revisions to Term Appointments) have been satisfied. Position announcements, etc., will not be required for these term appointments.

Conversion from current GS/GM grade and pay into the new pay band system will be accomplished upon implementation of the demonstration project. Each employee's initial total salary under the demonstration project will equal the total salary received immediately before conversion. Special conversion rules apply to special salary rate employees, which are described in III.E.8. (Staffing Supplements). Employees who enter the demonstration project later by lateral transfer, reassignment or realignment will be subject to the same pay conversion rules. If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

Employees who are covered by special salary rates prior to entering the demonstration project will no longer be considered a special rate employee under the demonstration project. These employees will, therefore, be eligible for full locality pay or a staffing supplement. The adjusted salaries of these employees will not change. Rather, the employees will receive a new basic pay rate computed under the staffing supplement rules in section III. E. 8. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary.

Employees who are on temporary promotions at the time of conversion will be converted to a pay band commensurate with the grade of the position to which temporarily promoted. At the conclusion of the temporary promotion, the employee will revert to the grade or pay band that corresponds to the position of record. When a temporary promotion is terminated, pay will be determined based on the position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the CECOM RDE Personnel Management Board. In no case may those adjustments increase the pay for the position of record beyond the applicable pay range maximum rate. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases, actions to make the temporary promotion permanent will be considered, and if implemented, will be subject to all existing priority placement programs.

During the first 12 months following conversion, employees will receive pay increases for non-competitive promotion equivalents when the grade level of the promotion is encompassed within the same pay band, the employee's performance warrants the promotion and promotions would have otherwise occurred during that period. Employees who receive an in-level promotion at the time of conversion will not receive a prorated step increase equivalent as defined below.

Under the current pay structure, employees progress through their assigned grade in step increments. Since this system is being replaced under the demonstration project, employees will be awarded that portion of the next higher step they have completed up until the effective date of implementation. As under the current system, supervisors will be able to withhold these partial step increases if the employee's performance is below an acceptable level of competence.

Rules governing WGIs under the current Army performance plan will continue in effect until the implementation date. Adjustments to the employee's base salary for WGI equity will be computed effective the date of implementation to coincide with the beginning of the first formal PFP assessment cycle. WGI equity will be acknowledged by increasing base salaries by a prorated share based upon the number of weeks an employee has completed toward the next higher step. Payment will equal the value of the employee's next WGI times the proportion of the waiting period completed (weeks completed in waiting period/weeks in the waiting period) at the time of conversion. Employees at step 10, or receiving retained rates, on the day of implementation will not be eligible for WGI equity adjustments since they are already at or above the top of the step scale. Employees serving on retained grade will receive WGI equity adjustments provided they are not at step 10 or receiving a retained rate.

Employees who enter the demonstration project after initial implementation by lateral transfer, reassignment, or realignment will be subject to the same pay conversion rules as above. Specifically, adjustments to the employee's base salary for a step increase and a non-competitive career ladder promotion will be computed as a prorated share of the current value of the step or promotion increase based upon the number of weeks an employee has completed toward the next higher step or grade at the time the employee moves into the project.

B. Conversion Out Of The Demonstration Project

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedures will be used to convert the employee's project pay band to a GS-equivalent grade and the employee's project rate of pay to the GS-equivalent rate of pay. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (e.g., promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of those grades according to the following rules:

(a) The employee's adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates in the highest applicable GS rate range. (For this purpose, a GS rate range includes a rate in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(b) If the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

(c) If the employee's adjusted project rate is lower than the applicable step 4 rate of the highest grade, the adjusted rate is compared with the step 4 rate of the second highest grade in the employee's pay band. If the employee's adjusted rate equals or exceeds step 4 rate of the second highest grade, the employee is converted to that grade.

(d) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

(e) Exception: If the employee's adjusted project rate exceeds the maximum rate of the grade assigned under the above-described step 4 rule but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

(f) Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has undergone a reduction in band.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

(a) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(b) An employee's adjusted rate of basic pay under the project (including any locality payment or staffing supplement) is converted to a GS-adjusted rate on the highest applicable GS rate range for the converted GS grade. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

(c) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.)

(d) If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

(e) E&S Pay Band V Employees: An employee in Pay Band V of the E&S Occupational Family will convert out of the demonstration project at the GS–15 level. Procedures will be developed to ensure that employees entering Pay Band V understand that if they leave the demonstration project and their

adjusted project pay exceeds the GS–15, Step 10 rate, there is no entitlement to retained pay. Their GS equivalent rate will be deemed to be the rate for GS–15, Step 10. For those Pay Band V employees paid below the adjusted GS–15, Step 10 rate, the converted rates will be set in accordance with paragraph b.

(f) Employees with Pay Retention: If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her band level. Demonstration project operating procedures will outline the methodology for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

3. Within Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

C. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and merit principles will be maintained. Servicing CPOCs/CPACs will continue to process personnel-related actions and provide consultative and other appropriate services.

D. Automation

The CECOM RDE organizations will continue to use the Defense Civilian Personnel Data System (DCPDS) for the processing of personnel-related data. Payroll servicing will continue from the respective payroll offices.

Local automated systems will be developed to support computation of performance related pay increases and awards and other personnel processes and systems associated with this project.

E. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the new system is working. The provisions of this project plan will not be modified, duplicated in organizations not listed in the project plan, or extended to individuals or groups of employees not included in the project plan without the approval of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy). ODASD(CPP) will inform DA of requirements for notification to stakeholders, which may include Congress, employees, labor organizations, and the public. The extent of notification requirements will depend on the nature and extent of the requested project modification. As a minimum, however, major changes and modifications will be published in the **Federal Register**, subject to ODASD(CPP) approval.

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration. CECOM, DA and DoD will ensure this project is evaluated for the first five years after implementation in accordance with 5 U.S.C. 4703. Modifications to the original evaluation plan or any new evaluation will ensure the project is evaluated for its effectiveness, its impact on mission and any potential adverse impact on any employee groups. Major changes and modifications to the interventions can be made through announcement in the **Federal Register** and would be made if formative evaluation data warranted. At the 5-year point, the demonstration will be reexamined for permanent implementation, modification and additional testing, or termination of the entire demonstration project.

VII. Evaluation Plan

A. Overview

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project, and its impact on improving public management. A comprehensive evaluation plan for the entire demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research & Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (i.e. organizational effectiveness, mission accomplishment, and customer satisfaction).

B. Evaluation Model

Appendix D shows an intervention model for the evaluation of the demonstration project. The model is designated to evaluate two levels of organizational performance: intermediate and ultimate outcomes. The intermediate outcomes are defined as the results from specific personnel system changes and the associated waivers of law and regulation expected to improve human resource (HR) management (i.e. cost, quality, timeliness). The ultimate outcomes are determined through improved organizational performance, mission accomplishment, and customer satisfaction. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the new HR system will contribute to improved organizational effectiveness.

Organizational performance measures established by the organization will be used to evaluate the impact of a new HR system on the ultimate outcomes. The evaluation of the new HR system for any given organization will take into account the influence of three factors on organizational performance: context, degree of implementation, and support of implementation. The context factor refers to the impact which intervening variables (i.e., downsizing, changes in mission, or the economy) can have on the effectiveness of the program. The degree of implementation considers: (1) The extent to which the HR changes are given a fair trial period; (2) the extent to which the changes are implemented; and (3) the extent to which the changes conform to the HR interventions as planned. The support of implementation factor accounts for the impact that factors such as training, internal regulations and automated support systems have on the support available for program implementation. The support for program implementation factor can also be affected by the personal characteristics (e.g., attitudes) of individuals who are implementing the program.

The degree to which the project is implemented and operated will be tracked to ensure that the evaluation results reflect the project as it was intended. Data will be collected to measure changes in both intermediate and ultimate outcomes, as well as any unintended outcomes, which may happen as a result of any organizational change. In addition, the evaluation will track the impact of the project and its interventions on veterans and other EEO groups, the Merit Systems Principles, and the Prohibited Personnel Practices. Additional measures may be added to the model in the event that changes or modifications are made to the demonstration plan.

The intervention model at Appendix D will be used to measure the effectiveness of the personnel system interventions implemented. The intervention model specifies each personnel system change or "intervention" that will be measured and shows: (1) The expected effects of the intervention, (2) the corresponding measures, and (3) the data sources for obtaining the measures. Although the model makes predictions about the outcomes of specific intervention, causal attributions about the full impact of specific interventions will not always be possible for several reasons. For example, many of the initiatives are expected to interact with each other and contribute to the same outcomes. In addition, the impact of changes in the HR system may be mitigated by context variables (e.g., the job market, legislation, and internal support systems) or support factors (e.g., training, automation support systems).

C. Evaluation

A modified quasi-experimental design will be used for the evaluation of the S&T Personnel Demonstration Program. Because most of the eligible laboratories are participating in the program, a Title 5 U.S.C. comparison group will be compiled from the Civilian Personnel Data File (CPDF). This comparison group will consist of workforce data from Government-wide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. This comparison group will be used primarily in the analysis of pay banding costs and turnover rates. The original "China Lake" project will serve as a second comparison group that can be used as a benchmark representing a stable pay banding system.

D. Method of Data Collection

Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the interventions are working. The information gathered from one source will serve to validate information obtained through another source. In so doing, the confidence of overall findings will be strengthened as the different collection methods substantiate each other.

Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected: (1) Workforce data; (2) personnel office data; (3) employee attitude surveys; (4) focus group data; (5) local site historian logs and implementation information; (6) customer satisfaction surveys; and (7) core measures of organizational performance.

The evaluation effort will consist of two phases, formative and summative evaluation, covering at least 5 years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation, and current information on impact of the project on veterans and EEO groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which interventions were most effective, and whether the results can be generalized to other Federal installations.

VIII. Demonstration Project Costs

A. Cost Discipline

An objective of the demonstration project is to ensure in-house cost discipline. A baseline will be established at the start of the project and salary expenditures will be tracked yearly. Implementation costs (including project development, automation costs, step buy-in costs, and evaluation costs) are considered one-time costs and will not be included in the cost discipline.

The RDE Personnel Management Board will track personnel cost changes and recommend adjustments if required to achieve the objective of cost discipline.

B. Developmental Costs

Costs associated with the development of the personnel demonstration project include software automation, training, and project evaluation. All funding will be provided through the organization's budget. The projected annual expenses are summarized in Table 1. Project evaluation costs are not expected to continue beyond the first 5 years unless the results warrant further evaluation.

TABLE 1.—PROJECTED DEVELOPMENTAL COSTS (THEN YEAR DOLLARS)

[In thousands of dollars]

	FY 00	FY01	FY 02	FY 03	FY 04
Training	.....	40	232	10	
Project Evaluation	40	40	40	40	40
Automation	.....	495	383	202	.....
Totals	40	575	655	252	40

IX. Required Waivers to Law and Regulation

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request.

The following waivers and adaptations of certain Title 5, U.S.C., provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5, U.S. Code

Chapter 31, section 3111: Acceptance of Volunteer Service— Amended to allow for a Voluntary Emeritus corps in addition to student volunteers.

Chapter 31, Section 3132: The Senior Executive Service: Definitions and Exclusions.

Chapter 33, Subchapter 1, section 3318(a): Competitive Service, Selection from Certificate.

Chapter 33, Section 3324: Appointments to Positions Classified Above GS–15.

Chapter 33, Section 3341: Details. This waiver applies to the extent necessary to waive the time limits for details.

Chapter 41, Section 4107(a) and (b) (1) Restriction on Degree Training.

Chapter 43, Section 4302: To the extent necessary to substitute "pay band" for "grade."

Chapter 43, Section 4303: To the extent necessary to (1) substitute "pay band" for "grade" and (2) provide that moving to a lower pay band as a result of not receiving the general pay increase because of poor performance is not an action covered by the provisions of section 4303 (a)—(d).

Chapter 43, Section 4304(b)(1) and (3): Responsibilities of the OPM.

Chapter 51, Sections 5101–5111, Classification.

Chapter 53, Sections 5301, 5302 (8) and (9), 5303 and 5304: Pay Comparability System-Sections 5301, 5302, and 5304 are waived only to the extent necessary to allow (1) demonstration project employees to be treated as General Schedule employees, (2) basic rates of pay under the demonstration project to be treated as scheduled rates of pay, and (3) employees in Pay Band V of the E&S Occupational Family to be treated as ST employees for the purposes of these provisions.

Chapter 53, Section 5305: Special Rates.

Chapter 53, Sections 5331–5336: General Schedule Pay Rates.

Chapter 53, Sections 5361–5366 Grade and Pay Retention: This waiver applies only to the extent necessary to (1) replace "grade" with "pay band"; (2) allow demonstration project employees to be treated as General Schedule employees; (3) provide that pay band retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position; and to movements to a lower pay band as a result of not receiving the General Increase due to a rating of record of "Unacceptable"; (4) provide that an employee on pay retention whose rating of record is "Unacceptable" is not entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position; (5) provide that pay retention does not apply to reduction in basic pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement; and (6) ensure that for employees of Pay Band V of the E&S occupational family, pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (i.e., there is no entitlement to retained rate). This waiver applies to ST employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Chapter 55, Section 5542(a)(1)–(2): Overtime rates; computation. This waiver applies only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5542.

Chapter 55, Section 5545(d): Hazardous duty differential. This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in Pay Band V of the E&S occupational family.

Chapter 55, Section 5547 (a)–(b): Limitation on premium pay. This waiver applies only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, Section 5753, 5754, and 5755: Recruitment and relocation, bonuses, retention allowances and supervisory differentials. (This waiver applies only to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the General Schedule and (2) employees in Pay Band V of the E&S occupational family to be treated as ST employees.)

Chapter 59, Section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. This waiver applies only to the extent necessary to provide that COLAs paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, Section 7512(3): Adverse actions—This provision is waived only to the extent necessary to replace "grade" with "pay band."

Chapter 75, Section 7512(4): Adverse actions (This waiver applies only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position.)

B. Waivers to Title 5, Code of Federal Regulations

Part 300, sections 300.601 through 605: Time-in-Grade restrictions. Time in grade restrictions are eliminated in the demonstration project.

Part 308, sections 308.101 through 308.103: Volunteer service. Amended to allow for a Voluntary Emeritus Corps in addition to student volunteers.

Part 315, section 315.801 and 315.802: Probationary Period—(This waiver applies only to the extent necessary to extend probationary periods from one year to a maximum of three years for newly-hired permanent career-conditional employees in the E&S occupational family.)

Part 315, section 315.901: Statutory requirements—(This waiver applies only to the extent necessary to replace "grade" with "pay band.")

Part 316, section 316.301: Term Appointments for more than 4 years.

Part 316, section 316.303: Converting Terms to Status.

Part 316, section 316.305: Eligibility for Within-Grade Increases.

Part 332, subpart D., section 332.404: Order of Selection from Certificates.

Part 335, section 335.103: Covering the length of details and temporary promotions.

Part 337, subpart A, section 337.101(a): Rating Applicants. Waive when 15 or fewer qualified candidates.

Part 351.402(b): Competitive Area.

Part 351.403: Competitive Level—(This waiver applies only to the extent necessary to replace "grade" with "pay band.")

Part 351, section 351.504: As it relates to years of credit.

Part 351, section 351.701: Assignment Involving Displacement—(This waiver applies to the extent that employee bump and retreat rights will be limited to one pay band except in the case of 30 percent preference eligible, and to include employees with an unsatisfactory current rating of record.)

Part 410, section 410.308(a–f): Training to obtain an academic degree.

Part 410, section 410.309: Agreements to Continue in Service—(This waiver applies to that portion that pertains to the authority of the head of the agency to determine continued service requirements, to waive repayment of such requirements, and to the extent that the service obligation is to the CECOM RDE organizations.)

Part 430, section 430.203: Rating of Record—(This waiver applies to the extent that the definition shall also include ratings for interns that are based on less than the whole appraisal period and improved ratings following an opportunity to demonstrate acceptable performance as provided for in the waiver of 351.504.)

Part 430, section 430.210: OPM Responsibilities

Part 432, section 432.102: (This waiver applies to the extent that the term "grade level" is replaced with "pay band.")

Part 432: Modified to the extent that an employee may be removed, reduced in pay band level with a reduction in pay, reduced in pay without a reduction in pay band level and reduced in pay band level without a reduction in pay based on unacceptable performance. Also modified to delete reference to critical element. For employees who are reduced in pay band level without a reduction in pay, Sections 432.105 and 432.106(a) do not apply.

Part 432, sections 432.104 Addressing unacceptable performance. References to "critical elements" are deleted as all elements are critical and adding that the employee may be "reduced in pay band level, or pay, or removed" if performance does not improve to an acceptable level during a reasonable opportunity period.

Part 432, section 432.105(a) (2): Waive "If an employee has performed acceptably for 1 year" to allow for "within two years from the beginning of a PIP."

Part 511, subpart A: General Provisions, and subpart B: Coverage of the General Schedule.

Part 511, section 511.601: Classification Appeals modified to the extent that white collar positions established under the project plan, although specifically excluded from Title 5, are covered by the classification appeal process outlined in this section, as amended below.

Part 511, section 511.603(a): Right to appeal—substitute "pay band" for "grade."

Part 511, section 511.607(b): Non-Appealable Issues—add to the list of issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate occupational families.

Part 530, subpart C: Special salary rates.

Part 531, subparts B, D, and E: Determining rate of basic pay, within-grade increases, and quality step increases.

Part 531, subpart F: Locality pay—(This waiver applies only to the extent necessary to allow (1) demonstration project employees, except employees in Pay Band V of the E&S occupational family, to be treated as General Schedule employees; (2) basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay; and (3) employees in Pay Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.)

Part 536: Grade and pay retention:—(This waiver applies only to the extent necessary to (1) replace "grade" with "pay band"; (2) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, and to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position; (3) allow demonstration project employees to be treated as General Schedule employees; (4) provide that pay retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of "Unacceptable"; (5) provide that an employee on pay retention whose rating of record is "Unacceptable" is not entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position; (6) ensure that for employees of Pay Band V in the E&S occupational family, pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (i.e., there is no entitlement to retained rate); and (7) provide that pay retention does not apply to reduction in basic pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement. This waiver applies to ST employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Part 550, sections 550.105 and 550.106: Bi-weekly and annual maximum earnings limitations—This waiver applies only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5547.

Section 550.703: Severance Pay—(This waiver applies only to the extent necessary to modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one band level" and "grade or pay level" with "band level.")

Section 550.902: Hazardous Duty Differential—(This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in Pay Band V of the E&S occupational family.)

Part 575, subparts A, B, C, and D: Recruitment Bonuses, Relocation Bonuses, Retention Allowances and Supervisory Differentials. (This waiver applies to the extent necessary to allow (1) employees and positions under the demonstration project covered by pay banding to be treated as employees and positions under the General Schedule and (2) employees in Pay Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.)

Part 591, subpart B: Cost-of-Living Allowances and Post Differential—Non-foreign Areas (This waiver applies only to the extent necessary to allow (1) demonstration project employees to be treated as employees under the General Schedule and (2) employees in Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.

Section 752.401 (a)(3): Adverse Actions. (This waiver applies only to the extent necessary to replace "grade" with "pay band," and to provide that a reduction in pay band level is not an adverse action if it results from the employee's rate of basic pay being exceeded by the minimum rate of basic pay for his/her pay band level.)

Section 752.401(a)(4): Adverse Actions. (This waiver applies only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position).

Appendix A: RDE Employees by Duty Location

Duty Location	CECOM employees
Fort Huachuca, AZ	24
Melbourne, FL	2
Miami, FL	1
Valparaiso, FL	1
Fort Benning, GA	1
Fort Wayne, IN	1

Duty Location	CECOM employees
Fort Meade, MD	81
Fort Monmouth, NJ	1315
Fort Monmouth	1315
Lakehurst, NJ	14
Zimmerman, OH	1
Fort Sill, OK	29
Arlington, VA	1
Fairfax, VA	6
Fort AP Hill, VA	1
Fort Belvoir, VA	571
McLean, VA	2
Fort Monroe, VA	1
Total All Employees 2052	2052

Note: Totals exclude SES, ST, DCIPS and FWS Employees.

Appendix B: Occupational Series by Occupational Family

I. Engineering & Science

0180 Psychologist Series
0801 General Engineering Series
0810 Civil Engineering Series
0830 Mechanical Engineering Series
0850 Electrical Engineering Series
0854 Computer Engineering Series
0855 Electronics Engineering Series
0893 Chemical Engineering Series
0892 Ceramic Engineering Series
0896 Industrial Engineering Series
0899 Engineering and Architecture Student Trainee Series
1301 General Physical Science Series
1306 Health Physics Series
1310 Physics Series
1320 Chemistry Series
1515 Operations Research Series
1520 Mathematics Series
1550 Computer Science Series
1599 Mathematics and Statistics Student Trainee Series

II. Business/Technical

0018 Safety and Occupational Health Management Series
0028 Environmental Protection Specialist Series
0301 Miscellaneous Administration and Program Series
0334 Computer Specialist Series
0340 Program Management Series
0341 Administrative Officer Series
0342 Support Services Administration Series
0343 Management and Program Analysis Series
0346 Logistics Management Series
0391 Telecommunications Series
0501 Financial Administration and Program Series
0510 Accounting Series
0560 Budget Analysis Series
0802 Engineering Technician Series
0818 Engineering Drafting Series
0856 Electronics Technician Series
1001 General Arts and Information Series
1082 Writing and Editing Series
1083 Technical Writing and Editing Series
1084 Visual Information Series
1101 General Business and Industry Series
1102 Contracting Series
1150 Industrial Specialist Series
1152 Production Control Series
1311 Physical Science Technician Series
1410 Librarian Series
1412 Technical Information Services Series
1499 Library and Archives Student Trainee Series
1521 Mathematics Technician Series
1601 General Facilities and Equipment Series
1640 Facility Management Series
1670 Equipment Specialist Series
1910 Quality Assurance Series
2001 General Supply Series
2003 Supply Program Management Series
2010 Inventory Management Series
2101 Transportation Specialist Series
2130 Traffic Management Series
2181 Aircraft Operation Series
2210 Information Technology Management Series

III. General Support

0085 Security Guard Series
0086 Security Clerical and Assistance Series (Non-CIPMS)
0302 Messenger Series
0303 Miscellaneous Clerk and Assistant Series
0305 Mail and File Series
0312 Clerk-Stenographer and Reporter Series
0318 Secretary Series
0326 Office Automation Clerical and Assistance Series
0332 Computer Operation Series
0335 Computer Clerk and Assistant Series
0344 Management Clerical and Assistance Series
0394 Communications Clerical Series
0399 Administration and Office Support Student Trainee Series
0525 Accounting Technician Series
0561 Budget Clerical and Assistance Series
1087 Editorial Assistance Series
1411 Library Technician Series
2005 Supply Clerical and Technician Series
2102 Transportation Clerk and Assistant Series

Appendix C: Performance Elements

Each performance element is assigned a minimum weight. The total weight of all elements in a performance plan is 100. The supervisor assigns percentage of the 100 in accordance with individual duties/responsibilities objectives and the organization's mission and goals. All employees will be rated against the first four performance elements listed below. Those employees whose duties require team leader responsibilities will be rated on element 5. All managers/supervisors will be rated on element 6.

1. Technical Competence

Exhibits and maintains knowledge, skills, abilities and initiative to produce quality work as defined in individual performance objectives. Assignments are completed in a timely manner with an appropriate level of supervision. The quality and quantity of work meets expectations. Makes prompt, technically sound decisions and recommendations that get the desired results. Where appropriate, seeks and accepts developmental and/or special assignments.—*Minimum Weight:* 15%.

2. Interpersonal Skills

Provides or exchanges oral/written ideas and information in a manner that is timely, accurate and easily understood. Listens effectively so that resultant actions show complete comprehension. Coordinates actions appropriately so that others are included in, and informed of, decisions and actions. Is an effective team player. Accepts personal responsibility for assigned tasks. Is considerate of differing viewpoints, exhibiting willingness to compromise on areas of difference. Exercises tact and diplomacy and maintains effective relationships both within and external to the organization. Readily gives assistance and shows appropriate respect and courtesy.—*Minimum Weight:* 10%.

3. Management of Time and Resources

Meets schedules and deadlines. Arranges work schedules to effectively balance difficult and time-consuming high priority tasks with other lower priority and less time consuming tasks. Generates and accepts new ideas and methods for increasing work efficiency. Effectively utilizes and, where appropriate, properly controls available resources.—*Minimum Weight:* 15%.

4. Customer Satisfaction

Demonstrates care for customers through responsive, courteous, and reliable actions. Promotes relationships of trust and respect. Maintains solid working relationship with existing customers and where appropriate seeks out and develops new customers. Responds to taskings and develops practical solutions to satisfy those needs. Keeps customer informed. Within the scope of job responsibility seeks out and develops new programs and/or reimbursable customer work.—*Minimum Weight:* 10%.

5. Team/Project Leadership

Ensures thet the organization/project strategic plan, mission, vision, and values are communicated into the team work plans, products, and services. Provides advice on work methods practices and procedures. Assists members in identifying viable solutions to work issues. As appropriate, distributes and balances workload, checks on work in progress, makes adjustments as needed. Reports to the supervisor on team and individual work accomplishments, problems and training needs. Resolves simple, informal complaints, informs supervisor of performance management issues/problems. (Mandatory for team leaders optional for others, e.g. project leaders.)—*Minimum Weight:* 15%.

6. Supervision and EEO

Plans, develops, communicates and directs the implementation of strategic and operational goals and objectives of the organization. Allocates, and monitors resources and equitably distributes work to subordinates. Initiates personnel actions to recruit, select, promote and/or reassign employees in a timely manner. Develops subordinates, through counseling and positive motivational techniques on job expectations, identification of training needs, and attainment of career goals. Recognizes and rewards quality performance. Takes corrective action to resolve inadequate performance or behavioral issues. Applies EEO and Merit Principles. Creates a positive, safe and challenging work environment. Ensure appropriate internal controls to prevent fraud, waste or abuse and to safeguard assigned property and resources. (Mandatory for managers/supervisors)—*Minimum Weight:* 25%.

Appendix D: Intervention Model

Intervention	Expected effects	Measures	Data sources
1. Compensation:			
a. Paybanding	—Increased organizational flexibility.	—Perceived flexibility	—Attitude survey.
	—Reduced administrative workload, paperwork reduction.	—Actual/perceived time savings	—Personnel office data, PME results, attitude survey.
	—Advanced in-hire rates	—Starting salaries of banded v. non-banded employees.	—Workforce data.
	—Slower pay progression at entry levels.	—Progression of new hires over time by band, career path.	—Workforce data.
	—Increased pay potential	—Mean salaries by band, career path, demographics.	—Workforce data.
		—Total payroll costs	—Personnel office data.
	—Increased satisfaction with advancement.	—Employee perceptions of advancement.	—Attitude survey.
	—Increased pay satisfaction	—Pay satisfaction, internal/external equity.	—Attitude survey.
	—Improved recruitment	—Offer/acceptances rations	—Personnel office data.
		—Percent declinations	
b. Conversion buy-in	—Employee acceptance	—Employee perceptions of equity, fairness.	—Attitude survey.
		—Cost as a percent of payroll	—Workforce data.
c. Pay differentials/adjustments.	—Increased incentive to accept supervisory/team leader positions.	—Perceived motivational power	—Attitude survey.
2. Performance Management:			
a. Cash awards/bonuses	—Reward/motivate performance	—Perceived motivational power	—Attitude survey.
	—To support fair and appropriate distribution of awards.	—Amount and number of awards by career path, demographics.	—Workforce data.
		—Perceived fairness of awards	—Attitude survey.
		—Satisfaction with monetary awards.	—Attitude survey.
b. Performance based pay progression.	—Increased pay-performance link	—Perceived pay-performance link	—Attitude survey.
		—Perceived fairness of ratings	—Attitude survey.
	—Improved performance feedback.	—Satisfaction with ratings	—Attitude survey.
		—Employee trust in supervisors	—Attitude survey.
		—Adequacy of performance feedback.	—Attitude survey.
	—Decreased turnover of high performers/increased turnover of low performers.	—Turnover by performance rating category.	—Workforce data.
	—Differential pay progression of high/low performers.	—Pay progression by performance score, career path.	—Workforce data.
	—Alignment of organizational and individual performance expectations and results.	—Linkage of performance expectations to strategic plans/goals.	—Performance expectations, strategic plans.
	—Increased employee involvement in performance planning and assessment.	—Perceived involvement	—Attitude survey/focus group.
		—Performance management	—Personnel regulations.
c. New appraisal process	—Reduced administrative burden	—Employee and supervisor perceptions of revised procedures.	—Attitude survey.
	—Improved communication	—Perceived fairness of process	—Focus groups.
d. Performance development	—Better communications of performance expectations.	—Feedback and coaching procedures used.	—Focus groups.
		—Time, funds spent on training by demographics.	—Personnel office data.
			—Training records.
	—Improved satisfaction and quality of workforce.	—Perceived workforce quality	—Attitude survey.
3. Classification:			
a. Improved classification system with generic standards in an automated mode.	—Reduction in amount of time and paperwork spent on classification.	—Time spent on classification procedures.	—Personnel office data.
		—Reduction of paper work/number of personnel actions (classification/promotion).	—Personnel office data.
	—Ease of use	—Managers' perceptions of time savings, ease of use.	—Attitude survey.

Intervention	Expected effects	Measures	Data sources
b. Classification authority delegated to managers.	—Increased supervisory authority/accountability.	—Perceived authority	—Attitude survey.
	—Decreased conflict between management and personnel staff.	—Number of classification disputes/appeals pre/post.	—Personnel records.
		—Management satisfaction with service provided by personnel office.	—Attitude survey.
	—No negative impact on internal pay equity.	—Internal pay equity	—Attitude survey.
c. Dual career ladder	—Increased flexibility to assign employees.	—Assignment flexibility	—Focus groups, surveys.
	—Improved internal mobility	—Perceived internal mobility	—Attitude survey.
	—Increased pay equity	—Perceived pay equity	
	—Flatter organizational structure	—Supervisory/non-supervisory ratios.	Workforce data.
	—Improved quality of supervisory staff.	—Employee perceptions of quality of supervisory.	—Attitude survey.
4. Modified RIF:	—Minimize loss of high performing employees with needed skills.	—Separated employees by demographics, performance scores.	—Workforce data. —Attitude survey/focus group.
	—Contain costs and disruption	—Satisfaction with RIF process	—Attitude survey/focus group.
		—Cost comparison of traditional vs. modified RIF.	—Personnel office/budget data.
		—Time to conduct RIF	—Personnel office data.
		—Number of appeals/reinstatements.	—Personnel office data.
5. Hiring and Authority:			
a. Delegated Examining	—Improved ease and timeliness of hiring process.	—Perceived flexibility in authority to hire.	—Attitude survey.
	—Improved recruitment of employees in shortage categories.	—Offer/accept ratios	—Personnel office data.
		—Percent declinations	—Personnel office data.
		—Timeliness of job offers	—Personnel office data.
		—GPAs of new hires, educational levels.	—Personnel office data.
	—Reduced administrative workload/paperwork reduction.	—Actual/perceived skills	—Attitude survey.
b. Term Appointment Authority	—Increased capability to expand and contract workforce.	—Number/percentage of conversions from modified term to permanent appointments.	—Workforce data. —Personnel office data.
c. Flexible Probationary Period	—Expanded employee assessment.	—Average conversion period to permanent status.	—Workforce data. —Personnel office data.
		—Number/percentage of employees completing probationary period.	—Workforce data. —Personnel office data.
		—Number of separations during probationary period.	—Workforce data. —Personnel office data.
6. Expanded Development Opportunities:			
a. Sabbaticals	—Expanded range of professional growth and development.	—Number and type of opportunities taken.	—Workforce data.
	—Application of enhanced knowledge and skills to work product.	—Employee and supervisor perceptions.	—Attitude survey.
b. Critical Skills Training	—Improved organizational balance.	—Number and type of training	—Personnel office data.
		—Placement of employees, skills imbalances corrected.	—Personnel office data.
		—Employee and supervisor perceptions.	—Attitude survey.
		—Application of knowledge gained from training.	—Attitude survey/focus groups.
7. Combination of All Interventions:			
All	—Improved organizational effectiveness.	—Combination of personnel measures.	—All data sources.
	—Improved management of the workforce.	—Employee/management job satisfaction (intrinsic/extrinsic).	—Attitude survey.
	—Improved planning	—Planning procedures	—Strategic planning documents.
		—Perceived effectiveness of planning procedures.	—Organizational charts.
	—Improved cross functional coordination.	—Actual/perceived coordination	—Attitude survey.
	—Increased product success	—Customer satisfaction	—Customer satisfaction surveys.

Intervention	Expected effects	Measures	Data sources
	—Cost of innovation	—Project training/development costs (staff salaries, contract costs, training hours per employee).	—Demo project records. —Contract documents.
8. Context:			
Regionalization	—Reduced servicing rations/costs	—HR servicing ratios	—Personnel office data, workforce data.
		—Average cost per employee served.	—Personnel office data, workforce data.
	—No negative impact on service quality.	—Service quality, timeliness	—Attitude survey/focus groups.

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Federal Register

Tuesday,
October 30, 2001

Part V

The President

Proclamation 7488—National Character Counts Week, 2001

Proclamation 7489—National Red Ribbon Week for a Drug-Free America, 2001

Proclamation 7490—United Nations Day, 2001

Federal Register
Vol. 66, No. 210
Tuesday, October 30, 2001

Presidential Documents

Title 3—

The President

Proclamation 7488 of October 22, 2001

National Character Counts Week, 2001

By the President of the United States of America

A Proclamation

Our Nation was built on a foundation of sound moral principles. The heroes of American history responded to threats to their freedom by choosing to fight for these timeless principles, assuming duties that superseded their self-interest. The character of America's founders was exemplified in their willingness to risk death in resisting tyranny and securing liberty and independence. From the frozen soil of Valley Forge to the beaches of Normandy and the deserts of the Persian Gulf region, American soldiers have answered the call of patriotic duty at great personal cost.

Our Nation's character continues to define how we respond to those who threaten America's core principles of liberty, justice, and equality. We saw that character when, in the face of the terrible terrorist attacks of September 11, American firefighters, police officers, and airline passengers sacrificed their lives to save others. We saw it when people across our land donated blood for the victims. And we see it as the children of America donate dollars to help suffering Afghan children. These acts reveal that enduring patriotism and faith are part of the fabric of America.

How our military is responding to these despicable attacks is also indicative of our national character. We are waging a war against terrorists who have hijacked their own peaceful religion in an attempt to justify their evil deeds. As we strike military targets, however, we also are dropping food, medicine, and supplies to relieve the suffering among the victims of the Taliban regime.

The manner in which we face these and other challenges in this war will continue to influence our country for generations to come. In fulfilling our mission with both compassion and courage, we show our children what putting American values into action means. Similarly, parents should teach their children by word and deed to understand and live out the moral values that we hold, such as honesty, accepting responsibility for our actions, and loving our neighbors as ourselves.

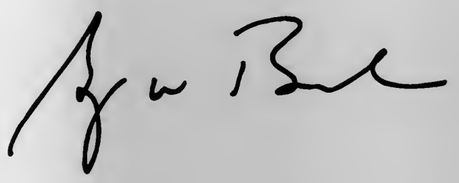
Places of worship, faith-based organizations, and other community groups also play an important role in helping to shape young hearts and minds. Government should cultivate a climate that supports families and organizations that seek to instill sound moral principles in their children. My Administration's Faith-Based and Community Initiative proposes a program that will ensure that faith-based and community caregivers are welcomed as partners in these efforts. In addition, my budget triples the funds available for character education in public schools. I have also proposed to extend Federal after-school funding to programs run by faith-based and community-based organizations.

During this week, we should reflect on the national character we inherited from our forefathers and on the obligation we now have to stand for morality and virtue in the face of evil and terror. Since September 11, our Nation has shown that we are prepared to respond to the evildoers who have attacked the principles for which we stand. Our national character

shall guide us as we wage this war, and in that we know that evil will not triumph.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 21 through October 27, 2001, as National Character Counts Week. I call upon the people of the United States to commemorate this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of October, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01-27443
Filed 10-29-01; 11:37 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 7489 of October 24, 2001

National Red Ribbon Week for a Drug-Free America, 2001

By the President of the United States of America

A Proclamation

Drug and alcohol abuse in America annually create staggering societal costs and prevent millions of people from reaching their full potential at school, on the job, and in their communities. The Department of Health and Human Services estimates that approximately 14 million Americans use illegal drugs and 17 million Americans are alcoholics or abusers of alcohol. To improve the well-being of our Nation and to protect our people, we must continue to make the prevention and treatment of drug and alcohol abuse a national priority.

The rate of abuse of drugs and alcohol by our Nation's youth is cause for alarm. Currently, 3 million young people between the ages of 14 and 17 have an alcohol problem, and more than half of America's school-age children have tried illegal drugs by the time they have finished high school. Research indicates that youth who avoid the early use of alcohol, tobacco, and marijuana are less likely to engage in other harmful behaviors such as crime, delinquency, and other illegal drug use. That is why we must clearly communicate to America's youth that drug and alcohol abuse is dangerous and harmful to both their health and their future.

Through the efforts of families, law enforcement officers, healthcare professionals, teachers, and dedicated community activists, we have made progress in the ongoing war against substance abuse. To continue this progress, my Administration is implementing a comprehensive, results-oriented strategy for reducing illegal drug use in America. We will work cooperatively with other nations to help eradicate illegal drugs at their source. We will increase border security to stop the flow of these drugs into America. And we will provide Federal support to local law enforcement agencies in combating drug trafficking networks.

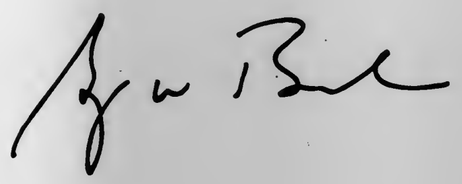
The most effective way, however, to reduce the cycle of youth drug addiction and the crime it causes is to reduce demand. This effort begins at home; and it depends upon the active participation of families, schools, and community organizations in education and outreach programs that clearly communicate to children the dangers inherent in drug and alcohol abuse.

On the occasion of "National Red Ribbon Week for a Drug-Free America," Laura and I are pleased to serve as Honorary Chairpersons of the 2001 National Red Ribbon Campaign. We join all Americans in saying that we will no longer tolerate the destructive impact that drug and alcohol abuse have had on our homes, schools, workplaces, and highways. With strong resolve and creative leadership, we can protect our communities from the preventable dangers of substance abuse and restore dignity and character to millions of men, women, and children who are addicted to drugs and alcohol.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the period beginning October 23 through October 31, 2001, as National Red Ribbon Week for a Drug-Free America. I encourage citizens to support activities that raise

awareness and encourage prevention of substance abuse. I also call upon every American to wear a red ribbon throughout the week in recognition of their commitment to a healthy, drug-free lifestyle and our commitment to a drug-free America.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01-27444
Filed 10-29-01; 11:38 am]
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Presidential Documents

Proclamation 7490 of October 24, 2001

United Nations Day, 2001

By the President of the United States of America

A Proclamation

On June 26, 1945, representatives from 50 countries signed the charter creating the United Nations (U.N.), which inaugurated a new era of unprecedented international cooperation. The world had then just emerged victorious against the threat of global tyranny, and these representatives resolved to preserve peace through international cooperation and collective security. Officially coming into existence on October 24, 1945, the U.N. became the central organization charged with carrying out this mission. Since then, it has worked to maintain world peace and security, to develop friendly relations among nations, to cooperate in solving international problems, and to promote respect for human rights.

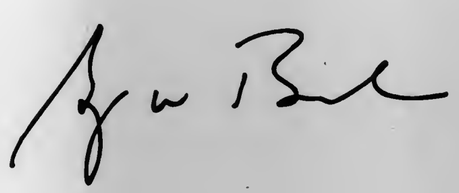
Today, 189 countries belong to the United Nations. The organization's mission remains as urgent as ever, particularly as our world confronts new challenges in the 21st century. The recent terrorist attacks on the United States not only threatened Americans, they also threatened civilized people everywhere who believe in freedom and peace. These tragic events remind us all of the vitally important unified efforts necessary to building international security and to guaranteeing a more peaceful world for us and for our children.

Americans are a generous and compassionate people, willing to do all we can to help alleviate poverty and suffering around the world. These efforts include close cooperative ventures with the United Nations organizations through its many humanitarian programs. As our country observes United Nations Day, 2001, we pause to reflect on the noble history of the U.N. and to praise its many contributions toward providing a better quality of life for people around the globe. We also celebrate the U.N.'s commitment to promoting human rights, protecting the environment, fighting disease, fostering development, and reducing poverty. By reaffirming our desire to advance these goals, America looks forward to continued progress in addressing the challenges that face humanity and to achieving a brighter future for the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 2001, as United Nations Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord two thousand one, and of the

Independence of the United States of America the two hundred and twenty-sixth.



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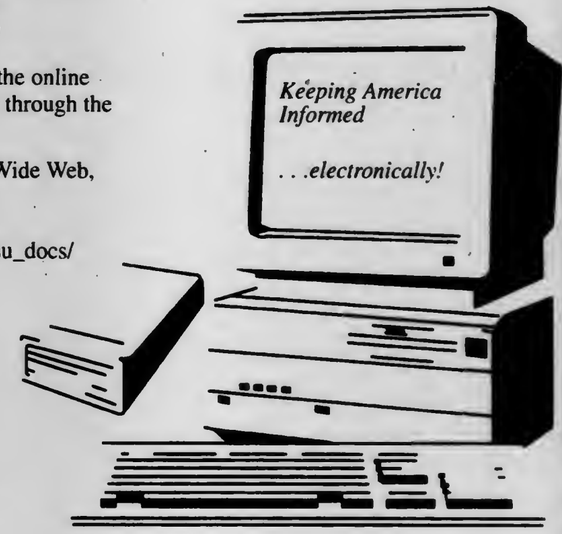
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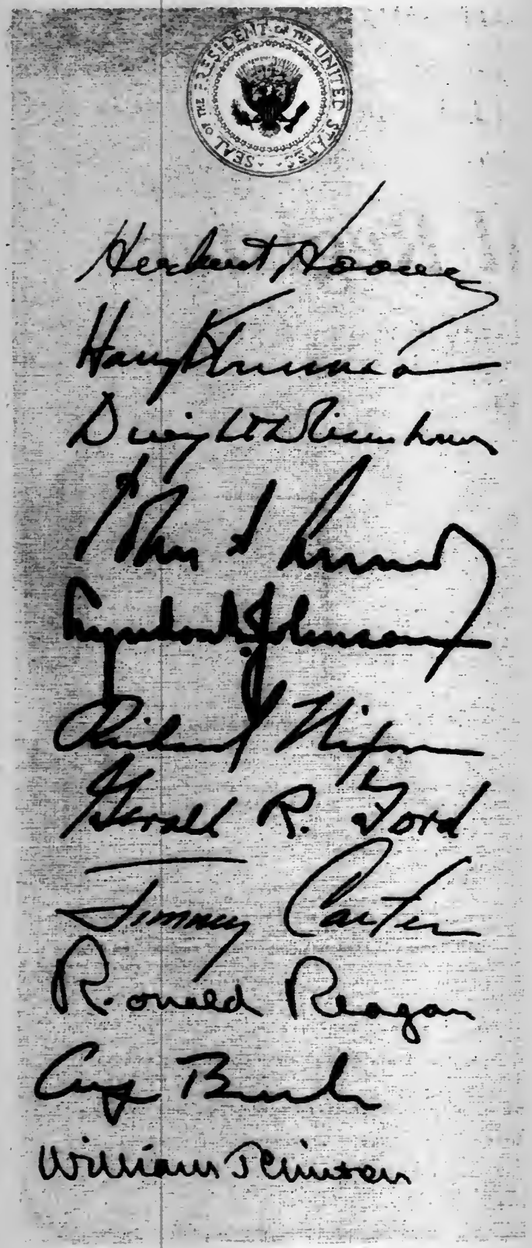
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1007

Milk in the Southeast Marketing Area

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 1000 to 1199, revised as of January 1, 2001, in § 1007.7, paragraph (c) is revised to read as follows:

§ 1007.7 Pool plant.

* * * * *

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

* * * * *

[FR Doc. 01–55533 Filed 10–31–01; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 3

[INS No. 2172–01; AG Order No. 2528–2001]

RIN 1115–AG41

Executive Office for Immigration Review; Review of Custody Determinations

AGENCY: Immigration and Naturalization Service, Justice; and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the regulations of the Executive Office for Immigration Review (EOIR), by expanding the existing regulatory provision for a temporary automatic stay of an immigration judge's decision to order an alien's release in any case in which a district director has ordered that the alien be held without bond or has set a bond of $10,000 or more, to maintain the status quo while the Immigration and Naturalization Service seeks expedited review of the custody order by the Board of Immigration Appeals (Board) or by the Attorney General.

DATES: *Effective date:* This interim rule is effective October 29, 2001.

Comment date: Written comments must be submitted on or before December 31, 2001.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2172–01 on your correspondence. The public may also submit comments electronically to the Service at insregs@usdoj.gov. When submitting comments electronically, please make sure that you include INS No. 2172–01 in the subject field. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: For matters relating to the Executive Office for Immigration Review: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Falls Church, VA 22041, telephone (703) 305–0470 (not a toll-free call). For matters relating to the Immigration and Naturalization Service: Daniel S. Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 236 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1226, authorizes the Attorney General to determine whether to hold an alien in custody while proceedings are pending to determine whether an alien is to be removed from the United States. As a general principle, whether to detain an alien or to release the alien on bond or other appropriate conditions is a matter entrusted to the Attorney General's discretion. Under section 236(c) of the Act, however, certain aliens are subject to mandatory detention during the course of proceedings to determine their removal. These generally include individuals who are inadmissible or deportable due to the commission of specified crimes or due to having engaged in terrorist activity.

More than a century ago, the Supreme Court upheld detention as a necessary aspect of the exclusion or expulsion of aliens. *Wong Wing* v. *United States*, 163 U.S. 228, 235 (1896); *see also Carlson* v. *Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure. Otherwise aliens arrested for deportation would have opportunities to hurt the United States during the pendency of deportation proceedings."). An alien's interest in being at liberty during the course of immigration proceedings is "narrow" and "circumscribed by considerations of the national interest." *Doherty* v. *Thornburgh*, 943 F.2d 204, 208, 208, 209 (2d Cir. 1991). "An alien's freedom from detention is only a variation on the alien's claim of an interest in entering the country." *Clark* v. *Smith*, 967 F.2d 1329, 1332 (9th Cir. 1992).

Section 236 of the Act confers discretion upon the Attorney General to determine the custody of aliens who are in proceedings as long as they are not subject to the mandatory detention provisions of section 236(c) of the Act. The detention of aliens during the pendency of the immigration proceedings serves two essential purposes: ensuring removal by preventing the alien from fleeing, and protecting the public from potential harm.

Under the regulations, the Immigration and Naturalization Service (Service) makes the initial custody decision in each case—that is, whether to keep the alien in detention pending completion of the removal proceedings, or whether to release the alien on bond or other appropriate conditions. The alien, however, may ask an immigration judge to review the custody decision,

subject to specified exceptions in § 3.19(h). The immigration judge may then reduce the required bond amount, release the alien on his or her own recognizance, or make such other custody decision as the immigration judge finds warranted. The Board then has jurisdiction to hear an appeal (whether by the alien or by the Service) from the immigration judge's decision.

Stays Pending Appeals of Custody Determinations

This rule revises the existing provisions in § 3.19(i). That rule currently provides for an automatic stay in certain cases where the Service has denied release of an alien during the pendency of removal proceedings or has set a bond in excess of $10,000, an immigration judge orders an alien released, and the Service promptly files a Form EOIR–43, Notice of Intent to Appeal Custody Redetermination, with the Immigration Court. If the Service then files a timely appeal, the stay will continue pending the disposition of the appeal by the Board. *See Matter of Joseph*, Int. Dec. 3387 (1999).

Under the existing rule, since the expiration of the Transition Period Custody Rules, this automatic stay applies only to cases involving aliens subject to mandatory detention. This interim rule extends the existing scope of the automatic stay provisions in § 3.19(i) to authorize the Service, in its discretion, to invoke the automatic stay in other cases in which the Service has denied release of an alien during the pendency of the removal proceedings or has set a bond of $10,000 or more.

This change will allow the Service to maintain the status quo while it seeks review by the Board, and thereby avoid the necessity for a case-by-case determination of whether a stay should be granted in particular cases in which the Service had previously determined that the alien should be kept in detention and no conditions of release would be appropriate. This stay is a limited measure and is limited in time—it only applies where the Service determines that it is necessary to invoke the special stay procedure pending appeal, and the stay only remains in place until the Board has had the opportunity to consider the matter.

However, in order to ensure that any custody appeal proceedings are conducted on an expeditious basis, this rule also amends § 3.19(i) to add a new limitation that the automatic stay will continue, pending the decision by the Board on appeal, only if the Service files its appeal within ten business days of the immigration judge's order. Under the current rules, once the Service has invoked the automatic stay provision, it has the usual 30 days to file an appeal to the Board. As a matter of practice, the Service does not take that long and makes a prompt decision on whether or not to appeal a custody decision that is subject to an automatic stay. This change in the rule will better reflect the need for an expedited decision in the case of a custody appeal that is subject to an automatic stay.

In addition to the existing provisions for an automatic stay of an immigration judge's custody decision in § 3.19(i), pending an appeal to the Board, this rule also provides an automatic five-day stay of the Board's decision, where the Board dismisses the Service's appeal of an immigration judge's custody decision. This provision will allow the Commissioner a meaningful opportunity to review the Board's decision and to decide whether to certify the case to the Attorney General pursuant to § 3.1(h). Where the Commissioner certifies a custody decision of the Board to the Attorney General within that five-day period, the automatic stay will continue pending the Attorney General's review of the custody issues.

This change in § 3.19 makes explicit, in the context of bond appeals, the general principle that a "decision of the Board is not final while pending review before the Attorney General on certification." *Matter of Farias*, 21 I&N Dec. 269, 282 (BIA 1996; A.G. 1997). This provision for an automatic stay will avoid the necessity of having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues.

The rule also makes a slight modification to the existing rule by providing that the Form EOIR–43 must be filed within one business day of the decision of the immigration judge. This is intended to afford the Service an opportunity to file the Form EOIR–43 in those cases where the immigration judge's custody decision is issued after normal business hours.

Effective Date of This Interim Rule

The Department's immediate implementation of this interim rule, with provision for post-promulgation public comment, is based upon findings of good cause pursuant to 5 U.S.C. 553(b)(3)(B) and (d).

The immediate implementation of this interim rule without prior public comment is necessary to prevent the release of aliens who may pose a threat to national security and to provide a clear set of procedural rules of administrative procedure with respect to determining the custody conditions and bond status for aliens during the pendency of removal proceedings. The existing rules permit the Service to appeal a decision ordering the release of an alien, but in many cases the rules do not provide for a stay of the release decision during the time that the Service would be pursuing an appeal. Thus, an alien who has received a custody redetermination by an immigration judge is eligible for release under the terms of that order unless and until a stay of that order is granted by the Board.

The time that elapses from the custody redetermination to the granting of a stay by the Board may be significant. The time it takes to draft a notice of appeal and motion for emergency stay and file these documents with the Board is often up to twenty-four hours, as the Service attorney handling the case may have to complete his or her duties in court that day before securing the necessary supervisory approval to file the motion for stay. The Service attorney then must draft the filings and transmit them to the Board in Falls Church, Virginia. The Board then must review the record and adjudicate the motion. The Board does not have a complete record upon which to base a ruling, because that record remains with the immigration court. As a matter of practice, the Board will not grant a stay without communicating with the alien or opposing counsel, so as to ascertain the alien's position regarding the necessity of the stay. Thus, under current procedures, there is a significant window of time wherein the alien may be released while the Service prepares its filings to the Board and while the Board adjudicates the motion. Also, the crucial determination by the Board is made without the benefit of a full record of proceedings and the Board instead relies upon the submissions of the parties.

Another significant problem that is remedied by this provision concerns custody determinations that arise on the west coast. Due to the time difference between the east and west coast, an alien may be ordered released after the Board has closed for the day. When this occurs, the Service is effectively barred from filing a stay request and this significantly increases the period during which the alien may be released.

During this window of time, the Service may be required to release an alien that it believes is a threat to national security or the public safety without even having the opportunity to present its case to the Board. The automatic stay provision allows the Service attorney to maintain the alien's custody status via immediate filing of the Form EOIR–43. This rule extends the scope of the existing automatic stay provision to cover all cases in which the Service has denied release of an alien pending the completion of removal proceedings or has set a bond of $10,000 or more, and in which the Service specifically invokes the automatic stay in order to seek an expedited appeal. The purpose of the automatic stay is to allow the Service to maintain the status quo during such time as is necessary for the Service to take a prompt appeal to the Board, and the stay only remains in place until the Board has had an opportunity to consider the matter. This rule similarly provides a five-day period after a decision by the Board to allow sufficient time for the Commissioner to determine whether to certify a decision of the Board to the Attorney General for review. These provisions for a temporary automatic stay will avoid the necessity of the Service having to seek stays on a case by case basis and the Board or the Attorney General having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues.

Finally, the current investigation in connection with recent terrorist activities has resulted in the detention of a large number of individuals. This may overwhelm the capacity of the Service to take the steps necessary to secure stays of custody redeterminations in timely fashion. The automatic stay provision will address this problem and prevent the Service and the Board from being overwhelmed with stay requests.

For these reasons, the Attorney General has determined that there is good cause to publish this interim rule and to make it effective upon filing for public inspection at the Office of the Federal Register, because the delays inherent in the regular notice-and-comment process would be "impracticable, unnecessary and contrary to the public interest."

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule extends the scope of the existing automatic stay provision to cover cases in which the Service has denied release of an alien pending the completion of removal proceedings or has set a bond of $10,000 or more, in order to allow the Service to maintain the status quo while it pursues an expedited appeal of an order to release the alien from custody. This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (government agencies).

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Section 3.19 is amended by revising paragraph (i)(2), to read as follows:

§ 3.19 Custody/bond.

* * * * *

(i) * * *

(1) * * *

(2) *Automatic stay in certain cases.* In any case in which the district director has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon the Service's filing of a Notice of Service Intent to Appeal Custody Redetermination (Form EOIR–43) with the immigration court within one business day of the issuance of the order, and shall remain in abeyance pending decision of the appeal by the Board of Immigration Appeals. The stay shall lapse if the Service fails to file a notice of appeal with the Board in accordance with § 3.38 within ten business days of the issuance of the order of the immigration judge. If the Board authorizes release (on bond or otherwise), that order shall be automatically stayed for five business days. If, within that five-day period, the Commissioner certifies the Board's custody order to the Attorney General pursuant to § 3.1(h)(1) of this chapter, the Board's order shall continue to be stayed pending the decision of the Attorney General.

Dated: October 26, 2001.
John Ashcroft,
Attorney General.
[FR Doc. 01–27447 Filed 10–29–01; 1:51 pm]
BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 319, and 381

[Docket No. 01–016DF]

Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its meat inspection regulations to permit the use of pork collagen and transglutaminase enzyme (TG enzyme), in limited amounts, as binders in certain standardized meat food products. FSIS also is amending its poultry products inspection regulations to permit the use of TG enzyme, in limited amounts, as a binder in certain standardized poultry products. Additionally, FSIS is amending the meat and poultry inspection regulations to require that, when TG enzyme is used to fabricate or reform cuts of meat or poultry, the resulting product bear labeling to indicate that it has been formed from pieces of whole muscle meat, or that it has been reformed from a single cut. FSIS is proceeding with this direct final rule in response to petitions submitted to the Agency by Ajinomoto, U.S.A., Inc. and AMPC, Corp.

DATES: This rule will be effective December 31, 2001 unless FSIS receives written adverse comments within the scope of this rulemaking or written notice of intent to submit adverse comments within the scope of this rulemaking on or before November 30, 2001. If FSIS receives adverse comments, a timely withdrawal will be published in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments within the scope of this rulemaking to: FSIS Docket Clerk, Docket #01–016DF, Room 102, Cotton Annex, 300 C Street, SW., Washington, DC 20250–3700. Reference materials cited in this document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279

SUPPLEMENTARY INFORMATION:

Background

Ajinomoto and AMPC Petitions

On May 5, 1999, Hogan and Hartson, L.L.P. filed a petition with FSIS on behalf of its client, Ajinomoto, USA, Inc. (Ajinomoto), requesting that the Agency amend its regulations to allow the use of TG enzyme, at usage levels of up to 65 ppm of product formulation, to improve texture and cooking yields in various standardized meat and poultry products. Ajinomoto also requested that FSIS permit TG enzyme to be used as a protein cross-linking agent, at usage levels of up to 65 ppm, to fabricate or reform cuts of meat. When TG enzyme is used to fabricate or reform cuts of meat, Ajinomoto requested that the resulting product be distinguished from its non-fabricated counterpart through terms such as "formed" or "reformed" as part of the product name (*e.g.* "formed beef tenderloin"), as opposed to a statement that declares the presence of the enzyme as part of the product name (*e.g.* "beef tenderloin formed with water and transglutaminase enzyme").

TG enzyme is derived from a non-toxigenic and non-pathogenic strain of *Streptoverticillium mobaraense* and functions by catalyzing the formation of a covalent bond between the glutamine and lysine side residues of proteins. There are no current allowances in the FSIS regulations or those of the Food and Drug Administration (FDA) for the use of TG enzyme as a binder or protein cross-linking agent in standardized meat or poultry products.

In a previous petition submitted in June 1997, Ajinomoto requested that FSIS permit the use of TG enzyme in both standardized and non-standardized meat and poultry products. In support of the petition, Ajinomoto submitted data to support the generally recognized as safe (GRAS) status of TG enzyme for use as a cross-linking agent in meat and poultry products at levels of up to 65 ppm. As part of its review of the petition, FSIS asked FDA to evaluate the data submitted by Ajinomoto on the safety of TG enzyme for this proposed use. In January 1998, FDA sent a letter to FSIS that said that, although it has not made a determination regarding the GRAS status of any use of this enzyme, FDA would not challenge, at this time, Ajinomoto's conclusion that TG enzyme is safe under the proposed conditions of use.

Based on the findings of FDA's evaluation, described above, and the technical data provided by Ajinomoto, FSIS concluded that TG enzyme was suitable for use in non-standardized meat and poultry products, and in meat and poultry products that have been formulated to reduce sodium or fat content. Thus, the Agency permits the use of TG enzyme, at levels of up to 65 ppm, in such products, provided that the products are identified by a truthful descriptive designation, such as "low fat pork sausage, water and TG enzyme product."

Although FSIS determined that TG enzyme was suitable for use in non-standardized meat and poultry products, and in meat and poultry products that have been formulated to reduce sodium or fat content, in its review of the 1997 petition, the Agency also found that Ajinomoto submitted insufficient data on the suitability of the use of TG enzyme in standardized meat and poultry products. FSIS informed Ajinomoto that in order to permit the use of TG enzyme in standardized products, the Agency must pursue rulemaking to amend the regulatory standards of identity. FSIS suggested that Ajinomoto submit a petition to request that the Agency amend the individual meat and poultry product standards to provide for the use of TG enzyme. The Agency also informed Ajinomoto that such a petition must include technical data to establish the suitability of TG enzyme for use in standardized meat and poultry products. In response, Ajinomoto submitted the May 5, 1999, petition, to which this rulemaking responds.

In support of its most recent petition, Ajinomoto submitted numerous published studies on the efficacy of TG enzyme in cross-linking muscle proteins. FSIS determined that the data demonstrate that TG enzyme is effective in improving texture by increasing elasticity and improving cooking yields in standardized meat sausage products, standardized restructured meat products, standardized "roast beef parboiled and steam roasted" meat products, and standardized poultry rolls. The Agency also determined that TG enzyme is effective in binding pieces of whole muscle meat to fabricate or reform cuts of meat. FSIS concluded that the data demonstrate efficacy at 65 ppm. However, FSIS found that the petition contained insufficient data to support the use of TG enzyme in standardized poultry products other than poultry rolls.

In support of its request that cuts of meat fabricated or reformed using TG enzyme be identified as "formed" or "reformed" in conjunction with the product name, Ajinomoto claimed that TG enzyme does not change the essential character of a meat product. According to the data presented by Ajinomoto, TG enzyme functions to fuse together muscle tissue, and that whole muscle tissues fused together with the TG enzyme have the same taste, aroma, nutritional profile, and other properties as untreated whole muscle tissue. Thus, Ajinomoto argued, the primary difference between a cut of meat formed with TG enzyme and an untreated cut will be the shape or size of the final product.

Because muscle fibers treated with TG enzyme will not be aligned as they would be naturally, the Agency does not agree that TG enzyme does not affect the essential character of a product. However, the Agency does agree that, because the primary difference between a cut of meat formed with TG enzyme and an untreated cut is the shape of the product, special labeling to alert the consumer to the presence of the TG enzyme in the product, such as "beef tenderloin formed with water and transglutaminase enzyme," is not necessary. Therefore, in this direct final rule, the Agency is requiring that products that are fabricated using TG enzyme bear the term "formed" or "reformed" in conjunction with product name. The words "formed" and "reformed" are appropriate terms to identify these products because these terms reveal the material fact that multiple pieces of meat have been formed to look like a solid piece of meat. Otherwise, consumers could be misled. The product must also declare the presence of TG enzyme in the list of ingredients on the product's label, as required by 9 CFR 317.2(f)(1) and 381.118(a)(1).

On September 27, 1999, AMPC, Inc., petitioned FSIS to amend its regulations to allow the use of pork collagen, a connective tissue protein, as a binder in sausage as provided in 9 CFR Part 319, at usage levels of up to 3.5% of product formulation. In addition to sausage as provided in 9 CFR Part 319, AMPC requested that FSIS allow the use of pork collagen as a binder in other standardized meat and poultry products, such as cured pork products, luncheon meat, meat food entrée products, pies, turnovers, meat snacks, hors d'oeuvres, pizza and specialty items, meat salads, meat spreads, barbecued meats, poultry breakfast sausages, and canned, frozen, or dehydrated meat food products. There are no current allowances in the FSIS regulations for the use of pork collagen as a binder in standardized meat or poultry products.

Before petitioning FSIS, AMPC submitted a GRAS Notification to FDA concerning the use of pork collagen as a binder in meat products. After consulting with FSIS, FDA sent a letter to AMPC on July 29, 1999, that said that FDA "has no questions at this time regarding the conclusion of AMPC that pork collagen is GRAS for use as a binder and purge reducing additive in meat and meat type products at a level of 1–3.5% " (GRAS Notice No. GRN 000021). FDA instructed AMPC to consult with FSIS regarding the suitability of the use of pork collagen in meat and poultry products, and the acceptability of use within the context of the Federal meat and poultry products inspection regulations.

AMPC has conducted research to support the efficacy of pork collagen as a binder in sausages and submitted data with the petition. After evaluating the data submitted by AMPC, FSIS determined that the data demonstrate that pork collagen is effective at reducing purge and improving cooking yields in those meat sausages whose standards permit binders, in certain standardized cured pork products, and in non-standardized meat and poultry products. FSIS also determined that the data demonstrate efficacy at 3.5% of the product formulation. Thus, the Agency permits the use of pork collagen, at the specified levels, in non-standardized meat and poultry products, provided that these products are identified by a truthful descriptive designation, such as "low fat pork sausage, water and pork collagen."

However, to permit the use of pork collagen in standardized meat and poultry products, the Agency must conduct rulemaking to amend the individual product standards. Therefore, in response to AMPC's petition, FSIS is publishing this direct final rule to amend the standards of identity for certain meat sausages and certain standardized cured pork products. The Agency is not amending other product standards in this rulemaking because it found that the petition contained insufficient data to support the suitability of pork collagen for use in standardized poultry products.

Current Regulatory Requirements

In order to permit the use of a food ingredient in the production of meat or poultry products, FDA, in consultation with FSIS, assesses the safety of the ingredient's proposed use, while FSIS evaluates its efficacy and suitability for use in meat and poultry products. At the time that AMPC and Ajinomoto submitted their petitions, substances permitted for use in the production of meat products were listed in the chart of approved substances contained in former 9 CFR 318.7(c)(4), and substances permitted to be used in the production of poultry products were listed in the chart of approved substances contained in former 9 CFR 381.147(f)(4). Therefore, in its petition, Ajinomoto requested that FSIS amend the chart of substances in former §§ 318.7(c)(4) and 381.147(f)(4) to include the acceptable use of TG enzyme as a binder and cross-linking agent for sausage and other standardized meat and poultry products. Likewise, in its petition, AMPC requested that FSIS amend the chart of substances in former §§ 318.7(c)(4) and 381.147(f)(4) to include the acceptable use of pork collagen as a binder for sausage and other standardized meat and poultry products.

On December 23, 1999, FSIS published a final rule, "Food Ingredients and Sources of Radiation Listed or Approved for Use in Meat and Poultry Products," designed to improve the efficiency of the procedures used by FSIS and FDA to review and approve the use of food ingredients and sources of radiation in the production of meat and poultry products (64 FR 72168). Under the new regulations, rather than listing substances approved for use in the production of meat and poultry products in the chart of substances contained in former 9 CFR 318.7(c)(4) and former 9 CFR 381.147(f)(4), FDA now lists food ingredients and sources of radiation that are safe for specific use in the production of meat and poultry products in its regulations in title 21 of the CFR. 9 CFR parts 310, 318, 319, and 381 of the FSIS regulations were amended to include appropriate cross-references to title 21 listings of substances and sources of radiation approved for use in meat and poultry products. In the final rule, FSIS also created one list of food ingredients approved for use in the production of meat and poultry products by combining the listing contained in former section 318.7(c)(4) with the listing contained in former section 381.147(f)(4) and moving the combined listing to section 424.21(c). The final rule became effective on January 24, 2000.

Because FDA now lists food ingredients and sources of radiation approved for use in the production of

meat and poultry products in its regulations, FSIS has stated that it will limit substance-specific rulemakings to those necessary to establish specific prohibitions or limitations on the use of food ingredients in the production of meat or poultry products. Such rulemakings are necessary when a standard of identity or composition prohibits or limits the use of an ingredient. In these instances, the standard of identity must be amended to include the permitted use of the ingredient. FSIS does not intend to add any new substances to the chart contained in 9 CFR 424.21(c).

As previously mentioned, FSIS currently permits TG enzyme and pork collagen to be used in non-standardized meat and poultry products, such as meat links or patties, and modified versions of traditional products, such as "low fat pork sausage, water, and pork collagen product," and "reduced fat breakfast sausage with transglutaminase enzyme," provided that these products are identified by a truthful descriptive designation (9 CFR 317.2(c)(1), 317.2(e) and 381.117(a)). However, according to the petitioners, these descriptive designations may confuse some consumers or may cause some consumers to believe that the product identified by the descriptive designation is inferior to the traditional standardized version. Thus, the petitioners requested that, when TG enzyme or pork collagen is used as a binder in certain standardized products, these products be permitted to be identified by a standardized term, such as "hotdogs" or "breakfast sausage."

The Final Rule

FSIS is amending its meat inspection regulations and poultry products inspection regulations to permit the use of TG enzyme as a binder at up to 65 ppm of product formulation in sausages as provided in 9 CFR part 319, in fabricated steaks under 9 CFR 319.15(d), in "roast beef parboiled and steam roasted" under 9 CFR 319.81, and in poultry rolls under 9 CFR 319.81. FSIS is also amending its meat inspection regulations to permit the use of pork collagen as a binder at up to 3.5% of product formulation in sausages whose standards currently permit binders as provided in 9 CFR part 319 and cured pork products as provided in 9 CFR 319.104. Under § 319.104, binders are only permitted in certain cured pork products, such as "Ham Water Added," "Ham and Water Product-X% of Weight is Added Ingredients," and "Ham with Natural Juices." Under this direct final rule, the use of pork collagen is also limited to those particular cured pork products.

Because it no longer adds new substances to the list of approved substances codified at 9 CFR 424.21(c), the Agency is amending the standards of identity for sausage at 9 CFR 319.140, fabricated steaks at 9 CFR 319.15(d), "roast beef parboiled and steam roasted" at 9 CFR 319.81, certain cured pork products at 9 CFR 319.104, and poultry rolls at 9 CFR 381.159 to permit the use of either TG enzyme, pork collagen, or both of these substances at the specified levels. The Agency is revising the standards of identity for the sausages that currently permit the use of binders, such as "breakfast sausage" (9 CFR 319.143), "frankfurter," "frank," "furter," "hotdog," "weiner," "vienna," "bologna," "garlic bologna," "knockwurst," and similar products (9 CFR 319.180), and "cheesefurters" and similar products (9 CFR 319.181), to cross reference 319.140 for the purpose of determining which binders are permitted for use in these products and at what levels. The standards of identity for "braunschweiger" (9 CFR 319.182(a)) and "liver sausage" or "liverwurst" (9 CFR 319.182(b)) permit the addition of binders and contain a cross reference to § 319.140 for purposes of determining the permissible use of these substances in these products. Therefore, there is no need to change these product standards.

The Agency is also amending 9 CFR 317.8(b) of the meat inspection regulations to require that, when transglutaminase enzyme is used to fabricate or reform a cut of meat, the resulting product's labeling include a statement to indicate that the product has been "formed" or "reformed" as part of the product name. The Agency has determined that such labeling is necessary because TG enzyme alters the essential character of a product by making multiple cuts of meat or pieces of muscle tissue appear to be one intact cut or piece of meat, which could mislead consumers about the nature of this type of product. The Agency has determined that the terms "formed" and "reformed" are appropriate descriptive terms. Although it must be revealed in the ingredients statement, the presence of TG enzyme need not be disclosed as part of the product name. The labeling of these products must still comply with the requirement that a product that has been prepared by salting, smoking, drying, cooking, chopping, or otherwise must be so described on the label, unless the name of the product implies, or the manner of packaging shows that the product was subject to such preparation (9 CFR 317.2(e)).

The following examples are intended to provide further clarification on the application of the labeling requirements for products that have been fabricated or reformed using TG enzyme. When the surface of two whole beef tenderloins are fused together to create a product with a uniform thickness or portion size, an appropriate name for the product would be "Formed Beef Tenderloin." However, if TG enzyme is used to fuse non-intact pieces of beef tenderloin to form a roll that resembles a tenderloin, an appropriate name would be "Reformed Beef Tenderloin Pieces." When a beefsteak is formed by treating chopped pieces of meat trim with TG enzyme to fuse the pieces together, an appropriate name for this product would be "Formed Beefsteak, Chopped and Shaped." When seam fat is removed from a cut of meat and the cut is then reassembled using TG enzyme, an appropriate name for the product would be "reformed" in conjunction with the name of the product, for example, "Reformed Ribeye Steak."

The petition did not request that FSIS adopt these labeling requirements for fabricated or reformed poultry products. However, because FSIS has determined that TG enzyme is suitable for use in non-standardized poultry products and modified versions of traditional poultry products, and because it is interested in harmonizing the meat and poultry inspection regulations, the Agency is amending 9 CFR 381.129 to require that the labels of poultry products fabricated or reformed using TG enzyme state that the product has been "formed" or "reformed" as part of the product name.

Establishments that choose to use TG enzyme or pork collagen in their products will be required to list these substances, in descending order of predominance, in the product's ingredients statement (9 CFR 317.2(f)(1) and 381.118(a)(1)). This will require modification of the product's label and the printing of new product labels.

Because the use of these substances at the level that are being provided for by FSIS is not controversial, and because these substances are permitted in non-standardized products, FSIS expects no adverse comment to result from the changes that it is making in this direct final rule. Therefore, unless the Agency receives written adverse comments within the scope of this rulemaking, or a written notice of intent to submit adverse comments within the scope of this rulemaking, within 30 days, this action will become final 60 days after publication in the **Federal Register**. If written adverse comments within the scope of the rulemaking are received, the final rulemaking notice will be withdrawn, and the Agency will publish a proposed rulemaking notice that includes a comment period.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. It has been determined to be not significant for purposes of E.O. 12866 and therefore, has not been reviewed by the Office of Management and Budget (OMB).

Effect on Small Entities

This direct final rule will permit the use of TG enzyme and pork collagen in certain standardized meat food products. It also prescribes labeling requirements for meat and poultry products fabricated or reformed using TG enzyme.

The use of these ingredients is voluntary and therefore, the impact of this direct final rule on small establishments is likely to be minimal. FSIS does not believe that any costs associated with changes to labels will be significant. The decision by individual establishments to use these ingredients will be based on their conclusions that the benefits of providing new product to meet consumers' needs outweigh the implementation costs.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.320 through 590.370, respectively, must be exhausted before any judicial challenge of the application of the provisions of this direct final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Paperwork Requirements

Abstract: FSIS has submitted an emergency information collection request for the paperwork and record keeping requirements in this direct final rule in accordance with the Paperwork Reduction Act. Establishments that choose to use any of the substances permitted by this final rule will have to make changes to their product labels.

Estimate of Burden: Establishments must develop product labels in accordance with the regulations. To receive approval of the labels, establishments must complete FSIS Form 7234–1. FSIS program employees review FSIS Form 7234–1 to ensure that the information on the labels complies with the regulations. FSIS estimates that it will take 60 minutes to design and develop modified product labels in accordance with this direct final rule and 15 minutes to prepare FSIS Form 7234–1 and submit it, along with the sketch label, to FSIS.

Establishments will only need to make the label change once.

Respondents: Meat and poultry product establishments.

Estimated Number of Respondents: 992

Estimated number of Responses per Respondents: FSIS estimates that each establishment will modify one product label.

Estimated Total Annual Burden on Respondents: 1,240 hours.

Copies of this information collection assessment can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, Room 109 Cotton Annex., Washington, DC 20250–3700.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to Lee Puricelli, see the address above, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this direct final rule and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS Web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects

9 CFR Part 317

Food labeling, Meat Inspection.

9 CFR Part 319

Food grades and standards, Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products.

For the reasons discussed in the preamble, FSIS amends 9 CFR Chapter III as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 317.8 is amended by adding a new paragraph (b)(39) to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.

* * * * *

(b) * * *

(39) When transglutaminase enzyme is used to bind pieces of meat to form a cut of meat, or to reform a piece of meat from a multiple cuts, there shall appear on the label, as part of the product name, a statement that indicates that the product has been "formed" or "reformed," in addition to other preparation steps, e.g., "Formed Beef Tenderloin" or "Reformed and Shaped Beef Tenderloin."

* * * * *

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Section 319.15 is amended by revising paragraph (d) to read as follows:

§ 319.15 Miscellaneous beef products.

* * * * *

(d) *Fabricated steak.* Fabricated beef steaks, veal steaks, beef and veal steaks, or veal and beef steaks, and similar products, such as those labeled "Beef Steak, Chopped, Shaped, Frozen," "Minute Steak, Formed, Wafer Sliced, Frozen," "Veal Steaks, Beef Added, Chopped—Molded—Cubed—Frozen, Hydrolyzed Plant Protein, and Flavoring" shall be prepared by comminuting and forming the product from fresh and/or frozen meat, with or without added fat, of the species indicated on the label. Such products shall not contain more than 30 percent fat and shall not contain added water or extenders. Transglutaminase enzyme at levels of up to 65 ppm may be used as a binder. Beef cheek meat (trimmed beef cheeks) may be used in the preparation of fabricated beef steaks only in accordance with the conditions prescribed in paragraph (a) of this section.

* * * * *

5. Section 319.81 is amended by adding the following new sentence after the phrase "shall not exceed 70 percent of the fresh beef weight":

"Transglutaminase enzyme at levels of up to 65 ppm may be used as a binder in such product."

6. Section 319.104 is amended by revising paragraph (d) to read as follows:

§ 319.104 Cured pork products.

* * * * *

(d) The binders provided for use in cured pork products in a regulation in this subchapter, in 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B, may be used singly in those cured pork products labeled as "Ham Water Added," "Ham and Water Product-X% of Weight is Added Ingredients," and "Ham with Natural Juices." In addition to the binders referred to in the preceding sentence, the following substances are permitted for use as binders and may be used singly in those cured pork products labeled as "Ham Water Added," "Ham and Water Product-X% of Weight is Added Ingredients," and "Ham with Natural Juices": pork collagen at up to 3.5% of the product formulation. Unless their use is provided for in a regulation in this subchapter, in 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B, or in this paragraph, these binders are not permitted to be used in combination with another such binder listed for use in cured pork products. When any such substance is added to these products, the substance shall be declared in the ingredients statement by its common or usual name in order of predominance.

* * * * *

7. Section 319.140 is amended by adding the following new sentence after the phrase "may contain binders and extenders as provided in a regulation permitting that use in this subchapter or in 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B":

"In addition to the binders and extenders referred to in the preceding sentence, the following two substances may also be used as binders in those sausages in which the use of such class of substances is permitted: pork collagen at up to 3.5% of the product formulation and transglutaminase enzyme at up to 65 ppm of the product formulation."

8. Section 319.143 is amended by removing the phrase "§ 318.7(c)(4) of this subchapter", and adding "§ 319.140 of this part" in its place.

9. Section 319.180 is amended by revising paragraph (e) to read as follows

§ 319.180 Frankfurter, frank, furter, hotdog, weiner, vienna, bologna, garlic bologna, knockwurst, and similar products.

* * * * *

(e) Binders and extenders as provided in § 319.140 of this part may be used in cooked sausage that otherwise comply with paragraph (a) or (b) of this section. When any such substance is added to these products, the substance shall be declared in the ingredients statement by its common or usual name in order of predominance.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

10. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

11. Section 381.129 is amended by adding a new paragraph (e) to read as follows:

§ 381.129 False or misleading labeling or containers.

* * * * *

(e) When transglutaminase enzyme is used to bind pieces of poultry to form a cut of poultry, or to reform a piece of poultry from a multiple cuts of poultry, there shall appear on the label, as part of the product name, a statement that indicates that the product has been "formed" or "reformed," in addition to other preparation steps, e.g., "Formed Turkey Thigh Roast" or "Reformed and Shaped Chicken Breast."

12. Section 381.159 is amended by revising paragraph (a) to read as follows:

§ 381.159 Poultry rolls.

(a) Binders or extenders may be added in accordance with a regulation in this subchapter, in 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B. In addition to the binders referred to in the preceding sentence, the following substances are permitted for use as binders in poultry rolls: transglutaminase enzyme at up to 65 ppm. When binding agents are added in excess of 3 percent for cooked rolls and 2 percent for raw rolls, the common name of the agent or the term "Binders Added" shall be included in the name of the product; e.g., "Turkey Roll-Gelatin Added."

* * * * *

Done at Washington, DC, on: October 25, 2001.

Thomas J. Billy,

Administrator.

[FR Doc. 01–27264 Filed 10–30–01; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 918

[No. 2001–25]

RIN 3069–AB05

Maintenance of Effort—Minimum Number of Annual Bank Board of Directors Meetings

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting as final, without change, the interim final rule that amended the maintenance of effort provision of its regulations to eliminate the three-year averaging requirement and to reduce the required minimum number of in-person board of directors meetings that a Federal Home Loan Bank (Bank) must hold annually to six meetings.

DATES: This final rule shall become effective on November 30, 2001.

FOR FURTHER INFORMATION CONTACT: Scott L. Smith, Acting Director, at (202) 408–2991, Patricia L. Sweeney, Program Analyst, at (202) 408–2872, Office of Policy, Research, and Analysis; or Sharon B. Like, Senior Attorney-Advisor, at (202) 408–2930, or Thomas Hearn, Senior Attorney-Advisor, at (202) 408–2976, Office of the General Counsel; or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

On December 21, 1999, the Finance Board published an interim final rule implementing the specific limits on annual compensation for the Chairperson, Vice Chairperson, and other members of a Bank's board of directors imposed by section 7(i) of the Federal Home Loan Bank Act, as amended by the Gramm-Leach-Bliley Act (GLB Act) (section 606(b)), Pub. L. No. 106–102, 113 Stat. 1338 (November 12, 1999). *See* 64 FR 71275 (December 21, 1999). The interim final rule required each Bank's board of directors, notwithstanding the compensation limits, to continue to maintain its level of oversight of the management of the Bank (maintenance of effort standard). Consistent with this maintenance of effort standard, the interim final rule required that each Bank's board of directors hold no fewer in-person meetings in any year than it held on average over the immediately preceding three years (three-year averaging requirement).

The Finance Board finalized the interim final rule on March 14, 2000. *See* 65 FR 13663 (March 14, 2000). The final rule revised the minimum meetings requirement in § 918.7(a) to the lesser of: (1) Nine; or (2) the three-year averaging requirement. *See id.* This change was made in order to avoid the vagaries of timing of the pure averaging requirement and reflect the operational reality at the Banks regarding the average number of meetings held over the preceding three years. In addition, § 918.7(b) of the final rule clarified that a Bank could apply to the Finance Board for a waiver of the minimum meetings requirement pursuant to the procedures of 12 CFR part 907. *See id.*

Based on subsequent experience with the minimum meetings requirement, on May 14, 2001, the Finance Board published a second interim final rule that further amended the maintenance of effort provision to eliminate the three-year averaging requirement and to reduce the required minimum number of in-person board of directors meetings that a Bank must hold annually to six meetings. *See* 66 FR 24263 (May 14, 2001). The May 2001 interim final rule also removed the waiver provision of § 918.7(b), because the ability to request a waiver of Finance Board regulatory provisions is already provided for in 12 CFR part 907. *See id.*

As discussed in the **SUPPLEMENTARY INFORMATION** section of the May 2001 interim final rule, these changes were made based on arguments by the Banks that they would be able to conduct their business more efficiently and effectively by holding only six annual in-person board meetings. The Banks indicated that they would be able to continue to maintain their level of oversight over the management of the Banks by conducting more business at fewer, but longer, board meetings, and/or placing greater reliance on board committees for the conduct of certain board business. The Banks noted that the three-year averaging requirement created a standard that varied among the Banks, with, for example, one Bank, based on the standard, already holding only six in-person board meetings annually.

The Finance Board also determined, based on a survey of the number of board of directors meetings held in 1999 by a number of financial institution holding companies and housing Government-Sponsored Enterprises (GSEs), that requiring at least six in-person Bank board of directors meetings in any year is within the range of the number of annual board meetings held by such holding companies and GSEs. Further, providing the boards of the Banks with greater discretion in determining the number of board meetings to hold annually is consistent with the GLB Act's emphasis on devolving governance issues to the Banks.

The May 2001 interim final rule provided for a 30-day comment period, which closed on June 13, 2001. The Finance Board received comment letters from two Banks, which are discussed below.

II. Analysis of Final Rule

The final rule adopts § 918.7 of the May 2001 interim final rule without change. Section 918.7 states:

> Notwithstanding the limits on annual directors' compensation established by section 7(i) of the [Bank] Act, as amended, the board of directors of each Bank shall continue to maintain its level of oversight of the management of the Bank. In maintaining its level of oversight, the board of directors of a Bank shall hold at least six in-person meetings in any year.

12 CFR 918.7.

One commenter interpreted the changes to the maintenance of effort requirement as a conclusion by the Finance Board that six in-person board meetings each year will fully enable the directors of a Bank to fulfill their fiduciary duties to the Bank's members. This comment misinterprets the maintenance of effort requirement. Section 918.7 requires that, in maintaining its level of oversight of the management of the Bank, the Bank shall hold *at least* six in-person board meetings in any year. As the **SUPPLEMENTARY INFORMATION** section of the May 2001 interim final rule explains, if a Bank's board intends to hold fewer annual in-person board meetings than it has held in past years, it would be in the board's best interest to document how it will continue to meet the maintenance of effort standard and its fiduciary duties regarding the Bank's safety and soundness. If the Bank cannot continue to maintain its level of oversight over Bank management with six board meetings in a given year, then it would need to hold more board meetings per year. *See* 66 FR at 24264.

The other commenter contended that the Finance Board should only be concerned that a Bank's board of directors has established sound governing processes, and should not pre-determine what governance practices are absolutely required for all Banks in all circumstances. As discussed in the **SUPPLEMENTARY INFORMATION** section of the March 2000 final rule, the minimum meetings requirement was adopted for safety and soundness reasons. While the Finance Board acknowledges that decisions on the number of Bank board meetings generally should be within the purview of the corporate governance responsibilities of the Banks' boards, the Finance Board believes that its safety and soundness concerns with respect to the Bank boards' level of oversight of Bank management warrant a regulatory response. Accordingly, the Finance Board is retaining the minimum meetings requirement in the final rule.

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply. Moreover, the final rule applies only to the Banks, which do not come within the meaning of "small

entities" as defined in the Regulatory Flexibility Act. *See id.* section 601(6).

IV. Paperwork Reduction Act

This final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

Accordingly, the interim final rule amending 12 CFR part 918, published at 66 FR 24263 (May 14, 2001), is adopted by the Federal Housing Finance Board as final without change.

Dated: October 24, 2001.

By the Board of Directors of the Federal Housing Finance Board.

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–27389 Filed 10–30–01; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–310–AD; Amendment 39–12474; AD 2001–21–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2001–21–51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 737–600, –700, and –800 series airplanes by individual notices. This AD requires a detailed visual inspection for damage of the aft pressure bulkhead at body station (BS) 1016 and the forward attachment of the vertical fin at body section 48, and corrective action, if necessary. This action is prompted by a report of damage to the web of the aft pressure bulkhead at BS 1016. The actions specified by this AD are intended to find and fix damage of the aft pressure bulkhead at BS 1016 and the forward attachment of the vertical fin at body section 48, which could result in structural failure of the aft pressure bulkhead and consequent uncontrolled decompression, or loss of structural integrity of the forward support of the vertical fin, loss of the vertical fin, and consequent loss of control of the airplane.

DATES: Effective November 5, 2001, to all persons except those persons to whom it was made immediately effective by emergency AD 2001–21–51, issued October 12, 2001, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 5, 2001.

Comments for inclusion in the Rules Docket must be received on or before December 31, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–310–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM–310-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1221; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On October 12, 2001, the FAA issued emergency AD 2001–21–51, which is applicable to certain Boeing Model 737–600, –700, and –800 series airplanes.

The FAA recently received a report indicating that an operator found damage to the web of the aft pressure bulkhead at body station (BS) 1016 on a Boeing Model 737–700 series airplane. One section of the web had two large dents that crossed a radial tearstrap and a crease common to one edge. During replacement of the damaged web sections of the bulkhead, additional damage to the vertical shear beam web and to the skin adjacent to the attachment fittings of the vertical fin at BS 1016 was found. The vertical shear beam webs are integral to the attachment fittings that attach the vertical fin to the fuselage. A shimmy event of the main landing gear (MLG) on that airplane also was reported, and was so severe that it damaged the MLG and resulted in replacement of the right MLG.

Subsequent to the first report, three other operators reported similar damage to the aft pressure bulkhead on other Boeing Model 737–700 series airplanes, following severe shimmy events which resulted in damage to the MLG. A 0.65-inch crack in the aft pressure bulkhead also was found on one of the damaged airplanes. Shimmy events are a possible cause of the aft pressure bulkhead damage; however, the actual cause is undetermined. Hard landings and tail strikes are other possible causes. Such damage, if not fixed, could result in structural failure of the aft pressure bulkhead and consequent uncontrolled decompression, or loss of structural integrity of the forward support of the vertical fin, loss of the vertical fin, and consequent loss of control of the airplane.

Boeing Model 737–600 and –800 series airplanes have identical structure in the subject area and may also be subject to the same unsafe condition described above.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Telegraphic Alert Service Bulletin, 737–53A1238, dated October 11, 2001, which describes procedures for a detailed visual inspection for damage of the aft pressure bulkhead at body station (BS) 1016 and the forward attachment of the vertical fin at body section 48. For airplanes on which damage is found, the service bulletin describes procedures for doing an additional detailed visual inspection of the vertical beam web installation. The service bulletin also specifies contacting Boeing for repair of any damage found, and reporting inspection results to Boeing.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2001–21–51 notices issued on October 12, 2001, to all known U.S. owners and operators of Boeing Model 737–600, –700, and –800 series airplanes; line numbers 1 through 405 inclusive, and line numbers 466, 585, 590, and 793. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–310–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–21–51 Boeing: Amendment 39–12474. Docket 2001–NM–310–AD.

Applicability: Model 737–600, –700, and –800 series airplanes; line numbers 1 through 405 inclusive, and line numbers 466, 585, 590, and 793; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix damage of the aft pressure bulkhead at body station 1016 and the forward attachment of the vertical fin at body section 48, which could result in structural failure of the aft pressure bulkhead and consequent uncontrolled decompression, or loss of structural integrity of the forward support of the vertical fin, loss of the vertical fin, and consequent loss of control of the airplane; accomplish the following:

Inspection

(a) Do a detailed visual inspection for damage of the aft pressure bulkhead at body station 1016 and the forward attachment of the vertical fin at body section 48, according to Boeing Telegraphic Alert Service Bulletin, 737–53A1238, dated October 11, 2001. Except as provided by paragraph (b) of this AD, do the inspections at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For Group 1 airplanes as identified in paragraph 1.A., "Effectivity," of the service bulletin: Within 5 days after the effective date of this AD.

(2) For Group 2 airplanes as identified in paragraph 1.A., "Effectivity," of the service bulletin: Within 10 days after the effective date of this AD.

(3) For Group 3 airplanes as identified in paragraph 1.A., "Effectivity," of the service bulletin: Within 30 days after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) For airplanes identified in paragraphs (b)(1) and (b)(2) of this AD: Do the inspection at the time specified in those paragraphs, as applicable.

(1) For Group 2 or Group 3 airplanes on which a severe shimmy event that damaged the main landing gear before the effective date of this AD, or on which a hard landing or a tail strike occurred before the effective date of this AD: Do the inspection required by paragraph (a) of this AD at the time specified in paragraph (a)(1) of this AD.

(2) For Group 3 airplanes on which a shimmy event that damaged the aircraft interior or the flaps occurred before the effective date of this AD: Do the inspection required by paragraph (a) of this AD at the time specified in paragraph (a)(2) of this AD.

(c) Do the inspection required by paragraph (a) of this AD before further flight after any of the following events occurring after the effective date of this AD: A severe shimmy event that damaged the main landing gear, a hard landing, or a tail strike.

Corrective Action

(d) If any damage is found during the inspection required by this AD, before further flight, do a detailed visual inspection of the vertical beam web installation for damage, according to Boeing Telegraphic Alert Service Bulletin, 737–53A1238, dated October 11, 2001. If any damage is found, before further flight, repair all damage per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Reporting Requirement

(e) Submit a report of inspection findings (both positive and negative) to the Manager, Seattle ACO, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181; at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. The report must include the following: The approximate date of inspection; whether the shimmy dampers were installed subsequent to aircraft delivery; a description of any structural damage found and its location, as well as the extent and depth of the damage, or whether structural damage was NOT found; whether any shimmy event, hard landing, engine-out, or tail strike has occurred; the airplane serial number; and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 5 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 5 days after the effective date of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Boeing Telegraphic Alert Service Bulletin, 737–53A1238, dated October 11, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on November 5, 2001, to all persons except those persons to whom it was made immediately effective by emergency AD 2001–21–51, issued on October 12, 2001, which contained the requirements of this amendment.

Issued in Renton, Washington, on October 22, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27188 Filed 10–30–01; 8:45 am].

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–281–AD; Amendment 39–12491; AD 2001–22–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 727 series airplanes. This action requires repetitive inspections for migration or corrosion of the outer hinge pins that attach the horizontal stabilizer to the vertical fin, and various follow-on actions, if necessary. This action also provides other repetitive inspections for cracking or corrosion of the hinge pins, which terminate the required repetitive inspections for migration or corrosion; these inspections are optional for airplanes on which no migration or corrosion is found. This action is necessary to find and fix corrosion or cracking in the hinge pins of the horizontal stabilizer, which could lead to structural degradation of the hinge of the horizontal stabilizer and result in loss of the horizontal stabilizer and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 15, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 15, 2001.

Comments for inclusion in the Rules Docket must be received on or before December 31, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–281–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001-NM–281-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of cracks and corrosion in the outer hinge pins that attach the horizontal stabilizer to the vertical fin on several Boeing Model 727 series airplanes. The cracks in the outer hinge pins, which are made of 4330 steel, have been attributed to stress corrosion. These cracks often initiate in corroded areas of the hinge pin not protected by chrome plating. Corrosion has also been found on inner fail-safe hinge pins. Corrosion or cracking in the outer hinge pins of the horizontal stabilizer could lead to structural degradation of the stabilizer hinge joint and consequent loss of the horizontal stabilizer, which would result in loss of controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 727–55A0090, Revision 1, dated September 20, 2001, which describes procedures for repetitive detailed visual inspections for migration or corrosion of the outer hinge pins of the horizontal stabilizer, and various follow-on actions, if necessary. The follow-on actions include:

- A torque test (referred to in the service bulletin as a "torque check") of the nut on the outer hinge pins, and reduction of the torque values for the nut on the outer hinge pins, if necessary.
- Repetitive detailed visual and magnetic particle inspections for corrosion or cracking of the outer and inner hinge pins (which also involves removal of outer and inner hinge pins, as necessary, and application of corrosion preventative compound or grease on the hinge pins).
- Replacement of migrated, cracked, or broken hinge pins with new or serviceable hinge pins.

Accomplishment of the repetitive detailed visual and magnetic particle inspections for corrosion or cracking of the outer and inner hinge pins, as necessary, including all associated actions, eliminates the need for the repetitive detailed visual inspections for migration or corrosion of the hinge pins.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to find and fix corrosion or cracking in the outer hinge pins of the horizontal stabilizer, which could lead to structural degradation of the hinge of the horizontal stabilizer and result in loss of the horizontal stabilizer and consequent loss of controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This AD and Service Bulletin

This AD differs from the referenced service bulletin in the following ways:

- The service bulletin specifies that the manufacturer may be contacted for disposition of repair conditions. However, this AD requires the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.
- The referenced service bulletin recommends accomplishment of the repetitive detailed visual and magnetic particle inspections for corrosion or cracking of the outer and inner hinge pins; and provides initial and repetitive compliance times for these inspections. However, for airplanes on which no migrated, cracked, broken, or corroded hinge pins are found, this AD provides for accomplishment of the repetitive detailed visual and magnetic particle inspections as an option which terminates the requirement for repetitive inspections for pin migration or corrosion.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring, for all airplanes, accomplishment of the inspections in Part 3 and Part 4 of the service bulletin, which—as described above—are specified in this AD as optional for airplanes on which no migrated, cracked, broken, or corroded hinge pins are found. However, the planned compliance time for such inspections is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments

received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-281-AD." The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001-22-12 Boeing: Amendment 39-12491. Docket 2001-NM-281-AD.

Applicability: All Model 727 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix corrosion or cracking in the hinge pins of the horizontal stabilizer, which could lead to structural degradation of the hinge of the horizontal stabilizer and result in loss of the horizontal stabilizer and consequent loss of controllability of the airplane, accomplish the following:

One-Time Inspection and Torque Test, and Follow-On Actions (Certain Airplanes)

(a) For outer hinge pins that attach the horizontal stabilizer to the vertical fin on which the actions in Boeing Service Bulletin 727-55-0086, Revision 1, dated June 23, 1988, have NOT been accomplished prior to the effective date of this AD: Within 90 days after the effective date of this AD, do a one-time detailed visual inspection for migration or corrosion of the outer hinge pins, per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 727-55A0090, Revision 1, dated September 20, 2001. If no migration or corrosion of an outer hinge pin is found, before further flight, do a torque test (referred to in the service bulletin as a "torque check") of the nuts on the outer hinge pins to determine the existing torque values and if any hinge pins are cracked or broken, per Boeing Alert Service Bulletin 727-55A0090, Revision 1.

Note 2: Boeing Service Bulletin 727-55-0086, Revision 1, dated June 23, 1988, recommends a one-time inspection and application of primer to prevent corrosion on the outer hinge pins of the horizontal stabilizer on all Boeing Model 727 series airplanes. That service bulletin also specifies a reduction of torque values for installing the nuts of the outer hinge pins, which is intended to prevent stress corrosion cracking.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For any outer hinge pin that is not migrated, cracked, broken, or corroded, torque the nut on the outer hinge pin within the limits specified in Boeing Alert Service Bulletin 727-55A0090, Revision 1, per that service bulletin, and within 180 days after accomplishment of paragraph (a) of this AD, do the initial inspection in paragraph (b) of this AD, and applicable follow-on actions.

(2) For any migrated, cracked, or broken outer hinge pin that is not corroded: Do paragraph (c) of this AD.

(3) For any corroded outer hinge pin: Do paragraph (d) of this AD.

Repetitive Inspections

(b) For outer hinge pins of the outer horizontal stabilizer on which the actions in Boeing Service Bulletin 727-55-0086, Revision 1, dated June 23, 1988, HAVE been accomplished prior to the effective date of this AD, and airplanes identified in paragraph (a)(1) of this AD: Within 90 days after the effective date of this AD, except as provided by paragraph (a) of this AD, do a detailed visual inspection for migration or corrosion of both the outer and inner hinge pins, per Part 2 of the Work Instructions of Boeing Alert Service Bulletin 727-55A0090, Revision 1, dated September 20, 2001. If no migration or corrosion of a hinge pin is found, repeat the inspection every 180 days, per Boeing Alert Service Bulletin 727-55A0090, Revision 1, until paragraph (e) of this AD is accomplished.

Follow-On Corrective Actions: Migrated, Cracked, or Broken Hinge Pin

(c) If any migration of the hinge pin or a cracked or broken hinge pin is found during an inspection per paragraph (a) or (b) of this AD, but NO corrosion is found: Before further flight, do all actions in Part 4 of the Work Instructions of Boeing Alert Service Bulletin 727-55A0090, Revision 1, dated September 20, 2001, per paragraph (e) of this AD.

Note 4: Parts 1 and 2 of the Work Instructions of Boeing Alert Service Bulletin 727-55A0090, Revision 1, refer to Figures 4 and 5 of that service bulletin as follow-on corrective actions for certain conditions. Figures 4 and 5 of that service bulletin specify accomplishment of Parts 3 and 4, respectively, of the Work Instructions of that service bulletin.

Follow-On Corrective Actions: Corrosion

(d) If any corrosion of a hinge pin is found during an inspection per paragraph (a) or (b) of this AD: Do paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) If corrosion is found on the inner hinge pin only: Before further flight, do all actions in Part 3 of the Work Instructions of Boeing Alert Service Bulletin 727-55A0090, Revision 1, dated September 20, 2001, per paragraph (e) of this AD.

(2) If corrosion is found on the outer hinge pin: Before further flight, do all actions in Part 4 of the Work Instructions of Boeing Alert Service Bulletin 727-55A0090, Revision 1, dated September 20, 2001, per paragraph (e) of this AD.

Optional Inspections

(e) Accomplishment of detailed visual and magnetic particle inspections for corrosion or cracking including all associated actions (such as removal of outer, inner, or outer AND inner hinge pins, as applicable, and application of corrosion preventative compound or grease), per Part 3 or 4, as applicable, of the Work Instructions of Boeing Alert Service Bulletin 727-55A0090, Revision 1, dated September 20, 2001; AND accomplishment of applicable follow-on actions per paragraphs (e)(1) and (e)(2) of this AD, as applicable; terminates the repetitive inspections required by paragraph (b) of this AD.

(1) If any corrosion or cracking is found, replace the outer, inner, or outer AND inner hinge pins, as applicable, with new or serviceable pins, per Boeing Alert Service Bulletin 727-55A0090, Revision 1, EXCEPT, where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. And,

(2) Repeat the inspections in Part 3 or 4 of the service bulletin, as applicable, at the applicable time specified in the "REPEAT INSPECTIONS" column of the table under paragraph 1.E. "Compliance" of Boeing Alert Service Bulletin 727-55A0090, Revision 1.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraph (e)(1) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 727-55A0090, Revision 1, dated September 20, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on November 15, 2001.

Issued in Renton, Washington, on October 24, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-27214 Filed 10-30-01; 8:45 am]

BILLING CODE 4910-13-U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

Substantial Product Hazard Reports

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendment to interpretative rule.

SUMMARY: Section 15(b) of the Consumer Product Safety Act, requires manufacturers, distributors, and retailers of consumer products to report possible substantial product hazards to the Commission. The Consumer Product Safety Commission publishes a final amendment to its interpretative rule advising manufacturers, distributors, and retailers how to comply with the requirements of section 15(b). The amendment points out that firms that obtain information concerning products manufactured or sold outside of the United States that may be relevant to the existence of potential defects and hazards associated with products distributed within the United States should evaluate that information and, if necessary, report under section 15(b).

EFFECTIVE DATE: This revision is effective November 30, 2001.

FOR FURTHER INFORMATION CONTACT: Marc Schoem, Director, Division of Recalls and Compliance, Consumer Product Safety Commission, Washington. D.C. 20207, telephone—(301) 504-0608, ext. 1365, fax.—(301) 504-0359, E-mail address—*mschoem@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 15(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b) requires manufacturers, distributors, and retailers of consumer products to report possible "substantial product hazards" to the Commission. In 1978, the Commission published in the **Federal Register** "Substantial Product Hazard Reports", 16 CFR 1115, an interpretative rule that set forth the Commission's understanding of this requirement and established procedures for filing such reports and proffering remedial action to the Commission. That rule addresses the types of information a firm should evaluate in considering whether to report. It does not, however, specifically address information about experience with products manufactured or sold outside of the United States. The Commission has always expected that firms would report when they obtained reportable information, no matter where that information comes from. Neither the statute, nor the rule itself, suggests otherwise.

Over the past several years, the Commission has received reports under section 15(b) that included information on experience with products abroad and technical data concerning such products. When appropriate, the Commission has initiated recalls based in whole or in part on that experience. In addition, the Bridgestone/Firestone tire recall of 2000 focused public attention on the possible relevance of information generated abroad to safety issues in the United States. Accordingly, to assure that firms who obtain information generated abroad are aware that they should consider such information in deciding whether to report under section 15(b), on January 3, 2001, the Commission solicited comments in the **Federal Register** on a proposed policy statement. The statement set forth the Commission's position that firms should evaluate and, if appropriate, report to the Commission information concerning products

manufactured or sold outside of the United States that may be relevant to defects and hazards associated with products distributed within the United States

On June 7, 2001, after considering the comments, the Commission published in the **Federal Register** a final policy statement memorializing this position. Simultaneously, the Commission proposed for comment an amendment to codify this policy guidance as part of the Substantial Product Hazard Reports interpretative rule, 16 CFR 1115. The proposed amendment notes in substance that information about product experience, performance, design or manufacture outside the United States may be relevant to products sold or distributed in the United States. It further notes that firms should study and evaluate such information under section 15(b).

Discussion: The Commission received four comments in response to the proposed amendment. One of these commentors, the CPSC Coalition of the National Association of Manufacturers ("NAM"), resubmitted comments that it had presented in response to the Commission's January proposed policy statement. NAM's resubmission contended that the Commission's response to its comments to that proposal did not take the Coalition's concerns into account. However, NAM did not point to any specific inadequacy in the Commission's response, nor did it otherwise elaborate on its contention. The Commission, on the other hand, believes that its response to the NAM comments in the June 7 **Federal Register** notice was more than adequate. The NAM comments largely voiced the same hypothetical concerns that commentors on the original 1977 proposed interpretative rule on reporting raised. As the June 7 **Federal Register** notice points out, the Commission addressed the substance of those comments in the preamble to and text of the final rule in 1978. 43 FR 34988. The Commission believes, therefore, that the NAM comments require no further response.

a. Imputing Knowledge: The three commentors other than NAM expressed concern that the proposed amendment treated information generated abroad in the same manner that the Commission views domestically obtained data. In the commentors' view, the amendment should have, but did not, take into account differences in data-gathering capabilities abroad from those within the United States, as well as perceptions of the significance of data that becomes available. The commentors requested that the final rule or its preamble recognize these differences. These commentors also noted that U.S. subsidiaries of foreign companies are often not in a position to require corporate parents to collect and/or forward safety-related information to those subsidiaries. They further indicated that U.S. subsidiaries will not necessarily be aware of, or be able to obtain, information that other independent subsidiaries of a common foreign parent acquire. Again, the commentors suggested that the Commission recognize in the final rule or its preamble these possible impediments to the acquisition of information.

The issue of obtaining and evaluating information from abroad is pertinent to two aspects of reporting—timely reporting and corrective action. With respect to the first aspect—failing to report in a timely manner or not at all, the Commission believes that the commentors may have misconstrued the intent and scope of the proposed amendment. The Commission recognizes that a number of factors may affect the ability of a firm located in the United States to obtain information from abroad, including limitations on the availability of and access to information. The Commission also appreciates that the nature of corporate business relationships and affiliations may impact the ability of a firm to obtain such information. The Commission further understands that training, experience, and corporate position, and differences in product design, use and operating environment from standard practices in the United States may affect the ability of recipients abroad to appreciate the significance of information that may relate to products to be sold in the United States.

As commentors acknowledged in their written comments and in discussions with the Commission staff, the evaluation of compliance with the reporting obligations requires a case-by-case assessment of relevant facts, including those relating to the considerations identified above. The Consumer Product Safety Act provides the standard for this evaluation. In the context of reporting, section 20, 15 U.S.C. 2069, only permits the assessment of civil penalties against a party who "knowingly" commits a prohibited act by failing to furnish information required by section 15(b). Section 20(d) of the act defines "knowingly" as "* * *" (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations."

The existing interpretative rule also provides guidance, consistent with section 20, on how the Commission will analyze the facts of each case. In its discussion of the imputation of knowledge to a firm, 16 CFR 1115.11 notes that "the Commission will deem a subject firm to know what a reasonable person acting in the circumstances in which the firm finds itself would know." The section goes on to explain that this imputation extends to knowledge that a firm could have obtained, had it exercised due care to ascertain the truth of complaints or other representations or conducted a reasonably expeditious investigation to evaluate the reportability of a death, grievous bodily injury, or other information.

Under section 115.11, the "reasonable person" standard applies to a firm's accountability for failure to obtain information that exists abroad. Considerations, such as those described above that may have affected the firm's ability to obtain or appreciate the significance of such information are certainly relevant to whether a firm acted reasonably in the circumstances. In view of the strictures in the statute and the existing interpretative regulation, the Commission believes that the commentors' fears that the Commission would not take such factors into account when assessing a firm's compliance with the reporting obligations are unfounded.

With respect to the second aspect of reporting—corrective action, as the June 7, 2001 final policy statement points out, information from abroad may be relevant to the core issue of whether some form of remedial action is necessary to protect American consumers from defective products that present a substantial risk of death or injury. The Commission hopes that all of the commentors to the proposed amendment accept that, in evaluating potential hazards, firms should attempt to obtain all reasonably available information, including that from abroad, in a timely manner to assure that they can reach reasoned decisions. Indeed, one of the three commentors expressly stated its agreement with this proposition. The Commission believes that this perspective is appropriate, since the welfare of their domestic customers should be of paramount concern to U.S. companies.

b. Two commentors believed that the proposed amendment differed materially from the final policy statement because, unlike the policy statement, the amendment did not expressly note that firms had to have first obtained information from abroad for the obligation to evaluate the information to arise. The commentors feared that the omission signaled a possibility that, in evaluating a firm's compliance with the reporting requirements, the Commission might hold a firm responsible for not exercising due diligence to search for and obtain information that was available abroad, but that had not come to the firm's attention. The commentors therefore requested that the final amendment expressly state that a firm only needs to review information that it obtains.

The Commission believes that the amendment as proposed implicitly recognized that, in order to have an obligation to study and evaluate information, a firm must first obtain the information, or be reasonably expected to have obtained it because, for example, of the firm's relationship with or access to a firm or individual who possesses it. To alleviate the apparent confusion, however, the Commission has included in the final amendment an express statement that the information that should be evaluated includes information that a firm "has obtained, or reasonably should have obtained in accordance with section 1115.11" relating to product experience, etc. The Commission has not, however, limited this revision to cover only information that a firm has "actually" obtained, as one commentor requested. As is discussed *infra*, both the CPSA and the interpretative rule recognize that a firm need not have actually obtained information for obligations under section 15(b) to arise, if a reasonable person acting in the circumstances in which the firm finds itself would have obtained the information. Accordingly, the Commission believes that these provisions that address the imputation of knowledge to a firm dictate against further limiting the revision to the amendment. Adopting the restriction suggested by the commentor, on the other hand, could encourage firms to avoid seeking reasonably available information that could ultimately support the need for those firms to take corrective action.

c. Recipients of Information: One commentor stated that the rule should reflect that a firm "obtains" information only when an employee of the firm capable of appreciating the significance of the information actually receives it. Section 1115.11 of the interpretative rule already states that " the Commission will deem a firm to have obtained reportable information when the information has been received by an official or employee who may reasonably be expected to be capable of appreciating the significance of the information." Because this provision already addresses the commentor's request, no additional revision to the final amendment is necessary.

d. Products Imported into the United States: Section 3(a)(4) of the CPSA, 15 U.S.C. 2051(a)(4) classifies importers as "manufacturers" under the act, while section 15(b) itself imposes reporting obligations on manufacturers, distributors, and retailers of consumer products. The Commission notes that foreign manufacturers export many products into the United States directly to importers, distributors, and retailers. In these circumstances, the Commission reminds importers, distributors, and retailers that they also have obligations under section 15 to conduct reasonable and diligent investigations, and to evaluate and report information about possible safety defects based on information they obtain or should reasonably obtain, including information from outside the United States. Retailers and distributors should refer to section 1115.13(b) of the interpretative rule for procedures for reporting.

Effective Date: This revision becomes effective 30 days after the date of publication of the revised final interpretative rule in the **Federal Register**.

List of Subjects in 16 CFR Part 1115

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

In accordance with the procedures of 5 U.S.C. 553 and under the authority of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, the Commission amends part 1115 of title 16, Chapter II, of the Code of Federal Regulations as follows:

PART 1115—SUBSTANTIAL PRODUCT HAZARD REPORTS

1. The authority citation for part 1115 continues to read as follows:

Authority: 15 U.S.C. 2061, 2064, 2065, 2066(a), 2068, 2070, 2071, 2073, 2076, 2079 and 2084.

2. Section 1115.12(f) introductory text is revised to read as follows:

§ 1115.12 Information which should be reported; evaluating substantial product hazard.

* * * * *

* * * (f) *Information which should be studied and evaluated.* Paragraphs (f)(1) through (7) of this section are examples of information which a subject firm should study and evaluate in order to determine whether it is obligated to report under section 15(b) of the CPSA. Such information may include information that a firm has obtained, or reasonably should have obtained in accordance with § 1115.11, about product use, experience, performance, design, or manufacture outside the United States that is relevant to products sold or distributed in the United States. All information should be evaluated to determine whether it suggests the existence of a noncompliance, a defect, or an unreasonable risk of serious injury or death:

* * * * *

Dated: October 24, 2001.

Todd Stevenson,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 01–27316 Filed 10–30–01; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

32 CFR Part 326

National Reconnaissance Office; NRO Privacy Act Program

AGENCY: National Reconnaissance Office, DOD.

ACTION: Final rule.

SUMMARY: The National Reconnaissance Office (NRO) is exempting two Privacy Act systems of records. The systems of records are QNRO–10, Inspector General Investigative Records and QNRO–15, Facility Security Files. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the systems of records.

EFFECTIVE DATE: October 16, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The proposed rules were previously published on August 17, 2001, at 66 FR 43138. No comments were received; therefore, the National Reconnaissance Office is adopting the rules as final.

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do

not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR part 326

Privacy.

32 CFR part 326 is amended as follows:

PART 326—[AMENDED]

1. The authority citation for 32 CFR part 326 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 326.17 is amended by adding paragraphs (f) and (g) to read as follows:

§ 326.17 Exemptions.

* * * * *

(f) *QNRO–10, Inspector General Investigative Files*—(1) Exemption: This system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Any portion of this system which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(2) Authority: 5 U.S.C. 552a(j)(2)

(3) Reasons

(i) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede the NRO IG's criminal law enforcement.

(ii) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(iii) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, due to NRO IG's close liaison and working relationships with other Federal, state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity, which may relate to the jurisdiction of other cooperating agencies.

(iv) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(v) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(vi) From subsection (e)(4) (G) through (I) because this system of records is exempt from the access provisions of subsection (d).

(vii) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. (viii) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(ix) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(x) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(4) Exemptions

(i) Investigative material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(5) Authority

5 U.S.C. 552a(k)(2) and (k)(5).

(6) Reasons

(i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(g) QNRO–15, Facility Security Files.

(1) Exemptions

(i) Investigative material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(2) Authority

5 U.S.C. 552a(k)(2) and (k)(5).

(3) Reasons

(i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence;

enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

Dated: October 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27185 Filed 10–30–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is exempting those records contained in N05211–1, Privacy Act Files and Tracking System, and N05720–1, FOIA Request Files and Tracking System, when an exemption has been previously claimed for the records in 'other' systems of records. The exemptions are intended to preserve the exempt status of records when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records.

EFFECTIVE DATE: October 16, 2001.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The proposed rule was published on August 17, 2001, at 66 FR 43141. No comments were received therefore the Navy is adopting the rules as final.

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act". The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 701 Privacy.

32 CFR part 701 is amended as follows;

PART 701—[AMENDED]

1. The authority citation for 32 CFR part 701, Subpart G continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118, is amended by adding paragraphs (v) and (w) as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(v) *System identifier and name:*

(1) N05211–1, Privacy Act Files and Tracking System

(2) Exemption

During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Navy hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) Authority

5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(w) System identifier and name

(1) N05720–1, FOIA Request Files and Tracking System

(2) Exemption

During the processing of a Freedom of Information Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Navy hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) Authority:

5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

* * * * *

Dated: October 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27184 Filed 10–30–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising two existing exemption rules for the Privacy Act systems of records notices F031 AF SP E, Security Forces Management Information System (SFMIS) and F44 AF SG Q, Family Advocacy Program Records.

EFFECTIVE DATE: October 22, 2001.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–0561 or DSN 425–0561.

SUPPLEMENTARY INFORMATION: The proposed rules were published on August 21, 2001, at 66 FR 43820. No comments were received therefore the Department of the Air Force is adopting the rules as final.

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6).

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not

significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

32 CFR part 806b is amended as follows;

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Appendix C to section 806b is amended by revising paragraph a.(3) and paragraph b.(6) to read as follows:

Appendix C to Part 806b—General and Specific Exemptions

a. *General exemptions.** * *

(3) *System identifier and name:* F031 AF SP E, Security Forces Management Information System (SFMIS).

(i) *Exemption:* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reasons:* (A) To protect ongoing investigations and to protect from access criminal investigation information contained in this record system, so as not to jeopardize any subsequent judicial or administrative process taken as a result of information contained in the file.

(B) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(C) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(D) From subsection (d) because access to the records contained in this system would inform the subject of an investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection, and would present a serious impediment to law enforcement.

(E) From subsection (e)(4)(H) because this system of records is exempt from individual access pursuant to subsection (j) of the Privacy Act of 1974.

(F) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(G) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Air Force will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Air Force's Privacy Instruction, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis

b. * * *

(6) *System identifier and name:* F44 AF SG Q, Family Advocacy Program Records.

(i) *Exemption:* (A) Investigative material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3) and (d), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons:* From subsections (c)(3) and (d) because the exemption is needed to encourage those who know of exceptional medical or educational conditions or family maltreatments to come forward by protecting their identities and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accounting, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

* * * * *

Dated: October 23, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27186 Filed 10–30–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–127]

Drawbridge Operation Regulations; SR 84 Bridge, South Fork of the New River, Mile 4.4, Ft. Lauderdale, Broward County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the SR 84 Bridge across the South Fork of the New River, mile 4.4, Ft. Lauderdale, Broward County, Florida. This deviation allows the drawbridge owner or operator to not open the Bridge from October 29, 2001 to November 3, 2001. This temporary deviation is required to allow the bridge owner to safely complete repairs of the Bridge.

DATES: This deviation is effective from October 29, 2001 to November 3, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The SR 84 Bridge across the South Fork of the New River at Ft. Lauderdale, Broward County, Florida is a single leaf bridge with a vertical clearance of 21.0 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 40 feet. On October 2, 2001, the Florida Department of Transportation, the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR 117.315(b) which requires the draw of the SR 84 Bridge, mile 4.4 at Fort Lauderdale, to open on signal if at least 24 hours notice is given. Public vessels of the Unites States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed through the draw as soon as possible. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.315(b) to complete repairs to the drawbridge. Under this deviation, the SR 84 Bridge need not open from October 29, 2001 through November 3, 2001, except in the event of an emergency with 24 hours advance notification.

Dated: October 25, 2001.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 01–27386 Filed 10–30–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Emergency Closures and Adjustments—Kuskokwim River Drainage

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Emergency closures and adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect chinook and chum salmon escapement in the Kuskokwim River drainage. These regulatory adjustments and the closures provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 13, 2001. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2001 regulatory year.

DATES: The fourth Kuskokwim River drainage closure and regulatory adjustment was effective June 17, 2001, through June 19, 2001, for Districts 1 and 2. The fifth Kuskokwim River drainage closure and regulatory adjustment was effective June 24, 2001, through June 26, 2001, for Districts 1 and 2. The sixth Kuskokwim River drainage closure and regulatory adjustment was effective July 1, 2001, through July 10, 2001, for Districts 1 and 2. The seventh Kuskokwim River drainage closure and regulatory adjustment was effective July 11, 2001, through July 31, 2001, for Districts 1 and 2. The eighth Kuskokwim River drainage closure and regulatory adjustment was effective July 27, 2001, through July 31, 2001, for Districts 1 and 2.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2001 fishing seasons, harvest limits, and methods and means were published on February 13, 2001, (66 FR 10142). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These emergency closures (restricted subsistence fishing schedules) and adjustments were necessary because of predictions of extremely weak returns of chinook and chum salmon in the Kuskokwim River drainage. These

emergency actions are authorized and in accordance with 50 CFR 100.19(d) and 36 CFR 242.19(d).

Kuskokwim River Drainage

The Federal Subsistence Board, ADF&G, and subsistence users were very concerned that not enough chinook and chum salmon would be returning to the Kuskokwim River and its tributaries in 2001 to meet both spawning escapement objectives and subsistence needs. Adequate spawning escapement is necessary to assure sustaining the population. Last year, subsistence salmon harvests in the Kuskokwim River were among the lowest in the past 12 years. Returns of chinook and chum salmon have been extremely poor over the last 3 years. The expected low runs and poor spawning escapements in 2001 could jeopardize the viability of future returns. Federal and State biologists anticipated that the 2001 salmon returns would be critically low, and subsistence needs in some areas may not be met.

The BOF met in January 2001 to review the status of salmon returns on the Kuskokwim River and identified Kuskokwim River chinook and chum salmon as stocks of concern. The BOF then took action to establish a salmon rebuilding plan for the Kuskokwim River. In addition, ADF&G indicated that no commercial fishing periods were being considered for June and July for the Kuskokwim River, that they intended to limit the sport fishery to one salmon per person per day, and that they would close the sport fishery for salmon in the entire Kuskokwim River drainage if the runs were weaker than expected. The ADF&G and U.S. Fish & Wildlife Service personnel conducted public meetings, produced information posters, and published news articles to let the local users know about concerns regarding the expected low salmon returns and advise them regarding the restrictions and closures to protect spawning escapement.

On May 10, 2001, in public forum and after hearing testimony, the Federal Subsistence Board adopted the first emergency action closing the chinook and chum salmon fishery on Federal waters in the Kuskokwim River drainage to all users except Federally-qualified subsistence users. That closure was for 60 days (the maximum amount of time allowed under 50 CFR 100.19(d) and 36 CFR 242.19(d)) from June 1, 2001, to July 30, 2001 (66 FR 32750, June 18, 2001). This is the period of the majority of chinook and chum salmon run passage through the river. The effect of that action was to close the sport take for chinook and chum salmon in the Kuskokwim River drainage within the boundaries of the Yukon Delta National Wildlife Refuge, within or adjacent to Denali National Park and Preserve, and within or adjacent to Lake Clark National Park and Preserve and to close subsistence harvest on those same waters by any residents living outside the Kuskokwim Fishery Management Area. Additionally, any chinook or summer chum salmon taken incidentally in another fishery must be released immediately. In other words, if you catch a chinook or chum salmon in Federal waters while fishing for sheefish or pike, you must immediately release it. Although commercial fisheries were closed and ADF&G indicated that an opening in June or July was highly unlikely, this action would prevent any such opening from occurring on Federal waters. Should the runs have come in stronger than expected with spawning escapements and subsistence needs being met, the delegated field manager, as authorized by the Federal Subsistence Board, could have removed this restriction.

On June 1, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the Kuskokwim River Salmon Management Working Group (KRSMWG), initiated a second closure on Federal waters for the period from June 3, 2001, through June 5, 2001, in the Kuskokwim Area District 1 for the subsistence gillnet and fishwheel fisheries (66 FR 33642, June 25, 2001). This reduced the subsistence salmon fishing schedule to four days that week. In Kuskokwim Area District 1, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On June 8, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a third closure on Federal waters for the period from June 10, 2001, through June 12, 2001, in the Kuskokwim Area Districts 1 and 2 for the subsistence gillnet and fishwheel fisheries (66 FR 33642, June 25, 2001). In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On June 14, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a fourth closure on Federal waters for the period from June 17, 2001, through June 19, 2001, in the Kuskokwim Aera Districts 1and 2 for the subsistence gillnet and fishwheel fisheries. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On June 22, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a fifth closure on Federal waters for the period from June 24, 2001, through June 26, 2001, in the Kuskokwim Area Districts 1and 2 for the subsistence gillnet and fishwheel fisheries. This action was necessary due to continued low returns. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On June 28, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a sixth closure (Sunday through Tuesday of each week) on Federal waters for the period from July 1, 2001, through July 10, 2001, in the Kuskokwim Area Districts 1 and 2 for the subsistence gillnet and fishwheel fisheries. This action was necessary due to continued low returns. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On July 10, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a seventh closure (Friday through Tuesday of each week) on Federal waters for the period from July 11, 2001, through July 10, 2001, in the Kuskokwim Area Districts 1and 2 for the subsistence gillnet and fishwheel fisheries. This action was necessary due to continued low returns. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On July 25, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated an eighth action (establishing four days of each week) on Federal waters for the period from July 27, 2001, through July 31, 2001, in the Kuskokwim Area Districts 1and 2 for the subsistence gillnet and fishwheel fisheries. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

These regulatory actions were necessary to assure the continued viability of the chinook and chum salmon runs and provide a long-term subsistence priority during a period of limited harvest opportunity. These closures and adjustments brought the Federal subsistence fishing regulations in line with the similar ADF&G action for unified management and minimized confusion under the dual management system.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these emergency closures are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustment and emergency closures have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as guides and boat, fishing tackle, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustment and emergency closures will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustment and emergency closures have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that the adjustment and emergency closures will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustment and emergency closures meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustment and emergency closures do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply,

distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: October 4, 2001.

Kenneth E. Thompson,

Subsistence Program Leader, USDA-Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 01–27341 Filed 10–30–01; 8:45 am]

BILLING CODE 3410–11–P and 4310–55–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Emergency Closures—Redoubt and Salmon Lakes Drainages

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Emergency closures.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect sockeye salmon escapement in the Redoubt and Salmon Lakes drainages. These regulatory adjustments and the closures provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 13, 2001. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2001 regulatory year.

DATES: This closure was effective July 13, 2001, through August 31, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, part 100 and Title 36, part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2001 fishing seasons, harvest limits, and methods and means were published on February 13, 2001, (66 FR 10142). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These emergency closures were necessary because of predictions of extremely weak returns of sockeye salmon in the Redoubt and Salmon Lakes drainages. These emergency actions are authorized and in accordance with 50 CFR 100.19(d) and 36 CFR 242.19(d).

Redoubt Lake Drainage

Since the projected escapement was well below desirable levels for Redoubt Lake, the system was closed to provide for spawning escapement needs. The total return to July 11, 2001, was 1,089 sockeye. Usually 16% of the run returned to the lake by that time. The projected escapement is 7,571 fish for the 2001 season. This projection represents 21% of the average escapement of 36,000 sockeye during the period 1989–1999

Salmon Lake Drainage

Salmon Lake was closed since returns were low, and to avoid excessive harvest effort for this relatively small sockeye population. Closure of the nearby Redoubt Lake system could displace harvest effort in the Sitka Sound area to Salmon Lake. The total escapement to July 11, 2001, was 320 at Salmon Lake. Past subsistence harvest for Salmon Lake has ranged from zero to 353 sockeye salmon since monitoring began in 1985.

On July 11, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated a sockeye salmon closure in the Redoubt and Salmon Lakes drainages for the period from July 13, 2001, through August 31, 2001. This action was necessary due to low sockeye returns.

This regulatory action was necessary to assure the continued viability of the sockeye salmon runs and provide a long-term subsistence priority during a period of limited harvest opportunity. This closure brought the Federal subsistence fishing regulations in line with the similar ADF&G action for unified management and minimized confusion under the dual management system.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for this emergency closure is impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of this action and pursuant to 5 U.S.C. 553(d) to make this effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276).

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The emergency closure does not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The emergency closure has been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing tackle, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the emergency closure will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the emergency closure has no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the emergency closure will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the emergency closure meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the emergency closure does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this action is not expected to significantly affect energy supply, distribution, or use, it is not a significant energy action and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: October 4, 2001.

Kenneth E. Thompson,

Subsistence Program Leader, USDA-Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 01–27342 Filed 10–30–01; 8:45 am]

BILLING CODE 3410–11–P and 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4176; FRL–7089–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Eighteen Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for eighteen major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 15, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink, (215) 814–2104 or by e-mail at spink.marcia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 20, 1995, April 16, 1996, May 2, 1996, July 2, 1997, July 24, 1998, December 7, 1998, April 9, 1999, and April 20, 1999, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several sources of VOC and/or NO_X. This rulemaking pertains to eighteen of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of plan approvals and operating permits which impose VOC and/or NO_X RACT requirements for each source. These sources are all located in the Philadelphia area and include: Amerada Hess Corp.; Amoco Oil Company; Cartex Corporation; Exxon Company, USA; GATX Terminals Corporation; Hatfield Quality Meats, Incorporated; J. L. Clark, Incorporated; Johnson Matthey, Incorporated; Kurz Hastings, Incorporated; Lawrence McFadden Company; Philddelphia Baking Company; Philadelphia Gas Works; PPG Industries, Incorporated; SmithKline Beecham Pharmaceuticals; Teva Pharmaceuticals, USA; The Philadelphian Condominium Building; Warner Company; and Webcraft Technologies, Incorporated.

On August 20, 2001, EPA published a direct final rule (66 FR 43502) and a companion notice of proposed rulemaking (66 FR 43551) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 26, 2001, (66 FR 49107), we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 20, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 43551). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 20, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on August 20, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by-case RACT determinations by the DEP. Rather, EPA stated that "* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by-case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour "are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States" [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by-case RACT submissions, EPA has not demonstrated that these large boilers are subject to "numeric emission limitations" under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-

examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options" (September 1993) and "Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options" (July 1994). The categories referenced by PennFuture are not VOC *categories* for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the "automatic" selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish "bright line" or "cook-book" approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions," March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to "all source categories." PennFuture notes that EPA later objected to the $1500 per ton methodology as "not generically acceptable to EPA" [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a "dollar per ton threshold" is "inconsistent with the definition of RACT" [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other "bright line" approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly

indicates that the Commonwealth's document, "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions." March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55 %) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton "Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an "automatic" rejection of a control technology as RACT for a source."

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition to* any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to

the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that "Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT." [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

G. Comment: PennFuture submitted comments specific to the case-by-case RACT determinations for two sources located in the Philadelphia area, namely for Kurz-Hastings, and GATX Terminals Corporation.

(1) Kurz-Hastings—PennFuture comments that the Kurz-Hastings plant is the second-highest VOC emitter in Philadelphia with the potential to emit 3400 tons per year of VOCs. PennFuture's comment recognizes that Kurz-Hastings' VOC-emitting processes (several printing machines) are subject to SIP-approved category RACT regulations and do not require a case-by-case RACT evaluation. PennFuture asserts, however, that Kurz-Hastings' own data show that annual emissions from these units are still one-third or more of its potential to emit, suggesting that VOC controls on these units are only modestly effective. PennFuture also comments that the case-by-case RACT evaluation of Kurz-Hastings' mixing room operations, rejects control technologies that are up to 99% effective in favor of minimal work-practice efforts. Therefore, PennFuture comments that the RACT determination for Kurz-Hastings merits close review by EPA to determine whether RACT requires a more effective control strategy for VOCs, and as at other plants, EPA must not approve this RACT proposal without conducting a thorough evaluation of available control technology.

Response: EPA disagrees with PennFuture's comments. The comment regarding the RACT requirements applicable to the printing machines at Kurz-Hastings are outside the scope of this rulemaking. Those printing machines are subject to a SIP-approved source category VOC RACT regulation adopted by the Commonwealth pursuant to the Graphic Arts CTG. The fact that compliance with that applicable regulation achieves an approximate 66 percent annual reduction in VOCs from Kurz-Hastings' printing machines does not require that a different or more stringent RACT be explored and imposed on this facility. With regard to fugitive emissions from the mixing room and clean-up operations, the work practice standards imposed on Kurz-Hastings for its mixing room and clean-up operations are consistent with RACT determinations routinely made and approved for such fugitive emission sources at graphic arts facilities. EPA's review of the SIP revision submitted for Kurz-Hastings indicates that the applicable SIP-approved definitions, provisions and procedures have been followed in imposing RACT for this facility.

(2) GATX Terminals Corporation—Citing Philadelphia Air Management Service (AMS) documents, PennFuture notes that GATX has the potential to emit 12,867 tons per year of VOC as a Bulk Terminal facility, and that its marine vessel loading unit has a potential to emit 3,520 tons of VOC per year. PennFuture then comments that the Philadelphia AMS's RACT review memorandum notes that a permit restriction limits emissions from this marine vessel loading operation to 59 tons per year in place of an add-on VOC control device. PennFuture goes on to note that, EPA promulgated a National Emission Standard for Marine Tank Vessel Loading Operations in 1995, which specifically established RACT for such sources at 40 CFR Part 63, Subpart Y. PennFuture notes that the RACT evaluation submitted by GATX to AMS in 1994 noted the pendency of this rule, which requires capture of VOCs and routing for combustion or recovery at an efficiency of up to 98 percent (RACT Proposal for a Marine Tank Vessel Loading Terminal Facility, prepared for GATX Terminals Corporation by Versar, Inc., July 14, 1994, p. 12). PennFuture comments that AMS either overlooked this reference or chose not to require as RACT a highly effective control technology that, according to the GATX consultant, was "technically viable" at this plant. PennFuture, therefore, asserts that since EPA has promulgated a regulation specifically designating RACT for sources such as the GATX marine vessel loading operation, EPA must not approve a RACT proposal for this operation unless it includes the application of technology required by EPA in its regulation at 40 CFR, Part 63, Subpart Y.

Response: EPA disagrees with PennFuture's comments regarding the marine vessel loading operation at GATX. The federal regulations cited by PennFuture were promulgated at 40 CFR, Part 63, Subpart Y on September 19, 1995 (61 FR 48399) more than 3 months after the compliance date imposed in Act for major sources of VOC subject to non-CTG RACT. Moreover, the compliance date promulgated for the RACT standards of Subpart Y for sources such as GATX was two years beyond after the regulation's effective date. Most relevantly, the 59 ton per year annual limit imposed by AMS (and submitted by DEP on its behalf as a SIP revision) on GATX's marine vessel loading operation represents a 98.3 percent reduction in VOC emissions from the operation's 3,520 tons per year potential to emit which is at least as stringent as the requirements of 40 CFR Part 63, Subpart Y. Moreover, GATX's RACT plan approval (PA–51–5003) requires the compliance with the 59 ton per year annual limit by the date imposed in Act for major sources of VOC subject to non-CTG RACT. Environmentally, there is no additional benefit that would result in disapproving the case-by-case RACT SIP submittal for GATX's marine vessel loading operation. Approval of the case-by-case RACT SIP revision for GATX in no way relieves the source from any otherwise applicable Maximum Available Control Technology (MACT) requirements of 40 CFR Part 63, Subpart Y.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for 18 major sources located in the Philadelphia area. EPA is approving Pennsylvania's RACT SIP submittals because the AMS and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The AMS and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for eighteen (18) named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and/or NO_X RACT for eighteen sources located in the Philadelphia area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(156) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(156) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and NO_X RACT determinations for sources located in the Philadelphia area submitted by the Pennsylvania Department of Environmental Protection on September 20, 1995, April 16, 1996, May 2, 1996, July 2, 1997, July 24, 1998, December 7, 1998, April 9, 1999, and April 20, 1999.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals and operating permits on September 20, 1995, April 16, 1996, May 2, 1996, July 2, 1997, July 24, 1998, December 7, 1998, April 9, 1999, and April 20, 1999.

(B) Plan approvals (PA), Operating permits (OP) issued to the following sources:

(*1*) Amerada Hess Corp., PA–51–5009, for PLID 5009, effective May 29, 1995.

(*2*) Amoco Oil Company, PA–51–5011, for PLID 5011, effective May 29, 1995.

(*3*) Cartex Corporation, OP–09–0076, effective April 9, 1999, except for the expiration date.

(*4*) Exxon Company, U.S.A., PA–51–5008, for PLID 5008, effective May 29, 1995.

(*5*) GATX Terminals Corporation, PA–51–5003, for PLID 5003, effective May 29, 1995.

(*6*) Hatfield, Inc., OP–46–0013A, effective January 9, 1997 (as revised

October 1, 1998), except for the expiration date.

(7) J. L. Clark, Inc., OP–36–02009, effective April 16, 1999, except for the expiration date.

(8) Johnson Matthey, Inc., OP–15–0027, effective August 3, 1998 (as revised April 15, 1999), except for the expiration date.

(9) Kurz Hastings, Inc., PA–51–1585, for PLID 1585, effective May 29, 1995.

(10) Lawrence McFadden, Inc., PA–51–2074, for PLID 2074, effective June 11, 1997.

(11) Philadelphia Baking Company, PA–51–3048, for PLID 3048, effective April 10, 1995.

(12) Philadelphia Gas Works, PA–51–4921, for PLID 4921, effective May 29, 1995.

(13) PPG Industries, Inc., OP–23–0005, effective June 4, 1997, except for the expiration date.

(14) SmithKline Beecham Pharmaceuticals, OP–46–0035, effective March 27, 1997 (as revised October 20, 1998), except for the expiration date.

(15) Teva Pharmaceuticals USA, OP–09–0010, effective April 9, 1999, except for the expiration date.

(16) The Philadelphian Condominium Building, PA–51–6512, for PLID 6512, effective May 29, 1995.

(17) Warner Company, OP–15–0001, effective July 17, 1995 except for the expiration date.

(18) Webcraft Technologies, Inc., OP–09–0009, effective April 18, 1996 (as revised October 15, 1998), except for the expiration date.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(156)(i)(B) of this section.

[FR Doc. 01–26766 Filed 10–30–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4186; FRL–7089–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for 14 Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for fourteen major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO_X). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on November 15, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink, (215) 814–2104 or by e-mail at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 1995, March 21, 1996, January 21, 1997, July 24, 1998, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001; PADEP submitted revisions to the Pennsylvania SIP to establish and impose RACT for several major sources of VOC and/or NO_X. This rulemaking pertains to fourteen of those sources. The remaining sources are or have been the subject of separate rulemakings. These sources are all located in the Philadelphia area and include: Perkasie Industries; Quaker Chemical Corporation; Rohm and Haas—Bucks County Plant; Rohm and Haas—Philadelphia Plant; SBF Communications Graphics; Schlosser Steel, Inc.; SEPTA's Berridge/Courtland Maintenance Shop; Smith-Edwards-Dunlap Company; Southwest Water Pollution Control Plant/Biosolids Recycling Center; Stroehman Bakeries, Inc.; Sunoco, Inc. (R&M) Refinery; Tasty Baking Company; Transcontinental Gas Pipeline Corp.—Compressor Station #200; and Worthington Steel Company.

On September 6, 2001 (66 FR 46525), EPA published a direct final rule and a companion notice of proposed rulemaking (66 FR 46573) to approve these SIP revisions. On October 9, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On October 10, 2001, EPA signed a withdrawal notice for timely publication in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our September 6, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 46573). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the September 6, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

On October 9, 2001, the Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on September 6, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas*, 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list each of subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that "* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either: (1) The case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour "are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States" [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to "numeric emission limitations" under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories. PennFuture contends that the case-by-case approach for establishing and approving RACT is unacceptable under a statutory scheme that specifically requires category-wide RACT regulations for sources covered by CTGs. PennFuture's comment cites to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir.)(Cincinnati ozone redesignation and RACT). EPA should reject any proposed case-by-case VOC RACT for a source in a category for which there is a CTG but no Pennsylvania RACT regulation.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options" (September 1993) and "Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options" (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the *categories* to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account. EPA disagrees with the commenter's citing to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir. Sept. 11, 2001) (Cincinnati ozone redesignation and RACT) as indicative of his contentions regarding states' obligations to adopt category-wide RACT regulations for sources covered by CTGs. The opinion rendered in the cited case neither requires states to adopt category-wide RACT regulations for sources covered by CTGs, nor does it preclude states from exercising their option to impose RACT for CTG-subject sources, on a case-by-case basis. Rather, it speaks only to the Act's requirement that states must implement RACT for CTG-subject sources in ozone nonattainment areas; and not to any specific regulatory construct by which they must do so. Pennsylvania has implemented RACT for all CTG-subject sources in the Philadelphia area, and, EPA has approved all such RACT determinations as revisions to the Pennsylvania SIP. As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the "automatic" selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish "bright line" or "cook-book" approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions," March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to "all source categories." PennFuture notes that EPA later objected to the $1500 per ton methodology as "not generically acceptable to EPA" [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a "dollar per ton threshold" is "inconsistent with the definition of RACT" [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other "bright line" approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions." March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton "Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an "automatic" rejection of a control technology as RACT for a source."

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all

such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition to* any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that "Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT." [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for fourteen major of sources located in the Philadelphia area. EPA is approving these SIP submittals because the Philadelphia AMS and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The AMS and PADEP have also imposed record keeping, monitoring, and/or testing requirements sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **Note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for fourteen named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and NO_X RACT for fourteen major sources located in the Philadelphia area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(169) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(169) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and/or NO_X RACT for 14 sources located in the Philadelphia-Wilmington-Trenton area, submitted by the Pennsylvania Department of Environmental Protection on December 8, 1995, March 21, 1996, January 21, 1997, July 24, 1998, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals, operating permits, or compliance permits on December 8, 1995, March 21, 1996, January 21, 1997, July 24, 1998, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001.

(B) Plan approvals (PA), or Operating permits (OP) issued to the following sources:

(*1*) Stroehmann Bakeries, Inc., PA–46–0003, effective on May 4, 1995, except for the expiration date.

(*2*) Schlosser Steel, Inc., OP–46–0051, effective February 1, 1996, except for the expiration date.

(*3*) Perkasie Industries Corporation, OP–09–0011, effective August 14, 1996, except for the expiration date.

(*4*) Quaker Chemical Corporation, OP–46–0071, effective September 26, 1996, except for the expiration date.

(*5*) Worthington Steel Company, OP–15–0016, effective July 23, 1996, except for the expiration date.

(*6*) Transcontinental Gas Pipeline Corp., PA–15–0017, effective June 5, 1995, except for the expiration date.

(*7*) Rohm and Haas Company, Bucks County Plant, OP–09–0015, effective April 20, 1999, except for the expiration date.

(*8*) SEPTA—Berridge/Courtland Maintenance Shop, PA–51–4172, effective July 27, 1999, except for condition 2.C. and condition 5.

(*9*) Southwest Water Pollution Control Plant/Biosolids Recycling Center, PA–51–9515, effective July 27, 1999, except for condition 1.A.(1), condition 1.A.(2), condition 2.A., condition 2.B., and condition 7.

(*10*) Rohm and Haas Company, Philadelphia Plant, PA–51–1531, effective July 27, 1999, except for condition 7.

(*11*) Sunoco, Inc. (R&M), PA–1501/1517, for Plant ID: 1501 and 1517, effective August 1, 2000, except for conditions 1.A.(4) as it pertains to H–600, H–601, H–602, H–1 and H–3 heaters; 1.A. (7)–(10); 1.A. (12) as it pertains to HTR 1H4; 1.A. (13) as it pertains to HTR PH2 and HTR PH7; 1.A. (15) as it pertains to HTR 11H2; 1.A. (16); 1.A. (18) as it pertains to HTR 2H1, HTR 2H6, and HTR 2H8; 1.A. (19); 1.A. (21); 1.A.(22); 2.B. as it pertains to Gas Oil HDS Unit 866: HTR 12H1; 2.E.; 2.L.; and condition 6.

(*12*) SBF Communication Graphics, PA–2197, for Plant ID: 2197, effective July 21, 2000.

(*13*) Smith-Edwards-Dunlap, Company, PA–2255, for Plant ID: 2255, effective July 14, 2000.

(*14*) Tasty Baking Co., PA–2054, for Plant ID: 2054, effective April 9, 1995.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the sources listed in paragraph (c)(169)(i)(B) of this section.

[FR Doc. 01–26760 Filed 10–30–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4182; FRL–7089–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Nine Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection

(PADEP) to establish and require reasonably available control technology (RACT) for 9 major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO_X). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on November 15, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink (215) 814–2104 or by e-mail at spink.marcia.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 16, 1996, June 10, 1996, November 4, 1997, December 31, 1997, March 24, 1998, March 23, 2001, and August 8, 2001, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several sources of VOC and/or NO_X. This rulemaking pertains to the 9 of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of plan approvals and operating permits which impose VOC and/or NO_X RACT requirements for each source. These sources are all located in the Philadelphia area and include: Jefferson Smurfit Corporation and Container Corporation of America; Maritank Philadelphia, Inc.; Moyer Packing Company; PECO Energy Company; Exelon Generation Company—Schuylkill Generating Station; Exelon Generation Company—Delaware Generating Station; Philadelphia Gas Works, Richmond Plant; SPS Technologies; and Tullytown Resource Recovery Facility (Waste Management of PA, Inc.).

On August 31, 2001, EPA published a direct final rule (66 FR 45928) and a companion notice of proposed rulemaking (66 FR 45953) to approve these SIP revisions. On October 1, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On October 11, 2001, we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 31, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 45953). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 31, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

On October 1, 2001, the Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on August 31, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum (Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list each of subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that "* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by the Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour "are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States" [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to "numeric emission limitations" under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for

these and 14 other unnamed VOC source categories. PennFuture's comment cites to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir.)(Cincinnati ozone redesignation and RACT). EPA should reject any proposed case-by-case VOC RACT for a source in a category for which there is a CTG but no Pennsylvania RACT regulation.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options" (September 1993) and "Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options" (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account. EPA disagrees with the commenter's citing to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir. Sept. 11, 2001) (Cincinnati ozone redesignation and RACT) as indicative of his contentions regarding states' obligations to adopt category-wide RACT regulations for sources covered by CTGs. The opinion rendered in the cited case neither requires states to adopt category-wide RACT regulations for sources covered by CTGs, nor does it preclude states from exercising their option to impose RACT for CTG-subject sources, on July 2, 1997, November 4, 1997, July 24 1998, October 2, 1998, March 3, 1999, April 9, 1999, and April 20, 1999, on a case-by-case basis. Rather, it speaks only to the Act's requirement that states must implement RACT for CTG-subject sources in ozone nonattainment areas; and not to any specific regulatory construct by which they must do so. Pennsylvania has implemented RACT for all CTG-subject sources in the Philadelphia area, and, EPA has approved all such RACT determinations as revisions to the Pennsylvania SIP. As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the "automatic" selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish "bright line" or "cook-book" approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions," March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to "all source categories." PennFuture notes that EPA later objected to the $1500 per ton methodology as "not generically acceptable to EPA" [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a "dollar per ton threshold" is "inconsistent with the definition of RACT" [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other "bright line" approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, "Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions." March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton "Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an 'automatic' rejection of a control technology as RACT for a source."

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is

no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that "Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT." [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for nine major of sources located in the Philadelphia area. EPA is approving these RACT SIP submittals because the Philadelphia Air Management Services (AMS) and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The AMS and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for nine named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and/or NO_X RACT for nine sources located in the Philadelphia area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(184) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(184) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and NO_X RACT, for sources located in the Philadelphia area submitted by the Pennsylvania Department of Environmental Protection on April 16, 1996, June 10, 1996, November 4, 1997, December 31, 1997, March 24, 1998, March 23, 2001, and August 8, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals and operating permits on April 16, 1996, June 10, 1996, November 4, 1997, December 31, 1997, March 24, 1998, March 23, 2001, and August 8, 2001.

(B) Plan approvals (PA), or Operating Permits (OP) issued to the following sources:

(*1*) Jefferson Smurfit Corporation and Container Corporation of America, PA–51–1566, for PLID 1566, effective April 10, 1995.

(*2*) Maritank Philadelphia, Inc., PA–51–5013, for PLID 5013, effective December 28, 1995.

(*3*) Moyer Packing Company, OP–46–0001, effective March 15, 1996, except for the expiration date.

(*4*) Tullytown Resource Recovery Facility (Waste Management of PA, Inc.), OP–09–0024, effective July 14, 1997, except for the expiration date.

(*5*) SPS Technologies, OP–46–0032, effective October 30, 1997, except for the expiration date.

(*6*) PECO Energy Company, OP–09–0077, effective December 19, 1997, except for the expiration date.

(*7*) Philadelphia Gas Works, Richmond Plant, PA–51–4922, effective July 27, 1999, except for condition 1.A. 10–17, inclusive, condition 2.E., 2.F., 2.G., and condition 8.

(*8*) Exelon Generation Company-Delaware Generating Station, PA–51–4901, effective July 11, 2001.

(*9*) Exelon Generation Company-Schuylkill Generating Station, PA–51–4904, effective July 11, 2001.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(184) (i)(B) of this section.

[FR Doc. 01–26765 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[KY–T5–2001–02; FRL–7095–1]

Clean Air Act Final Full Approval of Operating Permit Program; KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: EPA is promulgating full approval of the operating permit program of the Kentucky Department of Environmental Protection. This program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. On November 14, 1995, EPA granted interim approval to the Kentucky title V operating permit program. This agency revised its program to satisfy the conditions of the interim approval, and EPA proposed full approval in the **Federal Register** on September 12, 2001. EPA did not receive any comments on the proposed action, so this action promulgates final full approval of the Kentucky operating permit program.

EFFECTIVE DATE: November 30, 2001.

ADDRESSES: Copies of the Kentucky submittal and other supporting documentation used in developing the final full approval are available for inspection during normal business hours at EPA, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Interested persons wanting to examine these documents, which are contained in EPA docket number KY–T5–2001–01, should make an appointment at least 48 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Pierce, EPA Region 4, at (404) 562–9124 or *pierce.kim@epa.gov/*.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
Why is EPA taking this action?
What is involved in this final action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the title V operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under the title V program include: "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds (VOCs), carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "serious," major sources include those with the potential of emitting 50 tons per year or more of VOCs or NO_X.

Why Is EPA Taking This Action?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the

implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct the deficiencies. Because the Kentucky program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to this program in a rulemaking (60 FR 57186) published on November 14, 1995. The interim approval notice described the conditions that had to be met in order for the Kentucky program to receive full approval. Interim approval of this program expires on December 1, 2001.

What Is Involved in This Final Action?

The Kentucky Department of Environmental Protection has fulfilled the conditions of the interim approval granted on November 14, 1995. On September 12, 2001, EPA published a notice in the **Federal Register** (see 66 FR 47428) proposing full approval of the Kentucky title V operating permit program, and proposing approval of other program revisions. Since EPA did not receive any comments on the proposal, this action promulgates final full approval of the Kentucky program and final approval of the other program changes described in the proposal.

Administrative Requirements

A. Docket

Copies of the Kentucky submittal and other supporting documentation used in developing the final full approval are contained in docket files maintained at the EPA Region 4 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. The docket files are available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

This rule does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the CAA.

E. Executive Order 13175

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000).

F. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because operating permit program approvals under section 502 of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In reviewing operating permit programs, EPA's role is to approve state choices, provided that they meet the criteria of the CAA and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the state to use VCS, EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of NTTAA do not apply.

J. Paperwork Reduction Act

This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

K. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 22, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For reasons set out in the preamble, Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix A to part 70 is amended by revising the entry for Kentucky to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Kentucky

(a)(1) Kentucky Natural Resources and Environmental Protection Cabinet: Submitted on December 27, 1993, and supplemented on November 15, 1994, April 14, 1995, May 3, 1995, and May 22, 1995; interim approval expires on December 1, 2001.

(2) Revision submitted on February 13, 2001. Rule revisions contained in the February 13, 2001 submittal adequately addressed the conditions of the interim approval which expires on December 1, 2001. The Commonwealth is hereby granted final full approval effective on November 30, 2001.

(b)(1) Air Pollution Control District of Jefferson County: submitted on February 1, 1994, and supplemented on November 15, 1994, May 3, 1995, July 14, 1995, and February 16, 1996; full approval effective on April 22, 1996.

(2) [Reserved]

* * * * *

[FR Doc. 01–27362 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7095–8]

RIN 2060–AJ76

Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption for Motorcycles

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This rule exempts motorcycles with emission control devices that could be affected by the use of leaded gasoline from having to be equipped with gasoline tank filler inlet restrictors. As before, motorcycles and other motor vehicles without such emission control devices are not required to be equipped with gasoline tank filler inlet restrictors.

The Clean Air Act and corresponding EPA regulations prohibit gasoline containing lead or lead additives (leaded gasoline) as a motor vehicle fuel after December 31, 1995. As a deterrent to misfueling prior to that date, the EPA regulations required filler inlet restrictors on motor vehicles equipped with an emission control device that could be affected by the use of leaded gasoline, such as a catalytic converter. EPA retained that provision after 1995 because the filler inlet restrictor, besides being a deterrent to misfueling, has also been incorporated into the design of some vapor recovery gasoline nozzle spouts. Gasoline tank filler inlet restrictors do not work well with most motorcycle fuel tanks, especially the saddle type of tank, because of their shallow depth. A gasoline tank filler inlet restrictor may cause gasoline spitback or spillage when a motorcycle is refueled, which increases evaporative emissions. Today there is relatively little risk of misfueling a motorcycle. Also, it is unlikely that a gasoline tank filler inlet restrictor on a motorcycle helps to control gasoline vapors when the motorcycle is refueled.

DATES: This action will be effective December 31, 2001, unless the Agency receives adverse or critical comments or a request for a public hearing by November 30, 2001. If the Agency receives adverse or critical comments, EPA will publish in the **Federal Register** a timely withdrawal of this direct final rule informing the public that this rule will not take effect.

ADDRESSES: Any person wishing to submit comments should submit them (in duplicate, if possible) to the docket listed below, with a copy forwarded to Richard Babst, U.S. Environmental Protection Agency, Transportation and Regional Programs Division, 1200 Pennsylvania Avenue, N.W., (Mail Code: 6406J), Washington, D.C. 20460.

Public Docket: Materials relevant to this rule are available for inspection in public docket A–2001–17 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7548, between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473 facsimile: (202) 565–2085, e-mail address: babst.richard@epa.gov

SUPPLEMENTARY INFORMATION

Regulated Entities

Entities potentially affected by this rule are manufacturers of motorcycles. Regulated categories include:

Category	Examples of regulated entities
Industry	Manufacturers of motorcycles

To determine whether you are affected by this rule, you should carefully examine the requirements in § 80.24(b) of title 40 of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. History of Fuel Tank Filler Restrictor

Prior to 1996, 40 CFR 80.24(b) contained size specifications for the gasoline tank filler inlet of motor vehicles equipped with an emission control device that would be significantly impaired by the use of leaded gasoline. The purpose of the tank filler inlet restriction was to allow the insertion of an unleaded gasoline pump nozzle, but not a leaded gasoline pump nozzle. Specifically, § 80.24(b) required that a manufacturer of motor vehicles "equipped with an emission control device which the Administrator has determined will be significantly impaired by the use of leaded gasoline" shall "[m]anufacture such vehicle with each gasoline tank filler inlet having a restriction which prevents the insertion of a nozzle with a spout as described in § 80.22(f)(1) and allows the insertion of a nozzle with a spout as described in § 80.22(f)(2)." Section 80.22(f)(1) specified that "[e]ach pump from which leaded gasoline is introduced into motor vehicles shall be equipped with a nozzle spout having a terminal end with an outside diameter of not less than 0.930 inch (2.363 centimeters)." Section 80.22(f)(2) specified that "[e]ach pump from which unleaded gasoline is introduced into motor vehicles shall be equipped with a nozzle spout which meets the following specifications: (i) The outside diameter of the terminal end shall not be greater than 0.840 inch (2.134 centimeters); (ii) * * *"

Section 80.24(b) contained additional specifications to prevent misfueling of motor vehicles with leaded gasoline. Section 80.24(b)(1) required that the filler inlet restrictor "pool" gasoline at the restrictor's opening, if fueling is attempted when the spout of a pump nozzle is not inserted into the restrictor opening. Historically, this had been accomplished by a spring-loaded door on the inside of the restrictor opening, which would be pushed open by inserting the spout of an unleaded gasoline nozzle. Since leaded gasoline nozzle spouts were larger than the inlet restrictor opening, they did not fit into the restrictor opening or push open the spring loaded door. Fueling with leaded gasoline would require the nozzle spout to be positioned in front of the restrictor opening and spring-loaded door. If fueling were attempted in this manner, the gasoline would pool at the restrictor opening and cause the nozzle's automatic shut-off device to activate. The related § 80.24(b)(2) exempted motorcycle manufacturers from meeting the "pooling" requirements of § 80.24(b)(1).

Section 211(n) of the Clean Air Act, 42 U.S.C. 7545(n), prohibits the introduction of gasoline containing lead or lead additives into commerce for use as a motor vehicle fuel after December 31, 1995. For consistency with this Clean Air Act prohibition, we published in the **Federal Register** on February 2, 1996 a direct final rule and associated notice of proposed rulemaking revising our regulations (61 FR 3832 and 61 FR 3894, respectively). The direct final rule became effective on March 4, 1996 except for language associated with § 80.24(b). We withdrew language for that paragraph from the direct final rule on March 4, 1996 (61 FR 8221) due to adverse comment, and subsequently published revised language in the **Federal Register** on June 6, 1996 (61 FR 28763).

In the February 2, 1996 direct final rule and associated notice of proposed rulemaking, we removed various portions of § 80.24, including the introductory text, and modified § 80.24(b) to make the size requirements of the tank filler inlet applicable to all new motor vehicles, and not just to those equipped with an emission control device that would be significantly impaired by the use of leaded gasoline. We reasoned that retaining the requirement for the tank filler inlet restrictor would conform with the statutory ban prohibiting the use of gasoline containing lead or lead additives as a motor vehicle fuel. The restrictor requirements for motor vehicles would match the nozzle size requirement for dispensing unleaded gasoline, which we had retained in § 80.22(f)(2). Further, General Motors and several gasoline pump nozzle manufacturers had requested that the specification for the tank filler inlet size be retained so that automobile equipment would continue to be compatible with Stage II vapor recovery pump nozzles. We simplified the applicability language of § 80.24(b) to refer to all motor vehicles, instead of motor vehicles equipped with an emission control device that would be significantly impaired by the use of leaded gasoline, because we thought that all motor vehicles were manufactured with tank filler inlet restrictors at that time. We did not intend to broaden the applicability of § 80.24(b).

In the February 2, 1996 direct final rule and associated notice of proposed rulemaking, we also removed §§ 80.24(b)(1) and 80.24(b)(2). We believed misfueling would be unlikely, making the § 80.24(b)(1) "pooling" safeguard against misfueling unnecessary. Once we removed § 80.24(b)(1), it was appropriate for us to remove § 80.24(b)(2) as well, since § 80.24(b)(2) exempted motorcycle manufacturers from the requirements of § 80.24(b)(1).

We received an adverse comment from Harley Davidson, Inc. (Harley) on the revised language of 40 CFR 80.24(b) in the February 2, 1996 direct final rule and proposed rule.[1] In its comment, Harley stated that motorcycles generally do not use emission control devices that would be significantly impaired by the use of leaded gasoline (e.g., catalytic converters) and are therefore not manufactured with tank filler inlet restrictors matching the requirements of the existing § 80.24(b). The February 2, 1996 direct final rule and associated notice of proposed rulemaking would have required these motorcycles to meet the fuel inlet size requirements of 40 CFR § 80.24(b), thereby causing additional economic burden and manufacturing complexity for Harley. We did not intend or foresee that we would be expanding the applicability of § 80.24(b) by the revised applicability language. Because of this adverse comment, we withdrew paragraph 40 CFR 80.24(b) from the direct final rule, and published it in the June 6, 1996 final rule with its previous applicability.

II. Why Are We Exempting Motorcycles?

There are few, if any, offsetting environmental benefits to support the continued use of gasoline tank filler inlet restrictors in motorcycles equipped with emission control devices that would be significantly impaired by the use of leaded gasoline. Today there is relatively little risk of misfueling a motorcycle. Gasoline tank filler inlet restrictors were originally required to prevent motor vehicles with an emission control device, such as a catalytic converter, from using leaded gasoline. Leaded gasoline can damage catalytic converters and certain other emission control devices. Significantly, leaded gasoline has now been banned from use in all motor vehicles for over five years and is generally no longer available for sale at gasoline filling stations. Also, it is unlikely that a gasoline tank filler inlet restrictor on a motorcycle helps to control gasoline vapors when the motorcycle is refueled. Although a vapor recovery gasoline nozzle, in conjunction with the gasoline tank filler inlet restrictor, helps to control gasoline vapors and emissions when used to refuel most motor vehicles, they are relatively ineffective when used to refuel motorcycles.

During refueling of a car or truck, the fuel nozzle spout is inserted into the fill tube and through the filler neck restrictor plate. The fuel nozzle automatically stops the flow of gasoline when it senses a sufficiently high level of gasoline vapors below the restrictor plate, which indicates the fuel tank is full. We understand that, beginning with the introduction of Stage I vapor recovery fueling systems in the early 1990s and continuing with current Stage II vapor recovery systems, the fuel tank inlet restrictor of a car or truck has been used as a guide, a seat and a pressure contact point for some vapor recovery gasoline nozzle spouts.

For some vapor recovery fueling systems, the restrictor plate lines up the nozzle and helps concentrate the fugitive emissions for collection. Without the restrictor plate, more fugitive emissions would be released. The "balance" type of vapor recovery system uses a boot to seal around the outside of the tank filler inlet tube. While this system does not require the restrictor plate to help capture fugitive emissions, it requires the restrictor plate to push against in order to activate an interlock. An "emission" or "efficiency" control vapor recovery device does not need the restrictor plate to control fugitive emissions. This device consists of a cup, which has an outside diameter the same as the inside diameter of the fill hole, that is clipped to the spout. A similar type of vapor recovery system, the Marconi system, does not need the restrictor plate or the plastic cup.[2]

Most on-board vapor recovery systems, which are required for light-duty vehicles and light-duty trucks but not for motorcycles, are also designed around the restrictor plate. A seal is needed between the pump nozzle and the tank filler inlet tube to prevent fugitive emissions from escaping. This seal is normally located below the restrictor plate, and uses the restrictor plate to line-up the nozzle with the seal. Fugitive emissions below the seal are then diverted to a canister in the vehicle.[3]

We understand that gasoline tank filler inlet restrictors do not work well with most motorcycle fuel tanks, especially the saddle type of tank, because of their shallow depth. The use of gasoline tank inlet restrictors in motorcycles may in fact contribute to unnecessary releases of gasoline vapors and emissions. Unlike a car or truck, motorcycles are typically fueled while the operator observes the tank fuel level, similar to filling a small gasoline container typically used to refuel lawnmowers and other small gasoline powered equipment. However, the restrictor plate obstructs the view of the fuel level, and could contribute to inadvertent fuel overfill and spillage. If fueling with the "balance" type of vapor recovery nozzle, motorcycle operators generally pull back and hold the rubber boot to activate the interlock and allow for better visibility, but that defeats the vapor recovery system.[4] Further, the filler inlet restrictor may cause the nozzle spout to be inserted deeper into the motorcycle tank than otherwise would be necessary, potentially causing increased splash back from the shallow tank. Besides causing excess gasoline vapors and spitback through the restrictor plate openings, this splashback could cause the pump nozzle to prematurely stop the flow of gasoline. The operator may have to reactivate the pump nozzle, possible several times, before the tank is full.

These problems were not much of an issue in the 1995 and earlier time frame, because only relatively few motorcycles were equipped with catalytic converters, and thus, only relatively few required tank inlet restrictors. However, a significant number of 2001 model year motorcycles have been equipped with catalytic converters.

III. Final EPA Action

Today's direct final rule revises 40 CFR 80.24(b) to exempt motorcycles equipped with an emission control device that will be affected by the use of leaded gasoline, such as a catalytic converter, from having to be equipped with a fuel tank inlet restrictor.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. This rulemaking is very narrow in scope and exempts motorcycles from a requirement that, when applied to motorcycles, generally has no air quality benefits and that, in fact, could cause increased evaporative emissions from motorcycles during refueling. In the "Proposed Rules" section of today's **Federal Register**, however, we are publishing a separate document that will serve as the proposal to exempt motorcycles from having to be equipped with a tank filler inlet restrictor if adverse comments are filed. This direct final rule will be effective on December 31, 2001 without further notice unless we receive adverse comment by November 30, 2001. If EPA receives adverse comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on today's proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of EO 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

[1] This comment can be found in docket No. A–95–13 for the February 2, 1996 direct final rule and proposed rule, and for the June 6, 1996 final rule.

[2] Conversation with Catlow on April 3, 2001.

[3] Ibid

[4] Also, for those motorcycles where the filler cap is attached to the gas tank by a hinge, the rubber boot of a "balance" type of vapor recovery nozzle would not seat correctly anyway, and the insertion pressure required to compress the boot may damage the gas cap, hinge, and tank finish.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule exempts motorcycles from a current provision that requires them, under certain circumstances, to be equipped with fuel inlet restrictors, and thus avoids the costs imposed by the existing Federal regulations. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, the rule is a deregulatory action and affects only motorcycle manufacturers.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, Apr. 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA reduced the content of lead in leaded gasoline, because EPA found that lead particle emissions from motor vehicles presented a significant risk of harm to the health of urban populations, especially children (38 FR 33734, Dec. 6, 1973). Congress ultimately banned the use of leaded gasoline in motor vehicles after 1995. 42 U.S.C. 7545(n). Gasoline tank filler inlet restrictors were related to the phase-out of leaded gasoline to prevent a motor vehicle with an emission control device, such as a catalytic converter, from using leaded gasoline. Leaded gasoline can damage such emission control devices. Today there is relatively little risk of misfueling a motorcycle with an emission control device that could be damaged by the use of leaded gasoline, because leaded gasoline has now been banned from use in all motor vehicles for over five years and is generally no longer available for sale at gasoline filling stations.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, Aug. 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Today's rule eliminates the existing requirement that manufacturers of motorcycles must equip certain motorcycles with fuel tank filler inlet restrictors. Thus, Executive Order 13132 does not apply to this rule.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(a).

H. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities affected by this rule.

Today's rule is a deregulatory action and affects all motorcycle manufacturers. It eliminates the existing requirement that manufacturers of motorcycles must equip certain motorcycles with fuel tank filler inlet restrictors. We have therefore concluded that today's rule will relieve regulatory burden for any small entity.

I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, this rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084. Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, Nov. 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The rule affects the applicability of the fuel tank filler inlet restrictor to motorcycles. It therefore affects only manufacturers of motorcycles. Thus, Executive Order 13175 does not apply to this rule.

J. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

K. Electronic Copies of Rulemaking

A copy of this action is available on the Internet at *http://www.epa.gov/otaq* under the title: "Direct Final Rule—Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption for Motorcycles."

L. Statutory Authority

Authority for this action is in sections 211, and 301(a) of the Clean Air Act, 42 U.S.C. 7545, 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties.

Dated: October 24, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

2. Section 80.24 is amended by adding paragraph (c) to read as follows:

§ 80.24 Controls applicable to motor vehicle manufacturers.

* * * * *

(c) A motorcycle, as defined at 40 CFR 86.402 for the applicable model year, is exempt from to the requirements of paragraph (b) of this section.

[FR Doc. 01–27378 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 66, No. 211
Wednesday, October 31, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–07–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, L, L1, and L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France Model AS332C, L, L1, and L2 helicopters. This proposal would require inspecting the cockpit pedal unit adjustment lever (lever) for a crack at specified time intervals by either a borescope or by a dye-penetrant inspection and replacing any cracked lever with an airworthy lever before further flight. This proposal is prompted by reports of cracks detected in the lever. The actions specified by the proposed AD are intended to prevent failure of the lever, loss of access to the brake pedals on the ground or loss of yaw control in flight, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before December 31, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–07–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–07–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–07–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS332 helicopters. The DGAC advises of several cases of failure of the lever, which might lead to temporary loss of access to the brake pedals during aircraft taxiing or difficulties in ensuring the yaw control of the aircraft in flight.

Eurocopter France has issued Alert Service Telex No. 67.00.19 R1, dated November 14, 2000 (Telex). The Telex specifies inspecting the lever, part number (P/N) 332A27–2344–20, for a crack by either a borescope within 50 hours time-in-service (TIS) and at intervals not to exceed 500 hours TIS or by dye-penetrant inspection within 50 hours TIS and at intervals not to exceed 1500 hours TIS. The Telex also specifies replacing any cracked lever with an airworthy lever. The DGAC has classified this Telex as mandatory and issued AD Nos. 2000–487–017(A) and 2000–486–077(A), both dated December 13, 2000, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to this bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

We have identified an unsafe condition that is likely to exist or develop on other Eurocopter France Model AS332C, L, L1, and L2 helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require inspecting the lever for a crack and replacing any unairworthy lever, P/N 332A27–2344–20, with an airworthy lever. The actions would be required to be accomplished in accordance with the Telex described previously.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD. The FAA also estimates the following requirements to accomplish the proposed AD: 2 work hours for a borescope inspection, 5 work hours for a dye-penetrant inspection, and 5 work hours to replace the lever unless accomplished during a dye-penetrant inspection in which no additional work hours would be required. The average labor rate is $60 per work hour. Required parts would cost approximately $200. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1500 assuming an inspection using the dye-penetrant method and replacing each lever.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2001–SW–07–AD.

Applicability: Model AS332C, L, L1, and L2 helicopters, with a cockpit pedal unit adjustment lever (lever), part number (P/N) 332A27–2344–20, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the lever, loss of access to the brake pedals on the ground or loss of yaw control in flight, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the lever for a crack, using either a borescope or dye-penetrant inspection, in accordance with the Accomplishment Instructions of either paragraph C.C.3. or C.C.5., as applicable, of Eurocopter France Alert Telex 67.00.19R1, dated November 14, 2000, and Figure 1 of this AD as follows:

(1) For helicopters with 4450 or more hours time-in-service (TIS), inspect the lever within the next 50 hours TIS, and thereafter at intervals not to exceed 500 hours TIS if performed by a borescope or 1500 hours TIS if performed by dye-penetrant.

(2) For helicopters with less than 4450 hours TIS, inspect the lever before accumulating 4500 hours TIS, and thereafter at intervals not to exceed 500 hours TIS if performed by a borescope or 1500 hours TIS if performed by dye-penetrant.

(3) Replace any cracked lever with an airworthy lever before further flight.

Note 2: Returning a cracked lever to the manufacturer is not required by this AD nor are you required to inspect levers held as spares.

BILLING CODE 4910–13–U

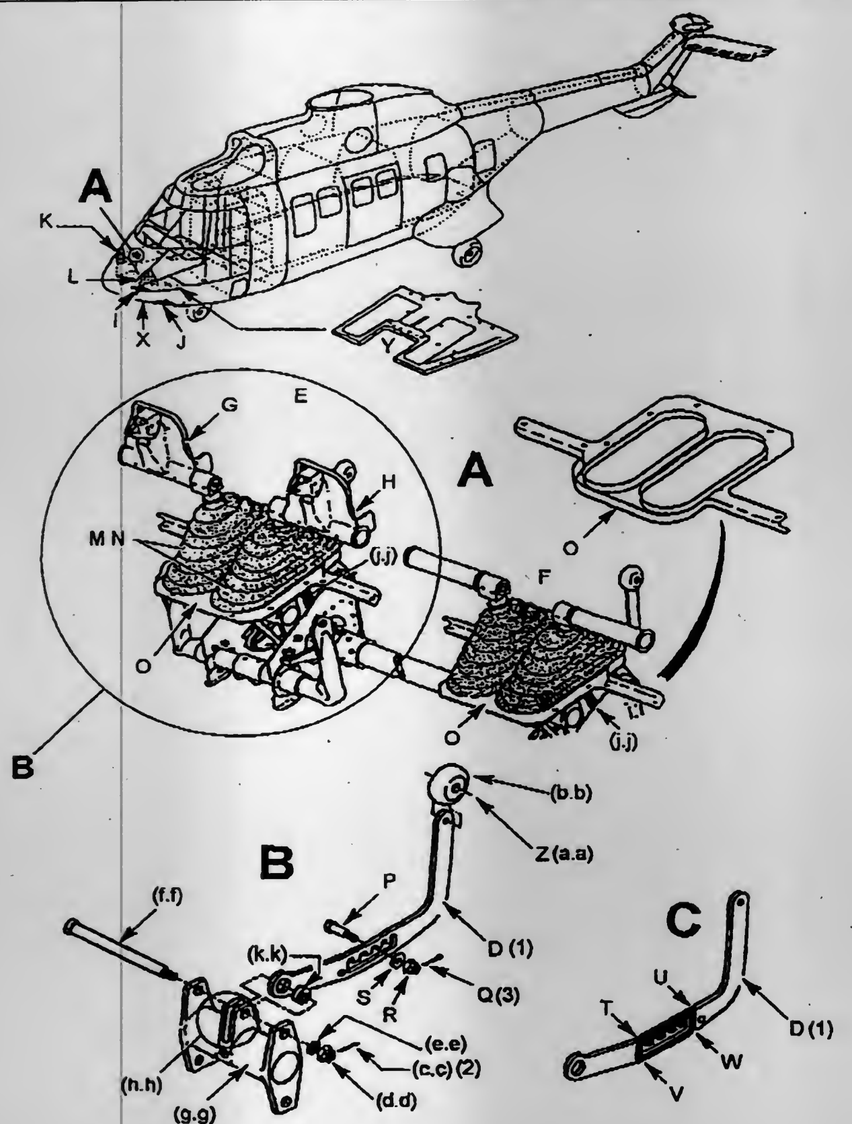


FIGURE 1

BILLING CODE 4910–13–C

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. 2000–487–017(A) and 2000–486–077(A), both dated December 13, 2000.

Issued in Fort Worth, Texas, on October 16, 2001.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–26964 Filed 10–30–01; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 312

Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("the Commission") proposes amending the Children's Online Privacy Protection Rule ("the Rule") to extend the time period during which website operators may use an e-mail message from the parent, coupled with additional steps, to obtain verifiable parent consent for the collection of personal information from children for internal use by the website operator. The Commission proposes to extend the time period from April 21, 2002 until April 21, 2004.

DATES: Written comments will be accepted until November 30, 2001.

ADDRESSES: Written comments should be submitted to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission requests that commenters submit the original plus five copies, if feasible. To enable prompt review and public access, comments also should be submitted, if possible, in electronic form, on a 3½-inch computer disk, with a disk label stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.) Alternatively, the Commission will accept comments submitted to the following e-mail address *slidingscale@ftc.gov*. Individual members of the public filing comments need not submit multiple copies or comments in electronic form. All submissions should be captioned: "Children's Online Privacy Protection Rule Amendment—Comment, P994504." Comments will be posted on the Commission's website: *http://www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Delaney, (202) 326–2903, Mamie Kresses, (202) 326–2070, or Kial Young, (202) 326–3525, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

As part of the effort to protect children's online privacy, Congress enacted the Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501 *et seq.* ("COPPA"), to prohibit unfair or deceptive acts or practices in connection with the collection, use, or disclosure of personally identifiable information from children on the Internet. On October 20, 1999, the Commission issued its final Rule implementing COPPA, which became effective on April 21, 2000.[1] The Rule imposes certain requirements on operators of websites or online services directed to children under 13 years of age, or other websites or online services that have actual knowledge that they have collected information from a child under 13 years of age. Among other things, the Rule requires that website operators obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 years of age.

Section B. Obtaining Verifiable Parent Consent

The Rule provides that, "[a]ny method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent."[2] In order to allow time for reliable electronic methods of verification to become widely available and affordable, the Rule sets forth a sliding scale approach to obtaining verifiable parental consent. For uses of personal information that will involve disclosing the information to the public or third parties, the Rule requires that website operators use the more reliable methods of obtaining verifiable parental consent. These methods include: using a print-and-send form that can be faxed or mailed back to the website operator; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key technology; and using e-mail accompanied by a PIN or password obtained through one of the above methods.[3]

In contrast, if the website operator is collecting personal information for its internal use only, the Rule allows verifiable parental consent to be obtained through the use of an e-mail message from the parent, coupled with additional steps. Such additional steps are designed to provide assurances that the person providing the consent is the parent and include: sending a confirmatory e-mail to the parent after receiving consent; or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. The sliding scale is set to expire on April 21, 2002, at which time website operators must obtain verifiable parental consent using the more reliable methods for all uses of personal information.[4]

At the time it issued the final Rule, the Commission anticipated that the sliding scale was necessary only in the short term because the more reliable methods of obtaining verifiable parental consent would soon be widely available and affordable.[5] At the present time, however, it appears that the expected progress in available technology has not occurred. The Commission therefore proposes to amend the Rule to extend the sliding scale mechanism for an additional two years to April 21, 2004 and requests public comment on this proposed extension of time.

Section C. Invitation To Comment

Before adopting this amendment as final, the Commission will give consideration to any written comments submitted to the Secretary of the Commission on or before November 30, 2001. Comments submitted will be

[1] 64 FR 59888 (1999).
[2] 16 CFR 312.5(b)(1).
[3] 16 CFR 312.5(b)(2).
[4] *Id.*
[5] 64 FR 59902 (1999).

available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. Comments will also be posted on the Commission website, *http://www.ftc.gov*.

Section D. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

Section E. Regulatory Flexibility Act

The provision of the Regulatory Flexibility Act requiring an initial regulatory flexibility analysis (5 U.S.C. 605) does not apply because it is believed that the proposed amendment to the Rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605). This notice also serves as certification to the Small Business Administration of that determination.

The economic impact of the proposed amendment to the Rule is not anticipated to be significant because it is only extending, for a two-year period, a sliding scale mechanism that is already in place. The proposed amendment does not alter the *status quo*, and would postpone the potential economic impact, if any, of the expiration of the sliding scale mechanism. Thus, the economic impact of the amendment to the Rule is expected to be comparatively minimal.

Nonetheless, to ensure that no significant economic impact on a substantial number of small entities is overlooked, the Commission hereby requests public comment on the effect of the proposed amendment to the Rule on the costs, profitability, and competitiveness of, and employment in, small entities. After considering such comments, if any, the Commission will determine whether preparation of a final regulatory flexibility analysis (pursuant to 5 U.S.C. 605) is required.

Section F. Paperwork Reduction Act

This amendment would not amend any information collection requirements that have previously been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, as amended, 44 U.S.C. 3501 *et seq*.

Section G. Questions on the Proposed Amendment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed amendment to the Children's Online Privacy Protection Rule. The Commission proposes to extend the sliding scale mechanism for obtaining verifiable parental consent for two years until April 21, 2004. The Commission is particularly interested in comments addressing the following questions:

(1) Are secure electronic mechanisms now widely available to facilitate verifiable parental consent at a reasonable cost? Please include comments on the following:

(a) Digital signature technology;
(b) Digital certificate technology;
(c) Other digital credentialing technology;
(d) P3P technology; and
(e) Other secure electronic technologies.

(2) Are infomediary services now widely available to facilitate verifiable parental consent at a reasonable cost?

(3) Is this proposed extension an adequate amount of time considering the current development of secure electronic mechanisms and/or infomediary services for obtaining verifiable parental consent at a reasonable cost? Please include comments on the following:

(a) The anticipated availability of secure electronic mechanisms and/or infomediary services;

(b) The anticipated affordability of secure electronic mechanisms and/or infomediary services; and

(c) The likelihood and timeframe of consumer adoption of secure electronic mechanisms and/or infomediary services.

(4) Should the extension be longer than two years?

(5) Rather than be extended, should the sliding scale mechanism be kept in place indefinitely, until the development of secure electronic mechanisms and/or infomediary services become widely available to facilitate verifiable parental consent at a reasonable cost?

(6) What, if any, will be the negative impact of extending the time period for the sliding scale mechanism for obtaining verifiable parental consent? Please include comments on whether the extension will serve as a disincentive for industry to develop secure electronic mechanisms and/or infomediary services to facilitate verifiable parental consent at a reasonable cost.

List of Subjects in 16 CFR Part 312

Children, Communications, Consumer protection, Electronic mail, E-mail, Internet, Online service, Privacy, Record retention, Safety, Science and technology, Trade practices, Website, Youth.

Accordingly, the Federal Trade Commission proposes to amend 16 CFR Part 312 as follows:

PART 312—CHILDREN'S ONLINE PRIVACY PROTECTION RULE

1. The authority citation for part 312 continues to read as follows:

Authority: 15 U.S.C. 6501 *et seq*.

2. Amend § 312.5 by revising the second sentence of paragraph (b)(2) to read as follows:

§ 312.5 Parental consent.

* * * * *

(b) * * *

(2) * * * *Provided that:* For the period until April 21, 2004, methods to obtain verifiable parental consent for uses of information other than the "disclosures" defined by § 312.2 may also include use of e-mail coupled with additional steps to provide assurances that the person providing the consent is the parent. * * *

* * * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–27390 Filed 10–30–01; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 627, 635, 636, 637 and 710

[FHWA Docket No. FHWA–2000–7799]

RIN 2125–AE79

Design-Build Contracting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document corrects a typographical error in the FHWA's notice of proposed rulemaking (NPRM), published on October 19, 2001, at 66 FR 53288. The NPRM proposes the implementation of regulations for design-build contracting as mandated by section 1307(c) of the Transportation Equity Act for the 21st Century (TEA–21). The docket number that appeared in the heading of the NPRM was incorrect. This notice provides the correct docket number regarding the design-build contracting NPRM as FHWA–2000–7799.

DATES: Written comments to the NPRM must be received on or before December 18, 2001. Late comments will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Yakowenko, Office of Program Administration (HIPA), (202) 366–1352, or Mr. Harold Aikens, Office of the Chief Counsel (202) 366–1373, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's homepage at: *http://www.nara.gov//fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

On October 19, 2001, at 66 FR 53288, the FHWA issued a NPRM regarding the implementation of regulations for design-build contracting as mandated by section 1307(c) of the TEA–21. The heading of this NPRM inadvertently referenced an incorrect docket number, FHWA–2000–7790 (this docket number references a final rule published by the Coast Guard). The purpose of this notice is to correct the docket number for the design-build contracting NPRM. The correct docket number for the design-build contracting NPRM is FHWA–2000–7799. All written comments submitted to the docket in response to the October 19, 2001, NPRM should reference the correct docket number, FHWA–2000–7799.

Authority: 23 U.S.C. 315; sec. 1307(c) of Pub. L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48.

Issued on: October 26, 2001.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 01–27401 Filed 10–26–01; 3:47 pm]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7095–9]

RIN 2060–AJ76

Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption for Motorcycles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today's proposed rule exempts motorcycles with emission control devices that could be affected by the use of leaded gasoline from having to be equipped with gasoline tank filler inlet restrictors. As before, motorcycles and other motor vehicles without such emission control devices are not required to be equipped with gasoline tank filler inlet restrictors.

The Clean Air Act and corresponding EPA regulations prohibit gasoline containing lead or lead additives (leaded gasoline) as a motor vehicle fuel after December 31, 1995. As a deterrent to misfueling prior to that date, the EPA regulations required filler inlet restrictors on motor vehicles equipped with an emission control device that could be affected by the use of leaded gasoline, such as a catalytic converter. EPA retained that provision after 1995 because the filler inlet restrictor, besides being a deterrent to misfueling, has also been incorporated into the design of some vapor recovery gasoline nozzle spouts. Gasoline tank filler inlet restrictors do not work well with most motorcycle fuel tanks, especially the saddle type of tank, because of their shallow depth. A gasoline tank filler inlet restrictor may cause gasoline spitback or spillage when a motorcycle is refueled, which increases evaporative emissions. Today there is relatively little risk of misfueling a motorcycle. Also, it is unlikely that a gasoline tank filler inlet restrictor on a motorcycle helps to control gasoline vapors when the motorcycle is refueled.

DATES: Comments on this proposed rule must be received in writing by November 30, 2001.

ADDRESSES: Materials relevant to this rule are available for inspection in public docket A-2001–17 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, S.W., Washington, D. C. 20460, (202)260–7548, between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473, facsimile: (202) 565–2085, e-mail address: *babst.richard@epa.gov*.

SUPPLEMENTARY INFORMATION: For more information on this proposal, please see EPA's direct final rule published in the Rules and Regulations section of this **Federal Register** which amends the regulations to exempt motorcycles from the tank filler inlet restrictor provision of 40 CFR 80.24(b). The Agency views this direct final rule as a noncontroversial action for the reasons discussed in the Direct Final Rule published in today's **Federal Register**. If no adverse or critical comments or requests for a public hearing are received in response to this proposal, no further action is contemplated in relation to this rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This proposed action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule exempts motorcycles from a current provision that requires them, under certain circumstances, to be equipped with fuel inlet restrictors, and thus avoids the costs imposed by the existing Federal regulations. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, the proposed rule is a deregulatory action and affects only motorcycle manufacturers.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, Apr. 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA reduced the content of lead in leaded gasoline, because EPA found that lead particle emissions from motor vehicles presented a significant risk of harm to the health of urban populations, especially children (38 FR 33734, Dec. 6, 1973). Congress ultimately banned the use of leaded gasoline in motor vehicles after 1995. 42 U.S.C. 7545(n). Gasoline tank filler inlet restrictors were related to the phase-out of leaded gasoline to prevent a motor vehicle with an emission control device, such as a catalytic converter, from using leaded gasoline. Leaded gasoline can damage such emission control devices. Today there is relatively little risk of misfueling a motorcycle with an emission control device that could be damaged by the use of leaded gasoline, because leaded gasoline has now been banned from use in all motor vehicles for over five years and is generally no longer available for sale at gasoline filling stations.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to lead, evaporative gasoline emissions, or ozone (caused by any increased evaporative emissions) resulting from the absence of fuel filler neck restrictors on motorcycles that are equipped with emission control devices that are impacted by the use of leaded gasoline.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, Aug. 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Today's proposed rule eliminates the existing requirement that manufacturers of motorcycles must equip certain motorcycles with fuel tank filler inlet restrictors. Thus, Executive Order 13132 does not apply to this proposed rule.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business, including its affiliates, that has a maximum of 1,000 employees (13 CFR 121.201 for SIC code 3711 "Motor Vehicles and Passenger Car Bodies"); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's proposed rule is a deregulatory action and affects all motorcycle manufacturers. It eliminates the existing requirement that manufacturers of motorcycles must equip certain motorcycles with fuel tank filler inlet restrictors. We have therefore concluded that today's proposed rule will relieve regulatory burden for any small entity.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On January 1, 2001 Executive Order 13084 was superseded by Executive Order 13175. However, this proposed rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084. Development of the final rule will address tribal considerations. Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, Nov. 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The proposed rule affects the applicability of the fuel tank filler inlet restrictor to motorcycles. It therefore affects only manufacturers of motorcycles. Thus, Executive Order 13175 does not apply to this proposed rule.

I. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

J. Electronic Copies of Rulemaking

For more information about this proposed rule and more details as described in the preamble to the direct final rule see a copy of this rule on the Internet at *http://www.epa.gov/otaq* under the title: "Proposed Rule—Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption for Motorcycles."

K. Statutory Authority

Authority for this action is in sections 211, and 301(a) of the Clean Air Act, 42 U.S.C. 7545, 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties.

Dated: October 24, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–27379 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 01J–2]

Federal-State Joint Board on Universal Service Seeks Comment on Review of Lifeline and Link-Up Service for all Low-Income Consumers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: In a public notice released on October 12, 2001, the Federal-State Joint Board on Universal Service (Joint Board) invites comment regarding its review of Lifeline/Link-Up, two federal support programs that are used to preserve and advance universal service and to ensure that quality telecommunications and information services are available to low-income consumers at just, reasonable and affordable rates, as required by the Telecommunications Act of 1996.

DATES: Submit comments on or before December 31, 2001. Submit reply comments on or before February 28, 2002.

ADDRESSES: *See* Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Anita Cheng or Dana Bradford, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

I. Background

Since 1984, the Commission, in conjunction with the states and local telephone companies, has administered a Lifeline program designed to promote universal service by providing low-income individuals with monthly discounts on the cost of receiving telephone service. The Commission also established "Link-Up America," a program designed to help low-income individuals pay the initial costs of commencing telephone service. In June 2000, the Commission expanded the Lifeline and Link-Up programs to provide additional discounts to those individuals living on Indian reservations.

In the 1996 *Joint Board Recommended Decision*, 61 FR 63778, December 2, 1996), the Joint Board determined that Congress's intent would best be served if all low-income consumers had access to Lifeline/Link-Up assistance. Accordingly, the Joint Board found that the goal of increasing low-income subscribership would best be met if the Commission maintained the basic framework for administering Lifeline/Link-Up qualification in states that provide matching support from the intrastate jurisdiction, with the criteria to be based solely on income or factors directly related to income. The Joint Board also recommended that for states choosing not to provide intrastate matching support, the Commission should adopt specific default means-tested eligibility standards.

Consistent with the Joint Board's recommendations, the Commission maintained the basic framework for administering the Lifeline program that existed prior to the adoption of the *Universal Service Order*, 62 FR 32862, June 17, 1997. The Commission also adopted the Joint Board's recommendation to apply a specific, means-tested eligibility standard, by requiring participation in Medicaid, food stamps, Supplementary Security Income (SSI), Federal public housing assistance (Section 8), or Low Income Home Energy Assistance Program (LIHEAP), in order for an individual to be eligible for Lifeline/Link-Up in states that choose not to provide matching support from the intrastate jurisdiction.

An individual living on tribal lands may also qualify for Lifeline/Link-Up assistance if he/she certifies participation in one of the following Federal programs: Bureau of Indian Affairs general assistance, Tribally-administered Temporary Assistance for Needy Families; Head Start (only for those meeting its income qualifying standard); or National School Lunch Program.

In the *Universal Service Order*, the Commission explained that: "We clarify, however, that the Joint Board recommendation, which we adopt, requires states to base eligibility on income or factors directly related to income and merely suggests using participation in a low income assistance program as the criterion." The Commission further explained that: "[w]e have tied the default Lifeline qualification standards (which will apply in states that do not provide intrastate funds) to programs that commenters believe to be unaffected or minimally affected by the new welfare legislation. We will, however, continue to monitor the situation and may make further changes in the future if it appears that changes to other programs unduly limit Lifeline eligibility."

On December 21, 2000, the Commission referred the low-income support issues to the Joint Board and stated: "* * * we ask the Joint Board to undertake a review of Lifeline and Link-Up service for all low-income customers, including a review of the income eligibility criteria."

A. The Effectiveness of the Current Lifeline/Link-Up Program

According to the 2001 *Trends in Telephone Service Report*, an estimated 5.9 million consumers paid reduced rates for local telephone service under the low-income provisions of the Lifeline program in 2000. Since the inception of the Link-Up America program in 1987, approximately 10.6 million low-income consumers have been able to initiate telephone service using Link-Up. We note that, in a recent study, the Missouri Office of Public Counsel estimated that 26 percent of households with incomes at or below 150 percent of the Federal poverty level take advantage of the Lifeline/Link-Up program.

We invite parties to develop a full record on the effectiveness of the Commission's existing Lifeline/Link-Up rules. In particular, we seek comment from all interested parties who may have data on the Lifeline/Link-Up enrollment in each state. Commenters should provide information on the number and percentage of low-income households that are with and without telephones within the living unit; the number and percentage of low-income households who receive Lifeline/Link-Up support; the number and percentage of low-income households who do not receive Lifeline/Link-Up support; and the number and percentage of households that are low-income and not enrolled in Federal assistance programs. Where possible, commenters should break these figures into on-reservation and off-reservation categories.

The *2001 Trends Report* includes some of the information we seek; however, states and/or telecommunications companies may have gathered more comprehensive information concerning Lifeline/Link-Up enrollment in their respective state(s). In the interest of compiling the most complete and accurate record, we therefore encourage commenters to provide as much detail as possible with respect to Lifeline/Link-Up enrollment, including the source of the information, when and how this information was compiled, or other information the commenters believe to be relevant.

We also invite parties to discuss the reasons that some low-income individuals are not receiving Lifeline/Link-Up assistance. For example, these individuals may be excluded from qualifying programs because of federal or state program restrictions; they may not be receiving adequate information about the Lifeline/Link-Up program; or they may be excluding themselves by choice from participating in qualifying programs.

We also seek comment regarding welfare reform and its impact on the number of low-income households that are participating in Lifeline/Link-Up. In particular, we seek comment on whether the number of low-income households eligible for Lifeline/Link-Up assistance has changed as a result of state and federal efforts to reduce the number of participants in welfare programs such as food stamps, SSI, LIHEAP, etc.

We encourage commenters to discuss whether there are other reasons that low-income individuals may not enroll in qualifying programs or participate in Lifeline/Link-Up. Commenters also should discuss whether existing or proposed qualification standards and enrollment procedures may serve to encourage or discourage increased participation among all low-income households.

In addition, there may be special concerns regarding recent immigrants, individuals living on reservations, and other groups that may need to be considered. In this regard, we invite comment on the extent to which immigrants may be underrepresented in public assistance programs for legal or social reasons. Commenters also should discuss whether individuals living on reservations face barriers to participation and what modifications to the Lifeline/Link-Up program may be necessary to overcome those barriers.

Moreover, we seek comment on the innovative ways in which states are implementing their respective Lifeline/Link-Up programs. Specifically, commenters should discuss what steps have been taken to increase Lifeline/Link-Up subscribership in their respective state(s). Commenters should also discuss ways in which successful state methods could be implemented at the federal level.

B. Modifying the Existing Lifeline/Link-Up Rules

We seek comment on whether changes to the current Lifeline/Link-Up program are warranted to further the goal of bringing affordable rates to low-income consumers. We discuss various possible changes below.

1. Eligibility Criteria

We seek comment on whether the current eligibility criteria should be modified. Specifically, commenters should address whether new eligibility criteria should be added to the existing list for Lifeline/Link-Up and enhanced Lifeline/Link-Up, or whether particular eligibility criteria should be deleted from the existing list.

Commenters also should discuss whether there are programs used by states that are particularly effective in determining eligibility for Lifeline/Link-Up assistance. In addition, commenters should discuss how modifications to the current federal eligibility criteria may impact state Lifeline/Link-Up programs.

As indicated, a state that has its own Lifeline/Link-Up program establishes the eligibility criteria for that program. As such, these criteria vary from state to state. To the extent a state has its own Lifeline/Link-Up program, we seek comment on the specifics of the eligibility criteria used. We also seek comment on whether all states should be required to include, at a minimum, the federal eligibility criteria in their respective programs or whether we should adopt one national standard for purposes of determining eligibility.

Moreover, we invite comment on whether individuals should be able to qualify for Lifeline/Link-Up support merely by being eligible for low-income assistance programs, rather than actually participating in them. If the Commission were to adopt such a standard, we invite comment on how eligibility might be certified or verified.

Commenters also are encouraged to discuss whether low-income individuals should be removed immediately from Lifeline enrollment when they no longer meet the eligibility standards, or whether Lifeline enrollment should be guaranteed for a specified minimum period of time.

We also seek comment on whether eligibility based on income level should be added to the existing eligibility standards as an additional means to qualify for Lifeline/Link-Up. In the *Twelfth Report and Order*, 65 FR 47941, August 4, 2000, the Commission stated its intent to examine, in consultation with the Joint Board, revisions to § 54.409 of the Commission's rules to provide for eligibility based solely on income level. We seek comment on whether this approach would reach more or fewer low-income consumers than the federal criteria, which condition eligibility on participation in low-income assistance programs. We invite comment on what the appropriate income level might be, if an income-based test is used. Commenters should discuss whether the Federal Poverty Guidelines or some other mechanism should be used to establish an appropriate income level.

Commenters also should discuss how an individual may qualify for Lifeline/Link-Up support under an income-based standard; how an individual might certify his/her income level; and what, if any, special procedures should be implemented to verify an individual's income level.

2. Application/Verification

We invite comment on the Lifeline/Link-Up application process. Currently, in order to receive Lifeline/Link-Up support under federal criteria, a consumer must certify that he/she participates in at least one of the qualifying federal programs set forth. Under the federal criteria of the Commission's Lifeline/Link-Up rules, certification of participation in a federal assistance program is accomplished in the following manner: the eligible telecommunications carrier that is providing Lifeline/Link-Up service to the low-income consumer obtains the consumer's signature on a document certifying under penalty of perjury that the consumer receives benefits from at least one of the qualifying programs. The consumer also must identify the program or programs from which he/she receives benefits and must agree to notify the carrier if he/she ceases to participate in the identified program(s). We invite comment on whether this process effectively targets support. In this regard, commenters should discuss what application procedures should be considered in order to promote an efficient and effective Lifeline/Linkup program, including increasing participation where appropriate.

We also seek comment on whether an individual's eligibility to receive Lifeline/Link-Up support should be verified, and if so, what the federal verification measures should be (*e.g.*, requiring consumers to provide a copy of a food stamp coupon in order to receive support). We seek comment on the effects of any proposed verification procedures on enrollment, on the costs of administration, and on the effectiveness of the program. For instance, commenters should discuss whether verification of eligibility should occur periodically or whether the subscriber should be required to notify the carrier when he/she is no longer eligible to receive Lifeline/Link-Up assistance. In addition, we encourage commenters to provide information concerning best practices of states with regard to certification and/or verification procedures and whether those procedures have been successful. We also ask commenters to provide information on the extent and frequency of any fraudulent or otherwise inappropriate enrollment in Lifeline or Link-Up programs, or any other problems that lead to improper program expenditures. We seek comment on any problems relating to our existing procedures and also on any problems that could result from adopting new qualifying standards.

Finally, we seek comment regarding automatic enrollment and verification methods that could assist the states in more readily identifying low-income households that qualify for Lifeline/Link-Up, and reduce delay and inefficiency in the processing of applications.

3. Additional Modifications

We invite comment on the ways in which the Federal Lifeline/Link-Up program could be improved. For example, commenters may wish to discuss whether increased or alternative methods of Link-Up support would improve the Lifeline program.

We also seek comment regarding impediments that may prevent low-income households from obtaining affordable access to the network, including existing credit, collections,

and disconnection policies and service application procedures that are required by local exchange companies. Commenters are requested to suggest alternatives to those procedures that are identified as impediments.

Commenters also are requested to provide information about specific procedures that have been adopted to eliminate impediments and provide efficient processing of Lifeline/LinkUp applications without undue delay. We are particularly interested in learning about specific credit and collection procedures that have resulted in increased subscribership in low-income households.

Commenters also should discuss whether there are initiatives in addition to Lifeline/Link-Up that could increase telephone subscribership among low-income households.

C. Outreach

In the *Twelfth Report and Order*, the Commission amended §§ 54.405 and 54.411 of its rules to require eligible telecommunications carriers to publicize the availability of Lifeline/Link-Up services in a manner reasonably designed to reach those likely to qualify for those services. We seek comment on whether more extensive consumer education and outreach efforts are necessary to increase participation in the Lifeline/Link-Up program. We recognize that many carriers and states have been successful in locating and informing low-income consumers of the Lifeline/Link-Up program by various measures, such as mailings, hanging posters in churches and community centers, placing advertisements in local newspapers, and in some cases, canvassing. We seek comment on whether these efforts have been sufficient to educate low-income individuals about their telecommunications options. We encourage states, carriers, and interested non-profit organizations to continue to develop innovative consumer education and outreach programs that will increase public awareness and understanding of Lifeline/Link-Up. The Joint Board and the Commission are committed to working together to increase participation in these programs as well.

To this end, we invite comment on the best practices of states, telecommunications companies, and non-profit organizations with regard to increasing participation in the Lifeline/Link-Up program, including outreach efforts, assisting individuals in enrolling in Lifeline/Link-Up, and assisting in eligibility verification. Commenters should discuss the costs and benefits of preparing and distributing information to the public. Commenters also should discuss whether existing websites on Lifeline/Link-Up provide adequate information. We encourage commenters to provide as much detail as possible with respect to their consumer education and outreach efforts. Commenters also may wish to identify specifically those non-profit organizations that may be able to assist with consumer outreach efforts, Lifeline/Link-Up enrollment, and any eligibility verification procedures that may be adopted. In addition, commenters should discuss whether the Commission should adopt specific outreach requirements if current outreach efforts are not effectively providing Lifeline/Link-Up information to low-income consumers. We ask commenters to provide detailed comment on these as well as any other issues relating to Lifeline/Link-Up that they wish to raise.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before December 31, 2001, and reply comments on or before February 28, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and CC Docket No. 96–45. Parties also may submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.

All paper filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties who choose to file by paper also should send three copies of their filings to Sheryl Todd, Accounting Policy Division, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, parties who choose to file by paper must send copies of their comments on diskette to the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Such submissions should be on a 3.5-inch diskette formatted in an IBM-compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, CC Docket No. 96–45, the type of pleading (comment or reply comment), the date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file.

The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–27229 Filed 10–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2468, MM Docket No. 01–306, RM–10152]

Digital Television Broadcast Service; Hartford, CT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Fox Television Stations, Inc., requesting the substitution of DTV channel 31 for DTV channel 5 for Tribune Television Corporation's station WTIC–TV at Hartford, Connecticut. DTV Channel 31 can be allotted to Hartford, Connecticut, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (41–42–13 N. and 72–49–57 W.). However, since the community of Hartford is located within 400 kilometers of the U.S.-Canadian border, concurrence of the Canadian government must be obtained for this allotment. As requested, we propose to allot DTV Channel to 31 with a power of 500 and a height above average terrain (HAAT) of 492 meters.

DATES: Comments must be filed on or before December 17, 2001, and reply comments on or before January 2, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John C. Quale, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW., Washington, DC 20005 (Counsel for Fox Television Stations, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–306, adopted October 25, 2001, and released October 26, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Connecticut is amended by removing DTV Channel 5 and adding DTV Channel 31 at Hartford.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–27346 Filed 10–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2445; MM Docket No. 01–304, RM–10309; MM Docket No. 01–305, RM–10310.

Radio Broadcasting Services: Menard, TX; San Isidro, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Jeraldine Anderson, proposing the allotment of Channel 287C3 at Menard, Texas, as the community's second local aural transmission service. Channel 287C3 can be allotted to Menard in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) southwest of Menard. The coordinates for Channel 287C3 at Menard are 30–52–29 North Latitude and 99–54–00 West Longitude. The Commission also requests comments on a petition filed by Jeraldine Anderson proposing the allotment of Channel 247A at San Isidro, Texas, as the community's first local aural transmission service. Channel 247A can be allotted to San Isidro in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) northeast of San Isidro. The coordinates for Channel 247A at San Isidro are 26–45–00 North Latitude and 98–26–00 West Longitude.

DATES: Comments must be filed on or before December 10, 2001, and reply comments on or before December 26, 2001.

ADDRESSES: Federal Communications Commission, Washington, D.C., 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner for both proposals, as follows: Jeraldine Anderson; 1702 Cypress Drive; Irving, Texas 75601.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–304 and MM Docket No. 01–305, adopted October 10, 2001, and released October 19, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR §§ 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334, and 336.

§ 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 287C3 at Menard, and San Isidro, Channel 247A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–27347 Filed 10–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2446, MM Docket No. 01–303, RM–10306]

Radio Broadcasting Services; Birch Tree, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 241A at Birch Tree, Missouri, providing the community with additional local FM service. The coordinates for Channel 241A at Birch Tree are 36–55–35 and 91–24–23. There is a site restriction 10.5 kilometers (6.5 miles) southeast of the community.

DATES: Comments must be filed on or before December 10, 2001, and reply comments on or before December 26, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–303, adopted October 10, 2001 and released October 19, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Channel 241A at Birch Tree.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–27348 Filed 10–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 01–290; FCC 01–307]

Implementation of the Cable Television Consumer Protection and Competition Act of 1992 and the Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act—Sunset of Exclusive Contract Prohibition.

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission issues this document in accordance with section 628(c)(5) of the Communications Act of 1934, as amended. Section 628(c)(2)(D) generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Under section 628(c)(5), the prohibition on exclusive programming contracts contained in section 628(c)(2)(D) will cease to be effective on October 5, 2002, unless the Commission finds that such prohibition continues to be necessary to preserve competition and diversity in the distribution of video programming. The document initiates a proceeding in order to make that determination.

DATES: Comments are due December 3, 2001 and reply comments are due January 7, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition, to filing comments with the secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and to Edward C. Springer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Room 10236, NEOB, Washington, DC 20503 or via the Internet to *Edward.Springer@.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Karen A. Kosar, Cable Services Bureau at 202–418–1053 or via the Internet at *kkosar@fcc.gov*. For additional information concerning the information collection(s) contained in this NPRM, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of a Notice of Proposed Rulemaking (NPRM) initiating the proceeding in CS-Docket No. 01–290. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W. Room CY–B402, Washington, DC 20554.

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this

NPRM; OMB notification of action is due December 31, 2001. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0551.

Title: Section 76.1002 Specific Unfair Practices Prohibited.

Form No.: N/A.

Type of Review: Revision.

Respondents: Business or other for-profit.

Number of Respondents: 52 (26 petitions and 26 oppositions).

Estimated Time Per Response: 1 hour–25 hours. We estimate that the total burden for completion of all aspects of the proceeding will be no more than 25 hours. We estimate that 50% of entities will use outside counsel and will undergo a burden of 1 hour to coordinate information with outside counsel.

Total Annual Burden: 676 hours. (26 respondents with outside counsel × 1 hour = 26 hours. 26 respondents with outside counsel × 25 hours = 650 hours.

Total Annual Costs: $97,500.00 26 respondents using outside counsel at $150 per hour= 26 × 25 × $150 = $97,500.00.

Needs and Uses: This information is used by Commission staff to determine on a case-by-case basis whether particular exclusive contracts for cable television programming comply with the statutory public interest standard of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 and Section 628 of the Communications Act, as amended. Section 301(j) of the 1996 Act amends the restriction in section 628 to include common carriers and their affiliates that provide video programming.

Synopsis of the NPRM

1. This Notice of Proposed Rulemaking involves the possible sunset of section 628(c)(2)(D) of the Communications Act, which generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Pursuant to section 628(c)(5), the prohibition on exclusive programming contracts contained in section 628(c)(2)(D) will cease to be effective on October 5, 2002, unless the Commission conducts a proceeding and finds that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

2. The program access provisions contained in section 628 of the Communications Act were adopted as part of the Cable Television Consumer Protection and Competition Act of 1992. When adopting the statute, Congress was concerned by its finding that a majority of cable operators enjoyed a monopoly in program distribution at the local level, and concluded that the use of exclusive contracts between vertically integrated programming vendors and cable operators served to inhibit the development of competition among distributors.

3. Section 628(c) instructs the Commission to adopt regulations to prohibit a number of specific practices. For example, Congress absolutely prohibited exclusive contracts between vertically integrated programming vendors and cable operators in areas unserved by cable, and, pursuant to section 628(c)(2)(D), generally prohibited exclusive contracts within areas served by cable. Congress recognized, however, that in areas served by cable some exclusive contracts between vertically integrated programming vendors and cable operators may serve the public interest. Accordingly, in determining whether an exclusive contract is in the public interest for purposes of section 628(c)(2)(D), Congress instructed the Commission to consider the factors outlined in section 628(c)(4). The prohibition contained in section 628(c)(2)(D) regarding restrictions on exclusive contracts is not unlimited and Congress determined that after a ten-year period the Commission should determine in a proceeding conducted pursuant to section 628(c)(5) whether such prohibition continues to be necessary.

4. The Notice seeks comment on: (1) Whether section 628(c)(2)(D) of the Communications Act should cease to be effective pursuant to the sunset provision contained in section 628(c)(5); (2) the effect, if any, section 628(c)(2)(D) has had on competition in local and national markets; (3) the degree to which, if at all, clustering and the continuing consolidation within the communications industry should inform our decision on the possible sunset of the exclusivity prohibition; (4) the effects of exclusivity in the multichannel video programming marketplace; (5) the impact the prohibition on exclusivity has had on diversity in programming; (6) whether it would be advisable, and consistent with the Commission's statutory authority, to retain the rule only for some types of programming or in some specific cases; (7) how other program access provisions would function should the exclusivity prohibition sunset; (8) what future procedures the Commission should undertake if the prohibition on exclusivity is retained; and (9) any other issues appropriate to our inquiry in accordance with section 628(c)(5).

Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980, as amended, ("RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules referenced in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to this IRFA and must be filed by the deadlines for comments in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the IRFA (or summaries thereof) will be published in the **Federal Register**.

I. Need for, and Objectives of, the Proposed Regulatory Approaches

6. The purpose of section 628 of the Communications Act is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies. Specifically, this proceeding involves section 628(c)(2)(D), which prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators unless the Commission determines that such exclusivity is in the public interest. The exclusivity prohibition set forth in section 628(c)(2)(D) ceases to be effective after a 10-year period ending October 5, 2002. Section 628(c)(5) of the Communications Act requires that restrictions on exclusive contracts, within areas served by cable, are to sunset unless the Commission finds, in

a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. Pursuant to this statutory mandate and by this Notice of Proposed Rulemaking, we seek comment on whether section 628(c)(2)(D) should be retained or eliminated.

II. Legal Basis

7. The authority for the action proposed in this rulemaking is contained in section 4(i), 303 and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 and 548.

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

8. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

9. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

10. *Cable Systems:* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this NPRM.

11. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

12. *Open Video Systems:* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of "Cable and Other Pay Television Services." This definition provides that a small entity is one with $11 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of those are currently providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

13. *Program Producers and Distributors:* The Commission has not developed a definition of small entities applicable to producers or distributors of cable television programs. Therefore, we will use the SBA classifications of Motion Picture and Video Tape Production (NAICS Code 51211), Motion Picture and Video Tape Distribution (NAICS Code 42199), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 71132, 51229, 53249). These SBA definitions provide that a small entity in the cable television programming industry is an entity with $21.5 million or less in annual receipts for NAICS Codes 51211, 42199 and 51212, and $5 million or less in annual receipts for NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 51229, and 53249. Census Bureau data indicate the following: (a) There were 7,265 firms in the United States classified as Motion Picture and Video Production (NAICS Code 51211), and that 6,987 of these firms had $16.999 million or less in annual receipts and 7,002 of these firms had $24.999 million or less in annual receipts; (b) there were 1,139 firms classified as Motion Picture and Video Tape Distribution (NAICS Codes 42199 and 51212), and 1007 of these firms had $16.999 million or less in annual receipts and 1013 of these firms had $24.999 million or less in annual receipts; and (c) there were 5,671 firms in the United States classified as Theatrical Producers and Services (NAICS Codes 56131, 71111, 71141, 561599, 71151, 71121, 51229, and 53249), and 5627 of these firms had $4.999 million or less in annual receipts.

14. Each of these NAICS categories are very broad and include firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated. Thus, we estimate that our rules may affect approximately 6,987 small entities primarily engaged in the production and distribution of taped cable television programs and 5,627 small producers of live programs that may be affected by the rules adopted in this proceeding.

15. *Direct Broadcast Satellite Service ("DBS"):* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services." This definition provides that a small entity is one with $11 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

16. *Home Satellite Dish Service ("HSD"):* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of "Cable and Other Pay Television Services." This definition provides that a small entity is one with $11 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

17. According to the most recently available information, there are approximately four program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 1,476,700 subscribers nationwide. This is an average of about 370,000 subscribers per program package. This is smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller.

18. *Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") and Local Multipoint Distribution Service ("LMDS"):* MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS"). LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

20. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

21. The SBA definition of small entities for pay television services, which includes such companies generating $11 million in annual receipts, appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

22. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

23. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

24. *Satellite Master Antenna Television ("SMATV") Systems.* The SBA definition of small entities for "Cable and Other Pay Television Services" specifically includes SMATV services and, thus, small entities are defined as all such companies generating $11 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of June 2000. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a

substantial number of SMATV operators qualify as small entities.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

25. The NPRM seeks comment on the sunset of section 628(c)(2)(D) of the Communications Act. The NPRM does not propose any specific reporting, recordkeeping or other compliance requirements.

V. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

26. The RFA requires an agency to describe any significant alternatives that it has considered in proposing regulatory approaches, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The NPRM seeks comment on whether section 628(c)(2)(D) should cease to be effective, pursuant to the sunset provision in section 628(c)(5), or whether section 628(c)(2)(D) should be retained. Thus, the NPRM invites comments on a number of issues that may significantly impact small entities. Specifically, the NPRM seeks comment in para. 8 on the effect, if any, section 628(c)(2)D) has had on competition in local and national markets. The NPRM also seeks comment in para. 9 on the degree to which, if at all, clustering and the continuing consolidation within the communications industry should inform the Commission's decision on the possible sunset of the exclusivity prohibition. In para. 10, the NPRM seeks comment on the effects of exclusivity in the multichannel video programming marketplace. In para. 11, the NPRM seeks comment on the impact the prohibition on exclusivity has had on diversity of programming. In para. 12, the NPRM seeks comment on how the program access provisions would function should the exclusivity prohibition sunset. In para.13, the NPRM seeks comment relationship of section 628(c)(2)(D) and section 628(c)(2)(C) of the Act, which affects areas not served by a cable operator. In para. 14, the NPRM seeks comment on how the proliferation of new programming services impacts assumptions with regard to exclusivity. If section 628(c)(2)(D) is retained, the NPRM seeks comment in para. 15 on future procedures necessarily related to the retention of section 628(c)(2)(D).

VI. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

27. There are no federal rules that specifically duplicate, overlap or conflict with the Commission's inquiry with regard to section 628(c)(2)(D).

VII. Report to Congress

28. The Commission will send a copy of the NPRM, including this IRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the NPRM, including IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the NPRM and IRFA (or summaries thereof) will also be published in the **Federal Register**.

Paperwork Reduction Analysis

29. This NPRM contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due December 31, 2001. Comments should address: (a) Whether the proposed collection information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Ex Parte Presentations

30. This proceeding will be treated as a "permit-but-disclose" proceeding, subject to the "permit-but-disclose" requirements under § 1.1206(b) of the Commission's rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

Comment Dates

31. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before December 3, 2001 and reply comments on or before January 7, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

32. Written comments by the public on the proposed information collection are due on December 3, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before December 31, 2001. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov*.

33. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554. The Cable Services Bureau contact for this proceeding is Karen A. Kosar at (202) 418–7200, TTY (202) 418–7172, or at *kkosar@fcc.gov*.

34. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, TTY (202) 418–2555, or *bcline@fcc.gov*. Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

35. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418–7426, TTY (202) 418–7365, or *bmillin@fcc.fov*.

Ordering Clauses

36. Accordingly, *It is ordered* that, pursuant to the authority contained in sections 4(i), 303 and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 and 548, *Notice is hereby given* of the proposals described in this Notice of Proposed Rulemaking.

37. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure and Cable television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–27225 Filed 10–30–01; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 66, No. 211
Wednesday, October 31, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Sheep Industry Improvement Center; Solicitation of Nominations of Board Members

AGENCY: National Sheep Industry Improvement Center, USDA.

ACTION: Notice: Invitation to submit nominations.

SUMMARY: The National Sheep Industry Improvement Center announces that it is accepting nominations for the Board of Directors of the National Sheep Industry Improvement Center for two directors' positions whose terms are expiring on February 13, 2002. Both positions are for voting members who are active producers of sheep or goats. Board members manage and oversee the Center's activities. Nominations may only be submitted by National organizations that consist primarily of active sheep or goat producers in the United States and who have as their primary interest the production of sheep or goats in the United States. Nominating organizations should submit:

(1) Substantiation that the nominating organization is national in scope,

(2) The number and percent of members that are active sheep or goat producers,

(3) Substantiation of the primary interests of the organization, and

(4) An Advisory Committee Membership Background Information form (Form AD–755) for each nominee.

This action is taken in accordance with section 759 of the Federal Agriculture Improvement and Reform Act of 1996 for the establishment of a National Sheep Industry Improvement Center.

DATES: The closing date for acceptance of nominations is December 17, 2001. Nominations must be received by, or postmarked, on or before, this date.

ADDRESSES: Submit nominations and statements on qualifications to National Sheep Industry Improvement Center, PO Box 23483, Washington DC 20026–3483 if using USPS or 1400 Independence Ave., SW, Room 2117, Washington, DC 20250–3252, Attn.: National Sheep Improvement Center, Nominations.

FOR FURTHER INFORMATION CONTACT: Jay B. Wilson, Executive Director, National Sheep Industry Improvement Center, PO Box 23483, Washington DC 20026–3483 if using USPS or 1400 Independence Ave, SW., Washington, DC 20250–3252 if using another carrier, telephone (202) 690–0632, (This is not a toll free number.) FAX 202–720–1053.

SUPPLEMENTARY INFORMATION: The Federal Agriculture Improvement and Reform Act of 1996, known as the 1996 Farm Bill, established a National Sheep Industry Improvement Center. The Center shall (1) promote strategic development activities and collaborative efforts by private and State entities to maximize the impact of Federal assistance to strengthen and enhance production and marketing of sheep or goat products in the United States; (2) optimize the use of available human capital and resources within the sheep or goat industries; (3) provide assistance to meet the needs of the sheep or goat industry for infrastructure development, business development, production, resource development, and market and environmental research; (4) advance activities that empower and build the capacity of the United States sheep or goat industry to design unique responses to special needs of the sheep or goat industries on both a regional and national basis; and (5) adopt flexible and innovative approaches to solving the long-term needs of the United States sheep or goat industry. The Center has a Revolving Fund established in the Treasury to carry out the purposes of the Center. Management of the Center is vested in a Board of Directors, which has hired an Executive Director and other staff to operate the Center.

The Board of Directors is composed of seven voting members of whom four are active producers of sheep or goats in the United States, two have expertise in finance and management, and one has expertise in lamb, wool, goat or goat product marketing. Both of the open positions are for voting members who are active producer of sheep or goats in the United States. The Board also includes two non-voting members, the Under Secretary of Agriculture for Rural Development and the Under Secretary of Agriculture for Research, Education, and Economics. Board members will not receive compensation for serving on the Board of Directors, but shall be reimbursed for travel, subsistence, and other necessary expenses.

The Secretary of Agriculture shall appoint the voting members from the submitted nominations. Member's term of office shall be three years. Voting members are limited to two terms. The two positions for which nominees are sought are currently held by one member who is completing a first term and is eligible for reappointment and one member who is serving a second term and is therefore not eligible to be re-nominated. The Board shall meet not less than once each fiscal year, but is likely to meet at least quarterly.

The statement of qualifications of the individual nominees is being obtained by using Form AD–755, "Advisory Committee Membership Background Information." The requirements of this form are incorporated under OMB number 0505–0001.

Dated: October 26, 2001.

Jay B. Wilson,

Executive Director, National Sheep Industry Improvement Center.

[FR Doc. 01–27397 Filed 10–30–01; 8:45 am]

BILLING CODE 135100001–P

DEPARTMENT OF AGRICULTURE

National Sheep Industry Improvement Center; Inviting Grant Proposals for the Sheep and Goat Industry Grant Program

AGENCY: National Sheep Industry Improvement Center, USDA.

ACTION: Notice.

SUMMARY: The National Sheep Industry Improvement Center (NSIIC) announces the availability of approximately $200,000 in competitive grants for product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention or animal health. Funds have been made available by the Board of Directors of the National Sheep Industry Improvement Center (NSIIC) to be awarded in Fiscal Year (FY) 2002 with projects completed by the end of FY 2003. The intent is to fund a variety of proposals that will benefit the U.S. sheep and goat industries.

DATES: Completed proposals must be received no later than December 31, 2001. Proposals received after that date will not be considered.

ADDRESSES: Completed proposals and other required materials should be submitted to Jay B. Wilson, Executive Director, National Sheep Industry Improvement Center, U.S. Department of Agriculture, PO Box 23483, Washington, DC 20026–3483 if using the US Postal Service or Room 2117, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250 if using other carriers. Telephone (202) 690–0632 or (207) 236–6567.

FOR FURTHER INFORMATION CONTACT: Jay B. Wilson, Executive Director, National Sheep Industry Improvement Center, U.S. Department of Agriculture, PO Box 23483, Washington, DC 20026–3483 if using the US Postal Service or Room 2117, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250 if using other carriers. Telephone (202) 690–0632 or (207) 236–6567.

SUPPLEMENTARY INFORMATION:

General Information

The Board of Directors of the National Sheep Industry Improvement Center (NSIIC) makes this grant program of up to $200,000 available. The NSIIC is authorized under section 375 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2008j). A fund is established in the Treasury of the United States, without fiscal year limitations, to provide funds for the enhancement and marketing of sheep or goat products in the United States. Grants are authorized by section 375(e)(3)(A) of the Consolidated Farm and Rural Development Act.

Projects that are submitted in the proposals should be completed in a timely fashion as provided in the proposal, but under no circumstances later than September 30, 2003. The primary objective of the Sheep and Goat Industry Grant Program (SGIG) is to fund a number of diverse projects that will benefit the U.S. sheep or goat industries through product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention or animal health at the regional, national or international level. The program is administered through USDA, NSIIC.

Eligible Applicants

An Eligible entity is an organization that promotes the betterment of the United States sheep or goat industries that is: (A) A public, private, or cooperative organization; (B) an association, including a corporation not operated for profit; (C) a federally recognized Indian Tribe; or (D) a public or quasi-public agency. Eligible entities must have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501 (c)(4)) which engages in lobbying activities, is not eligible to apply.

Use of Funds

Use of funds should directly impact the U.S. sheep or goat industries through product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention, or animal health programs. Funds may not be used to: (a) Pay costs of preparing the application package; (b) pay costs incurred prior to the effective date of the grant; (c) conduct duplicative research; or (d) fund political activities. Preference will be given to proposals that have over 50 percent of the project costs in matching funds, including in kind contributions, and no proposal will be funded if the proposed overhead costs exceed 25 percent.

Available Funds and Award Limitations

The total amount of funds available for grants in FY 2002 is approximately $200,000. It is anticipated that all funds will be awarded in FY 2002 for projects that will be completed by September 30, 2003. It is expected that there will be proposals submitted that address a variety of needs related to the U.S. sheep and goat industries. Awards will be segregated so that a variety of needs will be addressed by the funded proposals. The actual number of grants funded will depend on the quality of proposals received and the amount of funding requested. A proposal may be partially funded or funded in its entirety. The maximum amount of Federal funds through this grant program awarded for any one proposal will be $50,000.

Selection Criteria

The proposal will initially be reviewed to determine whether the entity submitting the proposal meets the eligibility requirements and whether the proposal application contains the information required. After this initial evaluation, the following criteria will be used to rate and rank proposals received in response to this notice of funding availability. Failure to address any one of the criteria will disqualify the proposal. Equal weight shall be given to each of the criterion listed below and points will be awarded to each criterion on a scale of 5, 4, 3, 2, 1. A score of 5 indicates that the proposal was judged to be highly relevant to the criteria and a score of 1 indicates that the proposal was judged not to sufficiently address the criteria. A proposal with an average score from the NSIIC evaluation panel of less than 2 for any one criterion will disqualify the proposal.

Each proposal criteria area will be evaluated and judged on its own merits using the following criteria:

1. Potential Industry Impact—Describe the proposed project and demonstrate how it will stimulate the U.S. sheep or goat industries. Provide a detailed analysis of the sheep or goat industry issue that is being addressed by the proposal by including the: (A) Product or group that will be impacted by the proposal (B) geographic area affected (C) target audience or end user; (D) and expected results. Is the industry issue and need well-defined? Does the proposed project provide an effective and efficient approach to resolving the identified need?

2. Industry Commitment—Describe the commitment of the producers, processor, end-users or other involved parties in participating in the proposed project. This may include, but is not limited to, individual producers, producer groups, processors, seminar participants, local organizations, local or state governments or trade associations. Is there a commitment from all who are expected to participate and benefit from the proposed project?

3. Business Soundness—Provide a timetable and objectives along with a quantifiable benchmark and expected results. Does the proposal include: (A) A clear objective; (B) well-defined tasks that will accomplish the objectives; (C) realistic benchmarks; (D) a realistic timetable for the completion of the proposed tasks? Has the business strategy been adequately developed?

4. Financial Feasibility—Provide a well-defined budget for the proposal. Are the funding requirements and budget for the project well defined and financially feasible? Are matching funds or other resources that will be used to leverage the requested funds in the proposal identified?

5. Management Ability—Identify the management team needed to complete the proposal objectives and describe their qualifications. Is the management team identified, and are they capable of implementing the proposal?

Selection Process

The Board of Directors of the NSIIC will evaluate proposal applications. Applications will be evaluated competitively and points awarded as specified in the Selection Criteria section of this notice. Grants will be awarded on a competitive basis to eligible entities. A proposal may be partially funded. After assigning points based upon those criteria, applications will be funded in rank order until all available funds have been expended. The Board of Directors reserves the right to award up to five additional points in order to provide a diversity of projects targeting various situations, geographic areas or subject matter distribution of funded projects. Projects that are approved for further processing will be subject to the grant terms that are negotiated between the applicant and the Board of Directors including, but not limited to, the amount to be funded, project goals, timetables, completion date or other terms as deemed necessary.

Proposal Submission

All proposals, except for forms, are to be submitted on standard 8.5″ x 11″ paper with typing on one side of the page only. In addition, margins must be at least 1″, type must be 12 characters per inch (12 pitch or 10 point) or larger, no more than 6 lines per inch, and there should be no page reductions.

Content of a Proposal

A proposal should contain the following:

1. Form SF–424 "Application for Federal Assistance."
2. Form SF–424A "Budget Information-Non Construction Programs."
3. Form SF–424B "Assurances-Non Construction Programs."
4. Table of Contents—For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Page numbering should begin immediately following the Table of Contents.
5. Project Summary: The proposal must contain a project summary of 1 page or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals and relevance of the project. The summary should also contain a listing of all organizations involved in the project. The Project Summary should immediately follow the Table of Contents.
6. Project Narrative: The narrative portion of the Project Proposal is limited to 10 pages of text and should contain the following:

a. Introduction. A clear statement of the goals and objectives of the project. The problem should be set in context of the present-day situation. Summarize the body of knowledge which substantiates the need for the proposed project.

b. Rationale and Significance. Substantiate the need for the proposed project. Describe the impact of the project on the U.S. sheep or goat industry. Describe the project's specific relationship to the segment of sheep or goat industry issue, product or market being addressed.

c. Objectives and Approach. Discuss the specific objectives to be accomplished under the project. A detailed description of the approach must include: (1) Techniques or procedures used to carry out the proposed activities and for accomplishing the objectives; (2) The results expected.

d. Time Table. Tentative schedule for conducting the major steps of the project.

e. Evaluation. Provide a plan for assessing and evaluating the accomplishments of the stated objectives during the project and describe ways to determine the effectiveness (impact) of the end results upon conclusion of the project. Awardees will be required to submit written project performance reports on a semi-annual basis.

f. Coordination and Management Plan. Describe how the project will be coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration.

What To Submit

An original and 10 copies must be submitted. Each copy must be stapled in the upper left-hand corner. (DO NOT BIND). All copies of the proposal must be submitted in one package.

Other Federal Statutes and Regulations That Apply

Several Federal statutes and regulations apply to proposals considered for review and to grants awarded under this program. These include but are not limited to:

7 CFR part 1.1—USDA implementation of the Freedom of Information Act. of 1964.
7 CFR part 15a—USDA implementation of title VI of the Civil Rights Act of 1964.
7 CFR part 3015—USDA Uniform Federal Assistance Regulations.
7 CFR part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
7 CFR part 3017—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for drug-free workplace (grants).
7 CFR part 3018—New Restrictions on Lobbying.
7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.
7 CFR part 3052—Audits of State, Local Governments, and Non-Profit Organizations.

Public Burden in This Notice

Form SF–424, "Application for Federal Assistance" This form is used by applicants as a required face sheet for applications for Federal assistance.

Form SF–424A, "Budget Information-Non Construction Programs" This form must be completed by applicants to show the project's budget breakdown, both as to expense categories and the division between Federal and non-Federal sources.

Form SF–424B, "Assurances-Non Construction Programs" The applicant must complete this form to give the Federal government certain assurances that the applicant has the legal authority to apply for Federal assistance and the financial capability to pay the non-Federal share of project costs. The applicant also gives assurance it will comply with various legal and regulatory requirements as described in the form.

Reporting Requirements

Awardees will be required to submit written project performance reports on a semi-annual basis and a final report at the completion of the project. The project performance report and final report shall include, but need not be limited to: (1) A comparison of timeline, tasks and objectives outlined in the proposal as compared to the actual accomplishments; (2) If report varies from the stated objectives or they were not met, the reasons why established objectives were not met; (3) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives; (4) Objectives established for the next reporting period; and (5) Status of compliance with any special conditions on the use of awarded funds.

Dated: October 26, 2001.

Jay B. Wilson,

Executive Director, Notional Sheep Industry Improvement Center.

[FR Doc. 01–27396 Filed 10–30–01; 8:45 am]

BILLING CODE 135100001–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act; Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff briefing for the board of directors.

TIME AND DATE: 2 p.m., Thursday, November 8, 2001.

PLACE: Conference Room 5030, South Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Contract for legal and business advisors to the Privatization Committee.
2. FY 2002 Appropriations.
3. Current telecommunications industry issues.
4. Schedule for Year 2002 board meetings.
5. Administrative issues.

ACTION: Board of directors meeting.

TIME AND DATE: 9 p.m., Friday, November 9, 2001.

PLACE: Conference Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 12th and Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Introduction of Ms. Hilda Gay Legg, newly appointed Governor of the Rural Telephone Bank.
3. Action on Minutes of the August 17, 2001, board meeting.
4. Report on loans approved in FY 2001.
5. Report on financial activity for FY 2001.
6. Privatization Committee report.
7. Establish dates and locations for Year 2002 board meetings.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: October 26, 2001.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

[FR Doc. 01–27479 Filed 10–29–01; 2:17 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. ST–01–01]

Plant Variety Protection Board; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Plant Variety Protection Board.

DATES: November 14 and 15, 2001, 8 a.m. to 5 p.m., open to the public.

ADDRESSES: The meeting will be held in the National 4–H Conference Center, 1700 Connecticut Avenue, Chevy Chase, Maryland.

FOR FURTHER INFORMATION CONTACT: Commissioner Paul M. Zankowski, Plant Variety Protection Office, Science and Technology Program, United States Department of Agriculture, 10301 Baltimore Blvd., Room 400, National Agricultural Library Building, Beltsville, Maryland 20705–2351, Telephone number (301) 504–5518 or fax (301) 504–5291.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.), this notice is given regarding a Plant Variety Protection Advisory Board meeting. The board is constituted under section 7 of the Plant Variety Protection Act (7 U.S.C. 2327).

The proposed agenda for the meeting will include discussions of: (1) A proposal to increase fees of the Plant Variety Protection Office, (2) the Six Sigma review process, (3) long term strategic planning for efficient functioning of the Plant Variety Protection Office, (4) migration to e-business and (5) and other related topics. Written comments may be submitted to the contact person listed above before or after the meeting.

Dated: October 25, 2001.

A.J. Yates,

Administrator, Agricultural Marketing Service.

AGENDA—Plant Variety Protection (PVP) Board Meeting, November 14 and 15, 2001, National 4–H Conference Center, Chevy Chase, MD

November 14, 2001

Call to Order
Introductions
Opening Remarks
Adoption of Agenda
Adoption of March and September 2000 Board Meeting Minutes
Overview of the PVP Act and proposed changes to the regulations and rules of practice
Discussion of proposed fee increase and supplemental fees
Reengineering PVP Office business operations (Six Sigma Process)
Recommendations

November 15, 2001

FY2001 Accomplishment Report
Appeals to the Secretary of Agriculture (if any)
E-Business Migration Plans
Biotechnology—Influence of new molecular techniques for the reviewing applications and bioengineered varieties
Future Program Activities
Topics brought forward by Board members
Meeting Summary
Adjourn

[FR Doc. 01–27324 Filed 10–30–01; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Georgia Transmission Corporation, Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold scoping meetings and prepare an environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) proposes to prepare environmental assessments related to possible financing assistance to Georgia Transmission Corporation for the construction of approximately 25 miles of 230 kV transmission line and 30 miles of 500 kV transmission line. The 230 kV transmission line project would be located in Heard and Carroll Counties, Georgia. The 500 kV transmission line would be located in Heard, Carroll, and Douglas Counties, Georgia.

DATES: RUS and Georgia Transmission Corporation will conduct a scoping meeting in an open house format from 3 P.M. until 8 P.M. on Thursday, November 15, 2001.

ADDRESSES: The meeting will be held at the Carrollton Parks Recreation and Cultural Arts Center in the Optimist Room located at 118 South White Street, in Carrollton, Georgia 30117, phone (770)–832–1161. The purpose of the meeting is to provide information to the public and solicit comments.

FOR INFORMATION CONTACT: Bob Quigel, Engineering and Environmental Staff, Rural Utilities Service, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468. Mr. Quigel's e-mail address is *bquigel@rus.usda.gov*. You can also contact Ms. Analee Mayes at Georgia Transmission Corporation at (770) 270–7030. Ms. Mayes' e-mail address is *pbcntr1@gatrans.com*.

SUPPLEMENTARY INFORMATION: Two separate transmission lines are being proposed. A separate environmental assessment will be prepared for each transmission line. Georgia Transmission Corporation proposes to construct a 230 kV transmission between the Yellowdirt Switching Station at Plant Wansley in Heard County to the proposed Hickory Level Substation in Carroll County. (The Hickory Level Substation is anticipated to be in service by 2002 as it is a needed system improvement regardless of the 230 kV transmission line described herein.) Concrete or steel single pole structures ranging in height from 90 to 130 feet would support the conductors and would require a right-of way of approximately 100 feet. The approximate length of the line is 25 miles. It is anticipated that this transmission line would be in service in the spring of 2004. Georgia Transmission Corporation proposes to construct a 500 kV transmission line from the existing substation at Plant Wansley in Heard County to the existing Villa Rica #2 Substation east of Villa Rica, in Douglas County. Lattice steel structures would be used to support the conductors for the length of the project. The heights of these structures typically range from 80 to 150 feet and require a right-of-way width of 180 feet. The approximate length of the line is 30 miles. It is anticipated that this transmission line would be in service by the spring of 2008.

Alternatives considered by RUS and Georgia Transmission Corporation include: (a) No action, (b) alternative transmission improvements, and (c) alternative transmission line corridors. An Alternative Evaluation Study and Macro Corridor Study Report, prepared by Georgia Transmission Corporation, will be presented at the public scoping meetings. The report is available for public review at RUS at the address provided in this notice, at Georgia Transmission Corporation, 2100 East Exchange Place, Tucker, Georgia 30085 and at:

Whitesburg City Hall, 788 Main Street, Whitesburg, GA 30185, Phone: 770–832–1184

Neva Lomason Memorial Library, 710 Rome Street, Carrollton, GA 30117, Phone: 770–836–6711

Villa Rica City Hall, 571 West Bankead Hwy., Villa Rica, GA 30180, Phone: 770–459–3656

Heard County Public Library, 564 Main Street, Franklin, GA, Phone: 706–675–6501

Villa Rica Public Library, 70 Horace Luther Dr., Villa Rica, GA 30180, Phone: 770–459–7012

Carrollton City Hall, 315 Bradley Street, Carrollton, GA 30117, Phone: 404–830–2000

Mr. Jim Veal, Roopville City Council, P.O. Box 410, Roopville, GA 30170, Phone: 770–854–7723

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and Georgia Transmission Corporation will be available at the scoping meetings to discuss RUS's environmental review process, describe the project, the need for the project, and macro corridors under consideration, and discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for 30 days after the public scoping meeting. Written comments should be sent to RUS at the address provided in this notice.

From information provided in the alternative evaluation and site selection study, input that may be provided by government agencies, private organizations, and the public, Georgia Transmission Corporation will prepare an environmental analysis to be submitted to RUS for review. RUS will use the environmental analysis to determine the significance of the impacts of the project and may adopt it as its environmental assessment of the project. RUS' environmental assessment of the project would be available for review and comment for 30 days.

Should RUS determine, based on the environmental assessment of the project, that the impacts of the construction and operation of the plant would not have a significant environmental impact, it will prepare a finding of no significant impact. Public notification of a finding of no significant impact would be published in the **Federal Register** and in newspapers with a circulation in the project area.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by CEQ and RUS environmental policies and procedures.

Dated: October 23, 2001.

Glendon D. Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 01–27325 Filed 10–30–01; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

October 25, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Costa Rica and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 2002.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 25, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	1,541,941 dozen.
342/642	569,217 dozen.
347/348	2,598,514 dozen.
443	230,083 numbers.
447	12,405 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated December 13, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), you are directed to establish guaranteed access levels for properly certified cotton, wool and man-made fiber textile products in the following categories which are assembled in Costa Rica from fabric formed and cut in the United States and re-exported to the United States from Costa Rica during the period beginning on January 1, 2002 and extending through December 31, 2002:

Category	Guaranteed access level
340/640	650,000 dozen.
342/642	250,000 dozen.
347/348	1,500,000 dozen.
443	200,000 numbers.
447	4,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of May 15, 1990 (55 FR 21074), as amended, shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–27345 Filed 10–30–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

October 25, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALS) for textile products, produced or manufactured in Guatemala and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 2002.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in

Federal Register notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 25, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Guatemala and exported during the period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	2,013,906 dozen.
347/348	2,411,420 dozen.
351/651	424,822 dozen.
443	76,123 numbers.
448	47,696 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated November 28, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2002, you are directed to establish guaranteed access levels for properly certified textile products in the following categories which are assembled in Guatemala from fabric formed and cut in the United States and re-exported to the United States from Guatemala during the period January 1, 2002 through December 31, 2002:

Category	Guaranteed access Level
340/640	520,000 dozen.
347/348	1,000,000 dozen.
351/651	200,000 dozen.
443	25,000 numbers.
448	42,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of January 24, 1990 (55 FR 3079), as amended, shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27344 Filed 10–30–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Technology Advisory Committee; Security Procedures for November 27, 2001; Meeting

On October 17, 2001, the Commodity Futures Trading Commission published notice that its Technology Advisory Committee will conduct a public meeting on Tuesday, November 27, 2001. The meeting will take place at the Federal Reserve Bank of Chicago, 230 South LaSalle Street, Chicago, IL 60604–1413, from 1 to 5 p.m. For general information concerning this meeting, see 66 FR 52747.

Due to the physical security procedures at the Federal Reserve Bank of Chicago, all attendees must register with the Bank in advance, (but not later than November 25, 2001) by providing their names and company affiliations. To register, please contact Judith Kozla by telephone at (800) 333–0894, extension or by e-mail at *judith.kozla@chi.frb.org*. The secondary contact is Pamela Suarez, who can be reached at (800) 333–0894, extension 8103, or *pamela.suarez@chi.frb.org*. Persons who do not register by November 25, 2001 will not be able to attend the meeting.

On the day of the meeting, attendees must bring photo identification to receive a visitors pass. Be advised that the Federal Reserve Bank of Chicago utilizes metal detectors as well as x-ray machines for all bags and briefcases.

For further information concerning this meeting, please contact Natalie A. Markman or William Penner at (202) 418–5060.

Issued by the Commission in Washington, DC on October 26, 2001.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–27374 Filed 10–30–01; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement (DEIS) for Enhanced Training and Operations at the National Guard Training Center (NGTC)—Fort Indiantown Gap (FTIG), PA

AGENCY: National Guard Bureau (NGB), Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Pennsylvania Army National Guard (PAARNG) and the Pennsylvania Air National Guard (PaANG) have formulated long-range plans to ensure the continued and long-term viability of FTIG as a National Guard Training Center. In these plans, a total of 11 actions, comprised of 42 component projects, are proposed for the specific purposes and needs set forth in the DEIS. These proposed actions consist of the construction or improvement of the following projects: (1) Tracked Vehicle Training Complex, (2) Ammunition Supply Point Facility, (3) Artillery Training Support Facility, (4) Multi-Purpose Training Range Facility, (5) NGTC–FTIG Garrison Facility, (6) Wastewater Treatment Plant and Collection System, (7) Muir Army Airfield Complex, (8) Air Guard Station Facilities, (9) Air-to-Ground Range Control Compound, (10) Regional Equipment Operator Training School, and (11) the implementation of the Integrated Natural Resources Management Plan. Implementation of these actions and component projects, in concert with on-going operations, will provide the user of NGTC–FTIG with the facilities, training support, logistical support, and resources necessary to complete their military mission.

ADDRESSES: Written comments or materials should be forwarded to Captain Geoffrey Lincoln, NGTC–FTIG EIS Project Officer, NGTC–FTIG, Environmental Section, 1119 Utility Road, Annville, Pennsylvania 17003–5002; or Lieutenant Colonel Christopher Cleaver, NGTC–FTIG Public Affairs Officer (PAO), PADMVA Headquarters, Building 0–47, Annville, Pennsylvania 17003–5002.

FOR FURTHER INFORMATION CONTACT: Captain Lincoln at (717) 861–2548 or Lieutenant Colonel Cleaver at (717) 861–8468.

SUPPLEMENTARY INFORMATION: The mission of the 28th Infantry Division (Mechanized) is to be trained and equipped to join the active forces in time of war or national emergency; response to orders of the governor protecting lives and property during natural and man-made disasters; cleaning up the environment; fighting to eradicate the illicit flow of drugs; and serving as role models for future generations. Each of the proposed actions has been determined to be necessary to allow the PAARNG and PaANG to continue to utilize the training site to support on-going military and civilian missions. By implementing each of these actions, NGTC–FTIG will continue to provide training and support facilities necessary to ensue its long-term viability, sustainability, and value as a major NGB training site. A summary of impact analysis of previously completed Environmental Assessments are incorporated into the DEIS.

Two public comment meetings are anticipated to be held in the fall of 2001, with exact dates and locations to be determined and published in the local news media well in advance of the meeting. These meetings will be conducted in order to receive comments from the public on the DEIS.

Dated: October 24, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 01–27353 Filed 10–31–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council (FICC), and invites people to participate. Notice of this meeting is required under section 644(c) of the Individuals with Disabilities Education Act (IDEA) and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

The FICC will attend to ongoing work including discussion of future planning.

DATES AND TIMES: FICC Meeting: Thursday, December 13, 2001 from 1:30 p.m. to 4:30 p.m.

ADDRESSES: U.S. Department of Education, Barnard Auditorium, 400 Maryland Avenue, SW., Washington, DC 20202 (near the Federal Center Southwest and L'Enfant metro stops).

FOR FURTHER INFORMATION CONTACT: Bobbi Stettner-Eaton or Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 Ext. 3. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 644(c) of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert H. Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

The meeting of the FICC is open to the public and is physically accessible. Anyone requiring accommodations such as an interpreter, materials in Braille, large print, or cassette please call Obral Vance at (202) 205–5507 (voice) or (202) 205–9754 (TDD) ten days in advance of the meeting. Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 01–27323 Filed 10–30–01; 8:45 am]

BILLING CODE 4000–010–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–146–000, ER02–147–000, ER02–148–000, ER02–149–000]

CalPeak Power—Panoche LLC et. al.; Notice of Filing

October 25, 2001.

Take notice that on October 22, 2001, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power—Enterprise LLC, and CalPeak Power—Border LLC (the CalPeak Entities) tendered for filing each of the CalPeak Entities' respective long-term power purchase agreements with the California Department of Water Resources (CDWR).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 12, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27333 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–325–005]

Colorado Interstate Gas Company; Notice of Compliance Filing

October 25, 2001.

Take notice that on October 22, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date October 5, 2001.

CIG states that the filing is being made in compliance with the Commission's order issued October 5, 2001 at Docket No. RP00–325–003, et al.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27336 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–22–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

October 25, 2001.

Take notice that on October 22, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective December 1, 2001.

Natural states that the purpose of this filing is to eliminate the surcharges for Gas Supply Realignment costs applicable to Natural's services and to delete other references to GSR where no longer applicable.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27337 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065 California]

El Dorado Irrigation District; Notice of Public Meeting

October 25, 2001.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No.184), which was filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador Counties, California. The project occupies lands of the Eldorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies have agreed to ask the Commission for time to work collaboratively with a facilitator to resolve certain issues relevant to this proceeding. The purpose of this meeting is to finalize the protocols by which the collaborative group would operate and, if time permits, begin discussions of the interests of the parties. We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in this meeting.

The meeting will be held on Tuesday, November 13, 2001, from 9 a.m. until 4 p.m. in the Sacramento Marriott, located at 11211 Point East Drive, Rancho Cordova, California.

For further information, please contact Elizabeth Molloy at (202) 208–0771 or John Mudre at (202) 219–1208.

David P. Boergers,

Secretary.

[FR Doc. 01–27334 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3112–001]

New York Independent System Operator, Inc.; Notice of Filing

October 25, 2001.

Take notice that on October 22, 2001, the New York Independent System Operator, Inc. (NYISO) filed a correction to revisions to its Market Administration and Control Area Services Tariff (Services Tariff) and its Open-Access Transmission Tariff ("OATT") to make permanent two temporary market rules pertaining to External Transactions that were initially implemented as "Extraordinary Corrective Actions," and to introduce several new enhancements to its external transaction scheduling processes.

The NYISO has requested a waiver of the usual sixty day notice period so that this filing can become effective on October 30, 2001.

The NYISO has served a copy of the filing on all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, to the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 1, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27332 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–8–000, et al.]

Metro Energy, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

October 24, 2001.

Take notice that the following filings have been made with the Commission:

1. Metro Energy, L.L.C.

[Docket No. EC02–8–000]

Take notice that on October 19, 2001, Metro Energy, L.L.C. (Metro Energy), filed with the Federal Energy Regulatory Commission (Commission), an application pursuant to section 203 of the Federal Power Act (16 U.S.C. 842b) and part 33 of the Commission's Regulations for authorization of the transfer to the Charter County of Wayne, Michigan (County) of certain interconnection facilities which may be regarded as jurisdictional facilities and which are appurtenant to the 17.1 MW natural-gas fueled generating facility that Metro Energy is transferring to the County.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. American Transmission Company LLC

[Docket No. EC02–9–000]

Take notice that on October 18, 2001, American Transmission Company LLC (ATCLLC), tendered for filing with the Federal Energy Regulatory Commission (Commission), an Application for Authorization to Transfer Operational Control of Jurisdictional Transmission Facilities to the Midwest Independent Transmission System Operator, Inc. pursuant to section 203 of the Federal Power Act and part 33 of the Commission's regulations, 18 CFR 33.1.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Tucson Electric Power Company, WestConnect RTO, LLC

[Docket No. EL02–9–000]

Take notice that on October 16, 2001, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Tucson Electric Power Company filed pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207, and the Commission's Regional Transmission Organization (RTO) rules at 18 CFR 35.34(d)(3) and (4), a petition for Declaratory Order seeking confirmation that their joint proposal to form WestConnect RTO, LLC (WestConnect) meets or exceeds the Commission's requirements for the formation of RTOs under Order No. 2000.

Comment date: November 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Consumers Energy Company

[Docket Nos. ER92–331–009 and ER92–332–009]

Take notice that on October 22, 2001, Consumers Energy Company (Consumers) tendered for filing with the Federal Energy Regulatory Commission (Commission) the following substitute tariff sheets as part of its FERC Electric Tariff No. 5 in compliance with the October 5, 2001 letter order, and previous orders, issued in these proceedings; Second Sub Original Sheet Nos. 2.00, 10.00, 11.00 and 12.00.

The first sheet listed is to have an effective date of June 21, 1993. The remaining three sheets are to have an effective date of May 2, 1992. Copies of these sheets were served upon the Michigan Public Service Commission and upon those on the official service lists in these proceeding.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER01–1152–003]

Take notice that PacifiCorp on October 22, 2001, tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its January 30, 2001 filing of a revised Exhibit C to the contract for Interconnections and Transmission Service between PacifiCorp and Western Area Power Administration (Western), Contract No. 14–06–400–2436, Supplement No. 2 (PacifiCorp's Rate Schedule FERC No. 262). The revisions modify the rates charged to Western for Block 2 transmission service. Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

PacifiCorp has requested an effective date of April 1, 2001.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Mountain View Power Partners II, LLC

[Docket No. ER01–1336–001]

Take notice that on October 22, 2001, Mountain View Power Partners II, LLC (Mountain View II) filed with the Federal Energy Regulatory Commission (Commission) a Notice of Change in Status with the Commission in accordance with the delegated letter order issued April 6, 2001 in Mountain View Power Partners II, LLC, Docket No. ER01–1336–000, accepting for filing Mountain View II's marked-based rate tariff. The Notice of Change in Status reports that the change in ownership of Mountain View II that was described in its market-based rate application filed with the Commission on February 27, 2001 in the above-referenced docket, has occurred.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER01–2566–002]

Take notice that on October 22, 2001, Public Service Company of New Mexico (PNM) submitted for filing with the Federal Energy Regulatory Commission (Commission) a supplement to its filing in this proceeding to respond to a letter dated September 21, 2001, from the Director, Division of Tariffs and Rates + West, notifying PNM that its original filing was deficient. This supplement provides additional information concerning the Wholesale Requirements Power Sale and Services Agreement (Agreement) between PNM and Texas-New Mexico Power Company (TNMP) filed by PNM in this proceeding. Specifically, the supplement provides additional information concerning transmission service associated with sales to TNMP pursuant to the Agreement, as well as additional information concerning charges for ancillary services. The supplement includes an amended version of the Agreement, designated as Substitute Service Agreement No. 28 under PNM's FERC Electric Tariff, First Revised Volume No. 3.

Copies of this filing have been served upon TNMP, Southwestern Public Service Company, and the New Mexico Public Regulation Commission.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. ODEC Power Trading, Inc.

[Docket No. ER01–2783–001]

Take notice that on October 22, 2001, ODEC Power Trading, Inc. (OPT) filed with the Federal Energy Regulatory Commission (Commission) an Amendment to its application for blanket authority to sell wholesale power at market-based rates (Docket No. ER01–2783–000). OPT's Amendment is filed pursuant to section 205 of the Federal Power Act and Rules 205 and 207 of Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER01–3071–001]

Take notice that on October 22, 2001, PacifiCorp, tendered for filing with the Federal Energy Regulatory Commission (Commission) in accordance with 18 CFR Section 35 of the Commission's Rules and Regulations, an Amendatory Agreement No. 1 to Service Agreement No. 50 under PacifiCorp's FERC Electric Tariff, Volume No. 12 dated October 12, 2001 between Flathead and PacifiCorp.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. PPL Electric Utilities Corporation

[Docket No. ER02–128–001]

Take notice that on October 23, 2001, PPL Electric Utilities Corporation (PPL Electric) and Williams Generation Company—Hazleton (WGC) filed with the Federal Energy Regulatory Commission (Commission) Exhibit C to an Interconnection Agreement between PPL Electric and WGC. The Interconnection Agreement originally filed with the Commission on October 18, 2001 inadvertently omitted the contents of Exhibit C.

PPL Electric and WGC request an effective date of October 19, 2001 for the Interconnection Agreement.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PJM Interconnection, L.L.C.

[Docket No. ER02–131–000]

Take notice that on October 19, 2001, PJM Interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) amendments to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. and PJM's FERC Electric Tariff, Third Revised Volume No. 1 to permit Market Sellers the option of requesting cost-based start-up fees in their Offer Data that are modifiable on a daily basis.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM control area.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. American Transmission Systems, Incorporated

[Docket No. ER02–132–000]

Take notice that on October 19, 2001, American Transmission Systems, Incorporated (ATSI) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Generator Interconnection and Operating Agreement to provide a connection of electric generating facilities owned and operated by Fremont Energy Center, L.L.C. (Fremont) to the FirstEnergy Transmission System and for coordination of the operation and maintenance of those facilities with ATSI. The proposed effective date for the Generator Interconnection and Operating Agreement is September 19, 2001.

Copies of this filing have been served on the Ohio and Pennsylvania utility commissions and Fremont.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Public Service Corporation

[Docket No. ER02–133–000]

Take notice that on October 19, 2001, Wisconsin Public Service Corporation (WPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised partial requirements service agreement with Washington Island (WIEC). Second Revised Service Agreement No. 9 provides WIEC's contract demand nominations for January 2002—December 2002, under WPSC's W–2A partial requirements tariff.

The company states that copies of this filing have been served upon WIEC and to the State Commissions where WPSC serves at retail.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Consumers Energy Company

[Docket No. ER02–134–000]

Take notice that on October 18, 2001 Consumers Energy Company (Consumers) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Carolina Power & Light Company, (Customer) under Consumer's FERC Electric Tariff No. 9 for Market Based Sales. Consumers requested that the Agreement be allowed to become effective as of September 27, 2001.

Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Mid-Continent Area Power Pool

[Docket No. ER02–135–000]

Take notice that on October 19, 2001, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under section 201(e) of the Federal Power Act, filed with the Federal Energy Regulatory Commission (Commission) an amendment to Schedule R of the Restated Agreement that would extend provision of the redispatch service from October 31, 2001 to October 31, 2002.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. West Penn Power Company

[Docket No. ER02–136–000]

Take notice that on October 19, 2001 West Penn Power Company filed with the Federal Energy Regulatory Commission (Commission) a unilateral addendum to its agreement for service to Allegheny Electric Cooperative, Inc. West Penn recites that the addendum contains terms and conditions proposed by West Penn for a one-year renewal period of that agreement.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Mohawk River Funding III, L.L.C.

[Docket No. ER02–137–000]

Take notice that on October 19, 2001, Mohawk River Funding III, L.L.C. (Mohawk), filed with the Federal Energy Regulatory Commission (Commission) an application asking that the Commission accept for filing an Amended and Restated PPA (designated as Mohawk River Funding III, L.C. Rate Schedule FERC No. 1), thereby authorizing Mohawk to engage in the wholesale sales of energy and capacity under the Amended and Restated PPA at the market-based rates to which the parties have agreed, and grant other waivers, approvals, and authorizations requested in the application.

Mohawk is a limited liability company formed under the laws of Delaware. Mohawk does not own any generating facilities.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Northern Indiana Public Service Company

[Docket No. ER02–138–000]

Please take notice that on October 22, 2001, Northern Indiana Public Service Company (NIPSCO), a wholly owned subsidiary of NiSource Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement. NIPSCO seeks an effective date of December 21, 2001, for the tariff sheets submitted with this filing.

NIPSCO states that pursuant to the Service Agreement, it will be authorized to sell electric energy, from time to time, to its marketing affiliate, EnergyUSA-TPC Corp. (TPC). The rate applicable to any such sales will be no lower than the published "Into-Cinergy" price for the applicable time period. The "Into-Cinergy" rate will act as a guarantee against potential affiliate concerns. Under the terms of the proposed Service Agreement, neither TPC nor NIPSCO shall be required to undertake any sales or purchases of electric energy.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power & Light Company

[Docket No. ER02–139–000]

Take notice that on October 22, 2001, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, an executed Interconnection & Operation Agreement between FPL and CPV Atlantic, Ltd.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Corporation

[Docket No. ER02–140–000]

Take notice that on October 22, 2001, Wisconsin Public Service Corporation (WPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised partial requirements service agreement with Manitowoc Public Utilities (MPU). Second Revised Service Agreement No. 5 provides MPU's contract demand nominations for January 2002–December 2002, under WPSC's W–2A partial requirements tariff.

The company states that copies of this filing have been served upon MPU and to the State Commissions where WPSC serves at retail.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Michigan Electric Transmission Company

[Docket No. ER02–142–000]

Take notice that on October 22, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) executed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service with Dynegy Power Marketing (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). Copies of the filed agreements were served upon the Michigan Public Service Commission, ITC, and the Customer.

Michigan Transco is requesting an effective date of October 15, 2001 for the Agreements.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. American Electric Power Service Corporation

[Docket No. ER02–141–000]

Take notice that on October 22, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission) ten replacement blanket Service Agreements for existing customers under the AEP Companies' Power Sales Tariffs; AEPSC's request to terminate several Service Agreements under the Power Sales Tariffs and; various Counterparty requests to assign their Service Agreement under AEPSC's Power Sales Tariffs to other entities because of a merger or acquisition. The Power Sales Tariffs were accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, Effective January 8, 1998 in Docket ER 98–542–000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies). AEPSC respectfully requests waiver of notice to permit the attached Service Agreements to be made effective on or prior to September 20, 2001. AEPSC also respectively requests that the Commission accepts its request to terminate those Service Agreements identified in Exhibit 2 and the assignments identified in Exhibit 3 to be effective on, or prior to September 20, 2001.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company

[Docket No. ER02–143–000]

Take notice that on October 22, 2001, Commonwealth Edison Company (ComEd) submitted for filing with the Federal Energy Regulatory Commission (Commission) an amended Form of Service Agreement for Firm Point-To-Point Transmission Service (Amended

Service Agreement) between ComEd and Exelon Generation Company, LLC (Exelon) under the terms of ComEd's Open Access Transmission Tariff (OATT). ComEd asks that the Amended Service Agreement supersede and be substituted for the Service Agreement with Exelon previously filed on August 21, 2001 in Docket No. ER01–2897–000. The Amended Service Agreement has been amended to change the roll-over rights from pending to granted. Copies of this filing were served on Exelon.

ComEd requests an effective date of October 5, 2001 for the Amended Service Agreement, and waiver of the Commission's notice requirements.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Services, Inc.

[Docket No. ER02–144–000]

Take notice that on October 22, 2001, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission) a unilaterally executed Interconnection and Operating Agreement with Mobil Oil Corporation (Mobil), and a Generator Imbalance Agreement with Mobil.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Pool

[Docket No. ER02–145–000]

Take notice that on October 22, 2001, the New England Power Pool (NEPOOL) submitted to the Federal Energy Regulatory Commission (Commission) the Seventy-Seventh Agreement Amending the Restated NEPOOL Agreement (the Seventy-Seventh Agreement), which corrects and updates certain provisions of the NEPOOL Tariff to reflect recently completed merger activity among various NEPOOL Participants, and corrects certain other incorrect references in various defined terms in the NEPOOL Tariff. NEPOOL also filed on October 22, 2001 certain changes to the NEPOOL Tariff Attachment F Implementation Rule, which correct incorrect references in various defined terms of the Implementation Rule and are not substantive. NEPOOL states that these changes will not increase rates.

NEPOOL request a January 1, 2002 effective date.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27330 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI02–1–000]

Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

October 25, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI02–1–000.

c. *Date Filed:* October 11, 2001.

d. *Applicant:* Peter Fox Sipp, Jr.

e. *Name of Project:* Peter Fox Sipp's Hydro-Generating Facility.

f. *Location:* The Peter Fox Sipp Hydro-Generating Facility would be located approximately 15 miles from Burnsville, North Carolina, on the Cane River in Yancy County, North Carolina. The project will not occupy Federal or Tribal land.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Peter Fox Sipp, 8 Bear Creek Place, Asheville, NC 28806, telephone (828) 258–8139.

i. *FERC Contact:* Any questions on this notice should be addressed to Patricia W. Gillis (202) 208–0735, or E-mail address: *patricia.gillis@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* December 7, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the docket number (DI02–1–000) on any comments or motions filed.

k. *Description of Project:* The proposed Peter Sipp's Hydro-Generating Facility would consist of: (1) A jib crane; (2) a paddle type wheel 12 feet wide, 14 feet in diameter; (3) a drawbridge with a screen on the upstream side only in front of the wheel; (4) a 12-volt automotive alternator and producing approximately 420 watts connected to a 24-volt D.C. x 25 amp truck generator producing approximately 600 watts; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at

http://www.ferc.gov using the "RIMS" link, select "Docketı" and follow the instructions (call 202–208–2222 for assistance).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–27331 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

October 25, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 233–081.

c. *Date Filed:* October 19, 2001.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Pit 3, 4, and 5 Hydroelectric Project.

f. *Location:* On the Pit River, in Shasta County, near the community of Burney and the Intermountain towns of Fall River Mills and McArthur, California. The project includes 746 acres of lands of the United States, which are administered by the Forest Supervisor of the Shasta Trinity National Forest and the Forest Supervisor of the Lassen National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Randal Livingston, Lead Director, Hydro Generation Department, Pacific Gas and Electric Company, P.O. Box 770000, N11C, San Francisco, CA 94177, (415) 973–6950.

i. *FERC Contact:* John Mudre, (202) 219–1208 or *john.mudre@ferc.fed.us.*

j. *Deadline for filing additional study requests:* December 18, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Additional study requests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The existing Pit 3, 4, 5 Project consists of three hydraulically-connected developments, with a total of four dams, four reservoirs, three powerhouses, associated tunnels, surge chambers, and penstocks. The powerhouses contain nine generating units with a combined operating capacity of about 325 MW. No new construction is proposed.

The Pit 3 development consists of: (1) The 1,293-acre Lake Britton, with a gross storage capacity of 41,877 acre feet; (2) the Pit 3 Dam, with a crest length of 494 feet and a maximum height of 130 feet; (3) a concrete tunnel in two sections, 19 feet in diameter with a total length of about 21,000 feet; (4) a surge tank; (5) three penstocks about 10 feet in diameter and 600 feet in length; (6) a 47-foot by 194-foot reinforced concrete multilevel powerhouse; (7) three generating units, driven by three vertical Francis turbines, with a combined normal operating capacity of 70 MW; and (8) appurtenant facilities.

The Pit 4 development consists of: (1) The 105-acre Pit 4 Reservoir, with a gross storage capacity of 1,970 acre feet; (2) the Pit 4 Dam, consisting of a gravity type overflow section 203 feet in length with a maximum height of 108 feet and a slab-and-buttress type section 212 feet in length with a maximum height of 78 feet; (3) a 19-foot-diameter pressure tunnel with a total length of about 21,500 feet; (4) two 12-foot-diameter penstocks about 800 feet in length; (5) a four-level 58-foot by 155-foot reinforced concrete powerhouse; (6) two generating units, driven by two vertical Francis turbines, with a combined normal operating capacity of 95 MW; and (7) appurtenant facilities.

The Pit 5 development consists of: (1) The 32-acre Pit 5 Reservoir, with a gross storage capacity of 314 acre feet; (2) the Pit 5 Dam, with a concrete gravity overflow structure 340 feet in length and a maximum height of 67 feet; (3) the 19-foot-diameter Tunnel No. 1; (4) the 48-acre Pit 5 Tunnel Reservoir, with a gross storage capacity of 1,044 acre feet; (5) the Pit 5 Tunnel Reservoir Dam, approximately 3,100 feet long and 66 feet high; (6) the 19-foot-diameter Pit 5 Tunnel No. 2; (7) four steel penstocks about 8 feet in diameter and 1,400 feet in length; (8) a 56-foot by 266.5-foot reinforced concrete multilevel powerhouse; (9) four generating units, driven by four vertical Francis turbines, with a combined normal operating capacity of 160 MW; and (10) appurtenant facilities.

m. A copy of the application is on file with the Commission and is available

for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the *CALIFORNIA STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by section 106 of the National Historic Preservation Act.

o. *Procedural schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing;
Notice of NEPA Scoping (unless scoping has already occurred);
Notice of application is ready for environmental analysis;
Notice of the availability of the draft NEPA document;
Notice of the availability of the final NEPA document;
Order issuing the Commission's decision on the application.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

David P. Boergers,

Secretary.

[FR Doc. 01–27335 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7096–2]

Federal NO_X Budget Trading Program; Applicability Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of applicability determination under Federal NO_X Budget Trading Program.

SUMMARY: EPA established 40 CFR part 97, the Federal NO_X Budget Trading Program ("the Program"), to reduce interstate transport of ozone under section 126 of the Clean Air Act ("section 126"). The Program applies to existing or new large electric generating units ("EGU's") and large non-EGU's (as defined at 40 CFR 52.34) in states subject to section 126. EPA finds, in an applicability determination dated October 24, 2001, that Point B015 at Marathon Ashland Petroleum LLC's Plant 1576000301 in Ohio is not subject to the Program because it is not an EGU, since it does not serve a generator, nor is it a non-EGU, since it has less than 250 (166) mmBtu/hr maximum design heat input. Further, it is not a "NO_X Budget unit" as defined at 40 CFR 97.2. Since Point B015 is not subject to the Program, NO_X allowances will not be allocated for this unit in EPA's NO_X Allowance Tracking System.

DATES: Any comments regarding this applicability determination must be submitted in writing to EPA at the address below no later than November 30, 2001.

ADDRESSES: U.S. EPA, Clean Air Markets Division (6204N), Attn: Robert Miller, 1200 Pennsylvania Avenue, NW., Washington DC, 20460.

FOR FURTHER INFORMATION CONTACT: Robert Miller, U.S. EPA Headquarters, Clean Air Markets Division, (202) 564–9077.

Dated: October 24, 2001.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 01–27382 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34240; FRL–6810–7]

Technical Briefing on Dietary and Residential Exposure Methodologies for Use in the Organophosphate Pesticide Cumulative Preliminary Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA is announcing a public technical briefing on November 15, 2001, to discuss the exposure methodologies proposed for use in the organophosphate (OP) cumulative risk assessment for food and residential exposures. The briefing will provide the public with an explanation in non-technical terms of the proposed exposure methodologies. In addition, the briefing will cover how the Calendex model calculates and combines these exposure estimates. This briefing follows the August 22, 2001, briefing on the hazard portion of the assessment and the October 3, 2001, briefing on the water exposure methodology. This technical briefing will complete the background briefings on the proposed OP cumulative risk assessment methodology.

DATES: The technical briefing will be held on Thursday, November 15, 2001, from 9 a.m. to 5 p.m. On Friday, November 16, 2001, from 9 a.m. to noon, EPA and the U.S. Department of Agriculture will hold a public meeting of the CARAT Workgroup on Cumulative Risk Assessment/Public Participation Process.

ADDRESSES: The technical briefing will be held at the Old Town Holiday Inn Select, 480 King Street, Alexandria, VA. The telephone number for the hotel is (703) 549–6080. Complimentary shuttle service to and from the Ronald Reagon Airport and the King Street Metro Station is available. The CARAT Workgroup Meeting will be held at the Environmental Protection Agency, 1921 Jefferson Davis Highway, Room 1110 (Fishbowl), Arlington, VA.

FOR FURTHER INFORMATION CONTACT: For general information contact: Terria Northern, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7093; fax number (703) 308–8005, e-mail address: northern.terria@epa.gov.

For technical questions contact: Kathy Monk, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8071; fax number (703) 308–8005, e-mail address: monk.kathy@epa.gov.

Deanna Scher, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–7043; fax number (703) 308–7042, e-mail address: Scher.Deanna@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are concerned about implementation of the Food Quality Protection Act (FQPA). Passed in 1996, this new law strengthens the nation's system for regulating pesticides on food. Participants may include environmental/public interest and consumer groups; industry and trade associations; pesticide user and grower groups; Federal, State and local governments; food processors; academia; general public; etc. Since others may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about the cumulative process you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/cumulative.

2. *In person.* The Agency has established an official record under docket control number OPP–34240. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Request to Participate in this Meeting?

This meeting is open to the public. Outside statements by observers are welcome. Oral statements will be limited to 3 to 5 minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement may do so immediately before or after the meeting. These statements will become part of the permanent record and will be available for public inspection at the address listed in Unit II.

List of Subjects

Environmental protection, organophosphate pesticides.

Dated: October 25, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 01–27384 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7096–7]

RIN 2040–AB75

Meeting of the Research Working Group of the National Drinking Water Advisory Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Drinking Water Research Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300F *et seq.*), will be held on November 28–29, 2001. The meeting will begin at 9 a.m. on the 28th and end by 4 p.m. on the 29th, at RESOLVE, 1255 23rd Street, NW., Suite 275, Washington, DC 20037. The meeting will be open to the public to observe and statements will be taken from the public as time allows. Seating is limited.

This is the third meeting of the Drinking Water Research Working Group. The purpose of this working group is to provide advice to NDWAC as it develops recommendations for EPA on a Comprehensive Drinking Water Research Strategy (as required under the Safe Drinking Water Act) that will consider a broad range of research needs to support the Agency's drinking water regulatory activities. The research strategy will include an assessment of research needs for microbes and disinfection by-products (M/DBPs), arsenic, contaminants on the Contaminants Candidate List (CCL), and other critical cross-cutting issues, such as sensitive subpopulations, distribution systems, contaminants mixtures, future scenarios and source water assessment. The majority of this meeting (1.5 days) will be a workshop on futures scenarios. During the first half of November 28th, the working group will also discuss the status of the cross-cutting issues and criteria for prioritizing research.

FOR FURTHER INFORMATION CONTACT: For more information, please contact Maggie Javdan, U.S. EPA, Office of Ground Water and Drinking Water, Mailcode 4607, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Phone number: (202)–260–9862. E-mail: *javdan.maggie@epa.gov.*

Dated: October 23, 2001.

Evelyn Washington,

Deputy Office Director, Office of Ground Water and Drinking Water.

[FR Doc. 01–27381 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30516; FRL–6803–4]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30516, must be received on or before November 30, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30516 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food

manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register** Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30516. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30516 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30516. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. *File symbol: 7969-RIU.* Applicant: BASF Corporation, Agricultural Products Division, P.O. Box 13528, Research Triangle Park, NC 27709–3528. Product name: Insignia Fungicide. Active ingredient: pyraclostrobin (methyl-N-(((1-(4-chlorophenyl)pyrazol-3-yl)oxy)o-tolyl)N-methoxycarbamate). Proposed classification: None. Proposed use pattern: Control of anthracnose, brown patch, cool weather patch/yellow patch, fusarium patch, gray leaf spot, gray snow mold/typhula blight, leaf spot, pink snow mold, pythium blight, red thread, rhizoctonia large patch, rust, spring dead spot, summer patch, and take-all patch on turf grass sites including golf courses; institutional, commercial, and residential lawns; sod farms; parks; recreation areas; cemeteries; and sports fields.

2. *File symbol: 7969-RIL.* Applicant: BASF Corporation, Agricultural Products Division, P.O. Box 13528, Research Triangle Park, NC 27709–3528. Product name: BAS 500F Manufacturers Use Product. Active ingredient: Pyraclostrobin (methyl-N-(((1-(4-chlorophenyl)pyrazol-3-yl)oxy)o-tolyl)N-methoxycarbamate). Proposed classification: None. Proposed use pattern: A technical product for use in fungicide formulations for control of a wide range of fungi on turf grass and a wide range of crops, as here in detailed for the three end-use products containing this active ingredient.

3. *File symbol: 7969-RIA.* Applicant: BASF Corporation, Agricultural Products Division, P.O. 13528, Research Triangle Park, NC 27709 –3528. Product name: Headline EC Fungicide. Active ingredient: pyraclostrobin (methyl-N-(((1-(4-chlorophenyl)pyrazol-3-yl)oxy)o-tolyl)N-methoxycarbamate). Proposed classification: None. Proposed use pattern: Control of alternaria brown spot, anthracnose, black spot, greasy spot, melanose, phytophthora brown spot, post bloom fruit drop, and scab on the citrus crop group; control of anthracnose, ascochyta blight, mycosphaerella blight, powdery mildew, and rust on the dried shelled pea and bean subgroup; control of powdery mildew and rust on grasses grown for seed; control of early leafspot, late leafspot, pepperspot, rhizoctonia limb rot, rhizoctonia peg rot, rhizoctonia pod rot, rust, stem rot, southern blight, web blotch, and white mold on peanuts; control of downy mildew, early blight, late blight, leaf spot, powdery mildew, and rust on the tuberous and corm vegetables subgroup; control of cercospora leaf spot and powdery mildew on sugarbeets; and control of fusarium head scab/blight, net blotch, powdery mildew, rust, scald, septoria, spot blotch, and tan spot on wheat, barley, and rye.

4. *File symbol: 7969-RIT.* Applicant: BASF Corporation, Agricultural Products Division, P.O. Box 13528, Research Triangle Park, NC 27709–3528. Product name: Cabrio Fungicide. Active ingredient: Pyraclostrobin (methyl-N-(((1-(4-chlorophenyl)pyrazol-3-yl)oxy)o-tolyl)N-methoxycarbamate). Proposed classification: None. Proposed use pattern: Control of alternaria, anthracnose, leaf blotch, leaf spot, phomopsis, powdery mildew, rust, and spur blight on the berries group; control of alternaria purple blotch, downy mildew, and powdery mildew on the bulb vegetables group; control of alternaria blight, anthracnose, cercospora leaf spot, downy mildew, gummy stem blight, microdochium blight, powdery mildew, and target leaf spot on the cucurbit vegetables group; control of anthracnose, early blight, late blight, powdery mildew, and septoria leaf spot on the fruiting vegetables group; control of angular leaf spot, anthracnose, black rot, downy mildew, mycosphaerella leaf blight, phomopsis rot, powdery mildew, and ripe rot, and suppression of botrytis gray mold on grape (vinifera variety only); control of late blight and shoot blight on pistachio; control of alternaria, cercospora, powdery mildew, and white rust on the root vegetables group; control of alternaria, anthracnose, leaf rust, and shothole, and suppression of blossom blight on the tree nuts group; control of alternaria, anthracnose, leaf spot, powdery mildew, scab, and shothole, and suppression of monilinia blossom blight on the stone fruits group; control of anthracnose, leaf spot, and powdery mildew, and suppression of botrytis gray mold on strawberry.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 15, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 01–27292 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50890; FRL–6804–8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

In person or by telephone: Contact the designated person at the following address at the office location, telephone number, or e-mail address cited in each EUP: 1921 Jefferson Davis Hwy., Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. EUPs

EPA has issued the following EUPs:

053263–EUP–1. Issuance. Cognis Corporation, 4900 Este Avenue, Cincinnati, OH 45232–1419. This EUP allows the use of 1,700 pounds of the insecticide poly(oxy–1,2,–ethanediyl), alpha-isoctadecyl-omega-hydroxy on 67 acres of mosquitoes and midge habitats to evaluate the control of immature midges and mosquitoes. The program is authorized only in the States of California, Florida, and South Carolina. The EUP is effective from October 1, 2001 to October 2, 2002. (Dani Daniel; Rm. 211, Crystal Mall #2; telephone number: (703) 305–5409; e-mail address: daniel.dani@epa.gov).

62719–EUP–46. Extension. Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, Indiana 46268–1054. This EUP allows the use of 237,350 pounds of the nematicide 1,3–dichloropropene on 5,000 acres of golf course turf to evaluate the control of plant parasitic nematodes. The program is authorized only in the State of Florida. The EUP is effective from August 28, 2001 to August 28, 2002. (Mary L. Waller; Rm. 249, Crystal Mall

#2; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov).

Persons wishing to review these EUPs are referred to the designated contact person. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: October 13, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 01–27290 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

October 25, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 31, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advice the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0992.

Title: Request for Extension of the Implementation Deadline for Non-Recurring Services, CC Docket 96–45 (FCC 01–195) and 47 CFR Section 54.507(d)(1)(4).

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit; Not-for-Profit Institutions.

Number of Respondents: 850.

Estimated Time Per Response: 1 hour per response (avg).

Total Annual Burden: 850 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Needs and Uses: Section 54.507(d) provides additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. Section 54.507(d) extends the deadline for receipt of non-recurring services from June 30 to September 30 following the close of the funding year. Section 54.407(d) establishes a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline. Applicants may qualify for the extension, based on satisfaction of one of four criteria. Applicants may be required to submit documentation or a certification.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–27349 Filed 10–30–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

* * * * *

Previously announced date & time: Thursday, November 1; 2001, open meeting scheduled for 10:00 a.m. The starting time has been changed to 2:00 p.m.

DATES & TIME: Tuesday, November 6, 2001 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATES & TIME: Thursday, November 8, 2001 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2001–13: Green Party of the United States by special counsel, Thomas Alan Linzey, and senior counsel, David Cobb.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer. Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–27486 Filed 10–29–01; 3:12 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011692–001.

Title: SCI/Contship and CMA CGM Space Charter and Sailing Agreement.

Parties: CMA CGM S.A., Contship Containerlines, The Shipping Corporation of India, Ltd.

Synopsis: The proposed modification adds language establishing a conference arrangement in that portion of the agreement scope westbound from India, Pakistan, Sri Lanka, and Bangladesh to the U.S. East Coast; retains voluntary rate authority for the remainder of the scope; retains sailing vessel-sharing authority for the entire scope; updates Contship's name to indicate its status as a subsidiary of CP Ships (UK) Limited; and changes the name of the agreement to the Indamex Agreement.

Agreement No.: 011779.

Title: Tropical/Kent Agreement.

Parties: Kent Line International Limited, Tropical Shipping & Construction Co., Ltd.

Synopsis: Under the agreement, Kent Line agrees not to compete as a container liner operator for a period of five years in the trades between Canada, the U.S. East Coast, and the Caribbean. This is part of the consideration associated with Tropical's purchase of Kent's assets in these trades.

By Order of the Federal Maritime Commission.

Dated: October 26, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–27400 Filed 10–30–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary license has been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 15865N.

Name: Davis International Trade and Transportation Organization, Inc. dba Ditto.

Address: 6610 Tributary Street, Suite 200, Baltimore, MD 21224.

Date Revoked: May 10, 2000.

Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–27399 Filed 10–30–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation, Intermediary Applicant:

Cargo Control Express, Inc. dba Ramses Logistics Co., 2782 Engel Drive, Los Alamitos, CA 90702. Officer: Christine Kim, President, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Coltrans (USA), Inc., 10925 N.W. 27th Street, Suite 201, Miami, FL 33172. Officers: Consuelo Suarez, Vice President-Sea/Air Operations, (Qualifying Individual), Jochen Raute, President.

Logenix International LLC, 13800 Coppermine Road, Suite 255, Herndon, VA 20171. Officer: Ron Cruise, President/CEO, (Qualifying Individual), James Halstead, Vice President.

Dated: October 26, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–27398 Filed 10–30–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 14, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. R. Steven Lutterbach, Michigan City, Indiana; to acquire voting shares of Alliance Financial Corp., New Buffalo, Michigan, and thereby indirectly acquire voting shares of Alliance Banking Company, New Buffalo, Michigan.

Board of Governors of the Federal Reserve System, October 25, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27322 Filed 10–30–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the

nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 2001.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. HFB Financial Corporation, Middlesboro, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Home Federal Bank, Middlesboro, Kentucky.

Board of Governors of the Federal Reserve System, October 25, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27321 Filed 10–30–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 11:30 a.m. (EST), November 13, 2001.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the October 9, 2001, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG LLP audit reports:

(a) Policies and Procedures of the Federal Retirement Thrift Investment Board Administrative Staff

(b) Thrift Savings Plan F, C, S, and I Fund Investment Management Operations at Barclays Global Investors, N.A.

4. Semiannual review of status of audit recommendations.
5. Quarterly investment policy review.
6. Annual ethics briefing.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 29, 2001.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 01–27446 Filed 10–29–01; 12:17 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Announcement of the Establishment of the Secretary's Council on Public Health Preparedness

AGENCY: Office of Public Health and Science.

ACTION: Notice of Establishment of the Secretary's Council on Public Health Preparedness.

SUMMARY: The Office of the Secretary announces establishment of the Secretary's Council on Public Health Preparedness by the Secretary of Health and Human Services on October 22, 2001. The Secretary established this committee to respond to public health emergencies, which exist as a consequence of the terrorist attacks on September 11, 2001.

FOR FURTHER INFORMATION CONTACT: Harold P. Thompson, (202) 690–5605.

SUPPLEMENTARY INFORMATION:

Authority and Purpose

Pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247D), the Secretary of Health and Human Services has determined that a public health emergency exists as a consequence of the terrorist attacks on September 11, 2001. The Secretary's Council on Public Health Preparedness, established pursuant to section 222 of the Public Health Service Act (42 U.S.C. §217a), will provide advice to the Secretary on appropriate actions to take to respond to this public health emergency and similar emergencies.

Function

The Council shall advise the Secretary regarding steps that the U.S. Department of Health and Human Services can take to (1) Improve the public health and health care infrastructure to better enable Federal, State, and local governments to respond to a public health emergency and, specifically, a bio-terrorism event; (2) ensure that there are comprehensive contingency plans in place at the Federal, State, and local levels to respond to a public health emergency and, specifically, a bio-terrorism event; and (3) improve public preparedness at the Federal, State, and local levels.

Structure

The Council shall consist of not more than 26 members appointed by the Secretary. Members shall be selected from State and local public health agencies, other components of the public health community, academia, and other appropriate stakeholders. Members shall be invited to serve for overlapping four year terms. Terms for more than two years are contingent upon the renewal of the Committee by appropriate action prior to its termination. Unless renewed by appropriate action, the Council will terminate on September 30, 2003.

Compensation

Members shall be paid at a rate of $188.00 for each day they are actively engaged in the performance of duties as members of the Council. Members also shall receive per diem and reimbursement of travel expenses incurred, in accordance with the Federal Travel Regulations, when travel becomes necessary to carry out duties in relation to Council membership.

Dated: October 26, 2001.

Arthur J. Lawrence,

Acting Principal Deputy Assistant Secretary for Health.

[FR Doc. 01–27414 Filed 10–30–01; 4:08 pm]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13¼% for the quarter ended September 30, 2001. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 24, 2001.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 01–27352 Filed 10–30–01; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Mr. Sherman Smith, University of California at San Francisco: Based on the report of an investigation conducted by the University of California at San Francisco (UCSF) and information obtained by ORI during its oversight review, the U.S. Public Health Service (PHS) finds that Mr. Smith, former research technician, Division of Occupational and Environmental Medicine at UCSF, engaged in scientific misconduct by intentionally and knowingly fabricating and falsifying patient interview data as the sole interviewer in the PHS-funded UCSF Asthma Disability Study (Asthma Study). The UCSF Asthma Study was funded by National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grants K04 HL03225, R01 HL56438, and R29 HL48959, and National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), grant R01 OH03480.

Specifically, Mr. Smith intentionally falsified and fabricated the interviews of 107 patients in the Asthma Study. The falsification of the patient interviews was committed with an intent to deceive. This deception, in turn, had a material, negative impact on the Asthma Study in particular and on asthma research in general. The falsified and fabricated data were reported in ten publications, and fellow members of the Asthma Study Team had to spend over two years correcting the research data and were required to submit retractions or corrections for all ten publications produced by the study.

PHS has implemented the following administrative actions for the five (5) year period beginning October 9, 2001:

(1) Mr. Smith is prohibited from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

(2) Mr. Smith is debarred from eligibility for, or involvement in, nonprocurement transactions (*e.g.*, grants and cooperative agreements) of the Federal government and from contracting or subcontracting with any Federal government agency as defined in 45 CFR part 76 (Debarment Regulations).

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 01–27365 Filed 10–30–01; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Social Services Block Grant Post-Expenditure Report.

OMB No.: None.

Description: States are required to report their annual SSBG expenditures on a standard post-expenditure report, which includes a yearly total of adults and children served and annual expenditures in each of 29 service categories.

Respondents: 56.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Post-Expenditure Report	56	1	110	6160
Estimated Total Annual Burden Hours:				6160

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concenring the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: October 25, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–27350 Filed 10–30–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: IRS Project 1099.

OMB No.: 0970–0183.

Description: A Voluntary program which provides States' Child Support Enforcement agencies, upon their request access to the earned and unearned income information reported to IRS by employers and financial institutions. The IRS 1099 information

is used to locate noncustodial parents and to verify income and employment.

Respondents: State IV–D programs.

ANNUAL BURDEN ESTIMATES

Reporting	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
States	12	12	2	288

Estimated Total Annual Burden: 288.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Laura Oliven.

Dated: October 25, 2001.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 01–27351 Filed 10–30–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Announcement of Financial Assistance to Expand Head Start Enrollment to Unserved Communities.

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Correction.

SUMMARY: This document contains a correction to the Notice that was published in the **Federal Register** on Monday, September 24, 2001.

In Appendix A, add Bloomfield County, Colorado to the list of geographic areas currently unserved by Head Start grantees, and delete Lemhi County, Idaho because it is a served community.

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center at 1815 N. Fort Myer Drive, Suite 300, Arlington, VA 22209 or telephone: 1–(800)–351–2293, or E. Mail to: *ehs@lognet.com.*

Dated: October 25, 2001.

James A. Harrell,

Acting Commissioner, Administration on Children, Youth, and Families.

[FR Doc. 01–27375 Filed 10–30–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1305]

Compliance Policy Guide: "Apple Juice, Apple Juice Concentrates, and Apple Juice Products—Adulteration with Patulin," Availability; and "Patulin in Apple Juice, Apple Juice Concentrates and Apple Juice Products," Supporting Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a compliance policy guide (CPG) entitled "Apple Juice, Apple Juice Concentrates, and Apple Juice Products—Adulteration with Patulin." This document is intended to make FDA offices and the industry aware of FDA's guidance for enforcement concerning apple juice, apple juice concentrates, and apple juice products that contain patulin, a toxic substance produced by molds that may grow on apples and that has been found to occur at high levels in some apple juice products offered for sale in the United States. The agency also is announcing the availability of a document entitled "Patulin in Apple Juice, Apple Juice Concentrates and Apple Juice Products" (final supporting document).

DATES: Submit written or electronic comments on the CPG or the final supporting document at any time.

ADDRESSES: Submit written requests for single copies of the CPG entitled "Apple Juice, Apple Juice Concentrates, and Apple Juice Containing Products—Adulteration with Patulin" and/or the final supporting document entitled "Patulin in Apple Juice, Apple Juice Concentrates and Apple Juice Products" to the Office of Plant and Dairy Foods and Beverages (HFS–305), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Send two self-addressed adhesive labels to assist that office in processing your request. Submit written comments to the Docket Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to these documents.

FOR FURTHER INFORMATION CONTACT:

Technical questions concerning patulin in apple juice products: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5321, FAX 202–205–4422, e-mail: mkashtoc@cfsan.fda.gov.

Questions concerning regulatory actions: MaryLynn Datoc, Office of Enforcement (HFC–230), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0413, FAX 301–827–0482, e-mail: mdatoc@ora.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of June 16, 2000 (65 FR 37791), FDA announced the availability of a draft CPG entitled "Apple Juice, Apple Juice Concentrates, and Apple Juice Products—Adulteration with Patulin" and a draft supporting document entitled "Patulin in Apple Juice, Apple Juice Concentrates, and Apple Juice Products." The agency has finalized the draft CPG and the draft supporting document after considering the comments we received on these documents.

FDA received four comments on these two documents, three from food industry associations and one from an organization representing several foreign governments. Three of the comments supported the draft CPG and draft supporting document and did not raise any questions.

The fourth comment posed three questions about the action level and the safety assessment described in the draft supporting document. FDA has considered these questions and has responded to them in the revised supporting document.

II. Significance of Guidance

This CPG is being issued as guidance consistent with FDA's good guidance practices regulation in 21 CFR 10.115. The CPG represents the agency's current thinking on its enforcement process concerning the adulteration of apple juice, apple juice concentrates, and apple juice products with patulin. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may, at any time, submit to the Docket Management Branch (address above) written or electronic comments concerning the CPG entitled "Apple Juice, Apple Juice Concentrates, and Apple Juice Products—Adulteration with Patulin" or the final supporting document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments also may be submitted electronically. A copy of the CPG and the final supporting document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the CPG at http://www.fda.gov/ora under "Compliance References." The supporting document may be accessed at http://www.cfsan.fda.gov under the heading "How to Obtain FDA Food & Cosmetic Guidance Documents."

Dated: October 22, 2001.

Dennis E. Baker,,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 01–27319 Filed 10–30–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Health Service Corps Uniform Data System (OMB No. 0915–0232): Extension

The National Health Service Corps (NHSC) of the Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The NHSC needs to collect data on its programs to ensure compliance with legislative mandates and to report to Congress and policymakers on program accomplishments. To meet these objectives, the NHSC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The following information will be collected from each site: services offered and delivery method; users by various characteristics; staffing and utilization; charges and collections; receivables, income, and expenses; and managed care.

The estimated burden is as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Universal Report	620	1	27	16,740

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 25, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–27366 Filed 10–30–01; 8:45 am]

BILLING CODE 4815–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA)

publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: State-by-State Self Assessment of Trauma Care Systems—(NEW)

The Health Resources and Services Administration (HRSA) proposes to collect baseline data from the 56 States and Territories on their current trauma care systems and self-identified unmet needs to achieve minimum standards for a comprehensive statewide trauma care program. This information will be used to establish a national strategy to assist in future grant opportunities to the States to improve or enhance their basic systems infrastructure in trauma care. The survey includes an assessment of trauma care systems, readiness to participate in disaster relief efforts, and infrastructure development needs. HRSA's Maternal and Child Health Bureau (MCHB) and the Office of Rural Health Policy and the Department of Transportation's Emergency Medical Services Division are jointly administering this project. HRSA has included national performance measures for Trauma/EMS for this project in accordance with the requirements of the "Government Performance and Results Act (GPRA) of 1993" (Public Law 103–62). This act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance.

The estimated response burden is as follows:

Type of form	Number of respondents	Responses per respondent	Burden hour per response	Total burden hours
Trauma Survey	54	1	9	486
Analysis	54	1	1	54
Disaster Module	54	1	9	486
Total	54	3		1026

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 25, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–27367 Filed 10–30–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Seedskadee National Wildlife Refuge, Green River, WY

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Draft Seedskadee National Wildlife Refuge Comprehensive Conservation Plan and Environmental Assessment. This Plan describes how the FWS intends to manage the Seedskadee NWR for the next 10 to 15 years.

DATES: Submit written comments by November 30, 2001. All comments need to be addressed to: Carol Damberg, Refuge Manager, U.S. Fish and Wildlife Service, Seedskadee National Wildlife Refuge, P.O. Box 700, Green River, WY 82935

ADDRESSES: A copy of the Draft Plan may be obtained by writing to U.S. Fish and Wildlife Service, Seedskadee NWR, P.O. Box 700, Green River, WY 82935 or from *http://www.r6.fws.gov/larp/*.

FOR FURTHER INFORMATION CONTACT: Carol Damberg, U.S. Fish and Wildlife Service, Seedskadee NWR, P.O. Box 700, Green River, WY 82935, phone 307/875–2187; fax 307/875–4425; E-Mail: *carol_damberg@fws.gov*.

SUPPLEMENTARY INFORMATION: The 26,382-acre Seedskadee National Wildlife Refuge is located within the Central Flyway, the Upper Colorado River Ecosystem, and the Green River Basin in southwestern Wyoming, about 37 miles northwest of the city of Green River, WY. Seedskadee NWR was established in 1965 through the Colorado River Storage Project Act of 1956. Section 8 of this Act provided for the establishment of wildlife habitat development areas to offset the loss of wildlife habitat resulting from reservoir development in the Colorado River Drainage. The Seedskadee Reclamation Act of 1958 specifically authorized acquisition of lands for Seedskadee NWR. Seedskadee NWR's purpose is defined by two pieces of Federal enabling legislation. The principal purpose of Seedskadee NWR is to provide for the conservation, maintenance, and management of wildlife resources and its habitat including the development and improvement of such wildlife resources (Fish and Wildlife Coordination Act 16 U.S.C. 664). Additionally, the Refuge is charged to protect the scenery, cultural resources, and other natural resources and provide for public use and enjoyment of compatible wildlife-dependent activities (Colorado River Storage Act 43 U.S.C. 620g). Besides these, the 35th legislature of the State of Wyoming passed enrolled Act No. 54 in 1959 "providing consent of the State of Wyoming to the acquisition by the United States where approved by the Wyoming Game and Fish Commission and the State Land Board, of lands for the establishment of migratory bird refuges." All efforts leading to the preparation of this draft CCP were undertaken to provide the Refuge with a vision for the future, guidelines for wildlife and habitat management over the next 15 years to ensure progress is made toward attaining the mission and goals of Seedskadee NWR and the Refuge System, and to comply with Congressional mandates stated in the National Wildlife Refuge System Improvement Act of 1997. The CCP will be used to prepare step-down management plans and revise existing plans. It also will be used to prepare budgets which describe specific actions to be taken by the Refuge over the next 15 years. Given that new information, guidance and technology frequently change and become available, the CCP will be updated as necessary throughout the 15-year period.

Dated: October 10, 2001.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 01–27373 Filed 10–30–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: Kevin L. Reid, Rio Rancho, NM, PRT–041574.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Fred H. Palmer, Kremmling, CO, PRT–048683.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Written data, comments, or requests for copies of these complete applications or requests for a public hearing on these applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: The Newark Museum, Newark, NJ, PRT–042580.

Permit Type: Import for public display.

Name and Number of Animals: Polar bear (*Ursus maritimus*), One (1).

Summary of Activity to be Authorized: The applicant requests a permit to import a polar bear skin and skull.

Source of Marine Mammals: Southern Beaufort Sea population, Canada.

Period of Activity: 1 year, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: October 19, 2001.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–27388 Filed 10–30–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Yakima River Basin Conservation Advisory Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Public Law 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the Yakima River Basin Conservation Advisory Group (CAG). The purpose of the Committee is to provide assistance and recommendations to the Secretary of the Interior and the State of Washington on the structure and implementation of the Yakima River Basin Water Conservation Program. In consultation with the State, the Yakima Nation, Yakima River basin irrigators, and other interested and related parties, six-members and a facilitator are appointed to serve on the Yakima River Basin Water Conservation Advisory Group (CAG).

The basin conservation program is structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural cost-effective water conservation measures in the Yakima river basin. Improvements in the efficiency of water delivery and use will result in improved streamflows for fish and wildlife and improve the reliability of water supplies for irrigation.

FOR FURTHER INFORMATION CONTACT: Jim Esget, Manager, Yakima River Basin Water Enhancement Program, telephone (509) 575–5848, extension 267.

The certification of renewal is published below:

Certification

I hereby certify that renewal of the Yakima River Basin Conservation Advisory Group is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 01–27395 Filed 10–30–01; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–325]

The Economic Effects of Significant U.S. Import Restraints: Third Update

AGENCY: International Trade Commission

ACTION: Notice of third update report and scheduling of public hearing, corrected.

EFFECTIVE DATE: October 19, 2001.

SUMMARY: The Commission has announced the schedule for its third update report in investigation No. 332–325, The Economic Effects of Significant U.S. Import Restraints, and has established deadlines for the submission of requests to appear at the hearing and for the filing of written submissions as set forth below. The investigation was requested by the Office of the U.S. Trade Representative (USTR) in May 1992. That request called for an initial investigation and subsequent updates, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Sandra Rivera, Project Leader (202–205–3007) or Kyle Johnson, Deputy Project Leader (202–205–3229), Office of Economics, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

Background

The Commission instituted this investigation following receipt on May 15, 1992 of a request from the USTR. The request asked that the Commission conduct an investigation assessing the quantitative economic effects of significant U.S. import restraints on the U.S. economy, and prepare periodic update reports following the submission of the first report. The first report was delivered to the USTR in November 1993, the first update in December 1995, and the second update in May 1999. In this third update report, the Commission will assess the economic effects of significant tariff and non-tariff U.S. import restraints on U.S. consumers, on the activities of U.S. firms, on the income and employment of U.S. workers, and on the net economic welfare of the United States. The assessment will not include import restraints resulting from final antidumping or countervailing duty investigations, section 337, and 406 investigations, or section 301 actions.

The initial notice of institution of this investigation was published in the **Federal Register** of June 17, 1992 (57 F.R. 27063).

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on December 4, 2001. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., November 9, 2001. Any prehearing briefs (original and 14 copies) should be filed not later than close of business, November 14, 2001; the deadline for filing post-hearing briefs or statements is close of business, January 10, 2002. In the event that, as of the close of business on November 9, 2001, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–2000) after November 9, 2001, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on January 10, 2002. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

List of Subjects

U.S. Import Restraints, Nontariff measures (NTM), Tariffs, Imports.

By order of the Commission.
Issued: October 26, 2001.

Donna R. Koehnke,
Secretary.

[FR Doc. 01–27391 Filed 10–30–01; 8:45 am]
BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 22, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 219–8904 or e-mail *Howze-Marlene@dol.gov*).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Procedure for Application for Exemption from the Prohibited Transaction Provisions of Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA).

OMB Number: 1210–0060.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 116.

Number of Annual Responses: 116.

Total Burden Hours: 0.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $162,648.

Description: Section 408(a) of ERISA authorizes the Secretary of Labor to grant exemptions from the prohibited transaction sections of 406 and 407(a) of ERISA and directs the Secretary to establish a procedure with respect to such provisions. This regulation provides a procedure that requires applications for exemption to make certain disclosures to the Department of Labor and to participants and beneficiaries.

There are two information disclosure requirements incorporated within the exemption procedure regulation. The first requirement, that an applicant for an exemption disclose information regarding the application and certify to that information, is necessary in order for the Department to make an informed determination regarding the application. The second requirement, notice to interested persons, ensures that participants and beneficiaries are informed of the application for exemption and have an opportunity to respond.

Ira L. Mills,
Departmental Clearance Officer.

[FR Doc. 01–27354 Filed 10–30–01; 8:45 am]
BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; Comment Request

October 24, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7136), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Unemployment Insurance (UI) State Quality Service Plan (SQSP).

OMB Number: 1205–0132.

Affected Public: State, Local, or Tribal Government.

Frequency: Annually and Quarterly.

Type of Response: Reporting.

Number of Respondents: 53.

Number of Annual Responses: 835.

Average Time per Respondent: 40 hours.

Estimated Total Burden Hours: 2,121.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The State Quality Service Plan (ETA Handbook Number 336, 17th Edition) is one of several mechanisms for implementing UI PERFORMS, that allows for an exchange of information between the Federal and State partners to enhance the ability of the program to reflect the joint commitment to continuous improvement and client-centered services.

Ira L. Mills,
Departmental Clearance Officer.

[FR Doc. 01–27355 Filed 10–30–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Increasing Pension Coverage, Participation and Savings Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of increasing pension coverage, participation and savings will hold an open public meeting on Tuesday, November 13, 2001, in Room N–5437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue NW., Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to complete the group's findings and/or recommendations to present to the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to the topic by sending 20 copies on or before November 6, 2001, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753 or, after October 26, 2001, (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 6, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers

will be accepted and included in the record of the meeting if received on or before November 6.

Signed at Washington, DC this 25th day of October 2001.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 01–27356 Filed 10–30–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Planning for Retirement; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Tuesday, November 13, 2001, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study planning for retirement.

The session will take place in Room N–5437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 4 p.m., is for working group members to finish their report and/or recommendations on ways in which individuals can be encouraged to better prepare for their retirement.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before November 6, 2001, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753 or, after October 26, 2001 (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 6, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 6.

Signed at Washington, D.C. this 25th day of October 2001.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 01–27357 Filed 10–30–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Challenges to the Employment-Based Healthcare System; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Wednesday, November 14, 2001, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study challenges to the employment-based healthcare system.

The session will take place in Room N–5437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for working group members to complete their report and/or recommendations on the weaknesses, strengths and alternatives to employer-based health benefits.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before November 6, 2001, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753 or, after October 26, 2001, (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 6, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 6.

Signed at Washington, DC this 25th day of October 2001.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 01–27358 Filed 10–30–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

116th Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 116th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held Wednesday, November 14, 2001, in the Secretary's Conference Room S–2508, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will begin at 1:30 p.m. and end at approximately 3:30 p.m., is for members to present their Working Group reports and/or recommendations to be accepted by the full body and ultimately forwarded to the Secretary of Labor for her consideration. Outgoing members of the Advisory Council also will be presented certificates of appreciation for their three-years of service to the Council.

Members of the public are encouraged to file a written statement pertaining to any topics the Council studied during 2001 by submitting 20 copies on or before November 6, 2001 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 219–8921 or, after October 26, 2001, (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 6 at the address indicated.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 6, 2001.

Signed at Washington, DC this 25th day of October, 2001.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 01–27359 Filed 10–30–01; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE (01–136)]

NASA Advisory Council (NAC), Space Science Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Wednesday, December 5, 2001, 8:30 a.m. to 5:30 p.m., and Thursday, December 6, 2001, 8:30 a.m. to 5:30 p.m.

ADDRESSES: Hilton Cocoa Beach Oceanfront, 1550 North Atlantic Avenue, Cocoa Beach, Florida 32931–3268.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following:

—Associate Administrator's Program Status Report
—Division Managers' Reports
—Subcommittee Reports
—In-Space Propulsion
—Mars Exploration
—Strategic Planning Status
—Technology Programs Update
—GPRA Science Objectives Assessment

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–27392 Filed 10–30–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–137]

Aerospace Safety Advisory Panel (ASAP); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Friday, November 9, 2001, 8 a.m. to 11:30 p.m. Eastern Standard Time.

ADDRESSES: Radisson Resort At the Port, Cape Canaveral, 8701 Astronaut Blvd., Cape Canaveral, FL 32920. Martinique Room. Hotel phone number is (321) 784–0000.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Lengyel, Aerospace Safety Advisory Panel Executive Director, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0391, if you plan to attend.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room (40). The agenda for the meeting is to conduct deliberations on Calendar Year 2001 fact-finding activities and trip reports in preparation for the drafting of the Panel's Annual Report. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–27393 Filed 10–30–01; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Note: The publication date for this notice will change from every other Wednesday to every other Tuesday, effective January 8, 2002. The notice will contain the same information and will continue to be published biweekly.

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 9, 2001 through October 19, 2001. The last biweekly notice was published on October 17, 2001 (66 FR 52794).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 30, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by email to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Docket No. 50–219, Oyster Creek Generating Station, Ocean County, New Jersey

Docket Nos. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: August 1, 2001.

Description of amendment request: The requested changes to the technical specifications (TSs) propose to revise requirements that have been superceded based on licensed operator training programs being accredited by the Institute for Nuclear Power Operations (INPO), promulgation of the revised 10 CFR part 55, Operators' Licenses, and adoption of a systems approach to training as required by 10 CFR 50.120, Training and qualification of nuclear power plant personnel. The same changes were requested by Exelon Generation Company, LLC (Exelon) for Braidwood Station, Units 1 and 2; Byron Station, Units 1 and 2; Dresden Nuclear Power Station, Units 2 and 3; LaSalle County Station, Units 1 and 2; Limerick Generating Station, Units 1 and 2; Peach Bottom Atomic Power Station, Units 2 and 3; and Quad Cities Nuclear Power Station, Units 1 and 2. The proposed no significant hazards consideration for those plants is published elsewhere in the **Federal Register** under Exelon Generation Company, LLC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

There will be no changes to the procedures by which the operators operate the plants. There will be no changes to the systems, structures, or components in the plants.

Based on the above, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident previously evaluated.

There will be no changes to the procedures by which the operators operate the plants. There will be no changes to the systems, structures, or components in the plants.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no change in the plants' systems, structures, or components, nor in the way in which they will be operated as a result of the proposed changes. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chiefs: Anthony J. Mendiola, Lakshminaras Raghavan.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: July 31, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated July 31, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information

needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety. Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 27, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specification action and surveillance requirements associated with the containment air lock and expand the current guidance provided to address inoperable air lock components.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes to revise the action and surveillance requirements associated with the containment air lock will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The containment air lock is not an accident initiator. The proposed changes will not revise the operability requirements (e.g., leakage limits) for the containment air lock. Proper operation of the containment air lock will still be verified. As a result, the design basis accidents will remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report, and the consequences of the design basis accidents will remain the same. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not impact any system or component that could cause an accident. The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. The response of the plant and the operators following an accident will not be different. In addition, the proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification changes to revise the action and surveillance requirements associated with the containment air lock will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The operability requirements for the containment air lock have not been changed. The containment air lock will continue to function as assumed in the safety analysis. In addition, the proposed changes will not adversely affect equipment design or operation, and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. Therefore, the proposed changes will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 28, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications by removing the surveillance requirement that verifies the automatic opening features of the safety injection tank outlet isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification change to remove the surveillance requirement that verifies the automatic opening features of the safety injection tank outlet isolation valves will not cause an accident to occur since the safety injection tanks and associated isolation valves are not accident initiators. In addition, the proposed change will not alter the operation of the associated accident mitigation equipment. The operability requirement for the safety injection tank outlet isolation valves to be deenergized open when the safety injection tanks are required to be operable will not be affected, and outlet isolation valve position will still be verified periodically. As a result, the design basis accidents will remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report, and the consequences of the design basis accidents will remain the same. Therefore, the proposed change will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification change does not impact any system or component that could cause an accident. The proposed change will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed change will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. The response of the plant and the operators following an accident will not be different. In addition, the proposed change does not introduce any new failure modes. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification change to remove the surveillance requirement that verifies the automatic opening features of the safety injection tank outlet isolation valves will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The proposed change will not revise the operability requirement for the safety injection tank outlet isolation valves to be deenergized open when the safety injection tanks are required to be operable. The safety injection tanks will continue to be able to mitigate the design basis accidents as assumed in the safety analysis. In addition, the proposed change will not adversely affect equipment design or operation, and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. Therefore, the proposed change will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Dominion Nuclear Connecticut Inc., et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of amendment request: June 4, 2001.

Description of amendment request: The proposed amendment modifies the Millstone Nuclear Power Station, Unit No. 2 (MP2) and Unit No. 3 (MP3) Technical Specifications (TSs) to relocate selected MP2 and MP3 technical specifications related to the reactor coolant system to the respective Technical Requirements Manual (TRM), with the exception of MP3 Technical Specification section 4.4.10, which will be relocated to section 6 of MP3's TS. The Bases of the affected TSs will be modified to address the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis, which is based on the representation made by the licensee in the June 4, 2001, application, is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed requirements remain the same except that the requirements will be relocated to the TRM. Since the proposed requirements are the same, this proposed change will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the requirements remain the same, these proposed changes do not alter the way any system, structure, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Since the proposed changes are solely to relocate the existing requirements, it does not affect plant operation in any way. Therefore, the proposed change will not result in a reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Hartford, CT 06141–5127.

NRC Section Chief: James W. Clifford.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: July 31, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC

determination in its application dated July 31, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 20, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.8, "Refueling, Fuel Storage and Operations with the Reactor Vessel Head Bolts Less Than Fully Tensioned," TS Table 4.1–2, "Frequencies for Sampling Tests," and TS Section 5.4, "Fuel Storage," to allow the credit for soluble boron in the criticality analysis of the spent fuel pit (SFP). The revisions also incorporate changes to the SFP rack layout by dividing it into sub-regions and specifying requirements for fuel assembly burnup and soluble boron concentration for various loading configurations in these sub-regions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

Current TS contain minimum requirements for the SFP boron concentration. The actual boron concentration in the SFP has been maintained at a higher value. The proposed changes to the TS establish new boron concentration requirements for the SFP water that are consistent with the new criticality analysis. Since soluble boron has already been maintained in the SFP water and is currently required by the TS, the implementation of this new requirement will have no effect on the normal SFP operations and maintenance.

The presence of an increased requirement for soluble boron in the SFP water does not increase the probability of a fuel assembly drop accident in the SFP. The handling of the fuel assemblies in the SFP has always been performed in borated water. The criticality analysis shows the consequences of a fuel assembly drop accident in the SFP are not affected when considering the presence of soluble boron since the rack k_{eff} remains ≤ 0.95.

Fuel assembly placement will continue to be controlled in accordance with approved fuel handling procedures and will be in accordance with TS spent fuel rack storage configuration limitations. The proposed SFP storage configuration limitations will be more complex but will be similar to those previously approved. Therefore, the new limitations will not significantly increase the probability of accident occurrence. There is no increase in the consequences of the accidental misloading of spent fuel assemblies into the spent fuel racks since the criticality analysis demonstrates that the SFP k_{eff} will remain ≤ 0.95 following an accidental misloading.

There is no increase in the probability of the loss of normal cooling to the spent fuel pit water when considering the presence of soluble boron in the pit water for subcriticality control since a high concentration of soluble boron has always been maintained in the SFP water.

Soluble boron requirements for mitigating reactivity effects due to increased pool temperatures are adequately met by the proposed increase in minimum TS soluble boron concentration. A negligible increase in the probability of a criticality accident due to increased pool temperature exists with the proposed TS changes, as the minimum soluble boron concentration will not change. The positive reactivity introduced as a result of the higher TS boron concentration effect on moderator reactivity coefficient will be sufficiently mitigated by the substantial margin to the amount actually required to maintain $k_{eff} \leq 0.95$.

Decreased fuel temperatures will increase the water density in the SFP, therefore increasing the thermal neutron flux, possibly causing an increase in reactivity. This density increase will increase the differential worth of the soluble boron but the excess soluble boron in the SFP is more than sufficient to offset any reactivity increase introduced by a temperature decrease.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Spent fuel handling accidents are not new or different types of accidents, they have been analyzed for the UFSAR [Updated Final Safety Analysis Report] and in Criticality Analysis reports associated with License Amendment 150 up to the nominal 5.0 w/o ^{235}U [weight percent uranium-235] that is assumed for the proposed change.

A dilution of the SFP soluble boron has always been a possibility. However the boron dilution event previously had no consequences since boron was not previously credited. With the proposed TS, credit is taken for soluble boron. So a boron dilution has been evaluated as a possible new accident. The evaluation concluded a boron dilution accident was not credible, that processes were in place to detect and mitigate the possible events, and that, even if the SFP boron concentration was diluted to zero, criticality would not occur. Therefore, there would be no additional hazards if this request were approved.

There is no other change in the plant configuration or equipment design.

Therefore, the proposed change does not create a new accident initiator or precursor, or create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The TS changes proposed by this LAR [license amendment request] and the resulting spent fuel storage operation limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. These limits are based on the plant specific criticality analysis and boron dilution analysis. The proposed TS changes rely upon known and predictable reactivity effects to ensure required criticality margins in the SFP.

While the criticality analysis utilizes credit for soluble boron, storage configurations have been defined using 95/95 k_{eff} calculations to ensure the spent fuel rack k_{eff} will be <1.0 with no soluble boron. Soluble boron credit is used to offset uncertainties, tolerances, and off-normal conditions and to provide subcritical margin such that the SFP k_{eff} is maintained ≤0.95.

The loss of substantial amounts of soluble boron from the SFP, which could lead to k_{eff} exceeding 0.95, has been evaluated and shown to be not credible. An evaluation has been performed that shows that the dilution of the SFP boron concentration from 2000 ppm [parts per million] to 786 ppm is not credible. Also the spent fuel rack k_{eff} will remain <1.0 with the SFP flooded with unborated water. These safety analyses demonstrate a level of safety comparable to the conservative criticality analysis approved for License Amendment 150 and show that the requirements of 10CFR50.68 are met.

The reactivity credit for additional poisons in the spent and fresh fuel assemblies increases the margin of safety in the SFP. No credit is taken for Boraflex in certain regions, when in reality some residual Boraflex does remain in these regions. In regions that do take credit for Boraflex, the amount of credit is conservative. These conservatisms add an increased safety margin. Predictions of the effective neutron multiplication factors have shown that, under the worst of scenarios, the SFP remains subcritical when conservative credit for future expected loss of Boraflex poison plates is considered.

The analysis show that the level of safety required by 10CFR50.68 is achieved for the IP2 [Indian Point 2] SFP with the proposed TS.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Generating Co., Pilgrim Station, 600 Rocky Hill Road, Plymouth, MA 02360.

NRC Section Chief: L. Raghavan, Acting.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 20, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (TSs) (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated September 20, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 [Three Mile Island 2] accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in [a] margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: L. Raghavan, Acting.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 20, 2001.

Description of amendment request: The proposed amendment would allow the one-time extension of the intervals for selected Technical Specification (TS) surveillance requirements (SRs) to enable the tests to be performed during the next refueling outage starting no later than November 19, 2002. Specifically, the surveillance interval would be extended for certain SRs associated with the volume control tank (VCT), residual heat removal system (RHR) , emergency diesel generators (EDGs), and shock suppressors (snubbers). In addition, the proposed amendment would: (1) Correct the channel functional test interval in Items 3 and 4 of TS Table 4.10–4 and Items 4 and 5 of Table 4–10–4, (2) delete alternate inspection requirements for the steam generator snubbers, and (3) remove the reference to a prior one-time extension of checks, calibrations and tests for certain instrument channels in TS Table 4.1–1 that is no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

There is no change to the design, function, or capability of any plant structure, system, or component as a result of the proposed surveillance interval extensions. Hence there is no change in the probability of occurrence of an accident previously evaluated.

The proposed surveillance interval extensions do not affect the ability of any plant structure, system, or component to mitigate the consequences of any accident previously evaluated. The surveillance interval extensions do not alter or prevent the ability of the affected structures, systems, and components to perform their intended functions.

[VCT]

A statistical analysis of channel uncertainty for a proposed 31 month operating cycle has been performed. It confirms that the channel drift for the proposed 31 month interval is bounded by the existing drift allowance used in the current uncertainty calculations. Therefore, there is no expected decrease in reliability for the VCT level channel for the proposed 31 month operating cycle. Since there is no expected decrease in the reliability of the VCT level channels, the design safety functions of the VCT are not affected.

[RHR]

Since the past test data supports the integrity of the system and an extended standby period is not expected to affect any potential leak path, there is a reasonable expectation that the RHR and Safety Injection systems will continue to perform their intended safety functions without excessive leakage. It is concluded that a one-time extension of less than one month for the leakage test surveillance intervals will have minimal impact on the system reliability.

[EDG]

The identified anomalies with valve and filter operation for EDG 23 were evaluated and corrected and are not indicative of any inability of the machine to meet performance requirements. The anomalous adjustment affecting movement of the fuel control lever arm for EDG 22 was properly evaluated and eliminated as evidenced by subsequent successful testing. Therefore, the historical data together with the positive verification of the adequacy of corrective actions for previous test failures demonstrate that the EDGs have met the required performance criteria. Therefore the ability of the EDGs to mitigate accidents is not affected by this proposed change.

Failure of an EDG cannot, of itself, initiate an accident.

[Snubbers]

The TS functional testing program requires a sampling program that provides a 95% confidence level that 90–100% of the snubbers operate within acceptance limits. For each snubber failing the functional test an additional sample lot must be selected and tested to assure that the required confidence level is maintained. The past functional test history with very few functional test failures provides assurance that an extension in the surveillance will not result in increased snubber failures. In all cases, the functional test failures were thoroughly analyzed and appropriate action was taken to prevent recurrence. Subsequent testing resulted in all snubbers meeting their design requirements.

The operability of snubbers is not affected by the deletion of the allowance to separately group steam generator snubbers for the purposes of determining inspection intervals.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical design change or operational change to any plant system, structure or component. Thus a new failure mode is not introduced. Therefore, the proposed changes do not create a new accident initiator or precursor, or create the possibility of a new or different kind of accident from any accident previously evaluated.

[VCT]

The proposed change does not involve the addition of any new or different type of equipment, nor does it involve operating equipment required for safe operation of the facility in a manner that is different from that addressed in the Updated Final Safety Analysis Report (UFSAR). The proposed change in the surveillance interval has been evaluated to have a negligible effect on the reliability of the existing instruments.

[RHR]

The proposed change does not involve the addition of any new or different type of equipment. Nor does it involve operating equipment required for safe operation of the facility in a manner that is different from that addressed in the UFSAR.

[EDG]

The proposed change does not involve the addition of any new or different type of equipment, nor does it involve operating equipment required for safe operation of the facility in a manner that is different from that addressed in the UFSAR. Also, the increased surveillance interval (one-time only) will not adversely affect the reliability of the EDGs.

[Snubbers]

The proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not involve the addition of any new or different type of equipment, nor does it involve operating equipment required for safe operation of the facility in a manner that is different from that addressed in the UFSAR. Also, the increased surveillance interval (one-time only) will not adversely affect the snubbers.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

As a result of these proposed surveillance interval extensions, there are no changes to IP2's design or to the IP2 TS safety limits, limiting safety system settings, or limiting conditions for operation. The only change is a change to the surveillance testing frequency for affected structures, systems, and components.

The proposed surveillance interval extensions have been evaluated to not significantly degrade the reliability of any existing system, structure, or component. Therefore, testing in accordance with the proposed test intervals continues to ensure that the necessary quality of affected structures, systems, and components is maintained, that IP2 operation will be within safety limits, and that the IP2 limiting conditions for operation will be met.

The proposed surveillance interval extensions do not adversely affect the ability of any IP2 structures, systems, or components to function when required to mitigate any accident or licensing basis event.

[VCT]

The proposed change in surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance that impacts any TS limit or any UFSAR requirement. Protective functions will continue to occur so that safety analysis limits are not exceeded.

Based on past rest results, the one-time extension of nine days does not involve a significant reduction in a margin of safety.

[RHR]

There is minimal risk that a surveillance interval extension of less than one month will increase leakage in the piping systems under review beyond the TS limits or that the system performance will be influenced. Past test data indicate that there was no impact on the margin imposed by the TS.

[EDG]

The functional test history indicates the functional test failures were the result of actions independent of actual EDG load performance. Apart from these anomalous actions, the record does not indicate a potential for failure to meet performance criteria. In all cases, the functional test failures were thoroughly analyzed and appropriate actions were taken to prevent recurrence.

Subsequent testing resulted in the EDG meeting its design requirements.

There is no reduction of margin indicated by the surveillance testing. The proposed change for a one-time extension of the test interval does not adversely affect the performance of any safety related system, component or structure and does not result in increased severity of any of the accidents considered in the UFSAR. Surveillance test results indicate no trend toward margin reduction.

[Snubbers]

The objective of the functional test is to provide a 95% confidence level that 90–100% of the snubbers operate within the specified acceptance limits. The review of past test history indicates that this objective was met at the time of the testing. There are no identified trends that would suggest that the same success rate would not be maintained over the requested extension period. The proposed license amendment does not involve a significant reduction in a margin of safety. The proposed change for a one-time extension of the test interval does not adversely affect the performance of any safety related system, component or structure and does not result in increased severity of any of the accidents considered in the UFSAR.

Therefore, the one-time extension of less than one month for the functional tests does not involve a significant reduction in a margin of safety.

The proposed deletion of the allowance to separately group steam generator snubbers for the purpose of determining inspection intervals does not affect the effectiveness of the surveillance requirements. The steam generator snubbers will still be inspected at the interval required by the TS.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Generating Co., Pilgrim Station, 600 Rocky Hill Road, Plymouth, MA 02360.

NRC Section Chief: L. Raghavan, Acting.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: October 2, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 3.3–4, "Engineered Safety Feature Actuation System Instrumentation Trip Values," Functional Unit 7.b, "Loss of Power, 460 volt Emergency Bus Undervoltage," by changing the referenced bus from the 460 volt (V) bus to the 480 V bus, by removing the trip setpoint, and by slightly increasing the range of allowable values for the degraded voltage setting and its associated time delay.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The two degraded voltage protection relays that are provided on each of the 480 V safety buses act to mitigate the consequences of an

accident by detecting a sustained undervoltage condition, isolating the safety buses from offsite power, and starting the associated emergency diesel generator (EDG). This safety function is unchanged by the proposed allowable voltage setting revisions. The revised settings for the degraded voltage protection relays will continue to provide the safety function of protecting the associated Class 1E equipment from the effects of a low voltage condition. The time delays remain within those assumed in the ANO–2 [Arkansas Nuclear One, Unit 2] safety analyses. Additionally, the revised allowable voltage settings will not result in any unnecessary isolation from the off-site power sources. The relocation of trip setpoint values to station surveillance procedures allows operational flexibility to account for additional margins, drifts, or uncertainties while ensuring that the relays are set to actuate within the acceptable range of allowable values denoted in the TSs. Since the proposed change does not adversely impact the mitigating function of the relays, the consequences of an accident previously evaluated remains unchanged.

The ANO–2 technical specifications will continue to require the 480 V bus degraded voltage functions to be surveillance tested at their present frequency without changing the modes in which the surveillance is required or the modes of applicability for these components. The technical specifications will continue to require the same actions as currently exist for the inoperability of one or more of the 480 V bus degraded voltage relays.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change introduces no new modes of plant operation or new plant configuration that could lead to a new or different kind of accident from any previously evaluated being introduced. The 480 V bus degraded voltage relays are required to operate upon detection of a sustained undervoltage condition to protect the Class 1E components from damage from low voltage by initiating transfer of the 4160 V safety bus power source to the EDG. This safety function remains unchanged by the proposed allowable voltage setting revisions, and the proposed values continue to provide the required actions consistent with the ANO–2 safety analysis.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The two degraded voltage relays located on each 480 V safety bus are provided to detect sustained undervoltage, isolate the safety buses, and start the EDGs. This safety function remains unchanged by the proposed revisions to the allowable values. The proposed changes to the allowable values for the degraded voltage relays incorporate channel uncertainties and calibration tolerances, while fully meeting their required safety functions of degraded voltage protection without resulting in undesired tripping of the offsite power source.

The slightly higher range of allowable values for the degraded voltage settings allows enhanced protection of the Class 1E components, but does not result in undesired tripping of the offsite power source for the analyzed grid minimum normal condition. In addition, the slight increase in the range of allowable values for the degraded voltage time delay remains well within the assumption of the accident analysis.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: October 2, 2001.

Description of amendment request: **The proposed amendment would relocate the technical specification (TS) requirement that the reactor core be subcritical for a minimum of 175 hours prior to discharge of more than 70 assemblies to the spent fuel pool (SFP), to the technical requirements manual (TRM).**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The accident of concern related to the proposed change is the fuel handling accident. This accident assumes a dropped fuel assembly. One of the assumptions made in the analysis is that fuel movement is delayed at least 100 hours after shutdown to allow for radioactive decay of the fission product inventory. TS 3.9.3.a provides this restriction. The analysis does not assume any further delay in fuel movement following the initial 100-hour decay period. The relocation of TS 3.9.3.b will not impact this assumption.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change relocates TS 3.9.3.b to the TRM. There are no changes to the design or operation of the facility proposed. Thus, there are no new or different kinds of accidents created. SFP cooling capability and the heat load generated by the movement of fuel into the SFP will continue to be evaluated under 10 CFR 50.59. The SFP cooling system includes two cooling pumps and one heat exchanger. In addition, several systems are available for makeup when needed. Under postulated accident conditions, when no pool cooling systems are operational, the maximum temperature at the inlet to the cells is assumed to be equal to the saturation temperature at atmospheric pressure or 212F [Fahrenheit] (allowed to boil). The proposed change does not increase the possibility of a complete loss of pool cooling.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed change relocates TS 3.9.3.b to the TRM. Following relocation, any future changes to TRM 3.9.3.b will be assessed under the guidance of 10 CFR 50.59. The ANO [Arkansas Nuclear One] 50.59 process will provide an evaluation to ensure heat loads transferred will be within the cooling capacity of the service water system. Analyses will continue to demonstrate that even in the event of a loss of SFP cooling, the maximum temperature in the pool is such that design limits associated with assuring the integrity of the fuel cladding are satisfied.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: October 2, 2001.

Description of amendment request: **The proposed amendment would change the technical specification definitions of response time for the reactor trip system (RTS) and for engineered safety features (ESFs) to allow use of either an allocated or a measured response time for select sensors in these two systems.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response time testing is not an initiator of any previously evaluated accident. The proposed change to the definition of RTS and ESF response time allows substitution of an allocated response time for selected sensors in lieu of measuring the sensor response time. The allocated response times adequately represent the response time of the components such that the safety systems utilizing these components will continue to perform their accident mitigation function as assumed in the safety analysis. Response time testing for the non-sensor portions of the channels will continue to use a series of sequential or overlapping test measurements.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical change to the plant. Modifications will not be made to existing components nor will any new or different types of equipment be installed. The proposed change modifies the definitions for RTS and ESF response time and allows the substitution of an allocated response time in lieu of measured sensor response time for selected sensors. The response time assumed in the accident analysis for the non-sensor portions of the channels will continue to be verified using a series of sequential or overlapping test measurements. Appropriate actions will be taken to ensure overall channel response time remains within the times specified in the accident analysis.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed change modifies the definitions of RTS and ESF response time to allow a substitution of an allocated response time for selected sensors in lieu of measuring the response time. The allocated time adequately represents the actual measured time for the associated sensors. The overall response time of each channel will continue to be measured using a series of sequential, overlapping or entire channel measurements to ensure the components actuated by each channel perform their accident mitigation function within the response time assumed in the safety analysis.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 21, 2001.

Description of amendment request: **Entergy Operations, Inc. (Entergy, the licensee) is requesting approval of changes to the Waterford Steam Electric Station, Unit 3, Operating License and Technical Specifications associated with an increase in the licensed power level. The changes involve a proposed increase in the power level from 3,390 Megawatts thermal (MWt) to 3,441 MWt. These changes result from increased feedwater flow measurement accuracy to be achieved by utilizing high accuracy ultrasonic flow measurement instrumentation.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The comprehensive analytical efforts performed to support the proposed change included a review of the Nuclear Steam Supply System (NSSS) systems and components that could be affected by this change. All systems and components will function as designed, and the applicable performance requirements have been evaluated and found to be acceptable.

The primary loop components (reactor vessel, reactor internals, control element drive mechanisms, loop piping and supports, reactor coolant pumps, steam generators, and pressurizer) continue to comply with their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components. The Leak Before Break analysis conclusions remain valid, and thus the limiting break sizes determined in this analysis remain bounding. All of the NSSS will still perform the intended design functions during normal and accident conditions. The auxiliary systems and components continue to meet their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components. All of the NSSS and Balance of Plant (BOP) interface systems will continue to perform their intended design functions. The main steam safety valves (MSSVs) will provide adequate relief capacity to maintain the steam generator pressures within design limits. The atmospheric dump valves and steam bypass valves meet design sizing requirements at the uprated power level. The current Loss of Coolant Accident (LOCA) hydraulic forcing functions are still bounding for the proposed 1.5 percent increase in power.

Because the integrity of the plant will not be affected by operation at the uprated condition, it is concluded that all structures, systems, and components required to mitigate a transient remain capable of fulfilling their intended functions. The reduced uncertainty in the flow input to the power calorimetric measurement allows the current safety analyses to be used, without change, to support operation at a core power of 3,441 megawatts thermal (MWt). As such, all Updated Final Safety Analysis Report (UFSAR) Chapter 15 accident analyses continue to demonstrate compliance with the relevant event acceptance criteria. Those analyses performed to assess the effects of mass and energy releases remain valid. The source terms used to assess radiological consequences have been reviewed and determined to either bound operation at the 1.5 percent uprated condition, or new analyses were performed to verify all acceptance criteria continue to be met.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed changes. The new installation of the LEFM [leading edge flow meter] CheckPlus system has been analyzed, and failures of this system will have no effect on any safety-related system or any systems, structures or components required for transient mitigation. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change

involve a significant reduction in a margin of safety?

Operation at the uprated power condition does not involve a significant reduction in a margin of safety. Analyses of the primary fission product barriers have concluded that all relevant design criteria remain satisfied, both from the standpoint of the integrity of the primary fission product barrier and from the standpoint of compliance with the required acceptance criteria.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Docket Nos. STN 50–277 and STN 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: August 1, 2001.

Description of amendment request: The requested changes to the technical specifications (TSs) propose to revise requirements that have been superceded based on licensed operator training programs being accredited by the Institute for Nuclear Power Operations (INPO), promulgation of the revised 10 CFR part 55, Operators' Licenses, and adoption of a systems approach to training as required by 10 CFR 50.120, Training and qualification of nuclear power plant personnel. The same changes were requested by AmerGen Energy Company, LLC (AmerGen) for the Clinton Power Station, Oyster Creek, and Three Mile Island, Unit 1. The proposed no significant hazards consideration for those plants is published elsewhere in the **Federal Register** under AmerGen.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

There will be no changes to the procedures by which the operators operate the plants. There will be no changes to the systems, structures, or components in the plants.

Based on the above, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident previously evaluated.

There will be no changes to the procedures by which the operators operate the plants. There will be no changes to the systems, structures, or components in the plants.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no change in the plants' systems, structures, or components, nor in the way in which they will be operated as a result of the proposed changes. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chiefs: Anthony J. Mendiola, James W. Clifford.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: September 21, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated September 21, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Beaver County, Pennsylvania

Date of amendment request: June 28, 2001.

Description of amendment request: The proposed amendment would revise the technical specification (TS) 3.1.1.4 upper limit for the moderator temperature coefficient (MTC) from 0×10^{-4} change in reactivity per degree Fahrenheit ("k/k/°F) to $+0.2 \times 10^{-4}$ "k/k/°F for power levels up to 70 percent of rated thermal power (RTP), and ramping linearly to 0×10^{-4} "k/k/°F from 70 percent to 100 percent RTP. The proposed change is needed to address future core designs with higher energy requirements, associated with plant operation at higher capacity factors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change from a[n] MTC of 0×10^{-4} "k/k/°F to a positive moderator temperature coefficient (PMTC) of $+0.2 \times 10^{-4}$ "k/k/°F does not introduce an initiator of any design basis accident or event. The proposed change does not adversely affect accident initiators or precursors nor alter the configuration of the facility or the manner in which the plant is maintained. Thus, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change to a PMTC does not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change is consistent with the safety analysis assumptions and resultant consequences. Accident analyses affected by the proposed change have been reanalyzed and all applicable acceptance criteria have been met. Thus, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The change to a PMTC does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed), subsequently no new or different failure modes or limiting single failures are created. The plant will not be operated in a different manner due to the proposed change. All SSCs will continue to function as currently designed. Thus, the proposed change does not create any new or different accident scenarios.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The proposed change to a PMTC does not involve revisions to any safety limits or safety system settings that would adversely impact plant safety. The proposed amendment does not alter the functional capabilities assumed in a safety analysis for any SSCs important to the mitigation and control of design bases accident conditions within the facility.

All of the applicable acceptance criteria (i.e., preventing reactor coolant system [RCS] or main steam system overpressurization, maintaining the minimum departure from nucleate boiling ratio [DNBR], preventing core uncovery, preventing fuel temperatures from exceeding their limit, preventing clad damage, and limiting the number of fuel rods that enter a departure from nucleate boiling [DNB] condition) for each of the analyses affected by the proposed change continue to be met. The conclusions of the UFSAR remain valid. Thus, since the operating parameters and system performance will remain within design requirements and safety analysis assumptions, safety margin is maintained.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Lakshminaras Raghavan, (Acting).

GPU Nuclear Inc., Docket No. 50–320, Three Mile Island Nuclear Generating Station, Unit 2, Dauphin County, Pennsylvania

Date of amendment request: June 21, 2001.

Description of amendment request: The proposed technical specifications change request (TSCR) No. 81 is to revise Three Mile Island Nuclear Generating Station, Unit 2 (TMI–2) Technical Specification (TS) Administrative Controls section that will provide consistency with the changes to the revised 50.59 rule of Title 10 of the *Code of Federal Regulations* (10 CFR) Regulations, as published in the **Federal Register** on October 4, 1999 (64 FR 53582).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes reflect the revised 50.59 rule, issued as a Final Rule in October 4, 1999, and do not impact the operation of any system or component assumed in any accident analysis. The proposed change does not change the requirement to perform a 50.59 review when required by the Technical Specification Administrative Controls. Based on the administrative nature of this change there will be no direct impact on the radiological source term. Therefore, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes are administrative in nature and do not involve a change to the plant design or operation. No new or different types of equipment will be installed as a result of this change. The proposed change is administrative in nature and makes the language in the Technical Specification Administrative Controls conform to the Final Rule, dated October 4, 1999, related to the 10 CFR 50.59 rule. No new accident mode or equipment failure modes are created by these changes. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact or have a direct effect on any safety analysis assumptions. The proposed change is administrative in nature and makes the TS Administrative Control language conform to the Final Rule, dated October 4, 1999, related to the 10 CFR 50.59 rule. Changes to the facility that result in meeting the criteria of 10 CFR 50.59 will still require NRC approval pursuant to 10 CFR 50.59.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Robert A. Gramm.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: October 5, 2001.

Description of amendment request: The licensee proposed to amend the Technical Specifications (TSs) to change the licensing basis requirement for establishing containment hydrogen monitoring "within 30 minutes" to "within 3 hours" of initiating emergency core cooling following a loss-of-coolant accident (LOCA).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three standards of 10 CFR 50.92(c). The licensee's analysis is presented below:

1. The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Updated Safety Analysis Report (USAR) Chapter 15 accident analyses do not require or take credit for hydrogen monitoring to be established shortly after a loss of coolant accident (LOCA). Post-LOCA hydrogen production occurs over a long period of time, and an extension from 30 minutes to 3 hours for establishing hydrogen monitoring will have a positive impact on the ability of the operators to concentrate on their more immediate actions while having no negative impact on containment integrity or the long-term assessment efforts. Therefore, the proposed license amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Control room operators use the containment hydrogen monitors following a LOCA to establish hydrogen control measures should it become necessary. The proposed license amendment would not eliminate the requirement to establish hydrogen monitoring, but would allow it to be delayed until those actions required to mitigate the accident and verify proper operation of essential safety equipment have been completed. The proposed extension maintains the requirement to establish hydrogen monitoring well before calculated conditions inside the containment indicate any need to initiate hydrogen control measures. Therefore, the proposed license amendment will not create a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The need to establish hydrogen control measures will not be present within the first 3 hours following a LOCA since there will not be significant hydrogen accumulation. By extending the time allowed to establish containment hydrogen monitoring, the operators can remain focused on the actions necessary to mitigate the accident before directing their attention to hydrogen control measures and other long-term actions. The proposed extension maintains the requirement to establish hydrogen monitoring well before calculated conditions inside the containment indicate any need to initiate hydrogen control measures. Therefore, the proposed license amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: L. Raghavan, Acting.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Units 1 and 2, San Luis Obispo County, California

Date of amendment requests: September 13, 2001.

Description of amendment requests: The proposed license amendments would revise Technical Specification (TS) 3.7.16, "Spent Fuel Pool Boron Concentration," TS 3.7.17, "Spent Fuel Assembly Storage—Region 1/Region 2," and TS 4.3, "Fuel Storage" for DCPP Units 1 and 2, to allow the use of credit for soluble boron in the spent fuel pool criticality analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

There is no increase in the probability of a fuel assembly drop accident in the spent fuel pool (SFP) when considering the presence of soluble boron in the SFP water for criticality control. The handling of the fuel assemblies does not change as a result of crediting soluble boron in the SFP.

There is no increase in the probability of the accidental misloading of a fuel assembly into the SFP racks when considering the presence of soluble boron in the SFP water for criticality control. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the Technical Specification (TS) SFP storage configuration limitations.

There is no increase in the consequences of an accidental drop or accidental misloading of a fuel assembly into the SFP racks because the criticality analysis demonstrates that the pool will remain subcritical following either event even if the pool contains a boron concentration less than that currently specified in the TS. The current TS limitation will ensure that an adequate SFP boron concentration will be maintained.

There is no increase in the probability of the loss of normal cooling to the SFP water considering the presence of soluble boron in the pool water for subcriticality control since a high concentration of soluble boron has always been maintained in the SFP water.

There is no increase in the consequences of a loss of normal SFP cooling because the 2,000 ppm boron concentration required by TS provides significant negative reactivity to provide subcritical margin such that the SFP k_{eff} is maintained less than or equal to 0.95 up to boiling (212°F).

Therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

Spent fuel handling accidents are not new or different types of accidents; they have been analyzed in Section 15.5.22 of the Updated Final Safety Analysis Report (UFSAR).

Criticality accidents in the SFP are not new or different types of accidents; they have been analyzed in the UFSAR and in the Criticality Analysis reports associated with the specific license amendments for fuel enrichments up to 5.0 weight percent U–235.

Because soluble boron has always been required in the SFP water, and is currently required by TS, credit for soluble boron will have no effect on normal pool operation and maintenance. Crediting soluble boron in the SFP criticality analysis will only result in increased sampling to verify the boron concentration. This increased sampling frequency will not create the possibility of a new or different kind of accident.

The SFP dilution analysis demonstrates that a dilution which could increase the rack k_{eff} to greater than 0.95 is not a credible event. Therefore, crediting soluble boron in the SFP criticality analysis will not result in the possibility of a new kind of accident.

Revised specifications continue to specify the requirements for SFP storage configurations. The only significant changes relate to the criteria for determining the storage configuration. Because the proposed SFP storage configuration limitations will be similar to those currently contained in the TS, the new limitations will not have any significant effect on normal SFP operations and maintenance and will not create the possibility of a new or different kind of accident. A SFP loading verification will continue to be performed to ensure that the SFP loading configuration meets the specified requirements.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Response: No.

The TS changes proposed by this license amendment request and the resulting spent fuel storage limitations will provide an adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on a plant specific criticality analysis performed for the Diablo Canyon Units 1 and 2 SFPs that includes technically supported margins.

While the criticality analysis utilized credit for soluble boron, storage configurations have been defined to ensure that the spent fuel rack k_{eff} will be less than 1.0 with no soluble boron with a 95 percent probability at a 95 percent confidence level. Soluble boron credit is used to offset uncertainties, tolerances and off-normal conditions, and to provide subcritical margin such that the SFP k_{eff} is maintained less than or equal to 0.95. Since k_{eff} is less than or equal to 0.95, the current margin of safety is maintained.

A substantial reduction in the SFP soluble boron concentration that could lead to exceeding a k_{eff} of 0.95 has been evaluated and shown not to be credible.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: September 13, 2001.

Description of amendment requests: The proposed license amendments would modify Technical Specification (TS) 5.5.9, "Steam Generator Tube Surveillance Program," to allow extension of steam generator tube W star alternate repair criteria for DCPP Units 1 and 2, from Cycles 10 and 11 to Cycles 12 and 13.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Of the various accidents previously evaluated, the extension of the steam generator (SG) tube W star (W*) alternate repair criteria (ARC) through Cycles 12 and 13 only affects the steam generator tube rupture (SGTR) accident evaluation and the postulated steam line break (SLB) accident evaluation. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this evaluation.

For the SGTR accident, the required structural margins of the SG tubes will be maintained by the presence of the tubesheet. Tube rupture is precluded for cracks in the Westinghouse explosive tube expansion (WEXTEX) region due to the constraint provided by the tubesheet. Therefore, Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes," margins against burst are maintained for both normal and postulated accident conditions.

WCAP–14797, Revision 1, defines a length, W*, of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied). The W* length supplies the necessary resistive force to preclude pullout loads under both normal operating and accident conditions. The contact pressure results from the WEXTEX expansion process, thermal

expansion mismatch between the tube and tubesheet and from the differential pressure between the primary and secondary side. The proposed changes do not affect other systems, structures, components, or operational features. Therefore, the proposed change results in no significant increase in the probability of the occurrence of an SGTR or SLB accident.

The consequences of an SGTR accident are affected by the primary-to-secondary leakage flow during the accident. Primary-to-secondary leakage flow through a postulated broken tube is not affected by the proposed changes since the tubesheet enhances the tube integrity in the region of the WEXTEX expansion by precluding tube deformation beyond its initial expanded outside diameter. The resistance to both tube rupture and collapse is strengthened by the tubesheet in that region. At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) in the W* length is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. No leakage has been observed in any in-situ test of W* indications identified to date. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region.

SLB leakage is limited by leakage flow restrictions resulting from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of crack face opening compared to free span indications. The total leakage, that is, the combined leakage for all such tubes, plus the combined leakage developed by any other ARC, are maintained below the maximum allowable SLB leak rate limit, such that off-site doses are maintained less than 10 CFR 100 guideline values.

Therefore, based on the above evaluation, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon continued implementation of the W* ARC.

Axial indications left in service shall have the upper crack tip below the top of the tubesheet (TTS) by at least the value of the nondestructive examination (NDE) uncertainty and crack growth allowance, such that at the end of the subsequent operating cycle the entire crack remains below the tubesheet secondary face, thereby minimizing the potential for free span cracking and demonstrating that an acceptable level of risk is maintained for tubes returned to service under W* ARC. This repair criteria is in addition to ensuring that the upper crack tip is located below the bottom of the WEXTEX transition by at least the NDE measurement uncertainty. Condition monitoring will verify that all tubes returned to service under W* ARC remain below the TTS, including an allowance for NDE uncertainty.

These changes do not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes maintain the required structural margins of the SG tubes for both normal and accident conditions. RG 1.121 is used as the basis in the development of the W* ARC for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC staff for meeting General Design Criteria 14, 15, 31, and 32 by reducing the probability and consequences of an SGTR. RG 1.121 concludes that by determining the limiting safe conditions of tube wall degradation beyond which tubes with unacceptable cracking, as established by inservice inspection, should be removed from service or repaired, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube-burst that are consistent with the requirements of Section III of the ASME Code.

For primarily axially oriented cracking located within the tubesheet, tube-burst is precluded due to the presence of the tubesheet. WCAP–14797, Revision 1, defines a length, W*, of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied). Application of the W* ARC will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the W* ARC.

Plugging of the SG tubes reduces the reactor coolant flow margin for core cooling. Continued implementation of W* ARC will result in maintaining the margin of flow that may have otherwise been reduced by tube plugging.

Based on the above, it is concluded that the proposed changes do not result in a significant reduction of margin with respect to plant safety as defined in the Final Safety Analysis Report Update or Bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 17, 2001.

Description of amendment request: The proposed amendments delete requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated August 17, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment requests, the requested changes do not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: October 1, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (TS) (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated October 1, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management

strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard J. Laufer, Acting.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: May 3, 2001.

Description of amendment request: The proposed amendments would relocate cycle-specific reactor coolant system Technical Specifications parameters limits to the Core Operating Limits Report. Also, a reference to the Refueling Operations Boron Concentration is added to TS 5.6.5 to correct an omission.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is a programmatic and administrative change that does not physically alter plant systems, nor does it impact the performance of their functions. No new equipment is added nor is installed equipment being changed or operated in a different manner. Because the design of the facility and system operating parameters are not being changed, the proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated.

The cycle-specific limits in the Core Operating Limits Report (COLR) will continue to be controlled by the Farley Nuclear Plant (FNP) programs and procedures. Each accident analysis addressed in the Final Safety Analysis Report (FSAR) will be examined with respect to changes in the cycle dependent parameters, which are obtained from the use of Nuclear Regulatory Commission (NRC) approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be conducted per the requirements of 10 CFR 50.59, will ensure that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated. The safety limits imposed in Technical Specification (TS) 2.1 are consistent with the values stated in the FNP FSAR.

This change does not involve an increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Relocation of the cycle-specific parameters has no influence or impact on, nor does it contribute in any way to the probability or consequences of an accident. No plant equipment, function or plant operation will be altered as a result of this proposed change. The cycle-specific parameters are calculated using the NRC approved methods and submitted to the NRC to allow the staff to continue to trend the values of these limits. The TS will continue to require operation within the core operating limits and appropriate actions will be required if these limits are exceeded. The safety limits are maintained in the COLR and appropriate actions will be required if these limits are exceeded. In addition, the minimum limit for Reactor Coolant System flow will be retained in the TS. The safety limits imposed in TS 2.1 are consistent with the values stated in the FNP FSAR.

This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of cycle-specific core operating limits from the TS. The margin of safety presently provided by current TS limits remains unchanged. Appropriate measures exist to control the values of these cycle-specific limits. The proposed amendment continues to require operation within the core limits as obtained from NRC approved reload design methodologies and the actions to be taken if a limit is exceeded remain unchanged.

The development of the limits for future reloads will continue to conform to those methods described in NRC approved documentation. In addition, each future reload will involve a 10 CFR 50.59 evaluation to assure that operation of the unit within the cycle-specific limits will not involve a significant reduction in the margin of safety.

The proposed changes to relocate cycle specific parameter limits to the COLRs will not affect plant design or system operating parameters, there is no detrimental impact on any equipment design parameters, and the plant will continue to operate within prescribed limits. The safety limits imposed in TS 2.1 are consistent with the values stated in the FNP FSAR.

This proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: Richard J. Laufer, Acting.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: June 5, 2001.

Description of amendment request: The proposed amendments would modify Technical Specifications (TS) Surveillance Requirement 3.4.14.1 to clarify that the frequency does not apply to Reactor Coolant System Pressure Isolation Valves in the Residual Heat Removal System flow path. Also, related TS Bases and editorial changes are part of this TS change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Surveillance Requirement (SR) 3.4.14.1 clarifies that the requirement to test Reactor Coolant System (RCS) Pressure Isolation Valves (PIVs) following valve actuation due to automatic or manual action or flow through the valve does not apply to PIVs in the Residual Heat Removal (RHR) flow path. This resolves a source of potential confusion and ensures that the testing requirements are implemented consistent with the historical licensing basis for Farley and the Improved Technical Specification conversion NRC Safety Evaluation Report. The valves will continue to be tested for back leakage every 18 months. The proposed change does not affect the consequences of a previously analyzed accident since the magnitude and duration of analyzed events are not impacted by this change. Thus, the consequences of a previously evaluated accident are unchanged.

Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change involves no change to the physical plant. It allows for a clarification to the testing requirements to ensure that the historical licensing basis for Farley is maintained. These valves are tested every 18 months to ensure that the back leakage is within acceptable limits. This testing will continue. These changes do not impact the function of the valves.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The physical plant is unaffected by this change. The proposed change does not impact accident offsite dose, containment pressure or temperature, emergency core cooling system (ECCS) or reactor protection system (RPS) settings or any other parameter that could affect a margin of safety. The clarification of the testing requirements ensures that future testing is consistent with the historical licensing basis for Farley.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: Richard J. Laufer, Acting.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 10, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated September 10, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard J. Laufer, Acting.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: September 10, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated September 10, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard J. Laufer, Acting.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: April 1, 2001, as supplemented by letter dated July 26, 2001.

Brief description of amendments: The amendment revises Technical Specifications (TS) section 5.0, "Administrative Controls," by (1) clarifying new diesel fuel oil limits for water and sediment, (2) revising guidance on changes to TS Bases consistent with changes to 10 CFR 50.59, (3) adding clarification to the requirements for the Safety Function Determination Program, (4) adding the CENTS computer code to the list of analytical methods used to determine core operating limits, and (5) revising the Core Operating Limits Report list of references to approved topical reports.

Date of issuance: October 15, 2001.

Effective date: October 15, 2001, and shall be implemented within 60 days of the date of issuance.

Amendment Nos.: Unit 1–137, Unit 2–137, Unit 3–137.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 2, 2001 (66 FR 22022).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 2001.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 4, 2000, as supplemented March 8, 2001, March 27, April 26, May 14, May 18, June 4, June 11, June 26, June 29, July 3, July 16 (2 letters), July 17, August 17, and September 20, 2001.

Brief description of amendment: The license amendment revises the Harris Nuclear Plant Technical Specifications to support the replacement of the current Westinghouse Model D4 steam generators with Westinghouse Model Delta 75 replacement steam generators and revises the accident analyses to adopt the alternate source term (AST) methodology, using the guidance of Nuclear Regulatory Commission (NRC) Regulatory Guide 1.183.

Date of issuance: October 12, 2001.

Effective date: October 12, 2001.

Amendment No.: 107.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** For the steam generator replacement amendment request, the initial notice is dated November 1, 2000 (65 FR 65338). The March 8, 2001, March 27, April 26, May 14, May 18, June 4, June 11, June 26, June 29, July 3, July 16 (2 letters), and September 20, 2001, supplements contained clarifying information only, and did not change the initial no significant hazards consideration determination, or expand the scope of the initial application. The initial notice for the adoption of the AST methodology, using the guidance of NRC Regulatory Guide 1.183, was published on August 8, 2001 (66 FR 41612). The August 17, 2001, supplement contained clarifying information only, and did not change the initial no significant hazards

consideration determination, or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 2001.

No significant hazards consideration comments received: No.

Entergy Nuclear Indian Point 2 and Entergy Nuclear Operations, Docket Nos. 50–003 and 50–247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of application for amendment: July 13, 2001.

Brief description of amendment: The amendments revise Technical Specification (TS) 4.1.8, "High Radiation Area," for Indian Point Unit 1 and TS 6.12, "High Radiation Area," for Indian Point Unit 2 to delete the administrative requirements for the control of access to high radiation areas. The control of access to these areas is assured by the licensee's radiation protection programs that comply with 10 CFR 20.1601 by using the alternate methods in NRC Regulatory Guide 8.38, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants," June 1993.

Date of issuance: October 10, 2001.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 51 and 221.

Facility Operating License Nos. DPR–5 and DPR–26: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 5, 2001 (66 FR 46477).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 10, 2001.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket Nos. 50–003 and 50–247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of application for amendments: December 12, 2000, as supplemented on April 12, April 16, May 24, June 6, and June 8, 2001.

Brief description of amendments: The conforming amendments reflected the transfer of the licenses, formerly held by Consolidated Edison Company of New York, Inc., to Entergy Nuclear Indian Point 2, LLC, as the owner of Indian Point 1 and 2, and to Entergy Nuclear Operations, Inc., as the entity authorized to maintain Indian Point 1 and operate Indian Point 2. The amendments were approved pursuant to Section 50.90 of Title 10 of the Code of Federal Regulations.

Date of issuance: September 6, 2001.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 50 (Indian Point 1) and 220 (Indian Point 2).

Facility Operating License Nos. DPR–05 and DPR–26: Amendments revised the Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 29, 2001 (66 FR 8122).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 2001.

No significant hazards consideration comments received: Not applicable.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: June 12, 2001, as supplemented by letters dated July 31, September 19 and September 25, 2001.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.8.1.1 to provide a one-time extension of the allowed outage time (AOT) for an inoperable emergency diesel generator (EDG) from three days to ten days. In addition, the amendment revised TS 3.4.4 to make the action associated with an inoperable emergency power supply to the pressurizer heaters consistent with the proposed EDG AOT.

Date of issuance: October 15, 2001.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 234.

Facility Operating License No. NPF–6: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** July 11, 2001 (66 FR 36341).

The July 31, September 19 and September 25, 2001, supplemental letters provided clarifying information and revised TSs that were within the scope of the original **Federal Register** notice and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 2001.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 8, 2001.

Brief description of amendment: The change revises the lower limit of the allowable containment internal pressure in Technical Specification (TS) 3.6.1.4, "Containment Systems—Internal Pressure," from 14.375 pounds per square inch, absolute (psia) to 14.275 psia.

Date of issuance: October 10, 2001.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 174.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 21, 2001 (66 FR 11058).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 10, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, PSEG Nuclear LLC, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of application for amendments: October 10, 2000, as supplemented October 9, 2001.

Brief description of amendments: The amendments revised the licenses for Peach Bottom Units 2 and 3 to remove Atlantic City Electric Company as a licensee, in conjunction with the transfer of the minority ownership interests of Atlantic City Electric Company to the majority owners, Exelon Generation Company, LLC, and PSEG Nuclear LLC.

Date of issuance: October 18, 2001.

Effective date: As of date of issuance, and shall be implemented within 30 days of issuance.

Amendments Nos.: 241 and 245.

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the License.

Date of initial notice in ***Federal Register:*** November 27, 2000 (65 FR 70740).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 27, 2000.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 28, 2001, as supplemented July 19, and October 2, 2001.

Brief description of amendment: The amendment revised the Improved Technical Specifications 3.7.18, "Control Complex Cooling System" to allow a one-time increase in the completion time for restoring an inoperable Control Complex Cooling System train from 7 to 35 days.

Date of issuance: October 16, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 200.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 18, 2001 (66 FR 20006). The supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 2001.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: February 21, 2000, as supplemented June 27, 2001.

Brief description of amendment: The amendments revise various administrative actions, requirements, and responsibilities contained in Improved Technical Specifications (ITS) 2.0, "Safety Limits," and ITS 5.0, "Administrative Controls," to reflect the recent CR–3 Nuclear Operations reorganization and the amended requirements of 10 CFR 50.72, 10 CFR 50.73 and 10 CFR 50.59.

Date of issuance: October 18, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 201.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 21, 2001 (66 FR 15926). The supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 20, 2001.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: April 17, 2001.

Brief description of amendments: Minor changes and corrections to a Unit 1 license condition and to Technical Specifications of both Unit 1 and 2 to correct administrative errors, or to incorporate changes justified by previous submittals, or to correct logic errors, or to delete obsolete terminology and provide conforming changes to reflect the revisions to 10 CFR 50.59.

Date of Issuance: October 18, 2001.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 177 and 119.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Unit 1 Operating License and the Technical Specifications of both units.

Date of initial notice in ***Federal Register:*** May 30, 2001 (66 FR 29357).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 18, 2001.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 28, 2001.

Brief description of amendment: The amendment revises the technical specifications to reflect changes in the standard by which the licensee will test charcoal used in engineered safety feature systems. The requested changes satisfy the requirements of NRC Generic Letter 99–02.

Date of issuance: October 16, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 186.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 12, 2001 (66 FR 31710).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 2001.

No significant hazards consideration comments received: No.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of application for amendment: February 27, 2001, as supplemented on September 6, 2001.

Brief description of amendment: The amendment revises surveillance requirements associated with Technical Specifications Section 3.3.8.2, "Reactor Protection System (RPS) Electric Power Monitoring—Logic," and Section 3.3.8.3, "Reactor Protection System (RPS) Electric Power Monitoring—Scram Solenoids." Specifically, the overvoltage allowable values and associated channel calibration frequency interval are changed.

Date of issuance: October 17, 2001.

Effective date: As of the date of issuance and shall be implemented by March 15, 2002.

Amendment No.: 99.

Facility Operating License No. NPF–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 21, 2001 (66 FR 15928).

The staff's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 2001.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: November 16, 2000.

Brief description of amendment: This amendment deleted a note in TS Surveillance Requirement 3.6.1.1.1 which extended the leak rate testing surveillance interval on the 2S299A and 2S299B spectacle flange o-rings until the Unit 2 10th refueling outage or a prior Unit 2 outage requiring entry into Mode 4. The note, added in Amendment No. 160 to Facility Operating License No. NPF–22 which was issued on May 8, 2000, was necessitated because of a Notice of Enforcement Discretion documented in a letter dated April 11, 2000. This note is no longer required to be included in TS 3.6.1.1.1 because the surveillance test was conducted during the Unit 2 forced outage in August of 2000.

Date of issuance: October 9, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 171.

Facility Operating License No. NPF–22: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 11, 2001 (66 FR 36343).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 9, 2001.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 20, 1999, as supplemented on February 11, February 25, and October 10, 2000.

Brief description of amendment: The amendment revises the license to reflect changes related to the transfer of the license for the Hope Creek Generating Station, to the extent held by Atlantic City Electric Company to PSEG Nuclear LLC.

Date of issuance: October 18, 2001.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 135.

Facility Operating License No. NPF–57: This amendment revised the License.

Date of initial notice in ***Federal Register:*** February 18, 2000 (65 FR 8453).

The letters dated February 11, February 25, and October 10, 2000, provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: December 20, 1999, as supplemented February 11, February 25, and October 10, 2000.

Brief description of amendments: The amendments revised Facility Operating Licenses DPR–70 and DPR–75 to reflect changes related to the transfer of the license for the Salem Nuclear Generating Station, Unit Nos. 1 and 2, to the extent held by the Atlantic City Electric Company, to PSEG Nuclear Limited Liability Company.

Date of issuance: October 18, 2001.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment Nos.: 246 and 227.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the License.

Date of initial notice in ***Federal Register:*** February 18, 2000 (65 FR 8452). The February 11, February 25, and October 10, 2000, supplements did not expand the scope of the original application with respect to both the proposed transfer action and the proposed amendment action as initially noticed in the **Federal Register**. *No hearing requests or comments were received.* In addition, the submittals did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 21, 2000.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: May 23, 2001.

Brief description of amendments: The amendment revises the Safety Limit Minimum Critical Power Ratio to reflect the results of a cycle-specific calculation that was performed using NRC-approved methodology.

Date of issuance: October 12, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 167.

Facility Operating License No. NPF–5: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 2001 (66 FR 31714).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 12, 2001.

No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: April 25, 2001, as supplemented by letters dated July 31 and August 23, 2001.

Brief description of amendments: The amendments change the Technical Specifications (TS) to allow a one-time only change to TS 3.8.1, "AC Sources—Operating," Action A.3, by extending the required Completion Time for restoration of an inoperable offsite circuit from 72 hours to 21 days.

Date of issuance: October 9, 2001.

Effective date: As of the date of issuance and shall be implemented no later than February 28, 2002.

Amendment Nos.: 88/88.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 5, 2001 (66 FR 46482).

The supplemental letter dated August 23, 2001, provided clarifying information that did not change the Nuclear Regulatory Commission (the Commission) staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 9, 2001.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 14, 2001, as supplemented on August 21, 2001.

Brief description of amendment: The proposed amendment would extend the allowed outage time (AOT) for the High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling systems from 7 days to 14 days. Requirements were added to immediately ensure the availability of alternate means of high pressure coolant makeup. Also, clarifying changes were made to Technical Specifications (TSs) 3.5.E.2 and 3.5.G.2 by reformatting the TSs to make the nomenclature consistent regarding HPCI and the Automatic Depressurization System as being systems, not subsystems.

Date of Issuance: October 18, 2001.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 205.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 18, 2001 (66 FR 48152).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 18, 2001.

No significant hazards consideration comments received: No.

Note: The publication date for this notice will change from every other Wednesday to every other Tuesday, effective January 8, 2002. The notice will contain the same information and will continue to be published biweekly.

Dated at Rockville, Maryland, this 22nd day of October 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–27261 Filed 10–30–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44972; File No. SR–Amex–2001–19]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1, 2 and 3 by the American Stock Exchange LLC Relating to Its Performance Evaluation and Allocations Procedures

October 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 31, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On August 13, 2001, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On August 27, 2001, the Exchange submitted Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Amex Rules 26 and 27 to codify the Exchange's performance evaluation and allocations procedures. The text of the proposed rule change is available at the Office of the Secretary, the Amex and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Board of Governors of the Exchange is generally responsible for the supervision of its members. With regards to (1) evaluating the performance of specialists, registered traders, and brokers, and (2) allocating securities to specialists, the Board has delegated its responsibilities to the Committee on Floor Member Performance (the "Performance Committee" or "Committee") and the Allocations Committee, respectively.[6]

Performance evaluation is the non-disciplinary process[7] by which the Exchange reviews Floor member conduct and takes remedial action where necessary to improve performance. The registration of specialists ("allocations") is the process by which the Exchange matches appropriate specialists to particular securities.

The Exchange proposes to codify its performance evaluation and allocation procedures as Amex Rules 26 and 27 in order to make them readily available to members since these procedures currently are not available in one easily accessed location.

Performance Evaluation (Rule 26)

Paragraph (a) of proposed Rule 26 describes the composition of the Performance Committee. The proposed rule states that the Performance Committee consists of 16 persons drawn from a larger pool divided as equally as possible among specialists, registered traders, brokers and upstairs member firm representatives. Specialists, registered traders, and brokers are the three classes of market participants on the Exchange Floor. Upstairs member firm representatives, while not on the Floor, make extensive use of the Exchange's services and have another perspective on the operation of the market. A Floor Governor chairs meetings of the Performance Committee and only may vote to break a tie. A

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Bill Floyd-Jones, Jr., Assistant General Counsel, Legal and Regulatory, Amex, to Katherine A. England, Assistant Director, Division Market Regulation ("Division"), Commission (May 31, 2001). Amendment No. 1 adds discussion to the purpose section of the proposal regarding the ability of the Performance Committee to take appropriate action should a member or member organization fail without a reasonable excuse to meet with the committee after receiving notice. In addition, Amendment No. 1 corrects structural and typographical errors that appeared in the proposed rule language.

[4] *See* Letter from Bill Floyd-Jones, Jr., Assistant General Counsel, Legal and Regulatory, Amex, to Katherine A. England, Assistant Director, Division, Commission (August 10, 2001). Amendment No. 2 adds a reference to the Special Allocations Committee in the proposal and proposed rule text; adds allocations procedures for structured products and Exchange Traded Funds; and makes technical changes to the proposed rule text.

[5] *See* Letter from Bill Floyd-Jones, Jr., Assistant General Counsel, Legal and Regulatory, Amex, to Katherine A. England, Assistant Director, Division, Commission (August 24, 2001). Amendment No. 3 clarifies the Performance and Allocations Committee review procedures.

[6] *See* Amex Rules 170 and 958, which establish standards for specialists and Registered Options Traders. *See also* Article II, Section 3 of the Exchange Constitution, which provides in relevant part:

> The Board shall establish standards and requirements for the registration of specialists or odd-lot dealers in securities dealt in on the Exchange, and may grant to a committee or committees, the authority to (i) approve the registration of specialists or odd-lot dealers, (ii) revoke or suspend any such registration at any time, (iii) allocate to a registered specialist or odd-lot dealer any security dealt in on the Exchange, and (iv) revoke any such allocation, temporarily or permanently, at any time.

[7] *See In the Matter of the Application of Pacific Stock Exchange's Options Floor Post X–17*, Admin. Proc. File No. 3–7285, Securities Exchange Act Release No. 31666 (December 29, 1992), 51 SEC DOC 261. The Commission determined that performance evaluation processes fulfill a combination of business and regulatory interests at exchanges and are not disciplinary in nature. The Commission states in the *Post X–17* case:

> We believe that the reallocation of a market maker's (or a specialist's) security due to poor performance is neither an action responding to a violation of an exchange rule nor an action where a sanction is sought or intended. Instead, we believe that performance-based security reallocations are instituted by exchanges to improve market maker performance and to ensure quality of markets. Accordingly, in approving rules for performance-based reallocations, we historically have taken the position that the reallocation of a specialist's or a market maker's security due to inadequate performance does not constitute a disciplinary sanction.
>
> We believe that an SRO's need to evaluate market maker and specialist performance arises from both business and regulatory interests in ensuring adequate market making performance by its market makers and specialists that are distinct from the SRO's enforcement interests in disciplining members who violate SRO or Commission Rules. An exchange has an obligation to ensure that its market makers or specialists are contributing to the maintenance of fair and orderly markets in its securities. In addition, an exchange has an interest in ensuring that the services provided by its members attract buyers and sellers to the exchange. To effectuate both purposes, an SRO needs to be able to evaluate the performance of its market makers or specialists and transfer securities from poor performing units to the better performing units. This type of action is very different from a disciplinary proceeding where a sanction is meted out to remedy a specific rule violation. (Footnotes omitted.)

Senior Floor Official may chair the Committee in the event that a Floor Governor is unavailable.

Paragraph (a) of the proposed Rule 26 also allows the Performance Committee to delegate some or all its responsibilities to one or more subcommittees consisting of six persons. Due to the large size of the Performance Committee, the Exchange believes that it is impractical to convene the full Committee for all matters that might come before it. As a result, it is the practice of the Performance Committee to use subcommittees to (1) screen matters to determine if they warrant the attention of the full Committee, and (2) resolve routine matters (*e.g.*, adherence to zone performance standards). A Performance subcommittee would have less substantial remedial tools available to it than are available to the Performance Committee due to its limited size. The remedial actions available to Performance subcommittees are enumerated in paragraph (a) of proposed Rule 26.

Paragraphs (b) through (d) of proposed Rule 26 describe the responsibilities of the Performance Committee with respect to specialist, registered traders, and brokers. These paragraphs also enumerate the remedial actions available to the Committee with respect to each group of Floor members.

With respect to specialists, paragraph (b) of proposed Rule 26 would provide that the Performance Committee reviews proposed transfers to specialist registrations and specified transactions involving specialists. Paragraph (b) provides that the Performance Committee will approve a proposed transaction unless a "countervailing institutional interest" indicates that the transaction should be disapproved or conditionally approved. In determining the presence of a countervailing institutional interest, the Performance Committee would consider whether the proposed transaction would maintain or enhance the quality of the Exchange's markets. The Performance Committee also would consider whether the transaction would create a level of concentration among specialists that should be mitigated. Commentary .03 to proposed rule 26 describes the Exchange's "concentration" policy.

The Exchange proposes that the Performance Committee disapprove or conditionally approve a transaction if it appears to the Committee that the proposed transaction (1) would not maintain, or (2) would not enhance the quality of markets on the Exchange. The Committee also may disapprove or conditionally approve a transaction if it appears to the Committee that it would raise concentration issues. This review authority gives the Performance Committee an important means for ensuring that specialists maintain quality markets on the Exchange and thus benefits investors.

In addition to reviewing transactions of specialists, the Performance Committee would review specialist performance relative to the quality of markets, competition with other markets, observance of ethical standards, and administrative factors. The Exchange believes that the Performance Committee of the Amex and its analogues at other principal equity and options exchanges traditionally have used these factors to review specialists performance to ensure the maintenance of quality markets. If the Performance Committee determines that a specialist has failed to properly perform as a specialist, the Exchange proposes that the Committee may take one or more of the 10 remedial actions enumerated in Paragraph (b) of proposed Rule 26. These range from relatively mild actions such as counseling the specialists on how to improve its performance or issuing an admonitory letter, to more intermediate actions such as assigning a performance rating[8] or requiring the adoption of a Performance Improvement Plan,[9] to stronger actions such as directing the reallocation of one or more securities.

The four types of securities that currently trade on the Amex are (1) stock and other equities, (2) structured products, (3) standardized options, and (4) Exchange Traded Funds ("ETFs").[10] Specializing or market making in these securities requires different resources, and firms or units that specialize in more than one security class customarily are staffed and managed along product line. As a result, poor performance by a specialist unit in listed equities might not be mirrored by poor performance by the same unit in listed options. Therefore, the Performance Committee would have the authority to target remedial action to a particular class of security traded by a specialist or registered trader.

Paragraph (c) of proposed Rule 26 describes the responsibilities and authority of the Performance Committee with respect to registered traders. It is quite similar to paragraph (b) of proposed Rule 26 (which concerns specialists) in recognition of the fact that the Registered Options Traders ("ROTs") are "quasi-specialists."[11] Since the Exchange does not "allocate" securities to registered traders, however, there is no provision for reallocations or allocation preclusions with respect to registered traders.

Commentary .01 to proposed Rule 26 provides that an Auto-Ex[12] performance standard applicable to ROTs is monitored by the Performance Committee. The standard provides that any ROT that trades an option during a break-out situation and has signed-on to Auto-Ex for a period of two or more days over the ten previous business days must sign on to Auto-Ex for the break-out option. LEAPS are excluded from this standard. The proposed standard further provides that all ROTs that sign on to Auto-Ex for the break-out must remain on Auto-Ex for the duration of the break-out. ROTs that have signed-on to Auto-Ex during a break-out only are permitted to sign-off with the permission of a Floor Governor. The purpose of the standard is to ensure that there is sufficient liquidity for an option during times of market stress. The Performance Committee may prohibit a ROT, or his or her firm, from participating on Auto-Ex for up to six months for deviations from this standard.

Paragraph (d) of proposed Rule 26 describes the responsibilities and authority of the Performance Committee with respect to Floor Brokers. Since brokers do not act as dealers, they are not evaluated in terms of quality or markets and competition with other markets. Instead, they are evaluated with respect to order handling, observance of ethical standards, and administrative factors. In addition, the remedial actions that the Performance Committee may take with respect to brokers are more limited than those that may be taken with respect to registered traders and specialists because many of the Committee's remedial measures involve restrictions on acting as a dealer, which is not a broker's function.

Paragraph (e) of proposed rule 26 describes Performance Committee procedures. Paragraph (e) of proposed rule 26 provides that persons (*i.e.*, specialists, specialist units, registered traders or brokers) that are asked to address the Performance Committee because they may have failed to meet minimum performance standards are notified in writing of the matter(s) to be considered by the Committee and are provided with copies of any written materials that are given to the Committee prior to the meeting. Such persons may be questioned by the Performance Committee members and Exchange staff present at the meeting, and they have an opportunity to present information and documents to rebut any concerns about their performance. Anyone appearing before the Committee (not just persons that may have failed to meet appropriate performance standards) may be represented by counsel. Formal rules of evidence do not apply at meetings of the Performance Committee. If the Performance Committee determines that a member or member organization has failed to meet minimum performance standards, the affected person or persons would be notified in writing of the Committee's findings, conclusions, and the remedial action to be taken.

Paragraph (f) of proposed Rule 26 provides that the Performance Committee may take action against a member or member organization if the person or firm fails without reasonable excuse to meet with the Committee after receiving notice of the meeting.

Paragraphs (g) and (h) of proposed Rule 26 describe procedures for appealing decisions of the Performance Committee. Members and member organizations aggrieved by determinations of the Performance Committee or a Performance subcommittee must submit an application to review the decisions to the Secretary of the Exchange within five business days of receipt of the Committee's or subcommittee's written decision. Filing a timely application for review stays the decisions of the Performance Committee or subcommittee. Appeals from decisions of a Performance subcommittee are reviewed "de-novo" by the Performance Committee. Appeals from decisions of the Performance Committee are reviewed by the Amex Adjudicatory Council ("Adjudicatory Council"). The Exchange represents that the Adjudicatory Council may (1) Limit its review to the record created by the Performance Committee, (2) consider additional matters that were not included in the record, or (3) hear the matter "de novo," as the Adjudicatory Council determines is appropriate to render a fair decision on the appeal. A verbatim record of the proceeding before the Adjudicatory Council is maintained and the Adjudicatory Council's decision is in writing. The decision of the Adjudicatory Council constitutes final action by the Exchange.

Allocations Procedures (Rule 27)

Paragraph (a) of proposed Rule 27 describes the composition and responsibilities of the Options and Equities Allocations Committees. The Options Allocations Committee is responsible for allocating standardized equity options. This Committee consists of 11 persons as follows: Six Floor brokers, two Registered Options Traders, and three representatives of upstairs member firms. The Equities Allocations Committee allocates the equity securities of operating companies. It consists of ten persons as follows: Six Floor brokers, one specialist, and three representatives of upstairs member firms. A Floor Governor, who only may vote to break a tie, chairs both Committees. A Senior Floor Official may chair a meeting in the event that a Floor Governor is unavailable.

The Special Allocations Committee allocates securities that are not allocated by the Options or Equities Allocations Committees and securities with special characteristics as may be determined by the Chief Executive Officer of the Exchange or his or her designee. It consists of six persons as follows: The Chief Executive Officer (or his or her designee), two brokers, two Registered Options Traders, and a representative of an upstairs member firm. The Special Allocations Committee is chaired by the Chief Executive Officer who does not vote except to make or break a tie. In the Chief Executive Officer's absence, a Floor Governor or Senior Floor Official may chair the Committee. The Options, Equities and Special Allocations Committees are collectively referred to herein as the "Allocations Committee."

Floor brokers have the greatest number of representatives on the Allocations Committee since they tend to have personal familiarity with all units on the Floor as a result of their representation of orders at different posts. Specialists have the fewest representatives on the Allocations Committee since they typically have limited personal familiarity with other units. In addition, specialists and the units that they are associated with are ineligible to be allocated any security that is allocated at a meeting where they participate on the Committee. As a result, specialists frequently decline to participate at Allocations Committee meetings. Representatives of upstairs member firms have an intermediate number of representatives on the Committee (as do ROTs with respect to the Options Allocations Committee). Upstairs member firms, like brokers, are users of the services provided by specialists and have valuable insights as to their relative competencies. ROTs, as market makers, also have insights into the qualifications of different specialists. The Chief Executive Officer is a member of the Special Allocations Committee as a result of the role played by the Exchange's staff in securing listings of the securities that are allocated by the Special Allocations Committee (*e.g.*, ETFs).

Paragraph (b) of proposed Rule 27 provides that the Allocations Committee shall select the specialist or unit for a security that appears best able in the professional judgment of the Committee members to perform the functions of a specialist in the security to be allocated. The proposed rule also provides a non-exclusive list of the criteria that the Allocations Committee uses to decide which unit should be allocated a particular security. The Exchange, the New York Stock Exchange, Inc., and Chicago Board Options Exchange, Inc. customarily use these criteria to ensure that securities are allocated consistent with the interests of investors and the Exchange. Issuers of equity securities may elect to use the Exchange's "Issuer Choice" procedures to allocate a security[13] if they so desire, pursuant to paragraph (e) of proposed Rule 27 and Commentary .05 of proposed Rule 27.

Paragraph (b) of proposed Rule 27 also provides that specialists subject to a preclusion on new allocations in one or more classes of a security as a result of Performance Committee or a disciplinary action only are eligible for allocations of "related securities " as described in proposed Commentary .05 to Rule 27.

With respect to equity securities, proposed Commentary .05 to Rule 27 provides that newly listed convertible securities and securities issued in connection with a name change or reverse stock split are automatically allocated (*i.e.*, allocated without any involvement of the Allocations

[8] *See* Securities Exchange Act Release No. 27455 (Nov. 22, 1989), 54 FR 49152 (Nov. 29, 1989) (approving File No. SR–Amex–83–27, regarding the Exchange's "rating" system).

[9] Commentary .02 to proposed Rule 26 describes Performance Improvement Plans and the procedure for implementing them. In general, the Performance Improvement Plan procedure permits the Performance Committee to require specialists and registered traders to implement business plans to improve their performance.

[10] ETFs include, but are not limited to, Portfolio Depositary Receipts (*e.g.*, SPDRs, DIAMONDS and Nasdaq-100 Index Tracking Stock), Index Fund Shares (*e.g.*, Select Sector SPDRs and iShares) and Trust Issued Receipts (e.g., "HOLDRs"). The Exchange also lists corporate and government bonds.

[11] *See* Commentary .01 to Amex rule 958. Unlike a specialist, however, a ROT may not handle agency orders. *See also* Amex Rules 111(c) and 950(c).

[12] Auto-Ex is the Exchange system that provides an automatic execution to incoming customer orders up to a specific size. Specialists and ROTs that sign on to the system take the opposite side of incoming customer orders at the displayed bid or offer except when a limit order on the book establishes the best bid or offer on the Amex.

[13] *See* Securities Exchange Act Release No. 23593 (Sept. 5, 1986), 51 FR 32985 (Sept. 17, 1986) (order approving File No. SR–Amex–86–10, regarding the Issuer Choice program).

Committee) to the specialist that already trades the issuer's securities regardless of an allocation preclusion. In other situations involving the allocation for equity securities that are related securities, proposed Commentary .05 provides that the Allocations Committee would determine whether the trading characteristics of the newly listed related security are closely related to the exiting security given the Exchange staff's recommendations as to whether the newly listed related securities should be allocated to the current specialist. If the Allocations Committee determines that the trading characteristics of the newly listed related security are closely related to the existing listed security, it would allocate the newly listed security to the existing regardless of an allocation preclusion. If the Allocations Committee determines that the trading characteristics of the newly listed related security are not closely related to the existing security, the related security is allocated either by the Allocations Committee (paragraph (b) of proposed Rule 27) or according to the Issuer Choice procedure (paragraph (e) of proposed Rule 27). The existing specialist, if subject to an allocation preclusion, is eligible for the newly listed related security only if the issuer requests its current specialist under the Issuer Choice procedure.

With respect to the standardized options, proposed Commentary .05 provides that options on related securities are automatically allocated to the existing option specialist unless the existing options specialist is subject to an allocation preclusion. If the existing option specialist is subject to a preclusion on new option allocations, the specialist only will be allocated the new option if the Allocations Committee determines that the trading characteristics of the newly listed option are closely related to the existing option, given the Exchange's recommendation as to whether the newly listed related securities should be allocated to the current specialist. Unless the Allocations Committee makes the required determination, the existing specialist that is subject to an allocation preclusion is ineligible for the newly listed option on the related security.

Commentary .05 states that the term "related security" does not include ETF's. Thus, an ETF specialist that is subject to a preclusion on the allocation of ETCs is not eligible for any new ETF allocations for the duration of the preclusion.

Paragraph (e) of proposed Rule 27 describes the Exchange's "Issuer Choice" program, and should be read in conjunction with Commentary .02 and .03 to proposed Rule 27, "Contacts with Unlisted Companies," and "Specialist and other Member Contacts with Issuers and Sponsors of Exchange Traded Funds and Structured Products for the Purpose of Securing New Listings." Commentary .02 to proposed Rule 27 provides that specialists or other members are required to submit a Notice of Marketing Interest ("NOMI") to the Exchange (1) prior to initiating any contact with an unlisted company regarding listing, or (2) within five business days of an unanticipated contact with a company where discussions regarding listing occurred or are anticipated in the future. There is an automatic 12-month sunset on the authorization of a specialist unit or other member to effect the listing of prospect company on the Exchange. This sunset period may be extended for one additional six-month period by Amex staff if the specialist or other member submits a written request to Amex staff detailing the activities that the specialist or other member has undertaken which it believes will result in a favorable listing decision. Once a company decides to list on the Exchange, specialists and other members can have no further communications with the company for the purpose of influencing the choice of specialist except for the interview described below.

Commentary .03 to Rule 27 provides that the Exchange must approved proposed contacts between specialists and potential issuers and sponsors of ETFs and Structured Products regarding potential new listings. The Exchange would approve the contact where it appears that the contact would benefit the Exchange's listing effort. The Exchange would disapprove the contact where it might hinder the listing effort or would be inappropriate. The approval would last for six months and could be extended for one or more six-month period where it appears that the specialist is making progress in securing the listing. The Exchange also could withdraw the approval prior to scheduled termination if it appears that the specialist contacts are hindering the Exchange's listing efforts.

Paragraph (e) of proposed Rule 27 provides that the Allocations Committee prepares a list of six qualified units based upon the criteria used by the Allocations Committee in selecting a specialist under its regular allocations process. The issuer or sponsor (in the case of an ETF) may request that a unit or units be placed on the list of eligible specialist. The Allocations Committee, however, is not obligated to honor such requests. In the case of an equity security, the Allocations Committee only is advised of a company's preference for a particular specialist where the specialist's efforts actually have been instrumental in securing the listing as evidenced by the company filing a preference with the Exchange for the specialist within two weeks of the Exchange initiating a listing qualification review.

Pursuant to proposed Rule 27, issuers may interview specialists on the list of eligible units prepared by the Allocations Committee. Exchange staff would arrange these interviews, and in the case of an equity security, the Chief Executive Officer of the Exchange or his or her designee may require a member of the Exchange staff to attend such interviews to answer questions about the Exchange's allocation policies and to ensure that any statements by specialists and their representatives are consistent with the Exchange's policies on communications with unlisted companies. Inappropriate statements to issuers and ETF sponsors include, but are not limited to, apparent misrepresentations as to market making capabilities or promises unrelated to the specialist's role in making a market in the issuer's stock. Specialists and their representatives also may not supply information concerning another specialist unit or units either orally or in writing, except they may refer to overall floor-wide statistics.

Under proposed Rule 27, the issuer selects its specialist from the list of eligible units provided to it. In addition, if an issuer becomes dissatisfied with its specialist, it has a one-time right to request the reallocation of its securities. This right may be exercised at any time between 120 days and one year of listing. In the event that the issuer requests a reallocation under this provision, its securities may be reallocated either under the Exchange's Issuer Choice or regular allocations procedures.

Paragraph (c) of proposed Rule 27 provides miscellaneous procedures that apply to both the regular and Issuer Choice allocation process. Paragraph (c) of proposed Rule 27 also provides that all eligible specialists are automatically deemed to apply for all new listings. In contrast, options specialists must submit an application to be considered for a new allocation of options. In addition, the Exchange proposes to require that specialists disclose any business transactions (e.g., agreements) or other relationships (e.g., ownership of stock or other securities) that a specialist, its affiliates, and the employees of both the specialist and its affiliates have with a newly listed company, its affiliates and the employees of the company and its affiliates. Specialists also would be required to confirm to the Exchange in writing the absence of any disclosable business transactions or relationships if there are none.

Paragraph (c) of proposed Rule 27 provides that specialists may present relevant information to the Allocations Committee for its consideration in connection with specific allocation decisions. The Allocations Committee would have discretion to permit members of a trading crowd to present relevant information to the Allocations Committee in appropriate circumstances. Information presented to the Allocations Committee could include, for example, undertakings as to the size of the markets and quote spreads that the Specialist and crowd would maintain, and other information relevant to the factors that the Allocations Committee may consider in making its decisions. The Allocations Committee may require that all submissions be in writing.

Paragraph (d) of proposed Rule 27 describes the "Pre-Allocation" or "Piggy-Back" allocation process. This procedure is used in situations where the Exchange decides to "piggy-back" a listing announced by another exchange (*i.e.*, the Amex determines to list an option following its designation by another exchange). Due to the delay attendant to the regular allocation process and the short time prior to the commencement of trading in "piggy-back" situations, pre-selected units identified by the Allocations Committee as the Exchange's premier units are allocated "piggy-back" options on a rotating basis.

Twice a year, the entire Allocations Committee pool meets to interview and review applications from all specialists that wish to be placed on the pre-allocation list. Following this review process, the Allocations Committee prepares a list of the selected units in such order of priority as the Allocations Committee designates based on the criteria enumerated in paragraph (b) of proposed Rule 27.

When the Exchange determines to list an option in response to its listing by another exchange, the Exchange proposes that the Exchange staff may contact available Floor Governors to confirm that no material performance situation or other relevant matter has developed that would cause the next unit on the list to be inappropriate to receive the allocation. If such a situation has developed, the Exchange proposes that specialists or specialist units would be by-passed and the Allocations Committee would be convened as soon as possible to determine if the specialist or specialist unit should be removed from the pre-allocation list.

Paragraphs (f), (g), and (h) of proposed Rule 27 address the role of the Allocations Committee in the reallocation of securities. Paragraph (f) of proposed Rule 27 provides that the Allocations Committee follows its regular allocation procedures (not Issuer Choice) in the event that the Exchange reallocates securities because of, among other things, (1) A Performance Committee remedial action, (2) a specialist request to be relieved of a security for good cause, or (3) the registration of a specialist which is cancelled as a result of a disciplinary action. Paragraph (f) of proposed Rule 27 also provides that the procedures specified in paragraphs (g) and (h) of proposed Rule 27 shall apply to reallocations made in connection with the emergency reallocations due to financial or operating conditions or to reallocations because of business transactions that result in a transfer of one or more specialist registration.

As previously noted by the Exchange, the Performance Committee is responsible for reviewing proposed transfers of specialist registrations and specified transactions involving specialists including the dissolution of specialist units. Since the Performance Committee is primarily responsible for reviewing such matters, paragraph (g) of proposed Rule 26 provides that the Allocations Committee shall follow directions received from the Performance Committee with respect to the reallocation of securities in these matters. If the Performance Committee directs that there should be some other disposition of the securities than provided for by the parties, but does not give the Allocations Committee specific instructions as to how the securities should be allocated, the Allocations Committed would follow its customary (*i.e.*, no Issuer Choice) procedures in reallocating these securities. Paragraph (g) of proposed Rule 27 further provides that the Exchange will defer to the decision of the arbitrators in the event of an arbitration between specialists unless the Performance Committee determines that a countervailing institutional interest dictates that the Exchange either should not wait for and/or abide by the decision of the arbitrators. In such cases, the Performance Committee may direct the Allocations Committee to reallocate the disputed securities in a specified manner. In the absence of specific instructions from the Performance Committee, the Allocations Committee reallocates the securities in accordance with its customary (no Issuer Choice) procedures.

Paragraph (h) of proposed Rule 27 addresses emergency reallocations for reasons of financial or operating condition. It provides that the Chief Executive Officer of the Exchange or the Senor Supervisory Officer on the Trading Floor, in consultation with the available Floor Governors, may request the Allocations Committee to convene to reallocate securities on an emergency basis where it appears that a unit cannot be permitted to continue to specialize in one or more of its securities with safety to investors, its creditors, or other members due to financial or operational conditions. The affected specialist would be notified of the meeting (the notice does not have to be in writing) and, if time and circumstances permit, the specialist will be given an opportunity to appear before the Allocations Committee. If a prior hearing is not feasible, however, the Exchange proposes that the Allocations Committee may proceed with the reallocation, and the specialist unit shall be afforded an opportunity to address the Committee as soon as reasonably possible after the reallocation. If the conditions which led to the reallocation no longer exist or are corrected, the Chief Executive Officer in consultation with the available Floor Governors, or the specialist unit may request the Allocations Committee to reconvene to consider whether the securities should be restored to the unit.

Paragraph (i) of proposed Rule 27 provides for the appeal of decisions of the Allocations Committee to the Amex Adjudicatory Council. A written application to appeal a decision must be filed with the Office of the Secretary within five business days of the decision of the Committee. An application to review the Allocations Committee's decision, however, does not stay the decision. Unless the Adjudicatory Council decides otherwise, the review of Allocations Committee decisions is limited to matters raised before the Committee. A verbatim record of the proceeding before the Adjudicatory Council is maintained and the Council's decision is in writing. The decision of the Adjudicatory Council is final and may not be appealed.

2. Statutory Basis

Proposed Rules 26 and 27 are consistent with section 6(b) of the Act [14] in general, and further the objectives of

[14] 15 U.S.C. 78f(b).

section 6(b)(5) of the Act [15] in particular, in that the Exchange's procedures are designed to promote just and equitable principles of trade and protect investors and the public interest by encouraging good performance and competition among specialists and other Floor members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that proposed Rules 26 and 27 will impose no burden on competition; rather, the proposed rules will enhance and encourage competition both within the Exchange, and, more significantly, between and among the Exchange and other exchanges and markets by establishing incentives for superior performance and thereby ensuring the maintenance of quality markets at the Exchange. In this respect, the Exchange believes that it is critical to recognize that the most important level of competition occurs not among specialists of the same exchange to obtain a particular listing (although this, too, is important), rather among specialists of different exchanges trading in the same security and actively competing for the business of the investing public.[16]

Moreover, the Exchange believes that the Commission has expressly recognized the types of procedures as are set forth in Rules 26 and 27 for allocating securities to the most suitable specialists, reviewing the performance of specialists and other Floor members, and, if applicable, reallocating securities, are necessary to ensure quality markets and thereby attract buyers and sellers to the Exchange.[17]

The Exchange did not solicit comments on this proposal and, therefore, did not receive written comments directly on proposed Rules 26 and 27. However, criticism was expressed to the Exchange during internal meetings to review these rules regarding the practice of payment for order flow in options and its alleged impact upon a specialist's market share, combined with the concomitant use of market share as a criterion for measuring performance by options specialists. The criticism expressed was that payment for order flow skews a specialist's market share in ways having little or nothing to do with the quality of the market provided by the specialist.

Because the Exchange believes that the Commission has previously considered the practice of payment for order flow, it will not address the advantages or disadvantages of payment for order flow at this time.[18] Nevertheless, the Exchange acknowledges that payment for order flow can in some circumstances be one of many factors capable of affecting a specialist's market share in an option. The Exchange believes that payment for order flow, however, is never the sole determining factor of market share. Furthermore, the Exchange believes that, as in any free and competitive market, a loss of market share is a warning signal that the customer, in this case the investor, views the market as inferior in some respect to a competitor's market. According to the Exchange, to ignore the diminishment of market share would be tantamount to a declaration of non-competition (*i.e.*, it would ignore the fact that the investing public views another market or exchange as superior or more competitive). In such circumstances, the Exchange believes that the only responsible course is to investigate and weigh the reasons for the loss of market share to competitive markets and exchanges.

The Exchange notes that the Performance Committee may in its evaluation determine that the loss of market share occurred through no fault of the specialist involved, and the security would not be reassigned. In any event, the Exchange believes that market share is one of a number of appropriate factors for the Performance Committee to weigh in evaluating performance by specialists, including options specialists, and that inclusion of this criterion promotes competition among market makers and among markets. The Exchange believes that the failure to include loss of market share as one possible indicator of poor performance could leave the Exchange unable to prevent the erosion of a viable market in a security, which would reduce or eliminate competition with respect to that security.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

As set forth above in Item II(B), there were no written comments received by the Exchange directly in response to proposed Rules 26 and 27.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2001–19 and should be submitted by November 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27326 Filed 10–30–01; 8:45 am]

BILLING CODE 8010–01–M

[15] 15 U.S.C. 78f(b)(5).

[16] The Exchange represents that much of the new proposed rules are merely codifications of existing practices and procedures, and thus do not reflect any fundamental changes with respect to the allocation of securities to specialists or the evaluation of the performance of specialists and other Floor members.

[17] *See* note 5, *supra*.

[18] The Exchange notes that on July 20, 2000, the Exchange filed a proposed rule change establishing a marketing fee for equity option transactions of specialists and registered options traders used to attract order flow, which became effective upon filing with the Commission. The Exchange further notes that, after soliciting comments, the Commission allowed the rule to remain in effect. *See* Securities Exchange Act Release No. 43228 (Aug. 30, 2000), 65 FR 54330 (Sept. 7, 2000).

[19] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44974; File No. SR–Amex–2001–67]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change of the American Stock Exchange LLC to Codify Current Audit Trail and Trade Comparison Requirements and To Make Other Technical Amendments to the Exchange's Audit Trail Rules

October 24, 2001.

On August 28, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to codify certain audit trail and trade comparison requirements and to make other technical amendments to the Exchange's audit trial rules. On September 21, 2001, the Commission published the proposed rule change in the **Federal Register**.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, and dealers.[5] The proposed clarifications to the Amex's audit trail rules previously were set forth in the Exchange's information circulars, but were not codified in the Exchange's rules. The Commission believes that these provisions are reasonably designed to improve the Exchange's audit trail, and that codifying them will make the Exchange's rules more transparent to its members and other market participants.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Amex–2001–67) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27328 Filed 10–30–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44807 (September 17, 2001), 66 FR 48727.

[4] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release 34–44946A; File No. GSCC–2001–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Redesign of Comparison Rules

October 25, 2001.

Correction

In FR Document No. 01–26727, beginning on page 53816, in the issue of Wednesday, October 24, 2001, the first sentence of the first paragraph in the middle column on page 53817 should read as follows: "In the current environment, most trades are compared within the GSCC system as a result of bilateral comparison, the exception being certain lock-in trades, such as members' Federal Reserve auction purchases."

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27363 Filed 10–30–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44975; File No. SR–NYSE–2001–17]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend the Exchange's Allocation Policy and Procedures

October 24, 2001.

On July 3, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Allocation Policy and Procedures to allow a listing company to send a separate letter to the Allocation Committee indicating the role that one specialist unit has played in helping the company to reach its listing decision. Such specialist unit would then be included in the pool of potential specialist units that would be interviewed by the listing company. Notice of the proposed rule change appeared in the **Federal Register** on August 17, 2001.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act, which requires among other things, that the rules of an exchange promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interests.[5] The Commission bases its findings on representations by the NYSE that the Exchange's Allocation Policy and Procedures would continue to carefully restrict communications between specialists and issuers, and that the fairness of the allocation process would not be compromised

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–2001–17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27327 Filed 10–30–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44676 (August 9, 2001), 66 FR 43281.

[4] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–9188]

Proposed Decommissioning and/or Excessing of the Remaining 180-foot Seagoing Buoy Tender Class, and the Proposed Excessing of the Vessel, FIR (WLM 212)

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard announces the availability of the final Programmatic Environmental Assessment and the Finding of No Significant Impact on its proposal to decommission and/or declare excess the remaining vessels in the 180-foot seagoing buoy tender fleet and the proposed excessing of the former United States Coast Guard Cutter, FIR (WLM–212).

DATES: The Final Programmatic Environmental Assessment (PEA) and the Finding of No Significant Impact (FONSI) will be available on October 31, 2001.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. The Final Programmatic Environmental Assessment (PEA) and the Finding of No Significant Impact (FONSI) are available for inspection or copying in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket, including the PEA, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated assessment, call Ms. Kebby Kelley, U.S. Coast Guard, telephone 202–267–6034. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Proposed Action

The U.S. Coast Guard (USCG) proposes to decommission and/or declare excess the remaining vessels in its aging fleet of 180-foot seagoing buoy tenders and declare the former United States Coast Guard Cutter, FIR (WLM–212), excess to its needs. The USCG has determined that the entire class of 180-foot vessels is eligible for listing in the National Register of Historic Places (NRHP). Additionally, FIR (WLM–212) is a National Historic Landmark listed on the NRHP. The USCG intends to replace the 180-foot WLBs with 175-foot Coastal Buoy Tenders (WLMs) and 225-foot Coastal Buoy Tenders (WLBs). These new vessels will support the same mission requirements as the 180-foot WLBs, with state-of-the-art technology.

While the 180-foot WLBs have contributed to nearly every USCG mission area, their primary contribution has been servicing the Short Range Aids to Navigation System. All 180-foot WLBs are over 50 years of age and further renovation is impractical. Excessive maintenance problems stemming from the age of these vessels are also being experienced with resultant reduced reliability and increased operating costs. The Federal Property Administrative Services Act (FPASA) (40 U.S.C. Chapter 10) requires that excess property be identified and declared as such. Therefore, the USCG has an operational, economic, and legal need to cost-effectively rid itself of obsolete and inefficient vessels that can no longer effectively carry out the USCG missions they were designed for. Consequently, the USCG is proposing to decommission (remove the vessels from active use) and declare the current WLB fleet excess to its needs. In order to declare a vessel excess, the USCG must complete a report of survey that states that the vessel is excess to its needs. The USCG provides the General Services Administration (GSA) with a Standard Form 120 for the excess material. Following submittal to GSA, the standard mandated GSA process for disposing of Federally owned materials ensues. Built in 1939, FIR (WLM 212) is classified as a National Historic Landmark and as such is listed on the NRHP. Homeported for 50 years in Washington State, FIR served buoys, lighthouses, and other navigation aids in the Pacific Northwest. FIR is the last surviving unaltered American lighthouse tender, and was the last working member of the U.S. Lighthouse Service fleet.

The FIR has reached the end of its service life. The vessel is over 50 years of age. Excessive maintenance problems stemming from the age of FIR were experienced with resultant reduced reliability and increased operating costs. As a result of its age and condition, the USCG decommissioned FIR in 1996. At present, the USCG is incurring costs to store the vessel in Suisun Bay, California. As previously stated, it is a requirement of the FPASA that excess property be identified by the USCG and declared as such. Therefore, the USCG has an operational, economic, and legal need to cost effectively rid itself of the obsolete and inefficient FIR.

Final Programmatic Environmental Assessment

The Coast Guard completed a draft Programmatic Environmental Assessment (PEA) in March of 2001 and published a Notice of Availability in the **Federal Register** on April 23, 2001 (66 FR 20513). The draft PEA identified and examined the reasonable alternatives to our proposed action and assessed potential environmental impacts. The alternatives analyzed in the draft PEA were chosen because they fulfilled the need for the USCG to cost effectively and legally rid itself of obsolete and inefficient vessels that can no longer effectively carry out the USCG missions they were designed for. In analyzing these alternatives for environmental impact, the draft PEA looked at the impacts of decommissioning and excessing which we control, and then generally, at the possible environmental impacts resulting from each component of the mandated disposal process—the connected actions to the decommissioning and/or excessing of our remaining 180-foot vessels and FIR.

The draft PEA concluded that the only area of significant impact from the Coast Guard's proposed action was the impact to the historic character of the vessels. However, the PEA states the Coast Guard's commitment to performing photo-documentation and the completion of historic narratives for the remaining vessels in the 180-foot fleet and for, FIR. The photographs and the historic narratives will be deposited in the Library of Congress and distributed to the affected states and interested parties. Future generations will thus have the ability to appreciate the contribution of these vessels to this nation's maritime history. The Coast Guard's commitment to providing the historical documentation, as indicated in the PEA, will mitigate the potential for significant impacts to historic resources to an insignificant level.

No substantive comments or environmental concerns related to the draft PEA or the Coast Guard's proposed action were received during the comment period for the draft PEA. Therefore, this notice announces our decision to make the draft PEA our final PEA without any further revisions. Additionally, this notice announces the availability of our FONSI for the proposed action described in the PEA. All those who received a copy of the draft PEA, will receive a copy of the final PEA cover pages and the FONSI along with a letter explaining our decision to make the draft our final document.

Dated: October 24, 2001.

Harvey E. Johnson,

Rear Admiral, U.S. Coast Guard, Director of Operations Capability.

[FR Doc. 01–27387 Filed 10–30–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 24, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 30, 2001 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1465.

Regulation Project Number: PS–54–94 Final.

Type of Review: Extension.

Title: Environmental Settlement Funds—Classification.

Description: Section 7701 and the regulations thereunder classify entities for federal tax purposes as partnerships, associations, and trusts. Section 671 requires a grantor treated as an owner of a portion of a trust to include items in income. This regulation provides reporting rules.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: Other (Once).

Estimated Total Reporting Burden: 2,000 hours.

OMB Number: 1545–1471.

Regulation Project Number: REG–209626–93 Final.

Type of Review: Extension.

Title: Notice, Consent, and Election Requirements under Sections 411(a)(11) and 417.

Description: These regulations concern the ability to make a distribution from a qualified plan within 30 days of giving the participant a written explanation of the distribution options provided the plan administrator informs the participant of the right to have at least 30 days to consider the options.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 750,000.

Estimated Burden Hours Per Respondent: .011 hours.

Frequency of Response: Other (once each year).

Estimated Total Reporting Burden: 8,333 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 01–27368 Filed 10–30–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the U.S. Treasury Auction Submitter Agreement.

DATES: Written comments should be received on or before December 27,2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: U.S. Treasury Auctions Submitter Agreement.

OMB Number: None.

Form Number: PD F 5441.

Abstract: The information is requested to establish an account for entities wishing to submit bids directly in U.S. Treasury Auctions for the purchase of Treasury securities.

Current Actions: None.

Type of Review: New.

Affected Public: Depository Institutions, Brokers/Dealers, and Funds/Assessment Management Companies.

Estimated Number of Respondents: 900.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 72.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 19, 2001.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 01–27364 Filed 10–30–01; 8:45 am]

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Federal Register

Wednesday,
October 31, 2001

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 13
Flight Operational Quality Assurance Program; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA–2000–7554; Amendment No. 13–30]

RIN 2120–AF04

Flight Operational Quality Assurance Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule codifies enforcement protection for Flight Operational Quality Assurance (FOQA) programs. It states that except for criminal or deliberate acts, the Administrator will not use an operator's FOQA data or aggregate FOQA data in an enforcement action against that operator or its employees when such FOQA data or aggregate FOQA data is obtained from a FOQA program that is approved by the Administrator. The rule requires air carriers participating in approved FOQA programs to submit aggregate FOQA data to the FAA for use in monitoring safety trends.

EFFECTIVE DATE: November 30, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Longridge, Flight Standards Service, AFS–230, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (703) 661–0275, email: *thomas.longridge@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page *(http://dms.dot.gov/search)*.

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us 9–AWA–SBREFA@faa.gov.

Background

The primary purpose of a Flight Operational Quality Assurance program (FOQA) is to enhance aviation safety. A FOQA program involves the analysis of digital flight data generated during routine line operations in order to reveal situations that may require corrective action, to enable early intervention to correct adverse safety trends before they can lead to accidents, and to provide an objective means of following-up on corrective action to determine whether it has been effective. To institute such a program, an operator would need to develop a system that captures digital flight data, transforms the data into an appropriate format for analysis, analyzes the data, and generates reports and visualizations to assist personnel in interpreting the results of analysis.

In 1995 the FAA initiated a voluntary FOQA demonstration program in cooperation with interested operators. The demonstration study determined that the information and insights provided by a FOQA program can significantly enhance line operational safety, training effectiveness, operational procedures, maintenance and engineering procedures, ATC procedures, and airport surface issues. The demonstration study found that FOQA programs can provide objective safety related information from line operations that is not available from any other source.

On April 5, 2000, the President signed the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (known as AIR–21). Section 510, entitled *Flight Operations Quality Assurance Rules*, directed the Administrator to issue a Notice of Proposed Rulemaking to protect air carriers and their employees from enforcement actions for violations of title 14, Code of Federal Regulations, (other than criminal or deliberate acts) that are reported or discovered as a result of voluntary reporting programs, such as FOQA.

Airlines and pilot associations have strongly endorsed the voluntary establishment of FOQA programs in the interest of safety. However, they have also stated that they will not continue to voluntarily participate in FOQA programs unless the FAA codifies regulatory protection from the use of FOQA information in enforcement action against operators or their employees, except for criminal or deliberate acts.

On July 5, 2000 (65 FR 41528), the FAA published a Notice of Proposed Rulemaking (NPRM) to provide protection from the use of FOQA information for punitive enforcement purposes, subject to certain conditions, and to retain FAA discretion to use FOQA data or aggregate FOQA data in remedial enforcement action. The FAA carefully considered all of the comments that were submitted, along with the duty of the FAA to address adverse safety conditions. This final rule codifies a level of enforcement protection for FOQA information that is consistent with the congressional direction provided in Section 510 of AIR–21. Namely, it provides operators and their employees with protection from the use of FOQA information for enforcement, except for criminal or deliberate acts. The FAA anticipates that this final rule will encourage the further growth of voluntary FOQA programs in the United States, and will thereby enhance public safety, as well as provide the FAA with trend information to better manage its safety oversight and regulatory decision making responsibilities.

This final rule does not require any operator to implement a FOQA program, nor does it require any operator who desires to voluntarily implement such a program to obtain FAA approval to do so, or to submit FOQA information from such an internal program to the FAA. However, in order to qualify for the enforcement protection afforded by this rule, the rule provides that FAA initial and continuing approval of the proposed program would be required, as well as the submission of aggregate FOQA information to the FAA.

Discussion of Comments and Section-by-Section Analysis

The FAA received six written comments on the proposed rule, one of which was a consolidated comment from multiple airline and pilot association groups (Air Transport Association of America, the Air Line Pilots Association, the Aerospace Industries Association, the Coalition of Airline Pilots Association, the Independent Association of Continental Pilots, and the Regional Airline Association). Additional organizational commenters were the Transportation Trades Department, the Advocates for Legitimate and Fair Aviation Regulations, and an additional comment from the Regional Airline Association. Two individuals submitted comments. The FAA also participated in two meetings with industry representatives to hear their comments about the NPRM. The contents of those meetings as well as a list of the participants appear in the docket. The comments are discussed below, along with the provisions of the final rule.

The Rule in General

The proposed rule was intended to codify certain protection from the use of FOQA information for punitive enforcement purposes for operators of voluntary FOQA programs that have been approved by the FAA. The proposal would require operators of approved FOQA programs to submit aggregate FOQA data to the FAA. Operators who do not seek such enforcement protection would not be required to obtain FAA approval of their voluntary programs, nor would they be required to submit FOQA data to the FAA. The proposed rule would not require any operator to establish a FOQA program.

Comment: One commenter asserted that under 49 U.S.C. 44701 the FAA is only empowered to issue regulations that establish minimum standards required in the interest of safety, and there is therefore no legal basis for this proposed rule.

FAA Response: As noted by the commenter, 49 U.S.C. Section 44701(a) also authorizes the FAA to issue regulations and minimum standards for other practices, methods, and procedures that the Administrator finds necessary for safety in air commerce. Under this section the FAA is clearly authorized to issue regulations for programs that the Administrator has determined will enhance safety, and to establish minimum standards for such programs, including voluntary programs. The Administrator has determined that voluntary FOQA programs enhance safety, and further, that this final rule is necessary in order to establish the necessary conditions for voluntary participation by airlines and pilot associations in FOQA programs. There are already examples of other voluntary safety enhancement programs that have been codified in 14 CFR, such as the Aviation Safety Reporting Program (ASRP).

Comment: One commenter noted that an operator who elects to establish a FOQA program without complying with the proposed rule would not be in violation of the regulations.

FAA Response: The FAA concurs. Nothing in the proposed regulation or in the final rule would compel an operator who does not seek the enforcement protection afforded by the rule to comply with the provisions of the rule.

§ 13.401(a) Applicability (Proposed § 13.401(a)). Who Is Eligible for the Enforcement Protection Afforded by This Rule?

The NPRM stated that the rule applies to any operator of an aircraft who operates that aircraft under an FAA approved FOQA program. It is not necessary for an operator to be a certificated air carrier in order to be eligible for the enforcement protection afforded by the rule, so long as they are operating in compliance with an FAA approved FOQA program. An operator who elects to operate a FOQA program that is not approved by the FAA in accordance with this rule may do so, but will not be afforded the enforcement protections of this rule. No comments specific to the applicability of this rule to operators were received and the subparagraph is adopted as proposed.

§ 13.401(b) Definitions (Proposed § 13.401(b)). What Is the Meaning of the Key Terminology Employed in This Rule?

No comments specific to the definitions in the proposed rule were received, although one commenter asserted that there is general ambiguity in the proposed rule language, and several of the other commenters' comments appear to indicate a misunderstanding of the proposed language. The FAA has therefore clarified the definitions of each such term. In addition, the definitions for remedial and punitive enforcement have been deleted, as they are no longer applicable to the final rule.

§ 13.401(b)(1) Flight Operational Quality Assurance (FOQA) Program (Proposed § 13.401(b)(1)) What Constitutes a FOQA Program?

The NPRM stated that a FOQA program means an FAA-approved program for the routine collection and analysis of data gathered during aircraft operations by means of a DFDR, including data currently collected under existing regulations. The final rule definition inserts the words "digital flight" before data, to clarify that the data to be collected is digital flight data. The reference to "DFDR" is deleted in the definition of a FOQA program in the final rule. This is because the technology used to acquire FOQA data is expected to evolve over time, and it is not necessary to define a FOQA program on the basis of the technology that is used to record the data. The final definition was also modified to clarify that data that operators currently collect under the regulations will not be included in FOQA data unless it is identified for inclusion in an approved FOQA program. An operator may elect, for example, to establish a FOQA program using only the data recorded by the mandatory DFDR, rather than by using the supplementary recorder commonly employed in current airline FOQA programs. Indeed, as the technological capabilities of the mandatory flight data recorder continue to evolve, operators may find that there is no longer a need for a supplementary recorder to collect all of the parameters an operator desires to include in a FOQA program, since a single recorder may be sufficient to meet both regulatory and FOQA program requirements. The final definition adds the words "when such data is included in an approved FOQA program" to the proposed language. This change was made to clarify that data currently collected under the regulations will be considered by the FAA to be included in a FOQA program only when it has been identified for inclusion in an approved program.

§ 13.401(2) FOQA Data (Proposed § 13.401(2)). What Is FOQA Data?

The NPRM stated that FOQA data means any raw data that has been collected by means of a DFDR pursuant to an FAA-approved FOQA program. The final rule definition replaces the reference to "raw data" with "digital flight data", inserts additional language indicating that for the purposes of this rule, FOQA data is collected "from an individual aircraft", inserts additional language "regardless of the electronic format of that data", and deletes the

proposed definition language "by means of a DFDR". The term "raw data" was deleted because it is subject to varying interpretations (e.g. binary data or engineering units). The reference to DFDR was deleted for the reasons cited above. Reference to individual aircraft was added to clarify that for the purposes of this rule, FOQA data refers to digital flight data gathered from an individual aircraft. The languagee "regardless of electronic format" was added to clarify that for the purposes of this rule any digital data collected from an individual aircraft in an FAA approved FOQA program shall be considered to be FOQA data, regardless of whether it is in binary format, engineering unit format, FOQA exceedence event format, or another electronic format.

§ 13.401(b)(3), Aggregate FOQA Data. What Is Aggregate FOQA Data?

The NPRM stated that aggregate FOQA data means the summary statistical indices that are associated with FOQA event categories, based on an analysis of FOQA data recorded by digital flight data recorders (DFDRs) during aircraft operations. The proposed definition was modified to delete "recorded by digital flight data recorders (DFDRs)" for the reasons cited above. The proposed language "during aircraft operations" was replaced with "from multiple aircraft operations.". The latter change was made to clarify that for the purposes of this rule the term aggregate data only applies to multiple aircraft operations. The definition of aggregate FOQA data in the final rule retains the basic meaning provided in the proposed rule, namely that aggregate FOQA data means the summary statistical indices that are associated with FOQA event categories, based on analysis of FOQA data. Individual data records (FOQA data) may be aggregated along various dimensions (e.g., event category as a function of aircraft type, phase of flight, and geographical location) to identify trends and patterns. Aggregation is simply a statistical process that groups and mathematically combines (e.g., count, total, average, standard deviation) individual FOQA data elements based on some criterion (e.g. the average approach maximum rate of descent below 2000 feet by fleet type by airport).

Proposed definitions § 13.401(b)(4), Remedial Enforcement Action, and § 13.401(b)(5), Punitive Enforcement Action, have been deleted from the definitions section of the final rule, as these terms are no longer applicable to the final rule for the reasons discussed below.

§ 13.401(c) Requirements (Proposed § 13.401(c)). What Is an Operator Required To Do To Be Eligible for the Enforcement Protection Provisions of This Rule?

The NPRM proposed that, to be eligible for the enforcement protection provisions of the rule, an operator would have to submit and adhere to a FOQA Implementation and Operations (I & O Plan) approved by the Administrator that would include the following:

(1) The operator's plan for collecting and analyzing flight data,

(2) Procedures for taking corrective action,

(3) Procedures for providing the FAA with aggregate data, and

(4) Procedures for informing the FAA of each corrective action.

Comment: One commenter objected to the requirement to obtain FAA approval of a voluntary program, and asserted that the FAA has no authority to require such approval.

FAA Response: The rule only requires that operators who seek the enforcement protection afforded by the rule must submit a FOQA Implementation and Operations Plan for FAA approval. Operators who do not seek such protection are not required to submit or adhere to an approved plan. The FAA cannot extend enforcement protection to an undefined program. The requirement for operators to submit and adhere to an FAA approved plan is intended to assure that in return for certain enforcement protection, the FAA's goals for the enhancement of public safety will be achieved. Just as the FAA has the authority and responsibility to enforce the aviation regulations, it clearly has the authority to define the conditions on which basis any enforcement protection from those regulations will be afforded. The Aviation Safety Reporting Program is an existing example of the exercise of that authority to extend enforcement protection in the overall interest of safety enhancement, subject to certain conditions.

Comment: One commenter questioned the language of § 13.401(c)2 that requires a FOQA I & O Plan to identify procedures for taking corrective action that analysis of the data indicates is necessary in the interest of safety. The commenter questioned whether the operator or the FAA makes the determination of whether corrective action is needed and raised the question of the consequences of a disagreement between the FAA and the operator on that issue.

FAA Response: The rule clearly places the primary responsibility with the operator for determining whether analysis of FOQA data indicates that corrective action is necessary in the interest of safety. This is why the I & O Plan requires the operator to identify the procedures it will follow if corrective action becomes necessary. Further, since only the operator has access to FOQA data from individual flights, only the operator is in a position to determine whether analysis of such data warrants corrective action in that circumstance. The rule does, however, require the operator to inform the FAA of each corrective action it undertakes based on FOQA data. It also requires the operator to submit aggregate FOQA data that the FAA could employ to identify adverse safety trends, which the agency might determine warrant corrective action. Since FOQA is a voluntary program that represents a shared commitment to safety enhancement, the FAA believes that differences of opinion on the necessity and appropriateness of corrective action will be relatively few, and that any such differences will normally be resolved through mutual discussion. The rule clearly provides the operator of an approved program with protection from enforcement action in the unlikely event that differences of opinion on such issues cannot be resolved.

However, § 13.401(g) of the rule also provides that the FAA may withdraw program approval if the agency determines that the operator has failed to implement corrective action that analysis of available FOQA data indicates is necessary in the interest of safety or the operator has failed to correct a continuing pattern of violations following notice by the agency. Thus while the operator has the primary responsibility for determining when corrective action is warranted, and for determining the nature of that action, the operator and the FAA must ultimately agree on these matters. This approach helps to assure that FOQA programs do in fact enhance public safety. In the event that the FAA and the operator cannot agree, the only potential consequence to the operator is the withdrawal of program approval. In the event that program approval is withdrawn, the operator will not have enforcement protection under this rule for FOQA data obtained subsequent to the withdrawal. However, the operator may continue to conduct its FOQA program if it determines that it is appropriate for it to do so.

Comment: One commenter asserted that the references in the NPRM to the required content of a FOQA I & O Plan did not contain sufficient information. The commenter observes that no doubt the FAA intends to require more in the I & O Plan than the NPRM states. The commenter asserts that the NPRM's reference to a future advisory circular that provides further detail is an "extra-legal mechanism to create a stealth regulation".

FAA Response: The FAA does not concur. The FAA believes that the rule contains all of the essential elements that the FAA will require for approval purposes. The intent of the planned advisory circular referenced in the NPRM is to provide applicants with one way, but not the only way, of complying with the provisions of the proposed rule with regard to developing the content of a FOQA I & O Plan. The FOQA Advisory Circular, which is being published concurrently with this final rule, does not add any additional requirements beyond those specified in the rule. Although the issuance of a FOQA Advisory Circular has necessarily been linked to the issuance of a final FOQA rule, the FAA already has made advisory materials, including a detailed I & O Plan template, available to any interested operator for the past 5 years. With regard to the content of a FOQA I & O Plan, the existing advisory materials closely match the requirements of this rule, as well as the FOQA Advisory Circular.

The FAA adopts § 13.401(c) as proposed, with two minor working additions for clarification purposes that do not change the meaning of the section as originally proposed. The word "maintain" was inserted into proposed paragraph § 13.401(c), as in "the operator must submit, maintain, and adhere to a FOQA Implementation and Operations Plan * * *." This word was inserted to clarify that under this final rule an operator will be expected to maintain the currency of its FOQA I & O Plan. The phrase "including identification of the data to be collected" was added to proposed § 13.401(c)(1), as in "a description of the operator's plan for collecting and analyzing flight recorded data from line operations on a routine basis, including identification of the data to be collected." The language was added to clarify that the operator's plan must identify the data to be collected. The FAA does not intend to prescribe what data an operator will collect in its FOQA program as a condition for approval of FOQA I & O Plans. However, in order to allow the FAA to accomplish meaningful interpretation and additional processing of the aggregate data received from operators, it must be provided with information in advance that identifies the data to be collected. FOQA I & O plans that have been approved under existing FAA policy already contain that information.

§ 13.401(d) Submission of Aggregate Data (Proposed § 13.401(d), Access to Data). What Data Must Be Submitted to the FAA?

The NPRM proposed that the operator would provide the FAA with aggregate FOQA data in a form and manner acceptable to the Administrator.

Comment: One commenter asserted that the FAA has no authority to require submission of data for a voluntary program.

FAA Response: The submission of aggregate FOQA data to the FAA is a condition for the enforcement protection afforded by this rule. Just as the FAA has the authority and responsibility for enforcing the aviation regulations, it clearly has the authority to define the conditions on which basis any enforcement protection from those regulations will be afforded. The Aviation Safety Reporting Program is an existing regulatory example of the exercise of that authority to extend enforcement protection in the overall interest of safety enhancement, subject to certain conditions.

Comment: A number of commenters expressed concern that by virtue of this requirement, the FAA intends to force airlines to comply with FAA prescribed data collection requirements. These commenters stated that any such attempt by the FAA would adversely impact the effectiveness of such programs, and inhibit initiative to explore new areas for data collection.

FAA Response: The FAA does not intend to require operators to comply with FAA specified data collection protocols. The FAA acknowledges that were it to do so, it could adversely effect the continued growth and effectiveness of voluntary FOQA programs. The FAA notes that if the agency intended to prescribe data collection requirements, then it would have proposed specific requirements in the NPRM.

Comment: A number of commenters observed that various operators employ different definitions for FOQA events. These commenters stated that it would therefore not be possible for the FAA to accomplish meaningful aggregation of data, and they recommended that this requirement therefore be deleted.

FAA Response: The FAA is aware of the commonalities and differences in how operators define FOQA events. First, any differences among operators would not impact FAA aggregation specific to a particular operator. Second, with regard to aggregation across multiple operators, the FAA has established a statistical approach which will allow it to accomplish meaningful trend analysis that fully takes into account whatever differences may exist in event definitions between operators. One of the functions of a FOQA I & O Plan is to provide the FAA with the information it needs in order to appropriately accomplish aggregation across multiple operators. Proposed § 13.401(d) is adopted without modification, except for the title of the paragraph. The title has been changed from proposed "Access to data" to "Submission of Aggregate Data" in the final rule in order to more accurately describe the content of the paragraph.

§ 13.401(e) Enforcement (Proposed § 13.401(e)) What Protections Does This Rule Provide Against the Use of FOQA Data by the FAA for Enforcement Purposes?

As proposed in the NPRM, § 13.401(e)(1) would have provided that the Administrator could not use an operator's FOQA data or aggregate FOQA data in a punitive enforcement action against that operator or its employees when such FOQA data or aggregate FOQA data is obtained from a FOQA program that is approved by the Administrator. Proposed § 13.401(e)(2) provided that the Administrator could use any operator's FOQA data and/or aggregate FOQA data in a remedial enforcement action.

Comment: The majority of commenters took strong exception to the provisions of proposed § 13.401(e)(1) and § 13.401(e)(2). They stated that there is one critical paragraph of the proposed rule that must be corrected to ensure industry participation and support regarding FOQA. They stated that § 13.401(e)(1) must be rewritten to read "The Administrator will not use an operator's FOQA data or aggregate FOQA data in enforcement actions against that operator or its employees except for criminal or deliberate acts". They noted that this revised language would be consistent with the language of Section 510 of the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century (AIR–21) concerning FOQA. These commenters also took strong exception to proposed § 13.401(e)(2), which would have allowed the use of FOQA data and/or aggregate FOQA data for remedial enforcement purposes. These commenters stated that this paragraph must be removed from the rule in order to assure industry participation and

support regarding FOQA programs. They stated that this paragraph utterly destroys the spirit, intent, and operational effectiveness of any FOQA program, and inpugns the credibility of the rule itself. They stated that removing this paragraph from the rule would make the rule workable, acceptable, and supportable from an industry standpoint. They stated that in order to elicit industry support, all references to remedial and punitive actions should be removed from the preamble. One commenter noted that the rationale in the NPRM for retaining remedial enforcement authority as stated in the preamble does not appear to be consistent with the fact that the existing regulations extend protection from both civil penalty and certificate action for the cockpit voice recorder record.

FAA Response: With one minor exception, the FAA concurs with these commenters. The FAA agrees that it is in the best overall interest of encouraging voluntary participation in FOQA, thereby enhancing public safety, to modify the language of the proposed rule regarding the use of FOQA data or aggregate data for enforcement purposes. The FAA further agrees that it is consistent with the intent of Congress as embodied in Section 510 of AIR–21, as well as with existing regulatory precedent, to make this change. However, the FAA believes that it is only appropriate to extend such enforcement protection to a FOQA program that has been approved by the Administrator. Accordingly, the language of the final rule has been modified to delete proposed paragraphs § 13.401(e)(1) and § 13.401(e)(2), and to replace them with a single paragraph § 13.401(e) which states that except for criminal or deliberate acts, the Administrator will not use an operator's FOQA data or aggregate FOQA data in an enforcement action against that operator or its employees when such data or aggregate data is obtained from a FOQA program that is approved by the Administrator.

Although the language of the final rule clearly provides protection, except for criminal or deliberate acts, from the use of information obtained from a FOQA program for enforcement purposes, this rule will have no impact on FAA enforcement action based on information obtained from other sources. For example, while the operator has a responsibility to initiate corrective action for adverse safety trends revealed by FOQA data, the FAA has the responsibility to verity that such corrective action is effective. This rule provides no protection from action based on information obtained from surveillance activities, including physical surveillance undertaken by the FAA to verify the effectiveness of corrective actions. One of the principal benefits to the FAA and to public safety of aggregate FOQA data submission will be the opportunity it affords to target the limited resources available for FAA surveillance to those areas where it is most needed. The FAA fully anticipates that it will conduct physical surveillance for that purpose in areas identified by FOQA aggregate trend data. FAA discretion to take action, including enforcement action where appropriate, based on such surveillance activities will not be affected by this final rule.

§ 13.401(f) Disclosure (Proposed § 13.401(f)) What Protections From the Disclosure of FOQA Information Will the FAA Provide?

The NRPM proposed that FOQA data and aggregate FOQA data, if submitted in accordance with the provisions of Part 193, would be afforded the nondisclosure protections of that part.

Comment: One commenter observed that this provision of the NPRM makes reference to a non-existent part.

FAA Response: Part 193 had not yet been issued as a final rule when the NPRM was issued. Part 193 was published on June 25, 2001 (66 FR 33791) as a final rule. Part 193 provides in part that the FAA may issue an order designating certain voluntarily provided safety information as protected from disclosure. The FAA intends to publish in the **Federal Register** a proposed order to protect FOQA data and aggregate FOQA data under part 193. If adopted, the order under part 193 will cover all approved FOQA programs entered into by all operators.

Section 13.401(f) provides that FOQA data and aggregate FOQA data, if submitted in accordance with an order designating the information as protected under part 193 of this chapter, will be afforded the nondisclosure protections of that part.

§ 13.401(g) Withdrawal of Program Approval (Proposed § 13.401(g)) On What Grounds May the Administrator Withdraw Approval of a Previously Approved FOQA Program?

This paragraph states that the Administrator may withdraw program approval for failure to comply with the requirements of the chapter. It further identifies some, but not necessarily all, of the potential grounds for withdrawal, including:

(1) Failure to implement corrective action that analysis of available FOQA data indicates is necessary in the interest of safety,

(2) Failure to correct a continuing pattern of violations following notice by the agency, and

(3) Willful misconduct or willful violation of the regulations.

No comments on this paragraph were received, and it is adopted without modification.

Paperwork Reduction Act

The amendment to 14 CFR Part 13 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of these sections to the Office of Management and Budget for its review. The collection of information was approved and assigned OMB Control Number 2120–0660. The FAA received no comments pertaining to the Paperwork Reduction Act.

Following is a summary of the information requirement that was sent to OMB.

Title: Flight Operational Quality Assurance (FOQA) Rule.

Summary/Need/Uses: Flight Operational Quality Assurance (FOQA) is a program for the routine collection and analysis of digital flight data from airline operations, including but not limited to digital flight data currently collected under the regulations. By this amendment, the FAA will require certificate holders who voluntarily establish approved FOQA programs to periodically provide aggregate trend analysis information from such programs to the FAA.

The purpose of collecting, analyzing, aggregating, and reporting this information is to identify potential threats to safety, and to enable early corrective action before such threats lead to accidents. The submitted aggregate trend information will be reviewed by the FAA principal operations inspector (POI) responsible for oversight of the certificate holding respondent. The POI uses this information to monitor operation trends, to identify areas in need of corrective action, and to verify that corrective action is effective. The aggregate FOQA information would also be employed by the FAA to monitor national trends and as a source of objective information for agency decision making regarding policy and regulatory issues.

Respondents and Frequency of Response: The FAA has identified 30 certificate holders who are candidates to take the necessary steps to comply with the rule and gain the benefits of so doing. They would respond monthly. However, currently twelve certificate holders, nearly all of which are major airlines, have established FOQA programs. Because of the benefits of FOQA participation to both safety and cost containment, it is anticipated that FOQA will be implemented on an industry wide basis in the U.S. within the next twenty years.

Burden Hours: It is estimated that it will take each respondent 1.0 hour to prepare aggregate trend information to be submitted to the FAA. The annual burden per respondent is 12.0 hours for an annual industry burden of 144 hours.

The estimated 1.0 hour burden is the additional time required to send to the FAA the aggregate data already produced monthly by the certificate holder as part of an approved FOQA program.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined this rule (1) has benefits which do justify its costs, is "a significant regulatory action" as defined in the Executive Order and is "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; and (3) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are summarized below.

Any costs associated with providing the FAA with aggregate FOQA data is expected to be nominal. The FAA does not propose to require submission of FOQA data from individual flights to the government. The FAA anticipates that information obtained by airline FOQA programs will be voluntarily submitted to the FAA in the interest of joint goals to promote safety, and that because of the objective nature of FOQA data, this information will be valuable for formulating future policy, NAS procedures, and rulemaking development. This information will enable the FAA to more accurately compute the estimated cost and benefits of agency decisions.

This final rule is an enabling initiative intended to promote the voluntary establishment of FOQA programs. The FAA has determined that because the establishment of FOQA programs is voluntary and the final rule only requires certificate holders who voluntarily establish approved FOQA programs to provide periodically the aggregate trend data from such programs to the FAA, the costs from this rule are nominal. Therefore, an economic evaluation is not warranted.

International Trade Impact

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule to be minimal and therefore has determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes (as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.) To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action establishes a voluntary program and therefore the FAA expects this rule to impose only nominal cost on small entities. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this rulemaking does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Unfunded Mandates Reform Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement.

In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Aviation safety, Investigations, Law enforcement.

The Admendment

In consideration of the foregoing, the Federal Aviation Administration amends part 13 of the Federal Aviation Regulations (14 CFR part 13) as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461; 49 U.S.C. 106(g); 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

2. Subpart I, consisting of § 13.401 is added to read as follows:

Subpart I—Flight Operational Quality Assurance Programs

§ 13.401 Flight Operational Quality Assurance Program: Prohibition Against Use of Data for Enforcement Purposes

(a) *Applicability.* This section applies to any operator of an aircraft who operates such aircraft under an approved Flight Operational Quality Assurance (FOQA) program.

(b) *Definitions.* For the purpose of this section, the terms—

(1) *Flight Operational Quality Assurance (FOQA) program* means an FAA-approved program for the routine collection and analysis of digital flight data gathered during aircraft operations, including data currently collected pursuant to existing regulatory provisions, when such data is included in an approved FOQA program.

(2) *FOQA data* means any digital flight data that has been collected from an individual aircraft pursuant to an FAA-approved FOQA program, regardless of the electronic format of that data.

(3) *Aggregate FOQA data* means the summary statistical indices that are associated with FOQA event categories, based on an analysis of FOQA data from multiple aircraft operations.

(c) *Requirements.* In order for paragraph (e) of this section to apply, the operator must submit, maintain, and adhere to a FOQA Implementation and Operation Plan that is approved by the Administrator and which contains the following elements:

(1) A description of the operator's plan for collecting and analyzing flight recorded data from line operations on a routine basis, including identification of the data to be collected;

(2) Procedures for taking corrective action that analysis of the data indicates is necessary in the interest of safety;

(3) Procedures for providing the FAA with aggregate FOQA data;

(4) Procedures for informing the FAA as to any corrective action being undertaken pursuant to paragraph (c)(2) of this section.

(d) *Submission of aggregate data.* The operator will provide the FAA with aggregate FOQA data in a form and manner acceptable to the Administrator.

(e) *Enforcement.* Except for criminal or deliberate acts, the Administrator will not use an operator's FOQA data for aggregate FOQA data in an enforcement action against that operator or its employees when such FOQA data or aggregate FOQA data is obtained from a FOQA program that is approved by the Administrator.

(f) *Disclosure.* FOQA data and aggregate FOQA data, if submitted in accordance with an order designating the information as protected under part 193 of this chapter, will be afforded the nondisclosure protections of part 193 of this chapter.

(g) *Withdrawal of program approval.* The Administrator may withdraw approval of a previously approved FOQA program for failure to comply with the requirements of this chapter. Grounds for withdrawal of approval may include, but are not limited to—

(1) Failure to implement corrective action that analysis of available FOQA data indicates is necessary in the interest of safety; or

(2) Failure to correct a continuing pattern of violations following notice by the agency; or also

(3) Willful misconduct or willful violation of the FAA regulations in this chapter.

Issued in Washington, DC, on October 25, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–27273 Filed 10–30–01; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Wednesday,
October 31, 2001

Part III

Environmental Protection Agency

40 CFR Chapter I

Project XL Site-specific Rulemaking for NASA White Sands Test Facility, Las Cruces, NM; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 Ch. I.

[FRL–7095–7]

RIN 2090–AA27

Project XL Site-specific Rulemaking for NASA White Sands Test Facility, Las Cruces, NM

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing this rule to implement a pilot project under the Project XL program that would provide site-specific regulatory flexibility under the Clean Air Act (CAA), Resource Conservation and Recovery Act (RCRA), and Clean Water Act (CWA) for the National Aeronautics and Space Administration (NASA) White Sands Test Facility (WSTF) in Las Cruces, New Mexico. The principal objective of this XL project is to enable the NASA WSTF to electronically submit regulatory reports and permit information required by EPA regulations to the NMED Air Quality Bureau, Solid Waste Bureau, Hazardous Waste Bureau, Groundwater Bureau, and Surface Water Bureau in accordance with guidelines set forth in the NASA WSTF Project XL Final Project Agreement (FPA). This project would significantly reduce NASA's regulatory reporting costs and enhance the NMED's ability to analyze and manage NASA WSTF's regulatory and permit information.

DATES: Public Comments: Comments on the proposed rule must be received on or before November 30, 2001.

Public Hearing: Commentors may request a hearing by November 14, 2001. Commentors must state the basis for requesting the public hearing. If EPA determines there is sufficient reason to hold a public hearing, it will do so no later than November 30, 2001, during the last week of the public comment period. Requests for a public hearing should be submitted to the address listed below. If a public hearing is scheduled, the date, time, and location will be made available through a **Federal Register** Notice. If a public hearing is held, it will take place in Las Cruces, NM.

ADDRESSES: *Comments:* Written comments should be mailed to the Air Docket Clerk, Mail Code 6102, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, D.C. 20460. Please send an original and three copies of all written comments as well as an original and three copies of any attachments, enclosures, or other documents referenced in the comments and refer to Docket Number A–2000–54. A copy should also be sent to Mr. John DuPree at Mail Code 1807, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

EPA will also accept comments electronically. Electronic comments should be addressed to the following internet address: dupree.john@epa.gov. Electronic comments must be submitted as an ASCII or WordPerfect version 5.1, 6.1, or 8.0 format file, and must avoid use of special characters or any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission.

Request to speak at Hearing: Requests to speak at a hearing should be mailed to the Air Docket, Mail Code 6102, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460.

Viewing Project Materials: A docket containing the proposed rule, Final Project Agreement, supporting materials, and public comments is available for public inspection and copying at the Air Docket, located at Waterside Mall, 401 M St., Washington, D.C. 20460. The Air Docket is open from 9:00 am to 4:00 pm, Monday through Friday, excluding Federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (202) 260–7549. Refer to docket number A–2000–54. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page. Project materials for today's action are also available on the internet at http://www.epa.gov/projectxl/.

A duplicate copy of the docket is available for inspection and copying during normal business hours at U.S. EPA Region VI, 1445 Ross Ave., Dallas, Texas 75202–2733. Persons wishing to view the duplicate docket at the Dallas location are encouraged to contact Mr. David Bond or Mr. Rob Lawrence, in advance, by telephoning (214) 665–6431 or (214) 665–6580, respectively.

FOR FURTHER INFORMATION CONTACT: Mr. John DuPree; Mail Code 1807; U.S. Environmental Protection Agency; Office of Policy, Economics, and Innovation; 1200 Pennsylvania Avenue, N.W.; Washington, D.C. 20460. Mr. DuPree's telephone number is (202) 260–4468 and e-mail address is dupree.john@epa.gov. Further information on today's action may also be obtained on the world wide web at http://www.epa.gov/projectxl/.

SUPPLEMENTARY INFORMATION: This project assesses the appropriateness of submitting regulatory and compliance information electronically instead of paper reports.

The duration of this project is five years. 016

EPA is soliciting comments on this rulemaking. EPA will publish responses to comments in the **Federal Register** and on the Project XL web-site http://www.epa.gov/projectxl. The XL project will enter the implementation phase on the effective date of a final rule. Any comments received will be made available on the Project XL web site: http://www.epa.gov/projectxl.

The terms of the overall XL project are contained in a Final Project Agreement (FPA). The FPA is available for review at the Air Docket in Washington, D.C.; EPA Region VI Library in Dallas, TX; and at the Las Cruces Public Library in Las Cruces, NM.

Outline of Today's Proposal

The information presented in this preamble is organized as follows:

I. Authority
II. Overview of Project XL
III. Overview of the NASA WSTF XL Project
A. To Which Facilities Would the Proposed Rule Apply?
B. What Problems would the NASA WSTF XL Project Address?
C. What Solution is Proposed by the NASA WSTF Project?
D. What Regulatory Changes Will Be Necessary to Implement this Project?
E. How Have Various Stakeholders Been Involved in this Project?
F. How Would this Project Result in Cost Savings and Paperwork Reduction?
G. What Are the Terms of the NASA WSTF XL Project and How Would They Be Enforced?
H. Does EPA Propose to Require Revision of NMED's Authorized, Delegated, or Approved Programs?
IV. Additional Information
A. How Does this Rule Comply with Executive Order 12866?
B. Is a Regulatory Flexibility Analysis Required?
C. Does this Trigger the Requirements of the Unfunded Mandates Reform Act?
D. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?
E. How Does this Rule Comply with Executive Order 13132: Federalism?
F. How Does this Rule Comply with Executive Order 13175: Consultation and Coordination with Indian Tribal Governments?
G. How Does this Rule Comply with the National Technology Transfer and Advancement Act?
H. How Does this Rule Comply with Executive Order 13211: Energy Effects?
I. Requirements of Today's Rule
J. How Does this Rule Comply with the Paperwork Reduction Act?

I. Authority

EPA is publishing this proposed regulation under the authority of sections 33 U.S.C. 2701 to 2761; 42 U.S.C. 300f to 300J–26; 42 U.S.C. 6901 to 6992k.

II. Overview of Project XL

The Final Project Agreement (FPA) sets forth the intentions of EPA, NMED, and the NASA WSTF (hereinafter, collectively, Project Signatories) with regard to a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results with limited regulatory flexibility. The proposed regulation, along with the FPA (also available in today's **Federal Register**), would facilitate implementation of the project. Project XL "eXcellence and Leadership"—was announced on March 16, 1995, as a central part of the National Performance Review and the Agency's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to request regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably-anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other Project XL projects to determine which specific elements of the projects, if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies, and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance.

The XL program is intended to enable EPA to experiment with potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. As part of this experimentation, EPA may try approaches or legal interpretations that depart from, or are even inconsistent with, longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting the statutes that it implements. EPA may also modify rules, on a site-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, EPA expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (provided that the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory provisions.

XL Criteria

To participate in Project XL, applicants must develop alternative environmental performance objectives pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. The XL projects must have the full support of the affected Federal, State, local and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 "Principles for Development of Project XL Final Project Agreements" document. A copy of this publication is available in Docket #A–2000–54. For explanation of how the NASA WSTF XL project addresses the XL criteria, readers should refer to the Final Project Agreement available from the EPA Air docket A–2000–54, or the Project XL web page (http://www.epa.gov/projectxl).

XL Program Phases

The Project XL program has four basic developmental phases: the initial pre-proposal phase in which the project sponsor identifies an innovative concept that it would like EPA to consider as an XL pilot project; the second phase where the project sponsor works with EPA and interested stakeholders in developing an XL proposal; the third phase in which EPA, local regulatory agencies, and other interested stakeholders review the XL proposal; and the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing a Final Project Agreement and implementation mechanism. After the Final Project Agreement has been signed by all designated parties and promulgation of the final rule (or other legal mechanism) for the XL pilot, the XL pilot project proceeds to implementation and evaluation.

Final Project Agreement

The Final Project Agreement (FPA) is a written voluntary agreement between the project sponsor and regulatory agencies. The FPA contains a detailed description of the proposed pilot project. It addresses the eight Project XL criteria, and the expectation of the Agency that the XL project will meet those criteria. The FPA identifies performance goals and indicators that the project is yielding the expected environmental benefits, and specifically addresses the manner in which the project is expected to produce superior environmental benefits. The FPA also discusses the administration of the FPA,

including dispute resolution and termination. The FPA for this XL project is available for review in the docket for today's action, and also is available on the world wide web at http://www.epa.gov/projectxl/.

III. Overview of the NASA WSTF XL Project

Today's proposed rule would facilitate implementation of Phases 1 and 2 of the NASA WSTF FPA (the document that embodies EPA's intent to implement this project) that has been developed by EPA, the New Mexico Environmental Department (NMED), NASA WSTF and other stakeholders. In order for New Mexico to implement this project, it may be necessary for NMED to make conforming changes to its regulations or State-issued permits.

In this XL Project, the NASA WSTF proposes to electronically submit regulatory reports and permit information to the NMED in lieu of paper reports. This reporting process will be implemented in a six-phase process that will first utilize data submitted on a CD-ROM before transitioning to a system that will utilize the internet to transmit information to NMED. Today's rule sets forth provisions to facilitate implementation of phases 1 and 2 of this XL project. All six phases are described in Appendix A of the NASA WSTF FPA and in the Table below.

Phase	Action	Affected NMED Bureau
Phase 1	NASA WSTF shall submit the reports and permit information listed in Table A on CD-ROM to the affected NMED Bureau with an electronic certification statement for compliance purposes.	Hazardous Waste, Groundwater, Surface Water.
Phase 2	NASA WSTF shall submit the reports and permit information listed in Table A on CD-ROM to the affected NMED Bureau with an electronic certification statement for compliance purposes.	Hazardous Waste, Groundwater, Surface Water.
	NASA WSTF shall post the compliance reports and permit information listed in Table A to their web site for general information purposes.	Hazardous Waste, Groundwater, Surface Water.
Phase 3	NASA WSTF shall post the reports and permit information listed in Table A to the NASA web site for compliance purposes.	Hazardous Waste, Groundwater, Surface Water.
	Eliminate CD ROM submittals for the reports listed in Table A.	Hazardous Waste, Groundwater, Surface Water.
Phase 4	Post reports and permit information listed in Table A to the NASA Website for compliance purposes.	Hazardous Waste, Groundwater, Solid Waste.
	Submit reports and permit information listed in Table B on CD-ROM to the NMED Air Quality and Surface Water Bureaus for compliance purposes.	Air Quality, Solid Waste Bureaus.
Phase 5	Post reports and permit information listed in Table A to the NASA Website for compliance purposes.	Hazardous Waste, Groundwater, Solid Waste.
	Submit reports and permit information listed in Table B on CD-ROM to the NMED Air Quality and Surface Water Bureaus for compliance purposes.	Air Quality, Solid Waste Bureaus.
	Post reports and permit information listed in Table B to the NASA Web site for general information purposes.	Air Quality, Solid Waste Bureaus.
Phase 6	Eliminate CD-ROM submittals for the reports listed in Table B.	Air Quality, Solid Waste Bureaus.
	Post reports and permit information listed in Tables A and B to the NASA Web site for compliance with EPA and NMED reporting requirements.	Air Quality, Solid Waste, Groundwater, Solid Waste, Hazardous Waste.

Public Key Infrastructure (PKI)-Based Digital Signatures

In today's rule, EPA proposes to require the use of PKI based digital signatures to sign certifications of data submitted by NASA WSTF to NMED as part of this XL project. The PKI-based digital signatures utilized in today's proposed rule are the product of two concepts:

1. "Asymmetric" cryptography, and

2. a framework for "certifying" the identity of a digital signature-holder, provided by PKI.

"Asymmetric" cryptography is based on a mathematical relationship that exists between certain pairs of numbers, for example number A and number B, such that

1. if A is used to encrypt a message, B and only B can decipher it, and

2. if B deciphers the message, it can only have been encrypted with A.

For purposes of a digital signature, then, A and B are uniquely assigned to individual X. One of the numbers, say A, submitter X shares with no one. This is X's "private key". The other, B, is X's "public key", and X shares B with anyone to whom X wishes to send a message—X may even publish B together with information that identifies him/her as X.

X then signs an electronic document as follows: (1) X uses a standard formula or algorithm to produce a number uniquely related to the content of the electronic document; this is referred to as the "message digest" or "hash" of the document. (2) X uses A, the private key, to encrypt this hash; this encrypted hash is X's digital signature, and it is unique both to X and to the particular message it signs. (3) X attaches this digital signature to X's message (which is otherwise not encrypted), and sends it.

When Y gets X's message, Y validates X's signature by: (1) deriving the hash of the message, using the same standard algorithm that X used; (2) deciphering X's digital signature, using X's public key, B; and (3) comparing the hash Y derived (in step 1) with the deciphered signature. The two numbers—the derived hash and the deciphered signature—should agree. If (and only if) they do, then Y knows both that the signature was produced using A (which belongs to X), and that the message has not changed since X signed it.

Because the digital signature is specific to the particular document, and is unique in each case, to say that X is a "signature-holder" in this context is to refer to A and B, the private/public key-pair. The A/B key-pair does belong to X and plays the same role in each of the many digital signatures X may create through the process described above. Accordingly, it is this key-pair—rather than the individual signatures they are used to create—that is associated with the process of certifying a signature-holder's identity that is provided by PKI.

PKI is a way of reliably establishing and maintaining the identity of the individual associated with a given key-pair used in producing digital signatures. This protocol involves the issuance of a "PKI certificate" by a "trusted" "certificate authority" (CA). The CA is "trusted" in the sense that it operates in conformance with an appropriate certificate policy, and has demonstrated this conformance through its operations across a wide range of electronic commerce applications.

Issuing a certificate for individual X typically involves the following steps: (1) X applies to the CA for a certificate; (2) the CA requests various pieces of personal information from X, and/or notarized verifications of X's personal information, and/or X to appear in person, to provide the CA with the basis for "proving" X's identity; (3) the CA provides X with a way to generate X's unique key pair; (4) the CA conducts the "identity proofing" process—matching what X has provided against information about X in various commercial databases, official documents, etc.; (5) when the "identify proofing" is successfully completed, the CA creates a "certificate" for X that incorporates X's public key, along with various pieces of identifying information about X; and (6) the CA digitally signs the certificate to certify its authenticity, and makes it available to users through directory services.

Digital Signature Process

In this project, the digital certificate used to create a digital signature would be issued to a "Designated Representative" at the NASA WSTF by an EPA authorized Certificate Authority (CA). For the purposes of this XL project EPA has contracted with a third party to serve as the CA, to issue digital certificates to individuals at the NASA WSTF who are authorized to submit signed, electronic reports to NMED. To receive a digital certificate, a Designated Representative would be required to log-on to the CA website and provide the "entrance" number provided in their instruction letter from EPA and the NMED. The submitter provides the requested personal information that the CA needs to perform identity-proofing (name, address, Social Security Number, driver's license number, credit card number, etc.). This information will not be given to EPA or NMED. During this registration process, the issuer of the certificates will also generate the public and private cryptographic keys that are associated with the digital certificate that the CA will issue. After the CA has completed identity-proofing, the submitter will receive a letter from the CA with instructions on how to download the certificate to their local computer via a web connection. This web session will install the certificate in the web browser so it can be used to create digital signatures.

The electronic signing process will use software issued by an EPA-approved third party to affix a digital signature to the electronic document being submitted via CD ROM. The document is displayed to the user on the computer screen. When the submitter activates the signing block of the document, a "signing ceremony" is initiated. The user is advised that he/she is creating a digital signature through the use of their private key. After the user provides access to their private key by providing a password, a hash function is used to obtain a condensed or hash version of the document being submitted, called a message digest. The message digest and private key are then input into the approved software's digital signature algorithm, to generate the digital signature. Any subsequent changes to the document would render the original digital signature invalid.

Electronic Signature Agreement

Today's proposed rule would require NASA WSTF and NMED to enter into an Electronic Signature Agreement to properly use and protect the validity of the digital signatures used in this XL project. Today's rule proposes that the terms in this agreement include, a commitment to: (1) protect the private key from unauthorized use by anyone other than the Designated Representative; (2) be held as legally bound, obligated, or responsible by use of the Designated Representative's private key to create a digital signature as by handwritten signature; (3) under no circumstances, delegate the use of the private key or make it available for use by anyone else; (4) report to NMED within twenty-four hours of discovery any evidence of the loss, theft, or other compromise of any component of the digital signature; (5) immediately notify EPA and NMED in writing if the Designated Representative loses the authority to sign reports submitted to NMED as a representative of NASA WSTF; and (6) secure any assistance of third parties that is needed to protect a signature from unauthorized use. EPA believes that this agreement is important to ensure that the holder of the private key understands how to properly use and protect the key. It is also important to ensure that the signature holder understands the legal effect of using the private key to affix the digital signature to an electronic document. To achieve these goals, EPA believes that the signature agreement should require that the signature holder agree to: (1) protect the private key from unauthorized use by anyone other than the Designated Representative; (2) be held as legally bound, obligated, or responsible by use of the Designated Representative's private key to create a digital signature as by handwritten signature; (3) under no circumstances, delegate the use of the private key or make it available for use by anyone else; (4) report to NMED within twenty-four hours of discovery any evidence of the loss, theft, or other compromise of any component of the digital signature; (5) immediately notify EPA and NMED in writing if the Designated Representative loses the authority to sign reports submitted to NMED as a representative of NASA WSTF; and (6) secure any assistance of third parties that is needed to protect a signature from unauthorized use.

CD–ROM Submission Procedures

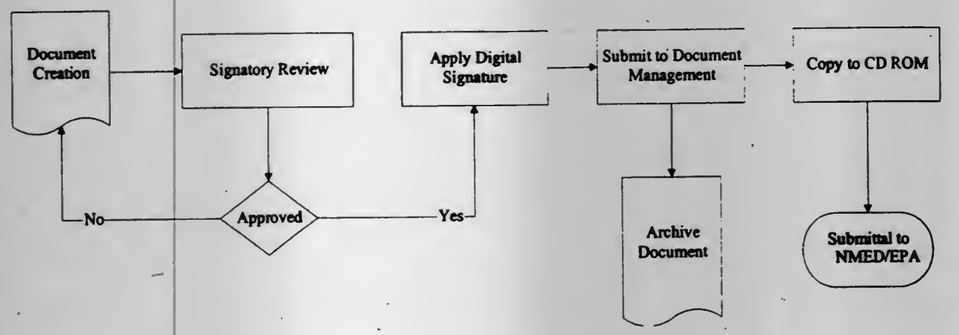
During the first, second, fourth and fifth phases of this project, NASA WSTF would mail compliance reports and permit information on Compact Disc-Read Only Memory (CD-ROM) to the appropriate NMED bureau. The CD-ROMs for this project would be prepared at the NASA WSTF. NASA WSTF's preparation process would include draft creation by the originator, internal review by NASA WSTF's contractor Environmental Department personnel, and final editing prior to NASA WSTF concurrence, document signature, and preparation of the CD-ROMs. After internal review and final edits are completed, the finalized document and certification statement would be electronically submitted to NASA management for signatory review. If NASA management requires changes, the document would be returned to the originator for correction. When the document is approved by the appropriate NASA management, that individual applies a digital signature using standard Public Key Infrastructure

(PKI) software and digital certificates provided by the EPA.

After the document is digitally signed, it would be submitted to the document management system. The document management system copies the electronic deliverable to CD-ROMs for submission to the regulatory agencies. The CD-ROM that contains the Project XL Final Project Agreement certification statement listed in section 7 of today's rule would then be submitted to the NMED. This certification statement would be contained in each of the reports listed in Table A of today's proposed rule that would be forwarded to NMED by NASA WSTF on a CD-ROM. In addition, the document management system would prepare a duplicate copy of all submittals and place the electronic documents in the NASA on-site document archival system for secure storage and future access. The following flow chart provides the electronic deliverable preparation steps.

BILLING CODE 6560-50-P

Document Creation and Submission for Project XL



BILLING CODE 6560-50-C

Certification Statement

Each report listed in Table A of today's proposed rule forwarded to NMED as part of this XL project would include a certification statement created by the NASA WSTF Designated Representative as specified in section 7 of today's rule. The NASA WSTF Designated Representative would be a NASA official legally responsible for the accuracy and integrity of the regulatory reports and permit information submitted to NMED.

Recordkeeping Requirements

Today's rule proposes standards to provide for electronic recordkeeping of documents submitted by NASA WSTF to NMED as part of this XL project. In lieu of paper recordkeeping requirements, NASA WSTF would be required to maintain electronic records of the reports included in Table A of today's rule for a time period no shorter than what is currently required under existing NMED and EPA regulations. The point of today's proposed rule requirements in section 8 is to ensure that the authenticity and integrity of the electronic documents submitted to NMED by NASA WSTF as part of this XL project, are preserved as they are created, submitted and/or maintained electronically, so that they can provide strong evidence of what was intended by the individuals who created and or signed them.

A. To Which Facilities Would the Proposed Rule Apply?

The proposed rule would apply only to the NASA White Sands Test Facility in Las Cruces, NM and NMED bureaus of Solid Waste, Hazardous Waste, Air Quality, Surface Water, and Ground Water. Further, the regulatory modifications being proposed would only affect the reporting and recordkeeping requirements for the reports listed in Table A.

B. What Problems Would the NASA WSTF XL Project Address?

The NASA XL project proposes to implement an electronic document submission and recordkeeping system that will reduce the cost and time necessary to submit selected regulatory reports and permit information to NMED as required by EPA regulations. Implementation of this project will reduce the cost and time associated with the reporting of regulatory reports and permit information currently required by EPA and NMED.

C. What Solution Is Proposed by the NASA WSTF Project?

The NASA WSTF proposes to implement an electronic regulatory reporting system. NASA proposes that the extensive paper reporting deliverable requirements of multiple Bureaus of NMED can be simplified and streamlined through use of a paperless regulatory reporting system that allows data to be reported electronically. The system will ultimately provide regulatory agencies with real-time desktop access to site-specific environmental compliance information and reduce needed resources including document preparation time, white paper usage, and triplicate reproduction.

D. What Regulatory Changes Will Be Necessary To Implement This Project?

To implement this project, the Agency is proposing today a site-specific rule that would authorize NMED to allow the NASA WSTF to electronically submit the regulatory reports and permit information included in Table A of today's proposed rule to the NMED bureaus.

This XL project consists of six phases. After completion of the second phase, EPA intends to draft a site-specific rule to enable NASA WSTF to utilize an internet-based electronic reporting system to be described in a subsequent rule.

E. How Have Various Stakeholders Been Involved in This Project?

NASA established an appropriate stakeholder group to assist in developing the Final Project Agreement for this XL pilot project and to evaluate NASA WSTF's plan and progress in implementing the project. NASA solicited input on this project from a wide range of stakeholders including local and national environmental groups, neighborhood associations, and industry trade associations. Stakeholders were notified of this project by direct mail, telephone, and notification in the local press.

NASA WSTF solicited public involvement in this project by holding public meetings while negotiating the Final Project Agreement for this project with EPA and NMED. The NMED supports this project and is a Project Signatory to the Final Project Agreement.

NASA has kept an open dialogue with interested stakeholders since the project's inception and will continue to involve any interested stakeholders in the project's development. In addition, EPA and NASA will make all project-related final documents and events publicly accessible through announcements, EPA's web site, and public dockets.

F. How Would This Project Result in Cost Savings and Paperwork Reduction?

In this XL project, the NASA White Sands Test Facility proposes to reduce its EPA and NMED reporting and recordkeeping costs through use of an electronic document reporting and recordkeeping system. NASA would provide NMED and EPA with access to NASA WSTF's regulatory information by electronically submitting regulatory reports and permit information to a NASA controlled web site and forwarding compliance data on CD-ROM's in lieu of submitting paper reports to each NMED Bureau. NASA's use of electronic reporting would greatly reduce the number of reports submitted on paper. Additionally, use of the proposed electronic reporting system would reduce the manpower required to compile and disseminate compliance information.

G. What Are the Terms of the NASA WSTF XL Project and How Would They Be Enforced?

This project would be in effect for five years from the date the final rule takes effect. Any Project Signatory may terminate its participation in this project at any time in accordance with the procedures set forth in the FPA.

Upon completion of the project term, EPA and NMED, have committed to evaluate the project. If the project results indicate that it was a success, EPA will consider transferring the regulatory flexibility (or some similar flexibility) to the national RCRA, CAA, or CWA program (through rulemaking procedures). Should the project results indicate that the project was not successful or if the project is terminated early, EPA may promulgate a rule to remove the site-specific regulatory flexibility.

H. Does EPA Propose to Require Revision of NMED's Authorized, Delegated, or Approved Programs?

EPA is not proposing to revise the affected State authorized, delegated, or approved programs. Today's rule would affect only certain reports submitted by a single facility. Electronic reporting and record keeping would also be permitted only in accordance with the specific requirements articulated in today's proposal. EPA solicits comments on these specific requirements. Under these circumstances, EPA does not believe that program revision is necessary. Nonetheless, EPA solicits comment on whether EPA should require New Mexico to seek revision of the affected State programs.

IV. Additional Information

A. How Does This Rule Comply With Executive Order 12866?

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because this rule affects only one facility, it is not a rule of general applicability and therefore not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site specific rules under Project XL is not necessary. Additionally, the annualized cost of this final rule would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order, therefore, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of today's proposed rulemaking and the public involvement in the development of the proposed Final Project Agreement, EPA considers 30 days to be sufficient in providing a meaningful public comment period for today's action.

B. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule would not have a significant impact on a substantial number of small entities because it would only affect the NASA White Sands Test Facility, in Las Cruces, NM, and it is not a small entity. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

C. Does this Project Trigger the Requirements of the Unfunded Mandates Reform Act?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of

their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule would apply only to one facility in Las Cruces, New Mexico. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

D. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risk?

The Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule, as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks. This rule sets forth electronic reporting procedures for the submission of environmental compliance data.

E. How Does This Rule Comply With Executive Order 13132: Federalism?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposed rule would implement a project developed under an entirely voluntary federal program; thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comments on the proposed rule from State and local officials.

F. How Does This Rule Comply With Executive Order 13175: Consultation and Coordination With Indian Tribal Government?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule would not have tribal implications. It would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's proposed rule, would affect a single, non-tribal facility that is not located on tribal lands and this rule would have no impact on tribal law or culture; thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. How Does This Rule Comply With the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard.

Today's proposed rule would allow NASA WSTF to mail regulatory reports and permit information on a CD–ROM diskette to NMED using specified technical standards. EPA proposes to require that NMED require NASA WSTF to use Portable Data Format (PDF), Hypertext Markup Language (HTML) and eXtensible Mark-Up Language (XML_s) format standards in these CD–ROM submissions. Accordingly, this rule would comply with the requirements of NTTAA.

H. How Does This Rule Comply With Executive Order 13211: Energy Effects?

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. Requirements for Today's Rule

For the reasons set forth above and under the conditions described below, EPA authorizes the New Mexico Environment Department (NMED) to allow the National Aeronautics and Space Administration (NASA) White Sands Test Facility (WTSF) to submit and retain in electronic form any of the documents listed in Table A.

J. How Does This Rule Comply With the Paperwork Reduction Act?

Information collection requests will not pertain to this rule, which pertains to a site specific pilot program that has only one respondent.

1. Definitions. For purposes of this rule, the terms listed below are defined as follows:

Certificate Authority (CA) means an entity which EPA has authorized to serve as the trusted third party to oversee the certificate enrollment, issuance, validation, and revocation processes. The CA also conducts identity proofing inquiries and issues digital certificates that accurately convey the subscriber's identity information and public keys.

Designated Representative means an individual who is authorized to sign reports for the NASA WSTF with respect to the submission of any documents listed in Table A.

Digital Signature means a number uniquely calculated by the application of an encryption algorithm, using a value supplied by an individual's private key, to a message digest for the document being signed.

Electronic record-keeping system means any set of apparatus, procedures, software, records or documentation used to retain exact electronic copies of electronic records and electronic documents.

Electronic signature means any electronic record that is incorporated into (or appended to) an electronic document for the purpose of expressing the same meaning and intention that an individual's handwritten signature would express if affixed in the same relation to the document's content presented on paper.

Private/public key pair means a pair of numbers mathematically related to each other and to a specified encryption algorithm such that: (i) the private key cannot be derived from the public key, and (ii) using the encryption algorithm, the public key will only decrypt messages encrypted with the private key and it is the only key that will decrypt these messages.

2. Authentication. A Designated Representative must use a digital certificate, issued by a third party authorized by EPA, and EPA-approved electronic signature software to affix a digital signature to any electronic version of a document in Table A.

3. Electronic Signature Agreement. NMED shall require each Designated Representative to sign, in handwriting with ink on paper, the Electronic Signature Agreement in Appendix A. By signing the Electronic Signature Agreement, a Designated Representative must, at a minimum, agree to:

(a) protect the private key from unauthorized use by anyone other than the Designated Representative;

(b) be held as legally bound, obligated, or responsible by use of the Designated Representative's private key to create a digital signature as by handwritten signature;

(c) under no circumstances, delegate the use of the private key or make it available for use by anyone else;

(d) report to NMED within twenty-four hours of discovery any evidence of the loss, theft, or other compromise of any component of the digital signature;

(e) immediately notify EPA and NMED in writing if the Designated Representative loses the authority to sign reports submitted to NMED as a representative of NASA WSTF; and

(f) secure any assistance of third parties that is needed to protect a signature from unauthorized use.

4. General Submission Requirements. In lieu of a paper document, NMED may accept from NASA WSTF an electronic version of any document listed in Table A, provided the electronic document bears a valid digital signature, as provided in sections 2 and 3 of this rule, to the same extent that a paper submission for which the document substitutes would bear a handwritten signature. To be valid a digital signature must be created by a Designated Representative and with a private key device issued to that person.

5. CD–ROM Submission Procedures. Electronic versions of documents listed in Table A may only be submitted by certified mail to the appropriate NMED bureau in Portable Data Format (PDF), Hypertext Markup Language (HTML) or eXtensible Markup Language format on a read-only CD–ROM disk. To be acceptable, each submission must include a digital signature, as provided in sections 2, 3, and 4 of this rule, and a certification statement, as provided in section 7 of this rule.

6. Frequency. Any electronic documents submitted must be submitted at the same time and with the same frequency prescribed under applicable NMED and EPA regulations for their paper equivalents.

7. Compliance Certification. NMED must require that, as part of any electronic document that it receives from NASA WSTF, a Designated Representative provides a digitally-signed electronic compliance certification that includes at least the following:

(a) the name of the regulatory document being submitted;

(b) date of signature;

(c) name and mailing address of the NMED bureau to which the document is being sent; and

(d) a digital signature of the Designated Representative who attests to a statement that reads as follows:

"I am authorized to submit the electronic document identified above on behalf of the NASA White Sands Test Facility. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this electronic document and all of its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information contained in this electronic document and its attachments are, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.

I recognize that NMED and EPA will rely on this electronic document in lieu of an equivalent paper document, and that this document and the information it contains will be used to determine my compliance with federal and State law.

In addition, I certify that I am the individual to whom the digital

certificate used in signing this document has been issued and that I have at all times complied with the terms under which this certificate was issued, including my obligation to protect my private key from use by anyone other than myself and to report any compromise of any component of my digital signature."

8. Electronic Record-keeping. Any electronic version of a document listed in Table A must be retained in electronic format by both NASA WSTF and NMED for as long as a corresponding paper document must be stored under applicable State or federal law. NMED must require that:

(a) NASA make electronic copies of electronic documents available on an individual, collective, or standing basis to NMED upon written request. These electronic documents must be promptly transmitted, mailed, or available for inspection as NMED requests.

(b) NASA employ a method of electronic record retention that:

(1) Generates and maintains accurate and complete electronic documents in a form that may not be altered without detection;

(2) produces accurate and complete copies of any electronic document and renders these copies readily available, in both human readable and electronic form, for on-site inspection and off site review, for the entirety of the required period of record retention;

(3) ensures that any electronic record or electronic document bearing an electronic signature contain the name of the signatory and the date and time of signature;

(4) prevents an electronic signatory and the date and time of signature;

(5) ensures that record changes do not obscure previously recorded information and that audit trail documentation is retained for at least as long as the electronic document;

(6) ensures that electronic documents are searchable and retrievable for reference and secondary uses, including inspections, audits, and legal proceedings; and

(7) archives records in an electronic form which preserves the context, meta data, and audit trail.

Dated: October 24, 2001.

Christine Todd Whitman,

Administrator.

TABLE A.—COVERED DOCUMENTS

State permit	Report name
Post Closure Care Permit NM88000194–2	Application for renewal submittal.
Post Closure Care Permit NM88000194–2	Duty to provide requested information.
Post Closure Care Permit NM88000194–2	Revision/Modification Notification Report.
Post Closure Care Permit NM88000194–2	Non compliance report.
Post Closure Care Permit NM88000194–2	Notification of Emergency Coordinators list change.
Post Closure Care Permit NM88000194–2	Annual compliance monitoring report.
Post Closure Care Permit NM88000194–2	Annual potentiometric flow net report.
Post Closure Care Permit NM88000194–2	Incident reports.
Post Closure Care Permit NM88000194–2	Request for modified post closure care period.
Post Closure Care Permit NM88000194–2	Completion of post closure care requirements submittal.
Post Closure Care Permit NM88000194–2	Appendix IX analysis new defects notification.
Post Closure Care Permit NM88000194–2	Annual effectiveness/conclusions report.
Post Closure Care Permit NM88000194–2	Well Replacement notification.
Post Closure Care Permit NM88000194–2	Modification of groundwater monitoring plan submittal.
Landfill Post Closure Care Plan	Plan revision submittal.
Landfill Post Closure Care Plan	Methane and groundwater.
Landfill Post Closure Care Plan	Inspections and maintenance reports.
Discharge Plan DP–392	Annual Wastewater flow volumes submittal.
Discharge Plan DP–392	Spill contingency notification.
Discharge Plan DP–392	Contingency Plan notification.
Discharge Plan DP–392	Duty to provide requested information.
Discharge Plan DP–392	Modification notifications.
Discharge Plan DP–392	Right to appeal petition.
Discharge Plan DP–392	Transfer of ownership notification.
Discharge Plan DP–392	Application for renewal submittal.
Discharge Plan DP–392	Internal written recordkeeping.
Discharge Plan DP–584	Semi-annual Monitoring Reports Submittal.
Discharge Plan DP–584	Semi-annual wastewater discharge volumes report submittal.
Discharge Plan DP–584	Closure sampling results submittal.
Discharge Plan DP–584	Internal written recordkeeping.
Discharge Plan DP–584	Duty to provide requested information.
Discharge Plan DP–584	Spill contingency notification.
Discharge Plan DP–584	Modification notifications.
Discharge Plan DP–584	Right to appeal petition.
Discharge Plan DP–584	Transfer of ownership notification.
Discharge Plan DP–584	Application for renewal submittal.
Discharge Plan DP–697	Leak contingency notification and reporting.
Discharge Plan DP–697	Mitigation summary report submittal.
Discharge Plan DP–697	Quarterly monitoring reports submittal.
Discharge Plan DP–697	Internal written recordlkeeping.
Discharge Plan DP–697	Duty to provide requested information.
Discharge Plan DP–697	Modification notifications.
Discharge Plan DP–697	Right to appeal petition.
Discharge Plan DP–697	Transfer of ownership notification.
Discharge Plan DP–697	Application for renewal submittal.
Discharge Plan DP–1170	Leak contingency notification and reporting.
Discharge Plan DP–1170	Semi annual monitoring reports submittal.
Discharge Plan DP–1170	Internal written recordkeeping.

TABLE A.—COVERED DOCUMENTS—Continued

State permit	Report name
Discharge Plan DP–1170	Duty to provide requested information.
Discharge Plan DP–1170	Modification notifications.
Discharge Plan DP–1170	Right to appeal petition.
Discharge Plan DP–1170	Transfer of ownership notification.
Discharge Plan DP–1170	Application for renewal submittal.
Landfill Post Closure Care Plan	Inspections and maintenance reports.
Landfill Post Closure Care Plan	Methane and groundwater monitoring data reports.
Landfill Post Closure Care Plan	Plan revision submittal.
Landfill Post Closure Care Plan	Change of responsible parties notification.
Landfill Post Closure Care Plan	30 year reporting requirement.
Landfill Groundwater Monitoring Plan	Plan revision submittal.
Landfill Groundwater Monitoring Plan	Request to modify sampling frequencies submittal.
Landfill Groundwater Monitoring Plan	Monitoring level exceedance notification.
Landfill Groundwater Monitoring Plan	Analytical data reports.
RCRA Operating Permit NM8800019434–1	Revision/Modification notification.
RCRA Operating Permit NM8800019434–1	Waste Analysis Plan modification submittal.
RCRA Operating Permit NM8800019434–1	Submittal signatory requirements.
RCRA Operating Permit NM8800019434–1	Requests for deadline extension.
RCRA Operating Permit NM8800019434–1	Newly identified SWMUs notification.
RCRA Operating Permit NM8800019434–1	Newly identified SWMUs notification plan.
RCRA Operating Permit NM8800019434–1	Newly discovered release notification.
RCRA Operating Permit NM8800019434–1	Newly discovered release investigation plan.
RCRA Operating Permit NM8800019434–1	Transfer of ownership notification.
RCRA Operating Permit NM8800019434–1	RFI/CMS and monthly progress reports.
RCRA Operating Permit NM8800019434–1	Revised reports submittals.
RCRA Operating Permit NM8800019434–1	Non EPA analytical method protocol submittal.
RCRA Operating Permit NM8800019434–1	Off site access agreements submittal.
RCRA Operating Permit NM8800019434–1	Monthly analytical data reports.
RCRA Operating Permit NM8800019434–1	Project coordinator change notification.
RCRA Operating Permit NM8800019434–1	Reports, plans, notifications, etc "in writing" requirement.
RCRA Operating Permit NM8800019434–1	Lack of funds notification.
RCRA Operating Permit NM8800019434–1	Written statement of dispute submittal.
RCRA Operating Permit NM8800019434–1	"Force majeur" event notification.
RCRA Operating Permit NM8800019434–1	Final RFI/CMS submittal.
RCRA Operating Permit NM8800019434–1	Application for renewal submittal.
RCRA Operating Permit NM8800019434–1	Duty to provide requested information.
RCRA Operating Permit NM8800019434–1	Annual ETU liner assessment report.
RCRA Operating Permit NM8800019434–1	Notification of non compliance.
RCRA Operating Permit NM8800019434–1	Notification and certification of closure and survey plat.
RCRA Operating Permit NM8800019434–1	Emergency coordinator personnel change notification.
RCRA Operating Permit NM8800019434–1	Contingency plan modification submittal.
RCRA Operating Permit NM8800019434–1	Spill incident reports.
RCRA Operating Permit NM8800019434–1	Spill response and corrective action reports.
RCRA Operating Permit NM8800019434–1	Certifications of major repairs submittal and recordkeeping.
RCRA Operating Permit NM8800019434–1	ETU secondary containment useful life extension request.
RCRA Operating Permit NM8800019434–1	ETU steel structure useful life extension request.
RCRA Operating Permit NM8800019434–1	ODU waste quantity exceedance notification.
RCRA Operating Permit NM8800019434–1	ODU statistical results and constituent exceedance report.
RCRA Operating Permit NM8800019434–1	FTU waste quantity exceedance notification.
Air Quality Permit # 629–M–1	40 CFR Notification Requirements.
Air Quality Permit # 629–M–1	Revision/Modification Notice.
Air Quality Permit # 629–M–1	Compliance Testing schedule notification.
Air Quality Permit # 629–M–1	Written test protocol submittal.
Air Quality Permit # 629–M–1	Compliance test report submittal.
Air Quality Permit # 629–M–1	Quarterly reports submittal.
Air Quality Permit # 629–M–1	Duty to provide requested information.
Air Quality Permit # 629–M–1	Transfer of ownership notification.
Air Quality Permit # 629–M–1	Modification notifications.
Air Quality Permit # 629–M–1	Change of operator notification.
Air Quality Permit # 629–M–1	Right to appeal notification.
Air Quality Permit # 629–M–1	Certifications of major repairs submittals and recordkeeping.
Air Quality Permit # 629–M–1	ETU secondary containment useful life extension request.
Air Quality Permit # 629–M–1	ETU steel structure useful life extension request.
Air Quality Permit # 629–M–1	ODU waste quantity exceedance notification.
Air Quality Permit # 629–M–1	ODU statistical results and constituent exceedance report.
Air Quality Permit # 629–M–1	FTU waste quantity exceedance notification.
Air Quality Permit # 629 M–3	40 CFR part 60 notification requirements.
Air Quality Permit # 629 M–3	Revision/Modification notification.
Air Quality Permit # 629 M–3	Compliance Testing schedule notification.
Air Quality Permit # 629 M–3	Written test protocol submittal.
Air Quality Permit # 629 M–3	Compliance test report submittal.
Air Quality Permit # 629 M–3	Transfer of ownership notification.

TABLE A.—COVERED DOCUMENTS—Continued

State permit	Report name
Air Quality Permit # 629 M–3	Duty to provide requested information.
Air Quality Permit # 629 M–3	Change of operator notification.
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Appendix A

Project XL Electronic Signature Agreement

In accepting the digital certificate issued by the EPA approved Certificate Authority to digitally sign electronic documents submitted to the New Mexico Environmental Department (NMED) as part of the NASA White Sands Test Facility (NASA WSTF) Project XL pilot project, I, [name of digital signature holder],

(1) agree to protect the private key from use by anyone except me,

(2) understand and agree that I will be held as legally bound, obligated, or responsible by my use of my private key as I would be using my hand-written signature, and that legal action can be taken against me based on my use of my private key in submitting reports to NMED.

(3) agree never to delegate the use of my private key or make it available for use by anyone else;

(4) agree to report to NMED and the issuer of the certificate within twenty-four (24) hours of discovery, any evidence of the loss, theft, or other compromise of my private key;

(5) agree to report to NMED and the issuer of the certificate within twenty-four (24) hours of discovery, any evidence of discrepancy between a report I have signed and submitted and what NMED has received from me;

(6) agree to notify NMED and issuer of the certificate in writing if I cease to represent NASA WSTF as signatory of that organization's reports to NMED as soon as this change in relationship occurs.

NASA WSTF Designated Representative.

NMED Chief Information Officer.

[FR Doc. 01–27380 Filed 10–30–01; 8:45 am]
BILLING CODE 6560–50–P



Federal Register

Wednesday,
October 31, 2001

Part IV

Department of Justice

Bureau of Prisons

28 CFR Parts 500 and 501

National Security; Prevention of Acts of Violence and Terrorism; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 500 and 501

[BOP–1116; AG Order No. 2529–2001]

RIN 1120–AB08

National Security; Prevention of Acts of Violence and Terrorism

AGENCY: Bureau of Prisons, Department of Justice.

ACTION: Interim rule with request for comment.

SUMMARY: The current regulations of the Bureau of Prisons on institutional management authorize the Bureau to impose special administrative measures with respect to specified inmates, based on information provided by senior intelligence or law enforcement officials, where it has been determined to be necessary to prevent the dissemination either of classified information that could endanger the national security or of other information that could lead to acts of violence and terrorism. This rule extends the period of time for which such special administrative measures may be imposed from 120 days to up to one year, and modifies the standards for approving extensions of such special administrative measures. In addition, in those cases where the Attorney General has certified that reasonable suspicion exists to believe that an inmate may use communications with attorneys or their agents to further or facilitate acts of violence or terrorism, this rule amends the existing regulations to provide that the Bureau is authorized to monitor mail or communications with attorneys in order to deter such acts, subject to specific procedural safeguards, to the extent permitted under the Constitution and laws of the United States. Finally, this rule provides that the head of each component of the Department of Justice that has custody of persons for whom special administrative measures are determined to be necessary may exercise the same authority to impose such measures as the Director of the Bureau of Prisons.

DATES: *Effective date:* October 30, 2001.

Comment date: Written comments must be submitted on or before December 31, 2001.

ADDRESSES: Rules Unit, Office of the General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of the General Counsel, Bureau of Prisons, (202) 307–2105.

SUPPLEMENTARY INFORMATION: On June 20, 1997 (62 FR 33732), the Bureau of Prisons ("Bureau") finalized its interim regulations on the correctional management of inmates whose contacts with other persons present the potential for disclosure of classified information that could endanger national security or of other information that could lead to acts of violence or terrorism. These rules are codified at 28 CFR 501.2 (national security) and 501.3 (violence and terrorism).

The Bureau previously had published an interim rule on preventing the disclosure of classified information in the **Federal Register** on October 13, 1995 (60 FR 53490). No public comment was received, and the 1997 final rule adopted the 1995 interim rule with only minor changes. In general, § 501.2 authorizes the Director of the Bureau of Prisons to impose special administrative measures with respect to a particular inmate that are reasonably necessary to prevent disclosure of classified information, upon a written certification by the head of a United States intelligence agency that the unauthorized disclosure of such information would pose a threat to the national security and that there is a danger that the inmate will disclose such information. These special administrative measures ordinarily may include housing the inmate in administrative detention and/or limiting certain privileges, including, but not limited to, correspondence, visiting, interviews with representatives of the news media, and use of the telephone, as is reasonably necessary to prevent the disclosure of classified information.

The Bureau also had previously published a separate interim rule on preventing acts of violence and terrorism on May 17, 1996 (61 FR 25120). The Bureau's 1997 final rule responded at length to the public comments received on the 1996 interim rule. Section 501.3 authorizes the imposition of similar special administrative measures on a particular inmate based on a written determination by the Attorney General or, at the Attorney General's discretion, the head of a federal law enforcement or intelligence agency that there is a substantial risk that an inmate's communications or contacts with other persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons.

In either case, the affected inmate may seek review of any special administrative measures imposed pursuant to §§ 501.2 or 501.3 in accordance with paragraph (a) of this section through the Administrative Remedy Program, 28 CFR part 542.

Both rules limit the initial period of special administrative measures to 120 days, and provide that additional 120-day periods may be authorized based on a certification or notification that the circumstances identified in the original notification continue to exist.

Changes to § 501.2 With Respect to National Security

This rule makes no change in the substantive standards for the imposition of special administrative measures, but changes the initial period of time under § 501.2 from a fixed 120-day period to a period of time designated by the Director, up to one year. Where the head of an intelligence agency has certified to the Attorney General that there is a danger that the inmate will disclose classified information posing a threat to the national security, there is no logical reason to suppose that the threat to the national security will dissipate after 120 days. This rule allows the Director to designate a longer period of time, up to one year, in order to protect the national security.

The rule also allows for the Director to extend the period for the special administrative measures for additional one-year periods, based on subsequent certifications from the head of an intelligence agency. This will ensure a continuing review by the Director and the intelligence community of the need for the special administrative measures in light of the ongoing risks to the national security. Given the serious nature of the danger to the national security, as determined by the head of the intelligence agency, this approach reflects an appropriate balancing of the interests of the individual inmates and of the public interest in protecting against the disclosure of such national security information.

In addition, this rule modifies the standard for approving extensions of the special administrative measures. The existing regulation requires that the head of the intelligence agency certify that "the circumstances identified in the original certification continue to exist." This standard, however, is unnecessarily static, as it might be read to suggest that the subsequent certifications are limited to a reevaluation of the original grounds. Instead, this rule provides that the subsequent certifications by the head of an intelligence agency may be based on any information available to the intelligence agency.

Changes to § 501.3 With Respect to Prevention of Acts of Violence and Terrorism

This rule makes no change in the substantive standards for the implementation of special administrative measures under § 501.3(a). The rule also retains the existing authority of the Director to extend the imposition of the special administrative measures for additional periods, based on subsequent certifications from the Attorney General or the head of a federal law enforcement or intelligence agency. By continuing to apply the existing standards under § 501.3(a), this rule preserves the balance struck in the 1997 final rule and ensures that the inmate's circumstances will be subject to a continuing review.

However, this rule also recognizes that the threats of violence or terrorism posed by an inmate's communications or contacts with his or her associates, whether those other persons are within the detention facility or in the community at large, may in many cases be manifested on a continuing basis, such that the periods for special administrative measures need not be limited to 120 days. Accordingly, this rule allows the Director, with the approval of the Attorney General, to impose special administrative measures for a longer period of time, not to exceed one year, in cases involving acts of violence or terrorism. In addition, the rule provides authority for the Director under certain circumstances to provide for extensions of the period for the special administrative measures for additional periods, up to one year.

This rule also modifies the standard for approving extensions of the special administrative measures. The existing regulation requires that the Attorney General or the head of the federal law enforcement or intelligence agency determine that "the circumstances identified in the original notification continue to exist." Again, that standard is unnecessarily static, as it might be read to suggest that the subsequent determinations are limited to a reevaluation of the original grounds.

Recent incidents of terrorism and violence demonstrate, without question, that some criminal conspiracies develop and are carried out over a long period—far in excess of 120 days. During that time, as the plans may change or develop, there may be changes in the level of activity directed toward that conspiracy over time by the various participants. The level of participation by a particular inmate in the planning or orchestration of a terrorist or violent criminal conspiracy may vary over time.

The existing regulation fails to recognize that an inmate still may be an integral part of an ongoing conspiracy even though his or her activity may change over time—or, indeed, possibly even be dormant for limited periods of time. Those changes in an inmate's role over time, however, would not alter the significance of the inmate's role in planning acts of terrorism or violence and do not diminish the urgent need for law enforcement authorities to curb the inmate's ability to participate in planning or facilitating those acts through communications with others within or outside the detention facility. The phraseology of the existing rule also may raise questions about the relevance of more recently acquired information. For these reasons, it would not be appropriate to require a factual determination, in effect, that "nothing has changed" with respect to the initial determination.

Accordingly, this rule provides that the subsequent notifications by the Attorney General, or the head of the federal law enforcement or intelligence agency should focus on the key factual determination—that is, whether the special administrative measures continue to be reasonably necessary, at the time of each determination, because there is a substantial risk that an inmate's communications or contacts with persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons. Where the Attorney General, or the head of a federal law enforcement or intelligence agency, previously has made such a determination, then the determination made at each subsequent review should not require a de novo review, but only a determination that there is a continuing need for the imposition of special administrative measures in light of the circumstances.

With these changes, § 501.3 will still ensure a continuing, periodic review by the Director and the law enforcement and intelligence communities of the need for the special administrative measures in light of the ongoing risks of terrorism or violent crime. Given the serious nature of the danger to the public arising from such incidents, coupled with a determination by the Attorney General or the head of a federal law enforcement or intelligence agency regarding the danger posed by each particular inmate, this approach reflects an appropriate balancing of the interests of the individual inmates and of the public interest in detecting and deterring acts of terrorism and violence.

Although this rule does not alter the substantive standards for the initial imposition of special administrative measures under § 501.3, it is worth noting that the Bureau's final rule implementing this section in 1997 devoted a substantial portion of the supplementary information accompanying the rule to a discussion of the relevant legal issues. 62 FR 33730–31. As the U.S. Supreme Court noted in *Pell* v. *Procunier*, 417 U.S. 817, 822, 823 (1974), "a prison inmate retains those First Amendment rights that are not inconsistent with his status as an inmate or with the legitimate penological objectives of the corrections system. * * * An important function of the corrections system is the deterrence of crime. * * * Finally, central to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves."

This regulation, with its concern for security and protection of the public, clearly meets this test. The changes made by this rule, regarding the length of time and the standards for extension of periods of special administrative measures, do not alter the fundamental basis of the rules that were adopted in 1997. Instead, they more clearly focus the provisions for extensions—both the duration of time and the standards—on the continuing need for restrictions on a particular inmate's ability to communicate with others within or outside the detention facility in order to avoid the risks of terrorism and violence. In every case, the decisions made with respect to a particular inmate will reflect a consideration of the issues at the highest levels of the law enforcement and intelligence communities. Where the issue is prevention of acts of violence and terrorism, it is appropriate for government officials, at the highest level and acting on the basis of their available law enforcement and intelligence information, to impose restrictions on an inmate's public contacts that may cause or facilitate such acts.

Monitoring of Communications With Attorneys To Deter Acts of Terrorism

In general, the Bureau's existing regulations relating to special mail (§§ 540.18, 540.19), visits (§ 540.48), and telephone calls (§ 540.103) contemplate that communications between an inmate and his or her attorney are not subject to the usual rules for monitoring of inmate communications. In specific instances, however, based on information from federal law

enforcement or intelligence agencies, the Bureau may have substantial reason to believe that certain inmates who have been involved in terrorist activities will pass messages through their attorneys (or the attorney's legal assistant or an interpreter) to individuals on the outside for the purpose of continuing terrorist activities.

The existing regulations, of course, recognize the existence of the attorney-client privilege and an inmate's right to counsel. However, it also is clear that not all communications between an inmate and an attorney would fall within the scope of that privilege. For example, materials provided to an attorney that do not relate to the seeking or providing of legal advice are not within the attorney-client privilege. Accordingly, such materials would not qualify as special mail under the Bureau's regulations.

The attorney-client privilege protects confidential communications regarding legal matters, but the law is clear that there is no protection for communications that are in furtherance of the client's ongoing or contemplated illegal acts. *Clark* v. *United States*, 289 U.S. 1, 15 (1933) (such a client "will have no help from the law"); *United States* v. *Gordon-Nikkar*, 518 F. 2d 972, 975 (5th Cir. 1975) ("it is beyond dispute that the attorney-client privilege does not extend to communications regarding an intended crime"). The crime/fraud exception to the attorney-client privilege applies even if the attorney is unaware that his professional service is being sought in furtherance of an improper purpose, *United States* v. *Soudan*, 812 F.2d 920, 927 (5th Cir. 1986), and the attorney takes no action to assist the client, *In re Grand Jury Proceedings*, 87 F. 3d 377, 382 (9th Cir. 1996).

This rule provides specific authority for the monitoring of communications between an inmate and his or her attorneys or their agents, where there has been a specific determination that such actions are reasonably necessary in order to deter future acts of violence or terrorism, and upon a specific notification to the inmate and the attorneys involved. The rule provides for (1) protection of the inmate's right to counsel; (2) the use of a special "privilege team" to contemporaneously monitor an inmate's communications with counsel, pursuant to established firewall procedures, when there is a sufficient justification of need to deter future acts of violence or terrorism; (3) a procedure for federal court approval prior to the release or dissemination of information gleaned by the privilege team while monitoring the inmate's communications with counsel; and (4) an emergency procedure for immediate dissemination of information pertaining to future acts of violence or terrorism where those acts are determined to be imminent.

The Supreme Court has held that the presence of a government informant during conversations between a defendant and his or her attorney may, but need not, impair the defendant's Sixth Amendment right to effective assistance of counsel. *See Weatherford* v. *Bursey*, 429 U.S. 545, 552–54 (1977). When the government possesses a legitimate law enforcement interest in monitoring such conversations, *cf. Massiah* v. *United States*, 377 U.S. 201, 207 (1964), no Sixth Amendment violation occurs so long as privileged communications are protected from disclosure and no information recovered through monitoring is used by the government in a way that deprives the defendant of a fair trial. The procedures established in this new rule are designed to ensure that defendants' Sixth Amendment rights are scrupulously protected. The circumstances in which monitoring will be permitted are defined narrowly and in a way that reflects a very important law enforcement interest: the prevention of acts of violence or terrorism. The monitoring is not surreptitious; on the contrary, the defendant and his or her attorney are required to be given notice of the government's listening activities. The rule requires that privileged information not be retained by the government monitors and that, apart from disclosures necessary to thwart an imminent act of violence or terrorism, any disclosures to investigators or prosecutors must be approved by a federal judge.

In following these procedures, it is intended that the use of a taint team and the building of a firewall will ensure that the communications which fit under the protection of the attorney-client privilege will never be revealed to prosecutors and investigators. Procedures such as this have been approved in matters such as searches of law offices, *See, e.g., National City Trading Corp.* v. *United States*, 635 F.2d 1020, 1026–27 (2d Cir. 1980). In a similar vein, screening procedures are used in wiretap surveillance. *See, e.g., United States* v. *Noriega*, 764 F. Supp. 1480 (S.D. Fla. 1991) (DEA agent unrelated to the case reviewed prison telephone tapes to determine whether they contained any privileged attorney-client communications; agent mistakenly reduced one such communication to memorandum form, but the assigned prosecutor stopped reading the memo once he realized it contained attorney-client conversation; the court cited the screening procedure as a factor in finding that the government's intrusion into the defense camp was unintentional, and that the intrusion had not benefitted the government). Likewise, firewalls have been built so that an entire prosecution office is not disqualified when a lawyer who formerly represented or had a connection to a defendant joins the prosecutor's office but has no involvement in his former client's prosecution. *See Blair* v. *Armontrout*, 916 F.2d 1310, 1333 (8th Cir. 1990).

This rule carefully and conscientiously balances an inmate's right to effective assistance of counsel against the government's responsibility to thwart future acts of violence or terrorism perpetrated with the participation or direction of federal inmates. In those cases where the government has substantial reason to believe that an inmate may use communications with attorneys or their agents to further or facilitate acts of violence or terrorism, the government has a responsibility to take reasonable and lawful precautions to safeguard the public from those acts.

Applicability to All Persons in Custody Under the Authority of the Attorney General

The existing §§ 501.2 and 501.3 cover only inmates in the custody of the Bureau of Prisons. However, there are instances when a person is held in the custody of other officials under the authority of the Attorney General (for example, the Director of the United States Marshals Service or the Commissioner of the Immigration and Naturalization Service). To ensure consistent application of these provisions relating to special administrative measures in those circumstances where such restrictions are necessary, this rule clarifies that the appropriate officials of the Department of Justice having custody of persons for whom special administrative measures are required may exercise the same authorities as the Director of the Bureau of Prisons and the Warden.

We are also clarifying the definition of "inmate" to avoid any question whether these regulations apply to all persons in BOP custody.

Administrative Procedure Act, 5 U.S.C. 553

The Department's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based on the foreign affairs exception, 5 U.S.C. 553(a), and upon findings of good cause pursuant to 5 U.S.C. 553(b)(B) and (d).

The immediate implementation of this interim rule without public comment is necessary to ensure that the Department is able to respond to current intelligence and law enforcement concerns relating to threats to the national security or risks of terrorism or violent crimes that may arise through the ability of particular inmates to communicate with other persons. Recent terrorist activities perpetrated on United States soil demonstrate the need for continuing vigilance in addressing the terrorism and security-related concerns identified by the law enforcement and intelligence communities. It is imperative that the Department have the immediate ability to impose special administrative measures, and to continue those measures over time, with respect to persons in its custody who may wrongfully disclose classified information that could pose a threat to national security or who may be planning or facilitating terrorist acts.

In view of the immediacy of the dangers to the public, the need for detecting and deterring communications from inmates that may facilitate acts of violence or terrorism, and the small portion of the inmate population likely to be affected, the Department has determined that there is good cause to publish this interim rule and to make it effective upon publication, because the delays inherent in the regular notice-and-comment process would be "impracticable, unnecessary and contrary to the public interest." 5 U.S.C. 553(b)(B), (d). Application of these measures is likely to affect only a small portion of the inmate population: those inmates who have been certified by the head of a United States intelligence agency as posing a threat to the national security through the possible disclosure of classified information; or for whom the Attorney General or the head of a federal law enforcement or intelligence agency has determined that there is a substantial risk that the inmate's communications with others could lead to violence or terrorism.

Regulatory Certifications

The Department has determined that this rule is a significant regulatory action for the purpose of Executive Order 12866, and accordingly this rule has been reviewed by the Office of Management and Budget.

The Department certifies, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. Because this rule pertains to the management of offenders committed to the custody of the Department of Justice, its economic impact is limited to the use of appropriated funds.

This rule will not have substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 28 CFR Parts 500 and 501

Prisoners.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a), part 501 in subchapter A of 28 CFR, chapter V is amended as set forth below:

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 500—GENERAL DEFINITIONS

1. The authority citation for 28 CFR part 500 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date). 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 500.1, paragraph (c) is revised to read as follows:

§ 500.1 Definitions.

* * * * *

(c) *Inmate* means all persons in the custody of the Federal Bureau of Prisons or Bureau contract facilities, including persons charged with or convicted of offenses against the United States; D.C. Code felony offenders; and persons held as witnesses, detainees, or otherwise.

* * * * *

PART 501—SCOPE OF RULES

3. The authority citation for 28 CFR part 501 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

4. In § 501.2, paragraph (c) is revised and paragraph (e) is added, to read as follows:

§ 501.2 National security cases.

* * * * *

(c) Initial placement of an inmate in administrative detention and/or any limitation of the inmate's privileges in accordance with paragraph (a) of this section may be imposed for a period of time as determined by the Director, Bureau of Prisons, up to one year. Special restrictions imposed in accordance with paragraph (a) of this section may be extended thereafter by the Director, Bureau of Prisons, in increments not to exceed one year, but only if the Attorney General receives from the head of a member agency of the United States intelligence community an additional written certification that, based on the information available to the agency, there is a danger that the inmate will disclose classified information and that the unauthorized disclosure of such information would pose a threat to the national security. The authority of the Director under this paragraph may not be delegated below the level of Acting Director.

* * * * *

(e) Other appropriate officials of the Department of Justice having custody of persons for whom special administrative measures are required may exercise the same authorities under this section as the Director of the Bureau of Prisons and the Warden.

4. In § 501.3,

a. Paragraph (c) is revised;

b. Paragraph (d) is redesignated as paragraph (e); and

c. New paragraphs (d) and (f) are added to read as follows:

§ 501.3 Prevention of acts of violence and terrorism.

* * * * *

(c) Initial placement of an inmate in administrative detention and/or any limitation of the inmate's privileges in accordance with paragraph (a) of this section may be imposed for up to 120 days or, with the approval of the Attorney General, a longer period of time not to exceed one year. Special restrictions imposed in accordance with paragraph (a) of this section may be extended thereafter by the Director, Bureau of Prisons, in increments not to exceed one year, upon receipt by the Director of an additional written notification from the Attorney General, or, at the Attorney General's direction, from the head of a federal law enforcement agency or the head of a member agency of the United States intelligence community, that there

continues to be a substantial risk that the inmate's communications or contacts with other persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons. The authority of the Director under this paragraph may not be delegated below the level of Acting Director.

(d) In any case where the Attorney General specifically so orders, based on information from the head of a federal law enforcement or intelligence agency that reasonable suspicion exists to believe that a particular inmate may use communications with attorneys or their agents to further or facilitate acts of terrorism, the Director, Bureau of Prisons, shall, in addition to the special administrative measures imposed under paragraph (a) of this section, provide appropriate procedures for the monitoring or review of communications between that inmate and attorneys or attorneys' agents who are traditionally covered by the attorney-client privilege, for the purpose of deterring future acts that could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons.

(1) The certification by the Attorney General under this paragraph (d) shall be in addition to any findings or determinations relating to the need for the imposition of other special administrative measures as provided in paragraph (a) of this section, but may be incorporated into the same document.

(2) Except in the case of prior court authorization, the Director, Bureau of Prisons, shall provide written notice to the inmate and to the attorneys involved, prior to the initiation of any monitoring or review under this paragraph (d). The notice shall explain:

(i) That, notwithstanding the provisions of part 540 of this chapter or other rules, all communications between the inmate and attorneys may be monitored, to the extent determined to be reasonably necessary for the purpose of deterring future acts of violence or terrorism;

(ii) That communications between the inmate and attorneys or their agents are not protected by the attorney-client privilege if they would facilitate criminal acts or a conspiracy to commit criminal acts, or if those communications are not related to the seeking or providing of legal advice.

(3) The Director, Bureau of Prisons, with the approval of the Assistant Attorney General for the Criminal Division, shall employ appropriate procedures to ensure that all attorney-client communications are reviewed for privilege claims and that any properly privileged materials (including, but not limited to, recordings of privileged communications) are not retained during the course of the monitoring. To protect the attorney-client privilege and to ensure that the investigation is not compromised by exposure to privileged material relating to the investigation or to defense strategy, a privilege team shall be designated, consisting of individuals not involved in the underlying investigation. The monitoring shall be conducted pursuant to procedures designed to minimize the intrusion into privileged material or conversations. Except in cases where the person in charge of the privilege team determines that acts of violence or terrorism are imminent, the privilege team shall not disclose any information unless and until such disclosure has been approved by a federal judge.

* * * * *

(f) Other appropriate officials of the Department of Justice having custody of persons for whom special administrative measures are required may exercise the same authorities under this section as the Director of the Bureau of Prisons and the Warden.

Dated: October 26, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–27472 Filed 10–30–01; 9:35 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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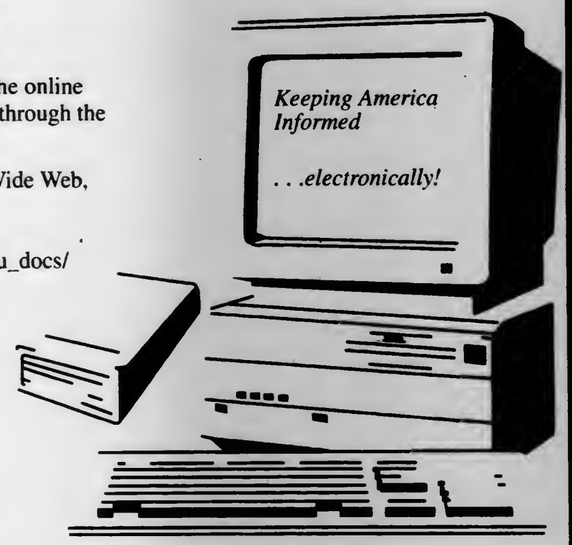
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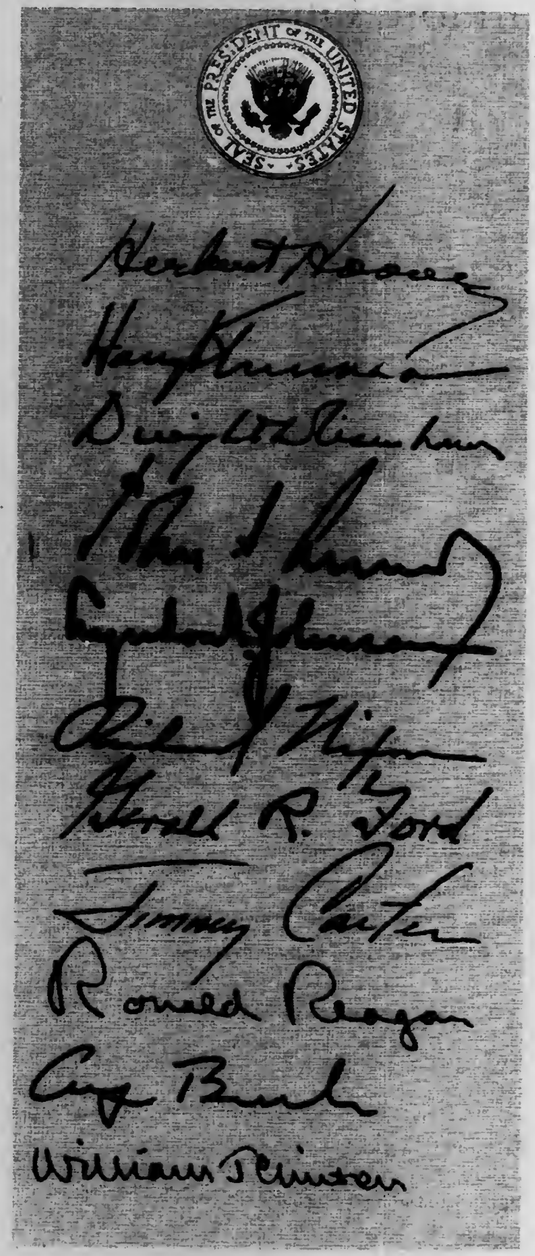
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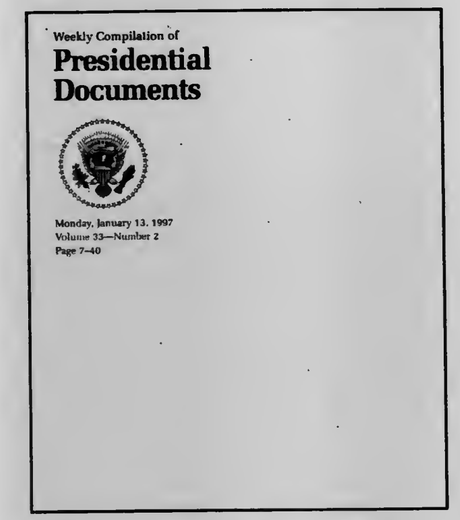
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Vol. 66, No. 212
Thursday, November 1, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–102–1]

Oriental Fruit Fly; Designation of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by quarantining a portion of San Diego County, CA, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

DATES: This interim rule was effective October 26, 2001. We invite you to comment on this docket. We will consider all comments that we receive by December 31, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–102–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 01–102–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. Section 301.93–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles; and (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) reveal that a portion of San Diego County, CA, is infested with the Oriental fruit fly. The Oriental fruit fly is not known to exist anywhere else in the continental United States except in San Bernardino County, CA.

State agencies in California have begun an intensive Oriental fruit fly eradication program in the quarantined area in San Diego County. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly to other States, we are amending the regulations in § 301.93–3 by designating a portion of San Diego County, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the rule portion of this document.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Oriental fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not

have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Oriental fruit fly will not have a significant impact on human health or the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA ImplementingProcedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. The environmental assessment and finding of no significant impact may also be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppq/offsd.pdf*.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.93–3, paragraph (c), the entry for California is amended by adding, in alphabetical order, an entry for San Diego County to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) * * *

California

* * * * *

San Diego County. That portion of the county beginning at the intersection of State Highway 94 and Sweetwater Springs Boulevard; then south along Sweetwater Springs Boulevard to its intersection with U.S. Elevator Road; then south from the intersection of Sweetwater Springs Boulevard and U.S. Elevator Road along an imaginary line to the intersection of ProctorValley Road and Lane Avenue; then south on Lane Avenue to Otay Lakes Road; then west on Otay Lakes Road to Telegraph Canyon Road; then west on Telegraph Canyon Road to Hilltop Drive; then north on Hilltop Drive to J Street; then west on J Street to 4th Avenue; then north on 4th Avenue to H Street; then west on H Street to Broadway; then north on Broadway to E Street; then west on E Street to Interstate Highway 5; then north on Interstate Highway 5 to StateHighway 15; then north on State Highway 15 to State Highway 94; then east on State Highway 94 to Interstate Highway 805; then north on Interstate Highway 805 to Home Avenue; then northeast on Home Avenue to Euclid Avenue; then north on Euclid Avenue to University Avenue; then east on University Avenue to Massachusetts Avenue; then south on Massachusetts Avenue to State Highway 94; then east on State Highway 94 to the point of beginning.

Done in Washington, DC, this 26th day of October 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–27460 Filed 10–31–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 01–055–1]

States Approved To Receive Stallions and Mares From CEM-Affected Regions; Rhode Island

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the animal importation regulations by adding Rhode Island to the list of States approved to receive certain stallions and mares imported into the United States from regions affected with contagious equine metritis (CEM). We are taking this action becauseRhode Island has entered into an agreement with the Administrator of the Animal and Plant Health Inspection Service to enforce its State laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by Federal regulations, to further ensure the horses' freedom from CEM. This action relieves unnecessary restrictions on the importation of mares and stallions from regions where CEM exists.

DATES: This rule will be effective on December 31, 2001 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before December 3, 2001.

ADDRESSES: Please send four copies (an original and three copies) of your comments or notice of intent to submit adverse comments to: Docket No. 01–055–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238

Please state that your comment refers to Docket No. 01–055–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Bischoff, Staff Veterinarian, National Center for Import and Export, Technical Trade Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The animal importation regulations (contained in 9 CFR part 93 and referred to below as the regulations), among other things, prohibit or restrict the importation of certain animals, including horses, into the United States to protect U.S. livestock from communicable diseases.

In § 93.301, paragraph (c)(1) prohibits the importation of horses into the United States from certain regions where contagious equine metritis (CEM) exists. Paragraph (c)(2) lists categories of horses that are excepted from this prohibition, including, in § 93.301(c)(2)(vi), horses over 731 days of age imported for permanent entry if the horses meet the requirements of § 93.301(e).

One of the requirements in § 93.301(e) is that mares and stallions over 731 days old imported for permanent entry from regions where CEM exists must be consigned to States listed in § 93.301(h)(6), for stallions, or in § 93.301(h)(7), for mares. The Administrator of the Animal and Plant Health Inspection Service (APHIS) has approved these States to receive stallions or mares over 731 days of age from regions where CEM exists because each State has entered into a written agreement with the Administrator to enforce State laws and regulations to control CEM, and each State has agreed to quarantine, test, and treat stallions and mares over 731 days of age from any region where CEM exists in accordance with § 93.301(e).

Rhode Island has entered into a written agreement with the Administrator of APHIS and has agreed to comply with all of the requirements in § 93.301(e) for importing stallions and mares over 731 days old from regions where CEM exists. Therefore, this direct final rule will add Rhode Island to the lists of States in § 93.301(h)(6) and (h)(7) approved to receive certain stallions and mares imported into the United States from regions where CEM exists.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comments. This rule will be effective, as published in this document, on December 31, 2001, unless we receive written adverse comments or written notice of intent to submit adverse comments by December 3, 2001.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice in the **Federal Register** before the effective date of this direct final rule confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Horse Imports From CEM-affected Regions

The share of purebred breeding horse imports coming from CEM-affected regions is a relatively small fraction of the total number of horses imported, ranging between 5 and 10 percent between 1996 and 1999 (table 1). However, horses supplied by CEM-affected countries are generally highly valued. In 1999, for example, the average value of a purebred breeding horse imported from a CEM-affected region was $52,300, whereas the average value of a purebred breeding horse imported from anywhere in the world (i.e., from both CEM-affected and CEM-free regions) was $11,700.

During these same 4 years, the United States imported 28,374 horses classified as "except purebred breeding" from CEM-affected regions (table 2). While it is possible that some of these horses from CEM-affected regions may be for breeding, it is more likely that they are imported for racing or exhibition.[1] During 1996–1999, about one of every five "except purebred breeding" horses imported into the United States came from CEM-affected countries. Their combined annual value comprised, on average, 60 percent of the value of all "except purebred breeding" horse imports.

[1] As stated in the Harmonized Tariff Schedule of the United States (2000), "The expression 'purebred breeding animals' covers only animals certified to the U.S. Customs Service by the Department of Agriculture as being purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed, imported specially for breeding purposes, whether intended to be used by the importer himself or for sale for such purposes."

TABLE 1.—QUANTITY AND VALUE OF PUREBRED BREEDING HORSES IMPORTED FROM CEM–AFFECTED REGIONS, 1996–1999

Year	Quantity			Value	
	Number	Percent of all purebred breeding imports (percent)	Dollars (million)	Percent of all purebred breeding imports (percent)
1996	69	5.2	$2.0	26.7
1997	115	7.2	2.7	19.9
1998	200	10.0	31.3	77.8
1999	187	8.1	9.8	36.2

Source: U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), "Global Agricultural Trade System," using data from the United Nations Statistical Office. Harmonized tariff schedule 010111.

TABLE 2.—QUANTITY AND VALUE OF HORSES "EXCEPT PUREBRED BREEDING" IMPORTED FROM CEM-AFFECTED REGIONS, 1996–1999

Year	Quantity		Value	
	Number	Percent of all "except purebred breeding" imports	Dollars (million)	Percent of all "except purebred breeding" imports (percent)
1996	2,642	8.7	93.5	26.7
1997	3,677	15.5	99.9	76.7
1998	17,044	40.7	147.9	83.6
1999	5,011	17.9	170.9	54.8

Source: USDA, FAS, "Global Agricultural Trade System," using data from the United Nations Statistical Office. Harmonized tariff schedule 010119.

CEM Testing

To minimize the risk of the CEM organism entering the United States, restrictions are applied to stallions and mares imported from CEM-affected regions, including health certification and preembarkation and postentry testing and treatment. During 1996 through 1999,21,882 cultures were tested at approved laboratories for CEM and a similar CEM-like organism. Forty of the cultures tested positive, of which at least one-third to one-half were infections by the CEM-like organism (several of domestic origin). Thus, the likelihood of a specimen testingCEM-positive during this period was roughly about 0.1 percent.

As this small percentage indicates, breeding horses imported from CEM-affected regions rarely test positive for CEM. When they do, they are treated and remain in isolation until examined and subsequent cultures test negative. Nevertheless, the potential consequences of the establishment of CEM in the United States make the risk posed by this disease a serious concern.

Besides the health costs associated with infected horses, establishment of CEM would have a disruptive impact on U.S. horse exports, especially on high-value breeding horses. At a minimum, more extensive testing and extended quarantining would be required of exporters.

The addition of Rhode Island to the list of approved States is explicit recognition of the capability of Rhode Island facilities to carry out postentry testing and treatment requirements.

Affected Entities

The rule will allow Rhode Island horse operations to import stallions and mares directly from CEM-affected regions, whereas at present they must be imported and undergo post-entry testing and treatment in another, currently approved State. There are now 21 States approved to receive stallions and mares from CEM-affected regions. Neither of Rhode Island's neighboringStates, Connecticut and Massachusetts, is on the list of approved States; breeding horse importers in both of these States may benefit as well from this rule, given their proximity.

The Regulatory Flexibility Act requires that agencies consider the impacts of their rules on small entities. Whether affected entities may be considered small depends on their annual gross receipts. Annual receipts of $750,000 or less is the small-entity criterion set by the SmallBusiness Administration for establishments primarily engaged in raising horses and other equines(North American Industrial Classification System (NAICS) code 112920). For operations owning race horses (NAICS code 711219), the small-entity criterion is annual gross receipts of $5 million or less.

Importers of breeding horses in Rhode Island presumably, owners of horse farms and race horses are the entities that will be affected by this rule, but only those importing from CEM-affected regions. It is not known how many such firms there may be, but it is reasonable to assume that at least some of them may be small entities. According to the 1997 Census of Agriculture, there were 163 horse farms in Rhode Island that year, 32 of which sold 79 horses that had a total value of $510,000. These data imply an average income per farm from horse sales of about $16,000.

The economic effects of this rule on affected Rhode Island establishments will be positive. Breeding horses from CEM-affected regions will be allowed to be moved directly into Rhode Island following their postentry quarantine, thereby benefitting Rhode Island importers, as well as importers in neighboring States, through lower transport costs. The benefits are not, however, expected to be large when compared to the value of the imported horses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 93 is amended as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b,134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.301 [Amended]

2. Section 93.301 is amended as follows:

a. In paragraph (h)(6), by adding, in alphabetical order, "The State of Rhode Island".

b. In paragraph (h)(7), by adding, in alphabetical order, "The State of Rhode Island".

Done in Washington, DC, this 26th day of October 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–27459 Filed 10–31–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket No. 01–12]

[RIN 1557–AB82]

Community Bank-Focused Regulation Review: Lending Limits Pilot Program

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule; correction.

SUMMARY: The Office of the Comptroller of the Currency (OCC) recently published a final rule amending part 32, the regulation governing the percentage of capital and surplus that a national bank may loan to any one borrower. Inadvertently, six cross-references in the existing regulation were not amended to reflect changes made by the final rule. This document amends these cross-references.

EFFECTIVE DATE: Effective on September 10, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Katz, Senior Counsel, Legislative Regulatory Activities Division, (202) 874–5090; or Jonathan Fink, Senior Attorney, Bank Activities and Structure Division, (202) 874–5300.

SUPPLEMENTARY INFORMATION:

Description of Change

The Office of the Comptroller of the Currency (OCC) published a final rule on June 11, 2001 (66 FR 31114) amending part 32. This final rule established a three-year pilot program that creates new special lending limits for 1–4 family residential real estate loans and small business loans, subject to certain conditions and requirements. The final rule added three new definitions to 12 CFR 32.2 and renumbered the existing definitions in that section. However, we inadvertently did not amend the cross-references in existing part 32 to reflect the changes in the numerical order of the definitions made by the final rule. This correction amends the cross-references throughout part 32 to reflect these changes.

Administrative Procedure Act—Notice and Comment

Pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), the OCC finds good cause for dispensing with the requirements for notice and opportunity for public comment that the APA would otherwise require. Notice and comment on this amendment of part 32 are unnecessary because the renumbering of the cross-references is a technical, rather than a substantive, change. Moreover, if left uncorrected, the cross-references will cause confusion among readers of part 32 as amended because the cross-references currently do not refer to the correct definitional sections.

Effective Date

The APA generally requires that a final rule take effect 30 days after publication in the **Federal Register**. 5 U.S.C. 553(d). Similarly, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 generally requires that a final rule issued by a Federal banking agency take effect on the first day of the first calendar quarter that begins on or after the date on which the regulation is published in final form. 12 U.S.C. 4802(b)(1). Both requirements are subject to a good cause exception. For the reasons previously explained, the OCC finds good cause for making this amendment to 12 CFR part 32 effective immediately upon publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the OCC has determined that it is not necessary to publish a notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

Executive Order 12866

The Comptroller of the Currency has determined that this final rule is not a significant regulatory action for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMA), Pub. L. 104–4, 109 Stat. 48, applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which the agency published a general notice of proposed rulemaking, 2 U.S.C. 1532. As noted previously, the OCC has determined, for good cause, that notice and comment is unnecessary. Accordingly, the UMA does not require a budgetary impact analysis.

List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 32—LENDING LIMITS

1. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 84 and 93a.

2. In § 32.2, revise paragraphs (f)(1)(iii), (f)(1)(iv), and (m)(1) to read as follows:

§ 32.2 Definitions.

* * * * *

(f) * * *

(1) * * *

(iii) Advance funds under a qualifying commitment to lend, as defined in paragraph (m) of this section, and

(iv) Advance funds under a standby letter of credit as defined in paragraph (s) of this section, a put, or other similar arrangement.

* * * * *

(m) * * *

(1) In determining whether a commitment is within the bank's lending limit when made, the bank may deduct from the amount of the commitment the amount of any legally binding loan participation commitments that are issued concurrent with the bank's commitment and that would be excluded from the definition of "loan or extension of credit" under paragraph (k)(2)(vi) of this section.

* * * * *

3. In § 32.3:

A. Revise the first sentence of paragraph (a);

B. Revise the first sentence of paragraph (b)(1)(i); and

C. Revise the introductory text of paragraph (b)(5).

The revisions read as follows:

§ 32.3 Lending limits.

(a) * * * A national bank's total outstanding loans and extensions of credit to one borrower may not exceed 15 percent of the bank's capital and surplus, plus an additional 10 percent of the bank's capital and surplus, if the amount that exceeds the bank's 15 percent general limit is fully secured by readily marketable collateral, as defined in § 32.2(n). * * *

(b) * * *

(1) * * *

(i) A national bank's loans or extensions of credit to one borrower secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples, as defined in § 32.2(o), may not exceed 35 percent of the bank's capital and surplus in addition to the amount allowed under the bank's combined general limit.

* * *

* * * * *

(5) * * * A national bank may renew a qualifying commitment to lend, as defined by § 32.2(m), and complete funding under that commitment if all of the following criteria are met—

* * * * *

Dated: October 19, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 01–27413 Filed 10–31–01; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–62–AD; Amendment 39–12490; AD 2001–22–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 737–600, –700, and –800 series airplanes, that currently requires an inspection of the power distribution panels (PDP) to verify proper installation of the power feeder terminals and associated hardware, and corrective actions, if necessary. The existing AD also requires repetitive torque checks of the terminal attachment screws. This amendment adds a requirement for repetitive replacement of the PDP rigid bus assembly with a new assembly and provides an optional terminating action for the repetitive torque checks and the repetitive replacement of the PDP rigid bus assembly. This amendment is prompted by reports of loss of electrical power from the engine-driven generators or the auxiliary power unit due to overheating, melting, and subsequent failure of the power feeder terminals at the PDPs. The actions specified by this AD are intended to prevent such conditions, which could result in increased risk of fire and the loss of electrical power from the associated alternating current power source.

DATES: Effective December 6, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 6, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–08–03, amendment 39–11107 (64 FR 15920, April 2, 1999), which is applicable to all Boeing Model 737–600, –700, and –800 series airplanes, was published in the **Federal Register** on June 11, 1999 (64 FR 31518). The action proposed to continue to require an inspection of the power distribution panels (PDP) to verify proper installation of the power feeder terminals and associated hardware, corrective actions, if necessary, and repetitive torque checks of the terminal attachment screws. The action proposed to add a requirement for repetitive replacement of the PDP rigid bus assembly with a new assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed Rule

Two commenters concur with the proposed AD.

Provide Terminating Action

Several commenters ask the FAA to revise the proposed AD to specify that replacement of the existing PDP rigid bus assemblies with new, improved assemblies terminates the repetitive torque checks in paragraph (b) and the repetitive replacements of the PDP rigid bus assemblies in paragraph (c) of the proposed AD. Three commenters point out that we have previously approved Boeing Service Bulletin 737–24–1128, dated April 29, 1999, as an alternative method of compliance (AMOC) with the repetitive torque check requirement of AD 99–08–03. That service bulletin describes procedures for replacement of existing rigid bus assemblies on the P91 and P92 PDPs with new, improved assemblies. One of the commenters states that the new, improved PDP rigid bus assemblies incorporate retaining blocks that are integral to the rigid bus cover, surround the termination assemblies, and provide a solid surface for the termination assemblies to bear on during installation and removal of power feeders, thus reducing the load transmitted through the attachment screws. The commenters state that installation of the new, improved PDP rigid bus assemblies addresses the unsafe condition in the proposed AD.

The FAA concurs. As noted by the commenters, replacement of existing rigid bus assemblies with new, improved assemblies eliminates the need for the repetitive replacement of PDP rigid bus assemblies specified in paragraph (c) of the proposed AD. Also, we have previously approved Boeing Service Bulletin 737–24–1128, and have approved that service bulletin as an AMOC for the repetitive torque checks required by AD 99–08–03, which this AD supersedes. Therefore, we have done the following in this final rule:

- Added a new paragraph (d) to this AD to state that replacement of existing PDP rigid bus assemblies with new, improved PDP rigid bus assemblies constitutes terminating action for the requirements of this AD.
- Revised paragraphs (b) and (c) of this AD to state that the requirements of those paragraphs only apply until paragraph (d) of this AD is accomplished.
- Added a new paragraph (e)(2) to this AD to state that AMOCs approved previously in accordance with AD 99–08–03 are approved for the corresponding requirements of this AD. (This provision should have been stated in the proposed rule but was inadvertently omitted.)

In a related issue, two commenters request that we revise the applicability statement of the proposed AD to remove airplanes on which improved PDP rigid bus assemblies have been installed during production.

We partially concur with this request. Airplanes equipped with the improved PDP rigid bus assemblies would not be subject to this AD. However, we must consider the possibility that some airplanes originally delivered with PDPs having the improved rigid bus assemblies may have been changed to be equipped with PDPs having rigid bus assemblies of the original design. This could occur as a result of rotation of spare parts inventories during routine maintenance replacements. Therefore, we have revised the applicability statement of this AD to state that this AD applies only to Boeing Model 737–600, –700, and –800 series airplanes equipped with PDPs bearing any of the Boeing part numbers in the "Existing Part Number" column of the table under paragraph 2.E., "Existing Parts Accountability," of Boeing Service Bulletin 737–24–1128.

Clarify Appropriate Replacement Parts

Two commenters ask us to revise paragraph (c) of the proposed AD to clarify appropriate replacement parts. The commenters question whether we intend paragraph (c) to require replacement of existing PDP rigid bus assemblies with identical parts (i.e., parts with the same part number as the existing parts), or with new, improved parts (as described in the previous section above). Both commenters note that replacement of existing PDP rigid bus assemblies with new, improved assemblies should eliminate the need for the repetitive replacement specified in paragraph (c).

We concur that we need to clarify under what circumstances it is necessary to repeat the replacement of the PDP rigid bus assembly required by paragraph (c) of this AD. Therefore, we have revised paragraph (c) of this final rule to require repetitive replacement of the PDP rigid bus assembly with a new assembly having the same part number as the removed part. As stated above, we have also added paragraph (d) to this AD to state that replacement of existing PDP rigid bus assemblies with new, improved rigid bus assemblies terminates the requirements of this AD.

Ascertain Parts Availability

One commenter requests that we confirm the availability of replacement parts from the manufacturer prior to issuance of this final rule. The commenter states that, as of the time of its comment, sufficient replacement parts have not been available to support replacement schedules. We have confirmed that the manufacturer can support replacement according to the schedule required by this AD, and no change to the final rule is necessary in this regard.

Revise Boeing 737 Configuration Maintenance and Procedures (CMP) Document

One commenter requests that we revise the Extended Twin Engine Operations (ETOPs) coverage in the Boeing 737 CMP Document to be consistent with the provisions of the proposed AD. The commenter notes that, while the proposed AD would require repetitive torque checks of the attachment screws of the power feeder terminals every 1,000 flight hours, and replacement of the PDP rigid bus assembly with a new assembly within 1,000 flight hours after every eighth torque check, the Boeing 737 CMP Document requires repetitive torque checks every 400 flight hours, with replacement of the PDP rigid bus assembly after every fourth check. The commenter notes that revision of the ETOPs information in the Boeing 737 CMP Document would provide consistency for all Boeing 737 "Next Generation" airplanes.

We do not concur. The torque check and replacement at the intervals required by this AD are intended to ensure that an adequate level of safety is maintained. However, the more conservative torque check and replacement intervals specified in the Boeing 737 CMP Document are necessary for airplanes performing ETOPS. No change to the final rule is necessary in this regard.

Explanation of Changes Made to Proposed Rule

Paragraph (a) of the proposed AD specifies accomplishment of a "general visual" inspection. To clarify this inspection requirement, we have added a note to this final rule that defines that type of inspection.

Also, the inspection procedure included in paragraph (a) of AD 99–08–03, which is restated in paragraph (a) of this AD, contains several references to Boeing 737–600, –700, –800, –900 Airplane Maintenance Manual (AMM) Section 24–21–71/401, Figure 401. These references have been clarified in this final rule to refer specifically to relevant page numbers in AMM Section 24–21–71, Figure 401.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action. The FAA is considering further rulemaking to require accomplishment of the optional terminating action described in this AD. However, the planned compliance time for this action is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Cost Impact

There are approximately 153 Model 737–600, –700, and –800 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 56 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 99–08–03 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $6,720, or $120 per airplane.

The new replacement required by this AD will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $20,160, or $360 per airplane, per replacement cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11107 (64 FR 15920, April 2, 1999), and by adding a new airworthiness directive (AD), amendment 39–12490, to read as follows:

2001–22–11 Boeing: Amendment 39–12490. Docket 99–NM–62–AD. Supersedes AD 99–08–03, Amendment 39–11107.

Applicability: Model 737–600, –700, and –800 series airplanes, equipped with power distribution panels (PDP) bearing any of the Boeing part numbers in the "Existing Part Number" column of the table under paragraph 2.E., "Existing Parts Accountability," of Boeing Service Bulletin 737–24–1128, dated April 29, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating, melting, and subsequent failure of the power feeder terminals, which could result in increased risk of fire and the loss of electrical power from the associated alternating current power source, accomplish the following:

Restatement of Requirements of AD 99–08–03, Amendment 39–11107

Initial Inspection

(a) Within 90 days after April 19, 1999 (the effective date of AD 99–08–03, amendment 39–11107): Perform a one-time general visual inspection to verify proper installation of the power feeder terminals and associated hardware located in power distribution panels (PDP) P91 and P92, in accordance with the following procedures: Using a flashlight, inspect each of the six power feeder terminals by looking into the access holes located in the plastic cover of the rigid bus assembly. The holes are located on the aft face of PDPs P91 and P92. (Refer to the Boeing 737–600, –700, –800, –900 Airplane Maintenance Manual (AMM), Section 24–21–71, Page 402, Figure 401 (Sheet 1), for the location of PDP P91 and P92.) On PDP P91, the holes are adjacent to terminal blocks TB5001 and TB5002. On PDP P92, the holes are adjacent to terminal blocks TB5005 and TB5006. There are a total of six holes per PDP. (Refer to the Boeing 737–600, –700, –800, –900 AMM, Section 24–21–71, Page 403, Figure 401 (Sheet 2), for the location of the access holes on the PDPs.) Note that although each PDP has nine power feeder terminals, only the six terminals adjacent to the access holes require inspection. Verify that the power feeder terminal is properly installed and held in place on the busbar by the No. 8 socket head cap screw, and verify that the cap screw is inserted into the hole in the terminal. For the proper power feeder terminal and screw buildup, refer to the Boeing 737–600, –700, –800, –900 AMM, Chapter 24–21–71, Page 405, Figure 401 (Sheet 4). The subject power feeder terminal is identified as item (7) and the cap screw as item (12). This visual inspection does not require loosening or removing any fasteners. The inspection may require looking through the access hole at a slight angle to see the terminal clearly. The terminal can be identified by its shiny metal finish; the current transformer behind the terminal block is made of plastic with a flat black finish. If the power feeder terminal and No. 8 socket head cap screw are not assembled as shown in Boeing 737–600, –700, –800, –900 AMM, Section 24–21–71, Page 405, Figure 401 (Sheet 4): Prior to further flight, replace the rigid bus assembly with a new assembly, in accordance with the procedures specified in Boeing 737–600, –700, –800, –900 AMM, Section 24–21–22.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Repetitive Torque Check

(b) Concurrent with the accomplishment of the requirements of paragraph (a) of this AD: Perform a torque check of the attachment screws of the power feeder terminals in accordance with the procedures specified in Boeing Maintenance Tip 737 MT 24–003, dated May 14, 1998. Repeat the torque check thereafter at intervals not to exceed 1,000 flight hours, in accordance with the maintenance tip, until paragraph (d) of this AD is accomplished.

New Requirements of This AD

Repetitive Replacement

(c) Within 1,000 flight hours after accomplishment of the eighth torque check required by paragraph (b) of this AD: Replace the PDP rigid bus assemblies with new assemblies having the same part numbers as the removed assemblies, in accordance with the procedures specified in Boeing 737–600, –700, –800, –900 AMM, Chapter 24–21–22. Repeat the replacement thereafter within 1,000 flight hours after every eighth torque check required by paragraph (b) of this AD, in accordance with the procedures specified in the AMM, until paragraph (d) of this AD is accomplished.

Optional Terminating Action

(d) Replacement of existing PDP rigid bus assemblies with new, improved PDP rigid bus assemblies having part number 1032181–2 or 1032185–2, as applicable, according to Boeing Service Bulletin 737–24–1128, dated April 29, 1999, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–08–03, amendment 39–11107, are approved as alternative methods of compliance for the corresponding requirements of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions required by paragraph (b) of this AD shall be done in accordance with Boeing Maintenance Tip 737 MT 24–003, dated May 14, 1998. The optional terminating action, if accomplished, shall be done in accordance with Boeing Service Bulletin 737–24–1128, dated April 29, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on December 6, 2001.

Issued in Renton, Washington, on October 23, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27187 Filed 10–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–395–AD; Amendment 39–12492; AD 2001–22–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes; and Model 747, 757, 767, and 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes; and certain Boeing Model 747, 757, 767, and 777 series airplanes; that requires replacing the rudder pedal pushrod fasteners for both the captain's and first officer's pedal assemblies with new, improved fasteners. This action is necessary to prevent loss of rudder control due to improperly torqued fasteners that connect the pushrod to the rudder pedal assembly, which could result in loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 6, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 6, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Model 737–100, –200, –300, –400, and –500 series airplanes; and Model 747, 757, 767, and 777 series airplanes; was published in the **Federal Register** on April 20, 2001 (66 FR 20218). That action proposed to require replacing the rudder pedal pushrod fasteners for both the captain's and first officer's pedal assemblies with new, improved fasteners.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule; a second commenter states that it has no technical objection and intends to accomplish the proposed actions; and a third commenter states no objection to the proposed rule.

Refer to Additional Sources of Service Information

Two commenters request that the FAA revise Table 2 of the proposed AD to refer to Boeing Service Bulletin 767–27A0159, Revision 1, dated April 5, 2001, as an acceptable source of service information for the actions in paragraph (a) of the proposed AD. (The proposed AD refers to the original issue of Boeing Alert Service Bulletin 767–27A0159, dated June 10, 1999, as an acceptable source of service information for accomplishment of the actions in paragraph (a) of the proposed rule on affected Model 767 series airplanes.) One of the commenters also requests that we add a new note similar to Note 2 to cover incorporation of Boeing Service Bulletin 767–27A0159, Revision

1, as acceptable for compliance with the proposed AD.

We concur with the commenters' request to reference Boeing Service Bulletin 767–27A0159, Revision 1, in Table 2 of this AD and have revised Table 2 accordingly. Since we are making this change, we find that there is no need to add a new note similar to Note 2 of this AD to the final rule as one of the commenters suggested.

One commenter also asks us to revise Table 1 under the applicability statement of the proposed AD to refer to Boeing Alert Service Bulletin 737–27A1214, dated April 8, 1999, and Boeing Service Bulletin 767–27A0159, Revision 1. (Table 1 of the proposed AD lists Boeing Service Bulletin 737–27A1214, Revision 1, dated July 1, 1999, as the applicable service bulletin listing affected Model 737–100, –200, –300, –400, and "500 series airplanes; and the original issue of Boeing Alert Service Bulletin 767–27A0159, as the applicable service bulletin listing affected Model 767 series airplanes.) The same commenter also asks that we revise Table 2 of the proposed AD to refer to Boeing Alert Service Bulletin 737–27A1214, dated April 8, 1999. The commenter's rationale for these requests is that these service bulletins provide for the incorporation of the improved fasteners and compliance with the proposed action.

We do not concur that any change is necessary. Comparison of the effectivity listings of the original issue and Revision 1 of Boeing Service Bulletins 737–27A1214 and 767–27A0159 show that both issues of these service bulletins list the same affected airplane line numbers. Thus, we find that revising Table 1 as the commenter suggests would add no value and may be confusing for operators. No change to the final rule is necessary in this regard.

In addition, because Note 2 of this AD already states that the original issue of Boeing Alert Service Bulletin 737–27A1214 is acceptable for compliance with the applicable action in this AD, we find no need to also list that service bulletin in Table 2 of this AD. No change to this final rule is necessary in this regard.

Issue Action as a Supersedure of AD 98–13–12 R1

One commenter suggests that the proposed AD should supersede AD 98–13–12 R1, amendment 39–10930 (63 FR 68165, December 10, 1998). The commenter states that the proposed actions in this AD remove the unsafe condition addressed by AD 98–13–12 R1. The commenter also notes that operators cannot comply with both AD 98–13–12 R1 and the proposed AD because this proposed AD requires rudder pedal pushrod fasteners to be torqued at a lower value than that required by AD 98–13–12 R1. The commenter is concerned that operators will need to request alternative methods of compliance for both of these ADs.

We do not concur with the request to supersede AD 98–13–12 R1. That AD requires a one-time inspection to detect discrepancies of the fasteners that connect the pushrods to the rudder pedal assemblies, and corrective actions, if necessary, on certain Boeing Model 737, 747, 757, 767, and 777 series airplanes. The actions in that AD are intended to prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane. Corrective actions in that AD include tightening nuts and bolts to specified torque limits, installing missing fasteners, and replacing incorrectly installed fasteners with new fasteners, as applicable. This new AD requires replacement of existing rudder pedal pushrod fasteners for both the captain's and first officer's pedal assemblies with new, improved fasteners that use self-locking, castellated nuts and cotter pins through the bolts for nut retention. We consider the actions in this AD to provide an improved level of safety over that provided by the actions in AD 98–13–12 R1.

Since the compliance time for the actions required by AD 98–13–12 R1 (90 days after July 6, 1998, which is the effective date of AD 98–13–12, amendment 39–10600 (63 FR 33246, June 17, 1998)) has passed, most airplanes should already be in compliance with that AD. However, we find that accomplishment of the requirements of that AD is necessary in the event that an affected airplane is added to the U.S. Register. In that event, we find that accomplishment of paragraph (a) of this AD before the airplane is added to the U.S. Register is acceptable for compliance with AD 98–13–12 R1. We have added a new paragraph (b) to this AD (and reordered subsequent paragraphs) accordingly.

With regard to the commenter's perceived need for operators to apply for an alternative method of compliance, we note that, once the new, improved fasteners are installed according to this AD, the torque requirements for the old fasteners referenced in AD 98–13–12 R1 no longer apply. Further, the actions in this AD are not considered "terminating action" for AD 98–13–12 R1 because that AD did not contain any repetitive actions to terminate. No change to this final rule is necessary in this regard.

Extend Compliance Time

One commenter requests that we extend the compliance time for the proposed requirements from 18 to 36 months after the effective date of this AD. The commenter's rationale is that there have been very few reports of disconnection of the rudder pedal pushrod from the rudder pedal assembly, and all affected airplanes have previously been inspected per AD 98–13–12 R1.

We do not concur. In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, as well as the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the small amount of time necessary to perform the inspection (one hour). We have also considered that the service bulletins have been available for some time, and many operators have already accomplished the required actions. In light of all of these factors, the FAA finds an 18-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time wherein airplanes will be able to continue to operate without compromising safety, and the majority of operators will be able to do the required work during a scheduled maintenance visit. No change to the final rule is necessary in this regard.

Revise Cost Impact Estimate

One commenter requests that the FAA revise the proposed rule to increase the cost estimate. The commenter states that it has compiled its own cost estimate for this inspection, based on actual direct costs incurred, and estimates the costs associated with the proposed AD as $125.76 for labor and $226.00 for materials per airplane, for a total of $351.76 per airplane.

We do not concur with the request. With regard to the number of work hours necessary to accomplish the actions in this AD, the cost impact information describes only the "direct" costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions, specified as 1 work hour in the cost impact information below, was provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any

AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

With regard to the cost of materials, the cost of parts necessary to accomplish the required actions, specified as approximately $75 in the cost impact information below, was provided to the FAA by the manufacturer based on the best data available to date. The commenter did not specify what materials its cost estimate included, so it is impossible for the FAA to know the reason for the difference between our cost estimate and the commenter's. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 6,097 Model 737–100, –200, –300, –400, and –500 series airplanes; and Model 747, 757, 767, and 777 series airplanes; of the affected design in the worldwide fleet. The FAA estimates that 2,338 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $75 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $315,630, or $135 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–22–13 Boeing: Amendment 39–12492. Docket 2000–NM–395–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; and Model 747, 757, 767, and 777 series airplanes; as listed in the following applicable Boeing service bulletin specified in the following table; certificated in any category:

TABLE 1.—APPLICABLE SERVICE BULLETINS

Model	Service bulletin	Revision level	Date
737–100, –200, –300, –400, and –500	Boeing Service Bulletin 737–27A1214	1	July 1, 1999.
747	Boeing Alert Service Bulletin 747–27A2373	Original	June 24, 1999.
757	Boeing Alert Service Bulletin 757–27A0129	Original	March 25, 1999.
767	Boeing Alert Service Bulletin 767–27A0159	Original	June 10, 1999.
777	Boeing Alert Service Bulletin 777–27A0030	Original	April 1, 1999.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder control due to improperly torqued fasteners that connect the pushrod to the rudder pedal assembly, which could result in loss of controllability of the airplane, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD: Replace the rudder pedal pushrod fasteners for both the captain's and first officer's pedal assemblies with new, improved fasteners that use self-locking, castellated nuts and cotter pins through the bolts for nut retention, per the applicable Boeing service bulletin listed in the following table:

TABLE 2.—APPLICABLE SERVICE BULLETINS

Model	Service bulletin	Revision level	Date
737–100, –200, –300, –400, and –500	Boeing Service Bulletin 737–27A1214	1	July 1, 1999.
747	Boeing Alert Service Bulletin 747–27A2373	Original	June 24, 1999.
757	Boeing Alert Service Bulletin 757–27A0129	Original	March 25, 1999.
767	Boeing Alert Service Bulletin 767–27A0159	Original	June 10, 1999.
767	Boeing Service Bulletin 767–27A0159	1	April 5, 2001.
777	Boeing Alert Service Bulletin 777–27A0030	Original	April 1,1999.

Note 2: Replacement actions that include replacing the rudder pedal pushrod fasteners for both the captain's and first officer's pedal assemblies with new, improved fasteners, which use self-locking, castellated nuts and cotter pins through the bolts for nut retention, accomplished before the effective date of this amendment, per Boeing Alert Service Bulletin 737–27A1214, dated April 8, 1999, are considered acceptable for compliance with the applicable actions specified in this amendment.

Compliance With AD 98–13–12 R1

(b) Accomplishment of the requirements of paragraph (a) of this AD before the airplane is added to the U.S. Register is acceptable for compliance with AD 98–13–12 R1, amendment 39–10930.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Service Bulletin 737–27A1214, Revision 1, dated July 1, 1999; Boeing Alert Service Bulletin 747–27A2373, dated June 24, 1999; Boeing Alert Service Bulletin 757–27A0129, dated March 25, 1999; Boeing Alert Service Bulletin 767–27A0159, dated June 10, 1999; Boeing Service Bulletin 767–27A0159, Revision 1, dated April 5, 2001; or Boeing Alert Service Bulletin 777–27A0030, dated April 1, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on December 6, 2001.

Issued in Renton, Washington, on October 24, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27215 Filed 10–31–01; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038–AB87

Listing Standards and Conditions for Trading Security Futures Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is promulgating rules 41.21 through 41.25 under the Commodity Exchange Act ("CEA").[1] These rules relate to new statutory provisions enacted by the Commodity Futures Modernization Act of 2000 ("CFMA")[2] that specify listing standards and conditions for trading of security futures products. These rules also establish requirements related to the self-certification of rules and rule amendments, reporting of data, speculative position limits, and special provisions relating to contract design for cash settlement and physical delivery of security futures products.

EFFECTIVE DATE: November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Acting Director, Division of Economic Analysis; Thomas M. Leahy, Jr., Financial Instruments Unit Chief, Division of Economic Analysis; or Gabrielle A. Sudik, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5000. E-mail: (*RShilts@cftc.gov*), (*TLeahy@cftc.gov*), or (*GSudik@cftc.gov*).

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission today promulgates new rules 41.21 through 41.25 under 17 CFR part 41, pursuant to the CEA as amended by the Commodity Futures Modernization Act of 2000 (7 U.S.C. 1 *et seq.*, as amended by Appendix E of Pub. L. No. 106–554, 114 Stat. 2763).

I. Background

A. Overview

On December 21, 2000, the CFMA was signed into law. Among other things, the CFMA lifted the ban on single stock and narrow-based stock index futures ("security futures").[3] In addition, the CFMA established a framework for the joint regulation of security futures products[4] by the CFTC and the Securities and Exchange Commission ("SEC").[5] Section 2(a)(1)(D) of the CEA and Section 6(h) of the Securities Exchange Act of 1934, as amended by the CFMA, provide that in order for a board of trade to list security futures products, the security futures products and the securities underlying the security futures products must meet a number of standards and conditions termed "listing standards."

Security futures products may be traded on any board of trade that is designated as a contract market by the Commission pursuant to Section 5 of the CEA or that is registered with the Commission as a derivatives transaction execution facility ("DTEF") pursuant to Section 5a of the CEA. In addition, Section 5f(a) of the CEA permits certain entities that are otherwise regulated by the SEC to be designated contract markets for the limited purpose of trading security futures products. Specifically, any board of trade that is registered with the SEC as a national securities exchange pursuant to Section 6(a) of the Exchange Act, is registered with the SEC as a national securities association pursuant to Section 15A(a) of the Exchange Act, or is an alternative trading system ("ATS") as defined by Section 1a(1) of the CEA shall be a designated contract market in security futures products if certain conditions are met.[6]

On July 20, 2001, the Commission published for comment proposed rules 41.21 through 41.25,[7] which addressed issues related to listing standards and established uniform requirements related to position limits, as well as provisions to minimize the potential for manipulation and disruption to the futures markets and underlying securities markets.[8] The proposed rules also related to the allowable types of securities underlying security futures products; settlement procedures; who may deal in security futures products; restrictions on dual trading; and rules governing surveillance, audit trails, trading halts, and margin requirements.

It should be noted that in addition to satisfying the listing standards of the CEA, security futures products must conform to listing standards that a national securities exchange or national securities association files with the SEC under Section 19(b) of the Exchange Act.[9] In addition, Section 6(h)(3)(C) of the Exchange Act imposes the additional requirement that the exchange or association's listing standards for security futures products must be no less restrictive than comparable listing standards for security options. On September 5, 2001, the SEC issued guidance for boards of trade as to the listing standards that would satisfy this requirement.[10]

B. The Proposed Rules

The Commission proposed rule 41.21 to address the statutory requirements for securities that may underlie security futures products.[11] Under the proposed rules, eligible securities must be securities registered pursuant to Section 12 of the Exchange Act and must be common stock or other equity securities as the Commission and the SEC deem appropriate. The proposed rules further provided that the securities must conform to any listing standards the designated contract market or registered DTEF files with the SEC.

The Commission proposed rule 41.22 to make it unlawful for a designated contract market or registered DTEF to list for trading or execution a security futures product unless it provided the Commission with a certification that the security futures product and the board of trade meet specified requirements set forth in the CEA.[12] Accordingly, proposed rule 41.22 would require designated contract markets and registered DTEFs to certify that they meet the requirements of Section 2(a)(1)(D)(i) of the CEA. That rule required certifications regarding the types of securities underlying security futures products; the payment and delivery of security futures products; who may trade security futures products; dual trading; anti-manipulation provisions; coordinated surveillance; audit trails; trading halts; and margin requirements.

With respect to the coordinated surveillance requirement, Section 2(a)(1)(D)(i)(VIII) of the CEA requires designated contract markets and registered DTEFs on which security futures products are traded to coordinate surveillance with markets that trade the underlying security or any related security, in order to detect manipulation and insider trading. This requirement was proposed to be implemented by paragraph (g) of proposed Section 41.22, which would require that a board of trade certify that it is a full member of the Intermarket Surveillance Group (the "ISG").[13]

Proposed rule 41.23 described the procedures for filing documents with the Commission before a designated contract market or registered DTEF could trade a security futures product. Specifically, proposed rule 41.23(a) described the documents that must be filed with the Commission, including documents and certifications required by proposed rules 41.22 and 41.25. Proposed rule 41.23(b) described the procedures for voluntary submission by designated contract markets and registered DTEFs for Commission approval of security futures products, as permitted by Section 5c(c)(2) of the CEA. The proposed rule noted that notice designated contract markets are not permitted to request Commission approval of security futures products, since they are exempt from the provisions of 5c of the CEA by virtue of Section 5f(b)(1)(D) of the CEA.

Proposed rule 41.24 required designated contract markets (including notice designated contract markets) and registered derivatives clearing organizations to file with the Commission a copy of any rule or rule amendment. Proposed paragraph (b) mandated that the procedures of paragraph (a) also apply to the self-certification of rules relating to security futures products by registered DTEFs, notwithstanding the provisions of rule 37.7. Proposed paragraph (c) allowed a designated contract market, registered

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[1] 7 U.S.C. 1 *et seq.*

[2] Pub. L. No. 106–554, 114 Stat. 2763 (December 21, 2000).

[3] *See* Section 251(a) of the CFMA. This trading previously was prohibited by Section 2(a)(1)(B)(v) of the CEA.

[4] The term "security futures product" is defined in Section 1a(32) of the CEA and Section 3(a)(56) of the Exchange Act to mean "a security future or any put, call, straddle, option, or privilege on any security future." The term "security future" is defined in Section 1a(31) of the CEA and Section 3(a)(55)(A) of the Exchange Act to include futures contracts on individual securities and on narrow-based security indexes. The term "narrow-based security index" is defined in Section 1a(25) of the CEA and Section 3(a)(55)(B) of the Exchange Act. Because the CFMA also provides that options on security futures cannot be traded until at least December 21, 2003, security futures are the only security futures product that may be available for trading until that date.

[5] The CFMA also prescribes the dates on which security futures trading can commence. Specifically, trading on a principal-to-principal basis between eligible contract participants was not permitted until August 21, 2001, and retail transactions cannot commence until December 21, 2001. Both starting dates are conditioned upon the registration of a futures association as a national securities association under the Exchange Act. *See* Section 202(a) of the CFMA; Section 6(g)(5) of the Exchange Act.

[6] *See* 66 FR 44960 (August 27, 2001). In that notice, the Commission adopted new regulations that provide notice registration procedures for a national securities exchange, a national securities association, or an alternative trading system to become a designated contract market in security futures products. By registering with the Commission, a national securities exchange, a national securities association, or an alternative trading system is, by definition, a designated contract market for purposes of trading security futures products. Hence, references in these rules to designated contract markets include notice designated contract markets, except where otherwise noted.

[7] *See* 66 FR 37932 (July 20, 2001).

[8] Additional rules related to trading halts and the cash settlement of security futures products were proposed in a joint rulemaking by the Commission and the SEC. See 66 FR 45903 (August 30, 2001).

[9] *See* Section 6(h)(2) of the Exchange Act.

[10] *See* Division of Market Regulation Staff Legal Bulletin No. 15 (September 5, 2001). The Staff Legal Bulletin is available on the SEC's website at http://www.sec.gov/interps/legal/mrslb15.htm.

[11] *See* Sections 2(a)(1)(D)(i)(I) and (III) of the CEA, as created by Section 251 of the CFMA.

[12] *See* Section 2(a)(1)(D)(vii) of the CEA.

[13] The Intermarket Surveillance Group was created under the auspices of the SEC in 1983 as a forum to ensure that national securities exchanges and national securities associations adequately share surveillance information and coordinate inquiries and investigations designed to address potential intermarket manipulations and trading abuses. All national securities exchanges and national securities associations are full members of the ISG. Full members routinely share a great deal of surveillance and investigatory information, and this framework has proven to be an essential mechanism to ensure that there is adequate information sharing and investigatory coordination for potential intermarket manipulations and trading abuses. In view of the growth of stock index futures contracts, since 1987, several futures exchanges and non-U.S. exchanges and associations have become affiliate members of the ISG. Affiliate members are required to share information on a more limited basis with the ISG.

DTEF, or registered derivatives clearing organization to submit rules for Commission approval, as permitted by Section 5c(c)(2) of the CEA. However, under the proposed rule, notice designated contract markets would not be permitted to request Commission approval of rules, since Section 5f of the CEA exempts these entities from Section 5c(c)(2) of the CEA.

Proposed rule 41.25 established requirements related to data reporting, trading halts, speculative position limits, and certain contract design features related to the settlement of security futures products. The Commission proposed paragraph (a)(1) of rule 41.25 to require designated contract markets and registered DTEFs to comply with Part 16 of the Commission's regulations regarding the daily reporting of market data. Paragraph (a)(2) was reserved for the establishment of rules providing for trading halts for security futures products, which the Commission and the SEC jointly proposed in a separate release.[14]

Paragraph (a)(3) of proposed rule 41.25 required designated contract markets and registered DTEFs to adopt speculative position limits or position accountability rules for listed security futures products. The level of the position limit and whether a position limit is required would depend upon the trading activity and capitalization of the security or securities underlying the security futures product.

Paragraph (b) of proposed rule 41.25 established requirements for security futures products that are cash settled. Paragraph (b) was, in part, reserved for rules relating to acceptable cash settlement prices of security futures products. In this regard, in a separate release, the Commission and the SEC jointly proposed rules relating to the acceptable procedures for setting cash settlement prices for security futures products.[15] Proposed paragraph (c) of rule 41.25 established requirements related to security futures products that are settled by physical delivery of the underlying security or securities.

C. Overview of Comments and Final Rules

The Commission received four letters in response to its request for comment on the proposed rules.[16] Generally, the commenters supported the proposed rules, but objected to, or offered suggested modifications relating to, several individual provisions or requirements.

Except to the extent discussed below, the Commission will adopt the rules as proposed. The Commission has carefully considered the commenters' views on the proposed rules and has adopted several revisions to the proposed rules consistent with those comments.

1. Rule 41.21: Securities Eligible To Underlie Security Futures Products

AMEX suggested that the types of securities underlying security futures products should include exchange-traded funds ("EFTs"), trust issued receipts ("TIRs"), American Depositary Receipts ("ADRs"), and closed-end registered investment companies ("subject securities"). AMEX argued that these products are functionally comparable to common stock in the sense that they represent shares of securities that are registered under Section 12 of the Exchange Act.

The Commission and the SEC agree that ADRs are eligible securities for purposes of rule 41.21 under certain conditions. In this regard, on August 20, 2001, the Commission and the SEC issued a joint order modifying the requirements regarding securities underlying security futures products. In CEA and Section 6(h)(4)(A) of the Exchange Act, the Commissions modified the criteria in Section 2(a)(1)(D)(I) and (III) of the CEA and Sections 6(h)(3)(A) and (D) of the Exchange Act regarding the securities eligible for underlying security futures products. The order permits a depositary share, as defined in Exchange Act rule 12b–2,[17] to underlie a security future and be a component of a narrow-based security index, provided that two conditions are met: (1) The securities underlying the depositary share are registered pursuant to Section 12 of the Exchange Act and (2) the depositary share is registered under the Securities Act of 1933 on Form F–6.

Regarding ETFs, TIRs, and "subject securities," the Commission and the SEC will consider separately the AMEX's request to allow these other securities to underlie security futures products. The Commission and the SEC will also consider what eligibility criteria and listing standards would be appropriate for such other underlying securities. The Commission and the SEC may seek public comment prior to issuing any orders regarding these securities.

Finally, the Commission has clarified the text of rule 41.21 to more clearly state that requirements for listing securities as security futures products relate to the security or securities that underlie security futures contracts.

2. Rule 41.22(d): Who May Trade Security Futures Products

CBOE noted that proposed rule 41.22(d), which lists the persons and entities who may trade or offer security futures products, does not encompass everyone who currently trades on the floor of CBOE; notably, some market makers. The proposed rule provided that only five categories of persons may trade security futures products, "except to the extent otherwise permitted under the Securities Exchange Act of 1934 and the rules and regulations thereunder * * *." The rule was drafted in such a manner because Section 2(a)(1)(D)(i)(V) of the CEA explicitly provides that only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Exchange Act may solicit, accept orders for, or otherwise deal in any transaction in or in connection with security futures products. By including the language "except to the extent otherwise permitted under the Securities Exchange Act of 1934 and the rules and regulations thereunder * * *" the Commission intended to encompass within the rule all persons and entities that are allowed to trade security futures products under the Exchange Act and its rules and regulations.

The Commission notes that brokers and dealers registered with the SEC may notice-register with the Commission to become futures commission merchants or introducing brokers.[18] In addition, it should be noted that associated persons of notice-registered futures commission merchants or introducing brokers are exempt from registration pursuant to Section 4k(5) of the CEA. These persons, however, are presumably permitted to

[14] The proposed rules relating to trading halts for security futures products can be found at 66 FR 45903 (August 30, 2001).

[15] The proposed rules relating to cash settlement for security futures products can be found at 66 FR 45903 (August 30, 2001).

[16] Comments were provided by the Chicago Mercantile Exchange ("CME") on August 20, 2001, the Chicago Board Options Exchange ("CBOE") on August 20, 2001, the American Stock Exchange ("AMEX") on August 31, 2001, and the Intermarket Surveillance Group ("ISG") on September 10, 2001.

[17] 17 CFR 240.12b–2.

[18] Section 4f of the CEA, as amended by Section 252(b) of the CFMA, allows brokers and dealers registered with the SEC to register with the Commission as futures commission merchants or introducing brokers so long as they adhere to certain requirements regarding transactions in connection with security futures products. The Commission adopted rules regarding the procedures for brokers or dealers to notice-register as a futures commission merchant or introducing broker. *See* 66 FR 43080 (August 17, 2001).

trade security futures products under the Exchange Act, and therefore qualify for certification under rule 41.22(d).

3. Rule 41.22(g): Required Membership in the Intermarket Surveillance Group

Three commenters expressed concern about the provision in proposed rule 41.22(g) that would require boards of trade trading security futures products to be full members of the Intermarket Surveillance Group in order to meet the coordinated surveillance requirement of Section (2)(a)(1)(D)(i)(VIII) of the CEA.[19] The Intermarket Surveillance Group expressed its belief that requiring ISG membership in order to trade security futures products went beyond the requirements of the CFMA, exceeds the Commission's authority, and is potentially anti-competitive. The ISG noted that membership in the ISG is not automatic, and one current member could effectively veto membership by an applicant and thus could preclude trading of security futures products by such interested board of trade. The ISG expressed strong support for a rule that would ensure coordinated surveillance among markets and noted a willingness to work with the Commission in fostering effective surveillance coordination; however, it stated that rule 41.22(g) as proposed was an inappropriate means of achieving coordinated surveillance.

CME also expressed concern that not all boards of trade would be accepted as full members of the ISG, or that they may not be accepted quickly enough so that the boards of trade could commence trading security futures products when allowed to do so under the CFMA. CME suggested that the final rule include a grace period for boards of trade that have affiliate membership status and have applied for full membership and have satisfied the membership criteria applicable to national securities exchanges but have not yet been formally accepted.

AMEX indicated that the CFTC lacked the statutory authority to compel all boards of trade that wish to trade security futures products to be full members of the ISG. Furthermore, AMEX pointed out that a board of trade may only become a member of the ISG with the unanimous approval of all of its members. Thus, membership is not guaranteed, and in any case, the application process may be lengthy.

In light of the foregoing concerns regarding the full ISG membership requirement in proposed rule 41.22(g), the Commission has determined to defer consideration of this matter at this time. The final rule published today simply sets forth the requirement that a board of trade certify that it has in place procedures for coordinated surveillance. The Commission and the SEC are addressing the appropriate means of ensuring that this statutory requirement is satisfied, and the Commissions will consider whether it is appropriate to publish final rules related to the coordinated surveillance requirement of the CEA and the Exchange Act in a separate joint rulemaking related to trading halts and requirements for cash settlement.[20] All comments received by the Commission regarding membership in the ISG in response to the instant rulemaking will be considered by both agencies in the promulgation of the final joint release. Further, the Commission would welcome additional comment concerning membership in the ISG in response to the joint rule proposal.

4. Rules 41.22(g), 41.22(h), and 41.22(i): Certifications Required by Alternative Trading Systems

CBOE raised a point applicable to proposed rules 41.22(g), (h), and (i)—namely, that the exception to the required certifications for the listing standards in these rules should only apply to alternative trading systems that are members of a national securities exchange or national securities association; and that the exception, by the terms of the CEA, should not apply to national securities exchanges or national securities associations themselves.

After considering this comment, the Commission has revised proposed rules 41.22(g), (h), and (i) to clarify what entities are exempt from making the certifications required by those rules, consistent with the language of the CEA and the Exchange Act. The final rules exempt only alternative trading systems from making these three certifications. Furthermore, the rules are clarified to exempt only those alternative trading systems that are members of either national security exchanges that have the required procedures in place, or national security associations that have the required procedures in place.

5. Rules 41.22(i) and 41.25(a)(2): Trading Halts

CBOE stated that proposed rule 41.22(i) should be clarified to explain whether the circuit breakers already in place on boards of trade are sufficient to satisfy the proposed rules regarding trading halts. The Commission notes that proposed rule 41.25(a)(2) was reserved to set forth requirements regarding trading halts. As with requirements related to cash settlement procedures for security futures products, proposed rules related to trading halt requirements were set forth in a separate joint rulemaking by the Commission and the SEC.[21] This CBOE comment will be addressed by the Commission and the SEC in promulgating those final rules.

6. Rule 41.25(a)(1): Reporting of Data

AMEX suggested that notice designated contract markets (as opposed to designated contract markets and registered DTEFs) should be exempt from the daily reporting requirements of proposed 41.25(a) if the notice designated contract market files comparable information with the SEC. The Commission routinely collects the information required by part 16 of the regulations from all futures exchanges, and it intends to do so for all exchanges trading security futures products. The Commission is unaware of any current or planned daily data collection by the Securities and Exchange Commission that is comparable to the data specified in Part 16. However, the Commission's market surveillance staff will consider requests by an exchange seeking relief from pertinent parts of these reporting requirements for which data already are available to the Commission or are not useful to the Commission's surveillance program.

7. Rule 41.25(a)(3): Speculative Position Limit Provisions

Three commenters commented on the proposed rules regarding the requirements for speculative position limits or position accountability. Two commenters noted that the proposed position limit provisions differ somewhat from the limits imposed on security and securities index options.[22] Differences cited include the specification of limits on a net, rather than a gross, position basis; the establishment of numerical limit levels that differ from those imposed on security and securities index options; and the fact that the proposed limits would apply only during the last five days of trading.

CME suggested that the Commission adopt a position accountability standard for all security futures products and not require that speculative limits be imposed for contracts on less liquid securities, as specified in the proposed rules. CBOE and AMEX did not object to the proposed speculative position limit provisions, but suggested that the

[19] CME, AMEX and ISG.

[20] *See* 66 FR 45903.

[21] *See* 66 FR at 45918.

[22] CBOE and AMEX.

Commission coordinate with the SEC so that speculative position limit rules for security and securities index futures products are the same as those applicable for security and securities index options. Barring that, these two commenters recommended that the Commission adopt position limit provisions that more closely resemble existing limits on option index options. In addition, CME and AMEX asked that the term "least liquid" be clarified in connection with applying speculative position limits for narrow-based stock indexes, and that this requirement be linked to the average daily trading volume of the average security in an index. Finally, CME recommended that the "six months" of calculations specified in the proposed rules should be made no more frequently than once a month.

After careful consideration of the comments, the Commission is adopting the speculative limit provisions as set forth in the proposed rules, with two modifications. In this regard, the Commission is modifying proposed rule 41.25(a)(3) by adding a new paragraph (iv) to clarify how "average daily trading volume" is to be calculated in determining whether speculative position limits are required and if so, the level that is applicable. These changes require calculations to be made monthly and establish procedures for implementing new levels when required, consistent with the suggestions of CME and AMEX. Further, for clarification, the term "least liquid security" in rule 41.25(a)(3)(ii) has been changed to the security with the lowest average daily trading volume.

In regard to CME's suggestion that the Commission adopt a position accountability standard for all security futures products, the Commission continues to believe that speculative position limits are appropriate for contracts based on securities that are less liquid or less highly capitalized. Allowing position accountability only for contracts that overlie the most liquid and highly capitalized securities is consistent with the Commission's surveillance experience and its long-standing approach regarding position accountability. Contracts based on less liquid and lower capitalized securities are more susceptible to manipulation or price distortions, and thus, the Commission believes that speculative position limits are appropriate measures to minimize the potential for these abuses.

In regard to the commenters' observations about differences in the proposed security futures product speculative position limits relative to existing security and securities index options limits, the Commission notes that the provisions are consistent with the Commission's customary approach for all other futures markets. As with other markets, the Commission believes that the speculative position limit and position accountability provisions set forth in the proposal are necessary to effectively oversee the markets and are consistent with the obligation in Section 2(a)(1)(D)(i)(VII) of the CEA that a designated contract market or registered DTEF maintain procedures to prevent manipulation of the price of the security futures product and the underlying security or securities.

As the Commission noted in the proposed rulemaking, the Commission's proposed position limit levels were set at levels that are generally comparable but not identical to the limits that currently apply to options on individual securities. The differences mainly reflect certain provisions adopted for commodity futures contracts that reflect the special characteristics of those markets. In this regard, the proposed position limit requirements for security futures differ from individual security option position limit rules in that the limits would apply only to net positions in an expiring security futures contract during its five last trading days. The Commission believes that this provision is appropriate since, consistent with its experience in conducting surveillance of other futures markets, it is during the time period near contract expiration that the potential for manipulation based on an extraordinarily large net futures position would most likely occur.

The Commission also believes that position accountability is appropriate for contracts on highly liquid and capitalized securities. In this regard, for security futures contracts based on a security that has an average daily trading volume greater than 20 million shares, the Commission believes that the threat of manipulation is sufficiently reduced such that an exchange could substitute a position accountability rule in lieu of a fixed position limit. Under such a rule, a trader holding a position in a security future that exceeded a threshold level determined by the exchange (e.g., no more than 22,500 contracts of 100 shares) would agree to provide information to the exchange regarding that position and consent to halt increasing the position if requested by the exchange.

8. Rule 41.25(b): Cash Settlement Price

CBOE stated that the cash settlement price for security futures products should be based on the underlying securities' opening price. Proposed rule 41.25(b) provided that, "For cash-settled security futures products, the cash-settlement price must be reliable and acceptable, be reflective of prices in the underlying securities market and be not readily susceptible to manipulation." Part of proposed rule 41.25(b) was reserved for specific rules regarding acceptable practices for the calculation of cash settlement prices; text will be added to paragraph (b) in a future final rule. In a separate rulemaking issued jointly with the SEC, the Commission proposed that cash settlement be based on opening prices, consistent with the CBOE comment.[23] Accordingly, the Commission and the SEC will address CBOE's comment in the final rulemaking for that proposal. The Commission notes that one line of text has been removed from proposed rule 41.25(b), due to changes made to the text of that proposed rule in the joint rulemaking. This change is not substantive.

9. Applicability of Rules to Notice-Registered Entities

CBOE requested clarification as to whether the proposed rules applied to all boards of trade, including those that are notice-registered with the Commission. The Commission recently issued final rules regarding notice procedures for national securities exchanges, national securities associations, and alternative trading systems to become a designated contract market in security futures products.[24] In accordance with those rules and with Section 5f of the CEA, any board of trade that registers with the Commission as a notice designated contract market is, by definition, a designated contract market. Hence, the rules adopted today apply to designated contract markets under Section 5 of the CEA, registered DTEFs under Section 5a of the CEA, and notice designated contract markets under Section 5f of the CEA. It should be noted, however, that notice designated contract markets are exempt from certain provisions of the CEA in accordance with Section 5f(b)(1) of the CEA. The final rules, therefore, apply to all boards of trade that trade security futures products, except where otherwise explicitly noted in the rules.

II. Administrative Procedure Act

The Administrative Procedure Act (the "APA") generally requires that rules promulgated by an agency not be made effective less than thirty days after publication, except for, among other things, instances where the agency finds good cause to make a rule effective sooner, and has published that finding together with the rule.[25] Pursuant to the CFMA, beginning on August 21, 2001, eligible contract participants may trade security futures products on a principal-to-principal basis. The rules being published today affect the products that eligible contract participants may trade on a designated contract market or registered DTEF. The CFTC believes good cause exists for the rules to become effective immediately, so that boards of trade can list security futures products for trading by eligible contract participants, as contemplated by the CFMA. Furthermore, to the extent that these rules have been promulgated in substantially the same form as the proposed rules, any affected boards of trade are already familiar with the rules. Therefore, the Commission concludes that there is good cause for making these rules effective immediately upon publication.

III. Costs and Benefits of the Rules

Section 15 of the CEA requires the Commission to consider the costs and benefits of its action before issuing a new regulation.[26] The Commission understands that, by its terms, Section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does it require that each proposed rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, Section 15 simply requires the Commission to "consider the costs and benefits" of its action.

Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

These rules constitute one part of a package of related rule provisions. The rules provide guidance and establish procedures for trading facilities to comply with governing laws related to security futures products. The Commission considered the costs and benefits of these rules, in light of the specific areas of concern identified in Section 15.[27] The rules should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets or on the risk management practices of trading facilities or others. The rules also should have no material effect on the protection of market participants and the public and should not impact the efficiency and competition of the markets.

The Commission solicited comments about its consideration of these costs and benefits.[28] The Commission received no comments. Accordingly, the Commission has determined to adopt the regulations discussed above. Changes made to the proposed rules as a result of the comments do not affect the Commission's consideration of the costs and benefits of this rulemaking.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA") of 1995, 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This rulemaking contains information collection requirements within the meaning of the PRA. The Commission submitted a copy of this part to the Office of Management and Budget (OMB) for its review in accordance with 44 U.S.C. 3507(d).

Collection of Information: Part 41, Relating to Security Futures Products, OMB Control Number 3038–0059.

No comments were received in response to the Commission's invitation in the notice of proposed rulemaking to comment on any paperwork burden associated with these rules.[29] *See* 44 U.S.C. 3507(d)(2).

Copies of the information collection submission to OMB are available from the Commission from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules adopted herein would affect contract markets, registered DTEFs, and derivatives clearing organizations. The Commission previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA. In its previous determinations, the Commission concluded that contract markets, registered derivatives trading execution facilities, and derivatives clearing organizations are not small entities for the purpose of the RFA.[30] In the proposed rulemaking, the Chairman certified that these rules would not have a significant economic impact on a substantial number of small entities.[31] The Commission invited comment on this determination, but received no comments.

V. Statutory Authority

The Commission has the authority to propose these rules pursuant to Sections 1a, 2(a)(1)(D), and 5c(c) of the CEA, 7 U.S.C. 1a, 2(a)(1)(D), and 7a–2(c).

List of Subjects in 17 CFR Part 41

Reporting and recordkeeping requirements, Security futures products.

Text of Rules

In accordance with the foregoing, Title 17, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 41—SECURITY FUTURES PRODUCTS

1. The authority citation for Part 41 continues to read as follows:

Authority: Sections 251 and 252, Pub. L. 106–554, 114 Stat. 2763; 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a.

2. Subpart C is added to read as follows:

Subpart C—Requirements and Standards for Security Futures Products

Sec.

41.21 Requirements for underlying securities.
41.22 Required certifications.
41.23 Listing of security futures products for trading.
41.24 Rule amendments to security futures products.
41.25 Additional conditions for trading security futures products.

[23] *See* 66 FR at 45918–19.

[24] *See* 66 FR 44960 (August 27, 2001).

[25] 5 U.S.C. 553(d)(3).

[26] 7 U.S.C. 19.

[27] 66 FR at 37936.

[28] 66 FR at 37936.

[29] 66 FR at 37936.

[30] *See* 47 FR 18618, 18619 (April 30, 1982) (contract markets); 66 FR 42256, 42268 (August 10, 2001) (registered derivatives trading execution facilities); 66 FR 45604, 45609 (August 29, 2001) (derivatives clearing organizations).

[31] *See* 5 U.S.C. 605(b).

Subpart C—Requirements and Standards for Listing Security Futures Products

§ 41.21 Requirements for underlying securities.

(a) *Security futures products based on a single security.* A futures contract on a single security is eligible to be traded as a security futures product only if:

(1) The underlying security is registered pursuant to Section 12 of the Securities Exchange Act of 1934;

(2) The underlying security is:

(i) Common stock, or

(ii) Such other equity security as the Commission and the SEC jointly deem appropriate; and,

(3) The underlying security conforms with the listing standards for the security futures product that the designated contract market or registered derivatives transaction execution facility has filed with the SEC under Section 19(b) of the Securities Exchange Act of 1934.

(b) *Security futures product based on two or more securities.* A futures contract on an index of two or more securities is eligible to be traded as a security futures product only if:

(1) The index is a narrow-based security index as defined in Section 1a(25) of the Act;

(2) The securities in the index are registered pursuant to Section 12 of the Securities Exchange Act of 1934;

(3) The securities in the index are:

(i) Common stock, or

(ii) Such other equity securities as the Commission and the SEC jointly deem appropriate; and,

(4) The index conforms with the listing standards for the security futures product that the designated contract market or registered derivatives transaction execution facility has filed with the SEC under Section 19(b) of the Securities Exchange Act of 1934.

§ 41.22 Required certifications.

It shall be unlawful for a designated contract market or registered derivatives transaction execution facility to list for trading or execution a security futures product unless the designated contract market or registered derivatives transaction execution facility has provided the Commission with a certification that the specific security futures product or products and the designated contract market or registered derivatives transaction execution facility meet, as applicable, the following criteria:

(a) The underlying security or securities satisfy the requirements of § 41.21;

(b) If the security futures product is not cash settled, arrangements are in place with a clearing agency registered pursuant to section 17A of the Securities Exchange Act of 1934 for the payment and delivery of the securities underlying the security futures product;

(c) Common clearing. [Reserved]

(d) Only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 and the rules and regulations thereunder, may solicit, accept any order for, or otherwise deal in any transaction in or in connection with security futures products;

(e) If the board of trade is a designated contract market pursuant to section 5 of the Act or is a registered derivatives transaction execution facility pursuant to section 5a of the Act, dual trading in these security futures products is restricted in accordance with § 41.27;

(f) Trading in the security futures products is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities, consistent with the conditions for trading of § 41.25;

(g) Procedures are in place for coordinated surveillance among the board of trade, any market on which any security underlying a security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading. A board of trade that is an alternative trading system does not need to make this certification, provided that:

(1) The alternative trading system is a member of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934; and

(2) The national securities association or national securities exchange of which the alternative trading system is a member has in place such procedures;

(h) An audit trail is in place to facilitate coordinated surveillance among the board of trade, any market on which any security underlying a security futures product is traded, and any market on which any related security is traded. A board of trade that is an alternative trading system does not need to make this certification, provided that:

(1) The alternative trading system is a member of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934; and

(2) The national securities association or national securities exchange of which the alternative trading system is a member has in place such procedures;

(i) Procedures are in place to coordinate regulatory trading halts between the board of trade and markets on which any security underlying the security futures product is traded and other markets on which any related security is traded. A board of trade that is an alternative trading system does not need to make this certification, provided that:

(1) The alternative trading system is a member of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934; and

(2) The national securities association or national securities exchange of which the alternative trading system is a member has in place such procedures; and

(j) The margin requirements for the security futures product will comply with the provisions specified in § 41.43 through § 41.48.

§ 41.23 Listing of security futures products for trading.

(a) *Initial listing of products for trading.* To list new security futures products for trading, a designated contract market or registered derivatives transaction execution facility shall submit to the Commission at its Washington, DC headquarters, either in electronic or hard-copy form, to be received by the Commission no later than the day prior to the initiation of trading, a filing that:

(1) Is labeled "Listing of Security Futures Product;"

(2) Includes a copy of the product's rules, including its terms and conditions;

(3) Includes the certifications required by § 41.22;

(4) Includes a certification that the terms and conditions of the contract comply with the additional conditions for trading of § 41.25; and

(5) If the board of trade is a designated contract market pursuant to section 5 of the Act or a registered derivatives transaction execution facility pursuant to section 5a of the Act, it includes a certification that the security futures product complies with the Act and rules thereunder.

(b) *Voluntary submission of security futures products for Commission approval.* A designated contract market or registered derivatives transaction execution facility may request that the Commission approve any security futures product under the procedures of § 40.5 of this chapter, provided however that the registered entity shall include the certification required by § 41.22 with its submission under § 40.5 of this chapter. Notice designated contract markets may not request Commission approval of security futures products.

§ 41.24 Rule amendments to security futures products

(a) *Self-certification of rules and rule amendments by designated contract markets and registered derivatives clearing organizations.* A designated contract market or registered derivatives clearing organization may implement any new rule or rule amendment relating to a security futures product by submitting to the Commission at its Washington, DC headquarters, either in electronic or hard-copy form, to be received by the Commission no later than the day prior to the implementation of the rule or rule amendment, a filing that:

(1) Is labeled "Security Futures Product Rule Submission;'

(2) Includes a copy of the new rule or rule amendment;

(3) Includes a certification that the designated contract market or registered derivatives clearing organization has filed the rule or rule amendment with the Securities and Exchange Commission, if such a filing is required; and

(4) If the board of trade is a designated contract market pursuant to section 5 of the Act or is a registered derivatives clearing organization pursuant to section 5b of the Act, it includes the documents and certifications required to be filed with the Commission pursuant to § 40.6 of this chapter, including a certification that the security futures product complies with the Act and rules thereunder.

(b) *Self-certification of rules by registered derivatives transaction execution facilities.* Notwithstanding § 37.7 of this chapter, a registered derivatives transaction execution facility may only implement a new rule or rule amendment relating to a security futures product if the registered derivatives transaction execution facility has certified the rule or rule amendment pursuant to the procedures of paragraph (a) of this section.

(c) *Voluntary submission of rules for Commission review and approval.* A designated contract market, registered derivatives transaction execution facility, or a registered derivatives clearing organization clearing security futures products may request that the Commission approve any rule or proposed rule or rule amendment relating to a security futures product under the procedures of § 40.5 of this chapter, provided however that the registered entity shall include the certifications required by § 41.22 with its submission under § 40.5 of this chapter. Notice designated contract markets may not request Commission approval of rules.

§ 41.25 Additional conditions for trading for security futures products

(a) *Common provisions.*

(1) *Reporting of data.* The designated contract market or registered derivatives transaction execution facility shall comply with chapter 16 of this title requiring the daily reporting of market data.

(2) *Regulatory trading halts.* [Reserved.]

(3) *Speculative position limits.* The designated contract market or registered derivatives transaction execution facility shall have rules in place establishing position limits or position accountability procedures for the expiring futures contract month. The designated contract market or registered derivatives transaction execution facility shall,

(i) Adopt a net position limit no greater than 13,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month; except where,

(A) For security futures products where the average daily trading volume in the underlying security exceeds 20 million shares, or exceeds 15 million shares and there are more than 40 million shares of the underlying security outstanding, the designated contract market or registered derivatives transaction execution facility may adopt a net position limit no greater than 22,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month; or

(B) For security futures products where the average daily trading volume in the underlying security exceeds 20 million shares and there are more than 40 million shares of the underlying security outstanding, the designated contract market or registered derivatives transaction execution facility may adopt a position accountability rule. Upon request by the designated contract market or registered derivatives transaction execution facility, traders who hold net positions greater than 22,500 (100-share) contracts, or such lower level specified by exchange rules, must provide information to the exchange and consent to halt increasing their positions when so ordered by the exchange.

(ii) For a security futures product comprised of more than one security, the criteria in paragraphs (a)(3)(i)(A) and (a)(3)(i)(B) of this section must apply to the security in the index with the lowest average daily trading volume.

(iii) Exchanges may approve exemptions from these position limits pursuant to rules that are consistent with § 150.3 of this chapter.

(iv) For purposes of this section, average daily trading volume shall be calculated monthly, using data for the most recent six-month period. If the data justify a higher or lower speculative limit for a security future, the designated contract market or registered derivatives transaction execution facility may raise or lower the position limit for that security future effective no earlier than the day after it has provided notification to the Commission and to the public under the submission requirements of § 41.24. If the data require imposition of a reduced position limit for a security future, the designated contract market or registered derivatives transaction execution facility may permit any trader holding a position in compliance with the previous position limit, but in excess of the reduced limit, to maintain such position through the expiration of the security futures contract; provided that the designated contract market or registered derivatives transaction execution facility does not find that the position poses a threat to the orderly expiration of such contract.

(b) *Special requirements for cash-settled contracts.* For cash-settled security futures products, the cash-settlement price must be reliable and acceptable, be reflective of prices in the underlying securities market and be not readily susceptible to manipulation.

(c) *Special requirements for physical delivery contracts.* For security futures products settled by actual delivery of the underlying security or securities, payment and delivery of the underlying security or securities must be effected through a clearing agency that is registered pursuant to section 17A of the Securities Exchange Act of 1934.

Issued in Washington, DC, on October 25, 2001, by the Commission.

Jean A. Webb,

Secretary.

[FR Doc. 01–27320 Filed 10–31–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 84 and 183

46 CFR Part 25

[USCG–1999–6580]

RIN 2115–AF70

Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is requiring domestic manufacturers of vessels to install only certified navigation lights on all newly manufactured uninspected commercial vessels and recreational vessels. This rule aligns the requirements for these lights with those for inspected commercial vessels and with requirements for all other mandatory safety equipment carried on board all vessels. The Coast Guard expects the resulting reduction in the use of noncompliant lights to improve safety on the water.

DATES: This final rule is effective November 1, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of November 1, 2002.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–6580 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Randolph J. Doubt, Project Manager, Office of Boating Safety, Coast Guard, by telephone at 202–267–6810 or by e-mail at *rdoubt@comdt.uscg.mil.* If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard published a notice of proposed rulemaking (NPRM) to establish requirements for approval, certification, installation, and performance of navigation lights on vessels less than 20 meters in length in the **Federal Register** on September 7, 1978 (43 FR 39946), and a supplemental notice on December 29, 1980 (45 FR 85468). It published a notice withdrawing the proposed rulemaking in the **Federal Register** on January 7, 1982 (47 FR 826). The proposed rule was withdrawn because a newly established voluntary standard and Coast Guard enforcement policies were deemed sufficient.

On October 9, 1997, the Coast Guard published in the **Federal Register** (62 FR 52673) a request for comments on whether navigation lights on uninspected commercial vessels and recreational vessels need to be regulated. We received 34 comments. On August 4, 2000, we published a notice of proposed rulemaking (NPRM) entitled Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels in the **Federal Register** (65 FR 47936). We received 11 comments on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

The rule will direct manufacturers of uninspected commercial vessels and recreational vessels to install only navigation lights certified and labeled as meeting the technical requirements of the Navigation Rules. It will standardize the navigation light requirement for uninspected commercial vessels and recreational vessels with the requirement for inspected commercial vessels. This action is consistent with the treatment for all other items of safety equipment.

Previously, only lights specifically manufactured for inspected commercial vessels were regulated. These regulations appear in Title 46 CFR subchapter J-Electrical Engineering, and they state in part that each light must "be certified by an independent laboratory to the requirements of [Underwriters Laboratories, Inc. (UL)] 1104 or an equivalent standard" and be so labeled. The "independent laboratory" must be recognized by the Coast Guard as bonafide and have been placed on a list, which is available from G–MSE–3 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

Rulemakings to establish regulatory controls of navigation lights on uninspected commercial vessels and recreational vessels were proposed in September 1978 and December 1980. They were withdrawn in January 1982 because a newly established voluntary standard and Coast Guard enforcement policies were deemed sufficient to eliminate the need for the regulation. However, by 1997, several entities concerned with recreational boating safety were calling for regulations.

Before April 1997, a manufacturer of navigation lights for uninspected commercial vessel and recreational vessels could voluntarily apply for a "Letter of Acceptance" from the U.S. Coast Guard for its light models. The Coast Guard would compare a laboratory report for each model sent by the manufacturer with the technical requirements of the International and Inland Navigation Rules (together referred to as the "Navigation Rules"). If the reported data indicated that the light met the requirements of the Navigation Rules, the Coast Guard would grant a "Letter of Acceptance," allowing the manufacturer to label the light as "U.S. Coast Guard Accepted." The public often interpreted the acceptance label as meaning that a light was "U.S. Coast Guard Approved."

To eliminate the confusion, the Coast Guard stopped issuing Letters of Acceptance in April 1997. Consequently, vessel manufacturers, owners, surveyors, vessel inspectors, and boarding officials could rely only on a statement from the navigation light manufacturer that a model of light complied with the technical requirements of the Navigation Rules.

In 1997 the National Boating Safety Advisory Council (NBSAC)—representing operators and manufacturers of recreational vessels, State boating officials, and national boating organization—and the National Association of State Boating Law Administrators (NASBLA) passed resolutions asking the Coast Guard to require that navigation lights installed on recreational vessels offered for sale to the public be certified. The Navigation Safety Advisory Council (NAVSAC) passed a similar resolution relating to uninspected commercial vessels. In the report, "Recreational Boat Collision Accident Research," UL recommended that the Coast Guard take stronger measures to ensure that navigation lights installed in recreational vessels meet the requirements established by the Navigation Rules.

A request for comments on the proposed rulemaking was published in the **Federal Register** on October 9, 1997. State law-enforcement personnel, vessel owners, marine professionals (manufacturers and marine surveyors), standard-setting organizations, manufacturers of navigation lights, and a laboratory testing navigation lights submitted comments. Of the 34 respondents, 28 favored the rule. Some expressed concern about installing lights in vessels with bow-high cruising trim angles that tend to obstruct sidelight visibility. While it would not require certification of navigation light installations, the rule will require that the installed lights be certified as compliant with the visibility requirements established by the Navigation Rules. A complete discussion of these comments was included in the NPRM, which may be found in the docket at the locations listed under **ADDRESSES.**

In its response to the October 1997 request for comments, UL stated that during the past 20 years compliance with the Navigation Rules for navigation lights has steadily declined. UL stated that about half of the lights tested have failed to meet minimum performance requirements.

To address this decline in compliance, the rule requires that vessel manufacturers install only lights that are certified. The new requirement will provide evidence of compliance to vessel manufacturers, surveyors, owners, inspectors, and boarding officials. It includes the same requirements as those for navigation lights for inspected commercial vessels; however, the light test requirements are less stringent. It also aligns with the International Navigation Rule requirement (COLREGS) for "Approval" (33 CFR, subchapter D, Annex I.)

The rule does not apply to the replacement of existing navigation lights on vessels completed before the designated effective date.

Discussion of Comments and Changes

Respondents to the NPRM published August 4, 2000, included State law-enforcement officials, a marine safety service, a tug operator, several tug and tow operation companies, and two waterways associations representing the towing industry. Of the nine respondents, four favored the rulemaking.

All opposing comments came from representatives of the towing industry. Some cited the expense of certifying barge mooring lights; however, barge mooring lights are outside the scope of this rule because they are not generally installed by the builder.

Other comments requested that commercial vessel lights be grandfathered. Although the NPRM did not specify that this rulemaking applied to only newly manufactured vessels, that was the original intent. This has been clarified in the final rule by adding an applicability section to the new subpart 25.10 in 46 CFR. We also added a definition section to the new subpart 25.10. Furthermore, only uninspected commercial vessels and recreational vessels are within the rule's scope, as inspected commercial vessels are covered in other regulations.

Another comment recommended that when non-certified lights need to be replaced that they be replaced with certified lights. The Coast Guard disagrees with this comment. A planned amendment to Navigation Rule 38 will grandfather all existing lights, whether installed or on the shelf, implying that original equipment may be replaced in kind.

Comments also expressed concern about bulb "monopolies" resulting from this rulemaking. The labeling requirements call for "identification of the bulb used in the compliance test." Although "identification" will include bulb make along with specifications regarding wattage, rated voltage, and filament configuration, this rule does not preclude the use of any make bulb that allows the performance requirements of the light to be satisfied.

One towing company cited lack of enforcement of the Navigation Rules as the crux of the problem while another objected to using "pre-focus lamps" (lamps with screened lenses designed to meet the sector requirements) rather than "incandescent rough service lamps." Neither of these comments are within the scope of this rule. However, the intent of this rulemaking is to discourage the use of non-compliant lights on uninspected commercial vessels and recreational vessels as a step in enforcing the Navigation Rules. A requirement for "approval," or third-party certification, has always existed in the International Navigation Rules. The intent to establish a similar requirement in the Inland Rules is evidenced by Inland Rule, Annex I, 84.25 Approval, currently marked "reserved." This rule satisfies that intent.

Additionally, the need for this rule is reflected in a memo from Marine Safety Office, New Orleans to the Executive Director, Navigation Safety Advisory Committee that details problems associated with lights noncompliant with the International Navigation Rules and the Inland Rules and includes accident examples implicating improper navigation lights. This memo has been placed in the docket for this rulemaking as supplemental information and may be viewed at the locations listed on the **ADDRESSES** section of this document.

Of those favoring the rulemaking, a comment from a State law-enforcement agency reported that a significant number of collisions occur during the hours of darkness or reduced visibility, and that not seeing the other vessel's navigation lights is commonly cited as the cause. The U.S. Coast Guard agrees with this comment and has placed a letter from the City of Fort Lauderdale and the U.S. Coast Guard's response in the docket for this rulemaking as supplemental information. The letter refers to a horrendous nighttime collision in November 1997, which prompted an accident record review that caused city officials to question the adequacy of the navigation lights.

One comment recommended a more stringent labeling requirement. The Coast Guard agrees and has amended the labeling requirement to read that the label must be permanent and indelible and that it be visible without removing or disassembling the light. Another comment favoring the rulemaking stated that UL 1104 is too stringent as a testing standard. The Coast Guard also agrees with this comment. ABYC A–16, the most basic standard, has been substituted for UL 1104.

The aforementioned comments, combined with those received from UL in response to our original request for comments on October 9, 1997, indicate substantial support for the rulemaking. The UL comments state that more than half of the lights for small craft, which are not regulated, do not comply with minimum Navigation Rule requirements, but most regulated lights, that is, those for commercial vessels, do.

The new rule will be placed in Title 33 CFR, Part 183, subpart M, and not subpart I. We noticed after publication of the NPRM that subpart I applies only to gasoline-powered vessels. To ensure that the regulation properly applies to all uninspected commercial and recreational vessels, as originally stated in the preamble to the NPRM (65 FR 47938), we are recodifying the regulation in a new subpart. This has required that we draft new applicability and definitions sections to be placed in subpart M. These additions do not change the rule.

Regulatory Evaluation

This rule is not a 'significant regulatory action' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs

and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed this rule under that Order. Since we expect the economic effect of this rule to be very minimal, a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is not necessary.

Costs of the Rule

(1) Manufacturers of navigation lights will incur initial costs for laboratory tests to certify that their lights comply with Navigation Rules. This may result in a minor increase in the market price for certified lights. Navigation light manufacturers will pass these costs on to vessel manufacturers. In turn, the vessel manufacturers will charge consumers more. We conclude that these increases should be so small that their effect on vessel manufacturers and consumers will be negligible.

Most recreational vessel manufacturers install navigation lights on their vessels. We have discovered that eight types of lights are now on the market, and each light manufacturer may make multiple models of each type. Our survey of available lights determined that each manufacturer produces an average of 10 models for each type and introduces 3 new models a year. Certification will require that a representative light of each model pass a performance test before it is marketed. Specifically, we identified nine domestic manufacturers of lights that this rule might affect. To conduct a cost analysis involving these nine manufacturers we must allow a one-year delay in the effective date of this rule. The one-year delay will allow the navigation light manufacturers time to alter their products and procedures to meet certification requirements. Consequently, initial costs will not begin to incur until the year 2002, when the rule becomes effective. Given that 3 new models are introduced each year, we will set a period of 15 years over which the analysis of the impacts of this rule will span. For the first year, 2002, we have analyzed the cost of certifying currently available models. For the remaining fourteen years, 2003–2016, we analyze the cost of certifying new models.

An e-mail exchange between the Office of Boating Safety and a navigation light manufacturer regarding costs associated with this rule can be found in the docket for this rulemaking.

In conversations with UL and Imanna Laboratory, testing laboratories approved by the Coast Guard, we developed an estimate of $500 for a performance test of each model. Volume discounts for multiple model tests from these laboratories will decrease the cost of each model to $400. We can therefore calculate a partial cost of the rule as follows.

Types of light	×	No. of models of lights	×	No. of manufacturers	×	Cost per test for each model	=	Total cost
8		10		9		$400		$288,000

To account for the current value of benefits and costs in the future, we determined the present value of this cost to 2001 through discounting. The present value represents the expected value of any benefits or costs-one-time or recurring-discounted by the interest rate compounded over the period of analysis. The Office of Management and Budget requires that all Federal Agencies, including the Department of Transportation, use a standard discount rate of 7 percent, which we incorporate into our cost analysis. A partial calculation of the total cost of the rule is therefore the following:

($288,000)/(1.07)1 = $269,158.88 = Partial Cost 1

This figure is the one-time testing cost for the total of all existing models of lights occurring during the first year of the regulation. If a manufacturer decides to introduce a new model of light, that model will also have to be tested by an independent laboratory approved by the Coast Guard before it can be marketed. When calculating costs, we must also account for the three new models of lights that each manufacturer sends yearly to the market. In order to perform this calculation we sum the cost over the remaining 14 years using a discount rate of 7 percent through the following formula:

$$\sum_{n=2}^{15}\left[(\text{no. of manufacturers})\times(\text{no. of models})\times(\text{testing cost per light})\right]/(1.07)^n$$

We know that the nine manufacturers of navigation lights introduce three new models each year with a testing cost of $400 per model. We can say that the cost associated with testing three new models each year can be calculated by inserting the number of manufacturers, number of models, and testing costs into the above equation,

$$\sum_{n=2}^{15}\left[(9)\times(3)\times(\$400)\right]/(1.07)^n = \$88{,}272.00 = \text{Partial Cost 2}$$

The present value of the total testing over 15 years is therefore:

$269,158.88 + $88,272.00 = $357,430.88

(2) New labeling requirements for the certified lights will add to the cost of the regulation. Much of the verification will be printable on an insert with the package, or on a sticker (described in Title 33 CFR 183.810). This rule will not involve modification of the package to accommodate the labeling. Using estimates from labeling companies, we have determined that manufacturers will pay about $240 for 1,000 labels. Since the Notice of Proposal for Rulemaking, we have obtained a more accurate cost for labels and have revised our analysis to include $240 for labeling costs in the formula. When computing labeling costs, we make the following assumptions: each model will need 1000 labels, each of 9 manufacturers produces 10 models of each of 6 light types, and each manufacturer introduces 3 new models per year. We first compute the one-time cost of labeling for the 10 models of each type of light.

Types of light	×	No. of models of lights	×	No. of manufacturers	×	Labeling costs for each model	=	Partial labeling cost
8		10		9		$240		$172,800

In computing the cost of labeling we must also include a one-time $45 plate charge for each model. This means that 10 × 9 × 8 × 45 = $32,400 must be added to $172,800 for obtaining $205,500 as the labeling cost for the existing ten models. The present value of this cost is $205,500/1.07 or $192,056.

The cost of labeling for the three new models of lights introduced can be computed as follows:

$$\sum_{n=2}^{15}\left[(9\text{ manufacturers}\times 3\text{ new models}\times\$240)\right]/(1.07)^n = 52{,}963.$$

Calculating labeling costs for the three new models would again require us to add the one-time cost of the plate.

$$\sum_{n=2}^{15}\left[(9\text{ manufacturers}\times 3\text{ new models}\times\$45)\right]/(1.07)^n = \$695.14.$$

The total cost of labeling would therefore be $192,056 + 52,963 + 695.14 or $245,714.14. This represents Partial Cost 3. Finally we can say that the present value of the total cost of the rule is:

Partial Cost 1 + Partial Cost 2 + Partial Cost 3 = $269,158.88 + $88,272.00 + $245,714.14 = $60,3145.02

Benefits of the Rule

(1) Certification will place navigation lights under regulatory control comparable to that affecting all other items of mandatory safety equipment. This will result in a general improvement in reliability, quality, and effectiveness of domestic and imported lights available to domestic manufacturers of vessels.

(2) This rule will discourage the practice of installing lights, custom-made or other, that are not compliant with the Navigation Rules. Navigation lights are safety equipment with the designated purpose of preventing collisions. According to the 2000 Boating Accident Reporting Database (BARD) statistics collected by the U.S. Coast Guard, accidents due to collisions with another vessel account for 35 percent of all reported boating accidents occurring over the year. These collisions lead to fatalities and injuries as well as property damage. Consequently, fatalities and injuries due to a collision with another vessel comprise around 10 percent of all reported fatalities and 32 percent of all reported injuries arising from recreational boating accidents. These BARD statistics also indicate that accidents involving a collision with another vessel result in property damages amounting to $8,735,300. The intent of this regulation is to reduce these numbers and lessen the costs society pays in terms of property damage, lives lost, or injuries when collisions occur.

(3) Lack of compliance with rules for navigation lights has also led to recalls of certain recreational vessels. Under the Federal Boat Safety Act of 1971, the U.S. Coast Guard can declare non-complaint lights as "defective" once they are installed. Recreational boats with defective items are subject to recall completely at the vessel manufacturers' expense. According to U.S Coast Guard data on recalls, recreational vessels of 13 different makes have been recalled as a result of the navigation lights failing to comply with the Navigation Rules since 1990. This regulation would therefore minimize the recall cost burden placed on vessel manufacturers by assuring them that a light meets the Navigation Rules requirements before they begin installation.

(4) Certification will also facilitate exports to countries enforcing the requirement of the COLREGS for approval of navigation lights.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations independently owned and operated and not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. We identified nine manufacturers who could be affected by this rule. Four out of the nine manufacturers qualify as small businesses by the size standards of the Small Business Association (SBA). However, we observed that the four businesses we identified as small entities offer fewer models of each type of light than their larger competitors. These 4 manufacturers offer between 1 and 5 models of each type, which is well below the average of 10 models each. Therefore, we do not believe that they will bear a disproportionate amount of the burden of this rule. We have found that these four manufacturers have annual revenues of $2.5m-$5.0m; $5.0m-$10m; $10m-$20m; and $20m-$50m. The greatest possible cost for testing and labeling incurred by these four light manufacturers would be $18,000, or $685 (testing + labeling costs) × 6 light types × 5 models per type. In addition to this, if they each test at least two new models per year then they will have to bear an extra $1,280, or $685 × 2. A total of $19,200 is well below 5 percent of the revenue of even the smallest company, indicating that this regulation will have a negligible

effect on revenues to these small businesses. We expect prices in the industry will remain stable allowing companies to competitively enter the industry. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for a new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520]. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the collections, a description of those who perform them, and an estimate of the total annual burden follow. The estimate covers the time for submitting a new model of light to the third-party certifier and for designing a label for each model of light.

Summary of the Collection of Information

The rule will impose a new burden of collection of information on manufacturers of navigational lights for uninspected commercial vessels and recreational vessels. Each manufacturer of the lights would incur a one-time burden of submitting paperwork to the third-party certifier and of designing labeling for each model of light.

Need and Proposed Use for Information

This collection of information is necessary to accomplish the third-party certification and the labeling. The third-party certifier would use the information to document and test the models of lights. Once the model had passed performance testing, the manufacturer of the light would design and provide a label for its product so the consumer would know that the product was certified.

Description of Respondents

The collection of information would affect the current manufacturers of navigational lights for recreational and uninspected vessels. It would also affect any future manufacturers that may enter the market.

Number of Respondents

There are nine manufacturers of lights in the market. This collection of information will affect them all.

Frequency of Response

This collection would take place only when a manufacturer undertook to place a new light on the market.

Burden of Response

We estimate that it would take one employee about one hour to prepare the paperwork to submit a light for performance tests. He or she would be an administrative assistant and, as such, would cost around $24 an hour. If each of these manufacturers submitted three new models of lights for testing each year, the burden for the submitted would be 27 hours and $648.

We also estimate that it would take one employee about one hour to update the labeling for each new model. He or she, too, would cost around $24 an hour. The burden for the labeling requirement would likewise be 27 hours and $648 if each of nine manufacturers submitted 3 new models for testing each year.

Estimate of Total Annual Burden

Using the above estimates, the total burden in hours would be 54 and the total cost would be $1,296.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 35)7(d), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the collection. The section numbers are 33 CFR part 183 and 46 CFR 25. The corresponding approval number from OMB is OMB Control Number 2115–0645, which expires on September 9, 2003. You are not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).) Because the States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1. paragraph (34)(d), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A requirement for certification of navigation lights should not have any environmental impact. A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 84

Navigation (water), Waterways.

33 CFR Part 183

Incorporation by reference, Marine safety.

46 CFR Part 25

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 84 and 183, and 46 CFR part 25, as follows:

PART 84—ANNEX I: POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES

1. The citation of authority for part 84 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

2. Add § 84.25 to read as follows:

§ 84.25 Approval.

The construction of lights and shapes and the installation of lights on board the vessel must satisfy the Commandant, U.S. Coast Guard.

PART 183—BOATS AND ASSOCIATED EQUIPMENT

3. The citation of authority for part 183 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

4. Amend § 183.5 (b) by adding in alphabetical order the following standard:

§ 183.5 Incorporation by reference.

* * * * *

(b) * * *

American Boat and Yacht Council, Inc., 3069 Solomons Island Road, Edgewater, Maryland 21037–1416
ABYC A–16 Electric Navigation Lights-1997 § 183.810

* * * * *

5. Add subpart M to part 183 to read as follows:

Subpart M—Navigation Lights

Sec.
183.801 Applicability.
183.803 Definitions.
183.810 Navigation light certification requirements.

§ 183.801 Applicability.

This subpart applies to recreational vessel manufacturers, distributors, and dealers installing such equipment in new recreational vessels constructed after November 1, 2002.

§ 183.803 Definitions.

As used in this subpart:

Dealer means any person who is engaged in the sale and distribution of recreational vessels to purchasers who the seller in good faith believes to be purchasing any such recreational vessel for purposes other than resale.

Distributor means any person engaged in the sale and distribution of recreational vessels for the purpose of resale.

Manufacturer means any person engaged in:

(1) The manufacture, construction, or assembly of recreational vessels, or

(2) The importation of recreational vessels into the United States for subsequent sale.

Navigation lights are those lights prescribed by the Navigation Rules (Commandant Instruction 16672.2 series) to indicate a vessel's presence, type, operation, and relative heading.

§ 183.810 Navigation light certification requirements.

(a) Except as provided by paragraph (b) of this section, each navigation light must—

(1) Meet the technical standards of the applicable Navigation Rules;

(2) Be certified by a laboratory listed by the Coast Guard to the standards of ABYC A–16 (incorporated by reference, see § 183.5) or equivalent, although portable battery-powered lights need only meet the requirements of the standard applicable to them; and

(3) Bear a permanent and indelible label that is visible without removing or disassembling the light and that states the following:

(i) "USCG Approval 33 CFR 183.810."

(ii) "MEETS_____." (Insert the identification name or number of the standard under paragraph (a)(2) of this section, to which the laboratory type-tested.)

(iii) "TESTED BY_____." (Insert the name or registered certification-mark of the laboratory listed by the Coast Guard that tested the fixture to the standard under paragraph (a)(2) of this section.)

(iv) Name of manufacturer.

(v) Number of model.

(vi) Visibility of the light in nautical miles.

(vii) Date on which the light was type-tested.

(viii) Identification and specifications of the bulb used in the compliance test.

(b) If a light is too small to attach the required label—

(1) Place the information from the label in or on the package that contains the light; and

(2) Mark each light "USCG" followed by the certified range of visibility in nautical miles (nm), for example, "USCG 2nm". Once installed, this mark must be visible without removing the light.

46 CFR PART 25—REQUIREMENTS

6. The citation of authority for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4302; 49 CFR 1.46.

7. Amend § 25.01–3(b) by adding the following standard in numerical order to those listed under American Boat and Yacht Council as follows:

§ 25.01–3 Incorporation by reference.

* * * * *

(b) * * *

Standard A–16–97, Electric Navigation Lights, July 1997	§ 25.10–3

* * * * *

8. Add subpart 25.10 to part 25 to read as follows:

Subpart 25.10—Navigation Lights

Sec.

25.10–1 Applicability.
25.10–2 Definitions.
25.10–3 Navigation light certification requirements.

§ 25.10–1 Applicability.

This subpart applies to vessel manufacturers, distributors, and dealers installing navigation lights on all uninspected commercial vessels, except those completed before November 7, 2002.

§ 25.10–2 Definitions.

As used in this subpart:

Dealer means any person who is engaged in the sale and distribution of vessels to purchasers who the seller in good faith believes to be purchasing any such vessel for purposes other than resale.

Distributor means any person engaged in the sale and distribution of vessels for the purpose of resale.

Manufacturer means any person engaged in:

(1) The manufacture, construction, or assembly of vessels, or

(2) The importation of vessels into the United States for subsequent sale.

Navigation lights are those lights prescribed by the Navigation Rules (Commandant Instruction 16672.2 series) to indicate a vessel's presence, type, operation, and relative heading.

§ 25.10–3 Navigation light certification requirements.

(a) Except as provided by paragraph (b) of this section, each navigation light must—

(1) Meet the technical standards of the applicable Navigation Rules;

(2) Be certified by a laboratory listed by the Coast Guard to the standards of ABYC A–16 (incorporated by reference, see § 25.01–3), or equivalent, although portable battery-powered lights need only meet the requirements of the standard applicable to them; and

(3) Bear a permanent and indelible label stating the following:

(i) "USCG Approval 33 CFR 183.810"

(ii) "MEETS _." (Insert the identification name or number of the standard under paragraph (a)(2) of this section, to which the light was type-tested.)

(iii) "TESTED BY _." (Insert the name or registered certification-mark of the laboratory listed by the Coast Guard that tested the fixture to the standard under paragraph (a)(2) of this section.)

(iv) Name of Manufacturer.

(v) Number of Model.

(vi) Visibility of the light in nautical miles (nm).

(vii) Date on which the light was type-tested.

(viii) Identification of bulb used in the compliance test.

(b) If a light is too small to attach the required label—

(1) Place the information from the label in or on the package that contains the light; and

(2) Mark each light "USCG" followed by the certified range of visibility in nautical miles, for example, "USCG 2nm." Once installed, this mark must be visible without removing the light.

Dated: October 4, 2001.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 01–27385 Filed 10–31–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Emergency Closures and Adjustments—Yukon River Drainage

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Emergency closures and adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect chinook and chum salmon escapement in the Yukon River drainage. These regulatory adjustments and the closures provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 13, 2001. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2001 regulatory year.

DATES: The twenty-eighth Yukon River drainage action is effective September 10, 2001, through November 9, 2001, for Subdistrict 6A; and September 11, 2001, through November 9, 2001, for Subdistrict 5A. See **SUPPLEMENTARY INFORMATION** for effective dates of the fourth through twenty-seventh Yukon River drainage actions.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Previously Effective Dates

The fourth Yukon River drainage action was effective June 12, 2001, through August 11, 2001, for Districts 1, 2, and 3. The fifth Yukon River drainage action was effective June 13, 2001, through August 12, 2001, for District 4. The sixth Yukon River drainage action was effective June 19, 2001, through August 18, 2001, for the Coastal District; June 21, 2001, through August 18, 2001, for District 1; June 24, 2001, through August 18, 2001, for District 2; and June 27, 2001, through August 18, 2001, for District 3. The seventh Yukon River drainage action was effective June 22, 2001, through July 30, 2001, for District 5. The eighth Yukon River drainage action was effective June 26, 2001, through August 25, 2001, for Districts 1–4. The ninth Yukon River drainage action was effective June 28, 2001, through August 27, 2001, for District 1; July 1, 2001, through August 27, 2001, for District 2; and July 4, 2001, through August 18, 2001, for District 3. The tenth Yukon River drainage action was effective July 1, 2001, through August 30, 2001, for Subdistrict 4A and July 4, 2001, through August 30, 2001, for Subdistricts 4B and 4C. The eleventh Yukon River drainage action was effective July 1, 2001, through August 30, 2001, for Districts 1, 2, 3, and 4 and Subdistricts 5A, 5B, and 5C. The twelfth Yukon River drainage action was effective July 4, 2001, through September 2, 2001, for the Koyukuk River. The thirteenth Yukon River drainage action was effective July 5, 2001, through September 4, 2001, for District 1 and July 6, 2001, through September 4, 2001, for Districts 2 and 3. The fourteenth Yukon River drainage action was effective July 8, 2001, through September 6, 2001, for Subdistrict 4A and July 11, 2001, through September 6, 2001, for Subdistricts 4B and 4C. The fifteenth Yukon River drainage action was effective July 10, 2001, through September 8, 2001, for Subdistricts 5B and 5C. The sixteenth Yukon River drainage action was effective July 13, 2001, through September 11, 2001, for Subdistrict 5A and July 17, 2001, through September 11, 2001, for Subdistrict 5D. The seventeenth Yukon River drainage action was effective July 20, 2001, through September 18, 2001, for Districts 1, 2, and 3. The eighteenth Yukon River drainage action was effective July 20, 2001, through September 18, 2001, for Subdistrict 5A. The nineteenth Yukon River drainage action was effective July 29, 2001, through September 27, 2001, for District 4 including the Koyukuk River. The twentieth Yukon River drainage action was effective July 27, 2001, through July 30, 2001, for all Federal waters of the Yukon River drainage. The twenty-first Yukon River drainage action was effective August 2, 2001, through October 1, 2001, for Subdistrict 5D and August 3, 2001, through October 1, 2001, for Subdistricts 5A, 5B, and 5C. The twenty-second Yukon River drainage action was effective August 6, 2001, through October 5, 2001, for all Federal waters of the Yukon River drainage. The twenty-third Yukon River drainage action was effective August 6, 2001, through October 5, 2001, for Districts 1–3; August 7, 2001, through October 5, 2001, for Subdistricts 5B and 5C; and August 8, 2001, through October 5, 2001, for District 4. The twenty-fourth Yukon River drainage action was effective August 8, 2001, through October 7, 2001, for District 4; August 9, 2001, through October 7, 2001, for Subdistricts 5B and 5C and Districts 1–3. The twenty-fifth Yukon River drainage action was effective August 9, 2001, through October 9, 2001, for Subdistrict 5A. The twenty-sixth Yukon River drainage action was effective August 10, 2001, rescinding the twenty-second Yukon River action for Districts 1–6. The twenty-seventh Yukon River drainage action is effective August 20, 2001, through October 19, 2001, for Subdistrict 6A; and August 21, 2001, through October 19, 2001, for Subdistrict 5A.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2001 fishing seasons, harvest limits, and methods and means were published on February 13, 2001, (66 FR 10142). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These emergency closures (restricted subsistence fishing schedules) and adjustments are necessary because of predictions of extremely weak returns of chinook, summer-run chum, and fall-run chum salmon in the Yukon River drainage. These emergency actions are authorized and in accordance with 50 CFR 100.19(d) and 36 CFR 242.19(d).

Yukon River Drainage

It now appears that returns of chinook, summer, and fall chum salmon to the Yukon River in 2001 have been at or slightly larger than the record lows of 2000. Very low catches of chinook and chum salmon were reported by many subsistence fishermen in 2000. Chinook and summer chum salmon escapement monitoring projects in 2000 showed that the returns of these species were very weak throughout most of the Yukon River drainage. Federal and State Managers and most subsistence users in the region have had strong concerns that not enough chinook or summer chum salmon would reach their spawning grounds in 2001. There were similar concerns that subsistence needs in some areas would not be met.

At their January 2001 meeting, the BOF identified the Yukon River chinook and chum salmon as stocks of concern and for the first time implemented a reduced subsistence fishing schedule to decrease confusion among users, increase the quality of escapement, spread the harvest throughout the run, and spread subsistence opportunity among users. In addition, ADF&G has indicated that any commercial fishing periods were highly unlikely for the Yukon River and that they would close the sport fishery for chinook salmon if the runs were weak. The ADF&G biologists and U.S. Fish & Wildlife Service personnel conducted public meetings, produced information posters, and published news articles to let the local users know about concerns regarding the expected low salmon returns and advised them regarding the restrictions and closures to protect spawning escapement.

Overall, both the chinook and summer chum salmon runs were assessed to be low in abundance. Restrictions in fishing time were initially implemented in District 1 and moved upriver sequentially to conserve both chinook and summer chum salmon. When it was determined the summer chum salmon return would not meet a population size of 600,000 fish. gear restrictions were implemented in

District 1 on July 5, and also implemented sequentially upriver, to prohibit directed summer chum salmon harvest.

The chinook salmon run now appears to be a little better than last year. The restricted subsistence fishing schedule successfully increased the quality of the escapement, spread the harvest throughout the run and spread subsistence harvest opportunity among users in the lower, middle and upper Yukon River. Subsistence salmon fishing time was restricted throughout the drainage to conserve chinook salmon. Subsistence catch reports have been variable with success rates ranging from very good to poor. It appears that most individuals who tried, were able to meet their subsistence needs for chinook salmon, while some individuals were unable to meet their needs for chum salmon.

Early in the fall chum salmon season, there was great concern that this stock would not attain the minimum escapement goal. The poor outlook predicting a weak fall chum salmon run was based on the performance of the this years summer chum run and the realization that the trend of poor salmon production could continue for this year's fall season. The initial evaluation of all available information for fall chum salmon indicated that this year's run would likely be less than the 350,000 fish minimum. Since this projection was near or below the established drainage-wide goal, the management plan dictates that no directed subsistence harvest of fall chum salmon would be allowed.

Subsistence fishing for whitefish, suckers and other non-salmon species was allowed 7 days per week wherever possible.

On May 10, 2001, in public forum and after hearing testimony, the Federal Subsistence Board adopted an emergency action closing the chinook and summer chum salmon fishery on all Federal waters in the Yukon River drainage for 60 days (the maximum amount of time allowed under 50 CFR 100.19(d) and 36 CFR 242.19(d)) from June 1, 2001, to July 30, 2001, to all users except those Federally-qualified subsistence users 2001 (66 FR 32750, June 18, 2001). (First action.)

The Board also suspended the chinook salmon fin-marking restriction for subsistence users since there was no commercial harvest that subsistence-caught fish could blend into. (Second action.)

On May 31, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated a set of closures on Federal waters in Districts 1–3 of the Yukon River drainage for the subsistence fisheries (66 FR 33642, June 25, 2001). In Districts 1–3 the take of salmon was closed except for two 36-hour periods each week. (Third action.)

On June 12, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated gillnet restrictions on Federal waters in Districts 1–3 of the Yukon River drainage for the subsistence fisheries. These restrictions to nets with 4-inch or less stretched measure mesh and 60 feet or less in length allowed subsistence users to continue to subsistence fish for non-salmon species while still conserving salmon. (Fourth action.)

On June 13, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated a set of closures on Federal waters in District 4 of the Yukon River drainage for the subsistence fisheries. In District 4, the take of salmon was closed except for two 48-hour periods each week. (Fifth action.)

On June 19, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated a set of closures on Federal waters in the Coastal District and Districts 1–3 of the Yukon River drainage for the subsistence fisheries. In the Coastal District, the take of salmon was closed except for one 96-hour period each week. In Districts 1–3 the take of salmon was closed except for two 24-hour periods each week. (Sixth action.)

On June 22, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated a set of closures on Federal waters in District 5 of the Yukon River drainage for the subsistence fisheries. In District 5A, the take of salmon is closed except for two 42-hour periods each week. In District 5B and 5C, the take of salmon was closed except for two 48-hour periods each week. (Seventh action.)

On June 26, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers extended the gillnet restrictions on Federal waters to District 4 of the Yukon River drainage for the subsistence fisheries. This restriction to nets with 4-inch or less stretched measure mesh and 60 feet or less in length allowed subsistence users to continue to subsistence fish for non-salmon species while still conserving salmon. (Eighth action.)

On June 28, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated a set of closures on Federal waters in Districts 1–3 of the Yukon River drainage for the subsistence fisheries. In Districts 1–3 the take of salmon was suspended for a single 24-hour period then returning to two 24-hour periods each week. (Ninth action.)

On July 1, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated a set of closures on Federal waters in District 4 of the Yukon River drainage for the subsistence fisheries. In District 4, the take of salmon was closed except for two 36-hour periods each week. (Tenth action.)

On July 1, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers extended the fishwheel and gillnet restrictions that were already in effect on Federal waters in Districts 1–4 to Subdistricts 5A, 5B, and 5C of the Yukon River drainage for the subsistence fisheries. This restriction to nets with 4-inch or less stretched measure mesh and 60 feet or less in length allowed subsistence users to continue to subsistence fish for non-salmon species while still conserving salmon. (Eleventh action.)

On July 4, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated a set of closures on Federal waters on the Koyukuk River drainage of the Yukon River drainage for the subsistence fisheries. In that area, the take of salmon was closed except for two 48-hour periods each week. (Twelfth action.)

On July 5, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated a set of closures on Federal waters in Districts 1–3 of the Yukon River drainage for the subsistence fisheries. In Districts 1–3 the take of salmon was closed except for one 24-hour period each week and gillnets are restricted to mesh size 8 inches or larger. (Thirteenth action.)

On July 8, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers extended the fishwheel and gillnet restrictions on Federal waters to District 4, including the Koyukuk River drainage, of the Yukon River drainage for the subsistence fisheries. This restriction to nets with 4-inch or less stretched measure mesh and 60 feet or less in length seven days per week and nets with 8-inch or greater stretched measure mesh during salmon openings allowed subsistence users to continue to subsistence fish while still conserving chum salmon. (Fourteenth action.)

On July 10, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated a set of closures on Federal waters in District 5 of the Yukon River drainage for the subsistence fisheries. In Subdistricts 5B and 5C, the take of salmon was closed except for two 36-hour periods each week. (Fifteenth action.)

On July 13, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated a set of closures on Federal waters in District 5 of the Yukon River drainage for the subsistence fisheries. In District 5A, the take of salmon was closed except for two 36-hour periods each week. In District 5D, the take of salmon was closed except for two 48-hour periods each week. Non-salmon gillnet restrictions were also extended to Subdistricts 5A and 5D during closed salmon fishing periods. (Sixteenth action.)

On July 20, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers closed all Federal waters in Districts 1–3 of the Yukon River drainage for the subsistence salmon fisheries in order to conserve fall-run chum salmon. (Seventeenth action.)

On July 20, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers relaxed restrictions on Federal waters in Subdistrict 5A of the Yukon River drainage for the subsistence fisheries. In Subdistrict 5A, the take of salmon was reopened for two 42-hour periods each week. (Eighteenth action.)

On July 29, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers closed all Federal waters in District 4, including the Koyukuk River drainage, of the Yukon River drainage for the subsistence salmon fisheries in order to conserve fall-run chum salmon. (Nineteenth action.)

On July 27, 2001, the Federal Subsistence Board, acting through the delegated field official, removed the restriction on the harvest of chinook salmon by non-Federally-qualified users on all Federal waters in the Yukon River drainage. This action was based on larger than expected chinook runs which met both the spawning escapement and subsistence user needs. (Twentieth action.)

On August 2, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers closed salmon fishing in all Federal waters in Subdistricts 5A, B, and C and liberalized salmon fishing in Subdistrict 5D of the Yukon River drainage in order to conserve fall-run chum salmon and still provide an opportunity to take chinook salmon. (Twenty-first action.)

On August 6, 2001, the Federal Subsistence Board, acting through the delegated field official closed fall-run chum salmon fishing to all non-Federally qualified users in all Federal waters of the Yukon River drainage in order to conserve fall-run chum salmon and yet provide a limited subsistence harvest opportunity. (Twenty-second action.)

On August 6, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers established a subsistence fishing schedule for Districts 1–4 and Subdistricts 5B and 5C of the Yukon River drainage in order to conserve fall-run chum salmon. (Twenty-third action.)

On August 8, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers increased the fishing periods in the subsistence fishing schedule for Districts 1–4 and Subdistricts 5B and 5C of the Yukon River drainage in order to provide greater harvest opportunities based on larger run projections. (Twenty-fourth action.)

On August 9, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers reinstated gillnet restrictions on Federal waters in Subdistrict 5A of the Yukon River drainage for the subsistence fisheries. This restriction to nets with 4-inch or less stretched measure mesh and 60 feet or less in length seven days per week allowed subsistence users to continue to subsistence fish while still conserving chum salmon. (Twenty-fifth action.)

On August 10, 2001, the Federal Subsistence Board, acting through the delegated field, removed the restriction on the harvest of chum salmon by non-Federally-qualified users on all Federal waters in the Yukon River drainage. This action was predicated on larger than expected chum runs which met both the spawning escapement and subsistence user needs. (Twenty-sixth action.)

On August 20, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers removed the gear restrictions for non-salmon species in Subdistricts 5A and 6A of the Yukon River drainage and opened those areas to the harvest of salmon. This action was predicated on continuing larger than expected chum runs which met both the spawning escapement and subsistence user needs. (Twenty-seventh action.)

On September 10, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers modified the subsistence fishing schedule and required the use of liveboxes on fishwheels on Federal waters in Subdistrict 5A of the Yukon River drainage for the subsistence fisheries. This restriction allowed subsistence users to harvest coho salmon while while still conserving chum salmon. (Twenty-eighth action.)

These regulatory actions were necessary to assure the continued viability of the chinook and chum salmon runs and provide a long-term subsistence priority during a period of limited harvest opportunity. These reduced subsistence fishing schedules brought the Federal subsistence fishing regulations in line with the similar ADF&G action for unified management and minimized confusion under the dual management system.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these emergency closures are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d) to make this rule effective as indicated in the **DATES** and the beginning of the **SUPPLEMENTARY INFORMATION** sections.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska,

Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustment and emergency closures have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustment and emergency closures will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustment and emergency closures have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustment and emergency closures will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustment and emergency closures meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustment and emergency closures do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: October 4, 2001.

Kenneth E. Thompson,

Subsistence Program Leader, USDA—Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 01–27343 Filed 10–31–01; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

POSTAL SERVICE

39 CFR Part 501

Authorization To Manufacture and Distribute Postage Meters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule clarifies and strengthens requirements for manufacturers/distributors of postage meters to destroy meters at the end of their useful life.

DATES: This rule is effective November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson by fax at (703) 292–4073.

SUPPLEMENTARY INFORMATION: When a postage meter, or other postage evidencing system, reaches the end of its useful life, it must be destroyed so as to eliminate potential misuse or fraud which could lead to loss of Postal Service revenue. To accomplish this objective, the Postal Service is publishing procedures for the destruction of meters.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

The Amendment

For the reasons set out in this document, the Postal Service is amending 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

1. The authority citation for 39 CFR part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

§§ 501.18 through 501.29 [Redesignated as §§ 501.19 through 501.30]

Sections 501.18 through 501.29 are redesignated as §§ 501.19 through 501.30 and new § 501.18 is added to read as follows:

§ 501.18 Secure destruction.

(a) Authorized meter manufacturers/distributors may destroy meters, when required, in accordance with methods approved in advance by the manager of Postage Technology Management. The postage meter must be rendered completely inoperable by the destruction process and associated postage-printing dies must be destroyed in accordance with § 501.17. Manufacturers/distributors must submit the proposed destruction method; a schedule listing the meters to be destroyed, by serial number and model; and the proposed time and place of destruction to the manager of Postage Technology Management for approval prior to any meter destruction. Manufacturers/distributors must record and retain the serial numbers of the meters to be destroyed, and provide the list in electronic form in accordance with Postal Service requirements for postage meter accounting and tracking systems. Manufacturers/distributors must give sufficient advance notice of the destruction to allow the manager of Postage Technology Management to schedule observation by Postage Technology Management or its designated representative. The Postal Service representative must ensure that the serial numbers of the meters destroyed are the same as the serial numbers recorded by the manufacturer/distributor on the list of destroyed meters, and that the destruction is performed in accordance with a Postal Service-approved method or process.

(b) These requirements for meter destruction apply to all postage meters, postage evidencing systems, and postal security devices included as a component of a postage evidencing system.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–27462 Filed 10–31–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NOS. MT–001–0024; MT–001–0025; MT–001–0026; MT–001–0034; MT–001–0035; FRL–7093–6]

Approval and Promulgation of Air Quality Implementation Plans; Montana; State Implementation Plans; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: The EPA published in the **Federal Register** on June 12, 2001 and June 18, 2001 several documents that, among other things, approved updates to Montana's State Implementation Plan (SIP). In the June 12, 2001, rule, which approved the State's Emergency Episode Avoidance Plan and Cascades County's Local Regulation Chapter 7, Open Burning, EPA inadvertently omitted a sentence from the Administrative Requirements section of the document. EPA is correcting the Administrative Requirements section with this document. In the June 18, 2001, rule, which partially approved and partially disapproved the East Helena Lead (Pb) SIP, EPA inadvertently referenced an incorrect date in the preamble and inadvertently failed to promulgate regulatory text for those portions of the plan we disapproved, and to indicate that we determined that the East Helena Pb nonattainment area had attained the Pb NAAQS. In addition, in the regulatory text that was promulgated in the June 18, 2001 document, EPA inadvertently failed to indicate that the partially approved Pb SIP superseded the previously approved Pb SIP. Also, quotation marks were placed in the wrong location in the June 18, 2001 regulatory text. EPA is correcting the date in the preamble, promulgating the regulatory text for the disapproved provisions of the plan, correcting the promulgated regulatory text to indicate that the partially approved Pb SIP supercedes the previously approved Pb SIP, and correcting the location of quotation marks in the promulgated regulatory text with this document.

EFFECTIVE DATE: This rule is effective December 3, 2001.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region VIII, (303) 312–6437.

SUPPLEMENTARY INFORMATION:

June 12, 2001, Rulemaking

In our June 12, 2001 (66 FR 31548) (FR Doc. 01–14612) rulemaking we approved Montana's Emergency Episode Avoidance Plan and Cascades County's Local Regulation Chapter 7, Open Burning. In the Administrative Requirements section of that rulemaking, on page 31549, third column, the paragraph that starts with "The Congressional Review Act * * *", the following sentence should be added between the first and second sentence: "EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**." [1]

June 18, 2001, Rulemaking

In our June 18, 2001 (66 FR 32760) (FR Doc. 01–15142) rulemaking we partially approved and partially disapproved the East Helena Lead SIP. On page 32764, second and third columns, we inadvertently referenced the wrong date. At the bottom of the second column, paragraph starting with "We are disapproving * * *", "June 21, 1996" should be replaced with "June 26, 1996." In the third column, paragraph starting with "We are disapproving paragraphs 15 and 15 * * *", "June 21, 1996" should be replaced with "June 26, 1996."

Additionally, in the June 18, 2001 rulemaking, we partially disapproved provisions of the State's East Helena Lead SIP (see 66 FR at 32761 and 32764) and determined that the East Helena Pb nonattainment area had attained the Pb NAAQS (see 66 FR 32765). However, we failed to promulgate corresponding text in the Code of Federal Regulations. In this document we are promulgating changes to 40 CFR 52, subpart BB, specifically § 52.1384 (Emission control regulations) to correspond to the partially disapproved plan provisions and § 52.1375 (Control strategy: Lead) to correspond to the attainment determination.

Also, the East Helena Pb Plan partially approved on June 18, 2001 superseded a previously approved Pb Plan submitted on September 29, 1983. We are correcting the regulatory text (at § 52.1370(c)(51)) to indicate that the

[1] Note, although the Administrative Requirements section in the June 12, 2001 preamble did not include the statement that we would submit a report containing the rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States, on June 6, 2001, we did, in fact, fulfill this requirement by sending a report to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States containing the Montana rule and other required information.

September 29, 1983 Pb Plan is superseded.

Finally, in the June 18, 2001 rulemaking, on page 32766, third column, paragraph (5), the quotation mark ending the quotation was placed in the wrong location. We are correcting the regulatory text to read as follows:

The words, "or a method approved by the Department in accordance with the Montana Source Testing Protocol and Procedures Manual shall be used to measure the volumetric flow rate at each location identified," in section 7(A)(2) of exhibit A.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting incorrect administrative text and dates in the preamble of previous rulemakings, promulgating regulatory text for rules disapproved in a previous rulemaking and correcting regulatory text in a previous rulemaking. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in the June 12, 2001, rule, approving Montana's Emergency Episode Avoidance Plan and Cascade County's Local Regulation Chapter 7, Open Burning, and in the June 18, 2001, rule, partially approving and partially disapproving the East Helena Lead SIP.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of December 3, 2001. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to the identification of plan for Montana is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Accordingly, 40 CFR part 52, subpart BB of chapter I, title 40 is corrected by making the following amendments:

PART 52—[CORRECTED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Revise § 52.1370(c)(51) introductory text and (c)(51)(i)(B)(5) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(51) The Governor of Montana submitted the East Helena Lead SIP revisions with letters dated August 16, 1995, July 2, 1996, and October 20, 1998. The revisions address regulating lead emission from Asarco, American Chemet and re-entrained road dust from the streets of East Helena. The revisions supersede the Lead Plan submitted to EPA on September 29, 1983 (see paragraph (c)(15) of this section).

(i) * * *

(B) * * *

(5) The words, "or a method approved by the Department in accordance with the Montana Source Testing Protocol and Procedures Manual shall be used to measure the volumetric flow rate at each location identified," in section 7(A)(2) of exhibit A;

* * * * *

3. Add a new § 52.1375 to read as follows:

§ 52.1375 Control strategy: Lead.

Determination—EPA has determined that the East Helena Lead nonattainment area has attained the lead national ambient air quality standards through calendar year 1999. This determination is based on air quality data currently in the AIRS database (as of the date of our determination, June 18, 2001).

4. In § 52.1384 add paragraph (b) to read as follows:

§ 52.1384 Emission control regulations.

* * * * *

(b)(1) In 40 CFR 52.1370(c)(51), we incorporated by reference several documents that comprise the East Helena Lead SIP. Sections 52.1370(c)(51)(i)(B) and (C) indicate that certain provisions of the documents that were incorporated by reference were excluded. The excluded provisions of § 52.1370(c)(51)(i)(B) and (C) are disapproved. These provisions are disapproved because they do not entirely conform to the requirement of section 110(a)(2) of the Act that SIP limits must be enforceable, nor to the requirement of section 110(i) that the SIP can be modified only through the SIP revision process. The following phrases, words, or section in exhibit A of the stipulation between the Montana Department of Environmental Quality (MDEQ) and Asarco, adopted by order issued on June 26, 1996 by the Montana Board of Environmental Review (MBER), are disapproved:

(i) The words, "or an equivalent procedure" in the second and third sentences in section 2(A)(22) of exhibit A;

(ii) The words, "or an equivalent procedure" in the second and third sentences in section 2(A)(28) of exhibit A;

(iii) The words, "or an equivalent procedure" in the second sentence in section 5(G) of exhibit A;

(iv) The sentence, "Any revised documents are subject to review and approval by the Department as described in section 12," from section 6(E) of exhibit A;

(v) The words, "or a method approved by the Department in accordance with the Montana Source Testing Protocol and Procedures Manual shall be used to measure the volumetric flow rate at each location identified," in section 7(A)(2) of exhibit A;

(vi) The sentence, "Such a revised document shall be subject to review and approval by the Department as described in section 12," in section 11(C) of exhibit A;

(vii) The sentences, "This revised Attachment shall be subject to the review and approval procedures outlined in Section 12(B). The Baghouse Maintenance Plan shall be effective only upon full approval of the plan, as revised. This approval shall be obtained from the Department by January 6, 1997. This deadline shall be extended to the extent that the Department has exceeded the time allowed in section 12(B) for its review and approval of the revised document," in section 12(A)(7) of exhibit A; and

(viii) Section 12(B) of exhibit A.

(2) Paragraphs 15 and 16 of the stipulation by the MDEQ and Asarco adopted by order issued on June 26, 1996 by the MBER are disapproved. Paragraph 20 of the stipulation by the MDEQ and American Chemet adopted by order issued on August 4, 1995 by the MBER is disapproved.

* * * * *

Dated: October 22, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

[FR Doc. 01–27278 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC 050–2027a; FRL–7094–7]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Nitrogen Oxides Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the District of Columbia (the District) State Implementation Plan (SIP). This revision was submitted in response to EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the " NO_X SIP Call." This revision establishes and requires a nitrogen oxides (NO_X) allowance trading program for large electric generating and industrial units, beginning in 2003. The intended effect of this action is to approve the District's NO_X Budget Trading Program because it addresses the requirements of the NO_X SIP Call. On December 26, 2000, EPA made a finding that the District had failed to submit a SIP response to the NO_X SIP Call, thus starting the 18 and 24 month clocks for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP) within 24 months. On May 21, 2001, the District of Columbia submitted its NO_X Budget Trading Program in response to the NO_X SIP Call. EPA found that SIP submission complete on June 8, 2001, thereby halting the sanctions clocks. Upon approval of this SIP revision, both the sanctions clocks and EPA's FIP obligation are fully terminated.

DATES: This rule is effective on December 31, 2001 without further notice, unless EPA receives adverse written comment by December 3, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, or by e-mail at *fernandez.cristina@epa.gov*. Please note any comments on this rule must be submitted, in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On May 21, 2001, the Government of the District of Columbia, Department of Health submitted a revision to its SIP to address the requirements of the NO_X SIP Call. The revision consists of the adoption of Chapter 10—Nitrogen Oxides Budget Trading Program. The information in this section of this document is organized as follows:

I. EPA's Action
A. What Action Is EPA Taking In This Final Rulemaking?
B. What Are the General NO_X SIP Call Requirements?
C. What Is EPA's NO_X Budget Trading Program?
D. What Guidance Did EPA Use to Evaluate the District's Submittal?

II. The District's NO_X Budget Trading Program
A. When Did the District Submit the SIP Revision to EPA in Response to the NO_X SIP Call?
B. What Is the District's NO_X Budget Trading Program?
C. What Is the Result of EPA's Evaluation of the District's Program?
III. Final Action
IV. Administrative Requirements

I. EPA's Action

A. What Action Is EPA Taking in This Final Rulemaking?

EPA is taking direct final action to approve the District of Columbia NO_X Budget Trading Program submitted as a SIP revision on May 21, 2001. Upon approval of this SIP revision, both the sanctions clocks and EPA's FIP obligation are terminated.

B. What Are the General NO_X SIP Call Requirements?

On October 27, 1998 (63 FR 57356), EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the " NO_X SIP Call." The NO_X SIP Call requires 22 States and the District of Columbia to meet statewide NO_X emission budgets during the five-month period between May 1 and October 1 in order to reduce the amount of ground level ozone that is transported across the eastern United States. EPA determined state-wide NO_X emission budgets for each affected jurisdiction to be met by the year 2007. EPA identified NO_X emission reductions, by source category, that could be achieved by using cost-effective measures. The source categories included were electric generating units (EGUs), non-electric generating units (non-EGUs), area sources, nonroad mobile sources and highway sources. However, the NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. In the NO_X SIP Call rule's preamble, EPA suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and electricity generating units would provide a highly cost effective means for States to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lbs of NO_X/MMBtu) at EGUs, multiplied by the projected heat input (MMBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407, October 27, 1998. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_X SIP Call state budgets also assumed, on average, a 30 percent NO_X reduction from cement kilns, a 60 percent reduction from industrial boilers and combustion turbines, and a 90 percent reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 MMBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rule included a model NO_X allowance trading regulation, called "NO_X Budget Trading Program for State Implementation Plans" (40 CFR part 96), that could be used by states to develop their regulations. The NO_X SIP Call rulemaking explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by EPA. See 63 FR 57458–57459, October 27, 1998.

EPA conducted several comment periods on various aspects of the NO_X SIP Call emissions inventories. On March 2, 2000 (65 FR 11222), EPA published additional technical amendments to the NO_X SIP Call. The March 2, 2000 final rulemaking established the inventories upon which the District of Columbia's final budget is based.

On March 3, 2000, the D.C. Circuit issued its decision on the NO_X SIP Call ruling in favor of EPA on all of the major issues. *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. March 3, 2000). The Court denied petitioners' requests for rehearing or rehearing *en banc* on July 22, 2000. However, the Court ruled against EPA on four narrow issues. The Court remanded certain matters for further rulemaking by EPA. EPA expects to publish a proposal that addresses the remanded portion of the NO_X SIP Call Rule in the near future. Any additional emissions reductions required as a result of a final rulemaking on that proposal will be reflected in the second phase portion (Phase II) of the NO_X SIP Call rule. EPA does not anticipate that the District of Columbia will have any additional reductions requirements pursuant to the Phase II of the NO_X SIP Call rule.

C. What Is EPA's NO_X Budget Trading Program?

EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, sets forth a NO_X emissions trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998 final rulemaking contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514–57538 and 40 CFR part 96. In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, e.g., one ton of airborne NO_X. At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner.

D. What Guidance Did EPA Use To Evaluate the District's Submittal?

The final NO_X SIP Call rule included a model NO_X budget trading program regulation at 40 CFR part 96. EPA used the model rule and 40 CFR part 51.121–22 to evaluate the District's NO_X Budget Trading Program.

II. The District's NO_X Budget Trading Program

A. When Did the District Submit the SIP Revision to EPA in Response to the NO_X SIP Call?

On May 21, 2001, the Government of the District of Columbia, Department of Health submitted a revision to its SIP to address the requirements of the NO_X SIP Call.

B. What Is the District's NO_X Budget Trading Program?

The District's SIP revision to address the requirements of the NO_X SIP Call consists of the adoption and submittal of Chapter 10—Nitrogen Oxides Budget Trading Program. The District of Columbia NO_X Budget Trading Program establishes and requires a NO_X allowance trading program for large electric generating and industrial units. Chapter 10—NO_X Budget Trading Program establishes a NO_X cap and allowance trading program with a budget of 233 tons of NO_X for the ozone seasons of 2003 and beyond. The District has adopted, by reference, the requirements of the July 1, 2000 edition of 40 CFR part 96, subpart A (NO_X Budget Trading Program General Provisions), subpart B (Authorized Account Representative for NO_X Budget Sources), subpart C (Permits), subpart D (Compliance Certification), subpart E (NO_X Allowance Allocations), subpart F (NO_X Allowance Tracking System), Subpart G (NO_X Allowance Transfers), Subpart H (Monitoring and Reporting), and subpart I (Individual Opt-ins) and 40 CFR part 97, Appendix A (Final Section 126 Rule: EGU Allocations, 2003–2007), Appendix B (Final Section 126 Rule: Non-EGU Allocations 2003–2007), Appendix C (Final Section 126 Rule: Trading Budget, 2003–2007), and Appendix D (Final Section 126 Rule: State Compliance Supplement Pool for the Section 126 Rule (Tons)). Therefore, pursuant to 40 CFR 51.121(p)(1), the District's SIP revision is automatically approved as satisfying its portion of NO_X emission reductions.

Under the NO_X Budget Trading Program, the District allocates NO_X allowances to the EGUs and non-EGUs units that are affected by these requirements. Because the District's NO_X Budget Trading Program is based upon EPA's model rule, the District of Columbia sources are allowed to participate in the interstate NO_X allowance trading program that EPA will administer for the participating states. The NO_X trading program applies to all fossil fuel fired EGUs with a nameplate capacity equal to or greater than 25 MW that sell any amount of electricity to the grid as well as any non-EGUs that have a heat input capacity equal to or greater than 250 MMBtu per hour. Each NO_X allowance permits a source to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations. Source owners will monitor their NO_X emissions by using systems that meet the requirements of 40 CFR part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the Federal Acid Rain program).

C. What Is the Result of EPA's Evaluation of the District's Program?

EPA has evaluated the District's May 21, 2001 SIP submittal and finds it approvable. The District of Columbia NO_X Budget Trading Program is consistent with EPA's guidance and addresses the requirements of the NO_X SIP Call. EPA finds the NO_X control measures in the District's NO_X Budget Trading Program approvable. The May 21, 2001 submittal will strengthen the District's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2003.

On December 26, 2000 (65 FR 81366), EPA made a finding that the District had failed to submit a SIP response to the NO_X SIP Call, thus starting 18 and 24 month clocks for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP) with 24 months. The effective date of that finding was January 25, 2001. On May 21, 2001, the District submitted a SIP revision to satisfy the NO_X SIP Call. EPA found that SIP submission complete on June 8, 2001, thus, halting the sanctions clocks.

III. Final Action

EPA is approving the District's NO_X Budget Trading Program, submitted as a SIP revision on May 21, 2001. EPA finds that the District's NO_X Budget Trading Program is fully approvable because it satisfies the requirements of the NO_X SIP Call. Approval of this SIP revision fully terminates both the sanctions clocks and EPA's FIP obligation which officially started on January 25, 2001, the effective date of EPA's December 26, 2000 finding (FR 65 81366).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 31, 2001 without further notice unless EPA receives adverse comment by December 3, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the District of Columbia NO_X Budget Trading Program as satisfying the NO_X SIP Call may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 24, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

2. In § 52.470, the table in paragraph (c) is amended by adding the entry under Chapter 10 in numerical order for Section 1014 to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA approval date	Additional Explanation
• •	•	•	•	•
Chapter 10—Nitrogen Oxides Emissions Budget Program				
• •	•	•	•	•
Section 1014	NO_X Budget Trading Program For State Implementation Plans.	May 1, 2001	November 1, 2001.	
• •	•	•	•	•

[FR Doc. 01–27376 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0038,CO–001–0065;FRL–7093–7]

Clean Air Act Determination of Attainment for PM_{10} Nonattainment Areas; Montana and Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing determinations of attainment for the particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM_{10}) national ambient air quality standards (NAAQS) for the Whitefish, Montana, Thompson Falls, Montana and Steamboat Springs, Colorado moderate PM_{10} nonattainment areas. The Whitefish, Montana nonattainment area was required by the Clean Air Act Amendments (CAAA) of 1990 to attain the PM_{10} NAAQS by December 31, 1999. This final determination is based on complete, quality assured ambient air quality monitoring data for the years 1997, 1998, and 1999. The Thompson Falls, Montana and Steamboat Springs, Colorado nonattainment areas were required by the Clean Air Act Amendments (CAAA) of 1990 to attain the PM_{10} NAAQS as of December 31, 2000. These final determinations are based on complete, quality assured ambient air quality monitoring data for the years 1998, 1999, and 2000.

EFFECTIVE DATE: This final rule is effective December 3, 2001.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

SUPPLEMENTARY INFORMATION: On August 8, 2001, EPA published a notice of proposed rulemaking (NPR) for the attainment determinations. The NPR proposed approval of the PM_{10} attainment date determinations for Whitefish and Thompson Falls, Montana and Steamboat Springs, Colorado. Please refer to this proposed rulemaking for background information on Clean Air Act requirements for conducting attainment determinations. Throughout this document, wherever "we," "us," or "our" are used, we mean the Environmental Protection Agency (EPA).

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Determination that the Thompson Falls PM_{10} Nonattainment Area Attained the PM_{10} NAAQS as of December 31, 2000.
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Determination that the Steamboat Springs PM_{10} Nonattainment Area Attained the PM_{10} NAAQS as of December 31, 2000.
III. Administrative Requirements

I. Final Action

Based on quality-assured data meeting the requirements of 40 CFR 50, appendix K, we are determining that Whitefish, Montana attained the PM_{10} NAAQS as of December 31, 1999 and that Thompson Falls, Montana and Steamboat Springs, Colorado attained the PM_{10} NAAQS as of December 31, 2000. This final action to determine attainment for Whitefish, Montana is based on monitored air quality data for the national ambient air quality standard (NAAQS) for PM_{10} from the years 1997–99, and the actions for Thompson Falls, Montana and Steamboat Springs, Colorado are based on data from the years 1998–2000. With this final action, consistent with CAA section 188, the areas will remain moderate PM_{10} nonattainment areas and avoid the additional planning requirements that apply to serious PM_{10} nonattainment areas.

This action should not be confused with a redesignation to attainment under CAA section 107(d) because neither Montana nor Colorado have submitted a maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignation. The designation status in 40 CFR part 81 will remain moderate nonattainment for all three areas until such time as Montana and Colorado meet the CAA requirements for redesignations to attainment.

II. Basis for EPA's Final Action

A. Whitefish, Montana

Determination that the Whitefish PM_{10} Nonattainment Area Attained the PM_{10} NAAQS as of December 31, 1999

Whether an area has attained the PM_{10} NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. See 40 CFR part 50 and 40 CFR part 50, appendix K. Since the attainment date for Whitefish was December 31, 1999, the three year period covers calendar years 1997, 1998, and 1999. Samples were collected on an every day schedule for Whitefish during this time period.

The PM_{10} concentrations reported at the monitoring site showed one measured exceedance of the 24-hour PM_{10} NAAQS in 1997 with a value of 178 $\mu g/m^3$; the expected exceedances for this year also calculated to 1. For 1998 and 1999, the number of exceedances and expected exceedances were 0.0. Thus, the three-year average was less than 1.0, which indicates that Whitefish attained the 24-hour PM_{10} NAAQS as of December 31, 1999. The second highest value recorded between 1997 and 1999 at the Whitefish monitoring site was 138 $\mu g/m^3$ which is below the standard of 150 $\mu g/m^3$.

Review of the annual standard for calendar years 1997, 1998 and 1999 reveals that Whitefish also attained the annual PM_{10} NAAQS by December 31, 1999. There was no violation of the annual standard for the three year period from 1997 through 1999. The expected annual average value for the three year period was 29 $\mu g/m^3$, which is below the standard of 50 $\mu g/m^3$.

B. Thompson Falls

Determination that the Thompson Falls PM_{10} Nonattainment Area Attained the PM_{10} NAAQS as of December 31, 2000

Since the attainment date for Thompson Falls was December 31, 2000, the three year period covers calendar years 1998, 1999, and 2000. The PM_{10} concentrations reported at the two monitoring sites showed no measured exceedances of the 24-hour PM_{10} NAAQS between 1998 and 2000. Review of the annual standard for calendar years 1998, 1999 and 2000 reveals that Thompson Falls also attained the annual PM_{10} NAAQS by December 31, 2000. No monitoring sites showed a violation of the annual standard in the three year period from 1998 through 2000 and the expected annual average value for the three year period was 26 $\mu g/m^3$, which is below the standard of 50 $\mu g/m^3$. The sampling frequency at the Thompson Falls monitoring site during the first and fourth quarters of 1998 and 1999 was every two days and every sixth day for the second and third quarters. During 2000, the sampling frequency was every two days for the first quarter, every sixth day for second and third quarters and every third day for the fourth quarter.

As described above, the 1987 Guideline provides eligibility requirements and example situations in which data may be substituted. For Thompson Falls, there were two quarters during this three year attainment period (1998–2000), which had less than 75% data capture, but greater than 50% data capture and thus qualified for data substitution under our guidelines. The first quarter of 1999 had 12 values substituted, and used an 89 $\mu g/m^3$ value from February 25, 1997 for substitution, bringing the quarterly average to 39.3 $\mu g/m^3$, and the 1999 annual average to 35.1 $\mu g/m^3$. The third quarter of 2000 had 4 values substituted, and used a 75 $\mu g/m^3$ value from August 10, 2000 as the substitution value, bringing the quarterly average to 40.7

µg/m³, and the 2000 annual average to 20.5 µg/m³.

In 1999, the data recovery for Thompson Falls was incomplete due to extenuating circumstances at the monitoring site. The Courthouse on which the monitoring site had been located was being re-roofed and therefore, MDEQ was forced to find a new site on short notice, without enough time to set up a new monitoring site before the existing site was shut down. This forced MDEQ to miss all the monitoring days for the entire 3rd quarter of 1999. A new monitoring site was set up on the grounds of the local high school for the fourth quarter of 1999. The Region used 40 CFR part 50, appendix K and our April 1987 "Guideline on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards" to address the missing data from 1999. The Region decided to substitute third quarter data from 1998 for 1999 because we believe that it is representative of what third quarter 1999 data would have looked like had the monitoring site continued to operate. We believe this is an acceptable method because the exceedances that Thompson Falls experienced in the early 1990's were during winter months, not during the third quarter of the year. In addition, the particulate problem in Thompson Falls is related to road dust and that problem has been resolved since street sweeping measures were adopted by Montana and implemented in 1998. Therefore, we don't expect that there would have been any recorded exceedances during the third quarter of 1999 had the monitor been operating.

Since MDEQ was forced to change monitoring sites in the middle of the three year period necessary for Thompson Falls to show attainment by the area's attainment date, we don't have complete data at any one monitoring site. However, we believe that combining the data from the two separate monitoring sites is acceptable in this situation. We also believe that the location of the replacement monitoring site within the extremely small town of Thompson Falls provides adequate characterization of the community's air. We believe that Thompson Falls' data meets our Guideline and rule requirements. Therefore, with the preceding actions concluded, we believe that the data indicates that Thompson Falls attained the 24-hour and annual PM_{10} NAAQS as of December 31, 2000.

C. Steamboat Springs

Determination that the Steamboat Springs PM_{10} Nonattainment Area Attained the PM_{10} NAAQS as of December 31, 2000

Since the attainment date for Steamboat Springs was December 31, 2000, the three year period covers calendar years 1998, 1999, and 2000. Steamboat Springs was operating on an every day sampling frequency during this time period. The PM_{10} concentrations reported at the monitoring site showed no measured exceedances of the 24-hour PM_{10} NAAQS between 1998 and 2000, which indicates Steamboat Springs attained the 24-hour PM_{10} NAAQS as of December 31, 2000. The highest monitored 24-hour value between 1998 and 2000 was 148 µg/m³. Although this wasn't an exceedance of the NAAQS, we agreed with Colorado that this value should be excluded as a high wind event under our May 30, 1996 "Areas Affected by PM–10 Natural Events" policy. This data was flagged as a natural event in our Aerometric Information Retrieval System (AIRS) and Colorado submitted the proper documentation package to us certifying that this monitored value was due to unusually high winds in the area. Because of this, the highest applicable monitored 24-hour value during the three year period was 121 µg/m³ which is below the standard of 150 µg/m³.

Review of the annual standard for calendar years 1998, 1999 and 2000 reveals that Steamboat Springs also attained the annual PM_{10} NAAQS by December 31, 2000. Data collected at the monitoring site showed no violations of the annual standard in the three year period from 1998 through 2000. The expected annual average value for the three year period was 25 µg/m³, which is below the standard of 50 µg/m³.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This final action merely determines that certain States have met federal requirements and imposes no requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule doesn't impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely makes attainment determinations, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. However, in this context, there is no state request or submittal for these attainment determinations. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 16, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Chapter I, title 40, part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. Section 52.332 is amended by revising the section heading and by adding paragraph (k) to read as follows:

§ 52.332 Control strategy: Particulate matter.

* * * * *

(k) *Determination*—EPA has determined that the Steamboat Springs PM_{10} "moderate" nonattainment area attained the PM_{10} national ambient air quality standard by December 31, 2000. This determination is based on air quality monitoring data from 1998, 1999, and 2000.

Subpart BB—Montana

3. Section 52.1374 is amended by redesignating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.1374 Control strategy: Particulate matter.

* * * * *

(b) *Determination*—EPA has determined that the Whitefish PM_{10} "moderate" nonattainment area attained the PM_{10} national ambient air quality standard by December 31, 1999. This determination is based on air quality monitoring data from 1997, 1998, and 1999. EPA has determined that the Thompson Falls PM_{10} "moderate" nonattainment area attained the PM_{10} national ambient air quality standard by December 31, 2000. This determination is based on air quality monitoring data from 1998, 1999, and 2000.

[FR Doc. 01–27277 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket #s: OR 68–7283a, OR 37–2–6301a, and OR 37–1–6301a; FRL–7035–6]

Approval and Promulgation of Air Quality Implementation Plan; Oregon

AGENCY: Environmental Protection Agency (EPA or "we").

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving most but not all of the State Implementation Plan (SIP) revisions submitted by the State of Oregon. This rulemaking evaluates the provisions of the Oregon Visibility SIP submitted August 26, 1993, smoke management plan provisions submitted on August 26, 1993, amendments to the smoke management plan for the Blue Mountains submitted September 27, 1995, and revisions to the Oregon field burning program submitted July 3, 1997. We are acting on these submissions together because they address, or are affected by, the control of particulate matter from area sources, specifically smoke from field burning and smoke from forestry burning. These rules are also linked through the Oregon Visibility SIP, which seeks to control visibility degradation through field burning programs and smoke management programs.

EPA is taking no action on the provision in the visibility SIP changing the review period from three to five years. Instead, the original three year review cycle will remain in the federally approved SIP until the first Regional Haze SIP is submitted and approved.

DATES: This direct final rule will be effective December 31, 2001, unless EPA receives adverse comment by December 3, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the informing the public that the rule will not take effect.

ADDRESSES: Mail written comments to Steven K. Body, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. You can see copies of the relevant documents used in this rulemaking during normal business hours at the following location: EPA Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA Region 10, Office of Air Quality, at (206) 553–0782.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

I. Visibility
A. What is visibility protection and why do we have it?
B. How is visibility being protected in Oregon?
C. What does Oregon's 1993 Visibility SIP submission propose to change and how do these changes compare to the Federal requirements?
D. Which regulations are being approved through this federal action?
II. Smoke Management Plan
A. What is Oregon's Smoke Management Plan?
B. How does Oregon's 1993 submission change the plan?
C. How does the Smoke Management Plan compare to Federal requirements?
D. Which regulations are being approved through this Federal action?
III. Smoke Management Plan—Blue Mountains Revision
A. What changes to the Smoke Management Plan are being proposed?
B. What are the Federal requirements?
C. Which regulations are being approved through this Federal action?
IV. Field Burning
A. What is Oregon's field burning program?
B. How does this SIP submission change the program?
C. What are the changes in acreage limitations?
D. What are the changes in registration and permitting of different types of burning?
E. Are there any other significant changes proposed by the 1997 SIP submission?
F. What are the Federal requirements for field burning?
G. Which regulations are being approved through this Federal action?
V. Administrative Requirements

I. Visibility

A. What Is Visibility Protection and Why Do We Have It?

Section 169A of the Federal Clean Air Act (CAA or Act) requires states to protect visibility in mandatory Class I Federal areas where visibility is an important value. Mandatory Class I Federal areas are generally large national parks or wilderness areas where visibility is considered an important value. In Oregon, there are 12

mandatory Class I Federal areas, which include the Mount Hood Wilderness, the Mount Jefferson Wilderness, Three Sisters Wilderness, and Crater Lake National Park. A full listing of these mandatory Class I Federal areas can be found at 40 CFR 81.425, as well as at OAR 340–30–120. The Federal rules regulating visibility protection are set out in 40 CFR part 51, subpart P.

What are the main visibility protections provided for by the Federal rules? The Clean Air Act sets out a goal of preventing any future and remedying any existing impairment of visibility in mandatory Class I Federal areas (section 169(A)). Employing a close coordination process among the state and the Federal land managers (FLM), the Federal rules require monitoring of visibility in mandatory Class I Federal areas, as well as the development of a long-term strategy for making reasonable progress towards this national visibility goal. The visibility protection rules also provide for an assessment of visibility impacts from any new major stationary source or major modification that may affect mandatory Class I Federal areas. Additionally, in the event that a Federal land manager certifies impairment of visibility in a mandatory Class I Federal area that could be caused, or contributed to, by a major stationary facility, Best Available Retrofit Technology (BART) may be imposed on the facility.

The Federal visibility rules were modified in 1999 to include provisions for addressing regional haze. Regional haze is visibility impairment which results from emissions from many point and non-point sources. All of the states are currently in the process of developing revisions to their SIP to address the regional haze provisions. Therefore, the SIP submission under discussion in this action is not required to comply with the regional haze provisions of 40 CFR part 51, subpart P. Please see the Technical Support Document associated with this rule for additional discussion of the visibility requirements of the Federal rule.

B. How Is Visibility Being Protected in Oregon?

On November 22, 1988, EPA approved visibility protection provisions into Oregon's State Implementation Plan (see 53 FR 47188). Oregon's visibility protection provisions are at Oregon Administrative Rule (OAR) 340–20–047, section 5.2. The visibility protection SIP provided three approaches to visibility protection: (1) A short-term strategy to be accomplished over a 5 year period to mitigate existing visibility impairment; (2) a long-range strategy to reduce fine particle emissions from agricultural field burning and forest prescribed burning over a 10–15 year period; and (3) on-going visibility protection afforded through the New Source Review permitting process. EPA approved the visibility SIP because it conformed to the federal visibility protection provisions outlined in 40 CFR 51.300, subpart P. On August 26, 1993, Oregon submitted changes to Oregon's regulations as proposed revisions to the visibility SIP.

C. What Does Oregon's 1993 Visibility SIP Submission Propose To Change and How Do These Changes Compare to the Federal Requirements?

The federal rules regulating visibility protection are set out in 40 CFR part 51, subpart P. Many of the federal requirements set out in subpart P are specific to SIPs that contain BART controls on a stationary source. Currently there are no major stationary sources in Oregon that could be required to adopt BART controls, therefore the BART requirements in subpart P are not applicable to this review of the Oregon SIP.

How does Oregon's SIP submission compare with the federal visibility requirements? The federal regulations require states to: (1) Develop long-term strategies for improving visibility over a 10–15 year period; (2) assess visibility impairment; (3) establish BART emission limits (if applicable); and (4) implement visibility protection provisions under the Prevention of Significant Deterioration program. See 40 CFR 51.302. The first, second and fourth requirements are discussed below. The third requirement is not applicable to Oregon because no Federal Land Manager has certified impairment of visibility in a Class I area due to a specific stationary source.

What are the proposed changes to the long-term strategy for visibility protection and how do they compare to the federal requirements? The 1993 submission builds on the programs established in the earlier visibility SIP. Oregon set out a comprehensive plan for all its Class I areas. Focusing on vegetative burning, the 1993 submission: (1) Expands the period during which restrictions to protect visibility apply by approximately 15 days; (2) incorporates the Class I area visibility protection provisions of the Union and Jefferson County field burning ordinances (Union County Ordinance #1992–4 passed May 6, 1992, and Jefferson County Ordinance #0–58–89 passed May 31, 1989); (3) reduces the annual acreage allowed for research and hardwood conversion burning from 1200 to 600 acres per year; and (4) revises the Willamette Valley field burning restriction emergency clause to allow hardship requests for visibility protection exemptions beyond August 10th of each year. In addition to these changes, the 1993 visibility SIP submission proposes to decrease the frequency of the formal review of the visibility program by the Department of Environmental Quality from 3 to 5 years. However, EPA will take no action on this provision because at this time Federal visibility protection regulations require the states to review and revise as necessary the visibility program every three years. See 40 CFR 51.306(c). Thus the three year review period remains in the SIP.

EPA has determined that the 1993 submission is a general strengthening of the SIP because it includes additional provisions protecting visibility, such as the expansion of the visibility protection period, and the addition of field burning ordinances for Jefferson and Union County.

Visibility is actively monitored in the Oregon Class I areas. Visibility in the Class I areas has significantly improved from the conditions in the 1980s. Please see the Technical Support Document associated with this rule for further discussion on this issue.

The 1993 submission evaluated monitoring results for the summers of 1984 to 1989 as part of the State's assessment of the effectiveness of its past controls and choice of future controls needed. Oregon concluded that from 23% to 31% of the visibility impairment cases documented within the Eagle Cap Wilderness are caused by agricultural field burning in the Grande Ronde Valley. Oregon also identified Jefferson County agricultural field burning as a source of impairment within the central Oregon Cascade wilderness areas. Based on this assessment, Oregon continues to focus on emissions from agricultural burning.

EPA believes that Oregon's monitoring system and the SIP's use of these data satisfy the federal requirements to monitor visibility, assess the progress achieved in remedying existing impairment of visibility, assess changes in visibility since the last report, and use these assessments in the development of a long-term strategy. See 40 CFR 51.302(c)(ii), 51.305, 51.306(c)(1), and 51.306(c)(3).

40 CFR 51.307 sets out the requirements for evaluating the visibility impacts from any new major stationary source or major modification that would be constructed in an area that is designated attainment or unclassified. The State of Oregon is fully delegated to carry out the Prevention of Significant Deterioration (PSD) program and complies with this section of the visibility provisions.

D. Which Regulations Are Being Approved Through This Federal Action?

In this action, EPA is revising Oregon's State Implementation Plan to include OAR 340–20–047, section 5.2 that became effective August 11, 1992. EPA is taking no action on the provision in OAR 340–20–047, section 5.2.4.2 and section 5.2.5.1, that changes the review period of the visibility SIP from three to five years.

II. Smoke Management Plan

A. What Is Oregon's Smoke Management Plan?

Oregon's Smoke Management Plan (SMP) is a program designed to manage smoke impacts from the burning of silvicultural wastes and the prescribed burning of forests. The Oregon SMP tries to balance essential forest land burning with preventing smoke from being carried to, or accumulating in, designated areas and other areas sensitive to smoke. The SMP establishes a permitting system for burning based on close cooperation of the Oregon Department of Forestry (ODF) and the Oregon Department of Environmental Quality (ODEQ). The SMP requires burners to obtain burning permits and to burn only under appropriate meteorological conditions.

Oregon's Smoke Management Plan is at OAR 629–43–043, Oregon Department of Forestry rules. On November 22, 1988, EPA incorporated the State of Oregon's smoke management program (OAR 629–43–043) and the "Operational Guidance for the Oregon Smoke Management Program" (Directive 1–4–1–601) into the SIP. See 53 FR 47188 (November 22, 1988). On August 26, 1993, Oregon submitted the Department of Environmental Quality Smoke Management Plan as amended and adopted as part of the Oregon Clean Air Act Implementation Plan (SIP) through Oregon Administrative Rule (OAR) 340–20–047, to EPA as a revision to the SMP portion of the Oregon SIP

B. How Does Oregon's 1993 Submission Change the Plan?

Through this 1993 SIP submission, Oregon is modifying its Smoke Management Plan to strengthen visibility protection of the Class I areas, and to provide for additional protections around nonattainment areas for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). EPA is approving Oregon's amendment to its Smoke Management Plan because it constitutes a general strengthening of the SIP.

One of the primary strengthening provisions of the Oregon Smoke Management Plan is the adoption of additional restrictions on burning through the establishment of a Special Protection Zone (SPZ) around each of the six PM–10 nonattainment areas in Oregon. When this rule was under development in 1992, there were six PM–10 nonattainment areas; Klamath Falls, Medford, Oakridge, Grants Pass, Eugene-Springfield, and La Grande. A new nonattainment area, Lakeview, was designated on October 25, 1993. See 40 CFR 81.338. The SMP does not identify a SPZ for Lakeview. Determined in part by geography, meteorology and location of forested areas, the 20 mile SPZ boundary around the six PM–10 nonattainment areas would contain additional restrictions on slash burning. In western Oregon, between November 15 and February 15, the slash burning restrictions are mandatory: (1) A prohibition on burning in the SPZ if the Department of Forestry forecaster determines weather conditions are likely to cause a smoke intrusion into the adjacent PM–10 nonattainment area; (2) monitoring of burns for at least 3 days and requirements to extinguish fires to prevent smoke from smoldering fires from affecting the nonattainment area; and (3) a prohibition on new ignitions in the SPZ when there is a residential wood combustion curtailment in the adjacent PM–10 nonattainment area between December 1 to February 15 (during "Red" woodburning curtailment). In eastern Oregon, these three restrictions would be voluntary for La Grande and Klamath Falls.

In the event that both a PM–10 nonattainment area fails to attain the National Ambient Air Quality Standard by the specified deadline, and a measured impact from slash smoke is determined to be a significant contributor to the PM–10 nonattainment, then additional smoke burning restrictions would take effect as contingency measures to the PM–10 nonattainment area plans.

The 1993 SIP revision revises the definition of slash to exclude brush generated by residential development land clearing. Instead, the burning of brush generated by residential development land clearing will be regulated by the Department of Environmental Quality's open burning rules.

For additional discussion of the previously described modifications and other changes to the smoke management plan proposed by the 1993 SIP submission, please see the Technical Support Document associated with this rule.

C. How Does the Smoke Management Plan Compare to Federal Requirements?

The visibility protection provisions at 40 CFR part 51, subpart P suggest that states consider Smoke Management Plans in developing long-term strategies for visibility protection. In September 1992, the Environmental Protection Agency published *The Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures* to assist states in the development of Smoke Management Plans (EPA–450/2–92–003). These are a few examples of how the federal government widely acknowledges the benefits of smoke management plans. However, there are no specific federal requirements for states to develop and adopt Smoke Management Plans. Nonetheless, when compared with many of the smoke management plans adopted by other states, Oregon's Smoke Management Plan is one of the stronger plans.

D. Which Regulations Are Being Approved Through This Federal Action?

In this action, EPA is revising Oregon's State Implementation Plan to include rules for the Oregon Department of Forestry. Specifically, OAR 629–24–301, that became effective on August 1, 1987 and the Smoke Management Plan at OAR 629–43–0043 that became effective on April 13, 1987, are approved. This action also approves Oregon Revised Statutes, ORS 477.515, last amended in 1971 into the SIP and modifies the *Operational Guidance for the Oregon Smoke Management Program*, Directive 1–4–1–601 that became effective on August 11, 1992.

III. Smoke Management Plan—Blue Mountain Revision

A. What Changes to the Smoke Management Plan Are Being Proposed?

On September 27, 1995, Oregon submitted a package of rules revising the Prevention of Significant Deterioration (PSD) program for Oregon. The package included several modifications to comply with existing federal requirements for the PSD program, as well as changes specific to the Oregon program. The 1995 submission sought to: replace Total

Suspended Particulate increments with PM–10 increments; change the boundaries for the Class I areas; change the PSD baseline date, and amend the Smoke Management Plan.

On March 7, 1997, EPA approved the changes submitted in the September 1995 package with the exception of approving the amendments to the Smoke Management Plan (see 62 FR 10457). In this action, EPA is approving the Smoke Management Plan amendments.

The 1995 submission amends the Smoke Management Plan in the Blue Mountains in eastern Oregon. The Blue Mountains comprise the Umatilla, Wallowa-Whitman, Ochoco, and Malheur National Forests in northeastern Oregon, the forest lands of the Baker Resource Area, Vale Bureau of Land Management (BLM) District, Central Oregon Resource Area, Prineville BLM District, and the Three Rivers Resource Area and the Burns BLM District. The 1995 submission creates a mandatory smoke management program that requires Forest Service and BLM to track annual emissions from prescribed burning and wildfire to protect against a violation of the PSD increment requirements. The 1995 submission requires prescribed burning to be curtailed if the emission target is reached. Should unexpected increases in wildfires cause the target level to be exceeded, the annual prescribed burning limit would be adjusted downward to offset these increases.

The PSD baseline time period for the Blue Mountains is set using the period of 1980 to 1993, inclusive. The amendments to the Smoke Management Plan establishes a total baseline emissions from prescribed burning and wildfire. The total baseline emissions are estimated to be 17,500 tons of PM–10 per year. The Smoke Management Plan distributes this increment between a wildfire target level of 2,500 tons of PM–10 per year, and a prescribed burning emission limit of 15,000 tons per year. The 1995 submission requires wildfire emissions to be estimated, and adjustments to the prescribed burning schedule to be made in response to these estimates.

Further, the Forest Service and BLM are required to conduct prescribed burning under smoke dispersion conditions which minimize smoke impacts and protect air quality in northeast Oregon, southeast Washington, and western Idaho. An important component of this program is the establishment of real-time monitoring of smoke impacts through a smoke management network operated by the Forest Service, with technical assistance from the Oregon Department of Environmental Quality. Should burning be determined to be causing a measurable smoke impact, aggressive mop-up or other measures would be used to reduce the duration or intensity of the smoke impacts.

B. What Are the Federal Requirements?

There are no specific federal requirements for Smoke Management Plans. The federal requirements for the Prevention of Significant Deterioration are outlined in 40 CFR 51.166. As noted above, EPA approved the revision of the baseline date for an area in northeastern Oregon in March 1997. EPA has reviewed the derivation of the 17,500 tons per year baseline and believes it is consistent with the Clean Air Act. EPA further believes that this Smoke Management Plan would improve Oregon's ability to try to control overall smoke impacts from forest fires. This is a creative approach to minimize air quality impacts from prescribed fires and wildfires based on strong cooperation among state air regulators, state land managers, and federal land managers.

C. Which Regulations Are Being Approved Through This Federal Action?

In this action, EPA is revising Oregon's State Implementation Plan to include the "Oregon Smoke Management Plan, Appendix 5, Operational Guidance to the Oregon Smoke Management Program, Criteria for National Forest and BLM Lands in the Blue Mountains of NE Oregon (Volume 3, Section A1)" with the effective date of July 12, 1995.

IV. Field Burning

A. What Is Oregon's field burning program?

Since the 1970's, Oregon has operated a field burning program to control particulate matter emissions from the burning of perennial and annual grass seed and cereal grain crops in the Willamette Valley. The Willamette Field Burning Rules are in OAR Chapter 340, Division 26. The open burning of all other agricultural waste material, including sanitizing perennial and annual grass seed crops by open burning in counties outside of the Willamette Valley is governed by OAR Chapter 340, Division 23, "Rules for Open Burning." This action addresses changes to Division 26 only.

Over the years, Oregon has modified its field burning program. In 1985, EPA approved the field burning SIP. The field burning program was a permits and fee program. Burning permits were specific to location and might limit or define the methods a burner may use. The 1985 field burning SIP established a cap on the maximum acreage to be open burned annually in the Willamette Valley. This acreage cap was set at 250,000 acres annually. The 1985 field burning SIP included a record keeping provision that enabled the program to track acreage burned. Based on meteorological assessments of wind conditions and mixing heights, the field burning program had daily burning authorization criteria.

EPA last approved the propane flaming annual acreage cap and several definitions for the Oregon field burning program in 1997 (62 FR 8385, February 25, 1997). The approved modifications to Division 26 were those that were effective in Oregon on March 10, 1993. The last substantive EPA approval of Division 26 occurred in 1985 (50 FR 31368, August 2, 1985). On July 3, 1997, ODEQ submitted revisions to the field burning program as a revision to Chapter 340, Division 26, "Rules for Open Burning (Willamette Valley)'.

B. How Does This SIP Submission Change the Program?

What are the significant changes proposed by the July 3, 1997, submission? This 1997 submission proposes to significantly revise the 1985 field burning SIP. Earlier in 1997, EPA adopted several housekeeping changes to the Willamette Valley field burning rule (see 62 FR 8385, February 25, 1997). The February 1997 action was not intended to address any substantive changes to the field burning program. In February 1997, EPA specifically approved the definitions for: "fire safety buffer zone," "marginal day," "open burning," "propane flaming permit," "released allocation," and "stack burning permit." EPA also approved a maximum acreage to be propane-flamed annually in the Willamette Valley.

The July 3, 1997, submission modifying the Oregon field burning rules establishes three types of burning: open field burning, propane flaming and stack-or pile burning. The 1997 submission reduces the total acreage allowed to be open burned, establishes a separate acreage cap for propane flaming, exempts stack or pile burning from the field burning cap and changes the registration, permitting and fee structure for all these burns. The 1997 submission also adds two new sections: Sections 340–26–033 and 340–26–055 which regulate preparatory burning and stack or pile burning. This 1997 submission also repeals Section 340–26–025 which provided for Civil Penalties.

C. What Are The Changes in Acreage Limitations?

How are acreage limitations affected by the new submission? In the 1985 field burning SIP, Oregon established that the maximum acreage to be open burned annually would not exceed 250,000 acres. The 1985 SIP also set a daily burn limit of 46,934 acres per day. Propane flaming was not included under this acreage limitation. In supporting documentation on the July 3, 1997, SIP revision, provided to EPA by Oregon on December 22, 1999, Oregon asserts that stack or pile burning were not considered to be covered by this limitation, either. EPA disagrees. In reading the language used in the 1985 SIP, as well as the language adopted under the Fire Marshal Rules that were first promulgated in 1988, there was a consistent division only between field burning and propane flaming. "Stack or pile burning" was not considered to be a separate category. EPA believes that the 250,000 annual acreage limit covered both open field burning and stack or pile burning.

As noted earlier, the 1997 submission defines three different methods of burning: open field burning, propane flaming, and stack or pile burning. The 1997 submission treats each of these types of burns differently. One of the most aggressive forms of control in Oregon's field burning program is the significant decrease in the maximum acreage that can be open field burned annually. The maximum allowable acreage decreased from 140,000 (for 1992–3) to 120,000 (for 1994–5) to 100,000 (for 1996–7) to 40,000 for 1998 and thereafter. Maximum acreage of fields to be propane flamed annually is set at 75,000 acres. No specific acreage caps have been set for stack or pile burning, however, the fees for stack or pile burning incrementally increase annually to discourage this type of burning.

What is the effect of the acreage limitations proposed in the 1997 submission? Combining the limits for open burning and propane flaming, the maximum combined acreage to be burned annually is 140,000 acres. This is a decrease from the 250,000 annual limit on open burning established in the 1985 SIP. Stack and pile burning is not included in this annual cap.

As noted above, EPA believes that stack or pile burning was included in the 1985 SIP's annual limit of 250,000 acres. In 1999, Oregon estimated the amount of acreage treated by stack or pile burning fell from approximately 60,000 acres in 1988 to 30,000 acres in 1991, to 14,574 acres in 1992, to 8,588 acres in 1997. (See December 22, 1999 letter from Laurey Cook, ODEQ, to Claire Hong, EPA Region 10). EPA believes that these significant decreases in the amount of acreage stack or pile burned are likely to continue due to the conversion of agricultural lands to other uses, the fall in hay prices, and the increased cost of sanitizing the fields. Even if we were to use the historically much higher 1988 levels of stack or pile burning, the overall acreage that would be burned would still fall below the limits established in the 1985 SIP for annual limits.

In addition to the change in annual acreage limits, another change to the acreage limitations focused on acreage burned per day. Under the 1985 SIP, the daily cap on acres field burned was 46,934 acres. This cap was based on air quality dispersion modeling that indicated that burning this acreage would not result in a violation of the National Ambient Air Quality Standards or Prevention of Significant Deterioration increments. The 1997 submission would repeal this daily acreage cap. EPA believes that repealing this daily acreage limit would not result in a weakening of the SIP due to the significantly decreased acreage that can be burned over the year for all types of burning. Although not a direct comparison, the annual limit in the 1997 submission for open burning is lower than the 1985 daily cap on acres burned. Additionally, the 1997 submission adds acreage limits for steep terrain, training fires, and preparatory burns. When evaluated in total, EPA believes all these changes to acreage limits is a general strengthening of the SIP.

In reviewing the 1997 submission, EPA considers the impact of rule changes on air quality. Comparing the total acreage allowed to be burned under the 1985 SIP to the total acreage allowed to be burned under the 1997 submission is a rough indicator of what air quality impacts may be. However, there are factors in addition to decreased acreage that support the idea that this 1997 modification would result in better air quality. The 1997 submission encourages the use of stack or pile burning over open field burning. In general, stack or pile burning tends to emit less smoke than open field burning due to higher combustion rates because of the concentration of materials. While this correlation does not hold true if the stacks or piles are wet, it is likely that encouraging the use of stack or pile burning over open field burning would result in lower emissions. Oregon estimates that an acre of straw burned in the field emits sixty percent more particulate matter than an acre of straw removed and burned in a stack. When evaluated in total, EPA believes that the overall impact of changes to acreage limitations would be a strengthening of the SIP.

D. What Are the Changes in Registration and Permitting of Different Types of Burning?

Two of the main changes between the 1985 SIP and the 1997 submission is the change in the treatment of propane flaming and the addition of stack or pile burning as a separate category of burning. In the 1985 SIP, propane flaming was exempt from rules OAR 340–26–010 through 340–26–015 and, therefore not subject to open field burning requirements related to registration, permits, fees, limitations, allocations and daily burning authorization criteria. The 1997 submission dramatically modifies the treatment of propane flaming. The 1997 submission prohibits individuals from burning in a manner contrary to the Department's conditions. Section OAR 340–26–010 (5), states that, "No person shall cause or allow open field burning, propane flaming, or stack or pile burning which is contrary to the Department's announced burning schedule specifying the times, locations and amounts of burning permitted, or to any other provision announced or set forth by the Department or this Division." The 1997 submission would repeal the exemption of propane flaming from registration, permitting and other general controls established for field burning. This does not mean that propane flaming is treated in the exact same manner as field burning. It is not. Rather, propane flaming is more controlled under the 1997 rules than it was in the 1985 SIP.

Stack or pile burning's treatment under Division 26 is also clarified by the 1997 submission. The 1997 submission creates a new category of burning known as stack or pile burning. The 1997 submission does not include stack or pile burning in the annual acreage limitations established for field burning. As discussed earlier in this **Federal Register** notice, and in the TSD that accompanies this action, EPA believes that failing to include stack or pile burning in the annual acreage limits does not weaken the SIP because of the significant decrease in the acreage that can be burned under the annual cap.

The 1997 submission also proposes to change the treatment of stack or pile burning by exempting stack or pile burning from the registration process. Although Oregon would no longer separately register acres that would be

stack or pile burned, Oregon would continue to permit stack or pile burning. Thus, Oregon would still be able to track the acres to be stack or pile burned through the permitting process. Oregon also proposes to clarify that stack or pile burning will be subject to the State Fire Marshal Rules that prohibit burning within 1/4 mile of major roadways, and that can impose additional conditions on burning. Stack and pile burning must be conducted with a valid permit, must follow established procedures of the Department, and is prohibited on any day, or at any time, if the Department has notified the State Fire Marshal that such burning is prohibited because of adverse meteorological or air quality conditions.

What is the overall impact of these changes to the treatment of stack or pile burning? Although stack or pile burning will no longer be registered, it continues to be permitted, thus allowing sufficient regulatory authority to control stack or pile burning. EPA believes the impact of these changes would not constitute a relaxation of the SIP.

E. Are There Any Other Significant Changes Proposed by the 1997 SIP Submission?

The 1997 submission incorporates the Rules of the State Fire Marshal by reference into 340–26–001, 340–26–015, 340–26–033, 340–26–045, and 340–26–055. The rules of the State Fire Marshal, safety requirements for field burning and propane flaming, are at Oregon Administrative Rules 837–110–010 through 837–110–160. Adopting these rules by reference is intended to increase the degree of public safety by preventing unwanted wild fires and smoke from open field burning, propane flaming, and stack burning near highways and freeways. The State Fire Marshal rules establish a fire safety buffer zone around highways and roadways. The State Fire Marshal rules outline additional controls on the manner and timing of burns in these areas.

The 1997 submission repeals Section 340–26–025 entitled "Civil Penalties". While SIP revisions are evaluated for enforceability, rules describing state enforcement authority and penalties are not appropriate for inclusion into the SIP to avoid potential conflict with EPA's independent authorities. Therefore, EPA is taking no action on these provisions of the Oregon rules.

Other rule changes include systematically referencing propane flaming and stack or pile burning to the rules to clarify which criteria apply to different types of burns. The "prohibition conditions" under daily burning authorization criteria are tightened and the acreage limitation for experimental burning are lowered from 5000 to 1000 acres. Several definitions have been added, and the definition for "grower allocation" has been modified to tighten the amount of acreage that could be allocated in the event that total registration as of April 1 exceeds the maximum acreage allowed to be open field burned or propane flamed annually.

F. What Are the Federal Requirements for Field Burning?

Similar to smoke management plans, there are no federal requirements for field burning controls. How then does EPA evaluate the adequacy of these significant changes proposed by the 1997 submission? Section 193 of the Clean Air Act, entitled the "General Savings Clause" provides that, "no control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in an area which is a nonattainment area for any air pollutant, may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant."

The pollutant of concern is PM–10 and the area of interest is the Willamette Valley, which contains several PM–10 nonattainment areas. The criteria for approval of these revisions is whether the 1997 submission would pose a relaxation of the controls that are in effect in the existing State Implementation Plan.

The majority of the changes proposed by the 1997 submission, such as the specific incorporation of the State Fire Marshal rules, strengthen the controls on field burning. The area most likely to be seen as a relaxation is the exemption of stack or pile burning from the annual acreage cap for field burning. However, as discussed above, EPA believes the impacts of this change are not a relaxation of the SIP.

In addition to reviewing the regulatory stringency of the 1997 submission compared to the 1985 SIP, it may be useful to evaluate the air quality in the Willamette Valley. The air quality data do not raise specific concerns about the contribution of field burning to the exceedances of the PM–10 standard. Please see the associated Technical Support Document for a fuller discussion.

G. Which Regulations Are Being Approved Through This Federal Action?

In this action, EPA is revising the Oregon State Implementation Plan to include OAR Chapter 340, Division 26 effective May 31, 1994. Further, EPA is incorporating by reference the rules of the State Fire Marshal OAR 837–110–110 through 837–110–160, effective February 7, 1994.

Please note that since these SIP revisions were adopted by the state, other modifications to Oregon's rules may have been adopted by the Environmental Quality Commission and submitted to the EPA for approval (e.g. the rule recodification package). Approval of the SIP revisions discussed in this action does not rescind any local rule amendments that were subsequently filed and submitted.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use" (66 FR 28355, May 22, 2001) This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **FEDERAL REGISTER**. A major rule cannot take effect until 60 days after it is published in the **FEDERAL REGISTER**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective December 31, 2001 unless EPA receives adverse written comments by December 3, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Oregon Notice Provision

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. EPA determined that, because the five-day advance notice provision required by ORS 468.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority that a state must demonstrate to obtain SIP approval, as specified in section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude Federal approval of a section 110 SIP revision.

To correct the problem the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph ORS 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify a state program from Federal approval or delegation. ODEQ responded to EPA's understanding of the application of ORS 468.126(2)(e) and agreed that, because Federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

Oregon Audit Privilege and Immunity Law

Another enforcement issue concerns Oregon's audit privilege and immunity law. Nothing in this action should be construed as making any determination or expressing any position regarding Oregon's Audit Privilege Act, ORS 468.963 enacted in 1993, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act Program resulting from the effect of Oregon's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and record keeping requirements.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of **Federal Register** on July 1, 1982.

Dated: July 23, 2001.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(135) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(135) The Oregon Department of Environmental Quality submitted a Visibility SIP revision on August 26, 1993, smoke management provisions on August 26, 1993, revisions to the Oregon field burning program on July 3, 1997, and amendments to the smoke management program regarding the Blue Mountains rules on September 27, 1995. EPA approves these revisions with the exception of the provision that changes the review period of the Visibility SIP from every three years to every 5 years (OAR 340–20–047 Section 5.2.4.2 and OAR 340–20–047 Section 5.2.5.1)

(i) Incorporation by reference.

(A) OAR 629–24–301 effective August 1, 1987.

(B) OAR 629–43–043 effective April 13, 1987.

(C) ORS 477.515 effective 1971.

(D) Directive 1–4–1–601, *Operational Guidance for the Oregon Smoke Management Program*, effective October 23, 1992.

(E) OAR 340–26–0035 and 340–26–0040, effective March 10, 1993; OAR 340–26–0001, 340–26–0031, 340–26–0033, and 340–26–0045, effective May 11, 1993; 340–26–0003, 340–26–0005, 340–26–0010, 340–26–0012, 340–26–0013, 340–26–0015, and 340–26–0055, effective May 31, 1994.

(F) OAR 837–110–0010, 837–110–0020, 837–110–0030, 837–110–0040, 837–110–0070, 837–110–0080, 837–110–0090, 837–110–0110, 837–110–0120, 837–110–0130, and 837–110–0150, effective February 7, 1994; 837–110–0160, effective August 11, 1993; and 837–110–0050, 837–110–0060, and 837–110–0140, effective February 7, 1989.

(G) Union County Ordinance #1992–4 effective July 1, 1992.

(H) Jefferson County Ordinance #–0–58–89 effective May 31, 1989.

(I) Remove the following provision from the current incorporation by reference: OAR 340–26–025 effective March 7, 1984.

(ii) Additional Materials.

(A) OAR 340–20–047 Section 5.2 effective August 11, 1992 (except section 5.2.4.2 and section 5.2.5.1 introductory paragraph)

(B) "Oregon Smoke Management Plan, Appendix 5, Operational Guidance for the Oregon Smoke Management Program, Criteria for National Forest and Bureau of Land Management Lands in the Blue Mountains of NE Oregon (Volume 3, Section A1)", effective July 12, 1995.

[FR Doc. 01–27279 Filed 10–31–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[PA–T5–AC2001a; FRL–7093–3]

Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County; Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action fully approving a partial operating permit program under title V of the Clean Air Act (the Act). This program will allow the Allegheny County Health Department (ACHD), located in the Commonwealth of Pennsylvania, to issue federally enforceable operating permits to all major stationary sources and certain other affected minor sources in its jurisdiction. The ACHD's operating permits program was submitted to EPA by the Commonwealth of Pennsylvania on behalf of Allegheny County. By this same rulemaking, EPA is also withdrawing its previously published notice of proposed rulemaking dated December 6, 1999. Any parties interested in commenting on this rulemaking granting full approval to the ACHD's operating permits program should do so at this time.

DATES: This rule is effective on December 17, 2001 without further notice, unless EPA receives adverse written comment by December 3, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Allegheny County Health Department Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Linda Miller, Permits and Technical Assessment Branch at (215) 814–2068 or by e-mail at miller.linda@.epa.gov. Please note that comments on this rule must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On November 9, 1998 and March 1, 2001, the Pennsylvania Department of Environmental Protection (PADEP) submitted a request on behalf of the Allegheny County Health Department (ACHD) for approval of a partial operating program pursuant to 40 CFR part 70 for Allegheny County (the County). The ACHD will be the permitting authority for the operating permit program. On December 6, 1999, EPA proposed approval of the County's partial operating permit program (64 FR 68066). The ACHD has subsequently revised its regulations. These revisions strengthen the ACHD's operating permitting program. In this final rulemaking, EPA is both withdrawing its previous proposal (64 FR 68066) and approving the County's part 70 operating permit program as submitted on November 9, 1998 and amended on March 1, 2001.

This section provides additional information on EPA's approval of the partial operating permit program by addressing the following questions:

What is the operating permit program?
What is a partial program approval?
What are the operating permit program requirements?
What is being addressed in this document?
What is not being addressed in this document?

What Is the Operating Permit Program?

The Clean Air Act Amendments of 1990 required all States to develop operating permit programs that meet established Federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the Clean Air Act (CAA or the Act). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a federally-enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined. Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the Act or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of "major" sources in Allegheny County include, but are not limited to, those that have the potential to emit 50 tons per year or more of volatile organic compounds; 100 tons per year or more of certain other criteria pollutants; those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the Act, or those that emit 25 tons per year or more of a combination of HAPs. In an area not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the area's nonattainment classification.

What Is a Partial Program Approval?

The approved Pennsylvania part 70 operating permit program currently applies state-wide. A partial program approval means that a geographic region of Pennsylvania, Allegheny County, will have a separate program. The term "partial" is a geographic reference. It is not a reference to the approval status of the ACHD's program.

What Are the Operating Permit Program Requirements?

The minimum program elements for an approvable operating permit program are those mandated by title V of the Act and in EPA's implementing regulations at CFR 40, part 70—"State Operating Permit Programs." Title V required state and provided for local air pollution control agencies to develop operating permit programs and submit them to EPA for approval by November 15, 1993. Under title V, State and local air pollution control agencies that implement operating permit programs are called "permitting authorities." EPA granted full approval of PADEP's operating permit program on August 26, 1996 (61 FR 39597). That program currently applies in Allegheny County. The ACHD has adopted and requested approval of a separate program, referred to as a partial program. The PADEP has submitted a formal request to EPA for approval of a part 70 operating permit program for Allegheny County. EPA is approving this partial program for Allegheny County.

The regulations for the Allegheny County part 70 permit program are found in the County's Air Pollution Control Regulations. Definitions for the air pollution control program are found in Part A of the regulations (2101.01 et seq.). A list of the County's definitions relevant to this rulemaking is included in the Technical Support Document (TSD) prepared by EPA in support of this rulemaking. Copies of that TSD may be obtained, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. Part C of the County's regulations focuses on requirements for operating permits for all sources of air pollution. Part C is divided into two subparts. Subpart 1 includes requirements for all operating permits, including part 70 sources. Subpart 2 includes additional, and in some cases, more extensive, requirements for part 70 operating permit sources.

The County's program meets the minimum requirements of 40 CFR part 70. Several provisions differ from, but have been determined to be consistent with, 40 CFR part 70, in scope and stringency. These areas are highlighted below:

A. Legal Opinion

The legal opinion submitted by the County did not address the time frame required for petitions for judicial review and the judicial review requirements for failure to issue minor permits. However, as described below, the ACHD's regulations contain provisions which address the requirements:

(1) *Time frame for judicial review:* Although the ACHD's operating permit program regulations do not specify the time frame for filing a petition for judicial review, the ACHD is generally subject to Article XI, Hearings and Appeals. In order to obtain judicial review, section 1104(a) requires that an appellant must first file a notice of appeal to the Director of the ACHD and go through an administrative hearing process. The notice of appeal, as described in ACHD regulations, section 1104(b), requires the names, addresses, and telephone numbers of the appellant and his or her duly authorized attorney or agent, if any, and shall describe grounds for appeal. The notice of appeal must be filed no later than 10 days after written notice or issuance of the action by which the appellant is aggrieved. The remaining requirements for submission of information by the appellant is described in the procedures set forth in section 1105 of the ACHD's regulations. The ACHD regulations meet the requirement for initiating judicial review required by 40 CFR part 70.

(2) *Judicial review for failure to act on minor permits:* The ACHD's program does not specifically address judicial review for failure to issue a minor permit modification as a separate appealable action. However, section 2103.14(c)(8) clearly requires final action within 60 days for any proposed minor permit modification. Section 2103.11(f) states that the Department's failure to take final action is appealable and that the Court of Common Pleas may require action on the application without further delay. Therefore, the ACHD's regulations contain necessary authority to compel action on minor permit modifications.

B. Transition Plan

The transition plan included in section 2103.01 of the ACHD's regulations specified deadlines for permit application submittal and permit issuance. These dates have passed. Nonetheless, EPA previously approved the Commonwealth of Pennsylvania's part 70 operating permit program on August 29, 1996 (see 61 FR 39598) which established deadlines for permit applications that applied state-wide. The ACHD's request to have partial program approval does not affect, or change in any way, the dates established in the Commonwealth's approved program.

C. De Minimis Changes

The ACHD's program limits changes without a permit revision to de minimis levels in section 2103.14. The ACHD regulations allow a permit shield for de minimis changes, unless prohibited by the CAA. In this final rulemaking, EPA is clarifying that the Act's implementing regulations, 40 CFR part 70, do prohibit permit shield for de minimis changes to a title V permit.

D. Absence of Part 70 Emergency Defense Provisions

The ACHD has incorporated most of the recordkeeping and reporting requirements required under part 70 for an emergency to be considered an affirmative defense. However, consistent with Pennsylvania's program, the ACHD program does not allow an emergency to be considered an affirmative defense. EPA clarified in its August 31, 1995 (60 FR 45530) supplemental part 70 document that "the part 70 rule does not require the States to adopt the emergency defense. A State may include such a defense in its part 70 program to the extent it finds appropriate, although it may not adopt an emergency defense less stringent than that set forth at 40 CFR 70.6 (g)." As the adoption of emergency defense provisions under part 70 is discretionary, the ACHD's program is not inconsistent with part 70.

A detailed description of Allegheny County's submittal and EPA's evaluation are included in a technical support document (TSD) in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

What is Being Addressed in This Document?

The November 5, 1998 submittal, as amended March 1, 2001, requested approval of numerous revisions of the Pennsylvania State Implementation Plan (SIP) as well as approval of the ACHD's operating permit program. This final rule addresses only the ACHD's part 70 operating permit program approval. The part 70 operating permit program is also referred to as the title V program, referencing the CAA citation for part 70 operating permit programs.

What is Not Being Addressed in This Document?

The November 9, 1998, submittal, as amended March 1, 2001, contained numerous requests for revisions to the Pennsylvania SIP, including a recodification of the regulations in general, amendments to major and minor new source review (NSR) and prevention of significant deterioration (PSD) programs, as well as requests for approval or delegation of programs under 40 CFR parts 52, 63 and part 70 permitting programs, and approval for delegation of programs under section 112 of the Act. These requests have been or will be the subjects of separate rulemakings.

II. Final Action

EPA is taking direct final action fully approving a partial operating permit program to allow ACHD to issue operating permits to all major stationary sources in Allegheny County, Pennsylvania. In addition, EPA is withdrawing its proposed rule of December 6, 1999(64 FR 68066). EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the operating permit program approval if adverse comments are filed relevant to the issues discussed in this action. This rule will be effective on December 17, 2001 without further notice unless EPA receives adverse comment by December 3, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, (May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing state operating permit programs, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove an operating permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving a partial title V operating permit program for the ACHD, Allegheny County, Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 17, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Appendix A to part 70 is amended by revising paragraph (b) in the entry for Pennsylvania to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Pennsylvania

(a) * * *

(b) The Pennsylvania Department of Environmental Protection submitted a request on behalf of the Allegheny County Health Department pertaining to operating permit programs in the Commonwealth of Pennsylvania. The submission, dated November 9, 1998 and amended March 1, 2001, includes a request for approval of a partial operating program pursuant to 40 CFR part 70 for Allegheny County. The Allegheny County Health Department's partial operating permit program is hereby granted full approval effective on December 17, 2001.

* * * * *

[FR Doc. 01–27281 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7097–1]

Hawaii: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination on application of Hawaii for final authorization.

SUMMARY: Hawaii has applied for final authorization of its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Hawaii's application and has reached a final determination that Hawaii's hazardous waste management program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA).

EFFECTIVE DATE: Final authorization for Hawaii shall be effective at 1 p.m. on November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Rebecca Smith, WST–2, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco 94105–3901, (415) 744–2152.

SUPPLEMENTARY INFORMATION:

A. Why are State Programs Authorized?

Section 3006 of RCRA allows EPA to authorize State hazardous waste management programs to operate in the State in lieu of the Federal hazardous waste management program subject to the authority retained by EPA in accordance with RCRA, including HSWA. EPA grants authorization if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6926(b)). EPA regulations for final State authorization appear at 40 CFR part 271.

B. When Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste management program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

C. What Were the Comments and Responses to EPA's Proposal?

On May 5, 1999, Hawaii submitted an official application for final authorization to administer the RCRA program. On June 22, 2000, EPA published a tentative determination announcing its intent to grant Hawaii final authorization. Further background on the tentative decision to grant authorization appears at 65 FR 38802–38806, June 22, 2000.

Along with the tentative determination, EPA announced the availability of the application for public comment and the dates of a public meeting and a public hearing. The public meeting was held on July 25, 2000 and the public hearing was held on July 27, 2000.

The EPA received three oral comments, one of which was supplemented in writing, and one letter containing written comment during the public comment period. Additionally, in April 2001, after the close of the comment period, EPA received a Petition To Withdraw Hawaii Certification and Title VI Complaint of Discriminatory Acts (Petition to Withdraw) document challenging the administration and enforcement of environmental programs by the State of Hawaii and seeking withdrawal of authorization for all environmental programs, including RCRA. We have taken into consideration comments in the Petition relating to the Hawaii hazardous waste management program in taking today's action. In addition, the EPA Office of Civil Rights (OCR), which is responsible for processing and investigating complaints of discrimination filed against programs or activities that receive financial assistance from EPA, has notified the complainant that it will review the Title VI Complaint of Discriminatory Acts under the procedural rules for handling Title VI Complaints. The significant issues raised by the commenters and EPA's responses are summarized below. Today's action is not a final determination on the merits of the Petition to Withdraw federal authorization for all environmental programs in Hawaii.

1. *Comment:* EPA received comments relating to the Hawaii Department of Health's (HDOH) implementation of other programs for which Hawaii had been delegated authority by EPA. The comments generally asserted that the HDOH could not adequately enforce the laws and regulations of the hazardous waste management program because its record of performance in other environmental programs is poor. Some specific examples cited were that Hawaii's enforcement of the Clean Water Act is poor, its implementation of the Total Maximum Daily Load program (TMDL) is poor, and, in general, it lacks adequate funds, staff and commitment for environmental programs, such as the solid waste program. The Petition to Withdraw also raised these concerns. Please note, today's action is not a final determination on the merits of the Petition to Withdraw.

Response: Each environmental program is unique and must be evaluated in light of the particular federal and state requirements applicable to that program. Among other things, programs differ significantly in the numbers and types of pollutants regulated; the number, size and type of facilities which are regulated; complexity and scope of regulatory requirements; regulatory mechanisms (for example, use of permits and prohibitions); tools for assessing compliance (e.g., inspections, self-

monitoring and self-reporting); and enforcement options. Moreover, different programs vary in funding levels and sources, and staffing levels (both number of staff and required qualifications).

With respect to HDOH's performance in implementing the hazardous waste management program, EPA will discuss four program areas: compliance and enforcement, permitting, corrective action and waste minimization. HDOH has demonstrated steady progress in developing a strong compliance program. HDOH has been developing its capability to enforce the hazardous waste regulations since 1988, eleven years prior to submitting its application for program authorization in 1999. Since 1994, when Hawaii first promulgated state hazardous waste regulations, the HDOH staff have conducted more than 170 inspections of generators or treatment facilities and have developed 30 enforcement actions as a result of those inspections. Included in HDOH's recent enforcement efforts was a complex joint enforcement action with EPA against the University of Hawaii. That enforcement action resulted in one of the largest RCRA settlements ever for hazardous waste violations in EPA Region 9, including $1.7 million in penalties and environmental projects.

HDOH has inspected or visited another 530 sites, which were determined to be either conditionally exempt from regulation because they generated small amounts of hazardous waste, or not hazardous waste sites because the original facility no longer existed at that location. Information from these 530 smaller inspections and visits was used to update the HDOH database of facilities subject to RCRA hazardous waste management regulations. Twenty five of its 30 enforcement actions are complete, resulting in $792,058 in penalties collected. HDOH has also negotiated, as part of two settlements, supplemental environmental projects worth about $1.2 million. The EPA believes that this record demonstrates both a capacity and a commitment to enforce hazardous waste regulations.

Enforcement is only one aspect of a comprehensive hazardous waste management program. Other important components are permitting, which includes permitting currently operating treatment, storage and disposal facilities; corrective action, i.e., monitoring the cleanup of sites where past practices or accidents have resulted in hazardous waste spilling on the ground; and waste minimization, involving development of projects to promote future safe practices and waste reduction efforts. EPA believes that the Hawaii hazardous waste management program is thorough and sound in its permitting, corrective action and waste reduction activities.

Under the second part of the program, permitting, there is only one non-emergency permitted hazardous waste facility operating in Hawaii. The U.S. Navy at Pearl Harbor operates a hazardous waste storage facility to store hazardous wastes generated by the Navy until the wastes can be shipped to the mainland for proper treatment and disposal. The Pearl Harbor facility renewed a five-year permit in July 2000. The HDOH permit writer took the lead for reviewing the Navy's application and for developing the subsequent permit, issued pursuant to both Hawaii and Federal laws and regulations. There are currently three emergency permits that have been issued in Hawaii. Emergency permits are temporary permits, with a duration of no more than 90 days, issued to address an imminent and substantial endangerment to human health or the environment.

The only other site which may lawfully store hazardous waste on Hawaii is under the administration of the EPA rather than HDOH. That site is another U.S. Navy site at Pearl Harbor, which is storing hazardous waste mixed with radioactive waste until it can be shipped to planned treatment and disposal facilities on the mainland. Pearl Harbor is currently storing this waste under a compliance order entered into with EPA. When all of the currently stored waste is transferred, the site will not store hazardous waste beyond the amount of time allowed any generator in Hawaii to accumulate hazardous waste for safe transportation. In accordance with EPA's independent inspection and enforcement authorities after program authorization, EPA will continue to administer this order unless there is an agreement at some future time for HDOH to assume these duties.

The HDOH is monitoring the cleanup of four sites in Hawaii. Those sites comprise Hawaii's corrective action universe. All four of these sites have achieved sufficient cleanup and control to safeguard human health and groundwater.

In the area of waste minimization, the HDOH is implementing several projects to provide information to businesses and the public that will assist them in improving Hawaii's environment by preventing wastes from ever being generated or reducing the amount of waste a business needs to generate in its industrial processes.

In all four of these program areas: compliance and enforcement, permitting, corrective action, and waste minimization, Hawaii's record of performance shows it can adequately implement and enforce the laws and regulations of the hazardous waste management program.

With respect to the comments related to Hawaii's implementation and enforcement of the Clean Water Act, these are the same comments which were raised in the Petition. In response to the Petition, EPA decided to change its schedule of state program audits to perform an audit of Hawaii's NPDES program earlier than originally scheduled. Pursuant to the audit, EPA reviewed Hawaii's statutory authorities as well as enforcement mechanisms, and the audit raised some concerns, particularly related to enforcement. EPA is working with the State to address those concerns. We are also reviewing the issues raised in the Petition, and will respond directly to the Petitioner on those issues.

2. *Comment:* Several comments generally expressed concern that the State of Hawaii has sometimes violated its own regulations and cannot take enforcement action against itself.

Response: The HDOH does have the legal authority to bring an enforcement action against another state agency and, in fact, HDOH has taken enforcement action against another state agency. The EPA is satisfied that appropriate enforcement actions can and will be taken by HDOH against other non-complying State of Hawaii agencies when necessary. Over the last five years HDOH has targeted both local, state and federal governmental facilities, as well as private businesses, for hazardous waste compliance inspections. These inspections have resulted in 30 hazardous waste enforcement cases against public and private entities. Most recently, HDOH's largest hazardous waste enforcement case was against the University of Hawaii, a state-funded agency, that resulted in a $1.7 million settlement. The settlement includes a cash penalty of $505,000 and an agreement that the University will undertake several system-wide pollution prevention and waste minimization projects at a total value of $1.2 million, and an extensive compliance audit of its facilities. The University of Hawaii action was a joint enforcement effort between HDOH and EPA.

3. *Comment:* A commenter expressed concern that HDOH has not developed appropriately protective regulations, commenting for example that the State does not have good water quality standards. Similar concerns were mentioned in the Petition to Withdraw. Please note, today's action is not a final determination on the merits of the Petition to Withdraw.

Response: As adopted in 1994, and amended in 1998, the Hawaii hazardous waste management rules are at least as stringent as the federal rules and in some cases are even more protective, as was outlined in the **Federal Register** document discussing EPA's tentative determination to authorize the Hawaii hazardous waste management program, 65 FR 38802 (June 22, 2000). Hawaii has adopted all applicable federal RCRA hazardous waste management rules through May 25, 1998, and will continue to adopt new federal rules which are more protective of the environment. In addition, federal rules promulgated under the Hazardous and Solid Waste Amendments of 1984 (HSWA) are immediately enforceable by the U. S. EPA until Hawaii adopts and receives authorization for them.

HDOH is currently reviewing the water quality standards for Hawaii, as required by the Clean Water Act. The EPA is working closely with the State during this triennial review process to ensure a successful outcome. The HDOH is expected to complete its review by the end of 2002. However, the adequacy of water quality standards is not an element of the criteria for determining a state hazardous waste management program's eligibility for RCRA authorization.

4. *Comment:* One commenter said EPA has failed to adequately monitor the State of Hawaii programs and that program funds designated for a specific program have been given to other programs.

Response: The commenter did not give a specific example of a program or a federally-funded grant that was not adequately monitored or of misuse or misapplication of funds. Given that this Notice is addressing authorization of the hazardous waste management program, EPA will address the hazardous waste management program for which Hawaii is seeking authorization. Since 1988, EPA has annually evaluated HDOH's development and implementation of the hazardous waste management program. The hazardous waste management program has been supported by annual federal grants with appropriate matching state funds since 1988. As a part of these grants, EPA and HDOH negotiated annual work plans with EPA monitoring HDOH performance throughout the year. After the end of each annual grant EPA conducted a complete evaluation of the HDOH hazardous waste management program expenditures under the grant. EPA determined that HDOH accomplished all of the work described in the annual grants, or, on the occasions when HDOH experienced a vacant position or for some other reason missed a work commitment, HDOH has returned an appropriate amount of hazardous waste federal funds to EPA. EPA is satisfied that HDOH implements an effective hazardous waste management program and that HDOH has completed the work supported by the federal hazardous waste grants. EPA will continue to conduct program evaluations and monitor HDOH performance and grant expenditures.

5. *Comment:* A commenter said that the two-year enforcement trend that EPA discussed at a public meeting on July 25, 2000 was insufficient to predict continuing success.

Response: Although EPA focused on the three most recent years of HDOH inspection and enforcement history at the public meeting, HDOH has been conducting inspections since 1994, when the State rules were first promulgated. In making its authorization determination, EPA has reviewed the full HDOH inspection history. Since 1994, HDOH has conducted more than 170 inspections of large generators and has annually monitored compliance at the only non-emergency permitted hazardous waste storage facility. These inspections have resulted in 30 enforcement actions since 1994, including a complex joint enforcement action with EPA against the University of Hawaii.

6. *Comment:* A commenter said that Hawaii's hazardous waste management program is not adequately funded and is staffed by temporary employees. Similar concerns were raised in the Petition to Withdraw. Please note, today's action is not a final determination on the merits of the Petition to Withdraw.

Response: Before making an authorization determination, EPA evaluates the State's program in light of the following characteristics: past performance, resources and skill mix, training program, and State commitment; and EPA's expectation of the program's continuing success. EPA has evaluated all aspects of Hawaii's hazardous waste management program and has determined that Hawaii's program is adequate and the level of the State's resources is sufficient.

Hawaii has issued quality permits and the quality of the State's corrective action activities is high. All four of Hawaii's corrective action sites have corrective actions in place that are protective of human health and groundwater. The State's inspections and subsequent reports have adequately documented violations resulting in the successful assessment and collection of penalties. Hawaii has issued enforcement orders, settled cases and collected penalties in a timely manner; all of their enforcement cases initiated prior to the year 2000 are resolved. In addition, Hawaii has devoted sufficient State resources necessary to match the Federal hazardous waste management program grants. The State prepares and implements an annual training plan that ensures that all staff are adequately trained. Hawaii also has and effectively uses a data management system that provides timely and accurate information to the State and EPA. EPA believes that the State has demonstrated that it has the necessary resources, experience and organizational structure to successfully implement the provisions for which it is seeking authorization.

EPA believes that all of these actions and efforts are adequate to support HDOH's program, which has a universe of one storage facility, eight closing or closed facilities, four other sites undergoing cleanup, 55 large generators and 450 smaller generators of hazardous waste. All of the staff of the hazardous waste management program, the equivalent of 12 full time employees (FTE), occupy permanent positions.

7. *Comment:* A comment requested that HDOH develop, and get public involvement in, a policy to design and monitor supplemental environmental projects (SEP). The commenter said that they believed there was a SEP negotiated several years ago that awarded money to a non-profit agency without allowing other non-profit agencies to bid for the work. The commenter could not specify the office that developed the SEP or the violator involved.

Response: Hawaii is not required by RCRA statute or regulation to develop a supplemental environmental projects policy. Therefore EPA cannot condition RCRA authorization on whether HDOH has a SEP policy or the process to develop a SEP policy. Nevertheless, HDOH has chosen to adopt the EPA SEP policy, which obtains penalties for violations, but allows a portion of the penalty to be replaced by environmental work that is directly related to the violation. The February 2001 settlement of the enforcement action against the University of Hawaii contains the first SEP developed by the HDOH hazardous waste management program. EPA is satisfied with HDOH's application of its penalty and SEP policies in the University of Hawaii case. EPA believes that the HDOH policy concerning hazardous waste penalties is consistent with the federal policy and provides

adequate enforcement of compliance with the hazardous waste rules for purposes of authorization.

8. *Comment:* A comment proposed that, instead of giving the HDOH hazardous waste management program authorization, EPA give HDOH funding and training.

Response: As is the case with other States, EPA will continue to support HDOH's hazardous waste management program with available funding, training opportunities and coordinated activities after program authorization. EPA has supported the program since 1988 with federal grant funds. The EPA has provided training to HDOH in several areas, including inspections and enforcement, health and safety, penalty and economic benefit calculations, information management and waste minimization. The EPA also conducts program evaluations and provides feedback to the HDOH. The EPA will continue to do all of these things even after the program is approved.

9. *Comment:* A comment asked that the HDOH hazardous waste management program not be authorized until HDOH has developed criminal penalties.

Response: RCRA requires that authorized States have the authority to assess criminal penalties of at least $10,000 per day for each violation and imprisonment for at least six months. The criminal remedies must address the transport, permitting and used oil violations described at 40 CFR 271.16(a)(3)(ii). Under Hawaii Revised Statutes (HRS) Chapter 342J–9(c), Hawaii may assess criminal penalties up to $25,000 for each day of each violation or imprisonment for up to one year, or both; each of these provisions is more stringent than required for authorization. Additionally, the types of violations identified at HRS 342J–9(c) are consistent with the violations listed at 40 CFR 271.16(a)(3)(ii). Furthermore, HRS Chapters, 342J–7(a), 342J–8, and 342J–11 give Hawaii the authority to obtain injunctions against any person for any unauthorized activity which is endangering or causing damage to public health or the environment. Thus, Hawaii is authorized to assess criminal penalties, and such authority is consistent with the federal RCRA authorization requirements and therefore adequate for program authorization.

10. *Comment:* The Petition to Withdraw raised issues with Hawaii's investigative and enforcement efforts in connection with a March 2001 mercury release. Please note, today's action is not a final determination on the merits of the Petition to Withdraw.

Response: EPA is working with Hawaii on the cleanup and enforcement activities surrounding the mercury release. The HDOH office responsible for hazardous waste cleanup and enforcement in Hawaii is the Hazard Evaluation and Emergency Response (HEER) Office. The HEER Office does not administer the hazardous waste management program that is the subject of this authorization decision. The HEER Office had the lead in managing the cleanup activities. However, the EPA Emergency Response Team, the United States Navy and Air Force, and other local agencies participated in the cleanup. Cleanup of the mercury release and disposal of the waste was completed on or around July 30, 2001. Currently, the HEER Office is investigating the circumstances of the release to identify the responsible parties and recover response costs. The status of a state's hazardous waste cleanup activities however is not part of the criteria for determining a state hazardous waste management program's eligibility for RCRA authorization.

D. What Decisions Have We Made in This Rule?

EPA has made the final determination that Hawaii's application meets all of the statutory and regulatory requirements established by RCRA as of May 25, 1998. Therefore, we are granting Hawaii final authorization to operate its hazardous waste management program described in the authorization application, subject to the authority retained by EPA under RCRA. Hawaii will have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its program application, subject to the limitations of RCRA, including HSWA. New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before such states are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Hawaii, including issuing permits, until the State is granted authorization to do so.

E. What Is the Effect of Today's Action?

The effect of today's action is that persons in Hawaii that are subject to RCRA must comply with the authorized State requirements in lieu of the corresponding Federal requirements in order to comply with RCRA. Additionally, such persons must comply with any applicable Federally-issued requirements, such as, for example, HSWA regulations issued by EPA for which the State has not yet received authorization, and RCRA requirements that are not supplanted by authorized state-issued requirements. Hawaii continues to have enforcement responsibilities under its State law to pursue violations of its hazardous waste management program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements (including State-issued statutes and regulations that are authorized by EPA and any applicable Federally-issued statutes and regulations) and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own action.

This action does not impose additional requirements on the regulated community because the regulations for which Hawaii is authorized are already effective under State law and are not changed by the act of authorization.

EPA cannot delegate the Federal requirements for international export and transfrontier shipments of hazardous wastes at 40 CFR part 262, subparts E and H. Although Hawaii has adopted these requirements verbatim from the Federal regulations in Title 11 of the Hawaii Administrative Rules, sections 11–260, 11–261, and 11–262, EPA will continue to implement those requirements. Hawaii is not authorized for the requirements for international export and transfrontier shipments of hazardous wastes at 40 CFR part 262, subparts E and H.

F. What Rules Are We Authorizing With Today's Action?

On May 5, 1999, Hawaii submitted a final complete program application, seeking authorization in accordance with 40 CFR 271.3. In developing its hazardous waste management program, Hawaii adopted almost verbatim the federal hazardous waste regulations found in 40 CFR parts 260–266, 268, 270, 273 and 279, effective through May 25, 1998. We are granting Hawaii final authorization for the hazardous waste management program submitted. State hazardous waste management requirements that are either equivalent to or more stringent than the corresponding federal requirements will become part of the authorized State program and are federally enforceable. Upon authorization, the State's hazardous waste management rules that are either equivalent to or more stringent than the corresponding federal rules will apply in lieu of the federal rules. State hazardous waste requirements that are broader in scope than the federal program will not be part of the authorized program and are not federally enforceable. The applicable authorized rules are identified in the chart below. In the discussion below, we also identify the state hazardous waste requirements that are more stringent or broader in scope.

Federal hazardous waste requirements	Analogous state authority
40 CFR parts 260–266, 268, 270, 273, and 279, through May 25, 1998.	Hawaii Administrative Rules (HAR) 11–260 to 11–266, 11–268, and 11–270, adopted June 18, 1994, revised March 13, 1999; and HAR 11–273 and 11–279 adopted March 13, 1999.

Federal Provisions That Are Not Included in This Authorization

Hawaii did not adopt certain rulemaking petition procedures from 40 CFR part 260, subpart C, i.e., 40 CFR 260.20, 260.21, 260.22, 260.30, 260.31, 260.32 and 260.33, which address what to include in

- Petitions requesting modifications under 40 CFR parts 260 through 266, 268 and 273, and
- Petitions concerning equivalent testing methods, waste exclusion, recycled materials and devices classified as boilers.

Adoption of these rulemaking petition procedures is not required for RCRA authorization. EPA will continue to implement those requirements. Although Hawaii did not adopt these procedures, Hawaii did adopt some similar procedures which are discussed below with other more stringent requirements.

Where EPA grants a petitioner an exclusion from federally-issued standards under these procedures, it is advisable that the petitioner contact the State regulatory authority to determine the current status of its waste under State law. It is important for petitioners to contact Hawaii because States are free to impose requirements that are more stringent or broader in scope than Federal programs (RCRA section 3009 and 40 CFR 271.1(i)).

More Stringent Authorized State Hazardous Waste Requirements

Authorized State hazardous waste requirements are either equivalent to or more stringent than the corresponding federal requirements. The Hawaii hazardous waste requirements authorized with today's action include state requirements that are more stringent than the corresponding federal requirements.

Hawaii's program is more stringent in the manner in which it addresses federally approved variances and exclusions. Hawaii's hazardous waste management program includes procedures by which a petitioner may seek an exclusion or variance under State law where EPA has previously approved an exclusion or variance under RCRA. Where EPA has excluded a waste from regulation under 40 CFR 260.22, the exclusion will only be effective under Hawaii law if Hawaii adopts the exclusion by rule, pursuant to HAR 11–260–42. Similarly, under HAR 11–268–51, any extension, variance or alternative treatment approval granted by EPA under 40 CFR 268.5, 268.6 and 268.44 will not be effective in the state unless Hawaii adopts it by rule. Finally, under HAR 11–264–1082(c)(4)(ii) the State must separately approve any alternative treatment method approved by EPA under 40 CFR 268.42(b). Given the additional procedures required by Hawaii, these State requirements are considered more stringent than the federal program.

Hawaii has also adopted some more stringent requirements concerning permits. Hawaii established a shorter permit term (five years instead of ten years) than the federal program, and is therefore more stringent than the federal program. Additionally, Hawaii reviews hazardous waste land disposal permits three years rather than five years after issuance, which is also more stringent than the federal program. However, there are currently no such facilities in Hawaii. Furthermore, Hawaii's provision under HAR 11–271–15(e) establishing a maximum time period of 180 days for the State's action on a permit application, will be terminated as soon as Hawaii obtains federal authorization for its hazardous waste management program pursuant to HAR 11–271–15(f).

Broader in Scope State Hazardous Waste Requirements

States are free to impose hazardous waste requirements that are broader in scope than the Federal hazardous waste management program. Broader in scope requirements will not be part of the authorized program.

Hawaii did not adopt 40 CFR 261.4(b)(5) and therefore does not exclude drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy from regulation as hazardous waste. With respect to the management of those wastes, the Hawaii program is therefore broader in scope than the federal program. EPA cannot enforce requirements that are broader in scope than the federal program. Broader in scope requirements will not be part of the authorized program. Although you must comply with these requirements in accordance with state law, they will not be RCRA requirements under the authorized program and are not federally enforceable.

Hawaii's used oil requirements also reflect some departure from the federal program. Hawaii requires persons who transport, market or recycle used oil or used oil fuel to obtain a permit from HDOH, which requirement is broader in scope than the federal program. Hawaii also requires an annual report of transporters, processors, re-refiners and marketers, in addition to the RCRA required biennial reports, in order to allow the State to track legitimate handlers of used oil and thus better locate illegal handlers. This requirement is broader in scope than the federal program.

Hawaii adds a requirement that any person who imports hazardous waste from a foreign country or from a state into Hawaii must submit additional information in writing to the State within 30 days after the waste arrives. This requirement is broader in scope than the federal program.

Summary of More Stringent and Broader in Scope Requirements

In summary, EPA considers the following State requirements to be more stringent than the Federal requirements:

- HAR 11–268–51, because the State must separately approve any exclusion, variance or alternative treatment method approved by EPA under 40 CFR 268.5, 268.6, 268.42(b) and 268.44; and
- HAR 11–270–50(a) and (d), because the State limits hazardous waste permits to five years (the federal limit is 10 years), and landfill permits to three years (the federal limit is five years). These requirements are part of Hawaii's authorized program and are federally enforceable.

EPA considers that the following State requirements go beyond the scope of the federal program. EPA cannot enforce requirements that are broader in scope than the federal program. Broader in scope requirements will not be part of the authorized program. Although persons must comply with these requirements in accordance with state

law, they will not be RCRA requirements under the authorized program and are not federally enforceable.

• HAR 11–261–4(b)(5), because the State treats drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy as hazardous waste, and the Federal requirements exempt them from regulation;

• HAR 11–262–60 and HAR 11–262–61, because, unlike the Federal program, the State requires that any person who imports hazardous waste from a foreign country or from any state into Hawaii must submit specified information in writing within 30 days after the waste arrives in the State;

• HAR 11–279–90 to HAR 11–279–95, because the State requires that persons who transport, market or recycle used oil or used oil fuel obtain a State permit and the Federal program has no such permitting requirement; and

• HAR 11–279–48, 57 and HAR 11–279–76, because the State requires annual reports of used oil transporters, processors, re-refiners, and marketers, in addition to the biennial reports required by RCRA.

G. How Will the State Enforce Compliance With the Rules?

Section 3006(b) of RCRA requires that the State provide adequate enforcement of compliance with the hazardous waste management requirements in order to receive authorization. We have determined that Hawaii can adequately enforce compliance with its hazardous waste management regulations. Hawaii's enforcement authorities include the power to issue, modify, suspend or revoke permits; collect information and enter and inspect the premises of persons who handle hazardous wastes; assess administrative penalties or initiate action in court for penalties or injunctive relief; issue abatement and corrective action orders; and pursue criminal violations. Hawaii's enforcement provisions are located at Hawaii Revised Statute (HRS) Chapter 342J (1993 and Supp. 1998).

H. Who Handles Permits After This Authorization Takes Effect?

Hawaii will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will transfer the administration of any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization to Hawaii. In the Notice of Tentative Determination, EPA said that it would continue to administer any RCRA hazardous waste permits or portions of permits issued by EPA prior to the effective date of this authorization. However, under the Memorandum of Agreement with Hawaii, EPA and HDOH have agreed that HDOH will administer the permits or portions of permits issued by EPA prior to authorization. EPA will not issue any new permits or new portions of permits for the authorized provisions after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Hawaii is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Hawaii?

There are no Federally-recognized Indian lands in Hawaii.

J. What Is Codification and Is EPA Codifying Hawaii's Hazardous Waste Management Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations. EPA does this by referencing the authorized State rules in 40 CFR part 272. We are reserving the amendment of 40 CFR part 272, subpart M, for codification of Hawaii's program at a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted RCRA authorizations from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, a decision to authorize Hawaii for these revisions is not subject to review by OMB. Furthermore, this rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This authorization will effectively suspend the applicability of certain Federal regulations in favor of Hawaii's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. Authorization will not impose any new burdens on small entities. Accordingly, I certify that authorization for these revisions will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibility between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste management program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action does not include environmental justice related issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in

accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order. This action will not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective November 13, 2001.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 26, 2001.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 01–27465 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 207, 252, 253, and Appendix G to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names and addresses, reference numbers, and terminology.

EFFECTIVE DATE: November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Parts 204, 207, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204, 207, 252, 253, and Appendix G to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR parts 204, 207, 252, 253, and Appendix G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

204.7303 [Amended]

2. Section 204.7303 is amended in paragraph (a)(2), in the last sentence, by removing *http://www.ccr2000.com* and adding in its place *http://www.ccr.gov*.

PART 207—ACQUISITION PLANNING

207.471 [Amended]

3. Section 207.471 is amended in paragraph (b), in the last sentence, by removing "070308" and adding in its place "070207".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7004 [Amended]

4. Section 252.204–7004 is amended as follows:

a. By revising the clause date to read "(NOV 2001)"; and

b. In paragraph (d) by removing http://www.ccr2000.com and adding in its place http://www.ccr.gov.

252.204–7005 [Amended]

5. Section 252.204–7005 is amended as follows:

a. By revising the clause date to read "(NOV 2001)"; and

b. In paragraph (a), in the first sentence, by removing "Special" the second time it appears and adding in its place "Sensitive".

PART 253—FORMS

253.204–70 [Amended]

6. Section 253.204–70 is amended in paragraph (e)(4), in the third sentence, by removing "http" and adding in its place "https".

Appendix G—Activity Address Numbers

7. Appendix G to Chapter 2 is amended in Part 3 as follows:

a. In the entry "N00189" by adding, after "H3", ", J3"; and

b. By adding, in alpha-numerical order, five new entries to read as follows:

Part 3—Navy Activity Address Numbers

* * * * *

N49400, 3G Officer-in-Charge, Naval Regional Contracting Center, Detachment Bahrain, PSC 451, Box NRCC, FPO AE 09834–2800

N49420, 3R Officer-in-Charge, Naval Regional Contracting Center, Detachment Dubai, PSC 451, Box 531, FPO AE 09834–2800

* * * * *

N63273, 4S Commanding Officer, Combat Direction Systems Activity, Dahlgren Division, Naval Surface Warfare Center, 1922 Regulus Avenue, Virginia Beach, VA 23461–2097

* * * * *

N68558, 3H Officer-in-Charge, Naval Regional Contracting Center, Detachment London, PSC 821, Box 45, FPO AE 09421–1300

* * * * *

N69250, NSF Director, SPAWAR Information Technology Center,2251 Lakeshore Drive, New Orleans, LA 70145–0001

* * * * *

[FR Doc. 01–27369 Filed 10–31–01; 8:45 am]

BILLING CODE 5000–04–U

DEPARTMENT OF DEFENSE

48 CFR Parts 212 and 252

[DFARS Case 95–D712]

Defense Federal Acquisition Regulation Supplement; Acquisition of Commercial Items

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending Defense Federal Acquisition Regulation Supplement (DFARS) policy pertaining to the acquisition of commercial items. The rule updates the

lists of clauses included in contracts for commercial items to implement statutory requirements.

EFFECTIVE DATE: November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy,Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR),IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350.

SUPPLEMENTARY INFORMATION:

A. Background

This rule finalizes the interim rule published as Item XXXV of Defense Acquisition Circular 91–9 on November 30, 1995 (60 FR 61586). The interim rule amended the DFARS to conform to FAR changes that implemented Title VIII of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) pertaining to the acquisition of commercial items. The interim rule also added DoD-unique requirements pertaining to the acquisition of commercial items.

The final rule differs from the interim rule in that it adds the following to the lists of provisions and clauses that must be included in solicitations and contracts to implement statutory requirements:

- FAR 52.203–3, Gratuities (10 U.S.C. 2207).
- DFARS 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country (10 U.S.C. 2327).
- DFARS 252.219–7004, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (15 U.S.C. 637 note).

In addition, the final rule adds dates to the contract clauses listed in 252.212–7001, to clarify which version of each clause applies to a contract.

Ten sources submitted comments on the interim rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis. Interested parties may obtain a copy of the analysis from the point of contact specified herein. The analysis is summarized as follows:

This rule finalizes an interim DFARS rule published on November 30, 1995. The rule implements provisions of the Federal Acquisition Streamlining Act of 1994 and supplements FAR policy pertaining to the acquisition of commercial items. The objective of the FAR and DFARS policy is to streamline procedures for the acquisition of commercial items. DoD received no comments in response to the initial regulatory flexibility analysis. The rule applies to all small entities that are interested in selling commercial items to DoD. Based on data collected by DoD's Washington Headquarters Services, in Fiscal Year 2000, DoD awarded approximately 11,437 contracts totaling $2.2 billion to small business concerns using the streamlined procedures in the interim rule. There are no significant alternatives to the rule that would accomplish the stated objectives.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 212 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 212 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 212 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.301 is amended as follows:

a. In paragraph (f)(iii), by removing "paragraph (a)" and adding in its place "paragraphs (a) and (b)";

b. By redesignating paragraphs (f)(v) and (f)(vi) as paragraphs (f)(vi) and (f)(vii), respectively; and

c. By adding a new paragraph (f)(v) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(v) Use the provision at 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, as prescribed in 209.104–70(a).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.212–7001 is revised to read as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive orders applicable to Defense acquisitions of commercial items.

As prescribed in 212.301(f)(iii), use the following clause:

Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (NOV 2001)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

_____ 52.203–3 Gratuities (APR 1984) (10 U.S.C. 2207).

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

_____ 252.205–7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

_____ 252.206–7000 Domestic Source Restriction (DEC 1991) (10 U.S.C. 2304).

_____ 252.219–7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).

_____ 252.219–7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).

_____ 252.225–7001 Buy American Act and Balance of Payments Program (MAR 1998) (41 U.S.C. 10a–10d, E.O. 10582).

_____ 252.225–7007 Buy American Act—Trade Agreements—Balance of Payments Program (SEP 2001) (41 U.S.C. 10a–10d, 19 U.S.C. 2501–2518, and 19 U.S.C. 3301 note).

_____ 252.225–7012 Preference for Certain Domestic Commodities (AUG 2000) (10 U.S.C. 2241 note).

_____ 252.225–7014 Preference for Domestic Specialty Metals (MAR 1998) (10 U.S.C. 2241 note).

_____ 252.225–7015 Preference for Domestic Hand or Measuring Tools (DEC 1991) (10 U.S.C. 2241 note).

_____ 252.225–7016 Restriction on Acquisition of Ball and Roller Bearings (DEC 2000) (____ Alternate I) (DEC 2000) (Section 8064 of Public Law 106–259).

_____ 252.225–7021 Trade Agreements (SEP 2001) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note).

_____ 252.225–7027 Restriction on Contingent Fees for Foreign Military Sales (MAR 1998) (22 U.S.C. 2779).

_____ 252.225–7028 Exclusionary Policies and Practices of Foreign Governments (DEC 1991) (22 U.S.C. 2755).

_____ 252.225–7029 Preference for United States or Canadian Air Circuit Breakers (AUG 1998) (10 U.S.C. 2534(a)(3)).

_____ 252.225–7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (MAR 1998) (____ Alternate I) (SEP 1999) (41 U.S.C. 10a–10d and 19 U.S.C. 3301 note).

_____ 252.227–7015 Technical Data—Commercial Items (NOV 1995) (10 U.S.C. 2320).

_____ 252.227–7037 Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).

_____ 252.243–7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).

_____ 252.247–7023 Transportation of Supplies by Sea (MAR 2000) (____ Alternate I) (MAR 2000) (____ Alternate II) (MAR 2000) (10 U.S.C. 2631).

_____ 252.247–7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items clause of this contract (FAR 52.212–5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225–7014 Preference for Domestic Specialty Metals, Alternate I (MAR 1998) (10 U.S.C. 2241 note).

252.247–7023 Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

252.247–7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(End of clause)

[FR Doc. 01–27372 Filed 10–31–01; 8:45 am]

BILLING CODE 5000–04–U

DEPARTMENT OF DEFENSE

48 CFR Part 213

[DFARS Case 2000–D019]

Defense Federal Acquisition Regulation Supplement; Overseas Use of the Purchase Card in Contingency, Humanitarian, or Peacekeeping Operations

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to permit contracting officers supporting an overseas contingency, humanitarian, or peacekeeping operation to use the Governmentwide commercial purchase card on a stand-alone basis for purchases valued at or below the simplified acquisition threshold. Use of the purchase card streamlines purchasing and payment procedures and, therefore, increases operational efficiency.

EFFECTIVE DATE: November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the policy at DFARS 213.301 to permit contracting officers supporting a contingency operation, as defined in 10 U.S.C. 101(a)(13), or a humanitarian or peacekeeping operation, as defined in 10 U.S.C. 2302(8), to use the Governmentwide commercial purchase card on a stand-alone basis for purchases valued at or below the simplified acquisition threshold. In accordance with FAR 2.101, the simplified acquisition threshold for contingency, humanitarian, or peacekeeping operations is $200,000.

Use of the purchase card at the $200,000 threshold is subject to the existing conditions at DFARS 213.301 and the following additional conditions: (1) The supplies or services must be immediately available; and (2) Only one delivery and one payment will be made. These additional conditions are similar to those placed on use of the Standard Form 44, Purchase Order-Invoice-Voucher, in accordance with FAR 13.306 and DFARS 213.306.

DoD published a proposed rule at 65 FR 56858 on September 20, 2000. DoD received no comments on the proposed rule. DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule applies only to purchases that are made outside the United States for use outside the United States in support of contingency, humanitarian, or peacekeeping operations.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 213

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 213 is amended as follows:

1. The authority citation for 48 CFR Part 213 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 213.301 is amended by adding paragraph (3) to read as follows:

213.301 Government-wide commercial purchase card.

* * * * *

(3) A contracting officer supporting a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8) also may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold, if;

(i) The supplies or services being purchased are immediately available;

(ii) One delivery and one payment will be made; and

(iii) The requirements of paragraphs (2)(i) and (ii) of this section are met.

[FR Doc. 01–27371 Filed 10–31–01; 8:45 am]

BILLING CODE 5000–04–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 001114320–1191–02; I.D. 080400B]

RIN 0648–AN01

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Alaska Commercial Operator's Annual Report; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains corrections to the final rule for the Alaska Commercial Operator's Annual Report (COAR) that was published in the **Federal Register** on August 20, 2001.

DATES: Effective November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: A final rule was published in the **Federal Register** on 66 FR 43524 (August 20, 2001), to require groundfish motherships and catcher/processors to submit annually to the State of Alaska, Department of Fish & Game (ADF&G), a COAR.

Several errors were made in Tables 14A, 15, 16, and 18 to 50 CFR part 679. These tables are corrected and reprinted as follows:

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Accordingly, 50 CFR part 679 is amended by making the following corrections:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Table 14A to Part 679 [Corrected]

1. Beginning on page 43527, Table 14A is corrected to read as follows:

TABLE 14A TO PART 679.—PORT OF LANDING CODES, ALASKA, INCLUDING CDQ AND IFQ PRIMARY PORTS

Port Name	NMFS Code	ADF&G Code	CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5 (l)(5)(vi))		
			CDQ/IFQ	North Latitude	West Longitude
Adak	186	ADA			
Akutan	101	AKU	X	54°08′05″	165°46′20″
Akutan Bay	102				
Alitak	103	ALI			
Anchor Point	104				
Anchorage	105	ANC			
Angoon	106	ANG			
Aniak		ANI			
Anvik		ANV			
Atka	107	ATK			
Auke Bay	108				
Baranof Warm Springs	109				.....
Beaver Inlet	110				
Bethel		BET			
Captains Bay	112				
Chefornak	189				
Chignik	113	CHG			
Chinitna Bay	114				
Cordova	115	COR	X	60°33′00″	145°45′00″
Craig	116	CRG	X	55°28′30″	133°09′00″
Dillingham	117	DIL			
Douglas	118				
Dutch Harbor/Unalaska	119	DUT	X	53°53′27″	166°32′05″
Edna Bay	121				
Egegik	122	EGE			
Ekuk		EKU			
Elfin Cove	123	ELF			
Emmonak		EMM			.....
Excursion Inlet	124	XIP			
False Pass	125	FSP			
Fairbanks		FBK			
Galena		GAL			
Glacier Bay		GLB			
Glennallen		GLN			
Gustavus	127	GUS			
Haines	128	HNS			
Halibut Cove	130				
Hollis	131	.....			
Homer	132	HOM	X	59°38′40″	151°33′00″
Hoonah	133	HNH			
Hooper Bay	188				
Hydaburg		HYD			
Hyder	134	HDR			.....
Ikatan Bay	135	.....			
Juneau	136	JNU			
Kake	137	KAK			
Kaltag		KAL			.....
Kasilof	138	KAS			
Kenai	139	KEN			.....
Kenai River	140				

TABLE 14A TO PART 679.—PORT OF LANDING CODES, ALASKA, INCLUDING CDQ AND IFQ PRIMARY PORTS—Continued

Port Name	NMFS Code	ADF&G Code	CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5 (l)(5)(vi))		
			CDQ/IFQ	North Latitude	West Longitude
Ketchikan	141	KTN	X	55°20′30″	131°38′45″
King Cove	142	KCO	X	55°03′20″	162°19′00″
King Salmon	143	KNG			
Kipnuk	144				
Klawock	145	KLA			
Kodiak	146	KOD			
Kotzebue		KOT			
La Conner		LAC			
Mekoryuk	147				
Metlakatla	148	MET			
Moser Bay		MOS			
Naknek	149	NAK			
Nenana		NEN			
Nikiski (or Nikishka)	150	NIK			
Ninilchik	151	NIN			
Nome	152	NOM			
Nunivak Island		NUN			
Old Harbor	153	OLD			
Other[1]	499	UNK			
Pelican	155	PEL	X	57°57′30″	136°13′30″
Petersburg	156	PBG	X	56°48′10″	132°58′00″
Point Baker	157				
Port Alexander	158	PAL			
Port Armstrong		PTA			
Port Bailey	159	PTB			
Port Graham	160	GRM			
Port Lions		LIO			
Port Moller		MOL			
Port Protection	161				
Portage Bay (Petersburg)	162				
Quinhagak	187				
Resurrection Bay	163				
Sand Point	164	SPT	X	55°20′15″	160°30′00″
Savoonga	165				
Seldovia	166	SEL			
Seward	167	SEW	X	60°06′30″	149°26′30″
Sitka	168	SIT	X	57°03′	135°20′
Skagway	169	SKG			
Soldotna		SOL			
St. George	170	STG			
St. Lawrence	171				
St. Mary		STM			
St. Paul	172	STP	X	57°07′20″	170°16′30″
Tee Harbor	173				
Tenakee Springs	174	TEN			
Thorne Bay	175				
Togiak	176	TOG			
Toksook Bay	177				
Tununak	178				
Ugadaga Bay	179				
Ugashik		UGA			
Unalakleet		UNA			
Valdez	181	VAL			
Wasilla		WAS			
West Anchor Cove	182				
Whittier	183	WHT			
Wrangell	184	WRN			
Yakutat	185	YAK	X	59°33′	139°44′

[1] To report a landing at a location not currently assigned a location code number: Use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Levelock, Alaska if there is currently no code assigned, use "499," "Other," AK."

2. On page 43530, Table 15 is corrected to read as follows:

TABLE 15 TO PART 679.—GEAR CODES, DESCRIPTIONS, AND USE (X INDICATES WHERE THIS CODE IS USED)

Name of Gear	NMFS Logbooks and Forms[1]	Electronic WPR & Check-in/out Code[1]	Gear Code, Numeric	Use Numeric Code to Complete the Following:		
				Shoreside Electronic Logbook (SPELR)	IFQ Terminal & Forms	ADF&G COAR
Diving		OTH	11	X		X
Dredge		OTH	22	X		X
Dredge, hydro/mechanical		OTH	23	X		X
Fish wheel		OTH	08	X		X
Gillnet, drift		OTH	03	X		X
Gillnet, herring		OTH	34	X		X
Gillnet, set		OTH	04	X		X
Gillnet, sunken		OTH	41	X		X
Hand line/jig/troll (IFQ name: hand troll)		(1)	05	X	X	X
Handpicked		OTH	12	X		X
Hatchery		n/a	77	X		X
Hook-and-line	X	HAL	61	X	X	X
Jig, mechanical (IFQ name: jigs)	X	JIG	26	X	X	X
Net,dip		OTH	13	X		X
Net,ring		OTH	10	X		X
Other/specify	X	OTH	99	X		X
Pair Trawl			37			X
Pot	X	POT	91	X	X	X
Pound		OTH	21	X		X
Seine,purse		OTH	01	X		X
Seine,beach		OTH	02	X		X
Shovel		OTH	18	X		X
Trap		OTH	90	X		X
Trawl, beam		(1)	17	X		X
Trawl, double otter		(1)	27	X		X
Trawl, nonpelagic/bottom	X	NPT	07	X		X
Trawl, pelagic/midwater	X	PTR	47	X		X
Troll, dinglebar	X	TROLL	25	X	X	X
Troll, power gurdy	X	TROLL	15	X	X	X
Weir		OTH	14	X		X

[1] For logbooks, forms, electronic WPR, electronic check-in/out reports: all trawl gear must be reported as either nonpelagic or pelagic trawl

3. On page 43531, Table 16 is corrected to read as follows:

TABLE 16 TO PART 679.—AREA CODES AND DESCRIPTIONS FOR USE WITH STATE OF ALASKA ADF&G COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR)

COAR: Name (Code)	Species	ADF&G Fisheries Management Areas	Area Description in ADF&G Regulations
Alaska Peninsula	King Crab:	M	5 AAC 34.500
South Peninsula (MS)	AK Peninsula/Aleutian Islands Salmon	M	5 AAC 12.100
North Peninsula (MN)		M	(Aleutians) 5 AAC 09.100 (AK Peninsula)
	Herring	M	5 AAC 27.600
Bering Sea:	Bering Sea King Crab	Q	5 AAC 34.900
Pribilof Island (Q1)	Bering Sea/Kotzebue Herring	Q	5 AAC 27.900
St. Matthew Island Q2)			
St. Lawrence Island (Q4)			
Bristol Bay (T)	King Crab	T	5 AAC 34.800
	Salmon	T	5 AAC 06.100
	Herring	T	5 AAC 27.800
Chignik (L)	Groundfish	L	5 AAC 28.500
	Herring	L	5 AAC 27.550
	Salmon	L	5 AAC 15.100

TABLE 16 TO PART 679.—AREA CODES AND DESCRIPTIONS FOR USE WITH STATE OF ALASKA ADF&G COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR)—Continued

COAR: Name (Code)	Species	ADF&G Fisheries Management Areas	Area Description in ADF&G Regulations
Cook Inlet:	Groundfish	H	5 AAC 26.300
Lower Cook Inlet (HL)	Herring	H	5 AA 27.400
Upper Cook Inlet (HU)	Cook Inlet Shrimp	H	5 AAC 31.300
	Outer Cook Inlet Shrimp	H	5 AA 31.400
	Dungeness Crab	H	5 AA 32.300
	King Crab	H	5 AA 34.300
	Tanner Crab	H	5 AA 35.400
	Miscellaneous Shellfish	H	5 AA 38.300
	Salmon	H	5 AA 21.100
Dutch Harbor (O)	Aleutian Islands King Crab	O	5 AA 34.600
EEZ (Federal waters of BSAI (FB)	Groundfish	n/a	n/a
GOA (FG)	Atka-Amlia Islands Salmon	n/a	5 AAC 11.1010
Kodiak (western GOA) (K)	Groundfish	K	5 AAC 28.400
	Herring	K	5 AAC 27.500
	King Crab	K	5 AAC 34.400
	Salmon	K	5 AAC 18.100
	Shrimp	J	5 AAC 31.500
	Dungeness Crab	J	5 AAC 32.400
	Tanner Crab	J	5 AAC 35.500
	Miscellaneous Shellfish	J	5 AAC 38.400
Kotzebue (X)	Salmon	X	5 AAC 03.100
Kuskokwim:	Salmon	W	5 AAC 07.100
Kuskokwim River/Bay (W1)	Herring	W	5AAC 27.870
Security Cove (W2)			
Goodnews Bay (W3)			
Nelson Island (W4)			
Ninivak Island (W5)			
Cape Avinof (W6)			
Norton Sound (Z)	Norton Sound-Port Clarence Salmon	Z	5 AAC 04.100
	Norton Sound-Port Clarence King Crab		
Prince William Sound (E)	Groundfish	E	5 AAC 28.200
	Herring	E	5 AAC 27.300
	Shrimp	E	5 AAC 31.200
	Dungeness Crab	E	5 AAC 32.200
	King Crab	E	5 AAC 34.200
	Tanner Crab	E	5 AAC 35.300
	Miscellaneous Shellfish	E	5 AAC 38.200
	Salmon	E	5 AAC 24.100
Southeast:	Groundfish	A	5 AAC 28.100
Juneau/Haines (A1)	Southeast (w/o Yakutat) Herring	A	5 AAC 27.100
Yakutat (A2)	Yakutat Herring	D	5 AAC 27.200
Ketchikan/Craig (B)	Southeast (w/o Yakutat) Shrimp	A	5 AAC 31.100
Petersburg/Wrangell (C)	Yakutat Shrimp	D	5 AAC 31.150
Sitka/Pelican (D)	Southeast (w/o Yakutat) Dungeness Crab	A	5 AAC 32.100
	Yakutat Dungeness Crab	D	5 AAC 32.155
	Southeast (w/o Yakutat) Dungeness, King Crab	A	5 AAC 34.100
	Yakutat King Crab	D	5 AAC 34.160
	Southeast (w/o Yakutat) Tanner Crab	A	5 AAC 35.100
	Yakutat Tanner Crab	D	5 AAC 35.160
	Southeast (w/o Yakutat) Miscellaneous Shellfish	A	5 AAC 38.100
	Yakutat Miscellaneous Shellfish	D	5 AAC 38.160
	Southeast (w/o Yakutat) Salmon	A	5 AAC 33.100
	Yakutat Salmon	D	5 AAC 29.010 5 AAC 30.100
Yukon River:	Yukon-Northern Salmon	Y	5 AAC 05.100
Lower Yukon (YL)			
Upper Yukon (YU)			

4. On page 43533, Table 18 is corrected to read as follows:

TABLE 18 TO PART 679.—REQUIRED BUYING AND PRODUCTION FORMS FOR USE WITH STATE OF ALASKA COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR)

Fishery	Form Number and Name
Salmon	*Salmon Buying*
	(A)(1) Seine gear
	(A)(1) Gillnet gear
	(A)(2) Troll gear
	(A)(2) Hatchery
	(A)(3) Miscellaneous gear
	King Salmon Production
	(B)(1) Production
	(B)(1) Canned Production
	Sockeye Salmon Production:
	(B)(2)(i) Production
	(B)(2)(ii) Canned Production
	Coho Salmon Production
	(B)(3)(i) Production
	(B)(3)(ii) Canned Production
	Pink Salmon Production
	(B)(4)(i) Production
	(B)(4)(ii) Canned Production
	Chum Salmon Production
	(B)(5)(i) Production
	(B)(5)(ii) Canned Production
	Salmon Roe & Byproduct Production
	(B)(6)(i) Roe
	(B)(6)(ii) Byproduct Production
Herring	Herring Buying
	(C)(1)(i) Seine gear
	(C)(1)(ii) Gillnet gear
	(C)(2)(i) Gillnet gear
	(C)(2)(ii) Pound gear
	(C)(2)(iii) Hand-pick gear
	Herring Production
	(D)(1)(i) Production
	(D)(1)(ii) Byproduct Production
Crab	(E)*Crab Buying*
	(F) Crab Production
Shrimp/Miscellaneous Shellfish	(G)*Shrimp/Misc.Shellfish Buying*
	(G)(1)(i) Trawl gear
	(G)(1)(ii) Pot gear
	(G)(1)(iii) Diving/picked gear
	(G)(1)(iv) Other gear (specify)
	(H) Shrimp/Misc. Shellfish/Finfish Production
Groundfish	(I)(1) Groundfish Buying
	(I)(2) Groundfish Buying
	(J)(1) Groundfish Production
	(J)(2) Groundfish Production
Halibut	(K) Halibut Buying & Production
Custom Production	*Custom Production*
	(L)(1) Associated Processors
	(L)(1)(i) Custom Fresh/Frozen
	(L)(1)(ii) Misc. production
	(L)(1)(iii) Custom Canned Production
	(L)(2) (additional sheet)
PRICES NOT FINAL	(M)(1) Fish Buying Retro Payments
	(M)(2) Post-season Adjustments

October 24, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries

[FR Doc. 01–27402 Filed 10–31–01: 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 102901A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bycatch Limitation Zone 1 of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2001 bycatch allowance of red king crab specified for the trawl yellowfin sole fishery category in Zone 1.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 29, until 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and at 50 CFR part 679.

The 2001 red king crab bycatch allowance specified for Zone 1 of the BSAI trawl yellowfin sole fishery category, which is defined at § 679.21(e)(3)(iv)(B)(*1*), is 11,664 animals (66 FR 7276, January 22, 2001 and 66 FR 37167, July 17, 2001).

In accordance with § 679.21(e)(7)(ii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2001 bycatch allowance of red king crab specified for the trawl yellowfin sole fishery in Zone 1 of the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for yellowfin sole by vessels using trawl gear in Zone 1 of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the red king crab bycatch allowance for the yellowfin sole fishery category constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and at 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the red king crab bycatch allowance for the yellowfin sole fishery category constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 29, 2001.

Bruce C. Morehead

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27448 Filed 10–29–01; 4:04 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 212
Thursday, November 1, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1717

RIN 0572–AB63

Mergers and Consolidations of Electric Borrowers

AGENCY: Rural Utilities Service.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend regulations to provide the Administrator with loan processing prioritization authority for recently merged companies. This change will allow the Administrator to grant or decline priority or grant priority for a limited amount of a loan application. This action is being proposed to allow lending priority to newly merged companies and provide greater opportunity to provide loans to as many borrowers as possible.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than December 3, 2001.

ADDRESSES: Written comments should be addressed to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Patrick R. Sarver, Management Analyst, Rural Utilities Service, Electric Program, Room 4024 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560, Telephone: 202–690–2992, FAX: 202–690–0717, E-mail: *psarver@rus.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice titled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guarantees from coverage were not covered by Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912 (e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of RUS has determined that this rule will not have significant impact on a substantial number of small entities. The RUS electric loan program provides loans and loan guarantees to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. Small entities are not subjected to any requirements, which are not applied equally to large entities. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572–0032 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Background

Pursuant to the Rural Utilities Service (RUS) effort to review and streamline regulations, amendments were made to regulations in 1996 that were intended to encourage electric borrowers to evaluate and complete mergers, consolidations, or enter into similar arrangements that benefited borrowers and the rural communities they serve, consistent with the interests of the Government as a secured lender. Since the inception of the new rules, 30 mergers or consolidations have taken place consolidating the efforts of 62 borrowers.

The 1996 amendments provided RUS with the option of granting transitional assistance in connection with new municipal rate loans by providing loan processing priority. At the borrower's request, RUS offered priority for the first loan to a successor, provided that the loan was approved by RUS not later than five years after the subsequent date of the merger. RUS also offered, at the borrower's request, a waiver on the requirement to obtain supplemental financing and, upon borrower's request, extended the reimbursement period up to 48 months.

Unfortunately, the RUS municipal rate loan program has experienced several situations where large loans (48-month reimbursement period) were made to recently merged borrowers which received loan-processing priority under 7 CFR 1717.154. This activity severely limited the number of municipal rate loans that RUS was able to approve.

For example, in Fiscal Year 2000, loans from two recently merged systems totaling more than $150 million were provided loan priority. The merger loans accounted for more than 50 percent of the total municipal rate funding authority.

In an effort to alleviate this funding level burden and provide a greater opportunity to provide direct loans to as many borrowers as possible, RUS is proposing to provide the Administrator the flexibility to limit the amount of a loan to a successor (surviving business entity) following a merger.

In response to rapid changes in the regulatory and business environment of the electric industry, RUS will continue to urge borrowers to explore any and all opportunities when such action is likely to contribute, in the long term, to greater operating efficiency, financial soundness, and enhance the ability of the successor to provide reliable electric service at reasonable cost to Rural Electrification Act beneficiaries. RUS believes that limiting the maximum loan amount for the first loan following a merger will not deter such activity.

List of Subjects in 7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart D—Mergers and Consolidations of Electric Borrowers

2. Section 1717.154 is amended by:

A. Revising paragraph (a)(1);

B. Redesignating paragraph (a)(2) to (a)(3), and

C. Adding a new paragraph (a)(2).

This revision and addition are to read as follows:

§ 1717.154 Transitional assistance in connection with new loans.

* * * * *

(a) *Loan processing priority.* (1) RUS loans are generally processed in chronological order based on the date the complete application is received in the regional or division office. At the borrower's request, RUS may offer loan processing priority for the first loan to a successor, provided that the loan is approved by RUS not later than 5 years after the effective date of the merger. In considering the request, the Administrator will take into account, among other factors, the amount of the loan application, whether there is a significant backlog in pending loan applications, the impact that loan priority would have on the backlog, the savings and efficiencies to be realized from the merger and the relative importance of loan priority to facilitating the merger. The Administrator may, in his or her sole discretion, grant or decline to grant priority, or grant priority for a limited amount of the loan application while deferring for later consideration the remainder of the application.

(2) For any subsequent loans approved during those 5 years, RUS may offer loan processing priority. In reviewing requests for loan processing priority on subsequent loans, RUS will consider the loan authority for the fiscal year, the borrower's projected cash flows, its electric rates and rate disparity, and the likely mitigation effects of priority loan processing. See 7 CFR 1710.108 and 1710.119.

* * * * *

Dated: October 9, 2001.

Roberta D. Purchell,

Acting Administrator, Rural Utilities Service.

[FR Doc. 01–27480 Filed 10–31–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 559 and 560

[No. 2001–67]

RIN 1550–AB37

Lending and Investment

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision ("OTS") proposes to revise and clarify its lending and investment regulations to give savings associations greater flexibility in a changing marketplace. Today's proposed regulatory amendments are intended to help thrifts take better advantage of the flexibility available under the Home Owners' Loan Act ("HOLA"), to provide low-cost credit to their customers, and to invest in their communities while still operating safely and soundly.

DATES: Comments must be received on or before December 3, 2001.

ADDRESSES:

Mail: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2001–67.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention Regulation Comments, Chief Counsel's Office, Docket No. 2001–67.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention Docket No. 2001–67.

E-Mail: Send e-mails to *regs.comments@ots.treas.gov*, Attention Docket No. 2001–67, and include your name and telephone number.

Public Inspection: Comments and the related index will also be posted on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) Appointments will be scheduled on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date a request is received.

FOR FURTHER INFORMATION CONTACT: William J. Magrini, Senior Project Manager, Supervision Policy, (202) 906–5744; Paul Robin, Assistant Chief Counsel, Regulations and Legislation Division, (202) 906–6648, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background of the Proposal

OTS periodically reviews its lending and investment regulations to ensure that they enhance safe and sound lending, implement statutory requirements, protect consumers, minimize regulatory burden, and are clearly written. OTS lending and investment regulations have been considerably modified over time as savings associations, their markets, their competition, and the economy have changed. For the most part, OTS has taken a contract and market-based approach to provide flexibility for thrifts and their customers and to encourage innovations in lending to help make credit more available.

OTS last substantively revised its lending regulations and subordinate organizations regulations in 1996.[1] Since that time, the markets in which thrifts operate have changed substantially. In the primary market, savings associations now compete with other mortgage lenders to offer potential borrowers a wide variety of options besides the traditional 30-year fixed-rate purchase money mortgage. The secondary market continues to narrow the interest-rate spread on high quality mortgages.

As the residential mortgage market has evolved, thrifts have increasingly begun to explore offering other types of credit needed in their communities, including consumer lending and small business lending. A variety of community-related investment opportunities offer thrifts new ways to serve and to participate in the economic development of their communities. Thrifts have asked whether and how such loans and investments may be made by either the thrift itself or through an operating subsidiary or service corporation.

This evolving environment makes it appropriate for OTS to again re-examine and update its lending and investment and subordinate organizations regulations. Today's proposed regulatory amendments are intended to help thrifts take better advantage of the flexibility available under the Home Owners' Loan Act ("HOLA"), to provide low-cost credit to their customers, and to invest in their communities while still operating safely and soundly.

[1] *See* Lending and Investment Final Rule, 61 FR 50951 (Sept. 30, 1996); Subsidiaries and Equity Investments, 61 FR 66561 (Dec. 18, 1996).

II. Section-by-Section Analysis

Section 559.4 What Activities Are Preapproved for Service Corporations?

Section 559.4 lists activities that are preapproved for service corporations of Federal savings associations. *Preapproved* means that well-managed savings associations planning to initiate the activity in a service corporation must only give OTS and the Federal Deposit Insurance Corporation ("FDIC") advance notice under section 18(m) of the Federal Deposit Insurance Act and 12 CFR 559.11, rather than receive OTS approval.

Paragraph (g) of § 559.4 currently preapproves service corporation investments in only those small business investment companies ("SBICs") licensed by the U.S. Small Business Administration ("SBA") that engage solely in activities otherwise permissible for the service corporation itself.[2] Under the current regulation, other investments in SBICs must be approved on a case-by-case basis.

The proposed rule would amend this provision to reflect recent statutory changes made in the Consolidated Appropriations Act—FY 2001 ("CAA").[3] The CAA gives Federal savings associations the same authority that national and state banks enjoy to invest in SBICs[4] and new markets venture capital companies ("NMVCCs")[5] licensed by the SBA, without restriction as to the activities of those companies. Accordingly, proposed § 559.4(g) would preapprove Federal savings association service corporation investments in SBICs and NMVCCs without regard to the nature of a particular company's activities. (OTS is also proposing to amend 12 CFR 560.30 to reflect Federal savings associations' ability to make these investments at the thrift level.)

Paragraph (h) of existing § 559.4 preapproves service corporation investments in certain community development and charitable activities. Thrifts interested in participating in community development projects with other depository institutions have asked how the scope of this authority compares to that of banks. OTS is proposing to clarify any ambiguity by modifying paragraph (h)(2) to parallel 12 U.S.C. 24 (Eleventh), which defines a national bank's authority to make public welfare investments. That definition includes investments "designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs)." This modification would clarify that Federal savings association service corporations have the same authority that national banks and state member banks have to make investments to promote the public welfare (see 12 U.S.C. 24 (Eleventh) and 12 U.S.C. 338a, respectively).

OTS is also proposing to add a new paragraph (i) to existing § 559.4 to preapprove service corporation activities conducted on an "as agent" basis. Section 559.4's preapproved list currently includes various activities that are conducted on an agency basis, such as insurance agency or acting as a trustee. Allowing service corporations to engage on behalf of their customers in "any activities conducted other than as principal" expands thrifts' opportunities to enter other profitable businesses. These activities can enhance their ability to meet their customers' needs while presenting no significant risk to savings associations or the deposit insurance fund, assuming compliance with the applicable capital standards. The capital provisions of HOLA recognize that such activities present no higher risks to savings associations by specifically excluding activities conducted as agent from otherwise applicable higher capital requirements. See 12 U.S.C. 1464(t)(5)(B). Similarly, the FDIC regulations governing activities by state-chartered banks that are not permitted for national banks specifically exclude activities conducted other than as principal. See 12 CFR 362.1(b)(1).

[2] 12 CFR 559.4(g)(3).

[3] Pub. L. No. 106–554 (Dec. 21, 2000).

[4] *See* section 302(b)(2) of the Small Business Investment Act of 1958, as amended by the CAA, 15 U.S.C. 682(b).

[5] *See* new section 5(c)(4)(F) to the HOLA, as amended by the CAA, 12 U.S.C. 1464(c)(4)(F), which authorizes federal savings associations to invest in securities of any new markets venture capital company, subject to a 5% of capital and surplus limit.

Section 560.3 Definitions.

HOLA section 5(c) lists various categories of loans and investments permissible for Federal savings associations. Because some categories focus on the purpose of a loan and others on the security for a loan, some loans have characteristics that would qualify them for more than one category. For example, a home equity loan could qualify as a loan secured by residential real estate, a loan to repair or improve residential real property, or a consumer loan. Some loans may be collateralized by both real and personal property. OTS regulations have long allowed savings associations to report all or part of any such multi-category-qualifying loan in whatever category best suits the institution's needs. See 12 CFR 560.31(a).

OTS has received some questions about how the regulatory definition of loans secured by real estate at § 560.3 fits into this regulatory scheme. In part, the rule currently requires that the savings association must "substantially" rely on the real estate as "the primary security" for the loan. We have been asked for clarification of the meaning, purpose, and relative importance of "substantially" and "primary." In trying to understand the regulation's requirements, some have focused on the details of how the loan is underwritten and others look at how the loan is reported on the Thrift Financial Report.

Upon review of the statute, which does not contain either term, and the confusion that has resulted by having both terms, OTS is modifying its definition of real estate loans for purposes of 12 CFR part 560 to remove the requirement that the real estate be the primary security for a loan. The regulation will expand upon the existing "substantially relies" requirement by stating that a real estate loan is one where the association "substantially relies upon a security interest in real estate given by the borrower as a condition of making the loan." The purpose of this new language is to treat as a real estate loan only a loan that would not have been made in the same amount or on the same terms unless it was secured, in whole or in part, by real estate. This change is consistent with the definition of "Loans Secured by Real Estate" in the FFIEC's Call Report Instructions. Thus, for example, a $500,000 loan to a non-profit organization or small business where the savings association required the organizers or owners to give the savings association a security interest valued at $300,000 in the real property used by the organization or in the owner's home as a condition of making the loan could be treated as either a small business loan or as a real estate loan. In contrast, a multi-million dollar loan to a large business secured in part by a $100,000 mortgage would not meet the requirement that the association "substantially" rely on the real estate as security for the loan. This change should help savings associations use more effectively the long-standing flexibility embodied in § 560.31(a).

OTS is also proposing to modify the definition of "small business loans and loans to small businesses." Sections 5(c)(2)(A) and 10(m)(4)(E) specifically authorize the Director to define the terms "small business loans" and "small business" for purposes of HOLA investment limits and the Qualified Thrift Lender test, respectively.

Current OTS regulations, adopted in 1996 when this statutory authority was granted, provide two alternatives for determining whether a particular loan qualifies as a small business loan for purposes of either provision. First, a loan of any size to a business that meets the size standards established by the Small Business Administration qualifies as a small business loan. Because determining whether a particular business meets the SBA size standards can be time-consuming and difficult, OTS regulations have also allowed savings associations to count any loan of less than $1 million to a business or $500,000 to a farm as a small business loan.

Since 1996, OTS has heard from savings associations that this alternative has not provided the flexibility the agency originally anticipated, especially in certain higher priced geographic areas. The agency therefore proposes to raise the safe harbor level for small business loans to $2 million for both businesses and farms. This level should help more savings associations use their small business lending authority under the HOLA. This increase is also consistent with statutory changes made in the CAA to increase the maximum gross loan amount for loans qualifying for SBA guarantees under the § 7(a) General Business Loan Guaranty program to $2 million. OTS specifically requests comment on whether a higher safe harbor level would be appropriate.

Section 560.30 General Lending and Investment Powers of Federal Savings Associations

Section 560.30 contains a chart summarizing the lending and investment powers granted to Federal thrifts by the HOLA. OTS proposes to update the lending and investment chart to reflect the new statutory authority granted to savings associations by the CAA to invest in SBICs and NMVCCs. As discussed above, the CAA gives Federal savings associations the same authority that national and state banks enjoy to invest up to 5% of their capital in SBICs and NMVCCs. OTS proposes to add NMVCCs as one of the investment categories on the chart with its corresponding 5% of total capital investment limit, change the investment limit for SBICs in the chart to 5% of total capital, and remove endnote 17 because its limits on savings associations' SBIC investments have been overridden by the CAA.

OTS also proposes to update the lending and investment chart to reflect section 1201 of the Financial Regulatory Relief and Economic Efficiency Act of 2000's[6] elimination of statutory liquidity requirements previously implemented at 12 CFR part 566. OTS has removed part 566 in a separate rulemaking and today proposes to remove endnote 10 of the lending and investment chart, which currently references § 566.1(g) regarding assets qualified as liquidity investments.[7] The chart will continue to contain the statutory reference to liquid assets as permissible investments.

Section 560.36 De Minimis Investments

Section 560.36 currently permits a Federal savings association to invest, in the aggregate, up to the greater of one-fourth of 1% of its total capital or $100,000 in community development investments of the types permitted for a national bank under 12 CFR part 24. OTS proposes to increase Federal savings associations' authority to make de minimis community development investments.

The regulation enables Federal savings associations to invest in community development funds, community centers, and economic development initiatives within their communities. These investments generally do not present safety and soundness problems and enable a thrift to support and participate fully in its community.

Savings associations, however, have told OTS that they have not been able to participate as fully as competing banks of a comparable size in local partnerships because of the regulatory limitatioh for de minimis investments. Under the current regulation, for example, a $500 million savings association with capital of $50 million may invest up to $125,000 in the aggregate. A $100 million thrift with capital of $10 million may invest up to $100,000. National banks of comparable size could potentially invest up to $5 million or $1 million respectively.

To give savings associations, particularly smaller savings associations, greater flexibility to support their communities through investment, OTS is proposing to amend § 560.36 to increase the de minimis limits to the greater of 1% of an association's total capital or $250,000. The $500 million association in the

[6] Pub. L. No. 106–569, 114 Stat. 3032 (2000).

[7] Savings associations must maintain sufficient liquidity to ensure safe and sound operation. See § 563.161.

above example could therefore make up to $500,000 in community development investments in the aggregate at the association or operating subsidiary level. Additional investments could be made at the service corporation level.

Section 560.40 Commercial Paper and Corporate Debt Securities.

Section 560.40 reiterates HOLA's grant of statutory authority to Federal thrifts to invest in commercial paper and corporate debt securities and sets out limitations on that authority.[8] Recently, some Federal savings associations have purchased complex investment securities with nonstandard ratings, ratings that only apply to the principal amount rather than both the principal and interest, or payment features such as residuals. These investments tend to be speculative in nature, and their likelihood of producing a particular rate of return is difficult to assess even where they may be partially guaranteed or rated investment grade. These investments are clearly not intended to hedge interest rate risk or credit risk. Rather, their potential purchase creates risks that highlight the need for savings associations to perform thorough underwriting analyses. To address issues raised by these types of investments, OTS proposes two changes to § 560.40 to codify the agency's existing expectations about the circumstances under which these investments may be made.

First, OTS proposes to amend paragraph (a)(2)(ii) to clarify that the rating must cover the entirety of the proposed security in which the thrift is considering an investment. For example, if only the principal of the security is rated as investment grade, the thrift could purchase a principal-only interest in that security, but not an interest in the security as a whole. OTS also proposes to add a new paragraph (c) to § 560.40 that codifies OTS's existing expectations that Federal savings associations must conduct an appropriately thorough underwriting analysis of any investment security they intend to purchase. Proposed paragraph (c) would require that before committing to acquire any investment security, a Federal savings association must determine whether the investment is safe and sound and suitable for the association. The Federal savings association must consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with the investment activity. The savings association must determine that the issuer has adequate resources and the willingness to provide for all required payments on its obligations in a timely manner. The savings association may consider the rating given by a ratings agency in determining the level of additional review the association should perform. The savings association must also determine that the investment is appropriate for the association.[9]

In addition to the initial underwriting of the investment, the savings association continues to have an ongoing responsibility to monitor the investment, including cash flows, collateral quality, and the performance of the underlying assets of the security, at least quarterly, to determine the effect of any changes to the association's investment. As always, the association must be able to demonstrate to examiners that it has underwritten its investments appropriately.[10]

Section 560.42 State and Local Government Obligations

Section 560.42 reiterates the HOLA's grant of statutory authority to Federal savings associations to invest in obligations issued by any state, territory, or political subdivision thereof[11] and sets out regulatory restrictions on that investment authority. OTS is proposing to enhance Federal savings associations' ability to invest in state and local government obligations by modifying certain of § 560.42's regulatory restrictions.

Section 560.42 currently provides that a Federal savings association may not invest more than ten percent of its total capital in non-general obligations of any one issuer, and that those obligations must hold one of the four highest investment grade ratings or must be issued by a public housing agency and backed by the full faith and credit of the United States. Section 560.42 also authorizes a Federal savings association to invest, in the aggregate, up to one percent of its assets in the obligations of a state, territory, or political subdivision in which the association's home office or a branch office is located or in any obligations approved by OTS.

Proposed § 560.42 eases the current percentage restrictions on Federal associations' investment in state and local government obligations to give savings associations greater flexibility to make those investments on a competitive basis with other financial institutions. While the 10 percent of capital per issuer limitation in current § 560.42 is a statutory requirement, the other limits are considerably stricter than required either by HOLA or the other banking regulators.[12]

Section 560.42(c)(1)'s current limitation of one percent of assets and accompanying geographic limitations for non-rated securities appears to make it overly difficult for smaller associations to make investments in support of their local community. Enhancing associations' ability to invest in non-rated securities that are of investment quality should strengthen associations' investment portfolios since non-rated municipal securities often pay higher interest rates than investment rated municipal securities.

OTS, however, remains concerned that removing all aggregate limits on investment in non-rated government obligations could potentially raise safety and soundness issues. Some state and local obligations are unrated because they are small issues and the municipality does not want to incur the high costs of having their issues rated by a rating agency. For small-dollar issues, obtaining a rating is generally not feasible. Other issues, however, are not rated because they are not investment grade, and the issuer knows it will likely receive an unfavorable rating. For example, revenue bond type securities that are supported by commercial development projects and not backed by the full faith and credit of municipalities generally present greater risks than municipal bonds to savings associations' investment portfolios.

OTS is proposing to revise § 560.42 to give associations greater flexibility to invest in general obligations of a governmental entity and to invest in high-quality, non-rated municipal securities, while at the same time limiting or prohibiting investments in low-quality municipal securities. Under the proposal, Federal savings associations may invest in general obligations of state or political subdivisions without any limitation. See proposed § 560.42(a)(1).

Pursuant to proposed § 560.42(a)(2), Federal savings associations may invest in other obligations of a government entity, such as revenue bonds, that hold one of the four highest investment grade ratings by a nationally recognized rating agency or that are nonrated but of investment quality, subject only to a 10% of total capital limit for investments in the obligations of any one issuer. Finally, OTS has retained its catch-all provision for obligations of a governmental entity that do not otherwise qualify under any other category. Proposed § 560.42(a)(4) provides that Federal savings associations may invest in obligations of a governmental entity that do not otherwise qualify under any other paragraph subject to the approval and conditions set by the appropriate Regional Director. The per issuer limitation remains the same.

[8] 12 U.S.C. 1464(c)(2)(D).

[9] OTS issued a Memorandum for Chief Executives 130, dated October 23, 2000, that addresses underwriting the purchase of investment securities in more detail. Thrift Bulletin 13a also provides guidance on the fundamental underwriting standards thrifts should use in this area.

[10] The Office of the Comptroller of the Currency has a similar regulation addressing safe and sound banking practices with respect to securities investments. *See* 12 CFR 1.5 (2001).

[11] 12 U.S.C. 1464(c)(1)(H).

[12] *Id.* The OCC allows national banks to invest in general obligations of states and municipalities backed by the full faith and credit of the issuer without limit. It limits an institution's investment in obligations of any one issuer in corporate bonds and municipal revenue bonds (Type III securities) to 10% of capital and surplus, but does not impose an aggregate limit. Other than general obligation bonds, national banks may not invest in non-rated, non-investment quality Type III securities, such as revenue bonds. The OCC does, however, allow national banks to invest in non-rated Type III securities if the bank can demonstrate that the securities are investment quality. *See* 12 CFR part 1 (2001).

III. Request for Public Comment

OTS invites comment on all aspects of the proposal as well as specific comments on the proposed changes. We encourage commenters to suggest modifications to approaches discussed above that could meet OTS's overall goals of enhancing savings associations' flexibility in a competitive mortgage market, encouraging the safe and sound, efficient delivery of low-cost credit to the public, and minimizing undue regulatory duplication and burden. Because OTS hopes to expeditiously publish a final rule effective by beginning of the next calendar quarter, OTS is publishing this proposal with a 30-day comment period.

IV. Solicitation of Comments Regarding the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[13] requires Federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. OTS invites comments on how to make this proposed rule easier to understand. For example:

(1) Have we organized the material to suit your needs? If not, how could the material be better organized?

(2) Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?

(3) Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

(4) Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would more (but shorter) sections be better? If so, what sections should be changed?

(6) What else could we do to make the rule easier to understand?

V. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

VI. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 ("Unfunded Mandates Act"), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act ("RFA") requires Federal agencies to prepare an initial regulatory flexibility analysis ("IRFA") with a proposed rule or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The proposed rule would make certain changes that should reduce burden on all savings associations, including small institutions. The proposed rule reduces burden on all savings associations by enhancing thrifts' flexibility to offer a greater range of products, to invest in activities that support their local communities, and to compete more effectively with other financial institutions. The proposed rule would allow small savings associations to make a greater amount of community development investments. Finally, the proposed rule revises § 560.42 into plain language, which should make it easier for all savings associations to comply with the regulation.

Based on the above discussion, OTS concludes that this proposed rule should not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision proposes to amend 12 CFR chapter V as follows:

PART 559—SUBORDINATE ORGANIZATIONS

1. The authority citation for part 559 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828.

2. Section 559.4 introductory text, and paragraphs (g)(3), (h)(2) and (3), and (i) are revised; and § 559.4(j) is added to read as follows:

§ 559.4 What activities are preapproved for service corporations?

This section sets forth the activities that have been preapproved for service corporations. Section 559.3(e)(2) of this part sets forth the procedures for engaging in a broader scope of activities on a case-by-case basis. You should read these two sections together to determine whether you must file a notice with OTS under § 559.11 of this part, or whether you must file an application under part 516 of this chapter and receive prior written OTS approval for your service corporation to engage in a particular activity. To the extent permitted by § 559.3(e)(2) of this part, a service corporation may engage in the following activities:

* * * * *

(g) * * *

(3) Small business investment companies and new markets venture capital companies licensed by the U.S. Small Business Administration; and

* * * * *

(h) * * *

(2) Investments designed primarily to promote the public welfare, including

[13] 12 U.S.C. 4809.

the welfare of low- and moderate-income communities or families (such as providing housing, services, or jobs);

(3) Investments in low-income housing tax credit and new markets tax credit projects and entities authorized by statute (e.g., community development financial institutions) to promote community, inner city, and community development purposes; and

* * * * *

(i) Activities conducted on behalf of a customer on an other than "as principal" basis.

(j) Activities reasonably incident to those listed in paragraphs (a) through (i) of this section if the service corporation engages in those activities.

PART 560—LENDING AND INVESTMENT

3. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

4. Section 560.3 is amended by revising the first sentence in the definition of *"Real estate loan"* and by revising the definition of *"Small business loans and loans to small businesses"* as follows:

§ 560.3 Definitions.

* * * * *

Real estate loan, for purposes of this part, is a loan for which the savings association substantially relies upon a security interest in real estate given by the borrower as a condition of making the loan. * * *

* * * * *

Small business loans and loans to small businesses include any loan to a small business as defined in this section; or a loan (including a group of loans to one borrower) that does not exceed $2 million to a business or farm.

5. Section 560.30 is revised to read as follows:

§ 560.30 General lending and investment powers of Federal savings associations.

Pursuant to section 5(c) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. 1464(c), a Federal savings association may make, invest in, purchase, sell, participate in, or otherwise deal in (including brokerage or warehousing) all loans and investments allowed under section 5(c) of the HOLA including, without limitation, the following loans, extensions of credit, and investments, subject to the limitations indicated and any such terms, conditions, or limitations as may be prescribed from time to time by OTS by policy directive, order, or regulation:

LENDING AND INVESTMENT POWERS CHART

Category	Statutory authorization [1]	Statutory investment limitations (Endnotes contain applicable regulatory limitations)
Bankers' bank stock	5(c)(4)(E)	Same terms as applicable to national banks.
Business development corporations	5(c)(4)(A)	The lesser of .5% of total credit outstanding loans or $250,000.
Commercial loans	5(c)(2)(A)	20% of total assets, provided that amounts in excess of 10% of total assets may be used only for small business loans.
Commercial paper and corporate debt securities.	5(c)(2)(D)	Up to 35% of total assets.[2 3]
Community development loans and equity investments.	5(c)(3)(A)	5% of total assets, provided equity investments do not exceed 2% of total assets.[4]
Construction loans without security	5(c)(3)(C)	In the aggregate, the greater of total capital or 5% of total assets.
Consumer loans	5(c)(2)(D)	Up to 35% of total assets.[2 5]
Credit card loans or loans made through credit card accounts.	5(c)(1)(T)	None.[6]
Deposits in insured depository institutions	5(c)(1)(G)	None.[6]
Education loans	5(c)(1)(U)	None.[6]
Federal government and government-sponsored enterprise securities and instruments.	5(c)(1)(C), 5(c)(1)(D), 5(c)(1)(E), 5(c)(1)(F)	None.[6]
Finance leasing	5(c)(1)(B), 5(c)(2)(A), 5(c)(2)(B), 5(c)(2)(D)	Based on purpose and property financed.[7]
Foreign assistance investments	5(c)(4)(C)	1% of total assets.[8]
General leasing	5(c)(2)(C)	10% of assets.[7]
Home improvement loans	5(c)(1)(J)	None.[6]
Home (residential) loans [9]	5(c)(1)(B)	None.[6 10]
HUD-insured or guaranteed investments	5(c)(1)(O)	None.[6]
Insured loans	5(c)(1)(I), 5(c)(1)(K)	None.[6]
Liquidity investments	5(c)(1)(M)	None.[6]
Loans secured by deposit accounts	5(c)(1)(A)	None.[6 11]
Loans to financial institutions, brokers, and dealers.	5(c)(1)(L)	None.[6 12]
Manufactured home loans	5(c)(1)(J)	None.[6 13]
Mortgage-backed securities	5(c)(1)(R)	None.[6]
National Housing Partnership Corporation and related partnerships and joint ventures.	5(c)(1)(N)	None.[6]
New markets venture companies	5(c)(4)(F)	5% of total capital.
Nonconforming loans	5(c)(3)(B)	5% of total assets.
Nonresidential real property loans	5(c)(2)(B)	400% of total capital.[14]
Open-end management investment companies [15].	5(c)(1)(Q)	None.[6]

LENDING AND INVESTMENT POWERS CHART—Continued

Category	Statutory authorization [1]	Statutory investment limitations (Endnotes contain applicable regulatory limitations)
Service corporations	5(c)(4)(B)	3% of total assets, as long as any amounts in excess of 2% of total assets further community, inner city, or community development purposes.[16]
Small business investment companies	15 U.S.C. 682(b)(2)	5% of total capital.
Small-business-related securities	5(c)(1)(S)	None.[6]
State and local government obligations	5(c)(1)(H)	None for general obligations. Per issuer limitation of 10% of capital for other obligations.[6 17]
State housing corporations	5(c)(1)(P)	None.[6 18]
Transaction account loans, including overdrafts.	5(c)(1)(A)	None.[6 19]

Endnotes

1. All references are to section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) unless otherwise indicated.

2. For purposes of determining a Federal savings association's percentage of assets limitation, investment in commercial paper and corporate debt securities must be aggregated with the Federal savings association's investment in consumer loans.

3. A Federal savings association may invest in commercial paper and corporate debt securities, which includes corporate debt securities convertible into stock, subject to the provisions of § 560.40. Amounts in excess of 30% of assets, in the aggregate, may be invested only in obligations purchased by the association directly from the original obligor and for which no finder's or referral fees have been paid.

4. The 2% of assets limitation is a sublimit for investments within the overall 5% of assets limitation on community development loans and investments. The qualitative standards for such loans and investments are set forth in HOLA section 5(c)(3)(A) (formerly 5(c)(3)(B), as explained in an opinion of the OTS Chief Counsel dated May 10, 1995 (available at www.ots.treas.gov)).

5. Amounts in excess of 30% of assets, in the aggregate, may be invested only in loans made by the association directly to the original obligor and for which no finder's or referral fees have been paid. A Federal savings association may include loans to dealers in consumer goods to finance inventory and floor planning in the total investment made under this section.

6. While there is no statutory limit on certain categories of loans and investments, including credit card loans, home improvement loans, education loans, and deposit account loans, OTS may establish an individual limit on such loans or investments if the association's concentration in such loans or investments presents a safety and soundness concern.

7. A Federal savings association may engage in leasing activities subject to the provisions of § 560.41.

8. This 1% of assets limitation applies to the aggregate outstanding investments made under the Foreign Assistance Act and in the capital of the Inter-American Savings and Loan Bank. Such investments may be made subject to the provisions of § 560.43.

9. A home (or residential) loan includes loans secured by one-to-four family dwellings, multi-family residential property, and loans secured by a unit or units of a condominium or housing cooperative.

10. A Federal savings association may make home loans subject to the provisions of §§ 560.33, 560.34, and 560.35.

11. Loans secured by savings accounts and other time deposits may be made without limitation, provided the Federal savings association obtains a lien on, or a pledge of, such accounts. Such loans may not exceed the withdrawable amount of the account.

12. A Federal savings association may only invest in these loans if they are secured by obligations of, or by obligations fully guaranteed as to principal and interest by, the United States or any of its agencies or instrumentalities, the borrower is a financial institution insured by the Federal Deposit Insurance Corporation or is a broker or dealer registered with the Securities and Exchange Commission, and the market value of the securities for each loan at least equals the amount of the loan at the time it is made.

13. If the wheels and axles of the manufactured home have been removed and it is permanently affixed to a foundation, a loan secured by a combination of a manufactured home and developed residential lot on which it sits may be treated as a home loan.

14. Without regard to any limitations of this part, a Federal savings association may make or invest in the fully insured or guaranteed portion of nonresidential real estate loans insured or guaranteed by the Economic Development Administration, the Farmers Home Administration, or the Small Business Administration. Unguaranteed portions of guaranteed loans must be aggregated with uninsured loans when determining an association's compliance with the 400% of capital limitation for other real estate loans.

15. This authority is limited to investments in open-end management investment companies that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940. The portfolio of the investment company must be restricted by the company's investment policy (changeable only if authorized by shareholder vote) solely to investments that a Federal savings association may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal in. Separate and apart from this authority, a Federal savings association may make pass-through investments to the extent authorized by § 560.32.

16. A Federal savings association may invest in service corporations subject to the provisions of part 559 of this chapter.

17. This category includes obligations issued by any state, territory, or possession of the United States or political subdivision thereof (including any agency, corporation, or instrumentality of a state or political subdivision), subject to § 560.42.

18. A Federal savings association may invest in state housing corporations subject to the provisions of § 560.121.

19. Payments on accounts in excess of the account balance (overdrafts) on commercial deposit or transaction accounts shall be considered commercial loans for purposes of determining the association's percentage of assets limitation.

6. Revise 560.36 to read as follows:

§ 560.36 De minimis investments.

A Federal savings association may invest in the aggregate up to the greater of 1% of its total capital or $250,000 in community development investments of the type permitted for a national bank under 12 CFR part 24.

7. Amend § 560.40 by adding the words "as to the portion of the security in which the association is investing" after "categories" in § 560.40(a)(2)(ii) and by adding § 560.40(c) to read as follows:

§ 560.40 Commercial paper and corporate debt securities.

* * * * *

(c) *Underwriting.* Before committing to acquire any investment security, a Federal savings association must determine whether the investment is safe and sound and suitable for the association. The Federal savings association must consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with the investment activity. The Federal savings association must also determine that the issuer has adequate resources and the willingness to provide for all required payments on its obligations in a timely manner.

8. Revise 560.42 to read as follows:

§ 560.42 State and local government obligations.

(a) *What limitations apply?* Pursuant to HOLA section 5(c)(1)(H), a Federal savings association ("you") may invest in obligations issued by any state, territory, possession, or political subdivision thereof ("governmental entity"), subject to appropriate underwriting and the following conditions:

	Aggregate limitation	Per-issuer limitation
(1) General obligations	None	None.
(2) Other obligations of a governmental entity (e.g., revenue bonds) that hold one of the four highest investment grade ratings by a nationally recognized rating agency or that are nonrated but of investment quality.	None	10% of total capital.
(3) Obligations of a governmental entity that do not qualify under any other paragraph but by your capital are approved by your Regional Director	As approved by your Regional Director.	10% of total capital.

(b) *What is a political subdivision? Political subdivision* means a county, city, town, or other municipal corporation, a public authority, or a publicly-owned entity that is an instrumentality of a state or a municipal corporation.

(c) *What is a general obligation of a state or political subdivision? A general obligation* is an obligation that is guaranteed by the full faith and credit of a state or political subdivision that has the power to tax. Indirect payments, such as through a special fund, may qualify as general obligations if a state or political subdivision with taxing authority has unconditionally agreed to provide funds to cover payments.

(d) *What is appropriate underwriting for this type of investment?* In the case of a security rated in one of the four highest investment grades by a nationally recognized rating agency, your assessment of the obligor's credit quality may be based, in part, on reliable rating agency estimates of the obligor's performance. For all other securities, you must perform your own detailed analysis of credit quality. In doing so, you must consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with the investment activity and determine that such investment is appropriate for your institution. You must also determine that the obligor has adequate resources and willingness to provide for all required payments on its obligations in a timely manner.

Dated: October 25, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 01–27329 Filed 10–31–01; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–61–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), that is applicable to Pratt & Whitney (PW) PW2000 series turbofan engines. That AD currently requires revisions to the engine manufacturer's time limits section (TLS) to include enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 31, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–61–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–61–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–61–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 12, 2000, the FAA issued airworthiness directive (AD) 2000–21–09, Amendment 39–11941 (65 FR 65730, November 2, 2000), to require revisions to the Time Limits Section (TLS) of the PW 2000 Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

New Inspection Procedures

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the time limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate the additional inspection requirements.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Pratt & Whitney (PW) PW2000 series turbofan engines of the same type design, the proposed AD would supersede AD 2000–21–09 to add additional critical life-limited parts for enhanced inspection at each piece-part opportunity.

Economic Analysis

The FAA estimates that 724 engines installed on airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per engine to perform the enhanced inspection. The average labor rate is $60 per work hour. The cost impact of the added inspections per engine is approximately $1,200 per year, with the approximate total cost for the U.S. fleet of $868,800 per year.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11941, (65 FR 65730 November 2, 2000), and by adding a new airworthiness directive:

Pratt & Whitney: Docket No. 98–ANE–61–AD. Supersedes AD 2000–21–09, Amendment 39–11941.

Applicability

This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) PW2037, PW2040, PW2037M, PW2240, PW2337, PW2043, PW2643, and PW2143, series turbofan engines, installed on but not limited to Boeing 757 series and Ilyushin IL–96T series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the manufacturer's Time Limits section (TLS) of the manufacturer's engine manual, as appropriate for PW PW2037, PW2040, PW2037M, PW2240, PW2337, PW2043, PW2643, and PW2143 series turbofan engines, and for air carriers revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in PW2000 Engine Manuals 1A6231 and 1B2412:

Nomenclature	Part No.	EM manual section	Inspection/ check
Hub, HPC Front	ALL	72–35–02	– 05
Disk, HPC Drum Rotor Assembly (7–15)	ALL	72–35–03	– 04
Disk, HPC Drum Rotor Assembly (16–17)	ALL	72–35–10	– 05
Disk, HPC 16th Stage	ALL	72–35–06	– 04
Disk, HPC 17th Stage	ALL	72–35–07	– 04

Nomenclature	Part No.	EM manual section	Inspection/ check
LPC Drive Turbine Shaft	ALL	72–32–01	–06
Hub, Turbine Rear	ALL	72–53–81	–06
Disk, LPT 3rd Stage	ALL	72–53–31	–01
Disk, LPT 4th Stage	ALL	72–35–41	–01
Disk, LPT 5th Stage	ALL	72–32–51	–01
Disk, LPT 6th Stage	ALL	72–53–61	–01
Disk, LPT 7th Stage	ALL	72–53–71	–01

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual to either part number level listed in the table above, and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (e) of this AD, and notwithstanding contrary provisions in § 43.16 of Federal Aviation Regulations [14 CFR 43.16), these enhanced inspections must be performed only in accordance with the TLS of the appropriate PW2000 series engine manuals.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations [14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Issued in Burlington, Massachusetts, on October 25, 2001.

Robert Mann,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–27432 Filed 10–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–1–000]

Standardizing Generator Interconnection Agreements and Procedures Advance Notice of Proposed Rulemaking

October 25, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) seeks comments on a standard generator interconnection agreement and procedures that would be applicable to all public utilities that own, operate or control transmission facilities under the Federal Power Act.

DATES: Written comments must be received by the Commission by December 21, 2001.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

David Faerberg (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1275.

Patrick Rooney (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 501–5546.

Roland Wentworth (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1288.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) intends to adopt a standard generator interconnection agreement and procedures that would be applicable to all public utilities that own, operate or control transmission facilities under the Federal Power Act. As discussed more fully below, the Commission requests comments on these contractual provisions and procedures. After receiving and considering these comments, the Commission will issue a notice of proposed rulemaking (NOPR).

I. Background

In Order No. 888,[1] the Commission mandated that public utilities provide non-discriminatory or comparable open access transmission service. Order No. 888 also established standardized terms and conditions for public utility-provided transmission service, *i.e.*, a *pro forma* transmission tariff.

However, Order No. 888 does not directly address generator interconnections, which are implicitly included as a part of transmission service. In *Tennessee Power Company (Tennessee)*,[2] the Commission held that interconnection service is an element of transmission service, that customers have the right to request interconnection separately from the delivery component of transmission service, and that interconnection must be offered under the terms of the *pro forma* tariff. The Commission has also held that customers have the right to request the transmission provider to file an unexecuted interconnection agreement if a dispute cannot be quickly resolved.[3]

Although a number of parties have requested that the Commission initiate a generic proceeding or industry collaboration to address interconnection concerns, the Commission until now has declined to do so. In addressing these requests, the Commission encouraged utilities to revise their open access transmission tariffs (OATTs) to include procedures for requesting interconnections services and the criteria for evaluating those requests. The Commission has also stated that because a regional transmission organization (RTO) will administer its *pro forma* tariff, it was the Commission's hope that compliance with the RTO rulemaking in Order No. 2000[4] would eliminate concerns about interconnection procedures.

Consistent with the Commission's encouragement, a number of transmission providers have filed interconnection procedures as part of their *pro forma* tariffs.[5] Some of these providers have filed *pro forma* interconnection agreements, while others have submitted only procedures explaining how interconnection requests will be processed.

While there have been a number of positive developments with respect to interconnection procedures, the Commission recognizes that there is still dissatisfaction and uncertainty with existing interconnection policy and procedures that may have resulted in less investment in infrastructure and less confidence in the competitiveness of the markets. In a number of contexts, the Commission has received comments from both generators and transmission providers concerning existing interconnection policy and procedures.

Generators assert, among other things, that (1) there is difficulty in securing interconnection without requesting delivery, (2) the treatment they receive is not comparable to the treatment received by the transmission provider's own generation, (3) system upgrade costs charged to generators are sometimes not related to the interconnection, (4) there are delays and uncertainty due to the lack of binding commitments and firm deadlines in transmission providers' *pro forma* tariffs, and (5) there is a lack of transparency of transmission information needed to make an independent assessment of the impact of an interconnection request.

On the other hand, transmission providers argue that they need (1) minimum commitments from generators seeking to interconnect prior to performing studies to weed out those who will likely never interconnect, resulting in a more manageable and realistic queue, (2) assurance that their control area will benefit from, or at least not be burdened by, adding generators, particularly when the new generator seeks to locate on one system but serve load on another, and (3) improved communication between the generators and the loads they serve.

II. Discussion

Generator interconnection is a critical aspect of open access transmission service. In order to fully realize the benefits of open access transmission service, interconnection procedures must be established that will encourage needed investment in infrastructure, remove incentives for transmission providers to favor their own generation, ease entry for competitors, and encourage efficient siting decisions. In the Commission's view, standard interconnection procedures are essential for providing the right incentives for both transmission providers and generators. Accordingly, the Commission intends to adopt a standard generator interconnection agreement and procedures that would be applicable to all public utilities that own, operate or control transmission facilities under the Federal Power Act.

The Commission is considering basing the standard interconnection agreement and procedures on the Standard Generator Interconnection Agreement and Generation Interconnection Procedure of the Electric Reliability Council of Texas (ERCOT),[6] as supplemented and modified by the various "best practices" that have been identified by the Commission in Attachment A to this order. (References in the ERCOT Agreement and Procedure to the Public Utility Commission of Texas should be generally understood for purposes of this ANOPR as references to FERC). These "best practices" are based, in part, on generator interconnection agreements and procedures that have been approved by the Commission in past cases. For purposes of commenting in this proceeding, assume that our current pricing policy as reflected in Attachment B is in effect. However, commenters should not interpret this as an indicator of our preference for a long-term pricing policy. Cost responsibility and pricing will be addressed in a subsequent rulemaking.

Commenters advocating a standard agreement and procedures other than the ERCOT model as supplemented and modified by the "best practices" in Attachment A should specify in detail how their proposals differ from the foregoing and are superior to or more appropriate than the proposal herein. Any approaches suggested by commenters must be in the public interest by promoting competition and economic efficiency .

The Commission strongly encourages interested persons to pursue consensus on these issues through procedures that will be initiated through a separate notice. As part of these procedures and separate from comments on this ANOPR, by December 14, 2001, participants will be required to file a single document reflecting as much consensus as possible on a standard generator interconnection agreement and procedures as well as pros and cons on issues where consensus was not reached. Any consensus reached among all interested persons will be the foundation for the subsequent NOPR, to the extent consistent with the Commission's statutory responsibility and the guidance above. Issues not resolved by consensus among all interested persons will be addressed in the subsequent NOPR consistent with this and the preceding paragraph.

III. Comment Procedures

The Commission invites interested persons to submit comments, data, views and other information concerning matters set out in this notice.

To facilitate the Commission's review of the comments, commenters are requested to provide an executive

[1] Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *clarified*, 76 FERC ¶ 61,009 and 76 FERC ¶ 61,347 (1996), *on reh'g*, Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *clarified*, 79 FERC ¶ 61,182 (1997), *on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd sub nom.* Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *cert. granted in part and denied in part*, 69 U.S.L.W. 3574 (U.S. Feb. 26, 2001).

[2] 90 FERC ¶ 61,238 (2000), *order on reh'g*, 91 FERC 61,271 (2000).

[3] *See, e.g.*, American Electric Power Service Corporation, 91 FERC ¶ 61,308 (2000); Commonwealth Edison Company, *et al.*, 92 FERC ¶ 61,018 (2000).

[4] Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000–A, FERC Stats. & Regs. ¶ 31,092 (2000), *petitions for review pending sub nom.* Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00–1174, *et al.*

[5] *See, e.g.*, American Electric Power Service Corp., 91 FERC ¶ 61,308 (2000); Southwest Power Pool, Inc., 92 FERC ¶ 61,109 (2000); Carolina Power & Light Company, 93 FERC ¶ 61,032 (2000); Virginia Electric and Power Co., 93 FERC 61,307 (2000); Consumers Energy Co., 93 FERC ¶ 61,339 (2000).

[6] The ERCOT agreement and procedures are attached as Appendix A to this order.

summary of their position on the issues raised in the Advance Notice of Proposed Rulemaking (ANOPR). Commenters are requested to identify each specific issue posed by the ANOPR that their discussion addresses and to use appropriate headings. Additional issues the commenters wish to raise should be identified separately. The commenters should double-space their comments.

Comments may be filed on paper or electronically via the Internet and must be received by the Commission by December 21, 2001. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426 and should refer to Docket No. RM02–1–000.

Comments filed via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *www.ferc.gov* and click on "e-Filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments.

User assistance for electronic filing is available at 202–208–0258 or by E-Mail to *efiling@ferc.fed.us*. Comments should not be submitted to the E-Mail address. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by E-mail to *RimsMaster@ferc.fed.us*.

IV. Document Availability

The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426. This document will be published in the **Federal Register** without the ERCOT Standard Generator Interconnection Agreement and Generation Interconnection Procedure. Those documents can be viewed in the Public Reference Room or via the internet at *http://www.ferc.gov/electric/gen_inter.htm*.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.
—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.
—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E–Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E–Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

By direction of the Commission.

David P. Boergers,

Secretary.

Attachment A—Best Practices

The items discussed in this attachment are intended to be additions or modifications to the ERCOT Interconnection Procedures.

1. Comparable Treatment

Transmission Providers who are also load serving entities are currently permitted to reserve (set aside) transmission capacity for use by future network resources to meet projected load growth. Under the new interconnection procedures, other suppliers such as merchant plants will be allowed to be competing network resources for meeting load and load growth without having to be selected as a designated network resource at the time of interconnection.

2. Generators Must Be Offered Multiple Interconnection Products[7]

Energy Resource: If the Generator elects to become an energy resource, it will be permitted to connect to the Transmission Provider's system and deliver the generating facility's output using the existing capacity of the transmission system on an "as available" basis. The Transmission Provider must conduct the necessary studies and construct minimal network facilities needed to allow the Generator to interconnect its facility to the grid and deliver the output on an "as available" basis.

Capacity Resource: The Transmission Provider must conduct the necessary studies and construct the network facilities needed to integrate the Generators's facility in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers.

3. Exemptions

Small generators (20 MW and below), including those owned by Transmission Providers or their affiliates, will be exempt from paying for interconnection studies or network upgrades. Interconnection of generating facilities of this size will not materially affect the Transmission Provider's system. The Transmission Provider will have streamlined procedures in place for administering interconnection requests from small generators (*e.g.*, only conducting a feasibility study at no charge to determine the minimal facilities necessary to accommodate the request).

4. Queuing

If requests are processed on an individual basis, the initial queue position for all interconnection requests will be based on the date that the Transmission Provider receives the request. If requests are processed jointly, the initial queue protocol may be modified. The interconnection procedures will set forth reasonable milestones and requirements which the Generator must meet to retain its position in the queue. In addition to the time line procedures listed in Section 7 of this attachment, if the Generator misses any stipulated milestones or requirements (*i.e.*, milestones tied to obtaining necessary application and governmental approvals to show the project is on track) it will be given 10 working days to correct any deficiencies or lose its place in the queue (unless the Generator can reasonably demonstrate that extraordinary circumstances prevented it from meeting the deadlines). A Generator will also risk losing its queue position if material changes are made to the initial request (*e.g.*, substantially revising the size or configuration of the facility).

5. Deposits

Generators will be responsible for the costs of all required studies. Generators will be required to submit a $2,000 non-refundable deposit at the time it submits the initial interconnection request; a $10,000 non-refundable deposit and demonstration that it has applied for necessary permits before any feasibility studies commence; a $50,000 deposit if the Transmission Provider is asked to proceed with a System Impact Study (with any amount over the actual study costs refundable); and a $100,000 if the Transmission Provider is asked to proceed with a Facilities Study (with any amount over the actual study costs refundable).

6. Generator Siting

Transmission Providers will post on their web site what, in their view, are the optimal and non-optimal sites on their system for locating prospective generating facilities. Transmission Providers need to identify areas where, for example, due to load growth, siting would require minimal network upgrades. Also, the Transmission Provider should identify areas where, for example, due to transmission constraints, significant network upgrades would be required, and the expected delay before such upgrades will be made.

7. Project Time Lines

The time lines associated with the construction of both Generator's and Transmission Provider's interconnection facilities must be the same. At the Transmission Provider's option, System Impact Studies may be conducted in response to individual requests or, alternatively, all requests received may be studied jointly every six months (e.g., June 30th and December 31st) during the year. If the latter approach is taken, the study completion date would become 90 days after the joint study commencement date.

Review Interconnection Request and Acknowledgment: Within 5 business days.

Perform Initial Feasibility Study: Within 30 business days of receipt of acknowledgment of request.

System Impact Study Agreement Tendered to Generator: Within 15 days of completed study.

Executed System Impact Study Agreement: Within 15 business days of receipt of System Impact Study Agreement.

Completed System Impact Study: Within 60 days of receipt of Executed Agreement.[8]

Facilities Study Agreement Tendered to Generator: Within 30 days of completed System Impact Study.

Executed Facilities Study Agreement Filed: Within 15 days of receipt of Facilities Study Agreement.

Perform Facilities Study: Within 60 days of receipt of Executed Agreement.

Execute or Request Filing of Unexecuted Interconnection Agreement: Within 30 days of receipt of Facilities Study.

Attachment B— Pricing

1. Interconnection Facilities: Direct Assignment

Interconnection Facilities are defined as all facilities needed to establish the direct electrical interconnection between the Generator's facility and the Transmission Provider's network. The Generator is obligated to pay for 100 percent of the cost of all the interconnection facilities.

2. Network Facilities

Network Facilities are defined as all facilities from the point where the generator connects to the grid, including facilities necessary to remedy short-circuit and stability problems. As discussed further below, the costs of these facilities will be borne initially by the Generator and will be credited back to the generator that funded them (including the time value of money) through payments for transmission service.

3. Credits To Follow Transmission Service

In general, the Generator will be required to pay up front for any network upgrades that would not be needed "but for" the interconnecting customer. Generators will then be entitled to a credit, to be applied through future transmission rates, for any such costs that they are required to bear. The transmission rates through which this credit will be applied will include rates for all transmission service utilized by the Generator after the date of the interconnection. Such service will include not only new point to point service taken by the Generator from the location of its new facility, but also any other transmission service taken by that Generator from the Transmission Provider. In addition, the credit will be applied to the rates for any transmission service, including both point to point and network service, used by loads to deliver the output of the new facility to their location.

4. Time Value for Network Upgrade Costs

Generators will be entitled to receive interest on the outstanding balance of network upgrade costs that they are required to bear. Interest will be calculated annually consistent with 18 CFR 35.19a(a)(2) of the Commission's Regulations.

[FR Doc. 01–27438 Filed 10–31–01; 8:45 am]

BILLING CODE 6717–01–P

[7] The definitions are adapted from those used by PJM. See *PJM Interconnection L.L.C.*, 87 FERC ¶ 61,299 (1999).

[8] Applies only if Transmission Provider elects to conduct studies on an individual basis.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Dockets: OR 68–7283b, OR 37–2–6301b, and OR 37–1–6301b; FRL–7035–7]

Approval and Promulgation of Implementation Plans; OR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve most but not all of the State Implementation Plan (SIP) revisions submitted by the State of Oregon. This rulemaking proposes to approve most provisions of the Oregon Visibility State Implementation Plan (SIP) submitted August 26, 1993, smoke management provisions submitted on August 26, 1993, revisions to the Oregon field burning program submitted July 3, 1997, and the amendments to the Smoke Management Plan for the Blue Mountains submitted September 27, 1995. We are proposing a combined action on these separate submissions because they address or are affected by the control of particulate matter from area sources, specifically smoke from field burning and smoke from forestry burning. These rules are also linked through the Oregon Visibility SIP, which seeks to control visibility degradation through field burning programs and smoke management programs.

EPA is proposing to take no action on the provision which changes the review

period from three to five years in the Visibility rules.

In the Final Rules section of this **Federal Register**, the EPA is approving the Oregon SIP submittals as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before December 3, 2001.

ADDRESSES: Written comments should be addressed to, Steven K. Body, (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below.

Copies of air quality data and other relevent information supporting this action are available for inspection during normal business hours at the following location: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA, Office of Air Quality (OAQ–107), Seattle, Washington, (206) 553–0782.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: July 23, 2001.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 01–27280 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC 050–2027b; FRL–7094–8]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Nitrogen Oxides Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the District of Columbia for the purpose of establishing a nitrogen oxides (NO_X) allowance trading program for large electric generating and industrial units, beginning in 2003. In the Final Rules section of this **Federal Register**, EPA is approving the District's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by December 3, 2001.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, at the EPA Region III address above, or by e-mail at *fernandez.cristina@epa.gov*. Please note any comments on this rule must be submitted, in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On May 21, 2001, the Government of the District of Columbia, Department of Health submitted a revision to its SIP to address the requirements of the NO_X SIP Call Phase I. The revision consists of the adoption of Chapter 10—Nitrogen Oxides Budget Trading Program. For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: October 24, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 01–27377 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[PA–T5–AC2001b; FRL–7093–2]

Clean Air Act Full Approval of Operating Permit Program; Allegheny County; PA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a partial operating permit program for Allegheny County, Pennsylvania. This program will allow the Allegheny County Health Department (ACHD), located in the Commonwealth of Pennsylvania, to issue federally enforceable operating permits to all major stationary sources and certain other affected minor sources in its jurisdiction. The ACHD's operating permits program was submitted to EPA by the Commonwealth of Pennsylvania on behalf of Allegheny County. By this same rulemaking, EPA is also withdrawing its previously published notice of proposed rulemaking dated December 6, 1999. In the Final Rules section of this **Federal Register**, EPA is fully approving the partial operating permit program for Allegheny County, Pennsylvania as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by December 3, 2001.

ADDRESSES: Comments are to be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Allegheny County Health Department Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Linda Miller, Permits and Technical Assessment Branch at (215) 814–2068 or by e-mail at miller.linda@.epa.gov. Please note that comments on this proposed rule must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: October 17, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 01–27282 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7096–8]

RIN 2060–AJ81

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2002; and Extension of the De Minimis Exemption for Essential Laboratory and Analytical Uses through Calendar Year 2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: With this action, EPA is proposing to allocate essential-use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2002. Essential use allowances permit a person to obtain controlled ODSs as an exemption to the January 1, 1996 regulatory phase-out of production and import of these chemicals. EPA allocates essential-use allowances for exempted production or import of a specific quantity of class I ODS solely for the designated essential purpose. Today, EPA is proposing to allocate essential-use allowances for production and import of ODSs for use in medical devices and the Space Shuttle and Titan Rockets, and to extend the general exemption for laboratory and analytical applications through the year 2005 as consistent with the Montreal Protocol. EPA is also proposing regulatory changes to ensure consistency with Decisions XI/15 and XII/2 of the Montreal Protocol. Decision XI/15 states that use of class I ODS for the testing of "oil and grease," and "total petroleum hydrocarbons" in water; testing of tar in road-paving materials; and forensic finger printing are not considered essential under the exemption for laboratory and analytical uses beginning January 1, 2002. Decision XII/2 states that any CFC MDIs approved after December 31, 2000, are not essential unless the product meets the criteria in paragraph 1(a) of Decision IV/25. Decision XII/2 also authorizes Parties to the Montreal Protocol to allow transfers of CFCs produced with essential-use allowances among MDI companies. Finally, EPA is proposing to add a prohibition to the regulations at 82.4 that would clarify that using virgin class I ODS produced under the authority of essential-use allowances or the exemption for laboratory and analytical uses for non-essential purposes is a violation of the CAA.

DATES: Written comments on this proposed rule must be received on or before December 3, 2001, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the Stratospheric Ozone Protection Hotline listed below by 5 p.m. Eastern Standard Time on November 13, 2001. If a hearing is held, EPA will publish a document in the **Federal Register** announcing the hearing information. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Protection Hotline at 1–800–269–1996.

ADDRESSES: Comments on this rulemaking should be submitted in duplicate to: Erin Birgfeld, Essential Use Program Manager, U.S. Environmental Protection Agency (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. If you plan to send comments using courier services or overnight express, please address comments to 501 3rd Street NW., Washington DC 20001. Comments will be filed in EPA Air docket number A–93–39. Comments that contain confidential business information should be submitted in two versions, one clearly marked "Public", to be filed in the public docket, and the other clearly marked "Confidential" to be reviewed by authorized government personnel only. If the comments are not marked, EPA will assume they are public and contain no confidential information.

Materials relevant to this rulemaking are contained in Docket No. A–93–39. The Docket is located in Waterside Mall Room M–1500, 401 M Street, SW., Washington, DC 20460. The materials may be inspected from 8 a.m. until 5:30 p.m. Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Protection Hotline at 1–800–296–1996 or Erin Birgfeld, U.S. Environmental Protection Agency, Global Programs Division, Office of Atmospheric Programs, 6205J, 1200 Pennsylvania Avenue, Washington, DC 20460, 202–564–9079.

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I. Background

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) is the international agreement to reduce and eventually eliminate production and consumption [1] of all stratospheric ozone depleting substances (ODSs). The elimination of production and consumption is accomplished through adherence to phase-out schedules for production and consumption of specific class I ODSs including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, hydrochlorofluorocarbons, and methyl bromide. As of January 1996, production and import of class I ODSs [2] were phased out in all developed countries including the United States. However, the Protocol and the Clean Air Act (CAA or Act) provide exemptions which allow for the continued import and/or production of class I ODS for specific uses. Under the Montreal Protocol, exemptions are granted for uses that are determined by the Parties to be "essential." Decision IV/25, taken by the Parties in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential-use as set forth in paragraph 1 of Decision IV/25 are the following:

"(a) that a use of a controlled substance should qualify as "essential" only if:
(i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and
(ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health; (b) that production and consumption, if any, of a controlled substance for essential-uses should be permitted only if:
(i) all economically feasible steps have been taken to minimize the essential-use and any associated emission of the controlled substance; and
(ii) the controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances."

The procedure set out by Decision IV/25 first calls for individual Parties to nominate essential-uses, and the amount of ODS needed for that essential-use on an annual basis. The Protocol's Technology and Economic Assessment Panel evaluates the nominated essential-uses and makes recommendations to the Protocol Parties. The Parties make the final decisions on whether to approve a Party's essential-use nomination at their annual meeting.

Once the U.S. nomination is approved by the Parties, EPA allocates essential-use exemptions to specific entities through notice-and-comment rulemaking in a manner consistent with the CAA. Under the CAA and the Montreal Protocol, EPA is authorized to allocate essential-use allowances in quantities below or equal to the amounts approved by the Parties. EPA cannot allocate essential-use allowances in amounts higher than is approved by the Parties.

II. Essential Use Allowances for Medical Devices

A. How Were Essential-Use Allowances for Medical Devices Nominated and Approved by the Parties to the Montreal Protocol?

On September 15, 1999, EPA issued a **Federal Register** notice (64 FR 50083) requesting applications for essential-use allowances for the year 2002. The applications EPA received requested exemptions for the production and import of specific quantities of CFCs (CFC–11, CFC–12, and CFC–114) for use in MDIs, and provided information in accordance with the criteria set forth in Decision IV/25 of the Protocol and the procedures outlined in the "1997 Handbook on Essential Use Nominations." Based on the information provided in these applications, and after consultation with the Food and Drug Administration (FDA), the U.S. forwarded a request for 2,900 metric tons of CFCs for use in metered dose inhalers to the Ozone Secretariat for consideration by the Technical and Economic Assessment Panel (TEAP) and the Aerosol Technical Options Committees (ATOC). The Parties approved the U.S. request for 2,900 metric tons of CFCs for essential-uses in Decision XII/9 taken at the December 2000 Meeting of the Parties.

On November 1, 2000, EPA issued a notice in the **Federal Register** that requested applications for supplemental essential-use allowances for the year 2002. Based on the information received as a part of these applications, EPA and FDA determined that a supplemental quantity of CFCs would be necessary to provide the U.S. with sufficient CFCs for the manufacture of MDIs to meet patient needs in the year 2002. As a result, the U.S. forwarded a supplemental request of 550 metric tons of CFCs for the year 2002 to the Ozone Secretariat for consideration by the TEAP and the Aerosol Technical Options Committee (ATOC) bringing the total quantity requested to 3,450 metric tons for calendar year 2002. The ATOC reviewed the U.S. supplemental request at their meeting in April of this year, and recommended that the Parties approve the U.S. supplemental request at the meeting of the Parties to be held in October 2001.

Today's action proposes to allocate essential-use allowances assuming that the Parties approve the U.S. supplemental request of 550 metric tons of CFCs for 2002. In the event that the Parties break with the ATOC recommendation, and do not approve the supplemental request, EPA would issue a final rule, in consultation with FDA, which would allocate essential-use allowances to U.S. companies based on the total amount approved by the Parties.

B. How Does the Clean Air Act Authorize Essential-Use Allowances?

The CAA provides exemptions under section 604(d) to the phase-out of class I ODSs. With today's action, EPA is proposing to implement the exemption at 604(d)(2) of the Act which states that "notwithstanding the phase-out, EPA shall, to the extent consistent with the Montreal Protocol, authorize production of limited quantities of class I ODSs for use in medical devices, if FDA, in consultation with EPA, determines that such production is necessary for use in medical devices". The term "medical device" is defined in section 601(8) of the Clean Air Act as follows:

"[A]ny device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system
(A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner [of FDA]; and
(B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner [of FDA] in consultation with the Administrator [of EPA]."

With today's action, EPA is allocating essential-use allowances for use in MDIs that have previously been determined to fit the definition of medical device above. For a full discussion of the definition of "medical device", and how it has been interpreted and applied in today's rulemaking please refer to the interim final rule for the year 2000 allocation of essential-use allowances (65 FR 716).

C. What Was the Allocation Process for Essential-Use Allowances for Medical Devices?

The following is a step-by-step list of actions EPA and FDA have taken thus far to implement the exemption for medical devices found at section 604(d)(2) of the Act for the 2002 control period.

1. EPA collaborated with FDA to identify what information would be required from companies in order for FDA to make a determination, in consultation with EPA, on the amount of CFCs necessary for use in MDIs. EPA and FDA determined that the following data were needed to make this determination:
- The specific MDI products to be produced in 2002
- The number of units of each product produced in the year 2000
- Number of units produced in the first quarter of 2001
- Number of units anticipated to be produced in 2002
- Gross target fill weight per unit (grams)
- Total amount of CFC to be contained in product for 2002 (metric tons)
- Additional amounts of CFCs necessary for production of MDIs in 2002
- Total CFC request per product for 2002

2. On April 12, 2002, EPA sent letters to MDI manufacturers requesting the information outlined above. The letters that EPA sent each company are available for review in the Air Docket No. A–93–39. The company's responses, however, are considered confidential business information and are not publicly available. Table Ia is an example of the reporting form EPA asked companies to fill out under the authority of section 114 of the Act (114 letters).

TABLE IA.—YEAR 2002 ESSENTIAL USE ALLOCATION: CFC REPORTING FORM

Product	Number of units produced from 1/1/00 to 12/31/00	Number of units produced from 1/1/01 to 3/31/01	Number of units anticipated to be produced in 2002	Gross Target fill weight per unit (grams)	Total CFC to be contained in product for 2002 (metnc tons)	Additional amount necessary for production [3]	Total request per product for 2002
A	B	C	D	E	F	G	H
Example Product	1,327,456	352,101	1,500,000	22	33.00	3.3	36.30

3. In a letter dated June 14, 2001, EPA requested that FDA make a determination regarding the amount of CFCs necessary for use in MDIs for calendar year 2002. With this request, we attached the information MDI manufacturers provided in response to the 114 letters. FDA compared the information from the companies' responses to EPA's section 114 letters with the annual reports companies file with FDA and used this information as a basis for their determination.

4. On August 9, 2001, FDA sent a letter to EPA stating the amount of CFCs necessary for use in MDIs for calendar year 2002. The FDA determination was based on the assumption that the total U.S. request of 3,450 metric tons of CFCs will be approved at the next Meeting of the Parties in October 2001. In accordance with the determination made by FDA, specified in their letter of August 9, 2001, today's action proposes to allocate essential-use allowances for a total of 3,388 metric tons of CFCs for use in MDIs for the year 2002 calendar year.

D. How Were the Decisions on the Amounts of Essential-Use Allowances for Each Company Made?

FDA states in their letter to EPA that "Under our existing regulations and our proposed rule [4], we have interpreted the CAA definition of medical device to refer to any product that contains an active moiety [5] that appears on the essential-use list found at 21 CFR 2.125. We further understand that under the Montreal Protocol, and therefore under the CAA, only products for the treatment of asthma or chronic obstructive pulmonary disease (COPD) are eligible for essential-use nominations and allocations. Under this definition, the sponsor of any drug product produced under an approved new drug application, abbreviated new drug application, or valid investigational new drug application, approved for the treatment of asthma or COPD, and containing an active moiety on our essential list may obtain CFCs. We also understand that Decision XII/2 of the 12th Meeting of the Parties to the Montreal Protocol states that any CFC metered-dose inhaler product for the treatment of asthma and/or COPD approved after December 31, 2000, in a non-Article 5(1) Party is not an essential-use, unless the product meets the criteria set out in paragraph 1(a) of Decision IV/25."

"With these definitions in mind, we [FDA] have examined the information you [EPA] obtained from individual sponsors regarding their historical and intended use of CFCs in specific products. We compared this information to the information filed with us by sponsors in previous annual reports. In listing the amounts we believe to be necessary for use in medical devices, we referred to this information, eliminated any double-counting we found, considered changes in the prevalence of asthma and COPD, and eliminated allocations for uses not considered essential by the Parties to the Montreal Protocol, even if those uses are currently listed in our regulations at 21 CFR 2.125(e)."

[1] "Consumption" is defined as the amount of a substance produced in the United States, plus the amount imported, minus the amount exported to Parties to the Montreal Protocol (see Section 601(6) of the Clean Air Act). Stockpiles of class I ODSs produced or imported prior to the 1996 phaseout can continue to be used for purposes not expressly banned at 40 CFR part 82.

[2] Class I ozone depleting substances are defined at 40 CFR Part 82 subpart A, appendix A.

[3] EPA requested that respondents provide details of the additional amount needed, e.g., canisters produced but not distributed, CFCs lost in processing, CFCs remaining at end of batch run, CFCs used in line cleaning.

[4] Use of Ozone-Depleting Substances; Essential Use Determinations, September 1, 1999. (64 FR 47719)

[5] An FDA regulation at 21 CFR 108(a) defines active moiety as "the molecule or ion excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a pharmacological action of the drug substance."

E. Will the Amounts Actually Allocated in the Final Rule Be the Same as the Amounts Listed in This Proposed Rule?

The amounts listed in this proposal are subject to additional review by EPA and FDA if new information demonstrates that the proposed allocations are either too high or too low. Commentors requesting increases or decreases of essential-use allowances should provide detailed information supporting their claim for additional or fewer CFCs. Any company that no longer needs the full amount listed in this proposal should notify EPA of the actual amount needed.

EPA will only be authorized to allocate a total of 3,450 metric tons of CFCs if the Parties approve the U.S. supplemental request at the October 2001 meeting. As stated earlier, in the event that the Parties do not approve the U.S. supplemental request for the year 2002 in its entirety, EPA, in consultation with FDA, will allocate CFCs based on the total amount authorized by the Parties.

F. How Does Decision XII/2 of the Parties to the Montreal Protocol Affect This Year's Regulation?

(1) Eligible Products

Decision XII/2, titled "Measures to facilitate the transition to chlorofluorocarbon-free metered dose inhalers", taken at the last Meeting of the Parties in December 2000 has two provisions that are being implemented with today's action. First, as noted in the FDA letter, paragraph 2 of Decision XII/2 states "that any chlorofluorocarbon metered-dose inhaler product approved after 31 December 2000 for treatment of asthma and/or chronic obstructive pulmonary disease in a non-Article 5(1) Party is not an essential-use unless the product meets the criteria set out in paragraph 1(a) of Decision IV/25."

In the past, EPA has allocated essential-use allowances for all CFC MDIs containing active moieties used for the treatment of asthma and COPD, without distinguishing among individual products. However, Decision XII/2 raises the bar for MDI products approved after December 31, 2000. In order for an MDI product in the research and development phase[6] to be considered essential, the MDI product must individually meet the criteria in Decision IV/25 paragraph 1(a). Decision IV/25 1(a) states that "use of a controlled substance should qualify as essential only if it is necessary for the health, safety or critical for the functioning of society (encompassing cultural and intellectual aspects); and there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health." Based on Decision XII/2, EPA believes that CFC MDI that are still in research and development, and that contain active moieties already commercially available in other MDI products are no longer "essential". This is because the new MDI products would not provide additional therapy to patients, and thus are not themselves necessary for the health, safety or functioning of society as specified by paragraph 1(a) of Decision IV/25.

Decision XII/2 allows for the possibility that a CFC MDI product containing an active moiety not currently available as an MDI might be considered essential if the product met the requirements of paragraph 1 of Decision IV/25. If the FDA, in consultation with EPA, determined that the new product was "essential" and the product met the criteria in Decision XII/2, the U.S. would forward a nomination to the Parties. Consistent with our current practice, EPA and FDA would only allocate essential-use allowances for MDIs considered to be essential by the Parties to the Protocol.

EPA, in consultation with FDA, is implementing paragraph 2 of Decision XII/2 by allocating essential-use allowances to companies only for production of CFC MDIs for the treatment of asthma and COPD, and approved by FDA prior to December 31, 2000. EPA is also proposing to amend the language at 40 CFR 82.4(t) to reflect this. One company had in prior years received essential-use allowances for research and development of CFC MDIs containing active moieties that are already available to patients in MDI form. Due to Decision XII/2, EPA and FDA cannot allocate essential-use allowances to this company for research and development of MDIs now considered to be non-essential.

(2) Transfers of Essential-Use Allowances and "Essential-Use CFCs"

With today's proposal, EPA is implementing paragraph 8 of Decision XII/2 which states that "* * * as a means of avoiding unnecessary production of new chlorofluorocarbons, and provided that the conditions set out in paragraphs (a)–(d) of Decision IX/20 are met, a Party may allow a MDI company to transfer:

(a) All or part of its essential-use authorization to another existing MDI company; or

(b) CFCs to another MDI company provided that the transfer complies with national/regional licence or other authorization requirements."

Paragraphs (a)–(d) of Decision IX/20 provide the following conditions for transfers between Parties: the transfer applies only up to the maximum level that has previously been authorized for the calendar year in which the next Meeting of the Parties is to be held; both Parties agree to the transfer; the aggregate annual level of authorizations for all Parties for essential-uses of MDIs does not increase as a result of the transfer; the transfer or receipt is reported by each Party involved on the essential-use quantity-accounting format approved by the Eighth Meeting of the Parties by paragraph 9 of Decision VIII/9.

As the transition progresses, and more CFC-free MDIs become available, fewer CFC MDIs will be produced globally. While many pharmaceutical companies have production lines for CFC MDIs in more than one country, this is likely to change as demand for CFC MDIs decreases. With last year's allocation rule, EPA amended its regulations to allow transfer of essential-use allowances for CFC among essential-use allowance holders domestically (66 FR 1462). As a result of Decision XII/2, EPA is proposing to allow metered dose inhaler companies to transfer essential-use allowances internationally and to allow transfer of essential-use allowances to companies that do not currently hold essential-use allowances from the U.S.

To accomplish this, EPA is proposing to change the regulations at 82.12(a)(1) to allow essential-use allowances for CFCs to be transferred to another MDI company and not just to another essential-use allowance holder. This will allow an MDI company that currently does not have essential-use allowances to receive them through a trade provided that the allowances are used to produce essential MDIs. EPA is also adding essential-use allowances to the list of allowances that may be traded internationally under paragraph 82.9(c). The international transfer of essential-use allowances would occur in the same manner as international transfers of Article 5 allowances and production allowances are currently traded. This ensures compliance with section 616 of the CAA which governs international trades. For approval of an international trade for essential-use allowances the transferor must submit the following information:

[6] EPA is unaware of any CFC MDI product that has been approved by the FDA since December 31, 2000.

- The identity of the Party (i.e. the country other than the U.S. that is participating in the transfer);
- The names and telephone number of contact person for the company where the allowances are being transferred to (transferee) and names and contact person for that country's government representative;
- The type of allowances being transferred (essential-use allowances), the type of chemical being transferred (CFC–11, CFC–12, or CFC–114);
- The control period (i.e., calendar year) to which the transfer applies.

After receiving a transfer request, the Administrator may at her discretion consider the following factors in deciding whether to approve a transfer:

- Possible creation of economic hardship;
- Possible effects on trade;
- Potential environmental implications;
- The total amount of unexpended allowances held by United States entities;
- Whether the essential-use allowances will be used in metered dose inhaler considered essential by the Parties.

EPA is proposing a mechanism to allow MDI companies to transfer CFCs already produced under the authority of essential-use allowances to other MDI companies as specified by paragraph 8 of Decision XII/2. EPA believes that other Parties to the Protocol are implementing this portion of Decision XII/2 in a similar manner which will allow free flow of CFCs produced with essential-use allowances between Parties and between MDI companies. EPA believes that this additional flexibility will result in a decrease in the total amount of CFCs produced for essential-uses globally.

First, we are amending section 82.3 to define the term "essential-use CFC" to mean CFCs already produced using essential-use allowances. Second, we are modifying the parenthetical in paragraph 82.4(d) so that import of "essential-use CFCs" will no longer count against the U.S. MDI company's essential-use allowances for that year. This will allow an MDI company to procure "essential-use CFCs" beyond the amount of essential-use allowances allocated to them in a particular control period if the transfer is approved by EPA (see next paragraph). Third, we are defining the term "essential MDIs" in section 82.3 as the following, "MDIs for the treatment of asthma and chronic obstructive pulmonary disease, approved by the FDA or by another Party's analogous health authority before December 31, 2000, and considered to be essential by the Party where the MDI product will eventually be sold. If the MDI product is to be sold in the U.S., the active moiety contained in the MDI must be listed as essential at 21 CFR 2.125(e)." By defining essential MDIs as such, we ensure that transferred "essential-use CFCs" would be used solely for production of MDIs considered essential by the Parties and the country where they are being ultimately sold.

EPA is adding paragraph (d) to the regulations at 82.12 to create the mechanism that EPA will use to approve transfers of essential-use CFCs between MDI companies in the U.S., and adding paragraph (g) to 82.9 to govern transfer of essential-use CFCs between U.S. companies and companies in other Parties. Under the proposed changes to 82.12 the transferee would submit to EPA the following information before EPA would approve a transfer of essential-use CFCs.

- The identities and addresses of the transferor and the transferee;
- The name and telephone numbers of contact persons for the transferor and the transferee;
- The amount of each controlled substance (CFC–11, CFC–12, or CFC–114) being transferred;
- The specific metered dose inhaler products (i.e. the MDI drug product or active moiety) that the company plans to produce with the transferred CFCs;
- The country(ies) where the CFC metered dose inhalers produced with the transferred essential-use CFCs will be sold if other than in the United States;
- Certification that the essential-use CFCs will be used in the production of essential MDIs. If the metered dose inhalers are to be sold in the United States, the certification must state that metered dose inhalers produced with the transferred essential-use CFCs are listed as essential at 21 CFR 2.125. If the metered dose inhalers produced with the essential-use CFCs are to be sold outside the United States, the transferee must certify that the metered dose inhalers produced with the essential-use CFCs are considered essential by the importing country.

The transferor must submit to EPA a letter concurring with the terms of the transferees request before the application is complete. For international transfers under section 82.9, EPA would require the same information requested at 82.12 and listed above, and a letter from the embassy of the Party involved in the transfer stating that the transfer is approved by the government of the Party.

If EPA approves the transfer, EPA would issue letters to the transferor and the transferee indicating that the transfer may proceed. If EPA objects to the transfer, EPA would issue letters to the transferor and transferee stating the basis for disallowing the transfer. The burden of proof is placed on the transferee (if the transferee is a U.S. company) to retain sufficient records to prove that the transferred essential-use CFCs are used only for production of essential MDIs. If the MDIs are produced in the U.S. and are to be exported to another country the transferee must ensure that the MDIs produced are considered essential by the national authority of the importing country. If EPA ultimately found that the transferee did not use the essential-use CFCs in essential MDIs, then the transferee would be in violation of the CAA.

Finally, EPA is proposing to revise the definition of "essential-use allowances" under section 82.3 to ensure consistency with the Montreal Protocol and section 82.4. Under the Montreal Protocol, essential-use exemptions were granted for the years 1996–2003. EPA has already granted essential-use allowances for calendar year 2001, and is proposing to allocate essential-use allowances for calendar year 2002. Further, EPA anticipates that the Parties will continue to grant essential-use exemptions until the transition from class I ODS in essential applications is complete. Therefore, EPA is proposing to change the definition of essential-use allowance by omitting a specific end date for the program.

III. Exemption for Methyl Chloroform for Use in the Space Shuttle and Titan Rockets

EPA is proposing to allocate methyl chloroform (MCF) for use in solid rocket motor assemblies. The CAA exemption for continued production and import of methyl chloroform is found at 604(d)(1) and reads as follows:

(1) Essential Uses of Methyl Chloroform.—Notwithstanding the termination of production required by subsection (b), during the period beginning on January 1, 2002, and ending on January 1, 2005, the Administrator [of EPA], after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of methyl chloroform solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available. Notwithstanding this paragraph, the authority to produce methyl chloroform

for use in medical devices shall be provided in accordance with paragraph (2).

Decision X/6 states that "* * * the remaining quantity of methyl chloroform authorized for the United States at previous meetings of the Parties [will] be made available for use in manufacturing solid rocket motors until such time as the 1999–2001 quantity of 176.4 tons (17.6 ODP-weighted tons) allowance is depleted, or until such time as safe alternatives are implemented for remaining essential-uses." According to the EPA tracking system, the total amount of MCF produced or imported by essential-use allowance holders was 15.2 metric tons in the calendar year 1999, and 3.3 metric tons in the calendar year 2000. EPA is proposing to allocate 50.4 metric tons of MCF for 2002 for use in the Space Shuttle and Titan Rockets, which is the amount requested by essential-use applicants for 2002. Essential-use allowance holders should be aware that the exemption for MCF under section 604(d)(1) of the CAA expires in the year 2005. Thus, EPA will not have statutory authority to allocate essential-use allowances for MCF after that date.

IV. Allocation of Essential-Use Allowances for Medical Devices and the Space Shuttle and Titan Rockets for Calendar Year 2002

EPA is proposing to allocate essential-use allowances for calendar year 2002 to entities listed in Table I for exempted production or import of the specific quantity of class I controlled substances solely for the specified essential-use.

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2002

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	343
Aventis	CFC–11 or CFC–12 or CFC–114	150
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	743
Glaxo SmithKline	CFC–11 or CFC–12 or CFC–114	1016
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	949
Sidmak Laboratories Inc	CFC–11 or CFC–12 or CFC–114	67
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	120
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/ Thiokol Rocket.	Methyl Chloroform	47
United States Air Force/Titan Rocket	Methyl Chloroform	3.4

V. General Laboratory Exemption for Class I ODSs

On March 13, 2001, EPA issued a direct final rule that implemented a *de minimis* exemption under the Clean Air Act for continued production and import of class I ODS for laboratory essential-uses (66 FR 14760). With the direct final rule, EPA allocated essential-use allowances for laboratory uses for the year 2001 only. Under the Montreal Protocol, the Parties have approved a global (i.e., general) exemption for laboratory and analytical uses for set periods of time. At their tenth meeting in 1998, the Parties, in Decision X/19, extended the global laboratory and analytical essential-use exemption until December 31, 2005, under the conditions set out in Annex II of the report of the Sixth Meeting of the Parties. Today's action proposes to extend EPA's regulatory *de minimis* exemption for essential laboratory and analytical uses through 2005 as consistent with the Montreal Protocol.

Decision X/19 also states that at the annual Meetings of the Parties, on the basis of information reported by the Technology and Economic Assessment Panel (TEAP), the Parties may "decide on any uses of controlled substances which should no longer be eligible under the exemption for laboratory and analytical uses and the date from which any such restriction should apply." Subsequently, the Parties at the Eleventh Meeting of the Parties to the Protocol took Decision XI/15 which eliminated the following uses from the global exemption for laboratory and analytical uses for controlled substances from the year 2002 onward:

(a) Testing of oil and grease, and total petroleum hydrocarbons in water;

(b) Testing of tar in road-paving materials; and

(c) Forensic finger-printing.

With today's action, EPA is proposing to amend Part 82 subpart A, appendix G to define the above laboratory methods as non-essential pursuant to Decision XI/15. Under this proposed change to appendix G, production or import of class I ODSs for these specific laboratory methods will be prohibited beginning January 1, 2002.

In the U.S., class I ODSs are not used for testing of tar in road-paving materials and forensic finger-printing. Thus, we expect that the major impact of Decision XI/15 will be upon testing of oil and grease, and total petroleum hydrocarbons in water. EPA requires testing for the these conventional pollutants as a part of its wastewater and hazardous waste programs. The analytical methods for measuring "oil and grease" include EPA methods 413.1, 413.2 and 418.1, which use CFC–113. Pursuant to Decision XI/15, methods for testing for oil and grease in water using class I ODSs will no longer be considered essential in the year 2002. Thus, new production or importation of CFC–113 for those EPA test methods will be prohibited. This should not cause a problem for laboratories since there are alternative methods available for testing of oil and grease that do not rely on class I ODS, and EPA recommends that laboratories switch to these alternative methods.[7] You may

[7] On May 14, 1999, EPA published alternative analytical methods for these tests that do not require using class I ODSs: Method 1664 Revision A: N-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated—Hexane Extractable Material (SGR–HEM; Nonpolar Material) by Extraction and Gravimetry. EPA promulgated method 9071B to replace method 9070 and incorporates Method 1664 for use in EPA's Resource Conservation and Recovery Act programs. For more information on method 1664, please reference EPA's Office of Water website at *www.epa.gov/ost/methods/oil.html*. For technical information regarding Resource Conservation and Recovery Act test methods and regulations please call the Office of Solid Waste Methods information and communication exchange at (703) 821–4690. For technical information regarding testing methods required under the Clean Water Act, call the Office of Water Resource Center at (202) 260–7786.

use stockpiled CFC–113 that was imported for production before January 1, 2001 or recycled CFC–113 as long as EPA's Office of Water and Office of Solid Waste continue to accept results from test methods using CFC–113.

Pursuant to Decision X/19, the TEAP will continue to make recommendations for laboratory uses which no longer require class I ODSs. The Parties to the Protocol may remove additional methods or uses from the global laboratory exemption in the future. Currently, there are no recommendations by the TEAP to remove any additional laboratory uses beyond those listed in Decision XI/15. If the Parties decide to remove any other laboratory uses from the exemption, EPA will propose appropriate regulations. EPA reserves the right to determine that a particular test method is non-essential in the United States, even if it continues to be considered essential by the Parties.

The current regulations require annual certifications from laboratory customers stating that the class I ODSs produced and/or imported under the laboratory exemption will not be resold or used in manufacturing. EPA is proposing to amend the recordkeeping and reporting requirements at 40 CFR 82.13 so that these certifications also state that the class I ODSs obtained under the laboratory exemption will be used for essential laboratory uses as defined by appendix G. EPA believes that these additional requirements will not impose additional paperwork burden on the regulated entities since annual certifications are already required.

VI. Clarification Regarding Use of Material Produced Under Essential-Use Allowances for Non-Essential-Uses

EPA is proposing to add paragraph (t)(4) to section 82.4 in order to clarify that virgin class I ODSs produced under the authority of essential-use allowances may not be used in applications that are not essential (i.e., those uses not listed in paragraphs (t)(2), (t)(3), and appendix G of subpart A). The regulations at section 82.4 establish limited exceptions to the production and import bans for class I ODS. The use or sale of virgin class I ODS produced under these exceptions for other purposes would circumvent the production and import bans and the intent of these exceptions.

We are concerned that laboratories might obtain class I ODSs in excess of their own need under the general laboratory exemption with the intent of "recycling" the class I ODS and re-selling it into other non-laboratory markets at a profit. Therefore, we explicitly prohibit such actions in section 82.4(t)(4) by stating that "It is a violation of this subpart to obtain virgin class I ODSs under the general laboratory exemption in excess of actual need, and to recycle that material for sale into other markets." The intent of this provision is not to disallow laboratories from purchasing sufficient class I ODSs for their own use, nor is it meant to discourage laboratories from re-using or recycling class I ODSs that are legitimately used for essential laboratory methods. It is meant to discourage those that might exploit a potential loophole and purchase quantities of ODSs far in excess of what would normally be necessary for laboratory uses, nominally "use" the class I ODS, and then "recycle" the material and sell it for use in non-laboratory applications.

EPA is aware that certain companies extract and recycle CFCs from MDIs that are "off-specification" and are thus not marketable. These recycled CFCs are often sold for use in non-essential applications. The addition of paragraph (t)(4) would not prevent this practice from continuing since the CFCs contained in off-specification MDIs are not considered virgin material. EPA is unaware of any virgin essential-use material that is being sold or used for non-essential purposes at this time, and therefore does not anticipate that this clarification will have any economic impact.

VII. Administrative Requirements

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule imposes no enforceable duty on any State, local or tribal government. For the private sector, it clarifies existing requirements and adds recordkeeping and reporting requirements for those who wish to participate in a voluntary program. Thus, it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined by OMB and EPA that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

C. Paperwork Reduction Act (PRA)

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document will be prepared by EPA and sent to OMB. Once the ICR in completed, EPA will issue a notice soliciting public comment on the ICR.

The information required in today's proposed rule, and that will be outlined in the ICR is mandatory under section 603(b) of the CAA which states that all production, import, and export of class I and class II ODSs must be reported to EPA. EPA is also requesting information from transferors and transferees of essential-use CFCs to ensure the conditions of Decision XII/2 and section 604(d) of the Act are met, so that only essential MDI products will be produced using essential-use CFCs. The information collected will be considered confidential, and will only be released in the aggregate to protect individual company information.

The estimated burden will be set forth in the ICR. We do not expect this cost and burden to be substantial since similar reporting requirements for transferring production, consumption, and essential-use allowances are already in place under subpart A. Further, there are only a small number of MDI companies that are able to produce CFC–MDIs in the U.S. Thus, the number of companies engaged in transferring essential-use CFC will be small as well. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

D. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's rule does not affect the communities of Indian tribal governments since the only entities directly affected by this rule are the companies that requested essential-use allowances or make use of the general exemption for laboratory uses. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

E. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entities is defined as: (1) Pharmaceutical preparations manufacturing businesses (NAICS code 325412) that have less than 750 employees; and environmental testing services (NAICS code 541380) that have annual receipts of less than $5 million dollars (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that the one pharmaceutical company that is not receiving essential-use allowances for use in CFC MDIs could experience an economic impact. The direct impact of this rule is that this company will be unable to import or produce CFCs for research and development of CFC MDIs that contain active moieties already available to the public. However, the economic impact is not quantifiable since this company does not have MDI products that are approved by the FDA and can be sold in the U.S. This company has participated in the essential-use allowance process since the original phaseout of class I ODS in 1996, and is aware that the U.S. as a Party to the Montreal Protocol is bound to complete the transition to CFC-free MDIs.

Environmental testing labs are affected by this rule in that beginning in the year 2002 newly imported or produced CFC–113 cannot be used in the testing of oil and grease, and total petroleum hydrocarbons in water. EPA believes that because there is an alternative method available, and that stockpiled and recycled CFC–113 can continue to be used for this testing if necessary, that the economic impact of this regulation on small environmental testing laboratories is minimal. Further, alternative methods to test oil and grease that do not use ODSs are available.

Although this proposed rule will not have significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact on small entities. In the case of environmental testing laboratories, EPA is minimizing the reporting requirements associated with this rule by simply amending the yearly certification already required of them under existing regulations. In this case of the one pharmaceutical company that is not receiving essential-use allowances for CFCs, we believe that there is no way to reduce the impact on this small business while still complying with Decision XII/2 of the Montreal Protocol. We continue to be interested in the potential impact of the proposed rule on small entities and welcome comments related to these issues.

F. Applicability of Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it implements the phase-out schedule and exemptions established by Congress in Title VI of the Clean Air Act.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in this regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not considering the use of any voluntary consensus standards.

H. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. With today's action EPA is proposing that the use of CFC–113 for testing of oil and grease is no longer considered "essential" as consistent with Decision XI/15 of the Parties to the Montreal Protocol. Thus, import and production of CFCs for this use will be prohibited beginning January 1, 2002. EPA believes that this will not substantially affect local and state government implementation of the Clean Water Act since stockpiles of CFC–113 produced or imported prior to the year 2002, and recycled material can continue to be used for these methods. Further, alternative methods that do not use ODSs are available. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

I. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Imports, Laboratory and analytical uses, Methyl chloroform, Ozone layer, Reporting and recordkeeping requirements.

Dated: October 24, 2001.

Christine Todd Whitman,

Administrator

40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.3 is amended by adding new definitions in alphabetical order for "Essential-use chlorofluorocarbons (Essential CFCs)", and "Essential metered dose inhaler (Essential MDI)", and revising the definition of "Essential-use allowances" to read as follows:

§ 82.3 Definitions.

* * * * *

Essential Metered Dose Inhaler (Essential MDI) means metered dose inhalers for the treatment of asthma and chronic obstructive pulmonary disease, approved by the Food and Drug Administration or by another Party's analogous health authority before December 31, 2000, and considered to be essential by the Party where the MDI product will eventually be sold. If the MDI product is to be sold in the U.S., the active moiety contained in the MDI must be listed as essential at 21 CFR 2.125(e).

Essential-Use Allowances means the privileges granted by § 82.4(t) to produce class I substances, as determined by allocation decisions made by the Parties to the Montreal Protocol and in accordance with the restrictions delineated in the Clean Air Act Amendments of 1990.

Essential-Use Chlorofluorocarbons (Essential-use CFCs) are the CFCs (CFC–11, CFC–12, or CFC–114) produced under the authority of essential-use allowances and not the allowances themselves. Essential-use CFCs include CFCs imported or produced by U.S. entities under the authority of essential-use allowances for use in metered dose inhalers, as well as CFCs imported or produced by non-U.S. entities under the authority of privileges granted by the Parties and the national authority of another country for use in metered dose inhalers.

* * * * *

3. Section 82.4 is amended:

a. By revising paragraph (d).

b. By revising paragraph (k).

c. By revising paragraphs (t) introductory text, (t)(1)(i), and (t)(3).

d. By adding the table to the end of paragraph (t)(2).

e. By adding paragraphs (t)(1)(iii) and (t)(4).

The revisions and additions read as follows:

§ 82.4 Prohibitions.

* * * * *

(d) Effective January 1, 1996, for any class I , Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substances, no person may import (except for transhipments or heels), at any time in any control period (except for controlled substances that are transformed or destroyed, or transfers of essential-use CFCs) in excess of the amount of unexpended essential-use allowances or exemptions as allocated under this section, or the amount of unexpended destruction and transformation credits obtained under § 82.9 held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess importation (other than transhipments or heels) constitutes a separate violation of this subpart. It is a violation of this subpart to obtain virgin class I ODSs under the general laboratory exemption in excess of actual need and to recycle that material for sale into other markets.

* * * * *

(k) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, a person may not use production allowances to produce a quantity of a class I controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, prior to January 1, 1996, for all class I controlled substances, and prior to January 1, 2005 for class I, Group VI controlled substances, only consumption allowances are required to import, with the exception of transhipments, heels and used controlled substances. Effective January 1, 1996, for all Groups of class I controlled substances, except Group VI, only essential-use allowances or exemptions are required to import class I controlled substances, with the exception of transhipments, heels, used controlled substances, and essential-use CFCs.

* * * * *

(t) Effective January 1, 1996, essential-use allowances are apportioned to a person under paragraphs (t)(2) and (t)(3) of this section for the exempted production or importation of specified class I controlled substances solely for the purposes listed in paragraphs (t)(1)(i) through (iii) of this section.

(1) * * *

(i) Metered dose inhalers (MDIs) for the treatment of asthma and chronic obstructive pulmonary disease that were approved by the Food and Drug Administration before December 31, 2000.

(ii) * * *

(iii) Laboratory and Analytical Uses (Defined at appendix G of this subpart).

(2) * * *

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2002

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	343
Aventis	CFC–11 or CFC–12 or CFC–114	150
Boehinger Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	743
Glaxo SmithKline	CFC–11 or CFC–12 or CFC–114	1016
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	949
Sidmak Laboratories Inc.	CFC–11 or CFC–12 or CFC–114	67
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	120
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/ Thiokol Rocket.	Methyl Chloroform	47
United States Air Force/Titan Rocket	Methyl Chloroform	3.4

(3) A global exemption for class I controlled substances for essential laboratory and analytical uses shall be in effect through December 31, 2005 subject to the restrictions in appendix G of this subpart, and subject to the record keeping and reporting requirements at § 82.13(u) through (z). There is no amount specified for this exemption.

(4) Any person using virgin class I ODSs produced under the authority of essential-use allowances or the essential-use exemption in paragraph (t)(3) of this section for anything other than an essential-use (i.e. for uses other than those specifically listed in paragraph (t)(1) of this section is in violation of this subpart. Each kilogram of virgin class I ODS produced or imported under the authority of essential-use allowances or the essential-use exemption and used for a non-essential-use is a separate violation of this subpart. Any person selling virgin class I material produced or imported under the authority of essential-use allowances or the essential-use exemption for uses other than an essential-use is in violation of this subpart. Each kilogram of virgin class I ODS produced under the authority of essential-use allowances or the essential-use exemption and sold for a use other than an essential-use is a separate violation of this subpart. It is a violation of this subpart to obtain virgin class I ODSs under the general laboratory exemption in excess of actual need and to recycle that material for sale into other markets.

* * * * *

4. Section 82.9 is amended:

a. By revising the section heading.

b. By revising paragraphs (c) introductory text, (c)(1) introductory text, (c)(1)(iv), (c)(2)(iv), and (c)(4).

c. By adding paragraphs (c)(3)(v) and (g).

The revisions and additions read as follows:

§ 82.9 Availability of allowances in addition to baseline production allowances for class I ozone depleting substances—International transfers of production allowances, Article 5 allowances, essential-use allowances, and essential-use CFCs.

* * * * *

(c) A company may increase or decrease its production allowances, its Article 5 allowances, or its essential-use allowances for CFCs for use in essential MDIs, by trading with another Party to the Protocol according to the provision under this paragraph (c). A nation listed in appendix C to this subpart (Parties to the Montreal Protocol) must agree either to transfer to the person for the current control period some amount of production or import that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some amount of production or import that the person is permitted under this subpart. If the controlled substance is produced under the authority of production allowances and is to be returned to the Party from whom production allowances are received, the request for production allowances shall also be considered a request for consumption allowances under § 82.10(c). If the controlled substance is produced under the authority of production allowances and is to be sold in the United States or to another Party (not the Party from whom the allowances are received), the U.S. company must expend its consumption allowances allocated under § 82.6 and § 82.7 in order to produced with the additional production allowances.

(1) For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a signed document stating that the appropriate authority within that nation has established or revised production limits for the nation to equal the lesser of the maximum production that the nation is allowed under the Protocol minus the amount transferred, the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred, or the average of the nation's actual national production level for the three years prior to the transfer minus the production transferred. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

* * * * *

(iv) The chemical type, type of allowance being transferred, and the amount of allowances being transferred;

* * * * *

(2) * * *

(iv) The chemical type, type of allowance being transferred, and the level of allowances being transferred; and

(3) * * *

(v) In the case of transfer of essential-use allowances the Administrator may consider whether the CFCs will be used for production of essential MDIs.

* * * * *

(4) The Administrator will issue the person a notice either granting or deducting production allowances, Article 5 allowances, or essential-use allowances, and specifying the control period to which the transfer applies, provided that the request meets the requirement of paragraph (c)(1) of this sections for trades from Parties and paragraph (c)(2) of this section for trades to Parties, unless the Administrator has decided to disapprove the trade under paragraph (c)(3) of this section. For a trade from a Party, the Administrator will issue a notice that revises the allowances held by the person to equal the unexpended production, Article 5, or essential-use allowances held by the person under this subpart plus the level of allowable production transferred from the Party. For a trade to a Party, the Administrator will issue a notice that revises the production limit for the person to equal the lesser of:

(i) The unexpended production allowances, essential-use allowances, or Article 5 allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances, essential-use allowances, or Article 5 allowances held by the person under this subpart minus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total production allowable for that substance under this subpart minus the amount transferred. The change in allowances will be effective on the date that the notice is issued.

* * * * *

(g) *International transfer of essential-use CFCs.* (1) For trades of essential-use CFCs where the transferee or the transferor is a person in another nation (Party), the transferee must submit the information requested in § 82.12(d)(2) and (d)(3), along with a signed document from the principal diplomatic representative in the Party's embassy in the United States stating that the appropriate authority within that nation has approved the transfer of the essential-use CFCs.

(2) If the transfer claim is complete, and EPA does not object to the transfer, then EPA will issue letters to the transferor and the transferee indicating that the transfer may proceed. EPA reserves the right to disallow a transfer if the transfer request is incomplete, or if it has reason to believe that the transferee plans to produce MDIs that are not essential MDIs. If EPA objects to the transfer, EPA will issue letters to the transferor and transferee stating the basis for disallowing the transfer. The burden of proof is placed on the transferee to retain sufficient records to prove that the transferred essential-use CFCs are used only for production of essential MDIs. If EPA ultimately finds that the transferee did not use the essential-use CFCs for production of essential MDIs then the transferee is in violation of this subpart.

* * * * *

5. Section 82.12 is amended by

a. Revising the section heading.

b. Revising paragraph (a)(1) introductory text.

c. Adding paragraph (d).

The revisions and additions read as follows:

§ 82.12 Domestic transfers for class I controlled substances.

(a) * * *

(1) Until January 1, 1996, for all class I controlled substances, except for Group VI, and until January 1, 2005, for Group VI, any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's consumption allowances or production allowances, and effective January 1, 1995, for all class I controlled substances any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's Article 5 allowances. After

January 1, 2002 any essential-use allowance holder (including those persons that hold essential-use allowances issued by a Party other than the United States) ("transferor") may transfer essential-use allowances for CFCs to a metered dose inhaler company solely for the manufacture of essential MDIs.

* * * * *

(d) *Transfers of essential-use CFCs.* (1) Effective January 1, 2002, any metered dose inhaler company (transferor) may transfer essential-use CFCs to another metered dose inhaler company (transferee) provided that the Administrator approves the transfer.

(2) The transferee must submit a transfer claim to the Administrator for approval before the transfer can take place. The transfer claim must set forth the following:

(i) The identities and addresses of the transferor and the transferee;

(ii) The name and telephone numbers of contact persons for the transferor and the transferee.

(iii) The amount of each controlled substance (CFC–11, CFC–12, or CFC–114) being transferred.

(iv) The specific metered dose inhaler products (*i.e.* the MDI drug product or active moiety) that the transferee plans to produce with the transferred CFCs.

(v) The country(ies) where the CFC metered dose inhalers produced with the transferred essential-use CFCs will be sold if other than in the United States.

(vi) Certification that the essential-use CFCs will be used in the production of essential MDIs. If the MDIs are to be sold in the United States, the certification must state that MDIs produced with the transferred essential-use CFCs are listed as essential at 21 CFR 2.125, and were approved by the Food and Drug Administration before December 31, 2000. If the MDIs produced with the essential-use CFCs are to be sold outside the United States, the transferee must certify that the metered dose inhalers produced with the essential-use CFCs are considered essential by the importing country.

(3) The transferor must submit a letter stating that it concurs with the terms of the transfer as requested by the transferee.

(4) Once the transfer claim is complete, and if EPA does not object to the transfer, then EPA will issue letters to the transferor and the transferee within 10 business days indicating that the transfer may proceed. EPA reserves the right to disallow a transfer if the transfer request is incomplete, or if it has reason to believe that the transferee plans use the essential-use CFCs in anything other than essential MDIs. If EPA objects to the transfer, within EPA will issue letters to the transferor and transferee stating the basis for disallowing the transfer. The burden of proof is placed on the transferee to retain sufficient records to prove that the transferred essential-use CFCs are used only for production of essential MDIs. If EPA ultimately finds that the transferee did not use the essential-use CFCs for production of essential MDIs then the transferee is in violation of this subpart.

* * * * *

6. Section 82.13 is amended:

a. By revising paragraphs (f)(2)(xv) and (f)(3)(xii).

b. By revising paragraphs (g)(1)(xvi) and (g)(4)(xiii).

c. By revising paragraph (u).

d. By revising paragraph (v).

e. By revising paragraph (y) introductory text.

The revisions read as follows:

§ 82.13 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(2) * * *

(xv) Written certifications that quantities of controlled substances, meeting the purity criteria in appendix G of this subpart, were purchased by distributors of laboratory supplies or by laboratory customers to be used only in essential laboratory and analytical uses as defined by appendix G, and not to be resold or used in manufacturing.

* * * * *

(3) * * *

(xii) In the case of laboratory essential-uses, certifications from distributors of laboratory supplies that controlled substances were purchased for sale to laboratory customers who certify that the substances will only be used for essential laboratory and analytical uses as defined by appendix G of this subpart, and will not be resold or used in manufacturing; or, if sales are made directly to laboratories, certification from laboratories that the controlled substances will only be used for essential laboratory and analytical uses (defined at appendix G of this subpart) and will not be resold or used in manufacturing.

* * * * *

(g) * * *

(1) * * *

(xvi) Copies of certifications that imported controlled substances are being purchased for essential laboratory and analytical uses (defined at appendix G of this subpart) or being purchased for eventual sale to laboratories that certify that controlled substances are for essential laboratory and analytical uses (defined at appendix G of this subpart).

* * * * *

(4) * * *

(xiii) The certifications from essential-use allowance holders stating that the controlled substances were purchased solely for specified essential-uses and will not be resold or used in manufacturing; and the certifications from distributors of laboratory supplies that the controlled substances were purchased solely for eventual sale to laboratories that certify the controlled substances are for essential laboratory and analytical uses (defined at appendix G of this subpart), or if sales are made directly to laboratories, certifications from laboratories that the controlled substances will only be used for essential laboratory and analytical uses (defined at appendix G of this subpart) and will not be resold or used in manufacturing.

* * * * *

(u) Any person allocated essential-use allowances who submits an order to a producer or importer for a controlled substance must report the quarterly quantity received from each producer or importer.

(v) Any distributor of laboratory supplies receiving controlled substances under the global laboratory essential-use exemption for sale to laboratory customers must report quarterly the quantity received of each controlled substance from each producer or importer.

* * * * *

(y) A laboratory customer purchasing a controlled substance under the global laboratory essential-use exemption must provide the producer, importer or distributor with a one-time-per-year certification for each controlled substance that the substance will only be used for essential laboratory and analytical uses (defined at appendix G of this subpart) and not be resold or used in manufacturing. The certification must also include:

* * * * *

7. The heading and paragraph 1 of appendix G to subpart A is revised to read as follows:

Appendix G to Subpart A of Part 82—UNEP Recommendations for Conditions Applied to Exemption for Essential Laboratory and Analytical Uses

1. Essential laboratory and analytical uses are identified at this time to include equipment calibration; use as extraction solvents, diluents, or carriers for chemical analysis; biochemical research; inert solvents for chemical reactions, as a carrier or laboratory chemical and other critical analytical and laboratory purposes. Pursuant to Decision XI/15 of the Parties to the Montreal Protocol, effective January 1, 2002 the following uses of class I controlled substances are not considered essential under the global laboratory exemption:

a. Testing of oil and grease, and total petroleum hydrocarbons in water;

b. Testing of tar in road-paving materials; and

c. Forensic finger printing.

Production for essential laboratory and analytical purposes is authorized provided that these laboratory and analytical chemicals shall contain only controlled substances manufactured to the following purities:

CTC (reagent grade)—99.5
1,1,1,trichloroethane—99.5
CFC-11—99.5
CFC-13—99.5
CFC-12—99.5
CFC-113—99.5
CFC-114—99.5
Other w/ Boiling P>20 degrees C—99.5
Other w/ Boiling P<20 degrees C—99.0

* * * * *

[FR Doc. 01–27383 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 203

[DFARS Case 99–D028]

Defense Federal Acquisition Regulation Supplement; Anticompetitive Teaming

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy addressing exclusive teaming arrangements. The proposed amendments specify that certain exclusive teaming arrangements may evidence violations of the antitrust laws.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before December 31, 2001, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: http:dfars@acq.osd.mil. Please cite DFARS Case 99–D028 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 99–D028.

At the end of the comment period, interested parties may view public comments on the World Wide Web at http://emissary.acq.osd.mil/dar/dfars.nsf.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0326. Please cite DFARS Case 99–D028.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS Subpart 203.3 to add a definition of "exclusive teaming arrangement" and to specify that certain exclusive teaming arrangements may evidence violations of the antitrust laws. DoD previously published a proposed rule on this subject at 64 FR 63002, November 18, 1999. As a result of public comments received on the previous proposed rule, DoD is publishing this revised proposed rule to clarify that not all exclusive teaming arrangements evidence violations of the antitrust laws.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because DoD does not expect frequent use of anticompetitive teaming arrangements by contractors or subcontractors. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D028.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 203

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 203 as follows:

1. The authority citation for 48 CFR part 203 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Sections 203.302 and 203.303 are added to read as follows:

203.302 Definitions.

Exclusive teaming arrangement means that two or more companies agree, in writing, through understandings, or by any other means, to team together on a procurement and further agree not to team with any other competitors on that procurement.

203.303 Reporting suspected antitrust violations.

(c)(i) Practices or events that may evidence violations of the antitrust laws also include exclusive teaming arrangements when all of the following conditions exist:

(A) One or a combination of the companies participating on the team is the sole provider of a product or service that is essential for contract performance;

(B) The teaming arrangement impairs competition; and

(C) Government efforts to eliminate the teaming arrangement are not successful.

(ii) This policy applies only to exclusive teaming arrangements that meet all three of the conditions in paragraph (c)(i) of this section and should not be misconstrued to imply that all exclusive teaming arrangements evidence violations of the antitrust laws.

[FR Doc. 01–27370 Filed 10–31–01; 8:45 am]

BILLING CODE 5000–04–U

Notices

Federal Register
Vol. 66, No. 212
Thursday, November 1, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66296 FRL–6808–4]

Oxadixyl; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a cancellation order that was signed September 27, 2001, ordering cancellations as requested by Syngenta Crop Protection, Inc., and Gustafson LLC for registrations of pesticide products containing 2-methoxy-N-(2-oxo-1,3-oxazolidin-3-yl)-acet-2',6'-xylidide (oxadixyl) and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up an August 15, 2001, notice of receipt of requests for registration cancellations. In that notice, EPA requested comments on the proposed cancellations and indicated that it would issue an order confirming the voluntary registration cancellations. Any distribution, sale, or use of canceled oxadixyl products is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations were effective September 27, 2001.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8195; fax number: (703) 308–7042; e-mail address: pates.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use oxadixyl products. The Congressional Review Act, 5 U.S.C. 801, *et seq.* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A fact sheet on oxadixyl and the voluntary cancellation decision is also available on EPA's website at http://www.epa.gov/pesticides/reregistration/status.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–66296. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Request to Cancel Registrations

A. Background

Oxadixyl is a member of the phenylamide family and is a systemic fungicide for seed treatment, which is registered for use on alfalfa, barley, beans, beets (garden), broccoli, Brussels sprouts, buckwheat, cabbage, carrot (including tops), cauliflower, celery, clover, collards, corn (field corn, pop corn, sweet corn), cotton, cucumber, eggplant, gourds, grass forage/fodder/hay, kale, kohlrabi, lespedeza, lettuce, lupine, melons (water melons, cantaloupe), millet (proso-broomcorn), mustard, oats, parsley, parsnip, peas, pepper (chili type), pimento, pumpkin, radish, rape, rhubarb, rutabaga, rye, sorghum, soybeans, spinach, squash (summer, winter), sugar beet, sunflower, tomato, trefoil, triticale, turnip, vetch, golf course turf, and residential lawns.

On April 23, 2001, and on May 11, 2001, the Agency received letters from Gustafson LLC (end-use product registrant) and Syngenta Crop Protection, Inc. (technical and end-use product registrant), respectively, requesting voluntary cancellation of all their products containing oxadixyl. Over the years, the market for these products has declined.

Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA announced receipt of this request from Syngenta Crop Protection, Inc. and Gustafson LLC in a **Federal Register** Notice published on August 15, 2001 (66 FR 42854) (FRL–6796–4). Relative to the notice, EPA provided a 30–day period. Both registrants requested that the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(c), and EPA granted these requests.

No public comments were received during the 30–day comment period.

B. Requests for Voluntary Cancellation of Products

Pursuant to FIFRA section 6(f)(1)(A), the registrants submitted requests for voluntary cancellation of registrations for their products containing oxadixyl. The registrations for which cancellations were requested are identified in the following Table 1.

TABLE 1.—PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Registration Number	Product
Syngenta Crop Protection, Inc	100–857	Oxadixyl Technical Fungicide
	100–858	Sandofan 31F Fungicide
Gustafson LLC	7501–97	Anchor Flowable Fungicide

III. Cancellation Order

Pursuant to section 6(f)(1)(A) of FIFRA, EPA has approved the requested registration cancellations. Accordingly, the Agency orders that the registrations identified in Table 1 are canceled. Any distribution, sale, or use of existing stocks of the products identified in Table 1 in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV. of this **Federal Register** Notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy June 26, 1991 (56 FR 29362) (FRL–3846–4), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of cancellation.

A. Sale and distribution

All sale and distribution of the existing stocks shall be unlawful as of 1 year from the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal.

B. Use of the Existing Stocks by Persons Other Than the Registrants Shall Be Legal Until Such Stocks Are Exhausted.

V. Notification of Intent to Revoke Tolerances

This Notice also serves as an advance notification that the Agency intends to revoke the related tolerance listed in 40 CFR, for the canceled registrations listed in this notice, unless there is a request from the public to support the tolerance for import purposes.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients for which FIFRA registrations no longer exist, to protect the food supply of the U.S. and to discourage the misuse of pesticides within the United States. In many cases the cancellation of a food use in the U.S. indicates that there are insufficient domestic residue data or other information to support the continuation of the tolerance and an uncertain amount of relevant data concerning residues on imported food. In the absence of relevant data, EPA is unable to make a safety finding regarding the treated food entering the U.S. Upon request, EPA will provide interested parties with its import tolerance policy and data requirements, explaining how an interested party should go about seeking to retain a tolerance for import purposes.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 25, 2001.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–27468 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Financing for Household Water Well Systems

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Water and Environmental Program within the Rural Utilities Service (RUS) seeks written comments on the need for a program which is specifically tailored to financing household wells, both new wells and well repairs.

DATES: Interested parties must submit written comments on or before December 31, 2001.

ADDRESSES: Submit written comments to Robin Meigel, Finance Specialist, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Ave., SW., stop 1569, room 1246, Washington, DC 20250–1569. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.4). In addition, parties may submit an electronic version by e-mail in either WordPerfect or MSWord format to *rmeigel@rus.usda.gov*. Comments will be available for public inspection during normal business hours (7 CFR part 1).

FOR FURTHER INFORMATION CONTACT: For further information contact Robin Meigel, Finance Specialist, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Ave., SW., stop 1569, room 1246, Washington, DC 20250–1569. Phone: 202–720–9452. Fax: 202–720–7491. E-mail: *rmeigel@rus.usda.gov.*

Background

The conference committee resolving differences in the legislation for appropriations for the U.S. Department of Agriculture ("USDA") for the fiscal year ending September 30, 2001 issued Conference Report 106–948, ordered to be printed on October 6, 2000. In this report, the conferees directed USDA to fund the completion of a study by the National Ground Water Association that would identify and develop strategies to address economic, legal, technological, or public health issues that must be addressed prior to developing a publicly financed program to assist individual low and moderate income households to secure financing for the installation or refurbishing of individually owned household water well systems.

In accordance with this directive, an advisory and assistance contract has been entered into with the National Ground Water Association for the purposes stated. USDA also invites the views of all interested parties on this topic.

Dated: October 26, 2001.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 01–27478 Filed 10–31–01; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, November 9, 2001, 9:30 a.m.

PLACE: Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of October 12, 2001 Meeting

III. Announcements
IV. Staff Director's Report
V. State Advisory Committee
Appointments for Alaska, California, Iowa, Mississippi, New Jersey, Nevada, North Carolina, South Carolina, Vermont, and Washington
VI. Election Reform Recommendations
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Michael L. Foreman,

Acting Deputy General Counsel.

[FR Doc. 01–27606 Filed 10–30–01; 2:46 pm]

BILLING CODE 6335–0–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Information for Assessment of U.S. Domestic Steel Capacity Pursuant to President's Steel Initiative.

Agency Form Number: N/A.

OMB Number: None.

Type of Request: Emergency Submission.

Burden: 175 hours.

Number of Respondents: 35.

Avg. Hours Per Response: 5 hours.

Needs and Uses: The Administration is currently conducting multilateral negotiations on global overcapacity with steel producers as part of the President's Steel Initiative announced on June 5, 2001. During the first round of negotiations held at the Organization for Economic Co-operation and Development (OECD) in September 2001, there was consensus among the 39 participating governments that the global excess of inefficient steelmaking capacity is a central problem affecting the steel trade. The participants at the OECD meeting recognized the differences among governments regarding definitions of inefficient or excess capacity, and acknowledged that in market-oriented economies, decisions to reduce capacity will be decided by individual firms, not governments. Therefore, they proposed that the negotiations proceed with a "self assessment" in which each participating governments agreed to consult with individual steel producers in their own countries over the next two months and evaluate the long term economic viability of their steel facilities in an open global market, identify the response of their steel companies to changing competitive conditions in world steel markets in recent years, and consider what further actions their industry is likely to take. The results of these government/producer consultations would then be discussed at the next round of negotiations, currently scheduled to take place in December 2001. The Department must collect certain information from major U.S. steel producers to conduct the self assessment and evaluation required to support these negotiations.

Affected Public: Businesses or other for-profits.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution, NW., Washington, DC 20230 or via internet at *MClayton@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 5 days of the publication of this notice in the **Federal Register**.

Dated: October 26, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–27407 Filed 10–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, A–489–805]

Certain Pasta from Italy and Turkey: Extension of Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong at (202) 482–3601, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue (1) the preliminary results of a review within 245 days after the last day of the month in which occurs the anniversary of the date of publication of an order or finding for which a review is requested, and (2) the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and the final results to a maximum of 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On September 6, 2000, the Department published a notice of initiation of the administrative reviews of the antidumping duty orders on certain pasta from Italy and Turkey, covering the period July 1, 1999 to June 30, 2000 (65 FR 53980). On June 28, 2001, the Department issued the preliminary results of these reviews (66 FR 34414, 66 FR 34410). The final results are currently due no later than October 26, 2001.

Extension of Final Results of Reviews

We determine that it is not practicable to complete the final results of these reviews within the original time limits. Therefore, we are extending the time limits for completion of the final results until no later than December 25, 2001. *See* Decision Memorandum from Melissa Skinner to Holly Kuga, dated October 26, 2001, which is on file in the Central Records Unit, B–099 of the main Commerce Building.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 26, 2001.

Holly Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–27482 Filed 10–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Certain Stainless Steel Sheet and Strip in Coils From Taiwan: Extension of Final Determination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final determination of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final determination of the review of stainless steel sheet and strip in coils from Taiwan. This review covers the period June 8, 1999 through June 30, 2000.

EFFECTIVE DATE: November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1102.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

On September 6, 2000, the Department published a notice of initiation of this antidumping duty administrative review for the period of January 4, 1999 through June 30, 2000 (65 FR 53980). On November 30, 2000, the Department published a notice of initiation of this antidumping duty administrative review for the correct period of June 8, 1999 through June 30, 2000.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary determination, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons:

- This review involves certain complex issues (*i.e.*, identification of home market sales).
- Yieh United Steel Corporation has been instructed to revise certain significant portions of its responses during this review.
- The review involves a large number of transactions and complex adjustments.
- The review involves middleman dumping issues.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final determination of review by 60 days until February 4, 2002.

Dated: October 25, 2001.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–27394 Filed 10–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102601A]

Proposed Information Collection; Comment Request; Northeast Region Raised Footrope Whiting Trawl Exemption Requests and Notifications

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before [*December 31, 2001*].

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Peter Christopher, NMFS, 1 Blackburn Drive, Gloucester, MA 01930 (phone 978–281–9288).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Massachusetts Division of Marine Fisheries has been conducting an experimental fishery, referred to as the Raised Footrope Whiting Trawl Experimental Fishery (Raised Footrope Experiment), to allow trawlers to target whiting, red hake, dogfish and other small mesh species using a raised footrope trawl. The experiment was designed to assess the effectiveness of a raised footrope small mesh otter trawl in reducing bycatch of regulated multispecies. Framework Adjustment 35 to the Multispecies Fishery Management Plan made the Raised Footrope Experiment a multispecies exempted fishery. The collection-of-information requirements are: (1) a request for a certificate to fish in the Raised Footrope Whiting Trawl Exemption, and (2) a notification of intention to withdraw from the Raised Footrope Whiting Trawl Exemption. Requests for a certificate identify the person, the vessel name, the permit number, and how long he/she intends to fish in the exemption area (no less than 7 days but not more than 4 months). These collection-of-information requirements were approved by OMB under emergency procedures for 6 months; NOAA is soliciting comments on its intent to request a 3–year Paperwork Reduction Act approval for the requirements.≤

II. Method of Collection

Requests and notifications are made by telephone.

III. Data

OMB Number: 0648–0422.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations (commercial fishermen).

Estimated Number of Respondents: 288.

Estimated Time Per Response: 2 minutes.

Estimated Total Annual Burden Hours: 230 hours.

Estimated Total Annual Cost to Public: $2,419.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden

(including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 25, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–27481 Filed 10–31–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

October 26, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66721, published on November 7, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 26, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 26, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 1, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Fabric Group 218–220, 224–227, 313–O [2], 314–O [3], 315–O [4], 317–O [5] and 326–O [6], as a group.	137,016,868 square meters.
Sublevel within Fabric Group 227	27,013,902 square meters.
Levels not in a group 300/301	15,668,997 kilograms of which not more than 4,914,348 kilograms shall be in Category 301.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27429 Filed 10–31–01; 8:45 a.m.

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Russia

October 26, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 435 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 66 FR 28425, published on May 23, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 26, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 18, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in Russia and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 1, 2001, you are directed to increase the current limit for Category 435 to 61,276 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27430 Filed 10–31–01; 8:45 am]

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2000.

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–C0001]

Honeywell Consumer Products, Inc. (Formerly Known as Duracraft Corp.) Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20. Published below is a provisionally-accepted Settlement Agreement with Honeywell Consumer Products, Inc. (formerly known as Duracraft Corp.), a corporation containing a civil penalty of $800,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 16, 2001.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 02–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Jimmie L. Williams, Jr., Trial Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980, 1376.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 29, 2001.

Todd A. Stevenson,

Acting Secretary.

[CPSC Docket No. 02–C0001]

In the Matter of Honeywell Consumer Products, Inc. (formerly known as Duracraft Corp.); Settlement Agreement and Order

1. Honeywell Consumer Products, Inc. ("HCP"), formerly known as Duracraft Corp. ("Duracraft"), enters into this Settlement Agreement and Order with the staff ("staff") of the U.S. Consumer Product Safety Commission ("Commission") in accordance with 16 CFR part 1118, section 20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA").

I. The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the CPSA, 15 U.S.C. 2051–2084.

3. HCP is a corporation organized and existing under the laws of the State of Massachusetts. HCP's principal offices are located at 250 Turnpike Road, Southborough, Massachusetts 01772. Duracraft was a corporation organized under the laws of the State of Massachusetts. Honeywell Inc. ("Honeywell") is a corporation organized and existing under the laws of the State of Delaware.

4. On February 16, 1996, Honeywell made a tender offer to acquire the corporate stock of Duracraft. On May 1, 1996, Duracraft became a wholly-owned subsidiary. In November 1996, Duracraft changed its name to Honeywell Consumer Products, Inc. Duracraft currently exists as a d/b/a for HCP.

II. Staff Allegations

DH 3000/DH 900 Humidifiers

5. From 1990 through May, 1996, and in June 1996, after it was acquired by Honeywell, Duracraft imported and distributed approximately 1 million DH 3001–3006 and DH 901–904 warm mist humidifiers in the United States. These humidifiers were then sold to consumers throughout the U.S. for use in or around a household or residence. Therefore, Duracraft and Honeywell were "manufacturers" of a "consumer product" "distributed in commerce" pursuant to 15 U.S.C. 2052(a)(1), (4) and (11).

6. The humidifiers contained a water tank, base, heating element, and a mist chamber. Water passed from the tank into the base, and the heating element, located in the mist chamber, heated the water to vaporization temperature. The water vapor rose through the mist chamber where it mixed with cooler air, and was discharged into the surrounding environment by a blower and natural convection. A sensor rod or float switch shut the humidifier off when the water reservoir tank became empty.

7. Duracraft manufactured the DH 3000 series humidifiers until 1991. In 1991, Duracraft redesigned the humidifier because of leakage from the water tank, and re-named it the DH 900 series. The DH 900 series was manufactured without significant design change until October 1994. Duracraft informed CPSC staff that the units redesigned in 1991 did not exhibit any safety related defects during the firm's functional or life testing, and that no changes had been made to address any safety related defects.

8. As of February, 1996, 68 claims had been reported to Duracraft in which a DH 3000 series humidifier or a pre-1995 DH 900 series humidifier unit either emitted smoke or sparks or caught on fire. Nineteen of these incidents occurred in a child's room.

9. The humidifier's float switch could fail, and not shut down the product. The humidifiers also included a high-limit switch. When the temperature at the location of the switch reached a certain level, the high-limit switch activated, breaking the electrical circuit within the humidifier and turning off the heating element. However, the high-limit switch could also fail. If both the float switch and the high-limit switch failed, the heating element could remain on, and the humidifier could overheat and catch on fire.

10. Immediately following Honeywell's February, 1996 tender offer, referred to in paragraph 4, Honeywell began a due diligence investigation of Duracraft's business. The Disclosure Schedule to the Merger Agreement between Duracraft and Honeywell disclosed that "[u]nder cover of a letter dated November 30, 1995, the United States Consumer Product Safety Commission ('CPSC') provided the Company ('Duracraft') with product-related reports regarding certain of the Company's humidifier models. The Company has also received notice of requests for information regarding these models submitted to the CPSC under the Freedom of Information Act." On May 1, 1996, Honeywell completed its acquisition of Duracraft.

11. On May 31, 1996, Duracraft submitted a telephone report under

Section 15(b) of the CPSA to staff regarding a DH 900 series humidifier that failed in the room of a 1½ year old child. The product overheated and melted. The child suffered smoke inhalation, and was treated in an emergency room.

12. Thereafter, Commission staff confirmed Duracraft's oral report, and requested a full report under Section 15(b) of the CPSA regarding Duracraft's warm mist humidifiers.

13. Commission staff initiated a site inspection of the Duracraft facilities in the summer of 1996. During this inspection, Duracraft managers stated that the company was not aware of any float switch failures. Moreover, the managers stated that the company had never observed any failures of the humidifier's safety devices.

14. Duracraft responded on October 9, 1996 and submitted its Section 15(b) report. Within its submission, Duracraft reported that it discovered on or about August, 1993, the DH 900 series humidifiers could fail. The DH 3000 series also had the same failure mode as the DH 900 series. However, Duracraft did not offer to recall the product.

15. In November 1996, a 6-year-old child died during a fire, which CPSC attributes to a failed humidifier. HCP first received notice of the fire on or about May 25, 1997.

16. In mid-April, 1997, Duracraft (which was then named Honeywell Consumer Products) received a preliminary determination letter from the CPSC, and a request for a recall of the DH 3000 and the pre-1995 DH 900 series humidifiers.

17. On June 4, 1997, HCP advised the CPSC that it would voluntarily recall the DH 3000 and DH 900 series humidifiers, and presented its corrective action plan to CPSC staff. At that time, approximately eighty-five (85) failures had taken place, with twenty-two (22) incidents occurring in a child's room.

CZ 520 Baseboard Heater

18. From September, 1995 through March, 1996, Duracraft imported and distributed 58,584 CZ 520 portable baseboard heaters in the United States. The CZ 520 heater was a movable baseboard heater that contained two heating assemblies, a selector switch, and a thermostat. Each heating assembly included a motor, a fan, a heating device, and a temperature-limiting device. The fan motor shafts were aligned on a central axis, and the temperature limiting devices were designed to shut down the product if the internal temperature reached 90° C. When the selector switch was turned on "LOW", only one heating assembly was activated. Both heating assemblies were activated when the switch was turned on "HIGH".

19. In December, 1995, Duracraft began to receive reports from consumers who observed some CZ–520 units smoking or flaming. There were no reports of personal injury. As of February, 1996, Duracraft's testing on seven failed returns revealed that all of the heaters were experiencing low fan speeds.

20. The Disclosure Schedule to the Merger Agreement between Duracraft and Honeywell indicated that "the company ['Duracraft'] has received complaints concerning the company's CZ-520 heater model, relating to incidents of flames or smoke emanating from the unit. The Company has had a number of returns of this model and has received a claim for several hundred dollars involving the unit."

21. On June 4, 1997, HCP notified Commission staff that it had decided to recall the heater. At that time, Duracraft had received twenty (20) claims, some involving minor property damage, and 12% warranty returns (7,295 heaters). On July 22, 1997, HCP submitted a full report under Section 15(b) of the CPSA.

Ceramic Heaters

22. From January, 1989 through May 1, 1996 Duracraft and then from May 1, 1996 through March, 1998, HCP manufactured or purchased approximately 1.6 million model CZ–303, CZ–304, CZ–308, CZ–318, CZ–319, and CER–1 ceramic heaters for Duracraft and HCP's importation and distribution. The heaters are cubed shaped 7½ inch tall portable air heaters with a ceramic heating element. The controls consist of a slide switch, which adjusts the heat output from 800 watts to 1,500 watts, a rocker switch, which turns the unit on and off or turns on a internal fan, and a manual/automatic slide switch, which allows the user to set the heat output at a certain level or vary the output to maintain a consistent temperature.

23. In January, 1990, Duracraft began to receive complaints about the heaters smoking or flaming. As of February, 1996, Duracraft had notice of at least thirty-three (33) incidents. The CPSC had knowledge of an additional twelve (12) incidents. There were no reports of personal injury. Nearly all of the complaints noted the above type of damage.

24. Duracraft's product tests on several failed units, conducted after Honeywell's acquisition of Duracraft, between May, 1996 and June, 1997, confirmed the units could fail. Honeywell was informed of the reports by HCP's general counsel, outside counsel, and Duracraft's management in June, 1997.

25. On July 22, 1997, a consultant hired by Honeywell concluded that a defective rocker switch, or the seepage of a foreign substance into the rocker switch, could create an internal electrical arc and ignite the unit. Honeywell sent this report to the Commission. Thus, the heaters could present a fire hazard to the consumer.

26. On October 10, 1997, as a result of a Commission staff initiated investigation, staff requested a report under section 15(b) of the CPSA for the heaters. HCP provided this report on December 2, 1997. On March 16, 1998, HCP agreed to voluntarily recall the products. By that time, Duracraft and HCP had received fifty-six (56) complaints of these ceramic heaters smoking and melting. HCP had received one complaint of smoke inhalation, and was notified that several failures had caused extensive property damage.

27. Duracraft failed to report the defects to the Commission in a timely manner, as required by Section 15(b) of the CPSA, 15 U.S.C. 2064(b). Honeywell received information concerning product failures at the time it acquired Duracraft, and continued to obtain information after that time. After the acquisition, Honeywell and HCP failed to report the defects to the Commission in a timely manner, as required by Section 15(b) of the CPSA, 15 U.S.C. 2064(b). A failure to furnish information under section 15(b) of the CPSA is a prohibited act under 15 U.S.C. 2068(a)(4). Duracraft and HCP "knowingly" failed to report, as that term is defined in 15 U.S.C. § 2069(d), and are subject to a civil penalty, pursuant to 15 U.S.C. 2069(a)(1).

III. Response of HCP

28. HCP denies all of the allegations of the staff set forth in paragraphs 5–27 above. HCP states that the products described in paragraphs 5–27 above do not contain any defect that would create a substantial product hazard pursuant to Section 15(a) of the CPSA, 15 U.S.C. 2064(a). These products do not create an unreasonable risk of serious injury or death pursuant to Section 15(b) of the CPSA, 15 U.S.C. 2064(b). HCP did not violate the reporting requirements of Section 15(b) of the CPSA, 15 U.S.C. 2064(b), or 16 CFR part 1115. No other violation of law occurred warranting imposition of a civil penalty. In settling this matter, HCP does not admit any fault, liability or statutory or regulatory violation.

29. For each of the products at issue, as soon as HCP received the information and knowledge necessary to trigger a Section 15(b) report, it acted promptly to file the report in a timely manner.

30. Honeywell has consistently taken responsibility for any potential safety problems in connection with its products. The staff's allegations relate directly to Honeywell's acquisition of Duracraft. The majority of the events at issue transpired prior to Honeywell's acquisition of Duracraft or its involvement in Duracraft's product-safety matters. Honeywell's due diligence review of Duracraft was customary in the context of public company acquisitions and did not reveal all issues or details about specific products. Information about consumer claims that Honeywell did receive during its due diligence review was not unusual for a consumer products company. Honeywell did not receive information about the extent of the consumer claims until it completed the acquisition.

31. HCP is entering into this Settlement Agreement for settlement purposes only, to avoid incurring additional legal costs and expenses.

IV. Agreement of the Parties

32. The Commission has jurisdiction over this matter under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*

33. HCP knowingly, voluntarily and completely waives any rights it may have to:

a. the issuance of a complaint in this matter;

b. an administrative or judicial hearing with respect to the staff allegations discussed in paragraphs 5 through 27 above;

c. judicial review or other challenge or contest of the validity of the Commission's Order;

d. a determination by the Commission as to whether a violation of Section 15(b) of the CPSA, 15 U.S.C. 2064(b) has occurred;

e. a statement of findings of fact and conclusion of law with regard to the staff allegations; and

f. to any claims under The Equal Access to Justice Act.

34. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be published in the **Federal Register** in accordance with 16 CFR part 1118, section 20, and the Commission may further publicize the terms of the Settlement Agreement and Order.

35. The Settlement Agreement and Order becomes effective upon final acceptance of the Commission and service of the Order upon HCP.

36. HCP agrees to pay to the United States Treasury a civil penalty in the amount of Eight Hundred Thousand Dollars ($800,000.00) within 30 calendar days of HCP's receiving service of the final Settlement Agreement and Order.

37. HCP agrees to the entry of the attached Order, which is incorporated herein by reference, and to be bound by its terms.

38. This Settlement Agreement and Order are entered into for settlement purposes only and shall not constitute a determination of any fault, liability or statutory or regulatory violation by HCP.

39. Compliance by HCP with the Settlement Agreement and Order in the above-captioned case fully resolves and settles the allegations of violations of Section 15(b) of the CPSA set out above.

40. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051, *et seq.*, and 16 CFR part 1118, section 20, and a violation of this Order may subject HCP to appropriate legal action.

41. This Settlement Agreement and Order is binding upon and shall inure to the benefit of HCP and its corporate parents, assigns or successors.

42. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

Honeywell Consumer Products, Inc.

Dated: _____

U.S. Consumer Product Safety Commission.

Alan H. Schoem,
Assistant Executive Director, Office of Compliance.

Eric L. Stone,
Director, Legal Division, Office of Compliance.

Dated: September 17, 2001.

Jimmie L. Williams, Jr.,
Trial Attorney, Legal Division, Office of Compliance.

[CPSC Docket No. 02–C0001]

In the Matter of Honeywell Consumer Products, Inc. (formerly known as Duracraft Corp.); Order

Upon consideration of the Settlement Agreement entered into between Honeywell Consumer Products, Inc., formerly known as Duracraft Corp., and the staff of the U.S. Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Honeywell Consumer Products, Inc., and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted, and it is

Further Ordered, that upon final acceptance of the Settlement Agreement and Final Order, Honeywell Consumer Products, Inc. shall pay the Commission a civil penalty in the amount of Eight Hundred Thousand Dollars ($800,000.00) within 30 calendar days after service of this Final Order upon Honeywell Consumer Products, Inc.

Provisionally accepted and Provisional Order issued on the 29th day of October, 2001.

By Order of the Commission.

Todd A. Stevenson,

Acting Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 01–27483 Filed 10–31–01; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 31, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and

proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 26, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension of a currently approved collection.

Title: Application for the High School Equivalency Program (HEP) and College Assistance Migrant Program (CAMP).

Frequency: Other: COMPETITIVE YEAR.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 90.

Burden Hours: 2160.

Abstract: IHEs, and non-profit organizations working with IHEs, are eligible applicants under HEP and CAMP. The programs provide federal financial assistance to Institutions of Higher Education (IHEs) or to non-profit agencies working in cooperation with IHEs for the purpose of providing academic, financial and supportive services to migrant and seasonal farmworkers to help them obtain the equivalent of a high school diploma (via HEP) and succeed in their first academic year of college (via CAMP). The Department uses the information to make grant awards.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO.RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–27425 Filed 10–31–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Interim Management of Nuclear Materials

AGENCY: Department of Energy.

ACTION: Amended record of decision.

SUMMARY: On December 12, 1995, the U.S. Department of Energy (DOE) issued a Record of Decision (ROD) and Notice of Preferred Alternatives, 60 FR 65300 (December 19, 1995), for the final environmental impact statement, Interim Management of Nuclear Materials (IMNM EIS) (DOE/EIS–0220, October 20, 1995), at the Savannah River Site (SRS), Aiken, South Carolina. As part of its decision, DOE decided to construct a new facility, the Actinide Packaging and Storage Facility (APSF), to prepare, package, and store plutonium oxide and metal in accordance with DOE's plutonium storage standard, recently revised as Stabilization, Packaging, and Storage of Plutonium-Bearing Materials (DOE–STD–3013). The APSF also was intended to provide space for consolidated storage of plutonium and some special actinide materials at the SRS. Additionally, DOE decided that it would process approximately 14,000 liters (3,800 gallons) of americium and curium solution into a glass matrix (vitrify) within small stainless steel canisters (the "Vitrification (F-Canyon)" alternative). Modifications to the F-Canyon, where the americium/curium solution is stored, would be required to establish the vitrification stabilization capability. The canisters of vitrified americium/curium would have been stored in the F-Canyon building until DOE decided on its use or disposition.

For several reasons, including project cost growth concerns, DOE issued an amended ROD (66 FR 7888, January 26, 2001) which canceled the APSF project and decided to install the plutonium storage standard stabilization and packaging capability within Building 235–F, an existing plutonium storage and processing facility in the F–Area at the SRS. DOE also decided to use existing SRS vault storage space, including space in Building 235–F, to store plutonium (and other nuclear material inventories) pending disposition.

Now, after further review of project costs, schedules, and program requirements, DOE has canceled the Building 235–F Plutonium Packaging and Stabilization project and the F-Canyon Americium/Curium Vitrification project. To establish the capability to package plutonium in accordance with the plutonium storage standard (DOE–STD–3013), DOE will modify existing furnaces, or install new ones, and install an outer can welding capability within the FB-Line facility, located in Building 221–F. To stabilize the F-Canyon americium/curium solution, DOE will implement the Processing and Storage for Vitrification in the Defense Waste Processing Facility (DWPF) alternative analyzed in the IMNM EIS. This alternative includes the transfer of the solution to the SRS high-level waste (HLW) system, vitrification of the HLW solution in the DWPF, and storage of the resultant canisters in the DWPF Glass Waste Storage Building pending disposition in a geologic repository.

FOR FURTHER INFORMATION CONTACT: For further information on the interim management of nuclear materials at the SRS, to receive a copy of the final IMNM EIS, or a copy of the IMNM ROD(s), contact: Andrew R. Grainger, National Environmental Policy Act (NEPA) Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, Building 730B, Room 2418, Aiken, South Carolina 29802, (800) 881–7292, Internet: *drew.grainger@srs.gov*

For further information on the DOE NEPA process, contact:

Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

Additionally, DOE NEPA information, including the IMNM Final EIS, can be found on the DOE NEPA Web site at: *www.eh.doe.gov/nepa/.*

SUPPLEMENTARY INFORMATION

Background

NEPA Review and Decisions

The U.S. Department of Energy (DOE) prepared a final environmental impact statement, Interim Management of Nuclear Materials (IMNM EIS) (DOE/EIS–0220, October 20, 1995), in accordance with the National Environmental Policy Act (NEPA), Council on Environmental Quality

NEPA implementing regulations, and DOE implementing procedures. The IMNM EIS assessed the potential environmental impacts of actions necessary to safely manage nuclear materials at the SRS, Aiken, South Carolina, until decisions on their future use or ultimate disposition are made and implemented. The IMNM EIS grouped the nuclear materials at the SRS into three categories: Stable, Programmatic, and Candidates for Stabilization. Some of the "Programmatic" and all of the "Candidates for Stabilization" materials could have presented environmental, safety and health vulnerabilities in their then-current storage condition. For materials that could present environmental, safety, or health vulnerabilities within the next 10 years of the NEPA analysis, the IMNM EIS evaluated stabilization alternatives to meet the new plutonium storage standard to ensure safe storage (for up to 50 years). For non-plutonium materials, alternatives were evaluated that provided similar safe storage.

Plutonium Stabilization and Packaging for Long-Term Storage

The capability to meet the Department's plutonium storage standard, DOE–STD–3013, did not exist at the SRS or any other DOE site at the time of the preparation of the IMNM EIS. Subsequently, DOE has been working to establish this capability at its non-pit [1] surplus plutonium sites. Facilities at the Rocky Flats Environmental Technology Site (RFETS, near Golden, Colorado), Hanford (Richland, Washington), and the Lawrence Livermore National Laboratory (Livermore, California) have been established and are now operating, packaging plutonium to the requirements of the storage standard. Stabilizing and packaging plutonium to the storage standard are generally the last steps in completing the stabilization process. The IMNM EIS considered two options to provide the long-term storage stabilization and packaging capability at the SRS: (1) The construction of a new facility (*i.e.*, APSF), and (2) the modification of existing plutonium processing and storage facilities—Building 235–F and FB-Line, both in F-Area.

On December 12, 1995, DOE issued a Record of Decision (ROD) and Notice of Preferred Alternatives [published December 19, 1995 (60 FR 65300)], on the interim management of several categories of nuclear materials at the SRS. As part of its decision, DOE decided to construct a new facility, the APSF, to enable plutonium oxides to be stabilized, and plutonium oxide and metal to be repackaged in accordance with DOE's plutonium storage standard (DOE–STD–3013). The APSF also was intended to provide space for consolidated storage of plutonium and certain special actinide materials at the SRS.

In December 1996, DOE issued the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement (Storage and Disposition PEIS, DOE/EIS–0229). The Storage and Disposition PEIS, among other things, assessed the potential environmental impacts of alternative approaches and locations for storing weapons-usable fissile materials (plutonium and highly enriched uranium). DOE decided in the Storage and Disposition ROD [published January 21, 1997 (62 FR 3014)], to expand the storage capacity of the prospective APSF at the SRS (from 2,000 storage positions to 5,000 storage positions) to accommodate the storage of surplus non-pit plutonium to be received from RFETS, pending disposition.[2] DOE also indicated in the Storage and Disposition ROD that DOE would pursue a strategy for surplus plutonium disposition that allows for immobilization of surplus weapons-plutonium in glass or ceramic forms, and irradiation of surplus plutonium as mixed oxide (MOX) [3] fuel in existing commercial nuclear power reactors. The immobilized plutonium would be stored in the DWPF Glass Waste Storage Building at the SRS and the spent MOX fuel would be stored at the commercial nuclear power reactor site, pending disposal in a geologic repository.

Subsequently, in order to support the early closure of RFETS, DOE published an amended Storage and Disposition ROD August 13, 1998 (63 FR 43386), to allow the RFETS surplus non-pit plutonium to be sent to the SRS before completion of the APSF. Based upon the amended Storage and Disposition ROD, DOE undertook the K-Area Materials Storage (KAMS) project to modify existing space within Building 105–K to store surplus plutonium in shipping containers as received from RFETS, pending disposition.

On January 12, 2001, DOE issued an Amended IMNM ROD [published January 26, 2001 (66 FR 7888)], deciding to cancel the APSF project and instead establish a stabilization and packaging capability by modifying space within Building 235–F to prepare and package surplus plutonium for storage in accordance with DOE's plutonium storage standard, DOE–STD–3013. Additionally, DOE indicated it would use existing facilities (Building 221–F's FB-Line, Building 235–F, and KAMS) for plutonium storage, pending disposition.

Americium/Curium Solution Stabilization

In the ROD issued December 12, 1995, DOE selected the "Vitrification (F-Canyon)" alternative evaluated in the IMNM EIS to stabilize the existing americium/curium solution being stored in F-Canyon. DOE would have processed the americium/curium solution to a glass ("vitrify") contained within small stainless steel canisters (14 inches tall, 2 inches in diameter). DOE would have modified an existing portion of F-Canyon (previously called the Multi-Purpose Processing Facility) to install the necessary vitrification equipment. The canisters would have been stored within the F-Canyon (Building 221–F) at the SRS until DOE made programmatic decision on the use of the americium and curium isotopes.

Other NEPA Reviews and Decisions

In addition to the December 12, 1995, and the January 12, 2001, RODs that relied upon the analyses of the IMNM EIS, DOE issued four supplemental RODs to make additional decisions and/or modify previous decisions concerning the management of nuclear materials at the SRS: (1) DOE published a supplemental ROD February 21, 1996 (61 FR 6633), identifying management actions for two categories of SRS nuclear materials: (a) DOE would stabilize the Mark-16 and Mark-22 fuels by processing them in the SRS canyon facilities and blending down the resulting highly enriched uranium to low enriched uranium, and (b) DOE would stabilize the "other aluminum-clad targets" by dissolving them in the SRS canyon facilities and transferring the resulting nuclear material solution to the HLW tanks for future vitrification in the DWPF; (2) DOE published a supplemental ROD September 13, 1996 (61 FR 48474), identifying management actions for two more categories of SRS nuclear materials: (a) DOE would dissolve, chemically separate, and process in F-Canyon obsolete neptunium-production targets and

[1] A "pit" is a nuclear weapon component.

[2] Non-pit weapons-usable plutonium would only move from the RFETS provided that: (1) The plutonium had been stabilized to meet the then-plutonium storage standard, DOE–STD–3013–96; (2) the construction of the APSE at the SRS had been completed; and, (3) the SRS had been selected as the immobilization disposition site for surplus weapons-usable plutonium.

[3] A physical blend of uranium oxide and plutonium oxide.

existing neptunium solution (stored in H-Canyon) to a glass form using a vitrification capability to be established in F-Canyon; and, (b) DOE would process existing H-Canyon plutonium-239 solutions to a glass form using a vitrification capability to be established in F-Canyon; (3) DOE published a supplemental ROD April 11, 1997 (62 FR 17790), identifying some additional spent nuclear fuel from the Taiwan Research Reactor that should be recategorized from Stable to Candidate for Stabilization and that this material would be processed through the SRS canyon facilities; and, (4) DOE published an amended ROD November 14, 1997 (62 FR 61099), modifying the decision to vitrify the H-Canyon plutonium-239 and neptunium to "Processing to Oxide" using H-Canyon facilities. These supplemental or amended decisions did not alter DOE's decisions related to the construction of the APSF or the vitrification of the americium/curium solution in F-Canyon.

In November 1999, DOE issued the *Surplus Plutonium Disposition Final Environmental Impact Statement* (SPD EIS) (DOE/EIS–0283), which analyzed alternatives for the siting, construction, and operation of three surplus plutonium disposition facilities. These three facilities would accomplish pit disassembly and conversion, plutonium conversion and immobilization, and MOX fuel fabrication. DOE published the Surplus Plutonium Disposition ROD on January 11, 2000 (65 FR 1608), which selected the SRS for all three of the new surplus plutonium disposition facilities.

Plutonium Stabilization and Storage Evaluations

As indicated in the January 12, 2001, Amended ROD (66 FR 7888), DOE determined after a review of plutonium storage and stabilization options, documented in *Evaluation of Savannah River Plutonium Storage and Stabilization Options* (July 2000), that cost savings of $180 million or more could be achieved by modifying space within Building 235-F in lieu of constructing the APSF.

As a result of program priorities and further review of an FB-Line low-cost option, DOE has canceled the Building 235-F Packaging and Stabilization Project. DOE has completed the conceptual design for an FB-Line project that would stabilize and package SRS plutonium in full compliance with the requirements of DOE-STD–3013; project costs are estimated to be $13.5 million to $29 million. This is substantially less than the Building 235-F project conceptual design estimate range of $160 million to $250 million. SRS plutonium stabilization and packaging activities using the FB-Line are estimated to begin earlier than Building 235-F, and complete stabilization and packaging activities within the same time-frame as Building 235-F (2006–2008), if not sooner. SRS plutonium, to include that stored in FB-Line, will be stored in Building 235-F and KAMS at the SRS after packaging to the plutonium storage standard.

Americium and Curium Vitrification Project Difficulties and Changes

The Department's February 28, 1995, Implementation Plan for DNFSB Recommendation 94–1 indicated that the americium/curium solution could be stabilized by September 1998 should the Vitrification (F-Canyon) alternative analyzed within the IMNM EIS be the selected stabilization alternative (with the corresponding ROD expected to be issued by July 1995). After more than five years of work on the americium/curium solution stabilization project, the time-table has been extended and the costs have increased for a variety of technical and programmatic reasons. Most recently, a project re-baseline request, submitted to DOE by the site contractor on March 19, 2001, identified a $68 million increase in estimated project costs, bringing total estimated project costs to $197 million. A subsequent request submitted April 6, 2001, identified an additional increase of up to $26 million to meet proposed geologic disposal waste criteria and would delay stabilization completion one year, to December 2006. These proposed changes would increase project costs by up to 73 percent.

One of the factors in DOE's selection process for stabilizing the americium and curium solution had been to preserve these rare isotopes, which are not likely to be produced again in any substantial quantity, for potential DOE or other research, medical, or industrial use. The Vitrification (F-Canyon) process would stabilize the americium and curium isotopes into a safe, long-term storable, but retrievable form.

Uncertainties and projections for project cost growth were becoming evident in mid-2000. In light of these rising costs and uncertainties in solution stabilization schedules, DOE's Office of Nuclear Energy, Science and Technology and Office of Science conducted an evaluation of the need for the americium and curium isotopes. No firm need for these special isotopes was identified, leading DOE to conclude that the material was excess to requirements and that maintaining the material indefinitely was unwarranted.

Based upon these events and determinations, DOE authorized the re-assessment of a waste disposal alternative for the americium/curium solution. Results from this re-assessment indicate: (1) The americium/curium solution can be transferred to the HLW system [4] in a single continuous transfer; (2) very little dilution is expected to be required, resulting in approximately ten additional DWPF canisters; (3) the transferred solution could be processed through DWPF in 2004–2007, substantially earlier than the previous expectation of 2020, or later; and (4) preliminary cost estimates indicate a savings of up to $116 million over continuing to pursue vitrification in F-Canyon. Subsequently, DOE has determined that there is no programmatic need for the americium and curium solution and that it can be dispositioned to the SRS HLW system, precluding any future recovery. DOE has, therefore, canceled the Americium/Curium Vitrification Project.

Interim Management of Nuclear Materials EIS

Alternatives

The IMNM EIS analyzed several alternatives, including the No Action alternative (Continued Storage), for the interim management of eleven (11) types of nuclear materials at the SRS. All of the alternatives, except the No Action, would support DOE's objective of removing nuclear materials from vulnerable conditions and from vulnerable facilities in preparation for deactivation, decontamination, and decommissioning. The IMNM RODs include decisions to undertake stabilization and processing actions for ten (10) SRS nuclear material types categorized as "Candidates for Stabilization" and "Programmatic." (DOE decided to continue existing actions for the "Stable" nuclear material types/category.) Seven of these nuclear materials types—(1) plutonium and uranium stored in vaults, (2) Mark-31 targets, (3) aluminum-clad Taiwan Research Reactor fuel and Experimental Breeder Reactor-II slugs, (4) plutonium-239 solutions, (5) plutonium-242 solutions, (6) neptunium-237 solutions, and, (7) americium/curium solution—require, or could require, a new capability to stabilize and package the material to DOE's storage standard, or comparable criteria, to complete stabilization for safe interim management and long-term storage.

[4] The SRS HLW system consists of a variety of facilities for the management, treatment, and vitrification of approximately 38 million gallons of HLW. The various facilities include the F- and H-Area tank farms (22 and 29 HLW tanks, respectively, with two tanks operationally closed), waste evaporators, DWPF, Saltstone, Extended Sludge Processing, Glass Waste Storage Building, piping and transfer systems.

The plutonium-242, neptunium-237, and americium/curium were categorized as programmatic materials in the IMNM EIS, but were analyzed for completeness of the potential impacts from stabilization and packaging for long-term storage. DOE has since stabilized the plutonium-242 to oxide and transferred it to the Los Alamos National Laboratory for programmatic use. The neptunium-237 has yet to be stabilized. However, DOE decided in a January 19, 2001, ROD for the *Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility* [published January 26, 2001 (66 FR 7877)], that the neptunium-237 is required to reestablish the domestic production of plutonium-238. Once stabilized to oxide, the neptunium-237 will be shipped to the Radiochemical Engineering Development Center at the Oak Ridge National Laboratory (Oak Ridge, Tennessee) where it will be stored until fabrication into targets for irradiation, and plutonium-238 production, in the Advanced Test Reactor (near Idaho Falls, Idaho) and the High Flux Isotope Reactor (Oak Ridge, Tennessee). [**Note:** On April 25, 2001, the Secretary of Energy suspended for 90 days the decision to permanently deactivate the Fast Flux Test Facility as indicated in the above subject ROD. This suspension did not alter DOE's decision regarding the need for the SRS neptunium-237.] As discussed in this Amended ROD, the americium/curium continues to require stabilization.

Plutonium Stabilization and Packaging for Long-Term Storage

The IMNM EIS considered two options [see IMNM EIS, Chapter 2. Alternatives, and Appendix C, pp. C–41 to C–46] for stabilizing, packaging, and storing plutonium to DOE's storage standard—(1) the construction of the new APSF, and (2) the modification of existing facilities, FB-Line and Building 235-F. The storage standard is designed to help ensure the safe storage of the materials for long periods (*e.g.*, up to 50 years). Each option was designed to provide the capability to heat plutonium oxide materials to drive off residual and absorbed moisture; package stabilized material (oxides and metal) in at least two corrosion-resistant containers (a container within a container) without the use of plastics, hydrogenous compounds, or organic material; weld-seal the outer container in an inert atmosphere to ensure weld joint and container material integrity; and store the stabilized material in sealed containers.

For modifications to the FB-Line in the F-Canyon building (Building 221–F) at the SRS, DOE had re-considered its previous decisions associated with the *F-Canyon Plutonium Solutions Final Environmental Impact Statement* (DOE/EIS–0219, December 1994). On February 1, 1995, DOE issued a ROD (60 FR 9824, February 22, 1995) to add to the FB-Line a capability to package plutonium metal within a single, inert gas-filled, welded container, without the need for plastic and other organic materials. During preparation of the IMNM EIS and its initial ROD, DOE concluded that adding the full stabilization and packaging mission to the FB-Line facility would delay completion of the FB-Line's nuclear materials stabilization activities and the planned shutdown of the FB-Line facility.

Since 1995, certain SRS nuclear material stabilization activities have been completed and plans for stabilizing other remaining materials have been altered. For plutonium-bearing residues, DOE stabilization decisions included dissolving the residues in nitric acid, purifying the solution, precipitating the solution back into a powder, and then either converting the powder to metal (if processed in FB-Line) or drying the powder (plutonium oxide, if processed in HB-Line) and canning. The FB-Line dissolver system, of 1960's vintage, has been shutdown since the mid-1980's and was not designed to today's safety standards. HB-Line is a newer facility (construction completed in the 1980's), and its dissolver system had been used satisfactorily in the mid- to late-1990's for the plutonium-238 program.

Now, based upon estimates for restart, plans to curtail materials separation and purification activities in F-Canyon, and the comparably better capabilities of the HB-Line dissolvers, DOE is no longer pursuing the restart of the FB-Line dissolver system. As documented in the "Department of Energy Plan for the Transfer of All Long-Term Chemical Separation Activities at the Savannah River Site from the F-Canyon Facility to the H-Canyon Facility Commencing in Fiscal Year 2002," and provided to the Congress on April 10, 2001, DOE expects to complete nuclear material stabilization activities that would use the F-Canyon's separation and purification capabilities in fiscal year 2002. Material characterization and packaging, as well as material storage, activities will continue in FB-Line supporting the dissolution of plutonium-bearing residues in HB-Line, the packaging and preparation of other residues for disposition to waste, and the characterization and staging of other plutonium-bearing materials for heat treatment and packaging to the long-term plutonium storage standard. The FB-Line material characterization and packaging activity is scheduled to continue through 2005. Establishing the DOE–STD–3013 stabilization and packaging capability within FB-Line can complement the facility's ongoing missions by reducing nuclear material handling and transportation requirements.

Americium/Curium Solution Stabilization

To manage the approximately 14,000 liters (3,800 gallons) of americium/curium solution stored within a single tank (Tank 17.1) in F-Canyon, DOE evaluated four alternatives in the IMNM EIS: (1) Vitrification (F-Canyon), the selected alternative in the December 12, 1995, ROD; (2) Processing to Oxide; (3) Processing and Storage for Vitrification in the DWPF; and, (4) Continuing Storage (*i.e.*, "No Action").

Under the Vitrification (F-Canyon) alternative, DOE would modify existing space in the F-Canyon, providing equipment to vitrify the americium/curium radioactive solution into a glass matrix. After completing the modifications, DOE would vitrify the existing solution of americium and curium isotopes. DOE identified Vitrification (F-Canyon) as the preferred alternative for stabilizing the americium/curium solution in the IMNM EIS.

For the Processing and Storage for Vitrification in the DWPF alternative, DOE would perform research and development work to determine the chemical adjustments necessary for the americium/curium solution in the F-Canyon in order to transfer it to the HLW tanks in F- or H-Area. The research and development work would evaluate the effects on the systems and facilities used to store and treat the liquid HLW. Upon completion of the studies, the americium/curium solution would be chemically adjusted and transferred to the HLW tank(s) via underground pipelines. When transferred to the HLW tank(s), the solution would be mixed with the existing volume of HLW stored in the tank(s). The bulk of the radioactivity in the HLW tank(s) solution would eventually be vitrified in borosilicate glass in the DWPF. The glass would be contained within stainless steel canisters that would be stored in the

Glass Waste Storage Building, adjacent to the DWPF, pending disposal in a geologic repository.

Potential Environmental Impacts

The IMNM EIS analyzed potential impacts of alternatives for managing all SRS nuclear materials, those materials that were expected to present a environment, safety, or health vulnerabilities as well as those determined to be stable. Summaries of potential impacts from the alternatives are presented in the IMNM EIS, Table 2–2 through Table 2–12 (pp. 2–48 through 2–58).

The IMNM EIS indicated that there would be minimal environmental impacts from the implementation of any alternative (including the APSF, Building 235–F, or FB-Line options for plutonium stabilization and storage activities, and the americium/curium stabilization alternatives involving F-Canyon or DWPF processing) in the areas of geologic, ecological, cultural, aesthetic and scenic resources, noise, and land use. Impacts in these areas would be limited because facility modifications or construction of new facilities would occur within existing buildings or industrialized portions of the SRS. The existing SRS workforce would support any construction projects and other activities required to implement any of the alternatives, and thus negligible socioeconomic impacts would be expected from implementing any of the alternatives.

Emissions of hazardous air pollutants and releases of hazardous liquid effluents from any of the alternatives would be very small and well within applicable standards and existing regulatory permits [5] for the SRS facilities. DOE expects minimal impacts from any of these releases. Similarly, for any of the IMNM EIS alternatives, potential transuranic waste, mixed hazardous waste, and low-level solid waste generated would be handled by existing waste management (treatment, storage, and disposal) facilities at the SRS.

Plutonium Stabilization and Packaging for Long-term Storage

DOE has reviewed the IMNM EIS and determined that there are no substantial changes in the proposed modification of FB-Line nor are there any significant new circumstances or information relevant to environmental impacts that would result from modifying FB-Line. The analysis of potential environmental impacts and the description of the FB-Line option in the IMNM EIS have not changed since the Final EIS was issued.

While the IMNM EIS indicated that potential adverse impacts to the environment, public, or workers would be small for the packaging and storage alternatives, there would be minor differences between the APSF "new construction" option and the Building 235–F or FB-Line modification options. The modification to FB-Line would involve work in an existing and radiologically contaminated facility, thereby potentially leading to a small increase over the APSF option in radiological waste generation and construction worker exposure. Through the use of site administrative control limits, however, no worker would be expected to receive a radiological dose beyond that allowed for radiological workers from normal operations, or from facility modification work. Likewise, the existing waste management facilities are capable of handling the additional radiological waste that would result from the FB-Line modification.

Americium/Curium Solution Stabilization

While the IMNM EIS indicates that potential environmental impacts from any of the nuclear material management alternatives are small, those management alternatives requiring the processing of nuclear material through the large chemical separations facilities (the canyons and B-Lines), such as the vitrification of the americium/curium solution in the F-Canyon, would have greater environmental impacts during the time that dissolving, processing or conversion activities are underway than when these facilities are storing nuclear materials. After materials have been stabilized, impacts of normal facility operations related to management of those materials would decline, and potential impacts of accidents associated with those materials would be reduced, with certain kinds of accidents eliminated (*e.g.*, americium/curium solution leaking or being improperly transferred from its existing storage tank). The americium/curium solution presents the greatest radiological source term (approximately 230,000 curies) within any of the nuclear material processing and storage facilities. Based upon an average HLW tank radioactivity content of 8.5 million curies, the transfer of the americium/curium solution to a single HLW tank would increase the HLW tank's radioactivity level by 0.23 million curies, or less than two and one-half percent.

Environmentally Preferable Alternative

Plutonium Stabilization and Packaging for Long-term Storage

The IMNM EIS indicated that potential adverse impacts to the environment, public, or workers would be small for the APSF, Building 235–F, or FB-Line options. While small increases in radiological waste and worker radiological exposure could be expected from the Building 235–F and FB-Line modification options over the APSF option, all options would involve relatively small impacts, and thus neither could be deemed environmentally preferable over the other.

Americium/Curium Solution Stabilization

Processing and Storage for Vitrification in the DWPF is the environmentally preferable alternative for stabilizing the americium/curium solution (as well as for americium/curium containing metal targets and slugs). This alternative is estimated to result in the lowest radiological doses to the offsite public and the SRS workers; have the lowest level of hazardous pollutant emissions to the air with comparable levels of liquid effluent emissions; and result in the least amount of high-level, transuranic and mixed waste with comparable amounts of low level waste.

Decision

After further review of the Building 235–F Stabilization and Storage Project and the Americium/Curium Vitrification Project (using a capability to be installed within F-Canyon's Multi-Purpose Processing Facility), DOE is amending its previous decisions issued in December 1995 and January 2001. The alternative approaches being implemented are estimated to have substantially reduced costs, which allows DOE to reduce capital expenditure requirements to levels more consistent with current and projected budget resources. Likewise, these alternatives offer the potential to complete certain nuclear materials stabilization activities sooner, reducing further the already low risks to workers, the public, and the environment.

Plutonium Stabilization and Packaging for Long-term Storage

DOE is amending its January 2001 ROD to provide a SRS capability for the stabilization and packaging of plutonium to the storage standard (DOE-STD–3013). Instead of modifying existing space within Building 235–F, DOE will modify existing space within the FB-Line facility, located within and atop the F-Canyon (Building 221–F). This decision will allow DOE to stabilize and package plutonium to the storage standard within the same time-frame, if not sooner, as would a modified Building 235–F. DOE will continue to use existing vault space in Building 235–F and Building 105–K (KAMS) for interim storage pending disposition, and existing vault space in FB-Line for interim storage during stabilization actions.

Americium/Curium Solution Stabilization

DOE is amending its December 1995 ROD for stabilizing americium and curium solution at the SRS. Instead of implementing the "Vitrification (F-Canyon)" alternative DOE will implement the "Processing and Storage for Vitrification in the Defense Waste Processing Facility" alternative analyzed in the IMNM EIS. For this alternative, DOE will transfer the solution, after chemical adjustments as necessary, to the HLW storage and treatment system. The americium and curium isotopes will be vitrified to a glass form with SRS HLW in the DWPF. DWPF canisters are being stored on-site in the Glass Waste Storage Building pending transfer to a geologic repository for permanent disposal. DOE estimates approximately ten additional DWPF canisters [approximately 6000 DWPF canisters are forecast to be produced at the SRS] will result from adding the americium/curium solution to the HLW inventory.

Issued at Washington, DC, October 19, 2001.

Jessie Hill Roberson,

Assistant Secretary for Environmental Management.

[FR Doc. 01–27437 Filed 10–31–01; 8:45 am]

BILLING CODE 6450–01–P

[5] The IMNM EIS inidcates many of the constituent releases would be expected to be several orders of magnitude below the permit or regulatory limits.

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 28, 2001, 1 p.m.–8:30 p.m.

ADDRESSES: Cities of Gold Hotel, Conference Room, Pojoaque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *www.nnmcab.org.*

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1–4:30 p.m. Board Business
- Amendments to Bylaws
- Openness Plan
- Recruitment/Membership
- Reports from Committees
- Report from Chair
- Report from Staff

4:30–6 p.m. Dinner Break

6–8:30 p.m. Report from New Mexico Environmental Department Presentation on Recovery and Rehabilitation from Cerro Grande Fire

Other Board business will be conducted as necessary.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org.*

Issued at Washington, DC on October 29, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–27436 Filed 10–31–01; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Notice of Revised Schedule Regarding Issues Arising Under Bonneville Power Administration's New Large Single Load Policy Review

AGENCY: Bonneville Power Administration (BPA), Department of Energy.

ACTION: Notice of revised schedule for policy issue review and issuance of a record of decision.

SUMMARY: This notice announces a change in the schedule for the policy review of certain issues relating to BPA's existing policy on New Large Single Loads (NLSL). Three issues were identified in the initial **Federal Register** notice (published June 25, 2001) as follows: (1) BPA preference customer service to direct service industrial (DSI) load; (2) the transfer of "contracted for, committed to" (CFCT) load determinations between preference customers; and (3) whether BPA should close the class of CFCT load served by BPA customers.

DATES: NLSL ROD publication date on Issues 2 and 3: November or December 2001. Record of Decision on Issue 1: late FY 2002.

FOR FURTHER INFORMATION CONTACT: David Fitzsimmons, Account Executive, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, telephone (503) 230–3685. Information can also be obtained from your BPA Customer Account Executive.

SUPPLEMENTARY INFORMATION:

Issue 1. BPA received approximately 60 comments on all three issues. After a review of the comments, BPA determined that additional regional discussion would benefit the resolution of the first issue. BPA will invite participation in an appropriate public process for the purpose of addressing this issue in a broader context of issues than the NLSL policy review affords.

This extended review is expected to take place during fiscal year 2002 and may be informed by a more comprehensive process reviewing broader electric power issues. Upon conclusion of this process, BPA plans to issue a record of decision on the first issue, prior to the end of FY 2002, taking into consideration the public comment already received and any additional comment on the issue received during the extended review.

Issues 2 and 3. The treatment of any transfer of "contracted for, committed to" (CFCT) loads between public agency or cooperative preference customers; and the issue of whether BPA should close the class of CFCT load served by BPA customers will be addressed in a record of decision which BPA plans to publish during the next sixty days.

BPA is directed by section 3(13) of the Northwest Power Act to treat large retail loads at a consumer's facility, served by a public body, cooperative, investor-owned utility, or Federal agency customer, which load increases power requirements in excess of 10 average megawatts (aMW) in any consecutive 12-month period, as within the definition of New Large Single Loads. For purposes of BPA's sales of electric power to a utility or Federal agency customer, the designation of the load at a consumer's facility as a NLSL does not affect the amount or quality of electric service which BPA provides. BPA treats these loads as any other load in terms of its supply of power and quality of service obligations under its utility power sales contracts. Designation of a load as a NLSL, however, does affect the power rate of the electric power sold for service to that load. BPA may not sell electric power at the Priority Firm (PF) rate to utilities for service to NLSLs. Rather, electric power sold by BPA for utility service to NLSLs is sold at the New Resources (NR) rate, which historically has been a higher rate than the PF rate.

BPA's NLSL policy is a combination of contract and policy decisions recorded in several documents. A statement of those decisions has been consolidated into one document, and it is available on BPA's Web site: *http://www.bpa.gov/Power/subscription.*

While BPA received comments on certain aspects of Issue 1, one area that had not been addressed in the policy process was the transfer of non-DSI loads larger than 9.9 aMW to service from a preference customer. Commenters on Issue 1 expressed the desire to address the more general issue. That issue is whether BPA should change its NLSL policy to allow any large loads at a consumer's facility—new and existing—larger than 9.9 aMW to transfer their load service to a public body, cooperative or federal agency customer in contract increments of only 9.9 aMW ["phase on"], and receive service at BPA's PF rate.

BPA will continue to apply its current policy during the extended review period. The policy states that in making any NLSL determinations BPA considers the entire load at a consumer's facility. If the total electric load associated with a single facility exceeds 9.9 aMW, then the entire electrically connected load is the single load which can be considered as being served by the utility. A utility has a general responsibility to provide service and only limited rights to deny service to consumers. If a consumer's facility has a total connected load exceeding 9.9 aMW and takes service from a utility, even if limited by contract, the load actually placed on the utility is the total connected electric load at the facility. The service would be declared a NLSL by BPA and served at the applicable NR rate if the total plant load that could be served was over 10 aMW.

A change in this policy could permit any large loads at a consumer's facility to separate out the entire load into contract increments of 9.9 aMW, regardless of the total load, and to place the 9.9 aMW per year increments of load on a preference customer at BPA's applicable PF rate. Some comments suggested a need for BPA to adopt this change in policy, others suggested imposition of a limit on the total amount of megawatts that could be transferred under contracts with a utility, and others argued for no change in policy. The extended review will afford an opportunity for parties to comment on the nature and impact of such a change, if any, in the context of future load service for these large loads.

Responsible Official: David Fitzsimmons, Account Executive, Power Business Line, is the official responsible for the review of these issues arising under BPA's NLSL policy.

Issued in Portland, Oregon, on October 22, 2001.

Stephen J. Wright,

Acting Administrator, and Chief Executive Officer.

[FR Doc. 01–27435 Filed 10–31–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES: November 20, 2001.

TIME: 8 A.M.

ADDRESS: Department of Energy, Room 6E–069, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Douglas E. Kaempf, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7766.

SUPPLEMENTARY INFORMATION: *Purpose of Meeting:* To provide advice and guidance that promotes research and development leading to the production of biobased industrial products.

Tentative Agenda: Agenda will include discussions on the following:

- Full committee discussion of recommendations to the Secretaries of Energy and Agriculture and their designated Points of Contacts on the technical focus and direction of request for proposals issued under the Biomass Research and Development Initiative.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of these items on the agenda, you should contact Douglas E. Kaempf at 202–586–7766 or *Bioenergy@ee.doe.gov* (e-mail) for information on DOE building access. You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 29, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–27434 Filed 10–31–01; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

National Environmental Justice Advisory Council

[FRL–7097–4]

Notification of Meeting and Public Comment Period; Open Meetings

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that the National Environmental Justice Advisory Council (NEJAC), along with the various subcommittees, will meet on the dates and times described below. All times noted are Eastern Standard Time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are *not* available from the NEJAC. The NEJAC and the subcommittee meetings will take place at the Renaissance Madison Hotel, 515 Madison Street, Seattle, WA 98104. The meeting dates are as follows: December 3, 2001 through December 6, 2001. This is the fourth in a series of focused policy issue meetings for the NEJAC. To help prepare for this specific focused policy issue meeting the following background information is provided:

Request and Policy Issue

The Charter for the NEJAC states that the advisory committee shall provide independent advice to the Administrator on areas that may include, among other things, "the direction, criteria, scope, and adequacy of the EPA's scientific research and demonstration projects" relating to environment justice. In order to provide such independent advice, the Agency requests that the NEJAC convene a focused, issue-oriented public meeting in Seattle, WA. The meeting shall be used to receive comments on, discuss, and analyze issues related to water quality, fish consumption and environmental justice. The Agency, furthermore, requests that the NEJAC produce a comprehensive report on the differing views, interests, concerns, and perspectives expressed by the stakeholder participants on the focused policy issue, and provide advice and recommendations for the Agency's review and consideration. In order to fulfill this charge, the NEJAC is being asked to discuss and provide recommendations regarding the following broad public policy question:

What is the relationship between water quality, fish consumption, and environmental justice?

NEJAC will examine this issue with respect to research methodologies, risk assessment and risk management approaches, remediation and prevention strategies, and the utilization of statutory authorities and implementing regulations which are designed to protect the health and safety of all people, including minority, low-income and tribal communities

Meeting

Registration for the NEJAC meeting will begin on Monday, December 3, 2001 at 12 noon. The NEJAC will convene Monday, December 3, 2001, from 2–6 p.m. On Monday from 4 p.m.–6 p.m. the Seattle community will conduct a "virtual" tour dialogue with the NEJAC. Structured Presentations for the NEJAC Executive Council will take place during this "virtual" tour dialogue. The NEJAC will reconvene on Tuesday, December 4, 2001 from 8:30 a.m. to 5 p.m. The meeting on Tuesday will be organized to create the best environment for a deliberative process. The meeting will be conducted in a round table fashion, except during the public comment session. A public comment period dedicated to the focused policy issue is scheduled for Tuesday evening, December 4, 2001, from 7 p.m. to 9 p.m. General environmental justice public comment issues will be heard on Tuesday evening, following the focus policy public comment issues. The following Subcommittees will meet on Wednesday, December 5, 2001, from 9 a.m. to 6 p.m.: Air and Water; Enforcement; Health and Research; Indigenous Peoples; International; and Waste and Facility Siting. The full NEJAC will reconvene Thursday, December 6, 2001, from 9 a.m. to 5 p.m. to wrap up all business requiring Executive Council action. All times shown are local time.

Any member of the public wishing additional information on the subcommittee meetings should contact the specific Designated Federal Official at the telephone number listed below.

Subcommittee, Federal Official and Telephone Number

Enforcement: Ms. Shirley Pate, 202/564–2607

Health & Research: Ms. Brenda Washington, 202/564–6781; Ms. Aretha Brockett, 202/260–3810

International: Ms. Wendy Graham, 202/564–6602

Indigenous Peoples: Mr. Danny Gogal, 202/564–2576

Waste/Facility Siting: Mr. Rey Rivera, 202/260–1910

Air & Water: Mr. Wil Wilson, 202/564–1954; Ms. Alice Walker, 202/260–1919

Members of the public who wish to participate in either of the public comment period should pre-register by November 29, 2001. Members of the public are encouraged to provide comments relevant to the focus issue being deliberated by the NEJAC. Individuals or groups making oral presentations during the public comment period will be limited to a total time of five minutes. Only one representative from a community, organization, or group will be allowed to speak. Any number of written comments can be submitted for the record. The suggested format for individuals making public comment should be as follows:

Request To Make Public Comment
Speaker's Template:
Name of Speaker: _____
Name of Organization/Community: _____
Address/Phone/Fax/Email: _____
Description of Concern: _____
Relationship to the Policy Issue: _____
Recommendations/Desired Outcome: _____

If you wish to submit written comments of any length (at least 50 copies), they should also be received by November 29, 2001. Comments received after that date will be provided to the Council as logistics allow. All information should be sent to the address or fax number cited below.

Registration

Pre-registration for all attendees is recommended. To receive a registration form, call the number listed below or visit the web site. Correspondence concerning registration should be sent to Ms. Victoria Robinson of Tetra Tech Environmental Management, Inc. at: 1881 Campus Commons, Suite 200, Reston, VA 20191, phone: 703/390–0641 or fax: 703/391–5876. Hearing-impaired individuals or non-English speaking attendees wishing to arrange for a sign language or foreign language interpreter, may make appropriate arrangements using these numbers also. In addition, NEJAC offers a toll-free Registration Hotline at 1–888/335–4299. For on-line registration, you may visit the Internet site: *http://es.epa.gov/oeca/main/ej/nejac/nejacform.html*

Dated: October 26, 2001.

Charles Lee,

Designated Federal Officer, National Environmental Justice Advisory Council.

[FR Doc. 01–27467 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30515; FRL–6803–6]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30515, must be received on or before December 3, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30515 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), listed in the table below:

Regulatory Action Leader	Mailing address	Telephone number and e-mail address	File symbol
Driss Benmhend	1200 Pennsylvania Ave., NW., Washington, DC 20460	(703) 308–9525; benmhend.driss@epa.gov	34704–IGI
Carol Frazer	Do.	(703) 308–8810; frazer.carol@epa.gov	10350–AN and 10350–AR

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov/*. To access this document, on the homepage select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30515. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30515 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30515. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. File symbol: 10350–AN. Applicant: 3M/St. Paul, MN 55144–1000. Product name: VWX-42 Technology. Product type: Family of biocides: the C8, C10 and C12 straight chain fatty acid monoesters of glycerol and propylene glycol. Active ingredients: Glycerol monocaprate, glycerol monocaprylate, glycerol monolaurate, propylene glycol monocaprate, propylene glycol monocaprylate, propylene glycol monolaurate at 86.68, 88.21, 93.50, 71.37, 68.62, 75.85%. Proposed classification/Use: Manufacturing use product for products that control plant diseases and microbial contamination.

2. File symbol: 10350–AR. Applicant: 3M/St. Paul, MN 55144–1000. Product name: 3M Potato Sanitizer. Product type: Biocide. Active ingredient: Propylene glycol monocaprylate 9.6%. Proposed classification/Use: To be used on potatoes immediately prior to packaging or being placed in long-term storage for control of microorganisms that cause decay of potatoes.

3. File symbol: 34704–IGI. Applicant: Platte Chemical Company, 419 18th Street, Greely, CO 80632. Product name: Alli-Up. Active ingredient: Contains 90% of the new active ingredient Diallyl Sulfides (DADs), a soil fumigant solution. Proposed classification/Use: To be used for the control of white rot, in onions, garlic and leaks.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 19, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 01–27471 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1047; FRL–6805–7]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–must be received on or before December 3, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1046 the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, Biopesticides and Pollution Prevention Division, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8733; e-mail address: *acierto.amelia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production

Categories	NAICS codes	Examples of potentially affected entities
	311 32532	Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov/*. To access this document, on the homepage select "Laws and Regulations" " Regulation and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1046. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1046 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–000. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 17, 2001.

Janet L. Anderson,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BioSafe Systems

PP 8F4996

EPA has received a pesticide petition 8F4996 from Biosafe Systems, 80 Commerce Street, Glastonbury, CT 06033], proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an amendment/expansion of an existing tolerance exemption for the biochemical pesticide hydrogen peroxide in or on all postharvest agricultural food commodities at the rate of < 1% hydrogen peroxide per application.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Biosafe Systems has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by [Biosafe Systems] and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product name and Proposed Use Practices

Hydrogen peroxide is for use to control plant pathogenic diseases on plants, food commodities, greenhouse surfaces and other agricultural use sites. BioSafe Systems maintains 2 registrations for 27.00% hydrogen peroxide end-use products, ZeroTol (EPA Reg. No. 70299–1) and Oxidate (EPA Reg. No. 70299–2), for these uses.

B. Product Identity/Chemistry

1. Identity of the pesticide and corresponding residues. Hydrogen peroxide reacts on contact with a surface on which it is applied, and rapidly degrades to oxygen and water, neither of which is of toxicological concern.

2. Analytical method. An analytical method for the detection of residues of hydrogen peroxide is not applicable. Hydrogen peroxide is used in low concentrations and rapidly degrades into water and oxygen.

C. Mammalian Toxicological Profile

Hydrogen peroxide at a concentration of 27% has a pH of 1.05, at which concentration the Agency assumes a toxicity category I for skin and eye irritation. BioSafe Systems has submitted toxicology information from open literature for aqueous solutions containing 6% and 50% hydrogen peroxide. The concentrate (27% hydrogen peroxide) will be diluted with water at the rate of 1:50 or 1:100 or 1:300 and thus, the concentration of hydrogen peroxide in the product at the time of application will range from 0.09% to 0.54%.

The information from open literature demonstrated that solutions containing 6% hydrogen peroxide have an acute oral LD_{50} ≥5,000 mg/kg in rats (toxicity category III), an acute dermal LD_{50} ≥10,000 mg/kg in rabbits (toxicity category IV), and an inhalation LC_{50} of 4 milligrams per liter (mg/l) (toxicity category IV). The 6% hydrogen peroxide solutions are mild irritants to rabbit skin and cause sever irreversible corneal injury in half of the exposed rabbits (toxicity category I). Toxicology information from open literature demonstrated that solutions that contained 50% hydrogen peroxide have an acute oral LD_{50} ≥500 mg/kg in rats (toxicity category II) and an acute dermal LD_{50} ≥1,000 mg/kg in rabbits (toxicity category II). No deaths resulted after an 8–hour exposure of rats to saturated vapors of 90% hydrogen peroxide, LC_{50} is 4 mg/l (2,000 ppm). Solutions that contain 50% hydrogen peroxide are also extremely irritating (corrosive) to rabbit eyes (toxicity category I).

EPA has concluded that for food use at an application rate of ≤1% hydrogen peroxide, no apparent acute toxicity and subchronic toxicity end-points exist to suggest a significant toxicity. An RfD (chronic toxicity) for hydrogen peroxide has not been estimated because of its short half-life in the environment and lack of any residues of toxicological concern. For similar reasons, an additional safety factor was not judged necessary to protect the safety of infants and children. Additionally, hydrogen peroxide is listed by the Food and Drug Administration as Generally Recognized as Safe (GRAS).

Additionally, hydrogen peroxide is used to treat food at a maximum level of 0.05% in milk used in cheese-making, 0.04% in whey, 0.15% in starch and corn syrup, and 1.25% in emulsifiers containing fatty acid esters as bleaching agents (21 CFR Part 184.1366). As a GRAS su stance, hydrogen peroxide may be used in washing or to assist in the lye peeling of fruits and vegetables (21 CFR 173.315).

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* For the proposed uses, the concentrate of hydrogen peroxide will be diluted with water ate the rate of 1:50, 1:100 or 1:300 corresponding to a low concentration of hydrogen peroxide in the product at the time of application (0.09% - 0.54%). The solution, having a low concentration of hydrogen peroxide, reacts on contact with the surface on which it is sprayed, and degrades rapidly to oxygen and water. Therefore residues in or on treated food commodities (growing and postharvest crops) are expected to be negligible. Additional sources of the GRAS substance hydrogen peroxide in concentrations range from 0.04% to 1.25% in various foods as cited above (21 CFR Part 184.1366).

ii. *Drinking water.* At the proposed application rates, the use of hydrogen peroxide to treat food commodities will result in minimal transfer of residues to potential drinking water sources. This is due to the low application rate and the rapid chemical degradation of hydrogen peroxide into oxygen and water, neither of which is of toxicological concern. The EPA Office of Water has stated that it has seen no new data that contradict the assessment previously given which is that low concentrations of hydrogen peroxide do not typically persist in drinking water at levels that pose a health risk.

2. *Non-dietary exposure.* There will be minimal amounts of non-dietary exposure to hydrogen peroxide, primarily through infrequent or short use of topical hydrogen peroxide products for treating minor skin injuries, and through use of oral mouthwashes. Exposure is expected to be minimal, and when used hydrogen

peroxide rapidly degradates into oxygen and water, neither of which is of toxicological concern.

E. Cumulative Exposure

Because of the low use rates of hydrogen peroxide, its low toxicity and rapid degradation, EPA does not believe that there is any concern regarding the potential for cumulative effects of hydrogen peroxide with other substances due to a common mechanism of action. Because hydrogen peroxide is not known to have a common toxic metabolite with other substances, EPA has not assumed that hydrogen peroxide has a common mechanism of toxicity with other substances.

F. Safety Determination to the General U.S. Population, and Infants and Children

Because hydrogen peroxide is of low toxicity, the proposed uses employ low concentrations of hydrogen peroxide, and hydrogen peroxide degrades rapidly following application, EPA concludes that this exemption from the requirement of a tolerance in or on all food commodities for hydrogen peroxide, when applied at ≤1%, will not pose a dietary risk under reasonably foreseeable circumstances. Further, the EPA Office of Water has stated that it has seen no new data that contradict the assessment previously given which is that low concentrations of hydrogen peroxide do not typically persist in drinking water at levels that pose a health risk. Accordingly EPA concluded that there is a reasonable certainty of no harm to consumers, including infants and children, from aggregate exposure to hydrogen peroxide.

G. Effects on the Immune and Endocrine Systems

There is no evidence to suggest that hydrogen peroxide in the proposed concentrations will adversely affect the endocrine system.

H. Existing Tolerances

An exemption from the requirement of a tolerance (40 CFR Part 180.1197) is established for residues of hydrogen peroxide in or on all food commodities at the rate of ≤ 1% hydrogen peroxide per application on growing crops and postharvest potatoes when applied as an algaecide, fungicide and bactericide.

I. International Tolerances

There is no Codex Alimentarium Commission Maximum Residue Level (MRL) for hydrogen peroxide.

[FR Doc. 01–27469 Filed 10–31–01; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1049; FRL–6807–7]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1049, must be received on or before December 3, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1049 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: *alston.treva@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS code	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov/.* To access this document, on the homepage select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

2. *In person.* The Agency has established an official record for this action under docket control number PF–1049. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1049 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1049. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 18, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs. Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Wacker Silicones Corporation

5E4595

EPA has received a pesticide petition (5E4595) from Wacker Silicones Corporation, 3301 Sutton Road, Adrian, MI 49221–9397 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for tetraethoxysilane polymer with hexamethyldisiloxane (CAS No. 104133–09–7), when used as an inert ingredient in pesticide formulations applied in accordance with good agricultural practice to growing crops and to raw agricultural commodities after harvest, and to animals. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

In the case of certain substances that are defined as "polymers," the Agency has established a set of criteria that identify categories of polymers that present low risk. These criteria described in 40 CFR 723.250 identify polymers that are relatively unreactive and stable compounds to other chemical substances was well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted will present minimal or no risk. Tetraethoxysilane, polymer with hexamethyldisiloxane, conforms to the definition of polymer given in 40 CFR 723.250(b) (as amended April 11, 1997) and meets the following criteria that are used to identify low risk polymers.

1. Tetraethoxysilane, polymer with hexamethyldisiloxane is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in the natural aquatic environment.

2. Tetraethoxysilane, polymer with hexamethyldisiloxane contains as an integral part of its composition the atomic elements carbon, hydrogen, oxygen and silicon.

3. Tetraethoxysilane, polymer with hexamethyldisiloxane does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250 (d)(2)(ii).

4. Tetraethoxysilane, polymer with hexamethyldisiloxane is not reasonably

anticipated to substantially degrade, decompose or depolymerize.

5. Tetraethoxysilane, polymer with hexamethyldisiloxane is not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. Tetraethoxysilane, polymer with hexamethyldisiloxane is not a water absorbing polymer with a number average molecular weight (MW) 10,000 or greater. Tetraethoxysilane, polymer with hexamethyldisiloxane also meets the exemption criteria of 40 CFR 723.250(e)(1) (as amended April 11, 1997). Tetraethoxysilane, polymer with hexamethyldisiloxane has a number average MW greater than or equal to 1,000 and less than 10,000 daltons (and oligomer content less than 10% below MW 500 and less than 25% below MW 1,000).

A. Aggregate Exposure

1. *Dietary exposure.* Tetraethoxysilane, polymer with hexamethyldisiloxane is not absorbed through the skin or gastrointestinal (GI) tract and is generally considered incapable of eliciting a toxic response.

i. *Food.* There are no food or food additive uses of tetraethoxysilane, polymer with hexamethyldisiloxane currently approved under 40 CFR. There are currently approved indirect food contact uses for tetraethoxysilane, polymer with hexamethyldisiloxane under 21 CFR 175.300, 175.320, and 176.170.

ii. *Drinking water.* Tetraethoxysilane, polymer with hexamethyldisiloxane is not absorbed through the skin or GI tract and is generally considered incapable of eliciting a toxic response.

2. *Non-dietary exposure.* There are no exposures to tetraethoxysilane, polymer with hexamethyldisiloxane through non-occupational, non-dietary routes.

B. Cumulative Effects

There are no data to support cumulative risk from tetraethoxysilane, polymer with hexamethyldisiloxane since polymers with MWs greater than 400 generally are not absorbed through the intact skin and substances with MWs greater than 1,000 generally are not absorbed through the GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response. Therefore, there is no reasonable expectation of risk due to cumulative exposure.

C. Safety Determination

1. *U.S. population.* Tetraethoxysilane, polymer with hexamethyldisiloxane causes no safety concerns because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(e)(1) and as such is considered incapable of eliciting a toxic response.

2. *Infants and children.* Tetraethoxysilane, polymer with hexamethyldisiloxane causes no additional concern to infants and children because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(e)(1), and as such, is considered incapable of eliciting a toxic response.

D. International Tolerances

There are no CODEX Maximum Residue Limits established for tetraethoxysilane, polymer with hexamethyldisiloxane in/on any crop commodities at this time.

[FR Doc. 01–27470 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board Members

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the SES Performance Review Board of EEOC .

FOR FURTHER INFORMATION CONTACT: Arlethia D. Monroe, Acting Director, Office of Human Resources, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, (202) 663–4306.

SUPPLEMENTARY INFORMATION: Pursuant to the requirement of 5 U.S.C. 4314(c)(1), membership of the SES Performance Review Board is as follows: Mr. Roy J. Rodriguez, Deputy Chief Operating Officer, Equal Employment Opportunity Commission (Chairperson); Mr. Chester V. Bailey, Director, Milwaukee District Office, Equal Employment Opportunity Commission; Ms. Patricia T. Bivins, Director, New Orleans District Office, Equal Employment Opportunity Commission; Mr. David L. Frank, Legal Counsel, Equal Employment Opportunity Commission; Susan L. McDuffie, Director, San Francisco District Office, Equal Employment Opportunity Commission; Peggy R. Mastroianni, Associate Legal Counsel (Alternate), Equal Employment Opportunity Commission.

Signed at Washington, D.C., on this 25th day of October 2001.

For the Commission.

Cari. M. Dominguez,

Chair.

[FR Doc. 01–27408 Filed 10–31–01; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–01–43–B (Auction No. 43); DA 01–2315]

Auction No. 43 Multi-Radio Service Auction Scheduled for January 10, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the Phase II 220 MHz Service, 800 MHz Specialized Mobile Radio ("SMR") Service General Category Frequencies, and Location and Monitoring Service ("LMS") scheduled for January 10, 2002 (Auction No. 43).

DATES: Auction No. 43 is scheduled for January 10, 2002.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Howard Davenport, Legal Branch, or Lyle Ishida, Auctions Operations Branch, at (202) 418–0660; Barbara Sibert, Auctions Operations Branch, at (717) 338–2888, Media Contact: Meribeth McCarrick at (202) 418–0654, Commercial Wireless Division: Amal Abdallah, Policy and Rules Branch, or Dwain Livingston, Licensing and Technical Analysis Branch, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 43 Procedures Public Notice* released October 10, 2001. The complete text of the *Auction No. 43 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. The Auction No. 43 Procedures Public Notice may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

I. General Information

A. Introduction

1. By the *Auction No. 43 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of licenses in the Phase II 220 MHz Service, 800 MHz Specialized Mobile Radio ("SMR") Service General Category Frequencies, and Location and Monitoring Service ("LMS") scheduled for January 10, 2002 (Auction No. 43). On September 7, 2001, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 43. The Bureau received no comments in response to the *Auction No. 43 Comment Public Notice*, 66 FR 48462 (September 20, 2001).

i. Background of Proceeding

2. Auction No. 43 will include licenses in the Phase II 220 MHz Service, 800 MHz SMR Service General Category Frequencies, and Location and Monitoring Service that either remain unsold from a previous auction or were defaulted on by a winning bidder in a previous auction.

a. Phase II 220 MHz

3. In March 1997, the Commission restructured the licensing framework that governs the 220 MHz Service. Site-specific licensing used in the Phase I 220 MHz Service, was replaced with a geographic-based system in the Phase II 220 MHz Service, which is the subject of Auction No. 43. This geographic-based licensing methodology is similar to that used in other commercial mobile radio services ("CMRS"). The Commission developed three types of geographic area licenses for the Phase II 220 MHz Service. The first type of license was based upon Economic Areas (EAs), developed by the Bureau of Economic Analysis of the U.S. Department of Commerce. In addition, the Commission created three EA-type license areas to cover the following United States territories: American Samoa; the U.S. Virgin Islands and Puerto Rico; and Guam and the Northern Mariana Islands. The second type of license, known as Economic Area Groupings (EAGs), included 6 groups of EAs, which collectively encompassed all of the EA and EA-type licenses. Finally, the Commission designed three nationwide licenses, each of which encompassed all six EAGs. Service and operational requirements for the Phase II 220 MHz Service are contained in Part 90 of the Commission's Rules, 47 CFR 90.

b. 800 MHz SMR

4. On December 15, 1995, the Federal Communications Commission ("FCC" or "Commission") released a *800 MHz First Report and Order*, 61 FR 6212 (February 16, 1996), that set forth proposals for new licensing rules and auction procedures for the "lower 230" 800 MHz SMR channels. On July 10, 1997, the Commission released a 800 MHz Second Report and Order, 62 FR 41190 (July 31, 1997), that resolved pending issues and established technical and operational rules for the "lower 230" 800 MHz SMR channels. On October 8, 1999, the Commission released a *800 MHz Order on Reconsideration, 64 FR 71042 (December 20, 1999), that completed the implementation of a new licensing framework for the 800 MHz SMR service.*

c. LMS

5. In 1995, the Commission established rules governing the licensing of the LMS in the 902–928 MHz frequency band. LMS refers to advanced radio technologies designed to support the nation's transportation infrastructure and to facilitate the growth of Intelligent Transportation Systems. The Commission created a new subpart M in part 90 of the Commission's rules for Transportation Infrastructure Radio Services, which includes LMS and like services.

6. The LMS licenses offered in Auction No. 43 are multilateration licenses. Multilateration LMS systems are designed to locate vehicles or other objects by measuring the difference in time of arrival, or difference in phase, of signals transmitted from a unit to a number of fixed points, or from a number of fixed points to the unit to be located. Such systems generally use spread-spectrum technology to locate vehicles throughout a wide geographic area. Multilateration technology is used, for example, by trucking companies to track individual vehicles, by municipalities to pinpoint the location of their buses, and by private entrepreneurs developing subscriber-based services for recovery of stolen vehicles. The Commission defined non-multilateration systems as LMS systems that employ any technology other than multilateration technology. The Commission noted that unlike a multilateration system, which determines the location of a vehicle or object over a wide area, a typical non-multilateration system uses narrowband technology whereby an electronic device placed in a vehicle transfers information to and from that vehicle when the vehicle passes near one of the system's stations. i.Licenses to Be Auctioned

7. The Auction No. 43 Comment Public Notice announced that 4 licenses in the Phase II 220 MHz Service, 23 licenses for the 800 MHz SMR Service General Category Frequencies, and 42 multilateration licenses in the Location and Monitoring Service ("LMS"), were to be auctioned on January 10, 2002. A complete list of licenses available for Auction No. 43 and their descriptions is included as Attachment A of the Auction No. 43 Procedures Public Notice.

B. Rules and Disclaimers

i. Relevant Authority

8. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the Phase II 220 MHz Service, 800 MHz SMR Service, and Location and Monitoring Service contained in title 47, part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in the Auction No. 43 Procedures Public Notice; the Auction No. 43 Comment Public Notice; and the Part 1 Fifth Report and Order, 65 FR 52401 (August 29, 2000), (as well as prior Commission proceedings regarding competitive bidding procedures).

a. Phase II 220 MHz

9. Auction participants bidding on licenses in the 220 MHz service should also be familiar with the *220 MHz Third Report and Order*, 62 FR 16004 (April 3, 1997); *220 MHz Memorandum Opinion and Order on Reconsideration*, 63 FR 32580 (June 12, 1998); *220 MHz Fourth Report and Order*, 62 46211 (September 2, 1997); and *220 MHz Fifth Report and Order*, 63 FR 49291 (September 15, 1998).

b. 800 MHz SMR

10. Auction participants bidding on licenses in the 800 MHz SMR service should also be familiar with the *800 MHz First Report and Order; 800 MHz Second Report and Order*; and the *800 MHz Order on Reconsideration.*

c. LMS

11. Auction participants bidding on licenses in the Location and Monitoring Service should also be familiar with the

LMS Second Report and Order, 63 FR 40659 (July 30, 1998); *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 62 FR 52036 (October 6, 1997).

d. Phase II 220 MHz, 800 MHz SMR, and LMS

12. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://www.fcc.gov/wtb/auctions*. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 98–157 for the LMS Second Report and Order).

i. Prohibition of Collusion

13. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

14. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. Furthermore, the rule would apply to an applicant bidding for an EAG and another applicant bidding for an EA within that EAG, regardless of service. In addition, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants until after the down payment deadline. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for licenses covering the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

15. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

16. The Commission recently amended § 1.2105 to require auction applicants to report prohibited communications in writing to the Commission immediately, but in no case later than five business days after the communication occurs. This rule takes November 28, 2001.

17. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment H of the *Auction No. 43 Procedures Public Notice*.

iii. Due Diligence

a. 220 MHz

18. Potential bidders are reminded that there are a number of incumbent Phase I 220 MHz licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Such incumbents must be protected from harmful interference by Phase II 220 MHz licensees in accordance with the Commission's rules. *See* 47 CFR 90.763. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

19. In addition, potential bidders seeking licenses for geographic areas that are near the Canadian border should be aware that the use of some or all of the channels they acquire in the auction could be restricted by the agreement with Canada on the use of 220–222 MHz spectrum in the border area.

20. Potential bidders should also be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to particular applicants or incumbent non-nationwide 220 MHz licensees. In addition, the decisions reached in the 220 MHz proceeding are the subject of a judicial appeal and may be the subject of additional reconsideration or appeal. *See*, e.g., *PLMRS Narrowband Corp., et al.* v. *Federal Communications Commission*, No. 92–1432, (D.C. Cir., filed September 18, 1992). The Bureau notes that resolution of these matters could have an impact on the availability of spectrum for EA and EAG licensees. In addition, while the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

b. 800 MHz

21. Potential bidders are reminded that there are incumbent licensees operating on frequencies that are subject to the upcoming auction. Incumbent licensees retain the exclusive right to use those channels within their self-defined service areas. The holder of an EA authorization thus will be required to implement its facilities to protect incumbents from harmful interference. These limitations may restrict the ability of such geographic area licenses to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. Specifically, an EA authorization holder will be required to coordinate with the incumbent licensees by using the interference protection criteria in §§ 90.683 and 90.621(b) of the Commission's rules. However, operational agreements are encouraged between the parties. Should an incumbent lose its license, the incumbent's service area(s) will convey to the relevant authorized holder of the EA. The relevant authorized holder of the EA will then be entitled to operate within the forfeited service area(s) located within its EA, without being subject to further competitive bidding.

22. Potential bidders should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to particular applicants or incumbent licensees. The Bureau notes that resolution of these matters could have an impact on the availability of spectrum for EA licensees in the 800 MHz SMR general category. While the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction. Potential bidders are solely responsible for investigating and evaluating the degree to, which such pending matters may affect spectrum availability in areas where they seek EA licenses.

23. In addition, licenses in EAs that border Canada may be subject to the Arrangement Between the Department of Communications of Canada and the Federal Communications Commission of the United States Concerning the Use of 806–890 MHz Band along the Canada-United States Border. Licenses in EAs that border Mexico may be subject to the Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Allocation and Use of Frequency Bands by Terrestrial Non-Broadcasting Radiocommunication Services Along the Common Border.

c. LMS

24. Potential bidders are reminded that LMS operates in the 902–928 MHz frequency band. This band is allocated for primary use by Federal Government radiolocation systems. Next, in order of priority, are Industrial, Scientific and Medical devices. Federal Government fixed and mobile and LMS systems are secondary to these uses. The remaining uses of the 902–928 MHz band include licensed amateur radio operations and unlicensed part 15 equipment, both of which are secondary to all other uses of the band. Part 15 low power devices include, but are not limited to, those used for automatic meter reading, inventory control, package tracking and shipping control, alarm services, local area networks, internet access, and cordless telephones. The amateur radio service is used by technically inclined private citizens to engage in self-training, information exchange, and radio experimentation. In the *LMS Report and Order*, 60 FR 15248 (March 23, 1995), the Commission recognized the important contribution to the public provided by Part 15 technologies and amateur radio operators and sought to develop a band plan that would maximize the ability of these services to coexist with LMS systems.

25. The Commission adopted the *LMS Report and Order* with an eye toward minimizing potential interference within and among the various users of the 902–928 MHz band. The Commission's band plan accordingly permits secondary operations across the entire band by users of unlicensed part 15 devices and amateur licensees. At the same time, the band plan separates non-multilateration from multilateration LMS systems in all but one subband so as to avert interference. The *LMS Report and Order* also established limitations on LMS systems' interconnection with the public switched network and set forth a number of technical requirements intended to ensure successful coexistence of all the services authorized to operate in the band.

26. Potential bidders should also be aware that certain applications (including those for modification), petitions for rulemaking, waiver requests, requests for special temporary authority ("STA"), petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to particular applicants or incumbent LMS licensees. While the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

d. 220 MHz, 800 MHz, and LMS

27. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 43.

28. To aid potential bidders, Attachment B to the *Auction No. 43 Procedures Public Notice* lists 220 MHz, SMR 800 MHz, and LMS matters pending before the Commission that relate to licenses or applications in these services. The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect spectrum availability in these services.

29. Copies of pleadings from pending cases relating to the 220 MHz, SMR 800 MHz, and LMS matters identified in Attachment B, of the *Auction No. 43 Procedures Public Notice*, are available for public inspection and copying during normal reference room hours at: Office of Public Affairs (OPA), Reference Operations Division, 445 12th Street, SW., Room CY–C314, Washington, DC 20554.

30. In addition, potential bidders may research the Bureau's licensing database on the Internet in order to determine which frequencies are already licensed to incumbent licensees. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the EA or EAG for which they plan to bid.

31. Licensing records for the 220 MHz, SMR 800 MHz, and LMS are contained in the Bureau's Universal Licensing System (ULS) and may be researched on the Internet at *http://www.fcc.gov/wtb/uls* by selecting the "License Search" button. Potential bidders may query the database online and download a copy of their search results if desired. The Bureau recommends that potential bidders select the "Frequency" option under License Search, specify the desired frequency or frequency range, select Status "A" (Active), and use the "GeoSearch" button at the bottom of the screen to limit their searches to a particular geographic area. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the bottom

right-hand corner of the License Search screen.

32. Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY), or via e-mail at *ulscomm@fcc.gov*. The hotline is available to assist with questions Monday through Friday, from 7 AM to 10 PM ET, Saturday, 8 AM to 7 PM ET, and Sunday, 12 noon to 6 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

33. Licenses may, in some EAs and EAGs, be required to protect quiet zones. *See* 47 CFR 1.923(g) and 1.924.

iv. Bidder Alerts

34. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

35. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

36. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 43 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

37. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 43 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225–5322).

v. National Environmental Policy Act ("NEPA") Requirements

38. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. See 47 CFR 1.1305 through 1.1319. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

39. The auction will begin on Thursday, January 10, 2002. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

40. The Commission announces that bidding for Auction No. 43 will be temporarily suspended January 21, 2002, in observance of the Federal holiday.

ii. Auction Title

41. Auction No. 43—Multi-Radio Service

iii. Bidding Methodology

42. The bidding methodology for Auction No. 43 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

43. These are important dates relating to Auction No. 43:

Auction Seminar—November 7, 2001
Short-Form Application (FCC FORM 175)—November 16, 2001; 6 p.m. ET
Upfront Payments (via wire transfer)—December 7, 2001; 6 p.m. ET
Mock Auction—January 7, 2002
Auction Begins—January 10, 2002

v. Requirements for Participation

44. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, November 16, 2001.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, December 7, 2001.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

45. The following is a list of general contract information relating to Auction No. 43:

General Auction Information: General Auction Questions, Seminar Registration.
FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. ET

Auction Legal Information: Auction Rules, Policies, Regulations.
Auctions and Industry Analysis Division, Legal Branch (202) 418–0660
Licensing Information: Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues.
Commercial Wireless Division, (202) 418–0620
Technical Support: Electronic Filing, Automated Auction System.
FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: Monday through Friday 7 a.m. to 10:00 p.m. ET, Saturday, 8:00 a.m. to 7:00 p.m., Sunday, 12:00 noon to 6:00 p.m.
Payment Information: Wire Transfers, Refunds.
FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax)
Telephonic Bidding:
Will be furnished only to qualified bidders.
FCC Copy Contractor: Additional Copies of Commission Documents.
Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, (202) 863–2898 (Fax), *qualexint@aol.com* (E-mail)
Press Information: Meribeth McCarrick (202) 418–0654.
FCC Forms: (800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), *http://www.fcc.gov/formpage.html*
FCC Internet Sites: *http://www.fcc.gov, http://www.fcc.gov/wtb/auctions, http://www.fcc.gov/wtb/uls*

II. Short-Form (FCC Form 175) Application Requirements

46. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment E of the *Auction No. 43 Procedures Public Notice.* The short-form application seeks the applicant's name and address, legal classification, status, small or very small business bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

A. License Selection

47. In Auction No. 43, Form 175 will include a mechanism that allows an applicant to filter the licenses by Service, Market Number, and/or Block to create customized lists of licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the customized list by using the "Save all filtered licenses" option; select and save individual licenses separately from the list; or create a second customized list without selecting any of the licenses from the first list. Applicants also will be able to select licenses from one customized list and then create a second customized list to select additional licenses.

B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

48. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

C. Consortia And Joint Bidding Arrangements (FCC Form 175 Exhibit B)

49. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

50. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

D. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

51. Bidding credits are available to small and very small business, or consortia, thereof, as defined in 47 CFR 90.1021 for Phase II 220 MHz, 47 CFR 90.912 for 800 MHz SMR, and 47 CFR 90.1103 for LMS. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests:

- A bidder with attributed average annual gross revenues of not more than $15 million for the preceding three years receives a 25 percent discount on its winning bids for 220 MHz, 800 MHz SMR, and LMS licenses;
- A bidder with attributed average annual gross revenues of not more than $3 million for the preceding three years receives a 35 percent discount on its winning bids for 220 MHz, 800 MHz SMR, and LMS licenses;

Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both.

ii. Tribal Land Bidding Credit

52. To encourage the growth of wireless services in federally recognized tribal lands the Commission has

implemented a tribal land bidding credit. *See* Part V.C. of the *Auction No. 43 Procedures Public Notice*.

iii. Applicability of Part 1 Attribution Rules

53. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the part 1 proceeding. Part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 43. *Accordingly, the "controlling interest" standard as set forth in the Part 1 rules will be in effect for Auction No. 43, even if conforming edits to the CFR are not made prior to the auction.*

54. *Control.* The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

55. *Attribution for small and very small business eligibility.* In determining which entities qualify as small or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

56. A consortium of small or very small businesses is a "conglomerate organization formed as a joint venture between or among mutually independent business firms," each of which *individually* must satisfy the definition of small or very small business in §§ 1.2110(f), 90.912, 90.1021, and 90.1103. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

57. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small or very small businesses (or consortia of small or very small businesses) for this auction.

58. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

59. *Small or very small business eligibility (Exhibit C).* Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) the applicant, (ii) its affiliates, (iii) its controlling interests, and (4) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small or very small businesses, this information must be provided for each consortium member.

E. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

60. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, for each of its controlling interests and affiliates, and for each affiliate of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

61. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 43, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

F. Installment Payments

61. Installment payment plans will not be available in Auction No. 43.

G. Other Information (FCC Form 175 Exhibits E and F)

62. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

H. Minor Modifications to Short-Form Applications (FCC Form 175)

63. After the short-form filing deadline (November 16, 2001), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Suite 4–A760, Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Howard Davenport of the Auctions and Industry Analysis Division at (202) 418–0660.

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

64. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

65. On Wednesday, November 7, 2001, the FCC will sponsor a free seminar for Auction No. 43 at the Federal Communications Commission, located at 445 12th Street, SW., Room 8–B516, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the Multi-Radio Service (Phase II 220 MHz, 800 MHz SMR, and LMS) spectrum and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

66. To register, complete Attachment C of the *Auctions No. 43 Procedures Public Notice* and submit it by Monday, November 5, 2001. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due November 16, 2001

67. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on November 16, 2001. Late applications will not be accepted.

68. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Part III.D.

i. Electronic Filing

69. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on November 7, 2001, until 6 p.m. ET on November 16, 2001. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on November 16, 2001.

70. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment D of the *Auctions No. 43 Procedures Public Notice*. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service Monday through Friday, from 7 AM to 10 PM ET, Saturday, 8 AM to 7 PM ET, and Sunday, 12 noon to 6 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

71. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the Form 175 Homepage.

ii. Completion of the FCC Form 175

72. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment E of the *Auction No. 43 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments D and E to the *Auction No. 43 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

73. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment D of the *Auction No. 43 Procedures Public Notice* for details on accessing the review system.

C. Application Processing and Minor Corrections

74. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

75. As described more fully in the Commission's rules, after the November 16, 2001, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due December 7, 2001

76. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an

FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on December 7, 2001. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 43 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the December 7, 2001, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

77. Wire transfer payments must be received by 6:00 p.m. ET on December 7, 2001. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/Account # 910–1182
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
TAXPAYER IDENTIFICATION NO.: (same as FCC Form 159, block 12)
PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A43U)
FCC CODE 1 (same as FCC Form 159, block 28A: "43")
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. # 358415

Note: The BNF and Lockbox number are specific to the upfront payments for this auction: do not use BNF or Lockbox numbers from previous auctions.

78. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 43." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

79. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment F of the *Auction No. 43 Procedures Public Notice.* An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

80. In the *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making,* 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order,* the Commission ordered that "former defaulters," i.e., applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters."

81. In the *Auction No. 43 Comment Public Notice,* the Bureau proposed translating bidders' upfront payments to bidding units to define a bidder's maximum eligibility. In order to bid on a license, otherwise qualified bidders who applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

82. In the *Auction No. 43 Comment Public Notice,* the Bureau proposed upfront payments on a license-by-license basis using the following formula:

- 220 MHz
  EAG Licenses: $0.01 * 0.15 MHz * License Area Population
  EA Licenses: $500 per license
- 800 MHz
  $0.005 * License Area Population with a minimum of $2,500 per license.
- LMS
  Block A: $0.0004 * MHz * License Area Population with a minimum of $500 per license.
  Block B: $0.0005 * MHz * License Area Population with a minimum of $500 per license.
  Block C: $0.0005 * MHz * License Area Population with a minimum of $500 per license.

83. Having received no comments regarding the value of the proposed upfront payments, the Bureau therefore adopts its proposed upfront payment amounts for Auction No. 43.

84. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 43 Procedures Public Notice.*

85. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

EXAMPLE: 800 MHz SMR UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

Market No.	Block	Market name	Population	Bidding units	Upfront payment
BEA009	D	State College, PA	798,826	4,000	$4,000

EXAMPLE: 800 MHz SMR UPFRONT PAYMENTS AND BIDDING FLEXIBILITY—Continued

Market No.	Block	Market name	Population	Bidding units	Upfront payment
BEA011	DD	Harrisburg–Lebanon–Carlisle, PA	1,026,459	5,100	5,100

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 9,100 bidding units (4,000 + 5,100). If a bidder only wishes to bid on one, but not both, purchasing 5,100 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time.* If the bidder purchased only 4,000 bidding units, it would have enough eligibility for the State College, PA license but not for the Harrisburg-Lebanon-Carlisle, PA license.

86. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

87. The Commission will use wire transfers for all Auction No. 43 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by December 7, 2001. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call (202) 418–1995.

Name of Bank, ABA Number, Contact and Phone Number, Account Number to Credit, Name of Account Holder, Taxpayer Identification Number, Correspondent Bank (if applicable), ABA Number, Account Number.

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.E.

E. Auction Registration

88. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

89. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

90. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Thursday, January 3, 2002, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

91. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Electronic Bidding

92. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the instructions for using them are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 43. The telephonic bidding phone number will be supplied in the first Federal Express mailing of the confidential bidder identification number. Your bidding preference—electronic or telephonic—is specified on the FCC Form 175.

93. Please note that the SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

94. All qualified bidders will be eligible to participate in a mock auction on Monday, January 7, 2002. The mock auction will enable applicants to become familiar with the electronic system prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

II. Auction Event

95. The first round of bidding for Auction No. 43 will begin on Thursday, January 10, 2002. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

ii. Simultaneous Multiple Round Auction

96. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed to award all licenses in Auction No. 43 in a single, simultaneous multiple round auction. The Bureau received no comments on this issue. Therefore, the Bureau concludes that it is operationally feasible and appropriate to auction the 220 MHz, 800 MHz, and LMS licenses through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach allows bidders to take advantage of any synergies that exist among licenses and is administratively efficient.

ii. Maximum Eligibility and Activity Rules

97. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

98. For Auction No. 43, the Bureau adopts this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility (*see* "Amount of Upfront Payment" in Part III.D.iii). The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" in Part IV.A.iii), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollars a bidder may bid on any given license.

99. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction.

100. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*see* "Bid Increments and Minimum Accepted Bids" in Part IV.B.(iii)). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in Part IV.A.iii and "Stage Transitions" in Part IV.A.iv), the Bureau adopts them for Auction No. 43.

iii. Auction Stages

101. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. The Bureau further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 98 percent of its current bidding eligibility. The Bureau received no comments on this proposal.

102. The Bureau adopts its proposed activity rules. The activity levels for each stage of the auction are provided. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and valid bids during the current round) by five-fourths (5/4).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and valid bids during the current round) by fifty-fortyninths (50/49).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding system's bidding module.

103. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Bureau adopts them for Auction No. 43.

iv. Stage Transitions

104. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. The Bureau further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureau proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau received no comments on this subject.

105. The Bureau adopts its proposal. Thus, the auction will start in Stage One and it will advance to the next stage (*i.e.*, from Stage One to Stage Two) when, in each of three consecutive rounds of bidding, the high bid has increased on 20 percent or less of the licenses being auctioned (as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 43.

v. Activity Rule Waivers and Reducing Eligibility

106. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed that each bidder in the auction would be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. The Bureau received no comments on this issue.

107. Based upon the Bureau's experience in previous auctions, it adopts its proposal that each bidder be provided three activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. The Bureau is satisfied that its practice of providing three waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

108. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

109. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* Part IV.A.iii discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

110. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new valid bids or withdrawals will not keep the auction open.

vi. Auction Stopping Rules

111. For Auction No. 43, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses.

112. The Bureau also proposed retaining discretion to implement a modified version of the simultaneous stopping rule. The modified version will close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder will not keep the auction open under this modified stopping rule.

113. The Bureau further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

114. In addition, the Bureau proposed that it reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the licenses.

115. The Bureau received no comments on the subject therefore it adopts all of the proposals concerning the auction stopping rules. Auction No. 43 will begin under the simultaneous stopping rule and the Bureau will retain the discretion to invoke the other versions of the stopping rule. The Bureau believes that these stopping rules are most appropriate for Auction No. 43, because its experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

vii. Auction Delay, Suspension, or Cancellation

116. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

117. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

118. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. This public notice will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the public notice referenced.

119. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

120. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

121. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 43 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 43, the Bureau proposed the following license-by-license formula for calculating minimum opening bids:

- 220 MHz
  EAG Licenses: $0.0125 * 0.15 MHz * License Area Population.
  EA Licenses: $500 per license.
- 800 MHz
  $0.005 * License Area Population with a minimum of $2,500 per license.
- LMS
  Block A: $0.0004 * MHz * License Area Population with a minimum of $500 per license:
  Block B: $0.0005 * MHz * License Area Population with a minimum of $500 per license.
  Block C: $0.0005 * MHz * License Area Population with a minimum of $500 per license.

122. In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price. Having received no comments regarding the value of the proposed minimum opening bids, the Bureau therefore adopts its proposed minimum opening bids amounts for Auction No. 43.

123. The specific minimum opening bids for each license are set forth in Attachment A of the *Auction No. 43 Procedures Public Notice.*

124. The minimum opening bids that the Bureau adopts are reducible at its discretion. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any requests to reduce the minimum opening bid on specific licenses.

iii. Bid Increments and Minimum Accepted Bids

125. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed to use a smoothing methodology to calculate minimum acceptable bids. The Bureau further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. The Bureau received no comment on this issue.

126. The Bureau adopts its proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment G of the *Auction No. 43 Procedures Public Notice.*

127. The Bureau adopts its proposal of initially setting the weighing factor at 0.5, the minimum percentage increment at 0.1 (10 percent), and the maximum at 0.2 (20 percent). The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 43 if circumstances warrant.

iv. High Bids

128. At the end of each round, the Automated Auction System determines the standing high bid for each license based on the gross dollar amounts of the bids received for each license.

129. In the case of tied high bids, an implementation of the Lecuyer pseudo-random generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

v. Bidding

130. During a bidding round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round.

131. Please note that all bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 43.

132. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) the licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

133. The FCC Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations *after* they submit their bids.

134. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts. The Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

135. Once there is a standing high bid on a license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment.* The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

136. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded, and the minimum opening bid. Therefore, when the minimum percentage increment equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

137. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

138. *See* Attachment G of the *Auction No. 43 Procedures Public Notice* for more detail on the calculation of the various bid amounts.

139. Finally, bidders are cautioned in selecting their bid amounts because, as explained in the following section, bidders who withdraw a standing high bid from a previous round, even if mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

140. In the Auction No. 43 Comment Public Notice, the Bureau proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, the Bureau proposed, would be at the bidder's discretion. The Bureau received no comments on this issue.

141. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which the Bureau received no comments, will enhance bidder flexibility during the auction. Therefore, the Bureau adopts these procedures for Auction No. 43.

142. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g).

143. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureau continues to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, it conclude that, for Auction No. 43, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so the Bureau believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Bureau's decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of its view regarding the likelihood of any speculation or "gaming" in this auction.

144. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the minimum accepted bid in the next round will be the prior round's second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

145. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auction(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is

a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

146. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

147. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 43 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

148. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

ix. Maintaining the Accuracy of FCC Form 175 Information

149. As noted in Part II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to: Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A760, Washington, DC 20554.

150. A separate copy of the letter should be mailed to Howard Davenport, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A435, Washington, DC 20554. Questions about other changes should be directed to Howard Davenport at (202) 418–0660.

I. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

151. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders, down payments and any withdrawn bid payments due.

152. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable small and very small business bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

153. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 43. Winning bidders that are small or very small businesses must include an exhibit demonstrating their eligibility for small and very small business bidding credits. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

C. Tribal Land Bidding Credit

154. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

155. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

156. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's web site by going to *http://www.fcc.gov/wtb/auctions* and clicking on *Tribal Land Credits*.

D. Default and Disqualification

157. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

E. Refund of Remaining Upfront Payment Balance

158. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 43 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

159. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number (TIN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Michelle Bennett, 445 12th Street, SW., Room 1–C864, Washington, DC 20554.

160. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 01–27433 Filed 10–31–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Discontinuance

SUMMARY:

Background

Notice is hereby given of the discontinuance of an information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer-Mary M. West-Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829); OMB Desk Officer-Alexander T. Hunt-Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

Discontinuation of the following report:

1. *Report title:* Daily Advance Report of Deposits
Agency form number: FR 2000
OMB Control number: 7100-0087
Effective Date: November 5, 2001
Frequency: Daily
Reporters: Large commercial banks and thrifts
Annual reporting hours: 24,960
Estimated average hours per response: 0.60
Number of respondents: 160
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 248(a), 347(d), 603, 615 and 415) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This report collects selected deposit and vault cash data for the most recent reporting week from a sample of large commercial banks and thrifts before such data become available for the universe of all weekly reporters of the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900; OMB No. 7100-0087). Although these advance data have been useful for estimating the monetary aggregates, the Federal Reserve feels that the costs to the Federal Reserve System and to depository institutions of collecting these data outweigh the benefits. In addition, under contemporaneous reserve requirements, these data were essential in constructing estimates of aggregate required reserves and vault cash for the reserve maintenance period. Since the Federal Reserve's change back to lagged reserve requirements in August 1998, these data are no longer essential for that purpose. Respondents will submit their final FR 2000 for the reporting week ending November 5, 2001. The Federal Reserve will continue to collect the other reports included in this information collection.

Board of Governors of the Federal Reserve System, October 26, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–27422 Filed 10–31–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Premier Holdings, Ltd., Rock Valley, Iowa; to become a bank holding

company by acquiring 100 percent of the voting shares of Premier Bank, Rock Valley, Iowa.

2. The Private Banking Company, Hartland, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Waunakee Employee Stock Ownership Plan, Waunakee, Wisconsin, Waunakee Bank Shares, Inc., Waunakee, Wisconsin, and Bank of Waunakee, Waunakee, Wisconsin.

Board of Governors of the Federal Reserve System, October 26, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27409 Filed 10–31–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instructions, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. Wave 3 Survey of Youth for the Federal Evaluation of Initiatives Funded Under Section 510 of the Maternal and Child Health Block Grant Program—The Personal Responsibility and Work Opportunity Reconciliation Act (Pub. L. 104–193) established section 510 of the Maternal and Child Health Block Grant Program, the purpose of which is to support state efforts promoting abstinence only education. This data collection is needed to fulfill the requirements for a Congressionally authorized evaluation of block grant programs funded under section 510, Title V, of the Social Security Act.—NEW—Respondents: Individuals, state or local governments—Burden Information for Wave 3 Survey—Number of Respondents: 2,871; Average Burden per Response: 0.5 hours; Total Burden: 1,436 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: October 25, 2001.

Kerry Williams,

Acting, Deputy Assistant Secretary, Budget.

[FR Doc. 01–27416 Filed 10–31–01; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–778195

Applicant: Helix Environmental Planning, Inc., La Mesa, California.

The applicant requests a permit amendment to take (collect, translocate, and retain) the Riverside fairy shrimp (*Streptocephalus wootoni*) in conjunction with habitat restoration activities in Riverside County, California for the purpose of enhancing its survival.

Permit No. TE–048385

Applicant: The Nature Conservancy, Eugene, Oregon.

The applicant requests a permit to take (harass by survey and kill larvae) the Fender's blue butterfly (*Icaricia icarioides fenderi*) in conjunction with surveys, monitoring, and habitat restoration activities, and remove/reduce to possession Kincaid's lupine (*Lupinus sulphureus kincaidii*) in conjunction with propagation and research in Lane County, Oregon, for the purpose of enhancing their survival.

Permit No. TE–044572

Applicant: Chris Pyke, Santa Barbara, California.

The applicant requests a permit to take (collect cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with ecological research in San Joaquin, Santa Barbara, Ventura, Tulare, Merced, Butte, Yuma, Solano, and Sutter Counties, California for the purpose of enhancing their survival.

Permit No. TE–823990

Applicant: Wildwing, Los Osos, California.

The applicant requests a permit amendment to take (monitor, locate nests) the California brown pelican (*Pelecanus occidentalis*) in conjunction with monitoring activities throughout the species' range for the purpose of enhancing its survival.

Permit No. TE–046262

Applicant: Blake Claypool, Santee, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) throughout its range in California in conjunction with surveys for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received on or before December 3, 2001.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 01–27411 Filed 10–31–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Record of Decision on Sea Lamprey Control Program in Lake Champlain

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Fish and Wildlife Service (Service) issues this Record of Decision (ROD) upon consideration of the Final Supplemental Environmental Impact Statement (FSEIS) for the sea lamprey control proposal in Lake Champlain.

The Service has considered alternatives and evaluated their impacts for controlling sea lamprey in Lake Champlain as presented in the FSEIS. We have solicited public and agency comments and considered these comments in the NEPA process and in making our decision. Based on that evaluation and review, the Service has decided to select the Proposed Action alternative for implementation as described in the FSEIS. The . determination was based on a thorough analysis of environmental, social, economic, and other considerations.

ADDRESSES: Additional copies of this ROD may be requested from Mr. Dave Tilton, Project Leader, U.S. Fish and Wildlife Service Lake Champlain Office, 11 Lincoln St., Essex Junction, Vermont 05452. Alternatively, copies may be requested electronically at: *dave_tilton@fws.gov*

FOR FURTHER INFORMATION CONTACT: Mr. Dave Tilton, Project Leader, U.S. Fish and Wildlife Service Lake Champlain Office, 11 Lincoln St., Essex Junction, Vermont 05452, 802–872–0629, FAX: 802–872–9704.

Background

The intent of this action is to achieve and maintain the greatest practical reductions in Lake Champlain sea lamprey populations while avoiding and minimizing significant adverse effects to other fish and wildlife and public uses in the Lake Champlain basin. Sea lamprey are primitive marine invaders to Lake Champlain. They are parasitic fish that feed on the body fluids of other fish resulting in reduced growth and often the death of host fish. A substantial body of information collected on Lake Champlain indicates sea lamprey have a profound negative impact upon the lake's fishery resources and have suppressed efforts to establish new and historical sportfisheries. In 1990, the Service, New York State Department of Environmental Conservation (NYSDEC), and Vermont Department of Fish and Wildlife (VTDFW), initiated an 8-year experimental sea lamprey control program for Lake Champlain. The experimental program treated tributaries and deltas of Lake Champlain with the chemical lampricides TFM and Bayluscide, which substantially reduced larval sea lamprey numbers in treated waters. The program included monitoring and assessment of the effects of sea lamprey reduction on the characteristics of certain fish populations, the sport fishery, and the area's growth and economy. A set of 30 evaluation standards was established. Overall, the experimental sea lamprey control program met or exceeded the majority of the standards demonstrating a successful reduction in sea lamprey population. In addition to this evaluation, the cooperating agencies assessed the effects of the program on nontarget organisms.

Two rounds of treatments were planned for each significantly infested stream and delta. From 1990 through 1996, 24 TFM treatments were conducted on 14 Lake Champlain tributaries, and 9 Bayluscide (5 percent granular) treatments were conducted on 5 deltas. A cumulative total of approximately 141 stream miles and 1,220 delta acres were treated. In summary, trap catches of spawning-phase sea lamprey declined by 80 to 90 percent; nest counts were reduced by 57 percent. Sixteen of twenty-two TFM treatments reduced ammocoetes at index stations to less than 10 percent of pre-treatment levels. Eight of the nine Bayluscide treatments resulted in mean mortality rates over 85 percent among caged ammocoetes. Relatively small numbers of nontarget amphibian and fish species were killed. Adverse effects on nontarget species were higher for Bayluscide treatments than TFM. Native mussels, snails, and some other macroinvertebrates were significantly affected after the 1991 Bayluscide treatments of the Ausable and Little Ausable deltas in New York. However, they recovered to pre-treatment levels within 4 years. American brook lamprey also experienced substantial treatment-related mortality. Yet, the finding of American brook lamprey in second-round treatments in each stream where they were negatively affected during the first round, suggested survival or immigration was adequate to maintain their presence in the streams. Wounding rates on lake trout and landlocked Atlantic salmon were reduced in the main lake basin, and catches of both species increased. A significant increase in survival of 3-to 4-year lake trout was noted; survival of older fish improved but did not change significantly. Returns of Atlantic salmon to tributaries increased significantly after treatment. Changes in wounding rates on brown and rainbow trout could not be evaluated, but angler catches increased since 1990. Catch per unit effort of rainbow smelt, the major forage species for salmonids, decreased significantly at one of two sampling stations in the main lake basin and in Malletts Bay, but not at other locations; length-at-age also decreased at most sites. Evaluation of angler responses to the program indicated a favorable 3.5:1 economic benefit:cost ratio.

"A Comprehensive Evaluation of an Eight Year Program of Sea Lamprey Control in Lake Champlain" provides a detailed description of the results of the project. It is available on the Service web-site at, *www.fws.gov/r5lcfwro/lamprey/lamprey.html.*, or from the contact for further information listed above.

Based on the results of the experimental program, the Lake Champlain Fish and Wildlife Management Cooperative comprised of the Service, the NYSDEC, and the VTDFW concluded that a long-term sea lamprey control program was warranted.

The public participation process on the proposal began in 1999. The Notice of Intent to prepare the Supplemental Environmental Impact Statement (SEIS) was published in the November 16, 1999, **Federal Register**. The Notice of Availability of the Draft Supplemental Environmental Impact Statement (DSEIS) was published on March 15, 2001. The comment period on the DSEIS ended on April 30, 2001. The Notice of Availability of the FSEIS appeared in the September 6, 2001, **Federal Register**. Four scoping meetings and two public meetings on the FSEIS were held, divided equally between Vermont and New York.

The Selected Alternative

The selected alternative is the proposed action as described in the FSEIS. This alternative implements a long-term sea lamprey control program based on the principals of integrated

pest management. The selected alternative will implement a tributary specific approach, in which all viable sea lamprey control techniques will be screened for use in each infested stream system.

This action expands sea lamprey control beyond the experimental program implemented in 1990, to include several untreated streams in New York, Vermont, and Quebec, Canada, in addition to those waters previously treated in the experimental program. Under this approach, many of the infested streams will be treated with lampricides, but total reliance on lampricides will be avoided through the use of barriers and/or traps where feasible. Sea lamprey producing streams currently designated for potential control include: The Great Chazy River including Bullis Brook, the Saranac, Salmon, Little Ausable, and Ausable River including Dry Mill Brook, the Bouquet River, Beaver and Mullen Brook, Putnam Creek, Mt. Hope and Greenland Brook, Lewis Creek, the Laplatte River, the Winooski River including Sunderland Brook, Mallets Creek including Indian Brook, Trout Brook, Stone Bridge Brook, the Missisquoi River, Youngman Brook, and Pike River including Morpion Stream.

Tentatively, this new sea Lamprey control effort is scheduled to begin in the fall of 2001, at Lewis Creek, Vermont. All control efforts will comply with applicable Vermont and New York permit requirements and be conducted in conformance with conditions designated through the permit process.

The selected alternative will defer lampricide treatment of the Poultney and Hubbardton Rivers for 5 years to fully assess potential alternatives to lampricides and the effects of the initiated portion of the sea lamprey control program on wounding rates. If the wounding rate objectives are not attained and feasible alternative control methods are not available, lampricide treatments will be implemented for both tributaries following the 5-year period.

Other Alternatives Considered

Three alternatives including the selected alternative, were considered in the FSEIS.

Alternative 2. This alternative would maintain reduced sea lamprey wounding rates attained during the experimental control program. This alternative and its methodologies would rely on the use of lampricides for maintaining reduced sea lamprey numbers, and restrict the program primarily to those rivers and deltas that were treated in the experimental program. This alternative ignores additional control techniques and locations included in the selected alternative that may offer nonchemical control methods. Under this alternative TFM and Bayluscide treatments would be conducted on sea lamprey infested streams and deltas. Lampricide treatment of each stream or delta would be scheduled according to sea lamprey larval transformation rates, or in most cases every fourth year.

Alternative 3. This alternative would abandon sea lamprey control efforts as a fisheries management tool for Lake Champlain. The most significant impact of this alternative is that it would never achieve the projected harvest, recreational and economic benefits which are possible with effective control of sea lamprey. This alternative would eliminate any adverse impacts associated with the selected alternative including preventing nontarget mortality on aquatic species associated with the use of lampricides.

Mitigation of Impacts

As discussed in the FSEIS, the selected alternative includes a variety of measures to minimize the adverse environmental, social and economic impacts. These measures include use of lampricide treatments and nonchemical control methods such as barriers and trapping. Mitigation measures include, but are not limited to, issuing advisories against water use until the lampricide plume has dissipated (24 hours after the concentration of TFM has decreased below 20 ppb, or after pre-established time intervals allowing for thorough dissipation of Bayluscide have expired), providing commercially bottled drinking water to households that withdraw water for drinking and other household purposes, applying lampricides in waters inhabited by endangered and threatened species at concentrations shown not to impact such species, regular monitoring of lampricide concentrations during applications and prompt adjustment of rates if necessary to minimize nontarget fish mortalities.

Additional mitigation measures will be applied through the permit conditions issued by the NYSDEC, the Vermont Department ofEnvironmental Consevation (VTDEC), the Vermont Agency of Natural Resources (VTANR), the VTDFW , Adirondack Park Agency (APA), Quebec Ministry of Environment and other applicable Canadian regulatory agencies.

Findings and Decisions

Having reviewed and considered the FSEIS for sea lamprey control in Lake Champlain and the public comments thereon, the Service finds as follows:

(1) The requirements of NEPA and implementing the Council on Environmental Quality regulations have been satisfied.

(2) Statutory authority for the Service's funding of and participation in the project exists under the Federal Aid in Sport Fish Restoration Act of August 9, 1950 (64 Stat. 430), as amended (16 U.S.C. 777–777l), the Fish and Wildlife Coordination Act, 16 U.S.C. 661–666 and the Lake Champlain Special Designation Act of 1990, P.L. 101–596.

(3) Consistent with social, economic and environmental considerations from among the reasonable alternatives thereto, the selected alternative is in the best interest for the resource and citizens of the States of New York and Vermont and one that minimizes or avoids adverse effects to the maximum extent practicable.

(4) Consistent with the environmental analysis provided in the FSEIS, adverse environmental effects will be minimized or avoided by incorporating as conditions the mitigation measures identified in the proposed action in the FSEIS and its supporting appendices.

(5) Consistent with the Purpose and Need Statement of the FSEIS, the Service establishes the following as the program objectives for the selective alternative: Achieve and maintain lamprey wounding rates at or below 25 wounds per lake trout, ideally 10 wounds per 100 lake trout; 15 wounds per 100 landlocked salmon, ideally 5 wounds per 100 landlocked salmon, and 2 wounds per 100 walleye, ideally less than 1 wound per 100 walleye. Attain wounding rate objectives within 5 years of full implementation of the selected alterative.

The decision to implement this alternative is subject to the following conditions:

a. All applicable regulatory requirements and approvals will be satisfied or obtained.

b. All applicable State and Provincial permit conditions are hereby adopted as part of this finding and will be met.

c. All studies and other conditions contained in the FSEIS proposed action alternative are adopted by the Service.

d. Conditions of b and c above will be incorporated into the NYSDEC and VTDFW Federal Aid grant agreement for this project.

This Record of Decision will serve as the written facts and conclusions relied on in reaching this decision. This Record of Decision was approved by the Acting Regional Director of the Service on October 9, 2001.

Dated: October 9, 2001.

Richard O. Bennett,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 01–27431 Filed 10–31–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–79324]

Recreation and Public Purposes, Classification; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public land in Kane County, Utah has been examined and found suitable for classification for lease under the provisions of the R&PP Act of 1954, as amended (43 U.S.C. 869 *et seq.*):

N½NE, N½N½SENE, N½NESWNE, E½NW,
Section 21 T. 43 S., R. 6 W. SLBM
containing 175 Acres more or less.

Kane County intends to use the land for a public trail and mountain park. The land is not needed for a Federal purpose. Lease or conveyance is consistent with current Bureau of Land Management land use planning and would be in the public interest.

FOR FURTHER INFORMATION CONTACT: Frank Olsen, 318 North 100 East, Kanab, UT 84741.

SUPPLEMENTARY INFORMATION:

Classification: The following public land in Kane County, Utah has been examined and found suitable for classification for lease under the provisions of the R&PP Act of 1954, as amended (68 Statue 173):

N½NE, N½N½SENE, N½NESWNE, E½NW,
Section 21 T. 43 S., R. 6 W. SLBM.

Kane County intends to use the land for a public trail and mountain park. The land is not needed for a Federal purpose. Lease is consistent with current Bureau of Land Management land use planning and would be in the public interest. The land is hereby segregated from appropriation under any other public land law, including locations under the mining laws.

DATES: On or before December 17, 2001, interested parties may submit comments regarding the proposed classification. In the absence of adverse comments, the classification will become effective December 31, 3001.

Tom Terry,

Acting Field Office Manager.

[FR Doc. 01–27455 Filed 10–31–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–01–1320–EL–P; MTM 91293]

Notice of Invitation to Participate in Coal Exploration License Application

AGENCY: Bureau of Land Management, Montana State Office Interior.

ACTION: Notice of Invitation—Coal Exploration License Application MTM 91293.

SUMMARY: Members of the public are hereby invited to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Big Horn County, Montana, encompassing 120.00 acres:

T. 8 S., R. 39 W., P. M. M.
Sec. 9: NE¼NW¼
Sec. 27: SW¼NW¼
Sec. 35: NW¼NE¼

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program shall notify, *in writing*, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and Spring Creek Coal Company, P.O. Box 67, Decker, Montana 59025. Such written notice must refer to serial number MTM 91293 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the *Sheridan Press* newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the Sheridan Press, Sheridan, Wyoming.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Spring Creek Coal Company, is available for public inspection at the Bureau of Land Management, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Giovanini, Mining Engineer, or Connie Schaff, Land Law Examiner, Branch of Solid Minerals (MT–921), Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5084 or (406) 896–5060, respectively.

Dated: October 5, 2001.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 01–27457 Filed 10–31–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–4120–EQ; NMNM 107171]

Invitation To Participate; Exploration for Coal in New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with San Juan Coal Company on a pro rata cost sharing basis, in a program for the exploration of coal deposits owned by the United States of America.

SUPPLEMENTARY INFORMATION: The lands are located in San Juan County, New Mexico, and are described as follows:

T. 30 N., R. 14 W., NMPM
Sec. 9: All;
Sec. 10: Lots 1, 2, 3, 4, S½N½, S½;
Sec. 15: All;
Sec. 21: All;
Sec. 22: All;
Sec. 27: All;
Sec. 28: All;
Sec. 33: Lots 1, 2, 3, 4, N½, N½S½;
Sec. 34: Lots 1, 2, 3, 4, 5, 6, 7, 8, N½, N½S½;

Containing 5,802.15 acres, more or less. Interested parties may obtain a complete description of the lands covered in the license application by contacting the San Juan Coal Company, or the Bureau of Land Management, New Mexico State Office, Solid Minerals Adjudication, PO Box 27115, Santa Fe, NM 87502–0115.

Any parties electing to participate in this exploration program shall notify in writing, both the State Director, Bureau of Land Management, New Mexico State Office, PO Box 27115, Santa Fe, NM 87502–0115, and the San Juan Coal Company, PO Box 561, Waterflow, NM 87421. Such written notice must include a justification for wanting to participate and any recommended changes in the exploration plan with specific reasons for such changes. The notice must be received no later than 30-calendar days after the publication of this notice in the **Federal Register**.

This proposed exploration program is for the purpose of determining the quality and quantity of the coal in the area and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by the San Juan Coal Company may be examined at the Bureau of Land Management, New Mexico State Office, 1474 Rodeo Road, Santa Fe, NM 87505, and the Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, NM 87401.

Dated: October 10, 2001.

M.J. Chávez,

State Director.

[FR Doc. 01–27423 Filed 10–31–01; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–1430–EU/1430–HM; NM 101522]

Notice of Availability of a Final Environmental Impact Statement (FEIS) for the Land Exchange With the Pueblo of San Felipe; Albuquerque Field Office, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Albuquerque Field Office has completed the FEIS for the land exchange with the Pueblo of San Felipe. This FEIS documents the BLM's analysis of three alternative courses of action for exchanging public lands administered by the BLM in Sandoval and Santa Fe Counties, New Mexico for private lands in Taos County, New Mexico. The lands in Taos County lie along the Rio Grande National Wild and Scenic River and within the Orilla Verde Recreation Area, identified as two of the BLM's high-priority acquisition areas.

The goals of this exchange are to enable the BLM to more effectively meet multiple use management objectives; to consolidate BLM-managed lands for more effective and efficient resource protection, enhancement and use; to give San Felipe Pueblo direct control over those lands having traditional, historical and cultural values and uses; and to greatly enhance the privacy often required for the pueblo's uses. When the lands are held in trust by the Bureau of Indian Affairs, these uses would be supported through the tribal government's direct supervision.

The BLM will retain restrictive covenants on the lands being received by the pueblo. The purposes of the restrictive covenants are to conserve important habitat for wildlife and open space, to conserve the diverse vegetative communities and the wildlife inhabiting these communities, and to preserve the lands in their present condition, without interfering with any uses of the property by the San Felipe Pueblo that are consistent with protecting these conservation values.

This FEIS includes changes to the Draft Environmental Impact Statement based on public comments, staff review, and the availability of updated information. Alternative A, the Proposed Action, is the BLM's preferred alternative.

DATES: The document is available for review for 30 days from the date of publication of the Notice of Availability by Environmental Protection Agency (EPA) in the **Federal Register**. To be considered, all comments must be postmarked within this 30-day timeframe.

After reviewing the comments, the BLM will publish a Record of Decision. Interested parties will have 45 days to protest the decision (under 43 CFR 1610.5–2). After this period, the decision can be implemented.

ADDRESSES: Comments should be addressed to: Edwin Singleton, Field Manager, BLM Albuquerque Field Office, 435 Montaño Road NE, Albuquerque, NM 87107–4935. Copies are available for review at this address. The document is also available on the Internet at *www.nm.blm.gov*.

FOR FURTHER INFORMATION, CONTACT: Debby Lucero, Albuquerque Field Office, 435 Montaño Road NE, Albuquerque, New Mexico 87107–4935; phone (505) 761–8787.

SUPPLEMENTARY INFORMATION:

Description of Proposed Action—Alternative A, the Proposed Action, involves an equal-value exchange of approximately 9,460 acres of BLM lands that have high traditional and cultural pueblo values for about 268.7 acres of privately owned, high-value recreation lands. The private lands are located along the Rio Grande National Wild and Scenic River and within the Orilla Verde Recreation Area. They would be incorporated into the Orilla Verde Recreation Area and managed under the principles of multiple use, consistent with the Taos Resource Management Plan (1988), as amended.

Other Alternatives Analyzed—Under Alternative B, an additional 1,447 acres of federal land would be exchanged for an equal value of private lands identified in the BLM's high-priority acquisition areas.

Under Alternative C, the No Action Alternative, the proposed land exchange would not occur. The BLM would not benefit from consolidating the public lands along the Rio Grande National Wild and Scenic River and within the Orilla Verde Recreation Area. The federal land would continue to be managed under the principles of multiple use and sustained yield.

Dated: September 14, 2001.

Steven W. Anderson,

Assistant Field Manager.

[FR Doc. 01–27484 Filed 10–31–01; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–01–1610–PD]

Notification of Approved Off Road Vehicle and Area of Critical Environmental Concern Designations, Southern Washoe County Urban Interface Plan Amendment, Nevada

January 9, 2001.

AGENCY: Bureau of Land Management, Carson City Field Office, Nevada.

ACTION: Notification of Approved Off Road Vehicle and Area of Critical Environmental Concern Designation Decisions within the Southern Washoe County Urban interface Plan Amendment, Carson City Field Office, Nevada.

SUMMARY: The Southern Washoe County Urban Interface Plan Amendment amends a portion of the Lahontan Resource Management Plan (RMP). The purpose is to provide for improved management of public lands in the Reno and Sparks metropolitan area. The amendment identifies areas where public lands will be retained in ownership by the people of the United States; areas where public lands are available for acquisition by State or local agencies or the private sector; areas appropriate for acquisition by the BLM; and how public lands will be managed.

The Land Use Master Plans of Reno, Sparks, and Washoe County, and the Washoe County Regional Open Space Plan define and delineate open space in southern Washoe County. Open Space in Washoe County is defined as: *Undeveloped land that encompasses natural, scenic, cultural, and recreational resources important to the local quality-of-life.* A large portion of the land described in the above plans as being consistent with open space values are public lands managed by the Bureau of Land Management (BLM), Carson City Field Office.

All other uses of public land, not addressed in the plan amendment, will continue to be managed as provided for in the existing Lahontan RMP.

Location: The planning area includes approximately 166,550 acres of public lands administered by the BLM in the urban interface of Southern Washoe County. The planning area is bounded by Bedell Flat to the north, Pyramid Lake Indian Reservation to the northeast, the Pah Rah Mountain Range and Storey County to the east and southeast, the State of California to the west, and Carson City to the south, and includes the communities of Reno and Sparks, Nevada.

Copies of the Southern Washoe County Urban Interface Plan Amendment with maps are available from the following BLM office: BLM-Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701.

Public Participation: This RMP Amendment was developed through a joint planning process with Washoe County. Public scoping was initiated with a notice published in the **Federal Register** in July 1998. Notice of public open houses and an invitation for public comment were published in local newspapers and sent to known interested parties, government entities, and the Nevada State Clearinghouse. This was followed by two BLM/Washoe County joint public open houses held at the BLM Nevada State Office and the Washoe County Commissioner's Chambers in Reno in September and October 1998. Representatives from BLM and Washoe County also presented the proposed plan amendment to the following eight Washoe County Citizen Advisory Boards: Spanish Springs, Galena/Steamboat, Sun Valley, North Valleys, Southeast Truckee Meadows, Cold Springs, East Washoe Valley, and Warm Springs. In addition, the proposal was presented to the following: Washoe County Planning Commission, Washoe County Parks Commission, Sparks Citizen Advisory Committee, Reno Southeast Neighborhood Advisory Board, Washoe Storey Conservation District, and the Nevada Division of Minerals.

A Notice of Availability and Public Meeting for the Proposed Southern Washoe County Urban Interface Plan Amendment and Environmental Assessment, Proposed Designation of Three Areas of Critical Environmental Concern, and Proposed Withdrawal of Public Land; Washoe County, Nevada was published in the **Federal Register** on July 24, 2000. This published notice initiated the 60-day comment period and Governors Consistency Review that ended on September 22, 2000. The notice also was published in local newspapers and the proposed plan amendment was sent to 532 interested parties, government entities, and the Nevada State Clearinghouse. A summary of comments from the 86 comment letters received and how these comments are addressed is found in Appendix A of the plan.

A public open house was held at the BLM Nevada State Office in Reno on August 24, 2000, and was attended by 27 individuals. Representatives from BLM and Washoe County presented the proposed plan amendment to the following Washoe County Citizen Advisory Boards: Spanish Springs, Galena/Steamboat, Sun Valley, North Valleys, Southeast Truckee Meadows, Cold Springs, East Washoe Valley, and Warm Springs. Presentations were also made to the following: Sierra Front Northwestern Great Basin Resource Advisory Council, Washoe County Planning Commission, Washoe County Board of Commissioners, Sparks Citizen Advisory Board, Truckee Meadows Regional Planning Agency, joint meeting of Reno, Sparks, and Washoe County Parks and Recreation Commissions, Reno Parks Commission, Red Rock Property Owners Association.

The Washoe Tribe, the Reno-Sparks Indian Colony, and the Pyramid Lake Paiute Tribe were consulted in conformance with the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, and the Environmental Justice Executive Order No.12898.

Off Road Vehicle Designations: The following areas are designated Closed to All Motorized Vehicle Use:

Fred's Mountain: Approximately 3,100 acres located west of Antelope Valley. The Closed Area includes all public land within:

Mt. Diablo Meridian

T. 22 N., R19 E.,
- Sec. 3
- Sec. 4
- Sec. 9
- Sec. 10 W½
- Sec. 15 W½
- Sec. 16
- Sec. 22

Hungry Ridge: Approximately 1,940 acres located east of the Reno-Sparks Indian Colony. The Closed Area includes all public land east of the ridge trail within:

Mt. Diablo Meridian

T. 21 N., R20 E.,
- Sec. 2
- Sec. 3
- Sec. 10

Mt. Diablo Meridian

T. 22 N., R20 E.,
- Sec. 23
- Sec. 26
- Sec. 35

The following areas are designated Open to All Motorized Vehicle Use:

Hungry Valley OHV Area: Located in Hungry Valley, the Open Area includes all public land within:

Mt. Diablo Meridian

T. 23 N., R20 E.,
- Sec. 16
- Sec. 17
- Sec. 18
- Sec. 19
- Sec. 20
- Sec. 21
- Sec. 22 W½ NW
- Sec. 22 SW¼
- Sec. 27 west of Winnemucca Ranch Road
- Sec. 28
- Sec. 29
- Sec. 30
- Sec. 31
- Sec. 32
- Sec. 33
- Sec. 34

T. 22 N., R20 E.,
- Sec. 3
- Sec. 4
- Sec. 5
- Sec. 6
- Sec. 7
- Sec. 8
- Sec. 9
- Sec. 10
- Sec. 15
- Sec. 16
- Sec. 17
- Sec. 18
- Sec. 19
- Sec. 20
- Sec. 21
- Sec. 22
- Sec. 27
- Sec. 28
- Sec. 29
- Sec. 30
- Sec. 31
- Sec. 32
- Sec. 33
- Sec. 34

T. 21 N., R20 E.,
- Sec. 5
- Sec. 6
- Sec. 7
- Sec. 8
- Sec. 17
- Sec. 18

Lemmon Valley Motocross Area: Located in Lemmon Valley, the Open Area includes all public land within:

Mt. Diablo Meridian

T. 21 N., R19 E.,
- Sec. 8

The following area is designated Limited to Designated Routes of Travel for all motorized vehicles.

Swan Lake Nature Study Area: Located in Lemmon Valley, the Limited to Designated Routes of Travel include all public land within:

Mt. Diablo Meridian

T. 21 N., R19 E.,
Sec. 22
Sec. 28

The off road vehicle designation for the remainder of the public land within the planning area is designated Limited to Existing Routes of Travel as of January 9, 2001.

Areas of Critical Environmental Concern Designations: The following areas are designated as Areas of Critical Environmental Concern (ACEC):

Carson Wandering Skipper ACEC: Located in Warm Springs Valley, including all public land within:

Mt. Diablo Meridian

T. 23 N., R 20 E.,
Sec. 15 W½ SE¼
Sec. 22 SE¼

Pah Rah High Basin (Dry Lakes) Petroglyph District ACEC: Located in Pah Rah Range, includes public lands within:

Mt. Diablo Meridian

T. 20 N., R 21 E.,
Sec. 9
Sec. 10
Sec. 14
Sec. 15
Sec. 16
Sec. 17
Sec. 20
Sec. 21
Sec. 22
Sec. 28
Sec. 29

Virginia Range Williams Combleaf Habitat Area ACEC: Located in Virginia Range, including all public lands within:

Mt. Diablo Meridian

T. 17 N., R 20 E.,
Sec. 15 SW¼ NW¼
Sec. 16 E½
Sec. 16 E½ NW¼
Sec. 16 E½ SW¼

Future acquisitions within the planning area, acquired by exchange, donation, or purchase that fall under BLM jurisdiction, will be managed the same as adjacent BLM lands.

Maps of the Off Road Vehicle Designations and Areas of Critical Environmental Concern are available from the following BLM office: BLM-Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701.

FOR FURTHER INFORMATION CONTACT: Terri Knutson, Planning and Environmental Coordinator, BLM-Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (775) 885–6000. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Authority: Authority for these decisions is contained in CFR title 43, chapter II, part 1610, subparts 1610.7–2 and CFR title 43, chapter II, part 8340, subparts CFR 8342 and 8343.

Penalty: Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any person failing to comply with the designations provided in the notice, may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, other penalties in accordance with 43 U.S.C. 1733, or both.

Administrative and Emergency Use: These designations do not apply to emergency or law enforcement personnel, or BLM employees engaged in the performance of their official duties.

Dated: May 4, 2001.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 01–27454 Filed 10–31–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT 100–01–1610–DO–083]

Intent To Prepare a Resource Management Plan for Public Lands and Resources in Garfield, Piute, Sanpete, Sevier, and Wayne Counties, UT

AGENCY: Richfield Field Office, Bureau of Land Management, Richfield, Utah.

ACTION: Notice of intent to prepare a Resource Management Plan (RMP) for public lands and resources managed by the Richfield Field Office. This action will require preparation of an Environmental Impact Statement (EIS). These lands are located in Garfield, Piute, Sanpete, Sevier and Wayne counties, Utah.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare an RMP and associated EIS for the Richfield Field Office. This planning activity encompasses approximately 2.2 million acres of public land in the above named counties and the leaseable mineral estate on portions of the Dixie and Fishlake National Forests. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work closely with interested parties to identify potential management decisions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and national needs and concerns. This notice initiates the public scoping process to identify planning issues and to review preliminary planning criteria.

DATES: The scoping comment period will commence with the publication of this notice. Formal scoping will end 60 days after publication of this notice. Comments on issues and planning criteria will be most useful if received on or before the end of the scoping period at the address listed below.

Public Participation: Public meetings will be held throughout the plan scoping and preparation period. In order to ensure local community participation and input, public meetings will be held, at a minimum, in the towns of Junction, Loa, Manti, and Richfield, Utah. Early participation by all interested parties is encouraged and will help determine the future management of the Richfield Field Office public lands. At least 15 days public notice will be given for activities where the public is invited to attend. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed. Written comments will be accepted throughout the planning process at the address shown below. Meetings and comment deadlines will be announced through the local news media, newsletters and the BLM Web site (*www.ut.blm.gov*). In addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment on the alternatives and upon publication of the draft RMP/EIS.

ADDRESSES: Written comments should be sent to RMP Comments, Bureau of Land Management, Richfield Field Office, 150 East 900 North, Richfield, Utah 84701; Fax 435–896–1550. Documents pertinent to this proposal may be examined at the BLM's Richfield Field Office. Comments, including names and street addresses of respondents, will be available for public review at the Richfield Field Office during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Frank Erickson, Assistant Field Manager for Planning, BLM Richfield Field Office, 150 East 900 North, Richfield, UT 84701, phone: 435–896–1532, e-mail: *frank_erickson@ut.blm.gov.*

SUPPLEMENTARY INFORMATION: Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date of the existing issues and concerns with current management. The major issue themes that will be addressed in the plan effort are management and protection of public land resources; access to and transportation on the public lands; off-highway vehicle management; wilderness study area recommendations; and balancing multiple uses. Other specific issues may include; cultural resource management, fire management, forestry and woodland harvest management, lands and realty management, rangeland health and management, wild horse and burro management, potential establishment of wilderness study areas, areas of critical environmental concern, wild and scenic rivers, and special status species management.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase. An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Rangeland management, minerals and geology, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology, and economics. Additional expertise will be included as appropriate.

Background Information

Public lands managed by the Richfield Field Office are situated in south-central Utah in the canyons, plateaus and deserts of the Great Basin and Colorado Plateau physiographic provinces. The field office borders the Colorado River, Glen Canyon National Recreation Area, Capitol Reef National Park, and portions of the Dixie, Fishlake, Manti-LaSal, and Uinta National Forests. Major waterways include the Sevier, San Pitch, Fremont, Muddy, and Dirty Devil rivers and the Piute, Otter Creek, and Sevier Bridge (Yuba) reservoirs. Elevations in the area range from 3,800 feet in the Cane Spring Desert to over 11,500 feet atop Mt. Ellen in the Henry Mountains.

The Richfield Field Office is presently managed under five existing land use plans:

- Mountain Valley Management Framework Plan (MFP), approved in 1982
- Henry Mountain MFP, approved in 1982
- Parker Mountain MFP, approved in 1982
- Cedar-Beaver-Garfield-Antimony (CBGA) RMP, approved in 1984
- San Rafael RMP, Approved in 1991

The existing plans are out-of-date with respect to current resource conditions, public values, laws, regulations and policies.

As part of the land use planning process, the FLPMA mandates that the BLM give priority to the designation and protection of Areas of Critical Environmental Concern (ACEC) in developing and revising land use plans. As part of the Richfield Field Office RMP planning effort, the BLM will determine what areas, if any, should be designated as ACECs. As such, BLM is requesting nominations for areas that the public may see as being appropriately managed as ACECs.

Additional public nominations are also being sought for those rivers which may be eligible for inclusion into the National Wild and Scenic River System. In order to be considered, the body of water must be free flowing and contain at least one outstandingly remarkable value. The river can be any size and must be existing or flowing in a natural condition without major modification. All nominations should be accompanied by detailed maps, descriptions of the river segment, and river related values. Rivers will also be tentatively classified as wild, scenic or recreational. An interdisciplinary team in coordination with planning partners will make preliminary determinations as to eligibility and classification of river segments. These preliminary determinations will be made available for public review prior to issuance of the Draft RMP/Draft EIS.

Preliminary Planning Criteria have been identified to help guide the planning effort. The Richfield Field Office Resource Management Plan and the process used for developing it will: (1) Recognize valid existing rights; (2) comply with laws, regulations, executive orders and BLM supplemental program guidance; (3) include management direction for public lands, including split estate lands managed by BLM; (4) determine the desired future condition of public lands using, where possible, a collaborative and multi-jurisdictional approach; (5) ensure, within applicable laws and policies, that management prescriptions and planning actions complement those of neighboring Federal, tribal, state, county and municipal planning jurisdictions; (6) focus management prescriptions on the harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment, giving consideration to the relative values of the resources and not necessarily the combination of uses that provide the greatest economic return or greatest unit output; (7) address the social and economic impacts of the alternatives; (8) utilize current scientific information, research, new technologies and the results of inventory, monitoring and coordination to determine appropriate local and regional management strategies to enhance or restore impaired ecosystems; (9) apply comprehensive Land Health Standards to all activities and uses; (10) develop and portray baseline Reasonable Foreseeable Management/Development (RFD) scenarios based on historical, existing, and projected development levels for appropriate programs; (11) coordinate with Indian Tribes to identify sites, areas and objects important to their culture and religious heritage; (12) evaluate paleontological and cultural

resources for use allocations, if appropriate, including provisions for interpretation, preservation, conservation and enhancement; (13) comply with the Endangered Species Act and follow interagency agreements with the USFWS regarding consultation; (14) develop vegetation management objectives for all areas; (15) develop management actions that are responsive to the issues, concerns and opportunities identified for resolution in this plan; and (16) develop direction for managing off-highway vehicles consistent with BLM's national OHV strategy.

This notice announces the beginning of the formal public involvement period. The Richfield Field Office is seeking public involvement at the earliest possible stages of this planning endeavor to enhance collaboration. If you have information, or concerns you would like to share, including ideas or opportunities that could enhance data collection, resource inventories, formulation of issues or alternatives, or development of planning criteria, please submit them to the above address.

Alternatives will be developed and analyzed to resolve those issues identified during the scoping process and a Draft RMP/Draft EIS will be published and made available for public review.

Dated: September 6, 2001.

Robert A. Bennett,

Acting State Director.

[FR Doc. 01–27424 Filed 10–31–01; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–031–1430–ET; UTU 44415]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, has filed an application to extend Public Land Order No. 6132 for a 20-year period. This order withdrew public land from location or entry under the mining laws to protect the Escalante Administrative Site.

DATES: Comments and requests for a public meeting must be received by January 30, 2002.

ADDRESSES: Comments and meeting requests should be sent to the Monument Manager, Grand Staircase-Escalante National Monument, 180 West 300 North, Kanab, Utah 84741.

FOR FURTHER INFORMATION CONTACT: Darrell Olsen, Realty Specialist, Escalante Field Station, P.O. Box 225, Escalante, Utah, 84726, 435–826–5611.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to extend Public Land Order No. 6132 for an additional 20-year period. Public Land Order No. 6132, which expires on February 16, 2002, withdrew 40 acres from location or entry under the mining laws to protect the Bureau of Land Management's Escalante Administrative Site.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing, by the date specified above, to the Monument Manager, Grand Staircase-Escalante National Monument, Kanab, Utah.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request, by the date specified above, to the Monument Manager, Grand Staircase-Escalante National Monument, Kanab, Utah. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Roger Zortman,

Deputy State Director, Division of Lands and Minerals.

[FR Doc. 01–27458 Filed 10–31–01; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–919 (Final)]

Certain Welded Large Diameter Line Pipe From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Japan of certain welded large diameter line pipe, provided for in subheadings 7305.11.10, 7305.11.50, 7305.12.10, 7305.12.50, 7305.19.10, and 7305.19.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective January 10, 2001, following receipt of a petition filed with the Commission and Commerce by Berg Steel Pipe Corp. (Panama City, FL); American Steel Pipe Division of American Cast Iron Pipe Co. (Birmingham, AL); and Stupp Corp. (Baton Rouge, LA). The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of certain welded large diameter line pipe from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 9, 2001 (66 FR 35811). The hearing was held in Washington, DC, on October 9, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in the investigation to the Secretary of Commerce on October 25, 2001. The views of the Commission are contained in USITC Publication 3464 (November 2001), entitled Certain Welded Large Diameter Line Pipe from Japan: Investigation No. 731–TA–919 (Final).

By order of the Commission.

Issued: October 26, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27428 Filed 10–31–01; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[USITC SE–01–038]

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 7, 2001 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meeting:* none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–402 and 731–TA–892–893 (Final)(Honey from Argentina and China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on November 19, 2001).
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 29, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27569 Filed 10–30–01; 12:36 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Census of Law Enforcement Training Academies.

The Department of Justice, office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 31, 2001.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Matthew Hickman, 202–353–1631, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Census of Law Enforcement Training Academies.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ–52, Bureau of Justice Statistics, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 800 respondents will complete a one hour survey form CJ–52.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the survey is 1,200 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: October 26, 2001.

Brenda E. Dyer,

Department Deputy Clearance Office, Department of Justice.

[FR Doc. 01–27427 Filed 10–31–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the following medical reports: CM–907, Report of Ventilatory Study; CM–2907, Report of Ventilatory Study; CM–933, Roentgenographic Interpretation; CM–933b, Roentgenographic Quality Rereading; CM–988, Medical History and Examination for Coal Mine Worker's Pneumoconiosis; and CM–1159, Report of Arterial Blood Gas Study.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 31, 2001.

ADDRESSEE: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451, email: *pforkel@fenix2.dol-esa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Black Lung Benefits Act of 1977, as amended, 30 U.S.C. 901 et. seq., provides for the payment of benefits to coal miners who have contracted black

lung disease as a result of coal mine employment, and their dependents and survivors. When a miner applies for benefits, the Division of Coal Mine Workers' Compensation (DCMWC) is required to schedule a series of diagnostic tests to help establish eligibility for black lung benefits. Each of the diagnostic tests has its own form setting forth the medical results. The forms are: CM–907, Report of Ventilatory Study; CM–2907, Report of Ventilatory Study; CM–933, Roentgenographic Interpretation Form; CM–933b, Roentgenographic Quality Rereading; CM–988, Medical History and Examination for Coal Mine Worker's Pneumoconiosis; and CM–1159, Report of Arterial Blood Gas Study.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to determine eligibility for black lung benefits. The CM–2907 is a new form designed to apply to all claims filed after January 20, 2001.

Type of Review: Revision.

Agency: Employment Standards Administration.

Titles: Report of Ventilatory Study (CM–907); Report of Ventilatory Study (CM–2907); Roentgenographic Interpretation (CM–933); Roentgenographic Quality Reading (CM–933b); Medical History and Examination for Coal Mine Workers' Pneumoconiosis (CM–988); Report of Arterial Blood Gas Study (CM–1159).

OMB Number: 1215–0090.

Agency Numbers: CM–907, CM–2907, CM–933, CM–933b, CM–988, CM–1159.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Total Respondents: 26,000.

Total Annual responses: 26,000.

Estimated Total Burden Hours: 6,334.

Form	Respondents	Responses	Average minutes per response	Burden hours
CM–907	100	100	20	33
CM–2907	4,900	4,900	20	1,634
CM–933	6,000	6,000	5	500
CM–933b	5,000	5,000	5	417
CM–988	5,000	5,000	30	2,500
CM–1159	5,000	5,000	15	1,250

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 19, 2001.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 01–27449 Filed 10–31–01; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Respirator Program Records

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood and the impact of collection rquriements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to respirator program records. MSHA is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before December 31, 2001.

ADDRESSES: Send comments to Gordon J. Burke, Jr., Director, Administration and Management, 4015 Wilson Boulevard, Room 615, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via e-mail to *Burke-Gordon@msha.gov*, along with an original printed copy. Mr. Burke can be reached at (703) 235–1383 (voice) or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Charlene Barnard, Records Management Division, Administration and Management, U.S. Department of Labor, Mine Safety and Health Administration, Room 725, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Barnard can be reached at *barnard-charlene@msha.gov* (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(a)(7) of the Mine Act mandates in part that mandatory standards prescribe the use of protective equipment where appropriate to protect miners against hazards. Where protective equipment or respirators are required because of exposure to harmful substances, MSHA must ensure that such equipment offers adequate protection for workers. A written respirator program that addresses such issues as selection, fitting, use, and maintenance of respirators is essential for ensuring that workers are properly and effectively using the equipment. Records of fit-testing are essential for determining that the worker is wearing the proper respirator.

Title 30 CAR sections 56.5005 and 57.5005 require metal and nonmetal mine operators to institute a respirator program governing selection, maintenance, training, fitting, supervision, cleaning and use of respirators. To control those occupational diseases caused by breathing air contaminated with harmful dusts, fumes, mists, gases, or vapors, the primary objective is to prevent atmospheric contamination. MSHA's current policy, as prescribed by regulation, is to require that this be accomplished by feasible engineering measures. When effective controls are not feasible, or while they are being instituted, or during occasional entry into hazardous atmospheres to perform maintenance or investigations, appropriate respirators are to be used in accordance with established procedures protecting the miners.

Sections 56.5005 and 57.5005 incorporate by reference requirements of the American National Standards Institute (ANSI Z88.2–1969). These incorporated requirements mandate that miners who must wear respirators be fit-tested to the respirators that they will use. Certain records also required to be kept in connection with respirators, including records of the date of issuance of the respirator, and fit-test results. The fit-testing records are essential for determining that the worker is wearing the proper respirator.

II. Current Actions

The mine opertor uses the information to properly issue respiratory protection to miners when feasible engineering and/or administrative controls do not reduce the exposure to permissible levels. Fit-testing records are used to ensure that a respirator worn by an individual is in fact the one for which that individual received a tight fit. MSHA uses the information to determine compliance with the standard.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Respirator Program Records.

MOB Number: 1219–0048.

Record keeping: None.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 56.5005 and 57.5005.

Total Respondents: 310.

Frequency: On occasion.

Total Responses: 5,530.

Average Time per Response: 4.04 hours.

Estimated Total Burden Hours: 2,235 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $156,350.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget Approval of the information collection request; they will also become a matter of public record.

Dated: October 26, 2001.

Gordon J. Burke, Jr.,

Director, Administration and Management and Information Resources.

[FR Doc. 01–27451 Filed 10–31–01; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Rock Burst Control Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before December 31, 2001.

ADDRESSES: Send comments to Gordon J. Burke, Jr., Director, Administration and Management, 4015 Wilson Boulevard, Room 615, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Burke-Gordon@msha.gov*, along with an original printed copy. Mr. Burke can be reached at (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Gordon J. Burke, Jr., Director, Administration and Management, U.S. Department of Labor, Mine Safety and Health Administration, Room 615, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Burke can be reached at *burke-gordon@msha.gov* (Internet E-mail), (703) 235–1383 (voice), or (703) 235–1381 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

When rock bursts occur in an underground mine, they pose a serious threat to the safety of miners in the area affected by the burst. These bursts may reasonably be expected to result in the entrapment of miners, death, and serious physical harm. Recent mining technology has disclosed scientific methods of monitoring rock stresses which will allow the prediction of an oncoming burst. These predictions can be used by the mine operator to move miners to safer locations and to

establish areas which need relief drilling. Title 30, Section 57.3461 requires operators of underground metal and nonmetal mines to develop a rock burst control plan within 90 days after a rock burst has been experienced.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Rock Burst Control Plans. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page *(http://www.msha.gov)* and selecting "Statutory and Regulatory information" then "Paperwork Reduction Act submission *(http://www.msha.gov/regspwork.htm)*", or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

This information collection needs to be extended to provide for the protection of miners from entrapment, death, or serious physical harm in metal and nonmetal underground mines with a history of rock bursts.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Rock Burst Control Plans.
OMB Number: 1219–0097.
Recordkeeping: The control plan must be maintained at all times and updated as conditions warrant.
Affected Public: Business or other for-profit.
Frequency: On occasion.
Cite/Reference/Form/etc: 30 CFR 57.3461.
Total Respondents: 2.
Total Responses: 2.
Average Time per Response: 12 hours.
Estimated Total Burden Hours: 12 hours.
Total Annualized Capital/Startup Costs: $0.
Total Operating and Maintenance Costs: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 26, 2001.

Gordon J. Burke, Jr.,

Director, Administration and Management.

[FR Doc. 01–27452 Filed 10–31–01; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–89]

Intertek Testing Services, NA, Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Intertek Testing Services, NA, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties, or any request for extension of the time to comment, must be received no later than November 16, 2001.

ADDRESSES: Submit written comments concerning this notice to: Docket Office, Docket NRTL1–89, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648. Submit request for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Intertek Testing Services, NA, Inc. (ITSNA), has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). ITSNA's expansion request covers the use of an additional testing site. OSHA's current scope of recognition for ITSNA may be found in the following informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/its.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

The most recent notices published by OSHA for ITSNA's recognition covered its renewal of recognition, which OSHA announced on December 17, 1998 (63 FR 69676) and granted on May 29, 2001 (66 FR 29178). In the May notice, we briefly explain the lapse in time between the two notices. Generally, the period between the two notices is about 1 to 2 months.

The current address of the ITSNA testing facilities already recognized by OSHA are:

ITSNA Antioch, 2200 Wymore Way, Antioch, California 94509
ITSNA Atlanta, 1950 Evergreen Blvd., Suite 100, Duluth, Georgia 30096
ITSNA Boxborough, 70 Codman Hill Road, Boxborough, Massachusetts 01719
ITSNA Cortland, 3933 U.S. Route 11, Cortland, New York 13045
ITSNA Los Angeles, 27611 LaPaz Road, Suite C, Laguna Niguel, California 92677
ITSNA Madison, 8431 Murphy Drive, Middleton, Wisconsin 53562
ITSNA Minneapolis, 7250 Hudson Blvd., Suite 100, Oakdale, Minnesota 55128
ITSNA San Francisco, 1365 Adams Court, Menlo Park, CA 94025
ITSNA Totowa, 40 Commerce Way, Unit B, Totowa, New Jersey 07512
ITSNA Vancouver, 211 Schoolhouse Street, Coquitlam, British Columbia, V3K 4X9 Canada
ITSNA Hong Kong, 2/F., Garment Centre, 576 Castle Peak Road, Kowloon, Hong Kong
ITSNA Taiwan, 14/F., Huei Fung Building, 27, Chung Shan North Road, Sec. 3, Taipei 10451, Taiwan

The current address of the additional ITSNA testing site covered by the expansion application is: Intertek Testing Services NA Sweden AB, Box 1103, S–164 122, Kista, Stockholm, Sweden.

General Background on the Application

ITSNA has submitted an application, dated February 25, 1997 (see Exhibit 35), to expand its recognition to include a site located in Stockholm, Sweden. The NRTL Program staff reviewed the application and determined that it was acceptable based on the guidelines that were then in effect. However, the program staff deferred further consideration of the application primarily due to processing of other requests submitted by ITSNA for expansion and renewal of its recognition, which were pending at the time the application was received. As explained in prior **Federal Register** notices, most recently a notice published on May 29, 2001 (66 FR 29178), consideration of those other requests had been deferred until December 1996.

The program staff resumed processing of the application for recognition of the Stockholm facility in June 1998, and the staff performed an on-site review (assessment) of the facility on September 24–25, 1998. In the on-site review report (see Exhibit 36), the program staff recommended a "positive finding," which means a positive recommendation on the recognition to the Assistant Secretary. However, the Agency further delayed processing of the application in January 1999 pending resolution of certain requests made by ITSNA, which also affected the other requests by ITSNA for expansion and for renewal of its recognition. In April 2000, ITSNA submitted information pertinent to its other requests and to its application for the Stockholm site and submitted additional information pertinent to the application in July 2001. The NRTL Program staff has reviewed the information and determined that OSHA may proceed with processing the application for the Stockholm site.

The application contains sufficient information demonstrating the testing capabilities of the Stockholm site listed above. The additional information list the personnel to be devoted to testing for ITSNA's NRTL operations and shows that the site listed above is a wholly-owned subsidiary of ITSNA. OSHA's recognition of the additional site would not be limited to any particular test standards. However, recognition of this site would be limited to performing product testing only to the test standards for which the site has the proper capability and programs, and for which OSHA has recognized ITSNA. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites. The Agency would not recognize the site to issue certifications under ITSNA's operations as an NRTL. Currently, ITSNA issues such certifications only at specific sites listed above, and OSHA must review and accept the Stockholm site before ITSNA issues certifications there. In addition, OSHA would permit the site to use of all eight of the "supplemental" programs. OSHA has already recognized ITSNA for these programs and, as a result, we are not listing them again in this notice, but merely providing this information as a matter of public interest.

OSHA has described the "supplemental" programs referred to above in a March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice described nine (9) programs and procedures (collectively, programs), eight of which (the "supplemental programs") an NRTL may use to control, audit, and accept the data relied upon for product certification. Such data is not normally generated at the NRTL's facility or by NRTL personnel. The notice also includes the criteria for the use by the NRTL of these eight, or supplemental, programs. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product.

OSHA developed the programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under the programs only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Existing Conditions

Currently, OSHA imposes the following conditions on its recognition of ITSNA as an NRTL. These conditions would apply also to the recognition of the Stockholm site. As mentioned in previous notices, these conditions apply solely to ITSNA's operations as an NRTL, and are in addition to any other condition that OSHA normally imposes in its recognition of an organization as an NRTL. These conditions are listed in this notice mainly for information.

(1) ITSNA may perform safety testing for hazardous location products only at the specific ITSNA sites that OSHA has recognized, and that have been pre-qualified for such testing by the ITSNA Chief Engineer. In addition, all safety test reports for hazardous location products must undergo a documented review and approval at the Cortland testing facility by a test engineer qualified in hazardous location safety testing, prior to ITSNA's initial or continued authorization of the certifications covered by these reports.

(2) ITSNA may not test and certify any products for a client that is a manufacturer or vendor that is either owned in excess of 2% by ITSLtd or affiliated organizationally with ITSNA, including Compliance Design.

Preliminary Finding

ITSNA has submitted an acceptable request for expansion of its recognition as an NRTL. As previously mentioned, in connection with the request, OSHA has performed an on-site review (evaluation) of the ITSNA Stockholm, Sweden, facility (site). ITSNA has addressed the discrepancies noted by the assessors following the review, and the assessors included the resolution in the on-site review reports (see Exhibit 36).

Following a review of the application file, the on-site review report, and other pertinent information, the NRTL Program staff has concluded that OSHA can grant to ITSNA the expansion of recognition for the Stockholm, Sweden, site listed above, subject to the conditions as noted. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendations of the staff, the Assistant Secretary has made a preliminary finding that Intertek Testing Services, NA, Inc., can meet the requirements as prescribed by 29 CFR 1910.7 for the expansion of recognition, subject to the above conditions. This preliminary finding, however, does not constitute an interim or temporary approval of the applications for ITSNA.

OSHA welcomes public comments, in sufficient detail, as to whether ITSNA has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESSES**), no later than the last date for comments (see "DATES" above). You may obtain or review copies of ITSNA's application, the on-site review report, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL1–89, the permanent record of public information on ITSNA's recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant ITSNA's expansion request. The Assistant Secretary will make the final decision on granting the expansion, and in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register.**

Signed at Washington, DC this 22d day of October, 2001.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 01–27450 Filed 10–31–01; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–138]

NASA Advisory Council (NAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NASA Advisory Council (NAC).

DATES: Tuesday, November 6, 2001, 11 a.m.–5 p.m. Eastern Standard Time.

ADDRESS: NASA Headquarters, 300 E Street, SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IC, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is to review and discuss the report of the International Space Station Management and Cost Evaluation (IMCE) Task Force. After the IMCE Task Force presents its findings and recommendations, the NASA Administrator will provide his comments to the report. The meeting will conclude with deliberation of the report by the NAC.

The planned release date of the IMCE Task Force report is November 2, 2001. A copy of the report may be obtained by contacting Mr. Daniel Hedin, Code ML, 202/358–1691, or by accessing *ftp://ftp.hq.nasa.gov/pub/pao/reports/2001/imce.pdf.*

Exceptional circumstances require that this meeting be held on November 6, 2001. A congressional hearing regarding this report is expected in early November 2001, and it is appropriate for the NAC to receive and discuss the results of the IMCE Task Force prior to any formal congressional review. Review and discussion by the NAC at this time, with the opportunity for members of the public to participate, will allow consideration of appropriate actions in response to the findings and recommendations in a timely manner for submission with the Agency's Fiscal Year 2003 budget request.

Following the meeting on November 6, 2001, the NAC will continue to consider the IMCE Task Force report at its next meeting, planned for early December 2001. Due to increased security measures at NASA Headquarters, please contact Ms. Kathy Dakon at 202/358–0732 if you plan to attend the meeting. Visitors will be requested to sign a visitor's register and will require escort within the NASA Headquarters building.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–27461 Filed 10–29–01; 3:56 pm]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend a Current Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request approval of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by December 31, 2001 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

Comments: Written comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF Proposal Review Process.

OMB Control No.: 3145–0060.

Expiration Date of Approval: March 31, 2002.

Proposed Project Proposal Evaluation Process

The National Science Foundation (NSF) is an independent Federal agency created by the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–75). The Act states the purpose of the NSF is "to promote the progress of science; [and] to advance the national health, prosperity, and welfare" by supporting research and education in all fields of science and engineering."

From those first days, NSF has had a unique place in the Federal Government: It is responsible for the overall health of science and engineering across all disciplines. In contrast, other Federal agencies support research focused on specific missions such as health or defense. The Foundation also is committed to ensuring the nation's supply of scientists, engineers, and science and engineering educators.

The Foundation fulfills this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. It does this through grants and cooperative agreements to more than 2,000 colleges, universities, K–12 school systems, businesses, informal science organizations and other research institutions throughout the U.S. The Foundation accounts for about one-fourth of Federal support to academic institutions for basic research.

The Foundation relies heavily on the advice and assistance of external advisory committees, ad-hoc proposal reviewers, and to other experts to ensure that the Foundation is able to reach fair and knowledgeable judgments. These scientists and educators come from colleges and universities, nonprofit research and education organizations, industry, and other Government agencies.

In making its decisions on proposals the counsel of these merit reviewers has proven invaluable to the Foundation both in the identification of meritorious projects and in providing sound basis for project restructuring.

Review of proposals may involve large panel sessions, small groups, or use of a mail-review system. Proposals are reviewed carefully by scientists or engineers who are expert in the particular field represented by the proposal. About 50% are reviewed exclusively by panels of reviewers who gather, usually in Arlington, VA, to discuss their advice as well as to deliver it. About 35% are reviewed first by mail reviewers expert in the particular field, then by panels, usually of persons with more diverse expertise, who help the NSF decide among proposals from multiple fields or subfields. Finally, about 15% are reviewed exclusively by mail.

Use of the Information

The information collected is used to support grant programs of the Foundation. The information collected on the proposal evaluation forms is used by the Foundation to determine the following criteria when awarding or declining proposals submitted to the Agency: (1) What is the intellectual merit of the proposed activity? (2) What are the broader impacts of the proposed activity?

The information collected on reviewer background questionnaires is used by managers to maintain an automated database of reviewers for the many disciplines represented by the proposals submitted to the Foundation. Information collected on gender, race, ethnicity is used in meeting NSF needs for data to permit response to Congressional and other queries into equity issues. These data are also used in the design, implementation, and monitoring of NSF efforts to increase the participation of various groups in science, engineering, and education.

Confidentiality

When a decision has been made (whether an award or a declination), verbatim copies of reviews, excluding the names of the reviewers, and summaries of review panel deliberations, if any, are provided to the PI. Proposers also may request and obtain any other releasable material in NSF's file on their proposal. Everything in the file except information that directly identifies either reviewers or other pending or declined proposals is usually releasable to the proposer.

While listings of panelists' names are released, the names of individual reviewers, associated with individual proposals, are not released to anyone.

Because the Foundation is committed to monitoring and identifying any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s), the Foundation also collects information regarding race, ethnicity, disability, and gender. This information is also protected by the Privacy Act.

Burden on the Public

The Foundation estimates that anywhere from one hour to twenty hours may be required to review a proposal. It is estimated that approximately five hours are required to review an average proposal. Each proposal receives an average of 8.5 reviews.

Dated: October 29, 2001.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 01–27453 Filed 10–31–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission

DATE: Weeks of October 29, November 5, 12, 19, 26, December 3, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 29, 2001

There are no meetings scheduled for the week of October 29, 2001.

Week of November 5, 2001—Tentative

There are no meetings scheduled for the week of November 5, 2001.

Week of November 12, 2001—Tentative

Thursday, November 15, 2001

2 p.m.
Discussion of Intragovernmental Issues (Closed-Ex. 1).

Week of November 19, 2001—Tentative

There are no meetings scheduled for the Week of November 19, 2001.

Week of November 26, 2001—Tentative

There are no meetings scheduled for the Week of November 26, 2001.

Week of December 3, 2001—Tentative

Monday, December 3, 2001

2 p.m.
Briefing on Status of Steam Generator Action Plan (Public Meeting) (Contact: maitri Banerjee, 301–415–2277).

Wednesday, December 5, 2001

1.25 p.m.
Affirmation Session (Public Meeting) (if needed).

1:30 p.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public

Meeting) (Contact: John Larkins, 301–415–7360).

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information:

By a vote of 5–0 on October 19, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intragovernmental Issues (Closed–Ex. 1 & 9)" be held on October 22, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/SECY/smj/schedule.htm.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 25, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–27522 Filed 10–29–01; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27458]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 26, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 20, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 20, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Conectiv, et al. (70–9899)

Conectiv, a registered holding company, Atlantic City Electric Company ("ACE"), a public utility subsidiary of Conectiv, Conectiv Resource Partners, Inc. ("CRPI"), the Conectiv system's service company, each located at P.O. Box 231, Wilmington, Delaware 19899–0231, and Atlantic City Electric Transition Funding LLC ("Special Purpose Issuer"), Mail Code: 89KS33, P.O. Box 15597, Wilmington, Delaware 19850–0231, (collectively, "Applicants") have filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b), 12(d), 12(f) and 13(b) of the Act and rules 42–45, 90, 91 and 54 under the Act.

The proposals set forth in the Application relate to recovery of stranded costs resulting from the restructuring of the electric utility industry by the State of New Jersey.

As of December 31, 2000, ACE served approximately 501,000 customers in its service, territory, covering an area of about 2,700 square miles in the southern one-third of New Jersey. ACE's customer base consists primarily of residential and commercial customers. ACE reported net income after extraordinary items of $54.4 million on revenue of $968.4 million for the year ended December 31, 2000.

The New Jersey Electric Discount and Energy Competition Act (the "Competition Act"), was signed into law in February 1999. The Competition Act provides, among other things, for the restructuring of the electric utility industry in New Jersey. The Competition Act requires the unbundling of electric services into separate generation, transmission, and distribution services with open retail competition for generation services. The Competition Act provides for utilities to recover the anticipated loss in value of their generation-related assets and the costs incurred under powder purchase contracts with nonutility generators of electricity that are not recoverable under market rates. The Competition Act also provides for the recovery of these stranded costs through a non-bypassable charge included in customers' bills ("Market Transition Charge").

The Competition Act authorizes a utility to securitize its right to recover stranded costs through the issuance of asset-backed debt securities ("Transition Bonds") by the electric public utility or other financing entity approved by the New Jersey Board of Public Utilities ("BPU"). To the extent a utility's right to recover stranded costs is securitized, a portion of the Market Transition Charge is replaced by a non-bypassable irrevocable charge included in customers' electric bills ("Transition Bond Charge"), which is designed to meet the costs of paying the principal of and interest on the Transition Bonds and the costs associated with the issuance, credit enhancing, and servicing of the Transition Bonds. The Competition Act also authorizes the recovery of a related Market Transition Charge tax component (the "MTC Tax"). The right to charge, collect, and receive the Transition Bond Charge, as well as the MTC Tax, constitute "Bondable Transition Property." In order to facilitate the issuance of Transition Bonds, ACE formed the Special Purpose Issuer March 28, 2001, under a limited liability company agreement with ACE as its sole member, and acquired its securities under authority granted through prior Commission orders.

The Competition Act authorizes the BPU to issue a "bondable stranded costs rate order," such as a BPU financing order, approving, among other things, the issuance of transition Bonds to recover bondable stranded costs and related expenses of a public electric utility. A utility, a finance subsidiary of a utility or a third-party assignee of a utility may issue Transition Bonds.

On June 25, 2001, ACE field a petition with the BPU requesting issuance by the BPU of a bondable stranded costs rate order under the Competition Act to allow ACE to monetize its bondable stranded costs, plus associated transaction costs and the cost of retiring its debt or equity or both. The final structure, pricing and other terms of the Transition Bonds will be subject to the approval of the BPU or its designee. BPU approval will be obtained prior to any sale of Transition Bonds.

By order dated February 26, 1998, HCAR No. 26833, and by various supplemental orders [1] (the "Prior Orders"), the Commission authorized Conectiv and its subsidiaries to engage in various financial transactions. Applicants now request authority, to the extent not already authorized in the Prior Orders, through May 31, 2006 ("Authorization Period"), for: (1) ACE to sell and/or assign Bondable Transition Property to the Special Purpose Issuer from time to time in exchange for the net proceeds from the sale of a series of Transition Bonds; (2) the Special Purpose Issuer to issue and sell Transition Bonds from time to time, in accordance with an underwriting agreement, in an aggregate principal amount up to $1.7 billion to be authorized and approved by the BPU; (3) the Special Purpose Issuer to enter into interest rate swaps, interest rate hedging programs, and credit enhancement arrangement to reduce interest rate and credit risks with respect to, and to facilitate the issuance of, Transition bonds; (4) ACE to act as the servicer of the Bondable Transition Property and enter into a servicing agreement under the ACE or an affiliate will perform services for the Special Purpose Issuer and receive compensation determined on a market rate basis; [2] (5) ACE, CRPI or any successor entity, or another affiliate to act as the administrator for the Special Purpose Issuer under an administration agreement and receive compensation which will be equal to a market rate fee,[3] (6) the Special Purpose Issuer to use the proceeds from the Transition Bonds to pay the expenses of issuance and to purchase the Bondable Transition Property from ACE [4]; and (7) ACE to indemnify the Special Purpose Issuers.

[1] *Conectiv*, NCAR No. 26907 (August 21, 1998); *Conectiv*, HCAR No. 26921 (Sept. 28, 1998); *Conectiv*, HCAR No. 26930 (Oct. 21, 1998); *Conectiv, et al.*, HCAR No. 27111 (Dec. 14, 1999); *Conectiv, et al.*, HCAR No. 27213 (Aug. 17, 2000); and *Conectiv, et al.*, HCAR No. 27415 (June 7, 2001).

National Fuel Gas Company, et al. (70–9959)

National Fuel Gas Company ("National"), a registered holding company, its wholly owned nonutility subsidiary, Horizon Energy Development, Inc. ("Horizon,") and Horizon's wholly owned nonutility subsidiary, Horizon energy Holdings, Inc. ("Holdings"), and Holding's subsidiaries (collectively, "Applicants") all located at 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(f), 13(b), 32 and 33 of the Act and rules 42, 43, 45(a), 46, 54, 90 and 91 under the Act.

By order dated August 29, 1995 (HCAR Nos. 26364 ("Order"), through December 31, 2001, National and Horizon were authorized to engage in various transactions, through intermediate subsidiaries ("Intermediate Subsidiaries"), relating to potential direct or indirect investments in "exempt wholesale generators" ("EWGs") and "foreign utility companies" ("FUCOs"), as defined in sections 32 and 33 of the Act, respectively.[5] The Order also authorized National and Horizon to engage in related energy consulting activities.

Specifically, the Commission authorized National to organize and provide additional debt and equity capital to Horizon in an aggregate amount not to exceed $150 million outstanding at any time to invest in preliminary development activities relating to investments in, and financing the acquisition of, EWGs and FUCOs and for preliminary development activities and administrative activities relating to "qualifying facilities" under the Public Utility Regulatory Policies Act of 1978, as amended. Under the Order, National and Horizon could organize and acquire, directly or indirectly, the securities of one or more Intermediate Subsidiaries formed of the purpose of acquiring and holding the debt or equity securities of one or more EWGs or FUCOs. In the alternative, Intermediate Subsidiaries were authorized to issue and sell debt and equity securities to finance EWG and FUCO acquisitions. Additionally, National and Horizon were authorized to issue guarantees and assume liabilities in connection with investments in EWGs and FUCOs and Intermediate Subsidiaries, subject to the $150 million investment limitation. Any National subsidiary company could provide services to EWGs that derive no part of their income, directly or indirectly, from the generation of electric energy for sale in the United States, or FUCOs and National and Horizon were authorized to provide consulting and operation services, at market prices, to unaffiliated third parties for foreign and domestic energy related projects.

Subsequently, by order dated March 20, 1998 (HCAR No. 26847) ("March Order") the Commission authorized National to engage in an external financing program [6] and to use the proceeds from the financing to, among other things, make investments, directly or indirectly in EWGs and FUCOs, subject to the limitations of rule 53, and in "energy-related companies," as defined in rule 58, and subject to the limitations of that rule. The March Order states that the investment authority was intended to supersede the investment limitation contained in the Order.[7]

The Applicants are now seeking to extend, and in certain respects modify, the authority contained in the Order for the period through September 30, 2006 ("Authorization Period"). It is intended that the authority granted in this proceeding replace and supersede the Order, except with respect to any transactions that have been carried out in reliance upon the 1995 Order.

Specifically, the following transactions are proposed to be consummated during the Authorization Period. Horizon, Existing Intermediate Subsidiaries and Intermediate Subsidiaries propose to engage in preliminary developmental activities ("Development") relating to investments in: (1) EWGs and FUCOs ("Exempt Subsidiaries"); (2) Existing Intermediate Subsidiaries; (3) any additional Intermediate Subsidiaries; (4) any other direct or indirect non-exempt Horizon subsidiaries that may be formed or acquired under rule 58 ("Rule 58 Subsidiaries"); and (5) other non-exempt nonutility companies, as may be authorized in any separate proceeding ("Authorized Subsidiaries," and, together with Existing Intermediate Subsidiaries, Intermediate Subsidiaries and Rule 58 Subsidiaries, "Non-Exempt Subsidiaries"). The expenses related to EWG and FUCO Development will be

[2] Accordingly, Applicants request an exemption from "at cost" standards of section 13(b) with respect to this request.

[3] Again, Applicants request an exemption from "at cost" standards of section 13(b) with respect to this request.

[4] ACE will use these proceeds to reduce its stranded costs through the buydown or buyout of long-term power purchase contracts with non-utility generators and through the retirement of its debt or equity or both, including the retirement of debt related to specific transactions completed prior to the issuance of the Transition Bonds for the buydown or buyout of long-term power purchase contracts with non-utility generators.

[5] Under the Order, Horizon organized one Intermediate Subsidiary, Holdings, to acquire Horizon Energy Development B.V. ("Development"). Development, in turn, acquired Horizon Energy Development s.r.o. ("HED") and Power Development s.r.o. (together with Holdings, Development and HED, "Existing Intermediate Subsidiaries"). The Existing Intermediate Subsidiaries and hold interests in three FUCOs.

[6] Specifically, the Commission authorized National to issue and sell up to $750 million of short-term and long-term debt and to issue equity securities in an aggregate amount not exceeding $2 billion. The Commission limited the use of proceeds from short-term debt sales to financing National's money pool operations and those from the sale of long-term debt and equity to investments in EWGs and FUCOs.

[7] Subsequent to the date of the Order, the Commission amended rules 45(b) and 52. Applicants assert that these rules will, in most cases, exempt from sections 6(a), 7 and 12(b) the issuance of securities by Horizon and by Intermediate Subsidiaries and guarantees by these companies of securities of their subsidiary companies.

included in the "aggregate investment" calculation required by rule 53 if they lead to EWG or FUCO investments and to the extent that they were financed by National.

National, Horizon or Intermediate Subsidiaries propose to acquire, directly or indirectly, the equity securities of one or more additional Intermediate Subsidiaries exclusively organized to acquire, finance and hold the securities of one or more existing or future Exempt Subsidiaries, Rule 58 Subsidiaries or Authorized Subsidiaries. Horizon and Intermediate Subsidiaries propose to provide administrative, operating, technical and management services ("Project Services") and sell goods to other Horizon subsidiaries to the extent necessary to manage National's investments in Exempt Subsidiaries, Rule 58 Subsidiaries and other Authorized Subsidiaries. Horizon and Intermediate Subsidiaries further propose, under certain circumstances, to provide Project Services and sell goods at fair market prices, under an exemption from the cost standard under section 13(b) of the Act and rules 90 and 91.[8]

Horizon and Intermediate Subsidiaries propose to provide guarantees and other forms of credit support ("Guarantees") with respect to obligations of any other Horizon nonutility subsidiary company in an aggregate principal or nominal amount not to exceed $200 million at any one time outstanding, exclusive of any guarantees that are exempt under rules 45(b) and rule 52. The company providing any Guarantee may charge its associate company a fee in an amount not exceeding the actual cost of the liquidity required to support the Guarantee. Guarantees supporting obligations of any Rule 58 Subsidiary shall be subject to rule 58(a)(1).

National, Horizon and Intermediate Subsidiaries propose to make loans to any other partially owned subsidiary of Horizon at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. However, it is stated that no loans will be made to partially owned nonutility subsidiaries that sell goods and services to associate companies, except for those companies, enumerated above, to whom Horizon and Intermediate Subsidiaries propose to provide goods and services under a section 13(b) exemption to the "at cost" standard contained in rules 90 and 91.

National, Horizon and any Non-Exempt Subsidiaries request approval to reorganize the ownership structure and change the terms of the authorized stock capitalization of Horizon or any Non-Exempt Subsidiaries, without further Commission approval. In particular, National, Horizon or any Non-Exempt Subsidiary proposes to sell, contribute, or distribute by dividend the equity securities of one company to another. To the extent that these transactions are not exempt under the Act, Applicants propose to consolidate or reorganize, under any Intermediate Subsidiary, Horizon's ownership interests in existing and future nonutility subsidiaries. Further, Applicants request authorization for the purchasing company in a transaction structured as a sale of equity securities or assets to issue promissory notes evidencing all or a portion of the consideration given. It is stated that each transaction will comply with the applicable United States or foreign laws and accounting requirements and that the consideration for any sales transaction will equal the book value of the equity securities being sold. Finally, National, Horizon, or any Non-Exempt Subsidiary propose to change at any time the authorized number of shares or classes of shares of capital stock or the par value of any shares of capital stock of Horizon or any Non-Exempt Subsidiary, provided that the consent of all other shareholders is obtained in the case of a partially owned Non-Exempt Subsidiary.

Horizon, directly or indirectly through any subsidiary, requests authority to provide engineering, operating, maintenance, consulting and other technical support services ("Consulting Services") to third parties, including foreign governmental bodies, for energy projects. Consulting Service may include technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services, risk management services, communication systems, information systems and data processing, system and strategic planning, finance, feasibility studies and other related services. Horizon requests authority to provide Consulting Services in both the United States and foreign countries at market prices.

Horizon and Non-Exempt Subsidiaries request authority to pay dividends out of capital and unearned surplus and/or reacquire or retire any securities issued to an associate company. It is stated that these transactions will be effected to the extent allowed under applicable law and the terms of any credit or security instruments to which they may be parties.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27441 Filed 10–31–01; 8:45 am]

BILLING CODE 8010–01–M

[8] Those circumstances include instances in which the company receiving the goods or services is: (1) A FUCO or foreign EWG not deriving any income, directly or indirectly, from the generation, transmission or distribution of electric energy for sale within the United States; (2) an EWG selling electricity to nonassociate companies at market-based rates approved by the Federal Energy Regulatory Commission ("FERC"); (3) a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), selling electricity to industrial or commercial customers for their own use at negotiated prices or to electric utility companies at their "avoided cost", as defined under PURPA; (4) a domestic EWG or "qualifying facility" that sells electricity to nonassociate companies at cost based rates approved by FERC or a state commission; and (5) a Rule 58 Subsidiary or any other Authorized Subsidiary that: (a) is partially owned, provided that the ultimate purchaser of the goods or services is not an associate public utility company or an associate company that primarily provides goods and services to associate public utility companies; (b) is engaged solely in the business of developing, owning, operating and/or providing goods and services to nonutility companies described in items (1) through (4), above; or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25245]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 26, 2001.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October, 2001. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 12, 2001, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

4 Winds Family of Funds [File No. 811–10099]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 18, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on September 21, 2001.

Applicant's Address: 5800 Corporate Dr., Pittsburgh, PA 15237–7000.

First Choice Funds Trust [File No. 811–7681]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 17, 2001, applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of $58.000 incurred in connection with the liquidation were paid by First American Capital Management, Inc., applicant's investment adviser.

Filing Dates: The application was filed on September 24, 2001, and amended on October 22, 2001.

Applicant's Address: c/o PFPC Inc., 4400 Computer Drive, P.O. Box 5176, Westborough, MA 01581.

Neuberger Berman Equity Trust [File No. 811–7784]; Neuberger Berman Equity Assets [File No. 811–8106]; Neuberger Berman Equity Series [File No. 811–9011]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 15, 2000, each applicant transferred its assets to Neuberger Berman Equity Funds based on net asset value. Expenses of $400,342, $25,626 and $1,701, respectively, incurred in connection with the reorganizations were paid by each applicant.

Filing Date: The applications were filed on October 18, 2001.

Applicants' Address: 605 Third Ave., 2nd Floor, New York, NY 10158–0180.

The Pillar Funds [File No. 811–6509]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By August 27, 2001, each series of applicant transferred its assets to a corresponding series of Galaxy Fund or Galaxy Fund II, based on net asset value. Expenses of $692,397 incurred in connection with the reorganization were paid by applicant and Fleet Investment Advisors Inc., applicant's investment adviser.

Filing Date: The application was filed on September 28, 2001.

Applicants' Address: 101 Federal St., Boston, MA 02112.

Scottish Widows International Fund [File No. 811–6019]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 30, 1997, applicant transferred its assets to Federal International Equity Fund, a portfolio of International Series, Inc., based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on September 21, 2001.

Applicant's Address: Penn Square Management Corporation, 2650 Westview Dr., Wyomissing, PA 19610.

West University Fund, Inc. [File No. 811–9124]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 16, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on October 11, 2001.

Applicant's Address: 3030 University Blvd., Houston, TX 77005.

INVESCO Global Health Sciences Fund [File No. 811–6476]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 15, 2001, applicant transferred its assets to INVESCO Advantage Global Health Sciences Fund, a series of INVESCO Counselor Series Funds, Inc., based on net asset value. Expenses of $191,690 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on September 21, 2001.

Applicant's Address: 7800 E. Union Ave., Denver, CO 80237.

William Penn Interest Income Fund [File No. 811–5177]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 30, 1997, applicant transferred the assets of its portfolios to corresponding portfolios of Federated Municipal Securities Income Trust, Federated Investment Series Funds, Inc., Money Market Obligations Trust, and Federated Fund For U.S. Government Securities, Inc., based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on September 21, 2001.

Applicant's Address: Penn Square Management Corporation, 2650 Westview Dr., Wyomissing, PA 19610.

Alliance Income Builder Fund, Inc. [File No. 811–6372]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 13, 1998, applicant transferred its assets to Alliance Balanced Shares, Inc. based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on September 28, 2001.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

Alliance Limited Maturity Government Fund, Inc. [File No. 811–6627]; Alliance Mortgage Securities Income Fund, Inc. [File No. 811–3829]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 8, 2000 and December 15, 2000, respectively, each applicant transferred its assets to Alliance Bond Fund, Inc.—U.S. Government Portfolio based on net asset value. Applicants incurred no expenses in connection with the reorganizations.

Filing Date: The applications were filed on September 27, 2001.

Applicants' Address: 1345 Avenue of the Americas, New York, NY 10105.

Alliance World Income Trust, Inc. [File No. 811–6205]; Alliance Short Term Multi Market Trust, Inc. [File No. 811–5771]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On October 16, 1998 and November 13, 1998, respectively, each applicant transferred its assets to Alliance Multi-Market Strategy Trust, Inc. based on net asset value. Applicants incurred no expenses in connection with the reorganizations.

Filing Dates: The applications were filed on September 28, 2001 and September 27, 2001, respectively.

Applicants' Address: 1345 Avenue of the Americas, New York, NY 10105.

Alliance Tax-Free Shares, Inc. [File No. 811–2717]; Alliance Insured California Tax Exempt Shares, Inc. [File No. 811–4359]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On July 10, 1987, each applicant transferred its assets to Alliance High Bracket Tax-Free Income Fund, Inc., and Alliance Tax-Free Income Fund, Inc, respectively, each a series of Alliance Municipal Income Fund, Inc., based on net asset value. Applicants incurred no expenses in connection with the reorganizations.

Filing Date: The applications were filed on September 28, 2001.

Applicants' Address: 1345 Avenue of the Americas, New York, NY 10105.

Van Wagoner Private Opportunities Fund, L.P. [File No. 811–10279];

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering. Applicant will continue to operate as a private investment company in reliance on section 3(c)(1) of the Act.

Filing Dates: The applications were filed on August 10, 2001 and amended on October 5, 2001.

Applicants' Address: 345 California Street, Suite 2450, San Francisco, CA 94104.

Blanchard Precious Metals Fund, Inc. [File No. 811–5303]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 27, 1998, applicant transferred its assets to Keystone Precious Metals Holdings, Inc. based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Dates: The applications was filed on August 31, 2001, and amended on October 10, 2001.

Applicants' Address: 5800 Corporate Dr., Pittsburgh, PA 15237–7000.

Ameritor Industry Fund [File No. 811–855]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 7, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. As of October 17, 2001, applicant had 351 shareholders who have not redeemed their shares. First Union National Bank is holding the unclaimed shareholder assets. Applicant intends to liquidate each remaining shareholder's interest by canceling each remaining shareholder certificate and sending each such shareholder a check representing their remaining interest in applicant. Expenses of approximately $7,647 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on July 23, 2001 and amended on October 17, 2001.

Applicants' Address: 4400 MacArthur Blvd., NW, Suite 301, Washington, DC 20007–2521.

Phoenix-Goodwin Multi-Sector Fixed Income Fund, Inc. [File No. 811–5909]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 30, 2000, applicant transferred its assets to Phoenix-Goodwin Multi-Sector Short Term Bond Fund, a series of Phoenix Multi-Series Trust, based on net asset value. Expenses of $70,382 incurred in connection with the reorganization were paid by the acquiring fund and Phoenix Investment Partners, Ltd.

Filing Date: The application was filed on June 12, 2001.

Applicants' Address: 101 Munson St., Greenfield, MA 01301.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27418 Filed 10–31–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25246; 812–12652]

Citizens Funds, et al; Notice of Application

October 26, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section (c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: Citizens Funds (the "Trust") and Citizens Advisers, Inc. (the "Adviser").

FILING DATES: The application was filed on October 2, 2001 and amended on October 24, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 20, 2001 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, John L. Shields, President, Citizens Advisers, Inc., 230 Commerce Way, Portsmouth, NH 03801.

FOR FURTHER INFORMATION CONTACT: Jaea, F. Hahn, Senior Counsel (202) 942–0614, or Nadya B. Royblat, Assistant Director (202) 942–0564 (Office of Investment Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an opened management investment company. The Trust currently has eight separate series (each a "Fund", and collectively, the "Funds").[1] The Adviser, a New Hampshire corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act").

2. The Trust has entered into an investment advisory agreement with the Adviser with respect to each of the Funds (the "Advisory Agreement"). The Adviser manages the assets of the Funds and performs various administrative

[1] The applicants request that any relief granted pursuant to the application also apply to future series of the Trust and any other registered open-end management investment company or series thereof advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser that operates in substantially the same manner as the Trust with respect to the Adviser/Subadviser structure and complies with the terms and conditions of the application. (together, "Future Funds", included in the term "Funds"). No fund will contain in its name the name of any Subadviser, as defined below.

duties for the Trust. The Advisory Agreement has been approved by shareholders of each of the Funds and by the Trust's board of trustees (the "Board"), including a majority of the Board members who are not "interested persons" of the Trust, the Adviser or any Subadviser within the meaning of section 2(a)(19) of the Act (the "Independent Trustees"). The Adviser has engaged subadvisers ("Subadvisers") to handle the day-to-day portfolio management of certain of the Funds. Each Subadviser performs services pursuant to a written subadvisory agreement with the Trust and the Adviser ("Subadvisory Agreement"). Each Subadvisor Agreement allows the Subadviser discretionary authority to invest all (or the portion assigned to it) of the assets of a particular Fund, subject to general supervision by the Adviser and the Board. Each of the existing Subadvisers is registered as an investment adviser under the Advisers Act. Future Subadvisers will be registered or exempt from registration under the Advisers Act. For its services under the Advisory Agreement, the Adviser receives management fees at annual rates based on a percentage of the applicable Fund's average net assets.

3. The Adviser continuously evaluates the performance of each Subadviser, recommends to the Board the appointment of new Subadvisers as circumstances warrant, and negotiates and renegotiates the terms of the Subadviser Agreements, including the subadvisory fees, with the Subadvisers. Each Subadviser is recommended by the Adviser based on a number of factors, and selected and approved by the Board, including a majority of the Independent Trustees. For their services under the Subadvisory Agreements, each of the Subadvisers receives a subadvisory fee from the Adviser. The Subadvisers are not compensated directly by the Funds, but by the adviser out of the fee the Adviser receives from the Funds.

4. Applicants request an order to permit the Trust and the Adviser to enter into new or amended Subadvisory Agreements with Subadvisers without such agreements being approved by the shareholders of the applicable Fund. The requested relief will not extend to a Subadviser that is an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Trust or the Adviser, other than by reason of serving as a Subadviser to one of the Funds ("Affiliated Subadviser"). None of the current Subadvisers is an Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the outstanding voting securities of the company. Rule 18f-2 under the Act provides that individual series funds must each company with the contract approval requirements of section 15(a) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f-2 thereunder to the extent necessary to permit them to enter into Subadvisory Agreements with Subadvisers, amend existing Subadvisory Agreements with Subadvisers, and approve new Subadvisory Agreement with an existing Subadviser that has been terminated as a result of an "assignment," in each case without such Subadvisory Agreement being approved by shareholders of the applicable Fund or Future Fund.

3. Applicants assert that the shareholders are relying on the Adviser's experience to select one or more Subadvisers best suited to achieve a Fund's desired investment objectives. Applicants assert that, from the prospective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement will remain fully subject to section 15(a) of the Act and rule 18f-2 under the Act, including the requirements for shareholder approval.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Fund, within the meaning of the Act, or by its initial shareholder, provided that, in the case of approval by the initial shareholder, the pertinent Fund's shareholders will purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below.

2. The Fund's prospectus will disclose the existence, substance and effect of any order granted pursuant to the application. In addition, the Funds will hold themselves out as employing the management structure described in the application. The prospectus with respect to each Fund will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination and replacement.

3. The Adviser will provide general management services to each of the Funds relying on the requested order, including overall supervisory responsibility for the general management and investment of each Fund's assets, and subject to the review and approval by the Board, will, as necessary: (a) Set each Fund's overall investment strategies; (b) select Subadvisers; (c) when appropriate, allocate and reallocate each Funds' assets among Subadvisers; (d) monitor and evaluate Subadviser performance; and (e) oversee Subadviser compliance with the investment objectives, policies and restrictions of the applicable Fund by, among other things, implementing procedures reasonably to ensure compliance.

4. At all times, a majority of the Board will be persons who are Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

5. Neither the Adviser nor the Trust will enter into a Subadvisory Agreement with any Affiliated Subadviser without such Subadvisory Agreement, including the compensation to be paid thereunder, being approval by the shareholders of the applicable Fund.

6. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of the meetings of the Board, that such change is in the best interests of the applicable Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. No director, trustee or officer of the Trust or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by the director, trustee or officer) any interest in a Subadviser except for ownership of (a) interest in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

8. Within 90 days of the hiring of any new Subadviser, the Adviser will furnish the shareholders of the applicable Fund all the information that would have been included in a proxy statement. Such information will include any changes in such information caused by the addition of a new Subadviser. To meet this obligation, the Adviser will provide the shareholders of the applicable Funds with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934, as well as the requirements of Item 22 of Schedule 14A under that Act.

For that Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01–27440 Filed 10–31–01; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44987; File No. SR–EMCC–2001–03]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Arrangements To Integrate Emerging Markets Clearing Corporation and the Depository Trust & Clearing Corporation

October 25, 2001.

On August 22, 2001, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File No. EMCC–2001–03) and on October 24, 2001, amended the proposed rule change.[2] Notice of the proposal was published in the **Federal Register** on October 10, 2001.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will modify EMCC's organizational documents to facilitate its integration with the Depository Trust and Clearing Corporation ("DTCC") ("Plan"). The primary purpose of the Plan, which was approved by EMCC's Board of Directors on July 25, 2001, is to ultimate harmonized the processing streams at EMCC, the Government Securities Clearing Corporation ("GSCC"), the MBS Clearing Corporation ("MBSCC").[4] The Depository Trust Company, and the National Securities Clearing Corporation ("NSCC")[5] (collectively, the "Operating Subsidiaries") for the clearance and settlement of institutional and broker transactions by integrating all of the Operating Subsidiaries with DTCC. Under the Plan, EMCC and DTCC will take the following initial actions:

(1) *Conduct an Exchange Offer.* DTCC will form a wholly owned subsidiary ("Acquisition Company") that will make an exchange offer ("Exchange Offer") for EMCC shares. Under the terms of the Exchange Offer, eligible Class A EMCC shareholders[6] will have the opportunity to exchange their EMCC shares for DTCC common stock.[7] Concurrent with and subject to the effectiveness of the Exchange Offer, EMCC will repurchase the Class A and Class B common sharer held by its trade association shareholders. Subject to the effectiveness of the Exchange Offer, EMCC's trade association shareholders will receive from EMCC in exchange for their Class A and Class B common shares cash in an amount equal to the lesser of (a) Their acquisition cost or (b) the adjusted book value of their shares. EMCC's Class B shareholders will retain their Class B shares (other than the trade association shareholders who will be paid out as provided above) with the same rights to have their shares repurchased for cash as currently provided in EMCC's Amended and Restated Shareholder Agreement ("EMCC Shareholder Agreement").[8]

Following a successful Exchange Offer, Acquisition Company will be the majority shareholder of EMCC and the Class B and any non-eligible and/or non-tendering Class A EMCC shareholders will remain as minority shareholders in EMCC.

As a matter of DTCC policy, EMCC's retained earnings at the time of (or as of the end of the last full preceding calendar month) the integration of EMCC with DTCC will be dedicated to supporting EMCC's business. Acquisition Company and DTCC will not engage in clearing agency activities. Certain support functions, including human resources, finances, audit, general administration, and corporate communications will continue to be centralized in DTCC and be provided by DTCC to EMCC pursuant to service contracts.

(2) *Change EMCC's Shareholder Agreement.* EMCC's Shareholder Agreement will be amended in connection with the Exchange Offer in order to eliminate any restrictions on transferring EMCC shares to Acquisition Company. Following a successful Exchange Offer, the EMCC Shareholder Agreement will be terminated.

(3) *Select New EMCC's Directors.* DTCC, through its wholly-owned subsidiary, Acquisition Company, will elect as directors of EMCC the persons elected by the shareholders of DTCC to be the directors of DTCC.[9] EMCC will continue to exist as a separate registered clearing agency and will operate essentially as it currently does by offering its own services to its own members pursuant to separate legal arrangements and separate risk management procedures.

As a part of the integration, a structure will be implemented that is designed to ensure that the Operating Subsidiaries satisfy the fair representation requirement of section 17A(b)(3)(C) of the Act.[10] Specifically, the DTCC shareholders, consisting of the current DTCC shareholders and EMCC's, MBSCC's, and GSCC's shareholders that become shareholders of DTCC as a result of the Plan, will elect the persons to serve on DTCC's Board of Directors. These individuals will, in turn, be selected by DTCC to serve as the directors of each of the Operating Subsidiaries. On a periodic basis to be determined by the DTCC Board, rights to purchase DTCC common stock will be reallocated to shareholders based upon their usage of one or more of the Operating Subsidiaries. Shareholders may, but will not be obligated to, purchase some or all of the DTCC common stock to which they are entitled. Holders of DTCC common stock will be entitled to cumulative voting in the election of directors.

(4) *Form New Committees.* DTCC's existing International Operations and Planning Committee will include representatives of EMCC members. The International Operations and Planning Committee will advise the DTCC Board and management on its policies and procedures with respect to the international products and/or services of the Operating Subsidiaries, including EMCC, and will have certain other responsibilities to be assigned to the Committee. In addition, EMCC will continue to have a Membership and Risk Committee that will include representatives of EMCC's members. The EMCC membership and Risk Committee will advise EMCC's Board of Directors and management with respect to membership, credit matters, and risk matters and will have certain other responsibilities assigned to it.

(5) *Change DTCC's and EMCC's Governing Documents.* DTCC's Certificate of Incorporation, By-Laws and Shareholders Agreement ("Basic Documents") will be amended to extend to the shareholders of EMCC, MBSCC, and GSCC that become shareholders of DTCC as a result of the Exchange Offer the rights to the shareholders of DTCC currently have and, in particular, to satisfy the fair representation requirement of the Exchange Act. The Basic Documents will provide the following:

- The persons elected as directors to the DTCC Board will also serve as the directors of each of the Operating Subsidiaries, including EMCC.
- Other than, as is currently the case, one director appointed to the DTCC Board by the New York Stock Exchange, Inc., as the owner of DTCC preferred stock, and one director appointed to the DTCC Board by the National Association of Securities Sealers, Inc., as an owner of DTCC preferred stock, all directors will be elected annually by the owners of DTCC common stock.
- The rights to purchase DTCC common stock will be reallocated to the users of each of the Operating subsidiaries based upon their usage. Under the Basic Documents, these rights will be reallocated on a periodic basis to be determine by DTCC's Board and in accordance with the DTCC Shareholders Agreement. DTCC common stock.
- DTCC's directors.
- Each year DTCC Board will appoint a nominating committee that may include both members and non-members of the DTCC Board. After soliciting suggestions from all users of each of the Operating Subsidiaries of possible nominees to fill vacancies on the DTCC Board, the nominating committee will recommend a slate of nominees for the full DTCC Board. The DTCC Board may make changes in that slate before submitting nominations to the holders of DTCC common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to cast their votes for a person not listed as a nominee. Because the Basic Documents will provide for cumulative voting, certain large holders of DTCC common stock may have a sufficient number of shares to elect a person not on the slate nominated for election by the DTCC Board.

In addition, EMCC's Certificate of Incorporation and By-Laws will be revised to reflect the changes in EMCC's corporate governance structure and to include certain other changes so that these documents conform to the Certificates of Incorporation and By-Laws of GSCC and MBSCC, so as to promote efficiency in the governance of the Operating Subsidiaries upon completion of the Plan. EMCC's Certificate of Incorporation shall be amended as follows:

- Its operative provisions, which currently are contained in the original Certificate and several amendments, will be restated into a single composite Amended and Restated Certificate of Incorporation and reordered and renumbered as appropriate.
- In Article 3 (as renumbered), the provisions relating to the Class B common shares will be modified to provide such shares with limited voting rights. These shares will have the right to vote, with the Class A common shares voting together as a single Class, for the election of directors.
- A new Article 4 will be inserted to provide that, in accordance with New York Business Corporation Law, EMCC shareholders may take action by written consent without a meeting and without unanimity as long as such consent is signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.
- The supermajority voting provisions currently contained in Article 6 will be deleted since they will be unnecessary because DTCC, through its wholly-owned subsidiary, Acquisition Company, will be the controlling shareholder of EMCC.
- A new Article 6 will be added to limit the liability of the directors to EMCC and its shareholders for any breach of duty provided such limitation is consistent with the provisions of the New York Business Corporation Law.

Since after the proposed integration, DTCC through its wholly-owned subsidiary, Acquisition Company, will be the majority shareholder of EMCC, the current By-Laws of EMCC will be replaced with a set of By-Laws that generally conform to NSCC's By-Laws.[11]

II. Discussion

The Commission finds that EMCC's proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] The amendment merely clarified that Class B shareholders would be given post integration voting rights for the election of EMCC directors at a rate of one-quarter vote per share. This clarification was made only to ensure the tax-free nature of the integration transaction and the proposal that Class B shareholders would be given limited voting rights was discussed and comment requested on in the notice. Accordingly, republication of the notice of filing is not required.

[3] Securities Exchange Act Release No. 44896 (Oct. 2, 2001), 66 FR 51695.

[4] Pursuant to separate plans for the integration of GSCC and MBSCC and DTCC, it is contemplated that GSCC and MBCC will become operating subsidiaries of DTCC at the same time that EMCC becomes an operating subsidiary of DTCC. However, the integration of EMCC and DTCC is not contingent on the integration of GSCC and MBSCC with DTCC and vice versa. Securities Exchange Act Release Nos. 44895 (Oct. 2, 2001), 66 FR 51698 (Oct. 10, 2001); 44989 (Oct. 25, 2001) [File No. SR–GSCC–2001–11]; 44838 (Sept. 24, 2001), 66 FR 51701 (Oct. 10, 2001); 44988 (Oct. 25, 2001) [File No. SR–MBSCC–2001–01].

[5] DTC and NSCC are already wholly owned subsidiaries of DTCC.

[6] EMCC Class A shareholders eligible to participate in the Exchange Offer include EMCC Class A shareholders that are members or affiliates of members of EMCC, GSCC, MBSCC, DTC, or NSCC.

[7] The share exchange rate will be based on the adjusted book values of EMCC and DTCC. The adjusted book value of EMCC will equal book value less the retained earnings of EMCC at the time of (or as of the end of the last full preceding calendar month) the integration of EMCC with DTCC. The adjusted book value of DTCC will equal book value less the smaller of (i) the retained earnings of DTCC attributable to NSCC's retained earnings at the time of the integration of NSCC and DTC with DTCC in 1999 or (ii) the retained earnings of DTCC attributable to the retained earnings of NSCC at the time of (or as of the last full preceding calendar month) the integration of EMCC with DTCC.

[8] In addition and subject to the effectiveness of the Exchange Offer, holders of Class B shares will be provided with the limited right to vote for the election of EMCC Directors.

[9] Given that EMCC's initial post-integration board would be elected upon the effectiveness of the integration plan, EMCC has determined to postpone its 2001 annual election of directors, which would normally occur near calendar year-end, with the current Board remaining in office until the Plan is effectuated. Should the Plan not become effective by March 31, 2002, EMCC will call an annual meeting for the election of directors pursuant to its current procedures.

[10] 15 U.S.C. 78–q(b)(3)(C).

[11] EMCC's By-Laws will differ from NSCC's By-Laws in that (i) all references will be gender-neutral, (ii) the requirement in Section 3.3 that the President shall be the Chief Executive Officer will be deleted, (iii) the number of directors shall be between fifteen and twenty-five as determined by the Board, and (iv) Sections 1.2 and Article VIII will provide that a majority of the outstanding shares may call a special shareholders meeting and may amend EMCC's By-Laws.

the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(C) [12] of the Act. Section 17A(b)(3)(C) requires that a clearing agency's rules assure the fair representation of its shareholders (or members) and participants in the selection of its direction and administration of its affairs. The Commission finds that EMCC's proposal is consistent with this requirement because the integration plan should provide EMCC members with a reasonable opportunity to acquire common stock in DTCC based on their use of EMCC and should provide EMCC members through their holding of DTCC stock with adequate and fair representation in the selection of EMCC's directors and in the administration of EMCC's affairs. Furthermore, EMCC members will have an opportunity to advise DTCC through the International Operations and Planning Committee and Membership and Risk Committee that will include EMCC members.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow EMCC to begin its integration in accordance with the schedule for the integration of EMCC, MBSCC, and GSCC with DTCC. The Commission is approving the proposed rule change prior to the end of the comment period in order that EMCC may begin its integration in accordance with the schedule for the integration of EMCC, MBSCC, and GSCC with DTCC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–2001–03) be, and hereby is approved.

[12] 15 U.S.C. 78q–1(b)(3)(C).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27419 Filed 10–31–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44989; File No. SR–GSCC–2001–11]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Accelerated Approval of A Proposed Rule Change Relating to Arrangements to Integrate Government Securities Clearing Corporation and The Depository Trust & Clearing Corporation

October 25, 2001.

On August 22, 2001, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File No. GSCC–2001–11), Notice of the proposal was published in the **Federal Register** on October 10, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will modify GSCC's organizational documents to facilitate its integration with the Depository Trust and Clearing Corporation ("DTCC") ("Plan"). The primary purpose of the Plan, which was approved by GSCC's Board of Directors on July 24, 2001, is to ultimately harmonize the processing streams at GSCC, the MBS Clearing Corporation ("MBSCC"),[3] the Emerging Markets Clearing Corporation ("EMCC"),[4] The Depository Trust Company, and the National Securities Clearing Corporation ("NSCC")[5] (collectively, the "Operating Subsidiaries") for the clearance and settlement of institutional and broker transactions by integrating all of the Operating Subsidiaries with DTCC. Under the Plan, GSCC and DTCC will take the following initial actions:

(1) *Conduct an Exchange Offer.* DTCC will form a wholly-owned subsidiary ("Acquisition Company") that will make an exchange offer ("Exchange Offer") for GSCC shares. Under the terms of the Exchange Offer, GSCC shareholders will have the opportunity to exchange their GSCC common stock for DTCC common stock.[6] Following a successful Exchange Offer, the GSCC Shareholder Agreement will be terminated. Acquisition Company will be the majority or sole (depending on whether all GSCC shareholders tender their shares) shareholder of GSCC, and any non-tendering GSCC shareholders will remain as minority shareholders of GSCC.

As a matter of DTCC policy, GSCC's retained earnings at the time of (or as of the end of the last preceding calendar month) the integration of GSCC with DTCC will be dedicated to supporting GSCC's business. Acquisition Company and DTCC will not engage in clearing agency activities. Certain support functions, including human resources, finances, audit, general administration, and corporate communications will continue to be centralized in DTCC and be provided by DTCC to GSCC pursuant to service contracts.

(2) *Change GSCC's Shareholder Agreement.* GSCC's Shareholder Agreement will be amended in connection with the Exchange Offer in order to eliminate any restrictions on transferring GSCC shares to Acquisition Company.

(3) *Select New GSCC's Directors.* DTCC, through its wholly-owned subsidiary, Acquisition Company, will elect as directors of GSCC the persons elected by the shareholders of DTCC to be the directors of DTCC.[7] GSCC will continue to exist as a separate registered clearing agency and will operate essentially as it currently does by offering its own services to its own members pursuant to separate legal arrangements and separate risk management procedures.

As a part of the integration, a structure will be implemented that is designed to ensure that the Operating Subsidiaries satisfy the fair representation requirement of section 17A(b)(3)(C) of the Act.[8] Specifically, the DTCC shareholders, consisting of the current DTCC shareholders and GSCC's, MBSCC's, and EMCC's shareholders that become shareholders of DTCC as a result of the Plan, will elect the persons to serve on DTCC's Boards of Directors. These individuals will, in turn, be selected by DTCC to serve as the directors of each of the Operating Subsidiaries. On a periodic basis to be determined by the DTCC Board, rights to purchase DTCC common stock will be reallocated to shareholders based upon their usage of one or more of the Operating Subsidiaries. Shareholders may, but will not be obligated to, purchase some or all of the DTCC common stock to which they are entitled. Holders of DTCC common stock will be entitled to cumulative voting in the election of directors.

(4) *Form New Committees.* DTCC will create a Fixed Income Operations and Planning Committee that will include representatives of members of GSCC and MBSCC. The Fixed Income Operations and Planning Committee will advise the DTCC Board and management on its policies and procedures with respect to fixed income products and services of the Operating Subsidiaries and will have certain other responsibilities to be assigned to the Committee. GSCC and MBSCC will also establish a joint GSCC/MBSCC Membership and Risk Management Committee that will include representatives of participants of GSCC and MBSCC. The joint GSCC/MBSCC Membership and Risk Management Committee will advise GSCC's and MBSCC's Board of Directors and management with respect to membership, credit, and risk matters and will have certain other responsibilities assigned to it.

(5) *Change DTCC's and GSCC's Governing Documents.* DTCC's Certificate of Incorporation, By-Laws, and Shareholders Agreement ("Basic Documents") will be amended to extend to the shareholders of GSCC, MBSCC, and EMCC that become DTCC shareholders as a result of the Exchange Offer the rights that DTCC's shareholders currently have and, in particular, to satisfy the fair representation requirement. The Basic Document will provide the following:

- The persons elected as directors to the DTCC Board will also serve as the directors of each of the Opening Subsidiaries, including GSCC.
- Other than, as is currently the case, one director appointed to the DTCC Board by the New York Stock Exchange, Inc., as an owner of DTCC preferred stock, and one director appointed to the DTCC Board by the National Association of Securities Dealers, Inc., as the owner of DTCC preferred stock, all directors will be elected annually by the owners of DTCC common stock.
- The rights to purchase DTCC common stock will be reallocated to the users of each of the Opening Subsidiaries based upon their usage. Under the Basic Documents, these rights will be reallocated on a periodic basis to be determined by DTCC's Board and in accordance with the DTCC Shareholders Agreement.
- DTCC common stock owners will be able to exercise cumulative voting in the election of DTCC's directors.
- Each year the DTCC Board will appoint a nominating committee that may include both members and non-members of the DTCC Board. After soliciting suggestions from all users of each of the Operating Subsidiaries of possible nominees to fill vacancies on the DTCC Board, the nominating committee will recommend a slate of nominees for the full DTCC Board. The DTCC board may make changes in that slate before submitting nominations to the holders of DTCC common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to cast their votes for a person not listed as a nominee. Because the Basic Documents will provide for cumulative voting, certain large holders of DTCC common stock may have a sufficient number of shares to elect a person not on the slate nominated for election by the DTCC Board.

GSCC's Certificate of Incorporation and By-Laws will be revised to reflect the changes in GSCC's corporate governance structure. GSCC's Certificate of Incorporation shall be amended and restated in accordance with Section 807 of the New York Business Corporation Law as follows:

- Current Article 2 of the Certificate of Incorporation will be revised to state that the purposes for which GSCC is formed are to engage in any lawful act or activity for which corporations may be organized under New York Business Corporation Law, provided, however, that GSCC is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency, or other body without first obtaining the consent of such body.
- The supermajority voting provisions previously contained in Article 3 will be deleted since they will be unnecessary because DTCC through its wholly-owned subsidiary, Acquisition Company, will be the controlling shareholder of GSCC.
- Current article 4 of the Certificate of Incorporation, which provides for removal of directors by shareholders, will be deleted as redundant because the By-Laws contain a substantially similar provision.
- Because there are no Class B common shares currently outstanding and because there are no plans to issue any such shares prior to or subsequent to the proposed integration, Article 5 (as revised, Article 3) of the Certificate of Incorporation will be modified to eliminate Class B shares. Because GSCC will no longer have any Class A shares, will be deleted. Article 7 (as revised, Article 5) will be amended to eliminate the references to classes of shares.
- A new Article 4 will be inserted to provide that GSCC shareholders may take action by written consent without a meeting as long as such consent is signed by the holders of outstanding shares having no less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.
- A new Article 6 will be inserted to limit liability of the directors to GSCC and its shareholders for any breach of duty provided that such limitation is consistent with the provisions of the New York Business Corporation Law.
- 8A, 8B, and 9 will be eliminated because most of the content of those articles is no longer relevant or will not be relevant after the proposed integration since GSCC will have a controlling shareholder, DTCC through its wholly-owned subsidiary Acquisition Company. GSCC's Rules currently address the subject of

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44895 (Oct. 2, 2001), 66 FR 51698.

[3] Because of the current functional integration of operations of GSCC and MBSCC, the integration of GSCC with DTCC is contingent upon the successful integration of MBSCC with DTCC and vice versa. Securities Exchange Act Release Nos. 44838 (Sept. 24, 2001), 66 FR 51695; 44988 (Oct. 25, 2001) (File No. SR–MBSCC–2001–01].

[4] Pursuant to a separate plan for the integration of EMCC with DTCC, it is contemplated that EMCC will become an operating subsidiary of DTCC at the same time that GSCC and MBSCC become operating subsidiaries of DTCC. However, the integration of GSCC and MBSCC with DTCC is not contingent on the integration of EMCC with DTCC and vice versa. Securities Exchange Act Release Nos. 44896 (Oct. 2, 2001), 66 FR 51695 (Oct. 10, 2001); 44987 (Oct. 25, 2001) [File No. SR–EMCC–2001–03].

[5] DTC and NSCC are already wholly owned subsidiaries of DTCC.

[6] The share exchange rate will be based on the adjusted book values of GSCC and DTCC. The adjusted book value of GSCC will equal book value less the retained earnings of GSCC at the time of (or as of the end of the last full preceding calendar month) the integration of GSCC with DTCC. The adjusted book value of DTCC will equal book value less the smaller of (i) the retained earnings of DTCC attributable to NSCC's retained earnings at the time of the integration of NSCC and DTC with DTCC in 1999 or (ii) the retained earnings of DTCC attributable to the retained earnings of NSCC at the time of (or as of the last full calendar month preceding) the integration of GSCC with DTCC.

[7] Given that GSCC's initial post-integration board would be elected upon the effectiveness of the integration plan, GSCC has determined to postpone its 2001 annual election of directors, which would normally occur near calendar year-end, with the current Board remaining in office until the Plan is effectuated. Should the Plan not become effective by March 31, 2002, GSCC will call an annual meeting for the election of directors pursuant to its current procedures.

[8] 15 U.S.C. 78q–1(b)(3)(C).

allocation of liability of failed participants.[9]

• Article 10, which refers to the election of the Vice Chairman of the Board pursuant to a shareholder agreement, will be deleted because the GSCC Shareholder Agreement will be terminated as part of the proposed integration.

After the proposed integration, Acquisition Company, which is wholly owned by DTCC, will be the majority of sole (depending on whether all current GSCC shareholders tender their shares under the Exchange Offer) shareholder of GSCC. In order to promote efficiency in the governance of the Operation Subsidiaries after the Plan is completed, GSCC's current By-Laws will be placed with a set of By-Laws that generally conform to NSCC's By-Laws.[10]

II. Discussion

The Commission finds that GSCC's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(C)[11] of the act. Section 17A(b)(3)(C) requires that a clearing agency's rules assure the fair representation of its shareholders (or members) and participants in the selection of its direction and administration of its affairs. The Commission finds that GSCC's proposal is consistent with this requirement because the integration plan should provide GSCC members with a reasonable opportunity to acquire common stock in DTCC based on their use of GSCC and should provide GSCC members through their holding of DTCC stock with adequate and fair representation in the selection of GSCC's directors and in the administration of GSCC's affairs. Furthermore, GSCC members will have an opportunity to advise DTCC through the new Fixed Income Operations and Planning Committee and Membership and through the Risk Management Committee that will be composed, in part, of GSCC members.

GSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow GSCC to amend its rules to begin its integration in accordance with the schedule for the integration of GSCC, MBSCC, and EMCC with DTCC. The Commission is approving the proposed rule change prior to the end of the comment period in order that GSCC may begin its integration in accordance with the schedule for the integration of GSCC, MBSCC, and EMCC with DTCC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–2001–11) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[9] GSCC will make a separate rule filing under Section 19(b) of the Act concerning amendments to its Rules to appropriately reflect the integration.

[10] GSCC's By-Laws will differ from NSCC's By-Laws in that (i) all references will be gender-neutral, (ii) Section 1.2 will provide that a majority, rather than twenty-five percent, of all outstanding shares may make a demand to call a special meeting, (iii) Section 1.4 will provide for the ability to notify shareholders of shareholder meetings electronically, (iv) Section 1.2 will set the number of directors at a minimum of fifteen and maximum of twenty-five, rather than twenty-seven, (v) Section 2.1 will provide that the number of directors at any time shall be determined by GSCC's Board of Directors, (vi) Section 2.9 will provide that GSCC's directors that are also GSCC or DTCC officers may not serve on the Audit Committee, (vii) Section 3.1 will state that the GSCC officers will include those required by statute and may include a Chief Executive Officer, (viii) the provision in Section 3.3 that the President shall be the Chief Executive Officer will be eliminated, (ix) the provision in Section 3.4 that Managing Directors shall, upon request, advise and assist the Chief Operating Officer will be eliminated, and (x) Article VIII will provide that a majority of the holders of all outstanding shares, rather than all the holders of all outstanding shares, may amend GSCC's By-Laws.

[11] 15 U.S.C. 78q–1(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44988; File No. SR–MBSCC–2001–01]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating To Arrangements To Integrate MBS Clearing Corporation and The Depository Trust & Clearing Corporation

October 25, 2001.

On August 22, 2001, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File No. MBSCC–2001–01). Notice of the proposal was published in the **Federal Register** on October 10, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will modify MBSCC's organizational documents to facilitate its integration with the Depository Trust and Clearing Corporation ("DTCC") ("Plan"). The primary purpose of the Plan, which was approved by MBSCC's Board of Directors on July 19, 2001, is to ultimately harmonize the processing streams at MBSCC, the Government Securities Clearing Corporation ("GSCC"),[3] the Emerging Markets Clearing Corporation ("EMCC"),[4] The Depository Trust Company, and the National Securities Clearing Corporation ("NSCC")[5] (collectively, the "Operating Subsidiaries") for the clearance and settlement of institutional and broker transactions by integrating all of the Operating Subsidiaries with DTCC.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44838 (Sept. 24, 2001), 66 FR 51701.

[3] Because of the current functional integration of operations of MBSCC and GSCC, the integration of MBSCC with DTCC is contingent upon the successful integration of GSCC with DTCC and vice versa. Securities Exchange Act Release Nos. 44985 (Oct. 2, 2001), 66 FR 51698 (Oct. 10, 2001); 44989 (Oct. 25, 2001) [File No. SR–GSCC–2001–01].

[4] Pursuant to a separate plan for the integration of EMCC with DTCC, it is contemplated that EMCC will become an operating subsidiary of DTCC at the same time that MBSCC and GSCC become operating subsidiaries of DTCC. However, the integration of MBSCC and GSCC with DTCC is not contingent on the integration of EMCC with DTCC and vice versa. Securities Exchange Act Release Nos. 44896 (Oct. 2, 2001), 66 FR 51695 (Oct. 10, 2001); 44987 (Oct. 25, 2001) [File No. SR–EMCC–2001–03].

[5] DTC and NSCC are already wholly owned subsidiaries of DTCC.

Under the Plan, MBSCC and DTCC will take the following initial actions.

(1) *Conduct an Exchange Offer.* DTCC will form (i) a company that will engage in a merger with MBSCC ("Operating Company"), (ii) a company that will own all of the capital stock of Operating Company ("Holding Company"), and (iii) an acquisition subsidiary ("Acquisition Company") that will make an exchange offer ("Exchange Offer") for Holding Company shares, as described below, and hold all shares of Holding Company received pursuant to the Exchange Offer. Under the terms of the Exchange Offer, Operating Company will merge with MBSCC in a transaction ("Merger") in which (i) the MSBCC shareholders will receive an equal number and class of shares of Holding Company stock for their shares of MBSCC Class A and Class B common stock; (ii) all of the shares of MBSCC will be canceled; and (iii) all the shares of Holding Company stock owned by DTCC will be canceled. MBSCC shareholders will have the opportunity to vote against the Merger and to exercise their appraisal rights. MBSCC will be the surviving corporation of the Merger.

The Acquisition Company will conduct the Exchange Offer whereby Holding Company's shareholders *i.e.*, former MBSCC Shareholders will have the opportunity to exchange their shares of Holding Company common stock for shares of DTCC common stock on the basis of the adjusted book value of the shares of MBSCC common stock that they exchanged for their shares of Holding Company common stock and the adjusted book value of the DTCC common shares.[6] Following a successful Exchange Offer, (i) Acquisition Company will be the majority or sole (depending on whether all Holding Company shareholders agree to tender their shares) shareholder of Holding Company; (ii) Holding Company will be the sole shareholder of MBSCC; and (iii) any non-tendering Holding Company shareholders (former MBSCC Shareholders) will be minority shareholders of Holding Company.

As a matter of DTCC policy, MBSCC's retained earnings at the time of (or as of the end of the last full preceding calendar month) the integration of MBSCC with DTCC will be dedicated to supporting MBSCC's business. Acquisition Company and DTCC will not engage in clearing agency activities. Certain support functions, including human resources, finances, audit, general administration, and corporate communications will continue to be centralized in DTCC and be provided by DTCC to MBSCC pursuant to service contracts.

(2) *Change MBSCC's Shareholder Agreement.* MBSCC's Shareholder Agreement will be terminated.

(3) *Select New MBSCC's Directors.* DTCC, through its wholly-owned subsidiary, Acquisition Company, will elect as directors of MBSCC the persons elected by the shareholders of DTCC to be the directors of DTCC.[7] As a subsidiary of the Holding Company (and indirect subsidiary of Acquisition Company), MBSCC will continue to operate essentially as it does currently, offering its own services to its own members pursuant to separate legal arrangements and separate risk management procedures.

As a part of the integration, a structure will be implemented allowing for the fair representation of the members of each of the Operating Subsidiaries in the governance of DTCC. Specifically, the DTCC shareholders, consisting of the current shareholders of DTCC and the shareholders of MBSCC, GSCC, and EMCC, which become shareholders of DTCC as a result of the Plan, will elect the persons to serve on the Board of Directors of DTCC. These individuals will, in turn, be selected by DTCC to serve as the directors of each of the Operating Subsidiaries. On a periodic basis to be determined by the DTCC Board, rights to purchase DTCC common stock will be reallocated to shareholders using the services of any one or more of the Operating Subsidiaries based upon their usage. Shareholders may, but will not be obligated to, purchase some or all of the DTCC common stock to which they are entitled. Holders of DTCC common stock will be entitled to cumulative voting in the election of directors.

(4) *Form New Committees.* DTCC will create a Fixed Income Operations and Planning Committee that will include representatives of members of each of MBSCC and GSCC. The Fixed Income Operations and Planning Committee will advise the DTCC Board and management on its policies and procedures with respect to the fixed income products and services of the Operating Subsidiaries and will have certain other responsibilities to be assigned to the Committee.

Furthermore, MBSCC and GSCC will establish a joint GSCC/MBSCC Membership and Risk Management Committee, which will be comprised of representatives of participants of MBSCC and GSCC. The joint GSCC/MBSCC Membership and Risk Management Committee will advise the Boards of Directors and management of MBSCC and GSCC with respect to membership, credit, and risk matters, and will have certain other responsibilities assigned to it.

(5) *Change DTCC's and MBSCC's Governing Documents.* DTCC's Certificate of Incorporation, By-Laws, and Shareholders Agreement ("Basic Documents") will be amended to extend to the shareholders of MBSCC, GSCC, and EMCC, which become shareholders of DTCC as a result of the Plan, the rights that the shareholders of DTCC currently have and, in particular, to satisfy the Fair Representation Requirement of section 17A of the Exchange Act.[8] In this regard, the Basic Documents will provide for the following:

• The persons elected as directors to the DTCC Board will also serve as the directors of each of the Operating Subsidiaries, including MBSCC.

• Other than, as is currently the case, one director appointed to the DTCC Board by the New York Stock Exchange, Inc., as the owner of DTCC preferred stock, and one director appointed to the DTCC Board by the National Association of Securities Dealers, Inc., as the owner of DTCC preferred stock, all directors will be elected annually by the owners of DTCC common stock.

• As discussed above, the rights to purchase DTCC common stock will be reallocated to the users of each of the Operating Subsidiaries based upon their usage. Under the Basic Documents, these rights will be reallocated on a periodic basis to be determined by the DTCC Board.

• The owners of DTCC common stock will be able to exercise cumulative voting in the election of directors of DTCC.

[6] Adjusted book value of MBSCC shares will equal book value less the retained earnings of MBSCC at the time of (or as of the end of the last full preceding calendar month) the integration of MBSCC with DTCC. Such retained earnings will thereafter be used only to support the business of MBSCC. Adjusted book value of the DTCC common shares will equal book value less the smaller of (i) the retained earnings of DTCC attributable to the retained earnings of NSCC at the time of the integration of NSCC and DTC with DTCC in 1999 or (ii) the retained earnings of DTCC attributable to the retained earnings of NSCC at the time of (or as of the last full preceding calendar month) the integration of MBSCC with DTCC.

[7] Given the MBSCC's initial post-integration board would be elected upon the effectiveness of the integration plan, MBSCC has determined to postpone its 2001 annual election of directors, which would normally occur near calendar year-end, with the current Board remaining in office until the Plan is effectuated. Should the Plan not become effective by March 31, 2002, MBSCC will call an annual meeting for the election of directors pursuant to its current procedures.

[8] 15 U.S.C. 78q–1(b)(3)(C).

• With respect to the nomination process, each year the DTCC Board will appoint a nominating committee that may include both members and nonmembers of the DTCC Board. After soliciting suggestions from all users of each of the Operating Subsidiaries of possible nominees to fill vacancies on the DTCC Board, the nominating committee will recommend a slate of nominees for the full DTCC Board. The DTCC Board may make changes in that slate before submitting nominations to the holders of DTCC common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to cast their votes for a person not listed as a nominee. Because the Basic Documents will provide for cumulative voting, certain large holders of DTCC common stock may have a sufficient number of shares to elect a person not on the slate nominated for election by the DTCC Board.

MBSCC's Certificate of Incorporation and By-Laws will be revised to reflect the changes in MBSCC's corporate governance structure. MBSCC's Certificate of Incorporation will be amended and restated in accordance with section 245 of the Delaware General Corporation Law ("section 245") as follows:

• The amended and restated Certificate of Incorporation shall contain a preamble and recitals pursuant to section 245.

• The fourth article of the Certificate of Incorporation shall be amended to eliminate all references to Class A and Class B Common Stock, including the right of holders of Class B Common Stock to elect one MBSCC director. References to Class B Common Stock, including the right of holders of Class B Common Stock to elect a director, will be longer be necessary as MBSCC will be wholly-owned by Holding Company. All of MBSCC's directors will be elected by DTCC through its wholly-owned subsidiary, Acquisition Company, which will be the majority or sole (depending on how many Holding Company shareholders, *i.e.*, former MBSCC shareholders, tender their Hold Company shares in the Exchange Offer) shareholders, of Holding Company. The former holders of MBSCC Class B Common Stock, as well as the former holders of Class A Common Stock, that participate in the Exchange Offer will have the opportunity to participate in the governance of DTCC through the election of DTCC's directors.

• The fifth article of the Certificate of Incorporation shall be stricken as permitted by section 245 of the Delaware Corporation Law and the sixth, seventh, ninth and tenth articles of the Certificate of Incorporation shall be deleted as unnecessary. The remaining articles shall be renumbered accordingly.

• The eighth article (as revised, the fifth article) of the Certificate of Incorporation shall be modified to include a reference to a testator or intestate of a person that is being indemnified.

After the proposed integration, Acquisition Company, which is wholly owned by DTCC, will be the majority or sole (depending on whether all Holding Company shareholders, *i.e.* former MBSCC Shareholders, tender their shares during the Exchange Offer) shareholder of Holding Company, which, in turn, will be the sole shareholder of MBSCC. In order to promote efficiency in the governance of Operating Subsidiaries after the Plan is completed, the current By-Laws of MBSCC will be replaced with a set of By-Laws that generally conform to NSCC's By-Laws.[9]

II. Discussion

The Commission finds that MBSCC's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(C)[10] of the Act. Section 17A(b)(3)(C) requires that a clearing agency's rules assure the fair representation of its shareholders (or members) and participants in the selection of its direction and administration of its affair. The Commission finds that MBSCC's proposal is consistent with this requirement because the integration plan should provide MBSCC members with a reasonable opportunity to acquire common stock in DTCC based on their use of MBSCC and should provide MBSCC members through their holding of DTCC stock with adequate and fair representation in the selection of MBSCC's directors and in the administration of MBSCC's affairs. Furthermore, MBSCC members will have an opportunity to advise DTCC through the new Fixed Income Operations and Planning Committee and Membership and through the Risk Management Committee that will be composed, in part, of MBSCC members.

MBSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow MBSCC to begin its integration in accordance with the schedule for the integration of MBSCC, GSCC, and EMCC with DTCC. The Commission is approving the proposed rule change prior to the end of the comment period in order that MBSCC may begin its integration in accordance with the schedule for the integration of MBSCC, GSCC, and EMCC with DTCC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–2001–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[9] The modifications include (i) making all references gender-neutral, (ii) changing the references to the State of New York to the State of Delaware (except the reference in section 5.2), (iii) providing in section 1.2 that a majority, rather than twenty-five percent, of all outstanding shares may make a demand to call a special meeting, (iv) providing for the ability to notify shareholders of shareholder meetings electronically in section 1.4 (v) deleting the provision addressing shareholder action by written consent because this is addressed under Delaware law, (vi) setting the number of directors in section 2.1 at a minimum of fifteen and maximum of twenty-five, rather than twenty-seven, (vii) providing in section 2.1 that the number of directors at any time shall be determined by the Board of Directors of MBSCC, (viii) providing in section 2.9 that directors of MBSCC that are also officers of GSCC or DTCC, rather than directors, officers, or employees of any MBSCC shareholders, may not serve on the Audit Committee, (ix) providing in section 3.1 that the officers of MBSCC will include those required by statute and may include a Chief Executive Officer, (x) eliminating the provision in section 3.3 that the President shall be the Chief Executive Officer, (xi) eliminating the provision in section 3.4 that Managing Directors shall upon request advise and assist the Chief Operating Officer, and (xii) providing in Article VIII that a majority of the holders of all outstanding shares, rather than all the holders of all outstanding shares, may amend the MBSCC By-Laws.

[10] 15 U.S.C. 78q–1(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44983; File No. SR–PCX–00–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc., as Amended, and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 4 and 5 Concerning the Establishment of the Archipelago Exchange as the Equities Trading Facility of PCX Equities, Inc.

October 25, 2001.

I. Introduction

On July 31, 2000, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to create a new electronic trading facility called the Archipelago Exchange ("ArcaEx"). The PCX filed Amendment No. 1 to the proposal on November 9, 2000. The proposed rule change, as amended by Amendment No. 1, was published for comment and appeared in the **Federal Register** on December 15, 2000.[3] The Commission received 10 comment letters.[4] The PCX filed Amendment No. 2 to the proposal on February 27, 2001. On April 20, 2001, the PCX filed Amendment No. 3 to the proposal, which replaced Amendment No. 2 in its entirety. Notice of the proposed rule change, as amended by Amendment No. 3, was published in the **Federal Register** on May 8, 2001.[5] The Commission received two comment letters on Amendment No. 3.[6] On July 19, 2001, the PCX filed Amendment No. 4 to the proposed rule change.[7] On October 9, 2001, the PCX filed Amendment No. 5 to the proposed rule change. This order approves the PCX's proposed rule change, as amended, publishes notice of Amendment Nos. 4 and 5 to the proposed rule change, and grants accelerated approval of Amendment Nos. 4 and 5.

II. Description of the Proposal

A. Introduction

The PCX proposes to establish ArcaEx as the new electronic communications and trading facility[8] of its subsidiary, PCX Equities, Inc. ("PCXE"). Operating in place of PCXE's traditional trading floor, the ArcaEx facility would automatically execute orders in equity securities listed or traded on the PCXE.[9] As described further below, ArcaEx market makers would replace the PCX's traditional floor specialists.[10]

As a facility of the PCX, ArcaEx would be subject to the Commission's oversight and examination. Consequently, the Commission would have the same authority to oversee the premises, personnel, and records of ArcaEx as it currently has with respect to the PCX. In addition, the PCX would be fully responsible for all activity that takes place through ArcaEx, and persons using ArcaEx would be subject to PCXE rules. For example, under the proposal, the PCX would conduct all necessary surveillance of the operation of ArcaEx and would maintain an audit trail of trading through ArcaEx. The PCX would rely on its own regulatory staff, and not on the employees of ArcaEx or its parent companies, to perform its regulatory functions concerning ArcaEx.

The Archipelago Exchange LLC, a subsidiary of Archipelago Holdings LLC, would operate the ArcaEx facility, and would be responsible for ArcaEx's business activities to the extent that those activities are not inconsistent with the regulatory and oversight functions of the PCX and PCXE.[11] This means that Archipelago Exchange LLC will not interfere with the PCX's self-regulatory responsibilities. The PCX currently has a 10% ownership interest in Archipelago Holdings LLC.[12] Pursuant to contractual agreement, the PCX has the right to appoint a representative to the board of Archipelago Holdings LLC. The current rules of PCXE allow an officer or director of a PCX trading facility to have a single seat on the PCXE's board.[13] By operation of PCX rules, the books, records, premises, officers, directors, agents, and employees of Archipelago Exchange LLC, which owns and operates the ArcaEx, would be deemed to be those of the PCX and PCXE for purposes of the Act. Moreover, all officers and directors of ArcaEx's parent company, Archipelago Holdings LLC, would be deemed officers and directors of PCX and PCXE for purposes of the Act.[14]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43608 (November 21, 2000), 65 FR 78822 (December 15, 2000).

[4] Letter from Lanny A. Schwartz, Executive Vice President and General Counsel, Philadelphia Stock Exchange, to Jonathan G. Katz, Secretary, SEC, dated Dec. 21, 2000 ("Phlx Letter"); letter from John F. Malitzis, Associate General Counsel, Nasdaq Stock Market Inc., to Jonathan G. Katz, Secretary, SEC, dated Dec. 28, 2000 ("Nasdaq Letter 1"); letter from San Francisco Specialists Association to Jonathan G. Katz, Secretary, SEC, dated Jan. 3, 2001 ("SFSA Letter"); letter from Los Angeles Specialists Association, to Jonathan G. Katz, Secretary, SEC, dated Jan. 4, 2001 ("LASA Letter"); letter from David Hultman, D.A. Davidson & Co., to Jonathan G. Katz, Secretary, SEC, dated Jan. 5, 2001 ("D.A. Davidson Letter"); letter from Jeffrey T. Brown, Cincinnati Stock Exchange, to Jonathan G. Katz, Secretary, SEC, dated Jan. 8, 2001 ("CSE Letter"); letter from Richard G. Ketchum, President, Nasdaq Stock Market Inc., to Jonathan G. Katz, Secretary, SEC, dated Jan. 22, 2001 ("Nasdaq Letter 2"); letter from Robert R. Glauber, Chief Executive Officer and President, NASD Regulation, Inc., to Jonathan G. Katz, Secretary, SEC, dated Jan. 26, 2001 ("NASD Regulation Letter"); letter from Steve Wunsch, President, Arizona Stock Exchange, to Jonathan G. Katz, Secretary, SEC, dated Feb. 1, 2001 ("AZX Letter"); and letter from Michael T. Dorsey, Senior Vice President, General Counsel and Secretary, Knight Trading Group, Inc., to Jonathan G. Katz, Secretary, SEC, dated Feb. 9, 2001 ("Knight Letter 1").

[5] Securities Exchange Act Release No. 44233 (April 30, 2001), 66 FR 23291 (May 8, 2001).

[6] *See* letter from Michael T. Dorsey, Senior Vice President, General Counsel and Secretary, Knight Trading Group, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 22, 2001 ("Knight Letter 2") and letter from Richard G. Ketchum, President, Nasdaq Stock Market Inc., to Jonathan G. Katz, Secretary, SEC, dated June 4, 2001 ("Nasdaq Letter 3").

[7] In Amendment No. 4 to the proposed rule change, the PCX added new subsection (d) to proposed PCXE Rule 14.3, which would require that Archipelago Exchange LLC and Archipelago Holdings LLC maintain all books and records related to the ArcaEx within the United States. In addition, the PCX made technical changes to various proposed rules. By letter dated October 24, 2001, Archipelago Holdings LLC withdrew its Form 1 application to register as an exchange.

[8] *See* 15 U.S.C. 78c(a)(2) (definition of "facility").

[9] The PCX has delegated its self-regulatory authority to the PCXE. *See* Securities Exchange Act Release No. 42759 (May 5, 2000), 65 FR 30654 (May 12, 2000).

[10] The proposal does not require that a market maker be assigned to every PCXE security. *See* proposed PCXE Rule 1.1(u) (definition of "market maker").

[11] *See* proposed PCXE Rule 14.3. *See also* Amendment No. 3 to the proposed rule change, Securities Exchange Act Release No. 44233 (April 30, 2001), 66 FR 23291 (May 8, 2001).

[12] *See* PCX Annual Report at *http://www.pacificex.com/about/2001AnnualReport/EQUITIES/equities.html*, visited on August 21, 2001.

[13] *See* Securities Exchange Act Release No. 44442 (June 18, 2001), 66 FR 33733 (June 25, 2001).

[14] The relationship between the PCX, PCXE, and the Archipelago entities is explained in proposed PCXE Rule 14.3. Under proposed PCXE Rule 14.3(a), the books, records, premises, officers, directors, agents, and employees of Archipelago Exchange LLC would be deemed to be the books, records, premises, officers, directors, agents, and employees of the PCX and PCXE for purposes of and subject to oversight under the Act. The books and records of Archipelago Exchange LLC would be subject at all times to inspection and copying by the PCX, PCXE, and the Commission. Under proposed PCXE Rule 14.3(b), all officers and directors of Archipelago Holdings LLC would be deemed to be officers and directors of the PCX and PCXE for purposes of and subject to oversight under the Act. Under proposed PCXE Rule 14.3(d), Archipelago Exchange LLC and Archipelago Holdings LLC would be required to maintain all books and records related to the Archipelago Exchange within the United States. *See* Amendment No. 4 to the proposed rule change.

B. Trading on ArcaEx

Equity Trading Permit ("ETP") Holders [15] and other users [16] of ArcaEx would be able to submit orders to an electronic file of orders, called the "Arca Book," [17] where trades would be executed at prices equal to or better than the national best bid or offer ("NBBO"). ArcaEx users could choose to have their unexecuted orders left on the Arca Book, returned to them, or routed to other markets.[18] A broker-dealer subsidiary of Archipelago Holdings LLC, Wave Securities LLC ("Wave"), would serve as an optional mechanism for routing the orders of ArcaEx users to other market centers.[19] ArcaEx users who do not choose to use Wave could establish routing arrangements with other providers of order-routing services or use their own proprietary routing mechanisms.

The Arca Book would feature four trading processes dealing with directed orders,[20] display orders,[21] working orders,[22] and tracking orders,[23] respectively. In the directed order process, a user could direct an order to a particular market maker, including itself.[24] In the display order and working order processes, orders would be ranked and maintained in the Arca Book according to price-time priority with displayed orders and prices having priority over undisplayed orders, sizes, and prices. In the tracking order process, orders that were not filled through the first three processes could be matched with tracking orders in accordance with the users' stated instructions. Finally, at the customer's option, orders not matched on the Arca Book may be routed to a different market center for execution.

1. The Directed Order Process

Any market or limit order to buy or sell that has been directed to a particular market maker is referred to as a "directed order." [25] A market maker would be allowed to submit standing "directed fill" instructions, including such parameters as the size of the order, the price improvement algorithm, the period of time that the instruction is effective, and the identity of the users that may send the market maker a directed order.[26] A directed order transaction would not take place unless a corresponding directed fill would execute the trade at a better price than any displayed order held in the Arca Book and in any case at the NBBO or better. Directed orders and directed fills are not displayed. Any directed order that is unexecuted or partially executed against a directed fill would enter the display order process.

2. The Display and Working Order Processes

All limited price orders [27] submitted to ArcaEx would be ranked and maintained in the display order process or the working order process of the Arca Book. Orders in those processes would be ranked according to price-time priority such that within each price level all orders would be assigned priority according to the time of entry.

Users of ArcaEx would be able to submit discretionary orders, reserve orders, and all-or-none orders—collectively referred to as "working orders"—that have conditional or undisplayed prices and/or sizes.[28] A discretionary order is an order to buy or sell a stated amount of a security at a specified, undisplayed price (the "discretionary price"), in addition to at a specified, displayed price. For example, a user could submit an order to buy 5000 shares of XYZ at 20, with discretion to buy at a price up to 20.25. In that case, the order is represented at a displayed price of 20, but under prescribed conditions the order may be filled partially or completely, at any allowable price up to the maximum discretionary price of 20.25.

A reserve order is a limit order with a portion of the size displayed and with a reserve portion of the size (the "reserve size") not displayed on the Arca Book. For example, a user could submit an order to buy 5000 shares of XYZ at 20 with a request that 1000 shares be displayed. Therefore, the 1000 shares would be displayed and the 4000 share reserve size would not be displayed until the displayed size is exhausted. An all-or-none order is a limit order that is to be executed in its entirety or not at all. All-or-none orders would not be displayed.

The display order process would include market orders, limit orders, and limit orders entered by market makers, known as "Q orders." [29] In addition, the display order process includes the displayed portions of discretionary orders and reserve orders. Discretionary orders would be ranked in the display order process based on the displayed price and the time of order entry. If a discretionary order were decremented, it would remain ranked based on the displayed price and the time of original order entry. The displayed portion of reserve orders would be ranked in the display order process at the specified limit price and the time of order entry.

All-or-none orders and the undisplayed portion of discretionary orders and reserve orders would be ranked in the working order process. Discretionary orders would be ranked in the working order process based on the displayed price and the time of original order entry. If a discretionary order were decremented, it would retain its standing in order priority. The reserve portion of reserve orders would be ranked in the working order process based on the specified limit price and the time of original order entry. If the displayed portion of the reserve order were exhausted, the displayed portion of the reserve order would be refreshed from the reserve portion at the original displayed amount, and would be submitted and ranked at the specified limit price and at the new time that the displayed portion of the order was refreshed. After the displayed portion of a reserve order is refreshed from the reserve portion, the reserve portion would remain ranked based on the original time of order entry, while the displayed portion would be sent to the display order process with a new time stamp. All-or-none orders would be ranked in the working order process based on the specified limit price and the time of order entry.

3. Examples

The PCX offers the following example to clarify how orders would be ranked in the display and working order processes. Suppose that users submit the following orders to ArcaEx:

10:00 a.m.—Order A—Limit order to buy 1000 XYZ at 20
10:01 a.m.—Order B—Reserve order to buy 5000 XYZ at 20 (show 1000)
10:02 a.m.—Order C—Limit order to buy 500 XYZ at 20
10:03 a.m.—Order D—Discretionary order to buy 5000 XYZ at 20 (discretion to 20.25)
10:04 a.m.—Order E—All-or-none to buy 1500 XYZ at 20
10:05 a.m.—Order F—Q order to buy 1000 XYZ at 20
10:06 a.m.—Order G—Limit order to buy 700 XYZ at 20
10:07 a.m.—Order H–Q order to buy 500 XYZ at 20
10:08 a.m.—Order I—Discretionary order to buy 10,000 XYZ at 20 (discretion to 20.25)

In the display order process, Orders A–H would be ranked in the Arca Book in the following order:

(1) Order A;
(2) Order B1 (the displayed 1000 shares of Order B);
(3) Order C;
(4) Order D1 (the displayed price of 20 for Order D);
(5) Order F;
(6) Order G;
(7) Order H; and
(8) Order I1 (the displayed price of 20 for Order I).

In the working order process, the orders would be ranked in the Arca book in the following order:

(1) Order B2 (4000 shares of the reserve portion of Order B);
(2) Order D2 (the discretionary price up to 20.25 for Order D);
(3) Order E; and
(4) Order I2 (the discretionary price up to 20.25 for Order I).

4. The Tracking Order Process

If an order has not been executed in its entirety after progressing through the directed order, display order, and working order processes, the order (or the remaining portion of the order) would enter the tracking order process. An incoming order may be matched to tracking orders held in the tracking order process in accordance with a user's set parameters, such as maximum aggregate size, maximum tradeable size, and the price in relation to the NBBO. Once a user has entered the parameters of a tracking order, the parameters may not be changed.[30] Like a directed fill, a tracking order would be executed only at the NBBO or better. Tracking orders are not displayed.

C. Early, Core, and Late Trading Sessions

ArcaEx would maintain three sessions each trading day: the opening session, the core trading session, and the late trading session.[31] The opening session would begin at 5:00 a.m. (Pacific Time) with an opening auction in which only limited price orders would be eligible. The opening session would conclude with a market order auction in which both market and limited price orders would be eligible. The market order auction would begin at 6:30 a.m. (Pacific Time). The core trading session would begin for each security at 6:30 a.m. (Pacific Time) or at the conclusion of the market order auction for such security, whichever comes later, and conclude at 1:00 p.m. (Pacific Time). The late trading session would begin after the conclusion of the core trading session and conclude at 5:00 p.m. (Pacific Time).

Market makers have certain obligations in the market order auction and core trading session. A market maker would be required to enter at least one "cleanup order" for each security in which it is registered for each market order auction.[32] When trading in the core session begins, market makers would be obligated to enter and maintain continuous, two-sided limit orders (*i.e.*, Q orders) in the securities in which they are registered. The directed order process and the tracking order process would not be available during the opening and late sessions. Market orders would be available during the core trading session, would not be available during the late trading session, and would be available only for the market order auction during the opening trading session.

For each day order entered into ArcaEx, the entering user would have to designate the trading sessions for which the order would be in effect. Any good-til-cancelled order entered into ArcaEx would be in effect only during core trading sessions unless the entering user specifically instructs otherwise.

III. Comments Received

The Commission received twelve comment letters from nine commenters.[33] A majority of the commenters supported the proposal.[34] Two commenters that operate electronic markets, the Arizona Stock Exchange ("AZX") and the Cincinnati Stock Exchange, stated that the proposal would benefit market participants, including retail investors, by bringing innovation and increased competition to the securities markets.[35] In particular, the AZX stated its support for the proposed auction method and sophisticated electronic surveillance capabilities.

Several PCXE members expressed strong support for the proposal and encouraged the Commission to expedite the approval process. D.A. Davidson & Co. stated its intention to participate on ArcaEx as both a market maker and a retail order flow provider, and noted that the proposal will "create a new national marketplace which will level the playing field for all participants." [36] Two commenters, the Los Angeles Specialists Association ("LASA") and the San Francisco Specialists Association ("SFSA"), strongly supported replacing the PCX's physical trading floor with the fully electronic order execution facility. LASA and SFSA believe that all investors would have equal access to information and would benefit from immediate electronic executions, possible price improvement, and anonymity on ArcaEx.[37] Further, in offering their strong support for the proposal, LASA and SFSA cited the proposed regulatory structure and ArcaEx's unique order execution algorithm, sophisticated order routing mechanism, and ability to attract corporate issuers.

In contrast, three commenters submitted a total of five letters opposing the proposal.[38] The Philadelphia Stock Exchange, Inc. ("Phlx") stated that the

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[15] *See* proposed PCXE Rule 1.1(n) (definition of "ETP Holder").

[16] A user is any ETP Holder or sponsored participant who is authorized to obtain access to ArcaEx. *See* proposed PCXE Rule 1.1(oo).

[17] *See* proposed PCXE Rule 1.1(a) (the Arca Book contains all the user's orders in each of the directed order, display order, working order and tracking order processes).

[18] *See* proposed PCXE Rule 7.37 (describing ArcaEx's order execution processes).

[19] As discussed more fully in part IV, *infra*, Wave would also act as an introducing broker and would function as an electronic communications network for the limited number of securities that would not be eligible to trade on ArcaEx.

[20] *See* proposed PCXE Rule 7.37(a) (description of "directed order process").

[21] *See* proposed PCXE Rule 7.37(b)(1) (description of "display order process").

[22] *See* proposed PCXE Rule 7.37(b)(2) (description of "working order process").

[23] *See* proposed PCXE Rule 7.37(c) (description of "tracking order process").

[24] *But see* PCXE Rule 7.43, submitted in Amendment No. 3 to the proposed rule change. (A market maker's ability to direct proprietary orders to itself would be limited because the practice could violate just and equitable principles of trade.)

[25] *See* proposed PCXE Rule 7.31(i). A directed order is defined as "any market or limit order to buy or sell which has been directed to a particular market maker by the user."

[26] *See* proposed PCXE Rule 7.31(j). A directed fill is a limit order with (1) a size that is equal to or less than the size of the directed order and (2) a price that improves the best bid or offer by an automatically preset amount, which must be equal to or greater than the minimum price improvement interval, pursuant to a price improvement algorithm; provided, however, that the directed fill will not be generated if the price is not equal to or better than the national best bid or offer.

[27] A "limited price order" is any order with a specified price or prices (e.g., limit orders and working orders) other than stop orders. *See* proposed PCXE Rule 1.1(s). Directed orders and tracking orders are limited price orders that are not displayed and are not handled within the display order process. *See* proposed PCXE Rule 7.31.

[28] *See* proposed PCXE Rule 7.31(h) (definition of "working order").

[29] *See* proposed PCXE Rule 7.31(k) (definition of "Q order"). A Q order may not be a working order.

[30] The instructions would remain in effect until the user's aggregate size limit were achieved or the day's trading session ended. *See* proposed PCXE Rule 7.31(f) (description of tracking orders).

[31] *See* proposed PCXE Rule 7.34 (description of "trading sessions").

[32] *See* proposed PCXE Rule 7.31(u) (description of "cleanup orders").

[33] *See* note 4, *supra*.

[34] NASD Regulation Inc. submitted a letter that neither supported nor opposed the proposal but urged the Commission to consider the regulatory relationship between any new exchange and existing self-regulatory organizations. *See* NASD Regulation Letter, *supra* note 4.

[35] *See* AZX Letter and CSE Letter, *supra* note 4.

[36] *See* D.A. Davison Letter, *supra* note 4.

[37] *See* LASA Letter and SFSA Letter, *supra* note 4.

[38] *See* Phlx Letter, Knight Letter 1, and Nasdaq Letter 2, *supra* note 4; Knight Letter 2, and Nasdaq Letter 3, *supra* note 6.

proposal was inconsistent with section 11(a) of the Act because public customer agency orders would not have priority over broker-dealer proprietary orders.[39] In support of this position, the Phlx argued that broker-dealers would have an informational advantage over public customers even though transactions would take place on a fully electronic system as opposed to a physical trading floor. The Phlx argued that the Commission should condition approval of the proposal on the requirement that customer orders be given priority.

The Nasdaq Stock Market, Inc. ("Nasdaq") submitted two letters opposing the proposal.[40] Nasdaq argued that, by seeking approval for ArcaEx as a facility of PCXE through the rule filing process under section 19 of the Act, the PCX and ArcaEx have improperly circumvented the exchange registration process. In Nasdaq's view, the PCX should obtain a controlling ownership interest in Archipelago Holdings LLC or ArcaEx should seek registration as a national securities exchange under section 6 of the Act. Taking note that the PCX previously regulated a competing specialist system, Nasdaq asserted that the PCX's regulatory structure was insufficient for regulating a competing dealer market. Nasdaq also questioned whether the proposal would ensure an adequate audit trail with respect to trading in Nasdaq securities.

Nasdaq also believes that an exchange is statutorily obligated to guarantee liquidity in its marketplace. Noting that there is no requirement under the proposal that a market maker be assigned to every ArcaEx security, Nasdaq asserted that the PCX would be unable to guarantee liquidity in its marketplace. Nasdaq also raised concerns with respect to ArcaEx's integration into the national market system, and contended that the requirement that users enter into a routing agreement raised best execution issues and could amount to a denial of access.

Knight Trading Group, Inc. ("Knight") questioned whether the PCX plans to impose fees on market participants that trade Nasdaq/NM securities admitted to unlisted trading privileges on ArcaEx, and asserted that expanding trading in the over-the-counter market potentially could place Nasdaq market makers that are not ETP Holders at a competitive disadvantage and disrupt the Nasdaq market.[41] In Knight's view, the proposal would provide an opportunity for Nasdaq securities to trade on ArcaEx through the OTC-UTP Plan[42] to the detriment of Nasdaq market makers.[43]

The PCX submitted three letters in response to the comments.[44] The PCX reiterated its belief that ArcaEx should properly be regulated as a facility of an exchange, and asserted that regulating ArcaEx as a facility is consistent with the Commission's regulation of facilities operated by other exchanges. Furthermore, the PCX stated that the relationship between the PCX and ArcaEx satisfies the regulatory requirements of the Act.

In response to Nasdaq concerns about ArcaEx's integration into the national market system, particularly the Intermarket Trading System ("ITS"), the PCX stated that it intends to comply with the national market system plans in connection with the operation of ArcaEx. Consistent with the terms of the ITS Plan, the PCX will not charge fees to non-members using ITS to access ArcaEx.[45] With regard to the concerns that commenters raised about the PCX's ability to conduct adequate surveillance of ArcaEx, the PCX argued that it has "not only the technological capability to establish and maintain an audit trail, but also the staff expertise and capital resources to satisfactorily oversee a new electronic market trading an increased number of securities."[46] The PCX represents that it will implement a state-of-the-art electronic audit trail system.[47]

In response to Nasdaq's concerns with respect to liquidity, the PCX stated that the Act does not specifically require that a market maker be assigned to each security traded on an exchange. Moreover, the PCX asserted that under the Commission's new regulatory framework for exchanges, liquidity provided by a market maker is not an essential element of an exchange.

Comments also questioned the proposed use of discretionary orders and the role of Wave on the ArcaEx. In particular, Nasdaq expressed the view that the use of discretionary orders would violate Rule 11Ac1–1[48] and that Wave, the broker-dealer subsidiary of Archipelago Holdings LLC, should be regulated as a facility of the PCX. More detailed summaries of those comments and the PCX's responses to them are included in part IV, infra.

IV. Discussion

After careful review and consideration of the comments, the Commission finds, for the reasons discussed below, that the ArcaEx proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the PCX.

The Commission historically has encouraged exchanges to integrate new data communications and trade execution mechanisms into their marketplaces in order to further these goals of the national market system. In recent years, for example, the Commission's Order Handling Rules[49] and Regulation ATS[50] sought to bring alternative trading systems ("ATSs"), including electronic communications networks ("ECNs"), into the framework of the national market system. In addition, the Commission approved the Nasdaq SuperMontage,[51] NYSE Direct+,[52] the application of the International Securities Exchange to become an all-electronic national securities exchange,[53] and the proposals of the PCX and the NASD to implement trading facilities using applications of the OptiMark System.[54]

In proposing to establish ArcaEx as the equities trading facility of the PCXE, the PCX has sought to replace its floor trading model with a sophisticated electronic trading system. In the Commission's view, the proposed ArcaEx facility would provide a new and technologically advanced way for trading interest to be matched and orders to be executed on the PCX. The Commission believes that, if the ArcaEx facility is able to attract new market participants and to increase order flow to the PCX, the facility could promote greater competition among market centers. In particular, the novel features of the ArcaEx facility may enable retail customers and institutional investors to come together in a new marketplace. For example, institutional investors may be able to use working orders in the ArcaEx facility to represent their trading interest more completely than is currently feasible in other electronic auction facilities.[55] If the ArcaEx facility succeeds in attracting more order flow to the PCX, the PCX may begin to serve as a greater source of liquidity for investors.

In publishing notice of the PCX's proposal, the Commission invited public comment on several important issues and received a number of well-reasoned comment letters that broadly criticized both the form and the function of the proposed ArcaEx facility. The major comments are discussed below.

A. ArcaEx Is an Equities Trading Facility of the PCX

The Commission believes that the PCX's proposal for ArcaEx to become its facility is properly filed under section 19(b)(1) of the Act,[56] and that it is not necessary for ArcaEx to register as a national securities exchange independent of the PCX under section 6(a) of the Act.[57] Section 19(b)(1) of the Act[58] requires that every self-regulatory organization ("SRO") file with the Commission copies of any proposed rule or any proposed change to its rules, accompanied by a concise general statement of the basis and purpose of the proposed rule change. The Commission is required to publish notice of the filing of a proposed rule change and to give interested persons an opportunity to submit written data, views, and arguments. Section 19(b)(2) of the Act[59] provides that the Commission shall approve an SRO's proposed rule change if it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the SRO, or disapprove the proposed rule change if the Commission does not make such a finding. In the Commission's view, the PCX's proposal to establish ArcaEx as an exchange facility is consistent with the Act, as well as with previous proposals of national securities exchanges filed under section 19(b) of the Act[60] to use the personnel and equipment of third parties to operate trading platforms.[61]

The Commission notes that PCXE rules will govern the operation of the ArcaEx facility. PCXE is a wholly-owned subsidiary of the PCX, which is a national securities exchange registered under section 6 of the Act.[62] The PCX, as the SRO, retains ultimate responsibility for its members' compliance with the provisions of the Act and the rules and regulations thereunder. In particular, the PCX must approve any changes to the rules and governing documents of PCXE. Moreover, the PCX must file changes to PCXE's bylaws and rules with the Commission pursuant to section 19(b) of the Act[63] and Rule 19b–4,[64] including any rules relating to its facilities.

In short, as a facility of the PCX, ArcaEx falls under the PCX's self-regulatory authority. In this regard, "the PCX will be fully responsible for all activity that takes place through ArcaEx, including its regulation and oversight, because ArcaEx is a part of the Exchange."[65] Although the PCX has delegated to PCXE the authority to administer and manage the PCX's equities trading function, the PCX retains the ultimate responsibility for the operation, administration, rules, and regulation of PCXE.[66] The PCX must review rulemaking and disciplinary decisions of PCXE and direct PCXE to take action that may be necessary to effectuate the purposes and functions of the Act.

ArcaEx would also be subject to Commission oversight and examination as a facility of the PCX. The Commission would oversee the premises, personnel, and records of ArcaEx to the same extent that it currently oversees the premises, personnel, and records of the PCX. Proposed PCXE Rule 14.3(a) states:

> The books, records, premises, officers, directors, agents, and employees of Archipelago Exchange LLC shall be deemed to be the books, records, premises, officers, directors, agents, and employees of PCX and PCX Equities for purposes of and subject to oversight pursuant to the Securities Exchange Act. The books and records of Archipelago Exchange LLC shall be subject at all times to inspection and copying by the PCX, PCX Equities and the SEC.

Similarly, proposed PCXE Rule 14.3(b) states that "[a]ll officers and directors of Archipelago Holdings LLC shall be deemed to be officers and directors of PCX and PCX Equities for purposes of and subject to oversight pursuant to the Securities Exchange Act."[67] Under proposed PCXE Rule 14.3(d), Archipelago Exchange LLC and Archipelago Holdings LLC must maintain all books and records related to ArcaEx within the United States.[68] The Commission believes that these provisions would adequately enable its oversight of the ArcaEx facility.

The Commission also believes that the PCX's proposal is designed to provide for the rigorous regulatory oversight that the Act requires. Under the proposal, the PCX would use its own regulatory staff, and not the employees of Archipelago Holdings LLC or Archipelago Exchange LLC, to perform its regulatory oversight duties. In addition, the PCX would maintain a full audit trail and would conduct all necessary surveillance of the trading

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[39] *See* Phlx Letter, *supra* note 4; *see also* discussion in Part IV.D., *infra*. The Commission notes that proposed PCXE Rule 6.16(a) would prohibit ETP Holders from trading ahead of their customer limit orders.

[40] *See* Nasdaq Letter 2, *supra* note 4; Nasdaq Letter 3, *supra* note 6. In Nasdaq Letter 1, Nasdaq requested that the Commission extend the period for comment on the proposal as amended by Amendment No. 1. *See* Nasdaq Letter 1, *supra* note 4.

[41] *See* Knight Letter 1, *supra* note 4; Knight Letter 2, *supra* note 6. The Commission notes that the PCX intends to submit a separate filing pursuant to Section 19(b) of the Act to establish its fees.

[42] *See* Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Exchange-listed Nasdaq/National Market System Securities and for Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("OTC-UTP Plan"). Securities Exchange Act Release No. 24407 (April 29, 1987), 52 FR 17349 (May 7, 1987). *See also* Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996).

[43] To the extent that Knight's concerns relate to the potential expansion of the OTC/UTP Plan, those issues are more appropriately addressed in the context of the pending proposal to expand the OTC/UTP Plan, which has been noticed for public comment. *See* Securities Exchange Act Release No. 44822 (September 20, 2001), 66 FR 50226 (October 2, 2001).

[44] *See* letters from Cherie L. Macauley, Wilmer, Cutler & Pickering, to John Polise, Senior Special Counsel, Division, Commission dated February 26, 2001 ("PCX Response 1"), April 19, 2001 ("PCX Response 2"), and August 3, 2001 ("PCX Response 3").

[45] The ITS Plan was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

[46] *See* PCX Response 1 and PCX Response 2.

[47] *See* PCX Response 2.

[48] 17 CFR 240.11Ac1–1.

[49] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Handling Rules").

[50] *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("ATS Release"). Generally, the ATS Release established a new regulatory framework that gives securities markets the choice to register as exchanges or as broker dealers, and also provided guidance to those markets that wished to register as national securities exchanges.

[51] *See* Securities Exchange Act Release No. 43863, (January 19, 2001), 66 FR 8020 (January 26, 2001) (Order approving the Nasdaq SuperMontage).

[52] Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (Order approving NYSE Direct+).

[53] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10–127).

[54] *See* Securities Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997) (SR–PCX–97–18); Securities Exchange Act Release No. 41967 (September 30, 1999), 64 FR 54704 (October 7, 1999) (SR–NASD–98–85).

[55] The PCX has represented that the ArcaEx displayed portion of the Arca Book will be available to the public in real time via the Archipelago internet web site.

[56] 15 U.S.C. 78s(b)(1).

[57] 15 U.S.C. 78f(a).

[58] 15 U.S.C. 78s(b)(1).

[59] 15 U.S.C. 78s(b)(2).

[60] 15 U.S.C. 78s(b).

[61] *See, e.g.*, Securities Exchange Act Release No. 41210 (March. 24, 1999), 64 FR 15857 (April 1, 1999) (approval of Phlx's VWAP Trading System); Securities Exchange Act Releese No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997) (approval of PCX's Application of the OptiMark System). *See also* Securities Exchange Act Release No. 41967 (September 30, 1999), 64 FR 54704 (October 7, 1999) (approval of Nasdaq Application of OptiMark System); Securities Exchange Act Release No. 35030 (November 30, 1994), 59 FR 63141 (December 7, 1999) (approval of Chicago Match System).

[62] 15 U.S.C. 78f.

[63] 15 U.S.C. 78s(b).

[64] 17 CFR 240.19b–4.

[65] PCX Response 2 at p. 5.

[66] *See* PCXE Rule 14.

[67] The PCX has represented, and the staff has confirmed, that the provisions of proposed PCXE Rule 14.3 are included in the contractual agreements between PCX and Archipelago Holdings LLC. *See* PCX Response 2 at p. 6.

[68] *See* Amendment No. 4 to the proposed rule change.

effected through the ArcaEx facility. The PCX would also be required to comply with the Commission's Automation Review Policy, which requires, among other things, that the PCX ensure that ArcaEx has "the capacity to accommodate current and reasonably anticipated future trading volume levels adequately and to respond to localized emergency conditions."[69]

The Commission believes that the PCX possesses the technological capability to develop and maintain a proper audit trail with respect to ArcaEx and the staff expertise and capital resources properly to oversee the new ArcaEx electronic marketplace.[70] In addition, the PCX has agreed that:[71]

- The PCX will demonstrate to the satisfaction of the Commission's staff that it has adequate surveillance programs and procedures in place to monitor trading on the ArcaEx facility;[72] and
- Prior to the start of trading on the ArcaEx facility, the PCX will demonstrate that the development and capabilities of its systems satisfy the Commission's Automation Review Policy ("ARP"); *i.e.*, that it has adequate computer system capacity, integrity and security to support its operation. In particular, PCX should continue to provide to Commission staff the results of testing ArcaEx trading system functionality, external market interfaces, and capacity, fail-over testing to the alternate data center, and mock trade testing with member firms.

Based on the foregoing, including the PCX's agreement with respect to surveillance and compliance with ARP, the Commission believes that the relevant regulatory objectives of the Act have been satisfied, and that the PCX's submission of the proposal under section 19(b) of the Act[73] is appropriate.

Nasdaq suggests that, because the PCX has filed a proposed rule change to establish ArcaEx as its facility, the proposal will receive less rigorous scrutiny than if Archipelago Holdings LLC had filed a Form 1[74] to establish ArcaEx as a national securities exchange. The Commission notes that its publication of notice and solicitation of comments on the ArcaEx proposal would have been no different in the Form 1 process than it was in the rule filing process. Indeed, recognizing that the ArcaEx proposal is unique, the Commission has given the public ample opportunity to comment on a market structure initiative of this magnitude. The proposal was formally filed on July 31, 2000, and has been amended five times. The proposal has twice been the subject of notices in the **Federal Register**. In the many months that the proposal has been in the public domain, interested persons, including other SROs, broker-dealers, investors, and other market participants, have submitted substantial, meaningful comments on the proposal.[75] The Commission believes that the public has had an adequate opportunity, pursuant to section 19(b) of the Act, to scrutinize the proposal and submit comments.

Finally, the Commission notes that, as a national registered exchange, the PCX is required to file an amendment to its Form 1 to reflect the agreement relating to the operation of ArcaEx, including a description of its affiliations with other parties, information describing the reporting, clearance, or settlement of transactions in connection with the operations of the facility, and a copy of existing by-laws or corresponding rules and instruments.[76]

B. A Market Maker Is Not Required for Every Security Traded on ArcaEx

Broker-dealers that register as market makers on ArcaEx would be required to maintain two-sided quotes, and would thereby provide a source of liquidity to the ArcaEx marketplace. Although the PCX believes that broker-dealers will make markets in many securities traded on ArcaEx, the proposed PCXE rules allow securities to be traded on ArcaEx without a registered market maker.

Nasdaq argues that PCX's failure to require a market maker in every security is a "clear statutory deficiency." In Nasdaq's view, the "most fundamental requirement" of an exchange is to provide a "ready source of liquidity," and therefore a market maker or specialist must be assigned to each security listed on an exchange.[77]

In the ATS Release,[78] the Commission specifically addressed the question whether the Act requires an exchange to guarantee liquidity in its marketplace. The Commission stated that, although traditional exchanges provide liquidity through two-sided quotations and therefore raise an expectation of execution at the quoted price, modern technology now enables market participants and investors to tap simultaneous and multiple sources of liquidity from remote locations. Significantly, the Commission rejected the suggestion that a guaranteed source of liquidity was a necessary component of an exchange.[79] The Commission notes that, although market makers could be important sources of liquidity on the ArcaEx, they would not be the sole source. In particular, the Arca Book is specifically designed to match the buying and selling interest of all users of ArcaEx. ArcaEx is not required to ensure that a market maker is registered in every PCXE security in order to be the core exchange facility of PCXE.[80]

C. Discretionary Orders Under the Quote Rule

1. The Discretionary Order Type

As discussed in part II, above, a user of ArcaEx would be able to submit a type of order called a discretionary order, which is an order to buy or sell a stated amount of a security at a specified, undisplayed price as well as at a specified, displayed price.[81] A non-marketable discretionary order would be displayed to all users at the displayed price, but the discretionary prices of the order would not be displayed. The undisplayed prices of a discretionary order would be represented in the working order process and could be matched with orders on the other side of the market under prescribed conditions.[82] The PCX believes that, because the discretionary order type allows a user to represent a single order at multiple price points, investors would be able to express their trading interest more accurately than is possible with traditional order types. In this way, according to the PCX, ArcaEx would replicate the dynamics of a floor trading model in an electronic environment.

2. The Quote Rule

In its comment letters, Nasdaq questioned whether ArcaEx's discretionary orders comply with the Commission's "Quote Rule," Rule 11Ac1–1 under the Act.[83] The Quote Rule requires exchanges to collect bids, offers, quotation sizes, and aggregate quotation sizes from "responsible brokers or dealers" and to make the best prices and aggregate quotation sizes available to quotation vendors.[84] In addition, responsible brokers and dealers must promptly communicate their best bids, offers, and quotation sizes to their exchange and be firm for their published bids and offers in any amount up to their published quotation sizes.[85]

The Quote Rule applies only to trading interest among brokers and dealers that falls within the definition of a bid or an offer. Specifically, the Quote Rule defines "bid" and "offer" as the "bid price and the offer price *communicated* by an exchange member or OTC market maker to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of a covered security, as either principal or agent, but shall not include indications of interest."[86] Therefore, a responsible broker or dealer must do more than simply indicate its interest in trading; it must affirmatively communicate its intentions to at least one other potential counter-party in the form of a cognizable bid or an offer in order to come under the Quote Rule.

In response to these concerns, the PCX argues that discretionary orders comply with both the letter and the spirit of the Quote Rule. First, the PCX argues that discretionary orders are consistent with the Quote Rule because the discretionary prices are communicated only to the exchange and not to another counter-party.[87] The essence of this argument is that the discretionary price of the discretionary order is not *displayed*, it is not *communicated* to another member or customer, and therefore that price does not qualify as a "bid" or an "offer." Second, the PCX argues that undisplayed, discretionary prices represent "inchoate trading interest," and are therefore excluded from the Quote Rule's definition of bid and offer as "indications of interest." In this regard, the PCX contends that discretionary orders are analogous to OptiMark Profiles, a feature of the PCX's former OptiMark equities trading facility.[88]

3. Analysis of Discretionary Orders

The Commission is not persuaded by Nasdaq's assertion that discretionary orders would violate the Quote Rule. Although the Commission recognizes that discretionary orders raise novel issues under the Quote Rule, the Commission does not believe that it would be in the best interests of the national market system or the protection of investors to prohibit the use of discretionary orders on ArcaEx. In the Commission's view, discretionary orders may represent a positive development for equities trading in an electronic exchange environment. The Commission believes that the discretionary order type, for example, might enable an institution to express its trading interest more fully than otherwise would be the case, in a single order covering multiple prices. This in turn could give other investors, both individual and institutional, an opportunity to interact more easily with such orders. In this regard, discretionary orders may give retail investors access to price improvement that previously has not been available in automated trading systems.[89]

In addition, one of the Commission's goals is to encourage "the deepest, most liquid markets possible."[90] In the Commission's view, by providing investors with greater flexibility in the expression of their trading interest, discretionary orders may encourage greater investor participation on the PCX, which, in turn, may increase the depth and liquidity of the securities markets.[91]

The Commission notes, moreover, that near equivalents to discretionary orders already exist on our national exchanges. For example, specialists at the New York Stock Exchange ("NYSE") routinely accept "percentage orders," in which the specialist follows instructions to match bids and offers up to a described limit but ordinarily does not display that limit, and floor brokers on the NYSE work orders with varying degrees of discretion that may be partially converted to displayed bids or offers within an allowed range.[92] In short, the functional equivalents of discretionary orders are being employed at other national securities exchanges today.

After carefully considering the advantages and disadvantages of discretionary orders, the Commission has concluded that discretionary orders are consistent with the Quote Rule. Because discretionary orders as applied on ArcaEx would represent a novel order type, however, the Commission believes that it would be useful to monitor their application in a live trading environment. The PCX has agreed to provide specific information to the Commission's staff with respect to the use of discretionary orders, including their impact on the execution of market orders in the Arca Book. Specifically, the PCX has agreed to

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[69] *See* Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 48703, 48705–06 (November 24, 1989); *see also* Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991).

[70] The Commission notes that the PCX has regulated both a traditional trading floor as well as the OptiMark electronic trading facility.

[71] Letter from Katherine Beck, Senior Vice President and Special Counsel, PCX, to Jonathan G. Katz, Secretary, Commission, dated October 24, 2001.

[72] The Commission notes that, as matter of Commission policy, surveillance programs and procedures are generally kept confidential. The Commission believes that disclosure of specific surveillance procedures could provide information that market participants could use to circumvent regulatory oversight.

[73] 15 U.S.C. 78s(b).

[74] *See* 17 CFR 249.1.

[75] A complete description of the rule filing, as well as such documents as the Equity Trading Permit Application, the Wave Routing Agreement, and other contracts for ArcaEx users, have also been available to the public via the internet. *See* http://www.tradearca.com/exchange, visited on August 21, 2001.

[76] *See* Rule 6a–2, 17 CFR 240.6a–2; see also Form 1, 17 CFR 249.1.

[77] Nasdaq Letter 2 at p.10.

[78] Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

[79] ATS Release, 63 FR at 70898; *see also* Section 3(a)(1) of the Act, 15 U.S.C. 78c(a)(1), and Rule 3b–16, 17 CFR 240.3b–16 (definition of "exchange").

[80] The Commission notes that, under the previous PCX equities trading rules, securities that were not traded with sufficient frequency to warrant the attention of a specialist were nonetheless traded on the PCX pursuant to "cabinet trading programs." *See* PCX Rule 7.20. With cabinet trading, buy and sell limit orders are booked for execution on the exchange and executed outside the regular specialist or market maker system. *See also* Section 11A(a)(1)(C) of the Act, 15 U.S.C. 78k–1(a)(1)(C) (opportunity for investors' orders to be executed without the participation of a dealer).

[81] *See* proposed PCXE Rule 7.31(h)(2) (definition of "discretionary order").

[82] *See* proposed PCXE Rule 7.37 (description of ArcaEx order execution process).

[83] Nasdaq Letter 2 at p.11.

[84] Subsection (a)(21)(i) of the Quote Rule defines the term "responsible broker or dealer" to mean: "When used with respect to bids or offers communicated on an exchange, any member of such exchange who communicates to another member on such exchange, at the location (or locations) designated by such exchange for trading in a covered security, a bid or offer for such covered security, as either principal or agent * * *" Rule 11Ac1–1(a)(21)(i).

[85] Rule 11Ac1–1(c).

[86] Rule 11Ac1–1(a)(4) (emphasis added).

[87] The Commission solicited comments as to whether discretionary orders on ArcaEx are consistent with the Quote Rule. Nasdaq opposed discretionary orders but provided no analysis to support the position.

[88] *See* Securities Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 23, 1997). The Commission does not believe that the undisplayed prices of discretionary orders can properly be characterized as "indications of interest." Unlike OptiMark Profiles, the undisplayed portion of a discretionary order would depend upon a publicly displayed price to establish its priority and standing within the ArcaEx system. Moreover, as the rules of the ArcaEx facility require both the displayed and the undisplayed portions of discretionary orders to be firm, a compatible incoming limit order would be automatically executed against the discretionary price imbedded in a discretionary order.

[89] The Commission notes that the ATS Release recognized the value of conditional orders, and expressly allowed ATSs to continue using reserve size orders, negotiation features, and other similar conditional orders. *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70866 (December 22, 1998).

[90] Securities Exchange Act Release No. 43084 (July 28, 2000), 65 FR 48406, 48407 (August 8, 2000) ("Disclosure of Order Routing and Execution Practices").

[91] *Cf.* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987, 3995 (January 25, 2000) (stating that increased participation in the Nasdaq National Market Execution System, as a result of the attractiveness of reserve orders for large investors, should enhance the depth and liquidity of the market for Nasdaq National Market securities to the benefit of all market participants).

[92] Discretionary orders may also resemble certain trading practices on regional exchanges, where regional specialists display one set of quotes while guaranteeing their customers more favorable order executions at the NBBO or better, which they do not display. *See, e.g.*, CHX Rule 37(a). The Commission historically has not determined that the order guarantees of regional specialists violate the Quote Rule.

submit data with respect to the following:

- The manner and frequency with which PCX market makers and other users are employing discretionary orders on ArcaEx;
- The extent to which market makers are using discretionary orders when trading for their own accounts;
- The quality of execution of discretionary orders (*e.g.*, inside the quote); and
- The volume of trading attributed to discretionary orders.

This information will enable the Commission's Division of Market Regulation, Office of Economic Analysis, and Office of Compliance Inspections and Examinations to evaluate the practical effects of discretionary orders as applied on ArcaEx.

D. Section 11(a) of the Act

Section 11(a) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, covered accounts) unless an exemption applies.[93] The purpose of this section was to encourage fair dealing and fair access in the exchange markets by reducing the conflicts arising from an exchange member trading for its own account in the public exchange markets.[94]

To supplement the exemptions in the statute, the Commission has adopted several rules that provide specific exemptions for transactions that would otherwise be prohibited by section 11(a). For example, Rule 11a1–1(T) provides that a member's proprietary order may be executed on the exchange to which the member belongs, as long as (1) the member discloses to the broker employed and to the trading floor that the order is proprietary,[95] and (2) any member presenting a proprietary order on the exchange floor yields priority to any bid or offer at the same price that is not also a proprietary order, notwithstanding any otherwise applicable rules of priority, parity, and precedence.[96] In addition, Rule 11a2–2(T) permits an exchange member to effect transactions for covered accounts if, among other things, the member uses an independent floor broker to execute the transactions on the exchange floor.[97] In particular, a member relying on Rule 11a2–2(T): (1) Must transmit the order from off the exchange floor; (2) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; [98] (3) may not be affiliated with the executing member; and (4) with respect to an account over which the member or an associated person has investment discretion, neither the member nor the associated person may retain any compensation in connection with effecting the transaction without express written consent from the person authorized to transact business for the account in accordance with the rule. The purpose of these requirements is "to put members and non-members on the same footing, to the extent practicable, in light of the purposes of section 11(a)." [99]

As noted above, the Phlx asserted that the operation of ArcaEx would be inconsistent with the requirements of section 11(a) because members' proprietary orders would not yield priority to public customer orders. In response to this comment, the PCX explained that ArcaEx is not relying on the exemption provide by Rule 11a1–1(T), but rather is relying on Rule 11a2–2(T). As the PCX explained, "the order execution algorithm of ArcaEx complies with the formal requirements of, and satisfies the policy concerns underlying, section 11(a) without requiring public customer priority." [100]

In particular, the PCX explained that all users, including exchange members, would transmit their orders electronically directly to ArcaEx from remote terminals. Once an order has been transmitted, a user could not further control or influence the order's execution. The orders enter a line of other orders to be executed against each other in the Arca Book based on an established matching algorithm. Execution depends on what orders are entered into ArcaEx at the same time, what orders are already in the Arca Book, and how the orders are ranked based on the time-price ranking algorithm.[101]

This electronic order and execution process of ArcaEx satisfies the four criteria of Rule 11a2–2(T). First, all orders are electronically submitted through remote terminals from off the exchange floor. Second, because a member relinquishes control of its order after transmission to ArcaEx, it receives no special or unique trading advantages. Third, although the rule contemplates having an order executed by an exchange member who is unaffiliated with the member initiating the order, the Commission recognizes that this requirement is not applicable when automated exchange facilities are used.[102] Fourth, ArcaEx members trading for covered accounts will disclose discretionary account compensation, as required by the rule. The Commission and its staff have, on numerous occasions, considered the application of Rule 11a2–2(T) to electronic trading and order routing

[93] 15 U.S.C. 78k(a). In addition to the exemptions contained in Section 11(a) of the Act, the Commission has adopted rules under this Section to provide additional exemptions. *See* 17 CFR 240.11a–1 (regulation of floor trading); 17 CFR 240.11a1–1(T) (transactions yielding priority, parity, and precedence); 17 CFR 240.11a1–2 (transactions for certain accounts of associated persons of members); 17 CFR 240.11a1–3(T) (bona fide hedge transactions in certain securities), 17 CFR 240.11a1–4(T) (bond transactions on national securities exchanges), 17 CFR 240.11a1–5 (transactions by registered competitive market makers and registered equity market makers); 17 CFR 240.11a1–6 (transactions for certain accounts of OTC derivatives); and 17 CFR 240.11a2–2(T) (transactions effected by exchange members through other members).

[94] *See* 78 Cong. Rec. 2270–71 (1934).

[95] Specifically, Rule 11a1–1(T)(a)(1) provides that the member must disclose that the order is proprietary to any member with whom the order is placed or to whom the order is communicated, and members with whom such an order is placed or communicated must disclose the proprietary status of the order to others participating in effecting the order. Rule 11a1–1(T)(a)(2) provides that immediately before executing a proprietary order, a member (other than the specialist in the security being traded) presenting such an order must "clearly announce or otherwise indicate" to the specialist and to any other members then present for trading in that security, that the order is proprietary.

[96] Proprietary orders must yield to non-proprietary orders at the same price, regardless of the size of the orders or the time at which they are entered. *See* Rule 11a1–1(T)(a)(3), 17 CFR 240.11a1–1(T)(a)(3).

[97] *See* Rule 11a2–2(T)(a)(2), 17 CFR 240.11a2–2(T)(a)(2). *See also* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (orders that are cancelled or changed under this rule are treated as new orders; such instructions must also be transmitted to the executing broker from off the floor); Securities Exchange Act Release No. 14713 (April 28, 1978), 43 FR 18557 (May 1, 1978) (orders must be transmitted directly to the executing broker from off the floor; they can not be sent through the initiating member's floor employees).

[98] The member may participate, however, in clearing and settling the transaction.

[99] Securities Exchange Act Release No. 14713 (April 28, 1978), 43 FR 18557 (May 1, 1978).

[100] *See* PCX Response 1 at p. 12.

[101] The Commission notes that proposed PCXE Rule 6.16 would prohibit ETP Holders from trading ahead of customer limit orders.

[102] For example, in considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange floors, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* Securities Exchange Act Release No. 15533 (January 29, 1979).

systems.[103] The PCX requested guidance from the staff regarding PCX's interpretation of how ArcaEx meets the requirements of Rule11a2–2(T), and the staff concurred with PCX's interpretation.[104] The Commission finds that the proposed operation of ArcaEx is consistent with section 11(a) of the Act.

E. The Wave Broker-Dealer

1. The Proposed Functions of Wave

Wave, a wholly owned subsidiary of Archipelago Holdings LLC, is a registered broker-dealer and a member of the NASD. The PCX described Wave's three functions with respect to ArcaEx in Amendment No. 3 to the proposed rule change.

First, Wave would register as an ETP Holder and act as an introducing broker for customers that are non-ETP Holders. In that capacity, Wave would provide sponsored access to ArcaEx pursuant to contractual relationships with entities that are not ETP Holders.

Second, Wave would provide an optional routing service for ArcaEx, and, as necessary, would route orders to other market centers from ArcaEx.[105] Those who choose to use this service would sign a Wave Routing Agreement that reads, in pertinent part:

> User agrees that all orders on its behalf must be transmitted to WAVE through the Archipelago Exchange. User agrees that the Archipelago Exchange is its exclusive mechanism for purposes of transmitting orders on its behalf to WAVE and for receiving notice regarding such orders. WAVE shall be entitled to rely upon and act in accordance with any order instructions received from the Archipelago Exchange on behalf of User. User agrees that all order executions effected on behalf of User pursuant to this agreement shall be reported by WAVE to the Archipelago Exchange. The User shall be notified of such executions through the Archipelago Exchange.[106]

In addition, the Wave routing agreement provides that orders routed through Wave will remain subject to the rules of PCXE.[107]

Third, Wave would continue to operate an ECN. Wave's ECN would trade only those securities that are ineligible for unlisted trading privileges on ArcaEx. As proposed, Wave's ECN would continue to trade the securities that are ineligible for unlisted trading on ArcaEx, but it would cease trading those securities if they became eligible.[108]

2. ArcaEx's Affiliation with Wave

As noted above, Archipelago Holdings LLC would own both ArcaEx, a facility of the PCX, and Wave, a broker-dealer. Nasdaq and Knight expressed concerns regarding ArcaEx's affiliation with the Wave broker-dealer operating in the capacities described above. Specifically, in their comment letters, Nasdaq and Knight contended that the proposed market structure of ArcaEx, particularly the relationship between ArcaEx and Wave, would be anti-competitive.[109] Nasdaq believes that Wave's order routing mechanism, combined with its role as an introducing broker and its maintenance of an ECN for trading Nasdaq securities, would create a troubling conflict of interest and would result in a competitive imbalance between Wave and other ETP Holders. Similarly, Knight believes that the proposal does not adequately address Wave's potential conflict as a broker-dealer and an order-routing mechanism for ArcaEx.

Under section 6 of the Act, the rules of a national securities exchange must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[110] The Commission recognizes that the potential for unfair discrimination may be heightened if a national securities exchange or its affiliate owns or operates a broker dealer. This is because the financial interests of the national securities exchange may conflict with its responsibilities as an SRO regarding the affiliated broker-dealer. For this reason, the national securities exchange must not serve as the self-regulatory organization that is primarily responsible for examining its affiliated broker-dealer.[111] Moreover, a conflict of interest would arise if the national securities exchange (or an affiliate) provided advantages to its broker-dealer that are not available to other members, or provided a feature to all members that was designed to give its broker-dealer a special advantage. These advantages, such as greater access to information, improved speed of execution, or enhanced operational capabilities in dealing with the exchange, might constitute unfair discrimination under the Act. The Commission has considered these potentially unfair advantages in the light of Wave's proposed functions.

a. The PCX Application of the Wave Order-Routing Function

Both Nasdaq and Knight believe that users who do not choose to enter into a routing agreement, and therefore do not use the order routing services of Wave, would be placed at a competitive disadvantage *vis a vis* users who opt to enter into a routing agreement. Moreover, Knight suggested that Wave would violate the fair access provisions of the Act because certain order types would not be available to those who have chosen not to use Wave. Finally, Nasdaq suggested that, because ArcaEx would have to return the partially executed or unexecuted orders to non-users of Wave, who would then route the orders by alternative means, the price and speed of execution for such orders could be significantly compromised.

The PCX addressed Wave's role as an optional order routing mechanism of the PCX in considerable detail. First, the PCX asserted its view that no denial of access issues arise with respect to any order type, regardless of their routing mechanism, because every user must satisfy identical, objective requirements for submitting each order type.[112] In the PCX's view, as the requirements do not vary based on the identity of the user, the routing procedures and mechanisms

[103] *See, e.g.*, Securities Exchange Act Release No. 29237 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); Securities Exchange Act Release No. 15533 (January 29, 1979) (regarding the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX's Communications and Execution System, and the Phlx's Automated Communications and Execution System); Securities Exchange Act Release No. 14563 (March 14, 1978) (regarding the NYSE's Designated Order Turnaround System). *See also* Letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, SEC, to Edith Hallahan, Associate General Counsel, Phlx (March 24, 1999) (regarding Phlx's VWAP Trading System); Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to David E. Rosedahl, PCX (November 30, 1998) (regarding OptiMark); and Letter from Brandon Becker, Director, Division of Market Regulation, SEC, to George T. Simon, Foley & Lardner (November 30, 1994) (regarding Chicago Match).

[104] Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Kathryn Beck, Senior Vice President and Special Counsel, PCX, dated October 25, 2001.

[105] *See, e.g.*, proposed PCXE Rules 1.1(gg), 7.32 and 7.37(d).

[106] *See* Wave Routing Agreement, http://www.tradearca.com/exchange, visited on October 14, 2001.

[107] *Id.* ("User understands and agrees that orders executed on its behalf shall at all times be subject to the terms and conditions of the PCXE Rules.")

[108] Unlisted trading privileges of Nasdaq securities on national securities exchanges are subject to the OTC-UTP Plan and Section 12(f) of the Act. Currently, 1,000 Nasdaq National Market issues may be admitted to unlisted trading privileges on national securities exchanges.

[109] *See* Nasdaq Letters 2 and 3; Knight Letters 1 and 2.

[110] *See* Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5).

[111] *See* ATS Release, 63 FR at 70892. Indeed, as the Commission noted in the ATS Release, a national securities exchange that operates a broker-dealer/alternative trading system must arrange for another SRO to act as the regulator for that entity. Here, the NASD will be the designated examining authority for those functions of Wave that are not facilities of the PCX.

[112] *See* PCX Response 2 and 3.

do not unfairly discriminate against any particular class of user.[113]

Second, the PCX noted that, although users could opt to route orders from ArcaEx to other market centers through the Wave order routing function, no ArcaEx user would be required to use Wave for this purpose.[114] Members could also select other broker-dealers to provide order-routing functions. Under the PCX's proposal, if a user has not chosen to use Wave's routing services, the user's unexecuted or partially unexecuted order would be returned to the user or its designated agent after a sweep of the ArcaEx market.[115] Once the order is returned, the user would then be able to route it to another market center by an alternative means. As an example, the PCX pointed out that a user could opt to bypass Wave entirely and instead rely on its own routing abilities or those of another broker-dealer by using a "fill or return" or a "fill or return plus" order.[116] By using those orders, a user could route its order to another market in a manner of its own choosing if the order is not fully executed on the ArcaEx.

Third, the PCX emphasized that users who opt out of the Wave routing services would be precluded from entering only a very limited subset of orders that specifically incorporate a Wave routing requirement within the definition of the order. In particular, non-users of Wave would be unable to enter only a primary-only order (an order that is automatically routed to the primary market as a market-on-open order) and a NOW order (an order that is automatically routed to a different market center for immediate execution).[117] In handling these particular orders, which are executed solely on another market, WAVE does not have advantages from its ArcaEx function. The PCX also represented that information barriers would be maintained to ensure that Wave does not unfairly take advantage of knowledge gained as the PCX's order routing mechanism.

The Commission believes that, although Wave's routing services are optional, Wave's order-routing function occupies a special position with respect to ArcaEx. In the Commission's view, Wave is uniquely linked to and endorsed by ArcaEx to provide its outbound routing functionality. Therefore, the Commission believes, and the PCX agrees, that the PCX application of the Wave order-routing function falls within the definition of a facility under the Act. Section 3(a)(2) of the Act provides:

> The term "facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to use of such premises or property or any service thereof *for the purpose of effecting or reporting a transaction on the exchange (including, among other things, any system of communication to or from the exchange,* by ticket or otherwise maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service. (Emphasis added.)

In the Commission's view, by functioning as an order routing mechanism for ArcaEx, Wave would operate as a "system of communication" to or from the PCX for the purpose of effecting a transaction on the exchange. Specifically, pursuant to contract, Wave would receive instructions from ArcaEx, would route orders away in accordance with those instructions, and would be responsible for reporting resulting executions back to ArcaEx.[118] In addition, as discussed above, all orders routed through Wave would remain subject to the terms and conditions of the PCX's rules.[119]

Because the application of the Wave order routing function is a facility of the PCX, the PCX would be responsible for regulating the Wave order routing function as an exchange facility subject to section 6 of the Act. As such, Wave's order routing function would be subject to the Commission's continuing oversight. In particular, under the Act, the PCX must file rule changes and fees relating to the Wave order-routing function, and Wave would be subject to exchange non-discrimination requirements.[120] These requirements are intended to address the potential misuse of advantages that might arise from Wave's order-routing function.[121]

b. Wave's Function as Introducing Broker for ArcaEx

The PCX's indirect ownership of Wave, combined with Wave's role as an introducing broker to ArcaEx, raises the question whether Wave in this role should be considered a facility of the PCX. Despite Wave's affiliation with the PCX, the Commission does not believe that Wave's introducing broker function should necessarily be viewed as constituting a facility of the PCX.[122] In its introducing broker role, Wave would be acting as a user/member of the ArcaEx on precisely the same terms as any other member. Wave would not be the sole source of sponsored access to ArcaEx; all other ETP Holders could readily provide similar services on behalf of their customers. In addition, the PCX is subject to existing statutory standards that prohibit denials of access and other unfair discrimination against any member regarding access to the PCX's services. Those standards would preclude the PCX from providing Wave with unfair, preferential access to its facilities.

Furthermore, the PCX has provided additional protections to limit the risk that Wave would receive an unfair advantage over other ETP Holders in operating as an introducing broker. The PCX has instituted safeguards to ensure that Wave's introducing broker function would be segregated from the operation of the PCX and its facilities, so that Wave would not receive any informational advantages from its affiliation with ArcaEx and the PCX. Specifically, proposed PCXE Rule 14 requires the PCX to maintain strong information barriers between its facilities and other functions of the Wave broker-dealer.[123]

The Commission believes that the availability of sponsored access to ArcaEx from multiple sources, coupled with the segregation of functions described above, would adequately protect investors and the public interest from potential concerns arising from the PCX's affiliation with Wave. This analysis would change, however, should Wave become the sole or predominant source of sponsored access to ArcaEx, or should the PCX's information barriers prove to be ineffective. In that case, the potential advantages provided to Wave in its operation as an introducing broker from its affiliation with the PCX may cause Wave to be considered a facility of the PCX and therefore subject to the requirements of section 6 of the Act.

c. Wave's Operation of an ECN

As noted above, Nasdaq expressed the view that Wave's ECN should be regulated as a facility of the PCX. The PCX submitted a response in which it argued that Wave's ECN does not meet the definition of a facility under section 3(a)(2) of the Act. The PCX noted that Wave's ECN would perform a very limited trading function, serving as an ECN for only those Nasdaq securities that are not eligible for trading on ArcaEx.

In the ATS Release, the Commission stated that exchanges may "form subsidiaries or affiliates that operate alternative trading systems registered as broker-dealers."[124] Such subsidiaries or affiliates are required to become members of a national securities association or national securities exchange. Furthermore, the alternative trading system would be considered a facility of its affiliated exchange if it were integrated or otherwise linked to that exchange.

Here, Wave's ECN will continue to be regulated by the NASD rather than the PCX,[125] will trade only those Nasdaq securities that are not eligible for trading on the PCX, and will not be integrated or otherwise linked to the PCX. In addition, the PCX has represented that once all Nasdaq securities are eligible for trading on the PCX, the Wave ECN will cease operation completely. In view of the foregoing, the Commission believes that the Wave ECN is not a facility of the PCX, and that it is properly regulated within the framework that Regulation ATS establishes.

V. Commission's Findings

On the basis of the facts and conclusions discussed in Sections I through IV above, the Commission makes the following findings with respect to the PCX's proposal.

A. Competition, Efficiency, and Capital Formation

In reviewing the PCX's proposal, the Commission is required under section 3(f) of the Act[126] to consider whether the proposal will promote competition, efficiency, and capital formation. In addition, section 6(b)(8) requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[127]

As noted above, in the Commission's view, the proposed ArcaEx facility would provide a new and technologically advanced way for trading interest to be matched and orders to be executed on the PCX. If the ArcaEx facility is able to attract new market participants and to increase order flow to the PCX, the facility could promote greater competition among market centers. In particular, ArcaEx's trading rules are designed to encourage the use of various tools, such as discretionary orders and reserve size, that will allow investors greater flexibility in displaying and managing their orders, thereby allowing them to more fully represent their trading interest in a public marketplace. Thus, the Commission believes that the PCX's proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Moreover, if the ArcaEx facility succeeds in attracting more order flow to the PCX, the PCX may begin to serve as a greater source of liquidity for investors, and this in turn could promote greater efficiency of executions. Similarly, the availability of novel features will provide investors and issuers with new opportunities to interact, thereby encouraging capital formation.

B. Section 6(b)(5) of the Act

The Commission finds that the PCX's proposed rules establishing the ArcaEx as its facility are consistent with section 6(b)(5) of the Act,[128] in that the rules have been designed to remove impediments to and to perfect the mechanism of a free and open market and a national market system, while also protecting investors and the public interest. Specifically, the PCX's rule proposal would create a new electronic platform for matching and executing orders. Significant features of the ArcaEx facility (as reflected in the PCXE rules), such as the availability, in real time, of the entire displayed book via the internet, would provide investors with more timely and accurate information regarding trading interest on the facility. In addition, the use of discretionary orders on ArcaEx may provide investors with greater flexibility to represent their trading interest accurately and completely. Further, the order routing function and the ITS connection would also provide investors entering orders into ArcaEx with the ability to access the best prices in different markets should their order not be executable on the Arca Book.

In addition, the Commission finds that the PCX's proposal is consistent with the requirements of section 6(b)(5) that the rules of an exchange be designed to prevent fraudulent and manipulative acts and to promote just and equitable principles of trade, and that they not be designed to permit unfair discrimination among customers, issuers, or broker-dealers. Specifically, the PCX has, when necessary and appropriate, adapted its customer protection rules to reflect its adoption of the all-electronic ArcaEx trading facility.[129] The PCX has also committed to develop and maintain an appropriate system of surveillance and an audit trail. Finally, by rule, the PCX has proposed to segregate the functions of the ArcaEx facility and the functions of Wave that are not regulated as facilities of the PCX. Accordingly, the Commission does not believe that the PCX's rules permit unfair discrimination among users of ArcaEx.

C. Section 11A of the Act

In section 11A(a)(1)(C),[130] Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) The economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer. Congress also recognized that technology would drive competition among the securities markets, stating, "[n]ew data processing and communications techniques create the opportunity for more efficient and

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[113] *See*, e.g., Section 6(b)(5) of the Act (the rules of an exchange may not be designed to permit "unfair discrimination").

[114] *See*, e.g., proposed PCXE Rules 1.1(gg), 7.32 and 7.37(d). The PCX explained the PCX and Archipelago opted to employ the services of a routing broker (rather than to rely on routing orders to other markets directly from PCX itself) simply because of various technical issues associated with market center-to-market center routing.

[115] *See* proposed PCXE Rule 7.37(d) (describing "Routing Away," Step 5 of the trading algorithm, after the directed order, display order, working order and tracking order processes).

[116] *See* proposed PCXE Rules 7.31(p) and 7.31(r) (definitions of "fill or return" and "fill or return plus" orders, respectively).

[117] *See* proposed PCXE Rule 7.31(v) and (x) (definitions of "NOW" and "primary only" orders, respectively).

[118] These trades would be reported by the executing market.

[119] *See* Wave Routing Agreement, http://www.tradearca.com/exchange, visited on October 14, 2001.

[120] *See*, e.g., Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5).

[121] The Commission also believes that, because Wave's order-routing function is optional and because those who decline to use it would continue to have full access to the rest of the ArcaEx facility, the Wave order-routing function would not be per se unfairly discriminatory.

[122] Cf. Securities Exchange Act Release No. 44201 (April 18, 2001), 66 FR 21025 (April 26, 2001) (Certain aspects of OTC Tools software application providing enhanced access to Nasdaq functionality, which was owned and exclusively available through the NASD was considered a facility of the NASD).

[123] *See* Amendment No. 5 to the proposed rule change.

[124] *See* ATS Release, 63 FR at 70891.

[125] *See* PCX Response 2 and 3.

[126] 15 U.S.C. 78c(f).

[127] 15 U.S.C. 78f(b)(8).

[128] 15 U.S.C. 78f(b)(5).

[129] *See*, e.g., proposed PCXE Rule 6.16 (prohibiting members from trading ahead of customer limit orders).

[130] 15 U.S.C. 78k–1(a)(1)(C).

effective market operations."[131] Congress instructed the Commission to seek to "enhance competition and to allow economic forces, interacting with a fair regulatory field, to arrive at appropriate variation in practices and services."[132]

The Commission believes that the proposal incorporates features that will provide investors with the opportunity to receive economically efficient execution of their securities transactions and to promote fair and orderly markets.[133] In addition to the features noted above, the Commission notes that a significant feature of the Arca Book is that it potentially provides an opportunity for investors' orders to be executed without the participation of a market maker. The Commission also believes that the real-time dissemination of the Arca Book to the public via the internet will provide valuable information to all market participants and is reasonably designed to promote price discovery. Finally, the Commission believes that ArcaEx's routing technology and link to ITS will allow investor orders efficiently to reach other markets with better prices. Therefore, Commission finds that the PCX's proposal is consistent with section 11A of the Act.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 4 and 5, including whether Amendment Nos. 4 and 5 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to Amendment Nos. 4 and 5 of File No. SR–PCX–2000–25 and should be submitted by November 23, 2001.

VII. Order Granting Approval

The original rule proposal was noticed for public comment in November 2000. Amendment No. 4 makes technical corrections to the rules and adds a provision with respect to the status of the books and records of Archipelago Holdings LLC. Amendment No. 5 is directly responsive to questions raised by commenters regarding the status of Wave. The Commission believes that it has received and fully considered substantial, meaningful comments with respect to the PCX's proposal, as amended, and that Amendment Nos. 4 and 5 do not raise issues that warrant further delay.[134] Accordingly, pursuant to section 19(b)(2) of the Act,[135] the Commission finds good cause to approve Amendment Nos. 4 and 5 prior to the thirtieth day after notice of the Amendments is published in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[136] that Amendment Nos. 4 and 5 to the PCX's proposed rule change are hereby granted accelerated approval; and

It is also ordered, pursuant to section 19(b)(2) of the Act,[137] that the proposed rule change (File No. SR–PCX–00–25), as amended, is hereby approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27417 Filed 10–31–01; 8:45 am]

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[131] *Id.*

[132] *See* S. Rep. No. 94–75, 94th Cong., 1st Sess. 7 (1975) at p. 8.

[133] 15 U.S.C. 78k–1.

[134] *See also* discussion at text accompanying note 76, *supra*.

[135] 15 U.S.C. 78s(b)(2).

[136] *Id.*

[137] *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44991; File No. SR–PHLX–2001–74]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Phlx By-Law Article XII, Section 12–4 and Article XV, Sections 15–1 and 15–2

October 26, 2001.

On August 7, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] a proposed rule change that would: (i) Amend Phlx By-Law Article XII, section 12–4 and Article XV sections 15–1 and 15–2 to reduce the current 14-day posting period for membership and foreign currency options participation transfers to seven days,[3] (i) change the notice of posting from the Exchange bulletin board to the Phlx website while retaining publication in the Secretary's Weekly Bulletin; and (iii) allow the Chairman or his designate to reduce the posting period as deemed appropriate upon determination that such action is in the best interests of the Exchange. The **Federal Register** published the proposed rule change for comment on September 26, 2001.[4] The Commission received no comments on the propsoal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act[7] and believes that the proposed rules should continue to provide members with sufficient notice of proposed transfers of memberships or foreign currency options participations to allow for the submission of information concerning an applicant's qualifications and fitness for membership. Therefore, the Commission finds the proposed rule change is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Phlx–2001–74) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27442 Filed 10–31–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As required by Exchange By-Law Article, XXII, section 22–2, the Exchange issued notice of the proposed By-Law amendments to Articles XII and XV to its membership on April 11, 2001 and July 10, 2001, respectively. The Exchange represents that it did not receive a request from 17 or more members for a special meeting of the Exchange to consider the proposed amendment. As a result, the Board approved the proposed amendment to By-Law Article XII on May 16, 2001, and approved the proposed amendment to By-Law Article XV on August 1, 2001. Telephone conversation between Murray L. Ross, Vice President and Secretary, Phlx, Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division") Commission, and Sonia Patton, Special Counsel, Division, Commission (September 13, 2001).

[4] Securities Exchange Act Release No. 44819 (September 19, 2001), 66 FR 49242.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–10855]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number 2115–0636

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of one Information Collection Request (ICR). The ICR concerns the survey of "customers" of the International Ice Patrol run by the Coast Guard. Before submitting the ICR to OMB, the Coast Guard is requesting comments on it.

DATES: Comments must reach the Coast Guard on or before December 31, 2001.

ADDRESSES: You may mail comments to the Docket Management System (DMS) [USCG 2001–10855], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The DMS maintains the public docket for this request. Comments will become part of this docket and will be available for inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2001–10855], and give the reason for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Request

1. *Title:* Survey of Customers of the International Ice Patrol (IIP) Run by the Coast Guard.

OMB Control Number: 2115–0636.

Summary: The Coast Guard will use the information obtained from direct customers to measure satisfaction with current services and determine whether added services are necessary.

Need: The IIP monitors the extent of danger due to icebergs near the Grand Banks of Newfoundland and warns the maritime community of the danger by broadcasting the southeastern, southern, and southwestern limits of all known ice in two message bulletins and one radiofacsimile chart each day. Executive Order 12862 requires us to evaluate our services and assess our customers' satisfaction.

Respondents: Masters, crewmembers, scientists, or other persons that use the bulletins or charts of the IIP.

Frequency: Annual.

Burden Estimate: The estimated burden is 125 hours a year.

Dated: October 17, 2001.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 01–27477 Filed 10–31–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Insurance Incremental Premium Reimbursement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Air Transportation System Safety and Stabilization Act of September 22, 2001 authorized the FAA to reimburse qualifying air carriers for the difference in insurance premiums paid as a result of increases resulting from the premium increases experienced after the September 11 New York City terrorists attacks. The FAA will provide stabilizing reimbursement payments to aid the carrier's financial recovery. The FAA is publishing the contents of a letter it has distributed and notice of the internet web access which explains the process for a carrier to apply for reimbursement.

FOR FURTHER INFORMATION CONTACT: Ms. Nan Shellabarger, Office of Aviation Policy and Plans, APO–2, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267–3275.

SUPPLEMENTARY INFORMATION: Pursuant to section 201(b)(1) of the Air Transportation System Safety and Stabilization Act, (Pub. L. No. 107–42, 115 Stat. 230, Sept. 22, 2001), the Federal Aviation Administration's Aviation Insurance Program hereby offers to partially reimburse your company for the increases in the war risk insurance premiums above that paid by your company for comparable operations during the period beginning on September 4, 2001, and ending on September 10, 2001. This offer is subject to final funding availability.

The attached letter and application can also be viewed on the web at: *http://api/hq.faa.gov/911/policies/inscover.html*.

Issued in Washington, DC, on October 29, 2001.

John M. Rodgers,

Director, Office of Aviation Policy and Plans.

Date: October 26, 2001

TO: U.S. Air Carriers

Aviation Insurance Incremental Premium Reimbursement

Dear Air Carrier Insurance Representative: Pursuant to section 201(b)(1) of the Air Transportation System Safety and Stabilization Act, (Pub. L. No. 107–42, 115 Stat. 230, Sept. 22, 2001), the Federal Aviation Administration's Aviation Insurance Program hereby offers to partially reimburse your company for the increases in the war risk insurance premiums above that

paid by your company for comparable operations during the period beginning on September 4, 2001, and ending on September 10, 2001. This offer is subject to final funding availability.

This reimbursement will only cover premium increases—

(a) for coverage against loss or damage arising out of war risks from the operation of an "American aircraft," as that term is defined at 49 USC 44301(1); and

(b) for the thirty-day period beginning at 12:01 a.m. on the day following the cancellation of the war risk insurance that was in effect for your company on September 11, 2001, and ending at 12:00 midnight on the thirtieth day following.

To request this reimbursement, follow the instructions below. You must submit your request for reimbursement with appropriate documentation for receipt by the FAA by close of business November 2, 2001, to be eligible for this reimbursement. Fax or e-mail requests are allowed, but must be followed by original documents sent via express courier or mail.

A final determination of the amount of payment for reimbursement will be made by the FAA after November 2 when all applications for reimbursement shall have been received and the sum of requests for reimbursement is known. The amount of reimbursement will be pro-rated based on the availability of funds for this purpose in the Aviation Insurance Revolving Fund. Additional payments may be made from the Revolving Fund as additional amounts become available from the "2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States".

Instructions for Application for Reimbursement

1. Complete the attached invoice with the following information.

A. Airline Name.

B. FAA Reference Number—R–AI–02–[use your two digit airline code].

C. Taxpayer Identification Number.

D. Company Invoice Number. This is *your* company's invoice number issued to FAA.

E. (1) Enter the dates for the thirty-day period beginning at 12:01 a.m. on the day following the cancellation of the war risk insurance that was in effect for your company on September 11, 2001, and ending at 12 midnight on the thirtieth day following.

(2) Amount—Enter the pro-rata average daily premium information for the two time periods as requested, calculate the difference and multiply by 30 to reach the total: Round to the nearest whole dollar: $000,000.

F. Electronic fund transfer information for your bank account for FAA's deposit.

(1) Bank name
(2) Bank address
(3) Bank ABA routing number
(4) Account Name
(5) Account Number

G. Fleet Certification—Fill in the correct percent (%) of "American aircraft" in your fleet as defined at 49 USC 44301(1). (See Frequently Asked Questions for definition)

H. Statement of Certification—By signing on line I (below this statement) you are certifying the invoiced amount is accurate under penalty of 18 USC 1001.

I. Signature of appropriate corporate official.

2. Supply us with the name, phone number, and e-mail address of the appropriate person(s) to contact if we have specific questions about the invoice.

3. Provide a copy of your FAA air carrier certificate.

4. Provide a copy of your insurance company's invoice showing the insurance premium for war risk hull and/or liability that was in effect for comparable operations during the period beginning September 4, 2001, and ending September 10, 2001.

5. Provide a copy of your insurance company's invoice showing the insurance premium increase for war risk after September 11, 2001.

If your company's invoices are not consistent with our request, provide a written statement from your insurer as to the war risk premium(s) prior to September 11, 2001 and premium(s) after September 11, 2001 on a pro-rata daily basis and calculate the difference.

Return of Documents

Please respond to this letter by e-mail or fax to the Aviation Insurance representative assigned to your company at (202) 267–3324 or (202) 267–5370 or (202) 267–3278. (If you have not yet had a representative assigned to your company, email to *9-awa-apo-aviation-insurance@faa.gov*, or fax to one of the above numbers.) Follow the electronic response by sending the original invoice to FAA at the address below. (As of this writing, U.S. mail delivery in the Washington, DC area is disrupted, so you may wish to use a private service.)

Federal Aviation Administrator, Attn:
[insurance representative's name], Aviation Insurance, APO–3 (Room 939), 800 Independence Ave., SW., Washington, DC 20591

Your request for reimbursement will be reviewed promptly by the Aviation Insurance Program staff. We anticipate that your reimbursement will be issued within four to six weeks of receipt of your e-mail or fax request. Please contact your Aviation Insurance representative with any questions you may have regarding the documentation required or the status of your reimbursement.

Sincerely,

John M. Rodgers,
Director of Aviation Policy and Plans.

Application for Incremental War Risk Insurance Premium Reimbursement.

To: Aviation Insurance Department, APO–3, Federal Aviation Administration, 800 Independence Avenue, SW, Room 939, Washington, DC 20591

A: Airline Name _____
B: FAA Reference Number:
R–AI–02 ____ (two digit airline code)
C: Taxpayer Identification Number _____
D: Company Invoice Number _____
E1: Charges for incremental war risk premium reimbursement, covering period _____, 2001 through _____, 2001 (not to exceed 30 days)
E2:

War Risk Premium Prior to Sept. 11, 2001

Avg Daily Rate
Hull $ _____
Liability $ _____
Total $ _____

War Risk Premium After Sept. 11, 2001

Avg Daily Rate
Hull $ _____
Liability $ _____
Total $ _____

Difference

Avg Daily Rate
Hull $ _____
Liability $ _____
Total $ _____

Total Difference Multiplied by 30 days
Total 30 Day Premium Reimbursement Request $_____ (Round to nearest whole dollar)

F 1: Bank Name _____

F 2: Bank Address _____

F 3: Bank ABA routing number _____

F 4: Account Name _____

F 5: Account Number _____

G: I certify that the percentage of "American aircraft" as defined at 49 U.S.C. 44301(1) covered by the insurance for which premium reimbursement is requested is _____%
(100% or some lessor number)
H: I certify that the forgoing charges are true and correct and that payment therefore has not yet been received for such charges from the Federal Aviation Administration. The information supplied in this certification subjects the affirmant to the provisions of 18 USC 1001.

I: Signed: Name and title of certifying corporate official

[FR Doc. 01–27475 Filed 10–31–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF THE INTERIOR

Federal Highway Administration

National Park Service

Environmental Impact Statement; Loudon, Fairfax, Fauquier, and Prince William Counties, VA

AGENCY: Federal Highway Administration (FHWA), DOT; National Park Service (NPS), DOI.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared, in cooperation with the National Park Service (NPS), for potential transportation improvements in the vicinity of the Manassas National Battlefield Park to address the Manassas National Battlefield Park Amendments Act of 1988 which require relocation of US Route 29 and VA Route 234 in the vicinity of the Park.

FOR FURTHER INFORMATION CONTACT: Jack Van Dop, Environmental Specialist, Federal Highway Administration, 21400 Ridgetop Circle, Sterling, VA 20166, Telephone 703–404–6282 or John Marsh, Project Manager, National Park Service, Denver Service Center, Telephone: (303) 969–2471.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's web site at: http://www.access.gpo.gov/nara.

Background

With this notice of intent, the FHWA and the NPS are initiating the National Environmental Policy Act (NEPA) process including the preparation of an environmental impact statement, for the Manassas National Battlefield Bypass to study potential alternatives to relocate US Route 29 and VA Route 234 in, and in the vicinity of, the Manassas National Battlefield Park in Manassas, Virginia. In 1988, the Congress enacted Public Law 100–647, 102 Stat. 3342, 3810. Title X of this Act is cited as the Manassas National Battlefield Park Amendments of 1988. In section 1004, the legislation states that:

[T]he Secretary of the Interior * * * in consultation with the Commonwealth of Virginia, the Federal Highway Administration, and Prince William County, shall conduct a study regarding the relocation of highways (known as Routes 29 and 234) in, and in the vicinity of, the Manassas National Battlefield Park. * * * The study shall include an assessment of available alternatives, together with cost estimates and recommendations regarding preferred options. The study shall specifically consider and develop plans for the closing of those public highways (known as Routes 29 and 234) that transect the park and shall include analysis of the timing and method of such closures and of means to provide alternative routes for traffic now transecting the park. The Secretary shall provide for extensive public involvement in the preparation of the study.

Recognizing that NEPA requires the consideration of a reasonable range of alternatives that will address the Purpose and Need, the environmental impact statement will include a range of alternatives for detailed study consisting of a no-build alternative as well as other alternatives including transportation system management strategies, mass transit, improvements to existing roadways, and/or new alignment facilities. These alternatives will be developed, screened, and subjected to detailed analysis in the draft environmental impact statement based on their ability to address the Purpose and Need, while attempting to avoid known and sensitive resources.

Letters describing the proposed NEPA study and soliciting input will be sent to the appropriate Federal, State and local agencies who have expressed or are known to have an interest or legal role in this proposal. It is anticipated that a formal scoping meeting will be held as part of the NEPA process to facilitate local, state, and federal agency involvement. Private organizations, citizens, and interest groups will also have an opportunity to provide input into the development of the Environmental Impact Statement and identify issues that should be addressed. A comprehensive public participation program will be developed to involve the public in the project development process. Notices of public meetings or public hearings will be given through various forums providing the time and place of the meeting along with other relevant information. The draft environmental impact statement will be available for public and agency review and comment prior to the public meetings/hearings.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning this notice of proposed action and when the draft environmental impact statement is made available should be directed to the FHWA at the address provided under the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: [23 U.S.C. 315; 49 CFR 1.48]

Issued on: October 18, 2001.

Donald R. Tuggle,
Director, Program Administration, Federal Highway Administration, Sterling, Virginia.
Terry Carlstrom,
Regional Director, National Park Service, National Capital Region, Washington, DC.

[FR Doc. 01–27410 Filed 10–31–01; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. F74–2001–109.3]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on August 15, 2001.

DATES: Comments must be submitted before December 3, 2001. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Charter Service Operations (*OMB Number: 2132–0543*).

Abstract: 49 U.S.C. section 5323(d) requires all applicants for financial assistance from FTA to enter into a charter bus agreement with the Secretary of Transportation (delegated to the Administrator of FTA in 49 CFR section 1.51(a)). 49 U.S.C. section 5323(d) provides protections for private intercity charter bus operators from unfair competition by FTA recipients. 49 U.S.C. section 5302(a)(7) as interpreted by the Comptroller General permits FTA recipients, but does not state that recipients have a right, to provide charter bus service with FTA-funded facilities and equipment only if it is incidental to the provision of mass transportation service. These statutory requirements have been implemented in FTA's charter regulation, 49 CFR section 604.

49 CFR section 604.7 requires all applicants for financial assistance under

49 U.S.C. section 5309, 5336, or 5311 to include two copies of a charter bus agreement with the first grant application submitted after the effective date of the rule. The applicant signs the agreement, but FTA executes it only upon approval of the application. This is a one-time submission with incorporation by reference in subsequent grant applications. 49 CFR section 604.11(b) requires recipients to provide notice to all private charter operators and allows them to submit written evidence demonstrating that they are willing and able to provide the charter service the recipient is proposing to provide. The notice must be published in a newspaper and sent to any private operator requesting notice and to the United Bus Owners of America and the American Bus Association, the two trade associations to which most private charter operators belong. To continue receiving federal financial assistance, recipients must publish this notice annually. 49 CFR section 604.13(b) requires recipients to review the evidence submitted and notify the submitter of its decision. This notice is also an annual requirement. On December 30, 1988, FTA issued an amendment to the Charter Service regulation that allows additional exceptions for certain non-profit social service groups that meet eligibility requirements.

Estimated Total Annual Burden: 1,984 hours.

Addresses: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of evidence demonstrating that they are willing and able to provide the charter service the recipient is proposing to provide. The notice must be published in a newspaper and sent to any private operator requesting notice and to the United Bus Owners of America and the American Bus Association, the two trade associations to which most private charter operators belong. To continue receiving federal financial assistance, recipients must publish this notice annually. 49 CFR section 604.13(b) requires recipients to review the evidence submitted and notify the submitter of its decision. This notice is also an annual requirement. On December 30, 1988, FTA issued an amendment to the Charter Service regulation that allows additional exceptions for certain non-profit social service groups that meet eligibility requirements.

Respondents: State and local government, business or other for-profit institutions, and non-profit institutions.

Estimated Annual Burden on Respondents: 1.2 hours for each of the 1,656 respondents.

Estimated Total Annual Burden: 1,984 hours.

Frequency: Annual.

Issued: October 26, 2001.

Timothy B. Wolgast,

Acting Associate Administrator for Administration.

[FR Doc. 01–27404 Filed 10–31–01; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: Section 5334(g) of the Federal Transit Laws, as codified, 49 U.S.C. 5301, et seq., permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the former Loves Park Transit System intends to transfer a maintenance facility to the City of Loves Park for its Streets and Sanitation Department to use the building as a maintenance facility. The City of Loves Park currently owns the land, and the proposed transfer only includes transfer of the building. The facility consists of a one and two-story concrete block automotive/transit building which is approximately 52,561 square feet situated within a light industrial district of Loves Park, Illinois, with rights of ingress and egress onto the northerly side of Lawn Drive.

EFFECTIVE DATE: Any Federal agency interested in acquiring the facility must notify the FTA Region V Office of its interest by December 3, 2001.

ADDRESSES: Interested parties should notify the Regional Office by writing to Joel P. Ettinger, Regional Administrator, Federal Transit Administration, 200 West Adams, Suite 2410, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Louise Carter, Director of Operations and Program Management at 312/353–2789.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. section 5334(g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government.

49 U.S.C. section 5334(g)(1)

Determinations:

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. section 5334(g)(1)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing facility, FTA will make certain that the other requirements specified in 49 U.S.C. section 5334(g)(1)(A) through (C) are met before permitting the asset to be transferred.

Additional Description of Facility

The property is a maintenance facility, consisting of a one and two-story concrete block automotive/transit building (the "Facility") which is approximately 52,561 square feet situated within a light industrial district of Loves Park, Illinois, with rights of ingress and egress onto the northerly side of Lawn Drive. This is a two lane public street that is asphalt surfaced and runs in an east-west direction. The Facility is a of masonry construction with face brick. The roof system is a truss type, with a newer roof covering. There is a covered front canopy entry, which has a glass entry and large windows on the front of the building. The building contains approximately 16,453 square feet of gross area. This area is divided into an area containing 11,992 square feet with an eave height of 20 feet, an office area containing 2,490 square feet or 15.13% of the gross building area and a mezzanine storage area containing 1,971 feet. The building has concrete block walls. The interior finish includes a fair to average quality, 2′ × 2′ suspended acoustic ceiling, with carpeted floors and concrete block interior walls. There are two restrooms, a locker room and a break room. There is strip fluorescent lighting. There is an adequate electrical service, which appears to be at least 200 amps. There is gas-fired, strip radiant heat in the warehouse area. The eastern portion of the building also has a heated floor. The office area has a gas forced air system with air conditioning. A 40-gallon, gas-fired heater provides hot water. There is adequate onsite, blacktopped driveways and parking areas. There are concrete curbs and there is minimal but adequate landscaping.

Issued on: October 25, 2001.

Donald Gismondi,

Deputy Regional Administrator.

[FR Doc. 01–27403 Filed 10–31–01; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on June 13, 2001 (66 FR 31974).

DATES: Comments must be submitted on or before December 3, 2001.

FOR FURTHER INFORMATION CONTACT: Walter Culbreath, National Highway Traffic Safety Administration, Office of Administration (NAD–40), 202–366–1566. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR Part 580 Odometer Disclosure Statement.

OMB Number: 2127–0047.

Type of Request: Extension of a currently approved collection.

Abstract: The Federal Odometer Law, 49 U.S.C. chapter 327, and implementing regulations, 49 CFR part 580 require each transferor of a motor vehicle to provide the transferee with a written disclosure of the vehicle's mileage. This disclosure is to be made on the vehicle's title, or in the case of a vehicle that has never been titled, on a separate form. If the title is lost or is held by a lien holder, and where permitted by state law, the disclosure can be made on a stat-issued, secure power of attorney.

Affected Public: Households, Business, other for-profit, and not-for-profit institutions, Federal Government, and State, Local, or Tribal Government.

Estimated Total Annual Burden: 2,586,160.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 29, 2001.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–27473 Filed 10–31–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on July 24, 2001 [66 FR 38449–38450].

DATES: Comments must be submitted on or before December 3, 2001.

FOR FURTHER INFORMATION CONTACT: Walter Culbreath at the National Highway Traffic Safety Administration, (NAD–40), 202–366–1566. 400 Seventh Street, SW., Room 6132, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Uniform Safety Program Cost Summary Form for Highway Safety Plan.

OMB Number: 2127–0003.

Type of Request: Extension of a currently approved collection.

Abstract: The Highway Safety Plan identifies State's traffic safety problems and describes the program and projects to address those problems. In order to account for funds expended under the priority areas and other program areas, States are required to submit a Program Cost Summary. The program cost summary is completed to reflect the state's proposed allocations of funds (including carry-forward funds) by program area, based on the projects and activities identified in the Highway Safety Plan.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden: 570.

Addresses: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information

is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 29, 2001.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–27474 Filed 10–31–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of a Petition for a Defect Investigation, DP01–001

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency investigate an alleged safety-related defect in certain Ford Escort and Mercury Tracer vehicles. The petition is hereinafter identified as DP01–001.

FOR FURTHER INFORMATION CONTACT: Peter C. Ong, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW, Washington, D.C. 20590. Telephone: (202) 366–0583.

SUPPLEMENTARY INFORMATION: Mr. Randy D. Brantley (petitioner) submitted a petition to NHTSA by letter dated February 13, 2001, requesting that a safety-related defect investigation be initiated with respect to the non-deployment of the frontal air bags in frontal crashes in model years (MY) 1998 through 1999 Ford Escort and Mercury Tracer passenger vehicles. Specifically, the petitioner alleges that he had noticed in NHTSA's consumer complaint database that there were many reports of both driver and passenger side air bags not deploying upon impact. Since both the MY 1998 and 1999 Ford Escort and Mercury Tracer have the same frontal passive restraint system, they are treated as the subject vehicles in this analysis.

The frontal air bag supplemental restraint system, when used with safety belts, is part of the vehicle's frontal occupant protection system that includes the vehicle's structural crumble zone, interior structure design/padding, instrument panel (IP) padding, and the energy absorbing steering wheel. As a supplemental restraint system, the air bag restraints reduce the risk of severe injuries and fatalities in frontal impacts. The air bags are designed to deploy and inflate in impacts that generate sufficient longitudinal deceleration to potentially cause moderate to serious injury to the vehicle's front seat occupants. Frontal air bags are not designed to deploy in side, rear, or rollover crashes or in frontal impacts that generate low longitudinal deceleration (such as low speed impacts and "soft" impacts that result in sheet metal deformation as opposed to major chassis/structural damage).

Manufacturers set deployment thresholds to enhance protection of the frontal occupants in severe frontal collisions such that the deployment of the air bags would help reduce the risk of serious injury or fatality. Likewise, the threshold is designed to prevent deployment in less severe collisions where air bag deployment is not likely to provide substantial benefits. The risk of injury during air bag deployment, particularly with respect to unbelted or out-of-position occupants, also provides a sound basis for setting the threshold to prevent deployment in less severe collisions. Manufacturers may select the deployment threshold that they believe is the most appropriate.

Real-world collisions often involve offset impacts, oblique angle impacts, override or underride impacts. These different impacts may or may not generate sufficient force and deceleration along the front to rear axis of the vehicle or apply significant force to the frame, suspension and engine to initiate air bag inflation. This can lead consumers to expect that the air bag should deploy in certain crashes resulting in significant body damage to the vehicle when in fact the crash force along the front to rear axis of the vehicle was not sufficient to deploy the air bags. The misconceptions about the criteria for deployment have caused allegations of non-deployment to be the most common type of air bag-related complaint reported to NHTSA.

When reviewing allegations of improper air bag non-deployment, NHTSA investigators analyze (1) The extent of vehicle frontal damage through pictures, repair invoices, and/or police accident reports, (2) the medical records to ascertain type and severity of personal injury, and (3) technical information that may indicate systematic or component related defect trends that lead to the non-deployment of the air bags.

A review of the agency's data files, including information reported to the DOT Auto Safety Hotline, shows 72 complaints of non-deployment in the subject vehicles. Thirty-nine of these complaints alleged injuries due to the non-deployment. (In the manufacturer's database, only 44 of the 278 owner reports/crash claims/litigation cases alleged injury associated with air bag non-deployments.) NHTSA attempted to contact all of the 39 complainants who alleged injury, plus some of the more recent complainants who did not specify any injury, to request additional crash and/or injury information. The follow-up contacts provided additional crash and injury information from 34 complainants.

NHTSA reviewed its crash reports and Ford's information, including crash damage, vehicle crash dynamics, and injury severity, and did not find any trend or pattern of air bags in the subject vehicles failing to deploy in crashes when they should have deployed. The crashes were minor in nature and many of them were underride impacts into the rear of pickup trucks, which typically result in major deformation of the vehicle's hood and upper regions of the fenders that absorbs much of the crash energy. It should be noted that a complaint often alleges an impact speed higher than what the damage indicates, since pre-impact braking will often slow the vehicle down dramatically prior to impact, and a driver will often not have any reliable way to estimate the actual impact speed.

Furthermore, NHTSA's analysis of the injuries experienced by the occupants of the subject vehicles does not suggest that deployment of the air bags in the subject vehicles in these crashes would have provided significant benefit. The injuries were minor in nature. All but one were AIS–1 (Abbreviated Injury Scale) severity injuries, with one AIS–2 severity injury (broken nose).

NHTSA reviewed Ford's developmental tests on air bag deployments and found that the frontal air bags in the subject vehicles deploy at an impact velocity comparable to other passenger vehicles. Ford reports that the air bag system in the subject vehicles are designed not to deploy when a vehicle is operated on rough roads and not to deploy under "soft" impacts that damage sheet metal but do not impact hard points on the vehicle such as the frame, suspension, and engine. Many of the "underride" crashes that ODI reviewed fall into this "soft" impact category, and air bag deployment was not appropriate under the circumstances.

For the foregoing reasons, and in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition for a defect investigation is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: October 25, 2001.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 01–27405 Filed 10–31–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration (NHTSA)

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of motor vehicle defect petition.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162 by William A. Schroeder, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety in the ignition distributor in certain Honda vehicles. After a review of the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition does not appear to be warranted. The agency accordingly has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan White, Chief, Defect and Recall Information Analysis Division, Office of Defects Investigation (ODI), NHTSA, 400 7th Street, SW., Washington, DC 20590. Telephone (202) 366–5226.

SUPPLEMENTARY INFORMATION: On October 18, 2000, Mr. William Schroeder submitted a petition requesting that the agency investigate "Distributor Units on Honda cars." Mr. Schroeder experienced a distributor bearing failure in October 2000 on his model year (MY) 1992 Honda Civic. The petition alleges that ignition distributor bearings may fail suddenly, which would cause the engine to stall. It also alleges that an engine compartment fire may occur.

The ignition distributor (distributor) is a engine component that distributes high voltage current to the spark plugs. It has a center shaft that is driven by the engine camshaft, and it supports a distributor cap and rotor. The high voltage surges are directed, one at a time, to each outer terminal of the distributor cap by the rotor, which is rotated by the distributor shaft. Spark plug wires are connected from these outer terminals to each engine spark plug. The distributor shaft is supported at the camshaft end by a bearing, which is the subject of this petition. If this bearing seizes, the distributor shaft will not rotate and distribute voltage to the spark plugs, causing the engine to stall or fail to start.

In December 1995, after experiencing high warranty claims and owner failure reports, American Honda Motor Company, Inc. (Honda) issued Technical Service Bulletin (TSB) 95–049 and initiated a Product Update Campaign to replace distributors in all MY 1992 and certain MY 1993 Honda Accords registered in a portion of the southeastern United States. This area of the country was targeted because Honda concluded that high heat and humidity conditions were major causes of these distributor bearing failures. Also, at that time, Honda extended the warranty for the distributor on MY 1992–93 Accords registered in the remainder of the United States to six years/75,000 miles. Honda's position was that the distributor bearing may develop excessive clearance and cause an engine no-start condition, but that this was not a safety problem. Honda did not extend this Product Update Campaign or warranty to MY 1992 Civics because the distributor bearing failure rate in those vehicles was low.

To date, ODI has received nine complaints alleging distributor bearing failures on MY 1992 Honda Civics, and 10 complaints alleging non-specific distributor failures on those vehicles, at an average mileage of 98,400 miles. Seven of the ODI reports allege engine stalling, and one fire was allegedly caused by a seized distributor in 1995. Only two of the 19 incidents occurred during the past two years.

In response to an ODI inquiry, Honda submitted 1,175 owner and field reports of distributor bearing failures, and 1,628 warranty claims relating to all types of distributor failures, including 19 reports of engine stalling, in MY 1992 Honda Civics. Honda also submitted one report of a fire allegedly caused by a defective distributor, but Honda contends that this had no connection with a distributor bearing failure.

There have been no reports of crashes, injuries or fatalities relating to distributor bearing and/or distributor failures in 1992 Honda Civic vehicles—a vehicle population of 190,000.

Information obtained during ODI's review of the petition indicates that the distributor bearing failure on these vehicles is almost always progressive, and that warnings such as significant bearing noise, poor engine performance, and starting difficulty are clearly evident to the operator long before the bearing seizes and causes the engine to stop running. Further, the risk of engine compartment fires caused by distributor bearing failures is extremely low.

For the foregoing reasons, further expenditure of the agency's investigative resources on the issues raised by the petition does not appear to be warranted. Therefore, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: October 25, 2001.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 01–27406 Filed 10–31–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–10531]

John Chevedden; Denial of Petition for Rulemaking

Mr. John Chevedden of Redondo Beach, California, petitioned for rulemaking to establish a new Federal Motor Vehicle Safety Standard requiring a non-glossy finish on the aerodynamic spoiler wings optionally installed on the rear of passenger vehicles.

Mr. Chevedden supported his request by stating that the surface of such spoilers is glossy because they are painted with the same glossy material as a vehicle. He observed that the spoilers reflect light into the rear view mirror causing glare and that this glare can temporarily impair the vision of drivers. He suggested these spoilers be required to have similar low reflectance performance as is required for windshield wiper arms in an existing Federal motor vehicle safety standard. He stated that the very reason that windshield wiper arms are prohibited from having glossy surfaces is the same

as why the rear spoiler wings should be required to have non-glossy surfaces.

Previously Federal Motor Vehicle Safety Standard No. 107, Reflective Surfaces, was enacted to address the reduction of glare from windshield wiper arms, horn rings and etc. However, this standard was rescinded on May 2, 1996 at 61 FR 11587, because it was determined that there was no longer a need for it. Standard No. 107 had specified reflectance requirements that apply to specified metallic components in the driver's forward field of view: the windshield wiper arms and blades, the inside windshield moldings, the horn ring and hub of the steering wheel assembly, and the inside rearview mirror frame and mounting bracket. The standard had required that the specular gloss of the surface of these components not exceed 40 units when tested. "Specular gloss" refers to the amount of light reflected from a test specimen. The purpose of the standard was to reduce the likelihood that glare from the regulated components would distract drivers or interfere with their direct vision.

Mr. Chevedden's concern is about indirect vision, not direct vision. While glare in any form may be annoying, Mr. Chevedden has provided no evidence of any crashes caused by the problem that he has described. Further, we have reviewed consumer complaints regarding glare. To date, the agency has not received any complaints related to indirect glare produced by sunlight on rear spoiler wings. Thus, we are not aware of any evidence showing this to be a safety problem or a source of concern to motorists.

In consideration of the foregoing, NHTSA has decided that there is no reason at this time to pursue a new motor vehicle safety regulation in this area. Accordingly, Mr. Chevedden's petition is hereby denied.

(49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on October 29, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–27476 Filed 10–31–01; 8:45 am]

BILLING CODE 4910–59–P



Federal Register

Thursday,
November 1, 2001

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 405 et al.

Medicare Program; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 2002; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 411, 414, and 415

[CMS–1169–FC]

RIN 0938–AK57

Medicare Program; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period makes several changes affecting Medicare Part B payment. The changes affect: refinement of resource-based practice expense relative value units (RVUs); services and supplies incident to a physician's professional service; anesthesia base unit variations; recognition of CPT tracking codes; and nurse practitioners, physician assistants, and clinical nurse specialists performing screening sigmoidoscopies. It also addresses comments received on the June 8, 2001 proposed notice for the 5-year review of work RVUs and finalizes these work RVUs. In addition, we acknowledge comments received on our request for information on our policy for CPT modifier 62 that is used to report the work of co-surgeons. The rule also updates the list of certain services subject to the physician self-referral prohibitions to reflect changes to CPT codes and Healthcare Common Procedure Coding System codes effective January 1, 2002. These refinements and changes will ensure that our payment systems are updated to reflect changes in medical practice and the relative value of services.

The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 modernizes the mammography screening benefit and authorizes payment under the physician fee schedule effective January 1, 2002; provides for biennial screening pelvic examinations for certain beneficiaries effective July 1, 2001; provides for annual glaucoma screenings for high-risk beneficiaries effective January 1, 2002; expands coverage for screening colonoscopies to all beneficiaries effective July 1, 2001; establishes coverage for medical nutrition therapy services for certain beneficiaries effective January 1, 2002; expands payment for telehealth services effective October 1, 2001; requires certain Indian Health Service providers to be paid for some services under the physician fee schedule effective July 1, 2001; and revises the payment for certain physician pathology services effective January 1, 2001. This final rule will conform our regulations to reflect these statutory provisions.

In addition, we are finalizing the calendar year (CY) 2001 interim RVUs and are issuing interim RVUs for new and revised procedure codes for calendar year (CY) 2002. As required by the statute, we are announcing that the physician fee schedule update for CY 2002 is −4.8 percent, the initial estimate of the Sustainable Growth Rate (SGR) for CY 2002 is 5.6 percent, and the conversion factor for CY 2002 is $36.1992.

DATES: *Effective date:* This rule is effective January 1, 2002.

Comment date: We will consider comments on the Clinical Practice Expert Panel data, the physician self-referral designated health services identified in Table 8, and the interim RVUs for selected procedure codes identified in Addendum C if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 31, 2001.

ADDRESSES: Mail written comments (1 original and 2 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1169–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

To insure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them. If you prefer, you may deliver your written comments (1 original and 2 copies) by courier to one of the following addresses: Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8013 or Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Comments mailed to the two above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–1169–FC.

For information on viewing public comments, please see the beginning of the Supplementary Information section below.

FOR FURTHER INFORMATION CONTACT: Carolyn Mullen, (410) 786–4589 or Marc Hartstein, (410) 786–4539 (for issues related to resource-based practice expense relative value units).

Carlos Cano, (410) 786–0245 (for issues related to screening sigmoidoscopies).

Paul W. Kim, (410) 786–7410 (for issues related to incident to services).

Rick Ensor, (410) 786–5617 (for issues related to screening mammography).

Bill Larson, (410) 786–4639 (for issues related to screening pelvic examinations, screening for glaucoma, and coverage for screening colonoscopies).

Bob Ulikowski, (410) 786–5721 (for issues related to the payment for screening colonoscopies).

Mary Stojak, (410) 786–6939 (for issues related to medical nutrition therapy).

Joan Mitchell, (410) 786–4508 (for issues related to the payment for medical nutrition therapy).

Craig Dobyski, (410) 786–4584 (for issues related to telehealth).

Terri Harris, (410) 786–6830 (for issues related to Indian Health Service providers).

Jim Menas, (410) 786–4507 (for issues related to anesthesia and pathology services).

Joanne Sinsheimer (410) 786–4620 (for issues related to updates to the list of certain services subject to the physician self-referral prohibitions).

Diane Milstead, (410) 786–3355 (for all other issues).

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at 7500 Security Blvd, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 5 p.m. Please call (410) 786–7197 to make an appointment to view the public comments.

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To order the disks containing this document, send your request to: Superintendent of Documents, Attention: Electronic Products, P.O. Box 37082, Washington, DC 20013–7082. Please specify, "Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2001," and enclose a check or money order payable to the Superintendent of Documents, or enclose your VISA, Discover, or MasterCard number and expiration date. Credit card orders can be placed by calling the order clerk at (202) 512–1530 (or toll free at 1–888–293–6498) or by faxing to (202) 512–1262.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web address is: *http://www.access.gpo.gov/nara/index.html*.

Information on the physician fee schedule can be found on our homepage. You can access these data by using the following directions:

1. Go to the CMS homepage (http://www.cms.hhs.gov).
2. Click on "Professionals."
3. Under the heading "Physicians and Health Care Professionals," click on "Medicare Coding and Payment Systems."
4. Select Physician Fee Schedule.

Or, you can go directly to the Physician Fee Schedule page by typing the following: *http://www.hcfa.gov/medicare/pfsmain.htm*.

To assist readers in referencing sections contained in this preamble, we are providing the following table of contents. Some of the issues discussed in this preamble affect the payment policies but do not require changes to the regulations in the Code of Federal Regulations. Information on the regulation's impact appears throughout the preamble and is not exclusively in section XIII.

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In addition, because of the many organizations and terms to which we refer by acronym in this final rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

AMA American Medical Association
BBA Balanced Budget Act of 1997
BBRA Balanced Budget Refinement Act of 1999
CF Conversion factor
CFR Code of Federal Regulations
CPT [Physicians'] Current Procedural Terminology [4th Edition, 1997, copyrighted by the American Medical Association]
CPEP Clinical Practice Expert Panel
CRNA Certified Registered Nurse Anesthetist
E/M Evaluation and management
EB Electrical bioimpedance
FMR Fair market rental
GAF Geographic adjustment factor
GPCI Geographic practice cost index
GDP Gross Domestic Product
CMS Centers for Medicare & Medicaid Services
HCPCS Healthcare Common Procedure Coding System
HHA Home health agency
HHS [Department of] Health and Human Services
IDTFs Independent Diagnostic Testing Facilities
MCM Medicare Carrier Manual
MedPAC Medicare Payment Advisory Commission
MEI Medicare Economic Index
MGMA Medical Group Management Association
MSA Metropolitan Statistical Area
NAMCS National Ambulatory Medical Care Survey
NCD National coverage determination
PC Professional component
PEAC Practice Expense Advisory Committee
PPAC Practicing Physicians Advisory Council
PPS Prospective payment system
RUC [AMA's Specialty Society] Relative [Value] Update Committee
RVU Relative value unit
SGR Sustainable growth rate
SMS [AMA's] Socioeconomic Monitoring System
TC Technical component

I. Background

A. Legislative History

Since January 1, 1992, Medicare has paid for physicians' services under section 1848 of the Social Security Act (the Act), "Payment for Physicians' Services." This section provides for three major elements: (1) a fee schedule for the payment of physicians' services; (2) a sustainable growth rate for the rates of increase in Medicare expenditures for physicians' services; and (3) limits on the amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense, and malpractice expense.

Section 1848(c)(2)(B)(ii)(II) of the Act provides that adjustments in RVUs may not cause total physician fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. If adjustments to RVUs cause expenditures to change by more than $20 million, we must make adjustments to preserve budget neutrality.

B. Published Changes to the Fee Schedule

In the July 17, 2000 proposed rule (65 FR 44177), we listed all of the final rules published through November 1999 relating to the updates to the RVUs and revisions to payment policies under the physician fee schedule.

In the June 8, 2001 **Federal Register** (66 FR 31028), we published a proposed notice concerning the 5-year review of work RVUs.

In the August 2, 2001 proposed rule (66 FR 40373) we discussed revisions contained in the November 1, 2000 final rule with comment period and the following issues affecting Medicare payment under the physician fee schedule:

- We listed the revisions to payment policies under the physician fee schedule that were made in the November 2000 final rule with comment period (65 FR 65376).
- We discussed policy issues affecting Medicare payment for physicians' services, including—

—refinement of the resource-based practice expense relative value units;
—services and supplies incident to a physician's professional service;
—anesthesia base unit variations;
—recognition of CPT tracking codes; and
—nurse practitioners, physician assistants, and clinical nurse specialists performing screening sigmoidoscopies.

We also solicited comments on the payment policy for CPT modifier 62 used to report the work of co-surgeons.

In addition, the August 2, 2001 proposed rule addressed the following provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA):

- Payment for the screening mammography benefit under the physician fee schedule effective January 1, 2002.
- Biennial screening pelvic examinations for certain beneficiaries effective July 1, 2001.
- Annual glaucoma screenings for high-risk beneficiaries effective January 1, 2002.
- Expansion of coverage for screening colonoscopies to all beneficiaries effective July 1, 2001.
- Coverage for medical nutrition therapy services for certain beneficiaries effective January 1, 2002.
- Expansion of payment for telehealth services effective October 1, 2001.
- Payment for some services of certain Indian Health Service providers under the physician fee schedule effective July 1, 2001.
- Revision to the payment for certain physician pathology services effective January 1, 2001.

This final rule affects the regulations set forth at Part 405, Federal health insurance for the aged and disabled; Part 410, Supplementary medical insurance (SMI) benefits; Part 411, Exclusions from Medicare and limitations on Medicare payment; Part 414, Payment for Part B medical and other health services; and Part 415, Services furnished by physicians in providers, supervising physicians in teaching settings, and residents in certain settings.

The information in this final rule finalizes information in the June 8, 2001 proposed notice and the August 2, 2001 proposed rule.

C. Components of the Fee Schedule Payment Amounts

Under the formula set forth in section 1848(b)(1) of the Act, the payment amount for each service paid under the physician fee schedule is the product of three factors—(1) a nationally uniform relative value for the service; (2) a geographic adjustment factor (GAF) for each physician fee schedule area; and (3) a nationally uniform conversion factor (CF) for the service. The CF converts the relative values into payment amounts.

For each physician fee schedule service, there are three relative values—(1) an RVU for physician work; (2) an RVU for practice expense; and (3) an RVU for malpractice expense. For each of these components of the fee schedule, there is a geographic practice cost index (GPCI) for each fee schedule area. The GPCIs reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average for each component.

The general formula for calculating the Medicare fee schedule amount for a given service in a given fee schedule area can be expressed as:

Payment = [(RVU work × GPCI work) + (RVU practice expense × GPCI practice expense) + (RVU malpractice × GPCI malpractice)] × CF

The CF for calendar year (CY) 2002 appears in section XIII. The RVUs for CY 2002 are in Addendum B. The GPCIs for CY 2002 can be found in Addendum D.

Section 1848(e) of the Act requires us to develop GAFs for all physician fee schedule areas. The total GAF for a fee schedule area is equal to a weighted average of the individual GPCIs for each of the three components of the service. In accordance with the statute, however, the GAF for the physician's work reflects one-quarter of the relative cost of physician's work compared to the national average.

D. Development of the Relative Value System

1. Work Relative Value Units

Approximately 7,500 codes represent services included in the physician fee schedule. The work RVUs established for the implementation of the fee schedule in January 1992 were developed with extensive input from the physician community. A research team at the Harvard School of Public Health developed the original work RVUs for most codes in a cooperative agreement with us. In constructing the vignettes for the original RVUs, Harvard worked with expert panels of physicians and obtained input from physicians from numerous specialties.

The RVUs for radiology services were based on the American College of Radiology (ACR) relative value scale, which we integrated into the overall physician fee schedule. The RVUs for anesthesia services were based on RVUs from a uniform relative value guide. We established a separate CF for anesthesia services, and we continue to recognize time as a factor in determining payment for these services. As a result, there is a separate payment system for anesthesia services.

II. Specific Proposals for Calendar Year 2002

In response to the publication of the August 2001 proposed rule, we received approximately 2,000 comments. We received comments from individual physicians, health care workers, and professional associations and societies. The majority of comments addressed the proposals related to medical nutrition therapy and the practice expense refinement.

The proposed rule discussed policies that affected the number of RVUs on which payment for certain services would be based. Certain changes implemented through this final rule are subject to the $20 million limitation on annual adjustments contained in section 1848(c)(2)(B)(ii)(II) of the Act.

After reviewing the comments and determining the policies we would implement, we have estimated the costs and savings of these policies and added those costs and savings to the estimated costs associated with any other changes in RVUs for 2002. We discuss in detail the effects of these changes in the Regulatory Impact Analysis in section XIII.

For the convenience of the reader, the headings for the policy issues correspond to the headings used in the August 2001 proposed rule. More detailed background information for each issue can be found in the June 2001 proposed notice with comment period and the August 2001 proposed rule.

A. Resource-Based Practice Expense Relative Value Units

1. Resource-Based Practice Expense Legislation

Section 121 of the Social Security Act Amendments of 1994 (Public Law 103–432), enacted on October 31, 1994, required us to develop a methodology for a resource-based system for determining practice expense RVUs for each physician's service beginning in 1998. In developing the methodology, we were to consider the staff, equipment, and supplies used in providing medical and surgical services in various settings. The legislation specifically required that, in implementing the new system of practice expense RVUs, we apply the same budget-neutrality provisions that we apply to other adjustments under the physician fee schedule.

Section 4505(a) of the BBA amended section 1848(c)(2)(ii) of the Act and delayed the effective date of the resource-based practice expense RVU system until January 1, 1999. In addition, section 4505(b) of the BBA provided for a 4-year transition period from charge-based practice expense RVUs to resource-based RVUs. The practice expense RVUs for CY 1999 were the product of 75 percent of charge-based RVUs and 25 percent of the resource-based RVUs. For CY 2000, the RVUs were 50 percent charge-based RVUs and 50 percent resource-based RVUs. For CY 2001, the RVUs are 25 percent charge-based and 75 percent resource-based. After CY 2001, the RVUs will be totally resource-based.

Section 4505(e) of the BBA amended section 1848(c)(2) of the Act by providing that 1998 practice expense RVUs be adjusted for certain services in anticipation of implementation of resource-based practice expenses beginning in 1999. As a result, the statute required us to increase practice expense RVUs for office visits. For other services in which practice expense RVUs exceeded 110 percent of the work RVUs and were furnished less than 75 percent of the time in an office setting, the statute required us to reduce the 1998 practice expense RVUs to a number equal to 110 percent of the work RVUs. This reduction did not apply to services that had proposed resource-based practice expense RVUs that increased from their 1997 practice expense RVUs as reflected in the June 18, 1997 proposed rule (62 FR 33196). The services affected and the final RVUs for 1998 were published in the October 1997 final rule (62 FR 59103).

Further legislation affecting resource-based practice expense RVUs was included in the Balanced Budget Refinement Act of 1999 (BBRA) (Public Law 106–113). Section 212 of the BBRA amended section 1848(c)(2)(ii) of the Act by directing us to establish a process under which we accept and use, to the maximum extent practicable and consistent with sound data practices, data collected or developed by entities and organizations. These data would supplement the data we normally collect in determining the practice expense component of the physician fee schedule for payments in CY 2001 and CY 2002.

2. Current Methodology for Computing the Practice Expense Relative Value Unit System

Effective with services furnished on or after January 1, 1999, we established a new methodology for computing resource-based practice expense RVUs that used the two significant sources of actual practice expense data we have available—the Clinical Practice Expert Panel (CPEP) data and the American Medical Association's (AMA) Socioeconomic Monitoring System (SMS) data. The methodology was based on an assumption that current aggregate specialty practice costs are a reasonable way to establish initial estimates of relative resource costs for physicians' services across specialties. The methodology allocated these aggregate specialty practice costs to specific procedures and, thus, can be seen as a "top-down" approach. Discussion of the various elements of the methodology and their application follows.

a. Practice Expense Cost Pools

We used actual practice expense data by specialty, derived from the 1995 through 1998 SMS survey data, to create six cost pools—administrative labor, clinical labor, medical supplies, medical equipment, office supplies, and all other expenses. There were three steps in the creation of the cost pools. (Please note that the 1999 SMS data are being incorporated for CY 2002.)

- Step (1) We used the AMA's SMS survey of actual cost data to determine practice expenses per hour by cost category. The practice expenses per hour for each physician respondent's practice were calculated as the practice expenses for the practice divided by the total number of hours spent in patient care activities. The practice expenses per hour for the specialty were an average of the practice expenses per hour for the respondent physicians in that specialty. For the CY 2000 physician fee schedule, we also used data from a survey submitted by the Society of Thoracic Surgeons (STS) in calculating thoracic and cardiac surgeons' practice expenses per hour. (Please see the November 1999 final rule (64 FR 59391) for additional information concerning acceptance of these data.) For CY 2001, we used these STS data, as well as survey data submitted by the American Society of Vascular Surgery and the Society of Vascular Surgery. (Please see the November 2000 final rule (65 FR 65385) for additional information on the acceptance of these data.)
- Step (2) We determined the total number of physician hours (by specialty) spent treating Medicare patients. This was calculated from physician time data for each procedure code and from Medicare claims data.
- Step (3) We calculated the practice expense pools by specialty and by cost category by multiplying the specialty practice expenses per hour for each category by the total physician hours.

For services with work RVUs equal to zero (including the technical component (TC) of services with a TC and a professional component (PC)), we created a separate practice expense pool using the average clinical staff time from the Clinical Practice Expert Panel (CPEP) data (since these codes, by definition, do not have physician time) and the "all physicians" practice expense per hour.

b. Cost Allocation Methodology

For each specialty, we divided the six practice expense pools into two groups, based on whether direct or indirect costs were involved, and we used a different allocation basis for each group. The first group included clinical labor, medical supplies, and medical equipment. The second group included administrative labor, office expenses, and all other expenses.

(i) Direct Costs

For direct costs (including clinical labor, medical supplies, and medical equipment), we used the CPEP data as the allocation basis. The CPEP data for clinical labor, medical supplies, and medical equipment were used to allocate the costs for each of the respective cost pools.

For the separate practice expense pool for services with work RVUs equal to zero, we used adjusted 1998 practice expense RVUs as an interim measure to allocate the direct cost pools. (Please see the November 1998 final rule (63 FR 58891) for further information related to this adjustment.) Also, for all radiology services that are assigned work RVUs, we used the adjusted 1998 practice expense RVUs for radiology services as an interim measure to allocate the direct practice expense cost pool for radiology. For all other specialties that perform radiology services, we used the CPEP data for radiology services in the allocation of that specialty's direct practice expense cost pools.

(ii) Indirect Costs

To allocate the cost pools for indirect costs, including administrative labor, office expenses, and all other expenses, we used the total direct costs, as described above, in combination with the physician fee schedule work RVUs. We converted the work RVUs to dollars using the Medicare CF (expressed in 1995 dollars for consistency with the SMS survey years).

The SMS pool was divided by the CPEP pool for each specialty to produce a scaling factor that was applied to the CPEP direct cost inputs. This was intended to match costs counted as practice expenses in the SMS survey with items counted as practice expenses in the CPEP process. When the specialty-specific scaling factor exceeded the average scaling factor by more than 3 standard deviations, we used the average scaling factor. (Please see the November 1999 final rule (64 FR 59390) for further discussion of this issue.)

For procedures performed by more than one specialty, the final procedure code allocation was a weighted average of allocations for the specialties that perform the procedure, with the weights being the frequency with which each specialty performs the procedure on Medicare patients.

c. Other Methodological Issues

(i) Global Practice Expense Relative Value Units

For services with the PC and TC paid under the physician fee schedule, the global practice expense RVUs were set equal to the sum of the PC and TC.

(ii) Practice Expenses per Hour Adjustments and Specialty Crosswalks

Since many specialties identified in our claims data did not correspond exactly to the specialties included in the practice expense tables from the SMS survey data, it was necessary to crosswalk these specialties to the most appropriate SMS specialty category. We also made the following adjustments to the practice expense per hour data. (For the rationale for these adjustments to the practice expense per hour, see the November 1998 final rule (63 FR 58841)).

- We set the medical materials and supplies practice expenses per hour for the specialty of "oncology" equal to the "all physician" medical materials and supplies practice expenses per hour.
- We based the administrative payroll, office, and other practice expenses per hour for the specialties of "physical therapy" and "occupational therapy" on data used to develop the salary equivalency guidelines for these specialties. We set the remaining practice expense per hour categories equal to the "all physician" practice expenses per hour from the SMS survey data. (Note that in the November 2000 final rule (65 FR 65403), we increased the space allotment for therapy services to 750 square feet.)
- Due to uncertainty concerning the appropriate crosswalk and time data for the nonphysician specialty "audiologist," we derived the resource-based practice expense RVUs for codes performed by audiologists from the practice expenses per hour of the other specialties that perform these services.
- For the specialty of "emergency medicine," we used the "all physician" practice expense per hour to create practice expense cost pools for the categories "clerical payroll" and "other expenses."
- For the specialty of "podiatry," we used the "all physician" practice expense per hour to create the practice expense pool.
- For the specialty of "pathology," we removed the supervision and autopsy hours reimbursed through Part A of the Medicare program from the practice expense per hour calculation.
- For the specialty "maxillofacial prosthetics," we used the "all physician" practice expense per hour to create practice expense cost pools and, as an interim measure, allocated these pools using the adjusted 1998 practice expense RVUs.
- We split the practice expenses per hour for the specialty "radiology" into "radiation oncology" and "radiology other than radiation oncology" and used this split practice expense per hour to create practice expense cost pools for these specialties.

(iii) Time Associated With the Work RVUs

The time data resulting from the refinement of the work RVUs have been, on average, 25 percent greater than the time data obtained by the Harvard study for the same services. We adjusted the Harvard study's time data to ensure consistency between these data sources.

For services with no assigned physician time, such as dialysis, physical therapy, psychology, and many radiology and other diagnostic services, we calculated estimated total physician time based on work RVUs, maximum clinical staff time for each service as shown in the CPEP data, or the judgment of our clinical staff.

We calculated the time for CPT codes (hereafter referred to as "codes") 00100 through 01996 using the base and time units from the anesthesia fee schedule and the Medicare allowed claims data.

3. Refinement

a. Background

Section 4505(d)(1)(C) of the BBA directed us to develop a refinement process to be used during each of the 4 years of the transition period. We did not propose a specific long-term refinement process in the June 1998 proposed rule (63 FR 30835). Rather, we set out the parameters for an acceptable refinement process for practice expense RVUs and solicited comments on our proposal. We received a variety of comments about broad methodology issues, practice expense per-hour data, and detailed code-level data. We made adjustments to our proposal based on the comments we received. We also indicated that we would consider other comments for possible refinement and that the RVUs for all codes would be considered interim for 1999 and for future years during the transition period.

We outlined in the November 1998 final rule (63 FR 58832) the steps we were undertaking as part of the initial refinement process. These steps included the following:

- Establishment of a mechanism to receive independent advice for dealing with broad practice expense RVU technical and methodological issues.
- Evaluation of any additional recommendations from the General Accounting Office, the Medicare Payment Advisory Commission (MedPAC), and the Practicing Physicians Advisory Council (PPAC).

- Consultation with physician and other groups about these issues.

We also discussed a proposal submitted by the AMA's Specialty Society Relative Value Update Committee (RUC) for development of a new advisory committee, the Practice Expense Advisory Committee (PEAC), to review comments and recommendations on the code-specific CPEP data during the refinement period. In addition, we solicited comments and suggestions about our practice expense methodology from organizations that have a broad range of interests and expertise in practice expense and survey issues.

b. Current Status of Refinement Activities

In the 1999 and 2000 final rules and the 2001 proposed rule, we provided further information on refinement activities underway, including the AMA's formation of the PEAC and the support contract that we awarded to the Lewin Group to focus on methodologic issues. In addition, in these rules, we announced actions taken and decisions made in response to the hundreds of comments received on our resource-based physician practice expense initiative. Because the transition will be completed in CY 2002 and the practice expense RVUs will then be totally resource-based, it is appropriate to recap the specific achievements reached and decisions implemented during this refinement effort to date.

(i) Use of the Top-Down Approach

Most of the physician organizations commenting agreed that this methodology was preferred for computing resource-based practice expense RVUs and that it was in accordance with the requirements of the BBA. KPMG Peat Marwick, under contract to us, reviewed the top-down methodology in which aggregate specialty costs are applied to specific procedures and concluded that it followed reasonable cost accounting principles. A 1999 GAO report concludes, "HCFA's new approach represents a reasonable starting point for creating resource-based practice expense RVUs. It uses the best available data for this purpose and explicitly recognizes specialty differences in practice expense." Based on these comments and assessments, we made the decision to continue to use the top-down methodology to calculate the resource-based practice expense RVUs.

(ii) Use of the SMS Survey

The supplemental non-SMS survey data submitted by several specialties in response to the 1998 proposed rule, with the exception of the survey data from the thoracic surgeons, were not compatible with the format or methodology of the SMS. We awarded a contract to the Lewin Group to recommend criteria for the acceptance of specialty-specific practice expense data so that we could supplement the SMS data as appropriate. These recommended criteria are contained in the final report, "An Evaluation of the Health Care Financing Administration's Resource-Based Practice Expense Methodology." This report is available on our web page under the same title. (Access to our web site is discussed in the **SUPPLEMENTARY INFORMATION** section above.)

The report also contains recommendations for revisions to the SMS or other surveys to efficiently meet the needs of our practice expense methodology. We augmented these recommendations and forwarded our suggestions for revisions to any future surveys to the AMA. For example, we developed supplementary survey questions that would allow us to distinguish both costs and direct patient care hours for all midlevel practitioners. We also suggested revisions that would capture the necessary information on separately billable supplies and services so that we could eliminate these costs from the specialty-specific practice expense per-hour calculations.

To obtain supplementary specialty-specific practice expense data that could be used in computing practice expense RVUs beginning January 1, 2001, we published an interim final rule on May 3, 2000 (65 FR 25664) that set forth the criteria applicable to supplemental survey data submitted to us by August 1, 2000.

We also provided a 60-day period for submission of public comments on our criteria for survey data submitted between August 2, 2000 and August 1, 2001 for use in computing the practice expense RVUs for the CY 2002 physician fee schedule.

In the November 1, 2000 final rule (65 FR 65385), we responded to comments received on the interim final rule and made modifications to the criteria for supplemental survey data that will be considered in computing practice expense RVUs for the CY 2002 physician fee schedule. These data can then be used to supplement the SMS survey data currently used to estimate each specialty's aggregate practice costs or to replace the crosswalks used for specialties not represented in the SMS.

In our November 1999 final rule, we accepted supplementary data submitted by the thoracic surgeons and, in our November 2000 final rule, we accepted survey data from the vascular surgeons that replaced the previously crosswalked practice expense per hour data for that specialty. In the November 2000 final rule, we also stated that if we received additional specialty-specific survey data before August 1, 2001 that met the criteria outlined in that rule, we would use these supplementary data in calculating the CY 2002 practice expense RVUs.

We accepted our contractor's recommendation to incorporate the latest SMS data into our practice expense per hour calculations. For CY 2001, we incorporated the 1998 SMS data into a 4-year average, and we are incorporating the 1999 SMS data into a 5-year average to calculate the CY 2002 practice expense RVUs.

We also accepted the contractor's recommendation to standardize the survey practice expense data to a common year. We adjusted the data to reflect a 1995 cost year.

We received comments that urged us to use the median SMS specialty-specific data instead of the mean, as well as comments supporting our use of the mean values. We made a decision to continue to use the mean in calculating the specialty-specific practice expense per hour. We believe that, in a small sample, using the median could eliminate outlying data from the calculation that represent real costs and thus should be considered.

(iii) CPEP Data

The AMA has formed a multispecialty sub-committee of their Relative Value Update Committee (RUC), the Practice Expense Advisory Committee (PEAC), to review the CPEP clinical staff, equipment, and supply data for all physicians' services. This multispecialty committee, which includes representatives from all major specialty societies, will then make recommendations on suggested refinements to these data. We indicated in our November 1998 final rule (63 FR 58833) that we would work with the PEAC and RUC to refine the practice expense direct cost inputs. This refinement process was supported in comments we received from almost every major physician specialty society.

In our November 1999 physician fee schedule final rule, we implemented most clinical staff time, supply and equipment refinements recommended by the RUC. For the November 2000 final rule, the RUC forwarded to us significant additional refinement recommendations that reflected multispecialty agreement on the typical resources for many important services, including visit codes, which account for

approximately 24 percent of Medicare spending for physicians' services. Again we accepted almost all of these RUC recommendations. In addition, at its October 2000, February 2001, and April 2001 meetings, the PEAC focused on refining high-volume services and on standardizing inputs across wide ranges of services. The RUC and PEAC forwarded to us recommendation on refinements for over 1,100 services. We anticipate that the pace of refinement of the CPEP inputs will continue to accelerate.

In addition to implementing most of the RUC-recommended refinements, we responded to comments on errors and anomalies in the CPEP data in both the November 1999 and November 2000 final rules. For example, we removed separately billable casting supplies and drugs from all services; we adjusted the prices of certain supplies that were clearly in error; we removed duplicated equipment from the direct inputs of the nuclear medicine codes; we added clearly essential equipment that was missing from the lithotripsy and photochemotherapy codes; we corrected anomalies in inputs within several families of codes; and we changed the crosswalks for the CPEP inputs of several codes not valued by the CPEP panels when a commenter suggested more appropriate crosswalks.

We simplified the refinement of equipment inputs by combining both the procedure-specific and overhead equipment into a single equipment category. We also deleted stand-by equipment and equipment used for multiple services at one time from the direct cost inputs because of the difficulty of allocating these costs at the code-specific level.

We are resolving issues related to averaging input costs for codes that were valued by more than one CPEP panel. While we have received comments agreeing and disagreeing with our use of mean costs, the issue is moot because we are substituting refined data for the data previously produced by multiple CPEPs.

(iv) Physician Time Data

In the November 1999 rule (64 FR 59404), we stated that, in general, requests for revisions for the procedure-specific physician times should be deferred to either the RUC process or the 5-year review process. However, we did adopt the newer data to correct the physician time for the pediatric surgery codes and made the requested revisions to correct anomalies in the times of certain psychotherapy codes.

In response to comments on the times associated with physical and occupational therapy services, we added preservice and postservice times to all of these codes.

(v) Crosswalk Issues

In response to concerns expressed by specialty societies representing emergency medicine that the SMS data did not capture the costs of uncompensated care, we crosswalked emergency medicine's cost pools for administrative labor and other expenses to the practice expense per hour for "all physicians."

We resolved issues related to the specialty crosswalk for nursing specialties by eliminating the separate practice expense pools for midlevel practitioners.

(vi) Calculation of Practice Expense Pools—Other Issues

We addressed concerns that potential errors in our specialty utilization data will have an effect on the calculation of practice expense RVUs. In the July 2000 proposed rule (65 FR 44178), we discussed our simulations that demonstrated that the small percentage of potential errors in our very large database have no adverse effect on specialty-specific practice expense RVUs.

We have created the zero-work pool for services with no physician work to ensure that these services are not inappropriately disadvantaged by our methodology. We have also agreed with the request of all the specialty societies that commented that their services should be moved out of the zero-work pool and into the specialty-specific pool. The specialties whose services remain in the zero-work pool have indicated that they wish their services to remain there. We plan to eliminate this separate pool for services with no physician work only when we have determined what revisions to our methodology are required so that we can value these services appropriately outside of the zero-work pool.

(vii) Calculation of Indirect Cost

We requested that our contractor evaluate various options for calculating indirect costs. The final report, referenced above, contains an analysis of the impacts of six alternative allocation methodologies. In confirming the suitability of our allocation methodology, the report concludes that "HCFA's approach is broadly consistent with most of the alternative methods. This consistency suggests that, from a broad perspective, no other allocation methodology offers a compelling reason to abandon the current HCFA approach."

(viii) Site-of-Service

The practice expense RVUs would be expected to be higher in the nonfacility setting, where the practitioner bears the costs of the necessary staff, supplies, and equipment, than in the facility setting. To prevent potential anomalies in our calculations due to the different mix of specialties performing a given service in different settings, we capped the practice expense RVUs for a physician service in facilities at the nonfacility practice expense level for each specific service.

In the November 1999 final rule (64 FR 59407), in response to a comment from the Renal Physicians Association, we agreed that the monthly capitated service codes should always be reported using the nonfacility designation. The site-of-service designations are not meaningful for a monthly service that may be provided in different settings for the same patient during a given month.

Although we are continuing our refinement of all practice expense RVUs, we believe that the above description of our actions to date illustrates that much has been accomplished. We also believe that it demonstrates that we have been responsive to comments from the medical community and have established a process that enables this community to participate fully in the refinement of both the specialty-specific practice expense per hour and the CPEP code-specific inputs.

4. Practice Expense Provisions for Calendar Year 2002

a. SMS Data

(i) Use of 1999 SMS Survey Data

We are currently using data from the 1995 through the 1998 SMS surveys (1994 through 1997 practice expense data) in order to calculate the specialty-specific practice expense per hour. The 1999 SMS survey data are now available. Because we want to incorporate the most recent survey data into our methodology during the transition period, we proposed in our August 2001 rule (66 FR 40377) to add this 1999 data to the 4 years of data we are currently using.

We proposed to use these 5 years of data in addition to any supplemental specialty-specific data that meet our criteria as the basis of the practice expense per hour calculations until the first 5-year review of practice expense RVUs in 2007. At that time, we anticipate that newer practice expense survey data might be available.

Comment: Specialty societies representing internal medicine, family practice and a number of their subspecialties were opposed to using the 1999 SMS data in the calculation of the practice expense RVUs. While many of these commenters were generally supportive of incorporating the most current SMS data, they are concerned that the sample size and results from the 1999 SMS data may not warrant their inclusion. Several of these commenters indicated that the American Medical Association is on record stating that "it normally would not provide or publish data with so few responses for some specialties."

A number of these commenters suggested that the practice expense information from the 1999 SMS would be less reliable because the data were collected after CMS announced the new resource-based practice expense methodology in the **Federal Register**. These commenters suggested that the opportunity for "gaming" now exists because the public was aware that the SMS data were used to calculate Medicare payments.

One commenter noted that the practice expense per hour for cardiology dropped by 15 percent in one year and doubted that the actual change in practice expense of this magnitude could have occurred. Another commenter indicated that the cardiac subspecialty of electrophysiology is very likely not represented at all in this flawed data set.

One association that represents eye surgeons commented that the 1999 SMS survey included about half as many usable responses as the 1995 through 1997 surveys. This commenter questioned our decision to disregard responses received by mail and indicated that an already poor response rate to the survey has become even lower. Another commenter that represents ophthalmology indicated that use of 1999 data with such low response rates violates good statistical practice. The 1999 responses included only 23 ophthalmologists, while over 200 offered responses to the survey in years before 1999. Another commenter that represents gastroenterology indicated that the SMS is perhaps the best available source of data on multispecialty practice costs. However, this comment indicated that it is by no means a perfect data source for the manner in which it has been used by CMS and is even less reliable for certain specialties, such as gastroenterology. This commenter appreciates our willingness to accept supplementary data from specialties, but believes that it is our responsibility to overcome data deficiencies. We were encouraged to develop a uniform and fair process to overcome data deficiencies, without relying on individual medical specialties to provide such data.

In light of AMA's suspension of the SMS survey, this commenter urged us to discuss in the final rule our plans for updating practice expense RVUs in future years beginning with 2003, and, if need be, for replacing the SMS survey with an alternative data source. Another commenter expressed concern that the newer data from the SMS surveys will not be incorporated until the first 5-year review of practice expense RVUs in 2007; by that time, some of the practice expense data will have been in existence for 13 years.

Similarly, another commenter expressed concern that using the SMS data set from 1995 through 1999 until 2007 will mean that the data will not accurately reflect the changes in technology that will increase costs, particularly for specialties with rapid changes in technology.

Response: In response to the comment that the SMS data are not a perfect data source for developing practice expense RVUs, as we have said previously, we believe the SMS survey is the best available source of data on multispecialty practice costs. This comment was echoed by one of the same commenters that objected to including the 1999 SMS data in the practice expense methodology for determining 2002 RVUs. While we have previously acknowledged that the data have potential limitations for determining practice expense RVUs, there are no alternative data sources that are better for this purpose.

Since there are no other data on aggregate multispecialty practice costs that are better than the SMS, our only alternative would be to eliminate the SMS data from the methodology and rely solely on estimates of practice expense inputs for individual codes. We believe a better approach would be to continue using the SMS data in the practice expense methodology and to work with the physician community to develop even better data for establishing practice expense RVUs in the future.

One commenter noted that we only included telephone survey responses and not mail responses from the 1999 SMS and suggested that this decision further reduces an already low response rate. Our understanding is that the AMA, as a result of concerns about a declining number of responses to the SMS survey, used several approaches to obtain more surveys in the 1999 SMS. As part of this effort, some survey respondents received a mail survey instead of the normal telephone survey. Our review of information from the AMA suggested that there were significant differences between the mail and telephone surveys on questions related to practice expense. Since our objective has been to use a consistent approach to obtaining practice expense data for use in our methodology, we felt that it would be better to incorporate only the traditional telephone survey responses in the methodology consistent with how the data were obtained in earlier years.

While a few commenters indicated that the SMS data are not representative of a particular specialty's costs, they provided no information to support the contention. One commenter suggested that electrophysiology, a subspecialty of cardiology, was unlikely to be included in the SMS survey. Since the SMS survey draws a random sample from the AMA's Physician Masterfile, we believe all physicians are equally likely to be selected for participation in the survey. We would further note that the SMS weights response information based on known characteristics of the population to make the final figures as representative of the self-employed population as possible. As we have stated previously, we believe the SMS survey is the best source of data for specialty practice expenses. If a specialty believes that the SMS is unrepresentative of their actual practice expenses, we have established a process by which additional data can be submitted to us. To date, we have used two specialty practice expense surveys in addition to or in place of the SMS survey. We encourage specialties to use this process to provide us with additional practice expense data that improve the representativeness of the data that we are using to determine the practice expense RVUs.

One commenter doubted that cardiology practice expense could have declined as much as suggested by the 1999 SMS data. We would note that the practice expense per hour in any given year can show more variability than the change in practice expense per hour over time. While the specialty of cardiology shows some level of variability in practice expense per hour, with some years showing a higher value than the average and other years a lower value, the change in practice expense per hour including the 1999 SMS data is far more modest than that suggested by the commenter. There is a −2.0 percent change in practice expense per hour as a result of including the 1999 SMS data. As indicated below, use of the 1999 SMS data changed average specialty level payments to cardiologists by less than 0.5 percent.

We acknowledge that response rates and the number of usable responses from the 1999 SMS are lower than in prior years. Nevertheless, as we have stated previously, it is unclear to us why this alone indicates that we should reject incorporating the data. To the extent that there are few responses to the latest SMS survey, there will be less impact on a given specialty because the practice expense per hour calculation is weighted by the number of respondents from each respective year. Further, we believe inclusion of more survey data will improve the data's representativeness and lead to more stability in the practice expense per hour. The use of the 1999 SMS data appears to have little effect on the practice expense RVUs. In our August 2, 2001 proposed rule (66 FR 40397), we simulated the impact of including the 1999 SMS data on average specialty level payments. The increase or decrease in average specialty level payment was less than 0.5 percent for 29 of the 35 specialties listed, including nearly all of the specialties that expressed concern about including the latest SMS data. For 4 of the remaining 6 specialties, the increase or decrease in payments was between 0.5 and 1.0 percent. Payments for the remaining two specialties (pathology and suppliers) increased by more than 2 percent.

We are doubtful that respondents "gamed" responses in the 1999 SMS because of an awareness that reporting higher practice expenses would lead to increased payments from Medicare. We observed no noticeable increase in practice expense per hour from the 1999 SMS survey than from earlier years. In fact, the inflation-adjusted all-physician practice expense per hour from the 1999 SMS data is lower than the same figure from the 1998 SMS data. Further, if the concern is that physicians were aware of how the data would be used and would "game" responses to obtain higher payments from Medicare, our expectation would be that the number of responses in the 1999 SMS would be higher, not lower, than in prior years. For these reasons, we are doubtful that there is any reason to assume that the 1999 SMS survey would show more bias than surveys from previous years.

We welcome the comments that suggest that we develop a long-term strategy for using aggregate specialty practice expense data to make refinements to RVUs. As noted by some commenters, the AMA is no longer conducting the SMS survey in its current form. We would like to engage physician specialty societies, as well as other practitioner groups and representatives of organizations affected by Medicare physician fee schedule payments, in discussions of how to best obtain practice expense data that will be useful in updating our methodology for determining practice expense RVUs. Although it has been beneficial to use 5 years of SMS data to develop practice expense RVUs, we believe that it may not be necessary to make annual updates to aggregate specialty practice cost data if relative practice expenses do not change significantly from year to year. However, it may be beneficial to periodically review aggregate practice expenses and make changes when necessary. For instance, one commenter suggested that technological innovation may change relative expenses among services. For this reason, we believe a review of aggregate practice costs at least every 5 years is necessary. In fact, the statute requires that we review RVUs at least every 5 years. At this time, we have incorporated all of the data from the SMS surveys into the practice expense methodology. We will consider public input on the best way to obtain practice expense data for use in future practice expense calculations.

(ii) Supplemental Practice Expense Survey Data

To ensure the maximum opportunity for specialties to submit supplementary practice expense data, we proposed to accept survey data that meet the criteria set forth in the November 2000 final rule for an additional 2 years. The deadlines for submission of such supplemental data to be considered in CY 2003 and CY 2004 are August 1, 2002 and August 1, 2003, respectively.

Comment: Several commenters expressed their strong support for our decision to accept specialty-specific practice expense surveys for an additional 2 years. Specialty societies representing podiatry, pediatrics, internal medicine, rheumatology and surgery, as well as the American Medical Association (AMA) stated their agreement with this decision.

An organization representing medical colleges commented that this will send an important message to the physician community about our willingness to consider all legitimate data sources in analyses of this critical portion of payments, and one that has been a subject of controversy within the community. A specialty society representing dermatology stated that the additional time will allow specialties to collect specialty-specific data that should be useful as we determine practice expense RVUs.

The AMA and a commenter representing podiatry expressed some concern about the criteria for the acceptance of survey data and the AMA also expressed hope that we would be flexible concerning any data submitted. The commenter representing emergency medicine argued that collecting specialty-specific data would be fruitless, due to a number of stringent criteria for submitting supplemental practice expense survey data.

On the other hand, three commenters indicated that we should accept only survey data that meet our criteria. The commenter representing rheumatology stated that it is critically important that any data accepted must meet the criteria in the November 2000 final rule.

Response: We received only comments supporting this proposal, and we will be extending the period of acceptance of supplemental survey data for another 2 years, as proposed. We hope to demonstrate flexibility in helping those specialties that conduct a survey to do so successfully, and we understand that for some specialties some revision to the survey format may be necessary. For example, questions regarding uncompensated care for emergency physicians or separately billable drugs for oncologists might need to be added to a survey to determine the appropriate practice expense for these specialties. However, like several of the commenters, we believe that fairness to all can only be achieved if we consistently apply the rules for determining validity to any survey that is submitted.

Comment: A specialty society representing geriatrics expressed concern regarding the use of SMS data in formulating practice expense costs because the sample size for geriatricians is not large enough to yield reliable data. The commenter stated that smaller specialty societies will be unable to provide supplementary survey data because of expense limitations and recommended that we continue to review alternative data sources that recognize the greater resources spent in caring for frail elderly persons. The society further recommended that we consider the use of "non-compliant" survey data for smaller specialty groups that do not meet our stringent and costly criteria.

Response: We could not justify accepting "non-compliant" surveys from some specialties, due solely to the specialty's size, while holding others to a more rigorous standard. However, though we would welcome survey data from any specialty that submits a survey that meets our criteria, we do recognize that performing a survey can be costly. We, therefore, suggest that the specialty society consider in advance the extent to which any possible survey result might actually alter the practice expense RVUs for their services. Note that we have only one payment amount for each service on the fee schedule. We have no authority to pay more to one specialty than to another for performing the same service. If a small specialty provides only a small percentage of a given service, a change in the practice expense per hour for that small specialty could have very little effect on the payment for the service. For example, if geriatricians perform mainly evaluation and management (E/M) services, even a survey that shows increased practice costs for geriatricians would not necessarily have any effect on the practice expense RVUs for E/M services because geriatricians' services would represent only a small part of the universe of E/M services. However, it is incumbent upon each specialty society to weigh both the costs and benefits to their specialty to determine whether conducting a practice expense survey would be worthwhile.

(iii) Submission of Supplemental Surveys

Three organizations submitted supplemental survey data for consideration for CY 2002. Survey data were submitted by the American Physical Therapy Association (APTA), the American Optometric Association (AOA), and the American Academy of Pediatrics (AAP). Our contractor, The Lewin Group, has evaluated the data submitted by each organization. They have recommended that we use the data submitted by APTA and AOA and reject the data submitted by AAP. The full recommendation and discussion will be made available on the CMS web site. (See the **SUPPLEMENTARY INFORMATION** section of this rule for directions on accessing our web site.)

We have decided not to use the data submitted by APTA, AOA, or AAP because none of the surveys met all of our stated criteria. In our May 3, 2000 interim final rule (65 FR 25666), we indicated that, based on our review of existing physician practice expense surveys, we believe that an achievable level of precision is a coefficient of variation (that is, the ratio of the standard error of the mean to the mean expressed as a percent) not greater than 10 percent for overall practice expenses or practice expenses per hour. For existing surveys, the standard deviation is frequently the same magnitude as the mean. We indicated in the May 2000 interim final rule that we would consider practice expenses for which the precision of practice expenses is equal to or better than this level of precision and that meet the other survey criteria. None of the surveys submitted for 2002 met the level of precision criteria; therefore, we have decided not to use the survey data.

b. CPEP Data

(i) 2000 RUC Recommendations on CPEP Inputs

In the November 2000 final rule (65 FR 65393), we responded to the RUC recommendations for the refinement of the direct inputs for 49 CPT codes and for the supply and equipment inputs for four additional services. These recommendations reflected multispecialty agreement on the typical resources for many important services, including visit codes, which account for approximately 24 percent of Medicare spending for physicians' services. We accepted almost all of these recommendations. We received the following comments on our responses to the RUC recommendations and on the PEAC/RUC refinement process:

Comment: Several specialty societies representing osteopaths, rheumatologists, neurologists, ophthalmologists, obstetricians, and gynecologists commended us for implementing the refinements submitted by the PEAC and RUC as part of the on-going refinement process. One specialty society stated that it was encouraged by the direction pursued with the physician fee schedule for 2001, because it demonstrated the ability to achieve refinement within the parameters of the fee schedule comment process. Another commenter expressed appreciation for our support of the PEAC and RUC refinement process because this relationship is critical to establishing fair and balanced payment policies.

In addition, other commenters praised our staff for being helpful in responding to the PEAC members' questions during meetings, as well as for the willingness to work with physician specialty societies toward establishing fair and appropriate reimbursement values. The RUC commented that it agreed that the PEAC has made significant progress in its ability to review and refine direct practice expense inputs for individual CPT codes.

Response: We appreciate the above comments and are also encouraged by the progress that the PEAC and RUC have made in refining the practice expense inputs.

Comment: The RUC agreed that the PEAC should continue to meet and refine the direct practice expense data. Therefore, it hopes that we will state that the practice expense RVUs will continue to be interim and subject to refinement as the PEAC continues its review. A specialty society representing ophthalmology echoed this request stating that, because the PEAC is continuing the refinement process, the interim status of the practice expense RVUs should be reaffirmed in the rule. The commenter requested that the RVUs remain interim and subject to change until 2007, that is, until the first update of the five-year review of practice expense RVUs.

Response: We are pleased that the RUC and PEAC are willing to continue the task of helping us to refine the practice expense inputs for the approximately 7,000 services in the physician fee schedule. We intend to keep the practice expense RVUs as interim as long as this refinement process is necessary. Also, as noted above, we will accept, for another 2 years, supplemental survey data that meet our criteria. During this period, we will also continue to make improvements to our practice expense methodology.

Comment: A commenter representing three ophthalmology sub-specialties, though appreciative of our implementation of the PEAC recommendations, expressed disappointment that we have not made the non-controversial revisions to correct additional errors in the CPEP database. The commenter encouraged us to explore alternative ways to improve the quality of the CPEP data without waiting for the PEAC to consider each of the thousands of alleged errors.

Response: We have made changes to the CPEP data in those instances when there was a clear anomaly in the data and when the more appropriate revision would be obvious, without the benefit of a multispecialty recommendation. However, we have found that the input and recommendations of a multispecialty group, such as the PEAC, have played a crucial role for the vast majority of suggested revisions when clinical judgment is involved.

Comment: An organization representing diagnostic imaging centers stated that it would be inappropriate for the PEAC to constitute the review body for direct cost data for technical component services, because the PEAC does not include any representatives of diagnostic imaging centers. The commenter requested that, if any of the CPEP direct cost data form the basis for future payment for technical component services, the accuracy of these data should be reviewed by representatives of centers that actually provide the services involved.

Response: We do not agree that it is inappropriate for the PEAC to review

the direct cost inputs for imaging services. The presentations for each service discussed at the PEAC are based either on surveys or panels of individuals who are familiar with the procedure in question. In addition, any of the recommendations of the PEAC that we accept are subject to review and comment by any interested party.

Comment: Societies representing surgeons, urologists, ophthalmologists, pediatrics, internists, and family physicians strongly support our acceptance of the revisions of CPEP inputs for office-based E/M services. One specialty society commented that the refined inputs for these services reflect the work of a multidisciplinary workgroup and demonstrate a major positive step toward streamlining practice expense inputs. One surgical specialty society did not fully agree that it is appropriate to use these E/M inputs to refine postsurgical visits because the direct costs associated with these visits are not necessarily comparable to the typical E/M visit. On the other hand, a primary care specialty society commented that the "rolling" implementation of CPEP refinement creates an anomaly because the surgical global services have not yet had these lower PEAC estimates for the E/M visits applied.

Response: We also saw the refinement of the practice expense inputs for the E/M codes as a significant milestone in the whole refinement process. These codes not only represent a sizeable portion of Medicare payments, but they also are used by most medical specialties, and, thus, most members of the PEAC had a stake in the outcome of this issue. We believe that, as a result of the extensive multispecialty discussion held by the PEAC on this issue, the recommendations on the E/M codes represent the best available estimates of the direct inputs needed for performing these services. With respect to the issue of applying these E/M inputs to the surgical global services, we will not be taking separate action now, but will be responding to the specific PEAC recommendations. We understand that it is expected that all the 90-day global surgical services will be refined by the PEAC by next year.

Comment: A specialty society representing internal medicine commented that the registered nurse (RN) and licensed practical nurse (LPN) staff mix should be used for the E/M codes rather than the RN, LPN, and medical assistant staff mix, which is less typical. The commenter also stated that we should increase the postservice clinical staff work for these services by 20 percent.

Response: We do not agree with changing the staff mix at this time, particularly because the PEAC recommendations have used this staff mix across the majority of refined services. We also have seen no evidence to suggest that the post-times for these services were undervalued.

(ii) 2001 RUC Recommendations on CPEP Inputs

We have received recommendations from the PEAC on the refinement to the CPEP inputs for over 1,100 codes. These include refinements of large numbers of orthopedic, dermatology, pathology, physical medicine, and ophthalmology services. In addition, the PEAC confirmed that there were no inputs for over 150 ZZZ-global procedures that are performed only in the facility and no supply or equipment inputs for almost 700 facility-only services with an XXX or 0-day global period. We believe this large increase in the number of CPT codes that have been refined demonstrates that the PEAC refinement process is working due to the valiant efforts of the AMA staff and the specialty societies participating in this mammoth undertaking. There is also reason to believe that the pace of refinement will continue to increase because of the steps that the PEAC is taking to create standardized packages of clinical staff time, supplies, or equipment that can be applied over a wide range of services.

We have reviewed the submitted PEAC recommendations and have accepted most of them with only minor revisions. The complete PEAC recommendations and the revised CPEP database can be found on our web site. (See the Supplementary Information section of this rule for directions on accessing our web site.)The following is a list of the only revisions we made to the PEAC recommendations:

- We substituted the multispecialty minimum visit supply package or the ophthalmology supply package for the list of individual supplies, when appropriate.
- We deleted separately billable supplies, for example, drugs, fluids, and casting supplies, when listed in the recommended supply list.
- We rounded fractions of minutes of clinical staff time to the nearest minute.
- For CPT code 52281, *cystoscopy and treatment*, we deleted the bougie a boule from the equipment list. The specialty society supplied us with the price of $105 for this item, which does not meet the minimum cost of $500 for an item to be included in the equipment list.
- For several ophthalmology services that did not involve dilation of the pupil, we consulted with the specialty society and deleted the ophthalmology visit supply package that was listed for the post-procedure visit. This package is intended for those services where dilation is necessary. The society confirmed that no supplies are needed for the post-procedure visit for these services.
- The recommendation did not specify the number of EEG electrodes for CPT code 92585, *auditory evoked potential, comprehensive*. We added seven electrodes, which is the same number assigned to the visual evoked potential code.
- The PEAC/RUC recommendations included time for the clinical staff type, "Physical Therapy Assistant (PTA)," which currently is not included in our CPEP input database. We are pricing the PTAs by using the Bureau of Labor Statistics wage estimates for physical therapy assistants. The base annual salary we are using will be $33,690. After factoring in benefits and adjusting this to 2001 dollars, the per minute rate will be $0.386.
- We have two concerns about the PEAC recommendations for therapy services. First, we believe that some of the duties ascribed to the physical therapy assistant are actually therapist services that are already captured in the work RVUs. Therefore, we are deleting from all the therapy codes the clinical staff time for obtaining vital signs and measurements, patient education, and phone calls. Because we believe that the resulting clinical staff times may be too low for the physical therapy and occupational therapy evaluation and reevaluation services, we are adding 7 additional minutes for the therapy aide in each of these codes. In addition, some of the occupational therapy codes contain several pieces of very expensive equipment called environmental modules. Because it is unclear how many of these modules would typically be used for each service, we are only including one module for each code that might use this equipment. We note that for three services, CPT codes 97530, 97535, and 97537, the PEAC did not submit a recommendation for equipment, presumably because of the difficulty of determining what would be typically used. In those cases, as in those with a PEAC recommendation, we are allowing for one module and some smaller equipment that was suggested by the specialty. We would hope to work with the specialty societies to obtain more precise information on the appropriate equipment for all of these therapy services.

- We note that one of the services for which we received recommendations, the casting/strapping procedure CPT code 29799, is carrier-priced. In addition, we received recommendations for two fine needle aspiration services, CPT codes 88170 and 88171, which are now deleted.

(iii) Other Comments on Refinement of CPEP Inputs

Comment: Several commenters were pleased that we finalized certain proposals regarding CPEP inputs, such as the following:

- The reinstatement of the pre-procedure clinical staff time in the facility setting for certain 0-day global services as well as pre-service time for the vitrectomy codes.
- Our decision to uphold the proposed refinements regarding inpatient dialysis CPT codes 90935 and 90945.
- The clarification of Medicare payment policy for cast supplies when used for non-fracture/dislocation procedures.
- The decision to retain Unna boot in the supplies for CPT code 29580.
- The correction of the supply list for CPT code 88104 and the establishment of a separate nonfacility practice expense RVU for CPT code 85607 in the 2001 fee schedule.
- The extension of the code-specific refinement beyond 2002.

Response: We appreciate the above comments and will strive to continue refining the practice expense RVUs in a manner that is fair and beneficial to the medical community.

Comment: An allergy clinic commented that because of our definition of a dose for CPT code 95165, *Allergy Immunotherapy*, doctors will be forced to use a dosage that could be harmful to certain patients.

Response: The definition of a dose will be used only for pricing the practice expense inputs for this service. Physicians should use their clinical judgment in determining what dose to use for any particular patient.

Comment: A commenter noted that the two codes for anal balloon sphincterplasty (CPT codes 49505 and 49510) did not have the balloon listed in the supply inputs.

Response: We agree that this was an omission and have added the balloon to the supply list for both services.

Comment: A commenter stated that there are no practice expense inputs assigned to CPT code 36533, *insertion of implantable venous access port, with or without subcutaneous reservoir*, in the nonfacility setting, because the CPEP panels priced it only in the facility. In particular, the supply inputs do not contain the cost of the catheter that is an integral part of the procedure.

Response: It is true that the original CPEP panel did not price this in the nonfacility setting; however, we subsequently crosswalked the inputs from the facility to the nonfacility setting for supplies, equipment, and clinical staff, adding clinical staff time for the intraservice period in the office. However, we agree that the catheter is an appropriate supply and have added it to the supply list for this code.

Comment: A specialty society representing podiatrists questioned why the practice expense RVUs for the nail trimming codes G0127 and CPT code 11719 are not the same. The commenter stated that they should have the same CPEP inputs since both were refined by the PEAC this year with identical inputs.

Response: The CPEP inputs are now identical for both codes, except that the supplies recommendation for CPT code 11719 does not include a surgical mask. However, none of this year's PEAC recommendations were reflected in the August 2001 proposed rule. In addition, even codes with identical CPEP inputs can have different practice expense RVUs if a different mix of specialties performs each service.

Comment: Two specialty societies representing cardiologists and electrophysiologists commented that we have allowed 60 minutes of clinical staff time to arrange for surgical procedures with a 90-day global period, but we have not yet allowed the same for 0-day global period procedures in facilities. The commenters stated that they may present specific codes to the PEAC with the recommendation that this time be recognized for these services, and they hope that we will be receptive to these recommendations.

Response: We will be glad to review any PEAC recommendations on clinical staff pre-service time for 0-day global period services in the facility setting if and when we receive them.

(iv) Repricing of Clinical Staff Wage Rates

In the August 2, 2001 proposed rule (66 FR 40378), we proposed modifications of wage rates for the clinical staff types contained in the CPEP database. Our contractor, Abt Associates, assigned the costs of the original CPEP inputs for staff, supplies, and equipment based primarily on 1994 and 1995 pricing data.

The original Abt Associates' estimates of clinical staff wage rates relied primarily on the Bureau of Labor Statistics (BLS) data. Abt's report on the CPEP cost estimation stated that, "* * * the BLS data were considered to be the preferred data set. The BLS" reputation for publishing valid estimates that are nationally representative led to the choice of the BLS data as the main source. If more than one data set provided an exact mapping for a receptionist, then the BLS wage was chosen over any other mapping."

We agreed with this assessment and have used the most current BLS survey (1999) as the main source of wage data.

It should be noted that the BLS discontinued the Occupational Compensation Survey used by Abt in 1995 and now conducts the National Compensation Survey that has a breakdown of staff types different from the earlier survey. Also, this survey does not cover all the staff types contained in the CPEP data. Therefore, it was necessary for us to crosswalk or extrapolate the wages for several staff types using supplementary data sources for verification whenever possible.

We used three other data sources to price wages of staff types that were not referenced in the BLS data:

- The American Society of Clinical Pathologists' survey of laboratory staff salaries (found at *www.ascp.org*).
- The survey performed by the American Academy of Health Physics and the American Board of Health Physics (found at *www.hps1.org*).
- The national salary data from the *Salary Expert*, an Internet site that develops national and local salary ranges and averages for thousands of job titles using mainly government sources. (A detailed explanation of the methodology used to determine the specific job salaries can be found at *www.salaryexpert.com*).

We also solicited any valid survey data that commenters might be able to submit to us.

The proposed cost per minute for each staff type was derived by dividing the proposed annual salary (converted to 2001 dollars using the Medicare Economic Index) by 2080 to arrive at the hourly wage rate and then again by 60 to arrive at the per minute cost. To account for the employers' cost of providing fringe benefits, such as sick leave, we used the same benefits multiplier of 1.366 used by Abt Associates.

Comment: We received several supportive comments on our efforts to update the clinical staff salaries used in calculating the practice expense RVUs. Specialty societies representing family physicians and surgeons supported the proposal to reprice clinical staff salaries to approximate current practice

expenses. A specialty society representing rheumatology stated that the repricing of clinical staff salary data represents an overdue positive step toward more accurate refinement of practice expense inputs. A specialty society representing dermatology agreed with the appropriateness of bundling similar clinical staff types into more easily identified and easily tracked clinical labor blended categories.

Response: We agree that using current wage data to price the clinical staff CPEP inputs is one step in ensuring that the practice expense RVUs are based on the resources needed to perform each service. We also would like to express our appreciation to the groups that included salary survey data on various staff types as part of their comments. These additional data have helped us to make appropriate revisions to our original proposals.

The following is a discussion of the specific proposals we made on the pricing of clinical staff types.

• We received no comments on the following proposals. Therefore, they will be implemented as proposed.

• We will price as proposed the staff types physical therapy aide, LPN, RN, certified surgical technician, laboratory technician, cytotechnologist, cardiovascular technician, nuclear medicine technician, optician, respiratory therapist, speech pathologist, audiologist, and counselor.

• We will collapse the medical assistant, technical aide, medical technician, EKG technician, anesthesia technician, technician, and cast technician staff types into a new staff type, "medical or technical assistant (MTA)," that will be priced at the medical assistant wage rate of $0.26 per minute.

+ We will bundle the staff type "RN-cardiology" into the staff type "RN."

+ We will adjust the wage rate for the oncology-certified nurse to be 18 percent higher than the RN.

+ We will bundle the staff type "surgery assistant" into the staff type "certified surgical technician (CST)."

+ We will use the average hourly rate of $15.60 for histologic technologists from the 1998 American Society of Clinical Pathologists' survey to price the histotechnologist staff type.

+ We will use the BLS salary data for electroneurodiagnostic technologists contained in the BLS Occupational Outlook Handbook to price the electrodiagnostic technologist staff type.

+ We will price the wage rate for the EEG technician using survey data from the *Salary Expert*.

+ We will merge the nuclear cardiology technician in with the nuclear medicine technician staff type.

• We were unable to find any national salary data for the electron microscopy technician and, in the absence of such data, proposed crosswalking the salary from the wage rate for the histotechnologist. Though this represented an increase in the per minute cost for this staff type, we stated that we would welcome reliable national survey data from the specialty that we could use in pricing electron microscopy technicians.

Comment: The specialty society representing pathologists recommended that the wage rate for electron microscopy (EM) technician, which we proposed crosswalking from that of the histologic technologist, should more accurately be priced at the same wage rate as the cytotechnologist. The commenter stated that histologic technologists are generally bachelor degree level personnel, whereas EM technicians generally have post-baccalaureate education, parallel to that of a cytotechnologist. In addition, they receive salaries that are higher than general histotechnologists. The commenter also recommended that the title of the EM technician category be changed to EM technologist.

Response: We are persuaded that the commenter has proposed a more suitable crosswalk for this staff type. Therefore, we will crosswalk the wage rate for the EM technologist from that of the cytotechnologist. We will also change the title as suggested by the specialty society.

• We were unable to find any national salary data for registered electroencephalograph technologists (REEGTs) and proposed to maintain the current rate, since the speciality society had recently recommended this rate of pay. However, we also requested reliable national survey data from the specialty that we could use in pricing these three levels of neurodiagnostic staff.

Comment: The American Academy of Neurology (AAN), on behalf of seven related organizations, submitted an abbreviated version of the 2000 American Society of Electroneurodiagnostic Technologists (ASET) Salary Survey. The commenter stated that this national salary survey has been collected triennially by ASET, the main national body representing this allied health professional field, and was not collected for any purpose connected with the physician fee schedule. For office-based registered electroencephalograph technologists, there were 31 responses and a mean salary per hour of $20.11. For all REEGTs, there were 559 responses and a mean salary of $20.53 per hour. The commenters recommend that we substitute either of these salary rates to determine the costs for the REEGT staff type. The specialty society representing sleep medicine requested that we consider the updated salary data that AAN included in its comments on the proposed rule.

Response: We have reviewed this survey and believe that it provides a more appropriate estimate of the wage rate of REEGTs than did our crosswalk to a staff type used in a different specialty. We will use the data for the office-based REEGTS, which results in a wage rate of $0.47 per minute, which we note is not significantly different from our proposed rate for the REEGT staff type.

• We proposed to bundle the vascular technician with the cardiovascular technologist staff type. Currently both are priced at the same rate.

Comment: The American Association for Vascular Surgery, American Society of Neuroimaging, Society of Diagnostic Medical Sonography, Society for Vascular Surgery, and Society of Vascular Technology submitted a joint comment as "The Coalition." The Coalition argued that the BLS was wrong to classify vascular technologists with cardiovascular technologists and technicians because the BLS description of duties for this classification does not include any of the duties performed by a vascular technologist. In addition, the commenters contended that, unlike most cardiovascular technicians, a vascular technologist functions as a direct and largely independent health care practitioner. A skilled vascular technologist undergoes between 2 and 4 years of didactic and clinical post-secondary education as evidenced by the presence of a baccalaureate degree program in vascular technology.

The Coalition recommended that we base the salaries for vascular technologists on data from a survey conducted earlier this year by nVision Research that surveyed by mail 406 randomly selected vascular technologists from a variety of settings. The response rate for this survey was 55 percent. Based on the survey, nVision Research determined that the median annual salary of a vascular technologist is $49,758. A copy of the survey was included with the comment. The commenters also recommended that we change the description of the "vascular technician" to "vascular technologist." A specialty society representing echocardiography urged that we adopt the classification of "vascular technologist" as proposed by the above groups.

Response: We agree that the nomenclature of the staff type should be changed to "vascular technologist." We have studied the data provided by the Coalition and have consulted with our medical advisors and now also agree that the salary shown in the submitted survey better represents the current wage rate for vascular technologists. Therefore, we will assign the vascular technologist staff type the recommended yearly salary of $49,758 which results in a per minute wage rate of $0.54.

• We proposed to merge the x-ray technician and radiation technologist staff types, which are currently priced at the same rate, into a staff type called "Radiologic Technologist."

Comment: The American Society of Radiologic Technologists (ASRT) submitted with their comment the 2001 "Radiologic Technologist Wage and Salary Survey" commissioned by the organization. The comment disagreed with our proposal to merge the x-ray technician and radiation technologist staff types. The society stated that the radiation technologist has completed a formal educational program and has successfully passed a nationally recognized credentialing examination; an x-ray technician denotes a person who is most likely informally trained and who is often employed to perform only very limited x-ray examinations. On the other hand, a society representing therapeutic radiology and oncology recommended that we not crosswalk radiation technologists to "radiologic technologists and technicians," but, instead, change the crosswalk and the name to "radiation therapist."

Response: We can understand why the original nomenclature assigned by the CPEP panels to these staff types would be confusing to the commenters. However, it is clear from the imaging services to which the radiation technologist is assigned that this staff type was not considered to be a radiation therapist. In addition, we do not disagree with the distinction made by ASRT between an x-ray technician and a radiation technologist. However, the CPEP panel did not appear to make this same distinction. In fact, the x-ray technician is often assigned to more complex services than the radiation therapist and Abt Associates priced the two staff types at the same wage rate. Therefore, we have made the decision to consider both staff types to be at the same level and to change the title of both to "radiologic technologist." If it is necessary to make a distinction between different levels of radiologic staff, this can be done as part of the refinement process.

Comment: A commenter representing imaging centers recommended that we substitute the "more accurate and recent salary information" obtained by the ASRT for the pricing of radiologic technologists. The commenter stated that these data indicate that the mean salary of full-time radiologic technologists is $53,919.

Response: We have reviewed the survey submitted to us by ASRT and have found it to be both comprehensive and useful. We would note that the $53,919 referenced in the comment is the mean salary for all radiologic personnel and includes the salaries of staff level personnel as well as chief technologists and of radiography staff as well as dosimetrists. Therefore, this is not salary information that can be used to price the specific radiology staff types in our database. However, as discussed below, we have used other ASRT data to price certain staff types for which we had no other pricing information. It is interesting to note that the mean salary in the ASRT survey for radiography staff is $36,862, while the 2001 salary rate for the equivalent staff based on the BLS is $37,126; the use of either figure would result in an almost identical per-minute wage rate. This information gives us extra confidence in our proposed wage rate of $0.41 per minute for radiologic technologists, and we will be implementing this salary rate as proposed.

• Because we were unable to find any national survey data regarding the salaries for CAT scan technician, MRI technician, or angiographic technician, we proposed crosswalking these staff types to the BLS radiologic technologist pay scale. We also stated that we would welcome any reliable national survey data that would allow us to separately price these staff types.

Comment: The American Society of Radiologic Technologists (ASRT) recommended that we use the 2001 ASRT survey submitted with its comment to price the MRI, CAT scan and angiographic technologists, rather than crosswalking their wage rate from the radiologic technologist. The ASRT data show an annual salary of $42,143 for a CAT scan technologist and $43,118 for an MRI technologist.

Response: We have reviewed the ASRT data for MRI and CAT scan technologists and will use that data for MRI and CT staff to price these staff types. There is a close congruence between the ASRT and the BLS salaries for those radiologic staff for whom we have data from both sources. Therefore, we have confidence that the wage rate we will use for the CAT scan and MRI technologists will be relatively correct. The wage rate for the CAT scan technologist will be $0.46 per minute and for the MRI technologist $0.47 per minute. We could not find data in the ASRT survey corresponding to the angiographic technician. Therefore, until some reliable national data are available, we will continue to crosswalk this wage rate from that of the radiologic technologist.

• We proposed merging the cardiac sonographer and the ultrasound technician into the sonographer staff type. Currently, all three are priced at the same rate.

Comment: The group of specialty societies commenting as the "Coalition" recommended that we maintain the description, "cardiac sonographer," eliminate the description, "ultrasound technician," and change the description "sonographer" to "diagnostic medical sonographer." A specialty society representing echocardiography strongly urged that we adopt the above classifications proposed by the Coalition. This commenter also contended that crosswalking the salary for cardiac sonographers from that of diagnostic medical sonographers does not adequately reflect the salaries currently paid to cardiac sonographers. The society is currently seeking a reliable source of current survey information so that we can price cardiac sonographers separately.

Response: We have already proposed eliminating the description "ultrasound technician" and will accept the description of "diagnostic medical sonographer." We proposed merging the cardiac sonographer into the sonographer classification because the two staff types were currently priced the same and we did not have any other salary data for the cardiac sonographers. However, we will accept the recommendation to keep the category "cardiac sonographer" and would be willing to reconsider the pricing if valid salary data are submitted.

• Because we were unable to find salary information for the staff type "dosimetrist," we proposed crosswalking their salary from that of radiation therapists.

Comment: The American Society of Radiologic Technologists (ASRT) recommended that we review our proposed equal wages rates for radiation therapists and dosimetrists. The commenter reported that the annual salary of $57,330 for staff dosimetrists shown in the submitted 2001 ASRT survey is considerably higher than that for radiation therapists, which reflects their additional educational

requirements. The specialty society representing radiology also opposed combining dosimetrists and radiation therapists in the same group because these two staff types provide very different services for radiation oncology procedures and are paid on different pay scales. This commenter agreed with the proposed increased wage rate for radiation therapists, but believed that the dosimetrists would be paid approximately 20 percent more than their proposed rate. Two other societies, one representing therapeutic radiology and oncology and one representing radiation oncology centers, also supported an increase for dosimetrists and one commenter suggested that we substitute the title "medical dosimetrist." In addition, these two commenters recommended that we use the ASRT data for radiation therapists as well.

Response: We appreciate receiving the ASRT data for dosimetrists and agree that the annual salary suggested by the ASRT survey more accurately reflects the appropriate wage rate for this staff type. The wage rate will be $0.63 per minute. We will also change the title for this staff type to "medical dosimetrist." We will continue to use the BLS data to determine the wage rate for radiation therapists since there has been no evidence presented to show that the BLS survey was in any way not representative.

- We proposed using the average salary data for all certified health physicists from the 1999 survey conducted by the American Academy of Health Physics and the American Board of Health Physics to price the "physicist" staff type.

Comment: Three specialty societies representing radiology, therapeutic radiology and oncology, and radiation oncology centers recommended that we use the Professional Information Survey data from The American Association of Physicists in Medicine (AAPM) rather than from the American Academy of Health Physics (AAHP). One commenter pointed out that the AAHP survey does not include physicists working in radiation oncology. The AAPM survey for CY 2000 had an overall response rate of 58 percent and demonstrated an average annual salary of $107,900. One commenter suggested that we also change the title to "medical physicist."

Response: No copy of the AAPM survey was included with any of the comments, and we have been unable to review it at this time. However, we would not question the commenters' assertion that the AAPM survey was more relevant to physicists working in radiation oncology than the survey we used to determine our proposed wage rate. Therefore, we are using the AAPM survey salary of $107,900 on an interim basis to price the physicist wage rate and will endeavor to obtain and review this survey to finalize this issue. The wage rate for 2002 will be $1.21 per minute. For clarity, we will also accept the recommendation to change the title to "medical physicist."

- We were unable to obtain representative national salary data for the certified ophthalmic technician (COT), the certified ophthalmic medical technologist (COMT), or the orthoptist staff types. We proposed to crosswalk the COT and COMT to the laboratory technician and histotechnician, respectively, since we believe that the skill and responsibility of these staff types would generally correspond. In the absence of any national salary data for the orthoptist, we proposed to crosswalk the salary from that of the COMT, the highest level of ophthalmic medical personnel. We also proposed crosswalking the salary data for the certified retinal angiographer from the data listed for ophthalmic photographers in the *Salary Expert*. We stated that we would welcome reliable and representative national salary data for these staff types.

Comment: The specialty society representing ophthalmologists commented that they would be pleased to offer additional assistance to validate the salaries for ophthalmic medical technicians and other ophthalmic clinical staff. At this time, the commenter agreed that the proposed crosswalks for these staff types are acceptable.

Response: We will be implementing these crosswalks as proposed.

- We proposed to crosswalk the wage rate for the staff type "dietitian" from the BLS salary data for dietitians and nutritionists.

Comment: The American Dietetic Association (ADA) commented that it believed that the BLS database includes salaries for non-credentialed dietitians and nutritionists and that we should reference ADA data from its membership surveys that estimates 2001 adjusted median annual income for dietitians to be $51,006.

Response: We would be willing to look at the ADA survey data if they were submitted to us. We would, of course, have to review and analyze these alternative survey data before we could substitute them for the BLS data that we have proposed to use. However, until we are convinced that the ADA data were equally or more representative of dietitians who serve as clinical staff for services on the fee schedule, we will continue to use the BLS data as our source of salary data for dietitians.

- We proposed to delete those clinical staff that can bill separately from the list of CPEP staff types. Therefore, we proposed substituting physical therapy aide for physical therapist, registered nurse for physician assistant, nurse practitioner and psychologist, and counselor for social worker.

Comment: Two specialty societies representing internal medicine and family practice expressed support for this proposal because these staff types, for example, nurse practitioners, are used as physician extenders and their salaries should not be considered as practice expense. A society representing geriatrics argued that we should not delete the clinical staff that can bill separately from the list of CPEP staff types because not all of these individuals bill separately, resulting in a negative impact on geriatrics.

Response: We will implement our proposal to delete clinical staff that can bill independently from our practice expense input database, with the two exceptions noted below. We believe that the costs of these staff types are not practice expenses and should be captured in the work RVUs. This revision to our clinical staff list should not have a negative impact on geriatrics because none of the deleted staff types were assigned to any of the E/M services that would make up a large percentage of geriatricians' case loads.

Comment: A society representing social workers commented that it was not opposed to the deletion from the practice expense inputs of staff types that can bill directly. However, the commenter pointed out that only clinical social workers are able to bill directly, while other social workers cannot. Therefore, the society is opposed to the deletion of the staff type, "social worker," from the CPEP inputs and the substitution of the staff type, "counselor." In addition, the society would at least want the BLS data for "social worker" to be used for pricing, though it believes that the BLS data does not differentiate enough between the various types of practice within social work.

Response: The commenter is correct in stating that not all social workers can bill directly. Therefore, we will keep the social worker staff type in our database and will use the BLS data for "social worker" to determine the appropriate wage rate. In addition, we will not delete the staff type, "psychologist," which is listed as the clinical staff for the psychological testing services. Because these services have no physician work RVUs, the work of the psychologist can only be captured through the practice expense RVUs. We can find no appropriate national salary at this time for this staff type. Therefore, we will use the current wage rate of $0.82 per minute.

- We proposed to delete, as redundant, the ophthalmic medical personnel (OMP) staff type and to substitute the COMT/COT/RN/CST blend that was suggested by the American Academy of Ophthalmology and recommended by the PEAC.

Comment: The specialty society representing optometrists agrees with our proposal to delete, as redundant, the ophthalmic medical personnel (OMP) staff type and substitute the COMT/COT/RN/CST staff blend.

Response: We will implement this as proposed. Table 1 lists each staff type remaining in our practice expense input database, the source of the data, the staff type crosswalk used, the proposed annual salary in 2001 dollars, the 2002 wage rate per minute (including benefits) and the current cost per minute (including benefits).

TABLE 1.—REVISED WAGE RATES FOR CPEP STAFF TYPES

Description	Source	Crosswalk	Mean yrly 2001	Hrly + benefits	Revised per minute	Current per minute
Physical Therapy Aide	BLS	Physical Therapist Aides	21,077	13.84	0.23	0.23
Physical Therapy Assistant	BLS	Physical Therapist Assistants	35,223	23.13	0.39	N/A
Medical or Technical Assistant	BLS	Medical Assistants	23,681	15.55	0.26	0.16
LPN	BLS	Licensed Practical Nurses	30,341	19.93	0.33	0.27
RN	BLS	Registered Nurses	46,494	30.53	0.51	0.42
RN Oncology	BLS	Registered Nurses plus adjustment	54,862	36.03	0.60	0.50
Certified Surgical Technician	BLS	Surgical Technologists	28,814	18.92	0.32	0.26
Lab Technician	BLS	Medical and Clinical Laboratory Technicians.	29,724	19.52	0.33	0.29
Histotechnologist	ASCP	Histologic Technologist	33,925	22.28	0.37	0.31
Electron Microscopy Technologist	X-WALK	Cytotechnologist	41,099	26.99	0.45	0.31
Cytotechnologist	BLS	Medical and Clinical Laboratory Technologists.	41,099	26.99	0.45	0.42
EEG Technician	Salary Expert	Electroencephalographic Technician	29,151	19.14	0.32	0.28
Electrodiagnostic Technologist	BLS	Electroneurodiagnostic Technologists	33,529	22.02	0.37	0.30
Registered EEG Technologist	ASET	Registered EEG Technologist	42,707	28.05	0.47	0.40
Vascular Technologist	nVision Survey	Vascular Technologist	49,758	32.68	0.54	0.35
Cardiovascular Technician	BLS	Cardiovascular Technologists and Technicians.	34,794	22.85	0.38	0.35
Radiologic Technologist	BLS	Radiologic Technologists and Technicians.	37,126	24.38	0.41	0.32
Mammography Technologist	ASRT	Mammography Technologist	39,212	25.75	0.43	N/A
Angiographic Technician	BLS	Radiologic Technologists and Technicians.	37,126	24.38	0.41	0.35
CAT Scan Technologist	ASRT	Computed Tomography Technologist	42,143	27.68	0.46	0.32
MRI Technologist	ASRT	Magnetic Resonance Imaging Technologist.	43,118	28.32	0.47	0.32
Nuclear Medicine Technician	BLS	Nuclear Medicine Technologists	44,361	29.13	0.49	0.39
Diagnostic Medical Sonographer	BLS	Diagnostic Medical Sonographers	45,751	30.05	0.50	0.39
Cardiac Sonographer	BLS	Diagnostic Medical Sonographers	45,751	30.05	0.50	0.39
Radiation Technical Therapist	BLS	Radiation Therapists	45,333	29.77	0.50	0.40
Medical Dosimetrist	ASRT	Medical Dosimetrist	57,330	37.65	0.63	0.50
Medical Physicist	AAPM	Medical Physicist	110,166	72.35	1.21	0.97
COT	X-WALK	Lab Technician	29,724	19.52	0.33	0.26
COMT	X-WALK	Histotechnician	33,925	22.28	0.37	0.28
Optician	BLS	Opticians, Dispensing	26,336	17.30	0.29	0.28
Certified Retinal Angiographer	Salary Expert	Ophthalmic Photographer	35,453	23.28	0.39	0.35
Orthoptist	X-WALK	COMT	33,925	22.28	0.37	0.32
Respiratory Therapist	BLS	Respiratory Therapists	38,537	25.31	0.42	0.42
Speech Pathologist	BLS	Speech-Language Pathologists	49,996	32.83	0.55	0.42
Audiologist	BLS	Audiologists	47,748	31.36	0.52	0.41
Registered Dietician	BLS	Dieticians and Nutritionists	39,050	25.65	0.43	0.37
Counselor	BLS	Mental Health Counselors	30,769	20.21	0.34	0.42
Social Worker	BLS	Medical and Public Health Social Workers.	37,011	24.31	0.41	0.33

The CPEP clinical staff inputs also include blends of staff types that are used for those services when more than one type of clinical staff may be used in the performance of the service. We will establish the payment rates for these blends by calculating a simple average of the wage rates of the staff types included. Table 2 shows the blended staff types, the 2002 cost per minute and the current cost per minute.

Note: We received no comments on the proposed cost per minute for the staff blends, so these rates will be implemented as proposed.

TABLE 2.—REVISED WAGE RATES FOR CPEP BLENDED CLINICAL STAFF TYPES

Description	Revised per minute	Current per minute
COMT/COT/RN/CST	0.38	0.307

TABLE 2.—REVISED WAGE RATES FOR CPEP BLENDED CLINICAL STAFF TYPES—Continued

Description	Revised per minute	Current per minute
Lab Tech/Histotech	0.35	0.297
Lab Tech/MTA	0.30	0.257
Optician/COMT	0.33	0.278
RN/LPN	0.42	0.389
RN/LPN/MTA	0.37	0.317
RN/OCN	0.56	0.497
RN/Respiratory Therapist	0.47	0.421
RN/Sonographer	0.51	0.405
Dosimetrist/Physicist	0.920	N/A

(v) Revision of the Ophthalmology Visit Supply Package

In its May 2000 submission to us, the RUC recommended the use of an ophthalmology visit supply package that would contain the routine supplies typically used in each 90-day global postsurgical visit for ophthalmology services. We accepted this recommendation. However, upon further review, we noted that two of the supplies, rev eyes and post myd spectacles, were not used in many of the postsurgical office visits. Therefore, after consulting with the ophthalmology specialty society, we proposed to remove these two items from the ophthalmology visit package. Instead, we proposed including these items as appropriate on a code-by-code basis.

Note: Since we received no comments on this issue, we will implement this revision on the supply package as proposed.

(vi) Deletion of Contrast Agents from the Practice Expense Inputs

Section 430(b) of BIPA amends section 1861(t)(1) of the Act to include contrast agents in the definition of drugs and biologicals. Previously, contrast agents were defined as supplies and were included in the list of CPEP supplies for the appropriate services. Therefore, we proposed to delete the costs of the following contrast agents from our CPEP data: hypaque, methylene blue, high-density barium, polibar, telopaque tablets, barium paste contrast, effervescent sparkies (fizzies), and renographin-60 iodinated contrast.

Comment: The specialty society representing radiology had no comment on the suggested list of deletions from the CPEP supplies. However, the society expressed concern that there are no HCPCS codes established for these deleted items and wanted information on how to bill for these supplies.

Response: As stated above, we proposed to delete contrast agents from the practice expense inputs in response to legislation that included contrast agents in the definition of drugs. This proposal was made to ensure that we did not include in the practice expense the costs of items that could also be billed separately. However, section 1842(o)(1) of the Act makes clear that the payment of 95 percent of the average wholesale price (AWP) can be made only if the drug is not paid on a cost or prospective payment basis. We believe that if we do include payment for any contrast agent in the practice expense RVUs, no other payment should be made for this item. After further consideration of this issue, however, we will continue to include the contrast agents listed in our proposal in our practice expense inputs at this time. Therefore, we are withdrawing the proposal.

c. Physician Time

RUC Time Database

The primary sources for the physician time data used in creating the specialty-specific practice expense pools are the surveys performed for the initial establishment of the work RVUs and the surveys submitted to the AMA RUC. The AMA informed us that some of the times used for the November 1998 final rule (63 FR 58823) differed from the official RUC database, and we agreed to use the RUC-verified physician time database when we received it from the AMA. Subsequently, the AMA notified us that there were gaps in its own database for certain global surgery codes and that a revised time database would be sent to us once all the times were verified. We have now received this revised database and proposed to use it in the calculation of the specialty-specific practice expense pools. It should be noted that the RUC database reflects the physician times for those codes that were surveyed as part of the second 5-year review of physician work.

Comment: We received a number of comments that supported using the physician time data. One commenter indicated that the new time database is expected to provide greater accuracy and consistency in the practice expense calculations. While commenters representing family physicians, internists, and rheumatologists supported use of the new time data, they also indicated that improvement is still needed. Specifically, these commenters suggested that the number and level of postoperative visits and the corresponding physician time included in the global surgical period may be overstated. The commenters noted that we previously indicated that we would study length of stay data relative to the number of postoperative visits and included in the surgical period, and they encouraged us to use this information to further refine the physician time data. One commenter indicated that surgeons rarely meet the criteria for billing critical care services in the postoperative period even though the time and value of critical care services are proposed for inclusion in the global period of some surgical codes.

Organizations representing thoracic surgeons indicated that we should not incorporate the new time data that will result in additional practice expense reductions for thoracic and cardiac surgery. These commenters said that no further reductions in the practice expense RVUs for cardiac surgery should be made until new studies of practice expense related issues by the Office of Inspector General and the General Accounting Office are completed. This commenter indicated that the new physician time data covers only 585 of the 7,928 codes in the physician fee schedule but directly affects cardiothoracic surgery because there are revised times for many high volume heart and chest procedures. The commenter suggested that the new time information needs to be put in the context of changes in physician time that may have occurred in the last five to ten years on the remaining 7,343 procedure codes where there are no new physician times. Another commenter representing a cardiology subspecialty indicated that we incorporated RUC time data for only 1,900 of the more than 7,000 procedure codes. This commenter suggested that we should continue using available time from a single source until a consistent source that includes information on all CPT codes is available.

Response: As indicated in the proposed rule, the RUC submitted physician time data for nearly 2,000 CPT codes in May 2001 and recommended that we use these new physician times in the practice expense methodology. The RUC recently sent new time for use in the final rule that reflected refinements for a few codes. We note that the source of the RUC times are actually the physician specialty societies themselves, including those associations that have objected to our use of the data. The data largely come from the specialty society surveys that were forwarded to the RUC to support requests for physician work RVUs for new and revised codes or services that were part of the 5-year review. The RUC made a comprehensive effort to validate these times before forwarding them to us. The RUC indicated to us that, over a period of 2 years, specialties had been provided with an opportunity to review the data and determine that they were accurately recorded.

While the new times forwarded by the RUC represent a minority of CPT procedure codes, we note that they account for over 60 percent of the allowed services that are paid under the physician fee schedule. In response to the comment that we should make changes only when we have a single source of time data for all codes, we note that there has never been a single source of time for all codes. While time for some codes is based on the original work of Harvard University, there are many codes that came into existence since the Harvard survey was completed. The only data source for these codes is the RUC.

We acknowledge that the Office of Inspector General is studying issues related to physicians bringing clinical staff to the hospital and the General Accounting Office is reviewing our use of supplemental practice expense survey data. Since these studies are unrelated to physician time, we do not believe they constitute a reason to suspend incorporation of the new time data into the practice expense methodology.

In response to the comments that suggest that the physician times in the postoperative period may be overstated, the RUC indicated to us that "a number of improvements were made to the specifications regarding the level of postoperative visits to more accurately capture each element of physician time." While the total times we received from the RUC reflect the number, types, and level of E/M services furnished in the postoperative surgical period, these services are not separately paid when furnished as part of a global surgical service. Since these services are not paid separately, it is difficult to find objective information that indicates how E/M services are provided in the postoperative period. Currently, the only source of information we can use is information that the RUC has supplied and data that previously existed in our files. While we have undertaken research that combines information on inpatient hospital stays with claims for physicians' services, these data have limitations for determining the level or type of visit being furnished in the postoperative period. We would consider any further evaluation by the RUC on this issue.

d. Calculation of Practice Expense—Other Issues

Comment: Several commenters requested additional clarification and information concerning the cause of reductions of 9 to 13 percent in the practice expense RVUs for electrophysiology services. One commenter indicated that there was no explanation of the proposed reduction in practice expense for CPT codes 33207, 33208, 33249, and 93651. The commenter suggested that we should provide a more complete explanation of the proposed reductions or rescind them.

Response: Our observation is that there is no more than a 9 percent reduction in practice expense RVUs for any of these codes. We also note that the change in total payment for these codes as a result of the change in practice expense RVUs is less than half of this amount. We modeled five different changes to the practice expense methodology in our August 2, 2001 proposed rule (66 FR 40397). Of these changes, the change to physician time has the greatest effect on these codes. Since the change in the practice expense RVUs results from new information that affects payments for all procedure codes, we are continuing to implement the reduction in practice expense RVUs that were proposed for these codes.

Comment: We received one comment expressing concern that the separate professional interpretation and technical components for CPT code 95824 (cerebral death evaluation) have been eliminated. The commenter requested that we restore the professional and technical components of this service and crosswalk the technical component value from a similar code, CPT code 95822 (EEG, sleep only). The commenter also suggested that the work RVUs should be 1.08 RVUs, the same as similar EEG codes.

Response: We have restored the separate professional and technical components of this service. This service will likely be exclusively furnished for patients who are in an institutional setting. Thus, we will pay under the physician fee schedule only for the professional interpretation. Payment for the technical component of the service will be made through our payment to the institution for facility services. Since the technical component of this service is never provided outside of a hospital, we do not have enough information under the resource-based methodology to establish nonfacility pricing. In the unlikely event that this service is provided in the nonfacility setting, we are making the global and technical component of this service subject to carrier pricing. This change will apply to several other services that are not furnished in nonfacility settings. We are not making changes to the physician work RVUs for cerebral death evaluation in this final rule. There were no requests to revise the work RVUs for this code as part of the 5-year review of physician work.

Comment: An organization representing vascular surgeons stated that the methodology used to incorporate the supplemental practice expense survey data has failed. This commenter indicated that the practice expense per hour for vascular surgeons increased by 9 percent from using supplemental data; however, payments actually declined between the November 2000 final rule and the August 2001 proposed rule. The commenter provided potential explanations for the change to practice expense RVUs. The commenter suggested that the results are inconsistent with the statute that requires payments to recognize all costs and violates the Administrative Procedure Act that rulemaking cannot be arbitrary and capricious.

The commenter suggested an option that would result in a total increase in vascular surgery payments of 9 percent, consistent with the results of the supplemental survey. This option would involve identifying vascular surgery procedure codes that decreased in payment and reallocating RVUs such that aggregate payments to vascular surgeons would increase by 9 percent.

Response: While the commenter is correct in stating that the practice RVUs for several high-volume vascular surgery procedures declined in our proposed rule, it is important to note that the changes occurred independent of the use of supplemental practice expense survey data. The supplemental practice expense survey data were incorporated into the methodology in the November 1, 2000 final rule (65 FR 65385).

The changes that occurred between the November 2000 final rule and the August 2001 proposed rule were the result of the five changes to the methodology that we modeled and described in the August 2, 2001 (66 FR 40397) proposed rule. The additional reductions in practice expense payments for vascular surgery codes that concern this commenter are attributed to the changes we made to physician time. As we have stated previously, the explanation of how time affects specific codes is complex and requires extensive data analysis. We would be willing to meet with interested parties to discuss the effects of the practice expense methodology further.

The commenter suggests that we make decisions about an appropriate increase

in value for specific services and reallocate RVUs consistent with these decisions. We do not believe that such a policy would be appropriate. We have established a methodology for determining practice expenses and have valued all services using that process with the exception of services that have no physician work RVUs. For these services, we have established RVUs using an alternative methodology. It is not possible to deviate from those methodologies and reallocate RVUs to achieve particular results that may be more desirable to some individuals than to others. Such decisions about "appropriateness" would become highly subjective and would, in our view, be more likely to be criticized as arbitrary and capricious.

Comment: We received comments from specialty societies representing technical component providers regarding the status of the zero-work pool. Commenters representing radiology, cardiology, echocardiography and radiation oncology centers strongly supported our position of maintaining the status of the zero-work pool until an appropriate alternative methodology can be determined. Two commenters argued that none of the direct or indirect cost information resulting from the CPEP process should be utilized to establish payment amounts for technical component services unless and until we further consider the entire methodology to be applied for technical component services. All commenters urged us to consult closely with associations representing the zero-work pool providers before making any changes in this regard. One commenter emphasized that no changes should be made without further research and discussion.

Response: We agree that the status of the zero-work pool should not be changed until an alternate approach that values technical component services appropriately can be developed. Over the next several months, we will be analyzing the options for such an alternative approach contained in the report, "The Resource-Based Practice Expense Methodology: An Analysis of Selected Topics," prepared by our contractor, The Lewin Group. This report can be found on our web site, and we would welcome comments on these options from all interested parties. (See the Supplementary Information section of this rule for directions on accessing our web site.) We also agree with the commenters that we should consult with the affected specialties as we proceed, and we will seek to maintain an open dialogue with the medical community on this issue.

Comment: A commenter representing speech, language, and hearing professionals recommended that the zero-work pool be modified to accept the clinical staff wage increases. Seventy percent of the procedure codes used by audiologists that are covered by Medicare are in that pool and, thus, even though the proposed wage rate for audiologist has increased by 24 percent, this increase will not be reflected for those non-work services.

Response: The commenter is correct in stating that, because the CPEP data are not used as allocators in the zero-work pool, the increases in the clinical staff wage rates will not affect the payments for audiology services at this time. However, as we mentioned above, we are seeking to develop an appropriate alternative for the zero-work pool and, when such an alternative is implemented, the revised wage rates will be applied to audiology services. In addition, we allow specialties to withdraw their services from the zero-work pool if the specialty believes that their services will be more appropriately valued outside that pool.

Comment: An organization representing diagnostic imaging centers stated that, if we adopt the suggestion in the report of The Lewin Group to establish specialty-specific zero-work pools, it has already conducted a survey that establishes the costs per hour of providing diagnostic imaging technical component services. The commenter added that, regardless of the approach that we choose, the organization welcomes the opportunity to work with us with respect to any changes that may be contemplated in the zero-work pool methodology.

Response: As we have noted above in our discussion on specialty-specific supplementary surveys, all of these surveys must meet the criteria stated in our November 2000 final rule. We would be willing to review the survey to see if the data can be used to develop a specialty-specific practice expense per hour. In addition, we, too, would welcome the opportunity to work with the organization as we develop an alternative to the zero-work methodology.

e. Site-of-Service

Comments on Site-of-Service Clarification of Payment Policy

In the November 2, 1998 final rule (63 FR 58830) and the November 2, 1999 final rule (64 FR 59407), we indicated the circumstances under which either the facility or the nonfacility RVUs are used to calculate payment for a service. Specifically, we indicated that the lower facility practice expense RVUs apply when the service is performed in an Ambulatory Surgical Center (ASC) and the procedure is on the ASC-approved procedures list. The higher nonfacility practice expense RVUs apply to procedures performed in an ASC that are not on the ASC-approved list because there will be no separate facility payment for these services. As explained in the August 2001 proposed rule, we have received a number of inquiries about the place-of-service that should be used on the Medicare claim when a service that is not on the ASC-approved procedures list is furnished in an ASC. In these circumstances, we stated that physicians should indicate ASC as the place-of-service on the Medicare claim. Other questions have arisen as to whether a beneficiary can be billed for the ASC facility fee when Medicare does not pay a facility fee because a procedure not on the ASC list is performed in a certified ASC. In this situation, Medicare pays the physician the higher nonfacility practice expense RVUs because the ASC is effectively serving as a physician's office, and Medicare's payment for the physician's service includes payment for all practice expenses incurred in furnishing the service. The ASC benefit is not implicated since the services do not meet the provisions of section 1833(i) of the Act. The services are covered as physicians' services and paid under the physician fee schedule. Therefore, payment to the physician reflects payment for the whole service, and the beneficiary cannot be charged in excess of the limiting charge for the physician fee schedule service.

Comment: Two commenters indicated that conditions of participation and/or survey and certification guidelines limit physicians in an ASC to furnishing only surgical procedures on the ASC approved list of procedures. They stated that such restrictions interfere with providing medical care that is in the patient's interest. The commenters request that we revise the regulations to allow physicians to furnish surgical and other medical procedures that are not on the approved ASC list in an ASC.

Response: Because our proposal relates only to payment policy, we are finalizing it as proposed. The payment policy will apply to services furnished in an ASC that are not on the ASC-approved list to the extent that such services are permitted under the conditions of participation developed by our Office of Clinical Standards and Quality (OCSQ) and by the survey rules developed by our Center for Medicaid and State Operations (CMSO). It is our understanding that current regulations

that restrict ASCs to furnishing surgical services does not limit them to surgical services on the ASC-approved list, but rather, includes all surgical services. However, questions about rules that limit services that can be furnished in an ASC are beyond the scope of this final rule.

B. Nurse Practitioners, Physician Assistants, and Clinical Nurse Specialists Performing Screening Sigmoidoscopies

Based on our review of current medical literature, we believe that nurse practitioners (NPs), clinical nurse specialists (CNSs), and physician assistants (PAs) whose services are covered under Medicare and who have been trained are qualified to perform screening sigmoidoscopies safely and accurately. Therefore, in the August 2, 2001 proposed rule, we proposed revising § 410.37(d) to provide that, in order for screening sigmoidoscopies to be covered, they must be performed by medical doctors, doctors of osteopathy, PAs, NPs, and CNSs, if they meet the applicable Medicare qualification requirements in §§ 410.74, 410.75, and 410.76, and if they are authorized to perform these services under State law.

Comment: Fifteen commenters addressed the issue of whether to allow non-physician health care professionals to perform screening flexible sigmoidoscopies for Medicare coverage and payment purposes. Four of the commenters representing national non-physician health care professional organizations and a health care consultant group enthusiastically supported the proposal. Ten commenters, all national medical associations or medical specialty groups, expressed various concerns about the proposal but agreed that it was appropriate for NPs, PAs, and CNSs to perform these services. These commenters suggested clarification and revision of the rule in a number of different areas, such as the need for physician supervision and appropriate training and experience standards, to ensure quality of care in the non-physician performance of these examinations. Two of these ten commenters that suggested the need for additional requirements were national gastroenterological physician groups which were divided in their enthusiasm for the proposal. The American Gastroenterological Association indicated that properly trained physician assistants, nurse practitioners and clinical nurse specialists are capable and qualified to perform screening flexible sigmoidoscopies. However, the Association insisted that in no case should such practitioners be permitted to do so without being directly supervised by an appropriately trained and qualified onsite physician. In addition, the Association urged that these non-physician providers should never be allowed to perform these examinations without some assurance that they have been properly educated and trained to perform them. These comments were echoed by several other physician groups. On the other hand, the American College of Gastroenterologists supported the proposal without specifically mentioning the need for physician supervision and education and experience requirements. The College emphasized that there is a great need for sigmoidoscopy screening to be performed in the Medicare age group. Moreover, they observed that there may not be sufficient numbers of physicians available to perform the procedure, posing an access problem for our beneficiaries. The College stated that, if we proceed with the proposal, non-physician practitioners should be required to provide certain specific information to beneficiaries stating who had performed the examination and its impact on available benefits in future years.

Another organization representing family physicians also noted conditions which should be met if these practitioners provide this service as proposed, but indicated that the existing Medicare regulations for these practitioners suggested that these conditions are met. For example, existing Medicare regulations require general (not onsite) rather than direct (onsite) supervision of PAs. Several other physician organizations in their recommendations also appear to support a requirement less strict than direct physician supervision.

One other commenter—a national medical association—opposed the proposal because of concerns as to whether non-physician health care professionals could respond appropriately to problems or complications that might possibly occur during the performance of the screening procedure when a physician (with a higher level of medical skills) is not present at the facility. None of the commenters who suggested revisions to the proposed rule to specify requirements for physician supervision and/or formal training and experience, or who opposed it, produced scientific evidence in support of their views.

Response: As we indicated in the proposed rule, a growing body of evidence from the medical literature has shown that certain properly trained non-physician health care professionals can carry out screening by flexible sigmoidoscopy as accurately and safely as physicians. (Scheon et al. Archives of Internal Medicine 2000) This procedure requires fewer supervised examinations to attain objective measures of technical competency than other endoscopic procedures, does not require sedation, and has a low rate of related complications. In the studies reviewed, physician and non-physician endoscopists achieved similar polyp detection rates and depth of insertion in screening performed independently. No significant complications from sigmoidoscopy were reported in any of these studies. The level of satisfaction with the procedure was similar for all practitioners.

This demonstration of the ability of non-physician practitioners to perform flexible sigmoidoscopy screening safely and accurately is a very significant development. As the American College of Gastroenterology noted in its comments, there is a physician availability and a related beneficiary access problem of concern to CMS. The Balanced Budget Act of 1997, effective January 1, 1998, expanded Medicare coverage of non-physician practitioner services to address concerns about access to services, especially in rural and other areas of the United States where there is a lack of availability of physicians for performing certain services such as screening flexible sigmoidoscopies. The law and related regulations also outline the level of supervision or medical direction for these non-physician practitioners.

Flexible sigmoidoscopy is one of the promising modalities available for decreasing mortality from colorectal cancer. The American Cancer Society estimates that more than 56,000 Americans will die of colorectal cancer this year. Studies have found that the use of screening flexible sigmoidoscopy could lead to a 30 percent reduction in total colorectal cancer mortality. (Selby et al. New England Journal of Medicine 1992.) In view of limited Medicare beneficiary access in certain areas, because screening flexible sigmoidoscopy remains an underused cancer-prevention procedure, and, in the absence of any submitted scientific literature that contradicts the underlying medical evidence supporting the proposal, we do not believe that commenters have presented us with a basis for revising the proposal as they have suggested. However, we have found that a number of commenters have offered us interesting suggestions for implementing the proposal and clarifying the agency's intent in this

regard, which we explain in our response to the more specific comments summarized below.

Comment: Several commenters referenced a recent OIG report entitled "Medicare Coverage of Non-Physician Practitioner Services" (OEI–02–00–00290), which they believe makes clear that CMS does not have systems in place to ensure that non-physician practitioners who provide beneficiaries with medical services and who bill Medicare directly, are performing their services in accordance with State law. One commenter states that the report implies that it is not possible for Medicare to ensure that a State law allows non-physician practitioners to provide flexible sigmoidoscopies or that the services are provided in an integrated practice arrangement with appropriate physician supervision. For example, the commenter pointed out that 16 carrier medical directors interviewed by the OIG reported that they do not verify that non-physician practitioners are performing services within their State scope of practice, and at least 22 carriers do not check the collaborative agreement required for nurse practitioners and clinical nurse specialists. The commenter indicated that the OIG concluded that services performed and billed by non-physician practitioners create potential payment and quality of care vulnerabilities since, (1) "non-physician practitioner billings are rising rapidly, but controls, which are based on scopes of practice, are limited", and (2) carriers "do not have sufficient guidance to distinguish which non-physician practitioner services should be reimbursed by the program and which should not." In light of these OIG findings, the commenter urges CMS to review whether and how the agency and its carriers can ensure that the above-mentioned concerns are resolved successfully when non-physician practitioners perform screening flexible sigmoidoscopies. The commenter says that "it is vital that CMS takes steps to ensure the fulfillment of these requirements to minimize any risk of experiencing the vulnerabilities referenced in the OIG report with respect to quality and payment issues."

Response: We agree with OIG's conclusion identifying program vulnerabilities when non-physician practitioners bill Medicare directly for their services. We also respect beneficiaries' choices and their need for access to medical services. While appreciative of OIG's suggestion that it may be appropriate to consider additional controls for Medicare payments to non-physician practitioners, we are sensitive to issues that might arise from different treatment of different classes of practitioners. As appropriate, we will monitor non-physician practitioner services for both overall trends and for complex services.

Medicare currently defers to State licensing boards for regulating and enforcing scope of practice laws. Before issuing a Medicare billing number to a nurse practitioner or a nurse clinical specialist, contractors first determine whether the applicant has a valid license within the State. If a licensing board subsequently acts to suspend a practitioner's license to practice, then Medicare suspends payments under the practitioner's Medicare billing number. This practice is the same for physician and non-physician practitioners.

To protect the integrity of the Medicare program, all claims submitted are subject to data analysis that may lead to a focused or a random review by a Medicare contractor. If Medicare is to begin monitoring practitioners for compliance with State laws and regulations, the program will have to develop additional regulations and policies and impose additional workloads on contractors and perhaps for all practitioners as well. In deciding whether such a process is necessary and appropriate, we will carefully consider these comments in this regard.

Comment: One commenter asked CMS, in implementing the proposal, to ensure that non-physician practitioners are required to tender a standard notification to Medicare beneficiaries providing them with a clear statement that the screening flexible sigmoidoscopy is being furnished by a non-physician practitioner. In addition, the commenter suggests that the beneficiary be notified that under the new colorectal cancer screening benefit, effective July 1, 2001, any average-risk individual receiving a covered screening flexible sigmoidoscopy will be precluded by law from receiving Medicare payment for a screening colonoscopy (which under Medicare regulations (§ 410.37(f) must be furnished by a physician)) for four years.

Response: We believe that our Medicare beneficiaries generally are knowledgeable about the identity of the Medicare practitioner that is furnishing them with a flexible sigmoidoscopy screening examination. Accordingly, we believe that there is no need for non-physician practitioners to provide beneficiaries with any formal notification statement in this regard. As for the suggestion that a non-physician practitioner should notify an average-risk beneficiary that providing him/her with a screening flexible sigmoidoscopy will preclude Medicare from paying for a screening colonoscopy (which must be performed by a physician) for four years, we believe that all Medicare practitioners should help to inform beneficiaries with respect to this limitation. However, we do not believe that any practitioner should be required to formally notify beneficiaries to this effect. While we believe that our Medicare contractors, and all our practitioners have an important role to play in educating our beneficiaries about the various conditions of coverage and payment limitations that apply to different colorectal cancer screening options that are available to them, we will not use these regulations as a mechanism for implementing the requested educational efforts.

Comment: One commenter suggested that we allow registered nurses to perform these as well, as a delegated act, under a physician's direction with the physician billing Medicare for the procedure.

Response: The regulation proposal to allow nurse practitioners, physician assistants, and clinical nurse specialists to perform screening flexible sigmoidoscopies for Medicare purposes was designed to increase beneficiary access to these screening services, especially in rural and other areas where there is a shortage or a lack of availability of physicians who are trained and qualified to perform these examinations. These non-physician practitioners are typically licensed independent practitioners who are recognized under the Medicare law and regulations for coverage and payment purposes. Under Medicare, these non-physician practitioners may be paid under the physician fee schedule for their tests (and treatments) that would be physicians' services if furnished by a physician when they are authorized by the State to perform such services. Registered nurses are not licensed independent practitioners who are recognized under Medicare law for coverage and payment purposes.

Comment: One commenter suggested that we should monitor beneficiary health outcomes that result from the performance of sigmoidoscopy examinations by non-physician practitioners to ensure that they are done safely and accurately.

Response: We had not planned to monitor beneficiary outcomes that might be related to implementation of the proposal to allow non-physician practitioners to perform flexible sigmoidoscopy screening because of the available evidence that they can provide these services safely and effectively. If we were to consider doing this, however, we would probably want to consider doing a comparative study of health outcomes of beneficiaries who have been screened by both physician and non-physician practitioners who have performed these examinations.

Such a study would mean that a number of physician and non-physician practitioners would have to collect and report data to us on their Medicare patients for a certain period of time, which could be burdensome for them. We may be interested in doing a study in this area in the future if we had any credible evidence of a serious problem in this area, but, at this time, we do not believe a study is necessary.

Result of Evaluation of Comments

We are adopting our proposal to allow certain non-physician practitioners to perform screening flexible sigmoidoscopies.

C. Services and Supplies Incident to a Physician's Professional Services: Conditions

Section 1861(s)(2)(A) of the Act authorizes coverage of services and supplies (including drugs and biologicals that are not usually self-administered by the patient) furnished incident to a physician's service. These drugs and biologicals are commonly furnished in physicians' offices without charge or included in the physicians' bills. This statutory "incident to" benefit differs from the "incident to" benefit in the hospital setting as set forth in section 1861(s)(2)(B) of the Act, which authorizes coverage of hospital services (including drugs and biologicals which are not usually self-administered by the patient) incident to a physician's service furnished to outpatients and partial hospitalization services furnished to outpatients incident to a physician's service. This provision only addresses coverage of "incident to" services under section 1861(s)(2)(A) of the Act. In addition, the statute provides Medicare coverage of services incident to practitioners other than physicians.

The Medicare Carriers Manual currently requires that the physician (or other practitioner) be either the employer of the auxiliary personnel or be an employee of the same entity that employs the auxiliary personnel. In the August 2, 2001 rule, we proposed to revise § 410.26 to codify our existing policy outlined in section 2050 of the manual. Specifically, we proposed to codify the definitions of auxiliary personnel, direct supervision, independent contractor, leased employment, non-institutional setting, practitioner, and services and supplies for purposes of services provided incident to a physician's service.

In addition, we proposed to allow auxiliary personnel to provide services incident to the services of physicians (or other practitioners) who supervise them, regardless of the employment relationship of the physician (or other practitioner) to the entity that employed the auxiliary personnel.

All commenters supported the proposal. Their specific comments are addressed below.

Comment: Commenters noted three errors in the proposed text of the regulation. First, in the definition of auxiliary personnel set forth in § 410.26(a)(1), after the phrase "under the supervision of a physician," the term "(or other practitioner)" was omitted. Second, in the definition of services and supplies set forth in § 410.26(a)(7), the phrase "(including drugs and biologicals that, as determined in accordance with regulations, cannot be self-administered)" should be changed to "(including drugs and biologicals which are not usually self-administered by the patient)" in accordance with section 112 of the BIPA, which amended sections 1861(s)(2)(A) and (B) of the Act. Third, in the supervision requirement set forth in § 410.26(b)(5), the word "direct" was omitted.

Response: We agree with these comments, and we have corrected these errors.

Comment: One commenter requested that independent contractor physicians also be recognized as employees under the reassignment policy set forth in section 3060 of the Medicare Carrier Manual.

Response: As stated in the August 2, 2001 rule, this proposal only applies to the incident to policy. Furthermore, we are not defining or re-defining the term employment. Instead, we proposed to permit physicians (or other practitioners) to directly supervise auxiliary personnel regardless of the employment relationship of the physicians (or other practitioners) with the entity that hired the auxiliary personnel. In order to bill and receive payment from Medicare under this policy, all other applicable requirements must also be met. For example, the service must be medically reasonable and necessary, and appropriate reassignment must be executed.

Comment: One commenter suggested using in § 410.26(b) all of the terms defined in § 410.26(a) or deleting the terms not used in § 410.26(b).

Response: We found one term—leased employment—that was not used in § 410.26(b). However, we will not eliminate this term because it is used to define the term auxiliary personnel.

Comment: Several commenters requested that we clarify and distinguish between the physician (or other practitioner) ordering the incident to service and the physician (or other practitioner) supervising the auxiliary personnel who perform the incident to service. They stated that confusion exists as to whose Medicare Part B billing number should be used on the claim form.

Response: Inherent in the definition of an incident to service is the requirement that the incident to service be furnished incident to a professional service of a physician (or other practitioner). When a claim is submitted to Medicare under the billing number of a physician (or other practitioner) for an incident to service, the physician is stating that he or she either performed the service or directly supervised the auxiliary personnel performing the service. Accordingly, the Medicare billing number of the ordering physician (or other practitioner) should not be used if that person did not directly supervise the auxiliary personnel. We added language to the supervision requirement set forth in § 410.26(b)(5) to reflect this clarification.

Comment: One commenter pointed out that the claim form currently requires the physician (or other practitioner) to certify that he or she personally supervised the employee. Therefore, the commenter requested that we update the claim form to reflect the proposed regulations.

Response: We plan to update not only the claim form but also section 2050 of the Medicare Carriers Manual to reflect the new regulations.

Comment: A few commenters noted that the individual does not always receive an IRS–1099 form under an independent contractor arrangement. Instead, when a clinic, for example, contracts with an entity that has hired individuals to be furnished to the clinic, then the entity (and not the individual) receives the IRS–1099 form.

Response: We agree with these commenters. Therefore, we have added language to the definition of an independent contractor set forth in § 410.26(a)(3) to reflect this practice. However, we again emphasize that the applicable reassignment rules must also be met and that this incident to policy does not in any way alter the current requirements for valid reassignment.

Comment: One commenter encouraged us to specify in the regulations the acceptability of forms (other than the IRS W–2 form) that the Internal Revenue Service recognizes as

proof of employment, such as the Payroll Agent arrangement where IRS forms 2678 and 1997C are used instead.

Response: Under our proposal, the employment relationship is irrelevant to whether a physician (or other practitioner) can effectively furnish direct supervision of the auxiliary staff. Therefore, we decline to include language that may define or re-define the term employment.

Comment: One commenter suggested that we also include Ambulatory Surgical Centers (ASCs) and Community Mental Health Clinics (CMHCs) in the definition of a non-institutional setting because Medicare Part B payments for services provided in these settings are paid through the facility relative value units (RVUs) rather than the non-facility RVUs.

Response: The definition of a non-institutional setting is not derived from the definition of a facility used to determine the site of service and the application of the facility or non-facility RVUs. Because section 1861(s)(2)(B) of the Act authorizes payment for hospital incident to services, section 1861(s)(2)(A) of the Act cannot authorize payment for hospital incident to services. This provision is reiterated in § 411.15(m)(2). Similarly, § 411.15(p)(2)(ii) specifically excludes payment for incident to services in skilled nursing facilities (SNFs). Consequently, we defined non-institutional settings as all settings except hospitals and SNFs, and we do not plan to define ASCs and CMHCs as institutional settings.

Comment: Many commenters wanted us to restrict the definition of auxiliary personnel so that only certain individuals may perform a given incident to service. For example, they want us to mandate that only audiologists may perform cochlear implant rehabilitation services as incident to services. Likewise, they want us to permit only physical or occupational therapists to perform physical or occupational therapy as incident to services. In support, they noted that section 4541(b) of the BBA amended section 1862(a)(20) of the Act and required that physical or occupational therapy furnished as an incident to service meet the same requirements outlined in the physical or occupational therapy benefit set forth in sections 1861(g) and (p) of the Act.

Response: We have not further clarified who may serve as auxiliary personnel for a particular incident to service because the scope of practice of the auxiliary personnel and the supervising physician (or other practitioner) is determined by State law. We deliberately used the term any individual so that the physician (or other practitioner), under his or her discretion and license, may use the service of anyone ranging from another physician to a medical assistant. In addition, it is impossible to exhaustively list all incident to services and those specific auxiliary personnel who may perform each service.

Comment: Many commenters wanted us to re-emphasize that incident to services set forth in section 1861(s)(2)(A) of the Act do not include Medicare benefits separately and independently listed in the Act, such as diagnostic services set forth in section 1861(s)(3). Some even requested that we not permit these separately and independently listed services to be rendered as incident to services.

Response: We realize, as did the Congress with the enactment of section 4541(b) of the BBA, that many services—even those that are separately and independently listed—can be furnished as incident to services. However, this fact of medical practice is not inconsistent with our policy. We maintain that a separately and independently listed service can be furnished as an incident to service but is not required to be furnished as an incident to service. Furthermore, even if a separately and independently listed service is provided as an incident to service, the specific requirements of that separately and independently listed service must be met. For instance, a diagnostic test under section 1861(s)(3) may be furnished as an incident to service. Nevertheless, it must also meet the requirements of the diagnostic test benefit set forth in § 410.32. Namely, the test must be ordered by the treating practitioner, and it must be supervised by a physician. Thus, if a test requires a higher level of physician supervision than direct supervision, then that higher level of supervision must exist even if the test is furnished as an incident to service. Accordingly, we decline to prohibit a separately and independently listed service from being rendered as an incident to service. Instead, we reiterate that a separately and independently listed service need not meet the requirements of an incident to service.

Comment: Recognizing that this proposal affords flexibility in the way physicians (or other practitioners) are hired by an office or clinic, one commenter requested that non-physician practitioners be permitted to stand as *locum tenens* (taking the place of) for other non-physician practitioners as well.

Response: This proposed rule does not alter in any way the current *locum tenens* policy.

Result of Evaluation of Comments

We are finalizing our proposed revisions to § 410.26 with the corrections noted above.

D. Anesthesia Services

We generally use the 1988 American Society of Anesthesiologists' (ASA) Relative Value Guide as the basis for the uniform relative value guide. This guide is used in all carrier localities to determine payment for anesthesia services furnished by physicians under Medicare Part B. We proposed using the ASA base unit values from the 1999 guide beginning in CY 2002 for eight codes with ASA base unit values that were different from CMS's values (specifically, CPT codes 00810; 00902; 01150; 01214; 01432; 01440; 01770; and 01921). These are older codes and, while we accepted the ASA base unit value initially, the ASA has changed this base unit subsequently and no additional adjustment was made by us to the base unit. For CPT codes 00142 and 00147, we proposed maintaining the current base unit values although they differed from the ASA values because values for these two codes were established under the "inherent reasonableness" process in 1987.

Comment: The ASA identified additional CPT codes 00548, 00700, 00800, and 01916 with different base unit values in the most current ASA guide from our base unit values.

Response: We are accepting the ASA's comments subject to the following clarification. In all, 12 codes were presented where the ASA base unit differs from our base unit. Of these, code 01921, which appeared on the list in the August 2, 2001 proposed rule, will be deleted in 2002. Since this code has been deleted and will no longer be used, we will not assign base units to it and, as a result, only 11 codes will be considered.

These additional four codes were added to CPT before CY 2000. New and revised codes starting in CY 2000 and for subsequent years are evaluated on a code-specific basis under our usual process after we receive recommendations from the RUC. Thus, because we review the RUC recommendations and may make changes based on them, there could be differences between the ASA guide and our base unit values beginning in 2000. If the RUC or other commenters recommend and we agree to a base unit different from what ASA recommends, we will use that value and not the ASA value, even though it may be published in the ASA's guide.

Result of Evaluation of Comments

The complete list of 11 CPT codes for which we will assign the ASA base unit values instead of the current CMS base unit values are as follows:

Code	CMS	ASA
00548	15	17
00700	3	4
00800	3	4
00810	6	5
00902	4	5
01150	8	10
01214	10	8
01432	5	6
01440	5	8
01770	8	6
01916	5	6

A related issue is the treatment of base unit values for new codes for 2002 as discussed in section V. The RUC reviewed the work values for 19 new anesthesia codes for 2002. We agree with the RUC on 17 of these codes but recommend lower values for 2 codes. The RUC recommended 9 units for CPT code 00797 (anesthesia for gastric restrictive procedure for morbid obesity) and we proposed 8 units. The RUC recommended 3 units for CPT code 01968 (cesarean delivery following neuraxial labor analgesia/anesthesia—list separately in addition to the code for primary procedure), and we proposed 2 units. (See section V for additional information on the valuing of these new anesthesia services.)

Result of Evaluation of Comments

We are implementing the base units for the 11 existing codes where there are differences between the ASA's guide and our base units and for which we received comments. In addition, we are implementing the base units which the RUC recommended for 17 new codes and the base units which we recommended and which are lower than the RUC's recommendation for 2 new codes.

E. Performance Measurement and Emerging Technology Codes

In the August 2, 2001 proposed rule (66 FR 40383) we included a discussion of the two new categories of CPT codes: Performance Measure codes, referred to as Category II CPT codes, which are intended to facilitate data collection; and, Emerging Technology codes, referred to as Category III CPT codes, which are intended to track new and emerging technologies.

For the Performance Measure codes, which have a syntax of four digits followed by the letter "F," we stated that no values would be placed on the Performance Measure codes and no additional payment would be made for the use of these codes. Practitioners would, however, be able to report them on their Medicare bills to enable us to track these services.

For the Emerging Technology Codes, which have a syntax of four digits followed by the letter "T," we stated that we would pay, on a case-by-case basis in specific situations, when we determine that the codes represent services that are not, in fact, experimental, but have been shown to be safe and effective. If the coverage policy is not consistent with the existing tracking codes, a Medicare-specific code may need to be developed to allow payment for the service. Thus, only specific emerging technology codes would be recognized for Medicare payment.

Comment: Commenters expressed appreciation for our recognition of these new categories of CPT codes. However, one commenter believed that we should refrain from categorically denying payment for category III (emerging technology) CPT codes, because these CPT codes may sometimes warrant payment. Another commenter believed that we were proposing not to pay for these codes at all. The commenter recommended that we clarify in the final rule that carriers may determine if payment should be made for a particular emerging technology code.

Response: We believe that these codes will serve a useful purpose. We regret that some commenters believed that the discussion in the proposed rule implied that these services should not be covered. We only intended to indicate that by publishing these codes we are not indicating that we would pay for these services in all instances. As the commenter indicates, coverage of emerging technologies and payment for these services is at the discretion of the carriers. We also want to clarify that our carriers will be able to incorporate these codes only after they are entered into our system during our regularly scheduled updates and not as soon as the AMA posts them on the CPT web site.

Result of Evaluation of Comments

We would like to clarify the intent of our proposal regarding emerging technology CPT codes. The emerging technology CPT codes will be published in the physician fee schedule with a status indicator of "C" to indicate that coverage and payment of these services is at the discretion of the carrier. The only exceptions will be for those emerging technology CPT codes that describe services for which Medicare has issued an NCD. In these situations, coverage will be based on the NCD, and we may establish national payment or may leave payment to the discretion of the carriers. It is also possible that an NCD or an established payment policy may foreclose coverage and/or payment for an emerging technology CPT code. In summary, we will finalize our proposal to allow both the CPT Performance Measure Codes (that is, codes with four digits followed by the letter "F") and Emerging Technology Codes (that is, codes with four digits followed by the letter "T") to be listed on Medicare bills and provide payment for the emerging technology codes as determined by the carrier.

F. Payment Policy for CPT Modifier 62 (Co-Surgery)

The CPT modifier code 62 is used to report the work of co-surgeons. Currently, if we pay for co-surgery, we pay a total of 125 percent of the fee schedule amount to the co-surgeons who each receive half of this total payment. In the August 2, 2001 proposed rule (66 FR 40383), we stated that we would be examining our payment policies for co-surgery to consider possible ways to ensure that they reflect current clinical practices and properly reflect the relative resources and work effort required to perform these services. We outlined several issues under consideration and specifically solicited information to assist us in deciding whether to make a future proposal affecting payments for co-surgery.

Result of Evaluation of Comments

Commenters responded to the specific questions in the proposed rule. Many commenters believe that the current payment policy is reasonable and that the focus should be on education efforts to ensure the appropriate use of the modifier. We will review carefully the information the commenters have provided. If we determine that we need to proceed with a change in payment policy for co-surgery, the change would be proposed as part of future rulemaking.

III. Implementation of Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Public Law 106–554), enacted on December 21, 2000, provides for revisions to policies applicable to the physician fee

schedule. These revisions are presented below.

A. Screening Mammography

Medicare has paid for screening mammography since January 1, 1991. Section 1834(c) of the Act governing these screenings did not include screening mammography under the physician fee schedule; it provided for payment under a separate statutory methodology. Section 104 of BIPA amends section 1848(j)(3) of the Act to include screening mammography as a physician's service for which payment is made under the physician fee schedule beginning January 1, 2002. In the August 2001 proposed rule, we proposed amending §§ 405.534 and 405.535 to reflect the inclusion of screening mammography as a physician's service which will be payable under the physician fee schedule. In addition, we proposed amending § 414.2 to include screening mammography under the definition for physicians' services. In accordance with part 414, payments for screening mammography will be resource-based and will have geographic adjustments that reflect cost differences among areas as do all other services under the physician fee schedule, including diagnostic mammography.

The following is a summary of the RVUs proposed for the professional and technical components (PC and TC) of a screening mammography, CPT code 76092, under the physician fee schedule.

Professional Component

A screening mammography service typically requires the same number of views as a unilateral diagnostic mammography. Therefore, for screening mammography, we proposed a physician work RVU of 0.70 based on the physician work established for a unilateral diagnostic mammography. This value is equal to the proposed work RVUs from the 5-year review of physician work for CPT code 76090, unilateral diagnostic mammogram (see June 8, 2001 proposed notice, "Five-Year Review of Work Relative Value Units Under the Physician Fee Schedule"). Since we believe that the practice expense and malpractice expense for the professional component of screening mammography is similar to the professional component of unilateral diagnostic mammography, we proposed establishing 0.25 practice expense RVUs and 0.03 malpractice RVUs for the PC of screening mammography.

Technical Component

We proposed valuing the technical component of screening mammography using a methodology that updates the original statutory limit for the technical component of screening mammography of $37.40, by the cumulative increase in physician fee schedule rates between 1992 and 2001 (see the August 2, 2001 proposed rule (66 FR 40384) for specific information on methodology). This resulted in proposed practice expense and malpractice RVUs for the technical component of screening mammography of 1.27 and 0.06, respectively.

Overall, the total proposed RVUs associated with the combined PC and TC of CPT code 76092 were 2.31 (0.70 work RVUs, 1.52 practice expense RVUs, and 0.09 malpractice expense RVUs).

New Technology Mammography

The BIPA also required us to determine whether the assignment of new HCPCS codes is appropriate for both screening and diagnostic mammography performed using new digital technologies.

We determined that new HCPCS codes are appropriate for the new digital technology mammography beginning January 1, 2002. We proposed three separate codes for directly taking a digital image (one for screening and one each for unilateral and bilateral diagnostic). We also proposed a single add-on code for computer-aided diagnosis with conversion of standard film images to digital images, since, at the time of the development of the proposed rule, the FDA approved computer-aided diagnosis only for screening mammography. Following is a summary of our proposed coding and payment methodologies for digital mammography.

Screening Mammography, Direct Digital Image (Gxxx1)

We proposed HCPCS code Gxxx1 to report screening mammography performed using direct digital images as opposed to mammography that is performed using the standard film images associated with CPT code 76092, or conversion of a standard film image to a digital image. For the PC of HCPCS code Gxxx1, we proposed 0.70 work RVUs, 0.28 practice expense RVUs, and 0.03 malpractice expense RVUs. For the TC of HCPCS code Gxxx1, for which there is no physician work associated, we proposed 2.50 practice expense RVUs and 0.06 malpractice RVUs.

Diagnostic Mammography, Unilateral, Direct Digital Image (Gxxx2)

We proposed HCPCS code Gxxx2 to report unilateral diagnostic mammography performed using direct digital images as opposed to mammography performed using the standard film images associated with CPT code 76090, or conversion of a standard film image to a digital image.

For the professional component of HCPCS code Gxxx2, we proposed 0.70 work RVUs, 0.28 practice expense RVUs, and 0.03 malpractice expense RVUs. For the TC of HCPCS code Gxxx2, with which there is no physician work associated, we proposed 1.99 practice expense RVUs and 0.05 malpractice expense RVUs.

Diagnostic Mammography, Bilateral, Direct Digital Image (Gxxx3)

We proposed HCPCS code Gxxx3 to report bilateral diagnostic mammography that is performed using direct digital images as opposed to mammography performed using the standard film images associated with CPT code 76091, or conversion of a standard film image to a digital image.

For the PC of HCPCS code Gxxx3, we proposed 0.87 work RVUs, 0.34 practice expense RVUs, and 0.03 malpractice expense RVUs. For the TC of HCPCS code Gxxx3, with which there is no physician work associated, we proposed 2.47 practice expense RVUs and 0.06 malpractice expense RVUs.

Computer-Aided Detection, With Either Direct Digital Image or Conversion of Standard Film Images to Digital Images (HCPCS Code Gxxx4)

We proposed HCPCS code Gxxx4 to report conversion of standard film images to digital images when used in conjunction with computer-aided diagnosis software. This code was proposed as an add-on code that can be billed only in conjunction with the primary service, CPT code 76092, based on our understanding that the only FDA-approved use of the computer-aided diagnosis mammography software is with screening film images. If there are other FDA-approved uses of computer-aided diagnosis, we stated we would allow for use of Gxxx4 as an add-on to other mammography services.

For the PC of code Gxxx4, we proposed 0.06 work RVUs, 0.02 practice expense RVUs, and 0.01 malpractice expense RVUs. For the TC of HCPCS code Gxxx4, with which there is no physician work associated, we proposed 0.41 practice expense RVUs and 0.01 malpractice expense RVUs.

Since publication of the proposed rule, the FDA has also approved the use of computer-aided diagnosis with diagnostic mammography.

Comment: The majority of comments received from manufacturers, specialty organizations, individuals, and representatives of the Congress were supportive of our proposed payment of mammography services beginning January 1, 2002. The general consensus from commenters was that the proposed 21 and 26 percent increase, respectively, in payments for unilateral and bilateral diagnostic mammography, as a result of the 5-year review of work (see section IV), the new resource-based payment for screening mammography, the new resource-based payments for both digital screening and digital diagnostic mammography, and the payments for computer-aided diagnosis reflect the relative resources associated with each individual service.

However, two commenters still believe that the 21 percent and 26 percent increase in payments for unilateral and bilateral diagnostic mammography, respectively, was still inadequate to cover the costs of these services.

Response: In agreement with the majority of comments received, we continue to believe that our proposed relative values are an accurate reflection of the resources associated with the provision of these services.

Comment: We received comments that suggested that Medicare payment is inadequate to cover the cost of screening mammography. One commenter stated that, due to the Federally-mandated Mammography Quality Standards Act (MQSA) requirements intrinsic to mammography (both screening and diagnostic), it is difficult to use the current methodology to account for all practice expenses. This commenter did indicate support for our proposal to develop practice expense RVUs for screening mammography using a comparison to unilateral diagnostic mammography.

Response: We are currently using the "no work" methodology to price the technical component of diagnostic mammography and a special method for the technical component of screening mammography. We believe that most costs associated with mammography services are likely to be associated with the technical component. At this time, we plan to continue using these methods to establish the practice expense relative value units for the technical component of mammography services. However, if we propose a change to the methodology for no-work services in the future, we agree that it is important to consider whether MQSA costs are incorporated in the data sources we are using to develop RVUs.

Comment: We received two comments that suggested Medicare should not pay for screening mammography using the physician fee schedule until payment is set at an appropriate level so as not to require reduction in payments for other services. The commenters were concerned about the reduction in payment for other services that would result from the increase in payment for screening mammography using the methodology we proposed. These commenters acknowledged that the statute requires us to pay for screening mammography using the physician fee schedule. One commenter appreciated the significant effort that CMS put forth to comply with the mandate.

Response: As indicated by the comments, section 104(a) of the BIPA requires us to pay for screening mammography using the Medicare physician fee schedule beginning January 1, 2002. We estimate that payment in 2002 for screening mammography under the statutory methodology would have been about $71; which is less than the $81 that Medicare will pay under the physician fee schedule. Since screening mammography is paid under the physician fee schedule, the increase in payment will be subject to the budget neutrality calculations under section 1848(c) of the Act. The increase in payment, although large, will have little effect on payment for other physician fee schedule services. The required adjustment to other physician fee schedule payments is less than −0.1 percent.

Comment: We received comments about coding for new technology screening mammograms. These comments indicated support for our proposed coding but noted that two developments have since occurred that we could not have taken into account in our proposed rule. First, CPT created a new code for computer-aided detection (CAD) as an add-on for screening mammography. Second, the Food and Drug Administration approved use of CAD for diagnostic mammography. The commenters requested that we use the CPT code for CAD as an add-on to screening mammography and create a slightly modified HCPCS alphanumeric code as an add-on for diagnostic mammography. The modification would specify that the alphanumeric code is to be used as an add-on for diagnostic mammography. Commenters also suggested that we accommodate potential future FDA approved uses of CAD as an add-on to digital mammography through necessary coding and payment changes as soon as possible without having to await the next rulemaking cycle.

Response: We agree with the comments about coding of CAD. Medicare will recognize CPT code 76085 for CAD as an add-on to screening mammography and procedure code G0236 as an add-on to diagnostic mammography. The code descriptors make clear that the CPT code is for use as an add-on to screening mammography and the alphanumeric code is an add-on to diagnostic mammography. Payment for the revised codes follows the proposed rule approach for physician work, practice expense and malpractice for all mammography services. There may be slight changes to the RVUs for practice expenses as a result of updated information included in this final rule that affect all physician fee schedule services.

In response to the comment about potential future FDA approved uses of CAD as add-on to digital mammography, it is possible that additional coding changes will be necessary or that editorial revisions to existing codes will allow for CAD to be paid as an add-on for digital mammography. We would like to coordinate our efforts with those of the CPT to minimize the need for alphanumeric codes and additional CPT codes.

Comment: One commenter expressed concern about the payment associated with the Outpatient Prospective Payment System for all forms of mammography.

Response: Any issues related to the Outpatient Prospective Payment System are outside the scope of this regulation and will be addressed by a separate regulation.

Comment: One commenter asked for clarification on Federally Qualified Health Centers (FQHC) reimbursement for screening mammography and other new services.

Response: Any issues related to FQHC reimbursement are outside the scope of this regulation.

Comment: One commenter expressed concern that CMS did not work more closely with the CPT codes in the establishment of coding for digital mammography.

Response: Whenever possible, CMS works with the American Medical Association's CPT Editorial Panel to establish coding for new technologies. The AMA CPT Editorial Panel has not established codes for digital mammography; therefore, CMS proactively established temporary G-codes for the digital mammography and

computer-aided detection for diagnostic mammograms.

Comment: One commenter indicated that the malpractice expense for screening mammography should be higher than the unilateral diagnostic value of 0.03 since most mammography malpractice claims arise from allegations of cancers not detected or inappropriate follow-up of screening mammograms, not diagnostic studies. In addition, the screening mammography malpractice apportionment should be reversed for the PC and TC portions as the malpractice expense and risk is primarily with the interpreter of the screening mammogram, not the facility producing the technical component.

Response: We will consider the malpractice RVUs for these services interim for 2002 and will examine this issue with respect to the methodology used to establish malpractice RVUs.

Result of Evaluation of Comments

We will finalize our proposed relative values, because we believe they are an accurate reflection of the cost associated with the provision of these services. Additionally, we will also establish a temporary G-code (G0236) for the recent FDA approval of computer-aided detection used in conjunction with diagnostic mammography.

TABLE 3.—2002 MAMMOGRAPHY PAYMENTS

CPT [1] HCPCS	MOD	Descriptor	Work RVU	Practice Expense RVU	Malpractice RVU	Total
76090		Mammogram, one breast	0.70	1.25	0.08	2.03
76090	26	Mammogram, one breast	0.70	0.25	0.03	0.98
76090	TC	Mammogram, one breast	0.00	1.00	0.05	1.05
76091		Mammogram, both breast	0.87	1.54	0.09	2.50
76091	26	Mammogram, both breast	0.87	0.30	0.03	1.20
76091	TC	Mammogram, both breast	0.00	1.24	0.06	1.30
76092		Mammogram, screening	0.70	1.44	0.09	2.23
76092	26	Mammogram, screening	0.70	0.25	0.03	0.98
76092	TC	Mammogram, screening	0.00	1.19	0.06	1.25
G0202		Mammogram, screen, dir dig	0.70	2.52	0.09	3.31
G0202	26	Mammogram, screen, dir dig	0.70	0.30	0.03	1.03
G0202	TC	Mammogram, screen, dir dig	0.00	2.42	0.06	2.48
G0204		Diag mammo, bilat, dir dig	0.87	2.73	0.09	3.69
G0204	26	Diag mammo, bilat, dir dig	0.87	0.35	0.03	1.25
G0204	TC	Diag mammo, bilat, dir dig	0.00	2.38	0.06	2.44
G0206		Diag mammo, unilat, dir dig	0.70	2.20	0.08	2.98
G0206	26	Diag mammo, unilat, dir dig	0.70	0.28	0.03	1.01
G0206	TC	Diag mammo, unilat, dir dig	0.00	1.92	0.05	1.97
G0236		Computer aided detect, diag	0.06	0.31	0.02	0.39
G0236	26	Computer aided detect, diag	0.06	0.02	0.01	0.09
G0236	TC	Computer aided detect, diag	0.00	0.29	0.01	0.30
76085		Computer aided detection	0.06	0.31	0.02	0.39
76085	26	Computer aided detection	0.06	0.02	0.01	0.09
76085	TC	Computer aided detection	0.00	0.29	0.01	0.30

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B. Screening Pelvic Examinations

Section 101 of the BIPA amends section 1861(nn)(2) of the Act (effective July 1, 2001) to provide that a woman who does not qualify for annual coverage of a screening pelvic examination under one of the statutory exceptions, qualifies for coverage of a screening pelvic examination (including a clinical breast examination) once every 2 years rather than once every 3 years.

In the August 2, 2001 proposed rule, we made conforming changes to § 410.56 (Screening Pelvic Examinations) of the regulations to reflect this statutory provision that has been implemented through sections 4603, 3628.1 and 4731 of the Medicare Carrier Manual, the Medicare Intermediary Manual, and the Medicare Hospital Manual, respectively.We received only one specific comment on the new screening pelvic examination proposal. That comment supported our proposed rule and recognized that the regulations are consistent with the Medicare law.

Result of Evaluation of Comments

We are adopting our proposal to conform the regulations to the law to provide coverage for biennial screening pelvic examination for women not at high risk for cervical or vaginal cancer, effective July 1, 2001.

C. Screening for Glaucoma

Section 102 of the BIPA provides for Medicare coverage under Part B for screening for glaucoma for individuals with diabetes, a family history of glaucoma, or others determined to be at "high risk" for glaucoma effective for services furnished on or after January 1, 2002. The statute provides for coverage of glaucoma screening, including (1) a dilated eye examination with an intraocular pressure measurement, and (2) a direct ophthalmoscopy or a slit-lamp biomicroscopic examination, subject to certain frequency and other limitations.

In the August 2, 2001 rule, we proposed a new § 410.23 (Screening for Glaucoma: Conditions for and Limitations on Coverage), to provide for coverage of the various types of glaucoma screening examinations specified in the statute. As provided in the statute, this new coverage allows payment for one glaucoma screening examination every year. To implement the statutory provisions, we proposed definitions for the following terms—screening for glaucoma, eligible beneficiaries, and direct supervision.

In keeping with the language of section 102(b) of the BIPA we proposed defining the term "screening for glaucoma" to mean a dilated eye examination with an intraocular pressure measurement and a direct ophthalmoscopy or a slit-lamp biomicroscopic examination for the early detection of glaucoma. This section also provides that the screening examinations that are to be covered under Medicare are to be furnished by or under the direct supervision of an optometrist or ophthalmologist who is legally authorized to furnish these services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished. These are services that would otherwise be covered if furnished by a physician or as incident to a physician's professional service. We also proposed incorporating this language in § 410.23.

We used the term "eligible beneficiaries" to indicate who may qualify for the new screening glaucoma benefit, and we proposed defining that term to include—individuals with diabetes mellitus, individuals with a family history of glaucoma, and African-Americans age 50 and over. As explained in the August 2 proposed rule, based on our review of the medical literature, and consultation with staff of the National Eye Institute and representatives of the American Academy of Ophthalmology and the American Optometric Association, we interpreted the statutory language, "individuals determined to be at high risk for glaucoma" to include Medicare beneficiaries who are African-Americans age 50 and over.

We felt that the medical evidence available at this time was only sufficient to support inclusion of African-Americans age 50 and over in the statutory "high risk" category, in addition to individuals with diabetes and those with a family history of glaucoma who are covered separately under the new screening benefit. However, we specifically solicited public comment on the appropriateness of including other individuals in the statutory definition of "high risk" for glaucoma, with supporting documentation from medical literature.

Section 102(b) of the BIPA provides that the glaucoma screening examination is to be furnished by or under the direct supervision of an ophthalmologist or optometrist who is legally authorized to furnish such services under State law or regulation in which the services are furnished. We proposed defining the term "direct supervision" as that term is defined in § 410.32(b)(3)(ii) for purposes of the oversight of covered diagnostic laboratory services as they are performed in the office setting. Specifically, for purposes of screening glaucoma we proposed defining the term "direct supervision" to mean that the ophthalmologist or optometrist must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of the procedure. The definition states that the term "direct supervision" does not mean the physician must be present in the room when the procedure is performed.

We also proposed conforming changes to specify an exception to the list of examples of routine physical checkups excluded from coverage in §§ 411.15(a)(1) and 411.15(k)(9) for glaucoma screening examinations that meet the frequency limitation and the conditions for coverage that we are specifying under new § 410.23.

We received six comments that generally supported the proposal to implement section 102 of BIPA that provides for Medicare coverage of screening for glaucoma. Four of these comments were submitted by national medical associations, one was submitted by a pharmaceutical company, and another was provided by a consulting group. Only one commenter had a suggestion for revising the specific coverage provisions of the proposal.

Comment: One commenter responded to our invitation to the public in the proposed rule to submit comments on the question of whether it might be appropriate to include other individuals (and not just African-Americans over age 50) in the statutory definition of those at "high risk" for glaucoma. First, the commenter cites an article from the medical literature that notes that "one of the clearest factors relating to increased glaucoma prevalence is age." (Gilchrist. Ophthalmic Physiol Opt 2000) Second, the commenter refers to other eye experts in the research of the epidemiology of glaucoma who have suggested that "the appropriate age at which screening might be most effective is 6 to 10 years younger among those of African descent because of the earlier onset of disease." (Quigley and Vitale. Invest Ophthalmol Vis Sci 1997) Third, the commenter states that the latter conclusion is supported by data showing that in African-Americans who eventually develop glaucoma, the disease is present in 25 percent by age 54, 50 percent by age 65, and 75 percent by age 75. The commenter cites from the same Quigley article that comparable ages for these percentages of disease development in non-African-Americans are 64, 72, and 81 years, respectively. Finally, the commenter concludes that this literature supports a policy that would provide the glaucoma screening benefit for non-African Americans at an age 6 to 10 years older than for African-Americans (for example, 50 years of age), or beginning at age 56 to 60 years of age.

Response: We believe that the commenter has not interpreted the results of the Quigley and Vitale studies correctly. The article by Quigley and Vitale reported the results of a meta-analysis and statistical modeling to estimate the prevalence and incidence of glaucoma. In general, results from meta-analysis and remodeling are often limited by the quality and comparability of the original source data. In the proposed rule, we used data reported directly from the Baltimore Eye Study (Tielsch, et al. JAMA 1991) and the Beaver Dam Eye Study (Klein, et al. JAMA 1992), two of the largest published studies on glaucoma. These studies indicated that the prevalence of glaucoma in non-African-Americans starts to increase after the age of 65 to 70 years, whereas the prevalence increases much earlier in African-Americans. Our decision to include African-Americans in the statutory category of those at "high risk" for glaucoma was based on these studies and the increased prevalence of glaucoma in African-Americans.

Although we have decided not to add new populations to the definition of high risk at this time, the comment does raise the issue of how we should revise the definition in the future, if there is evidence to do so. We have decided to revise the proposed language in § 410.23(a)(2) so that it specifically refers to "individuals in the following high risk categories" to make it more consistent with the statute. This new structure for the regulation language will permit CMS to more easily add high risk groups to the glaucoma screening benefit through the rulemaking process should the evidence in the medical literature warrant it.

Payment for Glaucoma Screening

We believe that services provided as part of glaucoma screening will often overlap with services a physician provides during a patient encounter for ophthalmological services without requiring any additional work or practice expense. Therefore, we proposed bundling payment for glaucoma screening when it is provided on the same day as an evaluation and management (E/M) service or when it is provided as part of any ophthalmology service. In instances when glaucoma screening is the only service provided or when it is provided as part of an otherwise non-covered service (for example, CPT code 99397, preventive services visit,) we proposed the following HCPCS codes and payments:

Gxxx5, Glaucoma Screening Furnished by a Physician for High Risk Patients.

For physician work and for malpractice, we proposed work and malpractice RVUs of 0.45 and 0.02, respectively, by crosswalking these values from CPT code 99212. Gxxx6, Glaucoma Screening Furnished Under the Direct Supervision of a Physician for High Risk Patients.

For physician work and for malpractice, we believe this new HCPCS code represents a level of work comparable to other E/M services performed "incident to" a physician's service and therefore proposed to crosswalk the work and malpractice RVUs from CPT code 99211 (E/M service that may not require the presence of a physician) which are 0.17 and 0.01, respectively.

For non-facility settings, we proposed the following practice expense inputs for both of the above HCPCS Codes—clinical staff time-certified ophthalmic medical technologist/certified ophthalmic technician/registered nurse: five minutes; equipment: screening lane; and supplies: ophthalmology visit supply package.

Comment: We received a comment from the American Academy of Ophthalmology (AAO) agreeing with our decision to bundle glaucoma screening with other E/M services and with our decision to create two levels of glaucoma screening services based on whether or not the physician performed the evaluation. The AAO also agreed with our proposal regarding RVUs for glaucoma screening performed "incident to" but commented that the level of payment for glaucoma screening performed by a physician was too low. They believe that payment rate should be a blend between CPT codes 99202 (Office or other outpatient visit for evaluation and management of a new patient) and 99213 (Office or other outpatient visit for evaluation and management of an established patient). This is based on the expectation that some patients receiving the service will be "new" patients to the ophthalmologist while others will have previously seen the ophthalmologist and therefore be "established" patients.

The AAO proposes that for 2002, payment be equivalent to CPT code 99202 for both physician work and practice expense, that for 2003, payment be equivalent to a 4.4 percent/95.6 percent blend of CPT codes 99202 and 99213 for both physician work and practice expense, that for 2004, payment be equivalent to a blend of 4.5 percent/95.5 percent blend of CPT codes 99202/99213, and that for 2005 and thereafter, payment be equivalent to a blend of 4.6 percent/95.4 percent of CPT codes 99202/99213. The AAO believes that the amount of history, physical examination, and medical decision making required for glaucoma screening approximates the amount of history, physical examination and medical decision making required for CPT code 99202 at the time of the first glaucoma screening and approximates the amount of history, physical examination, and medical decision making required for 99213 at the time of subsequent glaucoma screenings.

The American Optometric Association (AOA) echoed the AAO's comments concerning the crosswalk for physician work. They also noted that the practice expense inputs should be crosswalked to the intermediate ophthalmologic codes.

Response: We are finalizing our proposal to assign 0.45 work RVUs and .02 malpractice RVUs to Gxxx5, glaucoma screening performed by a physician (now G0117). This service is a screening service and therefore cannot be easily compared to the key components of a level III evaluation and management service (CPT code 99213). We also believe that the vast majority of beneficiaries receiving this service will be patients who have been previously seen by the ophthalmologist performing the service and, therefore, CPT code 99202 would not be an appropriate crosswalk for this service. We believe the work required for this service is similar whether or not the patient is "new" or "established". Patients undergoing a screening service have no chief complaint or history of present illness. To perform this service, the only historical information required is a determination as to whether the beneficiary meets the criteria in the law, (for example, is at high risk for glaucoma). Therefore, the requirements for taking a history are actually less than the requirements of CPT code 99212. Additionally, the physical examination requirements are specified in the statute and are similar to the requirements of CPT code 99212. Furthermore, the vast majority of patients undergoing screening will not have glaucoma, so the typical screening service will require routine medical decision making. For those few patients with glaucoma who will need to schedule a return visit, the medical decision making is straightforward. Therefore, the glaucoma screening requirements are similar to CPT code 99212. Our decision to assign 0.45 work RVUs to this service is also consistent with the time required to perform the service and places it in correct rank order with regard to other screening services payable under Medicare. We have decided to accept the recommendation of AOA on practice expense inputs and will crosswalk the inputs from CPT code 92012, brief ophthalmic exam performed on an established patient, rather than using the practice expense inputs from CPT codes 99202 and 99213 as suggested by AAO.

Because we received no comments on the RVUs for the Gxxx6 code, Glaucoma Screening Furnished Under the Direct Supervision of a Physician for High Risk Patients (now G0118), we will implement this as proposed and will assign .17 work RVUs and .01 malpractice RVUs. For practice expense, we will also crosswalk this code to CPT 92012.

Comment: Several commenters noted that medical technicians do not have the education or training to provide screening glaucoma services. One commenter noted that ophthalmic medical personnel (OMP) are not licensed by State regulatory agencies and are precluded from ordering medications, including eyedrops. The commenter states that, according to the Joint Commission on Allied Health Personnel in Ophthalmology and the Association of Technical Personnel in Ophthalmology, OMPs cannot be independent practitioners, cannot diagnose or treat eye disorders and cannot prescribe medications. Since a dilated eye exam requires medication, the OMP cannot perform the exam without the patient first being seen by an ophthalmologist or optometrist.

Response: The regulation is drafted based on the statutory provision; however, it does not supersede any State laws or licensing requirements.

Result of Evaluation of Comments

We are adopting our proposal to include only African-Americans age 50 and over in the statutory category of those at "high risk" for glaucoma. We are revising the regulation in § 410.23(a)(2) to read "Eligible beneficiary means individuals in the following high risk categories." This should allow CMS to more easily add high risk groups by rulemaking should the medical evidence warrant it.

For G0117 Glaucoma Screening for High Risk Patients Furnished by an Optometrist or Ophthalmologist—we will assign 0.45 work RVUs, .02 malpractice RVUs and we will crosswalk practice expense inputs from CPT code 92012.

For G0118 Glaucoma Screening for High Risk Patients Furnished Under the Direct Supervision of an Optometrist or Ophthalmologist—we will assign .17 work RVUs and .01 malpractice RVUs. For practice expense we will also crosswalk this code to CPT code 92012.

D. Screening Colonoscopy

Before the enactment of the BIPA, sections 1861(pp)(1)(C) and 1834(d)(3)(E) of the Act authorized Medicare coverage of screening colonoscopies once every 2 years for individuals at high risk for colorectal cancer. Individuals not at high risk for colorectal cancer did not qualify for coverage of screening colonoscopies under the colorectal cancer screening benefit, but they did qualify for coverage of other colorectal cancer screening examinations specified in the statute. These other examinations that were covered for individuals not at high risk for colorectal cancer included screening fecal-occult blood tests, screening flexible sigmoidoscopies, and screening barium enema examinations at certain frequency intervals specified in the statute and the regulations at § 410.37 (Colorectal cancer screening tests).

Section 103 of the BIPA amended sections 1861(pp)(1)(C), 1834(d)(2)(E)(ii), and 1834(d)(3)(F) of the Act to add coverage of screening colonoscopies once every 10 years for individuals not at high risk for colorectal cancer. However, in the case of an individual who is not at high risk for colorectal cancer, but who has had a screening flexible sigmoidoscopy within the last 4 years, the statute provides that payment may be made for a screening colonoscopy only after at least 47 months have passed following the month in which the last screening flexible sigmoidoscopy was performed. In addition, the statute provides that, in the case of an individual who is not at high risk for colorectal cancer but who does have a screening colonoscopy performed on or after July 1, 2001, payment may be made for a screening flexible sigmoidoscopy only after at least 119 months have passed following the month in which the last screening colonoscopy was performed.

In view of the statutory changes, we are conforming §§ 410.37(e) and 410.37(g) (related to limitations on coverage of screening colonoscopies and screening flexible sigmoidoscopies) to make them consistent with the new provisions of the statute that have been implemented through manual provisions of the Medicare Carriers Manual, the Medicare Intermediary Manual Part III, and the Medicare Hospital Manual in transmittal numbers 6097, 1824, and 7069, respectively, in February 2001.

Payment for Screening Colonoscopy

Payment for screening colonoscopy will be made under HCPCS code G0121: colorectal screening; colonoscopy for an individual not meeting criteria for high risk. As with current code G0105, screening colonoscopy for an individual at high risk, payment will be made at the level for a diagnostic colonoscopy, CPT code 45378, because the work is the same whether a procedure is screening or diagnostic. As the statute requires that, for both individuals who are or are not at high risk, if, during the course of the screening colonoscopy, a lesion or growth is detected that results in a biopsy or removal of the growth, the appropriate diagnostic procedure classified as colonoscopy with biopsy or removal should be billed and paid rather than HCPCS code G0105 or G0121.

We received four comments in support of the proposal to conform the regulations to the Medicare law implementing the new screening colonoscopy provision (section 103 of the BIPA) for individuals not at high risk for colorectal cancer. One of the commenters, however, did have a suggestion for how we could improve the manual instructions that we issue to our carriers on this subject.

Comment: The commenter suggests that we instruct our Medicare carriers to identify which International Classification of Diseases—Volume Nine (ICD–9) codes are acceptable to use in conjunction with the interim G0121 code that has been proposed for billing for covered screening colonoscopies performed for individuals not at high risk for colorectal cancer. The commenter stated that our failure to do this for screening flexible sigmoidoscopy code G0104 in the billing instructions we issued to our carriers in 1998 created problems for everyone concerned because individual carriers adopted a variety of acceptable ICD–9 codes, but did not inform the public under what circumstances the examinations were covered and when they were not.

Response: We are not aware of the problems stated above with respect to the Medicare billing codes for screening flexible sigmoidoscopies in 1998. In addition, we have not received any complaints about the new billing instructions that we released to our carriers in February of this year in conjunction with the interim G0121 code that was issued (effective July 1, 2001) for use in billing for screening colonoscopies for individuals not at high risk for colorectal cancer. Since individuals who might qualify for coverage under this new screening benefit are those who would not be at "high risk" for colorectal cancer, it is not clear to us why the physician billing for the service would need to provide any ICD–9 code for the examination to the carrier for Medicare payment to be made. We do not require that such information be submitted to the carrier at the present time in these circumstances.

Result of Evaluation of Comments

We are implementing our proposal as stated above. In view of the comment, we will review the matter, and we will take any necessary action that might be deemed appropriate.

E. Medical Nutrition Therapy

Section 105 of the BIPA amended section 1861(s)(2) of the Act to authorize Medicare Part B coverage of medical nutrition therapy (MNT) for certain beneficiaries who have diabetes or a renal disease, effective for services furnished on or after January 1, 2002. This new benefit is similar to a benefit initially established by section 4105 of the BBA as a component of the diabetes outpatient self-management training (DSMT) benefit. The DSMT benefit, described at section 1861(qq) of the Act, is a comprehensive diabetes training program, of which nutrition training is only one component.

Consistent with section 105(a)(3) of the BIPA, we considered the protocols of the American Dietetic Association (ADA) and the National Kidney Foundation (NKF) regarding medical nutrition therapy training for both diabetes and renal disease in order to establish criteria for coverage of these services. Because the protocols were inconclusive with respect to duration and frequency issues, we proposed to determine the duration and frequency of the benefit through the NCD process rather than through the rulemaking process.

We proposed to set forth the provisions regarding medical nutrition therapy at Part 410, subpart G and at § 414.64. The MNT provisions of the final rule follow.

Definitions (§ 410.130)

We defined "renal disease" for the purpose of this benefit as only chronic renal insufficiency and post-transplant care provided after discharge from the hospital. We proposed to limit post-transplant care to care furnished within 6 months after discharge from the hospital, if the transplant is viable and effective, because, under such conditions, we believe the beneficiary would no longer have renal disease and

would not be eligible to receive the benefit under the statutory provision. We specifically solicited comments on this proposed time period, and requested that the commenters support their comments with articles from medical journals. We also established definitions of "diabetes", "renal disease", and "chronic renal insufficiency" for the purpose of this benefit using definitions from the Institute of Medicine report, "The Role of Nutrition in Maintaining Health in the Nation's Elderly," published in 2000.

We proposed defining "episode of care" as a time period not to exceed 12 months, starting with the assessment (based on a referral from a physician), and including all covered interventions. Finally, in accordance with the statute, we defined MNT services as nutritional diagnostic, therapy, and counseling services provided by a registered dietitian or nutrition professional for the purpose of managing disease.

Medical Nutrition Therapy (§ 410.132)

At § 410.132(a), we proposed the conditions for coverage of MNT services. Specifically, we proposed that Medicare Part B pay for MNT services furnished by a registered dietitian or nutrition professional as defined in § 410.134 when the beneficiary is referred for the service by the beneficiary's treating physician. We proposed to limit the definition of physician to "treating physician" to ensure that the physician establishing the need for MNT is actually treating the beneficiary for a covered chronic disease and that the therapy is coordinated with the care being provided by the treating physician.

We proposed that the services covered consist of nutritional assessment, interventions, reassessment, and follow-up interventions. We chose not to define the specific components of the benefit in more detail because we anticipated that registered dietitians and nutritionists would use nationally recognized protocols, such as those developed by the ADA, as they normally would in their practice. As previously mentioned, we also proposed to use the NCD process to develop duration and frequency limits.

At § 410.132(b), we set forth the coverage limitations for MNT services. In accordance with section 1861(s)(2)(V)(ii) of the Act, we provided that MNT services would not be covered for beneficiaries on dialysis for end-stage renal disease. We did not exclude all beneficiaries who are diagnosed with end-stage renal disease because a few individuals with end-stage renal disease do not receive maintenance dialysis, and the statute specifically excludes beneficiaries receiving maintenance dialysis under section 1881 of the Act. The other provisions of this section outlined the coordination of referrals for MNT for diabetes and renal disease, and coordination of MNT and DSMT services.

Eligibility for MNT services will be dependent upon diagnoses and referrals made by the treating physician. At § 410.132(c), we proposed that referral only be made by the treating physician when the beneficiary has been diagnosed with diabetes or a renal disease, with documentation maintained by the referring physician in the beneficiary's medical record. Referrals must be made for each episode of care.

At § 410.132(d), we discussed requirements regarding reassessment and follow-up interventions. Specifically, we proposed that reassessments and follow-up interventions would only be covered when the referring physician determined that there was a change of diagnosis or medical condition within an episode of care that made a change in diet necessary.

Provider Qualifications (§ 410.134)

The BIPA specifies how we must define "registered dietitian or nutrition professional" for the purposes of this benefit, and allows for the grandfathering of nutrition professionals licensed or certified by States at the time of its enactment. The proposed qualifications for a registered dietitian or nutrition professional are set forth at § 410.134, and include alternative criteria for recognition of registered dietitians in States that do not provide for licensure or certification of these individuals.

We received nearly 1,000 comments on the MNT portion of the proposed rule. The most frequently received comments concerned: the definitions of diabetes, renal disease, and treating physician; the coordination of the diabetes self-management training and MNT benefits; and proposed reimbursement. We also received comments about provider qualifications.

Comment: We received a large number of comments that stated we had defined diabetes and renal disease too narrowly and asked for further clarification of the definitions.

Response: Our definition of diabetes does not specifically state how physicians should perform lab tests to determine if a beneficiary should be diagnosed with diabetes. However, as with the national protocols for medical nutrition therapy, we assume that physicians will conduct tests in accordance with nationally accepted clinical guidelines, which require testing on multiple occasions to determine a diagnosis of diabetes. We are clarifying our definition of diabetes by adding a sentence to further explain the etiology of the disease. We also have extended coverage to include gestational diabetes for the few Medicare beneficiaries who would need such coverage. We believe that we do not have the statutory authority to extend coverage to beneficiaries who have not yet been diagnosed with diabetes.

We also expand the definition of renal disease in this final rule. First, we clarify that beneficiaries with end-stage renal disease who are not receiving dialysis are eligible for the service. In addition, we have expanded the time period in which we will cover MNT for beneficiaries who have received a renal transplant to 36 months, to bring the coverage into conformance with the Medicare eligibility period for individuals under age 65.

Comment: A few commenters requested that we change our definition for renal disease to encompass all patients with glomerular filtration rates (GFR) below 60. The GFR is the measurement of renal function and has a range in normal adult males of 98 to 150 ml/min/1.7m^2 and in normal adult females of 106 to 132 ml/min/1.7^2. The commenters believe that we did not fulfill the intent of the Congress.

Response: We disagree with the comment. Neither the BIPA nor its legislative history indicates any specific intention regarding how to define renal disease for purposes of eligibility for this benefit. Section 4108 of the BBA required the Department of Health and Human Services to contract with the National Academy of Sciences (NAS) to examine the benefits and costs associated with extending Medicare coverage for certain services, including medical nutrition therapy. We believe the NAS Institute of Medicine (IOM) report, "The Role of Nutrition in Maintaining Health in the Nation's Elderly," published in 2000, provides a reasonable definition for determining the scope of the benefit. In that report, "renal disease" is defined as chronic renal insufficiency, end-stage renal disease, and the beneficiary's condition following renal transplant. The GFR rate for chronic renal insufficiency (GFR of 13 to 50 ml/min/1.73m^2) used in the proposed rule was also in the IOM report.

The IOM report did not cover the period of time MNT should be available to beneficiaries following a renal transplant. The Congress has authorized us to provide a reasonable interpretation of how much coverage will be provided for beneficiaries after renal transplant.

The suggested eligibility criterion of a GFR under 60 suggested by commentators appears to be too expansive, because typically the GFR for beneficiaries after they receive a transplant never goes above 60. We also received comments recommending that we match our coverage to the length of time an under-65 beneficiary is entitled to post-transplant coverage. We agree that this is a reasonable criterion for our coverage of MNT services for post-renal-transplant beneficiaries.

Comment: We received a large number of comments expressing concern about our use of the term "treating physician". Most commenters believe that the term does not include both primary care physicians and specialists. One commenter believes we exceeded our statutory authority. Also, some commenters believe that we should allow any physician to provide a referral for the service.

Response: We did not intend to exclude primary care physicians from the term "treating physician". In this final rule, we now define the term "treating physician" to mean the primary care physician or specialist coordinating care for the beneficiary with diabetes or renal disease.

Regarding our statutory authority, the statute, as amended at section 1861(s)(2)(V)(iii) of the Act, clearly states that the Secretary has authority to impose other criteria, after considering protocols established by dietetic or nutrition professional organizations. Requiring referral by the treating physician is within this statutory authority. We continue to believe that we must assure the quality of services received by Medicare beneficiaries. Therefore, our coverage guidelines must require coordination of care for beneficiaries with chronic diseases in order to assure that quality. We have not changed the final rule to allow any physician to make the referral for MNT.

Comment: We also received comments concerning the definition of the benefit and episode of care.

Response: As stated in the proposed rule, we relied on the national dietetic therapy protocols of major organizations to define the basic benefit. In seeking to understand the reason for these comments, we discovered that the use of the term "reassessment and follow-up interventions" in §§ 410.132(a) and (d) was confusing to many commenters. In the national protocols, reassessments and follow-up interventions are always considered part of the basic service. In the proposed rule, we had used the terms to define a special circumstance that happens only when a beneficiary has a change in medical condition or diagnosis.

In this final rule, we clarify our policy by eliminating the use of the terms "reassessment" and "follow-up interventions". We also have changed the language slightly in several other parts of the final rule to help clarify our intent, such as adding, "treatment regimen" as another reason why we would allow additional coverage in special circumstances. Our definition of "episode of care" (except in the case of coordination of services with initial DSMT and gestational diabetes) is based on our intent to pay providers of the service more efficiently by conforming the definition to our claims processing requirements. Our intent continues to be that dietitians and nutritionists should follow national MNT protocols.

Comment: Some commenters stated that the DSMT and MNT benefits for beneficiaries with diabetes should only be coordinated to the extent of reducing the total of number of MNT hours by one hour.

Response: In the proposed rule, we assumed that all of the MNT benefit for diabetes would be provided as part of the initial DSMT benefit and that follow-up DSMT and MNT for diabetes should be fully coordinated. In our discussions with interested organizations concerning the amount of services that should be covered for the NCD process, great concern was expressed about the coordination of the DSMT and MNT benefits. Therefore, we have spent a great deal of time researching this issue. We have found no evidence to date to suggest that the language of the proposed rule should be changed for this requirement. However, because we are still developing our NCD concerning the duration and frequency of the MNT benefit, we will continue to consider any evidence that might lead to the conclusion that additional hours should be covered when both benefits are provided during the same time period.

Until such time as an NCD alters this requirement, if initial DSMT and MNT benefits for diabetes are provided in the same 12 month episode of care, only 10 total hours of services will be covered, regardless of whether the hours are covered as MNT, DSMT, or a combination of both. In situations where follow-up DSMT and MNT for diabetes is provided, only the total amount of hours allowed under the MNT benefit will be covered. (The MNT cap will be applied to any DSMT services provided to a beneficiary during the follow-up period, until such time as an NCD alters this requirement.)

Comment: We received comments that MNT for a diagnosis of renal disease and MNT for a diagnosis of diabetes should not be fully coordinated.

Response: In this final rule, we are not changing this requirement because the provision at § 410.132(d) (in this final rule § 410.132(b)(5)) already provides for additional coverage in this situation and we believe that additional coverage is not necessary. However, we are clarifying that beneficiaries receiving initial DSMT can receive the full initial DSMT benefit.

Comment: One commenter was concerned that providers that had completed a full course of study of dietetics or nutrition after completion of a bachelor's degree would be excluded. We also received comments asking us to clarify the requirements further.

Response: We agree that individuals that complete the full course of study of an accredited dietetics or nutrition program after completion of a bachelor's degree would still meet the intent of the legislation. Therefore, we have altered the regulatory language to include these individuals. However, we will require our contractors to require the practitioner to provide proof of completion of the course of study in addition to proof of receiving the degree.

In situations where the individual is credentialed as a registered dietitian by an organization appropriate for this purpose, we will recognize that credential as proof that the individual meets both the education and experience required in the regulation. We have added language at §§ 410.134(a) and (d) to change the final rule.

Comment: A commenter noted that State licensure requirements vary considerably; providers will need to obtain multiple licenses when they perform services in more than one State; and providers will have to meet different requirements if State licensure provisions change.

Response: The statutory intent to recognize State licensure and State licensure requirements is clear. We cannot require States to have similar licensure requirements, recognize licensure by other States, or to provide for grandfathering of providers when State licensure laws change. Therefore, we have not changed the final rule to reflect these comments.

Payment for Medical Nutrition Therapy (§ 414.64)

Section 105(c) of the BIPA requires that we pay for medical nutrition therapy services at 80 percent of the lesser of the actual charge for the services or 85 percent of the amount determined under the physician fee schedule for the same services if the services had been furnished by a physician. Based upon consultation with the American Dietetic Association (ADA) to assess the types of resource inputs used to furnish a 15-minute medical nutrition therapy session by a registered dietitian or professional nutritionist, we proposed the following:

For CPT code 97802—Medical nutrition therapy; initial assessment and intervention, individual, face-to-face with the patient, each 15 minutes, we did not propose physician work RVUs for this service, based on the statutory provision that specifically provides that medical nutrition therapy services may only be furnished by registered dietitians or nutrition professionals. For practice expense, we proposed 0.47 RVUs and, for malpractice, we proposed 0.01 RVUs for a total of 0.48 RVUs.

For CPT code 97803—Reassessments and intervention, individual, face-to-face with the patient, each 15 minutes, we proposed 0.0 work RVUs, 0.34 practice expense RVUs and 0.01 malpractice RVUs for a total of 0.35 RVUs.

For CPT code 97804—Group, 2 or more individuals, each 30 minutes, we proposed 0.0 work RVUs, 0.14 practice expense RVUs and 0.01 malpractice RVUs for a total of 0.15 RVUs. To determine payment, the RVUs shown above would need to be multiplied by the physician fee schedule conversion factor and 0.85 (to reflect the statutory requirement that payment be 85 percent of the amount determined under the physician fee schedule).

We also stated that, consistent with the definition in the CPT's Physical Medicine Rehabilitation codes, a group is considered to be 2 or more individuals and that Medicare co-payments and deductibles would apply for medical nutritional therapy services.

Comment: The American Dietetic Association (ADA) and many individuals submitted comments concerning the proposed reimbursement rate for medical nutrition therapy services. They stated that the proposed reimbursement rate for these services is too low and would result in limited beneficiary access to these services since private practice dietitians will choose not to participate. Some commenters referenced reimbursement rates currently paid by private insurers of $85 to $125 for 1 to 1½ hours for an initial visit and $85 per hour for follow-up. They believe that the proposed rate for Medicare is far short of what was envisioned by the Congress.

Commenters indicated that the statute clearly states that medical nutrition therapy payment should be 80 percent of the lesser of the actual charge or 85 percent of the amount determined under the physician fee schedule for the same service, provided by a physician. According to commenters, physicians who are also registered dietitians, use E/M codes 99213 through 99215 and 99244 when providing medical nutrition therapy services. The commenters stated that E/M codes 99203 through 99205 are appropriate reference points for determining medical nutrition therapy payment. The commenters also stated that any refinement of medical nutrition therapy values should be based on the underlying E/M codes that they believe are the statutory basis for medical nutrition therapy payment. While commenters acknowledge that physicians may perform other tasks besides nutritional assessment, therapy and counseling during an office visit, they believe those additional services are the basis for the Congress' instruction to reimburse non-physician providers of medical nutrition therapy at 85 percent of the amount physicians receive. The AMA's Health Care Professionals Advisory Committee (HCPAC) submitted a comment that suggested there should be physician work for medical nutrition therapy. This group provides recommendations on valuing services for codes used by non-physician providers. The HCPAC indicated that it evaluated each of the medical nutrition therapy codes and compared them to services that are available to other providers but not nutritionists (for example, physical therapy services). The comment further stated that the 15 percent reduction should not apply because the HCPAC took this into account when developing the recommendations. The HCPAC further added that there should be work values for medical nutrition therapy just as there are for physical and occupational therapy.

Response: We have reviewed the statute and legislative history. There is no indication that Congress envisioned a particular payment amount or expected us to use an E/M service to determine the value of medical nutrition therapy. Section 105(c) of the BIPA states that "the amount paid shall be 80 percent of the lesser of the actual charge for the services or 85 percent of the amount determined under the fee schedule established under section 1848(b) of the Act for the same services if furnished by a physician." The BIPA Conference Report indicates that payment will equal "the lesser of the actual charge for the service or 85 percent of the amount that would be paid under the physician fee schedule if such services were provided by a physician." The statute and Conference Report direct us to establish the physician fee schedule amount for nutrition therapy services. The Medicare allowed charge would equal 100 percent of the physician fee schedule amount if the services are performed by a physician and 85 percent of the physician fee schedule amount if the services are performed by a registered dietitian or nutrition professional. The commenters suggest that physicians currently bill for an E/M service when they provide nutrition services. We do not believe that it is appropriate to compare medical nutrition therapy provided by a registered dietitian to an E/M service provided by a physician. Registered dietitians do not take medical histories, they are not trained to and do not perform physical examinations, nor do they make medical decisions. Furthermore, when physicians use an E/M code to report the provision of counseling or coordination of care, they typically have also performed a medical history, physical examination, and engaged in medical decision making as part of that service. If such an individual performed a service that met the requirements of an E/M service, then it would be be appropriate for him or her to report an E/M service. Further, we note that the E/M services include not only an amount attributable to physician work, but also payment for physician practice expenses. For instance, a level 3 new patient office visit (CPT code 99203) includes payment for 50 minutes of nurse time. A level 3 established patient office visit (CPT code 99213) includes 36 minutes of nurse time. Both of these codes include additional compensation for medical equipment and supplies that are typically used in an office visit but are not used as part of a medical nutrition therapy service. If we were to adopt the commenters' view and crosswalk values for medical nutrition therapy to an E/M service, we would be including payment not only for the counseling service of the practitioner, but also, inappropriately for the costs of clinical personnel that are not involved in the nutrition therapy service.

Commenters indicated that the statute established the 85 percent adjustment to account for activities that are typically performed by a physician during an E/M service are not performed by a nutritionist. The statute and legislative history do not indicate that the 85 percent adjustment is intended to serve this purpose. In fact, the commenters themselves note that "consistent with other non-physician providers, reimbursement is set at a percentage of the physician's fee schedule." Under the physician fee schedule, we will pay a physician 80 percent of 100 percent of the physician fee schedule amount, and, if a non-physician practitioner provides an identical service, Medicare pays 80 percent of 85 percent of the physician fee schedule amount. For instance, under CPT code 99213, a level 3 established patient office visit is one of the most common services provided by physicians, physician assistants and nurse practitioners. Even though the service is considered to be identical, we can by law pay a physician assistant and nurse practitioner only 85 percent of what we pay a physician to do the same service. Thus, in the case of other practitioners, the percentage does not reflect that a non-physician practitioner provides fewer services than a physician. Because there is no indication in the statute that the 85 percent adjustment should apply differently in the context of medical nutrition therapy than for other services performed by non-physician practitioners, we believe it is appropriate to pay 80 percent of 100 percent of the physician fee schedule amount when medical nutrition therapy is provided by a physician and 80 percent of 85 percent of the physician fee schedule amount when the service is provided by a registered dietitian or nutrition professional.

In response to the comment about payment rates of private insurers for medical nutrition therapy, we cannot use such information in a relative value system to establish payment. Section 1848(c) of the Act requires us to establish RVUs that recognize the relative resources involved in furnishing different physician fee schedule services. Thus, our role is to establish the appropriate relative payment amounts. The total payment amount is determined under a formula prescribed in section 1848(d) of the Act. We have no authority to change the formula.

In response to the HCPAC recommendation, we reiterate that it is inappropriate to compare medical nutrition therapy services to E/M services performed by physicians. While medical nutrition therapy may be performed by a physician who is also a registered dietitian, this does not make it a physician's service that requires a work RVU. Physicians may occasionally perform other services that have no physician work, such as chemotherapy administration or the technical component of a diagnostic x-ray test. When such services with no physician work are performed by a physician, we do not establish a physician work RVU just because the service was performed by a physician in that instance. Physicians will occasionally meet the statutory qualifications to be considered a registered dietitian or nutrition professional who can bill Medicare for medical nutrition therapy services. In these circumstances, we will pay the physician 80 percent of 100 percent of the physician fee schedule amount. In this unusual circumstance, we are paying for a medical nutrition therapy service provided by a physician under section 1861(s)(2)(V) and not a physician's service under section 1861(s)(1) of the Act.

Comment: One comment indicated that the 85 percent adjustment should not apply because the RVUs we used are not based on physician work or physician practice expenses to deliver the service. This commenter indicated that we proposed an inadequate payment by not following the statutory scheme and proceeded to apply a 15 percent discount that is neither fair nor reasonable.

Response: The statute requires us to establish a physician fee schedule amount for the service and pay 80 percent of 100 percent of the amount if the service is provided by a physician and 80 percent of 85 percent if the service is provided by a registered dietitian or nutrition professional. We initially anticipated that physicians would never bill Medicare for medical nutrition therapy services because they generally would not meet the statutory requirements to be considered registered dietitians or nutrition professionals. In this circumstance, we agree that it seems unusual to apply a reduction for a service that seldom would be furnished by a physician. However, we believe that the statute requires that Medicare payment be based on the 85 percent level. We understand that, although not common, there are physicians who do meet the statutory requirements to be considered registered dietitians or nutrition professionals. In these circumstances, our payment to the physician will be based on 100 percent of the physician fee schedule amount, not the 85 percent that we will pay to a registered dietitian or nutrition professional. We believe the statute would not allow a physician who does not meet the statutory requirements for a registered dietitian or nutrition professional to be paid for a medical nutrition therapy service. If a physician provides medical nutrition counseling as part of a patient encounter that meets the requirements for an E/M service, the physician can bill Medicare for a physician's service.

Comment: We received one comment requesting that we clarify that Medicare will pay qualified providers in private practice settings or physician offices where they may be independent contractors. The commenter also asked how we intend to pay for medical nutrition therapy in the hospital outpatient department. The commenter also asked for clarification on reassignment of payment if a registered dietitian is an employee of physicians or hospital outpatient facilities.

Response: Medicare will pay qualified dietitians and nutrition professionals who enroll in the Medicare program regardless of whether they provide medical nutrition therapy services in an independent practice setting, hospital outpatient department or any other setting, with the exception of services provided to patients in an inpatient stay in a hospital or skilled nursing facility. In these circumstances, our payment to the hospital or skilled nursing facility includes payment for medical nutrition therapy. If a qualified practitioner provides medical nutrition therapy in any other setting, including a private practice setting, section 1833(a)(1)(T) of the Act requires that Medicare payment equal 80 percent of the lesser of actual charges or 80 percent of 85 percent of the amount determined under the physician fee schedule. Payment in the hospital outpatient department will be made under the physician fee schedule, not under the hospital outpatient prospective payment system.

Current rules regarding reassignment of benefits would apply to medical nutrition therapy. We want to emphasize that medical nutrition therapy cannot be provided incident to a physician's service unless the physician also meets the qualifications to bill Medicare as a registered dietitian or nutrition professional.

Comment: Commenters objected to the methodology used to establish the proposed RVUs for this service. They believe it is inappropriate to use the top-down or no-work pool methodology to determine medical nutrition therapy payment. They believe that medical nutrition therapy payment should not be based on comparison to a preventive medicine code (CPT code 99401) in the zero-work pool methodology. The

commenters indicated that preventive medicine services omit the problem-oriented components of the comprehensive history, as well as other essential assessment points, such as the patient's chief complaint and history of present illness. They disagree with our assertion in the proposed rule that physicians do not perform nutrition services and assert that it is inappropriate to use the top-down or zero-work methodology to establish the RVU for medical nutrition therapy.

Response: We use the top-down methodology or no-work pool methodology to price the practice expense RVUs for all services priced under the Medicare physician fee schedule. Given that the statute indicates that medical nutrition therapy should be paid using the physician fee schedule, we believe it is reasonable and appropriate to use the same methodologies that we use to develop RVUs for other physician fee schedule services. With respect to use of the preventive medicine service, we used a service that we felt had similar practice expenses to medical nutrition therapy. It is not clear why practice expenses for a counseling service would differ based on the health status of the patient.

Comment: A commenter representing dietitians asked us to review the relativity of payment across the three medical nutrition CPT codes. The commenter indicated that payment for CPT code 97803 was set at 72.9 percent of proposed RVUs for CPT code 97802 and 97804 was set at 31 percent of CPT code 97802. The commenter argues that, because reassessments are shorter than initial assessments, the proposed RVUs are actually discounted twice (that is, less payment per 15 minutes of time as well as less total time). They believe that the value of CPT codes 97802 and 97803 should be identical. The commenters indicated that E/M services provided by physicians do not receive the same discount. The commenter also stated that the payment for CPT code 97804 was less than for other group services and gave the example of a nurse or pharmacist providing nutrition instruction under the diabetes self-management training benefit.

Response: We have reviewed the payments for CPT codes 97802 and 97803 and agree with the commenter that these two codes should have the same values. The essential difference between an initial and follow up medical nutrition therapy service is the time spent performing the service. Initial visits will be longer than follow-up visits and will likely involve Medicare payment for more increments of service. We will pay less for follow up visits because they will typically involve fewer 15 minute increments of time than an initial visit. The payment rate we are establishing in this final rule for CPT code 97803 will be the same as the proposed rate for CPT code 97802. We have also changed the payment rate for CPT code 97804 assuming that the code will normally be billed for 4 to 6 patients with the average of 5. Using the revised values, the payment rate for group medical nutrition therapy would approximate the hourly rate paid for other medical nutrition therapy services. (We note that the RVU units between the proposed and final rule show some marginal change because of changes made in the practice expense methodology that affect all physician fee schedule services). We do not agree with the comment that "evaluation and management services provided by physicians do not receive the same discount." E/M service are not time based services and, as stated above, for many reasons are inappropriate comparisons to medical nutrition therapy service codes.

Comment: Many commenters stated that co-payments must be structured so that they are not barriers to the medical nutrition therapy benefit.

Response: Section 105(c) of the BIPA modifies section 1833(a)(1) of the Act to add subparagraph (T) that requires that Medicare payment equal 80 percent of the lesser of the actual charge for the services or 85 percent of the amount determined under physician fee schedule. The statute requires the same coinsurance for medical nutrition therapy services that applies to other Part B services.

Comment: Commenters suggested that initial medical nutrition therapy sessions for treatment of diabetes or renal disease should be billed under CPT code 97802 and subsequent medical nutrition therapy sessions should be billed under CPT code 97803. New diagnoses due to a change in medical condition or unanticipated complications should be billed under CPT code 97802 and subsequent medical nutrition therapy sessions should be billed under CPT code 97803.

Response: At the present time, we are requiring that medical nutrition therapy be reported by using CPT codes 97802, 97803, and 97804. We will revisit our coding requirements when we publish the NCD for medical nutrition therapy. The NCD will set forth the structure of the medical nutrition therapy benefit in detail. We will make a decision concerning creation or modification of codes and creation of modifiers for reporting medical nutrition therapy once the NCD has been published. Until the NCD is published, creation or modification of codes and creation of modifiers would be premature. Therefore, we are requiring that the initial individual medical nutrition therapy visit be reported as CPT code 97802 and all follow up visits (for interventions and reassessments) for individual medical nutrition therapy be reported as CPT code 97803. All group medical nutrition therapy visits should be reported as CPT code 97804 whether they are initial or follow up visits.

Comment: Commenters urged us to define medical nutrition therapy descriptors consistently. They stated that the descriptors in Table 5 of the proposed rule should agree with the descriptors in §.414.132.

Response: We agree. We will make the descriptors for medical nutrition therapy consistent with the nomenclature in CPT and our regulations.

Comment: We received a comment that recommended that we consider including additional items in the practice expense inputs for medical nutrition therapy. The commenter indicated that inputs should include staff costs for training on billing procedures, Health Insurance Portability and Accountability Act training, audit expenses, and other costs resulting from Medicare policies and procedures. The commenter indicated that expenses of registered dietitians in private practice differ little from other practitioners.

Response: There are two major data sources used in the practice expense methodology—estimates of direct inputs and aggregate practice expense per hour information from the AMA's Socioeconomic Monitoring Survey. At this time, we are using the practice expense per hour for all physicians to establish the practice expense RVUs for medical nutrition therapy. We are not currently using the estimates of direct expenses for medical nutrition therapy because the services are valued in the no-work pool. However, we are researching alternatives to the no-work pool that would allow all no-work services to be priced under the top-down methodology. If we develop such an alternative, the estimates of direct expenses will be important in determining the RVUs for medical nutrition therapy. Indirect expenses are based on physician work and direct inputs. We believe that many of the costs identified by this commenter are indirect costs that would likely be included in practice expenses reported through the SMS survey. Since the commenter has suggested that practice expenses for private practice registered dietitians differ little from other practitioners, we believe the average practice expense per hour for all physicians is sufficient to use in the practice expense methodology.

Result of Evaluation of Comments

The payment rate we are establishing in this final rule for CPT code 97803 will be the same as the rate for CPT code 97802. We are also changing the payment rate for CPT code 97804 using the assumption that the code will normally be billed for 4 to 6 patients with the average of 5. Using these revised values, the payment rate for group medical nutrition therapy will approximate the hourly rate paid for other medical nutrition therapy services.

F. Telehealth Services

Beginning October 1, 2001, the BIPA amended section 1834 of the Act to specify that we pay a physician (as defined in section 1861(r) of the Act) or a practitioner (described in section 1842(b)(18)(C) of the Act) for telehealth services that are furnished via a telecommunications system to an eligible telehealth individual.

The BIPA defined Medicare telehealth services as professional consultations, office or other outpatient visits, and office psychiatry services identified as of July 1, 2000, by CPT codes 99241 through 99275; 99201 through 99215, 90804 through 90809 and 90862 (and as we may subsequently modify) and any additional service we specify. The BIPA defines an eligible telehealth individual as an individual enrolled under Part B who receives a telehealth service furnished at an originating site.

Section 1834(m) of the Act, as added by the BIPA, limited an originating site to a physician's or practitioner's office, hospital, critical access hospital, rural health clinic, or Federally qualified health center. Additionally, the BIPA specified that the originating site must be located in one of the following geographic areas:

- In an area that is designated as a rural health professional shortage area (HPSA) under section 332(a)(1)(A) of the Public Health Service Act.
- In a county that is not included in a Metropolitan Statistical Area (MSA).

However, an entity participating in a Federal telemedicine demonstration project that has been approved by, or receives funding from us as of December 31, 2000 would not be required to be in a rural HPSA or non-MSA.

The BIPA also required that we pay a physician or practitioner located at a distant site that furnishes a telehealth service to an eligible telehealth beneficiary an amount equal to the amount that the physician or practitioner would have been paid under Medicare had the service been furnished without the use of a telecommunications system.

This section also provided for a facility fee payment for the period beginning October 1, 2001 through December 31, 2002, to the originating site of $20. For each subsequent year, the facility fee for the preceding year is increased by the percentage increase in the MEI as defined in section 1842(i)(3) of the Act. The BIPA also amended section 1833(a)(1) of the Act to specify that the amount paid must be 80 percent of the lesser of the actual charge or the amounts specified in new section 1834(m)(2) of the Act.

In order for us to have this benefit expansion implemented timely, we have used a program memorandum. The program memorandum was effective October 1, 2001. This final rule will be effective January 1, 2002.

The rule published on August 2, 2001 proposed to establish policies for implementing the provisions of section 1834(m) of the Act, as added by the BIPA, that change Medicare payment for telehealth services.

We proposed to revise § 410.78 to specify that Medicare beneficiaries are eligible for telehealth services only if they receive services from an originating site located in either a rural HPSA as defined by section 332(a)(1)(A) of the Public Health Services Act or in a county outside of a MSA as defined by section 1886(d)(2)(D) of the Act.

1. Definitions

Section 1834(m)(4)(F) of the Act, which was added by the BIPA and became effective for services beginning October 1, 2001, defined telehealth services as professional consultations, office and other outpatient visits, individual psychotherapy, pharmacologic management, and any additional service we specify. Additionally, this provision identified covered services by HCPCS codes identified as of July 1, 2000. We proposed to revise § 410.78 to implement this coverage expansion to include the following services (and corresponding CPT codes):

- Consultations (codes 99241 through 99275).
- Office and other outpatient visits (codes 99201 through 99215).
- Individual psychotherapy (codes 90804 through 90809).
- Pharmacologic management (code 90862).

We solicited comments regarding the guidelines that we should use to make additions or deletions of services. We also solicited comments about specific services that may be appropriate to be covered under the Medicare telehealth benefit.

In this final rule, we are specifying at § 410.78 that, except for the use of store and forward technology in the demonstration programs conducted in Alaska or Hawaii, an interactive telecommunications system must be used and the medical examination of the patient must be at the control of the physician or practitioner at the distant site. We are defining interactive telecommunications system as multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and physician or practitioner at the distant site. We are also specifying that telephones, facsimile machines, and electronic mail systems do not meet the definition of an interactive telecommunications system.

A patient need not be present for a Federal telemedicine demonstration program conducted in Alaska or Hawaii. We are specifying that for Federal telemedicine demonstration programs conducted in Alaska or Hawaii, Medicare payment is permitted for telehealth when asynchronous store and forward technologies, in single or multimedia formats, are used as a substitute for an interactive telecommunications system. Additionally, we are specifying that the physician or practitioner at the distant site must be affiliated with the demonstration program.

We are defining asynchronous, store and forward technologies, as the transmission of the patient's medical information from an originating site to the physician or practitioner at the distant site. The physician or practitioner at the distant site can review the medical case without the patient being present. An asynchronous telecommunications system in single media format does not include telephone calls, images transmitted via facsimile machines, and text messages without visualization of the patient (electronic mail). Photographs must be specific to the patient's medical condition and adequate for rendering or confirming a diagnosis or treatment plan. Finally, we are defining the originating site as the location of an eligible telehealth individual at the time the service being furnished via a telecommunications system occurs.

2. Conditions of Payment

The BIPA changed the telepresenter requirements. In accordance with section 1834(m)(2)(C) of the Act, a

telepresenter is not required to be present. Therefore, we would not require a telepresenter as a condition of Medicare payment.

Section 1834(m)(1) of the Act requires that Medicare make payments for telehealth services furnished via a telecommunications system by a physician or a practitioner (described in section 1842(b)(18)(C) of the Act). Non-physician practitioners described in this section of the Act include nurse practitioners, physician assistants, clinical nurse specialists, certified nurse midwives, clinical psychologists, clinical social workers, and certified registered nurse anesthetists or anesthesiologists' assistants. Section 1834(m)(2) of the Act specifies that we pay the physician or practitioner at the distant site who furnishes a telehealth service an amount equal to the amount that the physician or practitioner would have been paid under Medicare had the service been furnished without the use of a telecommunications system.

Certified registered nurse anesthetists and anesthesiologists' assistants would not be permitted to bill for and receive payment for a telehealth service under this provision. Under the Medicare program, these practitioners do not receive payment for office visits, consultation, individual psychotherapy, or pharmacologic management when these services are furnished without the use of a telecommunications system. Section 1834(m)(2) of the Act specifies that we pay to the distant site physician or practitioner an amount equal to what would have been paid for the service without the use of a telecommunications system. Therefore, certified registered nurse anesthetists and anesthesiologists' assistants would not receive payment for telehealth services.

We proposed at § 410.78 that, as a condition of Part B payment for telehealth services, the physician or practitioner at the distant site must be licensed to provide the service under State law.

Section 1834(m)(2)(A) of the Act specifies that the payment amount for the professional service is equal to the amount that would have been paid without the use of a telecommunications system. Medicare payment for physicians' services is generally based, under section 1848 of the Act, on the resource-based physician fee schedule. Payment to other health care practitioners listed earlier, authorized under section 1833 of the Act, is based on a percentage of the physician fee schedule payment amount. Therefore, we will pay for office or other outpatient visits, consultation, individual psychotherapy, and pharmacologic management services furnished by physicians at 80 percent of the lower of the actual charge or the fee schedule amount for physicians' services. We will also pay for services furnished by other practitioners at 80 percent of the lower of the actual charge or that practitioner's respective percentage of the physician fee schedule.

Section 1834(m)(2) of the Act provides for a professional fee for the physician or practitioner at the distant site (equal to the applicable Part B fee schedule amount) and a $20 facility fee for the originating site. Telepresenters are not required, unless one is deemed medically necessary by the physician or practitioner at the distant site. The BIPA does not address the issue of payment for the telepresenter. The Office of the Inspector General has advised us that permitting the physician or practitioner at the distant site to pay the telepresenter creates a significant risk under the anti-kickback statute. Therefore, we establish in § 414.65 that payments made to the distant site physician or practitioner for professional fees, including deductible and coinsurance (for the professional service), are not to be shared with the referring practitioner or telepresenter.

However, the telepresenter could bill and receive payment for services that are not telehealth services that a telepresenter would otherwise be allowed to provide under the Medicare statute, including services furnished on the same day as the telehealth service.

The BBA prohibited any payment for line charges or facility fees associated with a professional consultation via a telecommunications system. Section 1834(m)(2)(B) of the Act, as added by the BIPA, provides for a facility fee payment to the originating site, specifying that the amount of payment is 80 percent of the lesser of the actual charge or a facility fee of $20.00. The BIPA further specifies that, beginning January 1, 2003, the originating facility fee be increased annually by the Medicare Economic Index (MEI) as defined in section 1842(i)(3) of the Act. Additionally, we clarify that the Geographic Practice Cost Index (GPCI) would not apply to the facility fee for the originating site. This fee is statutorily set and is not subject to the geographic payment adjustments authorized under the physician's fee schedule. The beneficiary is responsible for any unmet deductible amount and Medicare coinsurance. We would revise § 414.65 to provide for payment of a facility fee to the originating site.

Section 1834(m)(3) of the Act specifies that sections 1842(b)(18)(A) and (B) apply to physicians and practitioners receiving payment for telehealth services and to originating sites receiving a facility fee, in the same manner as they apply to practitioners. This section requires that payment for such services may only be made on an assignment-related basis. We did not reflect this provision in the proposed rule. Because this requirement is specified in the BIPA and we have no discretion, we are implementing it in this final rule in new § 414.65(d).

Comment: One commenter believed that requiring an originating site to be located in a rural HPSA or non-MSA county would not permit medical practitioners located in urban and suburban areas to offer telehealth services.

Response: We clarify that, as a condition of payment under Medicare, the originating site must be located in a rural HPSA or non-MSA county. The physician or practitioner at the distant site, who provides the telehealth service, is not subject to these limitations. For example, a psychologist in Salt Lake City, Utah would be able to provide a mental health visit to a beneficiary at a physician's office located in a non-MSA county.

Comment: We received various comments on the definition of an originating site. Many commenters believe that the list of facilities eligible to be a telehealth originating site should be expanded beyond those specified in the statute. Specific suggestions were received to include the patient's residence, skilled nursing facilities, nursing homes, and community mental health centers as originating site facilities within this provision. Another commenter suggested that we recommend legislative changes to remove the requirement that an originating site facility be located in a HPSA or non-MSA county.

Moreover, one organization requested that all locations included within the Alaska Native Tribal Health Consortium, including but not limited to outpatient health facilities recognized by the Indian Health Service as tribal health facilities be included as an originating site. The commenter requested that these sites be defined as an originating site regardless of whether they are certified as a Medicare Federally qualified health center or not.

Response: Section 1834(m) of the Act defines an originating site facility to include only a physician's or practitioner's office, hospital, critical access hospital, rural health clinic or Federally qualified health center.

Further, the Act specifies that the originating site must be located in a rural HPSA or non-MSA county. We do not have the legislative authority to expand the definition of a telehealth originating site beyond this provision. However, we will be studying this issue as part of a report to the Congress as authorized by section 223(d) of the BIPA.

Comment: One specialty college requested confirmation that the patient's medical information provided via store and forward telehealth is furnished to the physician or practitioner at the distant site in order to recommend or confirm a diagnosis and or treatment plan and not to provide a formal interpretation of imaging exams.

Response: The commenter is correct. Payment for services via store and forward technology under this provision does not include formal interpretation of an imaging exam. Medicare currently allows coverage and payment for medical services delivered via a telecommunications system that do not require a face-to-face "hands on" encounter. Section 2020(A) of the Medicare Carriers Manual addresses this issue and lists radiology, electrocardiogram, and electroencephalogram interpretations as examples of such services.

Comment: In the proposed rule, we requested comments on the guidelines that we should use to make additions or deletions to covered Medicare telehealth services. We also requested suggestions and comments about specific services that may be appropriate for payment under the Medicare telehealth benefit. In response to our solicitation, we received one comment regarding the guidelines we should use to make changes to the scope of Medicare telehealth coverage. Ten commenters provided specific suggestions regarding additional services that may be appropriate for the Medicare telehealth benefit.

Several commenters indicated that a psychiatric diagnostic interview, CPT code 90801, would be appropriate for Medicare telehealth payment. One association stated that the elements of this service are directly comparable to a new patient office visit, which the law defines as a telehealth service. Given that the law permits us to add additional services as appropriate, this commenter suggested that we include a psychiatric diagnostic interview within the definition of a telehealth service. Another association suggested that interactive psychotherapy, CPT codes 90810, 90812 and 90814, should be covered Medicare telehealth services. Interactive psychotherapy uses play equipment, physical devices and other mechanisms of non-verbal communication in an office or outpatient facility.

Several commenters suggested that telerehabilitation interventions that provide education, mentoring and consultation be included within the scope of Medicare telehealth coverage. The commenters specifically note that speech therapy and physical and occupational therapy should be included as telehealth services.

One consortium requested that all services provided under the Federal telehealth project in Alaska be included as covered telehealth services within this provision. The commenter believes that virtually all evaluation & management and psychiatry services should be included as Medicare telehealth services. Additionally, the commenter notes that many respiratory, digestive, ophthalmology and otorhinolaryngology services are appropriate for telehealth coverage.

One organization suggested that we consider guidelines similar to those currently in place for non-telehealth services. For instance, the commenter stated the service should be reasonable and necessary, safe and effective, medically appropriate, and provided within the purview of accepted standards of medical practice. The commenter stresses that the type of technology used to deliver the service should be secondary to the reasonable and necessary criteria.

Response: We will use these comments and suggestions to assist us in establishing guidelines for a telehealth coverage process and the addition of specific telehealth services that may be appropriate for Medicare beneficiaries. However, we do not believe it would be appropriate to expand the scope of telehealth services beyond the services explicitly listed in the Act until we have a process in place for adding new telehealth services.

Comment: With regard to the definition of a "telecommunications system", one organization encouraged us to permit store and forward technologies in other circumstances beyond federal telemedicine demonstration projects conducted in Alaska or Hawaii. The commenter believes that emphasis should be given to whether a particular service is reasonable and necessary rather than specific technology requirements. Moreover, the commenter stated that the face-to-face requirement is outdated for telehealth as well as other areas of the Medicare fee schedule and suggested that current technology, such as electronic mail, permits physicians to care for their patients even when the patient is not present.

Response: Section 1834(m) of the Act defines a telehealth service as office and other outpatient visits (99201 through 99215), professional consultations (99241 through 99275), individual psychotherapy (90804 through 90809), and pharmacologic management (90862). Further, the law specifies that payment must be equal to what would have been paid without the use of a telecommunications system.

As a condition of payment under Medicare, these services require a face-to-face patient encounter. We believe that the patient's presence and use of an interactive audio and video telecommunications system permitting the distant site practitioner to interact with the patient provides a reasonable substitute for a face-to-face encounter. The law provides for the use of asynchronous, store and forward technologies for delivering telehealth services only for telemedicine demonstration projects conducted in Alaska or Hawaii. We do not have the authority to expand the use of store and forward technology in delivering telehealth services.

Comment: One organization in a remote region requested that a definition of a telepresenter be added to § 410.78. The commenter suggested we permit a certified community health aid to present a patient when the aide is the only medical professional available to act as a telepresenter.

Response: The physician or practitioner at the distant site has the authority to determine whether it is medically necessary to require a telepresenter and, if necessary, the appropriate medical professional needed to present the patient. We do not believe it is appropriate for us to specify the type of medical professionals that are necessary to act as a telepresenter.

Comment: We received conflicting comments concerning interstate telehealth services. One organization requested that we require the physician or practitioner at the distant site to be licensed in the State where the originating site is located. On the other hand, an association requested clarification that the physician or practitioner at the distant site only needs to be licensed in the State where he or she is located and does not need to be licensed in the State where the originating site is located. Another commenter requested that we clarify that the service is considered rendered where the distant site physician or practitioner is located.

Response: We defer to State law regarding licensure issues. When the

State law for the originating site permits an out-of-State practitioner to provide a telehealth service, without being licensed in the State in which the originating site is located, Medicare would make payment for the telehealth service. However, when State law precludes an out-of-State practitioner from delivering a telehealth service, Medicare would not pay for that service.

We clarify that for payment purposes, the site of service for the telehealth service is the location of the physician or practitioner at the distant site. Given that section 1834(m) of the Act specifies that payment to the physician or practitioner at the distant site must be equal to the amount that would have been paid without the use of telehealth, it is appropriate to use the Geographic Practice Cost Index (GPCI) relevant to the distant site. However, our determination of the distant site physician's or practitioner's location as the site of service for Medicare payment is not intended to make a comment regarding the scope of medical practice.

Comment: One consortium believes that the proposed rule would not permit the physician or practitioner at the distant site to bill for a telehealth service when State or Federal law exempts a physician or practitioner from being licensed in the State in which he or she is currently employed. The consortium is a Federal telemedicine demonstration project that would be permitted to use store and forward telecommunications technologies in delivering telehealth services. The commenter notes that the State of Alaska exempts physicians or practitioners who are part of the military or Public Health Service that provide health care services in Alaska from its licensure requirements. Further, the commenter stated that Federal law authorizes health care professionals who are members of the military providing services for the Department of Defense to practice in any State provided the professionals are licensed in a State, the District of Columbia or other specific locations. The commenter also noted that current Medicare manual instructions specify that when a physician in a Federal hospital provides services to the public generally as a community institution, he or she may be considered as meeting the statutory definition of a physician even though he or she may not have a license to practice in the State in which he or she is employed.

Response: The telehealth provision does not affect State or Federal legislation providing certain physicians or practitioners an exemption from State licensure. When Federal or State law exempts a physician or practitioner from State licensure, then the physician or practitioner at the distant site is permitted to provide a telehealth service regardless of whether he or she is licensed within the State where he or she is employed.

Comment: One organization requested that § 414.65(a)(2) be revised to specify for what services the physician or practitioner who presents the patient could bill. The commenter believes that when the physician at the distant site determines that it is medically necessary for another practitioner to assist in providing the telehealth service, the telepresenter should be compensated. The commenter suggested that a telepresenter be permitted to bill for a consultation or confirmatory consultation.

Response: On the day the telehealth service occurs, the telepresenter may bill and receive payment for services that are not telehealth services that he or she would otherwise be allowed to provide under Medicare. A telepresenter, for example, a nurse practitioner, could bill for and be paid for a medically necessary office, outpatient or inpatient visit preceding or subsequent to a telehealth service. Additionally, the telepresenter could be paid for other medically necessary services requested by the physician or practitioner at the distant site. However, the physician at the distant site may not share any portion of the telehealth payment with the telepresenter or referring practitioner. We do not agree that § 414.65(a)(2) should be changed to specify the services for which a telepresenter can and cannot bill. This section implements payment for telehealth services only, and the Act does not provide for a payment to the telepresenter for telehealth services.

Comment: Many organizations and individual commenters expressed overall support for the revision of Medicare payment for telehealth. Specifically, commenters mentioned removal of the fee sharing requirement, relaxed conditions of payment, and the addition of non-MSA counties to the geographic areas eligible for telehealth under Medicare. The commenters noted that these changes will have a positive effect on health care delivery and will help provide services to areas where specialty care is sparse.

Response: We agree that the proposed revisions to Medicare telehealth coverage and payment policies, as authorized by the BIPA, remove significant barriers for physicians and practitioners wishing to provide telehealth services.

Comment: One commenter indicated that the cost of collecting the coinsurance for the originating site facility fee could easily exceed the amount the facility would collect from the beneficiary. The commenter encouraged us to permit originating sites to waive the coinsurance in those situations where the telehealth facility charge is the only amount to be billed to the beneficiary.

Response: We do not have the authority to eliminate the coinsurance requirement outright for telehealth originating sites. However, Medicare permits the waiver of coinsurance for limited situations. Section 5220 of the Medicare Carriers Manual specifies that physicians and suppliers may waive billing for or collection of coinsurance or deductibles for indigent patients or when the physicians' or suppliers' cost of billing or collecting exceeds or is disproportionate to the amounts to be collected. Documentation must be sufficient to support that costs for billing the beneficiary exceed or are disproportionate to the amount collected from the beneficiary. In this instance, the amount collected refers to 20 percent of the originating site telehealth facility fee.

We clarify that when the patient owes additional coinsurance to the originating site for other Medicare services, billing for the telehealth facility fee coinsurance amount may be consolidated with the coinsurance amount owed for those services. We believe that this would resolve the commenter's concern that the cost for billing and or collecting the coinsurance for a single facility fee could exceed or be disproportionate to the amount collected from the beneficiary.

Comment: One association submitted a number of comments that have payment implications for the Federally qualified health center benefit.

Response: These issues involve specific aspects of the Federally qualified health center payment methodology and are beyond the scope of this provision. We will take these comments into consideration in formulating future instructions for payment implications on FQHCs.

Result of Evaluation of Comments

We are implementing this provision as stated above.

G. Indian Health Service

The Indian health care system provides primary health care to many American Indian and Alaska Native Medicare beneficiaries. This system consists of programs operated by a Federal agency, the Indian Health Service (IHS), and Federally funded programs operated by Indian tribes, tribal organizations, and urban Indian organizations (as those terms are defined in section 4 of the Indian Health Care Improvement Act). These programs deliver a range of clinical and preventive health services to their beneficiaries through a network of facilities including hospitals and outpatient clinics. Programs operated in IHS-owned or leased facilities, by IHS or by tribes or tribal organizations, are considered "Federal providers" by Medicare. Sections 1814(c) and 1835(d) of the Act generally prohibit payment to Federal providers, subject to exceptions contained in section 1880 of the Act for these IHS facilities. Before enactment of the BIPA, the exception in section 1880 of the Act was applicable only to IHS owned or leased hospitals, provider-based clinics, and skilled nursing facilities (regardless of whether the entity is tribally operated). The exception did not permit Medicare to pay for services furnished by IHS owned or leased free-standing outpatient clinics or to pay any IHS owned or leased facilities for services by physicians and other practitioners paid under a fee schedule.

Effective July 1, 2001, section 432 of the BIPA extends the exception in section 1880 of the Act to permit Medicare payments to hospitals and outpatient clinics (provider-based or free-standing), operated by the IHS or by a tribe or tribal organization, for services furnished by physicians and specified non-physician practitioners in or at the direction of the hospital or outpatient clinic. Payments for these services are made to the hospital or outpatient clinic, not to the physician or other practitioner. These payments are subject to the same situations, terms, and conditions as would apply if the services were furnished in, or at the direction of, a hospital or outpatient clinic that is not operated by the IHS or by a tribe or tribal organization. The payments include incentive payments for physicians furnishing covered physicians' services in rural or urban health professional shortage areas (HPSAs) if the usual HPSA criteria are met. (For further information see section 1833 of the Act and § 414.42 of our regulations.) Payments will not be made under these provisions to the extent that Medicare is otherwise paying for the same services under other provisions (for example, as part of a bundled payment, or if a tribal outpatient clinic continues to bill as a Federally qualified health center (FQHC)).

We have added a new § 410.46 to our regulations to reflect this new statutory provision. Due to the statutory effective date of July 1, 2001, we implemented this BIPA provision through program memorandum instructions.

Result of Evaluation of Comments

We received no comments on the statutory requirement to pay Indian Health Service and tribal hospitals and clinics for the services of physicians and other practitioners under Medicare fee schedules.

H. Pathology Services

The November 2, 1999 final rule (64 FR 59380) provided that, for services furnished on or after January 1, 2001, carriers would no longer pay claims to independent laboratories under the physician fee schedule for the technical component (TC) of physician pathology services for hospital inpatients. Before that rule, independent laboratories could bill the carrier under the physician fee schedule for the TC of a physician pathology service furnished to a hospital inpatient. Also, under that rule, independent laboratories would still have been able to bill and receive payment for the TC of physician pathology services furnished to patients who are not hospital inpatients.

Section 542 of the BIPA requires the Medicare carrier to continue to pay for the TC of physician pathology services when an independent laboratory furnishes these services to an inpatient or outpatient of a covered hospital. The BIPA provisions apply to TC services furnished during the 2-year period beginning January 1, 2001 and continuing through December 31, 2002. We informed the carriers and the intermediaries of this provision through program memorandum AB–01–47, which was issued in March 2001. This program memorandum requested the carriers to notify independent laboratories of this provision in their next regularly scheduled bulletin and to place this bulletin on their Internet web site. In the absence of further legislation, the policy of the November 1999 final rule will take effect for the TC of physician pathology services furnished to hospital patients after December 31, 2002. We have revised § 415.130 to conform to the statutory change in section 542 of BIPA concerning the payment for the TC of physician pathology services.

Result of Evaluation of Comments

We have received no comments on this issue.

IV. Five-Year Review of Work Relative Value Units Under the Physician Fee Schedule; Responses to Public Comments on the Five-Year Review of Work Relative Value Units

A. Scope of Five-Year Review

This final rule includes the culmination of the 5-year review of work RVUs required by statute. The work RVUs affected by this review will be effective for services furnished beginning January 1, 2002.

In our June 8, 2001 proposed notice (66 FR 31028), we explained the process used to conduct the 5-year review of work RVUs. During the comment period we received approximately 35 public comments on approximately 900 codes. After review by our medical staff, we forwarded all of the comments we received concerning potentially misvalued services to the AMA's Specialty Society Relative Value Update Committee (RUC).

The RUC submitted work RVU recommendations for all of the codes we forwarded with the exception of the anesthesia codes and conscious sedation codes. We analyzed all of the RUC recommendations and evaluated both the recommended work RVUs and the rationale for the recommendations. If we had concerns about the application of a particular methodology, but thought the recommended work RVUs were reasonable, we verified that the recommended work RVUs were appropriate by using alternative methodologies. (For additional information on the review process, please see the proposed notice published June 8, 2001.)

B. Review of Comments (Includes Table 4 Work RVU Refinements of 5-Year Review Codes Commented on in Response to the June 8, 2001 Proposed Notice)

During the comment period for our June 8, 2001 proposed notice, commenters generally supported our proposed changes. We received more than 125 comments on approximately 39 specific codes plus all the anesthesia services. The majority of these comments addressed the gastrointestinal endoscopy codes and anesthesia services.

We convened a multispecialty panel of physicians to assist us in the review of the comments. The comments we did not submit for panel review are discussed at the end of this section. The panel was moderated by our medical staff and consisted of:

- Clinicians representing the commenting specialties, based on our determination of those specialties which

are most identified with the services in question. Although commenting specialties were welcomed to observe the entire refinement process, they were only involved in the discussion of those services for which they were invited to participate.

- Primary care clinicians nominated by the American Academy of Family Physicians and the American College of Physicians and American Society of Internal Medicine.
- Four carrier medical directors.
- Four clinicians with practices in related specialties who had knowledge of the services under review.

We submitted 6 codes for evaluation by the panel. The panel discussed the work RVUs involved in each procedure under review in comparison to the work RVUs associated with other services on the fee schedule. We assembled a set of reference services and asked each panel member to compare the clinical aspects for the services they believed were incorrectly valued to one or more of the reference services. In compiling the reference set, we attempted to include—(1) services that are commonly performed whose work RVUs are not controversial; (2) services that span the entire work spectrum from the easiest to the most difficult; and (3) at least three services performed by each of the major specialties so that each specialty would be represented. The reference set listed over 300 services. Group members were encouraged to make comparisons to these reference services. The intent of the panel process was to capture each participant's independent judgement based on the discussion and his or her clinical experience. Following each discussion, each participant rated the work for the procedure. Ratings were individual and confidential; there was no attempt to achieve consensus among the panel members.

We then analyzed the ratings based on a presumption that the RVUs in the proposed notice were correct. To overcome this presumption, the inaccuracy of the proposed RVUs had to be apparent to the broad range of physicians participating in each panel.

Ratings of work were analyzed for consistency among the groups represented on each panel. We used statistical tests to determine whether there was enough agreement among the groups on the panel, and whether the agreed-upon RVUs were significantly different from the proposed RVUs published in the June 8, 2001 proposed notice. We did not modify the RVUs unless there was a clear indication for a change. If there was agreement across groups for change, but the groups did not agree on what the new RVUs should be, we eliminated the outlier group, and looked for agreement among the remaining groups as the basis for new RVUs. We used the same methodology in analyzing the ratings that we first used in the refinement process for the 1993 fee schedule. The statistical tests we used are described in detail in the November 25, 1992 final rule (57 FR 55938).

Our decision to convene a multispecialty refinement panel of physicians and to apply the statistical tests referred to above was based on our need to balance the interests of those who commented on the work RVUs against the redistributive effects that would occur in other specialties. Of the 6 codes reviewed by the multispecialty panel, all were the subject of requests for increased values.

We also received comments that we did not submit to the panels for a variety of reasons. These comments are discussed later in this section. Of the proposed codes that were reviewed, 3 increased, and 3 were not changed.

Table 4.—Work Relative Value Unit Refinements of Five-Year Review Codes Commented on in Response to the June 8, 2001 Proposed Notice

Table 4 lists the codes reviewed during the 5-year review on which we received comments. This table includes the following information:

- *CPT/HCPCS Code.* This is the CPT or alphanumeric HCPCS code for a service.
- *Modifier.* A modifier–26 is shown if the work RVUs represent the professional component of the service.
- *Description.* This is an abbreviated version of the narrative description of the code.
- *Proposed Work RVUs.* This column includes the work RVUs proposed in the June 8, 2001 proposed notice for each reviewed code.
- *Requested Work RVUs.* This column identifies the work RVUs requested by the commenters. If the commenters requested different RVUs, the table lists the highest requested RVUs. For some codes we received recommendations for an increase but no specific RVUs were recommended.
- *RUC Recommendation.* This column identifies the work RVUs recommended by the RUC if the RUC made a specific work value recommendation as part of its comments on the June 8, 2001 proposed notice.
- *2002 Work RVUs.* This column contains the 2002 work RVUs.
- *Basis for Decision.* This column indicates whether:

+ The recommendations of the multispecialty refinement panel were the basis upon which we determined that the proposed work RVUs published June 8, 2001 should be retained (indicator 1).

+ A new value emerged from our analysis of the refinement panel ratings (indicator 2).

+ A new or retained value came from review of the comment(s) received (indicator 3).

+ A new value came from the need to make a rank-order change to maintain or correct existing relationships among services (indicator 4).

+ A value is retained and the code has been referred to the RUC (indicator 5).

+ There is no change in value but we have adjusted the global period (indicator 6).

TABLE 4.—WORK RVU REFINEMENTS OF THE FIVE-YEAR REVIEW CODES COMMENTED ON IN RESPONSE TO JUNE 8, 2001 PROPOSED NOTICE

CPT/HCPCS Code [1]	Mod	Descriptor	Proposed Work RVU	Requested Work RVU	RUC REC	2002 Work RVU	Basis for decision
00100–01999		Anesthesia services	(2)	(3)		(2)	#5
11055		Trim skin lesion	0.27	0.43		0.43	#3
11056		Trim skin lesion, 2 to 4	0.39	0.61		0.61	#3
11057		Trim skin lesions, over 4.	0.50	0.79		0.79	#3
11719		Trim nail(s)	0.11	0.17		0.17	#3
27286		Fusion of hip joint	23.45			23.45	#4

TABLE 4.—WORK RVU REFINEMENTS OF THE FIVE-YEAR REVIEW CODES COMMENTED ON IN RESPONSE TO JUNE 8, 2001 PROPOSED NOTICE—Continued

CPT/HCPCS Code [1]	Mod	Descriptor	Proposed Work RVU	Requested Work RVU	RUC REC	2002 Work RVU	Basis for decision
36400		Drawing blood	0.18	0.38		0.38	#2
36405		Drawing blood	0.18	0.32		0.31	#2
38510		Biopsy/removal, lymph nodes.	6.43			6.43	#6
38571		Laparoscopy, lymphadenectomy.	12.38	19.84		14.68	#2
38740		Remove armpit lymph nodes.	10.02	10.03		10.03	#3
38745		Remove armpit lymph nodes.	13.00	13.10		13.10	#3
38760		Remove groin lymph nodes.	12.94	12.95		12.95	#3
39503		Repair of diaphragm hernia.	34.85	95.00		95.00	#3
43219		Esophagus endoscopy	2.80	3.18		2.80	#3
43239		Upper GI endoscopy, biopsy.	2.69	2.87		[1]2.87	#3
43244		Upper GI endoscopy/ligation.	4.59	5.05		5.05	#3
43247		Operative upper GI endoscopy.	3.39	3.40		3.39	#3
43249		Esoph endoscopy, dilation.	2.90	3.25		2.90	#3
43255		Operative upper GI endoscopy.	4.40	4.82		4.82	#3
43259		Endoscopic ultrasound exam.	4.89	6.53		4.89	#3
43263		Endo cholangiopancreatograph.	6.19	7.29		7.29	#3
43265		Endo cholangiopancreatograph.	8.90	10.02		10.02	#3
43269		Endo cholangiopancreatograph.	6.04	8.21		8.21	#3
44388		Colon endoscopy	2.82	3.24		2.82	#3
44389		Colonoscopy with biopsy.	3.13	3.54		3.13	#3
44390		Colonoscopy for foreign body.	3.83	4.25		3.83	#3
44391		Colonoscopy for bleeding.	4.32	5.25		4.32	#3
44392		Colonoscopy and polypectomy.	3.82	4.23		3.82	#3
44393		Colonoscopy, lesion removal.	4.84	5.79		4.84	#3
45380		Colonoscopy and biopsy.	4.01	4.44		[1]4.44	#3
49605		Repair umbilical lesion	22.66	76.00		76.00	#3
56515		Destruction, vulva lesion(s).	2.76	3.63		2.76	#1
56605		Biopsy of vulva/perineum.	1.10		1.10	[4]1.10	#3
56810		Repair of perineum	4.13		4.13	[4]4.13	#3
57500		Biopsy of cervix	0.97			0.97	#5
58100		Biopsy of uterus lining	0.71		1.53	[4]1.53	#3
76090		Mammogram, one breast.	0.70	0.93		0.70	#1
76091		Mammogram, both breasts.	0.87	1.10		0.87	#1
G0127		Trim nail(s)	0.11			0.17	#3

[1] All CPT codes and descriptors copyright 2000 American Medical Association.

[2] No change.
[3] 26% incr.
[4] RVUS to remain interim for 2002.

C. Discussion of Comments by Clinical Area

In this section, we discuss the comments we received on the 39 codes of the more than 900 codes for which we sought public comment. For the codes for which we did not receive any comments, our proposed RVUs are being made final. We have categorized the comments into the same clinical areas we used in the June 8, 2001 notice. Within each clinical area, listed below, we discuss the comments received in CPT code order.

1. Vascular Surgery

Comment: The American Association for Vascular Surgery and the Society for Vascular Surgery expressed appreciation that we agreed with the RUC recommendations for work RVUs for the vascular surgery codes reviewed under the second 5-year review. However, it indicated that some of these services may still be undervalued. It will be reviewing these services as well as a small number of vascular surgery services that were not submitted this year and possibly submit these under the next 5-year review.

Response and final decision: We will finalize the RVUs for the vascular surgery codes as proposed.

2. General Surgery and Colon and Rectal Surgery

Family 2 Lymphadenectomy

Comment: The American College of Surgery (ACS) was supportive of the work performed by CMS medical officers to ensure that rank order anomalies were eliminated from 6 families of codes where acceptance of the RUC recommendations would create distortions in family work value relativity and the rest of the physician fee schedule.

The ACS pointed out a typographical error in the proposed notice. For Family 2 Lymphadenectomy, CMS disagreed with the RUC, and stated that the median survey result of 13 is appropriate for CPT code 38745. The ACS commented that the survey median is actually 13.10. The correction of this error would lead to increases for related family codes 38740 (from 10.02 to 10.03) and 38760 (from 12.94 to 12.95).

Response and final decision: We agree with the commenter's response and will adjust the work values for CPT code 38740 to 10.03; for CPT code 38745 to 13.10; and for CPT code 38760 to 12.95.

Family 3 Lymph Nodes and Lymphatic Channels—Incision/Excision

Comment: The American Academy of Otolaryngology recommended that CMS change the global surgical period of CPT code 38510 from 90 days to 10 days following the RUC survey data for this CPT code. It alleges that there were no postoperative visits beyond 10 days associated with this procedure for the relative work established.

Response: The RUC valued this service based on the fact that it is typically furnished to an outpatient. The value of a hospital discharge day was subtracted from the median survey value. The median survey value is based on one followup office visit. We believe there is merit to the group's point and will change the global period from 90 days to 10 days.

3. Thoracic Surgery

Comment: The Society of Thoracic Surgeons expressed appreciation that we had accepted the RUC recommendations for corrections to work values of many thoracic and cardiac procedures.

Response and final decision: We will finalize the RVUs for these codes as proposed.

4. Orthopedic Surgery

We received no comments on these codes. Therefore, we will finalize all of the proposed work RVUs for the orthopedic surgery codes. We would also note that, in the June rule, we proposed to correct a rank order anomaly by increasing values for CPT code 27286. This code, however, was inadvertently omitted from the table and addendum; it is included in Table 4 and Addendum A of this final rule.

5. Ophthalmology

We received no comments on these codes. Therefore, we will finalize all of the proposed work RVUs for the ophthalmology codes.

6. Urology

We received no comments on these codes. Therefore, we will finalize all of the proposed work RVUs for the urology codes.

7. Obstetrics/Gynecology

CPT Code 38571, Laparoscopy, Surgical; With Bilateral Total Pelvic Lympadenectomy

Comment: The Society of Gynecologic Oncologists (SGO) stated that, while we had proposed an increase for CPT code 38572, an increase was not proposed for CPT code 38571. The SGO believes that both of these codes are undervalued based on insufficient work RVUs being assigned for the laparoscopy with bilateral total pelvic lymphadenectomy procedure, which is common to both codes. It requested that a proportional increase in work RVUs be made for CPT 38571 as well.

Response: We accepted the RUC recommendation that no increase be made in the work RVU for this service based on the lack of compelling evidence to support an increase, and we had proposed retaining the current work RVU for this service. However, based on the comments received, we referred this code to a multispecialty refinement panel for review.

Final decision: As a result of our analysis of the multispecialty refinement panel ratings, we are increasing the work RVUs for CPT code 38571 to 14.68 work RVUs.

CPT Code 56515, Destruction of Lesion(s), Vulva; Extensive, Any Method

Comment: For CPT code 56515, SGO disagreed with the rationale that CPT codes 56515 and 46924 have comparable physician and intraservice work time. It indicated that CPT code 56515 involves lasering a much larger area; therefore, the amount of intraservice time and the number of postoperative visits can be significantly higher.

Response: We had accepted the RUC recommendation of 2.76 work RVUs for this code which was lower than the 3.625 which had been requested by the specialty. Based on the comments received, we referred this code to a multispecialty refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, we are retaining the work RVU of 2.76.

CPT Code 57500, Biopsy, Single or Multiple, or Excision of Lesion, With or Without Fulguration (Separate Procedure)

Comment: In addition to comments on the 2 codes referenced above, SGO also recommended that; while CPT code 57500 was not considered part of the 5-year review, this gender-specific code be forwarded to the RUC for evaluation. It believes the amount of physician time and level of pre- and postoperative work for this procedure is similar to that for the male-specific procedures of CPT code 54100 (Biopsy of penis (separate procedure)), and CPT code 54505 (Biopsy of testis, incisional (separate procedure)), and thus the physician work for CPT code 57500 should be increased.

Response and final decision: We will refer this code to the RUC for review.

Comment: In our June 8, 2001 proposed notice, we also stated that we referred three female-specific procedure codes that appeared to be misvalued to the RUC for review. As part of its comments on the proposed notice, and in response to our request to review these services, the RUC has provided recommendations on work RVUs for the three codes as follows:

- *CPT code 56605, Biopsy of vulva or perineum (separate procedure); one lesion.*

The RUC stated that this code was reviewed during the first 5-year review and was increased at that time to double the original work RVU for CPT code 56605. While the current work RVU for this code is less than CPT code 54100, Biopsy of penis (WRVU 1.90), the structure of CPT code 56605 allows additional reporting when more than one lesion is biopsied, while the penile code (54100) may be only reported once, regardless of the number of biopsies. The RUC recommended that the current work RVU of 1.10 be maintained for CPT code 56605.

- *CPT code 56810, Perineoplasty, repair of perineum, nonobsterical (separate procedure).*

The RUC indicated that the specialty stated that this service may be undervalued; however, perineoplasty is performed so rarely as a separate procedure that it would be difficult to obtain valid survey data to appropriately value this service. In addition, the specialty is currently considering CPT revisions to this family of codes and will review this issue at that time. The RUC recommended that the current work RVU of 4.13 be maintained for the service.

- *CPT code 58100, Endometrial sampling (biopsy) with or without endocervical sampling (biopsy), without cervical dilation, any method (separate procedure).*

The RUC indicated that, based on a review of survey data, CPT code 58100 is undervalued. The RUC compared this code to CPT code 55700 and determined that these 2 services are similar in time and intensity. The RUC also agreed that 58100 is more work than the reference procedure, CPT code 57505, and recommended an increase in the work RVU for CPT code 58100 to 1.53. The RUC also provided refinements to the practice expense inputs for this code.

Response and final decision: We agree with the RUC recommendations for these three codes and will maintain the current work RVUs of 1.10 for CPT code 56605 and 4.13 for CPT code 56810 and increase the work RVUs for CPT code 58100 to 1.53. Because the public has not had a chance to comment on these work RVUs, we will consider them to be interim and will accept comments on values for these 3 codes.

8. Gastroenterology

In the June 8, 2001 proposed notice, we explained that, for the selected series of gastrointestinal endoscopy codes for the 5-year review, the RUC recommended increases in work RVUs for some of the codes and no change in work for other codes. While some of these endoscopy codes may be misvalued, we proposed to keep all work RVUs for gastrointestinal endoscopy codes unchanged. We also requested that the RUC perform a comprehensive review of all gastrointestinal endoscopy codes to ensure that all codes are properly valued and that no rank-order anomalies within and across specialties are created or exacerbated.

With respect to the RUC recommendation concerning permitting separate reporting and payment of conscious sedation codes 90141 and 90142, we stated we would be reviewing data concerning this issue. Any proposal we would have concerning payment and reporting of conscious sedation codes would be the subject of future rulemaking.

Comment: Many physicians and several medical organizations expressed concern about our decision to propose no changes for the 17 endoscopy codes for which the RUC had recommended increases. The American Society for Gastrointestinal Endoscopy, the American College of Gastroenterology, and the American Gastroenterological Association provided an extensive discussion on each of the codes which we will summarize and respond to below.

CPT Code 43219, Esophagoscopy, Rigid or Flexible; With Insertion of Plastic Tube or Stent

The RUC recommended an increase in work RVUs from 2.8 to 3.18 for CPT code 43219 based upon the increased complexity of the condition of the patients receiving these stents. We proposed to maintain the current work RVUs due to our concerns about creating rank order anomalies in the fee schedule.

Comment: We received comments regarding this code from several societies representing gastroenterologists who said that the incremental work involved with esophageal stent placement, presently valued at 1.21 RVUs, should be increased to 1.59 RVUs. The commenters agreed with CMS that several other stent codes were recently reviewed by the RUC and valued using the incremental work value of 1.21 RVUs. Increasing the incremental work value for CPT code 43219 to 1.59 RVUs would result in rank order anomalies for several codes. The commenters acknowledged that these anomalies resulted from the timing of the 5-year review and the valuation of new stent placement codes. In spite of this, the commenters felt the RUC-recommended value was appropriate.

Response: We feel the current work increment of 1.21 RVUs for placement of a stent over the base code 43200 is the appropriate value when assessing incremental work. We do not agree that the incremental work for stent placement should be increased to 1.59 RVUs. The upper GI endoscopy base CPT code 43235 has RVUs of 2.39 and CPT code 43256, upper GI endoscopy with stent placement (including predilation) has work RVUs of 4.35. This results in an incremental value of 1.96 RVUs which includes placement of the stent (1.21 RVUs) and predilation (0.75 RVUs).

Furthermore, diagnostic bronchoscopy, CPT code 31622, has work RVUs of 2.78, and bronchoscopy with tracheal dilation and placement of a tracheal stent (CPT code 31631) has an RVU of 4.37. This means that the incremental work value for tracheal dilation and stent placement is 1.59 RVUs which is significantly less than the work increment of 1.96 listed for CPT code 43256. We also note that CPT code 43219 will be billed with CPT code 43226 (dilation of the esophagus over a guidewire) which has an incremental value of 0.75 work RVUs. This means that when an esophageal stent is placed, the total work value is 1.59 (base code) plus 1.21 (stent placement) plus 0.75 (dilation) for a total of 3.55 RVUs.

More important, the incremental work of placing the stent is 1.96 RVUs which is similar to the incremental work of placing a stent elsewhere in the GI tract and more than the incremental work of placing a stent in the trachea. Increasing the incremental work of placing an esophageal stent to 1.59 RVUs from 1.21 would create a significant rank order anomaly in the physician fee schedule because esophageal stent placement would be valued more than stent placement elsewhere.

Lastly, we note that less work is required to place a plastic stent than to place a wire stent. Both, however, are coded using CPT code 43219 and are valued similarly. For these reasons, we have decided to maintain the current RVUs of 2.80 for this code, and we would like the RUC to review all of the GI endoscopic stent placement codes and all of the GI endoscopic dilation codes simultaneously. Because these services are performed by gastroenterologists and various surgical specialties (general surgery, thoracic surgery, otolaryngology, and colorectal surgery), the RUC should obtain input from all specialties performing these services.

CPT Code 43239, Upper Gastrointestinal Endoscopy Including Esophagus, Stomach, and Either the Duodenum and/or Jejunum as Appropriate, With Biopsy, Single or Multiple

The RUC recommended an increase in work RVUs from 2.69 to 2.87 based on an increase in the number of biopsies obtained during each procedure. The RUC also stated that technological advances allowing for greater precision and detail in finding abnormalities have increased the complexity of this service. The RUC also stated that technological advances have allowed results to be reported more quickly which increases the postservice work because biopsy information and treatment guidance are conveyed to the patient the same day as the procedure. We disagreed, and in the June rule we proposed to maintain the current work RVUs.

Comment: We received comments from several societies representing gastroenterologists and the following concerns were expressed: First, they did not feel that the work of performing biopsy procedures at different sites in the GI tract was the same. They commented that biopsy of lesions in different anatomic sites required different amounts of work. Second, they felt that even though CPT code 43239 was used to report both single and multiple biopsies, the typical patient requires multiple biopsies.

Response: We reviewed these comments and compared the intraservice time for this procedure to other endoscopic biopsy procedures and we have decided to accept the RUC recommendations for this code. However, we are making this value interim. Please see the discussion under CPT code 45380 regarding this issue.

CPT Code 43244, Upper Gastrointestinal Endoscopy Including Esophagus, Stomach, and Either the Duodenum and/or Jejunum as Appropriate; With Band Ligation of Esophageal and or Gastric Varices; CPT Code 43255, Upper Gastrointestinal Endoscopy Including Esophagus, Stomach, and Either the Duodenum and/or Jejunum as Appropriate; With Control of Bleeding, Any Method

The RUC recommended an increase in work RVUs for CPT code 43255 from 4.4 to 4.82 work RVUs, based on the use of new technology, such as lasers, to control bleeding. The RUC also recommended an increase in work RVUs for CPT code 43244 from 4.59 to 5.05 RVUs, based on the increased number of bands typically used to treat esophageal varices. We disagreed and proposed to maintain the current work RVUs.

Comment: We received comments from several societies representing gastroenterologists and the following concerns were expressed: First, they felt that we had incorrectly determined that these two services should be valued identically because the RUC stated that they were "similar" in terms of work. Second, although they acknowledged that the use of cautery to control bleeding is not new, they said that the service is undervalued irrespective of which method is used to control bleeding.

Response: We reviewed these comments and compared the intraservice time to other similar procedures and have decided to accept the RUC recommendations for the above CPT codes.

CPT Code 43247, Upper Gastrointestinal Endoscopy Including Esophagus, Stomach, and Either the Duodenum and/or Jejunum as Appropriate; With Removal of Foreign Body

The RUC recommended an increase in work RVUs for this CPT code from 3.39 to 3.59 work RVUs, based on increased complexity of patients undergoing this procedure with a concomitant increase in risk of morbidity. We disagreed and proposed to maintain the current work RVUs.

Comment: We received comments from several societies representing gastroenterologists with the following concerns: First, they felt the increase in the work RVU for this procedure was justified because the procedure is usually performed under emergent conditions. Second, they did not favor uniform incremental work values for removal of foreign bodies from different sites in the gastrointestinal tract.

Response: The RUC used a building-block approach to validate its acceptance of the median work RVUs from the survey. We do not believe the approach used by the RUC is valid for this CPT code. We compared this service to other similar services and continue to believe that the RUC recommendation does not represent the appropriate work increments for foreign body removal from various gastrointestinal sites. Furthermore, it would create a clear rank-order anomaly with CPT code 43215 that should have an identical work increment. Therefore, we will maintain the current work RVUs for this procedure. If the RUC reviews this service again, we ask that all GI endoscopic services for removal of foreign bodies be included in the review.

CPT Code 43249, Upper Gastrointestinal Endoscopy Including Esophagus, Stomach, and Either the Duodenum and/or Jejunum as Appropriate; With Balloon Dilation

The RUC recommended an increase from 2.9 to 3.35 work RVUs for this CPT code based on increased complexity of the condition of patients undergoing this procedure. We disagreed and proposed to maintain the current work RVUs.

Comment: We received comments from several organizations representing gastroenterologists who felt the increase in incremental work value was justified based on their survey. However, they admitted that revaluing CPT code 43249 would create a rank order anomaly with CPT code 43220, an identical procedure. They stated that CPT code 43220 is also undervalued.

Response: The current work increment for "balloon dilation of esophagus (less than 30mm diameter)" is 0.51 RVUs for both the esophagus and upper gastrointestinal endoscopy families. Since this is the same procedure in both families, it is unclear why the work should be increased for the upper gastrointestinal family only. This would create a rank-order anomaly. We have decided to maintain the current work RVUs for CPT code 43249. We plan to ask the RUC to review the incremental work RVUs for both CPT code 43249 and CPT code 43220.

CPT Code 43259, Upper Gastrointestinal Endoscopy Including Esophagus, Stomach, and Either the Duodenum and/or Jejunum as Appropriate; With Endoscopic Ultrasound Examination

The RUC recommended an increase in work RVUs from 4.59 to 8.59 based on the complexity of the equipment and the skill and judgement required. The RUC also noted that the survey results supported this procedure as requiring more work than CPT code 43260—diagnostic endoscopic retrograde cholangio-pancreatography (ERCP)—which has 5.96 work RVUs.

Comment: We received comments from several societies representing gastroenterologists who agreed with us that the RUC values for the new endoscopic ultrasound codes (EUS) were inconsistent with the value recommended by the RUC for CPT code 43259. They felt that new survey data should have been used by the RUC when valuing CPT code 43259 instead of the current incremental work values used by the RUC for the 5-year review.

Response: The RUC used the following building-block methodology to arrive at its recommendation for 43259—1) The RUC added 1.5 work RVUs, which is approximately 75 percent of the difference between the RUC recommendation from the last 5-year review (6.11 work RVUs) and the work RVUs that we assigned (4.0 work RVUs); (2) the RUC then added 2.2 work RVUs, which are the work RVUs of CPT code

93312 (Echocardiography, Transesophageal, Real Time With Image Documentation (2D) (With or Without M-Mode Recording); Including Probe Placement, Image Acquisition, Interpretation and report)

Not only do we disagree with the RUC methodology for this recommendation, but we also note that the RUC has used the current work RVUs for CPT code 43259 to value not only other gastrointestinal transendoscopic ultrasound procedures but also many transendoscopic ultrasound guided biopsy codes. We also note that the RUC has recently re-evaluated CPT code 43231, Esophagoscopy, rigid or flexible; with endoscopic ultrasound examination, and recommended much lower RVUs for the incremental work of the ultrasound examination. Therefore, accepting the RUC recommendation for this code would be inconsistent with the RUC's reevaluation of CPT code 43231, would invalidate the work valuation of many other gastrointestinal endoscopy codes, and would create numerous rank-order anomalies. Therefore, we recommend that the RUC review CPT code 43259 along with all the other endoscopic ultrasound examination codes and all the transendoscopic ultrasound guided biopsy codes.

CPT Code 43263, Endoscopic Retrograde Cholangio-pancreatography (ERCP); With Pressure Measurement of Sphincter of Oddi (Pancreatic Duct or Common Bile Duct)

CPT Code 43265, Endoscopic Retrograde Cholangio-pancreatography (ERCP) With Endoscopic Retrograde Destruction, Lithotripsy of Stone(s), Any Method

CPT Code 43269, Endoscopic Retrograde Cholangio-pancreatography (ERCP); With Endoscopic Retrograde Removal of Foreign Body and/or Change of Tube or Stent

The RUC recommended an increase in work RVUs from 6.19 to 7.29 for CPT code 43263 based on the need to measure pressures in both the biliary and pancreatic sphincters, as well as the need for prolonged postoperative monitoring.

The RUC recommended an increase in work RVUs from 8.9 to 10.02 for CPT code 43265 based on a rank-order anomaly with code 43264 because this procedure is considered to be more time-consuming and complex than CPT code 43264.

The RUC recommended an increase in work RVUs from 6.04 to 8.21 for CPT code 43269 based on a rank-order anomaly between this code and CPT code 43268.

Comment: We received comments on these three codes from several organizations representing gastroenterologists. It was their position that these codes were commonly performed, undervalued procedures and that the survey data the organizations provided justify the increase in RVUs. We disagreed and proposed to maintain the current work RVUs for these three codes.

Response: We have reviewed the codes and compared their intraservice times to other similar procedures and have decided to accept the RUC recommendations.

CPT Code 44388, Colonoscopy Through Stoma; Diagnostic With or Without Collection of Specimen(s) by Brushing or Washing (Separate Procedure)

CPT Code 44389, Colonoscopy Through Stoma; With Biopsy, Single or Multiple

CPT Code 44390, Colonoscopy Through Stoma; With Removal of Foreign Body

CPT Code 44391, Colonoscopy Through Stoma; With Control of Bleeding, any Method

CPT Code 44392, Colonoscopy Through Stoma; With Removal of Tumor(s), Polyp(s), or Other Lesion(s) by Hot Biopsy Forceps or Bipolar Cautery

CPT Code 44393, Colonoscopy Through Stoma: With Ablation of Tumor(s), Polyp(s), or Other Lesion(s) Not Amenable to Removal by Hot Biopsy Forceps, Bipolar Cautery or Snare Technique

These 6 codes are in the same family, and the RUC recommended an increase for each code in this family primarily because it felt that the base CPT code, 44388, should be valued the same as CPT code 45378, diagnostic colonoscopy, at 3.7 work RVUs. The RUC also recommended that the values for the other codes in this family be increased to maintain their relativity to CPT code 44388. We disagreed and proposed to maintain the current work RVUs for all codes in this family.

Comment: We received comments from several societies representing gastroenterologists who commented that, although performing a colonoscopy through a stoma involves less physician work than performing a standard colonoscopy, they believed that performing a colonoscopy through a stoma is more technically challenging than performing a standard colonoscopy.

Response: We disagree with valuing the performance of a colonoscopy through a stoma identically to performing a standard colonoscopy. We feel the proposed valuation creates a series of rank-order anomalies. Consequently, we will finalize our proposal to maintain the current RVUs for this family of codes. In addition to determining that the RUC recommendation for the base code 44388 was incorrect, we note that the RUC recommendations create increments of work for performance of "biopsy, single or multiple," "control of bleeding, any method," "removal of tumors," and "ablation of tumors" during a colonoscopy through a stoma, which are inconsistent with the same increments for the complete colonoscopy family of codes that begins

with code 45378. We note that, in addition to gastroenterologists, general surgeons and colorectal surgeons perform these procedures. Therefore, if the RUC reconsiders the work values of these codes, we believe that information should be obtained from all physicians who perform these services.

CPT Code 45380, Colonoscopy, Flexible Proximal to Splenic Flexure; With Biopsy, Single or Multiple

The RUC recommended an increase in work RVUs from 3.98 to 4.44 for this CPT code, based on the increased number of biopsies generally taken during this procedure and the increased difficulty in removing these polyps. We disagreed and proposed to maintain the current work RVUs for this service.

Comment: We received comments from several societies representing gastroenterologists who commented that work increments for performing biopsies at different sites within the gastrointestinal tract are different. Furthermore, the societies believe that the incremental work of biopsy procedures performed by different specialties (for example, gastrointestinal endoscopic biopsies and tracheobronchial endoscopic biopsies) need not be valued identically. They also note that even though this code is reported for both single and multiple biopsies, the "typical" patient usually has multiple biopsies performed.

Response: We have reviewed these comments and compared the intraservice time of this code to the intraservice time of other similar procedures. We have decided to accept the RUC recommendation. However, CMS believes the best approach to accurately value gastrointestinal endoscopy biopsy procedures is to evaluate all the biopsy procedures in the gastrointestinal tract. This would provide the opportunity to establish the correct incremental work RVUs and avoid creating rank-order anomalies. Therefore, we will make the work values for CPT code 43239 (as indicated earlier) and 45380, interim until we receive further recommendations from the RUC regarding the entire spectrum of gastrointestinal biopsy procedures.

9. Conscious Sedation

Comment: The American Academy of Family Physicians indicated that the RUC has appointed an ad hoc workgroup to review the issue of conscious sedation, including identifying codes where conscious sedation is not inherently included as a component of the physician work. It recommended that, when the workgroup and RUC complete this review, we allow separate reporting and payment for CPT codes 90141 and 90142 in conjunction with the identified codes. The AMA and the RUC also referred to the newly formed workgroup in their comments, and the AMA urged us to work with the RUC and the CPT to reach a solution on the coding and payment issues surrounding conscious sedation.

Response and Final Decision: We welcome suggestions on this issue from both the coding and payment perspective. When the workgroup review of these issues is complete, we will evaluate any recommendations we receive for the development of any future proposals.

10. Pulmonary Medicine/Critical Care

We received no comments on these codes. Therefore, we will finalize the proposed work RVUs for the pulmonary medicine and critical care codes.

11. Cardiology

CPT Code 93350, Transthoracic Echocardiography

Comment: The American College of Cardiology expressed appreciation of our acceptance of the RUC recommendation to increase the work RVUs for this code.

Response and Final Decision: We are finalizing the proposed RVUs for CPT code 93350 and maintaining the work values for the other 2 CPT codes, 32234 and 32235, as discussed in the proposed notice.

12. Pediatrics

CPT Code 36400 (Venipuncture Under Age 3 Years; Femoral, Jugular or Sagittal Sinus) and CPT Code 36405 (Venipuncture, Under Age 3 Years, Scalp Vein)

Comment: The American Academy of Pediatrics (AAP) disagreed with our recommendations for CPT codes 36400 and 36405. The RUC recommended work RVUs of .38 and .32, respectively. We proposed that the work RVUs remain unchanged at .18 for each code. We do not believe it is appropriate to compare the work RVUs of a venipuncture to the work of an evaluation and management service. The AAP pointed out that the work involved in providing a venipuncture to a patient under age 3 is more intense than it has been in the past.

Response: Based on the comments received, we referred this code to a multispecialty refinement panel for review.

Final decision: As a result of our analysis of the multispecialty refinement panel ratings, we are increasing the work RVUs for CPT code 36400 to 0.38 and also increasing the work RVUs for CPT code 36405 to 0.31.

13. Pediatric Surgery

CPT Code 39503 (Repair, Neonatal Diaphragmatic Hernia, With or Without Chest Tube Insertion and With or Without Creation of Ventral Hernia) and CPT Code 49605 (Repair of Large Omphalacele or Gastroschisis; With or Without Prosthesis)

Comment: The AAP and the American Pediatric Surgical Association (ASPA) recommend that codes 39503 (Repair, neonatal diaphragmatic hernia, with or without chest tube insertion and with or without creation of ventral hernia), and 49605 (Repair of large omphalacele or gastroschisis; with or without prosthesis) receive interim values of 95 and 76, respectively, until the issue of critical care in the postoperative period is resolved. We had proposed to maintain the current work RVUs of 37.54 and 24.94, respectively, as interim 2002 work values and asked the RUC to resubmit recommendations for work RVUs for CPT codes 39503 and 49605 with either a 000 or 010 global period. As an option, pending resolution of the critical care issue, the APSA recommended that the interim work values for CPT codes 39503 and 49605 be 46.35 and 30.14, respectively.

The RUC agreed that the physician work in the postoperative period caring for these seriously ill neonates was significant and required the services of both surgeon and the neonatologist. The RUC requests that CMS treat these codes in the same manner as the other 90-day global codes that include extensive postoperative care.

Response: Upon further review, we agree with the RUC's recommendation and will establish the work values for CPT codes 39503 and 49605 at 95 and 76 units, respectively.

14. Radiology

CPT Code 76090, Mammography; Unilateral and CPT Code 76091 Mammography; Bilateral

Comment: The American College of Radiology (ACR) requested that CMS increase the work RVUs for unilateral mammography, that is, CPT code 76090, from the proposed .70, to .93 and for bilateral mammography, that is, code 76091, from the proposed .87, to 1.10. The ACR believes these values, which are the median survey values, more accurately reflect the work involved with these two procedures. The ACR points out that there is a significant amount of physician time associated with reviewing the results with these anxious patients and complying with the mandatory Mammography Quality Standards Act requirements.

The ACR commented that the chart at 66 FR 31045 of the June 8, 2001 proposed rule indicates that CPT code 76005 had a RUC recommendation of 10.60. However, that column should read .60.

The ACR also took exception to the requested work RVUs reported in the chart at 66 FR 31045 for codes 76065, 76090 and 76091. The chart displayed requested work RVUs of .60 for 76065, .64 for 76090, and .76 for code 76091. The ACR asked that the chart be corrected to reflect the actual requested work RVUs for each code. These corrected values, based on the median survey values, are .70 for CPT code 76065, .93 for 76090, and 1.10 for CPT code 76091.

Response: Based on the comments received, we referred these codes to a refinement panel for review. We regret the error in the chart concerning the requested work RVUs.

Final decision: As a result of our analysis of the multispecialty panel ratings, we are retaining the work RVU of 0.70 for CPT code 76090 and 0.87 for CPT code 76091, the work RVUs we proposed in the June 8 proposed rule.

CPT Code 76092, Screening Mammography, Bilateral Two View Film Study of Each Breast

In addition, we had requested the RUC to review the work RVUs for code 76092 (Screening mammography, bilateral two view film study of each breast). In its comments on the June 8, 2001 proposed rule, the RUC indicated it had placed this issue on the September 2001 meeting agenda and would provide recommendations to us following that meeting. The September meeting had to be cancelled and the issues to be addressed at that meeting will be discussed at the first meeting early next year. Therefore, we are finalizing the current RVUs for this code.

15. Plastic Surgery

We received no comments on these codes. Therefore, we will finalize the proposed work RVUs for the plastic surgery codes.

B. Other Comments

1. Anesthesia Services

In our June 8, 2001 proposed rule (66 FR 31065), we stated that the American Society of Anesthesiologists (ASA) contended that the work of anesthesia services is undervalued and, based on discussions with the RUC, the ASA requested a 24 percent increase in anesthesia work. However, the RUC furnished no recommendation on anesthesia services; instead, it assigned to a newly created workgroup the responsibility for reviewing anesthesia services in the context of the physician fee schedule. We indicated that the ASA will be working with this workgroup on clinical issues, such as induction and postinduction intensity, and did not propose any changes to the anesthesia CF at this time to reflect the 5-year review of physician work for anesthesia services. However, we did indicate that we might make changes in response to recommendations the RUC may provide.

Comment: Many individual anesthesiologists commented that their services are undervalued. The American Society of Anesthesiologists also commented that its services are undervalued and asked that we accept the results of the first RUC workgroup (weighted average increase of 26 percent on representative codes) and extrapolate this to all anesthesia codes. We also received letters from individuals indicating that anesthesia services are undervalued.

In its comments, the RUC stated that it had not come to an agreement on extrapolating the results of the work of the 19 studied anesthesia codes to all anesthesia codes. The RUC agreed that the five quintiles for postinduction anesthesia and the examples associated with each quintile were appropriate. The RUC also examined the intensity values assigned to each quintile and made adjustments to the intensity values based on comparisons to evaluation and management codes and critical care services. It agreed to the following values—.224 for Level 1; .031 for Level 2; .051 for Level 3; .070 for Level 4; and .085 for Level 5.

The RUC approved the following intensity factors for the induction period—.067 for induction of general anesthesia; .067 for induction of spinal and epidural anesthesia; and .051 for induction of regional anesthesia.

Although the RUC recommended acceptance of the building block work values for the 19 codes studied, it did not resolve issues related to how often anesthesiologists provide the retrobulbar bloc for code 00142 and agreed that the distribution of postinduction time among the quintiles should be reviewed in more detail after it receives more input from surgical specialties.

Response and final decision: The RUC has informed us that it will continue to look at anesthesia work beginning at its first meeting in CY 2002. We will review the RUC recommendation and address anesthesia work in next year's proposed physician fee schedule rule.

2. Spine Injection Procedures

We received no comments on these codes. Therefore we will finalize the proposed work RVUs for the spine injection procedure codes.

3. Biofeedback

We received no comments on these codes. Therefore, we will finalize the proposed work RVUs for the biofeedback codes.

4. Surgical Management of Burn Wounds

We received no comments on these codes. Therefore, we will finalize the proposed work RVUs for the codes involving surgical management of burn wounds.

5. Transplantation

We received no comments on these codes. Therefore, we will finalize the proposed work RVUs for the transplantation codes.

6. Arthroscopy Services

We received no comments on these codes. Therefore, we will finalize the proposed work RVUs for the arthroscopy service codes.

7. Wheelchair Management

We received no comments on these codes. Therefore, we will finalize the proposed work RVUs for the wheelchair management codes.

8. Psychological Testing

We received no comments on these codes. Therefore, we will finalize the proposed work RVUs for the psychological testing codes.

9. Podiatric Services

In our June 8, 2001 proposed notice (66 FR 31067), we stated the American Podiatric Medical Association (APMA) submitted 5 codes (trim skin lesions/trim nails) for review (11719, 11055, 11056, 11057, and G0127) and that the HCPAC requested we review our current utilization data to ensure that the original utilization assumptions were correct. The HCPAC recommended that the current review of data should be based on actual 1999 utilization data since these codes were not fully implemented until April 1, 1998. We stated that we would review the utilization data associated with the aforementioned codes to ensure the original assumptions are still correct and that we would publish our decision in the final rule.

Comment: The APMA was pleased that we would review the utilization data; however, it indicated that the work RVUs should not be revised based on current utilization. It recommended that we accept the original RUC recommendations since these values were based on the results of surveys of practicing podiatrists that were considered and approved by the RUC.

Response and final decision: Based on our review of the data and the APMA recommendation that we accept the original RUC recommended values, we are increasing the work values for these services as follows:

- *CPT code 11719, Trimming of nondystrophic nails, any number,* a work RVU of 0.17.
- *CPT code 11055, Paring or cutting of benign hyperkeratotic lesion (for example, corn or callus) single lesion,* a work RVU of 0.43.
- *CPT code 11056, two to four lesions,* a work RVU of 0.61.
- *CPT code 11057, more than four lesions,* a work RVU of 0.79 .

For *HCPCS code G0127, Trim nails,* while we did not receive a RUC recommendation on this code (since we created the code), we are increasing the work RVU to 0.17 to be consistent with the increase made to CPT code 11719.

D. Other Issues

1. Critical Care Services in a Global Period

The June 8, 2001 proposed rule included a discussion on critical care services (66 FR 31067–68). We stated that current Medicare policy allows separate payment to the surgeon for postoperative critical care services during the surgical global period only when the patient has suffered trauma or burns. If the surgeon provides critical care services during the global period, for reasons unrelated to the surgery, that is separately payable as well. However, the approach the RUC used for the 5-year review had previously been used to validate postoperative work. That approach compared the work of a postoperative intensive care unit visit by the surgeon to code 99291, *Critical care, evaluation and management of the critically ill or critically injured patient, first 30–74 minutes,* which is valued at 4.00 work RVUs, rather than comparing a level three subsequent hospital visit (code 99233), which is valued at 1.51 work RVUs).

We indicated that valuing the surgeon's postoperative intensive care unit visits as critical care services had raised a number of issues that could require a change in payment policy to ensure that postoperative critical care is appropriately paid. In order to ensure that we make appropriate payments to physicians furnishing postoperative critical care services to Medicare beneficiaries, we specifically solicited information and comments on several questions and issues. We also proposed that the work RVUs for those surgical codes where any postoperative intensive care unit visits were valued as critical care remain interim, until we address the issues discussed above.

Many individual physicians, specialty societies, and health benefit programs provided comments and addressed the points we had outlined in the proposed notice. We appreciate their responses and will carefully review this information as we determine whether to make a future proposal.

2. Budget Neutrality

As explained in the proposed rule published June 8, 2001 (66 FR 31068–69), section 1848(c)(2)(B)(ii)(II) of the Act requires that increases or decreases in RVUs may not cause the amount of expenditures for the year to differ by more than $20 million from what expenditures would have been in the absence of these changes. If this threshold is exceeded, we make across-the-board adjustments to preserve budget neutrality. Based on the proposed changes in work RVUs, we indicated that budget-neutrality adjustments would be required. We proposed to reduce the conversion factor to meet the budget neutrality requirement, rather than applying a reduction to all work RVUs. We also indicated that revisions in payment policies, including the establishment of interim and final RVUs for coding changes contained in a separate proposed rule, might result in additional budget-neutrality adjustments.

Comment: The American Academy of Family Physicians, American College of Radiology, American College of Physicians, American Society for Internal Medicine, and the American Medical Association Specialty Society RVUs Update Committee indicated that they supported our proposal to maintain budget neutrality by adjusting the conversion factor.

Response and final decision: We will proceed with our proposal to maintain budget neutrality by adjusting the conversion factor.

V. Refinement of Relative Value Units for Calendar Year 2002 and Responses to Public Comments on Interim Relative Value Units for 2001

A. Summary of Issues Discussed Related to the Adjustment of Relative Value Units

Section V.B of this final rule describes the methodology used to review the comments received on the RVUs for physician work and the process used to establish RVUs for new and revised CPT codes. Changes to codes on the physician fee schedule (Addendum B) are effective for services furnished beginning January 1, 2002.

B. Process for Establishing Work Relative Value Units for the 2002 Fee Schedule and Clarification of CPT Definitions

Our November 1, 2000 final rule on the 2001 physician fee schedule (65 FR 65376) announced the final work RVUs for Medicare payment for existing procedure codes under the physician fee schedule and interim RVUs for new and revised codes. The RVUs contained in the rule applied to physician services furnished beginning January 1, 2001. We announced that we considered the RVUs for the interim codes to be subject to public comment under the annual refinement process. In this section, we summarize the refinements to the interim work RVUs that have occurred since publication of the November 2000 final rule and our establishment of the interim work RVUs for new and revised codes for the 2002 fee schedule.

1. Work Relative Value Unit Refinements of Interim and Related Relative Value Units

a. Methodology (Includes Table 5, Refinements of the 2001 Interim Work Relative Value Units)

Although the RVUs in the November 2000 final rule were used to calculate 2001 payment amounts, we considered the RVUs for the new or revised codes to be interim. We accepted comments for a period of 60 days. We received substantive comments from many individual physicians and several specialty societies on 52 CPT codes with interim work RVUs. Only comments on codes listed in Addendum C of the November 2000 final rule were considered.

We used a process similar to the process used in 1997 to address substantive comments. (See the October 31, 1997 final rule on the physician fee schedule (62 FR 59084) for the discussion of refinement of CPT codes with interim work RVUs.) We convened a multispecialty refinement panel of physicians to assist us in the review of the comments. The comments that we did not submit to panel review are discussed at the end of this section, as well as those comments that were reviewed by the panel. We invited representatives from each of the specialty societies from which substantive comments were received to attend a panel for discussion of the codes on which they had commented. The panel was moderated by our medical staff and consisted of the following voting members:

- One to two clinicians representing the commenting specialty or specialties, based upon our determination of those specialties which are most identified with the service(s) in question. Although commenting specialties were welcome to observe the entire refinement process, they were *only* involved in the discussion of those services for which they were invited to participate.
- Two primary care clinicians nominated by the American Academy of Family Physicians and the American Society of Internal Medicine.
- Four carrier medical directors.
- Four clinicians with practices in related specialties, who were expected to have knowledge of the services under review.

The panel discussed the work involved in each procedure under review in comparison to the work associated with other services on the fee schedule. We assembled a set of reference services and asked the panel members to compare the clinical aspects of the work of services they believed were incorrectly valued to one or more of the reference services. In compiling the set, we attempted to include—(1) services that are commonly performed whose work RVUs are not controversial; (2) services that span the entire spectrum from the easiest to the most difficult; and (3) at least three services performed by each of the major specialties so that each specialty would be represented. The set contained approximately 300 services. Group members were encouraged to make comparisons to reference services. The intent of the panel process was to capture each participant's independent judgement based on the discussion and his or her clinical experience. Following each discussion, each participant rated the work for the procedure. Ratings were individual and confidential, and there was no attempt to achieve consensus among the panel members.

We then analyzed the ratings based on a presumption that the interim RVUs were correct. To overcome this presumption, the inaccuracy of the interim RVUs had to be apparent to a broad range of physicians participating in the panel.

Ratings of work were analyzed for consistency among the groups represented on the panel. In general, we used statistical tests to determine whether there was enough agreement among the groups of the panel, and whether the agreed-upon RVUs were significantly different from the interim RVUs published in Addendum C of the November 2000 final rule. We did not modify the RVUs unless there was a clear indication for a change. If there was agreement across groups for change, but the groups did not agree on what the new RVUs should be, we eliminated the outlier group and looked for agreement among the remaining groups as the basis for new RVUs. We used the same methodology in analyzing the ratings that we first used in the refinement process for the 1993 fee schedule. The statistical tests were described in detail in the November 25, 1992 final rule (57 FR 55938).

Our decision to convene a multispecialty refinement panel of physicians and to apply the statistical tests described above was based on our need to balance the interests of those who commented on the work RVUs against the redistributive effects that would occur in other specialties. Of the 3 codes reviewed by the multispecialty panel, all were the subject of requests for increased values. Of the 3 interim work RVUs that were reviewed, 2 were increased and 1 was unchanged.

We also received comments on RVUs that were interim for 2001, but which we did not submit to the panel for review for a variety of reasons. These comments and our decisions on those comments are discussed in further detail below.

Table 5 lists the interim and related codes reviewed during the refinement process described in this section. This table includes the following information:

- CPT Code. This is the CPT code for a service.
- Descriptor. This is an abbreviated version of the narrative description of the code.
- 2001 Work RVU. The work RVUs that appeared in the November 2000 rule are shown for each reviewed code.
- Requested Work RVU. This column identifies the work RVUs requested by commenters.
- 2002 Work RVU. This column contains the final RVUs for physician work.

TABLE 5.—REFINEMENT OF 2001 INTERIM WORK RELATIVE VALUE UNITS

[1] CPT code	Descriptor	2001 work RVU	Requested work RVU	2002 work RVU
19102	Bx breast percut w/image	2.00	2.73	2.00
19103	Bx breast percut w/device	2.37	5.55	3.70
22522	Percutaneous vertebroplasty, addl	3.00	4.31	4.31

[1] All CPT codes and descriptions copyright 2002 American Medical Association.

2. Interim 2001 Codes

Stenting Procedures—(CPT Codes 43256, 44370, 44379, 44383, 44397, 45345, 45387, and 45342)

We accepted the RUC recommended increase over the base code of 1.96 work RVUs. Commenters suggested that this increment should be increased to 2.59 work RVUs to reflect the work increase the RUC had recommended for CPT code 43219 (one of the codes used to arrive at this increase) as part of the 5-year review. Additionally, they also commented that the increment for the pre-dilation service should be from the dilation of gastric outlet in connection with an upper GI as opposed to the esophagoscopy code. Finally, commenters did not believe that these services should be subject to "within family work neutrality adjustments" (see *Final Decision* below) and instead believed that any increase in total RVUs should be addressed through the SGR or conversion factor. They felt that these stent placements are new technology and should not be viewed as code splitting/unbundling of services. They stated that stent placements have only been performed over the last 4–5 years and any work associated with them is

not reflected in current work values for endoscopic codes.

Final decision: "Within family work neutrality adjustments" are used for new or revised services that are not considered new technologies. To achieve work neutrality within families of services, we compare the new or revised work RVUs (weighted by projected frequency) to the old work RVUs (weighted by actual frequency) to ensure that additional RVUs have not been added based on fragmentation of existing codes. We agree with the commenter that these services are new technologies and thus should not be subject to within family work neutrality adjustments. With regard to the final work value for CPT code 43219 and the use of dilation and stent placement codes in assigning a work value to 43219, please see our discussion elsewhere in this rule.

Cryosurgical Ablation of the Prostate—CPT Code 55873

We agreed with the RUC recommended work RVU for CPT code 55873 as we felt that the comparison to CPT code 55801, Prostatectomy, perineal, subtotal, was appropriate to aid in setting the work RVU of CPT code 55873. One commenter did not agree that this comparison was appropriate. The commenter indicated that the RUC was being requested to review this service again at its February meeting.

Final decision: The RUC provided comments on interim valued CPT code 55873 that re-visited the appropriate comparison service. Based upon comments received, the final work RVUs for CPT code 55873 will be increased to 19.47.

Percutaneous Vertebroplasty—CPT Code 22522

We disagreed with the RUC-recommended work RVUs of 4.31 for this service. CPT code 22522 is an add-on code that should have no associated pre- or postservice work. We removed the pre- and postservice work from the weighted average of CPT codes 22520 and 22521, which are the base services with which add-on CPT code 22522 should be billed in conjunction, and recalculated the value. Thus, we assigned interim work RVUs of 3.00 for CPT code 22522. Several commenters disagreed and do not believe that our methodology has appropriately valued this add-on service. Commenters felt we should sum the work RVUs of CPT codes 22520 and 22521 and then take 50 percent of this value. They believe that this is how we historically have calculated work RVUs for add-on services. Based on these comments, we referred this code to a multispecialty refinement panel for review.

Final decision: As a result of the statistical analysis of the refinement panel ratings, the final work RVUs are 4.31 for CPT code 22522.

Fetal Biophysical Stress Testing—CPT Codes 76818 and 76819

Although we agreed with the relativity presented by the RUC, we reduced the RVUs for these aforementioned services due to within family work neutrality adjustments. As previously discussed, within family work neutrality adjustments are used to ensure that additional relative values are not added based on fragmentation of existing codes. One specialty organization felt that we inappropriately determined that the work associated with the original CPT code 76818 (CPT code 76819 was added for January 1, 2001), included the average work of both with and without non-stress test. It believes that the survey data presented to the RUC suggest that this assumption is invalid and that the inappropriate within family neutralization of these services creates a rank-order anomaly in this family of codes.

The survey data indicated that CPT code 76818 required more time and greater mental effort than CPT code 76805 (Complete OB ultrasound), which has 0.99 work RVUs, since the ultrasound portion of CPT code 76818, while less extensive, is typically performed in a high-risk situation. In addition, CPT code 76818 also includes CPT code 59025 (Fetal non-stress test) with work RVUs of 0.53. The specialty organization also reported that CPT code 76819 requires more work than CPT code 76815 (Limited obstetric ultrasound) with work RVUs of 0.65. The assignment of 0.86 RVUs to CPT code 76818 and 0.63 RVUs to 76819 creates a rank-order anomaly with this family of obstetric ultrasound procedures.

Final Decision: We agree with the commenter that the within family neutrality adjustment we made for 2001 was not appropriate and created a rank-order anomaly within this family of services. We will remove the neutrality adjustments for January 1, 2002.

Cognitive Skills and Sensory Integrative Techniques—CPT Codes 97532 and 97533

We did not agree with the HCPAC recommendation for CPT codes 97532 and 97533 (work RVUs of 0.51 and 0.48, respectively). These two new services were created to replace deleted CPT code 97770. We believed that the work associated with these new services is analogous to deleted CPT code 97770 and therefore, we assigned work RVUs of 0.44 (the value assigned to the deleted code) to these new replacement codes. Commenters felt that assignment of this work value was arbitrary on our part, particularly since the HCPAC information had been based on information from a survey completed by the practitioners who provide these services.

Final Decision: We disagree with the commenters and are finalizing the interim work values. This is an example of replacing one CPT code with two new CPT codes that describe identical work. Because there is no new technology involved, we will finalize the interim work RVUs.

Wound Care CPT Codes

Absent a HCPAC recommendation for either of the aforementioned CPT codes, we valued the work of CPT code 97601 as 0.50 RVUs, the same as deleted service G0169 that described the work in the new code. We considered CPT code 97602 to be bundled into CPT code 97601 and therefore did not establish work RVUs for this service. Commenters believed that we inappropriately bundled CPT code 97602 into 97601 since they represent distinct services. The commenters requested that we reconsider bundling CPT code 97602.

Final Decision: We have re-examined our determination but have not changed our decision. CPT code 97602 describes services that typically involve placement of a wound covering, for example, wet-to-dry gauze or enzyme-treated dressing. It also includes nonspecific removal of devitalized tissue that is an inherent part of changing a dressing. This service is already included in the work and practice expenses of CPT code 97601. In the typical service described by 97601, the patient has a dressing placed over the wound. We would add that the services described by 97602 are also included in the work and practice expenses of the whirlpool code, CPT 97022. For this reason, we consider this a bundled service that is not paid separately.

Percutaneous Breast Biopsy—CPT Codes 19102 and 19103

We agreed with the RUC recommended work RVUs of CPT codes 19102 (RVU = 2.00) and 19103 (RVU = 2.37). Commenters believed that the work RVUs assigned to these codes were inappropriately low and did not accurately reflect the time and intensity of the work involved. Commenters supplied information to support their request for increasing the work RVUs for these services. Based on these comments, we referred this code to a multispecialty refinement panel for review.

Final decision: As a result of the statistical analysis of the multispecialty refinement panel ratings, the final work RVUs for CPT code 19102 are 2.00, and the final work RVUs for CPT code 19103 are 3.70.

Magnetic Resonance Imaging Procedures—CPT codes 70540, 70542, 70543, 71550, 71551, 71552, 72195, 72196, 72197, 73218, 73219, 73220, 73221, 73222, 73223, 73718, 73719, 73720, 73721, 73722, 73723, 74181, 74182, and 74183

We received a RUC recommendation for only 3 of these codes (*70540, 70542, 70543*) for January 1, 2001. However, this recommendation did not reflect the required within family work neutrality adjustment. The work RVUs of 0.98, 1.17, and 1.56 were assigned to these services to ensure that there would not be additional work RVUs introduced into the system. We did not receive work recommendations or utilization data for any of the other new MRI codes and assigned work RVUs for these other codes based on the methodology outlined in the November 2000 final rule.

Commenters expressed concern about the within family work neutrality adjustment applied to the RUC-recommended work RVUs, and the methodology that was used to establish work values for the other MRI procedures. Commenters requested that we re-evaluate the within family work neutrality adjustment based upon updated information supplied in their respective comments.

Final decision: We are accepting the work values for these services which were submitted by the RUC in its comment on the interim work values we assigned in last year's final rule. We note that these work values are virtually identical to the work values that we assigned as interim last year. Based upon comments received, we have re-evaluated the utilization crosswalks upon which our within family work neutrality adjustments were based.

Since 2001 is the first year for which actual data is available for these services, we used available data (first two quarters of 2001) to capture the actual utilization of these new services. This utilization was then subjected to a standard analysis of reporting trends to estimate the completion percentage of 2001 utilization data. The available utilization was then "aged" to represent one full year of data for 2001. After determining the utilization for 2001, we applied this revised within family work neutrality adjustment across the entire family of MRI procedures rather than applying this adjustment to subsets. We are finalizing these within family work neutral values and note that the re-calculation of this neutrality adjustment results in increases to the work RVUs of the MRI services referenced above.

Computed Tomographic Angiography (CTA)—CPT Codes 70496, 70498, 71275, 72191, 73206, 73706, 74175 and 75635

We agreed with the RUC recommendation of 1.75 for CPT codes 70496 and 70498 for January 1, 2001. However, the RUC did not submit work recommendations for the other CTA codes. We assigned work RVUs for these other codes based on the methodology outlined in the November 2000 rule. Commenters disagreed with the interim values we had proposed for CTA codes and provided additional information for valuing these services. The commenter felt that our decisions created rank-order anomalies between anatomic sites.

Final decision: We are accepting the work values for these services which were submitted by the RUC in its comment on the interim work values we assigned in last year's final rule. We will implement them as final values for 2002.

Practice Expense Refinements of 2001 Interim and Revised RVUs

Percutaneous Breast Biopsy—CPT Codes 19102 and 19103

Comment: A specialty organization representing breast surgeons submitted its suggested direct cost inputs for these two services and had several comments on their practice expenses. The commenter indicated that the price in the database for the biopsy driver was too low, that the clinical staff type should be a registered nurse rather than a technician and that there should be pre- and postservice clinical staff time when the procedure is performed in the facility setting. In addition, the commenter questioned whether the 50 percent utilization rate used to price equipment was realistic for new technology and recommended that device-specific utilization rates be determined. The society also questioned the lack of direct cost inputs for equipment and supplies for CPT 76095, the associated procedure for image guidance. A manufacturer commented that the equipment inputs for CPT 19102 were erroneously dropped from the CPEP database.

Response: We had accepted the RUC recommendations on these two services, making only the following technical changes to the supplies and equipment: we did not include the cost of the crash cart, because we consider this an indirect expense, nor the cost of the biopsy gun handle, because this was less than the $500 required for an item to be on the equipment list. We also did not include separately billable fluids, the formalin that would be supplied by the lab, or the biohazard bag and skin marking pen that could be used for more than one procedure.

If the specialty that was involved in the presentation of these codes to the RUC now believes that the direct inputs do not adequately represent the costs of performing these services, one option would be to have these codes refined by the PEAC. In the meantime, we are prepared to make certain changes to the CPEP data in response to the recommendations made by the commenters. We will add the power table and surgical lamp to both codes and will increase the price associated with the biopsy device driver, subject to verification when we undertake our repricing of the CPEP equipment inputs. Because the specialties presenting the codes to the RUC, and the RUC itself, recommended using radiologic staff for these services, we will not change the staff type to registered nurse at this time. However, we will substitute the higher-paid mammography technologist, which we have just added to our staff type list, for the current x-ray technician staff type.

We have in the past solicited information from the specialties regarding equipment-specific utilization rates, but we have never received sufficient information to propose any changes in our policy. Additionally, for most services, changing the utilization rate would have very little effect.

The commenter is correct that the associated procedure for image guidance, CPT 76095, currently does not have CPEP inputs assigned to the non-facility setting. However, at this time, it is priced as a part of the "zero work" pool, and the CPEP inputs are not used to calculate the practice expense RVUs for this service. We would hope that this code could be refined in the near future and given the appropriate inputs for the office setting.

CPT Codes 34812, 34820, 34830, 34831 and 34832 for Repair of Aortic Aneurysm

Comment: A specialty organization representing vascular surgery stated that CPT codes 34812 and 34820 should have clinical staff preservice time added and that CPT codes 34830, 34831 and

34832 were assigned inappropriately low postservice clinical staff times.

Response: We accepted the RUC recommendations for all of these services. There was no preservice time included in the RUC recommendation for CPT codes 34812 and 34820. In addition, we have assigned 99 minutes of clinical staff postservice time to CPT codes 34830, 34831 and 34832, as recommended by the RUC. These codes can be refined by the PEAC which now has a standard package for 90-day global pre- and postservice times for clinical staff and is also discussing the coordination of care clinical staff times for 0-day global services.

We received the following comments on HCPCS codes established in the November 1, 2000 final rule.

• G0169 Removal of Devitalized tissue, without use of anesthesia.

Comment: The American Podiatric Medical Association recognized that, effective January 1, 2001, this code was eliminated and we have adopted CPT code 97601, which is sufficiently similar to the services described by G0169. However, it requested we address a policy issue related to the discussion of this service. In the November 2, 1999 **Federal Register** (64 FR 59426), we stated that G0169 was created because CPT codes 11040 through 11044 for debridement were created to describe "complex surgical services requiring the use of general anesthesia." APMA indicates that there had never been a policy requiring the use of *any* anesthesia, much less general anesthesia, when performing surgical debridement that is reported with CPT codes 11040 through 11044. However, as a result of the statement in the November 2 **Federal Register**, some carriers developed policies denying payment for these codes if anesthesia was not used. The APMA urged us to clarify that anesthesia, whether general or local, is not required when billing CPT codes 11040 through 11044.

Response: We acknowledge that the use of "general anesthesia" in the preamble to the November 2, 1999 rule was an error, and we believe all our contractors are aware of our misstatement. As the commenter stated, the code G0169 has been deleted and replaced by CPT code 97601, *Removal of devitalized tissue from wound(s); selective debridement, without anesthesia (e.g., high pressure waterjet, shape selective debridement with scissors, scalpel, and tweezers) including topical application(s), wound assessment, and instruction(s) for ongoing care, one session.* We expect that our contractors will develop policies to distinguish this service from the debridement codes, 11040 through 11044. We anticipate that they may consider a variety of factors, including the extent of the debridement and the amount of medical skill required to perform the service, and not simply whether a local anesthetic was used in the procedure.

Comment: The American College of Surgeons urged us to issue instructions to carriers specifying that the use of CPT code 97061 is limited to physical therapists and other non-physician practitioners and that the debridement of wounds by surgeons is properly reported with a code from the CPT debridement codes 11040–11044.

Response: As we stated in the response to the previous comment, we believe that our contractors are likely to make this distinction in their local policies. If we determine that relying on local carrier policies is unsatisfactory, then we will consider whether national guidance is needed.

• *G0181 and G0182, Care plan Oversight.*

Comment: A few organizations expressed disappointment that we finalized our proposal to establish two new G codes for care plan oversight services, rather than continue to recognize the CPT codes related to these services.

Response: The CPT codes for care plan oversight were modified so that they included services that extend beyond the limits of our current payment policy. As a result, we will continue to use the G-codes that are consistent with our payment policies.

• *G0180 and G0179 Certification and Recertification of Medicare Covered Home Health Services.*

Comment: Several specialty organizations expressed appreciation for our willingness to recognize and compensate physicians for these services and supported our decision to pursue this coding and reimbursement issue through the CPT and RUC processes. The American College of Surgeons expressed concern that claims submitted by surgeons for physician certification or recertification would be denied inappropriately due to longstanding rules that preclude payment for services that are provided during the global period.

Response: As was stated in the November 1, 2000 final rule (66 FR 65408), surgeons performing these services could be paid for G0179 and G0180 during the global period. We have heard no specific complaints that this policy has not been implemented appropriately.

G Codes Related to Swallowing Function

Comment: The American College of Surgeons objected to the creation of these G codes and requested that we discontinue their use and work with the otolaryngologists to submit a coding request on these services to the CPT Editorial Panel. The American Academy of Otolaryngology—Head and Neck Surgery, Inc. (AAO–HNS) also expressed concern about creation of these codes. It felt that our description of the codes was incomplete and inaccurate.

In the November 1, 2000 final rule we proposed 4 new G codes and stated that these would replace the more general CPT code 92525, *Evaluation of swallowing and oral function for feeding.* AAO–HNS believes that this incorrectly implies that the single code 92525 includes 4 unique services and, therefore, we have significantly understated the work and practice expenses required for these procedures.

For *G0193, Endoscopy study of swallowing function, and GO194 Sensory testing during endoscoping study of swallowing,* we stated that coverage of these services remains at the discretion of the carrier and that they would be carrier priced. AAO–HNS expressed concern that carriers might misinterpret this statement to mean the codes should not be covered and, if covered, the payment might be inappropriately low. AAO–HNS requested we clarify that these services should be covered and recommended that pricing for GO193 should equal to the sum of the RVUs for CPT code 31575, *Laryngoscopy, flexible fiberoptic; diagnostic,* and CPT code 92525.

AAO–HNS also did not agree with our decision to treat G0194 as an "add-on" code as this group felt this would create confusion. Rather, AAO–HNS suggested that GO194 be treated as a stand-alone code with RVUs equal to CPT codes 31575, 92525 and 92520 (*Laryngeal function studies*).

In addition, AAO–HNS was concerned about our statement that CPT code 31575 and CPT code 31579 (*Laryngoscopy, flexible or rigid fiberoptic, with stroboscopy*) should not be used for evaluations of swallowing and urged that we clarify that these codes could still be used to report flexible fiberoptic laryngosopies for patients with swallowing problems.

Response: These G codes related to swallowing function were created because of the ambiguity of the CPT code, 92525. The CPT editorial panel will be reviewing codes designed to substitute for the G-codes created. The specialty advisors, including AAO–HNS, will have the opportunity to comment on these proposals and to create codes that they believe will describe the services more accurately. If the CPT editorial panel adopts these revised codes, they could be in the 2003 CPT book.

Comment: The American Occupational Therapy Association stated that in the specific discussion of code GO195, and by implication the related codes, we stated these services are performed typically by a speech and language pathologist. While AOTA does not disagree with this characterization, it requested that we clarify that other professionals, specifically occupational therapists, also may be trained in these procedures. It noted that in some areas of the country occupational therapists typically perform swallowing evaluations, particularly in conjunction with feeding and eating deficits.

Response: These G codes did not specify which professionals could perform these services. The description of the new G codes only stated that these services would be most commonly performed by speech and language pathologists. Our contractors, who have the capacity to be responsive to local differences in practice patterns, will be aware of whether occupational therapists have the qualifications to perform these evaluations and will make the decisions about whether the service performed matches the services described by the code.

Comment: The American College of Radiology requested clarification on the specialties we anticipate using G0196; they asked if this G code would be used by the speech pathologist while the radiologist would use CPT code 74230. ACR expressed concern that provision of such a G code would promote performance of fluoroscopy by non-trained individuals.

Response: We do not believe that the development of these G codes should lead to non-trained individuals performing fluoroscopy. Prior to the development of the G codes, we were asked by speech and language pathologists if they could bill 74230 to describe the work they did in conjunction with a fluoroscopic or video evaluation of swallowing. We did not think that the speech and language pathologists should bill the code 74230 and created this G code to describe the portion of the examination that they typically performed.

We were also asked whether the services of a speech and language pathologist should have remained bundled into the technical portion of the 74230 examination, because this may have been the method of billing these services prior to the development of the G code. Because this new G code separates the services of the speech and language pathologists in this examination, we may need to clarify which services are included in the technical portion of 74230. None of these concerns would lead a non-skilled practitioner to perform either of these services.

G Codes Related to Speech Generating Devices and Voice Prostheses G0197–G0201

Comment: AAO–HNS expressed concern about the establishment of G codes related to speech generating devices and voice prostheses. It continues to believe that the creation of codes used to describe services that are already described in CPT makes compliance with Medicare policy difficult and confusing.

Response: The current CPT codes, 92597 and 92598, identify two distinct services—evaluation or modification of voice prosthetics and augmentative or alternative communicative devices. Since different types of patients require either voice prosthetics (for example, an artificial larynx) or augmentative or alternative communicative devices, we believe that separating these two services through the use of G-codes actually should make compliance with Medicare policies easier, since the services being delivered are more accurately described.

Revisions to Malpractice RVUs for New and Revised CPT Codes for 2001

Malpractice RVUs are calculated using the methodology described in detail at Addendum G of our November 1, 2000 final rule (65 FR 65589). Because of the timing of the release of new and revised CPT codes each year, the malpractice RVUs for the first year of these codes are extrapolated from existing similar codes, based on the advice of our medical consultants, and are considered interim subject to public comment and revision. The following year these codes are given values based on our malpractice RVU methodology and a review of comments received.

The malpractice RVUs for 2001 new and revised codes published in Addendum B of the November 1, 2000 final rule were thus extrapolated from (RVUs for existing similar codes). The malpractice RVUs for these codes in this year's Addendum B were calculated by our consultant, KPMG, using the same methodology used for all other codes. Likewise, the malpractice RVUs for new and revised 2002 codes are being extrapolated from existing similar codes and will be calculated using the malpractice RVU methodology next year.

Comment: One commenter stated that malpractice premiums are rapidly increasing all over the country and that we should ensure that the physician fee schedule reflect these increases.

Response: We agree that changes in malpractice premiums should, to the extent possible, be reflected in the physician fee schedule. The most recent malpractice data available were used in constructing the 2001 malpractice RVUs and the revised 2001 GPCIs. In addition, the relative weights of the component cost shares (work, practice expense, malpractice) in the physician fee schedule and in the MEI are periodically adjusted when the most recent AMA SMS data indicate significant shifts among physician practice cost components. However, because of the time needed to collect the data and propose changes through the rulemaking process, there is a time lag in making these changes.

Establishment of Interim Work Relative Value Units for New and Revised Physician's Current Procedural Terminology (CPT) Codes and New Healthcare Common Procedure Coding System Codes (HCPCS) for 2002 (Includes Table 6, AMA RUC and HCPAC Work RVU Recommendations and CMS Decisions for New and Revised 2002 CPT Codes)

One aspect of establishing RVUs for 2002 was related to the assignment of interim work RVUs for all new and revised CPT codes. As described in our November 25, 1992 notice in the 1993 fee schedule (57 FR 55983), and in section III.B. of our November 22, 1996 final rule (61 FR 59505–59506), we established a process, based on recommendations received from the AMA's RUC, for establishing interim work RVUs for new and revised codes.

This year we received RUC work RVU recommendations for approximately 314 new and revised CPT codes. Our staff and medical officers reviewed the RUC recommendations by comparing them to our reference set or to other comparable services for which work RVUs had been previously established, or to both of these criteria. We also considered the relationships among the new and revised codes for which we received RUC recommendations. We agreed with the majority of these relationships reflected in the RUC values. In some instances, when we agreed with the relationships, we revised the work RVUs to achieve work neutrality within families of codes, that is, the work RVUs have been adjusted so that the sum of the new or revised work RVUs

(weighted by projected frequency of use) for a family will be the same as the sum of the current work RVUs (weighted by projected frequency of use for that family of codes). For approximately 93 percent of the RUC recommendations, proposed work RVUs were accepted, and for approximately 7 percent, we disagreed with the RUC recommendation. In a majority of instances, we agreed with the relativity, proposed by the RUC, but needed to decrease work RVUs to retain budget neutrality.

There were also 10 CPT codes for which we did not receive a RUC recommendation. After a review of these CPT codes by our staff and medical officers, we established interim work RVUs for the majority of these services. For those services for which we could not arrive at interim work RVUs, we have assigned a carrier-priced status until such time as the RUC provides work RVU recommendations.

We received 18 recommendations from the Health Care Professionals Advisory Committee (HCPAC). We accepted 12, or 67 percent, of the HCPAC recommendations.

Table 6, AMA RUC and HCPAC Work RVU Recommendations and CMS Decisions for New and Revised 2002 CPT Codes, lists the new or revised CPT codes, and their associated work RVUs, that will be interim in 2002. This table includes the following information:

- A "#" identifies a new code for 2002.
- CPT code. This is the CPT code for a service.
- Modifier. A "26" in this column indicates that the work RVUs are for the professional component of the code.
- Description. This is an abbreviated version of the narrative description of the code.
- RUC recommendations. This column identifies the work RVUs recommended by the RUC.
- HCPAC recommendations. This column identifies the work RVUs recommended by the HCPAC.
- CMS decision. This column indicates whether we agreed with the RUC recommendation ("agree") or we disagreed with the RUC recommendation ("disagree"). Codes for which we did not accept the RUC recommendation are discussed in greater detail following this table. An "(a)" indicates that no RUC recommendation was provided. A discussion follows the table.
- 2002 Work RVUs. This column establishes the 2002 work RVUs for physician work.

TABLE 6.—AMA RUC AND HCPAC WORK RVU RECOMMENDATIONS AND CMS DECISIONS FOR NEW AND REVISED 2002 CPT CODES

*CPT CODE	Mod	Description	RUC recommendation	HCPAC recommendation	CMS decision	2002 work RVU
10021 #	26	FNA W/O IMAGE	1.27		Agree	1.27
10022 #	26	FNA W/IMAGE	1.27		Agree	1.27
11755		BIOPSY, NAIL UNIT	1.31		Agree	1.31
11981 #		INSERT DRUG IMPLANT DEVICE	1.48		Agree	1.48
11982 #		REMOVE DRUG IMPLANT DEVICE	1.78		Agree	1.78
11983 #		REMOVE/INSERT DRUG IMPLANT	3.30		Agree	3.30
17000		DESTROY BENIGN/PREMAL LESION	0.60		Agree	0.60
17003		DESTROY LESIONS, 2–14	0.15		Agree	0.15
17004		DESTROY LESIONS, 15 OR MORE	2.79		Agree	2.79
17110		DESTRUCT LESION, 1–14	0.65		Agree	0.65
17111		DESTRUCT LESION, 15 OR MORE	0.92		Agree	0.92
17260		DESTRUCTION OF SKIN LESIONS	0.91		Agree	0.91
17261		DESTRUCTION OF SKIN LESIONS	1.71		Agree	1.71
17262		DESTRUCTION OF SKIN LESIONS	1.58		Agree	1.58
17263		DESTRUCTION OF SKIN LESIONS	1.79		Agree	1.79
17264		DESTRUCTION OF SKIN LESIONS	1.94		Agree	1.94
17266		DESTRUCTION OF SKIN LESIONS	2.34		Agree	2.34
17270		DESTRUCTION OF SKIN LESIONS	1.32		Agree	1.32
17271		DESTRUCTION OF SKIN LESIONS	1.49		Agree	1.49
17272		DESTRUCTION OF SKIN LESIONS	1.77		Agree	1.77
17273		DESTRUCTION OF SKIN LESIONS	2.05		Agree	2.05
17274		DESTRUCTION OF SKIN LESIONS	2.59		Agree	2.59
17276		DESTRUCTION OF SKIN LESIONS	3.20		Agree	3.20
17280		DESTRUCTION OF SKIN LESIONS	1.17		Agree	1.17
17281		DESTRUCTION OF SKIN LESIONS	1.72		Agree	1.72
17282		DESTRUCTION OF SKIN LESIONS	2.04		Agree	2.04
17283		DESTRUCTION OF SKIN LESIONS	2.64		Agree	2.64
17284		DESTRUCTION OF SKIN LESIONS	3.21		Agree	3.21
17286		DESTRUCTION OF SKIN LESIONS	4.44		Agree	4.44
20225		BONE BIOPSY, TROCAR/NEEDLE	1.87		Agree	1.87
20526 #		THER INJECTION, CARPAL TUNNEL	0.86		Agree	0.86
20550		INJECT TENDON/LIGAMENT/CYST	0.86		Agree	0.86
20551 #		INJECT TENDON ORIGIN/INSERT	0.86		Agree	0.86
20552 #		INJECT TRIGGER POINT, 1 OR 2	0.86		Agree	0.86
20553 #		INJECT TRIGGER POINTS, 3	0.86		Agree	0.86
23000		REMOVAL OF CALCIUM DEPOSITS	4.36		Agree	4.36
23350		INJECTION FOR SHOULDER X-RAY	1.00		Agree	1.00
24075		REMOVE ARM/ELBOW LESION	3.92		Agree	3.92
24076		REMOVE ARM/ELBOW LESION	6.30		Agree	6.30
24300 #		MANIPULATE ELBOW W/ANESTH	3.75		Agree	3.75
24332 #		TENOLYSIS, TRICEPS	7.45		Agree	7.45
24343 #		REPR ELBOW LAT LIGMNT W/TISS	8.65		Agree	8.65
24344 #		RECONSTRUCT ELBOW LAT LIGMNT	14.00		Agree	14.00

TABLE 6.—AMA RUC AND HCPAC WORK RVU RECOMMENDATIONS AND CMS DECISIONS FOR NEW AND REVISED 2002 CPT CODES—Continued

*CPT CODE	Mod	Description	RUC recommendation	HCPAC recommendation	CMS decision	2002 work RVU
24345 #		REPR ELBW MED LIGMNT W/TISS	8.65		Agree	8.65
24346 #		RECONSTRUCT ELBOW MED LIGMNT	14.00		Agree	14.00
25001 #		INCISE FLEXOR CARPI RADIALIS	3.38		Agree	3.38
25020		DECOMPRESS FOREARM 1 SPACE	5.92		Agree	5.92
25023		DECOMPRESS FOREARM 1 SPACE	12.96		Agree	12.96
25024 #		DECOMPRESS FOREARM 2 SPACES	9.50		Agree	9.50
25025 #		DECOMPRESS FORAM 2 SPACES	16.54		Agree	16.54
25075		REMOVE FOREARM LESION SUBCUT	3.74		Agree	3.74
25076		REMOVE FOREARM LESION DEEP	4.92		Agree	4.92
25259 #		MANIPULATE WRIST W/ANESTHES	3.75		Agree	3.75
25274		REPAIR FOREARM TENDON/MUSCLE	8.75		Agree	8.75
25275 #		REPAIR FOREARM TENDON SHEATH	8.50		Agree	8.50
25394 #		REPAIR CARPAL BONE, SHORTEN	10.40		Agree	10.40
25405		REPAIR/GRAFT RADIUS OR ULNA	14.38		Agree	14.38
25420		REPAIR/GRAFT RADIUS & ULNA	16.33		Agree	16.33
25430 #		VASC GRAFT INTO CARPAL BONE	9.25		Agree	9.25
25431 #		REPAIR NONUNION CARPAL BONE	10.44		Agree	10.44
25440		REPAIR/GRAFT WRIST BONE	10.44		Agree	10.44
25520		TREAT FRACTURE OR RADIUS	6.26		Agree	6.26
25526		TREAT FRACTURE OF RADIUS	12.98		Agree	12.98
25645		TREAT WRITST BONE FRACTURE	7.25		Agree	7.25
25651 #		PIN ULNAR STYLOID FRACTURE	5.36		Agree	5.36
25652 #		TREAT FRACTURE ULNAR STYLOID	7.60		Agree	7.60
25671 #		PIN RADIOULNAR DISLOCATION	6.00		Agree	6.00
26115		REMOVE HAND LESION SUBCUT	3.86		Agree	3.86
26116		REMOVE HAND LESION, DEEP	5.53		Agree	5.53
26160		REMOVE TENDON SHEATH LESION	3.15		Agree	3.15
26250		EXTENSIVE HAND SURGERY	7.55		Agree	7.55
26255		EXTENSIVE HAND SURGERY	12.43		Agree	12.43
26340 #		MANIPULATE FINGER W/ANESTH	2.50		Agree	2.50
26350		REPAIR FINGER/HAND TENDON	5.99		Agree	5.99
26352		REPAIR/GRAFT HAND TENDON	7.68		Agree	7.68
26356		REPAIR FINGER/HAND TENDON	8.07		Agree	8.07
26357		REPAIR FINGER/HAND TENDON	8.58		Agree	8.58
26358		REPAIR/GRAFT HAND TENDON	9.14		Agree	9.14
26390		REVISE HAND/FINGER TENDON	9.19		Agree	9.19
26392		REPAIR/GRAFT HAND TENDON	10.26		Agree	10.26
26415		EXCISION, HAND/FINGER TENDON	8.34		Agree	8.34
26416		GRAFT HAND OR FINGER TENDON	9.37		Agree	9.37
26426		REPAIR FINGER/HAND TENDON	6.15		Agree	6.15
26428		REPAIR/GRAFT FINGER TENDON	7.21		Agree	7.21
26445		RELEASE HAND/FINGER TENDON	4.31		Agree	4.31
26510		THUMB TENDON TRANSFER	5.43		Agree	5.43
26587		RECONSTRUCT EXTRA FINGER	14.05		Agree	14.05
26590		REPAIR FINGER DEFORMITY	17.96		Agree	17.96
26607		TREAT METACARPAL FRACTURE	5.36		Agree	5.36
26608		TREAT METACARPAL FRACTURE	5.36		Agree	5.36
26670		TREAT HAND DISLOCATION	3.69		Agree	3.69
26675		TREAT HAND DISLOCATION	4.54		Agree	4.54
26676		PINE HAND DISLOCATION	5.52		Agree	5.52
26685		TREAT HAND DISLOCATION	6.98		Agree	6.98
26843		FUSION OF HAND JOINT	7.61		Agree	7.61
26844		FUSION/GRAFT OF HAND JOINT	8.73		Agree	8.73
27096		INJECT SACROILIAC JOINT	1.40		Agree	1.40
28299		CORRECTION OF BUNION	10.58		Agree	10.58
29086 #		APPLY FINGER CAST	0.62		Agree	0.62
29805 #		SHOULDER ARTHROSCOPY, DX	5.89		Agree	5.89
29806 #		SHOULDER ARTHROSCOPY/SURGERY.	14.37		Agree	14.37
29807 #		SHOULDER ARTHROSCOPY/SURGERY.	13.90		Agree	13.90
29819		SHOULDER ARTHROSCOPY/SURGERY.	7.62		Agree	7.62
29820		SHOULDER ARTHROSCOPY/SURGERY.	7.07		Agree	7.07
29821		SHOULDER ARTHROSCOPY/SURGERY.	7.72		Agree	7.72
29822		SHOULDER ARTHROSCOPY/SURGERY.	7.43		Agree	7.43

TABLE 6.—AMA RUC AND HCPAC WORK RVU RECOMMENDATIONS AND CMS DECISIONS FOR NEW AND REVISED 2002 CPT CODES—Continued

*CPT CODE	Mod	Description	RUC recommendation	HCPAC recommendation	CMS decision	2002 work RVU
29823		SHOULDER ARTHROSCOPY/SURGERY.	8.17		Agree	8.17
29824 #		SHOULDER ARTHROSCOPY/SURGERY.	8.25		Agree	8.25
29900 #		MCP JOINT ARTHROSCOPY, DX	5.42		Agree	5.42
29901 #		MCP JOINT ARTHROSCOPY, SURG	6.13		Agree	6.13
29902 #		MCP JOINT ARTHROSCOPY, SURG	6.70		Agree	6.70
30117		REMOVAL OF INTRANASAL LESION	3.16		Agree	3.16
30118		REMOVAL OF INTRANASAL LESION	9.69		Agree	9.69
31641		BRONCHOSCOPY, TREAT BLOCKAGE	5.03		Agree	5.03
32650		THORACOSCOPY, SURGICAL	10.75		Agree	10.75
33967 #		INSERT IA PERCUT DEVICE	4.85		Agree	4.85
33975		IMPLANT VENTRICULAR DEVICE	21.00		Agree	21.00
33976		IMPLANT VENTRICULAR DEVICE	23.00		Agree	23.00
33977		REMOVE VENTRICULAR DEVICE	19.29		Agree	19.29
33978		REMOVE VENTRICULAR DEVICE	21.73		Agree	21.73
33979 #		INSERT INTRACORPOREAL DEVICE	carrier		Agree	carrier
33980 #		REMOVE INTRACORPOREAL DEVICE	carrier		Agree	carrier
35646		ARTERY BYPASS GRAFT	31.00		Agree	31.00
35647 #		ARTERY BYPASS GRAFT	28.00		Agree	28.00
35685		BYPASS GRAFT PATENCY/PATCH	4.05		Agree	4.05
35686 #		BYPASS GRAFT/AV FIST PATENCY	3.35		Agree	3.35
36002 #		PSEUDOANEURYSM INJECTION TRT	1.96		Agree	1.96
36005		INJECTION EXT VENOGRAPHY	0.95		Agree	0.95
36400		DRAWING BLOOD	0.38		Agree	0.38
36819		AV FUSION/UPPR ARM VEIN	14.00		Agree	14.00
36820 #		AV FUSION/FOREARM VEIN	14.00		Agree	14.00
36823		INSERTION OF CANNULA(S)	21.00		Agree	21.00
38220 #		BONE MARROW ASPIRATION	1.08		Agree	1.08
38221 #		BONE MARROW BIOPSY	1.37		Agree	1.37
43200		ESOPHAGUS ENDOSCOPY	1.59		Agree	1.59
43227		ESOPH ENDOSCOPY, REPAIR	3.60		Agree	3.60
43245		OPERATIVE UPPER GI ENDOSCOPY	3.39		Agree	3.39
43310		REPAIR OF ESOPHAGUS	27.47		Agree	27.47
43312		REPAIR ESOPHAGUS AND FISTULA	30.50		Agree	30.50
43313 #		ESOPHAGOPLASTY CONGENITAL	45.28		Agree	45.28
43314 #		TRACHEO-ESOPHAGOPLASTY CONG	50.27		Agree	50.27
44120		REMOVAL OF SMALL INTESTINE	17.00		Agree	17.00
44121		REMOVAL OF SMALL INTESTINE	4.45		Agree	4.45
44126 #		ENTERECTOMY W/TAPER, CONG	35.50		Agree	35.50
44127 #		ENTERECTOMY W/O TAPER, CONG	41.00		Agree	41.00
44128 #		ENTERECTOMY CONG, ADD-ON	4.45		Agree	4.45
44140		PARTIAL REMOVAL OF COLON	18.35		Agree	18.35
44160		REMOVAL OF COLON	18.62		Agree	18.62
44202		LAP RESPECT S/INTESTINE SINGL	22.04		Agree	22.04
44203 #		LAP RESECT S/INTESTINE, ADDL	4.45		Agree	4.45
44204 #		LAPARO PARTIAL COLECTOMY	22.00		Disagree	25.08
44205 #		LAP COLECTOMY PART W/ILEUM	19.50		Disagree	22.23
44366		SMALL BOWEL ENDOSCOPY	4.41		Agree	4.41
44378		SMALL BOWEL ENDOSCOPY	5.26		Agree	5.26
44391		COLONOSCOPY FOR BLEEDING	3.82		Agree	3.82
45136 #		EXCISE ILEOANAL RESERVOIR	27.30		Agree	27.30
45190		DESTRUCTION, RECTAL TUMOR	8.28		Agree	8.28
45303		PROCTOSIGMOIDOSCOPY DILATE	0.44		Agree	0.44
45317		PROTOSIGMOIDOSCOPY BLEED	1.50		Agree	1.50
45334		SIGMOIDOSCOPY FOR BLEEDING	2.73		Agree	2.73
45382		COLONOSCOPY/CONTROL BLEEDING	5.69		Agree	5.69
46020 #		PLACEMENT OF SETON	2.90		Agree	2.90
46604		ANOSCOPY AND DILATION	1.31		Agree	1.31
46614		ANOSCOPY/CONTROL BLEEDING	2.01		Agree	2.01
46924		DESTRUCTION, ANAL LESION(S)	2.76		Agree	2.76
47370 #		LAPARO ABLATE LIVER TUMORE RF	(a)		(a)	18.00
47371 #		LAPARO ABLATE LIVER CRYOSUG	(a)		(a)	16.94
47380 #		OPEN ABLATE LIVER TUMOR RF	(a)		(a)	21.25
47381 #		OPEN ABLATE LIVER TUMOR CRYO	(a)		(a)	21.00
47382 #		PERCUT ABLATE LIVER RF	(a)		(a)	12.00
48100		BIOPSY OF PANCREAS, OPEN	11.08		Agree	11.08
49424		ASSESS CYST, CONTRAST INJECT	0.76		Agree	0.76
49491 #		REPAIRING HERN PREMIE REDUC	11.13		Agree	11.13

TABLE 6.—AMA RUC AND HCPAC WORK RVU RECOMMENDATIONS AND CMS DECISIONS FOR NEW AND REVISED 2002 CPT CODES—Continued

*CPT CODE	Mod	Description	RUC recommendation	HCPAC recommendation	CMS decision	2002 work RVU
49492 #		RPR ING HERN PREMIE, BLOCKED	14.03		Agree	14.03
49495		RPR ING HERNIA BABY, REDUC	5.89		Agree	5.89
49496		RPR ING HERNIA BABY, BLOCKED	8.79		Agree	8.79
50220		REMOVE KIDNEY, OPEN	17.15		Agree	17.15
50225		REMOVAL KIDNEY OPEN, COMPLEX	20.23		Agree	20.23
50230		REMOVAL KIDNEY OPEN, RADICAL	22.07		Agree	22.07
51596		REMOVE BLADDER/CREATE POUCH	39.52		Agree	39.52
52001 #		CYSTOSCOPY, REMOVAL OF CLOTS	5.45		Disagree	2.37
52347 #		CYSTOSCOPY, RESECT DUCTS	5.28		Agree	5.28
52510		DILATIONPROSTATIC URETHRA	6.72		Agree	6.72
53431 #		RECONSTRUCT URETHRA/BLADDER	19.89		Agree	19.89
53444 #		INSERT TANDEM CUFF	13.40		Agree	13.40
53445		INSERT URO./VES NCK SPHINCTER	14.06		Agree	14.06
53446 #		REMOVE URO SPHINCTER	10.23		Agree	10.23
53447		REMOVE/REPLACE UR SPHINCTER	13.49		Agree	13.49
53448 #		REMOVE/REPLC UR SPHINCTR COMP	21.15		Agree	21.15
53449		REPAIR URO SPHINCTER	9.70		Agree	9.70
53853 #		PROSTATIC WATER THERMOTHER	6.41		Disagree	4.14
54065		DESTRUCTION, PENIS LESION(S)	2.42		Agree	2.42
54162 #		LYSIS PENIL CIRCUMCIS LESION	3.00		Agree	3.00
54163 #		REPAIR OF CIRCUMSION	3.00		Agree	3.00
54164 #		FRENULOTOMY OF PENIS	2.50		Agree	2.50
54400		INSERT SEMI-RIGID PROSTHESIS	8.99		Agree	8.99
54401		INSERT SELF-CONTD PROSTHESIS	10.28		Agree	10.28
54405		INSERT MULTI-COMP PENIS PROS	13.43		Agree	13.43
54406 #		REMOVE MULTI-COMP PENIS PROS	12.10		Agree	12.10
54408 #		REPAIR MUTLI-COMP PENIS PROS	12.75		Agree	12.75
54410 #		REMOVE/REPLACE PENIS PROSTH	15.50		Agree	15.50
54411 #		REMV/REPLC PENIS PROS, COMP	16.00		Agree	16.00
54415 #		REMOVE SELF-CONTD PENIS PROS	8.20		Agree	8.20
54416 #		REMV/REPL PENIS CONTAIN PROS	10.87		Agree	10.87
54417 #		REMV/REPLC PENIS PROS, COMPL	14.19		Agree	14.19
54512		EXCISE LESION TESTIS	8.58		Agree	8.58
56501		DESTROY, VULVA LESIONS, SIMP	1.53		Agree	1.53
56515		DESTROY VULVA LESION/S COMPL	1.88		Agree	1.88
56605		BIOPSY OF VULVA/PERINEUM	1.10		Agree	1.10
56810		REPAIR OF PERINEUM	4.13		Agree	4.13
57022		I & D VAGINAL HEMATOMA, PP	2.56		Agree	2.56
57061		DESTROY VAG LESIONS, SIMPLE	1.25		Agree	1.25
57065		DESTROY VAG LESIONS, COMPLEX	2.61		Agree	2.61
57155 #		INSERT UTERI TANDEMNS/OVOIDS	6.27		Agree	6.27
58100		BIOPSY OF UTERUS LINING	1.53		Agree	1.53
58346 #		INSERT HEYMAN UTERI CAPSULE	6.75		Agree	6.75
58563		HYSTEROSCOPY, ABLATION	6.17		Agree	6.17
58953 #		TAH, RAD DISSECT FOR DEBULK	32.00		Agree	32.00
58954 #		TAH RAD DEBULK/LYMPH REMOVE	35.00		Agree	35.00
59000		AMNIOCENTESIS, DIAGNOSTIC	1.30		Agree	1.30
59001 #		AMINOCENTESIS, THERAPEUTIC	3.00		Agree	3.00
64555		IMPLANT NEUROELECTRODES	2.27		Agree	2.27
64561 #		IMPLANT NEUROELECTRODES	6.74		Agree	6.74
64575		IMPLANT NEUROELECTRODES	4.53		Agree	4.53
64581 #		IMPLANT NEUROELECTRODES	13.50		Agree	13.50
64820		REMOVE SYMPATHETIC NERVES	10.37		Agree	10.37
64821 #		REMOVE SYMPATHETIC NERVES	8.75		Agree	8.75
64822 #		REMOVE SYMPATHETIC NERVES	8.75		Agree	8.75
64823 #		REMOVE SYMPATHETIC NERVES	10.37		Agree	10.37
66982		CATARACT SURGERY, COMPLEX	13.50		Agree	13.50
67225 #		EYE PHOTODYNAMIC THER ADD-ON	(a)		(a)	0.47
69990		MICROSURGERY ADD-ON	3.47		Agree	3.47
74230	26	CINE/VIDEO X-RAY, THROAT/ESO	0.53		Agree	0.53
74305	26	X-RAY BILE DUCTS/PANCREAS	0.42		Agree	0.42
76066	26	JOINT SURVEY, SINGLE VIEW	0.31		Agree	0.31
76078	26	RADIOGRAPHIC ABSORPTIONMETRY	0.20		Agree	0.20
76085 #	26	COMPUTER MAMMOGRAM ADD-ON	(a)		(a)	0.06
76120	26	CINE/VIDEO X-RAYS	0.38		Agree	0.38
76125	26	CINE/VIDEO X-RAYS ADD-ON	0.27		Agree	0.27
76362 #	26	CAT SCAN FOR TISSUE ABLATION	(a)		(a)	4.00
76394 #	26	MRI FOR TISSUE ABLATION	(a)		(a)	4.25
76490 #	26	US FOR TISSUE ABLATION	(a)		(a)	2.00

TABLE 6.—AMA RUC AND HCPAC WORK RVU RECOMMENDATIONS AND CMS DECISIONS FOR NEW AND REVISED 2002 CPT CODES—Continued

*CPT CODE	Mod	Description	RUC recommendation	HCPAC recommendation	CMS decision	2002 work RVU
76819	26	FETAL BIOPHYS PROFIL W/O NST	0.63		Disagree	0.77
76885	26	US EXAM INFANT HIPS, DYNAMIC	0.74		Agree	0.74
76886	26	US EXAM INFANT HIPS, STATIC	0.62		Agree	0.62
77300	26	RADIATION THERAPY DOSE PLAN	0.62		Agree	0.62
77301 #	26	RADIOL THERAPY DOSE PLAN, IMRT	8.00		Agree	8.00
77418 #		RADIATION TX DELIVERY, IMRT	0.00		Agree	0.00
85097		BONE MARROW INTERPRETATION	0.94		Agree	0.94
88380 #	26	MICRODISSECTION	carrier		Agree	carrier
90471		IMMUNIZATION ADMIN	0.17		Disagree	0.00
90472		IMMUNIZATION ADMIN, EACH ADD	0.15		Disagree	0.00
90473 #		IMMUNE ADMIN ORAL/NASAL	0.17		Disagree	0.00
90939 #		HEMODIALYSIS STUDY, TRANSCUT	0.00		Agree	0.00
91123 #		IRRIGATE FECAL IMPACTION	0.00		Agree	0.00
92136 #	26	OPHTHALMIC BIOMETRY	0.54		Agree	0.54
92973 #		PERCUT CORONARY THROMBECTOMY.	3.28		Agree	3.28
92974 #		CATH PLACE, CARDIO BRACHYTX	3.00		Agree	3.00
93025 #		MICROVOLT T-WAVE ASSESS	0.75		Agree	0.75
93609	26	MAP TACHYCARDIA, ADD-ON	(a)		Disagree	4.81
93612	26	INTRAVENTRICULAR PACING	3.02		Agree	3.02
93613 #	26	ELECTROPHYS MAP, 3D, ADD-ON	carrier		Disagree	7.00
93619	26	ELECTROPHYSIOLOGY EVALUATION	7.32		Agree	7.32
93620	2	ELECTROPHYSIOLOGY EVALUATION	11.59		Agree	11.59
93621	26	ELECTROPHYSIOLOGY EVALUATION	2.10		Agree	2.10
93622	26	ELECTROPHYSIOLOGY EVALUATION	3.10		Agree	3.10
93701 #	26	BIOIMPEDANCE, THORACIC	0.00		Disagree	0.17
94720	26	MONOXIDE DIFFUSING CAPACITY	0.26		Agree	0.26
94750	26	PULMONARY COMPLIANCE STUDY	0.23		Agree	0.23
95144		ANTIGEN THERAPY SERVICES	0.06		Agree	0.06
95145		ANTIGEN THERAPY SERVICES	0.06		Agree	0.06
95165		ANTIGEN THERAPY SERVICES	0.06		Agree	0.06
95170		ANTIGEN THERAPY SERVICES	0.06		Agree	0.06
95250 #		GLUCOSE MONITORING, CONT	0.00		Agree	0.00
95875	26	LIMB EXERCISE TEST	1.10		Agree	1.10
95904	26	SENSE NERVE CONDUCTION TEST	0.34		Agree	0.34
95965 #	26	MEG, SPONTANEOUS	8.00		Agree	8.00
95966 #	26	MEG, EVOKED, SINGLE	4.00		Agree	4.00
95967 #	26	MEG, EVOKED, EACH ADDL	3.50		Agree	3.50
96000 #		MOTION ANALYSIS, VIDEO/3D		carrier	Disagree	1.80
96001 #		MOTION TEST W/FT PRESS MEAS		carrier	Disagree	2.15
96002 #		DYNAMIC SURFACE EMG		carrier	Disagree	0.41
96003 #		DYNAMIC FINE WIRE EMG		carrier	Disagree	0.37
96004 #		PHYS REVIEW OF MOTION TESTS		carrier	Disagree	1.80
96150 #		ASSESS HLTH/BEHAVE, INIT		0.50	Agree	0.50
96151 #		ASSESS HLTH/BEHAVE, SUBSEQ		0.48	Agree	0.48
96152 #		INTERVENE HLTH/BEHAVE, INDIV		0.46	Agree	0.46
96153 #		INTERVENE HLTH/BEHAVE, GROUP		0.10	Agree	0.10
96154 #		INTERV HLTH/BEHAV, FAM W/PT		0.45	Agree	0.45
96155 #		INTERV HLTH/BEHAV FAM NO PT		0.44	Agree	0.44
96567 #		PHOTODYNAMIC TX, SKIN	0.00		Agree	0.00
97005 #		ATHLETIC TRAIN EVAL		(*)	Agree	0.00
97006 #		ATHLETIC TRAIN REEVAL		(*)	Agree	0.00
97112		NEUROMUSCULAR REEDUCATION		0.45	Agree	0.45
97504		ORTHOTIC TRAINING		0.45	Agree	0.45
97535		SELF CARE MNGMENT TRAINING		0.45	Agree	0.45
97601		WOUND CARE SELECTIVE		0.50	Agree	0.50
97602		WOUND CARE NON-SELECTIVE		0.32	Disagree	0.00
99090		COMPUTER DATA ANALYSIS	0.00		Agree	0.00
99091 #		COLLECT/REVIEW DATA FROM PT	1.10		Disagree	0.00
99289 #		PT TRANSPORT, 30-74 MIN	4.80		Disagree	0.00
99290 #		PT TRANSPORT, ADDL 30 MIN	2.40		Disagree	0.00
99374		HOME HEALTH CARE SUPERVISION	1.10		Agree	1.10
99375		HOME HEALTH CARE SUPERVISION	1.73		Agree	1.73
99377		HOSPICE CARE SUPERVISION	1.10		Agree	1.10
99378		HOSPICE CARE SUPERVISION	1.73		Agree	1.73
99379		NURSING FAC CARE SUPERVISION	1.10		Agree	1.10
99380		NURSING FAC CARE SUPERVISION	1.73		Agree	1.73
99381		PREV VISIT, NEW, INFANT	1.19		Agree	1.19
99382		PREV VISIT, NEW, AGE 1-4	1.36		Agree	1.36

TABLE 6.—AMA RUC AND HCPAC WORK RVU RECOMMENDATIONS AND CMS DECISIONS FOR NEW AND REVISED 2002 CPT CODES—Continued

*CPT CODE	Mod	Description	RUC recommendation	HCPAC recommendation	CMS decision	2002 work RVU
99383		PREV VISIT, NEW, AGE 5-11	1.36		Agree	1.36
99384		PREV VISIT, NEW, AGE 12-17	1.53		Agree	1.53
99385		PREV VISIT, NEW, AGE 18-39	1.53		Agree	1.53
99386		PREV VISIT, NEW, AGE 40-64	1.88		Agree	1.88
99387		PREV VISIT, NEW, 65 & OVER	2.06		Agree	2.06
99391		PREV VISIT, EST, INFANT	1.02		Agree	1.02
99392		PREV VISIT, EST, AGE 1-4	1.19		Agree	1.19
99393		PREV VISIT, EST, AGE 5-11	1.19		Agree	1.19
99394		PREV VISIT, EST, AGE 12-17	1.36		Agree	1.36
99395		PREV VISIT, EST, AGE 18-39	1.36		Agree	1.36
99396		PREV VISIT, EST, AGE 40-64	1.53		Agree	1.53
99397		PREV VISIT, EST, 65 & OVER	1.71		Agree	1.71

(a) No RUC recommendation provided.
New CPT codes.
* All CPT codes copyright 2002 American Medical Association.

Table 7, AMA RUC Anesthesia Recommendations and CMS Decisions for New and Revised 2002 CPT Codes, lists the new or revised CPT codes for anesthesia and their base units that will be interim in 2002. This table includes the following information:

- CPT code. This is the CPT code for a service.
- Description. This is an abbreviated version of the narrative description of the code.
- RUC recommendations. This column identifies the base units recommended by the RUC.
- CMS decision. This column indicates whether we agreed with the RUC recommendation ("agree") or we disagreed with the RUC recommendation ("disagree"). Codes for which we did not accept the RUC recommendation are discussed in greater detail following this table.
- 2002 Base Units. This column establishes the 2002 base units for these services.

TABLE 7.—AMA RUC ANESTHESIA RECOMMENDATIONS AND CMS DECISIONS FOR NEW AND REVISED 2002 CPT CODES

*CPT code	Description	RUC recommendation	CMS decision	2002 Base units
00797	ANESTH, SURGERY FOR OBESITY	9	Disagree	8
00851	ANESTH, TUBAL LIGATION	6	Agree	6
00869	ANESTH, VASECTOMY	3	Agree	3
01905	ANES, SPINE INJECT, X-RAY/RE	5	Agree	5
01916	ANESTH, DX ARTERIOGRAPHY	5	Agree	5
01924	ANES, THER INTERVEN RAD, ART	5	Agree	5
01925	ANES, THER INTERVEN RAD, CAR	7	Agree	7
01926	ANES, TX INTERV RAD HRT/CRAN	8	Agree	8
01930	ANES, THER INTERVEN RAD, VEI	5	Agree	5
01931	ANES, THER INTERVEN RAD, TIP	7	Agree	7
01932	ANES, TX INTERV RAD, TH VEIN	6	Agree	6
01933	ANES, TX INTERV RAD, CRAN V	7	Agree	7
01951	ANESTH, BURN, LESS 4 PERCENT	3	Agree	3
01952	ANESTH, BURN, 4–9 PERCENT	5	Agree	5
01960	ANESTH, VAGINAL DELIVERY	5	Agree	5
01961	ANESTH, CS DELIVERY	7	Agree	7
01962	ANESTH, EMER HYSTERECTOMY	8	Agree	8
01963	ANESTH, CS HYSTERECTOMY	8	Agree	8
01964	ANESTH, ABORTION PROCEDURES	4	Agree	4
01967	ANESTH/ANALG, VAG DELIVERY	5	Agree	5
01968	ANES/ANALG CS DELIVER ADD-ON	3	Disagree	2
01969	ANESTH/ANALG CS HYST ADD-ON	5	Agree	5

* All CPT codes copyright 2002 American Medical Association.

Discussion of Codes for Which There Were No RUC Recommendations or for which the RUC Recommendations Were Not Accepted

The following is a summary of our rationale for not accepting particular RUC work RVU or base unit recommendations. It is arranged by type of service in CPT code order. Additionally, we also discuss those CPT codes for which we received no RUC recommendations for physician work RVUs. This summary refers only to work RVUs.

Anesthesia for Intraperitoneal Procedures in Upper Abdomen Including Laparoscopy; Gastric Restrictive Procedure for Morbid Obesity (CPT Code 00797).

The RUC recommended that 9 base units be assigned to this procedure

based on a comparison to CPT code 00790 (Anesthesia for intraperitoneal procedures in the upper abdomen including laparoscopy; not otherwise specified). We disagree. We believe that assigning 9 base units to 00797 creates a rank order anomaly with CPT code 00794 (Anesthesia for intraperitoneal procedures in the upper abdomen including laparoscopy; pancreatectomy, partial or total (for example, Whipple procedure)) which is assigned 8 base units.

While obese patients do make the work of an anesthesiologist more difficult, we believe that the vignette used in the RUC survey was atypical and exaggerated the required work because the patient in the vignette was described as having asthma. We believe the work of an anesthesiologist is greater for patients undergoing Whipple procedures because, typically, these patients are sicker and require longer operative time and more intense anesthesia care than patients undergoing gastric restrictive procedures. Therefore, we are assigning 8 base units to 00797.

Cesarean Delivery Following Neuraxial Labor Analgesia/Anesthesia (List Separately in Addition to Code for Primary Procedure (CPT Code 01968))

The RUC recommended 3 base units for this add-on procedure. This procedure is reported in addition to *CPT code 01967 (Neuraxial labor analgesia/anesthesia for planned vaginal delivery (this includes any repeat subarachnoid needle placement and drug injection and/or any necessary replacement of an epidural catheter during labor))*, when a patient who has been given neuraxial anesthesia for a planned vaginal delivery requires conversion to a cesarian delivery and must be given anesthesia for the cesarian delivery. The RUC recommended 7 base units for CPT code 01961 (Anesthesia for, cesarian delivery only), a recommendation with which we agree. We note the following:

- The base units of 01961, anesthesia for cesarian delivery, are the same as the base units of 01967 plus 01968.
- The survey respondents valued the add-on code 01968 as if it were a stand-alone code with a median base unit of 7 and an intraservice time of 75 minutes. Both the median base units and the intraservice time are identical to the survey results for 01961.
- CPT code 01968 is currently reported (per the American Society of Anesthesiologists) as *00857 (Neuraxial analgesia/anesthesia for labor ending in a cesarian delivery (this includes any repeat subarachnoid needle placement and drug injection and/or any necessary replacement of an epidural catheter during labor)*, which is valued at 7 base units. Moreover, the work of CPT code 01967 plus CPT code 01968 is completely described by CPT code 00857 so it is unclear why the sum of the base units assigned to 01967 and 01968 should not be identical to the base units currently assigned to CPT code 00857.

In view of these concerns, we are assigning 2 base units to CPT code 01968. We are also making a neutrality adjustment to the anesthesia conversion factor based on our analysis of the estimated difference in base units between previously repeated anesthesia codes and the new codes.

Injection, Therapeutic (Eg, Local Anesthetic, Corticosteroid); Carpal Canal, (CPT Code 20526) Injection; Tendon Sheath, Ligament, Ganglion Cyst, (CPT Code 20550)

Injection; Tendon Origin/Insertion, (CPT Code 20551)

Injection; Single or Multiple Trigger Point(s), One or Two Muscle Group(s) (CPT Code 20552), and

Injection; Single or Multiple Trigger Point(s), Three or More Muscle Groups (CPT Code 20553)

CPT codes 20526, 20551, 20552, and 20553 are new codes, while 20550 is being revised from its current descriptor "Injection, tendon sheath, ligament; ganglion cyst, or trigger points" to the descriptor above. We received an interim recommendation of 0.86 work RVUs for these codes, from the RUC, based on the fact that all these procedures are currently reported as 20550 which is valued at 0.86 RVUs.

CPT code 20550 comprises several procedures with varying amounts of physician work that will now be reported separately. We are assigning 0.86 RVUs to all these codes on an interim basis, and will review this further for 2002 if we receive recommendations from the RUC. At that time we will also have utilization data on these services to assist us in making work neutrality adjustments should any adjustments be required.

Laporoscopy, Surgical; Colectomy, Partial With Anastomosis (CPT Code 44204) and Laparoscopy, Surgical; Colectomy, Partial, With Removal of Terminal Ileum With Ileocecostomy (CPT Code 44205)

The RUC recommended 22.00 RVUs for CPT code 44204 and 19.50 RVUs for CPT Code 44205 based on the reference code 44140 (*Colectomy, partial; with anastomosis*) which, at the time of the recommendation, had a work RVU of 18.35. We increased the work RVU of CPT Code 44140 to 21 as part of the 5-year review of physician work. In order to prevent rank order anomalies we are assigning work RVUs of 25.08 and 22.23 to CPT Codes 44204 and 44205, respectively. These work RVUs represent a 14 percent increase over the RUC recommendation and are consistent with our valuation of CPT Code 44140.

Laparoscopy, Surgical, Ablation of One or More Liver Tumor(s); Radiofrequency (CPT Code 47370), Laparoscopy, Surgical, Ablation of One or More Liver Tumor(s); Cryosurgical (CPT Code 47371), Ablation, Open, of One or More Liver Tumor(s); Radiofrequency (CPT Code 47380), Ablation, Open, of One or More Liver Tumor(s); Cryosurgical (CPT Code 47381), Ablation, One or More Liver Tumor(s), Percutaneous, Radiofrequency (CPT Code 47382), Computerized Axial Tomography Guidance for, and Monitoring of, Tissue Ablation (CPT Code 76362), Magnetic Resonance Guidance for, and Monitoring of, Tissue Ablation (CPT Code 76394); and Ultrasound Guidance for, and Monitoring of, Tissue Ablation (CPT Code 76490)

We have not received recommendations from the RUC for these procedures. We have assigned work RVUs as follows:

47370—18 work RVUs
47371—16.94 work RVUs
47380—21.25 work RVUs
47381—21.00 work RVUs
47382—12.00 work RVUs

To arrive at the values listed above, we compared the time and intensity of these services to other open and laparoscopic liver, colon, and renal procedures. We believe that the RVUs assigned place them in the correct rank order with these other services and with respect to each other.

76362—4.00 work RVUs
76394—4.25 work RVUs
76490—2.00 work RVUs

To arrive at the values above, we compared the time and intensity of these procedures to other radiologic guidance codes and to radiologic supervision and interpretation codes. We believe that the assigned RVUs place them in correct rank order to other radiologic guidance services and to each other.

Cystourethroscopy with irrigation and evacuation of clots, (CPT Code 52001)

The RUC recommended 5.45 work RVUs based on a comparison to the reference procedures *CPT code 52315 (Cystourethroscopy, with removal of foreign body, calculus, or ureteral stent from urethra or bladder (separate procedure); complicated)*, and *CPT Code 52235 (Cystourethroscopy, with fulguration (including cryosurgery or laser surgery) and/or resection of; medium bladder tumor(s) (2.0 to 5.0 cm))*.

We are concerned that 52001, with its current descriptor, will be reported whenever a cystoscopy is performed and blood is present during the examination. As written, the code may be reported whenever any blood clots are present. The RUC recommendation is based upon the urologists' response to a scenario where the bladder outlet was obstructed due to large blood clots and removal of the blood clots required a resectoscope. Unfortunately, the code descriptor does not require the presence of bladder obstruction due to blood clots, nor does it require the use of a resectoscope. Therefore, until the descriptor of this code is clarified by the AMA CPT editorial panel, we are assigning 2.37 RVUs to this procedure. As the CPT code is now written, the time and intensity of the physician work for this procedure are comparable to CPT Code 52005. *(Cystourethroscopy, with ureteral catheterization, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service).*

Transurethral Destruction of Prostatic Tissue; By Water Induced Thermotherapy (CPT Code 53853)

The RUC recommended 6.41 work RVUs for this procedure based on a comparison to CPT Code 54670 (Suture or repair of testicular injury) which has a similar work value and similar pre-, intra-, and postservice times to the median times in the survey for 53853. The RUC also noted that *CPT Code 53850 (Transurethral destruction of prostate; by microwave thermotherapy)* has 90 minutes of intraservice time as compared to 60 minutes for CPT code 53853 and that the recommended work value for CPT code 53853 was approximately ⅔ of the work value for CPT code 53850.

We note that although the intraservice time for CPT code 53853 is 60 minutes, most of that time is spent monitoring the flow of hot water through a catheter and balloon and checking the water's temperature. We estimate that the maximum amount of time spent on activities other than monitoring is 20 minutes. This means that the work intensity for the intraservice portion of this procedure is significantly less than it is for most other surgical procedures and, specifically, the reference codes examined by the RUC. Therefore, we believe it is more appropriate to compare CPT code 53853 to 90-day global procedures with less than 30 minutes of intraservice time. For these reasons we compared CPT code 58350 to the following procedures:

CPT code	Work RVU	Intraservice time (minutes)	Pre/post service time
53853 Transurethral destruction of prostate tissue; by water-induced thermotherapy.	RUC Recommendation—6.41	60	*113
	CMS assigned RVU 4.14.		
30130 Excision turbinate, partial or complete, any method	3.38	27	78
42826 Tonsillectomy, primary or secondary; age 12 or over	3.38	28	82
46045 Incision and drainage of intramural, intramuscular, or submucosal abscess, transanal, under anesthesia.	4.32	25	206
46946 Ligation of internal hemorrhoids; multiple procedures	3.0	25	75
58800 Drainage of ovarian cyst(s), unilateral or bilateral, (separate procedure); vaginal approach.	4.14	23	100
61105 Twist burr hole for subdural or ventricular puncture	5.14	27	97
65810 Paracentesis of anterior chamber of eye (separate procedure); with removal of vitreous and/or discission of anterior hyaloid membrane, with or without air injection.	4.87	28	104
67031 Severing of vitreous strands, vitreous face adhesions, sheets, membranes, or opacities, laser surgery (one or more stages).	3.67	26	79

*see below.

The RUC sent us a postservice time of 131 minutes, which we believe is incorrect. The RUC assigned 3 postservice visits to this procedure which have a combined time of 35 minutes, not 53 minutes as recommended by the RUC. Therefore, the correct postservice time is 118 minutes.

With respect to the services listed above, we note that all of them carry significant risks to the patient and have intraservice work of high intensity. In fact, we believe the intraservice work of all the above procedures is of greater intensity than any portion of the intraservice work of CPT code 53853. After review of the procedures considered by the RUC and the above procedures, we believe that the time and intensity of CPT code 53853 is most comparable to CPT code 58800 and are assigning 4.14 work RVUs to CPT code 53853. This places CPT code 53853 in the correct rank order with respect not only to the procedures listed above but also to the prostate ablation, cystourethroscopy, and testicular procedures considered by the RUC.

Destruction of Localized Lesion of Choroids (eg, Choroidal Neovascularization); Photodynamic Therapy, Second Eye, at Single Session (List Separately in Addition To Code for Primary Eye Treatment) CPT Code 67225

We did not receive a RUC recommendation on this code. We are assigning work RVUs of 0.47, which is the work value for G0184, the code previously used for reporting this service.

Immunization Administration (Includes Percutaneous, Intradermal, Subcutaneous, Intramuscular and Jet Injections); One Vaccine (Single or Combination Vaccine/Toxoid) (CPT Code 90471), Immunization Administration (Includes Percutaneous, Intradermal, Subcutaneous, Intramuscular and Jet Injections); Each Additional Vaccine/Toxoid (List Separately in Addition To Code for Primary Procedure) One Vaccine (CPT Code 90472)

The RUC recommended a work RVU of .17 for CPT code 90471 and .15 work RVUs for CPT code 90472. These

services are analogous to *CPT code 90872 (Therapeutic, prophylactic or diagnostic injection (specify material injected); subcutaneous or intramuscular)* which has no physician work RVUs. They are services performed by a nurse and have no physician work. If the physician performs any counseling related to this service, it is considered part of the work of the preventive medicine visit during which the immunization was administered. If the vaccine is administered during a visit other than a preventive medicine service, any physician counseling should be billed separately as an E/M service. For these reasons we are not assigning work RVUs to these codes.

Immunization Administration by Intranasal or Oral Route; One Vaccine (Single or Combination Vaccine/Toxoid) (CPT Code 90473); and, Immunization Administration by Intranasal or Oral Route Each Additional Vaccine/Toxoid (List Separately in Addition To Code for Primary Procedure) CPT Code 90474

The RUC recommended a work RVU of .17 for CPT code 90473 and .15 work RVUs for CPT code 90474. These are noncovered services. Medicare does not cover self-administered vaccines, and, therefore, we are not assigning work RVUs to these services.

Intraventricular and/or Intra-Atrial Mapping of Tachycardia Site(s) With Catheter Manipulation to Record From Multiple Sites to Identify Origin of Tachycardia (CPT Code 93609)

We have not received a recommendation from the RUC for this service. The descriptor for this service has not changed but the AMA CPT editorial panel changed the global period for this service from a zero day global to a ZZZ global. This means that it is now an "add on" code and the physician work RVUs will no longer include any pre- or postservice work. It currently has a work RVU of 10.07. In order to appropriately value this add on service, we compared it to several other electrophysiology services, including *CPT code 93619, (Comprehensive electrophysiologic evaluation with right atrial pacing and recording, right ventricular pacing and recording, His bundle recording, including insertion and repositioning of multiple electrode catheters; without induction or attempted induction of arrhythmia)* with a work RVU of 7.32, and *CPT code 93618, Induction of arrhythmia by electrical pacing (work RVU 4.26),* and *CPT code 93624, (Electrophysiologic follow up study with pacing and recording to test effectiveness of therapy, including induction of attempted induction of arrhythmia),* with a work RVU of 4.81. After reviewing these services, we believe that the time and intensity of physician work for CPT code 93609 as an add-on code is most similar to CPT code 93624 and are assigning a work RVU of 4.81 to CPT code 93609.

Intracardiac Electrophysiologic 3-Dimensional Mapping (CPT Code 93613)

This is a new add-on code for which we have not received a recommendation from the RUC. As an add-on code, this service does not include and pre- or postservice work. We compared this service to *CPT code 93619 (Comprehensive electrophysiologic evaluation with right atrial pacing and recording, right ventricular pacing and recording, His bundle recording, including insertion and repositioning of multiple electrode catheters; without induction or attempted induction of arrhythmia)* with work RVUs of 7.32 and to *CPT code 93651 (Intracardiac catheter ablation of arrhythmogenic focus; for treatment of supraventricular tachycardia by ablation of fast or slow atrioventricular pathways, accessory atrioventricular connections or other atrial foci, singly or in combination)* with work RVUs of 16.25. We also wanted to ensure that the work value for this service was placed in correct rank order to CPT code 93609 (see above). We believe that the intraservice time and intensity of this service is slightly less than that of CPT code 93619 and are assigning 7.00 work RVUs to CPT code 93613.

Bioimpedence, Thoracic, Electrical CPT Code 93701

We received a RUC recommendation that this service has no physician work. We currently cover this service under the HCPCS code M0302. We assigned 0.17 physician work RVUs to this service in the November 2000 final rule after conducting a notice and comment period. We will consider the RUC recommendation. If we considered changing the work RVUs for this service, we would discuss any proposed change in a future notice of proposed rule making. However, we are going to discontinue HCPCS code M0302 and will recognize CPT Code 93701 for this service.

Comprehensive Computer-Based Motion Analysis by Video-Taping And 3–D Kinematics (CPT Code 96000), Comprehensive Computer-Based Motion Analysis by Video-Taping and 3–D Kinematics; With Dynamic Plantar Pressure Measurements During Walking (CPT Code 96001), Dynamic Surface Electromyography, During Walking or Other Functional Activities, 1–12 Muscles (CPT Code 96002), Dynamic Fine Wire Electromyography, During Walking or Other Functional Activities, 1 Muscle (CPT Code 96003), and Physician Review and Interpretation of Comprehensive Computer Based Motion Analysis, Dynamic Plantar Pressure Measurements, Dynamic Surface Electromyography During Walking or Other Functional Activities, and Dynamic Fine Wire Electromyography, With Written Report (CPT Code 96004)

HCPAC recommended that these services be carrier priced. We disagree and are assigning work RVUs to these services as follows:

CPT code 96000—1.8 work RVUs
CPT code 96001—2.15 work RVUs
CPT code 96002—.41 work RVUs
CPT code 96003—.37 work RVUs
CPT code 96004—1.8 work RVUs

To arrive at these values, we compared the time and intensity of CPT codes 96000 and 96001 to other physical therapy services. We believe that the assigned RVUs place these services in the correct rank order with other physical therapy services. We compared the time and intensity of CPT codes 96002 and 96003 to other electromyography services and believe that the assigned RVUs place these services in the correct rank order with other electromyography services. We compared the time and intensity of CPT code 96004 with other physical therapy services and physician consultation services and believe the assigned RVUs place CPT code 96004 in the correct rank order with these other services.

Removal of Devitalized Tissue From Wound(s); Non-Selective Debridement, Without Anesthesia (eg, Wet-To-Moist Dressings, Enzymatic, Abrasion), Including Topical Applications(s), Wound Assessment and Instruction(s) for Ongoing Care, Per Session, CPT 97602

The HCPAC recommended a work RVU of .32 for this service. We disagree with this recommendation as we continue to believe that this code is bundled into 97602 for the reasons discussed earlier in this section. Therefore, we are not establishing work RVUs for this service.

Collection and Interpretation of Physiologic Data (eg, ECG, Blood Pressure, Glucose Monitoring) Digitally Stored and/or Transmitted by the Patient and/or Caregiver to the Physician or Other Qualified Health Care Professional, Requiring a Minimum of 30 Minutes of Time CPT CODE 99091

The RUC recommended work RVUs of 1.10 for this code. We disagree as this work is considered part of the pre and postservice work of an E/M service and propose to bundle payment for this code. (Note that payment for similar *CPT code, 99090, Analysis of clinical data in computers (eg, ECGs, blood pressures, hematologic data,* is also currently bundled.)

CPT Codes 99289, Physician Constant Attention of the Critically Ill or Injured Patient During an Interfacility Transport; First 30–74 Minutes, and 99290 Each Additional 30 Minutes (List Separately in Addition To Code for Primary Service)

These two new codes were created for CPT 2002 that describe services provided during patient transport. The RUC recommended that CPT code 99289 be valued at 4.8 work RVUs and CPT code 99290 be valued at 2.4 work RVUs. The CPT explanatory notes accompanying these two new codes state:

> The following codes 99289 and 99290 are used to report the physical attendance and direct face-to-face care by a physician during the interfacility transport of a critically ill or injured patient. For the purposes of reporting codes 99289 and 99290, face-to-face care begins when the physician assumes the primary responsibility of the patient at the referring hospital or facility, and ends when the receiving hospital or facility accepts responsibility for the patient's care. Only the time the physician spends in direct face-to-face contact the patient during the transport should be reported. Patient transport services involving less than 30 minutes of face-to-face physician care should not be reported using 99289, 99290.
>
> Procedure(s) or service(s) performed by other members of the transporting team may not be reported by the supervising physician. Any procedure(s) or service(s) performed by the physician before or during transport that are identified in CPT may be reported separately with the exception of routine monitoring evaluations (eg, heart rate, respiratory rate, blood pressure, and pulse oximetry) and the initiation of mechanical ventilation.
>
> The time spent by the physician performing separately reportable services or procedures should not be included in the face-to-face time reported by codes 99289, 99290. The direction of emergency care to transporting staff by a physician located in a hospital or other facility by two-way communication is not considered direct face-to-face care and should not be reported with codes 99289, 99290.

The CPT explanatory notes go on to state that physicians should report emergency department services codes, initial hospital care codes, and critical care codes only after the patient has been admitted to the emergency department, the inpatient floor, or the critical care unit of the receiving facility.

Decision: We would like to note that, currently, physician services provided to patients during interfacility transport are reported, and paid, using the appropriate E/M service codes (for example, outpatient visits, emergency visits, prolonged services, critical care).

We have several significant concerns about the new CPT codes, 99289 and 99290. First, other than requiring face-to-face contact with the patient, there is no requirement for delivery of any specific physician service. This is in contrast to requirements for reporting critical care services under CPT codes 99291, 99292, 99295, 99296, 99297, and 99298. When reporting CPT codes 99291 and 99292 the CPT requires that, in addition to the patient being critically ill or critically injured, and the physician devoting his or her full attention to the patient, "high complexity decision making to assess, manipulate, and support vital system function(s) to treat single or multiple vital organ system failure and/or to prevent further life-threatening deterioration of the patient's condition." These codes are valued at 4.0 work RVUs and 2.0 work RVUs, respectively.

The CPT goes on to state that—

"Although critical care typically requires interpretation of multiple physiologic parameters and/or application of advanced technology(s), critical care may be provided in life threatening situations when those elements are not present."

"* * * Providing medical care to a critically ill, injured, or postoperative patient qualifies as a critical care service only if both the illness or injury and the treatment being provided, meet the above requirements."

As the code descriptors are written, the care described by the new CPT patient transport codes 99289 and 99290 do not meet the requirements for critical care. In fact, some services that will be reported as 99289 and 99290 would also be more appropriately reported as a new or established outpatient visit, an emergency visit, or as prolonged services, depending on the type of care that was delivered. We believe that the descriptors for CPT codes 99289 and 99290 will make it difficult for physicians to know when to report 99289 and 99290 appropriately.

Second, the beginning and ending times for 99289 and 99290 are unclear. We do not believe time spent in the referring and receiving facility should be counted towards this service. Time spent in the facility prior to and after transfer may not require any physician services even though the physician is face-to-face with the patient. Furthermore, if services are provided at the referring or receiving facility they should be billed as the appropriate E/M service (for example, new patient visit, emergency visit).

Third, we note that the descriptors for 99289 and 99290 include the phrase "* * * critically ill or injured patient" while the descriptors for 99291 and 99292 include the phrase "* * * critically ill or critically injured patient." We realize that CPT descriptors are carefully developed, so we are concerned about this discrepancy and believe it needs to be clarified.

Fourth, we note that although CPT specifically includes (or bundles) certain services into critical care, it does not include those same services in the payment for 99289 and 99290 (for example, gastric intubation, temporary transcutaneous pacing).

Therefore, after careful review of the descriptors and explanatory notes for CPT codes 99289 and 99290, we have decided to not recognize these codes for Medicare purposes. Instead, we have created two HCPCS Level II codes to describe critical care services provided to patients during inter-facility transport. These codes are:

G0240—Critical Care Service delivered by a physician; face-to-face, during inter-facility transport of a critically ill or critically injured patient: first 30–74 minutes of active transport.

G0240 will be valued at 4.0 work RVUs.

G0241—each additional 30 minutes (list separately in addition to G0240)

G0241 will be valued at 2.0 work RVUs.

We believe that these two G codes carry out the intent of 99289 and 99290 with less ambiguity and thus will facilitate accurate reporting of these services by physicians. We have decided to value these services at the present value for 99291 (4.0 work RVUs) and 99292 (2.0 work RVUs). Although critical care is the most intense E/M service delivered by physicians, there is considerable variation in the intensity range of the services provided under the umbrella of critical care. We value all critical care services uniformly and do not believe there is a need to develop a

tiered approach to valuing critical care services.

We will apply all the requirements for critical care services (CPT codes 99291 and 99292) to G0240 and G0241 with the following two exceptions: (1) All time counted towards patient transport time must be face-to-face time with the patient; (2) We will only allow face-to-face time spent in actual transport to be counted towards G0240 and G0241; E/M services delivered in the referring and receiving facilities may be reported under other appropriate E/M codes (for example, outpatient, emergency, or critical care services).

If the actual transportation time is less than 30 minutes and/or the service does not meet the requirements of G0240 and G0241, then the physician may report his or her services under the appropriate E/M code (for example, outpatient visit, emergency visit, prolonged services).

In order for G0240 and G0241 to be payable, the medical record must document the time spent in actual patient transport, the nature of the patient's critical illness or critical injury, and the critical care services delivered to the patient. Consistent with the teaching physician policies in section 15016 of the Medicare Carriers Manual, residents who provide this service are paid through graduate medical education payments. Therefore, their services are not payable through Medicare Part B.

Any services delivered, or face-to-face time spent with the patient, by a resident, nurse, emergency medical technician, or other non-physician may not be billed using G0240 or G0241. Nor may any services performed by any physician or non-physician who is not physically present with the patient during interfacility transport be billed. Time spent in the referring facility, the receiving facility, and time spent prior to transport are not countable towards G0240 and G0241. Additionally, any time spent performing separately billable procedures may not be counted towards G0240 and G0241 (for example, insertion of chest tubes, insertion of intravenous lines and pacemakers, and cardiopulmonary resuscitation). All services bundled into 99291 and 99292 will also be bundled into G0240 and G0241.

Establishment of Interim Practice Expense Relative Value Units for New and Revised Physician's Current Procedural Terminology (CPT) Codes and New HCFA Common Procedure Coding System Codes for 2002

We have developed a process for establishing interim practice expense RVUs (PERVUs) for new and revised codes that is similar to that used for work RVUs. Under this process, the RUC recommends the practice expense direct inputs, that is, the staff time, supplies and equipment associated with each new code. We then review the recommendations in a manner similar to our evalnation of the recommended work RVUs.

The RUC recommendations on the practice expense inputs for the new and revised 2002 codes were submitted to us as interim recommendations. We, therefore, consider that these recommendations are still subject to further refinement by the PEAC, or by us, if it is determined that such future review is needed. We may also revisit these inputs in light of future decisions of the PEAC regarding supply and equipment packages and standardized approaches to pre- and postservice clinical staff times.

We have accepted, at least in the interim, almost all of the practice expense recommendations submitted by the RUC for the codes listed in table 6, AMA RUC and HCPAC Work RVU Recommendations and CMS Decisions for New and Revised 2002 CPT Codes." We made the following minor changes to the inputs where relevant:

- We substituted the RUC agreed-upon multispecialty minimum visit supply package for the list of individual supplies where appropriate.
- We deleted separately billable supplies, for example, drugs, fluids, casting supplies, when listed in the recommended supply list.
- We rounded fractions of minutes of clinical staff time to the nearest minute.
- The RUC agreed with the specialty society representing neurology that the magnetoencephalography codes, CPT 95965, 95966, 95967, are only performed in the facility setting and that they therefore had no direct practice expense inputs. However, we have subsequently heard from the specialty society that it has determined that a small number of practitioners do perform these services in the office setting and that there would be costs in that setting that should be reflected. We have accepted the suggestion that the TC of these codes be carrier-priced, at least until we can ascertain what direct cost inputs should be included when these services are performed in the non-facility setting.
- We are accepting the practice expense inputs recommended for CPT code *77418 (Intensity modulated treatment delivery, single or multiple fields/arcs, via narrow spatially and temporally modulated beams (binary, dynamic, MLC, etc.)*, per treatment session, with the exception of the time for the radiation therapist which we are reducing from the recommended 123 minutes to 60 minutes. We are concerned that there may be overlap in the staff time for other codes billed in conjunction with CPT code 77418, such as CPT code *76950 (Ultrasound guidance for placement of radiation therapy fields)* and *CPT code 77417 (Therapeutic radiology port film(s))*.

Further, we understand that the code was valued assuming the typical time for the service was 60 minutes and included the time of two radiation therapists. We believe that the service commonly takes less than the recommended 123 minutes and it may involve only one therapist. As a result of these concerns, we are valuing the service using 60 minutes of radiation technician time. This valuation is considered interim during the refinement of practice expense RVUs. We also note that the practice expense RVUs for 77418 are being determined under the resource-based methodology even though the service has no physician work. We believe that the service will have a more appropriate relative payment amount if the practice expense RVUs are determined outside of the no work methodology.

- We did not receive a RUC recommendation for CPT code 93613, *Intracardiac electrophysiology*, or CPT 96004, *Gait and motion studies*. We have assumed that these services are performed only in the facility setting and have no direct inputs.

For the following CPT codes we did not receive practice expense recommendations. Therefore, we are providing practice expense inputs through crosswalking to an existing code as indicated below:

New/revised CPT code		Existing CPT/HCPCS code	
20553	Therapeutic Injections	20550	Therapeutic Injections.
47370	Ablation of Hepatic Tumors	47562	Laparoscopic cholecystectomy.
47371	Ablation of Hepatic Tumors	47562	Laparoscopic cholecystectomy.
47380	Ablation of Hepatic Tumors	47350	Repair liver wound.

New/revised CPT code		Existing CPT/HCPCS code	
47381	Ablation of Hepatic Tumors	47350	Repair liver wound.
47382	Ablation of Hepatic Tumors	47525	Change bile duct catheter.
67225	Ocular Photodynamic Therapy	G0184	Ocular photodynamic tx, 2nd.
76362	Ablation of Hepatic Tumors	76360	CAT scan for needle biopsy.
76394	Ablation of Hepatic Tumors	76393	Mr guidance for needle place.
76490	Ablation of Hepatic Tumors	76942	Echo guide for biopsy.

C. Other Changes to the 2002 Physician Fee Schedule and Clarification of CPT Definitions

For the 2002 physician fee schedule, we are establishing or revising several alpha-numeric HCPCS codes for reporting certain services that are not clearly described by existing CPT codes.

In addition to the two new HCPCS codes for patient transport we have discussed in section IV.B., "Establishment of Interim Work Relative Value Units for New and Revised Physician's Current Procedural Terminology (CPT) Codes and New Healthcare Common Procedure Coding System Codes (HCPCS) for 2002" above; we are also establishing the HCPCS codes for the respiratory therapy services below.

Respiratory Therapy Codes

Respiratory therapists can deliver services incident to a physician's service or in a provider setting such as an outpatient hospital or a comprehensive outpatient rehabilitation facility. In the past, services delivered by respiratory therapists or other health professionals often have not been clearly described by the existing CPT codes. In order to clarify coding of these services, typically delivered by respiratory therapists, but at times delivered by other specially trained health professionals, we are instituting new G codes to describe these services.

We developed three codes for use to describe services to improve respiratory function:

G0237 Therapeutic Procedures To Increase Strength or Endurance of Respiratory Muscles, Face-to-Face, One-on-One, Each 15 Minutes (Includes Monitoring).

This service is to be billed when the therapist works with the patient to perform specific exercises aimed at strengthening the main and accessory muscles of respiration.

We have provided a specific value for this code based upon the time that a respiratory therapist, who we believe will be the typical professional providing this service, will spend performing this service and practice expenses crosswalked from other similar services. This code will have no physician work.

G0238 Therapeutic Procedures To Improve Respiratory Function, Other Than Ones Described by G0237, One-on-One, Face-to-Face, per 15 Minutes (Includes Monitoring)

G0239 Therapeutic Procedures To Improve Respiratory Function, Two or More Patients Treated During the Same Period, Face-to-Face (Includes Monitoring)

Codes G0237 and G0238 are billed in 15-minute increments. The method for "counting" the 15 minutes will be consistent with the method for counting minutes in many of the 97000 series CPT codes (see PM–01–68 for details). These codes would describe activities, such as monitored exercise, that improve respiratory function. Both G0238 and G0239 would be carrier-priced. The carriers have the authority to request information about the specific nature of the services delivered. CPT codes G0237–G0239 may not be billed with codes G0110 and G0111, which are restricted to services in the National Emphysema Treatment Trial (NETT), since they represent the same services.

These codes are designed to provide more specific information about the services being delivered. The availability of codes for services to improve respiratory function will make billing of CPT codes 97000–97799 inappropriate for professionals involved in treating respiratory conditions, unless these services are delivered by physical and occupational therapists and meet the other requirements for physical and occupational therapy services. We recognize that speech and language pathologists also occasionally treat patients to improve respiratory function as part of their treatment of speech and language disorders. Because the primary goal of these services is not to improve respiratory function, but to restore speech and communication, these services should be coded with 92507, "treatment of speech, language, voice, communication, and/or auditory processing disorder (includes aural rehabilitation, individual)."

VI. Update of the Codes for the Physician Self-Referral Prohibition

On January 4, 2001 we published in the **Federal Register** a final rule with comment period, "Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships" (66 FR 856). That final rule incorporated into regulations the provisions in paragraphs (a), (b) and (h) of section 1877 of the Social Security Act (the Act). Section 1877 of the Act prohibits a physician from referring a Medicare patient for certain "designated health services" to a health care entity with which the physician (or a member of the physician's immediate family) has a financial relationship, unless an exception applies. In the final rule, we published an attachment listing all of the CPT and HCPCS codes that defined the entire scope of the following designated health services for purposes of section 1877 of the Act: clinical laboratory services; physical therapy services (including speech-language pathology services); occupational therapy services; radiology and certain other imaging services; and radiation therapy services and supplies.

In the January 4, 2001 final rule, we stated that we would update the list of codes used to define these designated health services in an addendum to the annual final rule concerning physician fee schedule payment policies. Thus, we are now publishing an updated all-inclusive list of codes at Addendum E. We also will provide that update on our website at *www.hcfa.gov/medlearn/refphys.htm*. The purpose of this update is to conform the code list to the most recent publication of CPT and HCPCS codes. The list of codes will become effective on January 4, 2002. We are using the January 4, 2002 date because that is the effective date for all but one provision of the January 4, 2001 physician self-referral final rule (changes made to 42 CFR 424.22 in the final rule became effective on April 6, 2001). In future years, we intend to use a January 1 effective date to coincide with the effective date of the new CPT and HCPCS codes.

Table 8, below, identifies the CPT and HCPCS codes that have been added to

or deleted from the list of codes published as an attachment to the January 4, 2001 physician self-referral final rule. In that final rule, we stated that we would consider timely comments regarding the updated code list. Accordingly, we will consider comments with respect to the codes listed in Table 8, below, if we receive them by the date specified in the date section of this final rule.

TABLE 8.—ADDITIONS AND DELETIONS TO THE PHYSICIAN SELF-REFERRAL CODES

CPT[1] or HCPCS code	
Additions	
76085	Computer mammogram add-on.
77301	Radioltherapy dos plan, imrt.
77418	Radiation tx delivery, imrt.
92974	Cath place, cardio brachytx.
96000	Motion analysis, video/3d.
96001	Motion test w/ft press meas.
96002	Dynamic surface emg.
96003	Dynamic fine wire emg.
G0202	Screening mammography digital.
G0204	Diagnostic mammography digital.
G0206	Diagnostic mammography digital.
G0236	Digital film convert diag ma.
J1270	Injection, doxercalciferol.
J1755	Iron sucrose injection.
Q3018	Hepatitis B vaccine.
Deletions	
90744	Hepb vacc ped/adol 3 dose im.
90746	Hep B vaccine, adult, im.
90747	Hepb vacc, ill pat 4 dose im.

[1] CPT codes, descriptions and other data only are copyright 2001 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Clauses Apply.

Table 8 includes 2 codes (J1270 and J1755) that we have identified as dialysis-related outpatient prescription drugs. The physician self-referral prohibition will not apply to these services if they meet the conditions set forth in § 411.355(g) concerning the exception to the physician self-referral rule for EPO and other dialysis-related outpatient prescription drugs furnished in or by an ESRD facility. Table 8 also includes codes (G0202, 76085 and Q3018) that we have identified as screening tests and a vaccine. The physician self-referral prohibition will not apply to these services if they meet the conditions at § 411.355(h) concerning the exception for preventive screening tests, immunizations, and vaccines.

We note that, in response to our January 4, 2001 final rule with comment, we received a number of comments regarding designated health services. We intend to address those comments in a second final rule regarding the physician self-referral prohibition.

VII. Physician Fee Schedule Update for Calendar Year 2002

A. Physician Fee Schedule Update

The physician fee schedule update for 2002 is –4.8 percent. Under section 1848(d)(3) of the Act, the update is equal to 1 plus the product of the Medicare Economic Index (MEI) (divided by 100) and 1 plus the update adjustment factor. For 2002, the MEI is equal to 2.6 percent (1.026). A more detailed description of the MEI and its calculation follows. The update adjustment factor is equal to –7.0 percent (0.930). Section 1848(d)(4)(F) of the Act requires an additional –0.2 percent (0.998) reduction to the update for 2002. Thus, the product of the MEI (1.026), the update adjustment factor (0.930), and the statutory adjustment factor (0.998) equals the 2002 update of –4.8 percent (0.9523). The MEI and the update adjustment factor are described below.

B. The Percentage Change in the Medicare Economic Index

The MEI measures the weighted-average annual price change for various inputs needed to produce physicians' services. The MEI is a fixed-weight input price index, with an adjustment for the change in economy-wide labor productivity. This index, which has 1996 base weights, is comprised of two broad categories—physician's own time and physician's practice expense.

The physician's own time component represents the net income portion of business receipts and primarily reflects the input of the physician's own time into the production of physicians' services in physicians' offices. This category consists of two subcomponents—wages and salaries, and fringe benefits. These components are adjusted by the 10-year moving average annual percent change in output per man-hour for the nonfarm business sector to reflect productivity growth in physicians' offices.

The physician's practice expense category represents the rate of price growth in nonphysician inputs to the production of services in physicians' offices. This category consists of wages and salaries and fringe benefits for nonphysician staff and other nonlabor inputs. Like physician's own time, the nonphysician staff categories are adjusted for productivity using the 10-year moving average annual percent change in output per man-hour for the nonfarm business sector. The physician's practice expense component also includes the following categories of nonlabor inputs—office expense, medical materials and supplies, professional liability insurance, medical equipment, professional car, and other expense. Table 9 presents a listing of the MEI cost categories with associated weights and percent changes for price proxies for the 2002 update. The calendar year 2002 MEI is 2.6 percent.

TABLE 9.—INCREASE IN THE MEDICARE ECONOMIC INDEX UPDATE FOR CALENDAR YEAR 2002 [1]

Cost categories and price measures	1996 Weights [2]	CY 2002 percent changes
Medicare Economic Index Total	100.0	2.6
1. Physician's Own Time [3 4]	54.5	2.1

TABLE 9.—INCREASE IN THE MEDICARE ECONOMIC INDEX UPDATE FOR CALENDAR YEAR 2002 [1]—Continued

Cost categories and price measures	1996 Weights [2]	CY 2002 percent changes
a. Wages and Salaries: Average hourly earnings private nonfarm, net of productivity	44.2	2.0
b. Fringe Benefits: Employment Cost Index, benefits, private nonfarm, net of productivity	10.3	3.2
2. Physician's Practice Expense [3 4]	45.5	3.0
a. Nonphysician Employee Compensation	16.8	2.5
1. Wages and Salaries: Employment Cost Index, wages and salaries, weighted by occupation, net of productivity	12.4	2.3
2. Fringe Benefits: Employment Cost Index, fringe benefits, white collar, net of productivity	4.4	3.7
b. Office Expense: Consumer Price Index forUrban Consumers (CPI–U), housing	11.6	4.2
c. Medical Materials and Supplies: Producer Price Index (PPI), ethical drugs/PPI, surgical appliances and supplies/CPI–U, medical equipment and supplies (equally weighted)	4.5	1.8
d. Professional Liability Insurance: HCFA professional liability insurance survey [5]	3.2	4.0
e. Medical Equipment: PPI, medical instruments and equipment	1.9	0.6
f. Other Professional Expense	7.6	2.8
1. Professional Car: CP–U, private transportation	1.3	3.9
Other: CPI–U, all items less food and energy	6.3	2.6
Addendum:		
Productivity: 10-year moving average of output per man-hour, nonfarm business sector	n/a	2.0
Physician's Own Time, not productivity adjusted	54.5	4.3
Wages and salaries, not productivity adjusted	44.2	4.1
Fringe benefits, not productivity adjusted	10.3	5.3
Nonphysician Employee Compensation, not productivity adjusted	16.8	4.7
Wages and salaries, not productivity adjusted	12.4	4.3
Fringe benefits, not productivity adjusted	4.4	5.9

[1] The rates of historical change are for the 12-month period ending June 30, 2001, which is the period used for computing the calendar year 2002 update. The price proxy values are based upon the latest available Bureau of Labor Statistics data as of September 18, 2001.

[2] The weights shown for the MEI components are the 1996 base-year weights, which may not sum to subtotals or totals because of rounding. The MEI is a fixed-weight, Laspeyres-type input price index whose category weights indicate the distribution of expenditures among the inputs to physicians' services for calendar year 1996. To determine the MEI level for a given year, the price proxy level for each component is multiplied by its 1996 weight. The sum of these products (weights multiplied by the price index levels) over all cost categories yields the composite MEI level for a given year. The annual percent change in the MEI levels is an estimate of price change over time for a fixed market basket of inputs to physicians' services.

[3] The Physician's Own Time and Nonphysician Employee Compensation category price measures include an adjustment for productivity. The price measure for each category is divided by the 10-year moving average of output per man-hour in the nonfarm business sector. For example, the fringe benefits component of the Physician's Own Time category is calculated by dividing the rate of growth in the employment cost index-benefits for private, nonfarm workers by the 10-year moving average rate of growth of output per man-hour for the nonfarm business sector. Dividing one plus the decimal form of the percent change in the employment cost index-benefits (1+.053=1.053) by one plus the decimal form of the percent change in the 10-year moving average of labor productivity(1+.020=1.020) equals one plus the change in the employment cost index-benefits for white collar workers net of the change in output per manhour (1.053/1.020=1.032). All Physician's Own Time and Nonphysician Employee Compensation categories are adjusted in this way. Due to a higher level of precision the computer calculated quotient may differ from the quotient calculated from rounded individual percent changes.

[4] The measures of productivity, average hourly earnings, Employment Cost Indexes, as well as the various Producer and Consumer Price Indexes can be found on the Bureau of Labor Statistics website—http://stats.bls.gov.

[5] Derived from a CMS survey of several major insurers (the latest available historical percent change data are for the period ending second quarter of 2001).

[6] Productivity is factored into the MEI compensation categories as an adjustment to the price variables; therefore, no explicit weight exists for productivity in the MEI.

C. The Update Adjustment Factor

Paragraphs (3) and (4) of section 1848(d)(3) of the Act indicate that the physician fee schedule update is equal to the product of the Medicare Economic Index and an "update adjustment factor." The update adjustment factor is applied to the inflation update to reflect success or failure in meeting the expenditure target that the law refers to as "allowed expenditures." Allowed expenditures are equal to actual expenditures in a base period updated each year by the sustainable growth rate (SGR). The SGR is a percentage increase that is determined by a formula specified in section 1848(f) of the Act. The next section of this final rule describes the SGR and its calculation in detail. The update adjustment factor is determined based on a comparison of actual and allowed expenditures. For years beginning with 1999, the BBA required that the update adjustment factor be determined under section 1848(d)(3) of the Act to equal—

- The difference between (1) the sum of the allowed expenditures for physicians' services (as determined under subparagraph (C)) for the period beginning April 1, 1997, and ending on March 31 of the year involved, and (2) the amount of actual expenditures for physicians' services furnished during the period beginning April 1, 1997, and ending on March 31 of the preceding year; divided by—
- The actual expenditures for physicians' services for the 12-month period ending on March 31 of the preceding year, increased by the sustainable growth rate under subsection (f) for the fiscal year which begins during such 12-month period.

The BBRA made changes to the methodology for determining the physician fee schedule update beginning in 2001. In particular, it established that the methodology in section 1848(d)(3) of the Act would only be used for determining the physician fee schedule update for 1999 and 2000; the physician fee schedule update for 2001 and subsequent years is determined under section 1848(d)(4) of the Act. While the general principle of adjusting the inflation update (the MEI) based on a comparison of actual and target expenditures (the update adjustment factor) is continuing, the BBRA made fundamental changes to the calculation of the update adjustment factor. These changes do two things. First, the measurement of actual

expenditures will occur on the basis of a calendar year rather than a April 1 to March 31 year. This essentially conforms the measurement of actual expenditures with other aspects of the SGR system that are also occurring on the basis of a calendar year as a result of BBRA amendments. As explained in our April 10, 2000 SGR notice (65 FR 19000), the BBRA essentially changed the SGR system from one that spanned 3 different time periods (1—Measurement of actual expenditures on the basis of a April 1 to March 31 period; 2—calculation of the SGR rate of increase on a Federal fiscal year basis; and 3—application of the update on a calendar year basis) to one that spans only one time period (all three elements are computed on the basis of a calendar year). Second, it ensures that any deviation between cumulative actual expenditures and cumulative allowed expenditures will be corrected over several years rather than in a single year. This will result in less year-to-year volatility in the physician fee schedule update than will occur if adjustments to the update are made to bring expenditures in line with the target in one year.

Under section 1848(d)(4)(A) of the Act, the physician fee schedule update for a year is equal to the product of—(1) 1 plus the Secretary's estimate of the percentage increase in the MEI for the year, and (2) 1 plus the Secretary's estimate of the update adjustment factor for the year. Under section 1848(d)(4)(B) of the Act, the update adjustment factor for a year beginning with 2001 is equal to the sum of the following—

- Prior Year Adjustment Component. An amount determined by—
  + Computing the difference (which may be positive or negative) between the amount of the allowed expenditures for physicians' services for the prior year (the year prior to the year for which the update is being determined) and the amount of the actual expenditures for such services for that year;
  + Dividing that difference by the amount of the actual expenditures for such services for that year; and
  + Multiplying that quotient by 0.75.
- Cumulative Adjustment Component. An amount determined by—
  + Computing the difference (which may be positive or negative) between the amount of the allowed expenditures for physicians' services from April 1, 1996 through the end of the prior year and the amount of the actual expenditures for such services during that period;
  + Dividing that difference by actual expenditures for such services for the prior year as increased by the sustainable growth rate for the year for which the update adjustment factor is to be determined; and
  + Multiplying that quotient by 0.33.

Section 1848(d)(4)(D) of the Act indicates that the update adjustment factor determined under section 1848(d)(4)(B) for a year may not be less than −0.07 or greater than 0.03. At this time, we estimate that the sum of the prior year and cumulative adjustment components will be less than −0.07 limit. In a letter to the Medicare Payment Advisory Commission and in data we made available to the public on the CMS website in March, we indicated that the estimated update adjustment factor for 2002 would be −1.5 percent. However, we also indicated that a number of factors could change our estimate of the update adjustment factor. Since our March estimate, a number of factors have changed that lower our estimate of allowed expenditures and increase our estimate of actual expenditures. Allowed expenditures have declined because real per capita gross domestic product (GDP) growth for 2000 is lower than the estimates in March. This occurs because of changes to economic figures for 2000 made at the Bureau of Economic Analysis. Further, current estimates of real GDP per capita growth for 2001 and 2002 are lower than in March. We provide a more detailed explanation of factors that affect our estimate of allowed expenditures in the next section of this final regulation on the SGR. An explanation of changes to actual expenditures follows.

As indicated above, we are currently estimating higher 2001 actual expenditures than we did in March. We did not have any Medicare claims data to develop our March estimates of actual expenditures for 2001. At this time, we are using claims received through June 30 to estimate actual expenditures for all of 2001. Based on the claims received in the first half of the year, our current estimates of actual expenditures for 2001 are higher than earlier estimates. We will be revising the measurement of actual expenditures for CY 2001 based on claims received through June 30, 2002. These revised figures will be determined no later than November 1, 2002. If the revised figures are different than current estimates, the difference will be reflected in the update adjustment factor used in determining the 2003 physician fee schedule update.

After taking into account the factors described above that affect allowed and actual expenditures, we originally estimated that the update adjustment factor for 2002 would be −5.4 percent or 1.6 percentage points more than the −7.0 percent limit on the update adjustment factor. However, in making updates to the list of codes that are included in the SGR, we discovered that a number of new procedure codes were inadvertently not included in the measurement of actual expenditures beginning in 1998. Therefore, the measurement of actual expenditures for 1998, 1999, and 2000 was lower than it should have been. As a result, the physician fee schedule update was higher in 2000 and 2001 than if we had included these codes. Including these codes in the measurement of actual expenditures results in a lower update adjustment factor than we earlier estimated. We will be making no changes to physician fee schedule payments made for services furnished in 2000 and 2001. However, under section 1848(d) of the Act, we must include these codes in the measurement of actual expenditures for historical, current, and future periods. While we do not currently know the precise effect of not measuring expenditures for all codes included in the SGR on the update adjustment factor for 2002, we are certain that it is in excess of 1.6 percentage points and is of sufficient magnitude to result in the update adjustment factor being less than the −7.0 percent statutory limit. In the near future, we expect to complete this analysis and update information that we make available on the CMS website. We plan to provide complete data that show quarterly allowed and actual expenditures for all procedure codes included in the SGR, as well as a list of the codes themselves.

Section 1848(d)(4)(A)(ii) of the Act indicates that 1 should be added to the update adjustment factor determined under section 1848(d)(4)(B) of the Act. Thus, adding 1 to −0.070 makes the update adjustment factor equal to 0.930.

(As indicated in the SGR discussion below, allowed expenditures through the end of CY 2001 will be revised one more time, not later than November 1, 2002. We will also be revising the measurement of actual expenditures for CY 2001 based on claims received through June 30, 2002, not later than November 1, 2002. The SGR for 2001 will also be revised one more time, and the SGR for 2002 will be revised two more times. The resulting effect from revisions of estimates will be reflected in the update adjustment factor determined for 2003.)

VIII. Allowed Expenditures for Physicians' Services and the Sustainable Growth Rate

A. Medicare Sustainable Growth Rate

Section 1848(f) of the Act, as amended by section 4503 of the BBA, replaced the Medicare Volume Performance Standard (MVPS) with a Sustainable Growth Rate (SGR). Section 1848(f)(2) of the Act specifies the formula for establishing yearly SGR targets for physicians' services under Medicare. The use of SGR targets is intended to control the actual growth in aggregate Medicare expenditures for physicians' services.

The SGR targets are not limits on expenditures. Payments for services are not withheld if the SGR target is exceeded by actual expenditures. Rather, the appropriate fee schedule update, as specified in section 1848(d)(3) of the Act, is adjusted to reflect the success or failure in meeting the SGR target. If expenditures exceed the target, the update is reduced. If expenditures are less than the target, the update is increased.

As with the MVPS, the statute specifies a formula to calculate the SGR based on our estimate of the change in each of four factors. The four factors for calculating the SGR are as follows—

(1) The estimated change in fees for physicians' services.

(2) The estimated change in the average number of Medicare fee-for-service beneficiaries.

(3) The estimated projected growth in real GDP per capita.

(4) The estimated change in expenditures due to changes in law or regulations.

Section 211 of the BBRA amended sections 1848(d) and 1848(f) of the Act with respect to the physician fee schedule update and the SGR. Section 211(b) of the BBRA maintains the formula for calculating the SGR, but amends section 1848(f)(2) of the Act to apply the SGR on a calendar year (CY) basis beginning with 2000 while maintaining the SGR on a fiscal year (FY) basis for FY 1998 through FY 2000. Specifically, section 1848(f)(2) of the Act, as amended by section 211(b) of the BBRA, states that "* * * [t]he sustainable growth rate for all physicians' services for a fiscal year (beginning with fiscal year 1998 and ending with fiscal year 2000) and a year beginning with 2000 shall be equal to the product of—

(1) 1 plus the Secretary's estimate of the weighted average percentage increase (divided by 100) in the fees for all physicians' services in the applicable period involved,

(2) 1 plus the Secretary's estimate of the percentage change (divided by 100) in the average number of individuals enrolled under this part (other than Medicare+Choice plan enrollees) from the previous applicable period to the applicable period involved,

(3) 1 plus the Secretary's estimate of the projected percentage growth in real gross domestic product per capita (divided by 100) from the previous applicable period to the applicable period involved; and

(4) 1 plus the Secretary's estimate of the percentage change (divided by 100) in expenditures for all physicians' services in the applicable period (compared with the previous applicable period) which will result from changes in law and regulations, determined without taking into account estimated changes in expenditures resulting from the update adjustment factor determined under section 1848 (d)(3)(B) or (d)(4)(B) of the Act, as the case may be, minus 1 and multiplied by 100."

Under section 1848(f)(4)(C) of the Act, the term "applicable period" means—(1) a FY, in the case of FY 1998, FY 1999 and FY 2000, and (2) a CY with respect to a year beginning with 2000.

Section 1848(d)(4)(C) of the Act requires us to make the transition from a FY SGR to a CY SGR in 1999 by using the FY 1999 SGR for the first 3 months of 1999 and the FY 2000 SGR for the 9-month period beginning April 1, 1999. Allowed expenditures for the year are equal to the sum of allowed expenditures for each respective period. The SGR for CY 2000 is then applied to allowed expenditures for CY 1999.

As stated in the April 10, 2000 final notice (65 FR 19000), the BBRA requires the estimates of the FY 2000 and CY 2000 SGRs to be revised based on more recent data, but, as explained below, the BBRA does not provide for revision of either the FY 1998 or the FY 1999 SGR. This means that, for the transition to a calendar year SGR system, allowed expenditures for the period April 1, 1999 through December 31, 1999 (determined by applying the FY 2000 SGR to allowed expenditures for the 12-month period ending March 31, 1999) are subject to change based on revision of the FY 2000 SGR; allowed expenditures for the period January 1, 1999 through March 31, 1999 (determined using the FY 1999 SGR) are not subject to revision.

In general, the BBRA requires us to publish SGRs for 3 different time periods, no later than November 1 of each year, using the best data available as of September 1 of each year. Under section 1848(f)(3)(C)(i) of the Act, as added by section 211(b)(5) of the BBRA, the SGR is estimated and subsequently revised twice (beginning with the FY and CY 2000 SGRs) based on later data. Under section 1848(f)(3)(C)(ii) of the Act, there are no further revisions to the SGR once it has been estimated and subsequently revised in each of the 2 years following the initial estimate.

The requirement of revisions to the SGR based on later data means that we will estimate and publish an SGR for the upcoming year, the contemporaneous year, and the preceding year by no later than November 1 of each year. For example, by no later than November 1, 2002, we will publish an estimate of the SGR for CY 2003, a revision of the CY 2002 SGR that is first being estimated in this notice, and a revision of the CY 2001 SGR first estimated in the final rule published on November 2, 2000 (65 FR 65429) and revised in this final rule. Under section 1848(f)(3)(C)(ii) of the Act, the final revision to the CY 2001 SGR will be announced in the **Federal Register** no later than November 1, 2002.

Subparagraphs (A) and (B) of section 1848(f)(3) of the Act, specify special rules with respect to the SGR and the CY 2001 and CY 2002 updates. Section 1848(f)(3)(A) of the Act required us, no later than November 1, 2000, to revise the SGRs for FY 2000 and CY 2000 and to establish the SGR for CY 2001, based on the best data available, as of September 1, 2000. We published our first estimate of the SGRs for FY 2000 and CY 2000 in a **Federal Register** notice on April 10, 2000 (65 FR 19000). Revised estimates of the SGRs for FY 2000 and CY 2000 and our original estimate of the SGR for CY 2001 appeared in the **Federal Register** on November 1, 2000 (65 FR 65429). We used each of the SGRs published in the November 1, 2000 **Federal Register** to determine the physician fee schedule update for 2001. Section 1848(f)(3)(B) of the Act requires us, by no later than November 1, 2001, to revise the SGRs for FY 2000 and CYs 2000 and 2001 and establish the SGR for CY 2002, based on the best data available as of September 1, 2001 and to use each of these SGRs to determine the physician fee schedule update for 2002. We are using each of the SGRs established in this notice to determine the 2002 physician fee schedule update. In accordance with section 1848(f)(3)(C)(ii) of the Act, there will be no further revisions to the FY 2000 and CY 2000 SGRs after the revisions we are making in this final rule.

B. Physicians' Services

Section 1848(f)(4)(A) of the Act defines the scope of physicians' services

covered by the SGR. The statute indicates that the term "physicians' services" includes other items and services (such as clinical diagnostic laboratory tests and radiology services), specified by the Secretary, that are commonly performed or furnished by a physician or in a physician's office, but does not include services furnished to a Medicare+Choice plan enrollee. The BBA and BBRA made no changes to this definition which was also used for the MVPS. We published a definition of physicians' services for use in the MVPS and subsequent SGR in the **Federal Register** (61 FR 59717) on November 22, 1996. We defined "physicians' services" to include many of the medical and other health services listed in section 1861(s) of the Act. Since the statute has made a number of changes to the definition of medical and other health services included in section 1861(s), we are updating our definition of physicians' services consistent with the statutory changes. Our practice has been to make adjustments to the SGR for medical and other health services added to the statute that meet the criterion of being "commonly performed by a physician or a physicians' office." For instance, the BBA and the BIPA amended section 1861(s) of the Act to add new preventive benefits to the Medicare statute. Since these preventive services are generally provided by physicians or in physicians' offices, we made adjustments to the SGR to reflect additional Medicare expenditures for the newly-added Medicare benefits. Physicians' services for the SGR include the following medical and other health services if bills for the items and services are processed and paid by Medicare carriers:

- Physicians' services.
- Services and supplies furnished incident to physicians' services.
- Outpatient physical therapy services and outpatient occupational therapy services.
- Antigens prepared by or under the direct supervision of a physician.
- Services of physician assistants, certified registered nurse anesthetists, certified nurse midwives, clinical psychologists, clinical social workers, nurse practitioners, and clinical nurse specialists.
- Screening tests for prostate cancer, colorectal cancer, glaucoma.
- Screening mammography, screening pap smears and screening pelvic exams.
- Diabetes outpatient self-management training services.
- Medical nutrition therapy services.
- Diagnostic x-ray tests, diagnostic laboratory tests and other diagnostic tests.
- X-ray, radium, and radioactive isotope therapy.
- Surgical dressings, splints, casts, and other devices used for the reduction of fractures and dislocations.
- Bone mass measurements.

C. Provisions Related to the SGR

Section 211(b)(1) of the BBRA amends section 1848(f)(1) of the Act to require that SGR estimates be published in the **Federal Register** not later than November 1 of every year. In this notice, we are publishing our initial estimate of the SGR for 2002, a revised estimate of the SGR for 2001 and final estimates of the SGRs for FY and CY 2000.

In general, the update for a year is based on the Medicare Economic Index (MEI) as adjusted, within bounds, by the amount of actual expenditures for physicians' services compared to target (referred to as "allowed" in the statute) expenditures. A key difference between the MVPS and the SGR is that the comparison of actual and allowed expenditures is made on a cumulative basis under the SGR, while it was made on an annual basis under the MVPS. The "update adjustment factor" in section 1848(d)(4)(B) of the Act is an adjustment to the MEI that reflects the difference between actual expenditures and target expenditures.

Section 1848(d)(3)(C) of the Act, as modified by the BBA, defines allowed expenditures for the 12-month period ending March 31, 1997 to be equal to actual expenditures for physicians' services during that period (that is, April 1, 1996 through March 31, 1997), as we have estimated. Section 1848(d)(3)(C) of the Act defines allowed expenditures for subsequent 12-month periods to be equal to allowed expenditures for physicians' services for the previous year increased by the SGR for the FY which begins during the 12-month period. For example, allowed expenditures for the 12-month period April 1, 1997 through March 31, 1998 are equal to allowed expenditures for the 12 months ending March 31, 1997, increased by the SGR for FY 1998. The BBRA subsequently provided for a transition to a calendar year SGR system in 1999. Allowed expenditures for the first quarter of 1999 are determined using the FY 1999 SGR and allowed expenditures for the April 1, 1999 to December 31, 1999 period are determined using the FY 2000 SGR. Allowed expenditures in 2000 are equal to 1999 allowed expenditures increased by the 2000 SGR. Allowed expenditures for each subsequent year will equal expenditures from the prior year updated by the SGR.

Table 10 shows annual and cumulative allowed expenditures for physicians' services for each of the 12-month periods between April 1, 1996 and March 31, 2000, for 1999 and 2000.

TABLE 10

Period	Annual allowed expenditures (in billions)	Cumulative allowed expenditures (in billions)	FY or CY SGR
4/1/96–3/31/97	$48.9	$48.9	N/A
4/1/97–3/31/98	49.6	98.5	FY 1998=1.5%
4/1/98–3/31/99	49.4	47.9	FY 1998=−0.3%
1/1/99–3/31/99	12.5	[1]	FY 1999=−0.3%
4/1/99–12/31/99	39.6	[2]	FY 2000=6.9%
1/1/99–12/31/99	52.1	187.6	FY 1999/FY 2000
1/1/00–12/31/00	55.9	243.5	CY 2000=7.3%
1/1/01–12/31/01	59.3	302.7	CY 2001=6.1%
1/1/02–12/31/02	62.6	365.3	CY 2002=5.6%

[1] Included in $147.9 above.
[2] Included in $187.6 below.

Note: Allowed Expenditures for the first quarter of 1999 are based on the FY 1999 SGR and allowed expenditures for the last three quarters of 1999 are based on the FY 2000 SGR.

Allowed Expenditures in the First Year (April 1, 1996–March 31, 1997) are equal to actual expenditures. All subsequent figures are equal to quarterly allowed expenditure figures increased by the applicable SGR. Cumulative allowed expenditures are equal to the sum of annual allowed expenditures. We provide more detailed quarterly allowed and actual expenditure data on the CMS website under the Medicare Actuary's publications at the following address: *http://www.hcfa.gov/pubforms/actuary/*. We expect to update this information in November.

Allowed expenditures for the April 1, 1999 through the December 31, 1999 period are based on the FY 2000 SGR. As previously discussed, section 1848(f)(3) of the Act requires two revisions to the FY and CY 2000 SGR. We made the first revision to the FY and CY 2000 SGR in the physician fee schedule final rule published in the **Federal Register** on November 1, 2000 (65 FR 65427). We are making the second and final revision in this final rule. Consistent with section 1848(f)(3)(B) of the Act, the revised FY and CY 2000 SGR uses the best data available to us as of September 1, 2001.

D. Preliminary Estimate of the SGR for 2002

According to subparagraphs (A) through (D) of section 1848(f)(2) of the Act, as amended by section 211(b) of the BBRA, we have determined the preliminary estimate of the CY 2002 SGR to be 5.6 percent. We first estimated the CY 2002 SGR in March and made the estimate available to the Medicare Payment Advisory Commission and our website. Our March and current estimates of the four statutory factors are indicated in table 11:

TABLE 11

Statutory factors	March estimate	Current estimate
Fees	1.6	2.3
Enrollment	0.4	0.7
Real Per Capita GDP	2.4	1.7
Law and Regulation ..	1.5	0.8
Total	6.0	5.6

Note: Consistent with section 1848(f)(2) of the Act, the statutory factors are multiplied, not added, to produce the total (that is, 1.023 × 1.007 × 1.017 × 1.008 = 1.056.) A more detailed explanation of each figure is provided below in section H.1.

E. Sustainable Growth Rate for CY 2001

According to subparagraphs (A) through (D) of section 1848(f)(2) of the Act, as amended by section 211(b) of the BBRA, our current estimate of the CY 2001 SGR is 6.1 percent. Table 12 shows our original estimate of the CY 2001 SGR published in the **Federal Register** on November 1, 2000 (65 FR 65433) and current estimates of the four statutory factors that determine the CY 2001 SGR:

TABLE 12

Statutory factors	11/1/00 estimate	Current estimate
Fees	1.9	1.9
Enrollment	0.9	3.0
Real Per Capita GDP	2.7	0.7
Law and Regulation ..	0.0	0.4
Total	5.6	6.1

A more detailed explanation of each figure is provided below in section H.2.

F. Sustainable Growth Rate for CY 2000

According to subparagraphs (A) through (D) of section 1848(f)(2) of the Act, as amended by section 211(b) of the BBRA, our current estimate of the CY 2000 SGR is 7.3 percent. Table 13 shows estimates included in the November 1, 2000 **Federal Register** (65 FR 65433) and current estimates of the four statutory factors that determine the CY 2000 SGR:

TABLE 13

Statutory factors	11/1/00 estimate	Current estimate
Fees	2.1	2.1
Enrollment	1.0	1.0
Real Per Capita GDP	4.3	3.2
Law and Regulation ..	0.5	0.8
Total	8.1	7.3

A more detailed explanation of each figure is provided below in section H.3.

G. Sustainable Growth Rate for FY 2000

According to subparagraphs (A) through (D) of section 1848(f)(2) of the Act, as amended by section 211(b) of the BBRA, our current estimate of the FY 2000 SGR is 6.9 percent. Table 14 shows estimates included in the November 1, 2000 **Federal Register** (65 FR 65433) and current estimates of the four statutory factors that determine the FY 2000 SGR:

TABLE 14

Statutory factors	11/1/00 estimate	Current estimate
Fees	2.1	2.1
Enrollment	0.8	0.5
Real Per Capita GDP	4.5	3.6
Law and Regulation ..	0.3	0.6
Total	7.9	6.9

A more detailed explanation of each figure is provided below in section H.3.

H. Calculation of the FY 2000, CY 2000, CY 2001, and CY 2002 Sustainable Growth Rates

1. Detail on the CY 2002 SGR

A more detailed discussion of our preliminary estimates of the four elements of the 2002 SGR follows.

Factor 1—Changes in Fees for Physicians' Services (Before Applying Legislative Adjustments) for CY 2002

This factor was calculated as a weighted average of the CY 2002 fee increases that apply for the different types of services included in the definition of physicians' services for the SGR.

Physicians' services as defined in sections 1861(s)(1) and (2) of the Act represent approximately 89 percent of allowed charges for physicians' services under the SGR and are updated by the Medicare Economic Index (MEI). Our current estimate of the MEI for 2002 is 2.6 percent. Diagnostic laboratory tests represent approximately 11 percent of the Medicare allowed charges for physicians' services under the SGR. The BBA provided for a 0.0 percent update for CY 2002 for laboratory services. Table 15 shows both the physicians' and laboratory service updates that were used to determine the percentage increase in physicians' fees for CY 2002.

TABLE 15

	Weight	Update
Physician	0.89	2.6
Laboratory	0.11	0.0
Weighted Average ..	1.0	2.3

After taking into account the elements described in the table, we estimate that the weighted-average increase in fees for CY 2002 for physicians' services under the SGR (before applying any legislative adjustments) will be 2.3 percent.

Factor 2—The Percentage Change in the Average Number of Part B Enrollees From CY 2001 to CY 2002

This factor is our estimate of the percent change in the average number of

fee-for-service enrollees for CY 2002 as compared to CY 2001 Medicare+Choice (M+C) plan enrollees, whose Medicare-covered medical care is outside the scope of the SGR, and who are excluded from this estimate. Our actuaries estimate that the average number of Medicare Part B fee-for-service enrollees (excluding beneficiaries enrolled in M+C plans) will increase by 0.7 percent in calendar year 2002. This estimate was derived by subtracting estimated M+C enrollment from estimated overall Medicare enrollment as illustrated in table 16.

TABLE 16
[In millions]

	2001	2002
Overall	37.828	38.149
Medicare+Choice	5.662	5.761
Net	32.166	32.388
Percent Increase:		0.7

Since 2002 has yet to begin, we currently only have estimates of this figure for 2002. An important factor affecting fee-for-service enrollment is beneficiary enrollment in Medicare+Choice plans. At this time, we do not know how actual enrollment in Medicare+Choice plans will compare to current estimates. While we do receive information on whether a Medicare+Choice plan will continue to participate or withdraw from the program, it remains difficult to estimate the number of beneficiaries who will select a Medicare+Choice plan or fee-for-service before the start of the calendar year. While some plans will no longer offer a Medicare+Choice plan, other plans are available as an option to most beneficiaries in areas where there have been plan withdrawals. It is difficult to estimate the size of the Medicare+Choice enrollee population before the start of a calendar year. Because we determine the fee-for-service enrollment figure net of the change in Medicare+Choice enrollment, early estimates of this factor are difficult to make. Our estimate of this factor is preliminary and only has minimal effect on the physician fee schedule update for CY 2002. The CY 2002 SGR will also be used in the calculation of the 2003 physician fee schedule update in a final rule to be published no later than November 1, 2002. By that time, we will have information on actual enrollment in Medicare+Choice plans for the first 8 months of CY 2002 and will be better able to predict the change in fee-for-service enrollment for the year.

Factor 3—Estimated Real Gross Domestic Product Per Capita Growth in CY 2002

Section 1848(f)(2)(C) of the Act, as amended by section 211 of the BBRA, requires us to estimate growth in real GDP per capita. This factor is applied on a CY basis beginning with the CY 2000 SGR. We estimate that the growth in real per capita GDP will be 1.7 percent in CY 2002. Our past experience indicates that there have also been large changes in estimates of real per capita GDP growth and the actual change in this factor. It is likely that this figure will change further as actual information on economic performance becomes available to us in 2002. Again, we note that we will use revised estimates of real per capita GDP growth in setting future year updates.

Factor 4—Percentage Change in Expenditures for Physicians' Services Resulting From Changes in Law or Regulations in CY 2002 Compared With CY 2001

Sections 101 through 104 of BIPA added Medicare coverage for screening glaucoma, authorized Medicare to pay for specific new technology mammography services, and changed coverage for screening pap smears, screening pelvic exams, and screening colonoscopy for average-risk individuals. In addition, section 105 of the BIPA also establishes a new benefit for medical nutrition therapy and expands access to telehealth services in section 223. Section 432 of the BIPA also requires that Medicare make payment to Indian Health Service hospitals and ambulatory clinics for physicians' and practitioners' services as well as outpatient physical and occupational therapy services that are included in the definition of physicians' services for purposes of the SGR. Since these provisions will increase Medicare expenditures for services that are included in the SGR, we are making an upward adjustment to reflect additional Medicare expenditures in 2002. Our estimates of the cost of these provisions for the period FY 2002–FY 2006 are included in our Notice of Proposed Rulemaking published in the **Federal Register** on August 2, 2001 (66 FR 40400).

We are making an adjustment to the SGR for one additional factor. In section VI.B. of this final rule, we provided a definition of physicians' services for purposes of the SGR. Historically, we have not measured expenditures for screening mammography under the SGR. However, section 1848(f)(4) of the Act indicates that "physicians" services includes other items and services (such as clinical diagnostic laboratory tests and radiology services), specified by the Secretary, that are commonly performed or furnished by a physician or in a physician's office." Screening mammography services are "radiology services" that are performed by "physicians or in a physician's office." As a result, we are using this rule to add screening mammography to the list of services that are part of the SGR definition. Since we have not previously measured expenditures for screening mammography services under the SGR, it is appropriate to make an adjustment to this factor for the change to the definition of physicians' services. We are making an adjustment that reflects estimated payments for screening mammography services in CY 2002. We will make a subsequent revision based on actual expenditures for screening mammography.

After taking these provisions into account, the percentage change in expenditures for physicians' services resulting from changes in law or regulations is estimated to be 0.8 percent for 2002. In March, we estimated that this figure would be 1.5 percent. The 0.7 percentage point difference is due to a change in our estimate of the BIPA provisions. In March, we had no information about implementation of these provisions. We used updated assumptions about pricing and utilization based on proposed policies published in the August 2, 2001 proposed rule (66 FR 40400).

2. Detail on the CY 2001 SGR

A more detailed discussion of our current estimates of the four elements of the 2001 SGR follows.

Factor 1—Changes in Fees for Physicians' Services (Before Applying Legislative Adjustments) for CY 2001

We are continuing to use 1.9 percent for this element of the SGR for the CY 2001 SGR. This factor is unchanged from earlier estimates previously described for CY 2001 in the November 1, 2000 **Federal Register** (65 FR 65433).

Factor 2—The Percentage Change in the Average Number of Fee-for-Service Part B Enrollees From CY 2000 to CY 2001

This factor is our estimate of the percent change in the average number of fee-for-service enrollees for CY 2001 as compared to CY 2000. As we indicated above, this factor is difficult to estimate prior to the beginning of the period for which the estimates are being made because of the interaction of the fee-for-service and Medicare+Choice program and the lack of availability of actual data on beneficiary selection of Medicare+Choice enrollment. We currently have information on actual enrollment in the Medicare+Choice program for CY 2001 and CY 2000 that permits estimates of the change in fee-for-service enrollment for these years that will be more reflective of the final actual enrollment and percent year-to-year change. The estimates for CY 2000 and CY 2001 were derived by subtracting estimated M+C enrollment from estimated overall Medicare enrollment as illustrated in table 17.

TABLE 17
[In millions]

	2000	2001
Overall	37.453	37.828
Medicare+Choice	6.233	5.662
Net	31.221	32.166
Percent Increase		3.0

Our actuaries estimate of the percent change in the average number of fee-for-service enrollees net of Medicare+Choice enrollment for 2001 compared to 2000 of 3.0 percent is more than our early estimate of this factor (0.9 percent for CY 2001 from the November 1, 2000 **Federal Register** (65 FR 65433)) because the historical base from which our actuarial estimate is made has changed. We currently have complete information on Medicare fee-for-service enrollment for 2000 that is lower than the figure we used one year ago. Further, we now have information on actual fee-for-service enrollment for the first 8 months of 2001. This figure is slightly higher than the figure used in the November 1, 2000 **Federal Register** (65 FR 65433). We would caution that our estimate of fee-for-service enrollment for 2001 may change once we have complete information for the entire year.

Factor 3—Estimated Real Gross Domestic Product Per Capita Growth in CY 2001

Section 1848(f)(2)(C) of the Act, as amended by section 211 of the BBRA, requires us to estimate growth in real GDP per capita. We estimate that the growth in real per capita GDP will be 0.7 percent in CY 2001. There have also been large changes in initial estimates of real per capita GDP growth and the actual change in this factor. There could be further changes in this factor once we have complete information on economic performance for the entire year. Again, we note that we will use revised estimates of real per capita GDP growth in setting future year updates.

Factor 4—Percentage Change in Expenditures for Physicians' Services Resulting From Changes in Law or Regulations in CY 2001 Compared With CY 2000

As described above, the BIPA makes changes to the Act that affect Medicare expenditures for services that are included in the SGR. Some of these provisions have no effect on Medicare expenditures in 2001 because they do not go into effect until 2002. Other provisions are effective at some time during 2001. Provisions that become effective in 2001 relate to new technology mammography and coverage changes for screening pap smears, screening pelvic exams and screening colonoscopy, expanded access to telehealth services and Medicare payment for services provided in Indian Health Service hospitals and clinics. After taking these provisions into account, the percentage change in expenditures for physicians' services resulting from changes in law or regulations is estimated to be 0.4 percent for 2001.

3. Detail on Calculation of the FY 2000 and CY 2000 SGRs

A more detailed discussion of our revised estimates of the four elements of the FY 2000 and CY 2000 SGRs follows.

Factor 1—Changes in Fees for Physicians' Services (Before Applying Legislative Adjustments) for FY 2000 SGR and CY 2000 SGR

We are continuing to use 2.1 percent for this element of the SGR for the FY 2000 SGR and the CY 2000 SGR. This factor is unchanged from earlier estimates previously described respectively for FY 2000 and CY 2000 in the October 1, 1999 **Federal Register** (64 FR 53395), the April 10, 2000 **Federal Register** (65 FR 19003) and the August 2, 2001 **Federal Register** (66 FR 40397).

Factor 2—The Percentage Change in the Average Number of Fee-for-Service Part B Enrollees for the FY 2000 SGR and CY 2000 SGR

This factor is our estimate of the percent change in the average number of fee-for-service enrollees for FY 2000 as compared to FY 1999 and CY 2000 as compared to CY 1999. We currently have complete information on actual enrollment in the Medicare+Choice program for FY 2000 and CY 2000 that permits a measure of change in fee-for-service enrollment for these years that reflects the actual change. The estimates for CY 2000 were derived by subtracting estimated M+C enrollment from estimated overall Medicare enrollment as illustrated in table 18.

TABLE 18
[In millions]

	1999	2000
Overall	37.115	37.453
Medicare+Choice	6.191	6.233
Net	30.923	31.221
Percent Increase		1.0

Our actuaries' estimate of the percent change in the average number of fee-for-service enrollees net of Medicare+Choice enrollment for 2000 compared to 1999 of 1.0 percent is the same as our estimate of this factor at this time last year (1.0 percent). However, the current estimate of 0.5 percent for FY 2000 is lower than the 0.8 percent estimate of this factor at this time last year.

Factor 3—Estimated Real Gross Domestic Product Per Capita Growth in FY 2000 and CY 2000

We estimate that real GDP per capita growth will be 3.6 percent for FY 2000 and 3.2 percent for CY 2000. In the FY 2000 SGR notice published on October 1, 1999 (64 FR 53396), we estimated that real GDP per capita growth for FY 2000 would be 1.8 percent. In our April 10, 2000 SGR notice, we estimated that real GDP per capita growth for CY 2000 would be 2.5 percent. In our November 1, 2000 final rule (65 FR 65433), we estimated that real GDP per capita growth would be 4.5 percent for FY 2000 and 4.3 percent CY 2000. The final figures that we will use for this factor are 3.6 percent for FY 2000 and 3.2 percent for CY 2000. The latest figures on real GDP per capita growth are approximately one percentage point less than estimated last year. The lower estimates are due to annual revisions of the National Income and Product Accounts (NIPA) by the Bureau of Economic Analysis. Usually, in annual revisions of the NIPA, new estimates incorporate source data that are more complete, more detailed, and otherwise more appropriate than those that were previously incorporated. In addition, several methodological changes have been made. (For detailed description of the NIPA revisions, see Brent R. Moulton, Eugene P. Seskin, and David F. Sullivan, "Annual Revision of the National Income and Product Accounts: Annual Estimates, 1998–2000, Quarterly Estimates, 1998: 1–2000: I, Survey of Current Business" (August, 2001): 7–32.)

Factor 4—Percentage Change in Expenditures for Physicians' Services Resulting From Changes in Law or Regulations in FY 2000 Compared with FY 1999, and CY 2000, Compared With CY 1999

As we explained in our October 1, 1999 and April 10, 2000 SGR notices, legislative changes contained in the BBA and the BBRA will have an impact on expenditures for physicians' services under the SGR in FY 2000 and CY 2000. Section 4103 of the BBA mandates a new prostate screening benefit effective January 1, 2000. Additionally, effective January 1, 2000, section 4513 of the BBA removes the requirement that a subluxation of the spine be demonstrated by an x-ray before Medicare payment can be made for chiropractic services furnished to a beneficiary. This provision will also result in a small increase in expenditures in FY 2000 and CY 2000. The impact of BBA Medicare Secondary Payer provisions will have small marginal impact on reducing expenditures in FY 2000 and CY 2000.

Certain BBRA provisions also have a small impact on expenditures in FY 2000 and CY 2000. Section 224 of the BBRA increases payments for pap smears and is slightly increasing expenditures. Section 221 of the BBRA postponed the implementation of payment caps on physical and occupational therapy and speech-language pathology services. The effect of this provision on physicians and independent practitioners is a small increase in expenditures for these years. Medicare expenditures for outpatient physical and occupational therapy services by therapists in independent practice are growing rapidly as a result of provisions of section 4541 of the BBA that require Medicare to make payments for facility-based therapy services under the physician fee schedule. Physical and occupational therapy services previously paid on the basis of a cost report through the Medicare fiscal intermediaries are more likely to be billed by therapists in independent practice because these services are no longer being paid on a cost basis. We analyzed growth in Medicare expenditures for physical and occupational therapy and believe that the larger rate of increase in Medicare expenditures for these services billed to carriers is likely a result of the statutory provisions that require the services to be paid under the Medicare physician fee schedule. We are making an upward adjustment to the SGR for this factor.

After taking into account these provisions, the percentage change in expenditures for physicians' services resulting from changes in law or regulations is estimated to be 0.6 percent for FY 2000 and 0.8 percent for CY 2000.

IX. Calculation of the 2002 Physician Fee Schedule and Anesthesia Conversion Factor

The 2002 physician fee schedule conversion factor is $36.1992. The separate 2002 national average anesthesia conversion factor is $16.60.

The specific calculations to determine the physician fee schedule and anesthesia conversion factor for calendar year 2002 are explained below.

Detail on Calculation of the Calendar Year 2002 Physician Fee Schedule Conversion Factor

• Physician Fee Schedule Conversion Factor

Under section 1848(d)(1)(A) of the Act, the physician fee schedule conversion factor is equal to the conversion factor for the previous year multiplied by the update determined under section 1848(d)(4) of the Act. In addition, section 1848(c)(2)(B)(ii)(II) of the Act requires that changes to relative value units (RVUs) cannot cause expenditures to increase or decrease by more than $20 million from the amount of expenditures that would have been made if such adjustments had not been made. We implement this requirement through a uniform budget neutrality adjustment to the conversion factor. There are two changes that will require us to make an adjustment to the conversion factor to comply with the budget neutrality requirement in section 1848(c)(2)(B)(ii)(II) of the Act. We are making a 0.460 percent reduction (0.9954) in the conversion factor to account for the increase in work RVUs resulting from the 5-year review. We are also making a 0.18 percent (0.9982) reduction in the conversion factor to account for an anticipated increase in the volume and intensity of services in response to the final year of the implementation of resource-based practice expense RVUs. As a result of the 5-year review of RVUs and additional budget-neutrality adjustments required by law, the conversion factor is 5.4 percent lower than last year's conversion factor.

The two budget neutrality factors are applied after the update is applied to the 2001 conversion factor:

TABLE 19

2001 Conversion Factor	$38.2581
2002 Update	0.9523
Budget-Neutrality Adjustment: 5 Year Review	0.9954
Budget-Neutrality Adjustment: Practice Expense Transition	0.9982
2002 Conversion Factor	$36.1992

• Anesthesia Fee Schedule Conversion Factor

Section 1848(b)(2)(B) of the Act indicates that, to the extent practicable, the Secretary will use the anesthesia relative value guide with appropriate adjustment of the conversion factor, in a manner to assure that the fee schedule amounts for anesthesia services are consistent with the fee schedule amounts for other services. The statute also requires the Secretary to adjust the conversion factor by geographic adjustment factors in the same manner as for other physician fee schedule services. Unlike other physician fee schedule services, anesthesia services are paid using a system of base and time units. The base and time units are summed and multiplied by a conversion factor. The base unit is fixed depending upon the type of anesthesia procedure performed, and the time units will vary based on the length of the anesthesia time associated with the surgical procedure. Thus, Medicare's payment will increase as anesthesia time lengthens. The same anesthesia service provided in two different surgeries will be paid different amounts if the associated anesthesia time is different. This system differs from other physician fee schedule services where payment is determined based on the product of RVUs and a conversion factor; payment for a given procedure will not vary based on the length of time it takes to perform the procedure in a specific instance.

Since anesthesia services do not have RVUs like other physician fee schedule services, we have had to make appropriate adjustments to the anesthesia fee schedule conversion factor to simulate changes to RVUs. We modeled the resource-based practice expense methodology using imputed anesthesia RVUs that were made comparable to other physician fee schedule services. As a result of modeling these changes, we are incorporating a 1.89 percent reduction (0.9811) to the anesthesia fee schedule conversion factor. We are incorporating an additional increase of 0.2 percent (1.002) to account for base unit revisions for 2002, both for the five-year review and for the alignment of CMS base units with ASA base units. All other adjustments (physician fee schedule update, adjustment for 5-year review of physician work, adjustment for volume and intensity changes) made to the anesthesia fee schedule conversion factor are the same as those applied to the physician fee schedule. To determine the anesthesia fee schedule conversion factor for 2002, we used the following figures:

TABLE 20

2001 Anesthesia Conversion Factor	$17.83
2002 Update	0.9523
Practice Expense RVU Adjustment for 2002	0.9823
Adjustment for Base Unit Alignment	1.0020
5-Year Review	0.9954
Volume and Intensity Adjustment	0.9982
2003 Conversion Factor	$16.60

X. Provisions of the Final Rule

The provisions of this final rule restate the provisions of the August 2001 proposed rule, except as noted elsewhere in the preamble. Following is a highlight of the changes made from the proposed rule:

For screening glaucoma, we are revising the regulation in § 410.23(a)(2) to read "Eligible beneficiary means individuals in the following high risk categories." This should allow us to more easily add high-risk groups by rulemaking should the medical evidence warrant it.

For G0117 Glaucoma Screening for High Risk Patients Furnished by an Optometrist or Ophthalmologist, we will assign 0.45 work RVUs, .02 malpractice RVUs, and we will crosswalk practice expense inputs from CPT code 92012.

For G0118 Glaucoma Screening for High Risk Patients Furnished Under the Direct Supervision of an Optometrist or Ophthalmologist, we will assign 0.17 work RVUs and 0.01 malpractice RVUs. For practice expense, we will also crosswalk this code to CPT code 92012.

For medical nutrition therapy, we made various changes in response to comments received. For detailed information, see section III.G.

For telehealth services section 1834(m)(3) of the Act specifies that sections 1842(b)(18)(A) and (B) apply to physicians and practitioners receiving payment for telehealth services and to originating sites receiving a facility fee, in the same manner as they apply to practitioners. This section requires that payment for these services may only be made on an assignment-related basis. We did not reflect this provision in the proposed rule. Nonetheless, because this requirement is required by the plain language of the law and because we are without discretion with respect to its application, we are implementing it in this final rule in new § 414.65(d).

Other Issues

Included in the comments we received were issues and topics that were not specifically included as proposals in the August 2, 2001 proposed rule such as coding issues on specific services, the need to expand dissemination of information on Medicare benefits and a variety of other topics. While we do not address these specifically in this rule, we will ensure that the appropriate CMS components are aware of the concerns expressed and would hope that these concerns can be addressed through appropriate channels.

XI. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

• The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for § 410.132 in this document, which contains information collection requirements.

Paragraph (c) of this section requires a referring physician or practitioner to maintain referral documentation in the beneficiary's medical record for each referral.

We believe the burden associated with these provisions is exempt in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by referring physicians and practitioners in the normal course of business activities.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn.: John Burke, CMS–1169–FC, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Eydt, CMS Desk Officer.

XII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

XIII. Regulatory Impact Analysis

We have examined the impact of this final rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), the Regulatory Flexibility Act of 1980 (RFA) (Pub. L. 96–354), and Executive Order 13132 of August 4, 1999 (Federalism).

EO 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). While the changes in the Medicare physician fee schedule are, for the most part, budget neutral, they do involve redistribution of Medicare spending among procedures and physician specialties. The redistributive effect of this rule on any particular specialty is in our estimate likely to exceed $100 million for at least one specialty group. For this reason we are considering this a major economic rule.

However, it is important to note, as indicated in section VII of this preamble, the physician fee update for 2002 under section 1848(d) of the Act is −4.8 percent of an estimated $41.2 billion in physician expenditures for 2001. Even though the physician fee schedule update is −4.8 percent, we project that the total Medicare

expenditures for physicians' services will increase from $41.2 billion to $41.7 billion in 2002.

The UMRA also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. We have determined that this rule has no consequential effect on State, local, or tribal governments. We believe the private sector cost of this rule falls below the above-stated threshold as well.

The RFA requires that we analyze regulatory options for small businesses and other small entities. We prepare a Regulatory Flexibility Analysis unless we certify that a rule would not have a significant economic impact on a substantial number of small entities. The analysis must include a justification concerning the reason action is being taken, the kinds and number of small entities the rule affects, and an explanation of any meaningful options that achieve the objectives and lessen significant adverse economic impact on the small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

For purposes of the RFA, all physicians are considered to be small entities. There are about 700,000 physicians and other practitioners who receive Medicare payment under the physician fee schedule.

For the purpose of EO 12866 and the RFA we have prepared the following analysis, which, together with the rest of this preamble, meets all four assessment requirements. It explains the rationale for and purpose of the rule, details the costs and benefits of the rule, analyzes alternatives, and presents the measures we considered to minimize the burden on small entities.

A. 5 Year Review of Physician Work and Resource-Based Practice Expense Relative Value Units

Revisions in physician work and resource-based practice expense RVUs for physicians' services are required by law to be budget neutral. We calculate total payments from the revisions to work and practice expense relative value units such that total payments do not change more than $20 million as a result of the revisions. Increases in payments for some services are necessarily offset by decreases in payments for other services. For revisions to physician work values that are occuring as part of the 5-year review, we are making a budget neutrality adjustment to the physician fee schedule conversion factor. For practice expense, we adjust all the practice expense RVUs upwards or downwards to meet the budget neutrality requirement in the statute. This means that increases in practice expense RVUs for some services will be offset by corresponding decreases in values for other services. We showed the impact of proposed changes in physician work and practice expense RVUs in our Notice of Proposed Rulemaking in the **Federal Register** on August 2, 2001 (65 FR 40397). Table 21 shows the impact on total allowed charges by specialty of this final rule's physician work and practice expense RVU changes. We are showing the impact of the proposed rule changes as well additional changes that are occurring as a result of this final rule. There are five changes we are adopting in this final rule that result in changes to the impacts displayed in the proposed rule. Table 21 incorporates additional impacts that result from using 2000 utilization data to determine the resource-based practice expense RVUs. This change has a very modest effect on payment for nearly all specialties. Based on public comments to our notice of proposed rulemaking, we have also made changes to physician work RVUs that were part of the 5-year review. These changes will increase payments to Gastronterology, General Surgery, Obstetrics and Gynecology and Podiatry. We also incorporated revised physician time data supplied to us by the Relative Value Update Committee (RUC). Relative to the physician times used in our proposed rule, there were slight refinements to some codes. With the exception of Nephrology, the new times have virtually no impact on specialty level payments. Nephrology payments will go up as a result of using new physician times supplied to us by the RUC. The RUC supplied us with a time of 186 minutes for the highest volume nephrology procedure code, 90921. This compared to a physician time of 153 minutes that was previously used. Finally, we also incorporated refinements to the practice expense inputs that are being recommended by the Practice Expense Advisory Committee (PEAC) and the RUC. These changes will result in a reduction in average payments to rheumatology of about 6 percent. This occurs primarily as a result of refinements to 4 codes that are frequently performed by rheumatologists (20610, 20550, 20605 and 20600). Based on the PEAC and RUC comments, we made changes to the practice expense inputs that result in a reduction in relative payments for these procedure codes. Other specialties that will experience a smaller reduction in payments as a result of the practice expense refinements for 2002 are Orthopedic Surgery, Podiatry and Urology. Since the changes are budget neutral, the reductions in practice expense RVUs will be offset by increases in practice expense payments that will be broadly distributed among other physician specialties.

Table 21 shows the impact of this final rule compared to the proposed rule that was published on August 2, 2001. We note that the table shows the impact of this rule only and does not incorporate practice expense changes from three other final rules, November 2, 1998 (63 FR 58895), November 2, 1999 (64 FR 59433) and November 1, 2000 (65 FR 65377). The table shows the average specialty change in payments in CY 2002 that are occurring as a result of this final rule relative to what would have occurred in 2002 had this rule not been published. The rule shows the redistributive (or relative) change in payments among specialties. It does not show the absolute average change in specialty level payments from 2001 to 2002 that are also affected by the final year of the transition to resource-based practice expense RVUs and the physician fee schedule update. The transition to resource-based RVUs is complete in CY 2002 and has no effect when comparing the impact on CY 2002 payments before and after changes made in this final rule. The physician fee schedule update and change to the conversion factor are discussed in sections VII and IX, respectively.

TABLE 21.—IMPACT OF PHYSICIAN WORK AND PRACTICE EXPENSE RELATIVE VALUE UNIT CHANGES—FINAL RULE COMPARED TO PROPOSED RULE

Specialty	Allowed charges (billions)	Proposed rule impact (percent)	Final rule impact (percent)
Anesthesiology	$1.5	1	1
Cardiac Surgery	0.3	0	0
Cardiology	4.2	0	−1
Chiropractor	0.4	0	0
Clinics	1.6	0	0
Dermatology	1.4	1	2
Emergency Medicine	1.0	0	0
Family Practice	3.3	0	0
Gastroenterology	1.2	1	3
General Practice	1.0	0	0
General Surgery	2.0	4	4
Hematology Oncology	0.6	0	1
Internal Medicine	7.1	0	1
Nephrology	1.0	0	2
Neurology	0.9	0	0
Neurosurgery	0.4	0	0
Nonphysician Practitioner	1.2	0	1
Obstetrics/Gynecology	0.4	1	2
Ophthalmology	3.9	−1	−1
Optometrist	0.5	0	−3
Orthopedic Surgery	2.3	0	−1
Other Physician	1.4	1	0
Otolaryngology	0.6	0	1
Pathology	0.6	3	3
Plastic Surgery	0.2	0	1
Podiatry	1.1	1	0
Psychiatry	1.1	0	0
Pulmonary	1.1	0	1
Radiation Oncology	0.7	0	−2
Radiology	3.3	0	−1
Rheumatology	0.3	0	−6
Suppliers	0.7	2	0
Thoracic Surgery	0.5	1	0
Urology	1.3	1	1
Vascular Surgery	0.3	2	1

Table 22, titled Impact of 5-Year Review and Proposed Rule on Medicare Payments for Selected Procedures, shows the percentage change in total payment (in CY 2002 physician fee schedule dollars) for selected high-volume procedures that result from changes to the physician work, practice expense and malpractice announced in this final rule. These tables reflect the impact of this final rule only on the fully implemented fee schedule amount. The payments in these columns are determined using a conversion factor $36.1992. The RVUs used for calculating payment in the "old" columns are from the November 1, 2000 final rule. The RVUs used in calculating payments in the "new" columns are from this final rule. By using the same conversion factor of $36.1992 to calculate payments in both the "old" and "new" columns, the impact of changes to the RVUs that are included in this final rule are illustrated. These tables do not show the actual impact on payment from 2001 to 2002 that are also affected by the final year of the practice expense transition and physician fee schedule update.

TABLE 22.—IMPACT OF 5 YEAR REVIEW AND PROPOSED RULE ON MEDICARE PAYMENT FOR SELECTED PROCEDURES

HCPCS	MOD	DESC	Old non-facility	New non-facility	Percent change	Old facility	New facility	Percent change
11721		Debride nail, 6 or more	$40.18	$36.92	−8	$28.96	$28.96	0
17000		Destroy benign/premal lesion	60.45	62.62	4	32.58	32.94	1
27130		Total hip replacement	NA	NA	NA	1,419.01	1,452.31	2
27236		Treat thigh fracture	NA	NA	NA	1,088.87	1,113.85	2
27244		Treat thigh fracture	NA	NA	NA	1,111.68	1,137.38	2
27447		Total knee replacement	NA	NA	NA	1,483.08	1,514.21	2
33533		CABG, arterial, single	NA	NA	NA	1,756.02	1,827.34	4
35301		Rechanneling of artery	NA	NA	NA	1,107.33	1,061.36	−4
43239		Upper GI endoscopy, biopsy	281.99	354.75	26	148.78	154.93	4
45385		Lesion removal colonoscopy	474.93	571.22	20	283.44	287.78	2
66821		After cataract laser surgery	217.56	229.50	6	203.44	213.94	5
66984		Cataract surg w/iol, 1 stage	NA	NA	NA	660.27	669.32	1
67210		Treatment of retinal lesion	594.03	603.08	2	544.44	546.61	0

TABLE 22.—IMPACT OF 5 YEAR REVIEW AND PROPOSED RULE ON MEDICARE PAYMENT FOR SELECTED PROCEDURES—Continued

HCPCS	MOD	DESC	Old non-facility	New non-facility	Percent change	Old facility	New facility	Percent change
71010	26	Chest x-ray	9.05	9.05	0	9.05	9.05	0
71020	26	Chest x-ray	11.22	11.22	0	11.22	11.22	0
76091		Mammogram, both breasts	84.34	90.50	7	NA	NA	NA
76091	26	Mammogram, both breasts	35.11	43.44	24	35.11	43.44	24
76092		Mammogram, screening	71.03	80.72	14	71.03	80.72	14
76092	26	Mammogram, screening	22.73	35.48	56	22.73	35.48	56
77427		Radiation tx management, x5	167.24	167.96	0	167.24	167.96	0
78465	26	Heart image (3d), multiple	75.29	74.93	−1	75.29	74.93	−1
88305	26	Tissue exam by pathologist	39.82	40.54	2	39.82	40.54	2
90801		Psy dx interview	145.52	144.80	−1	137.19	137.19	0
90806		Psytx, off, 45–50 min	96.65	95.93	−1	91.22	91.22	0
90807		Psytx, off, 45-50 min w/e&m	103.89	103.53	0	98.82	98.82	0
90862		Medication management	51.04	51.04	0	46.33	46.33	0
90921		ESRD related services, month	263.89	273.30	4	263.89	273.30	4
90935		Hemodialysis, one evaluation	NA	NA	NA	73.48	76.38	4
92004		Eye exam, new patient	124.16	123.44	−1	87.60	87.96	0
92012		Eye exam established pat	62.62	61.18	−2	35.84	35.84	0
92014		Eye exam & treatment	89.77	91.22	2	59.00	58.64	−1
92980		Insert intracoronary stent	NA	NA	NA	799.64	790.59	−1
92982		Coronary artery dilation	NA	NA	NA	592.22	584.26	−1
93000		Electrocardiogram, complete	26.06	25.34	−3	NA	NA	NA
93010		Electrocardiogram report	9.05	9.05	0	9.05	9.05	0
93015		Cardiovascular stress test	102.81	99.91	−3	NA	NA	NA
93307	26	Echo exam of heart	48.51	48.14	−1	48.51	48.14	−1
93510	26	Left heart catheterization	232.76	230.59	−1	232.76	230.59	−1
98941		Chiropractic manipulation	35.48	35.48	0	30.77	31.13	1
99202		Office/outpatient visit, new	60.45	61.54	2	45.61	45.61	0
99203		Office/outpatient visit, new	90.50	91.95	2	69.50	69.50	0
99204		Office/outpatient visit, new	130.32	130.68	0	102.81	102.81	0
99205		Office/outpatient visit, new	165.07	166.15	1	136.11	136.47	0
99211		Office/outpatient visit, est	19.91	20.27	2	8.69	8.69	0
99212		Office/outpatient visit, est	35.48	36.20	2	23.17	23.17	0
99213		Office/outpatient visit, est	49.59	50.32	2	34.03	34.03	0
99214		Office/outpatient visit, est	78.19	78.91	1	55.75	56.11	1
99215		Office/outpatient visit, est	114.39	115.84	1	90.14	90.50	0
99221		Initial hospital care	NA	NA	NA	65.16	65.16	0
99222		Initial hospital care	NA	NA	NA	107.87	108.24	0
99223		Initial hospital care	NA	NA	NA	150.59	150.95	0
99231		Subsequent hospital care	NA	NA	NA	32.58	32.58	0
99232		Subsequent hospital care	NA	NA	NA	53.21	53.57	1
99233		Subsequent hospital care	NA	NA	NA	76.02	76.38	1
99236		Observ/hosp same date	NA	NA	NA	213.58	214.66	1
99238		Hospital discharge day	NA	NA	NA	64.07	66.24	3
99239		Hospital discharge day	NA	NA	NA	87.60	90.86	4
99241		Office consultation	46.33	47.06	2	32.94	33.30	1
99242		Office consultation	86.15	87.24	1	67.69	68.05	1
99243		Office consultation	114.39	115.84	1	90.14	90.14	0
99244		Office consultation	162.53	164.34	1	133.21	133.58	0
99245		Office consultation	211.04	212.85	1	176.65	177.01	0
99251		Initial inpatient consult	NA	NA	NA	36.20	34.75	−4
99252		Initial inpatient consult	NA	NA	NA	71.31	69.86	−2
99253		Initial inpatient consult	NA	NA	NA	96.65	95.20	−2
99254		Initial inpatient consult	NA	NA	NA	138.28	136.83	−1
99255		Initial inpatient consult	NA	NA	NA	189.68	188.60	−1
99261		Follow-up inpatient consult	NA	NA	NA	23.53	21.72	−8
99262		Follow-up inpatient consult	NA	NA	NA	45.25	43.44	−4
99263		Follow-up inpatient consult	NA	NA	NA	66.24	64.80	−2
99282		Emergency dept visit	NA	NA	NA	26.43	26.43	0
99283		Emergency dept visit	NA	NA	NA	59.37	59.37	0
99284		Emergency dept visit	NA	NA	NA	92.67	92.67	0
99285		Emergency dept visit	NA	NA	NA	144.43	144.80	0
99291		Critical care, first hour	NA	NA	NA	197.65	198.37	0
99292		Critical care, addl 30 min	NA	NA	NA	98.46	98.82	0
99301		Nursing facility care	60.09	70.23	17	60.09	60.09	0
99302		Nursing facility care	80.36	95.57	19	80.36	80.72	0
99303		Nursing facility care	99.91	118.73	19	99.91	100.27	0
99311		Nursing fac care, subseq	30.05	40.18	34	30.05	30.05	0
99312		Nursing fac care, subseq	49.59	61.90	25	49.59	49.95	1
99313		Nursing fac care, subseq	70.59	84.34	20	70.59	70.95	1

TABLE 22.—IMPACT OF 5 YEAR REVIEW AND PROPOSED RULE ON MEDICARE PAYMENT FOR SELECTED PROCEDURES—Continued

HCPCS	MOD	DESC	Old non-facility	New non-facility	Percent change	Old facility	New facility	Percent change
99348		Home visit, est patient	73.12	73.85	1	NA	NA	NA
99350		Home visit, est patient	166.88	166.52	0	NA	NA	NA

(In two different places above, we indicate that the tables do not include the effect of the "final" year of the practice expense transition. While we note that resource-based practice expense will be fully implemented in 2002, our expectation is that we would continue to make refinements that improve the practice expense relative value units. We acknowledge that the efforts of the PEAC and RUC to make useful comments on practice expense inputs have resulted in significant improvements to the data we are using to determine practice expense relative value units. The refinements we have made to date have affected hundreds of procedure codes accounting for a high percentage of Medicare expenditures paid under the physician fee schedule. Our expectation is that this work will continue and we continue, to welcome comments and input from all members of the public interested in these issues).

B. Nurse Practitioners, Physician Assistants, and Clinical Nurse Specialists Performing Screening Sigmoidoscopies

As discussed in section II.B. of the preamble, this regulation will expand the list of practitioners for whose services Medicare may make payment for screening flexible sigmoidoscopies to include nurse practitioners, physician assistants, and clinical nurse specialists, as long as those practitioners meet applicable Medicare qualification requirements, and they are authorized to perform those screening services under State law. At present, the Medicare condition of coverage for screening flexible sigmoidoscopies limits coverage of those services to those that are performed by either a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act) who is authorized under State law to perform the examination.

We estimate that this expansion in the scope of practitioners who can receive Medicare payment for screening flexible sigmoidoscopies will increase beneficiary access to these screening services and will result in an increase in the number of covered exams that are performed. At the same time, we estimate that this final rule will result in a decrease in payments that are made for certain screening flexible sigmoidoscopies because they will be performed by nurse practitioners, physician assistants, and clinical nurse specialists, since services they provide are paid at 85 percent of the amount of payment that is made to physicians for the same screening service. Taking these factors into account, we estimate that this provision will result in negligible additional Medicare program costs. For a more detailed discussion of this provision see section II.B. of this preamble.

C. Services and Supplies Incident to a Physician's Professional Services—Conditions

Under this rule auxiliary personnel may provide services incident to the services of physicians (or other practitioners) who supervise them, regardless of the employment relationship. There are no costs or savings to the Medicare program associated with this provision. This provision could result in increased beneficiary access to the auxiliary personnel. For a more detailed discussion of this provision see section II.C. of this preamble.

D. Anesthesia Services—Anesthesia Base Units

As previously discussed in section II.D. of the preamble, with the exception of codes 00142 and 00147, we are using the same anesthesia base unit per anesthesia code as the ASA provides in its uniform relative value guide. There are eleven codes where our base unit value for an anesthesia code differed from the corresponding ASA base unit. Using the ASA base units resulted in an increase for 8 codes and a decrease for 3 codes. New and revised codes starting in CY 2000 and for subsequent years are evaluated on a code-specific basis under our usual process after we receive recommendations from the RUC. Thus, because of our review of the RUC recommendations, there could be differences between the ASA's guide and our base units beginning in CY 2000.

We have determined the budget neutrality impact on the anesthesia CF for the 11 codes for which CMS's base units are equal to the ASA's base units as well as the addition of 19 new anesthesia codes in CY 2002. The impact was determined by estimating the increase or decrease in base units between our base units and the ASA's base units for existing codes as well as the increase and decrease in base units between the new 2002 codes and the previous codes by which the services would have been reported. This results in an increase of approximately .2 percent in the 2002 anesthesia CF. For a more detailed discussion of this provision see section II.D. of this preamble.

E. Performance Measurement and Emerging Technology Codes

As previously discussed in section II.E. of the preamble, the AMA has developed two new categories of codes—performance codes and emerging technology. Allowing the performance measurement code to be recorded on Medicare billing forms will have no budgetary impact since we are not proposing payment for these codes. We are allowing for carrier pricing of the emerging technology codes.

We expect that the emerging technology codes will be used infrequently and may be used in place of "unlisted" procedure codes that are also carrier-priced. There would be few, if any, Medicare program costs associated with this proposal. For a more detailed discussion of this provision see section II.E. of this preamble.

F. BIPA Provisions Included in This Final Rule

The following provisions of the BIPA are discussed in detail in section III of this preamble. This final rule conforms the regulations text to the BIPA provisions. We showed the anticipated costs associated with the BIPA provisions in our August 2, 2001 proposed rule (66 FR 40400). We are showing that same table again in table 23 below.

TABLE 23.—MEDICARE COST ESTIMATES FOR BIPA 2000 PROVISIONS

[In millions]

BIPA provisions	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Sec. 101 Biennial Pelvic Examinations	10	20	20	20	20
Sec. 102 Screening Glaucoma	30	50	50	60	60
Sec. 103 Screening Colonoscopy	40	40	30	10	10
Sec. 104 Screening Mammography	30	40	40	40	50
Sec. 105 Medical Nutrition	20	50	60	70	70
Sec. 223 Telehealth Services	20	30	40	50	60
Sec. 432 Indian Health	60	70	80	80	90

1. Screening Mammography

As discussed in section III.A. of the preamble, the BIPA eliminates the statutorily prescribed payment rate for screening mammography and specifies that it will be paid under the physician fee schedule beginning January 1, 2002. To pay for the professional component of the screening mammography, we are using the work and malpractice RVUs that have been established for unilateral diagnostic mammography. We are establishing the practice expense RVUs for the professional component under the resource-based methodology. The process we used to establish the practice expense RVU for the TC is described in detail in section III.A. Currently, we pay for screening mammography under section 1834(c) of the Act. Payment for screening mammography under that section is not subject to the budget neutrality requirements that apply to physician fee schedule services under section 1848(c)(2)(B)(ii)(II) of the Act. However, effective January 1, 2002, screening mammography will be paid under the physician fee schedule and, thus, subject to the budget neutrality requirements that apply to physician fee schedule services. We will include the current payment amounts for screening mammography in aggregate physician fee schedule payments subject to the budget neutrality requirements. As a result, the BIPA requirement that we pay for screening mammography under the physician fee schedule will not result in an increase in Medicare program expenditures. However, the increase in payment for screening mammography under the physician fee schedule will be included in the budget neutrality adjustments that apply to physician fee schedule services. The BIPA also establishes a methodology for determining payment for certain types of new technology that are used in providing both diagnostic and screening mammography services. The statutory provisions are in effect from April 1, 2001 to December 31, 2001. The statute gives us the authority to determine whether separate codes and payment amounts are appropriate for screening and diagnostic mammography services that involve use of a new technology on or after January 1, 2002. We are establishing several new codes and fee schedule amounts for screening and diagnostic mammography services that involve use of a new technology. We believe this will help ensure that all Medicare beneficiaries have access to the benefits of mammography, including recent advances that further enhance the clinical capability of this vital health service for women. The BIPA provisions related to new technology mammography will result in the Medicare program costs shown in Table 23. The BIPA makes no changes to provisions for Medicare coverage of screening mammography.

2. Screening Pelvic Examinations

As discussed in section III.B. of the preamble, section 101 of the BIPA provides for expanded coverage for screening pelvic examinations (including a clinical breast examination) furnished on or after July 1, 2001. Specifically, the revised benefit will allow for biennial coverage of screening pelvic examination for all women who do not qualify under the law for annual coverage of such tests. We estimate that this change in the frequency of coverage for certain beneficiaries will result in an increase in Medicare payments. These payments will be made to a large number of physicians and other practitioners who provide these tests and for any medically necessary follow-up tests, or treatment that may be required as a result of the increased frequency of coverage of these tests. Medicare program expenditures associated with screening pelvic examinations have been included in the President's budget for Medicare expenditures. The impact of this provision is shown in Table 23.

3. Screening for Glaucoma

As discussed in section III.C. of the preamble, section 102 of the BIPA authorizes coverage of glaucoma screening examinations effective January 1, 2002, subject to certain frequency and other limitations. We believe services provided as part of glaucoma screening will often overlap with other services a physician provides during a patient encounter that is associated with a higher payment amount. We believe that physicians will more commonly provide glaucoma tests in conjunction with other services and will rarely provide only glaucoma screening to Medicare patients. Based on the projected utilization of these screening services and related medically necessary follow-up tests and treatment that may be required for the beneficiaries screened, we estimate that this new benefit will result in an increase in Medicare payments. These payments will be made to ophthalmologists or optometrists who will provide these screening tests and for any related follow-up tests and treatment that may be required. Medicare program expenditures associated with the BIPA provision that establishes coverage for screening glaucoma are shown in Table 23. The addition of the screening glaucoma benefit will allow a greater number of beneficiaries access to a preventive service.

4. Screening Colonoscopy

As discussed in section III.D. of the preamble, section 103 of the BIPA amended the Act to add coverage of screening colonoscopies once every 10 years for individuals not at high risk for colorectal cancer. We estimate that this new benefit will result in an increase in Medicare payments. These payments will be made to practitioners who will provide these screening tests and related follow-up tests and treatment that may be required. The addition of the screening colonoscopy benefit will allow beneficiaries who are not at high risk for colorectal cancer greater access to preventive services. The impact of this provision is shown in Table 23.

5. Medical Nutrition Therapy

As discussed in section III.E. of the preamble, section 105 of the BIPA amended the Act to authorize Medicare coverage under Part B of medical nutrition therapy (MNT) for beneficiaries who have diabetes or renal disease, effective for services furnished on or after January 1, 2002. We are implementing this provision in 42 CFR at part 410, in subpart G. Specifically, the final rule discusses the education, experience, and licensing requirements for dietitians or nutritionists furnishing the service. In addition, the final rule discusses a referral requirement and the manner by which the medical nutrition therapy and diabetes outpatient self-management training benefits will be coordinated to avoid duplicate payment. We are also establishing payment amounts for these services under the physician fee schedule.

We estimate that this new benefit will result in an increase in Medicare payments. These payments will be made to dietitians and nutrition professionals who will provide these diagnostic therapy and counseling services. Costs to the Medicare program associated with this provision are shown in Table 23.

6. Telehealth

We estimate that the cost of providing office or other outpatient visits, consultation services, individual psychotherapy, and pharmacologic management in accordance with section 223 of the BIPA will be approximately $20 million in FY 2002 and approximately $60 million by FY 2006, as indicated above in Table 23.

This final rule does not mandate that entities provide consultation, office or other outpatient visits, individual psychotherapy or pharmacological management services via a telecommunications system. Thus, this final rule will not require entities to purchase telehealth equipment or to acquire the telecommunications infrastructure necessary to deliver these services via a telecommunications system. Therefore, this final rule does not impose costs associated with starting and operating a telehealth network.

7. Indian Health Services

As discussed in section III.G. of the preamble, section 432 of the BIPA authorizes payment under the physician fee schedule to physicians and certain practitioners for services furnished in a hospital and an ambulatory care clinic, whether provider-based or free-standing, of the Indian Health Service effective for services furnished on or after July 1, 2001. We are adding a new § 410.46 to conform our regulations to the statute. Costs to the Medicare program for this BIPA provision are shown in Table 23.

8. Pathology Services

As discussed in section III.H. of the preamble, in the November 2, 1999 physician fee schedule final rule (64 FR 59381), we stated that we would implement a policy to pay only hospitals for the TC of physician pathology services furnished to hospital inpatients. Before the effective date of this proposal, any independent laboratory could bill the carrier under the physician fee schedule for the TC of physician pathology to a hospital inpatient. That regulation provided that for services furnished on or after January 1, 2001, the carriers would no longer pay claims to an independent laboratory under the physician fee schedule for the TC of physician pathology services furnished for hospital inpatients. Similar treatment was provided under the hospital outpatient prospective payment system for the TC of physician pathology services to hospital outpatients. We delayed implementation of this provision for one year; it was to take effect for services furnished on or after January 1, 2001. The delay was intended to allow independent laboratories and hospitals sufficient time to negotiate arrangements.

Section 542 of the BIPA requires Medicare to continue to pay for the TC of physician pathology services when an independent laboratory furnishes this service to an inpatient or outpatient of a covered hospital. This provision applies to TC services furnished during the 2-year period beginning on January 1, 2001.

In the November 2, 1999 final rule, we estimated that payment under the physician fee schedule for TC billings by independent laboratories would decrease by $6 million per year if the original proposal had been implemented on January 1, 2001. As a result of the BIPA, these savings are not realized for two years.

G. Update of the Codes for the Physician Self-Referral Prohibition

As discussed in section VI of this preamble, we are updating the list of codes used to define certain designated health services for the purposes of section 1877 of the Act. We are not making any substantive change to the description of any designated health service as set forth in the January 4, 2001 physician self-referral final rule (66 FR 856). Instead, we are merely updating our list of codes to conform to coding changes in the most recent publication of CPT and HCPCS codes.

For this reason, we certify that the changes we are making will not have a significant economic effect on a substantial number of small entities or on the operations of a substantial number of small rural hospitals. For an in-depth discussion of the anticipated effects of the recent physician self-referral final rule, refer to the regulatory impact statement in that rule as published in the January 4, 2001 **Federal Register** (66 FR 856).

H. Budget-Neutrality

The increase in physician work RVUs will necessitate an adjustment to meet the statute's budget neutrality requirements. We are reducing the physician fee schedule CF by –0.46 percent (CF X 0.9954) to ensure that the increase in physician work RVUs remains budget neutral across all physician fee schedule services. Each year since the fee schedule has been implemented, our actuaries have determined any adjustments needed to meet the budget-neutrality requirement of the statute. A component of the actuarial determination of budget-neutrality involves estimating the impact of changes in the volume and intensity of physicians' services provided to Medicare beneficiaries as a result of the proposed changes to relative value units. Consistent with the provision in the November 1998 final rule, the actuaries would use a model that assumes a 30 percent volume-and-intensity response to price reductions. Based on the practice expense changes that will occur in 2002, the actuaries estimate that a –0.18 (CF X 0.9982) percent adjustment to the conversion factor is necessary to meet the budget neutrality requirements in the statute. If the assumed volume and intensity offset does not occur, the offset applied to the RVUs will be, in essence, returned because there will be a future year adjustment to the physician fee schedule update.

I. Impact on Beneficiaries

Although changes in physicians' payments when the physician fee schedule was implemented in 1992 were large, we detected no problems with beneficiary access to care. Furthermore, since beginning our transition to a resource-based practice expense system in 1999, we have not found that there are problems with beneficiary access to care.

J. Federalism

We have reviewed this proposed rule under the threshold criteria of EO 13132, Federalism, and we have determined that the proposed rule does

not significantly affect the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 415

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare and Medicaid amends 42 CFR chapter IV as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 405.534, an introductory paragraph is added to read as follows:

§ 405.534 Limitation on payment for screening mammography services.

The provisions in paragraphs (a), (b), and (c) of this section apply for services provided from January 1, 1991 until December 31, 2001. Screening mammography services provided after December 31, 2001 are paid under the physician fee schedule in accordance with § 414.2 of this chapter.

* * * * *

3. In § 405.535, the section heading is revised and the introductory text is amended by adding two sentences to the beginning to read as follows:

§ 405.535 Special rule for nonparticipating physicians and suppliers furnishing screening mammography services before January 1, 2002.

The provisions in this section apply for screening mammography services provided from January 1, 1991 until December 31, 2001. Screening mammography services provided after December 31, 2001 are physician services pursuant to § 414.2 of this chapter paid under the physician fee schedule. * * *

* * * * *

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 410.3 is amended by revising paragraph (a)(1) to read as follows:

§ 410.3 Scope of benefits.

(a) * * *

(1) Medical and other health services such as physicians' services, outpatient services furnished by a hospital or a CAH, diagnostic tests, outpatient physical therapy and speech pathology services, rural health clinic services, Federally qualified health center services, IHS, Indian tribe, or tribal organization facility services, and outpatient renal dialysis services.

* * * * *

3. Section 410.10 is amended by adding paragraph (x) to read as follows:

§ 410.10 Medical and other health services: Included services.

* * * * *

(x) Services of physicians and other practitioners furnished in or at the direction of an IHS or Indian tribal hospital or clinic.

4. Section 410.22 is redesignated as § 410.21, § 410.23 is redesignated as § 410.22, and a new § 410.23 is added to read as follows:

§ 410.23 Screening for glaucoma: Conditions for and limitations on coverage.

(a) *Definitions*: As used in this section, the following definitions apply:

(1) *Direct supervision in the office setting* means the optometrist or the ophthalmologist must be present in the office suite and be immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean the physician must be present in the room when the procedure is performed.

(2) *Eligible beneficiary* means individuals in the following high risk categories:

(i) Individual with diabetes mellitus;

(ii) Individual with a family history of glaucoma; or

(iii) African-Americans age 50 and over.

(3) *Screening for glaucoma* means the following procedures furnished to an individual for the early detection of glaucoma:

(i) A dilated eye examination with an intraocular pressure measurement.

(ii) A direct ophthalmoscopy examination, or a slit-lamp biomicroscopic examination.

(b) *Condition for coverage of screening for glaucoma.*

Medicare Part B pays for glaucoma screening examinations provided to eligible beneficiaries as described in paragraph (a)(2) of this section if they are furnished by or under the direct supervision in the office setting of an optometrist or ophthalmologist who is legally authorized to perform these services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished, as would otherwise be covered if furnished by a physician or incident to a physician's professional service.

(c) *Limitations on coverage of glaucoma screening examinations.*

(1) Payment may not be made for a glaucoma screening examination that is performed for an individual who is not an eligible beneficiary as described in paragraph (a)(2) of this section.

(2) Payment may be made for a glaucoma screening examination that is performed on an individual who is an eligible beneficiary as described in paragraph (a)(2) of this section, after at least 11 months have passed following the month in which the last glaucoma screening examination was performed.

5. In § 410.26, paragraph (b) is redesignated as paragraph (c), paragraph (a) is redesignated as paragraph (b) and revised, a new paragraph (a) is added, and newly designated paragraph (c) is amended by adding a paragraph heading:

§ 410.26 Services and supplies incident to a physician's professional service: Conditions.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Auxiliary personnel* means any individual who is acting under the supervision of a physician (or other practitioner), regardless of whether the individual is an employee, leased employee, or independent contractor of the physician (or other practitioner) or of the same entity that employs or contracts with the physician (or other practitioner).

(2) *Direct supervision* means the level of supervision by the physician (or other practitioner) of auxiliary personnel as defined in § 410.32(b)(3)(ii).

(3) *Independent contractor* means an individual who performs part-time or full-time work for which the individual receives an IRS–1099 form.

(4) *Leased employment* means an employment relationship that is recognized by applicable State law and that is established by two employers by a contract such that one employer hires the services of an employee of the other employer.

(5) *Noninstitutional setting* means all settings other than a hospital or skilled nursing facility.

(6) *Practitioner* means a non-physician practitioner who is authorized by the Act to receive payment for services incident to his or her own services.

(7) *Services and supplies* means any services or supplies (including drugs or biologicals that are not usually self-administered) that are included in section 1861(s)(2)(A) of the Act and are not specifically listed in the Act as a separate benefit included in the Medicare program.

(b) Medicare Part B pays for services and supplies incident to the service of a physician (or other practitioner).

(1) Services and supplies must be furnished in a noninstitutional setting to noninstitutional patients.

(2) Services and supplies must be an integral, though incidental, part of the service of a physician (or other practitioner) in the course of diagnosis or treatment of an injury or illness.

(3) Services and supplies must be commonly furnished without charge or included in the bill of a physician (or other practitioner).

(4) Services and supplies must be of a type that are commonly furnished in the office or clinic of a physician (or other practitioner).

(5) Services and supplies must be furnished under the direct supervision of the physician (or other practitioner). The physician (or other practitioner) directly supervising the auxiliary personnel need not be the same physician (or other practitioner) upon whose professional service the incident to service is based.

(6) Services and supplies must be furnished by the physician, practitioner with an incident to benefit, or auxiliary personnel.

(7) A physician (or other practitioner) may be an employee or an independent contractor.

(c) *Limitation.* * * *

6. In § 410.37, paragraphs (d), (e)(2), and (g) are revised and paragraph (e)(3) is added to read as follows:

§ 410.37 Colorectal cancer screening tests: Conditions for and limitations on coverage.

* * * * *

(d) *Condition for coverage of flexible sigmoidoscopy screening.* Medicare Part B pays for a flexible sigmoidoscopy screening service if it is performed by a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act), or by a physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1861(aa)(5) of the Act and §§ 410.74, 410.75, and 410.76) who is authorized under State law to perform the examination.

(e) *Limitations on coverage of screening flexible sigmoidoscopies.*

* * *

(2) For an individual 50 years of age or over, except as described in paragraph (e)(3) of this section, payment may be made for screening flexible sigmoidoscopy after at least 47 months have passed following the month in which the last screening flexible sigmoidoscopy or, as provided in paragraphs (h) and (i) of this section, the last screening barium enema was performed.

(3) In the case of an individual who is not at high risk for colorectal cancer as described in paragraph (a)(3) of this section but who has had a screening colonoscopy performed, payment may be made for a screening flexible sigmoidoscopy only after at least 119 months have passed following the month in which the last screening colonoscopy was performed.

* * * * *

(g) *Limitations on coverage of screening colonoscopies.* (1) Effective for services furnished on or after January 1, 1998 through June 30, 2001, payment may not be made for a screening colonoscopy for an individual who is not at high risk for colorectal cancer as described in paragraph (a)(3) of this section.

(2) Effective for services furnished on or after July 1, 2001, except as described in paragraph (g)(4) of this section, payment may be made for a screening colonoscopy performed for an individual who is not at high risk for colorectal cancer as described in paragraph (a)(3) of this section, after at least 119 months have passed following the month in which the last screening colonoscopy was performed.

(3) Payment may be made for a screening colonoscopy performed for an individual who is at high risk for colorectal cancer as described in paragraph (a)(3) of this section, after at least 23 months have passed following the month in which the last screening colonoscopy was performed, or, as provided in paragraphs (h) and (i) of this section, the last screening barium enema was performed.

(4) In the case of an individual who is not at high risk for colorectal cancer as described in paragraph (a)(3) of this section but who has had a screening flexible sigmoidoscopy performed, payment may be made for a screening colonoscopy only after at least 47 months have passed following the month in which the last screening flexible sigmoidoscopy was performed.

* * * * *

7. Section 410.46 is added to read as follows:

§ 410.46 Physician and other practitioner services furnished in or at the direction of an IHS or Indian tribal hospital or clinic: Scope and conditions.

(a) Medicare Part B pays, in accordance with the physician fee schedule, for services furnished in or at the direction of a hospital or outpatient clinic (provider-based or free-standing) that is operated by the Indian Health Service (IHS) or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act). These services are subject to the same situations, terms, and conditions that would apply if the services were furnished in or at the direction of a hospital or clinic that is not operated by IHS or by an Indian tribe or tribal organization. Payments include health professional shortage areas incentive payments when the requirements for these incentive payments in § 414.42 of this chapter are met.

(b) Payment is not made under this section to the extent that Medicare otherwise pays for the same services under other provisions.

(c) Payment is made under these provisions for the following services:

(1) Services for which payment is made under the physician fee schedule in accordance with part 414 of this chapter.

(2) Services furnished by non-physician practitioners for which payment under Part B is made under the physician fee schedule.

(3) Services furnished by a physical therapist or occupational therapist, for which payment under Part B is made under the physician fee schedule.

(d) Payments under these provisions will be paid to the IHS or tribal hospital or clinic.

8. In § 410.56, paragraphs (b)(1), the introductory text of (b)(2), and (b)(3) are revised to read as follows:

§ 410.56 Screening pelvic examinations.

* * * * *

(b) * * *

(1) *General rule.* Except as specified in paragraphs (b)(2) and (b)(3) of this section, payment may be made for a pelvic examination performed on an asymptomatic woman only if the individual has not had a pelvic examination paid for by Medicare during the preceding 23 months following the month in which her last Medicare-covered screening pelvic examination was performed.

(2) *More frequent screening based on high-risk factors.* Subject to the limitation as specified in paragraph (b)(4) of this section, payment may be made for a screening pelvic examination performed more frequently than once every 24 months if the test is performed by a physician or other practitioner specified in paragraph (a) of this section, and there is evidence that the woman is at high risk (on the basis of her medical history or other findings) of developing cervical cancer or vaginal cancer, as determined in accordance with the following risk factors:

* * * * *

(3) *More frequent screening for women of childbearing age.* Subject to the limitation as specified in paragraph (b)(4) of this section, payment may be made for a screening pelvic examination performed more frequently than once every 24 months if the test is performed by a physician or other practitioner as specified in paragraph (a) of this section for a woman of childbearing age who has had an examination that indicated the presence of cervical or vaginal cancer or other abnormality during any of the preceding 3 years. The term "woman of childbearing age" means a woman who is premenopausal, and has been determined by a physician, or a qualified practitioner, as specified in paragraph (a) of this section, to be of childbearing age, based on her medical history or other findings.

* * * * *

9. Section 410.78 is revised to read as follows:

§ 410.78 Office and other outpatient visits, consultation, individual psychotherapy and pharmacologic management via an interactive telecommunications system.

(a) *Definitions.* For the purposes of this section the following definitions apply:

(1) *Asynchronous store and forward technologies* means the transmission of a patient's medical information from an originating site to the physician or practitioner at the distant site. The physician or practitioner at the distant site can review the medical case without the patient being present. An asynchronous telecommunications system in single media format does not include telephone calls, images transmitted via facsimile machines and text messages without visualization of the patient (electronic mail). Photographs visualized by a telecommunications system must be specific to the patient's medical condition and adequate for furnishing or confirming a diagnosis and or treatment plan. Dermatological photographs, for example, a photograph of a skin lesion, may be considered to meet the requirement of a single media format under this provision.

(2) *Distant site* means the site at which the physician or practitioner delivering the service is located at the time the service is provided via a telecommunications system.

(3) *Interactive telecommunications system* means multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner. Telephones, facsimile machines, and electronic mail systems do not meet the definition of an interactive telecommunications system.

(4) *Originating site* means, for purposes of a consultation, office or other outpatient visit, individual psychotherapy, or pharmacologic management via an interactive telecommunications system, the location of an eligible Medicare beneficiary at the time the service being furnished via a telecommunications system occurs. For asynchronous store and forward telecommunications technologies, the only originating sites are Federal telemedicine demonstration programs conducted in Alaska or Hawaii.

(b) *General rule.* Medicare Part B pays for office and other outpatient visits, professional consultation, individual psychotherapy, and pharmacologic management furnished by means of an interactive telecommunications system if the following conditions are met:

(1) The physician or practitioner at the distant site must be licensed to provide the service under State law. When the physician or practitioner at the distant site is licensed under State law to provide a covered telehealth service (that is, professional consultations, office and other outpatient visits, individual psychotherapy, and pharmacologic management), he or she may bill for, and receive payment for, this service when delivered via a telecommunications system.

(2) The practitioner at the distant site is one of the following:

(i) A physician as described in § 410.20.

(ii) A physician assistant as described § 410.74.

(iii) A nurse practitioner as described in § 410.75.

(iv) A clinical nurse specialist as described in § 410.76.

(v) A nurse-midwife as described in § 410.77.

(vi) A clinical psychologist as described in § 410.71.

(vii) A clinical social worker as described in § 410.73.

(3) The services are furnished to a beneficiary at an originating site, which is one of the following:

(i) The office of a physician or practitioner.

(ii) A critical access hospital (as described in section 1861(mm)(1) of the Act).

(iii) A rural health clinic (as described in section 1861(aa)(2) of the Act).

(iv) A Federally qualified health center (as defined in section 1861(aa)(4) of the Act).

(v) A hospital (as defined in section 1861(e) of the Act).

(4) Originating sites must be located in either a rural health professional shortage area as defined under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)) or in a county that is not included in a Metropolitan Statistical Area as defined in section 1886(d)(2)(D) of the Act. Entities participating in a Federal telemedicine demonstration project that have been approved by, or receive funding from, the Secretary as of December 31, 2000 qualify as an eligible originating site regardless of geographic location.

(5) The medical examination of the patient is under the control of the physician or practitioner at the distant site.

(c) *Telepresenter not required.* A telepresenter is not required as a condition of payment unless a telepresenter is medically necessary as determined by the physician or practitioner at the distant site.

(d) *Exception to the interactive telecommunications system requirement.* For Federal telemedicine demonstration programs conducted in Alaska or Hawaii only, Medicare payment is permitted for telehealth when asynchronous store and forward technologies, in single or multimedia formats, are used as a substitute for an interactive telecommunications system.

(e) *Limitation.* A clinical psychologist and a clinical social worker may bill and receive payment for individual psychotherapy via a telecommunications system, but may not seek payment for medical evaluation and management services.

10. A new subpart G is added to read as follows:

Subpart G—Medical Nutrition Therapy

Sec.
410.130 Definitions.
410.132 Medical nutrition therapy.
410.134 Provider qualifications.

Subpart G—Medical Nutrition Therapy

§ 410.130 Definitions.

For the purposes of this subpart, the following definitions apply:

Chronic renal insufficiency means the stage of renal disease associated with a reduction in renal function not severe enough to require dialysis or transplantation (glomerular filtration rate [GFR] 13–50 ml/min/1.73m^2).

Diabetes means diabetes mellitus consisting of two types. Type 1 is an autoimmune disease that destroys the beta cells of the pancreas, leading to insulin deficiency. Type 2 is familial hyperglycemia that occurs primarily in adults but can also occur in children and adolescents. It is caused by an insulin resistance whose etiology is multiple and not totally understood. Gestational diabetes is any degree of glucose intolerance with onset or first recognition during pregnancy. The diagnostic criterion for a diagnosis of diabetes for a fasting glucose tolerance test is greater than or equal to 126 mg/dL.

Episode of care means services covered in a 12-month time period when coordinated with initial diabetes self-management training (DSMT) and one calendar year for each year thereafter, starting with the assessment and including all covered interventions based on referral(s) from a physician as specified in § 410.132(c). The time period covered for gestational diabetes extends only until the pregnancy ends.

Medical nutrition therapy services means nutritional diagnostic, therapeutic, and counseling services provided by a registered dietitian or nutrition professional for the purpose of managing diabetes or a renal disease.

Physician means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he or she performs such function or action (including a physician within the meaning of section of 1101(a)(7) of the Act).

Renal disease means chronic renal insufficiency, end-stage renal disease when dialysis is not received, or the medical condition of a beneficiary for 36 months after kidney transplant.

Treating physician means the primary care physician or specialist coordinating care for the beneficiary with diabetes or renal disease.

§ 410.132 Medical nutrition therapy.

(a) *Conditions for coverage of MNT services.* Medicare Part B pays for MNT services provided by a registered dietitian or nutrition professional as defined in § 410.134 when the beneficiary is referred for the service by the treating physician. Services covered consist of face-to-face nutritional assessments and interventions in accordance with nationally accepted dietary or nutritional protocols.

(b) *Limitations on coverage of MNT services.*

(1) MNT services based on a diagnosis of renal disease as described in this subpart are not covered for beneficiaries receiving maintenance dialysis for which payment is made under section 1881 of the Act.

(2) A beneficiary may only receive the maximum number of hours covered under the DSMT benefit for both DSMT and MNT during the initial DSMT training period unless additional hours are determined to be medically necessary under the national coverage determination process.

(3) In years when the beneficiary is eligible for MNT and follow-up DSMT, the beneficiary may only receive the maximum number of hours covered under MNT unless additional hours are determined to be medically necessary under the national coverage determination process.

(4) If a beneficiary has both diabetes and renal disease, the beneficiary may only receive the maximum number of hours covered under the renal MNT benefit in one episode of care unless he or she is receiving initial DSMT services, in which case the beneficiary would receive whichever is greater.

(5) An exception to the maximum number of hours in (b)(2), (3), and (4) of this section may be made when the treating physician determines that there is a change of diagnosis, medical condition, or treatment regimen related to diabetes or renal disease that requires a change in MNT during an episode of care.

(c) *Referrals.* Referral may only be made by the treating physician when the beneficiary has been diagnosed with diabetes or renal disease as defined in this subpart with documentation maintained by the referring physician in the beneficiary's medical record. Referrals must be made for each episode of care and any additional assessments or interventions required by a change of diagnosis, medical condition, or treatment regimen during an episode of care.

§ 410.134 Provider qualifications.

For Medicare Part B coverage of MNT, only a registered dietitian or nutrition professional may provide the services. "Registered dietitian or nutrition professional" means an individual who, on or after December 22, 2000:

(a) Holds a bachelor's or higher degree granted by a regionally accredited college or university in the United States (or an equivalent foreign degree) with completion of the academic requirements of a program in nutrition or dietetics accredited by an appropriate national accreditation organization recognized for this purpose.

(b) Has completed at least 900 hours of supervised dietetics practice under the supervision of a registered dietitian or nutrition professional.

(c) Is licensed or certified as a dietitian or nutrition professional by the State in which the services are performed. In a State that does not provide for licensure or certification, the individual will be deemed to have met this requirement if he or she is recognized as a "registered dietitian" by the Commission on Dietetic Registration or its successor organization, or meets the requirements of paragraphs (a) and (b) of this section.

(d) *Exceptions.*

(i) A dietitian or nutritionist licensed or certified in a State as of December 21, 2000 is not required to meet the requirements of (a) and (b) of this section.

(ii) A "registered dietician" in good standing, as recognized by the Commission of Dietetic Registration or its successor organization, is deemed to have met the requirements of (a) and (b) of this section.

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 411.15, paragraph (a)(1) is revised, and a new paragraph (k)(10) is added to read as follows:

§ 411.15 Particular services excluded from coverage.

* * * * *

(a) * * *

(1) Examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptoms, complaint, or injury, except for screening mammography, colorectal cancer screening tests, screening pelvic examinations, prostate cancer screening

tests, or glaucoma screening exams that meet the criteria specified in paragraphs (k)(6) through (k)(10) of this section.

* * * * *

(k) * * *

(10) In the case of screening exams for glaucoma, for the purpose of early detection of glaucoma, subject to the conditions and limitations specified in § 410.23 of this chapter.

* * * * *

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

2. In 414.2, the definition of "Physician services" is amended by adding a new paragraph (8) to read as follows:

§ 414.2 Definitions.

* * * * *

Physician Services * * *

(8) Screening mammography services.

* * * * *

3. A new § 414.64 is added to read as follows:

§ 414.64 Payment for medical nutrition therapy.

(a) *Payment under the physician fee schedule.* Medicare payment for medical nutrition therapy is made under the physician fee schedule in accordance with subpart B of this part. Payment to non-physician professionals, as specified in paragraph (b) of this section, is the lesser of the actual charges or 80 percent of 85 percent of the physician fee schedule amount.

(b) *To whom payment may be made.* Payment may be made to a registered dietician or nutrition professional qualified to furnish medical nutrition therapy in accordance with part 410, subpart G of this chapter.

(c) *Effective date of payment.* Medicare pays suppliers of medical nutrition therapy on or after the effective date of enrollment of the supplier at the carrier.

(d) *Limitation on payment.* Payment is made only for documented nutritional therapy sessions actually attended by the beneficiary.

(e) *Other conditions for fee-for-service payment.* Payment is made only if the beneficiary:

(1) Is not an inpatient of a hospital, SNF, nursing home, or hospice.

(2) Is not receiving services in an RHC, FQHC or ESRD dialysis facility.

4. Section 414.65 is revised to read as follows:

§ 414.65 Payment for office or other outpatient visits, consultation, individual psychotherapy, and pharmacologic management via interactive telecommunications systems.

(a) *Professional service.* Medicare payment for the professional service via an interactive telecommunications system is made according to the following limitations:

(1) The Medicare payment amount for office or other outpatient visits, consultation, individual psychotherapy, and pharmacologic management via an interactive telecommunications system is equal to the current fee schedule amount applicable to services of the physician or practitioner.

(2) Only the physician or practitioner at the distant site may bill and receive payment for the professional service via an interactive telecommunications system.

(3) Payments made to the physician or practitioner at the distant site, including deductible and coinsurance, for the professional service may not be shared with the referring practitioner or telepresenter.

(b) *Originating site facility fee.* For office or other outpatient visits, consultation, individual psychotherapy, or pharmacologic management services delivered via an interactive telecommunications system furnished on or after October 1, 2001:

(1) For services furnished on or after October 1, 2001 through December 31, 2002, the payment amount to the originating site is the lesser of the actual charge or the originating site facility fee of $20. For services furnished on or after January 1 of each subsequent year, the facility fee for the originating site will be updated by the Medicare Economic Index (MEI) as defined in section 1842(i)(3) of the Act.

(2) Only the originating site may bill for the originating site facility fee and only on an assignment-related basis. The distant site physician or practitioner may not bill for or receive payment for facility fees associated with the professional service furnished via an interactive telecommunications system.

(c) *Deductible and coinsurance apply.* The payment for the professional service and originating site facility fee is subject to the coinsurance and deductible requirements of sections 1833(a)(1) and (b) of the Act.

(d) *Assignment required for physicians, practitioners, and originating sites.* Payment to physicians, practitioners, and originating sites is made only on an assignment-related basis.

(e) *Sanctions.* A distant site practitioner or originating site facility may be subject to the applicable sanctions provided for in chapter IV, part 402 and chapter V, parts 1001, 1002, and 1003 of this title if he or she does any of the following:

(1) Knowingly and willfully bills or collects for services in violation of the limitation of this section.

(2) Fails to timely correct excess charges by reducing the actual charge billed for the service in an amount that does not exceed the limiting charge for the service or fails to timely refund excess collections.

(3) Fails to submit a claim on a standard form for services provided for which payment is made on a fee schedule basis.

(4) Imposes a charge for completing and submitting the standard claims form.

PART 415—SERVICES FURNISHED BY PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

1. The authority citation for part 415 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 415.130 is amended by:

A. Redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d).

B. Adding a new paragraph (a).

C. Amending newly designated paragraph (b)(3) by removing the reference "paragraph (b)" and adding "paragraph (c)" in its place.

D. Amending newly designated paragraph (b)(4) by removing the reference "paragraphs (b)(1), (b)(3), and (b)(4)" and adding "paragraphs (c)(1), (c)(3), and (c)(4)" in their place.

E. Revising newly designated paragraph (d).

§ 415.130 Conditions for payment: Physician pathology services.

(a) *Definitions.* The following definitions are used in this section.

(1) *Covered hospital* means, with respect to an inpatient or an outpatient, a hospital that had an arrangement with an independent laboratory that was in effect as of July 22, 1999, under which a laboratory furnished the technical component of physician pathology services to fee-for-service Medicare beneficiaries who were hospital inpatients or outpatients, and submitted claims for payment for this technical component directly to a Medicare carrier.

(2) *Fee-for-service Medicare beneficiaries* means those beneficiaries who are entitled to benefits under Part A or are enrolled under Part B of Title XVIII of the Act or both and are not enrolled in any of the following:

(i) A Medicare+Choice plan under Part C of Title XVIII of the Act.

(ii) A plan offered by an eligible organization under section 1876 of the Act;

(iii) A program of all-inclusive care for the elderly (PACE) under 1894 of the Act; or

(iv) A social health maintenance organization (SHMO) demonstration project established under section 4018(b) of the Omnibus Budget Reconciliation Act of 1987.

* * * * *

(d) *Physician pathology services furnished by an independent laboratory.* The technical component of physician pathology services furnished by an independent laboratory to a hospital inpatient or outpatient before January 1, 2001 may be paid to the laboratory on a fee schedule basis. After December 31, 2000 but before January 1, 2003, if an independent laboratory furnishes the technical component of a physician pathology service to a fee-for-service Medicare beneficiary who is an inpatient or outpatient of a covered hospital, the carrier will treat the technical component as a service for which payment will be made to the laboratory under the physician fee schedule. For these two years the service will not be treated as an inpatient hospital service for which payment is made to the hospital under section 1886(d) of the Act or as an outpatient hospital service for which payment is made to the hospital under section 1833(t) of the Act. After December 31, 2002, the technical component for physician pathology services furnished by an independent laboratory to a hospital inpatient or outpatient is paid only to the hospital.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 22, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 24, 2001.

Tommy G. Thompson,

Secretary.

Note: These addenda will not appear in the Code of Federal Regulations.

Addendum A—Explanation and Use of Addenda B

The addenda on the following pages provide various data pertaining to the Medicare fee schedule for physicians' services furnished in 2002. Addendum B contains the RVUs for work, non-facility practice expense, facility practice expense, and malpractice expense, and other information for all services included in the physician fee schedule.

Addendum B—2002 Relative Value Units and Related Information Used in Determining Medicare Payments for 2002

This addendum contains the following information for each CPT code and alphanumeric HCPCS code, except for alphanumeric codes beginning with B (enteral and parenteral therapy), E (durable medical equipment), K (temporary codes for nonphysicians' services or items), or L (orthotics), and codes for anesthesiology.

1. *CPT/HCPCS code.* This is the CPT or alphanumeric HCPCS number for the service. Alphanumeric HCPCS codes are included at the end of this addendum.

2. *Modifier.* A modifier is shown if there is a technical component (modifier TC) and a professional component (PC) (modifier −26) for the service. If there is a PC and a TC for the service, Addendum B contains three entries for the code: One for the global values (both professional and technical); one for modifier −26 (PC); and one for modifier TC. The global service is not designated by a modifier, and physicians must bill using the code without a modifier if the physician furnishes both the PC and the TC of the service.

Modifier −53 is shown for a discontinued procedure. There will be RVUs for the code (CPT code 45378) with this modifier.

3. *Status indicator.* This indicator shows whether the CPT/HCPCS code is in the physician fee schedule and whether it is separately payable if the service is covered.

A = Active code. These codes are separately payable under the fee schedule if covered. There will be RVUs for codes with this status. The presence of an "A" indicator does not mean that Medicare has made a national decision regarding the coverage of the service. Carriers remain responsible for coverage decisions in the absence of a national Medicare policy.

B = Bundled code. Payment for covered services is always bundled into payment for other services not specified. If RVUs are shown, they are not used for Medicare payment. If these services are covered, payment for them is subsumed by the payment for the services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient.)

C = Carrier-priced code. Carriers will establish RVUs and payment amounts for these services, generally on a case-by-case basis following review of documentation, such as an operative report.

D = Deleted code. These codes are deleted effective with the beginning of the calendar year.

E = Excluded from physician fee schedule by regulation. These codes are for items or services that we chose to exclude from the physician fee schedule payment by regulation. No RVUs are shown, and no payment may be made under the physician fee schedule for these codes. Payment for them, if they are covered, continues under reasonable charge or other payment procedures.

G = Code not valid for Medicare purposes. Medicare does not recognize codes assigned this status. Medicare uses another code for reporting of, and payment for, these services.

H = Deleted modifier (code used to have modifier of TC and PC).

I = Code not valid for Medicare purposes. Medicare does not recognize codes assigned this status. Medicare uses another code for the reporting of, and payment for, these services. This indicator is treated in the same manner as status indicator "G". It's use allows for more efficient processing of Medicare claims.

N = Noncovered service. These codes are noncovered services. Medicare payment may not be made for these codes. If RVUs are shown, they are not used for Medicare payment.

P = Bundled or excluded code. There are no RVUs for these services. No separate payment should be made for them under the physician fee schedule.

—If the item or service is covered as incident to a physician's service and is furnished on the same day as a physician's service, payment for it is bundled into the payment for the physician's service to which it is incident (an example is an elastic bandage furnished by a physician incident to a physician's service).

—If the item or service is covered as other than incident to a physician's service, it is excluded from the physician fee schedule (for example, colostomy supplies) and is paid under the other payment provisions of the Act.

R = Restricted coverage. Special coverage instructions apply. If the service is covered and no RVUs are shown, it is carrier-priced.

T = There are RVUs for these services, but they are only paid if there are no other services payable under the physician fee schedule billed on the same date by the same provider. If any other services payable under the physician fee schedule are billed on the same date by the same provider, these

services are bundled into the service(s) for which payment is made.

X = Exclusion by law. These codes represent an item or service that is not within the definition of "physicians' services" for physician fee schedule payment purposes. No RVUs are shown for these codes, and no payment may be made under the physician fee schedule. (Examples are ambulance services and clinical diagnostic laboratory services.)

4. *Description of code.* This is an abbreviated version of the narrative description of the code.

5. *Physician work RVUs.* These are the RVUs for the physician work for this service in 2000. Codes that are not used for Medicare payment are identified with a "+."

6. *Facility practice expense RVUs.* These are the fully implemented resource-based practice expense RVUs for facility settings.

7. *Non-facility practice expense RVUs.* These are the fully implemented resource-based practice expense RVUs for non-facility settings.

8. *Malpractice expense RVUs.* These are the RVUs for the malpractice expense for the service for 2000.

9. *Facility total.* This is the sum of the work, fully implemented facility practice expense, and malpractice expense RVUs.

10. *Non-facility total.* This is the sum of the work, fully implemented non-facility practice expense, and malpractice expense RVUs.

11. *Global period.* This indicator shows the number of days in the global period for the code (0, 10, or 90 days).

An explanation of the alpha codes follows:

MMM = The code describes a service furnished in uncomplicated maternity cases including antepartum care, delivery, and postpartum care. The usual global surgical concept does not apply. See the 1999 Physicians' Current Procedural Terminology for specific definitions.

XXX = The global concept does not apply.

YYY = The global period is to be set by the carrier (for example, unlisted surgery codes).

ZZZ = The code is part of another service and falls within the global period for the other service.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
0001T		C	Endovas repr abdo ao aneurys	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0002T		C	Endovas repr abdo ao aneurys	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0003T		C	Cervicography	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0005T		C	Perc cath stent/brain cv art	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0006T		C	Perc cath stent/brain cv art	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0007T		C	Perc cath stent/brain cv art	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0008T		C	Upper gi endoscopy w/suture	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0009T		C	Endometrial cryoablation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0010T		C	Tb test, gamma interferon	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0012T		C	Osteochondral knee autograft	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0013T		C	Osteochondral knee allograft	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0014T		C	Meniscal transplant, knee	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0016T		C	Thermotx choroid vasc lesion	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0017T		C	Photocoagulat macular drusen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0018T		C	Transcranial magnetic stimul	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0019T		C	Extracorp shock wave tx, ms	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0020T		C	Extracorp shock wave tx, ft	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0021T		C	Fetal oximetry, trnsvag/cerv	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0023T		C	Phenotype drug test, hiv 1	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0024T		C	Transcath cardiac reduction	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0025T		C	Ultrasonic pachymetry	0.00	0.00	0.00	0.00	0.00	0.00	XXX
0026T		C	Measure remnant lipoproteins	0.00	0.00	0.00	0.00	0.00	0.00	XXX
10021		A	Fna w/o image	1.27	1.02	NA	0.10	2.39	NA	XXX
10021	26	A	Fna w/o image	1.27	0.55	0.55	0.07	1.89	1.89	XXX
10021	TC	A	Fna w/o image	0.00	0.47	NA	0.03	0.50	NA	XXX
10022		A	Fna w/image	1.27	1.11	NA	0.08	2.46	NA	XXX
10022	26	A	Fna w/image	1.27	0.48	0.48	0.05	1.80	1.80	XXX
10022	TC	A	Fna w/image	0.00	0.63	NA	0.03	0.66	NA	XXX
10040		A	Acne surgery	1.18	1.00	0.54	0.05	2.23	1.77	010
10060		A	Drainage of skin abscess	1.17	1.51	0.70	0.08	2.76	1.95	010
10061		A	Drainage of skin abscess	2.40	1.88	1.48	0.17	4.45	4.05	010
10080		A	Drainage of pilonidal cyst	1.17	2.18	0.75	0.09	3.44	2.01	010
10081		A	Drainage of pilonidal cyst	2.45	3.02	1.61	0.19	5.66	4.25	010
10120		A	Remove foreign body	1.22	1.52	0.36	0.10	2.84	1.68	010
10121		A	Remove foreign body	2.69	2.99	1.83	0.25	5.93	4.77	010
10140		A	Drainage of hematoma/fluid	1.53	1.54	0.90	0.15	3.22	2.58	010
10160		A	Puncture drainage of lesion	1.20	0.74	0.43	0.11	2.05	1.74	010
10180		A	Complex drainage, wound	2.25	1.51	1.33	0.25	4.01	3.83	010
11000		A	Debride infected skin	0.60	0.66	0.24	0.05	1.31	0.89	000
11001		A	Debride infected skin add-on	0.30	0.37	0.11	0.02	0.69	0.43	ZZZ
11010		A	Debride skin, fx	4.20	2.53	2.10	0.45	7.18	6.75	010
11011		A	Debride skin/muscle, fx	4.95	3.90	2.69	0.53	9.38	8.17	000
11012		A	Debride skin/muscle/bone, fx	6.88	5.52	4.35	0.89	13.29	12.12	000
11040		A	Debride skin, partial	0.50	0.55	0.22	0.05	1.10	0.77	000
11041		A	Debride skin, full	0.82	0.69	0.34	0.08	1.59	1.24	000
11042		A	Debride skin/tissue	1.12	1.04	0.47	0.11	2.27	1.70	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
11043		A	Debride tissue/muscle	2.38	2.72	1.42	0.24	5.34	4.04	010
11044		A	Debride tissue/muscle/bone	3.06	3.30	1.86	0.34	6.70	5.26	010
11055		R	Trim skin lesion	0.43	0.52	0.19	0.02	0.97	0.64	000
11056		R	Trim skin lesions, 2 to 4	0.61	0.59	0.26	0.03	1.23	0.90	000
11057		R	Trim skin lesions, over 4	0.79	0.66	0.34	0.04	1.49	1.17	000
11100		A	Biopsy of skin lesion	0.81	1.49	0.38	0.04	2.34	1.23	000
11101		A	Biopsy, skin add-on	0.41	0.71	0.20	0.02	1.14	0.63	ZZZ
11200		A	Removal of skin tags	0.77	1.20	0.32	0.04	2.01	1.13	010
11201		A	Remove skin tags add-on	0.29	0.53	0.12	0.02	0.84	0.43	ZZZ
11300		A	Shave skin lesion	0.51	1.05	0.22	0.03	1.59	0.76	000
11301		A	Shave skin lesion	0.85	1.12	0.39	0.04	2.01	1.28	000
11302		A	Shave skin lesion	1.05	1.21	0.49	0.05	2.31	1.59	000
11303		A	Shave skin lesion	1.24	1.36	0.55	0.06	2.66	1.85	000
11305		A	Shave skin lesion	0.67	0.77	0.29	0.04	1.48	1.00	000
11306		A	Shave skin lesion	0.99	1.02	0.44	0.05	2.06	1.48	000
11307		A	Shave skin lesion	1.14	1.15	0.51	0.05	2.34	1.70	000
11308		A	Shave skin lesion	1.41	1.29	0.62	0.07	2.77	2.10	000
11310		A	Shave skin lesion	0.73	1.15	0.34	0.04	1.92	1.11	000
11311		A	Shave skin lesion	1.05	1.24	0.51	0.05	2.34	1.61	000
11312		A	Shave skin lesion	1.20	1.32	0.58	0.06	2.58	1.84	000
11313		A	Shave skin lesion	1.62	1.63	0.74	0.09	3.34	2.45	000
11400		A	Removal of skin lesion	0.91	1.68	0.36	0.06	2.65	1.33	010
11401		A	Removal of skin lesion	1.32	1.83	0.53	0.09	3.24	1.94	010
11402		A	Removal of skin lesion	1.61	2.61	0.98	0.12	4.34	2.71	010
11403		A	Removal of skin lesion	1.92	2.84	1.12	0.16	4.92	3.20	010
11404		A	Removal of skin lesion	2.20	3.02	1.19	0.18	5.40	3.57	010
11406		A	Removal of skin lesion	2.76	3.33	1.41	0.25	6.34	4.42	010
11420		A	Removal of skin lesion	1.06	1.52	0.44	0.08	2.66	1.58	010
11421		A	Removal of skin lesion	1.53	1.84	0.64	0.11	3.48	2.28	010
11422		A	Removal of skin lesion	1.76	2.60	1.08	0.14	4.50	2.98	010
11423		A	Removal of skin lesion	2.17	3.02	1.26	0.17	5.36	3.60	010
11424		A	Removal of skin lesion	2.62	3.20	1.43	0.21	6.03	4.26	010
11426		A	Removal of skin lesion	3.78	3.81	1.89	0.34	7.93	6.01	010
11440		A	Removal of skin lesion	1.15	2.26	0.53	0.08	3.49	1.76	010
11441		A	Removal of skin lesion	1.61	2.48	0.74	0.11	4.20	2.46	010
11442		A	Removal of skin lesion	1.87	2.91	1.30	0.14	4.92	3.31	010
11443		A	Removal of skin lesion	2.49	3.41	1.64	0.18	6.08	4.31	010
11444		A	Removal of skin lesion	3.42	3.92	2.08	0.25	7.59	5.75	010
11446		A	Removal of skin lesion	4.49	4.37	2.58	0.30	9.16	7.37	010
11450		A	Removal, sweat gland lesion	2.73	4.20	1.03	0.26	7.19	4.02	090
11451		A	Removal, sweat gland lesion	3.95	5.23	1.33	0.39	9.57	5.67	090
11462		A	Removal, sweat gland lesion	2.51	4.32	0.98	0.23	7.06	3.72	090
11463		A	Removal, sweat gland lesion	3.95	5.67	1.67	0.40	10.02	6.02	090
11470		A	Removal, sweat gland lesion	3.25	4.97	1.26	0.30	8.52	4.81	090
11471		A	Removal, sweat gland lesion	4.41	5.54	1.74	0.40	10.35	6.55	090
11600		A	Removal of skin lesion	1.41	2.48	1.08	0.09	3.98	2.58	010
11601		A	Removal of skin lesion	1.93	2.52	1.36	0.12	4.57	3.41	010
11602		A	Removal of skin lesion	2.09	2.66	1.40	0.13	4.88	3.62	010
11603		A	Removal of skin lesion	2.35	2.93	1.49	0.16	5.44	4.00	010
11604		A	Removal of skin lesion	2.58	3.27	1.56	0.18	6.03	4.32	010
11606		A	Removal of skin lesion	3.43	3.88	1.85	0.28	7.59	5.56	010
11620		A	Removal of skin lesion	1.34	2.47	1.09	0.09	3.90	2.52	010
11621		A	Removal of skin lesion	1.97	2.56	1.41	0.12	4.65	3.50	010
11622		A	Removal of skin lesion	2.34	2.87	1.60	0.15	5.36	4.09	010
11623		A	Removal of skin lesion	2.93	3.30	1.86	0.20	6.43	4.99	010
11624		A	Removal of skin lesion	3.43	3.72	2.08	0.25	7.40	5.76	010
11626		A	Removal of skin lesion	4.30	4.48	2.57	0.35	9.13	7.22	010
11640		A	Removal of skin lesion	1.53	2.51	1.29	0.10	4.14	2.92	010
11641		A	Removal of skin lesion	2.44	2.94	1.78	0.15	5.53	4.37	010
11642		A	Removal of skin lesion	2.93	3.37	2.03	0.18	6.48	5.14	010
11643		A	Removal of skin lesion	3.50	3.83	2.32	0.24	7.57	6.06	010
11644		A	Removal of skin lesion	4.55	4.81	2.95	0.33	9.69	7.83	010
11646		A	Removal of skin lesion	5.95	5.68	3.77	0.46	12.09	10.18	010
11719		R	Trim nail(s)	0.17	0.25	0.07	0.01	0.43	0.25	000
11720		A	Debride nail, 1–5	0.32	0.34	0.13	0.02	0.68	0.47	000
11721		A	Debride nail, 6 or more	0.54	0.44	0.22	0.04	1.02	0.80	000
11730		A	Removal of nail plate	1.13	0.83	0.46	0.09	2.05	1.68	000
11732		A	Remove nail plate, add-on	0.57	0.30	0.24	0.05	0.92	0.86	ZZZ
11740		A	Drain blood from under nail	0.37	0.81	0.14	0.03	1.21	0.54	000
11750		A	Removal of nail bed	1.86	1.75	0.78	0.16	3.77	2.80	010
11752		A	Remove nail bed/finger tip	2.67	2.20	1.77	0.33	5.20	4.77	010
11755		A	Biopsy, nail unit	1.31	1.10	0.60	0.06	2.47	1.97	000
11760		A	Repair of nail bed	1.58	1.80	1.28	0.17	3.55	3.03	010

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
11762		A	Reconstruction of nail bed	2.89	2.28	1.95	0.32	5.49	5.16	010
11765		A	Excision of nail fold, toe	0.69	1.14	0.51	0.05	1.88	1.25	010
11770		A	Removal of pilonidal lesion	2.61	3.11	1.26	0.24	5.96	4.11	010
11771		A	Removal of pilonidal lesion	5.74	5.80	4.01	0.56	12.10	10.31	090
11772		A	Removal of pilonidal lesion	6.98	6.95	4.44	0.68	14.61	12.10	090
11900		A	Injection into skin lesions	0.52	0.77	0.23	0.02	1.31	0.77	000
11901		A	Added skin lesions injection	0.80	0.89	0.38	0.03	1.72	1.21	000
11920		R	Correct skin color defects	1.61	2.25	0.81	0.17	4.03	2.59	000
11921		R	Correct skin color defects	1.93	2.78	1.02	0.21	4.92	3.16	000
11922		R	Correct skin color defects	0.49	0.40	0.26	0.05	0.94	0.80	ZZZ
11950		R	Therapy for contour defects	0.84	1.23	0.47	0.06	2.13	1.37	000
11951		R	Therapy for contour defects	1.19	1.47	0.49	0.10	2.76	1.78	000
11952		R	Therapy for contour defects	1.69	1.65	0.64	0.17	3.51	2.50	000
11954		R	Therapy for contour defects	1.85	2.62	0.97	0.19	4.66	3.01	000
11960		A	Insert tissue expander(s)	9.08	NA	11.54	0.88	NA	21.50	090
11970		A	Replace tissue expander	7.06	NA	5.15	0.77	NA	12.98	090
11971		A	Remove tissue expander(s)	2.13	6.10	4.07	0.21	8.44	6.41	090
11975		N	Insert contraceptive cap	+1.48	1.58	0 59	0.14	3.20	2.21	XXX
11976		R	Removal of contraceptive cap	1.78	1.72	0.69	0.17	3.67	2.64	000
11977		N	Removal/reinsert contra cap	+3.30	2.31	1.32	0.31	5.92	4.93	XXX
11980		A	Implant hormone pellet(s)	1.48	1.14	0.58	0.10	2.72	2.16	000
11981		A	Insert drug implant device	1.48	1.58	0.59	0.14	3.20	2.21	XXX
11982		A	Remove drug implant device	1.78	1.70	0.71	0.17	3.65	2.66	XXX
11983		A	Remove/insert drug implant	3.30	2.31	1.32	0.31	5.92	4.93	XXX
12001		A	Repair superficial wound(s)	1.70	2.13	0.44	0.13	3.96	2.27	010
12002		A	Repair superficial wound(s)	1.86	2.21	0.95	0.15	4.22	2.96	010
12004		A	Repair superficial wound(s)	2.24	2.47	1.07	0.17	4.88	3.48	010
12005		A	Repair superficial wound(s)	2.86	3.04	1.25	0.23	6.13	4.34	010
12006		A	Repair superficial wound(s)	3.67	3.59	1.59	0.31	7.57	5.57	010
12007		A	Repair superficial wound(s)	4.12	4.26	1.85	0.37	8.75	6.34	010
12011		A	Repair superficial wound(s)	1.76	2.30	0.45	0.14	4.20	2.35	010
12013		A	Repair superficial wound(s)	1.99	2.45	0.99	0.16	4.60	3.14	010
12014		A	Repair superficial wound(s)	2.46	2.72	1.11	0.18	5.36	3.75	010
12015		A	Repair superficial wound(s)	3.19	3.38	1.31	0.24	6.81	4.74	010
12016		A	Repair superficial wound(s)	3.93	3.89	1.58	0.32	8.14	5.83	010
12017		A	Repair superficial wound(s)	4.71	NA	1.93	0.39	NA	7.03	010
12018		A	Repair superficial wound(s)	5.53	NA	2.18	0.46	NA	8.17	010
12020		A	Closure of split wound	2.62	2.51	1.44	0.24	5.37	4.30	010
12021		A	Closure of split wound	1.84	1.65	1.02	0.19	3.68	3.05	010
12031		A	Layer closure of wound(s)	2.15	2.21	0.81	0.15	4.51	3.11	010
12032		A	Layer closure of wound(s)	2.47	2.84	1.36	0.15	5.46	3.98	010
12034		A	Layer closure of wound(s)	2.92	3.12	1.51	0.21	6.25	4.64	010
12035		A	Layer closure of wound(s)	3.43	3.20	1.73	0.30	6.93	5.46	010
12036		A	Layer closure of wound(s)	4.05	5.33	2.50	0.41	9.79	6.96	010
12037		A	Layer closure of wound(s)	4.67	5.57	2.86	0.49	10.73	8.02	010
12041		A	Layer closure of wound(s)	2.37	2.41	0.87	0.17	4.95	3.41	010
12042		A	Layer closure of wound(s)	2.74	3.03	1.49	0.17	5.94	4.40	010
12044		A	Layer closure of wound(s)	3.14	3.22	1.67	0.24	6.60	5.05	010
12045		A	Layer closure of wound(s)	3.64	3.54	1.93	0.34	7.52	5.91	010
12046		A	Layer closure of wound(s)	4.25	6.24	2.62	0.40	10.89	7.27	010
12047		A	Layer closure of wound(s)	4.65	7.21	2.86	0.41	12.27	7.92	010
12051		A	Layer closure of wound(s)	2.47	3.11	1.49	0.16	5.74	4.12	010
12052		A	Layer closure of wound(s)	2.77	3.00	1.47	0.17	5.94	4.41	010
12053		A	Layer closure of wound(s)	3.12	3.20	1.63	0.20	6.52	4.95	010
12054		A	Layer closure of wound(s)	3.46	3.52	1.72	0.25	7.23	5.43	010
12055		A	Layer closure of wound(s)	4.43	4.49	2.27	0.35	9.27	7.05	010
12056		A	Layer closure of wound(s)	5.24	7.31	3.26	0.43	12.98	8.93	010
12057		A	Layer closure of wound(s)	5.96	6.31	3.66	0.50	12.77	10.12	010
13100		A	Repair of wound or lesion	3.12	3.39	1.93	0.21	6.72	5.26	010
13101		A	Repair of wound or lesion	3.92	3.59	2.39	0.22	7.73	6.53	010
13102		A	Repair wound/lesion add-on	1.24	0.75	0.60	0.10	2.09	1.94	ZZZ
13120		A	Repair of wound or lesion	3.30	3.48	1.95	0.23	7.01	5.48	010
13121		A	Repair of wound or lesion	4.33	3.84	2.52	0.25	8.42	7.10	010
13122		A	Repair wound/lesion add-on	1.44	0.89	0.67	0.12	2.45	2.23	ZZZ
13131		A	Repair of wound or lesion	3.79	3.75	2.30	0.25	7.79	6.34	010
13132		A	Repair of wound or lesion	5.95	4.57	3.38	0.32	10.84	9.65	010
13133		A	Repair wound/lesion add-on	2.19	1.23	1.08	0.17	3.59	3.44	ZZZ
13150		A	Repair of wound or lesion	3.81	5.19	2.75	0.29	9.29	6.85	010
13151		A	Repair of wound or lesion	4.45	5.07	3.19	0.28	9.80	7.92	010
13152		A	Repair of wound or lesion	6.33	5.78	4.14	0.38	12.49	10.85	010
13153		A	Repair wound/lesion add-on	2.38	1.38	1.20	0.18	3.94	3.76	ZZZ
13160		A	Late closure of wound	10.48	NA	6.47	1.19	NA	18.14	090
14000		A	Skin tissue rearrangement	5.89	7.58	4.83	0.46	13.93	11.18	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
14001		A	Skin tissue rearrangement	8.47	8.72	6.18	0.65	17.84	15.30	090
14020		A	Skin tissue rearrangement	6.59	8.05	5.56	0.50	15.14	12.65	090
14021		A	Skin tissue rearrangement	10.06	9.29	7.38	0.69	20.04	18.13	090
14040		A	Skin tissue rearrangement	7.87	8.19	6.27	0.53	16.59	14.67	090
14041		A	Skin tissue rearrangement	11.49	9.90	8.17	0.68	22.07	20.34	090
14060		A	Skin tissue rearrangement	8.50	8.64	7.13	0.59	17.73	16.22	090
14061		A	Skin tissue rearrangement	12.29	10.85	9.08	0.75	23.89	22.12	090
14300		A	Skin tissue rearrangement	11.76	10.11	8.68	0.88	22.75	21.32	090
14350		A	Skin tissue rearrangement	9.61	NA	6.48	1.09	NA	17.18	090
15000		A	Skin graft	4.00	2.51	1.91	0.37	6.88	6.28	000
15001		A	Skin graft add-on	1.00	0.64	0.43	0.11	1.75	1.54	ZZZ
15050		A	Skin pinch graft	4.30	4.98	4.12	0.46	9.74	8.88	090
15100		A	Skin split graft	9.05	6.27	6.26	0.94	16.26	16.25	090
15101		A	Skin split graft add-on	1.72	1.40	0.76	0.18	3.30	2.66	ZZZ
15120		A	Skin split graft	9.83	8.62	6.97	0.87	19.32	17.67	090
15121		A	Skin split graft add-on	2.67	1.83	1.23	0.27	4.77	4.17	ZZZ
15200		A	Skin full graft	8.03	9.90	5.64	0.73	18.66	14.40	090
15201		A	Skin full graft add-on	1.32	1.00	0.68	0.14	2.46	2.14	ZZZ
15220		A	Skin full graft	7.87	9.38	6.47	0.68	17.93	15.02	090
15221		A	Skin full graft add-on	1.19	0.92	0.60	0.12	2.23	1.91	ZZZ
15240		A	Skin full graft	9.04	9.01	7.27	0.77	18.82	17.08	090
15241		A	Skin full graft add-on	1.86	1.47	0.95	0.17	3.50	2.98	ZZZ
15260		A	Skin full graft	10.06	9.01	7.74	0.63	19.70	18.43	090
15261		A	Skin full graft add-on	2.23	1.59	1.16	0.17	3.99	3.56	ZZZ
15342		A	Cultured skin graft, 25 cm	1.00	2.18	1.04	0.09	3.27	2.13	010
15343		A	Cultured skin graft addl 25 cm	0.25	0.42	0.10	0.02	0.69	0.37	ZZZ
15350		A	Skin homograft	4.00	7.78	4.23	0.42	12.20	8.65	090
15351		A	Skin homograft add-on	1.00	0.85	0.42	0.11	1.96	1.53	ZZZ
15400		A	Skin heterograft	4.00	4.89	4.89	0.40	9.29	9.29	090
15401		A	Skin heterograft add-on	1.00	1.59	0.47	0.11	2.70	1.58	ZZZ
15570		A	Form skin pedicle flap	9.21	7.80	6.37	0.96	17.97	16.54	090
15572		A	Form skin pedicle flap	9.27	8.08	6.34	0.93	18.28	16.54	090
15574		A	Form skin pedicle flap	9.88	8.61	7.14	0.92	19.41	17.94	090
15576		A	Form skin pedicle flap	8.69	8.89	6.55	0.72	18.30	15.96	090
15600		A	Skin graft	1.91	6.66	2.51	0.19	8.76	4.61	090
15610		A	Skin graft	2.42	5.90	2.67	0.25	8.57	5.34	090
15620		A	Skin graft	2.94	7.04	3.54	0.28	10.26	6.76	090
15630		A	Skin graft	3.27	6.09	3.83	0.28	9.64	7.38	090
15650		A	Transfer skin pedicle flap	3.97	5.69	3.99	0.36	10.02	8.32	090
15732		A	Muscle-skin graft, head/neck	17.84	NA	11.63	1.50	NA	30.97	090
15734		A	Muscle-skin graft, trunk	17.79	NA	11.49	1.91	NA	31.19	090
15736		A	Muscle-skin graft, arm	16.27	NA	11.14	1.78	NA	29.19	090
15738		A	Muscle-skin graft, leg	17.92	NA	11.47	1.95	NA	31.34	090
15740		A	Island pedicle flap graft	10.25	8.74	7.20	0.62	19.61	18.07	090
15750		A	Neurovascular pedicle graft	11.41	NA	8.45	1.12	NA	20.98	090
15756		A	Free muscle flap, microvasc	35.23	NA	22.50	3.11	NA	60.84	090
15757		A	Free skin flap, microvasc	35.23	NA	22.54	3.37	NA	61.14	090
15758		A	Free fascial flap, microvasc	35.10	NA	22.75	3.52	NA	61.37	090
15760		A	Composite skin graft	8.74	9.27	6.93	0.72	18.73	16.39	090
15770		A	Derma-fat-fascia graft	7.52	NA	6.14	0.78	NA	14.44	090
15775		R	Hair transplant punch grafts	3.96	3.12	1.60	0.43	7.51	5.99	000
15776		R	Hair transplant punch grafts	5.54	3.97	2.97	0.60	10.11	9.11	000
15780		A	Abrasion treatment of skin	7.29	6.41	6.13	0.41	14.11	13.83	090
15781		A	Abrasion treatment of skin	4.85	5.17	4.83	0.27	10.29	9.95	090
15782		A	Abrasion treatment of skin	4.32	4.37	4.09	0.21	8.90	8.62	090
15783		A	Abrasion treatment of skin	4.29	5.02	3.51	0.26	9.57	8.06	090
15786		A	Abrasion, lesion, single	2.03	1.73	1.29	0.11	3 87	3.43	010
15787		A	Abrasion, lesions, add-on	0.33	0.39	0.18	0.02	0.74	0.53	ZZZ
15788		R	Chemical peel, face, epiderm	2.09	3.15	1.07	0.11	5.35	3.27	090
15789		R	Chemical peel, face, dermal	4.92	5.65	3.32	0.27	10.84	8.51	090
15792		R	Chemical peel, nonfacial	1.86	2.87	1.63	0.10	4.83	3.59	090
15793		A	Chemical peel, nonfacial	3.74	NA	3.81	0.17	NA	7.72	090
15810		A	Salabrasion	4.74	4.04	4.04	0.42	9.20	9.20	090
15811		A	Salabrasion	5.39	5.85	5.06	0.52	11.76	10.97	090
15819		A	Plastic surgery, neck	9.38	NA	6.24	0.77	NA	16.39	090
15820		A	Revision of lower eyelid	5.15	10.34	7.13	0.30	15.79	12.58	090
15821		A	Revision of lower eyelid	5.72	11.87	7.34	0.31	17.90	13.37	090
15822		A	Revision of upper eyelid	4.45	10.58	6.58	0.22	15.25	11.25	090
15823		A	Revision of upper eyelid	7.05	11.38	7.60	0.32	18.75	14.97	090
15824		R	Removal of forehead wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	000
15825		R	Removal of neck wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	000
15826		R	Removal of brow wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	000
15828		R	Removal of face wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
15829		R	Removal of skin wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	000
15831		A	Excise excessive skin tissue	12.40	NA	8.14	1.30	NA	21.84	090
15832		A	Excise excessive skin tissue	11.59	NA	8.04	1.21	NA	20.84	090
15833		A	Excise excessive skin tissue	10.64	NA	7.34	1.17	NA	19.15	090
15834		A	Excise excessive skin tissue	10.85	NA	7.59	1.18	NA	19.62	090
15835		A	Excise excessive skin tissue	11.67	NA	7.94	1.13	NA	20.74	090
15836		A	Excise excessive skin tissue	9.34	NA	6.51	0.95	NA	16.80	090
15837		A	Excise excessive skin tissue	8.43	7.30	6.38	0.78	16.51	15.59	090
15838		A	Excise excessive skin tissue	7.13	NA	5.70	0.58	NA	13.41	090
15839		A	Excise excessive skin tissue	9.38	7.64	5.97	0.88	17.90	16.23	090
15840		A	Graft for face nerve palsy	13.26	NA	10.10	1.15	NA	24.51	090
15841		A	Graft for face nerve palsy	23.26	NA	14.68	2.65	NA	40.59	090
15842		A	Flap for face nerve palsy	37.96	NA	22.81	3.99	NA	64.76	090
15845		A	Skin and muscle repair, face	12.57	NA	8.81	0.80	NA	22.18	090
15850		B	Removal of sutures	+0.78	1.43	0.31	0.04	2.25	1.13	XXX
15851		A	Removal of sutures	0.86	1.64	0.35	0.05	2.55	1.26	000
15852		A	Dressing change, not for burn	0.86	1.93	0.36	0.07	2.86	1.29	000
15860		A	Test for blood flow in graft	1.95	1.35	0.84	0.13	3.43	2.92	000
15876		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	000
15877		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	000
15878		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	000
15879		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	000
15920		A	Removal of tail bone ulcer	7.95	NA	5.90	0.83	NA	14.68	090
15922		A	Removal of tail bone ulcer	9.90	NA	7.78	1.06	NA	18.74	090
15931		A	Remove sacrum pressure sore	9.24	NA	5.89	0.95	NA	16.08	090
15933		A	Remove sacrum pressure sore	10.85	NA	8.32	1.14	NA	20.31	090
15934		A	Remove sacrum pressure sore	12.69	NA	8.48	1.35	NA	22.52	090
15935		A	Remove sacrum pressure scre	14.57	NA	10.12	1.56	NA	26.25	090
15936		A	Remove sacrum pressure sore	12.38	NA	8.81	1.32	NA	22.51	090
15937		A	Remove sacrum pressure sore	14.21	NA	10.75	1.51	NA	26.47	090
15940		A	Remove hip pressure sore	9.34	NA	6.17	0.98	NA	16.49	090
15941		A	Remove hip pressure sore	11.43	NA	10.44	1.23	NA	23.10	090
15944		A	Remove hip pressure sore	11.46	NA	8.77	1.21	NA	21.44	090
15945		A	Remove hip pressure sore	12.69	NA	9.73	1.38	NA	23.80	090
15946		A	Remove hip pressure sore	21.57	NA	14.65	2.32	NA	38.54	090
15950		A	Remove thigh pressure sore	7.54	NA	5.43	0.80	NA	13.77	090
15951		A	Remove thigh pressure sore	10.72	NA	8.07	1.14	NA	19.93	090
15952		A	Remove thigh pressure sore	11.39	NA	7.86	1.19	NA	20.44	090
15953		A	Remove thigh pressure sore	12.63	NA	9.24	1.38	NA	23.25	090
15956		A	Remove thigh pressure sore	15.52	NA	10.71	1.64	NA	27.87	090
15958		A	Remove thigh pressure sore	15.48	NA	11.20	1.66	NA	28.34	090
15999		C	Removal of pressure sore	0.00	0.00	0.00	0.00	0.00	0.00	YYY
16000		A	Initial treatment of burn(s)	0.89	1.09	0.27	0.06	2.04	1.22	000
16010		A	Treatment of burn(s)	0.87	1.21	0.37	0.07	2.15	1.31	000
16015		A	Treatment of burn(s)	2.35	2.01	1.03	0.22	4.58	3.60	000
16020		A	Treatment of burn(s)	0.80	1.20	0.27	0.06	2.06	1.13	000
16025		A	Treatment of burn(s)	1.85	1.94	0.69	0.16	3.95	2.70	000
16030		A	Treatment of burn(s)	2.08	3.36	0.97	0.18	5.62	3.23	000
16035		A	Incision of burn scab, initi	3.75	NA	1.56	0.36	NA	5.67	090
16036		A	Incise burn scab, addl incis	1.50	NA	0.62	0.11	NA	2.23	ZZZ
17000		A	Detroy benign/premal lesion	0.60	1.10	0.28	0.03	1.73	0.91	010
17003		A	Destroy lesions, 2–14	0.15	0.24	0.07	0.01	0.40	0.23	ZZZ
17004		A	Destroy lesions, 15 or more	2.79	2.56	1.30	0.12	5.47	4.21	010
17106		A	Destruction of skin lesions	4.59	4.88	2.88	0.28	9.75	7.75	090
17107		A	Destruction of skin lesions	9.16	6.92	5.28	0.53	16.61	14.97	090
17108		A	Destruction of skin lesions	13.20	8.87	7.26	0.89	22.96	21.35	090
17110		A	Destruct lesion, 1–14	0.65	1.11	0.26	0.04	1.80	0.95	010
17111		A	Destruct lesion, 15 or more	0.92	1.13	0.41	0.04	2.09	1.37	010
17250		A	Chemical cautery, tissue	0.50	0.76	0.21	0.04	1.30	0.75	000
17260		A	Destruction of skin lesions	0.91	1.37	0.39	0.04	2.32	1.34	010
17261		A	Destruction of skin lesions	1.17	1.48	0.56	0.05	2.70	1.78	010
17262		A	Destruction of skin lesions	1.58	1.69	0.76	0.07	3.34	2.41	010
17263		A	Destruction of skin lesions	1.79	1.80	0.83	0.08	3.67	2.70	010
17264		A	Destruction of skin lesions	1.94	1.87	0.87	0.08	3.89	2.89	010
17266		A	Destruction of skin lesions	2.34	2.08	1.05	0.11	4.53	3.50	010
17270		A	Destruction of skin lesions	1.32	1.57	0.60	0.06	2.95	1.98	010
17271		A	Destruction of skin lesions	1.49	1.65	0.72	0.06	3.20	2.27	010
17272		A	Destruction of skin lesions	1.77	1.79	0.86	0.07	3.63	2.70	010
17273		A	Destruction of skin lesions	2.05	1.93	0.97	0.09	4.07	3.11	010
17274		A	Destruction of skin lesions	2.59	2.21	1.20	0.11	4.91	3.90	010
17276		A	Destruction of skin lesions	3.20	2.52	1.84	0.15	5.87	5.19	010
17280		A	Destruction of skin lesions	1.17	1.41	0.54	0.05	2.63	1.76	010
17281		A	Destruction of skin lesions	1.72	1.77	0.83	0.07	3.56	2.62	010

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
17282		A	Destruction of skin lesions	2.04	1.93	0.99	0.09	4.06	3.12	010
17283		A	Destruction of skin lesions	2.64	2.23	1.24	0.11	4.98	3.99	010
17284		A	Destruction of skin lesions	3.21	2.52	1.51	0.14	5.87	4.86	010
17286		A	Destruction of skin lesions	4.44	3.23	2.52	0.22	7.89	7.18	010
17304		A	Chemosurgery of skin lesion	7.60	7.76	3.74	0.31	15.67	11.65	000
17305		A	2nd stage chemosurgery	2.85	3.60	1.40	0.12	6.57	4.37	000
17306		A	3rd stage chemosurgery	2.85	3.64	1.41	0.12	6.61	4.38	000
17307		A	Followup skin lesion therapy	2.85	3.62	1.43	0.12	6.59	4.40	000
17310		A	Extensive skin chemosurgery	0.95	1.54	0.48	0.05	2.54	1.48	000
17340		A	Cryotherapy of skin	0.76	0.39	0.27	0.04	1.19	1.07	010
17360		A	Skin peel therapy	1.43	1.46	0.73	0.06	2.95	2.22	010
17380		R	Hair removal by electrolysis	0.00	0.00	0.00	0.00	0.00	0.00	000
17999		C	Skin tissue procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
19000		A	Drainage of breast lesion	0.84	1.27	0.30	0.07	2.18	1.21	000
19001		A	Drain breast lesion add-on	0.42	0.86	0.15	0.03	1.31	0.60	ZZZ
19020		A	Incision of breast lesion	3.57	7.13	3.51	0.35	11.05	7.43	090
19030		A	Injection for breast x-ray	1.53	3.70	0.54	0.07	5.30	2.14	000
19100		A	Bx breast percut w/o image	1.27	1.50	0.45	0.10	2.87	1.82	000
19101		A	Biopsy of breast, open	3.18	5.27	1.97	0.20	8.65	5.35	010
19102		A	Bx breast percut w/image	2.00	5.13	0.71	0.13	7.26	2.84	000
19103		A	Bx breast percut w/device	3.70	12.73	1.31	0.16	16.59	5.17	000
19110		A	Nipple exploration	4.30	9.79	4.56	0.44	14.53	9.30	090
19112		A	Excise breast duct fistula	3.67	10.91	3.19	0.38	14.96	7.24	090
19120		A	Removal of breast lesion	5.56	5.18	3.20	0.56	11.30	9.32	090
19125		A	Excision, breast lesion	6.06	5.36	3.36	0.61	12.03	10.03	090
19126		A	Excision, addl breast lesion	2.93	NA	1.06	0.30	NA	4.29	ZZZ
19140		A	Removal of breast tissue	5.14	10.26	3.79	0.52	15.92	9.45	090
19160		A	Removal of breast tissue	5.99	NA	4.62	0.61	NA	11.22	090
19162		A	Remove breast tissue, nodes	13.53	NA	8.07	1.38	NA	22.98	090
19180		A	Removal of breast	8.80	NA	6.08	0.88	NA	15.76	090
19182		A	Removal of breast	7.73	NA	5.06	0.79	NA	13.58	090
19200		A	Removal of breast	15.49	NA	9.33	1.51	NA	26.33	090
19220		A	Removal of breast	15.72	NA	9.52	1.56	NA	26.80	090
19240		A	Removal of breast	16.00	NA	8.94	1.62	NA	26.56	090
19260		A	Removal of chest wall lesion	15.44	NA	9.12	1.64	NA	26.20	090
19271		A	Revision of chest wall	18.90	NA	11.13	2.27	NA	32.30	090
19272		A	Extensive chest wall surgery	21.55	NA	12.36	2.54	NA	36.45	090
19290		A	Place needle wire, breast	1.27	2.95	0.45	0.06	4.28	1.78	000
19291		A	Place needle wire, breast	0.63	1.74	0.22	0.03	2.40	0.88	ZZZ
19295		A	Place breast clip, percut	0.00	2.83	NA	0.01	2.84	NA	ZZZ
19316		A	Suspension of breast	10.69	NA	8.00	1.15	NA	19.84	090
19318		A	Reduction of large breast	15.62	NA	10.64	1.69	NA	27.95	090
19324		A	Enlarge breast	5.85	NA	4.41	0.63	NA	10.89	090
19325		A	Enlarge breast with implant	8.45	NA	7.00	0.90	NA	16.35	090
19328		A	Removal of breast implant	5.68	NA	4.73	0.61	NA	11.02	090
19330		A	Removal of implant material	7.59	NA	5.41	0.81	NA	13.81	090
19340		A	Immediate breast prosthesis	6.33	NA	3.30	0.68	NA	10.31	ZZZ
19342		A	Delayed breast prosthesis	11.20	NA	8.15	1.21	NA	20.56	090
19350		A	Breast reconstruction	8.92	14.55	7.09	0.95	24.42	16.96	090
19355		A	Correct inverted nipple(s)	7.57	12.42	5.93	0.80	20.79	14.30	090
19357		A	Breast reconstruction	18.16	NA	14.40	1.96	NA	34.52	090
19361		A	Breast reconstruction	19.26	NA	12.45	2.08	NA	33.79	090
19364		A	Breast reconstruction	41.00	NA	25.45	3.91	NA	70.36	090
19366		A	Breast reconstruction	21.28	NA	12.02	2.27	NA	35.57	090
19367		A	Breast reconstruction	25.73	NA	15.77	2.78	NA	44.28	090
19368		A	Breast reconstruction	32.42	NA	19.04	3.51	NA	54.97	090
19369		A	Breast reconstruction	29.82	NA	18.29	3.24	NA	51.35	090
19370		A	Surgery of breast capsule	8.05	NA	6.39	0.86	NA	15.30	090
19371		A	Removal of breast capsule	9.35	NA	7.46	1.01	NA	17.82	090
19380		A	Revise breast reconstruction	9.14	NA	7.35	0.98	NA	17.47	090
19396		A	Design custom breast implant	2.17	7.08	0.87	0.23	9.48	3.27	000
19499		C	Breast surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
20000		A	Incision of abscess	2.12	2.23	1.20	0.17	4.52	3.49	010
20005		A	Incision of deep abscess	3.42	3.07	2.22	0.34	6.83	5.98	010
20100		A	Explore wound, neck	10.08	6.49	4.12	0.99	17.56	15.19	010
20101		A	Explore wound, chest	3.22	3.03	1.64	0.24	6.49	5.10	010
20102		A	Explore wound, abdomen	3.94	3.43	1.85	0.35	7.72	6.14	010
20103		A	Explore wound, extremity	5.30	4.41	3.01	0.57	10.28	8.88	010
20150		A	Excise epiphyseal bar	13.69	NA	9.72	0.96	NA	24.37	090
20200		A	Muscle biopsy	1.46	1.72	0.62	0.17	3.35	2.25	000
20205		A	Deep muscle biopsy	2.35	4.04	0.98	0.23	6.62	3.56	000
20206		A	Needle biopsy, muscle	0.99	3.27	0.36	0.06	4.32	1.41	000
20220		A	Bone biopsy, trocar/needle	1.27	4.96	2.98	0.06	6.29	4.31	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
20225		A	Bone biopsy, trocar/needle	1.87	4.47	3.06	0.11	6.45	5.04	000
20240		A	Bone biopsy, excisional	3.23	NA	4.15	0.33	NA	7.71	010
20245		A	Bone biopsy, excisional	7.78	NA	6.91	0.44	NA	15.13	010
20250		A	Open bone biopsy	5.03	NA	4.37	0.50	NA	9.90	010
20251		A	Open bone biopsy	5.56	NA	4.86	0.79	NA	11.21	010
20500		A	Injection of sinus tract	1.23	5.34	3.91	0.10	6.67	5.24	010
20501		A	Inject sinus tract for x-ray	0.76	3.32	0.27	0.03	4.11	1.06	000
20520		A	Removal of foreign body	1.85	5.62	3.62	0.17	7.64	5.64	010
20525		A	Removal of foreign body	3.50	7.26	4.40	0.40	11.16	8.30	010
20526		A	Ther injection carpal tunnel	0.86	0.78	0.39	0.06	1.70	1.31	000
20550		A	Inject tendon/ligament/cyst	0.86	0.85	0.28	0.06	1.77	1.20	000
20551		A	Inject tendon origin/insert	0.86	0.78	0.39	0.06	1.70	1.31	000
20552		A	Inject trigger point, 1 or 2	0.86	0.78	0.39	0.06	1.70	1.31	000
20553		A	Inject trigger points, > 3	0.86	0.78	0.39	0.06	1.70	1.31	000
20600		A	Drain/inject, joint/bursa	0.66	0.67	0.37	0.06	1.39	1.09	000
20605		A	Drain/inject, joint/bursa	0.68	0.78	0.38	0.06	1.52	1.12	000
20610		A	Drain/inject, joint/bursa	0.79	0.96	0.44	0.08	1.83	1.31	000
20615		A	Treatment of bone cyst	2.28	4.89	2.52	0.19	7.36	4.99	010
20650		A	Insert and remove bone pin	2.23	5.06	3.19	0.28	7.57	5.70	010
20660		A	Apply, remove fixation device	2.51	NA	1.49	0.48	NA	4.48	000
20661		A	Application of head brace	4.89	NA	6.74	0.92	NA	12.55	090
20662		A	Application of pelvis brace	6.07	NA	5.12	0.81	NA	12.00	090
20663		A	Application of thigh brace	5.43	NA	4.94	0.77	NA	11.14	090
20664		A	Halo brace application	8.06	NA	8.55	1.49	NA	18.10	090
20665		A	Removal of fixation device	1.31	2.33	1.25	0.17	3.81	2.73	010
20670		A	Removal of support implant	1.74	5.73	3.42	0.23	7.70	5.39	010
20680		A	Removal of support implant	3.35	5.04	5.04	0.46	8.85	8.85	090
20690		A	Apply bone fixation device	3.52	NA	1.91	0.47	NA	5.90	090
20692		A	Apply bone fixation device	6.41	NA	3.57	0.60	NA	10.58	090
20693		A	Adjust bone fixation device	5.86	NA	12.98	0.85	NA	19.69	090
20694		A	Remove bone fixation device	4.16	8.96	6.30	0.57	13.69	11.03	090
20802		A	Replantation, arm, complete	41.15	NA	28.95	5.81	NA	75.91	090
20805		A	Replant, forearm, complete	50.00	NA	38.72	3.95	NA	92.67	090
20808		A	Replantation hand, complete	61.65	NA	56.41	6.49	NA	124.55	090
20816		A	Replantation digit, complete	30.94	NA	49.50	3.01	NA	83.45	090
20822		A	Replantation digit, complete	25.59	NA	45.97	3.07	NA	74.63	090
20824		A	Replantation thumb, complete	30.94	NA	49.10	3.48	NA	83.52	090
20827		A	Replantation thumb, complete	26.41	NA	45.65	3.21	NA	75.27	090
20838		A	Replantation foot, complete	41.41	NA	25.82	5.85	NA	73.08	090
20900		A	Removal of bone for graft	5.58	5.97	5.97	0.77	12.32	12.32	090
20902		A	Removal of bone for graft	7.55	NA	8.91	1.06	NA	17.52	090
20910		A	Remove cartilage for graft	5.34	9.09	6.94	0.50	14.93	12.78	090
20912		A	Remove cartilage for graft	6.35	NA	7.68	0.55	NA	14.58	090
20920		A	Removal of fascia for graft	5.31	NA	5.44	0.54	NA	11.29	090
20922		A	Removal of fascia for graft	6.61	8.50	6.28	0.88	15.99	13.77	090
20924		A	Removal of tendon for graft	6.48	NA	7.03	0.82	NA	14.33	090
20926		A	Removal of tissue for graft	5.53	NA	6.54	0.73	NA	12.80	090
20930		B	Spinal bone allograft	0.00	0.00	0.00	0.00	0.00	0.00	XXX
20931		A	Spinal bone allograft	1.81	NA	0.98	0.34	NA	3.13	ZZZ
20936		B	Spinal bone autograft	0.00	0.00	0.00	0.00	0.00	0.00	XXX
20937		A	Spinal bone autograft	2.79	NA	1.54	0.43	NA	4.76	ZZZ
20938		A	Spinal bone autograft	3.02	NA	1.64	0.52	NA	5.18	ZZZ
20950		A	Fluid pressure, muscle	1.26	NA	2.15	0.16	NA	3.57	000
20955		A	Fibula bone graft, microvasc	39.21	NA	30.52	4.35	NA	74.08	090
20956		A	Iliac bone graft, microvasc	39.27	NA	28.18	5.77	NA	73.22	090
20957		A	Mt bone graft, microvasc	40.65	NA	21.71	5.74	NA	68.10	090
20962		A	Other bone graft, microvasc	39.27	NA	28.54	5.19	NA	73.00	090
20969		A	Bone/skin graft, microvasc	43.92	NA	33.31	4.34	NA	81.57	090
20970		A	Bone/skin graft, iliac crest	43.06	NA	30.08	4.64	NA	77.78	090
20972		A	Bone/skin graft, metatarsal	42.99	NA	18.23	6.07	NA	67.29	090
20973		A	Bone/skin graft, great toe	45.76	NA	30.52	4.65	NA	80.93	090
20974		A	Electrical bone stimulation	0.62	0.47	0.34	0.09	1.18	1.05	000
20975		A	Electrical bone stimulation	2.60	NA	1.42	0.42	NA	4.44	000
20979		A	Us bone stimulation	0.62	0.58	0.25	0.04	1.24	0.91	000
20999		C	Musculoskeletal surgery	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21010		A	Incision of jaw joint	10.14	NA	7.24	0.54	NA	17.92	090
21015		A	Resection of facial tumor	5.29	NA	7.38	0.52	NA	13.19	090
21025		A	Excision of bone, lower jaw	10.06	7.40	7.00	0.79	18.25	17.85	090
21026		A	Excision of facial bone(s)	4.85	5.23	5.12	0.40	10.48	10.37	090
21029		A	Contour of face bone lesion	7.71	7.18	6.73	0.74	15.63	15.18	090
21030		A	Removal of face bone lesion	6.46	5.47	4.94	0.60	12.53	12.00	090
21031		A	Remove exostosis, mandible	3.24	3.39	2.19	0.28	6.91	5.71	090
21032		A	Remove exostosis, maxilla	3.24	3.38	2.47	0.27	6.89	5.98	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
21034		A	Removal of face bone lesion	16.17	10.59	10.59	1.37	28.13	28.13	090
21040		A	Removal of jaw bone lesion	2.11	3.03	1.81	0.19	5.33	4.11	090
21041		A	Removal of jaw bone lesion	6.71	5.68	4.46	0.56	12.95	11.73	090
21044		A	Removal of jaw bone lesion	11.86	NA	8.33	0.87	NA	21.06	090
21045		A	Extensive jaw surgery	16.17	NA	10.63	1.20	NA	28.00	090
21050		A	Removal of jaw joint	10.77	NA	11.93	0.84	NA	23.54	090
21060		A	Remove jaw joint cartilage	10.23	NA	10.59	1.16	NA	21.98	090
21070		A	Remove coronoid process	8.20	NA	6.36	0.67	NA	15.23	090
21076		A	Prepare face/oral prosthesis	13.42	9.87	7.41	1.36	24.65	22.19	010
21077		A	Prepare face/oral prosthesis	33.75	24.83	18.64	3.43	62.01	55.82	090
21079		A	Prepare face/oral prosthesis	22.34	17.55	12.90	1.59	41.48	36.83	090
21080		A	Prepare face/oral prosthesis	25.10	19.72	14.49	2.55	47.37	42.14	090
21081		A	Prepare face/oral prosthesis	22.88	17.97	13.21	1.87	42.72	37.96	090
21082		A	Prepare face/oral prosthesis	20.87	15.35	11.53	1.46	37.68	33.86	090
21083		A	Prepare face/oral prosthesis	19.30	15.16	11.14	1.96	36.42	32.40	090
21084		A	Prepare face/oral prosthesis	22.51	17.68	12.99	1.57	41.76	37.07	090
21085		A	Prepare face/oral prosthesis	9.00	6.62	4.97	0.65	16.27	14.62	010
21086		A	Prepare face/oral prosthesis	24.92	19.58	14.39	1.86	46.36	41.17	090
21087		A	Prepare face/oral prosthesis	24.92	18.33	13.76	2.22	45.47	40.90	090
21088		C	Prepare face/oral prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	090
21089		C	Prepare face/oral prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	090
21100		A	Maxillofacial fixation	4.22	5.66	3.70	0.18	10.06	8.10	090
21110		A	Interdental fixation	5.21	5.25	4.48	0.28	10.74	9.97	090
21116		A	Injection, jaw joint x-ray	0.81	7.88	0.30	0.05	8.74	1.16	000
21120		A	Reconstruction of chin	4.93	7.96	4.98	0.29	13.18	10.20	090
21121		A	Reconstruction of chin	7.64	7.68	6.65	0.56	15.88	14.85	090
21122		A	Reconstruction of chin	8.52	NA	7.95	0.59	NA	17.06	090
21123		A	Reconstruction of chin	11.16	NA	7.68	1.16	NA	20.00	090
21125		A	Augmentation, lower jaw bone	10.62	9.56	7.84	0.72	20.90	19.18	090
21127		A	Augmentation, lower jaw bone	11.12	10.66	7.33	0.76	22.54	19.21	090
21137		A	Reduction of forehead	9.82	NA	8.20	0.53	NA	18.55	090
21138		A	Reduction of forehead	12.19	NA	8.82	1.47	NA	22.48	090
21139		A	Reduction of forehead	14.61	NA	8.23	1.02	NA	23.86	090
21141		A	Reconstruct midface, lefort	18.10	NA	10.69	1.63	NA	30.42	090
21142		A	Reconstruct midface, lefort	18.81	NA	13.80	1.16	NA	33.77	090
21143		A	Reconstruct midface, lefort	19.58	NA	11.21	0.90	NA	31.69	090
21145		A	Reconstruct midface, lefort	19.94	NA	11.69	2.09	NA	33.72	090
21146		A	Reconstruct midface, lefort	20.71	NA	11.61	2.13	NA	34.45	090
21147		A	Reconstruct midface, lefort	21.77	NA	12.07	1.52	NA	35.36	090
21150		A	Reconstruct midface, lefort	25.24	NA	17.20	1.09	NA	43.53	090
21151		A	Reconstruct midface, lefort	28.30	NA	21.35	1.98	NA	51.63	090
21154		A	Reconstruct midface, lefort	30.52	NA	21.03	4.86	NA	56.41	090
21155		A	Reconstruct midface, lefort	34.45	NA	23.20	5.48	NA	63.13	090
21159		A	Reconstruct midface, lefort	42.38	NA	21.72	6.74	NA	70.84	090
21160		A	Reconstruct midface, lefort	46.44	NA	30.39	4.39	NA	81.22	090
21172		A	Reconstruct orbit/forehead	27.80	NA	16.39	1.91	NA	46.10	090
21175		A	Reconstruct orbit/forehead	33.17	NA	19.79	5.16	NA	58.12	090
21179		A	Reconstruct entire forehead	22.25	NA	18.94	2.48	NA	43.67	090
21180		A	Reconstruct entire forehead	25.19	NA	18.33	2.15	NA	45.67	090
21181		A	Contour cranial bone lesion	9.90	NA	8.46	0.97	NA	19.33	090
21182		A	Reconstruct cranial bone	32.19	NA	21.97	2.53	NA	56.69	090
21183		A	Reconstruct cranial bone	35.31	NA	22.93	2.75	NA	60.99	090
21184		A	Reconstruct cranial bone	38.24	NA	19.54	4.12	NA	61.90	090
21188		A	Reconstruction of midface	22.46	NA	15.86	1.85	NA	40.17	090
21193		A	Reconst lwr jaw w/o graft	17.15	NA	10.77	1.53	NA	29.45	090
21194		A	Reconst lwr jaw w/graft	19.84	NA	12.44	1.39	NA	33.67	090
21195		A	Reconst lwr jaw w/o fixation	17.24	NA	12.36	1.20	NA	30.80	090
21196		A	Reconst lwr jaw w/fixation	18.91	NA	12.83	1.62	NA	33.36	090
21198		A	Reconstr lwr jaw segment	14.16	NA	12.30	1.05	NA	27.51	090
21199		A	Reconstr lwr jaw w/advance	16.00	NA	10.85	1.26	NA	28.11	090
21206		A	Reconstruct upper jaw bone	14.10	NA	9.39	1.01	NA	24.50	090
21208		A	Augmentation of facial bones	10.23	8.95	8.62	0.92	20.10	19.77	090
21209		A	Reduction of facial bones	6.72	8.05	6.54	0.60	15.37	13.86	090
21210		A	Face bone graft	10.23	8.82	8.28	0.88	19.93	19.39	090
21215		A	Lower jaw bone graft	10.77	8.95	7.48	1.04	20.76	19.29	090
21230		A	Rib cartilage graft	10.77	NA	10.85	0.96	NA	22.58	090
21235		A	Ear cartilage graft	6.72	11.90	8.36	0.52	19.14	15.60	090
21240		A	Reconstruction of jaw joint	14.05	NA	11.79	1.15	NA	26.99	090
21242		A	Reconstruction of jaw joint	12.95	NA	10.85	1.40	NA	25.20	090
21243		A	Reconstruction of jaw joint	20.79	NA	13.97	1.85	NA	36.61	090
21244		A	Reconstruction of lower jaw	11.86	NA	9.56	0.95	NA	22.37	090
21245		A	Reconstruction of jaw	11.86	24.85	10.25	0.88	37.59	22.99	090
21246		A	Reconstruction of jaw	12.47	10.20	10.20	1.21	23.88	23.88	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
21247		A	Reconstruct lower jaw bone	22.63	NA	20.17	2.21	NA	45.01	090
21248		A	Reconstruction of jaw	11.48	8.91	7.86	1.01	21.40	20.35	090
21249		A	Reconstruction of jaw	17.52	11.44	10.35	1.39	30.35	29.26	090
21255		A	Reconstruct lower jaw bone	16.72	NA	13.16	1.13	NA	31.01	090
21256		A	Reconstruction of orbit	16.19	NA	13.87	1.04	NA	31.10	090
21260		A	Revise eye sockets	16.52	NA	13.54	1.25	NA	31.31	090
21261		A	Revise eye sockets	31.49	NA	20.04	2.20	NA	53.73	090
21263		A	Revise eye sockets	28.42	NA	15.09	2.16	NA	45.67	090
21267		A	Revise eye sockets	18.90	NA	14.75	1.35	NA	35.00	090
21268		A	Revise eye sockets	24.48	NA	15.15	0.79	NA	40.42	090
21270		A	Augmentation, cheek bone	10.23	10.39	9.99	0.73	21.35	20.95	090
21275		A	Revision, orbitofacial bones	11.24	NA	11.02	1.03	NA	23.29	090
21280		A	Revision of eyelid	6.03	NA	6.27	0.27	NA	12.57	090
21282		A	Revision of eyelid	3.49	NA	5.38	0.21	NA	9.08	090
21295		A	Revision of jaw muscle/bone	1.53	NA	4.34	0.13	NA	6.00	090
21296		A	Revision of jaw muscle/bone	4.25	NA	4.09	0.30	NA	8.64	090
21299		C	Cranio/maxillofacial surgery	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21300		A	Treatment of skull fracture	0.72	2.77	0.30	0.09	3.58	1.11	000
21310		A	Treatment of nose fracture	0.58	2.70	0.15	0.05	3.33	0.78	000
21315		A	Treatment of nose fracture	1.51	3.49	1.27	0.12	5.12	2.90	010
21320		A	Treatment of nose fracture	1.85	4.96	2.10	0.15	6.96	4.10	010
21325		A	Treatment of nose fracture	3.77	NA	3.73	0.31	NA	7.81	090
21330		A	Treatment of nose fracture	5.38	NA	5.67	0.48	NA	11.53	090
21335		A	Treatment of nose fracture	8.61	NA	7.34	0.64	NA	16.59	090
21336		A	Treat nasal septal fracture	5.72	NA	5.74	0.45	NA	11.91	090
21337		A	Treat nasal septal fracture	2.70	5.24	3.42	0.22	8.16	6.34	090
21338		A	Treat nasoethmoid fracture	6.46	NA	5.75	0.53	NA	12.74	090
21339		A	Treat nasoethmoid fracture	8.09	NA	6.97	0.76	NA	15.82	090
21340		A	Treatment of nose fracture	10.77	NA	8.78	0.85	NA	20.40	090
21343		A	Treatment of sinus fracture	12.95	NA	9.48	1.06	NA	23.49	090
21344		A	Treatment of sinus fracture	19.72	NA	13.82	1.72	NA	35.26	090
21345		A	Treat nose/jaw fracture	8.16	10.36	7.91	0.60	19.12	16.67	090
21346		A	Treat nose/jaw fracture	10.61	NA	10.12	0.85	NA	21.58	090
21347		A	Treat nose/jaw fracture	12.69	NA	9.68	1.14	NA	23.51	090
21348		A	Treat nose/jaw fracture	16.69	NA	11.57	1.50	NA	29.76	090
21355		A	Treat cheek bone fracture	3.77	3.89	2.54	0.29	7.95	6.60	010
21356		A	Treat cheek bone fracture	4.15	NA	3.31	0.36	NA	7.82	010
21360		A	Treat cheek bone fracture	6.46	NA	5.74	0.52	NA	12.72	090
21365		A	Treat cheek bone fracture	14.95	NA	11.72	1.30	NA	27.97	090
21366		A	Treat cheek bone fracture	17.77	NA	14.28	1.41	NA	33.46	090
21385		A	Treat eye socket fracture	9.16	NA	8.04	0.64	NA	17.84	090
21386		A	Treat eye socket fracture	9.16	NA	8.43	0.76	NA	18.35	090
21387		A	Treat eye socket fracture	9.70	NA	8.55	0.78	NA	19.03	090
21390		A	Treat eye socket fracture	10.13	NA	8.73	0.70	NA	19.56	090
21395		A	Treat eye socket fracture	12.68	NA	9.24	1.09	NA	23.01	090
21400		A	Treat eye socket fracture	1.40	3.29	1.05	0.12	4.81	2.57	090
21401		A	Treat eye socket fracture	3.26	4.34	3.65	0.34	7.94	7.25	090
21406		A	Treat eye socket fracture	7.01	NA	7.20	0.59	NA	14.80	090
21407		A	Treat eye socket fracture	8.61	NA	7.99	0.67	NA	17.27	090
21408		A	Treat eye socket fracture	12.38	NA	10.29	1.24	NA	23.91	090
21421		A	Treat mouth roof fracture	5.14	7.23	6.84	0.42	12.79	12.40	090
21422		A	Treat mouth roof fracture	8.32	NA	7.93	0.69	NA	16.94	090
21423		A	Treat mouth roof fracture	10.40	NA	8.63	0.95	NA	19.98	090
21431		A	Treat craniofacial fracture	7.05	NA	8.44	0.58	NA	16.07	090
21432		A	Treat craniofacial fracture	8.61	NA	8.06	0.55	NA	17.22	090
21433		A	Treat craniofacial fracture	25.35	NA	17.29	2.46	NA	45.10	090
21435		A	Treat craniofacial fracture	17.25	NA	12.97	1.66	NA	31.88	090
21436		A	Treat craniofacial fracture	28.04	NA	16.02	2.32	NA	46.38	090
21440		A	Treat dental ridge fracture	2.70	5.44	3.73	0.22	8.36	6.65	090
21445		A	Treat dental ridge fracture	5.38	7.14	5.04	0.55	13.07	10.97	090
21450		A	Treat lower jaw fracture	2.97	6.45	2.90	0.23	9.65	6.10	090
21451		A	Treat lower jaw fracture	4.87	6.46	6.11	0.39	11.72	11.37	090
21452		A	Treat lower jaw fracture	1.98	13.44	4.35	0.14	15.56	6.47	090
21453		A	Treat lower jaw fracture	5.54	7.32	6.69	0.49	13.35	12.72	090
21454		A	Treat lower jaw fracture	6.46	NA	5.72	0.55	NA	12.73	090
21461		A	Treat lower jaw fracture	8.09	8.40	8.26	0.73	17.22	17.08	090
21462		A	Treat lower jaw fracture	9.79	10.06	8.18	0.80	20.65	18.77	090
21465		A	Treat lower jaw fracture	11.91	NA	8.42	0.84	NA	21.17	090
21470		A	Treat lower jaw fracture	15.34	NA	10.31	1.36	NA	27.01	090
21480		A	Reset dislocated jaw	0.61	1.62	0.18	0.05	2.28	0.84	000
21485		A	Reset dislocated jaw	3.99	3.82	3.34	0.31	8.12	7.64	090
21490		A	Repair dislocated jaw	11.86	NA	7.69	1.31	NA	20.86	090
21493		A	Treat hyoid bone fracture	1.27	NA	3.68	0.10	NA	5.05	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
21494		A	Treat hyoid bone fracture	6.28	NA	4.21	0.44	NA	10.93	090
21495		A	Treat hyoid bone fracture	5.69	NA	5.28	0.41	NA	11.38	090
21497		A	Interdental wiring	3.86	4.68	3.81	0.31	8.85	7.96	090
21499		C	Head surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21501		A	Drain neck/chest lesion	3.81	4.50	3.64	0.36	8.67	7.81	090
21502		A	Drain chest lesion	7.12	NA	7.05	0.79	NA	14.96	090
21510		A	Drainage of bone lesion	5.74	NA	7.47	0.67	NA	13.88	090
21550		A	Biopsy of neck/chest	2.06	2.32	1.25	0.13	4.51	3.44	010
21555		A	Remove lesion, neck/chest	4.35	4.25	2.43	0.41	9.01	7.19	090
21556		A	Remove lesion, neck/chest	5.57	NA	3.29	0.51	NA	9.37	090
21557		A	Remove tumor, neck/chest	8.88	NA	7.87	0.85	NA	17.60	090
21600		A	Partial removal of rib	6.89	NA	7.80	0.81	NA	15.50	090
21610		A	Partial removal of rib	14.61	NA	11.26	1.85	NA	27.72	090
21615		A	Removal of rib	9.87	NA	7.90	1.20	NA	18.97	090
21616		A	Removal of rib and nerves	12.04	NA	8.94	1.31	NA	22.29	090
21620		A	Partial removal of sternum	6.79	NA	8.13	0.77	NA	15.69	090
21627		A	Sternal debridement	6.81	NA	12.16	0.82	NA	19.79	090
21630		A	Extensive sternum surgery	17.38	NA	14.03	1.95	NA	33.36	090
21632		A	Extensive sternum surgery	18.14	NA	12.35	2.16	NA	32.65	090
21700		A	Revision of neck muscle	6.19	8.63	7.19	0.31	15.13	13.69	090
21705		A	Revision of neck muscle/rib	9.60	NA	7.87	0.92	NA	18.39	090
21720		A	Revision of neck muscle	5.68	8.71	5.93	0.80	15.19	12.41	090
21725		A	Revision of neck muscle	6.99	NA	7.28	0.90	NA	15.17	090
21740		A	Reconstruction of sternum	16.50	NA	12.85	2.03	NA	31.38	090
21750		A	Repair of sternum separation	10.77	NA	9.41	1.35	NA	21.53	090
21800		A	Treatment of rib fracture	0.96	2.31	1.11	0.09	3.36	2.16	090
21805		A	Treatment of rib fracture	2.75	NA	4.08	0.29	NA	7.12	090
21810		A	Treatment of rib fracture(s)	6.86	NA	7.49	0.60	NA	14.95	090
21820		A	Treat sternum fracture	1.28	2.80	1.58	0.15	4.23	3.01	090
21825		A	Treat sternum fracture	7.41	NA	9.90	0.84	NA	18.15	090
21899		C	Neck/chest surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21920		A	Biopsy soft tissue of back	2.06	2.40	0.77	0.12	4.58	2.95	010
21925		A	Biopsy soft tissue of back	4.49	10.19	4.79	0.44	15.12	9.72	090
21930		A	Remove lesion, back or flank	5.00	4.55	2.66	0.49	10.04	8.15	090
21935		A	Remove tumor, back	17.96	NA	13.53	1.87	NA	33.36	090
22100		A	Remove part of neck vertebra	9.73	NA	8.36	1.55	NA	19.64	090
22101		A	Remove part, thorax vertebra	9.81	NA	9.04	1.51	NA	20.36	090
22102		A	Remove part, lumbar vertebra	9.81	NA	9.18	1.46	NA	20.45	090
22103		A	Remove extra spine segment	2.34	NA	1.27	0.37	NA	3.98	ZZZ
22110		A	Remove part of neck vertebra	12.74	NA	11.06	2.20	NA	26.00	090
22112		A	Remove part, thorax vertebra	12.81	NA	10.95	1.96	NA	25.72	090
22114		A	Remove part, lumbar vertebra	12.81	NA	10.71	1.98	NA	25.50	090
22116		A	Remove extra spine segment	2.32	NA	1.26	0.40	NA	3.98	ZZZ
22210		A	Revision of neck spine	23.82	NA	17.42	4.23	NA	45.47	090
22212		A	Revision of thorax spine	19.42	NA	14.60	2.78	NA	36.80	090
22214		A	Revision of lumbar spine	19.45	NA	15.32	2.78	NA	37.55	090
22216		A	Revise, extra spine segment	6.04	NA	3.31	0.98	NA	10.33	ZZZ
22220		A	Revision of neck spine	21.37	NA	15.61	3.65	NA	40.63	090
22222		A	Revision of thorax spine	21.52	NA	15.08	3.08	NA	39.68	090
22224		A	Revision of lumbar spine	21.52	NA	15.70	3.20	NA	40.42	090
22226		A	Revise, extra spine segment	6.04	NA	3.22	1.01	NA	10.27	ZZZ
22305		A	Treat spine process fracture	2.05	3.25	2.01	0.29	5.59	4.35	090
22310		A	Treat spine fracture	2.61	4.77	3.54	0.37	7.75	6.52	090
22315		A	Treat spine fracture	8.84	NA	9.32	1.37	NA	19.53	090
22318		A	Treat odontoid fx w/o graft	21.50	NA	15.02	4.26	NA	40.78	090
22319		A	Treat odontoid fx w/graft	24.00	NA	17.42	4.76	NA	46.18	090
22325		A	Treat spine fracture	18.30	NA	14.94	2.61	NA	35.85	090
22326		A	Treat neck spine fracture	19.59	NA	15.67	3.54	NA	38.80	090
22327		A	Treat thorax spine fracture	19.20	NA	15.43	2.75	NA	37.38	090
22328		A	Treat each add spine fx	4.61	NA	2.43	0.66	NA	7.70	ZZZ
22505		A	Manipulation of spine	1.87	4.58	3.20	0.27	6.72	5.34	010
22520		A	Percut vertebroplasty thor	8.91	NA	4.15	0.99	NA	14.05	010
22521		A	Percut vertebroplasty lumb	8.34	NA	3.92	0.93	NA	13.19	010
22522		A	Percut vertebroplasty addl	4.31	NA	1.75	0.33	NA	6.39	ZZZ
22548		A	Neck spine fusion	25.82	NA	18.08	4.98	NA	48.88	090
22554		A	Neck spine fusion	18.62	NA	13.94	3.51	NA	36.07	090
22556		A	Thorax spine fusion	23.46	NA	16.80	3.78	NA	44.04	090
22558		A	Lumbar spine fusion	22.28	NA	15.27	3.18	NA	40.73	090
22585		A	Additional spinal fusion	5.53	NA	2.94	0.98	NA	9.45	ZZZ
22590		A	Spine & skull spinal fusion	20.51	NA	15.56	3.81	NA	39.88	090
22595		A	Neck spinal fusion	19.39	NA	14.58	3.62	NA	37.59	090
22600		A	Neck spine fusion	16.14	NA	12.66	2.89	NA	31.69	090
22610		A	Thorax spine fusion	16.02	NA	12.98	2.66	NA	31.66	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
22612		A	Lumbar spine fusion	21.00	NA	15.75	3.28	NA	40.03	090
22614		A	Spine fusion, extra segment	6.44	NA	3.54	1.04	NA	11.02	ZZZ
22630		A	Lumbar spine fusion	20.84	NA	16.01	3.79	NA	40.64	090
22632		A	Spine fusion, extra segment	5.23	NA	2.75	0.90	NA	8.88	ZZZ
22800		A	Fusion of spine	18.25	NA	14.30	2.71	NA	35.26	090
22802		A	Fusion of spine	30.88	NA	21.88	4.42	NA	57.18	090
22804		A	Fusion of spine	36.27	NA	24.48	5.23	NA	65.98	090
22808		A	Fusion of spine	26.27	NA	18.27	4.36	NA	48.90	090
22810		A	Fusion of spine	30.27	NA	19.63	4.49	NA	54.39	090
22812		A	Fusion of spine	32.70	NA	21.89	4.67	NA	59.26	090
22818		A	Kyphectomy, 1–2 segments	31.83	NA	21.69	5.01	NA	58.53	090
22819		A	Kyphectomy, 3 or more	36.44	NA	22.19	5.20	NA	63.83	090
22830		A	Exploration of spinal fusion	10.85	NA	10.05	1.73	NA	22.63	090
22840		A	Insert spine fixation device	12.54	NA	6.84	2.03	NA	21.41	ZZZ
22841		B	Insert spine fixation device	0.00	0.00	0.00	0.00	0.00	0.00	XXX
22842		A	Insert spine fixation device	12.58	NA	6.83	2.04	NA	21.45	ZZZ
22843		A	Insert spine fixation device	13.46	NA	7.39	2.10	NA	22.95	ZZZ
22844		A	Insert spine fixation device	16.44	NA	9.26	2.42	NA	28.12	ZZZ
22845		A	Insert spine fixation device	11.96	NA	6.38	2.22	NA	20.56	ZZZ
22846		A	Insert spine fixation device	12.42	NA	6.70	2.26	NA	21.38	ZZZ
22847		A	Insert spine fixation device	13.80	NA	7.08	2.36	NA	23.24	ZZZ
22848		A	Insert pelv fixation device	6.00	NA	3.38	0.88	NA	10.26	ZZZ
22849		A	Reinsert spinal fixation	18.51	NA	14.22	2.87	NA	35.60	090
22850		A	Remove spine fixation device	9.52	NA	8.89	1.51	NA	19.92	090
22851		A	Apply spine prosth device	6.71	NA	3.54	1.11	NA	11.36	ZZZ
22852		A	Remove spine fixation device	9.01	NA	8.60	1.40	NA	19.01	090
22855		A	Remove spine fixation device	15.13	NA	11.67	2.74	NA	29.54	090
22899		C	Spine surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
22900		A	Remove abdominal wall lesion	5.80	NA	4.42	0.58	NA	10.80	090
22999		C	Abdomen surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
23000		A	Removal of calcium deposits	4.36	9.04	6.97	0.50	13.90	11.83	090
23020		A	Release shoulder joint	8.93	NA	10.53	1.23	NA	20.69	090
23030		A	Drain shoulder lesion	3.43	6.40	4.44	0.42	10.25	8.29	010
23031		A	Drain shoulder bursa	2.74	5.80	4.16	0.33	8.87	7.23	010
23035		A	Drain shoulder bone lesion	8.61	NA	16.13	1.19	NA	25.93	090
23040		A	Exploratory shoulder surgery	9.20	NA	11.71	1.28	NA	22.19	090
23044		A	Exploratory shoulder surgery	7.12	NA	10.73	0.97	NA	18.82	090
23065		A	Biopsy shoulder tissues	2.27	2.61	1.34	0.14	5.02	3.75	010
23066		A	Biopsy shoulder tissues	4.16	8.34	6.16	0.50	13.00	10.82	090
23075		A	Removal of shoulder lesion	2.39	5.40	3.17	0.25	8.04	5.81	010
23076		A	Removal of shoulder lesion	7.63	NA	8.36	0.87	NA	16.86	090
23077		A	Remove tumor of shoulder	16.09	NA	14.41	1.81	NA	32.31	090
23100		A	Biopsy of shoulder joint	6.03	NA	8.73	0.81	NA	15.57	090
23101		A	Shoulder joint surgery	5.58	NA	8.63	0.77	NA	14.98	090
23105		A	Remove shoulder joint lining	8.23	NA	10.18	1.13	NA	19.54	090
23106		A	Incision of collarbone joint	5.96	NA	9.27	0.82	NA	16.05	090
23107		A	Explore treat shoulder joint	8.62	NA	10.41	1.19	NA	20.22	090
23120		A	Partial removal, collar bone	7.11	NA	9.55	0.99	NA	17.65	090
23125		A	Removal of collar bone	9.39	NA	10.78	1.27	NA	21.44	090
23130		A	Remove shoulder bone, part	7.55	NA	9.82	1.06	NA	18.43	090
23140		A	Removal of bone lesion	6.89	NA	8.31	0.82	NA	16.02	090
23145		A	Removal of bone lesion	9.09	NA	10.87	1.24	NA	21.20	090
23146		A	Removal of bone lesion	7.83	NA	10.70	1.11	NA	19.64	090
23150		A	Removal of humerus lesion	8.48	NA	10.14	1.14	NA	19.76	090
23155		A	Removal of humerus lesion	10.35	NA	12.33	1.20	NA	23.88	090
23156		A	Removal of humerus lesion	8.68	NA	10.45	1.18	NA	20.31	090
23170		A	Remove collar bone lesion	6.86	NA	11.33	0.84	NA	19.03	090
23172		A	Remove shoulder blade lesion	6.90	NA	9.59	0.95	NA	17.44	090
23174		A	Remove humerus lesion	9.51	NA	11.74	1.30	NA	22.55	090
23180		A	Remove collar bone lesion	8.53	NA	16.16	1.18	NA	25.87	090
23182		A	Remove shoulder blade lesion	8.15	NA	16.18	1.08	NA	25.41	090
23184		A	Remove humerus lesion	9.38	NA	16.43	1.24	NA	27.05	090
23190		A	Partial removal of scapula	7.24	NA	8.74	0.97	NA	16.95	090
23195		A	Removal of head of humerus	9.81	NA	10.03	1.38	NA	21.22	090
23200		A	Removal of collar bone	12.08	NA	14.39	1.48	NA	27.95	090
23210		A	Removal of shoulder blade	12.49	NA	13.96	1.61	NA	28.06	090
23220		A	Partial removal of humerus	14.56	NA	15.57	2.03	NA	32.16	090
23221		A	Partial removal of humerus	17.74	NA	16.93	2.51	NA	37.18	090
23222		A	Partial removal of humerus	23.92	NA	20.66	3.37	NA	47.95	090
23330		A	Remove shoulder foreign body	1.85	6.15	3.49	0.18	8.18	5.52	010
23331		A	Remove shoulder foreign body	7.38	NA	9.70	1.02	NA	18.10	090
23332		A	Remove shoulder foreign body	11.62	NA	12.12	1.62	NA	25.36	090
23350		A	Injection for shoulder x-ray	1.00	7.22	0.35	0.05	8.27	1.40	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
23395		A	Muscle transfer, shoulder/arm	16.85	NA	14.09	2.29	NA	33.23	090
23397		A	Muscle transfers	16.13	NA	13.86	2.24	NA	32.23	090
23400		A	Fixation of shoulder blade	13.54	NA	14.52	1.91	NA	29.97	090
23405		A	Incision of tendon & muscle	8.37	NA	9.66	1.12	NA	19.15	090
23406		A	Incise tendon(s) & muscle(s)	10.79	NA	11.55	1.48	NA	23.82	090
23410		A	Repair of tendon(s)	12.45	NA	12.55	1.72	NA	26.72	090
23412		A	Repair of tendon(s)	13.31	NA	13.05	1.86	NA	28.22	090
23415		A	Release of shoulder ligament	9.97	NA	10.22	1.39	NA	21.58	090
23420		A	Repair of shoulder	13.30	NA	13.94	1.86	NA	29.10	090
23430		A	Repair biceps tendon	9.98	NA	11.15	1.40	NA	22.53	090
23440		A	Remove/transplant tendon	10.48	NA	11.54	1.47	NA	23.49	090
23450		A	Repair shoulder capsule	13.40	NA	13.02	1.86	NA	28.28	090
23455		A	Repair shoulder capsule	14.37	NA	13.62	2.01	NA	30.00	090
23460		A	Repair shoulder capsule	15.37	NA	14.21	2.17	NA	31.75	090
23462		A	Repair shoulder capsule	15.30	NA	13.68	2.16	NA	31.14	090
23465		A	Repair shoulder capsule	15.85	NA	14.47	1.61	NA	31.93	090
23466		A	Repair shoulder capsule	14.22	NA	13.63	2.00	NA	29.85	090
23470		A	Reconstruct shoulder joint	17.15	NA	15.16	2.40	NA	34.71	090
23472		A	Reconstruct shoulder joint	21.10	NA	17.40	2.37	NA	40.87	090
23480		A	Revision of collar bone	11.18	NA	11.94	1.56	NA	24.68	090
23485		A	Revision of collar bone	13.43	NA	13.10	1.84	NA	28.37	090
23490		A	Reinforce clavicle	11.86	NA	13.74	1.11	NA	26.71	090
23491		A	Reinforce shoulder bones	14.21	NA	13.54	2.00	NA	29.75	090
23500		A	Treat clavicle fracture	2.08	3.87	2.60	0.26	6.21	4.94	090
23505		A	Treat clavicle fracture	3.69	5.98	4.02	0.50	10.17	8.21	090
23515		A	Treat clavicle fracture	7.41	NA	8.24	1.03	NA	16.68	090
23520		A	Treat clavicle dislocation	2.16	3.91	2.67	0.26	6.33	5.09	090
23525		A	Treat clavicle dislocation	3.60	7.16	4.08	0.44	11.20	8.12	090
23530		A	Treat clavicle dislocation	7.31	NA	7.94	0.85	NA	16.10	090
23532		A	Treat clavicle dislocation	8.01	NA	8.67	1.13	NA	17.81	090
23540		A	Treat clavicle dislocation	2.23	4.56	2.63	0.24	7.03	5.10	090
23545		A	Treat clavicle dislocation	3.25	4.99	3.65	0.39	8.63	7.29	090
23550		A	Treat clavicle dislocation	7.24	NA	8.29	0.94	NA	16.47	090
23552		A	Treat clavicle dislocation	8.45	NA	8.82	1.18	NA	18.45	090
23570		A	Treat shoulder blade fx	2.23	3.84	2.70	0.29	6.36	5.22	090
23575		A	Treat shoulder blade fx	4.06	6.22	4.18	0.53	10.81	8.77	090
23585		A	Treat scapula fracture	8.96	NA	9.31	1.25	NA	19.52	090
23600		A	Treat humerus fracture	2.93	5.65	3.71	0.39	8.97	7.03	090
23605		A	Treat humerus fracture	4.87	8.32	6.55	0.67	13.86	12.09	090
23615		A	Treat humerus fracture	9.35	NA	10.19	1.31	NA	20.85	090
23616		A	Treat humerus fracture	21.27	NA	16.26	2.98	NA	40.51	090
23620		A	Treat humerus fracture	2.40	5.35	3.43	0.32	8.07	6.15	090
23625		A	Treat humerus fracture	3.93	7.35	5.57	0.53	11.81	10.03	090
23630		A	Treat humerus fracture	7.35	NA	8.20	1.03	NA	16.58	090
23650		A	Treat shoulder dislocation	3.39	5.58	3.67	0.31	9.28	7.37	090
23655		A	Treat shoulder dislocation	4.57	NA	4.39	0.52	NA	9.48	090
23660		A	Treat shoulder dislocation	7.49	NA	8.27	1.01	NA	16.77	090
23665		A	Treat dislocation/fracture	4.47	7.68	5.81	0.60	12.75	10.88	090
23670		A	Treat dislocation/fracture	7.90	NA	8.72	1.10	NA	17.72	090
23675		A	Treat dislocation/fracture	6.05	8.22	6.71	0.83	15.10	13.59	090
23680		A	Treat dislocation/fracture	10.06	NA	9.89	1.39	NA	21.34	090
23700		A	Fixation of shoulder	2.52	NA	3.48	0.35	NA	6.35	010
23800		A	Fusion of shoulder joint	14.16	NA	14.28	1.97	NA	30.41	090
23802		A	Fusion of shoulder joint	16.60	NA	15.83	2.34	NA	34.77	090
23900		A	Amputation of arm & girdle	19.72	NA	16.35	2.47	NA	38.54	090
23920		A	Amputation at shoulder joint	14.61	NA	13.70	1.92	NA	30.23	090
23921		A	Amputation follow-up surgery	5.49	NA	6.67	0.78	NA	12.94	090
23929		C	Shoulder surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
23930		A	Drainage of arm lesion	2.94	6.10	4.01	0.32	9.36	7.27	010
23931		A	Drainage of arm bursa	1.79	5.76	3.74	0.21	7.76	5.74	010
23935		A	Drain arm/elbow bone lesion	6.09	NA	12.90	0.84	NA	19.83	090
24000		A	Exploratory elbow surgery	5.82	NA	6.06	0.77	NA	12.65	090
24006		A	Release elbow joint	9.31	NA	8.64	1.27	NA	19.22	090
24065		A	Biopsy arm/elbow soft tissue	2.08	5.50	3.25	0.14	7.72	5.47	010
24066		A	Biopsy arm/elbow soft tissue	5.21	8.48	6.40	0.61	14.30	12.22	090
24075		A	Remove arm/elbow lesion	3.92	7.80	5.91	0.43	12.15	10.26	090
24076		A	Remove arm/elbow lesion	6.30	NA	7.39	0.70	NA	14.39	090
24077		A	Remove tumor of arm/elbow	11.76	NA	14.23	1.32	NA	27.31	090
24100		A	Biopsy elbow joint lining	4.93	NA	5.83	0.62	NA	11.38	090
24101		A	Explore/treat elbow joint	6.13	NA	6.82	0.84	NA	13.79	090
24102		A	Remove elbow joint lining	8.03	NA	7.81	1.09	NA	16.93	090
24105		A	Removal of elbow bursa	3.61	NA	5.26	0.49	NA	9.36	090
24110		A	Remove humerus lesion	7.39	NA	9.75	0.99	NA	18.13	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
24115		A	Remove/graft bone lesion	9.63	NA	10.80	1.15	NA	21.58	090
24116		A	Remove/graft bone lesion	11.81	NA	12.20	1.66	NA	25.67	090
24120		A	Remove elbow lesion	6.65	NA	6.96	0.87	NA	14.48	090
24125		A	Remove/graft bone lesion	7.89	NA	6.67	0.88	NA	15.44	090
24126		A	Remove/graft bone lesion	8.31	NA	7.79	0.90	NA	17.00	090
24130		A	Removal of head of radius	6.25	NA	6.91	0.87	NA	14.03	090
24134		A	Removal of arm bone lesion	9.73	NA	16.50	1.31	NA	27.54	090
24136		A	Remove radius bone lesion	7.99	NA	7.09	0.85	NA	15.93	090
24138		A	Remove elbow bone lesion	8.05	NA	8.06	1.12	NA	17.23	090
24140		A	Partial removal of arm bone	9.18	NA	16.67	1.23	NA	27.08	090
24145		A	Partial removal of radius	7.58	NA	11.43	1.01	NA	20.02	090
24147		A	Partial removal of elbow	7.54	NA	11.40	1.04	NA	19.98	090
24149		A	Radical resection of elbow	14.20	NA	11.28	1.90	NA	27.38	090
24150		A	Extensive humerus surgery	13.27	NA	14.92	1.81	NA	30.00	090
24151		A	Extensive humerus surgery	15.58	NA	16.64	2.19	NA	34.41	090
24152		A	Extensive radius surgery	10.06	NA	9.96	1.19	NA	21.21	090
24153		A	Extensive radius surgery	11.54	NA	7.55	0.64	NA	19.73	090
24155		A	Removal of elbow joint	11.73	NA	9.66	1.42	NA	22.81	090
24160		A	Remove elbow joint implant	7.83	NA	7.77	1.07	NA	16.67	090
24164		A	Remove radius head implant	6.23	NA	6.93	0.84	NA	14.00	090
24200		A	Removal of arm foreign body	1.76	5.80	3.25	0.15	7.71	5.16	010
24201		A	Removal of arm foreign body	4.56	8.42	6.97	0.56	13.54	12.09	090
24220		A	Injection for elbow x-ray	1.31	11.16	0.47	0.07	12.54	1.85	000
24300		A	Manipulate elbow w/anesth	3.75	NA	5.46	0.52	NA	9.73	090
24301		A	Muscle/tendon transfer	10.20	NA	9.11	1.30	NA	20.61	090
24305		A	Arm tendon lengthening	7.45	NA	7.70	0.98	NA	16.13	090
24310		A	Revision of arm tendon	5.98	NA	8.43	0.74	NA	15.15	090
24320		A	Repair of arm tendon	10.56	NA	11.29	1.00	NA	22.85	090
24330		A	Revision of arm muscles	9.60	NA	8.79	1.21	NA	19.60	090
24331		A	Revision of arm muscles	10.65	NA	9.25	1.41	NA	21.31	090
24332		A	Tenolysis, triceps	7.45	NA	5.23	0.77	NA	13.45	090
24340		A	Repair of biceps tendon	7.89	NA	7.74	1.08	NA	16.71	090
24341		A	Repair arm tendon/muscle	7.90	NA	7.85	1.08	NA	16.83	090
24342		A	Repair of ruptured tendon	10.62	NA	9.37	1.48	NA	21.47	090
24343		A	Repr elbow lat ligmnt w/tiss	8.65	NA	7.91	1.21	NA	17.77	090
24344		A	Reconstruct elbow lat ligmnt	14.00	NA	10.87	1.95	NA	26.82	090
24345		A	Repr elbw med ligmnt w/tiss	8.65	NA	7.91	1.21	NA	17.77	090
24346		A	Reconstruct elbow med ligmnt	14.00	NA	10.87	1.95	NA	26.82	090
24350		A	Repair of tennis elbow	5.25	NA	6.25	0.72	NA	12.22	090
24351		A	Repair of tennis elbow	5.91	NA	6.72	0.82	NA	13.45	090
24352		A	Repair of tennis elbow	6.43	NA	7.01	0.90	NA	14.34	090
24354		A	Repair of tennis elbow	6.48	NA	6.85	0.88	NA	14.21	090
24356		A	Revision of tennis elbow	6.68	NA	7.21	0.90	NA	14.79	090
24360		A	Reconstruct elbow joint	12.34	NA	10.26	1.69	NA	24.29	090
24361		A	Reconstruct elbow joint	14.08	NA	11.30	1.95	NA	27.33	090
24362		A	Reconstruct elbow joint	14.99	NA	11.30	1.92	NA	28.21	090
24363		A	Replace elbow joint	18.49	NA	13.80	2.52	NA	34.81	090
24365		A	Reconstruct head of radius	8.39	NA	7.96	1.11	NA	17.46	090
24366		A	Reconstruct head of radius	9.13	NA	8.48	1.28	NA	18.89	090
24400		A	Revision of humerus	11.06	NA	12.48	1.53	NA	25.07	090
24410		A	Revision of humerus	14.82	NA	13.75	1.89	NA	30.46	090
24420		A	Revision of humerus	13.44	NA	16.08	1.82	NA	31.34	090
24430		A	Repair of humerus	12.81	NA	12.88	1.80	NA	27.49	090
24435		A	Repair humerus with graft	13.17	NA	13.98	1.84	NA	28.99	090
24470		A	Revision of elbow joint	8.74	NA	6.59	1.23	NA	16.56	090
24495		A	Decompression of forearm	8.12	NA	10.33	0.92	NA	19.37	090
24498		A	Reinforce humerus	11.92	NA	12.31	1.67	NA	25.90	090
24500		A	Treat humerus fracture	3.21	5.09	3.38	0.41	8.71	7.00	090
24505		A	Treat humerus fracture	5.17	8.88	6.81	0.72	14.77	12.70	090
24515		A	Treat humerus fracture	11.65	NA	11.40	1.63	NA	24.68	090
24516		A	Treat humerus fracture	11.65	NA	11.85	1.63	NA	25.13	090
24530		A	Treat humerus fracture	3.50	6.19	4.86	0.47	10.16	8.83	090
24535		A	Treat humerus fracture	6.87	8.81	6.72	0.96	16.64	14.55	090
24538		A	Treat humerus fracture	9.43	NA	10.61	1.25	NA	21.29	090
24545		A	Treat humerus fracture	10.46	NA	10.18	1.47	NA	22.11	090
24546		A	Treat humerus fracture	15.69	NA	13.69	2.18	NA	31.56	090
24560		A	Treat humerus fracture	2.80	4.87	3.23	0.35	8.02	6.38	090
24565		A	Treat humerus fracture	5.56	8.09	5.82	0.74	14.39	12.12	090
24566		A	Treat humerus fracture	7.79	NA	9.96	1.10	NA	18.85	090
24575		A	Treat humerus fracture	10.66	NA	8.49	1.44	NA	20.59	090
24576		A	Treat humerus fracture	2.86	4.62	3.26	0.38	7.86	6.50	090
24577		A	Treat humerus fracture	5.79	8.22	6.13	0.81	14.82	12.73	090
24579		A	Treat humerus fracture	11.60	NA	11.32	1.62	NA	24.54	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
24582		A	Treat humerus fracture	8.55	NA	10.46	1.20	NA	20.21	090
24586		A	Treat elbow fracture	15.21	NA	11.23	2.12	NA	28.56	090
24587		A	Treat elbow fracture	15.16	NA	11.13	2.14	NA	28.43	090
24600		A	Treat elbow dislocation	4.23	6.82	5.12	0.49	11.54	9.84	090
24605		A	Treat elbow dislocation	5.42	NA	5.02	0.72	NA	11.16	090
24615		A	Treat elbow dislocation	9.42	NA	7.94	1.31	NA	18.67	090
24620		A	Treat elbow fracture	6.98	NA	6.63	0.90	NA	14.51	090
24635		A	Treat elbow fracture	13.19	NA	16.55	1.84	NA	31.58	090
24640		A	Treat elbow dislocation	1.20	3.35	1.88	0.11	4.66	3.19	010
24650		A	Treat radius fracture	2.16	4.55	2.92	0.28	6.99	5.36	090
24655		A	Treat radius fracture	4.40	7.33	5.22	0.58	12.31	10.20	090
24665		A	Treat radius fracture	8.14	NA	9.40	1.13	NA	18.67	090
24666		A	Treat radius fracture	9.49	NA	10.18	1.32	NA	20.99	090
24670		A	Treat ulnar fracture	2.54	4.49	3.10	0.33	7.36	5.97	090
24675		A	Treat ulnar fracture	4.72	7.55	5.49	0.65	12.92	10.86	090
24685		A	Treat ulnar fracture	8.80	NA	9.79	1.23	NA	19.82	090
24800		A	Fusion of elbow joint	11.20	NA	9.90	1.41	NA	22.51	090
24802		A	Fusion/graft of elbow joint	13.69	NA	11.50	1.89	NA	27.08	090
24900		A	Amputation of upper arm	9.60	NA	11.37	1.18	NA	22.15	090
24920		A	Amputation of upper arm	9.54	NA	13.96	1.22	NA	24.72	090
24925		A	Amputation follow-up surgery	7.07	NA	9.64	0.95	NA	17.66	090
24930		A	Amputation follow-up surgery	10.25	NA	10.86	1.23	NA	22.34	090
24931		A	Amputate upper arm & implant	12.72	NA	11.63	1.56	NA	25.91	090
24935		A	Revision of amputation	15.56	NA	13.22	1.58	NA	30.36	090
24940		C	Revision of upper arm	0.00	0.00	0.00	0.00	0.00	0.00	090
24999		C	Upper arm/elbow surgery	0.00	0.00	0.00	0.00	0.00	0.00	YYY
25000		A	Incision of tendon sheath	3.38	NA	7.49	0.45	NA	11.32	090
25001		A	Incise flexor carpi radialis	3.38	NA	4.30	0.45	NA	8.13	090
25020		A	Decompress forearm 1 space	5.92	NA	11.49	0.75	NA	18.16	090
25023		A	Decompress forearm 1 space	12.96	NA	17.50	1.50	NA	31.96	090
25024		A	Decompress forearm 2 spaces	9.50	NA	8.17	1.20	NA	18.87	090
25025		A	Decompress forearm 2 spaces	16.54	NA	12.05	1.91	NA	30.50	090
25028		A	Drainage of forearm lesion	5.25	NA	10.20	0.61	NA	16.06	090
25031		A	Drainage of forearm bursa	4.14	NA	10.24	0.50	NA	14.88	090
25035		A	Treat forearm bone lesion	7.36	NA	16.18	0.98	NA	24.52	090
25040		A	Explore/treat wrist joint	7.18	NA	9.40	0.96	NA	17.54	090
25065		A	Biopsy forearm soft tissues	1.99	2.53	2.53	0.12	4.64	4.64	010
25066		A	Biopsy forearm soft tissues	4.13	NA	8.40	0.49	NA	13.02	090
25075		A	Remove forearm lesion subcut	3.74	NA	7.13	0.40	NA	11.27	090
25076		A	Remove forearm lesion deep	4.92	NA	12.68	0.59	NA	18.19	090
25077		A	Remove tumor, forearm/wrist	9.76	NA	15.66	1.10	NA	26.52	090
25085		A	Incision of wrist capsule	5.50	NA	11.29	0.71	NA	17.50	090
25100		A	Biopsy of wrist joint	3.90	NA	7.99	0.50	NA	12.39	090
25101		A	Explore/treat wrist joint	4.69	NA	7.75	0.60	NA	13.04	090
25105		A	Remove wrist joint lining	5.85	NA	11.22	0.77	NA	17.84	090
25107		A	Remove wrist joint cartilage	6.43	NA	11.41	0.82	NA	18.66	090
25110		A	Remove wrist tendon lesion	3.92	NA	8.94	0.48	NA	13.34	090
25111		A	Remove wrist tendon lesion	3.39	NA	6.70	0.42	NA	10.51	090
25112		A	Reremove wrist tendon lesion	4.53	NA	7.43	0.54	NA	12.50	090
25115		A	Remove wrist/forearm lesion	8.82	NA	17.19	1.11	NA	27.12	090
25116		A	Remove wrist/forearm lesion	7.11	NA	16.20	0.90	NA	24.21	090
25118		A	Excise wrist tendon sheath	4.37	NA	7.93	0.55	NA	12.85	090
25119		A	Partial removal of ulna	6.04	NA	11.45	0.80	NA	18.29	090
25120		A	Removal of forearm lesion	6.10	NA	14.87	0.81	NA	21.78	090
25125		A	Remove/graft forearm lesion	7.48	NA	16.11	1.02	NA	24.61	090
25126		A	Remove/graft forearm lesion	7.55	NA	15.76	1.00	NA	24.31	090
25130		A	Removal of wrist lesion	5.26	NA	8.33	0.66	NA	14.25	090
25135		A	Remove & graft wrist lesion	6.89	NA	9.00	0.89	NA	16.78	090
25136		A	Remove & graft wrist lesion	5.97	NA	9.26	0.58	NA	15.81	090
25145		A	Remove forearm bone lesion	6.37	NA	15.43	0.82	NA	22.62	090
25150		A	Partial removal of ulna	7.09	NA	12.00	0.96	NA	20.05	090
25151		A	Partial removal of radius	7.39	NA	16.22	0.93	NA	24.54	090
25170		A	Extensive forearm surgery	11.09	NA	17.56	1.52	NA	30.17	090
25210		A	Removal of wrist bone	5.95	NA	8.71	0.73	NA	15.39	090
25215		A	Removal of wrist bones	7.89	NA	12.27	1.02	NA	21.18	090
25230		A	Partial removal of radius	5.23	NA	8.23	0.66	NA	14.12	090
25240		A	Partial removal of ulna	5.17	NA	10.78	0.69	NA	16.64	090
25246		A	Injection for wrist x-ray	1.45	10.20	0.52	0.07	11.72	2.04	000
25248		A	Remove forearm foreign body	5.14	NA	10.66	0.54	NA	16.34	090
25250		A	Removal of wrist prosthesis	6.60	NA	8.91	0.84	NA	16.35	090
25251		A	Removal of wrist prosthesis	9.57	NA	12.52	1.15	NA	23.24	090
25259		A	Manipulate wrist w/anesthes	3.75	NA	5.35	0.52	NA	9.62	090
25260		A	Repair forearm tendon/muscle	7.80	NA	17.11	0.97	NA	25.88	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
25263		A	Repair forearm tendon/muscle	7.82	NA	15.65	0.94	NA	24.41	090
25265		A	Repair forearm tendon/muscle	9.88	NA	17.11	1.19	NA	28.18	090
25270		A	Repair forearm tendon/muscle	6.00	NA	16.04	0.76	NA	22.80	090
25272		A	Repair forearm tendon/muscle	7.04	NA	16.50	0.89	NA	24.43	090
25274		A	Repair forearm tendon/muscle	8.75	NA	17.36	1.11	NA	27.22	090
25275		A	Repair forearm tendon sheath	8.50	NA	7.53	1.11	NA	17.14	090
25280		A	Revise wrist/forearm tendon	7.22	NA	15.80	0.91	NA	23.93	090
25290		A	Incise wrist/forearm tendon	5.29	NA	18.17	0.66	NA	24.12	090
25295		A	Release wrist/forearm tendon	6.55	NA	15.16	0.84	NA	22.55	090
25300		A	Fusion of tendons at wrist	8.80	NA	10.02	1.07	NA	19.89	090
25301		A	Fusion of tendons at wrist	8.40	NA	10.15	1.08	NA	19.63	090
25310		A	Transplant forearm tendon	8.14	NA	16.47	1.01	NA	25.62	090
25312		A	Transplant forearm tendon	9.57	NA	17.24	1.22	NA	28.03	090
25315		A	Revise palsy hand tendon(s)	10.20	NA	18.59	1.26	NA	30.05	090
25316		A	Revise palsy hand tendon(s)	12.33	NA	18.40	1.74	NA	32.47	090
25320		A	Repair/revise wrist joint	10.77	NA	11.53	1.32	NA	23.62	090
25332		A	Revise wrist joint	11.41	NA	11.89	1.46	NA	24.76	090
25335		A	Realignment of hand	12.88	NA	13.60	1.66	NA	28.14	090
25337		A	Reconstruct ulna/radioulnar	10.17	NA	13.80	1.31	NA	25.28	090
25350		A	Revision of radius	8.78	NA	16.68	1.17	NA	26.63	090
25355		A	Revision of radius	10.17	NA	17.17	1.44	NA	28.78	090
25360		A	Revision of ulna	8.43	NA	16.86	1.17	NA	26.46	090
25365		A	Revise radius & ulna	12.40	NA	18.74	1.67	NA	32.81	090
25370		A	Revise radius or ulna	13.36	NA	17.84	1.88	NA	33.08	090
25375		A	Revise radius & ulna	13.04	NA	16.44	1.84	NA	31.32	090
25390		A	Shorten radius or ulna	10.40	NA	17.38	1.38	NA	29.16	090
25391		A	Lengthen radius or ulna	13.65	NA	19.01	1.73	NA	34.39	090
25392		A	Shorten radius & ulna	13.95	NA	15.59	1.73	NA	31.27	090
25393		A	Lengthen radius & ulna	15.87	NA	21.72	1.87	NA	39.46	090
25394		A	Repair carpal bone, shorten	10.40	NA	8.43	1.15	NA	19.98	090
25400		A	Repair radius or ulna	10.92	NA	17.98	1.50	NA	30.40	090
25405		A	Repair/graft radius or ulna	14.38	NA	20.38	1.95	NA	36.71	090
25415		A	Repair radius & ulna	13.35	NA	19.14	1.87	NA	34.36	090
25420		A	Repair/graft radius & ulna	16.33	NA	21.72	2.20	NA	40.25	090
25425		A	Repair/graft radius or ulna	13.21	NA	24.75	1.61	NA	39.57	090
25426		A	Repair/graft radius & ulna	15.82	NA	18.15	2.23	NA	36.20	090
25430		A	Vasc graft into carpal bone	9.25	NA	7.82	0.56	NA	17.63	090
25431		A	Repair nonunion carpal bone	10.44	NA	6.42	0.56	NA	17.42	090
25440		A	Repair/graft wrist bone	10.44	NA	11.05	1.41	NA	22.90	090
25441		A	Reconstruct wrist joint	12.90	NA	12.24	1.83	NA	26.97	090
25442		A	Reconstruct wrist joint	10.85	NA	11.46	1.24	NA	23.55	090
25443		A	Reconstruct wrist joint	10.39	NA	13.29	1.30	NA	24.98	090
25444		A	Reconstruct wrist joint	11.15	NA	14.29	1.43	NA	26.87	090
25445		A	Reconstruct wrist joint	9.69	NA	13.50	1.26	NA	24.45	090
25446		A	Wrist replacement	16.55	NA	14.45	2.20	NA	33.20	090
25447		A	Repair wrist joint(s)	10.37	NA	11.27	1.34	NA	22.98	090
25449		A	Remove wrist joint implant	14.49	NA	16.20	1.77	NA	32.46	090
25450		A	Revision of wrist joint	7.87	NA	13.91	0.88	NA	22.66	090
25455		A	Revision of wrist joint	9.49	NA	15.22	1.07	NA	25.78	090
25490		A	Reinforce radius	9.54	NA	16.70	1.19	NA	27.43	090
25491		A	Reinforce ulna	9.96	NA	16.98	1.41	NA	28.35	090
25492		A	Reinforce radius and ulna	12.33	NA	16.09	1.62	NA	30.04	090
25500		A	Treat fracture of radius	2.45	4.27	2.94	0.28	7.00	5.67	090
25505		A	Treat fracture of radius	5.21	7.87	5.65	0.69	13.77	11.55	090
25515		A	Treat fracture of radius	9.18	NA	10.00	1.22	NA	20.40	090
25520		A	Treat fracture of radius	6.26	8.00	6.28	0.85	15.11	13.39	090
25525		A	Treat fracture of radius	12.24	NA	11.65	1.68	NA	25.57	090
25526		A	Treat fracture of radius	12.98	NA	15.01	1.80	NA	29.79	090
25530		A	Treat fracture of ulna	2.09	4.21	2.87	0.27	6.57	5.23	090
25535		A	Treat fracture of ulna	5.14	7.74	5.72	0.68	13.56	11.54	090
25545		A	Treat fracture of ulna	8.90	NA	9.88	1.23	NA	20.01	090
25560		A	Treat fracture radius & ulna	2.44	4.28	2.93	0.27	6.99	5.64	090
25565		A	Treat fracture radius & ulna	5.63	8.02	5.94	0.76	14.41	12.33	090
25574		A	Treat fracture radius & ulna	7.01	NA	8.72	0.96	NA	16.69	090
25575		A	Treat fracture radius/ulna	10.45	NA	10.74	1.46	NA	22.65	090
25600		A	Treat fracture radius/ulna	2.63	4.53	3.10	0.34	7.50	6.07	090
25605		A	Treat fracture radius/ulna	5.81	8.18	6.11	0.81	14.80	12.73	090
25611		A	Treat fracture radius/ulna	7.77	NA	10.04	1.08	NA	18.89	090
25620		A	Treat fracture radius/ulna	8.55	NA	9.67	1.17	NA	19.39	090
25622		A	Treat wrist bone fracture	2.61	4.48	3.10	0.33	7.42	6.04	090
25624		A	Treat wrist bone fracture	4.53	7.40	5.34	0.61	12.54	10.48	090
25628		A	Treat wrist bone fracture	8.43	NA	9.68	1.14	NA	19.25	090
25630		A	Treat wrist bone fracture	2.88	4.66	3.20	0.37	7.91	6.45	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
25635		A	Treat wrist bone fracture	4.39	7.45	5.11	0.39	12.23	9.89	090
25645		A	Treat wrist bone fracture	7.25	NA	9.56	0.93	NA	17.74	090
25650		A	Treat wrist bone fracture	3.05	4.75	3.24	0.37	8.17	6.66	090
25651		A	Pin ulnar styloid fracture	5.36	NA	4.39	0.73	NA	10.48	090
25652		A	Treat fracture ulnar styloid	7.60	NA	6.90	0.97	NA	15.47	090
25660		A	Treat wrist dislocation	4.76	NA	5.45	0.59	NA	10.80	090
25670		A	Treat wrist dislocation	7.92	NA	9.54	1.07	NA	18.53	090
25671		A	Pin radioulnar dislocation	6.00	NA	6.02	0.75	NA	12.77	090
25675		A	Treat wrist dislocation	4.67	7.57	5.39	0.57	12.81	10.63	090
25676		A	Treat wrist dislocation	8.04	NA	9.52	1.10	NA	18.66	090
25680		A	Treat wrist fracture	5.99	NA	6.45	0.61	NA	13.05	090
25685		A	Treat wrist fracture	9.78	NA	10.20	1.25	NA	21.23	090
25690		A	Treat wrist dislocation	5.50	NA	7.00	0.78	NA	13.28	090
25695		A	Treat wrist dislocation	8.34	NA	9.68	1.07	NA	19.09	090
25800		A	Fusion of wrist joint	9.76	NA	10.87	1.30	NA	21.93	090
25805		A	Fusion/graft of wrist joint	11.28	NA	11.61	1.51	NA	24.40	090
25810		A	Fusion/graft of wrist joint	10.57	NA	11.33	1.37	NA	23.27	090
25820		A	Fusion of hand bones	7.45	NA	9.54	0.96	NA	17.95	090
25825		A	Fuse hand bones with graft	9.27	NA	10.51	1.20	NA	20.98	090
25830		A	Fusion, radioulnar jnt/ulna	10.06	NA	16.99	1.27	NA	28.32	090
25900		A	Amputation of forearm	9.01	NA	15.04	1.08	NA	25.13	090
25905		A	Amputation of forearm	9.12	NA	14.25	1.06	NA	24.43	090
25907		A	Amputation follow-up surgery	7.80	NA	15.26	1.01	NA	24.07	090
25909		A	Amputation follow-up surgery	8.96	NA	14.51	1.07	NA	24.54	090
25915		A	Amputation of forearm	17.08	NA	15.11	2.41	NA	34.60	090
25920		A	Amputate hand at wrist	8.68	NA	10.12	1.06	NA	19.86	090
25922		A	Amputate hand at wrist	7.42	NA	7.58	0.93	NA	15.93	090
25924		A	Amputation follow-up surgery	8.46	NA	10.19	1.07	NA	19.72	090
25927		A	Amputation of hand	8.80	NA	14.11	1.02	NA	23.93	090
25929		A	Amputation follow-up surgery	7.59	NA	7.42	0.89	NA	15.90	090
25931		A	Amputation follow-up surgery	7.81	NA	15.79	0.88	NA	24.48	090
25999		C	Forearm or wrist surgery	0.00	0.00	0.00	0.00	0.00	0.00	YYY
26010		A	Drainage of finger abscess	1.54	5.24	3.94	0.14	6.92	5.62	010
26011		A	Drainage of finger abscess	2.19	7.48	6.50	0.25	9.92	8.94	010
26020		A	Drain hand tendon sheath	4.67	NA	13.10	0.59	NA	18.36	090
26025		A	Drainage of palm bursa	4.82	NA	13.26	0.60	NA	18.68	090
26030		A	Drainage of palm bursa(s)	5.93	NA	14.02	0.72	NA	20.67	090
26034		A	Treat hand bone lesion	6.23	NA	14.84	0.79	NA	21.86	090
26035		A	Decompress fingers/hand	9.51	NA	15.17	1.12	NA	25.80	090
26037		A	Decompress fingers/hand	7.25	NA	12.67	0.87	NA	20.79	090
26040		A	Release palm contracture	3.33	NA	12.87	0.45	NA	16.65	090
26045		A	Release palm contracture	5.56	NA	14.17	0.74	NA	20.47	090
26055		A	Incise finger tendon sheath	2.69	8.12	7.69	0.38	11.17	10.74	090
26060		A	Incision of finger tendon	2.81	NA	7.57	0.35	NA	10.73	090
26070		A	Explore/treat hand joint	3.69	NA	11.69	0.35	NA	15.73	090
26075		A	Explore/treat finger joint	3.79	NA	12.47	0.40	NA	16.66	090
26080		A	Explore/treat finger joint	4.24	NA	13.09	0.52	NA	17.85	090
26100		A	Biopsy hand joint lining	3.67	NA	8.43	0.45	NA	12.55	090
26105		A	Biopsy finger joint lining	3.71	NA	12.95	0.45	NA	17.11	090
26110		A	Biopsy finger joint lining	3.53	NA	12.46	0.44	NA	16.43	090
26115		A	Remove hand lesion subcut	3.86	7.66	7.66	0.48	12.00	12.00	090
26116		A	Remove hand lesion, deep	5.53	NA	13.91	0.69	NA	20.13	090
26117		A	Remove tumor, hand/finger	8.55	NA	15.41	1.01	NA	24.97	090
26121		A	Release palm contracture	7.54	NA	15.80	0.94	NA	24.28	090
26123		A	Release palm contracture	9.29	NA	16.73	1.17	NA	27.19	090
26125		A	Release palm contracture	4.61	NA	2.60	0.57	NA	7 78	ZZZ
26130		A	Remove wrist joint lining	5.42	NA	15.62	0.65	NA	21.69	090
26135		A	Revise finger joint, each	6.96	NA	17.04	0.87	NA	24.87	090
26140		A	Revise finger joint, each	6.17	NA	16.33	0.76	NA	23.26	090
26145		A	Tendon excision, palm/finger	6.32	NA	16.86	0.77	NA	23.95	090
26160		A	Remove tendon sheath lesion	3.15	7.93	7.88	0.39	11.47	11.42	090
26170		A	Removal of palm tendon, each	4.77	NA	8.53	0.60	NA	13.90	090
26180		A	Removal of finger tendon	5.18	NA	9.19	0.64	NA	15.01	090
26185		A	Remove finger bone	5.25	NA	8.76	0.67	NA	14.68	090
26200		A	Remove hand bone lesion	5.51	NA	13.97	0.71	NA	20.19	090
26205		A	Remove/graft bone lesion	7.70	NA	15.35	0.95	NA	24.00	090
26210		A	Removal of finger lesion	5.15	NA	14.32	0.64	NA	20.11	090
26215		A	Remove/graft finger lesion	7.10	NA	14.89	0.77	NA	22.76	090
26230		A	Partial removal of hand bone	6.33	NA	12.87	0.84	NA	20.04	090
26235		A	Partial removal, finger bone	6.19	NA	12.56	0.78	NA	19.53	090
26236		A	Partial removal, finger bone	5.32	NA	12.62	0.66	NA	18.60	090
26250		A	Extensive hand surgery	7.55	NA	17.33	0.92	NA	25.80	090
26255		A	Extensive hand surgery	12.43	NA	18.74	1.05	NA	32.22	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
26260		A	Extensive finger surgery	7.03	NA	16.39	0.83	NA	24.25	090
26261		A	Extensive finger surgery	9.09	NA	16.10	0.84	NA	26.03	090
26262		A	Partial removal of finger	5.67	NA	14.81	0.70	NA	21.18	090
26320		A	Removal of implant from hand	3.98	NA	13.08	0.49	NA	17.55	090
26340		A	Manipulate finger w/anesth	2.50	NA	4.53	0.32	NA	7.35	090
26350		A	Repair finger/hand tendon	5.99	NA	20.24	0.73	NA	26.96	090
26352		A	Repair/graft hand tendon	7.68	NA	19.74	0.93	NA	28.35	090
26356		A	Repair finger/hand tendon	8.07	NA	21.55	0.99	NA	30.61	090
26357		A	Repair finger/hand tendon	8.58	NA	21.30	1.02	NA	30.90	090
26358		A	Repair/graft hand tendon	9.14	NA	22.43	1.07	NA	32.64	090
26370		A	Repair finger/hand tendon	7.11	NA	20.61	0.90	NA	28.62	090
26372		A	Repair/graft hand tendon	8.76	NA	20.46	1.06	NA	30.28	090
26373		A	Repair finger/hand tendon	8.16	NA	22.61	0.98	NA	31.75	090
26390		A	Revise hand/finger tendon	9.19	NA	16.93	1.09	NA	27.21	090
26392		A	Repair/graft hand tendon	10.26	NA	23.05	1.26	NA	34.57	090
26410		A	Repair hand tendon	4.63	NA	16.26	0.57	NA	21.46	090
26412		A	Repair/graft hand tendon	6.31	NA	16.83	0.80	NA	23.94	090
26415		A	Excision, hand/finger tendon	8.34	NA	18.14	0.77	NA	27.25	090
26416		A	Graft hand or finger tendon	9.37	NA	18.95	1.20	NA	29.52	090
26418		A	Repair finger tendon	4.25	NA	16.34	0.50	NA	21.09	090
26420		A	Repair/graft finger tendon	6.77	NA	17.92	0.83	NA	25.52	090
26426		A	Repair finger/hand tendon	6.15	NA	17.05	0.77	NA	23.97	090
26428		A	Repair/graft finger tendon	7.21	NA	16.05	0.84	NA	24.10	090
26432		A	Repair finger tendon	4.02	NA	13.49	0.48	NA	17.99	090
26433		A	Repair finger tendon	4.56	NA	14.42	0.56	NA	19.54	090
26434		A	Repair/graft finger tendon	6.09	NA	15.34	0.71	NA	22.14	090
26437		A	Realignment of tendons	5.82	NA	14.16	0.74	NA	20.72	090
26440		A	Release palm/finger tendon	5.02	NA	18.48	0.62	NA	24.12	090
26442		A	Release palm & finger tendon	8.16	NA	19.40	0.94	NA	28.50	090
26445		A	Release hand/finger tendon	4.31	NA	18.27	0.54	NA	23.12	090
26449		A	Release forearm/hand tendon	7.00	NA	20.16	0.84	NA	28.00	090
26450		A	Incision of palm tendon	3.67	NA	8.71	0.46	NA	12.84	090
26455		A	Incision of finger tendon	3.64	NA	8.38	0.47	NA	12.49	090
26460		A	Incise hand/finger tendon	3.46	NA	8.06	0.44	NA	11.96	090
26471		A	Fusion of finger tendons	5.73	NA	13.93	0.73	NA	20.39	090
26474		A	Fusion of finger tendons	5.32	NA	13.30	0.69	NA	19.31	090
26476		A	Tendon lengthening	5.18	NA	12.72	0.62	NA	18.52	090
26477		A	Tendon shortening	5.15	NA	13.73	0.60	NA	19.48	090
26478		A	Lengthening of hand tendon	5.80	NA	14.73	0.77	NA	21.30	090
26479		A	Shortening of hand tendon	5.74	NA	13.71	0.76	NA	20.21	090
26480		A	Transplant hand tendon	6.69	NA	19.63	0.84	NA	27.16	090
26483		A	Transplant/graft hand tendon	8.29	NA	19.79	1.03	NA	29.11	090
26485		A	Transplant palm tendon	7.70	NA	20.08	0.94	NA	28.72	090
26489		A	Transplant/graft palm tendon	9.55	NA	17.34	0.98	NA	27.87	090
26490		A	Revise thumb tendon	8.41	NA	14.87	1.05	NA	24.33	090
26492		A	Tendon transfer with graft	9.62	NA	15.84	1.19	NA	26.65	090
26494		A	Hand tendon/muscle transfer	8.47	NA	13.52	1.13	NA	23.12	090
26496		A	Revise thumb tendon	9.59	NA	15.53	1.17	NA	26.29	090
26497		A	Finger tendon transfer	9.57	NA	16.42	1.17	NA	27.16	090
26498		A	Finger tendon transfer	14.00	NA	18.19	1.74	NA	33.93	090
26499		A	Revision of finger	8.98	NA	14.61	0.94	NA	24.53	090
26500		A	Hand tendon reconstruction	5.96	NA	15.16	0.66	NA	21.78	090
26502		A	Hand tendon reconstruction	7.14	NA	15.14	0.87	NA	23.15	090
26504		A	Hand tendon reconstruction	7.47	NA	14.31	0.84	NA	22.62	090
26508		A	Release thumb contracture	6.01	NA	14.11	0.76	NA	20.88	090
26510		A	Thumb tendon transfer	5.43	NA	14.18	0.71	NA	20.32	090
26516		A	Fusion of knuckle joint	7.15	NA	15.06	0.90	NA	23.11	090
26517		A	Fusion of knuckle joints	8.83	NA	15.89	0.96	NA	25.68	090
26518		A	Fusion of knuckle joints	9.02	NA	15.91	1.13	NA	26.06	090
26520		A	Release knuckle contracture	5.30	NA	18.59	0.65	NA	24.54	090
26525		A	Release finger contracture	5.33	NA	18.67	0.66	NA	24.66	090
26530		A	Revise knuckle joint	6.69	NA	19.35	0.86	NA	26.90	090
26531		A	Revise knuckle with implant	7.91	NA	19.41	1.01	NA	28.33	090
26535		A	Revise finger joint	5.24	NA	11.10	0.66	NA	17.00	090
26536		A	Revise/implant finger joint	6.37	NA	17.97	0.80	NA	25.14	090
26540		A	Repair hand joint	6.43	NA	14.54	0.81	NA	21.78	090
26541		A	Repair hand joint with graft	8.62	NA	16.36	1.12	NA	26.10	090
26542		A	Repair hand joint with graft	6.78	NA	14.51	0.87	NA	22.16	090
26545		A	Reconstruct finger joint	6.92	NA	16.16	0.79	NA	23.87	090
26546		A	Repair nonunion hand	8.92	NA	15.95	1.14	NA	26.01	090
26548		A	Reconstruct finger joint	8.03	NA	16.13	0.98	NA	25.14	090
26550		A	Construct thumb replacement	21.24	NA	30.36	1.80	NA	53.40	090
26551		A	Great toe-hand transfer	46.58	NA	29.35	6.57	NA	82.50	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
26553		A	Single transfer, toe-hand	46.27	NA	29.23	1.99	NA	77.49	090
26554		A	Double transfer, toe-hand	54.95	NA	32.69	7.76	NA	95.40	090
26555		A	Positional change of finger	16.63	NA	24.00	2.13	NA	42.76	090
26556		A	Toe joint transfer	47.26	NA	29.62	6.67	NA	83.55	090
26560		A	Repair of web finger	5.38	NA	12.55	0.60	NA	18.53	090
26561		A	Repair of web finger	10.92	NA	18.61	0.69	NA	30.22	090
26562		A	Repair of web finger	15.00	NA	13.44	0.98	NA	29.42	090
26565		A	Correct metacarpal flaw	6.74	NA	14.77	0.84	NA	22.35	090
26567		A	Correct finger deformity	6.82	NA	15.10	0.84	NA	22.76	090
26568		A	Lengthen metacarpal/finger	9.08	NA	19.48	1.10	NA	29.66	090
26580		A	Repair hand deformity	18.18	NA	17.22	1.46	NA	36.86	090
26585		D	Repair finger deformity	0.00	NA	0.00	0.00	NA	0.00	090
26587		A	Reconstruct extra finger	14.05	4.67	NA	1.08	19.80	NA	090
26590		A	Repair finger deformity	17.96	NA	14.62	1.32	NA	33.90	090
26591		A	Repair muscles of hand	3.25	NA	14.22	0.37	NA	17.84	090
26593		A	Release muscles of hand	5.31	NA	13.33	0.64	NA	19.28	090
26596		A	Excision constricting tissue	8.95	NA	10.26	0.87	NA	20.08	090
26597		D	Release of scar contracture	0.00	NA	0.00	0.00	NA	0.00	090
26600		A	Treat metacarpal fracture	1.96	4.15	2.83	0.25	6.36	5.04	090
26605		A	Treat metacarpal fracture	2.85	6.05	4.29	0.38	9.28	7.52	090
26607		A	Treat metacarpal fracture	5.36	NA	8.33	0.70	NA	14.39	090
26608		A	Treat metacarpal fracture	5.36	NA	8.85	0.73	NA	14.94	090
26615		A	Treat metacarpal fracture	5.33	NA	8.43	0.70	NA	14.46	090
26641		A	Treat thumb dislocation	3.94	6.58	4.99	0.42	10.94	9.35	090
26645		A	Treat thumb fracture	4.41	7.33	5.30	0.54	12.28	10.25	090
26650		A	Treat thumb fracture	5.72	NA	9.02	0.77	NA	15.51	090
26665		A	Treat thumb fracture	7.60	NA	9.24	0.97	NA	17.81	090
26670		A	Treat hand dislocation	3.69	6.46	4.93	0.36	10.51	8.98	090
26675		A	Treat hand dislocation	4.64	6.82	4.71	0.56	12.02	9.91	090
26676		A	Pin hand dislocation	5.52	NA	9.36	0.76	NA	15.64	090
26685		A	Treat hand dislocation	6.98	NA	8.88	0.95	NA	16.81	090
26686		A	Treat hand dislocation	7.94	NA	9.84	1.05	NA	18.83	090
26700		A	Treat knuckle dislocation	3.69	5.01	3.02	0.35	9.05	7.06	090
26705		A	Treat knuckle dislocation	4.19	6.26	4.33	0.50	10.95	9.02	090
26706		A	Pin knuckle dislocation	5.12	NA	5.87	0.64	NA	11.63	090
26715		A	Treat knuckle dislocation	5.74	NA	8.62	0.75	NA	15.11	090
26720		A	Treat finger fracture, each	1.66	3.06	1.72	0.20	4.92	3.58	090
26725		A	Treat finger fracture, each	3.33	5.27	3.26	0.43	9.03	7.02	090
26727		A	Treat finger fracture, each	5.23	NA	8.88	0.69	NA	14.80	090
26735		A	Treat finger fracture, each	5.98	NA	8.99	0.77	NA	15.74	090
26740		A	Treat finger fracture, each	1.94	3.86	2.67	0.24	6.04	4.85	090
26742		A	Treat finger fracture, each	3.85	7.21	5.13	0.49	11.55	9.47	090
26746		A	Treat finger fracture, each	5.81	NA	8.93	0.74	NA	15.48	090
26750		A	Treat finger fracture, each	1.70	3.66	2.47	0.19	5.55	4.36	090
26755		A	Treat finger fracture, each	3.10	5.08	3.27	0.37	8.55	6.74	090
26756		A	Pin finger fracture, each	4.39	NA	8.74	0.56	NA	13.69	090
26765		A	Treat finger fracture, each	4.17	NA	8.02	0.51	NA	12.70	090
26770		A	Treat finger dislocation	3.02	4.87	2.80	0.27	8.16	6.09	090
26775		A	Treat finger dislocation	3.71	6.07	4.09	0.43	10.21	8.23	090
26776		A	Pin finger dislocation	4.80	NA	8.61	0.63	NA	14.04	090
26785		A	Treat finger dislocation	4.21	NA	7.95	0.54	NA	12.70	090
25820		A	Thumb fusion with graft	8.26	NA	15.80	1.11	NA	25.17	090
26841		A	Fusion of thumb	7.13	NA	15.37	0.97	NA	23.47	090
26842		A	Thumb fusion with graft	8.24	NA	15.49	1.10	NA	24.83	090
26843		A	Fusion of hand joint	7.61	NA	13.91	0.99	NA	22.51	090
26844		A	Fusion/graft of hand joint	8.73	NA	15.63	1.12	NA	25.48	090
26850		A	Fusion of knuckle	6.97	NA	14.63	0.89	NA	22.49	090
26852		A	Fusion of knuckle with graft	8.46	NA	15.19	1.05	NA	24.70	090
26860		A	Fusion of finger joint	4.69	NA	13.45	0.60	NA	18.74	090
26861		A	Fusion of finger jnt, add-on	1.74	NA	0.99	0.22	NA	2.95	ZZZ
26862		A	Fusion/graft of finger joint	7.37	NA	15.18	0.92	NA	23.47	090
26863		A	Fuse/graft added joint	3.90	NA	2.25	0.51	NA	6.66	ZZZ
26910		A	Amputate metacarpal bone	7.60	NA	13.98	0.90	NA	22.48	090
26951		A	Amputation of finger/thumb	4.59	NA	13.06	0.56	NA	18.21	090
26952		A	Amputation of finger/thumb	6.31	NA	14.47	0.74	NA	21.52	090
26989		C	Hand/finger surgery	0.00	0.00	0.00	0.00	0.00	0.00	YYY
26990		A	Drainage of pelvis lesion	7.48	NA	15.92	0.92	NA	24.32	090
26991		A	Drainage of pelvis bursa	6.68	11.32	9.39	0.85	18.85	16.92	090
26992		A	Drainage of bone lesion	13.02	NA	19.95	1.75	NA	34.72	090
27000		A	Incision of hip tendon	5.62	NA	7.48	0.76	NA	13.86	090
27001		A	Incision of hip tendon	6.94	NA	8.42	0.95	NA	16.31	090
27003		A	Incision of hip tendon	7.34	NA	9.01	0.93	NA	17.28	090
27005		A	Incision of hip tendon	9.66	NA	10.50	1.36	NA	21.52	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
27006		A	Incision of hip tendons	9.68	NA	10.59	1.33	NA	21.60	090
27025		A	Incision of hip/thigh fascia	11.16	NA	10.53	1.38	NA	23.07	090
27030		A	Drainage of hip joint	13.01	NA	12.45	1.81	NA	27.27	090
27033		A	Exploration of hip joint	13.39	NA	12.62	1.87	NA	27.88	090
27035		A	Denervation of hip joint	16.69	NA	19.67	1.70	NA	38.06	090
27036		A	Excision of hip joint/muscle	12.88	NA	14.03	1.80	NA	28.71	090
27040		A	Biopsy of soft tissues	2.87	6.23	4.00	0.21	9.31	7.08	010
27041		A	Biopsy of soft tissues	9.89	NA	8.60	1.01	NA	19.50	090
27047		A	Remove hip/pelvis lesion	7.45	9.26	7.03	0.79	17.50	15.27	090
27048		A	Remove hip/pelvis lesion	6.25	NA	7.94	0.73	NA	14.92	090
27049		A	Remove tumor, hip/pelvis	13.66	NA	13.77	1.60	NA	29.03	090
27050		A	Biopsy of sacroiliac joint	4.36	NA	7.52	0.53	NA	12.41	090
27052		A	Biopsy of hip joint	6.23	NA	8.24	0.85	NA	15.32	090
27054		A	Removal of hip joint lining	8.54	NA	10.67	1.17	NA	20.38	090
27060		A	Removal of ischial bursa	5.43	NA	7.21	0.60	NA	13.24	090
27062		A	Remove femur lesion/bursa	5.37	NA	7.32	0.74	NA	13.43	090
27065		A	Removal of hip bone lesion	5.90	NA	8.65	0.76	NA	15.31	090
27066		A	Removal of hip bone lesion	10.33	NA	12.53	1.42	NA	24.28	090
27067		A	Remove/graft hip bone lesion	13.83	NA	14.54	1.95	NA	30.32	090
27070		A	Partial removal of hip bone	10.72	NA	17.71	1.36	NA	29.79	090
27071		A	Partial removal of hip bone	11.46	NA	18.67	1.51	NA	31.64	090
27075		A	Extensive hip surgery	35.00	NA	25.75	2.22	NA	62.97	090
27076		A	Extensive hip surgery	22.12	NA	20.08	2.86	NA	45.06	090
27077		A	Extensive hip surgery	40.00	NA	30.55	3.18	NA	73.73	090
27078		A	Extensive hip surgery	13.44	NA	16.30	1.67	NA	31.41	090
27079		A	Extensive hip surgery	13.75	NA	13.43	1.86	NA	29.04	090
27080		A	Removal of tail bone	6.39	NA	7.64	0.80	NA	14.83	090
27086		A	Remove hip foreign body	1.87	5.85	3.70	0.17	7.89	5.74	010
27087		A	Remove hip foreign body	8.54	NA	9.04	1.09	NA	18.67	090
27090		A	Removal of hip prosthesis	11.15	NA	11.37	1.55	NA	24.07	090
27091		A	Removal of hip prosthesis	22.14	NA	15.14	3.11	NA	40.39	090
27093		A	Injection for hip x-ray	1.30	13.59	0.53	0.09	14.98	1.92	000
27095		A	Injection for hip x-ray	1.50	11.00	0.60	0.10	12.60	2.20	000
27096		A	Inject sacroiliac joint	1.40	8.86	0.35	0.08	10.34	1.83	000
27097		A	Revision of hip tendon	8.80	NA	8.13	1.22	NA	18.15	090
27098		A	Transfer tendon to pelvis	8.83	NA	9.18	1.24	NA	19.25	090
27100		A	Transfer of abdominal muscle	11.08	NA	13.03	1.57	NA	25.68	090
27105		A	Transfer of spinal muscle	11.77	NA	12.14	1.66	NA	25.57	090
27110		A	Transfer of iliopsoas muscle	13.26	NA	12.99	1.38	NA	27.63	090
27111		A	Transfer of iliopsoas muscle	12.15	NA	11.77	1.48	NA	25.40	090
27120		A	Reconstruction of hip socket	18.01	NA	14.28	2.45	NA	34.74	090
27122		A	Reconstruction of hip socket	14.98	NA	14.48	2.08	NA	31.54	090
27125		A	Partial hip replacement	14.69	NA	14.02	2.05	NA	30.76	090
27130		A	Total hip arthroplasty	20.12	NA	17.18	2.82	NA	40.12	090
27132		A	Total hip arthroplasty	23.30	NA	19.00	3.26	NA	45.56	090
27134		A	Revise hip joint replacement	28.52	NA	21.82	3.97	NA	54.31	090
27137		A	Revise hip joint replacement	21.17	NA	17.54	2.97	NA	41.68	090
27138		A	Revise hip joint replacement	22.17	NA	17.94	3.11	NA	43.22	090
27140		A	Transplant femur ridge	12.24	NA	11.98	1.67	NA	25.89	090
27146		A	Incision of hip bone	17.43	NA	15.87	2.27	NA	35.57	090
27147		A	Revision of hip bone	20.58	NA	17.87	2.61	NA	41.06	090
27151		A	Incision of hip bones	22.51	NA	18.97	3.12	NA	44.60	090
27156		A	Revision of hip bones	24.63	NA	19.84	3.48	NA	47.95	090
27158		A	Revision of pelvis	19.74	NA	15.58	2.60	NA	37.92	090
27161		A	Incision of neck of femur	16.71	NA	14.47	2.32	NA	33.50	090
27165		A	Incision/fixation of femur	17.91	NA	14.92	2.51	NA	35.34	090
27170		A	Repair/graft femur head/neck	16.07	NA	14.16	2.20	NA	32.43	090
27175		A	Treat slipped epiphysis	8.46	NA	7.26	1.19	NA	16.91	090
27176		A	Treat slipped epiphysis	12.05	NA	10.23	1.68	NA	23.96	090
27177		A	Treat slipped epiphysis	15.08	NA	12.22	2.11	NA	29.41	090
27178		A	Treat slipped epiphysis	11.99	NA	10.13	1.68	NA	23.80	090
27179		A	Revise head/neck of femur	12.98	NA	10.90	1.84	NA	25.72	090
27181		A	Treat slipped epiphysis	14.68	NA	11.92	1.74	NA	28.34	090
27185		A	Revision of femur epiphysis	9.18	NA	10.04	1.29	NA	20.51	090
27187		A	Reinforce hip bones	13.54	NA	13.53	1.89	NA	28.96	090
27193		A	Treat pelvic ring fracture	5.56	7.14	5.36	0.77	13.47	11.69	090
27194		A	Treat pelvic ring fracture	9.65	9.20	7.69	1.32	20.17	18.66	090
27200		A	Treat tail bone fracture	1.84	3.13	1.84	0.22	5.19	3.90	090
27202		A	Treat tail bone fracture	7.04	NA	21.62	0.69	NA	29.35	090
27215		A	Treat pelvic fracture(s)	10.05	NA	10.60	1.37	NA	22.02	090
27216		A	Treat pelvic ring fracture	15.19	NA	15.51	2.15	NA	32.85	090
27217		A	Treat pelvic ring fracture	14.11	NA	12.83	1.95	NA	28.89	090
27218		A	Treat pelvic ring fracture	20.15	NA	16.68	2.85	NA	39.68	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
27220		A	Treat hip socket fracture	6.18	7.48	5.72	0.85	14.51	12.75	090
27222		A	Treat hip socket fracture	12.70	NA	10.37	1.77	NA	24.84	090
27226		A	Treat hip wall fracture	14.91	NA	10.36	2.07	NA	27.34	090
27227		A	Treat hip fracture(s)	23.45	NA	17.22	3.24	NA	43.91	090
27228		A	Treat hip fracture(s)	27.16	NA	19.67	3.77	NA	50.60	090
27230		A	Treat thigh fracture	5.50	7.62	6.30	0.73	13.85	12.53	090
27232		A	Treat thigh fracture	10.68	NA	9.31	1.45	NA	21.44	090
27235		A	Treat thigh fracture	12.16	NA	11.24	1.71	NA	25.11	090
27236		A	Treat thigh fracture	15.60	NA	12.99	2.18	NA	30.77	090
27238		A	Treat thigh fracture	5.52	NA	6.36	0.76	NA	12.64	090
27240		A	Treat thigh fracture	12.50	NA	10.38	1.69	NA	24.57	090
27244		A	Treat thigh fracture	15.94	NA	13.25	2.23	NA	31.42	090
27245		A	Treat thigh fracture	20.31	NA	15.61	2.85	NA	38.77	090
27246		A	Treat thigh fracture	4.71	7.31	5.93	0.66	12.68	11.30	090
27248		A	Treat thigh fracture	10.45	NA	10.20	1.45	NA	22.10	090
27250		A	Treat hip dislocation	6.95	NA	6.55	0.68	NA	14.18	090
27252		A	Treat hip dislocation	10.39	NA	8.31	1.37	NA	20.07	090
27253		A	Treat hip dislocation	12.92	NA	11.10	1.81	NA	25.83	090
27254		A	Treat hip dislocation	18.26	NA	14.29	2.52	NA	35.07	090
27256		A	Treat hip dislocation	4.12	NA	4.31	0.49	NA	8.92	010
27257		A	Treat hip dislocation	5.22	NA	4.59	0.56	NA	10.37	010
27258		A	Treat hip dislocation	15.43	NA	13.93	2.06	NA	31.42	090
27259		A	Treat hip dislocation	21.55	NA	18.02	2.99	NA	42.56	090
27265		A	Treat hip dislocation	5.05	NA	6.09	0.65	NA	11.79	090
27266		A	Treat hip dislocation	7.49	NA	7.50	1.04	NA	16.03	090
27275		A	Manipulation of hip joint	2.27	NA	3.62	0.31	NA	6.20	010
27280		A	Fusion of sacroiliac joint	13.39	NA	13.95	1.98	NA	29.32	090
27282		A	Fusion of pubic bones	11.34	NA	12.33	1.14	NA	24.81	090
27284		A	Fusion of hip joint	23.45	NA	18.86	2.36	NA	44.67	090
27286		A	Fusion of hip joint	23.45	NA	19.13	2.37	NA	44.95	090
27290		A	Amputation of leg at hip	23.28	NA	17.37	2.94	NA	43.59	090
27295		A	Amputation of leg at hip	18.65	NA	14.65	2.35	NA	35.65	090
27299		C	Pelvis/hip joint surgery	0.00	0.00	0.00	0.00	0.00	0.00	YYY
27301		A	Drain thigh/knee lesion	6.49	15.30	14.04	0.80	22.59	21.33	090
27303		A	Drainage of bone lesion	8.28	NA	14.63	1.14	NA	24.05	090
27305		A	Incise thigh tendon & fascia	5.92	NA	8.88	0.77	NA	15.57	090
27306		A	Incision of thigh tendon	4.62	NA	7.54	0.62	NA	12.78	090
27307		A	Incision of thigh tendons	5.80	NA	8.15	0.78	NA	14.73	090
27310		A	Exploration of knee joint	9.27	NA	10.14	1.29	NA	20.70	090
27315		A	Partial removal, thigh nerve	6.97	NA	4.04	0.79	NA	11.80	090
27320		A	Partial removal, thigh nerve	6.30	NA	5.07	0.78	NA	12.15	090
27323		A	Biopsy, thigh soft tissues	2.28	5.57	3.49	0.17	8.02	5.94	010
27324		A	Biopsy, thigh soft tissues	4.90	NA	6.79	0.59	NA	12.28	090
27327		A	Removal of thigh lesion	4.47	8.47	6.35	0.50	13.44	11.32	090
27328		A	Removal of thigh lesion	5.57	NA	7.19	0.66	NA	13.42	090
27329		A	Remove tumor, thigh/knee	14.14	NA	15.02	1.68	NA	30.84	090
27330		A	Biopsy, knee joint lining	4.97	NA	6.42	0.66	NA	12.05	090
27331		A	Explore/treat knee joint	5.88	NA	7.56	0.81	NA	14.25	090
27332		A	Removal of knee cartilage	8.27	NA	8.84	1.15	NA	18.26	090
27333		A	Removal of knee cartilage	7.30	NA	8.49	1.03	NA	16.82	090
27334		A	Remove knee joint lining	8.70	NA	9.80	1.21	NA	19.71	090
27335		A	Remove knee joint lining	10.00	NA	10.58	1.41	NA	21.99	090
27340		A	Removal of kneecap bursa	4.18	NA	6.03	0.58	NA	10.79	090
27345		A	Removal of knee cyst	5.92	NA	7.49	0.81	NA	14.22	090
27347		A	Remove knee cyst	5.78	2.64	2.64	0.76	9.18	9.18	090
27350		A	Removal of kneecap	8.17	NA	8.95	1.15	NA	18.27	090
27355		A	Remove femur lesion	7.65	NA	10.36	1.07	NA	19.08	090
27356		A	Remove femur lesion/graft	9.48	NA	11.32	1.29	NA	22.09	090
27357		A	Remove femur lesion/graft	10.53	NA	11.75	1.48	NA	23.76	090
27358		A	Remove femur lesion/fixation	4.74	NA	2.69	0.67	NA	8.10	ZZZ
27360		A	Partial removal, leg bone(s)	10.50	NA	18.43	1.42	NA	30.35	090
27365		A	Extensive leg surgery	16.27	NA	14.69	2.26	NA	33.22	090
27370		A	Injection for knee x-ray	0.96	11.10	0.35	0.06	12.12	1.37	000
27372		A	Removal of foreign body	5.07	8.66	6.28	0.62	14.35	11.97	090
27380		A	Repair of kneecap tendon	7.16	NA	8.57	1.00	NA	16.73	090
27381		A	Repair/graft kneecap tendon	10.34	NA	10.34	1.44	NA	22.12	090
27385		A	Repair of thigh muscle	7.76	NA	8.93	1.09	NA	17.78	090
27386		A	Repair/graft of thigh muscle	10.56	NA	11.12	1.49	NA	23.17	090
27390		A	Incision of thigh tendon	5.33	NA	8.22	0.69	NA	14.24	090
27391		A	Incision of thigh tendons	7.20	NA	9.08	0.99	NA	17.27	090
27392		A	Incision of thigh tendons	9.20	NA	11.15	1.23	NA	21.58	090
27393		A	Lengthening of thigh tendon	6.39	NA	8.45	0.90	NA	15.74	090
27394		A	Lengthening of thigh tendons	8.50	NA	10.51	1.17	NA	20.18	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
27395		A	Lengthening of thigh tendons	11.73	NA	13.19	1.63	NA	26.55	090
27396		A	Transplant of thigh tendon	7.86	NA	9.65	1.11	NA	18.62	090
27397		A	Transplants of thigh tendons	11.28	NA	11.71	1.58	NA	24.57	090
27400		A	Revise thigh muscles/tendons	9.02	NA	10.67	1.18	NA	20.87	090
27403		A	Repair of knee cartilage	8.33	NA	8.88	1.16	NA	18.37	090
27405		A	Repair of knee ligament	8.65	NA	9.81	1.21	NA	19.67	090
27407		A	Repair of knee ligament	10.28	NA	10.67	1.38	NA	22.33	090
27409		A	Repair of knee ligaments	12.90	NA	12.11	1.75	NA	26.76	090
27418		A	Repair degenerated kneecap	10.85	NA	10.99	1.51	NA	23.35	090
27420		A	Revision of unstable kneecap	9.83	NA	9.87	1.38	NA	21.08	090
27422		A	Revision of unstable kneecap	9.78	NA	9.83	1.37	NA	20.98	090
27424		A	Revision/removal of kneecap	9.81	NA	9.75	1.38	NA	20.94	090
27425		A	Lateral retinacular release	5.22	NA	7.29	0.73	NA	13.24	090
27427		A	Reconstruction, knee	9.36	NA	9.57	1.29	NA	20.22	090
27428		A	Reconstruction, knee	14.00	NA	12.85	1.95	NA	28.80	090
27429		A	Reconstruction, knee	15.52	NA	13.69	2.18	NA	31.39	090
27430		A	Revision of thigh muscles	9.67	NA	9.90	1.35	NA	20.92	090
27435		A	Incision of knee joint	9.49	NA	9.68	1.33	NA	20.50	090
27437		A	Revise kneecap	8.46	NA	10.06	1.18	NA	19.70	090
27438		A	Revise kneecap with implant	11.23	NA	11.34	1.56	NA	24.13	090
27440		A	Revision of knee joint	10.43	NA	10.92	1.42	NA	22.77	090
27441		A	Revision of knee joint	10.82	NA	11.24	1.49	NA	23.55	090
27442		A	Revision of knee joint	11.89	NA	11.77	1.68	NA	25.34	090
27443		A	Revision of knee joint	10.93	NA	11.56	1.52	NA	24.01	090
27445		A	Revision of knee joint	17.68	NA	14.98	2.49	NA	35.15	090
27446		A	Revision of knee joint	15.84	NA	14.26	2.22	NA	32.32	090
27447		A	Total knee arthroplasty	21.48	NA	17.35	3.00	NA	41.83	090
27448		A	Incision of thigh	11.06	NA	11.98	1.51	NA	24.55	090
27450		A	Incision of thigh	13.98	NA	13.83	1.96	NA	29.77	090
27454		A	Realignment of thigh bone	17.56	NA	15.83	2.46	NA	35.85	090
27455		A	Realignment of knee	12.82	NA	12.57	1.78	NA	27.17	090
27457		A	Realignment of knee	13.45	NA	11.73	1.88	NA	27.06	090
27465		A	Shortening of thigh bone	13.87	NA	14.09	1.86	NA	29.82	090
27466		A	Lengthening of thigh bone	16.33	NA	16.19	1.92	NA	34.44	090
27468		A	Shorten/lengthen thighs	18.97	NA	14.57	2.68	NA	36.22	090
27470		A	Repair of thigh	16.07	NA	16.07	2.24	NA	34.38	090
27472		A	Repair/graft of thigh	17.72	NA	16.98	2.49	NA	37.19	090
27475		A	Surgery to stop leg growth	8.64	NA	9.51	1.13	NA	19.28	090
27477		A	Surgery to stop leg growth	9.85	NA	10.10	1.31	NA	21.26	090
27479		A	Surgery to stop leg growth	12.80	NA	12.09	1.81	NA	26.70	090
27485		A	Surgery to stop leg growth	8.84	NA	9.40	1.24	NA	19.48	090
27486		A	Revise/replace knee joint	19.27	NA	16.13	2.70	NA	38.10	090
27487		A	Revise/replace knee joint	25.27	NA	19.26	3.54	NA	48.07	090
27488		A	Removal of knee prosthesis	15.74	NA	14.21	2.21	NA	32.16	090
27495		A	Reinforce thigh	15.55	NA	15.78	2.18	NA	33.51	090
27496		A	Decompression of thigh/knee	6.11	NA	7.96	0.77	NA	14.84	090
27497		A	Decompression of thigh/knee	7.17	NA	8.16	0.84	NA	16.17	090
27498		A	Decompression of thigh/knee	7.99	NA	8.37	0.97	NA	17.33	090
27499		A	Decompression of thigh/knee	9.00	NA	9.42	1.18	NA	19.60	090
27500		A	Treatment of thigh fracture	5.92	9.84	7.57	0.80	16.56	14.29	090
27501		A	Treatment of thigh fracture	5.92	10.92	8.62	0.83	17.67	15.37	090
27502		A	Treatment of thigh fracture	10.58	NA	11.27	1.49	NA	23.34	090
27503		A	Treatment of thigh fracture	10.58	NA	11.26	1.49	NA	23.33	090
27506		A	Treatment of thigh fracture	17.45	NA	14.57	2.33	NA	34.35	090
27507		A	Treatment of thigh fracture	13.99	NA	12.58	1.95	NA	28.52	090
27508		A	Treatment of thigh fracture	5.83	7.17	5.43	0.80	13.80	12.06	090
27509		A	Treatment of thigh fracture	7.71	NA	9.44	1.08	NA	18.23	090
27510		A	Treatment of thigh fracture	9.13	NA	7.37	1.26	NA	17.76	090
27511		A	Treatment of thigh fracture	13.64	NA	13.38	1.91	NA	28.93	090
27513		A	Treatment of thigh fracture	17.92	NA	15.80	2.51	NA	36.23	090
27514		A	Treatment of thigh fracture	17.30	NA	14.55	2.41	NA	34.26	090
27516		A	Treat thigh fx growth plate	5.37	7.98	5.85	0.74	14.09	11.96	090
27517		A	Treat thigh fx growth plate	8.78	9.94	7.90	1.22	19.94	17.90	090
27519		A	Treat thigh fx growth plate	15.02	NA	13.11	2.09	NA	30.22	090
27520		A	Treat kneecap fracture	2.86	5.48	3.82	0.38	8.72	7.06	090
27524		A	Treat kneecap fracture	10.00	NA	8.98	1.40	NA	20.38	090
27530		A	Treat knee fracture	3.78	6.00	4.33	0.51	10.29	8.62	090
27532		A	Treat knee fracture	7.30	7.65	5.84	1.02	15.97	14.16	090
27535		A	Treat knee fracture	11.50	NA	12.15	1.61	NA	25.26	090
27536		A	Treat knee fracture	15.65	NA	12.16	2.19	NA	30.00	090
27538		A	Treat knee fracture(s)	4.87	7.64	5.60	0.67	13.18	11.14	090
27540		A	Treat knee fracture	13.10	NA	10.75	1.80	NA	25.65	090
27550		A	Treat knee dislocation	5.76	7.60	5.79	0.68	14.04	12.23	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
27552		A	Treat knee dislocation	7.90	NA	8.04	1.10	NA	17.04	090
27556		A	Treat knee dislocation	14.41	NA	14.45	2.01	NA	30.87	090
27557		A	Treat knee dislocation	16.77	NA	15.78	2.37	NA	34.92	090
27558		A	Treat knee dislocation	17.72	NA	15.91	2.51	NA	36.14	090
27560		A	Treat kneecap dislocation	3.82	5.89	4.04	0.40	10.11	8.26	090
27562		A	Treat kneecap dislocation	5.79	NA	5.67	0.69	NA	12.15	090
27566		A	Treat kneecap dislocation	12.23	NA	10.09	1.73	NA	24.05	090
27570		A	Fixation of knee joint	1.74	NA	3.24	0.24	NA	5.22	010
27580		A	Fusion of knee	19.37	NA	16.63	2.70	NA	38.70	090
27590		A	Amputate leg at thigh	12.03	NA	12.67	1.35	NA	26.05	090
27591		A	Amputate leg at thigh	12.68	NA	14.01	1.63	NA	28.32	090
27592		A	Amputate leg at thigh	10.02	NA	12.55	1.17	NA	23.74	090
27594		A	Amputation follow-up surgery	6.92	NA	9.05	0.82	NA	16.79	090
27596		A	Amputation follow-up surgery	10.60	NA	12.64	1.24	NA	24.48	090
27598		A	Amputate lower leg at knee	10.53	NA	11.69	1.24	NA	23.46	090
27599		C	Leg surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
27600		A	Decompression of lower leg	5.65	NA	7.67	0.68	NA	14.00	090
27601		A	Decompression of lower leg	5.64	NA	7.68	0.69	NA	14.01	090
27602		A	Decompression of lower leg	7.35	NA	8.08	0.85	NA	16.28	090
27603		A	Drain lower leg lesion	4.94	16.03	10.54	0.56	21.53	16.04	090
27604		A	Drain lower leg bursa	4.47	11.01	8.47	0.54	16.02	13.48	090
27605		A	Incision of achilles tendon	2.87	9.81	3.67	0.38	13.06	6.92	010
27606		A	Incision of achilles tendon	4.14	13.19	5.08	0.57	17.90	9.79	010
27607		A	Treat lower leg bone lesion	7.97	NA	12.78	1.08	NA	21.83	090
27610		A	Explore/treat ankle joint	8.34	NA	10.43	1.15	NA	19.92	090
27612		A	Exploration of ankle joint	7.33	NA	8.32	1.01	NA	16.66	090
27613		A	Biopsy lower leg soft tissue	2.17	5.38	2.96	0.16	7.71	5.29	010
27614		A	Biopsy lower leg soft tissue	5.66	10.88	7.17	0.62	17.16	13.45	090
27615		A	Remove tumor, lower leg	12.56	NA	17.07	1.39	NA	31.02	090
27618		A	Remove lower leg lesion	5.09	11.72	6.72	0.54	17.35	12.35	090
27619		A	Remove lower leg lesion	8.40	12.63	9.55	1.01	22.04	18.96	090
27620		A	Explore/treat ankle joint	5.98	NA	8.20	0.83	NA	15.01	090
27625		A	Remove ankle joint lining	8.30	NA	9.57	1.16	NA	19.03	090
27626		A	Remove ankle joint lining	8.91	NA	10.39	1.23	NA	20.53	090
27630		A	Removal of tendon lesion	4.80	10.70	6.87	0.60	16.10	12.27	090
27635		A	Remove lower leg bone lesion	7.78	NA	11.13	1.06	NA	19.97	090
27637		A	Remove/graft leg bone lesion	9.85	NA	12.36	1.38	NA	23.59	090
27638		A	Remove/graft leg bone lesion	10.57	NA	12.55	1.47	NA	24.59	090
27640		A	Partial removal of tibia	11.37	NA	18.46	1.54	NA	31.37	090
27641		A	Partial removal of fibula	9.24	NA	16.52	1.22	NA	26.98	090
27645		A	Extensive lower leg surgery	14.17	NA	18.78	1.98	NA	34.93	090
27646		A	Extensive lower leg surgery	12.66	NA	18.50	1.55	NA	32.71	090
27647		A	Extensive ankle/heel surgery	12.24	NA	11.31	1.64	NA	25.19	090
27648		A	Injection for ankle x-ray	0.96	9.49	0.36	0.05	10.50	1.37	000
27650		A	Repair achilles tendon	9.69	NA	9.60	1.35	NA	20.64	090
27652		A	Repair/graft achilles tendon	10.33	NA	9.90	1.45	NA	21.68	090
27654		A	Repair of achilles tendon	10.02	NA	10.34	1.41	NA	21.77	090
27656		A	Repair leg fascia defect	4.57	11.38	7.06	0.48	16.43	12.11	090
27658		A	Repair of leg tendon, each	4.98	10.63	9.14	0.68	16.29	14.80	090
27659		A	Repair of leg tendon, each	6.81	12.77	9.97	0.96	20.54	17.74	090
27664		A	Repair of leg tendon, each	4.59	17.85	9.17	0.63	23.07	14.39	090
27665		A	Repair of leg tendon, each	5.40	8.95	8.95	0.75	15.10	15.10	090
27675		A	Repair lower leg tendons	7.18	NA	8.48	1.01	NA	16.67	090
27676		A	Repair lower leg tendons	8.42	NA	9.72	1.15	NA	19.29	090
27680		A	Release of lower leg tendon	5.74	NA	8.27	0.80	NA	14.81	090
27681		A	Release of lower leg tendons	6.82	NA	8.88	0.92	NA	16.62	090
27685		A	Revision of lower leg tendon	6.50	10.37	8.45	0.91	17.78	15.86	090
27686		A	Revise lower leg tendons	7.46	15.30	9.89	1.05	23.81	18.40	090
27687		A	Revision of calf tendon	6.24	NA	8.70	0.88	NA	15.82	090
27690		A	Revise lower leg tendon	8.71	NA	9.61	1.22	NA	19.54	090
27691		A	Revise lower leg tendon	9.96	NA	11.10	1.40	NA	22.46	090
27692		A	Revise additional leg tendon	1.87	NA	0.99	0.26	NA	3.12	ZZZ
27695		A	Repair of ankle ligament	6.51	NA	9.20	0.90	NA	16.61	090
27696		A	Repair of ankle ligaments	8.27	NA	9.54	1.16	NA	18.97	090
27698		A	Repair of ankle ligament	9.36	NA	9.72	1.31	NA	20.39	090
27700		A	Revision of ankle joint	9.29	NA	7.95	1.24	NA	18.48	090
27702		A	Reconstruct ankle joint	13.67	NA	13.02	1.92	NA	28.61	090
27703		A	Reconstruction, ankle joint	15.87	NA	13.31	2.24	NA	31.42	090
27704		A	Removal of ankle implant	7.62	NA	9.40	0.61	NA	17.63	090
27705		A	Incision of tibia	10.38	NA	11.55	1.44	NA	23.37	090
27707		A	Incision of fibula	4.37	NA	8.48	0.60	NA	13.45	090
27709		A	Incision of tibia & fibula	9.95	NA	11.48	1.39	NA	22.82	090
27712		A	Realignment of lower leg	14.25	NA	13.92	2.00	NA	30.17	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
27715		A	Revision of lower leg	14.39	NA	15.22	2.00	NA	31.61	090
27720		A	Repair of tibia	11.79	NA	13.67	1.66	NA	27.12	090
27722		A	Repair/graft of tibia	11.82	NA	13.46	1.65	NA	26.93	090
27724		A	Repair/graft of tibia	18.20	NA	17.28	2.10	NA	37.58	090
27725		A	Repair of lower leg	15.59	NA	15.62	2.20	NA	33.41	090
27727		A	Repair of lower leg	14.01	NA	14.43	1.84	NA	30.28	090
27730		A	Repair of tibia epiphysis	7.41	21.54	10.22	0.75	29.70	18.38	090
27732		A	Repair of tibula epiphysis	5.32	14.45	7.22	0.63	20.40	13.17	090
27734		A	Repair lower leg epiphyses	8.48	NA	10.84	0.85	NA	20.17	090
27740		A	Repair of leg epiphyses	9.30	16.04	9.72	1.31	26.65	20.33	090
27742		A	Repair of leg epiphyses	10.30	16.44	9.27	1.55	28.29	21.12	090
27745		A	Reinforce tibia	10.07	NA	11.60	1.38	NA	23.05	090
27750		A	Treatment of tibia fracture	3.19	5.65	4.00	0.43	9.27	7.62	090
27752		A	Treatment of tibia fracture	5.84	8.20	6.17	0.82	14.86	12.83	090
27756		A	Treatment of tibia fracture	6.78	NA	10.84	0.94	NA	18.56	090
27758		A	Treatment of tibia fracture	11.67	NA	12.22	1.52	NA	25.41	090
27759		A	Treatment of tibia fracture	13.76	NA	13.46	1.93	NA	29.15	090
27760		A	Treatment of ankle fracture	3.01	5.42	3.87	0.39	8.82	7.27	090
27762		A	Treatment of ankle fracture	5.25	7.57	5.75	0.71	13.53	11.71	090
27766		A	Treatment of ankle fracture	8.36	NA	8.26	1.17	NA	17.79	090
27780		A	Treatment of fibula fracture	2.65	5.37	3.69	0.33	8.35	6.67	090
27781		A	Treatment of fibula fracture	4.40	6.38	4.62	0.57	11.35	9.59	090
27784		A	Treatment of fibula fracture	7.11	NA	8.63	0.98	NA	16.72	090
27786		A	Treatment of ankle fracture	2.84	5.38	3.78	0.37	8.59	6.99	090
27788		A	Treatment of ankle fracture	4.45	6.65	4.62	0.61	11.71	9.68	090
27792		A	Treatment of ankle fracture	7.66	NA	8.18	1.07	NA	16.91	090
27808		A	Treatment of ankle fracture	2.83	6.44	4.50	0.38	9.65	7.71	090
27810		A	Treatment of ankle fracture	5.13	7.77	5.71	0.71	13.61	11.55	090
27814		A	Treatment of ankle fracture	10.68	NA	10.93	1.50	NA	23.11	090
27816		A	Treatment of ankle fracture	2.89	5.97	4.55	0.37	9.23	7.81	090
27818		A	Treatment of ankle fracture	5.50	7.89	5.88	0.74	14.13	12.12	090
27822		A	Treatment of ankle fracture	11.00	NA	13.18	1.29	NA	25.47	090
27823		A	Treatment of ankle fracture	13.00	NA	14.39	1.65	NA	29.04	090
27824		A	Treat lower leg fracture	2.89	6.43	4.50	0.39	9.71	7.78	090
27825		A	Treat lower leg fracture	6.19	8.30	6.32	0.85	15.34	13.36	090
27826		A	Treat lower leg fracture	8.54	NA	11.88	1.19	NA	21.61	090
27827		A	Treat lower leg fracture	14.06	NA	15.00	1.96	NA	31.02	090
27828		A	Treat lower leg fracture	16.23	NA	15.03	2.27	NA	33.53	090
27829		A	Treat lower leg joint	5.49	NA	8.67	0.77	NA	14.93	090
27830		A	Treat lower leg dislocation	3.79	5.82	4.36	0.44	10.05	8.59	090
27831		A	Treat lower leg dislocation	4.56	NA	4.94	0.61	NA	10.11	090
27832		A	Treat lower leg dislocation	6.49	NA	8.06	0.91	NA	15.46	090
27840		A	Treat ankle dislocation	4.58	NA	6.21	0.47	NA	11.26	090
27842		A	Treat ankle dislocation	6.21	NA	5.25	0.76	NA	12.22	090
27846		A	Treat ankle dislocation	9.79	NA	10.46	1.36	NA	21.61	090
27848		A	Treat ankle dislocation	11.20	NA	11.70	1.55	NA	24.45	090
27860		A	Fixation of ankle joint	2.34	NA	3.78	0.31	NA	6.43	010
27870		A	Fusion of ankle joint	13.91	NA	13.76	1.95	NA	29.62	090
27871		A	Fusion of tibiofibular joint	9.17	NA	11.03	1.29	NA	21.49	090
27880		A	Amputation of lower leg	11.85	NA	11.95	1.38	NA	25.18	090
27881		A	Amputation of lower leg	12.34	NA	13.44	1.59	NA	27.37	090
27882		A	Amputation of lower leg	8.94	NA	13.13	1.03	NA	23.10	090
27884		A	Amputation follow-up surgery	8.21	NA	10.78	0.95	NA	19.94	090
27886		A	Amputation follow-up surgery	9.32	NA	11.26	1.13	NA	21.71	090
27888		A	Amputation of foot at ankle	9.67	NA	11.11	1.26	NA	22.04	090
27889		A	Amputation of foot at ankle	9.98	NA	10.45	1.19	NA	21.62	090
27892		A	Decompression of leg	7.39	NA	8.41	0.86	NA	16.66	090
27893		A	Decompression of leg	7.35	NA	8.58	0.90	NA	16.83	090
27894		A	Decompression of leg	10.49	NA	10.09	1.25	NA	21.83	090
27899		C	Leg/ankle surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
28001		A	Drainage of bursa of foot	2.73	5.62	3.09	0.31	8.66	6.13	010
28002		A	Treatment of foot infection	4.62	6.78	4.22	0.56	11.96	9.40	010
28003		A	Treatment of foot infection	8.41	11.40	10.63	1.03	20.84	20.07	090
28005		A	Treat foot bone lesion	8.68	NA	10.26	1.14	NA	20.08	090
28008		A	Incision of foot fascia	4.45	8.17	6.38	0.56	13.18	11.39	090
28010		A	Incision of toe tendon	2.84	7.64	5.37	0.39	10.87	8.60	090
28011		A	Incision of toe tendons	4.14	9.36	6.79	0.58	14.08	11.51	090
28020		A	Exploration of foot joint	5.01	8.12	6.81	0.64	13.77	12.46	090
28022		A	Exploration of foot joint	4.67	7.90	6.26	0.62	13.19	11.55	090
28024		A	Exploration of toe joint	4.38	8.55	6.64	0.50	13.43	11.52	090
28030		A	Removal of foot nerve	6.15	NA	3.50	0.85	NA	10.50	090
28035		A	Decompression of tibia nerve	5.09	8.80	5.35	0.71	14.60	11.15	090
28043		A	Excision of foot lesion	3.54	7.47	4.96	0.45	11.46	8.95	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
28045		A	Excision of foot lesion	4.72	8.18	5.81	0.62	13.52	11.15	090
28046		A	Resection of tumor, foot	10.18	13.58	11.38	1.13	24.89	22.69	090
28050		A	Biopsy of foot joint lining	4.25	9.52	6.11	0.55	14.32	10.91	090
28052		A	Biopsy of foot joint lining	3.94	8.01	5.76	0.51	12.46	10.21	090
28054		A	Biopsy of toe joint lining	3.45	7.70	5.50	0.45	11.60	9.40	090
28060		A	Partial removal, foot fascia	5.23	8.72	6.51	0.69	14.64	12.43	090
28062		A	Removal of foot fascia	6.52	9.27	6.87	0.85	16.64	14.24	090
28070		A	Removal of foot joint lining	5.10	7.98	6.12	0.68	13.76	11.90	090
28072		A	Removal of foot joint lining	4.58	8.84	8.67	0.64	14.06	11.89	090
28080		A	Removal of foot lesion	3.58	7.82	5.51	0.50	11.90	9.59	090
28086		A	Excise foot tendon sheath	4.78	11.87	7.11	0.66	17.31	12.55	090
28088		A	Excise foot tendon sheath	3.86	9.97	6.62	0.52	14.35	11.00	090
28090		A	Removal of foot lesion	4.41	8.12	5.64	0.57	13.10	10.62	090
28092		A	Removal of toe lesions	3.64	8.17	6.08	0.46	12.27	10.18	090
28100		A	Removal of ankle/heel lesion	5.66	13.07	7.70	0.76	19.49	14.12	090
28102		A	Remove/graft foot lesion	7.73	NA	9.00	0.97	NA	17.70	090
28103		A	Remove/graft foot lesion	6.50	8.76	6.93	0.89	16.15	14.32	090
28104		A	Removal of foot lesion	5.12	8.49	6.76	0.69	14.30	12.57	090
28106		A	Remove/graft foot lesion	7.16	NA	6.97	1.01	NA	15.14	090
28107		A	Remove/graft foot lesion	5.56	9.96	7.13	0.74	16.26	13.43	090
28108		A	Removal of toe lesions	4.16	7.49	5.36	0.52	12.17	10.04	090
28110		A	Part removal of metatarsal	4.08	8.80	6.87	0.49	13.37	11.44	090
28111		A	Part removal of metatarsal	5.01	9.09	7.69	0.63	14.73	13.33	090
28112		A	Part removal of metatarsal	4.49	8.89	7.47	0.60	13.98	12.56	090
28113		A	Part removal of metatarsal	4.79	8.92	7.13	0.63	14.34	12.55	090
28114		A	Removal of metatarsal heads	9.79	12.36	10.85	1.36	23.51	22.00	090
28116		A	Revision of foot	7.75	9.27	6.38	1.03	18.05	15.16	090
28118		A	Removal of heel bone	5.96	9.37	7.24	0.79	16.12	13.99	090
28119		A	Removal of heel spur	5.39	8.58	6.15	0.74	14.71	12.28	090
28120		A	Part removal of ankle/heel	5.40	11.28	9.83	0.69	17.37	15.92	090
28122		A	Partial removal of foot bone	7.29	10.94	9.50	0.96	19.19	17.75	090
28124		A	Partial removal of toe	4.81	9.61	7.61	0.65	15.07	13.07	090
28126		A	Partial removal of toe	3.52	8.37	6.76	0.49	12.38	10.77	090
28130		A	Removal of ankle bone	8.11	NA	8.77	1.11	NA	17.99	090
28140		A	Removal of metatarsal	6.91	10.40	7.92	0.84	18.15	15.67	090
28150		A	Removal of toe	4.09	8.75	7.07	0.52	13.36	11.68	090
28153		A	Partial removal of toe	3.66	8.39	6.22	0.49	12.54	10.37	090
28160		A	Partial removal of toe	3.74	8.55	7.22	0.51	12.80	11.47	090
28171		A	Extensive foot surgery	9.60	NA	8.27	1.13	NA	19.00	090
28173		A	Extensive foot surgery	8.80	10.83	8.88	1.04	20.67	18 72	090
28175		A	Extensive foot surgery	6.05	9.54	6.99	0.75	16.34	13.79	090
28190		A	Removal of foot foreign body	1.96	6.54	3.53	0.16	8.66	5.65	010
28192		A	Removal of foot foreign body	4.64	8.20	5.44	0.52	13.36	10.60	090
28193		A	Removal of foot foreign body	5.73	8.94	6.67	0.63	15.30	13 03	090
28200		A	Repair of foot tendon	4.60	8.47	6.32	0.59	13.66	11.51	090
28202		A	Repair/graft of foot tendon	6.84	12.63	6.83	0.86	20.33	14.53	090
28208		A	Repair of foot tendon	4.37	8.17	6.03	0.59	13.13	10.99	090
28210		A	Repair/graft of foot tendon	6.35	9.83	6.38	0.77	16.95	13.50	090
28220		A	Release of foot tendon	4.53	8.12	6.41	0 63	13.28	11.57	090
28222		A	Release of foot tendons	5.62	8.40	6.77	0.77	14.79	13.16	090
28225		A	Release of foot tendon	3.66	7.76	5.57	0.50	11.92	9.73	090
28226		A	Release of foot tendons	4.53	8.30	6.66	0.62	13.45	11.81	090
28230		A	Incision of foot tendon(s)	4.24	8.26	6.83	0.59	13.09	11.66	090
28232		A	Incision of toe tendon	3.39	8.12	6.53	0.48	11.99	10.40	090
28234		A	Incision of foot tendon	3.37	7.98	6.11	0.46	11.81	9.94	090
28238		A	Revision of foot tendon	7.73	9.77	7.60	1.08	18.58	16.41	090
28240		A	Release of big toe	4.36	8.17	6.40	0.61	13.14	11.37	090
28250		A	Revision of foot fascia	5.92	9.05	7.12	0.81	15.78	13.85	090
28260		A	Release of midfoot joint	7.96	11.04	8.08	1.08	20.08	17.12	090
28261		A	Revision of foot tendon	11.73	11.16	9.64	1.66	24.55	23.03	090
28262		A	Revision of foot and ankle	15.83	15.66	15.09	2.22	33.71	33.14	090
28264		A	Release of midfoot joint	10.35	10.98	10.98	1.46	22.79	22.79	090
28270		A	Release of foot contracture	4.76	8.75	7.43	0.67	14.18	12.86	090
28272		A	Release of toe joint, each	3.80	7.70	5.50	0.52	12.02	9.82	090
28280		A	Fusion of toes	5.19	8.39	6.77	0.72	14.30	12.68	090
28285		A	Repair of hammertoe	4.59	8.79	6.76	0.64	14.02	11.99	090
28286		A	Repair of hammertoe	4.56	8.78	6.75	0.64	13.98	11.95	090
28288		A	Partial removal of foot bone	4.74	9.00	8.02	0.65	14.39	13.41	090
28289		A	Repair hallux rigidus	7.04	10.54	9.75	0.96	18.54	17.75	090
28290		A	Correction of bunion	5.66	9.55	8.81	0.79	16.00	15.26	090
28292		A	Correction of bunion	7.04	9.82	7.69	0.98	17.84	15.71	090
28293		A	Correction of bunion	9.15	10.67	8.02	1.28	21.10	18.45	090
28294		A	Correction of bunion	8.56	10.52	8.30	1.16	20.24	18.02	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
28296		A	Correction of bunion	9.18	10.84	8.65	1.28	21.30	19.11	090
28297		A	Correction of bunion	9.18	12.80	10.25	1.31	23.29	20.74	090
28298		A	Correction of bunion	7.94	10.10	8.48	1.12	19.16	17.54	090
28299		A	Correction of bunion	10.58	11.55	9.21	1.24	23.37	21.03	090
28300		A	Incision of heel bone	9.54	14.15	9.43	1.31	25.00	20.28	090
28302		A	Incision of ankle bone	9.55	9.55	9.22	1.15	20.25	19.92	090
28304		A	Incision of midfoot bones	9.16	9.53	7.88	1.00	19.69	18.04	090
28305		A	Incise/graft midfoot bones	10.50	14.52	10.07	0.55	25.57	21.12	090
28306		A	Incision of metatarsal	5.86	8.84	6.51	0.81	15.51	13.18	090
28307		A	Incision of metatarsal	6.33	13.70	7.74	0.71	20.74	14.78	090
28308		A	Incision of metatarsal	5.29	7.97	5.60	0.74	14.00	11.63	090
28309		A	Incision of metatarsals	12.78	NA	11.08	1.64	NA	25.50	090
28310		A	Revision of big toe	5.43	9.00	6.93	0.76	15.19	13.12	090
28312		A	Revision of toe	4.55	8.66	7.87	0.62	13.83	13.04	090
28313		A	Repair deformity of toe	5.01	9.06	9.06	0.68	14.75	14.75	090
28315		A	Removal of sesamoid bone	4.86	7.95	5.82	0.66	13.47	11.34	090
28320		A	Repair of foot bones	9.18	NA	9.02	1.27	NA	19.47	090
28322		A	Repair of metatarsals	8.34	11.71	8.38	1.17	21.22	17.89	090
28340		A	Resect enlarged toe tissue	6.98	8.96	6.28	0.98	16.92	14.24	090
28341		A	Resect enlarged toe	8.41	9.55	6.88	1.18	19.14	16.47	090
28344		A	Repair extra toe(s)	4.26	7.38	4.86	0.60	12.24	9.72	090
28345		A	Repair webbed toe(s)	5.92	9.48	7.58	0.84	16.24	14.34	090
28360		A	Reconstruct cleft foot	13.34	NA	12.22	1.88	NA	27.44	090
28400		A	Treatment of heel fracture	2.16	5.76	4.74	0.29	8.21	7.19	090
28405		A	Treatment of heel fracture	4.57	6.66	5.87	0.63	11.86	11.07	090
28406		A	Treatment of heel fracture	6.31	NA	8.69	0.87	NA	15.87	090
28415		A	Treat heel fracture	15.97	NA	15.72	2.24	NA	33.93	090
28420		A	Treat/graft heel fracture	16.64	NA	15.95	2.29	NA	34.88	090
28430		A	Treatment of ankle fracture	2.09	5.25	4.26	0.27	7.61	6.62	090
28435		A	Treatment of ankle fracture	3.40	5.41	4.57	0.47	9.28	8.44	090
28436		A	Treatment of ankle fracture	4.71	NA	7.86	0.66	NA	13.23	090
28445		A	Treat ankle fracture	15.62	NA	13.94	1.29	NA	30.85	090
28450		A	Treat midfoot fracture, each	1.90	5.28	4.07	0.25	7.43	6.22	090
28455		A	Treat midfoot fracture, each	3.09	5.51	4.94	0.43	9.03	8.46	090
28456		A	Treat midfoot fracture	2.68	NA	6.27	0.36	NA	9.31	090
28465		A	Treat midfoot fracture, each	7.01	NA	8.25	0.87	NA	16.13	090
28470		A	Treat metatarsal fracture	1.99	4.52	3.41	0.26	6.77	5.66	090
28475		A	Treat metatarsal fracture	2.97	5.18	4.38	0.41	8.56	7.76	090
28476		A	Treat metatarsal fracture	3.38	NA	6.71	0.46	NA	10.55	090
28485		A	Treat metatarsal fracture	5.71	NA	8.16	0.80	NA	14.67	090
28490		A	Treat big toe fracture	1.09	2.76	2.21	0.13	3.98	3.43	090
28495		A	Treat big toe fracture	1.58	2.82	2.31	0.19	4.59	4.08	090
28496		A	Treat big toe fracture	2.33	11.10	4.58	0.32	13.75	7.23	090
28505		A	Treat big toe fracture	3.81	11.46	6.74	0.50	15.77	11.05	090
28510		A	Treatment of toe fracture	1.09	2.51	2.23	0.13	3.73	3.45	090
28515		A	Treatment of toe fracture	1.46	2.83	2.30	0.17	4.46	3.93	090
28525		A	Treat toe fracture	3.32	10.82	6.16	0.44	14.58	9.92	090
28530		A	Treat sesamoid bone fracture	1.06	2.91	2.91	0.13	4.10	4.10	090
28531		A	Treat sesamoid bone fracture	2.35	11.91	4.73	0.33	14.59	7.41	090
28540		A	Treat foot dislocation	2.04	3.75	3.75	0.24	6.03	6.03	090
28545		A	Treat foot dislocation	2.45	4.76	4.76	0.33	7.54	7.54	090
28546		A	Treat foot dislocation	3.20	12.55	6.31	0.46	16.21	9.97	090
28555		A	Repair foot dislocation	6.30	13.49	8.36	0.88	20.67	15.54	090
28570		A	Treat foot dislocation	1.66	3.67	3.67	0.22	5.55	5.55	090
28575		A	Treat foot dislocation	3.31	5.19	5.19	0.45	8.95	8.95	090
28576		A	Treat foot dislocation	4.17	12.06	6.85	0.56	16.79	11.58	090
28585		A	Repair foot dislocation	7.99	8.75	8.32	1.13	17.87	17.44	090
28600		A	Treat foot dislocation	1.89	4.32	3.89	0.24	6.45	6.02	090
28605		A	Treat foot dislocation	2.71	4.40	4.40	0.35	7.46	7.46	090
28606		A	Treat foot dislocation	4.90	16.14	7.09	0.68	21.72	12.67	090
28615		A	Repair foot dislocation	7.77	NA	9.45	1.09	NA	18.31	090
28630		A	Treat toe dislocation	1.70	2.35	2.35	0.17	4.22	4.22	010
28635		A	Treat toe dislocation	1.91	2.49	2.49	0.24	4.64	4.64	010
28636		A	Treat toe dislocation	2.77	4.81	3.22	0.39	7.97	6.38	010
28645		A	Repair toe dislocation	4.22	6.69	4.34	0.58	11.49	9.14	090
28660		A	Treat toe dislocation	1.23	3.11	2.60	0.11	4.45	3.94	010
28665		A	Treat toe dislocation	1.92	2.47	2.47	0.24	4.63	4.63	010
28666		A	Treat toe dislocation	2.66	13.30	3.00	0.38	16.34	6.04	010
28675		A	Repair of toe dislocation	2.92	9.48	4.90	0.41	12.81	8.23	090
28705		A	Fusion of foot bones	18.80	NA	15.67	2.13	NA	36.60	090
28715		A	Fusion of foot bones	13.10	NA	12.57	1.84	NA	27.51	090
28725		A	Fusion of foot bones	11.61	NA	11.48	1.63	NA	24.72	090
28730		A	Fusion of foot bones	10.76	NA	10.76	1.51	NA	23.03	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
28735		A	Fusion of foot bones	10.85	NA	10.45	1.51	NA	22.81	090
28737		A	Revision of foot bones	9.64	NA	9.04	1.36	NA	20.04	090
28740		A	Fusion of foot bones	8.02	13.03	8.94	1.13	22.18	18.09	090
28750		A	Fusion of big toe joint	7.30	12.48	9.13	1.03	20.81	17.46	090
28755		A	Fusion of big toe joint	4.74	8.52	6.42	0.66	13.92	11.82	090
28760		A	Fusion of big toe joint	7.75	10.39	7.82	1.07	19.21	16.64	090
28800		A	Amputation of midfoot	8.21	NA	8.90	0.98	NA	18.09	090
28805		A	Amputation thru metatarsal	8.39	NA	9.00	0.97	NA	18.36	090
28810		A	Amputation toe & metatarsal	6.21	NA	7.97	0.70	NA	14.88	090
28820		A	Amputation of toe	4.41	9.91	7.16	0.51	14.83	12.08	090
28825		A	Partial amputation of toe	3.59	10.12	6.95	0.43	14.14	10.97	090
28899		C	Foot/toes surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
29000		A	Application of body cast	2.25	2.71	1.67	0.30	5.26	4.22	000
29010		A	Application of body cast	2.06	2.98	1.72	0.27	5.31	4.05	000
29015		A	Application of body cast	2.41	3.17	1.93	0.21	5.79	4.55	000
29020		A	Application of body cast	2.11	3.33	1.47	0.16	5.60	3.74	000
29025		A	Application of body cast	2.40	3.32	1.86	0.26	5.98	4.52	000
29035		A	Application of body cast	1.77	3.05	1.56	0.24	5.06	3.57	000
29040		A	Application of body cast	2.22	2.54	1.49	0.35	5.11	4.06	000
29044		A	Application of body cast	2.12	3.20	1.81	0.29	5.61	4.22	000
29046		A	Application of body cast	2.41	3.31	2.04	0.34	6.06	4.79	000
29049		A	Application of figure eight	0.89	1.07	0.57	0.12	2.08	1.58	000
29055		A	Application of shoulder cast	1.78	2.40	1.42	0.24	4.42	3.44	000
29058		A	Application of shoulder cast	1.31	1.33	0.73	0.14	2.78	2.18	000
29065		A	Application of long arm cast	0.87	1.10	0.69	0.12	2.09	1.68	000
29075		A	Application of forearm cast	0.77	1.05	0.63	0.11	1.93	1.51	000
29085		A	Apply hand/wrist cast	0.87	1.10	0.62	0.11	2.08	1.60	000
29086		A	Apply finger cast	0.62	0.81	0.50	0.07	1.50	1.19	000
29105		A	Apply long arm splint	0.87	1.05	0.52	0.11	2.03	1.50	000
29125		A	Apply forearm splint	0.59	0.88	0.41	0.06	1.53	1.06	000
29126		A	Apply forearm splint	0.77	1.21	0.47	0.06	2.04	1.30	000
29130		A	Application of finger splint	0.50	0.44	0.18	0.05	0.99	0.73	000
29131		A	Application of finger splint	0.55	0.71	0.23	0.03	1.29	0.81	000
29200		A	Strapping of chest	0.65	0.85	0.37	0.04	1.54	1.06	000
29220		A	Strapping of low back	0.64	0.96	0.41	0.07	1.67	1.12	000
29240		A	Strapping of shoulder	0.71	0.92	0.39	0.05	1.68	1.15	000
29260		A	Strapping of elbow or wrist	0.55	0.85	0.35	0.04	1.44	0.94	000
29280		A	Strapping of hand or finger	0.51	0.91	0.39	0.04	1.46	0.94	000
29305		A	Application of hip cast	2.03	2.74	1.60	0.29	5.06	3.92	000
29325		A	Application of hip casts	2.32	3.05	1.79	0.31	5.68	4.42	000
29345		A	Application of long leg cast	1.40	1.51	1.02	0.19	3.10	2.61	000
29355		A	Application of long leg cast	1.53	1.47	1.11	0.20	3.20	2.84	000
29358		A	Apply long leg cast brace	1.43	1.72	1.07	0.19	3.34	2.69	000
29365		A	Application of long leg cast	1.18	1.38	0.90	0.17	2.73	2.25	000
29405		A	Apply short leg cast	0.86	1.03	0.66	0.12	2.01	1.64	000
29425		A	Apply short leg cast	1.01	1.05	0.68	0.14	2.20	1.83	000
29435		A	Apply short leg cast	1.18	1.35	0.88	0.17	2.70	2.23	000
29440		A	Addition of walker to cast	0.57	0.61	0.26	0.07	1.25	0.90	000
29445		A	Apply rigid leg cast	1.78	1.58	0.96	0.24	3.60	2.98	000
29450		A	Application of leg cast	2.08	1.40	1.11	0.13	3.61	3.32	000
29505		A	Application, long leg splint	0.69	1.10	0.48	0.06	1.85	1.23	000
29515		A	Application lower leg splint	0.73	0.78	0.48	0.07	1.58	1.28	000
29520		A	Strapping of hip	0.54	0.93	0.44	0.02	1.49	1.00	000
29530		A	Strapping of knee	0.57	0.83	0.36	0.04	1.44	0.97	000
29540		A	Strapping of ankle	0.51	0.40	0.32	0.04	0.95	0.87	000
29550		A	Strapping of toes	0.47	0.40	0.29	0.05	0.92	0.81	000
29580		A	Application of paste boot	0.57	0.61	0.36	0.05	1.23	0.98	000
29590		A	Application of foot splint	0.76	0.50	0.30	0.06	1.32	1.12	000
29700		A	Removal/revision of cast	0.57	0.81	0.28	0.07	1.45	0.92	000
29705		A	Removal/revision of cast	0.76	0.73	0.39	0.10	1.59	1.25	000
29710		A	Removal/revision of cast	1.34	1.50	0.66	0.17	3.01	2.17	000
29715		A	Removal/revision of cast	0.94	0.98	0.29	0.08	2.00	1.31	000
29720		A	Repair of body cast	0.68	0.95	0.36	0.10	1.73	1.14	000
29730		A	Windowing of cast	0.75	0.71	0.36	0.10	1.56	1.21	000
29740		A	Wedging of cast	1.12	1.02	0.46	0.15	2.29	1.73	000
29750		A	Wedging of clubfoot cast	1.26	1.13	0.62	0.16	2.55	2.04	000
29799		C	Casting/strapping procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
29800		A	Jaw arthroscopy/surgery	6.43	NA	9.15	0.84	NA	16.42	090
29804		A	Jaw arthroscopy/surgery	8.14	NA	8.73	0.66	NA	17.53	090
29805		A	Shoulder arthroscopy, dx	5.89	3.23	3.23	0.83	9.95	9.95	090
29806		A	Shoulder arthroscopy/surgery	14.37	NA	11.33	2.01	NA	27.71	090
29807		A	Shoulder arthroscopy/surgery	13.90	NA	11.06	2.01	NA	26.97	090
29815		D	Shoulder arthroscopy	0.00	NA	0.00	0.00	NA	0.00	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
29819		A	Shoulder arthroscopy/surgery	7.62	NA	9.82	1.07	NA	18.51	090
29820		A	Shoulder arthroscopy/surgery	7.07	NA	9.55	0.99	NA	17.61	090
29821		A	Shoulder arthroscopy/surgery	7.72	NA	9.84	1.08	NA	18.64	090
29822		A	Shoulder arthroscopy/surgery	7.43	NA	9.75	1.04	NA	18.22	090
29823		A	Shoulder arthroscopy/surgery	8.17	NA	10.14	1.15	NA	19.46	090
29824		A	Shoulder arthroscopy/surgery	8.25	NA	7.48	1.16	NA	16.89	090
29825		A	Shoulder arthroscopy/surgery	7.62	NA	9.80	1.06	NA	18.48	090
29826		A	Shoulder arthroscopy/surgery	8.99	NA	10.65	1.26	NA	20.90	090
29830		A	Elbow arthroscopy	5.76	NA	6.14	0.79	NA	12.69	090
29834		A	Elbow arthroscopy/surgery	6.28	NA	6.94	0.86	NA	14.08	090
29835		A	Elbow arthroscopy/surgery	6.48	NA	6.95	0.88	NA	14.31	090
29836		A	Elbow arthroscopy/surgery	7.55	NA	7.62	1.06	NA	16.23	090
29837		A	Elbow arthroscopy/surgery	6.87	NA	7.30	0.96	NA	15.13	090
29838		A	Elbow arthroscopy/surgery	7.71	NA	7.73	1.07	NA	16.51	090
29840		A	Wrist arthroscopy	5.54	NA	8.38	0.69	NA	14.61	090
29843		A	Wrist arthroscopy/surgery	6.01	NA	8.70	0.82	NA	15.53	090
29844		A	Wrist arthroscopy/surgery	6.37	NA	8.96	0.86	NA	16.19	090
29845		A	Wrist arthroscopy/surgery	7.52	NA	9.56	0.84	NA	17.92	090
29846		A	Wrist arthroscopy/surgery	6.75	NA	11.67	0.89	NA	19.31	090
29847		A	Wrist arthroscopy/surgery	7.08	NA	11.85	0.91	NA	19.84	090
29848		A	Wrist endoscopy/surgery	5.44	NA	8.46	0.72	NA	14.62	090
29850		A	Knee arthroscopy/surgery	8.19	NA	7.49	0.74	NA	16.42	090
29851		A	Knee arthroscopy/surgery	13.10	NA	12.00	1.81	NA	26.91	090
29855		A	Tibial arthroscopy/surgery	10.62	NA	10.55	1.50	NA	22.67	090
29856		A	Tibial arthroscopy/surgery	14.14	NA	12.49	2.00	NA	28.63	090
29860		A	Hip arthroscopy, dx	8.05	NA	8.05	1.14	NA	17.24	090
29861		A	Hip arthroscopy/surgery	9.15	NA	8.71	1.29	NA	19.15	090
29862		A	Hip arthroscopy/surgery	9.90	NA	9.75	1.39	NA	21.04	090
29863		A	Hip arthroscopy/surgery	9.90	NA	10.31	1.40	NA	21.61	090
29870		A	Knee arthroscopy, dx	5.07	NA	6.27	0.67	NA	12.01	090
29871		A	Knee arthroscopy/drainage	6.55	NA	8.38	0.88	NA	15.81	090
29874		A	Knee arthroscopy/surgery	7.05	NA	8.15	0.87	NA	16.07	090
29875		A	Knee arthroscopy/surgery	6.31	NA	7.69	0.88	NA	14.88	090
29876		A	Knee arthroscopy/surgery	7.92	NA	9.19	1.11	NA	18.22	090
29877		A	Knee arthroscopy/surgery	7.35	NA	8.29	1.03	NA	16.67	090
29879		A	Knee arthroscopy/surgery	8.04	NA	8.68	1.13	NA	17.85	090
29880		A	Knee arthroscopy/surgery	8.50	NA	8.95	1.19	NA	18.64	090
29881		A	Knee arthroscopy/surgery	7.76	NA	8.53	1.09	NA	17.38	090
29882		A	Knee arthroscopy/surgery	8.65	NA	9.01	1.09	NA	18.75	090
29883		A	Knee arthroscopy/surgery	11.05	NA	10.41	1.33	NA	22.79	090
29884		A	Knee arthroscopy/surgery	7.33	NA	8.87	1.03	NA	17.23	090
29885		A	Knee arthroscopy/surgery	9.09	NA	9.85	1.27	NA	20.21	090
29886		A	Knee arthroscopy/surgery	7.54	NA	8.99	1.06	NA	17.59	090
29887		A	Knee arthroscopy/surgery	9.04	NA	9.83	1.27	NA	20.14	090
29888		A	Knee arthroscopy/surgery	13.90	NA	12.50	1.95	NA	28.35	090
29889		A	Knee arthroscopy/surgery	16.00	NA	13.71	2.11	NA	31.82	090
29891		A	Ankle arthroscopy/surgery	8.40	NA	8.92	1.17	NA	18.49	090
29892		A	Ankle arthroscopy/surgery	9.00	NA	9.04	1.26	NA	19.30	090
29893		A	Scope, plantar fasciotomy	5.22	NA	5.56	0.74	NA	11.52	090
29894		A	Ankle arthroscopy/surgery	7.21	NA	8.04	1.01	NA	16.26	090
29895		A	Ankle arthroscopy/surgery	6.99	NA	8.01	0.97	NA	15.97	090
29897		A	Ankle arthroscopy/surgery	7.18	NA	8.73	1.01	NA	16.92	090
29898		A	Ankle arthroscopy/surgery	8.32	NA	8.79	1.14	NA	18.25	090
29900		A	Mcp joint arthroscopy, dx	5.42	NA	5.88	0.69	NA	11.99	090
29901		A	Mcp joint arthroscopy, surg	6.13	NA	6.28	0.81	NA	13.22	090
29902		A	Mcp joint arthroscopy, surg	6.70	NA	6.60	0.89	NA	14.19	090
29909		D	Arthroscopy of joint	0.00	0.00	0.00	0.00	0.00	0.00	YYY
29999		C	Arthroscopy of joint	0.00	0.00	0.00	0.00	0.00	0.00	YYY
30000		A	Drainage of nose lesion	1.43	2.53	1.51	0.10	4.06	3.04	010
30020		A	Drainage of nose lesion	1.43	2.64	1.57	0.08	4.15	3.08	010
30100		A	Intranasal biopsy	0.94	1.34	0.53	0.06	2.34	1.53	000
30110		A	Removal of nose polyp(s)	1.63	2.80	0.88	0.12	4.55	2.63	010
30115		A	Removal of nose polyp(s)	4.35	NA	4.54	0.31	NA	9.20	090
30117		A	Removal of intranasal lesion	3.16	4.95	3.20	0.22	8.33	6.58	090
30118		A	Removal of intranasal lesion	9.69	NA	8.55	0.66	NA	18.90	090
30120		A	Revision of nose	5.27	5.71	5.71	0.41	11.39	11.39	090
30124		A	Removal of nose lesion	3.10	NA	3.31	0.20	NA	6.61	090
30125		A	Removal of nose lesion	7.16	NA	6.61	0.54	NA	14.31	090
30130		A	Removal of turbinate bones	3.38	NA	3.99	0.22	NA	7.59	090
30140		A	Removal of turbinate bones	3.43	NA	4.61	0.24	NA	8.28	090
30150		A	Partial removal of nose	9.14	NA	8.83	0.76	NA	18.73	090
30160		A	Removal of nose	9.58	NA	8.79	0.78	NA	19.15	090
30200		A	Injection treatment of nose	0.78	1.23	0.46	0.06	2.07	1.30	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
30210		A	Nasal sinus therapy	1.08	2.15	0.61	0.08	3.31	1.77	010
30220		A	Insert nasal septal button	1.54	2.52	0.84	0.11	4.17	2.49	010
30300		A	Remove nasal foreign body	1.04	2.62	0.37	0.07	3.73	1.48	010
30310		A	Remove nasal foreign body	1.96	NA	1.92	0.14	NA	4.02	010
30320		A	Remove nasal foreign body	4.52	NA	5.26	0.36	NA	10.14	090
30400		R	Reconstruction of nose	9.83	NA	8.95	0.80	NA	19.58	090
30410		R	Reconstruction of nose	12.98	NA	10.45	1.08	NA	24.51	090
30420		R	Reconstruction of nose	15.88	NA	12.50	1.24	NA	29.62	090
30430		R	Revision of nose	7.21	NA	7.40	0.62	NA	15.23	090
30435		R	Revision of nose	11.71	NA	10.68	1.10	NA	23.49	090
30450		R	Revision of nose	18.65	NA	14.37	1.53	NA	34.55	090
30460		A	Revision of nose	9.96	NA	9.16	0.85	NA	19.97	090
30462		A	Revision of nose	19.57	NA	14.30	1.92	NA	35.79	090
30465		A	Repair nasal stenosis	11.64	NA	9.58	0.97	NA	22.19	090
30520		A	Repair of nasal septum	5.70	NA	5.93	0.41	NA	12.04	090
30540		A	Repair nasal defect	7.75	NA	6.71	0.53	NA	14.99	090
30545		A	Repair nasal defect	11.38	NA	9.19	0.80	NA	21.37	090
30560		A	Release of nasal adhesions	1.26	2.37	1.52	0.09	3.72	2.87	010
30580		A	Repair upper jaw fistula	6.69	5.00	5.00	0.50	12.19	12.19	090
30600		A	Repair mouth/nose fistula	6.02	4.90	4.90	0.70	11.62	11.62	090
30620		A	Intranasal reconstruction	5.97	NA	6.69	0.45	NA	13.11	090
30630		A	Repair nasal septum defect	7.12	NA	7.23	0.51	NA	14.86	090
30801		A	Cauterization, inner nose	1.09	2.57	2.31	0.08	3.74	3.48	010
30802		A	Cauterization, inner nose	2.03	3.14	2.87	0.15	5.32	5.05	010
30901		A	Control of nosebleed	1.21	1.43	0.34	0.09	2.73	1.64	000
30903		A	Control of nosebleed	1.54	3.20	0.53	0.12	4.86	2.19	000
30905		A	Control of nosebleed	1.97	3.85	0.80	0.15	5.97	2.92	000
30906		A	Repeat control of nosebleed	2.45	4.27	1.27	0.17	6.89	3.89	000
30915		A	Ligation, nasal sinus artery	7.20	NA	7.13	0.50	NA	14.83	090
30920		A	Ligation, upper jaw artery	9.83	NA	8.64	0.69	NA	19.16	090
30930		A	Therapy, fracture of nose	1.26	NA	2.17	0.09	NA	3.52	010
30999		C	Nasal surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
31000		A	Irrigation, maxillary sinus	1.15	2.43	0.66	0.08	3.66	1.89	010
31002		A	Irrigation, sphenoid sinus	1.91	NA	2.07	0.14	NA	4.12	010
31020		A	Exploration, maxillary sinus	2.94	4.20	3.68	0.20	7.34	6.82	090
31030		A	Exploration, maxillary sinus	5.92	4.85	4.68	0.42	11.19	11.02	090
31032		A	Explore sinus,remove polyps	6.57	NA	6.16	0.47	NA	13.20	090
31040		A	Exploration behind upper jaw	9.42	NA	7.34	0.71	NA	17.47	090
31050		A	Exploration, sphenoid sinus	5.28	NA	5.12	0.39	NA	10.79	090
31051		A	Sphenoid sinus surgery	7.11	NA	6.66	0.55	NA	14.32	090
31070		A	Exploration of frontal sinus	4.28	NA	5.04	0.30	NA	9.62	090
31075		A	Exploration of frontal sinus	9.16	NA	8.38	0.64	NA	18.18	090
31080		A	Removal of frontal sinus	11.42	NA	9.13	0.78	NA	21.33	090
31081		A	Removal of frontal sinus	12.75	NA	9.97	1.84	NA	24.56	090
31084		A	Removal of frontal sinus	13.51	NA	10.76	0.96	NA	25.23	090
31085		A	Removal of frontal sinus	14.20	NA	11.12	1.18	NA	26.50	090
31086		A	Removal of frontal sinus	12.86	NA	10.50	0.90	NA	24.26	090
31087		A	Removal of frontal sinus	13.10	NA	10.32	1.15	NA	24.57	090
31090		A	Exploration of sinuses	9.53	NA	9.05	0.66	NA	19.24	090
31200		A	Removal of ethmoid sinus	4.97	NA	5.86	0.25	NA	11.08	090
31201		A	Removal of ethmoid sinus	8.37	NA	7.91	0.58	NA	16.86	090
31205		A	Removal of ethmoid sinus	10.24	NA	8.66	0.58	NA	19.48	090
31225		A	Removal of upper jaw	19.23	NA	15.42	1.38	NA	36.03	090
31230		A	Removal of upper jaw	21.94	NA	17.21	1.57	NA	40.72	090
31231		A	Nasal endoscopy, dx	1.10	2.01	0.61	0.08	3.19	1.79	000
31233		A	Nasal/sinus endoscopy, dx	2.18	2.66	1.24	0.16	5.00	3.58	000
31235		A	Nasal/sinus endoscopy, dx	2.64	2.93	1.49	0.18	5.75	4.31	000
31237		A	Nasal/sinus endoscopy, surg	2.98	3.22	1.66	0.21	6.41	4.85	000
31238		A	Nasal/sinus endoscopy, surg	3.26	3.75	1.89	0.23	7.24	5.38	000
31239		A	Nasal/sinus endoscopy, surg	8.70	NA	6.72	0.46	NA	15.88	010
31240		A	Nasal/sinus endoscopy, surg	2.61	NA	1.62	0.18	NA	4.41	000
31254		A	Revision of ethmoid sinus	4.65	NA	2.79	0.32	NA	7.76	000
31255		A	Removal of ethmoid sinus	6.96	NA	4.14	0.49	NA	11.59	000
31256		A	Exploration maxillary sinus	3.29	NA	2.01	0.23	NA	5.53	000
31267		A	Endoscopy, maxillary sinus	5.46	NA	3.27	0.38	NA	9.11	000
31276		A	Sinus endoscopy, surgical	8.85	NA	5.24	0.62	NA	14.71	000
31287		A	Nasal/sinus endoscopy, surg	3.92	NA	2.37	0.27	NA	6.56	000
31288		A	Nasal/sinus endoscopy, surg	4.58	NA	2.75	0.32	NA	7.65	000
31290		A	Nasal/sinus endoscopy, surg	17.24	NA	11.86	1.20	NA	30.30	010
31291		A	Nasal/sinus endoscopy, surg	18.19	NA	12.28	1.73	NA	32.20	010
31292		A	Nasal/sinus endoscopy, surg	14.76	NA	10.36	0.99	NA	26.11	010
31293		A	Nasal/sinus endoscopy, surg	16.21	NA	11.16	0.97	NA	28.34	010
31294		A	Nasal/sinus endoscopy, surg	19.06	NA	12.46	1.04	NA	32.56	010

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
31299		C	Sinus surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
31300		A	Removal of larynx lesion	14.29	NA	17.46	0.99	NA	32.74	090
31320		A	Diagnostic incision, larynx	5.26	NA	12.54	0.40	NA	18.20	090
31360		A	Removal of larynx	17.08	NA	19.24	1.20	NA	37.52	090
31365		A	Removal of larynx	24.16	NA	23.20	1.72	NA	49.08	090
31367		A	Partial removal of larynx	21.86	NA	23.92	1.57	NA	47.35	090
31368		A	Partial removal of larynx	27.09	NA	28.64	1.90	NA	57.63	090
31370		A	Partial removal of larynx	21.38	NA	23.46	1.51	NA	46.35	090
31375		A	Partial removal of larynx	20.21	NA	21.16	1.43	NA	42.80	090
31380		A	Partial removal of larynx	20.21	NA	21.41	1.40	NA	43.02	090
31382		A	Partial removal of larynx	20.52	NA	23.06	1.44	NA	45.02	090
31390		A	Removal of larynx & pharynx	27.53	NA	28.90	1.95	NA	58.38	090
31395		A	Reconstruct larynx & pharynx	31.09	NA	35.02	2.27	NA	68.38	090
31400		A	Revision of larynx	10.31	NA	15.75	0.72	NA	26.78	090
31420		A	Removal of epiglottis	10.22	NA	15.60	0.71	NA	26.53	090
31500		A	Insert emergency airway	2.33	NA	0.69	0.15	NA	3.17	000
31502		A	Change of windpipe airway	0.65	1.97	0.27	0.04	2.66	0.96	000
31505		A	Diagnostic laryngoscopy	0.61	1.85	0.35	0.04	2.50	1.00	000
31510		A	Laryngoscopy with biopsy	1.92	2.86	1.04	0.15	4.93	3.11	000
31511		A	Remove foreign body, larynx	2.16	3.15	0.75	0.16	5.47	3.07	000
31512		A	Removal of larynx lesion	2.07	3.00	1.10	0.16	5.23	3.33	000
31513		A	Injection into vocal cord	2.10	NA	1.32	0.15	NA	3.57	000
31515		A	Laryngoscopy for aspiration	1.80	2.30	0.90	0.12	4.22	2.82	000
31520		A	Diagnostic laryngoscopy	2.56	NA	1.41	0.17	NA	4.14	000
31525		A	Diagnostic laryngoscopy	2.63	2.94	1.53	0.18	5.75	4.34	000
31526		A	Diagnostic laryngoscopy	2.57	NA	1.59	0.18	NA	4.34	000
31527		A	Laryngoscopy for treatment	3.27	NA	1.77	0.21	NA	5.25	000
31528		A	Laryngoscopy and dilation	2.37	NA	1.24	0.16	NA	3.77	000
31529		A	Laryngoscopy and dilation	2.68	NA	1.62	0.18	NA	4.48	000
31530		A	Operative laryngoscopy	3.39	NA	1.89	0.24	NA	5.52	000
31531		A	Operative laryngoscopy	3.59	NA	2.18	0.25	NA	6.02	000
31535		A	Operative laryngoscopy	3.16	NA	1.88	0.22	NA	5.26	000
31536		A	Operative laryngoscopy	3.56	NA	2.16	0.25	NA	5.97	000
31540		A	Operative laryngoscopy	4.13	NA	2.48	0.29	NA	6.90	000
31541		A	Operative laryngoscopy	4.53	NA	2.72	0.32	NA	7.57	000
31560		A	Operative laryngoscopy	5.46	NA	3.11	0.38	NA	8.95	000
31561		A	Operative laryngoscopy	6.00	NA	2.96	0.42	NA	9.38	000
31570		A	Laryngoscopy with injection	3.87	3.97	2.31	0.24	8.08	6.42	000
31571		A	Laryngoscopy with injection	4.27	NA	2.46	0.30	NA	7.03	000
31575		A	Diagnostic laryngoscopy	1.10	2.08	0.59	0.08	3.26	1.77	000
31576		A	Laryngoscopy with biopsy	1.97	2.26	1.08	0.13	4.36	3.18	000
31577		A	Remove foreign body, larynx	2.47	2.90	1.31	0.17	5.54	3.95	000
31578		A	Removal of larynx lesion	2.84	3.13	1.62	0.20	6.17	4.66	000
31579		A	Diagnostic laryngoscopy	2.26	2.97	1.27	0.16	5.39	3.69	000
31580		A	Revision of larynx	12.38	NA	16.85	0.87	NA	30.10	090
31582		A	Revision of larynx	21.62	NA	22.06	1.52	NA	45.20	090
31584		A	Treat larynx fracture	19.64	NA	19.05	1.42	NA	40.11	090
31585		A	Treat larynx fracture	4.64	NA	8.92	0.30	NA	13.86	090
31586		A	Treat larynx fracture	8.03	NA	12.71	0.56	NA	21.30	090
31587		A	Revision of larynx	11.99	NA	14.77	0.88	NA	27.64	090
31588		A	Revision of larynx	13.11	NA	17.21	0.92	NA	31.24	090
31590		A	Reinnervate larynx	6.97	NA	12.63	0.50	NA	20.10	090
31595		A	Larynx nerve surgery	8.34	NA	11.90	0.62	NA	20.86	090
31599		C	Larynx surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
31600		A	Incision of windpipe	7.18	NA	3.15	0.34	NA	10.67	000
31601		A	Incision of windpipe	4.45	NA	2.20	0.39	NA	7.04	000
31603		A	Incision of windpipe	4.15	NA	1.88	0.35	NA	6.38	000
31605		A	Incision of windpipe	3.58	NA	1.24	0.33	NA	5.15	000
31610		A	Incision of windpipe	8.76	NA	10.98	0.69	NA	20.43	090
31611		A	Surgery/speech prosthesis	5.64	NA	10.28	0.40	NA	16.32	090
31612		A	Puncture/clear windpipe	0.91	1.53	0.48	0.06	2.50	1.45	000
31613		A	Repair windpipe opening	4.59	NA	8.94	0.37	NA	13.90	090
31614		A	Repair windpipe opening	7.12	NA	12.47	0.51	NA	20.10	090
31615		A	Visualization of windpipe	2.09	3.76	1.20	0.14	5.99	3.43	000
31622		A	Dx bronchoscope/wash	2.78	3.69	1.20	0.14	6.61	4.12	000
31623		A	Dx bronchoscope/brush	2.88	2.97	1.17	0.14	5.99	4.19	000
31624		A	Dx bronchoscope/lavage	2.88	2.75	1.17	0.13	5.76	4.18	000
31625		A	Bronchoscopy with biopsy	3.37	2.96	1.34	0.16	6.49	4.87	000
31628		A	Bronchoscopy with biopsy	3.81	3.38	1.45	0.14	7.33	5.40	000
31629		A	Bronchoscopy with biopsy	3.37	NA	1.32	0.13	NA	4.82	000
31630		A	Bronchoscopy with repair	3.82	NA	1.99	0.30	NA	6.11	000
31631		A	Bronchoscopy with dilation	4.37	NA	2.04	0.31	NA	6.72	000
31635		A	Remove foreign body, airway	3.68	NA	1.70	0.21	NA	5.59	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
31640		A	Bronchoscopy & remove lesion	4.94	NA	2.36	0.37	NA	7.67	000
31641		A	Bronchoscopy, treat blockage	5.03	NA	2.20	0.30	NA	7.53	000
31643		A	Diag bronchoscope/catheter	3.50	1.17	1.17	0.15	4.82	4.82	000
31645		A	Bronchoscopy, clear airways	3.16	NA	1.27	0.13	NA	4.56	000
31646		A	Bronchoscopy, reclear airway	2.72	NA	1.12	0.12	NA	3.96	000
31656		A	Bronchoscopy, inj for xray	2.17	NA	1.05	0.10	NA	3.32	000
31700		A	Insertion of airway catheter	1.34	3.44	0.68	0.07	4.85	2.09	000
31708		A	Instill airway contrast dye	1.41	NA	0.64	0.06	NA	2.11	000
31710		A	Insertion of airway catheter	1.30	NA	0.75	0.06	NA	2.11	000
31715		A	Injection for bronchus x-ray	1.11	NA	0.73	0.06	NA	1.90	000
31717		A	Bronchial brush biopsy	2.12	3.25	0.89	0.09	5.46	3.10	000
31720		A	Clearance of airways	1.06	1.90	0.35	0.06	3.02	1.47	000
31725		A	Clearance of airways	1.96	NA	0.61	0.10	NA	2.67	000
31730		A	Intro, windpipe wire/tube	2.85	2.54	1.13	0.15	5.54	4.13	000
31750		A	Repair of windpipe	13.02	NA	16.22	1.02	NA	30.26	090
31755		A	Repair of windpipe	15.93	NA	19.27	1.15	NA	36.35	090
31760		A	Repair of windpipe	22.35	NA	12.79	1.48	NA	36.62	090
31766		A	Reconstruction of windpipe	30.43	NA	15.03	3.16	NA	48.62	090
31770		A	Repair/graft of bronchus	22.51	NA	15.67	2.27	NA	40.45	090
31775		A	Reconstruct bronchus	23.54	NA	15.14	2.91	NA	41.59	090
31780		A	Reconstruct windpipe	17.72	NA	12.97	1.55	NA	32.24	090
31781		A	Reconstruct windpipe	23.53	NA	15.49	2.04	NA	41.06	090
31785		A	Remove windpipe lesion	17.23	NA	13.05	1.36	NA	31.64	090
31786		A	Remove windpipe lesion	23.98	NA	14.41	2.20	NA	40.59	090
31800		A	Repair of windpipe injury	7.43	NA	6.81	0.67	NA	14.91	090
31805		A	Repair of windpipe injury	13.13	NA	10.72	1.45	NA	25.30	090
31820		A	Closure of windpipe lesion	4.49	8.24	8.07	0.35	13.08	12.91	090
31825		A	Repair of windpipe defect	6.81	10.86	10.86	0.50	18.17	18.17	090
31830		A	Revise windpipe scar	4.50	7.82	7.82	0.36	12.68	12.68	090
31899		C	Airways surgical procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
32000		A	Drainage of chest	1.54	3.10	0.51	0.07	4.71	2.12	000
32002		A	Treatment of collapsed lung	2.19	NA	0.87	0.11	NA	3.17	000
32005		A	Treat lung lining chemically	2.19	NA	0.88	0.17	NA	3.24	000
32020		A	Insertion of chest tube	3.98	NA	1.48	0.36	NA	5.82	000
32035		A	Exploration of chest	8.67	NA	7.83	1.02	NA	17.52	090
32036		A	Exploration of chest	9.68	NA	8.39	1.20	NA	19.27	090
32095		A	Biopsy through chest wall	8.36	NA	8.05	0.99	NA	17.40	090
32100		A	Exploration/biopsy of chest	15.24	NA	10.30	1.45	NA	26.99	090
32110		A	Explore/repair chest	23.00	NA	12.72	1.63	NA	37.35	090
32120		A	Re-exploration of chest	11.54	NA	9.34	1.42	NA	22.30	090
32124		A	Explore chest free adhesions	12.72	NA	9.53	1.51	NA	23.76	090
32140		A	Removal of lung lesion(s)	13.93	NA	9.79	1.68	NA	25.40	090
32141		A	Remove/treat lung lesions	14.00	NA	9.98	1.72	NA	25.70	090
32150		A	Removal of lung lesion(s)	14.15	NA	9.70	1.60	NA	25.45	090
32151		A	Remove lung foreign body	14.21	NA	10.20	1.49	NA	25.90	090
32160		A	Open chest heart massage	9.30	NA	6.34	1.01	NA	16.65	090
32200		A	Drain, open, lung lesion	15.29	NA	10.08	1.46	NA	26.83	090
32201		A	Drain, percut, lung lesion	4.00	NA	5.67	0.18	NA	9.85	000
32215		A	Treat chest lining	11.33	NA	9.16	1.34	NA	21.83	090
32220		A	Release of lung	24.00	NA	13.56	2.39	NA	39.95	090
32225		A	Partial release of lung	13.96	NA	9.95	1.70	NA	25.61	090
32310		A	Removal of chest lining	13.44	NA	9.86	1.65	NA	24.95	090
32320		A	Free/remove chest lining	24.00	NA	13.21	2.50	NA	39.71	090
32400		A	Needle biopsy chest lining	1.76	1.89	0.59	0.07	3.72	2.42	000
32402		A	Open biopsy chest lining	7.56	NA	7.76	0.91	NA	16.23	090
32405		A	Biopsy, lung or mediastinum	1.93	2.33	0.67	0.09	4.35	2.69	000
32420		A	Puncture/clear lung	2.18	NA	0.88	0.11	NA	3.17	000
32440		A	Removal of lung	25.00	NA	13.57	2.56	NA	41.13	090
32442		A	Sleeve pneumonectomy	26.24	NA	14.35	3.12	NA	43.71	090
32445		A	Removal of lung	25.09	NA	13.83	3.11	NA	42.03	090
32480		A	Partial removal of lung	23.75	NA	12.78	2.24	NA	38.77	090
32482		A	Bilobectomy	25.00	NA	13.39	2.35	NA	40.74	090
32484		A	Segmentectomy	20.69	NA	11.97	2.54	NA	35.20	090
32486		A	Sleeve lobectomy	23.92	NA	13.32	3.00	NA	40.24	090
32488		A	Completion pneumonectomy	25.71	NA	13.89	3.18	NA	42.78	090
32491		R	Lung volume reduction	21.25	NA	12.67	2.66	NA	36.58	090
32500		A	Partial removal of lung	22.00	NA	12.70	1.77	NA	36.47	090
32501		A	Repair bronchus add-on	4.69	NA	1.59	0.56	NA	6.84	ZZZ
32520		A	Remove lung & revise chest	21.68	NA	12.56	2.71	NA	36.95	090
32522		A	Remove lung & revise chest	24.20	NA	13.63	2.84	NA	40.67	090
32525		A	Remove lung & revise chest	26.50	NA	14.22	3.25	NA	43.97	090
32540		A	Removal of lung lesion	14.64	NA	9.99	1.84	NA	26.47	090
32601		A	Thoracoscopy, diagnostic	5.46	NA	3.60	0.63	NA	9.69	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
32602		A	Thoracoscopy, diagnostic	5.96	NA	3.72	0.70	NA	10.38	000
32603		A	Thoracoscopy, diagnostic	7.81	NA	4.33	0.76	NA	12.90	000
32604		A	Thoracoscopy, diagnostic	8.78	NA	4.79	0.97	NA	14.54	000
32605		A	Thoracoscopy, diagnostic	6.93	NA	4.19	0.86	NA	11.98	000
32606		A	Thoracoscopy, diagnostic	8.40	NA	4.55	0.99	NA	13.94	000
32650		A	Thoracoscopy, surgical	10.75	NA	8.47	1.25	NA	20.47	090
32651		A	Thoracoscopy, surgical	12.91	NA	8.84	1.50	NA	23.25	090
32652		A	Thoracoscopy, surgical	18.66	NA	11.16	2.30	NA	32.12	090
32653		A	Thoracoscopy, surgical	12.87	NA	9.15	1.55	NA	23.57	090
32654		A	Thoracoscopy, surgical	12.44	NA	7.53	1.51	NA	21.48	090
32655		A	Thoracoscopy, surgical	13.10	NA	8.86	1.53	NA	23.49	090
32656		A	Thoracoscopy, surgical	12.91	NA	9.53	1.61	NA	24.05	090
32657		A	Thoracoscopy, surgical	13.65	NA	9.36	1.64	NA	24.65	090
32658		A	Thoracoscopy, surgical	11.63	NA	9.05	1.47	NA	22.15	090
32659		A	Thoracoscopy, surgical	11.59	NA	9.10	1.39	NA	22.08	090
32660		A	Thoracoscopy, surgical	17.43	NA	10.53	2.09	NA	30.05	090
32661		A	Thoracoscopy, surgical	13.25	NA	9.15	1.66	NA	24.06	090
32662		A	Thoracoscopy, surgical	16.44	NA	10.59	2.01	NA	29.04	090
32663		A	Thoracoscopy, surgical	18.47	NA	11.22	2.28	NA	31.97	090
32664		A	Thoracoscopy, surgical	14.20	NA	9.43	1.70	NA	25.33	090
32665		A	Thoracoscopy, surgical	15.54	NA	9.18	1.79	NA	26.51	090
32800		A	Repair lung hernia	13.69	NA	10.05	1.51	NA	25.25	090
32810		A	Close chest after drainage	13.05	NA	10.05	1.55	NA	24.65	090
32815		A	Close bronchial fistula	23.15	NA	13.32	2.84	NA	39.31	090
32820		A	Reconstruct injured chest	21.48	NA	13.99	2.31	NA	37.78	090
32850		X	Donor pneumonectomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
32851		A	Lung transplant, single	38.63	NA	19.94	4.90	NA	63.47	090
32852		A	Lung transplant with bypass	41.80	NA	21.40	5.17	NA	68.37	090
32853		A	Lung transplant, double	47.81	NA	23.49	6.13	NA	77.43	090
32854		A	Lung transplant with bypass	50.98	NA	24.35	6.41	NA	81.74	090
32900		A	Removal of rib(s)	20.27	NA	12.27	2.42	NA	34.96	090
32905		A	Revise & repair chest wall	20.75	NA	12.77	2.54	NA	36.06	090
32906		A	Revise & repair chest wall	26.77	NA	14.12	3.30	NA	44.19	090
32940		A	Revision of lung	19.43	NA	11.96	2.47	NA	33.86	090
32960		A	Therapeutic pneumothorax	1.84	2.16	0.70	0.12	4.12	2.66	000
32997		A	Total lung lavage	6.00	NA	2.00	0.55	NA	8.55	000
32999		C	Chest surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
33010		A	Drainage of heart sac	2.24	NA	1.01	0.13	NA	3.38	000
33011		A	Repeat drainage of heart sac	2.24	NA	1.05	0.13	NA	3.42	000
33015		A	Incision of heart sac	6.80	NA	4.41	0.64	NA	11.85	090
33020		A	Incision of heart sac	12.61	NA	7.91	1.50	NA	22.02	090
33025		A	Incision of heart sac	12.09	NA	7.77	1.50	NA	21.36	090
33030		A	Partial removal of heart sac	18.71	NA	12.12	2.40	NA	33.23	090
33031		A	Partial removal of heart sac	21.79	NA	13.20	2.78	NA	37.77	090
33050		A	Removal of heart sac lesion	14.36	NA	10.24	1.73	NA	26.33	090
33120		A	Removal of heart lesion	24.56	NA	15.68	3.06	NA	43.30	090
33130		A	Removal of heart lesion	21.39	NA	12.40	2.51	NA	36.30	090
33140		A	Heart revascularize (tmr)	20.00	NA	10.57	2.27	NA	32.84	090
33141		A	Heart tmr w/other procedure	4.84	NA	1.63	0.55	NA	7.02	ZZZ
33200		A	Insertion of heart pacemaker	12.48	NA	9.59	1.17	NA	23.24	090
33201		A	Insertion of heart pacemaker	10.18	NA	9.39	1.21	NA	20.78	090
33206		A	Insertion of heart pacemaker	6.67	NA	5.35	0.50	NA	12.52	090
33207		A	Insertion of heart pacemaker	8.04	NA	6.00	0.57	NA	14.61	090
33208		A	Insertion of heart pacemaker	8.13	NA	6.14	0.54	NA	14.81	090
33210		A	Insertion of heart electrode	3.30	NA	1.34	0.17	NA	4.81	000
33211		A	Insertion of heart electrode	3.40	NA	1.41	0.17	NA	4.98	000
33212		A	Insertion of pulse generator	5.52	NA	4.44	0.44	NA	10.40	090
33213		A	Insertion of pulse generator	6.37	NA	4.85	0.46	NA	11.68	090
33214		A	Upgrade of pacemaker system	7.75	NA	5.95	0.52	NA	14.22	090
33216		A	Revise eltrd pacing-defib	5.39	NA	4.95	0.36	NA	10.70	090
33217		A	Revise eltrd pacing-defib	5.75	NA	5.26	0.36	NA	11.37	090
33218		A	Revise eltrd pacing-defib	5.44	NA	4.51	0.40	NA	10.35	090
33220		A	Revise eltrd pacing-defib	5.52	NA	4.45	0.39	NA	10.36	090
33222		A	Revise pocket, pacemaker	4.96	NA	3.93	0.39	NA	9.28	090
33223		A	Revise pocket, pacing-defib	6.46	NA	5.06	0.44	NA	11.96	090
33233		A	Removal of pacemaker system	3.29	NA	3.80	0.22	NA	7.31	090
33234		A	Removal of pacemaker system	7.82	NA	5.03	0.56	NA	13.41	090
33235		A	Removal pacemaker electrode	9.40	NA	6.26	0.68	NA	16.34	090
33236		A	Remove electrode/thoracotomy	12.60	NA	9.35	1.49	NA	23.44	090
33237		A	Remove electrode/thoracotomy	13.71	NA	9.51	1.57	NA	24.79	090
33238		A	Remove electrode/thoracotomy	15.22	NA	9.24	1.56	NA	26.02	090
33240		A	Insert pulse generator	7.60	NA	5.49	0.53	NA	13.62	090
33241		A	Remove pulse generator	3.24	NA	3.39	0.21	NA	6.84	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
33243		A	Remove eltrd/thoracotomy	22.64	NA	10.88	2.53	NA	36.05	090
33244		A	Remove eltrd, transven	13.76	NA	8.22	1.05	NA	23.03	090
33245		A	Insert epic eltrd pace-defib	14.30	NA	10.79	1.28	NA	26.37	090
33246		A	Insert epic eltrd/generator	20.71	NA	14.16	2.22	NA	37.09	090
33249		A	Eltrd/insert pace-defib	14.23	NA	8.98	0.80	NA	24.01	090
33250		A	Ablate heart dysrhythm focus	21.85	NA	13.65	1.01	NA	36.51	090
33251		A	Ablate heart dysrhythm focus	24.88	NA	14.06	2.41	NA	41.35	090
33253		A	Reconstruct atria	31.06	NA	16.58	3.68	NA	51.32	090
33261		A	Ablate heart dysrhythm focus	24.88	NA	14.47	2.82	NA	42.17	090
33282		A	Implant pat-active ht record	4.17	NA	4.42	0.39	NA	8.98	090
33284		A	Remove pat-active ht record	2.50	NA	3.94	0.23	NA	6.67	090
33300		A	Repair of heart wound	17.92	NA	11.56	1.91	NA	31.39	090
33305		A	Repair of heart wound	21.44	NA	13.24	2.68	NA	37.36	090
33310		A	Exploratory heart surgery	18.51	NA	11.85	2.26	NA	32.62	090
33315		A	Exploratory heart surgery	22.37	NA	13.43	2.90	NA	38.70	090
33320		A	Repair major blood vessel(s)	16.79	NA	11.06	1.66	NA	29.51	090
33321		A	Repair major vessel	20.20	NA	13.15	2.70	NA	36.05	090
33322		A	Repair major blood vessel(s)	20.62	NA	13.02	2.51	NA	36.15	090
33330		A	Insert major vessel graft	21.43	NA	12.35	2.49	NA	36.27	090
33332		A	Insert major vessel graft	23.96	NA	12.94	2.45	NA	39.35	090
33335		A	Insert major vessel graft	30.01	NA	16.15	3.79	NA	49.95	090
33400		A	Repair of aortic valve	28.50	NA	17.04	3.09	NA	48.63	090
33401		A	Valvuloplasty, open	23.91	NA	14.85	2.71	NA	41.47	090
33403		A	Valvuloplasty, w/cp bypass	24.89	NA	15.99	2.48	NA	43.36	090
33404		A	Prepare heart-aorta conduit	28.54	NA	17.22	3.31	NA	49.07	090
33405		A	Replacement of aortic valve	35.00	NA	17.69	3.86	NA	56.55	090
33406		A	Replacement of aortic valve	37.50	NA	18.53	4.07	NA	60.10	090
33410		A	Replacement of aortic valve	32.46	NA	16.93	4.11	NA	53.50	090
33411		A	Replacement of aortic valve	36.25	NA	18.07	4.16	NA	58.48	090
33412		A	Replacement of aortic valve	42.00	NA	21.90	4.66	NA	68.56	090
33413		A	Replacement of aortic valve	43.50	NA	23.05	4.26	NA	70.81	090
33414		A	Repair of aortic valve	30.35	NA	17.67	3.79	NA	51.81	090
33415		A	Revision, subvalvular tissue	27.15	NA	16.53	3.25	NA	46.93	090
33416		A	Revise ventricle muscle	30.35	NA	16.06	3.85	NA	50.26	090
33417		A	Repair of aortic valve	28.53	NA	17.09	3.58	NA	49.20	090
33420		A	Revision of mitral valve	22.70	NA	11.77	1.48	NA	35.95	090
33422		A	Revision of mitral valve	25.94	NA	14.74	3.30	NA	43.98	090
33425		A	Repair of mitral valve	27.00	NA	14.98	3.00	NA	44.98	090
33426		A	Repair of mitral valve	33.00	NA	17.14	3.87	NA	54.01	090
33427		A	Repair of mitral valve	40.00	NA	19.42	4.30	NA	63.72	090
33430		A	Replacement of mitral valve	33.50	NA	17.26	3.95	NA	54.71	090
33460		A	Revision of tricuspid valve	23.60	NA	13.83	3.02	NA	40.45	090
33463		A	Valvuloplasty, tricuspid	25.62	NA	14.60	3.17	NA	43.39	090
33464		A	Valvuloplasty, tricuspid	27.33	NA	15.22	3.47	NA	46.02	090
33465		A	Replace tricuspid valve	28.79	NA	15.67	3.61	NA	48.07	090
33468		A	Revision of tricuspid valve	30.12	NA	19.06	4.00	NA	53.18	090
33470		A	Revision of pulmonary valve	20.81	NA	14.20	2.81	NA	37.82	090
33471		A	Valvotomy, pulmonary valve	22.25	NA	13.13	3.00	NA	38.38	090
33472		A	Revision of pulmonary valve	22.25	NA	13.13	2.92	NA	38.30	090
33474		A	Revision of pulmonary valve	23.04	NA	13.45	2.84	NA	39.33	090
33475		A	Replacement, pulmonary valve	33.00	NA	18.28	2.64	NA	53.92	090
33476		A	Revision of heart chamber	25.77	NA	14.23	2.40	NA	42.40	090
33478		A	Revision of heart chamber	26.74	NA	14.43	3.56	NA	44.73	090
33496		A	Repair, prosth valve clot	27.25	NA	16.84	3.44	NA	47.53	090
33500		A	Repair heart vessel fistula	25.55	NA	13.99	2.80	NA	42.34	090
33501		A	Repair heart vessel fistula	17.78	NA	10.24	2.05	NA	30.07	090
33502		A	Coronary artery correction	21.04	NA	16.64	2.51	NA	40.19	090
33503		A	Coronary artery graft	21.78	NA	13.90	1.42	NA	37.10	090
33504		A	Coronary artery graft	24.66	NA	16.55	3.04	NA	44.25	090
33505		A	Repair artery w/tunnel	26.84	NA	18.16	1.52	NA	46.52	090
33506		A	Repair artery, translocation	35.50	NA	19.27	3.19	NA	57.96	090
33510		A	CABG, vein, single	29.00	NA	15.53	3.13	NA	47.66	090
33511		A	CABG, vein, two	30.00	NA	16.05	3.34	NA	49.39	090
33512		A	CABG, vein, three	31.80	NA	16.65	3.70	NA	52.15	090
33513		A	CABG, vein, four	32.00	NA	16.77	3.99	NA	52.76	090
33514		A	CABG, vein, five	32.75	NA	17.00	4.37	NA	54.12	090
33516		A	Cabg, vein, six or more	35.00	NA	17.74	4.62	NA	57.36	090
33517		A	CABG, artery-vein, single	2.57	NA	0.86	0.32	NA	3.75	ZZZ
33518		A	CABG, artery-vein, two	4.85	NA	1.62	0.61	NA	7.08	ZZZ
33519		A	CABG, artery-vein, three	7.12	NA	2.38	0.89	NA	10.39	ZZZ
33521		A	CABG, artery-vein, four	9.40	NA	3 15	1.18	NA	13.73	ZZZ
33522		A	CABG, artery-vein, five	11.67	NA	3.91	1.48	NA	17.06	ZZZ
33523		A	Cabg, art-vein, six or more	13.95	NA	4.63	1.78	NA	20.36	ZZZ

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
33530		A	Coronary artery, bypass/reop	5.86	NA	1.96	0.73	NA	8.55	ZZZ
33533		A	CABG, arterial, single	30.00	NA	17.24	3.24	NA	50.48	090
33534		A	CABG, arterial, two	32.20	NA	17.45	3.63	NA	53.28	090
33535		A	CABG, arterial, three	34.50	NA	17.77	3.97	NA	56.24	090
33536		A	Cabg, arterial, four or more	37.50	NA	19.27	3.29	NA	60.06	090
33542		A	Removal of heart lesion	28.85	NA	17.05	3.61	NA	49.51	090
33545		A	Repair of heart damage	36.78	NA	19.79	4.40	NA	60.97	090
33572		A	Open coronary endarterectomy	4.45	NA	1.48	0.55	NA	6.48	ZZZ
33600		A	Closure of valve	29.51	NA	17.79	2.30	NA	49.60	090
33602		A	Closure of valve	28.54	NA	16.65	2.90	NA	48.09	090
33606		A	Anastomosis/artery-aorta	30.74	NA	17.53	3.59	NA	51.86	090
33608		A	Repair anomaly w/conduit	31.09	NA	16.38	4.17	NA	51.64	090
33610		A	Repair by enlargement	30.61	NA	18.89	4.02	NA	53.52	090
33611		A	Repair double ventricle	34.00	NA	19.08	3.28	NA	56.36	090
33612		A	Repair double ventricle	35.00	NA	20.17	4.44	NA	59.61	090
33615		A	Repair, modified fontan	34.00	NA	19.33	3.15	NA	56.48	090
33617		A	Repair single ventricle	37.00	NA	21.25	4.09	NA	62.34	090
33619		A	Repair single ventricle	45.00	NA	26.49	4.71	NA	76.20	090
33641		A	Repair heart septum defect	21.39	NA	11.82	2.67	NA	35.88	090
33645		A	Revision of heart veins	24.82	NA	13.92	3.27	NA	42.01	090
33647		A	Repair heart septum defects	28.73	NA	17.08	3.37	NA	49.18	090
33660		A	Repair of heart defects	30.00	NA	17.09	2.82	NA	49.91	090
33665		A	Repair of heart defects	28.60	NA	16.87	3.81	NA	49.28	090
33670		A	Repair of heart chambers	35.00	NA	16.68	2.18	NA	53.86	090
33681		A	Repair heart septum defect	30.61	NA	17.83	3.53	NA	51.97	090
33684		A	Repair heart septum defect	29.65	NA	17.82	3.77	NA	51.24	090
33688		A	Repair heart septum defect	30.62	NA	16.70	3.89	NA	51.21	090
33690		A	Reinforce pulmonary artery	19.55	NA	13.55	2.56	NA	35.66	090
33692		A	Repair of heart defects	30.75	NA	17.52	3.77	NA	52.04	090
33694		A	Repair of heart defects	34.00	NA	17.82	4.27	NA	56.09	090
33697		A	Repair of heart defects	36.00	NA	18.62	4.54	NA	59.16	090
33702		A	Repair of heart defects	26.54	NA	16.53	3.45	NA	46.52	090
33710		A	Repair of heart defects	29.71	NA	16.82	3.85	NA	50.38	090
33720		A	Repair of heart defect	26.56	NA	16.51	3.21	NA	46.28	090
33722		A	Repair of heart defect	28.41	NA	17.05	3.80	NA	49.26	090
33730		A	Repair heart-vein defect(s)	34.25	NA	18.35	2.85	NA	55.45	090
33732		A	Repair heart-vein defect	28.16	NA	17.95	2.78	NA	48.89	090
33735		A	Revision of heart chamber	21.39	NA	13.00	1.12	NA	35.51	090
33736		A	Revision of heart chamber	23.52	NA	14.06	2.70	NA	40.28	090
33737		A	Revision of heart chamber	21.76	NA	15.22	2.93	NA	39.91	090
33750		A	Major vessel shunt	21.41	NA	12.83	1.74	NA	35.98	090
33755		A	Major vessel shunt	21.79	NA	12.94	2.93	NA	37.66	090
33762		A	Major vessel shunt	21.79	NA	13.32	1.59	NA	36.70	090
33764		A	Major vessel shunt & graft	21.79	NA	14.22	1.93	NA	37.94	090
33766		A	Major vessel shunt	22.76	NA	15.16	3.04	NA	40.96	090
33767		A	Major vessel shunt	24.50	NA	14.92	3.14	NA	42.56	090
33770		A	Repair great vessels defect	37.00	NA	19.01	4.49	NA	60.50	090
33771		A	Repair great vessels defect	34.65	NA	18.08	4.67	NA	57.40	090
33774		A	Repair great vessels defect	30.98	NA	16.61	4.18	NA	51.77	090
33775		A	Repair great vessels defect	32.20	NA	17.10	4.34	NA	53.64	090
33776		A	Repair great vessels defect	34.04	NA	17.83	4.58	NA	56.45	090
33777		A	Repair great vessels defect	33.46	NA	17.60	4.51	NA	55.57	090
33778		A	Repair great vessels defect	40.00	NA	20.21	4.83	NA	65.04	090
33779		A	Repair great vessels defect	36.21	NA	17.93	2.40	NA	56.54	090
33780		A	Repair great vessels defect	41.75	NA	20.98	5.21	NA	67.94	090
33781		A	Repair great vessels defect	36.45	NA	18.80	4.91	NA	60.16	090
33786		A	Repair arterial trunk	39.00	NA	19.81	4.69	NA	63.50	090
33788		A	Revision of pulmonary artery	26.62	NA	14.87	3.32	NA	44.81	090
33800		A	Aortic suspension	16.24	NA	13.12	1.11	NA	30.47	090
33802		A	Repair vessel defect	17.66	NA	12.22	1.56	NA	31.44	090
33803		A	Repair vessel defect	19.60	NA	13.53	2.63	NA	35.76	090
33813		A	Repair septal defect	20.65	NA	14.12	2.78	NA	37.55	090
33814		A	Repair septal defect	25.77	NA	15.61	2.52	NA	43.90	090
33820		A	Revise major vessel	16.29	NA	10.95	2.10	NA	29.34	090
33822		A	Revise major vessel	17.32	NA	11.16	2.33	NA	30.81	090
33824		A	Revise major vessel	19.52	NA	11.97	2.61	NA	34.10	090
33840		A	Remove aorta constriction	20.63	NA	14.11	2.36	NA	37.10	090
33845		A	Remove aorta constriction	22.12	NA	14.85	2.90	NA	39.87	090
33851		A	Remove aorta constriction	21.27	NA	12.98	2.86	NA	37.11	090
33852		A	Repair septal defect	23.71	NA	14.14	3.19	NA	41.04	090
33853		A	Repair septal defect	31.72	NA	18.25	4.23	NA	54.20	090
33860		A	Ascending aortic graft	38.00	NA	18.74	4.30	NA	61.04	090
33861		A	Ascending aortic graft	42.00	NA	20.15	4.24	NA	66.39	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
33863		A	Ascending aortic graft	45.00	NA	21.10	4.60	NA	70.70	090
33870		A	Transverse aortic arch graft	44.00	NA	20.69	5.09	NA	69.78	090
33875		A	Thoracic aortic graft	33.06	NA	17.01	4.08	NA	54.15	090
33877		A	Thoracoabdominal graft	42.60	NA	19.96	5.07	NA	67.63	090
33910		A	Remove lung artery emboli	24.59	NA	14.16	3.06	NA	41.81	090
33915		A	Remove lung artery emboli	21.02	NA	12.31	1.20	NA	34.53	090
33916		A	Surgery of great vessel	25.83	NA	15.49	3.04	NA	44.36	090
33917		A	Repair pulmonary artery	24.50	NA	15.36	3.17	NA	43.03	090
33918		A	Repair pulmonary atresia	26.45	NA	14.80	3.42	NA	44.67	090
33919		A	Repair pulmonary atresia	40.00	NA	21.02	3.48	NA	64.50	090
33920		A	Repair pulmonary atresia	31.95	NA	17.28	3.61	NA	52.84	090
33922		A	Transect pulmonary artery	23.52	NA	13.79	2.30	NA	39.61	090
33924		A	Remove pulmonary shunt	5.50	NA	2.05	0.74	NA	8.29	ZZZ
33930		X	Removal of donor heart/lung	0.00	0.00	0.00	0.00	0.00	0.00	XXX
33935		R	Transplantation, heart/lung	60.96	NA	27.93	8.15	NA	97.04	090
33940		X	Removal of donor heart	0.00	0.00	0.00	0.00	0.00	0.00	XXX
33945		R	Transplantation of heart	42.10	NA	21.67	5.42	NA	69.19	090
33960		A	External circulation assist	19.36	NA	6.06	2.14	NA	27.56	000
33961		A	External circulation assist	10.93	NA	3.79	1.47	NA	16.19	ZZZ
33967		A	Insert ia percut device	4.85	2.01	1.96	0.27	7.13	7.08	000
33968		A	Remove aortic assist device	0.64	NA	0.24	0.07	NA	0.95	000
33970		A	Aortic circulation assist	6.75	NA	2.37	0.70	NA	9.82	000
33971		A	Aortic circulation assist	9.69	NA	7.82	0.97	NA	18.48	090
33973		A	Insert balloon device	9.76	NA	3.44	1.01	NA	14.21	000
33974		A	Remove intra-aortic balloon	14.41	NA	10.69	1.48	NA	26.58	090
33975		A	Implant ventricular device	21.00	NA	7.04	1.72	NA	29.76	XXX
33976		A	Implant ventricular device	23.00	NA	7.78	2.82	NA	33.60	XXX
33977		A	Remove ventricular device	19.29	NA	10.46	2.44	NA	32.19	090
33978		A	Remove ventricular device	21.73	NA	11.27	2.66	NA	35.66	090
33979		C	Insert intracorporeal device	0.00	0.00	0.00	0.00	0.00	0.00	XXX
33980		C	Remove intracorporeal device	0.00	0.00	0.00	0.00	0.00	0.00	090
33999		C	Cardiac surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
34001		A	Removal of artery clot	12.91	NA	5.97	1.46	NA	20.34	090
34051		A	Removal of artery clot	15.21	NA	7.07	1.90	NA	24.18	090
34101		A	Removal of artery clot	10.00	NA	4.84	1.11	NA	15.95	090
34111		A	Removal of arm artery clot	10.00	NA	4.88	0.85	NA	15.73	090
34151		A	Removal of artery clot	25.00	NA	10.54	1.84	NA	37.38	090
34201		A	Removal of artery clot	10.03	NA	5.12	1.02	NA	16.17	090
34203		A	Removal of leg artery clot	16.50	NA	7.65	1.37	NA	25.52	090
34401		A	Removal of vein clot	25.00	NA	10.47	1.20	NA	36.67	090
34421		A	Removal of vein clot	12.00	NA	6.01	0.95	NA	18.96	090
34451		A	Removal of vein clot	27.00	NA	11.08	1.59	NA	39.67	090
34471		A	Removal of vein clot	10.18	NA	5.18	0.90	NA	16.26	090
34490		A	Removal of vein clot	9.86	NA	6.26	0.73	NA	16.85	090
34501		A	Repair valve, femoral vein	16.00	NA	8.98	1.37	NA	26.35	090
34502		A	Reconstruct vena cava	26.95	NA	11.34	2.99	NA	41.28	090
34510		A	Transposition of vein valve	18.95	NA	10.23	1.60	NA	30.78	090
34520		A	Cross-over vein graft	17.95	NA	9.59	1.41	NA	28.95	090
34530		A	Leg vein fusion	16.64	NA	8.48	2.06	NA	27.18	090
34800		A	Endovasc abdo repair w/tube	20.75	NA	9.79	1.49	NA	32.03	090
34802		A	Endovasc abdo repr w/device	23.00	NA	10.69	1.65	NA	35.34	090
34804		A	Endovasc abdo repr w/device	23.00	NA	10.69	1.65	NA	35.34	090
34808		A	Endovasc abdo occlud device	4.13	NA	1.65	0.29	NA	6.07	ZZZ
34812		A	Xpose for endoprosth, aortic	6.75	NA	2.69	0.49	NA	9.93	000
34813		A	Xpose for endoprosth, femorl	4.80	NA	1.92	0.34	NA	7.06	ZZZ
34820		A	Xpose for endoprosth, iliac	9.75	NA	3.89	0.70	NA	14.34	000
34825		A	Endovasc extend prosth, init	12.00	NA	6.30	0.86	NA	19.16	090
34826		A	Endovasc exten prosth, addl	4.13	NA	1.65	0.29	NA	6.07	ZZZ
34830		A	Open aortic tube prosth repr	32.59	NA	14.89	2.34	NA	49.82	090
34831		A	Open aortoiliac prosth repr	35.34	NA	15.99	2.53	NA	53.86	090
34832		A	Open aortofemor prosth repr	35.34	NA	15.99	2.53	NA	53.86	090
35001		A	Repair defect of artery	19.64	NA	8.41	2.44	NA	30.49	090
35002		A	Repair artery rupture, neck	21.00	NA	9.12	1.82	NA	31.94	090
35005		A	Repair defect of artery	18.12	NA	8.04	1.35	NA	27.51	090
35011		A	Repair defect of artery	18.00	NA	7.59	1.30	NA	26.89	090
35013		A	Repair artery rupture, arm	22.00	NA	8.98	1.91	NA	32.89	090
35021		A	Repair defect of artery	19.65	NA	8.64	1.93	NA	30.22	090
35022		A	Repair artery rupture, chest	23.18	NA	9.57	1.99	NA	34.74	090
35045		A	Repair defect of arm artery	17.57	NA	7.99	1.25	NA	26.81	090
35081		A	Repair defect of artery	28.01	NA	11.69	3.20	NA	42.90	090
35082		A	Repair artery rupture, aorta	38.50	NA	15.08	4.07	NA	57.65	090
35091		A	Repair defect of artery	35.40	NA	14.22	4.09	NA	53.71	090
35092		A	Repair artery rupture, aorta	45.00	NA	17.35	4.31	NA	66.66	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
35102		A	Repair defect of artery	30.76	NA	12.67	3.44	NA	46.87	090
35103		A	Repair artery rupture, groin	40.50	NA	15.81	3.79	NA	60.10	090
35111		A	Repair defect of artery	25.00	NA	10.43	1.81	NA	37.24	090
35112		A	Repair artery rupture,spleen	30.00	NA	12.06	1.95	NA	44.01	090
35121		A	Repair defect of artery	30.00	NA	12.39	2.93	NA	45.32	090
35122		A	Repair artery rupture, belly	35.00	NA	13.73	3.54	NA	52.27	090
35131		A	Repair defect of artery	25.00	NA	10.64	2.11	NA	37.75	090
35132		A	Repair artery rupture, groin	30.00	NA	12.14	2.48	NA	44.62	090
35141		A	Repair defect of artery	20.00	NA	8.66	1.65	NA	30.31	090
35142		A	Repair artery rupture, thigh	23.30	NA	9.76	1.75	NA	34.81	090
35151		A	Repair defect of artery	22.64	NA	9.72	1.93	NA	34.29	090
35152		A	Repair artery rupture, knee	25.62	NA	10.50	1.93	NA	38.05	090
35161		A	Repair defect of artery	18.76	NA	8.96	2.21	NA	29.93	090
35162		A	Repair artery rupture	19.78	NA	9.05	2.21	NA	31.04	090
35180		A	Repair blood vessel lesion	13.62	NA	6.49	1.44	NA	21.55	090
35182		A	Repair blood vessel lesion	30.00	NA	12.39	1.88	NA	44.27	090
35184		A	Repair blood vessel lesion	18.00	NA	7.92	1.34	NA	27.26	090
35188		A	Repair blood vessel lesion	14.28	NA	6.70	1.53	NA	22.51	090
35189		A	Repair blood vessel lesion	28.00	NA	11.71	2.12	NA	41.83	090
35190		A	Repair blood vessel lesion	12.75	NA	6.03	1.33	NA	20.11	090
35201		A	Repair blood vessel lesion	16.14	NA	7.18	1.17	NA	24.49	090
35206		A	Repair blood vessel lesion	13.25	NA	7.60	1.04	NA	21.89	090
35207		A	Repair blood vessel lesion	10.15	NA	9.91	1.15	NA	21.21	090
35211		A	Repair blood vessel lesion	22.12	NA	13.55	2.83	NA	38.50	090
35216		A	Repair blood vessel lesion	18.75	NA	11.83	2.17	NA	32.75	090
35221		A	Repair blood vessel lesion	24.39	NA	10.31	1.79	NA	36.49	090
35226		A	Repair blood vessel lesion	14.50	NA	8.54	0.84	NA	23.88	090
35231		A	Repair blood vessel lesion	20.00	NA	9.45	1.32	NA	30.77	090
35236		A	Repair blood vessel lesion	17.11	NA	8.97	1.19	NA	27.27	090
35241		A	Repair blood vessel lesion	23.12	NA	14.09	2.90	NA	40.11	090
35246		A	Repair blood vessel lesion	26.45	NA	14.32	2.22	NA	42.99	090
35251		A	Repair blood vessel lesion	30.20	NA	12.39	1.87	NA	44.46	090
35256		A	Repair blood vessel lesion	18.36	NA	9.63	1.32	NA	29.31	090
35261		A	Repair blood vessel lesion	17.80	NA	7.56	1.34	NA	26.70	090
35266		A	Repair blood vessel lesion	14.91	NA	8.12	1.16	NA	24.19	090
35271		A	Repair blood vessel lesion	22.12	NA	13.43	2.77	NA	38.32	090
35276		A	Repair blood vessel lesion	24.25	NA	13.56	2.37	NA	40.18	090
35281		A	Repair blood vessel lesion	28.00	NA	11.66	1.82	NA	41.48	090
35286		A	Repair blood vessel lesion	16.16	NA	8.88	1.36	NA	26.40	090
35301		A	Rechanneling of artery	18.70	NA	8.39	2.23	NA	29.32	090
35311		A	Rechanneling of artery	27.00	NA	11.10	2.75	NA	40.85	090
35321		A	Rechanneling of artery	16.00	NA	6.87	1.36	NA	24.23	090
35331		A	Rechanneling of artery	26.20	NA	11.11	2.71	NA	40.02	090
35341		A	Rechanneling of artery	25.11	NA	10.70	2.87	NA	38.68	090
35351		A	Rechanneling of artery	23.00	NA	9.84	2.29	NA	35.13	090
35355		A	Rechanneling of artery	18.50	NA	8.33	1.80	NA	28.63	090
35361		A	Rechanneling of artery	28.20	NA	11.60	2.66	NA	42.46	090
35363		A	Rechanneling of artery	30.20	NA	12.54	2.77	NA	45.51	090
35371		A	Rechanneling of artery	14.72	NA	6.75	1.32	NA	22.79	090
35372		A	Rechanneling of artery	18.00	NA	7.91	1.53	NA	27.44	090
35381		A	Rechanneling of artery	15.81	NA	7.35	1.80	NA	24.96	090
35390		A	Reoperation, carotid add-on	3.19	NA	1.11	0.38	NA	4.68	ZZZ
35400		A	Angioscopy	3.00	NA	1.05	0.34	NA	4.39	ZZZ
35450		A	Repair arterial blockage	10.07	NA	4.22	0.84	NA	15.13	000
35452		A	Repair arterial blockage	6.91	NA	3.11	0.76	NA	10.78	000
35454		A	Repair arterial blockage	6.04	NA	2.83	0.67	NA	9.54	000
35456		A	Repair arterial blockage	7.35	NA	3.27	0.82	NA	11.44	000
35458		A	Repair arterial blockage	9.49	NA	4.03	1.09	NA	14.61	000
35459		A	Repair arterial blockage	8.63	NA	3.69	0.96	NA	13.28	000
35460		A	Repair venous blockage	6.04	NA	2.70	0.66	NA	9.40	000
35470		A	Repair arterial blockage	8.63	NA	3.98	0.50	NA	13.11	000
35471		A	Repair arterial blockage	10.07	NA	4.67	0.50	NA	15.24	000
35472		A	Repair arterial blockage	6.91	NA	3.32	0.39	NA	10.62	000
35473		A	Repair arterial blockage	6.04	NA	3.01	0.34	NA	9.39	000
35474		A	Repair arterial blockage	7.36	NA	3.52	0.40	NA	11.28	000
35475		R	Repair arterial blockage	9.49	NA	4.23	0.47	NA	14.19	000
35476		A	Repair venous blockage	6.04	NA	2.94	0.27	NA	9.25	000
35480		A	Atherectomy, open	11.08	NA	4.58	1.13	NA	16.79	000
35481		A	Atherectomy, open	7.61	NA	3.54	0.84	NA	11.99	000
35482		A	Atherectomy, open	6.65	NA	3.16	0.75	NA	10.56	000
35483		A	Atherectomy, open	8.10	NA	3.52	0.81	NA	12.43	000
35484		A	Atherectomy, open	10.44	NA	4.21	1.13	NA	15.78	000
35485		A	Atherectomy, open	9.49	NA	4.05	1.06	NA	14.60	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
35490		A	Atherectomy, percutaneous	11.08	NA	4.83	0.55	NA	16.46	000
35491		A	Atherectomy, percutaneous	7.61	NA	3.59	0.49	NA	11.69	000
35492		A	Atherectomy, percutaneous	6.65	NA	3.22	0.43	NA	10.30	000
35493		A	Atherectomy, percutaneous	8.10	NA	3.90	0.47	NA	12.47	000
35494		A	Atherectomy, percutaneous	10.44	NA	4.57	0.48	NA	15.49	000
35495		A	Atherectomy, percutaneous	9.49	NA	4.52	0.51	NA	14.52	000
35500		A	Harvest vein for bypass	6.45	NA	2.25	0.63	NA	9.33	ZZZ
35501		A	Artery bypass graft	19.19	NA	8.14	2.33	NA	29.66	090
35506		A	Artery bypass graft	19.67	NA	8.32	2.33	NA	30.32	090
35507		A	Artery bypass graft	19.67	NA	8.29	2.27	NA	30.23	090
35508		A	Artery bypass graft	18.65	NA	7.91	2.34	NA	28.90	090
35509		A	Artery bypass graft	18.07	NA	7.70	2.12	NA	27.89	090
35511		A	Artery bypass graft	21.20	NA	8.80	1.74	NA	31.74	090
35515		A	Artery bypass graft	18.65	NA	7.80	2.26	NA	28.71	090
35516		A	Artery bypass graft	16.32	NA	4.94	1.88	NA	23.14	090
35518		A	Artery bypass graft	21.20	NA	8.80	1.78	NA	31.78	090
35521		A	Artery bypass graft	22.20	NA	9.53	1.82	NA	33.55	090
35526		A	Artery bypass graft	29.95	NA	12.19	2.18	NA	44.32	090
35531		A	Artery bypass graft	36.20	NA	14.53	2.91	NA	53.64	090
35533		A	Artery bypass graft	28.00	NA	11.74	2.35	NA	42.09	090
35536		A	Artery bypass graft	31.70	NA	12.85	2.62	NA	47.17	090
35541		A	Artery bypass graft	25.80	NA	10.98	2.74	NA	39.52	090
35546		A	Artery bypass graft	25.54	NA	10.75	2.84	NA	39.13	090
35548		A	Artery bypass graft	21.57	NA	9.45	2.45	NA	33.47	090
35549		A	Artery bypass graft	23.35	NA	9.88	2.77	NA	36.00	090
35551		A	Artery bypass graft	26.67	NA	11.20	3.19	NA	41.06	090
35556		A	Artery bypass graft	21.76	NA	9.45	2.48	NA	33.69	090
35558		A	Artery bypass graft	21.20	NA	9.11	1.58	NA	31.89	090
35560		A	Artery bypass graft	32.00	NA	13.12	2.73	NA	47.85	090
35563		A	Artery bypass graft	24.20	NA	10.42	1.68	NA	36.30	090
35565		A	Artery bypass graft	23.20	NA	9.99	1.71	NA	34.90	090
35566		A	Artery bypass graft	26.92	NA	11.77	3.02	NA	41.71	090
35571		A	Artery bypass graft	24.06	NA	12.13	2.14	NA	38.33	090
35582		A	Vein bypass graft	27.13	NA	11.35	3.11	NA	41.59	090
35583		A	Vein bypass graft	22.37	NA	10.62	2.53	NA	35.52	090
35585		A	Vein bypass graft	28.39	NA	14.53	3.21	NA	46.13	090
35587		A	Vein bypass graft	24.75	NA	12.79	2.17	NA	39.71	090
35600		A	Harvest artery for cabg	4.95	NA	1.98	0.60	NA	7.53	ZZZ
35601		A	Artery bypass graft	17.50	NA	7.49	2.08	NA	27.07	090
35606		A	Artery bypass graft	18.71	NA	7.93	2.17	NA	28.81	090
35612		A	Artery bypass graft	15.76	NA	6.70	1.72	NA	24.18	090
35616		A	Artery bypass graft	15.70	NA	7.05	1.84	NA	24.59	090
35621		A	Artery bypass graft	20.00	NA	8.79	1.68	NA	30.47	090
35623		A	Bypass graft, not vein	24.00	NA	10.22	1.91	NA	36.13	090
35626		A	Artery bypass graft	27.75	NA	11.08	2.89	NA	41.72	090
35631		A	Artery bypass graft	34.00	NA	13.74	2.83	NA	50.57	090
35636		A	Artery bypass graft	29.50	NA	12.26	2.37	NA	44.13	090
35641		A	Artery bypass graft	24.57	NA	10.47	2.83	NA	37.87	090
35642		A	Artery bypass graft	17.98	NA	7.92	1.84	NA	27.74	090
35645		A	Artery bypass graft	17.47	NA	8.36	1.91	NA	27.74	090
35646		A	Artery bypass graft	31.00	NA	13.26	2.98	NA	47.24	090
35647		A	Artery bypass graft	28.00	NA	11.97	2.98	NA	42.95	090
35650		A	Artery bypass graft	19.00	NA	7.93	1.64	NA	28.57	090
35651		A	Artery bypass graft	25.04	NA	10.70	2.53	NA	38.27	090
35654		A	Artery bypass graft	25.00	NA	10.60	2.10	NA	37.70	090
35656		A	Artery bypass graft	19.53	NA	8.44	2.21	NA	30.18	090
35661		A	Artery bypass graft	19.00	NA	8.26	1.50	NA	28.76	090
35663		A	Artery bypass graft	22.00	NA	9.65	1.55	NA	33.20	090
35665		A	Artery bypass graft	21.00	NA	9.18	1.76	NA	31.94	090
35666		A	Artery bypass graft	22.19	NA	11.93	2.19	NA	36.31	090
35671		A	Artery bypass graft	19.33	NA	10.53	1.68	NA	31.54	090
35681		A	Composite bypass graft	1.60	NA	0.56	0.18	NA	2.34	ZZZ
35682		A	Composite bypass graft	7.20	NA	2.51	0.83	NA	10.54	ZZZ
35683		A	Composite bypass graft	8.50	NA	2.99	0.98	NA	12.47	ZZZ
35685		A	Bypass graft patency/patch	4.05	NA	1.50	0.41	NA	5.96	ZZZ
35686		A	Bypass graft/av fist patency	3.35	NA	1.24	0.34	NA	4.93	ZZZ
35691		A	Arterial transposition	18.05	NA	7.65	2.06	NA	27.76	090
35693		A	Arterial transposition	15.36	NA	6.66	1.80	NA	23.82	090
35694		A	Arterial transposition	19.16	NA	8.02	2.13	NA	29.31	090
35695		A	Arterial transposition	19.16	NA	7.92	2.19	NA	29.27	090
35700		A	Reoperation, bypass graft	3.08	NA	1.07	0.36	NA	4.51	ZZZ
35701		A	Exploration, carotid artery	8.50	NA	4.70	0.64	NA	13.84	090
35721		A	Exploration, femoral artery	7.18	NA	5.10	0.59	NA	12.87	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
35741		A	Exploration popliteal artery	8.00	NA	5.47	0.60	NA	14.07	090
35761		A	Exploration of artery/vein	5.37	NA	4.47	0.60	NA	10.44	090
35800		A	Explore neck vessels	7.02	NA	3.95	0.79	NA	11.76	090
35820		A	Explore chest vessels	12.88	NA	4.32	1.61	NA	18.81	090
35840		A	Explore abdominal vessels	9.77	NA	5.21	1.06	NA	16.04	090
35860		A	Explore limb vessels	5.55	NA	3.62	0.63	NA	9.80	090
35870		A	Repair vessel graft defect	22.17	NA	10.21	2.47	NA	34.85	090
35875		A	Removal of clot in graft	10.13	NA	6.63	0.97	NA	17.73	090
35876		A	Removal of clot in graft	17.00	NA	9.16	1.88	NA	28.04	090
35879		A	Revise graft w/vein	16.00	NA	7.77	1.35	NA	25.12	090
35881		A	Revise graft w/vein	18.00	NA	8.65	1.44	NA	28.09	090
35901		A	Excision, graft, neck	8.19	NA	5.85	0.90	NA	14.94	090
35903		A	Excision, graft, extremity	9.39	NA	8.20	1.03	NA	18.62	090
35905		A	Excision, graft, thorax	31.25	NA	15.39	2.15	NA	48.79	090
35907		A	Excision, graft, abdomen	35.00	NA	14.97	2.17	NA	52.14	090
36000		A	Place needle in vein	0.18	0.65	0.05	0.01	0.84	0.24	XXX
36002		A	Pseudoaneurysm injection trt	1.96	2.95	1.03	0.08	4.99	3.07	000
36005		A	Injection ext venography	0.95	7.29	0.34	0.04	8.28	1.33	000
36010		A	Place catheter in vein	2.43	NA	0.84	0.16	NA	3.43	XXX
36011		A	Place catheter in vein	3.14	NA	1.10	0.17	NA	4.41	XXX
36012		A	Place catheter in vein	3.52	NA	1.23	0.17	NA	4.92	XXX
36013		A	Place catheter in artery	2.52	NA	0.61	0.17	NA	3.30	XXX
36014		A	Place catheter in artery	3.02	NA	1.06	0.14	NA	4.22	XXX
36015		A	Place catheter in artery	3.52	NA	1.24	0.16	NA	4.92	XXX
36100		A	Establish access to artery	3.02	NA	1.16	0.18	NA	4.36	XXX
36120		A	Establish access to artery	2.01	NA	0.69	0.11	NA	2.81	XXX
36140		A	Establish access to artery	2.01	NA	0.69	0.12	NA	2.82	XXX
36145		A	Artery to vein shunt	2.01	NA	0.70	0.10	NA	2.81	XXX
36160		A	Establish access to aorta	2.52	NA	0.90	0.20	NA	3.62	XXX
36200		A	Place catheter in aorta	3.02	NA	1.09	0.15	NA	4.26	XXX
36215		A	Place catheter in artery	4.68	NA	1.68	0.22	NA	6.58	XXX
36216		A	Place catheter in artery	5.28	NA	1.89	0.24	NA	7.41	XXX
36217		A	Place catheter in artery	6.30	NA	2.29	0.32	NA	8.91	XXX
36218		A	Place catheter in artery	1.01	NA	0.37	0.05	NA	1.43	ZZZ
36245		A	Place catheter in artery	4.68	NA	1.78	0.23	NA	6.69	XXX
36246		A	Place catheter in artery	5.28	NA	1.91	0.26	NA	7.45	XXX
36247		A	Place catheter in artery	6.30	NA	2.25	0.32	NA	8.87	XXX
36248		A	Place catheter in artery	1.01	NA	0.37	0.06	NA	1.44	ZZZ
36260		A	Insertion of infusion pump	9.71	NA	5.63	1.00	NA	16.34	090
36261		A	Revision of infusion pump	5.45	NA	3.47	0.50	NA	9.42	090
36262		A	Removal of infusion pump	4.02	NA	2.59	0.43	NA	7.04	090
36299		C	Vessel injection procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
36400		A	Drawing blood	0.38	0.72	0.10	0.01	1.11	0.49	XXX
36405		A	Drawing blood	0.31	0.58	0.09	0.01	0.90	0.41	XXX
36406		A	Drawing blood	0.18	0.94	0.06	0.01	1.13	0.25	XXX
36410		A	Drawing blood	0.18	0.50	0.05	0.01	0.69	0.24	XXX
36415		I	Drawing blood	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36420		A	Establish access to vein	1.01	NA	0.33	0.09	NA	1.43	XXX
36425		A	Establish access to vein	0.76	3.44	0.17	0.05	4.25	0.98	XXX
36430		A	Blood transfusion service	0.00	0.95	NA	0.05	1.00	NA	XXX
36440		A	Blood transfusion service	1.03	NA	0.31	0.08	NA	1.42	XXX
36450		A	Exchange transfusion service	2.23	NA	0.71	0.16	NA	3.10	XXX
36455		A	Exchange transfusion service	2.43	NA	0.97	0.10	NA	3.50	XXX
36460		A	Transfusion service, fetal	6.59	NA	2.55	0.56	NA	9.70	XXX
36468		R	Injection(s), spider veins	0.00	0.00	0.00	0.00	0.00	0.00	000
36469		R	Injection(s), spider veins	0.00	0.00	0.00	0.00	0.00	0.00	000
36470		A	Injection therapy of vein	1.09	2.60	0.40	0.10	3.79	1.59	010
36471		A	Injection therapy of veins	1.57	2.65	0.58	0.15	4.37	2.30	010
36481		A	Insertion of catheter, vein	6.99	NA	2.86	0.40	NA	10.25	000
36488		A	Insertion of catheter, vein	1.35	NA	0.76	0.09	NA	2.20	000
36489		A	Insertion of catheter, vein	2.50	4.70	1.08	0.08	7.28	3.66	000
36490		A	Insertion of catheter, vein	1.67	NA	0.86	0.17	NA	2.70	000
36491		A	Insertion of catheter, vein	1.43	NA	0.75	0.13	NA	2.31	000
36493		A	Repositioning of cvc	1.21	NA	0.88	0.06	NA	2.15	000
36500		A	Insertion of catheter, vein	3.52	NA	1.31	0.14	NA	4.97	000
36510		A	Insertion of catheter, vein	1.09	NA	0.73	0.06	NA	1.88	000
36520		A	Plasma and/or cell exchange	1.74	NA	1.07	0.06	NA	2.87	000
36521		A	Apheresis w/ adsorp/reinfuse	1.74	NA	1.07	0.06	NA	2.87	000
36522		A	Photopheresis	1.67	6.03	1.16	0.07	7.77	2.90	000
36530		R	Insertion of infusion pump	6.20	NA	4.17	0.56	NA	10.93	010
36531		R	Revision of infusion pump	4.87	NA	3.32	0.44	NA	8.63	010
36532		R	Removal of infusion pump	3.30	NA	1.57	0.34	NA	5.21	010
36533		A	Insertion of access device	5.32	4.67	3.50	0.49	10.48	9.31	010

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
36534		A	Revision of access device	2.80	NA	1.55	0.19	NA	4.54	010
36535		A	Removal of access device	2.27	2.95	1.89	0.21	5.43	4.37	010
36540		B	Collect blood venous device	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36550		A	Declot vascular device	0.00	0.38	NA	0.31	0.69	NA	XXX
36600		A	Withdrawal of arterial blood	0.32	0.43	0.09	0.02	0.77	0.43	XXX
36620		A	Insertion catheter, artery	1.15	NA	0.25	0.06	NA	1.46	000
36625		A	Insertion catheter, artery	2.11	NA	0.61	0.16	NA	2.88	000
36640		A	Insertion catheter, artery	2.10	NA	0.75	0.18	NA	3.03	000
36660		A	Insertion catheter, artery	1.40	NA	0.38	0.08	NA	1.86	000
36680		A	Insert needle, bone cavity	1.20	NA	0.66	0.08	NA	1.94	000
36800		A	Insertion of cannula	2.43	NA	1.59	0.17	NA	4.19	000
36810		A	Insertion of cannula	3.97	NA	2.22	0.40	NA	6.59	000
36815		A	Insertion of cannula	2.62	NA	1.28	0.26	NA	4.16	000
36819		A	Av fusion/uppr arm vein	14.00	NA	6.56	1.53	NA	22.09	090
36820		A	Av fusion/forearm vein	14.00	NA	6.56	1.53	NA	22.09	090
36821		A	Av fusion direct any site	8.93	NA	5.03	0.97	NA	14.93	090
36822		A	Insertion of cannula(s)	5.42	NA	6.81	0.63	NA	12.86	090
36823		A	Insertion of cannula(s)	21.00	NA	10.63	2.18	NA	33.81	090
36825		A	Artery-vein graft	9.84	NA	5.58	1.09	NA	16.51	090
36830		A	Artery-vein graft	12.00	NA	6.14	1.32	NA	19.46	090
36831		A	Open thrombect av fistula	8.00	NA	3.99	0.79	NA	12.78	090
36832		A	Av fistula revision, open	10.50	NA	5.59	1.13	NA	17.22	090
36833		A	Av fistula revision	11.95	NA	6.11	1.29	NA	19.35	090
36834		A	Repair A-V aneurysm	9.93	NA	3.93	1.06	NA	14.92	090
36835		A	Artery to vein shunt	7.15	NA	4.50	0.80	NA	12.45	090
36860		A	External cannula declotting	2.01	2.52	1.33	0.10	4.63	3.44	000
36861		A	Cannula declotting	2.52	NA	1.50	0.14	NA	4.16	000
36870		A	Percut thrombect av fistula	5.16	41.63	2.45	0.23	47.02	7.84	090
37140		A	Revision of circulation	23.60	NA	10.56	1.21	NA	35 37	090
37145		A	Revision of circulation	24.61	NA	12.97	2.48	NA	40.06	090
37160		A	Revision of circulation	21.60	NA	9.43	2.16	NA	33.19	090
37180		A	Revision of circulation	24.61	NA	10.66	2.63	NA	37.90	090
37181		A	Splice spleen/kidney veins	26.68	NA	11.02	2.67	NA	40.37	090
37195		A	Thrombolytic therapy, stroke	0.00	7.65	NA	0.38	8.03	NA	XXX
37200		A	Transcatheter biopsy	4.56	NA	1.60	0.19	NA	6.35	000
37201		A	Transcatheter therapy infuse	5.00	NA	2.59	0.24	NA	7.83	000
37202		A	Transcatheter therapy infuse	5.68	NA	3.33	0.38	NA	9.39	000
37203		A	Transcatheter retrieval	5.03	NA	2.62	0.23	NA	7.88	000
37204		A	Transcatheter occlusion	18.14	NA	6.36	0.85	NA	25.35	000
37205		A	Transcatheter stent	8.28	NA	3.90	0.43	NA	12.61	000
37206		A	Transcatheter stent add-on	4.13	NA	1.54	0.22	NA	5.89	ZZZ
37207		A	Transcatheter stent	8.28	NA	3.61	0.89	NA	12.78	000
37208		A	Transcatheter stent add-on	4.13	NA	1.45	0.44	NA	6.02	ZZZ
37209		A	Exchange arterial catheter	2.27	NA	0.80	0.11	NA	3.18	000
37250		A	Iv us first vessel add-on	2.10	NA	0.79	0.17	NA	3.06	ZZZ
37251		A	Iv us each add vessel add-on	1.60	NA	0.58	0.14	NA	2.32	ZZZ
37565		A	Ligation of neck vein	10.88	NA	5.34	0.45	NA	16.67	090
37600		A	Ligation of neck artery	11.25	NA	6.51	0.40	NA	18.16	090
37605		A	Ligation of neck artery	13.11	NA	6.63	0.77	NA	20.51	090
37606		A	Ligation of neck artery	6.28	NA	3.85	0.79	NA	10.92	090
37607		A	Ligation of a-v fistula	6.16	NA	3.71	0.67	NA	10.54	090
37609		A	Temporal artery procedure	3.00	7.25	2.58	0.21	10.46	5.79	010
37615		A	Ligation of neck artery	5.73	NA	3.61	0.57	NA	9.91	090
37616		A	Ligation of chest artery	16.49	NA	10.54	1.93	NA	28.96	090
37617		A	Ligation of abdomen artery	22.06	NA	9.81	1.69	NA	33.56	090
37618		A	Ligation of extremity artery	4.84	NA	3.56	0.54	NA	8.94	090
37620		A	Revision of major vein	10.56	NA	5.53	0.75	NA	16.84	090
37650		A	Revision of major vein	7.80	NA	4.64	0.56	NA	13.00	090
37660		A	Revision of major vein	21.00	NA	9.44	1.17	NA	31.61	090
37700		A	Revise leg vein	3.73	NA	3.20	0.40	NA	7.33	090
37720		A	Removal of leg vein	5.66	NA	3.72	0.61	NA	9.99	090
37730		A	Removal of leg veins	7.33	NA	4.59	0.77	NA	12.69	090
37735		A	Removal of leg veins/lesion	10.53	NA	5.94	1.17	NA	17.64	090
37760		A	Revision of leg veins	10.47	NA	5.78	1.11	NA	17.36	090
37780		A	Revision of leg vein	3.84	NA	2.89	0.41	NA	7.14	090
37785		A	Revise secondary varicosity	3.84	7.18	2.91	0.41	11.43	7.16	090
37788		A	Revascularization, penis	22.01	NA	14.08	1.35	NA	37.44	090
37790		A	Penile venous occlusion	8.34	NA	6.78	0.63	NA	15.75	090
37799		C	Vascular surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
38100		A	Removal of spleen, total	14.50	NA	6.73	1.30	NA	22.53	090
38101		A	Removal of spleen, partial	15.31	NA	7.27	1.38	NA	23.96	090
38102		A	Removal of spleen, total	4.80	NA	1.73	0.49	NA	7.02	ZZZ
38115		A	Repair of ruptured spleen	15.82	NA	7.23	1.40	NA	24.45	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
38120		A	Laparoscopy, splenectomy	17.00	NA	7.58	1.73	NA	26.31	090
38129		C	Laparoscope proc, spleen	0.00	0.00	0.00	0.00	0.00	0.00	YYY
38200		A	Injection for spleen x-ray	2.64	NA	0.93	0.12	NA	3.69	000
38220		A	Bone marrow aspiration	1.08	4.64	0.44	0.03	5.75	1.55	XXX
38221		A	Bone marrow biopsy	1.37	4.74	0.56	0.04	6.15	1.97	XXX
38230		R	Bone marrow collection	4.54	NA	2.45	0.25	NA	7.24	010
38231		R	Stem cell collection	1.50	NA	0.61	0.05	NA	2.16	000
38240		R	Bone marrow/stem transplant	2.24	NA	0.88	0.08	NA	3.20	XXX
38241		R	Bone marrow/stem transplant	2.24	NA	0.86	0.08	NA	3.18	XXX
38300		A	Drainage, lymph node lesion	1.99	4.88	2.65	0.15	7.02	4.79	010
38305		A	Drainage, lymph node lesion	6.00	7.99	6.41	0.36	14.35	12.77	090
38308		A	Incision of lymph channels	6.45	NA	5.40	0.51	NA	12.36	090
38380		A	Thoracic duct procedure	7.46	NA	7.61	0.68	NA	15.75	090
38381		A	Thoracic duct procedure	12.88	NA	9.72	1.58	NA	24.18	090
38382		A	Thoracic duct procedure	10.08	NA	8.81	1.08	NA	19.97	090
38500		A	Biopsy/removal, lymph nodes	3.75	3.15	2.63	0.28	7.18	6.66	010
38505		A	Needle biopsy, lymph nodes	1.14	3.21	1.13	0.05	4.44	2.36	000
38510		A	Biopsy/removal, lymph nodes	6.43	NA	5.55	0.38	NA	12.36	010
38520		A	Biopsy/removal, lymph nodes	6.67	NA	5.67	0.52	NA	12.86	090
38525		A	Biopsy/removal, lymph nodes	6.07	NA	4.51	0.48	NA	11.06	090
38530		A	Biopsy/removal, lymph nodes	7.98	NA	5.78	0.63	NA	14.39	090
38542		A	Explore deep node(s), neck	5.91	NA	6.09	0.50	NA	12.50	090
38550		A	Removal, neck/armpit lesion	6.92	NA	5.01	0.69	NA	12.62	090
38555		A	Removal, neck/armpit lesion	14.14	NA	9.47	1.46	NA	25.07	090
38562		A	Removal, pelvic lymph nodes	10.49	NA	6.79	0.97	NA	18.25	090
38564		A	Removal, abdomen lymph nodes	10.83	NA	6.54	1.06	NA	18.43	090
38570		A	Laparoscopy, lymph node biop	9.25	NA	4.63	0.89	NA	14.77	010
38571		A	Laparoscopy, lymphadenectomy	14.68	NA	6.50	0.80	NA	21.98	010
38572		A	Laparoscopy, lymphadenectomy	16.59	NA	7.71	1.32	NA	25.62	010
38589		C	Laparoscope proc, lymphatic	0.00	0.00	0.00	0.00	0.00	0.00	YYY
38700		A	Removal of lymph nodes, neck	8.24	NA	13.61	0.60	NA	22.45	090
38720		A	Removal of lymph nodes, neck	13.61	NA	16.25	1.03	NA	30.89	090
38724		A	Removal of lymph nodes, neck	14.54	NA	16.82	1.10	NA	32.46	090
38740		A	Remove armpit lymph nodes	10.03	NA	5.89	0.69	NA	16.61	090
38745		A	Remove armpit lymph nodes	13.10	NA	8.47	0.90	NA	22.47	090
38746		A	Remove thoracic lymph nodes	4.89	NA	1.65	0.55	NA	7.09	ZZZ
38747		A	Remove abdominal lymph nodes	4.89	NA	1.75	0.50	NA	7.14	ZZZ
38760		A	Remove groin lymph nodes	12.95	NA	7.36	0.88	NA	21.19	090
38765		A	Remove groin lymph nodes	19.98	NA	11.57	1.50	NA	33.05	090
38770		A	Remove pelvis lymph nodes	13.23	NA	7.18	0.94	NA	21.35	090
38780		A	Remove abdomen lymph nodes	16.59	NA	9.67	1.60	NA	27.86	090
38790		A	Inject for lymphatic x-ray	1.29	14.77	0.46	0.09	16.15	1.84	000
38792		A	Identify sentinel node	0.52	NA	0.19	0.04	NA	0.75	000
38794		A	Access thoracic lymph duct	4.45	NA	1.57	0.17	NA	6.19	090
38999		C	Blood/lymph system procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
39000		A	Exploration of chest	6.10	NA	7.41	0.73	NA	14.24	090
39010		A	Exploration of chest	11.79	NA	9.31	1.46	NA	22.56	090
39200		A	Removal chest lesion	13.62	NA	10.10	1.65	NA	25.37	090
39220		A	Removal chest lesion	17.42	NA	11.29	2.10	NA	30.81	090
39400		A	Visualization of chest	5.61	NA	7.01	0.69	NA	13.31	010
39499		C	Chest procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
39501		A	Repair diaphragm laceration	13.19	NA	7.82	1.38	NA	22.39	090
39502		A	Repair paraesophageal hernia	16.33	NA	8.41	1.68	NA	26.42	090
39503		A	Repair of diaphragm hernia	95.00	NA	37.24	3.52	NA	135.76	090
39520		A	Repair of diaphragm hernia	16.10	NA	9.59	1.83	NA	27.52	090
39530		A	Repair of diaphragm hernia	15.41	NA	8.69	1.66	NA	25.76	090
39531		A	Repair of diaphragm hernia	16.42	NA	8.45	1.83	NA	26.70	090
39540		A	Repair of diaphragm hernia	13.32	NA	7.79	1.38	NA	22.49	090
39541		A	Repair of diaphragm hernia	14.41	NA	7.97	1.52	NA	23.90	090
39545		A	Revision of diaphragm	13.37	NA	9.32	1.55	NA	24.24	090
39560		A	Resect diaphragm, simple	12.00	NA	7.62	1.35	NA	20.97	090
39561		A	Resect diaphragm, complex	17.50	NA	9.84	1.97	NA	29.31	090
39599		C	Diaphragm surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
40490		A	Biopsy of lip	1.22	1.63	0.63	0.06	2.91	1.91	000
40500		A	Partial excision of lip	4.28	5.72	5.72	0.31	10.31	10.31	090
40510		A	Partial excision of lip	4.70	6.75	6.52	0.38	11.83	11.60	090
40520		A	Partial excision of lip	4.67	7.97	7.15	0.42	13.06	12.24	090
40525		A	Reconstruct lip with flap	7.55	NA	8.84	0.68	NA	17.07	090
40527		A	Reconstruct lip with flap	9.13	NA	9.60	0.82	NA	19.55	090
40530		A	Partial removal of lip	5.40	7.35	6.56	0.47	13.22	12.43	090
40650		A	Repair lip	3.64	5.78	5.18	0.31	9.73	9.13	090
40652		A	Repair lip	4.26	7.08	7.04	0.39	11.73	11.69	090
40654		A	Repair lip	5.31	7.95	7.95	0.48	13.74	13.74	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
40700		A	Repair cleft lip/nasal	12.79	NA	10.88	0.93	NA	24.60	090
40701		A	Repair cleft lip/nasal	15.85	NA	14.66	1.36	NA	31.87	090
40702		A	Repair cleft lip/nasal	13.04	NA	8.99	1.01	NA	23.04	090
40720		A	Repair cleft lip/nasal	13.55	NA	12.89	1.31	NA	27.75	090
40761		A	Repair cleft lip/nasal	14.72	NA	12.76	1.41	NA	28.89	090
40799		C	Lip surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
40800		A	Drainage of mouth lesion	1.17	2.01	0.48	0.09	3.27	1.74	010
40801		A	Drainage of mouth lesion	2.53	2.52	1.98	0.18	5.23	4.69	010
40804		A	Removal, foreign body, mouth	1.24	2.59	2.03	0.09	3.92	3.36	010
40805		A	Removal, foreign body, mouth	2.69	3.27	2.85	0.17	6.13	5.71	010
40806		A	Incision of lip fold	0.31	0.89	0.89	0.02	1.22	1.22	000
40808		A	Biopsy of mouth lesion	0.96	2.11	2.11	0.07	3.14	3.14	010
40810		A	Excision of mouth lesion	1.31	2.70	2.47	0.09	4.10	3.87	010
40812		A	Excise/repair mouth lesion	2.31	2.95	2.93	0.17	5.43	5.41	010
40814		A	Excise/repair mouth lesion	3.42	4.08	4.08	0.26	7.76	7.76	090
40816		A	Excision of mouth lesion	3.67	4.32	4.32	0.27	8.26	8.26	090
40818		A	Excise oral mucosa for gratt	2.41	4.05	4.05	0.14	6.60	6.60	090
40819		A	Excise lip or cheek fold	2.41	3.67	3.48	0.17	6.25	6.06	090
40820		A	Treatment of mouth lesion	1.28	2.38	2.30	0.08	3.74	3.66	010
40830		A	Repair mouth laceration	1.76	2.48	2.48	0.14	4.38	4.38	010
40831		A	Repair mouth laceration	2.46	2.72	2.72	0.21	5.39	5.39	010
40840		R	Reconstruction of mouth	8.73	5.93	5.93	0.79	15.45	15.45	090
40842		R	Reconstruction of mouth	8.73	5.90	5.90	0.65	15.28	15.28	090
40843		R	Reconstruction of mouth	12.10	7.35	7.35	0.84	20.29	20.29	090
40844		R	Reconstruction of mouth	16.01	9.01	9.01	1.63	26.65	26.65	090
40845		R	Reconstruction of mouth	18.58	12.25	12.25	1.47	32.30	32.30	090
40899		C	Mouth surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
41000		A	Drainage of mouth lesion	1.30	2.40	1.55	0.09	3.79	2.94	010
41005		A	Drainage of mouth lesion	1.26	2.33	1.62	0.09	3.68	2.97	010
41006		A	Drainage of mouth lesion	3.24	3.58	3.28	0.25	7.07	6.77	090
41007		A	Drainage of mouth lesion	3.10	3.78	3.33	0.22	7.10	6.65	090
41008		A	Drainage of mouth lesion	3.37	3.69	3.22	0.24	7.30	6.83	090
41009		A	Drainage of mouth lesion	3.59	3.65	3.42	0.25	7.49	7.26	090
41010		A	Incision of tongue fold	1.06	3.57	3.57	0.06	4.69	4.69	010
41015		A	Drainage of mouth lesion	3.96	4.05	3.39	0.29	8.30	7.64	090
41016		A	Drainage of mouth lesion	4.07	4.31	3.61	0.28	8.66	7.96	090
41017		A	Drainage of mouth lesion	4.07	4.26	3.46	0.32	8.65	7.85	090
41018		A	Drainage of mouth lesion	5.10	4.39	3.87	0.35	9.84	9.32	090
41100		A	Biopsy of tongue	1.63	2.67	2.64	0.12	4.42	4.39	010
41105		A	Biopsy of tongue	1.42	2.42	2.42	0.10	3.94	3.94	010
41108		A	Biopsy of floor of mouth	1.05	2.38	2.38	0.08	3.51	3.51	010
41110		A	Excision of tongue lesion	1.51	3.19	2.63	0.11	4.81	4.25	010
41112		A	Excision of tongue lesion	2.73	3.56	3.56	0.20	6.49	6.49	090
41113		A	Excision of tongue lesion	3.19	3.50	3.50	0.23	6.92	6.92	090
41114		A	Excision of tongue lesion	8.47	NA	6.59	0.64	NA	15.70	090
41115		A	Excision of tongue fold	1.74	2.69	2.53	0.13	4.56	4.40	010
41116		A	Excision of mouth lesion	2.44	3.37	3.37	0.17	5.98	5.98	090
41120		A	Partial removal of tongue	9.77	NA	9.12	0.70	NA	19.59	090
41130		A	Partial removal of tongue	11.15	NA	9.76	0.81	NA	21.72	090
41135		A	Tongue and neck surgery	23.09	NA	16.63	1.66	NA	41.38	090
41140		A	Removal of tongue	25.50	NA	17.39	1.85	NA	44.74	090
41145		A	Tongue removal, neck surgery	30.06	NA	21.36	2.11	NA	53.53	090
41150		A	Tongue, mouth, jaw surgery	23.04	NA	17.64	1.67	NA	42.35	090
41153		A	Tongue, mouth, neck surgery	23.77	NA	18.04	1.71	NA	43.52	090
41155		A	Tongue, jaw, & neck surgery	27.72	NA	20.44	2.02	NA	50.18	090
41250		A	Repair tongue laceration	1.91	2.98	1.77	0.15	5.04	3.83	010
41251		A	Repair tongue laceration	2.27	3.12	1.88	0.18	5.57	4.33	010
41252		A	Repair tongue laceration	2.97	3.23	2.33	0.23	6.43	5.53	010
41500		A	Fixation of tongue	3.71	NA	4.43	0.26	NA	8.40	090
41510		A	Tongue to lip surgery	3.42	NA	5.39	0.24	NA	9.05	090
41520		A	Reconstruction, tongue fold	2.73	3.06	3.06	0.19	5.98	5.98	090
41599		C	Tongue and mouth surgery	0.00	0.00	0.00	0.00	0.00	0.00	YYY
41800		A	Drainage of gum lesion	1.17	1.96	1.43	0.09	3.22	2.69	010
41805		A	Removal foreign body, gum	1.24	2.08	2.08	0.09	3.41	3.41	010
41806		A	Removal foreign body, jawbone	2.69	2.54	2.54	0.22	5.45	5.45	010
41820		R	Excision, gum, each quadrant	0.00	0.00	0.00	0.00	0.00	0.00	000
41821		R	Excision of gum flap	0.00	0.00	0.00	0.00	0.00	0.00	000
41822		R	Excision of gum lesion	2.31	2.82	0.98	0.24	5.37	3.53	010
41823		R	Excision of gum lesion	3.30	3.54	3.23	0.29	7.13	6.82	090
41825		A	Excision of gum lesion	1.31	2.43	2.41	0.10	3.84	3.82	010
41826		A	Excision of gum lesion	2.31	2.66	2.66	0.17	5.14	5.14	010
41827		A	Excision of gum lesion	3.42	3.63	3.63	0.25	7.30	7.30	090
41828		R	Excision of gum lesion	3.09	3.07	2.47	0.22	6.38	5.78	010

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
41830		R	Removal of gum tissue	3.35	3.39	2.98	0.23	6.97	6.56	010
41850		R	Treatment of gum lesion	0.00	0.00	0.00	0.00	0.00	0.00	000
41870		R	Gum graft	0.00	0.00	0.00	0.00	0.00	0.00	000
41872		R	Repair gum	2.59	2.93	2.93	0.18	5.70	5.70	090
41874		R	Repair tooth socket	3.09	2.86	2.45	0.23	6.18	5.77	090
41899		C	Dental surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
42000		A	Drainage mouth roof lesion	1.23	2.52	1.51	0.10	3.85	2.84	010
42100		A	Biopsy roof of mouth	1.31	2.47	2.47	0.10	3.88	3.88	010
42104		A	Excision lesion, mouth roof	1.64	2.58	2.58	0.12	4.34	4.34	010
42106		A	Excision lesion, mouth roof	2.10	2.66	2.66	0.16	4.92	4.92	010
42107		A	Excision lesion, mouth roof	4.44	4.26	4.26	0.32	9.02	9.02	090
42120		A	Remove palate/lesion	6.17	NA	5.19	0.44	NA	12 80	090
42140		A	Excision of uvula	1.62	3.91	3.36	0.12	5.65	5.10	090
42145		A	Repair palate, pharynx/uvula	8.05	NA	7.59	0.56	NA	16.20	090
42160		A	Treatment mouth roof lesion	1.80	3.25	2.72	0.13	5.18	4.65	010
42180		A	Repair palate	2.50	3.29	2.25	0.19	5.98	4.94	010
42182		A	Repair palate	3.83	3.10	3.10	0.27	7.20	7.20	010
42200		A	Reconstruct cleft palate	12.00	NA	9.78	0.97	NA	22.75	090
42205		A	Reconstruct cleft palate	13.29	NA	9.76	0.82	NA	23.87	090
42210		A	Reconstruct cleft palate	14.50	NA	11.47	1.24	NA	27.21	090
42215		A	Reconstruct cleft palate	8.82	NA	9.72	0.96	NA	19.50	090
42220		A	Reconstruct cleft palate	7.02	NA	6.85	0.41	NA	14.28	090
42225		A	Reconstruct cleft palate	9.54	NA	9.16	0.75	NA	19.45	090
42226		A	Lengthening of palate	10.01	NA	9.96	0.73	NA	20.70	090
42227		A	Lengthening of palate	9.52	NA	9.09	0.70	NA	19.31	090
42235		A	Repair palate	7.87	NA	5.93	0.49	NA	14.29	090
42260		A	Repair nose to lip fistula	9.80	6.43	6.43	0.85	17.08	17.08	090
42280		A	Preparation, palate mold	1.54	1.44	0.60	0.12	3.10	2.26	010
42281		A	Insertion, palate prosthesis	1.93	1.57	0.92	0.14	3.64	2.99	010
42299		C	Palate/uvula surgery	0.00	0.00	0.00	0.00	0.00	0.00	YYY
42300		A	Drainage of salivary gland	1.93	2.65	1.98	0.15	4.73	4.06	010
42305		A	Drainage of salivary gland	6.07	NA	5.38	0.46	NA	11.91	090
42310		A	Drainage of salivary gland	1.56	2.32	1.82	0.11	3.99	3.49	010
42320		A	Drainage of salivary gland	2.35	2.79	2.15	0.17	5.31	4.67	010
42325		A	Create salivary cyst drain	2.75	3.85	1.26	0.17	6.77	4.18	090
42326		A	Create salivary cyst drain	3.78	3.33	1.51	0.34	7.45	5.63	090
42330		A	Removal of salivary stone	2.21	2.81	1.20	0.16	5.18	3.57	010
42335		A	Removal of salivary stone	3.31	3.71	3.71	0.23	7.25	7.25	090
42340		A	Removal of salivary stone	4.60	5.07	5.07	0.34	10.01	10.01	090
42400		A	Biopsy of salivary gland	0.78	2.52	0.40	0.06	3.36	1.24	000
42405		A	Biopsy of salivary gland	3.29	3.44	3.44	0.24	6.97	6.97	010
42408		A	Excision of salivary cyst	4.54	4.71	4.71	0.34	9.59	9.59	090
42409		A	Drainage of salivary cyst	2.81	3.34	3.34	0.20	6.35	6.35	090
42410		A	Excise parotid gland/lesion	9.34	NA	8.20	0.77	NA	18.31	090
42415		A	Excise parotid gland/lesion	16.89	NA	12.82	1.26	NA	30.97	090
42420		A	Excise parotid gland/lesion	19.59	NA	14.46	1.45	NA	35.50	090
42425		A	Excise parotid gland/lesion	13.02	NA	10.70	0.98	NA	24.70	090
42426		A	Excise parotid gland/lesion	21.26	NA	15.44	1.57	NA	38.27	090
42440		A	Excise submaxillary gland	6.97	NA	6.13	0.51	NA	13.61	090
42450		A	Excise sublingual gland	4.62	4.38	4.38	0.34	9.34	9.34	090
42500		A	Repair salivary duct	4.30	5.14	5.10	0.30	9.74	9.70	090
42505		A	Repair salivary duct	6.18	6.02	6.02	0.44	12.64	12.64	090
42507		A	Parotid duct diversion	6.11	NA	5.44	0.66	NA	12.21	090
42508		A	Parotid duct diversion	9.10	NA	8.40	0.64	NA	18.14	090
42509		A	Parotid duct diversion	11.54	NA	9.25	1.24	NA	22.03	090
42510		A	Parotid duct diversion	8.15	NA	7.27	0.57	NA	15.99	090
42550		A	Injection for salivary x-ray	1.25	12.45	0.44	0.06	13.76	1.75	000
42600		A	Closure of salivary fistula	4.82	7.89	5.61	0.34	13.05	10.77	090
42650		A	Dilation of salivary duct	0.77	1.13	0.41	0.06	1.96	1.24	000
42660		A	Dilation of salivary duct	1.13	1.15	1.15	0.07	2.35	2.35	000
42665		A	Ligation of salivary duct	2.53	3.03	3.03	0.17	5.73	5.73	090
42699		C	Salivary surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
42700		A	Drainage of tonsil abscess	1.62	3.30	1.93	0.12	5.04	3.67	010
42720		A	Drainage of throat abscess	5.42	4.77	4.77	0.39	10.58	10.58	010
42725		A	Drainage of throat abscess	10.72	NA	8.70	0.80	NA	20.22	090
42800		A	Biopsy of throat	1.39	3.09	2.63	0.10	4.58	4.12	010
42802		A	Biopsy of throat	1.54	3.24	2.72	0.11	4.89	4.37	010
42804		A	Biopsy of upper nose/throat	1.24	3.04	2.56	0.09	4.37	3.89	010
42806		A	Biopsy of upper nose/throat	1.58	3.53	2.76	0.12	5.23	4.46	010
42808		A	Excise pharynx lesion	2.30	5.00	3.17	0.17	7.47	5.64	010
42809		A	Remove pharynx foreign body	1.81	3.48	1.77	0.13	5 42	3.71	010
42810		A	Excision of neck cyst	3.25	5.66	4.61	0.25	9.16	8.11	090
42815		A	Excision of neck cyst	7.07	NA	6.67	0.53	NA	14.27	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
42820		A	Remove tonsils and adenoids	3.91	NA	4.02	0.28	NA	8.21	090
42821		A	Remove tonsils and adenoids	4.29	NA	4.30	0.30	NA	8.89	090
42825		A	Removal of tonsils	3.42	NA	3.74	0.24	NA	7.40	090
42826		A	Removal of tonsils	3.38	NA	3.81	0.23	NA	7.42	090
42830		A	Removal of adenoids	2.57	NA	2.51	0.18	NA	5.26	090
42831		A	Removal of adenoids	2.71	NA	2.59	0.19	NA	5.49	090
42835		A	Removal of adenoids	2.30	NA	3.20	0.17	NA	5.67	090
42836		A	Removal of adenoids	3.18	NA	3.69	0.22	NA	7.09	090
42842		A	Extensive surgery of throat	8.76	NA	7.96	0.61	NA	17.33	090
42844		A	Extensive surgery of throat	14.31	NA	11.57	1.04	NA	26.92	090
42845		A	Extensive surgery of throat	24.29	NA	18.00	1.76	NA	44.05	090
42860		A	Excision of tonsil tags	2.22	NA	3.08	0.16	NA	5.46	090
42870		A	Excision of lingual tonsil	5.40	NA	6.18	0.38	NA	11.96	090
42890		A	Partial removal of pharynx	12.94	NA	11.03	0.91	NA	24.88	090
42892		A	Revision of pharyngeal walls	15.83	NA	12.68	1.14	NA	29.65	090
42894		A	Revision of pharyngeal walls	22.88	NA	17.38	1.64	NA	41.90	090
42900		A	Repair throat wound	5.25	NA	3.93	0.39	NA	9.57	010
42950		A	Reconstruction of throat	8.10	NA	7.60	0.58	NA	16.28	090
42953		A	Repair throat, esophagus	8.96	NA	9.14	0.73	NA	18.83	090
42955		A	Surgical opening of throat	7.39	NA	6.55	0.63	NA	14.57	090
42960		A	Control throat bleeding	2.33	NA	2.13	0.17	NA	4.63	010
42961		A	Control throat bleeding	5.59	NA	5.30	0.40	NA	11.29	090
42962		A	Control throat bleeding	7.14	NA	6.35	0.51	NA	14.00	090
42970		A	Control nose/throat bleeding	5.43	NA	3.99	0.37	NA	9.79	090
42971		A	Control nose/throat bleeding	6.21	NA	5.99	0.45	NA	12.65	090
42972		A	Control nose/throat bleeding	7.20	NA	5.73	0.54	NA	13.47	090
42999		C	Throat surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
43020		A	Incision of esophagus	8.09	NA	6.77	0.70	NA	15.56	090
43030		A	Throat muscle surgery	7.69	NA	7.00	0.60	NA	15.29	090
43045		A	Incision of esophagus	20.12	NA	11.14	2.15	NA	33.41	090
43100		A	Excision of esophagus lesion	9.19	NA	7.58	0.79	NA	17.56	090
43101		A	Excision of esophagus lesion	16.24	NA	8.84	1.81	NA	26.89	090
43107		A	Removal of esophagus	40.00	NA	18.49	3.29	NA	61.78	090
43108		A	Removal of esophagus	34.19	NA	16.39	3.78	NA	54.36	090
43112		A	Removal of esophagus	43.50	NA	20.06	3.67	NA	67.23	090
43113		A	Removal of esophagus	35.27	NA	16.38	4.33	NA	55.98	090
43116		A	Partial removal of esophagus	31.22	NA	18.49	2.62	NA	52.33	090
43117		A	Partial removal of esophagus	40.00	NA	18.51	3.51	NA	62.02	090
43118		A	Partial removal of esophagus	33.20	NA	15.76	3.56	NA	52.52	090
43121		A	Partial removal of esophagus	29.19	NA	15.08	3.44	NA	47.71	090
43122		A	Partial removal of esophagus	40.00	NA	18.05	3.27	NA	61.32	090
43123		A	Partial removal of esophagus	33 20	NA	15.58	3.96	NA	52.74	090
43124		A	Removal of esophagus	27.32	NA	15.15	2.95	NA	45 42	090
43130		A	Removal of esophagus pouch	11.75	NA	9.05	1.06	NA	21.86	090
43135		A	Removal of esophagus pouch	16.10	NA	10.09	1.85	NA	28.04	090
43200		A	Esophagus endoscopy	1.59	7.92	1.22	0.11	9.62	2.92	000
43202		A	Esophagus endoscopy, biopsy	1.89	6.46	1.15	0.12	8.47	3.16	000
43204		A	Esophagus endoscopy & inject	3.77	NA	1.71	0.18	NA	5.66	000
43205		A	Esophagus endoscopy/ligation	3.79	NA	1.71	0.17	NA	5.67	000
43215		A	Esophagus endoscopy	2.60	NA	1.26	0.17	NA	4 03	000
43216		A	Esophagus endoscopy/lesion	2.40	NA	1.20	0.15	NA	3.75	000
43217		A	Esophagus endoscopy	2.90	NA	1.35	0.17	NA	4.42	000
43219		A	Esophagus endoscopy	2.80	NA	1.43	0.16	NA	4.39	000
43220		A	Esoph endoscopy, dilation	2.10	NA	1.14	0.12	NA	3.36	000
43226		A	Esoph endoscopy, dilation	2.34	NA	1.21	0.12	NA	3.67	000
43227		A	Esoph endoscopy, repair	3.60	NA	1.64	0.18	NA	5.42	000
43228		A	Esoph endoscopy, ablation	3.77	NA	1.77	0.25	NA	5.79	000
43231		A	Esoph endoscopy w/us exam	3.19	NA	1.60	0.20	NA	4.99	000
43232		A	Esoph endoscopy w/us fn bx	4.48	NA	2.15	0.26	NA	6.89	000
43234		A	Upper GI endoscopy, exam	2.01	4.58	1.06	0.13	6.72	3.20	000
43235		A	Uppr GI endoscopy, diagnosis	2.39	6.38	1.23	0.13	8.90	3.75	000
43239		A	Upper GI endoscopy, biopsy	2.87	6.79	1.27	0.14	9.80	4.28	000
43240		A	Esoph endoscope w/drain cyst	6.86	NA	2.97	0.36	NA	10.19	000
43241		A	Upper GI endoscopy with tube	2.59	NA	1.27	0.14	NA	4.00	000
43242		A	Uppr GI endoscopy w/us fn bx	7.31	2.64	2.64	0.29	10.24	10.24	000
43243		A	Upper GI endoscopy & inject	4.57	NA	2.00	0.21	NA	6.78	000
43244		A	Upper GI endoscopy/ligation	5.05	NA	2.18	0.21	NA	7.44	000
43245		A	Operative upper GI endoscopy	3.39	NA	1.55	0.18	NA	5.12	000
43246		A	Place gastrostomy tube	4.33	NA	1.84	0.24	NA	6.41	000
43247		A	Operative upper GI endoscopy	3.39	NA	1.56	0.17	NA	5.12	000
43248		A	Uppr GI endoscopy/guide wire	3.15	NA	1.49	0.15	NA	4.79	000
43249		A	Esoph endoscopy, dilation	2.90	NA	1.39	0.15	NA	4.44	000
43250		A	Upper GI endoscopy/tumor	3.20	NA	1.48	0.17	NA	4.85	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
43251		A	Operative upper GI endoscopy	3.70	NA	1.67	0.19	NA	5.56	000
43255		A	Operative upper GI endoscopy	4.82	NA	1.97	0.20	NA	6.99	000
43256		A	Uppr GI endoscopy w stent	4.60	1.66	1.66	0.23	6.49	6.49	000
43258		A	Operative upper GI endoscopy	4.55	NA	1.99	0.22	NA	6.76	000
43259		A	Endoscopic ultrasound exam	4.89	NA	2.22	0.22	NA	7.33	000
43260		A	Endo cholangiopancreatograph	5.96	NA	2.50	0.27	NA	8.73	000
43261		A	Endo cholangiopancreatograph	6.27	NA	2.62	0.29	NA	9.18	000
43262		A	Endo cholangiopancreatograph	7.39	NA	3.03	0.34	NA	10.76	000
43263		A	Endo cholangiopancreatograph	7.29	NA	3.00	0.28	NA	10.57	000
43264		A	Endo cholangiopancreatograph	8.90	NA	3.58	0.41	NA	12.89	000
43265		A	Endo cholangiopancreatograph	10.02	NA	3.99	0.42	NA	14.43	000
43267		A	Endo cholangiopancreatograph	7.39	NA	3.04	0.34	NA	10.77	000
43268		A	Endo cholangiopancreatograph	7.39	NA	3.03	0.34	NA	10.76	000
43269		A	Endo cholangiopancreatograph	8.21	NA	3.33	0.28	NA	11.82	000
43271		A	Endo cholangiopancreatograph	7.39	NA	3.02	0.34	NA	10.75	000
43272		A	Endo cholangiopancreatograph	7.39	NA	3.04	0.34	NA	10.77	000
43280		A	Laparoscopy, fundoplasty	17.25	NA	8.43	1.76	NA	27.44	090
43289		C	Laparoscope proc, esoph	0.00	0.00	0.00	0.00	0.00	0.00	YYY
43300		A	Repair of esophagus	9.14	NA	7.31	0.85	NA	17.30	090
43305		A	Repair esophagus and fistula	17.39	NA	12.84	1.36	NA	31.59	090
43310		A	Repair of esophagus	25.39	NA	14.51	3.18	NA	43.08	090
43312		A	Repair esophagus and fistula	28.42	NA	17.45	3.38	NA	49.25	090
43313		A	Esophagoplasty congential	45.28	NA	22.01	5.43	NA	72.72	090
43314		A	Tracheo-esophagoplasty cong	50.27	NA	24.07	5.53	NA	79.87	090
43320		A	Fuse esophagus & stomach	19.93	NA	10.67	1.59	NA	32.19	090
43324		A	Revise esophagus & stomach	20.57	NA	9.79	1.72	NA	32.08	090
43325		A	Revise esophagus & stomach	20.06	NA	10.08	1.65	NA	31.79	090
43326		A	Revise esophagus & stomach	19.74	NA	10.33	1.84	NA	31.91	090
43330		A	Repair of esophagus	19.77	NA	9.78	1.52	NA	31.07	090
43331		A	Repair of esophagus	20.13	NA	11.41	1.93	NA	33.47	090
43340		A	Fuse esophagus & intestine	19.61	NA	10.31	1.53	NA	31.45	090
43341		A	Fuse esophagus & intestine	20.85	NA	11.17	2.14	NA	34.16	090
43350		A	Surgical opening, esophagus	15.78	NA	10.50	1.15	NA	27.43	090
43351		A	Surgical opening, esophagus	18.35	NA	10.91	1.51	NA	30.77	090
43352		A	Surgical opening, esophagus	15.26	NA	9.59	1.28	NA	26.13	090
43360		A	Gastrointestinal repair	35.70	NA	17.43	3.00	NA	56.13	090
43361		A	Gastrointestinal repair	40.50	NA	17.93	3.52	NA	61.95	090
43400		A	Ligate esophagus veins	21.20	NA	10.46	0.99	NA	32.65	090
43401		A	Esophagus surgery for veins	22.09	NA	10.34	1.73	NA	34.16	090
43405		A	Ligate/staple esophagus	20.01	NA	9.45	1.63	NA	31.09	090
43410		A	Repair esophagus wound	13.47	NA	9.35	1.15	NA	23.97	090
43415		A	Repair esophagus wound	25.00	NA	12.50	1.92	NA	39.42	090
43420		A	Repair esophagus opening	14.35	NA	9.15	0.86	NA	24.36	090
43425		A	Repair esophagus opening	21.03	NA	11.00	2.03	NA	34.06	090
43450		A	Dilate esophagus	1.38	1.47	0.63	0.07	2.92	2.08	000
43453		A	Dilate esophagus	1.51	NA	0.68	0.08	NA	2.27	000
43456		A	Dilate esophagus	2.57	NA	1.07	0.14	NA	3.78	000
43458		A	Dilate esophagus	3.06	NA	1.26	0.17	NA	4.49	000
43460		A	Pressure treatment esophagus	3.80	NA	1.54	0.21	NA	5.55	000
43496		C	Free jejunum flap, microvasc	0.00	0.00	0.00	0.00	0.00	0.00	090
43499		C	Esophagus surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
43500		A	Surgical opening of stomach	11.05	NA	5.23	0.84	NA	17.12	090
43501		A	Surgical repair of stomach	20.04	NA	8.86	1.55	NA	30.45	090
43502		A	Surgical repair of stomach	23.13	NA	10.16	1.83	NA	35.12	090
43510		A	Surgical opening of stomach	13.08	NA	7.50	0.90	NA	21.48	090
43520		A	Incision of pyloric muscle	9.99	NA	5.73	0.84	NA	16.56	090
43600		A	Biopsy of stomach	1.91	NA	1.05	0.11	NA	3.07	000
43605		A	Biopsy of stomach	11.98	NA	5.55	0.93	NA	18.46	090
43610		A	Excision of stomach lesion	14.60	NA	6.85	1.14	NA	22.59	090
43611		A	Excision of stomach lesion	17.84	NA	8.12	1.38	NA	27.34	090
43620		A	Removal of stomach	30.04	NA	12.89	2.29	NA	45.22	090
43621		A	Removal of stomach	30.73	NA	13.21	2.36	NA	46.30	090
43622		A	Removal of stomach	32.53	NA	13.79	2.48	NA	48.80	090
43631		A	Removal of stomach, partial	22.59	NA	9.72	1.99	NA	34.30	090
43632		A	Removal of stomach, partial	22.59	NA	9.73	2.00	NA	34.32	090
43633		A	Removal of stomach, partial	23.10	NA	9.87	2.05	NA	35.02	090
43634		A	Removal of stomach, partial	25.12	NA	10.84	2.18	NA	38.14	090
43635		A	Removal of stomach, partial	2.06	NA	0.74	0.21	NA	3.01	ZZZ
43638		A	Removal of stomach, partial	29.00	NA	12.13	2.24	NA	43.37	090
43639		A	Removal of stomach, partial	29.65	NA	12.30	2.31	NA	44.26	090
43640		A	Vagotomy & pylorus repair	17.02	NA	7.72	1.51	NA	26.25	090
43641		A	Vagotomy & pylorus repair	17.27	NA	7.82	1.53	NA	26.62	090
43651		A	Laparoscopy, vagus nerve	10.15	NA	4.71	1.03	NA	15.89	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
43652		A	Laparoscopy, vagus nerve	12.15	NA	5.53	1.25	NA	18.93	090
43653		A	Laparoscopy, gastrostomy	7.73	NA	4.37	0.78	NA	12.88	090
43659		C	Laparoscope proc, stom	0.00	0.00	0.00	0.00	0.00	0.00	YYY
43750		A	Place gastrostomy tube	4.49	NA	2.72	0.33	NA	7.54	010
43752		B	Nasal/orogastric w/stent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
43760		A	Change gastrostomy tube	1.10	1.47	0.46	0.07	2.64	1.63	000
43761		A	Reposition gastrostomy tube	2.01	NA	0.83	0.10	NA	2.94	000
43800		A	Reconstruction of pylorus	13.69	NA	6.60	1.07	NA	21.36	090
43810		A	Fusion of stomach and bowel	14.65	NA	6.94	1.10	NA	22.69	090
43820		A	Fusion of stomach and bowel	15.37	NA	7.15	1.18	NA	23.70	090
43825		A	Fusion of stomach and bowel	19.22	NA	8.56	1.50	NA	29.28	090
43830		A	Place gastrostomy tube	9.53	NA	5.06	0.69	NA	15.28	090
43831		A	Place gastrostomy tube	7.84	NA	4.67	0.81	NA	13.32	090
43832		A	Place gastrostomy tube	15.60	NA	7.66	1.13	NA	24.39	090
43840		A	Repair of stomach lesion	15.56	NA	7.21	1.20	NA	23.97	090
43842		A	Gastroplasty for obesity	18.47	NA	11.24	1.51	NA	31.22	090
43843		A	Gastroplasty for obesity	18.65	NA	11.25	1.53	NA	31.43	090
43846		A	Gastric bypass for obesity	24.05	NA	13.68	1.96	NA	39.69	090
43847		A	Gastric bypass for obesity	26.92	NA	15.28	2.14	NA	44.34	090
43848		A	Revision gastroplasty	29.39	NA	16.54	2.39	NA	48.32	090
43850		A	Revise stomach-bowel fusion	24.72	NA	10.42	1.97	NA	37.11	090
43855		A	Revise stomach-bowel fusion	26.16	NA	11.12	2.01	NA	39.29	090
43860		A	Revise stomach-bowel fusion	25.00	NA	10.58	2.03	NA	37.61	090
43865		A	Revise stomach-bowel fusion	26.52	NA	11.21	2.15	NA	39.88	090
43870		A	Repair stomach opening	9.69	NA	5.22	0.71	NA	15.62	090
43880		A	Repair stomach-bowel fistula	24.65	NA	10.87	1.94	NA	37.46	090
43999		C	Stomach surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
44005		A	Freeing of bowel adhesion	16.23	NA	7.40	1.39	NA	25.02	090
44010		A	Incision of small bowel	12.52	NA	6.48	1.05	NA	20.05	090
44015		A	Insert needle cath bowel	2.62	NA	0.93	0.25	NA	3.80	ZZZ
44020		A	Explore small intestine	13.99	NA	6.56	1.20	NA	21.75	090
44021		A	Decompress small bowel	14.08	NA	7.02	1.18	NA	22.28	090
44025		A	Incision of large bowel	14.28	NA	6.65	1.21	NA	22.14	090
44050		A	Reduce bowel obstruction	14.03	NA	6.60	1.15	NA	21.78	090
44055		A	Correct malrotation of bowel	22.00	NA	9.51	1.32	NA	32.83	090
44100		A	Biopsy of bowel	2.01	NA	1.09	0.12	NA	3.22	000
44110		A	Excise intestine lesion(s)	11.81	NA	5.84	1.00	NA	18.65	090
44111		A	Excision of bowel lesion(s)	14.29	NA	7.10	1.22	NA	22.61	090
44120		A	Removal of small intestine	17.00	NA	7.67	1.46	NA	26.13	090
44121		A	Removal of small intestine	4.45	NA	1.60	0.45	NA	6.50	ZZZ
44125		A	Removal of small intestine	17.54	NA	7.86	1.49	NA	26.89	090
44126		A	Enterectomy w/taper, cong	35.50	NA	18.03	0.36	NA	53.89	090
44127		A	Enterectomy w/o taper, cong	41.00	NA	20.56	0.41	NA	61.97	090
44128		A	Enterectomy cong, add-on	4.45	NA	1.78	0.45	NA	6.68	ZZZ
44130		A	Bowel to bowel fusion	14.49	NA	6.78	1.23	NA	22.50	090
44132		R	Enterectomy, cadaver donor	0.00	0.00	0.00	0.00	0.00	0.00	XXX
44133		R	Enterectomy, live donor	0.00	0.00	0.00	0.00	0.00	0.00	XXX
44135		R	Intestine transplant, cadaver	0.00	0.00	0.00	0.00	0.00	0.00	XXX
44136		R	Intestine transplant, live	0.00	0.00	0.00	0.00	0.00	0.00	XXX
44139		A	Mobilization of colon	2.23	NA	0.80	0.21	NA	3.24	ZZZ
44140		A	Partial removal of colon	21.00	NA	9.53	1.83	NA	32.36	090
44141		A	Partial removal of colon	19.51	NA	11.93	1.95	NA	33.39	090
44143		A	Partial removal of colon	22.99	NA	13.14	2.02	NA	38.15	090
44144		A	Partial removal of colon	21.53	NA	11.75	1.89	NA	35.17	090
44145		A	Partial removal of colon	26.42	NA	11.90	2.22	NA	40.54	090
44146		A	Partial removal of colon	27.54	NA	15.41	2.20	NA	45.15	090
44147		A	Partial removal of colon	20.71	NA	10.15	1.74	NA	32.60	090
44150		A	Removal of colon	23.95	NA	14.08	2.05	NA	40.08	090
44151		A	Removal of colon/ileostomy	26.88	NA	15.74	1.97	NA	44.59	090
44152		A	Removal of colon/ileostomy	27.83	NA	17.01	2.36	NA	47.20	090
44153		A	Removal of colon/ileostomy	30.59	NA	16.64	2.33	NA	49.56	090
44155		A	Removal of colon/ileostomy	27.86	NA	15.28	2.26	NA	45.40	090
44156		A	Removal of colon/ileostomy	30.79	NA	17.86	2.19	NA	50.84	090
44160		A	Removal of colon	18.62	NA	8.65	1.55	NA	28.82	090
44200		A	Laparoscopy, enterolysis	14.44	NA	6.79	1.46	NA	22.69	090
44201		A	Laparoscopy, jejunostomy	9.78	NA	5.16	0.97	NA	15.91	090
44202		A	Lap resect s/intestine singl	22.04	NA	9.82	2.16	NA	34.02	090
44203		A	Lap resect s/intestine, addl	4.45	NA	1.60	0.45	NA	6.50	ZZZ
44204		A	Laparo partial colectomy	25.08	NA	10.46	1.83	NA	37.37	090
44205		A	Lap colectomy part w/ileum	22.23	NA	9.31	1.55	NA	33.09	090
44209		C	Laparoscope proc, intestine	0.00	0.00	0.00	0.00	0.00	0.00	YYY
44300		A	Open bowel to skin	12.11	NA	6.79	0.88	NA	19.78	090
44310		A	Ileostomy/jejunostomy	15.95	NA	10.50	1.13	NA	27.58	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
44312		A	Revision of ileostomy	8.02	NA	5.25	0.54	NA	13.81	090
44314		A	Revision of ileostomy	15.05	NA	10.37	0.99	NA	26.41	090
44316		A	Devise bowel pouch	21.09	NA	13.77	1.41	NA	36.27	090
44320		A	Colostomy	17.64	NA	12.13	1.28	NA	31.05	090
44322		A	Colostomy with biopsies	11.98	NA	10.41	1.18	NA	23.57	090
44340		A	Revision of colostomy	7.72	NA	4.86	0.56	NA	13.14	090
44345		A	Revision of colostomy	15.43	NA	8.34	1.11	NA	24.88	090
44346		A	Revision of colostomy	16.99	NA	8.91	1.20	NA	27.10	090
44360		A	Small bowel endoscopy	2.59	NA	1.39	0.14	NA	4.12	000
44361		A	Small bowel endoscopy/biopsy	2.87	NA	1.50	0.15	NA	4.52	000
44363		A	Small bowel endoscopy	3.50	NA	1.71	0.19	NA	5.40	000
44364		A	Small bowel endoscopy	3.74	NA	1.80	0.21	NA	5.75	000
44365		A	Small bowel endoscopy	3.31	NA	1.68	0.18	NA	5.17	000
44366		A	Small bowel endoscopy	4.41	NA	2.05	0.22	NA	6.68	000
44369		A	Small bowel endoscopy	4.52	NA	2.05	0.23	NA	6.80	000
44370		A	Small bowel endoscopy/stent	4.80	1.74	1.74	0.21	6.75	6.75	000
44372		A	Small bowel endoscopy	4.41	NA	2.04	0.27	NA	6.72	000
44373		A	Small bowel endoscopy	3.50	NA	1.80	0.19	NA	5.49	000
44376		A	Small bowel endoscopy	5.26	NA	2.36	0.29	NA	7.91	000
44377		A	Small bowel endoscopy/biopsy	5.53	NA	2.47	0.28	NA	8.28	000
44378		A	Small bowel endoscopy	7.13	NA	3.06	0.37	NA	10.56	000
44379		A	S bowel endoscope w/stent	7.47	2.67	2.67	0.38	10.52	10.52	000
44380		A	Small bowel endoscopy	1.05	NA	0.79	0.08	NA	1.92	000
44382		A	Small bowel endoscopy	1.27	NA	0.90	0.09	NA	2.26	000
44383		A	Ileoscopy w/stent	3.26	1.16	1.16	0.13	4.55	4.55	000
44385		A	Endoscopy of bowel pouch	1.82	5.26	0.95	0.12	7.20	2.89	000
44386		A	Endoscopy, bowel pouch/biop	2.12	6.98	1.09	0.15	9.25	3.36	000
44388		A	Colon endoscopy	2.82	6.91	1.42	0.18	9.91	4.42	000
44389		A	Colonoscopy with biopsy	3.13	7.62	1.55	0.18	10.93	4.86	000
44390		A	Colonoscopy for foreign body	3.83	6.68	1.80	0.22	10.73	5.85	000
44391		A	Colonoscopy for bleeding	4.32	6.04	1.78	0.23	10.59	6.33	000
44392		A	Colonoscopy & polypectomy	3.82	8.21	1.79	0.23	12.26	5.84	000
44393		A	Colonoscopy, lesion removal	4.84	8.45	2.19	0.27	13.56	7.30	000
44394		A	Colonoscopy w/snare	4.43	7.71	2.04	0.26	12.40	6.73	000
44397		A	Colonoscopy w stent	4.71	NA	2.10	0.28	NA	7.09	000
44500		A	Intro. gastrointestinal tube	0.49	NA	0.37	0.02	NA	0.88	000
44602		A	Suture, small intestine	16.03	NA	7.34	1.07	NA	24.44	090
44603		A	Suture, small intestine	18.66	NA	8.25	1.39	NA	28.30	090
44604		A	Suture, large intestine	16.03	NA	7.35	1.42	NA	24.80	090
44605		A	Repair of bowel lesion	19.53	NA	8.94	1.54	NA	30.01	090
44615		A	Intestinal stricturoplasty	15.93	NA	7.32	1.39	NA	24.64	090
44620		A	Repair bowel opening	12.20	NA	5.81	1.05	NA	19.06	090
44625		A	Repair bowel opening	15.05	NA	6.86	1.30	NA	23.21	090
44626		A	Repair bowel opening	25.36	NA	10.60	2.19	NA	38.15	090
44640		A	Repair bowel-skin fistula	21.65	NA	9.70	1.46	NA	32.81	090
44650		A	Repair bowel fistula	22.57	NA	10.01	1.49	NA	34.07	090
44660		A	Repair bowel-bladder fistula	21.36	NA	9.51	1.14	NA	32.01	090
44661		A	Repair bowel-bladder fistula	24.81	NA	10.73	1.53	NA	37.07	090
44680		A	Surgical revision, intestina	15.40	NA	7.47	1.37	NA	24.24	090
44700		A	Suspend bowel w/prosthesis	16.11	NA	7.57	1.21	NA	24.89	090
44799		C	Intestine surgery procedure	0.00	0.00	0.00	0.00	0.00	0 00	YYY
44800		A	Excision of bowel pouch	11.23	NA	5.61	1.11	NA	17.95	090
44820		A	Excision of mesentery lesion	12.09	NA	5.98	1.03	NA	19.10	090
44850		A	Repair of mesentery	10.74	NA	5.41	0.99	NA	17.14	090
44899		C	Bowel surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
44900		A	Drain app abscess, open	10.14	NA	5.96	0.84	NA	16.94	090
44901		A	Drain app abscess, percut	3.38	NA	5.01	0.17	NA	8.56	000
44950		A	Appendectomy	10.00	NA	5.31	0.88	NA	16.19	090
44955		A	Appendectomy add-on	1.53	NA	0.57	0.16	NA	2.26	ZZZ
44960		A	Appendectomy	12.34	NA	6.50	1.09	NA	19.93	090
44970		A	Laparoscopy, appendectomy	8.70	NA	4.21	0.88	NA	13.79	090
44979		C	Laparoscope proc, app	0.00	0.00	0.00	0.00	0.00	0.00	YYY
45000		A	Drainage of pelvic abscess	4.52	NA	3.80	0.37	NA	8.69	090
45005		A	Drainage of rectal abscess	1.99	4.58	1.62	0.18	6.75	3.79	010
45020		A	Drainage of rectal abscess	4.72	NA	4.21	0.41	NA	9.34	090
45100		A	Biopsy of rectum	3.68	4.86	2.12	0.33	8.87	6.13	090
45108		A	Removal of anorectal lesion	4.76	6.40	2.95	0.46	11.62	8.17	090
45110		A	Removal of rectum	28.00	NA	13.26	2.26	NA	43.52	090
45111		A	Partial removal of rectum	16.48	NA	8.78	1.60	NA	26.86	090
45112		A	Removal of rectum	30.54	NA	13.70	2.35	NA	46.59	090
45113		A	Partial proctectomy	30.58	NA	13.39	2.13	NA	46.10	090
45114		A	Partial removal of rectum	27.32	NA	12.61	2.28	NA	42.21	090
45116		A	Partial removal of rectum	24.58	NA	11.58	2.00	NA	38.16	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
45119		A	Remove rectum w/reservoir	30.84	NA	13.25	2.13	NA	46.22	090
45120		A	Removal of rectum	24.60	NA	11.63	2.28	NA	38.51	090
45121		A	Removal of rectum and colon	27.04	NA	12.53	2.66	NA	42.23	090
45123		A	Partial proctectomy	16.71	NA	8.21	1.04	NA	25.96	090
45126		A	Pelvic exenteration	45.16	NA	19.12	3.23	NA	67.51	090
45130		A	Excision of rectal prolapse	16.44	NA	7.80	1.12	NA	25.36	090
45135		A	Excision of rectal prolapse	19.28	NA	9.10	1.52	NA	29.90	090
45136		A	Excise ileoanal reservoir	27.30	NA	12.66	2.19	NA	42.15	090
45150		A	Excision of rectal stricture	5.67	5.89	3.19	0.46	12.02	9.32	090
45160		A	Excision of rectal lesion	15.32	NA	7.14	1.07	NA	23.53	090
45170		A	Excision of rectal lesion	11.49	NA	5.89	0.89	NA	18.27	090
45190		A	Destruction, rectal tumor	9.74	NA	5.33	0.76	NA	15.83	090
45300		A	Proctosigmoidoscopy dx	0.38	1.34	0.23	0.05	1.77	0.66	000
45303		A	Proctosigmoidoscopy dilate	0.44	1.55	0.27	0.06	2.05	0.77	000
45305		A	Protosigmoidoscopy w/bx	1.01	1.64	0.46	0.09	2.74	1.56	000
45307		A	Protosigmoidoscopy fb	0.94	2.68	0.44	0.15	3.77	1.53	000
45308		A	Protosigmoidoscopy removal	0.83	1.59	0.39	0.13	2.55	1.35	000
45309		A	Protosigmoidoscopy removal	2.01	2.43	0.81	0.17	4.61	2.99	000
45315		A	Protosigmoidoscopy removal	1.40	2.84	0.60	0.20	4.44	2.20	000
45317		A	Protosigmoidoscopy bleed	1.50	1.94	0.63	0.20	3.64	2.33	000
45320		A	Protosigmoidoscopy ablate	1.58	1.88	0.68	0.20	3.66	2.46	000
45321		A	Protosigmoidoscopy volvul	1.17	NA	0.52	0.17	NA	1.86	000
45327		A	Proctosigmoidoscopy w/stent	1.65	NA	0.89	0.10	NA	2.64	000
45330		A	Diagnostic sigmoidoscopy	0.96	1.92	0.53	0.05	2.93	1.54	000
45331		A	Sigmoidoscopy and biopsy	1.15	2.38	0.54	0.07	3.60	1.76	000
45332		A	Sigmoidoscopy w/fb removal	1.79	4.36	0.76	0.11	6.26	2.66	000
45333		A	Sigmoidoscopy & polypectomy	1.79	3.93	0.77	0.12	5.84	2.68	000
45334		A	Sigmoidoscopy for bleeding	2.73	NA	1.12	0.16	NA	4.01	000
45337		A	Sigmoidoscopy & decompress	2.36	NA	0.97	0.15	NA	3.48	000
45338		A	Sigmoidoscpy w/tumr remove	2.34	4.75	0.97	0.15	7.24	3.46	000
45339		A	Sigmoidoscopy w/ablate tumr	3.14	3.62	1.27	0.17	6.93	4.58	000
45341		A	Sigmoidoscopy w/ultrasound	2.60	NA	1.40	0.20	NA	4.20	000
45342		A	Sigmoidoscopy w/us guide bx	4.06	NA	1.85	0.23	NA	6.14	000
45345		A	Sigmodoscopy w/stent	2.92	NA	1.44	0.15	NA	4.51	000
45355		A	Surgical colonoscopy	3.52	NA	1.28	0.26	NA	5.06	000
45378		A	Diagnostic colonoscopy	3.70	8.79	1.77	0.20	12.69	5.67	000
45378	53	A	Diagnostic colonoscopy	0.96	1.92	0.53	0.05	2.93	1.54	000
45379		A	Colonoscopy w/fb removal	4.69	8.25	2.13	0.25	13.19	7.07	000
45380		A	Colonoscopy and biopsy	4.44	9.28	2.05	0.21	13.93	6.70	000
45382		A	Colonoscopy/control bleeding	5.69	10.32	2.29	0.27	16.28	8.25	000
45383		A	Lesion removal colonoscopy	5.87	10.01	2.56	0.32	16.20	8.75	000
45384		A	Lesion remove colonoscopy	4.70	9.74	2.14	0.24	14.68	7.08	000
45385		A	Lesion removal colonoscopy	5.31	10.19	2.36	0.28	15.78	7.95	000
45387		A	Colonoscopy w/stent	5.91	NA	2.57	0.33	NA	8.81	000
45500		A	Repair of rectum	7.29	NA	4.24	0.56	NA	12.09	090
45505		A	Repair of rectum	7.58	NA	3.86	0.50	NA	11.94	090
45520		A	Treatment of rectal prolapse	0.55	0.77	0.20	0.04	1.36	0.79	000
45540		A	Correct rectal prolapse	16.27	NA	8.18	1.17	NA	25.62	090
45541		A	Correct rectal prolapse	13.40	NA	7.03	0.88	NA	21.31	090
45550		A	Repair rectum/remove sigmoid	23.00	NA	10.40	1.58	NA	34.98	090
45560		A	Repair of rectocele	10.58	NA	6.12	0.73	NA	17.43	090
45562		A	Exploration/repair of rectum	15.38	NA	7.52	1.15	NA	24.05	090
45563		A	Exploration/repair of rectum	23.47	NA	11.34	1.84	NA	36.65	090
45800		A	Repair rect/bladder fistula	17.77	NA	8.23	1.14	NA	27.14	090
45805		A	Repair fistula w/colostomy	20.78	NA	10.72	1.47	NA	32.97	090
45820		A	Repair rectourethral fistula	18.48	NA	8.55	1.17	NA	28.20	090
45825		A	Repair fistula w/colostomy	21.25	NA	10.57	0.97	NA	32.79	090
45900		A	Reduction of rectal prolapse	2.61	NA	1.04	0.17	NA	3.82	010
45905		A	Dilation of anal sphincter	2.30	12.19	0.96	0.14	14.63	3.40	010
45910		A	Dilation of rectal narrowing	2.80	17.62	1.15	0.14	20.56	4.09	010
45915		A	Remove rectal obstruction	3.14	4.89	1.16	0.17	8.20	4.47	010
45999		C	Rectum surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
46020		A	Placement of seton	2.90	3.09	2.36	0.22	6.21	5.48	010
46030		A	Removal of rectal marker	1.23	2.90	1.22	0.11	4.24	2.56	010
46040		A	Incision of rectal abscess	4.96	5.57	3.15	0.48	11.01	8.59	090
46045		A	Incision of rectal abscess	4.32	NA	2.88	0.40	NA	7.60	090
46050		A	Incision of anal abscess	1.19	3.68	1.37	0.11	4.98	2.67	010
46060		A	Incision of rectal abscess	5.69	NA	3.83	0.52	NA	10.04	090
46070		A	Incision of anal septum	2.71	NA	2.54	0.27	NA	5.52	090
46080		A	Incision of anal sphincter	2.49	3.81	1.65	0.23	6.53	4.37	010
46083		A	Incise external hemorrhoid	1.40	4.78	1.59	0.12	6.30	3.11	010
46200		A	Removal of anal fissure	3.42	4.01	2.42	0.30	7.73	6.14	090
46210		A	Removal of anal crypt	2.67	5.12	2.17	0.26	8.05	5.10	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
46211		A	Removal of anal crypts	4.25	4.97	3.10	0.37	9.59	7.72	090
46220		A	Removal of anal tab	1.56	1.32	0.56	0.14	3.02	2.26	010
46221		A	Ligation of hemorrhoid(s)	2.04	1.80	1.12	0.12	3.96	3.28	010
46230		A	Removal of anal tabs	2.57	4.38	1.69	0.22	7.17	4.48	010
46250		A	Hemorrhoidectomy	3.89	5.59	2.71	0.43	9.91	7.03	090
46255		A	Hemorrhoidectomy	4.60	6.45	2.96	0.51	11.56	8.07	090
46257		A	Remove hemorrhoids & fissure	5.40	NA	3.12	0.59	NA	9.11	090
46258		A	Remove hemorrhoids & fistula	5.73	NA	3.30	0.64	NA	9.67	090
46260		A	Hemorrhoidectomy	6.37	NA	4.04	0.68	NA	11.09	090
46261		A	Remove hemorrhoids & fissure	7.08	NA	4.19	0.70	NA	11.97	090
46262		A	Remove hemorrhoids & fistula	7.50	NA	4.35	0.76	NA	12.61	090
46270		A	Removal of anal fistula	3.72	5.23	2.65	0.36	9.31	6.73	090
46275		A	Removal of anal fistula	4.56	4.65	2.85	0.40	9.61	7.81	090
46280		A	Removal of anal fistula	5.98	NA	3.83	0.50	NA	10.31	090
46285		A	Removal of anal fistula	4.09	4.28	2.69	0.34	8.71	7.12	090
46288		A	Repair anal fistula	7.13	NA	4.25	0.60	NA	11.98	090
46320		A	Removal of hemorrhoid clot	1.61	4.00	1.57	0.14	5.75	3.32	010
46500		A	Injection into hemorrhoid(s)	1.61	2.89	0.58	0.12	4.62	2.31	010
46600		A	Diagnostic anoscopy	0.50	0.82	0.15	0.04	1.36	0.69	000
46604		A	Anoscopy and dilation	1.31	0.99	0.47	0.09	2.39	1.87	000
46606		A	Anoscopy and biopsy	0.81	0.87	0.29	0.07	1.75	1.17	000
46608		A	Anoscopy/remove for body	1.51	1.81	0.49	0.13	3.45	2.13	000
46610		A	Anoscopy/remove lesion	1.32	1.46	0.48	0.12	2.90	1.92	000
46611		A	Anoscopy	1.81	2.07	0.65	0.15	4.03	2.61	000
46612		A	Anoscopy/ remove lesions	2.34	2.65	0.85	0.18	5.17	3.37	000
46614		A	Anoscopy/control bleeding	2.01	1.90	0.71	0.14	4.05	2.86	000
46615		A	Anoscopy	2.68	1.76	0.96	0.23	4.67	3.87	000
46700		A	Repair of anal stricture	9.13	NA	4.78	0.56	NA	14.47	090
46705		A	Repair of anal stricture	6.90	NA	4.53	0.73	NA	12.16	090
46715		A	Repair of anovaginal fistula	7.20	NA	4.46	0.76	NA	12.42	090
46716		A	Repair of anovaginal fistula	15.07	NA	8.05	1.30	NA	24.42	090
46730		A	Construction of absent anus	26.75	NA	12.25	2.03	NA	41.03	090
46735		A	Construction of absent anus	32.17	NA	15.49	2.64	NA	50.30	090
46740		A	Construction of absent anus	30.00	NA	14.61	1.99	NA	46.60	090
46742		A	Repair of imperforated anus	35.80	NA	18.31	2.63	NA	56.74	090
46744		A	Repair of cloacal anomaly	52.63	NA	22.78	2.27	NA	77.68	090
46746		A	Repair of cloacal anomaly	58.22	NA	27.19	2.51	NA	87.92	090
46748		A	Repair of cloacal anomaly	64.21	NA	29.58	2.77	NA	96.56	090
46750		A	Repair of anal sphincter	10.25	NA	5.79	0.69	NA	16.73	090
46751		A	Repair of anal sphincter	8.77	NA	6.14	0.78	NA	15.69	090
46753		A	Reconstruction of anus	8.29	NA	4.13	0.58	NA	13.00	090
46754		A	Removal of suture from anus	2.20	5.36	1.43	0.12	7.68	3.75	010
46760		A	Repair of anal sphincter	14.43	NA	7.07	0.86	NA	22.36	090
46761		A	Repair of anal sphincter	13.84	NA	6.87	0.84	NA	21.55	090
46762		A	Implant artificial sphincter	12.71	NA	6.08	0.71	NA	19.50	090
46900		A	Destruction, anal lesion(s)	1.91	3.52	0.74	0.13	5.56	2.78	010
46910		A	Destruction, anal lesion(s)	1.86	3.81	1.48	0.14	5.81	3.48	010
46916		A	Cryosurgery, anal lesion(s)	1.86	3.24	1.68	0.09	5.19	3.63	010
46917		A	Laser surgery, anal lesions	1.86	5.32	1.62	0.16	7.34	3.64	010
46922		A	Excision of anal lesion(s)	1.86	3.96	1.46	0.17	5.99	3.49	010
46924		A	Destruction, anal lesion(s)	2.76	4.81	1.77	0.20	7.77	4.73	010
46934		A	Destruction of hemorrhoids	3.51	6.62	3.77	0.26	10.39	7.54	090
46935		A	Destruction of hemorrhoids	2.43	4.60	0.87	0.17	7.20	3.47	010
46936		A	Destruction of hemorrhoids	3.69	6.67	3.58	0.30	10.66	7.57	090
46937		A	Cryotherapy of rectal lesion	2.69	4.51	1.72	0.12	7.32	4.53	010
46938		A	Cryotherapy of rectal lesion	4.66	6.22	3.27	0.40	11.28	8.33	090
46940		A	Treatment of anal fissure	2.32	3.47	0.83	0.17	5.96	3.32	010
46942		A	Treatment of anal fissure	2.04	2.84	0.71	0.14	5.02	2.89	010
46945		A	Ligation of hemorrhoids	1.84	4.04	2.29	0.17	6.05	4.30	090
46946		A	Ligation of hemorrhoids	2.58	5.40	2.61	0.22	8.20	5.41	090
46999		C	Anus surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
47000		A	Needle biopsy of liver	1.90	8.36	0.67	0.09	10.35	2.66	000
47001		A	Needle biopsy, liver add-on	1.90	NA	0.68	0.18	NA	2.76	ZZZ
47010		A	Open drainage, liver lesion	16.01	NA	9.60	0.65	NA	26.26	090
47011		A	Percut drain, liver lesion	3.70	NA	4.61	0.17	NA	8.48	000
47015		A	Inject/aspirate liver cyst	15.11	NA	8.23	0.86	NA	24.20	090
47100		A	Wedge biopsy of liver	11.67	NA	6.50	0.75	NA	18.92	090
47120		A	Partial removal of liver	35.50	NA	17.02	2.29	NA	54.81	090
47122		A	Extensive removal of liver	55.13	NA	24.11	3.60	NA	82.84	090
47125		A	Partial removal of liver	49.19	NA	22.12	3.18	NA	74.49	090
47130		A	Partial removal of liver	53.35	NA	23.49	3.47	NA	80.31	090
47133		X	Removal of donor liver	0.00	0.00	0.00	0.00	0.00	0.00	XXX
47134		R	Partial removal, donor liver	39.15	NA	13.91	3.98	NA	57.04	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
47135		R	Transplantation of liver	81.52	NA	43.28	8.13	NA	132.93	090
47136		R	Transplantation of liver	68.60	NA	47.00	6.93	NA	122.53	090
47300		A	Surgery for liver lesion	15.08	NA	7.75	0.97	NA	23.80	090
47350		A	Repair liver wound	19.56	NA	9.45	1.25	NA	30.26	090
47360		A	Repair liver wound	26.92	NA	12.96	1.71	NA	41.59	090
47361		A	Repair liver wound	47.12	NA	19.94	3.11	NA	70.17	090
47362		A	Repair liver wound	18.51	NA	9.77	1.22	NA	29.50	090
47370		A	Laparo ablate liver tumor rf	18.00	7.19	7.19	0.85	26.04	26.04	090
47371		A	Laparo ablate liver cryosug	16.94	6.76	6.76	0.85	24.55	24.55	090
47379		C	Laparoscope procedure, liver	0.00	0.00	0.00	0.00	0.00	0.00	YYY
47380		A	Open ablate liver tumor rf	21.25	8.48	8.48	0.85	30.58	30.58	090
47381		A	Open ablate liver tumor cryo	21.00	8.38	8.38	0.85	30.23	30.23	090
47382		A	Percut ablate liver rf	12.00	NA	5.37	0.85	NA	18.22	010
47399		C	Liver surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
47400		A	Incision of liver duct	32.49	NA	14.99	1.82	NA	49.30	090
47420		A	Incision of bile duct	19.88	NA	9.46	1.70	NA	31.04	090
47425		A	Incision of bile duct	19.83	NA	9.38	1.60	NA	30.81	090
47460		A	Incise bile duct sphincter	18.04	NA	9.26	1.24	NA	28.54	090
47480		A	Incision of gallbladder	10.82	NA	6.80	0.85	NA	18.47	090
47490		A	Incision of gallbladder	7.23	NA	7.67	0.33	NA	15.23	090
47500		A	Injection for liver x-rays	1.96	NA	0.68	0.09	NA	2.73	000
47505		A	Injection for liver x-rays	0.76	2.88	0.26	0.03	3.67	1.05	000
47510		A	Insert catheter, bile duct	7.83	NA	9.46	0.36	NA	17.65	090
47511		A	Insert bile duct drain	10.50	NA	10.57	0.47	NA	21.54	090
47525		A	Change bile duct catheter	5.55	NA	3.34	0.24	NA	9.13	010
47530		A	Revise/reinsert bile tube	5.85	NA	5.07	0.29	NA	11.21	090
47550		A	Bile duct endoscopy add-on	3.02	NA	1.08	0.30	NA	4.40	ZZZ
47552		A	Biliary endoscopy thru skin	6.04	NA	2.52	0.42	NA	8.98	000
47553		A	Biliary endoscopy thru skin	6.35	NA	2.70	0.30	NA	9.35	000
47554		A	Biliary endoscopy thru skin	9.06	NA	3.55	0.74	NA	13.35	000
47555		A	Biliary endoscopy thru skin	7.56	NA	3.15	0.35	NA	11.06	000
47556		A	Biliary endoscopy thru skin	8.56	NA	3.49	0.38	NA	12.43	000
47560		A	Laparoscopy w/cholangio	4.89	NA	1.89	0.49	NA	7.27	000
47561		A	Laparo w/cholangio/biopsy	5.18	NA	2.19	0.49	NA	7.86	000
47562		A	Laparoscopic cholecystectomy	11.09	NA	5.15	1.13	NA	17.37	090
47563		A	Laparo cholecystectomy/graph	11.94	NA	5.43	1.21	NA	18.58	090
47564		A	Laparo cholecystectomy/explr	14.23	NA	6.26	1.44	NA	21.93	090
47570		A	Laparo cholecystoenterostomy	12.58	NA	5.67	1.28	NA	19.53	090
47579		C	Laparoscope proc, biliary	0.00	0.00	0.00	0.00	0.00	0.00	YYY
47600		A	Removal of gallbladder	13.58	NA	6.86	1.16	NA	21.60	090
47605		A	Removal of gallbladder	14.69	NA	7.23	1.25	NA	23.17	090
47610		A	Removal of gallbladder	18.82	NA	8.80	1.61	NA	29.23	090
47612		A	Removal of gallbladder	18.78	NA	8.70	1.60	NA	29.08	090
47620		A	Removal of gallbladder	20.64	NA	9.35	1.77	NA	31.76	090
47630		A	Remove bile duct stone	9.11	NA	3.20	0.46	NA	12.77	090
47700		A	Exploration of bile ducts	15.62	NA	8.79	1.40	NA	25.81	090
47701		A	Bile duct revision	27.81	NA	13.60	3.00	NA	44.41	090
47711		A	Excision of bile duct tumor	23.03	NA	11.34	1.98	NA	36.35	090
47712		A	Excision of bile duct tumor	30.24	NA	14.00	2.67	NA	46.91	090
47715		A	Excision of bile duct cyst	18.80	NA	8.95	1.59	NA	29.34	090
47716		A	Fusion of bile duct cyst	16.44	NA	8.19	1.41	NA	26.04	090
47720		A	Fuse gallbladder & bowel	15.91	NA	8.66	1.37	NA	25.94	090
47721		A	Fuse upper gi structures	19.12	NA	9.90	1.63	NA	30.65	090
47740		A	Fuse gallbladder & bowel	18.48	NA	9.64	1.59	NA	29.71	090
47741		A	Fuse gallbladder & bowel	21.34	NA	10.62	1.82	NA	33.78	090
47760		A	Fuse bile ducts and bowel	25.85	NA	12.28	2.21	NA	40.34	090
47765		A	Fuse liver ducts & bowel	24.88	NA	12.73	2.18	NA	39.79	090
47780		A	Fuse bile ducts and bowel	26.50	NA	12.49	2.27	NA	41.26	090
47785		A	Fuse bile ducts and bowel	31.18	NA	14.97	2.69	NA	48.84	090
47800		A	Reconstruction of bile ducts	23.30	NA	11.57	1.95	NA	36.82	090
47801		A	Placement, bile duct support	15.17	NA	10.21	0.69	NA	26.07	090
47802		A	Fuse liver duct & intestine	21.55	NA	11.60	1.84	NA	34.99	090
47900		A	Suture bile duct injury	19.90	NA	10.25	1.65	NA	31.80	090
47999		C	Bile tract surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
48000		A	Drainage of abdomen	28.07	NA	12.59	1.32	NA	41.98	090
48001		A	Placement of drain, pancreas	35.45	NA	15.04	1.90	NA	52.39	090
48005		A	Resect/debride pancreas	42.17	NA	17.39	2.26	NA	61.82	090
48020		A	Removal of pancreatic stone	15.70	NA	7.44	1.36	NA	24.50	090
48100		A	Biopsy of pancreas, open	12.23	NA	7.03	1.08	NA	20.34	090
48102		A	Needle biopsy, pancreas	4.68	8.96	2.45	0.20	13.84	7.33	010
48120		A	Removal of pancreas lesion	15.85	NA	7.69	1.35	NA	24.89	090
48140		A	Partial removal of pancreas	22.94	NA	10.78	2.12	NA	35.84	090
48145		A	Partial removal of pancreas	24.02	NA	11.48	2.25	NA	37.75	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
48146		A	Pancreatectomy	26.40	NA	13.96	2.43	NA	42.79	090
48148		A	Removal of pancreatic duct	17.34	NA	9.15	1.61	NA	28.10	090
48150		A	Partial removal of pancreas	48.00	NA	21.29	4.43	NA	73.72	090
48152		A	Pancreatectomy	43.75	NA	20.74	4.07	NA	68.56	090
48153		A	Pancreatectomy	47.89	NA	22.18	4.40	NA	74.47	090
48154		A	Pancreatectomy	44.10	NA	20.82	4.10	NA	69.02	090
48155		A	Removal of pancreas	24.64	NA	13.89	2.30	NA	40.83	090
48160		N	Pancreas removal/transplant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
48180		A	Fuse pancreas and bowel	24.72	NA	11.16	2.24	NA	38.12	090
48400		A	Injection, intraop add-on	1.95	NA	0.69	0.10	NA	2.74	ZZZ
48500		A	Surgery of pancreatic cyst	15.28	NA	7.74	1.35	NA	24.37	090
48510		A	Drain pancreatic pseudocyst	14.31	NA	7.45	1.07	NA	22.83	090
48511		A	Drain pancreatic pseudocyst	4.00	NA	3.95	0.17	NA	8.12	000
48520		A	Fuse pancreas cyst and bowel	15.59	NA	7.49	1.41	NA	24.49	090
48540		A	Fuse pancreas cyst and bowel	19.72	NA	8.84	1.82	NA	30.38	090
48545		A	Pancreatorrhaphy	18.18	NA	8.88	1.61	NA	28.67	090
48547		A	Duodenal exclusion	25.83	NA	11.04	2.30	NA	39.17	090
48550		X	Donor pancreatectomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
48554		R	Transpl allograft pancreas	34.17	NA	12.27	3.30	NA	49.74	090
48556		A	Removal, allograft pancreas	15.71	NA	8.71	1.52	NA	25.94	090
48999		C	Pancreas surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
49000		A	Exploration of abdomen	11.68	NA	6.22	1.17	NA	19.07	090
49002		A	Reopening of abdomen	10.49	NA	6.10	1.06	NA	17.65	090
49010		A	Exploration behind abdomen	12.28	NA	7.05	1.22	NA	20.55	090
49020		A	Drain abdominal abscess	22.84	NA	11.41	1.31	NA	35.56	090
49021		A	Drain abdominal abscess	3.38	NA	5.84	0.16	NA	9.38	000
49040		A	Drain, open, abdom abscess	13.52	NA	8.02	0.84	NA	22.38	090
49041		A	Drain, percut, abdom abscess	4.00	NA	6.07	0.18	NA	10.25	000
49060		A	Drain, open, retrop abscess	15.86	NA	9.62	0.77	NA	26.25	090
49061		A	Drain, percut, retroper absc	3.70	NA	5.99	0.17	NA	9.86	000
49062		A	Drain to peritoneal cavity	11.36	NA	7.06	1.08	NA	19.50	090
49080		A	Puncture, peritoneal cavity	1.35	4.56	0.48	0.07	5.98	1.90	000
49081		A	Removal of abdominal fluid	1.26	3.14	0.60	0.06	4.46	1.92	000
49085		A	Remove abdomen foreign body	12.14	NA	6.72	0.88	NA	19.74	090
49180		A	Biopsy, abdominal mass	1.73	8.50	0.60	0.08	10.31	2.41	000
49200		A	Removal of abdominal lesion	10.25	NA	6.59	0.89	NA	17.73	090
49201		A	Removal of abdominal lesion	14.84	NA	8.90	1.44	NA	25.18	090
49215		A	Excise sacral spine tumor	33.50	NA	15.52	2.48	NA	51.50	090
49220		A	Multiple surgery, abdomen	14.88	NA	7.94	1.51	NA	24.33	090
49250		A	Excision of umbilicus	8.35	NA	5.26	0.84	NA	14.45	090
49255		A	Removal of omentum	11.14	NA	6.66	1.12	NA	18.92	090
49320		A	Diag laparo separate proc	5.10	NA	3.08	0.50	NA	8.68	010
49321		A	Laparoscopy, biopsy	5.40	NA	3.07	0.53	NA	9.00	010
49322		A	Laparoscopy, aspiration	5.70	NA	3.53	0.57	NA	9.80	010
49323		A	Laparo drain lymphocele	9.48	NA	4.18	0.88	NA	14.54	090
49329		C	Laparo proc, abdm/per/oment	0.00	0.00	0.00	0.00	0.00	0.00	YYY
49400		A	Air injection into abdomen	1.88	NA	0.82	0.11	NA	2.81	000
49420		A	Insert abdominal drain	2.22	NA	0.98	0.13	NA	3.33	000
49421		A	Insert abdominal drain	5.54	NA	4.08	0.55	NA	10.17	090
49422		A	Remove perm cannula/catheter	6.25	NA	3.01	0.63	NA	9.89	010
49423		A	Exchange drainage catheter	1.46	NA	0.70	0.07	NA	2.23	000
49424		A	Assess cyst, contrast inject	0.76	NA	0.45	0.03	NA	1.24	000
49425		A	Insert abdomen-venous drain	11.37	NA	6.79	1.21	NA	19.37	090
49426		A	Revise abdomen-venous shunt	9.63	NA	6.17	0.93	NA	16.73	090
49427		A	Injection, abdominal shunt	0.89	NA	0.50	0.05	NA	1.44	000
49428		A	Ligation of shunt	6.06	NA	3.19	0.31	NA	9.56	010
49429		A	Removal of shunt	7.40	NA	3.55	0.81	NA	11.76	010
49491		A	Repairing hern premie reduc	11.13	NA	5.65	1.00	NA	17.78	090
49492		A	Rpr ing hern premie, blocked	14.03	NA	6.40	1.42	NA	21.85	090
49495		A	Rpr ing hernia baby, reduc	5.89	NA	3.72	0.55	NA	10.16	090
49496		A	Rpr ing hernia baby, blocked	8.79	NA	5.94	0.89	NA	15.62	090
49500		A	Rpr ing hernia, init, reduce	5.48	NA	3.48	0.46	NA	9.42	090
49501		A	Rpr ing hernia, init blocked	8.88	NA	4.62	0.76	NA	14.26	090
49505		A	Rpr i hern init reduc>5 yr	7.60	4.58	4.13	0.65	12.83	12.38	090
49507		A	Rpr i hern init block>5 yr	9.57	NA	6.17	0.83	NA	16.57	090
49520		A	Rerepair ing hernia, reduce	9.63	NA	5.49	0.84	NA	15.96	090
49521		A	Rerepair ing hernia, blocked	11.97	NA	5.85	1.04	NA	18.86	090
49525		A	Repair ing hernia, sliding	8.57	NA	4.97	0.74	NA	14.28	090
49540		A	Repair lumbar hernia	10.39	NA	5.65	0.90	NA	16.94	090
49550		A	Rpr fem hernia, init, reduce	8.63	NA	4.55	0.75	NA	13.93	090
49553		A	Rpr fem hernia, init blocked	9.44	NA	4.95	0.83	NA	15.22	090
49555		A	Rerepair fem hernia, reduce	9.03	NA	5.30	0.79	NA	15.12	090
49557		A	Rerepair fem hernia, blocked	11.15	NA	5.59	0.97	NA	17.71	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
49560		A	Rpr ventral hern init, reduc	11.57	NA	6.11	1.00	NA	18.68	090
49561		A	Rpr ventral hern init, block	14.25	NA	6.71	1.23	NA	22.19	090
49565		A	Rerepair ventrl hern, reduce	11.57	NA	6.27	1.00	NA	18.84	090
49566		A	Rerepair ventrl hern, block	14.40	NA	6.79	1.24	NA	22.43	090
49568		A	Hernia repair w/mesh	4.89	NA	1.76	0.50	NA	7.15	ZZZ
49570		A	Rpr epigastric hern, reduce	5.69	NA	3.54	0.50	NA	9.73	090
49572		A	Rpr epigastric hern, blocked	6.73	NA	4.00	0.58	NA	11.31	090
49580		A	Rpr umbil hern, reduc <5 yr	4.11	NA	3.03	0.34	NA	7.48	090
49582		A	Rpr umbil hern, block < 5 yr	6.65	NA	5.02	0.57	NA	12.24	090
49585		A	Rpr umbil hern, reduc > 5 yr	6.23	NA	4.15	0.53	NA	10.91	090
49587		A	Rpr umbil hern, block > 5 yr	7.56	NA	4.27	0.65	NA	12.48	090
49590		A	Repair spigelian hernia	8.54	NA	4.96	0.74	NA	14.24	090
49600		A	Repair umbilical lesion	10.96	NA	6.30	1.13	NA	18.39	090
49605		A	Repair umbilical lesion	76.00	NA	30.79	2.57	NA	109.36	090
49606		A	Repair umbilical lesion	18.60	NA	9.61	2.22	NA	30.43	090
49610		A	Repair umbilical lesion	10.50	NA	6.87	0.77	NA	18.14	090
49611		A	Repair umbilical lesion	8.92	NA	6.56	0.65	NA	16.13	090
49650		A	Laparo hernia repair initial	6.27	NA	3.33	0.64	NA	10.24	090
49651		A	Laparo hernia repair recur	8.24	NA	4.40	0.84	NA	13.48	090
49659		C	Laparo proc, hernia repair	0.00	0.00	0.00	0.00	0.00	0.00	YYY
49900		A	Repair of abdominal wall	12.28	NA	6.80	1.23	NA	20.31	090
49905		A	Omental flap	6.55	NA	2.44	0.61	NA	9.60	ZZZ
49906		C	Free omental flap, microvasc	0.00	0.00	0.00	0.00	0.00	0.00	090
49999		C	Abdomen surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
50010		A	Exploration of kidney	10.98	NA	7.07	0.79	NA	18.84	090
50020		A	Renal abscess, open drain	14.66	NA	13.72	0.80	NA	29.18	090
50021		A	Renal abscess, percut drain	3.38	NA	10.46	0.15	NA	13.99	000
50040		A	Drainage of kidney	14.94	NA	11.56	0.82	NA	27.32	090
50045		A	Exploration of kidney	15.46	NA	8.55	1.06	NA	25.07	090
50060		A	Removal of kidney stone	19.30	NA	10.03	1.14	NA	30.47	090
50065		A	Incision of kidney	20.79	NA	10.56	1.13	NA	32.48	090
50070		A	Incision of kidney	20.32	NA	10.70	1.20	NA	32.22	090
50075		A	Removal of kidney stone	25.34	NA	12.65	1.51	NA	39.50	090
50080		A	Removal of kidney stone	14.71	NA	11.03	0.86	NA	26.60	090
50081		A	Removal of kidney stone	21.80	NA	13.27	1.30	NA	36.37	090
50100		A	Revise kidney blood vessels	16.09	NA	9.34	1.64	NA	27.07	090
50120		A	Exploration of kidney	15.91	NA	8.93	1.04	NA	25.88	090
50125		A	Explore and drain kidney	16.52	NA	9.48	1.07	NA	27.07	090
50130		A	Removal of kidney stone	17.29	NA	9.24	1.04	NA	27.57	090
50135		A	Exploration of kidney	19.18	NA	9.93	1.18	NA	30.29	090
50200		A	Biopsy of kidney	2.63	NA	0.96	0.12	NA	3.71	000
50205		A	Biopsy of kidney	11.31	NA	6.52	0.94	NA	18.77	090
50220		A	Remove kidney, open	17.15	NA	9.29	1.16	NA	27.60	090
50225		A	Removal kidney open, complex	20.23	NA	10.30	1.26	NA	31.79	090
50230		A	Removal kidney open, radical	22.07	NA	10.92	1.35	NA	34.34	090
50234		A	Removal of kidney & ureter	22.40	NA	11.05	1.37	NA	34.82	090
50236		A	Removal of kidney & ureter	24.86	NA	14.27	1.50	NA	40.63	090
50240		A	Partial removal of kidney	22.00	NA	13.32	1.36	NA	36.68	090
50280		A	Removal of kidney lesion	15.67	NA	8.69	0.99	NA	25.35	090
50290		A	Removal of kidney lesion	14.73	NA	8.49	1.11	NA	24.33	090
50300		X	Removal of donor kidney	0.00	0.00	0.00	0.00	0.00	0.00	XXX
50320		A	Removal of donor kidney	22.21	NA	10.98	1.78	NA	34.97	090
50340		A	Removal of kidney	12.15	NA	9.31	1.15	NA	22.61	090
50360		A	Transplantation of kidney	31.53	NA	17.87	2.97	NA	52.37	090
50365		A	Transplantation of kidney	36.81	NA	21.29	3.51	NA	61.61	090
50370		A	Remove transplanted kidney	13.72	NA	9.88	1.26	NA	24.86	090
50380		A	Reimplantation of kidney	20.76	NA	13.52	1.80	NA	36.08	090
50390		A	Drainage of kidney lesion	1.96	NA	0.68	0.09	NA	2.73	000
50392		A	Insert kidney drain	3.38	NA	1.18	0.15	NA	4.71	000
50393		A	Insert ureteral tube	4.16	NA	1.44	0.18	NA	5.78	000
50394		A	Injection for kidney x-ray	0.76	2.60	0.26	0.04	3.40	1.06	000
50395		A	Create passage to kidney	3.38	NA	1.17	0.16	NA	4.71	000
50396		A	Measure kidney pressure	2.09	NA	0.89	0.10	NA	3.08	000
50398		A	Change kidney tube	1.46	1.06	0.51	0.07	2.59	2.04	000
50400		A	Revision of kidney/ureter	19.50	NA	10.06	1.21	NA	30.77	090
50405		A	Revision of kidney/ureter	23.93	NA	11.84	1.45	NA	37.22	090
50500		A	Repair of kidney wound	19.57	NA	11.37	1.45	NA	32.39	090
50520		A	Close kidney-skin fistula	17.23	NA	11.80	1.26	NA	30.29	090
50525		A	Repair renal-abdomen fistula	22.27	NA	13.30	1.51	NA	37.08	090
50526		A	Repair renal-abdomen fistula	24.02	NA	14.86	1.62	NA	40.50	090
50540		A	Revision of horseshoe kidney	19.93	NA	10.42	1.28	NA	31.63	090
50541		A	Laparo ablate renal cyst	16.00	NA	6.79	0.99	NA	23.78	090
50544		A	Laparoscopy, pyeloplasty	22.40	NA	9.04	1.41	NA	32.85	090

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
50545		A	Laparo radical nephrectomy	24.00	NA	9.65	1.53	NA	35.18	090
50546		A	Laparoscopic nephrectomy	20.48	NA	8.40	1.37	NA	30.25	090
50547		A	Laparo removal donor kidney	25.50	NA	11.27	2.04	NA	38.81	090
50548		A	Laparo remove k/ureter	24.40	NA	9.70	1.49	NA	35.59	090
50549		C	Laparoscope proc, renal	0.00	0.00	0.00	0.00	0.00	0.00	YYY
50551		A	Kidney endoscopy	5.60	4.93	1.90	0.33	10.86	7.83	000
50553		A	Kidney endoscopy	5.99	16.25	2.05	0.35	22.59	8.39	000
50555		A	Kidney endoscopy & biopsy	6.53	20.11	2.25	0.38	27.02	9.16	000
50557		A	Kidney endoscopy & treatment	6.62	20.23	2.25	0.39	27.24	9.26	000
50559		A	Renal endoscopy/radiotracer	6.78	NA	2.42	0.27	NA	9.47	000
50561		A	Kidney endoscopy & treatment	7.59	18.31	2.58	0.44	26.34	10.61	000
50570		A	Kidney endoscopy	9.54	NA	3.24	0.56	NA	13.34	000
50572		A	Kidney endoscopy	10.35	NA	3.52	0.64	NA	14.51	000
50574		A	Kidney endoscopy & biopsy	11.02	NA	3.87	0.65	NA	15.54	000
50575		A	Kidney endoscopy	13.98	NA	4.73	0.84	NA	19.55	000
50576		A	Kidney endoscopy & treatment	10.99	NA	3.74	0.66	NA	15.39	000
50578		A	Renal endoscopy/radiotracer	11.35	NA	4.01	0.67	NA	16.03	000
50580		A	Kidney endoscopy & treatment	11.86	NA	4.03	0.70	NA	16.59	000
50590		A	Fragmenting of kidney stone	9.09	10.78	5.35	0.54	20.41	14.98	090
50600		A	Exploration of ureter	15.84	NA	9.07	0.99	NA	25.90	090
50605		A	Insert ureteral support	15.46	NA	8.88	1.13	NA	25.47	090
50610		A	Removal of ureter stone	15.92	NA	9.09	1.08	NA	26.09	090
50620		A	Removal of ureter stone	15.16	NA	8.55	0.91	NA	24.62	090
50630		A	Removal of ureter stone	14.94	NA	8.48	0.90	NA	24.32	090
50650		A	Removal of ureter	17.41	NA	9.71	1.07	NA	28.19	090
50660		A	Removal of ureter	19.55	NA	10.43	1.19	NA	31.17	090
50684		A	Injection for ureter x-ray	0.76	15.02	0.26	0.04	15.82	1.06	000
50686		A	Measure ureter pressure	1.51	5.08	0.65	0.09	6.68	2.25	000
50688		A	Change of ureter tube	1.17	NA	1.76	0.06	NA	2.99	010
50690		A	Injection for ureter x-ray	1.16	15.40	0.40	0.06	16.62	1.62	000
50700		A	Revision of ureter	15.21	NA	9.09	0.86	NA	25.16	090
50715		A	Release of ureter	18.90	NA	12.37	1.68	NA	32.95	090
50722		A	Release of ureter	16.35	NA	10.42	1.41	NA	28.18	090
50725		A	Release/revise ureter	18.49	NA	10.61	1.44	NA	30.54	090
50727		A	Revise ureter	8.18	NA	6.54	0.51	NA	15.23	090
50728		A	Revise ureter	12.02	NA	8.18	0.88	NA	21.08	090
50740		A	Fusion of ureter & kidney	18.42	NA	9.66	1.49	NA	29.57	090
50750		A	Fusion of ureter & kidney	19.51	NA	10.48	1.24	NA	31.23	090
50760		A	Fusion of ureters	18.42	NA	10.11	1.25	NA	29.78	090
50770		A	Splicing of ureters	19.51	NA	10.43	1.25	NA	31.19	090
50780		A	Reimplant ureter in bladder	18.36	NA	10.01	1.20	NA	29.57	090
50782		A	Reimplant ureter in bladder	19.54	NA	11.91	1.13	NA	32.58	090
50783		A	Reimplant ureter in bladder	20.55	NA	11.22	1.35	NA	33.12	090
50785		A	Reimplant ureter in bladder	20.52	NA	10.83	1.30	NA	32.65	090
50800		A	Implant ureter in bowel	14.52	NA	10.02	0.92	NA	25.46	090
50810		A	Fusion of ureter & bowel	20.05	NA	12.23	1.78	NA	34.06	090
50815		A	Urine shunt to intestine	19.93	NA	11.71	1.31	NA	32.95	090
50820		A	Construct bowel bladder	21.89	NA	12.38	1.38	NA	35.65	090
50825		A	Construct bowel bladder	28.18	NA	15.30	1.81	NA	45.29	090
50830		A	Revise urine flow	31.28	NA	15.96	2.20	NA	49.44	090
50840		A	Replace ureter by bowel	20.00	NA	11.83	1.26	NA	33.09	090
50845		A	Appendico-vesicostomy	20.89	NA	10.20	1.26	NA	32.35	090
50860		A	Transplant ureter to skin	15.36	NA	8.93	1.01	NA	25.30	090
50900		A	Repair of ureter	13.62	NA	8.08	0.98	NA	22.68	090
50920		A	Closure ureter/skin fistula	14.33	NA	8.37	0.84	NA	23.54	090
50930		A	Closure ureter/bowel fistula	18.72	NA	10.80	1.57	NA	31.09	090
50940		A	Release of ureter	14.51	NA	8.44	1.04	NA	23.99	090
50945		A	Laparoscopy ureterolithotomy	17.00	NA	7.42	1.15	NA	25.57	090
50947		A	Laparo new ureter/bladder	24.50	NA	11.74	1.99	NA	38.23	090
50948		A	Laparo new ureter/bladder	22.50	NA	10.61	1.83	NA	34.94	090
50949		C	Laparoscope proc, ureter	0.00	0.00	0.00	0.00	0.00	0.00	YYY
50951		A	Endoscopy of ureter	5.84	5.28	1.98	0.35	11.47	8.17	000
50953		A	Endoscopy of ureter	6.24	16.55	2.12	0.37	23.16	8.73	000
50955		A	Ureter endoscopy & biopsy	6.75	21.11	2.38	0.38	28.24	9.51	000
50957		A	Ureter endoscopy & treatment	6.79	19.64	2.28	0.40	26.83	9.47	000
50959		A	Ureter endoscopy & tracer	4.40	NA	1.58	0.18	NA	6.16	000
50961		A	Ureter endoscopy & treatment	6.05	23.38	2.04	0.35	29.78	8.44	000
50970		A	Ureter endoscopy	7.14	NA	2.43	0.43	NA	10.00	000
50972		A	Ureter endoscopy & catheter	6.89	NA	2.52	0.39	NA	9.80	000
50974		A	Ureter endoscopy & biopsy	9.17	NA	3.16	0.53	NA	12.86	000
50976		A	Ureter endoscopy & treatment	9.04	NA	3.09	0.53	NA	12.66	000
50978		A	Ureter endoscopy & tracer	5.10	NA	1.88	0.30	NA	7.28	000
50980		A	Ureter endoscopy & treatment	6.85	NA	2.34	0.41	NA	9.60	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
51000		A	Drainage of bladder	0.78	2.03	0.25	0.05	2.86	1.08	000
51005		A	Drainage of bladder	1.02	3.37	0.35	0.08	4.47	1.45	000
51010		A	Drainage of bladder	3.53	4.42	2.37	0.23	8.18	6.13	010
51020		A	Incise & treat bladder	6.71	NA	5.72	0.42	NA	12.85	090
51030		A	Incise & treat bladder	6.77	NA	6.01	0.42	NA	13.20	090
51040		A	Incise & drain bladder	4.40	NA	4.47	0.27	NA	9.14	090
51045		A	Incise bladder/drain ureter	8.77	NA	6.01	0.47	NA	13.25	090
51050		A	Removal of bladder stone	6.92	NA	5.27	0.42	NA	12.61	090
51060		A	Removal of ureter stone	8.85	NA	6.53	0.54	NA	15.92	090
51065		A	Remove ureter calculus	8.85	NA	6.06	0.53	NA	15.44	090
51080		A	Drainage of bladder abscess	5.96	NA	5.67	0.35	NA	11.98	090
51500		A	Removal of bladder cyst	10.14	NA	6.13	0.88	NA	17.15	090
51520		A	Removal of bladder lesion	9.29	NA	6.66	0.58	NA	16.53	090
51525		A	Removal of bladder lesion	13.97	NA	8.15	0.85	NA	22.97	090
51530		A	Removal of bladder lesion	12.38	NA	7.81	0.82	NA	21 01	090
51535		A	Repair of ureter lesion	12.57	NA	8.23	0.90	NA	21.70	090
51550		A	Partial removal of bladder	15.66	NA	8.68	1.05	NA	25.39	090
51555		A	Partial removal of bladder	21.23	NA	11.00	1.37	NA	33.60	090
51565		A	Revise bladder & ureter(s)	21.62	NA	11.62	1.40	NA	34.64	090
51570		A	Removal of bladder	24.24	NA	12.60	1.59	NA	38.43	090
51575		A	Removal of bladder & nodes	30.45	NA	15.35	1.88	NA	47.68	090
51580		A	Remove bladder/revise tract	31.08	NA	16.01	1.94	NA	49.03	090
51585		A	Removal of bladder & nodes	35.23	NA	17.34	2.18	NA	54.75	090
51590		A	Remove bladder/revise tract	32.66	NA	16.01	2.01	NA	50.68	090
51595		A	Remove bladder/revise tract	37.14	NA	17.55	2.23	NA	56.92	090
51596		A	Remove bladder/create pouch	39.52	NA	18.94	2.39	NA	60.85	090
51597		A	Removal of pelvic structures	38.35	NA	18.06	2.49	NA	58.90	090
51600		A	Injection for bladder x-ray	0.88	5.51	0.30	0.04	6.43	1.22	000
51605		A	Preparation for bladder x-ray	0.64	16.73	0.22	0.04	17.41	0.90	000
51610		A	Injection for bladder x-ray	1.05	16.20	0.36	0.05	17.30	1.46	000
51700		A	Irrigation of bladder	0.88	1.32	0.30	0.05	2.25	1.23	000
51705		A	Change of bladder tube	1.02	2.15	0.65	0.06	3.23	1.73	010
51710		A	Change of bladder tube	1.49	5.11	1.47	0.09	6.69	3.05	010
51715		A	Endoscopic injection/implant	3.74	4.44	1.29	0.24	8.42	5.27	000
51720		A	Treatment of bladder lesion	1.96	1.68	0.74	0.12	3.76	2.82	000
51725		A	Simple cystometrogram	1.51	5.92	NA	0.13	7.56	NA	000
51725	26	A	Simple cystometrogram	1.51	0.52	0.52	0.10	2.13	2.13	000
51725	TC	A	Simple cystometrogram	0.00	5.40	NA	0.03	5.43	NA	000
51726		A	Complex cystometrogram	1.71	4.65	NA	0.15	6.51	NA	000
51726	26	A	Complex cystometrogram	1.71	0.59	0.59	0.11	2.41	2.41	000
51726	TC	A	Complex cystometrogram	0.00	4.06	NA	0.04	4.10	NA	000
51736		A	Urine flow measurement	0.61	1.07	NA	0.05	1.73	NA	000
51736	26	A	Urine flow measurement	0.61	0.21	0.21	0.04	0.86	0.86	000
51736	TC	A	Urine flow measurement	0.00	0.86	NA	0.01	0.87	NA	000
51741		A	Electro-uroflowmetry, first	1.14	1.93	NA	0.09	3.16	NA	000
51741	26	A	Electro-uroflowmetry, first	1.14	0.40	0.40	0.07	1.61	1.61	000
51741	TC	A	Electro-uroflowmetry, first	0.00	1.53	NA	0.02	1.55	NA	000
51772		A	Urethra pressure profile	1.61	4.73	NA	0.16	6.50	NA	000
51772	26	A	Urethra pressure profile	1.61	0.59	0.59	0.12	2.32	2.32	000
51772	TC	A	Urethra pressure profile	0.00	4.14	NA	0.04	4.18	NA	000
51784		A	Anal/urinary muscle study	1.53	3.36	NA	0.13	5.02	NA	000
51784	26	A	Anal/urinary muscle study	1.53	0.53	0.53	0.10	2.16	2.16	000
51784	TC	A	Anal/urinary muscle study	0.00	2.83	NA	0.03	2.86	NA	000
51785		A	Anal/urinary muscle study	1.53	3.46	NA	0.12	5.11	NA	000
51785	26	A	Anal/urinary muscle study	1.53	0.53	0.53	0.09	2.15	2.15	000
51785	TC	A	Anal/urinary muscle study	0.00	2.93	NA	0.03	2.96	NA	000
51792		A	Urinary reflex study	1.10	3.33	NA	0.20	4.63	NA	000
51792	26	A	Urinary reflex study	1.10	0.43	0.43	0.09	1.62	1.62	000
51792	TC	A	Urinary reflex study	0.00	2.90	NA	0.11	3.01	NA	000
51795		A	Urine voiding pressure study	1.53	4.84	NA	0.18	6.55	NA	000
51795	26	A	Urine voiding pressure study	1.53	0.53	0.53	0.10	2.16	2.16	000
51795	TC	A	Urine voiding pressure study	0.00	4.31	NA	0.08	4.39	NA	000
51797		A	Intraabdominal pressure test	1.60	4.87	NA	0.14	6.61	NA	000
51797	26	A	Intraabdominal pressure test	1.60	0.56	0.56	0.10	2.26	2.26	000
51797	TC	A	Intraabdominal pressure test	0.00	4.31	NA	0.04	4.35	NA	000
51800		A	Revision of bladder/urethra	17.42	NA	9.59	1.17	NA	28.18	090
51820		A	Revision of urinary tract	17.89	NA	10.91	1.45	NA	30.25	090
51840		A	Attach bladder/urethra	10.71	NA	6.88	0.87	NA	18.46	090
51841		A	Attach bladder/urethra	13.03	NA	8.57	1.04	NA	22.64	090
51845		A	Repair bladder neck	9.73	NA	6.90	0.62	NA	17.25	090
51860		A	Repair of bladder wound	12.02	NA	7.90	0.89	NA	20.81	090
51865		A	Repair of bladder wound	15.04	NA	8.93	1.01	NA	24.98	090
51880		A	Repair of bladder opening	7.66	NA	5.98	0.54	NA	14.18	090

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[3] +Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
51900		A	Repair bladder/vagina lesion	12.97	NA	8.29	0.87	NA	22.13	090
51920		A	Close bladder-uterus fistula	11.81	NA	7.65	0.86	NA	20.32	090
51925		A	Hysterectomy/bladder repair	15.58	NA	9.65	1.48	NA	26.71	090
51940		A	Correction of bladder defect	28.43	NA	16.41	1.97	NA	46.81	090
51960		A	Revision of bladder & bowel	23.01	NA	13.39	1.41	NA	37.81	090
51980		A	Construct bladder opening	11.36	NA	7.30	0.74	NA	19.40	090
51990		A	Laparo urethral suspension	12.50	NA	6.79	1.02	NA	20.31	090
51992		A	Laparo sling operation	14.01	NA	6.81	0.93	NA	21.75	090
52000		A	Cystoscopy	2.01	3.45	0.69	0.12	5.58	2.82	000
52001		A	Cystoscopy, removal of clots	2.37	NA	0.98	0.32	NA	3.67	000
52005		A	Cystoscopy & ureter catheter	2.37	13.40	0.91	0.15	15.92	3.43	000
52007		A	Cystoscopy and biopsy	3.02	NA	1.02	0.18	NA	4.22	000
52010		A	Cystoscopy & duct catheter	3.02	5.91	1.02	0.18	9.11	4.22	000
52204		A	Cystoscopy	2.37	6.17	0.80	0.15	8.69	3.32	000
52214		A	Cystoscopy and treatment	3.71	6.53	1.26	0.22	10.46	5.19	000
52224		A	Cystoscopy and treatment	3.14	6.41	1.07	0.18	9.73	4.39	000
52234		A	Cystoscopy and treatment	4.63	NA	1.68	0.27	NA	6.58	000
52235		A	Cystoscopy and treatment	5.45	NA	1.97	0.32	NA	7.74	000
52240		A	Cystoscopy and treatment	9.72	NA	3.43	0.58	NA	13.73	000
52250		A	Cystoscopy and radiotracer	4.50	NA	1.53	0.27	NA	6.30	000
52260		A	Cystoscopy and treatment	3.92	NA	1.34	0.23	NA	5.49	000
52265		A	Cystoscopy and treatment	2.94	3.77	1.00	0.18	6.89	4.12	000
52270		A	Cystoscopy & revise urethra	3.37	6.88	1.14	0.20	10.45	4.71	000
52275		A	Cystoscopy & revise urethra	4.70	7.42	1.59	0.28	12.40	6.57	000
52276		A	Cystoscopy and treatment	5.00	7.55	1.70	0.30	12.85	7.00	000
52277		A	Cystoscopy and treatment	6.17	NA	2.12	0.38	NA	8.67	000
52281		A	Cystoscopy and treatment	2.80	14.54	1.08	0.17	17.51	4.05	000
52282		A	Cystoscopy, implant stent	6.40	15.36	2.18	0.38	22.14	8.96	000
52283		A	Cystoscopy and treatment	3.74	6.58	1.27	0.22	10.54	5.23	000
52285		A	Cystoscopy and treatment	3.61	7.06	1.23	0.22	10.89	5.06	000
52290		A	Cystoscopy and treatment	4.59	NA	1.56	0.27	NA	6.42	000
52300		A	Cystoscopy and treatment	5.31	NA	1.80	0.32	NA	7.43	000
52301		A	Cystoscopy and treatment	5.51	NA	1.82	0.39	NA	7.72	000
52305		A	Cystoscopy and treatment	5.31	NA	1.80	0.31	NA	7.42	000
52310		A	Cystoscopy and treatment	2.81	3.85	1.02	0.17	6.83	4.00	000
52315		A	Cystoscopy and treatment	5.21	16.43	1.76	0.31	21.95	7.28	000
52317		A	Remove bladder stone	6.72	26.09	2.28	0.40	33.21	9.40	000
52318		A	Remove bladder stone	9.19	NA	3.11	0.54	NA	12.84	000
52320		A	Cystoscopy and treatment	4.70	NA	1.59	0.28	NA	6.57	000
52325		A	Cystoscopy, stone removal	6.16	NA	2.08	0.37	NA	8.61	000
52327		A	Cystoscopy, inject material	5.19	NA	1.77	0.32	NA	7.28	000
52330		A	Cystoscopy and treatment	5.04	20.79	1.71	0.30	26.13	7.05	000
52332		A	Cystoscopy and treatment	2.83	18.84	1.07	0.17	21.84	4.07	000
52334		A	Create passage to kidney	4.83	NA	1.63	0.28	NA	6.74	000
52341		A	Cysto w/ureter stricture tx	6.00	NA	2.40	0.37	NA	8.77	000
52342		A	Cysto w/up stricture tx	6.50	NA	2.59	0.40	NA	9.49	000
52343		A	Cysto w/renal stricture tx	7.20	NA	2.87	0.44	NA	10.51	000
52344		A	Cysto/uretero, stone remove	7.70	NA	3.07	0.47	NA	11.24	000
52345		A	Cysto/uretero w/up stricture	8.20	NA	3.27	0.50	NA	11.97	000
52346		A	Cystouretero w/renal strict	9.23	NA	3.68	0.57	NA	13.48	000
52347		A	Cystoscopy, resect ducts	5.28	NA	2.14	0.33	NA	7.75	000
52351		A	Cystouretro & or pyeloscope	5.86	NA	1.99	0.36	NA	8.21	000
52352		A	Cystouretro w/stone remove	6.88	NA	2.33	0.42	NA	9.63	000
52353		A	Cystouretero w/lithotripsy	7.97	NA	2.69	0.49	NA	11.15	000
52354		A	Cystouretero w/biopsy	7.34	NA	2.49	0.45	NA	10.28	000
52355		A	Cystouretero w/excise tumor	8.82	NA	2.99	0.55	NA	12.36	000
52400		A	Cystouretero w/congen repr	9.68	NA	5.75	0.60	NA	16.03	090
52450		A	Incision of prostate	7.64	NA	6.56	0.46	NA	14.66	090
52500		A	Revision of bladder neck	8.47	NA	6.81	0.50	NA	15.78	090
52510		A	Dilation prostatic urethra	6.72	NA	5.80	0.40	NA	12.92	090
52601		A	Prostatectomy (TURP)	12.37	NA	8.16	0.74	NA	21.27	090
52606		A	Control postop bleeding	8.13	NA	6.27	0.49	NA	14.89	090
52612		A	Prostatectomy, first stage	7.98	NA	6.72	0.48	NA	15.18	090
52614		A	Prostatectomy, second stage	6.64	NA	6.30	0.41	NA	13.55	090
52620		A	Remove residual prostate	6.61	NA	6.22	0.39	NA	13.22	090
52630		A	Remove prostate regrowth	7.26	NA	6.44	0.43	NA	14.13	090
52640		A	Relieve bladder contracture	6.62	NA	5.73	0.39	NA	12.74	090
52647		A	Laser surgery of prostate	10.36	59.33	4.85	0.61	70.30	15.82	090
52648		A	Laser surgery of prostate	11.21	NA	7.63	0.66	NA	19.50	090
52700		A	Drainage of prostate abscess	6.80	NA	6.32	0.41	NA	13.53	090
53000		A	Incision of urethra	2.28	7.47	2.63	0.13	9.88	5.04	010
53010		A	Incision of urethra	3.64	NA	4.12	0.20	NA	7.96	090
53020		A	Incision of urethra	1.77	4.43	0.67	0.11	6.31	2.55	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
53025		A	Incision of urethra	1.13	4.81	0.45	0.07	6.01	1.65	000
53040		A	Drainage of urethra abscess	6.40	14.74	8.33	0.41	21.55	15.14	090
53060		A	Drainage of urethra abscess	2.63	6.21	2.91	0.23	9.07	5.77	010
53080		A	Drainage of urinary leakage	6.29	NA	8.37	0.42	NA	15.08	090
53085		A	Drainage of urinary leakage	10.27	NA	10.29	0.67	NA	21.23	090
53200		A	Biopsy of urethra	2.59	5.63	0.97	0.17	8.39	3.73	000
53210		A	Removal of urethra	12.57	NA	8.00	0.81	NA	21.38	090
53215		A	Removal of urethra	15.58	NA	8.81	0.93	NA	25.32	090
53220		A	Treatment of urethra lesion	7.00	NA	5.71	0.44	NA	13.15	090
53230		A	Removal of urethra lesion	9.58	NA	6.36	0.60	NA	16.54	090
53235		A	Removal of urethra lesion	10.14	NA	6.49	0.60	NA	17.23	090
53240		A	Surgery for urethra pouch	6.45	NA	5.32	0.42	NA	12.19	090
53250		A	Removal of urethra gland	5.89	NA	4.74	0.35	NA	10.98	090
53260		A	Treatment of urethra lesion	2.98	6.11	2.44	0.23	9.32	5.65	010
53265		A	Treatment of urethra lesion	3.12	6.60	2.42	0.20	9.92	5.74	010
53270		A	Removal of urethra gland	3.09	7.03	2.83	0.21	10.33	6.13	010
53275		A	Repair of urethra defect	4.53	NA	3.43	0.28	NA	8.24	010
53400		A	Revise urethra, stage 1	12.77	NA	8.31	0.85	NA	21.93	090
53405		A	Revise urethra, stage 2	14.48	NA	8.61	0.91	NA	24.00	090
53410		A	Reconstruction of urethra	16.44	NA	9.21	0.99	NA	26.64	090
53415		A	Reconstruction of urethra	19.41	NA	10.16	1.16	NA	30.73	090
53420		A	Reconstruct urethra, stage 1	14.08	NA	8.82	0.90	NA	23.80	090
53425		A	Reconstruct urethra, stage 2	15.98	NA	9.02	0.97	NA	25.97	090
53430		A	Reconstruction of urethra	16.34	NA	9.34	1.01	NA	26.69	090
53431		A	Reconstruct urethra/bladder	19.89	7.94	7.94	1.25	29.08	29.08	090
53440		A	Correct bladder function	12.34	NA	8.09	0.73	NA	21.16	090
53442		A	Remove perineal prosthesis	8.27	NA	6.08	0.55	NA	14.90	090
53443		D	Reconstruction of urethra	0.00	NA	0.00	0.00	NA	0.00	090
53444		A	Insert tandem cuff	13.40	NA	6.66	0.79	NA	20.85	090
53445		A	Insert uro/ves nck sphincter	14.06	NA	8.72	0.84	NA	23.62	090
53446		A	Remove uro sphincter	10.23	NA	8.46	0.61	NA	19.30	090
53447		A	Remove/replace ur sphincter	13.49	NA	7.90	0.79	NA	22.18	090
53448		A	Remov/replc ur sphinctr comp	21.15	NA	12.35	1.27	NA	34.77	090
53449		A	Repair uro sphincter	9.70	NA	6.73	0.57	NA	17.00	090
53450		A	Revision of urethra	6.14	NA	5.16	0.37	NA	11.67	090
53460		A	Revision of urethra	7.12	NA	5.50	0.43	NA	13.05	090
53502		A	Repair of urethra injury	7.63	NA	5.80	0.50	NA	13.93	090
53505		A	Repair of urethra injury	7.63	NA	5.62	0.46	NA	13.71	090
53510		A	Repair of urethra injury	10.11	NA	6.58	0.60	NA	17.29	090
53515		A	Repair of urethra injury	13.31	NA	7.81	0.83	NA	21.95	090
53520		A	Repair of urethra defect	8.68	NA	6.12	0.53	NA	15.33	090
53600		A	Dilate urethra stricture	1.21	1.19	0.46	0.07	2.47	1.74	000
53601		A	Dilate urethra stricture	0.98	1.31	0.40	0.06	2.35	1.44	000
53605		A	Dilate urethra stricture	1.28	NA	0.44	0.08	NA	1.80	000
53620		A	Dilate urethra stricture	1.62	1.91	0.63	0.10	3.63	2.35	000
53621		A	Dilate urethra stricture	1.35	2.00	0.52	0.08	3.43	1.95	000
53660		A	Dilation of urethra	0.71	1.22	0.33	0.04	1.97	1.08	000
53661		A	Dilation of urethra	0.72	1.21	0.31	0.04	1.97	1.07	000
53665		A	Dilation of urethra	0.76	NA	0.27	0.05	NA	1.08	000
53670		A	Insert urinary catheter	0.50	1.74	0.18	0.03	2.27	0.71	000
53675		A	Insert urinary catheter	1.47	2.63	0.58	0.09	4.19	2.14	000
53850		A	Prostatic microwave thermotx	9.45	87.54	4.50	0.56	97.55	14.51	090
53852		A	Prostatic rf thermotx	9.88	75.53	4.68	0.58	85.99	15.14	090
53853		A	Prostatic water thermother	4.14	52.75	2.55	0.38	57.27	7.07	090
53899		C	Urology surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
54000		A	Slitting of prepuce	1.54	5.66	1.51	0.10	7.30	3.15	010
54001		A	Slitting of prepuce	2.19	6.56	2.15	0.14	8.89	4.48	010
54015		A	Drain penis lesion	5.32	7.95	3.21	0.33	13.60	8.86	010
54050		A	Destruction, penis lesion(s)	1.24	2.85	0.47	0.07	4.16	1.78	010
54055		A	Destruction, penis lesion(s)	1.22	6.64	1.42	0.07	7.93	2.71	010
54056		A	Cryosurgery, penis lesion(s)	1.24	2.96	0.58	0.06	4.26	1.88	010
54057		A	Laser surg, penis lesion(s)	1.24	2.97	1.41	0.08	4.29	2.73	010
54060		A	Excision of penis lesion(s)	1.93	5.65	1.66	0.12	7.70	3.71	010
54065		A	Destruction, penis lesion(s)	2.42	5.38	2.24	0.13	7.93	4.79	010
54100		A	Biopsy of penis	1.90	3.54	0.77	0.10	5.54	2.77	000
54105		A	Biopsy of penis	3.50	6.75	2.19	0.21	10.46	5.90	010
54110		A	Treatment of penis lesion	10.13	NA	8.20	0.60	NA	18.93	090
54111		A	Treat penis lesion, graft	13.57	NA	9.37	0.79	NA	23.73	090
54112		A	Treat penis lesion, graft	15.86	NA	10.08	0.94	NA	26.88	090
54115		A	Treatment of penis lesion	6.15	11.63	6.77	0.39	18.17	13.31	090
54120		A	Partial removal of penis	9.97	NA	8.14	0.60	NA	18.71	090
54125		A	Removal of penis	13.53	NA	9.37	0.81	NA	23.71	090
54130		A	Remove penis & nodes	20.14	NA	12.00	1.19	NA	33.33	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
54135		A	Remove penis & nodes	26.36	NA	14.68	1.58	NA	42.62	090
54150		A	Circumcision	1.81	6.04	1.87	0.17	8.02	3.85	010
54152		A	Circumcision	2.31	NA	1.76	0.16	NA	4.23	010
54160		A	Circumcision	2.48	5.04	1.82	0.16	7.68	4.46	010
54161		A	Circumcision	3.27	NA	2.10	0.20	NA	5.57	010
54162		A	Lysis penil circumcis lesion	3.00	NA	2.91	0.18	NA	6.09	010
54163		A	Repair of circumcision	3.00	NA	2.54	0.18	NA	5.72	010
54164		A	Frenulotomy of penis	2.50	NA	2.37	0.15	NA	5.02	010
54200		A	Treatment of penis lesion	1.06	2.87	0.38	0.06	3.99	1.50	010
54205		A	Treatment of penis lesion	7.93	NA	7.50	0.47	NA	15.90	090
54220		A	Treatment of penis lesion	2.42	2.08	1.04	0.15	4.65	3.61	000
54230		A	Prepare penis study	1.34	NA	0.46	0.08	NA	1.88	000
54231		A	Dynamic cavernosometry	2.04	2.26	0.83	0.14	4.44	3.01	000
54235		A	Penile injection	1.19	1.19	0.41	0.07	2.45	1.67	000
54240		A	Penis study	1.31	1.59	NA	0.13	3.03	NA	000
54240	26	A	Penis study	1.31	0.45	0.45	0.08	1.84	1.84	000
54240	TC	A	Penis study	0.00	1.14	NA	0.05	1.19	NA	000
54250		A	Penis study	2.22	2.90	NA	0.16	5.28	NA	000
54250	26	A	Penis study	2.22	0.75	0.75	0.14	3.11	3.11	000
54250	TC	A	Penis study	0.00	2.15	NA	0.02	2.17	NA	000
54300		A	Revision of penis	10.41	NA	8.89	0.64	NA	19.94	090
54304		A	Revision of penis	12.49	NA	10.04	0.74	NA	23.27	090
54308		A	Reconstruction of urethra	11.83	NA	9.94	0.70	NA	22.47	090
54312		A	Reconstruction of urethra	13.57	NA	10.73	0.81	NA	25.11	090
54316		A	Reconstruction of urethra	16.82	NA	11.67	1.00	NA	29.49	090
54318		A	Reconstruction of urethra	11.25	NA	10.06	1.15	NA	22.46	090
54322		A	Reconstruction of urethra	13.01	NA	9.56	0.77	NA	23.34	090
54324		A	Reconstruction of urethra	16.31	NA	12.02	1.03	NA	29.36	090
54326		A	Reconstruction of urethra	15.72	NA	11.17	0.93	NA	27.82	090
54328		A	Revise penis/urethra	15.65	NA	11.59	0.92	NA	28.16	090
54332		A	Revise penis/urethra	17.08	NA	11.87	1.01	NA	29.96	090
54336		A	Revise penis/urethra	20.04	NA	13.59	1.90	NA	35.53	090
54340		A	Secondary urethral surgery	8.91	NA	9.80	0.72	NA	19.43	090
54344		A	Secondary urethral surgery	15.94	NA	10.91	1.10	NA	27.95	090
54348		A	Secondary urethral surgery	17.15	NA	12.10	1.02	NA	30.27	090
54352		A	Reconstruct urethra/penis	24.74	NA	16.53	1.62	NA	42.89	090
54360		A	Penis plastic surgery	11.93	NA	8.82	0.72	NA	21.47	090
54380		A	Repair penis	13.18	NA	10.79	1.16	NA	25.13	090
54385		A	Repair penis	15.39	NA	12.20	0.71	NA	28.30	090
54390		A	Repair penis and bladder	21.61	NA	14.69	1.28	NA	37.58	090
54400		A	Insert semi-rigid prosthesis	8.99	NA	6.53	0.53	NA	16.05	090
54401		A	Insert self-contd prosthesis	10.28	NA	7.37	0.61	NA	18.26	090
54402		D	Remove penis prosthesis	0.00	NA	0.00	0.00	NA	0.00	090
54405		A	Insert multi-comp penis pros	13.43	NA	8.45	0.80	NA	22.68	090
54406		A	Remove multi-comp penis pros	12.10	NA	6.09	0.80	NA	18.99	090
54407		D	Remove multi-comp prosthesis	0.00	NA	0.00	0.00	NA	0.00	090
54408		A	Repair multi-comp penis pros	12.75	NA	6.46	0.80	NA	20.01	090
54409		D	Revise penis prosthesis	0.00	NA	0.00	0.00	NA	0.00	090
54410		A	Remove/replace penis prosth	15.50	NA	7.36	0.80	NA	23.66	090
54411		A	Remv/replc penis pros, comp	16.00	NA	8.98	0.80	NA	25.78	090
54415		A	Remove self-contd penis pros	8.20	NA	5.35	0.55	NA	14.10	090
54416		A	Remv/repl penis contain pros	10.87	NA	6.94	0.55	NA	18.36	090
54417		A	Remv/replc penis pros, compl	14.19	NA	7.89	0.55	NA	22.63	090
54420		A	Revision of penis	11.42	NA	8.70	0.72	NA	20.84	090
54430		A	Revision of penis	10.15	NA	8.17	0.60	NA	18.92	090
54435		A	Revision of penis	6.12	NA	6.30	0.36	NA	12.78	090
54440		C	Repair of penis	0.00	0.00	0.00	0.00	0.00	0.00	090
54450		A	Preputial stretching	1.12	1.10	0.49	0.07	2.29	1.68	000
54500		A	Biopsy of testis	1.31	6.26	0.45	0.08	7.65	1.84	000
54505		A	Biopsy of testis	3.46	NA	2.75	0.21	NA	6.42	010
54510		D	Removal of testis lesion	0.00	NA	0.00	0.00	NA	0.00	090
54512		A	Excise lesion testis	8.58	NA	5.19	0.56	NA	14.33	090
54520		A	Removal of testis	5.23	NA	3.75	0.33	NA	9.31	090
54522		A	Orchiectomy, partial	9.50	NA	6.15	0.62	NA	16.27	090
54530		A	Removal of testis	8.58	NA	5.46	0.53	NA	14.57	090
54535		A	Extensive testis surgery	12.16	NA	7.62	0.83	NA	20.61	090
54550		A	Exploration for testis	7.78	NA	4.97	0.49	NA	13.24	090
54560		A	Exploration for testis	11.13	NA	7.10	0.79	NA	19.02	090
54600		A	Reduce testis torsion	7.01	NA	4.38	0.45	NA	11.84	090
54620		A	Suspension of testis	4.90	NA	3.26	0.31	NA	8.47	010
54640		A	Suspension of testis	6.90	NA	4.40	0.49	NA	11.79	090
54650		A	Orchiopexy (Fowler-Stephens)	11.45	NA	7.29	0.81	NA	19.55	090
54660		A	Revision of testis	5.11	NA	3.65	0.35	NA	9.11	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
54670		A	Repair testis injury	6.41	NA	4.30	0.41	NA	11.12	090
54680		A	Relocation of testis(es)	12.65	NA	7.65	0.94	NA	21.24	090
54690		A	Laparoscopy, orchiectomy	10.96	NA	7.08	0.99	NA	19.03	090
54692		A	Laparoscopy, orchiopexy	12.88	NA	5.84	0.87	NA	19.59	090
54699		C	Laparoscope proc, testis	0.00	0.00	0.00	0.00	0.00	0.00	YYY
54700		A	Drainage of scrotum	3.43	8.80	3.53	0.23	12.46	7.19	010
54800		A	Biopsy of epididymis	2.33	6.45	0.79	0.14	8.92	3.26	000
54820		A	Exploration of epididymis	5.14	NA	3.61	0.33	NA	9.08	090
54830		A	Remove epididymis lesion	5.38	NA	3.85	0.34	NA	9.57	090
54840		A	Remove epididymis lesion	5.20	NA	3.79	0.31	NA	9.30	090
54860		A	Removal of epididymis	6.32	NA	4.40	0.38	NA	11.10	090
54861		A	Removal of epididymis	8.90	NA	5.28	0.52	NA	14.70	090
54900		A	Fusion of spermatic ducts	13.20	NA	6.99	1.34	NA	21.53	090
54901		A	Fusion of spermatic ducts	17.94	NA	9.27	1.83	NA	29.04	090
55000		A	Drainage of hydrocele	1.43	2.24	0.49	0.10	3.77	2.02	000
55040		A	Removal of hydrocele	5.36	NA	3.56	0.35	NA	9.27	090
55041		A	Removal of hydroceles	7.74	NA	4.63	0.50	NA	12.87	090
55060		A	Repair of hydrocele	5.52	NA	3.64	0.37	NA	9.53	090
55100		A	Drainage of scrotum abscess	2.13	10.06	3.63	0.15	12.34	5.91	010
55110		A	Explore scrotum	5.70	NA	3.71	0.36	NA	9.77	090
55120		A	Removal of scrotum lesion	5.09	NA	3.52	0.33	NA	8.94	090
55150		A	Removal of scrotum	7.22	NA	4.76	0.47	NA	12.45	090
55175		A	Revision of scrotum	5.24	NA	3.88	0.33	NA	9.45	090
55180		A	Revision of scrotum	10.72	NA	6.38	0.72	NA	17.82	090
55200		A	Incision of sperm duct	4.24	NA	3.10	0.25	NA	7.59	090
55250		A	Removal of sperm duct(s)	3.29	9.72	3.28	0.21	13.22	6.78	090
55300		A	Prepare, sperm duct x-ray	3.51	NA	1.56	0.20	NA	5.27	000
55400		A	Repair of sperm duct	8.49	NA	5.32	0.50	NA	14.31	090
55450		A	Ligation of sperm duct	4.12	8.08	2.62	0.24	12.44	6.98	010
55500		A	Removal of hydrocele	5.59	NA	3.76	0.43	NA	9.78	090
55520		A	Removal of sperm cord lesion	6.03	NA	3.82	0.56	NA	10.41	090
55530		A	Revise spermatic cord veins	5.66	NA	3.92	0.36	NA	9.94	090
55535		A	Revise spermatic cord veins	6.56	NA	4.23	0.42	NA	11.21	090
55540		A	Revise hernia & sperm veins	7.67	NA	4.37	0.74	NA	12.78	090
55550		A	Laparo ligate spermatic vein	6.57	NA	3.67	0.47	NA	10.71	090
55559		C	Laparo proc, spermatic cord	0.00	0.00	0.00	0.00	0.00	0.00	YYY
55600		A	Incise sperm duct pouch	6.38	NA	4.41	0.38	NA	11.17	090
55605		A	Incise sperm duct pouch	7.96	NA	5.39	0.54	NA	13.89	090
55650		A	Remove sperm duct pouch	11.80	NA	6.44	0.72	NA	18.96	090
55680		A	Remove sperm pouch lesion	5.19	NA	3.77	0.31	NA	9.27	090
55700		A	Biopsy of prostate	1.57	4.68	0.73	0.10	6.35	2.40	000
55705		A	Biopsy of prostate	4.57	NA	3.92	0.26	NA	8.75	010
55720		A	Drainage of prostate abscess	7.64	NA	5.88	0.44	NA	13.96	090
55725		A	Drainage of prostate abscess	8.68	NA	6.58	0.51	NA	15.77	090
55801		A	Removal of prostate	17.80	NA	9.78	1.08	NA	28.66	090
55810		A	Extensive prostate surgery	22.58	NA	11.85	1.35	NA	35.78	090
55812		A	Extensive prostate surgery	27.51	NA	13.91	1.69	NA	43.11	090
55815		A	Extensive prostate surgery	30.46	NA	15.01	1.84	NA	47.31	090
55821		A	Removal of prostate	14.25	NA	8.20	0.85	NA	23.30	090
55831		A	Removal of prostate	15.62	NA	8.67	0.94	NA	25.23	090
55840		A	Extensive prostate surgery	22.69	NA	12.32	1.37	NA	36.38	090
55842		A	Extensive prostate surgery	24.38	NA	12.86	1.48	NA	38.72	090
55845		A	Extensive prostate surgery	28.55	NA	14.26	1.71	NA	44.52	090
55859		A	Percut/needle insert, pros	12.52	NA	7.71	0.74	NA	20.97	090
55860		A	Surgical exposure, prostate	14.45	NA	7.93	0.82	NA	23.20	090
55862		A	Extensive prostate surgery	18.39	NA	9.69	1.14	NA	29.22	090
55865		A	Extensive prostate surgery	22.87	NA	11.49	1.37	NA	35.73	090
55870		A	Electroejaculation	2.58	1.96	0.98	0.14	4.68	3.70	000
55873		A	Cryoablate prostate	19.47	NA	10.65	1.02	NA	31.14	090
55899		C	Genital surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
55970		N	Sex transformation, M to F	0.00	0.00	0.00	0.00	0.00	0.00	XXX
55980		N	Sex transformation, F to M	0.00	0.00	0.00	0.00	0.00	0.00	XXX
56405		A	I & D of vulva/perineum	1.44	2.50	1.33	0.14	4.08	2.91	010
56420		A	Drainage of gland abscess	1.39	2.48	1.33	0.13	4.00	2.85	010
56440		A	Surgery for vulva lesion	2.64	3.83	2.40	0.28	6.95	5.52	010
56441		A	Lysis of labial lesion(s)	1.97	2.74	2.11	0.17	4.88	4.25	010
56501		A	Destroy, vulva lesions, simp	1.53	2.42	1.42	0.15	4.10	3.10	010
56515		A	Destroy vulva lesion/s compl	2.76	3.20	2.46	0.18	6.14	5.40	010
56605		A	Biopsy of vulva/perineum	1.10	1.90	0.50	0.11	3.11	1.71	000
56606		A	Biopsy of vulva/perineum	0.55	1.69	0.23	0.06	2.30	0.84	ZZZ
56620		A	Partial removal of vulva	7.47	NA	5.13	0.76	NA	13.36	090
56625		A	Complete removal of vulva	8.40	NA	6.20	0.84	NA	15.44	090
56630		A	Extensive vulva surgery	12.36	NA	7.93	1.23	NA	21.52	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
56631		A	Extensive vulva surgery	16.20	NA	10.80	1.63	NA	28.63	090
56632		A	Extensive vulva surgery	20.29	NA	12.42	2.03	NA	34.74	090
56633		A	Extensive vulva surgery	16.47	NA	9.70	1.66	NA	27.83	090
56634		A	Extensive vulva surgery	17.88	NA	11.25	1.78	NA	30.91	090
56637		A	Extensive vulva surgery	21.97	NA	13.16	2.18	NA	37.31	090
56640		A	Extensive vulva surgery	22.17	NA	12.58	2.26	NA	37.01	090
56700		A	Partial removal of hymen	2.52	3.18	2.16	0.24	5.94	4.92	010
56720		A	Incision of hymen	0.68	1.79	0.57	0.07	2.54	1.32	000
56740		A	Remove vagina gland lesion	4.57	4.08	3.08	0.37	9.02	8.02	010
56800		A	Repair of vagina	3.89	NA	2.86	0.37	NA	7.12	010
56805		A	Repair clitoris	18.86	NA	9.69	1.82	NA	30.37	090
56810		A	Repair of perineum	4.13	NA	2.91	0.41	NA	7.45	010
57000		A	Exploration of vagina	2.97	NA	2.49	0.28	NA	5.74	010
57010		A	Drainage of pelvic abscess	6.03	NA	4.08	0.57	NA	10.68	090
57020		A	Drainage of pelvic fluid	1.50	1.63	0.66	0.15	3.28	2.31	000
57022		A	I & d vaginal hematoma, pp	2.56	NA	2.14	0.24	NA	4.94	010
57023		A	I & d vag hematoma, non-ob	4.75	NA	3.01	0.24	NA	8.00	010
57061		A	Destroy vag lesions, simple	1.25	2.37	1.33	0.13	3.75	2.71	010
57065		A	Destroy vag lesions, complex	2.61	3.09	2.41	0.26	5.96	5.28	010
57100		A	Biopsy of vagina	1.20	1.64	0.53	0.10	2.94	1.83	000
57105		A	Biopsy of vagina	1.69	2.35	2.34	0.17	4.21	4.20	010
57106		A	Remove vagina wall, partial	6.36	2.67	2.67	0.58	9.61	9.61	090
57107		A	Remove vagina tissue, part	23.00	NA	10.65	2.17	NA	35.82	090
57109		A	Vaginectomy partial w/nodes	27.00	NA	13.89	1.97	NA	42.86	090
57110		A	Remove vagina wall, complete	14.29	NA	7.56	1.43	NA	23.28	090
57111		A	Remove vagina tissue, compl	27.00	NA	12.85	2.71	NA	42.56	090
57112		A	Vaginectomy w/nodes, compl	29.00	NA	14.38	2.19	NA	45.57	090
57120		A	Closure of vagina	7.41	NA	4.85	0.75	NA	13.01	090
57130		A	Remove vagina lesion	2.43	NA	2.25	0.23	NA	4.91	010
57135		A	Remove vagina lesion	2.67	3.09	2.35	0.26	6.02	5.28	010
57150		A	Treat vagina infection	0.55	1.04	0.22	0.06	1.65	0.83	000
57155		A	Insert uteri tandems/ovoids	6.27	NA	3.67	0.63	NA	10.57	090
57160		A	Insert pessary/other device	0.89	1.12	0.41	0.09	2.10	1.39	000
57170		A	Fitting of diaphragm/cap	0.91	1.46	0.36	0.09	2.46	1.36	000
57180		A	Treat vaginal bleeding	1.58	2.37	1.55	0.16	4.11	3.29	010
57200		A	Repair of vagina	3.94	NA	3.14	0.38	NA	7.46	090
57210		A	Repair vagina/perineum	5.17	NA	3.69	0.50	NA	9.36	090
57220		A	Revision of urethra	4.31	NA	3.52	0.42	NA	8.25	090
57230		A	Repair of urethral lesion	5.64	NA	4.49	0.50	NA	10.63	090
57240		A	Repair bladder & vagina	6.07	NA	4.62	0.53	NA	11.22	090
57250		A	Repair rectum & vagina	5.53	NA	4.01	0.54	NA	10.08	090
57260		A	Repair of vagina	8.27	NA	5.17	0.83	NA	14.27	090
57265		A	Extensive repair of vagina	11.34	NA	7.22	1.14	NA	19.70	090
57268		A	Repair of bowel bulge	6.76	NA	4.54	0.66	NA	11.96	090
57270		A	Repair of bowel pouch	12.11	NA	6.58	1.17	NA	19.86	090
57280		A	Suspension of vagina	15.04	NA	7.74	1.44	NA	24.22	090
57282		A	Repair of vaginal prolapse	8.86	NA	5.44	0.86	NA	15.16	090
57284		A	Repair paravaginal defect	12.70	NA	7.45	1.17	NA	21.32	090
57287		A	Revise/remove sling repair	10.71	NA	7.47	0.74	NA	18.92	090
57288		A	Repair bladder defect	13.02	NA	7.24	0.86	NA	21.12	090
57289		A	Repair bladder & vagina	11.58	NA	7.12	0.95	NA	19.65	090
57291		A	Construction of vagina	7.95	NA	5.93	0.78	NA	14.66	090
57292		A	Construct vagina with graft	13.09	NA	7.20	1.29	NA	21.58	090
57300		A	Repair rectum-vagina fistula	7.61	NA	4.82	0.70	NA	13.13	090
57305		A	Repair rectum-vagina fistula	13.77	NA	7.00	1.33	NA	22.10	090
57307		A	Fistula repair & colostomy	15.93	NA	7.72	1.59	NA	25.24	090
57308		A	Fistula repair, transperine	9.94	NA	5.96	0.91	NA	16.81	090
57310		A	Repair urethrovaginal lesion	6.78	NA	4.95	0.45	NA	12.18	090
57311		A	Repair urethrovaginal lesion	7.98	NA	5.45	0.51	NA	13.94	090
57320		A	Repair bladder-vagina lesion	8.01	NA	5.68	0.60	NA	14.29	090
57330		A	Repair bladder-vagina lesion	12.35	NA	6.96	0.86	NA	20.17	090
57335		A	Repair vagina	18.73	NA	9.84	1.66	NA	30.23	090
57400		A	Dilation of vagina	2.27	NA	1.18	0.22	NA	3.67	000
57410		A	Pelvic examination	1.75	2.75	1.12	0.14	4.64	3.01	000
57415		A	Remove vaginal foreign body	2.17	3.71	2.18	0.19	6.07	4.54	010
57452		A	Examination of vagina	0.99	1.69	0.46	0.10	2.78	1.55	000
57454		A	Vagina examination & biopsy	1.27	1.88	0.62	0.13	3.28	2.02	000
57460		A	Cervix excision	2.83	2.17	1.19	0.28	5.28	4.30	000
57500		A	Biopsy of cervix	0.97	2.29	0.50	0.10	3.36	1.57	000
57505		A	Endocervical curettage	1.14	2.05	1.36	0.12	3.31	2.62	010
57510		A	Cauterization of cervix	1.90	3.39	1.66	0.18	5.47	3.74	010
57511		A	Cryocautery of cervix	1.90	2.54	0.77	0.18	4.62	2.85	010
57513		A	Laser surgery of cervix	1.90	2.72	1.66	0.19	4.81	3.75	010

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
57520		A	Conization of cervix	4.04	4.43	2.93	0.41	8.88	7.38	090
57522		A	Conization of cervix	3.36	4.02	2.68	0.34	7.72	6.38	090
57530		A	Removal of cervix	4.79	NA	3.78	0.48	NA	9.05	090
57531		A	Removal of cervix, radical	28.00	NA	14.44	2.46	NA	44.90	090
57540		A	Removal of residual cervix	12.22	NA	6.49	1.21	NA	19.92	090
57545		A	Remove cervix/repair pelvis	13.03	NA	6.95	1.30	NA	21.28	090
57550		A	Removal of residual cervix	5.53	NA	3.98	0.55	NA	10.06	090
57555		A	Remove cervix/repair vagina	8.95	NA	5.90	0.89	NA	15.74	090
57556		A	Remove cervix, repair bowel	8.37	NA	5.14	0.80	NA	14.31	090
57700		A	Revision of cervix	3.55	NA	2.71	0.33	NA	6.59	090
57720		A	Revision of cervix	4.13	NA	3.41	0.41	NA	7.95	090
57800		A	Dilation of cervical canal	0.77	1.22	0.36	0.08	2.07	1.21	000
57820		A	D & C of residual cervix	1.67	2.70	2.40	0.17	4.54	4.24	010
58100		A	Biopsy of uterus lining	1.53	1.56	0.76	0.07	3.16	2.36	000
58120		A	Dilation and curettage	3.27	4.01	2.55	0.33	7.61	6.15	010
58140		A	Removal of uterus lesion	14.60	NA	7.38	1.46	NA	23.44	090
58145		A	Removal of uterus lesion	8.04	NA	5.11	0.80	NA	13.95	090
58150		A	Total hysterectomy	15.24	NA	7.90	1.53	NA	24.67	090
58152		A	Total hysterectomy	20.60	NA	10.17	1.52	NA	32.29	090
58180		A	Partial hysterectomy	15.29	NA	7.90	1.54	NA	24.73	090
58200		A	Extensive hysterectomy	21.59	NA	11.62	2.15	NA	35.36	090
58210		A	Extensive hysterectomy	28.85	NA	14.67	2.91	NA	46.43	090
58240		A	Removal of pelvis contents	38.39	NA	19.71	3.76	NA	61.86	090
58260		A	Vaginal hysterectomy	12.98	NA	6.90	1.23	NA	21.11	090
58262		A	Vaginal hysterectomy	14.77	NA	7.66	1.42	NA	23.85	090
58263		A	Vaginal hysterectomy	16.06	NA	8.22	1.55	NA	25.83	090
58267		A	Hysterectomy & vagina repair	17.04	NA	8.81	1.51	NA	27.36	090
58270		A	Hysterectomy & vagina repair	14.26	NA	7.43	1.37	NA	23.06	090
58275		A	Hysterectomy/revise vagina	15.76	NA	7.94	1.51	NA	25.21	090
58280		A	Hysterectomy/revise vagina	17.01	NA	8.46	1.54	NA	27.01	090
58285		A	Extensive hysterectomy	22.26	NA	11.15	1.88	NA	35.29	090
58300		N	Insert intrauterine device	+1.01	1.42	0.40	0.10	2.53	1.51	XXX
58301		A	Remove intrauterine device	1.27	1.62	0.51	0.13	3.02	1.91	000
58321		A	Artificial insemination	0.92	1.03	0.37	0.10	2.05	1.39	000
58322		A	Artificial insemination	1.10	1.05	0.42	0.11	2.26	1.63	000
58323		A	Sperm washing	0.23	0.53	0.10	0.02	0.78	0.35	000
58340		A	Catheter for hysterography	0.88	12.42	0.33	0.08	13.38	1.29	000
58345		A	Reopen fallopian tube	4.66	NA	1.73	0.36	NA	6.75	010
58346		A	Insert heyman uteri capsule	6.75	NA	3.84	0.68	NA	11.27	090
58350		A	Reopen fallopian tube	1.01	2.15	1.17	0.10	3.26	2.28	010
58353		A	Endometr ablate, thermal	3.56	NA	2.28	0.37	NA	6.21	010
58400		A	Suspension of uterus	6.36	NA	4.17	0.62	NA	11.15	090
58410		A	Suspension of uterus	12.73	NA	6.84	1.09	NA	20.66	090
58520		A	Repair of ruptured uterus	11.92	NA	6.24	1.17	NA	19.33	090
58540		A	Revision of uterus	14.64	NA	6.96	1.28	NA	22.88	090
58550		A	Laparo-asst vag hysterectomy	14.19	NA	7.11	1.44	NA	22.74	010
58551		A	Laparoscopy, remove myoma	14.21	NA	7.09	1.45	NA	22.75	010
58555		A	Hysteroscopy, dx, sep proc	3.33	2.95	1.49	0.34	6.62	5.16	000
58558		A	Hysteroscopy, biopsy	4.75	3.55	2.13	0.49	8.79	7.37	000
58559		A	Hysteroscopy, lysis	6.17	2.59	2.59	0.62	9.38	9.38	000
58560		A	Hysteroscopy, resect septum	7.00	3.01	3.01	0.71	10.72	10.72	000
58561		A	Hysteroscopy, remove myoma	10.00	3.78	3.78	1.02	14.80	14.80	000
58562		A	Hysteroscopy, remove fb	5.21	NA	2.34	0.52	NA	8.07	000
58563		A	Hysteroscopy, ablation	6.17	2.62	2.62	0.62	9.41	9.41	000
58578		C	Laparo proc, uterus	0.00	0.00	0.00	0.00	0.00	0.00	YYY
58579		C	Hysteroscope procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
58600		A	Division of fallopian tube	5.60	NA	3.51	0.39	NA	9.50	090
58605		A	Division of fallopian tube	5.00	NA	3.32	0.33	NA	8.65	090
58611		A	Ligate oviduct(s) add-on	1.45	NA	0.61	0.07	NA	2.13	ZZZ
58615		A	Occlude fallopian tube(s)	3.90	NA	3.35	0.40	NA	7.65	010
58660		A	Laparoscopy, lysis	11.29	NA	5.78	1.14	NA	18.21	090
58661		A	Laparoscopy, remove adnexa	11.05	NA	5.47	1.12	NA	17.64	010
58662		A	Laparoscopy, excise lesions	11.79	NA	5.75	1.18	NA	18.72	090
58670		A	Laparoscopy, tubal cautery	5.60	NA	3.73	0.55	NA	9.88	090
58671		A	Laparoscopy, tubal block	5.60	NA	3.74	0.56	NA	9.90	090
58672		A	Laparoscopy, fimbrioplasty	12.88	NA	6.81	1.22	NA	20.91	090
58673		A	Laparoscopy, salpingostomy	13.74	NA	7.16	1.40	NA	22.30	090
58679		C	Laparo proc, oviduct-ovary	0.00	0.00	0.00	0.00	0.00	0.00	YYY
58700		A	Removal of fallopian tube	12.05	NA	6.05	0.64	NA	18.74	090
58720		A	Removal of ovary/tube(s)	11.36	NA	6.05	1.14	NA	18.55	090
58740		A	Revise fallopian tube(s)	14.00	NA	7.34	0.59	NA	21.93	090
58750		A	Repair oviduct	14.84	NA	7.60	1.52	NA	23.96	090
58752		A	Revise ovarian tube(s)	14.84	NA	7.92	1.51	NA	24.27	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
58760		A	Remove tubal obstruction	13.13	NA	7.00	1.34	NA	21.47	090
58770		A	Create new tubal opening	13.97	NA	7.24	1.42	NA	22.63	090
58800		A	Drainage of ovarian cyst(s)	4.14	4.43	4.36	0.36	8.93	8.86	090
58805		A	Drainage of ovarian cyst(s)	5.88	NA	3.66	0.56	NA	10.10	090
58820		A	Drain ovary abscess, open	4.22	NA	3.38	0.29	NA	7.89	090
58822		A	Drain ovary abscess, percut	10.13	NA	5.20	0.92	NA	16.25	090
58823		A	Drain pelvic abscess, percut	3.38	NA	2.38	0.18	NA	5.94	000
58825		A	Transposition, ovary(s)	10.98	NA	5.95	0.62	NA	17.55	090
58900		A	Biopsy of ovary(s)	5.99	NA	3.64	0.56	NA	10.19	090
58920		A	Partial removal of ovary(s)	11.36	NA	5.85	0.68	NA	17.89	090
58925		A	Removal of ovarian cyst(s)	11.36	NA	5.79	1.14	NA	18.29	090
58940		A	Removal of ovary(s)	7.29	NA	4.18	0.73	NA	12.20	090
58943		A	Removal of ovary(s)	18.43	NA	9.92	1.86	NA	30.21	090
58950		A	Resect ovarian malignancy	16.93	NA	9.41	1.55	NA	27.89	090
58951		A	Resect ovarian malignancy	22.38	NA	11.81	2.20	NA	36.39	090
58952		A	Resect ovarian malignancy	25.01	NA	12.99	2.50	NA	40.50	090
58953		A	Tah, rad dissect for debulk	32.00	NA	15.59	3.20	NA	50.79	090
58954		A	Tah rad debulk/lymph remove	35.00	NA	16.71	3.50	NA	55.21	090
58960		A	Exploration of abdomen	14.65	NA	8.52	1.47	NA	24.64	090
58970		A	Retrieval of oocyte	3.53	8.56	1.92	0.36	12.45	5.81	000
58974		C	Transfer of embryo	0.00	0.00	0.00	0.00	0.00	0.00	000
58976		A	Transfer of embryo	3.83	2.30	1.53	0.39	6.52	5.75	000
58999		C	Genital surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
59000		A	Amniocentesis, diagnostic	1.30	2.05	0.72	0.23	3.58	2.25	000
59001		A	Amniocentesis, therapeutic	3.00	NA	1.37	0.23	NA	4.60	000
59012		A	Fetal cord puncture, prenatal	3.45	NA	1.71	0.62	NA	5.78	000
59015		A	Chorion biopsy	2.20	1.64	1.11	0.40	4.24	3.71	000
59020		A	Fetal contract stress test	0.66	0.78	NA	0.20	1.64	NA	000
59020	26	A	Fetal contract stress test	0.66	0.28	0.28	0.12	1.06	1.06	000
59020	TC	A	Fetal contract stress test	0.00	0.50	NA	0.08	0.58	NA	000
59025		A	Fetal non-stress test	0.53	0.44	NA	0.12	1.09	NA	000
59025	26	A	Fetal non-stress test	0.53	0.22	0.22	0.10	0.85	0.85	000
59025	TC	A	Fetal non-stress test	0.00	0.22	NA	0.02	0.24	NA	000
59030		A	Fetal scalp blood sample	1.99	NA	1.14	0.36	NA	3.49	000
59050		A	Fetal monitor w/report	0.89	NA	0.38	0.16	NA	1.43	XXX
59051		A	Fetal monitor/interpret only	0.74	NA	0.31	0.14	NA	1.19	XXX
59100		A	Remove uterus lesion	12.35	NA	6.61	2.21	NA	21.17	090
59120		A	Treat ectopic pregnancy	11.49	NA	6.35	2.06	NA	19.90	090
59121		A	Treat ectopic pregnancy	11.67	NA	6.39	2.09	NA	20.15	090
59130		A	Treat ectopic pregnancy	14.22	NA	7.16	2.54	NA	23.92	090
59135		A	Treat ectopic pregnancy	13.88	NA	7.27	2.49	NA	23.64	090
59136		A	Treat ectopic pregnancy	13.18	NA	6.36	2.36	NA	21.90	090
59140		A	Treat ectopic pregnancy	5.46	NA	3.70	0.98	NA	10.14	090
59150		A	Treat ectopic pregnancy	11.67	NA	6.69	1.23	NA	19.59	090
59151		A	Treat ectopic pregnancy	11.49	NA	6.12	1.41	NA	19.02	090
59160		A	D & C after delivery	2.71	3.73	2.29	0.49	6.93	5.49	010
59200		A	Insert cervical dilator	0.79	1.41	0.32	0.15	2.35	1.26	000
59300		A	Episiotomy or vaginal repair	2.41	2.01	1.01	0.43	4.85	3.85	000
59320		A	Revision of cervix	2.48	NA	1.31	0.45	NA	4.24	000
59325		A	Revision of cervix	4.07	NA	1.97	0.73	NA	6.77	000
59350		A	Repair of uterus	4.95	NA	2.19	0.88	NA	8.02	000
59400		A	Obstetrical care	23.06	NA	15.41	4.14	NA	42.61	MMM
59409		A	Obstetrical care	13.50	NA	5.57	2.42	NA	21.49	MMM
59410		A	Obstetrical care	14.78	NA	6.98	2.65	NA	24.41	MMM
59412		A	Antepartum manipulation	1.71	1.38	0.72	0.31	3.40	2.74	MMM
59414		A	Deliver placenta	1.61	NA	1.34	0.29	NA	3.24	MMM
59425		A	Antepartum care only	4.81	5.36	5.32	0.86	11.03	10.99	MMM
59426		A	Antepartum care only	8.28	9.14	9.14	1.49	18.91	18.91	MMM
59430		A	Care after delivery	2.13	1.29	1.29	0.38	3.80	3.80	MMM
59510		A	Cesarean delivery	26.22	NA	17.61	4.70	NA	48.53	MMM
59514		A	Cesarean delivery only	15.97	NA	6.57	2.86	NA	25.40	MMM
59515		A	Cesarean delivery	17.37	NA	8.52	3.12	NA	29.01	MMM
59525		A	Remove uterus after cesarean	8.54	NA	3.52	1.53	NA	13.59	ZZZ
59610		A	Vbac delivery	24.62	NA	16.29	4.41	NA	45.32	MMM
59612		A	Vbac delivery only	15.06	NA	6.43	2.70	NA	24.19	MMM
59614		A	Vbac care after delivery	16.34	NA	7.70	2.93	NA	26.97	MMM
59618		A	Attempted vbac delivery	27.78	NA	18.38	4.98	NA	51.14	MMM
59620		A	Attempted vbac delivery only	17.53	NA	6.87	3.15	NA	27.55	MMM
59622		A	Attempted vbac after care	18.93	NA	8.91	3.39	NA	31.23	MMM
59812		A	Treatment of miscarriage	4.01	3.75	2.51	0.58	8.34	7.10	090
59820		A	Care of miscarriage	4.01	3.79	2.85	0.72	8.52	7.58	090
59821		A	Treatment of miscarriage	4.47	3.79	3.01	0.80	9.06	8.28	090
59830		A	Treat uterus infection	6.11	NA	3.85	1.10	NA	11.06	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
59840		R	Abortion	3.01	4.01	2.47	0.54	7.56	6.02	010
59841		R	Abortion	5.24	5.78	3.72	0.94	11.96	9.90	010
59850		R	Abortion	5.91	NA	2.75	1.06	NA	9.72	090
59851		R	Abortion	5.93	NA	3.22	1.06	NA	10.21	090
59852		R	Abortion	8.24	NA	4.58	1.48	NA	14.30	090
59855		R	Abortion	6.12	NA	3.38	1.10	NA	10.60	090
59856		R	Abortion	7.48	NA	3.74	1.34	NA	12.56	090
59857		R	Abortion	9.29	NA	4.46	1.66	NA	15.41	090
59866		R	Abortion (mpr)	4.00	NA	1.60	0.72	NA	6.32	000
59870		A	Evacuate mole of uterus	6.01	NA	3.83	0.77	NA	10.61	090
59871		A	Remove cerclage suture	2.13	2.19	0.93	0.38	4.70	3.44	000
59898		C	Laparo proc, ob care/deliver	0.00	0.00	0.00	0.00	0.00	0.00	YYY
59899		C	Maternity care procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
60000		A	Drain thyroid/tongue cyst	1.76	2.40	2.22	0.14	4.30	4.12	010
60001		A	Aspirate/inject thyroid cyst	0.97	1.77	0.35	0.06	2.80	1.38	000
60100		A	Biopsy of thyroid	1.56	2.70	0.56	0.05	4.31	2.17	000
60200		A	Remove thyroid lesion	9.55	NA	6.88	0.84	NA	17.27	090
60210		A	Partial thyroid excision	10.88	NA	6.63	1.01	NA	18.52	090
60212		A	Partial thyroid excision	16.03	NA	8.62	1.51	NA	26.16	090
60220		A	Partial removal of thyroid	11.90	NA	7.27	0.97	NA	20.14	090
60225		A	Partial removal of thyroid	14.19	NA	8.05	1.31	NA	23.55	090
60240		A	Removal of thyroid	16.06	NA	9.32	1.50	NA	26.88	090
60252		A	Removal of thyroid	20.57	NA	11.64	1.63	NA	33.84	090
60254		A	Extensive thyroid surgery	26.99	NA	16.39	1.96	NA	45.34	090
60260		A	Repeat thyroid surgery	17.47	NA	10.66	1.39	NA	29.52	090
60270		A	Removal of thyroid	20.27	NA	11.54	1.78	NA	33.59	090
60271		A	Removal of thyroid	16.83	NA	10.20	1.35	NA	28.38	090
60280		A	Remove thyroid duct lesion	5.87	NA	5.29	0.45	NA	11.61	090
60281		A	Remove thyroid duct lesion	8.53	NA	6.27	0.67	NA	15.47	090
60500		A	Explore parathyroid glands	16.23	NA	7.99	1.61	NA	25.83	090
60502		A	Re-explore parathyroids	20.35	NA	9.97	2.00	NA	32.32	090
60505		A	Explore parathyroid glands	21.49	NA	11.53	2.14	NA	35.16	090
60512		A	Autotransplant parathyroid	4.45	NA	1.72	0.44	NA	6.61	ZZZ
60520		A	Removal of thymus gland	16.81	NA	9.55	1.84	NA	28.20	090
60521		A	Removal of thymus gland	18.87	NA	11.57	2.34	NA	32.78	090
60522		A	Removal of thymus gland	23.09	NA	12.88	2.83	NA	38.80	090
60540		A	Explore adrenal gland	17.03	NA	8.09	1.42	NA	26.54	090
60545		A	Explore adrenal gland	19.88	NA	9.73	1.75	NA	31.36	090
60600		A	Remove carotid body lesion	17.93	NA	13.43	1.87	NA	33.23	090
60605		A	Remove carotid body lesion	20.24	NA	18.12	2.28	NA	40.64	090
60650		A	Laparoscopy adrenalectomy	20.00	NA	8.34	1.98	NA	30.32	090
60659		C	Laparo proc, endocrine	0.00	0.00	0.00	0.00	0.00	0.00	YYY
60699		C	Endocrine surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
61000		A	Remove cranial cavity fluid	1.58	1.79	1.53	0.13	3.50	3.24	000
61001		A	Remove cranial cavity fluid	1.49	2.08	1.47	0.15	3.72	3.11	000
61020		A	Remove brain cavity fluid	1.51	2.52	1.51	0.26	4.29	3.28	000
61026		A	Injection into brain canal	1.69	2.28	1.73	0.21	4.18	3.63	000
61050		A	Remove brain canal fluid	1.51	NA	1.56	0.13	NA	3.20	000
61055		A	Injection into brain canal	2.10	NA	1.80	0.13	NA	4.03	000
61070		A	Brain canal shunt procedure	0.89	7.33	1.22	0.09	8.31	2.20	000
61105		A	Twist drill hole	5.14	NA	3.67	1.05	NA	9.86	090
61107		A	Drill skull for implantation	5.00	NA	3.12	1.02	NA	9.14	000
61108		A	Drill skull for drainage	10.19	NA	7.09	2.04	NA	19.32	090
61120		A	Burr hole for puncture	8.76	NA	5.88	1.81	NA	16.45	090
61140		A	Pierce skull for biopsy	15.90	NA	10.00	3.15	NA	29.05	090
61150		A	Pierce skull for drainage	17.57	NA	10.74	3.52	NA	31.83	090
61151		A	Pierce skull for drainage	12.42	NA	8.16	2.45	NA	23.03	090
61154		A	Pierce skull & remove clot	14.99	NA	9.43	3.05	NA	27.47	090
61156		A	Pierce skull for drainage	16.32	NA	10.30	3.42	NA	30.04	090
61210		A	Pierce skull, implant device	5.84	NA	3.53	1.16	NA	10.53	000
61215		A	Insert brain-fluid device	4.89	NA	4.24	0.99	NA	10.12	090
61250		A	Pierce skull & explore	10.42	NA	6.73	2.02	NA	19.17	090
61253		A	Pierce skull & explore	12.36	NA	7.65	2.26	NA	22.27	090
61304		A	Open skull for exploration	21.96	NA	12.85	4.33	NA	39.14	090
61305		A	Open skull for exploration	26.61	NA	15.31	5.25	NA	47.17	090
61312		A	Open skull for drainage	24.57	NA	14.57	4.99	NA	44.13	090
61313		A	Open skull for drainage	24.93	NA	14.76	5.07	NA	44.76	090
61314		A	Open skull for drainage	24.23	NA	11.55	4.00	NA	39.78	090
61315		A	Open skull for drainage	27.68	NA	16.22	5.62	NA	49.52	090
61320		A	Open skull for drainage	25.62	NA	15.20	5.20	NA	46.02	090
61321		A	Open skull for drainage	28.50	NA	16.09	5.35	NA	49.94	090
61330		A	Decompress eye socket	23.32	NA	19.43	2.58	NA	45.33	090
61332		A	Explore/biopsy eye socket	27.28	NA	20.43	4.15	NA	51.86	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
61333		A	Explore orbit/remove lesion	27.95	NA	16.45	2.24	NA	46.64	090
61334		A	Explore orbit/remove object	18.27	NA	10.08	3.02	NA	31.37	090
61340		A	Relieve cranial pressure	18.66	NA	11.75	3.66	NA	34.07	090
61343		A	Incise skull (press relief)	29.77	NA	17.96	6.04	NA	53.77	090
61345		A	Relieve cranial pressure	27.20	NA	16.17	5.23	NA	48.60	090
61440		A	Incise skull for surgery	26.63	NA	12.14	5.57	NA	44.34	090
61450		A	Incise skull for surgery	25.95	NA	14.46	5.11	NA	45.52	090
61458		A	Incise skull for brain wound	27.29	NA	15.89	5.28	NA	48.46	090
61460		A	Incise skull for surgery	28.39	NA	16.77	5.13	NA	50.29	090
61470		A	Incise skull for surgery	26.06	NA	13.74	4.65	NA	44.45	090
61480		A	Incise skull for surgery	26.49	NA	12.34	5.54	NA	44.37	090
61490		A	Incise skull for surgery	25.66	NA	15.18	5.37	NA	46.21	090
61500		A	Removal of skull lesion	17.92	NA	11.03	3.26	NA	32.21	090
61501		A	Remove infected skull bone	14.84	NA	9.62	2.63	NA	27.09	090
61510		A	Removal of brain lesion	28.45	NA	16.60	5.77	NA	50.82	090
61512		A	Remove brain lining lesion	35.09	NA	20.18	7.14	NA	62.41	090
61514		A	Removal of brain abscess	25.26	NA	14.91	5.12	NA	45.29	090
61516		A	Removal of brain lesion	24.61	NA	15.01	4.94	NA	44.56	090
61518		A	Removal of brain lesion	37.32	NA	22.34	7.53	NA	67.19	090
61519		A	Remove brain lining lesion	41.39	NA	24.42	8.15	NA	73.96	090
61520		A	Removal of brain lesion	54.84	NA	31.93	10.10	NA	96.87	090
61521		A	Removal of brain lesion	44.48	NA	26.22	8.85	NA	79.55	090
61522		A	Removal of brain abscess	29.45	NA	17.20	5.30	NA	51.95	090
61524		A	Removal of brain lesion	27.86	NA	16.83	5.01	NA	49.70	090
61526		A	Removal of brain lesion	52.17	NA	31.55	6.72	NA	90.44	090
61530		A	Removal of brain lesion	43.86	NA	27.43	6.17	NA	77.46	090
61531		A	Implant brain electrodes	14.63	NA	9.56	2.84	NA	27.03	090
61533		A	Implant brain electrodes	19.71	NA	12.21	3.80	NA	35.72	090
61534		A	Removal of brain lesion	20.97	NA	13.30	4.15	NA	38.42	090
61535		A	Remove brain electrodes	11.63	NA	8.16	2.29	NA	22.08	090
61536		A	Removal of brain lesion	35.52	NA	21.18	6.68	NA	63.38	090
61538		A	Removal of brain tissue	26.81	NA	16.30	5.38	NA	48.49	090
61539		A	Removal of brain tissue	32.08	NA	18.91	6.62	NA	57.61	090
61541		A	Incision of brain tissue	28.85	NA	16.89	5.50	NA	51.24	090
61542		A	Removal of brain tissue	31.02	NA	18.00	6.49	NA	55.51	090
61543		A	Removal of brain tissue	29.22	NA	17.42	6.11	NA	52.75	090
61544		A	Remove & treat brain lesion	25.50	NA	15.21	4.91	NA	45.62	090
61545		A	Excision of brain tumor	43.80	NA	25.09	8.88	NA	77.77	090
61546		A	Removal of pituitary gland	31.30	NA	18.74	6.06	NA	56.10	090
61548		A	Removal of pituitary gland	21.53	NA	13.74	3.63	NA	38.90	090
61550		A	Release of skull seams	14.65	NA	4.89	1.14	NA	20.68	090
61552		A	Release of skull seams	19.56	NA	9.87	0.88	NA	30.31	090
61556		A	Incise skull/sutures	22.26	NA	11.74	3.57	NA	37.57	090
61557		A	Incise skull/sutures	22.38	NA	13.41	4.68	NA	40.47	090
61558		A	Excision of skull/sutures	25.58	NA	12.67	2.61	NA	40.86	090
61559		A	Excision of skull/sutures	32.79	NA	18.89	6.86	NA	58.54	090
61563		A	Excision of skull tumor	26.83	NA	16.25	4.46	NA	47.54	090
61564		A	Excision of skull tumor	33.83	NA	18.73	7.08	NA	59.64	090
61570		A	Remove foreign body, brain	24.60	NA	13.80	4.60	NA	43.00	090
61571		A	Incise skull for brain wound	26.39	NA	15.43	5.23	NA	47.05	090
61575		A	Skull base/brainstem surgery	34.36	NA	21.38	5.02	NA	60.76	090
61576		A	Skull base/brainstem surgery	52.43	NA	28.89	4.68	NA	86.00	090
61580		A	Craniofacial approach, skull	30.35	NA	19.96	2.75	NA	53.06	090
61581		A	Craniofacial approach, skull	34.60	NA	22.57	3.37	NA	60.54	090
61582		A	Craniofacial approach, skull	31.66	NA	19.56	6.30	NA	57.52	090
61583		A	Craniofacial approach, skull	36.21	NA	22.71	6.94	NA	65.86	090
61584		A	Orbitocranial approach/skull	34.65	NA	20.99	6.53	NA	62.17	090
61585		A	Orbitocranial approach/skull	38.61	NA	22.21	6.19	NA	67.01	090
61586		A	Resect nasopharynx, skull	25.10	NA	16.39	3.52	NA	45.01	090
61590		A	Infratemporal approach/skull	41.78	NA	26.12	4.28	NA	72.18	090
61591		A	Infratemporal approach/skull	43.68	NA	26.89	5.26	NA	75.83	090
61592		A	Orbitocranial approach/skull	39.64	NA	23.59	7.55	NA	70.78	090
61595		A	Transtemporal approach/skull	29.57	NA	19.74	3.05	NA	52.36	090
61596		A	Transcochlear approach/skull	35.63	NA	21.88	4.25	NA	61.76	090
61597		A	Transcondylar approach/skull	37.96	NA	22.41	6.65	NA	67.02	090
61598		A	Transpetrosal approach/skull	33.41	NA	20.92	4.60	NA	58.93	090
61600		A	Resect/excise cranial lesion	25.85	NA	15.01	3.12	NA	43.98	090
61601		A	Resect/excise cranial lesion	27.89	NA	17.34	5.29	NA	50.52	090
61605		A	Resect/excise cranial lesion	29.33	NA	18.97	2.51	NA	50.81	090
61606		A	Resect/excise cranial lesion	38.83	NA	23.17	6.81	NA	68.81	090
61607		A	Resect/excise cranial lesion	36.27	NA	22.17	5.69	NA	64.13	090
61608		A	Resect/excise cranial lesion	42.10	NA	24.89	8.31	NA	75.30	090
61609		A	Transect artery, sinus	9.89	NA	5.11	2.07	NA	17.07	ZZZ

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
61610		A	Transect artery, sinus	29.67	NA	14.38	3.52	NA	47.57	ZZZ
61611		A	Transect artery, sinus	7.42	NA	2.96	1.55	NA	11.93	ZZZ
61612		A	Transect artery, sinus	27.88	NA	14.30	3.55	NA	45.73	ZZZ
61613		A	Remove aneurysm, sinus	40.86	NA	23.34	8.32	NA	72.52	090
61615		A	Resect/excise lesion, skull	32.07	NA	20.81	4.64	NA	57.52	090
61616		A	Resect/excise lesion, skull	43.33	NA	26.97	7.02	NA	77.32	090
61618		A	Repair dura	16.99	NA	11.43	2.92	NA	31.34	090
61619		A	Repair dura	20.71	NA	13.67	3.42	NA	37.80	090
61624		A	Occlusion/embolization cath	20.15	NA	7.46	1.15	NA	28.76	000
61626		A	Occlusion/embolization cath	16.62	NA	5.88	0.84	NA	23.34	000
61680		A	Intracranial vessel surgery	30.71	NA	18.38	6.04	NA	55.13	090
61682		A	Intracranial vessel surgery	61.57	NA	34.65	12.69	NA	108.91	090
61684		A	Intracranial vessel surgery	39.81	NA	22.60	7.87	NA	70.28	090
61686		A	Intracranial vessel surgery	64.49	NA	36.70	13.20	NA	114.39	090
61690		A	Intracranial vessel surgery	29.31	NA	17.64	5.51	NA	52.46	090
61692		A	Intracranial vessel surgery	51.87	NA	29.51	10.17	NA	91.55	090
61697		A	Brain aneurysm repr, complx	50.52	NA	28.42	10.31	NA	89.25	090
61698		A	Brain aneurysm repr, complx	48.41	NA	27.31	9.99	NA	85.71	090
61700		A	Brain aneurysm repr, simple	50.52	NA	28.42	10.18	NA	89.12	090
61702		A	Inner skull vessel surgery	48.41	NA	27.31	9.75	NA	85.47	090
61703		A	Clamp neck artery	17.47	NA	11.13	3.62	NA	32.22	090
61705		A	Revise circulation to head	36.20	NA	19.89	6.67	NA	62.76	090
61708		A	Revise circulation to head	35.30	NA	16.52	2.18	NA	54.00	090
61710		A	Revise circulation to head	29.67	NA	14.68	2.42	NA	46.77	090
61711		A	Fusion of skull arteries	36.33	NA	20.68	7.39	NA	64.40	090
61720		A	Incise skull/brain surgery	16.77	NA	10.90	3.51	NA	31.18	090
61735		A	Incise skull/brain surgery	20.43	NA	12.77	4.16	NA	37.36	090
61750		A	Incise skull/brain biopsy	18.20	NA	11.08	3.71	NA	32.99	090
61751		A	Brain biopsy w/ ct/mr guide	17.62	NA	10.92	3.57	NA	32.11	090
61760		A	Implant brain electrodes	22.27	NA	12.85	4.59	NA	39.71	090
61770		A	Incise skull for treatment	21.44	NA	13.26	4.09	NA	38.79	090
61790		A	Treat trigeminal nerve	10.86	NA	6.92	1.82	NA	19.60	090
61791		A	Treat trigeminal tract	14.61	NA	9.39	3.03	NA	27.03	090
61793		A	Focus radiation beam	17.24	NA	11.07	3.51	NA	31.82	090
61795		A	Brain surgery using computer	4.04	NA	2.14	0.81	NA	6.99	ZZZ
61850		A	Implant neuroelectrodes	12.39	NA	8.13	2.23	NA	22.75	090
61860		A	Implant neuroelectrodes	20.87	NA	12.59	4.04	NA	37.50	090
61862		A	Implant neurostimul, subcort	19.34	NA	12.16	3.97	NA	35.47	090
61870		A	Implant neuroelectrodes	14.94	NA	9.97	1.70	NA	26.61	090
61875		A	Implant neuroelectrodes	15.06	NA	7.39	2.42	NA	24.87	090
61880		A	Revise/remove neuroelectrode	6.29	NA	5.26	1.31	NA	12.86	090
61885		A	Implant neurostim one array	5.85	NA	4.36	1.22	NA	11.43	090
61886		A	Implant neurostim arrays	8.00	NA	6.13	1.64	NA	15.77	090
61888		A	Revise/remove neuroreceiver	5.07	NA	3.90	1.04	NA	10.01	010
62000		A	Treat skull fracture	12.53	NA	6.19	0.87	NA	19.59	090
62005		A	Treat skull fracture	16.17	NA	9.35	2.33	NA	27.85	090
62010		A	Treatment of head injury	19.81	NA	11.83	4.05	NA	35.69	090
62100		A	Repair brain fluid leakage	22.03	NA	13.97	4.07	NA	40.07	090
62115		A	Reduction of skull defect	21.66	NA	11.03	4.53	NA	37.22	090
62116		A	Reduction of skull defect	23.59	NA	14.04	4.85	NA	42.48	090
62117		A	Reduction of skull defect	26.60	NA	12.68	5.56	NA	44.84	090
62120		A	Repair skull cavity lesion	23.35	NA	15.14	3.07	NA	41.56	090
62121		A	Incise skull repair	21.58	NA	13.52	2.47	NA	37.57	090
62140		A	Repair of skull defect	13.51	NA	8.72	2.60	NA	24.83	090
62141		A	Repair of skull defect	14.91	NA	9.89	2.85	NA	27.65	090
62142		A	Remove skull plate/flap	10.79	NA	7.31	2.10	NA	20.20	090
62143		A	Replace skull plate/flap	13.05	NA	8.81	2.55	NA	24.41	090
62145		A	Repair of skull & brain	18.82	NA	11.77	3.81	NA	34.40	090
62146		A	Repair of skull with graft	16.12	NA	10.63	2.94	NA	29.69	090
62147		A	Repair of skull with graft	19.34	NA	12.38	3.64	NA	35.36	090
62180		A	Establish brain cavity shunt	21.06	NA	13.08	4.32	NA	38.46	090
62190		A	Establish brain cavity shunt	11.07	NA	7.77	2.18	NA	21.02	090
62192		A	Establish brain cavity shunt	12.25	NA	8.25	2.46	NA	22.96	090
62194		A	Replace/irrigate catheter	5.03	NA	2.25	0.50	NA	7.78	010
62200		A	Establish brain cavity shunt	18.32	NA	11.72	3.70	NA	33.74	090
62201		A	Establish brain cavity shunt	14.86	NA	9.76	2.52	NA	27.14	090
62220		A	Establish brain cavity shunt	13.00	NA	8.60	2.53	NA	24.13	090
62223		A	Establish brain cavity shunt	12.87	NA	8.54	2.58	NA	23.99	090
62225		A	Replace/irrigate catheter	5.41	NA	4.11	1.09	NA	10.61	090
62230		A	Replace/revise brain shunt	10.54	NA	6.42	2.10	NA	19.06	090
62252		A	Csf shunt reprogram	0.74	1.35	NA	0.18	2.27	NA	XXX
62252	26	A	Csf shunt reprogram	0.74	0.30	0.30	0.16	1.20	1.20	XXX
62252	TC	A	Csf shunt reprogram	0.00	1.05	NA	0.02	1.07	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
62256		A	Remove brain cavity shunt	6.60	NA	5.40	1.34	NA	13.34	090
62258		A	Replace brain cavity shunt	14.54	NA	8.82	2.91	NA	26.27	090
62263		A	Lysis epidural adhesions	6.14	5.15	2.07	0.42	11.71	8.63	010
62268		A	Drain spinal cord cyst	4.74	NA	2.74	0.29	NA	7.77	000
62269		A	Needle biopsy, spinal cord	5.02	NA	2.40	0.29	NA	7.71	000
62270		A	Spinal fluid tap, diagnostic	1.13	4.08	0.48	0.06	5.27	1.67	000
62272		A	Drain cerebro spinal fluid	1.35	3.38	0.62	0.13	4.86	2.10	000
62273		A	Treat epidural spine lesion	2.15	1.57	1.27	0.14	3.86	3.56	000
62280		A	Treat spinal cord lesion	2.63	3.79	0.70	0.17	6.59	3.50	010
62281		A	Treat spinal cord lesion	2.66	4.50	0.62	0.16	7.32	3.44	010
62282		A	Treat spinal canal lesion	2.33	5.57	0.62	0.14	8.04	3.09	010
62284		A	Injection for myelogram	1.54	5.53	0.55	0.10	7.17	2.19	000
62287		A	Percutaneous diskectomy	8.08	NA	5.05	0.66	NA	13.79	090
62290		A	Inject for spine disk x-ray	3.00	5.68	1.30	0.20	8.88	4.50	000
62291		A	Inject for spine disk x-ray	2.91	6.24	1.20	0.17	9.32	4.28	000
62292		A	Injection into disk lesion	7.86	NA	5.34	0.65	NA	13.85	090
62294		A	Injection into spinal artery	11.83	NA	7.37	0.85	NA	20.05	090
62310		A	Inject spine c/t	1.91	3.71	0.43	0.11	5.73	2.45	000
62311		A	Inject spine l/s (cd)	1.54	4.22	0.37	0.09	5.85	2.00	000
62318		A	Inject spine w/cath, c/t	2.04	3.83	0.44	0.12	5.99	2.60	000
62319		A	Inject spine w/cath l/s (cd)	1.87	3.67	0.40	0.11	5.65	2.38	000
62350		A	Implant spinal canal cath	6.87	NA	3.79	0.64	NA	11.30	090
62351		A	Implant spinal canal cath	10.00	NA	6.90	1.79	NA	18.69	090
62355		A	Remove spinal canal catheter	5.45	NA	3.02	0.47	NA	8.94	090
62360		A	Insert spine infusion device	2.62	NA	2.46	0.21	NA	5.29	090
62361		A	Implant spine infusion pump	5.42	NA	3.67	0.50	NA	9.59	090
62362		A	Implant spine infusion pump	7.04	NA	4.06	0.86	NA	11.96	090
62365		A	Remove spine infusion device	5.42	NA	3.99	0.58	NA	9.99	090
62367		C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	0.00	0.00	XXX
62367	26	A	Analyze spine infusion pump	0.48	0.14	0.14	0.03	0.65	0.65	XXX
62367	TC	C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	0.00	0.00	XXX
62368		C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	0.00	0.00	XXX
62368	26	A	Analyze spine infusion pump	0.75	0.20	0.20	0.05	1.00	1.00	XXX
62368	TC	C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	0.00	0.00	XXX
63001		A	Removal of spinal lamina	15.82	NA	11.68	3.03	NA	30.53	090
63003		A	Removal of spinal lamina	15.95	NA	11.95	2.98	NA	30.88	090
63005		A	Removal of spinal lamina	14.92	NA	11.49	2.62	NA	29.03	090
63011		A	Removal of spinal lamina	14.52	NA	11.29	1.43	NA	27.24	090
63012		A	Removal of spinal lamina	15.40	NA	10.34	2.71	NA	28.45	090
63015		A	Removal of spinal lamina	19.35	NA	13.68	3.84	NA	36.87	090
63016		A	Removal of spinal lamina	19.20	NA	13.66	3.62	NA	36.48	090
63017		A	Removal of spinal lamina	15.94	NA	12.00	2.91	NA	30.85	090
63020		A	Neck spine disk surgery	14.81	NA	11.33	2.89	NA	29.03	090
63030		A	Low back disk surgery	12.00	NA	9.92	2.21	NA	24.13	090
63035		A	Spinal disk surgery add-on	3.15	NA	1.67	0.57	NA	5.39	ZZZ
63040		A	Laminotomy, single cervical	18.81	NA	13.39	3.36	NA	35.56	090
63042		A	Laminotomy, single lumbar	17.47	NA	12.95	3.11	NA	33.53	090
63043		C	Laminotomy, addl cervical	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
63044		C	Laminotomy, addl lumbar	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
63045		A	Removal of spinal lamina	16.50	NA	12.22	3.19	NA	31.91	090
63046		A	Removal of spinal lamina	15.80	NA	12.02	2.89	NA	30.71	090
63047		A	Removal of spinal lamina	14.61	NA	11.42	2.61	NA	28.64	090
63048		A	Remove spinal lamina add-on	3.26	NA	1.75	0.58	NA	5.59	ZZZ
63055		A	Decompress spinal cord	21.99	NA	15.11	4.09	NA	41.19	090
63056		A	Decompress spinal cord	20.36	NA	14.44	3.34	NA	38.14	090
63057		A	Decompress spine cord add-on	5.26	NA	2.82	0.81	NA	8.89	ZZZ
63064		A	Decompress spinal cord	24.61	NA	17.12	4.72	NA	46.45	090
63066		A	Decompress spine cord add-on	3.26	NA	1.76	0.63	NA	5.65	ZZZ
63075		A	Neck spine disk surgery	19.41	NA	13.83	3.73	NA	36.97	090
63076		A	Neck spine disk surgery	4.05	NA	2.16	0.78	NA	6.99	ZZZ
63077		A	Spine disk surgery, thorax	21.44	NA	15.47	3.44	NA	40.35	090
63078		A	Spine disk surgery, thorax	3.28	NA	1.72	0.50	NA	5.50	ZZZ
63081		A	Removal of vertebral body	23.73	NA	16.68	4.46	NA	44.87	090
63082		A	Remove vertebral body add-on	4.37	NA	2.34	0.82	NA	7.53	ZZZ
63085		A	Removal of vertebral body	26.92	NA	17.89	4.70	NA	49.51	090
63086		A	Remove vertebral body add-on	3.19	NA	1.66	0.55	NA	5.40	ZZZ
63087		A	Removal of vertebral body	35.57	NA	22.45	5.87	NA	63.89	090
63088		A	Remove vertebral body add-on	4.33	NA	2.30	0.77	NA	7.40	ZZZ
63090		A	Removal of vertebral body	28.16	NA	18.12	4.27	NA	50.55	090
63091		A	Remove vertebral body add-on	3.03	NA	1.48	0.45	NA	4.96	ZZZ
63170		A	Incise spinal cord tract(s)	19.83	NA	13.54	3.89	NA	37.26	090
63172		A	Drainage of spinal cyst	17.66	NA	13.37	3.46	NA	34.49	090
63173		A	Drainage of spinal cyst	21.99	NA	15.54	4.14	NA	41.67	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
63180		A	Revise spinal cord ligaments	18.27	NA	13.04	3.83	NA	35.14	090
63182		A	Revise spinal cord ligaments	20.50	NA	13.61	3.48	NA	37.59	090
63185		A	Incise spinal column/nerves	15.04	NA	9.70	2.08	NA	26.82	090
63190		A	Incise spinal column/nerves	17.45	NA	11.68	2.88	NA	32.01	090
63191		A	Incise spinal column/nerves	17.54	NA	10.65	3.50	NA	31.69	090
63194		A	Incise spinal column & cord	19.19	NA	13.48	4.01	NA	36.68	090
63195		A	Incise spinal column & cord	18.84	NA	13.02	3.44	NA	35.30	090
63196		A	Incise spinal column & cord	22.30	NA	14.03	4.66	NA	40.99	090
63197		A	Incise spinal column & cord	21.11	NA	13.49	4.42	NA	39.02	090
63198		A	Incise spinal column & cord	25.38	NA	12.70	5.31	NA	43.39	090
63199		A	Incise spinal column & cord	26.89	NA	14.38	5.62	NA	46.89	090
63200		A	Release of spinal cord	19.18	NA	13.42	3.61	NA	36.21	090
63250		A	Revise spinal cord vessels	40.76	NA	23.15	7.65	NA	71.56	090
63251		A	Revise spinal cord vessels	41.20	NA	23.51	7.98	NA	72.69	090
63252		A	Revise spinal cord vessels	41.19	NA	23.36	7.75	NA	72.30	090
63265		A	Excise intraspinal lesion	21.56	NA	13.21	4.29	NA	39.06	090
63266		A	Excise intraspinal lesion	22.30	NA	13.70	4.47	NA	40.47	090
63267		A	Excise intraspinal lesion	17.95	NA	11.48	3.50	NA	32.93	090
63268		A	Excise intraspinal lesion	18.52	NA	10.97	3.18	NA	32.67	090
63270		A	Excise intraspinal lesion	26.80	NA	16.10	5.41	NA	48.31	090
63271		A	Excise intraspinal lesion	26.92	NA	16.17	5.56	NA	48.65	090
63272		A	Excise intraspinal lesion	25.32	NA	15.31	5.07	NA	45.70	090
63273		A	Excise intraspinal lesion	24.29	NA	14.84	5.08	NA	44.21	090
63275		A	Biopsy/excise spinal tumor	23.68	NA	14.47	4.68	NA	42.83	090
63276		A	Biopsy/excise spinal tumor	23.45	NA	14.27	4.63	NA	42.35	090
63277		A	Biopsy/excise spinal tumor	20.83	NA	12.99	4.03	NA	37.85	090
63278		A	Biopsy/excise spinal tumor	20.56	NA	13.08	4.02	NA	37.66	090
63280		A	Biopsy/excise spinal tumor	28.35	NA	16.76	5.80	NA	50.91	090
63281		A	Biopsy/excise spinal tumor	28.05	NA	16.73	5.67	NA	50.45	090
63282		A	Biopsy/excise spinal tumor	26.39	NA	15.79	5.33	NA	47.51	090
63283		A	Biopsy/excise spinal tumor	25.00	NA	15.07	5.12	NA	45.19	090
63285		A	Biopsy/excise spinal tumor	36.00	NA	20.82	7.31	NA	64.13	090
63286		A	Biopsy/excise spinal tumor	35.63	NA	20.51	7.07	NA	63.21	090
63287		A	Biopsy/excise spinal tumor	36.70	NA	21.03	7.48	NA	65.21	090
63290		A	Biopsy/excise spinal tumor	37.38	NA	21.58	7.65	NA	66.61	090
63300		A	Removal of vertebral body	24.43	NA	14.63	4.78	NA	43.84	090
63301		A	Removal of vertebral body	27.60	NA	15.65	5.03	NA	48.28	090
63302		A	Removal of vertebral body	27.81	NA	16.45	5.25	NA	49.51	090
63303		A	Removal of vertebral body	30.50	NA	17.71	5.21	NA	53.42	090
63304		A	Removal of vertebral body	30.33	NA	17.80	4.72	NA	52.85	090
63305		A	Removal of vertebral body	32.03	NA	19.24	5.39	NA	56.66	090
63306		A	Removal of vertebral body	32.22	NA	18.19	2.39	NA	52.80	090
63307		A	Removal of vertebral body	31.63	NA	17.29	4.23	NA	53.15	090
63308		A	Remove vertebral body add-on	5.25	NA	2.74	1.01	NA	9.00	ZZZ
63600		A	Remove spinal cord lesion	14.02	NA	6.38	1.22	NA	21.62	090
63610		A	Stimulation of spinal cord	8.73	NA	3.90	0.43	NA	13.06	000
63615		A	Remove lesion of spinal cord	16.28	NA	9.50	2.85	NA	28.63	090
63650		A	Implant neuroelectrodes	6.74	NA	2.97	0.48	NA	10.19	090
63655		A	Implant neuroelectrodes	10.29	NA	7.26	1.85	NA	19.40	090
63660		A	Revise/remove neuroelectrode	6.16	NA	3.67	0.65	NA	10.48	090
63685		A	Implant neuroreceiver	7.04	NA	4.15	0.96	NA	12.15	090
63688		A	Revise/remove neuroreceiver	5.39	NA	3.69	0.70	NA	9.78	090
63700		A	Repair of spinal herniation	16.53	NA	10.47	2.69	NA	29.69	090
63702		A	Repair of spinal herniation	18.48	NA	9.90	1.36	NA	29.74	090
63704		A	Repair of spinal herniation	21.18	NA	12.37	3.84	NA	37.39	090
63706		A	Repair of spinal herniation	24.11	NA	13.60	4.73	NA	42.44	090
63707		A	Repair spinal fluid leakage	11.26	NA	8.06	1.96	NA	21.28	090
63709		A	Repair spinal fluid leakage	14.32	NA	9.79	2.49	NA	26.60	090
63710		A	Graft repair of spine defect	14.07	NA	9.54	2.61	NA	26.22	090
63740		A	Install spinal shunt	11.36	NA	7.79	2.15	NA	21.30	090
63741		A	Install spinal shunt	8.25	NA	4.72	1.05	NA	14.02	090
63744		A	Revision of spinal shunt	8.10	NA	5.72	1.51	NA	15.33	090
63746		A	Removal of spinal shunt	6.43	NA	4.96	1.15	NA	12.54	090
64400		A	Injection for nerve block	1.11	2.70	0.29	0.06	3.87	1.46	000
64402		A	Injection for nerve block	1.25	4.38	0.45	0.07	5.70	1.77	000
64405		A	Injection for nerve block	1.32	1.34	0.37	0.08	2.74	1.77	000
64408		A	Injection for nerve block	1.41	2.95	0.62	0.09	4.45	2.12	000
64410		A	Injection for nerve block	1.43	3.27	0.35	0.08	4.78	1.86	000
64412		A	Injection for nerve block	1.18	2.49	0.37	0.08	3.75	1.63	000
64413		A	Injection for nerve block	1.40	2.81	0.34	0.09	4.30	1.83	000
64415		A	Injection for nerve block	1.48	2.65	0.32	0.08	4.21	1.88	000
64417		A	Injection for nerve block	1.44	3.21	0.38	0.09	4.74	1.91	000
64418		A	Injection for nerve block	1.32	2.49	0.29	0.07	3.88	1.68	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
64420		A	Injection for nerve block	1.18	2.37	0.27	0.07	3.62	1.52	000
64421		A	Injection for nerve block	1.68	2.91	0.38	0.10	4.69	2.16	000
64425		A	Injection for nerve block	1.75	2.33	0.41	0.11	4.19	2.27	000
64430		A	Injection for nerve block	1.46	2.89	0.47	0.11	4.46	2.04	000
64435		A	Injection for nerve block	1.45	2.96	0.60	0.15	4.56	2.20	000
64445		A	Injection for nerve block	1.48	1.60	0.42	0.08	3.16	1.98	000
64450		A	Injection for nerve block	1.27	1.79	0.33	0.08	3.14	1.68	000
64470		A	Inj paravertebral c/t	1.85	4.02	0.48	0.12	5.99	2.45	000
64472		A	Inj paravertebral c/t add-on	1.29	3.90	0.33	0.09	5.28	1.71	ZZZ
64475		A	Inj paravertebral l/s	1.41	3.82	0.39	0.09	5.32	1.89	000
64476		A	Inj paravertebral l/s add-on	0.98	3.86	0.26	0.06	4.90	1.30	ZZZ
64479		A	Inj foramen epidural c/t	2.20	4.40	0.64	0.14	6.74	2.98	000
64480		A	Inj foramen epidural add-on	1.54	4.07	0.50	0.09	5.70	2.13	ZZZ
64483		A	Inj foramen epidural l/s	1.90	4.44	0.56	0.12	6.46	2.58	000
64484		A	Inj foramen epidural add-on	1.33	4.05	0.40	0.08	5.46	1.81	ZZZ
64505		A	Injection for nerve block	1.36	2.41	0.35	0.08	3.85	1.79	000
64508		A	Injection for nerve block	1.12	2.32	0.48	0.06	3.50	1.66	000
64510		A	Injection for nerve block	1.22	2.53	0.26	0.07	3.82	1.55	000
64520		A	Injection for nerve block	1.35	3.49	0.31	0.08	4.92	1.74	000
64530		A	Injection for nerve block	1.58	3.07	0.37	0.09	4.74	2.04	000
64550		A	Apply neurostimulator	0.18	0.56	0.07	0.01	0.75	0.26	000
64553		A	Implant neuroelectrodes	2.31	4.25	1.33	0.17	6.73	3.81	010
64555		A	Implant neuroelectrodes	2.27	2.38	0.77	0.11	4.76	3.15	010
64560		A	Implant neuroelectrodes	2.36	2.30	0.94	0.17	4.83	3.47	010
64561		A	Implant neuroelectrodes	6.74	15.28	3.83	0.11	22.13	10.68	010
64565		A	Implant neuroelectrodes	1.76	3.41	0.69	0.08	5.25	2.53	010
64573		A	Implant neuroelectrodes	7.50	NA	5.40	1.48	NA	14.38	090
64575		A	Implant neuroelectrodes	4.35	NA	3.03	0.37	NA	7.75	090
64577		A	Implant neuroelectrodes	4.62	NA	3.44	0.50	NA	8.56	090
64580		A	Implant neuroelectrodes	4.12	NA	3.94	0.21	NA	8.27	090
64581		A	Implant neuroelectrodes	13.50	NA	6.72	0.37	NA	20.59	090
64585		A	Revise/remove neuroelectrode	2.06	2.82	2.20	0.29	5.17	4.55	010
64590		A	Implant neuroreceiver	2.40	NA	2.17	0.40	NA	4.97	010
64595		A	Revise/remove neuroreceiver	1.73	NA	2.08	0.22	NA	4.03	010
64600		A	Injection treatment of nerve	3.45	2.98	2.06	0.28	6.71	5.79	010
64605		A	Injection treatment of nerve	5.61	3.62	2.90	0.53	9.76	9.04	010
64610		A	Injection treatment of nerve	7.16	NA	4.18	1.12	NA	12.46	010
64612		A	Destroy nerve, face muscle	1.96	3.00	1.65	0.09	5.05	3.70	010
64613		A	Destroy nerve, spine muscle	1.96	1.82	1.48	0.10	3.88	3.54	010
64614		A	Destroy nerve, extrem musc	2.20	3.23	0.82	0.09	5.52	3.11	010
64620		A	Injection treatment of nerve	2.84	2.98	0.67	0.17	5.99	3.68	010
64622		A	Destr paravertebrl nerve l/s	3.00	4.77	0.74	0.17	7.94	3.91	010
64623		A	Destr paravertebral n add-on	0.99	3.85	0.24	0.06	4.90	1.29	ZZZ
64626		A	Destr paravertebrl nerve c/t	3.28	4.34	0.80	0.22	7.84	4.30	010
64627		A	Destr paravertebral n add-on	1.16	3.74	0.29	0.08	4.98	1.53	ZZZ
64630		A	Injection treatment of nerve	3.00	3.66	0.88	0.16	6.82	4.04	010
64640		A	Injection treatment of nerve	2.76	3.67	1.72	0.11	6.54	4.59	010
64680		A	Injection treatment of nerve	2.62	2.89	0.76	0.15	5.66	3.53	010
64702		A	Revise finger/toe nerve	4.23	NA	4.05	0.51	NA	8.79	090
64704		A	Revise hand/foot nerve	4.57	NA	3.23	0.59	NA	8.39	090
64708		A	Revise arm/leg nerve	6.12	NA	5.19	0.82	NA	12.13	090
64712		A	Revision of sciatic nerve	7.75	NA	5.61	0.54	NA	13.90	090
64713		A	Revision of arm nerve(s)	11.00	NA	6.66	1.01	NA	18.67	090
64714		A	Revise low back nerve(s)	10.33	NA	4.25	0.64	NA	15.22	090
64716		A	Revision of cranial nerve	6.31	NA	5.18	0.59	NA	12.08	090
64718		A	Revise ulnar nerve at elbow	5.99	NA	5.29	0.87	NA	12.15	090
64719		A	Revise ulnar nerve at wrist	4.85	NA	4.78	0.63	NA	10.26	090
64721		A	Carpal tunnel surgery	4.29	6.59	6.14	0.59	11.47	11.02	090
64722		A	Relieve pressure on nerve(s)	4.70	NA	3.49	0.32	NA	8.51	090
64726		A	Release foot/toe nerve	4.18	NA	3.14	0.57	NA	7.89	090
64727		A	Internal nerve revision	3.10	NA	1.68	0.40	NA	5.18	ZZZ
64732		A	Incision of brow nerve	4.41	NA	3.69	0.77	NA	8.87	090
64734		A	Incision of cheek nerve	4.92	NA	3.80	0.83	NA	9.55	090
64736		A	Incision of chin nerve	4.60	NA	2.98	0.71	NA	8.29	090
64738		A	Incision of jaw nerve	5.73	NA	3.92	0.84	NA	10.49	090
64740		A	Incision of tongue nerve	5.59	NA	4.11	0.43	NA	10.13	090
64742		A	Incision of facial nerve	6.22	NA	4.96	0.69	NA	11.87	090
64744		A	Incise nerve, back of head	5.24	NA	3.94	0.98	NA	10.16	090
64746		A	Incise diaphragm nerve	5.93	NA	4.58	0.75	NA	11.26	090
64752		A	Incision of vagus nerve	7.06	NA	4.96	0.83	NA	12.85	090
64755		A	Incision of stomach nerves	13.52	NA	6.40	1.16	NA	21.08	090
64760		A	Incision of vagus nerve	6.96	NA	4.05	0.51	NA	11.52	090
64761		A	Incision of pelvis nerve	6.41	NA	3.48	0.26	NA	10.15	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
64763		A	Incise hip/thigh nerve	6.93	NA	6.21	0.77	NA	13.91	090
64766		A	Incise hip/thigh nerve	8.67	NA	4.73	0.99	NA	14.39	090
64771		A	Sever cranial nerve	7.35	NA	5.44	1.32	NA	14.11	090
64772		A	Incision of spinal nerve	7.21	NA	4.88	1.20	NA	13.29	090
64774		A	Remove skin nerve lesion	5.17	NA	3.92	0.60	NA	9.69	090
64776		A	Remove digit nerve lesion	5.12	NA	3.89	0.63	NA	9.64	090
64778		A	Digit nerve surgery add-on	3.11	NA	1.64	0.38	NA	5.13	ZZZ
64782		A	Remove limb nerve lesion	6.23	NA	3.93	0.79	NA	10.95	090
64783		A	Limb nerve surgery add-on	3.72	NA	1.95	0.48	NA	6.15	ZZZ
64784		A	Remove nerve lesion	9.82	NA	6.99	1.17	NA	17.98	090
64786		A	Remove sciatic nerve lesion	15.46	NA	10.41	2.22	NA	28.09	090
64787		A	Implant nerve end	4.30	NA	2.28	0.56	NA	7.14	ZZZ
64788		A	Remove skin nerve lesion	4.61	NA	3.50	0.54	NA	8.65	090
64790		A	Removal of nerve lesion	11.31	NA	7.53	1.68	NA	20.52	090
64792		A	Removal of nerve lesion	14.92	NA	9.13	1.88	NA	25.93	090
64795		A	Biopsy of nerve	3.01	NA	1.81	0.40	NA	5.22	000
64802		A	Remove sympathetic nerves	9.15	NA	5.17	0.87	NA	15.19	090
64804		A	Remove sympathetic nerves	14.64	NA	6.83	1.79	NA	23.26	090
64809		A	Remove sympathetic nerves	13.67	NA	6.04	0.96	NA	20.67	090
64818		A	Remove sympathetic nerves	10.30	NA	5.76	1.08	NA	17.14	090
64820		A	Remove sympathetic nerves	10.37	NA	6.48	1.17	NA	18.02	090
64821		A	Remove sympathetic nerves	8.75	NA	7.09	0.99	NA	16.83	090
64822		A	Remove sympathetic nerves	8.75	NA	7.09	0.99	NA	16.83	090
64823		A	Remove sympathetic nerves	10.37	NA	7.89	1.17	NA	19.43	090
64831		A	Repair of digit nerve	9.44	NA	7.44	1.14	NA	18.02	090
64832		A	Repair nerve add-on	5.66	NA	3.11	0.68	NA	9.45	ZZZ
64834		A	Repair of hand or foot nerve	10.19	NA	7.40	1.23	NA	18.82	090
64835		A	Repair of hand or foot nerve	10.94	NA	8.06	1.36	NA	20.36	090
64836		A	Repair of hand or foot nerve	10.94	NA	7.94	1.32	NA	20.20	090
64837		A	Repair nerve add-on	6.26	NA	3.47	0.80	NA	10.53	ZZZ
64840		A	Repair of leg nerve	13.02	NA	7.79	0.86	NA	21.67	090
64856		A	Repair/transpose nerve	13.80	NA	9.66	1.71	NA	25.17	090
64857		A	Repair arm/leg nerve	14.49	NA	10.21	1.76	NA	26.46	090
64858		A	Repair sciatic nerve	16.49	NA	11.04	2.78	NA	30.31	090
64859		A	Nerve surgery	4.26	NA	2.24	0.50	NA	7.00	ZZZ
64861		A	Repair of arm nerves	19.24	NA	13.02	2.45	NA	34.71	090
64862		A	Repair of low back nerves	19.44	NA	12.29	2.47	NA	34.20	090
64864		A	Repair of facial nerve	12.55	NA	8.63	1.13	NA	22.31	090
64865		A	Repair of facial nerve	15.24	NA	10.46	1.37	NA	27.07	090
64866		A	Fusion of facial/other nerve	15.74	NA	9.84	1.06	NA	26.64	090
64868		A	Fusion of facial/other nerve	14.04	NA	9.57	1.40	NA	25.01	090
64870		A	Fusion of facial/other nerve	15.99	NA	9.65	1.08	NA	26.72	090
64872		A	Subsequent repair of nerve	1.99	NA	1.08	0.24	NA	3.31	ZZZ
64874		A	Repair & revise nerve add-on	2.98	NA	1.64	0.34	NA	4.96	ZZZ
64876		A	Repair nerve/shorten bone	3.38	NA	1.35	0.39	NA	5.12	ZZZ
64885		A	Nerve graft, head or neck	17.53	NA	11.66	1.51	NA	30.70	090
64886		A	Nerve graft, head or neck	20.75	NA	13.60	1.73	NA	36.08	090
64890		A	Nerve graft, hand or foot	15.15	NA	10.27	1.74	NA	27.16	090
64891		A	Nerve graft, hand or foot	16.14	NA	5.75	1.38	NA	23.27	090
64892		A	Nerve graft, arm or leg	14.65	NA	8.96	1.65	NA	25.26	090
64893		A	Nerve graft, arm or leg	15.60	NA	10.75	1.77	NA	28.12	090
64895		A	Nerve graft, hand or foot	19.25	NA	8.62	2.04	NA	29.91	090
64896		A	Nerve graft, hand or foot	20.49	NA	11.75	1.85	NA	34.09	090
64897		A	Nerve graft, arm or leg	18.24	NA	10.92	2.64	NA	31.80	090
64898		A	Nerve graft, arm or leg	19.50	NA	10.75	2.71	NA	32.96	090
64901		A	Nerve graft add-on	10.22	NA	5.75	0.99	NA	16.96	ZZZ
64902		A	Nerve graft add-on	11.83	NA	6.32	1.10	NA	19.25	ZZZ
64905		A	Nerve pedicle transfer	14.02	NA	8.93	1.52	NA	24.47	090
64907		A	Nerve pedicle transfer	18.83	NA	12.07	1.79	NA	32.69	090
64999		C	Nervous system surgery	0.00	0.00	0.00	0.00	0.00	0.00	YYY
65091		A	Revise eye	6.46	NA	11.59	0.26	NA	18.31	090
65093		A	Revise eye with implant	6.87	NA	11.83	0.28	NA	18.98	090
65101		A	Removal of eye	7.03	NA	12.04	0.28	NA	19.35	090
65103		A	Remove eye/insert implant	7.57	NA	12.17	0.30	NA	20.04	090
65105		A	Remove eye/attach implant	8.49	NA	12.67	0.34	NA	21.50	090
65110		A	Removal of eye	13.95	NA	15.90	0.68	NA	30.53	090
65112		A	Remove eye/revise socket	16.38	NA	17.26	0.96	NA	34.60	090
65114		A	Remove eye/revise socket	17.53	NA	18.54	0.94	NA	37.01	090
65125		A	Revise ocular implant	3.12	6.23	1.48	0.15	9.50	4.75	090
65130		A	Insert ocular implant	7.15	NA	11.46	0.28	NA	18.89	090
65135		A	Insert ocular implant	7.33	NA	12.37	0.29	NA	19.99	090
65140		A	Attach ocular implant	8.02	NA	12.36	0.31	NA	20.69	090
65150		A	Revise ocular implant	6.26	NA	10.94	0.25	NA	17.45	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
65155		A	Reinsert ocular implant	8.66	NA	12.59	0.40	NA	21.65	090
65175		A	Removal of ocular implant	6.28	NA	11.35	0.26	NA	17.89	090
65205		A	Remove foreign body from eye	0.71	0.63	0.20	0.03	1.37	0.94	000
65210		A	Remove foreign body from eye	0.84	0.78	0.32	0.03	1.65	1.19	000
65220		A	Remove foreign body from eye	0.71	8.23	0.19	0.05	8.99	0.95	000
65222		A	Remove foreign body from eye	0.93	0.80	0.29	0.04	1.77	1.26	000
65235		A	Remove foreign body from eye	7.57	NA	7.04	0.30	NA	14.91	090
65260		A	Remove foreign body from eye	10.96	NA	12.66	0.43	NA	24.05	090
65265		A	Remove foreign body from eye	12.59	NA	14.38	0.50	NA	27.47	090
65270		A	Repair of eye wound	1.90	4.07	2.44	0.08	6.05	4.42	010
65272		A	Repair of eye wound	3.82	5.76	4.75	0.16	9.74	8.73	090
65273		A	Repair of eye wound	4.36	NA	5.15	0.17	NA	9.68	090
65275		A	Repair of eye wound	5.34	5.50	5.32	0.27	11.11	10.93	090
65280		A	Repair of eye wound	7.66	NA	7.88	0.30	NA	15.84	090
65285		A	Repair of eye wound	12.90	NA	13.86	0.51	NA	27.27	090
65286		A	Repair of eye wound	5.51	9.12	7.85	0.21	14.84	13.57	090
65290		A	Repair of eye socket wound	5.41	NA	6.60	0.26	NA	12.27	090
65400		A	Removal of eye lesion	6.06	8.61	7.13	0.24	14.91	13.43	090
65410		A	Biopsy of cornea	1.47	1.76	0.71	0.06	3.29	2.24	000
65420		A	Removal of eye lesion	4.17	8.36	7.22	0.17	12.70	11.56	090
65426		A	Removal of eye lesion	5.25	8.01	6.75	0.20	13.46	12.20	090
65430		A	Corneal smear	1.47	8.68	0.71	0.06	10.21	2.24	000
65435		A	Curette/treat cornea	0.92	1.37	0.41	0.04	2.33	1.37	000
65436		A	Curette/treat cornea	4.19	6.02	5.03	0.17	10.38	9.39	090
65450		A	Treatment of corneal lesion	3.27	7.97	6.80	0.13	11.37	10.20	090
65600		A	Revision of cornea	3.40	5.54	1.54	0.14	9.08	5.08	090
65710		A	Corneal transplant	12.35	NA	13.25	0.49	NA	26.09	090
65730		A	Corneal transplant	14.25	NA	12.16	0.56	NA	26.97	090
65750		A	Corneal transplant	15.00	NA	14.54	0.59	NA	30.13	090
65755		A	Corneal transplant	14.89	NA	14.48	0.58	NA	29.95	090
65760		N	Revision of cornea	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65765		N	Revision of cornea	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65767		N	Corneal tissue transplant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65770		A	Revise cornea with implant	17.56	NA	15.48	0.69	NA	33.73	090
65771		N	Radial keratotomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65772		A	Correction of astigmatism	4.29	7.51	6.47	0.17	11.97	10.93	090
65775		A	Correction of astigmatism	5.79	NA	8.63	0.22	NA	14.64	090
65800		A	Drainage of eye	1.91	2.33	1.45	0.08	4.32	3.44	000
65805		A	Drainage of eye	1.91	2.34	1.46	0.08	4.33	3.45	000
65810		A	Drainage of eye	4.87	NA	8.95	0.19	NA	14.01	090
65815		A	Drainage of eye	5.05	9.40	8.16	0.20	14.65	13.41	090
65820		A	Relieve inner eye pressure	8.13	NA	10.99	0.32	NA	19.44	090
65850		A	Incision of eye	10.52	NA	10.35	0.41	NA	21.28	090
65855		A	Laser surgery of eye	3.85	5.17	3.70	0.17	9.19	7.72	010
65860		A	Incise inner eye adhesions	3.55	4.15	3.18	0.14	7.84	6.87	090
65865		A	Incise inner eye adhesions	5.60	NA	6.92	0.22	NA	12.74	090
65870		A	Incise inner eye adhesions	6.27	NA	7.25	0.24	NA	13.76	090
65875		A	Incise inner eye adhesions	6.54	NA	7.37	0.25	NA	14.16	090
65880		A	Incise inner eye adhesions	7.09	NA	7.64	0.28	NA	15.01	090
65900		A	Remove eye lesion	10.93	NA	12.75	0.46	NA	24.14	090
65920		A	Remove implant of eye	8.40	NA	8.26	0.33	NA	16.99	090
65930		A	Remove blood clot from eye	7.44	NA	8.83	0.29	NA	16.56	090
66020		A	Injection treatment of eye	1.59	2.43	1.57	0.07	4.09	3.23	010
66030		A	Injection treatment of eye	1.25	2.25	1.40	0.05	3.55	2.70	010
66130		A	Remove eye lesion	7.69	7.63	6.71	0.31	15.63	14.71	090
66150		A	Glaucoma surgery	8.30	NA	10.98	0.33	NA	19.61	090
66155		A	Glaucoma surgery	8.29	NA	10.94	0.32	NA	19.55	090
66160		A	Glaucoma surgery	10.17	NA	11.84	0.41	NA	22.42	090
66165		A	Glaucoma surgery	8.01	NA	10.72	0.31	NA	19.04	090
66170		A	Glaucoma surgery	12.16	NA	17.11	0.48	NA	29.75	090
66172		A	Incision of eye	15.04	NA	15.67	0.59	NA	31.30	090
66180		A	Implant eye shunt	14.55	NA	12.44	0.57	NA	27.56	090
66185		A	Revise eye shunt	8.14	NA	8.47	0.32	NA	16.93	090
66220		A	Repair eye lesion	7.77	NA	9.99	0.32	NA	18.08	090
66225		A	Repair/graft eye lesion	11.05	NA	9.65	0.44	NA	21.14	090
66250		A	Follow-up surgery of eye	5.98	8.08	6.48	0.23	14.29	12.69	090
66500		A	Incision of iris	3.71	NA	4.82	0.15	NA	8.68	090
66505		A	Incision of iris	4.08	NA	5.01	0.17	NA	9.26	090
66600		A	Remove iris and lesion	8.68	NA	8.90	0.34	NA	17.92	090
66605		A	Removal of iris	12.79	NA	12.54	0.61	NA	25.94	090
66625		A	Removal of iris	5.13	7.90	6.81	0.20	13.23	12.14	090
66630		A	Removal of iris	6.16	NA	7.76	0.24	NA	14.16	090
66635		A	Removal of iris	6.25	NA	8.65	0.24	NA	13.14	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
66680		A	Repair iris & ciliary body	5.44	NA	6.30	0.21	NA	11.95	090
66682		A	Repair iris & ciliary body	6.21	NA	7.75	0.24	NA	14.20	090
66700		A	Destruction, ciliary body	4.78	7.17	7.17	0.19	12.14	12.14	090
66710		A	Destruction, ciliary body	4.78	8.92	7.53	0.18	13.88	12.49	090
66720		A	Destruction, ciliary body	4.78	8.40	7.53	0.19	13.37	12.50	090
66740		A	Destruction, ciliary body	4.78	NA	6.53	0.18	NA	11.49	090
66761		A	Revision of iris	4.07	5.66	4.38	0.16	9.89	8.61	090
66762		A	Revision of iris	4.58	5.65	4.45	0.18	10.41	9.21	090
66770		A	Removal of inner eye lesion	5.18	5.94	4.68	0.20	11.32	10.06	090
66820		A	Incision, secondary cataract	3.89	NA	8.50	0.16	NA	12.55	090
66821		A	After cataract laser surgery	2.35	3.89	3.46	0.10	6.34	5.91	090
66825		A	Reposition intraocular lens	8.23	NA	10.56	0.32	NA	19.11	090
66830		A	Removal of lens lesion	8.20	NA	7.06	0.32	NA	15.58	090
66840		A	Removal of lens material	7.91	NA	6.92	0.31	NA	15.14	090
66850		A	Removal of lens material	9.11	NA	7.52	0.36	NA	16.99	090
66852		A	Removal of lens material	9.97	NA	7.99	0.39	NA	18.35	090
66920		A	Extraction of lens	8.86	NA	7.42	0.35	NA	16.63	090
66930		A	Extraction of lens	10.18	NA	8.94	0.41	NA	19.53	090
66940		A	Extraction of lens	8.93	NA	8.39	0.35	NA	17.67	090
66982		A	Cataract surgery, complex	13.50	NA	9.31	0.56	NA	23.37	090
66983		A	Cataract surg w/iol, 1 stage	8.99	NA	6.34	0.37	NA	15.70	090
66984		A	Cataract surg w/iol, 1 stage	10.23	NA	7.85	0.41	NA	18.49	090
66985		A	Insert lens prosthesis	8.39	NA	7.05	0.33	NA	15.77	090
66986		A	Exchange lens prosthesis	12.28	NA	8.86	0.49	NA	21.63	090
66999		C	Eye surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67005		A	Partial removal of eye fluid	5.70	NA	2.75	0.22	NA	8.67	090
67010		A	Partial removal of eye fluid	6.87	NA	3.32	0.27	NA	10.46	090
67015		A	Release of eye fluid	6.92	NA	8.38	0.27	NA	15.57	090
67025		A	Replace eye fluid	6.84	18.23	7.77	0.27	25.34	14.88	090
67027		A	Implant eye drug system	10.85	15.12	9.26	0.46	26.43	20.57	090
67028		A	Injection eye drug	2.52	11.92	1.21	0.11	14.55	3.84	000
67030		A	Incise inner eye strands	4.84	NA	8.96	0.19	NA	11.99	090
67031		A	Laser surgery, eye strands	3.67	4.22	3.24	0.15	8.04	7.06	090
67036		A	Removal of inner eye fluid	11.89	NA	9.30	0.47	NA	21.66	090
67038		A	Strip retinal membrane	21.24	NA	16.01	0.84	NA	38.09	090
67039		A	Laser treatment of retina	14.52	NA	12.74	0.57	NA	27.83	090
67040		A	Laser treatment of retina	17.23	NA	14.08	0.68	NA	31.99	090
67101		A	Repair detached retina	7.53	11.29	9.12	0.29	19.11	16.94	090
67105		A	Repair detached retina	7.41	7.80	5.70	0.29	15.50	13.40	090
67107		A	Repair detached retina	14.84	NA	13.63	0.58	NA	29.05	090
67108		A	Repair detached retina	20.82	NA	18.30	0.82	NA	39.94	090
67110		A	Repair detached retina	8.81	21.74	10.56	0.35	30.90	19.72	090
67112		A	Rerepair detached retina	16.86	NA	15.66	0.66	NA	33.18	090
67115		A	Release encircling material	4.99	NA	7.02	0.19	NA	12.20	090
67120		A	Remove eye implant material	5.98	17.57	7.36	0.23	23.78	13.57	090
67121		A	Remove eye implant material	10.67	NA	12.47	0.42	NA	23.56	090
67141		A	Treatment of retina	5.20	8.29	7.16	0.20	13.69	12.56	090
67145		A	Treatment of retina	5.37	5.43	4.28	0.21	11.01	9.86	090
67208		A	Treatment of retinal lesion	6.70	8.62	7.26	0.26	15.58	14.22	090
67210		A	Treatment of retinal lesion	8.82	7.49	5.93	0.35	16.66	15.10	090
67218		A	Treatment of retinal lesion	18.53	NA	16.36	0.53	NA	35.42	090
67220		A	Treatment of choroid lesion	13.13	11.18	9.94	0.51	24.82	23.58	090
67221		A	Ocular photodynamic ther	4.01	4.80	1.95	0.16	8.97	6.12	000
67225		A	Eye photodynamic ther add-on	0.47	0.24	0.19	0.50	1.21	1.16	ZZZ
67227		A	Treatment of retinal lesion	6.58	9.29	7.40	0.26	16.13	14.24	090
67228		A	Treatment of retinal lesion	12.74	10.17	7.47	0.50	23.41	20.71	090
67250		A	Reinforce eye wall	8.66	NA	12.10	0.36	NA	21.12	090
67255		A	Reinforce/graft eye wall	8.90	NA	12.11	0.35	NA	21.36	090
67299		C	Eye surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67311		A	Revise eye muscle	6.65	NA	6.36	0.27	NA	13.28	090
67312		A	Revise two eye muscles	8.54	NA	7.46	0.35	NA	16.35	090
67314		A	Revise eye muscle	7.52	NA	6.94	0.30	NA	14.76	090
67316		A	Revise two eye muscles	9.66	NA	7.99	0.40	NA	18.05	090
67318		A	Revise eye muscle(s)	7.85	NA	7.37	0.31	NA	15.53	090
67320		A	Revise eye muscle(s) add-on	4.33	NA	2.09	0.17	NA	6.59	ZZZ
67331		A	Eye surgery follow-up add-on	4.06	NA	2.02	0.17	NA	6.25	ZZZ
67332		A	Rerevise eye muscles add-on	4.49	NA	2.16	0.18	NA	6.83	ZZZ
67334		A	Revise eye muscle w/suture	3.98	NA	1.90	0.16	NA	6.04	ZZZ
67335		A	Eye suture during surgery	2.49	NA	1.20	0.10	NA	3.79	ZZZ
67340		A	Revise eye muscle add-on	4.93	NA	2.41	0.19	NA	7.53	ZZZ
67343		A	Release eye tissue	7.35	NA	7.26	0.30	NA	14.91	090
67345		A	Destroy nerve of eye muscle	2.96	4.46	1.36	0.13	7.55	4.45	010
67350		A	Biopsy eye muscle	2.87	NA	1.99	0.13	NA	4.99	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
67399		C	Eye muscle surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67400		A	Explore/biopsy eye socket	9.76	NA	13.85	0.43	NA	24.04	090
67405		A	Explore/drain eye socket	7.93	NA	12.56	0.36	NA	20.85	090
67412		A	Explore/treat eye socket	9.50	NA	16.02	0.41	NA	25.93	090
67413		A	Explore/treat eye socket	10.00	NA	13.80	0.43	NA	24.23	090
67414		A	Explr/decompress eye socket	11.13	NA	16.90	0.48	NA	28.51	090
67415		A	Aspiration, orbital contents	1.76	NA	0.80	0.09	NA	2.65	000
67420		A	Explore/treat eye socket	20.06	NA	20.79	0.84	NA	41.69	090
67430		A	Explore/treat eye socket	13.39	NA	18.38	0.97	NA	32.74	090
67440		A	Explore/drain eye socket	13.09	NA	18.43	0.58	NA	32.10	090
67445		A	Explr/decompress eye socket	14.42	NA	18.19	0.63	NA	33.24	090
67450		A	Explore/biopsy eye socket	13.51	NA	17.51	0.56	NA	31.58	090
67500		A	Inject/treat eye socket	0.79	0.95	0.20	0.04	1.78	1.03	000
67505		A	Inject/treat eye socket	0.82	0.95	0.21	0.04	1.81	1.07	000
67515		A	Inject/treat eye socket	0.61	0.86	0.29	0.02	1.49	0.92	000
67550		A	Insert eye socket implant	10.19	NA	13.57	0.50	NA	24.26	090
67560		A	Revise eye socket implant	10.60	NA	13.50	0.47	NA	24.57	090
67570		A	Decompress optic nerve	13.58	NA	17.66	0.69	NA	31.93	090
67599		C	Orbit surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67700		A	Drainage of eyelid abscess	1.35	7.80	0.60	0.06	9.21	2.01	010
67710		A	Incision of eyelid	1.02	7.92	0.49	0.04	8.98	1.55	010
67715		A	Incision of eyelid fold	1.22	NA	0.59	0.05	NA	1.86	010
67800		A	Remove eyelid lesion	1.38	2.67	0.66	0.06	4.11	2.10	010
67801		A	Remove eyelid lesions	1.88	8.23	0.91	0.08	10.19	2.87	010
67805		A	Remove eyelid lesions	2.22	8.41	1.06	0.09	10.72	3.37	010
67808		A	Remove eyelid lesion(s)	3.80	NA	4.34	0.17	NA	8.31	090
67810		A	Biopsy of eyelid	1.48	5.26	0.72	0.06	6.80	2.26	000
67820		A	Revise eyelashes	0.89	2.02	0.39	0.04	2.95	1.32	000
67825		A	Revise eyelashes	1.38	5.70	1.07	0.06	7.14	2.51	010
67830		A	Revise eyelashes	1.70	11.55	2.20	0.07	13.32	3.97	010
67835		A	Revise eyelashes	5.56	NA	4.90	0.22	NA	10.68	090
67840		A	Remove eyelid lesion	2.04	8.19	0.99	0.08	10.31	3.11	010
67850		A	Treat eyelid lesion	1.69	8.79	2.07	0.07	10.55	3.83	010
67875		A	Closure of eyelid by suture	1.35	11.62	2.16	0.06	13.03	3.57	000
67880		A	Revision of eyelid	3.80	12.77	3.24	0.16	16.73	7.20	090
67882		A	Revision of eyelid	5.07	15.42	4.84	0.21	20.70	10.12	090
67900		A	Repair brow defect	6.14	11.29	6.69	0.30	17.73	13.13	090
67901		A	Repair eyelid defect	6.97	NA	7.22	0.32	NA	14.51	090
67902		A	Repair eyelid defect	7.03	NA	7.17	0.34	NA	14.54	090
67903		A	Repair eyelid defect	6.37	10.72	6.80	0.39	17.48	13.56	090
67904		A	Repair eyelid defect	6.26	14.97	8.57	0.26	21.49	15.09	090
67906		A	Repair eyelid defect	6.79	9.91	6.30	0.42	17.12	13.51	090
67908		A	Repair eyelid defect	5.13	9.65	6.36	0.20	14.98	11.69	090
67909		A	Revise eyelid defect	5.40	10.20	6.87	0.25	15.85	12.52	090
67911		A	Revise eyelid defect	5.27	NA	6.92	0.23	NA	12.42	090
67914		A	Repair eyelid defect	3.68	13.22	3.70	0.16	17.06	7.54	090
67915		A	Repair eyelid defect	3.18	11.73	1.52	0.13	15.04	4.83	090
67916		A	Repair eyelid defect	5.31	17.26	5.52	0.22	22.79	11.05	090
67917		A	Repair eyelid defect	6.02	10.63	6.86	0.25	16.90	13.13	090
67921		A	Repair eyelid defect	3.40	12.94	3.47	0.14	16.48	7.01	090
67922		A	Repair eyelid defect	3.06	11.73	3.31	0.13	14.92	6.50	090
67923		A	Repair eyelid defect	5.88	16.33	5.62	0.24	22.45	11.74	090
67924		A	Repair eyelid defect	5.79	9.97	6.20	0.23	15.99	12.22	090
67930		A	Repair eyelid wound	3.61	12.50	3.15	0.17	16.28	6.93	010
67935		A	Repair eyelid wound	6.22	16.12	5.60	0.29	22.63	12.11	090
67938		A	Remove eyelid foreign body	1.33	9.65	0.53	0.06	11.04	1.92	010
67950		A	Revision of eyelid	5.82	9.01	7.67	0.30	15.13	13.79	090
67961		A	Revision of eyelid	5.69	9.39	6.03	0.26	15.34	11.98	090
67966		A	Revision of eyelid	6.57	9.01	6.25	0.33	15.91	13.15	090
67971		A	Reconstruction of eyelid	9.79	NA	7.85	0.42	NA	18.06	090
67973		A	Reconstruction of eyelid	12.87	NA	9.95	0.59	NA	23.41	090
67974		A	Reconstruction of eyelid	12.84	NA	9.87	0.54	NA	23.25	090
67975		A	Reconstruction of eyelid	9.13	NA	7.51	0.38	NA	17.02	090
67999		C	Revision of eyelid	0.00	0.00	0.00	0.00	0.00	0.00	YYY
68020		A	Incise/drain eyelid lining	1.37	7.79	0.65	0.06	9.22	2.08	010
68040		A	Treatment of eyelid lesions	0.85	7.68	0.41	0.03	8.56	1.29	000
68100		A	Biopsy of eyelid lining	1.35	7.93	0.65	0.06	9.34	2.06	000
68110		A	Remove eyelid lining lesion	1.77	8.98	1.41	0.07	10.82	3.25	010
68115		A	Remove eyelid lining lesion	2.36	8.47	1.14	0.10	10.93	3.60	010
68130		A	Remove eyelid lining lesion	4.93	NA	2.38	0.19	NA	7.50	090
68135		A	Remove eyelid lining lesion	1.84	8.23	0.89	0.07	10.14	2.80	010
68200		A	Treat eyelid by injection	0.49	0.76	0.24	0.02	1.27	0.75	000
68320		A	Revise/graft eyelid lining	5.37	5.75	5.34	0.21	11.33	10.92	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
68325		A	Revise/graft eyelid lining	7.36	NA	6.33	0.30	NA	13.99	090
68326		A	Revise/graft eyelid lining	7.15	NA	6.26	0.30	NA	13.71	090
68328		A	Revise/graft eyelid lining	8.18	NA	7.07	0.40	NA	15.65	090
68330		A	Revise eyelid lining	4.83	7.34	5.82	0.19	12.36	10.84	090
68335		A	Revise/graft eyelid lining	7.19	NA	5.68	0.29	NA	13.16	090
68340		A	Separate eyelid adhesions	4.17	15.87	4.33	0.17	20.21	8.67	090
68360		A	Revise eyelid lining	4.37	6.77	5.42	0.17	11.31	9.96	090
68362		A	Revise eyelid lining	7.34	NA	8.02	0.29	NA	15.65	090
68399		C	Eyelid lining surgery	0.00	0.00	0.00	0.00	0.00	0.00	YYY
68400		A	Incise/drain tear gland	1.69	11.48	2.18	0.07	13.24	3.94	010
68420		A	Incise/drain tear sac	2.30	11.89	2.52	0.10	14.29	4.92	010
68440		A	Incise tear duct opening	0.94	7.86	0.45	0.04	8.84	1.43	010
68500		A	Removal of tear gland	11.02	NA	9.13	0.60	NA	20.75	090
68505		A	Partial removal, tear gland	10.94	NA	10.31	0.57	NA	21.82	090
68510		A	Biopsy of tear gland	4.61	13.09	2.22	0.19	17.89	7.02	000
68520		A	Removal of tear sac	7.51	NA	7.47	0.33	NA	15.31	090
68525		A	Biopsy of tear sac	4.43	NA	2.15	0.18	NA	6.76	000
68530		A	Clearance of tear duct	3.66	15.33	3.18	0.16	19.15	7.00	010
68540		A	Remove tear gland lesion	10.60	NA	9.73	0.46	NA	20.79	090
68550		A	Remove tear gland lesion	13.26	NA	10.50	0.66	NA	24.42	090
68700		A	Repair tear ducts	6.60	NA	6.87	0.27	NA	13.74	090
68705		A	Revise tear duct opening	2.06	8.33	1.00	0.08	10.47	3.14	010
68720		A	Create tear sac drain	8.96	NA	8.04	0.38	NA	17.38	090
68745		A	Create tear duct drain	8.63	NA	7.82	0.38	NA	16.83	090
68750		A	Create tear duct drain	8.66	NA	8.46	0.37	NA	17.49	090
68760		A	Close tear duct opening	1.73	6.77	1.25	0.07	8.57	3.05	010
68761		A	Close tear duct opening	1.36	3.09	1.03	0.06	4.51	2.45	010
68770		A	Close tear system fistula	7.02	17.74	6.15	0.28	25.04	13.45	090
68801		A	Dilate tear duct opening	0.94	0.88	0.57	0.04	1.86	1.55	010
68810		A	Probe nasolacrimal duct	1.90	2.48	0.91	0.08	4.46	2.89	010
68811		A	Probe nasolacrimal duct	2.35	NA	2.46	0.10	NA	4.91	010
68815		A	Probe nasolacrimal duct	3.20	14.08	2.92	0.14	17.42	6.26	010
68840		A	Explore/irrigate tear ducts	1.25	1.62	1.00	0.05	2.92	2.30	010
68850		A	Injection for tear sac x-ray	0.80	15.29	0.32	0.03	16.12	1.15	000
68899		C	Tear duct system surgery	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69000		A	Drain external ear lesion	1.45	2.14	0.59	0.10	3.69	2.14	010
69005		A	Drain external ear lesion	2.11	2.55	2.11	0.16	4.82	4.38	010
69020		A	Drain outer ear canal lesion	1.48	2.25	0.71	0.11	3.84	2.30	010
69090		N	Pierce earlobes	0.00	0.00	0.00	0.00	0.00	0.00	XXX
69100		A	Biopsy of external ear	0.81	1.44	0.41	0.04	2.29	1.26	000
69105		A	Biopsy of external ear canal	0.85	1.51	1.02	0.06	2.42	1.93	000
69110		A	Remove external ear, partial	3.44	3.48	2.85	0.24	7.16	6.53	090
69120		A	Removal of external ear	4.05	NA	4.68	0.31	NA	9.04	090
69140		A	Remove ear canal lesion(s)	7.97	NA	8.24	0.56	NA	16.77	090
69145		A	Remove ear canal lesion(s)	2.62	3.41	2.54	0.18	6.21	5.34	090
69150		A	Extensive ear canal surgery	13.43	NA	11.38	1.07	NA	25.88	090
69155		A	Extensive ear/neck surgery	20.80	NA	16.26	1.51	NA	38.57	090
69200		A	Clear outer ear canal	0.77	1.45	0.77	0.05	2.27	1.59	000
69205		A	Clear outer ear canal	1.20	NA	1.58	0.09	NA	2.87	010
69210		A	Remove impacted ear wax	0.61	0.59	0.25	0.04	1.24	0.90	000
69220		A	Clean out mastoid cavity	0.83	1.53	0.44	0.06	2.42	1.33	000
69222		A	Clean out mastoid cavity	1.40	2.24	1.71	0.10	3.74	3.21	010
69300		R	Revise external ear	6.36	NA	4.36	0.43	NA	11.17	YYY
69310		A	Rebuild outer ear canal	10.79	NA	9.86	0.77	NA	21.42	090
69320		A	Rebuild outer ear canal	16.96	NA	13.77	1.17	NA	31.90	090
69399		C	Outer ear surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69400		A	Inflate middle ear canal	0.83	1.51	0.49	0.06	2.40	1.38	000
69401		A	Inflate middle ear canal	0.63	1.41	0.34	0.04	2.08	1.01	000
69405		A	Catheterize middle ear canal	2.63	3.09	1.50	0.18	5.90	4.31	010
69410		A	Inset middle ear (baffle)	0.33	1.39	0.17	0.02	1.74	0.52	000
69420		A	Incision of eardrum	1.33	2.35	0.75	0.10	3.78	2.18	010
69421		A	Incision of eardrum	1.73	2.58	1.92	0.13	4.44	3.78	010
69424		A	Remove ventilating tube	0.85	1.68	0.94	0.06	2.59	1.85	000
69433		A	Create eardrum opening	1.52	2.32	0.88	0.11	3.95	2.51	010
69436		A	Create eardrum opening	1.96	NA	2.05	0.14	NA	4.15	010
69440		A	Exploration of middle ear	7.57	NA	7.41	0.53	NA	15.51	090
69450		A	Eardrum revision	5.57	NA	6.18	0.39	NA	12.14	090
69501		A	Mastoidectomy	9.07	NA	8.22	0.65	NA	17.94	090
69502		A	Mastoidectomy	12.38	NA	10.80	0.86	NA	24.04	090
69505		A	Remove mastoid structures	12.99	NA	10.94	0.92	NA	24.85	090
69511		A	Extensive mastoid surgery	13.52	NA	11.45	0.96	NA	25.93	090
69530		A	Extensive mastoid surgery	19.19	NA	15.06	1.32	NA	35.57	090
69535		A	Remove part of temporal bone	36.14	NA	25.13	2.59	NA	63.86	090

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
69540		A	Remove ear lesion	1.20	2.27	1.61	0.09	3.56	2.90	010
69550		A	Remove ear lesion	10.99	NA	9.97	0.80	NA	21.76	090
69552		A	Remove ear lesion	19.46	NA	14.81	1.36	NA	35.63	090
69554		A	Remove ear lesion	33.16	NA	21.79	2.32	NA	57.27	090
69601		A	Mastoid surgery revision	13.24	NA	11.97	0.92	NA	26.13	090
69602		A	Mastoid surgery revision	13.58	NA	11.55	0.94	NA	26.07	090
69603		A	Mastoid surgery revision	14.02	NA	11.80	1.00	NA	26.82	090
69604		A	Mastoid surgery revision	14.02	NA	11.76	0.98	NA	26.76	090
69605		A	Mastoid surgery revision	18.49	NA	14.37	1.29	NA	34.15	090
69610		A	Repair of eardrum	4.43	4.27	3.47	0.31	9.01	8.21	010
69620		A	Repair of eardrum	5.89	6.90	3.40	0.40	13.19	9.69	090
69631		A	Repair eardrum structures	9.86	NA	9.38	0.69	NA	19.93	090
69632		A	Rebuild eardrum structures	12.75	NA	11.73	0.89	NA	25.37	090
69633		A	Rebuild eardrum structures	12.10	NA	11.36	0.84	NA	24.30	090
69635		A	Repair eardrum structures	13.33	NA	11.41	0.87	NA	25.61	090
69636		A	Rebuild eardrum structures	15.22	NA	13.23	1.07	NA	29.52	090
69637		A	Rebuild eardrum structures	15.11	NA	13.16	1.06	NA	29.33	090
69641		A	Revise middle ear & mastoid	12.71	NA	11.06	0.89	NA	24.66	090
69642		A	Revise middle ear & mastoid	16.84	NA	14.16	1.18	NA	32.18	090
69643		A	Revise middle ear & mastoid	15.32	NA	13.24	1.08	NA	29.64	090
69644		A	Revise middle ear & mastoid	16.97	NA	14.22	1.19	NA	32.38	090
69645		A	Revise middle ear & mastoid	16.38	NA	13.77	1.16	NA	31.31	090
69646		A	Revise middle ear & mastoid	17.99	NA	14.83	1.26	NA	34.08	090
69650		A	Release middle ear bone	9.66	NA	8.53	0.68	NA	18.87	090
69660		A	Revise middle ear bone	11.90	NA	9.86	0.84	NA	22.60	090
69661		A	Revise middle ear bone	15.74	NA	12.63	1.10	NA	29.47	090
69662		A	Revise middle ear bone	15.44	NA	12.56	1.08	NA	29.08	090
69666		A	Repair middle ear structures	9.75	NA	8.65	0.68	NA	19.08	090
69667		A	Repair middle ear structures	9.76	NA	8.58	0.72	NA	19.06	090
69670		A	Remove mastoid air cells	11.51	NA	10.36	0.78	NA	22.65	090
69676		A	Remove middle ear nerve	9.52	NA	9.14	0.69	NA	19.35	090
69700		A	Close mastoid fistula	8.23	NA	5.77	0.55	NA	14.55	090
69710		N	Implant/replace hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
69711		A	Remove/repair hearing aid	10.44	NA	9.62	0.62	NA	20.68	090
69714		A	Implant temple bone w/stimul	14.00	NA	11.53	1.01	NA	26.54	090
69715		A	Temple bone implnt w/stimulat	18.25	NA	14.05	1.32	NA	33.62	090
69717		A	Temple bone implant revision	14.98	NA	11.46	1.08	NA	27.52	090
69718		A	Revise temple bone implant	18.50	NA	14.20	1.34	NA	34.04	090
69720		A	Release facial nerve	14.38	NA	12.85	1.03	NA	28.26	090
69725		A	Release facial nerve	25.38	NA	17.97	1.78	NA	45.13	090
69740		A	Repair facial nerve	15.96	NA	10.90	1.13	NA	27.99	090
69745		A	Repair facial nerve	16.69	NA	12.80	1.00	NA	30.49	090
69799		C	Middle ear surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69801		A	Incise inner ear	8.56	NA	7.96	0.60	NA	17.12	090
69802		A	Incise inner ear	13.10	NA	11.37	0.91	NA	25.38	090
69805		A	Explore inner ear	13.82	NA	10.91	0.97	NA	25.70	090
69806		A	Explore inner ear	12.35	NA	10.82	0.86	NA	24.03	090
69820		A	Establish inner ear window	10.34	NA	8.78	0.66	NA	19.78	090
69840		A	Revise inner ear window	10.26	NA	9.00	0.64	NA	19.90	090
69905		A	Remove inner ear	11.10	NA	9.94	0.77	NA	21.81	090
69910		A	Remove inner ear & mastoid	13.63	NA	11.42	0.94	NA	25.99	090
69915		A	Incise inner ear nerve	21.23	NA	15.88	1.54	NA	38.65	090
69930		A	Implant cochlear device	16.81	NA	12.94	1.19	NA	30.94	090
69949		C	Inner ear surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69950		A	Incise inner ear nerve	25.64	NA	16.71	2.90	NA	45.25	090
69955		A	Release facial nerve	27.04	NA	18.39	1.89	NA	47.32	090
69960		A	Release inner ear canal	27.04	NA	18.40	2.43	NA	47.87	090
69970		A	Remove inner ear lesion	30.04	NA	19.12	2.34	NA	51.50	090
69979		C	Temporal bone surgery	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69990		R	Microsurgery add-on	3.47	NA	1.87	0.56	NA	5.90	ZZZ
70010		A	Contrast x-ray of brain	1.19	4.53	NA	0.24	5.96	NA	XXX
70010	26	A	Contrast x-ray of brain	1.19	0.42	0.42	0.06	1.67	1.67	XXX
70010	TC	A	Contrast x-ray of brain	0.00	4.11	NA	0.18	4.29	NA	XXX
70015		A	Contrast x-ray of brain	1.19	1.71	NA	0.12	3.02	NA	XXX
70015	26	A	Contrast x-ray of brain	1.19	0.42	0.42	0.05	1.66	1.66	XXX
70015	TC	A	Contrast x-ray of brain	0.00	1.29	NA	0.07	1.36	NA	XXX
70030		A	X-ray eye for foreign body	0.17	0.45	NA	0.03	0.65	NA	XXX
70030	26	A	X-ray eye for foreign body	0.17	0.06	0.06	0.01	0.24	0.24	XXX
70030	TC	A	X-ray eye for foreign body	0.00	0.39	NA	0.02	0.41	NA	XXX
70100		A	X-ray exam of jaw	0.18	0.56	NA	0.03	0.77	NA	XXX
70100	26	A	X-ray exam of jaw	0.18	0.06	0.06	0.01	0.25	0.25	XXX
70100	TC	A	X-ray exam of jaw	0.00	0.50	NA	0.02	0.52	NA	XXX
70110		A	X-ray exam of jaw	0.25	0.68	NA	0.04	0.97	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
70110	26	A	X-ray exam of jaw	0.25	0.09	0.09	0.01	0.35	0.35	XXX
70110	TC	A	X-ray exam of jaw	0.00	0.59	NA	0.03	0.62	NA	XXX
70120		A	X-ray exam of mastoids	0.18	0.65	NA	0.04	0.87	NA	XXX
70120	26	A	X-ray exam of mastoids	0.18	0.06	0.06	0.01	0.25	0.25	XXX
70120	TC	A	X-ray exam of mastoids	0.00	0.59	NA	0.03	0.62	NA	XXX
70130		A	X-ray exam of mastoids	0.34	0.86	NA	0.05	1.25	NA	XXX
70130	26	A	X-ray exam of mastoids	0.34	0.12	0.12	0.01	0.47	0.47	XXX
70130	TC	A	X-ray exam of mastoids	0.00	0.74	NA	0.04	0.78	NA	XXX
70134		A	X-ray exam of middle ear	0.34	0.82	NA	0.05	1.21	NA	XXX
70134	26	A	X-ray exam of middle ear	0.34	0.12	0.12	0.01	0.47	0.47	XXX
70134	TC	A	X-ray exam of middle ear	0.00	0.70	NA	0.04	0.74	NA	XXX
70140		A	X-ray exam of facial bones	0.19	0.66	NA	0.04	0.89	NA	XXX
70140	26	A	X-ray exam of facial bones	0.19	0.07	0.07	0.01	0.27	0.27	XXX
70140	TC	A	X-ray exam of facial bones	0.00	0.59	NA	0.03	0.62	NA	XXX
70150		A	X-ray exam of facial bones	0.26	0.83	NA	0.05	1.14	NA	XXX
70150	26	A	X-ray exam of facial bones	0.26	0.09	0.09	0.01	0.36	0.36	XXX
70150	TC	A	X-ray exam of facial bones	0.00	0.74	NA	0.04	0.78	NA	XXX
70160		A	X-ray exam of nasal bones	0.17	0.56	NA	0.03	0.76	NA	XXX
70160	26	A	X-ray exam of nasal bones	0.17	0.06	0.06	0.01	0.24	0.24	XXX
70160	TC	A	X-ray exam of nasal bones	0.00	0.50	NA	0.02	0.52	NA	XXX
70170		A	X-ray exam of tear duct	0.30	1.01	NA	0.06	1.37	NA	XXX
70170	26	A	X-ray exam of tear duct	0.30	0.11	0.11	0.01	0.42	0.42	XXX
70170	TC	A	X-ray exam of tear duct	0.00	0.90	NA	0.05	0.95	NA	XXX
70190		A	X-ray exam of eye sockets	0.21	0.66	NA	0.04	0.91	NA	XXX
70190	26	A	X-ray exam of eye sockets	0.21	0.07	0.07	0.01	0.29	0.29	XXX
70190	TC	A	X-ray exam of eye sockets	0.00	0.59	NA	0.03	0.62	NA	XXX
70200		A	X-ray exam of eye sockets	0.28	0.84	NA	0.05	1.17	NA	XXX
70200	26	A	X-ray exam of eye sockets	0.28	0.10	0.10	0.01	0.39	0.39	XXX
70200	TC	A	X-ray exam of eye sockets	0.00	0.74	NA	0.04	0.78	NA	XXX
70210		A	X-ray exam of sinuses	0.17	0.65	NA	0.04	0.86	NA	XXX
70210	26	A	X-ray exam of sinuses	0.17	0.06	0.06	0.01	0.24	0.24	XXX
70210	TC	A	X-ray exam of sinuses	0.00	0.59	NA	0.03	0.62	NA	XXX
70220		A	X-ray exam of sinuses	0.25	0.83	NA	0.05	1.13	NA	XXX
70220	26	A	X-ray exam of sinuses	0.25	0.09	0.09	0.01	0.35	0.35	XXX
70220	TC	A	X-ray exam of sinuses	0.00	0.74	NA	0.04	0.78	NA	XXX
70240		A	X-ray exam, pituitary saddle	0.19	0.46	NA	0.03	0.68	NA	XXX
70240	26	A	X-ray exam, pituitary saddle	0.19	0.07	0.07	0.01	0.27	0.27	XXX
70240	TC	A	X-ray exam, pituitary saddle	0.00	0.39	NA	0.02	0.41	NA	XXX
70250		A	X-ray exam of skull	0.24	0.67	NA	0.04	0.95	NA	XXX
70250	26	A	X-ray exam of skull	0.24	0.08	0.08	0.01	0.33	0.33	XXX
70250	TC	A	X-ray exam of skull	0.00	0.59	NA	0.03	0.62	NA	XXX
70260		A	X-ray exam of skull	0.34	0.96	NA	0.06	1.36	NA	XXX
70260	26	A	X-ray exam of skull	0.34	0.12	0.12	0.01	0.47	0.47	XXX
70260	TC	A	X-ray exam of skull	0.00	0.84	NA	0.05	0.89	NA	XXX
70300		A	X-ray exam of teeth	0.10	0.29	NA	0.03	0.42	NA	XXX
70300	26	A	X-ray exam of teeth	0.10	0.04	0.04	0.01	0.15	0.15	XXX
70300	TC	A	X-ray exam of teeth	0.00	0.25	NA	0.02	0.27	NA	XXX
70310		A	X-ray exam of teeth	0.16	0.46	NA	0.03	0.65	NA	XXX
70310	26	A	X-ray exam of teeth	0.16	0.07	0.07	0.01	0.24	0.24	XXX
70310	TC	A	X-ray exam of teeth	0.00	0.39	NA	0.02	0.41	NA	XXX
70320		A	Full mouth x-ray of teeth	0.22	0.82	NA	0.05	1.09	NA	XXX
70320	26	A	Full mouth x-ray of teeth	0.22	0.08	0.08	0.01	0.31	0.31	XXX
70320	TC	A	Full mouth x-ray of teeth	0.00	0.74	NA	0.04	0.78	NA	XXX
70328		A	X-ray exam of jaw joint	0.18	0.53	NA	0.03	0.74	NA	XXX
70328	26	A	X-ray exam of jaw joint	0.18	0.06	0.06	0.01	0.25	0.25	XXX
70328	TC	A	X-ray exam of jaw joint	0.00	0.47	NA	0.02	0.49	NA	XXX
70330		A	X-ray exam of jaw joints	0.24	0.88	NA	0.05	1.17	NA	XXX
70330	26	A	X-ray exam of jaw joints	0.24	0.08	0.08	0.01	0.33	0.33	XXX
70330	TC	A	X-ray exam of jaw joints	0.00	0.80	NA	0.04	0.84	NA	XXX
70332		A	X-ray exam of jaw joint	0.54	2.18	NA	0.12	2.84	NA	XXX
70332	26	A	X-ray exam of jaw joint	0.54	0.19	0.19	0.02	0.75	0.75	XXX
70332	TC	A	X-ray exam of jaw joint	0.00	1.99	NA	0.10	2.09	NA	XXX
70336		A	Magnetic image, jaw joint	1.48	11.16	NA	0.56	13.20	NA	XXX
70336	26	A	Magnetic image, jaw joint	1.48	0.52	0.52	0.07	2.07	2.07	XXX
70336	TC	A	Magnetic image, jaw joint	0.00	10.64	NA	0.49	11.13	NA	XXX
70350		A	X-ray head for orthodontia	0.17	0.42	NA	0.03	0.62	NA	XXX
70350	26	A	X-ray head for orthodontia	0.17	0.06	0.06	0.01	0.24	0.24	XXX
70350	TC	A	X-ray head for orthodontia	0.00	0.36	NA	0.02	0.38	NA	XXX
70355		A	Panoramic x-ray of jaws	0.20	0.61	NA	0.04	0.85	NA	XXX
70355	26	A	Panoramic x-ray of jaws	0.20	0.07	0.07	0.01	0.28	0.28	XXX
70355	TC	A	Panoramic x-ray of jaws	0.00	0.54	NA	0.03	0.57	NA	XXX
70360		A	X-ray exam of neck	0.17	0.45	NA	0.03	0.65	NA	XXX
70360	26	A	X-ray exam of neck	0.17	0.06	0.06	0.01	0.24	0.24	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
70360	TC	A	X-ray exam of neck	0.00	0.39	NA	0.02	0.41	NA	XXX
70370		A	Throat x-ray & fluoroscopy	0.32	1.35	NA	0.07	1.74	NA	XXX
70370	26	A	Throat x-ray & fluoroscopy	0.32	0.11	0.11	0.01	0.44	0.44	XXX
70370	TC	A	Throat x-ray & fluoroscopy	0.00	1.24	NA	0.06	1.30	NA	XXX
70371		A	Speech evaluation, complex	0.84	2.29	NA	0.14	3.27	NA	XXX
70371	26	A	Speech evaluation, complex	0.84	0.30	0.30	0.04	1.18	1.18	XXX
70371	TC	A	Speech evaluation, complex	0.00	1.99	NA	0.10	2.09	NA	XXX
70373		A	Contrast x-ray of larynx	0.44	1.84	NA	0.11	2.39	NA	XXX
70373	26	A	Contrast x-ray of larynx	0.44	0.15	0.15	0.02	0.61	0.61	XXX
70373	TC	A	Contrast x-ray of larynx	0.00	1.69	NA	0.09	1.78	NA	XXX
70380		A	X-ray exam of salivary gland	0.17	0.69	NA	0.04	0.90	NA	XXX
70380	26	A	X-ray exam of salivary gland	0.17	0.06	0.06	0.01	0.24	0.24	XXX
70380	TC	A	X-ray exam of salivary gland	0.00	0.63	NA	0.03	0.66	NA	XXX
70390		A	X-ray exam of salivary duct	0.38	1.82	NA	0.11	2.31	NA	XXX
70390	26	A	X-ray exam of salivary duct	0.38	0.13	0.13	0.02	0.53	0.53	XXX
70390	TC	A	X-ray exam of salivary duct	0.00	1.69	NA	0.09	1.78	NA	XXX
70450		A	Ct head/brain w/o dye	0.85	4.78	NA	0.25	5.88	NA	XXX
70450	26	A	Ct head/brain w/o dye	0.85	0.30	0.30	0.04	1.19	1.19	XXX
70450	TC	A	Ct head/brain w/o dye	0.00	4.48	NA	0.21	4.69	NA	XXX
70460		A	Ct head/brain w/dye	1.13	5.77	NA	0.30	7.20	NA	XXX
70460	26	A	Ct head/brain w/dye	1.13	0.40	0.40	0.05	1.58	1.58	XXX
70460	TC	A	Ct head/brain w/dye	0.00	5.37	NA	0.25	5.62	NA	XXX
70470		A	Ct head/brain w/o&w dye	1.27	7.16	NA	0.37	8.80	NA	XXX
70470	26	A	Ct head/brain w/o&w dye	1.27	0.45	0.45	0.06	1.78	1.78	XXX
70470	TC	A	Ct head/brain w/o&w dye	0.00	6.71	NA	0.31	7.02	NA	XXX
70480		A	Ct orbit/ear/fossa w/o dye	1.28	4.93	NA	0.27	6.48	NA	XXX
70480	26	A	Ct orbit/ear/fossa w/o dye	1.28	0.45	0.45	0.06	1.79	1.79	XXX
70480	TC	A	Ct orbit/ear/fossa w/o dye	0.00	4.48	NA	0.21	4.69	NA	XXX
70481		A	Ct orbit/ear/fossa w/dye	1.38	5.85	NA	0.31	7.54	NA	XXX
70481	26	A	Ct orbit/ear/fossa w/dye	1.38	0.48	0.48	0.06	1.92	1.92	XXX
70481	TC	A	Ct orbit/ear/fossa w/dye	0.00	5.37	NA	0.25	5.62	NA	XXX
70482		A	Ct orbit/ear/fossa w/o&w dye	1.45	7.22	NA	0.37	9.04	NA	XXX
70482	26	A	Ct orbit/ear/fossa w/o&w dye	1.45	0.51	0.51	0.06	2.02	2.02	XXX
70482	TC	A	Ct orbit/ear/fossa w/o&w dye	0.00	6.71	NA	0.31	7.02	NA	XXX
70486		A	Ct maxillofacial w/o dye	1.14	4.88	NA	0.26	6.28	NA	XXX
70486	26	A	Ct maxillofacial w/o dye	1.14	0.40	0.40	0.05	1.59	1.59	XXX
70486	TC	A	Ct maxillofacial w/o dye	0.00	4.48	NA	0.21	4.69	NA	XXX
70487		A	Ct maxillofacial w/dye	1.30	5.83	NA	0.31	7.44	NA	XXX
70487	26	A	Ct maxillofacial w/dye	1.30	0.46	0.46	0.06	1.82	1.82	XXX
70487	TC	A	Ct maxillofacial w/dye	0.00	5.37	NA	0.25	5.62	NA	XXX
70488		A	Ct maxillofacial w/o&w dye	1.42	7.21	NA	0.37	9.00	NA	XXX
70488	26	A	Ct maxillofacial w/o&w dye	1.42	0.50	0.50	0.06	1.98	1.98	XXX
70488	TC	A	Ct maxillofacial w/o&w dye	0.00	6.71	NA	0.31	7.02	NA	XXX
70490		A	Ct soft tissue neck w/o dye	1.28	4.93	NA	0.27	6.48	NA	XXX
70490	26	A	Ct soft tissue neck w/o dye	1.28	0.45	0.45	0.06	1.79	1.79	XXX
70490	TC	A	Ct soft tissue neck w/o dye	0.00	4.48	NA	0.21	4.69	NA	XXX
70491		A	Ct soft tissue neck w/dye	1.38	5.85	NA	0.31	7.54	NA	XXX
70491	26	A	Ct soft tissue neck w/dye	1.38	0.48	0.48	0.06	1.92	1.92	XXX
70491	TC	A	Ct soft tissue neck w/dye	0.00	5.37	NA	0.25	5.62	NA	XXX
70492		A	Ct sft tsue nck w/o & w/dye	1.45	7.22	NA	0.37	9.04	NA	XXX
70492	26	A	Ct sft tsue nck w/o & w/dye	1.45	0.51	0.51	0.06	2.02	2.02	XXX
70492	TC	A	Ct sft tsue nck w/o & w/dye	0.00	6.71	NA	0.31	7.02	NA	XXX
70496		A	Ct angiography, head	1.75	7.41	NA	0.56	9.72	NA	XXX
70496	26	A	Ct angiography, head	1.75	0.70	0.70	0.08	2.53	2.53	XXX
70496	TC	A	Ct angiography, head	0.00	6.71	NA	0.48	7.19	NA	XXX
70498		A	Ct angiography, neck	1.75	7.41	NA	0.56	9.72	NA	XXX
70498	26	A	Ct angiography, neck	1.75	0.70	0.70	0.08	2.53	2.53	XXX
70498	TC	A	Ct angiography, neck	0.00	6.71	NA	0.48	7.19	NA	XXX
70540		A	Mri orbit/face/neck w/o dye	1.35	11.11	NA	0.36	12.82	NA	XXX
70540	26	A	Mri orbit/face/neck w/o dye	1.35	0.47	0.47	0.04	1.86	1.86	XXX
70540	TC	A	Mri orbit/face/neck w/o dye	0.00	10.64	NA	0.32	10.96	NA	XXX
70542		A	Mri orbit/face/neck w/dye	1.62	13.33	NA	0.44	15.39	NA	XXX
70542	26	A	Mri orbit/face/neck w/dye	1.62	0.57	0.57	0.05	2.24	2.24	XXX
70542	TC	A	Mri orbit/face/neck w/dye	0.00	12.76	NA	0.39	13.15	NA	XXX
70543		A	Mri orbt/fac/nck w/o&w dye	2.15	24.39	NA	0.77	27.31	NA	XXX
70543	26	A	Mri orbt/fac/nck w/o&w dye	2.15	0.75	0.75	0.07	2.97	2.97	XXX
70543	TC	A	Mri orbt/fac/nck w/o&w dye	0.00	23.64	NA	0.70	24.34	NA	XXX
70544		A	Mr angiography head w/o dye	1.20	11.06	NA	0.54	12.80	NA	XXX
70544	26	A	Mr angiography head w/o dye	1.20	0.42	0.42	0.05	1.67	1.67	XXX
70544	TC	A	Mr angiography head w/o dye	0.00	10.64	NA	0.49	11.13	NA	XXX
70545		A	Mr angiography head w/dye	1.20	11.06	NA	0.54	12.80	NA	XXX
70545	26	A	Mr angiography head w/dye	1.20	0.42	0.42	0.05	1.67	1.67	XXX
70545	TC	A	Mr angiography head w/dye	0.00	10.64	NA	0.49	11.13	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
70546		A	Mr angiograph head w/o&w dye	1.80	21.92	NA	0.57	24.29	NA	XXX
70546	26	A	Mr angiograph head w/o&w dye	1.80	0.63	0.63	0.08	2.51	2.51	XXX
70546	TC	A	Mr angiograph head w/o&w dye	0.00	21.29	NA	0.49	21.78	NA	XXX
70547		A	Mr angiography neck w/o dye	1.20	11.06	NA	0.54	12.80	NA	XXX
70547	26	A	Mr angiography neck w/o dye	1.20	0.42	0.42	0.05	1.67	1.67	XXX
70547	TC	A	Mr angiography neck w/o dye	0.00	10.64	NA	0.49	11.13	NA	XXX
70548		A	Mr angiography neck w/dye	1.20	11.06	NA	0.54	12.80	NA	XXX
70548	26	A	Mr angiography neck w/dye	1.20	0.42	0.42	0.05	1.67	1.67	XXX
70548	TC	A	Mr angiography neck w/dye	0.00	10.64	NA	0.49	11.13	NA	XXX
70549		A	Mr angiograph neck w/o&w dye	1.80	21.92	NA	0.57	24.29	NA	XXX
70549	26	A	Mr angiograph neck w/o&w dye	1.80	0.63	0.63	0.08	2.51	2.51	XXX
70549	TC	A	Mr angiograph neck w/o&w dye	0.00	21.29	NA	0.49	21.78	NA	XXX
70551		A	Mri brain w/o dye	1.48	11.16	NA	0.56	13.20	NA	XXX
70551	26	A	Mri brain w/o dye	1.48	0.52	0.52	0.07	2.07	2.07	XXX
70551	TC	A	Mri brain w/o dye	0.00	10.64	NA	0.49	11.13	NA	XXX
70552		A	Mri brain w/dye	1.78	13.40	NA	0.66	15.84	NA	XXX
70552	26	A	Mri brain w/dye	1.78	0.64	0.64	0.08	2.50	2.50	XXX
70552	TC	A	Mri brain w/dye	0.00	12.76	NA	0.58	13.34	NA	XXX
70553		A	Mri brain w/o&w dye	2.36	24.47	NA	1.19	28.02	NA	XXX
70553	26	A	Mri brain w/o&w dye	2.36	0.83	0.83	0.10	3.29	3.29	XXX
70553	TC	A	Mri brain w/o&w dye	0.00	23.64	NA	1.09	24.73	NA	XXX
71010		A	Chest x-ray	0.18	0.51	NA	0.03	0.72	NA	XXX
71010	26	A	Chest x-ray	0.18	0.06	0.06	0.01	0.25	0.25	XXX
71010	TC	A	Chest x-ray	0.00	0.45	NA	0.02	0.47	NA	XXX
71015		A	Chest x-ray	0.21	0.57	NA	0.03	0.81	NA	XXX
71015	26	A	Chest x-ray	0.21	0.07	0.07	0.01	0.29	0.29	XXX
71015	TC	A	Chest x-ray	0.00	0.50	NA	0.02	0.52	NA	XXX
71020		A	Chest x-ray	0.22	0.67	NA	0.04	0.93	NA	XXX
71020	26	A	Chest x-ray	0.22	0.08	0.08	0.01	0.31	0.31	XXX
71020	TC	A	Chest x-ray	0.00	0.59	NA	0.03	0.62	NA	XXX
71021		A	Chest x-ray	0.27	0.79	NA	0.05	1.11	NA	XXX
71021	26	A	Chest x-ray	0.27	0.09	0.09	0.01	0.37	0.37	XXX
71021	TC	A	Chest x-ray	0.00	0.70	NA	0.04	0.74	NA	XXX
71022		A	Chest x-ray	0.31	0.81	NA	0.06	1.18	NA	XXX
71022	26	A	Chest x-ray	0.31	0.11	0.11	0.02	0.44	0.44	XXX
71022	TC	A	Chest x-ray	0.00	0.70	NA	0.04	0.74	NA	XXX
71023		A	Chest x-ray and fluoroscopy	0.38	0.88	NA	0.06	1.32	NA	XXX
71023	26	A	Chest x-ray and fluoroscopy	0.38	0.14	0.14	0.02	0.54	0.54	XXX
71023	TC	A	Chest x-ray and fluoroscopy	0.00	0.74	NA	0.04	0.78	NA	XXX
71030		A	Chest x-ray	0.31	0.85	NA	0.05	1.21	NA	XXX
71030	26	A	Chest x-ray	0.31	0.11	0.11	0.01	0.43	0.43	XXX
71030	TC	A	Chest x-ray	0.00	0.74	NA	0.04	0.78	NA	XXX
71034		A	Chest x-ray and fluoroscopy	0.46	1.54	NA	0.09	2.09	NA	XXX
71034	26	A	Chest x-ray and fluoroscopy	0.46	0.17	0.17	0.02	0.65	0.65	XXX
71034	TC	A	Chest x-ray and fluoroscopy	0.00	1.37	NA	0.07	1.44	NA	XXX
71035		A	Chest x-ray	0.18	0.56	NA	0.03	0.77	NA	XXX
71035	26	A	Chest x-ray	0.18	0.06	0.06	0.01	0.25	0.25	XXX
71035	TC	A	Chest x-ray	0.00	0.50	NA	0.02	0.52	NA	XXX
71040		A	Contrast x-ray of bronchi	0.58	1.59	NA	0.10	2.27	NA	XXX
71040	26	A	Contrast x-ray of bronchi	0.58	0.20	0.20	0.03	0.81	0.81	XXX
71040	TC	A	Contrast x-ray of bronchi	0.00	1.39	NA	0.07	1.46	NA	XXX
71060		A	Contrast x-ray of bronchi	0.74	2.35	NA	0.14	3.23	NA	XXX
71060	26	A	Contrast x-ray of bronchi	0.74	0.26	0.26	0.03	1.03	1.03	XXX
71060	TC	A	Contrast x-ray of bronchi	0.00	2.09	NA	0.11	2.20	NA	XXX
71090		A	X-ray & pacemaker insertion	0.54	1.82	NA	0.11	2.47	NA	XXX
71090	26	A	X-ray & pacemaker insertion	0.54	0.22	0.22	0.02	0.78	0.78	XXX
71090	TC	A	X-ray & pacemaker insertion	0.00	1.60	NA	0.09	1.69	NA	XXX
71100		A	X-ray exam of ribs	0.22	0.62	NA	0.04	0.88	NA	XXX
71100	26	A	X-ray exam of ribs	0.22	0.08	0.08	0.01	0.31	0.31	XXX
71100	TC	A	X-ray exam of ribs	0.00	0.54	NA	0.03	0.57	NA	XXX
71101		A	X-ray exam of ribs/chest	0.27	0.72	NA	0.04	1.03	NA	XXX
71101	26	A	X-ray exam of ribs/chest	0.27	0.09	0.09	0.01	0.37	0.37	XXX
71101	TC	A	X-ray exam of ribs/chest	0.00	0.63	NA	0.03	0.66	NA	XXX
71110		A	X-ray exam of ribs	0.27	0.83	NA	0.05	1.15	NA	XXX
71110	26	A	X-ray exam of ribs	0.27	0.09	0.09	0.01	0.37	0.37	XXX
71110	TC	A	X-ray exam of ribs	0.00	0.74	NA	0.04	0.78	NA	XXX
71111		A	X-ray exam of ribs/chest	0.32	0.95	NA	0.06	1.33	NA	XXX
71111	26	A	X-ray exam of ribs/chest	0.32	0.11	0.11	0.01	0.44	0.44	XXX
71111	TC	A	X-ray exam of ribs/chest	0.00	0.84	NA	0.05	0.89	NA	XXX
71120		A	X-ray exam of breastbone	0.20	0.69	NA	0.04	0.93	NA	XXX
71120	26	A	X-ray exam of breastbone	0.20	0.07	0.07	0.01	0.28	0.28	XXX
71120	TC	A	X-ray exam of breastbone	0.00	0.62	NA	0.03	0.65	NA	XXX
71130		A	X-ray exam of breastbone	0.22	0.75	NA	0.04	1.01	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
71130	26	A	X-ray exam of breastbone	0.22	0.08	0.08	0.01	0.31	0.31	XXX
71130	TC	A	X-ray exam of breastbone	0.00	0.67	NA	0.03	0.70	NA	XXX
71250		A	Ct thorax w/o dye	1.16	6.02	NA	0.31	7.49	NA	XXX
71250	26	A	Ct thorax w/o dye	1.16	0.41	0.41	0.05	1.62	1.62	XXX
71250	TC	A	Ct thorax w/o dye	0.00	5.61	NA	0.26	5.87	NA	XXX
71260		A	Ct thorax w/dye	1.24	7.14	NA	0.36	8.74	NA	XXX
71260	26	A	Ct thorax w/dye	1.24	0.43	0.43	0.05	1.72	1.72	XXX
71260	TC	A	Ct thorax w/dye	0.00	6.71	NA	0.31	7.02	NA	XXX
71270		A	Ct thorax w/o&w dye	1.38	8.88	NA	0.44	10.70	NA	XXX
71270	26	A	Ct thorax w/o&w dye	1.38	0.48	0.48	0.06	1.92	1.92	XXX
71270	TC	A	Ct thorax w/o&w dye	0.00	8.40	NA	0.38	8.78	NA	XXX
71275		A	Ct angiography, chest	1.92	9.17	NA	0.38	11.47	NA	XXX
71275	26	A	Ct angiography, chest	1.92	0.77	0.77	0.06	2.75	2.75	XXX
71275	TC	A	Ct angiography, chest	0.00	8.40	NA	0.32	8.72	NA	XXX
71550		A	Mri chest w/o dye	1.46	11.15	NA	0.41	13.02	NA	XXX
71550	26	A	Mri chest w/o dye	1.46	0.51	0.51	0.04	2.01	2.01	XXX
71550	TC	A	Mri chest w/o dye	0.00	10.64	NA	0.37	11.01	NA	XXX
71551		A	Mri chest w/dye	1.73	13.36	NA	0.49	15.58	NA	XXX
71551	26	A	Mri chest w/dye	1.73	0.60	0.60	0.06	2.39	2.39	XXX
71551	TC	A	Mri chest w/dye	0.00	12.76	NA	0.43	13.19	NA	XXX
71552		A	Mri chest w/o&w dye	2.26	24.43	NA	0.64	27.33	NA	XXX
71552	26	A	Mri chest w/o&w dye	2.26	0.79	0.79	0.08	3.13	3.13	XXX
71552	TC	A	Mri chest w/o&w dye	0.00	23.64	NA	0.56	24.20	NA	XXX
71555		R	Mri angio chest w or w/o dye	1.81	11.28	NA	0.57	13.66	NA	XXX
71555	26	R	Mri angio chest w or w/o dye	1.81	0.64	0.64	0.08	2.53	2.53	XXX
71555	TC	R	Mri angio chest w or w/o dye	0.00	10.64	NA	0.49	11.13	NA	XXX
72010		A	X-ray exam of spine	0.45	1.13	NA	0.08	1.66	NA	XXX
72010	26	A	X-ray exam of spine	0.45	0.16	0.16	0.03	0.64	0.64	XXX
72010	TC	A	X-ray exam of spine	0.00	0.97	NA	0.05	1.02	NA	XXX
72020		A	X-ray exam of spine	0.15	0.44	NA	0.03	0.62	NA	XXX
72020	26	A	X-ray exam of spine	0.15	0.05	0.05	0.01	0.21	0.21	XXX
72020	TC	A	X-ray exam of spine	0.00	0.39	NA	0.02	0.41	NA	XXX
72040		A	X-ray exam of neck spine	0.22	0.65	NA	0.04	0.91	NA	XXX
72040	26	A	X-ray exam of neck spine	0.22	0.08	0.08	0.01	0.31	0.31	XXX
72040	TC	A	X-ray exam of neck spine	0.00	0.57	NA	0.03	0.60	NA	XXX
72050		A	X-ray exam of neck spine	0.31	0.95	NA	0.07	1.33	NA	XXX
72050	26	A	X-ray exam of neck spine	0.31	0.11	0.11	0.02	0.44	0.44	XXX
72050	TC	A	X-ray exam of neck spine	0.00	0.84	NA	0.05	0.89	NA	XXX
72052		A	X-ray exam of neck spine	0.36	1.20	NA	0.07	1.63	NA	XXX
72052	26	A	X-ray exam of neck spine	0.36	0.13	0.13	0.02	0.51	0.51	XXX
72052	TC	A	X-ray exam of neck spine	0.00	1.07	NA	0.05	1.12	NA	XXX
72069		A	X-ray exam of trunk spine	0.22	0.56	NA	0.04	0.82	NA	XXX
72069	26	A	X-ray exam of trunk spine	0.22	0.09	0.09	0.02	0.33	0.33	XXX
72069	TC	A	X-ray exam of trunk spine	0.00	0.47	NA	0.02	0.49	NA	XXX
72070		A	X-ray exam of thoracic spine	0.22	0.70	NA	0.04	0.96	NA	XXX
72070	26	A	X-ray exam of thoracic spine	0.22	0.08	0.08	0.01	0.31	0.31	XXX
72070	TC	A	X-ray exam of thoracic spine	0.00	0.62	NA	0.03	0.65	NA	XXX
72072		A	X-ray exam of thoracic spine	0.22	0.78	NA	0.05	1.05	NA	XXX
72072	26	A	X-ray exam of thoracic spine	0.22	0.08	0.08	0.01	0.31	0.31	XXX
72072	TC	A	X-ray exam of thoracic spine	0.00	0.70	NA	0.04	0.74	NA	XXX
72074		A	X-ray exam of thoracic spine	0.22	0.94	NA	0.06	1.22	NA	XXX
72074	26	A	X-ray exam of thoracic spine	0.22	0.08	0.08	0.01	0.31	0.31	XXX
72074	TC	A	X-ray exam of thoracic spine	0.00	0.86	NA	0.05	0.91	NA	XXX
72080		A	X-ray exam of trunk spine	0.22	0.71	NA	0.05	0.98	NA	XXX
72080	26	A	X-ray exam of trunk spine	0.22	0.08	0.08	0.02	0.32	0.32	XXX
72080	TC	A	X-ray exam of trunk spine	0.00	0.63	NA	0.03	0.66	NA	XXX
72090		A	X-ray exam of trunk spine	0.28	0.73	NA	0.05	1.06	NA	XXX
72090	26	A	X-ray exam of trunk spine	0.28	0.10	0.10	0.02	0.40	0.40	XXX
72090	TC	A	X-ray exam of trunk spine	0.00	0.63	NA	0.03	0.66	NA	XXX
72100		A	X-ray exam of lower spine	0.22	0.71	NA	0.05	0.98	NA	XXX
72100	26	A	X-ray exam of lower spine	0.22	0.08	0.08	0.02	0.32	0.32	XXX
72100	TC	A	X-ray exam of lower spine	0.00	0.63	NA	0.03	0.66	NA	XXX
72110		A	X-ray exam of lower spine	0.31	0.97	NA	0.07	1.35	NA	XXX
72110	26	A	X-ray exam of lower spine	0.31	0.11	0.11	0.02	0.44	0.44	XXX
72110	TC	A	X-ray exam of lower spine	0.00	0.86	NA	0.05	0.91	NA	XXX
72114		A	X-ray exam of lower spine	0.36	1.26	NA	0.08	1.70	NA	XXX
72114	26	A	X-ray exam of lower spine	0.36	0.13	0.13	0.03	0.52	0.52	XXX
72114	TC	A	X-ray exam of lower spine	0.00	1.13	NA	0.05	1.18	NA	XXX
72120		A	X-ray exam of lower spine	0.22	0.92	NA	0.07	1.21	NA	XXX
72120	26	A	X-ray exam of lower spine	0.22	0.08	0.08	0.02	0.32	0.32	XXX
72120	TC	A	X-ray exam of lower spine	0.00	0.84	NA	0.05	0.89	NA	XXX
72125		A	Ct neck spine w/o dye	1.16	6.02	NA	0.31	7.49	NA	XXX
72125	26	A	Ct neck spine w/o dye	1.16	0.41	0.41	0.05	1.62	1.62	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
72125	TC	A	Ct neck spine w/o dye	0.00	5.61	NA	0.26	5.87	NA	XXX
72126		A	Ct neck spine w/dye	1.22	7.14	NA	0.36	8.72	NA	XXX
72126	26	A	Ct neck spine w/dye	1.22	0.43	0.43	0.05	1.70	1.70	XXX
72126	TC	A	Ct neck spine w/dye	0.00	6.71	NA	0.31	7.02	NA	XXX
72127		A	Ct neck spine w/o&w dye	1.27	8.85	NA	0.44	10.56	NA	XXX
72127	26	A	Ct neck spine w/o&w dye	1.27	0.45	0.45	0.06	1.78	1.78	XXX
72127	TC	A	Ct neck spine w/o&w dye	0.00	8.40	NA	0.38	8.78	NA	XXX
72128		A	Ct chest spine w/o dye	1.16	6.02	NA	0.31	7.49	NA	XXX
72128	26	A	Ct chest spine w/o dye	1.16	0.41	0.41	0.05	1.62	1.62	XXX
72128	TC	A	Ct chest spine w/o dye	0.00	5.61	NA	0.26	5.87	NA	XXX
72129		A	Ct chest spine w/dye	1.22	7.14	NA	0.36	8.72	NA	XXX
72129	26	A	Ct chest spine w/dye	1.22	0.43	0.43	0.05	1.70	1.70	XXX
72129	TC	A	Ct chest spine w/dye	0.00	6.71	NA	0.31	7.02	NA	XXX
72130		A	Ct chest spine w/o&w dye	1.27	8.85	NA	0.44	10.56	NA	XXX
72130	26	A	Ct chest spine w/o&w dye	1.27	0.45	0.45	0.06	1.78	1.78	XXX
72130	TC	A	Ct chest spine w/o&w dye	0.00	8.40	NA	0.38	8.78	NA	XXX
72131		A	Ct lumbar spine w/o dye	1.16	6.02	NA	0.31	7.49	NA	XXX
72131	26	A	Ct lumbar spine w/o dye	1.16	0.41	0.41	0.05	1.62	1.62	XXX
72131	TC	A	Ct lumbar spine w/o dye	0.00	5.61	NA	0.26	5.87	NA	XXX
72132		A	Ct lumbar spine w/dye	1.22	7.14	NA	0.37	8.73	NA	XXX
72132	26	A	Ct lumbar spine w/dye	1.22	0.43	0.43	0.06	1.71	1.71	XXX
72132	TC	A	Ct lumbar spine w/dye	0.00	6.71	NA	0.31	7.02	NA	XXX
72133		A	Ct lumbar spine w/o&w dye	1.27	8.85	NA	0.44	10.56	NA	XXX
72133	26	A	Ct lumbar spine w/o&w dye	1.27	0.45	0.45	0.06	1.78	1.78	XXX
72133	TC	A	Ct lumbar spine w/o&w dye	0.00	8.40	NA	0.38	8.78	NA	XXX
72141		A	Mri neck spine w/o dye	1.60	11.20	NA	0.56	13.36	NA	XXX
72141	26	A	Mri neck spine w/o dye	1.60	0.56	0.56	0.07	2.23	2.23	XXX
72141	TC	A	Mri neck spine w/o dye	0.00	10.64	NA	0.49	11.13	NA	XXX
72142		A	Mri neck spine w/dye	1.92	13.45	NA	0.67	16.04	NA	XXX
72142	26	A	Mri neck spine w/dye	1.92	0.69	0.69	0.09	2.70	2.70	XXX
72142	TC	A	Mri neck spine w/dye	0.00	12.76	NA	0.58	13.34	NA	XXX
72146		A	Mri chest spine w/o dye	1.60	12.38	NA	0.60	14.58	NA	XXX
72146	26	A	Mri chest spine w/o dye	1.60	0.56	0.56	0.07	2.23	2.23	XXX
72146	TC	A	Mri chest spine w/o dye	0.00	11.82	NA	0.53	12.35	NA	XXX
72147		A	Mri chest spine w/dye	1.92	13.44	NA	0.67	16.03	NA	XXX
72147	26	A	Mri chest spine w/dye	1.92	0.68	0.68	0.09	2.69	2.69	XXX
72147	TC	A	Mri chest spine w/dye	0.00	12.76	NA	0.58	13.34	NA	XXX
72148		A	Mri lumbar spine w/o dye	1.48	12.34	NA	0.60	14.42	NA	XXX
72148	26	A	Mri lumbar spine w/o dye	1.48	0.52	0.52	0.07	2.07	2.07	XXX
72148	TC	A	Mri lumbar spine w/o dye	0.00	11.82	NA	0.53	12.35	NA	XXX
72149		A	Mri lumbar spine w/dye	1.78	13.40	NA	0.67	15.85	NA	XXX
72149	26	A	Mri lumbar spine w/dye	1.78	0.64	0.64	0.09	2.51	2.51	XXX
72149	TC	A	Mri lumbar spine w/dye	0.00	12.76	NA	0.58	13.34	NA	XXX
72156		A	Mri neck spine w/o&w dye	2.57	24.55	NA	1.20	28.32	NA	XXX
72156	26	A	Mri neck spine w/o&w dye	2.57	0.91	0.91	0.11	3.59	3.59	XXX
72156	TC	A	Mri neck spine w/o&w dye	0.00	23.64	NA	1.09	24.73	NA	XXX
72157		A	Mri chest spine w/o&w dye	2.57	24.54	NA	1.20	28.31	NA	XXX
72157	26	A	Mri chest spine w/o&w dye	2.57	0.90	0.90	0.11	3.58	3.58	XXX
72157	TC	A	Mri chest spine w/o&w dye	0.00	23.64	NA	1.09	24.73	NA	XXX
72158		A	Mri lumbar spine w/o&w dye	2.36	24.47	NA	1.20	28.03	NA	XXX
72158	26	A	Mri lumbar spine w/o&w dye	2.36	0.83	0.83	0.11	3.30	3.30	XXX
72158	TC	A	Mri lumbar spine w/o&w dye	0.00	23.64	NA	1.09	24.73	NA	XXX
72159		N	Mr angio spine w/o&w dye	+1.80	12.54	NA	0.61	14.95	NA	XXX
72159	26	N	Mr angio spine w/o&w dye	+1.80	0.72	0.72	0.08	2.60	2.60	XXX
72159	TC	N	Mr angio spine w/o&w dye	+0.00	11.82	NA	0.53	12.35	NA	XXX
72170		A	X-ray exam of pelvis	0.17	0.56	NA	0.03	0.76	NA	XXX
72170	26	A	X-ray exam of pelvis	0.17	0.06	0.06	0.01	0.24	0.24	XXX
72170	TC	A	X-ray exam of pelvis	0.00	0.50	NA	0.02	0.52	NA	XXX
72190		A	X-ray exam of pelvis	0.21	0.70	NA	0.04	0.95	NA	XXX
72190	26	A	X-ray exam of pelvis	0.21	0.07	0.07	0.01	0.29	0.29	XXX
72190	TC	A	X-ray exam of pelvis	0.00	0.63	NA	0.03	0.66	NA	XXX
72191		A	Ct angiograph pelv w/o&w dye	1.81	8.78	NA	0.38	10.97	NA	XXX
72191	26	A	Ct angiograph pelv w/o&w dye	1.81	0.72	0.72	0.06	2.59	2.59	XXX
72191	TC	A	Ct angiograph pelv w/o&w dye	0.00	8.06	NA	0.32	8.38	NA	XXX
72192		A	Ct pelvis w/o dye	1.09	5.99	NA	0.31	7.39	NA	XXX
72192	26	A	Ct pelvis w/o dye	1.09	0.38	0.38	0.05	1.52	1.52	XXX
72192	TC	A	Ct pelvis w/o dye	0.00	5.61	NA	0.26	5.87	NA	XXX
72193		A	Ct pelvis w/dye	1.16	6.91	NA	0.35	8.42	NA	XXX
72193	26	A	Ct pelvis w/dye	1.16	0.41	0.41	0.05	1.62	1.62	XXX
72193	TC	A	Ct pelvis w/dye	0.00	6.50	NA	0.30	6.80	NA	XXX
72194		A	Ct pelvis w/o&w dye	1.22	8.49	NA	0.41	10.12	NA	XXX
72194	26	A	Ct pelvis w/o&w dye	1.22	0.43	0.43	0.05	1.70	1.70	XXX
72194	TC	A	Ct pelvis w/o&w dye	0.00	8.06	NA	0.36	8.42	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
72195		A	Mri pelvis w/o dye	1.46	11.15	NA	0.42	13.03	NA	XXX
72195	26	A	Mri pelvis w/o dye	1.46	0.51	0.51	0.05	2.02	2.02	XXX
72195	TC	A	Mri pelvis w/o dye	0.00	10.64	NA	0.37	11.01	NA	XXX
72196		A	Mri pelvis w/dye	1.73	13.36	NA	0.48	15.57	NA	XXX
72196	26	A	Mri pelvis w/dye	1.73	0.60	0.60	0.05	2.38	2.38	XXX
72196	TC	A	Mri pelvis w/dye	0.00	12.76	NA	0.43	13.19	NA	XXX
72197		A	Mri pelvis w/o&w dye	2.26	24.43	NA	0.84	27.53	NA	XXX
72197	26	A	Mri pelvis w/o&w dye	2.26	0.79	0.79	0.08	3.13	3.13	XXX
72197	TC	A	Mri pelvis w/o&w dye	0.00	23.64	NA	0.76	24.40	NA	XXX
72198		N	Mr angio pelvis w/o&w dye	+1.80	11.36	NA	0.57	13.73	NA	XXX
72198	26	N	Mr angio pelvis w/o&w dye	+1.80	0.72	0.72	0.08	2.60	2.60	XXX
72198	TC	N	Mr angio pelvis w/o&w dye	+0.00	10.64	NA	0.49	11.13	NA	XXX
72200		A	X-ray exam sacroiliac joints	0.17	0.56	NA	0.03	0.76	NA	XXX
72200	26	A	X-ray exam sacroiliac joints	0.17	0.06	0.06	0.01	0.24	0.24	XXX
72200	TC	A	X-ray exam sacroiliac joints	0.00	0.50	NA	0.02	0.52	NA	XXX
72202		A	X-ray exam sacroiliac joints	0.19	0.66	NA	0.04	0.89	NA	XXX
72202	26	A	X-ray exam sacroiliac joints	0.19	0.07	0.07	0.01	0.27	0.27	XXX
72202	TC	A	X-ray exam sacroiliac joints	0.00	0.59	NA	0.03	0.62	NA	XXX
72220		A	X-ray exam of tailbone	0.17	0.60	NA	0.04	0.81	NA	XXX
72220	26	A	X-ray exam of tailbone	0.17	0.06	0.06	0.01	0.24	0.24	XXX
72220	TC	A	X-ray exam of tailbone	0.00	0.54	NA	0.03	0.57	NA	XXX
72240		A	Contrast x-ray of neck spine	0.91	4.82	NA	0.25	5.98	NA	XXX
72240	26	A	Contrast x-ray of neck spine	0.91	0.31	0.31	0.04	1.26	1.26	XXX
72240	TC	A	Contrast x-ray of neck spine	0.00	4.51	NA	0.21	4.72	NA	XXX
72255		A	Contrast x-ray, thorax spine	0.91	4.41	NA	0.22	5.54	NA	XXX
72255	26	A	Contrast x-ray, thorax spine	0.91	0.30	0.30	0.04	1.25	1.25	XXX
72255	TC	A	Contrast x-ray, thorax spine	0.00	4.11	NA	0.18	4.29	NA	XXX
72265		A	Contrast x-ray, lower spine	0.83	4.15	NA	0.22	5.20	NA	XXX
72265	26	A	Contrast x-ray, lower spine	0.83	0.28	0.28	0.04	1.15	1.15	XXX
72265	TC	A	Contrast x-ray, lower spine	0.00	3.87	NA	0.18	4.05	NA	XXX
72270		A	Contrast x-ray of spine	1.33	6.25	NA	0.34	7.92	NA	XXX
72270	26	A	Contrast x-ray of spine	1.33	0.46	0.46	0.07	1.86	1.86	XXX
72270	TC	A	Contrast x-ray of spine	0.00	5.79	NA	0.27	6.06	NA	XXX
72275		A	Epidurography	0.76	2.20	NA	0.21	3.17	NA	XXX
72275	26	A	Epidurography	0.76	0.21	0.21	0.03	1.00	1.00	XXX
72275	TC	A	Epidurography	0.00	1.99	NA	0.18	2.17	NA	XXX
72285		A	X-ray c/t spine disk	1.16	8.35	NA	0.42	9.93	NA	XXX
72285	26	A	X-ray c/t spine disk	1.16	0.39	0.39	0.06	1.61	1.61	XXX
72285	TC	A	X-ray c/t spine disk	0.00	7.96	NA	0.36	8.32	NA	XXX
72295		A	X-ray of lower spine disk	0.83	7.76	NA	0.37	8.96	NA	XXX
72295	26	A	X-ray of lower spine disk	0.83	0.29	0.29	0.04	1.16	1.16	XXX
72295	TC	A	X-ray of lower spine disk	0.00	7.47	NA	0.33	7.80	NA	XXX
73000		A	X-ray exam of collar bone	0.16	0.56	NA	0.03	0.75	NA	XXX
73000	26	A	X-ray exam of collar bone	0.16	0.06	0.06	0.01	0.23	0.23	XXX
73000	TC	A	X-ray exam of collar bone	0.00	0.50	NA	0.02	0.52	NA	XXX
73010		A	X-ray exam of shoulder blade	0.17	0.56	NA	0.03	0.76	NA	XXX
73010	26	A	X-ray exam of shoulder blade	0.17	0.06	0.06	0.01	0.24	0.24	XXX
73010	TC	A	X-ray exam of shoulder blade	0.00	0.50	NA	0.02	0.52	NA	XXX
73020		A	X-ray exam of shoulder	0.15	0.50	NA	0.03	0.68	NA	XXX
73020	26	A	X-ray exam of shoulder	0.15	0.05	0.05	0.01	0.21	0.21	XXX
73020	TC	A	X-ray exam of shoulder	0.00	0.45	NA	0.02	0.47	NA	XXX
73030		A	X-ray exam of shoulder	0.18	0.60	NA	0.04	0.82	NA	XXX
73030	26	A	X-ray exam of shoulder	0.18	0.06	0.06	0.01	0.25	0.25	XXX
73030	TC	A	X-ray exam of shoulder	0.00	0.54	NA	0.03	0.57	NA	XXX
73040		A	Contrast x-ray of shoulder	0.54	2.18	NA	0.13	2.85	NA	XXX
73040	26	A	Contrast x-ray of shoulder	0.54	0.19	0.19	0.03	0.76	0.76	XXX
73040	TC	A	Contrast x-ray of shoulder	0.00	1.99	NA	0.10	2.09	NA	XXX
73050		A	X-ray exam of shoulders	0.20	0.70	NA	0.05	0.95	NA	XXX
73050	26	A	X-ray exam of shoulders	0.20	0.07	0.07	0.02	0.29	0.29	XXX
73050	TC	A	X-ray exam of shoulders	0.00	0.63	NA	0.03	0.66	NA	XXX
73060		A	X-ray exam of humerus	0.17	0.60	NA	0.04	0.81	NA	XXX
73060	26	A	X-ray exam of humerus	0.17	0.06	0.06	0.01	0.24	0.24	XXX
73060	TC	A	X-ray exam of humerus	0.00	0.54	NA	0.03	0.57	NA	XXX
73070		A	X-ray exam of elbow	0.15	0.55	NA	0.03	0.73	NA	XXX
73070	26	A	X-ray exam of elbow	0.15	0.05	0.05	0.01	0.21	0.21	XXX
73070	TC	A	X-ray exam of elbow	0.00	0.50	NA	0.02	0.52	NA	XXX
73080		A	X-ray exam of elbow	0.17	0.60	NA	0.04	0.81	NA	XXX
73080	26	A	X-ray exam of elbow	0.17	0.06	0.06	0.01	0.24	0.24	XXX
73080	TC	A	X-ray exam of elbow	0.00	0.54	NA	0.03	0.57	NA	XXX
73085		A	Contrast x-ray of elbow	0.54	2.19	NA	0.13	2.86	NA	XXX
73085	26	A	Contrast x-ray of elbow	0.54	0.20	0.20	0.03	0.77	0.77	XXX
73085	TC	A	Contrast x-ray of elbow	0.00	1.99	NA	0.10	2.09	NA	XXX
73090		A	X-ray exam of forearm	0.16	0.56	NA	0.03	0.75	NA	XXX

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CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
73090	26	A	X-ray exam of forearm	0.16	0.06	0.06	0.01	0.23	0.23	XXX
73090	TC	A	X-ray exam of forearm	0.00	0.50	NA	0.02	0.52	NA	XXX
73092		A	X-ray exam of arm, infant	0.16	0.53	NA	0.03	0.72	NA	XXX
73092	26	A	X-ray exam of arm, infant	0.16	0.06	0.06	0.01	0.23	0.23	XXX
73092	TC	A	X-ray exam of arm, infant	0.00	0.47	NA	0.02	0.49	NA	XXX
73100		A	X-ray exam of wrist	0.16	0.53	NA	0.04	0.73	NA	XXX
73100	26	A	X-ray exam of wrist	0.16	0.06	0.06	0.02	0.24	0.24	XXX
73100	TC	A	X-ray exam of wrist	0.00	0.47	NA	0.02	0.49	NA	XXX
73110		A	X-ray exam of wrist	0.17	0.57	NA	0.03	0.77	NA	XXX
73110	26	A	X-ray exam of wrist	0.17	0.06	0.06	0.01	0.24	0.24	XXX
73110	TC	A	X-ray exam of wrist	0.00	0.51	NA	0 02	0.53	NA	XXX
73115		A	Contrast x-ray of wrist	0.54	1.70	NA	0.11	2.35	NA	XXX
73115	26	A	Contrast x-ray of wrist	0.54	0.20	0.20	0.03	0.77	0.77	XXX
73115	TC	A	Contrast x-ray of wrist	0.00	1.50	NA	0.08	1.58	NA	XXX
73120		A	X-ray exam of hand	0.16	0.53	NA	0.03	0.72	NA	XXX
73120	26	A	X-ray exam of hand	0.16	0.06	0.06	0.01	0.23	0.23	XXX
73120	TC	A	X-ray exam of hand	0.00	0.47	NA	0.02	0.49	NA	XXX
73130		A	X-ray exam of hand	0.17	0.57	NA	0.03	0.77	NA	XXX
73130	26	A	X-ray exam of hand	0.17	0.06	0.06	0.01	0.24	0.24	XXX
73130	TC	A	X-ray exam of hand	0.00	0.51	NA	0.02	0.53	NA	XXX
73140		A	X-ray exam of finger(s)	0.13	0.44	NA	0.03	0.60	NA	XXX
73140	26	A	X-ray exam of finger(s)	0.13	0.05	0.05	0.01	0.19	0.19	XXX
73140	TC	A	X-ray exam of finger(s)	0.00	0.39	NA	0.02	0.41	NA	XXX
73200		A	Ct upper extremity w/o dye	1.09	5.09	NA	0.26	6.44	NA	XXX
73200	26	A	Ct upper extremity w/o dye	1.09	0.38	0.38	0.05	1.52	1.52	XXX
73200	TC	A	Ct upper extremity w/o dye	0.00	4.71	NA	0.21	4.92	NA	XXX
73201		A	Ct upper extremity w/dye	1.16	6.02	NA	0.31	7.49	NA	XXX
73201	26	A	Ct upper extremity w/dye	1.16	0.41	0.41	0.05	1.62	1.62	XXX
73201	TC	A	Ct upper extremity w/dye	0.00	5.61	NA	0.26	5.87	NA	XXX
73202		A	Ct uppr extremity w/o&w dye	1.22	7.48	NA	0.38	9.08	NA	XXX
73202	26	A	Ct uppr extremity w/o&w dye	1.22	0.43	0.43	0.06	1.71	1.71	XXX
73202	TC	A	Ct uppr extremity w/o&w dye	0.00	7.05	NA	0.32	7.37	NA	XXX
73206		A	Ct angio upr extrm w/o&w dye	1.81	7.77	NA	0.38	9.96	NA	XXX
73206	26	A	Ct angio upr extrm w/o&w dye	1.81	0.72	0.72	0.06	2.59	2.59	XXX
73206	TC	A	Ct angio upr extrm w/o&w dye	0.00	7.05	NA	0.32	7.37	NA	XXX
73218		A	Mri upper extremity w/o dye	1.35	11.11	NA	0.36	12.82	NA	XXX
73218	26	A	Mri upper extremity w/o dye	1.35	0 47	0.47	0.04	1.86	1.86	XXX
73218	TC	A	Mri upper extremity w/o dye	0.00	10.64	NA	0.32	10.96	NA	XXX
73219		A	Mri upper extremity w/dye	1.62	13.33	NA	0.44	15.39	NA	XXX
73219	26	A	Mri upper extremity w/dye	1.62	0.57	0.57	0.05	2.24	2.24	XXX
73219	TC	A	Mri upper extremity w/dye	0.00	12.76	NA	0.39	13.15	NA	XXX
73220		A	Mri uppr extremity w/o&w dye	2.15	24.39	NA	0.78	27.32	NA	XXX
73220	26	A	Mri uppr extremity w/o&w dye	2.15	0.75	0.75	0.08	2.98	2.98	XXX
73220	TC	A	Mri uppr extremity w/o&w dye	0.00	23.64	NA	0.70	24.34	NA	XXX
73221		A	Mri joint upr extrem w/o dye	1.35	11.11	NA	0.36	12.82	NA	XXX
73221	26	A	Mri joint upr extrem w/o dye	1.35	0.47	0.47	0.04	1.86	1.86	XXX
73221	TC	A	Mri joint upr extrem w/o dye	0.00	10.64	NA	0.32	10.96	NA	XXX
73222		A	Mri joint upr extrem w/dye	1.62	13.33	NA	0.44	15.39	NA	XXX
73222	26	A	Mri joint upr extrem w/dye	1.62	0.57	0.57	0.05	2.24	2.24	XXX
73222	TC	A	Mri joint upr extrem w/dye	0.00	12.76	NA	0.39	13.15	NA	XXX
73223		A	Mri joint upr extr w/o&w dye	2.15	24.39	NA	0.77	27.31	NA	XXX
73223	26	A	Mri joint upr extr w/o&w dye	2.15	0.75	0.75	0.07	2.97	2.97	XXX
73223	TC	A	Mri joint upr extr w/o&w dye	0.00	23.64	NA	0.70	24.34	NA	XXX
73225		N	Mr angio upr extr w/o&w dye	+1.73	11.33	NA	0.57	13.63	NA	XXX
73225	26	N	Mr angio upr extr w/o&w dye	+1.73	0.69	0.69	0.08	2.50	2.50	XXX
73225	TC	N	Mr angio upr extr w/o&w dye	+0.00	10.64	NA	0.49	11.13	NA	XXX
73500		A	X-ray exam of hip	0.17	0.51	NA	0.03	0.71	NA	XXX
73500	26	A	X-ray exam of hip	0.17	0.06	0.06	0.01	0.24	0.24	XXX
73500	TC	A	X-ray exam of hip	0.00	0.45	NA	0.02	0.47	NA	XXX
73510		A	X-ray exam of hip	0.21	0.61	NA	0.05	0.87	NA	XXX
73510	26	A	X-ray exam of hip	0.21	0.07	0.07	0.02	0.30	0.30	XXX
73510	TC	A	X-ray exam of hip	0.00	0.54	NA	0.03	0.57	NA	XXX
73520		A	X-ray exam of hips	0.26	0.72	NA	0.05	1.03	NA	XXX
73520	26	A	X-ray exam of hips	0.26	0.09	0.09	0.02	0.37	0.37	XXX
73520	TC	A	X-ray exam of hips	0.00	0.63	NA	0.03	0.66	NA	XXX
73525		A	Contrast x-ray of hip	0.54	2.19	NA	0.13	2.86	NA	XXX
73525	26	A	Contrast x-ray of hip	0.54	0.20	0.20	0.03	0.77	0.77	XXX
73525	TC	A	Contrast x-ray of hip	0.00	1.99	NA	0.10	2.09	NA	XXX
73530		A	X-ray exam of hip	0.29	0.60	NA	0.03	0.92	NA	XXX
73530	26	A	X-ray exam of hip	0.29	0.10	0.10	0.01	0.40	0.40	XXX
73530	TC	A	X-ray exam of hip	0.00	0.50	NA	0.02	0.52	NA	XXX
73540		A	X-ray exam of pelvis & hips	0.20	0.61	NA	0.05	0.86	NA	XXX
73540	26	A	X-ray exam of pelvis & hips	0.20	0.07	0.07	0.02	0.29	0.29	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
73540	TC	A	X-ray exam of pelvis & hips	0.00	0.54	NA	0.03	0.57	NA	XXX
73542	.....	A	X-ray exam, sacroiliac joint	0.59	2.16	NA	0.13	2.88	NA	XXX
73542	26	A	X-ray exam, sacroiliac joint	0.59	0.17	0.17	0.03	0.79	0.79	XXX
73542	TC	A	X-ray exam, sacroiliac joint	0.00	1.99	NA	0.10	2.09	NA	XXX
73550	.....	A	X-ray exam of thigh	0.17	0.60	NA	0.04	0.81	NA	XXX
73550	26	A	X-ray exam of thigh	0.17	0.06	0.06	0.01	0.24	0.24	XXX
73550	TC	A	X-ray exam of thigh	0.00	0.54	NA	0.03	0.57	NA	XXX
73560	.....	A	X-ray exam of knee, 1 or 2	0.17	0.56	NA	0.04	0.77	NA	XXX
73560	26	A	X-ray exam of knee, 1 or 2	0.17	0.06	0.06	0.02	0.25	0.25	XXX
73560	TC	A	X-ray exam of knee, 1 or 2	0.00	0.50	NA	0.02	0.52	NA	XXX
73562	.....	A	X-ray exam of knee, 3	0.18	0.60	NA	0.05	0.83	NA	XXX
73562	26	A	X-ray exam of knee, 3	0.18	0.06	0.06	0.02	0.26	0.26	XXX
73562	TC	A	X-ray exam of knee, 3	0.00	0.54	NA	0.03	0.57	NA	XXX
73564	.....	A	X-ray exam, knee, 4 or more	0.22	0.67	NA	0.05	0.94	NA	XXX
73564	26	A	X-ray exam, knee, 4 or more	0.22	0.08	0.08	0.02	0.32	0.32	XXX
73564	TC	A	X-ray exam, knee, 4 or more	0.00	0.59	NA	0.03	0.62	NA	XXX
73565	.....	A	X-ray exam of knees	0.17	0.54	NA	0.04	0.75	NA	XXX
73565	26	A	X-ray exam of knees	0.17	0.07	0.07	0.02	0.26	0.26	XXX
73565	TC	A	X-ray exam of knees	0.00	0.47	NA	0.02	0.49	NA	XXX
73580	.....	A	Contrast x-ray of knee joint	0.54	2.68	NA	0.15	3.37	NA	XXX
73580	26	A	Contrast x-ray of knee joint	0.54	0.19	0.19	0.03	0.76	0.76	XXX
73580	TC	A	Contrast x-ray of knee joint	0.00	2.49	NA	0.12	2.61	NA	XXX
73590	.....	A	X-ray exam of lower leg	0.17	0.56	NA	0.03	0.76	NA	XXX
73590	26	A	X-ray exam of lower leg	0.17	0.06	0.06	0.01	0.24	0.24	XXX
73590	TC	A	X-ray exam of lower leg	0.00	0.50	NA	0.02	0.52	NA	XXX
73592	.....	A	X-ray exam of leg, infant	0.16	0.53	NA	0.03	0.72	NA	XXX
73592	26	A	X-ray exam of leg, infant	0.16	0.06	0.06	0.01	0.23	0.23	XXX
73592	TC	A	X-ray exam of leg, infant	0.00	0.47	NA	0.02	0.49	NA	XXX
73600	.....	A	X-ray exam of ankle	0.16	0.53	NA	0.03	0.72	NA	XXX
73600	26	A	X-ray exam of ankle	0.16	0.06	0.06	0.01	0.23	0.23	XXX
73600	TC	A	X-ray exam of ankle	0.00	0.47	NA	0.02	0.49	NA	XXX
73610	.....	A	X-ray exam of ankle	0.17	0.57	NA	0.03	0.77	NA	XXX
73610	26	A	X-ray exam of ankle	0.17	0.06	0.06	0.01	0.24	0.24	XXX
73610	TC	A	X-ray exam of ankle	0.00	0.51	NA	0.02	0.53	NA	XXX
73615	.....	A	Contrast x-ray of ankle	0.54	2.18	NA	0.13	2.85	NA	XXX
73615	26	A	Contrast x-ray of ankle	0.54	0.19	0.19	0.03	0.76	0.76	XXX
73615	TC	A	Contrast x-ray of ankle	0.00	1.99	NA	0.10	2.09	NA	XXX
73620	.....	A	X-ray exam of foot	0.16	0.53	NA	0.03	0.72	NA	XXX
73620	26	A	X-ray exam of foot	0.16	0.06	0.06	0.01	0.23	0.23	XXX
73620	TC	A	X-ray exam of foot	0.00	0.47	NA	0.02	0.49	NA	XXX
73630	.....	A	X-ray exam of foot	0.17	0.57	NA	0.03	0.77	NA	XXX
73630	26	A	X-ray exam of foot	0.17	0.06	0.06	0.01	0.24	0.24	XXX
73630	TC	A	X-ray exam of foot	0.00	0.51	NA	0.02	0.53	NA	XXX
73650	.....	A	X-ray exam of heel	0.16	0.51	NA	0.03	0.70	NA	XXX
73650	26	A	X-ray exam of heel	0.16	0.06	0.06	0.01	0.23	0.23	XXX
73650	TC	A	X-ray exam of heel	0.00	0.45	NA	0.02	0.47	NA	XXX
73660	.....	A	X-ray exam of toe(s)	0.13	0.44	NA	0.03	0.60	NA	XXX
73660	26	A	X-ray exam of toe(s)	0.13	0.05	0.05	0.01	0.19	0.19	XXX
73660	TC	A	X-ray exam of toe(s)	0.00	0.39	NA	0.02	0.41	NA	XXX
73700	.....	A	Ct lower extremity w/o dye	1.09	5.09	NA	0.26	6.44	NA	XXX
73700	26	A	Ct lower extremity w/o dye	1.09	0.38	0.38	0.05	1.52	1.52	XXX
73700	TC	A	Ct lower extremity w/o dye	0.00	4.71	NA	0.21	4.92	NA	XXX
73701	.....	A	Ct lower extremity w/dye	1.16	6.02	NA	0.31	7.49	NA	XXX
73701	26	A	Ct lower extremity w/dye	1.16	0.41	0.41	0.05	1.62	1.62	XXX
73701	TC	A	Ct lower extremity w/dye	0.00	5.61	NA	0.26	5.87	NA	XXX
73702	.....	A	Ct lwr extremity w/o&w dye	1.22	7.48	NA	0.37	9.07	NA	XXX
73702	26	A	Ct lwr extremity w/o&w dye	1.22	0.43	0.43	0.05	1.70	1.70	XXX
73702	TC	A	Ct lwr extremity w/o&w dye	0.00	7.05	NA	0.32	7.37	NA	XXX
73706	.....	A	Ct angio lwr extr w/o&w dye	1.90	7.81	NA	0.38	10.09	NA	XXX
73706	26	A	Ct angio lwr extr w/o&w dye	1.90	0.76	0.76	0.06	2.72	2.72	XXX
73706	TC	A	Ct angio lwr extr w/o&w dye	0.00	7.05	NA	0.32	7.37	NA	XXX
73718	.....	A	Mri lower extremity w/o dye	1.35	11.11	NA	0.36	12.82	NA	XXX
73718	26	A	Mri lower extremity w/o dye	1.35	0.47	0.47	0.04	1.86	1.86	XXX
73718	TC	A	Mri lower extremity w/o dye	0.00	10.64	NA	0.32	10.96	NA	XXX
73719	.....	A	Mri lower extremity w/dye	1.62	13.32	NA	0.44	15.38	NA	XXX
73719	26	A	Mri lower extremity w/dye	1.62	0.56	0.56	0.05	2.23	2.23	XXX
73719	TC	A	Mri lower extremity w/dye	0.00	12.76	NA	0.39	13.15	NA	XXX
73720	.....	A	Mri lwr extremity w/o&w dye	2.15	24.39	NA	0.78	27.32	NA	XXX
73720	26	A	Mri lwr extremity w/o&w dye	2.15	0.75	0.75	0.08	2.98	2.98	XXX
73720	TC	A	Mri lwr extremity w/o&w dye	0.00	23.64	NA	0.70	24.34	NA	XXX
73721	.....	A	Mri joint of lwr extre w/o d	1.35	11.11	NA	0.36	12.82	NA	XXX
73721	26	A	Mri joint of lwr extre w/o d	1.35	0.47	0.47	0.04	1.86	1.86	XXX
73721	TC	A	Mri joint of lwr extre w/o d	0.00	10.64	NA	0.32	10.96	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
73722	.....	A	Mri joint of lwr extr w/dye	1.62	13.33	NA	0.45	15.40	NA	XXX
73722	26	A	Mri joint of lwr extr w/dye	1.62	0.57	0.57	0.06	2.25	2.25	XXX
73722	TC	A	Mri joint of lwr extr w/dye	0.00	12.76	NA	0.39	13.15	NA	XXX
73723	.....	A	Mri joint lwr extr w/o&w dye	2.15	24.39	NA	0.77	27.31	NA	XXX
73723	26	A	Mri joint lwr extr w/o&w dye	2.15	0.75	0.75	0.07	2.97	2.97	XXX
73723	TC	A	Mri joint lwr extr w/o&w dye	0.00	23.64	NA	0.70	24.34	NA	XXX
73725	.....	R	Mr ang lwr ext w or w/o dye	1.82	11.28	NA	0.57	13.67	NA	XXX
73725	26	R	Mr ang lwr ext w or w/o dye	1.82	0.64	0.64	0.08	2.54	2.54	XXX
73725	TC	R	Mr ang lwr ext w or w/o dye	0.00	10.64	NA	0.49	11.13	NA	XXX
74000	.....	A	X-ray exam of abdomen	0.18	0.56	NA	0.03	0.77	NA	XXX
74000	26	A	X-ray exam of abdomen	0.18	0.06	0.06	0.01	0.25	0.25	XXX
74000	TC	A	X-ray exam of abdomen	0.00	0.50	NA	0.02	0.52	NA	XXX
74010	.....	A	X-ray exam of abdomen	0.23	0.62	NA	0.04	0.89	NA	XXX
74010	26	A	X-ray exam of abdomen	0.23	0.08	0.08	0.01	0.32	0.32	XXX
74010	TC	A	X-ray exam of abdomen	0.00	0.54	NA	0.03	0.57	NA	XXX
74020	.....	A	X-ray exam of abdomen	0.27	0.68	NA	0.04	0.99	NA	XXX
74020	26	A	X-ray exam of abdomen	0.27	0.09	0.09	0.01	0.37	0.37	XXX
74020	TC	A	X-ray exam of abdomen	0.00	0.59	NA	0.03	0.62	NA	XXX
74022	.....	A	X-ray exam series, abdomen	0.32	0.81	NA	0.05	1.18	NA	XXX
74022	26	A	X-ray exam series, abdomen	0.32	0.11	0.11	0.01	0.44	0.44	XXX
74022	TC	A	X-ray exam series, abdomen	0.00	0.70	NA	0.04	0.74	NA	XXX
74150	.....	A	Ct abdomen w/o dye	1.19	5.79	NA	0.30	7.28	NA	XXX
74150	26	A	Ct abdomen w/o dye	1.19	0.42	0.42	0.05	1.66	1.66	XXX
74150	TC	A	Ct abdomen w/o dye	0.00	5.37	NA	0.25	5.62	NA	XXX
74160	.....	A	Ct abdomen w/dye	1.27	6.94	NA	0.36	8.57	NA	XXX
74160	26	A	Ct abdomen w/dye	1.27	0.44	0.44	0.06	1.77	1.77	XXX
74160	TC	A	Ct abdomen w/dye	0.00	6.50	NA	0.30	6.80	NA	XXX
74170	.....	A	Ct abdomen w/o&w dye	1.40	8.55	NA	0.42	10.37	NA	XXX
74170	26	A	Ct abdomen w/o&w dye	1.40	0.49	0.49	0.06	1.95	1.95	XXX
74170	TC	A	Ct abdomen w/o&w dye	0.00	8.06	NA	0.36	8.42	NA	XXX
74175	.....	A	Ct angio abdom w/o&w dye	1.90	8.82	NA	0.38	11.10	NA	XXX
74175	26	A	Ct angio abdom w/o&w dye	1.90	0.76	0.76	0.06	2.72	2.72	XXX
74175	TC	A	Ct angio abdom w/o&w dye	0.00	8.06	NA	0.32	8.38	NA	XXX
74181	.....	A	Mri abdomen w/o dye	1.46	11.15	NA	0.41	13.02	NA	XXX
74181	26	A	Mri abdomen w/o dye	1.46	0.51	0.51	0.04	2.01	2.01	XXX
74181	TC	A	Mri abdomen w/o dye	0.00	10.64	NA	0.37	11.01	NA	XXX
74182	.....	A	Mri abdomen w/dye	1.73	13.36	NA	0.49	15.58	NA	XXX
74182	26	A	Mri abdomen w/dye	1.73	0.60	0.60	0.06	2.39	2.39	XXX
74182	TC	A	Mri abdomen w/dye	0.00	12.76	NA	0.43	13.19	NA	XXX
74183	.....	A	Mri abdomen w/o&w dye	2.26	24.43	NA	0.84	27.53	NA	XXX
74183	26	A	Mri abdomen w/o&w dye	2.26	0.79	0.79	0.08	3.13	3.13	XXX
74183	TC	A	Mri abdomen w/o&w dye	0.00	23.64	NA	0.76	24.40	NA	XXX
74185	.....	R	Mri angio, abdom w or w/o dy	1.80	11.27	NA	0.57	13.64	NA	XXX
74185	26	R	Mri angio, abdom w or w/o dy	1.80	0.63	0.63	0.08	2.51	2.51	XXX
74185	TC	R	Mri angio, abdom w or w/o dy	0.00	10.64	NA	0.49	11.13	NA	XXX
74190	.....	A	X-ray exam of peritoneum	0.48	1.41	NA	0.08	1.97	NA	XXX
74190	26	A	X-ray exam of peritoneum	0.48	0.17	0.17	0.02	0.67	0.67	XXX
74190	TC	A	X-ray exam of peritoneum	0.00	1.24	NA	0.06	1.30	NA	XXX
74210	.....	A	Contrst x-ray exam of throat	0.36	1.26	NA	0.07	1.69	NA	XXX
74210	26	A	Contrst x-ray exam of throat	0.36	0.13	0.13	0.02	0.51	0.51	XXX
74210	TC	A	Contrst x-ray exam of throat	0.00	1.13	NA	0.05	1.18	NA	XXX
74220	.....	A	Contrast x-ray, esophagus	0.46	1.29	NA	0.07	1.82	NA	XXX
74220	26	A	Contrast x-ray, esophagus	0.46	0.16	0.16	0.02	0.64	0.64	XXX
74220	TC	A	Contrast x-ray, esophagus	0.00	1.13	NA	0.05	1.18	NA	XXX
74230	.....	A	Cine/video x-ray, throat/eso	0.53	1.43	NA	0.08	2.04	NA	XXX
74230	26	A	Cine/video x-ray, throat/eso	0.53	0.19	0.19	0.02	0.74	0.74	XXX
74230	TC	A	Cine/video x-ray, throat/eso	0.00	1.24	NA	0.06	1.30	NA	XXX
74235	.....	A	Remove esophagus obstruction	1.19	2.90	NA	0.17	4.26	NA	XXX
74235	26	A	Remove esophagus obstruction	1.19	0.41	0.41	0.05	1.65	1.65	XXX
74235	TC	A	Remove esophagus obstruction	0.00	2.49	NA	0.12	2.61	NA	XXX
74240	.....	A	X-ray exam, upper gi tract	0.69	1.63	NA	0.10	2.42	NA	XXX
74240	26	A	X-ray exam, upper gi tract	0.69	0.24	0.24	0.03	0.96	0.96	XXX
74240	TC	A	X-ray exam, upper gi tract	0.00	1.39	NA	0.07	1.46	NA	XXX
74241	.....	A	X-ray exam, upper gi tract	0.69	1.65	NA	0.10	2.44	NA	XXX
74241	26	A	X-ray exam, upper gi tract	0.69	0.24	0.24	0.03	0.96	0.96	XXX
74241	TC	A	X-ray exam, upper gi tract	0.00	1.41	NA	0.07	1.48	NA	XXX
74245	.....	A	X-ray exam, upper gi tract	0.91	2.58	NA	0.15	3.64	NA	XXX
74245	26	A	X-ray exam, upper gi tract	0.91	0.32	0.32	0.04	1.27	1.27	XXX
74245	TC	A	X-ray exam, upper gi tract	0.00	2.26	NA	0.11	2.37	NA	XXX
74246	.....	A	Contrst x-ray uppr gi tract	0.69	1.80	NA	0.11	2.60	NA	XXX
74246	26	A	Contrst x-ray uppr gi tract	0.69	0.24	0.24	0.03	0.96	0.96	XXX
74246	TC	A	Contrst x-ray uppr gi tract	0.00	1.56	NA	0.08	1.64	NA	XXX
74247	.....	A	Contrst x-ray uppr gi tract	0.69	1.84	NA	0.12	2.65	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
74247	26	A	Contrst x-ray uppr gi tract	0.69	0.24	0.24	0.03	0.96	0.96	XXX
74247	TC	A	Contrst x-ray uppr gi tract	0.00	1.60	NA	0.09	1.69	NA	XXX
74249		A	Contrst x-ray uppr gi tract	0.91	2.76	NA	0.16	3.83	NA	XXX
74249	26	A	Contrst x-ray uppr gi tract	0.91	0.32	0.32	0.04	1.27	1.27	XXX
74249	TC	A	Contrst x-ray uppr gi tract	0.00	2.44	NA	0.12	2.56	NA	XXX
74250		A	X-ray exam of small bowel	0.47	1.40	NA	0.08	1.95	NA	XXX
74250	26	A	X-ray exam of small bowel	0.47	0.16	0.16	0.02	0.65	0.65	XXX
74250	TC	A	X-ray exam of small bowel	0.00	1.24	NA	0.06	1.30	NA	XXX
74251		A	X-ray exam of small bowel	0.69	1.48	NA	0.09	2.26	NA	XXX
74251	26	A	X-ray exam of small bowel	0.69	0.24	0.24	0.03	0.96	0.96	XXX
74251	TC	A	X-ray exam of small bowel	0.00	1.24	NA	0.06	1.30	NA	XXX
74260		A	X-ray exam of small bowel	0.50	1.58	NA	0.09	2.17	NA	XXX
74260	26	A	X-ray exam of small bowel	0.50	0.17	0.17	0.02	0.69	0.69	XXX
74260	TC	A	X-ray exam of small bowel	0.00	1.41	NA	0.07	1.48	NA	XXX
74270		A	Contrast x-ray exam of colon	0.69	1.86	NA	0.12	2.67	NA	XXX
74270	26	A	Contrast x-ray exam of colon	0.69	0.24	0.24	0.03	0.96	0.96	XXX
74270	TC	A	Contrast x-ray exam of colon	0.00	1.62	NA	0.09	1.71	NA	XXX
74280		A	Contrast x-ray exam of colon	0.99	2.47	NA	0.15	3.61	NA	XXX
74280	26	A	Contrast x-ray exam of colon	0.99	0.35	0.35	0.04	1.38	1.38	XXX
74280	TC	A	Contrast x-ray exam of colon	0.00	2.12	NA	0.11	2.23	NA	XXX
74283		A	Contrast x-ray exam of colon	2.02	3.14	NA	0.21	5.37	NA	XXX
74283	26	A	Contrast x-ray exam of colon	2.02	0.71	0.71	0.09	2.82	2.82	XXX
74283	TC	A	Contrast x-ray exam of colon	0.00	2.43	NA	0.12	2.55	NA	XXX
74290		A	Contrast x-ray, gallbladder	0.32	0.81	NA	0.05	1.18	NA	XXX
74290	26	A	Contrast x-ray, gallbladder	0.32	0.11	0.11	0.01	0.44	0.44	XXX
74290	TC	A	Contrast x-ray, gallbladder	0.00	0.70	NA	0.04	0.74	NA	XXX
74291		A	Contrast x-rays, gallbladder	0.20	0.46	NA	0.03	0.69	NA	XXX
74291	26	A	Contrast x-rays, gallbladder	0.20	0.07	0.07	0.01	0.28	0.28	XXX
74291	TC	A	Contrast x-rays, gallbladder	0.00	0.39	NA	0.02	0.41	NA	XXX
74300		C	X-ray bile ducts/pancreas	0.00	0.00	0.00	0.00	0.00	0.00	XXX
74300	26	A	X-ray bile ducts/pancreas	0.36	0.13	0.13	0.02	0.51	0.51	XXX
74300	TC	C	X-ray bile ducts/pancreas	0.00	0.00	0.00	0.00	0.00	0.00	XXX
74301		C	X-rays at surgery add-on	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
74301	26	A	X-rays at surgery add-on	0.21	0.07	0.07	0.01	0.29	0.29	ZZZ
74301	TC	C	X-rays at surgery add-on	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
74305		A	X-ray bile ducts/pancreas	0.42	0.89	NA	0.06	1.37	NA	XXX
74305	26	A	X-ray bile ducts/pancreas	0.42	0.15	0.15	0.02	0.59	0.59	XXX
74305	TC	A	X-ray bile ducts/pancreas	0.00	0.74	NA	0.04	0.78	NA	XXX
74320		A	Contrast x-ray of bile ducts	0.54	3.18	NA	0.16	3.88	NA	XXX
74320	26	A	Contrast x-ray of bile ducts	0.54	0.19	0.19	0.02	0.75	0.75	XXX
74320	TC	A	Contrast x-ray of bile ducts	0.00	2.99	NA	0.14	3.13	NA	XXX
74327		A	X-ray bile stone removal	0.70	1.91	NA	0.12	2.73	NA	XXX
74327	26	A	X-ray bile stone removal	0.70	0.24	0.24	0.03	0.97	0.97	XXX
74327	TC	A	X-ray bile stone removal	0.00	1.67	NA	0.09	1.76	NA	XXX
74328		A	Xray bile duct endoscopy	0.70	3.24	NA	0.17	4.11	NA	XXX
74328	26	A	Xray bile duct endoscopy	0.70	0.25	0.25	0.03	0.98	0.98	XXX
74328	TC	A	Xray bile duct endoscopy	0.00	2.99	NA	0.14	3.13	NA	XXX
74329		A	X-ray for pancreas endoscopy	0.70	3.24	NA	0.17	4.11	NA	XXX
74329	26	A	X-ray for pancreas endoscopy	0.70	0.25	0.25	0.03	0.98	0.98	XXX
74329	TC	A	X-ray for pancreas endoscopy	0.00	2.99	NA	0.14	3.13	NA	XXX
74330		A	X-ray bile/panc endoscopy	0.90	3.31	NA	0.18	4.39	NA	XXX
74330	26	A	X-ray bile/panc endoscopy	0.90	0.32	0.32	0.04	1.26	1.26	XXX
74330	TC	A	X-ray bile/panc endoscopy	0.00	2.99	NA	0.14	3.13	NA	XXX
74340		A	X-ray guide for GI tube	0.54	2.68	NA	0.14	3.36	NA	XXX
74340	26	A	X-ray guide for GI tube	0.54	0.19	0.19	0.02	0.75	0.75	XXX
74340	TC	A	X-ray guide for GI tube	0.00	2.49	NA	0.12	2.61	NA	XXX
74350		A	X-ray guide, stomach tube	0.76	3.26	NA	0.17	4.19	NA	XXX
74350	26	A	X-ray guide, stomach tube	0.76	0.27	0.27	0.03	1.06	1.06	XXX
74350	TC	A	X-ray guide, stomach tube	0.00	2.99	NA	0.14	3.13	NA	XXX
74355		A	X-ray guide, intestinal tube	0.76	2.75	NA	0.15	3.66	NA	XXX
74355	26	A	X-ray guide, intestinal tube	0.76	0.26	0.26	0.03	1.05	1.05	XXX
74355	TC	A	X-ray guide, intestinal tube	0.00	2.49	NA	0.12	2.61	NA	XXX
74360		A	X-ray guide, GI dilation	0.54	3.18	NA	0.16	3.88	NA	XXX
74360	26	A	X-ray guide, GI dilation	0.54	0.19	0.19	0.02	0.75	0.75	XXX
74360	TC	A	X-ray guide, GI dilation	0.00	2.99	NA	0.14	3.13	NA	XXX
74363		A	X-ray, bile duct dilation	0.88	6.10	NA	0.31	7.29	NA	XXX
74363	26	A	X-ray, bile duct dilation	0.88	0.31	0.31	0.04	1.23	1.23	XXX
74363	TC	A	X-ray, bile duct dilation	0.00	5.79	NA	0.27	6.06	NA	XXX
74400		A	Contrst x-ray, urinary tract	0.49	1.77	NA	0.11	2.37	NA	XXX
74400	26	A	Contrst x-ray, urinary tract	0.49	0.17	0.17	0.02	0.68	0.68	XXX
74400	TC	A	Contrst x-ray, urinary tract	0.00	1.60	NA	0.09	1.69	NA	XXX
74410		A	Contrst x-ray, urinary tract	0.49	2.02	NA	0.11	2.62	NA	XXX
74410	26	A	Contrst x-ray, urinary tract	0.49	0.17	0.17	0.02	0.68	0.68	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
74410	TC	A	Contrst x-ray, urinary tract	0.00	1.85	NA	0.09	1.94	NA	XXX
74415		A	Contrst x-ray, urinary tract	0.49	2.18	NA	0.12	2.79	NA	XXX
74415	26	A	Contrst x-ray, urinary tract	0.49	0.17	0.17	0.02	0.68	0.68	XXX
74415	TC	A	Contrst x-ray, urinary tract	0.00	2.01	NA	0.10	2.11	NA	XXX
74420		A	Contrst x-ray, urinary tract	0.36	2.62	NA	0.14	3.12	NA	XXX
74420	26	A	Contrst x-ray, urinary tract	0.36	0.13	0.13	0.02	0.51	0.51	XXX
74420	TC	A	Contrst x-ray, urinary tract	0.00	2.49	NA	0.12	2.61	NA	XXX
74425		A	Contrst x-ray, urinary tract	0.36	1.37	NA	0.08	1.81	NA	XXX
74425	26	A	Contrst x-ray, urinary tract	0.36	0.13	0.13	0.02	0.51	0.51	XXX
74425	TC	A	Contrst x-ray, urinary tract	0.00	1.24	NA	0.06	1.30	NA	XXX
74430		A	Contrast x-ray, bladder	0.32	1.11	NA	0.07	1.50	NA	XXX
74430	26	A	Contrast x-ray, bladder	0.32	0.11	0.11	0.02	0.45	0.45	XXX
74430	TC	A	Contrast x-ray, bladder	0.00	1.00	NA	0.05	1.05	NA	XXX
74440		A	X-ray, male genital tract	0.38	1.20	NA	0.07	1.65	NA	XXX
74440	26	A	X-ray, male genital tract	0.38	0.13	0.13	0.02	0.53	0.53	XXX
74440	TC	A	X-ray, male genital tract	0.00	1.07	NA	0.05	1.12	NA	XXX
74445		A	X-ray exam of penis	1.14	1.46	NA	0.10	2.70	NA	XXX
74445	26	A	X-ray exam of penis	1.14	0.39	0.39	0.05	1.58	1.58	XXX
74445	TC	A	X-ray exam of penis	0.00	1.07	NA	0.05	1.12	NA	XXX
74450		A	X-ray, urethra/bladder	0.33	1.51	NA	0.09	1.93	NA	XXX
74450	26	A	X-ray, urethra/bladder	0.33	0.12	0.12	0.02	0.47	0.47	XXX
74450	TC	A	X-ray, urethra/bladder	0.00	1.39	NA	0.07	1.46	NA	XXX
74455		A	X-ray, urethra/bladder	0.33	1.61	NA	0.10	2.04	NA	XXX
74455	26	A	X-ray, urethra/bladder	0.33	0.11	0.11	0.02	0.46	0.46	XXX
74455	TC	A	X-ray, urethra/bladder	0.00	1.50	NA	0.08	1.58	NA	XXX
74470		A	X-ray exam of kidney lesion	0.54	1.37	NA	0.08	1.99	NA	XXX
74470	26	A	X-ray exam of kidney lesion	0.54	0.19	0.19	0.02	0.75	0.75	XXX
74470	TC	A	X-ray exam of kidney lesion	0.00	1.18	NA	0.06	1.24	NA	XXX
74475		A	X-ray control, cath insert	0.54	4.06	NA	0.20	4.80	NA	XXX
74475	26	A	X-ray control, cath insert	0.54	0.19	0.19	0.02	0.75	0.75	XXX
74475	TC	A	X-ray control, cath insert	0.00	3.87	NA	0.18	4.05	NA	XXX
74480		A	X-ray control, cath insert	0.54	4.06	NA	0.20	4.80	NA	XXX
74480	26	A	X-ray control, cath insert	0.54	0.19	0.19	0.02	0.75	0.75	XXX
74480	TC	A	X-ray control, cath insert	0.00	3.87	NA	0.18	4.05	NA	XXX
74485		A	X-ray guide, GU dilation	0.54	3.18	NA	0.17	3.89	NA	XXX
74485	26	A	X-ray guide, GU dilation	0.54	0.19	0.19	0.03	0.76	0.76	XXX
74485	TC	A	X-ray guide, GU dilation	0.00	2.99	NA	0.14	3.13	NA	XXX
74710		A	X-ray measurement of pelvis	0.34	1.12	NA	0.07	1.53	NA	XXX
74710	26	A	X-ray measurement of pelvis	0.34	0.12	0.12	0.02	0.48	0.48	XXX
74710	TC	A	X-ray measurement of pelvis	0.00	1.00	NA	0.05	1.05	NA	XXX
74740		A	X-ray, female genital tract	0.38	1.37	NA	0.08	1.83	NA	XXX
74740	26	A	X-ray, female genital tract	0.38	0.13	0.13	0.02	0.53	0.53	XXX
74740	TC	A	X-ray, female genital tract	0.00	1.24	NA	0.06	1.30	NA	XXX
74742		A	X-ray, fallopian tube	0.61	3.23	NA	0.16	4.00	NA	XXX
74742	26	A	X-ray, fallopian tube	0.61	0.24	0.24	0.02	0.87	0.87	XXX
74742	TC	A	X-ray, fallopian tube	0.00	2.99	NA	0.14	3.13	NA	XXX
74775		A	X-ray exam of perineum	0.62	1.62	NA	0.10	2.34	NA	XXX
74775	26	A	X-ray exam of perineum	0.62	0.23	0.23	0.03	0.88	0.88	XXX
74775	TC	A	X-ray exam of perineum	0.00	1.39	NA	0.07	1.46	NA	XXX
75552		A	Heart mri for morph w/o dye	1.60	11.20	NA	0.56	13.36	NA	XXX
75552	26	A	Heart mri for morph w/o dye	1.60	0.56	0.56	0.07	2.23	2.23	XXX
75552	TC	A	Heart mri for morph w/o dye	0.00	10.64	NA	0.49	11.13	NA	XXX
75553		A	Heart mri for morph w/dye	2.00	11.35	NA	0.58	13.93	NA	XXX
75553	26	A	Heart mri for morph w/dye	2.00	0.71	0.71	0.09	2.80	2.80	XXX
75553	TC	A	Heart mri for morph w/dye	0.00	10.64	NA	0.49	11.13	NA	XXX
75554		A	Cardiac MRI/function	1.83	11.33	NA	0.56	13.72	NA	XXX
75554	26	A	Cardiac MRI/function	1.83	0.69	0.69	0.07	2.59	2.59	XXX
75554	TC	A	Cardiac MRI/function	0.00	10.64	NA	0.49	11.13	NA	XXX
75555		A	Cardiac MRI/limited study	1.74	11.32	NA	0.56	13.62	NA	XXX
75555	26	A	Cardiac MRI/limited study	1.74	0.68	0.68	0.07	2.49	2.49	XXX
75555	TC	A	Cardiac MRI/limited study	0.00	10.64	NA	0.49	11.13	NA	XXX
75556		N	Cardiac MRI/flow mapping	0.00	0.00	0.00	0.00	0.00	0.00	XXX
75600		A	Contrast x-ray exam of aorta	0.49	12.16	NA	0.56	13.21	NA	XXX
75600	26	A	Contrast x-ray exam of aorta	0.49	0.20	0.20	0.02	0.71	0.71	XXX
75600	TC	A	Contrast x-ray exam of aorta	0.00	11.96	NA	0.54	12.50	NA	XXX
75605		A	Contrast x-ray exam of aorta	1.14	12.39	NA	0.59	14.12	NA	XXX
75605	26	A	Contrast x-ray exam of aorta	1.14	0.43	0.43	0.05	1.62	1.62	XXX
75605	TC	A	Contrast x-ray exam of aorta	0.00	11.96	NA	0.54	12.50	NA	XXX
75625		A	Contrast x-ray exam of aorta	1.14	12.37	NA	0.59	14.10	NA	XXX
75625	26	A	Contrast x-ray exam of aorta	1.14	0.41	0.41	0.05	1.60	1.60	XXX
75625	TC	A	Contrast x-ray exam of aorta	0.00	11.96	NA	0.54	12.50	NA	XXX
75630		A	X-ray aorta, leg arteries	1.79	13.14	NA	0.65	15.58	NA	XXX
75630	26	A	X-ray aorta, leg arteries	1.79	0.67	0.67	0.08	2.54	2.54	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
75630	TC	A	X-ray aorta, leg arteries	0.00	12.47	NA	0.57	13.04	NA	XXX
75635		A	Ct angio abdominal arteries	2.40	9.02	NA	0.41	11.83	NA	XXX
75635	26	A	Ct angio abdominal arteries	2.40	0.96	0.96	0.09	3.45	3.45	XXX
75635	TC	A	Ct angio abdominal arteries	0.00	8.06	NA	0.32	8.38	NA	XXX
75650		A	Artery x-rays, head & neck	1.49	12.49	NA	0.61	14.59	NA	XXX
75650	26	A	Artery x-rays, head & neck	1.49	0.53	0.53	0.07	2.09	2.09	XXX
75650	TC	A	Artery x-rays, head & neck	0.00	11.96	NA	0.54	12.50	NA	XXX
75658		A	Artery x-rays, arm	1.31	12.44	NA	0.60	14.35	NA	XXX
75658	26	A	Artery x-rays, arm	1.31	0.48	0.48	0.06	1.85	1.85	XXX
75658	TC	A	Artery x-rays, arm	0.00	11.96	NA	0.54	12.50	NA	XXX
75660		A	Artery x-rays, head & neck	1.31	12.44	NA	0.60	14.35	NA	XXX
75660	26	A	Artery x-rays, head & neck	1.31	0.48	0.48	0.06	1.85	1.85	XXX
75660	TC	A	Artery x-rays, head & neck	0.00	11.96	NA	0.54	12.50	NA	XXX
75662		A	Artery x-rays, head & neck	1.66	12.60	NA	0.62	14.88	NA	XXX
75662	26	A	Artery x-rays, head & neck	1.66	0.64	0.64	0.08	2.38	2.38	XXX
75662	TC	A	Artery x-rays, head & neck	0.00	11.96	NA	0.54	12.50	NA	XXX
75665		A	Artery x-rays, head & neck	1.31	12.43	NA	0.61	14.35	NA	XXX
75665	26	A	Artery x-rays, head & neck	1.31	0.47	0.47	0.07	1.85	1.85	XXX
75665	TC	A	Artery x-rays, head & neck	0.00	11.96	NA	0.54	12.50	NA	XXX
75671		A	Artery x-rays, head & neck	1.66	12.55	NA	0.62	14.83	NA	XXX
75671	26	A	Artery x-rays, head & neck	1.66	0.59	0.59	0.08	2.33	2.33	XXX
75671	TC	A	Artery x-rays, head & neck	0.00	11.96	NA	0.54	12.50	NA	XXX
75676		A	Artery x-rays, neck	1.31	12.43	NA	0.61	14.35	NA	XXX
75676	26	A	Artery x-rays, neck	1.31	0.47	0.47	0.07	1.85	1.85	XXX
75676	TC	A	Artery x-rays, neck	0.00	11.96	NA	0.54	12.50	NA	XXX
75680		A	Artery x-rays, neck	1.66	12.55	NA	0.62	14.83	NA	XXX
75680	26	A	Artery x-rays, neck	1.66	0.59	0.59	0.08	2.33	2.33	XXX
75680	TC	A	Artery x-rays, neck	0.00	11.96	NA	0.54	12.50	NA	XXX
75685		A	Artery x-rays, spine	1.31	12.43	NA	0.60	14.34	NA	XXX
75685	26	A	Artery x-rays, spine	1.31	0.47	0.47	0.06	1.84	1.84	XXX
75685	TC	A	Artery x-rays, spine	0.00	11.96	NA	0.54	12.50	NA	XXX
75705		A	Artery x-rays, spine	2.18	12.75	NA	0.65	15.58	NA	XXX
75705	26	A	Artery x-rays, spine	2.18	0.79	0.79	0.11	3.08	3.08	XXX
75705	TC	A	Artery x-rays, spine	0.00	11.96	NA	0.54	12.50	NA	XXX
75710		A	Artery x-rays, arm/leg	1.14	12.38	NA	0.60	14.12	NA	XXX
75710	26	A	Artery x-rays, arm/leg	1.14	0.42	0.42	0.06	1.62	1.62	XXX
75710	TC	A	Artery x-rays, arm/leg	0.00	11.96	NA	0.54	12.50	NA	XXX
75716		A	Artery x-rays, arms/legs	1.31	12.43	NA	0.60	14.34	NA	XXX
75716	26	A	Artery x-rays, arms/legs	1.31	0.47	0.47	0.06	1.84	1.84	XXX
75716	TC	A	Artery x-rays, arms/legs	0.00	11.96	NA	0.54	12.50	NA	XXX
75722		A	Artery x-rays, kidney	1.14	12.39	NA	0.59	14.12	NA	XXX
75722	26	A	Artery x-rays, kidney	1.14	0.43	0.43	0.05	1.62	1.62	XXX
75722	TC	A	Artery x-rays, kidney	0.00	11.96	NA	0.54	12.50	NA	XXX
75724		A	Artery x-rays, kidneys	1.49	12.56	NA	0.59	14.64	NA	XXX
75724	26	A	Artery x-rays, kidneys	1.49	0.60	0.60	0.05	2.14	2.14	XXX
75724	TC	A	Artery x-rays, kidneys	0.00	11.96	NA	0.54	12.50	NA	XXX
75726		A	Artery x-rays, abdomen	1.14	12.36	NA	0.59	14.09	NA	XXX
75726	26	A	Artery x-rays, abdomen	1.14	0.40	0.40	0.05	1.59	1.59	XXX
75726	TC	A	Artery x-rays, abdomen	0.00	11.96	NA	0.54	12.50	NA	XXX
75731		A	Artery x-rays, adrenal gland	1.14	12.36	NA	0.59	14.09	NA	XXX
75731	26	A	Artery x-rays, adrenal gland	1.14	0.40	0.40	0.05	1.59	1.59	XXX
75731	TC	A	Artery x-rays, adrenal gland	0.00	11.96	NA	0.54	12.50	NA	XXX
75733		A	Artery x-rays, adrenals	1.31	12.43	NA	0.60	14.34	NA	XXX
75733	26	A	Artery x-rays, adrenals	1.31	0.47	0.47	0.06	1.84	1.84	XXX
75733	TC	A	Artery x-rays, adrenals	0.00	11.96	NA	0.54	12.50	NA	XXX
75736		A	Artery x-rays, pelvis	1.14	12.37	NA	0.59	14.10	NA	XXX
75736	26	A	Artery x-rays, pelvis	1.14	0.41	0.41	0.05	1.60	1.60	XXX
75736	TC	A	Artery x-rays, pelvis	0.00	11.96	NA	0.54	12.50	NA	XXX
75741		A	Artery x-rays, lung	1.31	12.42	NA	0.60	14.33	NA	XXX
75741	26	A	Artery x-rays, lung	1.31	0.46	0.46	0.06	1.83	1.83	XXX
75741	TC	A	Artery x-rays, lung	0.00	11.96	NA	0.54	12.50	NA	XXX
75743		A	Artery x-rays, lungs	1.66	12.54	NA	0.61	14.81	NA	XXX
75743	26	A	Artery x-rays, lungs	1.66	0.58	0.58	0.07	2.31	2.31	XXX
75743	TC	A	Artery x-rays, lungs	0.00	11.96	NA	0.54	12.50	NA	XXX
75746		A	Artery x-rays, lung	1.14	12.36	NA	0.59	14.09	NA	XXX
75746	26	A	Artery x-rays, lung	1.14	0.40	0.40	0.05	1.59	1.59	XXX
75746	TC	A	Artery x-rays, lung	0.00	11.96	NA	0.54	12.50	NA	XXX
75756		A	Artery x-rays, chest	1.14	12.44	NA	0.58	14.16	NA	XXX
75756	26	A	Artery x-rays, chest	1.14	0.48	0.48	0.04	1.66	1.66	XXX
75756	TC	A	Artery x-rays, chest	0.00	11.96	NA	0.54	12.50	NA	XXX
75774		A	Artery x-ray, each vessel	0.36	12.09	NA	0.56	13.01	NA	ZZZ
75774	26	A	Artery x-ray, each vessel	0.36	0.13	0.13	0.02	0.51	0.51	ZZZ
75774	TC	A	Artery x-ray, each vessel	0.00	11.96	NA	0.54	12.50	NA	ZZZ

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
75790		A	Visualize A-V shunt	1.84	1.93	NA	0.16	3.93	NA	XXX
75790	26	A	Visualize A-V shunt	1.84	0.64	0.64	0.09	2.57	2.57	XXX
75790	TC	A	Visualize A-V shunt	0.00	1.29	NA	0.07	1.36	NA	XXX
75801		A	Lymph vessel x-ray, arm/leg	0.81	5.42	NA	0.29	6.52	NA	XXX
75801	26	A	Lymph vessel x-ray, arm/leg	0.81	0.28	0.28	0.05	1.14	1.14	XXX
75801	TC	A	Lymph vessel x-ray, arm/leg	0.00	5.14	NA	0.24	5.38	NA	XXX
75803		A	Lymph vessel x-ray,arms/legs	1.17	5.55	NA	0.29	7.01	NA	XXX
75803	26	A	Lymph vessel x-ray,arms/legs	1.17	0.41	0.41	0.05	1.63	1.63	XXX
75803	TC	A	Lymph vessel x-ray,arms/legs	0.00	5.14	NA	0.24	5.38	NA	XXX
75805		A	Lymph vessel x-ray, trunk	0.81	6.08	NA	0.31	7.20	NA	XXX
75805	26	A	Lymph vessel x-ray, trunk	0.81	0.29	0.29	0.04	1.14	1.14	XXX
75805	TC	A	Lymph vessel x-ray, trunk	0.00	5.79	NA	0.27	6.06	NA	XXX
75807		A	Lymph vessel x-ray, trunk	1.17	6.20	NA	0.32	7.69	NA	XXX
75807	26	A	Lymph vessel x-ray, trunk	1.17	0.41	0.41	0.05	1.63	1.63	XXX
75807	TC	A	Lymph vessel x-ray, trunk	0.00	5.79	NA	0.27	6.06	NA	XXX
75809		A	Nonvascular shunt, x-ray	0.47	0.91	NA	0.06	1.44	NA	XXX
75809	26	A	Nonvascular shunt, x-ray	0.47	0.17	0.17	0.02	0.66	0.66	XXX
75809	TC	A	Nonvascular shunt, x-ray	0.00	0.74	NA	0.04	0.78	NA	XXX
75810		A	Vein x-ray, spleen/liver	1.14	12.36	NA	0.60	14.10	NA	XXX
75810	26	A	Vein x-ray, spleen/liver	1.14	0.40	0.40	0.06	1.60	1.60	XXX
75810	TC	A	Vein x-ray, spleen/liver	0.00	11.96	NA	0.54	12.50	NA	XXX
75820		A	Vein x-ray, arm/leg	0.70	1.15	NA	0.08	1.93	NA	XXX
75820	26	A	Vein x-ray, arm/leg	0.70	0.25	0.25	0.03	0.98	0.98	XXX
75820	TC	A	Vein x-ray, arm/leg	0.00	0.90	NA	0.05	0.95	NA	XXX
75822		A	Vein x-ray, arms/legs	1.06	1.77	NA	0.12	2.95	NA	XXX
75822	26	A	Vein x-ray, arms/legs	1.06	0.37	0.37	0.05	1.48	1.48	XXX
75822	TC	A	Vein x-ray, arms/legs	0.00	1.40	NA	0.07	1.47	NA	XXX
75825		A	Vein x-ray, trunk	1.14	12.36	NA	0.60	14.10	NA	XXX
75825	26	A	Vein x-ray, trunk	1.14	0.40	0.40	0.06	1.60	1.60	XXX
75825	TC	A	Vein x-ray, trunk	0.00	11.96	NA	0.54	12.50	NA	XXX
75827		A	Vein x-ray, chest	1.14	12.36	NA	0.59	14.09	NA	XXX
75827	26	A	Vein x-ray, chest	1.14	0.40	0.40	0.05	1.59	1.59	XXX
75827	TC	A	Vein x-ray, chest	0.00	11.96	NA	0.54	12.50	NA	XXX
75831		A	Vein x-ray, kidney	1.14	12.36	NA	0.59	14.09	NA	XXX
75831	26	A	Vein x-ray, kidney	1.14	0.40	0.40	0.05	1.59	1.59	XXX
75831	TC	A	Vein x-ray, kidney	0.00	11.96	NA	0.54	12.50	NA	XXX
75833		A	Vein x-ray, kidneys	1.49	12.49	NA	0.61	14.59	NA	XXX
75833	26	A	Vein x-ray, kidneys	1.49	0.53	0.53	0.07	2.09	2.09	XXX
75833	TC	A	Vein x-ray, kidneys	0.00	11.96	NA	0.54	12.50	NA	XXX
75840		A	Vein x-ray, adrenal gland	1.14	12.38	NA	0.61	14.13	NA	XXX
75840	26	A	Vein x-ray, adrenal gland	1.14	0.42	0.42	0.07	1.63	1.63	XXX
75840	TC	A	Vein x-ray, adrenal gland	0.00	11.96	NA	0.54	12.50	NA	XXX
75842		A	Vein x-ray, adrenal glands	1.49	12.48	NA	0.61	14.58	NA	XXX
75842	26	A	Vein x-ray, adrenal glands	1.49	0.52	0.52	0.07	2.08	2.08	XXX
75842	TC	A	Vein x-ray, adrenal glands	0.00	11.96	NA	0.54	12.50	NA	XXX
75860		A	Vein x-ray, neck	1.14	12.39	NA	0.60	14.13	NA	XXX
75860	26	A	Vein x-ray, neck	1.14	0.43	0.43	0.06	1.63	1.63	XXX
75860	TC	A	Vein x-ray, neck	0.00	11.96	NA	0.54	12.50	NA	XXX
75870		A	Vein x-ray, skull	1.14	12.38	NA	0.60	14.12	NA	XXX
75870	26	A	Vein x-ray, skull	1.14	0.42	0.42	0.06	1.62	1.62	XXX
75870	TC	A	Vein x-ray, skull	0.00	11.96	NA	0.54	12.50	NA	XXX
75872		A	Vein x-ray, skull	1.14	12.36	NA	0.59	14.09	NA	XXX
75872	26	A	Vein x-ray, skull	1.14	0.40	0.40	0.05	1.59	1.59	XXX
75872	TC	A	Vein x-ray, skull	0.00	11.96	NA	0.54	12.50	NA	XXX
75880		A	Vein x-ray, eye socket	0.70	1.17	NA	0.08	1.95	NA	XXX
75880	26	A	Vein x-ray, eye socket	0.70	0.27	0.27	0.03	1.00	1.00	XXX
75880	TC	A	Vein x-ray, eye socket	0.00	0.90	NA	0.05	0.95	NA	XXX
75885		A	Vein x-ray, liver	1.44	12.46	NA	0.60	14.50	NA	XXX
75885	26	A	Vein x-ray, liver	1.44	0.50	0.50	0.06	2.00	2.00	XXX
75885	TC	A	Vein x-ray, liver	0.00	11.96	NA	0.54	12.50	NA	XXX
75887		A	Vein x-ray, liver	1.44	12.46	NA	0.60	14.50	NA	XXX
75887	26	A	Vein x-ray, liver	1.44	0.50	0.50	0.06	2.00	2.00	XXX
75887	TC	A	Vein x-ray, liver	0.00	11.96	NA	0.54	12.50	NA	XXX
75889		A	Vein x-ray, liver	1.14	12.36	NA	0.59	14.09	NA	XXX
75889	26	A	Vein x-ray, liver	1.14	0.40	0.40	0.05	1.59	1.59	XXX
75889	TC	A	Vein x-ray, liver	0.00	11.96	NA	0.54	12.50	NA	XXX
75891		A	Vein x-ray, liver	1.14	12.36	NA	0.59	14.09	NA	XXX
75891	26	A	Vein x-ray, liver	1.14	0.40	0.40	0.05	1.59	1.59	XXX
75891	TC	A	Vein x-ray, liver	0.00	11.96	NA	0.54	12.50	NA	XXX
75893		A	Venous sampling by catheter	0.54	12.15	NA	0.56	13.25	NA	XXX
75893	26	A	Venous sampling by catheter	0.54	0.19	0.19	0.02	0.75	0.75	XXX
75893	TC	A	Venous sampling by catheter	0.00	11.96	NA	0.54	12.50	NA	XXX
75894		A	X-rays, transcath therapy	1.31	23.38	NA	1.12	25.81	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
75894	26	A	X-rays, transcath therapy	1.31	0.46	0.46	0.07	1.84	1.84	XXX
75894	TC	A	X-rays, transcath therapy	0.00	22.92	NA	1.05	23.97	NA	XXX
75896		A	X-rays, transcath therapy	1.31	20.42	NA	0.97	22.70	NA	XXX
75896	26	A	X-rays, transcath therapy	1.31	0.48	0.48	0.06	1.85	1.85	XXX
75896	TC	A	X-rays, transcath therapy	0.00	19.94	NA	0.91	20.85	NA	XXX
75898		A	Follow-up angiography	1.65	1.60	NA	0.12	3.37	NA	XXX
75898	26	A	Follow-up angiography	1.65	0.60	0.60	0.07	2.32	2.32	XXX
75898	TC	A	Follow-up angiography	0.00	1.00	NA	0.05	1.05	NA	XXX
75900		A	Arterial catheter exchange	0.49	20.09	NA	0.94	21.52	NA	XXX
75900	26	A	Arterial catheter exchange	0.49	0.17	0.17	0.02	0.68	0.68	XXX
75900	TC	A	Arterial catheter exchange	0.00	19.92	NA	0.92	20.84	NA	XXX
75940		A	X-ray placement, vein filter	0.54	12.15	NA	0.57	13.26	NA	XXX
75940	26	A	X-ray placement, vein filter	0.54	0.19	0.19	0.03	0.76	0.76	XXX
75940	TC	A	X-ray placement, vein filter	0.00	11.96	NA	0.54	12.50	NA	XXX
75945		A	Intravascular us	0.40	4.48	NA	0.23	5.11	NA	XXX
75945	26	A	Intravascular us	0.40	0.15	0.15	0.03	0.58	0.58	XXX
75945	TC	A	Intravascular us	0.00	4.33	NA	0.20	4.53	NA	XXX
75946		A	Intravascular us add-on	0.40	2.32	NA	0.14	2.86	NA	ZZZ
75946	26	A	Intravascular us add-on	0.40	0.14	0.14	0.03	0.57	0.57	ZZZ
75946	TC	A	Intravascular us add-on	0.00	2.18	NA	0.11	2.29	NA	ZZZ
75952		C	Endovasc repair abdom aorta	+0.00	0.00	0.00	0.00	0.00	0.00	XXX
75952	26	A	Endovasc repair abdom aorta	4.50	1.80	1.80	0.68	6.98	6.98	XXX
75952	TC	C	Endovasc repair abdom aorta	0.00	0.00	0.00	0.00	0.00	0.00	XXX
75953		C	Abdom aneurysm endovas rpr	+0.00	0.00	0.00	0.00	0.00	0.00	XXX
75953	26	A	Abdom aneurysm endovas rpr	1.36	0.54	0.54	0.68	2.58	2.58	XXX
75953	TC	C	Abdom aneurysm endovas rpr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
75960		A	Transcatheter intro, stent	0.82	14.45	NA	0.68	15.95	NA	XXX
75960	26	A	Transcatheter intro, stent	0.82	0.30	0.30	0.04	1.16	1.16	XXX
75960	TC	A	Transcatheter intro, stent	0.00	14.15	NA	0.64	14.79	NA	XXX
75961		A	Retrieval, broken catheter	4.25	11.46	NA	0.64	16.35	NA	XXX
75961	26	A	Retrieval, broken catheter	4.25	1.49	1.49	0.18	5.92	5.92	XXX
75961	TC	A	Retrieval, broken catheter	0.00	9.97	NA	0.46	10.43	NA	XXX
75962		A	Repair arterial blockage	0.54	15.15	NA	0.72	16.41	NA	XXX
75962	26	A	Repair arterial blockage	0.54	0.20	0.20	0.03	0.77	0.77	XXX
75962	TC	A	Repair arterial blockage	0.00	14.95	NA	0.69	15.64	NA	XXX
75964		A	Repair artery blockage, each	0.36	8.10	NA	0.38	8.84	NA	ZZZ
75964	26	A	Repair artery blockage, each	0.36	0.13	0.13	0.02	0.51	0.51	ZZZ
75964	TC	A	Repair artery blockage, each	0.00	7.97	NA	0.36	8.33	NA	ZZZ
75966		A	Repair arterial blockage	1.31	15.45	NA	0.75	17.51	NA	XXX
75966	26	A	Repair arterial blockage	1.31	0.50	0.50	0.06	1.87	1.87	XXX
75966	TC	A	Repair arterial blockage	0.00	14.95	NA	0.69	15.64	NA	XXX
75968		A	Repair artery blockage, each	0.36	8.11	NA	0.37	8.84	NA	ZZZ
75968	26	A	Repair artery blockage, each	0.36	0.14	0.14	0.01	0.51	0.51	ZZZ
75968	TC	A	Repair artery blockage, each	0.00	7.97	NA	0.36	8.33	NA	ZZZ
75970		A	Vascular biopsy	0.83	11.26	NA	0.54	12.63	NA	XXX
75970	26	A	Vascular biopsy	0.83	0.30	0.30	0.04	1.17	1.17	XXX
75970	TC	A	Vascular biopsy	0.00	10.96	NA	0.50	11.46	NA	XXX
75978		A	Repair venous blockage	0.54	15.14	NA	0.71	16.39	NA	XXX
75978	26	A	Repair venous blockage	0.54	0.19	0.19	0.02	0.75	0.75	XXX
75978	TC	A	Repair venous blockage	0.00	14.95	NA	0.69	15.64	NA	XXX
75980		A	Contrast xray exam bile duct	1.44	5.64	NA	0.30	7.38	NA	XXX
75980	26	A	Contrast xray exam bile duct	1.44	0.50	0.50	0.06	2.00	2.00	XXX
75980	TC	A	Contrast xray exam bile duct	0.00	5.14	NA	0.24	5.38	NA	XXX
75982		A	Contrast xray exam bile duct	1.44	6.29	NA	0.33	8.06	NA	XXX
75982	26	A	Contrast xray exam bile duct	1.44	0.50	0.50	0.06	2.00	2.00	XXX
75982	TC	A	Contrast xray exam bile duct	0.00	5.79	NA	0.27	6.06	NA	XXX
75984		A	Xray control catheter change	0.72	2.10	NA	0.12	2.94	NA	XXX
75984	26	A	Xray control catheter change	0.72	0.25	0.25	0.03	1.00	1.00	XXX
75984	TC	A	Xray control catheter change	0.00	1.85	NA	0.09	1.94	NA	XXX
75989		A	Abscess drainage under x-ray	1.19	3.41	NA	0.19	4.79	NA	XXX
75989	26	A	Abscess drainage under x-ray	1.19	0.42	0.42	0.05	1.66	1.66	XXX
75989	TC	A	Abscess drainage under x-ray	0.00	2.99	NA	0.14	3.13	NA	XXX
75992		A	Atherectomy, x-ray exam	0.54	15.15	NA	0.71	16.40	NA	XXX
75992	26	A	Atherectomy, x-ray exam	0.54	0.20	0.20	0.02	0.76	0.76	XXX
75992	TC	A	Atherectomy, x-ray exam	0.00	14.95	NA	0.69	15.64	NA	XXX
75993		A	Atherectomy, x-ray exam	0.36	8.11	NA	0.37	8.84	NA	ZZZ
75993	26	A	Atherectomy, x-ray exam	0.36	0.14	0.14	0.01	0.51	0.51	ZZZ
75993	TC	A	Atherectomy, x-ray exam	0.00	7.97	NA	0.36	8.33	NA	ZZZ
75994		A	Atherectomy, x-ray exam	1.31	15.45	NA	0.75	17.51	NA	XXX
75994	26	A	Atherectomy, x-ray exam	1.31	0.50	0.50	0.06	1.87	1.87	XXX
75994	TC	A	Atherectomy, x-ray exam	0.00	14.95	NA	0.69	15.64	NA	XXX
75995		A	Atherectomy, x-ray exam	1.31	15.42	NA	0.75	17.48	NA	XXX
75995	26	A	Atherectomy, x-ray exam	1.31	0.47	0.47	0.06	1.84	1.84	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
75995	TC	A	Atherectomy, x-ray exam	0.00	14.95	NA	0.69	15.64	NA	XXX
75996		A	Atherectomy, x-ray exam	0.36	8.09	NA	0.37	8.82	NA	ZZZ
75996	26	A	Atherectomy, x-ray exam	0.36	0.12	0.12	0.01	0.49	0.49	ZZZ
75996	TC	A	Atherectomy, x-ray exam	0.00	7.97	NA	0.36	8.33	NA	ZZZ
76000		A	Fluoroscope examination	0.17	1.31	NA	0.07	1.55	NA	XXX
76000	26	A	Fluoroscope examination	0.17	0.07	0.07	0.01	0.25	0.25	XXX
76000	TC	A	Fluoroscope examination	0.00	1.24	NA	0.06	1.30	NA	XXX
76001		A	Fluoroscope exam, extensive	0.67	2.73	NA	0.15	3.55	NA	XXX
76001	26	A	Fluoroscope exam, extensive	0.67	0.24	0.24	0.03	0.94	0.94	XXX
76001	TC	A	Fluoroscope exam, extensive	0.00	2.49	NA	0.12	2.61	NA	XXX
76003		A	Needle localization by x-ray	0.54	1.43	NA	0.09	2.06	NA	XXX
76003	26	A	Needle localization by x-ray	0.54	0.19	0.19	0.03	0.76	0.76	XXX
76003	TC	A	Needle localization by x-ray	0.00	1.24	NA	0.06	1.30	NA	XXX
76005		A	Fluoroguide for spine inject	0.60	1.41	NA	0.09	2.10	NA	XXX
76005	26	A	Fluoroguide for spine inject	0.60	0.17	0.17	0.03	0.80	0.80	XXX
76005	TC	A	Fluoroguide for spine inject	0.00	1.24	NA	0.06	1.30	NA	XXX
76006		A	X-ray stress view	0.41	0.20	0.20	0.04	0.65	0.65	XXX
76010		A	X-ray, nose to rectum	0.18	0.56	NA	0.03	0.77	NA	XXX
76010	26	A	X-ray, nose to rectum	0.18	0.06	0.06	0.01	0.25	0.25	XXX
76010	TC	A	X-ray, nose to rectum	0.00	0.50	NA	0.02	0.52	NA	XXX
76012		C	Percut vertebroplasty fluor	+0.00	0.00	0.00	0.00	0.00	0.00	XXX
76012	26	A	Percut vertebroplasty fluor	1.31	0.52	0.52	0.23	2.06	2.06	XXX
76012	TC	C	Percut vertebroplasty fluor	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76013		C	Percut vertebroplasty, ct	+0.00	0.00	0.00	0.00	0.00	0.00	XXX
76013	26	A	Percut vertebroplasty, ct	1.38	0.55	0.55	0.48	2.41	2.41	XXX
76013	TC	C	Percut vertebroplasty, ct	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76020		A	X-rays for bone age	0.19	0.57	NA	0.03	0.79	NA	XXX
76020	26	A	X-rays for bone age	0.19	0.07	0.07	0.01	0.27	0.27	XXX
76020	TC	A	X-rays for bone age	0.00	0.50	NA	0.02	0.52	NA	XXX
76040		A	X-rays, bone evaluation	0.27	0.84	NA	0.07	1.18	NA	XXX
76040	26	A	X-rays, bone evaluation	0.27	0.10	0.10	0.03	0.40	0.40	XXX
76040	TC	A	X-rays, bone evaluation	0.00	0.74	NA	0.04	0.78	NA	XXX
76061		A	X-rays, bone survey	0.45	1.11	NA	0.07	1.63	NA	XXX
76061	26	A	X-rays, bone survey	0.45	0.16	0.16	0.02	0.63	0.63	XXX
76061	TC	A	X-rays, bone survey	0.00	0.95	NA	0.05	1.00	NA	XXX
76062		A	X-rays, bone survey	0.54	1.56	NA	0.09	2.19	NA	XXX
76062	26	A	X-rays, bone survey	0.54	0.19	0.19	0.02	0.75	0.75	XXX
76062	TC	A	X-rays, bone survey	0.00	1.37	NA	0.07	1.44	NA	XXX
76065		A	X-rays, bone evaluation	0.70	0.95	NA	0.05	1.70	NA	XXX
76065	26	A	X-rays, bone evaluation	0.70	0.25	0.25	0.01	0.96	0.96	XXX
76065	TC	A	X-rays, bone evaluation	0.00	0.70	NA	0.04	0.74	NA	XXX
76066		A	Joint survey, single view	0.31	1.17	NA	0.07	1.55	NA	XXX
76066	26	A	Joint survey, single view	0.31	0.11	0.11	0.02	0.44	0.44	XXX
76066	TC	A	Joint survey, single view	0.00	1.06	NA	0.05	1.11	NA	XXX
76070		I	CT scan, bone density study	+0.25	2.90	NA	0.14	3.29	NA	XXX
76070	26	I	CT scan, bone density study	+0.25	0.10	0.10	0.01	0.36	0.36	XXX
76070	TC	I	CT scan, bone density study	+0.00	2.80	NA	0.13	2.93	NA	XXX
76075		A	Us exam, abdom, limited	0.30	3.05	NA	0.15	3.50	NA	XXX
76075	26	A	Us exam, abdom, limited	0.30	0.11	0.11	0.01	0.42	0.42	XXX
76075	TC	A	Us exam, abdom, limited	0.00	2.94	NA	0.14	3.08	NA	XXX
76076		A	Dual energy x-ray study	0.22	0.80	NA	0.05	1.07	NA	XXX
76076	26	A	Dual energy x-ray study	0.22	0.08	0.08	0.01	0.31	0.31	XXX
76076	TC	A	Dual energy x-ray study	0.00	0.72	NA	0.04	0.76	NA	XXX
76078		A	Radiographic absorptiometry	0.20	0.80	NA	0.05	1.05	NA	XXX
76078	26	A	Radiographic absorptiometry	0.20	0.08	0.08	0.01	0.29	0.29	XXX
76078	TC	A	Radiographic absorptiometry	0.00	0.72	NA	0.04	0.76	NA	XXX
76080		A	X-ray exam of fistula	0.54	1.19	NA	0.07	1.80	NA	XXX
76080	26	A	X-ray exam of fistula	0.54	0.19	0.19	0.02	0.75	0.75	XXX
76080	TC	A	X-ray exam of fistula	0.00	1.00	NA	0.05	1.05	NA	XXX
76085		A	Computer mammogram add-on	0.06	0.31	NA	0.02	0.39	NA	ZZZ
76085	26	A	Computer mammogram add-on	0.06	0.02	0.02	0.01	0.09	0.09	ZZZ
76085	TC	A	Computer mammogram add-on	0.00	0.29	NA	0.01	0.30	NA	XXX
76086		A	X-ray of mammary duct	0.36	2.62	NA	0.14	3.12	NA	XXX
76086	26	A	X-ray of mammary duct	0.36	0.13	0.13	0.02	0.51	0.51	XXX
76086	TC	A	X-ray of mammary duct	0.00	2.49	NA	0.12	2.61	NA	XXX
76088		A	X-ray of mammary ducts	0.45	3.64	NA	0.18	4.27	NA	XXX
76088	26	A	X-ray of mammary ducts	0.45	0.16	0.16	0.02	0.63	0.63	XXX
76088	TC	A	X-ray of mammary ducts	0.00	3.48	NA	0.16	3.64	NA	XXX
76090		A	Mammogram, one breast	0.70	1.25	NA	0.08	2.03	NA	XXX
76090	26	A	Mammogram, one breast	0.70	0.25	0.25	0.03	0.98	0.98	XXX
76090	TC	A	Mammogram, one breast	0.00	1.00	NA	0.05	1.05	NA	XXX
76091		A	Mammogram, both breasts	0.87	1.54	NA	0.09	2.50	NA	XXX
76091	26	A	Mammogram, both breasts	0.87	0.30	0.30	0.03	1.20	1.20	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
76091	TC	A	Mammogram, both breasts	0.00	1.24	NA	0.06	1.30	NA	XXX
76092		A	Mammogram, screening	0.70	1.44	NA	0.09	2.23	NA	XXX
76092	26	A	Mammogram, screening	0.70	0.25	0.25	0.03	0.98	0.98	XXX
76092	TC	A	Mammogram, screening	0.00	1.19	NA	0.06	1.25	NA	XXX
76093		A	Magnetic image, breast	1.63	17.31	NA	0.83	19.77	NA	XXX
76093	26	A	Magnetic image, breast	1.63	0.57	0.57	0.07	2.27	2.27	XXX
76093	TC	A	Magnetic image, breast	0.00	16.74	NA	0.76	17.50	NA	XXX
76094		A	Magnetic image, both breasts	1.63	23.28	NA	1.10	26.01	NA	XXX
76094	26	A	Magnetic image, both breasts	1.63	0.57	0.57	0.07	2.27	2.27	XXX
76094	TC	A	Magnetic image, both breasts	0.00	22.71	NA	1.03	23.74	NA	XXX
76095		A	Stereotactic breast biopsy	1.59	7.36	NA	0.40	9.35	NA	XXX
76095	26	A	Stereotactic breast biopsy	1.59	0.56	0.56	0.09	2.24	2.24	XXX
76095	TC	A	Stereotactic breast biopsy	0.00	6.80	NA	0.31	7.11	NA	XXX
76096		A	X-ray of needle wire, breast	0.56	1.44	NA	0.09	2.09	NA	XXX
76096	26	A	X-ray of needle wire, breast	0.56	0.20	0.20	0.03	0.79	0.79	XXX
76096	TC	A	X-ray of needle wire, breast	0.00	1.24	NA	0.06	1.30	NA	XXX
76098		A	X-ray exam, breast specimen	0.16	0.45	NA	0.03	0.64	NA	XXX
76098	26	A	X-ray exam, breast specimen	0.16	0.06	0.06	0.01	0.23	0.23	XXX
76098	TC	A	X-ray exam, breast specimen	0.00	0.39	NA	0.02	0.41	NA	XXX
76100		A	X-ray exam of body section	0.58	1.38	NA	0.09	2.05	NA	XXX
76100	26	A	X-ray exam of body section	0.58	0.20	0.20	0.03	0.81	0.81	XXX
76100	TC	A	X-ray exam of body section	0.00	1.18	NA	0.06	1.24	NA	XXX
76101		A	Complex body section x-ray	0.58	1.55	NA	0.10	2.23	NA	XXX
76101	26	A	Complex body section x-ray	0.58	0.20	0.20	0.03	0.81	0.81	XXX
76101	TC	A	Complex body section x-ray	0.00	1.35	NA	0.07	1.42	NA	XXX
76102		A	Complex body section x-rays	0.58	1.84	NA	0.12	2.54	NA	XXX
76102	26	A	Complex body section x-rays	0.58	0.20	0.20	0.03	0.81	0.81	XXX
76102	TC	A	Complex body section x-rays	0.00	1.64	NA	0.09	1.73	NA	XXX
76120		A	Cine/video x-rays	0.38	1.14	NA	0.07	1.59	NA	XXX
76120	26	A	Cine/video x-rays	0.38	0.14	0.14	0.02	0.54	0.54	XXX
76120	TC	A	Cine/video x-rays	0.00	1.00	NA	0.05	1.05	NA	XXX
76125		A	Cine/ video x-rays add-on	0.27	0.84	NA	0.05	1.16	NA	ZZZ
76125	26	A	Cine/ video x-rays add-on	0.27	0.10	0.10	0.01	0.38	0.38	ZZZ
76125	TC	A	Cine/ video x-rays add-on	0.00	0.74	NA	0.04	0.78	NA	ZZZ
76140		I	X-ray consultation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76150		A	X-ray exam, dry process	0.00	0.39	NA	0.02	0.41	NA	XXX
76350		C	Special x-ray contrast study	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76355		A	CAT scan for localization	1.21	8.28	NA	0.41	9.90	NA	XXX
76355	26	A	CAT scan for localization	1.21	0.44	0.44	0.06	1.71	1.71	XXX
76355	TC	A	CAT scan for localization	0.00	7.84	NA	0.35	8.19	NA	XXX
76360		A	CAT scan for needle biopsy	1.16	8.24	NA	0.40	9.80	NA	XXX
76360	26	A	CAT scan for needle biopsy	1.16	0.40	0.40	0.05	1.61	1.61	XXX
76360	TC	A	CAT scan for needle biopsy	0.00	7.84	NA	0.35	8.19	NA	XXX
76362		A	Cat scan for tissue ablation	4.00	9.24	NA	1.38	14.62	NA	XXX
76362	26	A	Cat scan for tissue ablation	4.00	1.40	1.40	0.17	5.57	5.57	XXX
76362	TC	A	Cat scan for tissue ablation	0.00	7.84	NA	1.21	9.05	NA	XXX
76370		A	CAT scan for therapy guide	0.85	3.10	NA	0.17	4.12	NA	XXX
76370	26	A	CAT scan for therapy guide	0.85	0.30	0.30	0.04	1.19	1.19	XXX
76370	TC	A	CAT scan for therapy guide	0.00	2.80	NA	0.13	2.93	NA	XXX
76375		A	3d/holograph reconstr add-on	0.16	3.42	NA	0.16	3.74	NA	XXX
76375	26	A	3d/holograph reconstr add-on	0.16	0.06	0.06	0.01	0.23	0.23	XXX
76375	TC	A	3d/holograph reconstr add-on	0.00	3.36	NA	0.15	3.51	NA	XXX
76380		A	CAT scan follow-up study	0.98	3.66	NA	0.19	4.83	NA	XXX
76380	26	A	CAT scan follow-up study	0.98	0.34	0.34	0.04	1.36	1.36	XXX
76380	TC	A	CAT scan follow-up study	0.00	3.32	NA	0.15	3.47	NA	XXX
76390		A	Mr spectroscopy	1.40	11.14	NA	0.55	13.09	NA	XXX
76390	26	A	Mr spectroscopy	1.40	0.50	0.50	0.06	1.96	1.96	XXX
76390	TC	A	Mr spectroscopy	0.00	10.64	NA	0.49	11.13	NA	XXX
76393		A	Mr guidance for needle place	1.50	11.16	NA	0.53	13.19	NA	XXX
76393	26	A	Mr guidance for needle place	1.50	0.52	0.52	0.07	2.09	2.09	XXX
76393	TC	A	Mr guidance for needle place	0.00	10.64	NA	0.46	11.10	NA	XXX
76394		A	Mri for tissue ablation	4.25	12.13	NA	1.43	17.81	NA	XXX
76394	26	A	Mri for tissue ablation	4.25	1.49	1.49	0.14	5.88	5.88	XXX
76394	TC	A	Mri for tissue ablation	0.00	10.64	NA	1.29	11.93	NA	XXX
76400		A	Magnetic image, bone marrow	1.60	11.20	NA	0.56	13.36	NA	XXX
76400	26	A	Magnetic image, bone marrow	1.60	0.56	0.56	0.07	2.23	2.23	XXX
76400	TC	A	Magnetic image, bone marrow	0.00	10.64	NA	0.49	11.13	NA	XXX
76490		A	Us for tissue ablation	2.00	2.13	NA	0.36	4.49	NA	XXX
76490	26	A	Us for tissue ablation	2.00	0.69	0.69	0.12	2.81	2.81	XXX
76490	TC	A	Us for tissue ablation	0.00	1.44	NA	0.24	1.68	NA	XXX
76499		C	Radiographic procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76499	26	C	Radiographic procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76499	TC	C	Radiographic procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
76506		A	Echo exam of head	0.63	1.61	NA	0.10	2.34	NA	XXX
76506	26	A	Echo exam of head	0.63	0.26	0.26	0.03	0.92	0.92	XXX
76506	TC	A	Echo exam of head	0.00	1.35	NA	0.07	1.42	NA	XXX
76511		A	Echo exam of eye	0.94	2.37	NA	0.08	3.39	NA	XXX
76511	26	A	Echo exam of eye	0.94	0.45	0.45	0.02	1.41	1.41	XXX
76511	TC	A	Echo exam of eye	0.00	1.92	NA	0.06	1.98	NA	XXX
76512		A	Echo exam of eye	0.66	2.49	NA	0.09	3.24	NA	XXX
76512	26	A	Echo exam of eye	0.66	0.31	0.31	0.01	0.98	0.98	XXX
76512	TC	A	Echo exam of eye	0.00	2.18	NA	0.08	2.26	NA	XXX
76513		A	Echo exam of eye, water bath	0.66	2.90	NA	0.09	3.65	NA	XXX
76513	26	A	Echo exam of eye, water bath	0.66	0.32	0.32	0.01	0.99	0.99	XXX
76513	TC	A	Echo exam of eye, water bath	0.00	2.58	NA	0.08	2.66	NA	XXX
76516		A	Echo exam of eye	0.54	2.04	NA	0.07	2.65	NA	XXX
76516	26	A	Echo exam of eye	0.54	0.26	0.26	0.01	0.81	0.81	XXX
76516	TC	A	Echo exam of eye	0.00	1.78	NA	0.06	1.84	NA	XXX
76519		A	Echo exam of eye	0.54	1.91	NA	0.07	2.52	NA	XXX
76519	26	A	Echo exam of eye	0.54	0.26	0.26	0.01	0.81	0.81	XXX
76519	TC	A	Echo exam of eye	0.00	1.65	NA	0.06	1.71	NA	XXX
76529		A	Echo exam of eye	0.57	2.70	NA	0.08	3.35	NA	XXX
76529	26	A	Echo exam of eye	0.57	0.27	0.27	0.01	0.85	0.85	XXX
76529	TC	A	Echo exam of eye	0.00	2.43	NA	0.07	2.50	NA	XXX
76536		A	Us exam of head and neck	0.56	1.55	NA	0.09	2.20	NA	XXX
76536	26	A	Us exam of head and neck	0.56	0.20	0.20	0.02	0.78	0.78	XXX
76536	TC	A	Us exam of head and neck	0.00	1.35	NA	0.07	1.42	NA	XXX
76604		A	Us exam, chest, b-scan	0.55	1.43	NA	0.08	2.06	NA	XXX
76604	26	A	Us exam, chest, b-scan	0.55	0.19	0.19	0.02	0.76	0.76	XXX
76604	TC	A	Us exam, chest, b-scan	0.00	1.24	NA	0.06	1.30	NA	XXX
76645		A	Us exam, breast(s)	0.54	1.19	NA	0.08	1.81	NA	XXX
76645	26	A	Us exam, breast(s)	0.54	0.19	0.19	0.03	0.76	0.76	XXX
76645	TC	A	Us exam, breast(s)	0.00	1.00	NA	0.05	1.05	NA	XXX
76700		A	Us exam, abdom, complete	0.81	2.15	NA	0.13	3.09	NA	XXX
76700	26	A	Us exam, abdom, complete	0.81	0.28	0.28	0.04	1.13	1.13	XXX
76700	TC	A	Us exam, abdom, complete	0.00	1.87	NA	0.09	1.96	NA	XXX
76705		A	Us exam, abdom, limited	0.59	1.56	NA	0.10	2.25	NA	XXX
76705	26	A	Us exam, abdom, limited	0.59	0.21	0.21	0.03	0.83	0.83	XXX
76705	TC	A	Us exam, abdom, limited	0.00	1.35	NA	0.07	1.42	NA	XXX
76770		A	Us exam abdo back wall, comp	0.74	2.13	NA	0.12	2.99	NA	XXX
76770	26	A	Us exam abdo back wall, comp	0.74	0.26	0.26	0.03	1.03	1.03	XXX
76770	TC	A	Us exam abdo back wall, comp	0.00	1.87	NA	0.09	1.96	NA	XXX
76775		A	Us exam abdo back wall, lim	0.58	1.55	NA	0.10	2.23	NA	XXX
76775	26	A	Us exam abdo back wall, lim	0.58	0.20	0.20	0.03	0.81	0.81	XXX
76775	TC	A	Us exam abdo back wall, lim	0.00	1.35	NA	0.07	1.42	NA	XXX
76778		A	Us exam kidney transplant	0.74	2.13	NA	0.12	2.99	NA	XXX
76778	26	A	Us exam kidney transplant	0.74	0.26	0.26	0.03	1.03	1.03	XXX
76778	TC	A	Us exam kidney transplant	0.00	1.87	NA	0.09	1.96	NA	XXX
76800		A	Us exam, spinal canal	1.13	1.73	NA	0.11	2.97	NA	XXX
76800	26	A	Us exam, spinal canal	1.13	0.38	0.38	0.04	1.55	1.55	XXX
76800	TC	A	Us exam, spinal canal	0.00	1.35	NA	0.07	1.42	NA	XXX
76805		A	Us exam, pg uterus, compl	0.99	2.35	NA	0.14	3.48	NA	XXX
76805	26	A	Us exam, pg uterus, compl	0.99	0.36	0.36	0.04	1.39	1.39	XXX
76805	TC	A	Us exam, pg uterus, compl	0.00	1.99	NA	0.10	2.09	NA	XXX
76810		A	Us exam, pg uterus, mult	1.97	4.74	NA	0.25	6.96	NA	XXX
76810	26	A	Us exam, pg uterus, mult	1.97	0.75	0.75	0.07	2.79	2.79	XXX
76810	TC	A	Us exam, pg uterus, mult	0.00	3.99	NA	0.18	4.17	NA	XXX
76815		A	Us exam, pg uterus limit	0.65	1.60	NA	0.09	2.34	NA	XXX
76815	26	A	Us exam, pg uterus limit	0.65	0.25	0.25	0.02	0.92	0.92	XXX
76815	TC	A	Us exam, pg uterus limit	0.00	1.35	NA	0.07	1.42	NA	XXX
76816		A	Us exam pg uterus repeat	0.57	1.28	NA	0.07	1.92	NA	XXX
76816	26	A	Us exam pg uterus repeat	0.57	0.22	0.22	0.02	0.81	0.81	XXX
76816	TC	A	Us exam pg uterus repeat	0.00	1.06	NA	0.05	1.11	NA	XXX
76818		A	Fetal biophy profile w/nst	1.05	1.94	NA	0.12	3.11	NA	XXX
76818	26	A	Fetal biophy profile w/nst	1.05	0.41	0.41	0.04	1.50	1.50	XXX
76818	TC	A	Fetal biophy profile w/nst	0.00	1.53	NA	0.08	1.61	NA	XXX
76819		A	Fetal biophys profil w/o nst	0.77	1.83	NA	0.10	2.70	NA	XXX
76819	26	A	Fetal biophys profil w/o nst	0.77	0.30	0.30	0.02	1.09	1.09	XXX
76819	TC	A	Fetal biophys profil w/o nst	0.00	1.53	NA	0.08	1.61	NA	XXX
76825		A	Echo exam of fetal heart	1.67	2.50	NA	0.15	4.32	NA	XXX
76825	26	A	Echo exam of fetal heart	1.67	0.63	0.63	0.06	2.36	2.36	XXX
76825	TC	A	Echo exam of fetal heart	0.00	1.87	NA	0.09	1.96	NA	XXX
76826		A	Echo exam of fetal heart	0.83	0.97	NA	0.07	1.87	NA	XXX
76826	26	A	Echo exam of fetal heart	0.83	0.30	0.30	0.03	1.16	1.16	XXX
76826	TC	A	Echo exam of fetal heart	0.00	0.67	NA	0.04	0.71	NA	XXX
76827		A	Echo exam of fetal heart	0.58	1.85	NA	0.12	2.55	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
76827	26	A	Echo exam of fetal heart	0.58	0.22	0.22	0.02	0.82	0.82	XXX
76827	TC	A	Echo exam of fetal heart	0.00	1.63	NA	0.10	1.73	NA	XXX
76828		A	Echo exam of fetal heart	0.56	1.29	NA	0.09	1.94	NA	XXX
76828	26	A	Echo exam of fetal heart	0.56	0.23	0.23	0.02	0.81	0.81	XXX
76828	TC	A	Echo exam of fetal heart	0.00	1.06	NA	0.07	1.13	NA	XXX
76830		A	Us exam, transvaginal	0.69	1.68	NA	0.11	2.48	NA	XXX
76830	26	A	Us exam, transvaginal	0.69	0.24	0.24	0.03	0.96	0.96	XXX
76830	TC	A	Us exam, transvaginal	0.00	1.44	NA	0.08	1.52	NA	XXX
76831		A	Echo exam, uterus	0.72	1.71	NA	0.10	2.53	NA	XXX
76831	26	A	Echo exam, uterus	0.72	0.27	0.27	0.02	1.01	1.01	XXX
76831	TC	A	Echo exam, uterus	0.00	1.44	NA	0.08	1.52	NA	XXX
76856		A	Us exam, pelvic, complete	0.69	1.68	NA	0.11	2.48	NA	XXX
76856	26	A	Us exam, pelvic, complete	0.69	0.24	0.24	0.03	0.96	0.96	XXX
76856	TC	A	Us exam, pelvic, complete	0.00	1.44	NA	0.08	1.52	NA	XXX
76857		A	Us exam, pelvic, limited	0.38	1.13	NA	0.07	1.58	NA	XXX
76857	26	A	Us exam, pelvic, limited	0.38	0.13	0.13	0.02	0.53	0.53	XXX
76857	TC	A	Us exam, pelvic, limited	0.00	1.00	NA	0.05	1.05	NA	XXX
76870		A	Us exam, scrotum	0.64	1.66	NA	0.11	2.41	NA	XXX
76870	26	A	Us exam, scrotum	0.64	0.22	0.22	0.03	0.89	0.89	XXX
76870	TC	A	Us exam, scrotum	0.00	1.44	NA	0.08	1.52	NA	XXX
76872		A	Echo exam, transrectal	0.69	1.68	NA	0.12	2.49	NA	XXX
76872	26	A	Echo exam, transrectal	0.69	0.24	0.24	0.04	0.97	0.97	XXX
76872	TC	A	Echo exam, transrectal	0.00	1.44	NA	0.08	1.52	NA	XXX
76873		A	Echograp trans r, pros study	1.55	2.53	NA	0.21	4.29	NA	XXX
76873	26	A	Echograp trans r, pros study	1.55	0.54	0.54	0.08	2.17	2.17	XXX
76873	TC	A	Echograp trans r, pros study	0.00	1.99	NA	0.13	2.12	NA	XXX
76880		A	Us exam, extremity	0.59	1.56	NA	0.10	2.25	NA	XXX
76880	26	A	Us exam, extremity	0.59	0.21	0.21	0.03	0.83	0.83	XXX
76880	TC	A	Us exam, extremity	0.00	1.35	NA	0.07	1.42	NA	XXX
76885		A	Us exam infant hips, dynamic	0.74	1.70	NA	0.11	2.55	NA	XXX
6885	26	A	Us exam infant hips, dynamic	0.74	0.26	0.26	0.03	1.03	1.03	XXX
76885	TC	A	Us exam infant hips, dynamic	0.00	1.44	NA	0.08	1.52	NA	XXX
76886		A	Us exam infant hips, static	0.62	1.57	NA	0.10	2.29	NA	XXX
76886	26	A	Us exam infant hips, static	0.62	0.22	0.22	0.03	0.87	0.87	XXX
76886	TC	A	Us exam infant hips, static	0.00	1.35	NA	0.07	1.42	NA	XXX
76930		A	Echo guide, cardiocentesis	0.67	1.71	NA	0.10	2.48	NA	XXX
76930	26	A	Echo guide, cardiocentesis	0.67	0.27	0.27	0.02	0.96	0.96	XXX
76930	TC	A	Echo guide, cardiocentesis	0.00	1.44	NA	0.08	1.52	NA	XXX
76932		A	Echo guide for heart biopsy	0.67	1.71	NA	0.10	2.48	NA	XXX
76932	26	A	Echo guide for heart biopsy	0.67	0.27	0.27	0.02	0.96	0.96	XXX
76932	TC	A	Echo guide for heart biopsy	0.00	1.44	NA	0.08	1.52	NA	XXX
76936		A	Echo guide for artery repair	1.99	6.68	NA	0.39	9.06	NA	XXX
76936	26	A	Echo guide for artery repair	1.99	0.70	0.70	0.11	2.80	2.80	XXX
76936	TC	A	Echo guide for artery repair	0.00	5.98	NA	0.28	6.26	NA	XXX
76941		A	Echo guide for transfusion	1.34	1.98	NA	0.13	3.45	NA	XXX
76941	26	A	Echo guide for transfusion	1.34	0.53	0.53	0.06	1.93	1.93	XXX
76941	TC	A	Echo guide for transfusion	0.00	1.45	NA	0.07	1.52	NA	XXX
76942		A	Echo guide for biopsy	0.67	1.67	NA	0.12	2.46	NA	XXX
76942	26	A	Echo guide for biopsy	0.67	0.23	0.23	0.04	0.94	0.94	XXX
76942	TC	A	Echo guide for biopsy	0.00	1.44	NA	0.08	1.52	NA	XXX
76945		A	Echo guide, villus sampling	0.67	1.69	NA	0.10	2.46	NA	XXX
76945	26	A	Echo guide, villus sampling	0.67	0.24	0.24	0.03	0.94	0.94	XXX
76945	TC	A	Echo guide, villus sampling	0.00	1.45	NA	0.07	1.52	NA	XXX
76946		A	Echo guide for amniocentesis	0.38	1.59	NA	0.09	2.06	NA	XXX
76946	26	A	Echo guide for amniocentesis	0.38	0.15	0.15	0.01	0.54	0.54	XXX
76946	TC	A	Echo guide for amniocentesis	0.00	1.44	NA	0.08	1.52	NA	XXX
76948		A	Echo guide, ova aspiration	0.38	1.57	NA	0.10	2.05	NA	XXX
76948	26	A	Echo guide, ova aspiration	0.38	0.13	0.13	0.02	0.53	0.53	XXX
76948	TC	A	Echo guide, ova aspiration	0.00	1.44	NA	0.08	1.52	NA	XXX
76950		A	Echo guidance radiotherapy	0.58	1.45	NA	0.09	2.12	NA	XXX
76950	26	A	Echo guidance radiotherapy	0.58	0.21	0.21	0.03	0.82	0.82	XXX
76950	TC	A	Echo guidance radiotherapy	0.00	1.24	NA	0.06	1.30	NA	XXX
76965		A	Echo guidance radiotherapy	1.34	5.75	NA	0.31	7.40	NA	XXX
76965	26	A	Echo guidance radiotherapy	1.34	0.46	0.46	0.07	1.87	1.87	XXX
76965	TC	A	Echo guidance radiotherapy	0.00	5.29	NA	0.24	5.53	NA	XXX
76970		A	Ultrasound exam follow-up	0.40	1.14	NA	0.07	1.61	NA	XXX
76970	26	A	Ultrasound exam follow-up	0.40	0.14	0.14	0.02	0.56	0.56	XXX
76970	TC	A	Ultrasound exam follow-up	0.00	1.00	NA	0.05	1.05	NA	XXX
76975		A	GI endoscopic ultrasound	0.81	1.73	NA	0.11	2.65	NA	XXX
76975	26	A	GI endoscopic ultrasound	0.81	0.29	0.29	0.03	1.13	1.13	XXX
76975	TC	A	GI endoscopic ultrasound	0.00	1.44	NA	0.08	1.52	NA	XXX
76977		A	Us bone density measure	0.05	0.80	NA	0.05	0.90	NA	XXX
76977	26	A	Us bone density measure	0.05	0.02	0.02	0.01	0.08	0.08	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
76977	TC	A	Us bone density measure	0.00	0.78	NA	0.04	0.82	NA	XXX
76986		A	Ultrasound guide intraoper	1.20	2.91	NA	0.19	4.30	NA	XXX
76986	26	A	Ultrasound guide intraoper	1.20	0.42	0.42	0.07	1.69	1.69	XXX
76986	TC	A	Ultrasound guide intraoper	0.00	2.49	NA	0.12	2.61	NA	XXX
76999		C	Echo examination procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76999	26	C	Echo examination procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76999	TC	C	Echo examination procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77261		A	Radiation therapy planning	1.39	0.56	0.56	0.06	2.01	2.01	XXX
77262		A	Radiation therapy planning	2.11	0.82	0.82	0.09	3.02	3.02	XXX
77263		A	Radiation therapy planning	3.14	1.23	1.23	0.13	4.50	4.50	XXX
77280		A	Set radiation therapy field	0.70	3.55	NA	0.18	4.43	NA	XXX
77280	26	A	Set radiation therapy field	0.70	0.25	0.25	0.03	0.98	0.98	XXX
77280	TC	A	Set radiation therapy field	0.00	3.30	NA	0.15	3.45	NA	XXX
77285		A	Set radiation therapy field	1.05	5.67	NA	0.29	7.01	NA	XXX
77285	26	A	Set radiation therapy field	1.05	0.38	0.38	0.04	1.47	1.47	XXX
77285	TC	A	Set radiation therapy field	0.00	5.29	NA	0.25	5.54	NA	XXX
77290		A	Set radiation therapy field	1.56	6.74	NA	0.35	8.65	NA	XXX
77290	26	A	Set radiation therapy field	1.56	0.56	0.56	0.06	2.18	2.18	XXX
77290	TC	A	Set radiation therapy field	0.00	6.18	NA	0.29	6.47	NA	XXX
77295		A	Set radiation therapy field	4.57	28.18	NA	1.41	34.16	NA	XXX
77295	26	A	Set radiation therapy field	4.57	1.65	1.65	0.18	6.40	6.40	XXX
77295	TC	A	Set radiation therapy field	0.00	26.53	NA	1.23	27.76	NA	XXX
77299		C	Radiation therapy planning	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77299	26	C	Radiation therapy planning	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77299	TC	C	Radiation therapy planning	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77300		A	Radiation therapy dose plan	0.62	1.50	NA	0.09	2.21	NA	XXX
77300	26	A	Radiation therapy dose plan	0.62	0.22	0.22	0.03	0.87	0.87	XXX
77300	TC	A	Radiation therapy dose plan	0 00	1.28	NA	0.06	1.34	NA	XXX
77301		A	Radiotherapy dos plan, imrt	8.00	29.72	NA	1.41	39.13	NA	XXX
77301	26	A	Radiotherapy dos plan, imrt	8.00	3.19	3.19	0.18	11.37	11.37	XXX
77301	TC	A	Radiotherapy dos plan, imrt	0.00	26.53	NA	1.23	27.76	NA	XXX
77305		A	Radiation therapy dose plan	0.70	2.01	NA	0.12	2.83	NA	XXX
77305	26	A	Radiation therapy dose plan	0.70	0.25	0.25	0.03	0.98	0.98	XXX
77305	TC	A	Radiation therapy dose plan	0.00	1.76	NA	0.09	1.85	NA	XXX
77310		A	Radiation therapy dose plan	1.05	2.59	NA	0.15	3.79	NA	XXX
77310	26	A	Radiation therapy dose plan	1.05	0.38	0.38	0.04	1.47	1.47	XXX
77310	TC	A	Radiation therapy dose plan	0.00	2.21	NA	0.11	2.32	NA	XXX
77315		A	Radiation therapy dose plan	1.56	3.09	NA	0.18	4.83	NA	XXX
77315	26	A	Radiation therapy dose plan	1.56	0.56	0.56	0.06	2.18	2.18	XXX
77315	TC	A	Radiation therapy dose plan	0.00	2.53	NA	0.12	2.65	NA	XXX
77321		A	Radiation therapy port plan	0.95	4.18	NA	0.21	5.34	NA	XXX
77321	26	A	Radiation therapy port plan	0.95	0.34	0.34	0.04	1.33	1.33	XXX
77321	TC	A	Radiation therapy port plan	0.00	3.84	NA	0.17	4.01	NA	XXX
77326		A	Radiation therapy dose plan	0.93	2.58	NA	0.15	3.66	NA	XXX
77326	26	A	Radiation therapy dose plan	0.93	0.34	0.34	0.04	1.31	1.31	XXX
77326	TC	A	Radiation therapy dose plan	0.00	2.24	NA	0.11	2.35	NA	XXX
77327		A	Radiation therapy dose plan	1.39	3.80	NA	0.21	5.40	NA	XXX
77327	26	A	Radiation therapy dose plan	1.39	0.50	0.50	0.06	1.95	1.95	XXX
77327	TC	A	Radiation therapy dose plan	0.00	3.30	NA	0.15	3.45	NA	XXX
77328		A	Radiation therapy dose plan	2.09	5.46	NA	0.30	7.85	NA	XXX
77328	26	A	Radiation therapy dose plan	2.09	0.75	0.75	0.09	2.93	2.93	XXX
77328	TC	A	Radiation therapy dose plan	0.00	4.71	NA	0.21	4.92	NA	XXX
77331		A	Special radiation dosimetry	0.87	0.79	NA	0.06	1.72	NA	XXX
77331	26	A	Special radiation dosimetry	0.87	0.31	0.31	0.04	1.22	1.22	XXX
77331	TC	A	Special radiation dosimetry	0.00	0.48	NA	0.02	0.50	NA	XXX
77332		A	Radiation treatment aid(s)	0.54	1.47	NA	0.08	2.09	NA	XXX
77332	26	A	Radiation treatment aid(s)	0.54	0.19	0.19	0.02	0.75	0.75	XXX
77332	TC	A	Radiation treatment aid(s)	0.00	1.28	NA	0.06	1.34	NA	XXX
77333		A	Radiation treatment aid(s)	0.84	2.10	NA	0.13	3.07	NA	XXX
77333	26	A	Radiation treatment aid(s)	0.84	0.30	0.30	0.04	1.18	1.18	XXX
77333	TC	A	Radiation treatment aid(s)	0.00	1.80	NA	0.09	1.89	NA	XXX
77334		A	Radiation treatment aid(s)	1.24	3.54	NA	0.19	4.97	NA	XXX
77334	26	A	Radiation treatment aid(s)	1.24	0.45	0.45	0.05	1.74	1.74	XXX
77334	TC	A	Radiation treatment aid(s)	0.00	3.09	NA	0.14	3.23	NA	XXX
77336		A	Radiation physics consult	0.00	2.83	NA	0.13	2.96	NA	XXX
77370		A	Radiation physics consult	0.00	3.31	NA	0.15	3.46	NA	XXX
77399		C	External radiation dosimetry	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77399	26	C	External radiation dosimetry	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77399	TC	C	External radiation dosimetry	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77401		A	Radiation treatment delivery	0.00	1.68	NA	0.09	1.77	NA	XXX
77402		A	Radiation treatment delivery	0.00	1.68	NA	0.09	1.77	NA	XXX
77403		A	Radiation treatment delivery	0.00	1.68	NA	0.09	1.77	NA	XXX
77404		A	Radiation treatment delivery	0.00	1.68	NA	0.09	1.77	NA	XXX

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
77406		A	Radiation treatment delivery	0.00	1.68	NA	0.09	1.77	NA	XXX
77407		A	Radiation treatment delivery	0.00	1.98	NA	0.10	2.08	NA	XXX
77408		A	Radiation treatment delivery	0.00	1.98	NA	0.10	2.08	NA	XXX
77409		A	Radiation treatment delivery	0.00	1.98	NA	0.10	2.08	NA	XXX
77411		A	Radiation treatment delivery	0.00	1.98	NA	0.10	2.08	NA	XXX
77412		A	Radiation treatment delivery	0.00	2.21	NA	0.11	2.32	NA	XXX
77413		A	Radiation treatment delivery	0.00	2.21	NA	0.11	2.32	NA	XXX
77414		A	Radiation treatment delivery	0.00	2.21	NA	0.11	2.32	NA	XXX
77416		A	Radiation treatment delivery	0.00	2.21	NA	0.11	2.32	NA	XXX
77417		A	Radiology port film(s)	0.00	0.56	NA	0.03	0.59	NA	XXX
77418		A	Radiation tx delivery, imrt	0.00	16.07	NA	0.11	16.18	NA	XXX
77427		A	Radiation tx management, x5	3.31	1.19	1.19	0.14	4.64	4.64	XXX
77431		A	Radiation therapy management	1.81	0.73	0.73	0.07	2.61	2.61	XXX
77432		A	Stereotactic radiation trmt	7.93	3.25	3.25	0.33	11.51	11.51	XXX
77470		A	Special radiation treatment	2.09	11.34	NA	0.58	14.01	NA	XXX
77470	26	A	Special radiation treatment	2.09	0.75	0.75	0.09	2.93	2.93	XXX
77470	TC	A	Special radiation treatment	0.00	10.59	NA	0.49	11.08	NA	XXX
77499		C	Radiation therapy management	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77499	26	C	Radiation therapy management	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77499	TC	C	Radiation therapy management	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77520		C	Proton trmt, simple w/o comp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77522		C	Proton trmt, simple w/comp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77523		C	Proton trmt, intermediate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77525		C	Proton treatment, complex	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77600		R	Hyperthermia treatment	1.56	3.44	NA	0.21	5.21	NA	XXX
77600	26	R	Hyperthermia treatment	1.56	0.55	0.55	0.08	2.19	2.19	XXX
77600	TC	R	Hyperthermia treatment	0.00	2.89	NA	0.13	3.02	NA	XXX
77605		R	Hyperthermia treatment	2.09	4.62	NA	0.31	7.02	NA	XXX
77605	26	R	Hyperthermia treatment	2.09	0.76	0.76	0.13	2.98	2.98	XXX
77605	TC	R	Hyperthermia treatment	0.00	3.86	NA	0.18	4.04	NA	XXX
77610		R	Hyperthermia treatment	1.56	3.44	NA	0.20	5.20	NA	XXX
77610	26	R	Hyperthermia treatment	1.56	0.55	0.55	0.07	2.18	2.18	XXX
77610	TC	R	Hyperthermia treatment	0.00	2.89	NA	0.13	3.02	NA	XXX
77615		R	Hyperthermia treatment	2.09	4.60	NA	0.27	6.96	NA	XXX
77615	26	R	Hyperthermia treatment	2.09	0.74	0.74	0.09	2.92	2.92	XXX
77615	TC	R	Hyperthermia treatment	0.00	3.86	NA	0.18	4.04	NA	XXX
77620		R	Hyperthermia treatment	1.56	3.47	NA	0.19	5.22	NA	XXX
77620	26	R	Hyperthermia treatment	1.56	0.58	0.58	0.06	2.20	2.20	XXX
77620	TC	R	Hyperthermia treatment	0.00	2.89	NA	0.13	3.02	NA	XXX
77750		A	Infuse radioactive materials	4.91	3.04	NA	0.23	8.18	NA	090
77750	26	A	Infuse radioactive materials	4.91	1.77	1.77	0.17	6.85	6.85	090
77750	TC	A	Infuse radioactive materials	0.00	1.27	NA	0.06	1.33	NA	090
77761		A	Apply intrcav radiat simple	3.81	3.51	NA	0.28	7.60	NA	090
77761	26	A	Apply intrcav radiat simple	3.81	1.13	1.13	0.16	5.10	5.10	090
77761	TC	A	Apply intrcav radiat simple	0.00	2.38	NA	0.12	2.50	NA	090
77762		A	Apply intrcav radiat interm	5.72	5.42	NA	0.38	11.52	NA	090
77762	26	A	Apply intrcav radiat interm	5.72	1.99	1.99	0.22	7.93	7.93	090
77762	TC	A	Apply intrcav radiat interm	0.00	3.43	NA	0.16	3.59	NA	090
77763		A	Apply intrcav radiat compl	8.57	7.38	NA	0.53	16.48	NA	090
77763	26	A	Apply intrcav radiat compl	8.57	3.12	3.12	0.34	12.03	12.03	090
77763	TC	A	Apply intrcav radiat compl	0.00	4.26	NA	0.19	4.45	NA	090
77776		A	Apply interstit radiat simpl	4.66	3.72	NA	0.35	8.73	NA	090
77776	26	A	Apply interstit radiat simpl	4.66	1.65	1.65	0.24	6.55	6.55	090
77776	TC	A	Apply interstit radiat simpl	0.00	2.07	NA	0.11	2.18	NA	090
77777		A	Apply interstit radiat inter	7.48	6.37	NA	0.50	14.35	NA	090
77777	26	A	Apply interstit radiat inter	7.48	2.35	2.35	0.32	10.15	10.15	090
77777	TC	A	Apply interstit radiat inter	0.00	4.02	NA	0.18	4.20	NA	090
77778		A	Apply interstit radiat compl	11.19	8.90	NA	0.69	20.78	NA	090
77778	26	A	Apply interstit radiat compl	11.19	4.02	4.02	0.47	15.68	15.68	090
77778	TC	A	Apply interstit radiat compl	0.00	4.88	NA	0.22	5.10	NA	090
77781		A	High intensity brachytherapy	1.66	19.88	NA	0.95	22.49	NA	090
77781	26	A	High intensity brachytherapy	1.66	0.60	0.60	0.07	2.33	2.33	090
77781	TC	A	High intensity brachytherapy	0.00	19.28	NA	0.88	20.16	NA	090
77782		A	High intensity brachytherapy	2.49	20.18	NA	0.98	23.65	NA	090
77782	26	A	High intensity brachytherapy	2.49	0.90	0.90	0.10	3.49	3.49	090
77782	TC	A	High intensity brachytherapy	0.00	19.28	NA	0.88	20.16	NA	090
77783		A	High intensity brachytherapy	3.73	20.62	NA	1.03	25.38	NA	090
77783	26	A	High intensity brachytherapy	3.73	1.34	1.34	0.15	5.22	5.22	090
77783	TC	A	High intensity brachytherapy	0.00	19.28	NA	0.88	20.16	NA	090
77784		A	High intensity brachytherapy	5.61	21.30	NA	1.10	28.01	NA	090
77784	26	A	High intensity brachytherapy	5.61	2.02	2.02	0.22	7.85	7.85	090
77784	TC	A	High intensity brachytherapy	0.00	19.28	NA	0.88	20.16	NA	090
77789		A	Apply surface radiation	1.12	0.84	NA	0.05	2.01	NA	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
77789	26	A	Apply surface radiation	1.12	0.41	0.41	0.03	1.56	1.56	090
77789	TC	A	Apply surface radiation	0.00	0.43	NA	0.02	0.45	NA	090
77790		A	Radiation handling	1.05	0.86	NA	0.06	1.97	NA	XXX
77790	26	A	Radiation handling	1.05	0.38	0.38	0.04	1.47	1.47	XXX
77790	TC	A	Radiation handling	0.00	0.48	NA	0.02	0.50	NA	XXX
77799		C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77799	26	C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77799	TC	C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78000		A	Thyroid, single uptake	0.19	0.99	NA	0.06	1.24	NA	XXX
78000	26	A	Thyroid, single uptake	0.19	0.07	0.07	0.01	0.27	0.27	XXX
78000	TC	A	Thyroid, single uptake	0.00	0.92	NA	0.05	0.97	NA	XXX
78001		A	Thyroid, multiple uptakes	0.26	1.33	NA	0.07	1.66	NA	XXX
78001	26	A	Thyroid, multiple uptakes	0.26	0.09	0.09	0.01	0.36	0.36	XXX
78001	TC	A	Thyroid, multiple uptakes	0.00	1.24	NA	0.06	1.30	NA	XXX
78003		A	Thyroid suppress/stimul	0.33	1.04	NA	0.06	1.43	NA	XXX
78003	26	A	Thyroid suppress/stimul	0.33	0.12	0.12	0.01	0.46	0.46	XXX
78003	TC	A	Thyroid suppress/stimul	0.00	0.92	NA	0.05	0.97	NA	XXX
78006		A	Thyroid imaging with uptake	0.49	2.44	NA	0.13	3.06	NA	XXX
78006	26	A	Thyroid imaging with uptake	0.49	0.18	0.18	0.02	0.69	0.69	XXX
78006	TC	A	Thyroid imaging with uptake	0.00	2.26	NA	0.11	2.37	NA	XXX
78007		A	Thyroid image, mult uptakes	0.50	2.62	NA	0.14	3.26	NA	XXX
78007	26	A	Thyroid image, mult uptakes	0.50	0.18	0.18	0.02	0.70	0.70	XXX
78007	TC	A	Thyroid image, mult uptakes	0.00	2.44	NA	0.12	2.56	NA	XXX
78010		A	Thyroid imaging	0.39	1.87	NA	0.11	2.37	NA	XXX
78010	26	A	Thyroid imaging	0.39	0.14	0.14	0.02	0.55	0.55	XXX
78010	TC	A	Thyroid imaging	0.00	1.73	NA	0.09	1.82	NA	XXX
78011		A	Thyroid imaging with flow	0.45	2.45	NA	0.13	3.03	NA	XXX
78011	26	A	Thyroid imaging with flow	0.45	0.16	0.16	0.02	0.63	0.63	XXX
78011	TC	A	Thyroid imaging with flow	0.00	2.29	NA	0.11	2.40	NA	XXX
78015		A	Thyroid met imaging	0.67	2.68	NA	0.15	3.50	NA	XXX
78015	26	A	Thyroid met imaging	0.67	0.24	0.24	0.03	0.94	0.94	XXX
78015	TC	A	Thyroid met imaging	0.00	2.44	NA	0.12	2.56	NA	XXX
78016		A	Thyroid met imaging/studies	0.82	3.62	NA	0.18	4.62	NA	XXX
78016	26	A	Thyroid met imaging/studies	0.82	0.31	0.31	0.03	1.16	1.16	XXX
78016	TC	A	Thyroid met imaging/studies	0.00	3.31	NA	0.15	3.46	NA	XXX
78018		A	Thyroid met imaging, body	0.86	5.47	NA	0.27	6.60	NA	XXX
78018	26	A	Thyroid met imaging, body	0.86	0.32	0.32	0.03	1.21	1.21	XXX
78018	TC	A	Thyroid met imaging, body	0.00	5.15	NA	0.24	5.39	NA	XXX
78020		A	Thyroid met uptake	0.60	1.47	NA	0.14	2.21	NA	ZZZ
78020	26	A	Thyroid met uptake	0.60	0.23	0.23	0.02	0.85	0.85	ZZZ
78020	TC	A	Thyroid met uptake	0.00	1.24	NA	0.12	1.36	NA	ZZZ
78070		A	Parathyroid nuclear imaging	0.82	2.03	NA	0.12	2.97	NA	XXX
78070	26	A	Parathyroid nuclear imaging	0.82	0.30	0.30	0.03	1.15	1.15	XXX
78070	TC	A	Parathyroid nuclear imaging	0.00	1.73	NA	0.09	1.82	NA	XXX
78075		A	Adrenal nuclear imaging	0.74	5.44	NA	0.27	6.45	NA	XXX
78075	26	A	Adrenal nuclear imaging	0.74	0.29	0.29	0.03	1.06	1.06	XXX
78075	TC	A	Adrenal nuclear imaging	0.00	5.15	NA	0.24	5.39	NA	XXX
78099		C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78099	26	C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78099	TC	C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78102		A	Bone marrow imaging, ltd	0.55	2.15	NA	0.12	2.82	NA	XXX
78102	26	A	Bone marrow imaging, ltd	0.55	0.21	0.21	0.02	0.78	0.78	XXX
78102	TC	A	Bone marrow imaging, ltd	0.00	1.94	NA	0.10	2.04	NA	XXX
78103		A	Bone marrow imaging, mult	0.75	3.28	NA	0.17	4.20	NA	XXX
78103	26	A	Bone marrow imaging, mult	0.75	0.27	0.27	0.03	1.05	1.05	XXX
78103	TC	A	Bone marrow imaging, mult	0.00	3.01	NA	0.14	3.15	NA	XXX
78104		A	Bone marrow imaging, body	0.80	4.16	NA	0.21	5.17	NA	XXX
78104	26	A	Bone marrow imaging, body	0.80	0.29	0.29	0.03	1.12	1.12	XXX
78104	TC	A	Bone marrow imaging, body	0.00	3.87	NA	0.18	4.05	NA	XXX
78110		A	Plasma volume, single	0.19	0.97	NA	0.06	1.22	NA	XXX
78110	26	A	Plasma volume, single	0.19	0.07	0.07	0.01	0.27	0.27	XXX
78110	TC	A	Plasma volume, single	0.00	0.90	NA	0.05	0.95	NA	XXX
78111		A	Plasma volume, multiple	0.22	2.52	NA	0.13	2.87	NA	XXX
78111	26	A	Plasma volume, multiple	0.22	0.08	0.08	0.01	0.31	0.31	XXX
78111	TC	A	Plasma volume, multiple	0.00	2.44	NA	0.12	2.56	NA	XXX
78120		A	Red cell mass, single	0.23	1.73	NA	0.10	2.06	NA	XXX
78120	26	A	Red cell mass, single	0.23	0.09	0.09	0.01	0.33	0.33	XXX
78120	TC	A	Red cell mass, single	0.00	1.64	NA	0.09	1.73	NA	XXX
78121		A	Red cell mass, multiple	0.32	2.88	NA	0.13	3.33	NA	XXX
78121	26	A	Red cell mass, multiple	0.32	0.12	0.12	0.01	0.45	0.45	XXX
78121	TC	A	Red cell mass, multiple	0.00	2.76	NA	0.12	2.88	NA	XXX
78122		A	Blood volume	0.45	4.54	NA	0.22	5.21	NA	XXX
78122	26	A	Blood volume	0.45	0.17	0.17	0.02	0.64	0.64	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
78122	TC	A	Blood volume	0.00	4.37	NA	0.20	4.57	NA	XXX
78130		A	Red cell survival study	0.61	2.93	NA	0.15	3.69	NA	XXX
78130	26	A	Red cell survival study	0.61	0.22	0.22	0.03	0.86	0.86	XXX
78130	TC	A	Red cell survival study	0.00	2.71	NA	0.12	2.83	NA	XXX
78135		A	Red cell survival kinetics	0.64	4.86	NA	0.24	5.74	NA	XXX
78135	26	A	Red cell survival kinetics	0.64	0.23	0.23	0.03	0.90	0.90	XXX
78135	TC	A	Red cell survival kinetics	0.00	4.63	NA	0.21	4.84	NA	XXX
78140		A	Red cell sequestration	0.61	3.95	NA	0.20	4.76	NA	XXX
78140	26	A	Red cell sequestration	0.61	0.21	0.21	0.03	0.85	0.85	XXX
78140	TC	A	Red cell sequestration	0.00	3.74	NA	0.17	3.91	NA	XXX
78160		A	Plasma iron turnover	0.33	3.60	NA	0.19	4.12	NA	XXX
78160	26	A	Plasma iron turnover	0.33	0.12	0.12	0.03	0.48	0.48	XXX
78160	TC	A	Plasma iron turnover	0.00	3.48	NA	0.16	3.64	NA	XXX
78162		A	Iron absorption exam	0.45	3.22	NA	0.15	3.82	NA	XXX
78162	26	A	Iron absorption exam	0.45	0.18	0.18	0.01	0.64	0.64	XXX
78162	TC	A	Iron absorption exam	0.00	3.04	NA	0.14	3.18	NA	XXX
78170		A	Red cell iron utilization	0.41	5.19	NA	0.27	5.87	NA	XXX
78170	26	A	Red cell iron utilization	0.41	0.15	0.15	0.04	0.60	0.60	XXX
78170	TC	A	Red cell iron utilization	0.00	5.04	NA	0.23	5.27	NA	XXX
78172		C	Total body iron estimation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78172	26	A	Total body iron estimation	0.53	0.20	0.20	0.02	0.75	0.75	XXX
78172	TC	C	Total body iron estimation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78185		A	Spleen imaging	0.40	2.39	NA	0.13	2.92	NA	XXX
78185	26	A	Spleen imaging	0.40	0.15	0.15	0.02	0.57	0.57	XXX
78185	TC	A	Spleen imaging	0.00	2.24	NA	0.11	2.35	NA	XXX
78190		A	Platelet survival, kinetics	1.09	5.83	NA	0.31	7.23	NA	XXX
78190	26	A	Platelet survival, kinetics	1.09	0.40	0.40	0.06	1.55	1.55	XXX
78190	TC	A	Platelet survival, kinetics	0.00	5.43	NA	0.25	5.68	NA	XXX
78191		A	Platelet survival	0.61	7.19	NA	0.34	8.14	NA	XXX
78191	26	A	Platelet survival	0.61	0.22	0.22	0.03	0.86	0.86	XXX
78191	TC	A	Platelet survival	0.00	6.97	NA	0.31	7.28	NA	XXX
78195		A	Lymph system imaging	1.20	4.31	NA	0.23	5.74	NA	XXX
78195	26	A	Lymph system imaging	1.20	0.44	0.44	0.05	1.69	1.69	XXX
78195	TC	A	Lymph system imaging	0.00	3.87	NA	0.18	4.05	NA	XXX
78199		C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78199	26	C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78199	TC	C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78201		A	Liver imaging	0.44	2.40	NA	0.13	2.97	NA	XXX
78201	26	A	Liver imaging	0.44	0.16	0.16	0.02	0.62	0.62	XXX
78201	TC	A	Liver imaging	0.00	2.24	NA	0.11	2.35	NA	XXX
78202		A	Liver imaging with flow	0.51	2.93	NA	0.14	3.58	NA	XXX
78202	26	A	Liver imaging with flow	0.51	0.19	0.19	0.02	0.72	0.72	XXX
78202	TC	A	Liver imaging with flow	0.00	2.74	NA	0.12	2.86	NA	XXX
78205		A	Liver imaging (3D)	0.71	5.87	NA	0.29	6.87	NA	XXX
78205	26	A	Liver imaging (3D)	0.71	0.26	0.26	0.03	1.00	1.00	XXX
78205	TC	A	Liver imaging (3D)	0.00	5.61	NA	0.26	5.87	NA	XXX
78206		A	Liver image (3d) w/flow	0.96	5.96	NA	0.13	7.05	NA	XXX
78206	26	A	Liver image (3d) w/flow	0.96	0.35	0.35	0.04	1.35	1.35	XXX
78206	TC	A	Liver image (3d) w/flow	0.00	5.61	NA	0.09	5.70	NA	XXX
78215		A	Liver and spleen imaging	0.49	2.97	NA	0.14	3.60	NA	XXX
78215	26	A	Liver and spleen imaging	0.49	0.18	0.18	0.02	0.69	0.69	XXX
78215	TC	A	Liver and spleen imaging	0.00	2.79	NA	0.12	2.91	NA	XXX
78216		A	Liver & spleen image/flow	0.57	3.52	NA	0.17	4.26	NA	XXX
78216	26	A	Liver & spleen image/flow	0.57	0.21	0.21	0.02	0.80	0.80	XXX
78216	TC	A	Liver & spleen image/flow	0.00	3.31	NA	0.15	3.46	NA	XXX
78220		A	Liver function study	0.49	3.72	NA	0.18	4.39	NA	XXX
78220	26	A	Liver function study	0.49	0.18	0.18	0.02	0.69	0.69	XXX
78220	TC	A	Liver function study	0.00	3.54	NA	0.16	3.70	NA	XXX
78223		A	Hepatobiliary imaging	0.84	3.78	NA	0.20	4.82	NA	XXX
78223	26	A	Hepatobiliary imaging	0.84	0.30	0.30	0.04	1.18	1.18	XXX
78223	TC	A	Hepatobiliary imaging	0.00	3.48	NA	0.16	3.64	NA	XXX
78230		A	Salivary gland imaging	0.45	2.23	NA	0.13	2.81	NA	XXX
78230	26	A	Salivary gland imaging	0.45	0.16	0.16	0.02	0.63	0.63	XXX
78230	TC	A	Salivary gland imaging	0.00	2.07	NA	0.11	2.18	NA	XXX
78231		A	Serial salivary imaging	0.52	3.21	NA	0.16	3.89	NA	XXX
78231	26	A	Serial salivary imaging	0.52	0.20	0.20	0.02	0.74	0.74	XXX
78231	TC	A	Serial salivary imaging	0.00	3.01	NA	0.14	3.15	NA	XXX
78232		A	Salivary gland function exam	0.47	3.54	NA	0.16	4.17	NA	XXX
78232	26	A	Salivary gland function exam	0.47	0.18	0.18	0.01	0.66	0.66	XXX
78232	TC	A	Salivary gland function exam	0.00	3.36	NA	0.15	3.51	NA	XXX
78258		A	Esophageal motility study	0.74	3.01	NA	0.15	3.90	NA	XXX
78258	26	A	Esophageal motility study	0.74	0.27	0.27	0.03	1.04	1.04	XXX
78258	TC	A	Esophageal motility study	0.00	2.74	NA	0.12	2.86	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
78261		A	Gastric mucosa imaging	0.69	4.15	NA	0.21	5.05	NA	XXX
78261	26	A	Gastric mucosa imaging	0.69	0.26	0.26	0.03	0.98	0.98	XXX
78261	TC	A	Gastric mucosa imaging	0.00	3.89	NA	0.18	4.07	NA	XXX
78262		A	Gastroesophageal reflux exam	0.68	4.29	NA	0.21	5.18	NA	XXX
78262	26	A	Gastroesophageal reflux exam	0.68	0.25	0.25	0.03	0.96	0.96	XXX
78262	TC	A	Gastroesophageal reflux exam	0.00	4.04	NA	0.18	4.22	NA	XXX
78264		A	Gastric emptying study	0.78	4.20	NA	0.21	5.19	NA	XXX
78264	26	A	Gastric emptying study	0.78	0.28	0.28	0.03	1.09	1.09	XXX
78264	TC	A	Gastric emptying study	0.00	3.92	NA	0.18	4.10	NA	XXX
78267		X	Breath tst attain/anal c–14	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78268		X	Breath test analysis, c–14	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78270		A	Vit B–12 absorption exam	0.20	1.54	NA	0.09	1.83	NA	XXX
78270	26	A	Vit B–12 absorption exam	0.20	0.07	0.07	0.01	0.28	0.28	XXX
78270	TC	A	Vit B–12 absorption exam	0.00	1.47	NA	0.08	1.55	NA	XXX
78271		A	Vit B–12 absorp exam, IF	0.20	1.63	NA	0.09	1.92	NA	XXX
78271	26	A	Vit B–12 absorp exam, IF	0.20	0.07	0.07	0.01	0.28	0.28	XXX
78271	TC	A	Vit B–12 absorp exam, IF	0.00	1.56	NA	0.08	1.64	NA	XXX
78272		A	Vit B–12 absorp, combined	0.27	2.30	NA	0.12	2.69	NA	XXX
78272	26	A	Vit B–12 absorp, combined	0.27	0.10	0.10	0.01	0.38	0.38	XXX
78272	TC	A	Vit B–12 absorp, combined	0.00	2.20	NA	0.11	2.31	NA	XXX
78278		A	Acute GI blood loss imaging	0.99	4.98	NA	0.25	6.22	NA	XXX
78278	26	A	Acute GI blood loss imaging	0.99	0.35	0.35	0.04	1.38	1.38	XXX
78278	TC	A	Acute GI blood loss imaging	0.00	4.63	NA	0.21	4.84	NA	XXX
78282		C	GI protein loss exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78282	26	A	GI protein loss exam	0.38	0.13	0.13	0.02	0.53	0.53	XXX
78282	TC	C	GI protein loss exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78290		A	Meckel's divert exam	0.68	3.13	NA	0.16	3.97	NA	XXX
78290	26	A	Meckel's divert exam	0.68	0.24	0.24	0.03	0.95	0.95	XXX
78290	TC	A	Meckel's divert exam	0.00	2.89	NA	0.13	3.02	NA	XXX
78291		A	Leveen/shunt patency exam	0.88	3.23	NA	0.17	4.28	NA	XXX
78291	26	A	Leveen/shunt patency exam	0.88	0.32	0.32	0.04	1.24	1.24	XXX
78291	TC	A	Leveen/shunt patency exam	0.00	2.91	NA	0.13	3.04	NA	XXX
78299		C	GI nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78299	26	C	GI nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78299	TC	C	GI nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78300		A	Bone imaging, limited area	0.62	2.58	NA	0.15	3.35	NA	XXX
78300	26	A	Bone imaging, limited area	0.62	0.22	0.22	0.03	0.87	0.87	XXX
78300	TC	A	Bone imaging, limited area	0.00	2.36	NA	0.12	2.48	NA	XXX
78305		A	Bone imaging, multiple areas	0.83	3.78	NA	0.19	4.80	NA	XXX
78305	26	A	Bone imaging, multiple areas	0.83	0.30	0.30	0.03	1.16	1.16	XXX
78305	TC	A	Bone imaging, multiple areas	0.00	3.48	NA	0.16	3.64	NA	XXX
78306		A	Bone imaging, whole body	0.86	4.37	NA	0.22	5.45	NA	XXX
78306	26	A	Bone imaging, whole body	0.86	0.31	0.31	0.04	1.21	1.21	XXX
78306	TC	A	Bone imaging, whole body	0.00	4.06	NA	0.18	4.24	NA	XXX
78315		A	Bone imaging, 3 phase	1.02	4.91	NA	0.25	6.18	NA	XXX
78315	26	A	Bone imaging, 3 phase	1.02	0.37	0.37	0.04	1.43	1.43	XXX
78315	TC	A	Bone imaging, 3 phase	0.00	4.54	NA	0.21	4.75	NA	XXX
78320		A	Bone imaging (3D)	1.04	6.00	NA	0.30	7.34	NA	XXX
78320	26	A	Bone imaging (3D)	1.04	0.39	0.39	0.04	1.47	1.47	XXX
78320	TC	A	Bone imaging (3D)	0.00	5.61	NA	0.26	5.87	NA	XXX
78350		A	Bone mineral, single photon	0.22	0.80	NA	0.05	1.07	NA	XXX
78350	26	A	Bone mineral, single photon	0.22	0.08	0.08	0.01	0.31	0.31	XXX
78350	TC	A	Bone mineral, single photon	0.00	0.72	NA	0.04	0.76	NA	XXX
78351		N	Bone mineral, dual photon	+0.30	1.64	0.12	0.01	1.95	0.43	XXX
78399		C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78399	26	C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78399	TC	C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78414		C	Non-imaging heart function	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78414	26	A	Non-imaging heart function	0.45	0.16	0.16	0.02	0.63	0.63	XXX
78414	TC	C	Non-imaging heart function	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78428		A	Cardiac shunt imaging	0.78	2.46	NA	0.14	3.38	NA	XXX
78428	26	A	Cardiac shunt imaging	0.78	0.32	0.32	0.03	1.13	1.13	XXX
78428	TC	A	Cardiac shunt imaging	0.00	2.14	NA	0.11	2.25	NA	XXX
78445		A	Vascular flow imaging	0.49	1.94	NA	0.11	2.54	NA	XXX
78445	26	A	Vascular flow imaging	0.49	0.18	0.18	0.02	0.69	0.69	XXX
78445	TC	A	Vascular flow imaging	0.00	1.76	NA	0.09	1.85	NA	XXX
78455		A	Venous thrombosis study	0.73	4.04	NA	0.20	4.97	NA	XXX
78455	26	A	Venous thrombosis study	0.73	0.26	0.26	0.03	1.02	1.02	XXX
78455	TC	A	Venous thrombosis study	0.00	3.78	NA	0.17	3.95	NA	XXX
78456		A	Acute venous thrombus image	1.00	4.15	NA	0.28	5.43	NA	XXX
78456	26	A	Acute venous thrombus image	1.00	0.37	0.37	0.04	1.41	1.41	XXX
78456	TC	A	Acute venous thrombus image	0.00	3.78	NA	0.24	4.02	NA	XXX
78457		A	Venous thrombosis imaging	0.77	2.81	NA	0.15	3.73	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
78457	26	A	Venous thrombosis imaging	0.77	0.28	0.28	0.03	1.08	1.08	XXX
78457	TC	A	Venous thrombosis imaging	0.00	2.53	NA	0.12	2.65	NA	XXX
78458		A	Ven thrombosis images, bilat	0.90	4.17	NA	0.20	5.27	NA	XXX
78458	26	A	Ven thrombosis images, bilat	0.90	0.35	0.35	0.03	1.28	1.28	XXX
78458	TC	A	Ven thrombosis images, bilat	0.00	3.82	NA	0.17	3.99	NA	XXX
78459		I	Heart muscle imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78459	26	I	Heart muscle imaging (PET)	+1.88	0.75	0.75	0.08	2.71	2.71	XXX
78459	TC	I	Heart muscle imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78460		A	Heart muscle blood, single	0.86	2.55	NA	0.14	3.55	NA	XXX
78460	26	A	Heart muscle blood, single	0.86	0.31	0.31	0.03	1.20	1.20	XXX
78460	TC	A	Heart muscle blood, single	0.00	2.24	NA	0.11	2.35	NA	XXX
78461		A	Heart muscle blood, multiple	1.23	4.94	NA	0.26	6.43	NA	XXX
78461	26	A	Heart muscle blood, multiple	1.23	0.46	0.46	0.05	1.74	1.74	XXX
78461	TC	A	Heart muscle blood, multiple	0.00	4.48	NA	0.21	4.69	NA	XXX
78464		A	Heart image (3d), single	1.09	7.12	NA	0.35	8.56	NA	XXX
78464	26	A	Heart image (3d), single	1.09	0.41	0.41	0.04	1.54	1.54	XXX
78464	TC	A	Heart image (3d), single	0.00	6.71	NA	0.31	7.02	NA	XXX
78465		A	Heart image (3d), multiple	1.46	11.76	NA	0.56	13.78	NA	XXX
78465	26	A	Heart image (3d), multiple	1.46	0.56	0.56	0.05	2.07	2.07	XXX
78465	TC	A	Heart image (3d), multiple	0.00	11.20	NA	0.51	11.71	NA	XXX
78466		A	Heart infarct image	0.69	2.75	NA	0.15	3.59	NA	XXX
78466	26	A	Heart infarct image	0.69	0.26	0.26	0.03	0.98	0.98	XXX
78466	TC	A	Heart infarct image	0.00	2.49	NA	0.12	2.61	NA	XXX
78468		A	Heart infarct image (ef)	0.80	3.78	NA	0.19	4.77	NA	XXX
78468	26	A	Heart infarct image (ef)	0.80	0.30	0.30	0.03	1.13	1.13	XXX
78468	TC	A	Heart infarct image (ef)	0.00	3.48	NA	0.16	3.64	NA	XXX
78469		A	Heart infarct image (3D)	0.92	5.31	NA	0.26	6.49	NA	XXX
78469	26	A	Heart infarct image (3D)	0.92	0.35	0.35	0.03	1.30	1.30	XXX
78469	TC	A	Heart infarct image (3D)	0.00	4.96	NA	0.23	5.19	NA	XXX
78472		A	Gated heart, planar, single	0.98	5.60	NA	0.29	6.87	NA	XXX
78472	26	A	Gated heart, planar, single	0.98	0.37	0.37	0.04	1.39	1.39	XXX
78472	TC	A	Gated heart, planar, single	0.00	5.23	NA	0.25	5.48	NA	XXX
78473		A	Gated heart, multiple	1.47	8.40	NA	0.40	10.27	NA	XXX
78473	26	A	Gated heart, multiple	1.47	0.56	0.56	0.05	2.08	2.08	XXX
78473	TC	A	Gated heart, multiple	0.00	7.84	NA	0.35	8.19	NA	XXX
78478		A	Heart wall motion add-on	0.62	1.72	NA	0.10	2.44	NA	ZZZ
78478	26	A	Heart wall motion add-on	0.62	0.24	0.24	0.02	0.88	0.88	ZZZ
78478	TC	A	Heart wall motion add-on	0.00	1.48	NA	0.08	1.56	NA	ZZZ
78480		A	Heart function add-on	0.62	1.72	NA	0.10	2.44	NA	ZZZ
78480	26	A	Heart function add-on	0.62	0.24	0.24	0.02	0.88	0.88	ZZZ
78480	TC	A	Heart function add-on	0.00	1.48	NA	0.08	1.56	NA	ZZZ
78481		A	Heart first pass, single	0.98	5.35	NA	0.26	6.59	NA	XXX
78481	26	A	Heart first pass, single	0.98	0.39	0.39	0.03	1.40	1.40	XXX
78481	TC	A	Heart first pass, single	0.00	4.96	NA	0.23	5.19	NA	XXX
78483		A	Heart first pass, multiple	1.47	8.05	NA	0.39	9.91	NA	XXX
78483	26	A	Heart first pass, multiple	1.47	0.58	0.58	0.05	2.10	2.10	XXX
78483	TC	A	Heart first pass, multiple	0.00	7.47	NA	0.34	7.81	NA	XXX
78491		I	Heart image (pet), single	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78491	26	I	Heart image (pet), single	+1.50	0.60	0.60	0.05	2.15	2.15	XXX
78491	TC	I	Heart image (pet), single	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78492		I	Heart image (pet), multiple	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78492	26	I	Heart image (pet), multiple	+1.87	0.75	0.75	0.06	2.68	2.68	XXX
78492	TC	I	Heart image (pet), multiple	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78494		A	Heart image, spect	1.19	7.15	NA	0.29	8.63	NA	XXX
78494	26	A	Heart image, spect	1.19	0.44	0.44	0.04	1.67	1.67	XXX
78494	TC	A	Heart image, spect	0.00	6.71	NA	0.25	6.96	NA	XXX
78496		A	Heart first pass add-on	0.50	6.91	NA	0.27	7.68	NA	ZZZ
78496	26	A	Heart first pass add-on	0.50	0.20	0.20	0.02	0.72	0.72	ZZZ
78496	TC	A	Heart first pass add-on	0.00	6.71	NA	0.25	6.96	NA	ZZZ
78499		C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78499	26	C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78499	TC	C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78580		A	Lung perfusion imaging	0.74	3.53	NA	0.18	4.45	NA	XXX
78580	26	A	Lung perfusion imaging	0.74	0.27	0.27	0.03	1.04	1.04	XXX
78580	TC	A	Lung perfusion imaging	0.00	3.26	NA	0.15	3.41	NA	XXX
78584		A	Lung V/Q image single breath	0.99	3.39	NA	0.18	4.56	NA	XXX
78584	26	A	Lung V/Q image single breath	0.99	0.35	0.35	0.04	1.38	1.38	XXX
78584	TC	A	Lung V/Q image single breath	0.00	3.04	NA	0.14	3.18	NA	XXX
78585		A	Lung V/Q imaging	1.09	5.74	NA	0.30	7.13	NA	XXX
78585	26	A	Lung V/Q imaging	1.09	0.39	0.39	0.05	1.53	1.53	XXX
78585	TC	A	Lung V/Q imaging	0.00	5.35	NA	0.25	5.60	NA	XXX
78586		A	Aerosol lung image, single	0.40	2.60	NA	0.14	3.14	NA	XXX
78586	26	A	Aerosol lung image, single	0.40	0.14	0.14	0.02	0.56	0.56	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
78586	TC	A	Aerosol lung image, single	0.00	2.46	NA	0.12	2.58	NA	XXX
78587		A	Aerosol lung image, multiple	0.49	2.84	NA	0.14	3.47	NA	XXX
78587	26	A	Aerosol lung image, multiple	0.49	0.18	0.18	0.02	0.69	0.69	XXX
78587	TC	A	Aerosol lung image, multiple	0.00	2.66	NA	0.12	2.78	NA	XXX
78588		A	Perfusion lung image	1.09	3.43	NA	0.20	4.72	NA	XXX
78588	26	A	Perfusion lung image	1.09	0.39	0.39	0.05	1.53	1.53	XXX
78588	TC	A	Perfusion lung image	0.00	3.04	NA	0.15	3.19	NA	XXX
78591		A	Vent image, 1 breath, 1 proj	0.40	2.86	NA	0.14	3.40	NA	XXX
78591	26	A	Vent image, 1 breath, 1 proj	0.40	0.15	0.15	0.02	0.57	0.57	XXX
78591	TC	A	Vent image, 1 breath, 1 proj	0.00	2.71	NA	0.12	2.83	NA	XXX
78593		A	Vent image, 1 proj, gas	0.49	3.46	NA	0.17	4.12	NA	XXX
78593	26	A	Vent image, 1 proj, gas	0.49	0.18	0.18	0.02	0.69	0.69	XXX
78593	TC	A	Vent image, 1 proj, gas	0.00	3.28	NA	0.15	3.43	NA	XXX
78594		A	Vent image, mult proj, gas	0.53	4.92	NA	0.23	5.68	NA	XXX
78594	26	A	Vent image, mult proj, gas	0.53	0.19	0.19	0.02	0.74	0.74	XXX
78594	TC	A	Vent image, mult proj, gas	0.00	4.73	NA	0.21	4.94	NA	XXX
78596		A	Lung differential function	1.27	7.17	NA	0.36	8.80	NA	XXX
78596	26	A	Lung differential function	1.27	0.46	0.46	0.05	1.78	1.78	XXX
78596	TC	A	Lung differential function	0.00	6.71	NA	0.31	7.02	NA	XXX
78599		C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78599	26	C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78599	TC	C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78600		A	Brain imaging, ltd static	0.44	2.90	NA	0.14	3.48	NA	XXX
78600	26	A	Brain imaging, ltd static	0.44	0.16	0.16	0.02	0.62	0.62	XXX
78600	TC	A	Brain imaging, ltd static	0.00	2.74	NA	0.12	2.86	NA	XXX
78601		A	Brain imaging, ltd w/flow	0.51	3.41	NA	0.17	4.09	NA	XXX
78601	26	A	Brain imaging, ltd w/flow	0.51	0.18	0.18	0.02	0.71	0.71	XXX
78601	TC	A	Brain imaging, ltd w/flow	0.00	3.23	NA	0.15	3.38	NA	XXX
78605		A	Brain imaging, complete	0.53	3.42	NA	0.17	4.12	NA	XXX
78605	26	A	Brain imaging, complete	0.53	0.19	0.19	0.02	0.74	0.74	XXX
78605	TC	A	Brain imaging, complete	0.00	3.23	NA	0.15	3.38	NA	XXX
78606		A	Brain imaging, compl w/flow	0.64	3.90	NA	0.20	4.74	NA	XXX
78606	26	A	Brain imaging, compl w/flow	0.64	0.23	0.23	0.03	0.90	0.90	XXX
78606	TC	A	Brain imaging, compl w/flow	0.00	3.67	NA	0.17	3.84	NA	XXX
78607		A	Brain imaging (3D)	1.23	6.70	NA	0.34	8.27	NA	XXX
78607	26	A	Brain imaging (3D)	1.23	0.47	0.47	0.05	1.75	1.75	XXX
78607	TC	A	Brain imaging (3D)	0.00	6.23	NA	0.29	6.52	NA	XXX
78608		N	Brain imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78609		N	Brain imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78610		A	Brain flow imaging only	0.30	1.61	NA	0.09	2.00	NA	XXX
78610	26	A	Brain flow imaging only	0.30	0.11	0.11	0.01	0.42	0.42	XXX
78610	TC	A	Brain flow imaging only	0.00	1.50	NA	0.08	1.58	NA	XXX
78615		A	Cerebral vascular flow image	0.42	3.81	NA	0.19	4.42	NA	XXX
78615	26	A	Cerebral vascular flow image	0.42	0.16	0.16	0.02	0.60	0.60	XXX
78615	TC	A	Cerebral vascular flow image	0.00	3.65	NA	0.17	3.82	NA	XXX
78630		A	Cerebrospinal fluid scan	0.68	5.02	NA	0.25	5.95	NA	XXX
78630	26	A	Cerebrospinal fluid scan	0.68	0.24	0.24	0.03	0.95	0.95	XXX
78630	TC	A	Cerebrospinal fluid scan	0.00	4.78	NA	0.22	5.00	NA	XXX
78635		A	CSF ventriculography	0.61	2.67	NA	0.14	3.42	NA	XXX
78635	26	A	CSF ventriculography	0.61	0.25	0.25	0.02	0.88	0.88	XXX
78635	TC	A	CSF ventriculography	0.00	2.42	NA	0.12	2.54	NA	XXX
78645		A	CSF shunt evaluation	0.57	3.47	NA	0.17	4.21	NA	XXX
78645	26	A	CSF shunt evaluation	0.57	0.21	0.21	0.02	0.80	0.80	XXX
78645	TC	A	CSF shunt evaluation	0.00	3.26	NA	0.15	3.41	NA	XXX
78647		A	Cerebrospinal fluid scan	0.90	5.94	NA	0.29	7.13	NA	XXX
78647	26	A	Cerebrospinal fluid scan	0.90	0.33	0.33	0.03	1.26	1.26	XXX
78647	TC	A	Cerebrospinal fluid scan	0.00	5.61	NA	0.26	5.87	NA	XXX
78650		A	CSF leakage imaging	0.61	4.63	NA	0.22	5.46	NA	XXX
78650	26	A	CSF leakage imaging	0.61	0.22	0.22	0.02	0.85	0.85	XXX
78650	TC	A	CSF leakage imaging	0.00	4.41	NA	0.20	4.61	NA	XXX
78660		A	Nuclear exam of tear flow	0.53	2.20	NA	0.12	2.85	NA	XXX
78660	26	A	Nuclear exam of tear flow	0.53	0.19	0.19	0.02	0.74	0.74	XXX
78660	TC	A	Nuclear exam of tear flow	0.00	2.01	NA	0.10	2.11	NA	XXX
78699		C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78699	26	C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78699	TC	C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78700		A	Kidney imaging, static	0.45	3.05	NA	0.15	3.65	NA	XXX
78700	26	A	Kidney imaging, static	0.45	0.16	0.16	0.02	0.63	0.63	XXX
78700	TC	A	Kidney imaging, static	0.00	2.89	NA	0.13	3.02	NA	XXX
78701		A	Kidney imaging with flow	0.49	3.55	NA	0.17	4.21	NA	XXX
78701	26	A	Kidney imaging with flow	0.49	0.17	0.17	0.02	0.68	0.68	XXX
78701	TC	A	Kidney imaging with flow	0.00	3.38	NA	0.15	3.53	NA	XXX
78704		A	Imaging renogram	0.74	4.03	NA	0.20	4.97	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
78704	26	A	Imaging renogram	0.74	0.27	0.27	0.03	1.04	1.04	XXX
78704	TC	A	Imaging renogram	0.00	3.76	NA	0.17	3.93	NA	XXX
78707		A	Kidney flow/function image	0.96	4.59	NA	0.23	5.78	NA	XXX
78707	26	A	Kidney flow/function image	0.96	0.35	0.35	0.04	1.35	1.35	XXX
78707	TC	A	Kidney flow/function image	0.00	4.24	NA	0.19	4.43	NA	XXX
78708		A	Kidney flow/function image	1.21	4.68	NA	0.24	6.13	NA	XXX
78708	26	A	Kidney flow/function image	1.21	0.44	0.44	0.05	1.70	1.70	XXX
78708	TC	A	Kidney flow/function image	0.00	4.24	NA	0.19	4.43	NA	XXX
78709		A	Kidney flow/function image	1.41	4.75	NA	0.25	6.41	NA	XXX
78709	26	A	Kidney flow/function image	1.41	0.51	0.51	0.06	1.98	1.98	XXX
78709	TC	A	Kidney flow/function image	0.00	4.24	NA	0.19	4.43	NA	XXX
78710		A	Kidney imaging (3D)	0.66	5.84	NA	0.29	6.79	NA	XXX
78710	26	A	Kidney imaging (3D)	0.66	0.23	0.23	0.03	0.92	0.92	XXX
78710	TC	A	Kidney imaging (3D)	0.00	5.61	NA	0.26	5.87	NA	XXX
78715		A	Renal vascular flow exam	0.30	1.61	NA	0.09	2.00	NA	XXX
78715	26	A	Renal vascular flow exam	0.30	0.11	0.11	0.01	0.42	0.42	XXX
78715	TC	A	Renal vascular flow exam	0.00	1.50	NA	0.08	1.58	NA	XXX
78725		A	Kidney function study	0.38	1.83	NA	0 10	2.31	NA	XXX
78725	26	A	Kidney function study	0.38	0.14	0.14	0.01	0.53	0.53	XXX
78725	TC	A	Kidney function study	0.00	1.69	NA	0.09	1.78	NA	XXX
78730		A	Urinary bladder retention	0.36	1.52	NA	0.09	1.97	NA	XXX
78730	26	A	Urinary bladder retention	0.36	0.13	0.13	0.02	0.51	0.51	XXX
78730	TC	A	Unnary bladder retention	0 00	1.39	NA	0.07	1.46	NA	XXX
78740		A	Ureteral reflux study	0.57	2.22	NA	0.12	2.91	NA	XXX
78740	26	A	Ureteral reflux study	0.57	0.21	0.21	0.02	0.80	0.80	XXX
78740	TC	A	Ureteral reflux study	0.00	2.01	NA	0.10	2.11	NA	XXX
78760		A	Testicular imaging	0.66	2.77	NA	0.15	3.58	NA	XXX
78760	26	A	Testicular imaging	0.66	0.23	0.23	0.03	0.92	0.92	XXX
78760	TC	A	Testicular imaging	0.00	2.54	NA	0.12	2.66	NA	XXX
78761		A	Testicular imaging/flow	0.71	3.30	NA	0.17	4.18	NA	XXX
78761	26	A	Testicular imaging/flow	0.71	0.26	0.26	0.03	1.00	1.00	XXX
78761	TC	A	Testicular imaging/flow	0.00	3.04	NA	0.14	3.18	NA	XXX
78799		C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78799	26	C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78799	TC	C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78800		A	Tumor imaging, limited area	0.66	3.46	NA	0.18	4.30	NA	XXX
78800	26	A	Tumor imaging, limited area	0.66	0.23	0.23	0.03	0.92	0.92	XXX
78800	TC	A	Tumor imaging, limited area	0.00	3.23	NA	0.15	3.38	NA	XXX
78801		A	Tumor imaging, mult areas	0.79	4.30	NA	0.21	5.30	NA	XXX
78801	26	A	Tumor imaging, mult areas	0.79	0.29	0.29	0.03	1.11	1.11	XXX
78801	TC	A	Tumor imaging, mult areas	0.00	4.01	NA	0.18	4.19	NA	XXX
78802		A	Tumor imaging, whole body	0.86	5.57	NA	0.28	6.71	NA	XXX
78802	26	A	Tumor imaging, whole body	0.86	0.32	0.32	0.03	1.21	1.21	XXX
78802	TC	A	Tumor imaging, whole body	0.00	5.25	NA	0.25	5.50	NA	XXX
78803		A	Tumor imaging (3D)	1.09	6.64	NA	0.33	8.06	NA	XXX
78803	26	A	Tumor imaging (3D)	1.09	0.41	0.41	0.04	1.54	1.54	XXX
78803	TC	A	Tumor imaging (3D)	0.00	6.23	NA	0.29	6.52	NA	XXX
78805		A	Abscess imaging, ltd area	0.73	3.50	NA	0.18	4.41	NA	XXX
78805	26	A	Abscess imaging, ltd area	0.73	0.27	0.27	0.03	1.03	1.03	XXX
78805	TC	A	Abscess imaging, ltd area	0.00	3.23	NA	0.15	3.38	NA	XXX
78806		A	Abscess imaging, whole body	0.86	6.43	NA	0.32	7.61	NA	XXX
78806	26	A	Abscess imaging, whole body	0.86	0.32	0.32	0.03	1.21	1.21	XXX
78806	TC	A	Abscess imaging, whole body	0.00	6.11	NA	0.29	6.40	NA	XXX
78807		A	Nuclear localization/abscess	1.09	6.66	NA	0.33	8.08	NA	XXX
78807	26	A	Nuclear localization/abscess	1.09	0.43	0.43	0.04	1.56	1.56	XXX
78807	TC	A	Nuclear localization/abscess	0.00	6.23	NA	0.29	6.52	NA	XXX
78810		N	Tumor imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78810	26	N	Tumor imaging (PET)	+1.93	0.77	0.77	0.09	2.79	2.79	XXX
78810	TC	N	Tumor imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78890		B	Nuclear medicine data proc	+0.05	1.26	NA	0.06	1.37	NA	XXX
78890	26	B	Nuclear medicine data proc	+0.05	0.02	0.02	0.01	0.08	0.08	XXX
78890	TC	B	Nuclear medicine data proc	+0.00	1.24	NA	0.05	1.29	NA	XXX
78891		B	Nuclear med data proc	+0.10	2.53	NA	0.12	2.75	NA	XXX
78891	26	B	Nuclear med data proc	+0.10	0.04	0.04	0.01	0.15	0.15	XXX
78891	TC	B	Nuclear med data proc	+0.00	2.49	NA	0.11	2.60	NA	XXX
78990		I	Provide diag radionuclide(s)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78999		C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78999	26	C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78999	TC	C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79000		A	Init hyperthyroid therapy	1.80	3.14	NA	0.19	5.13	NA	XXX
79000	26	A	Init hyperthyroid therapy	1.80	0.65	0.65	0.07	2.52	2.52	XXX
79000	TC	A	Init hyperthyroid therapy	0.00	2.49	NA	0.12	2.61	NA	XXX
79001		A	Repeat hyperthyroid therapy	1.05	1.63	NA	0.10	2.78	NA	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
79001	26	A	Repeat hyperthyroid therapy	1.05	0.39	0.39	0.04	1.48	1.48	XXX
79001	TC	A	Repeat hyperthyroid therapy	0.00	1.24	NA	0.06	1.30	NA	XXX
79020		A	Thyroid ablation	1.81	3.13	NA	0.19	5.13	NA	XXX
79020	26	A	Thyroid ablation	1.81	0.64	0.64	0.07	2.52	2.52	XXX
79020	TC	A	Thyroid ablation	0.00	2.49	NA	0.12	2.61	NA	XXX
79030		A	Thyroid ablation, carcinoma	2.10	3.26	NA	0.20	5.56	NA	XXX
79030	26	A	Thyroid ablation, carcinoma	2.10	0.77	0.77	0.08	2.95	2.95	XXX
79030	TC	A	Thyroid ablation, carcinoma	0.00	2.49	NA	0.12	2.61	NA	XXX
79035		A	Thyroid metastatic therapy	2.52	3.43	NA	0.21	6.16	NA	XXX
79035	26	A	Thyroid metastatic therapy	2.52	0.94	0.94	0.09	3.55	3.55	XXX
79035	TC	A	Thyroid metastatic therapy	0.00	2.49	NA	0.12	2.61	NA	XXX
79100		A	Hematopoetic nuclear therapy	1.32	3.00	NA	0.17	4.49	NA	XXX
79100	26	A	Hematopoetic nuclear therapy	1.32	0.51	0.51	0.05	1.88	1.88	XXX
79100	TC	A	Hematopoetic nuclear therapy	0.00	2.49	NA	0.12	2.61	NA	XXX
79200		A	Intracavitary nuclear trmt	1.99	3.23	NA	0.19	5.41	NA	XXX
79200	26	A	Intracavitary nuclear trmt	1.99	0.74	0.74	0.07	2.80	2.80	XXX
79200	TC	A	Intracavitary nuclear trmt	0.00	2.49	NA	0.12	2.61	NA	XXX
79300		C	Interstitial nuclear therapy	0.00	0.00	0.00	0.00	0 00	0.00	XXX
79300	26	A	Interstitial nuclear therapy	1.60	0.68	0.68	0.07	2.35	2.35	XXX
79300	TC	C	Interstitial nuclear therapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79400		A	Nonhemato nuclear therapy	1.96	3.22	NA	0.20	5.38	NA	XXX
79400	26	A	Nonhemato nuclear therapy	1.96	0.73	0.73	0.08	2.77	2.77	XXX
79400	TC	A	Nonhemato nuclear therapy	0.00	2.49	NA	0.12	2.61	NA	XXX
79420		C	Intravascular nuclear ther	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79420	26	A	Intravascular nuclear ther	1.51	0.54	0.54	0.06	2.11	2.11	XXX
79420	TC	C	Intravascular nuclear ther	0.00	0.00	0.00	0 00	0.00	0.00	XXX
79440		A	Nuclear joint therapy	1.99	3.29	NA	0.20	5.48	NA	XXX
79440	26	A	Nuclear joint therapy	1.99	0.80	0.80	0.08	2.87	2.87	XXX
79440	TC	A	Nuclear joint therapy	0.00	2.49	NA	0.12	2.61	NA	XXX
79900		C	Provide ther radiopharm(s)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79999		C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79999	26	C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79999	TC	C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80048		X	Basic metabolic panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80050		N	General health panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80051		X	Electrolyte panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80053		X	Comprehen metabolic panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80055		I	Obstetric panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80061		X	Lipid panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80069		X	Renal function panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80072		D	Arthritis panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80074		X	Acute hepatitis panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80076		X	Hepatic function panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80090		X	Torch antibody panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80100		X	Drug screen, qualitate/multi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80101		X	Drug screen, single	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80102		X	Drug confirmation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80103		X	Drug analysis, tissue prep	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80150		X	Assay of amikacin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80152		X	Assay of amitriptyline	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80154		X	Assay of benzodiazepines	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80156		X	Assay, carbamazepine, total	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80157		X	Assay, carbamazepine, free	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80158		X	Assay of cyclosporine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80160		X	Assay of desipramine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80162		X	Assay of digoxin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80164		X	Assay, dipropylacetic acid	0.00	0.00	0.00	0.00	0 00	0.00	XXX
80166		X	Assay of doxepin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80168		X	Assay of ethosuximide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80170		X	Assay of gentamicin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80172		X	Assay of gold	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80173		X	Assay of haloperidol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80174		X	Assay of imipramine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80176		X	Assay of lidocaine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80178		X	Assay of lithium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80182		X	Assay of nortriptyline	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80184		X	Assay of phenobarbital	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80185		X	Assay of phenytoin, total	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80186		X	Assay of phenytoin, free	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80188		X	Assay of primidone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80190		X	Assay of procainamide	0.00	0.00	0.00	0.00	0 00	0.00	XXX
80192		X	Assay of procainamide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80194		X	Assay of quinidine	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
80196		X	Assay of salicylate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80197		X	Assay of tacrolimus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80198		X	Assay of theophylline	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80200		X	Assay of tobramycin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80201		X	Assay of topiramate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80202		X	Assay of vancomycin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80299		X	Quantitative assay, drug	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80400		X	Acth stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80402		X	Acth stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80406		X	Acth stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80408		X	Aldosterone suppression eval	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80410		X	Calcitonin stimul panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80412		X	CRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80414		X	Testosterone response	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80415		X	Estradiol response panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80416		X	Renin stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80417		X	Renin stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80418		X	Pituitary evaluation panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80420		X	Dexamethasone panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80422		X	Glucagon tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80424		X	Glucagon tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80426		X	Gonadotropin hormone panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80428		X	Growth hormone panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80430		X	Growth hormone panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80432		X	Insulin suppression panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80434		X	Insulin tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80435		X	Insulin tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80436		X	Metyrapone panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80438		X	TRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80439		X	TRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80440		X	TRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80500		A	Lab pathology consultation	0.37	0.21	0.17	0.01	0.59	0.55	XXX
80502		A	Lab pathology consultation	1.33	0.63	0.61	0.05	2.01	1.99	XXX
81000		X	Urinalysis, nonauto w/scope	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81001		X	Urinalysis, auto w/scope	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81002		X	Urinalysis nonauto w/o scope	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81003		X	Urinalysis, auto, w/o scope	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81005		X	Urinalysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81007		X	Urine screen for bacteria	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81015		X	Microscopic exam of urine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81020		X	Urinalysis, glass test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81025		X	Urine pregnancy test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81050		X	Urinalysis, volume measure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81099		X	Urinalysis test procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82000		X	Assay of blood acetaldehyde	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82003		X	Assay of acetaminophen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82009		X	Test for acetone/ketones	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82010		X	Acetone assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82013		X	Acetylcholinesterase assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82016		X	Acylcarnitines, qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82017		X	Acylcarnitines, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82024		X	Assay of acth	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82030		X	Assay of adp & amp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82040		X	Assay of serum albumin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82042		X	Assay of urine albumin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82043		X	Microalbumin, quantitative	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82044		X	Microalbumin, semiquant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82055		X	Assay of ethanol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82075		X	Assay of breath ethanol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82085		X	Assay of aldolase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82088		X	Assay of aldosterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82101		X	Assay of urine alkaloids	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82103		X	Alpha-1-antitrypsin, total	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82104		X	Alpha-1-antitrypsin, pheno	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82105		X	Alpha-fetoprotein, serum	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82106		X	Alpha-fetoprotein, amniotic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82108		X	Assay of aluminum	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82120		X	Amines, vaginal fluid qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82127		X	Amino acid, single qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82128		X	Amino acids, mult qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82131		X	Amino acids, single quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82135		X	Assay, aminolevulinic acid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82136		X	Amino acids, quant, 2-5	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
82139		X	Amino acids, quan, 6 or more	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82140		X	Assay of ammonia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82143		X	Amniotic fluid scan	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82145		X	Assay of amphetamines	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82150		X	Assay of amylase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82154		X	Androstanediol glucuronide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82157		X	Assay of androstenedione	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82160		X	Assay of androsterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82163		X	Assay of angiotensin II	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82164		X	Angiotensin I enzyme test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82172		X	Assay of apolipoprotein	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82175		X	Assay of arsenic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82180		X	Assay of ascorbic acid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82190		X	Atomic absorption	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82205		X	Assay of barbiturates	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82232		X	Assay of beta-2 protein	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82239		X	Bile acids, total	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82240		X	Bile acids, cholylglycine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82247		X	Bilirubin, total	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82248		X	Bilirubin, direct	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82252		X	Fecal bilirubin test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82261		X	Assay of biotinidase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82270		X	Test for blood, feces	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82273		X	Test for blood, other source	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82274		X	Assay test for blood, fecal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82286		X	Assay of bradykinin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82300		X	Assay of cadmium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82306		X	Assay of vitamin D	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82307		X	Assay of vitamin D	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82308		X	Assay of calcitonin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82310		X	Assay of calcium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82330		X	Assay of calcium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82331		X	Calcium infusion test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82340		X	Assay of calcium in urine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82355		X	Calculus analysis, qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82360		X	Calculus assay, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82365		X	Calculus spectroscopy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82370		X	X-ray assay, calculus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82373		X	Assay, c-d transfer measure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82374		X	Assay, blood carbon dioxide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82375		X	Assay, blood carbon monoxide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82376		X	Test for carbon monoxide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82378		X	Carcinoembryonic antigen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82379		X	Assay of carnitine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82380		X	Assay of carotene	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82382		X	Assay, urine catecholamines	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82383		X	Assay, blood catecholamines	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82384		X	Assay, three catecholamines	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82387		X	Assay of cathepsin-d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82390		X	Assay of ceruloplasmin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82397		X	Chemiluminescent assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82415		X	Assay of chloramphenicol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82435		X	Assay of blood chloride	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82436		X	Assay of urine chloride	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82438		X	Assay, other fluid chlorides	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82441		X	Test for chlorohydrocarbons	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82465		X	Assay, bld/serum cholesterol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82480		X	Assay, serum cholinesterase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82482		X	Assay, rbc cholinesterase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82485		X	Assay, chondroitin sulfate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82486		X	Gas/liquid chromatography	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82487		X	Paper chromatography	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82488		X	Paper chromatography	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82489		X	Thin layer chromatography	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82491		X	Chromotography, quant, sing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82492		X	Chromotography, quant, mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82495		X	Assay of chromium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82507		X	Assay of citrate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82520		X	Assay of cocaine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82523		X	Collagen crosslinks	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82525		X	Assay of copper	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82528		X	Assay of corticosterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82530		X	Cortisol, free	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
82533		X	Total cortisol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82540		X	Assay of creatine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82541		X	Column chromotography, qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82542		X	Column chromotography, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82543		X	Column chromotograph/isotope	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82544		X	Column chromotograph/isotope	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82550		X	Assay of ck (cpk)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82552		X	Assay of cpk in blood	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82553		X	Creatine, MB fraction	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82554		X	Creatine, isoforms	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82565		X	Assay of creatinine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82570		X	Assay of urine creatinine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82575		X	Creatinine clearance test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82585		X	Assay of cryofibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82595		X	Assay of cryoglobulin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82600		X	Assay of cyanide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82607		X	Vitamin B-12	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82608		X	B-12 binding capacity	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82615		X	Test for urine cystines	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82626		X	Dehydroepiandrosterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82627		X	Dehydroepiandrosterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82633		X	Desoxycorticosterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82634		X	Deoxycortisol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82638		X	Assay of dibucaine number	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82646		X	Assay of dihydrocodeinone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82649		X	Assay of dihydromorphinone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82651		X	Assay of dihydrotestosterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82652		X	Assay of dihydroxyvitamin d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82654		X	Assay of dimethadione	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82657		X	Enzyme cell activity	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82658		X	Enzyme cell activity, ra	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82664		X	Electrophoretic test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82666		X	Assay of epiandrosterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82668		X	Assay of erythropoietin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82670		X	Assay of estradiol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82671		X	Assay of estrogens	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82672		X	Assay of estrogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82677		X	Assay of estriol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82679		X	Assay of estrone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82690		X	Assay of ethchlorvynol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82693		X	Assay of ethylene glycol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82696		X	Assay of etiocholanolone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82705		X	Fats/lipids, feces, qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82710		X	Fats/lipids, feces, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82715		X	Assay of fecal fat	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82725		X	Assay of blood fatty acids	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82726		X	Long chain fatty acids	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82728		X	Assay of ferritin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82731		X	Assay of fetal fibronectin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82735		X	Assay of fluoride	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82742		X	Assay of flurazepam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82746		X	Blood folic acid serum	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82747		X	Assay of folic acid, rbc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82757		X	Assay of semen fructose	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82759		X	Assay of rbc galactokinase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82760		X	Assay of galactose	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82775		X	Assay galactose transferase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82776		X	Galactose transferase test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82784		X	Assay of gammaglobulin igm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82785		X	Assay of gammaglobulin ige	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82787		X	Igg 1, 2, 3 or 4, each	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82800		X	Blood pH	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82803		X	Blood gases: pH, pO2 & pCO2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82805		X	Blood gases W/02 saturation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82810		X	Blood gases, O2 sat only	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82820		X	Hemoglobin-oxygen affinity	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82926		X	Assay of gastric acid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82928		X	Assay of gastric acid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82938		X	Gastrin test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82941		X	Assay of gastrin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82943		X	Assay of glucagon	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82945		X	Glucose other fluid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82946		X	Glucagon tolerance test	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
82947		X	Assay, glucose, blood quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82948		X	Reagent strip/blood glucose	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82950		X	Glucose test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82951		X	Glucose tolerance test (GTT)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82952		X	GTT-added samples	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82953		X	Glucose-tolbutamide test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82955		X	Assay of g6pd enzyme	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82960		X	Test for G6PD enzyme	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82962		X	Glucose blood test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82963		X	Assay of glucosidase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82965		X	Assay of gdh enzyme	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82975		X	Assay of glutamine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82977		X	Assay of GGT	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82978		X	Assay of glutathione	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82979		X	Assay, rbc glutathione	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82980		X	Assay of glutethimide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82985		X	Glycated protein	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83001		X	Gonadotropin (FSH)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83002		X	Gonadotropin (LH)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83003		X	Assay, growth hormone (hgh)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83008		X	Assay of guanosine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83010		X	Assay of haptoglobin, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83012		X	Assay of haptoglobins	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83013		X	H pylori analysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83014		X	H pylori drug admin/collect	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83015		X	Heavy metal screen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83018		X	Quantitative screen, metals	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83020		X	Hemoglobin electrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83020	26	A	Hemoglobin electrophoresis	0.37	0.17	0.17	0.01	0.55	0.55	XXX
83021		X	Hemoglobin chromotography	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83026		X	Hemoglobin, copper sulfate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83030		X	Fetal hemoglobin, chemical	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83033		X	Fetal hemoglobin assay, qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83036		X	Glycated hemoglobin test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83045		X	Blood methemoglobin test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83050		X	Blood methemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83051		X	Assay of plasma hemoglobin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83055		X	Blood sulfhemoglobin test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83060		X	Blood sulfhemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83065		X	Assay of hemoglobin heat	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83068		X	Hemoglobin stability screen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83069		X	Assay of urine hemoglobin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83070		X	Assay of hemosiderin, qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83071		X	Assay of hemosiderin, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83080		X	Assay of b hexosaminidase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83088		X	Assay of histamine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83090		X	Assay of homocystine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83150		X	Assay of for hva	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83491		X	Assay of corticosteroids	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83497		X	Assay of 5-hiaa	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83498		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83499		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83500		X	Assay, free hydroxyproline	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83505		X	Assay, total hydroxyproline	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83516		X	Immunoassay, nonantibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83518		X	Immunoassay, dipstick	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83519		X	Immunoassay, nonantibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83520		X	Immunoassay, RIA	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83525		X	Assay of insulin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83527		X	Assay of insulin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83528		X	Assay of intrinsic factor	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83540		X	Assay of iron	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83550		X	Iron binding test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83570		X	Assay of idh enzyme	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83582		X	Assay of ketogenic steroids	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83586		X	Assay 17- ketosteroids	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83593		X	Fractionation, ketosteroids	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83605		X	Assay of lactic acid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83615		X	Lactate (LD) (LDH) enzyme	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83625		X	Assay of ldh enzymes	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83632		X	Placental lactogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83633		X	Test urine for lactose	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83634		X	Assay of urine for lactose	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
83655		X	Assay of lead	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83661		X	L/s ratio, fetal lung	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83662		X	Foam stability, fetal lung	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83663		X	Fluoro polarize, fetal lung	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83664		X	Lamellar bdy, fetal lung	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83670		X	Assay of lap enzyme	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83690		X	Assay of lipase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83715		X	Assay of blood lipoproteins	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83716		X	Assay of blood lipoproteins	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83718		X	Assay of lipoprotein	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83719		X	Assay of blood lipoprotein	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83721		X	Assay of blood lipoprotein	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83727		X	Assay of lrh hormone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83735		X	Assay of magnesium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83775		X	Assay of md enzyme	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83785		X	Assay of manganese	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83788		X	Mass spectrometry qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83789		X	Mass spectrometry quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83805		X	Assay of meprobamate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83825		X	Assay of mercury	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83835		X	Assay of metanephrines	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83840		X	Assay of methadone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83857		X	Assay of methemalbumin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83858		X	Assay of methsuximide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83864		X	Mucopolysaccharides	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83866		X	Mucopolysaccharides screen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83872		X	Assay synovial fluid mucin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83873		X	Assay of csf protein	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83874		X	Assay of myoglobin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83883		X	Assay, nephelometry not spec	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83885		X	Assay of nickel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83887		X	Assay of nicotine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83890		X	Molecule isolate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83891		X	Molecule isolate nucleic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83892		X	Molecular diagnostics	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83893		X	Molecule dot/slot/blot	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83894		X	Molecule gel electrophor	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83896		X	Molecular diagnostics	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83897		X	Molecule nucleic transfer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83898		X	Molecule nucleic ampli	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83901		X	Molecule nucleic ampli	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83902		X	Molecular diagnostics	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83903		X	Molecule mutation scan	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83904		X	Molecule mutation identify	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83905		X	Molecule mutation identify	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83906		X	Molecule mutation identify	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83912		X	Genetic examination	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83912	26	A	Genetic examination	0.37	0.17	0.17	0.01	0.55	0.55	XXX
83915		X	Assay of nucleotidase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83916		X	Oligoclonal bands	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83918		X	Organic acids, total, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83919		X	Organic acids, qual, each	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83921		X	Organic acid, single, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83925		X	Assay of opiates	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83930		X	Assay of blood osmolality	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83935		X	Assay of urine osmolality	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83937		X	Assay of osteocalcin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83945		X	Assay of oxalate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83950		X	Oncorprotein, her-2/neu	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83970		X	Assay of parathormone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83986		X	Assay of body fluid acidity	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83992		X	Assay for phencyclidine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84022		X	Assay of phenothiazine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84030		X	Assay of blood pku	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84035		X	Assay of phenylketones	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84060		X	Assay acid phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84061		X	Phosphatase, forensic exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84066		X	Assay prostate phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84075		X	Assay alkaline phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84078		X	Assay alkaline phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84080		X	Assay alkaline phosphatases	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84081		X	Amniotic fluid enzyme test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84085		X	Assay of rbc pg6d enzyme	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
84087		X	Assay phosphohexose enzymes	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84100		X	Assay of phosphorus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84105		X	Assay of urine phosphorus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84106		X	Test for porphobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84110		X	Assay of porphobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84119		X	Test unne for porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84120		X	Assay of urine porphynns	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84126		X	Assay of feces porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84127		X	Assay of feces porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84132		X	Assay of serum potassium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84133		X	Assay of urine potassium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84134		X	Assay of prealbumin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84135		X	Assay of pregnanediol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84138		X	Assay of pregnanetriol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84140		X	Assay of pregnenolone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84143		X	Assay of 17-hydroxypregneno	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84144		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84146		X	Assay of prolactin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84150		X	Assay of prostaglandin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84152		X	Assay of psa, complexed	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84153		X	Assay of psa, total	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84154		X	Assay of psa, free	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84155		X	Assay of protein	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84160		X	Assay of serum protein	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84165		X	Assay of serum proteins	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84165	26	A	Assay of serum proteins	0.37	0.17	0.17	0.01	0.55	0.55	XXX
84181		X	Western blot test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84181	26	A	Western blot test	0.37	0.15	0.15	0.01	0.53	0.53	XXX
84182		X	Protein, western blot test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84182	26	A	Protein, western blot test	0.37	0.15	0.15	0.01	0.53	0.53	XXX
84202		X	Assay RBC protoporphyrin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84203		X	Test RBC protoporphyrin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84206		X	Assay of proinsulin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84207		X	Assay of vitamin b-6	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84210		X	Assay of pyruvate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84220		X	Assay of pyruvate kinase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84228		X	Assay of quinine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84233		X	Assay of estrogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84234		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84235		X	Assay of endocrine hormone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84238		X	Assay, nonendocrine receptor	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84244		X	Assay of renin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84252		X	Assay of vitamin b-2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84255		X	Assay of selenium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84260		X	Assay of serotonin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84270		X	Assay of sex hormone globul	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84275		X	Assay of sialic acid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84285		X	Assay of silica	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84295		X	Assay of serum sodium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84300		X	Assay of urine sodium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84305		X	Assay of somatomedin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84307		X	Assay of somatostatin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84311		X	Spectrophotometry	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84315		X	Body fluid specific gravity	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84375		X	Chromatogram assay, sugars	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84376		X	Sugars, single, qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84377		X	Sugars, multiple, qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84378		X	Sugars single quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84379		X	Sugars multiple quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84392		X	Assay of urine sulfate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84402		X	Assay of testosterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84403		X	Assay of total testosterone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84425		X	Assay of vitamin b-1	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84430		X	Assay of thiocyanate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84432		X	Assay of thyroglobulin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84436		X	Assay of total thyroxine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84437		X	Assay of neonatal thyroxine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84439		X	Assay of free thyroxine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84442		X	Assay of thyroid activity	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84443		X	Assay thyroid stim hormone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84445		X	Assay of tsi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84446		X	Assay of vitamin e	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84449		X	Assay of transcortin	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
84450		X	Transferase (AST) (SGOT)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84460		X	Alanine amino (ALT) (SGPT)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84466		X	Assay of transferrin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84478		X	Assay of triglycerides	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84479		X	Assay of thyroid (t3 or t4)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84480		X	Assay, triiodothyronine (t3)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84481		X	Free assay (FT-3)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84482		X	Reverse assay (t3)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84484		X	Assay of troponin, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84485		X	Assay duodenal fluid trypsin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84488		X	Test feces for trypsin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84490		X	Assay of feces for trypsin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84510		X	Assay of tyrosine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84512		X	Assay of troponin, qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84520		X	Assay of urea nitrogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84525		X	Urea nitrogen semi-quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84540		X	Assay of urine/urea-n	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84545		X	Urea-N clearance test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84550		X	Assay of blood/uric acid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84560		X	Assay of urine/uric acid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84577		X	Assay of feces/urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84578		X	Test urine urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84580		X	Assay of urine urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84583		X	Assay of urine urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84585		X	Assay of urine vma	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84586		X	Assay of vip	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84588		X	Assay of vasopressin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84590		X	Assay of vitamin a	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84591		X	Assay of nos vitamin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84597		X	Assay of vitamin k	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84600		X	Assay of volatiles	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84620		X	Xylose tolerance test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84630		X	Assay of zinc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84681		X	Assay of c-peptide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84702		X	Chorionic gonadotropin test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84703		X	Chorionic gonadotropin assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84830		X	Ovulation tests	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84999		X	Clinical chemistry test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85002		X	Bleeding time test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85007		X	Differential WBC count	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85008		X	Nondifferential WBC count	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85009		X	Differential WBC count	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85013		X	Hematocrit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85014		X	Hematocrit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85018		X	Hemoglobin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85021		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85022		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85023		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85024		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85025		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85027		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85031		X	Manual hemogram, cbc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85041		X	Red blood cell (RBC) count	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85044		X	Reticulocyte count	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85045		X	Reticulocyte count	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85046		X	Reticyte/hgb concentrate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85048		X	White blood cell (WBC) count	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85060		A	Blood smear interpretation	0.45	0.19	0.19	0.02	0.66	0.66	XXX
85095		D	Bone marrow aspiration	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85097		A	Bone marrow interpretaiion	0.94	1.75	0.43	0.03	2.72	1.40	XXX
85102		D	Bone marrow biopsy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85130		X	Chromogenic substrate assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85170		X	Blood clot retraction	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85175		X	Blood clot lysis time	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85210		X	Blood clot factor II test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85220		X	Blood clot factor V test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85230		X	Blood clot factor VII test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85240		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85244		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85245		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85246		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85247		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85250		X	Blood clot factor IX test	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
85260		X	Blood clot factor X test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85270		X	Blood clot factor XI test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85280		X	Blood clot factor XII test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85290		X	Blood clot factor XIII test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85291		X	Blood clot factor XIII test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85292		X	Blood clot factor assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85293		X	Blood clot factor assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85300		X	Antithrombin III test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85301		X	Antithrombin III test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85302		X	Blood clot inhibitor antigen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85303		X	Blood clot inhibitor test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85305		X	Blood clot inhibitor assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85306		X	Blood clot inhibitor test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85307		X	Assay activated protein c	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85335		X	Factor inhibitor test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85337		X	Thrombomodulin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85345		X	Coagulation time	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85347		X	Coagulation time	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85348		X	Coagulation time	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85360		X	Euglobulin lysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85362		X	Fibrin degradation products	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85366		X	Fibrinogen test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85370		X	Fibrinogen test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85378		X	Fibrin degradation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85379		X	Fibrin degradation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85384		X	Fibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85385		X	Fibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85390		X	Fibrinolysins screen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85390	26	A	Fibrinolysins screen	0.37	0.12	0.12	0.01	0.50	0.50	XXX
85400		X	Fibrinolytic plasmin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85410		X	Fibrinolytic antiplasmin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85415		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85420		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85421		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85441		X	Heinz bodies, direct	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85445		X	Heinz bodies, induced	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85460		X	Hemoglobin, fetal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85461		X	Hemoglobin, fetal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85475		X	Hemolysin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85520		X	Heparin assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85525		X	Heparin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85530		X	Heparin-protamine tolerance	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85535		D	Iron stain, blood cells	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85536		X	Iron stain peripheral blood	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85540		X	Wbc alkaline phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85547		X	RBC mechanical fragility	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85549		X	Muramidase	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85555		X	RBC osmotic fragility	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85557		X	RBC osmotic fragility	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85576		X	Blood platelet aggregation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85576	26	A	Blood platelet aggregation	0.37	0.16	0.16	0.01	0.54	0.54	XXX
85585		X	Blood platelet estimation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85590		X	Platelet count, manual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85595		X	Platelet count, automated	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85597		X	Platelet neutralization	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85610		X	Prothrombin time	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85611		X	Prothrombin test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85612		X	Viper venom prothrombin time	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85613		X	Russell viper venom, diluted	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85635		X	Reptilase test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85651		X	Rbc sed rate, nonautomated	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85652		X	Rbc sed rate, automated	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85660		X	RBC sickle cell test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85670		X	Thrombin time, plasma	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85675		X	Thrombin time, titer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85705		X	Thromboplastin inhibition	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85730		X	Thromboplastin time, partial	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85732		X	Thromboplastin time, partial	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85810		X	Blood viscosity examination	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85999		X	Hematology procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86000		X	Agglutinins, febrile	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86001		X	Allergen specific igg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86003		X	Allergen specific IgE	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
86005		X	Allergen specific IgE	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86021		X	WBC antibody identification	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86022		X	Platelet antibodies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86023		X	Immunoglobulin assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86038		X	Antinuclear antibodies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86039		X	Antinuclear antibodies (ANA)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86060		X	Antistreptolysin o, titer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86063		X	Antistreptolysin o, screen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86077		A	Physician blood bank service	0.94	0.48	0.43	0.03	1.45	1.40	XXX
86078		A	Physician blood bank service	0.94	0.51	0.43	0.03	1.48	1.40	XXX
86079		A	Physician blood bank service	0.94	0.50	0.44	0.03	1.47	1.41	XXX
86140		X	C-reactive protein	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86141		X	C-reactive protein, hs	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86146		X	Glycoprotein antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86147		X	Cardiolipin antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86148		X	Phospholipid antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86155		X	Chemotaxis assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86156		X	Cold agglutinin, screen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86157		X	Cold agglutinin, titer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86160		X	Complement, antigen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86161		X	Complement/function activity	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86162		X	Complement, total (CH50)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86171		X	Complement fixation, each	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86185		X	Counterimmunoelectrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86215		X	Deoxyribonuclease, antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86225		X	DNA antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86226		X	DNA antibody, single strand	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86235		X	Nuclear antigen antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86243		X	Fc receptor	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86255		X	Fluorescent antibody, screen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86255	26	A	Fluorescent antibody, screen	0.37	0.17	0.17	0.01	0.55	0.55	XXX
86256		X	Fluorescent antibody, titer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86256	26	A	Fluorescent antibody, titer	0.37	0.17	0.17	0.01	0.55	0.55	XXX
86277		X	Growth hormone antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86280		X	Hemagglutination inhibition	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86294		X	Immunoassay, tumor qual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86300		X	Immunoassay, tumor ca 15–3	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86301		X	Immunoassay, tumor ca 19–9	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86304		X	Immunoassay, tumor, ca 125	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86308		X	Heterophile antibodies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86309		X	Heterophile antibodies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86310		X	Heterophile antibodies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86316		X	Immunoassay, tumor other	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86317		X	Immunoassay, infectious agent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86318		X	Immunoassay, infectious agent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86320		X	Serum immunoelectrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86320	26	A	Serum immunoelectrophoresis	0.37	0.17	0.17	0.01	0.55	0.55	XXX
86325		X	Other immunoelectrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86325	26	A	Other immunoelectrophoresis	0.37	0.17	0.17	0.01	0.55	0.55	XXX
86327		X	Immunoelectrophoresis assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86327	26	A	Immunoelectrophoresis assay	0.42	0.20	0.20	0.01	0.63	0.63	XXX
86329		X	Immunodiffusion	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86331		X	Immunodiffusion ouchterlony	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86332		X	Immune complex assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86334		X	Immunofixation procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86334	26	A	Immunofixation procedure	0.37	0.17	0.17	0.01	0.55	0.55	XXX
86336		X	Inhibin A	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86337		X	Insulin antibodies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86340		X	Intrinsic factor antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86341		X	Islet cell antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86343		X	Leukocyte histamine release	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86344		X	Leukocyte phagocytosis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86353		X	Lymphocyte transformation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86359		X	T cells, total count	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86360		X	T cell, absolute count/ratio	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86361		X	T cell, absolute count	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86376		X	Microsomal antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86378		X	Migration inhibitory factor	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86382		X	Neutralization test, viral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86384		X	Nitroblue tetrazolium dye	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86403		X	Particle agglutination test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86406		X	Particle agglutination test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86430		X	Rheumatoid factor test	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
86431		X	Rheumatoid factor, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86485		C	Skin test, candida	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86490		A	Coccidioidomycosis skin test	0.00	0.28	NA	0.02	0.30	NA	XXX
86510		A	Histoplasmosis skin test	0.00	0.30	NA	0.02	0.32	NA	XXX
86580		A	TB intradermal test	0.00	0.24	NA	0.02	0.26	NA	XXX
86585		A	TB tine test	0.00	0.19	NA	0.01	0.20	NA	XXX
86586		C	Skin test, unlisted	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86590		X	Streptokinase, antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86592		X	Blood serology, qualitative	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86593		X	Blood serology, quantitative	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86602		X	Antinomyces antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86603		X	Adenovirus antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86606		X	Aspergillus antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86609		X	Bacterium antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86611		X	Bartonella antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86612		X	Blastomyces antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86615		X	Bordetella antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86617		X	Lyme disease antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86618		X	Lyme disease antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86619		X	Borrelia antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86622		X	Brucella antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86625		X	Campylobacter antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86628		X	Candida antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86631		X	Chlamydia antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86632		X	Chlamydia igm antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86635		X	Coccidioides antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86638		X	Q fever antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86641		X	Cryptococcus antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86644		X	CMV antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86645		X	CMV antibody, IgM	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86648		X	Diphtheria antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86651		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86652		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86653		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86654		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86658		X	Enterovirus antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86663		X	Epstein-barr antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86664		X	Epstein-barr antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86665		X	Epstein-barr antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86666		X	Ehrlichia antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86668		X	Francisella tularensis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86671		X	Fungus antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86674		X	Giardia lamblia antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86677		X	Helicobacter pylori	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86682		X	Helminth antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86683		D	Hemoglobin, fecal antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86684		X	Hemophilus influenza	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86687		X	Htlv-i antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86688		X	Htlv-ii antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86689		X	HTLV/HIV confirmatory test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86692		X	Hepatitis, delta agent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86694		X	Herpes simplex test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86695		X	Herpes simplex test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86696		X	Herpes simplex type 2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86698		X	Histoplasma	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86701		X	HIV–1	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86702		X	HIV–2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86703		X	HIV–1/HIV–2, single assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86704		X	Hep b core antibody, total	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86705		X	Hep b core antibody, igm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86706		X	Hep b surface antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86707		X	Hep be antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86708		X	Hep a antibody, total	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86709		X	Hep a antibody, igm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86710		X	Influenza virus antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86713		X	Legionella antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86717		X	Leishmania antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86720		X	Leptospira antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86723		X	Listeria monocytogenes ab	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86727		X	Lymph choriomeningitis ab	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86729		X	Lympho venereum antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86732		X	Mucormycosis antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86735		X	Mumps antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
86738		X	Mycoplasma antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86741		X	Neisseria meningitidis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86744		X	Nocardia antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86747		X	Parvovirus antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86750		X	Malaria antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86753		X	Protozoa antibody nos	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86756		X	Respiratory virus antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86757		X	Rickettsia antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86759		X	Rotavirus antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86762		X	Rubella antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86765		X	Rubeola antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86768		X	Salmonella antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86771		X	Shigella antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86774		X	Tetanus antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86777		X	Toxoplasma antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86778		X	Toxoplasma antibody, igm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86781		X	Treponema pallidum, confirm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86784		X	Trichinella antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86787		X	Varicella-zoster antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86790		X	Virus antibody nos	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86793		X	Yersinia antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86800		X	Thyroglobulin antibody	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86803		X	Hepatitis c ab test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86804		X	Hep c ab test, confirm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86805		X	Lymphocytotoxicity assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86806		X	Lymphocytotoxicity assay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86807		X	Cytotoxic antibody screening	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86808		X	Cytotoxic antibody screening	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86812		X	HLA typing, A, B, or C	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86813		X	HLA typing, A, B, or C	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86816		X	HLA typing, DR/DQ	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86817		X	HLA typing, DR/DQ	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86821		X	Lymphocyte culture, mixed	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86822		X	Lymphocyte culture, primed	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86849		X	Immunology procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86850		X	RBC antibody screen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86860		X	RBC antibody elution	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86870		X	RBC antibody identification	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86880		X	Coombs test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86885		X	Coombs test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86886		X	Coombs test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86890		X	Autologous blood process	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86891		X	Autologous blood, op salvage	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86900		X	Blood typing, ABO	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86901		X	Blood typing, Rh (D)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86903		X	Blood typing, antigen screen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86904		X	Blood typing, patient serum	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86905		X	Blood typing, RBC antigens	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86906		X	Blood typing, Rh phenotype	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86910		N	Blood typing, paternity test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86911		N	Blood typing, antigen system	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86915		X	Bone marrow/stem cell prep	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86920		X	Compatibility test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86921		X	Compatibility test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86922		X	Compatibility test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86927		X	Plasma, fresh frozen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86930		X	Frozen blood prep	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86931		X	Frozen blood thaw	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86932		X	Frozen blood freeze/thaw	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86940		X	Hemolysins/agglutinins, auto	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86941		X	Hemolysins/agglutinins	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86945		X	Blood product/irradiation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86950		X	Leukacyte transfusion	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86965		X	Pooling blood platelets	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86970		X	RBC pretreatment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86971		X	RBC pretreatment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86972		X	RBC pretreatment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86975		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86976		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86977		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86978		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86985		X	Split blood or products	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86999		X	Transfusion procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
87001		X	Small animal inoculation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87003		X	Small animal inoculation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87015		X	Specimen concentration	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87040		X	Blood culture for bacteria	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87045		X	Feces culture, bacteria	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87046		X	Stool cultr, bacteria, each	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87070		X	Culture, bacteria, other	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87071		X	Culture bacteri aerobic othr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87073		X	Culture bacteria anaerobic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87075		X	Culture bacteria anaerobic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87076		X	Culture anaerobe ident, each	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87077		X	Culture aerobic identify	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87081		X	Culture screen only	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87084		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87086		X	Urine culture/colony count	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87088		X	Urine bacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87101		X	Skin fungi culture	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87102		X	Fungus isolation culture	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87103		X	Blood fungus culture	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87106		X	Fungi identification, yeast	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87107		X	Fungi identification, mold	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87109		X	Mycoplasma	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87110		X	Chlamydia culture	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87116		X	Mycobacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87118		X	Mycobacteric identification	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87140		X	Culture type immunofluoresc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87143		X	Culture typing, glc/hplc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87147		X	Culture type, immunologic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87149		X	Culture type, nucleic acid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87152		X	Culture type pulse field gel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87158		X	Culture typing, added method	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87164		X	Dark field examination	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87164	26	A	Dark field examination	0.37	0.12	0.11	0.01	0.50	0.49	XXX
87166		X	Dark field examination	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87168		X	Macroscopic exam arthropod	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87169		X	Macacroscopic exam parasite	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87172		X	Pinworm exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87176		X	Tissue homogenization, cultr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87177		X	Ova and parasites smears	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87181		X	Microbe susceptible, diffuse	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87184		X	Microbe susceptible, disk	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87185		X	Microbe susceptible, enzyme	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87186		X	Microbe susceptible, mic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87187		X	Microbe susceptible, mic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87188		X	Microbe suscept, macrobroth	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87190		X	Microbe suscept, mycobacteri	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87197		X	Bactericidal level, serum	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87198		X	Cytomegalovirus antibody dfa	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87199		X	Enterovirus antibody, dfa	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87205		X	Smear, gram stain	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87206		X	Smear, fluorescent/acid stai	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87207		X	Smear, special stain	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87207	26	A	Smear, special stain	0.37	0.18	0.17	0.01	0.56	0.55	XXX
87210		X	Smear, wet mount, saline/ink	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87220		X	Tissue exam for fungi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87230		X	Assay, toxin or antitoxin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87250		X	Virus inoculate, eggs/animal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87252		X	Virus inoculation, tissue	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87253		X	Virus inoculate tissue, addl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87254		X	Virus inoculation, shell via	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87260		X	Adenovirus ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87265		X	Pertussis ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87270		X	Chlamydia trachomatis ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87272		X	Cryptosporidum/gardia ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87273		X	Herpes simplex 2, ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87274		X	Herpes simplex 1, ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87275		X	Influenza b, ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87276		X	Influenza a, ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87277		X	Legionella micdadei, ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87278		X	Legion pneumophilia ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87279		X	Parainfluenza, ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87280		X	Respiratory syncytial ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87281		X	Pneumocystis carinii, ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] +Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
87283		X	Rubeola, ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87285		X	Treponema pallidum, ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87290		X	Varicella zoster, ag, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87299		X	Antibody detection, nos, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87300		X	Ag detection, polyval, if	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87301		X	Adenovirus ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87320		X	Chylmd trach ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87324		X	Clostridium ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87327		X	Cryptococcus neoform ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87328		X	Cryptospor ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87332		X	Cytomegalovirus ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87335		X	E coli 0157 ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87336		X	Entamoeb hist dispr, ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87337		X	Entamoeb hist group, ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87338		X	Hpylori, stool, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87339		X	H pylori ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87340		X	Hepatitis b surface ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87341		X	Hepatitis b surface, ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87350		X	Hepatitis be ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87380		X	Hepatitis delta ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87385		X	Histoplasma capsul ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87390		X	Hiv-1 ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87391		X	Hiv-2 ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87400		X	Influenza a/b, ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87420		X	Resp syncytial ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87425		X	Rotavirus ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87427		X	Shiga-like toxin ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87430		X	Strep a ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87449		X	Ag detect nos, eia, mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87450		X	Ag detect nos, eia, single	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87451		X	Ag detect polyval, eia, mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87470		X	Bartonella, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87471		X	Bartonella, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87472		X	Bartonella, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87475		X	Lyme dis, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87476		X	Lyme dis, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87477		X	Lyme dis, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87480		X	Candida, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87481		X	Candida, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87482		X	Candida, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87485		X	Chylmd pneum, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87486		X	Chylmd pneum, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87487		X	Chylmd pneum, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87490		X	Chylmd trach, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87491		X	Chylmd trach, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87492		X	Chylmd trach, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87495		X	Cytomeg, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87496		X	Cytomeg, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87497		X	Cytomeg, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87510		X	Gardner vag, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87511		X	Gardner vag, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87512		X	Gardner vag, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87515		X	Hepatitis b, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87516		X	Hepatitis b, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87517		X	Hepatitis b, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87520		X	Hepatitis c, rna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87521		X	Hepatitis c, rna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87522		X	Hepatitis c, rna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87525		X	Hepatitis g, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87526		X	Hepatitis g, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87527		X	Hepatitis g, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87528		X	Hsv, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87529		X	Hsv, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87530		X	Hsv, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87531		X	Hhv-6, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87532		X	Hhv-6, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87533		X	Hhv-6, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87534		X	Hiv-1, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87535		X	Hiv-1, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87536		X	Hiv-1, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87537		X	Hiv-2, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87538		X	Hiv-2, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87539		X	Hiv-2, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] +Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
87540		X	Legion pneumo, dna, dir prob	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87541		X	Legion pneumo, dna, amp prob	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87542		X	Legion pneumo, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87550		X	Mycobacteria, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87551		X	Mycobacteria, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87552		X	Mycobacteria, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87555		X	M.tuberculo, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87556		X	M.tuberculo, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87557		X	M.tuberculo, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87560		X	M.avium-intra, dna, dir prob	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87561		X	M.avium-intra, dna, amp prob	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87562		X	M.avium-intra, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87580		X	M.pneumon, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87581		X	M.pneumon, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87582		X	M.pneumon, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87590		X	N.gonorrhoeae, dna, dir prob	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87591		X	N.gonorrhoeae, dna, amp prob	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87592		X	N.gonorrhoeae, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87620		X	Hpv, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87621		X	Hpv, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87622		X	Hpv, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87650		X	Strep a, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87651		X	Strep a, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87652		X	Strep a, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87797		X	Detect agent nos, dna, dir	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87798		X	Detect agent nos, dna, amp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87799		X	Detect agent nos, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87800		X	Detect agnt mult, dna, direc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87801		X	Detect agnt mult, dna, ampli	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87802		X	Strep b assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87803		X	Clostridium toxin a w/optic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87804		X	Influenza assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87810		X	Chylmd trach assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87850		X	N. gonorrhoeae assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87880		X	Strep a assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87899		X	Agent nos assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87901		X	Genotype, dna, hiv reverse t	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87902		X	Genotype, dna, hepatitis C	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87903		X	Phenotype, dna hiv w/culture	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87904		X	Phenotype, dna hiv w/clt add	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87999		X	Microbiology procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88000		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88005		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88007		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88012		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88014		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88016		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88020		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88025		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88027		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88028		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88029		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88036		N	Limited autopsy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88037		N	Limited autopsy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88040		N	Forensic autopsy (necropsy)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88045		N	Coroner's autopsy (necropsy)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88099		N	Necropsy (autopsy) procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88104		A	Cytopathology, fluids	0.56	0.72	NA	0.04	1.32	NA	XXX
88104	26	A	Cytopathology, fluids	0.56	0.26	0.26	0.02	0.84	0.84	XXX
88104	TC	A	Cytopathology, fluids	0.00	0.46	NA	0.02	0.48	NA	XXX
88106		A	Cytopathology, fluids	0.56	0.72	NA	0.04	1.32	NA	XXX
88106	26	A	Cytopathology, fluids	0.56	0.26	0.26	0.02	0.84	0.84	XXX
88106	TC	A	Cytopathology, fluids	0.00	0.46	NA	0.02	0.48	NA	XXX
88107		A	Cytopathology, fluids	0.76	1.01	NA	0.05	1.82	NA	XXX
88107	26	A	Cytopathology, fluids	0.76	0.35	0.35	0.03	1.14	1.14	XXX
88107	TC	A	Cytopathology, fluids	0.00	0.66	NA	0.02	0.68	NA	XXX
88108		A	Cytopath, concentrate tech	0.56	0.94	NA	0.04	1.54	NA	XXX
88108	26	A	Cytopath, concentrate tech	0.56	0.26	0.26	0.02	0.84	0.84	XXX
88108	TC	A	Cytopath, concentrate tech	0.00	0.68	NA	0.02	0.70	NA	XXX
88125		A	Forensic cytopathology	0.26	0.30	NA	0.02	0.58	NA	XXX
88125	26	A	Forensic cytopathology	0.26	0.12	0.12	0.01	0.39	0.39	XXX
88125	TC	A	Forensic cytopathology	0.00	0.18	NA	0.01	0.19	NA	XXX
88130		X	Sex chromatin identification	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
88140		X	Sex chromatin identification	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88141		A	Cytopath, c/v, interpret	0.42	0.19	0.19	0.01	0.62	0.62	XXX
88142		X	Cytopath, c/v, thin layer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88143		X	Cytopath, c/v, thin lyr redo	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88144		X	Cytopath, c/v, thin lyr redo	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88145		X	Cytopath, c/v, thin lyr sel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88147		X	Cytopath, c/v, automated	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88148		X	Cytopath, c/v, auto rescreen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88150		X	Cytopath, c/v, manual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88152		X	Cytopath, c/v, auto redo	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88153		X	Cytopath, c/v, redo	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88154		X	Cytopath, c/v, select	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88155		X	Cytopath, c/v, index add-on	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88160		A	Cytopath smear, other source	0.50	1.01	NA	0.04	1.55	NA	XXX
88160	26	A	Cytopath smear, other source	0.50	0.23	0.23	0.02	0.75	0.75	XXX
88160	TC	A	Cytopath smear, other source	0.00	0.78	NA	0.02	0.80	NA	XXX
88161		A	Cytopath smear, other source	0.50	1.22	NA	0.04	1.76	NA	XXX
88161	26	A	Cytopath smear, other source	0.50	0.23	0.23	0.02	0.75	0.75	XXX
88161	TC	A	Cytopath smear, other source	0.00	0.99	NA	0.02	1.01	NA	XXX
88162		A	Cytopath smear, other source	0.76	0.73	NA	0.05	1.54	NA	XXX
88162	26	A	Cytopath smear, other source	0.76	0.35	0.35	0.03	1.14	1.14	XXX
88162	TC	A	Cytopath smear, other source	0.00	0.38	NA	0.02	0.40	NA	XXX
88164		X	Cytopath tbs, c/v, manual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88165		X	Cytopath tbs, c/v, redo	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88166		X	Cytopath tbs, c/v, auto redo	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88167		X	Cytopath tbs, c/v, select	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88170		D	Fine needle aspiration	0.00	0.00	NA	0.00	0.00	NA	XXX
88170	26	D	Fine needle aspiration	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88170	TC	D	Fine needle aspiration	0.00	0.00	NA	0.00	0.00	NA	XXX
88171		D	Fine needle aspiration	0.00	0.00	NA	0.00	0.00	NA	XXX
88171	26	D	Fine needle aspiration	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88171	TC	D	Fine needle aspiration	0.00	0.00	NA	0.00	0.00	NA	XXX
88172		A	Cytopathology eval of fna	0.60	0.68	NA	0.04	1.32	NA	XXX
88172	26	A	Cytopathology eval of fna	0.60	0.28	0.28	0.02	0.90	0.90	XXX
88172	TC	A	Cytopathology eval of fna	0.00	0.40	NA	0.02	0.42	NA	XXX
88173		A	Cytopath eval, fna, report	1.39	1.80	NA	0.07	3.26	NA	XXX
88173	26	A	Cytopath eval, fna, report	1.39	0.64	0.64	0.05	2.08	2.08	XXX
88173	TC	A	Cytopath eval, fna, report	0.00	1.16	NA	0.02	1.18	NA	XXX
88180		A	Cell marker study	0.36	0.60	NA	0.03	0.99	NA	XXX
88180	26	A	Cell marker study	0.36	0.17	0.17	0.01	0.54	0.54	XXX
88180	TC	A	Cell marker study	0.00	0.43	NA	0.02	0.45	NA	XXX
88182		A	Cell marker study	0.77	1.81	NA	0.06	2.64	NA	XXX
88182	26	A	Cell marker study	0.77	0.36	0.36	0.03	1.16	1.16	XXX
88182	TC	A	Cell marker study	0.00	1.45	NA	0.03	1.48	NA	XXX
88199		C	Cytopathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88199	26	C	Cytopathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88199	TC	C	Cytopathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88230		X	Tissue culture, lymphocyte	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88233		X	Tissue culture, skin/biopsy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88235		X	Tissue culture, placenta	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88237		X	Tissue culture, bone marrow	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88239		X	Tissue culture, tumor	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88240		X	Cell cryopreserve/storage	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88241		X	Frozen cell preparation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88245		X	Chromosome analysis, 20–25	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88248		X	Chromosome analysis, 50–100	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88249		X	Chromosome analysis, 100	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88261		X	Chromosome analysis, 5	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88262		X	Chromosome analysis, 15–20	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88263		X	Chromosome analysis, 45	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88264		X	Chromosome analysis, 20–25	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88267		X	Chromosome analys, placenta	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88269		X	Chromosome analys, amniotic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88271		X	Cytogenetics, dna probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88272		X	Cytogenetics, 3–5	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88273		X	Cytogenetics, 10–30	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88274		X	Cytogenetics, 25–99	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88275		X	Cytogenetics, 100–300	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88280		X	Chromosome karyotype study	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88283		X	Chromosome banding study	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88285		X	Chromosome count, additional	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88289		X	Chromosome study, additional	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88291		A	Cyto/molecular report	0.52	0.23	0.23	0.02	0.77	0.77	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
88299		C	Cytogenetic study	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88300		A	Surgical path, gross	0.08	0.34	NA	0.02	0.44	NA	XXX
88300	26	A	Surgical path, gross	0.08	0.04	0.04	0.01	0.13	0.13	XXX
88300	TC	A	Surgical path, gross	0.00	0.30	NA	0.01	0.31	NA	XXX
88302		A	Tissue exam by pathologist	0.13	0.73	NA	0.03	0.89	NA	XXX
88302	26	A	Tissue exam by pathologist	0.13	0.06	0.06	0.01	0.20	0.20	XXX
88302	TC	A	Tissue exam by pathologist	0.00	0.67	NA	0.02	0.69	NA	XXX
88304		A	Tissue exam by pathologist	0.22	0.95	NA	0.03	1.20	NA	XXX
88304	26	A	Tissue exam by pathologist	0.22	0.10	0.10	0.01	0.33	0.33	XXX
88304	TC	A	Tissue exam by pathologist	0.00	0.85	NA	0.02	0.87	NA	XXX
88305		A	Tissue exam by pathologist	0.75	1.78	NA	0.05	2.58	NA	XXX
88305	26	A	Tissue exam by pathologist	0.75	0.35	0.35	0.02	1.12	1.12	XXX
88305	TC	A	Tissue exam by pathologist	0.00	1.43	NA	0.03	1.46	NA	XXX
88307		A	Tissue exam by pathologist	1.59	2.71	NA	0.11	4.41	NA	XXX
88307	26	A	Tissue exam by pathologist	1.59	0.74	0.74	0.06	2.39	2.39	XXX
88307	TC	A	Tissue exam by pathologist	0.00	1.97	NA	0.05	2.02	NA	XXX
88309		A	Tissue exam by pathologist	2.28	3.40	NA	0.13	5.81	NA	XXX
88309	26	A	Tissue exam by pathologist	2.28	1.05	1.05	0.08	3.41	3.41	XXX
88309	TC	A	Tissue exam by pathologist	0.00	2.35	NA	0.05	2.40	NA	XXX
88311		A	Decalcify tissue	0.24	0.21	NA	0.02	0.47	NA	XXX
88311	26	A	Decalcify tissue	0.24	0.11	0.11	0.01	0.36	0.36	XXX
88311	TC	A	Decalcify tissue	0.00	0.10	NA	0.01	0.11	NA	XXX
88312		A	Special stains	0.54	1.69	NA	0.03	2.26	NA	XXX
88312	26	A	Special stains	0.54	0.25	0.25	0.02	0.81	0.81	XXX
88312	TC	A	Special stains	0.00	1.44	NA	0.01	1.45	NA	XXX
88313		A	Special stains	0.24	1.47	NA	0.02	1.73	NA	XXX
88313	26	A	Special stains	0.24	0.11	0.11	0.01	0.36	0.36	XXX
88313	TC	A	Special stains	0.00	1.36	NA	0.01	1.37	NA	XXX
88314		A	Histochemical stain	0.45	0.86	NA	0.04	1.35	NA	XXX
88314	26	A	Histochemical stain	0.45	0.20	0.20	0.02	0.67	0.67	XXX
88314	TC	A	Histochemical stain	0.00	0.66	NA	0.02	0.68	NA	XXX
88318		A	Chemical histochemistry	0.42	0.59	NA	0.02	1.03	NA	XXX
88318	26	A	Chemical histochemistry	0.42	0.20	0.20	0.01	0.63	0.63	XXX
88318	TC	A	Chemical histochemistry	0.00	0.39	NA	0.01	0.40	NA	XXX
88319		A	Enzyme histochemistry	0.53	2.45	NA	0.04	3.02	NA	XXX
88319	26	A	Enzyme histochemistry	0.53	0.24	0.24	0.02	0.79	0.79	XXX
88319	TC	A	Enzyme histochemistry	0.00	2.21	NA	0.02	2.23	NA	XXX
88321		A	Microslide consultation	1.30	0.62	0.60	0.04	1.96	1.94	XXX
88323		A	Microslide consultation	1.35	1.37	NA	0.07	2.79	NA	XXX
88323	26	A	Microslide consultation	1.35	0.63	0.63	0.05	2.03	2.03	XXX
88323	TC	A	Microslide consultation	0.00	0.74	NA	0.02	0.76	NA	XXX
88325		A	Comprehensive review of data	2.22	0.98	0.98	0.08	3.28	3.28	XXX
88329		A	Path consult introp	0.67	0.39	0.31	0.02	1.08	1.00	XXX
88331		A	Path consult intraop, 1 bloc	1.19	0.87	NA	0.07	2.13	NA	XXX
88331	26	A	Path consult intraop, 1 bloc	1.19	0.55	0.55	0.04	1.78	1.78	XXX
88331	TC	A	Path consult intraop, 1 bloc	0.00	0.32	NA	0.03	0.35	NA	XXX
88332		A	Path consult intraop, addl	0.59	0.47	NA	0.04	1.10	NA	XXX
88332	26	A	Path consult intraop, addl	0.59	0.27	0.27	0.02	0.88	0.88	XXX
88332	TC	A	Path consult intraop, addl	0.00	0.20	NA	0.02	0.22	NA	XXX
88342		A	Immunocytochemistry	0.85	1.43	NA	0.05	2.33	NA	XXX
88342	26	A	Immunocytochemistry	0.85	0.39	0.39	0.03	1.27	1.27	XXX
88342	TC	A	Immunocytochemistry	0.00	1.04	NA	0.02	1.06	NA	XXX
88346		A	Immunofluorescent study	0.86	1.20	NA	0.05	2.11	NA	XXX
88346	26	A	Immunofluorescent study	0.86	0.39	0.39	0.03	1.28	1.28	XXX
88346	TC	A	Immunofluorescent study	0.00	0.81	NA	0.02	0.83	NA	XXX
88347		A	Immunofluorescent study	0.86	1.90	NA	0.05	2.81	NA	XXX
88347	26	A	Immunofluorescent study	0.86	0.38	0.38	0.03	1.27	1.27	XXX
88347	TC	A	Immunofluorescent study	0.00	1.52	NA	0.02	1.54	NA	XXX
88348		A	Electron microscopy	1.51	6.96	NA	0.11	8.58	NA	XXX
88348	26	A	Electron microscopy	1.51	0.69	0.69	0.05	2.25	2.25	XXX
88348	TC	A	Electron microscopy	0.00	8.27	NA	0.06	6.33	NA	XXX
88349		A	Scanning electron microscopy	0.76	8.51	NA	0.08	9.35	NA	XXX
88349	26	A	Scanning electron microscopy	0.76	0.35	0.35	0.03	1.14	1.14	XXX
88349	TC	A	Scanning electron microscopy	0.00	8.16	NA	0.05	8.21	NA	XXX
88355		A	Analysis, skeletal muscle	1.85	2.41	NA	0.12	4.38	NA	XXX
88355	26	A	Analysis, skeletal muscle	1.85	0.86	0.86	0.07	2.78	2.78	XXX
88355	TC	A	Analysis, skeletal muscle	0.00	1.55	NA	0.05	1.60	NA	XXX
88356		A	Analysis, nerve	3.02	4.96	NA	0.16	8.14	NA	XXX
88356	26	A	Analysis, nerve	3.02	1.37	1.37	0.10	4.49	4.49	XXX
88356	TC	A	Analysis, nerve	0.00	3.59	NA	0.06	3.65	NA	XXX
88358		A	Analysis, tumor	2.82	1.78	NA	0.18	4.74	NA	XXX
88358	26	A	Analysis, tumor	2.82	1.30	1.30	0.10	4.22	4.22	XXX
88358	TC	A	Analysis, tumor	0.00	0.46	NA	0.06	0.52	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
88362		A	Nerve teasing preparations	2.17	3.36	NA	0.12	5.65	NA	XXX
88362	26	A	Nerve teasing preparations	2.17	0.99	0.99	0.07	3.23	3.23	XXX
88362	TC	A	Nerve teasing preparations	0.00	2.37	NA	0.05	2.42	NA	XXX
88365		A	Tissue hybridization	0.93	2.03	NA	0.05	3.01	NA	XXX
88365	26	A	Tissue hybridization	0.93	0.43	0.43	0.03	1.39	1.39	XXX
88365	TC	A	Tissue hybridization	0.00	1.60	NA	0.02	1.62	NA	XXX
88371		X	Protein, western blot tissue	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88371	26	A	Protein, western blot tissue	0.37	0.15	0.14	0.01	0.53	0.52	XXX
88372		X	Protein analysis w/probe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88372	26	A	Protein analysis w/probe	0.37	0.17	0.17	0.01	0.55	0.55	XXX
88380		C	Microdissection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88380	26	C	Microdissection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88380	TC	C	Microdissection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88399		C	Surgical pathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88399	26	C	Surgical pathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88399	TC	C	Surgical pathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88400		X	Bilirubin total transcut	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89050		X	Body fluid cell count	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89051		X	Body fluid cell count	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89060		X	Exam synovial fluid crystals	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89060	26	A	Exam synovial fluid crystals	0.37	0.18	0.17	0.01	0.56	0.55	XXX
89100		A	Sample intestinal contents	0.60	2.29	0.23	0.02	2.91	0.85	XXX
89105		A	Sample intestinal contents	0.50	2.25	0.18	0.02	2.77	0.70	XXX
89125		X	Specimen fat stain	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89130		A	Sample stomach contents	0.45	2.21	0.13	0.02	2.68	0.60	XXX
89132		A	Sample stomach contents	0.19	1.15	0.05	0.01	1.35	0.25	XXX
89135		A	Sample stomach contents	0.79	2.53	0.25	0.03	3.35	1.07	XXX
89136		A	Sample stomach contents	0.21	2.05	0.08	0.01	2.27	0.30	XXX
89140		A	Sample stomach contents	0.94	2.36	0.19	0.03	3.33	1.16	XXX
89141		A	Sample stomach contents	0.85	3.14	0.40	0.03	4.02	1.28	XXX
89160		X	Exam feces for meat fibers	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89190		X	Nasal smear for eosinophils	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89250		X	Fertilization of oocyte	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89251		X	Culture oocyte w/embryos	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89252		X	Assist oocyte fertilization	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89253		X	Embryo hatching	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89254		X	Oocyte identification	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89255		X	Prepare embryo for transfer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89256		X	Prepare cryopreserved embryo	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89257		X	Sperm identification	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89258		X	Cryopreservation, embryo	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89259		X	Cryopreservation, sperm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89260		X	Sperm isolation, simple	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89261		X	Sperm isolation, complex	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89264		X	Identify sperm tissue	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89300		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89310		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89320		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89321		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89325		X	Sperm antibody test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89329		X	Sperm evaluation test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89330		X	Evaluation, cervical mucus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89350		A	Sputum specimen collection	0.00	0.39	NA	0.02	0.41	NA	XXX
89355		X	Exam feces for starch	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89360		A	Collect sweat for test	0.00	0.43	NA	0.02	0.45	NA	XXX
89365		X	Water load test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89399		C	Pathology lab procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89399	26	C	Pathology lab procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89399	TC	C	Pathology lab procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90281		I	Human ig, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90283		I	Human ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90287		I	Botulinum antitoxin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90288		I	Botulism ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90291		I	Cmv ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90296		E	Diphtheria antitoxin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90371		E	Hep b ig, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90375		E	Rabies ig, im/sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90376		E	Rabies ig, heat treated	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90378		X	Rsv ig, im, 50mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90379		I	Rsv ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90384		I	Rh ig, full-dose, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90385		E	Rh ig, minidose, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90386		I	Rh ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
90389		I	Tetanus ig, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90393		E	Vaccina ig, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90396		E	Varicella-zoster ig, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90399		I	Immune globulin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90471		A	Immunization admin	0.00	0.10	NA	0.01	0.11	NA	XXX
90472		A	Immunization admin, each add	0.00	0.10	NA	0.01	0.11	NA	ZZZ
90473		N	Immune admin oral/nasal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90474		N	Immune admin oral/nasal addl	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
90476		E	Adenovirus vaccine, type 4	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90477		E	Adenovirus vaccine, type 7	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90581		E	Anthrax vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90585		E	Bcg vaccine, percut	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90586		E	Bcg vaccine, intravesical	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90632		E	Hep a vaccine, adult im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90633		E	Hep a vacc, ped/adol, 2 dose	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90634		E	Hep a vacc, ped/adol, 3 dose	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90636		E	Hep a/hep b vacc, adult im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90645		E	Hib vaccine, hboc, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90646		E	Hib vaccine, prp-d, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90647		E	Hib vaccine, prp-omp, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90648		E	Hib vaccine, prp-t, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90657		X	Flu vaccine, 6–35 mo, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90658		X	Flu vaccine, 3 yrs, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90659		X	Flu vaccine, whole, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90660		X	Flu vaccine, nasal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90665		E	Lyme disease vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90669		N	Pneumococcal vacc, ped<5	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90675		E	Rabies vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90676		E	Rabies vaccine, id	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90680		E	Rotovirus vaccine, oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90690		E	Typhoid vaccine, oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90691		E	Typhoid vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90692		E	Typhoid vaccine, h-p, sc/id	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90693		E	Typhoid vaccine, akd, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90700		E	Dtap vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90701		E	Dtp vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90702		E	Dt vaccine < 7, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90703		E	Tetanus vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90704		E	Mumps vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90705		E	Measles vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90706		E	Rubella vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90707		E	Mmr vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90708		E	Measles-rubella vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90709		E	Rubella & mumps vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90710		E	Mmrv vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90712		E	Oral poliovirus vaccine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90713		E	Poliovirus, ipv, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90716		E	Chicken pox vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90717		E	Yellow fever vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90718		E	Td vaccine > 7, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90719		E	Diphtheria vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90720		E	Dtp/hib vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90721		E	Dtap/hib vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90723		X	Dtap-hep b-ipv vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90725		E	Cholera vaccine, injectable	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90727		E	Plague vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90732		X	Pneumococcal vaccine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90733		E	Meningococcal vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90735		E	Encephalitis vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90740		X	Hepb vacc, ill pat 3 dose im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90743		X	Hep b vacc, adol, 2 dose, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90744		X	Hepb vacc ped/adol 3 dose im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90746		X	Hep b vaccine, adult, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90747		X	Hepb vacc, ill pat 4 dose im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90748		E	Hep b/hib vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90749		E	Vaccine toxoid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90780		A	IV infusion therapy, 1 hour	0.00	1.06	NA	0.06	1.12	NA	XXX
90781		A	IV infusion, additional hour	0.00	0.53	NA	0.03	0.56	NA	ZZZ
90782		T	Injection, sc/im	0.00	0.10	NA	0.01	0.11	NA	XXX
90783		T	Injection, ia	0.00	0.39	NA	0.02	0.41	NA	XXX
90784		T	Injection, iv	0.00	0.45	NA	0.03	0.48	NA	XXX
90788		T	Injection of antibiotic	0.00	0.11	NA	0.01	0.12	NA	XXX
90799		C	Ther/prophylactic/dx inject	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
90801		A	Psy dx interview	2.80	1.14	0.93	0.06	4.00	3.79	XXX
90802		A	Intac psy dx interview	3.01	1.17	0.99	0.07	4.25	4.07	XXX
90804		A	Psytx, office, 20–30 min	1.21	0.53	0.40	0.03	1.77	1.64	XXX
90805		A	Psytx, off, 20–30 min w/e&m	1.37	0.59	0.44	0.03	1.99	1.84	XXX
90806		A	Psytx, off, 45–50 min	1.86	0.75	0.62	0.04	2.65	2.52	XXX
90807		A	Psytx, off, 45–50 min w/e&m	2.02	0.79	0.66	0.05	2.86	2.73	XXX
90808		A	Psytx, office, 75–80 min	2.79	1.06	0.93	0.07	3.92	3.79	XXX
90809		A	Psytx, off, 75–80, w/e&m	2.95	1.11	0.97	0.07	4.13	3.99	XXX
90810		A	Intac psytx, off, 20–30 min	1.32	0.56	0.44	0.03	1.91	1.79	XXX
90811		A	Intac psytx, 20–30, w/e&m	1.48	0.63	0.48	0.03	2.14	1.99	XXX
90812		A	Intac psytx, off, 45–50 min	1.97	0.80	0.69	0.05	2.82	2.71	XXX
90813		A	Intac psytx, 45–50 min w/e&m	2.13	0.87	0.71	0.05	3.05	2.89	XXX
90814		A	Intac psytx, off, 75–80 min	2.90	1.15	1.01	0.07	4.12	3.98	XXX
90815		A	Intac psytx, 75–80 w/e&m	3.06	1.15	1.02	0.07	4.28	4.15	XXX
90816		A	Psytx, hosp, 20–30 min	1.25	0.57	0.43	0.03	1.85	1.71	XXX
90817		A	Psytx, hosp, 20–30 min w/e&m	1.41	0.62	0.45	0.03	2.06	1.89	XXX
90818		A	Psytx, hosp, 45–50 min	1.89	0.80	0.65	0.04	2.73	2.58	XXX
90819		A	Psytx, hosp, 45–50 min w/e&m	2.05	0.83	0.66	0.05	2.93	2.76	XXX
90821		A	Psytx, hosp, 75–80 min	2.83	1.11	0.97	0.06	4.00	3.86	XXX
90822		A	Psytx, hosp, 75–80 min w/e&m	2.99	1.30	0.97	0.07	4.36	4.03	XXX
90823		A	Intac psytx, hosp, 20–30 min	1.36	0.65	0.45	0.03	2.04	1.84	XXX
90824		A	Intac psytx, hsp 20–30 w/e&m	1.52	0.70	0.50	0.03	2.25	2.05	XXX
90826		A	Intac psytx, hosp, 45–50 min	2.01	0.89	0.68	0.04	2.94	2.73	XXX
90827		A	Intac psytx, hsp 45–50 w/e&m	2.16	0.91	0.70	0.05	3.12	2.91	XXX
90828		A	Intac psytx, hosp, 75–80 min	2.94	1.90	1.02	0.07	4.91	4.03	XXX
90829		A	Intac psytx, hsp 75–80 w/e&m	3.10	1.23	1.02	0.07	4.40	4.19	XXX
90845		A	Psychoanalysis	1.79	0.71	0.57	0.04	2.54	2.40	XXX
90846		R	Family psytx w/o patient	1.83	0.73	0.62	0.04	2.60	2.49	XXX
90847		R	Family psytx w/patient	2.21	0.86	0.75	0.05	3.12	3.01	XXX
90849		R	Multiple family group psytx	0.59	0.31	0.20	0.01	0.91	0.80	XXX
90853		A	Group psychotherapy	0.59	0.35	0.20	0.01	0.95	0.80	XXX
90857		A	Intac group psytx	0.83	0.37	0.21	0.02	1.02	0.86	XXX
90862		A	Medication management	0.95	0.44	0.31	0.02	1.41	1.28	XXX
90865		A	Narcosynthesis	2.84	1.70	0.94	0.07	4.61	3.85	XXX
90870		A	Electroconvulsive therapy	1.88	0.74	0.74	0.04	2.66	2.66	000
90871		A	Electroconvulsive therapy	2.72	NA	1.04	0.06	NA	3.82	000
90875		N	Psychophysiological therapy	+1.20	0.90	0.48	0.03	2.13	1.71	XXX
90876		N	Psychophysiological therapy	+1.90	1.18	0.76	0.04	3.12	2.70	XXX
90880		A	Hypnotherapy	2.19	0.91	0.71	0.05	3.15	2.95	XXX
90882		N	Environmental manipulation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90885		B	Psy evaluation of records	+0.97	0.39	0.39	0.02	1.38	1.38	XXX
90887		B	Consultation with family	+1.48	0.83	0.59	0.03	2.34	2.10	XXX
90889		B	Preparation of report	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90899		C	Psychiatric service/therapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90901		A	Biofeedback train, any meth	0.41	0.82	0.17	0.02	1.25	0.60	000
90911		A	Biofeedback peri/uro/rectal	0.89	0.87	0.39	0.04	1.80	1.32	000
90918		A	ESRD related services, month	11.18	5.53	5.53	0.30	17.01	17.01	XXX
90919		A	ESRD related services, month	8.54	4.53	4.53	0.24	13.31	13.31	XXX
90920		A	ESRD related services, month	7.27	4.02	4.02	0.19	11.48	11.48	XXX
90921		A	ESRD related services, month	4.47	2.98	2.98	0.12	7.55	7.55	XXX
90922		A	ESRD related services, day	0.37	0.17	0.17	0.01	0.55	0.55	XXX
90923		A	ESRD related services, day	0.28	0.15	0.15	0.01	0.44	0.44	XXX
90924		A	ESRD related services, day	0.24	0.13	0.13	0.01	0.38	0.38	XXX
90925		A	ESRD related services, day	0.15	0.10	0.10	0.01	0.26	0.26	XXX
90935		A	Hemodialysis, one evaluation	1.22	NA	0.86	0.03	NA	2.11	000
90937		A	Hemodialysis, repeated eval	2.11	NA	1.20	0.06	NA	3.37	000
90939		X	Hemodialysis study, transcut	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90940		X	Hemodialysis access study	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90945		A	Dialysis, one evaluation	1.28	NA	0.89	0.04	NA	2.21	000
90947		A	Dialysis, repeated eval	2.18	NA	1.24	0.06	NA	3.48	000
90989		X	Dialysis training, complete	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90993		X	Dialysis training, incompl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90997		A	Hemoperfusion	1.84	NA	1.10	0.05	NA	2.99	000
90999		C	Dialysis procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91000		A	Esophageal intubation	0.73	0.32	NA	0.04	1.09	NA	000
91000	26	A	Esophageal intubation	0.73	0.25	0.25	0.03	1.01	1.01	000
91000	TC	A	Esophageal intubation	0.00	0.07	NA	0.01	0.08	NA	000
91010		A	Esophagus motility study	1.25	2.80	NA	0.10	3.95	NA	000
91010	26	A	Esophagus motility study	1.25	0.46	0.46	0.05	1.76	1.76	000
91010	TC	A	Esophagus motility study	0.00	2.14	NA	0.05	2.19	NA	000
91011		A	Esophagus motility study	1.50	2.71	NA	0.10	4.31	NA	000
91011	26	A	Esophagus motility study	1.50	0.55	0.55	0.05	2.10	2.10	000
91011	TC	A	Esophagus motility study	0.00	2.16	NA	0.05	2.21	NA	000

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CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
91012		A	Esophagus motility study	1.46	2.35	NA	0.12	3.93	NA	000
91012	26	A	Esophagus motility study	1.46	0.54	0.54	0.06	2.06	2.06	000
91012	TC	A	Esophagus motility study	0.00	1.81	NA	0.06	1.87	NA	000
91020		A	Gastric motility	1.44	2.96	NA	0.11	4.51	NA	000
91020	26	A	Gastric motility	1.44	0.51	0.51	0.06	2.01	2.01	000
91020	TC	A	Gastric motility	0.00	2.45	NA	0.05	2.50	NA	000
91030		A	Acid perfusion of esophagus	0.91	2.27	NA	0.05	3.23	NA	000
91030	26	A	Acid perfusion of esophagus	0.91	0.34	0.34	0.03	1.28	1.28	000
91030	TC	A	Acid perfusion of esophagus	0.00	1.93	NA	0.02	1.95	NA	000
91032		A	Esophagus, acid reflux test	1.21	2.26	NA	0.10	3.57	NA	000
91032	26	A	Esophagus, acid reflux test	1.21	0.44	0.44	0.05	1.70	1.70	000
91032	TC	A	Esophagus, acid reflux test	0.00	1.82	NA	0.05	1.87	NA	000
91033		A	Prolonged acid reflux test	1.30	2.64	NA	0.14	4.08	NA	000
91033	26	A	Prolonged acid reflux test	1.30	0.48	0.48	0.05	1.83	1.83	000
91033	TC	A	Prolonged acid reflux test	0.00	2.16	NA	0.09	2.25	NA	000
91052		A	Gastric analysis test	0.79	2.19	NA	0.05	3.03	NA	000
91052	26	A	Gastric analysis test	0.79	0.29	0.29	0.03	1.11	1.11	000
91052	TC	A	Gastric analysis test	0.00	1.90	NA	0.02	1.92	NA	000
91055		A	Gastric intubation for smear	0.94	2.22	NA	0.06	3.22	NA	000
91055	26	A	Gastric intubation for smear	0.94	0.26	0.28	0.04	1.26	1.26	000
91055	TC	A	Gastric intubation for smear	0.00	1.94	NA	0.02	1.96	NA	000
91060		A	Gastric saline load test	0.45	0.28	NA	0.04	0.77	NA	000
91060	26	A	Gastric saline load test	0.45	0.15	0.15	0.02	0.62	0.62	000
91060	TC	A	Gastric saline load test	0.00	0.13	NA	0.02	0.15	NA	000
91065		A	Breath hydrogen test	0.20	4.55	NA	0.03	4.78	NA	000
91065	26	A	Breath hydrogen test	0.20	0.07	0.07	0.01	0.28	0.28	000
91065	TC	A	Breath hydrogen test	0.00	4.48	NA	0.02	4.50	NA	000
91100		A	Pass intestine bleeding tube	1.08	NA	0.48	0.06	NA	1.62	000
91105		A	Gastric intubation treatment	0.37	NA	0.21	0.02	NA	0.60	000
91122		A	Anal pressure record	1.77	2.77	NA	0.17	4.71	NA	000
91122	26	A	Anal pressure record	1.77	0.63	0.63	0.10	2.50	2.50	000
91122	TC	A	Anal pressure record	0.00	2.14	NA	0.07	2.21	NA	000
91123		B	Irrigate fecal impaction	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91132		C	Electrogastrography	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91132	26	A	Electrogastrography	0.52	0.21	NA	0.03	0.76	NA	XXX
91132	TC	C	Electrogastrography	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91133		C	Electrogastrography w/test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91133	26	A	Electrogastrography w/test	0.66	0.26	NA	0.03	0.95	NA	XXX
91133	TC	C	Electrogastrography w/test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91299		C	Gastroenterology procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91299	26	C	Gastroenterology procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91299	TC	C	Gastroenterology procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92002		A	Eye exam, new patient	0.88	0.96	0.38	0.02	1.86	1.28	XXX
92004		A	Eye exam, new patient	1.67	1.71	0.73	0.03	3.41	2.43	XXX
92012		A	Eye exam established pat	0.67	1.01	0.31	0.01	1.69	0.99	XXX
92014		A	Eye exam & treatment	1.10	1.40	0.50	0.02	2.52	1.62	XXX
92015		N	Refraction	+0.38	1.51	0.15	0.01	1.90	0.54	XXX
92018		A	New eye exam & treatment	2.50	NA	1.14	0.03	NA	3.67	XXX
92019		A	Eye exam & treatment	1.31	NA	0.61	0.03	NA	1.95	XXX
92020		A	Special eye evaluation	0.37	0.95	0.17	0.01	1.33	0.55	XXX
92060		A	Special eye evaluation	0.69	0.74	NA	0.02	1.45	NA	XXX
92060	26	A	Special eye evaluation	0.69	0.31	0.31	0.01	1.01	1.01	XXX
92060	TC	A	Special eye evaluation	0.00	0.43	NA	0.01	0.44	NA	XXX
92065		A	Orthoptic/pleoptic training	0.37	1.19	NA	0.02	1.58	NA	XXX
92065	26	A	Orthoptic/pleoptic training	0.37	0.15	0.15	0.01	0.53	0.53	XXX
92065	TC	A	Orthoptic/pleoptic training	0.00	1.04	NA	0.01	1.05	NA	XXX
92070		A	Fitting of contact lens	0.70	1.12	0.34	0.01	1.83	1.05	XXX
92081		A	Visual field examination(s)	0.36	1.84	NA	0.02	2.22	NA	XXX
92081	26	A	Visual field examination(s)	0.36	0.16	0.16	0.01	0.53	0.53	XXX
92081	TC	A	Visual field examination(s)	0.00	1.68	NA	0.01	1.69	NA	XXX
92082		A	Visual field examination(s)	0.44	0.85	NA	0.02	1.31	NA	XXX
92082	26	A	Visual field examination(s)	0.44	0.20	0.20	0.01	0.65	0.65	XXX
92082	TC	A	Visual field examination(s)	0.00	0.65	NA	0.01	0.66	NA	XXX
92083		A	Visual field examination(s)	0.50	1.51	NA	0.02	2.03	NA	XXX
92083	26	A	Visual field examination(s)	0.50	0.23	0.23	0.01	0.74	0.74	XXX
92083	TC	A	Visual field examination(s)	0.00	1.28	NA	0.01	1.29	NA	XXX
92100		A	Serial tonometry exam(s)	0.92	0.75	0.40	0.02	1.69	1.34	XXX
92120		A	Tonography & eye evaluation	0.81	0.81	0.31	0.02	1.64	1.14	XXX
92130		A	Water provocation tonography	0.81	0.92	0.32	0.02	1.75	1.15	XXX
92135		A	Ophthalmic dx imaging	0.35	1.48	NA	0.02	1.85	NA	XXX
92135	26	A	Ophthalmic dx imaging	0.35	0.17	0.17	0.01	0.53	0.53	XXX
92135	TC	A	Ophthalmic dx imaging	0.00	1.31	NA	0.01	1.32	NA	XXX
92136		A	Ophthalmic biometry	0.54	1.52	NA	0.07	2.13	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
92136	26	A	Ophthalmic biometry	0.54	0.22	0.22	0.01	0.77	0.77	XXX
92136	TC	A	Ophthalmic biometry	0.00	1.30	NA	0.06	1.36	NA	XXX
92140	.....	A	Glaucoma provocative tests	0.50	1.01	0.22	0.01	1.52	0.73	XXX
92225	.....	A	Special eye exam, initial	0.38	0.23	0.17	0.01	0.62	0.56	XXX
92226	.....	A	Special eye exam, subsequent	0.33	0.22	0.15	0.01	0.56	0.49	XXX
92230	.....	A	Eye exam with photos	0.60	1.73	0.21	0.02	2.35	0.83	XXX
92235	.....	A	Eye exam with photos	0.81	2.62	NA	0.07	3.50	NA	XXX
92235	26	A	Eye exam with photos	0.81	0.39	0.39	0.02	1.22	1.22	XXX
92235	TC	A	Eye exam with photos	0.00	2.23	NA	0.05	2.28	NA	XXX
92240	.....	A	Icg angiography	1.10	5.24	NA	0.07	6.41	NA	XXX
92240	26	A	Icg angiography	1.10	0.53	0.53	0.02	1.65	1.65	XXX
92240	TC	A	Icg angiography	0.00	4.71	NA	0.05	4.76	NA	XXX
92250	.....	A	Eye exam with photos	0.44	1.37	NA	0.02	1.83	NA	XXX
92250	26	A	Eye exam with photos	0.44	0.20	0.20	0.01	0.65	0.65	XXX
92250	TC	A	Eye exam with photos	0.00	1.17	NA	0.01	1.18	NA	XXX
92260	.....	A	Ophthalmoscopy/dynamometry	0.20	0.24	0.10	0.01	0.45	0.31	XXX
92265	.....	A	Eye muscle evaluation	0.81	1.23	NA	0.04	2.08	NA	XXX
92265	26	A	Eye muscle evaluation	0.81	0.38	0.38	0.02	1.21	1.21	XXX
92265	TC	A	Eye muscle evaluation	0.00	0.85	NA	0.02	0.87	NA	XXX
92270	.....	A	Electro-oculography	0.81	1.15	NA	0.05	2.01	NA	XXX
92270	26	A	Electro-oculography	0.81	0.37	0.37	0.03	1.21	1.21	XXX
92270	TC	A	Electro-oculography	0.00	0.78	NA	0.02	0.80	NA	XXX
92275	.....	A	Electroretinography	1.01	1.25	NA	0.04	2.30	NA	XXX
92275	26	A	Electroretinography	1.01	0.46	0.46	0.02	1.49	1.49	XXX
92275	TC	A	Electroretinography	0.00	0.79	NA	0.02	0.81	NA	XXX
92283	.....	A	Color vision examination	0.17	0.74	NA	0.02	0.93	NA	XXX
92283	26	A	Color vision examination	0.17	0.07	0.07	0.01	0.25	0.25	XXX
92283	TC	A	Color vision examination	0.00	0.67	NA	0.01	0.68	NA	XXX
92284	.....	A	Dark adaptation eye exam	0.24	1.75	NA	0.02	2.01	NA	XXX
92284	26	A	Dark adaptation eye exam	0.24	0.09	0.09	0.01	0.34	0.34	XXX
92284	TC	A	Dark adaptation eye exam	0.00	1.66	NA	0.01	1.67	NA	XXX
92285	.....	A	Eye photography	0.20	0.80	NA	0.02	1.02	NA	XXX
92285	26	A	Eye photography	0.20	0.09	0.09	0.01	0.30	0.30	XXX
92285	TC	A	Eye photography	0.00	0.71	NA	0.01	0.72	NA	XXX
92286	.....	A	Internal eye photography	0.66	3.00	NA	0.03	3.69	NA	XXX
92286	26	A	Internal eye photography	0.66	0.32	0.32	0.01	0.99	0.99	XXX
92286	TC	A	Internal eye photography	0.00	2.68	NA	0.02	2.70	NA	XXX
92287	.....	A	Internal eye photography	0.81	3.16	0.31	0.02	3.99	1.14	XXX
92310	.....	N	Contact lens fitting	+1.17	1.10	0.47	0.03	2.30	1.67	XXX
92311	.....	A	Contact lens fitting	1.08	1.17	0.31	0.03	2.28	1.42	XXX
92312	.....	A	Contact lens fitting	1.26	1.17	0.45	0.03	2.46	1.74	XXX
92313	.....	A	Contact lens fitting	0.92	1.21	0.33	0.02	2.15	1.27	XXX
92314	.....	N	Prescription of contact lens	+0.69	0.91	0.28	0.01	1.61	0.98	XXX
92315	.....	A	Prescription of contact lens	0.45	0.95	0.17	0.01	1.41	0.63	XXX
92316	.....	A	Prescription of contact lens	0.68	1.03	0.30	0.01	1.72	0.99	XXX
92317	.....	A	Prescription of contact lens	0.45	0.97	0.18	0.01	1.43	0.64	XXX
92325	.....	A	Modification of contact lens	0.00	0.38	NA	0.01	0.39	NA	XXX
92326	.....	A	Replacement of contact lens	0.00	1.55	NA	0.05	1.60	NA	XXX
92330	.....	A	Fitting of artificial eye	1.06	1.01	0.38	0.04	2.13	1.50	XXX
92335	.....	A	Fitting of artificial eye	0.45	0.99	0.17	0.01	1.45	0.63	XXX
92340	.....	N	Fitting of spectacles	+0.37	0.68	0.15	0.01	1.06	0.53	XXX
92341	.....	N	Fitting of spectacles	+0.47	0.72	0.19	0.01	1.20	0.67	XXX
92342	.....	N	Fitting of spectacles	+0.53	0.74	0.21	0.01	1.28	0.75	XXX
92352	.....	B	Special spectacles fitting	+0.37	0.68	0.15	0.01	1.06	0.53	XXX
92353	.....	B	Special spectacles fitting	+0.50	0.73	0.20	0.02	1.25	0.72	XXX
92354	.....	B	Special spectacles fitting	+0.00	8.41	NA	0.08	8.49	NA	XXX
92355	.....	B	Special spectacles fitting	+0.00	4.11	NA	0.01	4.12	NA	XXX
92358	.....	B	Eye prosthesis service	+0.00	0.92	NA	0.04	0.96	NA	XXX
92370	.....	N	Repair & adjust spectacles	+0.32	0.54	0.13	0.02	0.88	0.47	XXX
92371	.....	B	Repair & adjust spectacles	+0.00	0.59	NA	0.02	0.61	NA	XXX
92390	.....	N	Supply of spectacles	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92391	.....	N	Supply of contact lenses	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92392	.....	I	Supply of low vision aids	+0.00	3.84	NA	0.02	3.86	NA	XXX
92393	.....	I	Supply of artificial eye	+0.00	11.92	NA	0.47	12.39	NA	XXX
92395	.....	I	Supply of spectacles	+0.00	1.30	NA	0.08	1.38	NA	XXX
92396	.....	I	Supply of contact lenses	+0.00	2.19	NA	0.06	2.25	NA	XXX
92499	.....	C	Eye service or procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92499	26	C	Eye service or procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92499	TC	C	Eye service or procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92502	.....	A	Ear and throat examination	1.51	NA	1.28	0.06	NA	2.85	000
92504	.....	A	Ear microscopy examination	0.18	1.10	0.09	0.01	1.29	0.28	XXX
92506	.....	A	Speech/hearing evaluation	0.86	1.72	0.43	0.04	2.62	1.33	XXX
92507	.....	A	Speech/hearing therapy	0.52	1.54	0.28	0.02	2.08	0.82	XXX

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CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
92508	.....	A	Speech/hearing therapy	0.26	1.77	0.15	0.01	2.04	0.42	XXX
92510	.....	A	Rehab for ear implant	1.50	2.11	0.83	0.06	3.67	2.39	XXX
92511	.....	A	Nasopharyngoscopy	0.84	1.36	0.42	0.03	2.23	1.29	000
92512	.....	A	Nasal function studies	0.55	1.13	0.17	0.02	1.70	0.74	XXX
92516	.....	A	Facial nerve function test	0.43	0.94	0.24	0.02	1.39	0.69	XXX
92520	.....	A	Laryngeal function studies	0.78	0.52	0.43	0.03	1.31	1.22	XXX
92525	.....	I	Oral function evaluation	+1.50	1.69	0.60	0.07	3.26	2.17	XXX
92526	.....	A	Oral function therapy	0.55	1.55	0.27	0.02	2.12	0.84	XXX
92531	.....	B	Spontaneous nystagmus study	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92532	.....	B	Positional nystagmus test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92533	.....	B	Caloric vestibular test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92534	.....	B	Optokinetic nystagmus test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92541	.....	A	Spontaneous nystagmus test	0.40	1.45	NA	0.04	1.89	NA	XXX
92541	26	A	Spontaneous nystagmus test	0.40	0.20	0.20	0.02	0.62	0.62	XXX
92541	TC	A	Spontaneous nystagmus test	0.00	1.25	NA	0.02	1.27	NA	XXX
92542	.....	A	Positional nystagmus test	0.33	1.39	NA	0.03	1.75	NA	XXX
92542	26	A	Positional nystagmus test	0.33	0.17	0.17	0.01	0.51	0.51	XXX
92542	TC	A	Positional nystagmus test	0.00	1.22	NA	0.02	1.24	NA	XXX
92543	.....	A	Caloric vestibular test	0.10	0.39	NA	0.02	0.51	NA	XXX
92543	26	A	Caloric vestibular test	0.10	0.05	0.05	0.01	0.16	0.16	XXX
92543	TC	A	Caloric vestibular test	0.00	0.34	NA	0.01	0.35	NA	XXX
92544	.....	A	Optokinetic nystagmus test	0.26	1.35	NA	0.03	1.64	NA	XXX
92544	26	A	Optokinetic nystagmus test	0.26	0.13	0.13	0.01	0.40	0.40	XXX
92544	TC	A	Optokinetic nystagmus test	0.00	1.22	NA	0.02	1.24	NA	XXX
92545	.....	A	Oscillating tracking test	0.23	1.32	NA	0.03	1.58	NA	XXX
92545	26	A	Oscillating tracking test	0.23	0.12	0.12	0.01	0.36	0.36	XXX
92545	TC	A	Oscillating tracking test	0.00	1.20	NA	0.02	1.22	NA	XXX
92546	.....	A	Sinusoidal rotational test	0.29	2.22	NA	0.03	2.54	NA	XXX
92546	26	A	Sinusoidal rotational test	0.29	0.14	0.14	0.01	0.44	0.44	XXX
92546	TC	A	Sinusoidal rotational test	0.00	2.08	NA	0.02	2.10	NA	XXX
92547	.....	A	Supplemental electrical test	0.00	1.21	NA	0.05	1.26	NA	ZZZ
92548	.....	A	Posturography	0.50	2.09	NA	0.13	2.72	NA	XXX
92548	26	A	Posturography	0.50	0.28	0.28	0.02	0.80	0.80	XXX
92548	TC	A	Posturography	0.00	1.81	NA	0.11	1.92	NA	XXX
92551	.....	N	Pure tone hearing test, air	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92552	.....	A	Pure tone audiometry, air	0.00	0.42	NA	0.03	0.45	NA	XXX
92553	.....	A	Audiometry, air & bone	0.00	0.62	NA	0.05	0.67	NA	XXX
92555	.....	A	Speech threshold audiometry	0.00	0.36	NA	0.03	0.39	NA	XXX
92556	.....	A	Speech audiometry, complete	0.00	0.54	NA	0.05	0.59	NA	XXX
92557	.....	A	Comprehensive hearing test	0.00	1.13	NA	0.10	1.23	NA	XXX
92559	.....	N	Group audiometric testing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92560	.....	N	Bekesy audiometry, screen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92561	.....	A	Bekesy audiometry, diagnosis	0.00	0.68	NA	0.05	0.73	NA	XXX
92562	.....	A	Loudness balance test	0.00	0.39	NA	0.03	0.42	NA	XXX
92563	.....	A	Tone decay hearing test	0.00	0.36	NA	0.03	0.39	NA	XXX
92564	.....	A	Sisi hearing test	0.00	0.45	NA	0.04	0.49	NA	XXX
92565	.....	A	Stenger test, pure tone	0.00	0.38	NA	0.03	0.41	NA	XXX
92567	.....	A	Tympanometry	0.00	0.50	NA	0.05	0.55	NA	XXX
92568	.....	A	Acoustic reflex testing	0.00	0.36	NA	0.03	0.39	NA	XXX
92569	.....	A	Acoustic reflex decay test	0.00	0.39	NA	0.03	0.42	NA	XXX
92571	.....	A	Filtered speech hearing test	0.00	0.37	NA	0.03	0.40	NA	XXX
92572	.....	A	Staggered spondaic word test	0.00	0.08	NA	0.01	0.09	NA	XXX
92573	.....	A	Lombard test	0.00	0.33	NA	0.03	0.36	NA	XXX
92575	.....	A	Sensorineural acuity test	0.00	0.28	NA	0.02	0.30	NA	XXX
92576	.....	A	Synthetic sentence test	0.00	0.42	NA	0.04	0.46	NA	XXX
92577	.....	A	Stenger test, speech	0.00	0.68	NA	0.06	0.74	NA	XXX
92579	.....	A	Visual audiometry (vra)	0.00	0.69	NA	0.05	0.74	NA	XXX
92582	.....	A	Conditioning play audiometry	0.00	0.69	NA	0.05	0.74	NA	XXX
92583	.....	A	Select picture audiometry	0.00	0.84	NA	0.07	0.91	NA	XXX
92584	.....	A	Electrocochleography	0.00	2.35	NA	0.17	2.52	NA	XXX
92585	.....	A	Auditor evoke potent, compre	0.50	1.98	NA	0.14	2.62	NA	XXX
92585	26	A	Auditor evoke potent, compre	0.50	0.23	0.23	0.02	0.75	0.75	XXX
92585	TC	A	Auditor evoke potent, compre	0.00	1.75	NA	0.12	1.87	NA	XXX
92586	.....	A	Auditor evoke potent, limit	0.00	1.75	NA	0.12	1.87	NA	XXX
92587	.....	A	Evoked auditory test	0.13	1.31	NA	0.10	1.54	NA	XXX
92587	26	A	Evoked auditory test	0.13	0.07	0.07	0.01	0.21	0.21	XXX
92587	TC	A	Evoked auditory test	0.00	1.24	NA	0.09	1.33	NA	XXX
92588	.....	A	Evoked auditory test	0.36	1.58	NA	0.12	2.06	NA	XXX
92588	26	A	Evoked auditory test	0.36	0.18	0.18	0.01	0.55	0.55	XXX
92588	TC	A	Evoked auditory test	0.00	1.40	NA	0.11	1.51	NA	XXX
92589	.....	A	Auditory function test(s)	0.00	0.51	NA	0.05	0.56	NA	XXX
92590	.....	N	Hearing aid exam, one ear	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92591	.....	N	Hearing aid exam, both ears	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
92592		N	Hearing aid check, one ear	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92593		N	Hearing aid check, both ears	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92594		N	Electro hearng aid test, one	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92595		N	Electro hearng aid tst, both	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92596		A	Ear protector evaluation	0.00	0.56	NA	0.05	0.61	NA	XXX
92599		C	ENT procedure/service	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92599	26	C	ENT procedure/service	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92599	TC	C	ENT procedure/service	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92950		A	Heart/lung resuscitation cpr	3.80	1.59	1.18	0.21	5.60	5.19	000
92953		A	Temporary external pacing	0.23	NA	0.23	0.01	NA	0.47	000
92960		A	Cardioversion electric, ext	2.25	2.23	0.91	0.08	4.56	3.24	000
92961		A	Cardioversion, electric, int	4.60	NA	1.85	0.17	NA	6.62	000
92970		A	Cardioassist, internal	3.52	NA	1.27	0.17	NA	4.96	000
92971		A	Cardioassist, external	1.77	NA	0.86	0.06	NA	2.69	000
92973		A	Percut coronary thrombectomy	3.28	NA	1.37	0.17	NA	4.82	ZZZ
92974		A	Cath place, cardio brachytx	3.00	NA	1.26	1.18	NA	5.44	ZZZ
92975		A	Dissolve clot, heart vessel	7.25	NA	3.01	0.22	NA	10.48	000
92977		A	Dissolve clot, heart vessel	0.00	7.65	NA	0.38	8.03	NA	XXX
92978		A	Intravasc us, heart add-on	1.80	5.09	NA	0.26	7.15	NA	ZZZ
92978	26	A	Intravasc us, heart add-on	1.80	0.76	0.76	0.06	2.62	2.62	ZZZ
92978	TC	A	Intravasc us, heart add-on	0.00	4.33	NA	0.20	4.53	NA	ZZZ
92979		A	Intravasc us, heart add-on	1.44	2.76	NA	0.15	4.35	NA	ZZZ
92979	26	A	Intravasc us, heart add-on	1.44	0.58	0.58	0.04	2.06	2.06	ZZZ
92979	TC	A	Intravasc us, heart add-on	0.00	2.18	NA	0.11	2.29	NA	ZZZ
92980		A	Insert intracoronary stent	14.84	NA	6.22	0.78	NA	21.84	000
92981		A	Insert intracoronary stent	4.17	NA	1.75	0.21	NA	6.13	ZZZ
92982		A	Coronary artery dilation	10.98	NA	4.59	0.57	NA	16.14	000
92984		A	Coronary artery dilation	2.97	NA	1.24	0.16	NA	4.37	ZZZ
92986		A	Revision of aortic valve	21.80	NA	10.43	1.14	NA	33.37	090
92987		A	Revision of mitral valve	22.70	NA	10.85	1.18	NA	34.73	090
92990		A	Revision of pulmonary valve	17.34	NA	8.41	0.90	NA	26.65	090
92992		C	Revision of heart chamber	0.00	0.00	0.00	0.00	0.00	0.00	090
92993		C	Revision of heart chamber	0.00	0.00	0.00	0.00	0.00	0.00	090
92995		A	Coronary atherectomy	12.09	NA	5.06	0.63	NA	17.78	000
92996		A	Coronary atherectomy add-on	3.26	NA	1.37	0.17	NA	4.80	ZZZ
92997		A	Pul art balloon repr, percut	12.00	NA	4.55	0.63	NA	17.18	000
92998		A	Pul art balloon repr, percut	6.00	NA	2.06	0.31	NA	8.37	ZZZ
93000		A	Electrocardiogram, complete	0.17	0.50	NA	0.03	0.70	NA	XXX
93005		A	Electrocardiogram, tracing	0.00	0.43	NA	0.02	0.45	NA	XXX
93010		A	Electrocardiogram report	0.17	0.07	0.07	0.01	0.25	0.25	XXX
93012		A	Transmission of ecg	0.00	2.24	NA	0.15	2.39	NA	XXX
93014		A	Report on transmitted ecg	0.52	0.19	0.19	0.02	0.73	0.73	XXX
93015		A	Cardiovascular stress test	0.75	1.90	NA	0.11	2.76	NA	XXX
93016		A	Cardiovascular stress test	0.45	0.18	0.18	0.01	0.64	0.64	XXX
93017		A	Cardiovascular stress test	0.00	1.60	NA	0.09	1.69	NA	XXX
93018		A	Cardiovascular stress test	0.30	0.12	0.12	0.01	0.43	0.43	XXX
93024		A	Cardiac drug stress test	1.17	1.55	NA	0.11	2.83	NA	XXX
93024	26	A	Cardiac drug stress test	1.17	0.48	0.48	0.04	1.69	1.69	XXX
93024	TC	A	Cardiac drug stress test	0.00	1.07	NA	0.07	1.14	NA	XXX
93025		A	Microvolt t-wave assess	0.75	6.42	NA	0.11	7.28	NA	XXX
93040		A	Rhythm ECG with report	0.16	0.19	NA	0.02	0.37	NA	XXX
93041		A	Rhythm ECG, tracing	0.00	0.14	NA	0.01	0.15	NA	XXX
93042		A	Rhythm ECG, report	0.16	0.05	0.05	0.01	0.22	0.22	XXX
93224		A	ECG monitor/report, 24 hrs	0.52	3.47	NA	0.21	4.20	NA	XXX
93225		A	ECG monitor/record, 24 hrs	0.00	1.18	NA	0.07	1.25	NA	XXX
93226		A	ECG monitor/report, 24 hrs	0.00	2.08	NA	0.12	2.20	NA	XXX
93227		A	ECG monitor/review, 24 hrs	0.52	0.21	0.21	0.02	0.75	0.75	XXX
93230		A	ECG monitor/report, 24 hrs	0.52	3.72	NA	0.22	4.46	NA	XXX
93231		A	Ecg monitor/record, 24 hrs	0.00	1.44	NA	0.09	1.53	NA	XXX
93232		A	ECG monitor/report, 24 hrs	0.00	2.07	NA	0.11	2.18	NA	XXX
93233		A	ECG monitor/review, 24 hrs	0.52	0.21	0.21	0.02	0.75	0.75	XXX
93235		A	ECG monitor/report, 24 hrs	0.45	2.66	NA	0.13	3.24	NA	XXX
93236		A	ECG monitor/report, 24 hrs	0.00	2.49	NA	0.12	2.61	NA	XXX
93237		A	ECG monitor/review, 24 hrs	0.45	0.17	0.17	0.01	0.63	0.63	XXX
93268		A	ECG record/review	0.52	3.62	NA	0.24	4.38	NA	XXX
93270		A	ECG recording	0.00	1.18	NA	0.07	1.25	NA	XXX
93271		A	Ecg/monitoring and analysis	0.00	2.24	NA	0.15	2.39	NA	XXX
93272		A	Ecg/review, interpret only	0.52	0.20	0.20	0.02	0.74	0.74	XXX
93278		A	ECG/signal-averaged	0.25	1.19	NA	0.10	1.54	NA	XXX
93278	26	A	ECG/signal-averaged	0.25	0.10	0.10	0.01	0.36	0.36	XXX
93278	TC	A	ECG/signal-averaged	0.00	1.09	NA	0.09	1.18	NA	XXX
93303		A	Echo transthoracic	1.30	4.16	NA	0.23	5.69	NA	XXX
93303	26	A	Echo transthoracic	1.30	0.50	0.50	0.04	1.84	1.84	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
93303	TC	A	Echo transthoracic	0.00	3.66	NA	0.19	3.85	NA	XXX
93304		A	Echo transthoracic	0.75	2.15	NA	0.13	3.03	NA	XXX
93304	26	A	Echo transthoracic	0.75	0.30	0.30	0.02	1.07	1.07	XXX
93304	TC	A	Echo transthoracic	0.00	1.85	NA	0.11	1.96	NA	XXX
93307		A	Echo exam of heart	0.92	4.04	NA	0.22	5.18	NA	XXX
93307	26	A	Echo exam of heart	0.92	0.38	0.38	0.03	1.33	1.33	XXX
93307	TC	A	Echo exam of heart	0.00	3.66	NA	0.19	3.85	NA	XXX
93308		A	Echo exam of heart	0.53	2.07	NA	0.13	2.73	NA	XXX
93308	26	A	Echo exam of heart	0.53	0.22	0.22	0.02	0.77	0.77	XXX
93308	TC	A	Echo exam of heart	0.00	1.85	NA	0.11	1.96	NA	XXX
93312		A	Echo transesophageal	2.20	4.45	NA	0.32	6.97	NA	XXX
93312	26	A	Echo transesophageal	2.20	0.86	0.86	0.08	3.14	3.14	XXX
93312	TC	A	Echo transesophageal	0.00	3.59	NA	0.24	3.83	NA	XXX
93313		A	Echo transesophageal	0.95	5.29	0.22	0.05	6.29	1.22	XXX
93314		A	Echo transesophageal	1.25	4.10	NA	0.28	5.63	NA	XXX
93314	26	A	Echo transesophageal	1.25	0.51	0.51	0.04	1.80	1.80	XXX
93314	TC	A	Echo transesophageal	0.00	3.59	NA	0.24	3.83	NA	XXX
93315		A	Echo transesophageal	2.78	4.70	NA	0.34	7.82	NA	XXX
93315	26	A	Echo transesophageal	2.78	1.11	1.11	0.10	3.99	3.99	XXX
93315	TC	A	Echo transesophageal	0.00	3.59	NA	0.24	3.83	NA	XXX
93318		A	Echo transesophageal	0.95	6.39	0.25	0.05	7.39	1.25	XXX
93317		A	Echo transesophageal	1.83	4.31	NA	0.30	6.44	NA	XXX
93317	26	A	Echo transesophageal	1.83	0.72	0.72	0.06	2.61	2.61	XXX
93317	TC	A	Echo transesophageal	0.00	3.59	NA	0.24	3.83	NA	XXX
93318		C	Echo transesophageal intraop	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93318	26	A	Echo transesophageal intraop	2.20	0.88	NA	0.06	3.14	NA	XXX
93318	TC	C	Echo transesophageal intraop	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93320		A	Doppler echo exam, heart	0.38	1.79	NA	0.11	2.28	NA	ZZZ
93320	26	A	Doppler echo exam, heart	0.38	0.16	0.16	0.01	0.55	0.55	ZZZ
93320	TC	A	Doppler echo exam, heart	0.00	1.63	NA	0.10	1.73	NA	ZZZ
93321		A	Doppler echo exam, heart	0.15	1.12	NA	0.08	1.35	NA	ZZZ
93321	26	A	Doppler echo exam, heart	0.15	0.06	0.06	0.01	0.22	0.22	ZZZ
93321	TC	A	Doppler echo exam, heart	0.00	1.06	NA	0.07	1.13	NA	ZZZ
93325		A	Doppler color flow add-on	0.07	2.78	NA	0.18	3.03	NA	ZZZ
93325	26	A	Doppler color flow add-on	0.07	0.03	0.03	0.01	0.11	0.11	ZZZ
93325	TC	A	Doppler color flow add-on	0.00	2.75	NA	0.17	2.92	NA	ZZZ
93350		A	Echo transthoracic	1.48	2.28	NA	0.13	3.89	NA	XXX
93350	26	A	Echo transthoracic	1.48	0.61	0.61	0.02	2.11	2.11	XXX
93350	TC	A	Echo transthoracic	0.00	1.67	NA	0.11	1.78	NA	XXX
93501		A	Right heart catheterization	3.02	17.23	NA	1.03	21.28	NA	000
93501	26	A	Right heart catheterization	3.02	1.24	1.24	0.16	4.42	4.42	000
93501	TC	A	Right heart catheterization	0.00	15.99	NA	0.87	16.86	NA	000
93503		A	Insert/place heart catheter	2.91	NA	0.71	0.16	NA	3.78	000
93505		A	Biopsy of heart lining	4.38	3.67	NA	0.36	8.41	NA	000
93505	26	A	Biopsy of heart lining	4.38	1.80	1.80	0.23	6.41	6.41	000
93505	TC	A	Biopsy of heart lining	0.00	1.87	NA	0.13	2.00	NA	000
93508		A	Cath placement, angiography	4.10	13.64	NA	0.75	18.49	NA	000
93508	26	A	Cath placement, angiography	4.10	1.71	1.71	0.21	6.02	6.02	000
93508	TC	A	Cath placement, angiography	0.00	11.93	NA	0.54	12.47	NA	000
93510		A	Left heart catheterization	4.33	36.77	NA	2.13	43.23	NA	000
93510	26	A	Left heart catheterization	4.33	1.82	1.82	0.22	6.37	6.37	000
93510	TC	A	Left heart catheterization	0.00	34.95	NA	1.91	36.86	NA	000
93511		A	Left heart catheterization	5.03	36.12	NA	2.11	43.26	NA	000
93511	26	A	Left heart catheterization	5.03	2.10	2.10	0.26	7.39	7.39	000
93511	TC	A	Left heart catheterization	0.00	34.02	NA	1.85	35.87	NA	000
93514		A	Left heart catheterization	7.05	36.79	NA	2.22	46.06	NA	000
93514	26	A	Left heart catheterization	7.05	2.77	2.77	0.37	10.19	10.19	000
93514	TC	A	Left heart catheterization	0.00	34.02	NA	1.85	35.87	NA	000
93524		A	Left heart catheterization	6.95	47.32	NA	2.79	57.06	NA	000
93524	26	A	Left heart catheterization	6.95	2.86	2.86	0.36	10.17	10.17	000
93524	TC	A	Left heart catheterization	0.00	44.46	NA	2.43	46.89	NA	000
93526		A	Rt & Lt heart catheters	5.99	48.18	NA	2.81	56.98	NA	000
93526	26	A	Rt & Lt heart catheters	5.99	2.50	2.50	0.31	8.80	8.80	000
93526	TC	A	Rt & Lt heart catheters	0.00	45.68	NA	2.50	48.18	NA	000
93527		A	Rt & Lt heart catheters	7.28	47.49	NA	2.81	57.58	NA	000
93527	26	A	Rt & Lt heart catheters	7.28	3.03	3.03	0.38	10.69	10.69	000
93527	TC	A	Rt & Lt heart catheters	0.00	44.46	NA	2.43	46.89	NA	000
93528		A	Rt & Lt heart catheters	9.00	48.27	NA	2.90	60.17	NA	000
93528	26	A	Rt & Lt heart catheters	9.00	3.81	3.81	0.47	13.28	13.28	000
93528	TC	A	Rt & Lt heart catheters	0.00	44.46	NA	2.43	46.89	NA	000
93529		A	Rt&lt heart catheterization	4.80	46.46	NA	2.68	53.94	NA	000
93529	26	A	Rt&lt heart catheterization	4.80	2.00	2.00	0.25	7.05	7.05	000
93529	TC	A	Rt&lt heart catheterization	0.00	44.46	NA	2.43	46.89	NA	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
93530		A	Rt heart cath, congenital	4.23	17.59	NA	1.11	22.93	NA	000
93530	26	A	Rt heart cath, congenital	4.23	1.60	1.60	0.24	6.07	6.07	000
93530	TC	A	Rt heart cath, congenital	0.00	15.99	NA	0.87	16.86	NA	000
93531		A	R & l heart cath, congenital	8.35	48.92	NA	2.96	60.23	NA	000
93531	26	A	R & l heart cath, congenital	8.35	3.24	3.24	0.46	12.05	12.05	000
93531	TC	A	R & l heart cath, congenital	0.00	45.68	NA	2.50	48.18	NA	000
93532		A	R & l heart cath, congenital	10.00	48.58	NA	2.95	61.53	NA	000
93532	26	A	R & l heart cath, congenital	10.00	4.12	4.12	0.52	14.64	14.64	000
93532	TC	A	R & l heart cath, congenital	0.00	44.46	NA	2.43	46.89	NA	000
93533		A	R & l heart cath, congenital	6.70	47.01	NA	2.86	56.57	NA	000
93533	26	A	R & l heart cath, congenital	6.70	2.55	2.55	0.43	9.68	9.68	000
93533	TC	A	R & l heart cath, congenital	0.00	44.46	NA	2.43	46.89	NA	000
93536		D	Insert circulation assi	0.00	NA	0.00	0.00	NA	0.00	000
93539		A	Injection, cardiac cath	0.40	0.84	0.17	0.01	1.25	0.58	000
93540		A	Injection, cardiac cath	0.43	0.86	0.18	0.01	1.30	0.62	000
93541		A	Injection for lung angiogram	0.29	NA	0.12	0.01	NA	0.42	000
93542		A	Injection for heart x-rays	0.29	NA	0.12	0.01	NA	0.42	000
93543		A	Injection for heart x-rays	0.29	0.55	0.12	0.01	0.85	0.42	000
93544		A	Injection for aortography	0.25	0.53	0.10	0.01	0.79	0.36	000
93545		A	Inject for coronary x-rays	0.40	0.85	0.17	0.01	1.26	0.58	000
93555		A	Imaging, cardiac cath	0.81	6.27	NA	0.31	7.39	NA	XXX
93555	26	A	Imaging, cardiac cath	0.81	0.34	0.34	0.03	1.18	1.18	XXX
93555	TC	A	Imaging, cardiac cath	0.00	5.93	NA	0.28	6.21	NA	XXX
93556		A	Imaging, cardiac cath	0.83	9.71	NA	0.45	10.99	NA	XXX
93556	26	A	Imaging, cardiac cath	0.83	0.35	0.35	0.03	1.21	1.21	XXX
93556	TC	A	Imaging, cardiac cath	0.00	9.36	NA	0.42	9.78	NA	XXX
93561		A	Cardiac output measurement	0.50	0.67	NA	0.07	1.24	NA	000
93561	26	A	Cardiac output measurement	0.50	0.16	0.16	0.02	0.68	0.68	000
93561	TC	A	Cardiac output measurement	0.00	0.51	NA	0.05	0.56	NA	000
93562		A	Cardiac output measurement	0.16	0.34	NA	0.04	0.54	NA	000
93562	26	A	Cardiac output measurement	0.16	0.05	0.05	0.01	0.22	0.22	000
93562	TC	A	Cardiac output measurement	0.00	0.29	NA	0.03	0.32	NA	000
93571		A	Heart flow reserve measure	1.80	5.06	NA	0.31	7.17	NA	ZZZ
93571	26	A	Heart flow reserve measure	1.80	0.73	0.73	0.11	2.64	2.64	ZZZ
93571	TC	A	Heart flow reserve measure	0.00	4.33	NA	0.20	4.53	NA	ZZZ
93572		A	Heart flow reserve measure	1.44	2.70	NA	0.28	4.42	NA	ZZZ
93572	26	A	Heart flow reserve measure	1.44	0.52	0.52	0.17	2.13	2.13	ZZZ
93572	TC	A	Heart flow reserve measure	0.00	2.18	NA	0.11	2.29	NA	ZZZ
93600		A	Bundle of His recording	2.12	2.74	NA	0.22	5.08	NA	000
93600	26	A	Bundle of His recording	2.12	0.89	0.89	0.11	3.12	3.12	000
93600	TC	A	Bundle of His recording	0.00	1.85	NA	0.11	1.96	NA	000
93602		A	Intra-atrial recording	2.12	1.94	NA	0.18	4.24	NA	000
93602	26	A	Intra-atrial recording	2.12	0.88	0.88	0.12	3.12	3.12	000
93602	TC	A	Intra-atrial recording	0.00	1.06	NA	0.06	1.12	NA	000
93603		A	Right ventricular recording	2.12	2.46	NA	0.20	4.78	NA	000
93603	26	A	Right ventricular recording	2.12	0.86	0.86	0.11	3.09	3.09	000
93603	TC	A	Right ventricular recording	0.00	1.60	NA	0.09	1.69	NA	000
93607		D	Left ventricular recording	0.00	0.00	0.00	0.00	0.00	0.00	000
93607	26	D	Left ventricular recording	0.00	0.00	0.00	0.00	0.00	0.00	000
93607	TC	D	Left ventricular recording	0.00	0.00	0.00	0.00	0.00	0.00	000
93609		A	Map tachycardia, add-on	4.81	4.59	NA	0.66	10.06	NA	ZZZ
93609	26	A	Map tachycardia, add-on	4.81	2.01	2.01	0.52	7.34	7.34	ZZZ
93609	TC	A	Map tachycardia, add-on	0.00	2.58	NA	0.14	2.72	NA	ZZZ
93610		A	Intra-atrial pacing	3.02	2.52	NA	0.25	5.79	NA	000
93610	26	A	Intra-atrial pacing	3.02	1.23	1.23	0.17	4.42	4.42	000
93610	TC	A	Intra-atrial pacing	0.00	1.29	NA	0.08	1.37	NA	000
93612		A	Intraventricular pacing	3.02	2.76	NA	0.26	6.04	NA	000
93612	26	A	Intraventricular pacing	3.02	1.23	1.23	0.17	4.42	4.42	000
93612	TC	A	Intraventricular pacing	0.00	1.53	NA	0.09	1.62	NA	000
93613		C	Electrophys map, 3d, add-on	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93613	26	A	Electrophys map, 3d, add-on	7.00	2.79	2.79	0.52	10.31	10.31	XXX
93613	TC	C	Electrophys map, 3d, add-on	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93615		A	Esophageal recording	0.99	0.66	NA	0.05	1.70	NA	000
93615	26	A	Esophageal recording	0.99	0.36	0.36	0.03	1.38	1.38	000
93615	TC	A	Esophageal recording	0.00	0.30	NA	0.02	0.32	NA	000
93616		A	Esophageal recording	1.49	0.80	NA	0.08	2.37	NA	000
93616	26	A	Esophageal recording	1.49	0.50	0.50	0.06	2.05	2.05	000
93616	TC	A	Esophageal recording	0.00	0.30	NA	0.02	0.32	NA	000
93618		A	Heart rhythm pacing	4.26	5.54	NA	0.42	10.22	NA	000
93618	26	A	Heart rhythm pacing	4.26	1.78	1.78	0.22	6.26	6.26	000
93618	TC	A	Heart rhythm pacing	0.00	3.76	NA	0.20	3.96	NA	000
93619		A	Electrophysiology evaluation	7.32	10.32	NA	0.77	18.41	NA	000
93619	26	A	Electrophysiology evaluation	7.32	3.00	3.00	0.38	10.70	10.70	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
93619	TC	A	Electrophysiology evaluation	0.00	7.32	NA	0.39	7.71	NA	000
93620		A	Electrophysiology evaluation	11.59	13.33	NA	1.04	25.96	NA	000
93620	26	A	Electrophysiology evaluation	11.59	4.82	4.82	0.60	17.01	17.01	000
93620	TC	A	Electrophysiology evaluation	0.00	8.51	NA	0.44	8.95	NA	000
93621		C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
93621	26	A	Electrophysiology evaluation	2.10	0.88	0.88	0.15	3.13	3.13	ZZZ
93621	TC	C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
93622		C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
93622	26	A	Electrophysiology evaluation	3.10	1.30	1.30	0.67	5.07	5.07	ZZZ
93622	TC	C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
93623		C	Stimulation, pacing heart	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
93623	26	A	Stimulation, pacing heart	2.85	1.19	1.19	0.15	4.19	4.19	ZZZ
93623	TC	C	Stimulation, pacing heart	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
93624		A	Electrophysiologic study	4.81	3.87	NA	0.36	9.04	NA	000
93624	26	A	Electrophysiologic study	4.81	1.99	1.99	0.25	7.05	7.05	000
93624	TC	A	Electrophysiologic study	0.00	1.88	NA	0.11	1.99	NA	000
93631		A	Heart pacing, mapping	7.60	8.65	NA	1.17	17.42	NA	000
93631	26	A	Heart pacing, mapping	7.60	2.81	2.81	0.66	11.07	11.07	000
93631	TC	A	Heart pacing, mapping	0.00	5.84	NA	0.51	6.35	NA	000
93640		A	Evaluation heart device	3.52	8.27	NA	0.53	12.32	NA	000
93640	26	A	Evaluation heart device	3.52	1.46	1.46	0.18	5.16	5.16	000
93640	TC	A	Evaluation heart device	0.00	6.81	NA	0.35	7.16	NA	000
93641		A	Electrophysiology evaluation	5.93	9.28	NA	0.66	15.87	NA	000
93641	26	A	Electrophysiology evaluation	5.93	2.47	2.47	0.31	8.71	8.71	000
93641	TC	A	Electrophysiology evaluation	0.00	6.81	NA	0.35	7.16	NA	000
93642		A	Electrophysiology evaluation	4.89	8.85	NA	0.51	14.25	NA	000
93642	26	A	Electrophysiology evaluation	4.89	2.04	2.04	0.16	7.09	7.09	000
93642	TC	A	Electrophysiology evaluation	0.00	6.81	NA	0.35	7.16	NA	000
93650		A	Ablate heart dysrhythm focus	10.51	NA	4.32	0.55	NA	15.38	000
93651		A	Ablate heart dysrhythm focus	16.25	NA	6.78	0.85	NA	23.88	000
93652		A	Ablate heart dysrhythm focus	17.68	NA	7.36	0.92	NA	25.96	000
93660		A	Tilt table evaluation	1.89	2.39	NA	0.08	4.36	NA	000
93660	26	A	Tilt table evaluation	1.89	0.79	0.79	0.06	2.74	2.74	000
93660	TC	A	Tilt table evaluation	0.00	1.60	NA	0.02	1.62	NA	000
93662		C	Intracardiac ecg (ice)	+0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
93662	26	A	Intracardiac ecg (ice)	2.80	1.12	1.12	0.41	4.33	4.33	ZZZ
93662	TC	C	Intracardiac ecg (ice)	+0.00	0.00	NA	0.00	0.00	NA	XXX
93668		N	Peripheral vascular rehab	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93701		A	Bioimpedance, thoracic	0.17	0.78	NA	0.02	0.97	NA	XXX
93701	26	A	Bioimpedance, thoracic	0.17	0.07	0.07	0.01	0.25	0.25	XXX
93701	TC	A	Bioimpedance, thoracic	0.00	0.71	NA	0.01	0.72	NA	XXX
93720		A	Total body plethysmography	0.17	0.73	NA	0.06	0.96	NA	XXX
93721		A	Plethysmography tracing	0.00	0.67	NA	0.05	0.72	NA	XXX
93722		A	Plethysmography report	0.17	0.06	0.06	0.01	0.24	0.24	XXX
93724		A	Analyze pacemaker system	4.89	5.80	NA	0.38	11.07	NA	000
93724	26	A	Analyze pacemaker system	4.89	2.04	2.04	0.18	7.11	7.11	000
93724	TC	A	Analyze pacemaker system	0.00	3.76	NA	0.20	3.96	NA	000
93727		A	Analyze ilr system	0.52	0.21	0.21	0.05	0.78	0.78	XXX
93731		A	Analyze pacemaker system	0.45	0.66	NA	0.05	1.16	NA	XXX
93731	26	A	Analyze pacemaker system	0.45	0.19	0.19	0.02	0.66	0.66	XXX
93731	TC	A	Analyze pacemaker system	0.00	0.47	NA	0.03	0.50	NA	XXX
93732		A	Analyze pacemaker system	0.92	0.87	NA	0.06	1.85	NA	XXX
93732	26	A	Analyze pacemaker system	0.92	0.38	0.38	0.03	1.33	1.33	XXX
93732	TC	A	Analyze pacemaker system	0.00	0.49	NA	0.03	0.52	NA	XXX
93733		A	Telephone analy, pacemaker	0.17	0.76	NA	0.06	0.99	NA	XXX
93733	26	A	Telephone analy, pacemaker	0.17	0.07	0.07	0.01	0.25	0.25	XXX
93733	TC	A	Telephone analy, pacemaker	0.00	0.69	NA	0.05	0.74	NA	XXX
93734		A	Analyze pacemaker system	0.38	0.49	NA	0.03	0.90	NA	XXX
93734	26	A	Analyze pacemaker system	0.38	0.16	0.16	0.01	0.55	0.55	XXX
93734	TC	A	Analyze pacemaker system	0.00	0.33	NA	0.02	0.35	NA	XXX
93735		A	Analyze pacemaker system	0.74	0.72	NA	0.06	1.52	NA	XXX
93735	26	A	Analyze pacemaker system	0.74	0.30	0.30	0.03	1.07	1.07	XXX
93735	TC	A	Analyze pacemaker system	0.00	0.42	NA	0.03	0.45	NA	XXX
93736		A	Telephone analy, pacemaker	0.15	0.66	NA	0.06	0.87	NA	XXX
93736	26	A	Telephone analy, pacemaker	0.15	0.06	0.06	0.01	0.22	0.22	XXX
93736	TC	A	Telephone analy, pacemaker	0.00	0.60	NA	0.05	0.65	NA	XXX
93737		D	Analyze cardio/defibrillator	0.00	0.00	NA	0.00	0.00	NA	XXX
93737	26	D	Analyze cardio/defibrillator	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93737	TC	D	Analyze cardio/defibrillator	0.00	0.00	NA	0.00	0.00	NA	XXX
93738		D	Analyze cardio/defibrillator	0.00	0.00	NA	0.00	0.00	NA	XXX
93738	26	D	Analyze cardio/defibrillator	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93738	TC	D	Analyze cardio/defibrillator	0.00	0.00	NA	0.00	0.00	NA	XXX
93740		B	Temperature gradient studies	+0.16	0.21	NA	0.02	0.39	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
93740	26	B	Temperature gradient studies	+0.16	0.06	0.06	0.01	0.23	0.23	XXX
93740	TC	B	Temperature gradient studies	+0.00	0.15	NA	0.01	0.16	NA	XXX
93741		A	Analyze ht pace device sngl	0.80	0.96	NA	0.05	1.81	NA	XXX
93741	26	A	Analyze ht pace device sngl	0.80	0.33	0.33	0.02	1.15	1.15	XXX
93741	TC	A	Analyze ht pace device sngl	0.00	0.63	NA	0.03	0.66	NA	XXX
93742		A	Analyze ht pace device sngl	0.91	1.01	NA	0.05	1.97	NA	XXX
93742	26	A	Analyze ht pace device sngl	0.91	0.38	0.38	0.02	1.31	1.31	XXX
93742	TC	A	Analyze ht pace device sngl	0.00	0.63	NA	0.03	0.66	NA	XXX
93743		A	Analyze ht pace device dual	1.03	1.13	NA	0.06	2.22	NA	XXX
93743	26	A	Analyze ht pace device dual	1.03	0.43	0.43	0.03	1.49	1.49	XXX
93743	TC	A	Analyze ht pace device dual	0.00	0.70	NA	0.03	0.73	NA	XXX
93744		A	Analyze ht pace device dual	1.18	1.12	NA	0.06	2.36	NA	XXX
93744	26	A	Analyze ht pace device dual	1.18	0.49	0.49	0.03	1.70	1.70	XXX
93744	TC	A	Analyze ht pace device dual	0.00	0.63	NA	0.03	0.66	NA	XXX
93760		N	Cephalic thermogram	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93762		N	Peripheral thermogram	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93770		B	Measure venous pressure	+0.16	0.09	NA	0.02	0.27	NA	XXX
93770	26	B	Measure venous pressure	+0.16	0.06	0.06	0.01	0.23	0.23	XXX
93770	TC	B	Measure venous pressure	+0.00	0.03	NA	0.01	0.04	NA	XXX
93784		N	Ambulatory BP monitoring	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93786		N	Ambulatory BP recording	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93788		N	Ambulatory BP analysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93790		N	Review/report BP recording	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93797		A	Cardiac rehab	0.18	0.33	0.07	0.01	0.52	0.26	000
93798		A	Cardiac rehab/monitor	0.28	0.44	0.11	0.01	0.73	0.40	000
93799		C	Cardiovascular procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93799	26	C	Cardiovascular procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93799	TC	C	Cardiovascular procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93875		A	Extracranial study	0.22	1.13	NA	0.10	1.45	NA	XXX
93875	26	A	Extracranial study	0.22	0.08	0.08	0.01	0.31	0.31	XXX
93875	TC	A	Extracranial study	0.00	1.05	NA	0.09	1.14	NA	XXX
93880		A	Extracranial study	0.60	3.76	NA	0.33	4.69	NA	XXX
93880	26	A	Extracranial study	0.60	0.22	0.22	0.04	0.86	0.86	XXX
93880	TC	A	Extracranial study	0.00	3.54	NA	0.29	3.83	NA	XXX
93882		A	Extracranial study	0.40	2.50	NA	0.22	3.12	NA	XXX
93882	26	A	Extracranial study	0.40	0.15	0.15	0.04	0.59	0.59	XXX
93882	TC	A	Extracranial study	0.00	2.35	NA	0.18	2.53	NA	XXX
93886		A	Intracranial study	0.94	4.40	NA	0.37	5.71	NA	XXX
93886	26	A	Intracranial study	0.94	0.40	0.40	0.05	1.39	1.39	XXX
93886	TC	A	Intracranial study	0.00	4.00	NA	0.32	4.32	NA	XXX
93888		A	Intracranial study	0.62	2.91	NA	0.26	3.79	NA	XXX
93888	26	A	Intracranial study	0.62	0.24	0.24	0.04	0.90	0.90	XXX
93888	TC	A	Intracranial study	0.00	2.67	NA	0.22	2.89	NA	XXX
93922		A	Extremity study	0.25	1.18	NA	0.13	1.56	NA	XXX
93922	26	A	Extremity study	0.25	0.09	0.09	0.02	0.36	0.36	XXX
93922	TC	A	Extremity study	0.00	1.09	NA	0.11	1.20	NA	XXX
93923		A	Extremity study	0.45	2.24	NA	0.22	2.91	NA	XXX
93923	26	A	Extremity study	0.45	0.16	0.16	0.04	0.65	0.65	XXX
93923	TC	A	Extremity study	0.00	2.08	NA	0.18	2.26	NA	XXX
93924		A	Extremity study	0.50	2.43	NA	0.26	3.19	NA	XXX
93924	26	A	Extremity study	0.50	0.18	0.18	0.05	0.73	0.73	XXX
93924	TC	A	Extremity study	0.00	2.25	NA	0.21	2.46	NA	XXX
93925		A	Lower extremity study	0.58	3.76	NA	0.33	4.67	NA	XXX
93925	26	A	Lower extremity study	0.58	0.21	0.21	0.04	0.83	0.83	XXX
93925	TC	A	Lower extremity study	0.00	3.55	NA	0.29	3.84	NA	XXX
93926		A	Lower extremity study	0.39	2.51	NA	0.22	3.12	NA	XXX
93926	26	A	Lower extremity study	0.39	0.14	0.14	0.03	0.56	0.56	XXX
93926	TC	A	Lower extremity study	0.00	2.37	NA	0.19	2.56	NA	XXX
93930		A	Upper extremity study	0.46	3.93	NA	0.34	4.73	NA	XXX
93930	26	A	Upper extremity study	0.46	0.18	0.16	0.03	0.65	0.65	XXX
93930	TC	A	Upper extremity study	0.00	3.77	NA	0.31	4.08	NA	XXX
93931		A	Upper extremity study	0.31	2.62	NA	0.22	3.15	NA	XXX
93931	26	A	Upper extremity study	0.31	0.11	0.11	0.02	0.44	0.44	XXX
93931	TC	A	Upper extremity study	0.00	2.51	NA	0.20	2.71	NA	XXX
93965		A	Extremity study	0.35	1.17	NA	0.12	1.64	NA	XXX
93965	26	A	Extremity study	0.35	0.13	0.13	0.02	0.50	0.50	XXX
93965	TC	A	Extremity study	0.00	1.04	NA	0.10	1.14	NA	XXX
93970		A	Extremity study	0.68	4.16	NA	0.38	5.22	NA	XXX
93970	26	A	Extremity study	0.68	0.24	0.24	0.05	0.97	0.97	XXX
93970	TC	A	Extremity study	0.00	3.92	NA	0.33	4.25	NA	XXX
93971		A	Extremity study	0.45	2.77	NA	0.25	3.47	NA	XXX
93971	26	A	Extremity study	0.45	0.16	0.16	0.03	0.64	0.64	XXX
93971	TC	A	Extremity study	0.00	2.61	NA	0.22	2.83	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
93975		A	Vascular study	1.80	5.10	NA	0.47	7.37	NA	XXX
93975	26	A	Vascular study	1.80	0.64	0.64	0.11	2.55	2.55	XXX
93975	TC	A	Vascular study	0.00	4.46	NA	0.36	4.82	NA	XXX
93976		A	Vascular study	1.21	3.41	NA	0.31	4.93	NA	XXX
93976	26	A	Vascular study	1.21	0.43	0.43	0.06	1.70	1.70	XXX
93976	TC	A	Vascular study	0.00	2.98	NA	0.25	3.23	NA	XXX
93978		A	Vascular study	0.65	3.88	NA	0.36	4.89	NA	XXX
93978	26	A	Vascular study	0.65	0.23	0.23	0.05	0.93	0.93	XXX
93978	TC	A	Vascular study	0.00	3.65	NA	0.31	3.96	NA	XXX
93979		A	Vascular study	0.44	2.59	NA	0.24	3.27	NA	XXX
93979	26	A	Vascular study	0.44	0.16	0.16	0.04	0.64	0.64	XXX
93979	TC	A	Vascular study	0.00	2.43	NA	0.20	2.63	NA	XXX
93980		A	Penile vascular study	1.25	3.75	NA	0.35	5.35	NA	XXX
93980	26	A	Penile vascular study	1.25	0.44	0.44	0.07	1.76	1.76	XXX
93980	TC	A	Penile vascular study	0.00	3.31	NA	0.28	3.59	NA	XXX
93981		A	Penile vascular study	0.44	3.21	NA	0.28	3.93	NA	XXX
93981	26	A	Penile vascular study	0.44	0.15	0.15	0.02	0.61	0.61	XXX
93981	TC	A	Penile vascular study	0.00	3.06	NA	0.26	3.32	NA	XXX
93990		A	Doppler flow testing	0.25	2.46	NA	0.21	2.92	NA	XXX
93990	26	A	Doppler flow testing	0.25	0.09	0.09	0.02	0.36	0.36	XXX
93990	TC	A	Doppler flow testing	0.00	2.37	NA	0.19	2.56	NA	XXX
94010		A	Breathing capacity test	0.17	0.82	NA	0.03	1.02	NA	XXX
94010	26	A	Breathing capacity test	0.17	0.06	0.06	0.01	0.24	0.24	XXX
94010	TC	A	Breathing capacity test	0.00	0.76	NA	0.02	0.78	NA	XXX
94014		A	Patient recorded spirometry	0.52	0.46	NA	0.03	1.01	NA	XXX
94015		A	Patient recorded spirometry	0.00	0.29	NA	0.01	0.30	NA	XXX
94016		A	Review patient spirometry	0.52	0.17	0.17	0.02	0.71	0.71	XXX
94060		A	Evaluation of wheezing	0.31	1.36	NA	0.06	1.73	NA	XXX
94060	26	A	Evaluation of wheezing	0.31	0.10	0.10	0.01	0.42	0.42	XXX
94060	TC	A	Evaluation of wheezing	0.00	1.26	NA	0.05	1.31	NA	XXX
94070		A	Evaluation of wheezing	0.60	3.38	NA	0.10	4.08	NA	XXX
94070	26	A	Evaluation of wheezing	0.60	0.19	0.19	0.02	0.81	0.81	XXX
94070	TC	A	Evaluation of wheezing	0.00	3.19	NA	0.08	3.27	NA	XXX
94150		B	Vital capacity test	+0.07	0.63	NA	0.02	0.72	NA	XXX
94150	26	B	Vital capacity test	+0.07	0.03	0.03	0.01	0.11	0.11	XXX
94150	TC	B	Vital capacity test	+0.00	0.60	NA	0.01	0.61	NA	XXX
94200		A	Lung function test (MBC/MVV)	0.11	0.33	NA	0.03	0.47	NA	XXX
94200	26	A	Lung function test (MBC/MVV)	0.11	0.04	0.04	0.01	0.16	0.16	XXX
94200	TC	A	Lung function test (MBC/MVV)	0.00	0.29	NA	0.02	0.31	NA	XXX
94240		A	Residual lung capacity	0.26	1.26	NA	0.05	1.57	NA	XXX
94240	26	A	Residual lung capacity	0.26	0.08	0.08	0.01	0.35	0.35	XXX
94240	TC	A	Residual lung capacity	0.00	1.18	NA	0.04	1.22	NA	XXX
94250		A	Expired gas collection	0.11	0.61	NA	0.02	0.74	NA	XXX
94250	26	A	Expired gas collection	0.11	0.04	0.04	0.01	0.16	0.16	XXX
94250	TC	A	Expired gas collection	0.00	0.57	NA	0.01	0.58	NA	XXX
94260		A	Thoracic gas volume	0.13	0.38	NA	0.04	0.55	NA	XXX
94260	26	A	Thoracic gas volume	0.13	0.04	0.04	0.01	0.18	0.18	XXX
94260	TC	A	Thoracic gas volume	0.00	0.34	NA	0.03	0.37	NA	XXX
94350		A	Lung nitrogen washout curve	0.26	1.01	NA	0.04	1.31	NA	XXX
94350	26	A	Lung nitrogen washout curve	0.26	0.08	0.08	0.01	0.35	0.35	XXX
94350	TC	A	Lung nitrogen washout curve	0.00	0.93	NA	0.03	0.96	NA	XXX
94360		A	Measure airflow resistance	0.26	0.50	NA	0.06	0.82	NA	XXX
94360	26	A	Measure airflow resistance	0.26	0.08	0.08	0.01	0.35	0.35	XXX
94360	TC	A	Measure airflow resistance	0.00	0.42	NA	0.05	0.47	NA	XXX
94370		A	Breath airway closing volume	0.26	2.03	NA	0.03	2.32	NA	XXX
94370	26	A	Breath airway closing volume	0.26	0.08	0.08	0.01	0.35	0.35	XXX
94370	TC	A	Breath airway closing volume	0.00	1.95	NA	0.02	1.97	NA	XXX
94375		A	Respiratory flow volume loop	0.31	0.46	NA	0.03	0.80	NA	XXX
94375	26	A	Respiratory flow volume loop	0.31	0.10	0.10	0.01	0.42	0.42	XXX
94375	TC	A	Respiratory flow volume loop	0.00	0.36	NA	0.02	0.38	NA	XXX
94400		A	CO_2 breathing response curve	0.40	0.70	NA	0.06	1.16	NA	XXX
94400	26	A	CO_2 breathing response curve	0.40	0.13	0.13	0.01	0.54	0.54	XXX
94400	TC	A	CO_2 breathing response curve	0.00	0.57	NA	0.05	0.62	NA	XXX
94450		A	Hypoxia response curve	0.40	0.85	NA	0.04	1.29	NA	XXX
94450	26	A	Hypoxia response curve	0.40	0.12	0.12	0.02	0.54	0.54	XXX
94450	TC	A	Hypoxia response curve	0.00	0.73	NA	0.02	0.75	NA	XXX
94620		A	Pulmonary stress test/simple	0.64	1.66	NA	0.10	2.40	NA	XXX
94620	26	A	Pulmonary stress test/simple	0.64	0.21	0.21	0.02	0.87	0.87	XXX
94620	TC	A	Pulmonary stress test/simple	0.00	1.45	NA	0.08	1.53	NA	XXX
94621		A	Pulm stress test/complex	1.42	1.25	NA	0.13	2.80	NA	XXX
94621	26	A	Pulm stress test/complex	1.42	0.47	0.47	0.05	1.94	1.94	XXX
94621	TC	A	Pulm stress test/complex	0.00	0.78	NA	0.08	0.86	NA	XXX
94640		A	Airway inhalation treatment	0.00	0.74	NA	0.02	0.76	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
94642		C	Aerosol inhalation treatment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94650		A	Pressure breathing (IPPB)	0.00	0.67	NA	0.02	0.69	NA	XXX
94651		A	Pressure breathing (IPPB)	0.00	0.62	NA	0.02	0.64	NA	XXX
94652		A	Pressure breathing (IPPB)	0.00	0.77	NA	0.06	0.83	NA	XXX
94656		A	Initial ventilator mgmt	1.22	NA	0.33	0.06	NA	1.61	XXX
94657		A	Continued ventilator mgmt	0.83	NA	0.26	0.03	NA	1.12	XXX
94660		A	Pos airway pressure, CPAP	0.76	0.67	0.24	0.03	1.46	1.03	XXX
94662		A	Neg press ventilation, cnp	0.76	NA	0.24	0.02	NA	1.02	XXX
94664		A	Aerosol or vapor inhalations	0.00	0.53	NA	0.03	0.56	NA	XXX
94665		A	Aerosol or vapor inhalations	0.00	0.53	NA	0.04	0.57	NA	XXX
94667		A	Chest wall manipulation	0.00	1.01	NA	0.04	1.05	NA	XXX
94668		A	Chest wall manipulation	0.00	0.75	NA	0.02	0.77	NA	XXX
94680		A	Exhaled air analysis, o_2	0.26	1.17	NA	0.06	1.49	NA	XXX
94680	26	A	Exhaled air analysis, o_2	0.26	0.09	0.09	0.01	0.36	0.36	XXX
94680	TC	A	Exhaled air analysis, o_2	0.00	1.08	NA	0.05	1.13	NA	XXX
94681		A	Exhaled air analysis, o_2/co_2	0.20	1.32	NA	0.11	1.63	NA	XXX
94681	26	A	Exhaled air analysis, o_2/co_2	0.20	0.07	0.07	0.01	0.28	0.28	XXX
94681	TC	A	Exhaled air analysis, o_2/co_2	0.00	1.25	NA	0.10	1.35	NA	XXX
94690		A	Exhaled air analysis	0.07	1.59	NA	0.04	1.70	NA	XXX
94690	26	A	Exhaled air analysis	0.07	0.02	0.02	0.01	0.10	0.10	XXX
94690	TC	A	Exhaled air analysis	0.00	1.57	NA	0.03	1.60	NA	XXX
94720		A	Monoxide diffusing capacity	0.26	1.32	NA	0.06	1.64	NA	XXX
94720	26	A	Monoxide diffusing capacity	0.26	0.08	0.08	0.01	0.35	0.35	XXX
94720	TC	A	Monoxide diffusing capacity	0.00	1.24	NA	0.05	1.29	NA	XXX
94725		A	Membrane diffusion capacity	0.26	0.71	NA	0.11	1.08	NA	XXX
94725	26	A	Membrane diffusion capacity	0.26	0.08	0.08	0.01	0.35	0.35	XXX
94725	TC	A	Membrane diffusion capacity	0.00	0.63	NA	0.10	0.73	NA	XXX
94750		A	Pulmonary compliance study	0.23	1.06	NA	0.04	1.33	NA	XXX
94750	26	A	Pulmonary compliance study	0.23	0.07	0.07	0.01	0.31	0.31	XXX
94750	TC	A	Pulmonary compliance study	0.00	0.99	NA	0.03	1.02	NA	XXX
94760		T	Measure blood oxygen level	0.00	0.10	NA	0.02	0.12	NA	XXX
94761		T	Measure blood oxygen level	0.00	0.14	NA	0.05	0.19	NA	XXX
94762		A	Measure blood oxygen level	0.00	0.74	NA	0.08	0.82	NA	XXX
94770		A	Exhaled carbon dioxide test	0.15	0.91	NA	0.07	1.13	NA	XXX
94770	26	A	Exhaled carbon dioxide test	0.15	0.04	0.04	0.01	0.20	0.20	XXX
94770	TC	A	Exhaled carbon dioxide test	0.00	0.87	NA	0.06	0.93	NA	XXX
94772		C	Breath recording, infant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94772	26	C	Breath recording, infant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94772	TC	C	Breath recording, infant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94799		C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94799	26	C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94799	TC	C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95004		A	Allergy skin tests	0.00	0.09	NA	0.01	0.10	NA	XXX
95010		A	Sensitivity skin tests	0.15	0.45	0.07	0.01	0.61	0.23	XXX
95015		A	Sensitivity skin tests	0.15	0.39	0.06	0.01	0.55	0.22	XXX
95024		A	Allergy skin tests	0.00	0.14	NA	0.01	0.15	NA	XXX
95027		A	Skin end point titration	0.00	0.14	NA	0.01	0.15	NA	XXX
95028		A	Allergy skin tests	0.00	0.22	NA	0.01	0.23	NA	XXX
95044		A	Allergy patch tests	0.00	0.19	NA	0.01	0.20	NA	XXX
95052		A	Photo patch test	0.00	0.24	NA	0.01	0.25	NA	XXX
95056		A	Photosensitivity tests	0.00	0.17	NA	0.01	0.18	NA	XXX
95060		A	Eye allergy tests	0.00	0.33	NA	0.02	0.35	NA	XXX
95065		A	Nose allergy test	0.00	0.19	NA	0.01	0.20	NA	XXX
95070		A	Bronchial allergy tests	0.00	2.17	NA	0.02	2.19	NA	XXX
95071		A	Bronchial allergy tests	0.00	2.77	NA	0.02	2.79	NA	XXX
95075		A	Ingestion challenge test	0.95	0.80	0.43	0.03	1.78	1.41	XXX
95078		A	Provocative testing	0.00	0.24	NA	0.02	0.26	NA	XXX
95115		A	Immunotherapy, one injection	0.00	0.37	NA	0.02	0.39	NA	000
95117		A	Immunotherapy injections	0.00	0.48	NA	0.02	0.50	NA	000
95120		I	Immunotherapy, one injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95125		I	Immunotherapy, many antigens	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95130		I	Immunotherapy, insect venom	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95131		I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95132		I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95133		I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95134		I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95144		A	Antigen therapy services	0.06	0.25	0.03	0.01	0.32	0.10	000
95145		A	Antigen therapy services	0.06	0.47	0.03	0.01	0.54	0.10	000
95146		A	Antigen therapy services	0.06	0.62	0.03	0.01	0.69	0.10	000
95147		A	Antigen therapy services	0.06	0.91	0.03	0.01	0.98	0.10	000
95148		A	Antigen therapy services	0.06	0.81	0.03	0.01	0.88	0.10	000
95149		A	Antigen therapy services	0.06	1.04	0.03	0.01	1.11	0.10	000
95165		A	Antigen therapy services	0.06	0.21	0.02	0.01	0.28	0.09	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
95170		A	Antigen therapy services	0.06	0.26	0.02	0.01	0.33	0.09	000
95180		A	Rapid desensitization	2.01	1.66	0.85	0.04	3.71	2.90	000
95199		C	Allergy immunology services	0.00	0.00	0.00	0.00	0.00	0.00	000
95250		A	Glucose monitoring, cont	0.00	1.44	NA	0.01	1.45	NA	XXX
95805		A	Multiple sleep latency test	1.88	5.89	NA	0.34	8.11	NA	XXX
95805	26	A	Multiple sleep latency test	1.88	0.70	0.70	0.06	2.64	2.64	XXX
95805	TC	A	Multiple sleep latency test	0.00	5.19	NA	0.28	5.47	NA	XXX
95806		A	Sleep study, unattended	1.66	4.31	NA	0.32	6.29	NA	XXX
95806	26	A	Sleep study, unattended	1.66	0.57	0.57	0.06	2.29	2.29	XXX
95806	TC	A	Sleep study, unattended	0.00	3.74	NA	0.26	4.00	NA	XXX
95807		A	Sleep study, attended	1.66	10.70	NA	0.40	12.76	NA	XXX
95807	26	A	Sleep study, attended	1.66	0.56	0.56	0.05	2.27	2.27	XXX
95807	TC	A	Sleep study, attended	0.00	10.14	NA	0.35	10.49	NA	XXX
95808		A	Polysomnography, 1–3	2.65	3.86	NA	0.44	6.95	NA	XXX
95808	26	A	Polysomnography, 1–3	2.65	0.99	0.99	0.09	3.73	3.73	XXX
95808	TC	A	Polysomnography, 1–3	0.00	2.87	NA	0.35	3.22	NA	XXX
95810		A	Polysomnography, 4 or more	3.53	15.66	NA	0.47	19.66	NA	XXX
95810	26	A	Polysomnography, 4 or more	3.53	1.26	1.26	0.12	4.91	4.91	XXX
95810	TC	A	Polysomnography, 4 or more	0.00	14.40	NA	0.35	14.75	NA	XXX
95811		A	Polysomnography w/cpap	3.80	13.63	NA	0.49	17.92	NA	XXX
95811	26	A	Polysomnography w/cpap	3.80	1.34	1.34	0.13	5.27	5.27	XXX
95811	TC	A	Polysomnography w/cpap	0.00	12.29	NA	0.36	12.65	NA	XXX
95812		A	Electroencephalogram (EEG)	1.08	3.96	NA	0.13	5.17	NA	XXX
95812	26	A	Electroencephalogram (EEG)	1.08	0.48	0.48	0.04	1.60	1.60	XXX
95812	TC	A	Electroencephalogram (EEG)	0.00	3.48	NA	0.09	3.57	NA	XXX
95813		A	Electroencephalogram (EEG)	1.73	5.53	NA	0.15	7.41	NA	XXX
95813	26	A	Electroencephalogram (EEG)	1.73	0.73	0.73	0.06	2.52	2.52	XXX
95813	TC	A	Electroencephalogram (EEG)	0.00	4.80	NA	0.09	4.89	NA	XXX
95816		A	Electroencephalogram (EEG)	1.08	3.42	NA	0.12	4.62	NA	XXX
95816	26	A	Electroencephalogram (EEG)	1.08	0.49	0.49	0.04	1.61	1.61	XXX
95816	TC	A	Electroencephalogram (EEG)	0.00	2.93	NA	0.08	3.01	NA	XXX
95819		A	Electroencephalogram (EEG)	1.08	4.34	NA	0.12	5.54	NA	XXX
95819	26	A	Electroencephalogram (EEG)	1.08	0.49	0.49	0.04	1.61	1.61	XXX
95819	TC	A	Electroencephalogram (EEG)	0.00	3.85	NA	0.08	3.93	NA	XXX
95822		A	Sleep electroencephalogram	1.08	1.78	NA	0.15	3.01	NA	XXX
95822	26	A	Sleep electroencephalogram	1.08	0.49	0.49	0.04	1.61	1.61	XXX
95822	TC	A	Sleep electroencephalogram	0.00	1.29	NA	0.11	1.40	NA	XXX
95824		C	Electroencephalography	+0.00	0.00	0.00	0.00	0.00	0.00	XXX
95824	26	A	Electroencephalography	0.74	0.30	0.30	0.05	1.09	1.09	ZZZ
95824	TC	C	Electroencephalography	+0.00	0.00	NA	0.00	0.00	NA	XXX
95827		A	Night electroencephalogram	1.08	2.64	NA	0.15	3.87	NA	XXX
95827	26	A	Night electroencephalogram	1.08	0.46	0.46	0.03	1.57	1.57	XXX
95827	TC	A	Night electroencephalogram	0.00	2.18	NA	0.12	2.30	NA	XXX
95829		A	Surgery electrocorticogram	6.21	31.39	NA	0.33	37.93	NA	XXX
95829	26	A	Surgery electrocorticogram	6.21	2.90	2.90	0.31	9.42	9.42	XXX
95829	TC	A	Surgery electrocorticogram	0.00	28.49	NA	0.02	28.51	NA	XXX
95830		A	Insert electrodes for EEG	1.70	3.76	0.78	0.07	5.53	2.55	XXX
95831		A	Limb muscle testing, manual	0.28	0.52	0.12	0.01	0.81	0.41	XXX
95832		A	Hand muscle testing, manual	0.29	0.48	0.11	0.01	0.78	0.41	XXX
95833		A	Body muscle testing, manual	0.47	0.54	0.24	0.01	1.02	0.72	XXX
95834		A	Body muscle testing, manual	0.60	0.59	0.28	0.02	1.21	0.90	XXX
95851		A	Range of motion measurements	0.16	0.55	0.08	0.01	0.72	0.25	XXX
95852		A	Range of motion measurements	0.11	0.49	0.05	0.01	0.61	0.17	XXX
95857		A	Tensilon test	0.53	0.66	0.24	0.02	1.21	0.79	XXX
95858		A	Tensilon test & myogram	1.56	1.10	NA	0.07	2.73	NA	XXX
95858	26	A	Tensilon test & myogram	1.56	0.72	0.72	0.04	2.32	2.32	XXX
95858	TC	A	Tensilon test & myogram	0.00	0.38	NA	0.03	0.41	NA	XXX
95860		A	Muscle test, one limb	0.96	1.18	NA	0.05	2.19	NA	XXX
95860	26	A	Muscle test, one limb	0.96	0.45	0.45	0.03	1.44	1.44	XXX
95860	TC	A	Muscle test, one limb	0.00	0.73	NA	0.02	0.75	NA	XXX
95861		A	Muscle test, two limbs	1.54	1.42	NA	0.10	3.06	NA	XXX
95861	26	A	Muscle test, two limbs	1.54	0.72	0.72	0.05	2.31	2.31	XXX
95861	TC	A	Muscle test, two limbs	0.00	0.70	NA	0.05	0.75	NA	XXX
95863		A	Muscle test, 3 limbs	1.87	1.76	NA	0.11	3.74	NA	XXX
95863	26	A	Muscle test, 3 limbs	1.87	0.87	0.87	0.06	2.80	2.80	XXX
95863	TC	A	Muscle test, 3 limbs	0.00	0.89	NA	0.05	0.94	NA	XXX
95864		A	Muscle test, 4 limbs	1.99	2.62	NA	0.18	4.77	NA	XXX
95864	26	A	Muscle test, 4 limbs	1.99	0.93	0.93	0.06	2.98	2.98	XXX
95864	TC	A	Muscle test, 4 limbs	0.00	1.69	NA	0.10	1.79	NA	XXX
95867		A	Muscle test, head or neck	0.79	0.92	NA	0.06	1.77	NA	XXX
95867	26	A	Muscle test, head or neck	0.79	0.37	0.37	0.03	1.19	1.19	XXX
95867	TC	A	Muscle test, head or neck	0.00	0.55	NA	0.03	0.58	NA	XXX
95868		A	Muscle test, head or neck	1.18	1.23	NA	0.08	2.49	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
95868	26	A	Muscle test, head or neck	1.18	0.57	0.57	0.04	1.79	1.79	XXX
95868	TC	A	Muscle test, head or neck	0.00	0.66	NA	0.04	0.70	NA	XXX
95869		A	Muscle test, thor paraspinal	0.37	0.37	NA	0.03	0.77	NA	XXX
95869	26	A	Muscle test, thor paraspinal	0.37	0.17	0.17	0.01	0.55	0.55	XXX
95869	TC	A	Muscle test, thor paraspinal	0.00	0.20	NA	0.02	0.22	NA	XXX
95870		A	Muscle test, nonparaspinal	0.37	0.37	NA	0.03	0.77	NA	XXX
95870	26	A	Muscle test, nonparaspinal	0.37	0.17	0.17	0.01	0.55	0.55	XXX
95870	TC	A	Muscle test, nonparaspinal	0.00	0.20	NA	0.02	0.22	NA	XXX
95872		A	Muscle test, one fiber	1.50	1.25	NA	0.08	2.83	NA	XXX
95872	26	A	Muscle test, one fiber	1.50	0.68	0.68	0.04	2.22	2.22	XXX
95872	TC	A	Muscle test, one fiber	0.00	0.57	NA	0.04	0.61	NA	XXX
95875		A	Limb exercise test	1.10	1.38	NA	0.09	2.57	NA	XXX
95875	26	A	Limb exercise test	1.10	0.49	0.49	0.04	1.63	1.63	XXX
95875	TC	A	Limb exercise test	0.00	0.89	NA	0.05	0.94	NA	XXX
95900		A	Motor nerve conduction test	0.42	0.73	NA	0.03	1.18	NA	XXX
95900	26	A	Motor nerve conduction test	0.42	0.20	0.20	0.01	0.63	0.63	XXX
95900	TC	A	Motor nerve conduction test	0.00	0.53	NA	0.02	0.55	NA	XXX
95903		A	Motor nerve conduction test	0.60	0.51	NA	0.04	1.15	NA	XXX
95903	26	A	Motor nerve conduction test	0.60	0.27	0.27	0.02	0.89	0.89	XXX
95903	TC	A	Motor nerve conduction test	0.00	0.24	NA	0.02	0.26	NA	XXX
95904		A	Sense nerve conduction test	0.34	0.64	NA	0.03	1.01	NA	XXX
95904	26	A	Sense nerve conduction test	0.34	0.16	0.16	0.01	0.51	0.51	XXX
95904	TC	A	Sense nerve conduction test	0.00	0.48	NA	0.02	0.50	NA	XXX
95920		A	Intraop nerve test add-on	2.11	2.23	NA	0.20	4.54	NA	ZZZ
95920	26	A	Intraop nerve test add-on	2.11	0.99	0.99	0.14	3.24	3.24	ZZZ
95920	TC	A	Intraop nerve test add-on	0.00	1.24	NA	0.06	1.30	NA	ZZZ
95921		A	Autonomic nerv function test	0.90	0.70	NA	0.05	1.65	NA	XXX
95921	26	A	Autonomic nerv function test	0.90	0.34	0.34	0.03	1.27	1.27	XXX
95921	TC	A	Autonomic nerv function test	0.00	0.36	NA	0.02	0.38	NA	XXX
95922		A	Autonomic nerv function test	0.96	0.79	NA	0.05	1.80	NA	XXX
95922	26	A	Autonomic nerv function test	0.96	0.43	0.43	0.03	1.42	1.42	XXX
95922	TC	A	Autonomic nerv function test	0.00	0.36	NA	0.02	0.38	NA	XXX
95923		A	Autonomic nerv function test	0.90	2.57	NA	0.05	3.52	NA	XXX
95923	26	A	Autonomic nerv function test	0.90	0.40	0.40	0.03	1.33	1.33	XXX
95923	TC	A	Autonomic nerv function test	0.00	2.17	NA	0.02	2.19	NA	XXX
95925		A	Somatosensory testing	0.54	1.10	NA	0.07	1.71	NA	XXX
95925	26	A	Somatosensory testing	0.54	0.24	0.24	0.02	0.80	0.80	XXX
95925	TC	A	Somatosensory testing	0.00	0.86	NA	0.05	0.91	NA	XXX
95926		A	Somatosensory testing	0.54	1.11	NA	0.07	1.72	NA	XXX
95926	26	A	Somatosensory testing	0.54	0.25	0.25	0.02	0.81	0.81	XXX
95926	TC	A	Somatosensory testing	0.00	0.86	NA	0.05	0.91	NA	XXX
95927		A	Somatosensory testing	0.54	1.13	NA	0.08	1.75	NA	XXX
95927	26	A	Somatosensory testing	0.54	0.27	0.27	0.03	0.84	0.84	XXX
95927	TC	A	Somatosensory testing	0.00	0.86	NA	0.05	0.91	NA	XXX
95930		A	Visual evoked potential test	0.35	0.84	NA	0.02	1.21	NA	XXX
95930	26	A	Visual evoked potential test	0.35	0.16	0.16	0.01	0.52	0.52	XXX
95930	TC	A	Visual evoked potential test	0.00	0.68	NA	0.01	0.69	NA	XXX
95933		A	Blink reflex test	0.59	1.01	NA	0.07	1.67	NA	XXX
95933	26	A	Blink reflex test	0.59	0.27	0.27	0.02	0.88	0.88	XXX
95933	TC	A	Blink reflex test	0.00	0.74	NA	0.05	0.79	NA	XXX
95934		A	H-reflex test	0.51	0.44	NA	0.04	0.99	NA	XXX
95934	26	A	H-reflex test	0.51	0.24	0.24	0.02	0.77	0.77	XXX
95934	TC	A	H-reflex test	0.00	0.20	NA	0.02	0.22	NA	XXX
95936		A	H-reflex test	0.55	0.45	NA	0.04	1.04	NA	XXX
95936	26	A	H-reflex test	0.55	0.25	0.25	0.02	0.82	0.82	XXX
95936	TC	A	H-reflex test	0.00	0.20	NA	0.02	0.22	NA	XXX
95937		A	Neuromuscular junction test	0.65	0.60	NA	0.04	1.29	NA	XXX
95937	26	A	Neuromuscular junction test	0.65	0.28	0.28	0.02	0.95	0.95	XXX
95937	TC	A	Neuromuscular junction test	0.00	0.32	NA	0.02	0.34	NA	XXX
95950		A	Ambulatory eeg monitoring	1.51	4.93	NA	0.44	6.88	NA	XXX
95950	26	A	Ambulatory eeg monitoring	1.51	0.70	0.70	0.08	2.29	2.29	XXX
95950	TC	A	Ambulatory eeg monitoring	0.00	4.23	NA	0.36	4.59	NA	XXX
95951		A	EEG monitoring/videorecord	6.00	16.38	NA	0.58	22.96	NA	XXX
95951	26	A	EEG monitoring/videorecord	8.00	2.72	2.72	0.20	8.92	8.92	XXX
95951	TC	A	EEG monitoring/videorecord	0.00	13.66	NA	0.38	14.04	NA	XXX
95953		A	EEG monitoring/computer	3.08	7.39	NA	0.46	10.93	NA	XXX
95953	26	A	EEG monitoring/computer	3.08	1.38	1.38	0.10	4.56	4.56	XXX
95953	TC	A	EEG monitoring/computer	0.00	6.01	NA	0.38	6.37	NA	XXX
95954		A	EEG monitoring/giving drugs	2.45	4.43	NA	0.15	7.03	NA	XXX
95954	26	A	EEG monitoring/giving drugs	2.45	1.07	1.07	0.10	3.62	3.62	XXX
95954	TC	A	EEG monitoring/giving drugs	0.00	3.36	NA	0.05	3.41	NA	XXX
95955		A	EEG during surgery	1.01	2.26	NA	0.19	3.46	NA	XXX
95955	26	A	EEG during surgery	1.01	0.40	0.40	0.05	1.46	1.46	XXX

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[3] +Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
95955	TC	A	EEG during surgery	0.00	1.86	NA	0.14	2.00	NA	XXX
95956		A	Eeg monitoring, cable/radio	3.08	7.43	NA	0.47	10.98	NA	XXX
95956	26	A	Eeg monitoring, cable/radio	3.08	1.35	1.35	0.11	4.54	4.54	XXX
95956	TC	A	Eeg monitoring, cable/radio	0.00	6.08	NA	0.36	6.44	NA	XXX
95957		A	EEG digital analysis	1.98	2.52	NA	0.17	4.67	NA	XXX
95957	26	A	EEG digital analysis	1.98	0.90	0.90	0.07	2.95	2.95	XXX
95957	TC	A	EEG digital analysis	0.00	1.62	NA	0.10	1.72	NA	XXX
95958		A	EEG monitoring/function test	4.25	3.51	NA	0.29	8.05	NA	XXX
95958	26	A	EEG monitoring/function test	4.25	1.86	1.86	0.18	6.29	6.29	XXX
95958	TC	A	EEG monitoring/function test	0.00	1.65	NA	0.11	1.76	NA	XXX
95961		A	Electrode stimulation, brain	2.97	2.67	NA	0.24	5.88	NA	XXX
95961	26	A	Electrode stimulation, brain	2.97	1.43	1.43	0.18	4.58	4.58	XXX
95961	TC	A	Electrode stimulation, brain	0.00	1.24	NA	0.06	1.30	NA	XXX
95962		A	Electrode stim, brain add-on	3.21	2.72	NA	0.23	6.16	NA	ZZZ
95962	26	A	Electrode stim, brain add-on	3.21	1.48	1.48	0.17	4.86	4.86	ZZZ
95962	TC	A	Electrode stim, brain add-on	0.00	1.24	NA	0.06	1.30	NA	ZZZ
95965		C	Meg, spontaneous	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95965	26	A	Meg, spontaneous	8.00	3.19	3.19	0.20	11.39	11.39	XXX
95965	TC	C	Meg, spontaneous	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95966		C	Meg, evoked, single	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95966	26	A	Meg, evoked, single	4.00	1.60	1.60	0.18	5.78	5.78	XXX
95966	TC	C	Meg, evoked, single	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95967		C	Meg, evoked, each addl	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
95967	26	A	Meg, evoked, each addl	3.50	1.40	1.40	0.17	5.07	5.07	ZZZ
95967	TC	C	Meg, evoked, each addl	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
95970		A	Analyze neurostim, no prog	0.45	0.18	0.16	0.03	0.66	0.64	XXX
95971		A	Analyze neurostim, simple	0.78	0.28	0.24	0.06	1.12	1.08	XXX
95972		A	Analyze neurostim, complex	1.50	0.62	0.51	0.17	2.29	2.18	XXX
95973		A	Analyze neurostim, complex	0.92	0.42	0.36	0.07	1.41	1.35	ZZZ
95974		A	Cranial neurostim, complex	3.00	1.37	1.37	0.15	4.52	4.52	XXX
95975		A	Cranial neurostim, complex	1.70	0.78	0.78	0.07	2.55	2.55	ZZZ
95999		C	Neurological procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96000		A	Motion analysis, video/3d	1.80	NA	0.72	0.02	NA	2.54	XXX
96001		A	Motion test w/ft press meas	2.15	NA	0.86	0.02	NA	3.03	XXX
96002		A	Dynamic surface emg	0.41	NA	0.16	0.02	NA	0.59	XXX
96003		A	Dynamic fine wire emg	0.37	NA	0.15	0.03	NA	0.55	XXX
96004		A	Phys review of motion tests	1.80	0.72	0.72	0.08	2.60	2.60	XXX
96100		A	Psychological testing	0.00	1.67	NA	0.15	1.82	NA	XXX
96105		A	Assessment of aphasia	0.00	1.67	NA	0.15	1.82	NA	XXX
96110		C	Developmental test, lim	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96111		A	Developmental test, extend	0.00	1.67	NA	0.15	1.82	NA	XXX
96115		A	Neurobehavior status exam	0.00	1.67	NA	0.15	1.82	NA	XXX
96117		A	Neuropsych test battery	0.00	1.67	NA	0.15	1.82	NA	XXX
96150		A	Assess hlth/behave, init	0.50	0.21	0.20	0.02	0.73	0.72	XXX
96151		A	Assess hlth/behave, subseq	0.48	0.21	0.19	0.02	0.71	0.69	XXX
96152		A	Intervene hlth/behave, indiv	0.46	0.20	0.18	0.02	0.68	0.66	XXX
96153		A	Intervene hlth/behave, group	0.10	0.04	0.04	0.01	0.15	0.15	XXX
96154		A	Interv hlth/behav, fam w/pt	0.45	0.19	0.18	0.02	0.66	0.65	XXX
96155		A	Interv hlth/behav fam no pt	0.44	0.18	0.18	0.02	0.64	0.64	XXX
96400		A	Chemotherapy, sc/im	0.00	0.13	NA	0.01	0.14	NA	XXX
96405		A	Intralesional chemo admin	0.52	1.88	0.24	0.02	2.42	0.78	000
96406		A	Intralesional chemo admin	0.80	2.94	0.41	0.02	3.76	1.23	000
96408		A	Chemotherapy, push technique	0.00	0.92	NA	0.05	0.97	NA	XXX
96410		A	Chemotherapy infusion method	0.00	1.47	NA	0.07	1.54	NA	XXX
96412		A	Chemo, infuse method add-on	0.00	1.09	NA	0.06	1.15	NA	ZZZ
96414		A	Chemo, infuse method add-on	0.00	1.27	NA	0.07	1.34	NA	XXX
96420		A	Chemotherapy, push technique	0.00	1.18	NA	0.07	1.25	NA	XXX
96422		A	Chemotherapy infusion method	0.00	1.17	NA	0.07	1.24	NA	XXX
96423		A	Chemo, infuse method add-on	0.00	0.46	NA	0.02	0.48	NA	ZZZ
96425		A	Chemotherapy infusion method	0.00	1.36	NA	0.07	1.43	NA	XXX
96440		A	Chemotherapy, intracavitary	2.37	7.99	1.06	0.12	10.48	3.55	000
96445		A	Chemotherapy, intracavitary	2.20	8.74	1.08	0.07	11.01	3.35	000
96450		A	Chemotherapy, into CNS	1.89	6.79	0.95	0.06	8.74	2.90	000
96520		A	Pump refilling, maintenance	0.00	0.84	NA	0.05	0.89	NA	XXX
96530		A	Pump refilling, maintenance	0.00	1.01	NA	0.05	1.06	NA	XXX
96542		A	Chemotherapy injection	1.42	4.70	0.55	0.05	6.17	2.02	XXX
96545		B	Provide chemotherapy agent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96549		C	Chemotherapy, unspecified	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96567		A	Photodynamic tx, skin	0.00	1.63	NA	0.03	1.66	NA	XXX
96570		A	Photodynamic tx, 30 min	1.10	0.46	0.38	0.04	1.60	1.52	ZZZ
96571		A	Photodynamic tx, addl 15 min	0.55	0.22	0.20	0.02	0.79	0.77	ZZZ
96900		A	Ultraviolet light therapy	0.00	0.45	NA	0.02	0.47	NA	XXX
96902		B	Trichogram	+0.41	0.25	0.16	0.01	0.67	0.58	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
96910		A	Photochemotherapy with UV–B	0.00	1.37	NA	0.03	1.40	NA	XXX
96912		A	Photochemotherapy with UV–A	0.00	1.54	NA	0.04	1.58	NA	XXX
96913		A	Photochemotherapy, UV–A or B	0.00	2.26	NA	0.08	2.34	NA	XXX
96999		C	Dermatological procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97001		A	Pt evaluation	1.20	0.56	0.37	0.10	1.86	1.67	XXX
97002		A	Pt re-evaluation	0.60	0.35	0.27	0.04	0.99	0.91	XXX
97003		A	Ot evaluation	1.20	0.69	0.32	0.05	1.94	1.57	XXX
97004		A	Ot re-evaluation	0.60	0.69	0.12	0.02	1.31	0.74	XXX
97005		I	Athletic train eval	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97006		I	Athletic train reeval	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97010		B	Hot or cold packs therapy	+0.06	0.04	0.04	0.01	0.11	0.11	XXX
97012		A	Mechanical traction therapy	0.25	0.11	0.11	0.01	0.37	0.37	XXX
97014		A	Electric stimulation therapy	0.18	0.19	0.19	0.01	0.38	0.38	XXX
97016		A	Vasopneumatic device therapy	0.18	0.14	0.14	0.01	0.33	0.33	XXX
97018		A	Paraffin bath therapy	0.06	0.12	0.12	0.01	0.19	0.19	XXX
97020		A	Microwave therapy	0.06	0.05	0.05	0.01	0.12	0.12	XXX
97022		A	Whirlpool therapy	0.17	0.26	0.26	0.01	0.44	0.44	XXX
97024		A	Diathermy treatment	0.06	0.05	0.05	0.01	0.12	0.12	XXX
97026		A	Infrared therapy	0.06	0.05	0.05	0.01	0.12	0.12	XXX
97028		A	Ultraviolet therapy	0.08	0.06	0.06	0.01	0.15	0.15	XXX
97032		A	Electrical stimulation	0.25	0.21	0.21	0.01	0.47	0.47	XXX
97033		A	Electric current therapy	0.26	0.12	0.12	0.02	0.40	0.40	XXX
97034		A	Contrast bath therapy	0.21	0.14	0.14	0.01	0.36	0.36	XXX
97035		A	Ultrasound therapy	0.21	0.08	0.08	0.01	0.30	0.30	XXX
97036		A	Hydrotherapy	0.28	0.34	0.34	0.01	0.63	0.63	XXX
97039		A	Physical therapy treatment	0.20	0.07	0.07	0.01	0.28	0.28	XXX
97110		A	Therapeutic exercises	0.45	0.25	0.25	0.03	0.73	0.73	XXX
97112		A	Neuromuscular reeducation	0.45	0.29	0.29	0.02	0.76	0.76	XXX
97113		A	Aquatic therapy/exercises	0.44	0.33	0.33	0.03	0.80	0.80	XXX
97116		A	Gait training therapy	0.40	0.21	0.21	0.02	0.63	0.63	XXX
97124		A	Massage therapy	0.35	0.21	0.21	0.01	0.57	0.57	XXX
97139		A	Physical medicine procedure	0.21	0.21	0.21	0.01	0.43	0.43	XXX
97140		A	Manual therapy	0.43	0.23	0.23	0.02	0.68	0.68	XXX
97150		A	Group therapeutic procedures	0.27	0.20	0.20	0.02	0.49	0.49	XXX
97504		A	Orthotic training	0.45	0.25	0.25	0.03	0.73	0.73	XXX
97520		A	Prosthetic training	0.45	0.21	0.21	0.02	0.68	0.68	XXX
97530		A	Therapeutic activities	0.44	0.45	0.45	0.02	0.91	0.91	XXX
97532		A	Cognitive skills development	0.44	0.17	0.17	0.01	0.62	0.62	XXX
97533		A	Sensory integration	0.44	0.21	0.21	0.01	0.66	0.66	XXX
97535		A	Self care mngment training	0.45	0.35	0.35	0.02	0.82	0.82	XXX
97537		A	Community/work reintegration	0.45	0.20	0.20	0.01	0.66	0.66	XXX
97542		A	Wheelchair mngment training	0.45	0.22	0.22	0.01	0.68	0.68	XXX
97545		R	Work hardening	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97546		R	Work hardening add-on	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
97601		A	Wound(s) care, selective	0.50	1.90	1.90	0.04	2.44	2.44	XXX
97602		B	Wound(s) care non-selective	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97703		A	Prosthetic checkout	0.25	0.44	0.44	0.02	0.71	0.71	XXX
97750		A	Physical performance test	0.45	0.24	0.24	0.02	0.71	0.71	XXX
97780		N	Acupuncture w/o stimul	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97781		N	Acupuncture w/stimul	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97799		C	Physical medicine procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97802		A	Medical nutrition, indiv, in	0.00	0.45	0.45	0.01	0.46	0.46	XXX
97803		A	Med nutrition, indiv, subseq	0.00	0.45	0.45	0.01	0.46	0.46	XXX
97804		A	Medical nutrition, group	0.00	0.17	0.17	0.01	0.18	0.18	XXX
98925		A	Osteopathic manipulation	0.45	0.38	0.14	0.01	0.84	0.60	000
98926		A	Osteopathic manipulation	0.65	0.44	0.25	0.02	1.11	0.92	000
98927		A	Osteopathic manipulation	0.87	0.52	0.31	0.03	1.42	1.21	000
98928		A	Osteopathic manipulation	1.03	0.59	0.38	0.03	1.65	1.44	000
98929		A	Osteopathic manipulation	1.19	0.65	0.39	0.04	1.88	1.62	000
98940		A	Chiropractic manipulation	0.45	0.25	0.13	0.01	0.71	0.59	000
98941		A	Chiropractic manipulation	0.65	0.31	0.19	0.02	0.98	0.86	000
98942		A	Chiropractic manipulation	0.87	0.37	0.25	0.03	1.27	1.15	000
98943		N	Chiropractic manipulation	+0.40	0.34	0.16	0.01	0.75	0.57	XXX
99000		B	Specimen handling	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99001		B	Specimen handling	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99002		B	Device handling	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99024		B	Postop follow-up visit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99025		B	Initial surgical evaluation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99050		B	Medical services after hrs	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99052		B	Medical services at night	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99054		B	Medical servcs, unusual hrs	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99056		B	Non-office medical services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99058		B	Office emergency care	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
99070		B	Special supplies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99071		B	Patient education materials	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99075		N	Medical testimony	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99078		B	Group health education	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99080		B	Special reports or forms	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99082		C	Unusual physician travel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99090		B	Computer data analysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99091		B	Collect/review data from pt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99100		B	Special anesthesia service	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99116		B	Anesthesia with hypothermia	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99135		B	Special anesthesia procedure	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99140		B	Emergency anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99141		B	Sedation, iv/im or inhalant	+0.80	2.12	0.39	0.04	2.96	1.23	XXX
99142		B	Sedation, oral/rectal/nasal	+0.60	1.24	0.31	0.03	1.87	0.94	XXX
99170		A	Anogenital exam, child	1.75	2.02	0.55	0.07	3.84	2.37	000
99172		N	Ocular function screen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99173		N	Visual acuity screen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99175		A	Induction of vomiting	0.00	1.32	NA	0.08	1.40	NA	XXX
99183		A	Hyperbaric oxygen therapy	2.34	NA	0.77	0.12	NA	3.23	XXX
99185		A	Regional hypothermia	0.00	0.61	NA	0.03	0.64	NA	XXX
99186		A	Total body hypothermia	0.00	1.69	NA	0.37	2.06	NA	XXX
99190		X	Special pump services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99191		X	Special pump services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99192		X	Special pump services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99195		A	Phlebotomy	0.00	0.42	NA	0.02	0.44	NA	XXX
99199		C	Special service/proc/report	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99201		A	Office/outpatient visit, new	0.45	0.47	0.16	0.02	0.94	0.63	XXX
99202		A	Office/outpatient visit, new	0.88	0.77	0.33	0.05	1.70	1.26	XXX
99203		A	Office/outpatient visit, new	1.34	1.12	0.50	0.08	2.54	1.92	XXX
99204		A	Office/outpatient visit, new	2.00	1.51	0.74	0.10	3.61	2.84	XXX
99205		A	Office/outpatient visit, new	2.67	1.80	0.98	0.12	4.59	3.77	XXX
99211		A	Office/outpatient visit, est	0.17	0.38	0.06	0.01	0.56	0.24	XXX
99212		A	Office/outpatient visit, est	0.45	0.53	0.17	0.02	1.00	0.64	XXX
99213		A	Office/outpatient visit, est	0.67	0.69	0.24	0.03	1.39	0.94	XXX
99214		A	Office/outpatient visit, est	1.10	1.04	0.41	0.04	2.18	1.55	XXX
99215		A	Office/outpatient visit, est	1.77	1.36	0.66	0.07	3.20	2.50	XXX
99217		A	Observation care discharge	1.28	NA	0.45	0.05	NA	1.78	XXX
99218		A	Observation care	1.28	NA	0.45	0.05	NA	1.78	XXX
99219		A	Observation care	2.14	NA	0.75	0.08	NA	2.97	XXX
99220		A	Observation care	2.99	NA	1.06	0.11	NA	4.16	XXX
99221		A	Initial hospital care	1.28	NA	0.47	0.05	NA	1.80	XXX
99222		A	Initial hospital care	2.14	NA	0.77	0.08	NA	2.99	XXX
99223		A	Initial hospital care	2.99	NA	1.08	0.10	NA	4.17	XXX
99231		A	Subsequent hospital care	0.64	NA	0.24	0.02	NA	0.90	XXX
99232		A	Subsequent hospital care	1.06	NA	0.39	0.03	NA	1.48	XXX
99233		A	Subsequent hospital care	1.51	NA	0.55	0.05	NA	2.11	XXX
99234		A	Observ/hosp same date	2.56	NA	0.93	0.11	NA	3.60	XXX
99235		A	Observ/hosp same date	3.42	NA	1.21	0.13	NA	4.76	XXX
99236		A	Observ/hosp same date	4.27	NA	1.49	0.17	NA	5.93	XXX
99238		A	Hospital discharge day	1.28	NA	0.51	0.04	NA	1.83	XXX
99239		A	Hospital discharge day	1.75	NA	0.71	0.05	NA	2.51	XXX
99241		A	Office consultation	0.64	0.62	0.24	0.04	1.30	0.92	XXX
99242		A	Office consultation	1.29	1.03	0.50	0.09	2.41	1.88	XXX
99243		A	Office consultation	1.72	1.38	0.67	0.10	3.20	2.49	XXX
99244		A	Office consultation	2.58	1.83	0.96	0.13	4.54	3.69	XXX
99245		A	Office consultation	3.43	2.29	1.30	0.16	5.88	4.89	XXX
99251		A	Initial inpatient consult	0.66	NA	0.26	0.04	NA	0.96	XXX
99252		A	Initial inpatient consult	1.32	NA	0.53	0.08	NA	1.93	XXX
99253		A	Initial inpatient consult	1.82	NA	0.72	0.09	NA	2.63	XXX
99254		A	Initial inpatient consult	2.64	NA	1.03	0.11	NA	3.78	XXX
99255		A	Initial inpatient consult	3.65	NA	1.41	0.15	NA	5.21	XXX
99261		A	Follow-up inpatient consult	0.42	NA	0.16	0.02	NA	0.60	XXX
99262		A	Follow-up inpatient consult	0.85	NA	0.32	0.03	NA	1.20	XXX
99263		A	Follow-up inpatient consult	1.27	NA	0.48	0.04	NA	1.79	XXX
99271		A	Confirmatory consultation	0.45	0.67	0.17	0.03	1.15	0.65	XXX
99272		A	Confirmatory consultation	0.84	0.89	0.32	0.06	1.79	1.22	XXX
99273		A	Confirmatory consultation	1.19	1.13	0.47	0.07	2.39	1.73	XXX
99274		A	Confirmatory consultation	1.73	1.41	0.68	0.09	3.23	2.50	XXX
99275		A	Confirmatory consultation	2.31	1.68	0.86	0.10	4.09	3.29	XXX
99281		A	Emergency dept visit	0.33	NA	0.09	0.02	NA	0.44	XXX
99282		A	Emergency dept visit	0.55	NA	0.15	0.03	NA	0.73	XXX
99283		A	Emergency dept visit	1.24	NA	0.32	0.06	NA	1.64	XXX
99284		A	Emergency dept visit	1.95	NA	0.49	0.12	NA	2.56	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
99285		A	Emergency dept visit	3.06	NA	0.75	0.19	NA	4.00	XXX
99288		B	Direct advanced life support	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99289		I	Pt transport, 30–74 min	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99290		I	Pt transport, addl 30 min	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99291		A	Critical care, first hour	4.00	1.63	1.34	0.14	5.77	5.48	XXX
99292		A	Critical care, addl 30 min	2.00	0.92	0.66	0.07	2.99	2.73	ZZZ
99295		A	Neonatal critical care	16.00	NA	4.53	0.70	NA	21.23	XXX
99296		A	Neonatal critical care	8.00	NA	2.58	0.23	NA	10.81	XXX
99297		A	Neonatal critical care	4.00	NA	1.32	0.12	NA	5.44	XXX
99298		A	Neonatal critical care	2.75	NA	0.97	0.10	NA	3.82	XXX
99301		A	Nursing facility care	1.20	0.70	0.42	0.04	1.94	1.66	XXX
99302		A	Nursing facility care	1.61	0.98	0.57	0.05	2.64	2.23	XXX
99303		A	Nursing facility care	2.01	1.21	0.70	0.06	3.28	2.77	XXX
99311		A	Nursing fac care, subseq	0.60	0.49	0.21	0.02	1.11	0.83	XXX
99312		A	Nursing fac care, subseq	1.00	0.68	0.35	0.03	1.71	1.38	XXX
99313		A	Nursing fac care, subseq	1.42	0.87	0.50	0.04	2.33	1.96	XXX
99315		A	Nursing fac discharge day	1.13	0.74	0.40	0.04	1.91	1.57	XXX
99316		A	Nursing fac discharge day	1.50	0.95	0.53	0.05	2.50	2.08	XXX
99321		A	Rest home visit, new patient	0.71	0.49	NA	0.02	1.22	NA	XXX
99322		A	Rest home visit, new patient	1.01	0.70	NA	0.03	1.74	NA	XXX
99323		A	Rest home visit, new patient	1.28	0.93	NA	0.04	2.25	NA	XXX
99331		A	Rest home visit, est pat	0.60	0.47	NA	0.02	1.09	NA	XXX
99332		A	Rest home visit, est pat	0.80	0.59	NA	0.03	1.42	NA	XXX
99333		A	Rest home visit, est pat	1.00	0.73	NA	0.03	1.76	NA	XXX
99341		A	Home visit, new patient	1.01	0.56	NA	0.05	1.62	NA	XXX
99342		A	Home visit, new patient	1.52	0.87	NA	0.05	2.44	NA	XXX
99343		A	Home visit, new patient	2.27	1.29	NA	0.07	3.63	NA	XXX
99344		A	Home visit, new patient	3.03	1.57	NA	0.10	4.70	NA	XXX
99345		A	Home visit, new patient	3.79	1.86	NA	0.12	5.77	NA	XXX
99347		A	Home visit, est patient	0.76	0.49	NA	0.03	1.28	NA	XXX
99348		A	Home visit, est patient	1.26	0.74	NA	0.04	2.04	NA	XXX
99349		A	Home visit, est patient	2.02	1.08	NA	0.06	3.16	NA	XXX
99350		A	Home visit, est patient	3.03	1.47	NA	0.10	4.60	NA	XXX
99354		A	Prolonged service, office	1.77	1.46	0.66	0.06	3.29	2.49	ZZZ
99355		A	Prolonged service, office	1.77	1.24	0.65	0.06	3.07	2.48	ZZZ
99356		A	Prolonged service, inpatient	1.71	NA	0.61	0.06	NA	2.38	ZZZ
99357		A	Prolonged service, inpatient	1.71	NA	0.63	0.06	NA	2.40	ZZZ
99358		B	Prolonged serv, w/o contact	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99359		B	Prolonged serv, w/o contact	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99360		X	Physician standby services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99361		B	Physician/team conference	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99362		B	Physician/team conference	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99371		B	Physician phone consultation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99372		B	Physician phone consultation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99373		B	Physician phone consultation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99374		B	Home health care supervision	+1.10	1.47	0.44	0.04	2.61	1.58	XXX
99377		B	Hospice care supervision	+1.10	1.47	0.44	0.04	2.61	1.58	XXX
99379		B	Nursing fac care supervision	+1.10	1.47	0.44	0.03	2.60	1.57	XXX
99380		B	Nursing fac care supervision	+1.73	1.72	0.69	0.05	3.50	2.47	XXX
99381		N	Prev visit, new, infant	+1.19	1.50	0.48	0.04	2.73	1.71	XXX
99382		N	Prev visit, new, age 1–4	+1.36	1.54	0.54	0.04	2.94	1.94	XXX
99383		N	Prev visit, new, age 5–11	+1.36	1.48	0.54	0.04	2.88	1.94	XXX
99384		N	Prev visit, new, age 12–17	+1.53	1.55	0.61	0.05	3.13	2.19	XXX
99385		N	Prev visit, new, age 18–39	+1.53	1.55	0.61	0.05	3.13	2.19	XXX
99386		N	Prev visit, new, age 40–64	+1.88	1.74	0.75	0.06	3.68	2.69	XXX
99387		N	Prev visit, new, 65 & over	+2.06	1.87	0.82	0.06	3.99	2.94	XXX
99391		N	Prev visit, est, infant	+1.02	1.02	0.41	0.03	2.07	1.46	XXX
99392		N	Prev visit, est, age 1–4	+1.19	1.09	0.48	0.04	2.32	1.71	XXX
99393		N	Prev visit, est, age 5–11	+1.19	1.06	0.48	0.04	2.29	1.71	XXX
99394		N	Prev visit, est, age 12–17	+1.36	1.15	0.54	0.04	2.55	1.94	XXX
99395		N	Prev visit, est, age 18–39	+1.36	1.18	0.54	0.04	2.58	1.94	XXX
99396		N	Prev visit, est, age 40–64	+1.53	1.27	0.61	0.05	2.85	2.19	XXX
99397		N	Prev visit, est, 65 & over	+1.71	1.37	0.68	0.05	3.13	2.44	XXX
99401		N	Preventive counseling, indiv	+0.48	0.62	0.19	0.01	1.11	0.68	XXX
99402		N	Preventive counseling, indiv	+0.98	0.86	0.39	0.02	1.86	1.39	XXX
99403		N	Preventive counseling, indiv	+1.46	1.10	0.58	0.03	2.59	2.07	XXX
99404		N	Preventive counseling, indiv	+1.95	1.35	0.78	0.04	3.34	2.77	XXX
99411		N	Preventive counseling, group	+0.15	0.18	0.06	0.01	0.34	0.22	XXX
99412		N	Preventive counseling, group	+0.25	0.24	0.10	0.01	0.50	0.36	XXX
99420		N	Health risk assessment test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99429		N	Unlisted preventive service	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99431		A	Initial care, normal newborn	1.17	NA	0.39	0.04	NA	1.60	XXX
99432		A	Newborn care, not in hosp	1.26	1.12	0.50	0.06	2.44	1.82	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
99433		A	Normal newborn care/hospital	0.62	NA	0.21	0.02	NA	0.85	XXX
99435		A	Newborn discharge day hosp	1.50	NA	0.54	0.05	NA	2.09	XXX
99436		A	Attendance, birth	1.50	0.50	0.50	0.05	2.05	2.05	XXX
99440		A	Newborn resuscitation	2.93	NA	1.17	0.11	NA	4.21	XXX
99450		N	Life/disability evaluation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99455		R	Disability examination	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99456		R	Disability examination	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99499		C	Unlisted e&m service	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99500		I	Home visit, prenatal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99501		I	Home visit, postnatal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99502		I	Home visit, nb care	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99503		I	Home visit, resp therapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99504		I	Home visit, mech ventilator	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99505		I	Home visit, stoma care	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99506		I	Home visit, im injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99507		I	Home visit, cath maintain	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99508		I	Home visit, sleep studies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99509		I	Home visit, day life activity	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99510		I	Home visit, sing/m/fam couns	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99511		I	Home visit, fecal/enema mgmt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99512		I	Home visit, hemodialysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99539		I	Home visit, nos	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99551		I	Home infuse, pain mgmt, iv/sc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99552		I	Home infuse pain mgmt, epid/ith	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99553		I	Home infuse, tocolytic tx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99554		I	Home infuse, hormone/platelet	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99555		I	Home infuse, chemotheraphy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99556		I	Home infuse, antibio/fung/vir	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99557		I	Home infuse, anticoagulant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99558		I	Home infuse, immunotherapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99559		I	Home infuse, periton dialysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99560		I	Home infuse, entero nutrition	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99561		I	Home infuse, hydration tx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99562		I	Home infuse, parent nutrition	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99563		I	Home admin, pentamidine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99564		I	Home infuse, antihemophil agnt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99565		I	Home infuse, proteinase inhib	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99566		I	Home infuse, iv therapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99567		I	Home infuse, sympath agent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99568		I	Home infuse, misc drug, daily	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99569		I	Home infuse, each addl tx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0021		I	Outside state ambulance serv	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0080		I	Noninterest escort in non er	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0090		I	Interest escort in non er	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0100		I	Nonemergency transport taxi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0110		I	Nonemergency transport bus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0120		I	Noner transport mini-bus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0130		I	Noner transport wheelch van	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0140		I	Nonemergency transport air	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0160		I	Noner transport case worker	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0170		I	Noner transport parking fees	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0180		I	Noner transport lodgng recip	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0190		I	Noner transport meals recip	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0200		I	Noner transport lodgng escrt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0210		I	Noner transport meals escort	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0380		X	Basic life support mileage	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0382		X	Basic support routine supplS	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0384		X	Bls defibrillation supplies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0390		X	Advanced life support mileag	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0392		X	Als defibrillation supplies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0394		X	Als IV drug therapy supplies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0396		X	Als esophageal intub supplS	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0398		X	Als routine disposble supplS	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0420		X	Ambulance waiting ½ hr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0422		X	Ambulance 02 life sustaining	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0424		X	Extra ambulance attendant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0425		X	Ground mileage	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0426		X	Als 1	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0427		X	ALS1-emergency	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0428		X	bls	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0429		X	BLS-emergency	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0430		X	Fixed wing air transport	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0431		X	Rotary wing air transport	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
A0432		X	Pl volunteer ambulance co	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0433		X	als 2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0434		X	Specialty care transport	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0435		X	Fixed wing air mileage	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0436		X	Rotary wing air mileage	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0888		N	Noncovered ambulance mileage	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0999		X	Unlisted ambulance service	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4206		I	1 CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4207		I	2 CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4208		I	3 CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4209		I	5+ CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4210		N	Nonneedle injection device	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4211		P	Supp for self-adm injections	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4212		P	Non coring needle or stylet	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4213		I	20+ CC syringe only	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4214		P	30 CC sterile water/saline	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4215		I	Sterile needle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4220		P	Infusion pump refill kit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4221		X	Maint drug infus cath per wk	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4222		X	Drug infusion pump supplies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4230		X	Infus insulin pump non needl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4231		X	Infusion insulin pump needle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4232		X	Syringe w/needle insulin 3cc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4244		I	Alcohol or peroxide per pint	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4245		I	Alcohol wipes per box	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4246		I	Betadine/phisohex solution	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4247		I	Betadine/iodine swabs/wipes	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4250		N	Urine reagent strips/tablets	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4253		P	Blood glucose/reagent strips	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4254		X	Battery for glucose monitor	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4255		X	Glucose monitor platforms	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4256		P	Calibrator solution/chips	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4257		X	Replace Lensshield Cartridge	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4258		P	Lancet device each	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4259		P	Lancets per box	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4260		N	Levonorgestrel implant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4261		N	Cervical cap contraceptive	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4262		B	Temporary tear duct plug	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4263		I	Permanent tear duct plug	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4265		P	Paraffin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4270		B	Disposable endoscope sheath	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4280		X	Brst prsths adhsv attchmnt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4290		X	Sacral nerve stim test lead	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4300		B	Cath impl vasc access portal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4301		P	Implantable access syst perc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4305		P	Drug delivery system >=50 ML	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4306		P	Drug delivery system <=5 ML	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4310		P	Insert tray w/o bag/cath	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4311		P	Catheter w/o bag 2-way latex	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4312		P	Cath w/o bag 2-way silicone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4313		P	Catheter w/bag 3-way	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4314		P	Cath w/drainage 2-way latex	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4315		P	Cath w/drainage 2-way silcne	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4316		P	Cath w/drainage 3-way	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4319		X	Sterile H_2O irrigation solut	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4320		P	Irrigation tray	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4321		X	Cath therapeutic irrig agent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4322		P	Irrigation syringe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4323		P	Saline irrigation solution	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4324		X	Male ext cath w/adh coating	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4325		X	Male ext cath w/adh strip	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4326		P	Male external catheter	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4327		P	Fem urinary collect dev cup	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4328		P	Fem urinary collect pouch	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4329		D	External catheter start set	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4330		P	Stool collection pouch	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4331		X	Extension drainage tubing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4332		X	Lubricant for cath insertion	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4333		X	Urinary cath anchor device	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4334		X	Urinary cath leg strap	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4335		P	Incontinence supply	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4338		P	Indwelling catheter latex	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4340		P	Indwelling catheter special	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
A4344		P	Cath indw foley 2 way silicn	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4346		P	Cath indw foley 3 way	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4347		P	Male external catheter	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4348		X	Male ext cath extended wear	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4351		P	Straight tip urine catheter	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4352		P	Coude tip urinary catheter	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4353		X	Intermittent urinary cath	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4354		P	Cath insertion tray w/bag	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4355		P	Bladder irrigation tubing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4356		P	Ext ureth clmp or compr dvc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4357		P	Bedside drainage bag	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4358		P	Urinary leg or abdomen bag	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4359		P	Urinary suspensory w/o leg b	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4360		N	Adult incontinence garment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4361		P	Ostomy face plate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4362		P	Solid skin barrier	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4364		P	Adhesive, liquid or equal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4365		X	Adhesive remover wipes	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4367		P	Ostomy belt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4368		X	Ostomy filter	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4369		X	Skin barrier liquid per oz	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4370		X	Skin barrier paste per oz	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4371		X	Skin barrier powder per oz	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4372		X	Skin barrier solid 4x4 equiv	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4373		X	Skin barrier with flange	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4374		X	Skin barrier extended wear	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4375		X	Drainable plastic pch w fcpl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4376		X	Drainable rubber pch w fcplt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4377		X	Drainable pistic pch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4378		X	Drainable rubber pch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4379		X	Urinary plastic pouch w fcpl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4380		X	Urinary rubber pouch w fcplt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4381		X	Urinary plastic pouch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4382		X	Urinary hvy pistc pch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4383		X	Urinary rubber pouch w/o fp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4384		X	Ostomy facepit/silicone ring	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4385		X	Ost skn barrier sld ext wear	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4386		X	Ost skn barrier w fing ex wr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4387		X	Ost clsd pouch w att st barr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4388		X	Drainable pch w ex wear barr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4389		X	Drainable pch w st wear barr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4390		X	Drainable pch ex wear convex	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4391		X	Urinary pouch w ex wear barr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4392		X	Urinary pouch w st wear barr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4393		X	Urine pch w ex wear bar conv	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4394		X	Ostomy pouch liq deodorant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4395		X	Ostomy pouch solid deodorant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4396		X	Peristomal hernia supprt blt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4397		P	Irrigation supply sleeve	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4398		P	Ostomy irrigation bag	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4399		P	Ostomy irrig cone/cath w brs	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4400		P	Ostomy irrigation set	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4402		P	Lubricant per ounce	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4404		P	Ostomy ring each	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4421		P	Ostomy supply misc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4454		P	Tape all types all sizes	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4455		P	Adhesive remover per ounce	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4460		P	Elastic compression bandage	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4462		X	Abdmnl drssng holder/binder	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4464		N	Joint support device/garment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4465		P	Non-elastic extremity binder	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4470		P	Gravlee jet washer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4480		P	Vabra aspirator	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4481		X	Tracheostoma filter	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4483		X	Moisture exchanger	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4490		N	Above knee surgical stocking	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4495		N	Thigh length surg stocking	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4500		N	Below knee surgical stocking	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4510		N	Full length surg stocking	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4550		I	Surgical trays	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4554		N	Disposable underpads	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4556		P	Electrodes, pair	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4557		P	Lead wires, pair	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
A4558		P	Conductive paste or gel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4561		X	Pessary rubber, any type	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4562		X	Pessary, non rubber, any type	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4565		X	Slings	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4570		I	Splint	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4572		X	Rib belt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4575		N	Hyperbaric o2 chamber disps	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4580		I	Cast supplies (plaster)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4590		I	Special casting material	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4595		X	TENS suppl 2 lead per month	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4608		X	Transtracheal oxygen cath	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4611		X	Heavy duty battery	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4612		X	Battery cables	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4613		X	Battery charger	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4614		X	Hand-held PEFR meter	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4615		X	Cannula nasal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4616		X	Tubing (oxygen) per foot	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4617		X	Mouth piece	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4618		X	Breathing circuits	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4619		X	Face tent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4620		X	Variable concentration mask	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4621		X	Tracheotomy mask or collar	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4622		X	Tracheostomy or laringectomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4623		X	Tracheostomy inner cannula	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4624		X	Tracheal suction tube	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4625		X	Trach care kit for new trach	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4626		X	Tracheostomy cleaning brush	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4627		N	Spacer bag/reservoir	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4628		X	Oropharyngeal suction cath	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4629		X	Tracheostomy care kit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4630		X	Repl bat t.e.n.s. own by pt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4631		X	Wheelchair battery	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4635		X	Underarm crutch pad	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4636		X	Handgrip for cane etc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4637		X	Repl tip cane/crutch/walker	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4640		X	Alternating pressure pad	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4641		E	Diagnostic imaging agent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4642		E	Saturnomab pendetide per dose	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4643		E	High dose contrast MRI	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4644		E	Contrast 100-199 MGs iodine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4645		E	Contrast 200-299 MGs iodine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4646		E	Contrast 300-399 MGs iodine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4647		B	Supp- paramagnetic contr mat	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4649		P	Surgical supplies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4650		D	Supp esrd cantrifuge	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4651		X	Calibrated microcap tube	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4652		X	Microcapillary tube sealant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4655		D	Esrd syringe/needle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4656		X	Dialysis needle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4657		X	Dialysis syringe w/wo needle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4660		X	Sphyg/bp app w cuff and stet	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4663		X	Dialysis blood pressure cuff	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4670		N	Automatic bp monitor, dial	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4680		X	Actificial carbon filter, ea	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4690		X	Dialyzer, each	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4700		D	Standard dialysate solution	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4705		D	Bicarb dialysate solution	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4706		X	Bicarbonate conc sol per gal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4707		X	Bicarbonate conc pow per pac	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4708		X	Acetate conc sol per gallon	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4709		X	Acid conc sol per gallon	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4712		X	Sterile water inj per 10 ml	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4714		X	Treated water per gallon	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4719		X	"Y set" tubing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4720		X	Dialysat sol fld vol > 249cc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4721		X	Dialysat sol fld vol > 999cc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4722		X	Dialys sol fld vol > 1999cc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4723		X	Dialys sol fld vol > 2999cc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4724		X	Dialys sol fld vol > 3999cc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4725		X	Dialys sol fld vol > 4999cc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4726		X	Dialys sol fld vol > 5999cc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4730		X	Fistula cannulation set, ea	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4735		D	Local/topical anesthetics	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
A4736		X	Topical anesthetic, per gram	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4737		X	Inj anesthetic per 10 ml	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4740		X	Shunt accessory	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4750		X	Art or venous blood tubing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4755		X	Comb art/venous blood tubing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4760		X	Dialysate sol test kit, each	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4765		X	Dialysate conc pow per pack	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4766		X	Dialysate conc sol add 10 ml	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4770		X	Blood collection tube/vacuum	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4771		X	Serum clotting time tube	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4772		X	Blood glucose test strips	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4773		X	Occult blood test strips	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4774		X	Ammonia test strips	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4780		D	Esrd sterilizing agent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4790		D	Esrd cleansing agents	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4800		D	Heparin/antidote dialysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4801		X	Heparin per 1000 units	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4802		X	Protamine sulfate per 50 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4820		D	Supplies hemodialysis kit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4850		D	Rubber tipped hemostats	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4860		X	Disposable catheter tips	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4870		X	Plumb/elec wk hm hemo equip	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4880		D	Water storage tanks	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4890		R	Repair/maint cont hemo equip	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4900		D	Capd supply kit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4901		D	Ccpd supply kit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4905		D	Ipd supply kit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4910		D	Esrd nonmedical supplies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4911		X	Drain bag/bottle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4912		D	Gomco drain bottle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4913		X	Misc dialysis supplies noc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4914		D	Preparation kit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4918		X	Venous pressure clamp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4919		D	Supp dialysis dialyzer holde	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4920		D	Harvard pressure clamp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4921		D	Measuring cylinder	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4927		X	Non-sterile gloves	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4928		X	Surgical mask	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4929		X	Tourniquet for dialysis, ea	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5051		P	Pouch clsd w barr attached	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5052		P	Clsd ostomy pouch w/o barr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5053		P	Clsd ostomy pouch faceplate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5054		P	Clsd ostomy pouch w/flange	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5055		P	Stoma cap	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5061		P	Pouch drainable w barrier at	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5062		P	Dmble ostomy pouch w/o barr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5063		P	Drain ostomy pouch w/flange	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5064		D	Drain ostomy pouch w/fcepite	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5071		P	Urinary pouch w/barrier	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5072		P	Urinary pouch w/o barrier	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5073		P	Urinary pouch on barr w/flng	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5074		D	Urinary pouch w/faceplate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5075		D	Urinary pouch on faceplate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5081		P	Continent stoma plug	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5082		P	Continent stoma catheter	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5093		P	Ostomy accessory convex inse	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5102		P	Bedside drain btl w/wo tube	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5105		P	Urinary suspensory	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5112		P	Urinary leg bag	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5113		P	Latex leg strap	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5114		P	Foam/fabric leg strap	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5119		P	Skin barrier wipes box pr 50	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5121		P	Solid skin barrier 6x6	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5122		P	Solid skin barrier 8x8	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5123		P	Skin barrier with flange	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5126		P	Disk/foam pad + or − adhesive	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5131		P	Appliance cleaner	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5200		X	Percutaneous catheter anchor	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5500		X	Diab shoe for density insert	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5501		X	Diabetic custom molded shoe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5502		D	Diabetic shoe density insert	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5503		X	Diabetic shoe w/roller/rockr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5504		X	Diabetic shoe with wedge	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
A5505		X	Diab shoe w/metatarsal bar	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5506		X	Diabetic shoe w/off set heel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5507		X	Modification diabetic shoe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5508		X	Diabetic deluxe shoe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5509		X	Direct heat form shoe insert	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5510		X	Compression form shoe insert	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5511		X	Custom fab molded shoe inser	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6000		X	Wound warming wound cover	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6010		X	Collagen based wound filler	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6020		D	Collagen wound dressing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6021		X	Collagen dressing <=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6022		X	Collagen drsg>6<=48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6023		X	Collagen dressing >48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6024		X	Collagen dsg wound filler	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6025		I	Silicone gel sheet, each	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6154		P	Wound pouch each	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6196		P	Alginate dressing <=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6197		P	Alginate drsg >16 <=48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6198		P	alginate dressing >48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6199		P	Alginate drsg wound filler	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6200		X	Compos drsg <=16 no border	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6201		X	Compos drsg >16<=48 no bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6202		X	Compos drsg >48 no border	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6203		P	Composite drsg <=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6204		P	Composite drsg >16<=48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6205		P	Composite drsg >48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6206		P	Contact layer <=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6207		P	Contact layer >16<=48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6208		P	Contact layer >48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6209		P	Foam drsg <=16 sq in w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6210		P	Foam drg >16<=48 sq in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6211		P	Foam drg >48 sq in w/o brdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6212		P	Foam drg <=16 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6213		P	Foam drg >16<=48 sq in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6214		P	Foam drg >48 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6215		P	Foam dressing wound filler	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6216		P	Non-sterile gauze <=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6217		P	Non-sterile gauze >16<=48 sq	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6218		P	Non-sterile gauze >48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6219		P	Gauze <=16 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6220		P	Gauze >16 <=48 sq in w/bordr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6221		P	Gauze >48 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6222		P	Gauze <=16 in no w/sal w/o b	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6223		P	Gauze >16<=48 no w/sal w/o b	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6224		P	Gauze >48 in no w/sal w/o b	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6228		P	Gauze <=16 sq in water/sal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6229		P	Gauze >16<=48 sq in watr/sal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6230		P	Gauze >48 sq in water/salne	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6231		X	Hydrogel dsg <=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6232		X	Hydrogel dsg >16<=48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6233		X	Hydrogel dressing >48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6234		P	Hydrocolld drg <=16 w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6235		P	Hydrocolld drg >16<=48 w/o b	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6236		P	Hydrocolld drg >48 in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6237		P	Hydrocolld drg <=16 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6238		P	Hydrocolld drg >16<=48 w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6239		P	Hydrocolld drg >48 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6240		P	Hydrocolld drg filler paste	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6241		P	Hydrocolloid drg filler dry	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6242		P	Hydrogel drg <=16 in w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6243		P	Hydrogel drg >16<=48 w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6244		P	Hydrogel drg >48 in w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6245		P	Hydrogel drg <=16 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6246		P	Hydrogel drg >16<=48 in w/b	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6247		P	Hydrogel drg >48 sq in w/b	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6248		P	Hydrogel drsg gel filler	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6250		P	Skin seal protect moisturizr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6251		P	Absorpt drg <=16 sq in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6252		P	Absorpt drg >16<=48 w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6253		P	Absorpt drg >48 sq in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6254		P	Absorpt drg <=16 sq in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6255		P	Absorpt drg >16<=48 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6256		P	Absorpt drg >48 sq in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
A6257		P	Transparent film <=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6258		P	Transparent film >16<=48 in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6259		P	Transparent film >48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6260		P	Wound cleanser any type/size	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6261		P	Wound filler gel/paste/oz	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6262		P	Wound filler dry form/gram	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6263		P	Non-sterile elastic gauze/yd	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6264		P	Non-sterile no elastic gauze	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6265		P	Tape per 18 sq inches	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6266		P	Impreg gauze no h20/sal/yard	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6402		P	Sterile gauze <=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6403		P	Sterile gauze >16<=48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6404		P	Sterile gauze >48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6405		P	Sterile elastic gauze/yd	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6406		P	Sterile non-elastic gauze/yd	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7000		X	Disposable canister for pump	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7001		X	Nondisposable pump canister	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7002		X	Tubing used w suction pump	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7003		X	Nebulizer administration set	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7004		X	Disposable nebulizer sml vol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7005		X	Nondisposable nebulizer set	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7006		X	Filtered nebulizer admin set	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7007		X	Lg vol nebulizer disposable	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7008		X	Disposable nebulizer prefill	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7009		X	Nebulizer reservoir bottle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7010		X	Disposable corrugated tubing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7011		X	Nondispos corrugated tubing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7012		X	Nebulizer water collec devic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7013		X	Disposable compressor filter	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7014		X	Compressor nondispos filter	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7015		X	Aerosol mask used w nebulize	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7016		X	Nebulizer dome & mouthpiece	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7017		X	Nebulizer not used w oxygen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7018		X	Water distilled w/nebulizer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7019		X	Saline solution dispenser	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7020		X	Sterile H_2O or NSS w lgv neb	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7501		X	Tracheostoma valve w diaphra	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7502		X	Replacement diaphragm/fplate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7503		X	HMES filter holder or cap	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7504		X	Tracheostoma HMES filter	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7505		X	HMES or trach valve housing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7506		X	HMES/trachvalve adhesive disk	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7507		X	Integrated filter & holder	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7508		X	Housing & Integrated Adhesiv	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A7509		X	Heat & moisture exchange sys	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9150		E	Misc/exper non-prescript dru	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9160		D	Podiatrist non-covered servi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9170		D	Chiropractor non-covered ser	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9190		D	Misc/expe personal comfort i	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9270		N	Non-covered item or service	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9300		N	Exercise equipment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9500		E	Technetium TC 99m sestamibi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9502		X	Technetium TC 99M tetrofosmin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9503		E	Technetium TC 99m medronate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9504		X	Technetium tc 99m apcitide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9505		E	Thallous chloride TL 201/mci	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9507		X	Indium/111 capromab pendetid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9508		X	Iobenguane sulfate I–131	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9510		X	Technetium TC99m Disofenin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9511		X	Technetium TC 99m depreotide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9600		X	Strontium-89 chloride	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9605		X	Samarium sm153 lexidronamm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9700		X	Echocardiography Contrast	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9900		X	Supply/accessory/service	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9901		X	Delivery/set up/dispensing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0120		N	Periodic oral evaluation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0140		N	Limit oral eval problm focus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0150		R	Comprehensve oral evaluation	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0160		N	Extensv oral eval prob focus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0170		N	Re-eval,est pt,problem focus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0210		I	Intraor complete film series	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0220		I	Intraoral periapical first f	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0230		I	Intraoral periapical ea add	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
D0240		R	Intraoral occlusal film	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0250		R	Extraoral first film	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0260		R	Extraoral ea additional film	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0270		R	Dental bitewing single film	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0272		R	Dental bitewings two films	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0274		R	Dental bitewings four films	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0277		R	Vert bitewings-sev to eight	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0290		I	Dental film skull/facial bon	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0310		I	Dental saliography	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0320		I	Dental tmj arthrogram incl i	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0321		I	Dental other tmj films	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0322		I	Dental tomographic survey	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0330		I	Dental panoramic film	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0340		I	Dental cephalometric film	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0350		I	Oral/facial images	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0415		N	Bacteriologic study	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0425		N	Caries susceptibility test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0460		R	Pulp vitality test	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0470		N	Diagnostic casts	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0472		R	Gross exam, prep & report	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0473		R	Micro exam, prep & report	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0474		R	Micro w/exam of surg margins	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0480		R	Cytopath smear prep & report	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0501		R	Histopathologic examinations	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0502		R	Other oral pathology procedu	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0999		R	Unspecified diagnostic proce	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1110		N	Dental prophylaxis adult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1120		N	Dental prophylaxis child	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1201		N	Topical fluor w/prophy child	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1203		N	Topical fluor w/o prophy chi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1204		N	Topical fluor w/o prophy adu	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1205		N	Topical fluoride w/ prophy a	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1310		N	Nutri counsel-control caries	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1320		N	Tobacco counseling	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1330		N	Oral hygiene instruction	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1351		N	Dental sealant per tooth	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1510		R	Space maintainer fxd unilat	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1515		R	Fixed bilat space maintainer	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1520		R	Remove unilat space maintain	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1525		R	Remove bilat space maintain	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1550		R	Recement space maintainer	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D2110		N	Amalgam one surface primary	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2120		N	Amalgam two surfaces primary	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2130		N	Amalgam three surfaces prima	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2131		N	Amalgam four/more surf prima	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2140		N	Amalgam one surface permanen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2150		N	Amalgam two surfaces permane	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2160		N	Amalgam three surfaces perma	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2161		N	Amalgam 4 or > surfaces perm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2330		N	Resin one surface-anterior	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2331		N	Resin two surfaces-anterior	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2332		N	Resin three surfaces-anterio	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2335		N	Resin 4/> surf or w/incis an	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2336		N	Composite resin crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2337		N	Compo resin crown ant-perm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2380		N	Resin one surf poster primar	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2381		N	Resin two surf poster primar	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2382		N	Resin three/more surf post p	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2385		N	Resin one surf poster perman	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2386		N	Resin two surf poster perman	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2387		N	Resin three/more surf post p	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2388		N	Resin four/more, post perm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2410		N	Dental gold foil one surface	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2420		N	Dental gold foil two surface	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2430		N	Dental gold foil three surfa	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2510		N	Dental inlay metalic 1 surf	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2520		N	Dental inlay metallic 2 surf	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2530		N	Dental inlay metl 3/more sur	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2542		N	Dental onlay metallic 2 surf	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2543		N	Dental onlay metallic 3 surf	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2544		N	Dental onlay metl 4/more sur	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2610		N	Inlay porcelain/ceramic 1 su	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2620		N	Inlay porcelain/ceramic 2 su	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
D2630		N	Dental onlay porc 3/more sur	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2642		N	Dental onlay porcelin 2 surf	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2643		N	Dental onlay porcelin 3 surf	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2644		N	Dental onlay porc 4/more sur	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2650		N	Inlay composite/resin one su	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2651		N	Inlay composite/resin two su	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2652		N	Dental inlay resin 3/mre sur	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2662		N	Dental onlay resin 2 surface	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2663		N	Dental onlay resin 3 surface	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2664		N	Dental onlay resin 4/more sur	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2710		N	Crown resin laboratory	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2720		N	Crown resin w/high noble me	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2721		N	Crown resin w/base metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2722		N	Crown resin w/noble metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2740		N	Crown porcelain/ceramic subs	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2750		N	Crown porcelain w/h noble m	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2751		N	Crown porcelain fused base m	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2752		N	Crown porcelain w/noble met	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2780		N	Crown 3/4 cast hi noble met	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2781		N	Crown 3/4 cast base metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2782		N	Crown ¾ cast noble metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2783		N	Crown ¾ porcelain/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2790		N	Crown full cast high noble m	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2791		N	Crown full cast base metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2792		N	Crown full cast noble metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2799		N	Provisional crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2910		N	Dental recement inlay	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2920		N	Dental recement crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2930		N	Prefab stnlss steel crwn pri	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2931		N	Prefab stnlss steel crown pe	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2932		N	Prefabricated resin crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2933		N	Prefab stainless steel crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2940		N	Dental sedative filling	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2950		N	Core build-up incl any pins	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2951		N	Tooth pin retention	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2952		N	Post and core cast + crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2953		N	Each addtnl cast post	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2954		N	Prefab post/core + crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2955		N	Post removal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2957		N	Each addtnl prefab post	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2960		N	Laminate labial veneer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2961		N	Lab labial veneer resin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2962		N	Lab labial veneer porcelain	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2970		R	Temporary-fractured tooth	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D2980		N	Crown repair	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2999		R	Dental unspec restorative pr	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D3110		N	Pulp cap direct	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3120		N	Pulp cap indirect	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3220		N	Therapeutic pulpotomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3221		N	Gross pulpal debridement	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3230		N	Pulpal therapy anterior prim	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3240		N	Pulpal therapy posterior pri	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3310		N	Anterior	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3320		N	Root canal therapy 2 canals	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3330		N	Root canal therapy 3 canals	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3331		N	Non-surg tx root canal obs	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3332		N	Incomplete endodontic tx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3333		N	Internal root repair	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3346		N	Retreat root canal anterior	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3347		N	Retreat root canal bicuspid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3348		N	Retreat root canal molar	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3351		N	Apexification/recalc initial	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3352		N	Apexification/recalc interim	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3353		N	Apexification/recalc final	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3410		N	Apicoect/perirad surg anter	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3421		N	Root surgery bicuspid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3425		N	Root surgery molar	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3426		N	Root surgery ea add root	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3430		N	Retrograde filling	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3450		N	Root amputation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3460		R	Endodontic endosseous implan	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D3470		N	Intentional replantation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3910		N	Isolation-tooth w/rubb dam	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
D3920		N	Tooth splitting	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3950		N	Canal prep/fitting of dowel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3999		R	Endodontic procedure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4210		I	Gingivectomy/plasty per quad	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4211		I	Gingivectomy/plasty per toot	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4220		N	Gingival curettage per quadr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4240		N	Gingival flap proc w/planin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4245		N	Apically positioned flap	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4249		N	Crown lengthen hard tissue	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4260		R	Osseous surgery per quadrant	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4263		R	Bone replce graft first site	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4264		R	Bone replce graft each add	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4266		N	Guided tiss regen resorble	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4267		N	Guided tiss regen nonresorb	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4268		R	Surgical revision procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4270		R	Pedicle soft tissue graft pr	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4271		R	Free soft tissue graft proc	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4273		R	Subepithelial tissue graft	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4274		N	Distal/proximal wedge proc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4320		N	Provision splnt intracoronal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4321		N	Provisional splint extracoro	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4341		N	Periodontal scaling & root	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4355		R	Full mouth debridement	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4381		R	Localized chemo delivery	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4910		N	Periodontal maint procedures	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4920		N	Unscheduled dressing change	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4999		N	Unspecified periodontal proc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5110		N	Dentures complete maxillary	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5120		N	Dentures complete mandible	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5130		N	Dentures immediat maxillary	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5140		N	Dentures immediat mandible	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5211		N	Dentures maxill part resin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5212		N	Dentures mand part resin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5213		N	Dentures maxill part metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5214		N	Dentures mandibl part metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5281		N	Removable partial denture	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5410		N	Dentures adjust cmplt maxil	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5411		N	Dentures adjust cmplt mand	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5421		N	Dentures adjust part maxill	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5422		N	Dentures adjust part mandbl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5510		N	Dentur repr broken compl bas	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5520		N	Replace denture teeth complt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5610		N	Dentures repair resin base	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5620		N	Rep part denture cast frame	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5630		N	Rep partial denture clasp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5640		N	Replace part denture teeth	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5650		N	Add tooth to partial denture	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5660		N	Add clasp to partial denture	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5710		N	Dentures rebase cmplt maxil	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5711		N	Dentures rebase cmplt mand	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5720		N	Dentures rebase part maxill	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5721		N	Dentures rebase part mandbl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5730		N	Denture reln cmplt maxil ch	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5731		N	Denture reln cmplt mand chr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5740		N	Denture reln part maxil chr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5741		N	Denture reln part mand chr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5750		N	Denture reln cmplt max lab	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5751		N	Denture reln cmplt mand lab	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5760		N	Denture reln part maxil lab	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5761		N	Denture reln part mand lab	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5810		N	Denture interm cmplt maxill	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5811		N	Denture interm cmplt mandbl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5820		N	Denture interm part maxill	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5821		N	Denture interm part mandbl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5850		N	Denture tiss conditn maxill	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5851		N	Denture tiss condtin mandbl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5860		N	Overdenture complete	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5861	*	N	Overdenture partial	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5862		N	Precision attachment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5867		N	Replacement of precision att	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5875		N	Prosthesis modification	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5899		N	Removable prosthodontic proc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5911		R	Facial moulage sectional	0.00	0.00	0.00	0.00	0.00	0.00	YYY

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
D5912		R	Facial moulage complete	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5913		I	Nasal prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5914		I	Auricular prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5915		I	Orbital prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5916		I	Ocular prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5919		I	Facial prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5922		I	Nasal septal prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5923		I	Ocular prosthesis interim	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5924		I	Cranial prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5925		I	Facial augmentation implant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5926		I	Replacement nasal prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5927		I	Auricular replacement	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5928		I	Orbital replacement	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5929		I	Facial replacement	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5931		I	Surgical obturator	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5932		I	Postsurgical obturator	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5933		I	Refitting of obturator	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5934		I	Mandibular flange prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5935		I	Mandibular denture prosth	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5936		I	Temp obturator prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5937		I	Trismus appliance	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5951		R	Feeding aid	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5952		I	Pediatric speech aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5953		I	Adult speech aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5954		I	Superimposed prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5955		I	Palatal lift prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5958		I	Intraoral con def inter plt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5959		I	Intraoral con def mod palat	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5960		I	Modify speech aid prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5982		I	Surgical stent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5983		R	Radiation applicator	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5984		R	Radiation shield	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5985		R	Radiation cone locator	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5986		N	Fluoride applicator	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5987		R	Commissure splint	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5988		I	Surgical splint	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5999		I	Maxillofacial prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6010		I	Odontics endosteal implant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6020		I	Odontics abutment placement	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6040		I	Odontics eposteal implant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6050		I	Odontics transosteal implnt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6055		I	Implant connecting bar	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6056		N	Prefabricated abutment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6057		N	Custom abutment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6058		N	Abutment supported crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6059		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6060		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6061		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6062		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6063		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6064		N	Abutment supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6065		N	Implant supported crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6066		N	Implant supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6067		N	Implant supported mtl crown	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6068		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6069		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6070		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6071		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6072		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6073		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6074		N	Abutment supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6075		N	Implant supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6076		N	Implant supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6077		N	Implant supported retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6078		N	Implnt/abut suprtd fixd dent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6079		N	Implnt/abut suprtd fixd dent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6080		I	Implant maintenance	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6090		I	Repair implant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6095		I	Odontics repr abutment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6100		I	Removal of implant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6199		I	Implant procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6210		N	Prosthodont high noble metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6211		N	Bridge base metal cast	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
D6212		N	Bridge noble metal cast	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6240		N	Bridge porcelain high noble	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6241		N	Bridge porcelain base metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6242		N	Bridge porcelain nobel metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6245		N	Bridge porcelain/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6250		N	Bridge resin w/high noble	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6251		N	Bridge resin base metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6252		N	Bridge resin w/noble metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6519		N	Inlay/onlay porce/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6520		N	Dental retainer two surfaces	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6530		N	Retainer metallic 3+ surface	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6543		N	Dental retainr onlay 3 surf	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6544		N	Dental retainr onlay 4/more	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6545		N	Dental retainr cast metl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6548		N	Porcelain/ceramic retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6720		N	Retain crown resin w/hi nble	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6721		N	Crown resin w/base metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6722		N	Crown resin w/noble metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6740		N	Crown porcelain/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6750		N	Crown porcelain high noble	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6751		N	Crown porcelain base metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6752		N	Crown porcelain noble metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6780		N	Crown ¾ high noble metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6781		N	Crown ¾ cast based metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6782		N	Crown ¾ cast noble metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6783		N	Crown ¾ porcelain/ceramic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6790		N	Crown full high noble metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6791		N	Crown full base metal cast	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6792		N	Crown full noble metal cast	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6920		R	Dental connector bar	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D6930		N	Dental recement bridge	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6940		N	Stress breaker	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6950		N	Precision attachment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6970		N	Post & core plus retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6971		N	Cast post bridge retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6972		N	Prefab post & core plus reta	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6973		N	Core build up for retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6975		N	Coping metal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6976		N	Each addtnl cast post	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6977		N	Each addtl prefab post	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6980		N	Bridge repair	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6999		N	Fixed prosthodontic proc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7110		R	Oral surgery single tooth	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7120		R	Each add tooth extraction	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7130		R	Tooth root removal	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7210		R	Rem imp tooth w/mucoper flp	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7220		R	Impact tooth remov soft tiss	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7230		R	Impact tooth remov part bony	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7240		R	Impact tooth remov comp bony	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7241		R	Impact tooth rem bony w/comp	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7250		R	Tooth root removal	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7260		R	Oral antral fistula closure	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7270		N	Tooth reimplantation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7272		N	Tooth transplantation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7280		N	Exposure impact tooth orthod	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7281		N	Exposure tooth aid eruption	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7285		I	Biopsy of oral tissue hard	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7286		I	Biopsy of oral tissue soft	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7290		N	Repositioning of teeth	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7291		R	Transseptal fiberotomy	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7310		I	Alveoplasty w/ extraction	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7320		I	Alveoplasty w/o extraction	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7340		I	Vestibuloplasty ridge extens	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7350		I	Vestibuloplasty exten graft	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7410		I	Rad exc lesion up to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7420		I	Lesion > 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7430		I	Exc benign tumor to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7431		I	Benign tumor exc > 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7440		I	Malig tumor exc to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7441		I	Malig tumor > 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7450		I	Rem odontogen cyst to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7451		I	Rem odontogen cyst > 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7460		I	Rem nonodonto cyst to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
D7461		I	Rem nonodonto cyst > 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7465		I	Lesion destruction	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7471		I	Rem exostosis any site	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7480		I	Partial ostectomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7490		I	Mandible resection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7510		I	I&d absc intraoral soft tiss	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7520		I	I&d abscess extraoral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7530		I	Removal fb skin/areolar tiss	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7540		I	Removal of fb reaction	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7550		I	Removal of sloughed off bone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7560		I	Maxillary sinusotomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7610		I	Maxilla open reduct simple	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7620		I	Clsd reduct simpl maxilla fx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7630		I	Open red simpl mandible fx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7640		I	Clsd red simpl mandible fx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7650		I	Open red simp malar/zygom fx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7660		I	Clsd red simp malar/zygom fx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7670		I	Closd rductn splint alveolus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7680		I	Reduct simple facial bone fx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7710		I	Maxilla open reduct compound	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7720		I	Clsd reduct compd maxilla fx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7730		I	Open reduct compd mandble fx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7740		I	Clsd reduct compd mandble fx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7750		I	Open red comp malar/zygma fx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7760		I	Clsd red comp malar/zygma fx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7770		I	Open reduc compd alveolus fx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7780		I	Reduct compnd facial bone fx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7810		I	Tmj open reduct-dislocation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7820		I	Closed tmp manipulation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7830		I	Tmj manipulation under anest	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7840		I	Removal of tmj condyle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7850		I	Tmj meniscectomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7852		I	Tmj repair of joint disc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7854		I	Tmj excisn of joint membrane	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7856		I	Tmj cutting of a muscle	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7858		I	Tmj reconstruction	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7860		I	Tmj cutting into joint	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7865		I	Tmj reshaping components	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7870		I	Tmj aspiration joint fluid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7871		N	Lysis + lavage w catheters	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7872		I	Tmj diagnostic arthroscopy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7873		I	Tmj arthroscopy lysis adhesn	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7874		I	Tmj arthroscopy disc reposit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7875		I	Tmj arthroscopy synovectomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7876		I	Tmj arthroscopy discectomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7877		I	Tmj arthroscopy debridement	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7880		I	Occlusal orthotic appliance	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7899		I	Tmj unspecified therapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7910		I	Dent sutur recent wnd to 5 cm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7911		I	Dental suture wound to 5 cm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7912		I	Suture complicate wnd > 5 cm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7920		I	Dental skin graft	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7940		R	Reshaping bone orthognathic	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7941		I	Bone cutting ramus closed	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7943		I	Cutting ramus open w/graft	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7944		I	Bone cutting segmented	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7945		I	Bone cutting body mandible	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7946		I	Reconstruction maxilla total	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7947		I	Reconstruct maxilla segment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7948		I	Reconstruct midface no graft	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7949		I	Reconstruct midface w/graft	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7950		I	Mandible graft	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7955		I	Repair maxillofacial defects	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7960		I	Frenulectomy/frenulotomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7970		I	Excision hyperplastic tissue	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7971		I	Excision pericoronal gingiva	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7980		I	Sialolithotomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7981		I	Excision of salivary gland	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7982		I	Sialodochoplasty	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7983		I	Closure of salivary fistula	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7990		I	Emergency tracheotomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7991		I	Dental coronoidectomy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7995		I	Synthetic graft facial bones	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
D7996		I	Implant mandible for augment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7997		N	Appliance removal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7999		I	Oral surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8010		N	Limited dental tx primary	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8020		N	Limited dental tx transition	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8030		N	Limited dental tx adolescent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8040		N	Limited dental tx adult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8050		N	Intercep dental tx primary	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8060		N	Intercep dental tx transitn	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8070		N	Compre dental tx transition	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8080		N	Compre dental tx adolescent	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8090		N	Compre dental tx adult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8210		N	Orthodontic rem appliance tx	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8220		N	Fixed appliance therapy habt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8660		N	Preorthodontic tx visit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8670		N	Periodic orthodontc tx visit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8680		N	Orthodontic retention	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8690		N	Orthodontic treatment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8691		N	Repair ortho appliance	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8692		N	Replacement retainer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8999		N	Orthodontic procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9110		R	Tx dental pain minor proc	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9210		I	Dent anesthesia w/o surgery	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9211		I	Regional block anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9212		I	Trigeminal block anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9215		I	Local anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9220		I	General anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9221		I	General anesthesia ea ad 15m	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9230		R	Analgesia	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9241		I	Intravenous sedation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9242		I	IV sedation ea ad 30 m	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9248		R	Sedation (non-iv)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9310		I	Dental consultation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9410		I	Dental house call	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9420		I	Hospital call	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9430		I	Office visit during hours	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9440		I	Office visit after hours	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9610		I	Dent therapeutic drug inject	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9630		R	Other drugs/medicaments	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9910		N	Dent appl desensitizing med	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9911		N	Appl desensitizing resin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9920		N	Behavior management	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9930		R	Treatment of complications	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9940		R	Dental occlusal guard	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9941		N	Fabrication athletic guard	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9950		R	Occlusion analysis	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9951		R	Limited occlusal adjustment	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9952		R	Complete occlusal adjustment	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9970		N	Enamel microabrasion	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9971		N	Odontoplasty 1–2 teeth	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9972		N	Extrnl bleaching per arch	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9973		N	Extrnl bleaching per tooth	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9974		N	Intrnl bleaching per tooth	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9999		I	Adjunctive procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0001		X	Drawing blood for specimen	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0002		A	Temporary urinary catheter	0.50	3.32	0.17	0.03	3.85	0.70	000
G0004		A	ECG transm phys review & int	0.52	7.10	NA	0.45	8.07	NA	XXX
G0005		A	ECG 24 hour recording	0.00	1.18	NA	0.07	1.25	NA	XXX
G0006		A	ECG transmission & analysis	0.00	5.71	NA	0.36	6.07	NA	XXX
G0007		A	ECG phy review & interpret	0.52	0.21	0.21	0.02	0.75	0.75	XXX
G0008		X	Admin influenza virus vac	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0009		X	Admin pneumococcal vaccine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0010		X	Admin hepatitis b vaccine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0015		A	Post symptom ECG tracing	0.00	5.71	NA	0.36	6.07	NA	XXX
G0016		D	Post symptom ECG md review	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0025		I	Collagen skin test kit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0026		X	Fecal leukocyte examination	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0027		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0030		C	PET imaging prev PET single	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0030	26	A	PET imaging prev PET single	1.50	0.52	0.52	0.04	2.06	2.06	XXX
G0030	TC	C	PET imaging prev PET single	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0031		C	PET imaging prev PET multple	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0031	26	A	PET imaging prev PET multple	1.87	0.70	0.70	0.06	2.63	2.63	XXX

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[3] +Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
G0031	TC	C	PET imaging prev PET multple	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0032		C	PET follow SPECT 78464 singl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0032	26	A	PET follow SPECT 78464 singl	1.50	0.52	0.52	0.05	2.07	2.07	XXX
G0032	TC	C	PET follow SPECT 78464 singl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0033		C	PET follow SPECT 78464 mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0033	26	A	PET follow SPECT 78464 mult	1.87	0.70	0.70	0.06	2.63	2.63	XXX
G0033	TC	C	PET follow SPECT 78464 mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0034		C	PET follow SPECT 76865 singl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0034	26	A	PET follow SPECT 76865 singl	1.50	0.52	0.52	0.05	2.07	2.07	XXX
G0034	TC	C	PET follow SPECT 76865 singl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0035		C	PET follow SPECT 78465 mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0035	26	A	PET follow SPECT 78465 mult	1.87	0.70	0.70	0.06	2.63	2.63	XXX
G0035	TC	C	PET follow SPECT 78465 mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0036		C	PET follow comry angio sing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0036	26	A	PET follow comry angio sing	1.50	0.52	0.52	0.04	2.06	2.06	XXX
G0036	TC	C	PET follow comry angio sing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0037		C	PET follow comry angio mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0037	26	A	PET follow comry angio mult	1.87	0.70	0.70	0.06	2.63	2.63	XXX
G0037	TC	C	PET follow comry angio mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0038		C	PET follow myocard perf sing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0038	26	A	PET follow myocard perf sing	1.50	0.52	0.52	0.04	2.06	2.06	XXX
G0038	TC	C	PET follow myocard perf sing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0039		C	PET follow myocard perf mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0039	26	A	PET follow myocard perf mult	1.87	0.70	0.70	0.07	2.64	2.64	XXX
G0039	TC	C	PET follow myocard perf mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0040		C	PET follow stress echo singl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0040	26	A	PET follow stress echo singl	1.50	0.52	0.52	0.04	2.06	2.06	XXX
G0040	TC	C	PET follow stress echo singl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0041		C	PET follow stress echo mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0041	26	A	PET follow stress echo mult	1.87	0.70	0.70	0.05	2.62	2.62	XXX
G0041	TC	C	PET follow stress echo mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0042		C	PET follow ventriculogm sing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0042	26	A	PET follow ventriculogm sing	1.50	0.52	0.52	0.04	2.06	2.06	XXX
G0042	TC	C	PET follow ventriculogm sing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0043		C	PET follow ventriculogm mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0043	26	A	PET follow ventriculogm mult	1.87	0.70	0.70	0.06	2.63	2.63	XXX
G0043	TC	C	PET follow ventriculogm mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0044		C	PET following rest ECG singl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0044	26	A	PET following rest ECG singl	1.50	0.52	0.52	0.04	2.06	2.06	XXX
G0044	TC	C	PET following rest ECG singl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0045		C	PET following rest ECG mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0045	26	A	PET following rest ECG mult	1.87	0.70	0.70	0.06	2.63	2.63	XXX
G0045	TC	C	PET following rest ECG mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0046		C	PET follow stress ECG singl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0046	26	A	PET follow stress ECG singl	1.50	0.52	0.52	0.04	2.06	2.06	XXX
G0046	TC	C	PET follow stress ECG singl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0047		C	PET follow stress ECG mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0047	26	A	PET follow stress ECG mult	1.87	0.70	0.70	0.06	2.63	2.63	XXX
G0047	TC	C	PET follow stress ECG mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0050		A	Residual urine by ultrasound	0.00	0.81	NA	0.04	0.85	NA	XXX
G0101		A	CA screen; pelvic/breast exam	0.45	0.52	0.18	0.01	0.98	0.64	XXX
G0102		A	Prostate ca screening; dre	0.17	0.38	0.06	0.01	0.56	0.24	XXX
G0103		X	Psa, total screening	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0104		A	CA screen; flexi sigmoidscope	0.96	1.92	0.53	0.05	2.93	1.54	000
G0105		A	Colorectal scrn; hi risk ind	3.70	8.79	1.77	0.20	12.69	5.67	000
G0106		A	Colon CA screen; barium enema	0.99	2.47	NA	0.15	3.61	NA	XXX
G0106	26	A	Colon CA screen; barium enema	0.99	0.35	0.35	0.04	1.38	1.38	XXX
G0106	TC	A	Colon CA screen; barium enema	0.00	2.12	NA	0.11	2.23	NA	XXX
G0107		X	CA screen; fecal blood test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0108		A	Diab manage trn per indiv	0.00	1.64	NA	0.01	1.65	NA	XXX
G0109		A	Diab manage trn ind/group	0.00	0.96	NA	0.01	0.97	NA	XXX
G0110		R	Nett pulm-rehab educ; ind	0.90	0.67	0.36	0.03	1.60	1.29	XXX
G0111		R	Nett pulm-rehab educ; group	0.27	0.29	0.11	0.01	0.57	0.39	XXX
G0112		R	Nett; nutrition guid, initial	1.72	1.24	0.69	0.05	3.01	2.46	XXX
G0113		R	Nett; nutrition guid, subseqnt	1.29	0.97	0.51	0.04	2.30	1.84	XXX
G0114		R	Nett; psychosocial consult	1.20	0.49	0.48	0.03	1.72	1.71	XXX
G0115		R	Nett; psychological testing	1.20	0.57	0.48	0.04	1.81	1.72	XXX
G0116		R	Nett; psychosocial counsel	1.11	0.69	0.44	0.04	1.84	1.59	XXX
G0117		T	Glaucoma scrn hgh risk direc	0.45	0.97	0.22	0.02	1.44	0.69	XXX
G0118		T	Glaucoma scrn hgh risk direc	0.17	0.84	0.08	0.01	1.02	0.26	XXX
G0120		A	Colon ca scrn; barium enema	0.99	2.47	NA	0.15	3.61	NA	XXX
G0120	26	A	Colon ca scrn; barium enema	0.99	0.35	0.35	0.04	1.38	1.38	XXX
G0120	TC	A	Colon ca scrn; barium enema	0.00	2.12	NA	0.11	2.23	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
G0121	.....	A	Colon ca scrn not hi rsk ind	3.70	8.79	1.77	0.20	12.69	5.67	000
G0122	.....	N	Colon ca scrn; barium enema	+0.99	2.52	NA	0.15	3.66	NA	XXX
G0122	26	N	Colon ca scrn; barium enema	+0.99	0.40	0.40	0.04	1.43	1.43	XXX
G0122	TC	N	Colon ca scrn; barium enema	+0.00	2.12	NA	0.11	2.23	NA	XXX
G0123	.....	X	Screen cerv/vag thin layer	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0124	.....	A	Screen c/v thin layer by MD	0.42	0.19	0.19	0.01	0.62	0.62	XXX
G0125	.....	A	PET img WhBD sgl pulm ring	1.50	56.10	NA	2.00	59.60	NA	XXX
G0125	26	A	PET img WhBD sgl pulm ring	1.50	0.52	0.52	0.05	2.07	2.07	XXX
G0125	TC	A	PET img WhBD sgl pulm ring	0.00	55.58	NA	1.95	57.53	NA	XXX
G0126	.....	D	Lung image (PET) staging	0.00	0.00	NA	0.00	0.00	NA	XXX
G0126	26	D	Lung image (PET) staging	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0126	TC	D	Lung image (PET) staging	0.00	0.00	NA	0.00	0.00	NA	XXX
G0127	.....	R	Trim nail(s)	0.17	0.26	0.07	0.01	0.44	0.25	000
G0128	.....	R	CORF skilled nursing service	0.06	0.03	0.03	0.01	0.12	0.12	XXX
G0130	.....	A	Single energy x-ray study	0.22	0.90	NA	0.05	1.17	NA	XXX
G0130	26	A	Single energy x-ray study	0.22	0.11	0.11	0.01	0.34	0.34	XXX
G0130	TC	A	Single energy x-ray study	0.00	0.79	NA	0.04	0.83	NA	XXX
G0131	.....	A	CT scan, bone density study	0.25	3.18	NA	0.14	3.57	NA	XXX
G0131	26	A	CT scan, bone density study	0.25	0.13	0.13	0.01	0.39	0.39	XXX
G0131	TC	A	CT scan, bone density study	0.00	3.05	NA	0.13	3.18	NA	XXX
G0132	.....	A	CT scan, bone density study	0.22	0.90	NA	0.05	1.17	NA	XXX
G0132	26	A	CT scan, bone density study	0.22	0.11	0.11	0.01	0.34	0.34	XXX
G0132	TC	A	CT scan, bone density study	0.00	0.79	NA	0.04	0.83	NA	XXX
G0141	.....	A	Scr c/v cyto, autosys and md	0.42	0.19	0.19	0.01	0.62	0.62	XXX
G0143	.....	X	Scr c/v cyto, thinlayer,rescr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0144	.....	X	Scr c/v cyto, thinlayer,rescr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0145	.....	X	Scr c/v cyto, thinlayer,rescr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0147	.....	X	Scr c/v cyto, automated sys	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0148	.....	X	Scr c/v cyto, autosys, rescr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0163	.....	D	Pet for rec of colorectal ca	0.00	0.00	NA	0.00	0.00	NA	XXX
G0163	26	D	Pet for rec of colorectal ca	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0163	TC	D	Pet for rec of colorectal ca	0.00	0.00	NA	0.00	0.00	NA	XXX
G0164	.....	D	Pet for lymphoma staging	0.00	0.00	NA	0.00	0.00	NA	XXX
G0164	26	D	Pet for lymphoma staging	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0164	TC	D	Pet for lymphoma staging	0.00	0.00	NA	0.00	0.00	NA	XXX
G0165	.....	D	Pet, rec of melanoma/met ca	0.00	0.00	NA	0.00	0.00	NA	XXX
G0165	26	D	Pet, rec of melanoma/met ca	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0165	TC	D	Pet, rec of melanoma/met ca	0.00	0.00	NA	0.00	0.00	NA	XXX
G0166	.....	A	Extrnl counterpulse, per tx	0.07	4.17	0.03	0.01	4.25	0.11	XXX
G0167	.....	C	Hyperbaric oz tx; no md reqrd	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0168	.....	A	Wound closure by adhesive	0.45	2.33	0.19	0.01	2.79	0.65	000
G0173	.....	X	Stereo radoisurgery, complete	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0174	.....	D	Intensitymodulatedradiation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0175	.....	X	OPPS Service, sched team conf	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0176	.....	X	OPPS/PHP; activity therapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0177	.....	X	OPPS/PHP; train & educ serv	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0178	.....	D	Intensitymodulatedradiation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0179	.....	A	MD recertification HHA PT	0.45	1.21	NA	0.01	1.67	NA	XXX
G0180	.....	A	MD certification HHA patient	0.67	1.29	NA	0.02	1.98	NA	XXX
G0181	.....	A	Home health care supervision	1.73	1.57	NA	0.06	3.36	NA	XXX
G0182	.....	A	Hospice care supervision	1.73	1.97	NA	0.06	3.76	NA	XXX
G0184	.....	D	Ocular photdynamicTx 2nd eye	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
G0185	.....	C	Transpuppillary thermotx	0.00	0.00	0.00	0.00	0.00	0.00	YYY
G0186	.....	C	Dstry eye lesn, fdr vssl tech	0.00	0.00	0.00	0.00	0.00	0.00	YYY
G0187	.....	C	Dstry mclr drusen, photocoag	0.00	0.00	0.00	0.00	0.00	0.00	YYY
G0188	.....	D	Xray lwr extrmty-full lngth	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0188	26	D	Xray lwr extrmty-full lngth	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0188	TC	D	Xray lwr extrmty-full lngth	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0190	.....	D	Immunization administration	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0191	.....	D	Immunization admin, each add	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0192	.....	N	Immunization oral/intranasal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0193	.....	C	Endoscopicstudyswallowfunctn	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0194	.....	C	Sensorytestingendoscopicstud	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0195	.....	A	Clinicalevalswallowingfunct	1.50	1.95	0.76	0.07	3.52	2.33	XXX
G0196	.....	A	Eval of swallowing with radio opa	1.50	1.95	0.76	0.07	3.52	2.33	XXX
G0197	.....	A	Eval of pt for prescip speech devi	1.35	2.11	0.75	0.04	3.50	2.14	XXX
G0198	.....	A	Patient adapation & train for spe	0.99	1.14	0.58	0.03	2.16	1.60	XXX
G0199	.....	A	Reevaluation of patient uses pec	1.01	1.92	0.56	0.03	2.96	1.60	XXX
G0200	.....	A	Eval of patient prescip of voice p	1.35	2.11	0.75	0.04	3.50	2.14	XXX
G0201	.....	A	Modi for training in use voice pro	0.99	1.14	0.58	0.03	2.16	1.60	XXX
G0202	.....	A	Screening mammographydigital	0.70	2.70	NA	0.09	3.49	NA	XXX
G0202	26	A	Screening mammographydigital	0.70	0.28	0.28	0.03	1.01	1.01	XXX
G0202	TC	A	Screening mammographydigital	0.00	2.42	NA	0.06	2.48	NA	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
G0203	.....	D	Screen mammographyfilmdigital	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0204	.....	A	Diagnostic mammographydigital	0.87	2.73	NA	0.09	3.69	NA	XXX
G0204	26	A	Diagnostic mammographydigital	0.87	0.35	0.35	0.03	1.25	1.25	XXX
G0204	TC	A	Diagnostic mammographydigital	0.00	2.38	NA	0.06	2.44	NA	XXX
G0205	.....	D	Diagnostic mammographyfilmpro	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0205	26	D	Diagnostic mammographyfilmpro	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0205	TC	D	Diagnostic mammographyfilmpro	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0206	.....	A	Diagnostic mammographydigital	0.70	2.20	NA	0.08	2.98	NA	XXX
G0206	26	A	Diagnostic mammographydigital	0.70	0.28	0.28	0.03	1.01	1.01	XXX
G0206	TC	A	Diagnostic mammographydigital	0.00	1.92	NA	0.05	1.97	NA	XXX
G0207	.....	D	Diagnostic mammography film	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0207	26	D	Diagnostic mammography film	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0207	TC	D	Diagnostic mammography film	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0210	.....	C	PET img WhBD ring dxdung ca	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0210	26	A	PET img WhBD ring dxdung ca	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0210	TC	C	PET img WhBD ring dxdung ca	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0211	.....	C	PET img WhBD ring init lung	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0211	26	A	PET img WhBD ring init lung	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0211	TC	C	PET img WhBD ring init lung	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0212	.....	C	PET img WhBD ring restag lun	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0212	26	A	PET img WhBD ring restag lun	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0212	TC	C	PET img WhBD ring restag lun	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0213	.....	C	PET img WhBD ring dx colorec	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0213	26	A	PET img WhBD ring dx colorec	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0213	TC	C	PET img WhBD ring dx colorec	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0214	.....	C	PET img WhBD ring init colre	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0214	26	A	PET img WhBD ring init colre	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0214	TC	C	PET img WhBD ring init colre	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0215	.....	C	PET img WhBD restag col	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0215	26	A	PET img WhBD restag col	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0215	TC	C	PET img WhBD restag col	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0216	.....	C	PET img WhBD ring dx melanom	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0216	26	A	PET img WhBD ring dx melanom	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0216	TC	C	PET img WhBD ring dx melanom	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0217	.....	C	PET img WhBD ring init melan	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0217	26	A	PET img WhBD ring init melan	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0217	TC	C	PET img WhBD ring init melan	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0218	.....	C	PET img WhBD ring restag mel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0218	26	A	PET img WhBD ring restag mel	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0218	TC	C	PET img WhBD ring restag mel	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0219	.....	N	PET img WhBD ring noncov ind	+1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0219	26	N	PET img WhBD ring noncov ind	+1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0219	TC	N	PET img WhBD ring noncov ind	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0220	.....	C	PET img WhBD ring dx lymphom	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0220	26	A	PET img WhBD ring dx lymphom	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0220	TC	C	PET img WhBD ring dx lymphom	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0221	.....	C	PET img WhBD ring init lymph	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0221	26	A	PET img WhBD ring init lymph	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0221	TC	C	PET img WhBD ring init lymph	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0222	.....	C	PET img WhBD ring resta lymp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0222	26	A	PET img WhBD ring resta lymp	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0222	TC	C	PET img WhBD ring resta lymp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0223	.....	C	PET img WhBD reg ring dx hea	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0223	26	A	PET img WhBD reg ring dx hea	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0223	TC	C	PET img WhBD reg ring dx hea	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0224	.....	C	PET img WhBD reg ring ini hea	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0224	26	A	PET img WhBD reg ring ini hea	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0224	TC	C	PET img WhBD reg ring ini hea	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0225	.....	C	PET img WhBD ring restag hea	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0225	26	A	PET img WhBD ring restag hea	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0225	TC	C	PET img WhBD ring restag hea	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0226	.....	C	PET img WhBD dx esophag	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0226	26	A	PET img WhBD dx esophag	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0226	TC	C	PET img WhBD dx esophag	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0227	.....	C	PET img WhBD ini esopha	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0227	26	A	PET img WhBD ini esopha	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0227	TC	C	PET img WhBD ini esopha	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0228	.....	C	PET img WhBD ring restg esop	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0228	26	A	PET img WhBD ring restg esop	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0228	TC	C	PET img WhBD ring restg esop	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0229	.....	C	PET img metabolic brain ring	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0229	26	A	PET img metabolic brain ring	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0229	TC	C	PET img metabolic brain ring	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
G0230		C	PET myocard viability ring	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0230	26	A	PET myocard viability ring	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0230	TC	C	PET myocard viability ring	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0231		C	PET WhBD colorec; gamma cam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0231	26	A	PET WhBD colorec; gamma cam	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0231	TC	C	PET WhBD colorec; gamma cam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0232		C	PET WhBD lymphoma; gamma cam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0232	26	A	PET WhBD lymphoma; gamma cam	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0232	TC	C	PET WhBD lymphoma; gamma cam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0233		C	PET WhBD melanoma; gamma cam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0233	26	A	PET WhBD melanoma; gamma cam	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0233	TC	C	PET WhBD melanoma; gamma cam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0234		C	PET WhBD pulm nod; gamma cam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0234	26	A	PET WhBD pulm nod; gamma cam	1.50	0.60	0.60	0.04	2.14	2.14	XXX
G0234	TC	C	PET WhBD pulm nod; gamma cam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0236		A	digital film convert diag ma	0.06	0.31	NA	0.02	0.39	NA	ZZZ
G0236	26	A	digital film convert diag ma	0.06	0.02	0.02	0.01	0.09	0.09	ZZZ
G0236	TC	A	digital film convert diag ma	0.00	0.29	NA	0.01	0.30	NA	ZZZ
G0237		A	Therapeutic procd strg endur	0.00	0.45	NA	0.02	0.47	NA	XXX
G0238		C	Oth resp proc, indiv	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0239		C	Oth resp proc, group	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0240		A	Critic care by MD transport	4.00	1.60	1.60	0.14	5.74	5.74	XXX
G0241		A	Each additional 30 minutes	2.00	0.80	0.80	0.07	2.87	2.87	ZZZ
G0242		X	Multisource photon ster plan	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0243		X	Multisour photon stero treat	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0244		X	Observ care by facility topt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9001		X	MCCD, initial rate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9002		X	MCCD, maintenance rate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9003		X	MCCD, risk adj hi, initial	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9004		X	MCCD, risk adj lo, initial	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9005		X	MCCD, risk adj, maintenance	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9006		X	MCCD, Home monitoring	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9007		X	MCCD, sch team conf	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9008		X	MCCD, phys coor-care ovrsght	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9009		X	MCCD, risk adj, level 3	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9010		X	MCCD, risk adj, level 4	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9011		X	MCCD, risk adj, level 5	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9012		X	Other Specified Case Mgmt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G9016		N	Demo-smoking cessation coun	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0001		I	Alcohol and/or drug assess	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0002		I	Alcohol and/or drug screenin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0003		I	Alcohol and/or drug screenin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0004		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0005		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0006		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0007		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0008		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0009		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0010		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0011		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0012		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0013		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0014		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0015		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0016		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0017		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0018		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0019		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0020		I	Alcohol and/or drug services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0021		I	Alcohol and/or drug training	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0022		I	Alcohol and/or drug interven	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0023		I	Alcohol and/or drug outreach	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0024		I	Alcohol and/or drug preventi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0025		I	Alcohol and/or drug preventi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0026		I	Alcohol and/or drug preventi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0027		I	Alcohol and/or drug preventi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0028		I	Alcohol and/or drug preventi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0029		I	Alcohol and/or drug preventi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H0030		I	Alcohol and/or drug hotline	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H1000		I	Prenatal care atrisk assessm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H1001		I	Antepartum management	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H1002		I	Care coordination prenatal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H1003		I	Prenatal at risk education	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
H1004		I	Follow up home visit/prental	0.00	0.00	0.00	0.00	0.00	0.00	XXX
H1005		I	Prenatal care enhanced srv pk	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0120		E	Tetracyclin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0130		E	Abciximab injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0150		E	Injection adenosine 6 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0151		E	Adenosine injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0170		E	Adrenalin epinephrin inject	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0190		E	Inj biperiden lactate/5 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0200		E	Alatrofloxacin mesylate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0205		E	Alglucerase injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0207		E	Amifostine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0210		E	Methyldopate hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0256		E	Alpha 1 proteinase inhibitor	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0270		E	Alprostadil for injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0275		E	Alprostadil urethral suppos	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0280		E	Aminophyllin 250 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0282		E	Amiodarone HCl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0285		E	Amphotericin B	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0286		E	Amphotericin B lipid complex	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0290		E	Ampicillin 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0295		E	Ampicillin sodium per 1.5 gm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0300		E	Amobarbital 125 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0330		E	Succinycholine chloride inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0340		D	Nandrolon phenpropionate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0350		E	Injection anistreplase 30 u	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0360		E	Hydralazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0380		E	Inj metaraminol bitartrate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0390		E	Chloroquine injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0395		E	Arbutamine HCl Injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0400		D	Inj trimethaphan camsylate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0456		E	Azithromycin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0460		E	Atropine sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0470		E	Dimecaprol injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0475		E	Baclofen 10 MG injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0476		E	Baclofen intrathecal trial	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0500		E	Dicyclomine injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0510		D	Benzquinamide injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0515		E	Inj benztropine mesylate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0520		E	Bethanechol chloride inject	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0530		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0540		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0550		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0560		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0570		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0580		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0585		E	Botulinum toxin a per unit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0587		E	Botulinum toxin type B	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0590		D	Ethylnorepinephrine hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0600		E	Edetate calcium disodium inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0610		E	Calcium gluconate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0620		E	Calcium glycer & lact/10 ML	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0630		E	Calcitonin salmon injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0635		E	Calcitriol injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0640		E	Leucovorin calcium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0670		E	Inj mepivacaine HCL/10 ml	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0690		E	Cefazolin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0692		E	Cefepime HCl for injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0694		E	Cefoxitin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0695		D	Cefonocid sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0696		E	Ceftriaxone sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0697		E	Sterile cefuroxime injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0698		E	Cefotaxime sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0702		E	Betamethasone acet&sod phosp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0704		E	Betamethasone sod phosp/4 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0706		E	Caffeine citrate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0710		E	Cephapirin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0713		E	Inj ceftazidime per 500 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0715		E	Ceftizoxime sodium/500 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0720		E	Chloramphenicol sodium injec	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0725		E	Chorionic gonadotropin/1000u	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0730		D	Chlorpheniramin maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0735		E	Clonidine hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0740		E	Cidofovir injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] +Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
J0743		E	Cilastatin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0744		E	Ciprofloxacin iv	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0745		E	Inj codeine phosphate/30 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0760		E	Colchicine injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0770		E	Colistimethate sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0780		E	Prochlorperazine injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0800		E	Corticotropin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0810		D	Cortisone injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0835		E	Inj cosyntropin per 0.25 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0850		E	Cytomegalovirus imm IV /vial	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0895		E	Deferoxamine mesylate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0900		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0945		E	Brompheniramine maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0970		E	Estradiol valerate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1000		E	Depo-estradiol cypionate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1020		E	Methylprednisolone 20 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1030		E	Methylprednisolone 40 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1040		E	Methylprednisolone 80 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1050		E	Medroxyprogesterone inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1055		N	Medroxyprogester acetate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1056		E	MA/EC contraceptive injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1060		E	Testosterone cypionate 1 ML	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1070		E	Testosterone cypionate 100 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1080		E	Testosterone cypionate 200 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1090		D	Testosterone cypionate 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1095		E	Inj dexamethasone acetate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1100		E	Dexamethasone sodium phos	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1110		E	Inj dihydroergotamine mesylt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1120		E	Acetazolamid sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1160		E	Digoxin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1165		E	Phenytoin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1170		E	Hydromorphone injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1180		E	Dyphylline injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1190		E	Dexrazoxane HCl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1200		E	Diphenhydramine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1205		E	Chlorothiazide sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1212		E	Dimethyl sulfoxide 50% 50 ML	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1230		E	Methadone injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1240		E	Dimenhydrinate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1245		E	Dipyridamole injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1250		E	Inj dobutamine HCL/250 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1260		E	Dolasetron mesylate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1270		E	Injection, doxercalciferol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1320		E	Amitriptyline injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1325		E	Epoprostenol injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1327		E	Eptifibatide injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1330		E	Ergonovine maleate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1362		D	Erythromycin glucep/250 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1364		E	Erythro lactobionate/500 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1380		E	Estradiol valerate 10 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1390		E	Estradiol valerate 20 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1410		E	Inj estrogen conjugate 25 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1435		E	Injection estrone per 1 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1436		E	Etidronate disodium inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1438		E	Etanercept injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1440		E	Filgrastim 300 mcg injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1441		E	Filgrastim 480 mcg injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1450		E	Fluconazole	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1452		E	Intraocular Fomivirsen na	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1455		E	Foscarnet sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1460		E	Gamma globulin 1 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1470		E	Gamma globulin 2 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1480		E	Gamma globulin 3 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1490		E	Gamma globulin 4 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1500		E	Gamma globulin 5 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1510		E	Gamma globulin 6 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1520		E	Gamma globulin 7 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1530		E	Gamma globulin 8 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1540		E	Gamma globulin 9 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1550		E	Gamma globulin 10 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1560		E	Gamma globulin > 10 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1561		E	Immune globulin 500 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1563		E	IV immune globulin	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] +Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
J1565		E	RSV-ivig	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1570		E	Ganciclovir sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1580		E	Garamycin gentamicin inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1590		E	Gatifloxacin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1600		E	Gold sodium thiomaleate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1610		E	Glucagon hydrochloride/1 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1620		E	Gonadorelin hydroch/ 100 mcg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1626		E	Granisetron HCl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1630		E	Haloperidol injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1631		E	Haloperidol decanoate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1642		E	Inj heparin sodium per 10 u	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1644		E	Inj heparin sodium per 1000u	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1645		E	Dalteparin sodium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1650		E	Inj enoxaparin sodium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1655		E	Tinzaparin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1670		E	Tetanus immune globulin inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1690		D	Prednisolone tebutate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1700		E	Hydrocortisone acetate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1710		E	Hydrocortisone sodium ph inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1720		E	Hydrocortisone sodium succ i	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1730		E	Diazoxide injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1739		D	Hydroxyprogesterone cap 125	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1741		D	Hydroxyprogesterone cap 250	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1742		E	Ibutilide fumarate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1745		E	Infliximab injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1750		E	Iron dextran	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1755		E	Iron sucrose injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1785		E	Injection imiglucerase /unit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1790		E	Droperidol injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1800		E	Propranolol injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1810		E	Droperidol/fentanyl inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1820		E	Insulin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1825		E	Interferon beta-1a	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1830		E	Interferon beta-1b/.25 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1835		E	Intraconazole injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1840		E	Kanamycin sulfate 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1850		E	Kanamycin sulfate 75 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1885		E	Ketorolac tromethamine inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1890		E	Cephalothin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1910		E	Kutapressin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1930		D	Propiomazine injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1940		E	Furosemide injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1950		E	Leuprolide acetate/3.75 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1955		E	Inj levocamitine per 1 gm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1956		E	Levofloxacin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1960		E	Levorphanol tartrate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1970		D	Methotrimeprazine injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1980		E	Hyoscyamine sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1990		E	Chlordiazepoxide injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2000		E	Lidocaine injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2010		E	Lincomycin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2020		E	Linezolid injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2060		E	Lorazepam injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2150		E	Mannitol injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2175		E	Meperidine hydrochl/100 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2180		E	Meperidine/promethazine inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2210		E	Methylergonovin maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2240		D	Metocurine iodide injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2250		E	Inj midazolam hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2260		E	Inj milrinone lactate/5 ML	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2270		E	Morphine sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2271		E	Morphine so4 injection 100mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2275		E	Morphine sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2300		E	Inj nalbuphine hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2310		E	Inj naloxone hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2320		E	Nandrolone decanoate 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2321		E	Nandrolone decanoate 100 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2322		E	Nandrolone decanoate 200 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2330		D	Thiothixene injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2350		D	Niacirtamide/niacin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2352		E	Octreotide acetate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2355		E	Oprelvekin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2360		E	Orphenadrine injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] +Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
J2370		E	Phenylephrine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2400		E	Chloroprocaine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2405		E	Ondansetron hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2410		E	Oxymorphone hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2430		E	Pamidronate disodium/30 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2440		E	Papaverin hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2460		E	Oxytetracycline injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2480		D	Hydrochlorides of opium inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2500		E	Paricalcitol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2510		E	Penicillin g procaine inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2512		D	Inj pentagastrin per 2 ML	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2515		E	Pentobarbital sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2540		E	Penicillin g potassium inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2543		E	Piperacillin/tazobactam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2545		E	Pentamidine isethionte/300mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2550		E	Promethazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2560		E	Phenobarbital sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2590		E	Oxytocin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2597		E	Inj desmopressin acetate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2640		D	Prednisolone sodium ph inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2650		E	Prednisolone acetate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2670		E	Totazoline hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2675		D	Inj progesterone per 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2680		E	Fluphenazine decanoate 25 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2690		E	Procainamide hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2700		E	Oxacillin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2710		E	Neostigmine methylsilfte inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2720		E	Inj protamine sulfate/10 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2725		E	Inj protirelin per 250 mcg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2730		E	Pralidoxime chloride inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2760		E	Phentolaine mesylate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2765		E	Metoclopramide hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2770		E	Quinupristin/dalfopristin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2780		E	Ranitidine hydrochloride inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2790		E	Rho (D) immune globulin inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2792		E	Rho(D) immune globulin h, sd	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2795		E	Ropivacaine HCl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2800		E	Methocarbamol injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2810		E	Inj theophylline per 40 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2820		E	Sargramostim injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2860		D	Secobarbital sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2910		E	Aurothioglucose injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2912		E	Sodium chloride injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2915		E	NA Ferric Gluconate Complex	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2920		E	Methylprednisolone injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2930		E	Methylprednisolone injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2940		E	Somatrem injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2941		E	Somatropin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2950		E	Promazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2970		D	Methicillin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2993		E	Reteplase injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2995		E	Inj streptokinase/250,000 IU	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2997		E	Alteplase recombinant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3000		E	Streptomycin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3010		E	Fentanyl citrate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3030		E	Sumatriptan succinate/6 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3070		E	Pentazocine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3080		D	Chlorprothixene injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3100		E	Tenecteplase injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3105		E	Terbutaline sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3120		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3130		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3140		E	Testosterone suspension inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3150		E	Testosteron propionate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3230		E	Chlorpromazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3240		E	Thyrotropin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3245		E	Tirofiban hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3250		E	Trimethobenzamide hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3260		E	Tobramycin sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3265		E	Injection torsemide 10 mg/ml	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3270		D	Imipramine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3280		E	Thiethylperazine maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3301		E	Triamcinolone acetonide inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
J3302		E	Triamcinolone diacetate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3303		E	Triamcinolone hexacetonl inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3305		E	Inj trimetrexate glucoronate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3310		E	Perphenazine injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3320		E	Spectinomycn di-hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3350		E	Urea injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3360		E	Diazepam injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3364		E	Urokinase 5,000 IU injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3365		E	Urokinase 250,000 IU inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3370		R	Vancomycin hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3390		D	Methoxamine injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3395		E	Verteporfin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3400		E	Triflupromazine hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3410		E	Hydroxyzine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3420		E	Vitamin b12 injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3430		E	Vitamin k phytonadione inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3450		D	Mephentermine sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3470		E	Hyaluronidase injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3475		E	Inj magnesium sulfate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3480		E	Inj potassium chloride	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3485		E	Zidovudine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3490		E	Drugs unclassified injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3520		N	Edetate disodium per 150 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3530		E	Nasal vaccine inhalation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3535		N	Metered dose inhaler drug	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3570		N	Laetrile amygdalin vit B17	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7030		E	Normal saline solution infus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7040		E	Normal saline solution infus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7042		E	5% dextrose/normal saline	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7050		E	Normal saline solution infus	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7051		E	Sterile saline/water	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7060		E	5% dextrose/water	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7070		E	D5w infusion	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7100		E	Dextran 40 infusion	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7110		E	Dextran 75 infusion	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7120		E	Ringers lactate infusion	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7130		E	Hypertonic saline solution	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7190		X	Factor viii	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7191		X	Factor VIII (porcine)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7192		X	Factor viii recombinant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7193		E	Factor IX non-recombinant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7194		X	Factor ix complex	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7195		E	Factor IX recombinant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7197		X	Antithrombin iii injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7198		E	Anti-inhibitor	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7199		E	Hemophilia clot factor noc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7300		N	Intraut copper contraceptive	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7302		N	Levonorgestrel iu contracept	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7308		E	Aminolevulinic acid hcl top	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7310		E	Ganciclovir long act implant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7315		D	Sodium hyaluronate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7316		E	Sodium hyaluronate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7320		E	Hylan G–F 20 injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7330		E	Cultured chondrocytes implnt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7340		E	Metabolic active D/E tissue	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7500		X	Azathioprine oral 50 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7501		X	Azathioprine parenteral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7502		E	Cyclosporine oral 100 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7504		X	Lymphocyte immune globulin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7505		X	Monoclonal antibodies	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7506		X	Prednisone oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7507		E	Tacrolimus oral per 1 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7508		E	Tacrolimus oral per 5 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7509		X	Methylprednisolone oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7510		X	Prednisolone oral per 5 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7511		E	Antithymocyte globuln rabbit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7513		E	Daclizumab, parenteral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7515		E	Cyclosporine oral 25 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7516		E	Cyclosporin parenteral 250 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7517		E	Mycophenolate mofetil oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7520		E	Sirolimus, oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7525		E	Tacrolimus injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7599		X	Immunosuppressive drug noc	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
J7608		E	Acetylcysteine inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7618		E	Albuterol inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7619		E	Albuterol inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7622		E	Beclomethasome inhalatn sol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7624		E	Betamethasome inhalation sol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7626		E	Budesonide inhalation sol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7628		E	Bitolterol mes inhal sol con	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7629		E	Bitolterol mes inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7631		E	Cromolyn sodium inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7635		E	Atropine inhal sol con	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7636		E	Atropine inhal sol unit dose	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7637		E	Dexamethasone inhal sol con	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7638		E	Dexamethasone inhal sol u d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7639		E	Dornase alpha inhal sol u d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7641		E	Flunisolide, inhalation sol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7642		E	Glycopyrrolate inhal sol con	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7643		E	Glycopyrrolate inhal sol u d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7644		E	Ipratropium brom inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7648		E	Isoethanine hcl inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7649		E	Isoethanine hcl inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7658		E	Isoproterenolhcl inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7659		E	Isoproterenol hcl inh sol ud	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7668		E	Metaproterenol inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7669		E	Metaproterenol inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7680		E	Terbutaline so4 inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7681		E	Terbutaline so4 inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7682		E	Tobramycin inhalation sol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7683		E	Triamcinolone inh sol con	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7684		E	Triamcinolone inh sol u d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7699		E	Inhalation solution for DME	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7799		E	Non-inhalation drug for DME	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8499		N	Oral prescrip drug non chemo	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8510		E	Oral busulfan	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8520		E	Capecitabine, oral, 150 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8521		E	Capecitabine, oral, 500 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8530		E	Cyclophosphamide oral 25 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8560		E	Etoposide oral 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8600		E	Melphalan oral 2 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8610		E	Methotrexate oral 2.5 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8700		E	Temozolmide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8999		E	Oral prescription drug chemo	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9000		E	Doxorubic hcl 10 MG vl chemo	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9001		E	Doxorubicin hcl liposome inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9015		E	Aldesleukin/single use vial	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9017		E	Arsenic trioxide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9020		E	Asparaginase injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9031		E	Bcg live intravesical vac	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9040		E	Bleomycin sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9045		E	Carboplatin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9050		E	Carmus bischl nitro inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9060		E	Cisplatin 10 MG injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9062		E	Cisplatin 50 MG injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9065		E	Inj cladribine per 1 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9070		E	Cyclophosphamide 100 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9080		E	Cyclophosphamide 200 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9090		E	Cyclophosphamide 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9091		E	Cyclophosphamide 1.0 grm inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9092		E	Cyclophosphamide 2.0 grm inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9093		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9094		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9095		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9096		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9097		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9100		E	Cytarabine hcl 100 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9110		E	Cytarabine hcl 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9120		E	Dactinomycin actinomycin d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9130		E	Dacarbazine 10 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9140		E	Dacarbazine 200 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9150		E	Daunorubicin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9151		E	Daunorubicin citrate liposom	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9160		E	Denileukin diftitox, 300 mcg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9165		E	Diethylstilbestrol injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9170		E	Docetaxel	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
J9180		E	Epirubicin HCl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9181		E	Etoposide 10 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9182		E	Etoposide 100 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9185		E	Fludarabine phosphate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9190		E	Fluorouracil injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9200		E	Floxuridine injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9201		E	Gemcitabine HCl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9202		E	Goserelin acetate implant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9206		E	Irinotecan injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9208		E	Ifosfomide injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9209		E	Mesna injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9211		E	Idarubicin hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9212		E	Interferon alfacon-1	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9213		E	Interferon alfa-2a inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9214		E	Interferon alfa-2b inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9215		E	Interferon alfa-n3 inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9216		E	Interferon gamma 1-b inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9217		E	Leuprolide acetate suspnsion	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9218		E	Leuprolide acetate injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9219		E	Leuprolide acetate implant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9230		E	Mechlorethamine hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9245		E	Inj melphalen hydrochl 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9250		E	Methotrexate sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9260		E	Methotrexate sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9265		E	Paclitaxel injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9266		E	Pegaspargase/singl dose vial	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9268		E	Pentostatin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9270		E	Plicamycin (mithramycin) inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9280		E	Mitomycin 5 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9290		E	Mitomycin 20 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9291		E	Mitomycin 40 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9293		E	Mitoxantrone hydrochl/5 MG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9300		E	Gemtuzumab ozogamicin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9310		E	Rituximab cancer treatment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9320		E	Streptozocin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9340		E	Thiotepa injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9350		E	Topotecan	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9355		E	Trastuzumab	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9357		E	Valrubicin, 200 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9360		E	Vinblastine sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9370		E	Vincristine sulfate 1 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9375		E	Vincristine sulfate 2 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9380		E	Vincristine sulfate 5 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9390		E	Vinorelbine tartrate/10 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9600		E	Porfimer sodium	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9999		E	Chemotherapy drug	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0064		A	Visit for drug monitoring	0.37	0.25	0.12	0.01	0.63	0.50	XXX
M0075		N	Cellular therapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0076		N	Prolotherapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0100		N	Intragastric hypothermia	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0300		N	IV chelationtherapy	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0301		N	Fabric wrapping of aneurysm	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0302		D	Assessment of cardiac output	0.00	0.00	NA	0.00	0.00	NA	XXX
M0302	26	D	Assessment of cardiac output	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0302	TC	D	Assessment of cardiac output	0.00	0.00	NA	0.00	0.00	NA	XXX
P2028		X	Cephalin floculation test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2029		X	Congo red blood test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2031		N	Hair analysis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2033		X	Blood thymol turbidity	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2038		X	Blood mucoprotein	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P3000		X	Screen pap by tech w md supv	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P3001		A	Screening pap smear by phys	0.42	0.19	0.19	0.01	0.62	0.62	XXX
P7001		I	Culture bacterial urine	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9010		E	Whole blood for transfusion	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9011		E	Blood split unit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9012		E	Cryoprecipitate each unit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9016		E	RBC leukocytes reduced	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9017		E	One donor fresh frozn plasma	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9019		E	Platelets, each unit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9020		E	Plaelet rich plasma unit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9021		E	Red blood cells unit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9022		E	Washed red blood cells unit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9023		X	Frozen plasma, pooled, sd	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
P9031		X	Platelets leukocytes reduced	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9032		X	Platelets, irradiated	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9033		X	Platelets leukoreduced irrad	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9034		X	Platelets, pheresis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9035		X	Platelet pheres leukoreduced	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9036		X	Platelet pheresis irradiated	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9037		X	Plate pheres leukoredu irrad	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9038		X	RBC irradiated	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9039		X	RBC deglycerolized	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9040		X	RBC leukoreduced irradiated	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9041		X	Albumin (human), 5%, 50 ml	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9042		D	Albumin (human), 25%	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9043		X	Plasma protein fract,t5%,50 ml	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9044		X	Cryoprecipitatereducedplasma	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9045		X	Albumin (human), 5%, 250 ml	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9046		X	Albumin (human), 25%, 20 ml	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9047		X	Albumin (human), 25%, 50 ml	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9048		X	Plasmaprotein fract, 5%, 250 ml	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9050		X	Granulocytes, pheresis unit	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9603		X	One-way allow prorated miles	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9604		X	One-way allow prorated trip	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9612		X	Catheterize for urine spec	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9615		X	Urine specimen collect mult	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0035		A	Cardiokymography	0.17	0.44	NA	0.03	0.64	NA	XXX
Q0035	26	A	Cardiokymography	0.17	0.07	0.07	0.01	0.25	0.25	XXX
Q0035	TC	A	Cardiokymography	0.00	0.37	NA	0.02	0.39	NA	XXX
Q0091		A	Obtaining screen pap smear	0.37	0.68	0.15	0.01	1.06	0.53	XXX
Q0092		A	Set up port x-ray equipment	0.00	0.30	NA	0.01	0.31	NA	XXX
Q0111		X	Wet mounts/w preparations	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0112		X	Potassium hydroxide preps	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0113		X	Pinworm examinations	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0114		X	Fern test	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0115		X	Post-coital mucous exam	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0136		E	Non esrd epoetin alpha inj	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0144		D	Azithromycin dihydrate, oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0160		D	Factor IX non-recombinant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0161		D	Factor IX recombinant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0163		X	Diphenhydramine HCl 50 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0164		X	Prochlorperazine maleate 5 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0165		X	Prochlorperazine maleate 10 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0166		X	Granisetron HCl 1 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0167		X	Dronabinol 2.5 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0168		X	Dronabinol 5 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0169		X	Promethazine HCl 12.5 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0170		X	Promethazine HCl 25 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0171		X	Chlorpromazine HCl 10 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0172		X	Chlorpromazine HCl 25 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0173		X	Trimethobenzamide HCl 250 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0174		X	Thiethylperazine maleate 10 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0175		X	Perphenazine 4 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0176		X	Perphenazine 8 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0177		X	Hydroxyzine pamoate 25 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0178		X	Hydroxyzine pamoate 50 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0179		X	Ondansetron HCl 8 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0180		X	Dolasetron mesylate oral	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0181		X	Unspecified oral anti-emetic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0183		X	Nonmetabolic active tissue	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0184		X	Metabolically active tissue	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0185		D	Metabolic active D/E tissue	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0187		E	Factor viia recombinant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1001		X	Ntiol category 1	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1002		X	Ntiol category 2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1003		X	Ntiol category 3	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1004		X	Ntiol category 4	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1005		X	Ntiol category 5	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2001		N	Oral cabergoline 0.5 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2002		E	Elliotts b solution per ml	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2003		E	Aprotinin, 10,000 kiu	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2004		E	Bladder calculi irrig sol	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2005		E	Corticorelin ovine triflutat	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2006		E	Digoxin immune fab (ovine)	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2007		E	Ethanolamine oleate 100 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2008		E	Fomepizole, 15 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
Q2009		E	Fosphenytoin, 50 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2010		E	Glatiramer acetate, per dose	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2011		E	Hemin, per 1 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2012		E	Pegademase bovine, 25 iu	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2013		E	Pentastarch 10% solution	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2014		E	Sermorelin acetate, 0.5 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2015		D	Somatrem, 5 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2016		D	Somatropin, 1 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2017		E	Teniposide, 50 mg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2018		E	Urofollitropin, 75 iu	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2019		E	Basiliximab	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2020		E	Histrelin acetate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2021		E	Lepirudin	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q2022		E	VonWillebrandFactrCmplxperIU	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3001		E	Brachytherapy Radioelements	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3002		E	Gallium ga 67	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3003		E	Technetium tc99m bicisate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3004		E	Xenon xe 133	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3005		E	Technetium tc99m mertiatide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3006		E	Technetium tc99m glucepatate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3007		E	Sodium phosphate p32	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3008		E	Indium 111-in pentetreotide	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3009		E	Technetium tc99m oxidronate	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3010		E	Technetium tc99mlabeledrbcs	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3011		E	Chromic phosphate p32	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3012		E	Cyanocobalamin cobalt co57	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3013		D	Verteporfin injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3014		E	Telehealth facility fee	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q3017		E	ALS assessment	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4001		X	Cast sup body cast plaster	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4002		X	Cast sup body cast fiberglas	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4003		X	Cast sup shoulder cast plstr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4004		X	Cast sup shoulder cast fbrgl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4005		X	Cast sup long arm adult plst	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4006		X	Cast sup long arm adult fbrg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4007		X	Cast sup long arm ped plster	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4008		X	Cast sup long arm ped fbrgls	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4009		X	Cast sup sht arm adult plstr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4010		X	Cast sup sht arm adult fbrgl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4011		X	Cast sup sht arm ped plaster	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4012		X	Cast sup sht arm ped fbrglas	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4013		X	Cast sup gauntlet plaster	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4014		X	Cast sup gauntlet fiberglass	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4015		X	Cast sup gauntlet ped plster	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4016		X	Cast sup gauntlet ped fbrgls	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4017		X	Cast sup lng arm splint plst	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4018		X	Cast sup lng arm splint fbrg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4019		X	Cast sup lng arm splnt ped p	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4020		X	Cast sup lng arm splnt ped f	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4021		X	Cast sup sht arm splint plst	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4022		X	Cast sup sht arm splint fbrg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4023		X	Cast sup sht arm splnt ped p	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4024		X	Cast sup sht arm splnt ped f	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4025		X	Cast sup hip spica plaster	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4026		X	Cast sup hip spica fiberglas	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4027		X	Cast sup hip spica ped plstr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4028		X	Cast sup hip spica ped fbrgl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4029		X	Cast sup long leg plaster	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4030		X	Cast sup long leg fiberglass	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4031		X	Cast sup lng leg ped plaster	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4032		X	Cast sup lng leg ped fbrgls	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4033		X	Cast sup lng leg cylinder pl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4034		X	Cast sup lng leg cylinder fb	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4035		X	Cast sup lng leg cylndr ped p	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4036		X	Cast sup lng leg cylndr ped f	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4037		X	Cast sup shrt leg plaster	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4038		X	Cast sup shrt leg fiberglass	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4039		X	Cast sup shrt leg ped plster	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4040		X	Cast sup shrt leg ped fbrgls	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4041		X	Cast sup lng leg splnt plstr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4042		X	Cast sup lng leg splnt fbrgl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4043		X	Cast sup lng leg splnt ped p	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4044		X	Cast sup lng leg splnt ped f	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
Q4045		X	Cast sup sht leg splnt plstr	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4046		X	Cast sup sht leg splnt fbrgl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4047		X	Cast sup sht leg splnt ped p	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4048		X	Cast sup sht leg splnt ped f	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4049		X	Finger splint, static	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4050		X	Cast supplies unlisted	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q4051		X	Splint supplies misc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9920		E	Epoetin with hct <= 20	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9921		E	Epoetin with hct = 21	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9922		E	Epoetin with hct = 22	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9923		E	Epoetin with hct = 23	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9924		E	Epoetin with hct = 24	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9925		E	Epoetin with hct = 25	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9926		E	Epoetin with hct = 26	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9927		E	Epoetin with hct = 27	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9928		E	Epoetin with hct = 28	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9929		E	Epoetin with hct = 29	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9930		E	Epoetin with hct = 30	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9931		E	Epoetin with hct = 31	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9932		E	Epoetin with hct = 32	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9933		E	Epoetin with hct = 33	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9934		E	Epoetin with hct = 34	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9935		E	Epoetin with hct = 35	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9936		E	Epoetin with hct = 36	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9937		E	Epoetin with hct = 37	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9938		E	Epoetin with hct = 38	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9939		E	Epoetin with hct = 39	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9940		E	Epoetin with hct >= 40	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0070		C	Transport portable x-ray	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0075		C	Transport port x-ray multipl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0076		B	Transport portable EKG	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1000		I	Private duty/independent nsg	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1001		I	Nursing assessment/evaluatn	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1002		I	RN services up to 15 minutes	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1003		I	LPN/LVN services up to 15 min	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1004		I	Nsg aide service up to 15 min	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1005		I	Respite care service 15 min	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1006		I	Family/Couple Counseling	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1007		I	Treatment Plan Development	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1008		I	Day Treatment for Individual	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1009		I	Child Sitting Services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1010		I	Meals when Receive Services	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1011		I	Alcohol/Substance Abuse NOC	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1012		I	Alcohol/Substance Abuse Skil	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1013		I	Sign Lang/Oral Interpreter	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1014		I	Telehealth transmit, per min	0.00	0.00	0.00	0.00	0.00	0.00	XXX
T1015		I	Clinic service	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2020		X	Vision svcs frames purchases	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2025		N	Eyeglasses delux frames	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2100		X	Lens spher single plano 4.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2101		X	Single visn sphere 4.12–7.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2102		X	Singl visn sphere 7.12–20.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2103		X	Spherocylindr 4.00d/12–2.00d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2104		X	Spherocylindr 4.00d/2.12–4d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2105		X	Spherocylinder 4.00d/4.25–6d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2106		X	Spherocylinder 4.00d/>6.00d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2107		X	Spherocylinder 4.25d/12–2d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2108		X	Spherocylinder 4.25d/2.12–4d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2109		X	Spherocylinder 4.25d/4.25–6d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2110		X	Spherocylinder 4.25d/over 6d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2111		X	Spherocylindr 7.25d/.25–2.25	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2112		X	Spherocylindr 7.25d/2.25–4d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2113		X	Spherocylindr 7.25d/4.25–6d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2114		X	Spherocylinder over 12.00d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2115		X	Lens lenticular bifocal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2116		X	Nonaspheric lens bifocal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2117		X	Aspheric lens bifocal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2118		X	Lens aniseikonic single	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2199		X	Lens single vision not oth c	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2200		X	Lens spher bifoc plano 4.00d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2201		X	Lens sphere bifocal 4.12–7.0	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2202		X	Lens sphere bifocal 7.12–20	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2203		X	Lens sphcyl bifocal 4.00d/.1	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
V2204		X	Lens sphcy bifocal 4.00d/2.1	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2205		X	Lens sphcy bifocal 4.00d/4.2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2206		X	Lens sphcy bifocal 4.00d/ove	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2207		X	Lens sphcy bifocal 4.25–7d/	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2208		X	Lens sphcy bifocal 4.25–7/2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2209		X	Lens sphcy bifocal 4.25–7/4	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2210		X	Lens sphcy bifocal 4.25–7/ov	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2211		X	Lens sphcy bifo 7.25–12/.25–	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2212		X	Lens sphcyl bifo 7.25–12/2.2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2213		X	Lens sphcyl bifo 7.25–12/4.2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2214		X	Lens sphcyl bifocal over 12	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2215		X	Lens lenticular bifocal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2216		X	Lens lenticular nonaspheric	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2217		X	Lens lenticular aspheric bif	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2218		X	Lens aniseikonic bifocal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2219		X	Lens bifocal seg width over	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2220		X	Lens bifocal add over 3.25d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2299		X	Lens bifocal speciality	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2300		X	Lens sphere trifocal 4.00d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2301		X	Lens sphere trifocal 4.12–7	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2302		X	Lens sphere trifocal 7.12–20	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2303		X	Lens sphcy trifocal 4.0/.12–	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2304		X	Lens sphcy trifocal 4.0/2.25	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2305		X	Lens sphcy trifocal 4.0/4.25	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2306		X	Lens sphcyl trifocal 4.00/>6	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2307		X	Lens sphcy trifocal 4.25–7/	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2308		X	Lens sphc trifocal 4.25–7/2	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2309		X	Lens sphc trifocal 4.25–7/4	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2310		X	Lens sphc trifocal 4.25–7/>6	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2311		X	Lens sphc trifo 7.25–12/.25–	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2312		X	Lens sphc trifo 7.25–12/2.25	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2313		X	Lens sphc trifo 7.25–12/4.25	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2314		X	Lens sphcyl trifocal over 12	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2315		X	Lens lenticular trifocal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2316		X	Lens lenticular nonaspheric	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2317		X	Lens lenticular aspheric tri	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2318		X	Lens aniseikonic trifocal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2319		X	Lens trifocal seg width > 28	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2320		X	Lens trifocal add over 3.25d	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2399		X	Lens trifocal speciality	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2410		X	Lens variab asphericity sing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2430		X	Lens variable asphericity bi	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2499		X	Variable asphericity lens	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2500		X	Contact lens pmma spherical	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2501		X	Cntct lens pmma-toric/prism	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2502		X	Contact lens pmma bifocal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2503		X	Cntct lens pmma color vision	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2510		X	Cntct gas permeable sphericl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2511		X	Cntct toric prism ballast	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2512		X	Cntct lens gas permbl bifocl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2513		X	Contact lens extended wear	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2520		P	Contact lens hydrophilic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2521		X	Cntct lens hydrophilic toric	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2522		X	Cntct lens hydrophil bifocl	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2523		X	Cntct lens hydrophil extend	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2530		X	Contact lens gas impermeable	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2531		X	Contact lens gas permeable	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2599		X	Contact lens/es other type	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2600		X	Hand held low vision aids	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2610		X	Single lens spectacle mount	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2615		X	Telescop/othr compound lens	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2623		X	Plastic eye prosth custom	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2624		X	Polishing artifical eye	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2625		X	Enlargemnt of eye prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2626		X	Reduction of eye prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2627		X	Scleral cover shell	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2628		X	Fabrication & fitting	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2629		X	Prosthetic eye other type	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2630		X	Anter chamber intraocul lens	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2631		X	Iris support intraoclr lens	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2632		X	Post chmbr intraocular lens	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2700		X	Balance lens	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2710		X	Glass/plastic slab off prism	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
V2715		X	Prism lens/es	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2718		X	Fresnell prism press-on lens	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2730		X	Special base curve	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2740		X	Rose tint plastic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2741		X	Non-rose tint plastic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2742		X	Rose tint glass	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2743		X	Non-rose tint glass	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2744		X	Tint photochromatic lens/es	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2750		X	Anti-reflective coating	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2755		X	UV lens/es	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2760		X	Scratch resistant coating	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2770		X	Occluder lens/es	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2780		X	Oversize lens/es	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2781		X	Progressive lens per lens	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2785		X	Corneal tissue processing	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2790		X	Amniotic membrane	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2799		X	Miscellaneous vision service	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5008		N	Hearing screening	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5010		N	Assessment for hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5011		N	Hearing aid fitting/checking	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5014		N	Hearing aid repair/modifying	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5020		N	Conformity evaluation	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5030		N	Body-worn hearing aid air	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5040		N	Body-worn hearing aid bone	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5050		N	Hearing aid monaural in ear	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5060		N	Behind ear hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5070		N	Glasses air conduction	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5080		N	Glasses bone conduction	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5090		N	Hearing aid dispensing fee	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5100		N	Body-worn bilat hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5110		N	Hearing aid dispensing fee	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5120		N	Body-worn binaur hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5130		N	In ear binaural hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5140		N	Behind ear binaur hearing ai	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5150		N	Glasses binaural hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5160		N	Dispensing fee binaural	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5170		N	Within ear cros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5180		N	Behind ear cros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5190		N	Glasses cros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5200		N	Cros hearing aid dispens fee	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5210		N	In ear bicros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5220		N	Behind ear bicros hearing ai	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5230		N	Glasses bicros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5240		N	Dispensing fee bicros	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5241		N	Dispensing fee, monaural	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5242		N	Hearing aid, monaural, cic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5243		N	Hearing aid, monaural, itc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5244		N	Hearing aid, prog, mon, cic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5245		N	Hearing aid, prog, mon, itc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5246		N	Hearing aid, prog, mon, ite	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5247		N	Hearing aid, prog, mon, bte	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5248		N	Hearing aid, binaural, cic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5249		N	Hearing aid, binaural, itc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5250		N	Hearing aid, prog, bin, cic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5251		N	Hearing aid, prog, bin, itc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5252		N	Hearing aid, prog, bin, ite	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5253		N	Hearing aid, prog, bin, bte	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5254		N	Hearing aid, digit, mon, cic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5255		N	Hearing aid, digit, mon, itc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5256		N	Hearing aid, digit, mon, ite	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5257		N	Hearing aid, digit, mon, bte	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5258		N	Hearing aid, digit, bin, cic	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5259		N	Hearing aid, digit, bin, itc	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5260		N	Hearing aid, digit, bin, ite	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5261		N	Hearing aid, digit, bin, bte	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5262		N	Hearing aid, disp, monaural	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5263		N	Hearing aid, disp, binaural	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5264		N	Ear mold/insert	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5265		N	Ear mold/insert, disp	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5266		N	Battery for hearing device	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5267		N	Hearing aid supply/accessory	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5268		N	ALD Telephone Amplifier	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5269		N	Alerting device, any type	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
V5270		N	ALD, TV amplifier, any type	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5271		N	ALD, TV caption decoder	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5272		N	Tdd	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5273		N	ALD for cochlear implant	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5274		N	ALD unspecified	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5275		N	Ear impression	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5299		R	Hearing service	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5336		N	Repair communication device	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5362		R	Speech screening	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5363		R	Language screening	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5364		R	Dysphagia screening	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM C.—CODES WITH INTERIM RVUS

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
11981		A	Insert drug implant device	1.48	1.58	0.59	0.14	3.20	2.21	XXX
11982		A	Remove drug implant device	1.78	1.70	0.71	0.17	3.65	2.66	XXX
11983		A	Remove/insert drug implant	3.30	2.31	1.32	0.31	5.92	4.93	XXX
20526		A	Ther injection carpal tunnel	0.86	0.78	0.39	0.06	1.70	1.31	000
20551		A	Inject tendon origin/insert	0.86	0.78	0.39	0.06	1.70	1.31	000
20552		A	Inject trigger point, 1 or 2	0.86	0.78	0.39	0.06	1.70	1.31	000
20553		A	Inject trigger points, > 3	0.86	0.78	0.39	0.06	1.70	1.31	000
24300		A	Manipulate elbow w/anesth	3.75	NA	5.46	0.52	NA	9.73	090
24332		A	Tenolysis, triceps	7.45	NA	5.23	0.77	NA	13.45	090
24343		A	Repr elbow lat ligmnt w/tiss	8.65	NA	7.91	1.21	NA	17.77	090
24344		A	Reconstruct elbow lat ligmnt	14.00	NA	10.87	1.95	NA	26.82	090
24345		A	Repr elbw med ligmnt w/tiss	8.65	NA	7.91	1.21	NA	17.77	090
24346		A	Reconstruct elbow med ligmnt	14.00	NA	10.87	1.95	NA	26.82	090
25001		A	Incise flexor carpi radialis	3.38	NA	4.30	0.45	NA	8.13	090
25024		A	Decompress forearm 2 spaces	9.50	NA	8.17	1.20	NA	18.87	090
25025		A	Decompress forearm 2 spaces	16.54	NA	12.05	1.91	NA	30.50	090
25259		A	Manipulate wrist w/anesthes	3.75	NA	5.35	0.52	NA	9.62	090
25275		A	Repair forearm tendon sheath	8.50	NA	7.53	1.11	NA	17.14	090
25394		A	Repair carpal bone, shorten	10.40	NA	8.43	1.15	NA	19.98	090
25430		A	Vasc graft into carpal bone	9.25	NA	7.82	0.56	NA	17.63	090
25431		A	Repair nonunion carpal bone	10.44	NA	6.42	0.56	NA	17.42	090
25651		A	Pin ulnar styloid fracture	5.36	NA	4.39	0.73	NA	10.48	090
25652		A	Treat fracture ulnar styloid	7.60	NA	6.90	0.97	NA	15.47	090
25671		A	Pin radioulnar dislocation	6.00	NA	6.02	0.75	NA	12.77	090
26340		A	Manipulate finger w/anesth	2.50	NA	4.53	0.32	NA	7.35	090
26587		A	Reconstruct extra finger	14.05	4.67	NA	1.08	19.80	NA	090
28299		A	Correction of bunion	10.58	11.55	9.21	1.24	23.37	21.03	090
29086		A	Apply finger cast	0.62	0.81	0.50	0.07	1.50	1.19	000
29805		A	Shoulder arthroscopy, dx	5.89	3.23	3.23	0.83	9.95	9.95	090
29806		A	Shoulder arthroscopy/surgery	14.37	NA	11.33	2.01	NA	27.71	090
29807		A	Shoulder arthroscopy/surgery	13.90	NA	11.06	2.01	NA	26.97	090
29824		A	Shoulder arthroscopy/surgery	8.25	NA	7.48	1.16	NA	16.89	090
29900		A	Mcp joint arthroscopy, dx	5.42	NA	5.88	0.69	NA	11.99	090
29901		A	Mcp joint arthroscopy, surg	6.13	NA	6.28	0.81	NA	13.22	090
29902		A	Mcp joint arthroscopy, surg	6.70	NA	6.60	0.89	NA	14.19	090
33967		A	Insert ia percut device	4.85	2.01	1.96	0.27	7.13	7.08	000
33979		C	Insert intracorporeal device	0.00	0.00	0.00	0.00	0.00	0.00	XXX
33980		C	Remove intracorporeal device	0.00	0.00	0.00	0.00	0.00	0.00	090
35646		A	Artery bypass graft	31.00	NA	13.26	2.98	NA	47.24	090
35647		A	Artery bypass graft	28.00	NA	11.97	2.98	NA	42.95	090
35685		A	Bypass graft patency/patch	4.05	NA	1.50	0.41	NA	5.96	ZZZ
35686		A	Bypass graft/av fist patency	3.35	NA	1.24	0.34	NA	4.93	ZZZ
36002		A	Pseudoaneurysm injection trt	1.96	2.95	1.03	0.08	4.99	3.07	000
36400		A	Drawing blood	0.38	0.72	0.10	0.01	1.11	0.49	XXX
36820		A	Av fusion/forearm vein	14.00	NA	6.56	1.53	NA	22.09	090
43239		A	Upper GI endoscopy, biopsy	2.87	6.79	1.27	0.14	9.80	4.28	000
43313		A	Esophagoplasty congential	45.28	NA	22.01	5.43	NA	72.72	090
43314		A	Tracheo-esophagoplasty cong	50.27	NA	24.07	5.53	NA	79.87	090
44120		A	Removal of small intestine	17.00	NA	7.67	1.46	NA	26.13	090
44126		A	Enterectomy w/taper, cong	35.50	NA	18.03	0.36	NA	53.89	090
44127		A	Enterectomy w/o taper, cong	41.00	NA	20.56	0.41	NA	61.97	090
44128		A	Enterectomy cong, add-on	4.45	NA	1.78	0.45	NA	6.68	ZZZ

ADDENDUM C.—CODES WITH INTERIM RVUs—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
44160		A	Removal of colon	18.62	NA	8.65	1.55	NA	28.82	090
44203		A	Lap resect s/intestine, addl	4.45	NA	1.60	0.45	NA	6.50	ZZZ
44204		A	Laparo partial colectomy	25.08	NA	10.46	1.83	NA	37.37	090
44205		A	Lap colectomy part w/ileum	22.23	NA	9.31	1.55	NA	33.09	090
45136		A	Excise ileoanal reservoir	27.30	NA	12.66	2.19	NA	42.15	090
45380		A	Colonoscopy and biopsy	4.44	9.28	2.05	0.21	13.93	6.70	000
46020		A	Placement of seton	2.90	3.09	2.36	0.22	6.21	5.48	010
47370		A	Laparo ablate liver tumor rf	18.00	7.19	7.19	0.85	26.04	26.04	090
47371		A	Laparo ablate liver cryosug	16.94	6.76	6.76	0.85	24.55	24.55	090
47380		A	Open ablate liver tumor rf	21.25	8.48	8.48	0.85	30.58	30.58	090
47381		A	Open ablate liver tumor cryo	21.00	8.38	8.38	0.85	30.23	30.23	090
47382		A	Percut ablate liver rf	12.00	NA	5.37	0.85	NA	18.22	010
49491		A	Repairing hern premie reduc	11.13	NA	5.65	1.00	NA	17.78	090
49492		A	Rpr ing hern premie, blocked	14.03	NA	6.40	1.42	NA	21.85	090
52001		A	Cystoscopy, removal of clots	2.37	NA	0.98	0.32	NA	3.67	000
52347		A	Cystoscopy, resect ducts	5.28	NA	2.14	0.33	NA	7.75	000
53431		A	Reconstruct urethra/bladder	19.89	7.94	7.94	1.25	29.08	29.08	090
53444		A	Insert tandem cuff	13.40	NA	6.66	0.79	NA	20.85	090
53446		A	Remove uro sphincter	10.23	NA	8.46	0.61	NA	19.30	090
53447		A	Remove/replace ur sphincter	13.49	NA	7.90	0.79	NA	22.18	090
53448		A	Remov/replc ur sphinctr comp	21.15	NA	12.35	1.27	NA	34.77	090
53853		A	Prostatic water thermother	4.14	52.75	2.55	0.38	57.27	7.07	090
54162		A	Lysis penil circumcis lesion	3.00	NA	2.91	0.18	NA	6.09	010
54163		A	Repair of circumcision	3.00	NA	2.54	0.18	NA	5.72	010
54164		A	Frenulotomy of penis	2.50	NA	2.37	0.15	NA	5.02	010
54406		A	Remove multi-comp penis pros	12.10	NA	6.09	0.80	NA	18.99	090
54408		A	Repair multi-comp penis pros	12.75	NA	6.46	0.80	NA	20.01	090
54410		A	Remove/replace penis prosth	15.50	NA	7.36	0.80	NA	23.66	090
54411		A	Remv/replc penis pros, comp	16.00	NA	8.98	0.80	NA	25.78	090
54415		A	Remove self-contd penis pros	8.20	NA	5.35	0.55	NA	14.10	090
54416		A	Remv/repl penis contain pros	10.87	NA	6.94	0.55	NA	18.36	090
54417		A	Remv/replc penis pros, compl	14.19	NA	7.89	0.55	NA	22.63	090
56605		A	Biopsy of vulva/perineum	1.10	1.90	0.50	0.11	3.11	1.71	000
56810		A	Repair of perineum	4.13	NA	2.91	0.41	NA	7.45	010
57155		A	Insert uteri tandems/ovoids	6.27	NA	3.67	0.63	NA	10.57	090
58100		A	Biopsy of uterus lining	1.53	1.56	0.76	0.07	3.16	2.36	000
58346		A	Insert heyman uteri capsule	6.75	NA	3.84	0.68	NA	11.27	090
58953		A	Tah, rad dissect for debulk	32.00	NA	15.59	3.20	NA	50.79	090
58954		A	Tah, rad debulk/lymph remove	35.00	NA	16.71	3.50	NA	55.21	090
59001		A	Amniocentesis, therapeutic	3.00	NA	1.37	0.23	NA	4.60	000
64561		A	Implant neuroelectrodes	6.74	15.28	3.83	0.11	22.13	10.68	010
64581		A	Implant neuroelectrodes	13.50	NA	6.72	0.37	NA	20.59	090
64821		A	Remove sympathetic nerves	8.75	NA	7.09	0.99	NA	16.83	090
64822		A	Remove sympathetic nerves	8.75	NA	7.09	0.99	NA	16.83	090
64823		A	Remove sympathetic nerves	10.37	NA	7.89	1.17	NA	19.43	090
67225		A	Eye photodynamic ther add-on	0.47	0.24	0.19	0.50	1.21	1.16	ZZZ
76085		A	Computer mammogram add-on	0.06	0.31	NA	0.02	0.39	NA	ZZZ
76092		A	Mammogram, screening	0.70	1.44	NA	0.09	2.23	NA	XXX
76362		A	Cat scan for tissue ablation	4.00	9.24	NA	1.38	14.62	NA	XXX
76394		A	Mri for tissue ablation	4.25	12.13	NA	1.43	17.81	NA	XXX
76490		A	Us for tissue ablation	2.00	2.13	NA	0.36	4.49	NA	XXX
76819		A	Fetal biophys profil w/o nst	0.77	1.83	NA	0.10	2.70	NA	XXX
77301		A	Radiotherapy dos plan, imrt	8.00	29.72	NA	1.41	39.13	NA	XXX
77418		A	Radiation tx delivery, imrt	0.00	16.07	NA	0.11	16.18	NA	XXX
88380		C	Microdissection	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90471		A	Immunization admin	0.00	0.10	NA	0.01	0.11	NA	XXX
90472		A	Immunization admin, each add	0.00	0.10	NA	0.01	0.11	NA	ZZZ
90473		N	Immune admin oral/nasal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90474		N	Immune admin oral/nasal addl	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
90939		X	Hemodialysis study, transcut	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91123		B	Irrigate fecal impaction	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92136		A	Ophthalmic biometry	0.54	1.52	NA	0.07	2.13	NA	XXX
92973		A	Percut coronary thrombectomy	3.28	NA	1.37	0.17	NA	4.82	ZZZ
92974		A	Cath place, cardio brachytx	3.00	NA	1.26	1.18	NA	5.44	ZZZ
93025		A	Microvolt t-wave assess	0.75	6.42	NA	0.11	7.28	NA	XXX
93609		A	Map tachycardia, add-on	4.81	4.59	NA	0.66	10.06	NA	ZZZ
93613		C	Electrophys map, 3d, add-on	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93621		C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
93622		C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
93701		A	Bioimpedance, thoracic	0.17	0.78	NA	0.02	0.97	NA	XXX
95250		A	Glucose monitoring, cont	0.00	1.44	NA	0.01	1.45	NA	XXX
95875		A	Limb exercise test	1.10	1.38	NA	0.09	2.57	NA	XXX
95965		C	Meg, spontaneous	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95966		C	Meg, evoked, single	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95967		C	Meg, evoked, each addl	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
96000		A	Motion analysis, video/3d	1.80	NA	0.72	0.02	NA	2.54	XXX
96001		A	Motion test w/ft press meas	2.15	NA	0.86	0.02	NA	3.03	XXX
96002		A	Dynamic surface emg	0.41	NA	0.16	0.02	NA	0.59	XXX

ADDENDUM C.—CODES WITH INTERIM RVUs—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician Work RVUs [3]	Fully implemented non-facility PE RVUs	Fully implemented facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Fully implemented facility total	Global
96003		A	Dynamic fine wire emg	0.37	NA	0.15	0.03	NA	0.55	XXX
96004		A	Phys review of motion tests	1.80	0.72	0.72	0.08	2.60	2.60	XXX
96150		A	Assess hlth/behave, init	0.50	0.21	0.20	0.02	0.73	0.72	XXX
96151		A	Assess hlth/behave, subseq	0.48	0.21	0.19	0.02	0.71	0.69	XXX
96152		A	Intervene hlth/behave, indiv	0.46	0.20	0.18	0.02	0.68	0.66	XXX
96153		A	Intervene hlth/behave, group	0.10	0.04	0.04	0.01	0.15	0.15	XXX
96154		A	Interv hlth/behav, fam w/pt	0.45	0.19	0.18	0.02	0.66	0.65	XXX
96155		A	Interv hlth/behav fam no pt	0.44	0.18	0.18	0.02	0.64	0.64	XXX
96567		A	Photodynamic tx, skin	0.00	1.63	NA	0.03	1.66	NA	XXX
97602		B	Wound(s) care non-selective	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97802		A	Medical nutrition, indiv, in	0.00	0.45	0.45	0.01	0.46	0.46	XXX
97803		A	Med nutrition, indiv, subseq	0.00	0.45	0.45	0.01	0.46	0.46	XXX
97804		A	Medical nutrition, group	0.00	0.17	0.17	0.01	0.18	0.18	XXX
99091		B	Collect/review data from pt	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99289		I	Pt transport, 30–74 min	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99290		I	Pt transport, addl 30 min	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
G0117		T	Glaucoma scrn hgh risk direc	0.45	0.97	0.22	0.02	1.44	0.69	XXX
G0118		T	Glaucoma scrn hgh risk direc	0.17	0.84	0.08	0.01	1.02	0.26	XXX
G0202	26	A	Screeningmammographydigital	0.70	0.28	0.28	0.03	1.01	1.01	XXX
G0204	26	A	Diagnosticmammographydigital	0.87	0.35	0.35	0.03	1.25	1.25	XXX
G0206	26	A	Diagnosticmammographydigital	0.70	0.28	0.28	0.03	1.01	1.01	XXX
G0236	26	A	digital film convert diag ma	0.06	0.02	0.02	0.01	0.09	0.09	ZZZ

[1] CPT codes and descriptions only are copyright 2001 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.

ADDENDUM D.—2002 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
00510	00	ALABAMA	0.978	0.870	0.807
00831	01	ALASKA	1.064	1.172	1.223
00832	00	ARIZONA	0.994	0.978	1.111
00520	13	ARKANSAS	0.953	0.847	0.340
31146	26	ANAHEIM/SANTA ANA, CA	1.037	1.184	0.955
31146	18	LOS ANGELES, CA	1.056	1.139	0.955
31140	03	MARIN/NAPA/SOLANO, CA	1.015	1.248	0.687
31140	07	OAKLAND/BERKELEY, CA	1.041	1.235	0.687
31140	05	SAN FRANCISCO, CA	1.068	1.458	0.687
31140	06	SAN MATEO, CA	1.048	1.432	0.687
31140	09	SANTA CLARA, CA	1.063	1.380	0.639
31146	17	VENTURA, CA	1.028	1.125	0.783
31146	99	REST OF CALIFORNIA*	1.007	1.034	0.748
31140	99	REST OF CALIFORNIA*	1.007	1.034	0.748
00824	01	COLORADO	0.985	0.992	0.840
00591	00	CONNECTICUT	1.050	1.156	0.966
00902	01	DELAWARE	1.019	1.035	0.712
00903	01	DC + MD/VA SUBURBS	1.050	1.166	0.909
00590	03	FORT LAUDERDALE, FL	0.996	1.018	1.877
00590	04	MIAMI, FL	1.015	1.052	2.528
00590	99	REST OF FLORIDA	0.975	0.946	1.265
00511	01	ATLANTA, GA	1.006	1.059	0.935
00511	99	REST OF GEORGIA	0.970	0.892	0.935
00833	01	HAWAII/GUAM	0.997	1.124	0.834
05130	00	IDAHO	0.960	0.881	0.497
00952	16	CHICAGO, IL	1.028	1.092	1.797
00952	12	EAST ST. LOUIS, IL	0.988	0.924	1.691
00952	15	SUBURBAN CHICAGO, IL	1.006	1.071	1.645
00952	99	REST OF ILLINOIS	0.964	0.889	1.157
00630	00	INDIANA	0.981	0.922	0.481
00826	00	IOWA	0.959	0.876	0.596
00650	00	KANSAS*	0.963	0.895	0.756
00740	04	KANSAS*	0.963	0.895	0.756
00660	00	KENTUCKY	0.970	0.866	0.877
00528	01	NEW ORLEANS, LA	0.998	0.945	1.283
00528	99	REST OF LOUISIANA	0.968	0.870	1.073
31142	03	SOUTHERN MAINE	0.979	0.999	0.666
31142	99	REST OF MAINE	0.961	0.910	0.666
00901	01	BALTIMORE/SURR. CNTYS, MD	1.021	1.038	0.916
00901	99	REST OF MARYLAND	0.984	0.972	0.774
31143	01	METROPOLITAN BOSTON	1.041	1.239	0.784
31143	99	REST OF MASSACHUSETTS	1.010	1.129	0.784
00953	01	DETROIT, MI*	1.043	1.038	2.738
00953	99	REST OF MICHIGAN	0.997	0.938	1.571
00954	00	MINNESOTA	0.990	0.974	0.452
00512	00	MISSISSIPPI	0.957	0.837	0.779

ADDENDUM D.—2002 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
00740	02	METROPOLITAN KANSAS CITY, MO	0.988	0.967	0.846
00523	01	METROPOLITAN ST. LOUIS, MO	0.994	0.938	0.846
00740	99	REST OF MISSOURI*	0.946	0.825	0.793
00523	99	REST OF MISSOURI*	0.946	0.825	0.793
00751	01	MONTANA	0.950	0.876	0.727
00655	00	NEBRASKA	0.948	0.877	0.430
00834	00	NEVADA	1.005	1.039	1.209
31144	40	NEW HAMPSHIRE	0.986	1.030	0.825
00805	01	NORTHERN NJ	1.058	1.193	0.860
00805	99	REST OF NEW JERSEY	1.029	1.110	0.860
00521	05	NEW MEXICO	0.973	0.900	0.902
00803	01	MANHATTAN, NY	1.094	1.351	1.668
00803	02	NYC SUBURBS/LONG I., NY	1.068	1.251	1.952
00803	03	POUGHKPSIE/N NYC SUBURBS, NY	1.011	1.075	1.275
14330	04	QUEENS, NY	1.058	1.228	1.871
00801	99	REST OF NEW YORK	0.998	0.944	0.764
05535	00	NORTH CAROLINA	0.970	0.931	0.595
00820	01	NORTH DAKOTA	0.950	0.880	0.657
16360	00	OHIO	0.988	0.944	0.957
00522	00	OKLAHOMA	0.968	0.876	0.444
00835	01	PORTLAND, OR	0.996	1.049	0.436
00835	99	REST OF OREGON	0.961	0.933	0.436
00865	01	METROPOLITAN PHILADELPHIA, PA	1.023	1.092	1.413
00865	99	REST OF PENNSYLVANIA	0.989	0.929	0.774
00973	20	PUERTO RICO	0.881	0.712	0.275
00870	01	RHODE ISLAND	1.017	1.065	0.883
00880	01	SOUTH CAROLINA	0.974	0.904	0.279
00820	02	SOUTH DAKOTA	0.935	0.878	0.406
05440	35	TENNESSEE	0.975	0.900	0.592
00900	31	AUSTIN, TX	0.988	0.996	0.859
00900	20	BEAUMONT, TX	0.992	0.890	1.338
00900	09	BRAZORIA, TX	0.992	0.978	1.338
00900	11	DALLAS, TX	1.010	1.065	0.931
00900	28	FORT WORTH, TX	0.987	0.981	0.931
00900	15	GALVESTON, TX	0.988	0.969	1.338
00900	18	HOUSTON, TX	1.020	1.007	1.338
00900	99	REST OF TEXAS	0.968	0.880	0.956
00910	09	UTAH	0.976	0.941	0.644
31145	50	VERMONT	0.973	0.986	0.539
00973	50	VIRGIN ISLANDS	0.965	1.023	1.002
00904	00	VIRGINIA	0.984	0.938	0.500
00836	02	SEATTLE (KING CNTY), WA	1.005	1.100	0.788
00836	99	REST OF WASHINGTON	0.981	0.972	0.788
16510	16	WEST VIRGINIA	0.963	0.850	1.378
00951	00	WISCONSIN	0.981	0.929	0.939
00625	21	WYOMING	0.967	0.895	1.005

*Payment locality is serviced by two carriers.

Note: Work GPCI reflects only ¼ work GPCI in accordance with section 1848(e)(1)(A)(iii) of the Social Security Act. GPCIs rescaled by the following factors for budget neutrality: Work = 0.99699; Practice Expense = 0.99235; Malpractice Expense = 1.00215.

ADDENDUM E.—UPDATED LIST OF CPT [1]/HCPCS CODES USED TO DESCRIBE CERTAIN DESIGNATED HEALTH SERVICES UNDER THE PHYSICIAN REFERRAL PROVISIONS

[Section 1877 of the Social Security Act]

CLINICAL LABORATORY SERVICES

INCLUDE CPT codes for all clinical laboratory services in the 80000 series, except EXCLUDE CPT codes for the following blood component collection services:

86890	Autologous blood process
86891	Autologous blood, op salvage
86915	Bone marrow/stem cell prep
86927	Plasma, fresh frozen
86930	Frozen blood prep
86931	Frozen blood thaw
86932	Frozen blood freeze/thaw
86945	Blood product/irradiation
86950	Leukacyte transfusion
86965	Pooling blood platelets
86985	Split blood or products

INCLUDE the following HCPCS level 2 codes for other clinical laboratory services:

G0001	Drawing blood for specimen
G0026	Fecal leukocyte examination

ADDENDUM E.—UPDATED LIST OF CPT [1]/HCPCS CODES USED TO DESCRIBE CERTAIN DESIGNATED HEALTH SERVICES UNDER THE PHYSICIAN REFERRAL PROVISIONS—Continued

[Section 1877 of the Social Security Act]

G0027	Semen analysis
G0103	Psa, total screening
G0107	CA screen; fecal blood test
G0123	Screen cerv/vag thin layer
G0124	Screen c/v thin layer by MD
G0141	Scr c/v cyto,autosys and md
G0143–G0145	Scr c/v cyto,thinlayer, rescr
G0147	Scr c/v cyto, automated sys
G0148	Scr c/v cyto, autosys, rescr
P2028	Cephalin floculation test
P2029	Congo red blood test
P2031	Hair analysis
P2033	Blood thymol turbidity
P2038	Blood mucoprotein
P3000	Screen pap by tech w md supv
P3001	Screening pap smear by phys
P7001	Culture bacterial urine
P9612	Catheterize for urine spec
P9615	Urine specimen collect mult

ADDENDUM E.—UPDATED LIST OF CPT [1]/HCPCS CODES USED TO DESCRIBE CERTAIN DESIGNATED HEALTH SERVICES UNDER THE PHYSICIAN REFERRAL PROVISIONS—Continued

[Section 1877 of the Social Security Act]

Q0111	Wet mounts/w preparations
Q0112	Potassium hydroxide preps
Q0113	Pinworm examinations
Q0114	Fern test
Q0115	Post-coital mucous exam

PHYSICAL THERAPY/OCCUPATIONAL THERAPY/SPEECH-LANGUAGE PATHOLOGY

INCLUDE the following CPT codes for the physical therapy/occupational therapy/speech-language pathology services in the 97000 series:

97001	Pt evaluation
97002	Pt re-evaluation
97003	Ot evaluation
97004	Ot re-evaluation
97010	Hot or cold packs therapy
97012	Mechanical traction therapy
97014	Electric stimulation therapy
97016	Vasopneumatic device therapy
97018	Paraffin bath therapy

ADDENDUM E.—UPDATED LIST OF CPT [1]/HCPCS CODES USED TO DESCRIBE CERTAIN DESIGNATED HEALTH SERVICES UNDER THE PHYSICIAN REFERRAL PROVISIONS—Continued

[Section 1877 of the Social Security Act]

97020	Microwave therapy
97022	Whirlpool therapy
97024	Diathermy treatment
97026	Infrared therapy
97028	Ultraviolet therapy
97032	Electrical stimulation
97033	Electric current therapy
97034	Contrast bath therapy
97035	Ultrasound therapy
97036	Hydrotherapy
97039	Physical therapy treatment
97110	Therapeutic exercises
97112	Neuromuscular reeducation
97113	Aquatic therapy/exercises
97116	Gait training therapy
97124	Massage therapy
97139	Physical medicine procedure
97140	Manual therapy
97150	Group therapeutic procedures
97504	Orthotic training
97520	Prosthetic training
97530	Therapeutic activities
97532	Cognitive skills development
97533	Sensory integration
97535	Self care mngment training
97537	Community/work reintegration
97542	Wheelchair mngment training
97545	Work hardening
97546	Work hardening add-on
97703	Prosthetic checkout
97750	Physical performance test
97799	Physical medicine procedure

INCLUDE CPT codes for physical therapy/occupational therapy/speech-language pathology services *not* in the 97000 series:

64550	Apply neurostimulator
90901	Biofeedback train, any meth
90911	Biofeedback peri/uro/rectal
92506	Speech/hearing evaluation
92507–92508	Speech/hearing therapy
92510	Rehab for ear implant
92526	Oral function therapy
93797	Cardiac rehab
93798	Cardiac rehab/monitor
94667–94668	Chest wall manipulation
94762	Measure blood oxygen level
95831	Limb muscle testing, manual
95832	Hand muscle testing, manual
95833–95834	Body muscle testing, manual
95851–95852	Range of motion measurements
96000	Motion analysis, video/3d
96001	Motion test w/ft press meas
96002	Dynamic surface emg
96003	Dynamic fine wire emg
96105	Assessment of aphasia
96110	Developmental test, lim
96111	Developmental test, extend
96115	Neurobehavior status exam

INCLUDE HCPCS level 2 codes for the following physical therapy/occupational therapy/speech-language pathology services:

G0193	Endoscopic study swallow functn
G0194	Sensory testing endoscopic stud
G0195	Clinical eval swallowing funct
G0196	Eval of swallowing with radioopa
G0197	Eval of pt for prescip speech devi
G0198	Patient adapation & train for spe
G0199	Reevaluation of patient use spec

ADDENDUM E.—UPDATED LIST OF CPT [1]/HCPCS CODES USED TO DESCRIBE CERTAIN DESIGNATED HEALTH SERVICES UNDER THE PHYSICIAN REFERRAL PROVISIONS—Continued

[Section 1877 of the Social Security Act]

G0200	Eval of patient prescip of voice p
G0201	Modi for training in use voice pro
Q0086	Physical therapy evaluation/

RADIOLOGY

INCLUDE the following radiology and certain other imaging services in the CPT 70000 series:

70100–70110	X-ray exam of jaw
70120–70130	X-ray exam of mastoids
70134	X-ray exam of middle ear
70140–70150	X-ray exam of facial bones
70160	X-ray exam of nasal bones
70190–70200	X-ray exam of eye sockets
70210–70220	X-ray exam of sinuses
70240	X-ray exam, pituitary saddle
70250–70260	X-ray exam of skull
70300–70310	X-ray exam of teeth
70320	Full mouth x-ray of teeth
70328	X-ray exam of jaw joint
70330	X-ray exam of jaw joints
70336	Magnetic image, jaw joint
70350	X-ray head for orthodontia
70355	Panoramic x-ray of jaws
70360	X-ray exam of neck
70370	Throat x-ray & fluoroscopy
70371	Speech evaluation, complex
70380	X-ray exam of salivary gland
70450	Ct head/brain w/o dye
70460	Ct head/brain w/dye
70470	Ct head/brain w/o&w dye
70480	Ct orbit/ear/fossa w/o dye
70481	Ct orbit/ear/fossa w/dye
70482	Ct orbit/ear/fossa w/o&w dye
70486	Ct maxillofacial w/o dye
70487	Ct maxillofacial w/dye
70488	Ct maxillofacial w/o&w dye
70490	Ct soft tissue neck w/o dye
70491	Ct soft tissue neck w/dye
70492	Ct sft tsue nck w/o & w/dye
70498	Ct angiography, head
70498	Ct angiography, neck
70540	Mri orbit/face/neck w/o dye
70542	Mri orbit/face/neck w/dye
70543	Mri orbt/fac/nck w/o&w dye
70544	Mr angiography head w/o dye
70545	Mr angiography head w/dye
70546	Mr angiograph head w/o&w dye
70547	Mr angiography neck w/o dye
70548	Mr angiography neck w/dye
70549	Mr angiograph neck w/o&w dye
70551	Mri brain w/o dye
70552	Mri brain w/dye
70553	Mri brain w/o&w dye
71010–71022	Chest x-ray
71023	Chest x-ray and fluoroscopy
71030	Chest x-ray
71034	Chest x-ray and fluoroscopy
71035	Chest x-ray
71100	X-ray exam of ribs
71101	X-ray exam of ribs/chest
71110	X-ray exam of ribs
71111	X-ray exam of ribs/ chest
71120–71130	X-ray exam of breastbone
71250	Ct thorax w/o dye
71260	Ct thorax w/dye
71270	Ct thorax w/o&w dye
71275	Ct angiography, chest
71550	Mri chest w/o dye
71551	Mri chest w/dye
71552	Mri chest w/o&w dye
71555	Mri angio chest w or w/o dye
72010–72020	X-ray exam of spine
72040–72052	X-ray exam of neck spine
72069	X-ray exam of trunk spine

ADDENDUM E.—UPDATED LIST OF CPT [1]/HCPCS CODES USED TO DESCRIBE CERTAIN DESIGNATED HEALTH SERVICES UNDER THE PHYSICIAN REFERRAL PROVISIONS—Continued

[Section 1877 of the Social Security Act]

72070–72074	X-ray exam of thoracic spine
72080–72090	X-ray exam of trunk spine
72100–72120	X-ray exam of lower spine
72125	Ct neck spine w/o dye
72126	Ct neck spine w/dye
72127	Ct neck spine w/o&w dye
72128	Ct chest spine w/o dye
72129	Ct chest spine w/dye
72130	Ct chest spine w/o&w dye
72131	Ct lumbar spine w/o dye
72132	Ct lumbar spine w/dye
72133	Ct lumbar spine w/o&w dye
72141	Mri neck spine w/o dye
72142	Mri neck spine w/dye
72146	Mri chest spine w/o dye
72147	Mri chest spine w/dye
72148	Mri lumbar spine w/o dye
72149	Mri lumbar spine w/dye
72156	Mri neck spine w/o&w dye
72157	Mri chest spine w/o&w dye
72158	Mri lumbar spine w/o&w dye
72170–72190	X-ray exam of pelvis
72191	Ct angiograph pelv w/o&w dye
72192	Ct pelvis w/o dye
72193	Ct pelvis w/dye
72194	Ct pelvis w/o&w dye
72195	Mri pelvis w/o dye
72196	Mri pelvis w/dye
72197	Mri pelvis w/o & w dye
72200–72202	X-ray exam sacroiliac joints
72220	X-ray exam of tailbone
73000	X-ray exam of collar bone
73010	X-ray exam of shoulder blade
73020–73030	X-ray exam of shoulder
73050	X-ray exam of shoulders
73060	X-ray exam of humerus
73070–73080	X-ray exam of elbow
73090	X-ray exam of forearm
73092	X-ray exam of arm, infant
73100–73110	X-ray exam of wrist
73120–73130	X-ray exam of hand
73140	X-ray exam of finger(s)
73200	Ct upper extremity w/o dye
73201	Ct upper extremity w/dye
73202	Ct uppr extremity w/o&w dye
73206	Ct angio upr extrm w/o&w dye
73218	Mri upper extremity w/o dye
73219	Mri upper extremity w/dye
73220	Mri uppr extremity w/o&w dye
73221	Mri joint upr extrem w/o dye
73222	Mri joint upr extrem w/ dye
73223	Mri joint upr extr w/o&w dye
73500–73510	X-ray exam of hip
73520	X-ray exam of hips
73540	X-ray exam of pelvis & hips
73550	X-ray exam of thigh
73560	X-ray exam of knee, 1 or 2
73562	X-ray exam of knee, 3
73564	X-ray exam, knee, 4 or more
73565	X-ray exam of knees
73590	X-ray exam of lower leg
73592	X-ray exam of leg, infant
73600–73610	X-ray exam of ankle
73620–73630	X-ray exam of foot
73650	X-ray exam of heel
73660	X-ray exam of toe(s)
73700	Ct lower extremity w/o dye
73701	Ct lower extremity w/dye
73702	Ct lwr extremity w/o&w dye
73706	Ct angio lwr extr w/o&w dye
73718	Mri lower extremity w/o dye
73719	Mri lower extremity w/dye
73720	Mri lwr extremity w/o&w dye
73721	Mri joint of lwr extre w/o d
73722	Mri joint of lwr extr w/dye

ADDENDUM E.—UPDATED LIST OF CPT[1]/HCPCS CODES USED TO DESCRIBE CERTAIN DESIGNATED HEALTH SERVICES UNDER THE PHYSICIAN REFERRAL PROVISIONS—Continued

[Section 1877 of the Social Security Act]

73723	Mri joint lwr extr w/o&w dye
73725	Mr ang lwr ext w or w/o dye
74000–74020	X-ray exam of abdomen
74022	X-ray exam series, abdomen
74150	Ct abdomen w/o dye
74160	Ct abdomen w/dye
74170	Ct abdomen w/o&w dye
74175	Ct angio abdom w/o&w dye
74181	Mri abdomen w/o dye
74182	Mri abdomen w/dye
74183	Mri abdomen w/o&w dye
74185	Mri angio, abdom w or w/o dy
74210	Contrst x-ray exam of throat
74220	Contrast x-ray, esophagus
74230	Cine/video x-ray, throat/eso
74240–74245	X-ray exam, upper gi tract
74246–74249	Contrst x-ray uppr gi tract
74250	X-ray exam of small bowel
74290	Contrast x-ray, gallbladder
74291	Contrast x-rays, gallbladder
74710	X-ray measurement of pelvis
75552	Heart mri for morph w/o dye
75553	Heart mri for morph w/dye
75554	Cardiac MRI/function
75555	Cardiac MRI/limited study
75635	Ct angio abdominal arteries
76000	Fluoroscope examination
76006	X-ray stress view
76010	X-ray, nose to rectum
76020	X-rays for bone age
76040	X-rays, bone evaluation
76061–76062	X-rays, bone survey
76065	X-rays, bone evaluation
76066	Joint survey, single view
76085	Computer mammogram add-on
76090	Mammogram, one breast
76091	Mammogram, both breasts
76092	Mammogram, screening
76093	Magnetic image, breast
76094	Magnetic image, both breasts
76100	X-ray exam of body section
76101	Complex body section x-ray
76102	Complex body section x-rays
76120	Cine/video x-rays
76125	Cine/ video x-rays add-on
76150	X-ray exam, dry process
76370	CAT scan for therapy guide
76375	3d/holograph reconstr add-on
76380	CAT scan follow-up study
76390	Mr spectroscopy
76400	Magnetic image, bone marrow
76499	Radiographic procedure
76506	Echo exam of head
76511–76512	Echo exam of eye
76513	Echo exam of eye, water bath
76516–76519	Echo exam of eye
76536	Us exam of head and neck
76604	Us exam, chest, b-scan
76645	Us exam, breast(s)
76700	Us exam, abdom, complete
76705	Us exam, abdom, limited
76770	Us exam abdo back wall, comp
76775	Us exam abdo back wall, lim
76778	Us exam kidney transplant
76800	Us exam, spinal canal
76805	Us exam, pg uterus, compl
76810	Us exam, pg uterus, mult
76815	Us exam, pg uterus limit
76816	Us exam pg uterus repeat
76818	Fetal biophy profile w/nst
76819	Fetal biophys profil w/o nst
76825–76828	Echo exam of fetal heart
76830	Us exam, transvaginal
76831	Echo exam, uterus
76856	Us exam, pelvic, complete
76857	Us exam, pelvic, limited
76870	Us exam, scrotum
76872	Echo exam, transrectal
76873	Echograp trans r, pros study
76880	Us exam, extremity
76885	Us exam infant hips, dynamic
76886	Us exam infant hips, static
76970	Ultrasound exam follow-up
76977	Us bone density measure
76999	Echo examination procedure

INCLUDE the following CPT codes for echocardiography and vascular ultrasound:

93303–93304	Echo transthoracic
93307–93308	Echo exam of heart
93320–93321	Doppler echo exam, heart, if used in conjunction with 93303–93308
93325	Doppler color flow add-on, if used in conjunction with 93303–93308
93875–93882	Extracranial study
93886–93888	Intracranial study
93922–93924	Extremity study
93925–93926	Lower extremity study
93930–93931	Upper extremity study
93965–93971	Extremity study
93975–93979	Vascular study
93980–93981	Penile vascular study
93990	Doppler flow testing

INCLUDE miscellaneous other HCPCS level 2 codes for radiology and certain other imaging services:

G0050	Residual urine by ultrasound
G0131–132	CT scan, bone density study
G0188	Xray lwr extrmty-full lngth
G0202	Screening mammography digital
G0204	Diagnostic mammography digital
G0206	Diagnostic mammography digital
G0236	digital film convert diag ma
R0070	Transport portable x-ray
R0075	Transport port x-ray multipl

RADIATION THERAPY SERVICES AND SUPPLIES

INCLUDE CPT codes for all radiation therapy services and supplies in the CPT 70000 series:

77261–77263	Radiation therapy planning
77280–77295	Set radiation therapy field
77299	Radiation therapy planning
77300	Radiation therapy dose plan
77301	Radioltherapy dos plan, imrt
77305–77315	Radiation therapy dose plan
77321	Radiation therapy port plan
77326–77328	Radiation therapy dose plan
77331	Special radiation dosimetry
77332–77334	Radiation treatment aid(s)
77336–77370	Radiation physics consult
77399	External radiation dosimetry
77401–77416	Radiation treatment delivery
77417	Radiology port film(s)
77418	Radiation tx delivery, imrt
77427	Radiation tx management, x5
77431	Radiation therapy management
77432	Stereotactic radiation trmt
77470	Special radiation treatment
77499	Radiation therapy management
77520	Proton trmt, simple w/o comp
77522	Proton trmt, simple w/comp
77523	Proton trmt, intermediate
77525	Proton treatment, complex
77600–77620	Hyperthermia treatment
77750	Infuse radioactive materials
77761	Apply intrcav radiat simple
77762	Apply intrcav radiat interm
77763	Apply intrcav radiat compl
77776	Apply interstit radiat simpl
77777	Apply interstit radiat inter
77778	Apply iterstit radiat compl
77781–77784	High intensity brachytherapy
77789	Apply surface radiation
77790	Radiation handling
77799	Radium/radioisotope therapy

INCLUDE CPT codes for radiation therapy classified elsewhere:

31643	Diag bronchoscope/catheter
50559	Renal endoscopy/radiotracer
55859	Percut/needle insert, pros
61770	Incise skull for treatment
61793	Focus radiation beam
92974	Cath place, cardio brachytx

PREVENTIVE SCREENING TESTS, IMMUNIZATIONS AND VACCINES

The following CPT and HCPCS codes are excluded under § 411.355(h) as screening tests:

76085	Computer mammogram add-on
76092	Mammogram, screening
76977	Us bone density measure
G0103	Psa, total screening
G0107	CA screen; fecal blood test
G0123	Screen cerv/vag thin layer
G0124	Screen c/v thin layer by MD
G0141	Scr c/v cyto, autosys and md
G0143–G0145	Scr c/v cyto, thinlayer, rescr
G0147	Scr c/v cyto, automated sys
G0148	Scr c/v cyto, autosys, rescr
G0202	Screening mammography digital
P3000	Screen pap by tech w md supv
P3001	Screening pap smear by phys

The following CPT and HCPCS codes are excluded under § 411.355(h) as vaccines:

90657	Flu vaccine, 6–35 mo, im
90658	Flu vaccine, 3 yrs, im
90659	Flu vacine, whole, im
90732	Pneumococcal vaccine
90748	Hep b/hib vaccine, im
Q3018	Hepatitis B vaccine

DRUGS USED BY PATIENTS UNDERGOING DIALYSIS

The following HCPCS codes are excluded under § 411.355(g) as EPO and other dialysis related outpatient prescription drugs furnished in or by an ESRD facility:

J0635	Calcitriol injection
J0895	Deferoxamine mesylate inj
J1270	Injection, doxercalciferol
J1750	Iron dextran
J1755	Iron sucrose injection
J2915	NA Ferric Gluconate Complex
J2997	Alteplase recombinant
Q9920	Epoetin with hct <=20
Q9921	Epoetin with hct = 21
Q9922	Epoetin with hct = 22
Q9923	Epoetin with hct = 23
Q9924	Epoetin with hct = 24
Q9925	Epoetin with hct = 25
Q9926	Epoetin with hct = 26
Q9927	Epoetin with hct = 27
Q9928	Epoetin with hct = 28
Q9929	Epoetin with hct = 29
Q9930	Epoetin with hct = 30
Q9931	Epoetin with hct = 31
Q9932	Epoetin with hct = 32
Q9933	Epoetin with hct = 33
Q9934	Epoetin with hct = 34
Q9935	Epoetin with hct = 35

ADDENDUM E.—UPDATED LIST OF CPT[1]/HCPCS CODES USED TO DESCRIBE CERTAIN DESIGNATED HEALTH SERVICES UNDER THE PHYSICIAN REFERRAL PROVISIONS—Continued

[Section 1877 of the Social Security Act]

Q9936	Epoetin with hct = 36
Q9937	Epoetin with hct = 37
Q9938	Epoetin with hct = 38
Q9939	Epoetin with hct = 39
Q9940	Epoetin with hct >= 40

[1] CPT codes and descriptions only are copyright 2001 American Medical Association. All rights are reserved and applicable FARS/DFARS clauses apply.

[FR Doc. 01–27275 Filed 10–31–01; 8:45 am]

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Federal Register

Thursday,
November 1, 2001

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, and 129
Collision Avoidance Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125 and 129

[Docket No. FAA–2001–10910; Notice No. 01–12]

RIN 2120–AG90

Collision Avoidance Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to use airplane weight and performance characteristics to require a collision avoidance system on airplanes operating under part 121, 125, or 129. The current traffic alert and collision avoidance system (TCAS) rules for parts 121 and 125 require use of TCAS based on airplane weight and passenger-seating configuration criteria and, in some cases, combination passenger/cargo configuration criteria. Part 129 uses passenger-seating configuration and the type of airplane power plant. This proposal would require use of a collision avoidance system by all-cargo airplanes for the first time, and would standardize the requirements for all-cargo and passenger-carrying airplanes. In the past, cargo air carriers had small fleets which operated primarily at night. However, the air cargo industry has experienced rapid growth and cargo fleets are expanding. Also, cargo operations are increasingly occurring around the clock and those operations occur in airspace shared with passenger airplanes.

Therefore, the FAA is proposing collision avoidance system requirements for certain cargo airplanes to minimize the possibility of midair collisions involving a cargo airplane. In addition, this proposal would standardize the collision avoidance system requirements for part 121, 125, and 129 airplanes.

DATES: Send your comments on or before December 31, 2001.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify the docket number [FAA–2000–10910] at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Air Carrier Operations Branch, Flight Standards Service, AFS–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8321.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page *http://dms.dot.gov/search*.

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

Regulatory History

On January 5, 1989, the FAA issued the "Traffic Alert and Collision Avoidance System; Final Rule" (54 FR 940, January 10, 1989), which established requirements for the installation and use of TCAS on passenger-carrying airplanes used under parts 121, 125, 129, and 135. The final rule required parts 121 and 125 operators of large airplanes with a passenger seating configuration of more than 30 seats to have TCAS II installed and operational by December 30, 1991. Part 129 operators of turbine-powered airplanes, with a passenger seating configuration of more than 30 seats, were required to install TCAS II in those airplanes by December 30, 1991. Part 135 operators (known at the time as air taxi and commuter operators) and part 129 operators of turbine-powered airplanes, with a passenger seating configuration of 10–30 seats, were required to install TCAS I by February 9, 1995. Part 121 operators of combination cargo/passenger (combi) airplanes, with a passenger seating configuration of 10–30 seats, were required to install TCAS I by February 9, 1995.

During this rulemaking effort, Congress enacted the Airport and Airway Safety and Capacity Expansion Act of 1987 (Public Law 100–223), which among other things, directed the FAA to require TCAS II by December 30, 1991, on airplanes with a maximum passenger seating configuration of more than 30 seats.

Amendments to the TCAS Rule

In response to concerns that the aviation community could not comply with the statutory schedule for TCAS II equipage, the FAA proposed a modified schedule to phase-in TCAS II installation. Public Law 101–236, enacted on December 15, 1989, allowed the Administrator to extend the deadline for TCAS II installation for no more than 2 years. On April 3, 1990, the FAA amended the compliance schedule for TCAS II installation for parts 121, 125, and 129 operators (68 FR 13242, April 9, 1990). The revised phase-in compliance schedule required all affected airplanes to be equipped with TCAS II by December 30, 1993.

In October 1992, the Regional Airline Association petitioned for a temporary exemption and urged the FAA to extend the compliance date for the installation of TCAS I. Because of delays in equipment development and testing, the complexity of the equipment, and requirements for supplemental type certification, the FAA extended the compliance date for installing TCAS I for 1 year to December 31, 1995 (59 FR 67584, December 29, 1994).

On December 12, 1995, the FAA issued the "Commuter Operations and General Certification and Operations Requirements; Final Rule" (60 FR 65832, December 20, 1995), which, in part, required certain part 135 operators to conduct operations under part 121. The rule affected part 135 operators with airplanes having a passenger seating configuration of 10–30 seats. Before the "Commuter Rule," only combi airplanes were included under the 10–30 passenger seat criteria in § 121.356(b), which required TCAS I. The "Commuter Rule" added passenger airplanes to § 121.356(b) to cover the remaining 10–30 passenger seat airplanes transitioning from part 135 to part 121. In part 135, the TCAS rule for airplanes with a passenger seating configuration of 10–30 seats applies only to turbine-powered airplanes, but in part 121, the TCAS rule applies to all airplanes with a passenger seating configuration of 10–30 seats. Consequently, some piston-powered airplanes with a passenger seating configuration of 10–30 seats that were not required to have TCAS before the "Commuter Rule" were required to have TCAS after the compliance date of that rule. The amendment also revised the TCAS rule by including reference to TCAS I in § 121.356(c), which covers flight manuals.

Current Requirements

Traffic Alert and Collision Avoidance System (TCAS) is a general term for a family of airborne devices that function independently of the ground-based air traffic control (ATC) system and provide collision avoidance protection for a broad spectrum of airplane types. It is designed to serve as a safety back-up to the ATC system.

TCAS I provides proximity warnings to pilots in the form of traffic advisories (TAs), which display the intruding transponder-equipped traffic relative to the TCAS-equipped airplane. Traffic advisories generally include the range, altitude, and bearing of the intruding airplane. Current rules require at least TCAS I on: (1) Passenger or combi airplanes with a passenger seating configuration of 10–30 seats operated under part 121, and (2) turbine-powered airplanes with a passenger seating configuration of 10–30 seats operated under part 129 or 135.

TCAS II provides both TAs and recommended vertical escape maneuvers, known as resolution advisories (RAs). Resolution advisories provide pilots with information to change a flight path or prevent a maneuver that could cause insufficient separation between airplanes. TCAS II also coordinates RAs between two TCAS-equipped airplanes (i.e., each pilot would receive an RA that would not conflict with the other RA). Current rules require TCAS II on: (1) Large airplanes with a passenger seating configuration of more than 30 seats operated under part 121 or 125, and (2) turbine-powered airplanes with a passenger seating configuration of more than 30 seats operated in the United States under part 129.

The current TCAS requirements for parts 121, 125, and 129 are summarized in the table below:

14 CFR	Classification	Equipment requirements
121.356(a)	Large airplane, a passenger seating configuration of more than 30 seats, excluding any pilot seat.	TCAS II and a Mode S transponder.
121.356(b)	Passenger or combi airplane, a passenger seating configuration of 10–30 seats, excluding any pilot seat.	An approved traffic alert and collision avoidance system; if TCAS II is installed, it must coordinate with TCAS units that meet TSO C–119.
125.224(a)	Large airplane, a passenger seating configuration of more than 30 seats, excluding any pilot seat.	TCAS II and a Mode S transponder.
129.18(a)(1)	Turbine-powered airplane, a passenger seating configuration of more than 30 seats, excluding any pilot seat.	TCAS II and a Mode S transponder.
129.18(b)	Turbine-powered airplane, a passenger seating configuration of 10–30 seats, excluding any pilot seat.	An approved traffic alert and collision avoidance system; if TCAS II is installed, it must coordinate with TCAS units that meet TSO C–119.

TCAS transmits interrogations that elicit replies from radar beacon transponders in nearby airplanes. The level of protection provided by TCAS depends on the type of transponder the intruding airplane is carrying. For example, nearby airplanes equipped with a Mode A transponder will provide only range and azimuth information to the TCAS-equipped airplane; whereas, an airplane equipped with a Mode C or Mode S transponder will provide range, azimuth, and altitude information to the TCAS-equipped airplane. Mode S is a more precise transponder because it transmits in 25-foot increments; whereas, Mode C transmits in 100-foot increments. TCAS provides protection only from airplanes with an operating transponder.

Purpose of the Proposal

The FAA promulgated the TCAS rule in 1989 to protect air carrier passengers from midair collisions. This has the added benefit of protecting persons on the ground. Because the cargo air carriers traditionally transported few passengers, operated few airplanes, and operated primarily at night, the FAA determined that those cargo airplanes

did not represent a significant risk to passenger-carrying airplanes, which operated primarily during the day.

The FAA recognized that those few cargo airplanes would benefit some from the TCAS requirement for passenger airplanes because transponder-equipped cargo airplanes are displayed to pilots of TCAS-equipped passenger airplanes. Cargo airplanes also benefit because of the large number of passenger airplanes that are equipped with TCAS. In addition, the FAA determined that the cost/benefit analysis and risk level at that time did not support requiring cargo operators to equip their airplanes with TCAS.

In 1987, prior to the TCAS rule, the air cargo industry operated approximately 375 airplanes. Today, cargo air carriers operate approximately 1,150 airplanes and the demand for air cargo services is expected to continue growing at a rate of 5–6 percent per year over the next 10–20 years. The FAA believes that because the U.S. air cargo industry and daytime cargo operations have grown rapidly at high-density hubs, an increased risk of near midair collisions (NMACs) involving cargo and passenger airplanes exists. Furthermore, large total traffic volume and complexity within the National Airspace System (NAS) increase the challenge of maintaining safe separation among aircraft.

On February 6, 1999, a cargo airplane and a passenger airplane were involved in a hazardous situation when they passed within 1 mile horizontally, and 600 feet vertically from each other. The passenger airplane was equipped with TCAS and its pilot took action to avoid the cargo airplane. On March 2, 1999, a NMAC occurred over Salina, Kansas involving two cargo airplanes. Neither airplane was equipped with TCAS and the airplanes passed within an estimated one-half mile horizontal and 0 feet vertical separation of each other. These occurrences illustrate the potential of a collision between cargo and passenger airplanes or two cargo airplanes.

According to FAA data, since the installation of TCAS began, the number of pilot-reported NMACs dropped from 454 reports in 1990 to an all-time low of 194 in 1996. FAA data also disclose that from January 1, 1994, to January 1, 1999, pilots flying cargo airplanes filed four NMAC reports. Two incidents involved Federal Express airplanes, one NMAC involved an Empire Airlines, Inc., airplane, and one involved an Airborne Express, Inc., airplane. The NTSB has reported that no midair collisions involving large all-cargo transport airplanes have occurred. However, the FAA believes that the potential risk exists of a NMAC or a midair collision occurring involving a cargo airplane.

Therefore, the FAA proposes to use airplane weight and performance characteristics to encompass cargo as well as passenger airplanes and to standardize and clarify parts 121, 125, and 129. The FAA believes this would reduce the risk of midair collisions, increasing public safety in the air and on the ground.

Petition for Rulemaking

Summary of the Petition for Rulemaking

The Independent Pilots Association (IPA), representing pilots from United Parcel Service, petitioned the FAA in September 1996 to amend § 121.356 to require TCAS II on transport category airplanes flown in all-cargo, part 121 operations. According to IPA, requiring transport category cargo airplanes to be equipped with TCAS II may prevent collisions between cargo airplanes and between cargo and passenger airplanes operating in the same airspace. IPA maintains that a TCAS II equipage requirement would reduce the risk of death and serious injury to pilots, passengers of other airplanes, and persons on the ground.

IPA maintains that TCAS has a proven track record in reducing the risk of midair collisions. Further, the FAA has reported to Congress that TCAS provides an additional safety margin against midair collisions. According to IPA, the FAA and the National Air and Space Administration's Aviation Safety Reporting System have received several reports indicating that TCAS II was credited with preventing midair collisions.

IPA asserts that the FAA articulated its belief that TCAS provides a valuable backup to visual collision avoidance, right-of-way rules, and air traffic separation services when it issued the "Notification to Air Traffic Control (ATC) of Deviations from ATC Clearances in Response to Traffic Alert and Collision Avoidance System Resolution Advisories; Final Rule" (60 FR 50676). This rule authorizes pilots to deviate from their ATC clearance to respond to a TCAS RA.

IPA states that the cargo industry has experienced rapid growth over the past 15 years, and the cargo industry's present operations more closely resemble those of the passenger carriers. IPA asserts that cargo air carriers are now operating numerous daytime flights in addition to nighttime flights and share the same airspace with passenger airplanes. IPA states that cargo air carriers operate within a hub and spoke system in which large banks of flights arrive at and depart from the same airport within a short period of time. IPA believes this contributes to an increased workload for air traffic controllers and is further reason to require on-board collision avoidance for cargo airplanes. IPA also claims that late-night ATC system maintenance, sleep-deprived controllers, ATC computer and communications outages, and the development of the "Free Flight" program are all additional reasons to require TCAS.

Comments on the Petition for Rulemaking

The FAA published a summary of IPA's petition for rulemaking in the **Federal Register** on October 25, 1996 (61 FR 55230). The FAA received 350 comments in support of the petition, and none opposing it. A copy of the petition for rulemaking and comments received in response to the petition have been placed in the docket.

Commenters included the Air Line Pilots Association (ALPA), Allied Pilots Association (APA), Air Traffic Control Association, Inc. (ATCA), International Brotherhood of Teamsters (IBT), and Airline Professionals Association Teamsters Local 1224 (APAT). The FAA also received comments from 3 individual pilots, 314 pilots employed by Airborne Express, and 28 pilots employed by DHL Airways, Inc. (DHL). In addition, two comments were received from members of Congress, who forwarded correspondence from their constituents.

The APA states that the 1989 TCAS rule excluded small commuter airplanes that operate out of low traffic airports from the TCAS requirements. The APA also states that the regulation excluded cargo airplanes, which was an oversight. An individual pilot states that the lack of a uniform regulation that includes all transport category airplanes negates some of the safety enhancements gained by the introduction of TCAS. The IBT endorses and supports the FAA's recognition that TCAS is an effective collision avoidance system. The IBT comments that the FAA's confidence in TCAS permits, by regulation (14 CFR § 91.123), pilots to deviate from an ATC clearance in response to a TCAS resolution advisory.

The APAT and ALPA note that the FAA requires sophisticated equipment on cargo and passenger airplanes, such as ground proximity warning systems, airborne weather radar, windshear detection systems, altitude alerters, cockpit voice recorders, and flight data recorders. These commenters add that the safety item not common to passenger and cargo airplane operations is TCAS II. Many commenters generally indicate that the lack of TCAS on cargo airplanes compromises the safety of the traveling public. They state that cargo airplanes share the same airspace as passenger airplanes and that since the requirement to carry TCAS on passenger-carrying airplanes was issued, cargo operations have expanded significantly. The IBT theorizes that an increase in cargo operations increases the statistical probability of a midair collision involving a cargo air carrier.

Airborne Express pilots comment that there are over 700 arrivals and departures of cargo airplanes under control of the Indianapolis Air Route Traffic Control Center between the hours of 11:00 p.m. and 6:30 a.m. According to this group of commenters, these airplanes, which are not equipped with TCAS, fly over densely populated cities and may be carrying hazardous materials. Additionally, the APAT notes that passenger-carrying airplanes often conduct "red eye" flights at night, which may result in an increased risk for collisions. According to APAT, during the hours air carriers conduct "red eye" flights, airplanes often fly at flight levels not typically assigned for the direction the airplane is flying.

Airborne Express pilots and the APAT maintain that certain ATC computer functions are shut down for routine maintenance between the hours of 1:00 a.m. and 5:00 a.m. They argue that at such times, ATC uses its backup computers, which do not have the collision warning system that is installed on the primary computers. As such, the commenters believe that airborne collision avoidance systems are necessary.

The IBT, the APAT, and the Airborne Express pilots addressed the effects of nighttime operations on human circadian rhythms. According to those commenters, pilots and controllers who work at night suffer the effects of the body's circadian low-point, which results in a reduction of mental alertness and performance. Those commenters contend that it is during such periods that the air traffic facilities also are often shut down for maintenance. According to the commenters, pilots who feel the effects of this circadian low rely heavily on controllers during times of reduced ATC computer functions.

The FAA received several comments regarding the positive effect TCAS has had on rates of midair and near midair collisions. According to the APA, since the requirement to carry TCAS on passenger-carrying airplanes became effective in 1993, FAA statistics disclose a decline in reported NMACs from 38 in 1993 to 20 in 1996. The APAT states that pilot reports of all NMACs have dropped from 454 in 1990 to 240 in 1995.

Other commenters addressed specific fatal midair collisions. The APAT comments that the NTSB found that the collision between a McDonnell Douglas DC–9 and a Piper PA–12 over Cerritos, California, in 1986 might have been avoided if either the pilots or the controller had an automated collision avoidance system available to them. ALPA noted that the use of the see-and-avoid requirement to prevent midair collisions has severe limitations caused by physiological constraints of the human eye, cockpit window configurations, and current ATC procedures. ALPA cited the November 12, 1996, midair collision over India between a Saudi Boeing B–747 and a Kazakh Ilyushin IL–76 as evidence that highly experienced pilots cannot consistently visually detect and avoid traffic threats. In addition, ALPA indicated that TCAS II equipment may have prevented the accident.

ALPA also comments that ground fatalities do occur as a result of midair collisions. Specifically, ALPA refers to the 1978 midair collision over San Diego, California, which caused 7 deaths on the ground, and the Cerritos midair collision, which caused 15 deaths on the ground.

Regarding general safety issues, DHL pilots, ALPA, APAT, and IBT refer to the FAA's stated goal of "one level of safety." Those commenters indicate that this goal should include equipping cargo airplanes with TCAS. Also, they comment that one effect of the "one level of safety" goal is the requirement for certain commuter operators that formerly operated under the requirements of part 135 to now operate under the requirements of part 121. Those operators have been required to install TCAS in airplanes with a passenger seating configuration of 10 to 19 seats. However, ALPA points out that airplanes with a passenger seating configuration of 30 seats or less are only required to be equipped with TCAS I. ALPA states that TCAS I is an inferior system and does not provide pilots with RAs. According to ALPA, pilots using TCAS I are required to identify visually the "threat aircraft" before initiating avoidance maneuvers. DHL pilots state that all cargo airplanes must be equipped with TCAS if the FAA has a "zero accident" objective.

The FAA received comments stating that requiring TCAS on all transport airplanes would enhance safety and close a "loophole" that does not require cargo airplanes to be equipped with TCAS. The commenters indicate that the "loophole" requires certain passenger-carrying airplanes to carry TCAS, but excludes cargo airplanes from the same requirement.

The DHL pilots note that TCAS II has 360-degree traffic alerting capability in all weather. An individual pilot commented that the pilot of an airplane equipped with TCAS II would not know which direction a non-TCAS II-equipped airplane would turn during a traffic conflict.

Commenters state that the FAA is falling behind Europe and Japan in aviation safety improvements. Some commenters state that in the year 2000, the Europeans and Japanese will require TCAS on airplanes with 30 or more passenger seats, or weighing more than 33,000 pounds.

ALPA states that pilots have found TCAS II to be invaluable when operating in foreign airspace that has marginal ATC services. Commenters express the need for TCAS in North Atlantic operations because of ICAO's initiative to establish Reduced Vertical Separation Minimum (RVSM) in the nonradar environment of the oceanic airspace. ALPA states that the RVSM program reduces vertical separation to 1,000 feet for aircraft operating between 29,000 feet and 41,000 feet. The commenter states that it cannot find any requirement for TCAS II on those airplanes exercising RVSM privileges.

FAA Response to the Petition for Rulemaking

The FAA believes that this NPRM is responsive to the IPA's petition for rulemaking, although it is broader in scope. Inclusion of airplanes operating under parts 121, 125, and 129 would ensure that airplanes of similar weight and performance capability would be equipped with collision avoidance systems. This action will serve as the FAA's response to the petitioner's request to amend § 121.356.

Congressional Hearing

The U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Aviation, held a hearing on February 26, 1997, to discuss whether to require TCAS II on cargo airplanes. The hearing also addressed four near midair collisions that occurred in February 1997 and involved military aircraft and passenger airplanes. Individuals from the FAA, NTSB, United States Air Force (USAF), United States Navy (USN), ALPA, Nations Air Express, Inc.,

Independent Pilots Association (IPA), International Teamsters Airline Division (Teamsters), the National Air Transport Association (NATA), and the Cargo Airline Association (CAA) (formerly known as the Air Freight Association) testified at the hearing. Most witnesses supported requiring TCAS on cargo airplanes. NATA rejected the proposal citing minimal safety increases and an unjustifiable financial burden to air carriers. A transcript of the hearing and written testimonies submitted by the witnesses are in the public docket.

NTSB Recommendation

On September 9, 1999, the NTSB recommended that the FAA amend §§ 121.356, 125.224, and 129.18. The NTSB cited two NMACs that occurred in early 1999 involving airplanes that were not required to have TCAS II equipment installed. The NTSB recommended that the FAA require all aircraft of 15,000 kilograms (1kg. = 2.2lb.; 2.2 × 15,000= 33,000 pounds) or greater MCTOW, or more than 30 passenger seats, be equipped with TCAS II and an appropriate Mode S transponder.

The NTSB states that a valuable feature of TCAS II is its ability to coordinate escape maneuvers with TCAS II equipment on opposing airplanes. But when two potentially conflicting airplanes are not equipped with TCAS II, avoidance maneuvers chosen by the pilots may be uncoordinated and the two flight paths may continue to converge. The same outcome could result if one airplane is equipped with TCAS II and the other is not equipped with TCAS.

According to the NTSB, a draft implementation plan published by the European Civil Aviation Conference states that by January 1, 2000, passenger and cargo airplanes weighing more than 15,000 kilograms, or configured with more than 30 seats must be equipped with TCAS II to fly within European airspace. Several other countries are implementing similar TCAS requirements.

The NTSB also discusses the developing technology known as ADS–B. It states that although ADS–B may have a future as a collision avoidance system, that is not its primary function and no firm schedule or implementation plan has been established. The NTSB further states that many technical and research issues remain to be resolved before ADS–B can provide anti-collision capability comparable to that of TCAS equipment. A copy of the NTSB's recommendation is included in the public docket.

Recent Legislation

On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act (AIR–21) was enacted (Pub. L. 106–181). AIR–21 directs the FAA to require all cargo airplanes of more than 15,000 kilograms MCTOW to be equipped with collision avoidance equipment by December 31, 2002. AIR–21 also provides for an extension of up to 2 years for safety or public interest reasons.

AIR–21 defines collision avoidance equipment as "equipment that provides protection from mid-air collisions using technology that provides cockpit-based detection and conflict resolution guidance, including display of traffic; and a margin of safety of at least the same level as provided by the collision avoidance system known as TCAS II." This proposal is consistent with the statutory definition and mandate.

The Proposal

The FAA is proposing to amend §§ 121.356, 125.224, and 129.18 by changing the applicability criteria for collision avoidance system requirements. Rather than retaining the current passenger-seating configuration criterion to determine applicability, the FAA would use revised weight and performance criteria. As such, this proposed rule would standardize the collision avoidance system requirements for airplanes of similar size and performance capability. It would apply to cargo airplanes and other airplanes that are not required to have TCAS under current regulations.

Turbine-powered airplanes of more than 33,000 pounds maximum certificated takeoff weight (MCTOW) operated under part 121, 125, or 129 would be required to be equipped with TCAS II, or equivalent, and an appropriate Mode S transponder. Turbine-powered airplanes of 33,000 pounds or less MCTOW operated under part 121, 125, or 129 would be required to be equipped with at least TCAS I, or equivalent. All piston-powered airplanes, regardless of weight, conducting operations under part 121 or 125 would be required to be equipped with TCAS I, or equivalent.

This proposal incorporates the NTSB's regulatory recommendation. However, the FAA has excluded piston-powered airplanes of more than 33,000 pounds MCTOW from these proposed TCAS II requirements. The FAA has determined that TCAS I is more appropriate for those airplanes, considering their reduced performance characteristics.

The FAA's proposal is broader than the NTSB's recommendation. This proposal would require TCAS I on certain turbine-powered airplanes weighing 33,000 pounds or less MCTOW. Finally, the FAA notes that TCAS II and an appropriate Mode S transponder already are required for airplanes with a passenger seating configuration of more than 30 seats and most of these airplanes weigh more than 33,000 pounds MCTOW.

General Discussion of the Proposals

Current Applicability

Current rules require TCAS II on: (1) Large airplanes with a passenger seating configuration of more than 30 seats operated under part 121 or 125, and (2) turbine-powered airplanes with a passenger seating configuration of more than 30 seats operated in the United States under part 129.

Part 121 certificate holders operating passenger or combi airplanes, and part 129 turbine-powered airplanes that have a passenger seating configuration, excluding any pilot seat, of 10 to 30 seats must equip those airplanes with an approved traffic alert and collision avoidance system. (Part 125 only applies to airplanes with 20 or more passenger seats.)

Proposed Applicability

This proposed rule would, in part, provide for the installation and use of an appropriate collision avoidance system on all airplanes used under part 121, and most airplanes used under part 125 or 129. The proposal would standardize TCAS requirements based on airplane performance characteristics (either piston- or turbine-powered) and airplane weight. Although TCAS technology can apply to all aircraft, this proposal would apply only to airplanes. The proposal is not intended to apply to aircraft that are not airplanes (*e.g.*, helicopters).

The FAA intends to eliminate the current passenger-seating threshold test for determining collision avoidance equipage. The passenger-seating configuration criteria excludes cargo airplanes and airplanes with fewer than 10 passenger seats. The FAA has determined that, in the interest of meeting its safety goals, implementing weight and performance capability thresholds for collision avoidance system applicability would better reflect the type of airplanes that should be equipped with a collision avoidance system. As such, this proposed rule would include airplanes that may have been excepted from the TCAS requirements since 1989.

The Weight Threshold

A large airplane (defined in 14 CFR 1.1 as an airplane of more than 12,500 pounds MCTOW) that has a passenger seating configuration of more than 30 seats is 33,000 pounds or greater. The current TCAS rules have resulted in TCAS II equipage for airplanes of 33,000 pounds or greater MCTOW. Therefore, the FAA's proposal to use a weight criteria of 33,000 pounds MCTOW for TCAS II requirements does not change TCAS II requirements for the passenger-carrying airplanes.

The 33,000-pound MCTOW threshold is consistent with ICAO's TCAS equipage recommendation, which uses 15,000 kilograms MCTOW (33,000 pounds). The weight threshold would divide affected airplanes into two categories: (1) Airplanes that weigh more than 33,000 pounds MCTOW; and (2) airplanes that weigh 33,000 pounds or less MCTOW. In addition, the proposal specifies whether the requirements apply to turbine-powered or piston-powered airplanes.

The FAA recognized that the current TCAS rule language differs among parts 121, 125, and 129, especially in describing which airplanes are covered by the rule. Some of these differences can be standardized. This proposal would standardize those collision avoidance rules to the greatest extent possible. The FAA intends for the proposal to continue to cover all airplanes that currently are covered by the part 121, 125, and 129 TCAS rules.

Part 135

This proposal does not apply to airplanes operated under part 135. In 1995, the FAA transitioned all part 135 commuter air carriers with airplanes having 10 or more passenger seats into part 121, and they are currently required to have TCAS. The transition plan required the part 135 air carriers to meet the TCAS standards in part 121. The only scheduled carriers remaining in part 135 operate are those with 9 or less passenger seats. The NTSB did not recommend requiring collision avoidance equipment for part 135 operators.

While safety may be enhanced by requiring collision avoidance systems on part 135 cargo airplanes, it is appropriate for the FAA to study this issue for possible future rulemaking.

As in all rulemaking proposals, the FAA conducts extensive research to determine which airplanes should be included in any proposed rule. The FAA uses the best available data when developing and justifying new rules. The FAA recognizes that changes to its data may occur as it is updated and that some data may be inconclusive. For that reason, the FAA encourages the public to comment on the scope of the proposed rule, particularly on the airplanes to be covered by the proposed rule.

Equivalent

Unlike the current TCAS rules, this proposal would allow an equivalent system to be used in lieu of TCAS. However, as explained in the section entitled "ADS–B Technology" below, FAA approval would be required. To be considered as an alternative to TCAS, the system must be equivalent to and interoperable with TCAS. The FAA is interested in new technology that could improve safety.

Proposed Requirements for TCAS II, or Equivalent

This proposal would require TCAS II, or an approved equivalent collision avoidance system, on part 121, 125, and 129 turbine-powered airplanes of more than 33,000 pounds MCTOW. In addition, those airplanes would be required to be equipped with a Mode S transponder.

By using the term "turbine-powered airplane," the FAA would exclude piston-powered airplanes from TCAS II requirements, reducing the scope of the current §§ 121.356 and 125.18. The FAA is aware that current §§ 121.356 and 125.18 do not exclude piston-powered airplanes with a passenger seating configuration of more than 30 seats from TCAS II requirements. Several petitioners operating those airplanes requested exemptions from the TCAS II requirements and the FAA denied those requests. Since the 1989 TCAS rule, the FAA has learned that piston-powered airplanes lack the performance necessary to respond to TCAS II resolution advisories. These airplanes (mostly 1940s vintage) generally operate at low altitudes, where airplanes normally have TCAS I, rather than at altitudes, where airplanes normally have TCAS II.

The FAA is aware of piston-powered airplanes operating under part 121 that would be allowed to have less than TCAS II, even though they weigh more than 33,000 pounds MCTOW—the Douglas DC–6 and the Convair CV–240/340/440 series. However, these airplanes may no longer be conducting passenger-carrying operations with more than 30 passenger seats. The FAA believes that some Convairs (e.g., 600-series) converted to turbine engines may still be operating. The FAA specifically requests comments regarding piston-powered airplanes weighing more than 33,000 pounds MCTOW operating under part 121 or 125 and the reduction of scope of this proposed rule on piston-powered airplanes with a passenger seating configuration of more than 30 seats operating under part 121.

Proposed Requirements for TCAS I, or Equivalent

This proposal would require TCAS I or an approved equivalent collision avoidance system on: (1) Turbine-powered airplanes of 33,000 pounds or less MCTOW operated under part 121, 125, or 129; and (2) all piston-powered airplanes, regardless of weight, operated under part 121 or 125. This would capture the remaining part 121 and 125 airplanes not covered under existing TCAS II requirements. Operators would be allowed to equip the affected airplanes with TCAS II, or an equivalent system, in lieu of TCAS I.

Part 129 includes certain piston-powered airplanes that are too small to be operated practically with a collision avoidance system. Such airplanes do not operate at high altitudes or airspeeds. Therefore, TCAS I requirements under part 129 would continue to apply only to turbine-powered airplanes.

This proposal would set forth a new requirement for passenger airplanes operating under part 125 with a passenger seating configuration of 30 seats or less (*i.e.*, 20–30 passenger seats). Unlike parts 121 and 129, part 125 currently does not include TCAS I requirements for those airplanes. The FAA has determined that airplanes of similar weight, performance capability, and operating environment should be equipped with similar collision avoidance systems. The FAA is aware that this proposal for part 125, similar to part 121, may require a collision avoidance system on DC–6s and Convairs. However, consistent with the TCAS I requirements proposed in part 121, turbine-powered airplanes of 33,000 pounds or less MCTOW, and any piston-powered airplane regardless of weight under part 125 would be required to be equipped with TCAS I.

Plain Language in Government Writing

In response to the June 1, 1998, Presidential memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. You can find more information about the Presidential memorandum and the plain language initiative at http: www.plainlanguage.gov.

The FAA is proposing amendments to §§ 121.356, 125.224, and 129.18 in a table format. The FAA specifically requests comments on whether these proposed amendments are in clear language, and whether the table format is easy for the reader to understand.

Use of "You" versus "Pilot" or "Certificate Holder".

Under current §§ 121.356, 125.224, and 129.18, the FAA uses the terms "person" and "certificate holder" to indicate who the rule applies to. The FAA proposes to standardize this and use the term "you" to apply to certificate holders and pilots operating the affected airplanes. Specifically, in part 121, this revision would clarify that the pilots, in addition to the certificate holder, are responsible for ensuring that an airplane meets the appropriate collision avoidance requirements before operating that airplane. Section 91.221(b) of 14 CFR states that "[e]ach person operating an aircraft equipped with an operable traffic alert and collision avoidance system shall have that system on and operating." The FAA would reiterate this responsibility in the proposed collision avoidance rules in parts 121 and 125.

Pilots operating non-U.S.-registered airplanes under part 129 are not required to possess U.S. pilot certificates. Furthermore, foreign air carriers operating under part 129 primarily operate foreign-registered airplanes; therefore, the proposed rule would be applicable only to the foreign air carrier. The term "you" would not mean the pilots.

Compliance Schedule

The FAA proposes that operators be required to equip affected airplanes by October 31, 2003. The Wendell H. Ford Aviation Investment and Reform Act (Public Law 106–181) directs the FAA to require collision avoidance equipment by December 31, 2002, and allows a 2-year extension for safety or public interest reasons. ICAO recommended a compliance date of January 1, 2003.

The FAA determined that a compliance date of October 31, 2003, would provide adequate time for air carriers to schedule the installation of TCAS equipment during a major C or D maintenance check. The FAA chose October 31, 2003, to avoid logistical problems that may occur during the holiday season and to ensure air carriers encounter few complications meeting the compliance date. It would not be the FAA's policy to grant exemptions when this rule is final.

Technical Standard Orders (TSOs)

The FAA issued TSO C–119a for production of TCAS II units, which required all manufacturers to use a version of the collision avoidance system logic designated as TCAS II version 6.02. Use of TCAS II version 6.02 revealed many shortcomings. As a result, the FAA issued Airworthiness Directives (ADs) requiring all operators to upgrade their system logic to version 6.04A Enhanced. Operators were required to comply with the ADs by December 31, 1994. Airplanes currently required to have TCAS II are equipped with version 6.04A Enhanced or version 7.0.

TCAS II version 7.0, manufactured under TSO C–119b, contains several enhancements to surveillance performance and changes to the collision avoidance logic software. Some of the more significant changes include: (1) Permitting a reversal of an RA in TCAS–TCAS encounters in which one airplane does not follow its RA, (2) improving performance in multiple airplane encounters, (3) clarifying potentially ambiguous phrases in aural advisories, (4) adding a horizontal miss distance filter to reduce nuisance RAs, and (5) eliminating false/nuisance TAs in RVSM operations.

TSO C–119b also provides the basis for design approval of the system known as Airborne Collision Avoidance System (ACAS II). ACAS II is the International Civil Aviation Authority (ICAO) designation for the collision avoidance system required by many foreign civil aviation authorities. ACAS II is equivalent to TCAS II version 7.0.

Grandfathering

This proposal would not require a retrofit of TCAS II version 7.0 for airplanes already equipped with TCAS II version 6.04A Enhanced before the publication date of this NPRM. Technology changes rapidly and the FAA attempts to balance the application of new technology with its role to promulgate reasonable regulations. The FAA has a responsibility to apply the latest technology, but it must do so without overwhelming certificate holders with equipment retrofits. Although the FAA desires all TCAS II version 6.04A Enhanced units to be replaced with version 7.0, the FAA proposes to allow operators with airplanes equipped with TCAS II version 6.04A Enhanced to continue to operate those airplanes with that system until the TCAS needs replacement (*i.e.*, can no longer meet TSO standards).

Certificate holders electing or required to install TCAS II on their airplanes would have to install TCAS II version 7.0 on airplanes that do not have TCAS II equipment before November 1, 2001. This also would apply to airplanes that are placed on a certificate holder's operations specifications after October 31, 2003.

Certificate holders operating airplanes installed with TCAS II version 6.04A Enhanced before November 1, 2001, would be able to continue to operate those airplanes with that TCAS unit beyond October 31, 2003, until the TCAS unit can no longer be repaired to TSO C–119a standards (version 6.04A Enhanced). At that time, the certificate holder must replace the unit with TCAS II version 7.0. This grandfathering privilege also would apply to those operators that buy, sell, or lease airplanes with existing version 6.04A Enhanced units installed. The FAA expects operators would encounter minimal costs to upgrade existing TCAS II units (version 6.04A Enhanced) to version 7.0. Operators could upgrade many of the existing units with a software change and/or a single chip.

Early Compliance

The FAA is proposing a new paragraph at the end of existing sections 121.356, 125.224, and 129.18, which would apply until the principal revision takes effect November 1, 2003. These new paragraphs apply to all airplanes on which TCAS II is installed for the first time after the publication of the NPRM. These new paragraphs would require that such airplanes be operated with TCAS II, version 7.0. We believe that it would be in the public interest to require that these TCAS units take full advantage of TCAS II, version 7.0. We note that this would require that operators preparing to comply on November 1, 2003, who install TCAS II, in effect would be required to comply early for that airplane when they first operate the airplane with version 7.0 installed. This operational requirement would include fully trained flight crews for that airplane. We specifically invite comments on this part of the proposal.

Training

All-cargo operators with pilots who have never used TCAS and must now comply with any collision avoidance final rule will have to train their pilots on the use of TCAS. Passenger-carrying operators with pilots who have used TCAS all along will need to train their pilots for differences training between version 6.04A Enhanced and version 7.0. While there are differences between the two versions, most differences are not readily discernible to the pilot. The differences that may be discernible

(aural annunciation and display) should be easily understood once pilots are aware of them. Differences training would be required with a minimum of a bulletin to pilots. There are no special markings added by the manufacturer of the TCAS equipment or by the FAA that would make the pilot aware of which version is installed. Airplane operating practices recommended for version 6.04A Enhanced should be continued when operating with version 7.0.

ADS–B Technology

Groups within the aviation industry have urged the FAA and Congress to allow for the development of an alternative collision avoidance system before imposing a requirement that cargo carriers equip their airplanes with TCAS. UPS Aviation Technologies, formerly known as II Morrow, Inc., is developing a technology called Automatic Dependent Surveillance-Broadcast (ADS–B).

ADS–B is intended to support surveillance of aircraft while airborne and on the ground. Surveillance capabilities include primary radar and secondary surveillance radar. Primary radar, a ground-based system, detects actual aircraft location by measuring reflected energy from the target. Secondary surveillance radar, also known as Mode S, interrogates aircraft transponders and determines aircraft location and other information through the reply. ADS–B uses the global positioning system (GPS) and a radio frequency link to broadcast information between aircraft equipped with ADS–B as well as between aircraft and ground-based ADS–B receivers. An aircraft equipped with ADS–B would broadcast its aircraft identification, along with position, velocity, and other time-sensitive surveillance information to other aircraft and would receive the same information from other aircraft. These capabilities are only fully realized when all aircraft in the system have an operating ADS–B system.

ADS–B may have a number of potential surveillance capabilities that may enhance aircrew situational awareness, and provide enhanced surveillance capabilities for ATC where none currently exists (e.g., oceanic airspace and areas not currently under positive control), and may provide a basis for collaborative activities, such as closely spaced parallel approaches. The FAA, UPS Aviation Technologies, ICAO, air cargo operators, manufacturers, and other industry segments have formed a working group referred to as Radio Technical Commission for Aeronautics (RTCA) Special Committee No. 186 (SC–186) to develop standards for ADS–B.

The FAA recognizes that ADS–B is being evaluated as a potential equivalent collision avoidance system to that of TCAS II, and believes that ADS–B technology may be promising as a surveillance tool, providing situational awareness for flight crewmembers. The cockpit display of traffic information also will enhance situational awareness in positive control airspace. However, the FAA believes there are several significant issues that pose challenges to its use as a collision avoidance system and thus its consideration as an equivalent system to TCAS II. Nonetheless, the FAA has structured this proposal to allow the use of ADS–B (or any other future technology) as an alternative to TCAS as long as these challenges are resolved. Any equivalent must be shown to provide the same level of safety and coordinated maneuvers as presently available with TCAS.

The FAA has determined that any equivalent to TCAS II must be interoperable with TCAS II. While ADS–B may provide an opportunity for early detection of traffic, ADS–B has not been developed to provide RAs or to perform coordinated maneuvers with the many TCAS- and transponder-equipped aircraft in the NAS. The current proposed version of ADS–B operates only with ADS–B-equipped airplanes and ground-based ADS–B receivers; whereas, TCAS II-equipped airplanes are afforded collision avoidance protection from other TCAS II- and all transponder-equipped airplanes. ADS–B will allow like-equipped airplanes to be displayed at considerable ranges, although only an airplane equipped with ADS–B will be able to detect another airplane equipped with ADS–B. Considering the worldwide magnitude of TCAS installations and projected increase in TCAS II/ACAS II installations to meet international requirements, a system that is not interoperable with TCAS would require significant costs for the high levels of equipage to realize the safety benefits equivalent to TCAS. For the FAA to accept ADS–B as an alternative to TCAS II, those wishing to make the case for ADS–B before the FAA must fully resolve these issues before the FAA will consider such a proposal.

Airplanes that may be equipped with ADS–B and TCAS II would assign priority to TCAS II as the collision avoidance system of last resort, with ADS–B as part of an airborne surveillance system. The FAA is concerned about the possible display of traffic from multiple sources such as TCAS II, ADS–B. and Traffic Information Services (TIS). How it is to be displayed and how the data may or may not be fused together into the display are but some of the issues that must be resolved when multiple traffic information is displayed to the flight crew. The problems related to data fusion and the fact that this data may come from avionics certified to different levels may be difficult to resolve. Those wishing to introduce multiple sources of data into the cockpit have the burden of resolving those issues to the satisfaction of the FAA. The FAA currently approves ADS–B for VFR-only flight in a non-radar environment.

The FAA has relied upon independent communication, navigation, and surveillance (CNS) capabilities for decades to provide safety in the NAS. The FAA recognizes that these are not the only components contributing to safety; however, independence of CNS capabilities allows a pilot to complete a flight safely to a destination even with the loss of any one of the airplane's CNS components. For example, with the loss of surveillance, whether it is primary radar or secondary surveillance radar, a pilot can still navigate and report the airplane's position through communications with ATC. This independence is compromised in a system where navigation and surveillance functions are tied to a single system. ADS–B relies on output from on-board navigation systems for position information. This navigation information provides a dependent surveillance system. A failure in the navigation system, whether on-board the airplane or a broader systemic failure, would result in simultaneous loss of navigation capability and the surveillance function (situational awareness).

Today, TCAS II functions independently from ground-based communication, navigation, and surveillance systems. TCAS II provides its own accuracy and is designed to provide collision avoidance in the event of a mechanical or human operational failure. ADS–B functioning as the method of primary ATC and as a replacement for TCAS II creates a scenario whereby a failure in ADS–B could affect the primary and backup means of separation. Any use of ADS–B as a replacement to TCAS II must be able to address this independence issue and demonstrate other acceptable methods of achieving this redundancy.

The international aviation community also has expressed concern about the potential use of ADS–B data for

collision avoidance. The ICAO Secondary Surveillance Radar Improvements and Collision Avoidance Systems Panel/Working Group 2 (SICASP/WG2) forwarded a position paper to RTCA–SC186 on July 31, 1997, on the use of ADS–B data for collision avoidance. The SICASP is responsible to the ICAO Air Navigation Commission for developing and reviewing proposals for operational technical procedures of airborne separation assurance systems, as well as drafting ICAO Standards and Recommended Practices (SARPs) relating to airborne collision avoidance systems and SSR improvements.

The SICASP/WG2 argues that ACAS II (TCAS II version 7.0) is a last resort safety function. Its purpose is to prevent collision when other means of separation assurance have failed. Therefore, it must be independent of those other means of separation assurance because a risk of collision implies a failure in the other means of separation assurance.

SICASP/WG2 states that ADS–B is expected to broadcast an aircraft's navigation data, and that separation assurance could use such navigation data. They further argue that this, however, increases the need for collision avoidance to provide protection that is independent of ADS–B. Where any proposed collision avoidance function is based on ADS–B data, it must be proved that the data and the overall design provide sufficient integrity, reliability and availability, bearing in mind the elements common to separation assurance and collision avoidance.

SICASP/WG2 states that it believes ADS–B can be used to improve ACAS II provided such use does not undermine the present degree of ACAS II independence. The working group states that any new collision avoidance system based on ADS–B would need to:

(i) Have the other aircraft fitted with some component (*e.g.*, ADS–B);

(ii) Coordinate resolution advisories when both aircraft in an encounter are equipped with ADS–B;

(iii) Coordinate with the existing ACAS II; and

(iv) Be demonstrated to meet all the performance requirements of ACAS II.

Any proposals to provide ADS–B as a replacement to TCAS II must address the above issues raised by ICAO to the satisfaction of ICAO.

The FAA will continue to support the development of ADS–B and any other technology that has the potential to improve the collision risk reduction, which currently is provided by TCAS II. ADS–B technology is still in a development phase and many of the technical standards for ADS–B have not been developed in the United States or internationally. It is not known when this technology will be fully developed or available to the industry; therefore, its potential is also unknown. Furthermore, the global mandates for TCAS II, NAS modernization and future changes in operations (e.g., Free Flight) provide the impetus for a strong fundamental system that will allow for changes to take place in a manner that does not compromise safety.

In summary, any alternatives to TCAS II deemed to be potential equivalents must demonstrate performance of the same functions and provide interoperability with TCAS II to function in an NAS environment that will exist for many years to come. The FAA believes that TCAS II features such as automated TAs, RAs, and coordinated maneuvers with other TCAS II-equipped airplanes are essential to any collision avoidance system of the future. Also critical is the need to have the largest practicable population of airplanes in the local sky available to the collision avoidance system so that the maximum amount of protection can be provided. While the FAA today believes that TCAS II may be the only system that can meet these safety criteria, it is willing to support any other systems that meet those same safety criteria. The FAA has always been open to innovative solutions to safety.

Related Activity

Other Countries Requiring Collision Avoidance Systems

Some countries already require, and several countries are moving toward mandating, the installation and use of collision avoidance systems. The Eurocontrol Airborne Collision Avoidance System Policy Task Force completed a policy, which specifies that ACAS II be required for airplanes operating in certain European airspace effective January 1, 2000. The policy requires implementation of ACAS II by all air carriers operating airplanes with more than 30 passenger seats, or weighing more than 15,000 kilograms (33,000 pounds). This policy also requires cargo airplanes to be equipped with ACAS II (TCAS II version 7.0) and applies to any operator entering Eurocontrol-member countries.

Also, France, Germany, and the United Kingdom have issued regulations implementing this policy with the provision that a petitioner may request relief from the rule until March 31, 2001, only if ACAS II equipment is unavailable.

In addition, the Japanese Government recently mandated TCAS operation within its airspace effective January 1, 2001, for all Japanese-registered airplanes with more than 30 passenger seats, or weighing more than 15,000 kilograms. Equipage of other airplanes desiring to fly in Japanese airspace will be achieved through regional agreements.

India mandated TCAS II for all airplanes operating in Indian airspace on January 1, 1999, and Australia has issued regulations requiring TCAS II equipage on airplanes operating in Australian airspace no later than January 1, 2000. Canada currently has rulemaking in progress that contains provisions for installation of TCAS on passenger and cargo airplanes.

TCAS II Version 7.0 for RVSM Operations

The FAA is beginning to plan implementation of Reduced Vertical Separation Minimum (RVSM) operations in U.S. domestic airspace and has considered a preliminary target year of 2004–2005. After a detailed review of implementation costs, benefits and tasks, the FAA will coordinate a firm implementation date with the user community. Federal regulations and ICAO documents base RVSM approval on stringent criteria for altimetry system error, automatic altitude-keeping, altitude alert, and transponders.

RVSM has an effect on TCAS II requirements. The FAA anticipates that when RVSM is implemented in U.S. domestic airspace, those airplanes that are required to be equipped with TCAS II will be required to upgrade to TCAS II version 7.0, as amended. In oceanic RVSM operations, TCAS II version 6.04A Enhanced has produced unwarranted TAs and, in some slow overtake situations, has produced multiple nuisance TAs. The FAA does not believe this situation will be acceptable in the high-density air traffic environment of domestic RVSM operations in the United States. Further, the FAA also is recommending version 7.0 modification for RVSM operations in oceanic airspace, in the interest of global mandates for TCAS II version 7.0.

Reference Material

Estimating Potential Risk Reduction Associated With TCAS II Equipage of Cargo Airplanes

MITRE Corporation analyzed the relative risk reduction resulting from TCAS II equipage of cargo airplanes. MITRE sampled 14 terminal areas that exhibit significant air cargo activity, but that also include diverse traffic types.

Using flight data from each terminal area, MITRE estimated the frequency of encounters between airplanes in different operational categories (cargo, passenger, and general aviation).

By combining the estimates of encounter frequencies with risk reduction factors for TCAS II version 7.0, MITRE (1) compared the risk of a midair collision in a pre-TCAS environment to that existing with equipage of TCAS on passenger airplanes; and (2) estimated the potential risk reduction with TCAS II equipage of cargo airplanes. MITRE based its safety data for the report only on TCAS II version 7.0. The difference between the risk reduction factors of TCAS II version 7.0 and version 6.04A Enhanced is nonconsequential; therefore, the FAA has determined that the findings in this report are applicable to TCAS II version 6.04A Enhanced.

MITRE estimated that installing TCAS II on passenger airplanes has led to an overall 90-percent reduction in the risk of a midair collision for all airplane types, including cargo airplanes. If cargo airplanes were equipped with TCAS II, the remaining 10-percent reduction of risk of a midair collision could be further reduced by another 3 percent. MITRE estimated that the risk reduction to cargo airplanes alone would be significant. A copy of MITRE's report is in the docket.

Paperwork Reduction Act

Information collection requirements in the proposed amendment to parts 121, 125, and 129 previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB control No. 2120–0008. The potential paperwork burden is any recordkeeping required to maintain the list of those pilots who have completed training and are certified as to their proficiency on the collision avoidance system operation. These recordkeeping requirements already are covered under the Paperwork Reduction Report entitled "Operating Requirements; Domestic, Flag, and Supplemental Operations."

Compatibility With ICAO Standards

International Standards and Recommended Practices (SARPs), Annex 6 to the Convention on International Civil Aviation, Part I, seventh edition, July 1998 has the following four recommendations addressing collision avoidance systems:

6.18 Aeroplanes Required To Be Equipped With an Airborne Collision Avoidance System (ACAS II)

6.18.1 From 1 January 2003, all turbine-engined aeroplanes of a maximum certificated take-off mass in excess of 15,000 kg. or authorized to carry more than 30 passengers shall be equipped with an airborne collision avoidance system (ACAS II).

6.18.2 From 1 January 2005, all turbine-engined aeroplanes of a maximum certificated take-off mass in excess of 5,700 kg. or authorized to carry more than 19 passengers shall be equipped with an airborne collision avoidance system (ACAS II).

6.18.3 Recommendation.—All aeroplanes should be equipped with an airborne collision avoidance system (ACAS II).

6.18.4 An airborne collision avoidance system shall operate in accordance with the relevant provisions of Annex 10, Volume IV.

FAA Discussion of ICAO SARPs

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO SARPs to the maximum extent practicable. If this NPRM is adopted unchanged with respect to the ICAO SARPs, the FAA intends to file a difference with ICAO. The FAA has reviewed the corresponding ICAO SARPs and has identified the following differences with these proposed regulations.

The FAA believes that ICAO should actively encourage the use of ACAS II and agrees in principle with the SARPs. However, the FAA is concerned that some aspects of the SARPs may be unrealistic. ACAS II is appropriate for large, transport category airliners, which have been successfully using the equivalent (TCAS II) in the United States for several years. However, some small airplanes lack the performance capability to respond to RAs provided by ACAS II (TCAS II version 7.0) and therefore would receive no benefit from the recommendation. The FAA believes that this NPRM provides a reasonable alternative for those airplanes for which ACAS II would be inappropriate. The FAA has considered the aerodynamic capability of certain airplanes and does not agree that ACAS II/TCAS II is the appropriate level for airplanes with 10–30 passenger seats. The FAA currently mandates TCAS I for those airplanes and has done so for more than 10 years. Many of the 10–30 passenger-seat airplanes currently using TCAS I weigh less than 5,700 kilograms (12,500 pounds). The FAA also has considered the cost of installing equipment that cannot be fully utilized by certain airplanes. The FAA notes, however, that this proposal partially exceeds ICAO SARPs in that the FAA also requires TCAS equipage for those airplanes with a passenger seating configuration of 10–30 seats, instead of 19–30 seats.

The FAA fully desires that all TCAS II/ACAS II users have the latest version (version 7.0) and the FAA believes that TCAS II version 7.0 has additional benefits. However, many airplanes currently required to have TCAS II have had version 6.04A Enhanced installed for several years. As described in the section entitled "Grandfathering," an alternative proposed in this NPRM is to allow airplanes that already are equipped with TCAS II version 6.04A Enhanced to continue using that version until those particular units can no longer be repaired to TSO C–119a standards. Air carriers that are subject to a TCAS II mandate for the first time must equip their applicable airplanes with TCAS II version 7.0. Eventually, airplanes operating under parts 121, 125, and 129 that are required to have TCAS II would be required to be equipped with TCAS II version 7.0 by virtue of the fact that version 6.04A Enhanced units will need replacement in the future.

Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal

governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses the FAA has determined that this proposed rule: (1) Has benefits that justify its costs; is "a significant regulatory action," as defined in Executive Order 12866; and is "significant," as defined in the Department of Transportation's regulatory policies and procedures (44 FR 11034, February 26, 1979); (2) would have a significant impact on a substantial number of small entities; (3) would not constitute a barrier to international trade; and (4) would not impose an unfunded mandate on State, local, or tribal governments, or the private sector. These analyses are available in the docket and are summarized below. The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in any final regulatory evaluation.

Introduction

This regulatory evaluation examines the economic impacts of a notice of proposed rulemaking to require part 121, 125, and 129 operators to install and use certain collision avoidance systems (CAS) by October 31, 2003. Part 121, part 125, and part 129 passenger airplanes must currently comply with the existing TCAS requirements, which are based, in part, on passenger-seating configuration. The proposed rule extends the collision avoidance system requirements to part 121, part 125, and part 129 all-cargo airplane operations, and to part 125 operators of passenger airplanes configured with 20–30 seats. However, the FAA is not aware of any part 125 operators that conduct passenger service with airplanes with 20–30 passenger seats that would be affected by this rule.

Benefits

The expected benefit of this rule is a reduction in the risk of midair collisions involving at least one cargo airplane. The risk of midair collisions for the potentially affected operators is very small, not one has occurred since the issuance of "Traffic Alert and Collision Avoidance System; Final Rule" (54 FR 940, January 10, 1989) requiring TCAS on passenger air carrier airplanes. However, the risk of midair collision involving cargo airplanes is real and such a collision could involve a passenger airplane.

The FAA performed a risk assessment in order to approximate the risk reduction that would be provided by this proposed rule. This assessment approximated that there would be a 40 percent chance of at least one Mid-Air Collision (MAC) involving a cargo airplane in U.S. airspace during the next 20 years. This proposed rule would reduce that risk to approximately one percent.

It is estimated that cargo airplanes could experience a reduction in their MAC risk by about 94 percent as compared to the current risk by installing TCAS II.

In addition, if this proposed rule is implemented, it is estimated that passenger airplanes would experience approximately a 17-percent risk reduction, as compared to the present risk.

Costs

Operators of existing all-cargo airplanes that have not been equipped with TCAS and newly manufactured all-cargo airplanes would incur the cost of the proposed rule. Over a 20-year horizon, the present value total cost of the proposed rule is projected to be $176 million. This cost does not include the cost of air carriers that have voluntarily equipped their fleets with TCAS or the costs of airplanes that have been equipped with TCAS because TCAS is required by a foreign government.

The proposed rule would require the installation of TCAS II, or equivalent, only on turbine-powered all-cargo airplanes of more than 33,000 pounds MCTOW (Maximum Certificated Takeoff Weight) which are operated by part 121, 125 or 129 operators. The proposed rule would also require the installation of TCAS I, or equivalent, on other all-cargo airplanes operated by part 121and 125 operators. In general, this would include turbine-powered cargo airplanes of 33,000 pounds or less MCTOW and all piston-powered cargo airplanes regardless of weight.

TCAS II, Part 121 Costs

The three TCAS II manufacturers reported that the average cost of TCAS II elements, as described above, for a transport category cargo airplane is between $130,000 and $200,000. One company indicated that if purchased in quantity, the cost of a TCAS II system would be between $80,000 to $145,000 per airplane. The manufacturers also estimated that it would cost between $50,000 and $70,000 (depending upon the specific airplane model) to install a TCAS II unit on an existing airplane. This results in a possible range of prices for a TCAS II system installed in an existing airplane of $130,000 to $270,000 or an average of $200,000. The actual price would depend on a number of factors including: the type of unit installed, the number of units ordered, whether or not it was necessary to include a display unit in the purchase price, etc. Some airplanes may not need a separate TCAS display unit because the TCAS information can be displayed on an airplane's existing EFIS (Electronic Flight Information Display System).

Based on these reported costs, for cost calculating purposes, the FAA used $211,000 for the initial costs of installing a TCAS II system into an existing airplane. This figure is estimated to include the necessary spare parts inventory.

The three TCAS II manufacturers reported that the TCAS II element costs would be identical for new and for existing airplanes. The FAA estimates that the initial (equipment plus installation) cost per newly manufactured cargo airplane would be $171,000.

In addition to the initial costs of the TCAS II units, the air carriers would also incur annual O&M expenses. The FAA estimates that the annual O&M expenses for TCAS II units to be $1 per flight hour. Based on an estimated utilization rate of 2,000 hours per airplane per year, and the fleet flight hours estimated in Tables VI–1 and VI–2, the FAA estimates that the total non-discounted O&M expenses for the existing fleet would be approximately $16,000,000 and $6,000,000 for the newly manufactured fleet.

The FAA estimates that the incremental fuel costs resulting in the weight added by the TCAS II System would be approximately $0.36 per flight hour. This results in a total non-discounted incremental fuel cost of approximately $6,000,000 for the existing fleet and $2,000,000 for the newly manufactured fleet.

The FAA estimates that the cost of pilot training would be approximately 0.05 times the cost of the TCAS unit itself. This results in a training cost of approximately $7,000 per unit per year. The total non-discounted cost of pilot training, for the 20 year analysis period, is estimated to be approximately $57,000,000 for the existing fleet and $22,000,000 for newly manufactured cargo airplanes.

The FAA has estimated that the total undiscounted TCAS II costs of the proposed rule, for the existing fleet during the 20 year analysis period, would be approximately $166,000,000 and that the discounted present value of the total costs of the proposed rule, for the existing fleet over the next 20 years, would be approximately $117,000,000.

The FAA has estimated that the total undiscounted TCAS II costs of the proposed rule, for the newly manufactured fleet during the 20-year analysis period, would be approximately $82,000,000 and that the discounted present value of the total costs of the proposed rule, for the newly manufactured fleet over the next 20 years, would be approximately $40,000,000.

The FAA has estimated that the total undiscounted costs of the proposed rule during the 20 year analysis period would be approximately $248,000,000 and the discounted present value of the total costs of the proposed rule over the next 20 years would be approximately $157,000,000.

TCAS I, Part 121 Costs

The FAA estimates that the undiscounted costs of retrofitting the existing all-cargo fleet with TCAS I would be about $7,000,000.

The FAA estimates that the total non-discounted Operating & Maintenance (O&M) expenses for the existing fleet would be approximately $4,000,000.

The FAA estimates that the total non-discounted incremental fuel cost is approximately $1,000,000 for the existing fleet.

The FAA estimates that the total non-discounted incremental pilot training cost is approximately $7,000,000 for the existing fleet. The FAA estimates that the total undiscounted TCAS I costs of the proposed rule, for the existing fleet during the 20-year analysis period, would be approximately $19,000,000 and that the discounted present value of the total costs of the proposed rule, for the existing fleet over the next 20 years, would be approximately $13,000,000.

The FAA estimates that the total undiscounted costs of the proposed TCAS rules for the part 121 all-cargo fleet during the 20-year analysis period would be approximately $268,000,000 and the discounted present value of the total costs of the proposed rule over the next 20 years would be approximately $169,000,000.

TCAS II, Part 125 Costs

The FAA estimates that the total undiscounted costs of installing TCAS II units on the existing part 125 Commercial Operator Fleet are approximately $4,000,000. The corresponding discounted amount is estimated to be approximately $2,800,000.

It is anticipated that the existing part 125 Commercial Operator Fleet that would require TCAS II installation as a result of this proposed rule would remain at about its current size. Therefore, no forecast of newly manufactured airplanes is provided.

TCAS I, Part 125 Costs

The FAA estimates that the total undiscounted costs of installing TCAS I units on the existing part 125 Commercial Operator Fleet is approximately $6,200,000. The corresponding discounted amount is estimated to be approximately $4,000,000 million.

It is anticipated that the existing part 125 Commercial Operator Fleet that would require TCAS I installation as a result of this proposed rule would remain at about its current size. Therefore, no forecast of newly manufactured airplanes is provided.

The total estimated costs of TCAS II and TCAS I installations on part 125 commercial operators, as a result of this proposed rule, are estimated to be approximately $10,100,000. The corresponding discounted costs are estimated to be approximately $6,800,000.

Total Incremental Costs of the Proposed Rule

The total estimated non-discounted costs of TCAS II and TCAS I installations on part 121 all-cargo airplanes and part 125 commercial operators that would be required as a result of this proposed rulemaking are estimated to be $278,000,000 over the next 20 years. The corresponding discounted costs are estimated to be approximately $176,000,000.

The costs in this regulatory evaluation are the costs of TCAS II or I, as appropriate, because these are the only collision avoidance systems currently approved by the FAA. However, the proposal would allow for a system equivalent to TCAS II or I to be used. Because no equivalent system currently exists, cost estimates cannot be made for them. However, in a competitive market, should equivalent systems be developed, they should cost no more than the currently available equipment.

Benefit Cost Comparison

A midair collision involving a cargo airplane could result in accident values from under $10 million to potentially hundreds of millions of dollars. In the least costly case, a cargo airplane could have a midair collision with a general aviation airplane with no collateral damage. A collision with a passenger airplane, with no collateral damage, can result in costs in excess of $300 million. In the event of midair collisions over Los Angeles, San Diego, and other metropolitan areas, significant collateral damage can easily exceed hundreds of millions of dollars. In its risk analysis, prepared for the FAA, MITRE estimated that slightly more than 50 percent of all midair collisions are expected to occur over the suburbs or cities.

A recent incident over mainland China illustrates the potential costs of midair collisions. On June 28, 1999, a British Airways (BA) B–747 carrying 400 passengers to Hong Kong came within 200 meters of a Korean Air B–747 freighter. The BA aircraft received a TCAS Resolution Advisory (RA), the flight crew responded to it, and a collision was avoided. With over 400 people onboard these two airplanes, the estimated dollar loss of such an accident exceeds a billion dollars. This proposed rule is estimated to reduce the risk of a cargo and passenger midair collision by 17 percent. In the United States a DC–10 and L–1011 All-Cargo Airplanes nearly collided in March, 1999.

The FAA believes the above approximated reduction in the very real risk of midair collisions justifies the $176 million present value cost of this rulemaking.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Under the RFA, the FAA must determine whether or not a proposed rule significantly affects a substantial number of small entities. This determination is typically based on small entity size and cost thresholds that vary depending on the affected industry. The FAA has conducted the required review and determined that this proposed rule would have a significant impact on a substantial number of small entities. Accordingly, a regulatory analysis was conducted as required by the RFA, and is summarized in this section.

Entities potentially affected by the proposed rule include: scheduled air transportation carriers, air courier services, and nonscheduled air transportation carriers. The FAA used SBA criteria of 1,500 employees or less per firm as the criteria for the determination of a small business.

The FAA estimates that 59 part 121 firms would be affected by the proposed rule. By the SBA criteria, 34 of these firms are small businesses. The FAA estimates that 22 part 125 firms would be affected by the proposed rule. All of these 22 firms are small businesses, under the SBA criteria. In all there are a total of 56 small businesses that would be affected by the proposed rule. Financial information was available for 39 of these firms.

The FAA estimated the impact on small entities in two steps. First, the FAA used a compliance cost per airplane multiplied by the operator's fleet size to obtain the estimated 1-year cost of this rulemaking for each operator. Then the FAA calculated an affordability measure by dividing this cost by the operator's 1998 (parent company) revenues. As 2 percent is often less than the annual rate-of-inflation, the FAA believes that a compliance cost of 2 percent or less is affordable.

Of the 39 firms considered to be small, and for which information was available, nearly 40 percent are estimated to have costs less than 2 percent of annual revenue. For these firms the FAA believes compliance is affordable. For the remaining 60 percent of the firms with annual costs greater than 2 percent, and perhaps for firms where financial data was not available, the impact of this proposed rule ranges from affordable to significantly negative. No impact is likely for some part 125 operators, as those firms may choose not to operate for hire. By part 125 regulation, these firms already can not solicit business.

Nearly all of the firms considered to be small entities and with an affordability measure greater than 2 percent appear to operate in markets with little or no competition. These markets require very specialized service such as remote air delivery service. Of the 18 part 121 (Group 2 operators—part 121 all-cargo air carriers operating turbine-powered airplanes of 33,000 pounds or less MCTOW and piston-powered airplanes regardless of weight) only 2 were headquartered in the same city and most were located in remote locations. All of the part 125 operators, by regulation, provide non-competitive services. Part 125 operators are restricted from offering for-hire services to the public, such as advertising or marketing. To provide for-hire services, these operators must, in effect, have the customer find them. Thus in terms of competition, this rulemaking is expected to have a minimal competitive impact.

Relative to larger air cargo operators, smaller air cargo operators are likely to be disproportionately impacted by this rulemaking. Large cargo air carriers are expected to incur costs, which are a relatively smaller percentage of annual revenue, than those of the smaller cargo air carriers.

Slightly more than 20 firms have compliance costs greater than two percent of their annual revenue. Four part 121 or 125 operators have compliance costs exceeding 10%, but less than 20 percent of their annual revenue. One or more of these firms could potentially face a business closure due to this proposed rulemaking. The FAA does not have sufficient information to provide a more refined estimate of the potential business closures. The FAA has attempted to mitigate the impacts on these firms by considering alternatives, such as extending the compliance deadline for small entities. Alternatives are limited because this rule is basically required by statute. The alternatives are discussed in the full initial regulatory evaluation associated with this rule.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activity that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would have minimal affect on trade-sensitive activities. The proposed rule could affect foreign-owned airplanes operated in the United States under part 129. However, the FAA has determined that this proposed rule would have a minimal impact on international trade because all air-cargo airplanes operating internationally are already, or will very shortly, be required by many foreign governments to be equipped with TCAS II, or its equivalent, by rules requiring its use in other airspaces, such as Eurocontrol's airspace.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532–1538) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local and tribal governments. It requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any 1 year. Therefore, the requirements of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice of proposed rulemaking would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, this proposed action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

List of Subjects

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

List of Subjects

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 121, 125, and 129 of Title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. In § 121.356, revise the section heading and add paragraph (d) to read as follows, effective on the date of publication of the final rule in the **Federal Register:**

§ 121.356 Collision avoidance system.

* * * * *

(d) If TCAS II is installed in an airplane for the first time between December 3, 2001 and October 31, 2003, you must operate that airplane with a TCAS II that meets TSO C–119b (version 7.0), or a later version.

3. Section 121.356 would be revised, effective November 1, 2003, to read as follows:

§ 121.356 Collision avoidance system.

Effective November 1, 2003, any airplane you operate under this part must be equipped and operated according to the following table:

AIRPLANE CRITERIA AND REQUIRED COLLISION AVOIDANCE EQUIPMENT

After October 31, 2003, if you operate any* * *	then you must operate that airplane with* * *
(a) Turbine-powered airplane of more than 33,000 pounds maximum certificated takeoff weight.	(1) A Mode S transponder that meets Technical Standard Order (TSO) C–112, or a later version, and one of the following approved units— (i) TCAS II that meets TSO C–119b (version 7.0), or a later version. (ii) TCAS II that meets TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before November 1, 2001. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (iii) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version.
(b) Turbine-powered airplane of 33,000 pounds or less maximum certificated takeoff weight.	(1) TCAS II that meets TSO C–119b (version 7.0), or a later version. (2) TCAS II that meets TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before November 1, 2001. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (3) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version. (4) TCAS I that meets TSO C–118, or a later version. (5) A collision avoidance system equivalent to TSO C–118, or a later version.
(c) Piston-powered airplane, regardless of weight	(1) TCAS II that meets TSO C–119b (version 7.0), or a later version. (2) TCAS II that meets TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before November 1, 2001. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (3) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version. (4) TCAS I that meets TSO C–118, or a later version. (5) A collision avoidance system equivalent to TSO C–118, or a later version.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

4. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

5. In § 125.224, revise the section heading and add paragraph (c) to read as follows, effective on the date of publication of the final rule in the **Federal Register:**

§ 125.224 Collision avoidance system.

* * * * *

(c) If TCAS II is installed in an airplane for the first time between December 3, 2001 and October 31, 2003, you must operate that airplane with a TCAS II that meets TSO C–119b (version 7.0), or a later version.

6. Section 125.224 would be revised, effective November 1, 2003, to read as follows:

§ 125.224 Collision avoidance system.

Effective November 1, 2003, any airplane you operate under this part 125 must be equipped and operated according to the following table:

AIRPLANE CRITERIA AND REQUIRED COLLISION AVOIDANCE EQUIPMENT

After October 31, 2003, if you operate any* * *	then you must operate that airplane with* * *
(a) Turbine-powered airplane of more than 33,000 pounds maximum certificated takeoff weight.	(1) A Mode S transponder that meets Technical Standard Order (TSO) C–112, or a later version, and one of the following approved units— (i) TCAS II that meets TSO C–119b (version 7.0), or a later version. (ii) TCAS II that meets TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before November 1, 2001. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (iii) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version.
(b) Turbine-powered airplane of 33,000 pounds or less maximum certificated takeoff weight.	(1) TCAS II that meets TSO C–119b (version 7.0), or a later version. (2) TCAS II that meets TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before November 1, 2001. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (3) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version. (4) TCAS I that meets TSO C–118, or a later version. (5) A collision avoidance system equivalent to TSO C–118, or a later version.
(c) Piston-powered airplane, regardless of weight	(1) TCAS II that meets TSO C–119b (version 7.0), or a later version. (2) TCAS II that meets TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before November 1, 2001. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (3) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version. (4) TCAS I that meets TSO C–118, or a later version. (5) A collision avoidance system equivalent to TSO C–118, or a later version.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

7. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 41706, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

8. In § 129.18, revise the section heading and add paragraph (c) to read as follows, effective on the date of publication of the final rule in the **Federal Register:**

§ 129.18 Collision avoidance system.

* * * * *

(c) If TCAS II is installed in an airplane for the first time between December 3, 2001 and October 31, 2003, you must operate that airplane with a TCAS II that meets TSO C–119b (version 7.0), or a later version.

9. Section 129.18 would be revised, effective November 1, 2003, to read as follows:

§ 129.18 Collision avoidance system.

Effective November 1, 2003, any airplane you operate under part 129 must be equipped and operated according to the following table:

AIRPLANE CRITERIA AND REQUIRED COLLISION AVOIDANCE EQUIPMENT

After October 31, 2003, if you operate in the United States any* * *	then you must operate that airplane with* * *
(a) Turbine-powered airplane of more than 33,000 pounds maximum certificated takeoff weight.	(1) A Mode S transponder that meets Technical Standard Order (TSO) C–112, or a later version, and one of the following approved units— (i) TCAS II that meets TSO C–119b (version 7.0), or a later version. (ii) TCAS II that meets TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before [November 1, 2001]. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (iii) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version.
(b) Turbine-powered airplane of 33,000 pounds or less maximum certificated takeoff weight.	(1) TCAS II that meets TSO C–119b (version 7.0), or a later version. (2) TCAS II that meets TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before [November 1, 2001]. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (3) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version. (4) TCAS I that meets TSO C–118, or a later version. (5) A collision avoidance system equivalent to TSO C–118, or a later version.

Issued in Washington, DC, on October 24, 2001.

Ava L. Mims,

Acting Director, Flight Standards Service.

[FR Doc. 01–27340 Filed 10–31–01; 8:45 am]

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Federal Register

Thursday,
November 1, 2001

Part IV

Department of Housing and Urban Development

Housing Choice Voucher Program: Funding Availability for Reallocated Baseline Units and Annual Budget Authority and for Relocated Baseline Welfare to Work Units and Annual Budget Authority; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4694–N–01]

Housing Choice Voucher Program: Notice of Funding Availability for Reallocated Baseline Units and Annual Budget Authority and for Reallocated Baseline Welfare to Work Units and Annual Budget Authority

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice announces HUD procedures for reallocating baseline units and annual budget authority in the housing choice voucher program. The notice outlines public housing agency (PHA) eligibility criteria to apply for reallocated units and budget authority, and the semiannual invitation and application procedures. This notice also announces HUD procedures for reallocating baseline Welfare to Work units and annual budget authority. The procedures applying to Welfare to Work vouchers are discussed in section III of this notice since the reallocation process and timetable will be separate from the process for other housing choice vouchers.

FOR FURTHER INFORMATION CONTACT: Deborah Hernandez, Section 8 Finance Division, Office of Administration and Budget, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4232, Washington, DC 20410; telephone (202) 708–2934. For further information regarding reallocation of Welfare to Work vouchers, contact Kathryn Greenspan, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4222, Washington, DC 20410; telephone (202) 708–0744. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Overview

A. Background

On October 21, 1999, following a negotiated rulemaking, HUD published a final rule (64 FR 56882) creating a new 24 CFR 982.102, which establishes the procedures to determine baseline unit allocations, for which HUD obligated and renews funding, for the Section 8 voucher program. The rule provides (§ 982.102(i)) that if a PHA has performance deficiencies, such as failure to adequately lease units, HUD may reallocate some of its budget authority to other PHAs. The rule provides that HUD will publish a **Federal Register** notice that describes the circumstances and procedure for reallocating budget authority.

On April 19, 2000, HUD published a **Federal Register** notice (65 FR 21088) pursuant to the final rule, which advises PHAs to ensure that they assist the number of families that equals the number of units reserved for the PHA, and to manage their lease-up and turnover to fully use annual budget authority.

The April 19, 2000 **Federal Register** notice also states that HUD will annually assess each PHA's leasing rate and use of annual budget authority to determine whether to reallocate unused baseline units and unexpended annual budget authority to other PHAs. The notice further states that HUD will issue a **Federal Register** notice outlining the criteria for determining the PHAs to receive reallocated annual budget authority. Section II of this notice announces the procedures for regular semiannual reallocation of voucher baseline units (other than Welfare to Work units) and annual budget authority. In addition, section III of this notice announces separate procedures for reallocating baseline Welfare to Work units and annual budget authority.

B. Environmental Review

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19 (c) (1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

II. Baseline Units and Annual Budget Authority Available for Reallocation

A. Determining the Number Units Available for Reallocation

The April 19, 2000 **Federal Register** notice specifies when tenant-based baseline unit allocations become available for reallocation to other PHAs. The notice states that when HUD processes a PHA's year-end statement, it will assess the PHA's leasing rate and rate of use of annual budget authority. If the leasing rate is less than 90 percent of the number of units reserved and the PHA has expended less than 90 percent of its annual budget authority, HUD will issue a warning to the PHA. If the PHA fails to increase its leasing rate to 95 percent of the number of units reserved by the time the PHA submits its second budget after the warning, then the unused baseline units and unexpended baseline annual budget authority is subject to reallocation.

In addition, unused baseline units and unexpended annual budget authority become available for reallocation when a PHA voluntarily decides to decrease its program size. A number of factors may cause a PHA to decide to no longer administer its full baseline unit allocation including a locally strong and tight private rental market, inadequate suitable rental stock, or insufficient voucher applicants, among other reasons. If a PHA voluntarily chooses to decrease its baseline unit allocation, those baseline units and the related annual budget authority become available for reallocation.

Baseline units and annual budget authority may also become available for reallocation in other ways, including but not limited to a HUD-directed mandatory reduction in voucher program size as a result of poor PHA performance under the Section 8 Management Assessment Program, or PHA failure to comply with the ACC. When baseline units become available for reallocation, the Department will reduce the number of baseline units for the PHA that is relinquishing the units by not renewing funding for them under the PHA's consolidated annual contributions contract (CACC).

B. Inapplicability to Voluntary Transfers of Program Administration within the Same Geographic Area

This notice does not apply to the voluntary transfer of baseline units and annual budget authority, from one PHA's CACC to another PHA's CACC, when the transfer is between PHAs within the same metropolitan area, within the same nonmetropolitan county, or within the same state where voucher program administration is voluntarily shifted from a city or county PHA to its state PHA, or from a state PHA to one or more of its county or city PHAs.

C. Semiannual Invitation to Apply for Reallocated Baseline Units and Annual Budget Authority

The HUD Office of Public and Indian Housing will post an invitation for PHAs to apply for reallocated housing choice voucher baseline units and annual budget authority during the first work week of each calendar semiannual period beginning in January 2002.

The invitation will be posted on the Internet, on the Office of Public and Indian Housing housing choice vouchers web page at: *http://www.hud.gov/offices/pih/programs/hcv*. The invitation will announce the availability of the total number of baseline units, the related annual budget authority, and the per unit annual budget authority amount, that became available to HUD for reallocation during the preceding semiannual period. The per unit annual budget authority amount for the reallocated baseline units made available under each semiannual invitation will be the average per unit annual budget authority amount for all of the units made available for reallocation and announced under that invitation.

If HUD determines there are insufficient baseline units and annual budget authority available for reallocation in any semiannual period and so an invitation is not warranted for that semiannual period, a notice will be posted to that effect on the Internet housing choice voucher page during the first workweek of the semiannual period.

D. Eligible Applicants and Application Procedures

(1) *Eligible Applicants.* Reallocated housing choice voucher baseline units and annual budget authority are available for only two groups of PHAs:

(a) PHAs that have urgent needs due to housing loss and permanent displacement arising from federally declared disasters and that have a leasing rate, or rate of use of annual budget authority, of at least 90 percent, and

(b) PHAs that have a leasing rate, or rate of use of annual budget authority, of at least 97 percent. The leasing rate and rate of use of budget authority are measured using data from the PHA's last submitted year end statement in accordance with the methodology in the April 19, 2000 **Federal Register** notice, as amended by notice published on September 28, 2001.

(2) *Ineligible Applicants.* Any otherwise eligible applicant under paragraph (1)(b) is ineligible for reallocated baseline units and annual budget authority if the PHA is rated troubled under the Section 8 Management Assessment Program (SEMAP) once all PHAs have been rated or if the PHA is rated troubled under the Section 8 Management Assessment Program (SEMAP once all PHAS have been rated or if the PHA (a) has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI, section 504, or section 109.

The Department will not accept or process an application under its semiannual invitations to apply for reallocated baseline units if any such fair housing charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application due date. The Department's decision regarding whether a fair housing charge, lawsuit, or letter of findings has been satisfactorily resolved will be based upon whether HUD determines that appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit or letter of findings.

(3) *Application Procedures.* (a) *Maximum and Minimum Voucher Request.* An eligible PHA may apply for the number of vouchers (baseline units) available for reallocation under the semiannual invitation, not to exceed a maximum of 5 percent of its baseline units, or 25 units, whichever is greater. The minimum number of vouchers that a PHA may apply for is 25. These limits do not apply to applications for vouchers for urgent housing needs arising from federally declared disasters.

(b) *Application Submission and Due Date.* Each January and July, after the invitation to apply for reallocated baseline units is posted on the Internet, an eligible PHA may submit an application to HUD Headquarters for the available units, up to the maximum voucher request. Eligible PHAs that have urgent housing needs arising from federally declared disasters may submit an application for any available reallocated baseline units and annual budget authority at any time. Urgent housing needs are defined as housing loss and permanent displacement and PHAs need not wait for the semiannual invitation to be posted.

(c) *Application Form.* The application form to be used is form HUD–52515 (section C, Average Monthly Adjusted Income, is not required). A PHA that applies for vouchers in connection with a federally declared disaster must also submit an application transmittal letter fully explaining the urgent need for the requested vouchers, including the extent of permanent housing loss by very low income families.

(d) *Non-disaster Application Deadline.* All non-disaster applications in response to the semiannual invitations are due no later than 5 p.m. Eastern time on the 1st of February or August. If the 1st falls on a weekend, applications are due by 5 p.m. on the following Monday. Mailed applications must be postmarked by the due date and must be received within 10 days of the due date.

(e) *Non-disaster Application Not Funded or Not Fully Funded.* If for any reason a non-disaster application is not funded, or is not fully funded, it will not be automatically considered under the next semiannual invitation. A non-disaster application must be submitted in response to a specific semiannual invitation to be considered for vouchers (baseline units) announced in that invitation.

E. Selection and Funding Procedure

(1) *Applications for Disasters.* HUD Headquarters will review applications to address urgent needs due to housing loss and permanent displacement arising from federally declared disasters upon receipt. If HUD determines the need for vouchers is adequately demonstrated and that the PHA meets the required leasing rate or rate of utilization of annual budget authority of at least 90 percent, these applications will generally be immediately approved and funded on a first-come, first-served basis, up to the amount of baseline units and annual budget authority available for reallocation.

(2) *Non-disaster applications from PHAs with at least 97 percent utilization.* (a) *Same-State funding priority.* Highest funding priority for baseline units available for reallocation in each State will be given to applicant PHAs in the same State. Upon receipt of all non-disaster applications in a semiannual period, HUD will examine the applicant PHAs to determine whether any applicant PHA has jurisdiction in the same state as a PHA from which units available for reallocation in the semiannual period were de-reserved. Applicants from the same state as a PHA from which units available for reallocation were de-reserved, will be given highest priority for the number of units made available from a PHA in the same state, up to the number of units requested by the applicant PHA. Any applicants given such priority in selection for funding

will generally be funded at the end of the third month of the semiannual period (March or September).

(b) *Priority for SEMAP high performers.* After priority is given to applicant PHAs in the same State as a PHA from which units available for reallocation were obtained, the next priority for funding will be given to applicant PHAs that are SEMAP high performers once all PHAs have been rated under SEMAP. HUD will examine the applicant PHAs to determine whether any applicant PHA is a SEMAP high performer. SEMAP high performers will be given the next priority for funding up to the number of units requested by the applicant PHA. Any applicants given such priority in selection for funding will generally be funded at the end of the third month of the semiannual period (March or September).

(c) *Remaining applications.* All remaining applications will generally be funded at the end of the third month of the semiannual period (March or September) by allocating the remaining number of baseline units available among all of the remaining semiannual applicants on an even percentage basis in proportion to the number of units requested or remaining to be funded in each PHA's application. PHA applications will not be reduced below 25 units. Consequently, a PHA's request for a certain number of units may be fully approved or partially approved.

(d) *Possibility of Selection of Applicants by Lottery.* In the event HUD determines that there are too many applicants from the same state (in giving same-state funding priority) from SEMAP high performers (in giving priority to high performers), or among remaining applications in any semiannual period to award each applicant the minimum of 25 vouchers, applicants will be selected by lottery. The number of baseline units and annual budget authority for which same-State priority is being given, for which SEMAP high performer priority is being given, or remaining available under the invitation will then be allocated among the PHAs selected in the lottery on an even percentage basis in proportion to the number of units requested in each PHA's application.

(e) *No Applications or Insufficient Applications.* If there are no applications or insufficient applications in response to any semiannual invitation, the unused reallocated baseline units and related annual budget authority announced in the semiannual invitation will be included in the next semiannual invitation.

F. Summary of Semiannual Baseline Unit and Budget Authority Reallocations

A summary of each semiannual period's baseline unit reallocations, including lists of PHAs from which and to which units and annual budget authority were reallocated, will be posted on the Internet at the same site as the semiannual invitations: *http://www.hud.gov/offices/pih/programs/hcv.* Funding decisions will also be published in the **Federal Register.**

III. Welfare-to-Work Voucher Baseline Units and Annual Budget Authority

Baseline Welfare to Work voucher units and annual budget authority will be permanently de-reserved and become available for reallocation in a process and on a timetable that is separate from the process for other housing choice vouchers. The Department will determine each PHA's Welfare to Work voucher leasing rate no earlier than 30 days after the publication of this notice. Welfare to Work voucher funding of PHAs that have not achieved leasing of their Welfare to Work vouchers of at least 95 percent by that date will be subject to de-reservation and reallocation without additional warnings or cure periods prior to de-reservation.

In the future, if PHAs that receive additional Welfare to Work vouchers have not reached a Welfare to Work voucher leasing rate of at least 95 percent by the expiration date of the Welfare to Work voucher increment, unused Welfare to Work voucher funding will be subject to de-reservation at the expiration date of the Welfare to Work voucher increment.

When baseline Welfare to Work voucher units become available for reallocation, the Department will reduce the number of baseline Welfare to Work voucher units for the PHA that is relinquishing the units by not renewing funding for them under the PHA's consolidated annual contributions contract (CACC).

A. Invitation To Apply for Reallocated Baseline Welfare to Work Voucher Units and Annual Budget Authority

When baseline Welfare to Work voucher units and annual budget authority become available, the Office of Public and Indian Housing will post an invitation for Welfare to Work voucher PHAs to apply for reallocated baseline Welfare to Work voucher units and annual budget authority. The invitation will be posted on the Internet, on the Office of Public and Indian Housing Welfare to Work voucher page at: *http://www.hud.gov/pih/programs/ph/wtw.* The invitation will announce the total number of baseline Welfare to Work voucher units available, the budget authority to be reallocated, and the per unit annual budget authority amount. The per unit annual budget authority amount for the reallocated baseline units made available under an invitation will be the average per unit annual budget authority amount for all of the units made available for reallocation and announced under that invitation.

B. Eligible Applicants and Application Procedures for Welfare to Work Voucher Funding

(1) *Eligible Applicants.* Reallocated Welfare to Work voucher baseline units and annual budget authority are available only to Welfare to Work voucher PHAs that have a Welfare to Work voucher program leasing rate of at least 97 percent.

(2) *Ineligible Applicants.* Any otherwise eligible applicant under paragraph (1) is ineligible for reallocated Welfare to Work baseline units and annual budget authority if the PHA is rated troubled under the Section 8 Management Assessment Program (SEMAP) once all PHAs have been rated or if the PHA (a) has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI, section 504, or section 109. The Department will not accept or process an application under any invitation to apply for reallocated Welfare to Work baseline units if any charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application due date. The Department's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit or letter of findings.

(3) *Application Procedures.* (a) *Maximum and Minimum Voucher Request.* An eligible PHA may apply for the number of Welfare to Work vouchers (baseline Welfare to Work voucher units) available for reallocation under the invitation, not to exceed the number of units which the PHA expects to lease within 12 months of the award of new funding, based on experience with the Welfare to Work voucher program. There is no minimum number of vouchers for which the PHA must apply.

(b) *Application Submission and Due Date.* After the invitation to apply for reallocated baseline Welfare to Work voucher units is posted on the Internet, an eligible PHA may submit an application to HUD Headquarters. The invitation will specify the place where applications are to be submitted and the due date.

(c) *Application Form.* The application form to be used is form HUD–52515 (section C, Average Monthly Adjusted Income, is not required).

C. Selection and Funding Procedures for Welfare to Work Vouchers

(1) All applications from Welfare to Work voucher PHAs with at least 97 percent utilization will generally be funded on an objective basis such as by allocating the number of baseline Welfare to Work voucher units available among all of the eligible applicants on a percentage basis in proportion to the size of their initial Welfare to Work voucher allocation.

(2) In the event that HUD determines that there are too many applicants to award each applicant the number of Welfare to Work vouchers for which they have applied and are eligible, applicants will be selected by lottery. The number of baseline Welfare to Work voucher units and annual budget authority available under the invitation will then be allocated among the Welfare to Work voucher PHAs selected in the lottery on an equitable basis such as on a percentage basis in proportion to the number of Welfare to Work voucher units in each PHA's initial Welfare to Work voucher allocation.

(3) If there are no applications or insufficient applications in response to an invitation, the unused reallocated baseline Welfare to Work voucher units and related annual budget authority announced in the invitation will be included in the next invitation.

Dated: October 25, 2001.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 01–27415 Filed 10–31–01; 8:45 am]

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Federal Register

Thursday,
November 1, 2001

Part V

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 319

Mexican Hass Avocado Import Program; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 00–003–4]

RIN 0579–AB27

Mexican Hass Avocado Import Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables to increase the number of States in which fresh avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. We are also lengthening the shipping season during which the Mexican Hass avocados may be imported into the United States. We are taking this action in response to a request from the Government of Mexico and after determining that expanding the current Mexican avocado import program would present a negligible risk of introducing plant pests into the United States.

EFFECTIVE DATE: November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

Under the regulations in 7 CFR 319.56–2ff (referred to below as the regulations), fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be imported into specified areas of the United States, subject to certain conditions.Those conditions include pest surveys and pest risk-reducing cultural practices, packinghouse procedures, inspection and shipping procedures, and restrictions on the time of year (November through February) that shipments may enter the United States. Further, the regulations limit the distribution of the avocados to 19 northeastern States (Connecticut, Delaware, Illinois, Indiana,Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York,Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin) and the District of Columbia, where climatic conditions preclude the establishment in the United States of any of the exotic plant pests that may attack avocados in Michoacan, Mexico.

In September 1999, the Government of Mexico requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to (1) increase the number of States into which the avocados may be imported and (2) to allow the shipping season to begin 1 month earlier (October rather than November) and end 1 month later (March rather than February).

On May 11, 2000, we published a notice in the **Federal Register** (65 FR 30365–30366,Docket No. 00–003–1) in which we solicited comments on Mexico's request. In particular, we asked the public for comments and recommendations regarding the scope of our review of Mexico's request and requested interested persons to submit any data or information that may have a bearing on our review of the Mexican Government's request. We requested that comments focus on scientific, technical, or other issues that commenters believed should be considered during our review of the Mexican Government's request.

We solicited comments on our request for 90 days, ending August 9, 2000. By that date, we received 265 comments. In general, the majority of commenters supported expanding the area of distribution of Hass avocados and increasing the length of the shipping season during which Hass avocados may be imported into the United States.

On July 13, 2001, we published in the **Federal Register** (64 FR 36891–36905, Docket No.00–003–2) a proposal to expand the area of distribution for Hass avocados imported from Mexico to include Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. We also proposed to lengthen the Mexican Hass avocado shipping season by 2 months, to include March and April. We proposed this action in response to the Mexican Government's request and after determining that expanding the current Mexican Hass avocado import program would present a negligible risk of introducing plant pests into the United States.

Note: Under the Plant Protection Act (7 U.S.C. 7701–7772), The Secretary's decision as to whether it is necessary to prohibit or restrict the importation of plant products is contingent upon her determination that such a prohibition or such restrictions are necessary to prevent the introduction of plant pests into the United States. The Plant Protection Act does not require that the Secretary's decision be based on a numerical or quantitative measurement of risk. In our proposed rule, we described the risk associated with the importation of Hass avocados under the systems approach regulations as being "negligible", "insignificant", or "reduced to a negligible level." We used these terms in their qualitative, descriptive sense; i.e., according to their common usage. In this final rule we use only the term "negligible" for consistency.

On July 27, 2001, we published a notice of public hearings in the **Federal Register** (66 FR 39121, Docket No. 00–003–3) that detailed the dates, times, and locations of four public hearings regarding the July 2001 proposed rule.

We solicited comments concerning our proposal for 60 days ending September 11, 2001. Because APHIS's main office in the Washington, D.C., area closed early and unexpectedly because of the attack on the nearby Pentagon on September 11, 2001, we accepted and considered any comments received by September 12, 2001. We received 71 comments by that date, including 35 comments made at the four public hearings. The comments were from officials of State departments of agriculture, officials of foreign governments, Members of Congress, scientists, representatives of associations such as farm bureaus, marketing associations, consumer groups, and trade associations, and growers, packers, and shippers of avocados. Thirty-seven of the commenters generally supported the rule, and 34 opposed it. The issues raised in the comments are discussed below, by topic.

On October 12, 2001, APHIS received a petition from the California Avocado Commission requesting that the agency suspend further administrative steps related to this action until, among other things, APHIS conducts, publishes, and makes available for public comment additional risk information that complies with *Harlan Land Co. et al.* v. *USDA, et al.*, a recent court decision related to the importation of citrus from Argentina. The plaintiffs in that case are four California citrus growers and a coalition of California citrus growers. In *Harlan Land*, the court ruled that APHIS exceeded its authority under the Plant Quarantine Act to permit the importation of Argentine citrus because the agency did not define "negligible risk." We are denying the California Avocado Commission's petition and we do not agree that the *Harlan Land* decision is applicable to the Mexican Hass avocado rulemaking. We disagree with much of the *Harlan Land* decision and believe that it was predicated on the unique facts of that case and should, therefore, be limited to the Argentine citrus regulations that were at issue in that litigation.

Section 7 of the Plant Quarantine Act (7 U.S.C. 160) and section 412 of the new Plant Protection Act (7 U.S.C. 7712) do not require that the Secretary set a numerical threshold of risk at which the Secretary must permit or forbid importation; rather, Congress entrusted to the Secretary's discretion the decision, regardless of any numerical limitation to permit or forbid importation. Nowhere in section 160 or 412 is the Secretary required to make a finding of negligible risk. Further, sections 160 and 412 do not set forth specific factors that the Secretary must consider in making her decision. A numerical threshold would eliminate the Secretary's ability to exercise her Congressionally delegated discretion under the Plant Protection Act.

Status of Avocados as a Host for Fruit Flies

Comment: Does APHIS consider Hass avocados to be a host for *Anastrepha* spp. fruit flies? Fruit flies are not known to infest Hass avocados under normal growing conditions, and no historical evidence exists that these pests attack Hass avocados under natural conditions, according to APHIS's 1995 Risk Management Analysis.

Response: APHIS considers Hass avocados to be a possible non-host, or, at best, a poor host, for *Anastrepha* spp. fruit flies. No available scientific research has conclusively proven that(1) Hass avocados are a host for *Anastrepha* fruit flies under field conditions, or (2) that Hass avocados are not a host for *Anastrepha* fruit flies under field conditions. However, we are unaware of any reported detections of *Anastrepha* fruit flies infesting Hass avocados under field conditions. Some research using ripe fruit has shown that Anastrepha fruit flies can infest Hass avocados under forced laboratory conditions, but no research has shown that Hass avocados can be infested under natural conditions in the field.

Comment: In laboratory tests aimed at ascertaining the susceptibility of several avocado varieties grown in California to infestation by the Mexican fruit fly (*Anastrepha ludens*), cultivars Anaheim and Hass proved uninfested while Nabal, Ryan, Fuerte, Zutano, Puebla, and several other unnamed varieties were infested under the highly artificial conditions of the study.

Response: APHIS believes that the research mentioned above and other scientific evidence show that Hass avocados are resistant to infestation by *Anastrepha* spp. fruit flies. However, we are not certain to what degree they are resistant. As stated above, APHIS considers Hass avocados to be a possible non-host, or, at best, a poor host, for *Anastrepha* spp. fruit flies.

Comment: One reason why fruit flies may lay eggs in Hass avocados is likely a result of "egg load." Flies may lay eggs in avocados simply because they have built up an excess of eggs and need to release some. For lack of a better available host, they choose avocados, just as they might choose plastic wrap or wood, under forced conditions.

Response: APHIS feels the commenter's supposition is entirely possible, since it is well known that fruit flies will lay eggs wherever they can if a preferred host is not available.

Comment: No research exists to verify with certainty that Hass variety avocados are a host for *Anastrepha* spp. fruit flies. There is no evidence showing that Hass avocados have been infested with *Anastrepha* spp. under field conditions. *Anastrepha* fruit flies may be present in avocado orchards not because they are seeking avocados as hosts, but because the groves provide a good microclimate for the flies. Almost all flies are captured on the periphery of avocado groves, and most likely enter and leave due to lack of preferred host material, and it is likely that fruit flies do not breed in commercial avocado orchards. Therefore, fruit flies should not be considered a pest of Hass avocados, because they do not cause any economic damage to commercially grown fruit.

Response: As stated above, APHIS agrees that no research or evidence exists that proves that Hass avocados are hosts for *Anastrepha* spp. under field conditions. Until such research is completed, APHIS will continue to consider Hass avocados hosts for fruit flies, albeit poor hosts.

Comment: The underlying assumption of the regulations is that avocados are poor hosts for the Mexican fruit fly. We do not know that this is truly the case. We need a better understanding of the true host status of the Hass avocado for Mexican fruit fly. As was shown with Sharwil avocados in Hawaii, a presumed non-host can become a good host if conditions are correct.

Response: As stated above, the host status of Hass avocados for *Anastrepha* spp. fruit flies has not yet been clearly defined, and until proven otherwise, APHIS will continue to consider Hass avocados as poor hosts for *Anastrepha* spp. fruit flies. However, while there is not sufficient research available to confirm that Hass avocados are not hosts of *Anastrepha* spp. fruit flies, no such fruit flies have ever been detected and reported in Hass avocados growing under field conditions.

Comment: What role do decreasing seven carbon sugars in the peel and flesh of the fruit play in host resistance? What about changes in fatty acid composition? What about barrier infestation of the fruit and the peel? We know that the fruit skin thins considerably as it hangs on the tree.

Response: Research aimed at determining the host status of Hass avocados has not shown the physiological reason why they appear to be resistant to fruit flies. Field cage tests previously conducted in Mexico were designed to test commercial avocados for resistance to fruit flies. The field cage tests found that, whatever their physiological condition, the fruits were resistant to fruit flies. (The nature of this resistance was not determined.)

Regarding the thinning of the skin: In the field cage tests, fruit flies were able to penetrate the skin and lay eggs in the fruit, but the eggs failed to develop. In laboratory tests that involved fruit subjected to infestation immediately after harvest, fruit flies were also able to penetrate the skin and lay eggs in the fruit, but eggs failed to develop. Only when fruit was harvested, held for several days, and then subjected to oviposition under forced conditions were the eggs able to develop into larvae.

Comment: APHIS relies on the total number of fruit cut and inspected without detection of fruit fly larvae during the operation of the Mexican Hass avocado import program as evidence of the poor host status of Hass avocados.

Response: APHIS believes that the number of fruit cut and inspected without detection of fruit fly larvae during the operation of the Mexican Hass avocado import program provides evidence that the systems approach is working as designed and is effectively mitigating the risk of pest introduction into the United States. As stated in the proposed rule, nearly 5.5 million fruit have been cut and inspected in orchards, in packinghouses, and at the border, and none were found infested

with target pests. While it may be tempting to infer that, based on the number of fruit cut without detection of fruit fly larvae, Hass avocados growing in commercial groves in Michoacan, Mexico, are not hosts to *Anastrepha spp.* fruit flies, no scientific evidence is available that conclusively supports or denies that conclusion.

Comment: An Agricultural Research Service (ARS) review of a research report from Mexico dated July 21, 1994, concluded, "it appears that Hass avocado, while on the tree, may be resistant to fruit fly development but this needs to be systematically proven before "non-host" status can be demonstrated." At the time, this prompted APHIS to write to Sanidad Vegetal: "Because of their high susceptibility in the laboratory, we cannot yet consider Hass avocados as being nonhosts under field conditions without research to identify the resistance factors over time and under all ecological conditions." Has this research been done? Regardless, APHIS has apparently changed its position on the issue of the host resistance of Hass avocados. APHIS has emphatically stated, "host resistance is real" based on fruit cutting results generated by the Mexican Avocado Import Program, despite the fact that past research projects have not conclusively established that Hass avocados are physically or chemically resistant to attack by fruit flies. APHIS's position on host resistance lacks substance, flies in the face of scientific principles, and cannot be relied upon as a risk mitigation strategy (it is presently Step Four in APHIS's systems approach).

Response: As stated earlier in this document, APHIS has not changed its position on the issue of host resistance, because no available scientific evidence conclusively proves that Hass avocados that are imported under the conditions of the systems approach are not hosts for fruit flies. APHIS did state in the June 1999 "Review of the Systems Approach for Mexican Avocado" that "the evidence shows that this variety [Hass] is either not a host or a poor *Anastrepha* fruit fly host prior to harvest * * * The field and packinghouse fruit cutting (2,897,926 fruit for both seasons) indicates that the host resistance is real."

We do not believe our use of the word "indicates" represents the "emphatic statement" suggested by the commenter. In fact, that sentence is the only time APHIS has gone on record with such a statement , and the June 1999 Review is not considered a risk assessment document, and does not, by itself, provide any basis for the expansion of the Mexican Hass avocado import program. As stated earlier in this document, APHIS does believe that the number of fruit cut and inspected without detection of fruit fly larvae during the operation of the Mexican Hass avocado import program provides evidence that the systems approach is working as designed and is effectively mitigating the risk of pest introduction into the United States.

Enforcement and Outreach

Comment: Who is going to enforce the rules and regulations that APHIS has proposed? Is enforcement being paid for by U.S. taxpayers? Is it going to be self-policing?

Response: APHIS's International Services (IS) maintains a presence in the avocado production areas in Michoacan. IS has an inspector stationed in Michoacan year-round to ensure that APHIS regulations and the conditions of the program workplan are being complied with in approved orchards and packinghouses. APHIS also employs seasonal inspectors who monitor compliance with the regulations during the orchard certification process and the avocado shipping season. These enforcement activities are paid for out of a trust fund account that is funded by an association of Mexican avocado growers in accordance with the regulations in § 319.56–2ff(b).

As has been the case for the first 4 years of the program, the regulations will be enforced in the United States by APHIS Plant Protection and Quarantine (PPQ) officers stationed at ports and offices in both approved and nonapproved States. Additional services will be provided by APHIS–PPQ's Smuggling Interdiction and Trade Compliance (SITC) program, which:

- Conducts smuggling interdiction efforts at air, land, and sea ports of entry.
- Carries out domestic market surveys for the presence of prohibited products.
- Conducts transit survey and smuggling interdiction efforts at truck weigh stations inside the country.
- Provides education and outreach to importers, market owners, transportation companies, retailers, and the public regarding regulatory compliance.
- Provides liaison and cooperative efforts with State departments of agriculture and other Federal agencies such as the U.S. Customs Service, U.S. Fish and Wildlife Service, U.S. Food and Drug Administration, and U.S. Department of Agriculture's (USDA's) Food Safety and Inspection Service.
- Works closely with APHIS's Investigative and Enforcement Services (IES) and USDA's Office of the Inspector General and Office of General Counsel to investigate potential regulatory violations and prosecute violators to the full extent of the law.
- Gathers information to identify and close down smuggling pathways for prohibited agricultural products.

More information on the SITC program is available on the APHIS website at: http://www.aphis.usda.gov/ppq/trade/. PPQ and SITC enforcement activities are funded by Agricultural Quarantine and Inspection (AQI) user fees paid by persons who import commodities, including avocados, into the United States.

Comment: What additional resources are going to be available to enforce the regulations, given the expansion of the program? There is legitimate concern that the Mexican Hass avocado import program cannot be effectively monitored under the current state of APHIS resources, particularly in the enforcement area. APHIS should review its resources prior to adopting any change to the program.

Response: APHIS has reviewed its resources and believes it has adequate coverage across the United States to ensure compliance with its regulations, including the Mexican Hass avocado import program, as expanded by this rule.

Comment: When avocados are moved into Utah, how is APHIS planning to guard the border to ensure that they do not move westward toward California?

Response: There are no APHIS personnel who physically guard borders between U.S. States. However, all persons who move or distribute Mexican Hass avocados within the United States must enter into a compliance agreement with APHIS wherein they must acknowledge and agree to observe the regulations that restrict the movement of Mexican Hass avocados to certain States. Furthermore, persons who obtain permits to import Mexican Hass avocados may only transfer the avocados to persons who have entered into a compliance agreement with APHIS. Persons who violate these conditions may have their permits or compliance agreements revoked. Violators are also subject to penalties authorized under the Plant Protection Act (7 U.S.C. 7701–7772).

APHIS–PPQ also has enforcement personnel in each U.S. State who are responsible for monitoring compliance with APHIS–PPQ regulations, including the Mexican Hass avocado import program. These personnel review shipping documents at either end of the shipping process to ensure that Mexican Hass avocados are distributed only to approved States.

Comment: Are the distribution hubs of retail chains that operate in States inside and outside the approved distribution area going to be monitored? If so, by whom? Who will pay for the monitoring?

Response: Distribution hubs of such retail operations will have to enter into the same compliance agreements just described, and will be subject to the same monitoring just described. As stated earlier in this document, monitoring is funded by receipts of AQI user fees paid by persons who import commodities, including avocados, into the United States.

Comment: Will there be an educational outreach effort to educate trucking companies on the restrictions associated with the movement of imported avocados? If so, who will conduct the outreach, and who will pay for it?

Response: APHIS will send letters to various trucking industry organizations and produce marketing organizations notifying them of the change in the regulations. Furthermore, the revised box marking requirement should be helpful in alerting shippers and retailers to the change in the regulations. All of APHIS's educational outreach activities, including outreach activities regarding Mexican Hass avocados, are paid for with funds appropriated by Congress.

Comment: There is an economic incentive for consumers to smuggle fruit into prohibited areas. What kind of outreach is planned to educate the public on the legal ramifications of moving Mexican Hass avocados to nonappproved States? Who will fund the outreach activities?

Response: There will always be some risk that commodities will be smuggled into one area from another area where they cost less. APHIS does not believe that expansion of the Mexican Hass avocado import program will increase the likelihood that smuggling will occur.Further, APHIS has not planned any outreach activities that are directed at consumers because it does not believe that smuggling of Mexican Hass avocados by consumers is a serious problem.Small quantities of Hass avocados that are moved into nonapproved areas do not present a major risk that pests could be introduced into, or become established in, those areas, especially given that Mexican Hass avocados have not been shown to be infested with any pests of concern.

Comment: Controls should continue to be tightened to keep Mexican Hass avocados from being illegally shipped to Florida and other States with avocado pest host material. One shipment of avocados found in Florida did have scale, which is an actionable pest in Florida.

Response: APHIS is pleased with statistics that suggest there has been over a 99 percent rate of compliance with the limited distribution requirements for shipments of Hass avocados from Mexico. This compliance rate is well within the estimates used for the risk assessment, and therefore, APHIS sees no need to further tighten restrictions on Mexican Hass avocado imports.The scale insect referred to above was not an exotic species that required quarantine action by APHIS.

Comment: Interception statistics suggest that 1 out of every 1,000 shipments of boxes of avocados ends up outside the approved distribution area. Is this an acceptable level of risk?

Response: APHIS does not determine "acceptable levels of risk" for each node or potential risk event. Rather, estimates of the risk that specific events could occur are factored into the overall calculations of risk in the risk assessment. The risk assessment concludes that there is a negligible risk of pest introduction associated with Mexican Hass avocados imported under the various requirements of the systems approach.

Comment: APHIS has been too slow in applying appropriate penalties to U.S. distributors who knowingly divert Mexican Hass avocados to nonapproved States.

Response: APHIS makes every attempt to resolve cases as quickly as possible; however, all alleged violators of APHIS's regulations have rights, are afforded due process, and may request to present their case at a hearing. This process can take time due to the fact that violators often have the right to appeal their cases to higher courts.

Comment: USDA–APHIS does not have a tracking system in place to monitor the movement of avocados to their final destination. Even though boxes of avocados are marked with destination restriction requirements, there is nothing to stop fruit from being repackaged and sent to nonapproved areas. The Florida Department of Agriculture is concerned that there is no mechanism in place to protect it from fraud by avocado shippers, packers, etc.

Response: Shipments of Mexican Hass avocados may only be imported under limited permits granted by APHIS and are tracked to their initial destination in the United States. APHIS inspectors confirm that shipments arrive at their approved destination by reviewing shipping documents, and monitor shipments from distribution hubs to ensure that avocados are not shipped to nonapproved areas. Shippers of Mexican Hass avocados must retain their shipping records, which are subject to APHIS review.

APHIS believes it is highly unlikely that Mexican Hass avocados would be repackaged and sent to nonapproved areas, especially given that each avocado must be identified with a sticker that bears the Sanidad Vegetal registration number of the packinghouse where they were packed in Mexico. An unscrupulous distributor who wished to illegally transship Mexican avocados would have to pay the costs associated with obtaining a shipment of imported Mexican avocados at wholesale prices from a terminal market in an approved State, moving that shipment to a secure location, unloading the boxes from the truck or container, removing all the avocados from their packing boxes, peeling the sticker from each piece of fruit, perhaps adding a new sticker to each piece of fruit, repacking the fruit in new boxes, loading the boxes back onto the truck or container, and driving the load of avocados across the country to one of the expected high-demand markets (south Florida, Texas, and California), all of which would limit the profitability of such an illegal enterprise. We believe that this limited profit potential, when combined with other factors such as the ready availability of domestic and imported avocados in areas outside the approved States and the fact that persons involved in such illegal transshipment are liable to legal action, incarceration, or fines, makes it unlikely that such "commodity fraud" will take place.

Comment: Since the inception of the Mexican Hass avocado importation program, two avocado pests from Mexico, the avocado thrips (*Oligonychus perseae*) and the Mexican fruit fly(*Anastrepha ludens*) have caused significant damage to the agricultural industry in San Diego County, CA. The thrips were likely introduced into California as a result of illegal shipments of Mexican avocados, despite APHIS's contention that Mexican Hass avocados have not been diverted into California.

Response: To clarify, the scientific name for the avocado thrips is *Scirtothrips perseae*, and the scientific name for the persea mite is *Oligonychus perseae*. Both of the these pests are established in the State of California, and both cause damage to avocado fruit. The avocado thrips was first noticed in California in July 1996, and the persea mite was first identified in California in

1990. Both pests were introduced into California prior to the beginning of the Mexican Hass avocado import program, and were not introduced into California via Mexican Hass avocados imported under the systems approach regulations. APHIS can only speculate as to how those pests were introduced into California, but believes it is possible that both could have been introduced via propagative material imported from Mexico in violation of APHIS regulations.

The Sequeira, *et al.* study, which provides part of the basis for this final rule, identifies San Diego County as an area at high risk for fruit fly establishment. Given the poor host status of Hass avocados for *Anastrepha* spp. fruit flies, and given the limited distribution requirements of the regulations and all the APHIS enforcement activities that support those regulations, APHIS believes it is highly unlikely that imported Hass avocados from Mexico could serve as a pathway for the introduction of fruit flies into San Diego County. Outbreaks of Mexican fruit fly occurred periodically prior to the inception of the Mexican Hass avocado program. APHIS believes these infestations were likely triggered by small amounts of preferred host material smuggled within legitimate cargo or passenger baggage.

Comment: APHIS's amendment of the regulations to require compliance agreements is appreciated. However, even after the new requirements, California continued to intercept Mexican avocado shipments, mostly at border stations, that were being moved in violation of the limited distribution and travel corridor requirements.

Response: APHIS is unaware of any Hass avocados imported under the systems approach regulations that were intercepted at California border stations. APHIS is aware that in early 1999, several shipments of Mexican avocados intended for transit through the United States and exportation to another country were intercepted at California border stations. These shipments were not associated with the Mexican Hass avocado import program.

Inequity of Treatment Protocols

Comment: In 1999, when APHIS declared a Mexican fruit fly quarantine covering an 81-square-mile area surrounding Fallbrook, CA, after finding two Mexican fruit flies, there was no debate about the host status of Hass avocados. APHIS did not classify Hass avocados as a secondary host, as did Sequeira, *et al.* In California, APHIS required the application of Malathion bait treatments for two life cycles of the Mexican fruit fly—a period of time covering 4 to 8 months—before Hass avocados could be harvested from groves within the quarantine zone. By contrast, under the regulations, if two fruit flies are detected within a 260-hectare area within the approved Hass avocado export area in Mexico, growers may continue to export fruit to the United States provided that malathion bait treatments are applied every 7 to 10 days. This APHIS policy unfairly favors foreign interests over domestic producers of avocados, and APHIS offers no explanation for this apparent double standard in the proposed rule or any of the supporting documents.

Response: APHIS acknowledges that there are differences in the regulatory procedures for growers to certify the movement of Hass avocados from Mexican fruit fly regulated areas of Mexico and the United States. However, in both cases, the goal of the regulatory procedures is the same: To eliminate the potential for spread of fruit flies. In 1999 in Fallbrook, CA, APHIS quarantined an 81-square-mile area until such time as we could determine that there was not a reproducing fruit fly population in that area. To ship fruit out of the area, growers had to bait treat Hass avocado orchards at 6 to 10 day intervals for two fruit fly life cycles as estimated by the degree day model. Upon completion of bait spray treatments, Hass avocados from the regulated areas could be shipped anywhere in the United States, without any further restriction.

In contrast, Hass avocados grown in approved orchards in Michoacan, Mexico, are always subject to the various conditions employed by the systems approach regulations, which are intended to protect the United States from the introduction of fruit flies and avocado-specific pests. While Hass avocados from Mexico may continue to be shipped to the United States if 2 fruit flies have been found in a 260-hectare area within the growing area, such avocados are still subject to all of the other risk-mitigating conditions of the systems approach. These conditions include, among other things, requirements that Hass avocados only be shipped to certain States during certain months of the year, that they originate in orchards that meet certain sanitation requirements, that they be packed in packinghouses under certain conditions, that the boxes and fruit be specially labeled, that certain numbers of fruit must be cut in orchards, in the packinghouse, and at the border, and that persons handling and shipping avocados enter into compliance agreements with APHIS. U.S. growers within an area under a fruit fly quarantine are not subject to any restrictions of this type, and may ship Hass avocados to all areas of the United States at any time of year after bait treatments have been completed.

These issues aside, APHIS understands that avocado growers in California would like to be able to harvest and ship their fruit during a fruit fly quarantine in the event that one was to be declared in a domestic growing area. APHIS is currently evaluating protocols that would enable such movement.

Extension of Shipping Season and Expansion of Approved Distribution Area

Comment: The regulations should list States where the distribution of Mexican Hass avocados is prohibited rather than States where such distribution is allowed.

Response: APHIS agrees that the box markings for imported Mexican avocados should be revised. Therefore, in this final rule we are revising the box marking provisions to require that boxes of Hass avocados imported from Mexico be clearly marked with the statement "Not for distribution in AL, AK, AZ, AR, CA, FL, GA, HI, LA, MS, NV, NM, NC, OK, OR, SC,TN, TX, WA, Puerto Rico, or any other U.S. Territory." The requirements that avocados be packed in clean, new boxes clearly marked with the identity of the grower, packinghouse, and exporter are not affected by this change. Given that the number of approved States now exceeds the number of nonapproved States, this change will reduce the amount of text necessary for the box markings, making them easier to read.

Comment: During the first year of the Mexican Hass avocado import program, six States were believed to have received illegal avocado shipments. To help protect the large California avocado industry from infestation, States such as Kansas and Utah should be removed from consideration. Utah is 200 miles from California, and Kansas is just across the Oklahoma panhandle from Texas.

Response: APHIS is confident that monitoring activities conducted by PPQ, which are described in detail earlier in this document, are adequate to ensure that Hass avocados from Mexico are not diverted into nonapproved States. APHIS does, however, wish to restate that the risk estimates assume that, despite the regulations and APHIS's enforcement activities, a certain number of boxes of avocados might be diverted outside the approved distribution area. These risk estimates are factored into the overall calculations of risk in the risk assessment, which provides that there is a negligible risk of pest introduction associated with the importation of Mexican Hass avocados. During the first 4 years of the program, 3881 boxes of fruit were diverted outside the approved distribution area. This number is substantially less than the number APHIS assumed might be diverted in calculating the overall pest risk associated with the importation of avocados. To change the overall risk estimate, the amount of diversion would have to be approximately 50 times the current level of diversion.

Comment: APHIS–PPQ's industry alert dated October 2000 states that moving or shipping Mexican Hass avocados to other States poses a risk of introducing pests that could cause millions of dollars of damage to U.S. crops. Why does APHIS's proposed rule state the opposite of what was reported in the industry alert?

Response: The October 2000 Industry Alert was based on information available to us at the time it was prepared. As stated in our proposed rule, APHIS proposed to expand the Mexican Hass avocado import program based on:

- Risk assessment documents on which the original import program was based, but that still provide a basis for expansion of the program.
- A study conducted by the North American Plant Protection Organization's (NAPPO's) Pest Risk Assessment Panel (referred to elsewhere in this document as "Sequeira, *et al.*") that provides evidence that *Anastrepha* fruit flies could not become established in the States proposed for expansion.
- Four shipping seasons (1997–2001) worth of shipping and inspection data and four years worth of fruit fly trapping data for the approved orchards in approved municipalities in Mexico.

The content of these documents, and our analysis of their applicability to Mexico's request that we expand the Mexican Hass avocado import program is documented in APHIS's "Information Memo for the Record" (April 30, 2001).

Comment: The Department appears to be sweeping aside one of the critical components to the systems approach, namely limiting the season of shipment. Under the proposal, fruit and pests can be shipped into the United States during times (April and May) when there certainly is host material present in the receiving States. Consequently, the rule should be appropriately modified to delete April as a shipping period. If the Department is intent on expanding the time period to cover a 6-month shipping window, then a possible approach would be to start the program on October 15 and end it on April 15.

Response: APHIS has reviewed the risk assessment documents on which this rule is based, and finds that they support the commenter's suggestion. We have reviewed anecdotal evidence regarding the marketing patterns of Mexican Hass avocados and have found that Hass avocados remain in the marketplace for 2 to 4 weeks after importation. Therefore, avocados imported on April 30 could be in the marketplace until late May, when fruit fly host material would be beginning to become available in some approved States. To further reduce the risk that fruit flies, if imported with Mexican Hass avocados, could find suitable host material in approved States, we are revising the dates that begin and end the shipping season. As suggested by the commenter, the shipping season will run from October 15 through April 15. This change will help to ensure that fruit flies, in the highly unlikely event that they are present in imported Hass avocados, are even less likely to be imported into areas with suitable host material that could support their survival.

As stated in our proposed rule, the numbers of fruit flies trapped in approved municipalities in Michoacan are higher in October than in April. However, climatic conditions in the States proposed for expansion are less conducive to fruit fly survival in late October than in mid- to late May, when imported avocados could still be in the marketplace in the United States. Climatic conditions in October in the approved distribution area are such that even if fruit flies were present in shipments of avocados, the flies would find little or no host material on which to survive. Further, even if host material were present and conditions were suitable for fruit fly survival in late October, conditions in November would not suitable for fruit fly survival.

Comment: Although trapping data indicate that fruit fly population levels in Michoacan are lower between the months of November and April, captures in May rise precipitously. For adults to be captured in May, ovipositing in host material had to occur in late March or early April, depending upon ambient weather conditions. Generally, temperatures between 20 and 30 °C considered optimal for the development of *Anastrepha* spp. fruit flies. According to the Joint Agricultural Weather Facility, operated by the World Agricultural Outlook Board of the USDA and the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce, average temperatures in those municipalities in Michoacan, Mexico, approved for the export of Hass avocados were within this range between February 1 and April 30, 2001. This means that fruit fly eggs and larvae were present in host material in or around avocado groves at the time of the proposed harvest of Hass avocados for shipment to the United States.

Response: As stated elsewhere in this document, APHIS has acknowledged that *Anastrepha* spp. fruit flies are present in Michoacan, which is why the systems approach regulations include safeguards to prevent the introduction of those pests. The requirements, such as surveillance trapping, increased trapping in response to a single fruit fly detection, Malathion bait treatments, covering of harvested avocados, fly-proof screens on packinghouses, and inspections, work together with the poor host status of Hass avocado fruit growing in commercial orchards in Michoacan to mitigate the risk posed by *Anastrepha* spp. fruit flies.

Comment: To allow Hass avocados to pass through Florida for an extended period when the invasive pests associated with avocados are more prevalent would create a hardship for the Florida avocado industry and the larger Florida agricultural industry. Although identified pests of avocados would not likely become established in the approved States, they could become established in Florida. With the potential for transshipment, that is a distinct possibility.

Response: Avocados imported under the systems approach regulations contained in § 319.56–2ff are not eligible for movement into or through Florida at any time.

Pest Detection

Comment: Without knowing the methodology used for fruit cutting and other visual survey activities, there is no way for reviewers to draw conclusions from the survey or other interpretive data provided.

Response: There is no manual on methods for fruit cutting and other visual survey activities, per se. However, there is some discussion of such methodologies in the 1995 Risk Management Analysis and the workplan for the Mexican Hass avocado import program. Again, APHIS is confident that Mexican Hass avocados are properly cut and inspected in orchards, at packinghouses, and at the port of first arrival in the United States.

Comment: The biology of potentially serious pests like thrips makes detection very difficult. Thrips eggs are extremely

small and are usually laid within the tissues of leaves or skin of fruit. The number of eggs laid within individual leaves and fruit in orchards infested with the avocado thrips in California can easily exceed 20. Plant material entering the United States, either legally or illegally, with this number of viable eggs provides a good-sized cohort that could establish a reproducing population in a permissive environment. Further, frequent introductions of small numbers of pests ultimately could lead to establishment when founding populations enter a permissive environment.

Response: APHIS is confident that infestations of thrips in Hass avocados can be detected during inspections required under the systems approach, including inspections at the port of first arrival in the United States. Available literature suggests that most thrips feed on, and lay eggs in, other parts of plants besides fruit, and therefore, APHIS does not generally consider fruit a likely pathway for thrips. Furthermore, the lack of interceptions of thrips of quarantine significance in commercial shipments of avocados suggests that imported avocado fruits are not a good pathway into the United States for such pests.

Comment: In the 2001 trip report, Dr. Cervantes states that "the methods used for detecting pests that have been proposed in the USDA–SAGAR workplan, if they are followed as specified, are adequate to detect the presence of the seed moth." What about the other pests?

Response: Dr. Luis M. Cervantes Peredo was asked to review only the avocado seed moth detection activities associated with the Mexican Hass avocado import program. Dr. Cervantes is an expert on the avocado seed moth, and in his report found that the various pest detection measures used in the program are adequate to detect the presence of the avocado seed moth in approved avocado groves.

Comment: Is there a prescribed protocol for certifying or otherwise validating laboratory standards and/or detection programs in the areas of origin? Who ensures that such protocols are enacted? Are there penalties for laboratories or detection facilities and programs that do not enact or conform to the prescribed protocols?

Response: We are unsure of what the commenter means by "laboratory standards," as the program involves no laboratories, per se. Regardless, as stated earlier in this document, APHIS's International Services (IS) maintains a presence in the avocado production areas in Michoacan. IS has an inspector stationed in Michoacan year-round to ensure that APHIS regulations and the conditions of the program workplan are being complied with in approved orchards and packinghouses. APHIS also employs seasonal inspectors who monitor compliance with the regulations during the avocado shipping seasons. Orchards that do not meet the criteria outlined in the regulations (including trapping, fruit cutting, orchard sanitation, and other requirements) are removed from the program. Essentially there should be minimal concern that APHIS standards are being met in Mexico because APHIS monitors all aspects of the import program.

Fruit Cutting

Comment: A fruit fly egg is about 1.2 millimeters in length in the field and in the packinghouse where 99 percent of all fruit cutting for the program takes place. Weevil larvae feed just underneath the skin of avocado near the stem end and, unless fruit are examined closely, larvae would not be detected. Fruit that are cut should be examined for eggs of fruit flies, weevils, and thrips using hand lenses or dissecting microscopes. Non-detection under the current fruit cutting procedures does not indicate non-infestation.

Response: APHIS inspectors are allowed to use their discretion in selecting a method of examination of imported Hass avocados. Each inspector has a hand lens that he or she may use if needed to aid in the detection of pests in Hass avocados. APHIS is aware that there is a remote possibility that pests could infest fruit and escape detection during fruit cutting. However, fruit cutting represents only one element of the systems approach, which uses a series of overlapping, redundant safeguards to mitigate the risk of pest infestation. In fact, Table 3 in the risk management analysis for the systems approach shows that fruit cutting is one of the least effective risk mitigating tools used in the systems approach. For convenience, the table is reproduced below.

TABLE 3.—SYSTEMS APPROACH: MEXICAN AVOCADO

Risk mitigation measures	Reduction of potential pest risk					
	Fruit flies: *Anastrepha* spp.	Small avocado seed weevils: *Conotrachelis* spp.	Avocado stem weevil: *Copturus aguacatae*	Large avocado seed weevil: *Heilipus lauri*	Avocado seed moth: *Stenoma cateniferi*	Hitchhikers and other pests
Field surveys	40% to 60%	95% to 99%	80% to 95%	95% to 99%	95% to 99%	40% to 75%
Trapping and field treatments	55% to 75%	0	0	0	0	3% to 20%
Field sanitation	75% to 95%	15% to 35%	70% to 90%	15% to 35%	15% to 35%	20% to 40%
Host resistance	95% to 99.9%.	0	0	0	0	0
Post-harvest safeguards	60% to 90%	0	0	0	0	40% to 60%
Winter shipping only	60% to 90%	0	0	0	0	50% to 75%
Packinghouse inspection and fruit cutting	25% to 40%	50% to 75%	40% to 60%	50% to 75%	50% to 75%	30% to 50%
Port-of-arrival inspection	50% to 70%	50% to 70%	50% to 70%	50% to 75%	50% to 75%	60% to 80%
Limited U.S. distribution	95% to 99%	95% to 99%	90% to 99%	95% to 99%	95% to 99%	75% to 95%

As shown in the table, for each type of pest, there are at least two other mitigating measures that are believed to be more effective in reducing risk of infestation of avocados than fruit cutting. The most significant of these mitigating measures is the limited distribution measure, which provides that, even in the event that infested fruit escape detection at the port of first arrival, they are only eligible for importation into areas with a lack of suitable host material and climatic conditions that would inhibit their survival.

Comment: In the field, fruit is cut in half or quartered, is inspected for seed damage or tunneling, and is then discarded. In the packinghouse, fruit is cut in half and given a cursory glance and then brushed off the cutting table without examination. APHIS must work closely with Sanidad Vegetal to develop formal, documented methods for cutting fruit in the field, at packinghouses, and at the border. The objective of fruit cutting in the field should be detection of stem weevils, seed weevils, and the seed moth. Each inspector should be thoroughly trained in proper fruit cutting technique, and should be equipped with a hand lens.

Response: In the past, APHIS observed improper fruit cutting techniques being employed at packinghouses, and took corrective action. We are confident that inspections and fruit cutting in the field and at the packinghouses are being conducted properly. APHIS inspectors are present any time that fruit is cut in a packinghouse in Mexico, and are trained to detect all of the pests of concern for Hass avocados. Each APHIS inspector has a hand lens available if its use is necessary, and the objective of fruit cutting is always detection of any and all pests. Though fruit cutting and inspection are not as effective for detecting fruit flies as they are for detecting stem weevils, seed weevils, and the seed moth, APHIS inspectors look for all pests during these procedures.

Comment: If the fruit cutting technique is not standardized, and is not accompanied by proper detailed inspection of fruit, including use of hand lenses or microscopes, then the data generated regarding the number of uninfested cut fruit are meaningless and cannot serve as a basis to support a change in regulatory requirements.

Response: As stated earlier in this document, we believe fruit cutting as it is currently practiced in the field and at packinghouses is adequate to detect pests in Hass avocado fruit. Furthermore, fruit cutting data suggest that the Mexican Hass avocado import program is working as designed.

We did not propose to expand the program simply because of fruit cutting data. Rather, as stated in our proposed rule and elsewhere in this document, we proposed to expand the program because risk assessment documents and 4 seasons worth of shipping, inspection, and trapping data support expanding the rule. Indeed, fruit cutting data suggest that imported avocados are not infested with pests, but the findings of the Sequeira, *et al.* study suggest that even if avocados were infested with fruit flies, those flies would not survive in the approved distribution areas.

Comment: APHIS has acknowledged that fruit cutting is not intended as a method for detecting fruit fly eggs or larvae. This is evident from the description of the procedure itself in the Work Plan, which states that "all the fruit will be cut open to detect the presence of weevil eggs or larvae".

Response: APHIS has made a policy of not using inspection (and in this case, fruit cutting) as a means of mitigating the risk posed by fruit flies. As shown in Table 3 of the Risk Management Analysis (reprinted earlier in this document), packinghouse inspection and fruit cutting provide only a 25 to 40 percent reduction in the risk posed by fruit flies, while providing a 50 to 75 percent reduction in the risk posed by seed weevils and a 40 to 60 percent reduction in the risk posed by the avocado stem weevil. Despite this, we do still inspect fruit for all pests.

Comment: Fruit cutting in the field should be supported by mandatory cutting of culled fruit in the packinghouse from each lot per day, in addition to cutting samples from packed fruit prior to shipping.

Response: Under the regulations, 300 fruit per shipment must be cut at the packinghouse prior to culling and packaging. No cutting is done after culling, though fruit that would have been culled are part of the cutting sample.

Comment: Fruit cutting should be based on a percentage of fruit at each inspection for each lot per pack date, not a set number of fruit per lot. Quantities of fruit per lot can vary considerably, with the possibility that large lots could be undersampled. As an example, a minimum of 1 percent of the boxes in each lot in the shipment should be visually inspected and 5 percent of the fruit within those boxes should be cut and carefully inspected for the presence of internal feeders.

Response: Fruit cutting is based on a percentage of fruit per shipment. As stated above, under the regulations, 300 fruit must be cut and inspected per shipment to the packinghouse. A shipment of avocados is almost always the total amount that can fit in a standard shipping container. APHIS believes that such shipments, depending on the size of the fruit and the number of field boxes, can range in number between 1,000 and 4,000 avocados. Hypergeometric tables indicate that the sample size needed to reach the 95 percent confidence level of detecting a 1 percent infestation in these shipments varies between 258 and 288 fruit cut per shipment, assuming a maximum number of 4,000 avocados per shipment. Therefore, we set the sample size at 300 fruit, and believe this sample size is sufficient to provide a high level of confidence that infested fruit will be detected, if present.

Comment: Paragraph 4.4 under the Packinghouse section of the 1999 workplan requires that fruits sampled at the packinghouse are to be cut into slices to inspect for fruit flies, seed pests, and stem weevils, but the 2001 trip report and program review pictures provided show a fruit cutting procedure that does not appear consistent with the work plan requirements.

Response: It is difficult to determine from the pictures provided in the 2001 trip report whether the fruit have been sliced properly to detect stem weevils. Since such slices are thin, as evidenced in G.L. Kreitner's photo essay on damage caused by weevils in avocado fruit, and those slices are not readily discernable from the picture. Nonetheless, the APHIS personnel who were present during the pictured fruit cutting have assured APHIS that cutting at the top of avocados near the stem end for stem weevils was indeed performed. Additionally, the pictures do show evidence of deep cuts necessary to examine for seed damage cause by seed weevils and the seed moth.

Comment: If fruit cutting is targeting seed-infesting insect larvae, yet the agency is using the same data to advance a finding of no fruit fly larvae. that conclusion should be a qualified one.

Response: While absence of fruit fly detections from fruit cutting does not definitively prove absence of infestation, we do believe it provides some evidence that the Mexican Hass avocado import program is working as designed, as we have previously stated.

Pest Surveys

Comment: APHIS claims that the starting point in the risk equation for fruit flies is virtually zero, and that the number of fruit fly captures in traps set out in Mexican avocado orchards from November through April is insignificant.

Response: We have acknowledged that *Anastrepha* spp. fruit flies are present in Michoacan, which is why the regulations set forth safeguards to prevent the introduction of those pests. The requirements, such as surveillance trapping, increased trapping in response to a single fruit fly detection, Malathion bait treatments, covering of harvested avocados, fly-proof screens on packinghouses, and inspections, work together with the poor host status of Hass avocado fruit to mitigate the risk posed by *Anastrepha* spp. fruit flies.

Comment: Single digit fruit fly captures in Mexico from November through April are not believable. There is no doubt that fly populations are on the rise in April in Mexican avocado groves, based on the dozens of adult flies captured in May. It would only take a warm spring—a 2-week shift in seasonal weather patterns—to precipitate explosive growth in fruit fly populations.

Response: We have confidence that fruit fly trapping in Mexico is being conducted properly, based on observations by APHIS inspectors. From 1997 to 2000, a total of 68 fruit flies were trapped during the month of May in orchards certified for export to the United States.

These data do suggest that fruit flies are being trapped in higher numbers in May than in November through April. However, as stated earlier in this document, the approved shipping season for Mexican Hass avocados will run from October 15 through April 15. We feel that this change will reduce the risk that fruit flies, in the highly unlikely event that they are present in imported Mexican Hass avocados, could be introduced into an area of the United States where adequate host material is available (mid- to late May in approved areas). Furthermore, there still remains no evidence to conclusively prove that the fruit flies in approved Mexican Hass avocado orchards are populating in those orchards and/or using Hass avocados as hosts.

Comment: Four years of trapping results provide no guarantee that future fruit fly population levels will remain low, particularly during the month of April, because populations of flies in commercial orchards can exhibit strong fluctuations from year to year.

Response: As stated in more detail earlier in this document, we are revising the approved shipping season for Hass avocados to run from October 15 through April 15. We believe that this change will further reduce the possibility that fruit flies, in the highly unlikely event that they are present in imported Hass avocados, could find suitable conditions and host material to support their survival in the approved distribution area.

Comment: APHIS should replace the highly inefficient McPhail traps and liquid protein baits used in the Mexican Hass avocado import program with newly developed synthetic lure and cylindrical traps. Alternatively, the Department should consider using Nulure as an attractant in McPhail traps deployed in Mexican avocado groves until new technology is adopted by Mexico.

Response: APHIS is aware of the availability of new traps that use Nulure as an attractant. APHIS is currently evaluating these traps and may elect to require their use in the Mexican Hass avocado import program at a later date.

Comment: Fruit fly trap placement in Mexican growing areas is haphazard with respect to height and exposure to sunlight. Research has shown that the preferred placement of traps is within the tree canopy where traps are shaded. Industry observers have seen traps being inappropriately washed out with soapy water. They have seen trappers barely examine trapped specimens to determine if target pests were present. Servicing of traps must be conscientious, both with respect to cleaning and rebaiting of traps as well as detection and identification of target species.

Response: Trapping is conducted in Michoacan by county-level officials of Mexico's Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación (SAGARPA). These persons are trained by SAGARPA, and are monitored by APHIS–IS personnel. APHIS inspectors stationed in Mexico monitor the placement and servicing of traps; if an inspector determines that trapping is not being conducted properly, he or she orders corrective action.

Comment: A weak or ineffective attractant, a misplaced trap, or a target species that was captured but undetected could significantly skew reported fruit fly trapping results. Data presented by APHIS do not accurately represent actual fruit fly activity levels in Mexican avocado orchards throughout the year, and the risk of infestation is significantly higher than levels calculated by APHIS.

Response: APHIS must rely on trapping data as the only evidence of fruit fly activity in Michoacan, given the absence of fruit fly detections in the avocados themselves. APHIS is confident that traps in Michoacan are placed and tended similarly to traps placed in U.S. fruit fly host growing areas, and, based on its own inspections of the growing areas in Mexico, has no reason to suspect that the data have been corrupted by improper trapping techniques.

Comment: Proper pest surveys of the avocado export area in Mexico still have not been done, particularly in the absence of broad-spectrum pesticide use that maintain pest species at relatively low levels such that it is almost impossible to predict what other pest problems, both arthropods and diseases, might arise. For instance, prior to its discovery in California, the avocado thrips was a species new to science. One wonders how this pest could be present in avocados in Mexico without being known as a pest in the scientific literature or having been described taxonomically.

Response: As stated in the proposed rule, APHIS pest surveys include areas with backyard and feral avocado trees and groves. We believe that surveying such areas provides a context to examine the presence of pests in a limited pesticide use context. Furthermore, APHIS believes that thrips, which are external feeders, can be readily detected by inspection. We do not require treatment or other mitigations for thrips on most fruits for this reason.

Comment: In 1997, APHIS surveys detected over 2,100 stem weevils in Mexican avocado groves. There is no indication that these numbers have decreased in the 4 years since. Given that APHIS conducts surveys for stem weevils at the wrong time of year, the numbers could be even higher.

Response: APHIS has acknowledged that stem weevils are present in the State of Michoacan, and there is no existing program in Mexico that is intended to reduce their numbers. However, the systems approach is designed to mitigate the risk that stem weevils could infest imported Hass avocado fruit.

Regarding inspections for stem weevils, the Junta Local de Sanidad Vegetal (JLSV) conducts monthly inspections of orchards certified under the Mexican export program.[1] These inspections include inspections for stem weevils. In addition, the Director General de Sanidad Vegetal (DGSV) conducts one stem weevil survey per year (usually in the spring), and APHIS and DGSV conduct a joint survey in the fall prior to orchard certification. If stem weevils are detected during any of these surveys (including the monthly inspections by JLSV), those orchards are dropped from the Hass avocado export program.

Further, even in the event that imported Hass avocados are infested with stem weevils upon reaching their destination in the United States, there is a minimal chance that stem weevils could find suitable host material on which to survive and establish themselves, given that they are believed to be avocado-specific pests. The only U.S. States that commercially grow avocados are Florida, Texas, California, and Hawaii, none of which are approved for distribution of Mexican Hass avocados.

[1] Under the regulations, orchards must be part of Mexico's export certification program, which is administered by SAGARPA. The monthly inspections by JLSV are required under the Mexican export program, not under APHIS regulations.

Comment: In 1998, 19 percent of wild/backyard orchards in Uruapan were found to harbor stem weevils. Two years later, APHIS's surveys indicated that 91 percent of wild/backyard sites were infested. No explanation is provided for this dramatic increase in stem weevil detections, but it is evident that populations of these insects remain unabated in the municipalities approved for export to the United States.

Response: Again, APHIS is well aware that stem weevils are present in the State of Michoacan. However, as explained in more detail above, we believe that there is a negligible risk that Mexican Hass avocados imported under the systems approach would introduce plant pests, including stem weevils, into the United States.

Comment: The timing of pest surveys by DGSV is a function of when a grower first petitions JLSV to participate in the export program and, later, the workload at DGSV. A review of a file for a grove eligible to export avocados to the United States shows that the grower initially signed up with the JLSV on November 13, 1997. Following the initial inspection and monthly grove visits by JLSV, DGSV conducted fruit, soil, and foliage sampling to pre-certify the grove for export to the United States. The DGSV surveys were conducted on March 3, 1999, and January 5, 2000. Neither survey was done at a time at when adult avocado pests were most likely to be present. APHIS's statement that surveys by DGSV are made "in the spring" simply is not true. Other grower records indicate that DGSV survey dates are random, and that they are most likely dictated by convenience, not pest biology. Based on this information, the reported number of pests as determined by APHIS and DGSV surveys is artificially low, and not representative of the risks posed by these injurious insects. APHIS should formalize an appropriate schedule for the survey of Mexican avocado groves to ensure that survey activities are conducted when adult stages of the pests of concern are most likely to be present. APHIS should develop this schedule jointly with DGSV and require the agency to adhere to the schedule by agreement under the work plan. Failure to adhere to the schedule should result in the non-certification of orchards until such time as APHIS is able to conduct survey activities with its own personnel.

Response: APHIS believes that the records submitted by the commenter do not represent the complete file for that orchard. APHIS records show that the orchard in question was also surveyed for stem weevils and seed weevils on June 15, 1999, and June 21, 2000, when adult weevils would be likely to be present in orchards. We continue to believe that orchards in Mexico that export Hass avocados to the United States are properly surveyed for these pests at an appropriate time of year, and see no reason to develop a set schedule for surveys in the regulations or the workplan for the Mexican Hass avocado import program.

Inspection at the Border

Comment: Cutting and inspection of only 64,560 fruit out of a total of 160,108,800 imported avocados at point of entry (0.04 percent) does not represent a valid inspection and detection program. Rather it implies that phytosanitary inspections at the border are simply window dressing and potential or possible detections are of no concern.

Response: There are several other pest detection elements involved in the systems approach regulations that supplement fruit cutting and inspection at the port of first arrival. In fact, there are pest detection measures in place at every stage of the production process for Hass avocados from Mexico. There are pest survey requirements that must be met in orchards, including fruit fly trapping, and surveys for the avocado stem weevil, seed moth, and seed weevils. Fruit are also cut and inspected in orchards a total of 4,439,013 avocados during the first 4 years of the program. At the packinghouse, a total of 300 fruit per shipment must be cut and inspected in the presence of APHIS inspectors. APHIS has required these additional pest detection activities, in part, because it is aware that inspection at the port of first arrival in the United States alone would not be sufficient to detect pests in imported fruits.

Inspection at the port of first arrival is intended to accomplish two goals. First, inspectors check the documents accompanying the shipment to ensure that the avocados are from an approved orchard and were processed in an approved packinghouse and are accompanied by a phytosanitary certificate. The inspectors also ensure that the limited distribution statement appears on all boxes, that a U.S. Customs Service bond has been secured for the shipment, and that the in-bond papers indicate that the shipment is consigned to an importer in an approved State. Second, the inspectors will select a sample of fruit from each shipment and carefully cut and inspect those avocados to verify their pest-free status. Inspection at the port of first arrival is essentially a redundant safeguard that serves to verify that all the regulatory requirements applicable to the importation of the avocados have been met.

Comment: It is physically impossible for inspectors, no matter how diligent they are, and no matter how honest their intentions, to protect the United States from pest invasions and infestations given the volume of goods imported into the United States.

Response: APHIS has stated in the past that if zero tolerance for pest risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh agricultural commodity to any other country. There will always be some degree of pest risk associated with the movement of agricultural products; APHIS's goal is to reduce that risk to a negligible level. In the case of Hass avocados from Mexico, we believe that the overlapping and redundant safeguards employed in the systems approach will achieve that goal.

Comment: Inspectors at the border stations do not know how to look for a weevil in an avocado, nor do they have time to carefully inspect pieces of fruit under a dissecting microscope.

Border personnel must be provided with specific instruction on the detection of stem weevil in Hass avocado fruit, and APHIS should update and reissue the photo essay guide prepared by G.L. Kreitner to PPQ offices at border ports of entry. Ports of entry should also be adequately staffed so that examination of fruit samples can be done in a meaningful way.

Response: As stated earlier in this document, APHIS inspectors are trained to detect all types of pests in various types of commodities. APHIS is distributing the photo essay as suggested to all approved ports on the Mexican border where Hass avocados are imported prior to the 2001–2002 shipping season. The photo essay will be incorporated into an existing booklet of procedural guidelines on the Mexican Hass avocado import program that is used by port inspectors when they process and inspect shipments of imported avocados. We believe the photo essay, as originally published, is a valuable tool in describing where stem weevil infestations are typically found in avocado fruit, and do not see the need to update it. Furthermore, APHIS believes the level of inspection at border ports is appropriate, given the additional safeguards employed under the systems approach regulations, and is confident that border stations are

adequately staffed to provide agricultural quarantine and inspection services.

Pest Detection in the United States

Comment: The proposed rule states that seven States (Arizona, California, Florida,Georgia, Louisiana, South Carolina, and Texas) in the continental United States are at risk for establishment of four fruit fly species. Do these States have pest detection programs that focus on the pests associated with Mexican Hass avocados?

Response: Arizona, California, Florida, and Texas each have fruit fly detection programs that operate year-round. APHIS is not aware of any detection programs in these or the other three States that focus on avocado-specific pests, though it is possible that local surveillance programs in avocado-producing States may conduct surveys for avocado-specific pests.

Comment: Do the 12 additional States have pest detection programs that focus on fruit fly host crops and fruit fly pests?

Response: The 12 States that we are adding to the Mexican Hass avocado import program do not conduct fruit fly or avocado-specific pest detection programs, likely because those States are not able to provide the combination of host material and climatic conditions necessary to support a reproducing, established fruit fly population, and because none of the 12States have climatic conditions suitable for the production of avocados.

Trade Issues

Comment: Over 4 years ago, avocado growers in California requested market access to Northern Baja California, Mexico, for California avocados and asked the USDA to initiate the necessary steps to clear the way for exports into Mexico. There is a ready market for California avocados in northern Mexico, yet California growers are prohibited from shipping into Mexico. For 3 years, growers heard nothing in response to their request. In November of 2000, senior representatives from the USDA pledged that they would aggressively pursue access to the Mexican market. Those talks prompted Mexico to prepare a risk assessment for California avocados, which was recently forwarded to the USDA. The Mexican risk assessment stated that California avocados would not be allowed into Mexico until procedures were in place to protect the Mexican avocado growers from being infested by avocado seed moths and seed weevils that could be introduced from California. There is no existing credible scientific evidence showing that these pests are present in California. By contrast, these same quarantined pests in Mexico are well documented through the scientific literature. APHIS must reject Mexico's bid for expansion as long as the U.S. avocados are not permitted entry into Mexico.

Response: APHIS agrees with the commenter that avocado seed moths and seed weevils are not present in California, and sent a letter to Sanidad Vegetal on September 6, 2001, asking that the Mexican risk assessment be revised and those pests removed from consideration. As of the drafting of this final rule, we have not received a response from Sanidad Vegetal.

Comment: APHIS's primary role is to protect agriculture from the introduction of pests and diseases. This role is compromised by APHIS's new emphasis on promoting and expanding trade.

Response: The Plant Protection Act authorizes the Secretary of Agriculture to regulate exports, imports, and interstate commerce when the Secretary determines such action is necessary to prevent the dissemination of plant pests. The Secretary of Agriculture has delegated this responsibility to APHIS.

APHIS's primary responsibility with regard to international import trade is now, and has been for many years, to identify and manage the risks associated with importing commodities. Because, as we have already noted, there is no such thing as zero risk in international trade, reducing risk to a negligible level is the only realistic approach. If there is no practical way to mitigate a particular risk associated with a product, APHIS will prohibit that product's entry into the United States, as is our right under current international trade agreements; we have done so in the past and will continue to do so when warranted. However, when we determine that the risk associated with the importation of product is negligible, it is our responsibility under those same trade agreements to make provisions for the importation of that product.

The systems approaches developed for citrus from Florida and Texas, apples from Washington, and stonefruit from California are examples of ways that we have found to answer the pest concerns of our trading partners in order to enable the exportation of domestically grown fruits and vegetables. Just as we seek to open foreign markets to our Washington apples or California stonefruit, however, we must also listen to the requests of other nations seeking to export their products to the United States.

Comment: This rulemaking is not based on science. It is based on a political agreement made even before the scientific research/risk assessment was done, and before the proposed rule was written. This is about trade and politics, not science, and is about favoring foreign interests over those of the domestic producer.

Response: This action was predicated on several risk assessment documents that provide a scientific basis for potential expansion of the Mexican Hass avocado import program. Without these risk assessment documents, which have withstood several reviews and public comment periods, APHIS would not have proposed this action. Political interests stimulate consideration of the expansion of trade of agricultural commodities between countries, but all decisionmaking concerning phytosanitary restrictions on trade must be science-based. APHIS stands behind the risk assessment documents that support this rule, and believes they are based on sound science.

Pest List

Comment: The proposed rule accurately states that: "the persea mite (*Oligonychus perseae*) and avocado thrips (*Scirtothrips perseae*) are currently established in the United States, and are not under official control, and therefore, do not meet the definition of a quarantine pest." At the time of their first detection by APHIS, however, the label of quarantine pest would have been appropriate. In both cases, APHIS failed to prevent the introduction and establishment of injurious pests known to infest Mexican Hass avocados.

Response: The introductions of the persea mite and avocado thrip happened independently of the importation of Mexican Hass avocados, as described elsewhere in this document.

Comment: Deficits in the knowledge on the taxonomy, ecology, and biology of the arthropod fauna on avocados in exporting countries may render any mitigation of the risk posed by unknown pests that could be present in growing areas ineffectual.

Response: Avocados and pests of avocados have been studied in detail for many years, especially in Mexico, which is the world's largest producer and consumer of avocados. APHIS is confident that it has identified all pests of quarantine significance known to follow the avocado pathway. Nonetheless, APHIS inspectors are trained to inspect for all quarantine pests, and eight of the nine safeguards employed by the systems approach provide reduction of the risk posed by hitchhikers and other (unknown) pests.

Comment: One species of thrips, *Neohydatothrips burungae* (Hood), is as common as *S. perseae* on avocados in Mexico and is not known to be present in California. This pest has not been included in USDA's Pest Risk Assessment for Hass avocados from Mexico. Given the common occurrence of *S. perseae* in Mexico on avocados and its pestiferous nature in California, it is highly likely that *N. burungae* could also pose a threat to the California avocado industry.

Response: When we conducted the Supplemental Pest Risk Assessment for the original Mexican Hass avocado import program in 1995, there was no literature available suggesting *Neohydatothrips burungae* (Hood) was associated with Hass avocados. N. burungae is now considered a quarantine pest by APHIS; however, to date, we have never intercepted this pest on avocado fruits at a port of entry, nor have we intercepted any thrips in commercial shipments of avocado fruits. We have intercepted other thrips, including species of the genera Scirtothrips and Thripidae, on avocado leaves imported in passenger baggage. Further, based on findings of thrips on other fruits, we are confident that we can detect thrips infesting Hass avocado fruits if they do indeed follow the avocado fruit pathway; however, evidence to date suggests they do not. For this reason, we are confident that *N. burungae* associated with Mexican Hass avocado fruit poses a negligible risk of being introduced into the United States.

Comment: Researchers have catalogued potentially dangerous pests that do not appear in USDA's pest risk assessment. Johansen collected 38 phytophagous thrips species from avocados in Mexico, identifying seven species, i.e. *Frankliniella bruneri, F. chamulae, Heliothrips haemorrhoidalis, Pseudophilothrips perseae, Scirtothrips aguacatae, S. kupandae,* and *S. perseae,* that could be transported via the avocado pathway. Also reported from avocado in Michoacan, Mexico, is *Scirtothrips aceri* (Moulton). Only one of these pests, *Heliothrips haemorrhoidalis,* is listed in USDA's pest risk assessment. It is important to note that the thrips species discussed above feed on or attack the avocado fruit, and thus, based on their biology, can be expected to follow the pathway of imported Mexican Hass avocados. *Frankliniella bruneri, F. chamulae, Pseudophilothrips perseae, Scirtothrips aguacatae, S. kupandae,* and *Neohydatothrips burungae* must be added to USDA's Mexican Action List. In each case, the species mentioned fall into the "H" or high category in the three criteria outlined USDA's Enhanced Hazard Pest Categorization methodology, indicating that quarantine action is required. Continuation of rulemaking without a revised pest risk assessment given the Department's own process of risk categorization for these species is inconsistent with, and a violation of, international plant health principles and the phytosanitary provisions of NAFTA.

Response: There was no literature available suggesting any of the pests listed above are associated with Hass avocado fruits at the time the 1995 Supplemental Pest Risk Assessment was conducted. APHIS now considers *Frankliniella bruneri* and, as stated above, *Neohydatothrips burungae,* to be quarantine pests. However, for the same reasons described above for *N. burungae,* we believe that *F. bruneri* associated with Mexican Hass avocado fruit poses a negligible risk of being introduced into the United States. We are confident that both thrips are unlikely to be imported in fresh Hass avocado fruit because they prefer leaves and plants over fruit. For this reason, we believe they do not follow the avocado fruit pathway.

Regarding the other thrips listed by the commenter (*Frankliniella chamulae, Heliothrips haemorrhoidalis, Pseudophilothrips perseae, Scirtothrips aceri* (Moulton), *S. aguacatae, S. kupandae,* and *S. perseae*):

- *S. perseae* exists in California, and does not meet the definition of a quarantine pest.
- *H. haemorrhoidalis* is listed in APHIS's 1995 Supplemental Pest Risk Assessment as a pest mainly associated with plant parts of avocado other than the fruit, and is considered by APHIS to be a non-actionable pest if detected during port inspections.
- *F. chamulae, P. perseae, S. aceri* (Moulton), *S. aguacatae,* and *S. kupandae* have not been evaluated for consideration as quarantine pests, but have not been associated with avocados in any published scientific literature. APHIS has no reason to believe they follow the avocado fruit pathway.

As requested by the commenter, APHIS is adding *N. burungae,* and *F. bruneri* to APHIS's Mexican Action List. We are also evaluating *F. chamulae, P. perseae, S. aceri*(Moulton), *S. aguacatae,* and *S. kupandae* using APHIS's Enhanced Hazard Pest Categorization methodology to determine whether they should be added to the Mexican Action List as well.

Regarding whether revisions to the pest risk assessment are necessary, APHIS is unaware of any evidence that suggests any of the thrips species listed by the commenter follow the avocado fruit pathway. Until we find evidence as such in scientific literature, we will continue to consider these pests as unlikely to follow the avocado fruit pathway, regardless of their quarantine pest status.

Comment: USDA's Supplemental Pest Risk Assessment states that the pest list for Mexican avocados was generated after a review of the AGRICOLA, CAB, and MELVYL databases, historical decision sheets covering importation of avocados, the U.S. catalogue of intercepted pests and interception records, CMI distribution maps, texts of plant diseases and pathogens, and APHIS files on pests not known to occur in the United States. No attempt has been made to collect information from the most obvious and important source, independent scientific reseârchers who have conducted field work on avocado pests in Mexico and the United States.

Response: When gathering information on what pests to include in a pest list for a risk assessment, APHIS considers only information from published scientific literature. This is the only way to ensure that we cite only research that has been peer-reviewed. If independent scientific researchers have finalized and documented findings that would be relevant to APHIS risk assessments, we would expect that those findings would have been peer reviewed and published. APHIS does not contact researchers to solicit information on pests that may be relevant to particular risk assessments.

Systems Approach

Comment: The use of restrictions on the distribution of avocados is meaningless. Once an avocado or any other product is legally imported into this country, there are no further restrictions on the fruit after importation. Unaware and unscrupulous importers are then free to transship the product anywhere in the United States. They are frequently found all over Florida and contain pests.

Response: If the limited distribution requirement was the only means of risk mitigation available in the Mexican avocado import program, the open nature of the U.S. marketing and transportation systems would be a matter of concern. Limited distribution is, however, only one of a series of safeguards designed to prevent the introduction of pests into the United States through the importation of avocados from Mexico. We have not

expected limited distribution to be foolproof, but we also do not expect that infested avocados will be entering the United States through legally imported commercial shipments in the first place. Further, we anticipate that unscrupulous importers will be the exception, rather than the rule, so we believe that the restrictions on distribution of the avocados will be widely observed, rather than ignored. As to the finding of imported Hass avocados in Florida, APHIS is aware of only 2 cases where avocados were found in Florida. In both cases, one less-than-full box of avocados was found, and the scale insect contained therein is not a pest of quarantine significance.

Comment: APHIS cannot say that the risk of pest introduction associated with increased Mexican Hass avocado imports is zero. The risk may be low, but the risk only applies to U.S. growers.

Response: APHIS has not stated that the risk associated with expanding the Mexican Hass avocado program is zero. As stated earlier in this document, if zero tolerance for pest risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh agricultural commodity to any other country. APHIS has performed a risk analysis and has concluded that the risk of pest introduction is negligible. APHIS has deliberately not defined the point at which risk becomes negligible. The use of specific, numerical thresholds can have important consequences in international trade, as their reciprocal use by other countries could adversely affect the export of domestic products and hinder trade in commodities that can be safely exported to other countries. APHIS thus separately assesses individual risks for specific commodities and applies the professional judgement of its technical and scientific experts. This can result in different quantified risks being deemed negligible. This approach allows APHIS to protect domestic producers from risks which are not negligible while maintaining necessary flexibility for U.S. export markets.

Comment: The risk assessment on which the avocado import program is based is flawed because it is based on, and begins with, estimated probabilities.

Response: Risk assessments are intended to estimate the potential that future events can occur. Since risk assessments often are conducted to evaluate the use of systems that did not previously exist, there is no feasible way for risk assessors to begin the process with historical or other hard data relevant to the scenario or system being assessed. In the case of Hass avocados from Mexico, in the absence of hard data, estimates of the probability that certain events could occur were made by expert scientists to evaluate the risk mitigating measures used in the import program. Using this method enabled APHIS to account explicitly for the uncertainty associated with the various parameters of the Mexican Hass avocado risk model.

Comment: When APHIS used Monte Carlo simulations to develop risk estimates for the Mexican Hass avocado import program, it based the simulations on two models; one model in which Mexican avocados are imported under no special restrictions, and the second model employing use of the systems approach. APHIS should have modeled the previously existing system., i.e., the quarantine that was in place for more than 80 years.

Response: APHIS acknowledges that we could have used Monte Carlo simulations to develop a risk assessment that considered the pre-1997 status quo in which the importation of Hass avocados from Mexico was prohibited. However, such simulations would have simply been a paper exercise, given that the pre-1997 quarantine is no longer in place; given that the purpose of the risk assessment was to consider the risks associated with the 1997 proposed rule, such an exercise was not warranted.

Comment: The proposed rule stated that an eradication program would be initiated if an introduced avocado pest became established. It should have said that an eradication program would be initiated if a pest is detected.

Response: We did not make such a statement in the proposed rule; however, the environmental assessment for the proposed rule did have a typographical error that may have led the commenter to make this statement. In the environmental assessment, APHIS states that "in the highly unlikely event that an avocado pest should be introduced into the United States established, appropriate eradication actions would likely be initiated." The word "established" should not have been included in that sentence and has been removed in the final draft. Regardless, a single detection of a pest would not warrant eradication, whereas introduction and establishment of a pest certainly would.

Peer Review/Cooperation

Comment: A third party should evaluate the surveillance techniques associated with the Mexican Hass avocado import program, including fruit cutting and trapping.

Response: APHIS has conducted two reviews of the Mexican Hass avocado import program in the 4 years since its inception. Representatives of domestic avocado growers (i.e., the California Avocado Commission) participated in both reviews, and the State of California participated in the second review. In fact, the representatives of domestic avocado growers helped to draft the workplan for the operation of the program, and has had many opportunities to participate in the development and review of the program. APHIS believes it has been very transparent with the public throughout the existence of the program, and has shared information whenever requested. APHIS sees no need for another third party to review the documents on which the program is based, especially given the success of the program thus far.

Comment: APHIS should allow external peer review of the pest risk assessment for the Mexican Hass avocado import program. Peer review should not be conducted by another USDA agency.

Response: APHIS believes that the pest risk assessment for the Mexican Hass avocado program has been subjected to significant peer review already. Each risk assessment document on which the program is based has been made available for public comment for at least 60 days, some of those documents more than once. APHIS has received and considered numerous written comments on the risk documents as well as oral comments made at public hearings and has made changes to documents when appropriate. APHIS sees no need for any additional peer review of its risk assessment documents, as ample opportunity has already been provided for the public to submit its opinions.

Risk to Host Material-Producing States

Comment: The current Mexican Hass avocado import program places Florida and other southern States at risk for new pest introductions.

Response: The systems approach regulations are designed to mitigate the risk that pests could be introduced into the United States via imported Mexican Hass avocados. Distribution of avocados is not allowed in Florida and several other southern States. As stated elsewhere in this document, the importation of commodities from foreign countries is not without some risk, but APHIS believes that the regulations render the risk of new pest introductions negligible.

Comment: Data for San Diego County, CA, show that over half of the 66 single fruit fly finds in San Diego County from 1991 to 2000 occurred during the proposed winter shipping period of November to April. There is a high risk that fruit flies could become established if introduced into California during those months.

Response: The Sequeira, *et al.* study confirms that most of the State of California is at risk for establishment of Mexican fruit flies. However, the intent of the regulations is to ensure that (1) Hass avocados are not shipped to California, and, (2) even in the event that they are shipped to California, that the imported avocados do not contain pests.

Comment: An increase in the volume of imported fruit will result in a proportional increase in the risk of a pest introduction.

Response: Indeed, increased volume of imports can increase the risk that a pest could be introduced into the United States. The risk assessment documents on which this final rule is based indicate that even if imports increase as a result of this rule, the risk of pest introduction associated with the increased volume of imports is still negligible. As explained in the Information Memo for the Record, the 1995 Supplemental Pest Risk Assessment (as well as the 1996 Addendum) estimated that between one and two million boxes of fruit would be imported under the systems approach program. The actual number of boxes imported fell short of the minimum in all but one of the four years that the program has been in place. During the first four years of its existence, the program averaged only 834,675 boxes per year. Because of this, we believe that the 1995 and 1996 assessments actually overestimated the risk. It also means that even if the addition of 12 States to the program doubled the number of imported Hass avocados, the actual number of imported boxes would still fall within the range of estimates used in the 1995 and 1996 assessments, and their results would remain valid.

Treatment of Commodities

Comment: Mexico uses chemicals and pesticides that have been outlawed in the United States since the early 1970's, DDT being one of them. The growers in the United States are not allowed to use the chemicals that Mexican growers can use.

Response: The U.S. Food and Drug Administration (FDA) samples and tests imported fruits and vegetables for pesticide residues. The U.S. Government does not have any control over what pesticides are approved for use in foreign countries. The Environmental Protection Agency has regulations that address the exportation from the United States of pesticides that are not registered for use in this country and works with foreign environmental protection agencies and agricultural producers to promote safer pesticide use and food production practices. There is a variety of pesticides and other pest control measures available for use in the United States in the highly unlikely event that a plant pest is introduced into this country via Hass avocados imported from Mexico in accordance with the regulations.

Comment: There is no post-harvest treatment available for Anastrepha spp. fruit flies in avocados. When fruit flies were found in Fallbrook, CA, in 1999, many avocado growers lost a great deal of fruit because they could not send fruit out of the quarantined area during the 9-month quarantine period. Commodity post-harvest treatments were available to growers of other fruits and vegetables. Has APHIS evaluated post-harvest treatment protocols, including irradiation, for fruit fly hosts in the seven at-risk States? These treatment options should have been reviewed and validated in the environmental assessment as required by NEPA. When will they become available to growers?

Response: As stated earlier in this document, APHIS is evaluating protocols that would facilitate the interstate movement of Hass avocados from fruit fly quarantined areas in the United States. Currently, there is no available post-harvest treatment for Hass avocados. Research on various varieties of avocados has shown that treatment, including irradiation, has adverse effects on fruit quality. It is likely, given the quality-related issues involving post-harvest treatments, that regulatory approaches, perhaps modeled after the Mexican Hass avocado systems approach, could prove to be more practical for growers.

The environmental assessment referred to above was prepared specifically to address the potential environmental impacts that could be associated with implementation of the proposed rule. APHIS does not agree that treatment options and a validation of prescribed treatment protocols related to a potential eradication program should be discussed in the environmental assessment for the Mexican Hass avocado import program.

Comments Related to the Study by Sequeira et al.

Comment: Sequeira, *et al.* report that Mexican fruit flies do not attack young fruit, but no source is cited for this unsubstantiated conclusion. Although Sequeira notes that his approach is "conservative" with respect to phenological windows, insufficient scientific evidence is presented to conclusively establish that young fruit is not subject to attack by *Anastrepha* spp. fruit flies.

Response: Evidence for Sequeira, *et al.*'s observation that fruit flies do not prefer young fruit can be found in: Leyva-Vazquez, Browning, and Gilstrap. 1991 "Development of *Anastrepha ludens* (Diptera: Tephritidae) in Several Host Fruit." *Environmental Entomology* 20(4): 1160–1165.

Comment: Mexican Hass avocados should not be imported during the months of March and April because the temperature and climatic conditions could foster a mating population of fruit flies.

Response: The findings of the Sequeira, *et al.* study indicate that many U.S. States are at risk for the establishment of *Anastrepha ludens*. These States include California and Florida, among others. All States proposed for expansion of the Mexican Hass avocado import program were found by Sequeira, *et al.* to be at low risk for establishment of *Anastrepha ludens* because they do not have the combination of hosts and climatic conditions needed to support an established population of fruit flies. Nonetheless, because fruit imported on April 30 could stay in the marketplace until late May (when host material could be beginning to become available in some approved States), APHIS is revising the approved shipping season for Hass avocados imported from Mexico, as stated earlier in this document. APHIS believes that revising the shipping season, which will run from October 15 through April 15, will reduce the risk that fruit flies, if present in imported Mexican Hass avocados, could be introduced into areas with conditions suitable for even a short period of survival.

Comment: The mean maximum temperatures in Missouri and other States along the southern boundary of the proposed Hass avocado distribution area will promote fruit fly development in March. The 65 °F temperatures there are optimal for pest development, and host crops like apricots are well along in terms of development by April. These are facts confirmed with tree fruit specialists in every State along the southern boundary of the proposed shipping area.

Response: An area's mean maximum temperature is only a partial indicator of the likelihood that fruit flies can become established there. In identifying areas in the United States that are susceptible for

the establishment of *Anastrepha ludens*, the Sequeira, *et al.* study found that a given area must have adequate temperatures (including mean maximum and mean minimum temperatures), adequate hosts (in a susceptible stage), and other environmental needs (including adequate moisture and low prevalence of predators and parasites) for fruit flies to become established there.[2] Furthermore, research shows that optimal temperature for fruit fly development is not 65 °F but approximately 77 to 86 °F.[3]

APHIS does believe that States proposed for expansion of the Mexican Hass avocado import program do not have the combination of these elements needed to support the survival of fruit flies in March and April, as stated earlier in this document. We have revised the shipping season, as described earlier in this document, to reduce the possibility that imported avocados could remain in the marketplace until mid to late May, when suitable fruit fly host material is beginning to become available.

Comment: Fruit that enters the United States on April 30th would stay in the marketplace pipeline until late May, when many of the commercial crops with early bloom dates would be bearing fruit that is unquestionably susceptible to attack by fruit flies. Climatic conditions at that time of year would also be more than sufficient to support fruit fly growth and development. Only two of the proposed States (Maine and North Dakota) have mean temperatures below 60 °F in May. Most of the other States have mean temperatures that range from 60 to 70 °F or above, and according to scientific literature, the optimal temperature for survival of adult Mexican fruit flies is 59 °F.

Response: As stated in response to the previous comment, in this final rule, we have revised the shipping season to reduce the possibility that imported avocados could remain in the marketplace until mid to late May, when suitable fruit fly host material is beginning to become available. Furthermore, research shows that optimal temperature for fruit fly development is not 59 °F but approximately 77 to 86 °F.

Comment: Mean maximum temperatures during April are more than sufficient to support fruit fly development. In May, when a piece of infested fruit might still be in the market, mean temperatures are favorable across many of the approved and proposed States. According to historical records, States with mean temperatures of between 60 to 70° F in May include: Utah,Kansas, Nebraska, Missouri, Iowa, Kentucky, Indiana, Virginia, West Virginia, Maryland,Delaware, New Jersey, Minnesota, South Dakota, Wisconsin, Illinois, Michigan, Ohio,Pennsylvania, New York, Massachusetts, Connecticut, Rhode Island, and Idaho. Over the same period, States with mean temperatures above 70° F during May include Kentucky, Illinois,Virginia, West Virginia, and Missouri. There are several States where host material is available and ambient air temperatures are optimal for survival and reproduction of adult fruit flies introduced via an infested container or piece of fruit that arrives during the first 3 weeks in May. Specifically, commercial production of cherries would be well underway in Colorado, Idaho,Kansas, Utah, and Virginia. In addition, commercial peach production would have progressed substantially in Colorado, Kansas, Missouri, and Virginia by this time of year. Other crops that would be vulnerable in May include plums and prunes in Idaho, apricots and native *Prunus* spp. in Kansas, and apricots and native cherries in Missouri. Mean temperatures in all of the States listed would be optimal for adult fruit flies.

Response: The Sequeira, *et al.* study acknowledges that temperatures during late spring and summer in some of the States cited above are adequate for Mexican fruit fly development, but not establishment. APHIS believes it would be exceedingly unlikely that fruit flies would be introduced into approved States in commercial shipments of Mexican Hass avocados in such numbers that their populations would reach outbreak levels in a matter of a few months. Extended cold periods during the winter would destroy surviving stages and make establishment very unlikely. Note: The 60 to 70°F temperatures cited by the commenter are not consistent with the reported optimal developmental temperatures for Mexican fruit flies, which are 77 to 86 °F.

To further reduce the possibility that fruit flies could survive if introduced into approved States from mid- to late May, we have revised the approved avocado shipping season, as described earlier in this document.

Comment: Colorado and Utah border high-risk States where commercial oranges, grapefruit, peaches, apricots, plums, and other hosts are grown. These States are at risk for establishment of fruit flies. Will APHIS adopt a buffer zone approach for fruit flies and not just avocado-specific pests?

Response: APHIS stated in the proposed rule for this action that "we have not proposed to allow Mexican Hass avocados to be distributed in any State that borders California, Florida, and Texas, the only U.S. States that produce avocados." We did not intend for this to mean that we were adopting a "buffer zone" approach for avocados. In fact, we proposed to expand the Mexican Hass avocado import program to include Colorado, Idaho, Iowa, Kansas, Minnesota,Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming because the Sequeira, *et al.* study found that each of these States has climatological conditions that put them at low risk for fruit fly establishment.

Comment: Given the maximum duration for the development of each life stage of fruit flies, as documented in the scientific literature, it appears reasonable to assume that under certain circumstances, the total preimaginal development time for the Mexican fruit fly could easily exceed 100 days. Climatic conditions and host availability in destination States are not only important at the time a shipment arrives, therefore, but also up to 100 days later. Fruit fly eggs or larvae in a piece of infested fruit that arrives in one of the proposed States in April would be capable of survival and, upon completion of their development into adults, they would emerge to find optimal climatic conditions and an ample food supply.

Response: APHIS agrees that, hypothetically, the total preimaginal development time for the Mexican fruit fly could easily exceed 100 days based on maximum durations of each life stage. However, we believe it is highly unlikely that development could actually occur across such a time span based on the simple fact that there are few hosts that would provide suitable host material for fruit fly life stages for 100 consecutive days.

Preimaginal developmental periods of more than 3 months are unlikely to occur in the case of imported avocados because fruits are perishable and not held in storage or in the commercial pathway for extended periods. APHIS believes that fruit are typically present in the commercial pathway for no more than 30 days. However, even if the flies were to emerge after a prolonged preimaginal period, when they emerge they would likely find prolonged periods where suitable hosts are absent, along with prolonged freezing conditions during the winter-time. We believe these facts make establishment of this tropical/sub tropical pest very unlikely.

Comment: Experiences in San Jose, CA, in 1980–81 proved the conclusions from the Flitters and Messenger Medfly temperature and humidity study cited by Sequeira, *et al.* to be absolutely and totally incorrect. The conclusion by Flitters and Messenger that Mexflies could not establish and maintain populations in areas such as Sebastopol, CA, is highly suspect. The importance of avoiding a "Medfly experience" with *Anastrepha* fruit flies, based on faulty assumptions and data, strongly suggests that new temperature and humidity studies, using improved, modern technology for laboratory work and climatic data, be conducted by ARS scientists before any expansion of the avocado import program is permitted.

Response: The research referred to above by the commenter refers to a different study by Flitters and Messenger involving Medflies that was not used as a reference by Sequeira, *et al.* It is noted in the comment that in the Medfly study, the areas of San Jose, CA, were considered low risk for Medfly establishment. In contrast to that study, the Sequeira, *et al.* study identifies most of northern California as a high risk area for the establishment of *Anastrepha ludens*.

APHIS does not believe that the Sequeira *et al.* study is an extrapolation of Flitters and Messenger.[4] Unlike Flitters and Messenger, Sequeira, *et al.* analyzed the likelihood of establishment based on the pest's requirements for survival. These requirements included: (1)Availability of hosts; (2) host presence in a susceptible condition (i.e., with susceptible fruit), (3) presence of temperatures that are above the minimum below which development does not occur, (4) absence of extended periods of freezing conditions (based on long-term climatological averages from National Oceanic and Atmospheric Administration data), and (5) other environmental needs (including adequate moisture and low prevalence of predators and parasites) for fruit flies to become established there. APHIS is confident that the findings of the study, which have been reviewed by our NAPPO counterparts in Canada and Mexico, are scientifically sound, and believes they provide adequate assurance that fruit flies could not become established in the States proposed for expansion.

Comment: USDA must recalculate the probability of detecting or failing to detect an infestation of *Anastrepha* spp. fruit flies along the Mexican avocado pathway, taking into consideration problems inherent in the fruit cutting and trapping data used as a basis for the proposed rule. This should also be done for the Sampling Analysis section of the Sequeira, *et al.* report, as well as for the Department's Supplemental Pest Risk Assessment. New Monte Carlo simulations should be run, and the resulting estimates of the frequency of a pest outbreak should be subjected to external peer review. USDA should also rerun the simulations and recalculate the possibility of an outbreak of stem weevils based upon deficiencies associated with fruit cutting conducted to detect these pests, and the documented evidence that confirms that stem weevils can be transported in fresh Hass avocados.

Response: As stated earlier in this document, APHIS is confident that fruit cutting and fruit fly trapping associated with the Mexican Hass avocado import program are being conducted properly, and are adequate to detect pests as intended. Furthermore, APHIS has not proposed to expand the program based solely on the results of fruit cutting and trapping results. Our decision to propose to expand the program was based on a number of factors, including the results of the Sequeira, *et al.* study of areas in the United States that are susceptible to establishment of *Anastrepha ludens*.

Comment: Consideration of fruit maturity is lacking from all the current risk assessment work pertaining to fruit flies and avocados. Fruit maturity is different than fruit ripeness. According to research by ARS and University of Hawaii researchers, papaya maturity is critical in determining the host susceptibility to fruit fly infestation.

Response: In laboratory tests, avocado fruit of various stages of maturity and ripeness were subjected to forced exposure to fruit flies. In these tests, fruit flies were only able to lay viable eggs that developed and produced larvae in fruit that were removed from trees and held for several days. A large volume of research has been conducted on the susceptibility of avocados to infestation by fruit flies, but little evidence that is conclusive in regard to avocados' host status.

None of this research suggests avocado maturity is more worthy of consideration than avocado ripeness in determining susceptibility to infestation with fruit flies.

Comment: Why is the "optima" temperature for fruit fly activity used as the benchmark in establishing the threshold for establishment of fruit flies? Given the consequences of an infestation, it would be justified to use the more conservative benchmark that incorporates minimum temperatures.

Response: The Sequeira, *et al.* study did not use temperature optima. Rather, it used a model that accounts for (1) slower rates of fruit fly development at cool temperatures down to the reported absolute minimum temperature (49 °F) at which development occurs, and (2) faster rates of development as the temperature increases. Temperatures below freezing are considered lethal for all stages. However, the Sequeira, *et al.* study used a conservative approach whereby only areas with prolonged temperatures below freezing were considered potentially lethal. Also, even though young fruit is not considered susceptible to damage, Sequeira, *et al.* used a conservative approach and considered the entire phenological period from bloom to last possible harvest as potentially susceptible. APHIS believes these approaches employ an even more conservative approach than that suggested by the commenter.

Comment: Given the obvious flaws inherent in Sequeira's extrapolation of conclusions from Flitters and Messenger (1965), USDA should conduct new laboratory research on the effects of temperature and humidity on fruit fly development and survival. Studies should take advantage of major changes and improvements in quality control and rearing technology to ensure the vigor and competitiveness of laboratory flies. Data generated can be used to calibrate developmental parameters for the Department's degree-day model, which can then be used to properly characterize all areas of the United States into risk regions.

[2] According to the following sources:

Aluja, M., J. Guillen, P. Liedo, M. Cabrera, E. Rios. 1990. "Fruit infesting tephritids and associated parasitoids in Chiapas, Mexico." *Entomophaga*. 35(1): 39–48.

Celedonio-Hurtado, H., Aluja, M., Liedo, P. 1995. "Adult population fluctuations of Anastrepha species (Diptera: Tephritidae) in tropical orchard habitats of Chiapas, Mexico." *Environmental Entomol.* 24(4): 861–869.

Levya-Vazquez, J.L. 1999. "Control biologico de moscas de la fruta: uso de parasitoides." *Vedalio*. 6:15–21.

Thomas, D.B. 1995. "Predation on the soil inhabiting stages of the Mexican fruit fly." *Southwestern Entomol.* 20(1): 61–71.

[3] According to the following sources:

Leyva-Vazquez et al. (1991),

Leyva-Vazquez, J. 1988. "Temperatura umbral y unidades de calor requeridos por los estados inmaduros de Anastrepha ludens (Loew) (Diptera: Tephritidae)." *Folia Entomologica Mexicana*. No. 74: 189–196.

Thomas, D.B. 1997. "Degree day accumulations and seasonal duration of the preimaginal stages of the Mexican fruit fly." *Florida Entomol.* 80(1): 71–80.

[4] Flitters, N.E. ed P.S. Messenger. 1965. "Effect of temperature and humidity on development and potential distribution of the Mexican fruit fly in the United States." *Tech. Bull.* No. 1330. USDA–ARS. 35pp.

Response: The Sequeira, *et al.* study did not extrapolate from Flitters and Messenger, although the findings of Sequeira, *et al.* agree with the results reported by Flitters and Messenger. More recent developmental studies (including Leyva-Vazquez *et al.* (1991), Leyva-Vazquez (1988), and Thomas (1997), each referenced earlier in this document) are consistent with the reports of Flitters and Messenger regarding conditions under which *Anastrepha ludens* develops. Sequeira, *et al.* used life table analyses referred to earlier in this document as the basis for the developmental model. As stated above, the developmental model was one element in a study that also evaluated host distribution, availability, susceptibility, winter-time freezing conditions, as well as the avocado pathway.

Comment: APHIS must focus on the "introduction" of *Anastrepha* spp. fruit flies, rather than "establishment" when characterizing risk. Fruit flies do not need to become established to become a quarantine risk, and a successfully introduced population can easily be transported to susceptible areas of commercial agricultural production.

Response: As stated earlier in this document, APHIS believes it would be exceedingly unlikely that fruit flies would be introduced into approved States in commercial shipments of Mexican Hass avocados in such numbers that their populations would reach outbreak levels in a matter of a few months. Nonetheless, in response to a previous comment, we are revising the approved shipping season for imported Hass avocados to run from October 15 through April 15. We believe this change will further reduce the risk that fruit flies could survive in approved distribution areas in the highly unlikely event that they are present in imported Hass avocados.

Comment: The Sequeira study should be subject to rigorous external peer review. APHIS has stated that the Sequeira study "has undergone a sufficient internal review process to use as an aid in making a sound regulatory decision." Again, APHIS relied almost exclusively on its own APHIS–PPQ staff to critique a document potentially affecting thousands of stakeholders. The California Department of Food and Agriculture, citrus industry leaders in potentially affected States, researchers and entomologists in California and Florida, and many other experts were never sought out, nor were they aware of the existence of the study until a final version of it appeared on the internet.

Response: The development of the Sequeira, *et al.* study included consultation with scientists outside of APHIS and with scientists associated with Mexican and American universities. Nonetheless, APHIS believes that the rulemaking process has subjected the Sequeira, *et al.* study to a very wide peer review. The process of soliciting and responding to public comments is not limited to internal USDA input, but seeks the widest possible range of comments and questions from all interested persons. Public comments are sought to help APHIS improve and enhance its decisionmaking and the resources on which decisions are based. If commenters submit information that suggests changes to APHIS documents are necessary, APHIS evaluates the information and may or may not make changes in response. In the past, many APHIS rules and the supporting documents for them have been reviewed and enhanced based on public comments.

Comment: Where is the USDA analysis of the complete temperature model for fruit fly activity as it relates to the proposed rule change in the 12 additional States and as it relates to the 7 at-risk States?

Response: The analysis of climatology contained in the Sequeira, *et al.* study was not limited to several States but included the entire continental United States.

Comment: Statements in the Sequeira, *et al.* report regarding host phenology appear to be inconsistent with information shown in Figure 2.

Response: Sequeira, *et al.*'s approach to estimating the periods when susceptible fruit were present (generally from post-bloom to last harvest) involved queries to all PPQ State Plant Health Directors as well as State Plant Regulatory Officials. In some cases, the information was not consistent, and when responses were not obtained, Sequeira, *et al.* used available literature (sources are noted in the document). Some inconsistent reports were due to changes in regional trends. For example, Plant Regulatory Officials in San Diego tended to provide State phenologies that were more appropriate to Southern California than elsewhere. However, in the final analysis, Sequeira, *et al.* were conservative given the reported variability. Their approach was to maximize the phenology period to reflect this. For example, Sequeira, *et al.* considered California to have fruit present year-round at all locations and that this fruit is always susceptible. That, in effect, is a conservative approach because clearly there are no fruit in parts of California for varying periods of time. We have reviewed the plant phenological information used in the study and are confident that it is accurate.

Economic Issues

Comment: The economic analysis only looks at the Hass avocado market, and does not take into account the effects on consumers and producers of other varieties such as Fuerte, Pinkerton, etc. The entire U.S. avocado market would be affected by the proposed ruling and needs to be included in any analysis.

Response: The analysis assumes that consumers do not readily substitute between Hass avocados and other varieties of avocado. For that reason, the other varieties are not included in the analysis. Significant differences in price suggest a lack of substitutability. For example, during the first 8 months of the current season, the average grower price for Hass avocados was $0.73 per pound, compared to an average price for Fuerte avocados of $0.24 per pound and a combined average price of $0.22 per pound for "other" varieties. If Hass and non-Hass avocados were close substitutes, then such large price differences would not exist. Including all domestically produced avocados in the analysis would increase the baseline, reducing the magnitude of the estimated impacts.

Comment: The analysis is based on the 6-month period from November through April. However, avocados can be stored on trees. Therefore, harvesting can be shifted between time periods. The 60 percent of the crop that is currently shipped from May through October is an increase in the percentage that was shipped during this same time period before Mexico was granted partial access to the U.S. market. Therefore, the analysis should be done for the entire year.

Response: We consider it appropriate to base the analysis on domestic avocado shipments for the November-April period. California producers may respond to increased imports from Mexico by postponing the harvesting of a portion of their production for shipment during the peak May-October season. However, inclusion in the analysis of possible seasonal marketing adjustments would not substantially change the results of the analysis. Analyzing increased imports from Mexico in terms of year-round domestic production would simply reduce the size of expected impacts. The percentage decline in price, gains to consumers/merchandisers and losses to producers would all be smaller.

Comment: Both the national and regional models are very short-run models that assume that the supply of avocados is fixed and, therefore, it ignores supply adjustments to falling prices. In the short run, supply is responsive to changes in prices through decisions made during harvest and at the handler level. In the long run, producers would adjust to the changes in market prices by removing land in production, causing market prices to rise. The consequence of the exclusion of a supply response in the economic model means that both the gains to consumers and the losses to producers are overestimated. Costs to handlers as a result of lower production also cannot be calculated using the USDA model.

Response: As noted by the commenter, relaxing the assumption of fixed supply would result in lower estimates of consumer/merchandiser gains and producer losses. However, the net impact of the rule would remain positive. A fixed supply is assumed in the analysis because avocado is a perennial tree crop. An avocado tree started as a nursery seedling takes 3 to 4 years to begin bearing fruit, and a tree grown from seed can take 5 to 13 years before yielding its first fruit. In the short term, producers can delay harvest in response to market conditions, although this may affect the tree's productivity in succeeding seasons. In the longer term, land may be removed from production in response to falling prices, but for other reasons as well. Bearing avocado acres in California decreased by more than 22 percent between 1987/1988 and 1999/2000, and yet over this same period levels of production and producer prices showed no discernable pattern of decline. Handlers adjust to seasonal variations in supply.

Comment: The analysis ignores the net effect of the proposed ruling to California. An analysis of Mexico's imports into the 19 northeastern States since 1997 shows that the net effect on consumer and producer welfare within California is negative, even though California consumers benefit. In addition, the decrease in producer surplus is about 10 times larger in the short run and 6 times larger in the long run than the increase in consumer surplus.

Response: During the 1999/2000 season, about 40 percent of California Hass avocado shipments remained within that State. As the commenter points out, when only California consumers/merchandisers are considered, their expected gains are outweighed by the expected losses of California's avocado producers. This consequence is predictable, given that essentially all domestically produced Hass avocados are grown in California. The Regulatory Impact Analysis examines impacts on approved and nonapproved States as defined in the rule. We do not believe a separate analysis of net impacts for California alone is appropriate.

Comment: The analysis assumes that the proposed expansion would result in an increase in imports from Mexico of 16.87 million pounds. The assumption is that Mexico would displace California shipments to the additional approved regions. This seems to be a reasonable starting point, however it is impossible to know precisely what the increase in prices will be. Therefore, a sensitivity analysis based on higher and lower levels should also be included.

Response: Whether more or less than the 16.87 million pounds of additional avocados assumed in the analysis are actually imported from Mexico, the pattern of impact remains the same: A decline in the price of avocado, with gains to consumers/merchandisers exceeding losses to domestic producers. Fewer additional imports would result in less of an effect on price, and smaller losses and gains; a larger increase in imports would mean a larger price effect, and larger losses and gains. Assuming the same price elasticities of supply and demand, the net impact is positive in all cases. For example, using the national model, additional imports of 10 million pounds would result in a price decline of 7 percent, with consumer/merchandiser gains of $16.1 million and producer losses of $10.6 million; additional imports of 40 million pounds would lead to a price decline of 28 percent, with consumer/merchandiser gains of $70.0 million and producer losses of $42.5 million.

Comment: The elasticity of demand used in the Regulatory Impact Analysis is −0.86 for Hass avocados, a number similar to the one estimated by Carmen and Craft for the entire California avocado market. Using techniques developed by Armington, the elasticity of demand for only Hass avocados is estimated at −1.2. The analysis correctly states that if demand is more elastic, then the costs to producers will decrease. However, the gains to consumers will also decrease and that is missing from the analysis.

Response: The magnitude of estimated impacts depends on the size of the elasticities. If a price elasticity of demand of −1.2 is assumed instead of −0.86, and the price elasticity of supply is kept at zero, the national model shows a price decline of 8.6 percent (compared to 12 percent), producer losses of $12.8 million (compared to $17.9 million) and consumer/merchandiser gains of $19.8 million (compared to $27.6 million), for a net benefit of $7.0 million (compared to $9.7 million). These results, as well as those for the regional model when assuming a price elasticity of −1.2, are shown in an addendum to the Regulatory Impact Analysis. Both merchandiser/consumer benefits and producer losses would be smaller, assuming a price elasticity of demand of −1.2 rather than of −0.86, but the net impact remains positive.

Comment: The analysis notes that average total shipments of California Hass avocados for the 1999–2000 season were 20 percent greater than shipments between the 1986 and 1994 seasons. However, average shipments between the 1997 and 2000 seasons were 12 percent lower than shipments between the 1994 and 1996 seasons, the period just prior to Mexican Hass avocado imports.

Response: We do not have data for domestic shipments during the 1994/1995 and 1995/1996 seasons. Quantities of avocados shipped during the 1999/2000 season to the approved and nonapproved States are the basis for the assumed level of additional avocado imports from Mexico. As indicated in response to other comments, whether a larger or smaller quantity of imports is assumed, the direction of the effects is the same: Price falls, with consumer/merchandiser gains and domestic producer losses resulting in a net positive impact. Shipment levels fluctuate from year to year, as do production levels and farm prices. Although California's avocado acreage has been in decline since the late 1980s, crop values (price times quantity produced) have trended upward. Crop values over the 4-year period 1996/97 through 1999/2000 were higher than at any previous time.

Comment: The analysis discusses the decrease in shipments of California Hass avocados and increase in prices since Hass avocado imports have begun. It does not mention the establishment of an exotic pest, avocado thrips, that has reduced marketable yields and increased costs of production during this same time period.

Response: The purpose of the economic analysis, as required by Executive Order 12866, is to evaluate the impact of the rule on U.S. entities. The analysis should include factors affecting the rule or influenced by the rule. Establishment of avocado thrips in California occurred independently of avocado imports from Mexico. This pest's impact in California is not directly pertinent to the analysis. Effects of additional imports from Mexico are

estimated without reference to production costs or yields.

Comment: The analysis lacks an estimate of the expected costs to consumers and producers should an exotic pest become established in the United States as a result of Mexican Hass avocado imports. An economic analysis of the effects of avocado thrips becoming established in California shows a decrease in avocado consumer and producer welfare since the 1997 season, even though increased imports from Mexico have benefitted consumers. While a risk analysis would be difficult at this time given that many avocado pests are undescribed or their impact unknown, the potential costs need to be addressed in some manner. This is especially important for the regional analysis. The regional analysis assumes the existence of a price discrepancy between the approved and non-approved regions. As the price discrepancy increases, the risk of non-compliance with APHIS regulations increases, increasing the risk of an exotic pest becoming established.

Response: The Regulatory Impact Analysis estimates annual net benefits that can be expected to result from this rule. The cost of a possible pest introduction would depend upon its likelihood of occurrence, and upon the reduction in yields and increase in production costs that would ensue. The introduction of a pest or disease would adversely affect the economic health of the avocado industry. However, for the purposes of our analysis, the likelihood of such an event must be weighed against the certainty of the trade effects. As APHIS has concluded that the introduction of plant pests is extremely unlikely, we believe that consideration of the costs of pest introduction would not substantively change the findings of our analysis. APHIS conducts economic analyses for import-related rulemaking using the assumption that the importation of a particular plant/plant product (or animal/animal product, for that matter) will not result in the introduction of pests or diseases; indeed, the prevention of such introductions is a primary goal of those rulemakings. APHIS does, however, routinely attempt to quantify, to the extent possible, the size (in dollar terms) of the domestic industry that stands to be affected by a rulemaking. In this instance, impacts on California avocado producers have been examined in terms of additional avocado imports from Mexico.

Comment: USDA should establish a mechanism to compensate U.S. growers who suffer economic losses attributable to pests imported with Mexican Hass avocados. What mechanisms are planned, and how will they be funded?

Response: The USDA's authority for the payment of compensation is found in § 415 of the Plant Protection Act, which provides that the Secretary may pay compensation to any person for economic losses incurred by the person as a result of action taken by the Secretary pursuant to a declaration of extraordinary emergency. The Secretary may determine that an extraordinary emergency exists because of the presence of a plant pest or noxious weed that is new to or not known to be widely prevalent in or distributed within and throughout the United States and that the presence of the plant pest or noxious weed threatens plants or plant products of the United States.

Environmental Assessment

Comment: The environmental assessment for the proposed rule does not address the fact that shippers have an economic incentive to develop mechanisms to smuggle avocados into areas outside the approved distribution area.

Response: APHIS believes that the restrictions imposed under the systems approach regulations discourage the smuggling of avocados into nonapproved areas. As stated earlier in this document, the time and effort involved in repackaging and restickering Mexican Hass avocados would likely negate the incentive to smuggle them. Further, persons who move Hass avocados into nonapproved areas are subject to prosecution, and if convicted, face civil and criminal penalties. In addition, in the 4 years since the Mexican Hass avocado import program began, APHIS believes that only 0.11 percent of the boxes of imported Mexican avocados were shipped outside the approved distribution area.

Based on these figures, APHIS believes that the chance that imported Mexican Hass avocados could be moved to nonapproved States is very remote. Further, even if imported Hass avocados were moved to nonapproved areas, it is even more unlikely that they would contain pests. The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) does not require consideration of remote and speculative risks in the development of an environmental assessment. Therefore, we see no need to revise our environmental assessment.

Comment: San Diego County, CA, has the highest number of threatened or endangered species of any county in the United States. The county has a large number of growers who practice integrated pest management, and has in excess of 300 registered organic agricultural producers. The potential impact of increased pesticide use resulting from an eradication program in the county would be tremendous. The environmental assessment should take these impacts into consideration.

Response: The concern of environmental impacts on threatened and endangered species was noted in the preparation of the environmental assessment as it applies to the proposed rule for the Mexican Hass avocado import program expansion and its limited distribution area. San Diego County is not listed as one of the distribution areas in the proposed rule and, therefore, was not considered in assessing environmental impacts to threatened and endangered species. If, in the future, APHIS proposes to include San Diego County, an environmental assessment or environmental impact statement (EIS) would be required to address all environmental issues, including threatened and endangered species.

Comment: Executive Order 12898 requires that in complying with NEPA, agencies shall include an analysis of environmental effects, including health, economic, and social factors. APHIS's environmental assessment does not meet NEPA requirements in that it does not consider economic or social factors.

Response: Section 1508.9(a) of NEPA states, in part, that an environmental assessment is a concise public document that serves to "(1) [b]riefly provide sufficient evidence for determining whether to prepare an environmental impact statement; (2) [a]id an agency's compliance with the [National Environmental Policy] Act when no environmental impact statement is necessary, and (3) [f]acilitate preparation of a statement when one is necessary." Because an environmental assessment is a concise document, it should not contain lengthy descriptions of information gathered for the environmental assessment. The analysis in the environmental assessment considered the potential for effects on the natural and physical environment from the proposed action and also, in accordance with Executive Order 12898, the potential for disproportionate human health effects on low-income populations and minority populations from the proposed action. The analysis concluded that the expansion of the distribution of Hass avocados will not result in adverse human health or environmental effects.

Section 1508.14 of NEPA specifies "when an environmental impact statement is prepared and economic or social and natural and physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment." Therefore, an environmental assessment is not required to discuss social and economic impacts of a proposed action; however if, after the analysis is completed for an environmental assessment, the decisionmaker cannot arrive at a finding of no significant impact, then it would be appropriate to consider social and economic factors, as they interrelate with the natural and physical environmental effects, in the EIS.

Comment: The first environmental assessment for the Mexican Hass avocado import program provided for the establishment of the program based upon a scientific assessment of pest biology, host range, and climatic factors. The current assessment discounts the science of the initial environmental assessment and eliminates the no action alternative based on trade issues. Where does APHIS provide the information required by NEPA for discussing elimination of the no action alternative?

Response: The environmental assessment considered three alternatives for the proposed action: (1) Change the Fruits and Vegetables regulations to add 12 States to the distribution area and extend the shipping season by 2 months (March and April),[5] (2) no action, which would not change the current distribution area or months of distribution, and (3) change the Fruits and Vegetable regulations to expand the distribution to all 50 States and the District of Columbia and provide for year-round distribution. Alternative 3 was dismissed from further consideration because of the risks associated with possible establishment of quarantine pests, as determined by pest risk assessment. Alternative 2 (no action) was dismissed from further consideration because (1) pest risk assessment documents produced by APHIS found that the risk posed by expanded importation of Mexican Hass avocados is negligible, and (2) under international trade agreements, APHIS is obligated to allow the importation of commodities if their importation presents a negligible risk of pest introduction. This information is stated on page 3 of the environmental assessment.

Comment: The consequences of introducing a new pest into the United States are not adequately addressed in the environmental assessment, and the assessment's conclusion that "the risk to the quality of the human environment [under the program expansion] is insignificant" is incorrect. A full environmental impact statement should be prepared.

Response: The environmental assessment considers, refers to, and incorporates by reference the risk assessment and subsequent documents updating the assessment that were prepared specifically for the importation of Mexican Hass avocados and analysis of selected pathways. The environmental assessment also incorporates by reference the Sequeira, *et al.* study, which assesses the risk associated with the establishment of *Anastrepha ludens* fruit flies in the United States, especially in relation to these pests as they occur in U.S. avocado imports from Mexico. The study used the following approach factors to determine the pest risks: (1) Examine the resource at risk (commercial fruit production), (2) characterize host susceptibility (timing and location of susceptible fruit), and (3) characterize climatology for the purpose of studying pest reproduction potential as a function of the previous factors. The study also used the avocado pathway as a case study for the risks associated with fruit imports. In determining the probability that fruit flies are getting through undetected along the pathway, the case study used evidence from ongoing sampling and recorded information since the initiation of the avocado export program.

Epidemiologically, the Sequeira, *et al.* study concludes that both the Hass avocado's status as a poor to inadequate host and marginal developmental conditions lead to low production area fruit fly densities. According to the statistical findings of the study, the probability that fruit fly infestations—even very low-level infestations—remain undetected in inspections under the current export program is close to zero.

Based on the findings of these scientific assessments, increased imports of Hass avocados from Michoacan, Mexico, will not significantly impact the human environment; thus, the preparation of an EIS is not required for this proposed action.

Miscellaneous

Under the regulations, imported Mexican Hass avocados must be packed in clean, new boxes that are clearly marked with the identity of the grower, packinghouse, and exporter, and a statement listing the States in which distribution of the avocados is prohibited. In this document, we are revising the regulations to allow imported Mexican Hass avocados to, alternatively, be packed in clean plastic reusable crates. The clean plastic reusable crates will be required to be marked with the same information as is required on clean new boxes. We are making this change because it could reduce unnecessary waste while continuing to provide that imported Mexican avocados are packaged in boxes that, in and of themselves, do not present a risk of introducing fruit flies or other plant pests into the United States.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

We are taking this action in response to a request from the Government of Mexico and after determining that expanding the current Mexican avocado import program would present a negligible risk of introducing plant pests into the United States.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Under the regulations, the shipping season for Mexican Hass avocados begins October 15, 2001. Making this rule effective immediately will allow interested persons to begin shipping Hass avocados to certain areas of the United States as soon as possible after that date. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective less than 30 days after publication.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this rule, we have prepared a regulatory impact analysis. The regulatory impact analysis also contains a final regulatory flexibility analysis, which considers the potential economic effects of this final rule on small

[5] The environmental assessment has since been revised to reflect the change in the shipping season described earlier in this document.

entities, as required under 5 U.S.C. 604. The regulatory impact analysis and regulatory flexibility analysis are summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at http://www.aphis.usda.gov/ppq/avocados/.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

Summary of Regulatory Impact Analysis

Our analysis considers economic impacts on U.S. producers and consumers/ merchandisers of Hass avocados that could result from allowing fresh Hass avocados from Michoacan, Mexico, to be imported into additional areas of the United States and over a longer period each year than is currently allowed. Since the 1997/98 season, imports of avocados from approved orchards in Michoacan, Mexico, have been allowed to be imported into the United States and distributed in Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin during the months of November through February. Under this final rule, distribution will be expanded to include the States of Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska,North Dakota, South Dakota, Utah, and Wyoming. The shipping season will also be expanded to run from October 15 through April 15.

We are taking this action in response to a request from the government of Mexico, and after determining that this action would present a negligible risk of introducing plant pests into the United States.

Impacts on U.S. producers and consumers/merchandisers will derive from the increased supply of Hass avocados from Mexico and concomitant price declines. Essentially all domestically produced Hass avocados are grown in California. U.S. producers and California producers are therefore used interchangeably in the analysis. The 1997 rule that first allowed for the importation of Mexican Hass avocados to 19 States and the District of Columbia resulted in a redistribution of California-grown Hass avocados from markets in the approved States during the months that imports are allowed from Mexico. This final rule is expected to have a similar effect. Anecdotal evidence suggests that benefits resulting from the previous regulations have been largely realized at the wholesale level, and discussion of consumer gains therefore includes explicit reference to merchandisers as well.

In our analysis, we use two models to estimate impacts. The first is a nationwide model that does not distinguish between the approved and nonapproved States. The rationale underlying this model is that given sufficient time, a single price for avocados would obtain in the two regions. Although Mexico's supply is restricted to the approved States for specified months of the year, California and other foreign suppliers can move in and out of the two markets, and would do so in search of profits until prices in the approved and nonapproved States essentially equalize.

The second model explicitly recognizes the approved and nonapproved States as two regions. Estimated economic losses include direct market loss for California producers in approved States, and losses related to increased supply in nonapproved States, as the diversion of California Hass avocados from approved to nonapproved States depresses prices. Consumers/merchandisers would be expected to gain in both approved and nonapproved States from the lower prices. A theoretical limitation of the regional model, in contrast to the national model, is the assumed maintenance of a price differential between the approved and nonapproved States.

Both models use a partial equilibrium economic surplus framework to consider the benefits and costs of the final rule. Potential producer losses and consumer/merchandiser gains are quantified in terms of changes in producer and consumer surplus resulting from the increased imports expected from Mexico. To simplify the analysis, the demand curve is assumed to be of constant elasticity while U.S. supply is assumed to be fixed. The supply curve is assumed to be vertical at least in the short run, that is, supply is perfectly inelastic and does not respond to changes in price.

In the national model, additional Hass avocado imports from Mexico totaling 16.87 million pounds are estimated to result in a 12 percent drop in the wholesale price, from $1.34 per pound to $1.18 per pound. Consumers/ merchandisers would gain by $27.65 million per year and California Hass avocado producers would lose by $17.93 million per year, for a net benefit of $9.72 million per year.

In the regional model, the same level of additional Mexican Hass avocado imports is assumed (16.87 million pounds), an amount equivalent to the maximum quantity assumed could be wholly diverted from approved to nonapproved States. Impacts are examined using three scenarios. In the first scenario, 70 percent of California Hass avocados that would otherwise be sold in the approved States are diverted to nonapproved States; in the second scenario, 85 percent are diverted; and in the third scenario, 100 percent are diverted. The 85 percent diversion scenario is considered representative of what is most likely to occur, given historic changes in quantities of California Hass avocados shipped to the existing approved States due to Mexican imports.

The first scenario of the regional model (70 percent diversion) would mean 6.07 million pounds of California Hass avocados remain in the approved States, and 11.81 million pounds are diverted to the nonapproved States. The additional supply of Mexican Hass avocados results in a price decline that benefits consumers/merchandisers in the approved States by $10.12 million per year. California producers whose Hass avocados are sold in the approved States face a revenue loss of $17.15 million per year. The net loss in the approved States is $7.03 million per year.

In the nonapproved States, the 11.81 million pounds of California Hass avocados diverted from the approved States result in a price decline that causes a revenue loss of $0.35 million per year for California producers. Consumers/merchandisers in the nonapproved States benefit by $19.31 million per year, for a net benefit of $18.96 million per year.

Net losses in the approved States ($7.03 million per year) and net gains in the nonapproved States ($18.96 million per year) yield an overall net gain of $11.94 million per year in the first scenario.

The second scenario (85 percent diversion) yields producers losses and Consumer/merchandiser gains comparable to the first one. Net losses in the approved States ($13.93 million per year) and net benefits in the nonapproved States ($22.79 million per year) combine for an overall net gain estimated at $8.87 million per year.

In the third scenario (100 percent diversion), 16.87 million pounds of California Hass avocados are diverted to the nonapproved States. Net losses in the approved States ($21.05 million per year) and net gains in the nonapproved States ($26.54 million per year) yield a combined net benefit of $5.50 million per year.

In sum, impacts of the final rule for U.S. producers and consumers/ merchandisers range from net benefits of $11.94 million per year for the 70 percent diversion scenario and $8.87 million per year for the 85 percent diversion scenario, to $5.50 million per year for the 100 percent diversion scenario. The net benefit estimated using the national model, $9.72 million per year, is contained within this range. The overall impact in all cases is minor. In the event the price elasticity of demand is larger than that used in this analysis (−0.86), losses to California producers will be less than those calculated, but the net impact remains positive. Another factor that could reduce losses to California producers would be activities to increase the demand for Hass avocados, that is, activities would increase sales at any given price.

Summary of Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that impacts on small entities be taken into consideration in rulemaking, to ensure that such businesses are not disproportionately burdened. There are about 6,000 producers and 100 handlers of Hass avocados in southwestern California that could be affected by this rule, as well as about 200 importers. APHIS has been unable to obtain information on the size distribution of affected avocado producers. For the purposes of our analysis, we assume that the size distribution of the 6,000 producers is the same as the size distribution of avocado farms reported in the 1997 Census of Agriculture; that is, 98 percent are small entities ($750,000 or less in annual receipts). Most avocado importers are reportedly also small entities (100 or fewer employees), while most Hass avocado handlers are large (more than $5 million in annual receipts). Given the declines in revenue that are described in the three scenarios of the regional model, average annual losses for small-entity California Hass avocado producers could range between $1,870 and $2,593. This impact could prove significant if producers rely upon Hass avocado production as their principal source of income.

Two variations of the regional model are presented as examples of modifications to the rule that would mitigate adverse impacts on small-entity California Hass avocado producers. Alternative A would extend the 4-month period of import by 2 months, March and April, but would not expand the number of approved States. Alternative B would maintain the current 4-month period of import, but would expand the number of approved States. For both alternatives, losses to California's Hass avocado producers would be less than were calculated for the proposed rule. Under the 85 percent diversion scenario, California producer losses would be $12.46 million per year and $2.50 million per year for alternatives A and B, respectively, compared to an annual producer loss of $20.55 million under the proposed rule. However, consumer/merchandiser gains would also be reduced in both cases. Annual net benefits are estimated to be $6.52 million per year for alternative A and $3.67 million per year for alternative B, compared to $8.87 million per year for the proposed rule.

There are no other rules that would overlap, duplicate, or conflict with this final rule.

This final rule contains information collection requirements, which have been approved by the Office of Management and Budget (see "Paperwork Reduction Act" below).

Executive Order 12988

This final rule allows Hass avocados to be imported into certain areas of the United States from Michoacan, Mexico. State and local laws and regulations regarding Hass avocados imported under this rule will be preempted while the fruit is in foreign commerce. Fresh Hass avocados are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The assessment provides a basis for the conclusion that the importation of Hass avocados from Mexico under the conditions specified in this rule will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS's NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**, and on the Internet at: *http://www.aphis.usda.gov/ppq/avocados/.*

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0129.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56–2ff is amended as follows:

a. By revising the section heading, the introductory text, and paragraphs (a)(2), (a)(3), and (c)(3)(vii).

b. In paragraphs (e)(2) and (e)(3), by removing the words "November through February" each time they appear and adding the words "October 15 through April 15" in their place.

c. By revising paragraphs (f)(1), (g), and (i).

§ 319.56–2ff Administrative instructions governing movement of Hass avocados from Michoacan, Mexico, to approved States.

Fresh Hass variety avocados (*Persea americana*) may be imported from Michoacan, Mexico, into the United States for distribution in approved States only under a permit issued in accordance with § 319.56–4, and only under the following conditions:

(a) * * *

(2) The avocados may be imported only between October 15 and April 15 of the following year; and

(3) The avocados may be distributed only in the following States: Colorado, Connecticut, Delaware, the District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

* * * * *

(c) * * *

(3) * * *

(vii) The avocados must be packed in clean, new boxes, or clean plastic reusable crates. The boxes or crates must be clearly marked with the identity of the grower, packinghouse, and exporter, and the statement "Not for distribution in AL, AK, AZ, AR, CA, FL, GA, HI, LA, MS, NV, NM, NC, OK, OR, SC, TN, TX, WA, Puerto Rico, and all other U.S. Territories."

* * * * *

(f) * * *

(1) Any port located in a State specified in paragraph (a)(3) of this section;

* * * * *

(g) *Shipping areas.* (1) Except as explained below in paragraph (g)(3) for avocados that enter the United States at Nogales, AZ, avocados moved by truck or rail car may transit only that area of the United States bounded as follows:

(i) On the east and south by a line extending from Brownsville, TX, to Galveston, TX, to Kinder, LA, to Memphis, TN, to Knoxville, TN, following Interstate 40 to Raleigh, NC, and due east from Raleigh, and

(ii) On the west by following Interstate 10 North from El Paso, TX, to Las Cruces, NM, and north following Interstate 25 to the Colorado border, then west along Colorado and Utah's southern borders, then north along Utah's western border, then west along Idaho's southern border and north along Idaho's western border to the border with Canada.

(2) All cities on the boundary lines described in paragraph (g)(1) are included in this shipping area. If the avocados are moved by air, the aircraft may not land outside this shipping area.

(3) Avocados that enter the United States at Nogales, AZ, must be moved to Las Cruces, NM, by the route specified on the permit, and then must remain within the shipping area described above in this paragraph.

* * * * *

(i) *Inspection.* The avocados are subject to inspection by an inspector at the port of first arrival, at any stops in the United States en route to an approved State, and upon arrival at the terminal market in the approved States. At the port of first arrival, an inspector will sample and cut avocados from each shipment to detect pest infestation.

* * * * *

Done in Washington, DC, this 29th day of October 2001.

James G. Butler,

Acting Under Secretary for Marketing and Regulatory Programs, USDA.

[FR Doc. 01–27485 Filed 10–31–01; 8:45 am]

BILLING CODE 3410–34–U

Federal Register

Thursday,
November 1, 2001

Part VI

Department of Transportation

Office of the Secretary

14 CFR Part 330

Procedures for Compensation of Air Carriers; Correction; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD06

Procedures for Compensation of Air Carriers

Correction

In rule document 01–27177 beginning on page 54615 in the issue of Monday, October 29, 2001, the **Federal Register** inadvertently dropped the word "not" in an eligibility section of the rule in the course of editing and printing the document. This error made it appear that certain parties were eligible for government compensation when in fact the rule as drafted specifies the contrary. As a result, make the following correction:

PART 330—[CORRECTED]

On page 54622 in the first column, in the eighth line, insert the word "not" after "operator), you are". As corrected, section 330.11 reads as follows:

§ 330.11 Which carriers are eligible to apply for compensation under this part?

(a) If you are a certificated air carrier, a commuter air carrier, or an air taxi, you are eligible to apply for compensation under Subpart B of this part.

(b) If you are an air freight forwarder (as described in 14 CFR part 296), public charter operator (as described in 14 CFR part 380), or other indirect air carrier (such as a contract bulk fare operator), you are not eligible to apply for compensation under this part.

(c) If you are a foreign air carrier, commercial operator, flying club, fractional owner, general aviation operator, fixed base operator, flight school, or ticket agent, you are not eligible to apply for compensation under this part.

[FR Doc. C1–27177 Filed 10–31–01; 2:24 pm]

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Presidential Documents

Title 3—

The President

Proclamation 7491 of October 30, 2001

Veterans Day, 2001

By the President of the United States of America

A Proclamation

Two hundred and twenty-five years ago, the signers of the Declaration of Independence declared that "all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness."

Throughout the course of American history, courageous men and women have taken up arms to secure, defend, and maintain these core principles upon which our Nation's freedoms depend. On September 11, 2001, terrorists ruthlessly attacked our land and these freedoms. The terrorists' deluded attempt to assail our spirit failed, and our Nation's response reveals that the spirit of freedom is as strong as ever. Our troops are now fighting overseas to defeat terrorism, and, in that effort, they follow in the footsteps of the 48 million men and women who, since our Nation's founding, have stepped forward to defend our land.

Today, there are more than 25 million living veterans who served our Nation in times of peace and war. Many of them willingly entered harm's way to fight for our freedoms. These veterans have diverse religious beliefs and come from varying backgrounds and ethnicities. By their service, they kept America strong, and they have protected our way of life from tyranny's grip for over two centuries. At this moment, men and women of the Army, Navy, Air Force, Marines, and Coast Guard are serving around the world. They represent our resolute dedication to achieving a lasting peace out of the new challenges and threats of the 21st century.

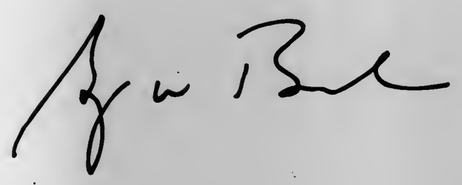
On Veterans Day, let us pause to reflect on the sacrifices of all of those who have put on the uniform to serve in the United States military. Let us honor our veterans, who proved their heroism and love of country time and again, from Yorktown and Gettysburg to Iwo Jima and the Persian Gulf. They consistently defended our ideals across the globe; and they continue to inspire those who defend America today, half a world away. More than a million have died in service to America; and more than a million and a half have been wounded. Some sustained serious injuries in combat and now live with disabilities. Our Nation will always be grateful for the noble sacrifices made by these veterans. We can never adequately repay them. But we can honor and respect them for their service.

As we consider the sacrifices and efforts of our veterans, we must never forget that freedom comes at a cost. Therefore, I ask all schools to observe November 11 through November 17, 2001, as National Veterans Awareness Week, and to invite a veteran to speak at their school. This "Lessons in Liberty" initiative will serve to honor America's veterans, while reminding young people of the strong principles upon which our Nation is founded. Our veterans have much to share with our young people about liberty, patriotism, democracy, and independence. They are living examples of the timeless truth that freedom is not free. I call upon our veterans to serve our country in a different way, by teaching a new generation of young Americans the importance of the liberties they helped secure.

In respect and recognition of the contributions our service men and women have made to the cause of peace and freedom, the Congress has provided (5 U.S.C. 6103 (a)) that November 11 of each year shall be set aside as a legal public holiday to honor veterans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim November 11, 2001, as Veterans Day and urge all Americans to observe November 11 through November 17, 2001, as National Veterans Awareness Week. I urge all Americans to recognize the valor and sacrifice of our veterans through appropriate public ceremonies and private prayers. I call upon Federal, State, and local officials to display the flag of the United States and to encourage and participate in patriotic activities in their communities. I invite civic and fraternal organizations, places of worship, schools, businesses, unions, and the media to support this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01-27717
Filed 11-1-01; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 66, No. 213
Friday, November 2, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 630

RIN 3206-AJ51

Absence and Leave; Use of Restored Annual Leave

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to aid agencies and employees responding to the "National Emergency by Reason of Certain Terrorist Attacks" on the World Trade Center and the Pentagon. The regulations provide that employees who would forfeit excess annual leave because of their work to support the nation during the national emergency will be deemed to have scheduled their excess annual leave in advance. Such employees will be entitled to restoration of their annual leave under these regulations.

DATES: The interim regulations are effective on December 3, 2001. Comments must be received on or before January 2, 2002.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606-0824, or e-mail: *payleave@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon A. Herzberg, (202) 606-2858.

SUPPLEMENTARY INFORMATION: On September 14, 2001, President Bush declared a "National Emergency by Reason of Certain Terrorist Attacks" on the World Trade Center and the Pentagon. The unprecedented events of September 11, 2001, the efforts toward recovery and response, and the continuing and immediate threat of further attacks on the United States have found many Federal agencies involved in activities vital to our nation. The Office of Personnel Management (OPM) is issuing these regulations to assist Federal employees who would lose entitlement to excess annual leave because of their involvement in national emergency efforts. These interim regulations simplify the restoration of employees' forfeited annual leave and impose relaxed time limitations for using restored annual leave. The procedures established by these interim regulations are similar to those established at 5 CFR 630.309 for employees who were deemed essential to the Year 2000 (Y2K) computer conversion.

Section 6304 of title 5, United States Code, establishes limitations on the amount of annual leave an employee may carry over from one leave year to the next. Most employees can carry over no more than 240 hours of annual leave to the next leave year. However, 5 U.S.C. 6304(d)(1)(b) also provides that excess annual leave lost as a result of "exigencies of the public business when the annual leave was scheduled in advance" may be restored to the affected employee. For the purpose of Federal leave administration, an exigency of the public business occurs when there is a pressing need for an employee's service and his or her pre-approved annual leave must be canceled because there are no other practical alternatives available to accomplish the work by a given deadline.

Many employees in Federal agencies are essential to on-going efforts to cope with the national emergency. As a result, many of these employees will be faced with the possible forfeiture of "use or lose" annual leave because they must remain on the job to guarantee the fulfillment of the agencies' missions during this critical period and beyond. Under the normal rules, agencies would be faced with the administrative burden of scheduling, canceling, and restoring such leave for these employees at a time when all available attention and energy should be focused on the national emergency.

The "National Emergency by Reason of Certain Terrorist Attacks" constitutes an exigency of the public business under 5 U.S.C. 6304(d)(1)(b), which justifies the restoration of any forfeited annual leave in excess of the maximum allowable limits. Since it is known in advance that it is not possible for employees involved in the national emergency to be absent on leave, the scheduling and canceling of such leave places an unnecessary administrative burden on the employees and agencies involved. In support of both agencies' and employees' needs, we are simplifying the procedures for restoring annual leave forfeited as a result of the national emergency. Section 630.311(a) of title 5, Code of Federal Regulations, will deem the "National Emergency by Reason of Certain Terrorist Attacks" an exigency of the public business. In addition, under § 630.311(b), annual leave forfeited in a leave year as a result of the national emergency will be deemed to have been scheduled in advance for the purpose of satisfying the requirements in 5 U.S.C. 6304(d) and 5 CFR 630.308. Therefore, annual leave forfeited at the end of a leave year as a result of the national emergency will be restored under 5 U.S.C. 6304 and placed in a separate restored leave account.

Time Limit for Use of Restored Leave

Under the current § 630.306, all restored annual leave must be scheduled and used not later than the end of the leave year ending 2 years after the termination date of the exigency of the public business—i.e., the end of the national emergency or transfer of the employee to another position that is not considered essential. Employees with large restored annual leave accounts or employees remaining in positions performing work that is essential to the national emergency for an extended period of time may accrue large amounts of annual leave in their accounts. Under the current regulations, the affected employees would have to schedule and use all of the restored leave by the end of the leave year ending 2 years after the termination date of the exigency of the public business. As a result, employing agencies would have to deal with the consequence of employees using sizeable amounts of leave within 2 to 3 years after the end of the national emergency. At the same time, annual leave that accrues during that 2- to 3-year period would routinely create a "use or lose" situation.

To help alleviate this situation, we are providing that leave which is restored as a result of the exigency caused by the national emergency will have the same time limits for restoration as are currently used for Department of Defense employees in installations undergoing closure or realignment. (See 5 CFR 630.306(b).) A full-time employee will be required to schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date the employee is no longer subject to the exigency of the public business created by the national emergency. The agency will extend that period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof. A part-time employee will be required to schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in the employee's scheduled annual tour of duty by the end of the leave year in progress 2 years after the date the employee is no longer subject to the exigency. The agency will extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

Treatment of Current Restored Leave Accounts

Some employees currently involved in the exigency created by the national emergency have an "active" restored leave account—*i.e.*, an account of restored annual leave that was established under other conditions permitting restoration of annual leave under 5 U.S.C. 6304(d). Since there is no authority to restore previously restored annual leave, employees (and agencies) have little option but to use (or permit the use of) the leave in the "active" restored leave account to avoid the forfeiture of annual leave, even though the employees are needed for critical projects in connection with the national emergency. The interim regulations at § 630.311(d) will alleviate this problem because the time limitation for using active restored annual leave will be canceled for the entire period during which employees' services are determined to be essential for activities associated with the national emergency. At the end of the national emergency, a new time limit will be established under § 630.311(c) for using all restored leave available to the employee under 5 U.S.C. 6304(d).

Employees Who Transfer to Another Position

As noted earlier, § 630.308 currently requires that before forfeited leave may be considered for restoration, the leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. We are concerned about the possible consequences of requiring advance scheduling for an employee who transfers from a position deemed necessary for the national emergency to another position during the latter portion of a leave year. It is possible that such employees would have leave in excess of the maximum limitation, but would still be unable to schedule it. Therefore, the interim regulations at § 630.310(e) will allow an agency to consider restoration of annual leave forfeited at the end of the leave year to an employee whose involvement in the national emergency ends during the leave year if the agency determines that there is a correlation between the lack of advance scheduling and the duties of the employee's former position.

OPM believes such annual leave may be considered for restoration. Section 630.311(e) requires affected employees to make a reasonable effort to comply with the advance scheduling requirement in § 630.308(a). However, the head of an agency may exempt an employee from the advance scheduling requirement if the employee can show that he or she was involved in activities necessary to the national emergency during the leave year and was unable to comply with the scheduling requirement due to circumstances beyond his or her control. Since the agency may determine that there was sufficient time for the employee to schedule and use annual leave before the end of the leave year, this provision does not guarantee that excess annual leave will be restored.

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

In order to give practical effect to these regulations, I find that good cause exists to waive the general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b)(3)(B). Also, I find that good cause exists for making this rule effective in less than 30 days. The delay in the effective date is being waived to give affected employees the benefit of these new provisions as quickly as possible.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 630

Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; Sec. 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; Sec. 630.303 also issued under 5 U.S.C. 6133(a); Secs. 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; Sec. 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

Subpart C—Annual Leave

2. In § 630.308, paragraph (a) is revised to read as follows:

§ 630.308 Scheduling of annual leave.

(a) Except as provided in paragraph (b) of this section and §§ 630.310 and 630.311, before annual leave forfeited under 5 U.S.C. 6304 may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.

* * * * *

3. A new § 630.311 is added to read as follows:

§ 630.311 Scheduling of annual leave by employees determined necessary to respond to the "National Emergency by Reason of Certain Terrorist Attacks."

(a) The "National Emergency by Reason of Certain Terrorist Attacks" (Presidential Proclamation of September 14, 2001) is deemed to be an exigency of the public business for the purpose of restoring annual leave forfeited under 5 U.S.C. 6304.

(b) For any employee who forfeits annual leave under 5 U.S.C. 6304 at the beginning of a leave year because the agency determined the employee's services were required in response to the national emergency, the forfeited annual leave is deemed to have been scheduled in advance for the purpose of 5 U.S.C. 6304(d)(1)(B) and § 630.308.

(c) Annual leave restored under 5 U.S.C. 6304(d) because of the national emergency must be scheduled and used within the time limits prescribed in paragraphs (c)(1) and (c)(2) of this section:

(1) A full-time employee must schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date the employee's services are no longer required by the national emergency. The agency must extend this period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

(2) A part-time employee must schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in the employee's scheduled annual tour of duty by the end of the leave year in progress 2 years after the date the employee's services are no longer required by the national emergency. The agency must extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

(d) The time limits established under paragraphs (c)(1) and (c)(2) of this section for using restored annual leave accounts do not apply for the entire period during which an employee's services are required for the national emergency. When coverage under paragraphs (a) and (b) of this section ends, a new time limit will be established under paragraph (c) of this section for all annual leave restored to an employee under 5 U.S.C. 6304(d).

(e) An employee whose services were determined essential during the national emergency, but who subsequently moves to a position not considered essential, must make a reasonable effort to comply with the scheduling requirement in § 630.308(a). The head of the agency or his or her designee may exempt such an employee from the advance scheduling requirement in § 630.308(a) if coverage under paragraphs (a) and (b) of this section terminated during the leave year and the employee can demonstrate that he or she was unable to comply with the advance scheduling requirement due to circumstances beyond his or her control.

[FR Doc. 01–27518 Filed 11–1–01; 8:45 am]

BILLING CODE 6325–39–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG82

List of Approved Spent Fuel Storage Casks: Westinghouse MC–10 Termination; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of November 5, 2001, for the direct final rule that appeared in the **Federal Register** of August 21, 2001 (66 FR 43761). This direct final rule amended the NRC's regulations revising the "List of Approved Spent Fuel Storage Casks" by terminating Certificate of Compliance Number 1001 for the Westinghouse MC–10 cask system. The Westinghouse MC–10 can no longer be used to store spent fuel under a general license. This document confirms the effective date.

DATES: The effective date of November 5, 2001 is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–8126 (E-mail: *mlh1@nrc.gov*).

SUPPLEMENTARY INFORMATION: On August 21, 2001 (66 FR 43761), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72 revising the "List of Approved Spent Fuel Storage Casks" by terminating Certificate of Compliance Number 1001 for the Westinghouse MC–10 cask system. The Westinghouse MC–10 can no longer be used to store spent fuel under a general license. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 29th day of October, 2001.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 01–27578 Filed 11–1–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–113–AD; Amendment 39–12493; AD 2001–22–14]

RIN 2120–AA64

Airworthiness Directives; Overland Aviation Services Fire Extinguishing System Bottle Cartridges

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Overland Aviation Services (OAS) fire extinguishing system bottle cartridges that were distributed during a certain time period and are installed on aircraft. This AD requires you to remove from service any of these fire extinguishing system bottle cartridges. This AD is the result of several incidents where the fire extinguishing system bottle cartridges activated with excessive energetic force. In one instance, the discharge valve outlet screen fractured and the screen material went through the distribution manifold. The actions specified by this AD are intended to prevent damage to fire extinguishing system components caused by a fire extinguishing system bottle cartridge activating with excessive energetic force, which could result in the fire extinguishing system operating improperly.

EFFECTIVE DATE: This AD becomes effective on December 10, 2001.

ADDRESSES: You may obtain copies of the document referenced in this AD from Overland Aviation Services, 10271 Bach Boulevard, St. Louis, Missouri 63132. You may view this document at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–113–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Janusz, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4148; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received reports of several incidents where fire extinguishing system bottle cartridges that were manufactured by Overland Aviation Services (OAS) activated with excessive energetic force. In one instance, the discharge valve outlet screen fractured and the screen material went through the distribution manifold.

The fire extinguishing system bottle cartridges are considered critical parts. The fire extinguishing system is only required to function after a failure or series of failures have occurred and developed into the potential for a fire. In the above-referenced incidents, the fire extinguishing system could not be relied on because of the potential for damage to the fire extinguishing system components that could result from a cartridge activating with excessive energetic force. OAS distributed fire extinguishing system bottle cartridges that could incorporate this problem from April 1, 1996, through September 15, 1997.

What is the potential impact if FAA took no action? A fire extinguishing system bottle cartridge activating with excessive energetic force could result in damage to fire extinguishing system components and cause the system to operate improperly. This could lead to passenger injury in the event of an airplane fire.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to OAS fire extinguishing system bottle cartridges that were distributed from April 1, 1996, through September 15, 1997, and were installed on aircraft. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 12, 1999 (64 FR 37471). The NPRM proposed to require you to remove from service any of these fire extinguishing system bottle cartridges.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Change the Compliance Time to "the Next Scheduled Inspection/Maintenance Interval"

What is the commenter's concern? One commenter recommends that FAA change the compliance time to the next scheduled inspection/maintenance interval. This would coincide with OAS Service Bulletin 22–09–97.

What is FAA's response to the concern? We do not concur with changing the compliance to the next scheduled inspection/maintenance interval. Operators of airplanes with the affected equipment use their airplanes in different operations, e.g., parts 121 and 135 of the Federal Aviation Regulations (14 CFR parts 121 and 135). These operations allow different inspection/maintenance intervals. The next inspection/maintenance interval for some airplanes may occur within a week after this AD becomes effective where the interval for other airplanes may occur a year after the AD becomes effective.

We have determined that the compliance time of "180 days after the effective date of the AD" will neither inadvertently ground any airplanes nor allow airplanes to operate with potentially defective equipment for an extended period of time.

We will consider individual extensions to the compliance times as alternative methods of compliance provided they:

—Provide a level of safety that is acceptable to FAA; and

—Are submitted using the procedures in the AD.

We are not making any changes to the final rule as a result of these comments.

Comment Issue No. 2: Re-estimate the Cost Impact

What is the commenter's concern? A commenter states that FAA's cost analysis does not account for the potential unnecessary inspection and removal of parts when you cannot identify whether one of the affected cartridges is installed. The commenter estimates this cost impact at three times more than FAA's estimate.

What is FAA's response to the concern? We based our cost analysis on operator input of the efforts to accomplish the inspection and replacement of the suspect part. Any unnecessary removal would be the result of improper identification or a lack of proper maintenance records. We have determined that, if proper maintenance was followed, the owner/operator of an airplane will maintain a direct correlation between the identity of parts on a particular airplane and that airplane's maintenance records and logbooks.

We are not making any changes to the final rule as a result of these comments.

Comment Issue No. 3: Clarify the Approved Replacement Parts

What is the commenter's concern? One commenter asks for clarification regarding whether you can use a replacement part with the same part number as those affected by this action. The commenter believes you can if the part is not of the suspect distribution date or lot number. However, the commenter feels that the current wording in the NPRM on this issue is unclear.

What is FAA's response to the concern? After re-evaluating the wording in the NPRM, we concur that the language could be more clear. To address this, we are also specifying the lot number and the distribution date in all references to part number in the AD.

Comment Issue No. 4: Explain Why FAA Uses the Distribution Date of the Cartridge Instead of the Manufacturing Date

What is the commenter's concern? One commenter asks for information regarding the requirement to use the distribution date of suspect parts instead of the manufacturing date. In particular, the commenter wants to be able to substitute the manufacturing date for the distribution date and wants information about the relationship between the two.

What is FAA's response to the concern? The manufacturer of the suspect part does not tie a single manufacturing date to a specific lot number. The lot number more directly identifies suspect components. For example, the manufacturer has produced parts with the same lot number on five different manufacturing dates.

Distribution dates are also as important as the lot numbers. Parts may have been manufactured earlier than the distribution date or the date when sent to the field or distributor.

Because of these discrepancies between the manufacturing date and the lot number and distribution dates, we are using the part number, lot number, and distribution date as the identifying criteria for this AD action.

We are not making any changes to the final rule as a result of these comments.

Comment Issue No. 5: Extend the Compliance Time To Ensure Parts Availability

What is the commenter's concern? OAS requests FAA extend the comment period so the company can ensure that parts are available to all affected owners/operators of the aircraft with the affected cartridges installed. OAS estimates it would need approximately 210 days as of August 10, 2001.

What is FAA's response to the concern? We will increase the compliance time from 120 days to 180 days. The AD becomes effective on December 10, 2001 (122 days past August 10, 2001). This would give OAS approximately 300 days to ensure that parts are available to all affected owners/operators of the aircraft with the affected cartridges installed.

We are changing the final rule to reflect this change.

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial questions. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Compliance Time of This AD

Why is the compliance of this AD presented in calendar time instead of hours time-in-service (TIS)? The unsafe condition described in this AD is not a direct result of aircraft operation. The fire extinguishing system bottle cartridges could activate with excessive energetic force the first time they are used during flight. This could occur on an aircraft with 50 hours TIS or an aircraft with 10,000 hours TIS. Therefore, to ensure that the unsafe condition is corrected in a timely manner, this AD is utilizing a compliance time of 180 days after the effective date of the AD.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 5,128 fire extinguishing system bottle cartridges

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish this action:

Labor cost	Parts cost	Total cost per airplane	Total Cost on U.S. operators
8 workhours × $60 per hour=$480	OAS to provide at no charge	$480	$2,461,440

OAS reports that 2,100 parts have been removed from service. This reduces the cost impact of this AD from $2,461,440, to $1,453,440.

The number of cartridges utilized varies from airplane to airplane. The FAA has no way of determining which airplanes have the affected fire extinguishing system bottle cartridges incorporated. Therefore, FAA has presented the cost impact of this AD based upon the number of fire extinguishing system bottle cartridges manufactured instead of the number of airplanes affected.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2001–22–14 Overland Aviation Services: Amendment 39–12493; Docket No. 98–CE–113–AD.

(a) *What airplanes are affected by this AD?* This AD affects the fire extinguishing system bottle cartridges presented in paragraph (a)(1) of this AD that were distributed from April 1, 1996, through September 15, 1997, and are installed on, but not limited to, the specified aircraft:

(1) This chart presents the fire extinguishing system bottle cartridge part number, the fire extinguishing system bottle assembly basic part number, the make/model aircraft that the system could be installed on, and the cartridge lot number:

Overland Aviation Services (OAS) cartridge part numbers	Walter Kidde Aerospace (WKA) fire extinguishing system (Firex) bottle assembly basic part number	Make/model of applicable aircraft	Cartridge lot number
OA472001	472073, 472420, 472467, 897878, 897885, 899170	Aerospatiale ATR72 Series ATR42–200, –300, –320; Embraer EMB–120 Series	SBI 1–1 SBI 1–2

Overland Aviation Services (OAS) cartridge part numbers	Walter Kidde Aerospace (WKA) fire extinguishing system (Firex) bottle assembly basic part number	Make/model of applicable aircraft	Cartridge lot number
OA841155	890532, 890598, 890599, 891070, 891147, 891814, 892308, 893675, 898768	Boeing 707–100, –100B Series, –300 Series, 720B; McDonnell Douglas DC–8 and DC–8F Series; Lockheed 382, 382E, 382F, 382G; Sabreliner NA–265 Series; Bell 204B	SBI 1–3, OAS 1–2
OA873364	472049, 472162, 472389, 472390, 893456, 893523, 893524, 893572, 893726, 894703, 895353, 897770, 898006, 898066	Gulfstream G–1159, G–1159B, G–1159A; Cessna 425, 441, 550, S550, 551, 552 Fokker F.28 Series; SAAB 340 Series; Bell 412	SBI 1–3
OA873571	892807, 892857, 893244, 899827, 899927	Boeing 707–100, –100B Series, –300 Series, 720B; McDonnell Douglas DC–8, DC–8F Series; DC–9 Series; Lockheed 382, 382E, 382F, 382G	SBI 2–2
OA876296	472602, 472603, 473598, 895240, 895564, 895678, 895683, 895877, 896054, 898150	McDonnell Douglas DC–9–81, DC–9–82, DC–9–83, DC–10 Series; Airbus A300 Series	SBI 1–1, OAS 1–1
OA876299	472268, 895656, 895752, 895848, 896165, 896166, 897785, 897797, 897798	Lockheed L–1011 Series	SBI 1–1
OA897776	472258, 472428, 897775, 897869, 897885, 897899, 899066, 899074, 899170, 899486	Canadair CL–600–1A11, CL–600 –2A12, CL–600–2B16; Embraer EMB–120, EMB 120RT; Sikorsky S–76A; SAAB 340 Series	SBI 1–4, SBI 1–15, SBI 1–16, OAS 1–1

(2) OAS distributed the affected fire extinguishing system bottle cartridges from April 1, 1996, through September 15, 1997. This AD does not apply to cartridges incorporated on the aircraft prior to April 1, 1996.

(3) Procurement records may show if the owner/operator has ever bought affected parts, for spares or time replacements, for airplane installation, or to support a repair shop. These could be cross-referenced to the lots that are suspect. Additionally, a review of procurement records with respect to the part number, lot number, and distribution date of the suspect lots would also reduce the owners'/operators' workload of having to examine all applicable Air Transport Association (ATA) codes in the databases. A search of the maintenance/inspection records and logbooks of a specific airplane make and model and serial number could be beneficial.

(4) The fire extinguishing system parts are installed up to a hex wrenching flat on the cartridge body. These wrenching flats have the part number, lot number, and date of manufacture stamped on them, as well as safety wire holes. When installed, the safety wire will probably cover up at least one bit of the above information. Inspecting the wrenching flats could help determine whether the fire extinguishing system bottle cartridges contain a suspect part number with the affected distribution date or lot number.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent damage to fire extinguishing system components caused by a fire extinguishing system bottle cartridge activating with excessive energetic force. This could result in the fire extinguishing system operating improperly and lead to passenger injury in the event of an airplane fire.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Check the maintenance records to determine whether an extinguishing system bottle cartridge that is referenced in paragraphs (a) and (a)(1) of this AD is installed. (i) If an affected fire extinguishing system bottle cartridge was installed prior to April 1, 1996, you do not have to accomplish the removal and replacement requirements of this AD (paragraph (d)(2) of this AD); and. (ii) Make an entry into the aircraft records showing compliance with that portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within the next 180 days after December 10, 2001 (the affected date of this AD).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 cartridge of the Federal Aviation Regulations (14 CFR 43.7) may accomplish this these actions.
(2) Remove from service any fire extinguishing system bottle cartridge referenced in paragraph (a) and (a)(1) of this AD). Replace that bottle cartridge with an FAA-approved fire extinguishing system bottle cartridge that is not one of the applicable OAS part numbers that was distributed from April 1, 1996, through September 15, 1997.	Within the next 180 days after December 10, 2001 (the effective dated of this AD).	OAS Service Bulletin 22–09–97, dated October 1, 2001, contains information related to this subject.
(3) Do not install, on any aircraft, any affected OAS fire extinguishing system bottled cartridge that was distributed from April 1, 1996, through September 15, 1997.	As of December 10, 2001 (the effective date of this AD).	Not Applicable.

Note 1: "Unless already accomplished" credit may be extended to the records check allowed by this AD provided that the records are checked to cover any time period that has elapsed since the previous check.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita ACO, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: This AD applies to each aircraft that incorporates one of the fire extinguishing system bottle cartridges identified in paragraphs (a) and (a)(1) of this AD; regardless of whether the aircraft has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Jeffrey D. Janusz, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4148; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the document referenced in this AD from Overland Aviation Services, 10271 Bach Boulevard, St. Louis, Missouri 63132. You may view this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) This amendment becomes effective on December 10, 2001.

Issued in Kansas City, Missouri, on October 24, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27412 Filed 11–1–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30277; Amdt. No. 2077]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S.

Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on October 26, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
10/09/01	AR	Hot Springs	Memorial Field	1/1082	VOR RWY 5, Amdt 16.
10/09/01	TX	Temple	Temple/Draughon-Miller Central Texas Regional.	1/1101	LOC/DME BC RWY 33, Amdt 3.
10/11/01	GA	Thompson	Thompson-McDuffie County	1/1182	NDB RWY 10, Orig.
10/11/01	GA	Thompson	Thompson-McDuffie County	1/1183	ILS RWY 10, Orig.
10/17/01	FL	Punta Gorda	Charlotte County	1/1358	GPS RWY 3, Orig.
10/17/01	MI	Bellaire	Antrim County	1/1375	GPS RWY 3, Orig-B.
10/17/01	FL	Naples	Naples Muni	1/1382	VOR RWY 23, Amdt 6B.
10/17/01	MI	Gaylord	Ostego County	1/1383	VOR or GPS RWY 9, Amdt 1.
10/17/01	MI	Gaylord	Ostego County	1/1384	NDB RWY 9, Amdt 12.
10/17/01	MI	Gaylord	Ostego County	1/1385	ILS RWY 9, Orig.
10/17/01	MI	Gaylord	Ostego County	1/1386	VOR or GPS RWY 27, Amdt 1.
10/18/01	MI	Kalamazoo	Kalamazoo/Battle Creek Intl	1/1415	VOR RWY 5, Orig.
10/18/01	AK	Cold Bay	Cold Bay	[1] 1/1419	ILS RWY 14, Amdt 16A.
10/18/01	MI	Bellaire	Antrim County	1/1421	VOR RWY 2, Amdt 2.
10/18/01	MI	Bellaire	Antrim County	1/1423	NDB RWY 2, Amdt 2A.
10/22/01	AK	Barrow	Wiley Post-Will Rogers Memorial	1/1487	LOC/DME BC RWY 24, Amdt 3.
10/23/01	MS	Natchez	Hardy-Anders Field, Natchez-Adams County.	1/1547	NDB or GPS RWY 18, Amdt 4B.
10/23/01	FL	Fort Myers	Page Field	1/1552	RADAR–1, Amdt 3.
10/23/01	FL	Fort Myers	Page Field	1/1553	GPS RWY 31, Orig.

[1] 1/1419 replaces 1/8899.

[FR Doc. 01–27573 Filed 11–1–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30276 Amdt. No. 2076]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulator actions are needed because of the adoption of new or revised criteria, or because of change occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Wasington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on October 26, 2001.

Nicholas A. Sabatini,

Director, Flight standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective November 1, 2001*

Palatka, FL, Kay Larkin, NDB OR GPS RWY 9, Amdt 2

Everett, WA, Snohomish County (Paine Field), ILS RWY 16R, Amdt 19

* * * *Effective November 29, 2001*

Memphis, TN, Memphis, NDB RWY 9, Amdt 27

Provo, UT, Provo Muni, ILS RWY 13, Orig-A, CANCELLED

Provo, UT, Provo Muni, ILS Z RWY 13, Orig, CANCELLED

Provo, UT, Provo Muni, ILS RWY 13, Orig

* * * *Effective December 27, 2001*

Iliamna, AK, Iliamna, NDB RWY 35, Amdt 1

Iliamna, AK, Iliamna, RNAV (GPS) RWY 7, Orig
Iliamna, AK, Iliamna, RNAV (GPS) RWY 17, Orig
Iliamna, AK, Iliamna, RNAV (GPS) RWY 25, Orig
Iliamna, AK, Iliamna, RNAV (GPS) RWY 35, Orig
Fayetteville/Springdale/Rogers, AR, Northwest Arkansas Regional, GPS RWY 16, Orig, CANCELLED
Fayetteville/Springdale/Rogers, AR, Northwest Arkansas Regional, GPS RWY 34, Amdt 1, CANCELLED
Fayetteville/Springdale/Rogers, AR, Northwest Arkansas Regional, RNAV (GPS) RWY 16, Orig
Fayetteville/Springdale/Rogers, AR, Northwest Arkansas Regional, RNAV (GPS) RWY 34, Orig
Santa Ana, CA, John Wayne Orange County, RNAV (GPS) RWY 1L, Orig
Santa Ana, CA, John Wayne Orange County, RNAV (GPS) RWY 19L, Orig
Kahului, HI, Kahului, RNAV (GPS) RWY 2, Orig
Algona, IA, Algona Muni, GPS RWY 30, Orig, CANCELLED
Algona, IA, Algona Muni, RNAV (GPS) RWY 30, Orig
Boone, IA, Boone Muni, RNAV (GPS) RWY 15, Orig
Boone, IA, Boone Muni, RNAV (GPS) RWY 33, Orig
Boone, IA, Boone Muni, GPS RWY 15, Amdt 1A CANCELLED
Boone, IA, Boone Muni, GPS RWY 33, Orig-A CANCELLED
Council Bluffs, IA, Council Bluffs Muni, RNAV (GPS) RWY 13, Orig
Council Bluffs, IA, Council Bluffs Muni, RNAV (GPS) RWY 31, Orig
Council Bluffs, IA, Council Bluffs Muni, GPS RWY 31, Orig CANCELLED
Monticello, IA, Monticello Regional, RNAV (GPS) RWY 15, Orig
Monticello, IA, Monticello Regional, RNAV (GPS) RWY 33, Orig
Monticello, IA, Monticello Regional, NDB–A Amdt 4
Monticello, IA, Monticello Regional, VOR/DME RNAV OR GPS RWY 31, Amdt 1B, CANCELLED
Pella, IA, Pella Muni, GPS RWY 16, Amdt 1, CANCELLED
Pella, IA, Pella Muni, RNAV Z RWY 16, Orig
Pella, IA, Pella Muni, RNAV Z RWY 34, Orig
Chicago, IL, Chicago Midway, RNAV (GPS) RWY 4R, Orig
Grand Rapids, MI, Gerald R. Ford Intl, RNAV (GPS) RWY 8L, Orig
Grand Rapids, MI, Gerald R. Ford Intl, RNAV (GPS) RWY 17, Orig
Grand Rapids, MI, Gerald R. Ford Intl, RNAV (GPS) RWY 26R, Orig
Grand Rapids, MI, Gerald R. Ford Intl, RNAV (GPS) RWY 35, Orig
Great Falls, MT, Great Falls Intl, RNAV (GPS) RWY 3, Orig
Great Falls, MT, Great Falls Intl, GPS RWY 3, Orig, CANCELLED
Albuquerque, NM, Albuquerque Intl Sunport, RNAV (GPS) RWY 3, Orig
Albuquerque, NM, Albuquerque Intl Sunport, RNAV (GPS) RWY 17, Orig
Albuquerque, NM, Albuquerque Intl Sunport, RNAV (GPS) RWY 35, Orig
Asheville, NC, Asheville Regional, RNAV (GPS) RWY 16, Orig
Asheville, NC, Asheville Regional, RNAV (GPS) RWY 34, Orig
Monroe, NC, Monroe, RNAV (GPS) RWY 5, Orig
Wilmington, NC, Wilmington Intl, NDB RWY 35, Amdt 17
St. George, UT, St. George Muni, VOR/DME RWY 34, Amdt 3
Salt Lake City, UT, Salt Lake City Muni 2, RNAV (GPS) RWY 34, Orig
Emporia, VA, Emporia-Greensville Regional, RNAV (GPS) RWY 33, Orig
Antigo, WI, Langlade County, NDB RWY 16, Amdt 5
Antigo, WI, Langlade County, RNAV (GPS) RWY 16, Orig
Antigo, WI, Langlade County, RNAV (GPS) RWY 34, Orig

[FR Doc. 01–27572 Filed 11–1–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151, 155, 157, and 158

46 CFR Part 172

[USCG–2000–7641]

RIN 2115–AF56

Pollution Prevention for Oceangoing Ships and Certain Vessels in Domestic Service

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends regulations for pollution prevention from ships to align domestic requirements with international maritime pollution standards. This rule changes regulations concerning: oily-water separators, operational discharges of oil, damage and intact stability of tank vessels, period of validity for an International Oil Pollution Prevention Certificate, and garbage recordkeeping requirements. To provide consistency with industry standards and clarify U.S. oil regulations, we are also amending oily mixture discharge shore connection requirements for certain vessels and redefining certain terms dealing with oil.

DATES: This final rule is effective December 3, 2001.

ADDRESSES: Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2000–7641 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket at *http://dms.dot.gov/*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Bob Gauvin, Vessel and Facility Operating Standards Division, Coast Guard, 202–267–1053. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 8, 2000, we published a notice of proposed rulemaking (NPRM) entitled "Pollution Prevention for Oceangoing Ships and Certain Vessels in Domestic Service" in the **Federal Register** (65 FR 48548). We received 6 letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

This rule amends U.S. regulations for pollution prevention from oceangoing ships and certain vessels in domestic service. These amendments were adopted by the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) during several sessions. MEPC adopted amendments to Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78) during its 32nd session (MEPC 32, March 6, 1992) and 40th session (MEPC 40, September 25, 1997). The MEPC also adopted amendments to Annex V of MARPOL, in its 37th session (MEPC 37, September 14, 1995). This rule will allow certain vessels in domestic service to use quick-connect fittings rather than international-type shore connections. We are also redefining certain terms dealing with oil in the domestic regulations for clarity.

By aligning the domestic regulations with international standards, compliant U.S. ships would encounter fewer difficulties while engaged in international trade. Under 33 U.S.C. 1902, the Coast Guard is authorized to prescribe or amend regulations necessary to implement any changes to the standards of MARPOL 73/78.

The following amendments, as provided in the NPRM, are listed below for your understanding and convenience. They have not been changed in the final rule.

Equivalent shore connections for the discharge of oily mixtures. The amendment of 33 CFR 155.410 and 33 CFR 155.420 will allow non-oceangoing ships of 100 gross tons and above, and oceangoing ships of 100 gross tons to less than 400 gross tons operating in domestic service to use any shore connections (quick-connect fittings) that are compatible with U.S. reception facilities instead of an international-type connection.

Definitions. We are redefining for clarity those words throughout 33 CFR parts 151, 155, 157, and 158 dealing with oil. Those words are: "oily mixtures," "oil," "oil cargo residues," and "oil residues." We are removing all conflicting and duplicative terms.

Amendments to Annex I of MARPOL are described in a **Federal Register** document published on November 12, 1993 (58 FR 60080). These amendments established more stringent criteria for controlling the discharge of oil and oily-water from vessels' machinery space bilges and cargo tanks of tank vessels.

Rate of discharge of oil. This rule amends 33 CFR 157.37(a) by reducing the allowable rate from 60 liters per nautical mile to 30 liters per nautical mile to align with the international standard set by MARPOL 73/78.

Controlling discharge from space bilges and tank vessels' cargo tanks. This rule amends 33 CFR 151.10(a)(5), 33 CFR 155.360(a), 33 CFR 155.370(a), and 33 CFR 157.39(b)(3) (redesignated as (b)(2)) by reducing the allowable oil content in effluent from oil tanker bilges and other ships of 400 gross tons and above from 100 parts per million (ppm) to 15 ppm.

Automatic stoppage of a discharge. This rule amends 33 CFR 155.370(a) to require ships of 400 gross tons to less than 10,000 gross tons that are carrying ballast water in their fuel oil tanks, and for ships over 10,000 gross tons, to have a means for automatically stopping discharges that exceed 15 ppm.

Discharge equipment. This rule amends 33 CFR 155.370(a), which requires all ships to comply with the oil filtering equipment, alarms, and automatic stop requirements by the rule's effective date.

International Oil Pollution Prevention (IOPP) Certificates. This rule sets the maximum term of validity for International Oil Pollution Prevention (IOPP) Certificates at 5 years to coincide with the International Maritime Organization's (IMO's) Harmonized System of Surveys and Certification, and MARPOL 73/78 standards.

Damage stability of tank vessels. This rule amends 33 CFR part 157, appendix B, and 46 CFR 172.065, table 172.065(a), to require oil tankers over 20,000 deadweight tons (DWT) to be designed to survive potential raking damage caused by grounding.

Intact stability of tankships. This rule adds two new sections—33 CFR 157.22 and 46 CFR 172.070—which require tankships over 5,000 DWT contracted after this rule's effective date to be designed to prevent lolling.

Garbage discharge records. This rule aligns U.S. garbage recordkeeping requirements with those in Regulation 9, Annex V of MARPOL. Oceangoing ships less than 400 gross tons and greater than 40 feet in length engaged in commerce are no longer required to carry garbage discharge records. Additionally, this rule requires every manned ship engaged in an international voyage that is certified to carry 15 passengers or more to carry garbage discharge records. These amendments do not change how vessel garbage is handled nor does it change the requirement to maintain a plan describing vessel waste management.

Note: A copy of MARPOL 73/78 is available from the International Maritime Organization, 4 Albert Embankment, London, SE1 7SR, England. It is also available online at *http://www.imo.org/*.

Discussion of Comments and Changes

We received 6 letters containing 11 specific comments in response to our NPRM. The information in this section discusses the comments we received, provides the Coast Guard's responses, and explains any changes we are making to the regulation.

1. Seven of the comments supported sections of the Coast Guard's proposed rule as written, and they generally supported the alignment of domestic regulations with international standards. These seven comments stated support for—

- Maintaining requirements for refuse logs on vessels of 400 gross tons and above, and those carrying 15 or more passengers on international voyages;
- The establishment of an equivalency for shore connections for vessels on domestic voyages; and
- An interpretation that fixed or floating production platforms would be excluded from oily-water separating equipment requirements with a valid NPDES permit issued under section 402 of the Clean Water Act and 40 CFR chapter I.

2. Three comments did not support the addition of 33 CFR 158.415, the proposed posting of placards for reporting inadequate port waste reception facilities. These comments discussed that posting these placards was impractical and costly and would not be helpful for reporting inadequate waste facilities to the Coast Guard. The Coast Guard agrees with these comments. Significant regulations are already in place that support the spirit of the proposed requirements and allow the Coast Guard to adequately police port reception facilities and permit anyone to report inadequacies. Therefore, we have removed proposed 33 CFR 158.415 from this final rule.

3. One comment proposed expanding the harmonization of U.S. regulations with MARPOL 73/78 to incorporate vessels below the 400 gross tonnage threshold for specific U.S. requirements on waste management plans. The Coast Guard does not agree with this comment as such a proposal is outside the scope of this rulemaking. Therefore, no change was made to the final rule.

4. In addition to the changes discussed in this section that were made in response to the comments, the Coast Guard is making an administrative edit to update a reference table's note within 33 CFR 151.26, "Shipboard oil pollution emergency plans." As IMO resolution A.648(16) has been superceded by IMO resolution A.851(20), the reference to resolution A.648(16) in the note to table 151.26(b)(3)(iii) is changed to A.851(20).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

Costs

The total present value costs for this rule during the 10-year period of analysis will approximate $3,037. The costs arise from the following requirements:

(a) *Oily-water or bilge monitors.* Based on the policies established in Navigation Vessel Inspection Circular (NVIC) No. 6–94, we estimate that at least 90 percent of the 131 affected tank vessels are currently operating within policy guidelines by automatically or manually setting the oil or oily-water discharge rate to not exceed 30 liters per nautical mile. The other 10 percent will simply upgrade their existing monitoring systems with new components that meet the new requirement. The estimated equipment costs to upgrade the components of an

existing bilge monitor average $250, making the one-time cost of this requirement approximately $3,250. When valued in year 2000 dollars, the cost will be $3,037. A copy of NVIC No. 6–94 is available in the docket where indicated under **ADDRESSES.**

(b) *Oil-filtering equipment.* We estimate that requiring oil-filtering equipment will affect 650 vessels, all of which are currently practicing the policies established in NVIC No. 6–94 and currently have oil-filtering equipment that complies with the 15 ppm oil content of the effluent discharged. Therefore, this requirement does not impose additional costs.

(c) *Automatic shut-off device/alarm.* We estimate that requiring automatic shut-off devices/alarms will affect 396 ships, all of which already practice the policies established in NVIC No. 6–94. Therefore, this requirement does not impose additional costs.

(d) *Damage stability for tank vessels.* We estimate that the damage stability requirements will affect 650 vessels. Based on trend data from the Coast Guard's Marine Safety Management System (MSMS) database (1992–1996), we estimate that 13 U.S.-flag tank vessels of 20,000 deadweight tons (DWT) and above will be built each year. For every single-hull tank vessel that is phased out before 2015, a double-hull tank vessel may be built as its replacement. Currently, 54 single-hull tankships and 160 single-hull tank barges will be phased out over the next 16 years. For the 10-year period of analysis for the damage stability requirements, approximately 3 tankships and 10 tank barges will be built annually to meet demand and to replace phased-out tank vessels (130 tank vessels over the 10-year period). We expect the affected tank vessel fleet to incur minimal costs to comply with these requirements. The U.S. international fleet currently complies with the damage stability requirements in MARPOL 73/78. Also, vessels in the U.S. domestic fleet that hold IOPP Certificates currently meet the additional design and engineering calculation requirements for design stability. Moreover, under section 4115(a) of the Oil Pollution Act of 1990 (OPA 90), these single-hull tank vessels are required to be retrofitted with double hulls or phased out of service by the year 2015. For vessels being retrofitted, there will be nominal additional costs during the design process for additional stability analyses. The requirement entails fitting the vessel with U-shaped ballast tanks, instead of J-shaped (or other) ballast tanks, and relocating cargo tank boundaries.

(e) *Intact stability for tank vessels.* We assume that all tank vessels of 5,000 DWT and above will be constructed so that they are capable of engaging in international commerce. Therefore, we assume that, in order to participate in international commerce, currently operating tank vessels affected by the intact stability requirements already meet the requirements in MARPOL 73/78. No additional costs are incurred by these requirements.

(f) *Equivalent shore connections.* Certain U.S. ships that are used only for domestic voyages will be required to use shore connections that are compatible with U.S. reception facilities. Although these ships will not be in compliance with the international-type standard, they will meet the intent of the standard by having a connector that is compatible with discharge facilities in their area of operation. Because these ships currently have connections that are compatible with the facilities used, this requirement imposes no additional cost on these ships.

Benefits

(a) *Industry benefits.* The total present value of industry benefits for this rule during the 10-year period of analysis will be approximately $164.1 million. The industry benefits arise from the following requirements: IOPP Certificates ($3,715); garbage discharge records ($163.5 million); and compliance with international oil discharge limitations ($632,122).

(1) *IOPP Certificates.* Changing the term of the IOPP Certificate from 4 to 5 years for both inspected and uninspected vessels creates a benefit by reducing the costs incurred due to recertification. The costs for this change are included under the approved collection OMB 2115–0518. By aligning U.S. regulations with international standards, the annual paperwork burden cost will be reduced by $530. The 10-year accumulated present value of the recurring benefit is approximately $3,715.

(2) *Refuse discharge.* The refuse discharge requirement applies to each oceangoing ship of 400 gross tons and above engaged in commerce and documented under the laws of the United States or numbered by a State, each vessel certified to carry 15 passengers or more on international voyages, and each fixed or floating platform subject to the jurisdiction of the United States. We use these garbage discharge records to determine how ship-generated waste is handled (i.e., incinerated, discharged at sea, or off-loaded at a shore reception facility). Since all of these vessels currently maintain these records, this requirement imposes no additional information-collection burden.

Instead, this requirement creates an annual benefit for those vessels no longer required to maintain garbage discharge records. The total annual cost (burden) for this information-collection is estimated in revised OMB collection 2115–0613 to be $2.6 million, and it applies to 1,296 vessels. The previous requirement imposed an annual cost (burden) of $25.9 million on 16,878 vessels. This rule saves industry $23.3 million annually. Therefore, the accumulated present value for the 10-year period of this benefit is $163.5 million.

(3) *Compliance with international oil discharge limitations.* Complying with international oil discharge limitations will enable U.S. vessels to engage in international trade with minimal interruption. Vessels that are not in compliance with this requirement could be denied entry into ports of countries party to MARPOL 73/78 or could experience detention in these ports. These actions could result in a substantial monetary loss due to the vessel's inability to engage in trade. Assuming non-compliance with the international oil discharge limitations, resulting in one U.S. vessel being detained each year, we estimate the avoided cost (savings) of complying with this rulemaking will be $90,000 per year. The accumulated present value for the 10-year period of this benefit will be $632,122.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

In terms of costs, the oily-water or bilge monitors requirement will impose a $250 cost per tank vessel. This is a one-time cost, and in our view a very small additional cost to tank vessel owners, considering that the cost of a tank vessel, depending on its size, may be $100 million or more.

As for cost savings, the Coast Guard proposes removing from the CFR the requirement for garbage discharge records for ships of 12.2 meters (40 ft.) or more in length and less than 400 gross tons. These ships are most likely owned by the small entities in this industry and are no longer required to keep garbage disposal records. Therefore, the small entities that own these vessels benefit from the new regulation. We estimate that 15,582 oceangoing vessels will no longer need to meet that requirement, and the average annual avoided costs (savings) to each vessel will be $1,494 ($23.3 million/15,582 vessels). The accumulated present value of these avoided costs (savings) for the 10-year period of analysis will be $10,491 per vessel (163.5 million/15,582 vessels).

In addition, vessels of less than 400 GT that might be owned or operated by small entities will not be required to install oily-water separators, associated monitors, and alarms. Under § 155.350, these vessels will only need to comply with the existing requirement for retaining oily mixtures on board.

Also, under § 155.410(a)(3), U.S. non-oceangoing vessels between 100 GT and 400 GT will be allowed to install shore connections that are compatible with U.S. reception facilities. This rule allows vessels of less than 400 GT operating only in domestic service to use any shore connection that is compatible with U.S. reception facilities, rather than one that meets the international standard.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking.

Small entities, as well as the general public, were provided an opportunity to comment on the notice of proposed rulemaking published on August 8, 2000. No requests for assistance or for a public hearing were received.

This rule assists small entities by making the following changes to requirements: removing requirements for garbage disposal records from ships that are usually owned by small entities; removing requirements for oily-water separators, associated monitors, and alarms; and removing the requirement for certain vessels to install shore connections that meet the international standard. These actions provide cost savings to small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule amends two collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Refuse discharge. This requirement mandates that vessel owners develop and maintain garbage discharge records on board their vessels if those vessels are either oceangoing ships of 400 gross tons and above, or their vessels are certified to carry 15 or more passengers and are engaged in international voyages. Oceangoing vessels less than 400 gross tons will no longer be required to maintain garbage discharge records—with the exception of vessels certified to carry 15 passengers or more on international voyages. The burden for this requirement is included in a revised OMB collection 2115–0613. As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to OMB for its review of the collection of information. OMB has approved the collection. The section number is 33 CFR 151.55, and the corresponding approval number from OMB is OMB Control Number 2115–0613, which expires on April 30, 2004.

IOPP Certificates. Changing the term of the IOPP Certificate from 4 to 5 years will decrease the information-collection burden on ship owners. The information-collection burden of the IOPP Certificate is included under the previously approved OMB collection 2115–0518. As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to OMB for its review of the collection of information. OMB has approved the collection. The section number is 33 CFR 151.19, and the corresponding approval number from OMB is OMB Control Number 2115–0518, which expires on February 29, 2004.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).

This rule concerns requirements for the construction (damage and intact stability), operation (operational discharges of oil, IOPP Certificates, and garbage recordkeeping requirements), and equipping (oily-water separators) of tank vessels or other oceangoing vessels. It also implements and allows the use of an optional type of shore connection equipment for domestic vessels discharging oily mixtures at shoreside facilities. This entire rule falls within the preempted categories listed above, which, as we have long held, apply to both inspected vessels as well as tank vessels. For this reason, preemption is not an issue in this rulemaking.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure of $100 million or more in any one year by a State, local, or tribal government, in the aggregate, or by the private sector. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(d) and (34)(e), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

The rule aligns certain U.S. regulations with the international standards introduced in the amendments to MARPOL 73/78. These regulations fall under categorical exclusions 34 (d) and (e) regarding vessel equipment and approval. Therefore, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 155

Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 158

Administrative practice and procedure, Harbors, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 172

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 151, 155, 157, and 158 and 46 CFR part 172 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151, subpart A, continues to read as follows:

Authority: 33 U.S.C. 1321 and 1903; Pub. L. 104–227 (110 Stat. 3034), E.O. 12777, 3 CFR, 1991 Comp. p. 351; 49 CFR 1.46.

§ 151.01 [Amended]

2. In § 151.01, remove the note.

3. In § 151.05, revise the definitions of the terms "MARPOL 73/78", "oil", and "operational waste" and add, in alphabetical order, the definitions of "oil residue", "oil cargo residue", "fuel oil", "oily rags", and "operational waste" to read as follows:

§ 151.05 Definitions.

* * * * *

Fuel oil means any oil used to fuel the propulsion and auxiliary machinery of the ship carrying the fuel. The term "fuel oil" is also known as "oil fuel."

* * * * *

MARPOL 73/78 means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention. A copy of MARPOL 73/78 is available from the International Maritime Organization, 4 Albert Embankment, London, SE1, SR7, England.

* * * * *

Oil means petroleum whether in solid, semi-solid, emulsified, or liquid form, including but not limited to, crude oil, fuel oil, sludge, oil refuse, oil residue, and refined products, and, without limiting the generality of the foregoing, includes the substances listed in Appendix I of Annex I of MARPOL 73/78. "Oil" does not include animal and vegetable based oil or noxious liquid substances (NLS) designated under Annex II of MARPOL 73/78.

Oil cargo residue means any residue of oil cargo whether in solid, semi-solid, emulsified, or liquid form from cargo tanks and cargo pump room bilges, including but not limited to, drainages, leakages, exhausted oil, muck, clingage, sludge, bottoms, paraffin (wax), and any constituent component of oil. The term "oil cargo residue" is also known as "cargo oil residue."

Oil residue means—

(1) Oil cargo residue; and

(2) Other residue of oil whether in solid, semi-solid, emulsified, or liquid form, resulting from drainages, leakages, exhausted oil, and other similar occurrences from machinery spaces.

Oily mixture means a mixture, in any form, with any oil content. "Oily mixture" includes, but is not limited to—

(1) Slops from bilges;

(2) Slops from oil cargoes (such as cargo tank washings, oily waste, and oily refuse);

(3) Oil residue; and

(4) Oily ballast water from cargo or fuel oil tanks.

Oily rags means rags soaked with oil.

Operational waste means all cargo-associated waste, maintenance waste, and cargo residues other than oil residues and NLS cargo residues. "Operational wastes" includes ashes and clinkers (i.e., a mass of incombustible matter fused together by heat) from shipboard incinerators and coal-burning boilers but does not include plastic clinkers, which are treated as an Annex V waste, or oily rags, which are treated as an Annex I waste.

* * * * *

§ 151.08 [Amended]

4. In § 151.08(a), remove the words "oil or oily residues and mixtures" and add, in their place, the phrase "oil, oil residue, or oily mixtures".

5. In § 151.10—

a. Revise the section heading to read as follows;

§ 151.10 Control of oil discharges.

* * * * *

b. In paragraph (a)(5), remove the number "100" and add, in its place, the number "15";

c. In the note to paragraph (f), remove the words "residues and mixtures containing oil" and add, in their place, the words "oil residues and oily mixtures"; and

d. Revise paragraph (c), paragraph (f) introductory text, and paragraphs (f)(2)(i) through (f)(2)(iii) to read as follows:

(c) The overboard discharge of any oil cargo residues and oily mixtures that include oil cargo residues from an oil tanker is prohibited, unless discharged in compliance with part 157 of this chapter.

* * * * *

(f) The person in charge of an oceangoing ship that cannot discharge oily mixtures into the sea in compliance with paragraphs (a), (b), (c), or (d) of this section must ensure that those oily mixtures are—

* * * * *

(2) * * *

(i) The estimated time of day the ship will discharge oily mixtures;

(ii) The type of oily mixtures to be discharged; and

(iii) The volume of oily mixtures to be discharged.

* * * * *

6. In § 151.13, revise paragraph (b)(3) to read as set forth below and, in paragraph (f), remove the words "oil residues" and add, in their place, the words "oily mixtures":

§ 151.13 Special areas for Annex I of MARPOL 73/78.

* * * * *

(b) * * *

(3) All ships operating in the Antarctic area must have on board a tank or tanks of sufficient capacity to retain all oily mixtures while operating in the area and arrangements made to discharge oily mixtures at a reception facility outside the Antarctic area.

* * * * *

7. In § 151.19, revise paragraph (e) introductory text to read as follows:

§ 151.19 International Oil Pollution Prevention (IOPP) Certificates.

* * * * *

(e) The IOPP Certificate for each inspected or uninspected ship is valid for a maximum period of 5 years from the date of issue, except as follows:

* * * * *

§ 151.25 [Amended]

8. In § 151.25—

a. In paragraph (d)(2), remove the words "dirty ballast" and add, in their place, the words "ballast containing an oily mixture";

b. In paragraph (d)(3), remove the words "oily residues (sludge)" and add, in their place, the words "oil residue"; and

c. In paragraph (e)(10), remove the word "residues" and add, in its place, the words "oil residue".

§ 151.26 [Amended]

9. In § 151.26—

a. In paragraphs (b)(3)(i)(A) and (b)(3)(i)(B), after the words "A discharge of oil", add the words "or oily mixture";

b. In paragraph (b)(3)(ii), in the note to table 151.26(b)(3)(ii), remove the phrase "resolution A.648(16)" and add in its place "resolution A.851(20)"; and

c. In paragraph (b)(3)(iii)(B), after the words "For actual or probable discharges of oil", add the words "or oily mixtures".

10. In § 151.55, revise paragraphs (a)(1) and (a)(2), add a new paragraph (a)(3), and revise paragraph (b) introductory text to read as follows:

§ 151.55 Recordkeeping requirements.

(a) * * *

(1) Every manned oceangoing ship (other than a fixed or floating platform) of 400 gross tons and above that is engaged in commerce and that is documented under the laws of the United States or numbered by a State.

(2) Every manned fixed or floating platform subject to the jurisdiction of the United States.

(3) Every manned ship that is certified to carry 15 passengers or more engaged in international voyages.

(b) The master or person in charge of each ship under paragraph (a)(1), (a)(2), or (a)(3) of this section shall ensure that a written record is maintained on the ship of each of the following garbage discharge or disposal operations:

* * * * *

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

11. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46, 1.46(iii). Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

§ 155.330 [Amended]

12. In § 155.330, in the section heading, remove the phrase "Bilge slops/fuel oil" and add, in its place, the phrase "Oily mixture (bilge slops)/fuel oil" and, in paragraph (b), remove the words "oily residue" and add, in their place, the words "oil residue".

13. In § 155.350, revise the section heading and paragraph (a)(2) to read as follows and, in paragraph (b), remove the words "oily residue" and add, in their place, the words "oil residue":

§ 155.350 Oily mixture (Bilge slops)/fuel oil tank ballast water discharges on oceangoing ships of less than 400 gross tons.

(a) * * *

(2) Has approved oily-water separating equipment for processing oily mixtures from bilges or fuel oil tank ballast and discharges into the sea according to § 151.10 of this chapter.

* * * * *

14. In § 155.360—

a. Revise the section heading to read as set forth below;

b. In paragraph (a), remove the number "100" and add, in its place, the number "15" and remove the words "oily bilge slops or oily" and add in their place "oily mixtures from bilges or";

c. In paragraph (b), introductory text remove the phrase "oily residues (sludges)" and add, in its place, the words "oil residue";

d. In paragraph (b)(2), remove the words "oily wastes" and add in their place "oily mixtures"; and

e. Revise paragraph (e) to read as follows:

§ 155.360 Oily Mixture (Bilge slops) discharges on oceangoing ships of 400 gross tons and above but less than 10,000 gross tons, excluding ships that carry ballast water in their fuel oil tanks.

* * * * *

(e) This section does not apply to a fixed or floating drilling rig or other platform, except as specified in § 155.400(a)(2).

* * * * *

15. In § 155.370—

a. Revise the section heading and paragraph (a) to read as set forth below;

b. In paragraph (b) introductory text, remove the phrase "oily residues (sludges)" and add, in its place, the words "oil residue";

c. In paragraph (b)(1), remove the words "oily residues" and add, in their place, the words "oil residue";

d. In paragraph (b)(2), remove the words "oily wastes" and add, in their place, the words "oily mixtures";

e. Remove paragraph (d);

f. Redesignate paragraphs (e) and (f) as paragraphs (d) and (e), respectively; and

g. Revise newly redesignated paragraph (e) to read as follows:

§ 155.370 Oily mixture (bilge slops)/fuel oil tank ballast water discharges on oceangoing ships of 10,000 gross tons and above and oceangoing ships of 400 gross tons and above that carry ballast water in their fuel oil tanks.

(a) No person may operate an oceangoing ship of 10,000 gross tons and above, or any oceangoing ship of 400 gross tons and above, that carries ballast water in its fuel oil tanks, unless it has—

(1) Approved 15 ppm oily-water separating equipment for the processing of oily mixtures from bilges or fuel oil tank ballast;

(2) A bilge alarm; and

(3) A means for automatically stopping any discharge of oily mixture when the oil content in the effluent exceeds 15 ppm.

* * * * *

(e) This section does not apply to a fixed or floating drilling rig or other platform, except as specified in § 155.400(a)(2).

§ 155.380 [Amended]

16. In § 155.380, remove paragraph (c) and redesignate paragraph (d) as paragraph (c).

17. In § 155.410, revise paragraph (a)(3) to read as set forth below and, in paragraph (b), remove the words "oily bilge slops or oily" and add, in their place, the words "oily mixtures from bilges or":

§ 155.410 Pumping, piping, and discharge requirements for non-oceangoing ships of 100 gross tons and above.

(a) * * *

(3) Each outlet required by this section has a shore connection that is compatible with reception facilities in the ship's area of operation; and

* * * * *

18. In § 155.420—

a. In paragraph (a)(3), remove the words "The outlet" and add, in their place, the phrase "For a ship on an international voyage, the outlet";

b. Redesignate paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), respectively;

c. Add new paragraph (a)(4) to read as follows;

d. In newly designated paragraph (a)(5), remove the word "wastes" and add, in its place, "mixtures"; and

e. In paragraph (b), remove the words "oily bilge slops or oily" and add, in their place, the words "oily mixtures from bilges or":

§ 155.420 Pumping, piping, and discharge requirements for oceangoing ships of 100 gross tons and above but less than 400 gross tons.

(a) * * *

(4) For a ship not on an international voyage, the outlet required by this section has a shore connection that is compatible with reception facilities in the ship's area of operation;

* * * * *

19. In § 155.430, revise paragraph (a) introductory text to read as set forth below:

§ 155.430 Standard discharge connections for oceangoing ships of 400 gross tons and above.

(a) All oceangoing ships of 400 gross tons and above must have a standard shore connection for reception facilities to discharge oily mixtures from machinery space bilges or ballast water containing an oily mixture from fuel oil tanks. The discharge connection must have the following dimensions:

* * * * *

§ 155.440 [Amended]

20. In § 155.440, in the section heading, remove the words "water ballast" and add, in their place, the words "ballast water".

21. Revise § 155.810 to read as follows:

§ 155.810 Tank vessel security.

Operators of tank vessels carrying more oil cargo residue than normal in any cargo tank must assign a surveillance person or persons responsible for maintaining standard vessel security.

§ 155.1015 [Amended]

22. In § 155.1015, in paragraphs (a) and (c)(2), before the words "cargo residue", add the word "oil".

23. In § 155.1020, revise the definition of "petroleum oil" to read as follows:

§ 155.1020 Definitions.

* * * * *

Petroleum oil means petroleum in any form, including but not limited to, crude oil, fuel oil, sludge, oil residue, and refined products.

* * * * *

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

24. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subparts G, H, and I are also issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520; Pub. L. 104–55, 109 Stat. 546.

§ 157.03 [Amended]

25. In § 157.03—

a. In the definitions of "lightweight", "oil fuel", and "segregated ballast", remove the words "oil fuel" and add, in their place, the words "fuel oil";

b. In the definition of "slop tank", remove the words "oil mixtures" and add, in their place, the words "oily mixtures";

c. Add, in alphabetical order, the definitions of the terms "MARPOL 73/78", "oil cargo residue", "oil residue" and "oily mixture";

d. Remove the definition of "MARPOL Protocol"; and

e. Revise the definition of "petroleum oil" to read as follows:

§ 157.03 Definitions.

* * * * *

MARPOL 73/78 means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention. A copy of MARPOL 73/78 is available from the International Maritime Organization, 4 Albert Embankment, London, SE1 7SR, England.

* * * * *

Oil cargo residue means any residue of oil cargo whether in solid, semi-solid, emulsified, or liquid form from cargo tanks and cargo pump room bilges, including but not limited to, drainages, leakages, exhausted oil, muck, clingage, sludge, bottoms, paraffin (wax), and any constituent component of oil. The term "oil cargo residue" is also known as "cargo oil residue."

Oil residue means—

(1) Oil cargo residue; and

(2) Other residue of oil whether in solid, semi-solid, emulsified, or liquid form, resulting from drainages, leakages, exhausted oil, and other similar occurrences from machinery spaces.

Oily mixture means a mixture, in any form, with any oil content. "Oily mixture" includes, but is not limited to—

(1) Slops from bilges;

(2) Slops from oil cargoes (such as cargo tank washings, oily waste, and oily refuse);

(3) Oil residue; and

(4) Oily ballast water from cargo or fuel oil tanks, including any oil cargo residue.

* * * * *

Petroleum oil means petroleum in any form, including but not limited to, crude oil, fuel oil, sludge, oil residue, and refined products.

* * * * *

§ 157.04 [Amended]

26. In § 157.04(b), remove the words "MARPOL Protocol" and add, in their place, "MARPOL 73/78".

§ 157.07 [Amended]

27. In § 157.07, remove the phrase "MARPOL Protocol" and add, in its place, the phrase "MARPOL 73/78".

§ 157.11 [Amended]

28. In § 157.11(a), remove the words "cargo residues and other".

§ 157.12 [Amended]

29. In § 157.12(b)(2), remove the phrase "MARPOL Protocol" and add, in its place, the phrase "MARPOL 73/78".

30. Revise § 157.15(b) introductory text to read as follows:

§ 157.15 Slop tanks in tank vessels.

* * * * *

(b) *Capacity.* Slop tanks must have the total capacity to retain oily mixtures from cargo tank washings, oil residue, and ballast water containing an oily mixture of 3 percent or more of the oil carrying capacity. Two percent capacity is allowed if there are—

* * * * *

§ 157.17 [Amended]

31. In § 157.17—

a. In the section heading and in paragraphs (b) and (c), remove the words "oily residue" and add, in their place, the phrase "oil residue (sludge)"; and

b. In paragraph (a), remove the words "oily residue" and add, in their place, the words "oil residue".

32. Add § 157.22 to read as follows:

§ 157.22 Intact stability requirements.

All tank ships of 5,000 DWT and above contracted after December 3, 2001 must comply with the intact stability requirements of Regulation 25A, Annex I MARPOL 73/78.

§ 157.24 [Amended]

33. In § 157.24(c)(2), remove the words "MARPOL Protocol" and add, in their place, "MARPOL 73/78".

§ 157.24a [Amended]

34. In § 157.24a(b)(2), remove the words "MARPOL Protocol" and add, in their place, "MARPOL 73/78".

§ 157.33 [Amended]

35. In § 157.33, remove the words "oil fuel" and add, in their place, the words "fuel oil".

36. In § 157.37—

a. In paragraph (a)(3), remove the number "60" and add, in its place, the number "30";

b. In paragraph (a)(7), remove the phrase "MARPOL Protocol" and add, in its place, the phrase "MARPOL 73/78";

c. In paragraph (b), remove the word "residues" and add, in its place, the words "oil cargo residues"; and

d. Revise the section heading and paragraph (e) introductory text to read as follows:

§ 157.37 Discharge of oily mixtures from oil cargoes.

* * * * *

(e) Ballast water containing an oily mixture may be discharged below the waterline at sea by gravity if—

* * * * *

§ 157.39 [Amended]

37. In § 157.39—

a. In paragraph (a) and the introductory text of paragraph (b), remove the words "oil cargo mixture" and add, in their place, the words "oil cargo residue";

b. Remove paragraph (b)(1);

c. Redesignate paragraphs (b)(2), (b)(3), and (b)(4) as paragraphs (b)(1), (b)(2), and (b)(3), respectively;

d. In newly designated paragraph (b)(2), remove the number "100" and add, in its place, the number "15".

§ 157.43 [Amended]

38. In § 157.43(b) introductory text, remove the words "oil mixture" and add, in their place, the words "oily mixture".

§ 157.118 [Amended]

39. In § 157.118(a)(1)(ii) and (a)(2)(i), remove the phrase "MARPOL Protocol" and add, in its place, the phrase "MARPOL 73/78".

§ 157.138 [Amended]

40. In § 157.138(a)(1), remove the phrase "MARPOL Protocol" and add, in its place, the phrase "MARPOL 73/78".

§ 157.140 [Amended]

41. In § 157.140(a)(1), remove the phrase "oil clingage or deposits of oil, or both" and add, in its place, the words "oil residues".

§ 157.160 [Amended]

42. In § 157.160(a)(2) and (b)(3), remove the word "sludge" and add, in its place, "oil cargo residue".

§ 157.216 [Amended]

43. In § 157.216(a)(1)(ii) and (a)(2)(i), remove the phrase "MARPOL Protocol" and add, in its place, the phrase "MARPOL 73/78".

§ 157.224 [Amended]

44. In § 157.224(a), remove the phrase "MARPOL Protocol" and add, in its place, the phrase "MARPOL 73/78".

§ 157.302 [Amended]

45. In § 157.302, paragraphs (b)(3) and (b)(6), remove the words "cargo residues" and add, in their place, the words "oil cargo residues".

§ 157.304 [Amended]

46. In § 157.304(a), remove the words "cargo residues" and add, in their place, "oil cargo residues".

§ 157.310 [Amended]

47. In § 157.310(c), remove the words "cargo residues" and add, in their place, the words "oil cargo residues".

§ 157.400 [Amended]

48. In § 157.400(b)(2), remove the words "cargo residue" and add, in their place, the words "oil cargo residue".

49. In part 157, appendix B, add paragraph 3(f) to read as follows:

Appendix B—Subdivision and Stability Assumptions

* * * * *

3. * * *

(f) For oil tankers of 20,000 DWT and above, the damage assumptions must be supplemented by the following assumed bottom raking damage:

(1) Longitudinal extent:

(i) For ships of 75,000 DWT and above, 0.6L measured from the forward perpendicular.

(ii) For ships of less than 75,000 DWT, 0.4L measured from the forward perpendicular.

(2) Transverse extent: B/3 anywhere in the bottom.

(3) Vertical extent: Breach of the outer hull.

Appendix D [Amended]

50. In part 157, appendix D, paragraph 2(a)(1), remove the word "slop" and add, in its place, the words "oily mixtures".

PART 158—RECEPTION FACILITIES FOR OIL, NOXIOUS LIQUID SUBSTANCES, AND GARBAGE

51. The authority citation for part 158 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 49 CFR 1.46.

§ 158.100 [Amended]

52. In § 158.100(b)(1), remove the words "Residues and mixtures containing oil" and add, in their place, the words "Oily mixtures".

§ 158.110 [Amended]

53. In § 158.110(a)(1), remove the words "residues and mixtures containing oil" and add, in their place, the words "oily mixtures".

54. In § 158.120—

a. Revise the section heading;

b. Remove the definition of "MARPOL Protocol";

c. Revise the definition of "oil";

d. In the definition of "reception facility", remove the words "residues and mixtures containing oil" and add, in their place, the words "oily mixtures"; and

e. Add, in alphabetical order, the definitions of the terms "MARPOL 73/78", "oil cargo residue", "oil residue", and "oily mixtures" to read as follows:

§ 158.120 Definitions.

* * * * *

MARPOL 73/78 means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention. A copy of MARPOL 73/78 is available from the International Maritime Organization, 4 Albert Embankment, London, SE1 7SR, England.

* * * * *

Oil means petroleum whether in solid, semi-solid, emulsified, or liquid form, including but not limited to, crude oil, fuel oil, sludge, oil refuse, oil residue, and refined products, and, without limiting the generality of the foregoing, includes the substances listed in Appendix I of Annex I of MARPOL 73/78. "Oil" does not include animal and vegetable based oil or noxious liquid substances (NLS) designated under Annex II of MARPOL 73/78.

Oil cargo residue means any residue of oil cargo whether in solid, semi-solid, emulsified, or liquid form from cargo tanks and cargo pump room bilges, including but not limited to, drainages, leakages, exhausted oil, muck, clingage, sludge, bottoms, paraffin (wax), and any constituent component of oil. The term "oil cargo residue" is also known as "cargo oil residue."

Oil residue means—

(1) Oil cargo residue; and

(2) Other residue of oil resulting from drainages, leakages, exhausted oil, and other similar occurrences from machinery spaces.

Oily mixture means a mixture, in any form, with any oil content. "Oily mixture" includes, but is not limited to—

(1) Slops from bilges;

(2) Slops from oil cargoes (such as cargo tank washings, oily waste, and oily refuse);

(3) Oil residue; and

(4) Oily ballast water from cargo or fuel oil tanks.

* * * * *

§ 158.133 [Amended]

55. In § 158.133(a), remove the words "residues and mixtures containing oil" and add, in their place, the words "oily mixtures".

§ 158.135 [Amended]

56. In § 158.135(a), remove the words "residues and mixtures containing oil" and add, in their place, the words "oily mixtures".

57. Revise the heading of subpart B to read as follows:

Subpart B—Criteria for Reception Facilities: Oily Mixtures

§ 158.200 [Amended]

58. In § 158.200(a)(2), (a)(3)(i), (a)(3)(iii), and (b), remove the words "residues and mixtures containing oil" and add, in their place, the words "oily mixtures"; and, in (a)(3)(ii), remove the words "oily ballast" and add, in their place, the words "ballast water containing oily mixtures".

§ 158.210 [Amended]

59. In § 158.210—

a. In paragraph (a), remove the word "Sludge" and add, in its place, the words "Oil residue";

b. In paragraph (b), remove the words "Oily bilge water" and add, in their place, the words "Bilge water containing oily mixtures"; and

c. In paragraph (c), remove the words "Oily ballast" and add, in their place, the words "Ballast water containing oily mixtures".

§ 158.220 [Amended]

60. In § 158.220—

a. In paragraph (a), remove the word "Sludge" and add, in its place, the words "Oil residue";

b. In paragraph (b), remove the words "Oily bilge water" and add, in their place, the words "Bilge water containing oily mixtures";

c. In paragraph (c), remove the words "Oily ballast" and add, in their place, the words "Ballast water containing oily mixtures"; and

d. In paragraph (d), remove the words "Cargo residue" and add, in their place, the words "Oil cargo residue".

§ 158.230 [Amended]

61. In § 158.230—

a. In paragraph (a), remove the word "Sludge" and add, in its place, the words "Oil residue"; and

b. In paragraph (b), remove the words "Oily bilge water" and add, in their place, the words "Bilge water containing oily mixtures".

62. In § 158.240, revise paragraphs (a) and (b), and the introductory text to paragraphs (c) and (d), to read as follows:

§ 158.240 Ship repair yards.

* * * * *

(a) An amount of ballast from bunker tanks, and the wash water and oil residue from the cleaning of bunker tanks and oil residue (sludge) tanks, equal to 8 percent of the bunker capacity of the largest oceangoing ship serviced;

(b) An amount of solid oil cargo residues from cargo tanks equal to 0.1 percent of the deadweight tonnage of the largest oceangoing tanker serviced;

(c) An amount of ballast water containing oily mixtures and wash water from in-port tank washing equal to—

* * * * *

(d) An amount of liquid oil cargo residue based on the following percentages of deadweight tonnage of the largest oceangoing tanker serviced:

* * * * *

§ 158.250 [Amended]

63. In § 158.250, remove the words "oily bilge water"and add, in their place, the words "bilge water containing oily mixtures".

46 CFR PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

64. The authority citation for part 172 continues to read as follows:

Authority: 46 U.S.C 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

65. Add § 172.048 to read as follows:

§ 172.048 Definitions.

As used in this subpart—

MARPOL 73/38 means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention

66. In § 172.065, in table 172.065(A), revise the heading of the table and, at the end of the table, immediately preceding footnote 1 to the table, add a new undesignated heading and entry for "GROUNDING PENETRATION FOR RAKING DAMAGE"; and, in table 172.065(B), revise the heading of the table to read as follows:

§ 172.065 Damage stability.

* * * * *

TABLE 172.065(A)—EXTENT OF DAMAGE

. . . . .	
GROUNDING PENETRATION FOR RAKING DAMAGE	
For tank vessels of 20,000 DWT and above, the following assumed bottom raking damage must supplement the damage assumptions:	
Longitudinal extent	For vessels of 75,000 DWT and above, 0.6L measured from the forward perpendicular. For vessels of less than 75,000 DWT, 0.4L measured from the forward perpendicular.
Transverse extent	B/3 anywhere in the bottom.
Vertical extent	Breach of the outer hull.
. . . . .	

TABLE 172.065(B)—PERMEABILITY

* * * * *

68. Add § 172.070 to read as follows:

§ 172.070 Intact stability.

All tank vessels of 5,000 DWT and above contracted after the effective date of this rulemaking must comply with the intact stability requirements of Regulation 25A, annex I of MARPOL 73/78.

Dated: June 25, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–27256 Filed 11–01–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–198]

RIN 2115–AA97

Security Zone; Verrazano Narrows Bridge, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary emergency security zone around the Verrazano Narrows Bridge, New York that will restrict vessel traffic in a portion of The Narrows, between Staten Island and Brooklyn, NY. This action is necessary to ensure public safety, and protect the Port of NY/NJ from sabotage or terrorist acts, accidents, or other causes of a similar nature during the New York City Marathon. Entry into or movement within this zone by any vessel or person, of any description without the express authority of the Captain of the Port, New York, or his authorized patrol representative is strictly prohibited.

DATES: This rule is effective from 9:20 a.m. until 12:20 p.m. on November 4, 2001.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD01–01–198) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. This rulemaking is urgently required to prevent terrorist strikes within and adjacent to the Port of NY/NJ. The delay inherent in the NPRM process is contrary to the public interest as it may render individuals, vessels and facilities within the Port vulnerable to subversive activity, sabotage or terrorist attack. Commercial vessels may still transit through the Port via Long Island Sound, the East River, the Kill Van Kull, and the Arthur Kill.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to prevent future terrorist attacks. Immediate action is needed to accomplish these objectives. Any delay in the effective date of this rule is impractical and contrary to the public interest.

Background and Purpose

Terrorist attacks against the World Trade Center in Manhattan, New York on September 11, 2001 inflicted catastrophic human casualties and property damage. Federal, state and local agencies are engaged in ongoing efforts to recover the victims and secure other potential terrorist targets from attack. The Coast Guard is establishing this security zone to ensure the security of the Port of NY/NJ against terrorism, sabotage, or other subversive acts and incidents of a similar nature prior to and during the start of the New York City Marathon, a widely publicized event that draws large numbers of spectators and participants.

This regulation establishes a temporary security zone in all waters of The Narrows within 500 yards of the Verrazano Narrows Bridge. The security zone is in effect from 9:20 a.m. until 12:20 p.m. on Sunday, November 4, 2001. The security zone prevents vessels from transiting a portion of The Narrows between Staten Island and Brooklyn, NY.

This security zone is based on the security needs for the Port of NY/NJ. It has been narrowly tailored to impose the least impact on maritime interests yet provide the level of security deemed necessary. Entry into or movement within this security zone is prohibited unless authorized by the Coast Guard Captain of the Port, New York. Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory

Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through the Port via Long Island Sound, the East River, Kill Van Kull, and the Arthur Kill, and advance notifications which will be made. The U.S. Coast Guard in consultation with local, state, and federal law enforcement agencies determined the size of this security zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of The Narrows between Staten Island and Brooklyn, NY during the times this zone is activated.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic may still transit through the Port via Long Island Sound, the East River, the Kill Van Kull, and the Arthur Kill. Before the effective period, public notifications will be made via the Local Notice to Mariners and Marine Information Broadcasts, which are widely available to users of the Port of NY/NJ.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes an emergency security zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–198 to read as follows:

§ 165.T01–198 Security Zone: Verrazano Narrows Bridge, New York.

(a) *Location.* The following area is a security zone: All waters of The Narrows within 500 yards of the Verrazano Narrows Bridge.

(b) *Effective period.* This section is effective from 9:20 a.m. until 12:20 p.m. on November 4, 2001.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.33 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: October 25, 2001.

P.A. Harris,

Captain, U.S. Coast Guard, Captain of the Port, New York, Acting.

[FR Doc. 01–27607 Filed 10–30–01; 3:45 pm]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 960

Implementation of the Contract With America Advancement Act

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending the rules implementing the Equal Access to Justice Act in Postal Service proceedings to reflect the statutory increase in the amount of the hourly fees payable.

EFFECTIVE DATE: November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Diane M. Mego, (703) 812–1905.

SUPPLEMENTARY INFORMATION: The Contract with America Advancement Act of 1996 (Pub. L. 104–121, 110 Stat. 857 (1996)) increased the maximum amount of attorney fees under the Equal Access to Justice Act from $75 per hour to $125 per hour. This rulemaking amends 39 CFR part 960 to conform with the statutory change. In addition, language specifying the allowable fees for expert witnesses is being deleted.

These are statutorily mandated changes in agency rules of procedure before the Judicial Officer and, therefore, it is appropriate for their adoption by the Postal Service to become effective immediately.

List of Subjects in 39 CFR Part 960

Administrative practice and procedure, Equal access to justice, Postal Service.

Accordingly, the Postal Service adopts amendments to 39 CFR part 960 as specifically set forth below:

PART 960—[AMENDED]

1. The authority citation for part 960 continues to read as follows:

Authority: 5 U.S.C. 504 (c) (1); 39 U.S.C. 204, 401 (2).

§ 960.6 [Amended]

2. Section 960.6(b) is amended by removing "$75.00 per hour" and adding $125.00 per hour, or such rate as prescribed by 5 U.S.C. 504".

3. Section 960.6(b) is further amended by removing ", which is generally $50.00 per hour".

§ 960.7 [Amended]

4. Section 960.7(a) is amended by removing "$75 per hour" and adding "$125.00 per hour, or such rate as prescribed by 5 U.S.C. 504,".

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–27626 Filed 11–1–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7096–1]

RIN 2060–AC28

Ethylene Oxide Emissions Standards for Sterilization Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: This action finalizes amendments to the emissions standards for sterilization facilities by eliminating maximum achievable control technology (MACT) requirements for chamber exhaust vents. This action reduces safety problems associated with the existing requirements. This action also amends testing and monitoring requirements for sterilization chamber, aeration, and chamber exhaust vents to correct technical problems associated with the existing requirements.

EFFECTIVE DATE: November 2, 2001.

ADDRESSES: Docket No. A–88–03 contains supporting information used in developing the standards for the ethylene oxide commercial sterilization source category. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Markwordt, Policy, Planning, and Standards Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0837, facsimile (919) 541–0942, electronic mail address: *markwordt.david@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule amendments will also be available on the WWW through the EPA's Technology Transfer Network (TTN). Following signature, a copy of the rule amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules, *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities regulated by this action include:

Category	SIC [a]/NAICS [b]	Examples of regulated entities
Industry	3841, 3842 ...	Medical suppliers.
	2834, 5122, 2831, 2833	Pharmaceuticals.
	2099, 5149, 2034, 2035, 2046	Spice manufacturers.
	7399, 7218, 8091	Contract sterilizers.

[a] Standard Industrial Classification Code.
[b] North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.2131 of the final rule.

Judicial Review. Under section 307(b) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 2, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to these rule amendments which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section

307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

I. Background

On July 11, 1997, we learned of reports of explosions at several ethylene oxide sterilization facilities. Some of the explosions occurred at facilities affected by the ethylene oxide emissions standards. As a result, we took immediate steps to suspend the rule until December 1998 pending an investigation of the explosions and to notify facility owners.

We completed our investigation in 1998 to determine if the emission control equipment mandated by the emissions standards was in any way associated with the problems at these facilities. We agreed with industry that, in the cases where explosions occurred, the catalytic oxidizer units were overfed with ethylene oxide in concentrations above the safe operations limit due to abnormal activation of the chamber exhaust (backvent). In June 1998, the Ethylene Oxide Sterilization Association (EOSA) recommended "additional time to consider safe and economical control, installation, operation, and maintenance alternatives applicable to aeration and chamber exhaust (backvent) emissions." The EOSA provided a time line of approximately 12 months beyond December 1998 to enable implementation of the appropriate changes to ensure safe operation. We agreed with EOSA's recommendation and further extended the compliance date for chamber exhaust and aeration room vents for all sources affected by the ethylene oxide emissions standards by 1 year, until December 8, 1999. The two affected emission points, the chamber exhaust and aeration room vent, represent approximately 1 and 3 percent of the uncontrolled emissions, respectively.

In June 1999, the EOSA requested elimination of the requirement for chamber exhaust vent controls. In December 1999, we again suspended the compliance dates for chamber exhaust and aeration room vents. A 1-year suspension of control requirements for aeration room vents was based on the fact that many facilities are routing chamber exhaust emissions to the emission control device for aeration room vents. Since control of the aeration room vent by itself does not pose any known safety problems, we did not anticipate any further suspensions of requirements for aeration room vents beyond December 6, 2000. We provided a 2-year suspension of control requirements for chamber exhaust vent emissions based on the anticipated time required to propose and promulgate changes in the **Federal Register**. We committed to reconsidering the original MACT determination for chamber exhaust vents and proposing a course of action in the near future.

The use of existing technology by some sources in the relevant industry category presumes the ability to operate that technology in a proven safe manner. Nonetheless, at the time of promulgation (December 1994), state-of-the-art control technology for chamber exhaust vent emissions apparently involved safety hazards not known at that time. To date, solutions to the safety problems have not been developed, and there is no indication that resolution of the safety issues is forthcoming. Consequently, on March 6, 2001, we proposed eliminating the MACT requirements for chamber exhaust vents (66 FR 13464). We also proposed amendments to testing and monitoring requirements for sterilization chamber, aeration, and chamber exhaust vents.

II. What Are the Final Rule Amendments?

A. Chamber Exhaust Vents

We have removed the requirement to control the ethylene oxide emissions from the chamber exhaust vents. See the March 6, 2001 proposal preamble for the detailed reasons for this change. For all facilities (i.e., both major and area sources), we have removed the 5,300 parts per million per volume (ppmv) concentration limit requirement for chamber exhaust vents.

B. Catalytic Oxidizer Monitoring

We have removed the requirement to operate at the average temperature to demonstrate continuous compliance. We are now requiring facilities to maintain a minimum temperature for catalytic oxidizers based on manufacturer design and perform a work practice. Facilities can do either of the following work practices: periodically replace catalyst, or annually test control device performance and if necessary restore the catalyst.

We have made changes to the monitoring requirements to provide facilities an alternative to continuous catalyst temperature monitoring. Facilities can monitor either temperature or ethylene oxide concentration for catalytic oxidizers. In the final rule, we have added several additional test method to measure ethylene oxide concentration.

III. What Major Changes Have We Made to the Rule Since Proposal?

In response to comments received on the proposed amendments, we made several changes for the final rule. While some of the changes we made were clarifications designed to make our intentions more clear, some of the changes do alter the requirements as proposed. The substantive comments and/or changes and responses made since the proposal are summarized in the following sections. Our complete responses to public comments are contained in a memorandum that can be obtained from docket A–88–03.

A. Elimination of 5,300 ppmv Concentration Requirement

To ensure that the current amount of ethylene oxide being evacuated via the sterilization pump continues to be routed to a control device rather than exhausted via an uncontrolled vent, we proposed a concentration-based limit on emissions from major source chamber exhaust vents. In the original, existing rule, this requirement currently applies to area sources but not to major sources.

Comments: Commentors questioned "the Agency's reliance on the 5,300 ppmv empty chamber concentration as a suitable limitation when such test conditions have zero connection to the reality of operations in a commercial sterilization facility." The commentor also stated that their research showed "no reliable justification for the 5,300 ppmv MACT and we are convinced from our own experience that this level, however determined, was unfounded at the time the regulation was originally drafted."

One commentor stated that industry does not have knowledge of any proven instrumentation it could employ to comply with the proposed requirement to determine the concentration of ethylene oxide in the sterilization chamber immediately prior to the operation of the chamber exhaust. The commentor stated it is universally known and understood that a safe, reliable and accurate technology capable of providing a determination of the exhaust vent concentration is not available. The commentor also stated that a separate system (suitable for small exhaust, high concentration, for a short time period of 5 minutes or less) would be needed, probably for each chamber. If gas chromatography (GC)-based systems are used, costs are $60,000–$100,000 per chamber, provided some existing system could somehow be made safe, reliable, and accurate. Also, units for area and process control are not satisfactory because they are set up differently and measure different concentration levels.

Response: As stated previously, the Agency is removing the control requirement for the major source chamber exhaust vent as proposed. The Agency had also proposed a 5,300 ppmv concentration limit on the chamber exhaust vent for larger facilities (i.e., major sources). The 5,300 ppmv concentration limit was required in the original rule for smaller facilities (i.e., area sources with 1 to 10 tons of ethylene oxide use) which were not required to control chamber exhaust vent emissions.

We agree with the commentor that the 5,300 ppmv concentration limit was based on "Agency modeling, not actual operating conditions." We also agree with the commentor that there is no proven instrumentation which could be employed to comply with the proposed requirement to determine the concentration of ethylene oxide in the sterilization chamber immediately prior to the operation of the chamber exhaust. For these reasons, we have reconsidered the proposed and existing concentration limit requirement.

The sterilization chamber vent emissions are currently controlled with add-on control devices; these devices are required to reduce inlet emissions by 99 percent. For small facilities, under the existing rule the MACT floor for new and existing source chamber exhaust vents requires no reduction in emissions from these vents. The purpose of the existing rule's 5,300 ppmv limitation on the small chamber exhaust vents is to ensure that the current amount of ethylene oxide being evacuated via the sterilization pump continues to be routed to a control device rather than exhausted via an uncontrolled vent. The 5,300 ppmv requirement maintained the status quo for emissions from the chamber exhaust vent, and did not require the use of any control technologies. In promulgating the existing rule, the Administrator determined that the use of this limit did not constitute measures beyond the MACT floor for these sources (59 FR 10591). The chamber exhaust concentration limit was added to the rule as a precautionary measure; the Agency did not know of any plant operators by-passing main sterilization vent control devices.

Comment: One commentor recommended a 7,500 ppmv limit (25 percent of the lower explosive limit); the limit would be determined based on empty chamber cycle calculations for all cycles. This approach does not require test equipment. The commentor stated that it is common industry practice to analyze the safety of a sterilization cycle by calculating the residual sterilant in an empty sterilizer at the completion of the process. Most sterilization facilities require that the safety analysis be performed on every new sterilization cycle. The intent of the safety analysis is to demonstrate that the concentration of ethylene oxide gas in the sterilizer at the end of processing is below 1 percent (10,000 ppmv). This ensures that during routine processing the sterilizer environment is non-flammable when the door is opened and the exhaust vent is activated. The determination of this empty chamber concentration relies on simple dilution formulas and the ideal gas laws. Using partial pressure data of ethylene oxide in the sterilizer following the initial charge, one can determine concentration through the subsequent evacuation and purging sequences. The commentor stated that sterilization cycles in question are generally validated to meet the requirements of the Food and Drug Administration (FDA).

Another commentor believes the present regulations provide adequate assurance to ensure that ethylene oxide from the sterilization chamber vent continues to be routed through a control device. The EPA specifically defines sterilization chamber vent as "* * * the point (prior to the vacuum pump) through which the evacuation of ethylene oxide from the sterilization chamber occurs following sterilization or fumigation, including any subsequent air washes." The rule also specifically requires that sources using greater than 1 ton per year of ethylene oxide "* * * shall reduce ethylene oxide emissions to the atmosphere by at least 99 percent from each sterilization chamber vent."

Rerouting sterilization chamber vents to exhaust out the uncontrolled chamber exhaust vent would be in direct violation of the present regulation.

Response: After considering the comments and additional information, we decided that the concentration limit approach is not feasible because there is no known way to safely measure concentration. A gas chromatograph is a logical testing approach but it includes a flame source which introduces a safety issue.

Today, we have less concern regarding by-passing the main sterilization control equipment by routing ethylene oxide to the chamber exhaust vent. As stated previously, there were no data suggesting plant operators were by-passing the main control device. Since initial work on the rule in the 1980's, significant regulatory changes have occurred which have affected the sterilization industry. In response to the phase-out of chlorofluorocarbon production, industry switched from a mixture of chlorofluorocarbons and ethylene oxide to pure ethylene oxide for processing. The Occupational Safety and Health Administration (OSHA) tightened workplace ethylene oxide concentration exposure limits, and on October 7, 1996, the FDA revised the Current Good Manufacturing Practice (CGMP) requirements for medical devices and incorporated them into a quality system regulation.

Now that the use of pure ethylene oxide dominates industry practice, there are serious safety issues associated with by-passing the main control device. Venting pure ethylene oxide to the atmosphere could cause an explosion. Additionally, it is probable that venting would result in workplace exposure concentrations which would violate the OSHA limits. Industry is very aware of these safety concerns.

The FDA quality system regulation includes requirements related to the methods used in, and the facilities and controls used for, designing, manufacturing, packaging, labeling, storing, installing, and servicing of medical devices intended for human use. The action was necessary to add preproduction design controls and to achieve consistency with quality system requirements worldwide. The regulation sets forth the framework for device manufacturers to follow and gives them greater flexibility in achieving quality requirements (61 FR 52601).

These requirements apply to contract sterilization and specify quality system requirements including management controls, design controls, material controls, equipment controls, production and process controls, corrective and preventive action, and documentation. For sterilization operations, the objectives of the quality system regulation apply only to the safety and effectiveness of medical devices following sterilization. However, compliance with its requirements may also provide an assurance that processing will be performed in a way which meets concerns regarding vent emissions. For example, in meeting the requirement in the quality system regulation for a definition of specifications for all steps of the process, a sterilizing facility must specify the number of air washes in the ethylene oxide sterilization process. By meeting the requirements for documentation to demonstrate that each process step has been performed as specified, the facility will establish

procedures to document performance of the air washes. The requirements of the quality system are already in place; compliance with the quality system regulation will ensure that specifications for process steps are defined and met.

The Agency believes there are sufficient practical reasons (i.e., safety considerations as well as existing OSHA and FDA regulatory requirements) for eliminating our original presumptive need for the chamber exhaust emission limit. The Agency sees no practical benefit to adding additional requirements to accomplish the same thing. Therefore, because the concentration cannot be measured and there is now little or no value to the requirement, we are not promulgating the chamber exhaust concentration limit for large facilities and are withdrawing the requirement for small facilities.

B. Alternative to Catalyst Replacement Requirement

We proposed a requirement to replace catalytic oxidizer catalyst every 2 years to ensure that the catalyst remains active and in continuous compliance with the control device performance requirement. The proposed replacement of catalyst every 2 years was opposed by commentors because the practice was believed to be wasteful and costly. Some commentors stated that the compliance test should suffice to indicate compliance.

We agreed with the commentors that performance testing is a viable alternative to routine replacement of catalyst in ensuring continuous compliance. Therefore, we have added a test alternative to the rule. If test results show the control efficiency is below the performance standard, the facility will have to restore the catalyst as soon as practicable but no later than 180 days after the performance test.

IV. Summary of Environmental, Energy and Economic Impacts

There are negligible environmental, energy, and economic impacts associated with these amendments. Ethylene oxide emissions from the chamber exhaust vent comprise less than 1 percent of the uncontrolled emissions from the sterilization process.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these rule amendments are not a "significant regulatory action" under the terms of Executive Order 12866. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements of the ethylene oxide national emission standards for hazardous air pollutants (NESHAP) were submitted to and approved by OMB. A copy of the Information Collection Request (ICR) document (OMB control number 2060–0283) may be obtained from Ms. Sandy Farmer by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

Today's action has little or no impact on the information collection burden estimates made previously. Today's action eliminates requirements for chamber exhaust vents and clarifies testing and monitoring requirements for sterilization and aeration room vents. These changes revise existing requirements and do not impose new additional burdens; consequently, the ICR has not been revised.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Policies that have federalism implications is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

These final rule amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule is mandated by statute and does not impose requirements on States; however, States will be required to implement the rule by incorporating the rule into permits and enforcing the rule upon delegation. States will collect permit fees that will be used to offset the resource burden of implementing the rule. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, the EPA did consult with State and local officials in developing these rule amendments.

D. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

These final rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. This is because no tribal governments own or operate an ethylene oxide sterilization facility. Thus, Executive Order 13175 does not apply to these rule amendments.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule amendments contain no Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. These amendments eliminate existing requirements. Thus, today's final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these amendments contain no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule amendments are not subject to the requirements of section 203 of the UMRA.

Because these final rule amendments do not include a Federal mandate and are estimated to result in expenditures less than $100 million in any 1 year by State, local, and tribal governments, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments will not be significantly or uniquely affected by these rule amendments, the EPA is not required to develop a plan with regard to small governments. Therefore, the requirements of the UMRA do not apply to this action.

F. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule amendments on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code ranging from 500 to 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, EPA has concluded that this action will not have a significant impact on a substantial number of small entities. We believe there will be little or no impact on any small entities because these amendments do not impose additional requirements but instead either eliminate or streamline some existing requirements of the ethylene oxide NESHAP. Based on the foregoing, the EPA concludes that these rule amendments will not have a significant impact on a substantial number of small businesses.

Although these final rule amendments will not have a significant impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact on small entities by providing alternatives to compliance and monitoring requirements.

G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

These final rule amendments provide technical corrections and minor technical amendments to the Ethylene Oxide Emissions Standards for Sterilization Facilities (40 CFR part 63, subpart O). These amendments include two technical standards: EPA Method 25A and PS–8. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods and performance specifications. No voluntary consensus standards were identified for PS–8. The search and review results have been documented and are placed in the Docket No. A–88–03 (see **ADDRESSES** section) for these rule amendments.

The search for emissions monitoring procedures identified two voluntary consensus standards, both for EPA Method 25A. The EPA determined that these two standards identified for measuring emissions of hazardous air pollutants or surrogates subject to emission standards in the final rule would not be practical due to lack of equivalency, detail, and/or quality assurance and/or quality control requirements. Therefore, we did not use this voluntary consensus standard in this rulemaking.

The two voluntary consensus standards, EN 12619:1999 "Stationary Source Emissions—Determination of the Mass Concentration of Total Gaseous

Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method" and ISO 14965:2000(E) "Air Quality—Determination of Total Nonmethane Organic Compounds—Cryogenic Preconcentration and Direct Flame Ionization Method," are impractical alternatives to EPA Method 25A for the purposes of this rulemaking because the standards do not apply to solvent process vapors in concentrations greater than 40 ppm (EN 12619) and 10 ppm carbon (ISO 14965). Methods whose upper limits are this low are too limited to be useful in measuring source emissions, which are expected to be much higher.

Section 63.365 of the NESHAP lists the EPA test methods and performance standards included in this rulemaking. Under 40 CFR 63.7(f) of the General Provisions, a source may apply to EPA for permission to use alternative test methods in place of any of the EPA testing methods.

H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonable alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, these rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing these rule amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). These amendments will be effective November 2, 2001.

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This rule is not subject to Executive Order 13211 (66 FR 28355 May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 24, 2001.

Christine Todd Whitman,

Administrator.

For reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart O—[Amended]

2. Section 63.360 is amended:

a. In Table 1 by revising the entry for "63.7(a)(2)";

b. Removing and reserving paragraphs (g)(7) through (10).

The revision reads as follows:

§ 63.360 Applicability.

(a) * * *

TABLE 1 OF SECTION 63.360.—GENERAL PROVISIONS APPLICABILITY TO SUBPART O

Reference	Applies to sources using 10 tons in subpart O[a]	Applies to sources using 1 to 10 tons in subpart O[a]	Comment
. . .	.	.	.
63.7(a)(2).	Yes		
. . .	.	.	.

[a] See definition.

* * * * *

3. Section 63.361 is amended by removing the definition for "Parametric monitoring," revising the definition for "Baseline temperature," and adding a definition for "Thermal oxidizer" and "Deviation" in alphabetical order to read as follows:

§ 63.361 Definitions.

* * * * *

Baseline temperature means a minimum temperature at the outlet from the catalyst bed of a catalytic oxidation control device or at the exhaust point from the combustion chamber of a thermal oxidation control device.

* * * * *

Deviation means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

* * * * *

Thermal oxidizer means all combustion devices except flares.

4. Section 63.362 is amended by:

a. Revising Table 1 of paragraph (a);

b. Removing and reserving paragraph (e).

The revision reads as follows:

§ 63.362 Standards.

(a) * * *

TABLE 1 OF SECTION 63.362.—STANDARDS FOR ETHYLENE OXIDE COMMERCIAL STERILIZERS AND FUMIGATORS

Existing and new sources	Source type	Sterilization chamber vent	Aeration room vent	Chamber exhaust vent
Source size	<907 kg (<1 ton)	No control required; minimal recordkeeping requirements apply (see § 63.367(c)).		
	≥907 kg and <9,070 kg (≥1 ton and < 10 tons).	99% emission reduction (see § 63.362(c)).	No control	No control.
	≥9,070 kg (≥10 tons)	99% emission reduction (see § 63.362(c)).	1 ppm maximum outlet concentration or 99% emission reduction (see § 63.362(d)).	No control.

* * * * *

(e) [Reserved]

5. Section 63.363 is revised (including the section heading) to read as follows:

§ 63.363 Compliance and performance provisions.

(a)(1) The owner or operator of a source subject to emissions standards in § 63.362 shall conduct an initial performance test using the procedures listed in § 63.7 according to the applicability in Table 1 of § 63.360, the procedures listed in this section, and the test methods listed in § 63.365.

(2) The owner or operator of all sources subject to these emissions standards shall complete the performance test within 180 days after the compliance date for the specific source as determined in § 63.360(g).

(b) The procedures in paragraphs (b)(1) through (3) of this section shall be used to determine initial compliance with the emission limits under § 63.362(c), the sterilization chamber vent standard and to establish operating limits for the control devices:

(1) The owner or operator shall determine the efficiency of control devices used to comply with § 63.362(c) using the test methods and procedures in § 63.365(b).

(2) For facilities with acid-water scrubbers, the owner or operator shall establish as an operating limit either:

(i) The maximum ethylene glycol concentration using the procedures described in § 63.365(e)(1); or

(ii) The maximum liquor tank level using the procedures described in § 63.365(e)(2).

(3) For facilities with catalytic oxidizers or thermal oxidizers, the operating limit consists of the recommended minimum oxidation temperature provided by the oxidation unit manufacturer for an operating limit.

(4) Facilities with catalytic oxidizers shall comply with one of the following work practices:

(i) Once per year after the initial compliance test, conduct a performance test during routine operations, i.e., with product in the chamber using the procedures described in § 63.365(b) or (d) as appropriate. If the percent efficiency is less than 99 percent, restore the catalyst as soon as practicable but no later than 180 days after conducting the performance test; or

(ii) Once per year after the initial compliance test, analyze ethylene oxide

concentration data from § 63.364(e) or a continuous emission monitoring system (CEMS) and restore the catalyst as soon as practicable but no later than 180 days after data analysis; or,

(iii) Every 5 years, beginning 5 years after the initial compliance test (or by December 6, 2002, whichever is later), replace the catalyst bed with new catalyst material.

(c) The procedures in paragraphs (c)(1) through (3) of this section shall be used to determine initial compliance with the emission limits under § 63.362(d), the aeration room vent standard:

(1) The owner or operator shall comply with either paragraph (b)(2) or (3) of this section.

(2) Determine the concentration of ethylene oxide emitted from the aeration room into the atmosphere (after any control device used to comply with § 63.362(d)) using the methods in § 63.365(c)(1); or

(3) Determine the efficiency of the control device used to comply with § 63.362(d) using the test methods and procedures in § 63.365(d)(2).

(d) [Reserved]

(e) For facilities complying with the emissions limits under § 63.362 with a control technology other than acid-water scrubbers or catalytic or thermal oxidizers, the owner or operator of the facility shall provide to the Administrator or delegated authority information describing the design and operation of the air pollution control system, including recommendations for the operating parameters to be monitored to demonstrate continuous compliance. Based on this information, the Administrator will determine the operating parameter(s) to be measured during the performance test. During the performance test required in paragraph (a) of this section, using the methods approved in § 63.365(g), the owner or operator shall determine the site-specific operating limit(s)for the operating parameters approved by the Administrator.

(f) A facility must demonstrate continuous compliance with each operating limit and work practice standard required under this section, except during periods of startup, shutdown, and malfunction, according to the methods specified in § 63.364.

6. Section 63.364 is amended by:

a. Revising paragraph (b) introductory text;

b. Adding a sentence to the end of paragraph (b)(2);

c. Revising paragraph (c) introductory text;

d. Removing and reserving paragraphs (c)(1), (2) and (3);

e. Adding a sentence to the end of paragraph (c)(4);

f. Revising paragraph (d);

g. Revising paragraph (e); and

h. Removing and reserving paragraph (f).

The additions and revisions read as follows:

§ 63.364 Monitoring requirements.

* * * * *

(b) For sterilization facilities complying with § 63.363(b) or (d) through the use of an acid-water scrubber, the owner or operator shall either:

* * * * *

(2) * * * Monitoring is required during a week only if the scrubber unit has been operated.

(c) For sterilization facilities complying with § 63.363(b) or (c) through the use of catalytic oxidation or thermal oxidation, the owner or operator shall either comply with § 63.364(e) or continuously monitor and record the oxidation temperature at the outlet to the catalyst bed or at the exhaust point from the thermal combustion chamber using the temperature monitor described in paragraph (c)(4) of this section. Monitoring is required only when the oxidation unit is operated. From 15-minute or shorter period temperature values, a data acquisition system for the temperature monitor shall compute and record a daily average oxidation temperature. Strip chart data shall be converted to record a daily average oxidation temperature each day any instantaneous temperature recording falls below the minimum temperature.

(1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) * * * As an alternative, the accuracy temperature monitor may be verified in a calibrated oven (traceable to NIST standards).

(d) For sterilization facilities complying with § 63.363(b) or (c) through the use of a control device other than acid-water scrubbers or catalytic or thermal oxidizers, the owner or operator shall monitor the parameters as approved by the Administrator using the methods and procedures in § 63.365(g).

(e) Measure and record once per hour the ethylene oxide concentration at the outlet to the atmosphere after any control device according to the procedures specified in § 63.365(c)(1). The owner or operator shall compute and record a 24-hour average daily. The owner or operator will install, calibrate, operate, and maintain a monitor consistent with the requirements of performance specification (PS) 8 or 9 in 40 CFR part 60, appendix B, to measure ethylene oxide. The daily calibration requirements of section 7.2 of PS 9 or section 2.3 of PS 8 are required only on days when ethylene oxide emissions are vented to the control device.

(f) [Reserved]

7. Section 63.365 is amended by:

a. Revising paragraph (b)(1) introductory text;

b. Revising paragraph (b)(1)(iv)(B);

c. Removing and reserving paragraph (b)(1)(iv)(C);

d. Removing and reserving paragraph (b)(2);

e. Revising paragraph (c);

f. Revising paragraph (d);

g. Removing and reserving paragraph (f);

h. Revising paragraph (h).

The revisions read as follows:

§ 63.365 Test methods and procedures.

* * * * *

(b) * * *

(1) *First evacuation of the sterilization chamber.* These procedures shall be performed on an empty sterilization chamber, charged with a typical amount of ethylene oxide, for the duration of the first evacuation under normal operating conditions (i.e., sterilization pressure and temperature).

* * * * *

(iv) * * *

(B) Test Method 18 or 25A, 40 CFR part 60, appendix A (hereafter referred to as Method 18 or 25A, respectively), shall be used to measure the concentration of ethylene oxide.

(*1*) Prepare a graph of volumetric flow rate versus time corresponding to the period of the run cycle. Integrate the area under the curve to determine the volume.

(*2*) Calculate the mass of ethylene oxide by using the following equation:

$$W_o = C \times V \times \frac{MW}{SV} \times \frac{1}{10^6}$$

Where:

W_O = Mass of ethylene oxide, g (lb)

C = concentration of ethylene oxide in ppmv

V = volume of gas exiting the control device corrected to standard conditions, L (ft^3)

$1/10^6$ = correction factor $L_{EO}/10^6\ L_{TOTAL\ GAS}$ ($ft^3_{EO}/10^6\ ft^3_{TOTAL\ GAS}$)

(*3*) Calculate the efficiency by the equation in paragraph (b)(1)(v) of this section.

(C) [Reserved]

* * * * *

(2) [Reserved]

* * * * *

(c) *Concentration determination.* The following procedures shall be used to determine the ethylene oxide concentration.

(1) *Parameter monitoring.* For determining the ethylene oxide concentration required in § 63.364(e), follow the procedures in PS 8 or PS 9 in 40 CFR part 60, appendix B. Sources complying with PS 8 are exempt from the relative accuracy procedures in sections 2.4 and 3 of PS–8.

(2) *Initial compliance.* For determining the ethylene oxide concentration required in § 63.363(c)(2), the procedures outlined in Method 18 or Method 25 A (40 CFR part 60, appendix A) shall be used. A Method 18 or Method 25A test consists of three 1-hour runs. If using Method 25A to determine concentration, calibrate and report Method 25A instrument results using ethylene oxide as the calibration gas. The arithmetic average of the ethylene oxide concentration of the three test runs shall determine the overall outlet ethylene oxide concentration from the control device.

(d) *Efficiency determination at the aeration room vent (not manifolded).* The following procedures shall be used to determine the efficiency of a control device used to comply with § 63.362(d), the aeration room vent standard.

(1) Determine the concentration of ethylene oxide at the inlet and outlet of the control device using the procedures in Method 18 or 25A in 40 CFR part 60, appendix A. A test is comprised of three 1-hour runs.

(2) Determine control device efficiency (% Eff) using the following equation:

$$\%\ Eff = \frac{W_i - W_o}{W_i} \times 100$$

Where:

% Eff = percent efficiency

W_i = mass flow rate into the control device

W_O = mass flow rate out of the control device

(3) Repeat the procedures in paragraphs (d)(1) and (2) of this section three times. The arithmetic average percent efficiency of the three runs shall determine the overall efficiency of the control device.

* * * * *

(f) [Reserved]

* * * * *

(h) An owner or operator of a sterilization facility seeking to demonstrate compliance with the requirements of § 63.363 or § 63.364, with a monitoring device or procedure other than a gas chromatograph or a flame ionization analyzer, shall provide to the Administrator information describing the operation of the monitoring device or procedure and the parameter(s) that would demonstrate continuous compliance with each operating limit. The Administrator may request further information and will specify appropriate test methods and procedures.

8. Section 63.366 is amended by revising paragraph (a)(3) to read as follows:

§ 63.366 Reporting requirements.

(a) * * *

(3) Content and submittal dates for deviations and monitoring system performance reports. All deviations and monitoring system performance reports and all summary reports, if required per § 63.10(e)(3)(vii) and (viii), shall be delivered or postmarked within 30 days following the end of each calendar half or quarter as appropriate (see § 63.10(e)(3)(i) through (iv) for applicability). Written reports of deviations from an operating limit shall include all information required in § 63.10(c)(5) through (13), as applicable in Table 1 of § 63.360, and information from any calibration tests in which the monitoring equipment is not in compliance with PS 9 or the method used for temperature calibration. The written report shall also include the name, title, and signature of the responsible official who is certifying the accuracy of the report. When no deviations have occurred or monitoring equipment has not been inoperative, repaired, or adjusted, such information shall be stated in the report.

* * * * *

9. Section 63.367 is revised to read as follows:

§ 63.367 Recordkeeping requirements.

(a) The owner or operator of a source subject to § 63.362 shall comply with the recordkeeping requirements in § 63.10(b) and (c), according to the applicability in Table 1 of § 63.360, and in this section. All records required to be maintained by this subpart or a subpart referenced by this subpart shall be maintained in such a manner that they can be readily accessed and are suitable for inspection. The most recent 2 years of records shall be retained onsite or shall be accessible to an inspector while onsite. The records of the preceding 3 years, where required, may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, computer disk, magnetic tape, or microfiche.

(b) The owners or operators of a source using 1 to 10 tons not subject to § 63.362 shall maintain records of ethylene oxide use on a 12-month rolling average basis (until the source changes its operations to become a source subject to § 63.362).

(c) The owners or operators of a source using less than 1 ton shall maintain records of ethylene oxide use on a 12-month rolling average basis (until the source changes its operations to become a source subject to § 63.362).

(d) The owners or operators complying with § 63.363(b) (4) shall maintain records of the compliance test, data analysis, and if catalyst is replaced, proof of replacement.

[FR Doc. 01–27594 Filed 11–1–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301185; FRL–6806–4]

RIN 2070–AB78

Methoxyfenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of methoxyfenozide in or on field corn grain, stover and oil, aspirated grain fractions and soybean forage, hay, oil, and seed. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on field corn and soybeans. This regulation establishes a maximum permissible level for residues of methoxyfenozide in these food commodities. The tolerances will expire and are revoked on December 31, 2003.

DATES: This regulation is effective November 2, 2001. Objections and requests for hearings, identified by docket control number OPP–301185, must be received by EPA on or before January 2, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301185 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide

Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; and e-mail address: Madden.Barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov/*. To access this document, on the homepage select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html*, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301185. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the insecticide methoxyfenozide, benzoic acid, 3-methoxy-2-methyl-2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide, in or on field corn grain at 0.02 part per million (ppm), field corn forage at 10 ppm, field corn stover at 75 ppm, corn oil at 0.1 ppm, aspirated grain fractions at 20 ppm, soybean seed at 0.04 ppm, soybean forage at 10 ppm, soybean hay at 75 ppm and soybean oil at 1.0 ppm. These tolerances will expire and are revoked on December 31, 2003. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of August 3, 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Methoxyfenozide on Field Corn and Soybeans and FFDCA Tolerances

Field Corn - The southwestern corn borer (Pyralidae: *Diarrhea grandiosella*) is one of several major corn pests in the southern United States. There are usually three generations per year. First generation larvae feed in the whorl, where it is susceptible to foliar insecticide applications. Second and third generation larvae bore into the stalk, where they are protected from insecticide applications. Larvae tunnel down the main stem to the base of the plant and overwinter in the crown of the corn stalk, just below soil surface, where they are susceptible to death by freezing, drowning, or mechanical destruction.

The Mississippi University Cooperative Extension Service recommends the following chemicals for southwestern corn borer control: Carbaryl, carbofuran, chlorpyrifos, cyhalothrin, esfenvalerate, and permethrin. According to the Mississippi application frequent summer rains have affected the effectiveness of the registered pesticides, most of which have short residual lives, resulting in poor southwestern corn borer control and

increasing the need for repeated applications. Furthermore, corn farmers in Mississippi, mostly small farmers who also grow catfish in ponds and handle and apply pesticides themselves, avoid using carbofuran, which is perceived as hazardous to themselves and their catfish. Methoxyfenozide, an IGR specific to lepidopteran larvae, was identified as a suitable alternative because of its moderate residual life and low risk to humans and most non-target organisms.

Transgenic Bt corn is an effective alternative, but is limited to 50% of the acreage planted due to resistance management compliance. Natural enemies destroy a portion of the southwestern corn borer population, but not at levels necessary to prevent economic losses. In the past, destruction of corn stubble by shredding, disking, or deep tillage was an effective cultural control method. However, under the present no-till conservation practices, larger numbers of overwintering larvae survive and infest the next year's crop.

The request indicates that yield reductions associated with southwestern core borer infestations have been reported in the range of 10% to 50%.

Soybean - Saltmarsh caterpillars (often called "woolly worms") feed in the larval stage in groups on soybean foliage. It feeds on the leaves on the upper third of the soybean canopy. The saltmarsh caterpillar has historically been only an occasional pest of soybeans in Arkansas and Mississippi. Although it is usually present in soybean fields, it is rarely at population densities to cause economic damage. However, due to favorable conditions, population densities of the saltmarsh caterpillar have been increasing over the last few years.

While environmental conditions played a role in the recent saltmarsh caterpillar outbreaks, the inability to control the pest with currently registered insecticides was the primary cause for yield loss. Control of the pest with currently registered insecticides (thiodicarb, esfenvalerate, and spinosad) was seldom greater than 50%. This required multiple, short interval, high rate insecticide applications with associated increase in cost. Soybeans which suffered the greatest impact were the late maturing varieties.

EPA has authorized under FIFRA section 18 the use of methoxyfenozide on field corn for control of Southwestern corn borer in Mississippi and for use on soybeans to control Saltmarsh caterpillars in Arkansas and Mississippi. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of methoxyfenozide in or on field corn and soybeans. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on field corn and soybeans after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether methoxyfenozide meets EPA's registration requirements for use on field corn and soybeans or whether a permanent tolerance for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of methoxyfenozide by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Arkansas and Mississippi to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for methoxyfenozide, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of methoxyfenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of methoxyfenozide in or on field corn grain at 0.02 ppm, field corn forage at 10 ppm, field corn stover at 75 ppm, corn oil at 0.1 ppm, aspirated grain fractions at 20 ppm, soybean seed at 0.04 ppm, soybean forage at 10 ppm, soybean hay at 75 ppm and soybean oil at 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the

appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for methoxyfenozide used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR METHOXYFENOZIDE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary females 13–50 years of age and the general population including infants and children	none	none	No appropriate endpoint was identified in the oral toxicity studies including the acute neurotoxicity study in rats and the developmental toxicity studies in rats and rabbits.
Chronic dietary all populations	NOAEL= 10.2 mg/kg/day UF = 100 Chronic RfD = 0.10 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF = 0.10 mg/kg/day	2–Year combined chronic feeding/carcinogenicity, rats LOAEL = 411 mg/kg/day based on hematological changes (decreased RBC, hemoglobin and hematocrit), liver toxicity (increased weights, hypertrophy), histopathological changes in thyroid (increased follicular cell hypertrophy, altered colloid), possible adrenal toxicity (increased weights).
Short-term, intermediate-term, and long-term dermal and inhalation	None	None	No systemic toxicity was seen at the limit dose following repeated dermal application to rats. Based on low vapor pressure, the low acute toxicity of both the technical and formulated products as well as the application rate and application method, there is minimal concern for inhalation exposure.
Cancer (oral, dermal, inhalation)	Methoxyfenozide has been classified as a "not likely" human carcinogen.		The classification is based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.544) for the residues of methoxyfenozide, in or on a variety of raw agricultural commodities including, the pome fruits crop group, apple pomace, cotton seed, cotton gin byproducts, milk, and meat, fat, liver and meat byproducts of cattle, goats, hogs, horses and sheep. Risk assessments were conducted by EPA to assess dietary exposures from methoxyfenozide in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No appropriate endpoint was identified in the oral toxicity studies including the acute neurotoxicity study in rats and the developmental toxicity studies in rats and rabbits. Therefore, acute dietary risk assessments were not conducted.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: 100% of all crops were treated and all resulting residues were at tolerance level.

iii. *Cancer.* Methoxyfenozide has been classified as a "not likely" human carcinogen. The classification is based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies. Therefore, risk assessments to estimate cancer risk were not conducted.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for methoxyfenozide in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of methoxyfenozide.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to methoxyfenozide they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of methoxyfenozide for chronic exposures are estimated to be 30 parts per billion (ppb) for surface water and 3.5 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Methoxyfenozide is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether methoxyfenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that methoxyfenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies.* In a developmental toxicity study in rats regarding maternal findings, there were no deaths or clinical signs, nor where there any effects on body weights or food consumption. No changes were noted in any of the reproductive parameters. Fetal examinations did not reveal any affects on body weight or gross/visceral/skeletal aspects. The maternal NOAEL is 1,000 mg/kg/day (Highest Dose Tested (HDT), Limit Dose (LD)) and the maternal LOAEL is greater than 1,000 mg/kg/day. The developmental NOAEL is 1,000 mg/kg/day and the developmental LOAEL is greater than 1,000 mg/kg/day.

In a developmental toxicity study in rabbits regarding maternal findings, there were no deaths or clinical signs, nor where there any effects on body weights, weight gains or food consumption. No changes were noted in any of the reproductive parameters. Fetal examinations did not reveal any affects on body weight or gross/visceral/skeletal aspects. The maternal NOAEL is 1,000 mg/kg/day (HDT, LD) and the maternal LOAEL is greater than 1,000 mg/kg/day. The developmental NOAEL is greater than 1,000 mg/kg/day and the

developmental LOAEL is greater than 1,000 mg/kg/day.

3. *Reproductive toxicity study.* In a 2–generation reproduction study the LOAEL for systemic toxicity is 20,000 ppm (1,551.9 mg/kg/day), based on increased absolute and relative liver weights in males and females and on hepatocellular hypertrophy in males and females. The NOAEL for systemic toxicity is 2,000 ppm (153.4 mg/kg/day). There were no treatment-related reproductive effects on the P1 and P2 males and females or their F1 and F2 offspring. Therefore, the NOAEL for reproductive toxicity is greater 20,000 ppm (1,551.9–2,036.5 mg/kg/day) (HDT). The LOAEL for reproductive toxicity was not identified.

4. *Neurotoxicity.* In an acute oral neurotoxicity study in rats there were no observable signs of a neurotoxic effect even at the highest concentration in females. Functional observational battery (FOB) assessment on Day 0 revealed a decrease in hindlimb grip strength for males in the 2,000 mg/kg group. Motor activity (MA) assessment remained comparable to controls throughout the study for males and females in all exposure groups. No neuropathological endpoints were observed during the histological examinations of the peripheral or central nervous systems of these animals at any exposure concentration. Based on the absence of any substance-related effects on body weight or body weight gain and any clinical signs of toxicity, the NOAEL for systemic toxicity is a concentration of 2,000 mg/kg for males and females. The NOAEL for neurotoxic effects is 2,000 mg/kg for females. Based on a decrease in hindlimb grip strength on day 0 in the 2,000 mg/kg male group, the NOAEL for males is 1,000 mg/kg and the LOAEL for males is 2,000 mg/kg. No LOAEL was established for systemic effects in males or females or for neurotoxic effects in females.

In a subchronic oral neurotoxicity study in rats there were no observable signs of a neurotoxic effect even at the highest concentration in males or females. FOB and MA remained comparable to controls throughout the study and no neuropathological endpoints were observed during the histological examinations of these animals at any exposure concentration. Based on the absence of any substance-related effects on body weight or body weight gain and any clinical signs of toxicity, the NOAEL for systemic toxicity is 20,000 ppm for males (1,318 mg/kg/day) and females (1,577 mg/kg/day). The NOAEL for neurotoxic effects is also 20,000 ppm for males (1,318 mg/kg/day) and females (1,577 mg/kg/day). No LOAEL was established for systemic or neurotoxic effects.

In none of the other oral toxicity studies on methoxyfenozide were there any signs of neurotoxicity. The studies considered included all the available toxicology studies on methoxyfenozide.

5. *Conclusion.* The toxicology data base for methoxyfenozide is complete and no additional studies are required at this time. The scientific and regulatory quality of the toxicology data base for methoxyfenozide is high and is considered sufficient to clearly define the toxicity of this chemical. There is, therefore, high confidence in the hazard and dose-response assessments conducted for this chemical. Exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

The toxicology data provided no indication of increased susceptibility in rats or rabbits from *in utero* and/or postnatal exposure to methoxyfenozide. In the prenatal developmental toxicity studies in rats and rabbits, no developmental toxicity was observed at the LD, the HDT. In the 2–generation reproduction study in rats, no effects in the offspring were observed at the HDT. In none of the oral toxicity studies on methoxyfenozide were there any signs of neurotoxicity. The studies considered included all the available toxicology studies on methoxyfenozide.

Therefore, the Agency has determined that the FQPA Safety Factor can be reduced to 1X in assessing the risk posed by this chemical.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to methoxyfenozide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of methoxyfenozide on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* No appropriate endpoint was identified in the oral toxicity studies including the acute neurotoxicity study in rats and the developmental toxicity studies in rats and rabbits. Therefore, acute dietary risk assessments were not conducted.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to methoxyfenozide from food will utilize 3% of the cPAD for the U.S. population, 13% of the cPAD for all infants (< 1year), the infant subpopulation at greatest exposure and 9% of the cPAD for children (1–6 years old), the children subpopulation at greatest exposure. There are no residential uses registered for methoxyfenozide. In addition, despite the potential for chronic dietary exposure to methoxyfenozide in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of methoxyfenozide in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO METHOXYFENOZIDE

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.10	3	30	3.5	3,400
Children (1–6 years old)	0.10	9	30	3.5	900
Infants (< 1 year old)	0.10	13	30	3.5	870

3. *Short-term risk and intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Methoxyfenozide is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Aggregate cancer risk for U.S. population.* Methoxyfenozide has been classified as a "not likely" human carcinogen. The classification is based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies. Therefore, risk assessments to estimate cancer risk were not conducted.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to methoxyfenozide residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no established or proposed Codex, Canadian or Mexican limits for residues of methoxyfenozide in or on plant or animal commodities. Therefore, no compatibility issues exist with regard to the proposed U.S. tolerances.

C. Conditions

A 1–year plant back interval is required for crops not having tolerances. Currently, there is a petition under review that may result in rotational crop tolerances being established allowing for shorter plant back intervals. But, in the absence of such tolerances, a 1–year plant back interval is required.

The existing livestock tolerances are adequate for the uses proposed under these emergency exemptions.

VI. Conclusion

Therefore, tolerances are established for residues of methoxyfenozide, benzoic acid, 3-methoxy-2-methyl-2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide, in or on field corn grain at 0.02 ppm, field corn forage at 10 ppm, field corn stover at 75 ppm, corn oil at 0.1 ppm, aspirated grain fractions at 20 ppm, soybean seed at 0.04 ppm, soybean forage at 10 ppm, soybean hay at 75 ppm and soybean oil at 1.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301185 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 2, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or

refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301185, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *oppdocket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 18, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.544 is amended by adding text to paragraph (b) to read as follows.

§ 180.544 Methoxyfenozide; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the residues of the insecticide methoxyfenozide in connection with the use of the pesticide under section 18 emergency exemption granted by EPA. The tolerances will expire on the dates specified in the following tables.

Commodity	Parts per million	Expiration/revocation date
Corn, field, forage	10	12/31/03
Corn, field, grain	0.02	12/31/03
Corn, field, stover	75	12/31/03
Corn, oil	0.1	12/31/03
Soybean, aspirated grain fractions	20	12/31/03
Soybean, forage	10	12/31/03
Soybean, hay	75	12/31/03
Soybean, refined oil	1.0	12/31/03
Soybean, seed	0.04	12/31/03

* * * * *

[FR Doc. 01–27603 Filed 11–1–01; 8:45 am]
BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–3 and 102–84

[FPMR Interim Rule A–1]

RIN 3090–AG55

Annual Real Property Inventories

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Interim rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on the annual real property inventories into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: *Effective Date*: November 2, 2001.

Comment Date: Your comments must reach us by January 2, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Send written comments to Mr. Michael E. Hopkins, Regulatory Secretariat (MVP), Acquisition Policy Division, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

Send e-mail comments to *RIN.3090-AG55@gsa.gov*.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, (202) 501–1737.

SUPPLEMENTARY INFORMATION:

A. Background

In furtherance of its leadership role in real property asset management, the Office of Governmentwide Policy, Office of Real Property, conducted a comprehensive review of the policies contained in Federal Property Management Regulations (FPMR) Part 101–3, entitled "Annual Real Property Inventories." This review was based on a collaborative effort with Federal real property holding agencies that utilize the Worldwide Inventory of Federal Real Property.

Representatives from the Department of the Interior, the Department of Energy, and the Army Corps of Engineers participated with GSA in conducting the initial steps of the comprehensive review of the policies in FPMR part 101–3. The review focused on improvements to make the real property inventory program more useful and to enable Federal agencies to more effectively manage their real property inventories. In addition, we have rewritten these regulations in plain language format. These regulations are being transferred from the FPMR to the FMR to enable the Government to better focus on implementing statutory requirements, Executive Orders, and governmentwide policies rather than on detailed operating procedures.

B. Executive Order 12866

GSA has determined that this interim rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This interim rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This interim rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

F. Determination To Issue an Interim Rule

This interim rule is not required to be published for notice and comment under the Administrative Procedures Act because it relates solely to agency management and personnel; therefore, GSA could issue the rule as a final rule. However, GSA would like to receive comments about this action before publishing it as a final rule. An interim rule provides two benefits. First, it gives agencies a chance to comment on aspects of the revised coverage in the FMR. Second, agencies will be able to use the new FMR coverage to respond to the Fiscal Year 2002 data call for real property inventories.

List of Subjects in 41 CFR Parts 101–3 and 102–84

Federal buildings and facilities, Government property management.

For the reasons set forth in the preamble, 41 CFR chapters 101 and 102 are amended as follows:

CHAPTER 101—[AMENDED]

1. Part 101–3 is revised to read as follows:

PART 101–3—ANNUAL REAL PROPERTY INVENTORIES

Authority: 40 U.S.C. 486(c).

§ 101–3.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on annual real property inventories previously contained in this part, see FMR part 84 (41 CFR part 102–84).

CHAPTER 102—[AMENDED]

2. Part 102–84 is added to Subchapter C to read as follows:

PART 102–84—ANNUAL REAL PROPERTY INVENTORIES

Sec.

102–84.5 What is the scope of this part?
102–84.10 What is the purpose of the Annual Real Property Inventory Program?
102–84.15 Why must I provide information for the Annual Real Property Inventory?
102–84.20 Where should I obtain information to be reported for the Annual Real Property Inventory?
102–84.25 Is it necessary for my agency to designate an official to serve as the point of contact for the real property inventories?
102–84.30 Is it necessary for my agency to certify the accuracy of its real property inventory submission?
102–84.35 Which agencies must submit a report for inclusion in the Annual Real Property Inventory?
102–84.40 What types of real property must I report for the Annual Real Property Inventory?
102–84.45 What types of real property must not be reported for the Annual Real Property Inventory?
102–84.50 Can the GSA Form 1166 be used to report information?
102–84.55 When are the Annual Real Property Inventory reports due?

Authority: 40 U.S.C. 486(c).

§ 102–84.5 What is the scope of this part?

GSA's policies contained in this part apply to all Federal agencies. This part prescribes guidance that you must follow in preparing and submitting annual real property inventory information for real property owned by and leased to the United States. The detailed guidance implementing these policies is contained in separate customer guides issued by the GSA Office of Governmentwide Policy.

§ 102–84.10 What is the purpose of the Annual Real Property Inventory Program?

The purpose of the Annual Real Property Inventory program is to:

(a) Maintain a centralized source of information on Federal real property holdings;

(b) Track space utilization of reporting agencies;

(c) Provide support for consolidated Federal financial statements on real property assets; and

(d) Establish a reference for answering inquiries from the Congress, the press, trade associations, educational institutions, Federal, State and local government agencies, and the general public.

§ 102–84.15 Why must I provide information for the Annual Real Property Inventory?

You must provide information for the Annual Real Property Inventory because:

(a) The Senate Committee on Appropriations requests that the Government maintain an Annual Real Property Inventory.

(b) Executive Order 12411, Government Work Space Management Reforms, dated March 29, 1983 (3 CFR, 1983 Comp., p. 155), requires that Executive agencies:

(1) Produce and maintain a total inventory of work space and related furnishings and declare excess to the Administrator of General Services all such holdings that are not necessary to satisfy existing or known and verified planned programs; and

(2) Establish information systems, implement inventory controls and conduct surveys, in accordance with procedures established by the Administrator of General Services, so that a governmentwide reporting system may be developed.

§ 102–84.20 Where should I obtain information to be reported for the Annual Real Property Inventory?

You should obtain data reported for the Annual Real Property Inventory from the most accurate real property and accounting records maintained by your agency, preferably the same accounting records used to support your agency's financial statements.

§ 102–84.25 Is it necessary for my agency to designate an official to serve as the point of contact for the real property inventories?

Yes, you must designate an official to serve as your agency's point of contact for the Annual Real Property Inventories. We recommend that you designate the same point of contact for the Federally-owned and leased real property inventory, although separate points of contact are permitted. You must advise the General Services Administration, Office of Governmentwide Policy, Office of Real Property (MP), 1800 F Street, NW., Washington, DC 20405, in writing, of the name(s) of these representative(s) and any subsequent changes. Each agency's point of contact for the real property inventories can be found at *http://worldwide.gsa.gov.*

§ 102–84.30 Is it necessary for my agency to certify the accuracy of its real property inventory submission?

Yes, your agency's highest ranking real property official must certify the accuracy of the real property information submitted to GSA.

§ 102–84.35 Which agencies must submit a report for inclusion in the Annual Real Property Inventory?

Each agency that carries real property on its financial statement as of September 30 each year has the responsibility for submitting the real property inventory information. Information provided in these reports related to asset values must be consistent with agency records used for financial reporting in accordance with standards issued by the Federal Accounting Standards Advisory Board (FASAB). For purposes of this part, this requirement shall apply regardless of the method used to acquire the property or which agency is currently using or occupying the property.

§ 102–84.40 What types of real property must I report for the Annual Real Property Inventory?

You must report for the Annual Real Property Inventory all land, buildings, and other structures and facilities owned by the United States (including wholly-owned Federal Government corporations) throughout the world and all real property leased by the United States from private individuals, organizations, and municipal, county, State, and foreign governments. These reports must include all real property that a Federal agency carries on its financial statement and/or in documentation accompanying the financial statement, such as:

(a) Unreserved public domain lands;

(b) Public domain lands reserved for national forests, national parks, military installations, or other purposes;

(c) Real property acquired by purchase, construction, donation, eminent domain proceedings, or any other method;

(d) Real property in which the Government has a long-term interest considered by the reporting agency as being equivalent to ownership. This would include land acquired by treaty or long-term lease (*e.g.*, 99-year lease), and that your agency considers equivalent to Federally-owned land;

(e) Buildings or other structures and facilities owned by or leased to the Government whether or not located on Government-owned land;

(f) Excess and surplus real property;

(g) Real property held in trust by the Federal Government;

(h) Leased real property (including leased land, leased buildings, leased other structures and facilities, or combination thereof); and

(i) Real property leased rent free or for a nominal rental rate if the real property is considered significant by the reporting agency.

§ 102–84.45 What types of real property must not be reported for the Annual Real Property Inventory?

You must not report real property that is not carried on your agency's financial statements, such as:

(a) Properties acquired through foreclosure, confiscation, or seizure to be liquidated in settlement of a claim or debt to the Federal Government;

(b) Rights-of-way or easements granted to the Federal Government; and

(c) Lands administered by the United States under trusteeship by authority of the United Nations.

§ 102–84.50 Can the GSA Form 1166 be used to report information?

No, GSA Form 1166 may not be used to report information. Agencies must submit information in an electronic format. For more information on format requirements, contact GSA's Office of Governmentwide Policy, Office of Real Property (MP), 1800 F Street NW., Washington, DC 20405, by telephone at (202) 501–0856, or e-mail at *assetmanagement@gsa.gov.*

§ 102–84.55 When are the Annual Real Property Inventory reports due?

You must prepare the Annual Real Property Inventory information prescribed in § 102–84.50 as of the last day of each fiscal year. This information is due to the General Services Administration, Office of Governmentwide Policy, Office of Real Property (MP), 1800 F Street, NW., Washington, DC 20405, no later than November 15 of each year.

Dated: October 25, 2001.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 01–27609 Filed 11–1–01; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. MARAD–2001–10256]

RIN 2133–AB44

Denial of Vessel Transfer to Foreign Registry Upon Revocation of Fishery Endorsement

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is amending regulation to state that approvals will not be granted for the transfer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel to a foreign registry or operation under authority of a foreign country when the vessel's fishery endorsement has been revoked as a result of the fishing capacity reduction program for crab fisheries established by the Secretary of Commerce. Pub. L. 106–554 requires that the Secretary of Transportation shall refuse to grant the approval required under section 9(c)(2) of the Shipping Act of 1916 for the placement of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel under foreign registry or the operation of such vessel under the authority of a foreign country when the vessel's fishery endorsement has been revoked under the Secretary of Commerce's fishing capacity reduction program. The intended effect of this final rule is to clearly state in the regulation that approvals required under section 9(c)(2) of the 1916 Act will not be granted in the circumstances described.

DATES: The effective date of this rule is December 3, 2001.

FOR FURTHER INFORMATION CONTACT: Edmund T. Sommer, Jr., Chief, Division of General and International Law at (202) 366–5181. You may send mail to Mr. Sommer at Maritime Administration, Office of Chief Counsel, Room 7221, 400 Seventh Street, SW., Washington, DC 20590. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pub. L. 106–554 requires the Secretary of Commerce to implement a fishing reduction program for crab fisheries included in the Fishery Management Plan for Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands. The Secretary of Commerce must notify the Secretary of Transportation which vessels are being removed from the fishery and request that the Secretary of Transportation revoke the vessel's fishery endorsement and refuse permission to transfer the vessel to a foreign flag.

Section 9 of the Shipping Act, 1916, as amended, (46 App. U.S.C. 808) governs the transfer of any documented vessel, or any vessel the last documentation of which was under the laws of the United States, to a foreign registry or operation of that vessel under the authority of a foreign country. This rulemaking amends the general approval granted under 46 CFR 221.15. We published a notice of proposed rulemaking (NPRM) on August 3, 2001 at 66 FR 40664). The NPRM proposed amendments to § 221.15 to state that approval to place under foreign registry or to operate under the authority of a foreign country a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that has had its fishery endorsement revoked pursuant to Appendix D of Pub. L. 106–554, 114 Stat 2763 will not be granted. This final rule mirrors the NPRM to which we received no public comments.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. The Department of Transportation and MARAD are committed to plain language in government writing; therefore, we have written this final rule in plain language. Our goal is to provide a clear regulation.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this final rule under Executive Order 12866 and have determined that this is not a significant regulatory action. Additionally, this final rule is not likely to result in an annual effect on the economy of $100 million or more. The purpose of this final rule is to ensure that Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels who lose their fishery endorsement in the Fishery Management Plan for Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands will not operate under foreign flag or under the authority of a foreign country.

This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further analysis is necessary. Because the economic impact, if any, should be minimal, further regulatory evaluation is not necessary.

Regulatory Flexibility Act

This Final rule will not have a significant economic impact on a substantial number of small entities. This Final rule only implements a statutory mandate to deny approval for a transfer of a vessel to a foreign registry or operation under authority of a foreign country when the vessel's fishery endorsement has been revoked. This rule does not impose a significant economic impact because owners of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels who lose their fishery endorsement have been compensated through the crab fisheries buy-out program. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Environmental Impact Statement

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order ("MAO") 600–1, Procedures for Considering Environmental Impacts, 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this final rule is not required.

Executive Order 13175

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the rule.

Paperwork Reduction Act

This final rule does not contain information collection requirements.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number is contained in the heading of this document to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 221

Administrative practice and procedure, Maritime carriers, Mortgages, Penalties, Reporting and recordkeeping requirements, Trusts and trustees, Uniform system of accounts.

Accordingly, MARAD amends 46 CFR part 221 to read as follows:

PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

1. The authority citation for part 221 continues to read as follows:

Authority: 46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 1114(b), 1195; 46 U.S.C. chs. 301 and 313; 49 U.S.C. 336; 49 CFR 1.66. 2.

2. Section 221.15 is amended by adding introductory text to read as follows:

§ 221.15 Approval for transfer of registry or operation under authority of a foreign country or for scrapping in a foreign country.

In no case will approval be granted to place under foreign registry or to operate under the authority of a foreign country a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that has had its fishery endorsement revoked pursuant to Appendix D of Public Law 106–554, 114 Stat 2763. Subject to this exclusion, approval requests will be considered as set forth in this section.

* * * * *

Dated: October 30, 2001.

By order of the Acting Deputy Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–27625 Filed 11–1–01; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2316; MM Docket No. 00–18; RM–9790]

Radio Broadcasting Services; Barnwell, SC, Pembroke, Douglas and Willacoochee, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of the Bullie Broadcasting Corporation, this document substitutes Channel 257C1 for Channel 256C3 at Barnwell, South Carolina, reallots Channel 257C1 to Pembroke, Georgia, and modifies the license of Station WBAW to specify operation on Channel 257C1 at Pembroke. To accommodate this reallotment, this document reallots Channel 258C1 from Douglas, Georgia, to Willacooche, Georgia, and modifies the Station WDMG license to specify Willacoochee as its community of license. This document also allots Channel 256C3 to Barnwell, South Carolina. *See* 65 FR 7815, published February 16, 2000. This document dismisses a Counterproposal filed by Multi-Service Corp. proposing a channel substitution at Statesboro, Georgia, and new allotments at Pulaski and Twin City, Georgia. The reference coordinates for the Channel 257C1 allotment at Pembroke, Georgia, are 32–11–137 and 81–48–04. The reference Coordinates for the Channel 258C1 allotment at Willacoochee, Georgia, are 31–20–27 and 83–24–30. The reference coordinates for the Channel 256C3 allotment at Barnwell, South Carolina, are 33–24–29 and 81–16–43. With this action, the proceeding is terminated.

DATES: Effective November 20, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 00–18, adopted October 3, 2001, and released October 5, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, D.C. 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Pembroke, Channel 257C1.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 258C1 at Douglas, and adding Willacoochee, Channel 258C1.

4. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 256C3 and adding Channel 257C1 at Barnwell.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–27614 Filed 11–1–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2257]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

DATES: Effective November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted September 19, 2001, and released September 28, 2001. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 236C and adding Channel 236C2 at Yuma.

3. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 298C and adding Channel 298A at Sun Valley.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 280A and adding Channel 281A at Big Lake and by removing Channel 229C3 adding Channel 229C1 at Krum.

5. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 225C2 and adding Channel 225C1 at Logan.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–27613 Filed 11–1–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2448; MM Docket No. 01–48; RM–10062 and 10117]

Radio Broadcasting Services; Junction City and Marquand, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Bishop Community Radio, Inc. proposed the allotment of Channel 295A at Junction City, Missouri. *See* 16 FCC Rcd 3527 (2001). No comments were received supporting an allotment at Junction City. In response to a counterproposal filed by Dockins Communications, Inc., we shall allot Channel 295A to Marquand, Missouri, as a first local service. The coordinates for Channel 295A at Marquand are 37–30–00 and 90–06–41.

DATES: Effective December 3, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–48, adopted October 10, 2001, and released

October 19, 2001. The full text of this Commission decision is available for public inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's dulicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Marquand, Channel 295A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–27612 Filed 11–1–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2447; MM Docket No. 01–107; RM–10057]

Radio Broadcasting Services; Mount Pleasant and Hemlock, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 233C1 from Mount Pleasant, Michigan to Hemlock, Michigan, and modifies the license for Station WCEN–FM to specify operation on Channel 233C1 at Hemlock, Michigan, in response to a petition filed by Wilks Broadcasting LLC. *See* 66 FR 27058, May 16, 2001. The coordinates for Channel 233C1 at Hemlock are 43–43–36 and 84–36–16.

DATES: Effective December 3, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–107 adopted October 10, 2001, and released October 19, 2001. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12 Street, SW, Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 233C1 at Mount Pleasant and adding Hemlock, Channel 233C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–27611 Filed 11–1–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–2001–6189]

Organization and Delegation of Powers and Duties; Redelegation to the Assistant Secretary for Aviation and International Affairs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) redelegates to the Assistant Secretary for Aviation and International Affairs the authority previously delegated by the President to the Secretary to carry out the duties and powers granted under section 101(a)(2) of the Air Transportation Safety and System Stabilization Act.

EFFECTIVE DATE: This rule is effective November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Nilza F. Velazquez, Attorney, Office of the General Counsel (C–10), Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–9164.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register homepage at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*. You can also view and download this document by going to the Web page of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on "search." On the next page, type in the four digit docket number shown on the first page of this document (6189). Then click on "search."

Background

The Air Transportation Safety and System Stabilization Act (Public Law 107–42, September 22, 2001) (the "Act") was enacted in response in response to the terrorist attacks on New York and Washington. Section 101(a)(2) of the Act authorizes the President to compensate air carriers for the direct and incremental losses they incurred from terrorist attacks of September 11, 2001, and any resulting ground stop order. The President signed a Memorandum for the Secretary of Transportation, dated September 25, 2001 (66 FR 49507, September 27, 2001), delegating his authority under Section 101(a)(2) to the Secretary of Transportation. Under the authority of section 322 (b) of title 49, United States Code, the Secretary may delegate his authority unless otherwise prohibited. In the present case the delegation is appropriate.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b)(3)(A), and it may be made effective in less than 30 days after publication in the **Federal Register** under 5 U.S.C. 553(d)(2) as a change in internal policy.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Public Law 101–522, 104 Stat. 2744; 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); 46 U.S.C. 2104(a).

2. In § 1.56a the introductory text is republished and paragraph (j) is added to read as follows:

§ 1.56a Delegations to the Assistant Secretary for Aviation and International Affairs.

The Assistant Secretary for Aviation and International Affairs is delegated the authority to:

* * * * *

(j) Carry out section 101(a)(2) of the Air Transportation Safety and System Stabilization Act (Public Law 107–42, 115 Stat. 230), as delegated to the Secretary of Transportation by the President pursuant to a Presidential Memorandum dated September 25, 2001.

Issued in Washington, DC, on October 24, 2001.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 01–27251 Filed 11–1–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 001226367–0367–01; I.D. 092801C]

Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to trip limit adjustments in the Pacific Coast groundfish fishery.

SUMMARY: This document corrects a section heading in the trip limit adjustments for the Pacific Coast groundfish fishery published on October 5, 2001.

DATES: Effective November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION: Changes to current management measures were recommended by the Pacific Fishery Management Council at its September 10–14, 2001, meeting in Portland, OR. Adjustments to trip limits were made to stay within the optimum yields and allocations announced in the 2001 annual specifications and management measures for the groundfish fishery, published in the **Federal Register** at 66 FR 2338 (January 11, 2001), as amended at 66 FR 10208 (February 14, 2001), at 66 FR 18409 (April 9, 2001), at 66 FR 22467 (May 4, 2001), at 66 FR 28676 (May 24, 2001), at 66 FR 35388 (July 5, 2001), at 66 FR 38162 (July 23, 2001), and at 66 FR 50851 (October 5, 2001).

Need for Correction

Trip limit adjustments published on October 5, 2001, contained an error in the section heading describing limit changes for groundfish taken with open access gear. This document corrects that error.

Correction

Accordingly, the rule, FR Doc. 01–25031, in the issue of Friday, October 5, 2001 (66 FR 50851), is corrected as follows:

1. On page 50858, in the first column, amendatory instruction 2. is corrected to read "2. In section IV., under C. *Trip Limits in the Open Access Fishery*, paragraphs (3) and (5) are revised to read as follows:".

Dated: October 26, 2001.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27634 Filed 11–1–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 001121328–1041–02; I.D. 102901B]

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 4 Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; Quarter 4 commercial black sea bass fishery.

SUMMARY: NMFS announces that the black sea bass commercial quota available in the quarter 4 period to the coastal states from Maine through North Carolina has been harvested. Commercial vessels may not land black sea bass in these states north of 35°15.3′ N. lat. for the remainder of the 2001 quarter 4 quota period (through December 31, 2001). Regulations governing the black sea bass fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing black sea bass in these states north of 35°15.3′ N. lat.

DATES: Effective 0001 hrs local time, November 6, 2001, through 2400 hrs local time, December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, Fishery Management Specialist, at (978) 281–9226.

SUPPLEMENTARY INFORMATION: Regulations governing the black sea bass fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into four quota periods based upon percentages of the annual quota. The quarter 4 (October through December) commercial quota is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota is described in § 648.140.

The initial total commercial quota for black sea bass for the 2001 calendar year was 3,024,742 lb (1,372,000 kg) (66 FR 12902, March 1, 2001). The quarter 4 period quota, which is equal to 19.77 percent of the annual commercial quota, was 597,991 lb (271,244 kg). The quota allocation was adjusted downward to compensate for 2000 quarter 4 landings in excess of the 2000 quarter 4 quota, consistent with the procedures in § 648.140. The final adjusted quarter 4 quota was 516,939 lb (234,480 kg).

The Regional Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial black sea bass quota for each quota period on the basis of dealer reports, state data, and other available information to determine when the commercial quota has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the black

sea bass commercial quota has been harvested and no commercial quota is available for landing black sea bass for the remainder of the quarter 4 period, north of 35°15.3′ N. lat. The Regional Administrator has determined, based upon dealer reports and other available information, that the black sea bass commercial quota for the 2001 quarter 4 period has been harvested.

The regulations at §648.4 (b) provide that Federal black sea bass moratorium permit holders agree as a condition of the permit not to land black sea bass in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for the black sea bass is available. The Regional Administrator has determined that the quarter 4 period for black sea bass no longer has commercial quota available. Therefore, effective 0001 hrs local time, November 6, 2001, further landings of black sea bass in coastal states from Maine through North Carolina, north of 35°15.3′ N. lat., by vessels holding commercial Federal fisheries permits are prohibited through December 31, 2001. The 2002 quarter 1 period for commercial black sea bass harvest will open on January 1, 2002. Effective November 6, 2001, federally permitted dealers are also advised that they may not purchase black sea bass from federally permitted black sea bass moratorium permit holders who land in coastal states from Maine through North Carolina, north of 35°15.3′ N. lat., for the remainder of the quarter 4 period (through December 31, 2001).

The regulations at § 648.4(b) also provide that, if the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3′ N. lat., any vessel owners who hold valid commercial permits for both the black sea bass and the NMFS Southeast Region snapper-grouper fisheries may surrender their black sea bass moratorium permit by certified mail addressed to the Regional Administrator (see table 1 at § 600.502) and fish pursuant to their snapper-grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 29, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27616 Filed 10–30–01; 3:34 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 213
Friday, November 2, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 01–018P]

Definitions and Standards of Identity or Composition: Elimination of the Pizza Standard

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to remove the standards of identity for "pizza with meat" and "pizza with sausage." The Agency has determined that these standards may be inhibiting manufacturers of federally inspected frozen pizzas from producing and marketing the new styles of pizzas that today's consumers demand. This proposed rule responds to a petition submitted to the Agency by the National Frozen Pizza Institute (NFPI).

DATES: Comments must be received on or before January 2, 2002.

ADDRESSES: Send an original and two copies of comments to:

FSIS Docket Clerk, Docket #01–018P, Room 102, Cotton Annex, 300 C Street, SW, Washington, DC 20250–3700. Reference materials cited in this document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 1999, NFPI petitioned FSIS to amend part 319 of the Federal meat inspection regulations to eliminate the standards of identity for "pizza with meat" and "pizza with sausage." In support of the petition, NFPI submitted data to demonstrate that the current standards are restricting the development of new products by the frozen pizza industry, and that consumers' expectations of what is meant by the term "pizza" are broader that what is prescribed by the current standards. In the petition, NFPI also demonstrated that, because of the prescribed meat content and cheese requirement, the current pizza standards restrict the frozen pizza industry from developing and marketing products with reductions in constituents that may be of health concern to some consumers, such as cholesterol and saturated fat. The petition and supporting data are available for public viewing in the FSIS docket room.

Under the Federal Meat Inspection Act (FMIA), a product is misbranded, in part, "if it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed * * * unless * * * it conforms to such definition and standards * * *" (21 U.S.C. 601(n)(7)). The current standard for "Pizza with Meat" requires that the product consist of a bread base with tomato sauce, cheese, and meat topping. The product must contain cooked meat made from not less than 15 percent raw meat (9 CFR 319.600(a)). The current standard for "Pizza with Sausage" requires that the product consist of a bread base with tomato sauce, cheese, and not less than 12 percent cooked sausage or 10 percent dry sausage (9 CFR 319.600(b)). Thus, if a product subject to FSIS jurisdiction fails to contain any of these components, its labeling can not bear the term "pizza."

Pizzas prepared by restaurants have not been required to meet these prescribed standards. In fact, in support of the petition, NFPI provided information to show that several national and regional restaurant chains sell pizzas that do not contain the four traditional components required by the Federal standards (i.e., meat, cheese, tomato sauce, and bread-based crust). The information provided by the petitioner also shows that these new styles of pizzas are popular with consumers.

Under section 7 of the FMIA, FSIS is authorized to prescribe definitions and standards of identity or composition to protect the public (21 U.S.C. 607(c)). In general, standards of identity are intended to protect consumers from economic deception, i.e., from purchasing meat food or poultry products in which inferior ingredients have been substituted for more valuable ones. The meat pizza and sausage pizza standards were established several decades ago and reflect the common understanding at that time of what a food identified as "meat pizza" or "sausage pizza" should contain. Data submitted by the petitioner indicate that today's consumers accept a broader interpretation of what is expected of a product identified as "pizza," and that consumer expectations are largely driven by the restaurant and food service industries. According to information provided by NFPI, product innovation in the food service industry has broadened the traditional concept of pizza to the extent that consumers understand the product to be an open-faced crust that is topped with one or more of a variety of ingredients.

Based on the information submitted by the petitioner, FSIS agrees that the current pizza standards may be inhibiting manufacturers of federally inspected pizzas from producing and marketing new styles of pizzas, including pizzas with less constituents, such as cheese or meat, that would be more consistent with nutritional guidance (e.g., lower fat). Based on the data submitted by NFPI, this is what today's consumers appear to demand. Furthermore, the Agency has determined that, because consumer expectations of what a product identified as "pizza" should contain differ from what is prescribed by the current standards, the standards no longer serve their original purpose of protecting the public from economic deception. Therefore, the Agency is proposing to remove these standards of identity from the regulations.

Under this proposed rule, federally inspected pizzas that are identified as a "meat pizza" or "sausage pizza" (*e.g.*, "pizza with bacon," "pizza with pepperoni," and "sausage and mushroom pizza") will be permitted to reduce their minimum meat content from 12% cooked or 15% raw to 2% cooked or 3% raw, the level of meat

required for a product to be considered a meat food product and, thus, under USDA jurisdiction. The Agency believes that if a new product formulated with less meat or sausage, or without the other components that are currently prescribed by the standard (i.e., cheese, sauce, and crust), does not meet consumer expectations, consumers are not likely to purchase the product and it will fail in the marketplace. In the absence of regulatory standards of identity for pizzas, FSIS has tentatively determined that required labeling features, such as the product name, ingredients statement, and nutrition facts panel, will provide adequate information for consumers to make informed choices when purchasing federally inspected pizza products. In particular, the product name would become a descriptive feature to convey to the consumer the components of the product. FSIS requests comment on whether the product name should be required to include the percentage of meat or poultry in the product.

The Agency proposes to amend title 9, part 319, subpart O, by removing and reserving section 319.600, Pizza. Removing the meat pizza and sausage pizza standards of identity, as proposed, does not mean that the names for these products will be completely unregulated. Sections 317.2(c)(1) and 381.117(a) of Title 9 of the Code of Federal Regulations require that the name of a meat or poultry product appear on the principal display panel of the product label. Under §§ 317.2(c)(1) and 381.117(a), the name of the product is (1) a standardized name, if the product purports to be or is represented as a product for which a regulatory standard of identity or composition has been prescribed; (2) the common or usual name of the food; or (3) if the product has no common or usual name, a truthful, descriptive designation.

The information submitted by NFPI evidences that, because of innovations in the restaurant and food services industries, to most consumers, the term "pizza" means an open-faced crust that is topped with any number of a variety of ingredients. Thus, if this proposal is issued as a final rule, and the standards of identity for meat pizza and sausage pizza are removed, FSIS has determined that "pizza" represents the appropriate common or usual name for the class of products that have been traditionally formulated with the components currently stipulated in the standard, *i.e.*, tomato sauce, cheese, and meat topping, on an open faced crust. If this proposal is finalized, products that comport with the traditional product and contain a bread-based crust, tomato sauce, cheese, and meat or poultry, may be identified as "pizza" together with the term that identifies the meat or poultry component, e.g., "pizza with pepperoni." The names for other products purporting to be pizzas would need to be descriptively labeled to enable consumers to distinguish them from the traditional pizza, *e.g.*, "pizza—garlic sauce, tomatoes, reduced-fat cheese, and seasoned beef strips on a crust."

If this proposal is issued as a final rule, FSIS will eliminate or revise its informal labeling policies related to pizza products that contain meat or poultry. Although the regulations do not contain a standard of identity for pizza products that contain poultry, FSIS has treated these products as "like products" to pizza with meat or sausage, and the Agency's policy has been that these products contain at least 12% cooked poultry meat. If the standards of identity for meat pizza and sausage pizza are removed, as proposed, the policy that pizzas that contain poultry need to have a minimum poultry content will also be revoked.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. It has been determined to be not significant for purposes of E.O. 12866 and therefore, has not been reviewed by the Office of Management and Budget (OMB).

Effect on Small Entities

Removing the standards of identity for pizza will have no effects on small entities. After the standards are eliminated, small companies may still produce these products and identify them by a common or usual name, or a descriptive term. Thus, if this proposal is adopted as a final rule, small companies could continue to produce these products and label them as a "meat pizza" (e.g., "pizza with ham") or a "sausage pizza" (e.g., "pepperoni pizza"). Small companies that choose to develop and market new styles of pizzas will incur the normal costs of product development, production, labeling, and marketing.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 590.320 through 590.370 must be exhausted before any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA.

Paperwork Requirements

There are no paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Public Notification and Request for Data

FSIS requests information regarding the impact of this proposed rule on minorities, women, and persons with disabilities, including information on the number of minority-owned meat and poultry establishments, the makeup of establishment workforces, and the communities served by official establishments. Public involvement in all segments of rulemaking and policy development are important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS Web page located at *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to= http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720-5704.

List of Subjects in 9 CFR Part 319

Food grades and standards, Meat inspection.

For the reasons set out in the preamble, FSIS is proposing to amend 9 CFR part 319 as follows:

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 319.600 would be removed and reserved.

Done at Washington, DC, on October 30, 2001.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 01–27542 Filed 11–1–01; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM–73–11]

Three Mile Island Alert; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Three Mile Island Alert. The petition has been docketed by the NRC and has been assigned Docket No. PRM–73–11. The petitioner is requesting that the NRC regulations governing physical protection of plants and materials be amended to require NRC licensees to post at least one armed guard at each entrance to the "owner controlled areas" (OCAs) surrounding all U.S. nuclear power plants. The petitioner states that this should be accomplished by adding armed site protection officers (SPOs) to the security forces—not by simply moving SPOs from their protected area (PA) posts to the OCA entrances. The petitioner believes that its proposed amendment would provide an additional layer of security that would complement existing measures against radiological sabotage and would be consistent with the long-standing principle of defense-in-depth.

DATES: Submit comments by January 16, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (*http://ruleforum.llnl.gov*). At this site, you may view the petition for rulemaking, this **Federal Register** notice of receipt, and any comments received by the NRC in response to this notice of receipt. Additionally, you may upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

Documents related to this action are available for public inspection at the NRC Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland.

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/indes.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll-Free: 1–800–368–5642 or E-mail: *mtl@nrc.Gov*.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission's regulations require that licensees establish protected areas (PAs) surrounding nuclear power plants, with strict access control at the PA boundaries including armed guards, entry barriers, vehicle barriers, intrusion detectors, personnel screening and vehicle screening. However, they do not require posting armed guards farther out, at the boundaries of the owner controlled areas (OCAs). The NRC has now received a petition for rulemaking dated September 12, 2001, submitted by the Three Mile Island Alert (petitioner) requesting that the regulations at 10 CFR 73.55 be amended to require licensees to post at least one armed guard at each entrance to the OCAs surrounding all nuclear power plants in the U.S.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–73–11. The NRC is soliciting public comment on the petition for rulemaking. As a result of the attacks on the World Trade Center and the Pentagon on September 11, 2001, the NRC is conducting a comprehensive reexamination of its security requirements including the issues raised in this petition.

Discussion of the Petition

The petitioner believes that armed guards are needed at OCA entrances to serve as a physical and visual deterrent against potential violent actions. However, the petitioner cautions that additional site protection officers (SPOs) are needed and that licensees should not merely move SPOs from PA posts. The petitioner notes that 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage" does not require armed guards at OCA entrances in current security plans. The petitioner states that adding an armed guard at each entrance to the OCA at nuclear power plants would be consistent with defense-in-depth safety principles that have been in place for many years.

The petitioner has concluded that the additional layer of security would complement existing measures against radiological sabotage and would be relatively inexpensive. The petitioner contends that the NRC could not inform the public and Congress that every reasonable precaution had been taken after an attack on a nuclear power facility occurs if the NRC fails to implement this proposed amendment.

The petitioner believes that security should be a clear and visible presence at the OCA entrances, especially since, according to the petitioner, the NRC considers nuclear power plants as "hardened targets." The petitioner states

that if terrorists perform reconnaissance missions at a nuclear power plant, the first thing they would see is that the OCA entrance is open and unguarded. The petitioner believes that the deterrent value of armed guards at the OCA entrances must not be downplayed.

The petitioner is concerned by how the NRC has determined what is "adequate" security and how the points of the "Design Basis Threat" are specified. The petitioner believes the NRC is reluctant to admit that terrorists might consider nuclear power plants as attractive targets. The petitioner states that nearly half of U.S. nuclear power plants have failed to demonstrate that they can defend against a terrorist attack during force-on-force security tests. The petitioner states that terrorists now take actions that are designed to kill large numbers of people instead of attempting to only instill fear or gain attention as in the past. According to the petitioner, revenge for the destruction of nuclear facilities in terrorists' home countries (e.g. Iraq) may be a motive for an attack in the U.S. The petitioner also states that a terrorist attack could destroy land and property that would be useless for many years and become a monument to terrorist activities. For these reasons, the petitioner has concluded that nuclear power plants are attractive targets to terrorists, that requiring guards at OCA entrances will create a visual deterrent against attacks, and that unguarded OCA entrances encourage attackers.

The petitioner believes that the NRC is not protecting against a large "Design Basis Bomb." That is, the petitioner is concerned that a large enough vehicle bomb driven to the PA boundary and detonated might be able to damage vital equipment. The petitioner states that the FBI has determined that a large conventional bomb is still the weapon of choice for terrorists.

The petitioner believes that the ideal solution is for armed guards to control vehicle access at the OCA entrances and not allow access to the Protected Area without proper security checks. The petitioner contends that the presence of armed guards at the OCA entrance would have prevented the 1993 intrusion at Three Mile Island (TMI). The petitioner also contends that the NRC cannot state it has kept current with terrorist activities and capabilities and that unguarded OCA entrances create the impression that these facilities are soft targets. The petitioner cites a 2000 report by the U.S. Commission on National Security that has recommended an immediate reexamination of security practices because America is less secure than perceived.

The petitioner believes there are lessons to be learned from the 1996 Kobar Towers bombings after the U.S. Air Force was repeatedly assured by Saudi security officers that an expansion of the security perimeter was not necessary and determined that the jersey barrier placement provided reasonable protection proportional to any received threat. The petitioner recommends that the NRC read the report on this bombing to avoid security pitfalls and delays the U.S. Air Force experienced.

The petitioner is troubled by threats associated with the 1993 World Trade Center terrorists, citing articles from the New York Times, Universal Press International, and the Harrisburg, Pennsylvania, Patriot News. The petitioner states that many licensees have reduced the size of their guard force during the past few years, reducing the level of protection provided.

The Petitioner's Conclusions

The petitioner has concluded that the NRC requirements in 10 CFR part 73 should be amended to require an armed guard to be posted at all entrances to the OCAs surrounding all U.S. nuclear power plants. The petitioner requests that the regulations at 10 CFR part 73 be amended as detailed in its petition for rulemaking.

Dated at Rockville, Maryland, this 29th day of October, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–27576 Filed 11–1–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR 170

[Docket No. PRM–170–5]

National Mining Association; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission has received and requests public comment on a petition for rulemaking filed by the National Mining Association (NMA). The petition, docketed on September 11, 2001, has been assigned Docket No. PRM–170–5. The petition requests that the NRC conduct a rulemaking that would enable the NRC to waive the assessment of all annual and periodic inspection and licensing fees imposed on NRC uranium recovery licensees or, as an alternative, establish the basis for waiving fees associated with a contemplated rulemaking that would establish requirements for licensing uranium and thorium recovery facilities. The NMA believes that relieving the fee pressure on the licensees would be in the public interest and serve to maintain a viable domestic uranium recovery industry, including its substantial waste disposal capacity.

DATES: Submit comments by January 16, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comment to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking Website at *http://ruleforum.llnl.gov.* This site allows you to upload comments as files in any format, if your web browser supports the function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (*e-mail:cag@nrc.gov*).

Documents related to this petition, including comments received, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site (the Electronic Reading Room), *www.nrc.gov.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free: 1–800–368–5642 or e-mail: *MTL@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner, NMA, is an organization composed of companies engaged in mining and mineral processing. The companies include producers of most of the U.S. metals, uranium, coal, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery, equipment, and supplies; engineering and consulting firms and financial institutions that serve the mining industry. NMA submits this petition on behalf of its member companies who are NRC uranium recovery licensees, owners and operators of uranium mill and mill tailings sites and in situ leach (ISL) facilities.

The petitioner notes that since 1990, the NRC has been required to recover 100 percent of its budget authority through the imposition of fees on its licensees; however, the FY 2001 Energy and Water Development Appropriations Act (EWDAA) requires the percentage to decrease by two percent per year until 2005. Therefore, for FY 2001, NRC is only required to recover 98 percent of its budget. The petitioner acknowledges the two percent decrease and subsequent annual decreases up to ten percent in recovery requirements; however, the petitioner states that these decreases may be an example of "too little, too late." The petitioner further recognizes that the Commission has the authority to waive fees if it can be established that to do so would be "in the public interest" (e.g., non-profit licensees). The petitioner also recognizes that any waiver of fees for Uranium Recovery (UR) licensees means that the burden of those fees would have to be shifted to other categories of licensees. NMA believes that it can establish that such a burden shift is not only, " in the public interest," but also, in the interest of other NRC licensees, particularly nuclear fuel cycle licensees, including commercial nuclear reactors.

I. Background

A. NRC Fees

The petitioner states that the Omnibus Budget Reconciliation Act of 1990 (OBRA) which authorizes NRC to impose annual and periodic inspection and licensing fees on its licensees requires NRC to recover 100 percent of its budget with specified exceptions. The petitioner notes that inspection and licensing fees which reimburse NRC for activities such as review of license applications are administered under 10 CFR part 170 pursuant to the Independent Offices Appropriations Act of 1952, and that annual fees established under 10 CFR part 171 cover reimbursement for all other costs not covered under 10 CFR Part 170. The petitioner notes that OBRA, section 6101(c)(3) states that fees "shall have a reasonable relationship to the cost of providing regulatory services." The petitioner states that the required two percent reduction each year until FY 2005 will result in a 90 percent recovery requirement. The petitioner states that the eventual ten percent reduction, along with a $3.2 million appropriations from the General Fund was implemented to cover certain agency expenses (e.g., regulatory reviews provided to other Federal agencies and States) because no direct benefit from these activities were realized by NRC licensees.

The petitioner cites that on June 14, 2001 (66 FR 32452), NRC issued a final rule on fee recovery FY 2001 based on the mandatory budget recovery figure of 98 percent. The petitioner states the Commission noted that it must recover approximately $453.3 million for FY 2001. The petitioner has included the Commission imposed FY 2001 fee scheme for UR licensees.

ANNUAL FEES FOR URANIUM RECOVERY LICENSEES

Class I Facilities (uranium mill licensees)	$94,300
Class II Facilities (ISL licensees	79,000
11e. (2) Disposal	58,200
11e. (2) Disposal Incident to Existing Tailing Sites	9,200

Class I and II sites will be billed on a quarterly basis.

In addition, the petitioner notes that NRC levies inspection fees on an increased hourly basis of $144 per hour for UR facilities, an increase from FY 2000's rate of $143 per hour. The petitioner recognizes that NRC fees are not levied universally for all types of licensees and notes that NRC waives the annual fee requirements for those licensees who have relinquished their authority to operate and have permanently ceased operations, that small business entities benefit from their status through lower fee rates, and that non-profit educational institutions are fully exempt from fees.

B. Uranium Recovery Industry

The petitioner asserts that in the past several years, the domestic UR industry has suffered the ramifications of a severely depressed uranium market. The petitioner sets out the following reasons in support of its assertion.

1. Low spot-market prices for uranium coupled with the lack of long-term contracts for domestic UR operations have caused the entire industry to experience significant economic downturns.

2. Employment in the uranium recovery sector has decreased by almost 50 percent since 1996.

3. Poor demand for, and an oversupply of, uranium has caused spot-market prices of uranium to dip below eight dollars per pound.

The petitioner states that, as a result of the depressed market, most all domestic UR companies have seen the value of their stock plummet and their financial stability undermined to the point that they feel their existence is threatened. The petitioner is concerned that current uranium spot-market prices cannot sustain domestic UR conventional or non-conventional (*i.e.*, ISL) capacity and, because of the rapid decline in uranium price production levels, some companies have had to lay off one-third of its workforce. The petitioner cites other companies that have experienced similar economic problems and have had difficulty maintaining consistent operating levels. According to the petitioner, because of the market conditions and the few active UR licensees, all active UR licensees have experienced significant NRC fees. The decline in the number of licensees and the resulting increase in fees for those that remain has created a vicious cycle that the petitioner believes threatens to destroy domestic UR capacity, including conventional mill tailing.

In addition, the petitioner asserts that regulatory inefficiencies also have contributed to the domestic UR problems. NMA references its White Paper which listed several events that caused UR licensees to suffer even more adverse cost impacts, e.g., the NRC closing of the Denver Uranium Recovery Field Office (URFO) which was to allegedly achieve cost-cutting benefits. NMA believes the closure benefits were not recognized and UR licensees paid significantly higher fees because of the loss of virtually all institutional knowledge of UR licensed operations and the subsequent need to re-educate new NRC personnel. According to the petitioner, the most dramatic example of increased costs to UR licensees as a

result of loss of experienced personnel is manifested in the Hydro Resources Inc. (HRI) licensing proceeding. The petitioner offers that post-URFO, NRC inexperience with licensing ISL operations led to a long and drawn out licensing process that culminated in a so-called "informal" hearing that began several years ago and continues with interveners filing in excess of 15,000 pages.

II. By Restoring the Domestic UR Industry to Viability, NRC Serves the Public Interest

A. NRC Fee Policies Currently Provide for Fee Reductions and Waivers That Are "in the Public Interest'

According to the petitioner, the current NRC fee scheme allows certain waivers or reductions in fee payment for certain types of licensee, i.e., licensees recognized as small entities under the Regulatory Flexibility Act; licensees that have relinquished their authority to operate and ceased operations permanently, provided proper notifications comply with fee regulations; and non-profit educational institutions because these institutions provide the potential for creating important scientific information and the formulation of new innovative techniques. The petitioner recognizes that every NRC action to benefit certain licensees with reductions or waivers of fee requirements creates burdens on other licensees because the NRC must recover those lost funds from other licensees; therefore NRC has not relied on economic hardship to justify fee waivers because this would shift the burden of increased fees on other licensees. The petitioner states imposing additional fees on other licensees can only be justified if it can be shown to benefit the "public interest." The petitioner asserts that reducing the impact on an economically challenged segment of NRC's licensees is merely collateral benefit to such burden shifting.

B. Altering Fee Requirements for Domestic UR Licensees To Preserve the Benefits

The petitioner asserts that NRC has demonstrated that acting "in the public interest" is a valid justification for reducing and/or waiving fee obligations. The petitioner believes that shifting reasonable economic burdens from UR licensees to other licensees can be justified based on several significant public interest factors and that the issue to be explored is whether the burden to be shifted is reasonable in light of the public interest benefit. The petitioner believes it is reasonable.

The petitioner offers a scenario where NRC would have to shift approximately $4 to 5 million in fees from exempt UR licensees. Spread over 100 fuel cycle licensees, each licensee would pay approximately $40,000 in fees per year. The petitioner states that a shift of $40,000 per year, when weighed against the actual and potential benefits that domestic UR licensees can and will provide, is a modest amount. The petitioner notes the fee shifting may only be necessary for a very short time depending on projected increases in the demand for and price of uranium in the near term. The petitioner asserts that fuel cycle licensees would bear a reasonable burden both in terms of the amount and the duration of the increased fees in order that UR licensees may retain their licenses and protect valuable fuel cycle resources.

According to the petitioner, the public's interest in UR begins with the benefit NRC confers with the issuance of a license. The petitioner asserts that by providing a licensee with a license to utilize certain materials, NRC confers a presumptive benefit which is the authority for the licensee to decide when and how best to use the material authorized by the license. Further, the petitioner states that implicit in this benefit is the assumption that the licensee will be able to use the licensed materials in a useful and cost-effective manner. The petitioner states that NRC's current focus on risk-informed, performance-based regulatory oversight is designed to enhance cost-effective regulation by focusing licensee and NRC resources on more serious potential hazards. The petitioner believes that imposing unreasonable regulatory burdens on such licensees runs counter to prevailing Commission policy and threatens the short-term economic viability at a time of national energy crisis which suggests the potential for significantly increasing demand for a variety of UR services in the finite future. The petitioner asserts that dual regulation and unresolved inefficiencies in the NRC's UR regulatory program are providing a significant "drag" on UR licensees" economic well-being; thereby resulting in increased internal operating costs as well as increased fees. The petitioner notes that NMA requested that the NRC forego a potentially more efficient regulatory program through the development of a new Part 41 because the cost of developing such a program would be prohibitive at present in part because of the increased fee impact on already economically burdened UR licensees.

The petitioner emphasizes the impact of increased costs on present and possibly future loss of human resources which could adversely impact the UR sector's ability to rebound economically as the price of uranium rises to levels that can support profitable domestic production.

The petitioner believes the ISL production can become profitable with relatively limited increases in the price of yellowcake (*i.e.*, $13–16/lb range). The petitioner discusses the increased cost in operating conventional mills and charges that the modest price increases will not be sufficient to support the continued production of yellowcake by conventional milling. However, the petitioner asserts that conventional mills hold the promise of providing significant new benefits to the ISL licensees, other fuel cycle licensees, including reactors and other NRC licensees through the processing of the alternate feed. The petitioner believes that alternate feed processing provides a valuable resource to other parties, including NRC licensees, DOE, and others that can divest themselves of materials that are wastes to them. The petitioner states that conventional mills can recycle the wastes and recover valuable energy resources that would be lost by direct disposal, yet ensure that the post-UR wastes will be contained and controlled in accordance with the Environmental Protection Agency/ Nuclear Regulatory Commission Uranium Mill Tailings Radiation Control Act (EPA/NRC UMTRCA) regulations in perpetuity.

The petitioner believes that only by processing alternate feeds and receiving recycling fees can conventional mills produce yellowcake profitably without a huge increase in the price of yellowcake. The petitioner claims that more efficient regulatory oversight through performance based license conditions authorized under the contemplated part 41 rule could support the viability of such operations and the benefits provided to waste generators and national energy interest.

Also, the petitioner offers that conventional mill tailings impoundments with approximately 20 million tons of disposal capacity offer the potential to assist in solving major radioactive waste disposal problems for "similar" high volume, low activity wastes. The petitioner states that stringent regulatory controls for both radiological and non-radiological wastes including a long-term governmental custodian with long-term stewardship costs funded by the licensee make such sites extremely valuable potential resources to address waste disposal options of NRC licensees including fuel cycle licensees. The petitioner indicates the full scope of these facilities' value to the "general public interest," in permanent disposal as opposed to temporary storage, has only just begun to be examined in detail, and that the loss of the significant low-level radioactive waste disposal options that such facilities may offer before those options have been fully explored by NRC, licensees, States, and the general public would be a blow to the national public interest.

The petitioner believes the UMTRCA UR regulatory program has provided, and will continue to provide, an invaluable "living laboratory" that addressed both operating and decommissioning impacts of nuclear fuel cycle facilities. The petitioner claims the information and experience gained through constructing and maintaining engineered barriers; groundwater corrective action, including ISL aquifer restoration; and site cleanup verification will help reduce the impact of future operations and future site closures. This, the petitioner asserts, is "in the public interest."

The petitioner states that to allow the domestic UR industry to wither to the point of virtual extinction or to disappear completely cannot be in the "national public interest" because of its current and potential benefits. The petitioner states that domestic UR operations provide value to the U.S. by producing energy-generating yellowcake and provide additional waste disposal options to radioactive waste generators.

The petitioner references several bills pending before Congress that acknowledge the importance of UR as a part of the domestic energy market. The petitioner believes consideration of these legislative initiatives demonstrates Congressional interest in maintaining a viable domestic UR industry as an important national resource that should be preserved.

Further, the petitioner states that NRC has recently explicitly noted ongoing Congressional concerns about a viable domestic UR industry. The petitioner cites a Federal concern for the impact on the domestic uranium mining industry as one of several factors regarding timeliness in the defueling and decommissioning (D&D) Standard Review Plan (SRP). The petitioner provided other examples of how the public will be served by an extension and included the following excerpt from the SRP:

The standby period will allow economic conditions in the uranium market to improve. Existing statutes oblige the Secretary of Energy to gather information on the uranium mining industry and to have a continuing responsibility for the domestic industry, to encourage the use of domestic uranium. See 42 U.S.C. 2201(b) & 2296(b)(3). Although this responsibility is not NRC's, we recognize that the viability of the industry is a Federal concern, or an alternate schedule involving some of the Federal licensee's other facilities would better take into account the Federal licensee's overall decommissioning needs, thereby reducing public funds needed for the ultimate decommissioning of the facility, etc.

The petitioner cites a July 17, 2001, NRC staff letter to Kennecott Uranium Company regarding the postponement of the Timeliness in D&D requirements' implementation at its Sweetwater Uranium Facility that stated, "the continued existence of the mill is in the public interest..." and "maintaining the domestic capacity to provide the raw material for nuclear power is in the public interest." The petitioner concludes that it can be fairly said that NRC staff recognizes that maintaining a viable domestic UR industry is "in the public interest" of the United States. NMA emphasizes that it is also specifically in the interest of the NRC licensees, potentially including reactor licensees, within and without the nuclear fuel cycle.

NMA states that shifting reasonable economic burdens to other licensees can serve the public interest" if the alternative is to lose all or even some of UR's valuable resources including ISL and conventional uranium mill facilities. The petitioner states that D&D activities have become increasingly important at fuel cycle facilities in part because of NRC's timeliness in D&D and final site D&D standards set forth in 10 CFR 20.1401 *et seq.* As a result, many sites, or portions thereof, are addressing reclamations activities to meet regulatory standards. The petitioner states that NRC has estimated that site D&D activities will generate large volumes of new low-level radioactive waste (LLRW) that will need a home for disposal. Also, licensed sites and government facilities will require the disposal of large volumes of LLRW in the form of soils, sludge, and debris. According to the petitioner, economically viable disposal options will be vital to final site closure and license termination at many complex sites. NMA believes conventional UR facilities can provide new alternatives to current disposal options for fuel cycle facilities with large volumes of LLRW. NMA continues that waste disposal for non-fuel cycle facilities generating technologically enhanced naturally occurring radioactive materials ("TENORM") may also benefit from more numerous and competing options for disposal. The petitioner asserts that it would be "in the public interest" to help to ensure that the resources will not be lost while these important waste disposal opportunities are being debated, perhaps in a (contemplated Part 41) rulemaking process.

The petitioner suggests that UR industry licensees can continue to develop information, techniques, and systems that will add to ongoing protection of workers and the environment at "active" sites and ensure long-term post-closure protection at UR mill tailing impoundments, particularly if additional alternate feeds are processed and "other than 11e.(2) materials" are disposed there. Research in groundwater restorations at ISL sites, which is explicitly recognized in H.R.4, Section 309, could lead to new or refined methods for efficient, low-impact UR. Therefore, the petitioner believes that shifting a reasonable burden of fees to other licensees will allow UR licensees to continue developing such information in anticipation of a better uranium market and the reinstatement of production activities, is in the public interest.

Conclusion

In conclusion, the petitioner states that for several years, the UR industry has suffered through the effects of a severely depressed uranium market. Despite the fact that prices have remained low enough to threaten the loss of domestic UR capability, it is likely that the market for uranium will recover somewhat in the near term. However, until that happens, according to the petitioner, UR licensees must survive without adequate revenues. If, even without such revenues, UR licensees must still find a way to pay NRC fees imposed, or face loss of their licenses, this would truly put the nail in the coffin. The petitioner states that, as NMA has demonstrated and NRC recognizes, it would be "in the public interest" to relieve the fee pressure on UR licensees, at least in the near term, by exempting these licensees from all fees until the price of uranium reaches $13–16/lb. In the alternative, NRC could exempt UR licensees from some fees, including fees for development of the (contemplated Part 41) rule which ultimately would lead to more cost-effective regulatory oversight. The petitioner believes that the fee burden to be shifted (i.e. $40,000 per fuel cycle licensee) and the likely time frame (for at least one year) during which burden shifting would be necessary, are not excessive and that the "public interest" benefits, existing and potential, are significant. The petitioner, therefore, believes the burden shift is reasonable and prudent.

Commission Vote to Discontinue Part 41

On May 29, 2001, the Commission issued a staff requirements memoranda (SRM) that approved the discontinuance of the current 10 CFR part 41 rulemaking efforts. The SRM recommended that staff focus its resources on updating guidance documents to implement Commission direction set forth in SRM's for SECY's 99–012, 99–013, and 99–277.

Dated at Rockville, Maryland, this 25th date of October, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–27536 Filed 11–1–01; 8:45 am]

BILLING CODE 7590–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 41 and 190

RIN 3038–AB71 and 3038–AB76

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–44996; File Nos. S7–16–01 and S7–17–01]

RIN 3235–AI22 and 3235–AI32

Customer Margin Rules Relating to Security Futures; Applicability of CFTC and SEC Customer Protection, Recordkeeping, Reporting, and Bankruptcy Rules and the Securities Investor Protection Act of 1970 to Accounts Holding Security Futures Products

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint proposed rules; extension of comment periods.

SUMMARY: The Commodity Futures Trading Commission ("CFTC") and Securities and Exchange Commission ("SEC") (collectively, the "Commissions") are extending the comment periods for the customer margin rules relating to security futures contained in proposed Release No. 34–44853 (September 26, 2001), 66 FR 50719 (October 4, 2001) and the rule relating to the applicability of CFTC and SEC customer protection, recordkeeping, reporting, and bankruptcy rules and the Securities Investor Protection Act of 1970 to accounts holding security futures products proposed in Release No. 34–44854 (September 26, 2001), 66 FR 50785 (October 4, 2001). The original comment periods for these proposals are scheduled to end on November 5, 2001. The new deadline for submitting public comments on both of the above releases is December 5, 2001.

DATES: Public comments are due on or before December 5, 2001.

ADDRESSES: Comments should be sent to both agencies at the addresses listed below.

CFTC: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, Attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to *secretary@cftc.gov*. Reference should be made to "Customer Margin for Security Futures" or "Proposed Rule 41.42—Treatment of Customer Funds." All comment letters will be posted, as submitted, on the CFTC's Internet web site (*http://www.cftc.gov*).

SEC: Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–16–01 (relating to customer margin for security futures) or S7–17–01 (relating to treatment of customer funds); this file number should be included on the subject line if e-mail is used. Comment letters received will be available for public inspection and copying in the SEC's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the SEC's Internet web site (*http//www.sec.gov*). The SEC does not edit personal identifying information, such as names or e-mail addresses, from electronic submissions. Submit only the information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

CFTC: Regarding Customer Margin Rules Relating to Security Futures, Phyllis P. Dietz, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5000. E-mail: (*PDietz@cftc.gov*).

Regarding Applicability of CFTC and SEC Customer Protection, Recordkeeping, Reporting, and Bankruptcy Rules and the Securities Investor Protection Act of 1970 to Accounts Holding Security Futures Products, Helene D. Schroeder, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430. E-mail: (*hschroeder@cftc.gov*).

SEC: Regarding Customer Margin Rules Relating to Security Futures, Jennifer Colihan, Special Counsel, at (202) 942–0735, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

Regarding Applicability of CFTC and SEC Customer Protection, Recordkeeping, Reporting, and Bankruptcy Rules and the Securities Investor Protection Act of 1970 to Accounts Holding Security Futures Products Bonnie L. Gauch, Attorney, at (202) 942–0765, Office of Risk Management and Control; and with respect to Exchange Act Rule 10b-10, Catherine McGuire, Chief Counsel, or Theodore R. Lazo, Special Counsel, at (202) 942–0073, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: On October 4, 2001, the Commissions published for comment proposed rules governing customer margin for security futures. The proposed rules would apply to margin arrangements between brokers, dealers, and members of national securities exchanges and their customers with respect to security futures, subject to certain exclusions. Also on October 4, 2001, the Commissions published for comment proposed rules relating to the applicability of the Commissions' customer protection, recordkeeping, reporting, and bankruptcy rules and the Securities Investor Protection Act of 1970 to accounts holding security futures products. These proposing releases established a deadline of November 5, 2001 for submitting public comment.

The Commissions have received a request from the Securities Industry Association ("SIA") and Futures Industry Association ("FIA") to extend the deadline on each release by an additional 30 days so that their members have an adequate opportunity to review these proposals and provide thoughtful comment.[1] The SIA and FIA explained that, in light of the tragic events of September 11, the securities and futures industries need more time to provide meaningful comments. They stated their belief that such extensions would not have any adverse consequences, recognizing that such extensions could delay commencement of trading of security futures on other than a principal-to-principal basis between eligible contract participants beyond December 21, 2001.[2] In letters to the leadership of the Senate Committee on Banking, Housing and Urban Affairs and the House Committees on Financial Services and Agriculture, the SIA and FIA further pointed out that "the tragic events of September 11, 2001 have severely strained the systems, personnel and related operational resources of the firms, exchanges and clearing organizations that provide the infrastructure for the U.S. capital markets."[3]

The Commissions are extending the comment periods for the proposed rules until December 5, 2001, even if, as noted by Chairmen Oxley and Combest, granting such extension would mean that security futures would not commence trading on other than a principal-to-principal basis between eligible contract participants until after December 21, 2001, because they believe that an additional 30-day comment period is appropriate for the reasons described above and will facilitate more meaningful comments from the public.

By the Commodity Futures Trading Commission.

Dated: October 25, 2001.

Jean A. Webb,

Secretary.

By the Securities and Exchange Commission.

Dated: October 29, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–27523 Filed 11–1–01; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* letter to Jean A. Webb, Secretary, CFTC, and Jonathan G. Katz, Secretary, SEC, from the SIA and FIA, dated October 16, 2001 ("SIA/FIA Extension Request").

[2] Section 6(g)(5) of the Securities Exchange Act of 1934 ("Exchange Act") permits security futures products to commence trading on the later of December 21, 2001 or such date that a futures association registered under Section 17 of the Commodity Exchange Act has met the requirements set forth in Section 15A(k)(2) of the Exchange Act. 15 U.S.C. 78f(g)(5).

[3] *See* letters to The Honorable Paul S. Sarbanes, Chairman, Senate Committee on Banking, Housing and Urban Affairs, The Honorable Michael G. Oxley, Chairman, House Committee on Financial Services, and The Honorable Larry Combest, Chairman, House Committee on Agriculture, from the SIA and FIA, dated October 10, 2001 (attached to the SIA/FIA Extension Request). The Commissions also note that the House Committees on Financial Services and Agriculture support an extension of the public comment period by joint letter to Chairmen Newsome and Pitt. *See* letter to The Honorable James E. Newsome, Chairman, CFTC, and The Honorable Harvey Pitt, Chairman, SEC, from The Honorable Michael G. Oxley, Chairman, House Committee on Financial Services, and The Honorable Larry Combest, Chairman, House Committee on Agriculture, dated October 15, 2001.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[SPATS No. LA–022–FOR]

Louisiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Louisiana regulatory program (Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Louisiana proposes additions of regulations concerning revegetation success standards for post-mining land uses of pastureland and wildlife habitat. Louisiana also proposes to add to its program a policy document that describes the criteria and procedures for determining reclamation phase III ground cover and stocking success for areas developed for wildlife habitat. Louisiana intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Louisiana program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., c.s.t., December 3, 2001. If requested, we will hold a public hearing on the amendment on November 27, 2001. We will accept requests to speak at the hearing until 4 p.m., c.s.t., on November 19, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Louisiana program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Louisiana Department of Natural Resources, Office of Conservation, Injection and Mining Division, 625 N. 4th Street, P.O. Box 94275, Baton Rouge, LA 70804, Telephone: (225) 342–5540.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: *mwolfrom@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of this criteria, the Secretary of the Interior approved the Louisiana program on October 10, 1980. You can find background information on the Louisiana program, including the Secretary's findings and the disposition of comments in the October 10, 1980, **Federal Register** (45 FR 67340). You can find later actions concerning the Louisiana program at 30 CFR 918.15 and 918.16.

II. Description of the Proposed Amendment

By letter dated October 2, 2001 (Administrative Record No. LA–367), Louisiana sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Louisiana sent the amendment in response to our letters dated March 24, 1999, and August 16, 2000 (Administrative Record Nos. LA–365 and LA–365.01, respectively), that we sent to Louisiana under 30 CFR 732.17(c). Louisiana proposes to amend the Louisiana Surface Mining Regulations. Below is a summary of the changes proposed by Louisiana. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. Section 5423. Revegetation: Standards for Success

1. Louisiana proposes to add new paragraph e. to subsection B.1. of its regulations to read as follows:

e. The criteria and procedures for determining ground cover and production success are found at § 5424.

2. Louisiana proposes to add new paragraph a. to subsection B.8. of its regulations to read as follows:

a. The criteria and procedures for determining ground cover and stocking success are found at § 5425.

B. Section 5424. Revegetation: Standards for Success—Post-Mining Land Use of Pastureland

Louisiana proposes to add a new section to its regulations that describes the criteria and procedures for determining ground cover and production success for areas being restored to pastureland.

C. Section 5425. Revegetation: Standards for Success—Post-Mining Land Use of Wildlife Habitat

Louisiana proposes to add a new section to its regulations that describes the criteria and procedures for determining ground cover and stocking success for areas developed for wildlife habitat.

D. Reclamation Phase III Revegetation Success Standards for Post-Mining Land Use of Wildlife Habitat

Louisiana proposes to add a policy document to its program that describes the criteria and procedures for determining reclamation phase III ground cover and stocking success for areas developed for wildlife habitat.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Louisiana program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. LA–022–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on November 19, 2001. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866 and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 16, 2001.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 01–27544 Filed 11–1–01; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[SPATS No. MS–017–FOR]

Mississippi Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Mississippi regulatory program (Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Mississippi proposes revisions to and additions of regulations concerning valid existing rights; roads; formal review of citations; and revegetation success standards. Mississippi intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

This document gives the times and locations that the Mississippi program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., c.s.t., December 3, 2001. If requested, we will hold a public hearing on the amendment on November 27, 2001. We will accept requests to speak at the hearing until 4 p.m., c.s.t. on November 19, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Arthur W. Abbs, Director, Birmingham Field Office, at the address listed below.

You may review copies of the Mississippi program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office.

Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282.

Department of Environmental Quality, Office of Geology, 2380 Highway 80 West, P.O. Box 20307, Jackson, Mississippi 39289–1307, Telephone: (601) 961–5500.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290–7282. Internet: *aabbs@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Mississippi Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ". . . a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Mississippi program on September 4, 1980. You can find background information on the Mississippi program, including the Secretary's findings and the disposition of comments, in the September 4, 1980, **Federal Register** (45 FR 58520). You can find later actions on the program at 30 CFR 924.10, 924.15, 924.16, and 924.17.

II. Description of the Proposed Amendment

By letter dated September 28, 2001 (Administrative Record No. MS–0388), Mississippi sent us an amendment to its

program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Mississippi sent the amendment in response to our letters dated August 17, 2000, and August 23, 2000 (Administrative Record Nos. MS–0382 and MS–0381, respectively), that we sent to Mississippi in accordance with 30 CFR 732.17(c), and in response to required program amendments at 30 CFR 924.16(i) and (l). The amendment also includes changes made at Mississippi's own initiative. Mississippi proposes to amend the Mississippi Surface Coal Mining Regulations. Below is a summary of the changes proposed by Mississippi. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES.**

A. Section 105, Definitions

Mississippi proposes to add a definition for "immediate mining area." Mississippi also proposes to revise its definition of "valid existing rights."

B. Section 1103, Responsibility

Mississippi proposes to add the phrase, "a valid existing rights determination made by OSM" after the reference to "30 U.S.C. 1272(e)." Mississippi also proposes to replace the phrase, "this Chapter" with the phrase, "these regulations."

C. Section 1105, Areas Where Mining Is Prohibited or Limited

Mississippi proposes to add the phrase, "or qualify for the exception for existing operations under paragraph (h) of this section" at the end of the introductory language to this section. Mississippi also proposes to add new paragraph (h) to provide that the prohibitions and limitations of section 1105 do not apply to surface coal mining operations for which a valid permit exists when the land comes under the protection of section 1105 of the Mississippi regulations, section 522(e) of SMCRA, or 30 CFR 761.11.

D. Section 1106, Submission and Processing of Requests for Valid Existing Rights Determinations

Mississippi proposes to add this new section to describe the authority of the Permit Board to make valid existing rights determinations; what an applicant must submit as part of a request for a valid existing rights determination; what the Department must do when it receives a request for a valid existing rights determination; and how the Permit Board will make decisions concerning valid existing rights claims. This new section also provides that determinations concerning valid existing rights are subject to administrative and judicial review under Mississippi Code Annotated (Miss. Code Ann.) 53–9–77. Finally, this new section requires the Department and Permit Board to make requests for valid existing rights determinations and associated records available to the public.

E. Section 1107, Procedures

At paragraph (a), Mississippi proposes to add the phrase, "or earlier, if properly requested under § 1106" after the opening phrase, "upon receipt of a complete application for a surface coal mining and reclamation operation permit."

In the first sentence of paragraph (b), Mississippi proposes to delete the specific references to section 1105(a), (f) and (g), and the phrase, "or if the operation did not exist on August 3, 1977." The revised sentence reads as follows:

(b) Where the proposed operation would be located on any lands listed in § 1105, the Permit Board shall deny the permit if the applicant has no valid existing rights for the area.

Mississippi proposes to revise paragraph (f) to provide that the Permit Board will follow the procedures required by section 3114(d) when it determines that a proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places.

Finally, Mississippi proposes to remove paragraph (h), which provides that a valid existing rights determination by the Permit Board is subject to administrative and judicial review under Miss. Code Ann. 53–9–77.

F. Section 2103, Permit Requirements for Exploration Removing More Than 250 Tons of Coal, or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations

Mississippi proposes to redesignate several paragraphs in this section. Mississippi proposes to redesignate paragraph (b)(13)(A) in its entirety as paragraph (c). Mississippi also proposes to redesignate paragraph (b)(13)(B), except paragraph (b)(13)(B)(iii), as new paragraph (d). Mississippi proposes to redesignate paragraph (b)(13)(B)(iii) as new paragraph (e). Finally, Mississippi proposes to redesignate paragraph (b)(13)(C) in its entirety as new paragraph (f).

Mississippi also proposes to add new paragraphs in this section. Mississippi proposes to add new paragraph (b)(14) to require applicants for coal exploration permits to submit, as part of their permit application, a demonstration that, for any lands listed at section 1105, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. Furthermore, applicants must provide documentation that they have consulted with the owner of the feature causing the land to come under the protection of section 1105, as well as the regulatory authority with primary jurisdiction over the feature, when applicable.

Mississippi also proposes to add a new provision at redesignated paragraph (d)(2)(iv) to require the Permit Board to approve an application for a coal exploration permit if it finds, for lands protected under section 1105, the applicant has demonstrated that the proposed exploration and reclamation activities will minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The new provision also requires the Permit Board to provide reasonable opportunity to the owner of the feature causing the land to come under the protection of section 1105, as well as the agency with primary jurisdiction over the feature when applicable, to comment on whether the finding is appropriate.

G. Section 3114, Valid Existing Rights Review at Time of Permit Application Review

Mississippi proposes to add this new section to describe the procedures the Permit Board or Department will follow when reviewing an administratively complete application for a surface coal mining operation, or an administratively complete application for revision or modification of the boundaries of a surface coal mining operations permit.

H. Section 53103, Revegetation: Standards for Success

Mississippi proposes to revise paragraph (a) to require the success of revegetation to be judged on the effectiveness of the vegetation for the approved post-mining land use, the extent of perennial cover compared to the cover occurring in natural vegetation areas, the general requirements of §§ 5397–53103, and the specific requirements of Appendix A, "Revegetation Success Standards."

Mississippi also proposes to redesignate paragraph (a)(1) as paragraph (b)(1); paragraph (b)(1) as paragraph (b)(2); paragraph (b)(2) in its entirety as paragraph (b)(3); and paragraph (b)(3) as new paragraph (4).

I. Section 53111, Roads: General

Mississippi proposes to add new paragraph (a)(4) to describe when a limited use vehicular pathway is not classified as a road. Mississippi also proposes to add new paragraph (a)(5) to read as follows:

(5) A limited use vehicular pathway: (i) May include water bars across the pathway and drainage ways incidental to the area; (ii) shall be reclaimed with vegetation sufficient to prevent erosion prior to phase II bond release; (iii) along with the area it disturbs, is a mining related activity and must be covered by an appropriate reclamation bond; (iv) will be reclassified as a road if upgraded by construction activities such as blading, construction, placement of a compacted surface, cut and fill of the natural grade, construction of drainage ditches or low water crossings, or installation of drainage structures not previously approved by the Department as appropriate to a limited use vehicular pathway. The submittal and approval of plans and drawings required by these regulations must be completed prior to the upgrading of a limited use vehicular pathway.

J. Section 6511, Formal Review of Citations

Mississippi proposes to revise the first sentence of paragraph (c) to allow any party to a proceeding that is the result of the issuance of a notice of violation or cessation order to apply to the Commission for temporary relief from the notice or cessation order. Mississippi also proposes to replace all references throughout this section to "Chief of the Legal Division" with "General Counsel."

K. Appendix A, Revegetation Success Standards

Mississippi proposes to add Appendix A to describe the standards for revegetation success on commercial forest lands, croplands, industrial or commercial lands, pasture and previously mined areas, prime farmlands, recreation lands, residential lands, and wildlife habitats.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Mississippi program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. MS–017-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Birmingham Field Office at (205) 290–7282.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Birmingham Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on November 19, 2001. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of this section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and

732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866, and because it is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 10, 2001.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 01–27543 Filed 11–1–01; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AI44

Ankylosis and Limitation of Motion of Digits of the Hands

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising the evaluation criteria for ankylosis and limitation of motion of the fingers and thumb. This change is necessary to ensure that veterans diagnosed with these conditions receive consistent evaluations.

DATES: Comments must be received by VA on or before January 2, 2002.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are in response to "RIN 2900–AI44." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by clarifying the method of evaluation for ankylosis and limitation of motion of the digits of the hands.

Current diagnostic codes (DC's) 5216 through 5227 represent ankylosis of individual digits or combinations of digits, and they are grouped in the following way: DC's 5216 through 5219 represent unfavorable ankylosis of multiple digits; DC's 5220 through 5223 represent favorable ankylosis of multiple digits; and DC's 5224 through 5227 represent ankylosis of individual digits. Explanatory notes preceding DC 5216, following DC 5219, preceding DC 5220, following DC 5223, and following DC 5227 give specific directions on evaluating limitation of motion or ankylosis of single and multiple digits, determining whether ankylosis is favorable or unfavorable, and evaluating combinations of digit amputations at various levels or any combination of digit amputation, ankylosis, or limitation of motion of the digits.

The United States Court of Veterans Appeals (now the Court of Appeals for Veterans Claims), in *Hill* v. *Principi*, 3 Vet. App. 540, 541 (1992), noted that "[n]either the format of the code pertaining to finger injuries nor its interpretive notes are a model of clarity." We therefore propose to clarify the method of evaluation of ankylosis and limitation of motion of single and multiple digits by revising and reorganizing the diagnostic codes and explanatory notes that address the evaluation of these conditions. The intent of this revision is to assure fair and consistent evaluations of these disabilities by clarifying existing evaluation criteria.

We propose to relocate the interpretive notes regarding evaluations of ankylosis and limitation of motion of the digits of the hands into a single set of instructions preceding DC 5216 and to delete current notes (1), (2), (3), and (4) preceding DC 5216; notes (a), (b), and (c) following DC 5219; notes (1), (2), (3) and (4) preceding DC 5220; notes (a) and (b) following DC 5223; and the note following DC 5227. We propose to incorporate the content of these notes into the proposed instructions preceding DC 5216, with modifications as discussed below.

We propose to change the term used for the third digit from "middle finger" to "long finger," the currently preferred terminology. We also propose to add descriptions of the position of function of the hand, and of the normal range of motion of the index, long, ring, and little fingers, in order to assist the rating agency in assessing impairment due to limitation of motion or ankylosis. We also propose to add Roman numeral designations for the digits: The thumb is digit I; the index, long, ring, and little fingers are digits II, III, IV, and V, respectively.

In the current schedule, ankylosis, *i.e.*, immobility of a joint, and limitation of motion, *i.e.*, loss of any portion of the normal range of motion of a joint, are evaluated using the same criteria. We propose to revise the criteria under diagnostic codes 5216 through 5227 so that they address ankylosis only, and to add three new diagnostic codes, 5228, 5229, and 5230, to evaluate limitation of motion of the thumb, the index or long finger, and the ring or little finger, respectively. The proposed criteria are derived from the material contained in note (3) preceding DC 5216 and note (3) preceding DC 5220, which state that with only one joint of a digit ankylosed or limited in its motion, evaluation will be based on whether motion is possible to within 2 inches (5.1 cms.) of the median transverse fold of the palm, and in note (a) following DC 5223, which states that limitation of motion of less than 1 inch (2.5 cms.) in either direction is not considered disabling. We propose to evaluate limitation of motion of the index, long, ring, and little fingers on either the number of degrees by which extension is limited, or on a measurement of the gap between the fingertip and the palm when the finger is flexed to the extent possible. We propose to evaluate the thumb based on its most important function, opposing the fingers, as measured by the gap between the thumb pad and the fingers with the thumb attempting to oppose the fingers. These criteria are consistent with § 4.71, "Measurement of ankylosis and joint motion," which states that motion of the thumb and fingers should be described by appropriate reference to the joints whose movement is limited, with a statement as to how near, in centimeters, the tip of the thumb can approximate the fingers, or how near the tips of the fingers can approximate the median transverse fold of the palm.

Current note (a) under DC 5219 indicates that extremely unfavorable ankylosis, *i.e.*, all joints in extension or in extreme flexion, will be evaluated as amputation; note (1) preceding DC 5216 establishes that ankylosis of both the metacarpophalangeal and proximal interphalangeal joints, with either in extension or extreme flexion, will be evaluated as amputation. We propose to evaluate an ankylosed digit as amputation when both joints are ankylosed, and either is in extension or "full" flexion. (Flexion of the fingers is not possible beyond "full," or complete, flexion.)

In DC's 5217 through 5223, we propose to simplify the criteria where feasible by indicating, for example, "thumb and any three fingers," rather than separately listing "thumb, index, middle, and ring," "thumb, index, middle, and little," etc.

The current schedule refers to motion of the fingertips to within certain distances of the "median transverse fold of the palm." Since that fold is mentioned neither in standard anatomy texts nor in "Dorland's Illustrated Medical Dictionary," we propose to change that term to "proximal transverse crease of the palm," an anatomic landmark where the fingertips normally meet the palm when they are in full flexion. The current schedule uses different language in different places to describe limited motion between the fingers and the palm or between the thumb and the fingers, *e.g.*, using "whether motion is possible to within 2 inches (5.1 cms.) of the median transverse fold of the palm" in one place and "limited motion preventing flexion of tips to within 2 inches (5.1 cms.) of median transverse fold of the palm" in another place. For the sake of clarity, we propose to measure these distances in terms of the gap, expressed in inches or centimeters, between the fingertips and the proximal transverse crease of the palm, with the finger flexed to the extent possible, or between the pad of the thumb and the fingers, with the thumb attempting to oppose the fingers.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: October 2, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

2. Section 4.71a is amended by removing the tables "MULTIPLE FINGERS: UNFAVORABLE ANKYLOSIS"; MULTIPLE FINGERS: FAVORABLE ANKYLOSIS"; and ANKYLOSIS OF INDIVIDUAL FINGERS" and adding, in their place, the following table to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

* * * * *

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND

	Rating	
	Major	Minor
(1) For the index, long, ring, and little fingers (digits II, III, IV, and V), zero degrees of flexion represents the fingers fully extended, making a straight line with the rest of the hand. The position of function of the hand is with the wrist dorsiflexed 20 to 30 degrees, the metacarpophalangeal and proximal interphalangeal joints flexed to 30 degrees, and the thumb (digit I) abducted and rotated so that the thumb pad faces the finger pads. Only joints in these positions are considered to be in favorable position. For digits II through V, the metacarpophalangeal joint has a range of zero to 90 degrees of flexion, the proximal interphalangeal joint has a range of zero to 100 degrees of flexion, and the distal (terminal) interphalangeal joint has a range of zero to 70 or 80 degrees of flexion.		
(2) When two or more digits of the same hand are affected by any combination of amputation, ankylosis, or limitation of motion that is not otherwise specified in the rating schedule, the evaluation level assigned will be that which best represents the overall disability (*i.e.*, amputation, unfavorable or favorable ankylosis, or limitation of motion), assigning the higher level of evaluation when the level of disability is equally balanced between one level and the next higher level.		
(3) Evaluation of ankylosis of the index, long, ring, and little fingers:		
(i) If both the metacarpophalangeal and proximal interphalangeal joints of a digit are ankylosed, and either is in extension or full flexion, or there is rotation or angulation of a bone, evaluate as amputation without metacarpal resection, at proximal interphalangeal joint or proximal thereto.		
(ii) If both the metacarpophalangeal and proximal interphalangeal joints of a digit are ankylosed, evaluate as unfavorable ankylosis, even if each joint is individually fixed in a favorable position.		
(iii) If only the metacarpophalangeal or proximal interphalangeal joint is ankylosed, and there is a gap of more than two inches (5.1 cm.) between the fingertip(s) and the proximal transverse crease of the palm, with the finger(s) flexed to the extent possible, evaluate as unfavorable ankylosis.		
(iv) If only the metacarpophalangeal or proximal interphalangeal joint is ankylosed, and there is a gap of two inches (5.1 cm.) or less between the fingertip(s) and the proximal transverse crease of the palm, with the finger(s) flexed to the extent possible, evaluate as favorable ankylosis.		
(4) Evaluation of ankylosis of the thumb:		
(i) If both the carpometacarpal and interphalangeal joints are ankylosed, and either is in extension or full flexion, or there is rotation or angulation of a bone, evaluate as amputation at metacarpophalangeal joint or through proximal phalanx.		
(ii) If both the carpometacarpal and interphalangeal joints are ankylosed, evaluate as unfavorable ankylosis, even if each joint is individually fixed in a favorable position.		
(iii) If only the carpometacarpal or interphalangeal joint is ankylosed, and there is a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers, evaluate as unfavorable ankylosis.		
(iv) If only the carpometacarpal or interphalangeal joint is ankylosed, and there is a gap of two inches (5.1 cm.) or less between the thumb pad and the fingers, with the thumb attempting to oppose the fingers, evaluate as favorable ankylosis.		
(5) If there is limitation of motion of two or more digits, evaluate each digit separately and combine the evaluations.		
I. Multiple Digits: Unfavorable Ankylosis		
5216 Five digits of one hand, unfavorable ankylosis of	60	50

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND—Continued

	Rating	
	Major	Minor
Note: Also consider whether evaluation as amputation is warranted		
5217 Four digits of one hand, unfavorable ankylosis of:		
Thumb and any three fingers	60	50
Index, long, ring, and little fingers	50	40
Note: Also consider whether evaluation as amputation is warranted.		
5218 Three digits of one hand, unfavorable ankylosis of:		
Thumb and any two fingers	50	40
Index, long, and ring; index, long, and little; or index, ring, and little fingers	40	30
Long, ring, and little fingers	30	20
Note: Also consider whether evaluation as amputation is warranted.		
5219 Two digits of one hand, unfavorable ankylosis of:		
Thumb and any finger	40	30
Index and long; index and ring; or index and little fingers	30	20
Long and ring; long and little; or ring and little fingers	20	20
Note: Also consider whether evaluation as amputation is warranted.		
II. Multiple Digits: Favorable Ankylosis		
5220 Five digits of one hand, favorable ankylosis of	50	40
5221 Four digits of one hand, favorable ankylosis of:		
Thumb and any three fingers	50	40
Index, long, ring, and little fingers	40	30
5222 Three digits of one hand, favorable ankylosis of:		
Thumb and any two fingers	40	30
Index, long, and ring; index, long, and little; or index, ring, and little fingers	30	20
Long, ring and little fingers	20	20

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND—Continued

	Rating	
	Major	Minor
5223 Two digits of one hand, favorable ankylosis of:		
Thumb and any finger	30	20
Index and long; index and ring; or index and little fingers	20	20
Long and ring; long and little; or ring and little fingers	10	10
III. Ankylosis of Individual Digits		
5224 Thumb, ankylosis of:		
Unfavorable	20	20
Favorable	10	10
Note: Also consider whether evaluation as amputation is warranted.		
5225 Index finger, ankylosis of:		
Unfavorable or favorable	10	10
Note: Also consider whether evaluation as amputation is warranted.		
5226 Long finger, ankylosis of:		
Unfavorable or favorable	10	10
Note: Also consider whether evaluation as amputation is warranted.		
5227 Ring or little finger, ankylosis of:		
Unfavorable or favorable	0	0
Note: Also consider whether evaluation as amputation is warranted.		
IV. Limitation of motion of individual digits		
5228 Thumb, limitation of motion:		
With a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	20	20
With a gap of one to two inches (2.5 to 5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	10	10
With a gap of less than one inch (2.5 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	0	0
5229 Index or long finger, limitation of motion:		
With a gap of one inch (2.5 cm.) or more between the fingertip and the proximal transverse crease of the palm, with the finger flexed to the extent possible, or; with extension limited by more than 30 degrees	10	10
With a gap of less than one inch (2.5 cm.) between the fingertip and the proximal transverse crease of the palm, with the finger flexed to the extent possible, and; extension is limited by no more than 30 degrees	0	0
5230 Ring or little finger, limitation of motion:		
Any limitation of motion	0	0

* * * * *

[FR Doc. 01–27426 Filed 11–1–01; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 89, 90, 91, 94, 1048, 1051, 1065, and 1068

[AMS–FRL–7096–9]

RIN 2060–AI11

Control of Emissions from Nonroad Large Spark Ignition Engines and Recreational Engines (Marine and Land-based); Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of October 5, 2001 a document

concerning new emission standards for large spark-ignition engines, recreational vehicles using spark-ignition engines, and recreational marine diesel engines. This document corrects two items in the preamble to that document.

DATES: *Comments:* Send written comments on this proposed rule by December 19, 2001.

Hearings: Hearings were held in the Washington, DC, area on October 24 and in Denver, CO, on October 30.

ADDRESSES: You may send written comments in paper form to Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105. We must receive them by the date indicated under **DATES** above. You may also submit comments via e-mail to "*nranprm@epa.gov.*" In you correspondence, refer to Docket A–2000–01.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4334; FAX: (734) 214–4816; e-mail: *borushko.margaret@epa.gov.* EPA hearings and comments hotline: 734–214–4370.

SUPPLEMENTARY INFORMATION: EPA published a document in the **Federal Register** of October 5, 2001 (66 FR 51098). That document proposed new emission standards for large spark-ignition engines, recreational vehicles using spark-ignition engines, and recreational marine diesel engines. On page 51172, in the first column, the information about the public hearing in Denver, Colorado should state that the hearing will occur on October 30, 2001. This is consistent with the information published in the original document under **DATES.**

Also, on page 51131, column 3, in the second paragraph under b., the CO emission standard that applies to field-testing procedures should be 5.0 g/kW-hr (3.8 g/hp-hr). This is consistent with the proposed regulations at § 1048.101(c).

Readers should also note a new telephone number that will serve as a hotline for updated information related to public hearings and comment period. People should call 734–214–4370 before traveling to ensure that there is no change in plans for the hearings.

Dated: October 24, 2001.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 01–27466 Filed 11–1–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 01–293]

Wireless E911 Service, Petition of City of Richardson, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document responds to a petition for clarification and/or declaratory ruling by amending the Commission's rules to clarify what constitutes a valid Public Safety Answering Point (PSAP) request for Enhanced 911 (E911) service so as to trigger a wireless carrier's obligation to implement E911 within the six-month period following the date of the request. If challenged by the wireless carrier, the request will be deemed valid if the PSAP making the request demonstrates E911-readiness as provided in the amended rule. This action is taken to ensure the continuing clarity of E911 obligations and thus avoid the possibility of confusion leading to delays in critically important emergency services. The decision is adopted to respond to the petition for clarification and/or declaratory ruling filed by the City of Richardson, Texas.

DATES: This document contains revised information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of this amendment. Public comment on the information collections are due January 2, 2002.

ADDRESSES: A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Jane Phillips, 202–418–1310. For further information concerning the information collection contained in this document, contact Judy Boley, Federal Communications Commission, 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 94–102, FCC No. 01–293, adopted October 2, 2001, and released October 17, 2001. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Copies of the full text of this decision may also be found at the Commission's Internet site at *www.fcc.gov.*

Synopsis of the Order

1. The Commission responds to a petition for clarification and/or declaratory ruling filed by the city of Richardson, Texas. The Commission amends its rules to clarify what constitutes a valid Public Safety Answering Point (PSAP) request so as to trigger a wireless carrier's obligation to provide enhanced 911 (E911) service to that PSAP. Specifically, the Order finds that a wireless carrier must implement E911 within the six-month period following the date of the PSAP's request and that, if challenged by the wireless carrier, the request will be deemed valid if the PSAP making the request demonstrates that: (1) A mechanism is in place by which the PSAP will recover its costs of the facilities and equipment necessary to receive and utilize the E911 data elements; (2) the PSAP has ordered the equipment necessary to receive and utilize the E911 data and the equipment will be installed and capable of receiving and utilizing that data no later than six months following its request; and (3) the PSAP has made a timely request to the appropriate local exchange carrier (LEC) for the necessary trunking and other facilities to enable the E911 data to be transmitted to the PSAP. In the alternative, a PSAP may demonstrate that a funding mechanism is in place, that it is E911-capable using a Non-call Associated Signaling (NCAS) technology, and that it has made a timely request to the appropriate LEC to upgrade the Automatic Location Identification (ALI) database.

2. The Commission established periods for public comment and replies to those comments upon receiving the Richardson petition. (*See* the document at 66 FR 19781, April 17, 2001, and a second document at 66 FR 36989, July 16, 2001.) Both representatives of PSAPs and of wireless carriers have participated in the record established during the comment periods, and these comments are discussed in paragraphs 11–30 of the full text of the Order. The Commission believes that the criteria adopted in the Order represent a fair balance between the interests of both PSAPs and carriers.

3. The first alternative that PSAPs may choose to demonstrate their E911-capability, if challenged by a carrier, is a three tiered approach discussed in paragraphs 14 through 16 of the full Order. In this approach, the PSAP must demonstrate that a funding mechanism exists for recovering its costs of facilities and equipment necessary to receive and utilize the E911 data elements to be supplied by the carrier. Citation to or a copy of the relevant finding legislation is sufficient to satisfy this demonstration. As part of this approach, a qualified PSAP must also demonstrate that it has ordered the equipment necessary to fulfill its E911 obligations. This substantiation could take the form of a listing of the necessary facilities and equipment and copies of the relevant vendor purchase orders as well as commitments that the vendor perform under the agreement within the six-month period following the date of the PSAP's request for service. The last element of the three-tier approach requires that a PSAP demonstrate that it has made a timely request to the proper LEC for facilities and equipment necessary to receive and utilize the E911 data elements requested. Evidence in this regard could consist of the letter of request, as well an any other pertinent correspondence between the PSAP and the LEC.

4. Alternatively, a PSAP, could satisfy the E911-capability requirement by demonstrating that funding mechanism is in place, that it has made a timely request to the LEC for upgrades to the ALI database, and that it is E911-capable using an NCAS technology, as detailed in paragraph 17 of the full text of the Order.

5. The Commission believes that the criteria adopted in the Order will be sufficient to eliminate reasonable doubts about a PSAP's capability of receiving and utilizing the E911 data elements by the end of the six-month period established for carrier compliance. The Commission declines to adopt more restrictive criteria, such as those proposed by commenters in response to the two documents, because it finds that more restrictive criteria would be unnecessary, would countermand the Commission's determination to leave the specifics of Phase I and Phase II compliance to the parties, and could interfere with the negotiation process, ultimately delaying Phase I and Phase II implementation.

Procedural Matters

Paperwork Reduction Act of 1995 Analysis

6. This contains a revised information collection. The Commission has requested emergency approval from the Office of Management and Budget for the revised information collection. As part of the Commission's continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget to take this opportunity to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 2, 2002. Comments should address: (a) Whether the revised collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0813.

Title: Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Form No.: N.A.

Type of Review: Revision of an existing information collection.

Respondents: Business or other for profit; government entities.

Number of Respondents: 42,324.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 198,200 hours.

Cost to Respondents: 0.

Needs and Uses: The demonstration of E911 capability will be required only when a requesting PSAP's E911 capability is challenged by the wireless carrier and will be used by the carrier to verify that the requesting PSAP is in reality capable of receiving and using E911 data and that the carrier must therefore provide E911 service.

Final Regulatory Flexibility Act Analysis

7. This is a summary of the Commission's Final Regulatory Flexibility Analysis. The full text of the Analysis may be found in Appendix C of the Order.

8. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the second document in CC Docket No. 94–102 (the second document). The Commission sought written public comment on the proposals in the second document, including comments on the IRFA. The comments received are discussed in this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the Order

9. The rule amendment mandated by this Order is meant to clarify the process by which a Public Safety Answering Point (PSAP) whose request for Enhanced 911 (E911) service is challenged by a wireless carrier may demonstrate E911 capability. This information will ensure that PSAPs and carriers are working with the same knowledge, thus avoiding delays in implementing E911 service or unnecessary or premature investments due to confusion over the PSAP's preparedness. Specifically, for purposes of resolving a challenge to a PSAP request for E911 service, a wireless carrier must implement E911 within the six-month period following the date of the PSAP's request if the PSAP making the request demonstrates that: (a) A mechanism is in place by which the PSAP will recover its costs of the facilities and equipment necessary to receive and utilize the E911 data elements; (b) the PSAP has ordered the equipment necessary to receive and utilize the E911 data and the equipment will be installed and capable of receiving and utilizing that data no later than six months following its request; and (c) the PSAP has made a timely request to the appropriate local exchange carrier (LEC) for the necessary trunking and other facilities to enable the E911 data to be transmitted to the PSAP. In the alternative, a challenged PSAP may demonstrate that a funding mechanism is in place, that it is Phase I-capable using a Non-call Associated Signaling (NCAS) technology, and that it has made a timely request to the appropriate LEC for the upgrade to the ALI database necessary to enable the PSAP to receive the Phase II data.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

10. The Commission received two direct responses to the IRFA. First, the Rural Cellular Association (RCA) argues that the IRFA in this proceeding is deficient, in that it ignores the possible impact on small and rural wireless carriers, and instead focuses only on the possible impact of the proposed rules on PSAPs. RCA also contends that the

IRFA failed to assess adequately the impact of imposing readiness criteria, as opposed to an actual readiness requirement. RCA further denies that an amendment to the rule, clarifying when and how a PSAP will be considered E911-capable, would benefit small/rural carriers by making confirmation of a PSAP's readiness less burdensome. RCA asserts that the burden on small carriers can be minimized by maintaining the application of the Commission's existing rule.

11. In its response to the IRFA, the National Telephone Cooperative Association (NTCA) maintains that small carriers may waste limited resources providing a service that a PSAP may not be ready to utilize, unless the Commission requires that a PSAP be actually capable of receiving and utilizing the data elements associated with the service at the time it requests the service. NTCA further argues that the burden placed on a small PSAP by the requirement that PSAPs be able to utilize the information prior to requiring such information from a carrier would be "nonexistent."

12. The Commission responds to this criticism in detail in paragraphs 28 and 29 of the Order. Section C of the IRFA describing the number of small entities affected by the proposed rules, emphasized that the IRFA was drafted at early point in the process when the Commission acknowledged it was premature to quantify the specific impact of the suggested action on any of the affected entities, and specifically invited comment on this issue. Section E of the IRFA noted that leaving the rule as it now stands was an option and was considered with the other alternatives mentioned in the IRFA before the second document was issued. The IRFA concentrated on analyzing the effect of a rule amendment on small PSAPs rather than small carriers because the burden of preparing any type of demonstration would fall on PSAPs and the burden on small carriers would not change. The key issue under discussion in the IRFA was how to make it easier for carriers of all sizes to determine when to provide a PSAP with E911 service without running the financial risk of offering service to a PSAP that is unprepared to use the service. Regardless of whether the Commission elected to maintain the existing rule or change it in some way to require a demonstration of E911 capability, the burden of proof of capability would fall on PSAPs, and the effect on carriers would either remain the same or, the Commission believed at the time of the IRFA and still believes, might even reduce the burden on carriers by possibly reducing the time carriers invest in verifying that a PSAP is E911 qualified. No convincing evidence was presented to the Commission to contradict this viewpoint. However, the Commission has determined that a showing would be appropriate only if a carrier decides to challenge a PSAP's request for service.

13. The Commission also received comments not in direct response to the IRFA, but regarding matters of interest to small entities. In its comments, the Rural Companies Group contends that the second document to assess adequately the impact of imposing readiness criteria, as opposed to an actual readiness requirement, on small and rural carriers. Further, the Rural Companies Group argues that allowing a carrier to wait until a PSAP has full technological capability may enable smaller carriers to take advantage of less-costly technological innovations or of cheaper prices, as existing technologies become less costly.

14. In its reply comments, Dobson Communications Corporation argues that the current rule provides the appropriate certainty for carriers and does not hinder the deployment of Phase II E911 services. Dobson therefore urges the Commission to not amend or clarify the existing rule.

15. Because small carriers lack large customer bases to absorb their E911 implementation costs, a primary concern exists that small and mid-sized carriers are more vulnerable to delays in implementation if a PSAP shows an inability to receive and utilize the E911 data supplied by these smaller carriers. Likewise, there is a concern that smaller carriers may be forced to devote time and resources to some PSAPs that prove to be incapable of receiving E911 service, to the detriment of those PSAPs that have current capability.

16. Taking these concerns into account, the Commission finds that the amendments to the rule, as described in the Order, will in fact reduce the vulnerability of the smaller carriers, as they will be working along with the PSAPs to ensure implementation of E911 service on a timely basis, and will better be able to plan their progression and allocation of resources during the implementation process. The Commission also finds that the rule amendments will make confirmation of a PSAP's readiness for E911 service less burdensome for all carriers, as the onus is placed on the PSAPs to demonstrate readiness as described in the Order, and because the showing will only be required to settle a challenge to the PSAP's preparedness.

17. The Commission finds unpersuasive the assertion that smaller carriers may be able to benefit from less-costly technological innovations by waiting to provide service. While it is possible that smaller carriers will pay less the longer they wait to provide service, the Commission finds that without the amendments to the existing rule, the smaller PSAPs will be unduly burdened, and will be more vulnerable, if required to be fully capable of receiving E911 service, without their providers' having to even begin the process of supplying the service.

18. Considering the potential burdens placed on all small entities, the Commission finds that the institution of objective criteria by rule amendment will benefit all PSAPs and carriers, including small entities, by more clearly defining E911 readiness, thus reducing the potential for misunderstanding between parties, and by reducing instances of delay in E911 implementation. In turn, this will reduce the likelihood that any PSAP or carrier, including all small entities, will have to expend its limited capital resources prematurely and/or improvidently.

19. Finally, as discussed in paragraph 29 of the Order, the Commission is sympathetic to the concerns of all small entities, carriers and PSAPs. In reaching its decision in the Order, the Commission attempted to balance these interests with critical interests at stake in this proceeding. The Commission believes that the approach taken in the Order will, ultimately, provide carriers of all sizes, including small carriers, with the tools they need to determine whether a PSAP will, in reality, be E911 capable, while not placing an unnecessarily onerous burden on PSAPs, 96 percent of whom qualify as small entities. Again, the showing will only be necessary when a PSAP's request for E911 service is challenged on the basis of preparedness.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

20. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Nationwide, there are 4.44 million small business firms, according to SBA reporting data.

21. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.

22. The definition of "small governmental jurisdiction" is one with populations of fewer than 50,000. There are 85,006 governmental jurisdictions in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, the Commission estimates that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

23. Neither the Commission nor the SBA has developed definitions for small providers of the specific industries affected. Therefore, throughout our analysis, the Commission uses the closest applicable definition under the SBA rules, the North American Industry Classification System (NAICS) standards for "Cellular and Other Wireless Telecommunications" and "Wired Telecommunications Carriers." According to this standard, a small entity is one with no more than 1,500 employees. To determine which of the affected entities in the affected services fit into the SBA definition of small business, the Commission has consistently referred to Table 5.3 in Trends in Telephone Service (Trends), a report published annually by the Commission's Common Carrier Bureau.

24. The Commission has included small incumbent local exchange carriers in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent carriers in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

25. Local Exchange Carriers. According to the most recent Trends data, 1,335 incumbent carriers reported that they were engaged in the provision of local exchange services. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, or are not independently owned. However, Trends indicates that 1,037 local exchange carriers report that, in combination with their affiliates, they have 1,500 or fewer employees, and would thus be considered small businesses as defined by NAICS.

26 Also included in the number of local exchange carriers is the rural radio telephone service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the NAICS definition.

27. Competitive Access Providers and Competitive Local Exchange Carriers (CAPs and CLECs). Trends indicates that 349 CAPs and CLECs, 87 local resellers, and 60 other local exchange carriers reported that they were engaged in the provision of competitive local exchange services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated. However, Trends states that 297 CAPs and CLECs, 86 local resellers, and 56 other local exchange carriers report that, in combination with their affiliates, they have 1,500 or fewer employees, for a total of 439 such entities qualified as small entities.

28. Fixed Local Service Providers and Payphone Providers. Trends reports that there are 1,831 fixed local service providers and 758 payphone providers. Using the NAICS standard for small entity of fewer than 1,500 employees, Trends estimates that 1,476 fixed local service providers, in combination with affiliates, have 1,500 or fewer employees and thus qualify as small entities. In addition, 755 payphone providers report that, in combination with their affiliates, they employ 1,500 or fewer individuals.

29. Wireless Telephone Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers. There are 806 entities in this category as estimated in Trends, and 323 such licensees in combination with their affiliates have 1,500 or fewer employees, and thus qualify, using the NAICS guide, as small businesses.

30. Other Mobile Service Providers. Trends estimates that there are 44 providers of other mobile services, and again using the NAICS standard, 43 providers of other mobile services utilize with their affiliates 1,500 or fewer employees, and thus may be considered small entities.

31. Toll Service Providers. Trends calculates that there are 738 toll service providers, including 204 interexchange carriers, 21 operator service providers, 21 pre-paid calling card providers, 21 satellite service carriers, 454 toll resellers, and 17 carriers providing other toll services. Trends further estimates that 656 toll service providers with their affiliates have 1,500 or fewer employees and thus qualify as small entities as defined by NAICS. This figure includes 163 interexchange carriers, 20 operator service providers, 20 pre-paid calling card providers, 16 satellite service carriers, 423 toll resellers, and 15 carriers providing other toll services.

32. Offshore Radiotelephone Service. This service operates on several TV broadcast channels that are not otherwise used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this FRFA, that all of the 55 licensees are small entities, as that term is defined by NAICS.

33. Public Safety Answering Points. Neither the Commission nor the SBA has developed a definition of small entities applicable to PSAPs. In order to give a numerical quantification of the number of PSAPs that are small entities affected by the rule modifications, it appears there are approximately 10,000 PSAPs nationwide. For purposes of this FRFA, The Commission assumes that all of the PSAPs are small entities, and may be affected by the rule amendments.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

34. As indicated in paragraph 1 of the Order, if a PSAP's request for E911 service is challenged by a wireless carrier, the PSAP must make a demonstration to the carrier, as detailed in Section A, in this FRFA. In the alternative, the PSAP may demonstrate that a funding mechanism is in place, that it is Phase I-capable, using a Non-Call Associated Signaling (NCAS) technology, and that it has made a timely request to the appropriate LEC for the upgrade to the ALI database necessary to enable the PSAP to receive the Phase II data. Once the showing is made, the carrier must implement E911 within six months of the date of the PSAP's request.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

35. The Commission is severely limited in this proceeding as to minimizing the burden on small entities. The proceeding is intended to provide all Americans with the most reliable, responsive emergency services that are technologically possible. The critical nature of this goal demands that all entities involved, regardless of size, bear the same responsibility for complying with requirements adopted to expedite reaching this goal. A delay in response caused by a small entity could result in the same fatal consequences as a delay caused by a large entity.

36. Several commenters have asserted the possibility that small carriers may expend monies prematurely and/or improvidently if the PSAPs request E911 service, but are not fully capable of receiving and utilizing it within six months. The alternative adopted herein is intended to minimize the possibility of this situation's developing by providing criteria that PSAPS and carriers may use to determine if a PSAP, whose E911 capability is challenged, is in reality prepared to use the service within six months of the request. Commenters who maintain that small carriers are at risk, ignore the fact that smaller carriers relying on smaller customer bases will likely be dealing with PSAPs that are themselves small governmental entities facing similar financial constraints. It would therefore be inequitable and short-sighted to require a small governmental entity to fund fully its share of the E911 costs, while allowing a small business entity to wait several months before funding its own share.

37. The Commission considered several alternatives before reaching its final decision in the Order. First, the Commission could have left the existing rule as it stands with regard to small entities. The Commission believes, however, that this would inevitably lead to more delays due to confusion as to when a PSAP has made a valid E911 service request. The Commission could also amend the rule to remove demonstration burdens and criteria on PSAPs. This alternative would seem to have a greater chance of negatively impacting small carriers though, particularly in terms of risking financial losses when a PSAP requesting E911 service claims to be fully E911 capable but isn't. In this case, carriers could provide the service prematurely and diminish the value of their financial investment until the PSAP is "in actuality" E911 capable. Finally, the Commission could amend the rule to place a more burdensome demonstration requirement on PSAPs, a course favored by several carrier commenters. As discussed in paragraphs 18 through 20 of the Order, the Commission finds that this alternative would not be beneficial for any of the involved parties. Not only would this place an unnecessarily oppressive burden on PSAPs, most of whom are small entities, but small carriers would need to spend more time and resources reviewing and evaluating the submission.

38. Commenters encouraged the Commission to require small governmental entities to fund fully their share of the E911 costs and establish a fully functional system before requiring small carriers to provide the requisite service. This alternative, while it relieves, for a while, the burden on small carriers, places the burden on small governmental entities. In addition, this alternative places all of the risk and uncertainty on the PSAPs, most of whom are small entities, and could delay the implementation of this vital public safety service for several months. The alternative adopted seeks to balance the burden between small carriers and small governmental entities by providing that the showing is only required when a PSAP's claim of E911 capability is challenged by a carrier. Therefore, no demonstration is required of the PSAP unless a carrier elects to set the newly adopted process in motion by challenging a PSAP's E911 capability. The PSAP would then need to make a demonstration that it is E911 capable. To satisfy this requirement, a PSAP may use the three-tier option by demonstrating that a cost recovery mechanism is in place, that the equipment needed to receive and utilize the E911 data has been ordered and will be installed and capable of receiving and utilizing E911 data no later than six months after its request for E911 service and that the PSAP has made a timely request to the appropriate local exchange carrier for the encessary trunking and other facilities to enable the E911 data to be transmitted to the PSAP. This three-tier option is more fully described in paragraphs 14–16 of the Order. Alternatively, as described in paragraph 17 of the Order, the PSAP may demonstrate that a funding mechanism is in place, that it is Phase I-capable, and that it has made a timely request to the appropriate LEC for the upgrade to the ALI database necessary to enable the PSAP to receive the Phase II data.

39. As noted in paragraph 11 of the Order, as well as in several of the comments, the process of implementing E911 services must be a joint and concerted effort between the carriers and the PSAPs. Neither side can perform the necessary functions required to implement timely and effective E911 service without working with the other. While the Commission has taken into account the concerns of small carriers, it cannot do so to the detriment of small PSAPs. This alternative balances the concerns of all parties, including those that may be small entities, and encourages all parties to work together to minimize delays and financial risk. In light of the critical nature of our E911 rules and the need for ubiquitous, reliable emergency services, all entities involved, regardless of size, must comply with those rules.

40. *Report to Congress:* The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of this Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

41. The Petition filed by the City of Richardson is granted as provided in the Order.

42. This document contains revised information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of this rule amendment. Public comment on the information collections are due January 2, 2002.

43. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carrier, Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.18 is amended by revising paragraph (j) to read as follows:

§ 20.18 911 Service.

* * * * *

(j) *Conditions for enhanced 911 services.* The requirements set forth in paragraphs (d) through (h) of this section shall be applicable only if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place. A Public Safety Answering Point will be deemed capable of receiving and utilizing the data elements associated with the service requested if it can demonstrate that it has ordered the necessary equipment and has commitments from suppliers to have it installed and operational within the six-month period specified in paragraphs (f) and (g) of this section, and can demonstrate that it has made a timely request to the appropriate LEC for the necessary trunking and other facilities. In the alternative, a Public Safety Answering Point will be deemed capable of receiving and utilizing the data elements associated with Phase II service if it is Phase I-capable using an NCAS methodology, and if it can demonstrate that it has made a timely request to the appropriate LEC for the ALI database upgrade necessary to receive the Phase II information.

* * * * *

[FR Doc. 01–27605 Filed 11–1–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2001–10916]

RIN 2127–AI55

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: NHTSA has been mandated by Congress to consider whether to prescribe clearer and simpler labels and instructions for child restraints. This notice reviews research NHTSA has conducted on child restraint labels and proposes changes to those labels and to the written instructions that accompany child restraints. NHTSA is proposing changes to the format, location, and content of some of the existing requirements. NHTSA is also proposing a new labeling requirement for harness slots.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 2, 2002.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mary Versailles of the NHTSA Office of Planning and Consumer Programs, at 202–366–2057.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel at 202–366–2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

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X. Comments

I. Overview

NHTSA has been mandated by Congress to consider whether to prescribe clearer and simpler labels and instructions for child restraints. This notice reviews research NHTSA has conducted on child restraint labels and proposes changes to those labels and to the written instructions that accompany child restraints. NHTSA is proposing changes to the format, location, and content of some of the existing requirements. Specifically, NHTSA is proposing (1) a requirement that some information be molded into or heat embossed to the shell to improve durability, (2) changes to existing location requirements for some labels, (3) a uniform font specified for all labels on all child restraints, (4) a requirement that most labels be white with black text, and (5) color-coding of installation information to distinguish forward-facing from rear-facing information.

With regard to content, NHTSA is proposing (1) a reworded warning statement, (2) a requirement that all mandated statements related to use be arranged below that statement in a bulleted form, and (3) rewording of some of these statements to simplify their language. With regard to written instructions, NHTSA is proposing conforming changes with those proposed for labels and a new requirement for information to assist owners in determining the meaning of the term "snugly" used on child restraint labels. Last, NHTSA is proposing a new labeling requirement for harness slots.

II. Tread

The National Highway Traffic Safety Administration (NHTSA) has been mandated by Congress to consider whether to prescribe clearer and simpler labels and instructions for child restraints (Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, November 1, 2000, Pub.L. 106–414, 114 Stat. 1800). Section 14 of the TREAD Act directed NHTSA to initiate a rulemaking for the purpose of improving the safety of child restraints by November 1, 2001, and to complete it by issuing a final rule or taking other action by November 1, 2002.

III. Current Requirements

A. Labels

Federal Motor Vehicle Safety Standard (FMVSS) No. 213 (49 CFR 571.213) requires that all currently manufactured add-on child restraint systems[1] must be labeled with the following information (S5.5.2): the model name or number, the manufacturer's (or distributor's) name, the statement "manufactured in (*month, year*)," the place of manufacture (or location of the distributor's principal office), a certification statement, a statement concerning the manufacturer's recommendations for maximum mass and height of children who should use the child restraint, a warning statement concerning the consequences of failing to follow the instructions, statements about proper use of belts or other restraints as appropriate, an air bag warning label if the child restraint can be used rear-facing, an installation diagram, a registration statement for recalls, and a statement about use in motor vehicles and/or aircraft as appropriate.[2] This information must be in English, lettered not smaller than 10 point type, and on contrasting background, except the air bag warning label has very specific requirements for location and size.[3] The warning statement to follow the instructions, the statements about proper use of belts and other restraints, and the air bag warning must also be visible when the restraint is installed in a vehicle.

B. Written Instructions

Each add-on child restraint system must have printed installation instructions (an owner's manual) that includes a step-by-step procedure, including diagrams, for installing the system in motor vehicles, securing the system in the vehicles, positioning a child in the system, and adjusting the system to fit the child (S5.6). The installation instructions must include information on attaching the child restraint to a tether anchorage or a child restraint anchorage system[4] if appropriate. The owner's manual must also include a statement that children are safer in rear seating positions; information about the types of vehicles, seats and seat belts with which the restraint can or cannot be used; a statement about the consequences of not following the warnings; a statement that the restraint should be secured in the vehicle even when not occupied, an air bag warning statement, and a registration statement for recalls. There are also some specific statements about proper use required for various types of restraints. Finally, the child restraint must have a location on the restraint for storing the owner's manual.

IV. History

A. 1978 NPRM and 1979 Final Rule

On May 18, 1978, NHTSA proposed to upgrade and extend the applicability of then Standard No. 213, Child Seating Systems (43 FR 21470). Included was a proposal for new labeling requirements to encourage proper use of child restraints. So that information would serve as a constant reminder, NHTSA proposed information on the correct use of the restraint be visible on the child restraint when it is installed in a vehicle and include a diagram showing the restraint properly installed, height and weight limits, warnings to use and snugly adjust all belts, and to secure the restraint according to instructions. The proposal also required the label to identify the manufacturer; make of the child restraint; month, year and place of manufacture; and a statement that the child restraint complies with all applicable Federal motor vehicle safety standards. Also included was a proposal that an instruction sheet accompany all child restraints.

On December 13, 1979, NHTSA published a final rule establishing a new Standard No. 213, Child Restraint Systems (44 FR 72131). In response to manufacturer concerns about the limited space available for labels visible when the child restraint is installed, only some of the new labeling requirements had to be visible. Depending on the design, the following information had to be visible when the child restraint was installed: a warning to secure the restraint with the vehicle lap belt, a warning to snugly adjust all belts provided with the restraint, a warning to correctly attach the top tether strap, a warning to only use a restraint adjustment position which is intended for use in a motor vehicle, a warning to not use rear-facing infant restraints in any other position, and a statement about the primary consequences of misusing the restraint. The following information did not have to be visible when the child restraint was installed: manufacturer, model, date and place of manufacture, and the certification statement. Because of the complexity of showing a diagram for all types of belt systems, NHTSA only required two diagrams—a diagram showing the restraint correctly installed with a continuous loop lap/shoulder belt and a diagram showing the restraint correctly installed in the center rear seating position with a lap belt. For restraints with top tethers, the diagram had to show the tether correctly attached. The agency adopted the instruction sheet requirement, but, based on comments also added a requirement that the restraint include a place to store it.

B. 1995 Public Meeting

On April 2, 1995, NHTSA held a public meeting in Indianapolis, Indiana regarding the misuse of child restraint systems. In the notice announcing the meeting, NHTSA asked

* * *child seat labeling requirements have often been criticized as overwhelming the consumer with long and complex warnings and instructions. How can these labeling requirements be improved? Which aspects of the labeling requirements should be retained, and which should be abolished, and why? (60 FR 12192, 12193; March 6, 1995)

A number of commenters to the public docket for this notice criticized existing labels as difficult for consumers to read. One commenter noted that the cloth cover sometimes conceals seat belt routing slots and labels, resulting in misuse when consumers only use the visible routing slots. Commenters suggested that the labels be written for a lower reading comprehension level, and suggested point-by-point or numbered instructions accompanied by pictures.

C. 1996 Air Bag Warning Label

On November 27, 1996, NHTSA issued a final rule requiring rear-facing child restraints to bear a new, enhanced warning label to replace the existing label (61 FR 60206). The labels were developed using focus groups, with the aim to make the labels clearer and easier to understand. Because the goal of this rulemaking is to make child restraint labels clearer and easier to understand also, and because of the tight deadline set for completing this rulemaking action, the air bag warning label on rear-facing child restraints will not be considered in this rulemaking.

D. 2000 Public Meeting

On February 9, 2000, NHTSA conducted a public meeting in Washington, DC, to discuss the safety performance of child restraint systems and options for providing consumers with information on the safety performance of different child restraints. In the notice announcing the meeting, improved labeling was one of the listed topics (65 FR 1224, January 7, 2000).

While most of the comments submitted to the docket, and most of the presentations at the public meeting focused on child restraint ratings, some labeling issues were also raised. The most common issue discussed was permanency of labels, particularly the labels with identifying information and date of manufacturer. Most notably, Transport Canada gave a presentation about their on-going research on possible performance criteria and tests to ensure that labels will be permanent. SafetyBeltSafe noted that 26% of the child restraints checked by the Family Safety in the Car program from 1992 to 1998 had no readable manufacture date. The Juvenile Products Manufacturers Association noted that some of the language required by NHTSA on child restraint labels requires up to a 12th grade education to read and understand. Other issues raised were the need for an additional warning that a restraint should not be used after even a minor crash, clearer wording, and a requirement that recommended heights and weights be limited to the size of the dummy used for certification.

E. 2000 Plan

1. Labels

On November 27, 2000, NHTSA published a notice requesting comments on a draft Child Restraint Systems Safety Plan (65 FR 70687). With regard to labels, the agency indicated that it would have current labels analyzed to determine whether to propose changes to the existing labels. The agency also indicated that it would consider proposing a requirement for basic identifying information to be permanently molded into the shell of the restraint at a specific location. Finally, the agency indicated that it would monitor ongoing research being conducted by Transport Canada on the durability of child restraint labels.

The agency did not receive extensive comments on aspects of the plan concerning child restraint labels. One commenter stated that the height and weight limits labeled on child restraints should not be allowed to exceed the size of the dummy used for certification. Another commenter requested that NHTSA prohibit additional information on child restraints and that NHTSA consider the space constraints when developing its proposal.

2. Harness Slots

In the draft Child Restraint Systems Safety Plan, NHTSA also indicated that it planned to study alternatives to address misuse of adjustable child restraint systems regarding child size and seat orientation. One of the suggested alternatives was a label requiring height indicator lines for each harness slot. One commenter, the American Academy of Pediatrics, addressed the issue of labeling harness slots. That commenter recommended a performance standard rather than a labeling requirement, as incorrect harness slot usage is believed to be a widespread problem.

V. Research

In anticipation of conducting research, NHTSA contacted child restraint manufacturers to obtain samples of currently used child restraint labels. Of the labels provided to the agency, three sets of labels were chosen by the agency to use in our research. The labels were chosen because they provide three distinctly different styles of child restraint labels. Each had a different amount of text ranging from extensive text to little text. Each uses graphic elements differently and has a differing amount of graphics. Additionally, each label uses color differently.

Our research on the readability of child restraint labels consisted of two phases: consumer focus group testing and a passive evaluation. Passive evaluation refers to an evaluation based on the characteristics of the language, vocabulary and visual presentation of the information using standard readability measures, rather than an evaluation based on consumer feedback. Copies of the full report on each research phase are available in the docket for this notice.

A. Child Restraint Focus Groups

Four focus groups were conducted in the suburbs of Chicago, IL, and Phoenix, AZ during the week of February 12, 2001. The purpose of this research was to explore parent/guardian perceptions about current child restraint labels. While many group participants admitted that they did not read the written instructions or labels that came with the child restraints, at least until they perceived they were having a problem, they also felt that it was important to have such information readily available. Participants also noted, that while they felt the language on the labels or instructions was clear when they read them, it was often difficult to translate the information into action. One of the most common problems noted was knowing for sure that the vehicle safety belt was threaded through the correct location. Of the samples shown, some of the features that participants felt made the instructions easier to understand were: color-coded distinction between forward- and rearward-facing use instructions, clear illustrations showing the vehicle belt path, numbered installation steps, dark copy on white background, positioning of the labels to indicate placement of the vehicle belts[5], strongly worded warnings, use of color to highlight warnings, illustrations which are "see-through" so it is clear where the belts path is, and good illustrations of what the restraint should look like when properly installed. Some common criticisms were: vague words such as "snugly," unfamiliar words like "child restraint" rather than "child seat," other words with which they

[1] Please note that the requirements for built-in child restraint systems are not summarized here. Factory-installed built-in's are required to have some, but not all, of the information required for add-on's, primarily due to the lack of need for warnings about proper installation. While this section of the preamble will only discuss requirements in terms of add-on's, this NPRM is proposing conforming changes to the built-in labeling requirements. These changes can be found in the proposed regulatory text for paragraphs S5.5.4, S5.5.5, S5.5.5(f), S5.5.5(g), S5.5.5(j), and S5.5.5(m). NHTSA is also proposing conforming changes to written instruction requirements in S5.6.1 and S5.6.2(a).

[2] The use statement must be in red lettering and placed after the certification statement.

[3] These requirements can be found in S5.5.2(k)(4).

[4] See 49 CFR 571.225.

[5] **Note:** While the participants were not shown the labels on child restraints, it was clear that some of the labels would be positioned on the child restraint to mark belt paths. For example, one label states: "Belt here forward facing 20–40 lbs."

were not familiar and that were not defined, not enough specifics about the risks of improper use, and lack of illustrations of what the child should look like in the restraint.

B. Passive Evaluation of Child Restraint Labels

The vocabulary and syntax of the sample labels were evaluated using standard readability tests, including: Flesch Reading Ease Score, Flesch-Kincaid Grade Level Score, and the Simple Measure of Gobbledegook (SMOG). The written language was also reviewed for overall tone, overall information organization, presence of subordinate clauses and other potential hindrances, presence of distant or formal language, presence of prescriptive or negative language, and presence of patronizing language. The labels were also evaluated based on visual examination using criteria that screen for: visual tone, visual appearance and justification of written material, typeface selection, arrangement of written and illustrative information, graphic discrimination, presence of subheadings, bullets and other visual aids, and presence of illustrations, photographs and other visual references. A team of reading and language experts performed the readability analysis. Because child restraints are used by a wide variety of persons with a wide variety of literacy, including persons with less than 8 years of formal education and persons whose first language is not English, readability was evaluated against a Grade 5 reading level.

The passive evaluation found that the most clear and "readable" samples were characterized by:

- Distinctive color-coding of information and illustrations to indicate importance and to lead the reader
- Simplicity of language
- Clear integration of written and visual information
- High contrast type/background relationships
- Clear, easy-to-follow illustrations
- Heavy use of "white space"

The least "readable" samples were characterized by:

- Dull, monochromatic visual appearance
- Densely packed written information
- Low contrast combinations of type, illustration and background.

While the language on the samples required by FMVSS No. 213 fell within the desirable ranges on many of the standard readability tests, it was found that the information is not written for a suitably low grade level. The Flesch-Kincaid Reading Grade Level analysis found that the mandatory information required between a 10.9 and an 11.1 grade reading level to comprehend.[6] The SMOG test found the 3 sets of sample labels to require 8th, 9th, and 11th grade reading levels. The evaluators noted that information added beyond the mandatory statements tended to use more readable language. The visual considerations varied widely however. Some of the features criticized were: full justification, sans serif typefaces, arrangements which made it difficult to distinguish warnings information from other less critical information, gray backgrounds and densely packed labels.

VI. Proposed Changes to the General Label Requirements

The following sections discuss format requirements for mandatory labels. NHTSA requests comments on whether NHTSA should require additional voluntary labels to comply with the any or all of these requirements.

A. Permanence and Location (S5.5.1, S5.5.3 and S5.5.4)

NHTSA currently requires that mandatory information be "permanently labeled" on the child restraint. One of the most common criticisms about child restraint labels is that they are not permanent. Unlike vehicle labels that are often printed directly on the vehicle component, child restraint labels are usually paper glued to the shell. As such, they fade from exposure to sunlight and peel off restraints. Because NHTSA does not have performance criteria for permanence in FMVSS No. 213, enforcing the existing requirement is difficult.

NHTSA also requires the warning statement about failure to follow the instructions, the statements about proper use of belts and other restraints, and the air bag warning to be visible when the restraint is installed in a vehicle. Location is not specified for other mandatory information.

Transport Canada is currently conducting research to develop an objective test for permanence. NHTSA is monitoring that activity, and depending on its outcome, may consider proposing criteria for permanence in the future.

In the interim, NHTSA is proposing to require the model name or number, manufacturer name, manufacturing date, and place of manufacture to be permanently molded into the rear surface of the structure supporting the child's back or on the side of the restraint if the restraint does not have a back. While focus group participants felt this was important information, NHTSA does not believe that it is as critical that this information be visible when the child restraint is installed in the vehicle. However, by standardizing the location, recall notices and announcements can direct owners to the location of this information. A requirement that the information be molded into the shell similar to the way tire information is molded should ensure that the information is always available in case of a recall.

NHTSA requests comments on whether the specification that this information be permanently molded is design restrictive in that it assumes that the child restraint shell is made out of a material such as plastic. Are there shells made out of materials that could not be molded? How else could NHTSA ensure the permanence of this information? Would other technologies better achieve the goals of this proposal? Would molding create problems with readability unless the molded material is color contrasted with the child restraint plastic?

NHTSA is proposing that all other required information be labeled on the child restraint so that it is visible when the restraint is installed in a motor vehicle. This is a change for the requirements for the certification statement, height and weight labeling, the installation diagram, the registration statement, and the statement about use in motor vehicles and/or aircraft, which are not currently required to be visible by FMVSS No. 213. NHTSA believes that this is important information that should be readily available to the user. NHTSA also notes that most, if not all, child restraint labels are currently visible, even when not required by NHTSA. Because most are already visible, and because as discussed in the previous section NHTSA is proposing that some information be located in a new location, it does not believe that this new requirement will cause space problems.

B. English language (S5.5.2, S5.5.5, and S5.5.6)

NHTSA is keeping the English language requirement for child restraints. However, NHTSA notes that many manufacturers also label child restraints in Spanish or other languages. NHTSA applauds these attempts to convey the information to owners who do not speak English, or for whom English is not their first language. NHTSA does not intend to restrict in any way a manufacturer's ability to also label child restraints in one or more additional languages as long as the required information is labeled in English. NHTSA also requests comments on whether Spanish should be required on child restraint labels.

C. Typeface (S5.5.2 and S5.5.5)

NHTSA currently requires information to be in letters and numbers that are not smaller than 10 point type. While we have not had any complaints about font size on existing labels, NHTSA notes that specifying a point size without also specifying a font does not guarantee legibility. In addition, the passive evaluation criticized the labels that were reviewed because all used a sans serif font, and serif fonts are considered easier to understand. NHTSA's graphics department has indicated that the most common serif font in publications and graphics is Times New Roman. Therefore, NHTSA is proposing to require all labels to be in Times New Roman and no less than 10 point.

D. Background (S5.5.2 and S5.5.5)

NHTSA currently requires the information to be labeled "on a contrasting background." Both the passive evaluation and the focus group participants noted the difficulty in reading the sample labels that were on a gray background or conversely, the ease of reading the labels with a white background. For this reason, unless specified otherwise, NHTSA is proposing to require all information to be in black text on a white background.

E. Color (S5.5.2(l), S5.5.5(j), and S5.6.5)

NHTSA currently has minimal color requirements for child restraint labels. Other than the air bag warning, the only color requirement is that the statement about use in motor vehicles and/or aircraft must be in red lettering (S5.5.2(n)). NHTSA is not proposing changes to either of these requirements, however we are proposing a new color requirement.

Focus group participants preferred sample labels which used different colors to indicate different instructions for forward- or rearward-facing use. Distinctive color coding was also mentioned as a desirable attribute in the passive evaluation. European Regulation 44 (4.3) requires that "the correct routing of the webbing shall be clearly indicated by means of a drawing," and the routing diagram must be color coded red for forward-facing and blue for rearward-facing. The same colors are required for labels "that illustrate the methods of use."

NHTSA is proposing a new requirement that illustrations and instructions for forward-facing use be enclosed within a red box, and that illustrations and instructions for rearward-facing use be enclosed within a blue box. NHTSA is also proposing to require vehicle belt routing to be indicated in red for forward-facing, and in blue for rearward-facing.

F. All Capital Letters

While the text required by FMVSS No. 213 is shown in all capital letters in the standard, capitalization is not generally required if not expressly required by the standard. However, because "block letters" are generally more difficult to read, NHTSA is proposing to delete this requirement. In this proposal the only requirement for all capital letters is the heading for the warnings.

VII. Proposed Changes To Label Contents

In the following subsections, NHTSA discusses possible changes and additions to mandated language for child restraint labels. NHTSA requests comments on whether instead of mandating specific language NHTSA should mandate only that specific information be provided, leaving the wording to each individual manufacturer. For example, S5.5.2(f) of FMVSS No. 213 mandates that child restraints be labeled with one of three statements regarding height and weight limits. As an alternative, NHTSA could require only that manufacturers label child restraints with either the maximum weight and height or a permissible range of weight and height.

A. Statement Regarding Height and Weight (S5.5.2(f) and S5.5.5(f))

NHTSA has made minor changes to simply the language. Currently each option states, "This child (infant) restraint is designed for use only by children * * *" NHTSA is proposing to revise the options to read, "Use only with children * * *" NHTSA further asks for comments on deleting the height references in these statements to further simplify them.

B. Warning Regarding the Consequences of Not Following Instructions (S5.5.2(g) and S5.5.5(g))

NHTSA currently requires the following statement to be on each child restraint:

WARNING! FAILURE TO FOLLOW EACH OF THE FOLLOWING INSTRUCTIONS CAN RESULT IN YOUR CHILD STRIKING THE VEHICLE'S INTERIOR DURING A SUDDEN STOP OR CRASH. SECURE THIS CHILD RESTRAINT WITH A VEHICLE BELT AS SPECIFIED IN THE MANUFACTURER'S INSTRUCTIONS LOCATED _____.

Both the passive analysis and the focus group participants criticized this statement as difficult to understand and too indirect about the risks. Consumer feedback after the changes to the air bag warning label indicate that the new air bag labels were noticed. Therefore, NHTSA is proposing to require the following similar statement on child restraints:

WARNING! DEATH OR SERIOUS INJURY CAN OCCUR

- Follow all instructions on this child restraint and in the written instructions located _____

This would be followed with additional bullets for any additional mandated statements, including the statement about maximum height and weight, and the statements about use of belts or other restraints. NHTSA is also proposing to require the heading (Warning! Death or Serious Injury Can Occur) to be in black text on a yellow background. NHTSA also requests comments on whether it should require or allow the alert symbol used on the air bag warning label (see Figure 10 in FMVSS No. 213).

C. Belt Use Statement (S5.5.2(h), S5.5.5(h) and S5.6.6)

Focus group participants criticized the term "snugly" used on child restraint labels as being too vague. NHTSA has not changed this language, because it would be difficult to have a more accurate description of how tightly belts should be adjusted on a label. However, NHTSA is requiring the following information to be included in the written instructions. This information is used in NHTSA's Standardized Child Passenger Safety Training Curriculum.

—A snug harness should not allow any slack. A snug harness should not, however, be so tight as to press into the child's body.

—A "snug" strap lies in a relatively straight line without sagging, but neither does it press on the child's flesh or push the child's body into an unnatural position.

D. Installation Diagram (S5.5.2(l))

NHTSA currently requires an installation diagram showing the child restraint installed in a seating position with a continuous-loop lap/shoulder belt and another diagram showing the child restraint installed in a seating position equipped with a lap belt. NHTSA is proposing to require an additional installation diagram showing the child restraint installed in a seating position with a child restraint anchorage system. By September 1, 2002, all child

[6] The mandatory language on the three samples scored differently depending on how the manufacturer had organized the information.

restraints are required to have attachments that work with these anchorages. Most new vehicles will have the child restraint anchorage system by the same date. NHTSA requests comments on whether the requirement for a diagram showing the child restraint installed in a seating position equipped with a lap belt can be deleted.

E. Registration Statement and Card (S5.5.2(m), S5.5.5(k) and S5.8)

Some focus group participants indicated that they would like to be able to register their child restraint via the internet. Currently, NHTSA requires a child restraint to be labeled with a statement about how to register the child restraint. NHTSA also requires a registration card to be attached to the child restraint that conforms to a specified format. In order to inform owners about the ability to register a child restraint via the internet, child restraint manufacturers could currently add an additional statement to a label or they could attach a separate card to the child restraint. Child restraint manufacturers could not modify the mandatory registration card. NHTSA requests comments on the availability now or in the future of online registration to determine whether the current requirements related to registration be modified to allow child restraint manufacturers the option of informing purchasers about this method of registration. Given that the current return rate on child restraint registrations is approximately 33%, NHTSA believes that anything which improves the number of registrations should be considered.

F. Harness Slot Labeling (S5.5.2(o) and S5.5.5(m))

NHTSA has decided to propose a requirement that all harness slot positions be labeled with information indicating the maximum height and weight of the children who should be restrained by the harness in the slot position. Child restraints are often misused because parents do not use the correct harness slots for the size child and/or seat orientation. In the event of a crash, the force of an older child loading harness strap slots that were designed only for the weight of an infant can result in structural damage to the child restraint and cause severe injury to the child.

A performance requirement is likely to have much higher costs than a labeling requirement. NHTSA also believes that more obviously available information about which harness slots to use can correct the misuse problem. In looking at labels and written instructions, NHTSA has found that this advice is often buried in the written instructions. As focus group participants stated, consumers often fail to read the written instructions unless they believe that they are having difficulty with the restraint. For these reasons, NHTSA has decided that it would be preferable to propose labeling to see if that can reduce the incidence of misuse. NHTSA will use child restraint fitting stations to determine if labeling has reduced the incidence of harness slot misuse, and if the problem continues will revisit the issue.

G. Reading Level Requirement

In the passive evaluation, sample labels were evaluated using the Flesch Reading Ease Score, the Flesch-Kincaid Grade Level Score, and the Simple Measure of Gobbledegook (SMOG). The Flesch Reading Ease Score, highly validated since its introduction in 1943, rates text on a 100-point scale in which the higher the score the easier it is to understand the material. The State of Indiana mandates that insurance policies sold in the state must have a Flesch Readability Ease score of 40 or better. The Flesch-Kincaid Grade Level Score converts the Reading Ease score to a U.S. grade-school level. The SMOG test is similarly based on a U.S. grade-school level and is intended to predict 90–100% comprehension. It is used extensively in health oriented literature.

NHTSA requests comments on whether it should mandate a minimum score on one or more of these standard tests. NHTSA believes such a requirement may be particularly useful if the final rule were to replace mandatory statements with requirements that certain topics are covered by labeling.

H. Other Information

In their comments on the child plan, Graco asked the agency to prohibit any labeling on child restraints other than that which is required or design specific instructions. NHTSA is not proposing such a prohibition. NHTSA prohibits information from being given to consumers in some limited situations. For example, vehicle manufacturers are prohibited from labeling sun visors with air bag information other than that required by NHTSA regulation because of concern that other information in close proximity to the required warnings would detract from the attention paid to those warnings. However, a broad prohibition such as Graco suggests would prevent manufacturers from providing supplementary information that could enhance the correct use of child restraints, or mitigate a safety problem that present labels do not address. Because supplementary information can benefit consumers, NHTSA is generally not prohibiting additional labeling. However, such supplementary labeling must not obscure or confuse the meaning of the required labeling, or be otherwise misleading to the consumer.

NHTSA has been asked in the past to limit the maximum height and weight recommendations to the size of the dummy used in the certifications tests. NHTSA has declined to make such a change in the past, and is not proposing such a change at this time either. In 1996, NHTSA denied a petition for reconsideration from Consumers Union (61 FR 30824, June 18, 1996). At the time, NHTSA expressed concerns that such a change would actually detract from safety, stating:

> Because 20 pounds is the weight of an average nine-month-old child, CU's approach would continue to limit weight recommendations in such a way as to possibly mislead consumers into thinking that an infant must be switched to face forward when the baby is only nine months old. This is likely to be before the infant's bones and muscular system have developed sufficiently to make seating the child in a forward facing position appropriate. Thus, CU's approach could have the unintended effect of detracting from the real-world safety needs of older infants (ages nine- to 12-months) to make such a change to the labeling requirements. (61 FR 30824, 30827)

NHTSA continues to believe this is true.

VIII. Future Research

Because of the tight deadline set for completion of this rulemaking action, NHTSA did not conduct additional research on the proposed changes to child restraint labels. NHTSA is confident that the proposed formatting and content changes to the mandatory warnings have reduced the grade level needed to read the labels. Figure 1 shows a label that is similar to some seen on child restraints today. Figure 2 shows an example of how the new warnings would look for an infant restraint. In addition, after reviewing the comments NHTSA may want to make further changes to the mandatory language and final version is the version that should be evaluated. NHTSA intends to conduct further passive analysis, at a minimum, prior to issuance of a final rule to verify that the changes have reduced the reading level necessary to comprehend the labels.

BILLING CODE 4910–59–P

Black Text with Gray Background

WARNING! Failure to follow each of the following instructions can result in your child striking the vehicle's interior during a sudden stop or crash. Secure this child restraint with a vehicle belt as specified in the manufacturer's instructions located on the bottom of the child restraint. Snugly adjust the belts provided with this child restraint around your child. Place this infant restraint in a rear-facing position when using it in a vehicle. This infant restraint is designed for use by children who weigh 20 pounds (9 kg) or less and whose height is 26 inches (61 cm) or less.

Figure 1-Sample Current Label

Black Text with Yellow Background

WARNING! DEATH OR SERIOUS INJURY CAN OCCUR

- Follow all instructions on this child restraint and in the written instructions located on the bottom of the restraint.
- Secure this child restraint with the vehicle's child restraint anchorage system if available or with a vehicle belt.
- Place this infant restraint in a rear-facing position when using it in the vehicle.
- Use only with children who weigh 20 pounds (9 kg) or less and height is 26 inches (61 cm) or less.
- Snugly adjust the belts provided with this child restraint around your child.
- Register your child restraint with the manufacturer.

Black Text with White Background

Figure 2-Sample Proposed Label

BILLING CODE 4910–59–C

IX. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant" under them. In the "Final Economic Assessment, FMVSS No. 213, FMVSS No. 225, Child Restraint Systems, Child Restraint Anchorage Systems," February 1999, the agency estimated that there were 68 fatalities and 874 injuries caused annually by misuse of child restraints. We are unable to estimate the effectiveness of these proposals on this target population, but by providing clearer instructions we expect to reduce misuse.

NHTSA anticipates that the cost of changing the location and text of the labels to be minor. There is a cost for adding color, estimated to be $.01 to $.03 per label. NHTSA requests comments on the cost of technologies such as molding or other technologies which would be used to meet the requirements of proposed S5.5.1 and S5.5.4.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96–354), as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment a preliminary regulatory flexibility analysis (PRFA) describing the impact of proposed rules on small entities. NHTSA has not included a PRFA in the PRE for this proposal. Of the 10 current child restraint manufacturers, 4 are small business. However, we do not believe this proposal adds a significant economic cost to child restraints.

Business entities are generally defined as small businesses by the North American Industry Classification System (NAICS) code, for the purposes of receiving Small Business Administration assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm. To qualify as a small business in the Motor Vehicle Seating and Interior Trim Category (NAICS 336360) or the All Other Transportation Equipment Manufacturing Category (NAICS 336999), the firm must have fewer than 500 employees. The agency has considered the small business impacts of this proposed rule based on this criterion.

C. Paperwork Reduction Act

The Department of Transportation has not submitted an information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The affected public is 10 child restraint manufacturers. Except for the proposal for harness slot labeling, this rule does not impose any new information collection requirements on manufacturers. NHTSA does not anticipate a significant change to the hour burden or costs associated with child restraint labels and written instructions.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

We have analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this proposal does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The proposed rule would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

F. Executive Order 12778 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this proposed rule. This proposed rule would not preempt the states from adopting laws or regulations on the same subject, except that it would preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

X. Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

I. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
II. On that page, click on "search."
III. On the next page type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1999–1234," you would type "1234." After typing the docket number, click on "search."
IV. On the next page, which contains docket summary information for the docket you selected, click on the desired comments.

You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Federal Motor Vehicle Safety Standards; Child Restraint Systems.

PART 571—[AMENDED] FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166 and 30177; delegation of authority at 49 CFR 1.50.

2. Section 571.213 would be amended by revising S5.5.1, the introductory text of S5.5.2, S5.5.2(f), S5.5.2(g), S5.5.2(k), S5.5.2(l), S5.5.3, S5.5.4, the introductory text of S5.5.5, S5.5.5(f), S5.5.5(g), and S5.5.5(j); and adding new sections S5.5.2(o), S5.5.5(m), S5.6.5, and S5.6.6 to read as follows:

§ 571.213 Standard No. 213; Child restraint systems.

* * * * *

S5.5.1 Each add-on child restraint system shall be permanently labeled with the information specified in S5.5.2(a) through (o). The information specified in (a) through (d) shall be molded or heat embossed on the shell on the rear surface of the structure supporting the child's back, or on the side of the restraint if the restraint does not have a back.

S5.5.2 The information specified in paragraphs (a) through (o) of this section shall be stated in the English language and lettered and numbered using Times New Roman font not smaller than 10 point. Unless otherwise specified, the information shall be labeled on a white background with black text.

* * * * *

S5.5.2(f) One of the following statements, inserting the manufacturer's recommendations for the maximum mass and height of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg:

(1) Use only with children who weigh __ pounds (__ kg) or less and whose height is (insert values in English and metric units; use of word "mass" in label is optional) or less; or

(2) Use only with children who weigh between __ and __ pounds (insert appropriate English and metric values; use of word "mass" is optional) and whose height is (insert appropriate values in English and metric units) or less and who are capable of sitting upright alone; or

(3) Use only with children who weigh between __ and __ pounds (insert appropriate metric values; use of word "mass" is optional) and whose height is (insert appropriate values in English and metric units) or less.

S5.5(g) The following statement specified in paragraphs (1) through (3):

(1) The statement WARNING! DEATH OR SERIOUS INJURY CAN OCCUR in all capitalized letters and in yellow with black text. This statement will be followed by the bulleted statements in the following order:

(i) Follow all instructions on this child restraint and in the written instructions located (insert storage location on the restraint for the manufacturer's installation instruction booklet or sheet).

(ii) Secure this child restraint with the vehicle's child restraint anchorage system if available or with a vehicle belt.

(2) As appropriate, the statements required by the following sections will be bulleted and placed after the statements required by 5.5.2(g)(1) in the following order: 5.5.2(k)(1)(i) or 5.5.2(k)(2)(i), 5.5.2(f), 5.5.2(h), 5.5.2(j), and 5.5.2(i).

(3) The statements required by 5.5.2(g)(1) and 5.5.2(g)(2) will be followed by the following statement:

Register your child restraint with the manufacturer.

* * * * *

S5.5(k)(1) In the case of each rear-facing child restraint system that is designed for infants only, the statement: Place this infant restraint in a rear-facing position when using it in the vehicle.

(2) In the case of a child restraint system that is designed to be used rearward-facing for infants and forward-facing for older children, the statement: PLACE THIS CHILD RESTRAINT IN A REAR-FACING POSITION WHEN USING IT WITH AN INFANT WEIGHING LESS THAN (insert a recommended weight that is not less than 20 pounds).

(3) Except as provided in paragraph (k)(4) of this section, each child restraint system that can be used in a rear-facing position shall have a label that conforms in content to Figure 10 of this section and to the requirements of S5.5.2(k)(3)(i) through S5.5.2(k)(3)(iii) of this standard permanently affixed to the outer surface of the cushion or padding in or adjacent to the area where a child's head would

rest, so that the label is plainly visible and easily readable.

(i) The heading area shall be yellow with the word "warning" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 square cm.

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 30 mm in diameter.

(4) If a child restraint system is equipped with a device that deactivates the passenger-side air bag in a vehicle when and only when the child restraint is installed in the vehicle and provides a signal, for at least 60 seconds after deactivation, that the air bag is deactivated, the label specified in Figure 10 of this section may include the phrase "unless air bag is off" after "on front seat with air bag."

S5.5.2(l) Installation diagrams and instructions.

(1) An installation diagram showing the child restraint system installed in:

(i) A seating position equipped with a continuous-loop lap/shoulder belt;

(ii) A seating position equipped with only a lap belt, as specified in the manufacturer's instructions; and

(iii) A seating position equipped with a child restraint anchorage system.

(2) Any installation diagrams and installation instructions labeled on child restraints shall be outlined in red for forward-facing use and blue for rearward-facing use. No other color shall be used for each orientation position.

* * * * *

S5.5.2(o) Except for child restraints with a single position for the harness straps, each child restraint system that has belts designed to restrain children using them shall have one of the following statements, inserting the manufacturer's recommendations for the maximum mass and height of children:

(1) Use only with children who weigh __ pounds (__ kg) or less and whose height is (insert values in English and metric units; use of word "mass" in label is optional) or less; or

(2) Use only with children who weigh between __ and __ pounds (insert appropriate English and metric values; use of word "mass" is optional) and whose height is (insert appropriate values in English and metric units) or less; or

(3) Use only with children who weigh more than ____ pounds (insert appropriate English and metric values; use of word "mass" is optional) and whose height is more than (insert appropriate values in English and metric units).

S5.5.3 The information specified in S5.5.2(e) through (j) and S5.5.2(l) through (n) shall be located on the add-on child restraint system so that it is visible when the system is installed as specified in S5.6.1.

S5.5.4 (a) Each built-in child restraint system other than a factory-installed built-in restraint shall be permanently labeled with the information specified in S5.5.5 (a) through (m). The information specified in (a) through (d) shall be molded or heat embossed on the shell. The information specified in S5.5.5(a) through (l) shall be visible when the system is activated for use. The information specified in S5.5.5(a) through (d) shall be located on the rear surface of the structure supporting the child's back, or on the side of the restraint if the restraint does not have a back.

(b) Each factory-installed built-in child restraint shall be permanently labeled with the information specified in S5.5.5(f) through (m), so that the information is visible when the restraint is activated for use. The information shall also be included in the vehicle owner's manual.

S5.5.5 The information specified in paragraphs (a) through (m) of this section that is required by S5.5.4 shall be in English and lettered in letters and numbers using Times New Roman Font not smaller than 10 point. Unless specified otherwise, the information shall be labeled on a white background with black text.

* * * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum mass and height of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg:

(1) Use only with children who weigh ____ pounds (____ kg) or less and whose height is (insert values in English and metric units; use of word "mass" in label is optional) or less; or

(2) Use only with children who weigh between ____ and ____ pounds (insert appropriate English and metric values; use of word "mass" is optional) and whose height is (insert appropriate values in English and metric units) or less and who are capable of sitting upright alone; or

(3) Use only with children who weigh between ____ and ____ pounds (insert appropriate English and metric values; use of word "mass" is optional) and whose height is (insert appropriate values in English and metric units) or less.

(g) The following statement specified in paragraph (1), and if appropriate, the statements in paragraph (2) and (3):

(1) The statement WARNING! DEATH OR SERIOUS INJURY CAN OCCUR in all capitalized letters and in yellow with black text. This statement will be followed by the bulleted statement: Follow all instructions on this child restraint and in the written instructions located (insert location).

(2) In the case of each built-in child restraint system which is not intended for use in motor vehicles in certain adjustment positions or under certain circumstances, an appropriate statement of the manufacturers restrictions regarding those positions or circumstances.

(3) As appropriate, the statements required by the following sections will be bulleted and placed after the statement required by 5.5.5(g)(1) in the following order: 5.5.5(g)(2), 5.5.5(f), S5.5.5(h) and S5.5.5(i).

* * * * *

(j) Installation diagrams and instructions.

(1) A diagram or diagrams showing the fully activated child restraint system in infant and/or child configurations.

(2) Any installation diagrams and installation instructions labeled on child restraints shall be outlined in red for forward-facing use and blue for rearward-facing use. No other color shall be used for each orientation position.

* * * * *

(m) Except for child restraints with a single position for the harness straps, each child restraint system that has belts designed to restrain children using them shall have one of the following statements, inserting the manufacturer's recommendations for the maximum mass and height of children:

(1) Use only with children who weigh ____ pounds (____ kg) or less and whose height is (insert values in English and metric units; use of word "mass" in label is optional) or less; or

(2) Use only with children who weigh between ____ and ____ pounds (insert appropriate English and metric values; use of word "mass" is optional) and whose height is (insert appropriate values in English and metric units) or less; or

(3) Use only with children who weigh more than ____ pounds (insert appropriate English and metric values; use of word "mass" is optional) and whose height is more than (insert appropriate values in English and metric units).

S5.6.5 Any installation diagrams and installation instructions included in the written instructions shall be outlined in red for forward-facing use and blue for rearward-facing use. No other color shall be used for each orientation position.

S5.6.6 The printed instructions for each child restraint system shall include the following statement:

(a) A snug harness should not allow any slack. A snug harness should not, however, be so tight as to press into the child's body.

(b) A "snug" strap lies in a relatively straight line without sagging, but does not press on the child's flesh or push the child's body into an unnatural position.

* * * * *

Issued on October 29, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–27545 Filed 10–30–01; 3:26 pm]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 66, No. 213
Friday, November 2, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01–036N]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The National Advisory Committee on Meat and Poultry Inspection (NACMPI) will hold a public meeting on November 14–15, 2001, to review and discuss two issues: (1) Retail Store Exemption-FSIS Current Thinking, and (2) Modernizing Standards of Identity for Meat and Poultry Products. Two subcommittees of the full Committee will also meet on November 14, 2001, to work on issues discussed during the full Committee session. All interested parties are welcome to attend the meetings and to submit written comments and suggestions concerning issues the Committee will review and discuss.

DATES: The full Committee will hold a public meeting on Wednesday, November 14, and Thursday, November 15, 2001 from 8:30 a.m. to 5 p.m. Subcommittees will hold open meetings on Wednesday, November 14, 2001 from 7 p.m. to 9 p.m.

ADDRESSES: All Committee meetings will take place at the Washington Plaza, 10 Thomas Circle, Washington, DC 20005; telephone (202) 842–1300. The full committee will meet in The National Hall on November 14–15, 2001. A meeting agenda is available on the FSIS Web site at *http://www.fsis.usda.gov/OPPDE/nacmpi*, which is a sub-web page of the FSIS homepage at *http://www.fsis.usda.gov*. A summary of the agenda may also be obtained from the contacts listed below. Submit one original and two copies of written comments to FSIS Docket Room, Docket #01–036N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street SW., Washington, DC 20250–3700. Comments may also be sent by facsimile (202) 205–0381. The comments and the official transcript of the meeting, when they become available will be kept in the FSIS Docket Room at the address provided above. All comments received in response to this notice will be considered part of the public record and will be available for reviewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles L. Gioglio for technical information at (202) 205–0256 and Sonya L. West for meeting information at (202) 720–2561, FAX (202) 205–0157, or e-mail *sonya.west@usda.gov*. Persons requiring a sign language interpreter or other special accommodations should notify Ms. West by November 6, 2001, at the above numbers or by e-mail. Information is also available on FSIS Web site at *http://www.fsis.usda.gov/OPPDE/nacmpi*.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2001, the Secretary of Agriculture renewed the charter for the NACMPI. The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the Federal and State meat and poultry inspection programs pursuant to sections 7(c), 24, 205, 301(a)(3), and 301(c) of the Federal Meat Inspection Act and sections 5(a)(3), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act. The Administrator of FSIS is the chairperson of the Committee. Membership of the Committee is drawn from representatives of consumer groups; producers, processors, and marketers from the meat and poultry industry; State government officials; and academia. The current members of the NACMPI are: Dr. Gladys Bayse, Spelman College; Nancy Donley, Safe Tables Our Priority; Sandra Eskin, American Association of Retired Persons; Carol Tucker Foreman, Food Policy Institute, Consumer Federation of America; Michael Govro, Oregon Department of Agriculture; Martin Holmes, North American Meat Processors; Dr. Lee C. Jan, Texas Department of Health; Dr. Alice Johnson, National Food Processors Association; Collette Schutlz Kaster, Premium Standard Farms; Dr. Daniel E. LaFontaine, South Carolina Meat Poultry Inspection Department; Dr. Irene Leech, Virginia Tech; Charles Link, Cargill Turkey Products; Dr. Catherine Logue, North Dakota State University; Michael Mamminga, Iowa Department of Agriculture; Dr. Dale Morse, New York Office of Public Health; and John Neal, Courseys Smoked Meats.

The Committee has two standing subcommittees to deliberate on specific issues and make recommendations to the whole Committee.

Members of the public will be required to register before entering the meeting.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could effect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: October 30, 2001.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 01–27538 Filed 10–30–01; 9:59 am]

BILLING CODE 3410–DM–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed additions and deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity and a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 3, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each commodity or service will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.
2. The action will result in authorizing small entities to furnish the commodity and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodity and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Stand, Office Machine
7110–00–601–9849
7110–01–136–1563
7110–00–601–9835
NPA: Knox County ARC, Knoxville, Tennessee
Government Agency: GSA/National Furniture Center for Zones 2 and 3

Services

Compact Disc Duplication and Printing, U.S. Department of Agriculture, Beltsville, Maryland
NPA: ServiceSource, Inc., Alexandria, Virginia
Government Agency: U.S. Department of Agriculture
Mailroom Operation, Federal Deposit Insurance Corporation, 1910 Pacific Avenue, Dallas, Texas
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas
Government Agency: Federal Deposit Insurance Corporation
Photocopying, James E. Van Zandt Veterans Affairs Medical Center, Altoona, Pennsylvania
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania
Government Agency: Department of Veterans Affairs

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodity and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for deletion from the Procurement List.

The following commodity and service are proposed for deletion from the Procurement List:

Commodity

Hood, Radioactive Contaminant Protective
8415–00–NSH–0027

Service

Janitorial/Custodial
U.S. Air Force Recruiting Station, Wasilla, Alaska

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–27570 Filed 11–1–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 3, 2001.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 31 and September 18, 2001 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 45959 and 48115) of proposed additions to the Procurement List.

The Following Comments Pertain to Milk, Non-Fat Dry, Instantized

Comments were received from the three current contractors for the dry milk, from workers at one of the designated nonprofit agencies, from five Members of Congress, two State representatives, and a county executive supporting the proposed addition to the Procurement List, and from two Members of Congress and two State legislators opposing the proposed addition. Congressional and State legislative opposition to the proposed addition focuses on one plant operated by one of the three current contractors, a very large business which will be only minimally impacted by the addition of dry milk to the Procurement List. That contractor told the Committee it intends to sell the plant to another of the current contractors for the dry milk, but will close it instead if the proposed addition is approved.

If this plant is closed, the contractor indicated that 22 people will lose their jobs, in an area where comparable employment is not easy to find locally. The proposed addition to the Procurement List, however, is projected to create over 100 jobs for people with severe disabilities, a group whose unemployment rate has recently been estimated to be 70 percent, well above the rate for other groups including those in the locality of the affected plant. Consequently, the Committee has concluded that the benefit to people with severe disabilities created by this Procurement List addition outweighs the harm which may be done to the plant's employees, who could more readily find other jobs.

The current contractor which intended to purchase the other contractor's plant informed the Committee that the proposed addition would have a serious impact on its plant which produces dry milk for the Government. Like the plant mentioned above, this contractor's plant has become increasingly dependent on Government sales in recent years as consumer use of dry milk has declined, to the point where such sales now represent a large minority of the plant's total sales. Loss of these sales, according to the contractor, will mean downsizing of the plant and loss of jobs for an unspecified number of its 61 workers.

As indicated above, the Committee believes that any job loss at this contractor's plant would be outweighed by the creation of a larger number of jobs for people with severe disabilities. In addition, the four nonprofit agencies designated to supply the Government with the dry milk intend to subcontract the instantizing process to an approved supplier. This contractor is one of the approved suppliers with which the nonprofit agencies are negotiating. If this contractor supplies instantized milk to the nonprofit agencies, the job losses at its plant should be less than it currently estimates.

Both these contractors noted that there are health issues involved in the production of instantized dry milk, and that their plants are certified by the U.S. Department of Agriculture (USDA) as meeting the health standards for dry milk production. USDA has informed the Committee that the designated nonprofit agencies either have been certified as meeting these standards or are in the process of being certified.

The third current contractor informed the Committee that it is a small business, and that USDA policy prohibits the transfer of contracts from successful contractors such as itself to the Committee's program. USDA has informed the Committee that it has no such policy.

The contractor claimed that it would be severely impacted by not being able to recoup its investment in equipment and processes needed to produce the dry milk through further Government contracts. The contractor also claimed that the process of having the milk instantized by a subcontractor in bulk and shipped to the nonprofit agencies for packaging at their locations would destroy the effects of the instantizing and make the milk unable to meet Government quality standards, as well as raising the price to the Government. The contractor provided a letter from its instantizing subcontractor which noted that losing this contract could result in job losses for employees with disabilities at the subcontractor's plant.

By its own admission, this contractor is an "autonomous subsidiary" of a larger entity, which is not a small business. The Committee looks at the entire corporate structure of an affected contractor when assessing impact of a Procurement List addition. 41 CFR 51–2.4(a)(4)(A). Loss of the dry milk contract would not cause a severe impact on the larger corporate entity. The contractor has only been producing dry milk for USDA for a short time, so it cannot be said to be dependent on this contract. Because of the competitive bidding requirement, the contractor cannot rely on the possibility of retaining the contracts for an item long enough to recoup a substantial investment. Accordingly, the Committee does not consider the frustration of this expectation to constitute severe adverse impact on the contractor.

USDA has informed us that instantized milk can be successfully shipped in bulk without noticeably reducing the quality of the milk, and such shipments are the norm in the dry milk industry. The designated nonprofit agencies are considering using the instantizing subcontractor mentioned in the previous paragraph to do their instantizing, in which case any loss of jobs by that company would be less than the subcontractor has predicted. The price of the dry milk would not be increased beyond the level of a fair market price as a result of this addition to the Procurement List.

For the reasons stated in the above paragraphs, the Committee has concluded that this addition to the Procurement List is not likely to have a severe adverse impact on the three current suppliers of this dry milk. However, in order to provide a more orderly transition from commercial suppliers to the Committee's program, and to mitigate the immediate impact of the addition on those suppliers, the Committee has agreed to a partial waiver of its mandatory source authority over the dry milk, in the amount of 34 percent of USDA's supply requirement, for a period not to exceed one year.

The Following Material Pertains to All of the Items Being Added to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and service.

3. The action will result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodity and service proposed for addition to the Procurement List.

Accordingly, the following commodity and service are added to the Procurement List:

Commodity

Milk, Non-Fat Dry, Instantized

8910–00–NSH–0002

Service

Office Supply Store

Federal Aviation Administration, Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–27571 Filed 11–1–01; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4 p.m. on Friday, November 30, 2001, at the Albuquerque Marriott, 2101 Louisiana Boulevard NE, Albuquerque, New Mexico 87110. The purpose of the meeting is to discuss civil rights issues in New Mexico and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 29, 2001.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 01–27556 Filed 11–1–01; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 42–2001]

Foreign-Trade Zone 204—Tri-Cities Area (TN/VA); Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Tri-Cities Airport Commission, grantee of Foreign-Trade Zone 204, requesting authority to expand its zone in the Tri-Cities area (TN/VA). The Tri-Cities Regional Airport has been designated a Customs user fee facility by the U.S. Customs Service. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 26, 2001.

FTZ 204 was approved on October 21, 1994 (Board Order 706, 59 FR 54432, 10/31/94). The zone project currently consists of the following sites in the Tri-Cities area: *Site 1* (1,040 acres)—Tri-Cities Regional Airport complex, Blountville (Sullivan County), TN; *Site 2* (440 acres)—St. John/Eldred Business Park, Johnson City (Washington County), TN; *Site 3* (330 acres)—Northeast Tennessee Business Park, adjacent to the Tri-Cities Regional Airport, Kingsport (Sullivan County), TN; *Site 4* (129 acres)—Bristol Tennessee Industrial Park, Bristol (Sullivan County), TN; *Site 5* (750 acres)—Tri-County Industrial Park, Piney Flats (Sullivan County), TN; *Site 6* (206 acres)—Regional Med-Tech Center, Johnson City (Washington County), TN; and, *Site 7* (103 acres)—Linden/Hairston Industrial Park, Linden Drive at Bonham Road, Bristol, VA.

The applicant is now requesting authority to expand the general-purpose zone to include two new sites in the Tri-Cities area (Proposed Sites 8 and 9): *Proposed Site 8* (3,000 acres)—Holston Business and Technology Park, 4509 West Stone Drive, Kingsport (Hawkins County), TN; and, *Proposed Site 9* (134 acres)—Washington County Industrial Park, Cherry Hill Road, Johnson City (Washington County), TN. Proposed Site 8 is part of the Holston Army Ammunitions Plant which is owned by the U.S. Department of the Army and being converted to commercial use. BAE Systems has entered into a facilities use contract with the U.S. Department of Army to manage, maintain, operate and develop the facility for commercial use. BAE's plans include the development of the industrial park described above. Proposed Site 9 is owned by Washington County. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099—14th St., NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is January 2, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 6, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Greater Tri-Cities Foreign-Trade Zone, 2525 Highway 75, Air Cargo Terminal Building, Suite 103, Blountville, TN 37617.

Dated: October 29, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–27622 Filed 11–1–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Notice of Amended Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final determination of sales at less than fair value.

EFFECTIVE DATE: November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge, Mike Heaney, or Robert James, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482–3518, (202) 482–4475, or (202) 482–0649, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR part 351 (2000).

Amendment to the Final Determination

On September 21, 2001, the Department determined that certain hot-

rolled carbon steel flat products (hot-rolled) from the Netherlands are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735(a) of the Tariff Act. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands, 66 FR 50408 (October 3, 2001) (Final Determination). On October 3, 2001, respondent Corus Staal BV (Corus Staal) timely filed an allegation that the Department had made two ministerial errors in its final determination. Petitioners (United States Steel LLC, Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel, Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, and Steel Dynamics, Inc.) also timely alleged several ministerial errors on October 3, 2001. Both interested parties requested that we correct the errors and publish a notice of amended final determination in the **Federal Register**. See 19 CFR 351.224(e). In addition, on October 9, 2001, petitioners filed comments in rebuttal of one of Corus Staal's alleged errors.

Corus Staal's submission alleges the following errors:

- The Department inadvertently applied the revised inland freight expense for sales by Rafferty-Brown of North Carolina (RBN) to all U.S. sales; and
- The Department inadvertently treated all U.S. sales as export price (EP) sales when it intended to treat only sales of tolled subject merchandise as EP sales.

See Letter, Steptoe & Johnson LLP, October 3, 2001 passim.

In their rebuttal submission petitioners note that the treatment of all U.S. sales as EP sales by the Department was not a ministerial error, and that the Department intended to treat all U.S. sales as EP sales.

Petitioners' submission alleges the following errors:

- The Department double-counted early payment discounts for both Laura Metaal BV and Namascor BV;
- The Department double-counted a rebate for one customer which was reported incorrectly as a billing adjustment and correctly as a rebate;
- The Department inadvertently applied the revised warranty expense factor for sales made by RBN to all U.S. sales instead of only to RBN sales;
- The Department failed to correctly adjust the billing adjustments for certain U.S. sales on an invoice-specific basis, the Department applied an adjustment rate to all U.S. sales and not only to the sales in question, the Department then failed to recalculate credit for the invoices in question, and the Department applied the incorrect factor to adjust the respondent's billing adjustments;
- The Department attempted but failed to adjust further manufacturing costs for certain sales by Rafferty-Brown of Connecticut; and
- Finally, the Department inadvertently omitted changes in the margin calculation and model match programs which would have revised costs for one model, as intended by the Department and stated in its Memorandum from Heidi Norris to Neal Halper, Director of Office of Accounting, re: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination (Sept. 19, 2001) at 1–2.

See Letter, Skadden, Arps, Slate, Meagher & Flom LLP, October 3, 2001 passim.

The Department's regulations define a ministerial error as one involving "addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication or the like, and any other similar type of unintentional error which the Secretary considers ministerial." 19 CFR 351.224(f).

After reviewing both parties' allegations and petitioners' rebuttal we have determined, in accordance with 19 CFR 351.224, that the Final Determination includes several ministerial errors. As to Corus Staal's allegations, we agree with Corus Staal that each of the points raised by Corus Staal constitutes a ministerial error. See Memorandum For Richard Weible; "Allegations of Ministerial Errors; Final Determination in the Investigation of Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands' (Ministerial Errors Memorandum), dated October 23, 2001, a public version of which is on file in room B–099 of the main Commerce building, and the Final Determination, 66 FR at 50408.

Finally, we agree that, with the exception of one allegation, the errors alleged by petitioners represent ministerial errors and have been corrected for this amended final determination. The alleged ministerial error with which we do not agree is petitioners' belief that the Department's methodology for adjusting the respondent's billing adjustments constituted a ministerial error. For a detailed description of each of these allegations and, where applicable, our resultant corrections, see the Ministerial Errors Memorandum. Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of certain hot-rolled carbon steel flat products from the Netherlands. The revised weighted-average dumping margins are in the **Amended Final Determination section, below.**

Scope of the Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation. Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which:(i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., ASTM specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this investigation is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Amended Final Determination

We are amending the final determination of the antidumping duty investigation of Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands to reflect the correction of the above-cited ministerial errors. The revised final weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Corus Staal BV (Corus Staal)	2.59
All Others	2.59

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing the United States Customs Service (Customs) to continue suspending liquidation on all imports of the subject merchandise from the Netherlands. Customs shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which normal value exceeds the export price as indicated in the chart above. These suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission of our amended final determination. This determination is issued and published in accordance with section 736(d) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 24, 2001.

Richard W. Moreland,

Acting Assistant Secretary, for Import Administration.

[FR Doc. 01–27621 Filed 11–1–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Notice of Extension of Final Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of final results of antidumping duty administrative review.

EFFECTIVE DATE: November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James Doyle, Office IX, DAS Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6412 and (202) 482–0159, respectively.

Extension of Final Results

The Department of Commerce ("the Department") is postponing the final results in the antidumping duty administrative review of Certain Stainless Steel Butt-Weld Pipe Fittings ("SSBWPF") from Taiwan. The deadline for issuing the final results in this administrative review is currently November 9, 2001.

On July 31, 2000, the Department published a notice of initiation of this antidumping duty administrative review for the period of June 1, 2000 through May 31, 2001. *See Notice of Initiation of Antidumping or Countervailing Duty Administrative Reviews and Requests for Revocation in Part* 65 FR 46687 (July 31, 2000). On July 12, 2001, the Department published the preliminary results of this review (66 FR 36555). The date for issuing the final results of the review is currently November 9, 2001.

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the final results within 120 days from the date of publication of the preliminary results, the administering authority may extend the period within which to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is impracticable for the following reasons: (1) This review involves certain complex United States indirect selling expense issues including, but not limited to, financial statements and interest expenses; (2) this review involves certain complex Constructed Export Price ("CEP") adjustments including, but not limited to, CEP profit

and CEP offset; (3) this review involves certain complex warehouse expenses in the United States including, but not limited to, inland freight and inventory; (4) there is a concurrent scope analysis underway in this same proceeding.

Because it is not practicable to complete the review within the time specified, we are extending the time limit for the final results of the administrative review of SSBWPF from Taiwan by 30 days, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

The date for issuing the final results is extended from November 9, 2001 to December 9, 2001.

Dated: October 25, 2001.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–27620 Filed 11–1–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Stainless Steel Sheet and Strip in Coils From France: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the review of stainless steel sheet and strip in coils from France. This review covers the period January 4, 1999 through June 30, 2000.

EFFECTIVE DATE: November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Bolling at (202) 482–3434; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce ("the Department") to issue the final results of an antidumping duty investigation within 120 days of the date on which the preliminary results are published. However, if the Department concludes that it is not practicable to issue the results by the original deadline, it may extend the 120-day period to 180 days.

Background

On September 6, 2000, the Department published a notice of initiation of the administrative review of stainless steel sheet and strip in coils from France, covering the period January 4, 1999 through June 30, 2000 (65 FR 53980). *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 65 FR 53980 (September 6, 2000). The preliminary results were published in the **Federal Register** on August 8, 2001. *See Stainless Steel Sheet and Strip in Coils from France: Notice of Preliminary Results of Antidumping Duty Administrative Review* ("*Preliminary Results*"), 66 FR 41538 (August 8, 2001). The current due date for the final results is December 6, 2001.

Extension of Time Limits for the Final Results

Due to the complexity of issues, such as home market affiliated downstream sales, U.S. further manufacturing sales of five entities, and complicated cost accounting issues present in this administrative review, it is not practicable to complete this review with the original time limit. *See* Memorandum from Edward C. Yang to Joseph A. Spetrini, *Extension of Time Limit for the Preliminary Results of Administrative Review of Certain Stainless Steel Sheet and Strip in Coils from France*, on file in the Central Records Unit (CRU) of the Main Commerce Building, Room B–099. Therefore, the Department has postponed the deadline for issuing the final results until February 4, 2002, which is 180 days after publication of the *Preliminary Results*.

Dated: October 25, 2001.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–27619 Filed 11–1–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) is seeking applicants for the following four seats on its Sanctuary Advisory Council (Council): Conservation, Tourism, Education, and Diving. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve three-year terms, ending on February 1, 2005, pursuant to the Council's Charter.

DATES: Applications are due by December 14, 2001.

ADDRESSES: Application kits may be obtained Karen Grimmer at the Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Karen Grimmer at (831) 647–4253, or *Karen.Grimmer@noaa.gov*.

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 (the current Council has served since February 2001) to assure continued public participation in the management of the Sanctuary. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary along the central California Coast.

The Council's nineteen voting members represent a variety of local user groups, as well as the general public, plus seven local, state and federal governmental jurisdictions. In addition, the respective managers for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

The Council is supported by four working groups: The Research Activity Panel (RAP) chaired by the Research Representative, the Sanctuary Education Panel (SEP) chaired by the Education Representative, the Conservation Working Group (CWG) chaired by the Conservation Representative, and the Business & Tourism Activity Panel (BTAP) chaired by the Business/Industry Representative, each dealing with matters concerning research, education and resource protection. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Council and the Sanctuary Superintendent.

The Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

Authority: 16 U.S.C. 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 25, 2001.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–27615 Filed 11–1–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for a new collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This is a proposed collection of information not previously approved by the Office of Management and Budget.

DATES: Consideration will be given to all comments received by December 3, 2001.

Title and OMB Number: Air Force Research Laboratory Public Awareness Survey; OMB Number 0701–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 441.

Responses Per Respondent: 1.

Annual Responses: 441.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 110.

Needs and Uses: The Air Force Research Laboratory will use this information collection to serve as a basis to educate and communicate to the public contributions the Research Laboratory plays in developing the Air Force of the future. As such, it is imperative the Research Laboratory understands the current level of information the average Air Force member has regarding the laboratory's contributions. With this information, the Air Force Research Laboratory will be better able to develop communication strategies to employ with the public.

Affected Public: Individuals or Households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 24, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27517 Filed 11–1–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant an Exclusive License of a U.S. Government-Owned Patent; Correction

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice; correction.

SUMMARY: The U.S. Army Medical Research and Materiel Command published a document in the **Federal Register** of October 18, 2001, concerning intent to grant an exclusive license of a U.S. Government-owned patent. Inadvertently, the incorrect information was provided under the summary.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

Correction

In the **Federal Register** of Oct 18, 2001, in FR Doc. 01–26191, on page 52898, in the second column, correct the **SUMMARY** caption to read:

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. patent number 5,607,979 issued March 4, 1997 entitled "Topical Skin Protectants" to DFB Pharmaceuticals, Inc with its principal place of business at 3909 Hulen Street, Fort Worth, Texas 76107.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–27627 Filed 11–1–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Critical Care Platform Litters

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/961,405 entitled "Critical Care Platform for Litters" and filed September 25, 2001. Foreign rights are also available (PCT/US01/29848). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention includes a platform having a support surface, a pair of legs connected to the support surface, and footings and securing mechanism on the legs for attaching the invention to a litter that satisfies NATO requirements. The invention attaches to the poles used to carry a patient on a litter such that the invention provides space for the patient's legs to pass under if necessary. A further embodiment of the invention adds at least one accessory clip, which includes at least one attachment for a piece of medical equipment such as medical monitors, ventilators, and infusion pumps.

Luz D. Ortiz,

Army Federal Register.

[FR Doc. 01–27633 Filed 11–1–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patent Application for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: U.S. Army Soldier and Biological Chemical Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209 and 37 CFR part 404 announcement is made of the availability for licensing of the following U.S. Patent application for non-exclusive, exclusive, or partially exclusive licensing. The patent application listed below has been assigned to the United States Government as represented by the Secretary of the Army, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John Biffoni, Intellectual Property Attorney, U.S. Army SBCCOM, ATTN: AMSSB–CC (Bldg E4435), APG, MD 21010–5424, Phone: (410) 436–1158; FAX: 410–436–2534 or e-mail: *John.Biffoni@sbccom.apgea.army.mil.*

SUPPLEMENTARY INFORMATION:

Title: "Immunoassay and Reagents and Kits for Performing the Same."

Description: The present invention relates to novel immunoassay methods and devices or kits that utilize a sandwich assay for detection of an antigen or hapten in a sample, particularly a biological sample. In a preferred embodiment, the present invention relates to a simple one-step electrochemiluminescent (ECL) assay approach that requires approximately 15 minutes for identification and/or quantification of an antigen or analyte. The present invention also relates to reagents and kits useful for carrying out such immunoassays.

Patent Application Number: 09/433,787.

Filing Date: November 3, 1999.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–27629 Filed 11–1–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: U.S. Army Soldier and Biological Chemical Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1) and 35 U.S.C. 209 announcement is made of the availability for licensing of the following U.S. Patents for non-exclusive, exclusive or partially exclusive licensing. All of the patents listed below have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Gross, Technology Transfer Office, U.S. Army SBCCOM, ATTN: AMSSB–RAS–C, 5183 Blackhawk Road (Bldg E3330/245), APG, MD 21010–5423, Phone: (410) 436–5387 or e-mail: *rlgross@sbccom.apgea.army.mil.*

SUPPLEMENTARY INFORMATION: The following Patent Numbers, Titles, Issue Dates and a Brief Summary are provided:

"Method and Kit for Rapid Detection of Toxins and Bacteria", U.S. Patent 5,994, 067 Issued November 30, 1999

The present invention relates to toxin detection methods using bacteria stained with a fluorescent indicator. The invention also relates to methods of detecting bacteria using fluorescent indicators.

"Solid Particle Aerosol Belt and Dissemination Method", U.S. Patent 6,170,234 Issued January 9, 2001

The present invention relates to a device and method that provide easy handling and dissemination of the solid particle aerosol material. The device and method permit the rapid and efficient dissemination of solid particle aerosol into the atmosphere for military and civilian purposes.

"Analytical Methodology for Qualitative and Quantitative Determination of Chemical Agent Vapor" U.S. Patent 6,174,732 Issued January 16, 2001

The present invention is a method for determining O-ethyl S (2-diisopropylanimoethyl) methylphosphonothiolate; better known as VX, vapor. This invention permits the generation of a purer non-contaminated VX vapor and the analytical determination of the VX samples collected under various relative humidity conditions.

"Advanced Chemical Biological Mask" U.S. Patents 6,176,239 Issued January 23, 2001

This invention is directed to an advanced chemical-biological mask for protecting a wearer from chemical and biological environmental contaminants. The mask is especially suitable for military applications, but is of interest in any civil emergency situation where highly toxic substances are in the atmosphere.

"Rapid Identification of Bacteria by Mass Spectrometry" U.S. Patent 6,177,266 Issued January 23, 2001

This invention relates to a method for the chemotaxonomic classification of bacteria with genus, species and strain specific biomarkers generated by matrix assisted laser desorption ionization time-of-flight mass spectrometry (MALDI–TOF–MS) analysis of either cellular protein extracts or whole cells.

"Alarm System for Hand-Held Chemical Monitor" U.S. Patent 6,191,696 Issued February 20, 2001

The present invention relates to an alarm system, which is capable of being interfaced with portable chemical monitors. The alarm system is for the Chemical Agent Monitor (CAM) and Improved Chemical Agent Monitor (ICAM).

"Environmental Material Ticket Reader and Airborne Hazard Detection System" U.S. Patent 6,228,657 Issued May 8, 2001

The present invention relates to a reader device that automatically reads collection elements for determining the presence of hazardous material, such as biological and chemical agents. The reader device may be used with a modified M256 ticket or other types of collection elements.

"Universal Decontaminating Solution for Chemical Warfare Agents" U.S. Patent 6,245,957 Issued June 23, 2001

The present invention is a composition, and a method that uses the composition, which decontaminate nerve and mustard chemical warfare agents. The composition is generally non-toxic to handling personnel prior to its use as a decontaminate for chemical warfare agents.

"Detector for Nucleic Acid Typing and Methods of Using the Same" U.S. Patent 6,238,866 Issued May 29, 2001

The present invention provides devices and methods for detecting or characterizing a nucleic acid analyte without requiring electrophoresis or the direct sequencing of analyte samples or analyte fragments.

"System and Method for Remote Detection of Hazardous Vapors and Aerosols" U.S. Patent 6,266,428 Issued July 24, 2001

The invention pertains generally to a system and method for remote detection and warning of hazardous vapors and aerosols and in particular to a system and method for imaging hazardous clouds.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–27628 Filed 11–1–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Draft Detailed Project Report and Environmental Impact Statement (DPR/EIS), Marlinton Local Protection Project, Marlinton, Pocahontas County, WV

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE), Huntington District has prepared a Draft Detailed Project Report and Environmental Impact Statement (DEIS) in response to section 579 of the Water Resources Development Act of 1996 (WRDA). This act authorizes the Corps to design and implement flood damage reduction measures for certain named communities in the Greenbrier River Valley. The report focuses on providing protection for the Town of Marlinton, Pocahontas County, West Virginia against flooding such as occurred in November 1985, January 1996 and May 1996.

The purpose of the Corps action would be to implement a local protection measure that would reduce or eliminate the damages associated with flood-stage flows of the Greenbrier River and Knapp Creek near Marlinton to the elevation of the 1985 flood of record.

DATES: The agency must receive comments on or before December 21, 2001. A public hearing on the Marlinton Local Protection Project Draft DPR/EIS will be held at the Marlinton Town Hall auditorium, 709 2nd Avenue, Marlinton, Pocahontas County, West Virginia on Thursday, December 6, 2001, beginning at 7 PM.

ADDRESSES: Send written comments and suggestions concerning this proposed project to S. Michael Worley, PM–PD, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, West Virginia 25701–2070. Telephone: (304) 529–5636. Requests to be placed on the mailing list should also be sent to this address. Submit electronic comments in ASCII, Microsoft Word, or Word Perfect file format to *Stephen.M.Worley@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the proposed project, contact Karen Miller, PM–PD–F, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, West Virginia 25701–2070. Telephone: 304–529–5638. Electronic mail: *Karen.V.Miller@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Detailed project studies have included consideration of a number of basin-wide and local flood damage reduction measures including mainstem dams and reservoirs, tributary impoundments, floodwall/levee combinations, channel modification and various non-structural measures. As part of the Marlinton Local Protection Project study, various alternatives considered were found effective for protecting Marlinton from the 1985 flood of record, including: floodwall/levee, floodwall/levee with diversion of the lower portion of Knapps Creek, and floodproofing and structure relocation options. More detailed evaluations determined that all the alternatives except levee/floodwall combinations and stream diversion were ineffective, very costly and/or too disruptive to the community. The most effective plans are a levee/floodwall combination for Marlinton including Riverside, and a levee/floodwall combination with diversion of Knapps Creek. These two alternatives along with the no action alternative have been evaluated in detail and the results documented in this report and EIS.

A public hearing on the Marlinton Local Protection Project Draft DPR/EIS will be held at the Marlinton Town Hall auditorium on Thursday, December 6, 2001, beginning at 7 PM. The hearing will provide an opportunity for the public to present oral, or written comments.

USACE has distributed copies of the Draft EIS to appropriate Members of Congress, State and local government officials in West Virginia, Federal agencies, and other interested parties. Copies of the document may be obtained by contacting USACE Huntington District Office of the Corps of Engineers (See **ADDRESSES**) and are available for public review at the following locations:

(1) McClintic Library, 500 8th Street, Marlinton, WV 24954.

(2) Hillsboro Library, HC 64, Box 398, Hillsboro, WV 24954.

(3) Durbin Library, P.O. Box 333, Durbin, WV 26264.

(4) Green Bank Library, P.O. Box 1, Green Bank, WV 24944.

(5) U.S. Army Corps of Engineers, Room 3100, 502 Eighth Street PD–R, Huntington, WV 25701.

(6) Internet—*http://www.lrh.usace.army.mil/pd/MarlintonLPP/.*

After the public comment period ends on December 21, 2001, USACE will consider all comments received, revise the Draft EIS as appropriate, and issue a Final EIS.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–27631 Filed 11–1–01; 8:45 am]

BILLING CODE 3710–GM–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Missouri River Fish and Wildlife Mitigation Project Located on the Missouri River From Sioux City, IA to the Mouth Near St. Louis, MO in the States of Iowa, Nebraska, Kansas and Missouri

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The purpose of the DSEIS is to identify and evaluate the potential environmental impacts associated with the reauthorized Missouri River Fish and Wildlife Mitigation Project and to provide this information in the form of a Draft Supplemental Environmental Impact Statement. The reauthorized project includes the development, restoration, or enhancement of an additional 118,650 acres on individual sites purchased from willing sellers. The project study area is located along 735 miles of the Missouri River from Sioux City, Iowa to the mouth near St. Louis, Missouri. The reauthorized project is a continuation of the Missouri River Mitigation Project authorized in 1986 for 48,100 acres currently being developed on over 20 individual sites. The purpose of the mitigation project is to restore fish and wildlife habitat losses resulting from the construction and development of the Missouri River Bank Stabilization and Navigation project.

FOR FURTHER INFORMATION CONTACT: Mr. Kelly Ryan, Civil Works Branch, ATTN: CENWK–PM–CJ, U.S. Army Engineer District, Kansas City, 601 East 12th Street, Kansas City, Missouri, 64106–2896, Phone: 816–983–3324.

SUPPLEMENTARY INFORMATION:

1. The Kansas City District, Corps of Engineers, is the lead District in undertaking a DSEIS to supplement the EIS prepared for the Missouri River Fish and Wildlife Mitigation Project authorized by section 601(a) of the 1986 Water Resources Development Act (WRDA86). WRDA86 authorized 48,100 acres for mitigation. Section 334(a) of WRDA99 modifies the authority of the Mitigation Project for an additional 118,650 acres.

2. The DSEIS will evaluate the no action alternative and other reasonable alternatives that may be identified during the public scoping process. The proposed action will include the acquisition of sites from willing sellers and the construction of mitigation sites designed to develop, restore or enhance aquatic and terrestrial habitat.

3. Scoping Process

a. The DSEIS public involvement program will include nine pubic scoping meetings that will use an open house format to obtain input from Native American tribes, government agencies, non-government organizations, and the general public. Tribes, individuals, organizations, and government agencies may participate in the scoping process by written comment and/or by attending a scoping meeting. The scoping meetings will be held at the following locations.

November 13, 2001: Sidney, Iowa—Sidney Elem. School, Cafeteria, 1004 Illinois Street.

November 14, 2001: Onawa, Iowa—West Monona Community High School, Commons Area, 1314 15th Street.

November 15, 2001: St. Joseph, Missouri—St. Joseph Civic Center, Meeting Room, 100 N. 4th Street.

November 19, 2001: Blair, Nebraska—Arbor Park Elementary School, Cafeteria, 1717 Adams Street.

November 26, 2001: Leavenworth, Kansas—Riverfront Community & Convention Center, Riverview Rm, 123 S. Esplanade.

November 27, 2001: Columbia, Missouri—Columbia College, Delaney Hall Banquet Room, 600 N. 8th Street.

November 28, 2001: Lexington, Missouri—Lexington High School, Cafeteria, 2309 Aull Lane.

November 29, 2001: Plattsmouth, Nebraska—Plattsmouth High School, Commons Area, 1916 E. Hwy 34.

December 5, 2001: Washington, Missouri—Washington West Elementary, 1570 W. 5th Street.

All meetings will be held from 5 p.m. to 8:30 p.m. CST.

b. The times and locations of the meetings will also be announced in a primary paper serving each county along the river and by notice sent to parties on the mailing list maintained for this project. The Corps of Engineers encourages participation of affected Native American tribes, affected Federal, State, and local agencies, and other individuals and organizations.

c. Agency scoping and preparation of the DSEIS will be conducted with appropriate Federal and state environmental and natural resource management agencies.

4. The anticipated date of availability of the DSEIS for public review is in the spring of 2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–27632 Filed 11–1–01; 8:45 am]

BILLING CODE 3710–KN–M

DEPARTMENT OF DEFENSE

Department of Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Va Shly'ay Akimel Salt River Restoration Project, Maricopa County, AZ

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District intends to prepare an Environmental Impact Statement (EIS) to support the proposed study for the Salt River Pima-Maricopa Indian Community and the City of Mesa. The Va Shly'ay Akimel study area is located in the upper Sonoran Desert in the Salt River watershed. It includes portions of the Salt River Pima-Maricopa Indian Community and the City of Mesa, and includes upland ares around the vicinity of the Salt River between the Pima Freeway (US 101) and Granite Reef Dam. The study area will be refined during the course of the study to include appropriate areas of consideration in accordance with the general study objectives.

The proposed project involves restoration of riparian habitat along the Salt River in Maricopa County, also increased recreational opportunities consistent with ecosystem restoration.

ADDRESSES: Commander, U.S. Army Corps of Engineers, Attn: Stephen Dibble, CESPL–PD–RN, Los Angeles District, Ecosystem Planning Section, P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Dibble, Environmental Manager, at (213) 452–3849. He can also be reached by e-mail at *ddibble@spl.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Study Authority:* This study would be conducted under two separate authorities provided by Congress. The first and most recent authority is provided by House Resolution 2425 (HR 2425), dated May 17, 1994. The second authority is given in Public Law 761, Seventy-fifth Congress, known as Section 6 of the Flood Control Act of 1938.

2. *Proposed Action:* Provide for restoration of riparian habitat, increase recreation facilities, and flood protection. The U.S. Army Corps of Engineers (USACE) intends to prepare a Draft EIS to assess the environmental effects associated with the proposed VA Shly'ay Akimel project. The Environmental Impact Statement will evaluate impacts of viable alternatives along with a No Action Alternative. Resources categories that will be analyzed in the EIS are: land use, physical environment, geology, biological, agricultural, air quality, water quality, groundwater, recreational usage, aesthetics, cultural resources, transportation/communications, hazardous waste, socioeconomic and safety. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

3. *Scoping Process:* The Corps will conduct a scoping meeting prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and potential mitigation measures associated with the proposed action.

A public scoping meeting will be held in conjunction with the local sponsor to discuss the project scope and invite public participation in developing alternatives for the project. Individuals and agencies may offer information or data relevant to the environmental or socioeconomic impacts by attending the public scoping meeting, or by mailing the information to the above address.

4. *Public Scoping Meeting:* A public scoping meeting will be held in November 2001. The location, date, and time of the public scoping meeting will be announced by means of letter, public announcements and news releases.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–27630 Filed 11–1–01; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Transfer and Reuse of the Naval Weapons Industrial Reserve Plant, Bethpage, NY

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy announces its decision to transfer the Naval Weapons Industrial Reserve Plant, at Bethpage, New York, to Nassau County, New York.

SUPPLEMENTARY INFORMATION: Pursuant to the Defense Authorization Act for Fiscal Year 1998, section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, and the Council on Environmental Quality Regulations for implementing NEPA procedures (40 CFR parts 1500–1508), the Department of the Navy (Navy) announces its decision to transfer the Naval Weapons Industrial Reserve Plant Bethpage (NWIRP) to Nassau County, New York. The conveyance and subsequent reuse of this property will be in accordance with the preferred alternative as described in the Final Environmental Impact Statement (FEIS).

Background

NWIRP Bethpage is located in the hamlet of Bethpage, town of Oyster Bay, and consists of two land parcels encompassing about 109.5 acres. The larger parcel (105 acres) contains Plant 3; Plant 10; Buildings 4–9 (north warehouses); Buildings 11–20 (south warehouses); and 30 Navy-owned ancillary buildings. The smaller parcel (4.5 acres) contains Plant 20 and one out-building. In addition to these land holdings, the transfer of NWIRP Bethpage includes Plant 5, a Navy-owned research and development building, and six other Navy-owned buildings located on land owned by the Northrop Grumman Corporation.

The Defense Authorization Act for fiscal year 1998 authorized the Secretary of the Navy to convey the property to Nassau County, NY, provided the property is used for economic redevelopment or other public uses.

Alternatives Considered—The Federal action is the conveyance of the NWIRP property outside of federal control. The EIS considered reuse of the NWIRP property an indirect effect of conveyance. The EIS analyzed the indirect effects of Nassau County's Preferred Reuse Plan, as well as the indirect effects of two other reuse plans, one that proposed a lesser intensity use and the other a greater intensity use of the site.

Nassau County's Preferred Reuse Plan proposes a mix of light industrial, warehousing, and office uses for the 105-acre parcel, and commercial uses on the 4.5-acre parcel. A total of about 1.97 million square feet of new and existing buildings would provide employment opportunities for about 5,400 workers. Full build-out of the NWIRP Bethpage property under the Preferred Reuse Plan was estimated to occur in 2010.

The EIS evaluated the development of NWIRP Bethpage under a second mixed reuse plan that proposed a less intense use than that in the Preferred Reuse Plan. Under the less intense reuse plan, about 1.7 million square feet in existing buildings and new construction would provide employment opportunities for 2,200 workers.

The EIS evaluated a third use plan that proposed a more intense use than the Preferred Reuse Plan. Under the more intense reuse plan, the NWIRP property would be redeveloped entirely for administrative use. This alternative would result in about 2.2 million square feet of office space and create job opportunities for approximately 9,900 employees.

Under the No Action Alternative, the NWIRP property would not be conveyed and would remain in U.S. Government ownership. The property would be placed in federal caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

Environmental Impact of the Preferred Alternative—The EIS analyzes direct, indirect and cumulative environmental impacts. There are no direct environmental impacts associated with Navy conveyance of the property to Nassau County because conveyance simply results in a change in ownership. There are indirect and cumulative impacts that would result from Nassau County implementing its Preferred Reuse Plan after conveyance of the property.

Redevelopment of the property will generate an estimated 5,400 new jobs, resulting in beneficial socioeconomic impacts. Annual estimated earnings of these new jobs would be about $220 million. Other employment occurring in the region as a result of the new development on the NWIRP property is estimated at 7,250 new jobs providing an additional $203 million in earnings. As the property is transitioned from county ownership to private ownership, and thereby subject to local real estate taxes, the estimated tax generated would be about $13 million.

The Reuse Plan does not provide for any new housing units on the NWIRP

site. The new workers at the NWIRP site are expected to commute from elsewhere in the region and therefore the local school system will not be significantly impacted. Even if there is worker migration into the area, local school systems have sufficient capacity to accommodate any corresponding increase in student enrollment. There will be additional demands on community support services such as police, fire, and emergency care. It is expected that this need would increase gradually over several years. The Reuse Plan provides for additional property tax revenue to support increased service costs.

Traffic generated by implementation of the Reuse Plan is expected to cause degraded levels of service at several intersections in the vicinity of the NWIRP site. State and Local governments will need to make intersection and roadway improvements to mitigate the impacts of increased traffic. With such improvements, there will be no significant traffic-related impacts.

The Clean Air Act General Conformity rule is not applicable to the transfer of the NWIRP Bethpage property, as stated in 40 CFR part 153(c), exemptions (XIV) and (XIX). While there will be an increase in carbon monoxide emissions due to the increase in traffic, the increase in CO will not be significant since the levels will remain below the National Ambient Air Quality Standards.

Noise levels will increase approximately three decibels due to additional traffic. These higher noise levels will exceed Federal Highway Administration and U.S. Department of Housing and Urban Development standards for residential property located in the surrounding area. However, existing noise levels in the area already exceed established residential noise standards, and the three-decibel increase will be barely perceptible to the general population.

Implementation of the Reuse Plan will result in the demolition of 18 of the 19 historic buildings comprising the Bethpage Naval Aircraft Production Historic District. Demolition of the historic buildings will alter the historic setting, feeling, and character of the historic district and will result in an adverse effect. The Final EIS discussed the possible use of protective covenants as mitigation for adverse impacts on the historic district in the event Nassau County and the New York State Historic Preservation Officer (SHPO) could not agree on how to mitigate those impacts. After the Final EIS was published, Nassau County and the SHPO agreed that recordation of the historic buildings as mitigation. Nassau County completed the recordation process and the SHPO accepted this recordation process as adequate mitigation for demolition of the historic structures.

There will be no significant impacts to biological resources. Nearly all of the NWIRP Bethpage property is fully developed. There is insufficient habitat at the site to support most wildlife species and there are no federally listed threatened or endangered species at NWIRP Bethpage.

There will be no significant impacts associated with existing hazardous waste sites. Transfer of Navy property must include a determination of the environmental suitability of the land for transfer to a nonfederal agency or to the public. Most areas on NWIRP Bethpage meet the requirements for transfer set out in the Comprehensive Environmental Response, Compensation and Liability Act without further environmental action. The Navy is working with Nassau County and the Grumman Master Planning Council to coordinate transfer of the parcels scheduled for reuse. The Navy intends to clean up the NWIRP site to levels approved by U.S. Environmental Protection Agency (EPA), the New York State Department of Environmental Conservation, and the Nassau County Department of Health Bureau of Environmental Exposure Investigations.

In accordance with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations* and *Low-Income Populations*, Navy analyzed the direct and indirect effects of the proposed conveyance and reuse on low income and minority populations. The conveyance and reuse will not cause adverse and disproportionately high environmental or economic impacts to minority or low-income populations residing in the region.

Mitigation—No mitigation is required for direct impacts associated with conveyance of the property. Reuse will result in indirect impacts that can be mitigated through measures taken directly by state and local governments or imposed on private developers through state and local permitting processes. For example, Nassau County could change traffic signal timing, realign roadways, and institute traffic regulatory measures, thereby reducing intersection delays and overall congestion. Nassau County could impose limitations on air emissions or water discharges as conditions in building permits.

Comments Received on the FEIS—The Navy received one comment letter on the FEIS. EPA requested that the Navy incorporate measures to reduce reliance on automobile travel into the deed or other conveyance documents. The Navy has no authority to impose such restrictions in a deed or other conveyance document. Measures relating to limitations on parking or traffic control measures are a function of local zoning and permitting authorities that are purely functions of state and local government police powers.

EPA also requested that Navy determine whether airborne volatile organic compounds emanating from contaminated groundwater affected indoor air. Navy gathered and analyzed indoor air samples and provided the results of the analysis to EPA and the New York Department of Environmental Conservation. The results of this indoor air analysis will be incorporated into the Navy's Finding of Suitability to Transfer (FOST).

Conclusion—Nassau County identified the Preferred Reuse Plan as the plan that best responds to local and regional economic conditions and promotes economic recovery from the closure of the NWIRP Bethpage. The Preferred Reuse Plan complies with the conditions imposed by Congress on the conveyance of the NWIRP property. Potentially significant environmental impacts associated with implementation of the Preferred Reuse Plan can be mitigated either directly by the State and Nassau County or indirectly through the regulatory authorities exercised by the State and Nassau County over private landowners and developers.

Although the "no action" alternative has less potential for adverse environmental impacts and is the environmentally preferred alternative, it would not promote local economic redevelopment and create jobs. Keeping the property in caretaker status would not be the highest and best use of the property because it would not take advantage of the property's physical characteristics and infrastructure.

Based on the analysis contained in the FEIS and associated administrative record, I have decided to convey the Naval Weapons Industrial Reserve Plant Bethpage, New York, to the County of Nassau as provided for in the Defense Authorization Act for fiscal year 1998.

Dated: October 23, 2001.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 01–27617 Filed 11–1–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 2, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 29, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.

Title: Descriptive Study of the Emergency Immigrant Education (EIEA) Program.

Frequency: Semi-annually.

Affected Public: Individuals or households; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 20.

Burden Hours: 344.

Abstract: Congress passed the Emergency Immigrant Education Act in 1984. In FY 2001, the appropriation for the EIEA program was $150,000,000. The goals of the Descriptive Study of the Emergency Immigrant Education are to provide information about: (1) The quality of instruction to immigrant children and youth; (2) the ease with which immigrant children and youth are transitioning into American society; and (3) the degree to which they are able to meet state performance standards. This study will include case studies of 15 districts that represent diverse circumstances and populations, and a range of approaches to serving recent immigrant children and youth.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at 708–6287 or via her Internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–27527 Filed 11–1–01; 8:45 am]

BILLING CODE 4000–1–P

DEPARTMENT OF ENERGY

Notice of Stakeholder Involvement Opportunity: Stakeholder Forum on Alternative Technologies to Incineration

AGENCY: Department of Energy.

ACTION: Notice of opportunity for involvement in early planning of forum.

SUMMARY: The Department of Energy (DOE) seeks to improve stakeholder involvement in its efforts to develop and evaluate alternative technologies to incineration for treatment of mixed transuranic and mixed low level waste. To encourage broad, diverse stakeholder participation, the Department is planning an Alternative Technologies to Incineration Stakeholder Forum in 2002.

DATES: Comments, suggestions and recommendations are requested by Spring 2002.

ADDRESSES: Comments, suggestions, and recommendations on the Stakeholder Forum should be directed to Noeleen Tillman of the Global Environment and Technology Foundation (GETF), a non-profit organization providing support for the Forum, at 7010 Little River Turnpike, Suite #460, Annandale, VA 22003; e-mail *ntillman@getf.org;* Telephone (703) 750–6401. Commenters are requested to provide Ms. Tillman with their name and e-mail and mailing addresses so she can follow-up as necessary.

FOR FURTHER INFORMATION CONTACT: Ms. Noeleen Tillman, Global Environment and Technology Foundation, 7010 Little River Turnpike, Suite #460, Annandale, VA 22003; e-mail *ntillman@getf.org;* Telephone (703) 750–6401.

SUPPLEMENTARY INFORMATION: The objectives of the Forum include: (1) To facilitate an exchange of information between technical experts, regulators, and interested stakeholders, and (2) to identify stakeholder values and concerns that the Department should consider in its technology development and evaluation process.

Topics for discussion at the Stakeholder Forum include:

- The Department of Energy's plans for developing alternative technologies to incineration. (A DOE "Action Plan" is available online at *http://www.em.doe.gov/ftplink/integrat/actionplan.pdf*).
- The current state of alternative technology development.
- Factors to be considered in determining the acceptability of new technologies.

- Stakeholder views regarding the benefits and drawbacks of various alternative technologies.
- Opportunities for stakeholder involvement in new technology development and evaluation.
- Federal and State regulatory processes, including permitting.

The Department invites interested stakeholders to participate early in the planning of this Stakeholder Forum. The Department requests suggestions and recommendations on the Forum's agenda, format and venue. The expected date and location will be announced later in a subsequent **Federal Register** notice.

Issued in Washington, D.C., on October 29, 2001.

Gerald G. Boyd,

Deputy Assistant Secretary for Science and Technology.

[FR Doc. 01–27554 Filed 11–1–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2416]

Aquenergy Systems, Inc.; Notice of Authorization for Continued Project Operation

October 29, 2001.

On October 5, 1999, Aquenergy Systems, Inc., licensee for the Ware Shoals Project No. 2416, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2416 is located on the Saluda River in Laurens, Greenwood, and Abbeville Counties, South Carolina.

The license for Project No. 2416 was issued for a period ending September 30, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2416 is issued to Aquenergy Systems, Inc. for a period effective October 1, 2001, through September 30, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before October 1, 2002, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Aquenergy Systems, Inc. is authorized to continue operation of the Ware Shoals Project No. 2416 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretory.

[FR Doc. 01–27563 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–8–000]

Copper Eagle Gas Storage, L. L. C.; Notice of Petition

October 26, 2001.

Take notice that on October 17, 2001, Copper Eagle Gas Storage, L. L. C. (Copper Eagle), Phoenix, Arizona, filed a Petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to rule 207(a)(5) of the Commission's Rules of Practice and Procedure (18 CFR 387.207(a)(5)), and section 7(c)(1)(B) of the Natural Gas Act (15 U.S.C. 717(c)(1)(B)), seeking approval of an exemption from certificate requirements to perform temporary activities related to drill site preparation and the drilling of a stratigraphic test well. The petition is on file with the Commission and open to public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (please call (202) 208–2222 for assistance).

Copper Eagle seeks authorization to engage in certain temporary activities for the sole purpose of drilling a 7,000 foot stratigraphic test well, through the Luke salt deposit and into the sub-salt strata. This well will be located in Section 24, Township 2 North, Range 2 West, Maricopa County, Arizona. The temporary activities for which approval is requested is the drilling of a stratigraphic well, the identification of the characteristics of the strata, and the plugging and abandonment of the well according to the requirements of the Arizona Oil and Gas Conservation Commission. Copper Eagle states the proposed stratigraphic test well is critical in determining the feasibility of utilizing deep injection as the method of brine disposal during the possible development of a natural gas salt cavern storage facility. Copper Eagle also requests the Commission include pre-granted abandonment authority under section 7(b) of the Natural Gas Act to the extent it is necessary or required.

Any questions regarding this petition are to be directed to J. Gordon Pennington, Senior Counsel, El Paso Corporation, 555 11th St. NW., Suite 750, Washington, DC 20004, Phone (202) 637–3544 or facsimile (202) 637–3501.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 7, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–27532 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–009–000]

Dominion Transmission, Inc.; Notice of Application

October 29, 2001.

Take notice that on October 19, 2001, Dominion Transmission, Inc. (DTI), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP02–009–000, an application, pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for abandonment authorization and a certificate of public convenience and necessity authorizing the construction and operation of certain compression facilities in Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

DTI proposes to install 2 compressor units, each with a capacity of 1,775 horsepower (hp) (for a total of 3,550 hp) at DTI's Ardell Compressor Station in Elk County, Pennsylvania. DTI states that it requires the additional compressors to replace capacity formerly provided by a deteriorating portion of Line LN–280 located in Elk, Cameron, Clinton, Potter, and Tioga Counties in Pennsylvania. DTI requests permission and approval to abandon in place 71 miles of this line, consisting of 8 miles of 20-inch line, 53 miles of 16-inch line, and 10 miles of 18-inch line. In addition, DTI proposes to abandon 5 miles of 14-inch line known as Line LN–4, located in Potter and Tioga Counties, Pennsylvania. It is stated that only above-ground facilities would be removed. It is asserted that DTI has determined that this proposal is the most cost-effective means of providing service to its customers with minimal environmental impact. DTI estimates the total cost of the proposed facilities at $6,500,000, and requests rolled-in rate treatment for the project. DTI requests that the Commission issue a preliminary determination by January 1, 2002 and a final certificate by April 1, 2002.

Any questions regarding this application should be directed to Sean R. Sleigh, Certificates Manager, at (304) 627–3305, Dominion Transmission, Inc., Post Office Box 2450, Clarksburg, West Virginia 26302–2450.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 19, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and ion landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a

person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–27560 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2694]

Duke Power, a Division of Duke Energy Corporation, Nantahala Area; Notice of Authorization for Continued Project Operation

October 29, 2001.

On September 27, 1999, Duke Power, a division of Duke Energy Corporation, Nantahala Area (on August 10, 2001, the Commission approved the transfer of the license from Nantahala Power and Light Company to Duke Power, a division of Duke Energy Corporation, Nantahala Area and redesignated the applicant of the relicense application as Duke Power, a division of Duke Energy Corporation, Nantahala Area), licensee for the Queens Creek Project No. 2694, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2694 is located on Queens Creek in Macon County, North Carolina.

The license for Project No. 2694 was issued for a period ending October 1, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2694 is issued to Duke Power, a division of Duke Energy Corporation, Nantahala Area for a period effective October 2, 2001, through October 1, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before October 2, 2002, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Duke Power, a division of Duke Energy Corporation, Nantahala Area is authorized to continue operation of the Queens Creek Project No. 2694 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 01–27566 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2935]

Enterprise Mill, LLC; Notice of Authorization for Continued Project Operation

October 29, 2001.

On September 24, 2001, Enterprise Mill, LLC, licensee for the Enterprise Mill Project No. 2935, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2935 is located on the Augusta Canal in Richmond County, Georgia.

The license for Project No. 2935 was issued for a period ending September 30, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2935 is issued to Enterprise Mill, LLC for a period effective October 1, 2001, through September 30, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before October 1, 2002, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Enterprise Mill, LLC is authorized to continue operation of the Enterprise Mill Project No. 2935 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 01–27568 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2724]

City of Hamilton, OH; Notice of Authorization for Continued Project Operation

October 29, 2001.

On September 30, 1999, the City of Hamilton, Ohio, licensee for the City of Hamilton Project No. 2724, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2724 is located on Ford Canal and the Great Miami River in Butler County, Ohio.

The license for Project No. 2724 was issued for a period ending September 30, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2724 is issued to the city of Hamilton, Ohio for a period effective October 1, 2001, through September 30, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before October 1, 2002, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the City of Hamilton, Ohio is authorized to continue operation of the City of Hamilton Project No. 2724 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 01–27567 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2576]

Northeast Generation Company; Notice of Authorization for Continued Project Operation

October 29, 2001.

On August 31, 1999, Northeast Generation Company, licensee for the Housatonic Project No. 2576, filed an application for a new or subsequent license (in its relicense application, Northeast Generation Company proposes to combine this project with the licensed Falls Village Project, FERC No. 2597) pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2576 is located on the Housatonic, Rocky, and Shepaug Rivers in Fairfield, New Haven, and Litchfield Counties, Connecticut.

The license for Project No. 2576 was issued for a period ending October 1, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2576 is issued to Northeast Generation Company for a period effective October 2, 2001, through October 1, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before October 2, 2002, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Northeast Generation Company is authorized to continue operation of the Housatonic Project No. 2576 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 01–27564 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 472]

PacifiCorp; Notice of Authorization for Continued Project Operation

October 29, 2001.

On September 27, 1999, PacifiCorp, licensee for the Oneida Project No. 472, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 472 is located on the Bear River in Franklin County, Idaho.

The license for Project No. 472 was issued for a period ending October 1, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA,

then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 472 is issued to PacifiCorp for a period effective October 2, 2001, through October 1, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before October 2, 2002, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that PacifiCorp is authorized to continue operation of the Oneida Project No. 472 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 01–27561 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2401]

PacifiCorp; Notice of Authorization for Continued Project Operation

October 29, 2001.

On September 27, 1999, PacifiCorp, licensee for the Grace/Cove Project No. 2401, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2401 is located on the Bear River in Caribou County, Idaho.

The license for Project No. 2401 was issued for a period ending October 1, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2401 is issued to PacifiCorp for a period effective October 2, 2001, through October 1, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before October 2, 2002, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that PacifiCorp is authorized to continue operation of the Grace/Cove Project No. 2401 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 01–27562 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.CP95–168–006]

Sea Robin Pipeline Company; Notice of Informal Settlement Conference

October 29, 2001.

Take notice that an informal settlement conference in this proceeding will be convened on Thursday, November 8, 2001 at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Thomas J. Burgess at 208–2058.

David P. Boergers,

Secretary.

[FR Doc. 01–27558 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–8–001]

Texas Eastern Transmission, LP; Notice of Amendment

October 29, 2001.

Take notice that on October 19, 2001, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed an amendment to its pending application in Docket No. CP01–8–000, requesting authority for a firm hourly swing service (Firm Hourly Service) all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Specifically, Texas Eastern seeks authorization to offer a Firm Hourly Service that will provide hourly flexibility of up to 110 percent of 1/24th of daily scheduled quantities for up to six hours on any day for customers who receive service under Rate Schedules CDS, FT–1, SCT, and SS–1 at primary

firm delivery points. The service will be offered on a seasonal basis: November to March (winter service) or April to October (summer service). The rate for Firm Hourly Service will be an incremental rate based on the cost of the lease proposed in Docket No. CP01–8–000 plus the cost of purchasing gas at Beverly, Massachusetts, the primary receipt point under the lease. This incremental rate is in lieu of Texas Eastern's original proposal to rely on a reduction in storage cost credits to cover the lease costs. Texas Eastern has included Pro Forma Tariff Sheet Nos. 651–653. These sheets replace Pro Forma Tariff Sheet No. 685 which was filed in the original application. Texas Eastern states that these tariff sheets set out the proposed incremental rates and the terms and conditions of the Firm Hourly Service. As proposed in the original filing in Docket No. CP01–8–000, Texas Eastern states that its customers will have the right to transport gas on an interruptible basis using the leased capacity to the extent the lease is not being utilized for Firm Hourly Service.

Any questions regarding the application should be directed to Steven E. Tillman, Director of Regulatory Affairs, Texas Eastern Transmission Corporation, P.O. Box 1642, Houston, Texas 77251–1642 at 713–627–5113.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 19, 2001, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the proposal is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provide for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 01–27559 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2631]

Woronoco Hydro LLC; Notice of Authorization for Continued Project Operation

October 29, 2001.

On August 1, 1999, Woronoco Hydro LLC, licensee for the Woronoco Project No. 2631 (in a May 22, 2001 Order, the Commission approved the transfer of the project from International Paper Company to Woronoco Hydro LLC and substitution of Woronoco Hydro LLC as the relicense applicant), filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2631 is located on the Westfield River in Hampden County, Massachusetts.

The license for Project No. 2631 was issued for a period ending September 1, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2631 is issued to Woronoco Hydro LLC for a period effective September 2, 2001, through September 1, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before September 2, 2002, notice is hereby given that,

pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Woronoco Hydro LLC is authorized to continue operation of the Woronoco Project No. 2631 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 01–27565 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2566–003, et al.]

Public Service Company of New Mexico, et al., Electric Rate and Corporate Regulation Filings

October 26, 2001.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of New Mexico'

[Docket No. ER01–2566–003]

Take notice that on October 23, 2001, Public Service Company of New Mexico (PNM) submitted for filing an amendment to its October 22, 2001 filing in this proceeding. The amendment consists of an executed signature page for the amended version of the Wholesale Requirements Power Sale and Services Agreement (Agreement) between PNM and Texas-New Mexico Power Company (TNMP) filed by PNM in this proceeding, designated as Substitute Service Agreement No. 28 under PNM's FERC Electric Tariff, First Revised Volume No. 3.

Copies of this filing have been served upon TNMP, Southwestern Public Service Company, and the New Mexico Public Regulation Commission.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Combined Locks Energy Center, LLC

[Docket No. ER01–2659–002]

Take notice that on October 23, 2001, Combined Locks Energy Center, L.L.C. (CLEC), filed an amendment to its application for market-based rate authority pursuant to the Commission's deficiency letter issued on October 5, 2001.

CLEC respectfully requests that the Commission grant an effective date of October 17, 2001, the date CLEC began producing and selling test power.

Copies of the filing were served upon the public utility's jurisdictional customers, Public Service Commission of Wisconsin.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corporation

[Docket No. ER01–2918–001]

Take notice that on October 23, 2001, Florida Power Corporation (FPC) tendered for filing a revised Market-Based Wholesale Power Sales Tariff, FERC Electric Tariff, Second Revised Volume No. 8 (Revised Tariff) to comply with an unpublished letter order issued by the Commission on September 25, 2001 in the above-captioned proceeding (Letter Order). The Revised Tariff has been revised to specifically comport with designation requirements set forth in Order No. 614.

The Letter Order allows the Revised Tariff to become effective as of August 24, 2001.

Copies of the filing were served upon FPC's customers receiving service under the Revised Tariff and the Florida Public Service Commission.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Electric & Gas Company

[Docket No. ER01–3087–000]

Take notice that on October 23, 2001 South Carolina Electric & Gas Company (SCE&G) submitted a correction to the service agreement with North Carolina Electric Membership Corporation that SCE&G filed on September 19, 2001 in the above referenced docket.

SCE&G states that the only change made in this filing is to correct the name of the issuing officer that appears on the cover page to this agreement. Accordingly, SCE&G continues to request an effective date of August 8, 2001.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric and Power Company

[Docket No. ER02–150–000]

Take notice that on October 23, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Termination of Service Agreement with Enron Power Marketing, Inc. designated as First Revised Service Agreement No. 1 under FERC Electric Tariff, Third Revised Volume 4.

Dominion Virginia Power respectfully requests an effective date of November 6, 2001.

Copies of the filing were served upon Enron Power Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER02–151–000]

Take notice that on October 23, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing Notice of Termination of Service Agreement with Aquila Energy Marketing Corporation (formerly Aquila Power Corporation) designated as First Revised Service Agreement No. 51 under FERC Electric Tariff, Third Revised Volume 4.

Dominion Virginia Power respectfully requests an effective date of November 5, 2001.

Copies of the filing were served upon Aquila Energy Marketing Corporation (formerly Aquila Power Corporation), the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER02–153–000]

Take notice that on October 23, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing Notice of Termination of Service Agreement with CMS Marketing, Services and Trading Company designated as First Revised Service Agreement No. 104 under FERC Electric Tariff, Third Revised Volume 4.

Dominion Virginia Power also respectfully requests an effective date of November 5, 2001.

Copies of the filing were served upon CMS Marketing, Services and Trading Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER02–154–000]

Take notice that on October 23, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing Notice of Termination of Service Agreement with Constellation Power Source, Inc. designated as First Revised Service Agreement No. 114 under FERC Electric Tariff, Third Revised Volume 4.

Dominion Virginia Power respectfully requests an effective date of November 5, 2001.

Copies of the filing were served upon Constellation Power Source, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER02–155–000]

Take notice that on October 23, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing Notice of Termination of Service Agreement with Duke Energy Trading and Marketing, L.L.C. (formerly Pan Energy Power Services, Inc.) designated as First Revised Service Agreement No. 67 under FERC Electric Tariff, Third Revised Volume 4.

Dominion Virginia Power respectfully requests an effective date of November 5, 2001.

Copies of the filing were served upon Duke Energy Trading and Marketing, L.L.C. (formerly Pan Energy Power Services, Inc.), the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. ER02–157–000]

Take notice that on October 23, 2001, Wisconsin Public Service Corporation (WPSC) tendered for filing its proposed Rate Schedule No. 63, consisting of a six-year renewal lease of a feeder bay in WPSC's Cranberry Substation and related feeder facilities to Eagle River Light & Water Utility (Eagle River). The lease was approved under section 203 of the Federal Power Act by an order issued on September 21, 2001 in Docket No. EC01–135–000.

WPSC requests that the proposed rate schedule become effective on October 24, 2001, the date of the commencement of the six-year renewal of the lease.

WPSC states that it has sent copies of the proposed rate schedule to Eagle River, the Public Service Commission of Wisconsin, the Michigan Public Service Commission, and Wisconsin Public Power, Inc.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Mountain View Power Partners II, LLC

[Docket No. ER02–158–000]

Take notice that on October 23, 2001, Mountain View Power Partners II, LLC (Mountain View) tendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement for power sales (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) as required by the Commission in its letter Order of April 16, 2001. See Mountain View Power Partners II, LLC, Docket No. ER01–1336–000 (delegated letter order issued April 16, 2001) (Section 205 Letter Order). See also Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139 clarified, 65 FERC ¶ 61,081 (1993) (permitting non-marketer public utilities with umbrella form of service agreements on file with the Commission to file individual, executed service agreements with the Commission within thirty days of commencing service). The Service Agreement commits Mountain View to sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff No. 1.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. OA96–39–007]

Take notice that on October 24, 2001, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission (Commission) a refund compliance report in connection with the December 10, 1998 settlement agreement between FPL, Florida Municipal Power Agency and Seminole Electric Cooperative, Inc., which the Commission approved by a letter order issued September 13, 2001, in the above-captioned docket.

FPL states that a copy of this filing has been served on the official service list in the above-captioned docket as well as the other dockets listed in the letter order.

Comment date: November 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27531 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

October 26, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Transfer of License.

b. *Project No*: 9988–012.

c. *Date Filed*: July 9, 2001, supplemented July 30, 2001, and October 1, 2001.

d. *Applicants*: Spartan Mills, Mr. Peter L. Tourtellot, Receiver, and the Augusta Canal Authority.

e. *Name of Project*: John P. King Mill.

f. *Location*: The project is located on the Augusta Canal and the Savannah River in Richmond County, Georgia. The project does not occupy Federal or Tribal land.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Ms. Beth E. Harris, CHI Energy, Inc., P.O. Box 8597, Greenville, SC 29604, (864) 281–9630 ext. 105.

i. *FERC Contact*: Mr. James Hunter, (202) 219–2839.

j. *Deadline for filing comments and or motions*: December 5, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Please include the project number (P–9988–012) on any comments or motions filed.

k. *Description of Proposal*: The applicants propose a transfer of the license for Project No. 9988 from Spartan International, Inc., also known as Spartan Mills (Spartan), the current licensee, by and through Mr. Peter L. Tourtellot, Receiver, to the Augusta Canal Authority. The transfer is being sought in connection with a judicial foreclosure proceeding initiated by General Electric Capital Corporation against Spartan. On October 1, 2001, the Governor of Georgia signed legislation giving the Augusta Canal Authority the authority to operate hydropower projects.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–27533 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 26, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No*: 12116–000.

c. *Date Filed*: September 5, 2001.

d. *Applicant*: Public Utility District No. 1 of Franklin County.

e. *Name of Project*: Esquatzel Hydroelectric Project.

f. *Location*: The proposed project would be located approximately 9 miles northwest of Pasco at the termination of the Esquatzel Wasteway into the Columbia River in Franklin County, Washington. The project will require the use of an existing irrigation wasteway administered by the U.S. Bureau of Reclamation (BOR) and would be contained entirely on federal lands.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Kenneth A. Sugden, Manager, Public Utility District No. 1 of Franklin County, 1411 W. Clark, Pasco, WA 99302–2407, Telephone: (509) 547–5591.

i. *FERC Contact*: Mr. Lynn R. Miles, Sr. (202) 219–2671.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Please include the Project Number (12116–000) on any comments, protest, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would utilize the BOR's existing Esquatzel Wasteway and would not require a new or existing dam. The project would consist of: (1) a 54-inch diameter 1,800-foot long steel penstock, (2) a powerhouse with an installed capacity of 2,000 kW, (3) a 13.8 kv transmission line approximately 1,000 feet long, and (4) appurtenant facilities. The project would have an annual generation of 7.2 GWh.

l. Copies of this filing are on file with the Commission and are available for public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–27534 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

October 26, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Exempt

Project or Docket, Date, and Name

1. Project Nos. 1975, 2061 and 2777 10–15–01, Susan P. Neitzel
2. Project No. 2778–000 10–15–01, Susan P. Neitzel
3. Project No. 2114–000 10–16–01, Adeline Fredin
4. Project No. 2114–000 10–16–01, William J. Judge
5. Project No. 2661–000 10–16–01, Edward C. Cole
6. Docket No. ER97–1523–065, *et al.* 10–17–01, Theodore Glick
7. Project No. 2342–000 10–17–01, Frank Winchell
8. Project No. 2030–000 10–18–01, Nan Allen
9. Project No. 2030–000 10–18–01, Fred Winchell
10. Docket No. RP00–241–000 10–18–01, Brian R. Hellebuyck
11. Project No. 2042–000 10–23–01, Tim Bachelder

12. Docket No. CP01–415–000 10–25–01, Medha Kochhar

David P. Boergers,

Secretary.

[FR Doc. 01–27535 Filed 11–1–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7097–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Protection of Stratospheric Ozone—Recordkeeping and Periodic Reporting of the Production Import, Export, Recycling, Destruction, Transhipment and Feedstock Use of Ozone-Depleting Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Recordkeeping and Periodic Reporting of the Production Import, Export, Recycling, Destruction, Transhipment and Feedstock Use of Ozone-Depleting Substances ICR #1432.20, OMB Control No. 2060–0170, Expiration Date 9/28/01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 2, 2002.

ADDRESSES: Copies of the material supporting this ICR renewal notice are available free of charge from The Stratospheric Ozone Protection Hotline at 1–800–269–1996 between the hours of 10 am and 4 pm Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Suzanne Bratis, Telephone: (202) 564–3515, Fax: (202) 564–2155, E-mail: *Bratis.Suzanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which produce, use feedstocks, import, export, and/or destroy the ozone-depleting substance, methyl bromide.

Title: Recordkeeping and Periodic Reporting of the Production Import, Export, Recycling, Destruction, Transhipment and Feedstock Use of Ozone-Depleting Substances (OMB Control No. 2060–0170; ICR #1432.20).

Abstract: This action revises reporting requirements so companies may produce and import for special exempted uses of methyl bromide for quarantine and preshipment applications during the interim period when production and consumption is capped at 50% of the 1991 baseline level. In order to monitor each company's production, import, export, destruction, and transformation, the reporting system continues to require information to check industry compliance with the stratospheric ozone protection regulations. Compliance during the reduction steps for methyl bromide mean that companies can produce and import 50% of 1991 baseline levels, except for the specific exemption created by this action. The information required satisfies statutory mandates for reporting and monitoring under section 603 of Title VI of CAAA and will be used to generate reports to Congress as mandated under section 603(d) of Title VI.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Give enough background information so someone could comment on points (i)-(iv) below.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The burden hours shown below represent the hours for the information collection request (ICR). The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for collection of information associated with the reporting is estimated to average 865 hours. This estimate accounts for all responses provided by all effected entities per year.

The following is a summary of the estimates taken from the ICR:

Estimated total number of potential respondents: 536.

Frequency of response: Quarterly.

Estimated total/average number of responses for each respondent: 1–10.

Estimated total annual burden hours: 865.

Estimated O&M costs: $141.87.

Estimated total annual burden costs: $52,275.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 29, 2001.

Paul Stolpman,

Director, Office of Atmospheric Programs.

[FR Doc. 01–27590 Filed 11–1–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6622–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed October 22, 2001 Through October 26, 2001

Pursuant to 40 CFR 1506.9.

EIS No. 010401, DRAFT SUPPLEMENT, FEW, MI, US–31 Petoskey Area Improvement Study, To Reduce Congestion on US–31 in the City of Petoskey and Resort and Bear Creek Townships, COE Section 404 Permit, Emmet County, MI, Due: December 17, 2001, Contact: James A. Kirschensteiner (517) 702–1835.

EIS No. 010402, FINAL EIS, DOE, TN, Programmatic EIS—Oak Ridge Y–12 Plant Mission, Processing and Storage Highly Enriched Uranium, U.S. Nuclear Weapons Stockpile, Anderson County, TN, Due: December 10, 2001, Contact: Gary Hartman (865) 576–0273.

EIS No. 010403, DRAFT EIS, COE, WV, Marlington Local Protection Project, To Evaluate Flood Damage Reduction Measures for the Town of Marlington, Three Alternatives: Two Levee/Floodwall for Managing Flooding from Knapp Creek, Greenbrier River, Pocahontas County, WV, Due: December 21, 2001, Contact: S. Michael Worley (304) 529–5636.

EIS No. 010404, FINAL EIS, AFS, AK, Emerald Bay Timber Sale, Implementation, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, U.S. Cost Guard Bridge Permit, NPDES Permit, and COE Section 10 and 404 Permits, Cleveland Peninsula, AK, Due: December 10, 2001, Contact: Colleen Grundy (907) 228–4114.

EIS No. 010405, DRAFT EIS, BLM, OR, Lakeview Resource Management Plan, To Unified Land Use Plan that will Replace all or Portion of three nearly Twenty year old Existing Land Use Plans, Implementation, Lake and Bend Counties, OR, Due: January 31, 2002, Contact: Dwayne Sykes (541) 947–2177.

This document is available on the Internet at: *http://(www.or.blm.gov/Lakeview/Planning/planninglist.htm).*

EIS No. 010406, DRAFT EIS, USA, PA, Fort Indiantown Gap National Guard Training Center, To Enhance Training and Operations, Pennsylvania National Guard (PANG), Annville, Dauphin and Lebanon Counties, PA, Due: December 10, 2001, Contact: Richard H. Shertzer (717) 861–2548.

EIS No. 010407, DRAFT SUPPLEMENTAL, COE, MO, St. Johns Bayou and New Madrid Floodway Project, Channel Enlargement and Improvement, Revised Information to Formulate and Analyze Additional Alternatives, Flood Control, National Economic Development (NED) New Madrid, Mississippi and Scott Counties, MO, Due: December 17, 2001, Contact: Mr. Shawn Phillips (901) 544–3321.

Dated: October 30, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–27604 Filed 11–1–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00748; FRL–6809–9]

Association of American Pesticide Control Officials/State FIFRA Issues Research and Evaluation Group

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, beginning on December 3, 2001, and ending December 4, 2001. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, December 3, 2001, from 8:30 a.m. to 5 p.m. and Tuesday, December 4, 2001, from 8:30 a.m. to noon.

ADDRESSES: This meeting will be held at the Double Tree Hotel, 300 Army Navy Drive, Arlington, Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: aapco@plainfield.bypass.com.

Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: mcduffie.georgia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all parties interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00748. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Tentative Agenda

The tentative agenda items identified by the AAPCO and SFIREG follows:

1. E-labels.
2. State and Federal pesticides Agency's activities - post September 11th terrorists attacks.
3. Status of the water quality registration review team.
4. Other OPP water quality activities.
5. Issues from water quality PREP course.
6. Committee reports and introduction of issue papers.
7. Update on current OPP activities.
8. SFIREG issue paper status reports.
9. Update on current OECA activities.
10. Regional reports.
11. Other topics, as appropriate.

List of Subjects

Environmental protection.

Dated: October 25, 2001.

Jay S. Ellenberger,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 01–27597 Filed 11–1–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1047; FRL–6806–1]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1047, must be received on or before December 3, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1047 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7610; e-mail address: jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1047. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1047 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1047. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 24, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4

6E4703

EPA has received a pesticide petition 6E4703 from the Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for combined residues of the herbicide, bentazon (3-isopropyl-1H-2,1,3-benzothiadiazin-4(3H)-one 2,2-dioxide) and its 6- and 8-hydroxy metabolites in or on the raw agricultural commodities clover forage at 1.0 part per million (ppm) and clover hay at 2.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. Bentazon is manufactured by the BASF Corporation, Agricultural Products Division.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residue in plants is adequately understood. Bentazon is rapidly metabolized, conjugated and incorporated into natural plant constituents. Metabolism involves the hydroxylation of bentazon at the 6- and 8-position. The terminal residues of regulatory concern are bentazon, 6-hydroxy bentazon, and 8-hydroxy bentazon (as specified in 40 CFR 180.355(a)).

2. *Analytical method.* Adequate enforcement methods are available for the determination of residues of bentazon and its 6- and 8-hydroxy metabolites in/on plant commodities. The Pesticide Analytical Manual (PAM) Vol. II lists Method II, a GLC method with flame photometric detection for the determination of bentazon and its hydroxy metabolites in/on corn, rice, and soybeans; the limit of detection for each compound is 0.05 ppm. Method III, modified from Method II, is available for the determination of bentazon and its hydroxy metabolites in/on peanuts and seed and pod vegetables with a limit of detection of 0.05 ppm for each compound.

3. *Magnitude of residues.* A total of 2 field residue trials were conducted on red clover in 1993 in Oregon. A single application of Basagran herbicide was made to clover at a rate of either 1.0 lb. active ingredient per acre (a.i./acre) (0.5X) or 2.0 lb/a.i./acre (1X). The spray volume was 20 gal/acre. An adjuvant (R-11) was included in all treatments at 2 oz./acre. Samples of forage and hay were harvested from each treated plot 36 days after treatment. Samples were analyzed for the combined residues of bentazon and its 6- and 8-hydroxy metabolites. Analysis of the treated samples showed that the maximum total residue was 0.77 ppm in forage and 1.19 ppm in hay.

B. Toxicological Profile

1. *Acute toxicity.* Acute toxicity data for bentazon show that this chemical is not acutely toxic by the oral, inhalation, or dermal routes of exposure (Toxicity Categories III and IV). It is moderately irritating to the eye (Toxicity Category II) and slightly irritating to the skin (Toxicity Category IV). Bentazon is also a dermal sensitizer.

2. *Genotoxicty.* Bentazon was not mutagenic in the tests for gene mutations, which were reverse mutation assays in *S. typhimurium* and in *E. coli* WP2 uvrA as well as forward mutation assays with *in vitro* Chinese hamster ovary cell (HGPRT) cultures. Bentazon was also negative in the mouse micronucleus test for assessing structural chromosomal aberrations and the unscheduled DNA synthesis assay with primary mouse hepatocytes for detecting DNA damage.

3. *Reproductive and developmental toxicity.* A developmental study in rats was conducted at doses of 0, 40, 100, or 250 milligrams per kilogram per day (mg/kg/day). The maternal NOAEL (no observed adverse effect level) is 250 mg/kg/day, HDT (highest dose tested). The maternal LOAEL (lowest observed adverse effect level) is greater than 250 mg/kg/day. The developmental NOAEL is 100 mg/kg/day. The developmental LOAEL is 250 mg/kg/day, based on increased postimplantation loss, skeletal variations (incomplete or absent ossification in the phalangeal nucleii of the extremities, the sternebrae and cervical vertebrae), and reduced body weights or fetuses surviving to day 21.

A developmental study in rabbits was conducted at doses of 0, 75, 150, or 375 mg/kg/day. The maternal/developmental NOAEL is 150 mg/kg/day. The maternal/developmental LOAEL is 375 mg/kg/day (HDT), based

on doe with partial abortion, embryonic resorptions, and no living fetuses. A 2–generation reproduction toxicity study in rats was conducted at doses of 0, 200, 800, or 3,200 ppm; equivalent to 0, 15, 62, or 249 mg/kg/day. The parental systemic NOAEL is 62 mg/kg/day. The parental systemic LOAEL is 249 mg/kg/day, based on increased incidences of kidney mineralization and liver microgranuloma. The reproductive NOAEL is 15 mg/kg/day. The reproductive LOAEL is 62 mg/kg/day, based on reduced pup growth (body weight gain) during lactation.

4. *Subchronic toxicity.* A 21–day dermal toxicity study in rabbits was conducted at doses of 0, 250, 500, or 1,000 mg/kg/day. The NOAEL is 1,000 mg/kg/day (HDT). The LOAEL is greater than 1,000 mg/kg/day. A 13–week feeding study in rats was conducted at doses of 0, 400, 1,200, or 3,600 ppm; equivalent to 0, 25.3, 77.8, or 243.3 mg/kg/day for males and 0, 28.9, 86.1, or 258.3 mg/kg/day for females. The NOAEL is 77.8 mg/kg/day. The LOAEL is 243.3 mg/kg/day for males and 258.3 mg/kg/day for females based on depressed mean body weights in females, a slight increase in food consumption in males, increased thromboplastin and prothrombin times (males only), and increased kidney and liver weights.

5. *Chronic toxicity.* A chronic feeding study in dogs was conducted at doses of 0, 100, 400, or 1,600 ppm; equivalent to 0, 3.2, 13.1, or 52.3 mg/kg/day. The NOAEL is 3.2 mg/kg/day. The LOAEL is 13.1 mg/kg/day based on a dose-dependent presence of feces with red areas in dogs at 13.1 mg/kg/day (400 ppm) and 52.3 mg/kg/day (1,600 ppm) and slight to severe anemia at the high dose. A chronic feeding/carcinogenicity study in rats was conducted at doses of 0, 200, 800, or 4,000 ppm; equivalent to 0, 9, 35, or 180 mg/kg/day in males and 0, 11, 45, or 244 mg/kg/day in females. The NOAEL is 9/11 mg/kg/day, in males/females. The LOAEL is 35/45 mg/kg/day, in males/females, based on increased water consumption, changes in urinalysis and hematology/coagulation parameters, and decreased absolute and relative thyroid weight. No evidence of carcinogenicity was observed. An oncogenicity study in mice was conducted at doses of 0, 100, 400, or 2,000 ppm; equivalent to 0, 12, 47, or 242 mg/kg/day in males and 0, 12, 48, or 275 mg/kg/day in females. The NOAEL is 12 mg/kg/day. The LOAEL is 47/48 mg/kg/day in males/females, based on increased prothrombin time, increased liver and kidney weights, calcification of the tunica albuginea, and islet cell hyperplasia of the pancreas. No evidence of carcinogenicity was observed.

6. *Animal metabolism.* A rat metabolism study with oral dosing showed that parent bentazon was the major metabolite found in urine, amounting to 77.37–91.02% of the dose. Another metabolism study demonstrated that the absorption and excretion of bentazon or its sodium salt in male rats after oral administration is rapid and essentially equivalent. No sex differences in the absorption, metabolism or excretion of sodium bentazon are apparent based on equivalent excretion half-lives (4 hours), pattern of excretion greater than 90% in urine or urinary metabolite identification greater than 80% as free acid. A dermal penetration study in rats was conducted at doses of 0.12, 1.2, 12, or 120 mg/kg. Single topical application of radioactive sodium bentazon did not appear to significantly penetrate the skin since a maximum of only 1-2% of the radioactivity was recovered primarily in the urine at 72 hours. Negligible amounts of dermally applied radioactivity were retained in the liver, kidneys, G.I. tract and carcass. For risk assessment purposes, dermal penetration is estimated to be 1-2%.

7. *Metabolite toxicology.* There are no metabolites of toxicological significance to mammals.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or endocrine effects of bentazon have been conducted. However, the standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology exposure. These studies are generally considered to be sufficient to detect any endocrine effects but no such effects of the endocrine organs following repeated or long-term were noted in any of the studies.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* In 1999, EPA evaluated the hazard and exposure data for bentazon and recommended that the FQPA safety factor be retained at 10X in assessing the risk posed by this chemical because there was evidence of increased susceptibility in the developmental toxicity study in rats and in the 2-generation reproduction toxicity study in rats. The 10X FQPA Safety Factor is applicable to females 13–50 years old for acute dietary and residential exposure assessments and to all population subgroups for chronic dietary and residential exposure assessments. The acute and chronic Population Adjusted Doses (aPAD and cPAD, respectively) are modification of the acute and chronic Reference Doses (RfDs) to include the FQPA safety factor. The acute or chronic PAD is equal to the acute or chronic RfD divided by the FQPA safety factor.

Acute and chronic dietary exposure analyses for bentazon were performed using the Dietary Exposure Evaluation Model (DEEM) which incorporates data generated in the USDA 1989-1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII). For the acute analysis, tolerance level residues were used and 100% crop treated (CT) was assumed for all commodities (Tier I) for the females 13–50 years old subgroup (the subpopulation of concern). For all the females 13–50 years old subgroup, 5% or less of the aPAD is occupied by dietary exposure from food. Results of the acute analysis indicate that the acute dietary risk residues in food associated with existing and proposed uses of bentazon do not exceed EPA's level of concern.

A refined chronic dietary exposure analysis (Tier 3) was performed using anticipated and tolerance level residues for commodities for the general U.S. population and all population subgroups. For the chronic analysis, percent crop treated information was used for several commodities. The percent chronic population adjusted dose (%cPADs) for all subgroups were less than 100%, with the highest being 28% for the children 1–6 years subgroup. Results of the chronic analysis indicate that the chronic dietary risk from residues in food associated with the existing and proposed uses of bentazon do not exceed EPA's level of concern.

ii. *Drinking water.* SCI-GROW (Screening Concentration in Ground Water) modeling indicates that bentazon residue (bentazon + its metabolite, 2-amino-N-isopropyl benzamide (AIBA) concentrations in ground water used as drinking water are not likely to exceed 4.25 parts per billion (ppb). The other regulated bentazon metabolites (6-hydroxy and 8-hydroxy bentazon) have not been found in environmental fate studies. Limited monitoring data indicated a range of bentazon concentrations (excluding degradation products) in ground water of 20 to 120 ppb. Because monitoring data indicate a higher concentration than the SCI-GROW screening model, EPA used the 20 ppb as the environmental exposure concentration (EEC) for both acute and chronic scenarios. The EEC for surface water (from EPA's Pesticide Root Zone Model-EXAMS modeling) is 41 ppb for the peak (acute) and 8 ppb for the 36-year annual mean (chronic). The surface and ground water estimates were used to compare against back-calculated drinking water levels of comparison (DWLOCs) for aggregate risk assessments. For the acute exposure scenario, the DWLOC is 2800 ppb for females (13+/nursing). For the chronic exposure scenario, the DWLOCs are 95, 82, 22, 94, and 95 ppb for the U.S. population, females (13+/nursing), children (1–6 years), Hispanics and males (13–19 years), respectively.

2. *Non-dietary exposure.* Because bentazon is registered for consumer use on turf and ornamentals, there is potential for residential exposure to adult applicators and adults and children entering recreational and residential areas treated with bentazon.

The handler exposure is expected to be short-term while the post-application exposure is expected for both the short- and intermediate-term. However, since there is no short-term dermal endpoint, the residential post-application exposure cannot be aggregated with the handler exposure. Short-term, non-dietary ingestion exposure for toddlers is not a concern because it was determined that there is no acute dietary or oral endpoint applicable to infants and children. However, intermediate-term, non-dietary ingestion exposure to toddlers playing on treated turf is possible and was assessed using the intermediate-term endpoint identified from the 1 year dog feeding study. Intermediate-term exposure is not expected for the ornamental use. The level of concern for residential exposures to bentazon is for MOE's less than 1,000.

There are no chemical-specific or site-specific data available to determine the potential risks associated with residential exposures from handling bentazon. Therefore, the exposure estimates are based on assumptions and generic data as specified by the December 18, 1997 Draft HED Standard Operating Procedures (SOPs) for Residential Exposure Assessments. Because bentazon is applied no more than twice per year, only short-term exposure is expected for the residential handler. Because a dermal endpoint of concern for the short-term duration was not identified, only inhalation exposure estimates are relevant. Assuming that a homeowner treats his lawn and ornamental plants on the same day, the aggregate inhalation short-term MOE is 500,000 for the residential handler. This estimate indicates that the potential handler risks from residential uses of bentazon do not exceed EPA's level of concern.

Environmental fate data indicate that bentazon is moderately resistant to degradation (t1/2 = 24–65 days). Due to the length of time bentazon is expected to remain in the environment, both short- and intermediate-term residential post-application exposures are expected. For toddlers playing on treated turf, the oral intermediate-term endpoint was used to assess toddler incidental ingestion exposures. Based on the residential use pattern, no long-term post-application residential exposure is expected. Short-term, non-dietary oral exposures to the toddler were not assessed because the subgroup of concern was identified as females 13–50 years old. This endpoint is not applicable to the infant and children population subgroups. Intermediate-term, post-application exposure is not expected from the ornamental use of bentazon.

Changes to the residential SOPs have been proposed that alter the residential post-application scenario assumptions. The proposed assumptions are expected to better represent residential exposure and are still considered to be high-end, screening level assumptions. Therefore, the proposed assumptions are used to calculate exposure estimates.

The dermal post-application exposure from the turfgrass use for the adult results in an MOE of 9,100. The MOEs for post-application exposures for the toddler are calculated as 6,400 and 3,500 for dermal and hand-to-mouth exposures, respectively. The aggregate intermediate MOE for post-application residential exposure to toddlers is 2,200. Therefore, all residential post-application exposure estimates are well below EPA's level of concern. Because these estimates were calculated using screening-level assumptions, it is believed that the actual risks will be lower. For the intermediate-term, typical lawn maintenance practices such as mowing and watering are expected to expedite the dissipation of bentazon on turfgrass. Therefore, with less residue available, potential incidental hand-to-mouth exposures are expected to be substantially lower.

D. Cumulative Effects

There is no available data to determine whether bentazon has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, bentazon does not appear to produce a toxic metabolite produced by other substances. For the purposes of this notice of filing, therefore, it is assumed that bentazon does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Acute risk estimates from aggregate exposure to bentazon in food and water are below EPA's level of concern. For Tier 1 acute dietary exposure analysis, it was assumed that 100% of the crops treated with bentazon and that residues equaled the tolerance level. For all females 13–50 years old subgroups, less than or equal to 5% of the aPAD is occupied by dietary exposure from food. The acute dietary risk from food associated with the existing and proposed uses of bentazon is below EPA's level of concern. The estimated average concentrations of bentazon in surface and ground water are less than EPA's levels of comparison for bentazon in drinking water as a contribution to acute aggregate exposure.

Chronic (non-cancer) aggregate risk estimates are below EPA's level of concern. The chronic dietary exposure analysis for residues in food incorporated anticipated and tolerance level residues for commodities. Percent crop treated information was used for several commodities. The %cPADs for all subgroups were less than 100%, with the highest being 28% for the children 1–6 years old subgroup. Thus, the chronic dietary risk estimates from food associated with existing and proposed uses of bentazon do not exceed EPA's level of concern. For ground and surface water, the estimated average concentrations of bentazon are less than EPA's levels of comparison for bentazon in drinking water as a contribution to chronic aggregate exposure.

Aggregate short-term risk estimates are below EPA's level of concern. In aggregating short-term risk, the background chronic dietary exposure (food + drinking water) and short-term inhalation exposures from residential uses are considered. Because a dermal endpoint of concern for the short-term duration was not identified, only inhalation exposure estimates are relevant for the adult handler. Short-term inhalation exposure may occur for a homeowner treating turf and ornamentals on the same day. The total short-term food and residential aggregate MOE value is 220,000. As this MOE is greater than 1,000, the short-term food and residential aggregate risk estimate is below EPA's level of concern. For surface and ground water, the estimated average concentrations of bentazon are less than EPA's levels of comparison for bentazon in drinking water contribution to short-term aggregate exposure.

Aggregate intermediate-term risk estimates are below EPA's level of concern for adults. In aggregating intermediate-term risk, the background chronic dietary exposure (food + drinking water) and intermediate-term dermal exposures from residential uses are considered. For adults, dermal post-application exposures may result from dermal contact with treated turf. For adults, the total food and residential intermediate-term aggregate MOE is 7,600. As this value is greater than 1,000, the intermediate-term aggregate risk estimate is below EPA's level of concern. For surface and ground water, the estimated average concentrations of bentazon are less than EPA's levels of comparison for bentazon in drinking water as a contribution to intermediate-term aggregate exposure.

A cancer risk assessment was not done. Bentazon is classified as a Group E chemical (evidence of non-carcinogenicity for humans) based upon lack of evidence of carcinogenicity in rats and mice. Based on these risk assessments, it is concluded that there is a reasonable certainty that no harm will result from aggregate exposure to bentazon residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of bentazon, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children.

Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

The toxicological data base for evaluating prenatal and postnatal toxicity of bentazon is complete with respect to current data requirements. There was evidence of increased susceptibility following *in utero* exposure to bentazon in the prenatal developmental toxicity study in rats and there was quantitative evidence of increased susceptibility following prenatal/postnatal exposure to bentazon in the 2-generation reproduction study in rats.

There is a complete toxicity data base for bentazon and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA Safety Factor for protection of infants and children will be retained at 10x for bentazon due to the increased prenatal/postnatal susceptibility. The FQPA Safety Factor for bentazon is applicable to females 13–50 years old only for acute dietary and residential exposure assessments because increased susceptibility was demonstrated in the developmental study in rats which is designed to evaluate chemical effects on the mother and fetus from the time of implantation of the fertilized egg in the uterus through the end of gestation. The safety factor is also applicable to all population subgroups for chronic dietary and residential exposure assessments because increased susceptibility was demonstrated in the 2-generation reproduction study (which is designed to assess the effects of the pesticide on male and female reproductive processes, from egg and sperm production and mating through pregnancy, birth, nursing, growth and development, and maturation). An acute endpoint was not identified and this risk assessment was not required.

Using the exposure assumptions described in this unit, it was concluded that aggregate exposure to bentazon from food will utilize 28% of the chronic PAD for children 1–6 years old. EPA generally has no concern for exposures below 100% of the chronic PAD because the chronic PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to bentazon in drinking water and from non-dietary, non-occupational exposure, the aggregate exposure is not expected to exceed 100% of the chronic PAD.

Although bentazon is a registered herbicide for use on turf and ornamentals, short-term non-dietary ingestion exposure for toddlers is not assessed because EPA determined that there is no acute dietary or oral endpoint applicable to infants and children. Aggregate intermediate-term risk estimates are below EPA's level of concern for infants and children. In aggregating intermediate-term risk, background chronic dietary exposure (food + drinking water) and intermediate-term, non-dietary oral and dermal exposures from residential uses are considered. For toddlers, dermal and non-dietary oral postapplication exposures may result from dermal contact with treated turf as well as hand-to-mouth transfer of residues from turfgrass. For infants and children, the total food and residential intermediate-term aggregate MOE is 2,000. As this value is greater than 1,000, the intermediate-term aggregate risk estimate is below EPA's level of concern. For surface and ground water, the estimated average concentrations of bentazon are less than EPA's levels of comparison for bentazon in drinking water as a contribution to intermediate-term aggregate exposure.

Based on these risk assessments, BASF concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to bentazon residues.

F. International Tolerances

There is neither a Codex proposal, nor Canadian or Mexican limits for residues of bentazon in clover. Therefore, a compatibility issue is not relevant to the proposed tolerance.

[FR Doc. 01–27600 Filed 11–1–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7097–9]

Proposed CERCLA Administrative Cost Recovery Settlement; Cliff/Dow Dump, Marquette, MI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Cliff/Dow Dump site in Marquette, Michigan with the following setting parties: The Cleveland-Cliffs Iron Company, The Dow Chemical Company, Georgia-Pacific Corporation and the City of Marquette, Michigan. The settlement requires the setting parties to pay $412,600 to the EPA Hazardous Substances Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive all written comments relating to the settlement. The Agency will consider all comments and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at U.S. EPA, Region 5. Administrative Records, 77 W. Jackson Boulevard, Chicago, IL 60604 (312) 886–0900; the Peter White Public Library, 217 N. Front St. Marquette, MI 49855; and the Michigan Department of Environmental Quality, Knapps Center, Lansing, Michigan 48909.

DATES: Comments must be submitted on or before December 3, 2001.

ADDRESSES: The proposed settlement is available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60640. A copy of the proposed settlement may be obtained from Christine M. Liszewski, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60640, phone (312) 886–4670. Comments should reference the Cliff/Dow Dump located in Marquette, Michigan, and Docket No. V–W–01–C–655 and should be addressed to Christine M. Liszewski, U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60640.

FOR FURTHER INFORMATION CONTACT: Christine M. Liszewski, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60640, phone (312) 886–4670.

Dated: October 10, 2001.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 01–27592 Filed 11–1–01; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission, Comments Requested

October 26, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 2, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1-A804, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0496.

Title: ARMIS Operating Data Report.

Form No.: FCC 43–08.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 50.

Estimated Time Per Response: 160 hours per response (avg).

Total Annual Burden: 8000 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Needs and Uses: Section 220 of the Communications Act of 1934, as amended, 47 U.S.C. 220, allows the Commission, at its discretion, to prescribe the forms of any and all accounts, records and memoranda to be kept by carriers subject to this Act, including the accounts, records and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys. Section 219(b) of the Communications Act of 1934, as amended, 47 U.S.C. 219(b), authorizes the Commission by a general or special orders to require any carriers subject to this Act to file annual reports concerning any matters with respect to which the Commission is authorized or required by law to act. Section 43.21 of the Commission's rules detail that requirement. ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy. The ARMIS 43–08 Report collects network operating data in a consistent format. The ARMIS 43–08 Report monitors network growth, usage, and reliability. The information contained in the ARMIS 43–08 Report provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities.

OMB Control No.: 3060–0763.

Title: The ARMIS Customer Satisfaction Report.

Form No.: FCC Report 43–06.

Type of Review: Extension.

Respondents: Business or other for Profit.

Number of Respondents: 8.

Estimated Time Per Response: 720 hours per response (avg).

Total Annual Burden: 5760 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Needs and Uses: Section 220 of the Communications Act of 1934, as amended, 47 U.S.C. 220, allows the Commission, at its discretion, to prescribe the forms of any and all accounts, records and memoranda to be kept by carriers subject to this Act, including the accounts, records and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys. Section 219(b) of the Communications Act of 1934, as amended, 47 U.S.C. 219(b), authorizes the Commission by a general or special orders to require any carriers subject to

this Act to file annual reports concerning any matters with respect to which the Commission is authorized or required by law to act. Section 43.21 of the Commission's rules detail that requirement. ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy. The Customer Satisfaction Report reflects the results of customer satisfaction based on surveys conducted by individual carriers from their customers. The information contained in the ARMIS 43–06 Report provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–27487 Filed 11–1–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2511]

Petition for Reconsideration of Action in Rulemaking Proceeding

October 29, 2001.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by November 19, 2001. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Amendment of section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use By the Mobile-Satellite Service (ET Docket No. 95–18)

In the Matter of establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band (IB Docket No 99–81)

In the Matter of New Advanced Mobile and Fixed Terrestrial Services; Use of Frequencies Below 3 GHz (ET Docket No. 00–258)

Number of petitions filed: 1.

Magalie Roman Sales,

Secretary.

[FR Doc. 01–27488 Filed 11–1–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 27, 2001.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Tri-County Bancorp, Inc., West Union, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of West Union Bank, West Union, West Virginia.

B. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. FNC S-Corp, Inc., Douglas, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of FNC Bancorp, Inc., Douglas, Georgia, and First National Bank of Coffee County, Douglas, Georgia.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Northwest Delaware, Inc., Wilmington, Delaware; and Northwest Bancshares, Inc., Roanoke, Texas; to become bank holding companies by acquiring 100 percent of the voting shares of Northwest Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Northwest Bank, Roanoke, Texas.

Board of Governors of the Federal Reserve System, October 29, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–27492 Filed 11–1–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Budget, Technology and Finance, Office of Assistant Secretary for Administration and Management; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended as follows: Chapter AM, "HHS Management and Budget Office" as last amended at 60 FR 52403–05 (10/6/95); 63 FR 38836–7 (7/20/98); 61 FR 43363–65 (8/22/96); 63 FR 9555–6 (2/25/98); and 60 FR 52403–5 (10/6/95). This reorganization will do the following: Abolish the HHS Management and Budget Office (MB), retitle it as the Office of Budget, Technology and Finance (OBTF), headed by an Assistant Secretary, and transfer its functions between OBTF and a newly established Chapter AJ to be titled, the "Office of the Assistant Secretary for Administration and Management (OASAM)," which will be headed by an Assistant Secretary. The Assistant Secretary for Administration and Management (ASAM) will share responsibility with the Assistant Secretary for Budget, Technology and Finance (ASBTF) for ensuring that HHS meets the goals set forth in the President's Management Agenda, and the OASAM Assistant Secretary will serve as the OPDIV Head for the Secretary. The OBTF will focus on the financial and budgetary concerns for the Department, as well as the investments the Department is making in e-government and technology. The OBTF Assistant Secretary will serve as the Department's Chief Financial Officer and manage the HHS Chief Information Officer functions. The changes are as follows:

1. Under Part A, "Office of the Secretary," make the following changes to Chapter AM:

A. Delete all references to the "HHS Management and Budget Office," and the Assistant Secretary for Management and Budget (ASMB) in their entireties; and retitle the "HHS Management and Budget Office," as the Office of Budget, Technology and Finance (OBTF) and the ASMB as the Assistant Secretary for Budget, Technology and Finance (ASBTF).

B. Delete Chapter AM, in its entirety and replace with the following:

Office of Budget, Technology and Finance (AM)

Section AM.00 Mission: The mission of the Office of Budget, Technology and Finance (OBTF) is to provide advice and guidance to the Secretary on budget, financial management, and information technology, and to provide for the direction and coordination of these activities throughout the Department.

Section AM.10 Organization: The Office of Budget, Technology, and Finance is headed by the Assistant Secretary for Budget, Technology and Finance (ASBTF). The Assistant Secretary for Budget, Technology, and Finance is the Departmental Chief Financial Officer (CFO), and reports to the Secretary. The office consists of the following components:

- Immediate Office of the ASBTF (AM)
- Office of Budget (AML)
- Office of Information Resources Management (AMM)
- Office of Finance (AMS)

Section AM.20. Functions: 1. Immediate Office of the Assistant Secretary for Budget, Technology, and Finance/Chief Financial Officer (AM). Provides executive direction to OBTF components. The ASBTF is the principal adviser to the Secretary on all aspects of budgetary and financial management and information technology. By delegation from the Secretary, the ASBTF/CFO exercises full Department-wide authority of the Secretary in the assigned areas of responsibility to include all responsibilities provided by the Chief Financial Officers Act of 1990. This includes the approval of the job descriptions and skill requirements, and the selection of OPDIV CFOs as well as participation with the OPDIV Head in the annual performance plan/evaluation of the OPDIV CFO. In addition, the ASBTF/CFO provides Department-wide policy guidance on the qualifications, recruitment, performance, training, and retention of all financial management personnel. The ASBTF manages the Chief Information Officer (CIO) and all functional responsibilities included in the Clinger-Cohen Act.

2. Office of Budget (AML): The Office of Budget: (1) Advises and supports the Secretary and the Assistant Secretary for Budget, Technology and Finance/CFO and oversees the preparation of the Departmental budget estimates and forecasts resources required to support programs and activities of the Department; (2) analyzes budgetary and financial management implications of new or proposed legislation, programs or activities; (3) appraises program activities and operations in terms of policies, goals and objectives of the Department; (4) operates HHS' integrated funding system; (5) recommends and administers policies and procedures for allocation and control of employment ceilings; (6) establishes and monitors audit management policy for the Department and prepares reports to Congress on audit resolution management; (7) develops and executes Department-wide procedures relating to implementation and management of Government Performance and Results Act (GPRA); (8) responsible for the Office of the Secretary activities under the Paperwork Reduction Act; (9); serves as the focal point for OS budget operations, providing assistance for the development of budget policy and management of positions and financial resources for the OS; (10) manages audit follow-up and resolves issues relating to audit resolution management in the OS; (11) with particular reference to the Office of the Secretary (OS), is responsible for the overall formulation and execution of the OS budget; (12) serves as the focal point for OS budget operations, providing assistance for the development of budget policy and management of positions and financial resources for the OS; and review proposed recommendation on draft regulations, proposed legislation, reorganization, and delegations of authority proposal.

3. Office of Information and Resources Management (OIRM): The Deputy Assistant Secretary for Information Resources Management (DASIRM), who is also the Deputy CIO, heads the Office of Information Resources Management (OIRM). OIRM provides the Secretary and the Assistant Secretary for Budget, Technology, and Finance (ASBTF) and the Chief Information Officer (CIO) with strategic planning, information resources management and technology policy, architecture, investment review, and Office of the Secretary (OS) computer operations management support. More specifically, OIRM, in collaboration with the HHS agencies and Staff Divisions, (1) develops and updates the Information Technology Five Year Strategic Plan; (2) develops and coordinates information resources management policies applicable across the Department and the Office of the Secretary, including the creation, handling, storage, dissemination, and disposition of information; (3) leads the development and implementation of an enterprise information infrastructure across the Department (including a Departmental information technology architecture and information technology-based services for the Office of the Secretary's clients and employees); (4) manages risks associated with major information systems and information technology; (5) evaluates major investments in information technology based on return on investment and is responsible for their subsequent periodic review; (6) guides and oversees the development of information systems and communications networks; (7) leads e-government activities to achieve strategic improvements in service in the following areas: Government to citizen, Government to business, Government to Government, and internal efficiency and effectiveness; and (8) provides data processing and communications equipment for the Office of the Secretary and implements and maintains standards office automation applications running on the OS network.

4. Office of Finance (AMS): The Office of Finance is headed by the Deputy Assistant Secretary for Finance and is also the Deputy Chief Financial Officer: (1) Advises and supports the Secretary and the Assistant Secretary for Budget, Technology, and Finance/CFO on all aspects of financial activities across the Department; (2) oversees, monitors and evaluates the design, development, operation, and enhancement of Department-wide and component accounting systems; (3) coordinates CFO activities and reports throughout HHS including the preparation of audited financial statements and the preparation of the annual CFO report for submission to the ASBTF/CFO; (4) in coordination with other ASBTF components, participates in the clearance/approval

process for program information systems that provide financial and/or program performance data which are used in financial statements; (5) provides advice to the ASBTF/CFO on approval of the job descriptions and skills requirements for OPDIV CFOs and on the approval of the selection of OPDIV CFOs; (6) provides advice to the ASBTF/CFO who participates with the OPDIV Head in the annual performance plan/evaluation of the OPDIV CFO; (7) provides advice to the ASBTF/CFO on the qualifications, recruitment, performance, training and retention of all financial management personnel; (8) serves as the Departmental liaison with GAO, OMB, Treasury, and other Federal agencies on financial matters; (9) maintains Departmental finance and accounting standards; (10) resolve monetary findings involving management systems; (11) directs regional review and negotiation of cost allocation plans and indirect cost rates; (12) in coordination with the Office of Budget, recommends and implements Departmental Budget execution policies and procedures, and serves as the focal point dealing with OMB on these matters; (13) manages the day-to-day finance and accounting activities of the Office of the Secretary and other Departmental components as determined by the ASBTF/CFO.

C. Delete Chapter AML, "Office of Budget," in its entirety and replace with the following:

Section AML.00 Mission: The Office of Budget provides advice and support to the Secretary and the Assistant Secretary for Budget, Technology, and Finance on matters pertaining to: formulation of the HHS and President's budgets, presentation of budgets and reconciliation legislation to OMB and the Congress, and resolution of issues arising from the execution of final appropriations.

Section AML.10 Organization: The Office of Budget is headed by the Deputy Assistant Secretary for Budget who reports to the Assistant Secretary Budget, Technology and Finance/Chief Financial Officer and includes the following:

- Division of Discretionary Programs (AML1)
- Division of Health Benefits and Income Support (AML3)
- Division of Budget Policy and Management (AML4)
- Division of Program Integrity and Accountability (AML2)

Section AML.20 Functions: 1. Division of Discretionary Programs: The Division—a. Provides analytical services and assistance to the Secretary, the Assistant Secretary for Budget, Technology. and Finance, and Department OPDIV heads in their budgetary management of the Department's principal discretionary programs including science and health services programs administered by the Public Health Service components; and social service programs of the Administration for Children and Families and the Administration on Aging.

b. Reviews, budgets, and related requests, for resources, and analyzes plans and proposals for new or alternative legislation.

c. Analyzes proposed regulations, reorganizations, or program initiatives to determine their policy, resource and management implications.

d. Proposes recommendations on draft regulations, proposed legislation and reorganization proposals.

e. Proposes budget options and policy initiatives as necessary to achieve program objectives established by the Secretary.

f. Assists in the development of strategies for the presentation of the budget to the Office of Management and Budget and the Congress and develops materials for key Departmental officials who testify at hearings before these bodies.

g. Provides guidances to OPDIVs and STAFFDIVs in the formulation of their budgets.

b. Conducts special reviews and analyses to examine assigned OPDIV and STAFFDIV program operations and management effectiveness.

2. Division of Health Benefits and Income Support: The Division—a. Provides analytical services and assistance to the Secretary, the Assistant Secretary for Budget, Technology, and Finance, and the Department OPDIV heads in the budgetary management of the Department's principal entitlement programs including Medicare, Medicaid, Family Support Payments and other entitlements in support of children and families.

b. Reviews budget and related requests for resources; analyzes plans and proposals for new legislation, regulations, or program initiatives to determine their resource, policy, and management implications; proposes recommendations for the Office of Budget on budget requests, draft regulations, proposed legislation, and reorganization proposals.

c. Assists the Secretary, the Assistant Secretary of Budget, Technology, and Finance and the OPDIV heads in evaluating programs and budgetary proposals by developing reliable cost projections for legislative and planning proposals, and ensuring that proposals are consistent with approved plans and policies.

d. Coordinates the preparation of budget estimates and forecasts of resources required to support the programs and operations of the Department.

e. Reviews reprogramming requests and recommends appropriate action to the Office of Budget.

f. Provides guidance in budget formulation for the appropriate OPDIV.

g. Conducts special management reviews and analyses, and develops management options to ensure efficient and effective program operations and to encourage management improvements.

h. Proposes budget options and policy initiatives as necessary to achieve program objectives established by the Secretary.

i. Assists in the development of strategies for presentation of the budget to the Office of Management and Budget and the Congress and develops materials for key Department officials who testify at hearings before these bodies.

3. Division of Budget Policy, Execution and Management: The Division—a. Directs the formulation and presentation of the HHS budget by developing and promulgating to the OPDIVs and others the policies, procedures, guidance, and schedules for preparing budget submissions.

b. Coordinates the presentation of the Department's budget to Congress including preparation and submission of justifications, reports, significant items, and crosscutting materials; preparation of the Secretary's testimony before the Appropriations Committees; and coordination of transcripts, questions for the record, and other hearing materials.

c. Provides advice and analysis to support Department-wide budget decision-making.

d. Maintains active communication with Department budget officers with regard to external budget events.

e. Manages a computerized budget information system reflecting data on HHS-wide basis and coordinates OPDIV input into this system.

f. Provides direct staff support to the Secretary in preparation for appropriation hearings and other budget related presentations and briefings.

g. Actively communicates with the Budget and Appropriations Committees in the Congress and provides intelligence and analyses of budget decisions to senior HHS staff and the Operating Divisions.

h. Prepares guidelines for determining funding levels under continuing resolutions.

i. Coordinates preparation of guidelines governing reprogrammings, transfers between accounts, and other crosscutting funding methods; provides recommendations and staff support in processing crosscutting funding proposals.

j. Analyzes and prepares reports on HHS performance in achieving streamlining and FTE reduction goals; provides expert advice on Departmentwide staffing policy.

k. Provides leadership and direction in the Department-wide review, analysis and appraisal of financial elements of program execution and the development and execution of policies related to efficient allocation, expenditure and control of funds.

l. Coordinates and tracks outlay projections: (1) To assist OMB in the continuing effort to monitor spending and to thereby improve the management of the Government's overall cash and debt operations; and (2) in support of formulation of the budget, including the maintenance of HHS ceiling controls and the development of outlay estimates shown in the President's Budget for controllable programs.

m. Promulgates Departmental spending policies, especially in the event of Continuing Resolutions and possible suspension of operations due to the failure of the Congress to enact appropriations on time and works with agency budget officers and the Office of Budget in formulating agency funding plans.

n. Maintains a system of Department-wide budget execution, including the management and control of the apportionment of funds in accordance with the requirements of the Anti-Deficiency Act and OMB regulations; and requests and monitors the receipt of Treasury warrants.

o. Serves as principal staff advisor to the OBTF on all matters involving budget execution.

p. Acts as liaison with the Office of Management and Budget, the Treasury Department, the Congressional Budget Office, and other agencies on matters involving budget execution.

q. Responsible for the development and maintenance of a system of financial information which involves the collection, organization, and maintenance of financial data in electronic form as well as the development of reporting mechanisms for making the financial information useful and available for decision making.

4. Division of Program Integrity and Accountability: The Division—a. Reviews and analyzes the budgets of the Office of Inspector General (OIG) and Office for Civil Rights (OCR). Prepares special analyses of OIG and OCR budgets for the purpose of evaluating capacity and determining if alternative approaches are feasible. These analyses would usually be for the use of the Deputy Assistant for Secretary Budget, the Assistant Secretary for Budget, Technology and Finance, and the Secretary. Monitors Congressional appropriations hearings in which the OIG and OCR are participants.

b. Establishes Department policy in the management of Inspector General Reports and audits.

c. Manages, in accordance with the Paperwork Reduction Act of 1980, as amended, the OS activities related to the review and approval of all public use reports and record-keeping requirements which impose a paperwork burden on the public. Develops policies for and manages the OS Information Collection Budget and the Information Collection Budget process. Develops policies and procedures for the OS and carries out analytical and oversight activities related to the Department's paperwork burden reduction efforts.

d. Provides staff assistance to the Assistant Secretary for Budget, Technology and Finance and the HHS Operating Divisions in the implementation, management and analysis for: (1) Strategic planning and for the development and implementation of performance measures under the Government Performance and Results Act (GPRA); and (2) budget related performance planning and annual performance plans required under the Government Performance and Results Act (GPRA).

e. Represents the Department in government-wide activities to implement the development and implementation of performance measures under GPRA and budget-related GPRA performance planning policies, requirements and processes.

f. Provides special management review services for selected activities.

g. Provides staff assistance to the Secretary, the Assistant Secretary for Budget, Technology and Finance, the Service and Supply Funds (SSF) Board of Directors, OPDIV Budget Officers and STAFFDIV Heads in the budgetary and financial management of the Service and Supply Fund.

h. Provides for budget policy management and financial integrity of the SSF in the provision of Departmental common use administrative services.

i. Assists in the planning and preparation of the SSF budget for presentation to the SSF Board, the Office of Management and Budget, and Congress.

j. Prepares apportionment requests for the Services and Supply fund.

D. Make the following changes to Chapter AMM, "Office of Information and Resources Management," delete Section AMM.00 Mission in its entirety and replace with the following:

Section AMM.00 Mission: Office of Information and Resources Management. The Office of Information Resources Management (OIRM) provides the Department and the Office of the Secretary with information resources management and technology policy, strategic planning, architecture, investment review, e-government guidance, and Office of the Secretary (OS) computer operations management support. The Office of Information Resources Management (OIRM) advises the Secretary and the Assistant Secretary for Budget, Technology, and Finance (ASBTF) and the Chief Information Officer (CIO) on information resources and information technologies to accomplish Department goals and program objectives. The Office represents the Department to central management agencies (e.g., the Office of Management and Budget, General Accounting Office); exercises delegated authorities and ensures adherence to any other applicable laws, Executive Orders, and oversight agency mandates; and promotes improved management of Departmental information resources and technology. Delegated authorities and applicable laws include the Information Technology Management Reform Act of 1996, the Paperwork Reduction Act of 1995, the Computer Matching and Privacy Act of 1988, the Computer Security Act of 1987, the National Archives and Records Administration Act of 1984, the Competition in Contracting Act of 1984, the Federal Records Act of 1950, OMB Circular A–130: Management of Federal Information Resources, the Government Information Security Reform Act, and the Government Printing and Binding Regulations issued by the Joint Committee on Printing.

E. Delete Chapter AMS. "Office of Finance," in its entirety and replace with the following:

Section AMS.10 Mission: The Office of Finance is headed by the Deputy Assistant Secretary, Finance, who is also the Deputy Chief financial Officer and reports to the Assistant Secretary for Budget, Technology and Finance/

Chief Financial Officer. The Office of Finance provides financial management advice and leadership to the Secretary and the Assistant Secretary for Budget, Technology and Finance, and the Operating Divisions CFOs.

Section AMS.20 Organization: The Office of Finance is headed by the Deputy Assistant Secretary for Finance who is also the Deputy Chief Financial Officer and reports to the Assistant Secretary for Budget, Technology and Finance. The Office includes the following:

- Immediate Office (AMS)
- Office of Financial Policy (AMS1)
- Program Management and Systems Policy Office (AMS4)
- Office of Audit Resolution and Cost Policy (AMS5)

Section AMS.20 Functions: Immediate Office (AMS) The Immediate Office is responsible for: (1) Standards for financial systems and financial reporting including audited financial statements in conformance with government wide accounting concepts and standards; (2) cash and credit management, debt management, payment management including disbursement activities and functions, (3) the design and development of Department-wide and component financial systems; (4) the preparation of the HHS Financial Management Status Report and Five Year Plan and the HHS Annual Report including financial statement and discussion and analysis and performance measures; (5) the development of outcome-based performance measures and performance plans through facilitation and training forums and best practices; (6) in coordination with other ASBTF components, participates in the clearance/approval process for program information systems that provide financial and/or program performance data which are used in financial statements; (7) approves the job descriptions and skill requirements for OPDIV CFOs, on the selection of OPDIV CFOs, and provides advice to the ASBTF/CFO who participates with the OPDIV Head in the annual performance plan/evaluation of the OPDIV CFO; and on the qualifications, recruitment, training and retention of all financial management personnel. In addition, improve financial performance by implementing a unified financial management system across HHS and ensure the preparation of financial statements that accurately represent HHS' financial condition.

2. Office of Financial Policy (AMS1): The Office of Financial Policy comprises the Division of Financial Management Policy (DFMP). (1) Division of Financial Management Policy (AMS11). The Division (a) Develops Department-wide policies, procedures, and standards for financial management areas including cash management, credit management, debt management, payment and disbursement activities and functions, and promulgates these and related government-wide financial management requirements through the Departmental Staff Manual system;

(b) Establishes a financial management planning process for the development of strategic and tactical plans and prepares the Department's Annual Financial Management Status Report and 5 Year Plan under the CFO Act;

(c) Provides support to the Operating Division Chief Financial Officers for financial planning and improvement initiatives;

(d) Serves as principal staff advisors on fiscal and accounting policy matters to the Office of Finance;

(e) Maintains liaison with the Office of Management and Budget (OMB), the Treasury Department, the General Accounting Office (GAO), the General Services Administration and other agencies on all financial management policy matters;

(f) Recommends policy and maintains a system for tracking and improving cash and credit management and debt collection performance throughout the Department;

(g) Establishes a financial management planning process for providing guidance and financial management indicators that enable the ASBTF/CFO to evaluate the financial management programs and activities of the Department;

(h) Prepares the annual HHS report on CFO activities as guided by the DASF/Deputy CFO.

3. Program Management and Systems Policy Office (AMS4): The Program Management and Systems Policy Office will be responsible for overseeing implementation of a unified financial management system consistent with the Secretary's directive. These responsibilities include:

a. Serve as a focal point for (1) overseeing the design, development, and implementation of the unified financial management system; and the development of life-cycle and budgetary plans; (2) monitoring the milestones and schedules as well as budget expenditures; and (3) the mediation and coordination of activities throughout all levels of HHS.

b. Ensure that all Federal accounting concepts and standards, as well as all HHS accounting policies and procedures are implemented throughout the unified financial management system.

c. Ensure that business requirements are met, the future direction of the initiative is consistent with HHS planning, and the status of the project is communicated to internal and external organizations.

d. Oversee a comprehensive program of change management that includes departmental communication, training plans and human resource issues.

e. Coordinate with workgroups to maximize the input from the cross-functional areas of HHS into the implementation process.

f. Oversee all risk management plans to ensure that risks are identified and mitigation strategies are developed.

(1) Division of Accounting and Fiscal Policy (AMS41). The Division: (a) Develops uniform business rules, data standards and accounting policy and procedures in support of new financial systems implementations. Ensures the development of ongoing accounting policy that further supports the consistent development and implementation of these systems;

(b) In collaboration with the Office of Financial Policy, provides advice and assistance to OPDIVs and STAFFDIVs on financial accounting and related fiscal matters and serves as principal advisor to the DASF on these matters as they relate to financial systems implementations;

(c) Maintains liaison with the Office of Management and Budget (OMB), the Treasury Department, the General Accounting Office (GAO), and other agencies on matters involving accounting and fiscal related matters as it relates to financial systems implementations;

(2) Division of Financial Systems Policy (AMS42). The Division: (a) Develops department-wide policies and standards for financial and mixed financial systems;

(b) Provides advice and serves as the focal point with the Federal control agencies on financial systems compliance matters;

(c) Provides for the establishment of Department-wide financial definitions and data structures;

(d) Provides for the administration of a data integrity and quality control program to ensure compliance with applicable Federal directives, Departmental financial systems policy and automated financial data exchange requirements;

(e) Oversees, monitors, evaluates, and recommends approval for the design, implementation, operation, and enhancement of Department-wide and component accounting and financial management systems;

(f) In collaboration with the Office of Financial Policy, serves as principal staff adviser to the Office of Finance on all financial systems related matters;

(g) Maintains liaison with the Office of Management and Budget, the Treasury Department, the General Accounting Office, and other agencies on matters involving financial systems.

4. Office of Audit Resolution and cost Policy (AMS5): The Office of Audit Resolution and Cost Policy provides leadership in the areas of resolving audits and managing cost policy. The Office has functional responsibility for cost principles and Department-wide cost policies and procedures affecting grants and contracts. In addition, the Office is responsible for resolving crosscutting audit findings and the following:

a. Serves as the Departmental liaison and maintains working relationships with OMB and other Federal agencies in the development of government-wide cost principles and Department-wide audit resolution policies; maintains similar relationships with associations of States, universities and other grantee and contractor organizations.

b. Reviews and resolves audit reports containing monetary and/or systemic findings of grantee and contractor organizations affecting the programs of more than one Operating or Staff Division of Federal agency. Conducts or arranges for additional reviews as needed.

c. Coordinates where necessary with other affected Federal agencies to establish a uniform Federal position on the actions needed to be taken and negotiates resolution on behalf of all Federal Departments and agencies.

d. When deemed necessary to protect the interests of the Department, makes recommendations to the Secretary, the ASBTF and other officials on safeguards or other actions against a grantee or contractor, where the organization is unwilling or unable to correct serious deficiencies in a timely manner.

e. Provides and arranges for technical assistance and/or training programs to grantees, contractors, and other Operating and Staff divisions on audit resolution, cost reimbursement and financial management of grants and contracts.

f. Upon request, reviews and approves accounting or other systems developed by grantees and contractors to meet Federal cost principle requirements.

F. Delete the following Chapters: Chapter AMG, "Office of Grants and Acquisition Management," Chapter AMP, "Office of Human Resources Management," and Chapter AMR, "Office of Facilities Services"; and under Chapter AML, "Office of Budget" delete the Office of Equal Employment Opportunity (AML–1), and transfer these components to the newly established Chapter, "Office of the Assistant Secretary for Administration and Management (AJ)."

II. Under Part A, establish a new Chapter AJ, to read as follows:

Office of Assistant Secretary for Administration and Management (AJ)

AJ.00 Mission
AJ.10 Organization
AJ.20 Functions

Section AJ.00 Mission: The Office of the Assistant Secretary for Administration and Management (OASAM) performs for the Secretary the administrative management functions (exclusive of financial and information resources management) of the Department. Manages the human resources, equal employment opportunity, acquisition, grants, and general management activities of the Department. Provides leadership and oversight direction to the activities of the Program Support Center. Provides resource management and equal opportunity services to the Office of the Secretary (OS) and is the head of the OS as an Operating Division.

Section AJ.10 Organization: The Office of the Assistant Secretary for Administration and Management is under the direction of the Assistant Secretary for Administration and Management, who reports to the Secretary and consists of the following components.

- Immediate Office of the Assistant Secretary for Administration and Management (AJ)
- Office of Human Resources (AJA)
- Office of Grants and Acquisition Management (AJB)
- Office of Management and Operations (AJC)

Section AJ.20 Functions:

A. Immediate Office of the Assistant Secretary for Administration and Management (AJ). Provides leadership, policy, guidance and supervision, as well as coordinating long and short range planning for the Office of the Assistant Secretary for Administration and Management.

B. Office of Human Resources (AJA):

Section AJA.00 Mission: The Office of Human Resources (OHR) provides leadership in the planning and development of personnel policies and human resource programs that support and enhance the Department's mission. Provides technical assistance to the Operating Divisions (OPDIVs) in building the capacity to evaluate the effectiveness of their human resource programs and policies. Serves as the Departmental liaison to central management agencies on topics relating to EEO and human resources matters.

Section AJA.10 Organization: The Office of Human Resources (OHR), headed by a Deputy Assistant Secretary for Human Resources who reports to the Assistant Secretary for Management and Administration, and consists of the following components:

- Immediate Office (AJA)
- Personnel Programs Group (AJA1)
- Equal Employment Opportunity Programs Group (AJA2)

Section AJA.20 Functions: 1. The Immediate Office of Human Resources (AJA): Provides leadership to the development and assessment of the Department's human resources programs and policies. In coordination with the Operating Divisions, designs human resource programs that support and enhance the HHS missions. Provides technical assistance to the OPDIVs in building the capacity to evaluate the effectiveness of their human resource programs and policies, including the development of performance standards. On behalf of the Department's Director of Equal Employment Opportunity, adjudicate complaints of discrimination. Serves as Departmental liaison to central management agencies exercising jurisdiction over human resources and EEO matters.

2. Personnel Programs Group (AJA1): Provides leadership to the planning and development of personnel policies and programs that support and enhance the Department's mission. In coordination with the OPDIVs, formulates HHS policies pertaining to employment, compensation, position classification, employee benefits, performance management, employee development, and employee and labor relations. Provides technical assistance to the OPDIVs in the proper application of Federal personnel laws, regulations, and policies. Provides strategic advice to the Deputy Assistant Secretary for Human Resources, the Assistant Secretary for Administration and Management, and the Secretary on those initiatives having major workforce implications. Analyzes workforce data and trends to support strategic workforce planning and restructuring efforts, at both the Departmental and OPDIV levels. Promotes and supports OPDIV capacity building efforts, including innovative approaches to personnel program

management. Serves as the Department's focal point for liaison on personnel and labor relations issues with the Office of Personnel Management, the General Accounting Office, the Merit Systems Protection Board, and the Federal Labor Relations Authority.

3. Equal Employment Opportunity Programs Group (AJA2): Provides leadership to the planning and development of affirmative employment policies and programs that recognize and value the diversity of the Department workforce and promote a work place free of discrimination. Provides technical assistance and enabling tools to the OPDIVs in the design of innovative, effective affirmative employment programs. Keeps top HHS officials appraised of workforce demographics and recommends positive interventions as needed. Prepares, for the Director of Equal Employment Opportunity, final Departmental decisions on the merits of complaints of discrimination, and prepares proposed dispositions of complaints presenting conflicts of interest for OPDIV and STAFFDIV officials. Serves as the Department's focal point for liaison with the Office of Personnel Management, the Equal Employment Opportunity Commission, and the General Accounting Office on issues pertaining to affirmative employment and discrimination complaints.

C. Office of Grants and Acquisition Management (AJB):

Section AJB.00 Mission: The Office of Grants and Acquisition Management (OGAM) provides functional management direction in the areas of grants management, acquisition and logistics. Provides Department-wide leadership in these areas through policy development, oversight and training. Awards and administers contracts in support of the program needs of the Office of the Secretary. Represents the Department in dealings with OMB, GSA and other Federal agencies and Congress in the areas of mandatory and discretionary grants, procurement and logistics. Fosters creativity and innovation in the administration of these functions throughout the Department.

Section AJB.10 Organization: The Office of Grants and Acquisition Management (OGAM), headed by a Deputy Assistant Secretary for Grants and Acquisition Management who reports to the Assistant Secretary for Administration and Management, consists of the following components:

- Immediate Office (AJB)
- Logistics Policy Staff (AJB1)
- Office of Acquisition Management (AJB2)
- Office of Grants Management (AJB3)
- Office of Small and Disadvantaged Business Utilization (AJB4)

Section AJB.20 Functions: 1. Office of the Deputy Assistant Secretary for Grants and Acquisition Management (AJB): The Office of the Deputy Assistant Secretary for Grants and Acquisition Management provides leadership, policy, guidance and supervision, as well as coordinating long and short-range planning to constituent organizations.

2. Logistics Policy Staff (AJB1): Serves as the Department's focal point and liaison with the Operating and Staff Divisions for policy development, technical assistance, oversight and training in the area of logistics. The Staff is responsible for the following:

a. Formulates Department-wide logistics policies governing the management of personal property throughout the Department.

b. Provides advice and technical assistance on logistics activities and policy matters to the Department's Operating Divisions.

c. Monitors the adoption of logistics policies by the Department's Operating Divisions to ensure consistent policy interpretation and application.

d. Oversees the implementation of logistics functions throughout the Department.

e. Develops, participates in and evaluates logistics training programs for Department staff.

f. Researches, analyzes and tests innovative ideas, techniques and policies in the area of logistics.

g. Serves as the Department's liaison in the area of logistics and maintains working relationships with OMB, GSA and other Federal agencies to coordinate and assist in the development of policy.

3. Office of Acquisition Management (AJB2): The Office of Acquisition Management provides leadership in the area of acquisition through policy development, oversight and training. The Office awards and administers contracts in support of the program needs of the office of the Secretary. The office is responsible for the following:

a. Formulates Department-wide acquisition policies governing procurement activities. Publishes these in regulations and manuals. Recommends and participates in development of government-wide acquisition policy.

b. Provides advice and technical assistance on procurement activities and policy matters to the Department's Operating and Staff Divisions.

c. Develops, participates in and evaluates the procurement training and certification program for Department's procurement staff; develops and participates in training activities for the Department's program staff who act as project officers on the Department's contracts.

d. Monitors the adoption of acquisition policies by the Department's Operating and Staff Divisions to ensure consistent policy interpretation and application.

e. Conducts Performance Measurement of the Department's procurement system to ensure compliance with procurement laws and policies and efficient acquisition of the Department's program needs.

f. Makes studies of problems requiring creation of new policies or revision of current policies, including the application of Departmental management controls and reports related to the Department's procurement activities; resolves issues arising from implementation of those policies; maintains similar relationships and associations with public and private contractor organizations.

g. Researches, analyzes and tests innovative ideas, techniques and policies in the area of acquisitions. Establishes and directs ad hoc teams to work on special projects to develop creative approaches to problems in the area of acquisition.

h. Serves as the Department's liaison in the area of acquisitions and maintains working relationships with OMB, GSA, GAO, and other Federal agencies to coordinate and assist in the development of policy and to participate in government-wide tests of procurement innovations.

i. Conducts special projects to develop improved mechanisms for Department-wide management of procurement.

j. Plans, directs, and carries out the centralized contracting program for the Office of the Secretary and the Administration on Aging. In the case of certain consolidated and centralized commodities and services (including information technology) also provides contract support for the Administration on Children and Families as well as other components of the Department.

k. Administers and manages performance of the contracts of the Office of the Secretary to ensure that it receives the timely and quality performance and the products for which it has contracted.

l. Is responsible for award and administration of contracts. Is authorized to enter into contracts at the micro-purchase, simplified acquisition, and major purchase (purchases in excess of $100,000.00) levels.

m. Tests innovative ideas and techniques to develop improved procurement methodologies.

4. Office of Grants Management (AJB3). The Office of Grants management provides leadership in the area of mandatory and discretionary grants through policy development, oversight and training. The Office has functional responsibility for Department-wide grants policies and grant regulations. In addition, the Office is responsible for oversight of the HHS grants management operations and the following:

a. Manages oversight of the award and administration of mandatory and discretionary grants and other forms of Federal financial assistance throughout the Department.

b. Formulates Department-wide grant policies governing the award and administration of grant activities. Publishes these in regulations and other directives.

c. Monitors the adoption of grant policies and procedures by the Department's Operating and Staff Divisions to ensure consistent policy interpretation and applications.

d. Provides advice and technical assistance to the Department's Operating and Staff Divisions and to the general public on matters relating to the administration of grants and other forms of Federal financial assistance.

e. Develops, participates in and evaluates grants management training programs for Department staff.

f. Serves as the Department's liaison in grants and maintains working relationships with OMB and other Federal agencies to coordinate and assist in the development of government-wide grant policies.

g. Conducts special studies of grants management issues to identify and implements improvements in the way the Department awards and administers grants and other forms of Federal financial assistance; and designs and assists in execution of demonstrations, experimentation and tests of innovative approaches to grants management.

h. Develops, analyzes and tests innovative ideas, techniques and policies in grants management. Fosters creativity in the administration of grants.

i. Establishes and manages improved grants management information and monitoring systems.

j. Establishes and manages training and certification programs for grants management professionals throughout the Department.

5. Offices of Small and Disadvantaged Business Utilization (AJB4): a. Has responsibility within the Department for policy, plans, and oversight of execution of the functions under section 8 and 15 of the Small Business Act as amended and Executive Orders 12073 and 12138, relating to preference programs for small business, disadvantaged businesses, labor surplus area concerns, and women-owned businesses. Under provision of Public Law 95–507, the Director reports directly to the Deputy Secretary. Pursuant to Deputy Secretarial direction, the day-to-day operational review will be provided by the Deputy Assistant Secretary for Grants and Acquisition Management to ensure effective departmental coordination and execution of these programs.

b. Acts as the advocate for the Secretary and Deputy Secretary within the Department for matters relating to sections 8 and 15 of Small Business Act and Executive Orders 12073 and 12138 and represents the Department in dealing with other Federal agencies on those matters.

c. Acts as focal point and advocate for the small business, disadvantaged business, labor surplus area and women-owned business firms in their dealings with the Department.

d. Formulates, recommends and monitors implementation of policies for the Department's small business, Small Business Innovation Research, disadvantaged business, labor surplus area, and women-owned business programs.

e. Coordinates and prepares the Department's goals for assigned programs, recommends Secretarial approval of such goals and subsequent to Secretarial approval, negotiates, establishes and reports on goals for the assigned programs with the cognizant Federal agencies.

f. Encourages the awarding of contracts and subcontracts to small business, disadvantaged business, labor surplus area, and women-owned business firms by providing information and assistance to all of the Department's organizational units.

g. Prepares documentation and reports to the Executive Office of the President, the Congress, Office of Management and Budget, the Small Business Administration, and other agencies, as required.

h. Ensures effective implementation by the Department of mandatory plans and/or contract clauses as required by Public Law 95–507 for small business and disadvantaged business firms and monitors the activities relating to such plans.

i. Provides input for coordinated Departmental positions on proposed legislation and Government regulations on matters affecting cognizant socioeconomic programs and maintain liaison with Congress through established Departmental channels.

j. Manages the Department's Small Business Innovation Research Program (SBIR) established under Public Law 97–219 and provides liaison between the Department and the Small Business Administration on SBIR matters.

k. Oversees and monitors the Departmental review and screening of planned procurement by programs and procurement offices to ensure that preference programs are given thorough consideration throughout the decision-making process.

D. Office of Management and Operations (AJC):

Section AJC.00 Mission: The Office of the Management and Operations (OMO) provides advice on matters having to do with the provision of administrative services, resource and financial management services, facilities services, and equal employment opportunity services for the Office of the Secretary. Provides leadership and direction for the Program Support Center and its Director. Provides Department-wide leadership for reorganizations and delegation of authority, travel policy, and other management programs.

Section AJC.10 Organization: The Office of Management and Operations is headed by a Deputy Assistant Secretary for Management and Operations (DASOMO) who reports to the Assistant Secretary for Administration and Management, provides day-to-day, supervisory review of the Program Support Center and its Director, consists of the following components:

- Office of Departmental Management (AJC1)
- Office of the Secretary Executive Office (AJC2)
  - —Office of the Secretary Equal Employment Opportunity (AJC21)
- Office of Facilities Services (AJC3)

Section AJC.20 Functions: 1. Office of Departmental Management (AJC1): (1) Serves as the principal source of advice on all aspects of Department-wide organizational analysis includes: planning for new organizational elements; evaluating current organizational structures for effectiveness; and conducting the review process for reorganization proposals. (2) Manages the reorganization process for the Office of the Secretary (OS) requiring the Secretary's signature and the Assistant

Secretary for Administration and Management. (3) Administers the Department's system for review, approval and documentation of delegations of authority. Develops Department-wide policies and provides technical assistance on the use and application of delegations of authority. Advises senior officials within the Department on delegations of authority, coordinates review of proposed delegations requiring the Secretary's or other senior officials approval. Analyzes and makes recommendations related to legislative proposals with potential impact upon the Department's organizational structure or managerial procedures; (4) Manages the Departmental Standards Administrative Code (SAC) system, providing oversight, advice, and assistance to ensure codes are in accord with the current approved organization, (5) Develops Departmental policies pertaining to travel and provides oversight to the travel function in the Operating Divisions.

2. Office of the Secretary Executive Office (AJC2): The Office of the Secretary Executive Office (OSEO) will: (1) Provides budget and other financial services to Office of the Secretary Staff Divisions; (2) oversees all aspects of budget formulation and execution for the Office of the Assistant Secretary for Administration and Management; (3) maintains funds controls and coordination of billing and accounts related to the Secretary's dining room and the Immediate Office of the Secretary; (4) plans and directs the provision of centralized purchasing and contracting services for administrative supplies, technical, and research requirements for the OS; (5) provides staff assistance and guidance to OS staff on purchasing and contracting related to purchase order, credit card (MACC), etc.; (6) administer contracts sponsored by the OS; (7) provide advisory services in the areas of classification, staffing, disability hiring, and reasonable accommodation assistance, as well as other human resources services to OS Staff Divisions; (8) provides advice and guidance to officials and employees on employee benefits and services, awards, and related matters; (9) designs and develop programs related to workforce recruitment; (10) determines OS training needs and develops annual training plans to service those needs; (11) coordinates with the Program Support Center on requests for personnel actions, departure closeout processing, and payroll liaison;, as well as other human resources special projects; and (12) as required, conduct special human resources projects.

a. Office of the Secretary Equal Employment Opportunity (AJC21): The OS Officer of Equal Employment Opportunity assists the DAS/OMO in carrying out the delegated authority to establish and maintain equal employment opportunity programs within the Office of the Secretary. The Office is responsible for ensuring that all OS employment policies and actions are based on merit, without regard to race, color, religion, national origin, sex, age, or physical/mental disability. Major functions include: Pre-complaint counseling; formal complaint processing; affirmative employment planning and implementation; technical guidance and policy development. The functions of the office also include program efforts which focus on the Federal Women's Program, the Hispanic Employment Program, and the Program for People with Disabilities.

3. Office of Facilities Services (AJC3): *Section AJC3.00 Mission:* The Office of Facilities Services (OFS) provides leadership and direction for real property management operations and provides Department-wide policy support for real property, space management, occupational safety and health, environmental and historic preservation responsibilities. Provides facilities management services to all HHS components in the Southwest Washington, DC complex. Advises senior Departmental officials on management issues related to the effective and efficient operations of the applicable programs and components. Acts as the Department's focal point with other Federal agencies and HHS Operating Divisions (OPDIVs) on policy and regulatory issues involving real property, space management, occupational safety and health, environmental and historic preservation activities for the Office of the Secretary (OS). Directs, plans, obtains, and coordinates building management, space management and design, systems furniture procurement and installation, safety and health and support services in the Southwest Washington, DC complex.

AJC3.10 Organization: The Office of Facilities Services is headed by a Director who reports to the Director, Office of Management and Operations, and consists of the following entitites:

Immediate Office (AJC3)
Division of Policy Coordination (AJC3A)
Division of Buildings Management (AJC3B)
Division of Security and Special Services (AJC3C)

AJC3.20 Functions: The Office of Facilities Services is responsible for the following functions:

1. The Office of the Director (AJC3) provides leadership, policy guidance and supervision as well as coordinating long and short range planning to constituent organizations.

2. Division of Policy Coordination (AJC3A): a. Establishes, maintains and promulgates HHS and OS policy for the HHS real property program. Establishes guidelines and procedures to monitor effectively the real property owned or leased by HHS.

b. Establishes guidelines to monitor the utilization of all space assigned to the Department by GSA.

c. Develops guidance to the OPDIVs on technical and facilities aspects of the HHS annual RENT budget. Provides oversight of OPDIV performance for this function and provides technical assistance on a Department-wide basis as required. Coordinates preparation among OPDIVs on facilities and space aspects, and collaborates with the office of Budget on final Department-wide RENT budgets, consistent with OMB and GSA guidance.

d. Establishes, maintains and promulgates HHS and OS policy for the occupational safety and health, and environmental programs. Provides oversight of OPDIV performance of these functions and provides technical assistance on a Department-wide basis as required.

e. Establishes, maintains and promulgates HHS and OS policy for the physical security program and provides technical assistance on a Department-wide basis as required.

f. Establishes, maintains, and promulgates HHS and OS policy for the historic preservation program. Provides oversight or OPDIV performance for this function and provides technical assistance on a Department-wide basis as required.

g. Establishes, maintains, and promulgates HHS and OS policy for the Health and Wellness, and Day Care Centers. Provides technical assistance on a Department-wide basis as required. Provides oversight of the HHS Health and Wellness Center at Headquarters.

h. Interprets Department of Energy policy on energy management issues and oversees implementation of energy related legislation within HHS.

i. Establishes information and reporting standards for all above listed programs. Collects, assembles, and analyzes required information for mandated reports to Congress, OMB, GSA and other Federal agencies.

3. Division of Buildings Management (AJC3B): a. Under delegation from GSA, is responsible for the physical plan operations and maintenance of the Hubert H. Humphrey Building including procurement and administration of related contracts.

b. Coordinates with GSA on building operation and maintenance matters for HHS-occupied space in GSA controlled facilities in the Southwest Washington, DC complex.

c. Is responsible for the acquisition, disposition, allocation and monitoring of space for the OS in Washington, DC and for the OPDIVs in the Southwest Washington, DC complex.

d. Enforces compliance with Federal space utilization principles in the Southwest Washington, DC complex by the preparation of high quality space management plans and drawings, and the arrangement of quality and timely renovation work. Provides engineering and architectural services as well as oversight in support of Southwest Washington, DC complex facilities both through in-house staff and manages major renovation and system furniture installation projects, moves and space consolidations. Oversees the restoration and renovation of joint use areas in the HHH Building. Procures systems furniture including related design, installation and maintenance services for the Southwest Washington, DC complex.

4. Division of Security and Special Services (AJC3C): a. Oversees the OS and Southwest complex occupational safety and health programs, including procurement and administration of related contracts. b. Provides physical security for employees and facility protection in the HHH Building through the procurement and administration of guard services and equipment. Serves as liaison with GSA for physical security issues affecting HHS employers in GSA controlled space in the Southwest Washington, DC complex. c. Provides a variety of facility support services to the OS and OPDIVs in the Southwest Washington, DC complex, including the management of conference and parking facilities, the issuance and control of employee identification badges, and special events support; and d. serves as the focal point within OFS for the receipt and referral of customer requests for services and complaints related to building operations and facilities management matters and is responsible for monitoring the timely and efficient corrective action.

III. Continuation of Policy: Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Office of the Secretary, the HHS Management and Budget Office and the Program Support Center heretofore issued and in effect prior to the date of this reorganization are continued to full force and effect.

IV. Delegations of Authority: All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

V. Funds, Personnel and Equipment: Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

Dated: October 11, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–27006 Filed 11–1–01; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–05]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Tailoring Occupational Safety and Health Messages to Individual Health Construals—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of the National Institute for Occupational Safety and Health is to promote safety and health at work for all people through research and prevention.

The overall goal of the current project is to examine the effectiveness of tailoring NIOSH web-based communications to the psychological characteristics of the individuals who receive the communications. Typically, NIOSH publications informing at-risk workers about health hazards and safety recommendations are distributed by mail using a printed format. However, the growing use of computers opens the door to a new format for distributing health and safety information to workers: Communication of health information via the Web. Importantly, web-based communication makes it possible to tailor health information to particular users. Past research has demonstrated that health-related behavior may be construed positively by an individual, in terms of wellness, or negatively, in terms in illness. The current project tests the effectiveness of message tailoring on this dimension.

This project will examine the effectiveness of tailoring a web communication based on the NIOSH document "Stress* * *At Work" (and additional occupational stress research) to users' personal construals of this issue in terms of wellness or illness. Health care workers, specifically nurses, have been selected as the target audience to receive these tailored messages on occupational stress as they frequently experience multiple, chronic, occupationally related stressors. One important source of occupational stress among nurses has been the move from the traditional inpatient, fee-for-service model to the outpatient, managed care model. The sweeping nature of this organizational change has dramatically altered the working conditions for an estimated 10 million healthcare workers in the United States and has left many healthcare workers, including nurses, without a sense of connection between their professional expectations and the goals of their organizations. Chronic occupational stress of this sort can lead to increased levels of depression among affected workers. Consequently, it is estimated that healthcare workers suffer from rates of depression 2–3 times higher than the general population. The corrosive effects of chronic stress can also leave workers more vulnerable to

incidents of acute stress. This is particularly important among healthcare workers, as research indicates that they are increasingly being exposed to incidents of violence and trauma on the job. As a result, healthcare workers have a significantly increased risk of developing posttraumatic stress disorder. Given the many occupationally related stress risk factors experienced by healthcare workers, the development of effective occupational stress interventions for health care workers is of the utmost importance. Therefore, this study will investigate ways to increase the effectiveness of occupational stress interventions targeted at nurses, the single largest healthcare worker group.

Through the use of message tailoring, the proposed project aims to increase health care workers' adherence to recommendations suggested by NIOSH to prevent and reduce the effects of occupational stress. In study 1, attitudinal predictors of occupational stress prevention/reduction behaviors will be assessed for registered nurses who view this issue as a wellness (health maintenance) issue versus an illness prevention issue. This data will be obtained from a sample of 500 registered nurses who will be asked to complete a mail survey assessing their attitudes and behaviors with regard to preventing and reducing workplace stress. In a second study, a web-based "occupational stress" document will be adapted from the NIOSH document "Stress* * * at Work " Two formats of this web-based document will be created that are tailored to nurses who construe the issue of workplace stress as a wellness issue, or as an illness issue. The impact of tailoring the message format to the nurse's construal of the issue of occupational stress will be examined in a laboratory setting where 300 participants will indicate whether they construe this issue in terms of maintaining wellness (positively) or in terms of illness prevention (negatively), and will then be randomly assigned to gain or loss frame web communications. The impact of the tailored messages on participants' attitudes and behavioral intentions with regard to occupational stress prevention and reduction will be assessed.

The results of this project should provide NIOSH with information about how to develop effective Web-based communication strategies using message tailoring. This should have the consequence of enhancing occupational safety and health attitudes and behaviors among at-risk workers.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden per response (in hours)	Total burden (in hours)
Nurses (Data collection #1)	500	1	20/60	167
Nurses (Data Collection #2):.				
Survey 1	300	1	30/60	150
Follow-up	300	1	5/60	25
Total				342

Dated: October 25, 2001.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–06]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Annual Submission of the Quantity of Nicotine Contained in Smokeless Tobacco Products Manufactured, Imported, or Packaged in the United States—Renewal—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). Oral use of smokeless tobacco represents a significant health risk, which can cause cancer and a number of noncancerous oral conditions, and can lead to nicotine addiction and dependence. The Office on Smoking and Health (OSH) within the National Center for Chronic Disease Prevention and Health Promotion, CDC has been delegated the authority for implementing major components of the Department of Health and Human Services' (HHS) tobacco and health program, including collection of tobacco ingredients information. HHS overall goal is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education and research.

The Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 *et seq.*, Pub. L. 99–252) requires that each person who manufactures, packages, or imports smokeless tobacco provide the Secretary of HHS annually with a report on the quantity of nicotine contained in smokeless tobacco products. This notice implements this nicotine reporting requirement. CDC is requesting OMB clearance to collect this information for three years. All companies are required to submit this information for all brands. A standard methodology for measurement of quantity of nicotine in smokeless tobacco has been developed. The methodology ("Protocol for Analysis of Nicotine, Total Moisture, and pH in Smokeless Tobacco Products") is intended to provide standardized measurement of nicotine, total moisture, and pH in smokeless tobacco products. This information should be submitted in the prescribed format. In addition, we ask that companies provide an electronic copy of this information on a floppy disk or CD–ROM.

Background

In 1989, the smokeless industry submitted a business review letter to the Department of Justice (DOJ), in accordance with 28 CFR 50.6. This letter requested approval of a collaborative industry effort to determine standard nicotine reporting. In January 1993, DOJ extended permission to the smokeless industry to begin the development of uniform methods for analyzing smokeless tobacco products for nicotine or moisture content. The first meeting of the work group, which represented the ten major domestic manufacturers of smokeless tobacco, was convened on July 7, 1993. After a series of meetings of the joint industry work group, a standard methodology was approved by the work group and submitted to OSH for approval. The protocol was revised by OSH based on individual comments received from peer reviewers and the Division of Environmental Health Laboratory Sciences, National Center for Environmental Health, CDC. There are no costs to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Tobacco Manufacturers	11	1	1,706	18,766
Total				18,766

Dated: October 25, 2001.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–27529 Filed 11–1–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9012–NC]

Medicare and Medicaid Programs; Plan to Create an Open and Responsive Federal Agency

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces our efforts to enhance our openness and responsiveness to all of our constituencies including Medicare and Medicaid beneficiaries and other individuals involved in their care, physicians, nurses, other health care providers, advocacy associations, and industry trade associations. We are making structural changes in the way we do business to build in processes that will enhance our ability to be responsive. This notice invites comments on our efforts to create an open and responsive agency.

We are proposing to issue quarterly provider updates that list provider-oriented regulatory documents and program instructions. We plan to release the quarterly provider update to provider associations first as a pilot and, at a later time, publish subsequent provider updates on our Web site on the first business day of each calendar quarter.

We are accepting comments about concerns or suggestions for improving our agency. We are particularly interested in specific suggestions on how we can improve our efforts to create an open responsiveness to better address the needs and concerns of all of our constituencies. We are not placing any time constraints for receipt of public comments.

ADDRESSES: In commenting, please refer to file code CMS–9012–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9012–NC, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Anthony Mazzarella, (410) 786–7501.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. In order to review public comments, you *must* schedule an appointment by calling (410) 786–7197. To obtain entry to our facility, you *must* have a photo identification (preferably a driver's license).

I. Background

Our mission is to serve Medicare and Medicaid beneficiaries by assuring quality health care security for beneficiaries. In keeping with our mission, we are committed to reforming and strengthening our agency by creating an open responsiveness to the needs and concerns of all of our constituencies including Medicare and Medicaid beneficiaries and individuals involved in their care, physicians, nurses, other health care providers, advocacy associations, and industry trade associations.

II. Plan To Create an Open, Responsive Agency

We want to be a reliable Federal agency; one that is open and responsive to the needs of all of our constituencies. In our effort to enhance our responsiveness to Medicare and Medicaid beneficiaries and their health care providers, we are making structural changes in the way we do business to build in processes that enhance our ability to create an open and responsive Agency. We plan to focus on working openly with our stakeholders, soliciting their individual input and feedback, responding to requests for information in a more timely manner, and issuing a

quarterly provider update of all changes to Medicare regulations and instructions that affect providers.

Because our agency focus is to be open and responsive, we are creating mechanisms that will give our employees a greater opportunity to receive and act on feedback from our constituencies. First, we are establishing a series of open listening forums across the country to be chaired by our senior staff, so that we can hear directly from our constituencies about the impact that our regulations, policies, and programs have on them. We want to hear the concerns and individual suggestions for improvement from physicians and other health care providers, from the people who deal with us in communities and facilities from day to day, and from seniors who rely upon Medicare and Medicaid for their health care needs.

Second, we are creating open door listening forums chaired by our senior staff, and made up of our employees, to serve as principal points of contact for beneficiary and provider groups. Our goal in working with these groups is to build stronger relationships, improve their understanding of CMS, and generate ideas for program improvements and reform, as well as ideas about how we can better serve our beneficiaries. Individual senior staff members will serve as the primary contacts for the following stakeholders to bring issues and ideas about our programs and policies:

- Physicians.
- Hospitals.
- Rural providers.
- Nursing homes.
- Medicare+Choice organizations and other health plans.
- Nurses and allied healthcare professionals.
- Home health agencies and hospices.
- End-stage renal disease facilities and dialysis centers.

Third, we will work with each State at both the regional and central office level. A Medicaid/State Children's Health Insurance Program contact person for each State will troubleshoot and resolve disputes for Governors, State Medicaid Directors, and other high-ranking State officials. The contact person will be directly accountable to the Administrator and the Director of the Center for Medicaid and State Operations as they respond to State issues.

Fourth, we will form in-house expert teams across program areas to develop new ways of conducting business that will reduce administrative burdens and simplify our policies and regulations. These teams will look to reduce administrative burden on providers, eliminate complexity when possible, augment some of the individual suggestions we hear in our listening forums, and make Medicare more "user-friendly." These expert teams will be coordinated with the Secretary's Regulatory Reform Initiative and the Secretary's Advisory Committee on Regulatory Reform.

Fifth, providers have advised us that it has become increasingly more difficult for them to stay abreast of the many new and changing instructions concerning our programs. We wish to make it easier for them to understand and comply with our regulatory documents and program instructions and to provide more predictability to program changes. Therefore, we are proposing to issue quarterly provider updates that list provider-oriented regulations we plan to publish in the coming quarter, as well as the **Federal Register** publication date and page reference for all regulations published in the previous quarter. The full text of our regulations is available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Web site address is *http://www.access.gpo.gov/nara/index.html.*

The first update serves as a pilot. In the pilot phase of this project, we have established several business objectives that we are testing with this release of the provider update. First, this update will be sent to provider groups and associations for their assessment as to its usefulness of content and format. Second, because of the complexity of the policy decisions associated with much of our regulatory work, we are taking an intermediate step towards enhancing the consistency of our regulatory publications. Specifically, we intend, to the extent practical, to publish regulations on a predictable cycle once a month. We plan to publish CMS business in the **Federal Register** on the fourth Friday of each month. In fact, each issue of the provider update will identify the specific days. We will work in good faith to follow the substance and timing of the provider update in the majority of cases. However, because some of our regulatory work has statutory publication dates that fall outside the fourth Friday of the month, we will continue to comply with the statutory requirements. For example, the public comment period for one of our major payment proposed rules closed the beginning of October. To effectively address the number of comments we anticipate and the complexity of the issues, the final rule titled, "Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2002 (CMS–1169–FC)," will be published on November 1, 2001.

In addition, there may be other instances when it is not possible to follow the schedule. We will work hard to minimize these situations to the greatest extent possible.

Also, the provider update will include all instructions (program memoranda, manual transmittals, and Operational Policy Letters) that affect health care providers. These provider-oriented Medicare instructions will be implemented at the beginning of the quarter following the quarter in which the provider update is published. We are proposing to published future provider updates on our Web site, *http://www.cms.gov*, the first business day of each calendar quarter to ensure wider access to this information. We also welcome comments relative to this approach.

In many instances, the publication of the quarterly provider update will lengthen the advance notification period we presently give providers; we will generally create a uniform 90-day period of notice before implementation of coverage and payment changes. We believe the predictability and uniformity offered by set publication and implementation timeframes would significantly reduce the burden on the provider community that our current "flow basis" publication processes impose. Further, we believe the benefits gained from predictable publication and implementation timeframes would significantly outweigh the disadvantages of the delays in coverage and payment changes that may occur.

Sixth, we are planning to enhance our system of provider training on new requirements and the resolution of problems through formal training, satellite broadcasts, and web-based information.

Finally, we are revamping the process for developing, reviewing, and clearing all correspondence and, in particular, congressional correspondence. Our goal is to substantially reduce our response time to congressional inquiries by December 1, 2001; thus, greatly improving our responsiveness to our constituency.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

This notice does not require an impact analysis because it does not have an economic impact on small entities, small rural hospitals, or State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 7, 2001.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–27700 Filed 11–1–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–HS–02–01A]

Discretionary Announcement of the Availability of Funds and Request for Applications for Select Service Areas of Early Head Start; Correction

AGENCY: Administration for Children, Youth and Families, ACF, DHHS.

ACTION: Correction.

SUMMARY: This document contains a correction to the Notice that was published in the **Federal Register** on September 20, 2001.

On page 48475, Appendix A, Part II, in the State of Missouri, in the County of St. Charles, in the FY 2002 funding level column, delete "1,470,549" and add "1,497,549".

On page 48476, Appendix A, Part II, in the State of New York, in the County of Bronx, in the FY 2002 funding level column, delete "1,334,471" and add "1,322,291". In the State of New York, in the County of Cattaraugus, in the FY 2002 funding level column, delete "468,962" and add "511,079". In the State of New York, in the County of Cattaraugus, in the FY 2002 funding level column, delete "450,808" and add "568,205". In the State of New York, in the County of Chenango, in the FY 2002 funding level column, delete "468,962" and add "511,079". In the State of New York, in the County of Monroe, in the FY 2002 funding level column, delete "1,995,614" and add "2,173,928". In the State of New York, in the County of Rensselaer, in the FY 2002 funding level column, delete "670,221" and add "732,234". In the State of New York, in the County of Steuben, in the FY 2002 funding level column, delete "329,700" and add "349,700". In the State of New York, in the County of Westchester, in the FY 2002 funding level column, delete "941,224" and add "1,033,799". In the State of New York, in the County of Erie, in the FY 2002 funding level column, delete "1,277,058" and add "1,381,901". In the State of New York, in the County of Schenectady, in the FY 2002 funding level column, delete "1,057,663" and add "743,672".

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center at 1–800–351–2293 or send an e-mail to *ehs@lcgnet.com*. You can also contact Sherri Ash, Early Head Start, Head Start Bureau at (202) 205–8562.

Dated: October 29, 2001.

James A. Harrell,

Acting Commissioner, Administration on Children, Youth and Families.

[FR Doc. 01–27610 Filed 11–1–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0336]

Schering Corp. et al.; Withdrawal of Approval of 51 New Drug Applications and 25 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of August 16, 2001 (66 FR 43017). The document announced the withdrawal of approval of 51 new drug applications (NDAs) and 25 abbreviated new drug applications (ANDAs). The document inadvertently withdrew approval of NDA 17–255 for DTPA (chelate) Multidose (kit for the preparation of Tc-99m pentetate injection) held by Nycomed Amersham Imaging, 101 Carnegie Center, Princeton, NJ 08540. FDA confirms that approval of NDA 17–255 is still in effect.

EFFECTIVE DATE: August 16, 2001.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

In FR Doc. 01–20605 appearing on page 43017 in the **Federal Register** of Thursday, August 16, 2001, the following correction is made: On page 43018, in the table, the entry for NDA 17–255 is removed.

Dated: October 11, 2001.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 01–27520 Filed 11–01–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0494]

Prescription Drug Products; Doxycycline and Penicillin G Procaine Administration for Inhalational Anthrax (Post-Exposure)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is clarifying that the currently approved indications for doxycycline and penicillin G procaine drug products include use in cases of inhalational exposure to *Bacillus anthracis* (the bacterium that causes anthrax). We also are providing dosing regimens that we have determined are appropriate for these products for this use. We encourage the submission of supplemental new drug applications (labeling supplements) to add the dosage information to the labeling of currently marketed drug products.

ADDRESSES: Submit labeling supplements to the Center for Drug Evaluation and Research, Food and Drug Administration, Central Document Room, 12229 Wilkins Ave., Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Dianne Murphy, Center for Drug Evaluation and Research (HFD–950),

Food and DrugAdministration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2350.

SUPPLEMENTARY INFORMATION:

I. Anthrax

Anthrax is caused by the spore-forming bacterium *Bacillus anthracis*. There are three types of anthrax infection in humans: Cutaneous, gastrointestinal, and inhalational.

Until recently, most human experience with anthrax was associated with exposure to infected animals or animal products. Anthrax is reported annually among livestock. In areas where these animal cases occur, most human cases are the cutaneous form. Such cases occur among workers who have handled infected hoofed animals or products from these animals. Gastrointestinal anthrax has been reported following the ingestion of undercooked or raw meat from infected animals. Inhalational anthrax, resulting from inhalation of aerosolized spores, was associated with industrial processing of infected wool, hair, or hides in the United States in the past. Before October 2001, no case of inhalational anthrax had been reported in the United States since 1978. In 1979, at least 64 people died in Sverdlovsk (currently Ekaterinburg), Russia, of inhalational anthrax after *Bacillus anthracis* spores were accidentally released from a Soviet military laboratory.

Administration of certain anti-microbial agents may prevent or reduce the incidence of disease following inhalational exposure to *Bacillus anthracis*.

II. Approved Drug Products

Drug products containing doxycycline, doxycycline calcium, doxycycline hyclate,[1] and penicillin G procaine are currently approved with indications foranthrax.[2] The approved labeling for the doxycycline products states that the drugs are indicated in infections caused by *Bacillus anthracis*. The approved labeling for penicillin G procaine drug products states that the drugs are indicated for anthrax.

[1] Doxycycline hyclate tablets, equivalent to 20 milligrams (mg) base, and doxycycline hyclate 10 percent for controlled release in subgingival application are not subjects of this notice because they have periodontal indications and do not have indications for anthrax or infections caused by *Bacillus anthracis*.

[2] Other drug products are currently approved with indications for anthrax or infections caused by *Bacillus anthracis*, i.e., minocycline, tetracycline, oxytetracycline, demeclocycline, and penicillin G potassium. We have not completed a review on these other drugs. We will not discuss these other drugs further in this notice.

Presently, the labeling for these drug products does not specify a dosing regimen for inhalational exposure to *Bacillus anthracis*. The indication sections of approved labeling for these drug products does not specify cutaneous, gastrointestinal, or inhalational anthrax. We have determined that the language in the labeling of drug products containing doxycycline, doxycycline calcium, doxycycline hyclate, and penicillin G procaine is intended to, and does, cover all forms of anthrax, including inhalational anthrax (post-exposure): To reduce the incidence or progression of disease following exposure to aerosolized *Bacillus anthracis*.

On August 30, 2000, we approved supplements to provide an indication for inhalational anthrax (post-exposure) for ciprofloxacin hydrochloride tablets and ciprofloxacin intravenous (IV) solution, IV in 5 percent dextrose, IV in 0.9 percent saline, and oral suspension. The approved labeling for these ciprofloxacin products provides for a 60-day dosing regimen. Because ciprofloxacin drug products are already specifically indicated for inhalational anthrax (post-exposure) and their approved labeling provides a regimen for inhalational anthrax (post-exposure), we do not discuss ciprofloxacin any further in this notice. It is relevant, however, that the rhesus monkey study supporting the approval of ciprofloxacin for inhalational anthrax also included separate doxycycline and penicillin G procaine treatment arms. Each of these arms showed a survival advantage over placebo.[3] No other antimicrobial drugs were tested in this study.

III. Doxycycline Drug Products

We have determined that 100 mg of doxycycline, taken orally twice daily for 60 days, is an appropriate dosing regimen for administration to adults who have inhalational exposure to*Bacillus anthracis*. The corresponding oral dosing regimen for children under 100 pounds (lb) is 1 mg per (/) lb of body weight (2.2 mg/kilogram (kg)), given twice daily for 60 days.

We have determined that IV doxycycline can be administered to adults in a 100 mg dose twice daily for inhalational anthrax (post-exposure). The corresponding IV dosing regimen for children under 100 lb is 1 mg /lb of body weight (2.2 mg/kg), twice daily. Intravenous therapy is indicated only when oral therapy is not indicated. Intravenous therapy should not be given over a prolonged period of time. Patients should be switched to oral doxycycline, or another antimicrobial drug product, as soon as possible, to complete a 60-day course of therapy.

[3] Friedlander, A. M. et al., "Postexposure Prophylaxis Against Experimental Inhalation Anthrax," Journal of Infectious Diseases, 167:1239–1243, 1993.

A. Safety

Doxycycline drug products have been used for over 30 years, and the literature on the products is voluminous. We have reviewed the literature dealing with the long-term administration of doxycycline for treatment of diseases other than anthrax. Several articles report the results of studies involving the administration of doxycycline in amounts comparable to the doses recommended in this notice. They also involve administration of doxycycline for 60 days and periods approaching and exceeding 60 days. We have also reviewed data from our Adverse Event Reporting System (AERS). Analysis of these articles and data indicates no pattern of unlabeled adverse events has been associated with the long-term use of doxycycline.

Doxycycline and other members of the tetracycline class of antibiotics are not generally indicated for the treatment of any patients under the age of 8 years. Tetracyclines are known to be associated with teeth discoloration and enamel hypoplasia in children and delays in bone development in premature infants after prolonged use. We have balanced the nature of the effect on teeth and the fact that this delay in bone development is apparently reversible against the lethality of inhalational anthrax, and concluded that doxycycline drug products can be labeled with a pediatric dosing regimen for inhalational anthrax (post-exposure).

We are not recommending that IV doxycycline be administered for prolonged periods because of the possibility of thrombophlebitis and other complications of IV therapy. Thrombophlebitis as a possible adverse reaction is already described in the approved labeling for IV doxycycline drug products. Patients administered IV doxycycline for inhalational anthrax (post-exposure) should be switched to oral doxycycline or another antimicrobial drug product as soon as possible to complete a 60-day course of therapy.

B. Effectiveness

We have reviewed minimal inhibitory concentration (MIC) data for the tetracycline class and *Bacillus anthracis*, pharmacokinetic data, data from the Sverdlovsk incident, and the outcome data from a study of inhalational exposure to *Bacillus anthracis* in rhesus monkeys.[4] We have concluded that 100 mg of doxycycline, administered twice a day for 60 days, is an effective dosing regimen for adults who have inhalational exposure to *Bacillus anthracis*. The corresponding dosing regimen for children under 100 lb of 1mg/lb of body weight (2.2 mg/kg), given twice daily for 60 days, is also effective.

[4] Friedlander.

C. Labeling for Oral Doxycyline

We encourage the submission of labeling supplements for orally administered doxycycline, doxycycline calcium, and doxycycline hyclate drug products. The revised labeling should contain a specific indication for inhalational anthrax (post-exposure), the recommended dosing regimen, safety information relevant to use in children, and other information described below. The following specific changes to the current approved labeling are recommended:

- *Indications and Usage*. The indication for anthrax should be revised from "Anthrax due to *Bacillus anthracis*" to "Anthrax due to *Bacillus anthracis*, including inhalational anthrax (post-exposure): to reduce the incidence or progression of disease following exposure to aerosolized *Bacillus anthracis*." This indication should be removed from the paragraph of the "Indications and Usage" section that begins "When penicillin is contraindicated, doxycycline is an alternative drug in the treatment of the following infections:" and inserted at the end of the preceding paragraph that begins "Doxycycline is indicated for the treatment of infections caused by the following gram-positive microorganisms when bacteriologic testing indicates appropriate susceptibility to the drug:."
- *Warnings*. The last sentence in the first paragraph of the "Warnings" section should be revised to read as follows: "TETRACYCLINE DRUGS, THEREFORE, SHOULD NOT BE USED IN THIS AGE GROUP, EXCEPT FOR ANTHRAX, INCLUDING INHALATIONAL ANTHRAX (POST-EXPOSURE), UNLESS OTHER DRUGS ARE NOT LIKELY TO BE EFFECTIVE OR ARE CONTRAINDICATED."
- *Dosage and Administration*. The following text should be inserted as the last item of the "Dosage and Administration" section:

"Inhalational anthrax (post-exposure):

ADULTS: 100 mg of doxycycline, by mouth, twice a day for 60 days.

CHILDREN: weighing less than 100 lb (45 kg); 1 mg/lb (2.2 mg/kg) of body weight, by mouth, twice a day for 60 days. Children weighing 100 lb or more should receive the adult dose."

D. Labeling for IV Doxycycline

We encourage the submission of labeling supplements for doxycycline hyclate injectable drug products. The revised labeling should contain a specific indication for inhalational anthrax (post-exposure), the recommended dosing regimen, safety information relevant to use in children and prolonged use, and other information described below. We recommend that labeling supplements for doxycycline hyclate injectable drug products include the following specific changes:

- *Indications*. The indication for anthrax should be revised from"*Bacillus anthracis*" to "Anthrax due to *Bacillus anthracis*, including inhalational anthrax (post-exposure): to reduce the incidence or progression of disease following exposure to aerosolized *Bacillus anthracis*." This indication should be removed from the paragraph of the "Indications" section that begins "When penicillin is contraindicated, doxycycline is an alternative drug in the treatment of infections due to:" and inserted at the end of the preceding paragraph that begins "Doxycycline is indicated for the treatment of infections caused by the following gram-positive microorganisms when bacteriologic testing indicates appropriate susceptibility to the drug:."
- *Warnings*. The last sentence in the first paragraph of the "Warnings" section should be revised to read as follows: "TETRACYCLINE DRUGS, THEREFORE, SHOULD NOT BE USED IN THIS AGE GROUP, EXCEPT FOR ANTHRAX, INCLUDING INHALATIONAL ANTHRAX (POST-EXPOSURE), UNLESS OTHER DRUGS ARE NOT LIKELY TO BE EFFECTIVE OR ARE CONTRAINDICATED."
- *Dosage and Administration*. The following paragraph should be inserted in the "Dosage and Administration" section after the paragraph describing the treatment for syphilis:

"In the treatment of inhalational anthrax (post-exposure) the recommended dose is 100 mg of doxycycline, twice a day. Parenteral therapy is only indicated when oral therapy is not indicated and should not be continued over a prolonged period of time. Oral therapy should be instituted as soon as possible. Therapy must continue for a total of 60 days."

The following paragraph should be inserted in the "Dosage and Administration" section after the paragraph describing the dosages for children above 8 years of age:

"In the treatment of inhalational anthrax (post-exposure) the recommended dose is 1 mg/lb (2.2 mg/kg) of body weight, twice a day in children weighing less than 100 lb (45 kg). Parenteral therapy is only indicated when oral therapy is not indicated and should not be continued over a prolonged period of time. Oral therapy should be instituted as soon as possible. Therapy must continue for a total of 60 days."

IV. Penicillin G Procaine Drug Products

We have determined that 1,200,000 units of penicillin G procaine, administered every 12 hours, is an appropriate dosing regimen for adults who have inhalational exposure to *Bacillus anthracis*. The corresponding dosing regimen for children is 25,000 units/kg of body weight (maximum 1,200,000 units) every 12 hours.

A. Safety

Penicillin drug products have been used for over 50 years. The amount of literature on penicillin is correspondingly large. We have reviewed published literature on the safety of penicillin G procaine. We have also reviewed data from AERS. Analysis of these articles and data indicates that no pattern of unexpected adverse events is associated with the use of penicillin G procaine as described in the recommended dosing regimen. All adverse events that we have identified are described in the approved labeling. We note that there may be an increased risk of neutropenia and an increased incidence of serum sickness-like reactions associated with use of penicillin for more than 2 weeks. Because prescribing health care professionals should take those factors into consideration when continuing administration of penicillin G procaine for longer than 2 weeks for inhalational anthrax (post-exposure), we are suggesting that the labeling for the drug products reflect these concerns about neutropenia and serum sickness-like reactions.

B. Effectiveness

We have reviewed MIC data for penicillin G and *Bacillus anthracis*, pharmacokinetic data, data from the Sverdlovsk incident, clinical data regarding the use of penicillins in treatment of primarily cutaneous anthrax, and the outcome data from a study of inhalational exposure to *Bacillus anthracis* in rhesus monkeys.[5] We have concluded that the recommended dosing regimens are effective for adults and children who

[5] Friedlander.

have inhalational exposure to *Bacillus anthracis*.

C. Labeling

We encourage the submission of labeling supplements for penicillin G procaine injectable drug products. The revised labeling should contain a specific indication for inhalational anthrax (post-exposure), the recommended dosing regimen, safety information relevant to prolonged use and use in children, and other information described below. The following specific changes to the current approved labeling are recommended:

- *Indications.* In the "Indications" section, the indication for anthrax should be revised from "Anthrax" to "Anthrax due to *Bacillus anthracis*, including inhalational anthrax (post-exposure): to reduce the incidence or progression of the disease following exposure to aerosolized *Bacillus anthracis*."
- *Precautions.* In the "Precautions" section, at the end of the paragraph that begins "In prolonged therapy with penicillin, and particularly with high-dosage schedules, periodic evaluation of the renal and hematopoietic systems is recommended," the following text should be added: "In such situations, use of penicillin for more than 2 weeks may be associated with an increased risk of neutropenia and an increased incidence of serum sickness-like reactions."
- *Dosage and Administration.* In the "Dosage and Administration" section, immediately following "Anthrax—cutaneous: 600,000 to 1,000,000 units/day." the following text should be inserted:

"Anthrax—inhalational (post-exposure): 1,200,000 units every 12 hours in adults, 25,000 units per kilogram of body weight (maximum 1,200,000 unit) every 12 hours in children. The available safety data for penicillin G procaine at this dose would best support a duration of therapy of 2 weeks or less. Treatment for inhalational anthrax (post-exposure) must be continued for a total of 60 days. Physicians must consider the risks and benefits of continuing administration of penicillin G procaine for more than 2 weeks or switching to an effective alternative treatment."

V. Conclusions

Drug products containing the following active ingredients are currently approved for administration in cases of inhalational anthrax:

- Doxycycline
- Doxycycline calcium
- Doxycycline hyclate
- Penicillin G procaine

We encourage the submission of labeling supplements for these drug products. The revised labeling should specifically mention inhalational anthrax (post-exposure), the recommended dosing regimen, safety information relevant to prolonged exposure (60 days or longer), and other information described in this notice. The requirement for data to support these labeling changes may be met by citing the published literature we relied on in publishing this notice. A list of the published literature and reprints of the reports will be available forpublic inspection in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is unnecessary to submit copies and reprints of the reports from the listed published literature. We invite applicants to submit any other pertinent studies and literature of which they are aware.

VI. Published Literature

The published literature we have relied on in making our recommendations will be placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. A list of this published literature will be on display in the Dockets Management Branch and on the Internet at www.fda.gov/cder/drug/infopage/penG_doxy/bibliolist.htm.

Dated: October 26, 2001.

Bernard A. Schwetz,

Acting Principal Deputy Commissioner.

[FR Doc. 01–27493 Filed 10–29–01; 4:35 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Cancer Institute.

Date: November 20, 2001.

Time: 11 am to 1 pm.

Agenda: The purpose of the meeting will be to discuss the Gynecologic Cancers Progress Review, Group Report.

Place: National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Chitra Mohla, Executive Secretary, Office of Scientific Opportunities, National Cancer Institute, National Institutes of Health, Bldg. 31, Rm. 11A03, Bethesda, MD 20892, (301) 496–1458.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's homepage: *deainfo.nci.nih.gov/advisory/joint/htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27505 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: November 8, 2001.

Time: 2 pm to 4 pm.

Agenda: To follow up on the Survivorship Forum and to get reports from the Working Groups.

Place: 6116 Executive Boulevard, Suite 300C, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Elaine Lee, Acting Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892, 301/594–3194.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's homepage: *deainfo.nci.nih.gov/advisory/dclg/delg.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: October 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27506 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

Date: November 5, 2001.

Time: 10 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Camille M. King, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, (301) 435–0810, *kingc@ncrr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: October 24, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27500 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sickle Cell Disease Advisory Committee.

Date: November 5, 2001.

Time: 8:30 AM to 5 PM.

Agenda: Discussion of Program policies and issues.

Ploce: National Institutes of Health, Two Rockledge Center, Conference Room 9112, 9116, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Charles M Peterson, MD, Director, Blood Diseases Program, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 10158, MSC 7950, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0050.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's homepage: *www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 24, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27497 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Heart, Lung, and Blood Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NHLBI.

Date: December 13–14, 2001.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville, Pike, Building 10, Room 7S235, Bethesda, MD 20892.

Contact Person: Elizabeth G. Nabel, MD, Scientific Director for Clinical Research, National Heart, Lung, and Blood Institute, Division of Intramural Research, Building 10, Room 8C103, MSC 1754, Bethesda, MD 20892, 301/496–1518.

Information is also available on the Institute's/Center's homepage: *www.nhlbi.nih.gov/meetings/index.htm*,

where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 24, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27498 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Environmental Health Sciences Review Committee, Review of National Research Service Award Institutional Training Grants.

Date: November 15–16, 2001.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Governors Inn, I–40 & Davis Dr., Exit 280, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PHD, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–24 Research Triangle Park, NC 27709 (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: October 24, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27496 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: November 7–8, 2001.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Nasrin Nabavi, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, *nn30t@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 24, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27499 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 20, 2001.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102. *jsherrill@mail.nih.gov*

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 27, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Associate Director of Staff Developoment, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216. *hhaigler@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 3, 2001.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avevnue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216. *hhaigler@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 24, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27501 Filed 11–01–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of PO1 Grant Applications.

Date: December 3–5, 2001.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Pasadena, 150 South Robles Avenue, Pasadena, CA 91101.

Contact Person: Brenda K. Weis, Phd, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institutes of Environmental Health Sciences, P.O. Box 12233, MD/EC–30, Research Triangle Park, NC 27709, 919/541–4964.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: October 24, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27502 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 19(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 5, 2001.

Time: 11 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavillion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27503 Filed 11–01–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of persons privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: December 5, 2001.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Laura K. Moen, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13H, Bethesda, MD 20892, 301–594–3998, *moenl@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27504 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–1(J2)P.

Date: December 6–7, 2001.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817.

Contact Person: John Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 757, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797, *connaughton@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6(J1).

Date: December 7, 2001.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Baltimore Washington International Sheraton Hotel, 7032 Elm Road, Baltimore, MD 21240.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27507 Filed 11–01–01; 8:45 am]

BILLING CODE 4140–1–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–4(J1).

Date: November 19–21, 2001.

Time: 7:30 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Houston Marriott Medical Center, 6580 Fannin St., Houston, TX 77030.

Contact Person: John Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 757, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 26, 2001.

LaVerne J. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27508 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–1–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: November 19, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: November 19, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ali A. Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH DHHS, Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27509 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: November 20, 2001.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Stanley C. Oaks, Jr., PhD, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27510 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Minority Institutions Drug Abuse Research Development Program (MIDARP).

Date: November 16, 2001.

Time: 2 pm to 4pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone conference Call).

Contact Person: Marina L. Volkov, PhD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: October 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27513 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: December 6, 2001.

Time: 11 AM to 1 PM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Rm 409, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: L. TONY BECK, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892–7003, 301–443–0913, *lbeck@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: December 14, 2001.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ronald Suddendorf, PhD, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 26, 2001.

LaVerne, Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27516 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, SEP Telephone Conference (ZLM1 MMR C J2).

Date: November 28, 2001.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27512 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications; the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 2, 2001.

Time: 1:45 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: Westin Grand Hotel 2350 M Street, NW., Washington, DC 20037–1417.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301/435–1045, *corsaroc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, National Institutes of Health, HHS)

Dated: October 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27511 Filed 11–01–01; 8:45 am]

BILLING CODE 4140–1–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Genome Study Section, November 1, 2001, 8:30 AM to November 2, 2001, 2:30 PM, Embassy Square, 2000 N Street, NW., Washington, DC, 20036 which was published in the **Federal Register** on October 19, 2001, 66 FR 53229–53231.

This meeting will be held at the Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037. The ending time has been changed to 1:45 PM. The meeting is closed to the public.

Dated: October 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27514 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 31, 2001, 1:30 PM to November 1, 2001, 5 PM, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on October 15, 2001, 66 FR 52441–52444.

The meeting will be one day only October 31, 2001, from 1:30 PM to 5 PM. The location remains the same. The meeting is closed to the public.

Dated: October 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27515 Filed 11–1–01; 8:45 am]

BILLING CODE 4140–1–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following Web sites: *http://workplace.samhsa.gov; http://www.drugfreeworkplace.gov;* and *http://www.health.org/workplace.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 716–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115 (Formerly: Hartford Hospital Toxicology Laboratory)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (Formerly: Cox Medical Centers)

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522 (Formerly: Alabama Reference Laboratories, Inc.)

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories*, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 1301 18th Ave., NW., Suite 110, Austin, MN 55912, 507–437–7322

Gamma-Dynacare Medical Laboratories *, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272 (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361 (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 11604 E. Indiana Ave., Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800 (Formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–842–6152 (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200 / 800–446–4728 (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507 / 800–279–0027

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics.

2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
Universal Toxicology Laboratories (Florida), LLC, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–717–0300, 800–522–0232x419 (Formerly: Integrated Regional Laboratories, Cedars Medical Center, Department of Pathology)
Universal Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915–561–8851 / 888–953–8851
US Army Forensic Toxicology Drug Testing Laboratory, Fort Meade, Building 2490, Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–7085

The following laboratories are voluntarily withdrawing from the NLCP:
Withdrawal effective November 1, 2001: Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171
Withdrawal effective October 1, 2001: Quest Diagnostics Incorporated, 801 East Dixie Ave., Suite 105A, Leesburg, FL 34748, 352–787–9006x4343 (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
Withdrawal effective October 1, 2001: Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 248–373–9120 / 800–444–0106 (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Withdrawal effective October 1, 2001: Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,
Executive Officer, Substance Abuse and Mental Health Services Administration.
[FR Doc. 01–27530 Filed 11–1–01; 8:45 am]
BILLING CODE 4160–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Intent To Issue a Notice of Funding Availability for Cooperative Agreements for Addiction Technology Transfer Center (ATTC) Sites and an ATTC National Office

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Notification of SAMHSA/CSAT's intent to announce the availability of FY 2002 funds for cooperative agreements for seven ATTC sites and an ATTC National Office.

SUMMARY: This notice is to inform the public of SAMHSA/CSAT's intention to issue a Notice of Funding Availability in late October or early November, to announce the availability of FY 2002 funds for cooperative agreements to support 7 ATTC sites to cover 7 ATTC Regions and an ATTC National Office. CSAT's ATTC program is comprised of 14 ATTC Regions and an ATTC National Office that together form a network which, individually and collaboratively, provides academic, continuing education, professional development and practicum training to professionals/providers in the substance abuse treatment field. The ATTC National Office coordinates all cross-site and multi-site activities of the 14 ATTC regions.

In FY 2001, awards were made to sites to cover 7 of the 14 ATTC Regions. In FY 2002, it is SAMHSA/CSAT's intent to solicit applications for an ATTC National Office and for coverage of the following currently uncovered 7 ATTC Regions:

Region 5: Georgia and South Carolina;
Region 7: Puerto Rico and U.S. Virgin Islands;
Region 8: Missouri, Kansas, Oklahoma, and Arkansas;
Region 9: Iowa, Nebraska, North Dakota, South Dakota, and Minnesota;
Region 10: Illinois, Indiana, Ohio, Wisconsin, and Michigan;
Region 13: California, New Mexico, Arizona, and Colorado (criminal justice); and
Region 14: Florida and Alabama.

Questions related to CSAT's ATTC program should be directed to Susanne Rohrer, RN, Office of Evaluation, Scientific Analysis, and Synthesis, CSAT, Rockwall II, Suite 840, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–8521; e-mail *srohrer@samhsa.gov.*

Dated: October 28, 2001.
Richard Kopanda,
Executive Officer, SAMHSA.
[FR Doc. 01–27521 Filed 11–1–01; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–81]

Notice of Submission of Proposed Information Collection to OMB; Revision of Cost Limits for Native American Housing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 3, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Office, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail: *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 350). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Revision to Cost Limits for Native American Housing.
OMB Approval Number: 2577–XXXX.

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Reporting burden	365		1		2.2		820

Total Estimated Burden Hours: 820.
Status: New Collection.
Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 26, 2001.
Wayne Eddins,
Departmental Reports Management Officer, Office of the Chief Information Officer.
[FR Doc. 01–27491 Filed 11–1–01; 8:45 am]
BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–11]

Announcement of Funding Awards—Fiscal Year 2001, Office of Troubled Agency Recovery Cooperative Agreements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department from funds distributed to the Office of Troubled Agency Recovery during Fiscal Year 2001. This announcement contains the name and address of all awardees and the amount of each award.

FOR FURTHER INFORMATION CONTACT: Karen A. Newton, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1141. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Cooperative Agreement with each of the following recipients was issued pursuant to section 6(j) of the United States Housing Act of 1937. The awards will be used to provide technical assistance to support troubled agency recovery efforts and funding assistance as necessary to remedy the substantial deterioration of living conditions in public housing or other related emergencies that endanger the health, safety, and welfare of the residents.

The Catalog of Federal Domestic Assistance number for this program is 14.859.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of each award as follows:

(COOPERATIVE AGREEMENT AWARDS FOR FISCAL YEAR 2001

Awardee	Amount
San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102	$147,679
Whitney Housing Authority, PO Box 594, Whitney, TX 76692	5,625
Housing Authority of New London, 78 Walden Avenue, New London, CT 06320	155,000
Bernalillo Housing Authority, PO Box 70 Bernalillo, NM 87004	28,985
Housing Authority of New Orleans, 4100 Touro Street, New Orleans, LA 70122	150,000
Muskegon Housing Commission, 1823 Commerce Street, Muskegon, MI 49440	125,000
Housing Authority of Kansas City, 299 Paseo, Kansas City, MO 64106	200,000
Tulane-Xavier University, Center for the Urban Community, Campus Affiliates Program, 102 Central Building, Tulane University, New Orleans, LA 70118	2,000,000
National Association of Housing and Redevelopment Officials (NAHRO), 1320 18th St. NW, Washington, DC 20035	540,000
Consensus Building Institute, 131 Mt. Auburn Street, Cambridge, MA 02138	183,650
Housing Authority of Havre de Grace, 101 Stansbury Court, Havre de Grace, MD 21078	15,000
Housing Authority of Texarkana, 1611 North Robison Rd., Texarkana, TX 75501	82,102
Housing Authority of the City of Sanford, 94 Castle Brewer Ct., Sanford, FL	1,150,000
Housing Authority of St. James Parish, PO Box 280, Lutcher, LA 70071	88,827
Muskegon Housing Commission, 1823 Commerce St., Muskegon, MI 49441	125,000

Dated: October 29, 2001.

Michael Liu,

Assistant Secretary for Public and Indion Housing.

[FR Doc. 01–27490 Filed 11–1–01; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–44]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing– and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 24, 2001.

Mark R. Johnston,

Deputy Director, Office of Special Needs Assistonce Programs.

[FR Doc. 01–27314 Filed 11–1–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Antioch Dunes National Wildlife Refuge, Contra Costa County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Assessment (CCP/EA) for Antioch Dunes National Wildlife Refuge (Refuge) is available for review and comment. This CCP/EA, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969, describes how the U.S. Fish and Wildlife Service intends to manage the Refuge for the next 15 years. Also available for review with the CCP/EA are draft compatibility determinations for environmental education, interpretation, wildlife observation, and photography, and research.

DATES: Please submit comments on the Draft CCP/EA on or before December 3, 2001.

ADDRESSES: Comments of the Draft CCP/EA should be addressed to: Mark Pelz, Planning Team Leader, U.S. Fish and Wildlife Service, California/Nevada Refuge Planning Office, 2800 Cottage Way, Room W–1916, Sacramento, CA 95825. Comments may also be submitted via electronic mail to *FW1PlanningComments@fws.gov*. Please type "Antioch Dunes NWR" in the subject line.

FOR FURTHER INFORMATION CONTACT: Mark Pelz, U.S. Fish and Wildlife Service, California/Nevada Refuge Planning Office, Room W–1916, 2800 Cottage Way, Sacramento, California, 95825; 916–414–6500; fax 916–414–6512.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Copies of the Draft CCP/EA may be obtained by writing to U.S. Fish and Wildlife Service, Attn: Mark Pelz, California/Nevada Refuge Planning Office, Room W–1916, 2800 Cottage Way, Sacramento, California, 95825. Copies of the plan may be viewed at this address or at the San Francisco Bay NWR Complex Headquarters, #1 Marshlands Road, Fremont, California. The Draft CCP/EA will also be available online for viewing and download at *http://pacific.fws.gov/planning*.

Background

The Antioch Dunes Refuge was the first National Wildlife Refuge in the country established to protect endangered plants and insects. Created in 1980 by the U.S. Fish and Wildlife Service (Service), this riverside Refuge provides protection and critical habitat for three endangered species: Lange's metalmark butterfly (*Apodemia mormo langei*) (Lange's), Contra Costa wallflower (*Erysimum capitatum* ssp. *angustatum*) (wallflower), and Antioch Dunes evening primrose (*Oenothera deltoides* ssp. *howellii*) (primrose). The Refuge, 55-acres of former dunes, in addition to the adjacent 12 acres of Pacific Gas and Electric Company (PG&E) land, is an isolated patch of what was once a larger dune system that hosted a unique assemblage of plants, insects, and reptiles. A major effort is currently underway to restore and improve dune habitat on the Refuge. The Refuge staff is based in the San Francisco Bay National Wildlife Refuge Complex office in Fremont, California.

This Draft CCP/EA identifies and evaluates four alternatives for managing the Refuge for the next 15 years. Alternative D is the Service's preferred alternative.

Under Alternative A (No Action), current management and public use would continue unchanged. The Refuge would continue its current weed control program. Various control methods would be used, including hand weeding, treating with herbicide, and prescribed fire. As opportunities arise, the Refuge would recontour existing sand dunes at the Refuge by using heavy equipment to reshape existing sand substrate into steep dunes and by importing sand from offsite. The Service would continue to outplant primrose, wallflower, and buckwheat on an as-needed basis. Annual surveys of the three endangered species would continue. The Refuge boundary would remain the same. The Service would continue to work to finalize a Cooperative Agreement with PG&E to manage its adjacent lands. The Refuge would continue to be closed to public use except for occasional staff guided tours for schools and other groups.

Under Alternative B, the Refuge would be restored and managed to pre-industrial natural conditions (oak woodland on sandy soils) with limited and controlled public access. Most of the Refuge would be managed as upland habitat and blowout areas along the shore would be allowed and encouraged to erode and to be colonized by endangered species. Nonnative weeds would continue to be controlled using the same measures described in Alternative A. Weed control research would be expanded. As in Alternative A, the Service would continue to recontour existing dunes to make them steeper, as opportunities arise. Under this alternative, the Service would plant oak seedlings and native grasses in addition to the primrose, wallflower, and buckwheat. The Service would continue monitoring the primrose, wallflower, and Lange's populations and encouraging research on the Refuge. The Refuge boundary would remain the same as under Alternative A. Regularly scheduled tours of the Refuge would be conducted by Refuge staff. An outreach program would be developed to help expand the Refuge's presence and support in the community. Interpretive programs and facilities would be developed, including an automobile pull-out with an interpretive kiosk and a parking area for school and other groups. The Service would also promote the Refuge with teachers and develop an educator-led curriculum for Refuge resources.

Under Alternative C, the Refuge would be managed as a mosaic of dune habitat at varying successional stages with unrestricted public access. Nonnative weeds would continue to be controlled using the same measures as described in Alternative A. The Service would create a cycle of disturbance by scraping the soil in a mosaic pattern. In addition, the Service would construct additional dunes using imported sand in the areas that currently do not provide good habitat for endangered species. The Refuge's outplanting program would be expanded to include other native plant species, especially plants that are either locally significant and/or were historically present. The Service would continue monitoring the primrose, wallflower, and Lange's populations and encouraging research on the Refuge. Additional studies would be undertaken to assess the effects of management actions on other plants and animals, including reptiles and invertebrates, at the Refuge. Under this alternative, the Refuge would remove nonnative species such as Ailanthus and oleander from the river shore to the extent possible. Native species would be planted in their place. Parts of the river bank would be allowed to experience erosion and blowouts so that the endangered plants could colonize them. Under this alternative, the Refuge would initiate the Service's land acquisition planning process to investigate riparian easement and dune habitat acquisition from adjacent land owners. The Refuge would be opened to unrestricted access by the public. Environmental education, interpretation, wildlife observation, photography, and fishing would be allowed on the Refuge. Public use facilities and programs would be developed and staffed as described under Alternative B except that there would be fewer guided tours. In addition, the Refuge would construct a nature trail with interpretive signs, a fishing pier, and a restroom.

Under Alternative D, the Service's preferred alternative, the Refuge would be managed as a mosaic of dune habitat at habitat at varying successional stages with limited and controlled public access. Nonnative weeds would be controlled using the same measures as described in Alternative C. Also, nonnative weeds would be removed in some places after spraying by mechanical means to reduce biomass and woody nonnative plants would also be removed. Under this alternative, restoration and dune construction would be implemented as in Alternative C. However, Alternative D, would require more soil scraping to create disturbance than Alternative C. Outplanting, riparian restoration, monitoring, and land protection planning under this alternative would be the same as under Alternative C. Public use services and facilities would be similar to those under Alternative B.

Dated: October 26, 2001.

Steve Thompson,

Acting Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 01–27519 Filed 11–1–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammals; Finding on Petition To List the Alaska Stock of Sea Otters as Depleted

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Finding on petition.

SUMMARY: On August 21, 2001, the U.S. Fish and Wildlife Service (FWS) received a petition under section 115 of the Marine Mammal Protection Act (MMPA) from the Center for Biological Diversity. The petition requests that FWS list the Alaska stock of sea otters as depleted. The FWS finds that the petition does not present substantial information that the petitioned action is warranted. The FWS has determined that the statewide population of sea otters in Alaska is larger than presented in the petition. Furthermore, the best available scientific information indicates that multiple stocks of sea otters exist in Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Burn, Wildlife Biologist, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, or telephone 907/786–3800 or facsimile 907/786–3816.

SUPPLEMENTARY INFORMATION:

Background

The sea otter, *Enhydra lutris*, is the smallest species of marine mammal. Sea otters occur primarily in shallow, nearshore marine habitats (Rotterman and Simon-Jackson 1988). They eat a wide variety of benthic (i.e., bottom dwelling) invertebrates, including bivalves, molluscs, gastropods, crustaceans, echinoderms, and occasionally octopus and fish. This dependence on nearshore benthic invertebrates greatly influences sea otter distribution, and as a result, they are seldom found in deep water. Sea otters seem to prefer areas with kelp beds, but this is not an essential habitat requirement (Riedman and Estes 1990). Although predominantly marine, they will occasionally haul our on shore to rest.

Taxonomically, three subspecies of sea otter have been identified (Wilson *et al.* 1991). The northern sea otter contains two subspecies: *Enhydra lutris kenyoni*, which occurs from the Aleutian Islands to Oregon, and *Enhydra lutris lutris*, which occurs in the Kuril Islands, Kamchatka Peninsula, and Commander Islands in Russia. The third subspecies, *Enhydra lutris nereis*, occurs in California and is known as the southern sea otter.

Historically, sea otters occurred around the North Pacific rim from Hokkaido, Japan, through the Kuril Islands, Kamchatka Peninsula, the Commander Islands, the Aleutian Islands, peninsular and south coastal Alaska, and southward to Baja California (Kenyon 1969). Extensive commercial hunting of sea otters began following the arrival in Alaska of Russian explores in 1741 and continued during the 18th and 19th centuries. By the time sea otters were afforded protection from commercial harvests by international treaty in 1911, the species was nearly extinct throughout its range, and may have numbered only 1,000–2,000 individuals (Kenyon 1969).

The remaining sea otters were distributed as 13 isolated remnant populations scattered throughout the historic range. Once commercial harvests ceased, 11 of the 13 remaining

populations began to grow and recolonize their former range. By the early 1960s, sea otters had not yet returned to southeast Alaska. In the mid-1960s, the Alaska Department of Fish and Game translocated sea otters from Amchitka Island in the Aleutians and Prince William Sound to several sites throughout southeast Alaska. Similar to the remnant populations, these translocated populations began to grow and expand their geographic range. By the mid-1980s, sea otters had recolonized much of their pre-exploitation range.

In April 1992, FWS conducted an aerial survey of sea otters throughout the entire Aleutian archipelago (Evans *et al.* 1997). The most striking results of this survey were that sea otter density and abundance in the Rat, Delarof, and western Andreanof Islands had unexpectedly declined by more than 50% since 1965. Boat-based surveys of sea otters at several islands in the Near, Rat, and Andreanof Islands further documented an ongoing decline of sea otters during the 1990s (Estes *et al.* 1998).

In April 2000, the FWS Marine Mammals Management Office replicated the 1992 aerial survey in the Aleutians. Overall, sea otters in the Aleutian Islands have declined by 70% during the 8-year period from 1992 to 2000 (U.S. Fish and Wildlife Service, unpublished data). The largest declines occurred in the Rat Islands (87%) and the central Aleutians (71%).

Based on the results of this survey, on August 22, 2000, FWS designated sea otters in the Aleutians (from Unimak Pass to Attu) as a candidate species under the Endangered Species Act (ESA) (65 FR 67343). On October 25, 2000, FWS received a petition from the Center for Biological Diversity (CBD) to list sea otters in the Aleutians as threatened or endangered under the ESA. Due to a backlog of court-ordered listing and critical habitat designations, funds were not available to prepare a proposed rule in Fiscal Year (FY) 2001.

Immediately following the completion of the Aleutian sea otter survey, in May 2000 the FWS conducted an aerial survey of sea otters on the north side of the Alaska Peninsula from False Pass to Cape Seniavin. The FWS also conducted aerial surveys along the south side of the Alaska Peninsula in April 2001. The results of these surveys, which replicated a baseline study conducted in 1986 (Brueggeman *et al.* 1988), indicate that the sea otter population has also declined in these areas. In June 2001, the FWS conducted an aerial survey of the Kodiak Archipelago for comparison with data collected in 1994. A comparison of the two surveys, which used the same aircraft, pilot, and observer, indicate the sea otter population has declined in the Kodiak area as well. Based on the results of surveys conducted in the past year, the Alaska Region of the FWS has requested funding in FY2002 to prepare a proposed rule to list sea otters in southwest Alaska under the ESA.

On August 21, 2001, FWS received a petition from CBD to list sea otters throughout their range in Alaska as depleted under the MMPA (September 6, 2001, 66 FR 46651). Section 115(a)(3)(B) of the MMPA requires the FWS to publish a finding in the **Federal Register** as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

Identification of Sea Otter Stocks in Alaska

Findings of depleted status must be made on the species or population stock level. Amendments to the MMPA in 1994 included section 117 (16 U.S.C. 1386), which mandated preparation of stock assessments for each marine mammal stock that occurs in waters under the jurisdiction of the United States. In 1995, FWS published a final stock assessment for the northern sea otter in Alaska as a single stock (60 FR 52008). Section 117(c) requires that stock assessments be reviewed: (A) At least annually for stocks which are specified as strategic stocks; (B) at least annually for stocks for which significant new information is available; and (C) at least once every 3 years for all other stocks. If the review indicates that the status of the stock has changed or can be more accurately determined, the stock assessment shall be revised according to the process outlined in section 117(b). The first revision to the stock assessment occurred in 1998.

In February 1998, FWS published a draft revision of the northern sea otter stock assessment that identified three stocks of sea otters in Alaska (63 FR 10936). The revision identified a southeast Alaska stock (Cape Yakataga to Dixon Entrance), a southcentral Alaska stock (Cook Inlet to Cape Yakataga), and a southwest Alaska stock (Cook Inlet to Attu Island, including the Kodiak archipelago).

In August 1998 the Alaska Sea Otter Commission (ASOC) requested a proceeding on the record as outlined in section 117(b)(2) of the MMPA to contest the identification of multiple stocks of sea otters in Alaska. After considerable discussion, FWS and ASOC signed a Memorandum of Agreement (MOA) in July 1999 to further investigate the issue of stock structure of sea otters in Alaska. On August 12, 1999, the ASOC (now the Alaska Sea Otter and Steller Sea Lion Commission) withdrew the request for a formal proceeding on the record. A revised stock assessment for the northern sea otter in Alaska has not been finalized.

The identification of multiple stocks of sea otters in Alaska in our 1998 draft revision was based on an analysis of existing data on distribution, population response, phenotypic data, and genotypic data according to Dizon *et al.* (1992). One element of the MOA concerned scientific peer review of the analysis that identified multiple stocks of sea otters in Alaska. That element has been satisfied by the publication of Gorbics and Bodkin (2001), who applied the criteria of Dizon *et al.* (1992) and identified three stocks of sea otters in Alaska: Southwest, southcentral, and southeast. Another element of the MOA involved the completion of additional genetics analysis using both mitochondrial and nuclear DNA, as well as a larger sample size. This study is complete and a manuscript is in preparation for scientific peer review and publication (Cronin *et al.* in prep.). The results of this study also support the identification of multiple stocks of sea otters in Alaska.

The FWS is currently in the process of revising our original 1995 stock assessment for northern sea otters in Alaska. Based on the best available scientific evidence, FWS anticipates publishing draft stock assessments identifying multiple stocks of sea otters in Alaska. The drafts soon will be available for public review and comment.

Current Population Size

The Petition presents an estimated statewide sea otter population of fewer than 38,000 individuals. This figure was calculated using population estimates from the 1998 draft stock assessments, along with the estimated abundance for the Aleutians presented in the Candidate Species announcements (65 FR 67343). The statewide population estimate presented in the petition is inaccurate for several reasons. First, available population estimates are omitted from substantial portions of the State, including the Alaska Peninsula and Kodiak archipelago. Second, the estimate used for the Aleutian Islands is incorrect. Further analysis of the Aleutian aerial survey data has resulted in a revised population estimate of 8,742 rather than the previously reported value of 5,812 (Doroff *et al.* in prep.). Finally, most population estimates presented by the petitioners are not corrected for detection probability. Sea otters may either be at the surface and missed by observers, or below the surface and unavailable for counting. In order to calculate the best estimate of current population size for determination of depleted status, these data must be corrected for detection probability.

Detection probability is often specific to survey design, personnel, and weather conditions. The survey technique used in Prince William Sound, Kodiak, and Yakutat generates a detectability correction factor for each survey (Bodkin and Udevitz 1999). Detection probabilities for this technique ranged from 52–72%. Similarly, the Aleutian Islands survey in 2000 used sea otter counts made from skiffs at six islands to estimate a detection probability of 28% (Doroff *et al.* in prep).

For aerial and ship-based surveys for which no correction factor exists, the results of similar studies can be used as approximate values. For fixed-wing aerial surveys with one observer on each side of the aircraft, Evans *et al.* (1997) calculated that observers saw 42% of the sea otters within a known area. This equates to a detectability correction factor of 2.38 (CV=0.087). For surveys conducted from small boats, Udevitz *et al.* (1995) estimated that observers saw 70% of the sea otters present, for a correction factor of 1.43 (CV=0.071). Detection of sea otters during boat surveys is higher than aerial surveys because the survey platform is moving slower, which gives observers more time to visually search for otters. The additional search time also reduces the likelihood that otters below the surface may be missed. Using the most applicable correction factors for detection probability available, the best estimate for the Aleutians Islands, and including all areas of the State, the current best estimate of the Alaska sea otter population size is 74,143 with a 95% confidence interval of ±15,739 (Table 1).

TABLE 1.—CURRENT STATEWIDE POPULATION ESTIMATES OF SEA OTTERS IN ALASKA. ORIGINAL ESTIMATES FOR LOCATIONS IN ITALICS DID NOT INCLUDE A SURVEY-SPECIFIC DETECTION PROBABILITY CORRECTION FACTOR. ADJUSTED ESTIMATES FOR THESE LOCATIONS USE A CORRECTION FACTOR OF 2.38 FOR FIXED-WING AIRCRAFT AND 1.43 FOR SMALL BOAT SURVEYS

Location	Survey year	Survey type	Original estimate	Coefficient of variation	Adjusted estimate	Reference
Southeast Alaska	1994	Small boat	8,180	0.392	11,697	Agler *et al.* 1995.
Yakutat Bay	1995	Fixed-wing aircraft	404	0.339	404	Doroff and Gorbics 1998.
North Gulf of Alaska (Cape Yakataga to Cape Spencer).	1996	Fixed-wing aircraft	223		531	Doroff and Gorbics 1998.
Lower Cook Inlet	1993	Small boat	5,914	0.267	8,457	Agler *et al.* 1995.
Kenai Peninsula	1989	Helicopter	2,330	0.120	2,330	DeGange *et al.* 1995.
Prince William Sound	1999	Fixed-wing aircraft	13,234	0.198	13,234	USGS unpublished data.
N. Gulf of Alaska (Cape Hinchinbrook to Cape Yakataga).	1996	Fixed-wing aircraft	271		645	Doroff and Gorbics 1998.
Aleutian Islands	2000	Fixed-wing aircraft	8,742	0.215	8,742	Doroff *et al.* in prep.
Unimak Island	2001	Fixed-wing aircraft	42		100	FWS unpublished data.
North Alaska Peninsula (False Pass to Port Heiden).	2000	Fixed-wing aircraft	5,756	0.327	13,699	FWS unpublished data.
South Alaska Peninsula (False Pass to Pavlof Bay).	2001	Fixed-wing aircraft	939	0.809	2,235	FWS unpublished data.
South Alaska Peninsula (Seal Cape to Cape Douglas).	2001	Fixed-wing aircraft	2,190		5,212	FWS unpublished data.
South Alaska Peninsula Islands	2001	Fixed-wing aircraft	405		964	FWS unpublished data.
Kodiak Archipelago	2001	Fixed-wing aircraft	5,893	0.228	5,893	FWS unpublished data.
Total					74,143	

Population Status Relative to OSP

The worldwide population of sea otters in the early 1700s has been estimated at 150,000 (Kenyon 1969) to 300,000 (Johnson 1982). The size of the Alaska sea otter population prior to commercial depletion is unknown. Calkins and Schneider (1985) estimated the statewide sea otter population at 100,000 to 150,000 in 1976. Sea otter populations have potentially high reproductive rates (Riedman and Estes 1990). As a result, recovering otter populations may temporarily exceed carrying capacity (K) on a local level, before stabilizing at a lower equilibrium value (Estes 1990). These uncertainties make a current determination of K for sea otters in Alaska problematic. In the face of these uncertainties, the petitioners propose a conservative estimate of K for sea otters in Alaska of 100,000 individuals. Lacking specific information about habitat and K throughout much of Alaska, we believe this is a reasonable estimate of K at this time.

Determination of the Maximum Net Productivity Level (MNPL), which defines the lower bound of Optimum Sustainable Population (OSP) for any marine mammal stock is difficult. Initial studies on marine mammal populations using a generalized logistic population model resulted in a MNPL of half of K. Later studies based on the life history characteristics of marine mammals suggested that MNPL lies somewhat closer to K (Eberhardt and Siniff 1977, Gerrodette and DeMaster 1990). For most species of marine mammals, there is insufficient data available to estimate MNPL accurately (Taylor and DeMaster 1993). Where a Species-specific estimate of MNPL is unavailable, the best available information calls for applying 60% of K as an approximation (Barlow *et al.* 1995). Using this approximation of MNPL (60%) for the purpose of responding to this petition and in the absence of specific productivity levels for Alaska sea otters and an estimated K of 100,000, the petitioners present a lower threshold of OSP for sea otters in

Alaska of 60,000. The best available population estimate for sea otters in Alaska (74,143) is above this threshold.

Finding on the Petitioned Action

Based on the best available estimate of current population size, the statewide sea otter population is above the conservative estimate of OSP. In addition, although the last finalized stock assessment in 1995 classified sea otters in Alaska as a single stock, the best scientific information currently available indicates that multiple stocks exist. This information suggests that three stocks occur in Alaska: Southwest, southcentral, and southeast. The best available scientific information shows that the population in southeast Alaska is growing (Bodkin *et al.* 1999), and the population in southcentral Alaska is either stable or growing. While these two populations are either stable or growing, the FWS acknowledge that sea otters in southwest Alaska have undergone widespread, dramatic declines in the past 10–15 years.

The FWS is in the process of revising the stock assessment of sea otters in Alaska under the MMPA, and as part of this process will make a final determination on the number and geographic range of Alaska sea otter stocks. Stock identification is a defined process under the MMPA and while the currently available biological data indicates that three stocks are appropriate, the Service needs to complete the stock assessment process properly and in close cooperation with our partners. The genetics study conducted by the FWS was just recently completed and we expect the new stock assessments to be completed soon. Once these stock assessments are finalized, the status of each stock will be evaluated and designation of a southwest stock as depleted may be warranted at that time.

The FWS acknowledged the decline of sea otters of the Aleutians by designating them a Candidate Species under the ESA in August 2000. In the candidate species designation, the FWS treated the sea otters in southwest Alaska as a distinct population segment under the ESA and its implementing regulations. Once funding is available the FWS will proceed to propose the southwest Alaska sea otters for Federal listing under the ESA. This action would be more applicable to the sea otter than a depleted designation. The primary benefits that accrue to a depleted species is the requirement for a conservationn plan which is already in place for the sea otter, and the ability to publish regulations to regulate harvest if harvest is negatively affecting the population; we do not believe harvest is affecting the population. Also, under section 3(1)(C) of the MMPA (16 U.S.C. 1362), a species or population stock that is listed as an endangered species or a threatened species under the ESA is automatically classified as depleted under the MMPA. While continuing to evaluate the sea otter under both statutes, the FWS will also continue to monitor population status and further assess causes of the decline, to the extent possible within available resources.

The FWS finds that the petition did not present substantial information that the petitioned action is warranted. The FWS has determined that the statewide population of sea otters in Alaska is considerably larger than the conservative estimate of OSP presented in the petition. Furthermore, the best available scientific information indicates that multiple stocks of sea otter exist in Alaska.

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Authority: The authority for this action is the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*

Dated: October 26, 2001.

Marshall P. Jones, Jr.,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 01–27495 Filed 11–1–01; 8:45 am]

BILLING CODE 4310–55–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–739 (Review)]

Clad Steel Plate From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on June 1, 2001 (66 FR 29829, June 1, 2001) and determined on September 4, 2001 that it would conduct an expedited review (66 FR 49040, September 25, 2001).

The Commission transmitted its determination in this review to the Secretary of Commerce on October 29, 2001. The views of the Commission are contained in USITC Publication 3459 (October 2001), entitled Clad Steel Plate from Japan: Investigation No. 731–TA–739 (Review).

Issued: October 29, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27540 Filed 11–1–01; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–365–366 (Review) and 731–TA–734–735 (Review)]

Certain Pasta From Italy and Turkey

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing and antidumping duty orders on certain pasta from Italy and Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on June 1, 2001 (66 FR 29831, June 1, 2001) and determined on September 4, 2001 that it would conduct expedited reviews (66 FR 50453, October 3, 2001).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on October 29, 2001. The views of the Commission are contained in USITC Publication 3462 (October 2001), entitled Certain Pasta from Italy and Turkey: Investigations Nos. 701–TA–365–366 (Review) and 731–TA–734–735 (Review).

Issued: October 29, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27539 Filed 11–1–01; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement and Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7 and pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.. 9622(d)(2), notice is hereby given that on October 10, 2001, a proposed Settlement Agreement and Consent Decree ("Decree") in United States and State of Colorado v. Robert Friedland, Civil No. 96–N–1213, was lodged with the United States District Court for the District of Colorado. The United States and State of Colorado filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act for recovery of costs incurred by the United States and State of Colorado in responding to releases of hazardous substances at the Summitville Mine Superfund Site near Del Norte, Colorado.

Pursuant to the proposed Decree, the United States and State of Colorado will have an allowed general unsecured claim jointly against defendant Industrial Constructors Corp. and also against Washington Group International, Inc., and Washington Contractors Group, Inc. in the amount of $20,288,080 in the Bankruptcy Case captioned *In re: Washington Group International, Inc.* Case No. BK–N–01–31627 (GWZ) (Bankr. D. Nev.). This general unsecured claim will resolve the claims of the United States and the State of Colorado against defendant Industrial Constructors Corp. in *United States and State of Colorado* v. *Robert Friedland*, Civil No. 96–N–1213 (D. Colo.) and also will resolve the claims of the State of Colorado against defendants Washington Group International, Inc., Washington Contractors Group, Inc., and Dennis Washington in *United States* v. *Sunoco, Inc., et al.*, Civil No. 01–N–1 (D. Colo.).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to, *United States and State of Colorado* v. *Robert Friedland*, Civil No. 96–N–1213, and D.J. Ref. #90–11–3–1133B.

The Decree may be examined at the office of the U.S. Department of Justice, Environmental Enforcement Section, 999 18th Street, Suite 945, North Tower. Denver, Colorado; at U.S. EPA Region 8, Office of Regional Counsel, 999 18th Street, Suite 300, South Tower, Denver Colorado. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $5.75 (25 cents per page reproduction

cost) payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–27608 Filed 11–1–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request.

ACTION: Notice of information collection under review: request for premium processing service.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in an interim rule INS No. 2108–01; RIN 1115–AG03 in the **Federal Register** on June 1, 2001 at 66 FR 29682, allowing for emergency OMB review and approval, as well as a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 3, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725–17th Street, NW., Room 10235, Washington, DC 20530; Attention: Department of Justice Desk Officer.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Premium Processing Service.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–907, Immigration Services Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The data collected on this form is used by the Service to process requests for premium processing of certain employment-based petitions or applications in accordance with section 286(u) of the District of Columbia Appropriations Act of 2002.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 80,000 responses at 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: October 25, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–27548 Filed 11–1–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review: application for removal.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 27, 2001 at 66 FR 39207, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 3, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–243, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information provided on this form allows the Service to determine eligibility for the alien's request for removal from the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 41 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 7 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: October 25, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–27549 Filed 11–1–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Canadian border boat landing permit.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 1, 2001 at 66 FR 39794, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 3, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the From/Collection:* Canadian Border Boat Landing Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–68, Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Section 235 of the Immigration and Nationality Act provides for the inspection of persons entering the United States from Canada by small craft to be inspected only once during the navigational season, rather than each time they enter. Persons issued this form are permitted to visit the immediate shore area for the duration of the boating season without having to travel to the nearest INS office for inspection.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 68,000 responses at 10 minutes (.316 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,288 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Solan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D

Street, NW., Ste. 1600, Washington, DC 20530.

Dated: October 25, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–27550 Filed 11–1–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein. Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, DC 20210.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume VII

California
CA010042 (Nov. 2, 2001)

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled "General Wage determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA010001 (Mar. 2, 2001)
MA010002 (Mar. 2, 2001)
MA010003 (Mar. 2, 2001)
MA010005 (Mar. 2, 2001)
MA010007 (Mar. 2, 2001)
MA010008 (Mar. 2, 2001)
MA010009 (Mar. 2, 2001)
MA010010 (Mar. 2 2001)
MA010012 (Mar. 2 2001)
MA010013 (Mar. 2 2001)
MA010014 (Mar. 2 2001)
MA010015 (Mar. 2 2001)
MA010016 (Mar. 2 2001)
MA010017 (Mar. 2 2001)
MA010018 (Mar. 2 2001)
MA010019 (Mar. 2 2001)
MA010020 (Mar. 2 2001)
MA010021 (Mar. 2 2001)
Maine
ME010001 (Mar. 2 2001)
ME010002 (Mar. 2 2001)
ME010005 (Mar. 2 2001)
ME010008 (Mar. 2 2001)
ME010012 (Mar. 2 2001)
New Hampshire
NH010011 (Mar. 2 2001)
New Jersey
NJ010001 (Mar. 2 2001)
NJ010002 (Mar. 2 2001)
NJ010003 (Mar. 2 2001)
NJ010006 (Mar. 2 2001)
New York
NY010001 (Mar. 2 2001)
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NY010043 (Mar. 2 2001)
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NY010048 (Mar. 2 2001)
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Volume II

West Virginia
WV010001 (Mar. 2, 2001)
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WV010006 (Mar. 2, 2001)
WV010010 (Mar. 2, 2001)

Volume IIII

Alabama
AL010018 (Mar. 2. 2001)
North Carolina
NC010055 (Mar. 2. 2001)

Volume IV

Illinois
IL010001 (Mar. 2, 2001)
IL010002 (Mar. 2, 2001)
IL010007 (Mar. 2, 2001)
IL010013 (Mar. 2, 2001)
IL010016 (Mar. 2, 2001)
IL010017 (Mar. 2, 2001)
IL010035 (Mar. 2, 2001)
IL010042 (Mar. 2, 2001)
IL010049 (Mar. 2, 2001)
IL010052 (Mar. 2, 2001)
IL010054 (Mar. 2, 2001)
Indiana
IN010001 (Mar. 2, 2001)
IN010002 (Mar. 2, 2001)
IN010003 (Mar. 2, 2001)
IN010004 (Mar. 2, 2001)
IN010005 (Mar. 2, 2001)
IN010006 (Mar. 2, 2001)
IN010008 (Mar. 2, 2001)
IN010016 (Mar. 2, 2001)
IN010047 (Mar. 2, 2001)

Volume V

Iowa
IA010003 (Mar. 2, 2001)
IA010004 (Mar. 2, 2001)
IA010005 (Mar. 2, 2001)
IA010006 (Mar. 2, 2001)
IA010007 (Mar. 2, 2001)
IA010009 (Mar. 2, 2001)
IA010029 (Mar. 2, 2001)
IA010032 (Mar. 2, 2001)
IA010038 (Mar. 2, 2001)
IA010056 (Mar. 2, 2001)
IA010059 (Mar. 2, 2001)
IA010060 (Mar. 2, 2001)
IA010067 (Mar. 2, 2001)
IA010070 (Mar. 2, 2001)
Missouri
MO010006 (Mar. 2, 2001)
Nebraska
NE010001 (Mar. 2, 2001)
NE010003 (Mar. 2, 2001)
NE010019 (Mar. 2, 2001)

Volume VI

North Dakota
ND010001 (Mar. 2, 2001)
ND010002 (Mar. 2, 2001)
ND010004 (Mar. 2, 2001)
ND010008 (Mar. 2, 2001)
ND010015 (Mar. 2, 2001)
Oregon
OR010001 (Mar. 2, 2001)
OR010017 (Mar. 2, 2001)
Washington
WA010001 (Mar. 2, 2001)
WA010002 (Mar. 2, 2001)
WA010008 (Mar. 2, 2001)

Volume VII

California
CA010001 (Mar. 2, 2001)
CA010002 (Mar. 2, 2001)
CA010009 (Mar. 2, 2001)
CA010029 (Mar. 2, 2001)
CA010030 (Mar. 2, 2001)
CA010031 (Mar. 2, 2001)
CA010033 (Mar. 2, 2001)
CA010035 (Mar. 2, 2001)
CA010036 (Mar. 2, 2001)
CA010037 (Mar. 2, 2001)
CA010038 (Mar. 2, 2001)
CA010039 (Mar. 2, 2001)
CA010040 (Mar. 2, 2001)
CA010041 (Mar. 2, 2001)
Nevada
NV010001 (Mar. 2, 2001)
NV010003 (Mar. 2, 2001)
NV010004 (Mar. 2, 2001)
NV010005 (Mar. 2, 2001)
NV010006 (Mar. 2, 2001)
NV010007 (Mar. 2, 2001)
NV010008 (Mar. 2, 2001)
NV010009 (Mar. 2, 2001)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 25th day of October 2001.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–27339 Filed 11–1–01; 8:45 am]

BILLING CODE 4510–27–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, November 15, 2001, and Friday, November 16, 2001, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on November 15, and at 9 a.m. on November 16.

Topics for discussion include: Quality improvement for health plans and providers; Medicare program complexity and regulatory burden; payment for outpatient pain management procedures; blood safety requirements: impact on hospital costs and payment options; measuring payment adequacy and; updating payments in traditional Medicare; the Medigap insurance market; Medicare's hospice benefit; and Medicare+Choice.

Agendas will be mailed on November 6, 2001. The final agenda will be available on the Commission's Web site (*www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 1730 K Street, NW., Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 01–27553 Filed 11–1–01; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL COMMUNICATIONS SYSTEM

Request for Information on Telecommunications Emergency Alerting Capabilities

AGENCY: National Communications System (NCS).

ACTION: Request for information.

SUMMARY: The National Communications System (NCS) is seeking information on potential emergency notification capabilities; before, during, and after an emergency; via: (1) The Public Telephone System. Notified telephone numbers might be all lines in a geographic area or a pre-loaded list of telephone numbers; (2) Paging Systems. These might be digital text and/or voice messaging systems. Notified pagers might be all pagers in a geographic area or a pre-loaded list of pager numbers; (3) Cellular Telephones. These might be notified by digital text messaging and/or voice. Notified cellular telephones might be all cellular telephones in a geographic area or a pre-loaded list of cellular telephone numbers.

DATES: Submissions should be made within 21 days of the date of this notice.

ADDRESSES: National Communications System, Attn: N2, 701 South Court House Road, Arlington, VA 22204–2198, *barrd@ncs.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Dale Barr, Jr., National Communications System, Attn: N2, 701 South Court House Road, Arlington, VA 22204–2198, telephone (703) 607–6157, fax (703) 607–4830, e-mail address, *barrd@ncs.gov.*

SUPPLEMENTARY INFORMATION: The requested information is for planning purposes and does not constitute a commitment, implied or otherwise, that a procurement action will be isued. No entitlement to payment of direct or indirect costs or charges by the Government will arise as a result of the submission of information. The Government shall not be liable for or suffer any consequential damages for any improperly identified proprietary information. Proprietary information will be safeguarded in accordance with the applicable Government regulations. If there is a GSA or other contract vehicle already available for the technology being proposed, please include this information in the response.

Peter M. Fonash,

Federal Register Certifying Officer, National Communications System.

[FR Doc. 01–27555 Filed 11–1–01; 8:45 am]

BILLING CODE 5001–08–M

NATIONAL SCIENCE INFORMATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) The accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) Ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by January 2, 2002, to be assured of consideration. Comments received after that date would be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Evaluation of NSF's Graduate Teaching Fellows in K–12 Education (GK–12) Program.

OMB Control No.: 3145–New.

Expiration Date of Approval: Not applicable.

1. *Abstract:* This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Graduate Teaching Fellows in K–12 Education (GK–12). GK–12 is a fellowship that offers graduate students and advanced undergraduates the opportunity to serve as resources for K–12 teachers of science and mathematics. The study design focuses on GK–12 projects funded during the period 1999–2002 and involves two types of studies. One consists of **Case Studies** of three cohorts of GK–12 projects. The second is a **SURVEY** of all GK–12 projects funded in this time period. This OMB submission seeks clearance for data collection instruments for both studies.

2. *Expected Respondents:* The expected respondents are GK–12 Fellows, Cooperating Teachers in the school districts where the Fellows are placed, Principal Investigators, and other educators associated directly with the GK–12 Program.

3. *Burden on the Public:* The total elements for this collection is 1,823 burden hours for a maximum of 3,645 participants assuming an 80–100% response rate. The average annual reporting burden is 2 hours per respondent. The burden on the public is negligible; the study is limited to project participants that have received funding from the NSF GK–12 program.

Dated: October 29, 2001.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 01–27489 Filed 11–1–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Cyberinfrastructure (#10719).

Date/Time: Wednesday, Nov. 21, 2001, 2 pm–5 pm EDT.

Place: Rm. 130, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open Teleconference Meeting. Persons wishing to attend the meeting at NSF should contact Richard Hilderbrandt to arrange for a visitor's pass.

Contact Person: Dr. Richard Hilderbrandt, Program Director, Division of Advanced Computational Infrastructure and Research, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Tel: (703) 292–7093, e-mail: *rhilderb@nsf.gov.*

Purpose of Meeting: To develop a plan for the preparation of a report to the National Science Foundation concerning he broad topic of advanced cyberinfrastructure and the evaluation of the existing Partnerships for Advanced Computational Infrastructure.

Agenda:

Announcements and news sharing.
Sub-committee status reports.
Comments by invited visitors.
Review of draft of outline of report.
Next Steps.
Matters Arising.

Dated: October 30, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–27618 Filed 11–1–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

Nuclear Management Company, LLC; Duane Arnold Energy Center Environmental Assessment and Finding of No Significant Impact Related to a Proposed License Amendment To Increase the Maximum Rated Thermal Power Level

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–49, issued to Nuclear Management Company, LLC (NMC), for operation of the Duane Arnold Energy Center, located in Linn County, Iowa. Therefore, pursuant to 10 CFR 51.21 and 10 CFR 51.35, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow NMC, the operator of DAEC, to incrementally increase its electrical generating capacity by raising the maximum reactor core power level from 1658 MWt to 1912 MWt, 15.3 percent above the current maximum licensed power level. The change is considered an EPU for a BWR because it would raise the reactor core power level more than approximately 7 percent above the original maximum licensed power level. A previous 4.1-percent power uprate, implemented in 1985, raised the original maximum power level from 1593 MWt to 1658 MWt. A power uprate increases the heat output of the reactor to support increased turbine inlet steam flow requirements and increases the heat dissipated by the condenser to support increased turbine exhaust steam flow requirements.

The proposed action is in accordance with NMC's application for amendment dated November 16, 2000, as supplemented April 16 (two letters) and 17; May 8 (two letters), 10, 11 (two letters), 22, and 29; June 5, 11, 18, 21, and 28; July 11, 19, and 25; and August 1, 10, 16, and 21; and October 17, 2001, and NMC's "Supplement to DAEC Environmental Report," submitted on September 22, 2000, in advance of the application.

The NRC previously published a draft environmental assessment of the proposed action in the **Federal Register** (66 FR 48482, September 20, 2001) and offered an opportunity for public comment. No comments were received.

Need for the Proposed Action

Alliant Energy—IES Utilities (Alliant), the principal owner of DAEC,[1] has compared the projected load growth to its electrical generating capacity and has determined a need for additional capacity in its territory. Alliant's obligated capacity is expected to increase by 2 percent per year. The proposed EPU would add 80 megawatts of electrical generating capacity to the grid. The estimated cost of adding this generating capacity is approximately half the cost of purchasing power and one-third the cost of providing the power by constructing a new combined-cycle, natural-gas-fueled facility. Therefore, Alliant concluded that increasing DAEC's capacity would be the most economical option for increasing power supply. Furthermore, unlike fossil fuel plants, DAEC does not routinely emit sulfur dioxide, nitrogen oxide, carbon dioxide, or other atmospheric pollutants.

Environmental Impacts of the Proposed Action

At the time of the issuance of the operating license for DAEC, the NRC staff noted that any activity authorized by the license would be encompassed by the overall action evaluated in the Final Environmental Statement (FES) for the operation of DAEC, which was issued in March 1973. The original operating license for DAEC allowed a maximum reactor power level of 1593 MWt. On September 22, 2000, NMC submitted a supplement to its Environmental Report supporting the proposed EPU action and provided a summary of its conclusions concerning the environmental impacts of the proposed action. Based on the NRC staff's independent analyses of the nonradiological and radiological impacts and the evaluation performed by the licensee, the staff has concluded that the environmental impacts of the EPU are bounded by the environmental impacts previously evaluated in the FES because the EPU does not involve extensive changes to plant systems that directly or indirectly interface with the environment. Additionally, the licensee states that no changes to the National Pollutant Discharge Elimination System permit issued by the State would be necessary.

[1] On January 10, 2001, the NRC published in the **Federal Register** (66 FR 2009) an Environmental Assessment and Finding of No Significant Impact regarding a requested change to the DAEC operating license to reflect the proposed change in the owner's name from IES Utilities, Inc., to Interstate Power and Light Company. The NRC's final action regarding the requested name change is pending.

Nonradiological Impacts

The following is the NRC staff's evaluation of the nonradiological environmental impacts of the EPU on land use, water use, waste discharges, terrestrial and aquatic biota, transmission facilities, and social and economic conditions at DAEC.

Land Use Impacts

The proposed EPU would not modify the land use at the site, nor have any impacts on lands with historic or archaeological significance. The licensee states that it has no plans to construct any new facilities or alter the land around existing facilities, including buildings, access roads, parking facilities, laydown areas, onsite transmission and distribution equipment, or power line rights-of-way, in conjunction with the EPU. The EPU would not significantly affect the storage of materials, including chemicals, fuels, and other materials stored above or under the ground. The EPU would not alter the aesthetics of the site. Therefore, the FES conclusions for impacts on land use would remain valid under EPU conditions.

Water Use Impacts

The staff evaluated surface water use and groundwater use as environmental impacts of water usage at DAEC.

Surface Water Use

An EPU is accomplished by increasing the heat output of the reactor, thereby increasing the steam flow to the turbine, for which increased feedwater flow is needed. The increased heat load on the cooling tower would cause evaporative losses to increase; therefore, cooling tower makeup to the circulating water system increases to compensate for the increase in evaporative losses. Cooling tower makeup at DAEC is supplied by the Cedar River and well water systems. The EPU would not change the amount of water withdrawn from the well water system. The EPU would require an increase in river water use; however, the licensee stated that DAEC would not use more river water than permitted. In accordance with the water appropriation limits of the Iowa Department of Natural Resources (IDNR), DAEC may withdraw a maximum of 12,575 million gallons per year (MGY) from the Cedar River at a rate of 27,000 gallons per minute (gpm) minus the total well water withdrawal rate (3000 gpm). Special operating restrictions apply at lower-than-average river flows if the withdrawal would reduce the river flow to less than 500 cubic feet per second (cfs). A maximum flow rate of 11,000 gpm and an annual

withdrawal rate of 5782 MGY were analyzed in the FES. During the years 1996 through 1999, the flow at DAEC averaged 5680 gpm. The licensee predicts the flow will be 6700 gpm under EPU conditions. The predicted flow average under EPU conditions is approximately 40 percent less than that analyzed in the FES and is below the IDNR-permitted limits. In the period 1996–1999, the annual withdrawal rate at DAEC averaged 3000 MGY; the licensee projects it will be 3540 MGY under EPU conditions. The 3540 MGY projected average flow withdrawal rate is also below the value evaluated in the FES and the IDNR-permitted limit of 12,575 MGY. The EPU would have no impact on the number of cooling tower concentration cycles or on the cooling tower flow rate. Therefore, current water appropriation limits would be maintained and the conclusions in the FES would remain valid under the proposed EPU conditions.

Groundwater Use

The staff evaluated the consumption of groundwater as an environmental impact of the proposed EPU. Groundwater use at DAEC is governed by a permit issued by the IDNR. The permit limits DAEC to 1575 MGY with the flow from all pumps not to exceed 3000 gpm. A maximum flow rate of 1500 gpm and a withdrawal rate of 788 MGY were evaluated in the FES. The average annual groundwater withdrawal rate for DAEC is 762 MGY, with a normal system flow averaging 1420 gpm.

The licensee stated that the proposed EPU would not increase the consumption of groundwater, would not impact the well water system flow path, and does not require any additional cooling capacity from the groundwater in order to shed heat loads. Therefore, the staff's conclusions in the FES on groundwater use are valid for the proposed EPU.

Discharge Impacts

The staff evaluated environmental impacts such as cooling tower fogging, icing, drift, noise, chemical discharges to surface water, sanitary waste discharges, blowdown, thermal plume spread, temperature of the river water, cold shock to aquatic biota, hazardous waste effluents, and air emissions.

Cooling Tower Fogging, Icing, Drift, and Noise

Environmental impacts such as fogging, icing, cooling tower drift, and noise could result from the increased heat load on the cooling tower under EPU conditions. In the FES, the staff concluded that the operation of the DAEC cooling towers may slightly increase fogging and icing in nearby areas. The staff stated that cooling tower drift was estimated to be a maximum of 0.1 percent of cooling water flow, or 0.65 cubic feet per second (290 gpm). The estimates were based on anticipated evaporation and drift rates of 2.25 percent and 0.5 percent of tower flow, respectively. The licensee stated that the total hours of fogging would increase by approximately 1.1 hour per year above the nominal 240 hours per year, and that icing would be insignificant. The proposed EPU would not change the cooling tower flow or drift rate; however, the evaporation rate was calculated to increase to approximately 3 percent.

Since the original analysis in the FES, the cooling towers at DAEC have been upgraded by replacing the wooden drift eliminators with polyvinyl chloride (PVC) drift eliminators. The PVC drift eliminators allow water droplets to return to the cooling tower air stream and channel water to the cooling tower's cold water basin, which reduces evaporation and drift losses. Consequently, the licensee's analysis of the effect of the EPU on fogging is conservative.

After considering the increase in heat load on the cooling towers, the staff concluded that the incremental effects of fog attributable to the proposed EPU would be negligible and would continue to be bounded by the FES. Other cooling tower impacts, such as drift and icing, would not be expected to change as a result of the EPU. Therefore, the staff finds that the conclusions in the FES for fogging, icing, and cooling tower drift would be valid under the proposed EPU conditions.

The FES also stated that the operation of the cooling towers would result in a noticeable, but acceptable, increase in the noise level at the nearest dwelling. The proposed EPU would not significantly change the character, sources, or energy of noise generated at DAEC. The new equipment necessary to implement the EPU would be installed within existing plant buildings and no significant increase in ambient noise levels within the plant would be expected. Therefore, the FES conclusions for noise levels would remain valid under EPU conditions.

Chemical and Sanitary Discharges

Surface water and wastewater discharges are regulated by the State of Iowa. The National Pollutant Discharge Elimination System (NPDES) permit is periodically reviewed and reissued by the IDNR. The present NPDES permit for DAEC authorizes discharges from two outfalls, only one of which would be affected by the EPU.

The use of chemicals and their subsequent discharge to the environment would not be expected to change significantly as a result of the proposed EPU. The cooling tower concentration cycle would remain within the current range of 3.5 to 4.0. Therefore, the concentration of pollutants in the effluent stream would remain the same. No changes to the sanitary waste systems or to the parameters regulated by the NPDES permit would be needed to accomplish the EPU. Sanitary waste from DAEC is discharged directly to the DAEC sewage treatment plant in accordance with a permit from the State of Iowa.

Blowdown

Total discharge would increase linearly with blowdown flow. It is anticipated that the blowdown flow would increase 18 percent as a result of the EPU. Blowdown for the circulating water system is discharged into the Cedar River. The FES conservatively assumed a blowdown flow rate of 4000 gpm. The actual blowdown flow rate is 1570 gpm and the blowdown flow rate calculated for EPU conditions would be 1850 gpm. During winter, the season which DAEC discharges would have the greatest impact on river water temperature, the actual average blowdown temperature is 30 degrees Fahrenheit (°F) less than that assumed in the FES. The EPU would increase the blowdown discharge temperature by approximately 1.6 °F. Typical discharge temperatures and flow rates are below the current limits so it would not be necessary to modify the NPDES permit to implement the proposed EPU.

Thermal Plume Spread and Temperature of River Water

The actual average blowdown flow rate is 1,570 gpm. The FES assumed a value of 4,000 gpm. The increased values for uprated power blowdown temperature and flow are still bounded by the calculation of the FES. Consequently, the FES conclusions remain valid. The FES concluded that the thermal plume would be less than 1 acre in area and would reach less than a quarter of the reach across the river. The EPU would increase the discharge temperature by 1.6 °F and the flow rate by 18 percent. However, the EPU would not noticeably increase the plume size.

Under worst-case winter conditions, the 2 °F isotherm was predicted to extend about 250 feet downstream with a width of about 70 feet. A discharge temperature of 72 °F for the month of January was analyzed in the FES. Historically, in winter, when discharges would have the greatest impact on river water temperature, the actual average blowdown temperature is 30 °F less than that assumed in the FES. The average discharge temperature (from 1961 to 1990) for the month of January was 36 °F, and, as stated above, the EPU would increase the discharge temperature by only 1.6 °F. Consequently, the actual size of the thermal plume is smaller than predicted in the FES.

Under worst-case summer conditions, with the same assumptions and data used to calculate the circulating water discharge temperature, the 2 °F isotherm was predicted to extend about 75 feet downstream of the discharge point with a width of about 35 feet. Thermal mapping conducted in August 1989, demonstrated the conservative nature of the assumptions in the FES. The mapping was performed at 100-percent reactor power. The 2 °F isotherm extended to between 100 and 150 feet downstream, and was restricted to within 10 feet of the bank (i.e. 10 feet wide). At 150 feet downstream, there was no detectible plume. The total plume area was less, therefore, than that predicted for the 2 °F isotherm in the FES, and, as stated above, the EPU would not noticeably increase the plume size. The staff concludes the plumes for both summer and winter cases are bounded by the FES. The conditions analyzed in the FES would be expected to remain valid under the proposed EPU conditions.

Cold Shock

Cold shock to an aquatic biota occurs when the warm water discharge from a plant abruptly stops because of an unplanned shutdown, resulting in a temperature drop of the river water and the possible adverse impact on aquatic biota. The probability of an unplanned shutdown is independent of a power uprate. As discussed previously, the discharge canal temperature at EPU conditions would be at least 10 °F less than the value evaluated in the FES. Additionally, the plume size would not increase appreciably under power uprate conditions and would be smaller than analyzed in the FES. Therefore, the risk of aquatic biota mortality by cold shock would continue to be bounded by the conclusions in the FES.

Hazardous Waste Generation and Air Emissions

Hazardous waste generated from routine plant operations and air emissions from the plant heating boiler and diesel generators are controlled by county permits. A power uprate would not have a significant impact on the quality or quantity of effluents from these sources, and operation under EPU conditions would not reduce the margin to the limits established by the applicable permits. Therefore, the conclusions in the FES would remain valid.

Terrestrial Biota Impacts

The proposed EPU would not result in a land disturbance that could adversely impact the habitat of any terrestrial plant or animal species. The licensee stated that according to a recent review by the IDNR, there were no known rare or endangered terrestrial species within the area of the site boundary. Additionally, the licensee stated that land use would remain the same as evaluated in the FES. Therefore, the staff's conclusions in the FES about the impact on terrestrial ecology, including endangered and threatened plant and animal species, would remain valid for the proposed EPU.

Aquatic Biota Impacts

The impacts of operation of the river water intake include impingement of fish on the traveling screens at the intake structure and the entrainment of benthic organisms. The losses associated with the impingement and entrainment of organisms were assessed in the FES and were judged to be insignificant. The effect of the EPU on the impingement and entrainment of organisms also would be insignificant. Fish impingement totals are typically less than 500 fish per year and are considered to be very low, considering the size and composition of the fish population in the Cedar River. Additionally, the licensee stated that there were no known rare or endangered aquatic species in the plant site vicinity. Therefore, the staff's conclusions in the FES as to impingement, entrainment, and endangered and threatened aquatic species would remain valid for the proposed EPU.

Transmission Facility Impacts

Environmental impacts, such as exposure to electromagnetic fields (EMFs) and shock could result from a major modification to transmission line facilities. However, the licensee stated that no change would be made to the existing transmission line design or operation as a result of the proposed EPU. Higher main transformer capacity would be necessary to deliver the additional power to the offsite grid and certain modifications to offsite substations are being planned to enhance stability at various grid locations. These modifications are consistent with Alliant's program of systematic improvements in grid stability and its commitments to the Mid-Continent Area Power Pool and the Mid-America Interconnected Network; modifications would be performed within existing substations. Therefore, no significant environmental impacts from any changes in transmission facilities design and equipment are expected, and the conclusions in the FES would remain valid.

The rise in generator output associated with EPU would slightly increase the current and the EMFs in the onsite transmission line between the main generator and the plant substation. The line is located entirely within the fenced, licensee-controlled boundary of the plant, and neither members of the public nor wildlife are expected to be affected. Exposure to EMFs from the offsite transmission system is not expected to increase significantly and any such increase is not expected to change the staff's conclusion in the FES that no significant biological effects are attributable to EMFs from high voltage transmission lines.

DAEC transmission lines are designed and constructed in accordance with the applicable shock prevention provisions of the National Electric Safety Code and the EPU would not cause the transmission line design to deviate from the NESC provisions. Therefore, the slight expected increase in current attributable to the proposed EPU does not change the staff's conclusion in the FES that adequate protection is provided against hazards from electrical shock.

Social and Economic Impacts

The staff has reviewed information provided by the licensee regarding socioeconomic impacts, including possible impacts on the DAEC workforce and the local economy. DAEC employs more than 500 people and is a major contributor to the local tax base. DAEC personnel also contribute to the tax base by paying sales and property taxes. The proposed EPU would not significantly affect the size of the DAEC workforce and would have no material effect on the labor force required for future outages. Because the plant modifications needed to implement the EPU would be minor, any increase in sales taxes and local and national business revenues would be negligible relative to the large taxes paid by DAEC. It is expected that improving the economic performance of DAEC through cost reductions and lower total bus bar costs per kilowatt hour would enhance the value of DAEC as a generating asset

and lower the probability of early plant retirement. Early plant retirement might have a negative impact upon the local economy and the community as a whole by reducing public services, employment, income, business revenues, and property values, although these reductions might be mitigated by decommissioning activities in the short term. The staff expects that conclusions in the FES regarding social and economic impacts would remain valid under EPU conditions.

The staff also considered the potential for direct physical impacts of the proposed EPU, such as vibration and dust from construction activities. The proposed EPU would be accomplished primarily by changes in station operation and a few physical modifications to the facility. These limited modifications would be accomplished without physical changes to transmission corridors, access roads, other offsite facilities, or additional project-related transportation of goods or materials. Therefore, no significant additional construction disturbances causing noise, odors, vehicle exhaust, dust, vibration, or shock from blasting are anticipated, and the conclusions in the FES would remain valid.

Summary

In summary, the proposed EPU would not result in a significant change in nonradiological impacts on land use, water use, waste discharges, terrestrial and aquatic biota, transmission facilities, or social and economic factors, and would have no nonradiological environmental impacts other than those evaluated in the FES.

TABLE 1.—SUMMARY OF NONRADIOLOGICAL ENVIRONMENTAL IMPACTS OF AN EPU AT DAEC

Land Use Impacts	No change in land use or aesthetics; would not impact lands with historic or archeological significance.
Water Use Impacts:	
Surface Water Use	Increase in river water withdrawal rate to 3540 MGY; withdrawal rate would remain within permitted levels, and within levels evaluated in the FES.
Groundwater Use	No change in groundwater use.
Discharge Impacts:	
Fogging	Increase in total hours of fogging per year by 1.1 hour.
Icing	No significant change in icing.
Cooling Tower Drift	No significant change in cooling tower drift.
Noise	No significant change in noise.
Chemical and Sanitary Discharge	No expected change to chemical use and subsequent discharge, or sanitary waste systems; cooling towers would operate in the current cycle range. No changes to sanitary waste discharges.
Blowdown	Increase in blowdown by 18°; blowdown would remain within the permitted limits.
Thermal Plume and Temperature of the River Water.	No noticeable increase in thermal plume size. Discharge temperature increase by 1.6 EF; river temperature would remain within National Pollution Discharge Elimination System limit of 9 °F.
Hazardous Waste and Air Emissions	No changes to hazardous waste sources or air emissions.
Terrestrial Biota Impacts	No change in terrestrial biota impacts; no known threatened or endangered species within the site boundary.
Aquatic Biota Impacts	No change in aquatic biota impacts; no known threatened or endangered species in the area of surface water intake or discharge.
Transmission Line Facility Impacts	No change to transmission line design or operation; higher main transformer capacity would be needed to deliver additional power and these changes would be made within existing substations; no change in exposure to EMFs.
Social and Economic Impacts	No significant change in size of DAEC workforce. Few modifications to physical station facility. No significant disturbances from noise, odor, vehicle exhaust, dust, vibration, or shock would be expected from construction.

Radiological Impacts

The staff evaluated radiological environmental impacts on waste streams, in-plant and offsite doses, accident analyses, and fuel cycle and transportation factors. The following is a general description of the waste treatment streams at DAEC and an evaluation of the environmental impacts.

Radioactive Waste Stream Impacts

DAEC uses waste treatment systems designed to collect, process, and dispose of radioactive gaseous, liquid, and solid waste in accordance with the requirements of 10 CFR part 20 and Appendix I to 10 CFR part 50. These radioactive waste treatment systems are discussed in the FES. The proposed EPU would not affect the environmental monitoring of these waste streams or the radiological monitoring requirements contained in licensing basis documents. The proposed EPU would not result in any changes in operation or design of equipment in the gaseous, liquid, or solid waste systems. The proposed EPU would not introduce new or different radiological release pathways and would not increase the probability of an operator error or equipment malfunction that would result in an uncontrolled radioactive release. The staff evaluated any changes in the gaseous, liquid, and solid waste streams for radiological environmental impact of the proposed EPU, as set forth below.

Gaseous Radioactive Waste Impacts

During normal operation, the gaseous effluent systems control the release of gaseous radioactive effluents to the site environs, including small quantities of noble gases, halogens, particulates, and tritium, so that routine offsite releases from station operation remain below the limits of 10 CFR part 20 and appendix I to 10 CFR part 50 (10 CFR part 20 includes the requirements of 40 CFR part 190). The gaseous waste management systems include the offgas system and various building ventilation systems. The proposed EPU assumes an increase in the release rate that is linearly proportional to power increase, and an increase in gaseous effluents would, therefore, occur. The resultant effluent increases in noble gas and iodine-131 activity are 0.3 and 4E–07 microcuries per second, respectively. The staff has evaluated information provided by the licensee and concludes that the estimated dose values would be below Appendix I requirements after the EPU. These dose levels are very small, and have no significant impact on human helath. The effluents for noble gases and effluents are well below those evaluated in the FES. Therefore, the conclusions in the FES would remain valid under EPU conditions.

Liquid Radioactive Waste Impacts

The liquid radwaste system is designed to process and recycle (to the extent practicable) the liquid waste collected so that annual radiation doses to individuals are maintained below the guidelines in 10 CFR Part 20 and 10 CFR Part 50, Appendix I. DAEC operates as a zero radioactive liquid release plant. The staff expects no change in the zero release policy as a result of the proposed EPU.

Filter backwashing provides decanted sludge water into the liquid radwaste system. Increasing the reactor thermal power by 15 percent would increase the frequency of backwashing necessary to decant backwash water from the reactor water cleanup condensate demineralizer filters by approximately 8 to 10 percent. However, since Alliant maintains a zero radioactive liquid release to the environment, the slight increase in flow to the liquid radwaste system would be recycled instead of discharged.

The EPU conditions would not result in significant increases in the volume of fluid from other sources flowing into the liquid radwaste system. The reactor would continue to be operated within its present pressure control band. Valve packing leakage volume into the liquid radwaste system is not expected to increase. There would be no changes in reactor recirculation pump seal flow or the flow of any other normal equipment drain path. In addition, there would be no impact on the dirty radwaste or chemical waste subsystems of the liquid radwaste system as a result of the EPU since the operation and the inputs to these subsystems are independent of power uprate. Based on information submitted by the licensee, the staff concludes that no significant dose increase in the liquid pathway would result from the proposed EPU. Therefore, the conclusions in the FES would remain valid under EPU conditions.

Solid Radioactive Waste Impacts

The solid radioactive radwaste system collects, monitors, processes, packages, and provides temporary storage facilities for radioactive solid wastes prior to offsite shipment and permanent disposal. DAEC has implemented procedures to assure that the processing and packaging of wet and dry solid radioactive waste and irradiated reactor components are accomplished in compliance with the regulations.

Wet Waste: The largest volume contributors to radioactive solid wet waste are the spent resin and filter sludges from the process wastes. Equipment waste from operation and maintenance activities, chemical wastes, and reactor system wastes also contribute to solid waste generation. The staff expects that the process wastes generated from the operation of the reactor water cleanup filter demineralizers and the condensate demineralizers will increase by no more than 10 percent. More frequent reactor water cleanup backwashes are anticipated under EPU conditions due to water chemistry limits. The licensee estimates that the backwashes would increase by approximately 8 to 10 percent, resulting in an additional 3 cubic meters of resin waste per year. The resultant total generation rate of approximately 36 cubic meters per year (CMY), is about half the current industry median value of 85 CMY and well below the FES assumed value of 697 CMY. The EPU would not involve changes in either reactor water cleanup flow rates or filter performance. The staff concludes that implementation of the proposed EPU would not have a significant impact on the volume or activity of wet radioactive solid waste at DAEC.

Dry Waste: Dry waste consists of air filters, miscellaneous paper and rags from contaminated areas, contaminated clothing, tools and equipment parts that cannot be effectively decontaminated, and solid laboratory wastes. The activity of much of this waste is low enough to permit manual handling. Dry waste is collected in containers located throughout the plant, compacted as practicable, and then sealed and removed to a controlled-access enclosed area for temporary storage. Because of its low activity, dry waste can be stored until enough is accumulated to permit economical transportation to an offsite processing facility or a burial ground for final disposal. DAEC has indicated that there will be no significant change in the amounts, level of controls, or methodology used for the processing dry radioactive waste at DAEC. The staff concludes that implementation of the proposed EPU should not have a significant impact on the volume or activity of the dry solid radioactive waste at DAEC.

Irradiated Reactor Components: Irradiated reactor components, such as spent control blades, in-core ion chambers, and fuel assemblies, must be disposed of after the life of the component. The volume and activity of waste generated from spent control blades and in-core ion chambers might increase slightly under the higher flux conditions associated with power uprate conditions. This increase would be mitigated by improved longer-lived local power range monitor strings, improved lower-cobalt-content control rod blades, and longer fuel cycles. Additionally, reactor equipment waste is stored in the spent fuel storage pool before removal to in-plant or offsite storage and final disposal in shielded containers or casks. Because of the mitigating effects of extended burnup and increased U–235 enrichment compared to the burnups and enrichment evaluated in the original FES, implementing the EPU would not be likely to have a significant impact on the amount of irradiated reactor components discharged from the reactor.

DAEC plans to load 152 fresh fuel bundles in the initial refueling to commence operation under the EPU. This is approximately 30 bundles more than for the current refueling cycle. Because of the mitigating effects of extended burnup and increased U–235 enrichment on fuel throughput under power uprate operating conditions, the number of irradiated fuel assemblies discharged from the reactor would not increase during subsequent reloads. Additionally, the 24-month operating cycle would result in one less fuel reload before the license expiration. These wastes are currently stored in the spent fuel pool and are not shipped off site. The staff concludes that implementation of the proposed EPU should not have a significant impact on the volume or activity of the irradiated reactor components at DAEC.

The staff has generically evaluated the annual environmental impact of low- and high-level solid wastes for a 1000 MWe reference reactor. The estimated activity of these wastes is given in Table S–3 in 10 CFR 51.51 and would be bounding under the proposed EPU conditions.

Dose Impacts

The staff evaluated in-plant and offsite radiation as part of its review of environmental impacts of the proposed EPU.

In-Plant Radiation

Increasing the rated power at DAEC might increase the radiation levels in the reactor coolant system; however, these potential increases would be compensated for by physical plant improvements and administrative controls, such as shielding, feedwater chemistry, and the plant radiation

protection program. Over the past 7 years, DAEC has decreased the occupational dose to DAEC workers by 15 percent per year (based on a rolling 3-year average). The licensee stated that it expects to continue its downward trend while operating under the proposed EPU conditions. The staff evaluated shielding, dose reduction programs, and corrosion as part of its evaluation.

Shielding: DAEC was conservatively designed with respect to shielding and radiation sources. In the shielding analysis, the assumed concentrations for reactor water fission and corrosion products were 4 microcuries per cubic centimeter and 0.06 microcuries per cubic centimeter, respectively. The normal value of both reactor water fission and corrosion products is 0.01 microcuries per cubic centimeters. With expected increases in operating activity proportional to the proposed power increase, the design shielding assumptions remain bounding at EPU conditions.

Feedwater Chemistry: The original design was based on an assumed value for nitrogen-16 (N–16) concentration of 100 microcuries per gram. To support the injection of hydrogen into the feedwater, the licensee conducted a special test in 1989 to evaluate the impact and efficacy of injection rates of up to 45 standard cubic feet per minute (scfm). The licensee stated that the results of this test led to an injection rate of 6 scfm, which yields an acceptable recirculating system electrochemical potential and no discernable N–16 dose rate increase. Between October 1994 and October 1996, the hydrogen injection rate was increased to 15 scfm to extend corrosion protection to portions of the core internals, with a resultant increase in dose rates of 3.3 times the rates without hydrogen injection. Although occupancy in some areas was restricted, no shielding modifications were required to maintain radiation levels within acceptable levels. Since 1996, DAEC has undertaken a noble metals injection program to protect the core internals from corrosion by reducing hydrogen use. As a result, the current operational hydrogen injection rate is 6.0 scfm. The 20-percent increase in the N–16 dose rate from EPU would not affect the acceptability of the shielding design.

The equilibrium activity concentration of corrosion products that have plated out on reactor coolant piping and other surfaces may theoretically increase by the square of the power uprate increase. This is primarily due to the linear increase in corrosion products in the primary system from the feedwater flow increase and the linear increase in activation events from the core average flux increase. However, this potential increase would be mitigated by four dose reduction programs at DAEC:

1. Oxygen injection in the condensate system started in 1987.
2. Recirculating system chemical decontaminations in 1990, 1992, 1993, and 1995.
3. Stellite reduction efforts started in 1993.
4. Depleted zinc addition started in 1994.

As a result of these efforts, the concentration of soluble cobalt-60 in the reactor water has decreased from 1.3E–04 microcuries per milliliter in early 1987 to 2.7 E–05 microcuries per milliliter in 2000. The potential increases in the volume and activity of activated corrosion products at EPU operating conditions would not negate these efforts, and it is expected that concentrations would continue to decline under EPU conditions. Consequently, operating and shutdown radiation levels would not increase under EPU conditions.

Plant Radiation Protection Program: The plant radiation protection program would be used to maintain individual doses consistent with as-low-as-reasonably-achievable policies and below the established limits of 10 CFR Part 20. Routine plant radiation surveys required by the radiation protection program would identify increased radiation levels in accessible areas of the plant, and radiation zone postings and job planning would be adjusted, if necessary. Time within radiation areas is controlled under the radiation protection program. Administrative dose control limits are established well below regulatory criteria and provide a significant margin to regulatory dose limits. The licensee stated that administrative dose limits were not routinely exceeded under present power conditions.

On the basis of the above information, the staff concludes that the expected annual collective dose for DAEC, following the proposed EPU, would still be bounded by the dose estimates in the FES.

Offsite Doses

The slight increase in normal operational gaseous activity levels under the EPU would not affect the large margin to the offsite dose limits established by 10 CFR Part 20. In addition, doses from liquid effluents, currently zero, would remain zero under EPU conditions.

The DAEC Technical Specifications implement the guidelines of 10 CFR Part 50, Appendix I, which are within the 10 CFR Part 20 limits. Adjusting current values for projected EPU increases, the offsite dose at EPU conditions is estimated to be 2.6 E–03 millirads for noble gas gamma air, 1.6E–02 millirads for noble gas beta air, and 6.8E–03 thyroid millirem for particulates and iodine. The Appendix I limits are 10 millirads, 20 millirads, and 15 thyroid millirem, respectively. The offsite dose would continue to be within the Technical Specification dose limits.

The EPU would not involve significant increases in an offsite dose from noble gases, airborne particulates, iodine, or tritium. Radioactive liquid effluents are not routinely discharged from DAEC. In addition, as stated by the Radiological Environmental Monitoring Program for DAEC, radiation from shine is not now a significant exposure pathway, and it would not be significantly affected by the proposed EPU.

The EPU would not create any new or different sources of offsite dose from DAEC operation, and the EPU would not involve significant increases in present radiation levels. Therefore, under EPU conditions, offsite dose would remain well within regulatory criteria and would not have a significant impact. The staff concludes that the estimated doses from both the liquid and gaseous release pathways resulting from EPU conditions are within the design objectives specified by 10 CFR part 50, appendix I, and the limits of 10 CFR part 20.

Accident Analysis Impacts

The staff reviewed the licensee's analyses and performed confirmatory calculations to verify the acceptability of the licensee's calculated doses under accident conditions. The staff concludes that the proposed EPU would not significantly increase the probability or consequences of accidents and would not result in a significant increase in the radiological environmental impact of DAEC under accident conditions. If the license amendment request is approved, the result of the staff's calculations will be presented in the safety evaluation issued with the license amendment.

Fuel Cycle and Transportation Impacts

The EPU would involve an increase in the average enrichment of the fuel bundle. The environmental impacts of the fuel cycle and of transportation of fuel and wastes are described in Table S–3 and S–4 of 10 CFR 51.51 and 10 CFR 51.52, respectively. Table S–3 of 10 CR 51.51 and S–4 of 10 CFR 51.52 were adopted by the licensee after DAEC received its operating license. Consequently, the DAEC FES does not contain a uranium fuel cycle environmental analysis similar to Table S–3. The impacts of transportation are addressed in the Environmental Report and the FES, although the conclusions are not presented in the format of Table S–4. An NRC assessment (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Table S–3 and S–4 to higher burnup cycles and concluded that there is no significant change in environmental impacts for fuel cycles with uranium enrichments up to 5 weight-percent U–235 and burnups less than 60 gigawatt-day per metric ton of uranium (GWd/MTU) from the parameters evaluated in Tables S–3 and S–4. Because the fuel enrichment for the EPU would not exceed 5 weight-percent U–235 and the rod average discharge exposure would not exceed 60 GWd/MTU, the environmental impacts of the proposed EPU would remain bounded by these conclusions and would not be significant.

Summary

The proposed EPU would not significantly increase the probability or consequences of an accident, would not introduce any new radiological release pathways, would not result in a significant increase in occupational or public radiation exposures, and would not result in significant additional fuel cycle environmental impacts. Accordingly, the NRC concludes that no significant radiological environmental impacts are associated with the proposed action. Table 2 summarizes the radiological environmental impacts of the proposed EPU.

TABLE 2.—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS OF EPU AT DAEC

Radiological Waste Stream Impacts:	
Gaseous Waste	An increase in release rate that is linearly proportional to the power increase would be expected.
Liquid Waste	No change in DAEC zero liquid release policy.
Solid Waste:	
Wet Waste	Backwashes would increase to create approximately 3 cubic meters of resin per year.
Dry Waste	No significant changes.
Irradiated Components	No significant changes.
Dose Impacts	May potentially increase radiation levels; dose would remain within permitted levels in-plant and offsite.
Accident Analysis Impacts	No significant increase in the probability or consequences of an accident.
Fuel Cycle and Transportation	Increase in bundle average enrichment; impacts would remain within the conclusions of Table S–3 and Table S–4 of 10 CFR Part 51.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

As stated previously, the estimated cost of adding this nuclear generating capacity is approximately half the cost projected for purchasing the power and one-third the cost of producing the power by constructing a new combined-cycle, natural-gas-fueled facility. Alliant concluded that increasing DAEC's capacity would be the most economical option for increasing power supply. Furthermore, unlike fossil fuel plants, DAEC does not routinely emit sulfur dioxide, nitrogen oxides, carbon dioxide, or other atmospheric pollutants that contribute to greenhouse gases or acid rain.

Alternative Use of Resources

This action does not involve the use of any resources different than those previously considered in the FES for DAEC, dated March 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on August 23, 2001, the NRC staff consulted with the Iowa State official, Mr. D. McGhee of the Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comment.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated November 16, 2000, as supplemented April 16 (two letters) and 17; May 8 (two letters), 10, 11 (two letters), 22, and 29; June 5, 11, 18, 21, and 28; July 11, 19, and 25; and August 1, 10, 16, and 21; and October 17, 2001, and NMC's "Supplement to DAEC Environmental Report," submitted on September 22, 2000. Documents may be examined and/or copied for a fee at the NRC's Public Document Room, at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, or 301–415–2737, or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 31st day of October 2001.

For the Nuclear Regulatory Commission.

William D. Reckley,

Acting Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–27716 Filed 11–1–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Reactor Fuels

Notice of Meeting

The ACRS Subcommittee on Reactor Fuels will hold a meeting on November

16, 2001, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, November 16, 2001—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the Duke Cogema Stone Webster MOX Fuel Fabrication Facility construction application authorization. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Ms. Maggalean W. Weston (telephone 301/415–3151) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: October 25, 2001.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 01–27537 Filed 11–1–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards and Advisory Committee on Nuclear Waste Joint Subcommittee Meeting; Notice of Meeting

The Advisory Committee on Reactor Safeguards (ACRS) and the Advisory Committee on Nuclear Waste (ACNW) Joint Subcommittee will hold a meeting on November 14, 2001, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, November 14, 2001—8:30 a.m. until the conclusion of business

The ACRS and ACNW Joint Subcommittee will continue its discussion on risk-informed regulation in the Office of Nuclear Material Safety and Safeguards (NMSS) including Standard Review Plan (SRP) Chapter 3 for integrated safety analysis (ISA), use of risk-informed case studies, and development of a PRA for dry cask storage. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the ACRS and ACNW full Committees.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the ACRS and ACNW full Committees. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS/ACNW staff member named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. During the initial portion of the meeting, the Subcommittee, along with any consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding these matters.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Subcommittee's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant senior staff engineer, Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST) or by e-mail *MTM@NRC.gov*. Persons planning to attend this meeting are urged to contact the above-named individual one to two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: October 26, 2001.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 01–27574 Filed 11–1–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Meeting of the Subcommittees on Human Factors and Safety Research Program; Notice of Meeting

The ACRS Subcommittees on Human Factors and Safety Research Program will hold a joint meeting on November 15, 2001, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, November 15, 2001—8:30 a.m. until the conclusion of business

The Subcommittees will discuss the staff's proposed human reliability analysis (HRA) research plan for fiscal years 2001–2005. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST) or by e-mail *MTM@NRC.gov*. Persons planning to attend this meeting are urged to contact the above named individuals one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 26, 2001.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 01–27575 Filed 11–1–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[SECY–01–0188]

Future Licensing and Inspection Readiness Assessment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing, for information, the availability of SECY–01–0188, "Future Licensing and Inspection Readiness Assessment," dated October 12, 2001. This document presents the staff's assessment of its readiness to review applications for licenses and to inspect new nuclear power plants in response to the Commission's February 13, 2001, staff requirements memorandum (SRM) for COMJSM–00–0003, "Staff Readiness for New Nuclear Plant Construction and the Pebble Bed Modular Reactor." Because of the high level of external stakeholder interest in the assessment contained in SECY–01–0188, the Commission is announcing its public availability at this time.

ADDRESSES: SECY–01–0188 is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically from the ADAMS Public Library component on the NRC web site, *http://www.nrc.gov* (the Electronic Reading Room). The ADAMS accession number for SECY–01–0188 is ML012640279. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*. A free single copy of SECY–01–0188 will be made available to interested parties until the supply is exhausted. Such copies may be requested by writing to the U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001 or submitting an e-mail to *distribution@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Nanette Gilles, U.S. Nuclear Regulatory Commission, Mail Stop O–11D17, Washington, DC 20555, Phone Number: (301) 415–1180, e-mail: *nvg@nrc.gov*.

SUPPLEMENTARY INFORMATION: In the SRM for COMJSM–00–0003 the Commission directed the staff to assess its technical, licensing, and inspection capabilities and identify enhancements, if any, that would be necessary to ensure that the agency can effectively carry out its responsibilities associated with an ESP application, a license application, and the construction of a new nuclear power plant. In addition, the staff was directed to critically assess the regulatory infrastructure supporting both part 50 and part 52, and other applicable regulations, and identify where enhancements, if any, are necessary. The Commission further directed the staff to incorporate into its planning the need for early interactions with the Advisory Committee on Reactor Safeguards and to integrate the tasks identified during this effort with the various related activities that are underway. The Commission also directed the staff to provide the Commission with a schedule and resource estimates for completing these tasks. The Commission stated that the staff should encourage the industry to be as specific as possible about its plans and schedules so that the agency can plan and budget for advanced reactor activities without disrupting other current important initiatives. The Commission also stated that the staff should work with NRC stakeholders to exercise, to the extent appropriate, the NRC's review process and identify potential policy issues that should be addressed by the Commission in a timely manner.

The staff provided its initial response to the February 13, 2001, SRM in a May 1, 2001, memorandum to the Commission. As the staff stated in that memorandum, the Future Licensing and Inspection Readiness Assessment (FLIRA) interoffice working group was established to address the ability of the NRC to support future application reviews under 10 CFR parts 50 and 52 and other applicable regulations. The FLIRA working group assessed the following matters:

- Licensing scenarios for the future application reviews, the durations of the reviews, and resource estimates to complete the reviews in full-time equivalents (FTE) for the NRC staff and in dollars for technical assistance support;
- Critical skills that must be available within the agency or that can be accessed through contractual agreements to perform these reviews; and
- Regulatory infrastructure needs to support future licensing reviews.

The attachment to SECY–01–0188 contains the FLIRA working group's assessment report. In developing its estimates of the durations and resources required to conduct the reviews discussed in the report, the staff considered (1) the results of a critical skills and resources survey taken of the staff in August 2001 to support this assessment, (2) industry plans and proposed schedules as discussed in public meetings and correspondence, (3) its past experience with licensing and pre-application reviews; (4) the effect of complex issues on these reviews; and (5) estimates from previous resource and schedule evaluations. The resource estimates developed reflect the most recent information received regarding industry plans and the staff's best estimate at this time regarding resource needs, recognizing that budget realities may not be consistent with the needs. Questions regarding the information contained in SECY–01–0188 should be directed to the contact point identified above.

Dated at Rockville, Maryland, this 26th day of October 2001.

For The Nuclear Regulatory Commission
James E. Lyons,
Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.
[FR Doc. 01–27577 Filed 11–1–01; 8:45 am]
BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meeting

AGENCY: Board of Governors, Postal Service.

ACTION: Notification of items added to meeting agenda and change in dates and times of meeting.

DATE OF MEETING: November 5 and 6, 2001.

STATUS: Closed and Open.

PREVIOUS ANNOUNCEMENT: By paper vote on October 26 and 29, 2001, the Board of Governors of the United States Postal Service voted unanimously to add these items to the agenda of its closed and open meeting and to change the times and dates and that no earlier announcement was possible. The General Counsel of the closed session item may be properly closed to public observation under the Government in the Sunshine Act.

STATUS: November 5–11 a.m. (Closed); November 6–8:30 a.m. (Open)

MATTERS TO BE CONSIDERED:

Monday, November 5–11 a.m. (Closed)

1. Rate Case R2001–1 Update.

Tuesday, November 6–8:30 a.m. (Open).

1. Minutes of the Previous Meetings, October 22, and October 1–2, 2001.
2. Remarks of the Postmaster General and CEO.
3. Report from the Chief Postal Inspector.
4. Human Resources/Report from the Surgeon General.
5. Report on Operations and Service.
6. Report on Equipment for Handling Hazardous Materials.
7. Report on Finances.
8. Tentative Agenda for the December 3–4, 2001, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: David G. Hunter, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC. 20260–1000. Telephone (202) 268–4800.

David G. Hunter,
Secretary.
[FR Doc. 01–27724 Filed 10–31–01; 2:15 pm]
BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 5, 2001:

An open meeting will be held on Wednesday, November 7, 2001, in Room 1C30, the William O. Douglas Room, at 10 a.m.

The subject matters of the open meeting scheduled for Wednesday, November 7, 2001, will be:

1. The Commission will consider whether to propose amendments to rule 17a–8 under the Investment Company Act of 1940. Rule 17a–8 permits certain affiliated investment companies to merge without obtaining individual exemptive relief. The amendments to Rule 17a–8 would expand the types of mergers that can proceed under the rule. The amendments would also add to the rule certain new conditions designed to protect the interests of fund shareholders.

For further information, please contact Hester Peirce, Attorney, Division of Investment Management, at (202) 942–0690.

2. The Commission will consider a recommendation to issue a concept release regarding actively managed exchange-traded funds. Currently, all exchange-traded funds are based on various equity market indices. The concept release would seek comment from a wide range of parties on potential issues raised by the prospect of an exchange-traded fund with an actively managed portfolio.

For further information, please contact David B. Smith, Associate Director, Division of Investment Management at (202) 942–0525, Nadya B. Roytblat, Assistant Director, Division of Investment Management at (202) 942–0564, or Michael W. Mundt, Branch Chief, Division of Investment Management at (202) 942–0564.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 30, 2001.

Jonathan G. Katz,
Secretary.
[FR Doc. 01–27679 Filed 10–31–01; 12:15 pm]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44900; File No. SR–Amex–2001–45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 by the American Stock Exchange LLC, Relating to Listing Additional Funds of iShares, Inc. Based on Foreign Stock Indexes

October 25, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 2, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On October 5, 2001 the Amex filed Amendment No. 1 to the proposal.[3] On October 19, 2001, the Amex filed Amendment No. 2 to the proposal.[4] On October 24, 2001, the Amex filed Amendment No. 3 to the proposal.[5] On October 25, 2001, the Amex filed Amendment No. 4 to the proposal.[6] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1, 2, 3, and 4 from interested persons and is simultaneously approving the proposal, as amended, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Department, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 4, 2001 ("Amendment No. 1"). Amendment No. 1 provided additional information concerning the proposal, including (1) the minimum size and predicted price range of Creation Unit Aggregations; (2) in-kind exchange procedures; (3) the purpose of the Balancing Amount that is used in the creation of Creation Unit Aggregations; (4) iShare redemption procedures; (5) the final dividend amount and method of dissemination; (6) fees associated with buying and selling baskets of stocks in countries with local transfer restrictions; (7) a representation by Amex on preventing excessive weighting and reducing concern that an Index Fund could become a surrogate for trading in unregistered securities; (8) a representation that Barclays Global Fund Advisors seeks to minimize tracking error; (9) a representation that Morgan Stanley Capital International's ("MSCI") has implemented procedures to prevent the misuse of material non-public information with regard to changes to the MSCI indexes underlying iShare Funds; and (9) the time of day when Net Asset Values will be determined for a given Index Fund.

[4] *See* letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex, to Steven Johnston, Special Counsel, Division, Commission, dated October 18, 2001 ("Amendment No. 2"), Amendment No. 2: (1) Noted that iShares, Inc. had amended its application for certain exemptions under the Investment Company Act of 1940 ("1940 Act") to add three funds not included in the original application; (2) clarified that Fund Participants must be a Depository Trust Company ("DTC") Participant; (3) made technical changes to descriptions of Balancing Amount and redemption procedures; (4) clarified the level of the Funds' investment in their underlying indices.

[5] *See* letter from Michael Cavalier, Associate General counsel, Legal & Regulatory Division, Amex, to Steven Johnston, Special Counsel, Division, Commission, dated October 23, 2001 ("Amendment No. 3"). Amendment No. 3: clarified that fees are assessed to offset market impact costs of buying and selling baskets of stocks in countries with local transfer restrictions.

[6] *See* letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex, to Steven Johnston, Special Counsel, Division, Commission, dated October 25, 2001 ("Amendment No. 4"). Amendment No. 4: clarified (1) further the level of the Funds investment in their underlying indices; (2) the Exchange will disseminate certain information to the National Securities Clearing Corporation ("NSCC") every 15 seconds; (3) Fund tracking error will be disseminated via an internet website; and (4) further the description of Balancing amount.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade under Amex Rules 1000A *et seq.* seven additional iShares[SM] MSCI Index Funds (each an "Index Fund" or "Fund"), with each Fund based on one of the following indices compiled by Morgan Stanley Capital International Inc. ("MSCI"): (1) MSCI Europe Index; (2) MSCI Emerging Markets (Free) Index; (3) MSCI Emerging Markets Latin America Index; (4) MSCI All Country World Ex USA Index; (5) MSCI All Country Far East (Free) Ex Japan Index; (6) MSCI Pacific (Free) Ex Japan Index; and (7) MSCI Israel Index. The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In 1996, the Commission approved an Amex proposal to list and trade under Amex Rules 1000A *et seq.* securities issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index ("Index Fund Shares").[7]

The first Index Fund Shares approved by the Commission and listed on the Exchange were seventeen series of World Equity Benchmark Shares™ (later re-named iShares[SM] MSCI Index Funds) issued by Foreign Fund, Inc. (now iShares, Inc.), based on the following MSCI indices: Australia, Austria, Belgium, Canada, France, Germany, Hong Kong, Italy, Japan, Malaysia, Mexico (Free), Netherlands, Singapore (Free), Spain, Sweden, Switzerland and United Kingdom.[8] These funds have been trading on the Amex since March 18, 1996.[9]

On May 2, 2000, the Commission approved the listing of additional Index Funds of iShares Inc. based on the following MSCI Indices: MSCI EMU Index; MSCI Brazil (free) Index; MSCI South Korea Index; MSCI South Africa Index; MSCI Taiwan Index; and MSCI United States Index.[10]

The Amex now proposes to list and trade under Amex Rules 1000A *et seq.* the following additional MSCI Index Funds: (1) MSCI Europe Index Fund; (3) MSCI Emerging Markets (Free) Index Fund; (3) MSCI Emerging Markets Latin America Index Fund; (4) MSCI All Country World Ex USA Index Fund; (5) MSCI All Country Far East (Free) Ex Japan Index (Fund); (6) MSCI Pacific (Free) Ex Japan Index Fund; and (7) MSCI Israel Index Fund (each individually a "Fund" and collectively the "Funds").[11]

Issuances of iShares are made only in Creation Unit Aggregations of 50,000 shares or more. The size of the applicable Creation Unit Aggregation will be set forth in the Fund's prospectus, and it is currently anticipated that the price of a Creation Unit Aggregation will range from at least $450,000 to approximately $25,000,000. iShares, Inc. issues and sells shares of the Index Funds through SEI Investments Distribution Co., the Distributor and principal underwriter, on a continuous basis at the net asset value per share next determined after an order to purchase iShares in Creation Unit size aggregations is received in proper form. Creation Unit Aggregations may be purchased only by or through a participant that has entered into a participant agreement with the Distributor ("Authorized Participant") [12]. Each Participant must be a Depository Trust Company participant ("DTC"). It is estimated that the initial net asset value per share for the proposed Index Funds will range from $20 to $120. Following issuance, iShares are traded on the Exchange like other equity securities by professionals, as well as retail and institutional investors.

Creation Unit Aggregations generally will be issued in exchange for an in-kind deposit of securities and cash. An Index Fund also may sell Creation Unit Aggregations on a "cash only" basis in limited circumstances. An investor wishing to make an in-kind purchase of a Creation Unit Aggregation from an Index Fund will have to transfer to the Fund a "Portfolio Deposit" consisting of (a) a portfolio of securities that has been selected by Barclays Global Fund Advisors ("Adviser") to correspond generally to the price and yield performance of the relevant Underlying Index ("Deposit Securities"), (b) a cash payment equal per Creation Unit Aggregation to the dividends accrued on the Portfolio Securities of the Index Fund since the last dividend payment on the Portfolio Securities, net of expenses and liabilities (the "Dividend Equivalent Payment"), and (c) an amount equal to the difference between (i) the net asset value ("NAV") per Creation Unit Aggregation of the Index Fund and (ii) the sum of (I) the Dividend Equivalent Payment and (II) the total aggregate market value per Creation Unit Aggregation of the Deposit Securities (the "Balancing Amount,"

[7] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (Order Approving file No. SR–Amex–95–43) ("1996 Order").

[8] "MSCI" and "MSCI Indices" are service marks of Morgan Stanley & Co. Iocorporated.

[9] Trading of these funds was specifically approved in the 1996 Order.

[10] Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000).

[11] iShares, Inc. has filed with the Commission an Application for Orders under Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940 Act") as amended, for the purpose of exempting the Index Funds referenced herein from various provisions of the 1940 Act and rules thereunder (File No. 812–12290). The iShares MSCI All Country World Ex USA Index Fund; iShares MSCI Pacific (Free) Ex Japan Index Fund; and iShares MSCI Israel Index Fund have been added to the Application by amendment. *See* Amendment No. 1., *supra*, footnote 3.

[12] *See* Amendment No. 1., *supra*, footnote 3

and, together with the Dividend Equivalent Payment, the "Cash Component"). The Balancing Amount serves the function of compensating for differences, if any, between the net asset value per Creation Unit Aggregation and the value of the Deposit Amount. The Deposit Amount is the sum of (i) the Dividend Equivalent Payment and (ii) the market value per Creation Unit Aggregation of the Deposit Securities. If the Balancing Amount is a positive number (*i.e.*, the net asset value per Creation Unit Aggregation of the Index Fund exceeds that of the Deposit Amount), the Balancing Amount will be paid to the Fund by the Creator. If the Balancing Amount is a negative number (*i.e.*, the NAV per Creation Unit Aggregation of the Index Fund is less than that of the Deposit Amount) the creator will receive cash in an amount equal to the differential.[13]

On each business day, the Adviser will make available through the Distributor, immediately prior to the opening of trading on the Amex, the list of the names and the required number of the shares of each Deposit Security for each Index Fund that offers in-kind purchases of Creation Unit Aggregations. The Portfolio Deposit will be applicable to purchases of Creation Unit Aggregations until a change in the Portfolio Deposit composition is next announced. On a daily basis, the Adviser provides NSCC with the names and required number of shares of the Deposit Securities in a Creation Unit Aggregation, the Balancing Amount and the estimated cash amount. The NSCC, in turn, makes this information available to NSCC members through an electronic file the NSCC members can download. In addition, the Amex will disseminate at regular intervals (every 15 seconds) throughout the trading day, via the facilities of the Consolidated Tape Association ("CTA"), an amount representing on a per iShare basis, the sum of the Cash Component effective through and including the prior business day, plus the current value of the Deposit Securities.

Each Index Fund reserves the right to permit or require the substitution of an amount of cash or the substitution of any security to replace any Deposit Security that may be unavailable or unavailable in sufficient quantity for delivery to iShares, Inc., or which may be ineligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

It is anticipated that the deposit of Deposit Securities and the Cash Component in exchange for iShares will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Creation Units are separable upon issuance into identical shares which are listed and traded on the Amex. iShares will be traded on the Exchange by professionals as well as institutional and retail investors.

Individual iShares will not be redeemable.[14] iShares will only be redeemable in Creation Unit Aggregations through each Index Fund. To redeem, an investor will have to accumulate enough iShares to constitute a Creation Unit Aggregation. An investor redeeming a Creation Unit Aggregation generally will receive (a) a portfolio of Portfolio Securities in effect on the date the request for redemption is made ("Redemption Securities"), which may not be identical to the Deposit Securities applicable to the purchase of Creation Unit Aggregations, and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Cash Component, although the actual amounts may differ if the Redemption Securities are not identical to the Deposit Securities. To the extent that the Redemption Securities have a value greater than the NAV of the iShares being redeemed, the redeeming beneficial owner must make a compensating cash payment to the Fund equal to the differential between the value of the Redemption Securities and the NAV of the iShares being redeemed.[15] An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as where a redeeming entity is restrained by regulation or policy from transacting in the Redemption Security. An Index Fund may redeem Creation Unit Aggregations in cash in limited circumstances, such as when it is impossible to effect deliveries of Redemption Securities in the applicable jurisdiction.[16]

An Index Fund may make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the Fund during the applicable period, net of expenses and liabilities for such period. The final dividend amount for each Fund, which is made available on amextrader.com, is the amount of dividends to be paid by a Fund for the appropriate period (usually annually). The final dividend amount is also disseminated by the Funds to Bloomberg and other sources. iShares, Inc. will not make the DTC book-entry Dividend Reinvestment Service (the "Service") available for use by beneficial owners for reinvestment of their cash proceeds but certain individual brokers may make the Service available to their clients.[17]

The net asset value for each Index Fund is calculated by the Fund's Administrator (PFPC Inc.). After calculation, such net asset values are available to the public from the Fund's Distributor via a toll free telephone number, and are also available to NSCC participants through data made available from NSCC.

Fund shares are registered in book entry form through The Depository Trust Company and the Index Funds will not issue individual share certificates. DTC or its nominee will be the record or registered owner of all outstanding iShares. Beneficial ownership of iShares will be shown on the records of DTC or DTC participants.[18] Trading in shares of iShares MSCI Index Funds on the Exchange is effected until 4 p.m. (New York Time) each business day. The minimum trading increment for such shares is $.01.

MSCI Indices. Each MSCI Index on which a Fund is based is calculated by MSCI for each trading day in the applicable foreign exchange markets based on official closing prices in such exchange markets. For each trading day, MSCI publicly disseminates each index value for the previous day's close. MSCI Indices are reported periodically in major financial publications worldwide, and are also available through vendors of financial information. The information includes an Index description, Index capitalization and concentration, size range of Index companies, Index characteristics, industry group weightings, country weightings and top ten companies and their weightings.

iShares MSCI Index Funds. As noted in the iShares MSCI Index Fund prospectus (Registration No. 33–97598), the investment objective of each Fund is to seek to provide investment results that correspond generally to the price and yield performance of public securities traded in the aggregate in particular markets, as represented by specific MSCI benchmark indices. Each Fund utilizes a "passive" or indexing investment approach (a "representative sampling" strategy) which attempts to approximate the investment performance of its benchmark index through quantitative analytical procedures. Each Fund has the policy to remain as fully invested as practicable in a pool of securities the performance of which will approximate the performance of the benchmark MSCI Index taken in its entirety. Each Fund will maintain regulated investment company compliance.[19]

Each Fund will normally invest at least 95% of its total assets in component securities that are represented in the underlying index, and will at all times invest at least 90% of its total assets in such stocks, except that in order to permit the Adviser additional flexibility to comply with the requirements of the Internal Revenue Code and other regulatory requirements and to manage future corporate actions and index changes in the smaller markets, certain Funds, identified in each Fund's prospectus, will at all times invest at least 80% of their assets in such stocks and at least half of the remaining 20% in such stocks or in stocks included in the relevant market, but not in the relevant underlying index. iShares, Inc. expects that the iShares MSCI Emerging Markets (Free), Emerging Markets Latin America and Israel Index Funds will be subject to the "80%/20%" exception described above. Each Fund may invest its remaining assets in money market instruments (subject to applicable limitations under the 1940 Act), in repurchase agreements, in stocks that are in the relevant market but not in the relevant underlying index, and/or in combinations of certain stock index futures contracts, options on futures contracts, stock index options, stock index swaps, cash, local currency and forward currency exchange contracts that are intended to provide a Fund with exposure to a stock. The Adviser may attempt to reduce tracking error by using futures contracts whose behavior is expected to represent the market performance of the Fund's underlying securities. A Fund will not use these instruments to leverage, or borrow against, its securities holdings or for speculative purposes.

As noted in the iShares MSCI Index Fund prospectus, the Exchange expects that, over time, the "expected tracking error" of an Index Fund relative to the performance of the relevant MSCI Index will be less than 5%. An expected tracking error of 5% means that there is a 68% probability that the net return on the asset value for the Index Fund (including dividends and without reflecting expenses) will be between 95% and 105% of the return of the subject MSCI Index after one year without rebalancing the portfolio composition. While no particular level of tracking error is assured, the Adviser monitors the tracking error of each Fund on an ongoing basis and seeks to minimize tracking error to the maximum extent possible. Semi-annual and annual reports of the Fund disclose tracking error over the previous six month periods, and in the event that tracking error exceeds 5%, the Adviser will notify the Fund's Board of Directors and the Board will consider what action might be appropriate.

The Index Funds do not intend to concentrate in any particular industry, except that each Fund will attempt to concentrate its investment (*i.e.*, hold generally 25% or more of its total assets in the stocks of a particular industry or group of industries)[20] to approximately the same extent that its underlying index concentrates in the stocks of such particular industry or group of industries.[21] For purposes of this limitation, securities of the U.S. Government (including its agencies and instrumentalities), repurchase agreements collateralized by U.S. Government securities, and securities of state or municipal governments and their political subdivisions are not considered to be issued by members of any industry.

The Exchange believes that these requirements and policies prevent any Index Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in an Index Fund could become a surrogate for trading in unregistered securities.

The Funds have chosen to pursue a representative sampling strategy which, by its very nature, entails some risk of tracking error. (It should also be noted that fund expenses, the timing of cash flows, and other factors all contribute to tracking error.) With this in mind, the Adviser seeks to minimize tracking error consistent with the Fund's decision to use a representative sampling strategy. The website for the Funds, *www.ishares.com*, contains detailed information on the performance and the tracking error for each Fund. Consistent with the current practice of other index funds, the Funds' annual and semi-annual report will not contain any specific item designated "tracking error." The annual and semi-annual report will contain all total return

[13] *See* Amendment No. 4., *supra*, footnote 6.

[14] *See* Amendment No. 2., *supra*, footnote 4.

[15] Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, October 25, 2001.

[16] For example, local restrictions on transfers of securities to and between certain types of investors exist in Korea, Malaysia, Taiwan and Brazil. These restrictions currently preclude "in kind" creations and redemptions of Creation Units of iShares MSCI Korea, Malaysia, Taiwan and Brazil Index Funds. (*See* SR–Amex–98–49). Accordingly, creations and redemptions of Creation Units of other iShares MSCI Index Funds that hold shares of Korean, Malaysian, Taiwanese and Brazilian companies i.e., iShares MSCI Emerging Markets Latin America; iShares MSCI All Country Far East (Free) Ex Japan; iShares MSCI Emerging Markets (Free); iShares MSCI Pacific (Free) Ex Japan; and iShares MSCI All Country World Ex USA) will involve a combination of "for cash" and "in kind" transfers. In such cases, the Fund will charge creation and redemption fees intended to offset the transfer and other transaction costs incurred by the Fund, including market impact expenses (primarily associated with creations and redemptions for cash), related to investing in or disposing of the basket of stocks held by the Fund. The Exchange will disclose this information in the Information Circular sent to members and member organizations about the Funds. The Exchange further notes that the Fund prospectus will disclose: (1) The time that the NAV for each fund is calculated; (2) the possible market impact of a Fund buying or selling securities in Brazil, South Korea, Malaysia and Taiwan prior to calculation of the NAV, and (3) the creation and redemption fees for the Fund. The Exchange will also disclose in the Information Circular issued to members and member organizations in connection with start-up of trading in the Funds. *See* Amendment No. 3, *supra*, footnote 5. It is expected that continuous sales and redemptions of Funds that hold shares of Korean, Malaysian, Taiwanese and Brazilian companies will result in their trading close to net asset values. These Funds should ordinarily be able to buy and sell Creation Unit Aggregations shortly after receipt of an order (ordinarily on the business day after receipt of an order). *See* Amendment No. 2, *supra*, footnote 4.

[17] Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex and Florence E. Harmon, Senior Special Counsel, Division, Commission, October 25, 2001.

[18] Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex and Florence E. Harmon, Senior Special Counsel, Division, Commission, October 25, 2001.

[19] In order for a Fund to qualify for tax treatment as e regulated investment company, it must meet several requirements under the Internal Revenue Code. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (i) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purpose of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or of two ore more issuers that are controlled by the Fund (within the meaning of section 851(b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or businesses of related trades or business (other than U.S. government securities or the securities of other regulated investment companies).

[20] Each Fund will maintain regulated investment company compliance, which requires, among other things, that, at the close of each quarter of the Fund's taxable year, not more than 25% of its total assets may be invested in the securities of any one issuer. *See supra*, footnote 19.

[21] For the iShares MSCI Israel Index Fund, the MSCI Index seeks to reflect at least 60% of Israel's stock market capitalization.

performance information required by the Investment Company Act of 1940, Form N–1A and the standard conditions for the 1940 Act exemptive relief which we expect to be granted to the Funds. This information includes disclosure of the Funds' total return and each underlying index's total return for 1, 5 and 10 year periods, and line graphs comparing values of hypothetical $10,000 investments in the Fund and its Underlying index.

MSCI has implemented procedures to prevent the misuse of material non-public information regarding changes to the MSCI indexes underlying the Index Funds. These procedures, which will also apply to the MSCI indexes that are the subject of this filing, were submitted to the Commission by MSCI in connection with approval of additional series of World Equity Benchmark Shares (the previous name for iShares MSCI Index Funds).[22]

Dissemination of Index Information. The daily closing index value and the percentage change in the daily closing index value for every MSCI country and regional index is publicly available on the MSCI Web site at *www.mscidata.com.* In addition, MSCI advises that various news publications (*e.g.*, Barron's, Business Week, Forbes, Global Finance, Investor's Daily, The New York Times and The Wall Street Journal in the United States) publish data for certain MSCI Indices. For example, The Wall Street Journal recently has been publishing the closing index value, for MSCI Indices covering the United States, the United Kingdom, Canada, Japan, France, Germany, Hong Kong, Switzerland, Australia, the World and EAFE (*i.e.*, European, Australian and Far Eastern markets).

Data regarding each MSCI Index is available to MSCI subscribers through various methods of delivery. MSCI index data may be delivered to subscribers directly from MSCI on a daily or monthly basis via electronic delivery methods. MSCI subscribers also may receive index data on a daily, monthly, or quarterly basis in print format via express mail. Several independent data vendors package and disseminate MSCI data in various value-added formats (including vendors displaying both securities and index levels, such as FAME, FactSet, Datastream, RIMES, DSC Data Services and QUANTEC, and vendors displaying index levels only, such as Bloomberg, Bridge/Knight Ridder, Dow Jones Markets, DRI/McGraw Hill, Lipper Analytical, Quick, Quotron, Reuters and Telekurs). According to the iShares, Inc., compared to the MSCI data available free of charge from the MSCI website, the data available to users subscribing to quote vendors such as Bloomberg, Bridge and Reuters includes more frequent calculation and dissemination of index levels, including "real-time" feeds for certain indices, while the data available to MSCI paid subscribers (either directly from MSCI or from an independent "full data" vendor) includes more detailed information in respect of the securities included in a given index and/or more frequent calculations and dissemination of index levels and securities levels.

Availability of Information Regarding iShares. The Web site for iShares, Inc., which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each Index Fund: (a) The prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

According to MSCI, the value of each Index Fund's underlying MSCI Index will be updated intra-day on a real time basis as individual component securities of that Index change in price. The intra-day values of these MSCI Indices will be disseminated every 15 seconds[23] throughout the trading day by organizations authorized by MSCI. In addition, these organizations will disseminate values for each Index once each trading day, based on closing prices in the relevant exchange market.

The NAV for each Index Fund will be calculated and disseminated daily. The NAV for the iShares MSCI Pacific (Free) Ex Japan Index Fund will be determined as of 8:30 a.m. Eastern Time. The time for NAV determination for the other Index Funds that are the subject of this filing will be established by iShares, Inc. prior to start-up of trading and will be publicly disclosed by the Funds. The Amex also intends disseminate for each Index Fund on a daily basis by means of CTA and CQ High Speed Lines information with respect to the Indicative Optimized Portfolio Value (as discussed below) and shares outstanding, prior to the opening of the Amex.[24] The Exchange will also disseminate the NAV and final dividend amounts to be paid for each Fund on the Web site *amextrader.com.* The closing prices of the Index Funds' Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

With each distribution, iShares, Inc. will furnish to the DTC Participants for distribution to Beneficial Owners of iShares of each Index Fund through the DTC Participants a statement setting forth the amount being distributed, expressed as a dollar amount per iShare of such Index Fund. Beneficial Owners also will receive annually notification as to the tax status of the distributions of iShares, Inc.

Promptly after the end of each fiscal year, iShares, Inc. will furnish to the DTC Participants, for distribution to each person who was a Beneficial Owner of iShares at the end of the fiscal year, an annual report of iShares, Inc. containing financial statements audited by independent accountants of nationally recognized standing and such other information may be required by applicable laws, rules and regulations.

Dissemination of Indicative Optimized Portfolio Value. As noted above, MSCI disseminates values for each MSCI Index once each trading day, based on closing prices in the relevant exchange market. In addition, the Fund causes to be made available on a daily basis the names and required number of shares of each of the securities to be deposited in connection with the issuance of Fund shares in Creation Unit size aggregations for each Fund, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends applicable to such Funds. This information is made available by the Fund's Adviser to any NSCC participants requesting such information. In addition, other investors can request such information directly from the Fund's Distributor. The net asset value for each Fund is calculated daily by the Fund's Administrator (PFPC Inc.).

In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to create or redeem iShares MSCI Index Fund shares, the Exchange disseminates through the facilities of CTA an updated "indicative optimized portfolio value" ("Value") for each of the Funds currently traded as

[22] Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (Order Approving File No. SR–Amex–98–49).

[23] *See* Amendment No. 4, *supra*, footnote 6.

[24] *See* Amendment No. 3, *supra*, footnote 5.

calculated by Bloomberg, LP. The Exchange will also disseminate a Value for the proposed seven new Funds over CTA facilities (Network B) as calculated by a securities information provider ("Value Calculator"). The methodology utilized in connection with the iShares MSCI Index Funds currently traded will also be utilized for the proposed seven new Funds. The Value is disseminated on a per Fund share basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m. New York time. The equity securities values included in the Value are the values of the designated portfolio of equity securities ("Deposit Securities") constituting an optimized representation of the benchmark MSCI foreign index for each Fund, which is the same as the portfolio that is to be utilized generally in connection with creations and redemptions of Fund shares in Creation Unit size aggregations on that day. The equity securities included in the Value reflects the same market capitalization weighting as the Deposit Securities in the optimized portfolio for the particular Fund. In addition to the value of the Deposit Securities for each Fund, the Value includes a cash component consisting of estimated accrued dividend and other income, less expenses. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currencies.

The Value does *not* reflect the value of *all* securities included in the applicable benchmark MSCI index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund for each Fund at a particular point in time. Therefore, the Value on a per Fund share basis disseminated during Amex trading hours should not be viewed as a real time update of the net asset value of the Fund, which is calculated only once a day. While the Value disseminated by the Amex at 9:30 a.m. is generally very close to the most recently calculated Fund net asset value on a per Fund share basis[25], it is possible that the value of the portfolio of securities held by the Fund for a particular Fund may diverge from the Deposit Securities Values during any trading day. In such case, the Value will not precisely reflect the value of the Fund portfolio. Following calculation of net asset value by the Fund's Administrator, the Value on a per Fund share basis can be expected to be the same as the net asset value of the Fund on a per Fund share basis.

However, during the trading day, the Value can be expected to closely approximate the value per Fund share of the portfolio of securities for each Fund except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Adviser). The circumstances that might cause the Value to be based on calculations different from the valuation per Fund share of the actual portfolio of a Fund would not be different than circumstances causing any index fund or trust to diverge from an underlying benchmark index.

The Exchange believes that dissemination of the Value based on the Deposit Securities provides additional information regarding each Fund that is not otherwise available to the public and is useful to professionals and investors in connection with Fund shares trading on the Exchange or the creation or redemption of Fund shares.

• MSCI All Country Far East Free Ex Japan Index; MSCI Pacific (Free) Ex Japan

For these Indexes there is no overlap in trading hours between the foreign markets and the Amex. Therefore, for these Funds, the Value calculator will utilize closing prices (in applicable foreign currency prices) in the principal foreign market for securities in the Funds portfolio, and convert the price to U.S. dollars. This Value will be updated every 15 seconds during Amex trading hours to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency. The Value will also include the applicable estimated cash component for the Fund.

• MSCI Emerging Markets Latin America Index; MSCI All Country World Ex USA Index; MSCI Emerging Markets Free Index; MSCI Europe Index; MSCI Israel Index

For the above noted MSCI Indexes, which include companies trading in markets with trading hours overlapping regular Amex trading hours, the Value calculator will update the applicable Value every 15 seconds to reflect price changes in the principal foreign market, and convert such prices into U.S. dollars based on the current currency exchange rate. When the foreign market is closed but the Amex is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign market closes. The Value will also include the applicable estimated cash component for each Fund.

Criteria for Initial and Continued Listing. The Index Funds are subject to the criteria for initial and continued listing of Index Fund Shares in rule 1002A. For each of the Funds, it is anticipated that a minimum of two Creation Units will be required to be outstanding at the start of the trading. The minimum number of shares of each Fund required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depository Receipts and Index Fund Shares. The Exchange believes that the anticipated minimum number of iShares outstanding for each Fund at the start of trading is sufficient to provide market liquidity and to further the Fund's objective to seek to provide investment results that correspond generally to the price and yield of a specified MSCI Index.

Original and Annual Listing Fees. The Amex original listing fee applicable to the listing of iShares MSCI Index Funds is $5,000 per Fund (*i.e.*, $35,000 for the seven Funds listed above). In additional, the annual listing fee applicable to the Funds under section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding shares in all iShares MSCI Index Funds listed on the Amex, including existing Funds and the seven additional Funds proposed herein.

Stop and Stop Limit Orders. Amex rule 154, Commentary. 04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i-v). The Exchange has designated Index Fund Shares, including iShares MSCI Index Funds, as eligible for this treatment[26]

Rule 190. Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including iShares MSCI Index Funds. Commentary .04 states that nothing in rule 190(a) should be construed to restrict a specialist registered in security issued by an investment company from purchasing and redeeming the listing security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the

[25] A slight different between the Value disseminated at 9:30 a.m. and the most recently calculated Fund net asset value can be expected because the Value will include an estimated cash amount consisting principally of any divided accruals for the Deposit Securities going "ex-dividend" on that day.

[26] *See* Securities Exchange Act Release No. 29063 (April 10, 1998), 56 FR 15652 (April 17, 2001) (Oder Approving File No. SR–Amex-90–31), and *supra*, footnote 9.

maintenance of a fair and orderly market.

Prospects Delivery. The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of prospectus or product description delivery requirements applicable to iShares MSCI Index Funds. IShares, Inc. has on file with the Division of Investment Management a separate request for an exemptive order granting relief from certain prospectus delivery requirements under section 24(d) of the 1940 Act. Any product description used in reliance on an section 24(d) exemptive order will comply with all representations made therein and all conditions thereto.

Purchase and Redemptions in Creation Unit Size. In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit size are described in the Fund prospectus and Statement of Additional Information, and that iShares are not individually redeemable but are redeemable only in Creation Unit size aggregations or multiples thereof.

Trading Halts. In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including iShares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in stocks underlying the index; (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. (See Amex rule 918C). In addition, trading in iShares will be halted if the circuit breaker parameters under Amex rule 117 have been reached.

Suitability. The Information Circular referenced above will inform members and member organizations of the characteristics of the specific Index Fund and of applicable Exchange rules, as well as of the requirements of Amex rule 411 (Duty to Know and Approve Customers). The Information Circular will also disclose the time that the NAV is determined for a particular Fund and will disclose that for Funds holding shares of Korean, Malaysian, Taiwanese and Brazilian companies that the Fund will charge creation and redemption fees intended to offset brokerage costs associated with cash creations and redemptions, (as discussed in footnote 16 above).

Surveillance. Exchange surveillance procedures applicable to trading in the proposed iShares MSCI Index Funds are the same as those applicable to iShares currently trading on the Exchange.

(2) Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objection of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment Nos. 1, 2, 3, and 4 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with the respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2001–45 and should be submitted by November 23, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Amex has requested that the Commission approve the proposal on an accelerated basis. The Amex notes that the proposed iShares are similar in structure and operation to Index Fund Shares approved previously by the Commission and that the component securities of the Underlying Indexes are among the stocks with the highest liquidity and market capitalization in their respective countries. The Amex believes that the proposal does not raise issues that the Commission has not considered in connection with previous proposed rule changes relating to Index Fund Shares.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of section 6(b)(5).[27] Specifically, the Commission finds that the proposal to list and trade the proposed iShares will provide investors with a convenient and less expensive way of participating in the foreign securities markets. The Commission believes that the Amex's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell single securities at negotiated prices throughout the business day that represent the performance of several portfolios of stocks.[28] Accordingly, the Commission finds that the Amex's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest, consistent with section 6(b)(5) of the Act.[29]

[27] 15 U.S.C. 78f(b)(5). In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[28] The Commission notes that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in iShares can redeem in Creation Unit size aggregations only.

[29] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

Amex Rules 1000A *et seq.* provide for the listing and trading of Index Fund Shares. The Commission has approved the listing and trading of various Index Fund Shares on the Amex, including the following: 15 series of iShares Trust;[30] 23 series of iShare MSCI Index Funds (formerly MSCI World Equity Benchmark Shares ("WEBS"));[31] series of the iShares Trust based on the S&P Europe 350 Index and the S&P/TSE 60 Index;[32] nine series of Select Sector SPDRs and one series of the Technology 100 Index Fund;[33] and shares of the street Tracks Dow Jones Global Titans Index Fund.[34]

Similar to these Index Fund Shares, the Commission believes that the proposed iShares will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade a product representing an interest in a portfolio of securities designed to reflect substantially the applicable Underlying Index. The estimated cost of individual iShares, approximately $20 to $120, should make them attractive to individual retail investors who wish to hold a security representing the performance of a portfolio of stocks. In addition, unlike the case with standard open-end investment companies specializing in such stocks, investors will be able to trade iShares continuously throughout the business day in secondary market transactions at negotiated prices.[35] Accordingly, the proposed iShares will allow investors to: (1) Respond quickly to market changes through intraday trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transaction costs for trading a portfolio of securities.

Although the value of iShares will be derived from and based on the value of the securities and cash held in the Fund, iShares are not leveraged instruments. Accordingly, the level of risk involved in the purchase or sale of iShares is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for the iShares is based on a portfolio of securities. Nevertheless, the Commission believes that the unique nature of iShares raises certain product design, disclosure, trading and other issues that must be addressed.

A. Generally

The Commission believes that the proposed iShares are reasonably designed to provide investors with an investment vehicle that substantially reflects in value their Underlying Indexes and, in turn, the performance of: (1) The component securities comprising the MSCI All Country World Ex USA Index;[36] (2) the component securities comprising the MSCI All Country Far East (Free) Ex Japan Index;[37] (3) the component securities comprising the MSCI Emerging Markets (Free) Index;[38] (4) the component securities comprising the MSCI Emerging Markets Latin America Index;[39] (5) the component securities comprising the MSCI Europe Index;[40] (6) the component securities comprising the MSCI Pacific (Free) Ex Japan Index;[41] and (7) the component securities of the MSCI Israel Index.[42]

The Commission notes that each Fund will normally invest at least 95% of its total assets in component securities that are represented in the underlying index, and will at all times invest at least 90% of its total assets in such stocks, except that in order to permit the Adviser additional flexibility to comply with the requirements of the Internal Revenue Code and other regulatory requirements and to manage future corporate actions and index changes in the smaller markets, certain Funds, identified in each Fund's prospectus, will at all times invest at least 80% of its assets in such stocks and at least half of the remaining 20% in such stocks or in stocks included in the relevant market, but not in the relevant underlying index. iShares, Inc. expects that the iShares MSCI Emerging Markets (Free), Emerging Markets Latin America and Israel Index Funds will be subject to the "80%/20%" exception described above. Each Fund may invest its remaining assets in money market instruments (subject to applicable limitations under the 1940 Act), in repurchase agreements, in stocks that are in the relevant market but not in the relevant underlying index, and/or in combinations of certain stock index futures contracts, options on futures contracts, stock index options, stock index swaps, cash, local currency and forward currency exchange contracts that are intended to provide a Fund

[30] Securities Exchange Act Release No. 4470 (August 14, 2001), 66 FR 43927 (August 21, 2001) (order approving File No. SR–Amex–2001–34).

[31] *See* 1996 Order (approving the listing and trading of Index Fund Shares under Amex Rules 1000A *et seq.* and 17 series of WEBS based on MSCI foreign indexes); and Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (order approving File No. SR–Amex–98–49) (approving the listing and trading of six series of WEBS based on MSCI Indexes).

[32] *See* Securities Exchange Act Release No. 42786 (May 15, 2000), 65 FR 33586 (May 24, 2000) (order approving File No. SR–Amex–99–49).

[33] *See* Securities Exchange Act Release No. 40749 (December 4, 1998), 63 FR 68483 (December 11, 1998) (order approving File No. SR–Amex–98–29).

[34] *See* Securities Exchange Act Release No. 433338 (September 28, 2000) 65 FR 59235 (October 4, 2000) (order approving File No. SR–Amex–00–53).

[35] Because of the potential arbitrage opportunities, the Commission believes that iShares will not trade at a material discount or premium in relation to their NAV. The mere potential for arbitrage should keep the market price of iShares comparable to their NAV; therefore, arbitrage activity likely will not be significant.

[36] The MSCI All Country World Ex USA Index, is comprised of securities trading on the exchanges of 49 of the 51 countries for which MSCI has indices. The index represents world stock markets (not including markets in the United States). The index included 1849 constituent companies as of May 31, 2001.

[37] The MSCI All Country Far East (Free) Ex Japan Index comprises 9 of the 51 countries for which MSCI has indices. The index represents Asian stock markets (not including markets in Japan). The index included 407 constituent countries as of May 31, 2001. Approximately 45% of the index is comprised of securities traded on the combined markets in Korea, Malaysia, and Taiwan. Those countries have restrictions that preclude in-kind redemptions and creations. Therefore, the MSCI Pacific (Free) Ex Japan Index Fund will charge fees to offset related transfer and transaction costs. Those costs include market impact costs because there is a possibility, which the Exchange will disclose in its prospectus, of market impact as a result of the Fund buying or selling securities in those countries.

[38] The MSCI Emerging Markets (Free) Index comprises 25 of the 51 countries for which MSCI has indices. The index included 696 constituent companies as of May 31, 2001. Approximately 40% of the index is comprised of securities trading in Brazil, Korea, Malaysia, and Taiwan. Those countries have restrictions that preclude in-kind redemptions and creations. Therefore, the Emerging Markets (Free) Index Fund will charge fees to offset related transfer and transaction costs. Those costs include market impact costs because there is a possibility, which the Exchange will disclose in its prospectus, of market impact as a result of the Fund buying or selling securities in those countries.

[39] The Emerging Markets Latin America Index comprises 7 of the 51 countries for which MSCI has indices. The index included 127 constituent companies as of May 31, 2001. Approximately 40% of the index is comprised of securities trading in Brazil, which has restrictions that preclude in-kind redemptions and creations. Therefore, the Emerging Markets Latin America Fund will charge fees to offset related transfer and transaction costs. Those costs include market impact costs because there is a possibility, which the Exchange will disclose in its prospectus, of market impact as a result of the Fund buying or selling securities in Brazil.

[40] The MSCI Europe Index comprises 7 of the 51 countries for which MSCI has indices. According to MSCI, the index included 127 constituent companies as of May 31, 2001.

[41] The MSCI Pacific (Free) Ex Japan Index represents markets in Australia, Hong Kong, New Zealand and Singapore. There were 151 constituent companies included in the index as of May 31, 2001.

[42] The MSCI Israel Index includes country constituents that are classified using the Global Industry Classification Standard (GICS), which has 10 sectors drawn from 23 Industry groups. Over 70% of the index is comprised of securities in three industry groups: Software & Services; Pharmaceuticals & Biotechnology; and Banks. There were 33 constituent companies as of May 31, 2001.

with exposure to a stock. The Adviser may attempt to reduce tracking error by using futures contracts whose behavior is expected to represent the market performance of the Fund's underlying securities. A Fund will not use these instruments to leverage, or borrow against, its securities holdings or for speculative purposes. The Exchange expects that each Fund does not intend to concentrate in any particular industry except to the extent that its Underlying Index concentrates in the stocks of a particular industry or industries.[43] In addition, each Fund will maintain regulated investment company compliance, which requires, among other things, that, at the close of each quarter of the Fund's taxable year, not more than 25% of its total assets may be invested in the securities of any one issuer. While the Commission believes that these requirements should help to reduce concerns that the Funds could become a surrogate for trading in a single or a few unregistered stocks, in the event that a Fund were to become such a surrogate, the Commission would expect the Amex to take action immediately to delist the securities to ensure compliance with the Act.

As noted above, each Fund will use a representative portfolio sampling strategy to attempt to track its Underlying Index. Although a representative sampling strategy entails some risk of tracking error, the Advisor will seek to minimize tracking error. It is expected that each Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5%. If the tracking error for a Fund exceeds 5%, the Advisor will notify the Board and discuss appropriate actions with the Board.[44] The Commission notes that the Exchange will disseminate the NAV and final dividend amounts to be paid for each Fund on the website amextrader.com.[45] In addition, the Funds' annual and semiannual reports will include disclosures regarding the Funds' total return and each Underlying Index's total return for one-, five-, and 10-year periods, and graphs comparing hypothetical $10,000 investments in the Funds and their Underlying Indexes.[46] While the Commission believes that the proposed requirements for the Funds, and the expected tracking error of less than 5%, should be adequate to characterize the proposed Funds as bona fide index funds; the Commission would be concerned if a Fund's portfolio failed to substantially reflect its Underlying Index.[47]

B. Disclosure

The Commission believes that the proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading iShares. Investors purchasing the proposed iShares will be required to receive either a prospectus or, as discussed below, a product description of the iShares.[48] If the proposed iShares are not granted relief from the prospectus delivery requirements of the 1940 Act, then investors purchasing iShares will be required to receive a prospectus prior to or concurrently with the confirmation of a transaction therein. Because iShares will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1933 will apply both to initial investors and to all investors purchasing such securities in secondary market transactions on the Amex.

Alternatively, if the proposed iShares are granted relief from the prospectus delivery requirements of the 1940 Act, they will be subject to Commentary .03 to Amex Rule 1000A, which provides for delivery of a product description for series of Index Fund Shares that have been granted relief from the prospectus delivery requirements of the 1940 Act. Under Commentary .03, the delivery requirement will extend to a member or member organization carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make the product description available to its customers on the same terms as are directly applicable to members and member organizations. In addition, Commentary .03 provides that a member or member organization must deliver a prospectus to a customer upon request.

The Commission notes that prior to the commencement of trading in the proposed iShares, the Amex will issue a circular to its members explaining the characteristics of the specific Index Fund and of applicable Exchange rules, as well as the requirements of Amex rule 411. Amex rule 411 generally requires that member use due diligence to learn the essential facts relative to every customer, every order or account accepted.[49]

The Information Circular will also disclose the time that the NAV is determined for a particular Fund and will disclose that for Funds holding shares of Korean, Malaysian, Taiwanese and Brazilian companies that the Fund will charge creation and redemption fees intended to offset brokerage costs associated with cash creations and redemption. It will also inform members and member organizations, prior to commencement of trading, of prospectus or product description delivery requirements applicable to iShares MSCI Index Funds.

C. Listing and Trading of iShares

The Commission finds that adequate rules and procedure exist to govern the listing and trading of iShares. iShares will be deemed equity securities subject to Amex rules governing the trading of equity securities,[50] including, among others, rules governing trading halts,[51] responsibilities of the specialist, account opening and customer suitability requirements, and the election of stop and stop limit orders.

In addition, the Funds will be subject to Amex listing and delisting/suspension rules and procedures governing the trading of Index Fund Shares on the Amex. As the Commission has noted previously,[52] the listing and delisting criteria for Index Fund Shares should help to ensure that a minimum level of liquidity will exist in each series of Index Fund Shares to allow for the maintenance of fair and orderly markets. The de listing criteria also will allow the Amex to consider the suspension of trading and the delisting of a series of iShares if an event were to occur that made further dealings in such securities inadvisable. This will give the Amex flexibility to delist iShares if circumstances warrant such action. For example, as noted above, in the vent that iShares became a surrogate for trading a single or few unregistered

[43] *See* Amendment No. 1, *supra*, footnote 3; Amendment No. 2, *supra*, footnote 4.

[44] *See* Amendment No. 1, *supra*, footnote 3.

[45] *See* Amendment No. 1, *supra*, footnote 3.

[46] *See* Amendment No. 1, *supra*, footnote 3.

[47] Among other issues that may arise under the federal securities lews, such an occurrence could raise the issue of whether trading of the proposed iShares would remain consistent with Amex listing standards for Index Fund Shares, as well as the surrogate trading issue discussed above.

[48] As noted above, iShares, Inc. has requested an exemptive order granting relief from the prospectus delivery requirements imposed by section 24(d) of the 1940 Act.

[49] *See* Amex Rule 411.

[50] Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex and Steven Johnston, Special Counsel, Division, Commission, October 25, 2001.

[51] In addition to other factors that may be relevant, tha Amex may consider factors such as those set forth in Amex Rule 918(b) in exercising its discretion to halt or suspend trading in iShares. These factors would include, but are not limited to: (1) The extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in iShares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

[52] *See* 1996 Order.

securities, such an event could raise issues that would require the delisting of iShares to ensure compliance with the Act. Accordingly, the Commission believes that the rules governing the trading of iShares provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

As noted above, the Amex expects to require that a minimum of two Creation Units (100,000 iShares) to outstanding at the start of trading. The Commission believes that this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading.

The Commission believes that the Amex's proposal to trade iShares with a minimum price variation of $.01 is consistent with the Act. The Commission believes that such trading may enhance market liquidity and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the Funds. Additionally, the Commission believes that the proposed original listing fee of $5,000 is reasonable, as is the proposed method for calculating the annual fee.

D. Specialists

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuers as appropriate to facilitate the maintenance of a fair and orderly market in that security. The Commission believes that such market activities should enhance liquidity in such securities and facilitate a specialist's market making responsibilities. In addition, because the specialist will only be able to purchase and redeem iShares on the same terms and conditions as any other investor in accordance with the terms of the Funds prospectus and statement of additional information ("SAI"), the Commission believes that concerns regarding potential abuse are minimized.[53] The Amex's existing surveillance procedure also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the Amex's proposal does not address any other requirements or obligations under the federal securities laws that may be applicable.

E. Stop and Stop Limited Orders

The Commission believes that the Amex's proposal to designate the proposed iShares as eligible for election by quotation with the prior approval of a Floor Official is consistent with the Act. Amex rule 154, Commentary .04(c) generally provides that stop and stop limit orders to buy or sell a security or index of securities may, with prior approval of a Floor Official, be elected by quotation, as set forth in Amex rule 154, Commentary .04. Amex rule 154, Commentary .04(c)(v) states that election by quotation only is available for such derivative securities as are designated by the Amex as eligible for such treatment. The Amex has so designated Index Fund Shares, including the proposed iShares.

The Commission believes that allowing stop and stop limit orders in iShares to be elected by quotation, a rule typically used in the options context, is appropriate because, as a result of their derivative nature, iShares are in effect equity securities that have a pricing and trading relationship to the underlying securities similar to the relationship between options and their underlying securities.[54]

F. Surveillance

The Amex represents that the Exchange surveillance procedures applicable to trading in the proposed iShares MSCI Index Funds are the same as those applicable to iShares currently trading on the Exchange.

The Commission believes that the surveillance procedures developed by the Amex for Index Fund Shares are adequate to address the concerns associated with the listing and trading of the iShares, including any concerns associated with purchasing and redeeming Creation Units.

G. Use of Non-Public Information

The Commission notes that when a broker-dealer's affiliate, such as MSCI, is involved in the development and maintenance of a stock index upon which a product such as iShares is based, the broker-dealer and its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that MSCI has implemented procedures to prevent the misuse of material non-public information regarding changes to the MSCI indexes underlying the Index Funds. The Commission believes,[55] as it has concluded previously, that the information barrier procedures put in place by MSCI address the unauthorized transfer and misuse of material, non-public information.

H. Dissemination of Information Regarding the Funds

The Commission believes that the Value that the Amex proposes to have disseminated for the Funds will provide investors with timely and useful information concerning the value of the individual Funds. The Exchange represents that Indicative Portfolio Value will be disseminated through the facilities of the CTA every 15 seconds from 9:30 a.m. to 4 p.m.Eastern time. The Commission expects that the Amex will monitor the disseminated Value and, if the Amex were to determine that the Value does not closely track the applicable iShares series, it would arrange to disseminate an adequate alternative value.

The daily index value and the percentage change in the daily closing index value for every MSCI country and regional index will be publicly available on the MSCI website at www.mscidata.com. In addition the website for the Funds, 222.ishares.com, contains detailed information on the performance of each Fund, and the tracking error for each fund.

The NAV for each Index Fund will be calculated and disseminated daily. The NAV for the iShares MSCI Pacific (Free) Ex Japan Index Fund will be determined as of 8:30 a.m. Eastern Time; the time for NAV determination for the other Index Funds that are the subject of this filing will be established by iShares, Inc. prior to start-up of trading and will be publicly disclosed by the Funds. In addition, the Funds' annual and semi-annual report will include disclosure of the Funds' total return and each Underlying Index's total return for one—, five—, and 10-year periods, and graphs comparing value of hypothetical $10,000 investments in the Fund and its Underlying Index.[56]

The Amex also will disseminate for each Index Fund on a daily basis by means of CTA and CQ High Speed Lines information with respect to the Indicative Optimized Portfolio Value (as discussed below) and shares

[53] Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex and Florence E. Harmon, Senior Special Counsel, Division, Commission, October 25, 2001.

[54] *See generally* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1999) (order approving File No. SR–Amex–90–31) (relating to stop and stop limit orders in certain equity securities).

[55] *See* Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (order approving File No. SR–Amex–98–49)

[56] *See* Amendment No. 1, *supra*, footnote 3.

outstanding, prior to the opening of the Amex. The Exchange will also disseminate the NAV and final dividend amounts to be paid for each Fund on amextrader.com.

As described more fully above, the Advisor will make available through the Distributor on each business day prior to the opening of trading on the Exchange the list of the names and the required number of shares of each Deposit Security included in the current Portfolio Deposit for each Fund to effect purchases of Creation Unit Aggregations of the Fund.

In addition, the Advisor will provide the NSCC on a daily basis with the names and required number of shares of the Deposit Securities in a Creation Unit Aggregation and the Balancing Amount, which the NSCC will make available to NSCC members through an electronic file that NSCC members can download.[57]

I. Scope of the Commission's Order

The Commission is approving the 7 series of iShares described herein. Other similarly structured products, or additional iShares Funds based on indexes that include securities not listed on a national securities exchange of The Nasdaq Stock Market, would require review by the Commission pursuant to Section 19(b) of the Act prior to being traded on the Amex.

J. Accelerated Approval of the Proposal and Amendment Nos. 1, 2, 3, and 4

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1, 2, 3, and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As discussed more fully above, the Commission has approved the listing and trading of various Index Fund Shares on the Amex. Several of the Amex's previous proposals to list and trade Index Fund Shares were published for comment and the Commission received no comments regarding the proposals. Accordingly, the Commission believes that it is reasonable to make the proposed iShares available to investors as soon as possible. Amendment No. 1 strengthens the Amex's proposal by, among other things, stating that the Exchange will disclose, in an Information Circular that Funds holding shares of Korean, Malaysian, Taiwanese and Brazilian companies will charge creation and redemption fees intended to offset brokerage costs associated with cash creations and redemptions; and representing that MSCI has implemented procedures to prevent the misuse of material non-public information regarding MSCI indices. Amendment No. 2 clarifies the proposal by, among other things, noting that Fund Participants are limited to DTC Participants and clarifying the level of the Funds' investment in their Underlying Indices. Amendment No. 2 further clarified the proposal explaining that fees assessed in connection with Funds trading in countries where in-kind purchases of securities are precluded, are assessed in part to cover market impact costs. Amendment No. 4 also strengthened the proposal by requiring, among other things, that the Fund prospectus will disclose the possible market impact of a Fund buying or selling securities in those countries prior to calculation of the NAV. Amendment No. 4 clarified the proposal by, among other things, further delineating the level of the Funds investment in their Underlying Indices. Accordingly, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act,[58] to approve the proposal and Amendment Nos. 1, 2, 3, and 4 to the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2001–45), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[59]

Margaret H. McFarland,

Deputy Secretary.

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[57] *See* Amendment No. 4, *supra*, footnote 6.

[58] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[59] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44994; File No. SR–CBOE–2001–22]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Permanent Approval of the Pilot Program To Eliminate Position and Exercise Limits for OEX, SPX, and DJX Index Options and Flex Options on These Indexes

October 26, 2001.

I. Introduction

On May 14, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking permanent approval of the pilot program eliminating position and exercise limits for S&P 500 Index ("SPX"), S&P 100 Index ("OEX"), and Dow Jones Industrial Average ("DJX") as well as for FLEX options overlying these indexes.

The proposed rule change was published for comment in the **Federal Register** on June 25, 2001.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of Proposal

On January 22, 1999, the Commission approved a two-year pilot program ("Pilot Program") that allowed for the elimination of position and exercise limits for options on the OEX, SPX, DJX index options as well as for FLEX options overlying these indexes.[4] On January 22, 2001, the Commission extended the Pilot Program until May 22, 2001.[5] On May 22, 2001, the Commission extended the Pilot Program until September 22, 2001.[6] On September 24, 2001, the Commission extended the pilot program until March 24, 2002.[7] The Exchange now seeks

[1] 15 U.S.C. 78(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42862 (May 30, 2000), 65 FR 36481.

[4] *See* Securities Exchange Act Release No. 40969, 64 FR 49111 (Feb. 1, 1999) (approving SR–CBOE–98–23) ("Pilot Approval Order").

[5] *See* Securities Exchange Act Release No. 43867, 66 FR 8250 (January 30, 2001).

[6] *See* Securities Exchange Act Release No. 44335, 66 FR 33726 (May 25, 2001).

[7] *See* Securities Exchange Act Release No. 44837, 66 FR 49988 (October 1, 2001).

permanent approval of the Pilot Program.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system.[9]

The Commission believes for the same reasons discussed in the Pilot Approval Order, in addition to the lack of any problems identified during the pilot period as discussed below, that the pilot should be approved on a permanent basis.[10] The Commission notes that the Pilot Approval Order required the Exchange to submit a report to the Commission on the status of the Pilot Program so that the Commission could use this information to evaluate any consequences of the program and to determine whether to approve the elimination of position and exercise limits for these products on a permanent basis.[11] The CBOE submitted the required report to the Commission on December 21, 2000.[12]

The report represents that during the review period, CBOE did not discover any instances where an account maintained an unusually large unhedged position. The data from the report found that only 12 accounts established positions in excess of 10% of the standard limit applicable to each index at the time the Pilot Program was approved. These positions were all in SPX and most were established by firms and market makers. All of the accounts were hedged, although to different degrees. CBOE represented that it did not discover any aberrations caused by large unhedged positions during the life of the Pilot Program.[13]

In addition to no identifiable problems during the pilot program, the Commission also believes that the factors for approval of the pilot program continue to be met. For example, in approving the pilot, the Commission stated, among other things, that the enormous capitalization of and deep, liquid markets for the underlying securities contained in the OEX, SPX and DJX significantly reduces concerns regarding market manipulation or disruption in the underlying market. In this regard, we note that the indexes continue to have enormous capitalizations. Indeed, the current capitalizations' of the indexes are currently higher than the capitalizations we relied on in originally approving the pilot.[14]

The Commission also continues to believe that the financial requirements imposed by CBOE and the Commission help to address concerns that a CBOE member or is customer may try to maintain an inordinately large unhedged position in the indexes. As noted in the Pilot Approval Order, the CBOE has the authority to impose additional margin and/or assess capital charges and should be able to monitor accounts to determine when such actien is warranted.[15]

Finally, in addition to the other basis for approval of the pilot as discussed in the Pilot Approval Order, the Commission relied heavily on the enhanced surveillance[16] and reporting safeguards that would allow CBOE to detect and deter trading abuses arising from the elimination of position and exercise limits in options and Flex options on the subject indexes.[17] The Commission continues to believe that these enhanced procedures are critical in our determination to permanently approve the pilot. While the pilot did not note any aberrations or concerns about large unhedged positions, the Commission continues to believe that these procedures will enable the CBOE to adequately assess and respond to market concerns at an early stage. In this regard the Commission continues to expect CBOE to take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–CBOE–2001–22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27525 Filed 11–1–01; 8:45 am]

BILLING CODE 8010–01–M

[8] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] The bases for approving the pilot as discussed in the Pilot Approval Order are incorporated herein to this permanent approval order.

[11] In the prior Approval Order, the Commission stated, "CBOE will provide the Commission with a report detailing the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program. The Commission expects that CBOE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop."

[12] Letter from Patricia L. Cerny, Director, Office of Trading Practices, CBOE, to Elizabeth King, Division of Market Regulation, Commission, dated December 21, 2000.

[13] In its latest filing extending the pilot program, CBOE again represented that it had not discovered any aberrations caused by large unhedged positions during the pilot program. *See supra* note 7.

[14] The Pilot Approval Order stated that, as of August 1998, the market capitalizations for the SPX, OEX, and DJX were $8.5 trillion, $3.8 trillion and $2.2 trillion, respectively. As of October 2001, these figures had increased to $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively.

[15] As originally noted in the Pilot Approval Order, the Commission's net capital rule, Rule 15c3–1 under the Exchange Act, imposes a capital charge on members to the extent of any margin deficiency. More specifically, Exchange Act Rule 15c3–1 requires a capital change equal to the maximum potential loss on a broker-dealer's aggregate index position over a +(−) 10% market move. Exchange margin rules require margin on naked index options which are in or at-the-money equal to a 15% move in the underlying index; and a minimum 10% charge for naked out-of-the money contracts. At an index value of 9,000 this approximates to a $135,000 to $90,000 requirement per each unhedged contract.

[16] It is inappropriate to discuss the details of CBOE's enhanced surveillance program because the disclosure of specific surveillance procedures could provide market participants with information that could aid potential attempts at avoiding regulatory detection of inappropriate trading activity.

[17] CBOE's reporting requirements subject SPX, OEX and FLEX options on those indexes to a 100,000 contract hedge reporting requirement, and DJX, which is one-tenth the size of a full value index contract, and FLEX options on the DJX, are subject to a 1 million contract hedge reporting threshold. Each member or member organization that maintains a position on the same side of the market in excess of these contract thresholds for its own account or for the account of a customer must file a report that includes, but is not limited to, data related to the option position, whether such position is hedged and if so, a description of the hedge. If applicable, the report must contain information concerning collateral used to carry the position.

[18] 15 U.S.C. 78f(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44995; File No. SR–GSCC–2001–06]

Self Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Placement of Highly Leveraged Members on Surveillance Status

October 26, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on May 14, 2001, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is published this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC proposes to add new definitions and procedures to its rules that relate to how GSCC will monitor its members' clearing fund status. In addition, GSCC proposes to add a rule that would permit GSCC to exchange information with other clearing organizations concerning a member that is on any surveillance status.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rules changes and discussed any comments it received on the proposed rules changes. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections A, B, C below of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 4, section 3 of GSCC's rules states that a member whose clearing fund deposit obligation represents a significant portion of its net worth or net capital will be placed on a "class 1 (advisory list) surveillance status" and thus be subjected to a more thorough monitoring of its financial condition and activities. Until recently, GSCC has not routinely monitored its members' use of leverage. Now, due to factors such as the increasingly high level of members' clearing fund deposit requirements and the growing number of executing firms[3] for whose trades members are responsible, the amount of clearing fund deposit required of certain GSCC netting members can represent a significant proportion of their excess capital. Consequently, GSCC believes that it has become appropriate for risk management purposes to more closely monitor members' relative use of leverage.

Specifically, GSCC believes that it is important to compare the ratio of each member's clearing fund requirement to that member's level of excess regulatory capital[4] and to advise its membership of specific actions that it plans to take pursuant to Rule 4 with respect to any member that has a ratio in excess of certain defined parameters.[5]

To accomplish this, GSCC's approach under this proposed rule change would be analogous to the early warning concept applied by the Commission with respect to its net capital rule.[6] Examining authorities utilize parameters established within the net capital rule to provide an early warning of any broker-dealer that may be at risk of not having sufficient liquid capital to meet current obligations.[7] Deposits to GSCC's clearing fund are included in broker-dealers' net capital balances since such deposits are allowable assets.[8] Despite its liquidity, these amounts are deposited with and retained by GSCC to support GSCC-related trading and, therefore, are not available for other use. Therefore, GSCC believes that it is meaningful to measure the portion of a member's excess capital that is deposited to the clearing fund against its overall excess capital.

If a significant portion of the excess net capital of a netting member is committed to GSCC's clearing fund, it may be more likely than other members to have difficulty in meeting obligations in general and may therefore deemed to pose a greater likelihood of default with respect to its obligations to GSCC in particular.

To compensate for this potentially higher-than-ordinary risk of default, GSCC will place a member with a clearing fund requirement to excess net capital ratio of greater than .050 on Class 1 Surveillance Status.[9] Rule 4 permits GSCC to more thoroughly monitor such a highly leveraged member's financial condition and activities and to require the member to make more frequent financial disclosures. GSCC will require a highly leveraged member to provide GSCC with a satisfactory explanation of its leverage and it may seek to obtain information with respect to such member's margin requirements at other clearing organizations to better enable GSCC to assess whether the member will be able to meet its obligations to GSCC.

GSCC believes that the proposed rules change is consistent with the requirements of section 17A of the Act[10] and the rules and regulations thereunder because they serve to clarify rights that GSCC currently possesses with respect to highly leveraged participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rules change will impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rules changes have not yet been solicited or received. Members will be notified of the rule change filing and an Important Notice will solicit comments. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)[11] of the Act and Rule 19b–4(f)(1)[12] thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at GSCC's principal office. All submissions should refer to File No. SR–GSCC–2001–06 and should be submitted by November 23, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27557 Filed 11–1–01; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] An executing firm is a non-GSCC member that contracts with a GSCC member to submit trades on its behalf to GSCC.

[4] In this context, the term "excess regulatory capital" is used to include excess net capital, excess liquid capital, or excess adjusted net capital, all of which are measures of an organization's net worth after adjusting for the liquidity of its balance sheet.

[5] Inter-dealer brokers ("IDBs") and bank members are excluded from this analysis because IDBs, which have fixed clearing fund requirements and limited capital, are subject to different types of risk management considerations and because banks do not perform net capital computations.

[6] 17 CFR 240.15c3–1. The net capital rule is designed to ensure the liquidity of broker-dealers by requiring that they maintain minimum levels of liquid assets to support the volume and risk of the business in which they are engaged.

[7] In order to derive net capital under the net capital rule, a firm's net worth is reduced to give effect to the elements of market, credit, or operational risk inherent in the business in which the firm is engaged. Net capital is the broker-dealer's net worth adjusted for illiquid ("nonallowable") assets, certain operational capital charges, and potential adverse fluctuations in the value of securities inventory (known as "haircuts"). The purpose of the net capital computation is to determine that the broker-dealer's net liquid assets (minimum capital base) are adequate in the event of sudden adverse business conditions. Excess net capital is the amount by which the member's net capital exceeds its minimum capital requirement.

[8] Letter from Richard L. Gregg, Commissioner of the Bureau of the Public Debt of the Department of the Treasury, to Jeffrey F. Ingber, General Counsel of the Government Securities Clearing Corporation (August 30, 1989) (permitting registered government securities brokers or dealers to treat clearing fund collateral as allowable assets for capital calculation purposes).

[9] For purposes of this analysis, the separate clearing fund requirements of members with multiple accounts will be combined into a single aggregate number.

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(1).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44993; File No. SR–NYSE–2001–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Floor Conduct and Safety Guidelines and Exchange Rule 35 To Allow Specialists' Trading Assistants To Assist Specialist in Capturing Trades and Quotes During Active Market Conditions

October 26, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Floor Conduct and Safety Guidelines (the "Guidelines") with respect to policies and procedures on clerical employees entering a trading crowd. The Exchange believes that the Guidelines are a "stated policy, practice or interpretation" concerned with the administration of the Exchange. In addition, the exchange proposes a corresponding amendment to Exchange Rule 35.20 to cross-reference the proposed amendment to the Guidelines.

The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the Guidelines is to ensure that the behavior and practices of individuals on the Floor of the Exchange contribute to the efficient, undisrupted conduct of business on the Floor and do not jeopardize the safety or welfare of others. The Exchange believes the proposed rule change would enable the Exchange to keep its Guidelines consistent with current and new Exchange policy and procedures.

Entering or Crossing Trading Floor

The Guidelines prohibit Floor clerical employees entering a Trading Crowd[3] for any purpose, other than the resolution of Question Trade[4] or open items, from ten minutes prior to the opening until five minutes after the close. This is popularly known as the prohibition against crossing the "blue line."

The Exchange believes that with the elimination of Exchange reports,[5] there may be a need, under active market conditions, for specialist' trading assistants to stand in front of the post to assist in capturing trades and quotes.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A trading crowd is defined as a group of Exchange members with a defined area of function tending to congregate around a trading post pending execution of orders. These are specialists, floor traders, odd-lot dealers, and other brokers as well as smaller groups with specialized functions (Barron's Dictionary of financial and Investment Terms).

[4] Indicates a trade in which, during the comparison process, one participant is discovered to be incorrectly identified. *See* Glossary, New York Stock Exchange Web page, *www.nyse.com* (visited October 23, 2001). *See also* NYSE Rule 134.

[5] According to the NYSE, it was the duty of Exchange reporters to report trades to the tape. As of August 2, 2001, this position has been eliminated by the Exchange. Telephone conversation between Jeff Rosenstrock, Senior Special Counsel, NYSE, and Christopher Solgan, Law Clerk, and Lisa Jones, Staff Attorney, Division of Market Regulation, Commission (October 25, 2001).

Accordingly, the Exchange is proposing to amend its Guidelines to permit specialists' trading assistants to act in this capacity, provided that prior Floor official approval is obtained.

Exchange Rule 35

Exchange Rule 35.20 provides that "Floor employees of members and member organizations are not allowed to be upon or to cross the trading area of the Floor for any purpose during the period between ten minutes preceding the opening of the market and five minutes following the close of the market." In order to conform the above rule to the Guidelines, the Exchange is proposing to amend this paragraph by cross-referencing the proposed amendment to the Guidelines.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(5) of the Act[7] in particular in that it is designed to facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market. The Exchange believes the revisions to the Guidelines support these goals by promoting the efficient, undisrupted conduct of business on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[8] and subparagraph (f)(1) of Rule 19b-4[9] thereunder because the proposed rule change is a "stated policy, practice or interpretation" concerned with the administration of Exchange Rule 35. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2001–41 and should be submitted by November 23, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27526 Filed 11–1–01; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b).
[7] 15 U.S.C. 78f(b)(5).
[8] 15 U.S.C. 78s(b)(3)(A)(i).
[9] 17 CFR 240.19b-4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative has determined that Uganda has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act. Therefore, imports of eligible products from Uganda qualify for the textile and apparel benefits provided under the AGOA.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Leslie S. Yang, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9612.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) (AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as "beneficiary sub-Saharan African countries," provided that these countries (1) have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents, and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Uganda as a "beneficiary sub-Saharan African country." Proclamation 7350 delegated to the United States Trade Representative (USTR) the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Uganda has taken, I have determined that Uganda has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting "Uganda" in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act*, 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 01–27494 Filed 11–1–01; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–5867]

Parts and Accessories Necessary for Safe Operation; Renewal of Fuel Tank Exemptions for Vehicles Manufactured by the Ford Motor Company

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of intent to renew exemptions; request for comments.

SUMMARY: The FMCSA is announcing its intent to renew exemptions granted in response to applications from the Ford Motor Company (Ford), from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). Renewal of the exemptions would enable motor carriers to continue operating commercial motor vehicles (CMVs) manufactured by Ford, and equipped with fuel tanks that do not meet the FMCSA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute, and be labeled or marked by the manufacturer to certify compliance with the design criteria. The FMCSA believes the terms and conditions of the exemptions have ensured a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations, and that renewing the exemptions would not adversely affect highway safety. The exemptions, if renewed, would continue to preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: Comments must be received on or before December 3, 2001.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments electronically at *http://dms.dot.gov*. Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or include a copy of the acknowledgement page that appears after you submit comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

Background

Ford's Applications for Exemptions

Ford applied for exemptions from 49 CFR 393.67(c)(7)(ii), which requires that certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3), which require that liquid fuel tanks be marked with the manufacturer's name and a certification that the tank conforms to all applicable rules in § 393.67.

On August 10, 1999 (64 FR 43417), the FHWA published a notice of intent to grant Ford's applications. The FHWA requested public comment on Ford's applications and the agency's safety analysis, and presented other relevant information known to the agency. After considering all the comments received, the agency granted the exemptions on December 20, 1999 (64 FR 71184). In that notice, the agency noted that the 20 gallon per minute rate referenced in the FMCSA's regulations, while appropriate for diesel fuel-powered vehicles, also mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at the same rate, which is twice the maximum rate gasoline pumps are designed to dispense fuel. The vehicles in question are gasoline-fueled and are capable of receiving fuel at a rate of 17 gallons per minute.

The exemptions covered § 393.67(c)(7)(ii), Construction of liquid fuel tanks; fill pipe, and §§ 393.67(f)(2) and (f)(3)(ii) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable rules in § 393.67.

Reason for Renewing the Exemptions

The FMCSA intends to renew the exemptions because the commercial motor vehicles covered by the exemptions are still in operation, and the agency is not aware of any information, anecdotal or otherwise, that would suggest that the level of safety for the exempted vehicles is not equivalent to the level of safety that would have been achieved if the vehicles complied with §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii). No interested parties have contacted the FMCSA or submitted comments to the docket since December 20, 1999, the date the exemption was granted, indicating that any aspects of the exemptions have had an adverse effect on highway safety. Accordingly, the agency is proposing to renew the exemptions for another two-year period.

Terms and Conditions for the Exemption Renewal

The FMCSA would continue to provide exemptions to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating Ford Econoline-based vehicles. The exemption renewal would be effective upon publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(1) and would be valid for two years from the date of approval, unless revoked earlier by the FMCSA. Ford, or any of the affected motor carriers, may apply to the FMCSA for another renewal of the exemption. The exemption would continue to preempt inconsistent State or local requirements applicable to interstate commerce.

As with the original exemption, the motor carriers operating these vehicles would not be required to maintain documentation concerning the exemption because the vehicles and fuel tanks have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs contain E30, E37, E39, E40, or E47 codes in the fifth, sixth, and seventh positions. The fuel tanks are marked with Ford part numbers F3UA–9002–G*, F3UA–9002–H*, F4UA–9002–V*, F4UA–9002–X*, F5UA–9002–V*, F5UA–9002–X*, F6UA–9002–Y*, F6UA–9002–Z*, F7UA–9002–C*, and F7UA–9002D* where the asterisk (*) represents a "wild card" character (any character of the alphabet).

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested

persons on the exemption renewal. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the FMCSA may renew the exemptions at any time after the close of the comment period.

Issued on: October 29, 2001.

Julie Anna Cirillo,

Acting Deputy Administrator.

[FR Doc. 01–27551 Filed 11–1–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2001–10923]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Krusa, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–2648 or FAX: 202–493–2288.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Supplementary Training Course Application.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0030.

Form Numbers: MA–823.

Expiration Date of Approval: May 31, 2002.

Summary of Collection of Information: Section 1305 (a) of the Maritime Education and Training Act of 1980 indicates that the Secretary of Transportation may provide maritime-related training to merchant mariners of the United States and to individuals preparing for a career in the merchant marine of the United States. Also, the U.S. Coast Guard requires a fire-fighting certificate for U.S. merchant marine officers. This collection provides the information necessary for the maritime schools to plan their course offerings and for applicants to complete their certificate requirements.

Need and Use of the Information: This information collection is necessary for eligibility assessment, enrollment, attendance verification and recordation. Without this information, the courses would not be documented for future reference by the program or individual student.

Description of Respondents: U.S. Merchant Seamen, both officers and unlicensed personnel, and other U.S. citizens employed in other areas of waterborne commerce.

Annual Responses: 2,000.

Annual Burden: 100 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By order of the Maritime Administrator.

Dated: October 30, 2001.

Joel C. Richard,

Secretary.

[FR Doc. 01–27624 Filed 11–1–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: CMIA Annual Report and Direct Cost Claim

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the report "CMIA Annual Report and Direct Cost Claim."

DATES: Written comments should be received on or before January 2, 2002.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Programs Branch, Room 144, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Birdie McKay, Program Compliance Division, 401–14th Street, SW, Room 424, Washington, DC 20227, (202) 874–6630.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A), the Financial Management Service solicits comments on the collection of information described below.

Title: CMIA Annual Report and Direct Cost Claim.

OMB Number: 1510–0061.

Form Number: None.

Abstract: This report is used to gather information from States and territories on interest owed to and collected by the Federal Government for major Federal assistance programs.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: States and territories.

Estimated Number of Respondents: 56.

Estimated Time Per Respondent: 500 hours.

Estimated Total Annual Burden Hours: 28,000.

Comments: Comments submitted in response to this notice will be summarized and/or included in a request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: October 26, 2001.

Bettsy H. Lane.

Assistant Commissioner, Federal Finance.

[FR Doc. 01–27623 Filed 11–1–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the U.S. Treasury Auction Submitter Agreement.

DATES: Written comments should be received on or before January 8, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: U.S. Treasury Auctions Submitter Agreement.

OMB Number: None.

Form Number: PD F 5441.

Abstract: The information is requested from entities wishing to participate in U.S. Treasury Securities Auctions via TAAPSLink.

Current Actions: None.

Type of Review: New.

Affected Public: Depository Institutions, Brokers/Dealers, Assessment Management Companies, Pension Funds, and other Institutional Investors.

Estimated Number of Respondents: 1000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 80.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 29, 2001.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 01–27552 Filed 11–1–01; 8:45 am]

BILLING CODE 4810–39–P

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Federal Register

Friday,
November 2, 2001

Part II

Nuclear Regulatory Commission

10 CFR Parts 2, 19, 20, 21, etc.
Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 21, 30, 40, 51, 60, 61, 63, 70, 72, 73, and 75

RIN 3150–AG04

Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, NV

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing licensing criteria for disposal of spent nuclear fuel and high-level radioactive wastes in the proposed geologic repository at Yucca Mountain, Nevada. As mandated by law, this final rule changes the Commission's technical requirements and criteria, as necessary, to be consistent with final environmental standards for Yucca Mountain issued by the U.S. Environmental Protection Agency (EPA). The criteria address how a repository system at Yucca Mountain must perform and specify that the system must comprise both natural and engineered barriers. The final rule includes licensing criteria, participation in license reviews by the State, affected units of local government, and Indian Tribes; records and reporting; monitoring and testing programs; performance confirmation; quality assurance; personnel training and certification; and emergency planning. Criteria set out in this final rule apply specifically and exclusively to the proposed repository at Yucca Mountain. Consistent with this intent, the Commission is also changing its generic criteria for disposal of spent nuclear fuel and high-level radioactive wastes in geologic repositories. These changes make clear that the generic criteria, specified elsewhere in the regulations, do not apply, nor may they be the subject of litigation, in any NRC licensing proceeding for a repository at Yucca Mountain.

EFFECTIVE DATE: December 3, 2001.

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7285, e-mail tjm3@nrc.gov; Janet Kotra, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6674, e-mail jpk@nrc.gov; or Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203, e-mail cwp@nrc.gov.

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XIII. Small Business Regulatory Enforcement Fairness Act.

I. Background

On February 22, 1999 (64 FR 8640), the Commission published a proposed rule for public comment that would establish licensing criteria for disposal of spent nuclear fuel and high-level radioactive waste in the proposed geologic repository at Yucca Mountain, Nevada. The Energy Policy Act of 1992, Pub. L. 102–486 (EnPA) directed the Commission to make its requirements for geologic disposal consistent with new standards for Yucca Mountain the Environmental Protection Agency (EPA) would develop. The legislation also specifies the type of standards the NRC is to implement [that is, standards which limit individual dose and which are based on and consistent with the National Academy of Sciences' (NAS) 10 recommendations]. The Commission proposed a new, separate part of its regulations, 10 CFR part 63, that would apply only to the proposed repository at Yucca Mountain. The Commission also proposed to leave its existing, generic regulations at Part 60 in place, changed only to state that they do not apply, nor may they be the subject of litigation, in any NRC licensing proceeding for a repository at Yucca Mountain.

In setting forth these criteria, the Commission sought to establish a coherent body of risk-informed, performance-based criteria for a Yucca Mountain facility that is compatible with the Commission's overall philosophy of risk-informed, performance-based regulation. Stated succinctly, risk-informed, performance-based regulation is an approach in which risk insights, engineering analysis and judgment, and performance history are used to (1) focus attention on the most important activities, (2) establish objective criteria based upon risk insights for evaluating performance, (3) develop measurable or calculable parameters for monitoring system and licensee performance, and (4) focus on the results as the primary basis for regulatory decision making. The Commission believes that creating a new part of its regulations accomplishes these objectives better than modifying the generic requirements. The Commission prefers a wholly new part 63 that reflects the fundamentally different approach laid out for Yucca Mountain by EnPA and the final EPA standards, an approach unlike that contemplated when the generic criteria were issued. Specifically, EnPA defined an approach that requires the performance of a Yucca Mountain repository to comply with health-based standards, developed by EPA and based on the recommendations of the NAS. EPA has established standards for Yucca Mountain that consider risk to a hypothetical individual and are to be the only such standards for the postclosure performance of the repository. This approach differs from that taken in the existing generic criteria which relies on quantitative, subsystem performance standards.

The public comment period, originally ending on May 10, 1999, was extended to June 30, 1999, in response to many requests for extension (64 FR 24092; May 5, 1999). During the public comment period, the NRC staff held a series of public meetings in Nevada to discuss the proposed rule and solicit public comment. Meetings were held at Las Vegas and Beatty, Nevada, on March 23 and 25, respectively. Later, NRC held more meetings at Amargosa Valley, Las Vegas, and Caliente, Nevada, on June 15, 16, and 17, respectively. In developing this final rule, NRC considered comments received at these meetings along with written comments sent to NRC. The NRC also held a facilitated round table discussion on defense in depth as applied to a possible repository at Yucca Mountain on November 2, 1999, in Las Vegas.

The EPA published final radiation protection standards for the potential Yucca Mountain repository (40 CFR part 197) on June 13, 2001 (66 FR 32073). The EPA standards differ from the performance objectives proposed by the Commission at 10 CFR part 63. EPA established an annual individual protection dose limit of 0.15 mSv (15 mrem), and EPA included separate ground-water protection criteria in its final standards for the purpose of protecting ground water. In formal comments on EPA's proposed standards, dated November 3, 1999, the NRC staff supported a somewhat different approach. The NRC approach, which the Commission believes is adequately protective of public health and safety and ground water, used a comprehensive, all-pathway limit. However, the ultimate decision was EPA's to make and, as called for under the EnPA, the Commission will change its technical requirements and criteria to be consistent with EPA's final standards.

II. Implementation of the Environmental Protection Agency Final Standards

The U.S. Environmental Protection Agency (EPA) published Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada, at 40 CFR part 197 on June 13, 2001 (66 FR 32073). The Energy Policy Act of 1992, Pub. L. 102–486 (EnPA) directs the Commission to modify its technical requirements and criteria to be consistent with these standards. The Commission has imported the EPA standards into its final 10 CFR part 63 regulations in as transparent a manner as possible. Three categories of changes were necessary to accomplish this. First, the two subparts of the EPA standards—subpart A for storage and subpart B for disposal—have been added to part 63 as subparts K and L, respectively. Second, in most cases, the Commission adopted wording precisely as it appears at 40 CFR part 197. The Commission also made nonsubstantive changes that conformed to the regulatory style of the proposed part 63, and other U.S. Nuclear Regulatory Commission (NRC) regulations; removed unnecessary references to NRC; and adapted or removed redundant definitions. Lastly, as the implementing authority for the EPA standards, we have provided additional specifications and requirements based on the proposed part 63 rule and public comments we received in the areas where it is appropriate to do so. Indeed, EPA has acknowledged NRC's authority to add implementing requirements. As part of its rulemaking process, the Commission proposed and received comments on many aspects of radiation exposure scenarios, including several matters relevant to implementation of the EPA standards. Although EPA publication of the standards postdated the formal comment period for proposed part 63, the Commission has provided further specifications in subpart L, where needed, for clarification. We believe these additions are consistent with EPA's intent and are responsive to public comments we received. A brief summary of key aspects of the Commission's implementation of EPA's Standards in the final part 63 regulations appears below.

Radiation Standards for Storage

NRC has adopted the 0.15 mSv/year (15 mrem/year) dose limit for members of the public, during the storage period, and the associated requirements for determining compliance with the standards. The EPA standards identify the standards for storage as applicable at Yucca Mountain during the time period before closure of the proposed repository. In proposed part 63, NRC characterized this phase as "preclosure." Therefore, we are implementing EPA's standards for storage to apply to the preclosure time period.

Radiation Standards for Disposal

The NRC has adopted the 0.15 mSv/year (15 mrem/year) dose limit for the reasonably maximally exposed individual, during the disposal period, and the associated requirements for determining compliance with the standards.

Ground-Water Protection Standards

NRC has adopted the ground-water protection standards and the associated requirements for determining compliance with the standards.

Radiation Standards for Human Intrusion

NRC has adopted the 0.15 mSv/year (15 mrem/year) dose limit for the reasonably maximally exposed individual as a result of a human intrusion and the associated requirements for determining compliance with the standards. One aspect of EPA's final standards is the specification of the characteristics of a postulated scenario for evaluating the consequences of human intrusion. NRC fully supports and has adopted the characteristics of the human intrusion scenario as specified in 40 CFR part 197 and has specified one additional requirement to further characterize the scenario. Specifically, part 63 provides that no particulate waste material falls into the borehole, and that DOE should assume the exposure scenario includes only those radionuclides transported to the saturated zone by water (e.g., water enters the waste package, releases radionuclides, and transports radionuclides by way of the borehole to the saturated zone). This change responds to a public comment seeking clarification of this aspect of the human intrusion scenario in proposed part 63. The Commission considers the additional requirement to be appropriate for addressing the comment and to be a matter of implementation of the EPA final standards. Further, the requirement is consistent with the human intrusion scenario as specified in 40 CFR part 197.

Reference Biosphere

The EPA standards for Yucca Mountain specify criteria that pertain to the characteristics of a reference biosphere, for use in the performance assessments that are required to show compliance with the postclosure standards for disposal. NRC fully supports and has adopted, in part 63, the characteristics of the reference biosphere as specified in 40 CFR part 197 and has included an additional requirement on characteristics of the biosphere that are consistent with EPA's final standards and that were discussed in proposed part 63 (64 FR 8640; February 22, 1999). Specifically, part 63 provides a further requirement for biosphere pathways by stating these pathways * * * "must be consistent with arid and semi-arid conditions." This addition, from proposed part 63 (64 FR 8677), clarifies the bounds on what DOE needs to consider and is consistent with present knowledge of

how the climate could change over the next 10,000 years.

Reasonably Maximally Exposed Individual

The EPA standards specify characteristics of the reasonably maximally exposed individual (RMEI) for use in the performance assessments used to demonstrate compliance with standards for disposal. The NRC fully supports and has adopted the characteristics of the reasonably maximally exposed individual from 40 CFR part 197, and has included requirements specifying additional characteristics that are consistent with the EPA standards and were discussed in proposed part 63 (64 FR 8640). First, part 63 provides that the reasonably maximally exposed individual * * * "is an adult with metabolic and physiological considerations consistent with present knowledge of adults." This addition, suggested for the average member of the critical group in proposed part 63 (64 FR 8677), clarifies assumptions DOE must make in estimating the radiation exposure to the reasonably maximally exposed individual. This addition is considered to be consistent with EPA's standards because: (1) The standards specify a consumption rate for water (i.e., 2 liters per day) that corresponds with that of an adult; and (2) a dose limit of 0.15 mSv (15 mrem) for an adult is protective of children as well as other age groups. The requirement that metabolic and physiological considerations are consistent with present knowledge of adults is consistent with EPA's final standards, which state that DOE should not project changes in human biology (66 FR 32133).

Second, although the EPA standards specify a representative volume approach for demonstrating compliance with the separate ground-water protection standards, they leave to NRC the approach for demonstrating compliance with the individual protection standard for disposal. EPA's approach for ground-water protection specifies a representative volume of 3,000 acre-feet for estimating the concentrations of radionuclides. The 3,000 acre-feet representative volume of ground water is consistent with assumptions for the critical group described in proposed part 63 (64 FR 8646). Specifically, in the proposed part 63, we suggested consideration of a farming community of up to 100 individuals, living on 15 to 25 farms. Fifteen to 25 farms are consistent with current conditions in the town of Amargosa Valley, Nevada, and would be the number needed to produce the range of locally produced food that is currently consumed in this area. The purpose of identifying 15 to 25 farms and specifying 100 individuals was to provide DOE with flexibility in determining an appropriate water demand consistent with a farming community of that size. A community of 15 to 25 farms would pump a sufficiently large volume of water and involve a broad range of exposure pathways. Of primary importance is the ingestion pathway, through consumption of water, crops, and animal products. The Commission considers that the water demand of between 15 and 25 farms can be represented by a volume of at least 3,000 acre-feet and, thus, is consistent with the farming community proposed for comment in part 63. Additionally, the preamble to EPA's final standards stated the NRC could use an approach to assess water usage in the hypothetical community, in which the RMEI resides, that was similar to the representative volume approach used for ground-water protection (i.e., consider a representative volume of 3,000 acre-feet). Therefore, the Commission removed the flexibility provided DOE to determine an appropriate water demand. This revised approach limits speculation on water demand and provides DOE with a specific value for the water demand that the NRC staff finds acceptable to estimate the RMEI dose. Part 63 specifies that the reasonably maximally exposed individual uses well water with an average concentration of radionuclides based on a representative volume of water of 3,000 acre-feet.

Unlikely Features, Events, and Processes

The EPA standards exclude unlikely features, events, and processes (including sequences of events and processes) from analyses for estimating compliance with the standards for human intrusion and ground-water protection. However, the EPA standards do not specify a frequency for unlikely features, events, and processes, and acknowledge that a value is to be specified by NRC (66 FR 32135). NRC fully supports excluding unlikely features, events, and processes from analyses for estimating compliance with the standards for human intrusion and ground-water protection. Although we have provided no specific quantitative value for determining when exclusion of unlikely features, events, and processes is appropriate, the final regulations require DOE to exclude unlikely features, events, and processes from the specified analyses upon prior approval of the Commission for the probability limit used for unlikely features, events, and processes. The Commission recognizes that specification of a probability limit for unlikely features, events, and processes, as is done for "very" unlikely features, events, and processes, would be a more direct approach. Although the Commission considers a frequency for unlikely features, events, and processes would fall somewhere between 10^{-8} to 10^{-4} per year, the Commission has decided not to specify a value in the regulations at this time. The Commission plans to conduct an expedited rulemaking to quantitatively define the term "unlikely." Consideration will be given to whether a range of values or a single specific value should be used as well as the appropriate numerical value(s). The expedited rulemaking will provide an opportunity for public comment to assist the Commission in determining an appropriate approach.

Total Effective Dose Equivalent

The EPA and the NRC use different quantities to assess the total dose to exposed members of the public (including the RMEI). EPA uses the annual committed effective dose equivalent (annual CEDE), defined as the sum of the committed effective dose equivalent from internal doses resulting from one year's exposure to radioactive materials, and the effective dose equivalent from external radiation exposure during the year. The NRC uses the total effective dose equivalent (TEDE) for the same purpose. There are differences between TEDE and annual CEDE in some contexts. Specifically, in determining the external dose component of TEDE, NRC specifies use of the deep-dose equivalent at 10 CFR 20.1003. The deep-dose equivalent is a point measurement that does not sum the doses to the organs or tissue through use of weighting factors. This approach may reflect the fact that compliance with part 20 is customarily assessed using a Thermo-Luminiscent Device (TLD) or a film badge, and the results of such measurements reflect deep-dose equivalent. By contrast, in determining annual CEDE, the external dose component is determined using the effective dose equivalent, which involves summing the products of organ doses and weighting factors. In those situations in which the two measures of external dose differ, the effective dose equivalent approach probably provides a better estimate for measuring radiation risk.

Nonetheless, NRC's part 20 does allow for consideration of weighting factors for individual organs in the case of external exposures on a case-by-case basis. *See* 10 CFR 20.1003, Footnote 2 to Table on Organ Dose Weighting Factors. In practice, computer codes used by NRC in decommissioning and HLW disposal currently calculate external doses using effective dose equivalent and not deep-dose equivalent. *See* NUREG/CR 6676, "Probabilistic Dose Analysis Using Parameter Distributions Developed for RESRAD and RESRAD-Build Codes," 3–1 (July 2000); NUREG–1464, "NRC Iterative Performance Assessment," 7–5 (October 1995); and NUREG/CR–5512, "Residual Contamination from Decommissioning, User's Manual DandD Version 2.1," Vol. 2, E–1 (April 2001). Consequently, use of organ doses and organ weighting factors, from Federal Guidance Report 12 and ICRP in its Publication 26, for external doses in assessing compliance with dose limits for members of the public in the general environment and the individual protection standard in connection with a geologic repository will yield exactly the same result as applying annual CEDE. As a result, in assessing compliance with the individual protection standard, the staff intends to use effective dose equivalent for assessing external exposure.

For purposes of assessing actual doses to workers at the Yucca Mountain repository, however, the Commission has directed that deep-dose equivalent be used in determining TEDE. This ensures consistency with NRC's regulations for limiting doses to occupationally exposed workers.

Requirements for Environmental Impact Statement

EPA's standards require DOE to estimate peak dose under the evaluations for individual protection and human intrusion. The results of these evaluations are to be included in DOE's environmental impact statement (EIS). The Commission has modified part 63 to include the provision that DOE must include peak dose estimates in its EIS, but notes that there is no standard that must be met with respect to these peak dose calculations, and that there is no finding that the NRC must make with respect to these peak dose calculations nor may they be the subject of litigation in any NRC licensing proceedings for a repository at Yucca Mountain. However, DOE still must carry out its responsibilities under the National Environmental Policy Act in accordance with the final EPA standards.

Definitions

Barriers

Proposed part 63 and EPA's final standards define "barriers" slightly differently. The Commission believes there is no substantive difference between the two definitions and has adopted the EPA definition at § 63.2. The EPA definition, among other things, provides that the Commission would determine a time period over which a material, structure or feature would perform its intended function. The regulation at § 63.115 requires DOE to describe the capability of each barrier to isolate waste. The description would include information on the time period over which DOE asserts that each barrier will perform its intended function including any changes during the compliance period. This information on expected performance will enable NRC to determine the period of time that any particular material, structure or feature prevents or substantially reduces the rate of movement of water or radionuclides from the Yucca Mountain repository to the accessible environment, or prevents the release or substantially reduces the release rate of radionuclides from the waste.

Ground Water

Proposed part 63 and EPA's final standards define "ground water" differently. To implement the EPA standard, part 63 has adopted the EPA definition for ground water and revised the use of the term "ground water" in the proposed rule accordingly. The single definition for ground water is provided at § 63.302.

High-Level Waste

Proposed part 63 and EPA's final standards define "high-level waste" slightly differently. The Commission believes there is no substantive difference between the two definitions and has modified its definition to more closely reflect the definition provided in the Nuclear Waste Policy Act of 1982 and the final standards.

Important to Waste Isolation

Proposed part 63 defined "important to waste isolation" in the context of meeting the individual dose limit for the postclosure period of the repository (i.e., disposal). This use of the term is important in defining the scope of the requirements for: DOE's quality assurance program (specified at subpart G); multiple barriers (specified at 10 CFR 63.113); performance confirmation (specified at subpart F); and changes, tests, and experiments (specified at 10 CFR 63.44). The Commission has expanded the definition of the term, "important to waste isolation" to include both the dose limit and the separate ground-water protection limits contained in the EPA standards.

Performance Assessment

Proposed part 63 and EPA's final standards define "performance assessment" slightly differently. The Commission believes there is nosubstantive difference between the two definitions and has adopted the EPA definition at § 63.2.

III. Public Comments and Responses

In preparing the final rule, the NRC staff carefully reviewed and considered more than 700 discrete comments enclosed in about 160 individual letters received during the public comment period. The NRC staff also identified and evaluated an additional 193 comments made at public meetings. To simplify the analysis, the NRC staff grouped all written and oral comments on the rule into the following six major topic areas:

(1) Regulatory Process and Licensing Process;

(2) Requirements for the Preclosure Period;

(3) Requirements for the Postclosure Period;

(4) General Requirements;

(5) Selected Topics; and

(6) Beyond the Scope of This Rulemaking.

1 Regulatory Process and Licensing Process

1.1 Promulgation in Advance of EPA Standards

Issue 1: Is NRC's action in promulgating part 63 in advance of EPA standards beyond the scope of its authority?

Comment. Many of those who commented on the NRC's proposed part 63 expressed concern that NRC was "usurping" EPA's authority by declaring its own standards and technical requirements in advance of EPA's issuance of final standards. For example, the State of Nevada pointed out the EnPA does not mandate a new Commission rule specific to Yucca Mountain to replace its general rule for licensing geologic repositories. It only requires modification of NRC's technical requirements and criteria, as necessary, to be consistent with new EPA standards once they are published. Further, the State pointed out that EnPA does not authorize the Commission to expand its licensing jurisdiction to include proposing standards for human safety and environmental protection

that are within the statutory mandate and jurisdiction of EPA.

Response. The Commission acknowledges the statutory role given to EPA for setting standards for Yucca Mountain. It is with full recognition of that role that the Commission is publishing final criteria that are consistent with EPA's published standards. In the supplementary information published with the proposed rule, the Commission stated clearly that "* * * the authority and responsibility for setting public health and safety standards for radioactive waste disposal rest with EPA" (64 FR 8643; February 22, 1999). The Commission went on to say that "* * * [w]hen EPA issues final standards for Yucca Mountain or if new HLW legislation is enacted into law, the Commission will amend its criteria at 10 CFR part 63, if necessary, to be consistent with the final standards" (ibid. 8644).

It is true the EnPA did not direct the NRC to develop a new rule specific to Yucca Mountain to replace its general rule for licensing geologic repositories. It is also true the EnPA does not diminish NRC's authority under the Atomic Energy Act to conduct rulemaking nor to select the manner in which it will revise regulatory requirements. In the proposed rule, the Commission explained that since the initial technical criteria at 10 CFR part 60 were promulgated more than 15 years ago, there has been notable evolution in the capability of technical methods for assessing the performance of a geologic repository at Yucca Mountain. The Commission stated that "(t)hese new methods were not envisioned when the part 60 criteria were established and their implementation for Yucca Mountain will avoid the imposition of unnecessary, ambiguous, or potentially conflicting criteria that could result from the application of some of the Commission's generic requirements at 10 CFR part 60" (64 FR 8641). The Commission recognized that its generic part 60 requirements will need updating if applied to sites other than Yucca Mountain. However, the Commission elected not to conduct an update of part 60 now but, instead, decided to place all the regulations needed for the licensing of a repository at Yucca Mountain in a separate CFR part. *See* Response to Issue 3. The Commission explained that it "believes this to be the most direct and time-efficient approach to the specification of concise, site-specific criteria for Yucca Mountain that are consistent with current assumptions, with site-specific information and performance assessment experience, and with forthcoming EPA standards that must also apply solely to Yucca Mountain" (64 FR 8643). Consistent with the views expressed by most commenters, the Commission has awaited EPA's publication of final standards for Yucca Mountain and has changed its technical requirements and criteria to conform to EPA's standards, as required by law.

Issue 2: Should NRC wait for EPA to release final standards before completing part 63?

Comment. Commenters differed on the issue whether NRC should proceed with proposed part 63 or wait until after EPA publishes final standards. Commenters in favor of NRC moving forward with the proposed part 63 supported the proposed approach as protective of public health and safety and the environment. They cited timely specification of NRC regulations for the potential repository as a benefit for the national program. Others, however, believed that it was premature for NRC to publish final regulations. They felt that doing so would be contrary to the sequence set by Congress in the EnPA which directs EPA to issue radiation standards first and then for NRC to conform its technical requirements to those standards. These commenters saw no reason for NRC to act outside this time sequence and favored withdrawal of the proposed rule and resubmittal with any necessary adjustments after promulgation of EPA standards.

Response. The EnPA specified that EPA was to publish radiation standards for Yucca Mountain not later than 1 year after receipt of the findings and recommendations of the National Academy of Sciences (NAS). It also directed NRC to modify its technical requirements and criteria not later than 1 year after EPA publishes final standards. The Commission believes that this schedule reflects Congress' intent to have a final regulatory structure before DOE would start preparation of a license application if Yucca Mountain were recommended as a site for a geologic repository. The NAS published its recommendations in August 1995. The NRC explained when it published its proposed rule, on February 22, 1999, that it had decided to proceed, even in the absence of EPA standards, because of the short time period allotted NRC to conduct its own rulemaking. In one year, NRC would have to modify its standards and requirements and to implement certain assumptions in the EnPA related to the effectiveness of postclosure oversight of the repository. The Commission also believed it was in the best interest of the national program to proceed, given that DOE could be in a position to submit a license application to NRC in 2002 (64 FR 8641). It is important to recognize that most of the requirements proposed at part 63 involve matters that are unaffected by the final EPA standards (e.g., licensing procedures, records and reporting, monitoring and testing programs, performance confirmation, quality assurance, personnel training and certification, and emergency planning). Now that EPA has published final standards, NRC is prepared to complete its implementing regulations at part 63 with due regard to the requirement in EnPA to be consistent with EPA's standards.

Issue 3: Why is there a need to develop a site-specific disposal regulation for the Yucca Mountain site?

Comment. Several commenters questioned NRC's need to develop a whole new body of site-specific regulations as opposed to revising its generic regulations at part 60, as necessary, to conform to the new, site-specific standards to be developed by EPA. These same commenters noted that certain portions of proposed part 63 depart significantly from part 60 (e.g., there are no quantitative subsystem requirements) and, in the view of several commenters, weaken the safety requirements for any proposed repository at Yucca Mountain.

Response. The Commission is establishing a new, separate part of its regulations (at part 63) that would apply only to the proposed repository at Yucca Mountain. The Commission will leave existing, generic regulations at part 60 in place, modified only to state that they do not apply, nor may they be the subject of litigation, in any NRC licensing proceeding for a repository at Yucca Mountain. The Commission believes this to be the most direct and efficient approach for specifying concise, site-specific criteria for Yucca Mountain that are consistent with current assumptions, with site-specific information and performance assessment experience, and with EPA standards that apply solely to Yucca Mountain.

In developing these criteria, the Commission sought to establish a coherent body of risk-informed, performance-based criteria for Yucca Mountain that is compatible with the Commission's overall philosophy of risk-informed, performance-based regulation ["Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities—Final Policy Statement" (60 FR 42622; August 16, 1995)]. Stated succinctly, risk-informed, performance-based regulation is an approach in which risk insights, engineering analysis and judgment (e.g., defense in depth), and performance history are used to: (1) Focus attention on the most important activities, (2) establish objective criteria for evaluating performance, (3) develop measurable or calculable parameters for monitoring system and licensee performance, (4) provide flexibility to determine how to meet the established performance criteria in a way that will encourage and reward improved outcomes, and (5) focus on the results as the primary basis for regulatory decision making. The Commission believes that creating a new part of its regulations to accomplish these objectives is preferable to modifying its generic requirements, given that EnPA and NAS laid out a fundamentally different approach for Yucca Mountain than was contemplated when the generic criteria were promulgated. Specifically, EnPA and NAS outlined an approach that would require the performance of a Yucca Mountain repository to comply with health-based standards established in consideration of risk to individuals in a hypothetical group. The law also stated that the new health-based standards were to be the only quantitative standards for the postclosure performance of the repository. This approach departs from the approach taken in the existing generic criteria which rely on compliance with cumulative release limits and separate, quantitative, subsystem performance objectives. Further, the Commission's current approach is consistent with EPA standards for Yucca Mountain. Therefore, after carefully considering the public comments, the Commission remains of the view that it is best to develop site-specific regulations—regulations that reflect an improved scientific understanding of the site; are based on state-of-the-art analyses; are consistent with the Commission's philosophy to implement risk informed regulation; and implement the separate, site-specific standards that EPA has issued for Yucca Mountain.

Commenters correctly pointed out that there are significant differences between part 60 and part 63. In the Commission's view, the part 63 regulations do not in any way lessen DOE's responsibility to site, design, and operate the proposed repository safely. Much has been learned regarding the expected performance of geologic repositories in general (Nuclear Energy Agency, Lessons Learnt from Ten Performance Assessment Studies, Paris, France, NEA/OECD Working Group on Integrated Performance Assessments for Geologic Repositories, 1997), and a potential Yucca Mountain repository in particular over the nearly two decades since part 60 was written. Part 63 reflects and incorporates much of this new information. The risk-informed, performance-based approach used to develop the rule (see SECY–97–300, "Proposed Strategy for Development of Regulations Governing Disposal of High-Level Radioactive Wastes in a Proposed Repository at Yucca Mountain," U.S. NRC, December 24, 1997) eliminates arbitrary or prescriptive siting and design criteria, as well as detailed requirements such as quantitative subsystem performance objectives. That being said, however, part 63 still requires DOE to demonstrate reliance on multiple barriers and defense in depth, preservation of the retrieval option, implementation of a performance confirmation program, transparency in decision making, and application of rigorous quality assurance (QA). Moreover, as a result of public comments, other provisions have been added to part 63 to ensure the adequacy and sufficiency of DOE's compliance demonstrations. (See Multiple Barriers and Defense in Depth for additional discussion on quantitative subsystem requirements.)

1.2 Differences Between Part 63 and EPA Standards for WIPP

Issue: Why is there a difference between the performance objectives in NRC's proposed 10 CFR part 63 for Yucca Mountain and EPA's 40 CFR part 191 standards used to certify the Waste Isolation Pilot Project (WIPP)?

Comment. Many commenters expressed concern that NRC's proposed regulations for Yucca Mountain provided less protection than EPA's standards for WIPP. They regarded NRC's proposed regulations as less stringent than the standards for WIPP. Many cited the absence of separate criteria for protection of ground water in NRC's proposed regulation as evidence that the WIPP standards, which include separate requirements for protection of ground water, are more restrictive. Commenters also cited the differences in the individual protection limits [0.15 mSv/year (15 mrem/year) for WIPP compared to 0.25 mSv/year (25 mrem/year) limit for Yucca Mountain], and the compliance location (5 km for WIPP compared to approximately 20 km for Yucca Mountain). Generally, commenters asked NRC to set standards similar to, or more stringent than, those for WIPP. Some argued that a greater level of protection for people near Yucca Mountain was needed to offset potential exposures from other sources in the region (i.e., the Beatty low-level waste site and the Nevada Test Site, NTS).

Response. Final EPA standards adopted numerical limits that are comparable to those applied at WIPP. Consistent with the views expressed by a majority of commenters, the Commission has awaited EPA's publication of final standards for Yucca Mountain and is adopting final part 63 criteria that are consistent with those limits, as required by law.

1.3 Multi-Staged Licensing

Issue 1: Should DOE be allowed to begin to place waste in the repository or to store waste in surface facilities once NRC has determined that there is enough space for initial operations, or should DOE have to wait until site construction is complete?

Comment. Many commenters indicated that NRC should not allow DOE to place waste in the repository until construction is complete. These commenters had general concerns that only after construction is completed would emergency equipment and safety precautions be available in case of an accident; and that any waste, if emplaced before completing construction, may pose an unnecessary risk to the construction workers. Alternatively, other commenters suggested that storage of waste at the repository should be allowed during construction as long as it does not pose any additional health or safety risk. The Nuclear Energy Institute (NEI) suggested that part 63 should be changed so that NRC could authorize DOE to construct all or part of the geologic repository operations area (GROA), and could authorize early use of the surface facilities to store waste.

Response. The proposed rule retained the licensing phases as described at part 60. Once construction of the GROA is substantially complete (as specified at § 63.41), DOE may update its application and the Commission may issue a license to receive and possess source, special nuclear, or byproduct material at the GROA. Prior to issuing such a license, the Commission must make certain findings, such as: (1) Activities to be conducted at the GROA comply with the rules and regulations of the Commission, which will include radiation protection for workers; (2) adequate protective measures can and will be taken in the event of a radiological emergency; (3) there is no unreasonable risk to the health and safety of the public; and (4) construction of the GROA has been substantially completed. Construction is deemed

substantially complete, for this purpose, if among other things, DOE has completed construction of sufficient underground storage space for *initial* operations. Thus, part 63 provides DOE flexibility to plan for efficient repository operations for receipt and emplacement of waste because of the significant length of time required to complete excavation of the entire underground facility.

The DOE has not indicated to the Commission any intention to seek an authorization for early use of the surface facilities for storage of spent nuclear fuel. Such an authorization likely would necessitate a change to (or an exemption from) the regulations. Before NRC would make changes of this type to its regulations, NRC would need to publish the proposed changes and seek public comment.

Issue 2: Should DOE have to prepare a second EIS to support a decision to issue a license amendment for permanent closure, as this may constitute a major Federal action?

Comment. Commenters stated that the license amendment for permanent closure is a major Federal action and should require a new EIS (i.e., not rely upon the EIS prepared for the license application). They expressed the view that a decision to issue an amendment for permanent closure would include a decision that retrieval of the waste is not necessary and that the expected impacts of the waste affecting the environment far into the future and far beyond the site are acceptable. They also pointed out that the decision to issue the license amendment will be based, in part, on performance confirmation data collected after the original EIS is submitted. One commenter was concerned that the proposed requirement at § 51.67 did not explicitly state the need to include measures to mitigate impacts including transportation.

Response. The regulations require DOE to supplement its EIS, if necessary, when the application for the license amendment for permanent closure is submitted [§ 63.51(b)]. The decision involved in granting the amendment would be a subset of decisions made in the original EIS and any supplements. A supplement to the EIS would need to address such things as substantial changes to the proposed action or significant new circumstances or information relevant to environmental concerns. The Commission believes the commenters' request for requiring DOE to consider these matters at the time of permanent closure is adequately covered by the regulations.

The Commission did not adopt the suggested change to § 51.67 to include a specific requirement to consider mitigation measures that the Council on Environmental Quality (CEQ) regulations dictate for the contents of the EIS, which include requirements for consideration of measures to mitigate impacts including transportation. DOE would need to comply with applicable CEQ requirements, and the Commission does not believe any regulatory changes are necessary to ensure compliance by DOE.

Issue 3: Is there any limit on the types and amounts of radioactive materials (e.g., tons of HLW) that DOE would be allowed to receive and possess at Yucca Mountain if these materials were for site characterization activities or testing during construction?

Comment. EPA suggested that, under the proposed rule (§§ 63.7(a) and 63.74(a)(1)), DOE could take any types and amounts of radioactive materials onto the site if it claimed that the materials were for site characterization activities.

Response. EPA correctly notes that proposed part 63 does not place any specific quantitative limit on the amount of radioactive materials DOE might use for site characterization or testing. However, a specific numerical limit is unnecessary. Section 113(c)(2)(A) of the NWPA prohibits the DOE from using radioactive material in conducting site characterization activities unless the Commission concurs that such use is necessary. Under § 63.16(a), if DOE's planned site characterization activities include onsite testing with radioactive material, the Commission must determine whether the proposed use of radioactive material is necessary. The Commission would not concur in any DOE proposal to bring radioactive materials on site unless it was convinced that both the types and amounts were needed for site characterization. The proposed part 63 would not have allowed DOE to receive and possess "any types or amounts" of radioactive materials as suggested by EPA. Thus, changes to the proposed regulations are not needed.

Issue 4: In a multi-staged licensing approach, does the NRC require that all information be available at the first stage (i.e., construction authorization) or will DOE be allowed to provide certain information in a "staged" manner consistent with that particular stage of the licensing process?

Comment. DOE commented that it intends to provide a sufficient level of information to allow the NRC to make a finding of reasonable assurance at the time of the construction authorization in accordance with § 63.31. However, DOE stated that it would be helpful if the Commission would clarify its intent regarding the level of information required in the license application. In particular, DOE recommended three changes to proposed subpart B: (1) The language of § 63.21(b)(3) calling for "a detailed plan" to provide physical protection for HLW should be changed to a "description of the plan" to provide physical protection for HLW because this would be more consistent with the language used in other provisions of § 63.21(b) and would reflect what DOE believes to be an adequate level of detail on this subject; (2) the proposed § 63.24(a) requirement that the application be as complete as possible at the time of docketing based on reasonably available information should be moved to § 63.21(a) because this section provides requirements for the content of the license application; and (3) the proposed finding that the Commission would make to authorize construction at § 63.31(a)(6) that "DOE's proposed operating procedures to protect health and to minimize danger to life or property are adequate" should be changed to "DOE's proposed plan to develop operating procedures" because, at the time of construction authorization, details of the repository design will not, in some cases, be sufficient to support development of operating procedures and DOE does not believe that the procedures need to be in place at this stage of the licensing process. Another commenter suggested that the regulations for each licensing stage should be modified to state explicitly that the corresponding Commission finding must take into account "the scope of the authorization requested and the information available."

Response. part 63 provides for a multi-staged licensing process that affords the Commission the flexibility to make decisions in a logical time sequence that accounts for DOE collecting and analyzing additional information over the construction and operational phases of the repository. The multi-staged approach comprises four major decisions by the Commission: (1) Construction authorization; (2) license to receive and emplace waste; (3) license amendment for permanent closure; and (4) termination of license. The time required to complete the stages of this process (e.g., 50 years for operations and 50 years for monitoring) is extensive and will allow for generation of additional information. Clearly, the knowledge available at the time of construction authorization will be less than at the subsequent stages. However, at each stage, DOE must provide sufficient information to support that stage. DOE has stated its intent to submit, and NRC expects to receive, a reasonably complete application at the time of construction authorization to allow the Commission to make a construction authorization decision. This is reflected in the requirement at § 63.24(a) that the application be as complete as possible in light of information that is reasonably available at the time of docketing. The Commission believes the regulations, as proposed, provide the necessary flexibility for making licensing decisions consistent with the amount and level of detail of information appropriate to each licensing stage. However, we agree with DOE that the proposed requirement at § 63.24(a) speaks to the content of the initial application, as well as to all subsequent updates, and, therefore, it has been included at the end of § 63.21(a).

Regarding DOE's recommendation that the requirement for a "detailed plan" to provide physical protection be changed to require a "description of the plan," the Commission agrees that the suggested revision provides greater consistency with other provisions of § 63.21(b) and with § 72.24(o) and has revised § 63.21(b)(3) to require "(a) description of the detailed security measures for physical protection of high-level radioactive waste in accordance with § 73.51 of this chapter." Notwithstanding this change, DOE must provide sufficient information at each stage of the licensing process to support that stage, and DOE must provide sufficient detail necessary to allow NRC to review DOE's design.

Regarding DOE's recommendation that the requirement that "DOE's proposed operating procedures" are adequate be changed to require the adequacy of "DOE's proposed plan to develop operating procedures," the Commission believes a proposed plan to develop operating procedures is not sufficient to meet the requirement at § 63.31(a)(6). However, to support the construction authorization, the DOE must provide a sufficient level of information to allow NRC to review DOE's design, which would include any operating procedures that affect design.

Issue 5: Is there any control over the site after license termination?

Comment. Commenters expressed general concern regarding oversight of the site after license termination. One commenter supported the approach in proposed part 63 that leaves a single agency (DOE) responsible for control over the site after license termination.

Response. License termination represents the end of NRC involvement with the repository. However, the Commission would not terminate the license unless and until all requirements have been met by DOE. License termination removes NRC oversight of the Yucca Mountain site, leaving DOE as the single Federal authority responsible for the site. Under the proposed part 63, the license amendment for permanent closure must include a DOE program for continued oversight to prevent any activity at the site that poses an unreasonable risk of breaching the geologic repository's engineered barriers or increasing radiation exposure of individual members of the public beyond allowable limits. The final part 63 continues to retain these same requirements. This is consistent with statutory direction in section 801(b)(2) of EnPA that the Commission's requirements assume that, following repository closure, the inclusion of engineered barriers and DOE's postclosure oversight will be sufficient to prevent any activity at the site that poses an unreasonable risk of breaching the repository's engineered or geologic barriers, and prevent any increase in the exposure of individual members of the public to radiation beyond allowable limits. The NRC will review the adequacy of DOE's program for continued oversight at the time DOE submits an application to amend the license for permanent closure.

Issue 6: Are the standards for issuance of a license sufficiently clear?

Comment. EPA asked why the term "unreasonable risk" was used at § 63.41(c) and suggested that reference to the dose limit may be more appropriate. EPA also asked what the basis was for judging what is necessary for "common defense and security" at § 63.42.

Response. The standards for issuance of a license specified at § 63.41 and conditions of the license at § 63.42 provide a general description of standards and conditions that the Commission will apply to a license application for an HLW repository at Yucca Mountain. They would include, among other things, compliance with dose limits established by EPA in its final standards for Yucca Mountain. Although the terms identified by EPA (i.e., "unreasonable risk" and "common defense and security") are general terms, clarification for what is required is provided earlier in the regulation. In particular, requirements for the content of the license application (specified at § 63.21) describe and clarify the types of analyses and information that would be necessary for DOE's demonstration of compliance with these standards and conditions including, among other things, reference to dose limits and physical protection of the repository (i.e., common defense and security). Revision of § 63.21 in the proposed rule to provide additional clarification of these terms is considered unnecessary.

1.4 Reasonable Assurance

Issue 1: Should a concept other than "reasonable assurance" be incorporated into the implementing regulations for Yucca Mountain?

Comment. EPA commented that generic disposal standards at 40 CFR Part 191 require compliance to be demonstrated with "reasonable expectation," and that proposed NRC implementing regulations for Yucca Mountain at Part 63 require demonstration with "reasonable assurance." EPA believes that a connotation has developed around "reasonable assurance" that could lead to an extreme approach of selecting worst case values for important parameters. EPA believes that "reasonable assurance" is appropriate for operating facilities or in the context of the nuclear power plant licensing program where facilities operate under active institutional controls during their lifetime. It is not appropriate, in EPA's view, for the licensing of a repository where projections of performance have inherently large ranges of uncertainty. EPA prefers "reasonable expectation" because it believes "reasonable assurance" has come to be associated with a level of confidence that is not appropriate for the very long term analytical projections that will be necessary for evaluating Yucca Mountain.

Another commenter expressed the view that the majority of people in the HLW field view "reasonable assurance" as being more stringent than "reasonable expectation." This commenter expressed the concern that it is likely that by requiring "reasonable assurance" the NRC will be seen as implementing EPA's standards in a manner more stringent than intended by the EPA. The commenter also indicated that if it is NRC's position that the two terms are synonymous in the context of HLW disposal, then this should be made more explicit.

Response. Confidence that DOE has, or has not, demonstrated compliance with EPA's standards is the essence of NRC's licensing process. It is the Commission's responsibility to determine whether DOE has or has not demonstrated compliance. The Commission does not believe that NRC's use of "reasonable assurance" as a basis

for judging compliance compels focus on extreme values (i.e., tails of distributions) for representing the performance of a Yucca Mountain repository. Further, if DOE is authorized to file a license application, and if the Commission is called on to make a decision, irrespective of the term used, the Commission will consider the full record before it. That record will include many factors in addition to whether the site and design comply with the performance objectives (both preclosure and postclosure performance standards) contained in Subparts E, K and L. The Commission could consider the QA program, personnel training program, emergency plan and operating procedures, among others, in order to determine whether it has confidence that there is no unreasonable risk to the health and safety of the public.

To avoid any misunderstanding and to achieve consistency with final EPA standards, the Commission has decided to adopt EPA's preferred criterion of "reasonable expectation" for purposes of judging compliance with the postclosure performance objectives. The Commission is satisfied that a standard of "reasonable expectation" allows it the necessary flexibility to account for the inherently greater uncertainties in making long-term projections of a repository's performance. The Commission agrees with EPA and others that it is important to not exclude important parameters from assessments and analyses simply because they are difficult to precisely quantify to a high degree of confidence. By adopting what EPA has characterized as a more flexible standard of "reasonable expectation" for determining compliance with postclosure performance objectives, the Commission hopes to make clear its expectations. The Commission expects that the required analyses of postclosure performance will focus on the full range of defensible and reasonable parameter distributions, and that they should not be constrained only to extreme physical situations and parameter values. For other determinations regarding compliance of the repository with preclosure objectives, the Commission will retain a standard of "reasonable assurance," consistent with its practice for other licensed operating facilities subject to active licensee oversight and control.

Issue 2: Does the term "reasonable assurance" denote a specific statistical parameter related to either the probability distribution of calculated individual doses or important variables used in that calculation?

Comment. EPA commented that a connotation has developed around "reasonable assurance" that could lead to an extreme approach to selecting worst case values for important parameters used to calculate individual dose (for example, precipitation rates, seepage rates, and flow in the unsaturated zone). According to the EPA, that approach, coupled with an equally extreme approach in selecting engineered barrier performance factors, would lead to assessments that represent situations with little or no probability of occurring but which become the basis for licensing decisions. The EPA concludes that the application of the "reasonable assurance" standard: (1) Is inconsistent with the NAS recommendation to use "cautious, but reasonable" assumptions when projecting the performance of the geologic repository; and (2) would result in applying margins of safety beyond the standard for individual protection set by EPA, which, in effect, alters that standard.

Another commenter noted that the proposed part 63 makes it clear that compliance is to be based on calculations of "expected annual dose" and that this requirement is completely consistent with the recommendation in the NAS report on "Technical Basis for Yucca Mountain Standards," which recommends that the mean values of calculations be the basis for comparison with the NAS recommended standards. However, the commenter was concerned that "reasonable assurance" may be interpreted to be more stringent than the mean values of calculations of individual dose and recommended that it be made clear that, in the context of Yucca Mountain, "reasonable assurance" refers to the mean or expected value of the relevant probability distribution.

Response. As stated previously, in order to avoid further misunderstanding of its intent, the Commission will adopt EPA's preferred standard of "reasonable expectation" for purposes of judging compliance with the numerical postclosure performance objectives. However, the Commission wants to make clear that its proposed use of "reasonable assurance" as a basis for judging compliance was not intended to imply a requirement for more stringent analyses (e.g., use of extreme values for important parameters) or for comparison with a potentially more stringent statistical criteria (e.g., use of the 95th percentile of the distribution of the estimate of dose).

2 Requirements for the Preclosure Period

2.1 Preclosure Safety Analysis

Issue 1: Is the use of an Integrated Safety Assessment (ISA) appropriate for evaluation of the preclosure safety of a repository at Yucca Mountain?

Comment. One commenter questioned the use of an ISA, as derived from chemical process safety analyses, to evaluate preclosure safety because there is not yet much experience in regulating with the ISA and suggested that requirements for monitored retrievable storage (as contained in part 72) should be applicable to the GROA and should be used in place of the proposed requirements of part 63.

Response. The Commission considers necessary the analysis referred to in the proposed rule as an "integrated safety analysis". However, for clarity, in the final rule, the Commission has changed the name of the analysis to "preclosure safety analysis" (PSA).

The proposed rule identifies the need for, and general scope of, the analysis to be done to demonstrate compliance with the performance requirements for the operational phase of the repository (§§ 63.111(a) and (b) and 63.112(e)). The Commission did not intend to imply, however, that a particular approach, such as that used for chemical process safety analyses, was required. The Commission's intention was to identify ISA as a broad category of analyses to be used by DOE in its evaluation of repository operations and design in the context of meeting the preclosure performance objectives. ISA was proposed as a general term for these preclosure analyses, much as the general term "performance assessment" is used to denote the analyses used to evaluate postclosure performance. To avoid confusion with any particular type of analysis associated with other industrial facilities, the term "ISA" will be replaced by the more general term "preclosure safety analysis (PSA)." The Commission intends that DOE have broad flexibility in structuring its PSA for purposes of demonstrating compliance with the requirements at § 63.112.

The Commission recognizes that there are similarities between a facility regulated by Part 72 and the GROA facilities proposed for Yucca Mountain. However, there are important differences (e.g., Part 72 does not consider a mined facility) that make it impractical to merely adopt the requirements of the current part 72. The Commission has used and adopted relevant portions of existing regulations (e.g., part 50), including part 72, to the extent practical, during the development of proposed part 63.

Issue 2: Is the probability of a design basis event (DBE) based on the event sequence or just an initiating event? Are the criteria for Category 2 DBEs too stringent?

Comment. DOE suggested that the rule should be clarified as to whether event sequences or single initiating events are to be used in determining the probabilities of DBEs. DOE also noted that the proposed rule would define Category 2 DBEs as those that have one chance in 10,000 of occurring before permanent closure of the repository or an annual probability of about 10^{-6}. DOE stated that:

> Designing to this probability is a reasonable goal in general, but that there are specific concerns with applying the definition to natural events, which have existing precedent for the magnitude and frequency of events to be included *ensp;* *ensp; A 1010^{-6} earthquake is far beyond normal design considerations.

DOE suggested the following definitions of DBEs:

Definition for Category 1 DBEs should be revised to read: "natural events and human-induced event sequences."

Definition for Category 2 DBEs should be revised to read: "other human-induced event sequences that have at least one chance in 10,000 of occurring before permanent closure of the geologic repository, and (b) appropriate consideration of natural events (phenomena) that have been historically reported for the site and the geologic setting (referred to as Category 2 events)."

Response. The Commission agrees that the basis for determining the probability for design basis events and what initiating events should be considered in the safety analysis should be clarified. The Commission considers that the changes to the rule suggested by DOE are not sufficiently clear and has not adopted these changes in the final rule. However, the Commission has revised the rule for clarity as follows: (1) A new term "initiating event" is defined; (2) the present term "design basis event" is replaced with a new term "event sequence;" and (3) § 63.102(f) is revised to clarify the scope of the PSA and the requirements for the inclusion or exclusion of specific, naturally-occurring, and human-induced hazards in the safety analysis.

The proposed rule described the ISA (referred to as PSA in final part 63) as a systematic examination of the hazards and their potential consequences [see § 63.102(f)]. In the Supplementary Information for the proposed rule, Category 2 design basis events were discussed as follows:

> The analysis of a specific Category 2 design basis event would include an initiating event (e.g., an earthquake) and the associated combinations of repository system or component failures that can potentially lead to exposure of individuals to radiation. An example design basis event is a postulated earthquake (the initiating event) which results in (1) the failure of a crane lifting a spent fuel waste package inside a waste handling building, (2) damage to the building ventilation (filtration) system, (3) the drop and breach of the waste package, (4) damage to the spent fuel, (5) partitioning of a fraction of the radionuclide inventory to the building atmosphere, (6) release of some radioactive material through the damaged ventilation (filtration) system, and (7) exposure of an individual (either a worker or a member of the public) to the released radioactive material.

The Commission intended that the probability of the entire event sequence, including initiating event(s) and the associated combinations of repository system or component failures, be considered in dose calculations. The proposed rule has been revised by replacing the previous term "design basis event" with new terms "initiating event" and "event sequence" and associated definitions. These changes clarify that the appropriate probability is based on the entire event sequence, which includes the initiating event(s) and associated combinations of repository system or component failures relating to the potential release of radioactive material.

The two critical aspects of the PSA in the context of this issue are (1) the identification of the event sequences that have probabilities greater than or equal to one chance in 10,000 of occurring before permanent closure and (2) the associated dose consequences. Following the intent of risk-informed performance-based regulation, designation of specific design basis criteria in the regulation is not appropriate. The goal of the DOE design activity should be to demonstrate that the dose limits expressed in § 63.111 will be met, taking into consideration site-specific information regarding the geologic setting and human activities in the surrounding environs. For example, if a hazard (or the low probability events of the hazard spectrum) is deemed unreasonable for the Yucca Mountain site, DOE can exclude it from consideration in the PSA provided proper technical justification is presented in accordance with § 63.112(d). Thus, while the regulation specifies a lower limit on the probability of event sequences, the risk-informed NRC regulation anticipates that DOE will develop a clear technical basis for the event sequences included/excluded from the PSA. The Commission did not intend to specify cut-off probabilities for initiating events but recognizes that certain initiating events may not be appropriate for inclusion in the PSA. Therefore, the rule, at § 63.102(f), has been revised to include the following description of considerations that can be used by the DOE to limit the inclusion of initiating events in the PSA:

> Initiating events are to be considered for inclusion in the preclosure safety analysis for determining event sequences only if they are reasonable (i.e., based on the characteristics of the geologic setting and the human environment, and are consistent with precedents adopted for nuclear facilities with comparable or higher risks to workers and the public).

Issue 3: How should doses be estimated in evaluating repository operations during the time before permanent closure? Can different approaches be used for evaluating Category 1 and Category 2 DBEs (event sequences)?

Comment. Further clarification is needed on the scope of the dose calculations associated with DBEs (event sequences).

For Category 1 DBEs (event sequences), DOE recommended a realistic or best-estimate analysis for direct exposures from a single event. For airborne pathways, DOE proposed including submersion, inhalation, and ingestion. DOE also recommended that the doses from all Category 1 DBEs (event sequences) be aggregated.

For Category 2 DBEs (event sequences), DOE recommended dose calculations be based on suitably conservative values for direct exposure and airborne pathways including submersion, and inhalation, but not ingestion. DOE recommended that ingestion not be considered because the focus is on an acute dose, not a dose that occurs slowly over time as is the case for ingestion. Also, the emergency planning would mitigate, if necessary, contamination relevant to ingestion. DOE also recommended that Category 2 DBEs (event sequences) be analyzed on an event sequence by event sequence basis.

Response. The Commission has revised the proposed rule, at § 63.111(b)(1) and (2), to clarify that (1) the doses from consequence analyses for Category 1 event sequences are to be aggregated to a single estimate and (2) the dose from the consequence analysis for each Category 2 event sequence is to be estimated for that specific event sequence only. Thus, each Category 2 event sequence dose is to be evaluated

separately. The doses from Category 2 event sequences that might occur at different times during the preclosure period are not to be aggregated.

DOE raised a number of concerns with the scope of the dose calculations associated with event sequences. Generally, DOE called for details that are typically found in regulatory guidance rather than regulation. Although such guidance is expected to be included in the Yucca Mountain Review Plan (YMRP) rather than in the regulation, the NRC staff response to DOE's concerns regarding dose calculations associated with event sequences is summarized below.

Within the context of the ISA (PSA), DOE is expected to identify the relevant initiating events and event sequences and estimate potential radiologic exposures. Part 63 provides flexibility to DOE in selecting an appropriate approach for estimating doses, including selection of pertinent exposure pathways and the degree of conservatism or realism to include in the analysis. DOE will need to defend and support whatever approach it selects for identifying initiating events and analyzing event sequences. In the selection of a particular approach, DOE will need to consider the uncertainties and limitations associated with a particular method of analysis and data.

DOE suggested that a "realistic or best-estimate" analysis is appropriate for Category 1 event sequences, and a "suitably conservative" analysis is appropriate for Category 2 event sequences. Once again, the approach in the rule is to provide DOE flexibility to select the type of analysis it believes most appropriate for the license application. Whatever approach DOE uses will need to be supported, taking into account uncertainties. Therefore, analyses relying on point values (e.g., best estimate values) will need to discuss how uncertainties are taken into account.

DOE suggested that dose estimates for Category 1 DBEs (event sequences) should be aggregated into a single annual dose estimate. This approach is consistent with historical practices and is acceptable to NRC. DOE also suggested that the potential dose arising from the occurrence of each Category 2 DBE (event sequence) should be estimated separately (i.e., not be aggregated). The Commission agrees that each Category 2 event sequence is to be evaluated individually, as this approach is consistent with historical practices. Also, analyzing each event sequence separately provides a high degree of transparency in the analysis, thus allowing NRC to evaluate the postulated events, the associated event sequences, and the engineered components that affect the likelihood and magnitude of potential releases of radioactive material. The Commission has revised the rule at § 63.111(b)(1) and (2) to clarify that dose estimates for Category 1 event sequences are to be aggregated, but those of Category 2 event sequences are to be analyzed and documented individually.

DOE also suggested that, for Category 2 DBEs (event sequences), dose calculations for ingestion are not necessary. The Commission sees no compelling logic for the specific pathways for dose calculations being different for Category 1 and Category 2 event sequences. Dose should be calculated considering all pathways relevant to an event sequence. Consistent with the Commission requirements elsewhere, the DOE must consider all pathways in demonstrating compliance with § 63.111. The risk-informed regulation anticipates that DOE will present in its license application the magnitude of, and the technical basis for, the dose contribution of various pathways, including the technical bases for eliminating any pathway.

Issue 4: What precedents, if any, do NRC regulatory guides developed for other applications, such as nuclear power plants, have for use in developing DBEs (event sequences) for a potential repository at Yucca Mountain?

Comment. DOE asked for clarification about the role of precedents in other regulatory guides (e.g., consideration of earthquakes, aircraft crashes, tornadoes, and flooding) in determining what should be considered in the development of DBEs (event sequences) (especially for Category 2). DOE also commented that development of credible natural events, for Category 2 DBEs (event sequences), would require only following applicable regulatory precedents and considering severe natural phenomena that have been historically reported for the site and geologic setting.

Response. The applicability of regulatory guidance developed for facilities other than a high-level waste repository will need to be considered on a case-by-case basis for applicability to high-level waste disposal at Yucca Mountain. For the guidance to be appropriate, it should be generally applicable to nuclear facilities with comparable or higher risks to workers and the public than the potential repository at the Yucca Mountain site (see discussion under Issue 2).

Issue 5: What is the status of NRC's provisional acceptance of DOE's Topical Report on Seismic Design for Yucca Mountain with respect to event sequences in part 63?

Comment. DOE inquired about the status of NRC's provisional acceptance of DOE's Topical Report on Seismic Design for Yucca Mountain with respect to event sequences in Part 63.

Response. DOE's Topical Reports 1 and 2 on Seismic Design for Yucca Mountain were provisionally accepted prior to NRC's issuance of proposed requirements at part 63. The applicability of DOE's seismic design methodology will be reviewed after final part 63 requirements are in place and DOE has completed Topical Report 3.

Issue 6: Should there be an explicit requirement for an analysis of the effects of any plans for use of the air space above the GROA?

Comment. One commenter recommended an analysis of the effects of any plans for use of the air space above the GROA.

Response. Any plans for use of the air space above the GROA that would affect compliance with the performance objectives should be included in the PSA. The Commission finds no reason for a separate requirement for such an analysis.

Issue 7: Will NRC have its own experts to evaluate what can happen during repository operations or will NRC rely on the DOE analysis?

Comment. One commenter inquired whether NRC had independent experts to develop probabilities for DBEs, or would NRC simply rely on DOE analyses.

Response. The Commission will perform an audit review of the DOE license application including a review of the technical basis for initiating events and event sequences. In performing the audit review, the NRC will use a variety of its technical staff with appropriate technical experience and skills, and experience with comparable activities for other facilities (handling of nuclear fuel at nuclear reactors and fuel fabrication facilities) regulated by NRC. Additionally, the NRC's HLW contractor (The Center for Nuclear Waste Regulatory Analyses, CNWRA) has a wide range of technical expertise to assist NRC staff in any review conducted.

Issue 8: Is the terminology in the rule consistent and adequate to convey what is required?

Comment. DOE identified instances where particular words or phrases in Part 63 lacked clarity and suggested the following changes:

Section 63.112(b) should be revised to read: "An identification and systematic analysis of naturally-occurring and human-induced hazards at the geologic repository operations area, including a comprehensive identification of potential design basis events" (The definition of DBEs makes no link to consequence, whereas § 63.112(b) inappropriately implies such a link).

The word "accidents" in § 63.112(e) should be replaced with "design basis events" (the word "accidents" is not defined (also in § 63.161)—use of DBE is consistent with language elsewhere in part 63).

Response. The Commission agrees that the use of the word "accident" in § 63.112(e) is vague and will replace "accident" by "event sequence." Additionally, the Commission has revised the language at § 63.112(b) to remove the inappropriate reference to consequences.

Issue 9: Should the proposed rule prescribe requirements for the ISA (PSA)?

Comment. DOE noted that prescribing requirements for the ISA (PSA) at § 63.112 was inconsistent with the overall performance-based approach in the rule.

Response. The rule identifies topics that need to be included in the PSA but does not prescribe either the methodology to use or the depth to which these topics need to be addressed. part 63 appropriately identifies the topics that need to be included in the PSA to ensure DOE's analysis is complete and yet gives DOE flexibility to determine the level of detail needed to address each topic properly. This performance-based approach provides DOE latitude to adjust the technical rigor of its evaluation of any particular topic in a manner that is consistent with the topic's importance to safety.

2.2 *Retrievability*

Issue 1: Will NRC require DOE to demonstrate that the waste package is retrievable?

Comment. Some commenters were concerned that NRC's proposed regulations required DOE to submit plans for retrievability, but did not require an actual demonstration that the plans were feasible. Some commenters suggested that the NRC should require DOE to demonstrate the feasibility of its retrieval plans.

Response. If necessary to protect public health and safety, waste package retrieval in a deep geologic repository would be a first-of-a-kind endeavor with unique engineering and geotechnical challenges. The Commission recognizes that the retrieval operation would be an unusual event, and may be an involved and expensive operation (U.S. Nuclear Regulatory Commission, "Staff Analysis of Public Comments on Proposed Rule 10 CFR part 60, 'Disposal of High-Level Radioactive Wastes in Geologic Repositories'," Office of Nuclear Regulatory Research, NUREG–0804, December 1983; p. 11). As such, DOE can expect that its plans and procedures in this area will receive extensive, detailed review by the NRC staff as part of any construction authorization review. The feasibility and reasonableness of DOE's retrieval plans will be reviewed by the NRC staff at the time of the license application submittal.

However, the Commission does not envision that DOE will need to build full-scale prototypes of its retrieval systems to demonstrate that its retrieval plans are practicable at the time of construction authorization. Rather, DOE needs to design (and build) the repository in such a way that the retrieval option is not rendered impractical or impossible.

Issue 2: Why did NRC set an upper limit for retrieval at 50 years after waste emplacement operations are initiated?

Comment. Some commenters expressed a belief that the period of waste package retrieval could be accomplished beyond 50 years, and there should be flexibility for extending the period of retrievability to longer time periods. One commenter suggested that the repository should be monitored to determine if there will be problems (e.g., too high a temperature, too much water inflow) that would require the waste to be retrieved. The same commenter suggested that stewardship of the waste be maintained (indefinitely) so that waste could be made available for future energy needs.

Response. The 50-year limit on waste retrieval operations was adopted from the generic requirements found at part 60. At the time part 60 was first promulgated, the Commission solicited comment on what was then a proposed 110-year retrieval period (46 FR 35282; July 8, 1981). However, after an analysis of public comments, it was determined that the Commission's earlier proposal was excessive, and the shorter 50-year period was decided upon (U.S. Nuclear Regulatory Commission, "Staff Analysis of Public Comments on Proposed Rule 10 CFR part 60, 'Disposal of High-Level Radioactive Wastes in Geologic Repositories'," Office of Nuclear Regulatory Research, NUREG–0804, December 1983). In specifying this time period, the Commission noted that the 50-year period was "provisional" and subject to possible modification (i.e., longer periods) in light of both the planned waste emplacement schedule and completion of the performance confirmation program and a review of those results. After 50 years of waste emplacement operations and performance confirmation, the Commission previously reasoned, it is likely that significant technical uncertainties will be resolved, thereby providing greater assurance that the performance objectives will be met. It should be noted that DOE is free to design the repository for retrieval periods greater than 50 years. In fact, the Commission understands that DOE is contemplating working designs that may provide for a retrieval period of up to 300 years (see "Supplement to the Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada," Office of Civilian Radioactive Waste Management, DOE/EIS–0250DS, May 2001). Thus, as recommended in this comment, allowance for longer waste retrieval periods greater than 50 years is permitted under the regulation.

As for longer retrieval periods that would permit the recovery of the HLW as a potential resource, the Commission has previously noted that its retrieval provision is not intended to facilitate recovery. Waste retrieval is intended to be an unusual event only to be undertaken to protect public health and safety.

Issue 3: If retrieval is necessary, what happens to the retrieved waste?

Comment. One commenter inquired as to the disposition of the waste if it is determined that retrieval is necessary.

Response. Proposed Part 63 does not specifically address any required actions for the handling of retrieved waste from an operating geologic repository, but § 63.21(c)(19) [moved to § 63.21(c)(7) in the final rule] does require that DOE's Safety Analysis Report include a description of its plans for the alternate storage of the radioactive wastes, should retrieval be necessary. Retrieved waste would need to be controlled in compliance with applicable regulations at the time of retrieval.

2.3 *Performance Confirmation*

Issue 1: What is the objective of the performance confirmation program?

Comment. DOE commented that the general requirements for performance confirmation at § 63.131(a) and requirements for confirmation of geotechnical and design parameters at § 63.132(a) do not reflect the Commission's risk-informed, performance-based approach to regulation because the requirements do

not explicitly focus the performance confirmation program on data linked to the performance assessment. DOE stated that the performance confirmation program, when tied to a performance-based approach, should focus on the verification of the performance assessment. DOE stated that this approach would allow DOE and NRC to focus attention and resources on those parameters and processes that are significant contributors to repository performance and to uncertainties in that performance.

Response. The objective of the performance confirmation program is to confirm the assumptions, data, and analyses that led to the findings that permitted construction of the repository and subsequent emplacement of the wastes. Consistent with NRC's performance-based approach, the NRC will make findings with respect to each of the performance objectives in Part 63, Subpart E, and not just the postclosure performance objective specified at § 63.113(b). The general requirements for the performance confirmation program at § 63.131(a)(1) and (a)(2) state that the program must provide data that indicate whether: (1) Subsurface conditions encountered and changes in those conditions during construction and waste emplacement are within limits assumed in the licensing review and (2) natural and engineered systems and components required for repository operation, and that are designed or assumed to operate as barriers after permanent closure, are functioning as intended and anticipated. These requirements are intended to encompass subsurface conditions and design assumptions related to both operational (preclosure) and postclosure repository performance. Should the Commission authorize construction of a geologic repository at Yucca Mountain, the NRC staff will conduct an ongoing, performance-based inspection program to evaluate DOE's compliance with the performance objectives and any conditions established in that construction authorization per § 63.75.

The general requirements at § 63.131(a) explicitly link the performance confirmation program to DOE's performance assessment, albeit in terms of the barriers designed or assumed to function after permanent closure. Although the primary focus of the performance confirmation program is on postclosure performance of the repository, and the NRC recognizes DOE's desire to focus on verifying the performance assessment (e.g., postclosure performance), it is important that the general requirements also include consideration of operational aspects of repository performance, for example, the ability to retrieve waste as required at § 63.111(e). An organized program of collecting subsurface information during repository construction and operation that confirms the design assumptions regarding the ability to retrieve waste is therefore an important performance confirmation activity. The NRC believes that the general requirements at § 63.131(a) allow DOE the flexibility to develop and implement an effective performance confirmation program focused on confirming assumed subsurface conditions and assumed functionality of geologic and engineered systems and components important to postclosure performance (i.e., performance of barriers important to isolation) and/or preclosure repository operations (e.g., retrievability). In the proposed rule, the definition of performance confirmation in § 63.2 and the discussion of performance confirmation in § 63.102(m) do not clearly reflect the intent of § 63.131(a) and have been revised accordingly in the final rule. To adopt the changes to §§ 63.131(a) and 63.132(a) requested by DOE would remove consideration of operational aspects of repository performance from the performance confirmation program. For these reasons, the Commission does not agree that these changes are appropriate and has not adopted them.

Issue 2: Are the requirements for the performance confirmation program too prescriptive?

Comment. Some commenters were concerned with the level of detail provided in the requirements for the performance confirmation program. NEI commented that the regulation should provide for ongoing programs of monitoring and testing to improve information but also stated that the specified requirements should be made less prescriptive. NEI stated that §§ 63.132–134 (respectively, Confirmation of geotechnical and design parameters, Design testing, and Monitoring and testing waste packages) were inconsistent with the overall performance-based nature of the regulation. NEI recommended that these requirements be deleted because they are unnecessary and counterproductive to § 63.131 in that they provide more detail and remove flexibility already in the rule. NEI also recommended minor word changes to the definition of performance confirmation in § 63.2 and the discussion of performance confirmation in § 63.102(m) to lessen the potential for overly prescriptive interpretations of what is expected of the performance confirmation program. DOE commented that the minimum list of geotechnical parameters in § 63.132(c) is overly prescriptive and is not needed or appropriate. DOE recommended revising the requirement to state that DOE will determine the parameters, measurements, and observations appropriate for inclusion in the program. DOE also recommended revising § 63.133, which restricted design testing to in situ testing, to allow performance of some of the design testing at other locations, such as laboratories, other test facilities, or boreholes outside of the repository block. In addition, DOE also suggested revising the wording of § 63.133(c) to make it clear that testing of backfill is required only if backfilling the emplacement drifts is planned. Another commenter noted that while § 63.134 requires a program to monitor and test waste packages, the commenter found no statement of objectives or criteria for the monitoring and test program. The commenter was concerned that the regulation could be used to drive a very large and costly full scale test program and recommended that the objectives and criteria be stated.

Response. The Commission agrees with the commenters that §§ 63.132–134 were too prescriptive and has modified these sections accordingly. However, the Commission does not agree with the comment that §§ 63.132–134 are inconsistent with the overall performance-based nature of the rule and therefore should be deleted. The Commission believes the requirements for performance confirmation set forth in §§ 63.132–134 are consistent with the overall performance-based approach to part 63. Consistent with this approach, the rule does not prescribe specific subsystem requirements. The absence of subsystem requirements is a concern to a number of commenters. Some commenters believe that the rule places too much reliance on the total system performance assessment (refer to discussion of issues under Postclosure Safety Assessment and Multiple Barriers and Defense in Depth). The Commission believes these concerns are partly addressed through an effective performance confirmation program focused on confirming assumed subsurface conditions and assumed functionality of geologic and engineered systems and components important to postclosure performance and the related performance assessment. Specific concerns that these requirements are either too prescriptive or too limiting are discussed in the following paragraphs.

Section 63.132 (Confirmation of geotechnical and design parameters) provides additional requirements related to the underground facility including comparing the original design bases and assumptions to information obtained during construction and operation, determining their significance to performance, and reporting this information, including recommended design changes, to the Commission. Section 63.132(c) does prescribe specific measurements and observations to be made by DOE. Because the design of the repository is evolving, it is not clear that, in the future, this list will be an acceptable minimum list of measurements and observations to be made. For the same reason, it is not clear that, in the future, all items in the list will be technically justifiable within the context of operational and postclosure performance of the repository. The Commission believes that it is DOE's responsibility to specify the important geotechnical and design parameters to be evaluated through observation and measurement during construction and operation, subject to NRC approval through review and evaluation of the license application. DOE will provide this information in their performance confirmation plan included in the license application. If necessary, the NRC staff will provide guidance to DOE in this area through pre-licensing interactions and/or the YMRP. Section 63.132(c) has been revised to reflect these considerations.

Section 63.133 (Design testing) provides requirements for in situ testing of seals and backfill and the thermal interaction effects of waste packages, backfill, rock, and ground water. DOE's recommendation that § 63.133 be revised so as to not limit testing to in situ testing only is reasonable. Section 63.133(a) has been revised accordingly. The NRC has also revised § 63.133(a) to generally reference "engineered systems and components," with examples, so as to not limit tests to specific features that may or may not be included in the final design of the repository. Finally, the Commission has revised § 63.133(c) to require specific testing of the effectiveness of backfill placement and compaction only if backfill is included in the repository design.

Section 63.134 (Monitoring and testing waste packages) provides specific requirements for monitoring and testing waste packages consistent with the objectives of the performance confirmation program established at § 63.131(a). Waste packages are important engineered components designed to operate as barriers after permanent closure. Because the assumed long-term performance of waste package materials is based on short-term experimental data, monitoring waste package performance and related laboratory experiments are appropriate performance confirmation activities. Although the NRC recognizes the need for reasonable cost constraints, it is important to note that it is DOE's responsibility to develop the details of a performance confirmation plan that focuses on those natural and engineered systems and components important to repository performance and operation. The requirements allow DOE the flexibility to develop a focused and effective performance confirmation program. An alternative approach would be to prescribe in detail the specifics and limits of that program. The Commission does not want to limit DOE's options regarding testing methodologies and has chosen not to follow that approach. Note, however, that NRC will evaluate the adequacy of the performance confirmation program in the course of its review of the license application.

Issue 3: Is the performance confirmation data required to be used in the updating of the performance assessment?

Comment. EPA recommended that performance confirmation data should be explicitly identified as information to be included in the update of the performance assessment required at the time of the amendment for permanent closure [§ 63.51(a)(1)].

Response. The Commission agrees with the commenter and has modified the rule accordingly.

2.4 Preclosure Operations Activities

Issue: Should the proposed rule specify environmental monitoring requirements for regulating releases from the preclosure operational activities?

Comment. The EPA commented that requirements for environmental monitoring during the operational phase of the repository were not in the proposed rule and there were no methods stated in the rule for enforcement of the preclosure requirements.

Response. The Commission considers that proposed part 63 has sufficient requirements for environmental monitoring during the operational phase of the repository and is not revising the rule on this issue. The Commission has included environmental monitoring requirements for radioactive releases in part 63. Sections 63.111 and 63.112 require DOE to account for, design against, and monitor any potential event sequences that could lead to radioactive releases. As part of the PSA (§ 63.112), for example, DOE is to describe its design and operating procedures for monitoring and controlling radioactive releases. Consistent with its National Environmental Policy Act (NEPA) responsibilities, DOE has already described its plans and procedures for the monitoring (and mitigation) of environmental impacts due to the operation of the geologic repository, including radioactive releases, in its DEIS for Yucca Mountain.

Regarding the comment on the lack of enforcement methods in the rule, subpart J of part 63 addresses enforcement at a level of detail that the Commission has typically used in all its regulations. Specific policy and procedure issues for enforcement activities are described in NRC's "General Statement of Policy and Procedure for NRC Enforcement Actions," the NRC enforcement manual, and supplemental guidance. The Commission believes this is an appropriate approach for its regulations and will retain the current language as in the proposed rule under subpart J. The Commission plans to develop specific changes to the enforcement policy and procedures as part of development of inspection and oversight plans for implementation of part 63.

2.5 Emergency Planning Criteria

Issue 1: If local emergency first-responder capabilities and emergency medical services are not sufficient for reacting to nuclear accidents at the geologic repository, will the NRC require DOE to enhance existing local capabilities in the Yucca Mountain region?

Comment. Commenters expressed concern that current local emergency and medical services are not adequate to respond to potential nuclear accidents at a geologic repository at Yucca Mountain. Accordingly, it was suggested that NRC include, as a license condition to operate the repository, a requirement that DOE enhance local capabilities for responding to potential nuclear accidents.

Response. Part 63 (Subpart I) requires DOE to submit an emergency plan for coping with radiological accidents. NRC's review of DOE's emergency plan will evaluate the adequacy of the plan including such things as the capability to respond to accidents and medical assistance for treatment of radiological injuries. Where DOE's emergency plan is found to be inadequate, the NRC, if necessary, can impose license conditions that require DOE to correct any deficiencies. (See also response to Issue 3 below.)

Additionally, U.S. Federal Emergency Management Agency (FEMA) regulations, as well as DOE orders, require that DOE have an emergency response capability that is adequate to meet anticipated accidents, including potential radiological accidents. DOE is responsible for ensuring that the emergency treatment capability exists and is documented in its emergency plan, which is subject to NRC review in accordance with § 63.161.

Issue 2: Will DOE's emergency plans be sufficiently comprehensive to include such scenarios as emergency evacuation procedures and responses to terrorist activity?

Comment. Some commenters were concerned whether DOE would have adequate, effective, and sufficiently comprehensive plans and procedures to address most, if not all, potential accidents, incidents, and/or contingencies.

Response. The rule requires DOE to have plans to cope with radiological accidents (emergency planning at § 63.161) and provide for physical protection (§ 63.21(b)(3)). These plans are required to address a number of criteria to ensure that DOE is prepared to respond, both on site and off site, to accidents, and that DOE has the capability to detect and respond to unauthorized access and activities that could threaten the physical protection of HLW. As noted in the previous response, NRC and FEMA regulations, as well as DOE orders, require that DOE have adequate plans and procedures in place to address any potential accidents and incidents. DOE's emergency plan and physical protection plan are subject to NRC review. The Commission believes that the requirements for DOE's plans for emergencies and physical protection expressed in the proposed part 63 are appropriate and has retained them in the final rule. In light of the terrorist attacks of September 11, 2001, the Commission has directed the staff to conduct a comprehensive reevaluation of NRC physical security requirements. If this effort indicates that NRC's regulations or requirements warrant revision, such changes would occur through a public rulemaking or other appropriate methods.

Section 63.161 requires DOE to develop an emergency plan based on the criteria of § 72.32 (i.e., criteria provided for an Emergency Plan for an Independent Spent Fuel Storage Installation (ISFSI)). The required Emergency Plan includes: Identification of each type of accident, description of the means of mitigating the consequences of each type of accident; prompt notification of offsite response organizations; and adequate methods, systems, and equipment for assessing and monitoring actual or potential consequences of a radiological emergency condition. If particular types of accidents require evacuation procedures to ensure the protection of public health and safety, they will be included in the Emergency Plan.

Section 63.21(b)(3) requires DOE to submit a detailed plan to provide physical protection of HLW in accordance with § 73.51 (requirements for physical protection of stored spent nuclear fuel and HLW). The requirements for physical protection include: (1) Capabilities to detect and assess unauthorized access or activities and protect against loss of control of the facility; (2) limiting access to HLW by means of two physical barriers; (3) providing continual surveillance of the protected area in addition to protection by an active intrusion alarm; and (4) providing a primary alarm station located within the protected area and have bullet-resisting walls, doors, ceiling, and floor. These requirements provide high assurance that physical protection of the repository includes appropriate measures to prevent and respond to unauthorized access and activities, including the potential for armed intruders (e.g., terrorist activity).

Issue 3: Will Federal funding be available to upgrade emergency first-responders and emergency medical services so as to allow local communities to be better prepared to respond to potential transportation accidents?

Comment. Counties in the Yucca Mountain region expressed concern with their ability to respond to medical emergencies resulting from a transportation accident involving nuclear waste. Local communities suggested that DOE be required to enhance local emergency capabilities for responding to transportation accidents.

Response. Section 180(c) of the NWPA requires DOE to provide technical assistance and funding for training State and local governments and Tribes for safe routine transportation and emergency response. However, NRC's responsibility for oversight and review of DOE's emergency plans (see discussion under Issues 1 and 2) does not include responsibility for how DOE provides for technical assistance and funding. Additionally, under NEPA, the potential for (environmental) impacts due to transportation, including accidents, is the responsibility of DOE to assess and mitigate.

3 Requirements for the Postclosure Period

3.1 Postclosure Safety Assessment

Issue 1: Can performance assessments be relied on as the sole quantitative technique for evaluating compliance with postclosure safety requirements?

Comment. DOE and NEI supported the risk-informed, performance-based approach. Additionally, NEI supported requirements in proposed Part 63 intended to ensure that DOE conducts and documents a high-quality performance assessment (e.g., features, events, and processes (FEPs) be described; relevant conceptual models be considered) and NEI also expressed a need for the NRC to effectively and clearly articulate this approach in future regulatory efforts. However, other commenters indicated that, although performance assessment is a highly informative methodology, its capability to model complex, coupled geologic systems over extended time periods has yet to be demonstrated. Confidence in performance assessments could be improved through testing on actual geologic systems and conducting suitable, long-term studies.

Response. Although repository postclosure performance is evaluated with respect to a single performance measure for individual protection, the NRC considers a broad range of information in arriving at a licensing decision. In the case of the proposed repository at Yucca Mountain, Part 63 contains a number of requirements (e.g., qualitative requirements for data and other information, the consideration and treatment of uncertainties, the demonstration of multiple barriers, performance confirmation program, and QA program) designed to increase confidence that the postclosure performance objective is satisfied. The Commission will rely on the performance assessment as well as DOE's compliance with these other requirements in making a decision, if DOE submits a license application for disposal of HLW at Yucca Mountain. The Commission believes the approach for performance assessment in the proposed rule is appropriate and it is retained in the final rule. However, requirements for QA, multiple barriers, and performance confirmation have been revised to clarify the Commission's intent for these requirements (see discussion under Quality Assurance, Multiple Barriers and Defense in Depth, and Performance Confirmation for more details).

The Commission believes that there have been significant advances in, and experience with, risk assessment in the past 20 years (see Commission's white paper on Risk-Informed and Performance-Based Regulation, March 1999). The Commission continues to believe that a performance assessment, developed with sufficient credibility, is the best means to provide useful information to the Commission for making an informed, reasonable licensing decision. The Commission recognizes, however, the uncertainties inherent in evaluating a first-of-a-kind facility like the repository and in estimating system performance over very long time periods (i.e., 10,000 years). Thus, proposed part 63 contained requirements to ensure that: (1) Uncertainties inherent in any performance assessment are thoroughly articulated and analyzed or addressed; (2) DOE's performance assessment is tested (corroborated) to the extent practicable; and (3) there are additional bases, beyond the performance assessment, that provide confidence that the postclosure performance objectives will be met. For example:

1. Requirements for Addressing Uncertainty in Performance Assessment

Section 63.114 provides a number of requirements for DOE's performance assessment to thoroughly address uncertainty. Part 63 requires consideration of uncertainties in DOE's representation of the repository (uncertainty and variability in parameter values must be taken into account—§ 63.114(b)) and the events that can happen during the compliance period (consideration of potentially disruptive events with a probability of occurrence as low as one chance in 10,000 of occurring over 10,000 years—§ 63.114(d)) to be directly included in the quantitative estimate of performance. Additionally, DOE is required to provide additional assurances that uncertainty in the information (e.g., evaluation of site characterization data) used to develop the performance assessment have been evaluated by consideration of alternative conceptual models of features and processes that are consistent with available data and current scientific understanding (§ 63.114(c)); and the basis for inclusion or exclusion of FEPs that would have a significant effect on performance (§ 63.114(e) and (f)). (See discussion under Issue 2 for further details on uncertainty in performance assessment.)

2. DOE's Performance Assessment Is Tested (Corroborated) to the Extent Practicable

DOE must test or corroborate, to the extent practicable, the confidence in (validity of) the performance assessment models. Part 63 requires DOE to provide the technical basis for the models used in the performance assessment (§ 63.114(g)). Approaches for providing the technical basis would include comparisons of these models with information relevant to the conditions of geologic disposal and time periods of the assessment (e.g., results from detailed process-level models, field investigations, and natural analogs). Additionally, a performance confirmation program is required (part 63, subpart F) to confirm that the behavior of the barriers of the repository system is consistent with what has been assumed in the performance assessment (see discussion under Performance Confirmation for more details).

3. Basis for Confidence That the Postclosure Performance Objectives Will Be Met

As a basis for confidence that the postclosure performance objectives will be met, the Commission plans to rely on requirements in addition to that for the performance assessment. Specifically, part 63 requires a multiple barrier approach for the repository, and a QA program. A requirement that multiple barriers make up the repository system ensures that repository performance is not wholly dependent on a single barrier. As a result, the system is more tolerant of failures and external challenges such as disruptive events (see discussion under Multiple Barriers and Defense in Depth for more details). The required QA program enhances confidence in the design and characterization of barriers important to waste isolation.

In summary, any determination that the postclosure performance objectives will be met will be based on a comprehensive set of regulatory requirements. Thus, reliance on the performance assessment for assisting regulatory decisions is supported by a range of considerations. The Commission believes this comprehensive approach (i.e., requirements for addressing uncertainty, providing technical basis for models, and additional requirements, beyond expected performance, for increasing confidence that the performance objectives will be met) is appropriate and it is retained in the final rule.

Issue 2: Should a requirement for the level of uncertainty and performance that is acceptable for performance assessment of the proposed repository be included in part 63?

Comment. A number of comments were received concerning uncertainty in estimating postclosure performance of the repository. Commenters were concerned with the level or degree of uncertainty in performance calculations and approaches for analyzing uncertainty in performance calculations. Some specific concerns were: (1) The acceptable level of uncertainty should be clearly stated in part 63 (results that depend mainly on assumptions rather than actual properties are unacceptable); (2) the many orders of magnitude of uncertainty in performance projections are, and will continue to be, too high for assuring long-term safety; and (3) whether DOE is required to predict "actual" performance.

Response. The first-of-a-kind nature of the repository and the evaluation over a very long time period result in significant uncertainty being included in the performance assessment. Part 63 not only requires DOE to account for uncertainty in its performance assessment but also contains a number of other requirements (e.g., use of multiple barriers, performance confirmation program) to compensate for residual uncertainties in estimating performance. The Commission will consider all these requirements in determining whether it has sufficient confidence (i.e., reasonable expectation) that DOE has demonstrated or has not demonstrated the safety of the repository. Specification of an acceptable level of uncertainty is neither practical nor appropriate due to the limited knowledge currently available to support any such specification and the range of uncertainties that would need to be addressed. The Commission believes the approach to performance assessment in the proposed rule, which includes the treatment of uncertainty, is appropriate and has retained this approach in the final rule.

The previous response under Issue 1, discussed the requirements for the performance assessment. Many of these requirements address uncertainty in the performance assessment. Some of these uncertainties will be directly included in the DOE's estimate of performance. For example, DOE is expected to conduct uncertainty analyses (i.e., evaluation of how uncertainty in parameter values affects uncertainty in the estimate of dose), including the consideration of disruptive events and associated probability of occurrence. Other uncertainties are not necessarily quantified but are considered during the development of the conceptual models for the performance assessment (e.g., consideration of alternative models, inclusion and exclusion of FEPs). If NRC were to specify an acceptable level of uncertainty, the specified value would be somewhat arbitrary because:

(1) Understanding of the site is evolving as site studies continue; (2) repository design options are still being evaluated; and (3) differences in the types of uncertainties (e.g., variability in measured parameters, modeling assumptions, expert judgment, etc.) complicate the specification. The approach defined in part 63, which requires DOE to fully address uncertainties in its performance assessment rather than requiring DOE to meet a specific level of uncertainty, is appropriate. The treatment of uncertainty in DOE's performance assessment will be an important part of NRC's review.

Regardless of the uncertainty in the performance assessment, part 63 contains additional provisions to increase confidence that the postclosure performance objectives will be met. These provisions include requirements for multiple barriers, a performance confirmation program, and implementation of a QA program (see discussion under Issue 1). However, it should be kept in mind that the performance assessment evaluates "potential" doses, not "actual" doses. For example, part 63 requires the performance assessment to assume for the next 10,000 years that the reasonably maximally exposed individual (RMEI) is a member of a community that: (1) Exists where it will intercept potential releases from the repository and (2) uses ground water but never tests the quality of this water nor treats the ground water to remove any contaminants. This specification is considered appropriately conservative for evaluating performance but most likely is not an "accurate" prediction of what will happen during the next 10,000 years (see discussion under RMEI Characteristics and Reference Biosphere for more information on the RMEI). Although the Commission does not require an "accurate" prediction of the future, uncertainty in performance estimates cannot be so large that the Commission cannot find a reasonable expectation that the postclosure performance objectives will be met (see discussion under Reasonable Expectation). At this time, the Commission is not aware of any information that suggests the uncertainties are so large that NRC will be unable to make a regulatory decision regarding the safety of a potential repository at Yucca Mountain.

Issue 3: Do known conditions at the Yucca Mountain site and/or the potential for other adverse conditions make Yucca Mountain an unacceptable location for an HLW repository?

Comment. Commenters expressed opinions/concerns regarding the impact of certain FEPs (e.g.; Yucca Mountain lies in an area that is seismically and tectonically active; volcanic activity in the recent geologic past; potential for fast ground-water pathways to the water table; the effect of heat and radiation on the surrounding rock; microbial-induced corrosion of the waste package; and the potential for a significant rise of the water table as the water table may rise and interact with the proposed repository) that could have a deleterious effect on repository performance. Given these concerns, many of the commenters recommended the Yucca Mountain site be withdrawn from further consideration as a potential repository.

Response. Consideration of all FEPs, especially those with the potential to have an adverse effect on performance, is an important part of the evaluation of repository performance. Commenters have correctly identified a number of conditions that have been or are being considered by DOE in performance assessments for Yucca Mountain, such as seismic activity, thermal effects, volcanic activity, microbial-induced corrosion of the waste package, and the potential for a significant rise of the water table. Section 63.114 requires DOE to consider all FEPs pertinent to a repository at Yucca Mountain and fully justify how they are treated in the performance assessment. In reviewing DOE's performance assessment, the NRC will evaluate how well DOE has accounted for those FEPs that could have an adverse effect on the repository. Based on current information, the Commission is not aware of any specific feature, event, or process that so adversely affects repository performance that Yucca Mountain must be withdrawn from further consideration by DOE as a potential repository site.

Issue 4: How will NRC ensure DOE properly documents its performance assessment?

Comment. One commenter discussed the need for DOE to provide a traceable and transparent analysis in support of its demonstration of compliance with the performance standard. The commenter recommended that plain English should be used to document the performance assessment to improve overall understanding of the risks.

Response. The Commission agrees that DOE's performance assessment needs to be clearly documented. Part 63 provides the requirements for DOE's performance assessment at § 63.114 and requirements for the content of the application at § 63.21. These requirements provide a general description of the types of information that need to be included in the license application but do not prescribe specific details for the format of the documentation. The Commission believes it is inappropriate and unnecessary to prescribe, in the regulations, further details for DOE's documentation. The performance assessment is DOE's analysis, and DOE needs flexibility in deciding how best to document its analysis. However, the NRC staff is developing a YMRP to provide guidance to DOE on approaches for documenting performance assessment results that are both transparent and traceable. The Commission agrees with improving overall understanding of performance assessment through better documentation and will interact with the public and DOE to improve the YMRP in this important area.

Issue 5: Why does NRC require DOE to evaluate alternative designs?

Comment. DOE questioned the regulatory basis of § 63.21(c)(7) that requires DOE to evaluate alternative designs. DOE believes evaluation of alternative designs goes beyond typical licensing practice by implying a need for DOE to justify selection of one design over another. DOE suggested they should be allowed to select the design that best suits their purposes consistent with the approach given other NRC-regulated activities at § 50.109(a)(7). Another commenter suggested that the consideration of alternative designs be limited to present-day technology.

Response. The Commission agrees with the comments and has removed this requirement from the regulations. The NRC review should focus on the safety aspects of DOE's proposed approach. DOE should only be required to propose alternatives from its proposed approach in areas where the NRC review determines DOE's approach is deficient.

When developing proposed part 63, the NRC staff adopted this requirement from 10 CFR part 60, the existing generic NRC HLW disposal regulation, which contains a similar requirement in 10 CFR 60.21 (c)(1)(ii)(D). At the time of the issuance of part 60, DOE objected to this specific requirement with basically the same argument presented for part 63. In the Statement of Considerations for part 60 (published in **Federal Register** on June 21, 1983; 48 FR 28194), the Commission justified the requirement by stating "If the Commission finds, on the basis of its review, that the adoption of some alternative design feature would significantly increase its confidence that the performance objectives would be satisfied, and that the costs of such an approach are commensurate with the benefits, it should not hesitate to insist that the alternative be adopted."

The decision to require DOE to submit alternatives for certain site design features was a discretionary action on the part of the Commission as nothing (in either the Atomic Energy Act of 1954, as amended, or the Nuclear Waste Policy Act of 1982, as amended) required the Commission to obtain information on alternative designs at the site level. At the time part 60 was initially published (1983), the Commission implemented an appropriate regulatory framework for a generic program facing many uncertainties. Multiple sites with very different geological settings were under consideration. The NRC's generic HLW regulations had to address the resolution of a large number of technical issues in the relative short licensing review period established by the Nuclear Waste Policy Act of 1982. With all the uncertainties in the program, the Commission believed it was important to require design alternatives be submitted with the application to increase the probability of NRC approval of the license application within the three-year schedule mandated by Congress.

The Commission has revisited the decision to require submission of alternative designs. Specifically, the Commission no longer believes this information should be submitted with a license application and, accordingly, has removed this requirement. To protect public health and safety and the common defense and security, which is the NRC's mandate under the Atomic Energy Act of 1954 as amended, the Commission will closely scrutinize the design proposed by DOE. Consistent with this mandate, the new part 63 is designed to be a risk-informed, performance-based regulation which establishes overall repository performance objectives. DOE must demonstrate that the repository meets the performance objectives. The NRC review is an audit of the DOE demonstration to determine if we agree that the performance objectives have been met. If the NRC believes that the site does not meet the performance objectives within uncertainties addressed in the analysis, then it is DOE's responsibility to either defend its current design or propose an alternative design that can meet the NRC acceptance criteria.

3.2 Individual Dose Limit

Issue 1: How is the protection of future generations considered as part of setting the dose limit?

Comment. A number of commenters expressed concern that the dose limit specified in the proposed rule provided inadequate protection for future generations. Commenters suggested that (1) selection of the dose limit should consider the unpredictability of the future, particularly where and how an individual would be exposed, and (2) the dose limit should reflect impacts from either future energy development or past releases on the local community, such as ground-water releases from the NTS or the Beatty Low-Level Waste facility, in developing the standard.

Response. The purpose of the postclosure dose limit and the performance assessment is to ensure that future generations will be adequately protected. EPA has established, and the Commission has incorporated, an individual dose limit of 0.15 mSv/year (15 mrem/year). The Commission is confident that this limit is fully protective and that it provides an added margin of safety beyond what is necessary to ensure public health and safety. The Commission has long held that an individual dose limit of 0.25 mSv/year (25 mrem/year) TEDE is (1) a reasonable and appropriate level of protection for future generations, (2) within the range of dose limits used for current sources of public exposure, and (3) accounts for the possibility of dose from other sources.

In judging the adequacy of a dose limit for waste management and other related activities, NRC considers recommendations from the International Commission on Radiological Protection (ICRP), National Council on Radiation Protection and Measurements (NCRP), EPA, and International Atomic Energy Agency (IAEA). The ICRP's and NCRP's recommendations are developed by recognized experts in the fields of radiation protection and health effects. The NCRP is a nonprofit corporation chartered by the U.S. Congress to develop and disseminate information and recommendations about radiation protection and to cooperate with the ICRP and other national and international organizations with regard to these recommendations. The ICRP is an international panel of radiation experts from all fields that provides estimates of radiation risk and recommendations on radiation protection and has continued to update and revise its risk estimates and radiation protection recommendations since its inception in 1928. In its deliberations, ICRP maintains relationships with United Nations health and labor organizations.

The IAEA is a United Nations agency involved in assisting member states to establish consistent radiation protection standards. In 1995, the IAEA identified a number of principles with the express purpose of giving a common basis for the development of more detailed standards and a basis for national waste management programs (The Principles of Radioactive Waste Management, IAEA Safety Series No.111–F, International Atomic Energy Agency, Vienna (1995)). Two of the principles are:

1. Protection of Future Generations. Radioactive waste shall be managed in such a way that predicted impacts on the health of future generations will not be greater than the relevant levels of impact that are acceptable today.

2. Burdens on Future Generations. Radioactive waste shall be managed in such a way that will not impose undue burdens on future generations.

In support of the proposed part 63 dose limit, the NRC considered other current regulations for consistency and the potential effects of other sources of radiation to select a limit that would be acceptable today for releases of radiation. The EPA, ICRP, and NCRP have all supported the use of source-specific constraints (i.e., a margin of safety) below the 1 mSv/year (100 mrem/year) public dose limit to account for the potential effect of multiple sources of radiation exposure. In addition, use of the critical group concept or the RMEI provides an additional margin of safety because it is difficult for the same individual to be a member of the critical group or to be the RMEI for multiple diverse sources.[1] The final regulations, which specify use of the RMEI concept and limit individual dose to 0.15 mSv/year (15 mrem/year) (15% of the public dose limit), are sufficiently protective that potential exposures from other sources (e.g., past releases from operations at NTS and future hospitals or research centers) would not be expected to result in exposures above the 100 mrem/year public dose limit.

Issue 2: Why does NRC prefer an individual dose limit over a total release limit like part 60?

Comment. Some commenters, while noting that the EnPA specified a dose limit for Yucca Mountain, expressed their support for a total release limit like

[1] Although an individual might be exposed to more than one source of radiation, it would be a very rare circumstance for that individual to retain the lifestyle and other characteristics of the RMEI for more than one source.

part 60. The commenters believed that a total release limit is more understandable, easier to implement, and a simpler way to measure compliance of the repository's performance.

Response. The EPA has established a dose limit for individual protection, expressed in terms of a limit on dose to the RMEI. The NRC is incorporating this limit as required by law. A total release limit may appear to be more straightforward and understandable. In fact, however, nearly all of the same issues, such as dose or risk limit, human behavior, or volume of water mixed with the release, must be addressed to determine an appropriate release standard that is protective of the health and safety of the public and environment. Furthermore, a release standard is more difficult to relate directly to site-specific risk.

To set a release limit, the regulatory agency would first need to establish a risk or dose goal and calculate the risk or dose per unit release (e.g., per curie). The risk/dose goal would need to be the collective risk/dose over the entire compliance time for any release into the environment based on some assumed level of waste (e.g., for 40 CFR part 191, EPA used a risk goal of 1,000 premature cancer deaths in 10,000 years per 100,000 metric tons of heavy metal contained in spent fuel (High-Level and Transuranic Radioactive Wastes: Background Information Document for Final Rule, Office of Radiation Programs, EPA 520/1–85–023, August 1985, Page 7–13)). To calculate the risk per unit release, a model estimating the individual dose from a release will need to be used. To develop the model and data parameters, assumptions about the type of release (e.g., for 40 CFR part 191, a release to surface water was assumed (ibid, pg. 7–13)), which biosphere processes to include, resource usage by the local population (e.g., for 40 CFR part 191, 65 percent of drinking water is assumed to be from the contaminated surface water (ibid, pg. 7–7)), and individual habits and characteristics (e.g., for 40 CFR part 191, annual individual intake of drinking water is assumed to be 600 liters (ibid, pg. 7–7)) will need to be made. In its current form, part 63 requires all the same calculations to be done, but the defense of many of the assumptions is the responsibility of DOE and will be subject to review and approval by NRC.

Use of a release limit also provides less information than calculating the dose from a release. The dose calculation combines the intake and exposure from all radionuclides in the environment into one term. The dose from one scenario or calculation can be readily compared to another. When release limits are used, it is very difficult to compare results if more than one radionuclide is involved because each radionuclide provides a different dose/risk per unit activity. For example, consider a review of two alternate designs. For design number one, the total release results in radionuclide A being released at 60 percent of its limit and radionuclide B is at 30 percent of its limit. For design number two, radionuclide A is 20 percent of its limit and radionuclide B is 70 percent of its limit. Without knowing the relative risk from a release per unit activity for each radionuclide, it would be difficult, if not impossible, to state which design results in a lower risk to the public. Thus, the total release limit yields less information in its application than a dose limit.

Issue 3: How does the use of an individual dose limit protect the entire population?

Comment. A few commenters supported either the use of collective dose limits or requiring dose distributions over the population to be calculated based on a concern that a single dose limit requiring only calculation of dose to the critical group would not adequately protect the overall population. Commenters: (1) Suggested that the collective dose is more important than the individual dose, (2) disagreed with the use of a negligible individual dose value to screen possible release scenarios, and (3) viewed a dose distribution over the population as more informative to the regulators and public, allowing a more risk-informed decision to be made.

Response. The Commission agrees with NAS that "a health-based individual standard will provide a reasonable standard for protection of the general public" (p. 65 of the NAS report). The final regulations, which specify characteristics of an RMEI and an individual dose limit of 0.15 mSv/year (15 mrem/year), are protective of the RMEI. The general public includes the small number of individuals within the RMEI's community as well as all other individuals residing near the Yucca Mountain area. Because the community in which the RMEI resides will have a higher estimated dose than the highest exposed individual who does not live in that community, an individual dose limit for the RMEI is protective of all individuals.

Although a distribution of individual doses for the entire population arguably can provide more information to consider in making a decision, the speculation and uncertainty regarding a representative population dose distribution would generally make the results inadequate to use in decision making. The difficulty lies in developing the habits, characteristics, location, and exposure time for the entire population. For analyses of possible future releases, such as from degrading waste in Yucca Mountain, the assumptions about the location, habits, and characteristics for each individual (or group of individuals) would be speculative. The Commission believes that it is possible to develop and defend a reasonable exposure scenario for a small group of individuals that would likely receive the largest doses based on current practices in the region because analyzing doses received by the RMEI living in a community at the 18-km (11-mile) location with a diet and living style representative of the people who now reside in the Town of Amargosa Valley, Nevada, would bound any doses received by other individuals in the population. Because of the uncertainty in the distribution and range of activities, including location and number of individuals, for other less exposed groups, unbounded speculation could make any resulting population dose distribution unsupportable.

Although the Commission could require performance assessments of the potential dose distribution to hypothetical individuals, at the same locations and with the same habits as the current residents, the Commission believes that the uncertainty in the doses calculated for those not subject to the largest expected exposures would make the results difficult to interpret. In the end, the speculation would lead NRC, DOE, EPA, and other interested parties to expend resources without a commensurate increase in public health and safety or protection of the environment.

Collective dose is useful for comparing options but it does not provide adequate protection of the individual. Collective dose is the total dose received by all exposed people, regardless of distance or magnitude of exposure, over all time from a source. In general, most analyses tend to truncate the dose by calculating over a certain time frame and a given environmental area. Truncated collective dose can provide an overall measure of radiological impact on society or on parts of society but is only useful as an aid to compare options (e.g., DOE has considered individuals living within 84 km (52 miles) of the Yucca Mountain site for evaluating population doses in the DEIS). Because the calculation of collective dose results in a single value (in person-Sv (person-rem)), it gives no indication of the range or variability of individual doses or the time when the doses could occur. Meanwhile, the use of an individual dose limit to the RMEI assures that the vast majority of the population receive lower doses. The Commission believes that using an individual all-pathway dose assessment provides to the regulator and the public a meaningful measure for making decisions regarding public health and safety.

Issue 4: How is the "As Low As Reasonably Achievable" (ALARA) principle incorporated in part 63?

Comment. A few commenters suggested that the ALARA principle be explicitly part of the long-term compliance dose limit in part 63. Others supported the proposed rule for not including the ALARA principle in the requirements for the long-term performance requirements because the cost-benefit analysis would be highly speculative.

Response. The Commission believes that, although it is appropriate to explicitly require the application of the ALARA principle to the operational and decommissioning phases of the repository, the application of ALARA to achievement of the long-term performance objective is not appropriate.

The ALARA principle deals with optimizing the reduction of potential doses from radiation to members of the general public and workers. It is a principal component of the radiation protection philosophy during operations and decommissioning activities and it helps to ensure that no individual will receive a dose in excess of the annual dose limit (i.e., 1 mSv/year (100 mrem/year) for the public and 50 mSv/year (5,000 mrem/year) for radiation workers). Application of ALARA during operations compels the consideration of the benefits of further reduction in potential doses to present-day populations and workers relative to impacts to present-day populations (e.g., increased cost to reduce potential doses further). The application of ALARA to the achievement of the postclosure performance objective would involve considerations far more complicated than those evaluated for operations. The reasonableness of further reduction of potential doses would need to evaluate benefits and impacts that span many generations (e.g., costs incurred today versus a reduction of potential doses thousands of years in the future; repository designs that reduce potential doses in the future but increase doses to present-day workers during fabrication of the design such as installing a special backfill). By adopting the EPA's dose limit for long-term performance, the Commission implements a constraint that is a small fraction (15 percent) of the public dose limit, and which provides a significant margin of safety to ensure that public health and safety and the environment are protected.

In its 1995 findings and recommendations, NAS noted that there is no scientific basis for incorporating the ALARA principle into NRC's Yucca Mountain regulations. In summary, their reasoning was that deep geologic disposal, by its very nature, was ALARA, and there were few technological alternatives in repository design. They also noted it would be problematic to evaluate compliance with the application of ALARA principles in the postclosure phase of the repository. The Commission agrees with NAS in this regard. Therefore, although the Commission will require ALARA considerations for the operational phase and decommissioning of the surface facilities, NRC will not explicitly require an ALARA analysis as part of the postclosure performance assessment.

Issue 5: Why did NRC select 0.25 mSv/year (25 mrem/year) as the proposed dose limit?

Comment. A large number of commenters addressed the 0.25 mSv/year (25 mrem/year) dose limit in proposed part 63. A large number either disagreed with the limit, saying it was too high, or supported a lower standard such as the EPA's 0.15 mSv/year (15 mrem/year) standard in 40 CFR part 191 and proposed 40 CFR part 197. Some commenters (1) expressed confusion on whether the dose limit was for workers or members of the public, (2) requested additional clarification on what "fully protect" meant as part of the dose limit, or (3) supported the 0.25 mSv/year (25 mrem/year) dose limit.

Response. The purpose of the postclosure dose limit and the performance assessment is to ensure that future generations will be adequately protected. EPA has established, and the Commission has incorporated, a dose limit of 0.15 mSV/year (15 mrem/year). The Commission has long held that its proposed dose limit of 0.25 mSv/year (25 mrem/year) to an individual is (1) a reasonable and appropriate fraction of the annual public dose limit to protect future generations from receiving doses greater than 1 mSv/year (100 mrem/yr), (2) within the range of dose limits used for current sources of public exposure, and (3) accounts for the possibility of dose from other sources. However, the Commission has changed the dose limit in the final rule because it is required to be consistent with EPA's final standards, and not because the Commission is persuaded that its earlier proposal is unsafe, inadequate, or not appropriate in any way. The Commission is confident that the 0.15 mSv/yr (15 mrem/yr) limit is also amply protective. Both limits ensure that no member of the public would be exposed to more than 1 mSv/yr (100 mrem/yr) from all sources of radiation, except background radiation. Both protect future generations. During the operational phase, the repository will be required to comply with part 20 for worker and public health and safety, except that the permitted public dose will be limited to 0.15 mSv/yr (15 mrem/yr).

Issue 6: How is NRC's proposed limit different than the dose limits in older rules (i.e., part 61) and how do they compare?

Comment. Many commenters were concerned that the proposed part 63 would relax health and safety standards. They (1) disagreed with the comparisons with other waste-related safety standards discussed in the Statements of Consideration of the proposed rule, especially with rules using an older dose methodology and (2) expressed concern that the use of the single limit on the TEDE did not adequately protect the organs. They pointed to regulations requiring specific organ limits. While not a dose limit, some commenters disagreed with the use of the national value for background radiation for comparison for the Nevada area because of impacts from past practices.

Response. Part 63 does not change the 1 mSv/yr (100 mrem/yr) public dose limit from part 20, which is the health and safety standard for protection of members of the public. The Commission adopts, in part 63, a limit specifically for the repository that is well below the public dose limit, and that is similar to, but more stringent than a number of other waste management-related dose limits. As noted in the proposed rule, the Commission considers 0.25 mSv/yr (25 mrem/yr) TEDE to be the appropriate dose limit to compare with the range of potential doses represented by the older limits that had whole body dose limits of 0.25 mSv/yr (25 mrem/yr). The single limit does account for each organ's sensitivity to radiation, and each organ is limited to the same risk as the whole body.

Different sources of radiation can have different constraints placed on them. The 0.25 mSv/yr (25 mrem/yr) dose limit is in a similar range as a number of other constraints for waste management facilities or

decommissioning requirements (e.g., 40 CFR 191.03(a), 10 CFR 72.104, 10 CFR 61.41, and 10 CFR 20.1402). Furthermore, during the operational and surface facility decommissioning phases, the facility will need to meet the ALARA requirements in 10 CFR 20.1101(b). This includes an 0.1 mSv/yr (10 mrem/yr) additional constraint on air emissions (10 CFR 20.1101(d)).

A number of the current regulations were published before the early 1990s when the NRC (and other Federal agencies) began using current knowledge about radiation risks and internal dosimetry. These older regulations generally have two or three limits associated with them. They tend to have separate limits for the dose to the whole body, the organs, and possibly, a specific limit for the thyroid (e.g., 10 CFR 72.104 limit of 0.25 mSv/yr (25 mrem/yr) whole body, 0.75 mSv/yr (75 mrem/yr) thyroid dose, and 0.25 mSv/yr (25 mrem/yr) to any other critical organ). At the time these older regulations were published, the Federal government was using a dosimetry system (i.e., a model that calculates the dose if a person ingests or inhales radioactive material) that did not account for the sensitivity to radiation of the various organs (also known as radiosensitivity) nor how the dose to an organ compared to a whole body dose. Because one could not add the various organ doses together, each needed its own limit. With little information on the radiosensitivity of different organs, most organs were given the same limit.

In the early 1990s, the Federal government began using a newer dosimetry system that accounted for how radiosensitive the various organ systems are. In addition to being able to compare the doses between organs, one can calculate what whole body dose would result in the same cancer risk. This whole body dose is known as an effective dose equivalent. By summing each organ's dose, weighted by its relative radiosensitivity, and adding in any whole body exposure, one could calculate the total dose received, which is called the TEDE. Therefore, by using the TEDE dosimetry system, not only the whole body but each of the organs are protected from an increased chance of cancer. They are also all protected at the same level of risk, which was not true of the earlier system.

Because each of the organs had the same limit under the older system even though each had a different level of radiosensitivity, it is very difficult to directly compare the old standards with the new standards. As noted in the proposed rule, the Commission considers 0.25 mSv/yr (25 mrem/yr) TEDE as the appropriate dose limit to compare with the range of potential doses represented by the older limits that had whole body dose limits of 0.25 mSv/yr (25 mrem/yr). However, to conform to the EPA standard, the Commission has incorporated a dose limit of 0.15 mSv/yr (15 mrem/yr) in final part 63.

In the proposed rule, as a point of reference, it stated that the national average background radiation is approximately 3 mSv/yr (300 mrem/yr). Some commenters questioned whether this was valid for the Nevada area considering past practices in the area. The average background radiation stated in the proposed rule did not include variations due to the geology, relative altitude above sea level, or past practices in the region around Yucca Mountain. The Commission does not consider dose from the residual radioactivity left by past practices to be part of the background radiation.

3.3 Calculation of Expected Dose

Issue: Is the "expected annual dose" an appropriate quantitative measure for demonstrating compliance?

Comment. The public noted that while a specialist may know that the "expected dose" and the "mean dose" are equivalent, to many people "expected" implies the most likely outcome. The same commenter asserted that the mean value derived from the performance assessment is not the most likely, but rather a value that is unlikely to be exceeded. The commenter sought clarification on whether the "expected annual dose" is the mean or the median dose or some other statistical measure. Some members of the public approved of the use of the mean dose rather than the median or mode and noted that the mean should provide a reasonable degree of conservatism. Furthermore, some commenters asserted that use of the "expected annual dose" is completely consistent with NAS recommendations that the mean value of the calculations be used for comparison to the standard. Finally, one commenter supported the use of a 25 mrem performance objective, but suggested that it be bolstered with the addition of a 100 mrem limit on the 95th percentile of the probabilistic dose distribution.

Response. Final EPA standards at 40 CFR part 197 specify that NRC determine compliance based upon the mean of projected doses of DOE's performance assessments. The Commission has incorporated this requirement at § 63.303 in subpart L. The mean of the projected annual dose is therefore the appropriate quantitative measure for demonstrating compliance with the dose limit. NAS recommended a performance objective for Yucca Mountain based on risk to an individual. Proposed part 63 defined "risk" to an individual as being proportional to two factors: (1) The dose to the individual from exposure to ionizing radiation and (2) the probability of the individual receiving that dose. Analyses conducted by NRC staff demonstrate that the mean annual dose correctly expresses the risk from radioactive exposure to the individual.

The Commission expects that performance assessments conducted by the applicant in support of any potential license application will use probabilistic methods to simulate a wide range of possible future behaviors of the repository system. Each possible future behavior of the repository system is represented by a curve describing the annual dose to the RMEI as a function of time. Generally, but not necessarily, each of the possible curves is assumed to be equally likely. Because none of these possible futures can be demonstrated to describe the actual future behavior of the repository system, the Commission requires that the applicant calculate the mean of these dose versus time curves, properly weighted by their individual probabilities.

In addition, NRC performance assessment experience indicates that the mean already reflects a high degree of confidence that dose limits will not be exceeded. For example, preliminary analysis of the proposed repository at Yucca Mountain (Mohanty, S., R. Codell, R. Rice, J. Weldy, Y. Lu, R. Byrne, T. McCartin, M. Jarzemba, and G. Wittmeyer, "System-Level Repository Analyses using TPA Version 3.2 Code," Center for Nuclear Waste Regulatory Analyses, CNWRA 99–002, August 1999) indicates that the mean exceeds the 95th percentile at early times (i.e., less than 600 years), the 80th percentile prior to 6,000 years and greater than the 70th percentile at 10,000 years. For this reason, NRC does not believe that addition of a 100-mrem limit on the 95th percentile would provide significant additional protection to the public.

3.4 Infant and Children Dose Standard

Issue: Is the dose limit protective of children (and other sensitive populations) and the environment?

Comment. Many commenters were concerned that the dose limits in part 63 may not be sufficiently protective of sensitive populations such as children or infants that may be more susceptible to the effects of radiation. Others were concerned that by focusing the dose limit on protecting humans, the environment was not adequately protected.

Response. The international community and the Federal agencies (including EPA) follow ICRP's current guidelines that the overall annual dose to members of the public from all sources should not exceed 1 mSv (100 mrem), in order to be protective of all individuals and the environment. These guidelines also hold that exposures from a single practice should be limited to a fraction of this overall dose. The purpose of the public dose limit is to limit the lifetime risk from radiation to a member of the general public. The conversion factor used to equate dose into risk is based on data from various populations exposed to very high doses of radiation such as the atomic bomb survivors, and these populations contained individuals of all ages. Therefore, variation of the sensitivity to radiation with age and gender is built into the standards which are based on a lifetime exposure. A lifetime exposure includes all stages of life, from birth to old age. For ease of implementation, the radiation standards, which are developed to minimize the lifetime risk, limit the annual exposure that an individual may receive. For more information on the selection of the 0.15 mSv/yr (15 mrem/yr) limit, see the discussion under the Individual Dose Limit.

Experimental studies have shown that many flora and fauna tend to be much more resistant to radiation than humans (Casarett, Alison, P., "Radiation Biology," Prentice-Hall, 1968, pages 220 and 300–302 and Nias, A.H.W., "An Introduction to Radiobiology," John Wiley and Sons, 1990, page 231). Therefore, except in cases where large concentrations of radionuclides can enter the environment and no reasonable exposure scenarios exist for humans, one of the principles of radiation protection is that by protecting the public, the environment is protected. In the case of Yucca Mountain and long-term releases, the primary pathway will be through the ground water. Although the contaminated ground water may rise up to the surface environment around Ash Meadows (approximately 40 km (25 miles) from Yucca Mountain), the contaminants will be diluted to much lower concentrations than those used in calculating the dose to the RMEI. Therefore, if the RMEI is protected from doses in excess of the dose limit, the environment is also protected.

3.5 Location of the Critical Group or RMEI

Issue 1: Should the NRC staff consider alternative locations to the proposed 20-km location of the proposed critical group?

Comment. Some commenters recommended that the critical group be located closer than 20 km (up to and including the outline of the repository footprint). Some commenters recommended distances greater than 20 km. Commenters suggested that locations downwind from Yucca Mountain should be considered under critical group locations. Another commenter suggested that NRC's limitation on well depths, based on 1950's–1960's drilling practices, in defining a critical group, was outdated and needed to be revised based on modern drilling practices and pumping technology.

Response. As required by law, the Commission will adopt a compliance location consistent with that established by EPA in its standards for Yucca Mountain. The EPA standards limit the permissible dose to the RMEI, an individual who resides in the "accessible environment", above the highest concentration of radionuclides in the plume of contamination. EPA has also established ground-water protection limits for a representative volume of water which includes the highest concentration level in the plume of contamination in the accessible environment. EPA defines the accessible environment as any point outside of the "controlled area." As defined by EPA the controlled area is a 300 square-kilometer surface area that extends no further south than 36° 40′13.6661″ north latitude, or roughly 18 kilometers, in the predominant direction of ground-water flow, and not beyond 5 kilometers in any other direction.

In its 1995 findings and recommendations, NAS recommended that dose calculations be performed, for specific populations, to avoid unlimited speculation about the behavior of future human society. Specifically, in performing the requisite calculations, NAS recommended consideration of the local biosphere, using the "critical group approach" specified by the ICRP and employing "cautious but reasonable assumptions." The ICRP has generally defined the critical group to be a relatively homogenous group of people whose location and habits are such that they are representative of those individuals expected to receive the highest doses as a result of radionuclide releases (International Commission on Radiological Protection, "Recommendations of the ICRP," Annals of the ICRP, Vol. 1, No. 3 (1977). (ICRP Publication 26) and International Commission on Radiological Protection, "Radiological Protection Principles for the Disposal of Solid Radioactive Waste," Pergamon Press, Oxford, 1985. (ICRP Publication 46))

Both EPA and NRC have identified the ground-water pathway as the most likely pathway for radiological exposures at Yucca Mountain. EPA's standards, which specify the location for the RMEI at 18 kilometers in the predominant direction of ground-water flow, is consistent with the most likely pathway for radiological exposure. This location is generally considered the nearest location to Yucca Mountain where farming activities can reasonably be expected to occur. At distances less than 18 km to the Yucca Mountain site, there is evidence of intermittent or temporary occupation in modern (historic) times in and around the site—for prospecting or ranching (see "Preliminary Performance-Based Analyses Relevant to Dose Based Performance Measures for a Proposed Geologic Repository at Yucca Mountain," T. McCartin and M. Lee (eds.), NUREG–1538, 2001 (in press)). There also are a number of Native American archeological sites reported throughout NTS closer to the site than the Lathrop Wells location. However, the literature indicates that these were never permanently occupied, and most were abandoned by the end of the 1800's. Overall, the literature suggests many reasons for the absence of permanent inhabitation at distances much closer than 18 km to the site—unfavorable agricultural conditions, inhospitable terrain, the scarcity of mineral resources, and limitations on water availability.

As discussed in the proposed regulation, farming activities are considered to be representative of those individuals expected to receive the highest dose because (1) farming activities involve more exposure pathways than other known human activities in the region (e.g., ingestion pathway through consumption of contaminated water, crops, and animal products) and (2) the relatively large water demand for ground water for irrigation increases the likelihood of drawing contaminated water to the surface where human exposures could occur (64 FR 8645; February 22, 1999).

Finally, with regard to the suggestion that the NRC staff's understanding of drilling and pumping practices in the area is outdated, the Commission does not share this view. Rotary drilling technology, first introduced into the

U.S. in the early 1900's, is still used to drill most wells in the U.S., including those in the Amargosa Desert area. The Commission also is aware that there are now more efficient submersible pumps capable of pumping ground water from greater depths. However, the costs of developing deep ground-water resources increase proportionally with depth, regardless of pump efficiencies.

Issue 2: Should alternatives to the proposed farming community critical group be considered?

Comment. A few commenters objected to the NRC staff's proposed farming community critical group type and noted that parameters used by the NRC staff to define it were themselves controversial and speculative. Overall, the commenters recommended that the NRC staff give more consideration to the criteria used to define the characteristics of the critical group and, in doing so, other critical groups could be identified and situated at locations closer than 20 km to the proposed repository. A question was also raised whether doses would be higher if a farming critical group were located closer than 20 km to Yucca Mountain.

Response. EPA's standards specify the RMEI as the appropriate basis for application of the individual protection standard and adopted certain characteristics for the RMEI representative of the Town of Amargosa Valley. The Commission has added an additional requirement that DOE should assume the RMEI uses contaminated water with average concentrations of radionuclides in a volume of water reflective of the water demand associated with the community in which the RMEI resides (*i.e.*, 3,000 acre-feet/yr). EPA selected a rural-residential RMEI that is assumed to drink two liters per day of contaminated water and consume some locally produced food (based on surveys) (66 FR 32092; June 13, 2001). As noted in the preamble to the EPA standards (66 FR 32093; June 13, 2001), commercial farming occurs today in the southwestern portion of the Town of Amargosa Valley. Thus any survey of consumption of locally produced food for this area will include a variety of lifestyles including some full-time farmers, however, the RMEI is not assumed to be a full-time farmer. NRC proposed an average member of a farming community, in part, to ensure locally produced food was accounted for as a potential exposure pathway. The Commission considers the RMEI, as specified in the EPA's standards, to be protective and consistent with the Commission's intent of including locally produced food as a potential exposure pathway. Also, as noted in the response to the previous issue, EPA limits the location of the RMEI to any point outside of the "controlled area," which EPA defines as 300 square kilometer surface area that extends no further south than 36° 40′13.6661″ north latitude, or roughly 18 kilometers, in the predominant direction of ground-water flow, and not beyond 5 kilometers in any other direction. It is possible, of course, to postulate some other RMEI, however, doing so would be difficult to defend based on the pattern of historic development in the area prior to the establishment of NTS, and would also be inconsistent with NAS' overall recommendations.

In order to avoid boundless speculation, the NAS recommended that the characteristics of the exposure scenario be specified by rule. Thus, the EPA standards specify certain characteristics of the biosphere and the RMEI. NRC's proposed regulation also specified many of these same characteristics in addition to specifying a farming community of approximately 100 individuals (residing on 15 to 25 farms). This specification of the farming community provided flexibility to DOE in determining an appropriate water demand consistent with the specified farming community. It is reasonable to assume, based on current activities and water usage in the area, that the annual water demand for a farming community of this size could range from a few thousand to as much as ten thousand acre-feet. The final regulations specify a water demand of 3,000 acre-feet as a conservative value for use in estimating the dose to the RMEI. Specification of this value is consistent with: (1) The NAS recommendations for specifying the exposure scenario by rule; (2) NRC's proposed critical group (*i.e.*, farming community of 100 individuals); and (3) the criteria for the RMEI specified in the EPA standards (*i.e.*, diet and lifestyle representative of the people who now reside in the Town of Amargosa Valley, Nevada). Finally, the specification of the use of an average concentration is both consistent with the proposed regulation, which specified the use of an average dose, and the EPA standards that specify the use of a mean (average) dose.

Regarding the consideration of other types of critical groups, examination of the literature suggests that the pattern and nature of development in Amargosa Valley has been influenced by two types of factors—natural and engineered. Foremost among the natural factors is the physical geography of the area—particularly the type of climate and the availability of water. Amargosa Valley is considered a mid-latitude desert; it receives on average 4 inches of rain per year. Moreover, there are few naturally-occurring sources of drinking water supply; surface water supplies are restricted to a few natural springs and, although ground water is available, one has to drill for it. Because of costs associated with drilling and pumping ground water, agricultural development has tended to favor areas where the ground water is shallow. Thus, despite almost 100 years of improvements in farming technology, practical limitations in soil fertility combined with the economics of irrigation-based agriculture continue to restrict farming activities to the same basic location within Amargosa Valley.

Man-made developments, such as the introduction of commercial electricity in Amargosa Valley in the early 1960s, have made the economics of irrigation-based agriculture somewhat more attractive and led to diversification of the local economic base which now includes a dairy, a turf farm, a hotel, a casino, and a golf course. The availability of commercial electricity has also led to a moderate increase in the permanent, non-farming resident population. Non-farming activities, as one commenter pointed out, are generally unaffected by ground-water depth, soil type, and other similar factors and could take place anywhere in the Yucca Mountain area, but have not, because the lands immediately surrounding Yucca Mountain are Federally-owned. It is likely that in addition to the existence of infrastructure (roads and commercial electricity) other factors as significant as the physical ones, also have contributed to diversification of the local economic base in Amargosa Valley. However, decisions to pursue diverse business ventures are typically made privately, by business persons or corporations, taking into account economic forces in the market place. In the Commission's view, it is impossible to predict the future behavior of the national or local economy and translate this behavior into specific human actions in the Yucca Mountain area.

In summary, the requirement that the RMEI use water of average contaminant concentration, in a volume of water (3,000 acre-feet) reflective of a farming community, is conservative. Because the RMEI is defined as that person reasonably likely to receive the highest doses, the selection of RMEI characteristics must take into consideration both the magnitude of the dose likely to be received and the likelihood that a dose will actually occur at that location. The Commission believes that EPA selected the characteristics of the RMEI based on cautious and reasonable assumptions for the community of individuals likely to receive the highest doses. For these reasons, the Commission has adopted EPA's definition of the RMEI, as it appears at 40 CFR part 197 and added the additional requirement for water usage by the RMEI.

Issue 3: How will potential doses from the air-pathway be evaluated during the period of repository operations (preclosure period)?

Comment. A subject of continuing concern for any possible geologic repository at Yucca Mountain is the potential effects of unexpected (low probability) releases of gaseous/particulate radionuclides during the preclosure phase of operations (*i.e.*, DBEs). As a matter of background, it was noted that radioactive fallout from atmospheric tests of nuclear weapons conducted at the NTS during the 1950's was transported by prevailing westerly winds to communities east of the NTS, such as Caliente (Nevada). Because prevailing wind patterns are unlikely to change, concerns were expressed that health effects similar to those assumed to have resulted from atmospheric testing may arise from potential repository operations. Accordingly, it was suggested that a critical group based on exposure to an air-pathway should be evaluated.

Response. The Commission is aware of the effects of local atmospheric conditions on past nuclear testing activities (which were not subject to NRC regulation). During operations, DOE is required to control releases from all potential pathways, including atmospheric, such that no member of the public is exposed to more than 0.15 mSv/year (15 mrem/year). To comply with this requirement (at § 63.111) DOE will need to account for potential gaseous and particulate releases to existing members of the public (including current down-wind communities, such as Caliente). This requirement also directs DOE to conduct a preclosure safety assessment (§ 63.112) that shows (1) that the GROA design and normal operations at the site will limit the release of gaseous and particulate radionuclides so that the public dose will remain below 0.15 mSv/yr (15 mrem/yr) dose and (2) that in the event of an unlikely, but credible emergency situation, the design is robust enough to constrain potential doses to within acceptable public health and safety standards.

3.6 Critical Group Characteristics and Reference Biosphere

Issue 1: Is the average member (of a critical group) an appropriate measure to protect public health and safety?

Comment. A number of commenters focused on the proposed approach of calculating doses to an average member of a critical group. Commenters noted: (1) Use of the average member results in some people (aside from those with extreme habits) receiving less protection than others (*i.e.*, individuals protected by assuming current conditions may not be protected under potentially different future conditions); (2) the proposed rule does not provide a definition of the average member of the critical group; (3) the appropriate measure is the average of calculated doses to members of the critical group rather than a single dose calculated for a single member with average characteristics; and (4) a subset of the farming group that would be more likely to experience health effects (*e.g.*, children) should be used.

A few commenters suggested use of a subsistence farmer. One commenter added that sensitivity studies should be done for a subsistence farmer (*i.e.*, all food locally grown) located closer than 20 km from the proposed repository site to gain insights into risk, even though such a scenario would be unlikely.

Response. Although the Commission finds that limiting the dose received by the average member of the critical group is protective of current and future populations in the vicinity of the site, the final rule has been changed, as required by EnPA, to use 40 CFR part 197's mean dose to the RMEI as the measure to compare with the dose limit. The RMEI approach has been characterized as providing a similar level of protection to that achieved by protecting the average member of the critical group, as was proposed for part 63. In its comments to EPA on the proposed 40 CFR part 197, the NAS noted that the reasonably maximally exposed individual is very similar to the internationally used critical group approach. Additionally, in the proposed rule, NRC quoted the International Commission on Radiological Protection, which stated that it may be convenient to define the critical group in terms of a single hypothetical individual. The International Atomic Energy Agency's (IAEA's) Biosphere Modeling and Assessment working group has taken it further and calls such a hypothetical individual a reasonably maximally exposed individual (BIOMASS, 1999). Although there are slight differences between the EPA's reasonably maximally exposed individual and NRC's proposed average member of the critical group, they are virtually the same (especially in view of the IAEA's guidance). As noted earlier, the Commission has adopted the RMEI approach to be consistent with 40 CFR part 197.

The issue of whether children are protected has been taken into consideration in developing the rule (see discussion under Infant and Children Dose Standard). In summary, the standards were developed with sufficient conservatism to protect all members of the public regardless of age or gender.

The Commission disagrees with the recommendation that the NRC should use the admittedly unlikely subsistence farmer approach as the basis to test sensitivities (for additional information on the subsistence farmer approach, see the response to Issue 2, below). The NRC expects that sensitivity studies based on unrealistic and unlikely exposure scenarios would provide results that would be difficult to interpret and relate to the actual anticipated conditions of exposure. The NRC, however, agrees with the commenters' recognition of the value of sensitivity analysis as a tool to gain insight into uncertainties and the importance of parameters and models. NRC conducted extensive sensitivity analyses with an independently developed total performance assessment code (Nuclear Regulatory Commission. "Sensitivity and Uncertainty Analysis for a Proposed Repository at Yucca Mountain, Nevada, Using TPA 3.1, Volume 2: Results and Conclusions," NUREG 1668, Vol. 2, Washington DC: Nuclear Regulatory Commission) in the development of the proposed rule.

Issue 2: Has NRC made cautious and reasonable assumptions about the characteristics of the proposed critical group?

Comment. A variety of comments were received which are related to critical group assumptions specified in the proposed NRC rulemaking. A few commenters disagreed with specification of critical group characteristics based on current conditions, noting that over long time frames such conditions are likely to change. Another commenter asserted that the assumption that all locally grown food is contaminated is vague because the proposed rule does not state all food consumed by the critical group is locally grown (the commenter disagreed with the use of a subsistence farmer approach that would result from assuming all consumption was local). The commenter further stated that the expected plume dimensions and

number of farms make the assumption that all local food is contaminated excessively conservative (*i.e.*, tends to overestimate dose). The commenter noted local surveys show that not all food consumed in Amargosa Valley is locally grown. Other commenters offered that the critical group should be a subsistence farmer because that approach is conservative and bounding (suggesting that no dose would be allowed higher than the critical group's and therefore it would be protective of all). Another commenter stated the reasonably maximally exposed individual for a subsistence farmer also provides broad protection of all people (excepting those with extreme habits), and its conservatism would lessen the effect of assuming constancy of future behaviors. Still another commenter tentatively approved the NRC choice for critical group noting the actual critical group is likely to involve commercial, light industrial activities and, therefore, assuming a farming community is conservative (*i.e.*, protective). One commenter questioned the accuracy of the reported population count for Amargosa Valley.

Some commenters suggested alternative critical groups as being more representative or protective of the local population. Representatives of the Western Shoshone people suggested their long existence in the region and lifestyle in close proximity to the land support selection of a Western Shoshone critical group. They noted a long history of a hunting and gathering "subsistence" lifestyle that is expected to remain into the future. Farming and livestock activities were also discussed as recent introductions to the Western Shoshone lifestyle.

Response. Although the Commission considers the proposed assumptions about the characteristics of the critical group to be protective of current and future populations in the vicinity of the site, the final rule has been changed, as required by EnPA, to use the mean dose to the RMEI, as defined at 40 CFR part 197, as the measure to compare with the dose limit. Although there are slight differences between the characteristics of EPA's reasonably maximally exposed individual and the proposed average member of the critical group, they are practically the same. However, as noted, the Commission has adopted the characteristics of the RMEI as specified in 40 CFR 197 and added two additional requirements.

Regarding the two additional requirements, the final regulations specify: (1) The water demand to be used in estimating exposure to the RMEI (see response to Issue 2 under Critical Group Location); and (2) that the RMEI is an adult with metabolic and physiological considerations consistent with present knowledge. Specification of the RMEI as an adult is: (1) Consistent with the NAS recommendations for specifying the exposure scenario by rule; (2) consistent with the proposed regulation characteristics for the exposure scenario; (3) consistent with the criteria for the RMEI specified in the EPA standards (*i.e.*, drinks 2 liters of water per day); and (4) consistent with the EPA's Draft Federal Radiation Protection Guidance for Exposures of the General Public (59 FR 66422; December 23, 1994). The Commission considers the RMEI approach and associated characteristics of the RMEI to be protective of the health and safety of the public and environment (see also responses under Infant and Children Dose Standard and Location of the Critical Group or RMEI).

The Commission disagrees with the suggestions that a subsistence farming critical group should be used in dose calculations or that the RMEI be a subsistence farmer. As noted above, the Commission considers the RMEI approach from 40 CFR part 197 to be fully protective. The RMEI approach requires DOE to use diets and lifestyles representative of the people who now reside in the Town of Amargosa Valley, Nevada. Therefore, a variety of diets and lifestyles, including farming as it occurs today, will be represented in the characteristics of the RMEI. The Commission considers the use of local, present day conditions to be the most realistic basis for RMEI behavior assumptions, and present evidence indicates that there are no subsistence farmers in the vicinity of Yucca Mountain. NRC disagrees with the suggestion that the excessive conservatism of the subsistence approach is needed to offset any presumed lack of conservatism from the assumption of current conditions.

The Commission also disagrees with the suggestion that a Shoshone critical group should be used in dose calculations or that the RMEI be a Western Shoshone. In defining the critical group for the proposed rule, the Commission considered the possibility of a Native American based critical group. To date, based on all the information including the information provided by public comments, NRC has not been able to identify a suite of common characteristics of Native American groups in the region that is both different from the proposed farming critical group and likely to lead to greater exposures than the proposed farming critical group or the RMEI. Thus, the NRC believes the use of a RMEI for postclosure exposures protects Native Americans as well as other members of the public.

Issue 3: Should NRC include potential future climate changes in the specification of a reference biosphere?

Comment. One commenter asked that the NRC clarify whether it has determined with certainty that a future ice age will occur and, if so, provide the supporting documentation. If such a determination has not been made, NRC should revise the proposed rule to reflect greater uncertainty with regard to climate change. DOE recommended that NRC move proposed § 63.115(a)(3) and (4) to proposed § 63.114 to remove the implication that climate change needs to be considered for biosphere assumptions. Both DOE and another commenter claimed that because NRC expects that climate change (from arid to semi-arid) will not alter the biosphere sufficiently to cause major changes in potential exposure pathways, climate change should be removed from the biosphere requirements. DOE noted that climate change and changes in the geologic setting affect the performance assessment and, thus, should be moved to § 63.114. Another commenter recommended deleting proposed § 63.115(a)(3) and revising proposed § 63.115(a)(2) to reflect current climate conditions. Yet another commenter stated that evolution of the geologic setting should not be part of the reference biosphere, and thus the requirements should be moved under performance assessment (proposed § 63.114).

A commenter stressed the need to emphasize present-day conditions for defining the biosphere and provided a number of supporting points for NRC consideration. The commenter agreed with NRC that use of future human behavior is speculative and, thus, it is appropriate to limit assumptions to present-day behavior. The commenter noted risks to future generations should be based on levels deemed tolerable by present day society. The commenter claimed such analyses of future risk can only be done by assuming present-day behavior. The commenter also noted that using present-day characteristics provides confidence to the local community.

Another commenter believed that the emphasis on present-day conditions, while adequate for the time of site characterization, does not take into consideration processes and events currently taking place in Southern Nevada which could lead to different futures. Cited examples include the rapid growth that has occurred (and continues) in Southern Nevada over the past 30 years and the increase in urban growth of southern Nye County (*e.g.*, Pahrump). Such growth was noted as important because it increases demand for, and pumping rates of, ground water, which could lead to changes in gradients that would accelerate contamination. It was further mentioned that ground-water sources north of Clark county have long been considered options to meet future water demands. For these reasons, the NRC should consider such future possibilities as alternatives to present-day biosphere conditions.

Response. Because some commenters questioned the Commission's basis for including climate change in the performance assessment requirements of the proposed rule, the Commission responds by providing additional information supporting the theory that climate change is possible during the proposed period of performance. The inclusion of climate change in biosphere requirements is consistent with the EPA standards and is also further justified based on a reasonable likelihood that climate change will occur in the future and the fact that such changes have the potential to impact the biosphere. However, comments suggesting that NRC consider future economic growth trends ignore inherently large uncertainties in predictions of such futures over both short and long time frames. The Commission finds that the inclusion of such future predictions would add inappropriate speculation into the requirements, would not enhance public safety, and is likely inconsistent with the EPA standards. Therefore, the language of the proposed rule, which requires DOE to consider climate change and precludes consideration of changes to assumptions of lifestyle and land use, that could be subject to speculation about future economic growth, is retained in the final rule, with the exception that the critical group has been replaced with the RMEI for consistency with EPA's standards.

Although it is beyond the capabilities of present-day science to determine "with certainty" that a future ice age will occur, the present paleoclimatic data support that (1) ice ages have occurred in past history, (2) climate changes in the past have exhibited a cyclical pattern, and (3) the cycle is likely to lead back to another ice age. The NRC has extensively investigated relevant research on future climate change in the vicinity of Yucca Mountain and has summarized the available information in an Issue Resolution Status Report (Nuclear Regulatory Commission, "Issue Resolution Status Report Key Technical Issue: Unsaturated and Saturated Flow Under Isothermal Conditions," Revision 2, Vol 1, Washington DC: Nuclear Regulatory Commission, June 1999). (For more information about obtaining reports from the NRC PDR, mail a request to U.S. Nuclear Regulatory Commission, Public Document Room, Mail Stop O1F13, Washington DC 20555, or e-mail pdr@nrc.gov.) The NAS committee also was familiar with the science behind future climate changes and stated, in its recommendations on Yucca Mountain standards, that a future ice age in the next few hundred years is unlikely but not impossible, in the next 10,000 years is probable but not assured; however, over a million-year time frame, the climate is virtually certain to pass through several glacial-interglacial cycles (*i.e.*, ice ages). The Commission believes there is sufficient information in the paleoclimate record to justify including climate change in the final regulations regarding effects on repository performance.

Climate change was included in the proposed regulations for the reference biosphere in § 63.115 because the NRC believed there was sufficient scientific evidence supporting the potential for climate change over the long time frames considered by the performance assessment calculations. Although NRC analyses suggest that inclusion of climate change in the biosphere is not likely to significantly change the assumed local climate conditions and assumed exposure conditions, the Commission believes it is important to include the consideration of climate change in both the geosphere and the biosphere performance assessment calculations to ensure that the conceptual model of the environment is consistent with our scientific understanding of reasonably anticipated natural events. The NRC also believes it is important for DOE to include these processes in its performance assessment calculations and do the necessary technical analyses to ensure the processes have been adequately considered and addressed.

The NRC agrees there is a need to emphasize current conditions when applied to behavioral characteristics of the RMEI. The natural systems of the biosphere are allowed to vary (*e.g.*, climate change) because the geologic record provides evidence of past climate over a long time frame, which provides a strong basis for predicting future changes. Because human behavior cannot be similarly predicted, a similar approach cannot be used for the RMEI and the influence the local population has on the biosphere. Thus, it is necessary to emphasize current conditions for the RMEI (see response to Issue 1 for more information). The suggestion that NRC consider alternative futures related to human behavior is speculative and leads to problems deciding which alternative futures are credible and which are unrealistic. Such questions have no scientific or technical answer. It is DOE's responsibility to demonstrate that the RMEI and biosphere assumptions in performance assessment calculations are consistent with local conditions. During the review of the license application, the NRC will evaluate DOE's assumptions to ensure they are consistent with current information. Given the uncertainties associated with local economics, NRC believes it is unreasonable to expect DOE to predict future growth conditions in local areas and the consequences of growth trends.

3.7 Absence of Separate Ground-Water Protection Criteria

Issue: Why are there no separate requirements for the protection of ground water given the importance of ground water in the arid environment of Yucca Mountain and the fact that the most likely pathway for radionuclides to escape from the repository is via the ground-water pathway?

Comment. Commenters were divided on whether separate requirements for protection of ground water are necessary. Commenters supporting separate requirements for protection of ground water provided various rationales for instituting separate requirements, such as: (1) Ground water represents a valuable resource deserving separate protection; (2) ground water is the most likely source of contamination to Yucca Mountain residents; and (3) ground water at Yucca Mountain should be provided the same level of protection afforded other sites around the country that are subject to separate ground-water protection requirements under the Safe Drinking Water Act (SDWA). Generally, these commenters recommended protecting ground water by either limiting individual exposure from drinking water to 4 mrem per year or using EPA's maximum contaminant levels (MCLs). However, some commenters opposed the imposition of separate requirements for protecting ground water. One commenter opposed to separate requirements for protection of ground water stated: (1) An overall system approach for safety is appropriate, and separate requirements for protection of ground water represent unnecessary subsystem requirements and (2) such requirements would not be consistent with the recommendations of

NAS and go beyond the health-based standards mandated in section 801 of the EnPA.

Response. The Commission has commented previously that an individual, all-pathway dose limit of either 0.15 mSv (15 mrem) or 0.25 mSv (25 mrem) TEDE ensures that the risks from all radionuclides and all exposure pathways, including the ground-water pathway, are acceptable and protective. The EPA itself acknowledged, in publishing final standards for Yucca Mountain, that an " * * * Individual Protection Standard is adequate in itself to protect public health and safety." However, ultimately, the EPA had to make the decision whether to include separate requirements for groundwater protection and the final EPA standards for Yucca Mountain include such requirements for the purpose of protecting groundwater. Therefore, as required by law, final part 63 requirements incorporate final EPA standards for Yucca Mountain at 40 CFR part 197, including separate ground-water protection requirements. These requirements, §§ 197.30 and 197.31, appear in the final 10 CFR part 63 regulations as §§ 63.331 and 63.332, respectively.

3.8 Multiple Barriers and Defense in Depth

Issue 1: Should NRC set quantitative limits (that is, subsystem requirements) for specific barriers that make up the repository system?

Comments. The NRC received comments both supporting and opposing the approach proposed in part 63, which would provide a single overall, health-based, performance objective and avoid setting arbitrary, quantitative limits on individual barriers. Commenters in favor of a single system performance goal stated that risk-informed and performance-based regulations allow the applicant and the regulator to place greatest emphasis on issues important to health and safety. Commenters supporting quantitative limits for specific subsystems expressed concern that reliance on quantitative performance assessments to show compliance with a single measure of performance is less protective than setting specific numerical criteria for the performance of individual barriers. They argued that quantitative limits for individual barriers are needed to provide greater assurance for overall repository performance and, in general, supported keeping the quantitative limits at part 60.

Response. The Commission believes that it presented a sound basis for the proposed approach to multiple barriers and defense in depth in the Supplementary Information accompanying the proposed part 63. The final rule adopts a single quantitative performance goal for individual protection and separate limits for ground-water protection as specified by the EPA standards. Beyond these, the final rule does not place quantitative limits on individual barriers. After considering the comments received, however, the Commission recognizes a need to clarify the multiple barrier requirements in the proposed rule. The response to the next issue discusses the specific clarifications adopted.

The Commission based its proposed treatment of multiple barriers on the following:

1. Consistent with the Commission's risk-informed and performance-based regulatory philosophy, DOE is provided flexibility for deciding the extent and focus of site characterization. As the repository designer, DOE may place greater or lesser reliance on individual components of the repository system when deciding how best to achieve the overall safety objective.

2. Estimates of subsystem performance are subject to many, if not all, of the same sources of uncertainty as are estimates of overall system performance. It is questionable, therefore, whether the subsystem criteria in part 60, or any other criteria, could provide truly independent assurance of total system performance.

3. The Commission recognizes that techniques of performance assessment have improved a great deal because of significant advances in knowledge and experience achieved since part 60 was developed. These advances in performance assessment technology support the use of performance assessment results for estimating long-term repository performance. They also obviate, in the Commission's view, the need to prescribe arbitrary, minimum performance standards for subsystems to build confidence in a system's overall performance.

The Commission's goal is to protect public health and safety and to ensure compliance with EPA's standards. NRC's evaluation of DOE's compliance demonstration will examine how all components of the repository system work together to achieve this goal. Therefore, the emphasis should not be on the isolated performance of individual barriers but rather on ensuring the repository system is robust, and is not wholly dependent on a single barrier. Further, the Commission supports an approach that would allow DOE to use its available resources effectively to achieve the safest repository without unnecessary constraints imposed by separate, additional subsystem performance requirements. It is also important to remember that part 63 requires DOE to carry out a performance confirmation program to provide further confidence that barriers important to waste isolation will continue to perform as expected (see Section 2.4 on Performance Confirmation).

Issue 2: How does the multiple barrier provision fulfill NRC's philosophy of defense in depth in evaluating repository performance?

Comments. Some commenters asked the NRC to explain how we apply defense in depth to the repository without specific calculations or numerical limits for meeting this requirement. They stated that the proposed part 63 is not clear about how DOE must demonstrate defense in depth for repository performance.

Response. In general, the Commission believes that a repository system should reflect the philosophy of defense in depth. The Commission expects that if a repository system is made up of multiple barriers, then it will be more tolerant of unanticipated failures and external challenges. The final regulations specify criteria for quantitatively evaluating postclosure performance (*e.g.*, individual protection, ground-water protection, and evaluation of human intrusion). These criteria help ensure defense in depth by requiring calculations that provide risk insights into the impact on performance of specific system attributes and external conditions. DOE must evaluate the performance of the repository system, as it performs as a result of compliance with general design criteria (*e.g.*, required use of multiple barriers and identification of the repository by markers). DOE must also evaluate the system's response to various external challenges (*e.g.*, disruptive events treated in the performance assessment, as well as a specified human intrusion scenario).

Commenters on the proposed rule pointed out that neither the intent of the multiple barrier provision, mandated by the Nuclear Waste Policy Act, nor how NRC would determine compliance with this provision, were clear. To clarify this intent, the final rule explains the concepts associated with the multiple barrier provision in § 63.102, and provides the criteria in § 63.115.

The proposed rule would have required and the final rule requires DOE to: (1) Identify barriers; (2) describe quantitatively each barrier's ability to contribute to waste isolation; and (3) provide technical bases for the barriers' capabilities as part of the overall demonstration of compliance with the individual protection standard (see § 63.114 (h)–(j) of the proposed rule). Although not necessarily required as a separate demonstration, this required information on the capability of barriers, integral to the performance assessment, illustrates the resilience or lack of resilience of the repository to unanticipated failures or external challenges. Also, quantitative insights about the defense in depth of the proposed repository emerge directly from the quantitative evaluations in the performance assessment. The performance assessment must include analyses of the effects of unlikely, but credible, external challenges on overall performance. (In its analyses, DOE must consider disruptive events that have an annual probability of occurrence greater than 10^{-8}.) Disruptive events may degrade performance of the engineered barriers or reduce the effectiveness of natural barriers or both. Also, DOE must evaluate uncertainty about the performance of both engineered and natural barriers in the performance assessment. For example, uncertainty about the corrosion rate of the waste package will necessarily affect the estimated lifetime of the package. Likewise, uncertainty about geochemical sorption will affect estimates of the time it takes specific radionuclides to travel in the geosphere. As with the disruptive events, the proper consideration of uncertainty in the performance assessment should ensure an evaluation of the range of response of individual barriers to various challenges (*e.g.*, higher than normal corrosion rates, lower than normal geochemical sorption). Thus, a complete performance assessment (*i.e.*, one that complies with § 63.114) will illustrate the effectiveness of the multiple barriers, and the implementation of the philosophy of defense in depth, such that the individual protection standard is shown to be met even when barriers are challenged.

The Commission has clarified how DOE is to develop the technical basis for each barrier's technical capability. The change makes clear that a description of relevant information about a given barrier's characteristics and performance, which DOE has used to support the overall performance assessment, is sufficient to show compliance with this requirement. The language of the proposed rule was not intended to imply that an acceptable technical basis for multiple barriers need be (or even could be) derived separately from the basis for the performance assessment itself. Rather, the technical basis for the barriers should be presented in a focused, clear description. This description should be derived from pertinent information contained in the technical basis for the performance assessment.

Quantitative or Qualitative Assessment?

Consistent with the proposed rule, the final rule allows DOE to select from various methods to describe the capabilities of the barriers. Regardless of the method selected, DOE must describe the capability of each barrier to perform its intended function and the relationship of that barrier's role to limiting radiological exposure in the context of the overall performance assessment. The Commission has considered the comment that an evaluation of each barrier's capability should be quantitative. The Commission continues to believe a qualitative approach, as proposed, is appropriate for the following reasons:

1. It provides the Commission with information to be considered in its decisions without constraining its considerations to a specific limit for a particular barrier, which could result in less favorable overall system performance.

2. It gives the Commission the flexibility to consider the nature and extent of conservatism in the evaluations used for compliance demonstration, and to decide whether there is a need to require DOE to reduce uncertainties in its assessment (*e.g.*, collecting more site data) or to include further mitigative measures.

3. Quantitative evidence of the capability of individual barriers to contribute to waste isolation is an integral part of the performance assessment. Therefore, an additional quantitative limit is not necessary to show that overall performance reflects a system of multiple barriers.

The Commission understands that establishment of explicit, quantitative limits for individual barriers might be considered a desirable and more easily explained approach. That being said, however, the Commission knows of no scientific basis for setting such limits for particular barriers at Yucca Mountain, or at any other site, independent of the complex repository system in which they must perform. The Commission is confident that evidence for the resilience, or lack of resilience, of a multiple-barrier system will be found by examining a comprehensive and properly documented performance assessment of the behavior of the overall repository system. Such an assessment must consider credible and supportable ranges of individual parameters and modeling assumptions, and must include multiple evaluations of a wide range of combinations of resulting barrier performance.

Finally, the required description of barrier capability provides information that will aid in the interpretation of the performance assessment results, while at the same time providing information that is independent from the condition of the other barriers. For example, the unsaturated and saturated zones could provide significant retardation to many radionuclides such that radionuclides will not reach the RMEI within 10,000 years regardless of when the waste package fails. This capability of geologic systems to "retard" or slow the movement of contaminants exists whether or not the waste package is breached. Thus a geologic barrier can provide defense in depth irrespective of releases from the waste package. Describing the capabilities of the system's component barriers (*e.g.*, retardation of specific radionuclides in specific geologic media) can be accomplished by describing the applicable conceptual models and parameters used in the performance assessment. It does not require quantitative calculations beyond those performed to demonstrate compliance with the postclosure performance objectives. The Commission believes that understanding the capability of the system's component barriers provides an understanding of the repository system that can increase confidence that the postclosure performance objectives are met. The Commission is satisfied that the clarifying additions discussed above, along with other requirements at §§ 63.114 and 63.115, if met, will provide sufficient basis to determine whether a proposed repository system acceptably provides a system of multiple barriers.

3.9 Compliance Period

Issue 1: Is a 10,000-year compliance period reasonable in light of the NAS recommendations?

Comment. Several commenters stated that a 10,000-year compliance period conflicts with the NAS recommendation that the time over which compliance should be assessed should include the time when greatest risk occurs, within the limits imposed by the stability of the geologic system, and that rejecting the NAS recommendation is arbitrary.

Response. The EPA standards for Yucca Mountain provide for a demonstration of compliance over a 10,000-year time frame. Moreover, the

Commission agrees that a 10,000-year compliance period is reasonable for the reasons identified in the supplementary information provided with the proposed criteria at part 63 (64 FR 8647; February 22, 1999). The fact that it is feasible to calculate performance of the engineered and geologic barriers making up the repository system for periods much longer than 10,000 years does not mean that it is possible to make realistic or meaningful projections of human exposure and risk, attributable to releases from the repository, over comparable time frames. NAS acknowledged that projecting the behavior of human society over long periods is beyond the limits of scientific analysis and recommended that "cautious, but reasonable" assumptions, based upon current knowledge, be made with regard to the selection of biosphere and critical group parameters for Yucca Mountain. Determining just how far into the future current knowledge can no longer support "reasonable" assumptions about pathways affecting human exposure is clearly a subjective, policy judgment. NRC believes that, for periods approaching 1,000,000 years, as suggested by NAS, during which significant climatic and even human evolution would almost certainly occur, it is all but impossible to make useful and informed assumptions about human behaviors and exposure pathways. NAS explicitly acknowledged that selection of a time period over which compliance should be evaluated necessarily involves both technical and policy considerations (see p. 56, "Technical Bases for Yucca Mountain Standard," National Research Council, 1995).

Issue 2: Should NRC require DOE to provide supplemental analyses of repository performance at times other than 10,000 years?

Comment. One commenter stated that although a 10,000-year compliance period is well justified, it would be beneficial to require, either by rule or guidance, a supplemental analysis for performance at 1,000 years. This analysis would help to identify vulnerabilities such as juvenile failures of waste packages, so that DOE can reduce the likelihood and consequences of such vulnerabilities. The same commenter also stated that a supplemental analysis at 100,000 years, or even later, can provide a useful projection of the final transport of waste from the repository, particularly for the very long-lived isotopes.

Response. The Commission will not require DOE to provide supplemental analyses of repository performance at times other than 10,000 years. To demonstrate compliance with the individual dose limit, the expected annual dose needs to be below the regulatory limit at all times within the 10,000-year compliance period. This requires a time history of repository performance throughout the 10,000-year compliance period. Therefore, repository performance at 1,000 years can be derived from the performance assessment provided by DOE in the license application. A separate, supplemental analysis at 1,000 years is not necessary. It may be useful to note that NRC pre-licensing activities include providing guidance that DOE (and other stakeholders) can use to develop a transparent performance assessment that will reveal an understanding of the relationship between the performance of individual components or subsystems of the geologic repository and the performance of the total system at all times over the 10,000-year compliance period.

In response to Issue 1 (Is a 10,000-year compliance period reasonable in light of NAS recommendations?), the Commission questions the realism and meaningfulness of projections of human exposure and risk, attributable to releases from the repository, over time frames much longer than 10,000 years. Requiring DOE to provide a separate analysis of repository performance over very long times in the license application would be inconsistent with our position on the utility of this information, as well as with EPA's standards for Yucca Mountain. The EPA standards require that DOE include an analysis of repository performance up through peak dose in the EIS which would accompany any potential license application. This provision is included in the final part 63 regulations at § 63.341. The Commission notes that there is no standard that must be met with respect to these peak dose calculations, and that there is no finding that the NRC must make with respect to these peak dose calculations nor may they be the subject of litigation in any NRC licensing proceedings for a repository at Yucca Mountain.

3.10 Human Intrusion Scenario

Issue 1: Is the Commission's proposal for the human intrusion calculation appropriate for evaluating the ability of the repository to withstand an intrusion event?

Comment. Some commenters noted that, because of the uniqueness of the repository, it is likely that institutions involved with the development, construction, and operation of a repository, and knowledge of its existence, are likely to persist longer than 100 years after the repository is permanently closed. Because some form of institutional, corporate, or anecdotal knowledge about the proposed repository, would exist well beyond closure, any drilling into the repository would be advertent, not inadvertent, contrary to the NAS" recommendation. Thus, given the likelihood of multi-generational knowledge about any proposed repository that could persist well beyond permanent closure, there is no reason to believe that unintended human intrusion would occur shortly after the loss of institutional controls. Also, given the current waste package design, DOE asserted that current drilling techniques would likely not lead to waste package penetration without recognition by the drillers. Other commenters noted that any natural resource exploration campaign is likely to involve more than an exploratory borehole. Moreover, because of the potential for changing resource needs over the long period of regulatory concern, there is the possibility for multiple exploration campaigns and, thus, the potential for multiple boreholes breaching the repository. Consequently, the rule should be changed to require that effects of multiple boreholes on repository performance be evaluated.

One commenter questioned the rationale for not regulating the radioactive materials brought to the surface, in drill cuttings or captured in drill core, because these materials would enter the biosphere and have the potential for exposing members of the drilling crew and the public.

Response. The Commission supports and is implementing the approach for evaluation of human intrusion as specified in EPA's final standards. The Commission proposed at part 63 a stylized calculation that prescribed the timing of the intrusion (*i.e.*, 100 years after permanent closure), the repository barriers affected by the intrusion (*i.e.*, unsaturated zone and the waste package), and the relevant exposure pathway (*i.e.*, ground-water pathway). The comments received reflect the difficulties presented to EPA and to the Commission in selecting an appropriate approach for evaluating human intrusion. As noted by NAS, selecting an approach for evaluating human intrusion requires consideration of unknowns (*i.e.*, how and when intrusion into the repository will occur), ability to estimate the effect of a postulated intrusion into the repository, and policy considerations for setting an appropriate standard. In the proposed rule, the Commission specified a "stylized" calculation to test resilience of the repository and preclude

speculation on the form of the intrusion and when it may occur. However, the Commission also believes it is necessary to provide flexibility to DOE to support an alternative calculation such as the approach provided in EPA's final standards. The final EPA standards provide DOE the flexibility to identify the time of the intrusion as the earliest time that human intrusion into the waste package could occur without recognition by the drillers. The Commission has implemented this approach in the final regulations.

Responses to specific comments on the timing and frequency of the intrusion, details of the intrusion scenario regarding effects on the contents of the waste package, and exposure pathways for the intrusion are provided below:

Timing and Frequency of Intrusion

DOE commented that the proposed calculation was unrealistic because it is unlikely that a borehole would intersect a waste package because the cross-sectional area of the waste packages is small relative to the overall area of the repository footprint. DOE also noted that, at 100 years, it is unlikely the waste package could be penetrated, using current drilling techniques, without recognition by the drillers (DOE does not expect the waste packages to degrade significantly during the 10,000-year regulatory period). The final regulation, which implements the approach contained in the EPA standard, provides DOE with the flexibility to determine and to justify (subject to NRC review) its selection of the time of the intrusion event based on the condition of the waste package.

Another related issue is whether the stylized calculation should consider multiple intrusions. The final EPA standards resolve this issue in favor of a single intrusion. Moreover, in its findings and recommendations, NAS argued against analyses of whether and how often exploratory drilling would occur at Yucca Mountain because of the complexities associated in such assessments. Simply stated, the NAS felt that no one can accurately predict the characteristics of future human society and their technology. In the context of human intrusion, estimating the probability of exploratory drilling for a given resource relies on an ability to predict certain economic and technical factors that influence supply of, and demand for, that resource. In fact, NAS noted that the continued advances in noninvasive geophysical techniques may, in fact, reduce the number and frequency of exploratory boreholes. However, some evaluations of the resource potential of the site suggest that Yucca Mountain (and the area immediately around it) does not represent an attractive candidate for either random or systematic exploratory drilling at this time ((1) Raines, G.L., *et al.* (eds.), "Geology and Ore Deposits of the Great Basin," Geological Society of Nevada/U.S. Geological Survey, Symposium Proceedings, April 1–5, 1990, Reno/Sparks, Nevada, 2 vols., 1991; (2) Schalla, R.A., and E.H. Johnson (eds.), Oil Fields of the Great Basin, Reno, Nevada, Geological Society of Nevada, 1994; (3) Sherlock, M.G., D.P. Cox, and D.F. Huber, "Known Mineral Deposits and Occurrences in Nevada (Chapter 2)," in D.A. Singer (ed.), "An Analysis of Nevada's Metal-Bearing Mineral Resources," Reno, Nevada, Nevada Bureau of Mines and Geology, Open File Report 96–2, 1996; and (4) Singer, D.A. (ed.), "An Analysis of Nevada's Metal-Bearing Mineral Resources," Reno, Nevada, Nevada Bureau of Mines and Geology, Open File Report 96–2, 1996; and (5) U.S. Department of Energy, "Site Characterization Plan, Yucca Mountain Site, Nevada Research and Development Area, Nevada," Office of Civilian Radioactive Waste Management, Nevada, DOE/RW–0199, 9 vols., December 1988, pp. 1–256–1–313). Consequently, any consideration for the drilling of multiple exploratory boreholes or later drilling of more boreholes further increases the speculative nature of the intrusion scenario with potentially little increase in understanding repository resilience.

The EPA standards provide for consideration of a single borehole at the earliest time that human intrusion into the waste package can occur without recognition by the drillers. The Commission believes this is an appropriate test for evaluating repository resilience. Moreover, the suggested alternative to evaluate multiple intrusions for the human intrusion calculation fails to reflect the purpose of the human intrusion calculation, that is to test the resilience of the repository, not to evaluate the speculative issue of frequency of the intrusion.

Intrusion Scenario

The public comments on part 63 point out the need to clarify certain aspects of the prescribed human intrusion event at proposed § 63.113(d) with respect to the effects of human intrusion on the contents of the waste package. Consistent with current drilling practices, it can be reasonably assumed that material inside the waste package that is intercepted by the borehole would be taken to the surface. Proposed part 63 stated the borehole "extends to the saturated zone, and is not adequately sealed." Some commenters suggested that particulate HLW inside the waste package would be free to fall to the saturated zone inside the inadequately sealed borehole. The Commission did not intend to imply that, contrary to current drilling practices, an inadequately sealed borehole would allow particulate waste to fall directly to the saturated zone. However, an inadequately sealed borehole would likely allow water to readily enter the waste package; release of radionuclides from the waste package by and in water, and transport of these radionuclides to the saturated zone by way of the borehole rather than through geologic units that could potentially retard the transport of radionuclides. NRC has clarified this point at § 63.322(e) and (f) in the final rule.

Exposure Pathways

Human intrusion has the potential for releasing particulate HLW to the surface with drill cuttings or providing a fast pathway for radionuclides to be transported to the saturated zone by water (*e.g.*, water enters the waste package, releases radionuclides, and transports radionuclides by way of the borehole to the saturated zone). NAS concluded, and the Commission agrees, that analysis of the risk to the public or the intruders (*i.e.*, drilling crew) from radioactive drill cuttings left unattended at the surface for subsequent dispersal into the biosphere would not fulfill the purpose of the human intrusion calculation because it would not show how well a particular repository site and design would protect the public at large. Rather, an analysis of the hazard of particulate HLW left on the surface would be dominated by assumptions subject to significant speculation and uncertainty regardless of the particular site or design under evaluation. Additionally, the release to the surface represents a one-time release with no long-term effect on the repository barriers. Alternatively, releases to the ground-water pathway can be adversely influenced over a long period of time by an intrusion event that affects barriers of the repository (see the discussion on barriers). Therefore, an appropriate test of the resilience of the repository is an evaluation of the effects of intrusion on releases in the ground-water pathway.

Issue 2: Is a quantitative comparison between the individual dose limit and the results of the stylized human intrusion calculation appropriate for evaluating the impact of human intrusion?

Comment. Commenters questioned the value of comparing the results of what is essentially a deterministic "bounding" calculation for human intrusion with that of the probabilistic (risk) analysis of overall repository performance. Because risk is a function of both probability and consequence, evaluation of human intrusion, without accounting for the probability of the event taking place, must also apply judgment as to what constitutes an acceptable consequence. NEI suggested that selection of an acceptable consequence limit should be guided by the same logic that was used in establishing the proposed preclosure licensing requirements for DBEs found at § 63.111. This logic sets higher dose limits for those events that are unlikely to occur (*i.e.*, Category 2 DBEs) compared with the dose limit for those events expected to occur (*i.e.*, normal operations or Category 1 DBEs).

DOE suggested that the use of a highly speculative human intrusion scenario to evaluate the robustness of the repository is inappropriate and makes a poor criterion for potentially disqualifying the Yucca Mountain site. In particular, DOE noted that designing a repository to meet a restrictive human intrusion performance criterion may lead to suboptimization of the overall repository design. Therefore, DOE recommended that the results of the intrusion calculation be used as a qualitative indicator of repository "resilience."

Response. The objective of the human intrusion assessment is to inform any Commission decision regarding the need for DOE to reduce uncertainties in its estimates of performance or to provide more measures to mitigate consequences and protect public health and safety. As discussed in the previous response, the Commission is implementing the approach for evaluation of human intrusion as specified in EPA's final standards. This approach provides DOE flexibility in determining the timing of intrusion and sets an annual individual dose limit of 0.15 mSv/yr (15 mrem/yr).

3.11 Postclosure Aspects of Repository Design

Issue 1: Should the NRC limit the thermal energy output per unit area of the repository?

Comment. High-level waste (principally spent nuclear fuel) will continue to produce thermal energy following its disposal in a geologic repository. Host rock temperatures would be affected by the burn-up history of the waste, its age, and the density of waste package canisters within the repository. The resulting thermal load may result in a thermal-mechanical-hydrologic-chemical (T–M–H–C) response in the host rock and surrounding geologic setting, and thus may have a deleterious effect on repository performance. Given this concern, some commenters noted the proposed rule did not adequately account for the thermal output of the waste. In particular, some commenters suggested that the regulations should place a limit on the thermal output that would better ensure safe operation and long-term stability of the repository. One commenter even suggested that the waste be allowed to cool for 100 years prior to emplacement as a means of addressing this potential design issue.

Response. The Commission believes that it is inappropriate to specify a limit on the thermal energy output per unit area of the repository in the rule. This proposed regulation is performance-based and allows DOE wide latitude in how it designs any potential Yucca Mountain repository by requiring DOE to take into account likely site conditions, processes, and events expected during the time period of regulatory concern. Consequently, as a result of site characterization, DOE can be expected to come to some conclusion regarding the significance of T–M–H–C coupling to repository performance and account for it in both its preclosure design as well as in its postclosure performance assessment. The Commission recognizes that DOE is evaluating different thermal loading regimes in the context of its Supplemental Draft EIS. For its part, the Commission believes that it is inappropriate to specify a limit on the thermal energy output per unit area in advance of DOE's scientific decision making about the role and significance of T–M–H–C coupling at the Yucca Mountain site.

Issue 2: The repository design should be as robust as reasonably achievable.

Comment. A commenter suggested that although the ALARA principle should not be used in calculating doses, it should be used to design critical repository structures, systems, and components. By incorporating ALARA into the rule, the commenter proposed that the performance of certain design features, particularly barriers, would be optimized and made as robust as reasonably achievable.

Another commenter suggested that NRC should require that engineered barriers be designed to account for an oxidizing environment. The commenter stated that a ceramic waste package may function more effectively than a metal waste package in an oxidizing environment. One commenter was concerned that exceeding the Nelson limits could result in catastrophic failure of the waste package.

Finally, a commenter suggested that a repository with a natural-ventilation system may be safer and more sound. The commenter suggested that this design approach may be safer than complete closure of the repository.

Response. The Commission considers that part 63, as written, will ensure an adequate design and has not revised the proposed rule on this matter.

With regard to the public comment on the use of ALARA, in its 1995 findings and recommendations, NAS noted that there is no scientific basis for incorporating the ALARA principle into NRC's postclosure requirements. In summary, its reasoning was that deep geologic disposal, by its very nature, was ALARA, and there were few technological alternatives in repository design. They also noted that it would be problematic to evaluate compliance with the application of ALARA principles in the postclosure phase of the repository. The Commission agrees with NAS in this regard.

With regard to the comment concerning the potential oxidizing waste package environment, the Commission is aware of this concern and notes that, as the repository developer, the responsibility for designing an adequate engineered barrier system rests with DOE. As part of its responsibilities, DOE is required by the regulations to take into account applicable engineering limits, as well as likely site conditions, processes, and events, including those driven by thermal loads, when designing the waste package. As a result of its investigations, DOE is expected to reach some conclusion regarding the significance of the thermal pulse and its coupled effects on waste package lifetime. Thus, because DOE has some flexibility in how to design the repository and how it will allocate performance among the various natural and engineered barriers, DOE will have some flexibility in the choice of materials used to fabricate the waste package.

Lastly, with respect to the issue of repository ventilation, inasmuch as proposed part 63 is nonprescriptive, DOE has the responsibility to determine how to best design the geologic repository so that it complies with performance objectives. As noted above, DOE will be required by the regulations to take into account likely site conditions, processes, and events expected, including those driven by a thermal pulse. As a result of its investigations, DOE would come to some conclusion regarding the significance of the thermal pulse to repository performance and account for such significance in both its preclosure design as well as in its postclosure performance assessment. For its part, the Commission will independently review this information in any potential license application, including the significance of thermal loading on the repository and how it has been accounted for in its design and in the context of overall performance of the repository, to ensure that the performance objectives are met.

Issue 3: Will NRC have sufficient information to evaluate DOE's repository design?

Comment. One commenter expressed the view that the amount of information being requested at § 63.21(c)(4)(i) in the proposed rule [moved to § 63.21(c)(3)(ii) in the final rule], the description and discussion of the engineered barrier system, is insufficient and inadequate for the NRC staff's requisite review. It was recommended that this section of the rule be expanded to include the requirements that DOE include detailed design drawings, including specifications and flow sheets for all manufacturing processes, etc., as part of any potential license application. One commenter asked whether the NRC will have access to classified information from other governmental agencies.

Response. The Commission believes that part 63 requires DOE to submit sufficient information to allow NRC to perform the necessary review but has revised the proposed rule to specify the level of detail required.

The rule requires that the general information of the license application shall include "* * * a description and discussion of the engineered barrier system. * * *" The types of information to be included in that "description and discussion" are currently being identified by the NRC staff as part of the development of the NRC's YMRP. Consistent with the rule, this review plan will identify the expected content of any potential license application. The guidance ensures that any potential license application submitted by DOE contains the information necessary for docketing and review by the NRC staff. However, to better assure that the information submitted by DOE is consistent with the level of detail being sought for the GROA design description for preclosure, the proposed rule has been revised to require that the design description include dimensions, material properties, specifications, and analytical and design methods used, along with any applicable codes and standards.

With regard to the comment on NRC access to classified information, all information (including classified information) used by DOE to support its license application is subject to NRC review. The Commission is capable of receiving, handling, and storing classified information.

4 General Requirements

4.1 Quality Assurance

Issue 1: Would the NRC rule weaken or undo the requirement that DOE systematically record its decisions that significantly concern safety, how those decisions were made, and what factors influenced them?

Comment. A number of comments expressed a concern that the NRC rule would weaken or undo the requirement that DOE systematically record its decisions that significantly concern safety, how those decisions were made, and what factors influenced them. The commenters further stated that systematic accountability on scientific and engineering decisions related to safety must be upheld.

Response. The regulations, while risk-informed and performance-based, contain provisions that require DOE to monitor and report on the types of potential concerns raised in this comment. These include reports on site characterization activities (§ 63.16); construction records (§ 63.72); potential site, design, and construction deficiencies (§ 63.73); the implementation of a program of continuing performance confirmation (§§ 63.131–63.134); and the application of a rigorous QA program to site characterization, design, construction, and operations (§§ 63.141–63.144).

Issue 2: Should the quality assurance program requirements contained in part 60 remain intact for part 63?

Comment. A number of comments identified a need for the QA requirements contained in part 60 to be applicable for part 63.

Response. The QA requirements initially proposed in Subpart G, "Quality Assurance," to part 63 required that the licensee implement a QA program that meets the applicable requirements of Appendix B ("Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants") to part 50. However, rather than referencing Appendix B to 10 CFR part 50, as was done in the proposed rule, the final rule has incorporated quality assurance requirements from Appendix B that are specifically applicable to a geologic repository. Further, additional requirements are added in a new § 63.144 to address the controls that a licensee will have to meet for changing an NRC-approved QA program description.

Issue 3: Should there be requirements for qualification of data that existed prior to the implementation of QA programs?

Comment. One commenter expressed a concern that there are no requirements in the proposed rule to provide for the qualification of data that existed prior to the implementation of the QA program used by DOE.

Response. The Commission believes that the controls in §§ 63.141, 63.142, 63.143, and 63.144 are adequate. Based on these requirements, data related to structures, systems, and components important to safety, to design and characterization of barriers important to waste isolation, and to activities related thereto are subject to the applicable requirements of Appendix B to 10 CFR part 50 as incorporated into 10 CFR part 63. These provisions require DOE to evaluate data required to support its license application. If data related to structures, systems, and components important to safety, to design and characterization of barriers important to waste isolation, and to activities related thereto have not been collected in accordance with a QA program that meets these requirements, DOE would be required to show that such data have been qualified for its intended use.

The NRC recognized that some data supporting a license application for a high-level waste repository may not have been initially collected under a part 60, subpart G, QA program. In February 1987, the NRC published NUREG–1298, "Qualification of Existing Data for High-Level Nuclear Waste Repositories." NUREG–1298 provides guidance on the use and qualification of data not initially collected under a Subpart G QA program.

Issue 4: Should the NRC conduct an inspection to verify proper execution of QA programs? What additional steps will the NRC take to ensure that problems which occurred during site characterization will not occur after a license is granted (will there be requirements for NRC inspections)?

Comment. Commenters suggested that the regulations should include a requirement for NRC to conduct inspections to verify proper execution of the DOE QA program and that there should not be a strict reliance upon DOE to implement the program properly. Commenters also expressed a concern that the problems occurring during site characterization would continue after NRC granted a license to DOE. The

question was asked, "What additional steps will the NRC take to ensure that these same problems do not occur after a license is granted?'

Response. DOE is presently undertaking a comprehensive program that includes the proper steps to correct its QA program deficiencies, although some implementation issues remain to be resolved. Section 63.75, "Inspection," requires, in part, that DOE allow the NRC to inspect the premises of the GROA at the Yucca Mountain site and adjacent areas to which DOE has right of access. Further, § 63.75 requires that DOE afford any NRC resident inspector assigned to the Yucca Mountain site or other NRC inspectors assigned to inspect the Yucca Mountain facility immediate unfettered access, equivalent to access provided regular employees, after proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety. If NRC were to issue a license to DOE, NRC would periodically perform inspections of selected DOE activities at the Yucca Mountain site, at DOE support facilities, and at DOE subcontractor facilities to ensure that DOE's QA program is being effectively implemented. The number and depth of the inspections would be based on: the risk significance of the structures, systems, or components; activities related to these structures, systems or components; and DOE's past performance.

Issue 5: Should the NRC require the use of Part 2.7 of NQA–1 or a similar standard for software QA?

Comment. A comment stated that it was proper to use Appendix B for QA requirements applicable for part 63. However, the commenter noted that Appendix B is weak regarding computer QA software and that the NRC should use Part 2.7 of NQA–1 or a similar standard for software QA.

Response. The proposed rule has been revised to emphasize that the QA program description needs to include how the requirements of Appendix B will be satisfied. In the final rule, § 63.143, "Implementation," states: "DOE shall implement a quality assurance program based on the criteria required by § 63.142." As discussed in § 63.142, DOE's QA program would be applicable to all structures, systems, and components important to safety, to design and characterization of barriers important to waste isolation, and to activities related thereto. Further, these activities include site characterization, facility and equipment construction, facility operation, performance confirmation, permanent closure, and decontamination and dismantling of surface facilities. Sections 63.142 and 63.21(c)(17) (§ 63.21(c)(11) in the proposed rule) have been changed to specifically require that the DOE QA program describe how the QA criteria contained in § 63.142 will be satisfied.

Presently, the DOE QA program for the Yucca Mountain site characterization (DOE Document No. DOE/RW–033P, Revision 8, dated June 5, 1998) includes a discussion of how the applicable requirements of Appendix B will be satisfied. Supplement 1, "Software," to DOE/RW–033P describes the QA controls for software and addresses controls such as: (1) Software life cycles, baselines, and controls; (2) software verification and validation; (3) software configuration management; (4) defect reporting and resolution; (5) control of the use of software; and (6) software documentation. The software controls described in DOE's QA program were reviewed by the NRC and found acceptable. Although § 63.142 in the final rule does not specifically address software QA, it does require that the QA controls be applied to certain design and analysis activities. By inference, software used for such activities would be subjected to the applicable requirements of § 63.142. The NRC will provide, as necessary, additional guidance for software QA in the YMRP that may include elements similar to those in existing standards such as Part 2.7 of NQA–1. The level of detail for software QA in Part 2.7 of NQA–1 is considered inappropriate for inclusion in the rule.

Also, as a result of this and other comments, the final rule does not reference Appendix B, but incorporates Appendix B, with appropriate modifications, to address its applicability to the high-level waste repository.

Issue 6: The applicability of the QA program is not clear. What does safety include?

Comment. One comment identified a concern that the applicability of the QA program was unclear and that he believed the QA program was applicable to all items and activities important to the isolation of radioactive waste at Yucca Mountain and suggested adding text to Part 63 to better define the applicability of the QA program.

Response. The QA program applies to all structures, systems, and components important to safety, to design and characterization of barriers important to waste isolation, and to activities related thereto. These activities include site characterization, acquisition and analysis of samples and data, scientific studies, performance of tests and experiments, controlling geological and engineering materials samples, facility design and equipment construction, facility operation, performance confirmation, permanent closure, and decontamination and dismantling of surface facilities. These terms are defined in § 63.2.

Based on this discussion, the NRC considers the applicability of the QA program to be adequately described in subpart G to part 63. Because proposed part 63 referred to Appendix B for QA requirements and Appendix B does not use the terms important to safety and important to waste isolation, requirements from Appendix B have been incorporated into final part 63 and modified accordingly to address their applicability to the high-level waste repository.

Issue 7: Should Part 63 contain QA program change controls similar to those found in § 50.54(a), and should the proposed § 63.44 change control process be applicable for QA program changes?

Comment. DOE identified a problem with proposed part 63 requirements for controlling changes to the QA program and recommended that requirements similar to those contained in § 50.54(a) be used. DOE correctly pointed out that the NRC stated, in the discussion accompanying the final rule for Part 50 concerning changes to QA programs (64 FR 9030; February 23, 1999), that "use of 10 CFR 50.59 criteria for QA program changes is not appropriate." DOE pointed out that, as written, proposed part 63 would permit QA program changes to be controlled in accordance with requirements similar to § 50.59 (as permitted by § 63.44). DOE suggested text changes to implement its comments. DOE also expressed a concern that as proposed, the location of § 63.21(c)(11) would cause the QA program description contained in the Safety Analysis Report to be subject to the change controls required by § 63.44.

Response. The Commission agrees that the use of the criteria specified at § 63.44 is not appropriate for changes to the QA program description included in the Safety Analysis Report. We also agree that the rule should identify change control requirements applicable to the licensee's QA Program and that those requirements should be similar to those contained in § 50.54(a)(3). The proposed rule has been revised to specifically address change control requirements for QA program descriptions.

We disagree that § 63.21(c)(11) should be relocated to § 63.21(b) because the QA program description is required to specifically describe how the requirements of § 63.142 will be satisfied. By adding specific requirements in §§ 63.44 and 63.144 for the control of changes to the QA program description, the Commission believes it has resolved the expressed concern for relocating § 63.21(c)(11).

Note: The text at § 63.21(c)(11) in the proposed rule is specified at § 63.21(c)(17) in the final rule due to reordering of § 63.21 to achieve a more consistent order with the required analyses.

Issue 8: How will NRC ensure DOE properly implements its QA program and assures the quality of data it will use to support a license application?

Comment. A number of comments related to what actions the NRC would take to ensure that DOE is properly implementing its QA program and qualifying data.

Response. In early 1999, the NRC staff established a QA Task Force to review and evaluate the DOE QA program. The Task Force was created to address acknowledged concerns regarding the effective implementation of the DOE QA program. This task force includes a Senior QA Engineer, the NRC Onsite Representatives, and the CNWRA QA Director, under the direction of the Division of Waste Management (DWM) Division Director. The Task Force has been active in reviewing DOE's progress and issues.

With respect to data qualification, DOE has initiated corrective actions for the data qualification problems documented in 1998 and 1999. In September 1999, DOE committed to have 100 percent of all data fully qualified by the time of license application, should DOE submit a license application. DOE has made significant progress in confirming the adequacy of data collected before June 1999. In January 2001, DOE had qualified 80 percent of these data. As of June 13, 2001, DOE had qualified 86 percent of the data supporting the potential license application. Further, during the June 13, 2001 NRC/DOE Quarterly QA Breakout Session Meeting, DOE reported that its goal was to have all data fully qualified by site recommendation.

In late spring of this year, NRC and DOE identified further QA problems, this time affecting the processes controlling software verification and model validation. DOE acknowledged a need to revise and enhance some of its procedures, such as those controlling software development and model validation, and to provide needed training to its personnel. Further, DOE is evaluating traceability and transparency problems in its technical reports. The QA staff of DOE and their contractors have been successful in identifying the QA program deficiencies in the various participants' programs and, in many cases, highlighting the repetition of similar deficiencies. In the past, inadequate corrective action was taken, and the DOE organizations responsible for correcting the deficiencies were not held accountable. NRC has impressed upon DOE that correction of the QA program deficiencies is essential to any potential licensing of the Yucca Mountain repository and we are taking steps to ensure that NRC is able to evaluate the effectiveness of DOE action to correct the problem.

During fiscal year 2000 and through June 2001, the NRC staff evaluated the implementation of DOE's QA program by: (1) Continuing observation of DOE performance-based audits; (2) daily overviews by NRC Onsite Representatives assigned to the Yucca Mountain Project office in Las Vegas, Nevada; (3) enhanced participation of NRC's technical staff in activities at the various DOE facilities; and (4) interfacing with DOE during technical exchanges and management meetings. Through these activities, we are encouraged that many of the deficiencies are being corrected by DOE. Further, we have observed that DOE is continuing to adequately identify, process, and correct new problems. NRC believes its aggressive overview activities provide the ability to adequately evaluate whether the DOE QA program will continue to be effectively implemented.

4.2 Changes, Tests, and Experiments

Issue 1: Should the Commission adopt alternative criteria for changes, tests, and experiments?

Comments. Commenters who addressed the change process issue were generally supportive of applying alternative criteria, noting that the alternative criteria offered at § 63.44 were useful in clarifying the issues involved in evaluating the effects of changes, tests, and experiments on license conditions. Nonetheless, several commenters noted that the alternative criteria retained some terms that are ambiguous and that could be interpreted subjectively, and recommended that these terms be avoided or defined in the final rule.

Response. For nuclear reactors, ISFSIs, and holders of a certificate of compliance for a spent fuel storage cask, the Commission recently amended its regulations concerning the authority of these licensees and certificate holders to make changes to the facility or operating procedures, or to conduct tests or experiments, without prior NRC approval (64 FR 53582; October 4, 1999). The final rule clarified the specific types of changes, tests, and experiments conducted at a licensed facility and revised the criteria that must be used to determine when NRC approval is needed before such changes, tests, or experiments are made. The final rule also added certain definitions for terms that have been subject to differing interpretations. Requirements comparable to those recently amended were proposed at § 63.44 for a geologic repository at Yucca Mountain. In the Supplementary Information accompanying the proposed criteria, the Commission expressed its desire to establish a uniform policy approach for addressing the change process issue. To that end, the Commission sought comment on the suitability, for a repository at Yucca Mountain, of an approach substantially equivalent to that proposed for nuclear reactors and ISFSIs (63 FR 56098; October 21, 1998). Having taken into account the comments received on this approach for other NRC-licensed facilities and as applied to a potential repository at Yucca Mountain, the Commission is adopting final criteria for § 63.44 that are comparable, but not identical, to those recently applied to reactors and spent fuel storage facilities. Departures from the criteria applied to reactors and spent fuel storage facilities were made to reflect differences between the repository and such facilities (*e.g.*, replacement of "facility or cask design" with "geologic repository operations area and design," and of "importance to safety" to "importance to safety and important to waste isolation"). Other departures were necessary to reflect different administrative requirements of part 63 (*e.g.*, requirement that the Safety Analysis Report be updated rather than replaced with a Final Safety Analysis Report). Less obvious changes were needed to reflect the risk-informed, performance-based nature of the part 63 criteria, and the fact that part 63 contains fewer prescriptive requirements (*e.g.*, design basis limits).

Issue 2: Should the proposed, or alternate, requirements for changes, tests, and experiments at § 63.44 apply to the contents of the entire license application?

Comment. Some commenters felt that the requirements at § 63.44 should apply to the contents of the entire license application to ensure that the license application is maintained as a current reference document for describing activities at the geologic repository. Not all commenters agreed,

however, as some asserted that the proposed requirements should not apply to certain types of information that were unlikely to change (*e.g.*, General Information) or that which is already subject to control under separate NRC requirements incorporated by reference in part 63 (*e.g.*, parts 72, 73, and 74).

Response. The Commission intends to apply these criteria to the contents of the Safety Analysis Report (as updated). As the Commission noted in the Supplementary Information provided with the proposed regulations, the purpose of the criteria for changes, tests, and experiments is to ensure that the level of safety documented in the original licensing basis (*i.e.*, the Safety Analysis Report) is not eroded by subsequent modifications to the facility or operating procedures. Changes to other portions of the license application, provided under § 63.21(b), that have the potential to affect safety, *i.e.* the physical protection plan, the safeguards contingency plan, the security organization personnel training and qualification plan, along with the material control and accounting plan, are already subject to update and change control requirements elsewhere in NRC regulation (at parts 72, 73, and 74). Furthermore, as discussed earlier (under Quality Assurance), the Commission is adding additional requirements so that changes to DOE's QA program will be subject to explicit requirements at § 63.144.

Issue 3: Should specific modifications be made to the rule to exclude from reconsideration issues that have no bearing on public health and safety and to constrain NRC backfitting of the repository design after construction is authorized or imposition of additional tests under § 63.74?

Comment. One commenter recommended that once an issue is considered resolved for the purposes of the issuance of a license to commence with waste emplacement operations, license to amend for permanent closure, or license termination, it should not be subject to reevaluation by the Commission (and the ASLB) unless it can be demonstrated that the issue has a bearing on public health and safety, common defense and security, or the environment. To implement this proposal, alternative regulatory language was recommended to §§ 63.41, 63.51, and 63.52.

Consistent with other NRC regulations, the Commission should include provisions for backfitting of the repository design as well as any additional tests required under § 63.74. Specific regulatory language was recommended, and it was suggested that these new additional requirements would apply only following the issuance of a construction authorization. The commenter asserted that backfits should only be allowed under two conditions: (1) Where there would be a substantial increase in public health and safety; and (2) where the direct and indirect costs of the backfit are justified in view of this increased protection. In proposing backfits, the commenter recommended that the Commission first perform analyses that are systematic and documented.

DOE commented that regulatory changes may be needed to ensure that issues closed at the construction authorization stage would not be reopened at the receipt and possession stage absent significant new safety related information. DOE felt that such a change would allow NRC and DOE to keep their focus on the unresolved issues important to public health and safety. DOE understands that this change would need to be addressed in a subsequent rulemaking on the licensing process.

Response. The Commission agrees that the focus of a risk-informed, performance-based regulatory approach should be on those issues bearing on public health and safety, common defense and security, and protection of the environment. Clearly, the recently-adopted, generic approach (adapted in this rule for the repository) for defining a threshold of safety significance for changes, tests, and experiments, illustrates NRC's desire to confine its regulatory attention and resources to issues bearing on its regulatory responsibilities. That being said, however, the issue of imposing backfitting constraints on the Commission itself, as it proceeds to evaluate the license application for a proposed repository at Yucca Mountain, was not evaluated in developing the proposed part 63 criteria, and is therefore beyond the scope of this rulemaking.

Issue 4: How will DOE document its decision making as new information is obtained for the site?

Comment. No specifics are given regarding how the rule could be modified to address this concern. However, commenters suggested that in light of a proposed regulation that is performance-based, there is the potential for DOE's decision making related to safety issues to become less than transparent. The view expressed in this comment is that there needs to be transparency in safety-related decision making in order to have accountability for engineering and scientific decisions.

Response. The Commission agrees with the comment with regard to the importance of transparency and accountability of all safety significant decisions made in developing and licensing a geologic repository. It is for this very reason that part 63 includes extensive provisions for documenting new information and updating the SAR, in order to ensure that the technical bases for the Commission's licensing decisions are not eroded (§§ 63.22, 63.24, 63.32, 63.44, 63.46, and 63.51). In addition, part 63 also provides for the implementation of performance confirmation and quality assurance programs (subparts F and G), that help ensure the soundness of the data, assumptions, and modeling upon which DOE bases its safety case, and upon which the Commission bases its licensing judgments.

4.3 Land Ownership and Control

Issue 1: Must the U. S. Department of Energy (DOE) establish its ownership, title, or control of the Yucca Mountain site?

Comment. A number of commenters stated that under the Treaty of Ruby Valley of 1863, the Western Shoshone Nation never ceded the Yucca Mountain site to the United States and that title to the land therefore remains with the Western Shoshone Nation. These commenters further argue that all activities conducted by the United States at the Yucca Mountain site that are not within the specific privileges granted the United States under the Treaty of Ruby Valley constitute an illegal occupation of Western Shoshone territory and a violation of Western Shoshone sovereignty.

Response. The NRC is aware that the Western Shoshone National Council disputes the claim of the United States to have legal title to land that includes the Yucca Mountain site. However, there are Federal court decisions which have addressed these land claim issues and which are binding on both DOE and NRC. Section 63.121 requires that, before NRC licensing of a waste repository at the Yucca Mountain site, DOE must establish that the GROA and the site are located in and on land that is either acquired land under the jurisdiction and control of DOE or lands permanently withdrawn and reserved for DOE's use.

Issue 2: Does siting a waste repository at Yucca Mountain unfairly impose undue risks on the Western Shoshone People or adversely affect their culture?

Comment. Commenters believed that the Western Shoshone People were being unfairly asked to accept the risks of a waste repository while the benefits went to the waste generators. One commenter believed that the Western Shoshone culture was being transformed from one of protecting the environment to one of being a steward of HLW.

Response. The Nuclear Waste Policy Amendments Act of 1987 (NWPAA), authorizes only Yucca Mountain, Nevada, as a location to be characterized as a potential repository site. Part 63 does not site the repository at Yucca Mountain. Rather, it provides criteria and regulations to provide reasonable assurance that public health and safety will be protected if a repository is constructed at this site. DOE and the President of the United States are responsible for making a site recommendation. If the Yucca Mountain site is recommended and Congress allows the recommendation to take effect, DOE is to file a license application accompanied by an EIS. To the extent practicable, the NRC will adopt DOE's EIS in accordance with the NWPA. In its licensing proceeding, the NRC will consider the costs and benefits of authorizing construction of a repository.

Issue 3: Should proposed § 63.121 be revised to require that DOE conform to State water law and to acknowledge the responsibilities of the Federal Government for compensation when initiating takings?

Comment. Commenters were concerned about whether DOE must conform to State water law to obtain water rights (one commenter indicated DOE is required, under State water law, to show beneficial use in order to obtain water). A commenter viewed § 63.121 as giving DOE the right to take water rights in order to achieve waste isolation and stated that the rule must acknowledge the responsibilities of the Federal Government for compensation when initiating takings.

Response. Section 63.121(c)(1) requires DOE to obtain such water rights as may be needed to accomplish the purpose of the GROA. The "purpose of the geologic repository operations area" is intended to be construed broadly to include the isolation of radioactive wastes after permanent closure as well as any water rights needed during the period of operations. Whether DOE is subject to State law in obtaining any water rights that may be needed for this purpose is a matter to be determined by DOE and the State. The NRC does not have the authority to require that DOE conform to State law.

Comment. One commenter suggested that § 63.121(b) directly state that additional controls include water rights, instead of specifying in § 63.121(c)(2) that water rights are included in the additional controls to be established under § 63.121(b).

Response. The Commission prefers to retain the present format for clarity because water rights would be dealt with explicitly in one paragraph of § 63.121. "Controls" referred to in § 63.121(b) would, of course, include water rights.

Comment. One commenter viewed § 63.121 as giving DOE the right to take water rights in order to achieve waste isolation and stated that the rule must acknowledge the responsibilities of the Federal Government for compensation when initiating takings. This commenter was also concerned that the rule permits the spread of radionuclides to areas far outside the boundaries of the repository and believes that the repository should be designed so that it is not necessary to take water rights to achieve waste isolation. Another commenter believed that this regulation would allow Yucca Mountain to operate as a delayed radioactive waste release facility and not a permanent disposal site.

Response. Section 63.121 does not give DOE the right to take water rights; rather, it requires DOE to have obtained any water rights needed to achieve waste isolation. DOE will need to comply with whatever laws apply with respect to obtaining any needed water rights. The purpose of the regulation is to make sure that DOE is in a position to establish appropriate controls outside of the site necessary to prevent adverse human actions that could significantly reduce the geologic repository's ability to achieve waste isolation. The NRC will not license the facility unless there is reasonable expectation that releases of radioactivity will remain within regulatory limits.

Issue 4: Do requirements for land ownership and control of the site apply equally to repository operations (preclosure) and long-term safety (postclosure) activities?

Comment. DOE commented that requirements for land ownership and control (§ 63.121) are not sufficiently clear regarding their applicability to preclosure and postclosure activities. The lack of a clear distinction between preclosure and postclosure activities could imply that DOE must designate the same area for the evaluation of design basis events and for postclosure considerations for preventing adverse human actions. Part 60 provided flexibility in designating areas under preclosure and postclosure activities that should be retained in Part 63.

Response. The Commission agrees with DOE that land ownership and control requirements are not sufficiently clear regarding their application to preclosure and postclosure activities. The requirements have been clarified to indicate that: (1) The GROA shall be located in and on lands that are either acquired lands under the jurisdiction and control of DOE, or lands permanently withdrawn and reserved for its use; (2) DOE has the flexibility to identify and establish additional controls for lands outside the GROA necessary to prevent adverse human actions that could significantly reduce the geologic repository's ability to achieve isolation (postclosure); and (3) DOE has the flexibility to identify and establish additional controls for lands outside the GROA to ensure the requirements at § 63.111(a) and (b) are met. These clarifications have been made in revisions to § 63.121 of the final rule.

5 Selected Topics

5.1 Public Out-Reach

Issue 1: What role do the public meetings serve in the rulemaking process?

Comment. Commenters questioned the use of the public meetings and were concerned about how the meeting record would be used in NRC's rulemaking process. Many commenters appreciated the efforts the NRC made to include the public in the promulgation of part 63. Based on listening to NRC staff presentations made at a public meeting, it appeared to some commenters that the objective was to convince the local populations about the safety of the Yucca Mountain Project and that NRC regulations will protect public health. Some commenters requested that sufficient time be given for the public to provide comments. One commenter asked if the dose limits would be lowered if public opinion favored a lower value.

Response. The purpose of the public meetings was to enhance the opportunity for the public to participate in NRC's rulemaking process. The public had an opportunity to question the NRC staff about the proposed rule and its decision making leading to it, as well as having the opportunity to express their views on the rule itself. To facilitate public interactions in this process, additional time was afforded to the public to comment on the proposed rule. Transcripts of the various public meetings were made as a way of accurately recording the public's views. These transcripts were later studied by the NRC staff so that the public's comments could be identified and responded to in this document. The Commission carefully considered the

issues raised by members of the public at the transcribed meetings, as well as the NRC staff's summary of written comments received, as part of its deliberations on the final form and content of part 63.

With regard to whether NRC would consider lowering the dose limits if public opinion favored it, the Commission has given serious consideration to the views of the public on this matter, and, consistent with its obligations under law, has adopted the dose limits published by EPA in its standards for Yucca Mountain.

Issue 2: Will there be more public meetings?

Comment. Commenters stated that it would be helpful for NRC to consider increasing its efforts in the area of public outreach and commit to holding more public meetings in the future. Another commenter suggested that the NRC program focus should be on public health and safety and not on political issues associated with the HLW program.

Response. The Commission agrees with the recommendation to increase its efforts in the area of public outreach. The NRC staff will continue to hold public meetings in Nevada. We continue to seek a better understanding of the views and concerns of the public on how we can best fulfill our independent regulatory responsibility to protect public health and safety.

As far as avoiding political issues associated with the Yucca Mountain site, the Commission notes that it has taken no position on the suitability of Yucca Mountain to host a potential geologic repository. That decision rests with DOE, with the subsequent approval of the President and Congress.

Issue 3: What is the role of NRC's local office in Nevada?

Comment. Some commenters asked if NRC had a local office in Nevada and if there was one, how could the public contact the staff there. One commenter suggested that the role of the local office be expanded to represent NRC in a manner more visible to the public.

Response. The NRC maintains a local onsite representative's office, with a small staff, in Las Vegas, Nevada, as a means of keeping abreast of DOE activities and interacting with other stakeholders. This office allows our onsite representatives physical proximity to the site and the opportunity to interact on various site characterization activities. At this time, the NRC has no plans to expand the size of the onsite representative's office. However, the size of the office, as well as the scope of NRC's activities conducted there, is subject to reexamination. Meanwhile, the public is encouraged to contact our staff at the onsite representative's office at: 1551 Hillshire Drive, Suite A, Las Vegas, Nevada 89137–1048, Telephone 702/794–5046.

Issue 4: Should AULGs and EPA be included in the regulations at part 63, subpart C, §§ 63.61–63.65, providing for participation in certain NRC regulatory activities?

Comment. One local government commenter noted that, under the NWPAA, there is a legal basis for the participation of affected units of local government (AULGs) in activities concerning a potential repository at the Yucca Mountain site and asked why AULGs have not been included in § 63.61 and subsequent sections dealing with participation in regulatory activities. Another local government commenter explicitly requested that AULGs be included in the requirement for provision of "timely and complete information" in § 63.61. EPA also requested that it be included in § 63.61(a) given its interest in the proper implementation of the standards.

Response. Section 116(c) of the NWPAA directs DOE to provide funding to AULGs so that they may participate in activities required or authorized under sections 116 and 117 of the NWPAA. Although these activities primarily involve DOE's interactions with the State, affected Indian tribes, and AULGs, the Commission believes that it would not be inconsistent with the intent of the statute to include AULGs at appropriate points in the regulations under part 63, subpart C, and has revised the regulations accordingly. The Commission is not adding EPA to § 63.61(a) because this provision is consistent with section 117(a)(1) of the NWPAA which does not include EPA. However, the information provided under § 63.61(a) is available to EPA.

Issue 5: Should the "unquestionable legal right to participate as a party" in a repository licensing hearing afforded to the State of Nevada and any affected Indian Tribe in proposed § 63.63(a) also include affected units of local government (AULGs)?

Comment. A local government commenter stated that AULGs should have the same "unquestionable legal right to participate as a party" in a repository licensing hearing as is provided to the State of Nevada and any affected Indian Tribe in proposed § 63.63(a).

Response. The Commission agrees. The hearing procedures in the current 10 CFR part 2, subpart J, have replaced the hearing procedures in 10 CFR part 2, subpart G (except for sections of subpart G specifically referenced in § 2.1000) with respect to a repository licensing proceeding. Under the subpart J rules for intervention in the licensing proceeding, AULGs are permitted to intervene as a matter of right (*see* 54 FR 14938; April 14,1989) in the same way as the State and an affected Indian Tribe. Thus, the Commission, in the final rule, has corrected the reference to "Subpart G" in the first sentence of § 63.63(a) to read "Subpart J" and has clarified the reference to local governments by changing it to "affected units of local government." The Commission deleted the final sentence because it does not add any right not provided by the first sentence.

The proposed § 63.63(a) states: "State and local governments and affected Indian Tribes may participate in license reviews as provided in subpart G of part 2 of this chapter. The State of Nevada and any affected Indian Tribe shall have an unquestionable legal right to participate as a party in such proceedings." This provision is modeled on, and virtually identical to, § 60.63(a). Section 60.63(a) was incorporated into NRC regulations prior to the Commission's adoption of part 2, subpart J, "Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository" (subpart J) (54 FR 14925; April 14, 1989). Section 2.1014(c) of subpart J permits intervention of AULGs in a repository licensing proceeding without the need to establish "party" status:

> "Subject to paragraph (a)(3) of this section, the Commission, or the Presiding Officer designated to rule on petitions to intervene and/or requests for hearing shall permit intervention, in any hearing on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, by an affected unit of local government as defined in section 2(31) of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S. 10101." [§ 2.1014(c) (1999)]

See also the definition of "party" in § 2.1001 which, as amended in 1998 (63 FR 71729; December 30, 1998), defines a "party" to mean the DOE, the NRC staff, the host State, any AULG as defined in section 2 of the NWPA, any affected Indian Tribe as defined in section 2 of the NWPA, and a person admitted under the criteria in § 2.1014. These regulations relieve the State, affected Indian Tribes, and AULGs from the need to meet the standing requirements in order to be admitted as a party in the proceeding. The State, an affected Indian Tribe, and an AULG must still submit contentions in accordance with the provisions of § 2.1014(a)(2)(ii) and (iii), and at least one contention must satisfy these requirements, or the State, affected Indian Tribe, or AULG shall not be permitted to participate as a party (§ 2.1014(a)(3) (1999)).

All the above is in the context of the existing hearing procedures in part 2. The Commission recently proposed revisions to part 2 (66 FR 19610; April 16, 2001). Even under the proposed revisions, however, a "party" in a subpart J proceeding continues to be defined as including the host State, any affected unit of local government and any affected Indian Tribe, provided that these entities file an acceptable contention. Thus, the Commission has not proposed any change to the ability of an affected unit of local government to participate as a party without the need to meet standing requirements.

Issue 6: What is the NRC's current approach to explaining the risks associated with the Yucca Mountain Project?

Comment. A commenter was concerned with how the NRC explains the risks associated with the Yucca Mountain Repository. The commenter stated that NRC bases its explanation of risk-informed regulation on comparison to other types of risks, such as exposure from other types of hazards or background levels of radiation. This commenter suggested that this relative risk explanation is not helpful or persuasive, and that the NRC should design a project that does not result in radioactive exposures. Other commenters complained that many of NRC's public documents, and the proposed rule in particular, are not written in language understandable to the public. For example, one commenter was confused about the intended meaning of "individuals with unusual habits and sensitivities."

Response. The Commission has the responsibility to establish disposal criteria that DOE must meet, consistent with the applicable environmental standards promulgated by EPA. As part of this responsibility, the Commission must explain the level of protection its regulations and regulatory programs provide. For its part, DOE, as the repository developer, is obliged to site and design the repository such that DOE can demonstrate, consistent with NRC regulations, that the proposed repository will perform as intended. In reaching any licensing decision, the Commission will need to perform an independent audit of DOE's analyses that show how DOE has complied with the established levels of protection, based on its independent review of DOE's license application and other confirmatory information and activities.

The NRC staff will continue to provide information to explain the risks that would be associated with a repository licensed in accord with its regulations by using a variety of comparisons. The potential health effects arising from any radiation exposure is a very complex subject. To provide a context for NRC's proposed criterion of 0.25 mSv/yr (25 mrem/yr) or EPA's final limit of 0.15 mSv/yr (15 mrem/yr) individual dose limit for Yucca Mountain, NRC staff members frequently draw comparisons with other dose limits applied in NRC's regulation for low-level waste disposal (part 61) as well as with national and international recommendations for radiation standards (see discussion under Individual dose limit). To provide some context for understanding what a radiation exposure at these levels represents, comparisons have been made to the values for more "routine" radiation exposures (*e.g.*, dental x-rays, increased radiation exposure from traveling in a plane). These comparisons are used to inform the public, not to persuade them.

With respect to the meaning of the term "individuals with unusual habits and sensitivities," the Commission believes the commenter refers to the findings and recommendations of NAS. Both these recommendations and final EPA standards require that DOE base the characteristics of the representative group for postclosure dose calculations (the community in which the RMEI resides) on lifestyles and dietary habits (*i.e.*, reliance on well water, extent to which food is grown locally, types of foodstuffs eaten) of individuals currently living in the Yucca Mountain region. NAS explained that specification of the representative group should avoid extreme cases defined by unreasonable assumptions regarding the factors affecting dose. NAS also stated that a reasonable and practicable objective is to protect the vast majority of members of the public while also ensuring that the decision on the acceptability of a repository is not prejudiced by the risks imposed on a very small number of individuals with "unusual habits or sensitivities" (pp. 51–52, "Technical Bases for Yucca Mountain Standard," National Research Council, 1995). Hence, the terms "unusual habits" and "sensitivities" were used to exclude unreasonable assumptions about the characteristics of a hypothetical, future population group or RMEI. The NAS did not use these words to imply any judgment with regard to the behaviors or mental state of individuals residing near the site today. The Commission will continue to strive to explain more clearly the risks associated with the potential repository at Yucca Mountain.

Issue 7: In the future, how is the NRC going to effectively communicate the risks of the Yucca Mountain Project to public health and safety?

Comment. One commenter requested one-on-one contact answering calls and letters and following through with questions and sending written responses. Another commenter was concerned that the people of Nevada are not suitably informed about the risks involved with the Yucca Mountain Project. Also, one commenter suggested that a bulletin be published quarterly or as an insert to a local paper about the Yucca Mountain Project. A few commenters were concerned that their fears are considered "irrational" regarding the safety of the Yucca Mountain Project and will not be taken seriously.

Commenters suggested that NRC use "local" sources (*e.g.*, local government and libraries) to provide information to the public regarding meetings and other information. Information should be written in plain English.

Response. The NRC understands the importance of a strong public outreach program. NRC held five public meetings in Nevada during the public comment period on proposed part 63. Comments made at those meetings were instrumental in NRC deciding to extend the public comment period for the proposed rule. However, these meetings also demonstrated to NRC that it can improve its public outreach efforts. The NRC has held seven additional public information workshops in Nevada since the public comment period closed on part 63. We will continue to meet with the people of Nevada and continue to seek the public's views on how we can carry out our responsibilities in a more effective manner. We also intend to keep the public better informed about our independent regulatory activities and oversight. The NRC will also continue to work on providing displays and fact sheets that use plain English.

The Commission notes also that DOE maintains three visitor centers that are intended to keep the public informed. They are located in Beatty, Pahrump, and Las Vegas. DOE also sponsors regular field trips to the Yucca Mountain site. DOE maintains an Internet web page with information that is regularly updated on activities at the site and developments in the program; it can be found at *http://www.ymp.gov*. With regard to the comments proposing that activities and future events be

published in local newspapers, the NRC staff will forward that recommendation to DOE. As the repository developer, DOE has the responsibility to keep interested members of the public informed about activities at the site as well as about the program. The State of Nevada, Nye County, Clark County, Eureka County, Inyo County, California, and others also maintain web sites with information about the Yucca Mountain program. They are located, respectively, at *http://www.state.nv.us/nucwaste, http://www.nyecounty.com, http://www.co.clark.nv/us/complan/Nucwaste.htm, http://Yuccamountain.org* and *http://sdsc.edu/Inyo/yucca-pg.htm.*

Finally, the Commission notes that the NRC staff has maintained a schedule of meetings with DOE on its Web page (*http://www.nrc.gov/nmss/dwm/hlw/htm*) for several years. Important NRC documents related to the HLW program also are distributed to DOE, the State, Affected Units of Local Government, and other stakeholders. Since November 1, 1999, NRC has made HLW program documents generated and received available on its Public Electronic Reading Room located at *http://www.nrc.gov/NRC/ADAMS/index.html.* Documents generated prior to November 1, 1999, can currently be found at the two designated library reading rooms (in Nevada): James R. Dickinson Library, Government Publications Department, University of Nevada at Las Vegas, 4505 Maryland Parkway, Las Vegas, NV 89154, (702) 895–1572 and Business and Government Information Center, University of Nevada Library. University of Nevada, Reno, Reno, NV 89557–0044, (702) 784–6500 ext. 257.

Issue 8: How do the NRC and DOE, both as government agencies, maintain a proper relationship, respectively, as the regulator and a potential licensee?

Comment. One commenter was concerned that constant care needs to be taken by both NRC and DOE to maintain a relationship that clearly delineates between the regulator and the licensee.

Response. The interactions of the NRC staff and the DOE staff with respect to all activities preparatory to DOE's submission of a license application are governed by the "Agreement Between DOE/OCRWM and NRC/NMSS Regarding Prelicensing Interactions," which was initially signed in 1983 and was revised in 1998, and by the NRC Staff's Policy Statement on Staff Meetings Open to the Public (65 FR 56964; September 20, 2000). These documents provide that meetings between the two staffs will be open to the public as specified in the Policy Statement and that management commitments will be documented in correspondence subsequent to the interactions. Thus, procedures are in place to ensure an appropriate open relationship between the potential regulator and the potential licensee.

Issue 9: Should different DOE organizations active in Nevada be required to better coordinate their activities and responses to questions from the public?

Comment. One commenter noted that the different DOE organizations operating within Yucca Mountain and the NTS need better coordination because the different organizations sometimes provide different answers to the same questions.

Response. The Commission is sensitive to the concern raised here, but this comment is beyond the scope of this particular rulemaking. This issue falls within DOE's purview as the overall operator of NTS and thus should be directed to it.

The Commission needs reliable information from DOE on its activities at Yucca Mountain in order to perform its independent regulatory role in the HLW program. DOE will be required to provide complete and accurate information for NRC's licensing decision. The Commission believes that the NRC licensing process for the repository will provide an adequate means to test the accuracy and reliability of the information submitted for licensing.

Issue 10: Where will the DOE license application be available for inspection by the public?

Comment. One commenter noted that the proposed rule (§ 63.22) stated that copies of the DOE license application will be made available for inspection by the public at "appropriate locations" near Yucca Mountain and inquired as to where these locations would be and how they would be determined.

Response. The determination as to what is an "appropriate location" has not been made at this time. In all likelihood, such a determination will be made in consultation with the State of Nevada and AULGs. Moreover, for those individuals who have access to the Internet, any potential DOE license application will also be available electronically for inspection on the NRC and DOE web pages.

Issue 11: Who is responsible for oversight and review of DOE's QA program?

Comment. The Western Shoshone Nation objected to DOE undertaking a QA program without strict oversight and review by the Western Shoshone Nation.

Response. NRC has the statutory responsibility for oversight and review of DOE's QA program for the proposed repository at Yucca Mountain. NRC cannot relinquish this authority to other groups or individuals. However, the Commission is interested in keeping the stakeholders informed of the results of the inspection process, including NRC's inspection of DOE's QA program. The Commission is interested in approaches for keeping the stakeholders informed and is interested in hearing from the stakeholders regarding their ideas for potential approaches.

5.2 Other Comments

Issue 1: Can the NWPA-mandated limit of 70,000 metric ton equivalent of uranium (MTU) for the proposed geologic repository at Yucca Mountain be exceeded?

Comment. Several comments were received in this area. Some commenters raised the possibility of the mass loading at the repository increasing from 70,000 MTU to 105,000 MTU. One commenter is concerned that such an increase may be approved by a Congressional action, without a scientifically-based recharacterization of the site. It appears that this comment was prompted as a result of published interviews with DOE officials quoted in June 1999 (in the Las Vegas Sun) that up to 105,000 MTU of waste may be destined for the repository. The comment concerns the effect of heat on the local geosphere given this alternative (higher) volume of waste.

Similarly, other commenters noted that a DOE report was published, which stated that there would likely be two repositories, and that the amount of waste emplaced in both would be a total of 126,000 metric tons plus 14,000 metric tons of defense waste.

Recognizing the potential need for additional repository disposal capacity, NEI suggested that the reference in § 63.42(d) (Conditions of License), to the NWPAA-mandated limit of 70,000 MTU for the proposed geologic repository at Yucca Mountain, should be deleted, and just refer to NWPA, as amended. This design limit is currently specified in legislation for the HLW program. If the legislation were to change, it would precipitate a need for an additional Yucca Mountain-specific rulemaking. By simply referring to NWPA, as amended, the need for a future rulemaking would be obviated if the legislation ever changes.

Response. The 70,000 MTU limit for the proposed geologic repository at Yucca Mountain is mandated by NWPAA. Specifically, NWPAA provides that no more than 70,000 MTU can be placed in the first geologic repository. Whether the statutorily-imposed limit should be changed is an issue for Congress and the President to decide. Regardless of the limit, DOE must demonstrate in its license application that the types, kinds, and amounts of HLW to be disposed in any potential geologic repository at Yucca Mountain can be disposed in a way that ensures public health and safety. The Commission does agree that referencing the NWPA, as amended, is more appropriate than NRC providing the specific value of 70,000 MTU. The proposed rule has been revised accordingly.

Issue 2: Should there be specific requirements for postclosure monitoring of ground water?

Comment. Local ground water supplies the domestic and agricultural water needs for area residents and, therefore, needs to be part of a DOE postclosure monitoring program. The most likely exposure scenario to radionuclides released from a potential geologic repository at Yucca Mountain would be in the ground water, down-gradient from the site. Because of this potential hazard, some commenters expressed the view that there is a need for the NRC to require that DOE implement a postclosure ground-water monitoring system. It was noted that such a system would protect citizens living near the repository by providing early warning of the presence of radionuclides in the ground water.

Response. Consistent with the EnPA, § 63.51(a)(3)(iii) requires a program for continued oversight of the repository site after permanent closure. One objective of the oversight program is to ensure that exposure to individual members of the public does not exceed allowable limits. Because the ground-water pathway is the most likely exposure pathway, it is expected that ground water would be monitored.

Issue 3: Would local residents be compensated if radioactive contamination, due to transport of HLW to Yucca Mountain or to leakage from the repository, damages their health or property?

Comment. Several commenters were concerned about whether local residents would be able to obtain compensation if their health should be adversely affected by leaking of radiation from the repository or from casks being transported to the repository. They were also concerned about whether damage to land or ground water due to radioactive contamination or to the lowering of property values would be compensated.

Response. Part 63 does not alter whatever liability the Federal Government may have for damage to health or property caused by its activities. It is possible that compensation could be available for certain types of damage to health or property under Federal law, but it would be speculative to suggest that compensation would be available in any particular case.

Issue 4: Over what time period must physical security be maintained over the site and how would this be maintained?

Comment. Some comments were made regarding how security would be maintained over the site for very long time periods. One commenter asked if the site would be safeguarded against sabotage.

Response. NRC's regulation requires that DOE will have a system of active institutional controls and (passive) site markers, specified at § 63.21(c)(18) (§ 63.21(c)(15) in the proposed rule) and § 63.51(a)(3), that will prevent human intrusion into the repository by ensuring physical security indefinitely following permanent closure of any potential geologic repository at Yucca Mountain. That being said, by its very nature, geologic disposal is intended to provide a high degree of physical security by rendering the wastes difficult to access owing to their remote location deep underground (*i.e.*, about 300 meters/1000 feet). As a practical matter, once the repository is closed—*i.e.*, by sealing and possibly backfilling the underground drifts and access tunnels—the level of effort to reopen the repository and gain access to the wastes while preserving radiological safety will entail a substantial technical effort and expertise given current technology, and any action to do so would likely be detected.

As regards the potential risk of radiological sabotage to the repository during the preclosure phase of operations, the Commission's regulations for Yucca Mountain at § 63.21(b)(3) require that licensees have in place adequate physical security plans and attendant procedures to protect against radiological sabotage, consistent with § 73.51—NRC's requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste. In light of the terrorist attacks of September 11, 2001, the Commission has directed the staff to conduct a comprehensive reevaluation of NRC physical security requirements. If this effort indicates that NRC's regulations or requirements warrant revision, such changes would occur through a public rulemaking or other appropriate methods.

Issue 5: Terminology in the rule is not always as clear as it should be.

Comment. DOE indicated instances where particular words or phrases in Part 63 lacked clarity. The following specific changes to the proposed rule were suggested by DOE:

1. The phrase "* * * could adversely affect safety * * *," found at § 63.32(b)(3), should be replaced with "* * * could constitute a substantial safety hazard * * *" as defined in part 21 of this chapter. (The phrase "substantial safety hazard" is well defined in NRC's part 21 regulations: there is no need to introduce a new, undefined term such as "adversely impact safety".)

2. DOE indicated that the location of the compliance point could be misinterpreted and recommended that the rule use "the junction of U.S. Route 95 and Nevada Route 373" and delete "near Lathrop Wells, Nevada."

Response. The Commission inadvertently used two different phrases ("could adversely affect safety" [§ 63.32(b)(3)] and "[b]e a substantial safety hazard" (§ 63.73(a)(1))) when describing requirements for reporting deficiencies in proposed part 63. The Commission's intent was to specify a general level of concern (*i.e.*, could adversely affect safety) for deficiencies that would require reporting to the NRC as specified at §§ 63.32(b)(3) and 63.73(a)(1). Although the proposed rule used the phrase "substantial safety hazard" (§ 63.73(a)(1)), it was not the Commission's intent to imply the reporting requirements under § 63.73 were to be construed as the same as the part 21 requirements for reporting of defects. Accordingly, the Commission will clarify its intent by replacing "[b]e a substantial safety hazard" with "adversely affect safety at any future time," and identify specific events and conditions that require reporting by reference to § 72.75 at § 63.73(c).

The location of the RMEI, for purposes demonstrating compliance with the postclosure performance objectives, is in the accessible environment above the highest concentration of radionuclides in the plume of contamination. EPA standards for Yucca Mountain define "accessible environment" as any point outside of the "controlled area." To be consistent with EPA's standards, the Commission has incorporated EPA's definitions of "accessible environment" and "controlled area", as specified at 40 CFR 197.12, into subpart L of part 63.

Issue 6: Address the technical skills of the NRC staff to regulate a potential geologic repository at Yucca Mountain Project.

Comment. During the June 15, 1999, public meeting in Amargosa Valley, Nevada, one individual questioned the NRC staff's understanding of the fundamentals of the Yucca Mountain Project. This individual questioned how the NRC can regulate such a highly technical process without having its own highly technical personnel on staff. Commenters asked if NRC had its own experts or if NRC had to rely solely on information collected and developed by DOE. Although this comment is beyond the scope of the rulemaking, it questions the core technical expertise of the NRC staff to promulgate and implement this rule.

Response. The NRC (and its predecessor agency, the Atomic Energy Commission) has been regulating civilian uses of radioactive materials for nearly five decades. With increased awareness in the area of radioactive waste management, beginning in the late 1970s, the Commission's regulatory purview was expanded to include the disposal of HLW. As a complement to the existing NRC staff expertise in regulating nuclear activities and facilities, the Commission recruited and maintained a core staff with scientific expertise in those areas generally recognized to be important to radioactive waste management—the earth sciences, applied mathematics, geotechnical and materials engineering, and health physics. In the late 1980s, the Commission created a federally-funded research and development center, the CNWRA, to provide dedicated, conflict-of-interest-free technical assistance as a further complement to its scientific expertise.

In order to maintain an independent technical capability of the highest order, the NRC staff and its technical assistance consultants have been engaged over the years in scientific investigations and research necessary to understand how to properly regulate the management of radioactive wastes. The results of these efforts are widely published in the technical literature. In addition to these efforts, when there is a common interest, the NRC staff and its technical assistance consultants monitor or engage in international activities related to the regulation of radioactive wastes or the advancement of technical capability in radioactive waste management. To oversee these activities, the Commission's ACNW makes recommendations, when appropriate, to adjust or expand the technical capabilities needed by its staff.

In summary, the Commission believes that the qualifications and knowledge of the NRC staff and its technical assistance consultants with respect to the important technical aspects of the Yucca Mountain Project provide them with the credentials, skills, and state-of-the-art knowledge that are necessary and appropriate to ensure that NRC regulatory decisions with respect to public health and safety are made with the highest degree of scientific competence.

Issue 7: Does Yucca Mountain fail to comply with one of the [technical] criteria in the existing (Part 60) rule?

Comment. A commenter noted that it appears from DOE analyses that the Yucca Mountain site does not comply with one of the specific criteria in the existing rule, not the proposed new rule.

Response. DOE has not submitted an analysis to NRC for review that would fit the description of this comment. In addition, this final rule amends 10 CFR 60.1 to clearly state that Part 63, not Part 60, applies to licensing a disposal facility at Yucca Mountain, Nevada.

Issue 8: How should the material control and accounting program balance the need for inspections with worker exposures?

Comment. One commenter suggested that the program for maintaining material control and accounting should balance the need for periodic inspections with the potential for increased exposures of the inspectors. It was recommended that DOE and NRC should agree on how and when to terminate material control and accounting surveillance.

Response. The Commission agrees with the comment that workers should be protected from unnecessary doses due to repository operations. Although the requirement for conducting a physical inventory of HLW (reference to § 72.72 at § 63.78) extends over the operational period of the repository, the regulations provide flexibility to the Commission in determining the frequency for conducting the physical inventories. Determination of an appropriate frequency for conducting the inventories will consider such things as DOE's proposal for the material control and accounting program, the requirements for material control and accounting, and safety of inspectors. It is anticipated that the frequency for conducting inventories could vary due to significant changes in operations (*i.e.*, emplacement versus post-emplacement activities) over the long operational period (*e.g.*, 100 years) for the repository. The Commission considers a decision on how and when to terminate material control and accounting to be unnecessary and premature. The regulations provide the necessary flexibility for the Commission to determine how and when to terminate the material control and accounting that would consider the important issue raised by the commenter.

Issue 9: All references to "* * * decontamination or dismantlement * * *" of geologic repository facilities in the proposed rule (*e.g.*, § 63.21) should be revised to refer to "* * * decontamination or decontamination and dismantlement * * *" to avoid confusion about the need for decontamination.

Comment. EPA suggested that the reference to decontamination and dismantlement in the proposed rule needed clarification because the current language implies that facilities that needed dismantlement did not need to be decontaminated.

Response. The Commission agrees with this comment and has revised the proposed rule as suggested.

Issue 10: Should there be additional requirements for the content of the application?

Comment. One commenter recommended that the contents of the license application at § 63.21(c)(1)(iv) should also include information on the hydrology, geology, and climate at and near the chosen location for the critical group.

Response. In general, the Commission agrees with this comment to the extent that the Commission anticipates that it will need such information because it has a bearing on understanding the lifestyles and habits of the RMEI. However, in the Commission's view, the type of information suggested by the commenter is already included in the regulations at § 63.21(c)(1). Nonetheless, the Commission expects that this subject will be addressed in the YMRP, which describes the required contents and methods for the NRC staff review of any potential DOE construction authorization application, as well as DOE's compliance demonstration with the rule. At the appropriate time, the YMRP will be shared with interested stakeholders and published for public comment. Based on the public comments received, the staff will determine if additional revisions to the YMRP or regulations are necessary (*e.g.*, additional information to be included in the content of the application and a requirement for DOE to address all the issues in the YMRP).

Issue 11: Does the requirement for collecting information during construction (§ 63.72) take precedence over preservation of the design integrity?

Comment. It should be recognized that there is the possibility that the collection of certain types of data could have a negative effect on the waste isolation capabilities of the site. The proposed requirements found in § 63.72 should be modified to recognize that data should be collected only when it is determined that the activities will have no adverse effect on the long-term performance of the repository.

Response. The Commission shares the commenter's concern that the collection of data could (potentially) have an adverse effect on the long-term performance of the repository. In this regard, it should be noted that the Commission is not in favor of any particular data collection techniques nor would it encourage data collection that could potentially affect the long-term performance of the repository or the effectiveness of its barriers be they natural or engineered. Nonetheless, during repository construction, DOE will need to collect data to confirm certain design (and performance) parameters as well as to identify previously undetected geologic conditions so as to have confidence that the repository will function as intended. To ensure that these activities have no effect on long-term repository performance, consistent with section 113(b)(1)(A)(ii) of the NWPAA, DOE will need to describe its data collection plans during construction in the manner described in § 63.72 so that their effect, if any, on containment and waste isolation can be independently evaluated by the NRC staff.

Issue 12: The reference to § 63.51(a)(2) (postclosure monitoring program) in §§ 63.71(b) (records and reports) and 63.72(a) (construction records) should be changed to refer to § 63.51(a)(3) (measures to regulate or prevent activities that could impair repository long-term performance).

Comment. Section 63.51(a)(3) refers to the description of the program for the postclosure monitoring program for the repository and not to record retention. The proposed requirements in §§ 63.71(b) and 63.72(a) also bear some relation to postclosure design, and this should be clarified in the rule.

Response. The commenter is correct, and the final rule contains the correct reference.

Issue 13: It is not clear how liquid HLW fits into DOE's disposal scenario.

Comment. From the definition of HLW found at § 63.2, it would appear that liquid HLW could also be disposed of at Yucca Mountain.

Response. Because of processing in the nuclear fuel cycle, some HLW can occur in the liquid (aqueous) state. However, this waste type is not expected to be disposed of at Yucca Mountain. Rather, liquid HLW will be vitrified—mixed with molten glass and solidified—to reduce the actual volume of waste and make it easier to handle. The definition of HLW found at § 63.2 was intended only to provide a technically correct definition of HLW in its various states. To provide further clarification, the definition has been revised to better reflect the language in the Nuclear Waste Policy Act of 1982 and final 40 CFR part 197, and continues to include the reference to irradiated reactor fuel consistent with the definition in the proposed rule.

Issue 14: Should climatological data be included for the update of the application and EIS?

Comment. EPA suggested that climatological data should be included in the types of data to be updated in the application and EIS [§ 63.24(b)(1)].

Response. The list of information to be updated at § 63.24(b)(1) includes meteorological data. Meteorological data are used as a general term indicating weather related information that would include information necessary to make inferences regarding climate. The addition of the word climatological is not needed; therefore, the language in proposed part 63 will be retained in final part 63.

6 Beyond the Scope of This Rulemaking

The following comments addressed issues that are beyond the scope of this rulemaking. Many of the comments in this category were directed at the hearing process, transportation, the selection of Yucca Mountain as a potential site for a geologic repository, or objected to deep geologic disposal as a method of managing HLW. Part 63 does not affect these issues because they already have been determined by legislation, are pertinent to other regulations or rulemakings but not to part 63, or because the provisions of part 63 are limited to specific regulatory areas while these issues are much broader.

6.1 Hearing Process

Issue: Will the Commission amend the hearing process for repository licensing to provide for informal, legislative-style hearings?

Comment. Some commenters, including EPA, urged NRC to change its hearing process to provide for informal, legislative-style hearings for repository licensing. One commenter suggested that the Commission itself be the hearing board. NEI expressed the view that a legislative-style hearing process is more conducive to effective scientific inquiry than formal adjudicatory procedures. NRC's decision on whether to adopt an informal process for repository licensing, in NEI's view, should not be tied to the generic question whether to revise the overall hearing process but, instead, should be the subject of a separate rulemaking. However, another commenter strongly opposed any suggestion to depart from formal trial-type adjudicatory and evidentiary hearing rules in 10 CFR part 2 for this potentially complex and first-of-a-kind licensing proceeding.

Response. In the proposed rule, the Commission told commenters that it had a broad study of the NRC hearing process underway, including the process that would be used for repository licensing. The Commission stated that it was inclined to provide for informal hearings for both construction authorization and licensing to receive and possess waste. If the Commission were to conclude that changes to the hearing process are warranted, the Commission stated that it would propose them for adoption in a separate notice and comment rulemaking. For that reason, the Commission did not seek comments on potential changes to the hearing process in this rulemaking. Subsequently, the Commission finished its study of the NRC hearing process and directed the staff to prepare a proposed rule to provide changes to that process. The proposed rule was published on April 16, 2001 (66 FR 19610) and the comment period closes on September 14, 2001 (extension of comment period, 66 FR 27045; May 16, 2001). In this recent notice, the Commission proposes to use formal hearing procedures in proceedings for the initial authorization to construct a geologic repository operations area and proceedings for initial authorization to receive and possess high-level waste at the repository. However, amendments to the construction authorization and to the authorization to receive and possess high-level waste may be conducted under informal hearing procedures. *See* proposed § 2.310(e). The Commission will make its final determinations on these issues in a final rule after it has considered all public comments received in this separate rulemaking.

6.2 Transportation

Issue 1: What regulations or controls will be used to ensure nuclear waste is transported safely including operations at an intermodal transfer facility?

Comment. Commenters raised concern that the risks for transporting nuclear waste were not being addressed in proposed part 63. Many commenters interpreted the absence of transportation criteria in proposed part 63 as an indication that NRC has deemphasized

transportation issues. One commenter raised concern over the possibility of terrorism and theft of spent fuel shipments.

Response. Nuclear waste transportation safety is not specifically addressed by the proposed part 63 because it is beyond the scope of this rulemaking. Issues related to terrorism or theft of spent fuel shipments during transport are also beyond the scope of this part 63 rulemaking. Nothing in this rule changes the existing regulatory regime governing the transportation of spent nuclear fuel and high-level radioactive waste. In light of the terrorist attacks of September 11, 2001, the Commission has directed the staff to conduct a comprehensive reevaluation of NRC physical security requirements. If this effort indicates that NRC's regulations or requirements warrant revision, such changes would occur through a public rulemaking or other appropriate methods.

Section 180 of the NWPA requires DOE to use packages that have been certified by NRC for transportation of spent nuclear fuel and HLW. The NRC regulations in 10 CFR part 71 specify the standards for certification. These standards provide that a package must prevent the loss or dispersion of radioactive contents, provide adequate shielding and heat dissipation, and prevent nuclear criticality under both normal and accident conditions of transportation.

Section 180 of the NWPA also requires that DOE abide by NRC regulations regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste. These advance notification requirements are set forth in 10 CFR 73.37. The NWPA also requires DOE to provide funds and technical assistance for training of local public safety officials (*e.g.*, emergency responders) along the routes.

In Volume II of the Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High Level Radioactive Waste at Yucca Mountain, Nye County, Nevada, dated July 1999 (DEIS) (at J–23), DOE states that its proposed procedures for implementing Section 180 of the NWPA provide that routing for shipments to Yucca Mountain would comply with applicable regulations of the U.S. Department of Transportation (DOT) in effect at the time of such shipments. DOT regulations on route approval for transporting radioactive material by highway and State or Tribal designation of preferred routing [as an alternative to Interstate System highways] are contained in 49 CFR 397.101, 397.103, and 397.201.

A DOT–NRC Memorandum of Understanding (44 FR 38690; July 2, 1979) specifies that, in general, the DOT is responsible for regulating safety in transportation of all hazardous materials, including radioactive material. The NRC is responsible for regulating safety in receipt, possession, use, and transfer of radioactive materials. The NRC also reviews and approves package designs for transporting fissile material and other radioactive material in quantities exceeding Type A limits. Facilities which temporarily handle and store radioactive material during and incidental to their transport (*i.e.*, movement), such as operations at an intermodal transfer facility, are subject to DOT requirements.

Issue 2: How will transportation routes be selected and will local governments and communities be informed and consulted about the routes?

Comment. Commenters raised a number of questions regarding the selection of transportation routes for nuclear waste, such as: (1) Will DOE analyze the impacts of transportation routes; (2) Can rural roads be used to safely transport large nuclear waste shipments; (3) Will transportation route selection be addressed in DOE's license application; (4) Will local governments and communities be able to participate in route selection; and (5) Does NRC require DOE contractors to be responsible for transporting waste or are third-party contractors responsible for transporting waste.

Response. The routing requirements and practices largely depend upon whether a particular shipment is made by highway or railway. DOE is evaluating its options regarding the mix of road and rail shipments to the potential repository and will decide the appropriate level of analysis needed for transportation routes.

As noted, DOE has stated that routing of shipments of spent nuclear fuel and high-level waste will comply with applicable DOT regulations (DEIS, Vol. II, at J–23). The DEIS (Vol. I and Vol. II, Appendix J) also contains a discussion of the impacts associated with shipments to the proposed repository. The DOT regulations (49 CFR part 397) provide that shipments are to be on preferred routes (Interstate System highways and city bypasses) or State-or Tribal-designated preferred routes (i.e., alternate routes). These routing requirements were developed by the DOT considering the risks of transportation. Further, DOT has published guidelines (DOT/RSPA/HMS/92–02) for State or Tribal agencies to use in performing route analyses to ensure that the overall risk of the shipments to the public is considered in designating preferred routes. The degree of local participation in the State or Tribal routing agency's process may vary from State to State or from Tribe to Tribe.

NRC licensees, contractors of NRC licensees, DOE, and DOE contractors who are transporting spent fuel by highway must abide by the DOT's routing rules when they transport spent fuel by highway. There are no Federal regulations for selecting railway routing. Once a highway or railway route is selected, the route is reviewed by the NRC for physical protection purposes. NRC annually publishes a report, "Public Information Circular for Shipments of Irradiated Reactor Fuel" (NUREG–0725, Rev. 13, 1998), that describes the routes taken by commercial spent fuel shipments. For physical protection reasons, certain information on shipments is protected from general release until after the shipment (or series of shipments) is completed.

Issue 3: What criteria will be used to ensure the shipping cask can survive a variety of challenges during transportation?

Comment. Commenters inquired into how shipping casks were designed and who was responsible for manufacturing the casks. Additionally, one commenter asked whether the shipping cask design and testing consider specific accident scenarios, including sabotage.

Response. An application for a cask design is submitted to NRC by the cask vendor, and an approval certificate must be issued by NRC before a cask can be used to transport spent fuel. Typically, private firms manufacture a cask under contract to the cask's vendor. NRC requires that casks be designed, fabricated, used, and maintained under an NRC-approved QA plan. Activities under these plans are subject to NRC's inspection and enforcement programs. Safety standards, design criteria, and design test requirements for spent fuel casks are set forth in NRC regulations at 10 CFR part 71. Casks must be designed to withstand a series of impact, puncture, and fire environments, thereby providing reasonable assurance that packages will withstand serious transportation accidents. NRC regulations require that casks protect against the loss or dispersion of radioactive contents, provide adequate shielding and heat dissipation, and prevent nuclear criticality, under both incident-free and accident conditions of transportation. NRC conducts an independent design review prior to issuing a cask certificate.

In the 1980's, NRC sponsored experiments and studies of the effects of sabotage on casks that meet NRC's safety standards. In addition, DOE has sponsored similar studies, most recently in 1999. The estimated performance of spent fuel casks during historically severe, actual accidents (viz., these severe accidents did not actually involve radioactive materials) was investigated as part of the NRC-sponsored study (*e.g.*, Fischer, L.E., *et. al.*, "Shipping Container Response to Severe Highway and Railway Accident Conditions," NUREG/CR–4829, 1987). NRC's studies show that risks are low, from both incident-free shipments of radioactive material and possible accidents during transport. Therefore, the Commission has found that approved cask designs provide an adequate level of protection of public health and safety.

Issue 4: Will dose estimates be calculated for exposures from transportation and operations at an intermodal transfer facility?

Comment. A commenter asked that dose estimates be calculated for exposures from transportation and operations at an intermodal transfer facility.

Response. NRC has estimated the radiation doses to the population as a result of transportation of radioactive material. These estimates are performed as part of environmental impact studies such as NUREG–0170 (1977), "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes."

The specific operations that would occur at an intermodal transfer facility related to the repository have not been identified. Consequently, NRC is not aware of radiation dose estimates that have been performed for that facility. Furthermore, the NRC notes that DOT requirements govern radiation safety for facilities which temporarily handle and store radioactive material during and incidental to their transport (*i.e.*, movement), such as operations at an intermodal transfer facility.

6.3 Other Comments

Issue 1: Should nuclear waste be sent somewhere else/out of Nevada?

Comment. A number of commenters believed that nuclear waste should be sent somewhere else (other than Yucca Mountain), or out of Nevada. Yucca Mountain was viewed as unsafe. Commenters did not want a nuclear waste repository constructed there and strongly objected to disposal of radioactive waste there. An opposing view was expressed by other commenters who stated that Yucca Mountain was the best place for disposal of radioactive waste. One commenter just wanted the waste kept safe.

Response. The NWPAA authorizes characterization of only Yucca Mountain, Nevada, as a potential repository site. Part 63 does not select Yucca Mountain as a site for a potential repository. Part 63 is being promulgated to provide reasonable assurance that, if a repository is built and operated at Yucca Mountain, public health and safety will be protected.

Issue 2: Is there a better solution for managing nuclear waste than geologic disposal?

Comment. There were a number of comments focused on whether an alternative should be used for management of radioactive waste. Some commenters stated that the use of onsite storage (*i.e.*, at nuclear reactors) of nuclear waste should be pursued. This would avoid transportation risks and be a suitable interim method of managing nuclear waste until a safe long-term disposal method was found. However, one commenter stated that it was appropriate and safe to place the waste in one location. Newly emerging technologies, such as transmutation, were cited by some commenters as methods that could reduce the hazard of the waste. A commenter noted that the materials making up the waste could be used in the future; there were numerous applications. Comments were received opposing underground disposal of spent fuel rods as unsafe, and not the best answer for disposal, and that only cooled spent fuel rods, but no plutonium, should be stored at Yucca Mountain or the NTS.

Response. The decision about how to manage HLW and spent fuel does not result from part 63. Deep geologic disposal of HLW was authorized by the NWPA. The NWPAA and the EnPA continue the U.S. government policy of disposal of HLW in a geologic repository. Nothing in part 63 changes this method of managing HLW authorized by existing law. The regulations in part 63 are designed to provide reasonable assurance of protection of public health and safety from any radioactive material disposed of, including surplus weapons plutonium.

Issue 3: Who should manage the Yucca Mountain project?

Comment. Commenters suggested that the University of Nevada at Las Vegas should manage the Yucca Mountain project.

Response. The NWPA gives DOE the responsibility for management of the Yucca Mountain project. DOE must address how to carry out its responsibility for management of the Yucca Mountain project.

Issue 4: Should nuclear power be used?

Comment. A commenter opposed the use of nuclear power as wasteful and the source of dangerous long-lived radioactive products. Another commenter said that sources of energy other than fission should be investigated.

Response. Part 63 establishes requirements for disposal of HLW at a potential repository at Yucca Mountain. It does not encourage or restrict the use of nuclear power. The NRC is establishing part 63 in accordance with its statutory responsibilities under the Atomic Energy Act (AEA), the NWPAA, and the EnPA.

Issue 5: How much money has been spent on Yucca Mountain?

Comment. A commenter wanted to know how much money had been spent on the Yucca Mountain project.

Response. The DOE publishes reports that give details of its budget and spending on the Yucca Mountain project. Expenditures are the subject of appropriations by Congress and oversight by both Congress and the General Accounting Office. In May 2001, DOE published its most recent cost estimates [see "Analysis of the Total System Lifecycle Costs of the Civilian Radioactive Waste Management Program," DOE/RW–0533, May 2001; available on DOE's Web page at *http://www.rw.doe.gov*].

Issue 6: What happens if the Yucca Mountain project is developed and Congress cuts the budget for it? Or appoints a weaker agency to oversee the project?

Comment. A commenter noted that Congress had cut DOE's budget for Yucca Mountain in past years. What will NRC do, especially regarding monitoring, if construction of the project is underway, and a budget cut occurs?

Response. Responsibility for the Yucca Mountain project rests with DOE. Changes in budget levels for the Yucca Mountain project would have to be addressed by DOE in its planning for the project. If the Commission believes that it does not have sufficient funds to carry out its mission to protect public health and safety, it would ask Congress for additional funding.

Issue 7: Will the NRC staff seek input from local governments to assist it in providing comments to the DOE on the DEIS for Yucca Mountain?

Comment. One commenter asked the NRC to seek input from local governments to assist the NRC in providing comments on the DOE's DEIS.

Response. The NRC is expected, under the NWPA, to comment on the DEIS during the DEIS public comment period. The NRC provided comments for DOE to consider as part of the DEIS public comment process. In preparing these comments, the NRC staff observed DOE's DEIS public meetings to better understand what DEIS issues were of concern to the public. In addition, the NRC staff conducted its own meetings with AULG officials and conducted a public meeting in Caliente (Nevada) to discuss the NRC role with respect to the EIS, as it was formulating its comments. For its part, the Commission invited AULGs, stakeholders, and other interested parties to express their views on the DEIS during a public meeting on January 21, 2000. The Commission has considered these views before forwarding its comments to DOE.

Issue 8: Does the public have enough time to prepare comments on DOE's DEIS for Yucca Mountain and attend NRC meetings on part 63?

Comment. The NRC staff was asked at several public meetings to avoid scheduling future public workshops and meetings on part 63 during the DEIS public comment period.

Response. The Commission is sensitive to the issue being raised here and notes that the NRC is making every effort practical to schedule its public workshops and meetings in such a way so as to afford the public opportunity to participate in other agencies' activities. Accordingly, the Commission held only one meeting on part 63 during the public comment period on the DEIS.

Issue 9: What about the possibility that a waste repository at Yucca Mountain would be a target in the event of a nuclear war?

Comment. A commenter stated that the Air Force base and Hoover dam would be likely targets in the event of war. If a repository were developed at Yucca Mountain, that would also be a target.

Response. Consideration of the effects of wars and military actions is beyond the scope of NRC's responsibility. The NRC has not taken into account the effects of war in developing part 63.

Issue 10: Decisions regarding the licensing of a potential geologic repository at Yucca Mountain should be left to the voters to decide.

Comment. A commenter stated that important decisions, such as the potential geologic repository, should be placed on a nationwide ballot for the voters to decide.

Response. The NWPA and the EnPA establish the framework for licensing a potential geologic repository at Yucca Mountain. This legislation gives the NRC the responsibility for making a licensing decision on such a potential repository. Under this framework for licensing, there are opportunities for public input in the licensing process. The requirements promulgated here as part 63 do not make any change in public input opportunities already established.

Issue 11: How much radiation is being released from nuclear facilities?

Comment. Commenters wanted to know how much radiation was being released from nuclear facilities around the U.S. and what is being done to control those releases.

Response. The NRC's Annual Report—Reactors, NUREG–1272, Vol. 11, No.1, November 1998, gives annual exposures to the average person in the U.S. of less than 1 mrem (0.01 mSv) TEDE from the entire nuclear fuel cycle, including operation of reactors. All NRC licensees are required to limit radiation exposures from licensed activities in accordance with NRC regulations in 10 CFR part 20, 10 CFR part 50, Appendix I, and 10 CFR part 72.

Issue 12: Is radioactive material recycled into consumer products?

Comment. One commenter was concerned about potential exposure from radioactive material that has been recycled into consumer products.

Response. Part 63 is concerned only with disposal of HLW in a potential geologic repository at Yucca Mountain, Nevada. There are no provisions in this final rule that affect recycling of radioactive material into consumer products.

NRC is in the preliminary stages of examining its approach for controlling solid material. A paper that discusses issues associated with alternative courses of action was published in the **Federal Register** on June 30, 1999 (64 FR 35090). This issues paper is also available at NRC's web site.

Issue 13: Does NRC regulate the transportation of nuclear weapons?

Comment. One commenter inquired as to NRC's role in the transportation of nuclear weapons.

Response. The NRC does not have authority to regulate the transportation of nuclear weapons. The NRC's regulations for packaging and transportation of radioactive materials, 10 CFR part 71, do not apply to transportation of nuclear weapons.

IV. Changes from the Proposed Rule

Subpart A—General Provisions

Section 63.2 Definitions

Several terms have been deleted and definitions revised either to conform with the final EPA standard (40 CFR part 197) or to provide needed clarification. The terms annual dose and expected annual dose have been replaced by a single definition for TEDE (total effective dose equivalent) that provides for the use of organ weighting factors for assessing potential doses to members of the public. The term critical group has been deleted, and the term reasonably maximally exposed individual added and defined. The term design basis event has been deleted, and replaced with the terms event sequence and initiating event (the term design basis event has been replaced throughout the rule with event sequence). The term integrated safety analysis has been deleted, and replaced with the term preclosure safety analysis (the term integrated safety analysis has been replaced throughout the rule with preclosure safety analysis). The definition of performance confirmation has been revised to more clearly reflect the intent of the general requirements for performance confirmation at § 63.131(a). The definition of the engineered barrier system has been revised to include engineered components and systems other than the waste package (*e.g.*, drip shields). The definition of retrieval has been revised to clarify that retrieval means the act of "permanently" removing radioactive waste. The clarification to the definition of retrieval was done to differentiate it from operational activities (*e.g.*, DOE might intentionally remove one or several waste packages from its emplacement location and re-emplace them either at the same or a different location in the underground facility during the operational life of the repository as part of testing, demonstration, repair, maintenance or performance confirmation) that would not be considered as permanent retrieval. The definition for high-level waste has been modified to more closely reflect the definition provided in the Nuclear Waste Policy Act of 1982 and final 40 CFR part 197. The definition for the saturated zone has been revised to more accurately describe the intent of the definition. Other definitions have been modified in whole or in part to conform with the final 40 CFR part 197, including barriers, important to waste isolation, isolation, performance assessment, and reference biosphere. The definition for ground water has been removed from this section because the definition for the same term provided in 40 CFR part 197 has been adopted into the regulations at § 63.302.

Section 63.4 Communications and Records

The section was revised to reflect the current address of the Commission.

Section 63.8 Information collection requirements: OMB approval

This section has been revised according to the current standard wording.

Section 63.10 Completeness and Accuracy of Information

The recipient of notification of information was changed from the Administrator of the appropriate Regional Office to the Director of the Office of Nuclear Material Safety and Safeguards.

Subpart B—Licenses

Section 63.16 Review of site Characterization Activities

Section 63.16(d) was clarified to specify that public comments would be sought on comments made by the Director of the Office of Nuclear Material Safety and Safeguards to DOE after the Director's comments had been sent to DOE. Section 63.16(d) essentially adopts 10 CFR 60.18(i) with the addition of performance assessment as a subject area for potential public comments. The Commission explained at the time it adopted § 60.18(i) that "(j)ust as the Commission will solicit comments on its comments on DOE's initial S(ite) C(haracterization) P(lan), it wants to allow for public comment on any Commission comments on DOE's semi-annual reports (or on any other comments which the Director makes to DOE on site characterization)" (51 FR 27161; July 30, 1986). Under § 60.18(f), the Director must publish in the **Federal Register** a notice of the availability of comments on DOE's Site Characterization Plan for public comment after the comments have been sent to DOE. Section 63.16(d) was clarified to reflect the Commission's intent that the timing of any public comment period remain the same as under § 60.18.

Section 63.21 Content of Application

Requirements associated with the description of the engineered barrier system, quality assurance program, physical protection, design criteria, and decontamination of surface facilities have been clarified. The requirements in this section have been regrouped in an order more consistent with the required analyses. The requirement for DOE to provide a comparative evaluation of alternatives to major design features has been removed. The level of information necessary to support each licensing stage has been clarified by stating the application must be as complete as possible in the light of information that is reasonably available at the time of docketing. The words "principal design criteria" have been replaced with "design criteria" to avoid any confusion with the meaning of the word "principal;" this was not intended as a substantive change. The design criteria to be described are those that relate to the preclosure and postclosure performance objectives. This provides DOE sufficient guidance as to which design criteria are to be provided. The reference to "ground water" at § 63.21(c)(10) was changed to "water" to maintain the intent of the proposed rule, which included both saturated and unsaturated zone water in the definition of ground water, and avoid conflict with the new definition for "ground water" in subpart L. Additional changes have been made to conform to the final 40 CFR part 197.

Section 63.31 Construction Authorization

This section was modified to reflect a finding of reasonable expectation for demonstration of compliance with the quantitative standards now specified in new Subpart L.

Section 63.41 Standards for Issuance of a License

Clarification has been made regarding decontamination of surface facilities.

Section 63.42 Conditions of License

Section 63.42(d) was modified to eliminate the specific reference to the NWPA limit of 70,000 MTU. Although this limit still applies, by simply referring to "* * * NWPA, as amended * * *," the need for a future rulemaking would be obviated if the legislation ever changes this disposal volume restriction.

Section 63.44 Changes, Tests, and Experiments

This section has been extensively revised in accordance with NRC-wide programmatic changes in this area.

Section 63.51 License Amendment for Permanent Closure

This section has been revised to specifically require that performance confirmation data pertinent to compliance with § 63.113 be included in the update of the performance assessment in the application for a license amendment for permanent closure.

Section 63.52 Termination of License

Clarification has been made regarding decontamination of surface facilities.

Subpart C—Participation by State Government, Affected Units of Local Government, and Affected Indian Tribes

Section 63.61 Provision for Information

This section has been changed to include the affected units of local government.

Section 63.62 Site Review

This section has been changed to include the affected units of local government.

Section 63.63 Participation in License Reviews

This section has been changed to correct the reference to "Subpart G" to read "Subpart J," and the reference to local governments has been clarified by changing it to "affected units of local government." The final sentence in proposed § 63.63(a) has been deleted.

Section 63.65 Representation

This section has been changed to include the affected units of local government.

Subpart D—Records, Reports, Tests, and Inspections

Section 63.71 Records and Reports

The record retention requirements referenced at § 63.71(b) were incorrect in the proposed rule and have been modified to refer correctly to § 63.51(a)(3).

Section 63.72 Construction Records

The record retention requirements referenced at § 63.72(a) were incorrect in the proposed rule and have been modified to refer correctly to § 63.51(a)(3). Additionally, the design specifications and "as built" drawings have been added to the list of required records.

Section 63.73 Reports of Deficiencies

The phrase "(b)e a substantial safety hazard," found at § 63.73(a)(1), was replaced with the phrase "(a)dversely affect safety at any future time," to be consistent with terminology used at § 63.32(b)(3) and to avoid confusion with reporting requirements under 10 CFR part 21, which includes a very precise definition for what constitutes a "substantial safety hazard." Specific requirements regarding DOE's implementation of a program for

evaluating and reporting deficiencies have been included to clarify the reporting requirements.

Subpart E—Technical Criteria

Section 63.101 Purpose and nature of findings

This section has been revised to address how the Commission intends to implement a finding of reasonable expectation. The discussion of postclosure performance objectives has been revised to conform with the public health and environmental radiation standards for geologic disposal now specified in Subpart L, which are referenced in § 63.113.

Section 63.102 Concepts

This section has been changed to clarify NRC's expectations for the demonstration of compliance with the requirements for multiple barriers, performance confirmation, and preclosure safety analysis. The discussion of multiple barriers has been modified to clarify the intent of the multiple barrier requirement. The discussion of preclosure safety analysis has been revised to clarify requirements for the dose calculations due to the event sequences and the selection of specific event sequences to be included in the analysis. The discussion of performance confirmation has been revised to more clearly reflect the intent of the general requirements for performance confirmation at § 63.131(a). Additional changes have been made to conform with the final 40 CFR part 197, including among others the discussion of the reference biosphere, reasonably maximally exposed individual, and human intrusion; and addition of a discussion on ground-water protection.

Section 63.111 Performance Objectives for the Geologic Repository Operations Area Through Permanent Closure

The performance objectives at § 63.111(b)(1) and (2) have been changed to clarify that (1) the doses from consequence analyses for Category 1 event sequences are to be aggregated to a single estimate and (2) the dose from the consequence analysis for each Category 2 event sequence is to be estimated for that specific event sequence only. Section 63.111(a)(2) has been modified to conform with the individual protection standard now specified in subpart K.

Section 63.112 Requirements for Preclosure Safety Analysis of the Geologic Repository Operations Area

This section has been revised to clarify that the objective of the analysis is to evaluate event sequences; as such, the phrase "accidents that would result in unacceptable consequences" has been replaced with "event sequences." The consideration of criticality has been clarified by requiring analysis of the means to prevent and control criticality. The words "principal design criteria" have been replaced with "design criteria" to be consistent with the changes made at § 63.21 (as noted in the discussion under § 63.21, this change was not intended as a substantive change).

Section 63.113 Performance Objectives for the Geologic Repository After Permanent Closure

This section has been modified to conform with the public health and environmental radiation standards for geologic disposal now specified in subpart L.

Section 63.114 Requirements for Performance Assessment

The reference to features, events, and processes in this section has been changed by removing the words "of the geologic setting." In addition, the requirements for multiple barriers have been moved to the revised § 63.115.

Section 63.115 Required Characteristics of the Reference Biosphere and Critical Group

Requirements related to characteristics of the reference biosphere and critical group have been deleted from this section in light of the definitions and concepts necessary to estimate dose to the reasonably maximally exposed individual, now specified in subpart L. This section now contains the requirements related to multiple barriers formerly at § 63.114. This section is now titled "Requirements for multiple barriers'.

Section 63.121 Requirements for Ownership and Control of Interests in Land

This section has been revised to clarify the extent and manner of control over lands that DOE must exercise during the preclosure period.

Subpart F—Performance Confirmation Program

Section 63.131 General Requirements

This section has been revised to replace the word "geologic" with "natural" at § 63.131(a) to be consistent with terms used in the definition of important to isolation.

Section 63.132 Confirmation of Geotechnical and Design Parameters

This section has been revised to require DOE to identify parameters and interactions to be measured or observed rather than specifically prescribing such parameters and interactions.

Section 63.133 Design Testing

This section has been revised to clarify testing requirements such that testing is not limited to in situ testing only; to require specific testing of the effectiveness of backfill placement and compaction only if backfill is included in the repository design; to require "tests", rather than "test sections," so as to be more general; and to generally reference "engineered systems and components," with examples, so as not to limit tests to specific features that may or may not be included in the final design of the repository. The reference to "ground water" was changed to "unsaturated zone and saturated zone water" to maintain the intent of the proposed rule, which included both saturated and unsaturated zone water in the definition of ground water, and avoid conflict with the new definition for "ground water" in subpart L.

Subpart G—Quality Assurance

Section 63.141 Scope

This section was revised to clarify the extent of the geologic repository system by adding "structures" and "systems" and deleting the word "subsystems."

Section 63.142 Quality Assurance Criteria

This section has been revised to include previously referenced quality assurance requirements. Provisions of Appendix B to 10 CFR part 50, as applicable, have been brought into this section rather than merely referencing appendix B in the rule. The introduction of the language from Appendix B into the final part 63 has not changed any requirements in the proposed part 63. This approach specifies the quality assurance requirements and removes any ambiguity regarding which portions of Appendix B are applicable to Yucca Mountain.

Section 63.143 Implementation

This section has been revised to reference the criteria at § 63.142 rather than the criteria in Appendix B of 10 CFR part 50, as applicable.

Section 63.144 Quality Assurance Program Change

This section has been added to provide requirements for how changes to the quality assurance program description are to be processed.

Subpart K—Preclosure Public Health and Environmental Standards

Section 63.201 Purpose and Scope

New section that states the requirements in this subpart apply to the storage of radioactive material in the Yucca Mountain repository and on the Yucca Mountain site.

Section 63.202 Definitions for Subpart K

New section adopted from the final 40 CFR part 197 that contains definitions of terms as used in subpart K.

Section 63.203 Implementation of Subpart K

New section adopted from the final 40 CFR part 197 that states DOE must demonstrate that normal repository operations will meet the requirements of this subpart.

Section 63.204 Preclosure Standard

New section adopted from the final 40 CFR part 197 that establishes a 0.15 mSv (15 mrem) dose limit during the preclosure period.

Subpart L—Postclosure Public Health and Environmental Standards

Section 63.301 Purpose and Scope

New section that states the requirements in this subpart apply to the disposal of radioactive material in the Yucca Mountain repository.

Section 63.302 Definitions for Subpart L

New section adopted from the final 40 CFR part 197 that contains definitions of terms as used in subparts L and K.

Section 63.303 Implementation of Subpart L

New section adopted from the final 40 CFR part 197 that states DOE must demonstrate there is a reasonable expectation that the projected performance of any geologic repository at Yucca Mountain will meet the requirements of this subpart for 10,000 years after disposal.

Section 63.304 Reasonable Expectation

New section adopted from the final 40 CFR part 197 that defines what is meant by the reasonable expectation concept used in relation to projecting the long-term performance of any geologic repository at Yucca Mountain.

Section 63.305 Required Characteristics of the Reference Biosphere

New section adopted from the final 40 CFR part 197 that describes the characteristics of the reference biosphere DOE is to assume for the purpose of projecting the long-term performance of the geologic repository.

Postclosure Individual Protection Standard

Section 63.311 Individual Protection Standard After Permanent Closure

New section adopted from the final 40 CFR part 197 that establishes an annual, all pathway, individual protection standard of 0.15 mSv (15 mrem) for the reasonably maximally exposed individual from potential releases of radioactivity from any geologic repository at the Yucca Mountain site for 10,000 years following disposal.

Section 63.312 Required Characteristics of the Reasonably Maximally Exposed Individual

New section adopted from the final 40 CFR part 197 that defines the required characteristics of the reasonably maximally exposed individual to be used by DOE in the dose calculations necessary to assess the long-term performance of any geologic repository at the Yucca Mountain site.

Human Intrusion Standard

Section 63.321 Individual Protection Standard for Human Intrusion

New section adopted from the final 40 CFR part 197 that describes the stylized human intrusion calculation to be used by DOE to evaluate the resilience of any geologic repository at the Yucca Mountain site. Establishes an annual, all pathway, individual protection standard of 0.15 mSv (15 mrem) for the reasonably maximally exposed individual, from potential releases of radioactivity from the geologic repository for 10,000 years after disposal, as a result of the stylized human intrusion.

Section 63.322 Human Intrusion Scenario

New section adopted from the final 40 CFR part 197 that describes the assumptions related to a stylized human intrusion scenario DOE will use to estimate the dose to any reasonably maximally exposed individual from a human intrusion. Additionally, NRC has clarified that the human intrusion scenario is to include only those radionuclides transported to the saturated zone by water (*e.g.*, water enters the waste package, releases radionuclides, and transports radionuclides by way of the borehole to the saturated zone); and not consider particulate waste material falling into the borehole.

Ground-Water Protection Standards

Section 63.331 Separate Standards for Protection of Ground Water

New section adopted from the final 40 CFR part 197 that establishes limits on the level of radioactivity that would be acceptable in a representative volume of ground water 10,000 years following repository closure.

Section 63.332 Representative Volume

New section adopted from the final 40 CFR part 197 that describes the assumptions DOE will use in the calculation to estimate the level of radioactivity in a representative volume of ground water, at a specified point, down-gradient from any geologic repository at Yucca Mountain.

Additional Provisions

Section 63.341 Projections of Peak Dose

New section adopted from the final 40 CFR part 197 that requires DOE to estimate peak dose and include the results in its Environmental Impact Statement. However, there is no standard that must be met with respect to these peak dose calculations, and there is no finding that the NRC must make with respect to these peak dose calculations, nor may they be the subject of litigation in any NRC licensing proceedings for a repository at Yucca Mountain.

Section 63.342 Limits on Performance Assessments

New section adopted from the final 40 CFR part 197 that describes how DOE will determine which features, events, and processes need to be considered in the dose assessments described in subpart L.

Section 63.343 Severability of Individual Protection and Ground-Water Protection Standards

New section adopted from the final 40 CFR part 197 that indicates the individual protection and ground-water protection standards are wholly severable.

Parts 2, 19, 20, 51, 70, 72, 73, and 75

The following changes are being made to other parts to add references to part 63 where appropriate. These changes are needed to reflect changes in NRC regulations that have occurred since development of the proposed rule and to correct omissions.

Section 2.714 Interventions

A reference to part 63 is added in the section on interventions in any hearing on a license application for a repository.

Section 2.1013 Use of the electronic docket during the proceeding

A reference to part 63 is added in the section on use of the electronic docket (Licensing Support Network) for a license application for a repository.

Section 2.1014 Intervention

A reference to part 63 is added in the section on procedures for intervention and for filing an amendment to a contention.

Section 2.1021 First Prehearing Conference

A reference to part 63 is added in the section on procedures for conducting the first prehearing conference.

Section 2.1023 Immediate Effectiveness

A reference to part 63 is added in the section containing criteria for immediate effectiveness of a decision on issuance or amendment of a construction authorization for a repository.

Section 19.20 Employee Protection

A reference to part 63 is added in the section on employee protection to make employee protection provisions applicable to employees engaged in protected activities under part 63.

Section 20.1003 Definitions

A reference to part 63 is added to the definition of "License" in the definitions section.

Section 20.1401 General Provisions and Scope

A reference to part 63 is added to the section on general provisions and scope of radiological criteria for license termination to make these provisions applicable to decommissioning facilities licensed under part 63.

Section 20.2001 General Requirements

A reference to part 63 is added to the section on general requirements for waste disposal.

Section 20.2206 Reports of Individual Monitoring

A reference to part 63 is added to the section on reports of individual monitoring to make requirements for individual monitoring applicable to a part 63 licensee.

Section 51.22 Criterion for Categorical Exclusion; Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or otherwise Not Requiring Environmental Review

A reference to part 63 is added to the section on categorical exclusions to allow for technical requirements and criteria promulgated under part 63 to be included along with technical requirements and criteria promulgated under part 60 as actions eligible for categorical exclusions.

Section 70.17 Specific Exemptions

A reference to part 63 is added to the section on specific exemptions to include DOE activities that are subject to part 63 or part 60 to be exempt from the requirements of part 70.

Section 72.44 License Conditions

A reference to part 63 is added to the section on license conditions. Part 72 already contains a provision limiting the quantity of spent fuel at the site of a monitored retrievable storage facility until a repository authorized under NWPA and part 60 begins operations. This change allows for a repository authorized under part 63 as well.

Section 73.1 Purpose and Scope

A reference to part 63 is added to the section on purpose and scope. This makes certain requirements for the establishment and maintenance of a physical protection system applicable to a repository licensed under part 63 in addition to part 60.

Section 73.51 Requirements for the Physical Protection of Stored Spent Nuclear Fuel and High-Level Radioactive Waste

A reference to part 63 is added to the section on requirements for physical protection of spent fuel and HLW. Applicability of these requirements is extended to the GROA licensed under part 63.

Section 75.4 Definitions

A reference to part 63 is added to the definition of "Installation" in the definitions section. This identifies locations where possession of more than 1 effective kilogram of nuclear material requires certain safeguards requirements.

V. Section-by-Section Analysis of Part 63

Subpart A—General Provisions

This subpart, except for § 63.2, "Definitions," contains general provisions that are similar to the provisions of part 60 with minor wording changes for simplification, clarification, or to refer specifically to the Yucca Mountain site, where appropriate. Definitions have been revised to reflect their use in this part, as appropriate.

Section 63.1 Purpose and Scope

This section limits the purpose and scope of part 63 to the licensing of DOE to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated at Yucca Mountain, Nevada. It states that generic regulations at part 60 of this title do not apply and cannot be the subject of any litigation in any licensing proceeding for the Yucca Mountain site.

Section 63.2 Definitions

This section contains definitions of terms as used in this part.

Section 63.3 License Required

This section prohibits DOE from receiving or possessing source, special nuclear, or byproduct material at a geologic repository operations area at the Yucca Mountain site without having a license issued by the Commission. It also prohibits DOE from beginning construction of the geologic repository operations area without authorization from the Commission.

Section 63.4 Communications and Records

This section describes requirements for communications and reports submitted to the Commission, including appropriate addresses for communications to be forwarded to NRC.

Section 63.5 Interpretations

This section specifies when interpretations of the meaning of the regulations in this part by NRC officers or employees will be considered binding on the Commission.

Section 63.6 Exemptions

This section states the bases on which the Commission may grant exemptions from the requirements of this part.

Section 63.7 License Not Required for Certain Preliminary Activities

This section allows DOE to possess source, special nuclear, or byproduct material at Yucca Mountain for the purposes of site characterization, and for use in certain construction activities.

Section 63.8 Information Collection Requirements: OMB Approval

This section indicates that the information collection requirements contained in this part have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act.

Section 63.9 Employee Protection

This section specifies requirements for protection of licensee or contractor and subcontractor personnel from certain adverse actions by employers.

Section 63.10 Completeness and Accuracy of Information

This section requires information provided to the Commission be complete and accurate. It also requires NRC notification of information having significant public health and safety implications.

Section 63.11 Deliberate Misconduct

This section prohibits certain licensee activities and describes resulting enforcement action.

Subpart B—Licenses

This subpart, except for § 63.15, "Site characterization," § 63.16, "Review of site characterization activities," and § 63.21, "Content of application," contains provisions that are similar to the licensing provisions of part 60 with minor wording changes for simplification, clarification, or to refer to the Yucca Mountain site, where appropriate. Provisions related to the content of the license application have been developed to be consistent with the technical criteria of subpart E. Provisions related to site characterization have been simplified from similar sections of part 60 to reflect the maturity of site characterization at Yucca Mountain. For example, there are no provisions requiring DOE to prepare and submit a site characterization plan to NRC or any requirement for NRC to prepare a specific site characterization analysis inasmuch as both activities have been completed. However, provisions requiring DOE to undertake site characterization and submit semiannual progress reports to NRC and provisions allowing NRC to comment on any aspect of site characterization or performance assessment, at any time, are retained as indicated in the analysis of pertinent sections of subpart B that follows.

Section 63.15 Site Characterization

This section specifies that a program of site characterization is to be conducted prior to submittal of an application and that investigations are to be conducted in a manner that limits adverse effects on the performance of the geologic repository.

Section 63.16 Review of Site Characterization Activities

This section specifies that DOE must submit to the Commission semiannual reports on the progress of site characterization, that the NRC staff shall be permitted to visit, inspect, and observe site characterization activities at the Yucca Mountain site, and that the Director may, at any time, comment on any aspect of site characterization and performance assessment. This section further provides that the Director shall invite public comment on any comments made by the Director after the Director's comments have been sent to DOE. This section also specifies that the Commission will determine whether any proposed onsite testing with radioactive material during site characterization is necessary to provide data for the preparation of the environmental reports required by law and for the license application.

Section 63.21 Content of Application

This section specifies that the license application must include general information, a safety analysis report, and be accompanied by an environmental impact statement. This section also describes the detailed information to be included in the safety analysis report.

Section 63.22 Filing and Distribution of Application

This section describes requirements for filing and distribution of the license application, amendments to the license application, environmental reports, and related updates and supplements.

Section 63.23 Elimination of Repetition

This section allows DOE to incorporate by reference information in previous applications, statements, or reports filed with the Commission in its application or environmental statement.

Section 63.24 Updating of Application and Environmental Impact Statement

This section requires DOE to submit a complete application, to update or supplement the application or environmental impact statement in a timely manner, and certify that updated copies contain current information.

Section 63.31 Construction Authorization

This section states the bases on which the Commission may authorize construction of a geologic repository operations area at the Yucca Mountain site.

Section 63.32 Conditions of Construction Authorization

This section indicates that the Commission will include conditions in the construction authorization as necessary to protect the health and safety of the public, the common defense and security, and environmental values, and describes specific provisions and restrictions that will be included in the construction authorization. This section also indicates that a license will not be issued until DOE has updated its application as required at § 63.24 and the Commission has made the findings stated at § 63.41.

Section 63.33 Amendment of Construction Authorization

This section requires DOE to apply for an amendment of the construction authorization if changes are desired. This section also states the bases on which the Commission may approve an amendment of the construction authorization.

Section 63.41 Standards for Issuance of a License

This section states the bases on which the Commission may issue a license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area at the Yucca Mountain site.

Section 63.42 Conditions of License

This section indicates that the Commission will include conditions or specifications in the license as necessary to protect the health and safety of the public, the common defense and security, and environmental values. This section also identifies general conditions that will be considered conditions of the license, whether stated in the license or not.

Section 63.43 License Specification

This section indicates that the Commission will include conditions in the license that are derived from the analyses and evaluations included in the application and amendments made before a license is issued. This section also describes specific categories of restrictions, requirements, and controls that will be included as conditions of the license.

Section 63.44 Changes, Tests, and Experiments

This section states the bases on which DOE may change the geologic repository operations area or procedures as described in the application, and conduct tests or experiments not described in the application, without prior Commission approval. This section also requires DOE to maintain records of changes made and tests undertaken under this section.

Section 63.45 Amendment of License

This section requires DOE to apply for an amendment of the license if changes are desired. This section also states the bases on which the Commission may approve an amendment of the license.

Section 63.46 Particular Activities Requiring License Amendment

This section describes specific activities that require amending the license prior to being performed, unless expressly authorized in the license.

Section 63.51 License Amendment for Permanent Closure

This section requires DOE to apply for an amendment of the license to permanently close a geologic repository at the Yucca Mountain site. This section also requires DOE to submit an update of the license application and describes the detailed information to be included in the update.

Section 63.52 Termination of License

This section requires DOE to apply for an amendment to terminate the license following permanent closure of the geologic repository and the decontamination or decontamination and dismantlement of surface facilities at the Yucca Mountain site.

Subpart C—Participation by State Government, Affected Units of Local Government, and Affected Indian Tribes

This subpart contains provisions that are similar to the State and affected Indian Tribe participation provisions of 10 CFR part 60, with some wording changes to refer to the State of Nevada, the Yucca Mountain site, and to include the AULGs, where appropriate.

Section 63.61 Provision of Information

This section states that the NRC shall provide to the Governor, the Nevada State legislature, AULGs, and any affected Indian Tribe timely and complete information regarding determinations made by the Commission with respect to the Yucca Mountain site. The NRC shall also make this information available to the public and DOE.

Section 63.62 Site Review

This section states that the NRC shall consult with the State of Nevada, AULGs, and affected Indian Tribes regarding site characterization activities.

Section 63.63 Participation in License Reviews

This section sets forth procedures for the State, AULGs, and affected Indian Tribes to participate in license review activities.

Section 63.64 Notice to State

This section notes that, if the Governor and legislature of the State of Nevada have designated a joint person or entity to receive information from NRC, the NRC will send such information to the jointly designated addressee.

Section 63.65 Representation

This section allows the Commission to request that any person acting as a representative of the State, Governor, or legislature of Nevada, or any AULG, or any affected Indian Tribe provide the Commission with the authority basis for such a representation.

Subpart D—Records, Reports, Tests, and Inspections

This subpart contains provisions that are similar to the records, reports, tests, and inspection provisions of part 60 with minor wording changes for simplification, clarification, or to refer to the Yucca Mountain site, as appropriate.

Section 63.71 Records and Reports

This section requires DOE to make and maintain records and reports as required by conditions of the license or rules, regulations, and orders of the Commission.

Section 63.72 Construction Records

This section requires DOE to maintain records of the construction of the geologic repository operations area and describes the types of records to be maintained.

Section 63.73 Reports of Deficiencies

This section requires DOE to notify the Commission of each deficiency found in the characteristics of the Yucca Mountain site and the design and construction of the geologic repository operations area, if the uncorrected deficiency could adversely affect safety, represent a deviation from the design criteria or design bases, or represent a deviation from conditions of the construction authorization or license.

Section 63.74 Tests

This section requires DOE to perform such tests, or to allow the Commission to perform such tests, as the Commission determines necessary for administration of the regulations in this part. This section also describes the types of tests that may be included under this section.

Section 63.75 Inspections

This section requires DOE to afford the Commission opportunity for inspection of the geologic repository operations area and adjacent areas. This section also requires DOE to provide office space for Commission inspection personnel.

Section 63.78 Material Control and Accounting Records and Reports

This section requires DOE to establish a material inventory system, whereby material and accounting procedures are developed, physical inventories are performed, loss of special nuclear material or accidental criticality is reported, and material status and nuclear material transfer reports are generated. This section notes that the material and accounting program is to be the same as that specified at §§ 72.72, 72.74, 72.76, and 72.78.

Subpart E—Technical Criteria

This subpart, except for § 63.101, "Purpose and nature of findings," § 63.102, "Concepts," and § 63.121, "Requirements for ownership and control of interests in land," contains performance objectives for the geologic repository operations area through permanent closure (preclosure) and the geologic repository after permanent closure (postclosure), separate requirements for protection of ground water (postclosure), and requirements for the analyses used to demonstrate compliance with the performance objectives. The preclosure performance objective is similar to the provisions in part 60. However, the postclosure performance objective and other requirements differ significantly from part 60. This subpart requires compliance to be demonstrated in the context of safety analyses of total system performance and does not prescribe general design or siting criteria, or specific quantitative subsystem performance objectives as was done in part 60. Performance requirements from the final 40 CFR part 197, incorporated into subparts K and L, are referenced in this subpart.

Section 63.101 Purpose and Nature of Findings

This section describes the Commission's expectations for demonstration that the geologic repository will be in conformance with the performance objectives.

Section 63.102 Concepts

This section provides a functional overview of this subpart.

Section 63.111 Performance Objectives for the Geologic Repository Operations Area Through Permanent Closure

This section requires DOE to design the geologic repository operations area to comply with the exposure limits given in this section, conduct a preclosure safety analysis, permit implementation of a performance confirmation program, and preserve the option for waste retrieval.

Section 63.112 Requirements for Preclosure Safety Analysis of the Geologic Repository Operations Area

This section specifies the requirements for the preclosure safety analysis used to demonstrate compliance with the performance objective through permanent closure provided at § 63.111(a)(1) and (a)(2).

Section 63.113 Performance Objectives for the Geologic Repository After Permanent Closure

This section requires DOE to include a system of multiple barriers for the geologic repository, comply with the limits on radiological exposures to the reasonably maximally exposed individual, comply with limits on releases of radionuclides into the accessible environment, comply with the limits on radiological exposures to the reasonably maximally exposed individual as a result of a specified human intrusion event, and conduct related assessments.

Section 63.114 Requirements for Performance Assessment

This section specifies the requirements for the performance assessment used to demonstrate compliance with the requirements specified at § 63.113(b), (c), and (d).

Section 63.115 Requirements for Multiple Barriers

This section requires DOE to identify and describe the natural features of the geologic setting and design features of the engineered barrier system that are considered barriers important to waste isolation.

Section 63.121 Requirements for Ownership and Control of Interests in Land

This section requires DOE to have permanent control of the geologic repository operations area. It states that DOE shall set up controls necessary to prevent adverse human actions that could affect the repository. Appropriate controls shall be established outside the geologic repository operations area. DOE is required to obtain water rights needed for the repository.

Subpart F—Performance Confirmation Program

This subpart contains provisions that are similar to the performance confirmation provisions of 10 CFR part 60.

Section 63.131 General Requirements

This section states the objectives of the performance confirmation program and specifies that the program be started during site characterization and continue until permanent closure.

Section 63.132 Confirmation of Geotechnical and Design Parameters

This section requires DOE to monitor subsurface conditions during repository construction and operation to confirm original design assumptions and to ensure that performance of geologic and engineered features is within design limits. DOE is also required to inform the Commission of any design changes needed to accommodate actual field conditions encountered.

Section 63.133 Design Testing

This section requires DOE to undertake a program of testing of such features as borehole and shaft seals, backfill, drip shields, and the thermal interaction effects of waste packages, backfill, rock, and ground water.

Section 63.134 Monitoring and Testing Waste Packages

This section requires DOE to establish a program for monitoring and testing waste packages at the geologic repository operations area that is to continue as long as practical up to the time of permanent closure.

Subpart G—Quality Assurance

This subpart contains provisions that are similar to the quality assurance provisions of 10 CFR part 60. Rather than referencing Appendix B to 10 CFR part 50, as was done in 10 CFR part 60, 10 CFR part 63 has incorporated quality assurance requirements from Appendix B that are specifically applicable to a geologic repository.

Section 63.141 Scope

This section requires DOE to establish a quality assurance program to be applied at the geologic repository at the Yucca Mountain site.

Section 63.142 Quality Assurance Criteria

This section indicates that the quality assurance program applies to all structures, systems, and components important to safety, to design and characterization of barriers important to waste isolation, and to activities related thereto. This section specifies the applicability and criteria for DOE's quality assurance program description.

Section 63.143 Implementation

This section indicates that the quality assurance program is to be based on the criteria required by § 63.142.

Section 63.144 Quality Assurance Program Change

This section specifies when DOE is allowed to make a change to a previously accepted quality assurance program without prior NRC approval.

Subpart H—Training and Certification of Personnel

This subpart contains provisions that are similar to the training and certification provisions of 10 CFR part 60.

Section 63.151 General Requirements

This section specifies that operations of systems and components important to safety are to be performed only by trained and certified personnel or by personnel under the direct visual supervision of an individual with training and certification in such operations. This section also specifies that supervisory personnel who direct operations that are important to safety are to be certified in such operations.

Section 63.152 Training and Certification Program

This section specifies that a program for training, proficiency testing, certification, and requalification of operating and supervisory personnel is to be established.

Section 63.153 Physical Requirements

This section specifies physical requirements for personnel certified for operations that are important to safety.

Subpart I—Emergency Planning Criteria

This subpart contains provisions for emergency planning.

Section 63.161 Emergency Plan for the Geologic Repository Operations Area Through Permanent Closure

This section requires DOE to develop and be prepared to implement a plan to cope with radiological emergencies. The section indicates that the emergency plan is to be based on criteria at § 72.32(b).

Subpart J—Violations

This subpart contains provisions that are similar to the violation provisions of 10 CFR part 60.

Section 63.171 Violations

This section specifies actions the Commission may take, including obtaining a court order to prevent a violation, and contains civil penalty provisions.

Section 63.172 Criminal Penalties

This section specifies criminal sanctions for violations. For purposes of section 223 of the Atomic Energy Act of 1954, as amended, that provides for criminal sanctions, all regulations in part 63 are issued under one or more of sections 161b, 161i, or 161o except for the sections listed in § 63.172(b).

Subpart K—Preclosure Public Health and Environmental Standards

This subpart contains provisions that are consistent with the public health and environmental standards for storage specified at 40 CFR part 197.

Section 63.201 Purpose and scope

This section stipulates that, to the extent that there may be a conflict, the requirements in this subpart take precedence over other requirements in subparts A through J.

Section 63.202 Definitions for Subpart K

This section contains definitions of terms as used in this subpart and subpart L.

Section 63.203 Implementation of Subpart K

This section provides a functional overview of this subpart.

Section 63.204 Preclosure Standard

This section specifies the dose limits that DOE must meet when storing waste at a geologic repository.

Subpart L—Postclosure Public Health and Environmental Standards

This subpart contains provisions that are consistent with the public health and environmental standards for disposal specified at 40 CFR part 197.

Section 63.301 Purpose and Scope

This section stipulates that, to the extent that there may be a conflict, the requirements in this subpart take precedence over other requirements in subparts A through J.

Section 63.302 Definitions for Subpart L

This section contains definitions of terms as used in this subpart.

Section 63.303 Implementation of Subpart L

This section provides a functional overview of this subpart.

Section 63.304 Reasonable Expectation

This section defines what is meant by the reasonable expectation concept.

Section 63.305 Required Characteristics of the Reference Biosphere

This section specifies characteristics of the reference biosphere to be used by DOE in its performance assessment to demonstrate compliance with the requirements specified at § 63.113(b) and (d).

Postclosure Individual Protection Standard

Section 63.311 Individual Protection Standard After Permanent Closure

This section specifies the dose limit for any geologic repository at the Yucca Mountain site.

Section 63.312 Required Characteristics of the Reasonably Maximally Exposed Individual

This section specifies characteristics of the reasonably maximally exposed individual to be used by DOE in the performance assessment used to demonstrate compliance with the requirements specified at § 63.113(b) and (d).

Human Intrusion Standard

Section 63.321 Individual Protection Standard for Human Intrusion

This section directs DOE to estimate the dose resulting from a stylized human intrusion drilling scenario and specifies the dose limit that any geologic repository at the Yucca Mountain site must meet as the result of any such hypothetical human intrusion.

Section 63.322 Human Intrusion Scenario

This section specifies the assumptions related to a stylized human intrusion scenario DOE will use to estimate the dose to any reasonably maximally exposed individual from a human intrusion.

Ground-Water Protection Standards

Section 63.331 Separate Standards for Protection of Ground Water

This section specifies limits on the levels of radioactivity that would be acceptable in a representative volume of ground water found in the accessible environment for up to 10,000 years following repository closure.

Section 63.332 Representative Volume

This section specifies the assumptions DOE will use to estimate the levels of radioactivity in a representative volume of ground water, at a specified point, down-gradient from any geologic repository at the Yucca Mountain site for up to 10,000 years following repository closure.

Additional Provisions

Section 63.341 Projections of Peak Dose

This section specifies that DOE will estimate peak dose and include the results in its Environmental Impact Statement. However, there is no standard that must be met with respect to these peak dose calculations, and there is no finding that the NRC must make with respect to these peak dose calculations, nor may they be the subject of litigation in any NRC licensing proceedings for a repository at Yucca Mountain.

Section 63.342 Limits on Performance Assessments

This section specifies how DOE will identify which features, events, and processes will be considered in the dose assessments described in Subpart L.

Section 63.343 Severability of Individual Protection and Ground-Water Protection Standards

This section stipulates that calculations required by §§ 63.311 and 63.331 can be performed independently of each other.

VI. Section-by-Section Analysis of Corresponding Changes to Other Parts

Section-by-section analysis of changes to parts 2, 19, 20, 21, 30, 40, 51, 61, 70, 72, 73, and 75.

10 CFR Part 2

Section 2.101, Filing of applications, is amended to add a reference to part 63 in the procedures for filing of applications.

Section 2.103, Action on applications for byproduct, source, special nuclear material, and operator licenses, is amended to add a reference to part 63 in the procedures for notification in this section.

Section 2.104, Notice of hearing, is amended to add a reference to part 63 in the procedures for notification of hearings.

Section 2.105, Notice of proposed action, is amended to add a reference to part 63 in the procedures for notification of proposed actions in this section.

Section 2.106(c), Notice of issuance, is amended to provide for public notification of any action with respect to a license application or license amendment under part 63.

Section 2.714—A reference to part 63 is added in the section on interventions in any hearing on a license application for a repository.

Section 2.1013—A reference to part 63 is added in the section on use of the electronic docket (Licensing Support Network) for a license application for a repository.

Section 2.1014—A reference to part 63 is added in the section on procedures for intervention and for filing an amendment to a contention.

Section 2.1021—A reference to part 63 is added in the section on procedures for conducting the first prehearing conference.

Section 2.1023—A reference to part 63 is added in the section containing criteria for immediate effectiveness of a decision on issuance or amendment of a construction authorization for a repository.

10 CFR Part 19

Section 19.2, Scope, is amended to make part 63 subject to the regulations in part 19.

Section 19.3, Definitions, is amended to add part 63 to the definition of "license."

Section 19.20—A reference to part 63 is added in the section on employee protection to make employee protection provisions applicable to employees engaged in protected activities under part 63.

10 CFR Part 20

Section 20.1002, Scope, is amended to make part 63 subject to the regulations in part 20.

Section 20.1003—A reference to part 63 is added to the definition of "License" in the definitions section.

Section 20.1401—A reference to part 63 is added to the section on general provisions and scope of radiological criteria for license termination to make these provisions applicable to decommissioning facilities licensed under part 63.

Section 20.2001—A reference to part 63 is added to the section on general requirements for waste disposal.

Section 20.2206—A reference to part 63 is added to the section on reports of individual monitoring to make requirements for individual monitoring applicable to a part 63 licensee.

10 CFR Part 21

Section 21.2(a), Scope, is amended to make part 63 subject to the regulations in part 21.

Certain definitions in § 21.3 are amended to include part 63.

Section 21.21 is amended to make part 63 subject to the regulations for reporting defects and noncompliance.

10 CFR Part 30

Section 30.11, Specific exemptions, is amended to exempt DOE from part 30 regulations for activities subject to part 63.

10 CFR Part 40

Section 40.14, Specific exemptions, is amended to exempt DOE from part 40 regulations for activities subject to part 63.

10 CFR Part 51

Section 51.20, Criteria for and identification of licensing and regulatory actions requiring environmental impact statements, is amended to add a reference to part 63 under actions requiring environmental impact statements.

Section 51.22, Criteria for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review, is amended to add a reference to part 63 in requirements for categorical exclusion from environmental review.

Section 51.26, Requirement to publish notice of intent and conduct scoping process, is amended to add a reference to part 63 in procedures for receipt of an application and accompanying environmental impact statement from DOE.

Section 51.67, Environmental information concerning geologic repositories, is amended to add a reference to part 63 in requirements for submission of an environmental impact statement by DOE.

10 CFR Part 61

Section 61.1, Purpose and scope, is amended to state that the regulations of part 61 do not apply to disposal of HLW as provided for in part 63.

In § 61.2, Definitions, the definition of "land disposal facility" is amended to clarify that a geologic repository as defined in part 63 is not considered a land disposal facility.

Section 61.55, Waste classification, is amended to add a reference to part 63 in the definition of a geologic repository.

10 CFR Part 70

Section 70.17—A reference to part 63 is added to the section on specific exemptions to exempt DOE activities that are subject to part 63 or part 60 from the requirements of part 70.

10 CFR Part 72

Section 72.44—A reference to part 63 is added to the section on license conditions. Part 72 already contains a provision limiting the quantity of spent fuel at the site of a monitored retrievable storage facility until a repository authorized under NWPA and part 60 begins operations. This change allows for a repository authorized under part 63 as well.

10 CFR Part 73

Section 73.1—A reference to part 63 is added to the section on purpose and scope. This makes certain requirements for the establishment and maintenance of a physical protection system applicable to a repository licensed under part 63 in addition to part 60.

Section 73.51—A reference to part 63 is added to the section on requirements for physical protection of spent fuel and HLW. Applicability of these requirements is extended to the GROA licensed under part 63.

10 CFR Part 75

Section 75.4—A reference to part 63 is added to the definition of "Installation" in the definitions section. This identifies locations where possession of more than 1 effective kilogram of nuclear material requires certain safeguards requirements.

VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is publishing licensing criteria for the disposal of spent nuclear fuel and high-level radioactive waste in the proposed geologic repository at Yucca Mountain, Nevada. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VIII. Finding of No Significant Environmental Impact: Availability

Pursuant to section 121(c) of the Nuclear Waste Policy Act, this rule does not require the preparation of an environmental impact statement under section 102(2)(c) of the National Environmental Policy Act of 1969 or any environmental review under subparagraph (E) or (F) of section 102(2) of such act.

IX. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0199.

The public reporting burden for this information collection is estimated to average 121 hours per response, including the time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0199), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

X. Regulatory Analysis

The NRC has prepared a regulatory analysis for this regulation. The analysis examines the alternatives considered by NRC. The analysis is available for inspection in the NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*.

Single copies of the analysis may be obtained from Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6203, e-mail *CWP@nrc.gov*.

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. This final rule relates to the licensing of only one entity, the Department of Energy, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act.

XII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

XIII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 2

Administrative procedure and practice, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Administrative practice and procedure, Criminal Penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2, 19, 20, 21, 30, 40, 51, 60, 61, 70, 72, 73, and 75, and adding the new 10 CFR part 63.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. Section 2.101 is amended by revising paragraphs (f)(1) and (f)(5) to read as follows:

§ 2.101 Filing of applications.

* * * * *

(f)(1) Each application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 or 63 of this chapter, and any environmental impact statement required in connection therewith pursuant to subpart A of part 51 of this chapter, shall be processed in accordance with the provisions of this paragraph.

* * * * *

(5) If a tendered document is acceptable for docketing, the applicant will be requested to submit to the Director of Nuclear Material Safety and Safeguards such additional copies of the application and environmental impact statement as the regulations in part 60 or 63 and subpart A of part 51 of this chapter require; serve a copy of such application and environmental impact statement on the chief executive of the municipality in which the geologic repository operations area is to be located, or if the geologic repository operations area is not to be located within a municipality, on the chief executive of the county (or to the Tribal organization, if it is to be located within an Indian reservation); and make direct distribution of additional copies to Federal, State, Indian Tribe, and local officials in accordance with the requirements of this chapter, and written instructions from the Director of Nuclear Material Safety and Safeguards. All such copies shall be completely assembled documents, identified by docket number. Subsequently distributed amendments to the application, however, may include revised pages to previous submittals and, in such cases, the recipients are responsible for inserting the revised pages.

* * * * *

3. Section 2.103 is amended by revising paragraph (a) to read as follows:

§ 2.103 Action on applications for byproduct, source, special nuclear material, and operator licenses.

(a) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, finds that an application for a byproduct, source, special nuclear material, or operator license complies with the requirements of the Act, the Energy Reorganization Act, and this chapter, he will issue a license. If the license is for a facility, or for the receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, or if it is to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 or 63 of this chapter, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the State, Tribal, and local officials specified in § 2.104(e) of the issuance of the license. For notice of issuance requirements for licenses issued pursuant to part 61 of this chapter, see § 2.106(d).

* * * * *

4. Section 2.104 is amended by revising paragraph (e) to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(e) The Secretary will give timely notice of the hearing to all parties and to other persons, if any, entitled by law to notice. The Secretary will transmit a notice of the hearing on an application for a license for a production or utilization facility, for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, for a license under part 61 of this chapter, for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 or 63 of this chapter, and for a license under part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) to the governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be so located or conducted within an Indian reservation). The Secretary will transmit a notice of hearing on an application for a license under part 72 of this chapter to acquire, receive or possess spent fuel, high-level radioactive waste or radioactive material associated with high-level radioactive waste for the purpose of storage in a monitored retrievable storage installation (MRS) to the same persons who received notice of docketing under § 72.16(e) of this chapter.

5. Section 2.105 is amended by revising paragraph (a)(5) to read as follows:

§ 2.105 Notice of proposed action.

(a) * * *

(5) A license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 or 63 of this chapter.

* * * * *

6. Section 2.106 is amended by revising paragraph (c) to read as follows:

§ 2.106 Notice of issuance.

* * * * *

(c) The Director of Nuclear Material Safety and Safeguards will also cause to be published in the **Federal Register** notice of, and will inform the State, local, and Tribal officials specified in § 2.104(e) of any action with respect to an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 or 63 of this chapter, or for the amendment to such license for which a notice of proposed action has been previously published.

* * * * *

7. Section 2.714 is amended by revising paragraph (d) to read as follows:

§ 2.714 Intervention.

* * * * *

(d) The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on petitions to intervene and/or requests for hearing shall permit intervention, in any hearing on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, by the State in which such area is located and by any affected Indian Tribe as defined in part 60 or 63 of this chapter.

* * * * *

8. In § 2.1001, the definitions of *Documentary material, Interested governmental participation, Licensing Support Network,* and *Party* are revised to read as follows:

§ 2.1001 Definitions.

* * * * *

Documentary material means any information upon which a party, potential party, or interested governmental participant intends to rely and/or to cite in support of its position in the proceeding for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 or 63 of this chapter; any information that is known to, and in the possession of, or developed by the party that is relevant to, but does not support, that information or that party's position; and all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related "circulated drafts," relevant to both the license application and the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. The scope of documentary material shall be guided by the topical guidelines in the applicable NRC Regulatory Guide.

* * * * *

Interested governmental participant means any person admitted under § 2.715(c) of this part to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 or 63 of this chapter.

Licensing Support Network means the combined system that makes documentary material available electronically to parties, potential parties, and interested governmental participants to the proceeding for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 or 63 of this chapter, as part of the electronic docket or electronic access to documentary material, beginning in the pre-license application phase.

* * * * *

Party for the purpose of this subpart means the DOE, the NRC staff, the host State, any affected unit of local government as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), any affected Indian Tribe as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), and a person admitted under § 2.1014 to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area under part 60 or 63 of this chapter, provided that a host State, affected unit of local government, or affected Indian Tribe shall file a list of contentions in accordance with the provisions of § 2.1014(a)(2)(ii) and (iii).

* * * * *

9. Section 2.1013 is amended by revising paragraphs (a)(2) and (c)(1) to read as follows:

§ 2.1013 Use of the electronic docket during the proceeding.

(a) * * *

(2) Commencing with the docketing in an electronic form of the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 or 63 of this chapter, the Secretary of the Commission, upon determining that the application can be properly accessed under the Commission's electronic docket rules, will establish an electronic docket to contain the official record materials of the high-level radioactive waste licensing proceeding in searchable full text, or, for material that is not suitable for entry in searchable full text, by header and image, as appropriate.

* * * * *

(c)(1) All filings in the adjudicatory proceeding on the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 or 63 of this chapter shall be transmitted electronically by the submitter to the Presiding Officer, parties, and the Secretary of the Commission, according to established format requirements. Parties and interested governmental participants will be required to use a password security code for the electronic transmission of these documents.

* * * * *

10. Section 2.1014 is amended by revising the introductory text of paragraph (a)(1) and paragraph (a)(4) to read as follows:

§ 2.1014 Intervention.

(a)(1) Any person whose interest may be affected by a proceeding on the application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 or 63 of this chapter, and who desires to participate as a party, shall file a written petition for leave to intervene. In a proceeding noticed pursuant to § 2.105, any person whose interest may be affected may also request a hearing. The petition and/or request, and any request to participate under § 2.715(c), shall be filed within thirty days after the publication of the notice of hearing in the **Federal Register**. Nontimely filings will not be entertained absent a determination by the Commission, or the Presiding Officer designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors, in addition to satisfying those set out in paragraphs (a)(2) and (c) of this section:

* * * * *

(4) Any party may amend its contentions specified in paragraph (a)(2)(ii) of this section. The Presiding Officer shall rule on any petition to amend such contentions based on the balancing of the factors specified in paragraph (a)(1) of this section and a showing that a significant safety or environmental issue is involved or that the amended contention raises a material issue related to the performance evaluation anticipated by §§ 60.112 and 60.113 or §§ 63.112 and 63.113 of this chapter.

* * * * *

11. Section 2.1021 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 2.1021 First prehearing conference.

(a) In any proceeding involving an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 or 63 of this chapter, the Commission or the Presiding Officer will direct the parties, interested governmental participants, and any petitioners for intervention, or their counsel, to appear at a specified time and place, within seventy days after the notice of hearing is published, or such other time as the Commission or the Presiding Officer may deem appropriate, for a conference to:

* * * * *

12. Section 2.1023 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 2.1023 Immediate effectiveness.

(a) Pending review and final decision by the Commission, an initial decision resolving all issues before the Presiding Officer in favor of issuance or amendment of a construction authorization pursuant to § 60.31 or 63.31 of this chapter or a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to § 60.41 or 63.41 of this chapter, will be immediately effective upon issuance except—

* * * * *

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTION AND INVESTIGATIONS

13. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282 2297f); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

14. Section 19.2 is revised to read as follows:

§ 19.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed by the Nuclear Regulatory Commission pursuant to the regulations in parts 30 through 36, 39, 40, 60, 61, 63, 70, or part 72 of this chapter, including persons licensed to operate a production or utilization facility under part 50 of this chapter, persons licensed to possess power reactor spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to part 72 of this chapter, and in accordance with 10 CFR 76.60 to persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter. The regulations regarding interviews of individuals under subpoena apply to all investigations and inspections within the jurisdiction of the Nuclear Regulatory Commission other than those involving NRC employees or NRC contractors. The regulations in this part do not apply to subpoenas issued pursuant to 10 CFR 2.720.

15. Section 19.3 is amended by revising the definition of *License* to read as follows:

§ 19.3 Definitions.

* * * * *

License means a license issued under the regulations in parts 30 through 36, 39, 40, 60, 61, 63, 70, or 72 of this chapter, including licenses to operate a production or utilization facility pursuant to part 50 of this chapter.

* * * * *

16. Section 19.20 is revised to read as follows:

§ 19.20 Employee protection.

Employment discrimination by a licensee (or a holder of a certificate of compliance issued pursuant to part 76) or a contractor or subcontractor of a licensee (or a holder of a certificate of compliance issued pursuant to part 76) against an employee for engaging in protected activities under this part or parts 30, 40, 50, 60, 61, 63, 70, 72, 76, or 150 of this chapter is prohibited.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

17. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

18. Section 20.1002 is revised to read as follows:

§ 20.1002 Scope.

The regulations in this part apply to persons licensed by the Commission to receive, possess, use, transfer, or dispose of byproduct, source, or special nuclear material, or to operate a production or utilization facility under parts 30 through 36, 39, 40, 50, 60, 61, 63, 70, or 72 of this chapter, and in accordance with 10 CFR 76.60 to persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter. The limits in this part do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with § 35.75, or to exposure from voluntary participation in medical research programs.

19. Section 20.1003 is amended by revising the definition of License to read as follows:

§ 20.1003 Definitions.

* * * * *

License means a license issued under the regulations in parts 30 through 36, 39, 40, 50, 60, 61, 63, 70, or 72 of this chapter.

* * * * *

20. Section 20.1401 is amended by revising paragraph (a) to read as follows:

§ 20.1401 General provisions and scope.

(a) The criteria in this subpart apply to the decommissioning of facilities licensed under parts 30, 40, 50, 60, 61, 63, 70, and 72 of this chapter, as well as other facilities subject to the Commission's jurisdiction under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended. For high-level and low-level waste disposal facilities (10 CFR parts 60, 61, and 63), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities. The criteria do not apply to uranium and thorium recovery facilities already subject to Appendix A to 10 CFR part 40 or to uranium solution extraction facilities.

* * * * *

21. Section 20.2001 is amended by revising paragraphs (a)(1) and (b)(5) to read as follows:

§ 20.2001 General requirements.

(a) * * *

(1) By transfer to an authorized recipient as provided in § 20.2006 or in the regulations in parts 30, 40, 60, 61, 63, 70, and 72 of this chapter;

* * * * *

(b) * * *

(5) Disposal at a geologic repository under part 60 or part 63 of this chapter.

22. Section 20.2206 is amended by revising paragraph (a)(4) to read as follows:

§ 20.2206 Reports of individual monitoring.

(a) * * *

(4) Possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 or 63 of this chapter; or

* * * * *

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

23. The authority citation for part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83, Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2953 (42 U.S.C.

2201, 2282, 2297f); secs. 201, as amended, 206, 88 Stat. 1242, as amended 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

24. Section 21.2 is amended by revising paragraph (a) to read as follows:

§ 21.2 Scope.

(a) The regulations in this part apply, except as specifically provided otherwise in parts 31, 34, 35, 39, 40, 60, 61, 63, 70, or part 72 of this chapter, to each individual, partnership, corporation, or other entity licensed pursuant to the regulations in this chapter to possess, use, or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel and high-level radioactive waste, or to construct, manufacture, possess, own, operate, or transfer within the United States, any production or utilization facility or independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS); and to each director and responsible officer of such a licensee. The regulations in this part apply also to each individual, corporation, partnership, or other entity doing business within the United States, and each director and responsible officer of such organization, that constructs a production or utilization facility licensed for the manufacture, construction, or operation pursuant to part 50 of this chapter, an ISFSI for the storage of spent fuel licensed pursuant to part 72 of this chapter, an MRS for the storage of spent fuel or high-level radioactive waste pursuant to part 72 of this chapter, or a geologic repository for the disposal of high-level radioactive waste under part 60 or 63 of this chapter; or supplies basic components for a facility or activity licensed, other than for export, under parts 30, 40, 50, 60, 61, 63, 70, 71, or part 72 of this chapter.

* * * * *

§ 21.3 [Amended]

25. In § 21.3, the definitions of Basic component, Commercial grade item, and Dedication are amended by adding the number 63 after "10 CFR parts 30, 40, 50 (other than nuclear power plants), 60" and the definition of Substantial safety hazard is amended by adding the number 63 between "61" and "70."

26. Section 21.21 is amended by revising paragraphs (d)(1)(i) and (d)(1)(ii) to read as follows:

§ 21.21 Notification of failure to comply or existence of a defect and its evaluation.

* * * * *

(d)(1) * * *

(i) The construction or operation of a facility or an activity within the United States that is subject to the licensing requirements under parts 30, 40, 50, 60, 61, 63, 70, 71, or 72 of this chapter and that is within his or her organization's responsibility; or

(ii) A basic component that is within his or her organization's responsibility and is supplied for a facility or an activity within the United States that is subject to the licensing requirements under parts 30, 40, 50, 60, 61, 63, 70, 71, or 72 of this chapter.

* * * * *

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

27. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 69 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

28. Section 30.11 is amended by revising paragraph (c) to read as follows:

§ 30.11 Specific exemptions.

* * * * *

(c) The Department of Energy is exempt from the requirements of this part to the extent that its activities are subject to the requirements of part 60 or 63 of this chapter.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

29. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

30. Section 40.14 is amended by revising paragraph (c) to read as follows:

§ 40.14 Specific exemptions.

* * * * *

(c) The Department of Energy is exempt from the requirements of this part to the extent that its activities are subject to the requirements of part 60 or 63 of this chapter.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

31. The authority citation for part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30 51.60, 51.61, 51.80, and 51.97 also issued under secs 135, 141, Pub. L. 97–425, 96 Stat, 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134 (f)).

32. Section 51.20 is amended by revising paragraph (b)(13) to read as follows:

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

* * * * *

(b) * * *

(13) Issuance of a construction authorization and license pursuant to part 60 or part 63 of this chapter.

* * * * *

33. Section 51.22 is amended by revising the introductory text of paragraph (c)(3) and paragraphs (c)(10), (c)(12), and (d) to read as follows:

§ 51.22 Criteria for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(c) * * *

(3) Amendments to parts 20, 30, 31, 32, 33, 34, 35, 39, 40, 50, 51, 54, 60, 61, 63, 70, 71, 72, 73, 74, 81, and 100 of this chapter which relate to—

* * * * *

(10) Issuance of an amendment to a permit or license under parts 30, 31, 32, 33, 34, 35, 36, 39, 40, 50, 60, 61, 63, 70, or part 72 of this chapter which —

(i) Changes surety, insurance and/or indemnity requirements; or

(ii) Changes recordkeeping, reporting, or administrative procedures or requirements.

* * * * *

(12) Issuance of an amendment to a license pursuant to parts 50, 60, 61, 63, 70, 72, or 75 of this chapter relating solely to safeguards matters (i.e., protection against sabotage or loss or diversion of special nuclear material) or issuance of an approval of a safeguards plan submitted pursuant to parts 50, 70, 72, and 73 of this chapter, provided that the amendment or approval does not involve any significant construction impacts. These amendments and approvals are confined to—

(i) Organizational and procedural matters;

(ii) Modifications to systems used for security and/or materials accountability;

(iii) Administrative changes; and

(iv) Review and approval of transportation routes pursuant to 10 CFR 73.37.

* * * * *

(d) In accordance with section 121 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141), the promulgation of technical requirements and criteria that the Commission will apply in approving or disapproving applications under part 60 or 63 of this chapter shall not require an environmental impact statement, an environmental assessment, or any environmental review under subparagraph (E) or (F) of section 102(2) of NEPA.

34. Section 51.26 is amended by revising paragraph (c) to read as follows:

§ 51.26 Requirement to publish notice of intent and conduct scoping process.

* * * * *

(c) Upon receipt of an application and accompanying environmental impact statement under § 60.22 or § 63.22 of this chapter (pertaining to geologic repositories for high-level radioactive waste), the appropriate NRC staff director will include in the notice of docketing required to be published by § 2.101(f)(8) of this chapter a statement of Commission intention to adopt the environmental impact statement to the extent practicable. However, if the appropriate NRC staff director determines, at the time of such publication or at any time thereafter, that NRC should prepare a supplemental environmental impact statement in connection with the Commission's action on the license application, the NRC shall follow the procedures set out in paragraph (a) of this section.

35. Section 51.67 is amended by revising paragraphs (a) and (b) to read as follows:

§ 51.67 Environmental information concerning geologic repositories.

(a) In lieu of an environmental report, the Department of Energy, as an applicant for a license or license amendment pursuant to part 60 or 63 of this chapter, shall submit to the Commission any final environmental impact statement which the Department prepares in connection with any geologic repository developed under Subtitle A of Title I, or under Title IV, of the Nuclear Waste Policy Act of 1982, as amended. (See § 60.22 or § 63.22 of this chapter as to the required time and manner of submission.) The statement shall include, among the alternatives under consideration, denial of a license or construction authorization by the Commission.

(b) Under applicable provisions of law, the Department of Energy may be required to supplement its final environmental impact statement if it makes a substantial change in its proposed action that is relevant to environmental concerns or determines that there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. The Department shall submit any supplement to its final environmental impact statement to the Commission. (See § 60.22 or § 63.22 of this chapter as to the required time and manner of submission.)

* * * * *

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

36. The authority citation for part 60 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

37. Section 60.1 is revised to read as follows:

§ 60.1 Purpose and scope.

This part prescribes rules governing the licensing of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated in accordance with the Nuclear Waste Policy Act of 1982. This part does not apply to any activity licensed under another part of this chapter. This part does not apply to the licensing of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated at Yucca Mountain, Nevada, in accordance with the Nuclear Waste Policy Act of 1982, as amended, and the Energy Policy Act of 1992, subject to part 63 of this chapter. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 60.11.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

38. The authority citation for part 61 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851).

39. Section 61.1 is amended by revising paragraph (b) to read as follows:

§ 61.1 Purpose and scope.

* * * * *

(b) Except as provided in part 150 of this chapter, which addresses assumption of certain regulatory authority by Agreement States, and § 61.6 "Exemptions," the regulations in this part apply to all persons in the United States. The regulations in this part do not apply to—

(1) Disposal of high-level waste as provided for in part 60 or 63 of this chapter;

(2) Disposal of uranium or thorium tailings or wastes (byproduct material as defined in § 40.4 (a-1) as provided for in part 40 of this chapter in quantities greater than 10,000 kilograms and containing more than 5 millicuries of radium-226; or

(3) Disposal of licensed material as provided for in part 20 of this chapter.

* * * * *

40. In § 61.2, the definition of Land disposal facility is revised to read as follows:

§ 61.2 Definitions.

* * * * *

Land disposal facility means the land, building, and structures, and equipment which are intended to be used for the disposal of radioactive wastes. For purposes of this chapter, a "geologic repository" as defined in part 60 or 63 is not considered a land disposal facility.

* * * * *

41. Section 61.55 is amended by revising paragraph (a)(2)(iv) to read as follows:

§ 61.55 Waste classification.

(a) * * *

(2) * * *

(iv) Waste that is not generally acceptable for near-surface disposal is waste for which form and disposal methods must be different, and in general more stringent, than those specified for Class C waste. In the absence of specific requirements in this part, such waste must be disposed of in a geologic repository as defined in part 60 or 63 of this chapter unless proposals for disposal of such waste in a disposal site licensed pursuant to this part are approved by the Commission.

* * * * *

42. Part 63 is added to read as follows:

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

Subpart A—General Provisions

Sec.
63.1 Purpose and scope.
63.2 Definitions.
63.3 License required.
63.4 Communications and records.
63.5 Interpretations.
63.6 Exemptions.
63.7 License not required for certain preliminary activities.
63.8 Information collection requirements: OMB Approval.
63.9 Employee protection.
63.10 Completeness and accuracy of information.
63.11 Deliberate misconduct.

Subpart B—Licenses

Preapplication Review

63.15 Site characterization.

63.1 Review of site characterization activities.

License Application

63.21 Content of application.
63.22 Filing and distribution of application.
63.23 Elimination of repetition.
63.24 Updating of application and environmental impact statement.

Construction Authorization

63.31 Construction authorization.
63.32 Conditions of construction authorization.
63.33 Amendment of construction authorization.

License Issuance and Amendment

63.41 Standards for issuance of a license.
63.42 Conditions of license.
63.43 License specification.
63.44 Changes, tests, and experiments.
63.45 Amendment of license.
63.46 Particular activities requiring license amendment.

Permanent Closure

63.51 License amendment for permanent closure.
63.52 Termination of license.

Subpart C—Participation by State Government, Affected Units of Local Government, and Affected Indian Tribes

63.61 Provision of information.
63.62 Site review.
63.63 Participation in license reviews.
63.64 Notice to State.
63.65 Representation.

Subpart D—Records, Reports, Tests, and Inspections

63.71 Records and reports.
63.72 Construction records.
63.73 Reports of deficiencies.
63.74 Tests.
63.75 Inspections.
63.78 Material control and accounting records and reports.

Subpart E—Technical Criteria

63.101 Purpose and nature of findings.
63.102 Concepts.

Preclosure Performance Objectives

63.111 Performance objectives for the geologic repository operations area through permanent closure.

Preclosure Safety Analysis

63.112 Requirements for preclosure safety analysis of the geologic repository operations area.

Postclosure Performance Objectives

63.113 Performance objectives for the geologic repository after permanent closure.

Postclosure Performance Assessment

63.114 Requirements for performance assessment.
63.115 Requirements for multiple barriers.

Land Ownership and Control

63.121 Requirements for ownership and control of interests in land.

Subpart F—Performance Confirmation Program

63.131 General requirements.
63.132 Confirmation of geotechnical and design parameters.
63.133 Design testing.
63.134 Monitoring and testing waste packages.

Subpart G—Quality Assurance

63.141 Scope.
63.142 Quality assurance criteria.
63.143 Implementation.
63.144 Quality assurance program change.

Subpart H—Training and Certification of Personnel

63.151 General requirements.
63.152 Training and certification program.
63.153 Physical requirements.

Subpart I—Emergency Planning Criteria

63.161 Emergency plan for the geologic repository operations area through permanent closure.

Subpart J—Violations

63.171 Violations.
63.172 Criminal penalties.

Subpart K—Preclosure Public Health and Environmental Standards

63.201 Purpose and scope.
63.202 Definitions for Subpart K.
63.203 Implementation of Subpart K.
63.204 Preclosure standard. ;

Subpart L—Postclosure Public Health and Environmental Standards

63.301 Purpose and scope.
63.302 Definitions for Subpart L.
63.303 Implementation of Subpart L.
63.304 Reasonable expectation.
63.305 Required characteristics of the reference biosphere.

Postclosure Individual Protection Standard

63.311 Individual protection standard after permanent closure.
63.312 Required characteristics of the reasonably maximally exposed individual.

Human-Intrusion Standard

63.321 Individual protection standard for human intrusion.
63.322 Human intrusion scenario.

Ground-Water Protection Standards

63.331 Separate standards for protection of ground water.
63.332 Representative volume.

ADDITIONAL PROVISIONS

63.341 Projections of peak dose.
63.342 Limits on performance assessments.
63.343 Severability of individual protection and ground-water protection standards.

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

Subpart A—General Provisions

§ 63.1 Purpose and scope.

This part prescribes rules governing the licensing of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated at Yucca Mountain, Nevada, in accordance with the Nuclear Waste Policy Act of 1982, as amended, and the Energy Policy Act of 1992. As provided in 10 CFR 60.1, the regulations in part 60 of this chapter do not apply to any activity that is subject to licensing under this part. This part does not apply to any activity licensed under another part of this chapter. This part also gives notice to all persons who knowingly provide, to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 63.11.

§ 63.2 Definitions.

As used in this part:

Affected Indian Tribe means any Indian Tribe within whose reservation boundaries a repository for high-level radioactive waste or spent fuel is proposed to be located; or whose Federally-defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of Congressionally-ratified treaties or other Federal law may be substantially and adversely affected by the location of the facility if the Secretary of the Interior finds, on the petition of the appropriate governmental officials of the Tribe, that the effects are both substantial and adverse to the Tribe.

Barrier means any material, structure, or feature that, for a period to be determined by NRC, prevents or substantially reduces the rate of movement of water or radionuclides from the Yucca Mountain repository to the accessible environment, or prevents the release or substantially reduces the release rate of radionuclides from the waste. For example, a barrier may be a geologic feature, an engineered structure, a canister, a waste form with physical and chemical characteristics that significantly decrease the mobility of radionuclides, or a material placed over and around the waste, provided that the material substantially delays movement of water or radionuclides.

Commencement of construction means clearing of land, surface or subsurface excavation, or other substantial action that would adversely affect the environment of a site. It does not include changes desirable for the temporary use of the land for public recreational uses, site characterization activities, other preconstruction monitoring and investigation necessary to establish background information related to the suitability of the Yucca Mountain site or to the protection of environmental values, or procurement or manufacture of components of the geologic repository operations area.

Commission means the Nuclear Regulatory Commission or its duly authorized representatives.

Containment means the confinement of radioactive waste within a designated boundary.

Design bases means that information that identifies the specific functions to be performed by a structure, system, or component of a facility and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be constraints derived from generally accepted "state-of-the-art" practices for achieving functional goals or requirements derived from analysis (based on calculation or experiments) of the effects of a postulated event under which a structure, system, or component must meet its functional goals. The values for controlling parameters for external events include:

(1) Estimates of severe natural events to be used for deriving design bases that will be based on consideration of historical data on the associated parameters, physical data, or analysis of upper limits of the physical processes involved; and

(2) Estimates of severe external human-induced events to be used for deriving design bases, that will be based on analysis of human activity in the region, taking into account the site characteristics and the risks associated with the event.

Director means the Director of the Nuclear Regulatory Commission's Office of Nuclear Material Safety and Safeguards.

Disposal means the emplacement of radioactive waste in a geologic repository with the intent of leaving it there permanently.

DOE means the U.S. Department of Energy or its duly authorized representatives.

Engineered barrier system means the waste packages, including engineered components and systems other than the waste package (e.g., drip shields), and the underground facility.

Event sequence means a series of actions and/or occurrences within the natural and engineered components of a geologic repository operations area that could potentially lead to exposure of individuals to radiation. An event sequence includes one or more initiating events and associated combinations of repository system component failures, including those produced by the action or inaction of operating personnel. Those event sequences that are expected to occur one or more times before permanent closure of the geologic repository operations area are referred to as Category 1 event sequences. Other event sequences that have at least one chance in 10,000 of occurring before permanent closure are referred to as Category 2 event sequences.

Geologic repository means a system that is intended to be used for, or may be used for, the disposal of radioactive wastes in excavated geologic media. A geologic repository includes the engineered barrier system and the portion of the geologic setting that provides isolation of the radioactive waste.

Geologic repository operations area means a high-level radioactive waste facility that is part of a geologic repository, including both surface and subsurface areas, where waste handling activities are conducted.

Geologic setting means the geologic, hydrologic, and geochemical systems of the region in which a geologic repository is or may be located.

High-level radioactive waste or *HLW* means:

(1) The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations;

(2) Irradiated reactor fuel; and

(3) Other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

HLW facility means a facility subject to the licensing and related regulatory authority of the Commission pursuant to sections 202(3) and 202(4) of the Energy

Reorganization Act of 1974 (88 Stat. 1244).[1]

Host rock means the geologic medium in which the waste is emplaced.

Important to safety, with reference to structures, systems, and components, means those engineered features of the geologic repository operations area whose function is:

(1) To provide reasonable assurance that high-level waste can be received, handled, packaged, stored, emplaced, and retrieved without exceeding the requirements of § 63.111(b)(1) for Category 1 event sequences; or

(2) To prevent or mitigate Category 2 event sequences that could result in radiological exposures exceeding the values specified at § 63.111(b)(2) to any individual located on or beyond any point on the boundary of the site.

Important to waste isolation, with reference to design of the engineered barrier system and characterization of natural barriers, means those engineered and natural barriers whose function is to provide a reasonable expectation that high-level waste can be disposed of without exceeding the requirements of § 63.113(b) and (c).

Initiating event means a natural or human induced event that causes an event sequence.

Isolation means inhibiting the transport of radioactive material to:

(1) The location of the reasonably maximally exposed individual so that radiological exposures will not exceed the requirements of § 63.113(b); and

(2) The accessible environment so that releases of radionuclides into the accessible environment will not exceed the requirements of § 63.113(c).

Performance assessment means an analysis that:

(1) Identifies the features, events, processes (except human intrusion), and sequences of events and processes (except human intrusion) that might affect the Yucca Mountain disposal system and their probabilities of occurring during 10,000 years after disposal;

(2) Examines the effects of those features, events, processes, and sequences of events and processes upon the performance of the Yucca Mountain disposal system; and

(3) Estimates the dose incurred by the reasonably maximally exposed individual, including the associated uncertainties, as a result of releases caused by all significant features, events, processes, and sequences of events and processes, weighted by their probability of occurrence.

Performance confirmation means the program of tests, experiments, and analyses that is conducted to evaluate the adequacy of the information used to demonstrate compliance with the performance objectives in subpart E of this part.

Permanent closure means final backfilling of the underground facility, if appropriate, and the sealing of shafts, ramps, and boreholes.

Preclosure safety analysis means a systematic examination of the site; the design; and the potential hazards, initiating events and event sequences and their consequences (e.g., radiological exposures to workers and the public). The analysis identifies structures, systems, and components important to safety.

Public Document Room means the place at One White Flint North, 11555 Rockville Pike, Room O–1F13, Rockville, MD, at which records of the Commission will ordinarily be made available for public inspection and any other place, the location of which has been published in the **Federal Register**, at which public records of the Commission pertaining to a geologic repository at the Yucca Mountain site are made available for public inspection.

Radioactive waste or *waste* means HLW and radioactive materials other than HLW that are received for emplacement in a geologic repository.

Reasonably maximally exposed individual means the hypothetical person meeting the criteria specified at § 63.312.

Reference biosphere means the description of the environment inhabited by the reasonably maximally exposed individual. The reference biosphere comprises the set of specific biotic and abiotic characteristics of the environment, including, but not necessarily limited to, climate, topography, soils, flora, fauna, and human activities.

Restricted area means an area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set aside as a restricted area.

Retrieval means the act of permanently removing radioactive waste from the underground location at which the waste had been previously emplaced for disposal.

Saturated zone means that part of the earth's crust beneath the regional water table in which statistically all voids, large and small, are filled with water under pressure greater than atmospheric.

Site means that area surrounding the geologic repository operations area for which DOE exercises authority over its use in accordance with the provisions of this part.

Site characterization means the program of exploration and research, both in the laboratory and in the field, undertaken to establish the geologic conditions and the ranges of those parameters of the Yucca Mountain site, and the surrounding region to the extent necessary, relevant to the procedures under this part. Site characterization includes borings, surface excavations, excavation of exploratory shafts and/or ramps, limited subsurface lateral excavations and borings, and in situ testing at depth needed to determine the suitability of the site for a geologic repository.

Total effective dose equivalent (TEDE) means, for purposes of assessing doses to workers, the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures). For purposes of assessing doses to members of the public (including the RMEI), TEDE means the sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

Underground facility means the underground structure, backfill materials, if any, and openings that penetrate the underground structure (e.g., ramps, shafts, and boreholes, including their seals).

Unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Unsaturated zone means the zone between the land surface and the regional water table. Generally, fluid pressure in this zone is less than atmospheric pressure, and some of the voids may contain air or other gases at atmospheric pressure. Beneath flooded areas or in perched water bodies, the fluid pressure locally may be greater than atmospheric.

Waste form means the radioactive waste materials and any encapsulating or stabilizing matrix.

Waste package means the waste form and any containers, shielding, packing, and other absorbent materials immediately surrounding an individual waste container.

Water table means that surface in a ground-water body, separating the unsaturated zone from the saturated zone, at which the water pressure is atmospheric.

[1] These are DOE "facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under such Act (the Atomic Energy Act)" and "Retrievable Surface Storage Facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive wastes generated by (DOE), which are not used for, or are part of, research and development activities."

§ 63.3 License required.

(a) DOE may not receive nor possess source, special nuclear, or byproduct material at a geologic repository operations area at the Yucca Mountain site except as authorized by a license issued by the Commission under this part.

(b) DOE may not begin construction of a geologic repository operations area at the Yucca Mountain site unless it has filed an application with the Commission and has obtained construction authorization as provided in this part. Failure to comply with this requirement is grounds for denial of a license.

§ 63.4 Communications and records.

(a) Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be addressed to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Communications, reports, and applications may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, MD.

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform if the copy or microform is authenticated by authorized personnel and the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

§ 63.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel is binding on the Commission.

§ 63.6 Exemptions.

The Commission may, upon application by DOE, any interested person, or upon its own initiative, grant an exemption from the requirements of this part if it determines that the exemption is authorized by law, does not endanger life nor property nor the common defense and security, and is otherwise in the public interest.

§ 63.7 License not required for certain preliminary activities.

The requirement for a license set forth in § 63.3(a) is not applicable to the extent that DOE receives and possesses source, special nuclear, and byproduct material at a geologic repository at the Yucca Mountain site:

(a) For purposes of site characterization; or

(b) For use, during site characterization or construction, as components of radiographic, radiation monitoring, or similar equipment or instrumentation.

§ 63.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0199.

(b) The approved information collection requirements contained in this part appear in §§ 63.62, 63.63, and 63.65.

§ 63.9 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant, against an employee, for engaging in certain protected activities, is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission, or his or her employer, information about alleged violations of either of the statutes named in paragraph (a) of this section or possible violations of requirements imposed under either of those aforementioned statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) of this section, or under these requirements, if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) of this section;

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section does not apply to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license;

(2) Imposition of a civil penalty on the licensee or applicant; or

(3) Other enforcement action.

(d) Actions taken by an employer, or others, that adversely affect an

employee, may be predicated on nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in § 19.11(c) of this chapter. This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to part 20 of this chapter or by accessing the NRC Web site *www.nrc.gov/NRC/FORMS/forms3.html*.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision that would prohibit, restrict, or otherwise discourage an employee from participating in a protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

§ 63.10 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee, or information required by statute, or required by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee must be complete and accurate in all material respects.

(b) The applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having, for the regulated activity, a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification must be provided to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, within 2 working days of identifying the information. This requirement is not applicable to information that is already required to be provided to the Commission by other reporting or updating requirements.

§ 63.11 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

Subpart B—Licenses

Preapplication Review

§ 63.15 Site characterization.

(a) DOE shall conduct a program of site characterization with respect to the Yucca Mountain site before it submits an application for a license to be issued under this part.

(b) DOE shall conduct the investigations to obtain the required information in a manner that limits adverse effects on the long-term performance of the geologic repository at Yucca Mountain to the extent practical.

§ 63.16 Review of site characterization activities.[2]

(a) If DOE's planned site characterization activities include onsite testing with radioactive material, including radioactive tracers, the Commission shall determine whether the proposed use of such radioactive material is necessary to provide data for the preparation of the environmental reports required by law and for an application to be submitted under § 63.22.

(b) During the conduct of site characterization activities at the Yucca Mountain site, DOE shall report the nature and extent of the activities, the information that has been developed, and the progress of waste form and waste package research and development to the Commission not less than once every 6 months. The semiannual reports must include the results of site characterization studies, the identification of new issues, plans for additional studies to resolve new issues, elimination of planned studies no longer necessary, identification of decision points reached, and modifications to schedules, where appropriate. DOE shall also report its progress in developing the design of a geologic repository operations area appropriate for the area being characterized, noting when key design parameters or features that depend on the results of site characterization will be established. Other topics related to site characterization must also be covered if requested by the Director.

(c) During the conduct of site characterization activities at the Yucca Mountain site, NRC staff shall be permitted to visit and inspect the locations at which such activities are

[2] In addition to the review of site characterization activities specified in this section, the Commission contemplates an ongoing review of other information on site investigation and site characterization, to allow early identification of potential licensing issues for timely resolution at the staff level.

carried out and to observe excavations, borings, and in situ tests, as they are done.

(d) The Director may comment at any time in writing to DOE, expressing current views on any aspect of site characterization or performance assessment at the Yucca Mountain site. In particular, the Director shall comment whenever he or she determines that there are substantial grounds for making recommendations or stating objections to DOE's site characterization program. The Director shall invite public comment on any comments that the Director makes to DOE on review of the DOE semiannual reports or on any other comments that the Director makes to DOE on site characterization and performance assessment by placing the comments in a public forum to allow the public to comment on them after the Director's comments are sent to DOE.

(e) The Director shall transmit copies of all comments to DOE made by the Director under this section to the Governor and legislature of the State of Nevada and to the governing body of any affected Indian Tribe.

(f) All correspondence between DOE and NRC resulting from the requirements of this section, including the reports described in paragraph (b) of this section, must be placed in the Public Document Room.

(g) The activities described in paragraphs (a) through (f) of this section constitute informal conference between a prospective applicant and the NRC staff, as described in § 2.101(a)(1) of this chapter, and are not part of a proceeding under the Atomic Energy Act of 1954, as amended. Accordingly, the issuance of the Director's comments made under this section does not constitute a commitment to issue any authorization or license, or in any way affect the authority of the Commission, Atomic Safety and Licensing Board, other presiding officers, or the Director, in any such proceeding.

License Application

§ 63.21 Content of application.

(a) An application consists of general information and a Safety Analysis Report. An environmental impact statement must be prepared in accordance with the Nuclear Waste Policy Act of 1982, as amended, and must accompany the application. Any Restricted Data or National Security Information must be separated from unclassified information. The application must be as complete as possible in the light of information that is reasonably available at the time of docketing.

(b) The general information must include:

(1) A general description of the proposed geologic repository at the Yucca Mountain site, identifying the location of the geologic repository operations area, the general character of the proposed activities, and the basis for the exercise of the Commission's licensing authority.

(2) Proposed schedules for construction, receipt of waste, and emplacement of wastes at the proposed geologic repository operations area.

(3) A description of the detailed security measures for physical protection of high-level radioactive waste in accordance with § 73.51 of this chapter. This plan must include the design for physical protection, the licensee's safeguards contingency plan, and security organization personnel training and qualification plan. The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with such requirements.

(4) A description of the material control and accounting program to meet the requirements of § 63.78.

(5) A description of work conducted to characterize the Yucca Mountain site.

(c) The Safety Analysis Report must include:

(1) A description of the Yucca Mountain site, with appropriate attention to those features, events, and processes of the site that might affect design of the geologic repository operations area and performance of the geologic repository. The description of the site must include information regarding features, events, and processes outside of the site to the extent the information is relevant and material to safety or performance of the geologic repository. The information referred to in this paragraph must include:

(i) The location of the geologic repository operations area with respect to the boundary of the site;

(ii) Information regarding the geology, hydrology, and geochemistry of the site, including geomechanical properties and conditions of the host rock;

(iii) Information regarding surface water hydrology, climatology, and meteorology of the site; and

(iv) Information regarding the location of the reasonably maximally exposed individual, and regarding local human behaviors and characteristics, as needed to support selection of conceptual models and parameters used for the reference biosphere and reasonably maximally exposed individual.

(2) Information relative to materials of construction of the geologic repository operations area (including geologic media, general arrangement, and approximate dimensions), and codes and standards that DOE proposes to apply to the design and construction of the geologic repository operations area.

(3) A description and discussion of the design of the various components of the geologic repository operations area and the engineered barrier system including:

(i) Dimensions, material properties, specifications, analytical and design methods used along with any applicable codes and standards;

(ii) The design criteria used and their relationships to the preclosure and postclosure performance objectives specified at § 63.111(b), § 63.113(b), and § 63.113(c); and

(iii) The design bases and their relation to the design criteria.

(4) A description of the kind, amount, and specifications of the radioactive material proposed to be received and possessed at the geologic repository operations area at the Yucca Mountain site.

(5) A preclosure safety analysis of the geologic repository operations area, for the period before permanent closure, to ensure compliance with § 63.111(a), as required by § 63.111(c). For the purposes of this analysis, it is assumed that operations at the geologic repository operations area will be carried out at the maximum capacity and rate of receipt of radioactive waste stated in the application.

(6) A description of the program for control and monitoring of radioactive effluents and occupational radiological exposures to maintain such effluents and exposures in accordance with the requirements of § 63.111.

(7) A description of plans for retrieval and alternate storage of the radioactive wastes, should retrieval be necessary.

(8) A description of design considerations that are intended to facilitate permanent closure and decontamination or decontamination and dismantlement of surface facilities.

(9) An assessment to determine the degree to which those features, events, and processes of the site that are expected to materially affect compliance with § 63.113—whether beneficial or potentially adverse to performance of the geologic repository—have been characterized, and the extent to which they affect waste isolation. Investigations must extend from the surface to a depth sufficient to determine principal pathways for radionuclide migration from the underground facility. Specific features,

events, and processes of the geologic setting must be investigated outside of the site if they affect performance of the geologic repository.

(10) An assessment of the anticipated response of the geomechanical, hydrogeologic, and geochemical systems to the range of design thermal loadings under consideration, given the pattern of fractures and other discontinuities and the heat transfer properties of the rock mass and water.

(11) An assessment of the ability of the proposed geologic repository to limit radiological exposures to the reasonably maximally exposed individual for the period after permanent closure, as required by § 63.113(b).

(12) An assessment of the ability of the proposed geologic repository to limit releases of radionuclides into the accessible environment as required by § 63.113(c).

(13) An assessment of the ability of the proposed geologic repository to limit radiological exposures to the reasonably maximally exposed individual for the period after permanent closure in the event of human intrusion into the engineered barrier system as required by § 63.113(d).

(14) An evaluation of the natural features of the geologic setting and design features of the engineered barrier system that are considered barriers important to waste isolation as required by § 63.115.

(15) An explanation of measures used to support the models used to provide the information required in paragraphs (c)(9) through (c)(14) of this section. Analyses and models that will be used to assess performance of the geologic repository must be supported by using an appropriate combination of such methods as field tests, in situ tests, laboratory tests that are representative of field conditions, monitoring data, and natural analog studies.

(16) An identification of those structures, systems, and components of the geologic repository, both surface and subsurface, that require research and development to confirm the adequacy of design. For structures, systems, and components important to safety and for the engineered and natural barriers important to waste isolation, DOE shall provide a detailed description of the programs designed to resolve safety questions, including a schedule indicating when these questions would be resolved.

(17) A description of the performance confirmation program that meets the requirements of subpart F of this part.

(18) An identification and justification for the selection of those variables, conditions, or other items that are determined to be probable subjects of license specifications. Special attention must be given to those items that may significantly influence the final design.

(19) An explanation of how expert elicitation was used.

(20) A description of the quality assurance program to be applied to the structures, systems, and components important to safety and to the engineered and natural barriers important to waste isolation. The description of the quality assurance program must include a discussion of how the applicable requirements of § 63.142 will be satisfied.

(21) A description of the plan for responding to, and recovering from, radiological emergencies that may occur at any time before permanent closure and decontamination or decontamination and dismantlement of surface facilities, as required by § 63.161.

(22) The following information concerning activities at the geologic repository operations area:

(i) The organizational structure of DOE as it pertains to construction and operation of the geologic repository operations area, including a description of any delegations of authority and assignments of responsibilities, whether in the form of regulations, administrative directives, contract provisions, or otherwise.

(ii) Identification of key positions that are assigned responsibility for safety at and operation of the geologic repository operations area.

(iii) Personnel qualifications and training requirements.

(iv) Plans for startup activities and startup testing.

(v) Plans for conduct of normal activities, including maintenance, surveillance, and periodic testing of structures, systems, and components of the geologic repository operations area.

(vi) Plans for permanent closure and plans for the decontamination or decontamination and dismantlement of surface facilities.

(vii) Plans for any uses of the geologic repository operations area at the Yucca Mountain site for purposes other than disposal of radioactive wastes, with an analysis of the effects, if any, that such uses may have on the operation of the structures, systems, and components important to safety and the engineered and natural barriers important to waste isolation.

(23) A description of the program to be used to maintain the records described in §§ 63.71 and 63.72.

(24) A description of the controls that DOE will apply to restrict access and to regulate land use at the Yucca Mountain site and adjacent areas, including a conceptual design of monuments that would be used to identify the site after permanent closure.

§ 63.22 Filing and distribution of application.

(a) An application for a license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area at the Yucca Mountain site that has been characterized, any amendments to the application, and an accompanying environmental impact statement and any supplements, must be signed by the Secretary of Energy or the Secretary's authorized representative and must be filed in triplicate with the Director.

(b) DOE shall submit 30 additional copies of each portion of the application and any amendments, and each environmental impact statement and any supplements. DOE shall retain another 120 copies for distribution in accordance with written instructions from the Director or the Director's designee.

(c) On notification of the appointment of an Atomic Safety and Licensing Board, DOE shall update the application, eliminating all superseded information, and supplement the environmental impact statement if necessary, and serve the updated application and environmental impact statement (as it may have been supplemented) as directed by the Board. Any subsequent amendments to the application or supplements to the environmental impact statement must be served in the same manner.

(d) When an application, and any amendment to it is filed, copies must be made available in appropriate locations near the proposed geologic repository operations area at the Yucca Mountain site for inspection by the public. These copies must be updated as amendments to the application are made. The environmental impact statement and any supplements to it must be made available in the same manner. An updated copy of the application, and the environmental impact statement and supplements, must be produced at any public hearing held by the Commission on the application for use by any party to the proceeding.

(e) DOE shall certify that the updated copies of the application, and the environmental impact statement as it may have been supplemented, as referred to in paragraphs (c) and (d) of this section, contain the current contents of these documents submitted as required by this part.

§ 63.23 Elimination of repetition.

In its application or environmental impact statement, DOE may incorporate, by reference, information contained in previous applications, statements, or reports filed with the Commission, if the references are clear and specific and copies of the information incorporated are made available to the public locations near the site of the proposed geologic repository, as specified in § 63.22(d).

§ 63.24 Updating of application and environmental impact statement.

(a) The application must be as complete as possible in light of the information that is reasonably available at the time of docketing.

(b) DOE shall update its application in a timely manner so as to permit the Commission to review, before issuance of a license—

(1) Additional geologic, geophysical, geochemical, hydrologic, meteorologic, materials, design, and other data obtained during construction;

(2) Conformance of construction of structures, systems, and components with the design;

(3) Results of research programs carried out to confirm the adequacy of designs, conceptual models, parameter values, and estimates of performance of the geologic repository.

(4) Other information bearing on the Commission's issuance of a license that was not available at the time a construction authorization was issued.

(c) DOE shall supplement its environmental impact statement in a timely manner so as to take into account the environmental impacts of any substantial changes in its proposed actions or any significant new circumstances or information relevant to environmental concerns bearing on the proposed action or its impacts.

Construction Authorization

§ 63.31 Construction authorization.

On review and consideration of an application and environmental impact statement submitted under this part, the Commission may authorize construction of a geologic repository operations area at the Yucca Mountain site if it determines:

(a) Safety.

(1) That there is reasonable assurance that the types and amounts of radioactive materials described in the application can be received and possessed in a geologic repository operations area of the design proposed without unreasonable risk to the health and safety of the public; and

(2) That there is reasonable expectation that the materials can be disposed of without unreasonable risk to the health and safety of the public.

(3) In arriving at these determinations, the Commission shall consider whether—

(i) DOE has described the proposed geologic repository as specified at § 63.21;

(ii) The site and design comply with the performance objectives and requirements contained in subpart E of this part;

(iii) DOE's quality assurance program complies with the requirements of subpart G of this part;

(iv) DOE's personnel training program complies with the criteria contained in subpart H of this part;

(v) DOE's emergency plan complies with the criteria contained in subpart I of this part; and

(vi) DOE's proposed operating procedures to protect health and to minimize danger to life or property are adequate.

(b) Common defense and security. That there is reasonable assurance that the activities proposed in the application will not be inimical to the common defense and security.

(c) Environmental. That, after weighing the environmental, economic, technical, and other benefits against environmental costs, and considering available alternatives, the action called for is the issuance of the construction authorization, with any appropriate conditions to protect environmental values.

§ 63.32 Conditions of construction authorization.

(a) In a construction authorization for a geologic repository operations area at the Yucca Mountain site, the Commission shall include any conditions it considers necessary to protect the health and safety of the public, the common defense and security, or environmental values.

(b) The Commission shall incorporate provisions in the construction authorization requiring DOE to furnish periodic or special reports regarding:

(1) Progress of construction;

(2) Any data about the site, obtained during construction, that are not within the predicted limits on which the facility design was based;

(3) Any deficiencies, in design and construction, that, if uncorrected, could adversely affect safety at any future time; and

(4) Results of research and development programs being conducted to resolve safety questions.

(c) The construction authorization for a geologic repository operations area at the Yucca Mountain site will include restrictions on subsequent changes to the features of the geologic repository and the procedures authorized. The restrictions that may be imposed under this paragraph can include measures to prevent adverse effects on the geologic setting as well as measures related to the design and construction of the geologic repository operations area. These restrictions will fall into three categories of descending importance to public health and safety, as follows:

(1) Those features and procedures that may not be changed without—

(i) 60 days prior notice to the Commission;

(ii) 30 days notice of opportunity for a prior hearing; and

(iii) Prior Commission approval;

(2) Those features and procedures that may not be changed without—

(i) 60 days prior notice to the Commission; and

(ii) Prior Commission approval; and

(3) Those features and procedures that may not be changed without 60 days notice to the Commission. Features and procedures falling in this paragraph section may not be changed without prior Commission approval if the Commission, after having received the required notice, so orders.

(d) A construction authorization must be subject to the limitation that a license to receive and possess source, special nuclear, or byproduct material at the Yucca Mountain site geologic repository operations area may not be issued by the Commission until;

(1) DOE has updated its application, as specified at § 63.24; and

(2) The Commission has made the findings stated in § 63.41.

§ 63.33 Amendment of construction authorization.

(a) An application for amendment of a construction authorization must be filed with the Commission that fully describes any desired changes and follows, as far as applicable, the content requirements prescribed in § 63.21.

(b) In determining whether an amendment of a construction authorization will be approved, the Commission will be guided by the considerations that govern the issuance of the initial construction authorization, to the extent applicable.

License Issuance and Amendment

§ 63.41 Standards for issuance of a license.

A license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area at the Yucca Mountain site may be issued by the Commission on finding that—

(a) Construction of the geologic repository operations area has been substantially completed in conformity with the application as amended, the provisions of the Atomic Energy Act, and the rules and regulations of the Commission. Construction may be considered substantially complete for the purposes of this paragraph if the construction of—

(1) Surface and interconnecting structures, systems, and components; and

(2) Any underground storage space required for initial operation, are substantially complete.

(b) The activities to be conducted at the geologic repository operations area will be in conformity with the application as amended, the provisions of the Atomic Energy Act and the Energy Reorganization Act, and the rules and regulations of the Commission.

(c) The issuance of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public.

(d) Adequate protective measures can and will be taken in the event of a radiological emergency at any time before permanent closure and decontamination or decontamination and dismantlement of surface facilities.

(e) All applicable requirements of part 51 of this chapter have been satisfied.

§ 63.42 Conditions of license.

(a) The Commission shall include any conditions, including license specifications, it considers necessary to protect the health and safety of the public, the common defense and security, and environmental values in a license issued under this part.

(b) Whether stated in the license or not, the following are considered to be conditions in every license issued:

(1) The license is subject to revocation, suspension, modification, or amendment for cause, as provided by the Atomic Energy Act and the Commission's regulations.

(2) DOE shall, at any time while the license is in effect, on written request of the Commission, submit written statements to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.

(3) The license is subject to the provisions of the Atomic Energy Act now or hereafter in effect and to all rules, regulations, and orders of the Commission. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to or by reason of rules, regulations, and orders issued in accordance with the terms of the Atomic Energy Act.

(c) Each license includes the provisions set forth in section 183 b–d, inclusive, of the Atomic Energy Act, whether or not these provisions are expressly set forth in the license.

(d) A license issued under this part includes the provisions set forth in section 114(d) of the Nuclear Waste Policy Act, as amended, defining the quantity of solidified high-level radioactive waste and spent nuclear fuel, until such time as a second repository is in operation, whether or not these provisions are expressly set forth in the license.

§ 63.43 License specification.

(a) A license issued under this part includes license conditions derived from the analyses and evaluations included in the application, including amendments made before a license is issued, together with any additional conditions the Commission finds appropriate.

(b) License conditions include items in the following categories:

(1) Restrictions as to the physical and chemical form and radioisotopic content of radioactive waste.

(2) Restrictions as to size, shape, and materials and methods of construction of radioactive waste packaging.

(3) Restrictions as to the amount of waste permitted per unit volume of storage space, considering the physical characteristics of both the waste and the host rock.

(4) Requirements relating to test, calibration, or inspection, to assure that the foregoing restrictions are observed.

(5) Controls to be applied to restrict access and to avoid disturbance to the site and to areas outside the site where conditions may affect compliance with §§ 63.111 and 63.113.

(6) Administrative controls, which are the provisions relating to organization and management, procedures, recordkeeping, review and audit, and reporting necessary to assure that activities at the facility are conducted in a safe manner and in conformity with the other license specifications.

§ 63.44 Changes, tests, and experiments.

(a) Definitions for the purposes of this section:

(1) *Change* means a modification or addition to, or removal from, the geologic repository operations area design or procedures that affects a design function, event sequence, method of performing or controlling the function, or an evaluation that demonstrates that intended functions will be accomplished.

(2) *Departure from a method of evaluation described in the Safety Analysis Report (SAR) (as updated) used in establishing the preclosure safety analyses or performance assessment* means:

(i) Changing any of the elements of the method described in the SAR (as updated) unless the results of the analysis are conservative or essentially the same; or

(ii) Changing from a method described in the SAR to another method unless that method has been approved by NRC for the intended application, addition or removal.

(3) *Safety Analysis Report (SAR) (as updated)* means the Safety Analysis Report for the geologic repository, submitted in accordance with § 63.21, as updated in accordance with § 63.24.

(4) *Geologic repository operations area as described in the SAR (as updated)* means:

(i) The structures, systems, and components important to safety or barriers important to waste isolation that are described in the SAR (as updated); and

(ii) The design and performance requirements for such structures, systems, and components described in the SAR (as updated).

(5) *Procedures as described in the SAR (as updated)* means those procedures that contain information described in the SAR (as updated) such as how structures, systems, and components important to safety, or important to waste isolation, are operated or controlled.

(6) *Tests or experiments not described in the SAR (as updated)* means any condition where the geologic repository operations area or any of its structures, systems, and components important to safety, or important to waste isolation, are utilized, controlled, or altered in a manner which is either:

(i) Outside the reference bounds of the design bases as described in the SAR (as updated); or

(ii) Inconsistent with the analyses or descriptions in the SAR (as updated).

(b)(1) DOE may make changes in the geologic repository operations area as described in the SAR (as updated), make changes in the procedures as described in the SAR (as updated), and conduct tests or experiments not described in the SAR (as updated), without obtaining either an amendment of construction authorization under § 63.33 or a license amendment under § 63.45, if:

(i) A change in the conditions incorporated in the construction authorization or license is not required; and

(ii) The change, test, or experiment does not meet any of the criteria in paragraph (b)(2) of this section.

(2) DOE shall obtain an amendment of construction authorization under § 63.33 or a license amendment under § 63.45, before implementing a change, test, or experiment if it would:

(i) Result in more than a minimal increase in the frequency of occurrence of an event sequence previously evaluated in the SAR (as updated);

(ii) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of structures, systems, components important to safety, or important to waste isolation, which were previously evaluated in the SAR (as updated);

(iii) Result in more than a minimal increase in the consequences of an event sequence previously evaluated in the SAR (as updated);

(iv) Result in more than a minimal increase in the consequences of malfunction of structures, systems, components important to safety, or important to waste isolation, which were previously evaluated in the SAR (as updated);

(v) Create the possibility for an event sequence, or of a pathway for release of radionuclides, of a different type than any evaluated previously in the SAR (as updated);

(vi) Create the possibility for a malfunction of structures, systems, and components important to safety, or important to waste isolation, with a different result than any evaluated previously in the SAR (as updated);

(vii) Result in a departure from a method of evaluation described in the SAR (as updated) used in establishing the preclosure safety analysis or the performance assessment.

(3) In implementing this paragraph, the SAR (as updated) is considered to include SAR changes resulting from evaluations performed pursuant to this section and from safety analyses performed under § 63.33 or § 63.45, as applicable, after the last Safety Analysis Report was updated under § 63.24.

(4) The provisions in this section do not apply to changes to the geologic repository operations area or procedures when the applicable regulations establish more specific criteria for accomplishing such changes.

(c)(1) DOE shall maintain records of changes in the geologic repository operations area at the Yucca Mountain site, of changes in procedures, and of tests and experiments made under paragraph (b) of this section. These records must include a written evaluation that provides the bases for the determination that the change, test, or experiment does not require an amendment of construction authorization or license amendment under paragraph (b) of this section.

(2) No less frequently than every 24 months, DOE shall prepare a report containing a brief description of such changes, tests, and experiments, including a summary of the evaluation of each. DOE shall furnish the report to the appropriate NRC Regional Office shown in appendix D to part 20 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Any report submitted under this paragraph must be made a part of the public record of the licensing proceedings.

(d) Changes to the quality assurance program description required by § 63.21(c)(20) must be processed in accordance with § 63.144.

§ 63.45 Amendment of license.

(a) An application for amendment of a license may be filed with the Commission fully describing the changes desired and following as far as applicable the format prescribed for license applications.

(b) In determining whether an amendment of a license will be approved, the Commission will be guided by the considerations that govern the issuance of the initial license, to the extent applicable.

§ 63.46 Particular activities requiring license amendment.

(a) Unless expressly authorized in the license, a license amendment is required for any of the following activities:

(1) Any action that would make emplaced high-level radioactive waste irretrievable or that would substantially increase the difficulty of retrieving the emplaced waste;

(2) Dismantling of structures;

(3) Removal or reduction of controls applied to restrict access to or avoid disturbance of the site and to areas outside the site where conditions may affect compliance with §§ 63.111 and 63.113;

(4) Destruction or disposal of records required to be maintained under the provisions of this part;

(5) Any substantial change to the design or operating procedures from that specified in the license, except as authorized in § 63.44; and

(6) Permanent closure.

(b) An application for an amendment must be filed, and will be reviewed, as specified in § 63.45.

Permanent Closure

§ 63.51 License amendment for permanent closure.

(a) DOE shall submit an application to amend the license before permanent closure of a geologic repository at the Yucca Mountain site. The submission must consist of an update of the license application submitted under §§ 63.21 and 63.22, including:

(1) An update of the assessment of the performance of the geologic repository for the period after permanent closure. The updated assessment must include any performance confirmation data collected under the program required by subpart F, and pertinent to compliance with § 63.113.

(2) A description of the program for post-permanent closure monitoring of the geologic repository.

(3) A detailed description of the measures to be employed—such as land use controls, construction of monuments, and preservation of records—to regulate or prevent activities that could impair the long-term isolation of emplaced waste within the geologic repository and to assure that relevant information will be preserved for the use of future generations. As a minimum, these measures must include:

(i) Identification of the site and geologic repository operations area by monuments that have been designed, fabricated, and emplaced to be as permanent as is practicable;

(ii) Placement of records in the archives and land record systems of local, State, and Federal government agencies, and archives elsewhere in the world, that would be likely to be consulted by potential human intruders—such records to identify the location of the geologic repository operations area, including the underground facility, boreholes, shafts and ramps, and the boundaries of the site, and the nature and hazard of the waste; and

(iii) A program for continued oversight, to prevent any activity at the site that poses an unreasonable risk of breaching the geologic repository's engineered barriers; or increasing the exposure of individual members of the public to radiation beyond allowable limits.

(4) Geologic, geophysical, geochemical, hydrologic, and other site data that are obtained during the operational period, pertinent to compliance with § 63.113.

(5) The results of tests, experiments, and any other analyses relating to backfill of excavated areas, shaft, borehole, or ramp sealing, drip shields, waste packages, interactions between

natural and engineered systems, and any other tests, experiments, or analyses pertinent to compliance with § 63.113.

(6) Any substantial revision of plans for permanent closure.

(7) Other information bearing on permanent closure that was not available at the time a license was issued.

(b) If necessary, to take into account the environmental impact of any substantial changes in the permanent closure activities proposed to be carried out or any significant new information regarding the environmental impacts of permanent closure, DOE shall also supplement its environmental impact statement and submit this statement, as supplemented, with the application for license amendment.

§ 63.52 Termination of license.

(a) Following permanent closure and the decontamination or decontamination and dismantlement of surface facilities at the Yucca Mountain site, DOE may apply for an amendment to terminate the license.

(b) The application must be filed and will be reviewed in accordance with the provisions of § 63.45 and this section.

(c) A license may be terminated only when the Commission finds with respect to the geologic repository:

(1) That the final disposition of radioactive wastes has been made in conformance with DOE's plan, as amended and approved as part of the license.

(2) That the final state of the geologic repository operations area conforms to DOE's plans for permanent closure and DOE's plans for the decontamination or decontamination and dismantlement of surface facilities, as amended and approved as part of the license.

(3) That the termination of the license is authorized by law, including sections 57, 62, and 81 of the Atomic Energy Act, as amended.

Subpart C—Participation by State Government, Affected Units of Local Government, and Affected Indian Tribes

§ 63.61 Provision of information.

(a) The Director shall provide the Governor and the Nevada State legislature, affected units of local government, and the governing body of any affected Indian Tribe, with timely and complete information regarding determinations or plans made by the Commission with respect to the Yucca Mountain site. Information must be provided concerning the site characterization, siting, development, design, licensing, construction, operation, regulation, permanent closure, or decontamination and dismantlement of surface facilities of the geologic repository operations area at the site.

(b) Notwithstanding paragraph (a) of this section, the Director is not required to distribute any document to any entity if, with respect to the document, that entity or its counsel is included on a service list prepared under part 2 of this chapter.

(c) Copies of all communications by the Director under this section must be placed in the Public Document Room and furnished to DOE.

§ 63.62 Site review.

(a) The Director shall make the NRC staff available to consult with representatives of the State of Nevada, affected units of local government, and affected Indian Tribes regarding the status of site characterization at the Yucca Mountain site.

(b) Requests for consultation must be made in writing to the Director.

(c) Consultation under this section may include:

(1) Keeping the parties informed of the Director's views on the progress of site characterization.

(2) Review of applicable NRC regulations, licensing procedures, schedules, and opportunities for State, affected units of local government, and Tribe participation in the Commission's regulatory activities.

(3) Cooperation in development of proposals for State, affected units of local government, and Tribal participation in license reviews.

§ 63.63 Participation in license reviews.

(a) The State, affected units of local government, and affected Indian Tribes may participate in license reviews as provided in subpart J of part 2 of this chapter.

(b) In addition, a State, or an affected unit of local government, or an affected Indian Tribe may submit a proposal to the Director to facilitate its participation in the review of the license application. The proposal may be submitted at any time and must contain a description and schedule of how the State, or affected unit of local government, or affected Indian Tribe wishes to participate in the review, or what services or activities the State, or affected unit of local government, or affected Indian Tribe wishes the NRC to carry out, and how the services or activities proposed to be carried out by the NRC would contribute to this participation. The proposal may include educational or information services (seminars, public meetings) or other actions on the part of NRC, such as establishing additional public document rooms or employment or exchange of State personnel under the Intergovernmental Personnel Act.

(c) The Director shall arrange for a meeting between the representatives of the State, or affected unit of local government, or affected Indian Tribe and the NRC staff, to discuss any proposal submitted under paragraph (b) of this section, with a view to identifying any modifications that may contribute to the effective participation by such State, or affected unit of local government, or Tribe.

(d) Subject to the availability of funds, the Director shall approve all or any part of a proposal, as it may be modified through the meeting described in paragraph (c) of this section, if it is determined that:

(1) The proposed activities are suitable in light of the type and magnitude of impacts that the State, or affected unit of local government, or affected Indian Tribe may bear;

(2) The proposed activities—

(i) Will enhance communications between NRC and the State, or affected unit of local government, or affected Indian Tribe;

(ii) Will make a productive and timely contribution to the review; and

(iii) Are authorized by law.

(e) The Director shall advise the State, or affected unit of local government, or affected Indian Tribe whether its proposal has been accepted or denied. If all or any part of a proposal is denied, the Director shall state the reason for the denial.

(f) Proposals submitted under this section, and responses to them, must be made available at the Public Document Room.

§ 63.64 Notice to State.

If the Governor and legislature of the State of Nevada have jointly designated, on their behalf, a single person or entity to receive notice and information from the Commission under this part, the Commission will provide the notice and information to the jointly designated person or entity instead of the Governor and legislature separately.

§ 63.65 Representation.

Any person who acts under this subpart as a representative for the State of Nevada (or for the Governor or legislature of Nevada), for an affected unit of local government, or for an affected Indian Tribe shall include in the request or other submission, or at the request of the Commission, a statement of the basis of his or her authority to act in this capacity.

Subpart D—Records, Reports, Tests, and Inspections

§ 63.71 Records and reports.

(a) DOE shall maintain records and make reports in connection with the licensed activity that are required by the conditions of the license or by rules, regulations, and orders of the Commission, as authorized by the Atomic Energy Act and the Energy Reorganization Act.

(b) Records of the receipt, handling, and disposition of radioactive waste at a geologic repository operations area at the Yucca Mountain site must contain sufficient information to provide a complete history of the movement of the waste from the shipper through all phases of storage and disposal. DOE shall retain these records in a manner that ensures their usability for future generations in accordance with § 63.51(a)(3).

§ 63.72 Construction records.

(a) DOE shall maintain records of construction of the geologic repository operations area at the Yucca Mountain site in a manner that ensures their usability for future generations in accordance with § 63.51(a)(3).

(b) The records required under paragraph (a) of this section must include at least the following—

(1) Surveys of the underground facility excavations, shafts, ramps, and boreholes referenced to readily identifiable surface features or monuments;

(2) A description of the materials encountered;

(3) Geologic maps and geologic cross-sections;

(4) Locations and amount of seepage;

(5) Details of equipment, methods, progress, and sequence of work;

(6) Construction problems;

(7) Anomalous conditions encountered;

(8) Instrument locations, readings, and analysis;

(9) Location and description of structural support systems;

(10) Location and description of dewatering systems;

(11) Details, methods of emplacement, and location of seals used; and

(12) Facility design records (e.g, design specifications and "as built" drawings).

§ 63.73 Reports of deficiencies.

(a) DOE shall promptly notify the Commission of each deficiency found in the characteristics of the Yucca Mountain site, and design, and construction of the geologic repository operations area that, were it to remain uncorrected, could—

(1) Adversely affect safety at any future time;

(2) Represent a significant deviation from the design criteria and design basis stated in the design application; or

(3) Represent a deviation from the conditions stated in the terms of a construction authorization or the license, including license specifications.

(b) DOE shall implement a program for evaluating and reporting deviations and failures to comply, to identify defects and failures to comply associated with substantial safety hazards, based on the applicable requirements in 10 CFR 50.55(e) as it applies to the construction authorization and design of the geologic repository operations area at the Yucca Mountain site.

(c) DOE shall implement a program of reporting specific events and conditions that is the same as that specified in 10 CFR 72.75.

(d) The requisite notification must be as specified in the applicable regulation. Copies of the written report must be sent to the NRC Operations Center, Document Control Desk, U.S. NRC, to the Director of NMSS, U.S. NRC, and to the NRC onsite representative.

§ 63.74 Tests.

(a) DOE shall perform, or permit the Commission to perform, those tests the Commission considers appropriate or necessary for the administration of the regulations in this part. This may include tests of—

(1) Radioactive waste,

(2) The geologic repository, including portions of the geologic setting and the structures, systems, and components constructed or placed therein,

(3) Radiation detection and monitoring instruments, and

(4) Other equipment and devices used in connection with the receipt, handling, or storage of radioactive waste.

(b) The tests required under this section must include a performance confirmation program carried out in accordance with subpart F of this part.

§ 63.75 Inspections.

(a) DOE shall allow the Commission to inspect the premises of the geologic repository operations area at the Yucca Mountain site and adjacent areas to which DOE has rights of access.

(b) DOE shall make available to the Commission for inspection, on reasonable notice, records kept by DOE pertaining to activities under this part.

(c)(1) DOE shall, on requests by the Director, Office of Nuclear Material Safety and Safeguards, provide rent-free office space for the exclusive use of the Commission inspection personnel. Heat, air-conditioning, light, electrical outlets, and janitorial services must be furnished by DOE. The office must be convenient to and have full access to the facility and must provide the inspector both visual and acoustic privacy.

(2) The space provided must be adequate to accommodate two full-time inspectors, and other transient NRC personnel and will be generally commensurate with other office facilities at the Yucca Mountain site geologic repository operations area. A space of 250 square feet either within the geologic repository operations area's office complex or in an office trailer or other onsite space at the geologic repository operations area is suggested as a guide. For locations at which activities are carried out under licenses issued under other parts of this chapter, additional space may be requested to accommodate additional full-time inspectors. The office space provided is subject to the approval of the Director, Office of Nuclear Material Safety and Safeguards. All furniture, supplies, and communication equipment will be furnished by the Commission.

(3) DOE shall afford any NRC resident inspector assigned to the Yucca Mountain site or other NRC inspectors identified by the Regional Administrator as likely to inspect the Yucca Mountain facility, immediate unfettered access, equivalent to access provided regular employees, after proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety.

§ 63.78 Material control and accounting records and reports.

DOE shall implement a program of material control and accounting (and accidental criticality reporting) that is the same as that specified in §§ 72.72, 72.74, 72.76, and 72.78 of this chapter.

Subpart E—Technical Criteria

§ 63.101 Purpose and nature of findings.

(a)(1) Subpart B prescribes the standards for issuance of a license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area at the Yucca Mountain site. In particular, § 63.41(c) requires a finding that the issuance of a license will not constitute an unreasonable risk to the health and safety of the public. The purpose of this subpart is to set out the performance objectives for postclosure performance of the geologic repository and other criteria that, if satisfied, support a finding of no unreasonable risk.

Postclosure performance objectives for the geologic repository include a requirement to limit radiological exposures to the reasonably maximally exposed individual, a requirement to limit releases of radionuclides to the accessible environment to protect ground water, and a requirement to limit radiological exposures to the reasonably maximally exposed individual in the event of human intrusion (see § 63.113(b), (c), and (d), respectively).

(2) Although the postclosure performance objectives specified at § 63.113 are generally stated in unqualified terms, it is not expected that complete assurance that the requirements will be met can be presented. A reasonable expectation, on the basis of the record before the Commission, that the postclosure performance objectives will be met, is the general standard required. Proof that the geologic repository will conform with the objectives for postclosure performance is not to be had in the ordinary sense of the word because of the uncertainties inherent in the understanding of the evolution of the geologic setting, biosphere, and engineered barrier system. For such long-term performance, what is required is reasonable expectation, making allowance for the time period, hazards, and uncertainties involved, that the outcome will conform with the objectives for postclosure performance for the geologic repository. Demonstrating compliance will involve the use of complex predictive models that are supported by limited data from field and laboratory tests, site-specific monitoring, and natural analog studies that may be supplemented with prevalent expert judgment. Compliance demonstrations should not exclude important parameters from assessments and analyses simply because they are difficult to precisely quantify to a high degree of confidence. The performance assessments and analyses should focus upon the full range of defensible and reasonable parameter distributions rather than only upon extreme physical situations and parameter values. Further, in reaching a determination of reasonable expectation, the Commission may supplement numerical analyses with qualitative judgments including, for example, consideration of the degree of diversity among the multiple barriers as a measure of the resiliency of the geologic repository.

(b) Subpart B lists findings that must be made in support of an authorization to construct a geologic repository operations area at the Yucca Mountain site. Prior to closure, § 63.31(a)(1) requires a finding that there is reasonable assurance that the types and amounts of radioactive materials described in the application can be received, possessed, and stored in a geologic repository operations area of the design proposed without unreasonable risk to the health and safety of the public. After permanent closure, § 63.31(a)(2) requires the Commission to consider whether there is a reasonable expectation the site and design comply with the postclosure performance objectives. Once again, although the criteria may be written in unqualified terms, the demonstration of compliance must take uncertainties and gaps in knowledge into account so that the Commission can make the specified finding with respect to paragraph (a)(2) of § 63.31.

§ 63.102 Concepts.

This section provides a functional overview of this Subpart E. In the event of any inconsistency, the definitions in § 63.2 prevail.

(a) *The HLW facility at the Yucca Mountain site.* NRC exercises licensing and related regulatory authority over those facilities described in section 202 (3) and (4) of the Energy Reorganization Act of 1974, including the site at Yucca Mountain, as designated by the Energy Policy Act of 1992.

(b) *The geologic repository operations area.*

(1) These regulations deal with the exercise of authority with respect to a particular class of HLW facility—namely, a geologic repository operations area at Yucca Mountain.

(2) *A geologic repository operations area* consists of those surface and subsurface areas of the site that are part of a geologic repository where radioactive waste handling activities are conducted. The underground structure, backfill materials, if any, and openings that penetrate the underground structure (e.g., ramps, shafts and boreholes, including their seals), are designated the *underground facility.*

(3) The exercise of Commission authority requires that the geologic repository operations area be used for storage (which includes disposal) of *high-level radioactive wastes* (HLW).

(4) HLW includes irradiated reactor fuel as well as reprocessing wastes. However, if DOE proposes to use the geologic repository operations area for storage of radioactive waste other than HLW, the storage of this radioactive waste is subject to the requirements of this part.

(c) *Stages in the licensing process.* There are several stages in the licensing process. The *site characterization* stage, when the performance confirmation program is started, begins before submission of a license application, and may result in consequences requiring evaluation in the license review. The construction stage would follow after the issuance of a construction authorization. A period of operations follows the Commission's issuance of a license. The period of operations includes the time during which *emplacement* of wastes occurs; any subsequent period before permanent closure during which the emplaced wastes are *retrievable*; and *permanent closure*, which includes sealing openings to the repository. Permanent closure represents the end of the performance confirmation program; final backfilling of the underground facility, if appropriate; and the sealing of shafts, ramps, and boreholes.

(d) *Areas related to isolation.* Although the activities subject to regulation under this part are those to be carried out at the geologic repository operations area, the licensing process also considers characteristics of adjacent areas that are defined in other ways. There must be an area surrounding the geologic repository operations area, that could include either a portion or all of the site, within which DOE shall exercise specified controls to prevent adverse human actions after permanent closure. There is an area, designated the geologic setting, which includes the geologic, hydrologic, and geochemical systems of the region in which the site and geologic repository operations area are located. The geologic repository operations area, plus the portion of the geologic setting that provides isolation of the radioactive waste, make up the geologic repository.

(e) *Performance objectives through permanent closure.* Before permanent closure, the geologic repository operations area is required to limit radiation levels and radiological exposures, in both restricted and unrestricted areas, and releases of radioactive materials to unrestricted areas, as specified at § 63.111(a).

(f) *Preclosure safety analysis.* Section 63.111 includes performance objectives for the geologic repository operations area for the period before permanent closure and decontamination or permanent closure, decontamination, and dismantlement of surface facilities. The preclosure safety analysis is a systematic examination of the site; the design; and the potential hazards, initiating events and their resulting event sequences and potential radiological exposures to workers and the public. Initiating events are to be considered for inclusion in the preclosure safety analysis for determining event sequences only if they are reasonable (i.e., based on the characteristics of the geologic setting and the human environment, and consistent with precedents adopted for nuclear facilities with comparable or higher risks to workers and the public). The analysis identifies structures, systems, and components important to safety.

(g) *Performance objectives after permanent closure.* After permanent closure, the geologic repository is required to:

(1) Limit radiological exposures to the reasonably maximally exposed individual, as specified at § 63.113(b);

(2) Limit releases of radionuclides to the accessible environment to protect ground water, as specified at § 63.113(c); and

(3) Limit radiological exposures to the reasonably maximally exposed individual in the event of human intrusion, as specified at § 63.113(d).

(h) *Multiple barriers.* Section 63.113(a) requires that the geologic repository include multiple barriers, both natural and engineered. Geologic disposal of HLW is predicated on the expectation that one or more aspects of the geologic setting will be capable of contributing to the isolation of radioactive waste and thus be a barrier important to waste isolation. Although there is an extensive geologic record ranging from thousands to millions of years, this record is subject to interpretation and includes many uncertainties. In addition, there are uncertainties in the isolation capability and performance of engineered barriers. Although the composition and configuration of engineered structures (barriers) can be defined with a degree of precision not possible for natural barriers, it is recognized that except for a few archaeologic and natural analogs, there is a limited experience base for the performance of complex, engineered structures over periods longer than a few hundred years, considering the uncertainty in characterizing and modeling individual barriers. These uncertainties are addressed by requiring the use of a multiple barrier approach; specifically, an engineered barrier system is required in addition to the natural barriers provided by the geologic setting. The performance assessment provides an evaluation of the repository performance based on credible models and parameters including the consideration of uncertainty in the behavior of the repository system. Thus the performance assessment results reflect the capability of each of the barriers to cope with a variety of challenges (e.g., combinations of parameters leading to less favorable performance for individual barriers and combinations of barriers). A description of each barrier's capability (e.g., retardation of radionuclides in the saturated zone, waste package lifetime, matrix diffusion in the unsaturated zone), as reflected in the performance assessment, provides an understanding of how the natural barriers and the engineered barrier system work in combination to enhance the resiliency of the geologic repository. The Commission believes that this understanding can increase confidence that the postclosure performance objectives specified at § 63.113(b) and (c) will be achieved and that DOE's design includes a system of multiple barriers.

(i) *Reference biosphere and reasonably maximally exposed individual.* The performance assessment will estimate the amount of radioactive material released to water or air at various locations and times in the future. To estimate the potential for future human exposures resulting from release of radioactive material from a geologic repository at Yucca Mountain, it is necessary to make certain assumptions about the location and characteristics of the reasonably maximally exposed individual. The environment inhabited by the reasonably maximally exposed individual, along with associated human exposure pathways and parameters, make up the reference biosphere, as described in § 63.305. The reasonably maximally exposed individual, as a hypothetical person living in a community with characteristics of the Town of Amargosa Valley, is a representative person using water with average concentrations of radionuclides as described at § 63.312. The reasonably maximally exposed individual is selected to represent those persons in the vicinity of Yucca Mountain who are reasonably expected to receive the greatest exposure to radioactive material released from a geologic repository at Yucca Mountain. Characteristics of the reference biosphere and the reasonably maximally exposed individual are to be based on current human behavior and biospheric conditions in the region, as described in § 63.305 and § 63.312.

(j) *Performance assessment.* Demonstrating compliance with the postclosure performance objective specified at § 63.113(b) requires a performance assessment to quantitatively estimate radiological exposures to the reasonably maximally exposed individual at any time during the compliance period. The performance assessment is a systematic analysis that identifies the features, events, and processes (i.e., specific conditions or attributes of the geologic setting, degradation, deterioration, or alteration processes of engineered barriers, and interactions between the natural and engineered barriers) that might affect performance of the geologic repository; examines their effects on performance; and estimates the radiological exposures to the reasonably maximally exposed individual. The features, events, and processes considered in the performance assessment should represent a wide range of both beneficial and potentially adverse effects on performance (e.g., beneficial effects of radionuclide sorption; potentially adverse effects of fracture flow or a criticality event). Those features, events, and processes expected to materially affect compliance with § 63.113(b) or be potentially adverse to performance are included, while events (event classes or scenario classes) that are very unlikely (less than one chance in 10,000 over 10,000 years) can be excluded from the analysis. An event class consists of all possible specific initiating events that are caused by a common natural process (e.g., the event class for seismicity includes the range of credible earthquakes for the Yucca Mountain site). Radiological exposures to the reasonably maximally exposed individual are estimated using the selected features, events, and processes, and incorporating the probability that the estimated exposures will occur. Additionally, performance assessment methods are appropriate for use in demonstrating compliance with the postclosure performance objectives for ground-water protection and human intrusion, and are subject to the requirements for performance assessments specified at § 63.114 and applicable criteria in Subpart L (e.g., criteria for evaluating compliance with ground-water protection and individual protection standards).

(k) *Institutional controls.* Active and passive institutional controls will be maintained over the Yucca Mountain site, and are expected to reduce significantly, but not eliminate, the potential for human activity that could inadvertently cause or accelerate the release of radioactive material. However, because it is not possible to make scientifically sound forecasts of the long-term reliability of institutional controls, it is not appropriate to include consideration of human intrusion into a fully risk-based performance assessment for purposes of evaluating the ability of

the geologic repository to achieve the performance objective at § 63.113(b). Hence, human intrusion is addressed in a stylized manner as described in paragraph (l) of this section.

(l) *Human intrusion.* In contrast to events unrelated to human activity, the probability and characteristics of human intrusion occurring many hundreds or thousands of years into the future cannot be estimated by examining either the historic or geologic record. Rather than speculating on the nature and probability of future intrusion, it is more useful to assess how resilient the geologic repository would be against a human intrusion event. Although the consequences of an assumed intrusion event would be a separate analysis, the analysis is similar to the performance assessment required by § 63.113(b) but subject to specific requirements for evaluation of human intrusion specified at §§ 63.321, 63.322 and 63.342 of subpart L of this part.

(m) *Performance confirmation.* A performance confirmation program will be conducted to evaluate the adequacy of assumptions, data, and analyses that led to the findings that permitted construction of the repository and subsequent emplacement of the wastes. Key geotechnical and design parameters, including any interactions between natural and engineered systems and components, will be monitored throughout site characterization, construction, emplacement, and operation to identify any significant changes in the conditions assumed in the license application that may affect compliance with the performance objectives specified at § 63.113(b) and (c).

(n) *Ground-Water Protection.* Separate ground-water protection standards are designed to protect the ground water resources in the vicinity of Yucca Mountain. These standards, specified at § 63.331, require the estimation of ground water concentrations in the representative volume of water. Depending on the radionuclide, the estimated concentrations must either be below a specified concentration or result in an annual, drinking water dose to the whole body or any organ of no greater than 0.04 mSv (4 mrem). Although the estimation of radionuclide concentrations in the representative volume would be a separate analysis, the analysis is similar to the performance assessment required by § 63.113(b) but subject to specific requirements for evaluation of ground-water protection specified at §§ 63.331, 63.332 and 63.342 of subpart L of this part.

Preclosure Performance Objectives

§ 63.111 Performance objectives for the geologic repository operations area through permanent closure.

(a) *Protection against radiation exposures and releases of radioactive material.*

(1) The geologic repository operations area must meet the requirements of part 20 of this chapter.

(2) During normal operations, and for Category 1 event sequences, the annual TEDE (hereafter referred to as "dose") to any real member of the public located beyond the boundary of the site may not exceed the preclosure standard specified at § 63.204.

(b) *Numerical guides for design objectives.*

(1) The geologic repository operations area must be designed so that, taking into consideration Category 1 event sequences and until permanent closure has been completed, the aggregate radiation exposures and the aggregate radiation levels in both restricted and unrestricted areas, and the aggregate releases of radioactive materials to unrestricted areas, will be maintained within the limits specified in paragraph (a) of this section.

(2) The geologic repository operations area must be designed so that, taking into consideration any single Category 2 event sequence and until permanent closure has been completed, no individual located on, or beyond, any point on the boundary of the site will receive, as a result of the single Category 2 event sequence, the more limiting of a TEDE of 0.05 Sv (5 rem), or the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue (other than the lens of the eye) of 0.5 Sv (50 rem). The lens dose equivalent may not exceed 0.15 Sv (15 rem), and the shallow dose equivalent to skin may not exceed 0.5 Sv (50 rem).

(c) *Preclosure safety analysis.* A preclosure safety analysis of the geologic repository operations area that meets the requirements specified at § 63.112 must be performed. This analysis must demonstrate that:

(1) The requirements of § 63.111(a) will be met; and

(2) The design meets the requirements of § 63.111(b).

(d) *Performance confirmation.* The geologic repository operations area must be designed so as to permit implementation of a performance confirmation program that meets the requirements of subpart F of this part.

(e) *Retrievability of waste.*

(1) The geologic repository operations area must be designed to preserve the option of waste retrieval throughout the period during which wastes are being emplaced and thereafter, until the completion of a performance confirmation program and Commission review of the information obtained from such a program. To satisfy this objective, the geologic repository operations area must be designed so that any or all of the emplaced waste could be retrieved on a reasonable schedule starting at any time up to 50 years after waste emplacement operations are initiated, unless a different time period is approved or specified by the Commission. This different time period may be established on a case-by-case basis consistent with the emplacement schedule and the planned performance confirmation program.

(2) This requirement may not preclude decisions by the Commission to allow backfilling part, or all of, or permanent closure of the geologic repository operations area, before the end of the period of design for retrievability.

(3) For purposes of paragraph (e) of this section, a reasonable schedule for retrieval is one that would permit retrieval in about the same time as that required to construct the geologic repository operations area and emplace waste.

Preclosure Safety Analysis

§ 63.112 Requirements for preclosure safety analysis of the geologic repository operations area.

The preclosure safety analysis of the geologic repository operations area must include:

(a) A general description of the structures, systems, components, equipment, and process activities at the geologic repository operations area;

(b) An identification and systematic analysis of naturally occurring and human-induced hazards at the geologic repository operations area, including a comprehensive identification of potential event sequences;

(c) Data pertaining to the Yucca Mountain site, and the surrounding region to the extent necessary, used to identify naturally occurring and human-induced hazards at the geologic repository operations area;

(d) The technical basis for either inclusion or exclusion of specific, naturally occurring and human-induced hazards in the safety analysis;

(e) An analysis of the performance of the structures, systems, and components to identify those that are important to safety. This analysis identifies and describes the controls that are relied on to limit or prevent potential event sequences or mitigate their consequences. This analysis also identifies measures taken to ensure the availability of safety systems. The analysis required in this paragraph must include, but not necessarily be limited to, consideration of—

(1) Means to limit concentration of radioactive material in air;

(2) Means to limit the time required to perform work in the vicinity of radioactive materials;

(3) Suitable shielding;

(4) Means to monitor and control the dispersal of radioactive contamination;

(5) Means to control access to high radiation areas or airborne radioactivity areas;

(6) Means to prevent and control criticality;

(7) Radiation alarm system to warn of significant increases of radiation levels, concentrations of radioactive material in air, and increased radioactivity in effluents;

(8) Ability of structures, systems, and components to perform their intended safety functions, assuming the occurrence of event sequences;

(9) Explosion and fire detection systems and appropriate suppression systems;

(10) Means to control radioactive waste and radioactive effluents, and permit prompt termination of operations and evacuation of personnel during an emergency;

(11) Means to provide reliable and timely emergency power to instruments, utility service systems, and operating systems important to safety if there is a loss of primary electric power;

(12) Means to provide redundant systems necessary to maintain, with adequate capacity, the ability of utility services important to safety; and

(13) Means to inspect, test, and maintain structures, systems, and components important to safety, as necessary, to ensure their continued functioning and readiness.

(f) A description and discussion of the design, both surface and subsurface, of the geologic repository operations area, including—

(1) The relationship between design criteria and the requirements specified at § 63.111(a) and (b); and

(2) The design bases and their relation to the design criteria.

Postclosure Performance Objectives

§ 63.113 Performance objectives for the geologic repository after permanent closure.

(a) The geologic repository must include multiple barriers, consisting of both natural barriers and an engineered barrier system.

(b) The engineered barrier system must be designed so that, working in combination with natural barriers, radiological exposures to the reasonably maximally exposed individual are within the limits specified at § 63.311 of subpart L of this part. Compliance with this paragraph must be demonstrated through a performance assessment that meets the requirements specified at § 63.114 of this subpart, and §§ 63.303, 63.305, 63.312 and 63.342 of Subpart L of this part.

(c) The engineered barrier system must be designed so that, working in combination with natural barriers, releases of radionuclides into the accessible environment are within the limits specified at § 63.331 of subpart L of this part. Compliance with this paragraph must be demonstrated through a performance assessment that meets the requirements specified at § 63.114 of this subpart and §§ 63.303, 63.332 and 63.342 of subpart L of this part.

(d) The ability of the geologic repository to limit radiological exposures to the reasonably maximally exposed individual, in the event of human intrusion into the engineered barrier system, must be demonstrated through an analysis that meets the requirements at §§ 63.321 and 63.322 of subpart L of this part. Estimating radiological exposures to the reasonably maximally exposed individual requires a performance assessment that meets the requirements specified at § 63.114 of this subpart, and §§ 63.303, 63.305, 63.312 and 63.342 of subpart L of this part.

Postclosure Performance Assessment

§ 63.114 Requirements for performance assessment.

Any performance assessment used to demonstrate compliance with § 63.113 must:

(a) Include data related to the geology, hydrology, and geochemistry (including disruptive processes and events) of the Yucca Mountain site, and the surrounding region to the extent necessary, and information on the design of the engineered barrier system used to define parameters and conceptual models used in the assessment.

(b) Account for uncertainties and variabilities in parameter values and provide for the technical basis for parameter ranges, probability distributions, or bounding values used in the performance assessment.

(c) Consider alternative conceptual models of features and processes that are consistent with available data and current scientific understanding and evaluate the effects that alternative conceptual models have on the performance of the geologic repository.

(d) Consider only events that have at least one chance in 10,000 of occurring over 10,000 years.

(e) Provide the technical basis for either inclusion or exclusion of specific features, events, and processes in the performance assessment. Specific features, events, and processes must be evaluated in detail if the magnitude and time of the resulting radiological exposures to the reasonably maximally exposed individual, or radionuclide releases to the accessible environment, would be significantly changed by their omission.

(f) Provide the technical basis for either inclusion or exclusion of degradation, deterioration, or alteration processes of engineered barriers in the performance assessment, including those processes that would adversely affect the performance of natural barriers. Degradation, deterioration, or alteration processes of engineered barriers must be evaluated in detail if the magnitude and time of the resulting radiological exposures to the reasonably maximally exposed individual, or radionuclide releases to the accessible environment, would be significantly changed by their omission.

(g) Provide the technical basis for models used in the performance assessment such as comparisons made with outputs of detailed process-level models and/or empirical observations (e.g., laboratory testing, field investigations, and natural analogs).

§ 63.115 Requirements for multiple barriers.

Demonstration of compliance with § 63.113(a) must:

(a) Identify those design features of the engineered barrier system, and natural features of the geologic setting, that are considered barriers important to waste isolation.

(b) Describe the capability of barriers, identified as important to waste isolation, to isolate waste, taking into account uncertainties in characterizing and modeling the behavior of the barriers.

(c) Provide the technical basis for the description of the capability of barriers, identified as important to waste isolation, to isolate waste. The technical basis for each barrier's capability shall be based on and consistent with the technical basis for the performance assessments used to demonstrate compliance with § 63.113(b) and (c).

Land Ownership and Control

§ 63.121 Requirements for ownership and control of interests in land.

(a) *Ownership of land.*

(1) The geologic repository operations area must be located in and on lands that are either acquired lands under the jurisdiction and control of DOE, or lands permanently withdrawn and reserved for its use.

(2) These lands must be held free and clear of all encumbrances, if significant, such as:

(i) Rights arising under the general mining laws;

(ii) Easements for right-of-way; and

(iii) All other rights arising under lease, rights of entry, deed, patent, mortgage, appropriation, prescription, or otherwise.

(b) *Additional controls for permanent closure.* Appropriate controls must be established outside of the geologic repository operations area. DOE shall exercise any jurisdiction and control over surface and subsurface estates necessary to prevent adverse human actions that could significantly reduce the geologic repository's ability to achieve isolation. The rights of DOE may take the form of appropriate possessory interests, servitudes, or withdrawals from location or patent under the general mining laws.

(c) *Additional controls through permanent closure.* Appropriate controls must be established outside the geologic repository operations area. DOE shall exercise any jurisdiction or control of activities necessary to ensure the requirements at § 63.111(a) and (b) are met. Control includes the authority to exclude members of the public, if necessary.

(d) *Water rights.*

(1) DOE shall also have obtained such water rights as may be needed to accomplish the purpose of the geologic repository operations area.

(2) Water rights are included in the additional controls to be established under paragraph (b) of this section.

Subpart F—Performance Confirmation Program

§ 63.131 General requirements.

(a) The performance confirmation program must provide data that indicate, where practicable, whether:

(1) Actual subsurface conditions encountered and changes in those conditions during construction and waste emplacement operations are within the limits assumed in the licensing review; and

(2) Natural and engineered systems and components required for repository operation, and that are designed or assumed to operate as barriers after permanent closure, are functioning as intended and anticipated.

(b) The program must have been started during site characterization, and it will continue until permanent closure.

(c) The program must include in situ monitoring, laboratory and field testing, and in situ experiments, as may be appropriate to provide the data required by paragraph (a) of this section.

(d) The program must be implemented so that:

(1) It does not adversely affect the ability of the geologic and engineered elements of the geologic repository to meet the performance objectives.

(2) It provides baseline information and analysis of that information on those parameters and natural processes pertaining to the geologic setting that may be changed by site characterization, construction, and operational activities.

(3) It monitors and analyzes changes from the baseline condition of parameters that could affect the performance of a geologic repository.

§ 63.132 Confirmation of geotechnical and design parameters.

(a) During repository construction and operation, a continuing program of surveillance, measurement, testing, and geologic mapping must be conducted to ensure that geotechnical and design parameters are confirmed and to ensure that appropriate action is taken to inform the Commission of design changes needed to accommodate actual field conditions encountered.

(b) Subsurface conditions must be monitored and evaluated against design assumptions.

(c) Specific geotechnical and design parameters to be measured or observed, including any interactions between natural and engineered systems and components, must be identified in the performance confirmation plan.

(d) These measurements and observations must be compared with the original design bases and assumptions. If significant differences exist between the measurements and observations and the original design bases and assumptions, the need for modifications to the design or in construction methods must be determined and these differences, their significance to repository performance, and the recommended changes reported to the Commission.

(e) In situ monitoring of the thermomechanical response of the underground facility must be conducted until permanent closure, to ensure that the performance of the geologic and engineering features is within design limits.

§ 63.133 Design testing.

(a) During the early or developmental stages of construction, a program for testing of engineered systems and components used in the design, such as, for example, borehole and shaft seals, backfill, and drip shields, as well as the thermal interaction effects of the waste packages, backfill, drip shields, rock, and unsaturated zone and saturated zone water, must be conducted.

(b) The testing must be initiated as early as practicable.

(c) If backfill is included in the repository design, a test must be conducted to evaluate the effectiveness of backfill placement and compaction procedures against design requirements before permanent backfill placement is begun.

(d) Tests must be conducted to evaluate the effectiveness of borehole, shaft, and ramp seals before full-scale operation proceeds to seal boreholes, shafts, and ramps.

§ 63.134 Monitoring and testing waste packages.

(a) A program must be established at the geologic repository operations area for monitoring the condition of the waste packages. Waste packages chosen for the program must be representative of those to be emplaced in the underground facility.

(b) Consistent with safe operation at the geologic repository operations area, the environment of the waste packages selected for the waste package monitoring program must be representative of the environment in which the wastes are to be emplaced.

(c) The waste package monitoring program must include laboratory experiments that focus on the internal condition of the waste packages. To the extent practical, the environment experienced by the emplaced waste packages within the underground facility during the waste package monitoring program must be duplicated in the laboratory experiments.

(d) The waste package monitoring program must continue as long as practical up to the time of permanent closure.

Subpart G—Quality Assurance

§ 63.141 Scope.

As used in this part, *quality assurance* comprises all those planned and systematic actions necessary to provide adequate confidence that the geologic repository and its structures, systems, or components will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to the physical characteristics of a material, structure, component, or system that provide a means to control the quality of the material, structure, component, or system to predetermined requirements.

§ 63.142 Quality assurance criteria.

(a) *Introduction and Applicability.* DOE is required by § 63.21(c)(20) to include in its safety analysis report a description of the quality assurance program to be applied to all structures, systems, and components important to safety, to design and characterization of barriers important to waste isolation, and to related activities. These activities include: site characterization; acquisition, control, and analyses of samples and data; tests and experiments; scientific studies; facility and equipment design and construction; facility operation; performance confirmation; permanent closure; and decontamination and dismantling of surface facilities. The description must indicate how the applicable quality assurance requirements will be satisfied. DOE shall include information pertaining to the managerial and administrative controls to be used to ensure safe operation in its safety analysis report. High-level waste repositories include structures, systems, and components that prevent or mitigate the consequences of postulated event sequences or that are important to waste isolation capabilities that could cause undue risk to the health and safety of the public. The pertinent requirements of this subpart apply to all activities that are important to waste isolation and important to safety functions of those structures, systems, and components. These activities include designing, purchasing, fabricating, handling, shipping, storing, cleaning, erecting, installing, inspecting, testing, operating, maintaining, repairing, modifying, site characterization, performance confirmation, permanent closure, decontamination, and dismantling of surface facilities.

(b) *Organization.* DOE shall establish and execute a quality assurance program. DOE may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of it, but DOE retains responsibility for it.

(1) The authority and duties of persons and organizations performing activities affecting the functions of structures, systems, and components that are important to waste isolation and important to safety must be clearly established and delineated in writing. These activities include both the performing functions of attaining quality objectives and the quality assurance functions. The quality assurance functions are those of:

(i) Assuring that an appropriate quality assurance program is established and effectively executed; and

(ii) Verifying that activities important to waste isolation and important to safety functions have been correctly performed by checking, auditing, and inspection of structures, systems, and components.

(2) The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions. The persons and organizations performing quality assurance functions shall report to a management level so that the required authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations, are provided.

(3) Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location or locations where activities are performed, the organizational structure for executing the quality assurance program may take various forms provided that the persons and organizations assigned the quality assurance functions have this required authority and organizational freedom. Irrespective of the organizational structure, the individual(s) assigned the responsibility for assuring effective execution of any portion of the quality assurance program at any location where activities subject to 10 CFR part 63 are being performed must have direct access to the levels of management as may be necessary to perform this function.

(c) *Quality assurance program.* DOE shall establish a quality assurance program that complies with the requirements of this subpart at the earliest practicable time, consistent with the schedule for accomplishing the activities. This program must be documented by written policies, procedures, or instructions and must be carried out throughout facility life in accordance with those policies, procedures, or instructions.

(1) DOE shall identify the structures, systems, and components to be covered by the quality assurance program and the major organizations participating in the program, together with the designated functions of these organizations. The quality assurance program must control activities affecting the quality of the identified structures, systems, and components, to an extent consistent with their importance to safety.

(2) Activities affecting quality must be accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanness; and assurance that all prerequisites for the given activity have been satisfied.

(3) The program must take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test. The program must provide for indoctrination and training of personnel performing activities affecting quality as necessary to assure that suitable proficiency is achieved and maintained.

(4) DOE shall regularly review the status and adequacy of the quality assurance program. Management of other organizations participating in the quality assurance program shall regularly review the status and adequacy of that part of the quality assurance program which they are executing.

(d) *Design control.* (1) DOE shall establish measures to assure that applicable regulatory requirements and the design basis, as defined in § 63.2 and as specified in the license application, for those structures, systems, and components to which this subpart applies, are correctly translated into specifications, drawings, procedures, and instructions. These measures must assure that appropriate quality standards are specified and included in design documents and that deviations from such standards are controlled. Measures must also be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are important to waste isolation and important to safety functions of the structures, systems and components.

(2) DOE shall establish measures to identify and control design interfaces and for coordination among participating design organizations. These measures must include the establishment of procedures among participating design organizations for the review, approval, release, distribution, and revision of documents involving design interfaces

(i) The design control measures must provide for verifying or checking the adequacy of design, such as by the

performance of design reviews, by the use of alternate or simplified calculational methods, or by the performance of a suitable testing program. The verifying or checking process must be performed by individuals or groups other than those who performed the original design. These individuals may be from the same organization. If a test program is used to verify the adequacy of a specific design feature in lieu of other verifying or checking processes, it must include suitable qualifications testing of a prototype unit under the most adverse design conditions. Design control measures must be applied to items such as: criticality physics, stress, thermal, hydraulic, and preclosure and postclosure analyses; compatibility of materials; accessibility for inservice inspection, maintenance and repair; and delineation of acceptance criteria for inspections and tests.

(ii) Design changes, including field changes, must be subject to design control measures commensurate with those applied to the original design and be approved by the organization that performed the original design unless the applicant designates another responsible organization.

(e) *Procurement document control.* DOE shall establish measures to assure that applicable regulatory requirements, design bases, and other requirements necessary to assure adequate quality are suitably included or referenced in the documents for procurement of material, equipment, and services, whether purchased by the licensee or applicant or by its contractors or subcontractors. To the extent necessary, procurement documents must require contractors or subcontractors to provide a quality assurance program consistent with the pertinent provisions of this section.

(f) *Instructions, procedures, and drawings.* Activities affecting quality must be prescribed by documented instructions, procedures, or drawings of a type appropriate to the circumstances and must be accomplished in accordance with these instructions, procedures, or drawings. Instructions, procedures, or drawings must include appropriate quantitative or qualitative acceptance criteria for determining that important activities have been satisfactorily accomplished.

(g) *Document control.* DOE shall establish measures to control the issuance of documents, such as instructions, procedures, and drawings, including changes to them that prescribe all activities affecting quality. These measures must assure that documents, including changes, are reviewed for adequacy and approved for release by authorized personnel and are distributed to and used at the location where the prescribed activity is performed. Changes to documents must be reviewed and approved by the same organizations that performed the original review and approval unless the applicant designates another responsible organization.

(h) *Control of purchased material, equipment, and services.* DOE shall establish measures to assure that purchased material, equipment, and services, whether purchased directly or through contractors and subcontractors, conform to the procurement documents.

(1) These measures must include appropriate provisions for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source, and examination of products upon delivery.

(2) Documentary evidence that material and equipment conform to the procurement requirements must be available at the high-level waste repository site before the material and equipment are installed or used. This documentary evidence must be retained at the high-level waste repository site and be sufficient to identify the specific requirements, such as codes, standards, or specifications, met by the purchased material and equipment.

(3) The effectiveness of the control of quality by contractors and subcontractors must be assessed by the licensee or applicant or designee at intervals consistent with the importance, complexity, and quantity of the product or services.

(i) *Identification and control of materials, parts, and components.* Measures must be established for the identification and control of materials, parts, and components, including partially fabricated assemblies. These measures must assure that identification of the item is maintained by heat number, part number, serial number, or other appropriate means, either on the item or on records traceable to the item, as required throughout fabrication, erection, installation, and use of the item. These identification and control measures must be designed to prevent the use of incorrect or defective material, parts, and components.

(j) *Control of special processes.* DOE shall establish measures to assure that special processes, including welding, heat treating, and nondestructive testing, are controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards, specifications, criteria, and other special requirements.

(k) *Inspection.* DOE shall establish and execute a program for inspection of activities affecting quality to verify conformance with the documented instructions, procedures, and drawings for accomplishing the activity. The inspection must be performed by individuals other than those who performed the activity being inspected.

(1) Examinations, measurements, or tests of material or products processed must be performed for each work operation where necessary to assure quality. If inspection of processed material or products is impossible or disadvantageous, indirect control by monitoring processing methods, equipment, and personnel must be provided. Both inspection and process monitoring must be provided when control is inadequate without both.

(2) If mandatory inspection hold points that require witnessing or inspecting by the applicant's designated representative and beyond which work may not proceed without the consent of its designated representative are required, the specific hold points must be indicated in appropriate documents.

(l) *Test control.* DOE shall establish a test program to assure that all testing required to demonstrate that structures, systems, and components important to safety will perform satisfactorily in service is identified and performed in accordance with written test procedures which incorporate the requirements and acceptance limits contained in applicable design documents.

(1) The test program must include, as appropriate, proof tests prior to installation, preoperational tests, and operational tests during repository operation, of structures, systems, and components.

(2) Test procedures must include provisions for assuring that all prerequisites for the given test have been met, that adequate test instrumentation is available and used, and that the test is performed under suitable environmental conditions.

(3) Test results must be documented and evaluated to assure that test requirements have been satisfied.

(m) *Control of measuring and test equipment.* DOE shall establish measures to assure that tools, gages, instruments, and other measuring and testing devices used in activities affecting quality are properly controlled, calibrated, and adjusted at specified periods to maintain accuracy within necessary limits.

(n) *Handling, storage, and shipping.* DOE shall establish measures to control the handling, storage, shipping, cleaning and preservation of material and equipment in accordance with work and inspection instructions to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, specific moisture content levels, and temperature levels, must be specified and provided.

(o) *Inspection, test, and operating status.* DOE shall establish measures to indicate the status of inspections and tests performed on individual items of the high-level waste repository by markings such as stamps, tags, labels, routing cards, or other suitable means. These measures must provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent bypassing of such inspections and tests. Measures must also be established for indicating the operating status of structures, systems, and components of the high-level waste repository, such as by tagging valves and switches, to prevent inadvertent operation.

(p) *Nonconforming materials, parts, or components.* DOE shall establish measures to control materials, parts, or components which do not conform to requirements in order to prevent their inadvertent use or installation. These measures must include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items must be reviewed and accepted, rejected, repaired or reworked in accordance with documented procedures.

(q) *Corrective action.* DOE shall establish measures to assure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformances are promptly identified and corrected. If significant conditions are adverse to quality, the measures must assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

(r) *Quality assurance records.* DOE shall maintain sufficient records to furnish evidence of activities affecting quality.

(1) The records must include at least the following: Operating logs and the results of reviews, inspections, tests, audits, monitoring of work performance, and materials analyses.

(2) The records must also include closely-related data such as qualifications of personnel, procedures, and equipment.

(3) Inspection and test records must, at a minimum, identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any deficiencies noted.

(4) Records must be identifiable and retrievable. Consistent with applicable regulatory requirements, the applicant shall establish requirements concerning record retention, such as duration, location, and assigned responsibility.

(s) *Audits.* DOE shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program. The audits must be performed in accordance with the written procedures or check lists by appropriately trained personnel not having direct responsibilities in the areas being audited. Audit results must be documented and reviewed by management having responsibility in the area audited. Followup action, including reaudit of deficient areas, must be taken where indicated.

§ 63.143 Implementation.

DOE shall implement a quality assurance program based on the criteria required by § 63.142.

§ 63.144 Quality assurance program change.

Changes to DOE's NRC-approved Safety Analysis Report quality assurance program description are processed as follows:

(a) DOE may change a previously accepted quality assurance program description included or referenced in the Safety Analysis Report without prior NRC approval, if the change does not reduce the commitments in the program description previously accepted by the NRC. Changes to the quality assurance program description that do not reduce the commitments must be submitted every 24 months, in accordance with paragraph (b)(1) of this section. In addition to quality assurance program changes involving administrative improvements and clarifications, spelling corrections, punctuation, or editorial items, the following changes are not considered reductions in commitment:

(1) The use of a quality assurance standard approved by the NRC which is more recent than the quality assurance standard in DOE's current quality assurance program at the time of the change;

(2) The use of generic organizational position titles that clearly denote the position function, supplemented as necessary by descriptive text, rather than specific titles;

(3) The use of generic organizational charts to indicate functional relationships, authorities, and responsibilities, or alternatively, the use of descriptive text;

(4) The elimination of quality assurance program information that duplicates language in quality assurance regulatory guides and quality assurance standards to which the licensee is committed; and

(5) Organizational revisions that ensure that persons and organizations performing quality assurance functions continue to have the requisite authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations.

(b) DOE shall submit changes made to the NRC-accepted Safety Analysis Report quality assurance program description that do reduce the commitments to the NRC and receive NRC approval prior to implementation, as follows:

(1) The signed original must be submitted to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, one copy to the Director, Office of Nuclear Material and Safeguards, U. S. Nuclear Regulatory Commission, Washington, DC 20555, and one copy to the appropriate NRC Resident Inspector if one has been assigned to the site or facility.

(2) The submittal of a change to the Safety Analysis Report quality assurance program description must include all pages affected by that change and must be accompanied by a forwarding letter identifying the change, the reason for the change, and the basis for concluding that the revised program incorporating the change continues to describe how the requirements of § 63.142 will be satisfied and continues to satisfy the criteria of § 63.142 and the Safety Analysis Report quality assurance program description previously accepted by the NRC (the letter need not provide the basis for changes that correct spelling, punctuation, or editorial items).

(3) DOE shall maintain records of quality assurance program changes that do reduce commitments.

Subpart H—Training and Certification of Personnel

§ 63.151 General requirements.

Operations of systems and components that have been identified as

important to safety in the Safety Analysis Report and in the license must be performed only by trained and certified personnel or by personnel under the direct visual supervision of an individual with training and certification in such operation. Supervisory personnel who direct operations that are important to safety must also be certified in such operations.

§ 63.152 Training and certification program.

DOE shall establish a program for training, proficiency testing, certification, and requalification of operating and supervisory personnel.

§ 63.153 Physical requirements.

The physical condition and the general health of personnel certified for operations that are important to safety may not be such as might cause operational errors that could endanger the public health and safety. Any condition that might cause impaired judgment or motor coordination must be considered in the selection of personnel for activities that are important to safety. These conditions need not categorically disqualify a person, so long as appropriate provisions are made to accommodate the conditions.

Subpart I—Emergency Planning Criteria

§ 63.161 Emergency plan for the geologic repository operations area through permanent closure.

DOE shall develop and be prepared to implement a plan to cope with radiological accidents that may occur at the geologic repository operations area, at any time before permanent closure and decontamination or decontamination and dismantlement of surface facilities. The emergency plan must be based on the criteria of § 72.32(b) of this chapter.

Subpart J—Violations

§ 63.171 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued under those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued under the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 63.172 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in this part 63 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in this part 63 that are not issued under sections 161b, 161i, or 161o for the purposes of Section 223 are as follows: §§ 63.1, 63.2, 63.5, 63.6, 63.7, 63.8, 63.15, 63.16, 63.21, 63.22, 63.23, 63.24, 63.31, 63.32, 63.33, 63.41, 63.42, 63.43, 63.45, 63.46, 63.51, 63.52, 63.61, 63.62, 63.63, 63.64, 63.65, 63.101, 63.102, 63.111, 63.112, 63.113, 63.114, 63.115, 63.121, 63.131, 63.132, 63.133, 63.134, 63.141, 63.142, 63.143, 63.153, 63.161, 63.171, 63.172, 63.201, 63.202, 63.203, 63.204, 63.301, 63.302, 63.303, 63.304, 63.305, 63.311, 63.312, 63.321, 63.322, 63.331, 63.332, 63.341, and 63.342.

Subpart K—Preclosure Public Health and Environmental Standards

§ 63.201 Purpose and scope.

This subpart covers the storage of radioactive material by DOE in the Yucca Mountain repository and on the Yucca Mountain site. For the purposes of demonstrating compliance with this subpart, to the extent there may be any conflict with the requirements specified in this subpart and the requirements contained in Subparts A–J of this regulation, including definitions, the requirements in this subpart shall take precedence.

§ 63.202 Definitions for Subpart K.

General environment means everywhere outside the Yucca Mountain site, the Nellis Air Force Range, and the Nevada Test Site.

Member of the public means anyone who is not a radiation worker for purposes of worker protection.

Radioactive material means matter composed of or containing radionuclides subject to the Atomic Energy Act of 1954, as amended (42 U.S.C. sec. 2014 et seq.). Radioactive material includes, but is not limited to, high-level radioactive waste and spent nuclear fuel.

Spent nuclear fuel means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

Storage means retention (and any associated activity, operation, or process necessary to carry out successful retention) of radioactive material with the intent or capability to readily access or retrieve such material.

Yucca Mountain repository means the excavated portion of the facility constructed underground within the Yucca Mountain site.

Yucca Mountain site means:

(1) The site recommended by the Secretary of DOE to the President under section 112(b)(1)(B) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10132(b)(1)(B)) on May 27, 1986; or

(2) The area under the control of DOE for the use of Yucca Mountain activities at the time of licensing, if the site designated under the Nuclear Waste Policy Act is amended by Congress prior to the time of licensing.

§ 63.203 Implementation of Subpart K.

DOE must demonstrate that normal operations at the Yucca Mountain site will and do occur in compliance with this subpart before the Commission grants or continues a license for DOE to receive and possess radioactive material within the Yucca Mountain site.

§ 63.204 Preclosure standard.

DOE must ensure that no member of the public in the general environment receives more than an annual dose of 0.15 mSv (15 mrem) from the combination of:

(a) Management and storage (as defined in 40 CFR 191.2) of radioactive material that:

(1) Is subject to 40 CFR 191.3(a); and

(2) Occurs outside of the Yucca Mountain repository but within the Yucca Mountain site; and

(b) Storage (as defined in § 63.202) of radioactive material inside the Yucca Mountain repository.

Subpart L—Postclosure Public Health and Environmental Standards

§ 63.301 Purpose and scope.

This subpart covers the disposal of radioactive material in the Yucca Mountain repository by DOE. For the purposes of demonstrating compliance with this subpart, to the extent that there may be any conflict with the requirements specified in this subpart and the requirements contained in Subparts A–J of this part, including definitions, the requirements in this subpart shall take precedence.

§ 63.302 Definitions for Subpart L.

All definitions in subpart K of this part, and the following:

Accessible environment means any point outside of the controlled area, including:

(1) The atmosphere (including the atmosphere above the surface area of the controlled area);

(2) Land surfaces;

(3) Surface waters;

(4) Oceans; and

(5) The lithosphere.

Aquifer means a water-bearing underground geological formation, group of formations, or part of a formation (excluding perched water bodies) that can yield a significant amount of ground water to a well or spring.

Controlled area means:

(1) The surface area, identified by passive institutional controls, that encompasses no more than 300 square kilometers. It must not extend farther:

(i) South than 36°40′13.6661″ North latitude, in the predominant direction of ground-water flow; and

(ii) Than five kilometers from the repository footprint in any other direction; and

(2) The subsurface underlying the surface area.

Disposal means the emplacement of radioactive material into the Yucca Mountain disposal system with the intent of isolating it for as long as reasonably possible and with no intent of recovery, whether or not the design of the disposal system permits the ready recovery of the material. Disposal of radioactive material in the Yucca Mountain disposal system begins when all of the ramps and other openings into the Yucca Mountain repository are sealed.

Ground water means water that is below the land surface and in a saturated zone.

Human intrusion means breaching of any portion of the Yucca Mountain disposal system, within the repository footprint, by any human activity.

Passive institutional controls means:

(1) Markers, as permanent as practicable, placed on the Earth's surface;

(2) Public records and archives;

(3) Government ownership and regulations regarding land or resource use; and

(4) Other reasonable methods of preserving knowledge about the location, design, and contents of the Yucca Mountain disposal system.

Peak dose means the highest annual dose projected to be received by the reasonably maximally exposed individual.

Period of geologic stability means the time during which the variability of geologic characteristics and their future behavior in and around the Yucca Mountain site can be bounded, that is, they can be projected within a reasonable range of possibilities.

Plume of contamination means that volume of ground water in the predominant direction of ground-water flow that contains radioactive contamination from releases from the Yucca Mountain repository. It does not include releases from any other potential sources on or near the Nevada Test Site.

Repository footprint means the outline of the outermost locations of where the waste is emplaced in the Yucca Mountain repository.

Slice of the plume means a cross-section of the plume of contamination with sufficient thickness parallel to the prevalent direction of flow of the plume that it contains the representative volume.

Total dissolved solids means the total dissolved (filterable) solids in water as determined by use of the method specified in 40 CFR part 136.

Undisturbed performance means that human intrusion or the occurrence of unlikely natural features, events, and processes do not disturb the disposal system.

Undisturbed Yucca Mountain disposal system means that the Yucca Mountain disposal system is not affected by human intrusion.

Waste means any radioactive material emplaced for disposal into the Yucca Mountain repository.

Well-capture zone means the volume from which a well pumping at a defined rate is withdrawing water from an aquifer. The dimensions of the well-capture zone are determined by the pumping rate in combination with aquifer characteristics assumed for calculations, such as hydraulic conductivity, gradient, and the screened interval.

Yucca Mountain disposal system means the combination of underground engineered and natural barriers within the controlled area that prevents or substantially reduces releases from the waste.

§ 63.303 Implementation of Subpart L.

DOE must demonstrate that there is a reasonable expectation of compliance with this subpart before a license may be issued. In the case of the specific numerical requirements in § 63.311 of this subpart, and if performance assessment is used to demonstrate compliance with the specific numerical requirements in §§ 63.321 and 63.331 of this subpart, compliance is based upon the mean of the distribution of projected doses of DOE's performance assessments which project the performance of the Yucca Mountain disposal system for 10,000 years after disposal.

§ 63.304 Reasonable expectation.

Reasonable expectation means that the Commission is satisfied that compliance will be achieved based upon the full record before it. Characteristics of reasonable expectation include that it:

(1) Requires less than absolute proof because absolute proof is impossible to attain for disposal due to the uncertainty of projecting long-term performance;

(2) Accounts for the inherently greater uncertainties in making long-term projections of the performance of the Yucca Mountain disposal system;

(3) Does not exclude important parameters from assessments and analyses simply because they are difficult to precisely quantify to a high degree of confidence; and

(4) Focuses performance assessments and analyses on the full range of defensible and reasonable parameter distributions rather than only upon extreme physical situations and parameter values.

§ 63.305 Required characteristics of the reference biosphere.

(a) Features, events, and processes that describe the reference biosphere must be consistent with present knowledge of the conditions in the region surrounding the Yucca Mountain site.

(b) DOE should not project changes in society, the biosphere (other than climate), human biology, or increases or decreases of human knowledge or technology. In all analyses done to demonstrate compliance with this part, DOE must assume that all of those factors remain constant as they are at

the time of submission of the license application.

(c) DOE must vary factors related to the geology, hydrology, and climate based upon cautious, but reasonable assumptions consistent with present knowledge of factors that could affect the Yucca Mountain disposal system over the next 10,000 years.

(d) Biosphere pathways must be consistent with arid or semi-arid conditions.

Postclosure Individual Protection Standard

§ 63.311 Individual protection standard after permanent closure.

DOE must demonstrate, using performance assessment, that there is a reasonable expectation that, for 10,000 years following disposal, the reasonably maximally exposed individual receives no more than an annual dose of 0.15 mSv (15 mrem) from releases from the undisturbed Yucca Mountain disposal system. DOE's analysis must include all potential pathways of radionuclide transport and exposure.

§ 63.312 Required characteristics of the reasonably maximally exposed individual.

The reasonably maximally exposed individual is a hypothetical person who meets the following criteria:

(a) Lives in the accessible environment above the highest concentration of radionuclides in the plume of contamination;

(b) Has a diet and living style representative of the people who now reside in the Town of Amargosa Valley, Nevada. DOE must use projections based upon surveys of the people residing in the Town of Amargosa Valley, Nevada, to determine their current diets and living styles and use the mean values of these factors in the assessments conducted for §§ 63.311 and 63.321;

(c) Uses well water with average concentrations of radionuclides based on an annual water demand of 3000 acre-feet;

(d) Drinks 2 liters of water per day from wells drilled into the ground water at the location specified in paragraph (a) of this section; and

(e) Is an adult with metabolic and physiological considerations consistent with present knowledge of adults.

Human Intrusion Standard

§ 63.321 Individual protection standard for human intrusion.

DOE must determine the earliest time after disposal that the waste package would degrade sufficiently that a human intrusion could occur without recognition by the drillers. DOE must:

(a) Provide the analyses and its technical bases used to determine the time of occurrence of human intrusion (see § 63.322) without recognition by the drillers.

(b) If complete waste package penetration is projected to occur at or before 10,000 years after disposal:

(1) Demonstrate that there is a reasonable expectation that the reasonably maximally exposed individual receives no more than an annual dose of 0.15 mSv (15 mrem) as a result of a human intrusion, at or before 10,000 years after disposal. The analysis must include all potential environmental pathways of radionuclide transport and exposure subject to the requirements at § 63.322; and

(2) If exposures to the reasonably maximally exposed individual occur more than 10,000 years after disposal, include the results of the analysis and its bases in the environmental impact statement for Yucca Mountain as an indicator of long-term disposal system performance.

(c) Include the results of the analysis and its bases in the environmental impact statement for Yucca Mountain as an indicator of long-term disposal system performance, if the intrusion is not projected to occur before 10,000 years after disposal.

§ 63.322 Human intrusion scenario.

For the purposes of the analysis of human intrusion, DOE must make the following assumptions:

(a) There is a single human intrusion as a result of exploratory drilling for ground water;

(b) The intruders drill a borehole directly through a degraded waste package into the uppermost aquifer underlying the Yucca Mountain repository;

(c) The drillers use the common techniques and practices that are currently employed in exploratory drilling for ground water in the region surrounding Yucca Mountain;

(d) Careful sealing of the borehole does not occur, instead natural degradation processes gradually modify the borehole;

(e) No particulate waste material falls into the borehole;

(f) The exposure scenario includes only those radionuclides transported to the saturated zone by water (e.g., water enters the waste package, releases radionuclides, and transports radionuclides by way of the borehole to the saturated zone); and

(g) No releases are included which are caused by unlikely natural processes and events.

Ground-Water Protection Standards

§ 63.331 Separate standards for protection of ground water.

DOE must demonstrate that there is a reasonable expectation that, for 10,000 years of undisturbed performance after disposal, releases of radionuclides from waste in the Yucca Mountain disposal system into the accessible environment will not cause the level of radioactivity in the representative volume of ground water to exceed the limits in the following Table 1:

TABLE 1.—LIMITS ON RADIONUCLIDES IN THE REPRESENTATIVE VOLUME

Radionuclide or type of radiation emitted	Limit	Is natural background included?
Combined radium-226 and radium-228	5 picocuries per liter	Yes.
Gross alpha activity (including radium-226 but excluding radon and uranium).	15 picocuries per liter	Yes.
Combined beta and photon emitting radionuclides	0.04 mSv (4 mrem) per year to the whole body or any organ, based on drinking 2 liters of water per day from the representative volume.	No.

§ 63.332 Representative volume.

(a) The representative volume is the volume of ground water that would be withdrawn annually from an aquifer containing less than 10,000 milligrams of total dissolved solids per liter of water to supply a given water demand. DOE must project the concentration of radionuclides released from the Yucca Mountain disposal system that will be in the representative volume. DOE must use the projected concentrations to demonstrate a reasonable expectation that the Yucca Mountain disposal system complies with § 63.331. The DOE must make the following assumptions concerning the representative volume:

(1) It includes the highest concentration level in the plume of contamination in the accessible environment;

(2) Its position and dimensions in the aquifer are determined using average hydrologic characteristics which have cautious, but reasonable, values representative of the aquifers along the radionuclide migration path from the Yucca Mountain repository to the accessible environment as determined by site characterization; and

(3) It contains 3,000 acre-feet of water (about 3,714,450,000 liters or 977,486,000 gallons).

(b) DOE must use one of two alternative methods for determining the dimensions of the representative volume. The DOE must propose its chosen method, and any underlying assumptions, to NRC for approval.

(1) DOE may calculate the dimensions as a well-capture zone. If DOE uses this approach, it must assume that the:

(i) Water supply well(s) has (have) characteristics consistent with public water supply wells in the Town of Amargosa Valley, Nevada, for example, well-bore size and length of the screened intervals;

(ii) Screened interval(s) include(s) the highest concentration in the plume of contamination in the accessible environment; and

(iii) Pumping rates and the placement of the well(s) must be set to produce an annual withdrawal equal to the representative volume and to tap the highest concentration within the plume of contamination.

(2) DOE may calculate the dimensions as a slice of the plume. If DOE uses this approach, it must:

(i) Propose, for approval, where the location of the edge of the plume of contamination occurs. For example, the place where the concentration of radionuclides reaches 0.1% of the level of the highest concentration in the accessible environment;

(ii) Assume that the slice of the plume is perpendicular to the prevalent direction of flow of the aquifer; and

(iii) Assume that the volume of ground water contained within the slice of the plume equals the representative volume.

Additional Provisions

§ 63.341 Projections of peak dose.

To complement the results of § 63.311, DOE must calculate the peak dose of the reasonably maximally exposed individual that would occur after 10,000 years following disposal but within the period of geologic stability. No regulatory standard applies to the results of this analysis; however, DOE must include the results and their bases in the environmental impact statement for Yucca Mountain as an indicator of long-term disposal system performance.

§ 63.342 Limits on performance assessments.

DOE's performance assessments should not include consideration of very unlikely features, events, or processes, i.e., those that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. Unlikely features, events, and processes, or sequences of events and processes shall be excluded from the assessments for the human intrusion and ground water protection standards upon prior Commission approval for the probability limit used for unlikely features, events, and processes. In addition, DOE's performance assessments need not evaluate the impacts resulting from any features, events, and processes or sequences of events and processes with a higher chance of occurrence if the results of the performance assessments would not be changed significantly.

§ 63.343 Severability of individual protection and ground-water protection standards.

The individual protection and ground-water protection standards are severable.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

43. The authority citation for part 70 continues to read:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246, (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

44. Section 70.17 is amended by revising paragraph (c) to read as follows:

§ 70.17 Specific exemptions.

* * * * *

(c) The DOE is exempt from the requirements of the regulations in this part to the extent that its activities are subject to the requirements of part 60 or part 63 of this chapter.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

45. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

46. Section 72.44 is amended by revising paragraphs (g)(1) and (g)(3) to read as follows:

§ 72.44 License conditions.

* * * * *

(g) * * *

(1) Construction of the MRS may not begin until the Commission has authorized the construction of a repository under section 114(d) of NWPA (96 Stat. 2215, as amended by 101 Stat. 1330–230, 42 U.S.C. 10134 (d)) and part 60 or 63 of this chapter;

* * * * *

(3) The quantity of spent nuclear fuel or high-level radioactive waste at the site of the MRS at any one time may not

exceed 10,000 metric tons of heavy metal until a repository authorized under NWPA and part 60 or 63 of this chapter first accepts spent nuclear fuel or solidified high-level radioactive waste; and

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

47. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

48. In § 73.1, paragraph (b)(6) is revised to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(6) This part prescribes requirements for the physical protection of spent nuclear fuel and high-level radioactive waste stored in either an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage (MRS) installation licensed under part 72 of this chapter, or stored at the geologic repository operations area licensed under part 60 or part 63 of this chapter.

* * * * *

49. Section 73.51 is amended by revising paragraph (a) to read as follows:

§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

(a) *Applicability.* Notwithstanding the provisions of §§ 73.20, 73.50, or 73.67, the physical protection requirements of this section apply to each licensee that stores spent nuclear fuel and high-level radioactive waste pursuant to paragraphs (a)(1)(i), (ii), and (2) of this section. This includes—

(1) Spent nuclear fuel and high-level radioactive waste stored under a specific license issued pursuant to part 72 of this chapter:

(i) At an independent spent fuel storage installation (ISFSI) or

(ii) At a monitored retrievable storage (MRS) installation; or

(2) Spent nuclear fuel and high-level radioactive waste at a geologic repository operations area (GROA) licensed pursuant to part 60 or 63 of this chapter;

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

50. The authority citation for part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

51. Section 75.4 is amended by revising paragraph (k)(5) to read as follows:

§ 75.4 Definitions.

* * * * *

(k) * * *

(5) Any location where the possession of more than 1 effective kilogram of nuclear material is licensed pursuant to parts 40, 60, 63, or 70 of this chapter or an Agreement State license.

* * * * *

Dated at Rockville, Maryland, this 23rd day of October, 2001.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–27157 Filed 11–1–01; 8:45 am]

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Part III

Securities and Exchange Commission

17 CFR Parts 240 and 242

Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–44992; File No. S7–26–98]

RIN 3235–AH04

Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; request for comments on Paperwork Reduction Act burden estimate.

SUMMARY: The Securities and Exchange Commission today is adopting amendments to its broker-dealer books and records rules. The amendments clarify and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. In addition, the amendments expand the types of records that broker-dealers must maintain and require broker-dealers to maintain or promptly produce certain records at each office to which those records relate. These amendments are specifically designed to assist securities regulators when conducting sales practice examinations of broker-dealers, particularly examinations of local offices.

EFFECTIVE DATE: May 2, 2003.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 942–0131; Thomas K. McGowan, Assistant Director, at (202) 942–4886; or Bonnie L. Gauch, Attorney, at (202) 942–0765; Office of Risk Management and Control, Division of Market Regulation, United States Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission's (the "Commission") books and records rules, Rule 17a–3[1] and Rule 17a–4[2] under the Securities Exchange Act of 1934 ("Exchange Act")(hereinafter the "Books and Records Rules"), specify minimum requirements with respect to the records that broker-dealers must make, and how long those records and other documents relating to a broker-dealer's business must be kept. The Commission has required that broker-dealers create and maintain certain records so that, among other things, the Commission, self-regulatory organizations ("SROs"), and State Securities Regulators[3] (collectively "securities regulatory authorities") may conduct effective examinations of broker-dealers.

The Commission originally proposed amending the Books and Records Rules in 1996 in response to concerns raised by members of the North American Securities Administrator's Association ("NASAA") regarding the adequacy of those Rules.[4] On October 11, 1996, the National Securities Market Improvement Act of 1996 ("NSMIA") was enacted.[5] NSMIA prohibits States from establishing books and records rules that differ from, or are in addition to, the Commission's rules. Prior to NSMIA many States had laws or rules that required broker-dealers to make and keep certain books and records that allowed the State Securities Regulators to conduct examinations and investigations to review for, among other things, sales practice violations.[6] NSMIA also provides that the Commission must consult periodically with the States concerning the adequacy of the Commission's Books and Records Rules,[7] particularly relating to the need by State Securities Regulators to have records readily accessible for their examinations.[8]

The Commission, recognizing the vital role that State regulators play in providing for customer protection, issued the Proposing Release, in part, to enhance the ability of the State Securities Regulators to conduct effective and efficient sales practice examinations of activities within their respective States, including those involving smaller broker-dealer offices. By adopting these rules, the Commission enables the State regulators to adopt and enforce similar rules on a State level, to support their examination responsibilities, and investigatory and enforcement requirements. An important aspect of the amendments is that broker-dealers are required to produce records at offices within a State. Moreover, many of these amendments require broker-dealers to make or keep records currently kept by broker-dealers as a matter of business practice or to comply with SRO rules. However, unless these requirements are adopted as Commission rules, the State regulators are unable to apply or enforce them at the State level.

II. Proposing and Reproposing Releases

In response to the comments received on the Proposing Release, the Commission substantially modified the amendments, and reproposed them to allow for public comment on the modifications.[9] In response to the reproposal, the Commission received approximately 115 comment letters from various groups, including broker-dealers, law firms representing broker-dealers, industry associations, and State Securities Regulators. Generally, State Securities Regulators supported the rules as reproposed, but suggested some minor changes. While broker-dealers generally supported the Commission's efforts to adopt uniform books and records rules, they opposed various sections of the reproposed rules. In particular, firms were opposed to the requirements to periodically update the customer account record and to maintain records at local offices. As discussed in the respective sections throughout this release, the Commission has substantially modified the content of the re-proposed amendments and incorporated many of the suggested changes into the final rules.

To a significant degree, the amendments to Rules 17a–3 and 17a–4 adopted by the Commission track existing SRO requirements and certain State regulations that were in place prior to NSMIA. In addition, they largely represent a codification of prudent recordkeeping practices of many broker-dealers. Accordingly, many portions of the Books and Records Rule amendments should not present additional burdens for most broker-dealers.

[1] 17 CFR 240.17a–3.

[2] 17 CFR 240.17a–4.

[3] For purposes of this release, "State Securities Regulators" include, as described in Section 15(h) of the Exchange Act, "the securities commissions (or any agency or office performing like functions) of the States." 15 U.S.C. 78o(h).

[4] *See* Exchange Act Release No. 37850 (October 22, 1996), 61 FR 55593 (Oct. 28, 1996) ("Proposing Release" and/or "Proposal") (File No. S7–27–96).

[5] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

[6] *E.g.*, violations of State suitability and fraud laws, or federal regulations.

[7] 15 U.S.C. 78o(h).

[8] 142 Cong.Rec.S. 12093, S12094 (October 1, 1996) (statement of Sen. Dodd) ("It is the intent of the conferees that the SEC work closely with the States to determine what records should be maintained at branch offices and to establish a mechanism so that States could require such records be kept in the branch office, rather than at a back office halfway across the Nation.").

[9] Exchange Act Release No. 40518 (Oct. 2, 1998), 63 FR 54404 (Oct. 9, 1998) (the "Reproposing Release" and/or "Reproposal"). The staff of the Division of Market Regulation has prepared a summary of the comment letters received on the reproposed rules and rule amendments (hereinafter referred to as "Comment Summary"). Copies of the comment letters and the Comment Summary have been placed in Public Reference File No. S7–26–98 and are available for inspection in the Commission's Public Reference Room.

III. Amendments to Rule 17a–3

In brief, the amendments to present Rule 17a–3 include revisions to the information that must be recorded on order tickets, and new requirements to: create certain records relating to associated persons; collect certain account record information and verify that information with customers periodically; create a record of customer complaints; create a record indicating compliance with applicable advertising rules; and create records identifying persons responsible for establishing procedures and persons able to explain the broker-dealer's records to a regulator.

A. Memoranda of Brokerage Orders and Dealer Transactions

Rule 17a–3 has been amended to require that a brokerage order ticket contain the identity of the associated person, if any, responsible for the account and any other person who entered or accepted the order on behalf of the customer, and whether it was entered subject to discretionary authority. In addition, a brokerage order ticket must include the time at which the broker-dealer received a customer order, even if the order is subsequently transmitted for execution.[10] A dealer ticket must include information regarding any modifications to the order.[11] This will allow securities regulators to better focus their examinations and investigations because they will be able to identify certain types of violative activities and the individuals responsible for those activities more easily.

The Commission clarified that the identity of the associated person responsible for the account must be included only if the broker-dealer assigns to an associated person responsibility for certain accounts. This modification was made in response to broker-dealer comment letters that noted some firms do not assign a particular associated person to each account, and some firms allow customers to enter orders directly into a broker-dealer's systems, such as through an on-line trading account. Further, this modification addresses the concerns of some commenters that without a qualifying phrase, such as "if any," the rule may be interpreted erroneously as placing on firms an affirmative obligation to assign an associated person to each account.

If a firm has assigned identification numbers or codes to the persons entering customer orders to comply with the requirement to record the identity of the person entering customer orders, a broker-dealer may record the identification number or code on the order ticket instead of the associated person's name. Further, if the person entering a customer order has been assigned to a computer terminal but does not have a specific identification number or code, it is acceptable for the broker-dealer to identify the number or code of a computer terminal at which an order was entered. In either case, upon request by a representative of a securities regulatory authority, the firm must provide the actual identity of the person who entered the order. Either of these alternatives may be satisfied by using a companion record to the order tickets.[12]

With these amendments, paragraphs (a)(6) and (a)(7) require that broker-dealers record the identity of "any [person other than the associated person responsible for the account] who entered or accepted the order on behalf of the customer." In response to comments by the online brokerage community, the Commission included, after this requirement, the phrase, "if a customer entered the order on an electronic system, a notation of such entry." Because most firms that accept orders through an electronic system already identify, for supervisory purposes, which orders were entered directly by a customer, this requirement will not create much additional burden on the firms. Further, it will assist them in identifying for securities regulatory authorities why certain tickets do not identify the associated person who received the order from the customer.

One commenter argued that firms that primarily accept "unsolicited" orders and do not pay transaction-based commissions should not be required to include on the order ticket information regarding associated persons because no sales practice concerns would be implicated in these types of transactions. However, the Commission believes that recording the identity of the associated person on a broker-dealer's order tickets is essential for adequate surveillance of, and accountability for, transactions.

One commenter wrote that for some transactions the time of entry frequently is simultaneous or nearly simultaneous with the time the order is received, and suggested that under these conditions, the firm should not have to make a separate entry for each time. In those situations, it must be clear from the order ticket that the time of receipt was the same as the time of entry. However, the time recorded must be accurate and this should not be construed as an exception to allow firms to use an approximate time for one or both entries.[13]

Finally, the Commission recognizes that for some types of transactions, such as purchases of mutual funds or variable annuities, the customer may simply fill out an application or a subscription agreement that the broker-dealer then forwards directly to the issuer.[14] These documents would include the information that is important for and specific to the particular type of transaction. Hence, the Commission has added paragraph (a)(6)(ii) under Rule 17a–3 to allow firms to keep a copy of the application or subscription document instead of making a separate record as to transactions described in the exemption. This paragraph would also exempt transactions such as automatic dividend reinvestments. The Commission views this additional paragraph as a codification of current industry practice, and it is limited to these types of transactions.

B. Associated Person Records

1. New Records Concerning Associated Persons

Rule 17a–3(a)(12) requires a firm to make records relating to associated persons of the firm, including information regarding the associated person's employment and disciplinary history. The amendments require a record listing all of a firm's associated

[10] 17 CFR 240.17a–3(a)(6). Most broker-dealers are currently required to record the time the order was received from a customer under the National Association of Securities Dealers' ("NASD") Order Audit Trail System ("OATS") rules (NASD rules 6950 through 6957 and 3110) (hereinafter "OATS rules") (*See* specifically NASD rules 6954(b)(16) and 3110(h)), and New York Stock Exchange ("NYSE") rules 123 and 410A.

[11] 7 CFR 240.17a–3(a)(7).

[12] *E.g.*, a firm may satisfy this requirement by using the record listing any internal identification number or code assigned to associated persons which is required under new Rule 17a–3(a)(12)(ii) (17 CFR 240.17a–3(a)(12)(ii)). Additionally, the Commission believes this requirement is consistent with the NASD's OATS rules.

[13] A number of firms have asked for guidance on the meaning of the term "to the extent feasible." The time of execution should be included on the order ticket except for situations in which it may be impossible to determine the precise time when the transaction was executed; however, in that case the broker-dealer must note the approximate time of execution. Exchange Act Release No. 3040 (Oct. 13, 1941), 11 FR 10984. The Commission has stated that the "phrase "to the extent feasible" was intended to be applicable only in exceptional circumstances where it might be actually impossible to determine the exact time of execution." Exchange Act Release No. 13508 (May 5, 1977) 42 FR 25318. However, in that case the broker-dealer must note the approximate time of execution.

[14] This is referred to elsewhere in the rules as a "subscription-way basis" transaction. *See* 17 CFR.15c3–1(a)(2)(v).

persons showing every office where each associated person regularly conducts business, and listing all internal identification numbers and the CRD number assigned to each associated person.[15] This will allow securities regulators to identify where associated persons work, and to read various records which may identify the associated persons solely through the use of identification numbers. Also, three technical changes were made from the rule as reproposed.[16]

2. The Definition of Associated Person

The Commission had proposed to eliminate from Rule 17a–3 a definition of "associated person" and instead use the definition of "associated person" as defined in sections 3(a)(18) and 3(a)(21) of the Exchange Act. However, the statutory definition of "associated person of a broker or dealer" in section 3(a)(18) specifically excludes those persons whose functions are clerical or ministerial from the definition solely for purposes of section 15(b) of the Exchange Act. Current Rule 17a–3 excludes those persons from the recordkeeping requirements. The Commission has determined that those persons should continue to be exempt from the recordkeeping requirements of Rules 17a–3 and 17a–4. Therefore, the Commission believes it is appropriate to retain a definition of the term "associated person" in the rule. This definition has been moved to paragraph (g), however, and has been modified for the sake of uniformity to incorporate the definitions of "associated person of a member" and "associated person of a broker or dealer" as set forth in sections 3(a)(21) and 3(a)(18) of the Exchange Act.[17] In addition, for purposes of Rules 17a–3 and 17a–4, the Commission has excluded from the definition persons whose functions are solely clerical or ministerial. In order to avoid redundancy and achieve greater consistency in interpretation, this phrase shall be interpreted in the same manner as the phrase "solely clerical and ministerial" is interpreted under section 3(a)(18) of the Exchange Act.

The Exchange Act provisions define an associated person to include any partner, officer, director, or branch manager of a broker-dealer (any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a broker-dealer, or any employee of a broker-dealer. This includes order-takers. The Commission interprets the term associated person to include any independent contractor, consultant, franchisee, or other person providing services to a broker-dealer equivalent to those services provided by the persons specifically referenced in the statute.[18]

C. Customer Account Record

The Commission is adopting new Rule 17a–3(a)(17)[19] under the Exchange Act, which requires broker-dealers to create a record containing certain minimum information as to each customer. The primary purpose of Rule 17a–3(a)(17) is to provide regulators, particularly State Securities Regulators, with access to books and records which enable them to review for compliance with suitability rules.[20] Rule 17a–3(a)(17) also requires broker-dealers to furnish that information to each customer on a periodic basis. The rule should not be construed to affect or supersede any Federal, State, or SRO requirement, including those relating to "know your customer," suitability, or supervisory obligations.

1. Account Record Information

The information required under new Rule 17a–3(a)(17)(i)(A) for each account with a natural person as a customer includes the customer's name, tax identification number, address, telephone number, date of birth, employment status (including occupation and whether the customer is an associated person of a member, broker or dealer), annual income, net worth (excluding value of primary residence), and investment objectives. Most broker-dealers already collect this information to assist them in assessing customers' suitability or to comply with other rules. For accounts with more than one owner, the record should include personal information for each owner of the account; however, the record should reflect the investment objectives for the account and not the individual investment objectives for each "joint" owner named on the account. Further, financial information for the owners can be combined. For discretionary accounts, firms also must include as part of the account record the dated signature of each customer granting the discretionary authority and the dated signature of each natural person[21] to whom discretionary authority was granted. In response to comments received, the Commission did not adopt the reproposed requirement that the account record include information regarding a customer's marital status and number of dependents.[22]

Under the final rule, the account record must indicate whether it has been signed by the associated person responsible for the account, and approved or accepted by a principal of the firm.[23] This will identify for regulators the persons responsible for accepting a particular account on behalf of the firm. Similar to the comments made regarding order tickets, some commenters stated that they do not always assign an associated person to each account. Therefore, the Commission has added the phrase "if any" to the requirement that the account record indicate whether it has been approved by an associated person. The account record still must indicate whether it has been approved by a principal.[24]

In the Reproposal, the Commission specifically sought comment on whether, for joint accounts, the firm should obtain the account record information for each individual. Most commenters that addressed this issue did not object to maintaining personal information for each owner of joint accounts. However, some commenters pointed out that it would be unnecessary and redundant to obtain individual information for certain types of joint accounts, such as a joint account of two spouses with similar information regarding income and net worth. These commenters also contended that the investment objectives should reflect the objectives for the account and not the objectives of the individual owners. In those cases, it is sufficient under paragraph (a)(17) of Rule 17a–3[25] that the account record reflect that portions of the account record information are the same for each owner of the account. It is acceptable for firms to combine joint owners' financial information as opposed to obtaining and maintaining that information separately for each of the joint owners. Lastly, the investment objectives recorded should be those for the account, and not those of the individual owners.

Some commenters requested clarification as to how this information must be maintained and whether all the information and signatures must be included on the same form.[26] Although a broker-dealer must create a single record for each account, that record may consist of more than one document, such as two or more account applications.

A broker-dealer is not required to furnish a copy of a customer's account record to the customer within thirty days when obtaining new information to complete the initial account record, required under Rule 17a–3(a)(17)(i)(A),[27] for an account in existence on the effective date of the rule amendments. However, as stated in Rule 17a–3(a)(17)(i)(B)(*1*),[28] broker-dealers must create a record indicating that the broker-dealer furnished these customers with a copy of the account record information within three years of the effective date of the rule.

2. Furnishing the Account Record Information

Rule 17a–3(a)(17) requires that the firm periodically furnish account record information to the customer.[29] The new requirement allows the customer to review the information regarding the account that the firm has on file and from which the associated person or the firm is making investment recommendations or suitability determinations for the account. The requirement to furnish this record to customers is designed to reduce the number of misunderstandings between customers and broker-dealers regarding the customer's situation or investment objectives. Firms may, of course, elect to provide this information to customers more frequently in order to coincide with other mailings.

Paragraph (a)(17) of the rule identifies four provisions that trigger the requirement that a broker-dealer furnish to a customer a copy of information contained in the account record.[30] Those provisions include (i) the opening of a new account;[31] (ii) the periodic updating of an account that must occur at least once every 36 months;[32] (iii) a change of customer name or address;[33] and (iv) a change of other customer information.[34]

Although paragraph (a)(17)(i) of Rule 17a–3 requires broker-dealers to periodically update customer records, the rule does not affect a broker-dealer's obligations under any SRO "know your customer" rules. It may be appropriate in certain circumstances for broker-dealers to obtain updated information from customers more often than once every 36 months.

Because different terms ascribed to categories of investment objectives may vary among firms, the firms must describe these terms when furnishing the account record to customers. When opening an account, the customer has the opportunity to question the meaning of the investment objective terms, but when the customer receives a copy of the account record at home, that customer may have forgotten or misunderstood the meaning of those terms. This requirement to describe investment objective terminology should help ensure that the customer and the firm have a mutual understanding of the meaning of each term.

Paragraph (a)(17) of Rule 17a–3 also provides that a broker-dealer is not required to include the customer's tax identification number and date of birth with the information provided to the customer. Several commenters suggested that unauthorized access to such information could facilitate the perpetration of fraud against the customer.[35]

The Commission did not adopt the portion of the rule as reproposed that would have required firms to send a notification of change of address to both the old and new addresses. This change was in response to comments that prudent business practice requires that this notification be sent only to the old address to prevent misdirection of account information. Therefore, as adopted, firms are required to send a notification of a change of address only to the old address.

Some commenters sought clarification as to whether the amendment required a separate mailing of the customer account record information. This rule does not require a separate mailing, and the Commission anticipates that firms will combine this mailing with other mailings. Further, the account record information may be printed on a customer's account statement. Finally, a firm may mail the customer a copy of the customer's complete account record reflecting any change of other account record information[36] on or before the 30th day after the date the member, broker or dealer received notice of any change, or it may choose to send this notification with the next statement scheduled to be mailed to the customer.

3. Explanation of the Neglect, Refusal, or Inability of a Customer To Provide Required Information

As adopted, Rule 17a–3(a)(17)(i)(C) does not require broker-dealers to include an explanation of the customer's neglect, refusal, or inability to provide the required information. However, a broker-dealer is required to make a good faith effort to collect this information. If the account record does not include the required information, the broker-dealer would bear the burden of explaining why this information is not available. Rule 17a–3(a)(17)(i)(C) is

[15] 17 CFR 240.17a–3(a)(12)(ii).

[16] First, reproposed paragraphs (a)(12)(ii) and (a)(12)(iii) have been moved to paragraph (a)(19) of Rule 17a–3 to keep all requirements relating to compensation records in the same section (most agreements between associated persons and broker-dealers relate to compensation in some manner). Second, reproposed paragraphs (a)(12)(iv) and (a)(12)(v) have been combined into new paragraph (a)(12)(ii). And finally, the Commission has deleted the references to local offices and state record depositories to make this paragraph consistent with the changes to the definition of "office" in paragraph (g)(1) of Rule 17a–3.

[17] 15 U.S.C. 78*c*(a)(21) and 15 U.S.C. 78*c*(a)(18).

[18] The Commission has consistently taken the position that independent contractors (who are not themselves registered as broker-dealers) involved in the sale of securities on behalf of a broker-dealer are "controlled by" the broker-dealer, and, therefore, are associated persons of the broker-dealer. *See, e.g., In the Matter of William V. Giordano*, 61 S.E.C. Dkt. 345, Exchange Act Release No. 36742 (Jan. 19, 1996) (in finding that an officer of a broker-dealer firm failed reasonably to supervise an independent contractor, the Commission found that the independent contractor was an "associated person" of the firm within the meaning of Section 3(a)(18) of the Exchange Act). *See, also,* Letter from Douglas Scarff, Director, Division of Market Regulation, to Gordon S. Macklin, NASD; Charles J. Henry, Chicago Board Options Exchange; Robert J. Birnbaum, American Stock Exchange; and John J. Phelan, NYSE, [1982–1983 Transfer Binder] Fed. Sec. L. Rep. (CCH) P77,303 at P77,116 (Jun. 18, 1982); *Hollinger* v. *Titan Capital Corp.*, 974 F.2d 1564, 1572–76 (9th Cir. 1990), *cert. denied*, 111 S. Ct. 1621 (1991). A similar analysis would be applicable to other persons, such as consultants and franchisees, performing securities activities with or for the broker-dealer.

[19] This provision was reproposed as Rule 17a–3(a)(16).

[20] Generally, suitability rules require that broker-dealers and their associated persons refrain from recommending transactions or investment strategies to a customer that would be "unsuitable" for that customer based upon the customer's situation. Factors that may be considered in assessing a customer's situation include the customer's age, financial situation, and investment experience or knowledge of the industry.

[21] *See* NYSE Rule 408 and NASD Rule 2510(b).

[22] *See, e.g.*, Comment Letters from Raymond James, p. 4; Investment Management and Research, p. 3, and Mayer, Brown & Platt, pp. 6–7.

[23] 17 CFR 240.17a–3(a)(17)(i)(A). This requirement is consistent with SRO rules regarding the signatures of associated persons and principals when opening customer accounts. *See* NYSE Rule 405(3) and NASD Rule 3110(c)(1)(C).

[24] The Commission believes that this requirement is consistent with SRO requirements regarding customer accounts such as those discussed above in footnote 23.

[25] 17 CFR 240.17a–3(a)(17).

[26] *See* Comment Letters from Donaldson, Lufkin and Jenrette, p. 9, and the International Association for Financial Planning, pp. 2–3.

[27] 17 CFR 240.17a–3(a)(17)(i)(A).

[28] 17 CFR 240.17a–3(a)(17)(i)(B)(*1*).

[29] Certain SRO rules already require that customer account records be sent to customers who open options accounts. *See* NASD Rule 2860(b)(16)(C) and IM–2860–2, and NYSE Rule 721(c) and Supplemental Material at .30 regarding options accounts.

[30] 17 CFR 240.17a–3(a)(17)(i)(B)(*1*) through (B)(*3*).

[31] 17 CFR 240.17a–3(a)(17)(i)(B)(*1*).

[32] *Id.*

[33] 17 CFR 240.17a–3(a)(17)(i)(B)(*2*).

[34] 17 CFR 240.17a–3(a)(17)(i)(B)(*3*).

[35] *See* Comment Letters from Fidelity Investments, p. 5, Benefits Communication Corporation, p. 1, American Express Financial Advisors, Inc., p. 4, and Comerica Securities, p. 3.

[36] 17 CFR 240.17a–3(a)(17)(i)(B)(*4*).

specifically limited in application to paragraph (a)(17), and does not apply to any other Federal or SRO rules regarding collections of information (*e.g.*, Rule 17a–3(a)(9)).

4. Exemption From Account Record Information Requirements

A number of broker-dealer firms argued that the Commission should create an exemption from the account record information requirements of Rule 17a–3(a)(17)(i), contending that this record is intended to allow examiners to review for suitability, but broker-dealers are not subject to SRO suitability requirements for all of their accounts.[37] Therefore, they argue, where they have no suitability obligation, they should not be required to obtain account record information. The Commission is adopting the account record requirements with an exemption for certain accounts,[38] such that a broker-dealer is not required to create an account record for an account if the firm is not required (under any Federal or SRO rules) to make a suitability determination as to the account. However, the obligation to collect and record information of the type enumerated in Rule 17a–3(a)(17)(i)(A) may arise under SRO rules and interpretations. If, after the account is opened, the firm or its associated person engage in conduct that would subject the firm to any requirement to make a suitability determination, the firm must obtain the information before making such a recommendation. The firm would have to comply thereafter with the requirement to furnish customers with a copy of their account record for verification, under paragraph (a)(17)(i)(B)(*1*) of Rule 17a–3, but the account could re-qualify for the exemption.

For accounts existing on the effective date of these amendments, a broker-dealer will not be required to create or update the account record if, within the 36-month period beginning on the effective date of this rule, the firm has not been required to make a suitability determination as to that account.

For the purposes of paragraph (a)(17)(i)(D) of Rule 17a–3, the term "suitability determination" should be interpreted broadly. A broker-dealer may have an obligation to perform a suitability determination under the Exchange Act,[39] Commission rules,[40] SRO rules,[41] or common law.[42] Rule 17a–3(a)(17) does not change or limit a broker-dealer's obligation to make a suitability determination.

It is important to note that even if a broker-dealer is not required to create an account record under Rule 17a–3(a)(17) for an account, the firm must still comply with federal laws and regulations and SRO rules requiring collections of information regarding customer accounts, including paragraph (a)(9) of Rule 17a–3,[43] NYSE Rule 405, and MSRB Rule G–8(a)(xi).

5. Applicability of Account Record Requirements and 36-Month Grace Period

The requirement to create an account record applies to both new and existing accounts. For accounts opened on or after the effective date of these amendments ("new accounts"), the firm must obtain the account record information required under Rule 17a–3(a)(17)(i)(A) when the account is opened.

As originally proposed, the grace period to obtain the customer account record information for accounts existing on the effective date of these amendments would have been one year. However, many commenters[44] stated that with a large number of accounts it would be unduly burdensome to obtain the account record information within one year. Therefore, the Commission has provided broker-dealers with a 36-month grace period. Specifically, under paragraph (B)(*1*) of Rule 17a–3(a)(17)(i), for accounts existing on the effective date of these amendments, a firm will have 36 months to obtain the information required on the account record under paragraph (a)(17)(i)(A) of Rule 17a–3. The new 36-month furnishing cycle under paragraph (a)(17)(i)(B) of Rule 17a–3 will begin when the firm obtains the account record information within the initial 36-month grace period.

6. Written Customer Agreements

New paragraph (a)(17)(iii) of Rule 17a–3 requires each broker-dealer to create a record for each account indicating that each customer was furnished with a copy of any written agreement entered into on or after the effective date of this paragraph pertaining to that account. This will allow customers to review the terms of agreements to which they are subject, and to better understand their rights and responsibilities (and those of the broker-dealer) under these agreements. In addition, if any customer specifically requests a copy of an agreement relating to their account, this paragraph would require that the broker-dealer maintain a record that it was provided to the customer.

D. Complaints

New paragraph (a)(18)(i) of Rule 17a–3[45] requires firms to make a record as to each associated person that includes every written customer complaint received by the firm concerning that associated person.[46] This will allow securities regulators to quickly identify any trends, and focus examinations. This record must include complaints received electronically from customers. The rule requires that the record include the complainant's name, address, and account number; the date the complaint was received; the name of each associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. However, because firms already are required to keep originals of incoming written complaints,[47] rather than make a separate record, firms have the option under this rule to keep the original complaint along with a record of the disposition of the complaint, if kept by name of associated person. This rule does not limit a broker-dealer's responsibilities under SRO and other regulations that may require creation and maintenance of records regarding, or reporting of, oral complaints.

Paragraph (ii) of Rule 17a–3(a)(18) requires firms to make a record indicating that each customer has been provided with a notice of the address and telephone number of the department of the firm to which any complaints may be directed.[48] This will assist both customers and broker-dealers to ensure that complaints reach the proper person or department so they can be recorded, reported (if necessary), and answered. Some commenters requested clarification of whether, in an introducing/clearing relationship,[49] the contact information should be that of the introducing firm, the clearing firm, or both. To the extent not otherwise required, this should be a matter of negotiation between the introducing firm and the clearing firm.[50] If contact information is provided for both firms, the notification should clearly indicate which firm the customer should contact and for what purposes. Two other commenters requested clarification as to whether this notification could take the form of a notice on customer statements.[51] The Commission believes that firms should have flexibility as to how they may deliver this notice to customers, and inserting the notice on a customer statement is one acceptable alternative.

E. Compensation

Paragraph (a)(19)(i) of Rule 17a–3 requires firms to make a record as to each associated person listing each purchase and sale of a security[52] attributable, for compensation purposes, to that associated person. Again, the purpose for this requirement is to allow securities regulators to quickly identify compensation trends and focus examinations. The record must include the amount of compensation (if monetary) and a description of the compensation (if non-monetary). Under this requirement, firms must make records of all commissions, concessions, overrides, and other compensation to the extent they are earned or accrued for transactions. In addition, if the compensation is non-monetary, that description should include an estimate of its value.

The term "non-monetary compensation" includes compensation such as sales incentives, gifts, or trips that would be provided to associated persons if certain sales goals were achieved. Such non-monetary compensation should be recorded if directly related to sales. If sales would be counted toward achieving these goals, then a notation of the sales should be made regardless of whether that goal is actually achieved. Non-monetary compensation does not include items of little value distributed by the firm.

Paragraph (ii) of new Rule 17a–3(a)(19)[53] requires that firms maintain a record of all agreements pertaining to the relationship between each associated person and the broker-dealer, including a summary of each associated person's compensation arrangement or plan. Further, to the extent that compensation is based on factors other than remuneration on a per trade basis, the firm must make a record that describes the method by which compensation is to be determined.

It should be noted that the requirement under paragraph (ii) that a broker-dealer maintain a record of all agreements between itself and each associated person includes verbal agreements and records, such as commission schedules, which may change on a periodic basis.

The term "relationship," as used in paragraph (a)(19) of Rule 17a–3, solely refers to the employment or contractual relationship between the associated person and the broker-dealer. It would not relate to personal relationships unrelated to the firm's business.

F. Compliance With Requirements for Communications With the Public

New paragraph (a)(20) of Rule 17a–3[54] requires each firm to make a record documenting that the firm has complied with, or adopted policies and procedures reasonably designed to establish compliance with, applicable federal regulations and SRO rules which require that a principal approve any advertisements, sales literature, or other communications with the public.[55] This paragraph would apply to marketing materials, sales scripts, and other paper or electronic material, such as audio or video tapes, used by broker-dealers in communicating with the public. This paragraph, which is designed to allow State Securities Regulators to examine broker-dealers for compliance with SRO rules relating to communications with the public, does not establish a new source of supervisory responsibility. In addition, a broker-dealer has many options as to how it may create this record.[56]

The Commission did not adopt the portion of this rule as reproposed that referenced specific types of advertisements or sales literature. Instead, the Commission will defer to SRO rules as to which communications with the public must be approved by a principal of the firm.

G. Persons To Explain Records and Their Content

Paragraph (a)(21) of Rule 17a-3 requires a record listing, by name or title, all personnel at an office who, without delay, can explain the types of records the firm maintains at that office, and the information contained in those records. Commenters, particularly the States, indicated that this requirement is important because recordkeeping practices typically vary from firm to firm in ways ranging from format and presentation to the name of a record. Therefore, each firm must be able to promptly explain how it makes, keeps, and titles its records. To comply with this rule, a firm may identify more than one person and list which records each person is able to explain.

Because it may be burdensome for firms to keep this record current if it lists each person by name, a firm may satisfy this requirement by recording the

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[37] *See, e.g.*, NASD Rules 2310 and 2860(b)(16)(B), NYSE Rule 723, Chicago Board Options Exchange Rule 9.9, and Municipal Securities Rulemaking Board Rule G–19.

[37] 17 CFR 240.17a–3(a)(17)(i)(D).

[39] Sections 10(b) and 15(c) (15 U.S.C. 78*j*(b) and 15 U.S.C. 78*o*(c)). *See e.g., Hanley* v. *SEC*, 415 F.2d 589, 596 (2d Cir. 1969); *F.J. Kaufman and Co.*, 50 S.E.C. 164 (1989); *O'Connor* v. *R.F.Lafferty & Co.*, 965 F.2d 893 (10th Cir. 1992).

[40] 17 CFR 240.10b–5 and 17 CFR 240.15c1–2.

[41] *See supra* note 37.

[42] If a recommendation is made, a suitability obligation arises irrespective of the medium used to deliver that recommendation. For example, a broker-dealer can make a recommendation in person, on a website, via telephone, mail, or email. A broker-dealer also can recommend a security online regardless of whether that recommendation is attributable to a specific registered representative. Whether a broker-dealer has made a recommendation is a question that can only be answered by considering all of the facts and circumstances. (*See* "Suitability Hypotheticals," Report of Commissioner Laura S. Unger, Online Brokerage: Keeping Apace of Cyberspace, pp. 32–4. (Nov. 1999))

[43] 17 CFR 240.17a–3(a)(9).

[44] *See, e.g.*, Comment Letter of Salomon Smith Barney, pp. 3–4.

[45] This paragraph was proposed as paragraph (a)(17) of Rule 17a–3.

[46] This requirement is in addition to other recordkeeping requirements such as Rule 17a–4(b)(4), which requires firms to keep originals of all correspondence received. For example, if a broker-dealer firm received a written complaint regarding the firm itself, the firm would be required to keep that complaint under Rule 17a–4(b)(4). If the complaint related to a particular associated person, the firm would also be required to make a record of the complaint as to that associated person under Rule 17a–3(a)(18); however, the firm may keep one copy of the complaint to satisfy both Rules 17a–3(a)(18)(i) and 17a–4(b)(4).

[47] *See* 17 CFR 240.17a–4(b)(4), and NASD Rule 3110(d).

[48] This requirement expands on an existing interpretation of the Commission's financial responsibility rules and the Securities Investor Protection Act of 1970, which states that, for purposes of custody of securities, for a firm to qualify as an introducing firm with a lesser net capital requirement than a clearing firm, its customers must be treated as customers of the clearing firm. In addition, under that interpretation, the clearing firm must issue account statements directly to customers, and each account statement must contain the name, address, and telephone number of a responsible individual at the clearing firm whom a customer can contact with inquiries and complaints regarding the customer's account.

[49] See, e.g., Comment Letter from Lawrence M. Lowman, p. 1.

[50] *See supra* note 48; Exchange Act Release No. 31511 at note 21 and accompanying text, (Nov. 24, 1992), 57 FR 56973 (Dec. 2, 1992).

[51] See Comment Letters from the Discount Brokers, p. 7, and Donaldson, Lufkin & Jenrette, p. 10.

[52] The phrase "and the specific security," which appeared in the Reproposing Release, was not included in the Rule as adopted because it is redundant. The record "listing all purchases and sales of securities for which the associated person was compensated" must provide enough information to identify that purchase or sale to which the compensation was attributable.

[53] This Rule was reproposed as Rule 17a–3(a)(12)(ii) and Rule 17a–3(a)(12)(iii).

[54] This paragraph was reproposed as paragraph (a)(19) of Rule 17a–3.

[55] *See e.g.*, NASD Rule 2210(b) and NYSE Rule 472.

[56] *E.g.*, the record may consist of a principal's signature or initials on the communication, or a signed memo from the principal granting permission for use of the communication. Further, a firm may have policies and procedures designed to establish compliance with applicable federal regulations and SRO rules which require that a principal approve any advertisements, sales literature, or other communications with the public. Thus, records presently used to evidence compliance with SRO rules may also be used to fulfill this requirement.

persons capable of explaining the firm's records by either name or title.

H. Record Listing Principals of the Firm

New paragraph (a)(22) of Rule 17a–3 requires firms to make a record listing each principal of the firm responsible for establishing policies and procedures reasonably designed to ensure compliance with any applicable securities regulatory authority requirements that require acceptance or approval of a record by a principal. This requirement is unchanged from the reproposal, and is intended to assist securities regulators by identifying individuals responsible for designing a broker-dealer's compliance procedures and managing the firm.

I. Definition of Principal

Paragraph 17a–3(g)(2) defines the term "principal" to include any individual registered with a registered national securities association as a principal or branch manager of a member, broker or dealer, or any other person who has been delegated supervisory responsibility for the firm or its associated persons. By including any person who has been delegated supervisory responsibility in the definition of the term "principal," the rule has been modified from the reproposal to include the definitions of "principal" used by other securities regulatory authorities.

J. Definition of Securities Regulatory Authority

The definition of "securities regulatory authority" in paragraph (g)(3) of Rule 17a–3 is substantially similar to that in the Reproposing Release, except that State Securities Regulators are identified as "the securities commissions (or any agency or office performing like functions) of the States * * *"[57] mirroring the language that Congress used in NSMIA.

K. Miscellaneous

The Commission has not adopted reproposed paragraph (a)(20) of Rule 17a–3, which would have required firms to make a record as to each associated person listing chronologically all customer purchase or sale transactions for which the associated person entered the order or was primarily responsible. Commenters stated that the information required in this record would already be maintained in other records, although not necessarily in the chronological format that this paragraph would have required. The Commission also has not adopted reproposed paragraph (a)(23) of Rule 17a–3, which would have required a firm to make a record listing each office of the firm and whether that office had been designated as a State record depository, since firms need no longer designate a State record depository for any purpose. This proposed record also would have required firms to list each associated person working out of or storing records at each office. The Commission has not adopted this requirement because firms are required to make a record of similar information under new paragraph (ii) of Rule 17a–3(a)(12).[58]

IV. Office Records

The Reproposing Release would have required that broker-dealers make certain records for each local office and maintain copies of those records at the office to which the records relate. These requirements were designed to assist securities regulators when conducting sales practice examinations at particular offices. The Commission has adopted the requirements regarding the creation of these records substantially as reproposed, but has materially altered the alternatives for maintenance of those records.

Generally, State Securities Regulators supported a requirement that records as to a particular office be maintained at that office, even if only electronically. The State Securities Regulators stated, in their comment letters, that they had encountered excessive and costly delays when conducting examinations when records were kept at another office. In sum, they stated that although firms generally had the records available in local offices, the firms preferred to funnel all records requested by examiners through their centralized compliance departments in order to assure accuracy, anticipate any potential violations, review material for applicable privileges, and make a record of documents reviewed by regulators.[59] While the State regulators have the power to impose fines and penalties on firms that fail to timely produce records, the delays still result in unnecessary, wasted examination time at firms waiting for the records production. The delay is costly for regulators, particularly when they travel to remote areas to conduct surprise examinations at an office where they may spend numerous days awaiting the records.[60]

The broker-dealer commenters were strongly opposed to this requirement for two main reasons. First, they stated that the requirement to maintain copies of documents at all local offices would be costly and burdensome because they would need to create and maintain two sets of records. They stated that even with the flexibility of being able to maintain the records electronically, this requirement would be costly because many firms do not currently have computer systems capable of retaining and producing all the required records. Second, firms stated that maintaining records at all local offices would force them to decentralize their recordkeeping, which would potentially compromise their controls on recordkeeping and supervisory practices.

Requiring records to be maintained at each local office was the requirement most seriously disputed by the firms. The reproposal has been altered to allow a firm, rather than to maintain records at an office, to produce the records promptly at the request of a representative of a securities regulatory authority at the office to which the records relate or at such other place as is agreed to by the representative. These alternative methods for complying with paragraph (k) of Rule 17a–4 were added in response to comments that the requirement, as reproposed, would have forced firms to decentralize their recordkeeping systems and would have compromised their internal controls and supervisory practices.[61]

The Commission believes that the amendments to Rules 17a–3 and 17a–4 adopted today, which set forth, (i) the definition of "office," (ii) what records must be created as to each office,[62] and (iii) what records must be maintained at each office,[63] address the concerns of both regulators and broker-dealers.

[57] *Supra* note 7.

[58] New paragraph (a)(12)(ii) of Rule 17a–3 requires firms to make a record showing, for each associated person, every office where the associated person regularly conducts a securities business and certain other information.

[59] *See* Comment Letter from Citicorp, p. 3, "RRs in all local offices would have to be trained to do a function outside their current job responsibilities, namely to review material for applicable privileges and make records of documents reviewed by regulators."

[60] *See, e.g.*, Comment Letters from Arkansas Securities Department, pp. 1–3; Department of Financial Institutions, Commonwealth of Kentucky, p. 6; and Securities Division, State of Rhode Island and Providence Plantations, p. 1.

[61] This does not relieve broker-dealers from any other Federal or SRO requirements to maintain records at office locations. *See, e.g.*, NASD Rule 3110(d) which requires firms to keep at each Office of Supervisory Jurisdiction (defined at NASD Rule 3010(g)(1)), either a separate file of all written complaints of customers and action taken by the firm, or a separate record of such complaints and a clear reference to the files containing the correspondence connected with such complaint maintained in such office.

[62] 17 CFR 240.17a–3(f).

[63] 17 CFR 240.17a–4(k).

A. Definition of Office

For both creation and maintenance of records, the definition of "office" adopted by the Commission includes any location where an associated person regularly conducts business.[64] However, an office would not include a customer's office that an associated person may visit on a regular basis.

The Commission has also addressed concerns that arise when an associated person's residence is an office. Rule 17a–4(k) states that a broker-dealer is not required to produce records at an office that is a private residence, provided that (i) only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family,[65] regularly conduct business at the office; (ii) the office is not held out to the public as an office; and (iii) neither customer funds nor securities are handled at that office. Instead, Rule 17a–4(k) allows a broker-dealer to either maintain those records at some other location within the same State as that office as the broker-dealer chooses, or to promptly produce those records at an agreed upon location.

For purposes of paragraph (f) of Rule 17a–3[66] and paragraph (k) of Rule 17a–4,[67] in circumstances where an associated person works out of multiple offices, such as bank circuit riders, a firm may treat all the locations where the associated person regularly works as a single office.[68]

B. Records "As To" Each Office

New paragraph (f) of Rule 17a–3 requires firms to make and keep current, separately for each office, certain books and records that reflect the activities of the office.[69] It should be noted that 75% of broker-dealers have reported that they have no branch locations.[70] The definition of "office" may be broader and more inclusive than the definition of "branch," however.

The Commission removed the sentence, "This requirement may be satisfied by demonstrating that the data is maintained in a system which is capable of promptly generating records for each office upon request", because the requirement to either maintain the specified records at each location or produce them on the same day a request is made has been changed to allow firms to produce these records promptly.

C. Records To Be Maintained at Office Locations

There have been two major changes to new paragraph (k) of Rule 17a–4 from the reproposal. First, the requirement to maintain certain records at the office locations has been expanded from one year to two years. This was done to establish parity with the retention requirements for the separate sections as provided under paragraph (b) of Rule 17a–4.

Second, under paragraph (k) of Rule 17a–4, if a broker-dealer does not maintain records at an office, but instead chooses to produce the records upon request, the broker-dealer must produce the records "promptly."[71] The word "promptly" has deliberately not been defined in the rule. Generally, requests for records which are readily available at the office (either on-site or electronically) should be filled on the day the request is made. If a request is unusually large or complex, then the firm should discuss with the regulator a mutually agreeable time-frame for production.[72]

Based on the foregoing, the Commission has not adopted the reproposed provision of Rule 17a–4(k) that would have allowed firms to maintain records at a State records depository in lieu of maintaining the records at the office to which the records relate.

One commenter requested guidance on how this paragraph relates to a foreign office of a U.S. registered broker-dealer.[73] Under paragraph (f) of Rule17a–3, a broker-dealer must make certain records for a foreign office; however, a broker-dealer is not required to maintain or produce those records at the foreign office under paragraph (k). Instead, those records would be maintained at the broker-dealer's main office.

V. Rule 17a–4

A. General Record Retention Requirements

Paragraphs (a) and (b)(1) of Rule 17a–4 list certain records required under Rule 17a–3 that must be kept for six and three years, respectively. The amendments to these two paragraphs have been modified from the reproposal to remain consistent with the modifications to Rule 17a–3.

B. Retention of Communications

Paragraph (b)(4) of Rule 17a–4 previously required that each broker-dealer keep originals of all communications received and copies of all communications sent by the firm relating to its business as a broker-dealer, including inter-office memoranda and communications. With respect to memoranda, including e-mail messages, the Commission has stated that the content and audience of the message determine whether a copy must be preserved, regardless of whether the message was sent on paper or sent electronically.[74] The amendments to this paragraph adopted today will require firms to retain communications that are subject to SRO rules regarding "communications with the public" (such as advertising) as well, a requirement reproposed separately as paragraph (b)(10) of Rule 17a–4. This requirement is designed to provide State Securities Regulators with the ability to access these public communications records so they can enforce their laws relating to the form and use of public communications.

It should be noted that a written advertisement that is never released to the public would not be covered by this rule; however, a sales script that is used by an associated person when communicating with the public would be covered even if the script itself is not delivered to the public.

The requirement, as reproposed, that "any written procedures [a broker-dealer] uses for reviewing the communications received or sent" has been moved to new paragraph (e)(7) of Rule 17a–4, which requires firms to keep all compliance, supervisory, and procedures manuals, including any written procedures for reviewing communications.

[64] 17 CFR 240.17a–3(g)(1).

[65] The term "immediate family," as used in paragraph (k), should be interpreted to have the same meaning as it does in NASD IM–2110–1(*l*)(2).

[66] New paragraph (f) of Rule 17a–3 requires firms to make and keep current separately as to each office, the books and records required under various paragraphs in Rule 17a–3.

[67] New paragraph (k) of Rule 17a–4 requires firms to either keep certain records at each office or produce them at that office or at another agreeable location.

[68] Firms need not apply to or notify securities regulators as to which office it selects as the associated person's "office." However, pursuant to paragraph (a)(12)(iii) of Rule 17a–3, the firm must identify the office as such.

[69] The specific paragraphs of Rule 17a–3 that are included in this requirement are (a)(1), (a)(6), (a)(7), (a)(12), (a)(16), (a)(17), (a)(18), (a)(19), (a)(20), (a)(21), and (a)(22).

[70] Per *Schedule I* data filed by broker-dealers as of year-ending December 31, 1998. Pursuant to 17 CFR 240.17a–10, Broker-dealers are required to file *Schedule I*, which requires the reporting of general information designed to measure certain economic and financial characteristics.

[71] *Supra* note.

[72] Valid reasons for delays in producing the requested records do not include the need to send the records to the firm's compliance office for review prior to providing the records.

[73] *See* Comment Letter from A.G. Edwards & Sons, Inc., p. 8.

[74] Exchange Act Release No. 38245 (Jan. 31, 1997), 62 FR 6469 (Feb. 12, 1997).

C. Organizational Documents

The Commission has modified paragraph (d) of Rule 17a–4, which require a broker-dealer to maintain certain organizational records. Specifically, the Commission has added language to clarify that organizational records of legal entities not specifically delineated in the present rule[75] are still required to be preserved under this rule. Various State statutes use different terms to describe the legal entities that may be created under their rules and the organizational documents necessary to create those entities; accordingly, the Commission has included in this paragraph generic terms to describe the types of records that firms must keep. The Commission believes that generally broker-dealers that are not formed as corporations or partnerships are already keeping these types of records and that this amendment codifies current business practices. Similar to the amendment to paragraph (g)(3) of Rule 17a–3 noted above, the Commission has replaced the phrase "state securities jurisdictions and self-regulatory organizations" in the Reproposing Release with the term "securities regulatory authorities."

Under this paragraph, every broker-dealer is also required to maintain copies of its Form BD and all amendments thereto. To comply with this requirement with respect to amendments to Form BD, a broker-dealer is required to retain a copy of only those portions of the Form that were amended. The Commission believes that generally broker-dealers are already keeping these records and that this amendment codifies current business practices.

D. Account Record Information

New paragraph (e)(5) of Rule 17a–4 requires broker-dealers to retain account record information for six years. The six-year period begins either at the time the account is closed or when the information is replaced or updated. This provision will allow regulators to review account record information for at least the six years immediately prior to the examination or investigation. Broker-dealers generally maintain account record information for at least the life of the account to facilitate a number of business purposes, including suitability determinations and supervision of accounts and representatives.

[75] For instance, limited liability companies ("LLCs") would be covered.

E. Special Reports

New paragraph (e)(6) of Rule 17a–4 requires a firm to keep for three years a copy of all reports that a securities regulatory authority has requested or required a specific firm to create. Such special reports would include those reports that are requested or required under an order or settlement that requires the firm to produce the report as part of the terms of the order or settlement. The purpose of this paragraph is to clarify that these records must be kept and to provide guidance as to how long firms are expected to maintain these records.

This requirement is not designed to limit the ability of securities regulatory authorities to obtain records that are otherwise required to be created and maintained, such as records of internal communications required to be maintained under paragraph (b)(4) of Rule 17a–4.

F. Compliance, Supervisory and Procedure Manuals

The Commission is also adopting, as reproposed, new paragraph (e)(7) of Rule 17a–4. This paragraph requires firms to retain a copy of all compliance, supervisory, and procedures manuals describing the firm's policies and practices with respect to compliance and supervision, as currently in use and for three years after the termination of the use of each manual, including any updates, modifications, and revisions to the manuals. This will ensure that securities regulators are able to obtain information as to what policies and procedures were in place at a given time.

G. Exception Reports

New paragraph (e)(8)(ii) of Rule 17a–4 requires firms to maintain copies of reports produced to review for unusual activity in customer accounts (commonly referred to as "exception reports"). This paragraph does not obligate broker-dealers to create exception reports. Exception reports would include reports that identify exceptional numerical occurrences, such as frequent trading in customer accounts, unusually high commissions, or an unusually high number of trade corrections or cancelled transactions. These reports will help securities regulators discover sales practice problems such as churning, unauthorized trading, or other indications of micro-cap fraud, and will also provide securities regulators with information as to what type of data may have been available to the broker-dealer.

In lieu of retaining copies of the reports, a member, broker or dealer may choose to promptly re-create the reports upon request by a securities regulatory authority. If the broker-dealer elects to re-create exception reports instead of maintaining a copy of the report, but the firm has changed its systems so that it cannot re-create the same report, the broker-dealer may provide a copy of the report in the format presently available using historical data,[76] but must also provide a record explaining each system change that affected each report.[77] Lastly, if the firm is unable to re-create the report in any format for the most recent 18 months, due to changes, for example, in a database, software, or physical system, the rule provides that the broker-dealer may instead provide a record of the parameters that were used to generate the report for the time period specified by the representative of the securities regulatory authority. The Commission provided these alternatives in order to make this rule less burdensome on broker-dealers.

Many firms commented that this requirement would be potentially counter-productive because, if firms are required to retain copies of all reports that they create, they would create fewer reports. However, the Commission believes that broker-dealers will continue to create those exception reports that are necessary to adequately supervise their business, and that retaining these reports will increase the efficiency of examinations by regulators and may reduce the examination burden on broker-dealers.

VI. Effective Date

The final rules adopted today shall become effective May 2, 2003.

VII. Technical Amendments

A. Electronic Storage Media

On February 5, 1997, the Commission amended Rule 17a–4 to allow broker-dealers to employ, under certain conditions, electronic storage media to maintain its records.[78] The Commission proposed and is now adopting technical amendments to that rule.[79] The

[76] For example, if the original report includes customer name, account number, social security number, and transactional information, however the report that can be re-created at a later date does not include social security numbers, the firm should provide the re-created report to the regulator with an explanation that although social security numbers appeared on the original report, the firm is unable to re-create the report including that information.

[77] This includes changes to hardware, software, or changes to the database used to produce the exception reports.

[78] Exchange Act Release No. 38245 (Feb. 5, 1997), 62 FR 6469 (Feb. 12, 1997) ("Electronic Storage Media Release").

[79] 17 CFR 240.17a–4(f).

Electronic Storage Media Release requires a broker-dealer that employs micrographic or electronic storage media to be ready at all times to immediately provide a facsimile enlargement upon request by the Commission or its representatives.[80] It also requires a broker-dealer that exclusively uses electronic storage media to fulfill some or all of its record preservation requirements to contract with a third party download provider that will file undertakings with the broker-dealer's designated examining authority indicating that the download provider will furnish promptly to the Commission, its designees or representatives, the information necessary to download information kept on the broker-dealer's electronic storage media.[81] Because SROs and State Securities Regulators are neither representatives nor designees of the Commission but, to the extent that they have jurisdiction over the broker-dealer serviced by the third party download provider, are organizations that should have access to facsimile enlargements and download information, the Commission is adopting these technical amendments to provide them with access to these records. The Commission is also adopting these technical amendments so that when broker-dealers use the undertaking option under Regulation ATS, SROs and State Securities Regulators will have access to those records.[82]

B. Other Technical Amendments

The Commission is adopting amendments to Rule 17a-3(a)(12)(i) to update the list of stock exchanges for which an associated person's application for registration or approval may be used to satisfy the requirements under that paragraph. This amendment is a codification of current practices. The Commission is also adopting amendments to the language throughout Rules 17a-3 and 17a-4 that eliminate masculine references, and replace them with gender neutral references.

VIII. Costs and Benefits of the Amendments

In the Reproposing Release, the Commission requested comment on the costs and benefits associated with the reproposed rules and rule amendments.[83] Of the comments received by the Commission, fifty-seven commenters discussed the benefits and costs associated with the reproposal. Of those commenters, thirty were broker-dealers,[84] twenty-two were States,[85] two were consumer groups,[86] two were other groups,[87] and one was an individual.[88] Most of the commenters (including all of the broker-dealer commenters) argued that the costs outweighed the benefits of the reproposed amendments and that the cost estimates provided in the Reproposing Release were too low. Although most of those arguments were general in nature, twenty-three commenters specifically referenced paragraph (a)(17)(i) of Rule 17a–3,[89] and fifteen commenters specifically referenced paragraph (k) of Rule 17a–4.[90] All the States and the consumer groups that commented argued that most broker-dealers presently maintained most, if not all, the records required under the reproposed amendments, and that the benefits, although difficult to quantify, justified any costs which might be incurred.

One commenter stated that well-organized firms are less likely to experience the potentially catastrophic losses that result from serious securities violations.[91] Many State Securities Regulators indicated in their comment letters that their agencies generally found that firms with inadequate books and records were more likely to have other problems, such as inadequate supervisory systems and selling-away issues. According to the NASD's Office of Dispute Resolution, $126 million and $76 million were awarded by NASD arbitrators in 1999 and 2000 respectively in customer claimant cases, of which $48 million and $21 million respectively constituted punitive damages.[92] The vast majority of claims filed for arbitration with the NASD's Office of Dispute Resolution during this time period related to sales practice issues. In addition, two industry participants estimated that they presently pay outside counsel approximately $50 million and $25 million respectively each year to deal with sales practice complaints.[93]

Many States indicated that they believed the amendments would impose only minimal additional costs to broker-dealers because, in their experience, many broker-dealers already maintain the records required by the amendments in order to comply with SRO rules, State laws that applied prior to NSMIA, or simply to properly manage costs and supervise offices. Further, some States indicated that they believed that broker-dealers were exaggerating the potential costs of the reproposed amendments.[94]

In fact, the States of Connecticut[95] and Florida[96] conducted special reviews, in conjunction with their examination programs, to determine the extent to which broker-dealers already maintained the records required under the Reproposal at office locations. The State of Connecticut concluded that its review "overwhelmingly indicate[d] that all the books and records that would be required by the re-proposed

[80] *See* 17 CFR 240.17a–4(f)(3)(i).

[81] *See* 17 CFR 240.17a–4(f)(3)(vii).

[82] Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998).

[83] *See supra* note 9, at p. 54411.

[84] *See* Comment Letters from Mutual Service Corporation, p. 6; Titan Value Equities Group, Inc., pp. 2 and 4; USAA, pp. 2 and 6; MetLife, p. 4; A.G. Edwards and Sons, Inc., p. 6; MONY, p. 4; Capital West, p. 2; Comerica Securities, p. 2; Nationwide Investment Services Corporation, p. 2; Edward Jones, pp. 1 and 3; Advest, p. 1; Salomon Smith Barney, pp. 1 to 2; NyLife Securities, pp. 6 to 7; HD Vest, p. 2; American Express Financial Advisors, pp. 2 to 5; First Union, pp. 3 to 4; Charles Schwab, pp. 3 to 4; MML Investors Services, Inc., pp. 2 to 4; National Planning Corpcration, p. 1; Pumphrey Securities, p. 2; Citicorp Investment Services, pp. 2 to 3; Discount Brokers, pp. 4 to 5; M & T Securities, pp. 1 and 2; Donaldson, Lufkin & Jenrette, p. 6; Investment Management & Research, Inc., p. 4; John Hancock Distributors, Inc., pp. 3 to 4; Southwest Securities, p. 2; the Securities Industry Association, p. 10; Merrill Lynch, pp. 1, 6 to 7, and 11; and Raymond James, p. 5.

[85] *See* Comment Letters from Michigan, pp. 1 to 2; Idaho, pp. 1 and 4; Kansas, pp. 1 to 2; Delaware, pp. 1 to 2; Colorado, p. 2; North Dakota, p. 1; Ohio, p. 1; Texas, pp. 1, 2 to 3, and 6; Hawaii, pp. 1 to 2; Rhode Island, pp. 1 to 2; New Hampshire, pp. 1 and 2; Nebraska, p. 1; Utah, pp. 1 and 3; NASAA, pp. 3 to 5 and 22; New York, pp. 1 and 3; Virginia, pp. 1 to 3; New Jersey, pp. 2 to 7; Washington, pp. 2 and 6; Arkansas, pp. 1, 3, and 5; New Mexico, p. 1; North Carolina, pp. 1 to 2; and Montana, pp. 1, and 3 to 5.

[86] *See* Comment Letters from AARP, p. 2; and the Consumer Federation of America, pp. 2 to 3.

[87] *See* Comment Letters from American Council of Life Insurance, pp. 12 to 13; and International Association of Financial Planning, p. 6.

[88] *See* Comment Letter from Thomas Koutris, p. 1.

[89] This paragraph provides that broker-dealers must obtain certain information relating to the accounts of natural customers, and that customer account records must be updated regularly.

[90] In the reproposed rule this paragraph provided that certain records had to be maintained at the local office, or that they had to be produced at the local office to which they related on the same day a request for those records was made by a representative of a securities regulatory authority.

[91] *See* Comment Letter from State of Virginia, pp. 1 to 3.

[92] Per NASD Dispute Resolution, Inc. website: www.nasdadr.com/statistics.asp.

[93] It should be noted that these estimates do not include any internal compliance, operational, and/or legal costs incurred by these firms in dealing with these complaints.

[94] *See, e.g.*, Comment Letter from the State of New Jersey, p. 5.

[95] *See* Second Comment Letter from State of Connecticut. The State of Connecticut performed examinations of forty-nine office locations of twenty-three broker-dealers in five States. Seventeen of these offices had two or less associated persons working there. In addition, the State reviewed the most recent 100 examinations it had performed, and as well as investigatory materials from the prior two years wherein subpoenas were issued to obtain broker-dealer records.

[96] *See* Second Comment Letter from NASAA. The State of Florida performed examinations on 19 broker-dealers.

rule proposal are, at the present time, being maintained in offices within Connecticut and similarly outside the state." Further, Connecticut stated, "During this review process the records were immediately available for inspection upon request," and "the types of records required by the reproposed rule would not be burdensome in that the firms retained substantially more records than required." Connecticut also stated, "[t]he retention schedules listed in the firms' compliance [manuals] were consistent with the requirements under the reproposed rule." Florida stated, "[t]he reviews indicated that based on records maintained most branch offices met or exceeded the records requirement for the [re-]proposed rule, and "[a] vast majority of the branch offices maintained the records on-site for periods of at least 2 years (and in some cases up to 6 years)." Further, Connecticut stated, "[t]he firms' recordkeeping requirements did not vary from location to location or even state to state because they were required by the firms' own compliance manuals," and "[i]n certain instances, the firms' compliance manuals indicated that these additional records were necessary to adequately supervise its branch operations." Similarly, Florida stated, "[m]anagement of several firms visited reported that record creation and retention is a nationwide requirement; the same for all offices in all states, not specific to the state of Florida * * * [t]his information was verified by the firms' Operational/Supervisory Compliance Manuals."

A number of the States contend that investors are defrauded of millions and millions of dollars every year as a result of sales practice violations by broker-dealers.[97] Further, Commission staff found through "The Large Firm Project" [98] "25% of the branch office examinations conducted in this project resulted in referrals for enforcement investigation and possible disciplinary action," and "[t]he examinations also revealed that some branch office managers were not implementing firm procedures adequately," and recommended that "the Commission should develop better means of identifying sales practice problems." [99] The enhanced recordkeeping requirements would help make available critical information necessary for securities regulatory authorities to discover and take appropriate action for various securities violations, particularly sales practice violations. The cost to securities regulatory authorities to obtain the same information and evidence that otherwise would be available by these rules from other methods would be high. In addition, the possibility exists that government regulatory authorities would be unable to obtain certain information by any other means if the information is not required to be kept. Investigatory delays often lead to additional investor losses. The State of New Jersey contended that these delays could lead to an erosion of public confidence in the industry, which can be exacerbated by the public's belief that securities regulatory authorities lack the ability to properly oversee broker-dealers and enforce securities regulations.[100] NASAA commented that lack of public confidence in the marketplace can lead to an inability of issuers to raise capital.[101]

Most broker-dealer commenters indicated that two of the reproposed amendments would cause them to incur substantial additional costs. These two amendments were paragraph (k) of Rule 17a–4, which required that records be maintained at local offices or that firms produce those records at the local office on the same day a request for records was made by a regulator at that local office, and paragraph (a)(17)(i) of Rule 17a–3, which required that a broker-dealer provide customers with a copy of their account record at specified times. As a result of comments received in response to the Reproposing Release, the Commission substantially modified those two amendments as described above.

The only other paragraphs broker-dealers specifically identified as resulting in increased costs were (a)(6) and (a)(7) of Rule 17a–3, which require that brokerage order tickets include the time of receipt, and that dealer order tickets include a notation of any modifications to an order. The Commission addressed some of these comments by modifying paragraph (a)(6) to provide an exemption for mutual fund and variable contract orders processed on a subscription-way basis. Further, for certain securities, the receipt time and notation of modification are already required under SRO rules.[102] The only cost to firms resulting from these paragraphs relate to assuring that processes for recording this information will record the information for all orders that are not exempt and not just those orders covered by SRO rules.

A few commenters attempted to provide alternative cost estimates for use in calculating the costs of the amendments. Some firms provided specific numbers, but provided no explanation as to the source of their estimates or their reason for believing that they would be more accurate than the Commission's estimates. In addition, certain costs are no longer relevant because the Commission substantially modified the amendments in response to comments. Accordingly, after consideration of all of the circumstances, the Commission has altered its cost estimates to reflect the fact that changes were made to the amendments in response to the comments received. Further, where the amendments were not altered significantly, the Commission has substantially increased estimates of costs that commenters argued were significantly underestimated.

The Commission estimates that the aggregate cost of these amendments will be approximately between $78.2 million and $84.3 million in the first year, and between $52.5 and $58.6 million per year thereafter (depending on what estimated postage cost is included in the calculations). Dollar costs relating to specific amendments are detailed below.

For purposes of this cost-benefit analysis, the amendments to Rules 17a–3 and 17a–4 are divided into three groups: (i) Those pertaining to the maintenance of office records and alternatives to these requirements; (ii) those pertaining to the periodic updating of customer information; and (iii) all other new requirements covered by the amendments.

A. Changes To Rule 17a–4, Including Maintenance of Office Records and Alternatives To These Requirements

As amended, Rule 17a–4 requires broker-dealers to maintain certain records at each office. As discussed above, new Rule 17a–4(k) was modified from the reproposal to provide broker-dealers with the alternative of "promptly" producing certain records pertaining to a particular office at that office or at a mutually agreeable alternative location. This modification should significantly reduce the compliance costs associated with the amendments.

The amendments standardize the amount of time broker-dealers must maintain certain records, and may thereby increase the amount of time these records are kept by certain firms. Broker-dealers generally maintain these records already to comply with Federal laws or regulations, SRO rules, or in the normal course of business. These records include, (i) information relating to the principals responsible for reviewing and updating policies and procedures, (ii) copies of Forms BD, BDW and amendments thereto, (iii) copies of compliance, supervisory, and procedures manuals, (iv) customer account records, (v) order ticket information, (vi) records relating to compensation of associated persons, (vii) evidence of compliance with SRO advertising and sales literature rules, (viii) exception reports, and (ix) specialized reports produced pursuant to an order or settlement.

The amendments will also standardize the type of records that must be kept by broker-dealers and the manner in which those records must be produced during examinations. Before NSMIA, States had various books and records requirements. Although these requirements were similar to Commission and SRO requirements, differences existed that broker-dealers had to track and comply with. As one commenter stated, "the cost savings to industry of moving from compliance in the pre-NSMIA days with a variety of State laws to a new uniform should be equally substantial and should more than make up for any [additional] burden imposed by the [amendments]." [103] The uniformity provided by NSMIA and these amendments to Rules 17a–3 and 17a–4 should result in significant cost savings to broker-dealers that operate in multiple jurisdictions.

1. Benefits

The amendments should result in increased efficiency and effectiveness of broker-dealer examinations, especially with respect to small offices. Increasing the efficiency of examinations tends to decrease the costs incurred by both regulators, whose staff spends time conducting examinations, and broker-dealers, whose personnel may be inconvenienced for the period the examiners are present in their offices. One State estimated that the average cost for them to perform an office examination was $1,300 to $1,500 per day.[104] Another State suggested that a local office with well organized records normally takes 2 to 3 days to complete, but that an office with incomplete records takes an additional 2 or more days.[105] While average costs and time periods may vary from State to State, their operations tend to be similar and the Commission expects the amendments to reduce the time and costs of State securities examinations. This will also allow regulators to identify abusive practices earlier during inspections and perform more targeted examinations. In addition, broker-dealers should benefit by having their operations interrupted for shorter time periods. Costs of examinations may also be further reduced due to the uniformity of the recordkeeping provided by the amendments, because regulators and broker-dealers will know what records the firms should have on hand.

2. Costs

The amendments were drafted to permit flexible methods for the creation and maintenance of records in order to reduce the burdens on broker-dealers. This gives broker-dealers the flexibility to choose the least costly method to comply with the rules based upon their present processes and systems capabilities.

The Commission believes that the amendments to Rule 17a–4 will not impose significant cost burdens because, in order to comply with federal laws or regulations, SRO rules, or in the normal course of business, broker-dealers already maintain most of the records specified in the amended rule. Similarly, broker-dealers already are required to provide regulators with books and records on demand. The Commission estimates that the amendments to Rule 17a–4 could result in additional costs for some broker-dealers who do not presently maintain certain items for the prescribed periods of time or in a manner where they can be easily segregated by office. On average, the Commission estimates these additional costs incurred by each broker-dealer to ensure compliance with the amendments to Rule 17a–4 to be approximately $405.00 [106] per year, resulting in an overall cost to the industry of about $2.9 million per year.[107]

Also, as mentioned previously, the State of Connecticut concluded in its study that, "the types of records required by the re-proposed rule would not be burdensome in that the firms retained substantially more records than required." [108]

B. Periodic Updating of Customer Account Record Information

Paragraph (a)(17) of Rule 17a–3 requires broker-dealers to obtain additional account record information. Present federal and SRO rules require that firms obtain and maintain that same information in many circumstances,[109] and many broker-dealers presently obtain and maintain this information as a prudent business practice to avoid disputes with customers, or for other business reasons.

The amendments also require that broker-dealers send account record information [110] to customers for verification within thirty days of account opening and at least every thirty-six months thereafter [111] and to require that broker-dealers provide customers with certain account record information when changes are made.[112]

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[97] Four States provided specific information regarding investor losses. Illinois indicated (in its Comment Letter, p. 2) that over the past 8 years, 29 enforcement cases were brought in which Illinois investors lost over $38.9 million dollars. Kansas indicated (in the attachment to its Comment Letter) that, with respect to cases they have brought over the past ten years, Kansas customers have lost over $6.4 million dollars. Ohio indicated (in its Comment Letter, p. 3) that in one particular case Ohio investors lost over $60 million dollars. Lastly, Connecticut indicated (in its Comment letter, p. 2) that, with respect to cases they have brought where the investors' relationship was established through small offices, Connecticut investors have lost over $12 million.

[98] Report by the Division of Market Regulation and the Division of Enforcement, U.S. Securities and Exchange Commission, *The Large Firm Project: A Review of Hiring, Retention and Supervisory Practices* (May 1994).

[99] *Id.*, at pp. 5 and 7.

[100] *See*, Comment Letter from the State of New Jersey, p. 3.

[101] *See*, Comment Letter from NASAA, pp. 7–8.

[102] *E.g.*, the NASD's OATS rules, and NYSE rules 123 and 410A.

[103] *See*, Comment Letter from the Consumer Federation of America, p. 3, note 4.

[104] *See* Comment Letter from State of Michigan Department of Consumer & Industry Services, p. 1.

[105] *See* Comment Letter from State of Texas' State Securities Board, pp. 2–3.

[106] The Commission estimates that these amendments to Rule 17a–4 will take broker-dealers an additional four hours each per year. In the Reproposal the Commission estimated that these amendments would take an additional eight hours. Since the amendments being adopted today allow broker-dealers the option of not maintaining records at each office or producing records to the office to which they relate on the same day they are requested, the original estimate was reduced by one-half. The Commission believes that firms will have senior compliance personnel ensure compliance with these amended rules. According to the Securities Industry Association ("SIA") *Management and Professional Earnings 2000* report, Table 051, the hourly cost of a Compliance Manager + 35% overhead is $101.25. ($101.25 × 4)=approximately $405.00 for each respondent, per year.

[107] ($405.00 per respondent × (7,217 broker-dealers)=approximately $2.9 million per year.

[108] *Supra* at note 95 .

[109] 17 CFR 240.17a–3(a)(9), NASD Rules 2310(b), 3110(c) and IM–2860–2, and NYSE Rules 405, 407, 408, 410A, and 721.10.

[110] Including customer name, address, telephone number, employment status, annual income, net worth, and the investment objectives for the account.

[111] The Commission originally proposed that broker-dealers verify customer account information at least once each year (*See* Proposing Release), however this was modified and reproposed as once every thirty-six months in the Reproposal based upon comments received from broker-dealers who contended that it would be too costly to send account information to customers yearly.

[112] Broker-dealers must furnish notification of a change in the name or address information to the

Continued

Many broker-dealers already send customers notification of address changes,[113] and some also send a copy of a customer's new account form to the customer when an account is opened.[114] While there is presently no requirement to send a copy of the customer account record at least once every 36 months to verify the information, broker-dealers are required to keep their records current.[115]

1. Benefits

The amendments should benefit broker-dealers by assuring that they have up-to-date information when making investment recommendations and reviewing suitability of certain transactions or investment strategies. Further, both broker-dealers and their customers will benefit by assuring that there is mutual understanding of the customer's financial position and objectives for the account. Indeed, requiring broker-dealers to update customer account records may assist less well managed firms in better supervising their operations to identify potential problems before they lead to regulatory or legal exposure and monetary losses.

Moreover, the amendments have been modified to exempt corporate accounts, inactive accounts, and accounts not requiring a determination of suitability. These changes reduce the total number of accounts covered by the updating requirements by over 25,000,000.[116]

2. Costs

The requirement to send account record information to customers will cause firms to incur costs to update their processes, and, with respect to the individual mailings, will add preparation expenses and additional postage charges. Further, firms will incur additional costs to update account information when customers notify the firm that their account record information has changed. Because broker-dealer processes, systems capabilities, and customer bases vary so widely, it is difficult to provide an estimated cost with which all parties will agree; however, the Commission estimates that for each of the 23,500,000 accounts to which a copy of the account record must be sent each year,[117] broker-dealers will spend an average of approximately 3.28 minutes[118] (including time for processing and any updating) costing between $1.36 and $1.62 per piece,[119] including postage. Thus the aggregate cost of Rule 17a–3(a)(17) is estimated to be between $32 million and $38.1 million (depending on what estimated postage cost is included in the calculations). In addition, the Commission estimates that all broker-dealers will, on average, incur a one-time cost of approximately $312.00 each[120] to update their forms, resulting in an aggregate cost of approximately $2.25 million.

As described more fully below, the Commission estimates that large broker-dealers (broker-dealers having over 100,000 accounts) will, on average, incur startup costs and ongoing costs to purchase and maintain additional equipment and develop systems of $.31 per account and $.25 per account respectively. Based upon the comment letters,[121] the Commission believes that the additional costs for smaller broker-dealers is included in the hourly burden costs delineated above.

Two large broker-dealers estimated the start-up costs of purchasing equipment and modifying systems to range from $1,000,000[122] to $1,300,000.[123] These two firms had a total of approximately 7,500,000 accounts which appeared to be subject to the updating requirement. The start-up costs per account, based upon these figures, is approximately $0.31 (($1,000,000 + $1,300,000)/7,500,000 accounts). It is important to note that the firms' estimates were based upon the assumption that they would have to update all of their accounts. Since the amendments adopted today provide an exemption for corporate accounts, inactive accounts, and accounts for which no suitability determination must be made, the actual costs will probably be much lower. These two firms further estimate that ongoing costs for equipment and systems development would range from $300,000[124] to about $1,600,000[125] per year. The ongoing costs per account would be $0.25 per account (($300,000 + $1,600,000)/7,500,000 accounts). Therefore, the total additional start-up and ongoing costs to obtain equipment and develop systems for these two large firms would be $0.56 per account ($0.31 + $0.25).

Of the 70,500,000 accounts, 68,385,000 (97%) belong to large broker-dealers that have more than 100,000 accounts, therefore the total start-up costs for large broker-dealers to purchase equipment and develop their systems is about $21.2 million (68,385,000 × $0.31). Similarly, the ongoing equipment and systems development costs for large broker-dealers would be about $17.1 million per year (68,385,000 × $0.25).

C. Other New Requirements Covered by the Amendments

Paragraphs (a)(12) and (a)(19) of Rule 17a–3 require broker-dealers to keep certain records regarding each associated person, including all agreements pertaining to the associated person's relationship with the broker-dealer and a summary of each associated person's compensation arrangement,[126] a record delineating all identification numbers relating to each associated person,[127] a record of the office at which each associated person regularly conducts business,[128] and a record as to each associated person listing transactions for which that person will be compensated.[129] The Commission believes that broker-dealers generally create and maintain these records already under prudent recordkeeping procedures.[130] The list of transactions for which each associated person will be compensated can be created at the time of an examination.

Paragraph (a)(18) of Rule 17a–3 requires broker-dealers to keep a record relating to written customer complaints and maintain a record of whether customers were provided with an address where they should direct complaints. Firms may, instead of creating a separate record of complaints, simply maintain a copy of each complaint, along with a record of the disposition of the complaint.

Paragraphs (a)(6) and (a)(7) of Rule 17a–3 have been amended to require that broker-dealers also record the identity of the associated person responsible for an account and the identity of the person who accepted the order, and whether the order was entered pursuant to discretionary authority. In addition, the amendment to paragraph (a)(6) requires that firms record the time an order was received from a customer, and the amendments to paragraph (a)(7) require that firms make a record of any modifications to an order. Paragraph (a)(6) now contains an exception providing that, for transactions done on a "subscription-way" basis, where an application or subscription agreement is sent to the issuer in place of an order ticket, broker-dealers may keep the application or subscription agreement in place of the order ticket. In addition, SRO rules already require that firms record and maintain certain of this information,[131] and firms, to assist in their supervision of the activities of their associated persons and to assure that commissions are properly paid, already record the identity of persons as required under the amendments.

The amendments also require broker-dealers to make records indicating that they have complied with applicable regulations of certain securities regulatory authorities,[132] listing persons who can explain the information in the broker-dealer's records,[133] and listing principals who are responsible for establishing compliance policies and procedures.[134] The Commission believes that these amendments will cause broker-dealers to incur only minimal additional costs. Firms presently maintain records to evidence compliance with SRO and other rules, they presently maintain lists of principals or branch managers responsible for supervising each of their offices under other SRO rules, and they maintain lists of associated persons operating out of each office location. Firms must, as part of their supervisory system, identify principals responsible for reviewing the firm's procedures and taking action to achieve compliance with applicable securities laws, regulations and rules.[135]

1. Benefits

The records required by these sections are either presently required under other federal laws or rules or SRO rules or currently maintained by many firms as a prudent business practice. These amendments codify current recordkeeping practices and make clear what records broker-dealers may be required to provide to State and other regulators. These records are expected to assist firms in better supervising their operations and identifying potential problems before they lead to regulatory or legal exposure and monetary losses.

2. Costs

The Commission has endeavored to codify present broker-dealer business practices in these amendments and has adjusted the amendments based upon comments received in response to the Proposal and Reproposal, as discussed above. Thus, these amendments are not expected to change market or industry behavior significantly. For example, firms are presently required to maintain copies of all communications under Exchange Act Rule 17a–4(b)(4), and certain SRO rules require that members maintain copies of all written complaints and a record of the actions taken by the broker-dealer with respect to each complaint.[136] Therefore, the Commission believes that amending Rule 17a–3 to require this information will not cause broker-dealers to incur any additional costs. Similarly, the Commission does not believe that the amendments to Rules 17a–3(a)(6) and 17a–3(a)(7) will cause any additional cost.

Nevertheless, broker-dealers may incur costs in assuring that their present practices comply with the amendments. For example, the Commission believes that the requirement to provide customers with an address where they can send complaints will cause firms to incur a one-time cost of approximately

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customer's old address, and must furnish a copy of new account record information to the customer if some other information component is changed.

[113] *See e.g.*, Comment Letter from Raymond James Financial, Inc., p. 4.

[114] *See e.g.*, Comment Letter from Investment Management & Research, Inc., p. 4.

[115] *Supra* note 1.

[116] *See infra* note 117.

[117] Broker-dealers reported, in their 12/31/00 *Schedule 1* filings (required to be filed pursuant to 17 CFR 240.17a–10), that they maintained a total of 97,600,000 customer accounts. The Commission estimates that at least 27,100,000 of these accounts are excluded from the provisions of Rule 17a–3(a)(17) because they are either not accounts of natural persons, inactive, or accounts for which the broker-dealer does not have a suitability requirement (the Commission arrived at this number using estimates provided by the firms, in their comment letters and otherwise, as to how many of their accounts would fit into one or more of these categories. *See* Rule 17 CFR 240.17a–3(a)(17)(i)(D)). Accordingly, the total number of accounts which would need to be contacted for updating is 70,500,000 every three years. 70,500,000/3 = 23,500,000 per year.

[118] Of the 23,500,000 accounts to which a copy of the account agreement must be sent each year, 22,975,000 (or 97%) of those accounts are attributable to 70 large broker-dealers which maintain over 100,000 customer accounts. Based upon the comment letters and other communications, large broker-dealers are more automated and small broker-dealers have more manual processes. The estimated additional time to send out customer account information is 1½ minutes per account for large broker-dealers and 7 minutes per account for small broker-dealers. The estimated number of customers who will provide updated account record information is 4,700,000 (or 20% of customers to which notification is sent—this estimate is based on a comment letter sent by Merrill Lynch) (4,559,000 the 4,700,000 are estimated to be maintained at large broker-dealers). The estimated time to update these account records is 5 minutes per account record for large broker-dealers and 10 minutes per account for small broker-dealers, and the estimated time to send updated account record to customer to notify of change is 1½ minutes for large broker-dealers and 7 minutes for small broker-dealers. The estimated number of customers who will change their account record without being prompted by a mailing is 3,525,000 (3,419,250 of which are maintained at large broker-dealers), and the estimated time to send updated account record information to those customers is 1½ minutes per account for large broker-dealers and 7 minutes per account for small broker-dealers. Thus it would take approximately 2.25 minutes per account contacted each year to send account records (((22,795,000 × 1½) + (705,000 × 7)) + ((4,559,000 × 1½) + (141,000 × 7)) + ((3,419,250 × 1½) + (105,750 × 7)))/23,500,000 accounts contacted yearly. In addition, it would take approximately 1.03 minutes per account contacted each year to update the account records (((4,559,000 × 5) + (141,000 × 10))/23,500,000 accounts contacted yearly. In total, the Staff estimates that it would take 3.28 minutes per account contacted each year for processing and any updating.

[119] The estimated total additional hours to provide customers with account record information is 880,369 hours ((((22,795,000 × 1½) + (705,000 × 7)) + ((4,559,000 × 1½) + (141,000 × 7)) + ((3,419,250 × 1½) + (105,750 × 7)))/60 minutes). The estimated total additional hours to update customers accounts is 403,417 hours (((4,559,000 × 5) + (141,000 × 10))/60 minutes in an hour). The hourly wage of the average person who would be providing customers with account record information is $22.70 per hour (per the SIA *Report on Office Salaries In the Securities Industry 2000*, Table 082 (Retail Sales Assistant, Registered) and including 35% in overhead charges). The hourly wage of the average person who would be updating account record information is $25.90 per hour (per the SIA *Report on Office Salaries In the Securities Industry 2000*, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Thus the aggregate cost of these hours is about $30.4 million ((880,369 hours × $22.70) + (403,417 hours × $25.90)). The estimated additional cost of paper, printing, and postage to provide this information to customers is between $.05 and $.244 per record sent, or between $1.6 million and $7.7 million (($.05 or $.244) × (23,500,000 + 4,700,000 + 3,525,000)). Yielding a total cost per record sent of between $1.36 and $1.62 (($30.4 million + ($1.6 million or $7.7 million))/23,500,000 records sent per year).

[120] It is estimated that it will take firms 2 hours each, on average, to update their forms to include information regarding the meaning of investment objective terms. The Commission believes that firms will have an attorney perform this task. According to the SIA *Management and Professional Earnings 2000* report, Tables 107 (Attorney) and 108 (Compliance Attorney), the hourly cost of an attorney + 35% overhead is $156.00 per hour. ($156.00 × 2) = approximately $312.00 per broker-dealer.

[121] One small broker-dealer stated, "smaller firms lack the automation to do this type of action" " " without additional personnel," (*See* Comment Letter from Titan Value Equities Group, Inc., p. 2) another stated, "[w]e do not have electronic account records," (*See* Comment Letter from Capital West Securities, Inc., p. 2) and another stated, "for most firms (the) initial identification process would be manual" and "compiling the account record to send would require" " " pulling out a paper file for the account and making photo copies of the documents or pulling up the account on a computer system and printing out the required account information screens." (*See* Comment Letter from Comerica Securities, p. 2.) No smaller broker-dealer provided information regarding any increased equipment or systems development costs.

[122] *See* Comment Letter from Morgan Stanley Dean Witter, p. 4.

[123] *See* Comment Letter from Merrill Lynch, p. 7 ($630,000 + $370,000 + $300,000).

[124] *See* Comment Letter from Dean Witter, p. 4.

[125] *See* Comment Letter from Merrill Lynch, p. 7. Merrill Lynch's estimate that they would spend $3.8 million for ongoing costs was reduced to account for the fact that the Commission has included costs to send account records to customers, costs to update customer account records, costs to send notification of updates to customers, and postage costs, which are included in Merrill's $3.8 million figure, elsewhere.

[126] 17 CFR 240.17a–3(a)(19)(ii).

[127] 17 CFR 240.17a–3(a)(12)(ii).

[128] 17 CFR 240.17a–3(a)(12)(iii).

[129] 17 CFR 240.17a–3(a)(19)(i).

[130] *See supra* text accompanying notes 95 and 96.

[131] *See supra* 102 note.

[132] 17 CFR 240.17a–3(a)(17)(ii) and 17 CFR 240.17a–4(b)(4).

[133] 17 CFR 240.17a–3(a)(21).

[134] 17 CFR 240.17a–3(a)(22).

[135] *See e.g.*, NASD Rule 3010.

[136] *See e.g.*, NASD Rule 3110(d), and for options complaints NASD Rule 2860(b)(17).

$312.00 [137] each, resulting in an aggregate cost of approximately $2.25 million. In addition, the Commission estimates that it will cost each firm an average of $50.83 per year to ensure compliance with paragraphs (a)(12) and (a)(19) of Rule 17a–3 (regarding associated person records),[138] resulting in an aggregate cost of approximately $0.4 million per year. Finally, the Commission estimates that each firm will spend an average of approximately $16.88 per year to ensure compliance with other requirements,[139] resulting in an aggregate cost of approximately $0.1 million per year.

IX. Effects on Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act [140] requires the Commission, in adopting Exchange Act rules, to consider the impact any such rule would have on competition and to not adopt a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act. Section 3(f) of the Exchange Act [141] provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The Commission has considered the amendments to Rules 17a–3 and 17a–4 in light of the standards in Sections 23(a)(2) and 3(f) of the Exchange Act.

In the Reproposing Release, the Commission requested comment on the effect of the reproposed rule amendments on competition, efficiency, and capital formation.[142] The Commission received 115 substantive comment letters[143] in response to the Reproposal. Approximately 44% were from broker-dealers opposing particular amendments and approximately 37% were from State Securities Regulators supporting the amendments. Few commenters provided any information on how these amendments would affect competition, efficiency, or capital formation. One commenter argued that, "[c]ompetition among broker-dealers is facilitated by the amendments to the [Books and Records Rules]" because they "[allow] firms to create and maintain records by alternative means * * *." [144] Conversely, a few of commenters argued that; (i) the requirement to maintain records at local offices would place an unfair competitive burden upon smaller broker-dealers who do not have the resources to utilize imaging technology,[145] and (ii) the amendments would have a disparate impact on non-traditionally organized broker-dealers with limited businesses.[146] In addition, a number of commenters, while not specifically addressing this issue, did argue that it would be duplicative to maintain records at a local office while also maintaining the same documents at a main office. In response to these concerns and others, the Commission has modified the amendments to allow firms the flexibility to promptly produce records at the offices to which they relate instead of maintaining those records at the offices,[147] and has added exemptions in recognition of present business practices.[148]

The Commission believes that any burden imposed by the amendments is justified by the enhanced investor protections described above. Further, as NASAA pointed out in its comment letter, when addressing Section 23(a) concerns, "the [amendments] to Rules 17a–3 and 17a–4, pursuant to a directive by Congress, must also reflect the needs of the State Securities Regulators as well as federal regulators."[149] In addition, by improving examination capabilities of all securities regulatory authorities, the amendments should improve investor confidence in broker-dealer firms and help to maintain fair and orderly markets.

Broker-dealers with larger customer bases would have correspondingly greater obligations under the amendments than smaller broker-dealers. Accordingly, any burden on competition should be slight, especially in light of the significant regulatory benefits discussed above.

X. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis ("FRFA") regarding the amendments to Rules 17a–3 and 17a–4 under the Exchange Act,[150] which require broker-dealers to maintain certain additional records, specify that certain books and records must be maintained at each office, and set forth the length of time these records must be kept, has been prepared in accordance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 604).

A. Need for the Rules and Rule Amendments

As discussed more fully in the FRFA, these amendments are intended to provide the Commission, SROs, and State Securities Regulators with timely access to broker-dealers' books and records to conduct effective examinations, investigations and enforcement actions. NSMIA prohibits States from establishing books and records rules that differ from, or are in addition to, the Commission's rules, and provides that the Commission must consult periodically with the States concerning the adequacy of the Commission's books and records rules,[151] particularly with regard to whether the Commission's rules satisfy State Securities Regulators' need to have

[137] The Commission estimates that it will take each broker-dealer, on average, two hours to update its forms to include the address to which complaints should be sent. This is a very conservative estimate, since it will probably take much less than 2 hours to write down the broker-dealer's address and where it should be placed on the form, but additional time was added to account for supervisory review. The Commission believes broker-dealers would have an attorney perform this task. According to the SIA *Management and Professional Earnings 2000* report, Tables 107 (Attorney) and 108 (Compliance Attorney), the hourly cost of an attorney + 35% overhead is $156.00 per hour. ($156.00 × 2) = approximately $312.00 per broker-dealer.

[138] The Commission estimated in its Reproposal that, on average, this requirement will obligate a broker-dealer to spend approximately 30 minutes each year to ensure that the records are in compliance with these amendments. The Commission received no specific comments relating to this estimate. The Commission believes firms may have senior compliance personnel perform this task. According to the SIA *Management and Professional Earnings 2000* report, Table 051, the hourly cost of a Compliance Manager + 35% overhead is $101.25. ($101.25 × ½ hour) = approximately $50.63 per broker-dealer.

[139] The Commission estimated in its Reproposal that it will take each firm 10 additional minutes each year to assure compliance with the amendments, and it received no specific comments relating to this estimate. The Commission believes that firms will have senior compliance personnel perform this task. According to the SIA *Management and Professional Earnings 2000* report, Table 051, the hourly cost of a Compliance Manager + 35% overhead is $101.25. ($101.25 × 10 minutes/60 minutes in an hour) = approximately $16.88 per broker-dealer.

[140] 15 U.S.C. 78*w*(a)(2).

[141] 15 U.S.C. 78*c*(f).

[142] *Supra* note 9, at 54411.

[143] Of the 144 total "comment letters" on file, seventeen are memos by the staff of the Commission relating to meetings with various industry groups, and twelve simply request that the comment period be extended.

[144] *See*, Comment Letter from NASAA, p. 7.

[145] *See*, Comment Letters from Titan Value Equities Groups, Inc., p. 3; BenefitsCorp Equities, Inc., p. 2; and One Orchard Equities, Inc. p. 2.

[146] *See*, Comment Letter from MML Investor Services, Inc., pp. 5 to 6.

[147] Paragraph (k) of Rule 17a–4.

[148] *See* paragraphs (a)(6)(ii) and (a)(17)(i)(D) of Rule 17a–3. In addition, paragraph (a)(17) of Rule 17a–3 was modified to limit the requirement to accounts with a natural person as the customer.

[149] *See* Comment Letter from NASAA, p. 4.

[150] 15 U.S.C. 78*o* *et. seq.*, adopted on October 11, 1996.

[151] 15 U.S.C. 78*o*(h).

records readily accessible for their examinations.[152]

If these amendments are not adopted, the Commission believes that the Commission staff and State Securities Regulators will be hampered in their efforts to obtain documentation, because the books and records that broker-dealers maintain may not always be sufficient or in such order as to enable regulators to conduct thorough and effective examinations, investigations, and enforcement proceedings. The Commission further believes that a failure to re-establish certain customer protection safeguards present in the marketplace prior to the enactment of NSMIA would reduce the regulatory oversight of broker-dealers. In addition, the Commission believes that this may also reduce customer confidence in the marketplace, which would be detrimental to market integrity and capital formation.

B. Small Entities Subject to the Rule

It is expected that these amendments will affect the approximately 1,000 broker-dealers that fall within the category of "small business" [153] ("Small Business Broker-Dealers"). The amendments would affect these Small Business' Broker-Dealers because they, like other broker-dealers, would have to create and maintain certain additional books and records and would have to provide access to specific books and records at each office. An OTC Derivatives Dealer would not be considered a small entity because of the minimum net capital requirement.

A summary of the Initial Regulatory Flexibility Analysis ("IRFA") appeared in the Reproposing Release,[154] where the Commission specifically requested comment with respect to the IRFA. In response to the Reproposing Release, the Commission received only one comment letter specifically concerning the IRFA.[155] In addition, three other commenters addressed aspects of the reproposed rules and rule amendments that could potentially affect small businesses.[156]

The commenter that did specifically discuss the IRFA stated, "The Initial Regulatory Flexibility Analysis does not give careful consideration to the economic impact on [broker-dealers that limit their business in certain ways[157]] of the new account cards, blotter records, and signatures of principals on account cards." However, the Commission has carefully considered the economic impact of these rules on various types of broker-dealers. Furthermore, the Commission notes that the commenter does not take into account the fact that, even with respect to broker-dealers that limit their business, existing NASD rules[158] require that broker-dealers maintain certain customer account information, including the signature of a principal accepting the account, and that Rule 17a–3(a)(1) [159] presently requires that broker-dealers retain blotter records. The Commission has amended new paragraph 17a–3(a)(17) to provide an exemption from obtaining certain information where broker-dealers have no Federal or SRO suitability requirement and are therefore not otherwise required to obtain that information.

Of the three commenters that addressed aspects of the reproposed rules and rule amendments that could potentially affect small businesses, one stated, "[t]he proposal to require blotters in local offices may cause an initial financial burden to firms which have * * * three or less broker offices." [160] Another argued that the requirement to maintain records at local offices "place[s] an unfair competitive burden on smaller broker-dealers who do not have the resources to image the required documents and place them upon a network that is available to both the firm's principal office and the local branch." [161] While the amendments as reproposed would require that firms maintain certain records in each local office or produce those records within the same business day that they are requested, the amendments have been changed in order to give firms the flexibility to produce those records promptly when they are requested by a representative of a securities regulatory authority. This change significantly reduces the cost of the amendments for most firms. In addition, recognizing that broker-dealers may not be required to maintain those records under SRO rules or other regulations, the Commission has attempted to reduce the impact of these amendments on firms that engage in certain specialized types of businesses by changing the amendments to allow those broker-dealers to utilize records they presently create and maintain in compliance with SRO or other rules and prudent business practices.

Another firm contended that the requirement to update account records is unduly burdensome on smaller firms because such firms lack the automation to perform that task quickly and without additional personnel.[162] The Commission has attempted to make these amendments sufficiently flexible to accommodate different types of operational systems, and broker-dealers may choose the operational methods that best suit their business in order to comply with the amendments.

Lastly, another firm disagreed with the Commission's statement in the Reproposing Release that, "[l]arger broker-dealers would have correspondingly greater obligations under the amendments," [163] stating, "the 'wire house' firms will be virtually unaffected by this proposal," because "wire houses * * * have very few small offices." [164] To the extent that Small Business Broker-Dealers service fewer customer accounts, employ fewer associated persons, and operate fewer offices than larger broker-dealers, they will be affected by the rule in proportion to their size.

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Most broker-dealers, including Small Business Broker-Dealers, already maintain many of the records specified in the amendments in the ordinary course of business. The Commission's intent has been to minimize the impact of the amendments on all broker-dealers by limiting, consistent with the objectives of the amendments, the number of instances in which broker-dealers would be obligated to create or

[152] *See supra* note 8.

[153] Pursuant to 17 CFR 240.0–10, the term "small business" or "small organization" when used with reference to a broker or dealer means a broker or dealer that: (i) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date its audited financial statements for the prior fiscal year were prepared pursuant to 17 CFR 240.17–5(d) or, if not required to file such statements, a broker-dealer that had total net capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (ii) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in 17 CFR 240.0–10. In addition, Exchange Act Release No. 40122 (June 24, 1998) 63 FR 35508 (June 30, 1998) recently amended standard that defines what it means to be "affiliated" with any person that is not a small business.

[154] *See supra* note 9.

[155] *See* Comment Letter from American Council of Life Insurance, p. 16.

[156] *See* Comment Letters from Titan Value Equities Group, Inc., pp. 2–3; Lawrence Lowman, p. 1; and John Hancock Distributors, Inc., p. 3.

[157] *E.g.*, broker-dealers which only facilitate transactions in certain types of products or broker-dealers which do not make recommendations.

[158] *See e.g.*, NASD Rule 3110(c).

[159] 17 CFR 240.17a–4(a)(1).

[160] *See* Comment Letter from Lawrence Lowman, p. 1.

[161] *See* Comment Letter from Titan Value Equities, p. 3.

[162] *Id.*, p. 2.

[163] *See* Comment Letter from John Hancock Distributors, Inc., p. 3.

[164] *Id.*

maintain records that they do not already maintain in the ordinary course of business. In addition, the amendments were designed to be sufficiently flexible to accommodate different types of recordkeeping systems, and broker-dealers may choose the format in which they wish to maintain those records.

D. Agency Action To Minimize Effect on Small Entities

As discussed further in the FRFA, the Commission has attempted to minimize the economic impact these amendments might have on broker-dealers, including Small Business Broker-Dealers, while still achieving the overall objective of assuring that regulators have the ability to perform effective examinations, including examinations for sales practice issues. In response to comments elicited by the Reproposing Release, many significant changes were made to the amendments to reduce the burdens associated with these amendments.

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. The Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission also considered whether these alternatives to the reproposed rules and rule amendments would accomplish the stated objectives of improving the effectiveness of the Commission's and State regulatory agencies' ability to perform investigations, examinations and enforcement actions.

The additional burdens placed on Small Business Broker-Dealers will vary depending upon the number of customer accounts at the firm, the number of associated persons employed by the firm, and the number of offices that the firm operates. Further, the rule provides substantial flexibility in the manner in which firms may comply with the amendments. Additionally, the Commission believes that obtaining essential information regarding the sales practices of all broker-dealers, including Small Business Broker-Dealers, is necessary to permit securities regulators to effectively oversee the securities markets and protect investors; therefore, the Commission does not believe that establishing differing compliance or reporting requirements for Small Business Broker-Dealers would be appropriate.

The Commission believes that the proposal could not be formulated differently for Small Business Broker-Dealers and still achieve the stated objectives. The Commission has considered Small Business Broker-Dealers in developing the amendments and has determined that all types of broker-dealers, including Small Business Broker-Dealers, engage in sales practice abuses; therefore, the Commission does not believe that further clarification, consolidation, or simplification of the proposed amendments would be appropriate. As stated previously, however, the Commission has made every effort to assure that, to the extent possible, the amendments require broker-dealers to maintain the same types of records required under other federal and SRO rules or that firms usually maintain as part of their present business practices, and has highlighted instances where records that broker-dealers presently maintain may serve to fulfill the requirements under these amendments.

The Commission does not believe that it would be appropriate to use performance standards, rather than design standards, with relation to these amendments. Because information must be collected and maintained in a uniform manner to be useful, design standards are necessary to achieve the objectives of the proposal. Any additional burden placed on broker-dealers by these amendments is dependent on the number of accounts serviced, the number of associated persons employed, and the number of offices operated. Thus, although the use of performance standards would be an inappropriate measure with relation to these amendments, the standards used do take into account the size of each firm. The Commission also notes that the recordkeeping requirements permit broker-dealers to keep records in different formats or systems as long as specified information can be sorted and produced upon request.

Lastly, customers may be exposed to fraud and sales practice violations by Small Business Broker-Dealers as well as other firms. Exempting Small Business Broker-Dealers from coverage of the rules, or any part thereof, would create a gap in industry oversight, where regulatory authorities may be unable to obtain documentation necessary to conduct comprehensive examinations of Small Business Broker-Dealers. Therefore, the Commission believes that it should not exempt Small Business Broker-Dealers from the requirements of the amendments.

The Commission believes that enacting the amendments in their present form is the best way to assure that regulators have the ability to perform effective examinations, including examinations for sales practice issues, and that no less burdensome alternatives are available to accomplish the objectives of the amendments. As stated previously, after NSMIA, States were constrained from "establishing books and records rules that differ from, or are in addition to the Commission's rules." [165] The States play an integral role in achieving customer protection by performing examinations on broker-dealers within their jurisdiction and reviewing for sales practice violations. Without these amendments, the States may be unable to obtain those books and records necessary to conduct comprehensive examinations. Finally, the Commission believes that most Small Business Broker-Dealers currently maintain certain of the additional records specified in the amendments.

A copy of the FRFA may be obtained by contacting Bonnie L. Gauch, Attorney, United States Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

XI. Paperwork Reduction Act

Certain provisions of the amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[166] The Commission has submitted the amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11 under the title "Books and Records Rule Amendments." The rules being amended contain currently approved collections of information under OMB control numbers 3235–0033 and 3235–0279 respectively. The collections and maintenance of information, and the reports made to the SEC and others that are required pursuant to Rules 17a-3 and 17a-4 are mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

[165] 15 U.S.C. 78o(h).

[166] 44 U.S.C. 3502 *et seq.*

A. Collection of Information Under the Amendments

As discussed previously in this release, the Books and Records Rule Amendments would require registered broker-dealers to maintain additional records with respect to purchase and sale documents, customer information, associated person information, customer complaints and certain other matters.

B. Proposed Use of Information

The information collected pursuant to the Books and Records Rule Amendments would be used by the Commission, SROs, and other securities regulatory authorities for examinations, investigations, and enforcement proceedings regarding broker-dealers and associated persons. No governmental agency would regularly receive any of the information described above. Instead, the information would be stored by the registered broker-dealer and made available to the various securities regulatory authorities as required to facilitate examinations, investigations, and enforcement proceedings. To comply with the amendments that require broker-dealers to update customer account records at least once every 36 months, broker-dealers would have to furnish the customers with copies of their account records. This requirement and the estimated burden associated with it are discussed in detail below.

C. Respondents

The Books and Records Rule Amendments would apply to all of the approximately 7,217 active broker-dealers that are registered with the Commission.[167]

D. Total Annual Reporting and Recordkeeping Burden

The hour burden of the Books and Records Rule Amendments is difficult to ascertain, because any additional burdens would vary widely due to differences in broker-dealer activity levels and current recordkeeping systems employed by the broker-dealers. Therefore, the estimates in this section are based on averages among the various types and sizes of broker-dealers.

[167] Of approximately 7,739 broker-dealers registered with the Commission, approximately 341 are not yet active because their registration is pending SRO approval and approximately 181 are inactive because they have ceased doing a securities business and have filed a Form BDW with the Commission. Of these 7,217 active, registered broker-dealers, three are registered OTC Derivatives Dealers. OTC Derivatives Dealers are a special class of broker-dealers that limit their business to dealer activities in eligible over-the-counter derivative instruments and that meet certain financial responsibility and other requirements.

Recognizing that large broker-dealers maintaining over 100,000 customer accounts are generally more automated than small broker-dealers maintaining less than 100,000 customer accounts with relation to certain of the amendments, the Commission has attempted to provide for these differences in its calculations.

Most of the requirements of the Books and Records Rule Amendments involve collections of information that broker-dealers already maintain pursuant to prudent business practices or to comply with existing SRO regulations. While some of the comment letters argued that the Commission's estimates set forth in the Reproposing Release were low, few contained actual alternative cost estimates, and none contained estimates which could be applied generally to broker-dealer firms. The Commission has increased its estimation of the expected burden of the amendments where, in general, commenters felt that the estimates were too low, and has provided a more detailed explanation of its estimates where it believes the amendments will impose little or no additional burden on broker-dealers. In addition, in response to the comments received relating to the Reproposing Release, the Commission modified its proposal and adopted amendments that reduce the amount of additional records that firms will be required to create and maintain.

1. Rule 17a–3

The amendments modify Rule 17a–3 by, among other things, requiring broker-dealers to send account information to customers for verification within 30 days of account opening and at least once every 36 months thereafter. As stated above, the total number of accounts that would need to be contacted for updating is 70,500,000.[168] Approximately 70 of the 7,217 active, registered broker-dealers maintain over 100,000 accounts, and the remaining broker-dealers (7,147) maintain less than 100,000 accounts each. Of the 70,500,000 accounts which may be affected by these amendments, approximately 68,385,000 (or 97%) are maintained at these large broker-dealers, and 2,115,000 (or 3%) are maintained at broker-dealers with less than 100,000 accounts each.

The Commission estimates that, as their processes are more automated, it will take large broker-dealers an average of 1½ additional minutes per account every three years,[169] thus requiring large broker-dealers to spend an additional 569,875 hours per year (68,385,000 account records/3 years × 1.5 minutes / 60 minutes) to send account information to customers. As small broker-dealers utilize processes which are more manual in nature,[170] the Commission estimates that it will take small broker-dealers an average of 7 minutes per account [171] every three years, thus requiring small broker-dealers to spend an additional 82,250 hours per year (2,115,000 account records/3 years × 7 minutes/60 minutes) to send account records to customers. Thus the total additional burden on the industry to send account records to customers is 652,125 hours.

The Commission estimates that approximately 20% [172] of the customers from whom information is requested will update their account record resulting in 4,700,000 updated account records each year (70,500,000/3 years × 20%). The Commission estimates that it would take, on average, 5 minutes for large broker-dealers to update each account and 10 minutes [173] for small broker-dealers to update each account, resulting in an additional burden of 403,417 hours per year ((4,559,000 account records × 5 minutes/60 minutes) + (141,000 account records × 10 minutes/60 minutes)). This estimate takes into account the amount of time it would take to receive the returned data and input any changes into the account record. While it is acknowledged that some customers will provide broker-dealers with changes to their account information outside of this update process, as those are changes broker-dealers must contend with in the present environment, the amendments create no additional burden in this regard. Broker-dealers presently maintain current account records in the ordinary course of their business because existing SRO rules require them to maintain current information about their customers.

If a customer has provided the broker-dealer with updated account record information, under paragraphs (a)(17)(i)(B) (*2*) and (*3*) of Rule 17a–3 the broker-dealer must send a copy of the revised account record to the customer within 30 days after it received notification of the change or, under paragraph (a)(17)(i)(B)(*3*), the broker-

[168] *Supra* note 117.

[169] The Commission, in its Reproposal, estimated that it would take broker-dealers 10 seconds to furnish the account record to customers. Because many commenters contended that this estimate was too low, the Commission raised its estimates.

[170] *Supra* note 121.

[171] *See* Comment Letter from Comerica Securities, p. 2.

[172] *See* Comment Letter from Merrill Lynch, p. 7.

[173] *See* Comment Letter from Titan Value Equities, Inc., p. 2.

dealer may send the notification with the next statement mailed to the customer. The Commission estimates that, in addition to the 70,500,000 updated account records discussed above, 3,525,000 customers (5% of the 70,500,000 accounts for which firms will be required to make the account record) will initiate changes to their account records on a yearly basis, just as they do now, with no prompting from any account record mailing. The Commission estimates, as stated above, that it will take large broker-dealers 1½ minutes and smaller broker-dealers 7 minutes to send out account information to each customer who updated their account. The Commission estimates that 8,225,000 (4,700,000 + 3,525,000) customers will update their account record, and that broker-dealers will spend an additional 228,244 hours each year ((7,978,250 account records x 1.5 minutes / 60 minutes) + (246,750 account records x 7 minutes / 60 minutes)) sending the updated account records to customers.

The amendments also impose a requirement that broker-dealers obtain the following additional information for each account with a natural person as the customer: the customer name, tax identification number, address, telephone number, date of birth, employment status, annual income, net worth, investment objectives, and the signature of the associated person and a principal. Present Rule 17a–3(a)(9) already requires that a firm maintain a record of a customer's name and address. Further, SRO rules require that firms obtain and maintain records of: whether a customer is of legal age (firms usually obtain a customer's date of birth to satisfy this requirement), the signature of the registered representative and principal, a customer's tax identification number, the customer's occupation, and whether or not the customer is associated with another broker-dealer.[174] In addition, certain SRO rules require that before making any recommendations to customers, broker-dealers obtain information, regarding the customer's annual income, net worth, and the investment objectives for the account in question in order to formulate a basis for any recommendation.[175]

In addition, the amendments require that, if the account is a discretionary account, the firm must obtain (i) The signature of the customer granting discretion, (ii) the date discretion was granted, and (iii) the signature of the person to whom discretion was granted. Certain SRO rules require that for discretionary accounts, broker-dealers must obtain the signature of the person who was granted discretion, and the date discretion was granted,[176] while other SRO rules require that firms obtain written authorization of the customer before exercising discretion in an account.[177] Further, the Commission believes that obtaining these records is a prudent business practice followed by most broker-dealers to avoid disputes with customers.

In addition to the account record requirements, the amendments require broker-dealers to keep certain records regarding their associated persons, including all agreements pertaining to the associated persons relationship with the broker-dealer and a summary of each associated person's compensation arrangement,[178] a record delineating all identification numbers relating to each associated person,[179] a record of the office at which each associated person regularly conducts business,[180] and a record as to each associated person listing transactions for which that person will be compensated.[181] The Commission believes that broker-dealers generally create and maintain these records under prudent recordkeeping procedures. Therefore, the Commission estimates that, on average, these records would require each broker-dealer to spend approximately 30 minutes each year to ensure that it is in compliance with these amendments, a total of about 3,609 hours ((7,217 broker-dealers x 30 minutes/60 minutes).

The amendments also require broker-dealers to keep a record relating to written customer complaints that includes: the complainant's name, address, and account number; the date the complaint was received; the name of any associated person identified in the complaint; a description of the nature of the complaint; and, the disposition of the complaint. In order to account for differing broker-dealer practices, the Commission has provided broker-dealers with an alternative; instead of creating what may be a new record, broker-dealers can simply maintain a copy of each complaint, along with a record of the disposition of the complaint.[182] Firms are presently required to maintain copies of all communications under Rule 17a–4(b)(4), and certain SRO rules require that members maintain copies of all written complaints and a record of the actions taken by the broker-dealer in specified offices, and that copies of options-related complaints be maintained in both the main office and in the branch office to which they relate.[183] Most firms maintain copies of all complaints and related information and documents at their headquarters, and some already maintain both option and non-option complaints at all offices as well. While the Reproposal would have required that complaints relating to an office be maintained in that office or be produced on the business day they are requested, the amendments as adopted require only that records of complaints for an office be produced promptly at the office to which the complaints relate.

The amendments also require broker-dealers to make records which indicate that they have complied with applicable regulations of certain securities regulatory authorities,[184] which list persons who can explain the information in the broker-dealer's records,[185] and that list principals responsible for establishing compliance policies and procedures.[186] Firms presently maintain records to evidence compliance with SRO and other rules; therefore, no additional burden is created by this amendment. The Commission believes that broker-dealers presently maintain lists of principals or branch managers responsible for supervising each of their offices under applicable SRO rules, and that they also have lists of associated persons operating out of each office location. Under certain SRO rules, broker-dealers must presently have supervisory systems in place that include identification of principals responsible for reviewing the firm's procedures and taking action to achieve compliance with applicable securities laws, regulations and rules.[187] The Commission estimates, therefore, that on average each broker-dealer would spend 10 minutes each year to ensure compliance with these requirements, yielding a total additional burden of about 1,203 hours ((7,217 broker-dealers x 10 minutes/60 minutes).

The amendments relating to order tickets require that broker-dealers note, in addition to information already required, the identity of the associated person responsible for an account and the identity of the person who accepted the order, and whether the order was entered pursuant to discretionary authority. In addition, the amendments to Rule 17a–3(a)(6) require that firms record the time an order was received from a customer, and the amendments to Rule 17a–3(a)(7) require that firms make a record of any modifications to an order. SRO rules already require that firms record, maintain, and in some cases report, the time an order was received, and information regarding modification and cancellation including instructions and the time.[188] Further, firms who assign associated persons to particular accounts usually refer the customer to that person to initiate transactions. The identity of the person who accepted the order from the customer, whether or not it was the person assigned to the account, is generally recorded and maintained at the present time by firms as a prudent business practice that assists the firm in properly supervising the activities of their associated persons and assuring that commissions are properly paid. In addition, the amendment to Rule 17a–3(a)(6) contains an exception for transactions done on a "subscription-way" basis, where an application or subscription agreement is sent to the issuer in place of an order ticket. For these types of transactions, broker-dealers may keep the application or subscription agreement in the place of the order ticket. Thus the Commission does not believe that the amendments to Rules 17a–3(a)(6) and 17a–3(a)(7) will cause any additional burden.

In total, the Commission estimates that compliance with the amendments to Rule 17a–3 will require an additional 1,288,598 hours (1,283,786[189] + 3,609[190] + 1,203[191]).

2. Rule 17a–4

The amendments modify Rule 17a–4 by requiring broker-dealers to maintain certain additional books and records, including a record listing all persons who are qualified to explain a broker-dealer's books and records. The amendments also require broker-dealers to make available certain records at each office. As discussed above, new Rule 17a–4(k) was modified to provide that, instead of requiring that firms either maintain copies of records in the office to which they pertain, broker-dealers now have the option of producing certain records which relate to a particular office "promptly." This significantly reduces the additional burden caused by the amendments to Rule 17a–4.

The amendments also increase the amount of time broker-dealers must maintain certain records. Broker-dealers generally maintain these records to comply with other federal or SRO Rules or in the normal course of business. These records include, (i) information relating to the principals responsible for reviewing and updating policies and procedures, (ii) copies of Forms BD, BDW and amendments thereto, (iii) copies of compliance, supervisory, and procedures manuals, (iv) customer account records, (v) order ticket information, (vi) records relating to compensation of associated persons, (vii) evidence of compliance with SRO advertising and sales literature rules, (viii) exception reports, and (ix) specialized reports produced pursuant to an order or settlement.

Based upon the information above, and due to the fact that the amendments to Rule 17a–4 require only that information be kept for prescribed periods of time, the Commission estimates that, on average, each broker-dealer would spend four hours each year to ensure that it is in compliance with the amendments to Rule 17a–4 and to produce required records promptly at an office when so required. Therefore, the Commission estimates that compliance with the amendments for Rule 17a–4 would require an additional 28,868 hours each year ((7,217 broker-dealers x 4 hours).

E. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to—(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information; (iii) Enhance the quality, utility, and clarity of the information to be collected; (iv) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. The Commission encourages commenters to identify and supply any relevant data, analysis and estimates concerning the burden of the proposed rules, especially where any commenter believes the Commission's estimates to be inaccurate.

Persons desiring to submit comments on the collection of information requirements proposed above should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609 with reference to File No. S7–26–98. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–26–98, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

XII. Statutory Basis

The amendments are adopted pursuant to the authority conferred on the Commission by the Exchange Act, including Sections 17(a) and 23(a).

List of Subjects in 17 CFR Parts 240 and 242

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, Title 17 Chapter II of the Code of Federal Regulation is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.17a–4 also issued under secs. 2, 17, 23(a), 48 Stat. 897, as amended; 15 U.S.C. 78a, 78d–1, 78d–2; sec. 14, Pub. L. 94–29, 89 Stat. 137 (15 U.S.C. 78a); sec. 18, Pub. L. 94–29, 89 Stat. 155 (15 U.S.C. 78w);

* * * * *

[174] *See* NASD Rules 3110(c) and IM–2860–2, and NYSE Rules 405, 407, 410A, and 721.10.

[175] *See e.g.*, NASD Rule 2310(b) and IM–2860–2.

[176] Supra note 158.

[177] *See e.g.*, NYSE Rule 408.

[178] *Supra* note 126.

[179] *Supra* note 127.

[180] *Supra* note 128.

[181] *Supra* note 129.

[182] 17 CFR 240.17a–3(e)(18)(i).

[183] *Supra* note 136.

[184] 17 CFR 240.17a–3(e)(17)(ii) and 17 CFR 240.17a–3(a)(20).

[185] *Supra* note 133.

[186] *Supra* note 134.

[187] *Supra* note 135.

[188] *Supra* note 102.

[189] 17 CFR 240.17a–3(a)(17).

[190] 17 CFR 240.17a–3(12) and (19).

[191] 17 CFR 240.17a–3(a)(20) to (22).

2. The authority citations following §§ 240.17a–3 and 240.17a–4 are removed.

3. Section 240.17a–3 is amended by:

a. Revising paragraphs (a)(6) and (a)(7);

b. Revising the introductory text of paragraph (a)(12)(i);

c. Revising paragraph (a)(12)(ii);

d. Redesignating paragraphs (a)(12)(i)(*a*) through (a)(12)(i)(*h*) as paragraphs (a)(12)(i)(A) through (a)(12)(i)(H); and

e. Adding paragraphs (a)(17), (a)(18), (a)(19), (a)(20), (a)(21), (a)(22), (f) and (g).

The revisions and additions read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

(a) * * *

(6)(i) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry; and, to the extent feasible, the time of execution or cancellation. The memorandum need not show the identity of any person, other than the associated person responsible for the account, who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the member, broker or dealer shall produce upon request by a representative of a securities regulatory authority a separate record which identifies each other person. An order entered pursuant to the exercise of discretionary authority by the member, broker or dealer, or associated person thereof, shall be so designated. The term *instruction* shall include instructions between partners and employees of a member, broker or dealer. The term *time of entry* shall mean the time when the member, broker or dealer transmits the order or instruction for execution.

* * * * *

(ii) This memorandum need not be made as to a purchase, sale or redemption of a security on a subscription way basis directly from or to the issuer, if the member, broker or dealer maintains a copy of the customer's subscription agreement regarding a purchase, or a copy of any other document required by the issuer regarding a sale or redemption.

(7) A memorandum of each purchase and sale for the account of the member, broker, or dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where the purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt; the terms and conditions of the order and of any modification thereof; the account for which it was entered; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum need not show the identity of any person other than the associated person responsible for the account who may have entered the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person: in that circumstance, the member, broker or dealer shall produce upon request by a representative of a securities regulatory authority a separate record which identifies each other person. An order with a customer other than a member, broker or dealer entered pursuant to the exercise of discretionary authority by the member, broker or dealer, or associated person thereof, shall be so designated.

* * * * *

(12)(i) A questionnaire or application for employment executed by each "associated person" (as defined in paragraph (g)(4) of this section) of the member, broker or dealer, which questionnaire or application shall be approved in writing by an authorized representative of the member, broker or dealer and shall contain at least the following information with respect to the associated person:

* * * * *

(ii) A record listing every associated person of the member, broker or dealer which shows, for each associated person, every office of the member, broker or dealer where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security for the member, broker or dealer, and the Central Registration Depository number, if any, and every internal identification number or code assigned to that person by the member, broker or dealer.

* * * * *

(17) For each account with a natural person as a customer or owner:

(i)(A) An account record including the customer's or owner's name, tax identification number, address, telephone number, date of birth, employment status (including occupation and whether the customer is an associated person of a member, broker or dealer), annual income, net worth (excluding value of primary residence), and the account's investment objectives. In the case of a joint account, the account record must include personal information for each joint owner who is a natural person; however, financial information for the individual joint owners may be combined. The account record shall indicate whether it has been signed by the associated person responsible for the account, if any, and approved or accepted by a principal of the member, broker or dealer. For accounts in existence on the effective date of this section, the member, broker or dealer must obtain this information within three years of the effective date of the section.

(B) A record indicating that:

(*1*) The member, broker or dealer has furnished to each customer or owner within three years of the effective date of this section, and to each customer or owner who opened an account after the effective date of this section within thirty days of the opening of the account, and thereafter at intervals no greater than thirty-six months, a copy of the account record or an alternate document with all information required by paragraph (a)(17)(i)(A) of this section. The member, broker or dealer may elect to send this notification with the next statement mailed to the customer or owner after the opening of the account. The member, broker or dealer may choose to exclude any tax identification number and date of birth from the account record or alternative document furnished to the customer or owner. The member, broker or dealer shall include with the account record or alternative document provided to each customer or owner an explanation of any terms regarding investment objectives. The account record or alternate document furnished to the customer or owner shall include or be accompanied by prominent statements that the customer or owner should mark any corrections and return the account record or alternate document to the member, broker or dealer, and that the customer or owner should notify the member, broker or dealer of any future changes to information contained in the account record.

(*2*) For each account record updated to reflect a change in the name or address of the customer or owner, the member, broker or dealer furnished a notification of that change to the customer's old address, or to each joint owner, and the associated person, if any, responsible for that account, on or before the 30th day after the date the member, broker or dealer received notice of the change.

(*3*) For each change in the account's investment objectives the member, broker or dealer has furnished to each customer or owner, and the associated person, if any, responsible for that account a copy of the updated customer account record or alternative document with all information required to be furnished by paragraph (a)(17)(i)(B)(*1*) of this section, on or before the 30th day after the date the member, broker or dealer received notice of any change, or, if the account was updated for some reason other than the firm receiving notice of a change, after the date the account record was updated. The member, broker or dealer may elect to send this notification with the next statement scheduled to be mailed to the customer or owner.

(C) For purposes of this paragraph (a)(17), the neglect, refusal, or inability of a customer or owner to provide or update any account record information required under paragraph (a)(17)(i)(A) of this section shall excuse the member, broker or dealer from obtaining that required information.

(D) The account record requirements in paragraph (a)(17)(i)(A) of this section shall only apply to accounts for which the member, broker or dealer is, or has within the past 36 months been, required to make a suitability determination under the federal securities laws or under the requirements of a self-regulatory organization of which it is a member. Additionally, the furnishing requirement in paragraph (a)(17)(i)(B)(*1*) of this section shall not be applicable to an account for which, within the last 36 months, the member, broker or dealer has not been required to make a suitability determination under the federal securities laws or under the requirements of a self-regulatory organization of which it is a member. This paragraph (a)(17)(i)(D) does not relieve a member, broker or dealer from any obligation arising from the rules of a self-regulatory organization of which it is a member regarding the collection of information from a customer or owner.

(ii) If an account is a discretionary account, a record containing the dated signature of each customer or owner granting the authority and the dated signature of each natural person to whom discretionary authority was granted.

(iii) A record for each account indicating that each customer or owner was furnished with a copy of each written agreement entered into on or after the effective date of this paragraph pertaining to that account and that, if requested by the customer or owner, the customer or owner was furnished with a fully executed copy of each agreement.

(18) A record:

(i) As to each associated person of each written customer complaint received by the member, broker or dealer concerning that associated person. The record shall include the complainant's name, address, and account number; the date the complaint was received; the name of any other associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. Instead of the record, a member, broker or dealer may maintain a copy of each original complaint in a separate file by the associated person named in the complaint along with a record of the disposition of the complaint.

(ii) Indicating that each customer of the member, broker or dealer has been provided with a notice containing the address and telephone number of the department of the member, broker or dealer to which any complaints as to the account may be directed.

(19) A record:

(i) As to each associated person listing each purchase and sale of a security attributable, for compensation purposes, to that associated person. The record shall include the amount of compensation if monetary and a description of the compensation if non-monetary. In lieu of making this record, a member, broker or dealer may elect to produce the required information promptly upon request of a representative of a securities regulatory authority.

(ii) Of all agreements pertaining to the relationship between each associated person and the member, broker or dealer including a summary of each associated person's compensation arrangement or plan with the member, broker or dealer, including commission and concession schedules and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation is determined.

(20) A record, which need not be separate from the advertisements, sales literature, or communications, documenting that the member, broker or dealer has complied with, or adopted policies and procedures reasonably designed to establish compliance with, applicable federal requirements and rules of a self-regulatory organization of which the member, broker or dealer is a member which require that advertisements, sales literature, or any other communications with the public by a member, broker or dealer or its associated persons be approved by a principal.

(21) A record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the firm maintains at that office and the information contained in those records.

(22) A record listing each principal of a member, broker or dealer responsible for establishing policies and procedures that are reasonably designed to ensure compliance with any applicable federal requirements or rules of a self-regulatory organization of which the member, broker or dealer is a member that require acceptance or approval of a record by a principal.

* * * * *

(f) Every member, broker or dealer shall make and keep current, as to each office, the books and records described in paragraphs (a)(1), (a)(6), (a)(7), (a)(12), (a)(17), (a)(18)(i), (a)(19), (a)(20), (a)(21), and (a)(22) of this section.

(g) When used in this section:

(1) The term *office* means any location where one or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.

(2) The term *principal* means any individual registered with a registered national securities association as a principal or branch manager of a member, broker or dealer or any other person who has been delegated supervisory responsibility over associated persons by the member, broker or dealer.

(3) The term *securities regulatory authority* means the Commission, any self-regulatory organization, or any securities commission (or any agency or office performing like functions) of the States.

(4) The term *associated person* means an "associated person of a member" or "associated person of a broker or dealer" as defined in sections 3(a)(21) and 3(a)(18) of the Act (15 U.S.C. 78c(a)(21) and (a)(18)) respectively, but shall not include persons whose functions are solely clerical or ministerial.

§ 240.17a–3 [Amended]

4. Section 240.17a–3 is amended by:

a. Removing from the introductory text of paragraph (a) and paragraph (a)(5) the word "his" and in its place adding "it";

b. Removing from paragraph (a)(11)(ii) the word "he" and in its place adding "it";

c. Removing from redesignated paragraphs (a)(12)(i)(A) and (a)(12)(i)(B) the word "His" and in its place adding "The associated person's";

d. Removing from redesignated paragraphs (a)(12)(i)(A), (a)(12)(i)(C), and (a)(12)(i)(H) the word "his" and in its place adding "the associated person's";

e. Removing from redesignated paragraphs (a)(12)(i)(D) and (a)(12)(i)(F) the word "him" and in its place adding "the associated person";

f. Removing from redesignated paragraphs (a)(12)(i)(D), (a)(12)(i)(E), (a)(12)(i)(F) and (a)(12)(i)(H) the word "he" and in its place adding "the associated person" and

g. Removing from redesignated paragraph (a)(12)(i)(H) the phrase "or the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the New York Stock Exchange, the Pacific Coast Stock Exchange, or the Philadelphia-Baltimore Stock Exchange" and in its place adding "the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Cincinnati Stock Exchange, Inc. or the International Securities Exchange".

5. Section 240.17a–4 is amended by:

a. Revising paragraph (a);

b. Revising the introductory text of paragraph (b);

c. Revising paragraphs (b)(1), (b)(4), (c) and (d);

d. Revising the introductory text of paragraph (e);

e. Adding paragraphs (e)(5), (e)(6), (e)(7), (e)(8);

f. Revising paragraph (j); and

g. Adding paragraphs (k) and (l).

The revisions and additions read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

(a) Every member, broker and dealer subject to § 240.17a–3 shall preserve for a period of not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to paragraphs § 240.17a–3(a)(1), (a)(2), (a)(3), (a)(5), (a)(21), (a)(22), and analogous records created pursuant to paragraph § 240.17a–3(f).

(b) Every member, broker and dealer subject to § 240.17a–3 shall preserve for a period of not less than three years, the first two years in an easily accessible place:

(1) All records required to be made pursuant to § 240.17a–3(a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(16), (a)(18), (a)(19), (a)(20), and analogous records created pursuant to § 240.17a–3(f).

* * * * *

(4) Originals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public. As used in this paragraph (b)(4), the term communications includes sales scripts.

* * * * *

(c) Every member, broker and dealer subject to § 240.17a–3 shall preserve for a period of not less than six years after the closing of any customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of the account.

(d) Every member, broker and dealer subject to § 240.17a–3 shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms BD (§ 249.501 of this chapter), all Forms BDW (§ 249.501a of this chapter), all amendments to these forms, all licenses or other documentation showing the registration of the member, broker or dealer with any securities regulatory authority.

(e) Every member, broker and dealer subject to § 240.17a–3 shall maintain and preserve in an easily accessible place:

* * * * *

(5) All account record information required pursuant to § 240.17a–3(a)(17) until at least six years after the earlier of the date the account was closed or the date on which the information was replaced or updated.

(6) Each report which a securities regulatory authority has requested or required the member, broker or dealer to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority examination report until three years after the date of the report.

(7) Each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.

(8) All reports produced to review for unusual activity in customer accounts until eighteen months after the date the report was generated. In lieu of maintaining the reports, a member, broker or dealer may produce promptly the reports upon request by a representative of a securities regulatory authority. If a report was generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced using historical data in the same format as it was originally generated, the report may be produced by using the historical data in the current system, but must be accompanied by a record explaining each system change which affected the reports. If a report is generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced in any format using historical data, the member, broker or dealer shall promptly produce upon request a record of the parameters that were used to generate the report at the time specified by a representative of a securities regulatory authority, including a record of the frequency with which the reports were generated.

* * * * *

(j) Every member, broker and dealer subject to this section shall furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the member, broker or dealer that are required to be preserved under this section, or any other records of the member, broker or dealer subject to examination under section 17(b) of the Act (15 U.S.C. 78*q*(b)) that are requested by the representative of the Commission.

(k) Records for the most recent two year period required to be made pursuant to § 240.17a–3(f) and paragraphs (b)(4) and (e)(7) of this section which relate to an office shall be maintained at the office to which they relate. If an office is a private residence where only one associated person (or multiple associated persons who reside at that location and are members of the same immediate family) regularly conducts business, and it is not held out to the public as an office nor are funds or securities of any customer of the member, broker or dealer handled there, the member, broker or dealer need not maintain records at that office, but the records must be maintained at another location within the same State as the member, broker or dealer may select. Rather than maintain the records at each office, the member, broker or dealer may choose to produce the records promptly at the request of a representative of a securities regulatory authority at the office to which they relate or at another location agreed to by the representative.

(l) When used in this section:

(1) The term *office* shall have the meaning set forth in § 240.17a–3(g)(1).

(2) The term *principal* shall have the meaning set forth in § 240.17a–3(g)(2).

(3) The term *securities regulatory authority* shall have the meaning set forth in § 240.17a–3(g)(3).

(4) The term *associated person* shall have the meaning set forth in § 240.17a–3(g)(4).

§ 240.17a–4 [Amended]

6. Section 240.17a–4 is amended by:

a. Removing from paragraph (b)(7) the word "his" and in its place adding "its"; and

b. Removing from paragraph (e)(1) the phrase "the "associated person" has terminated his employment and any other connection with the member, broker or dealer." and in its place adding "the associated person's employment and any other connection with the member, broker or dealer has terminated.".

c. Removing from paragraph (f)(3)(ii) the phrase "the Commission or its representatives" and in its place adding "the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer".

d. Removing from paragraph (f)(3)(vii):

i. The phrase "the U.S. Securities and Exchange Commission ("Commission"), its designees or representatives," and in its place adding "the U.S. Securities and Exchange Commission ("Commission"), its designees or representatives, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer,";

ii. The phrase "the Commission's or designee's staff" and in its place adding "the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer"; and

iii. From each place it appears, the phrase "the Commission's staff or its designee" and in its place adding "the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer".

PART 242—REGULATIONS M and ATS

7. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 80a–23, 80a–29, and 80a–37.

8. In § 242.303, paragraph (d) is amended by removing the phrase "representatives or designees of the Securities and Exchange Commission, and to promptly furnish to the Commission or its designee" and in its place adding "the staff of the Securities and Exchange Commission, any self-regulatory organization of which the alternative trading system is a member, or any State securities regulator having jurisdiction over the alternative trading system, and to promptly furnish to the Commission, self-regulatory organization of which the alternative trading system is a member, or any State securities regulator having jurisdiction over the alternative trading system."

Dated: October 26, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27439 Filed 11–1–01; 8:45 am]

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Federal Register

Friday,
November 2, 2001

Part IV

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7095–6]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On June 29, 1999, we issued the National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards (64 FR 34854). On November 22, 1999 (64 FR 63779), we proposed minor amendments to the June 29, 1999 promulgated rule concerning the regulation of surge control vessels and bottoms receiver vessels. These final amendments are necessary to correct discrepancies between the promulgated rule and our intent.

EFFECTIVE DATE: November 2, 2001.

ADDRESSES: Docket No. A–97–17 contains supporting information used in developing these amendments to the Generic MACT rulemaking subpart (40 CFR part 63, subpart YY). The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Markwordt, Policy, Planning, and Standards Group, Emission Standards Division (MD–13), U.S.EPA. Research Triangle Park, North Carolina 27711, telephone number (919) 541–0837, facsimile (919) 541–0942, electronic mail address: *markwordt.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. See section 307(d)(7)(A) of the Clean Air Act (CAA). The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule will also be available on the WWW through the EPA's Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules, *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated entities. Categories and entities potentially affected by this action include:

Category	SIC [a]	NAICS [b]	Regulated entities
Industry	2869	325199	Producers of homopolymers and/or copolymers of, alternating oxymethylene units. Producers of either acrylic fiber or modacrylic fiber synthetics composed of acrylonitrile (AN) units. Producers of polycarbonate.
Industry	2819	325188	Producers of, and recoverers of, HF by reacting calcium fluoride with sulfuric acid. For the purpose of implementing the rule, HF production is not a process that produces gaseous HF for direct reaction with hydrated aluminum to form aluminum fluoride (i.e., the HF is not recovered as an intermediate or final product prior to reacting with the hydrated aluminum).

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.1103(a)(1), (b)(1), (c)(1), and (d)(1) of the rule.

Judicial Review. Under section 307(b) of the CAA, judicial review of these final amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by January 2, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to these amendments which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

I. What Is the Background for the Amendments?

On June 29, 1999 (64 FR 34854), we published the National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards, which promulgated standards for four major hazardous air pollutants (HAP) source categories (i.e., acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production, and polycarbonate (PC) production). On November 22, 1999, we proposed amendments to the June 29, 1999 promulgated rule concerning the regulation of surge control vessels and bottoms receiver vessels (64 FR 63779). The proposed amendments changed the definition of "storage vessel" to include bottoms receivers and surge control vessels and changed the definition of "equipment" to not include bottoms receivers and surge control vessels. These amendments were necessary to correct discrepancies between the promulgated rule and our intent.

We received one comment on the proposed amendments. The commenter stated that if the proposed amendments are finalized, acetal resins production surge control vessels and bottoms receivers that are part of the front-end process of the process train (and treated as front-end process vents in the promulgated rule) would be required to install additional controls beyond those determined to be maximum achievable control technology (MACT) for these sources. The commenter explained that when determining MACT for front-end process vents, the EPA intentionally identified surge control vessels and bottoms receivers that are part of the front-end of the process train as front-end process vents.

When we proposed the amendments to the definition of "storage vessel," we had no intention of changing the requirements for acetal resins production surge control vessels and bottoms receivers that are part of the front-end process of the process train. Therefore, we are finalizing amendments that maintain the requirements for acetal resins production front-end process vents (including surge control vessels and bottoms receivers that are part of the front-end process) as promulgated and intended.

For acetal resins production, we are requiring that bottoms receivers and surge control vessels that are part of the front-end process train be controlled under the acetal resins production front-end process vent provisions. The rationale for inclusion of surge control vessels and bottoms receivers as part of the MACT determination for front-end process vents can be found in a memorandum to the docket supporting these amendments (Docket No. A–97–17). These final amendments are consistent with our intent at promulgation of the original standards.

II. What Are the Impacts Associated With These Amendments?

This action consists of a clarification of our intent at the time of promulgation of 40 CFR part 63, subpart YY, and will not affect the estimated emissions reductions or the control costs for the standards promulgated for AR, AMF, HF, and PC production source categories on June 29, 1999 (64 FR 34854). This clarification makes it easier for owners and operators of affected sources, and for local and State authorities, to understand and implement the requirements of 40 CFR part 63, subpart YY.

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these final rule amendments do not constitute a "significant regulatory action" under the terms of Executive Order 12866. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the regulation.

The EPA has concluded that these final rule amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to these amendments.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 entitled, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

These final rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate facilities that will be subject to this final rule. Thus, Executive Order 13175 does not apply to these final amendments.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of

the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonable alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on safety risks. Furthermore, these amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. There is no cost associated with these amendments. Thus, today's amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these final amendments do not contain regulatory requirements that might significantly or uniquely affect small governments because they do not contain requirements that apply to such governments or impose obligations upon them. Therefore, today's final amendments are not subject to the requirements of section 203 of the UMRA.

Because these final rule amendments do not include a Federal mandate and are estimated to result in expenditures less than $100 million in any 1 year by State, local, and tribal governments, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Therefore, the requirements of the UMRA do not apply to this action.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's final rule amendments. Because there is no cost associated with these amendments, the EPA has also determined that today's final rule amendments will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's final rule amendments on small entities, small entities are defined as: (1) A small business that has fewer than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, the EPA has concluded that this action will not have a significant impact on a substantial number of small entities.

G. Paperwork Reduction Act

The OMB approved the information collection requirements under the Generic MACT rule for the AR, AMF, HF, and PC production source categories and assigned the OMB control number 2060–0420 to the ICR. This approval expires September 30, 2002.

A copy may be obtained from Sandy Farmer by mail at the Collection Strategies Division (2822), Office of Environmental Information, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

These final rule amendments will not impact the information collection estimates made previously for the Generic MACT consolidated rulemaking package. Therefore, the ICR has not been revised.

H. National Technology Transfer and Advancement Act

As noted in the proposed amendments, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, (Public Law No. 104–113) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. These final rule amendments do not involve technical standards.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing these amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These final rule amendments do not constitute a "major rule" as defined by 5 U.S.C. 804(2). These amendments will be effective November 2, 2001.

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

These amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they do not constitute a significant regulatory action under Executive Order 12866.

List of Subjects for 40 CFR Part 63

Environmental protection, Acetal resins production, Acrylic and modacrylic fiber production, Air emissions control, Administrative practice and procedures, Hazardous air pollutants, Hydrogen fluoride production, Intergovernmental relations, Polycarbonate production, Process vents, Recordkeeping and reporting requirements, Storage vessels.

Dated: October 24, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart YY—[Amended]

2. Section 63.1101 is amended by revising the definitions for "equipment" and "storage vessel" to read as follows:

§ 63.1101 Definitions.

* * * * *

Equipment means each of the following that is subject to control under this subpart: pump, compressor, agitator, pressure relief device, sampling collection system, open-ended valve or line, valve, connector, instrumentation system in organic hazardous air pollutant service as defined in § 63.1103 for the applicable process unit, whose primary product is a product produced by a source category subject to this subpart.

* * * * *

Storage vessel or *tank*, for the purposes of regulation under the storage vessel provisions of this subpart, means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) that provides structural support and is designed to hold an accumulation of liquids or other materials. Storage vessel includes surge control vessels and bottoms receiver vessels. For the purposes of regulation under the storage vessel provisions of this subpart, storage vessel does not include vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships; or wastewater storage vessels. Wastewater storage vessels are covered under the wastewater provisions of § 63.1106.

* * * * *

3. Section 63.1103 is amended by revising paragraph (a)(1)(i)(A) to read as follows:

§ 63.1103 Source category-specific applicability, definitions, and requirements.

(a) * * *

(1) * * *

(i) * * *

(A) All storage vessels that store liquids containing organic HAP. For purposes of regulation, surge control vessels and bottoms receivers that are located as part of the process train prior to the polymer reactor are to be regulated under the front-end process vent provisions.

* * * * *

[FR Doc. 01–27593 Filed 11–1–01; 8:45 am]

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Federal Register

Friday,
November 2, 2001

Part V

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 419

Medicare Program—Prospective Payment System for Hospital Outpatient Services; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 419

[CMS–1179–IFC]

RIN 0938–AK59

Medicare Program—Prospective Payment System for Hospital Outpatient Services: Criteria for Establishing Additional Pass-Through Categories for Medical Devices

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period sets forth the criteria the Secretary will use to establish new categories of medical devices eligible for transitional pass-through payments under Medicare's hospital outpatient prospective payment system.

DATES: *Effective date*: These regulations are effective December 3, 2001.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 2, 2002.

ADDRESSES: Mail an original and 3 copies of written comments to the following address only:

Centers for Medicare & Medicaid Services Department of Health and Human Services, Attention: CMS–1179–IFC, P.O. Box 8018, Baltimore, MD 21244–8018

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–1179–IFC.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

For information on ordering copies of the **Federal Register** containing this document and electronic access, see the beginning of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Nancy Edwards, (410) 786–0378 or Barry Levi, (410) 786–4529.

SUPPLEMENTARY INFORMATION

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–10–04 of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD, on Monday through Friday of the week from 8:30 a.m. to 5 p.m. Please call (410) 786–7195 or (410) 786–4668 to view these comments.

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I. Background

Section 1833(t) of the Social Security Act (the Act), as added by section 4523 of the Balanced Budget Act of 1997 (BBA), Pub. L. 105–133, provided for implementation of a prospective payment system (PPS) for hospital outpatient services furnished to Medicare beneficiaries. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), Pub. L. 106–113, amended section 1833(t) of the Act to make major changes that affected the new PPS for hospital outpatient services. On April 7, 2000, we published in the **Federal Register** (65 FR 18434), a final rule with comment period to implement the new PPS for hospital outpatient services. The new system establishes payment rates for each service paid under this system using ambulatory payment classification (APC) groups. On June 30, 2000, we published a notice in the **Federal Register** (65 FR 40535) announcing a delay in the effective date of the hospital outpatient PPS (OPPS) from July 1, 2000 (as set forth in the April 7, 2000 final rule) until August 1, 2000. Therefore, OPPS became effective on August 1, 2000. The regulations implementing the payment system appear at 42 CFR part 419.

Among the provisions of the April 7, 2000 final rule with comment period are those implementing section 1833(t)(6) of the Act, which was added by section 201(b) of the BBRA. This section provided for temporary additional payments, referred to as "transitional pass-through payments," for certain drugs, biologicals, and devices. The provision required the Secretary to make additional payments to hospitals for at least 2, but no more than 3, years for specific items. The items designated by the BBRA are as follows:

- Current orphan drugs, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.
- Current drugs, biologicals, and brachytherapy devices used for the treatment of cancer.
- Current radiopharmaceutical drugs and biologicals.
- New medical devices, drugs, and biologicals in instances in which the item was not being paid as a hospital outpatient service as of December 31, 1996, and when the cost of the item is "not insignificant" in relation to the OPPS payment amount. For those drugs, biologicals, and devices referred to as "current," the transitional payment begins on the first date the hospital OPPS is implemented, as required by section 1833(t)(6)(B)(i) of the Act (before enactment of the Medicare, Medicaid, and SCHIP Program Benefits Improvement and Protection Act (BIPA), Pub. L. 106–554, enacted December 21, 2000).

Section 1833(t)(6)(B) of the Act requires payment to be made on a "pass-through" basis for the designated items. Specifically, for devices, the payment is determined by taking the hospital's charge for the device on the individual claim submitted to Medicare, multiplying by the hospital's cost-to-charge ratio, and subtracting an amount identified by the Secretary as already included in the associated APC to reflect payment for similar devices.

In the April 7, 2000 final rule with comment period, we discussed the criteria that we will use to determine which medical devices are eligible for transitional pass-through payments. These criteria were further discussed and several modifications were made in an interim final rule with comment period published in the **Federal Register** on August 3, 2000 (65 FR 47670). The modifications included changes in the test used to determine when the cost of the item is "not insignificant." Effective August 1, 2000, we used these criteria in determining which devices were eligible for transitional pass-through payments.

From the initial implementation of the new system on August 1, 2000 through March 31, 2001, we determined eligibility for all medical devices (as well as drugs and biologicals) for transitional pass-through payment on an item-specific basis, that is, distinguishing by individual trade names (and, in some instances, model numbers) of the eligible devices. Devices that we determined eligible were listed in one of a number of Program Memoranda we published on this subject. These lists were also posted on our Web site, *www.hcfa.gov*. Other devices, even if similar to those on the published lists, were not eligible in the absence of a specific eligibility decision published in a Program Memorandum. We established a quarterly process by which interested parties could submit applications to us for eligibility determinations for particular devices. Using this process, we determined that over 1,000 devices were eligible for transitional pass-through payments.

The most significant reason for adopting an item-specific approach rather than a category approach, which was also considered, was the requirement in section 1833(t)(6)(A)(iv)(I) of the Act that, for a device to be eligible for a transitional pass-through payment, "payment for the device * * * as an outpatient hospital service under this part was not being made as of December 31, 1996." We adopted an item-specific approach in order to distinguish which devices met this criterion. If we had adopted a categorical approach, any category that contained any device that Medicare had paid for before 1997 would not be eligible for transitional pass-through payments. No device included in that category, regardless of when Medicare started to pay for it, would be eligible. This approach would have severely limited the eligibility of devices for transitional pass-through payments, a result that we believed was contrary to the intent of the statute. Our reasons for adopting an item-specific approach to determining eligibility of transitional pass-through payments are further discussed in the November 13, 2000 interim final rule with comment period (65 FR 67806).

Section 402 of BIPA, which amends section 1833(t)(6) of the Act, requires us to use categories in determining the eligibility of devices for transitional pass-through payments effective April 1, 2001. Section 1833(t)(6)(B)(ii)(IV) of the Act, as added by section 402(a) of BIPA, requires us to establish a new category for a medical device when—

- The cost of the device is not insignificant in relation to the OPD fee schedule amount;
- No existing device category is appropriate for the device; and
- Payment was not being made for the device as an outpatient hospital service as of December 31, 1996. However, section 1833(t)(6)(B)(iv) of the Act, also added by section 402(a) of BIPA, provides that a medical device may be treated as meeting these requirements if either—
  - The device is described by one of the initial categories established; or
  - The device is described by one of the additional categories established under this rule, and—
    - An application under section 515 of the Federal Food, Drug, and Cosmetic Act has been approved; or
    - The device has been cleared for market under section 510(k) of the Federal Food, Drug, and Cosmetic Act; or
    - The device is exempt from the requirements of section 510(k) of the Federal Food, Drug, and Cosmetic Act under section 510(l) or section 510(m) of that Act.

Thus, otherwise covered devices that are described by a category may be eligible for transitional pass-through payments even if they were paid as part of an outpatient service as of December 31, 1996. At the same time, no categories will be created on the basis of devices that were paid on or before December 31, 1996. Under section 1833(t)(6)(B)(iv) of the Act, no further application or approval is required for a covered device that is described by a category to qualify for a transitional pass-through payment.

Section 1833(t)(6)(B)(i)(I) of the Act, as amended by BIPA, required us to establish, by April 1, 2001, an initial set of categories based on device by type in such a way that devices eligible for transitional pass-through payments under sections 1833(t)(A)(ii) and (iv) as of January 1, 2001 would be included in a category. We developed this initial set of categories in consultation with groups representing hospitals, manufacturers of medical devices, and other affected parties, as required by section 1833(t)(6)(B)(i)(II) of the Act, as amended by BIPA. We issued the list of initial categories on March 22, 2001, in Program Memorandum (PM) No. A–01–41, which is available on our Web site, *www.hcfa.gov*.

As required by section 1833(t)(6)(B)(iii) of the Act, the period during which a category of devices is eligible for transitional pass-through payments is at least 2, but not more than 3, years. This period begins with the first date on which a transitional pass-through payment is made for any medical device that is described by the category.

Section 1833(t)(6)(B)(ii)(III) of the Act, as amended by BIPA, requires us to establish criteria by July 1, 2001 that will be used to create additional categories. This provision requires that no medical device be described by more than one category. In addition, the criteria must include a test of whether the average cost of devices that would be included in a category is "not insignificant" in relation to the APC payment amount for the associated service.

A conforming amendment made by section 402(b)(3) of BIPA revises section 1833(t)(12)(E) of the Act concerning the limitation on administrative or judicial review of the OPPS. As amended, that section now prohibits administrative or judicial review of the determination and deletion of initial and new categories. In addition to the requirement to use device categories for purposes of the transitional pass-through payments, BIPA made other changes to those payments. Section 406 of BIPA amends section 1833(t)(6)(A)(ii) of the Act to extend transitional pass-through payments to devices used for temperature monitored cryoablation, effective for devices furnished on or after April 1, 2001.

Section 430 of BIPA amends section 1861(t)(1) of the Act to expand the definition of "drugs" to include contrast agents effective for items and services furnished on or after July 1, 2001. We implemented this provision by program memorandum (Transmittal A–01–73, June 1, 2001). Thus, contrast agents have been eligible for transitional pass-through payments since that date. The amount of the pass-through payment will be determined, as for other drugs, on the basis of 95 percent of the average wholesale price less the amount determined to be already included in the payment for the associated APC.

II. Provisions of This Interim Final Rule with Comment Period

This interim final rule sets forth the criteria for establishing new categories of medical devices eligible for transitional pass-through payments under the hospital outpatient PPS as required by section 1833(t)(6)(B)(ii) of the Act, as amended by BIPA. The provisions relating to transitional pass-through payments for eligible drugs and biologicals remain unchanged and are not addressed in this rule (except for the change relating to contrast agents as provided in section 430 of BIPA). Similarly, the provisions relating to new technology ambulatory payment classification (APC) groups remain the same, as set forth in our April 7, 2000 final rule (66 FR 18476). We note, however, that in the proposed rule to update the hospital OPPS for CY 2002, published on the August 24, 2001 (66 FR 44702), we proposed certain changes to the criteria for eligibility for payment in a new technology APC.

A. Changes to the Criteria for Eligibility for Pass-Through Payment of a Medical Device

As noted above, in our April 7, 2000 final rule with comment period (65 FR 18480), we defined new or innovative devices using eight criteria, three of which were revised in our August 3, 2000 interim final rule with comment period (65 FR 47673–74). These criteria were set forth in regulations at § 419.43(e)(4). For the most part, these criteria will remain applicable when defining a new category for devices. That is, devices to be included in a category must meet all previously established applicable criteria for a device eligible for transitional pass-through payments. The definition of an eligible device, however, must change to conform to the requirements of the amended section 1833(t)(6)(B)(ii) of the Act.

In addition, we are clarifying our criterion that states that a device must be approved or cleared by the FDA. The approval or clearance criterion applies only if FDA approval or clearance is required for the device as specified at new § 419.66(b)(1). For example, a device that has received an FDA investigational device exemption (IDE) and has been classified as a Category B device by the FDA in accordance with § 405.203 through § 405.207 and §§ 405.211 through 405.215 is exempt from this requirement. A device that has received an FDA IDE and is classified by the FDA as a Category B device is eligible for a transitional pass-through payment if all other requirements are met.

B. Criteria for Establishing Device Categories

As described above in section I of this preamble, in determining the criteria for establishing additional categories, section 1833(t)(6)(B)(ii) of the Act mandates that new categories must be established for devices that were not being paid for as an outpatient hospital service as of December 31, 1996, in such a way that no device is described by more than one category and the average cost of devices to be included in a category is not insignificant in relation to the APC payment amount for the associated service. Based on these requirements, we will use the following criteria to establish a category of devices:

- *Substantial clinical improvement.* The category describes devices that demonstrate a substantial improvement in medical benefits for Medicare beneficiaries compared to the benefits obtained by devices in previously established categories or other available treatments, as described in regulations at new § 419.66(c)(1).

This criterion ensures that no existing or previously existing category contains devices that are substantially similar to the devices to be included in the new category. This is consistent with the statutory mandate that no device is described by more than one category.

In addition, this criterion limits the number of new categories, and consequently transitional pass-through payments, to those categories containing devices that offer the prospect of substantial clinical improvement in the care of Medicare beneficiaries. Section 1833(t)(6)(E)(iii) of the Act, as redesignated by BIPA, requires that, if the Secretary estimates before the beginning of the year that the total amount of pass-through payments would exceed a specified percentage of total program payments (2.5 percent before 2004 and no more than 2 percent thereafter), we must uniformly reduce (prospectively) each pass-through payment in that year by an amount adequate to ensure that the limit is not exceeded.

We believe it is important for hospitals to receive pass-through payments for devices that offer substantial clinical improvement in the treatment of Medicare beneficiaries to facilitate access by beneficiaries to the advantages of the new technology. Conversely, the need for additional payments for devices that offer little or no clinical improvement over a previously existing device is less apparent. These devices can still be used by hospitals, and hospitals will be paid for them through the appropriate APC payment. To the extent these devices are used, the hospitals' charges for the associated procedures will reflect their use. We will use data on hospital charges to update the APC payment rates as part of the annual update cycle. Thus, the payment process will provide an avenue to reflect appropriate payments for devices that are not substantial improvements.

We will be evaluating a request for a new category of devices against the following criteria in order to determine if it meets the substantial clinical improvement requirement:

- The device offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments.
- The device offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods. There must also be evidence that use of the device to make a diagnosis affects the management of the patient.
- Use of the device significantly improves clinical outcomes for a patient population as compared to currently available treatments. Some examples of outcomes that are frequently evaluated in studies of medical devices are the following:
  - Reduced mortality rate with use of the device.
  - Reduced rate of device-related complications.
  - Decreased rate of subsequent diagnostic or therapeutic interventions (for example, due to reduced rate of recurrence of the disease process).
  - Decreased number of future hospitalizations or physician visits.
  - More rapid beneficial resolution of the disease process treated because of the use of the device.
  - Decreased pain, bleeding, or other quantifiable symptom.
  - Reduced recovery time.

As part of the application process (described below in section II.C.), we will require the requester to submit evidence that the category of devices meets one or more of these criteria. We note that the requirements set forth above will be used only for determining whether a device is eligible for a new category under section 1833(t)(6)(B) of the Act, which authorizes transitional pass through payments for categories of devices. These criteria are not intended for use in making coverage decisions under section 1862(a)(1)(A) of the Act. We note that adoption of these criteria is consistent with the recommendation of the Medicare Payment Advisory Commission, in its March 2001 Report to Congress, that pass-through payments for specific technologies be made only when a technology is new or substantially improved.

We expect to determine which devices represent a substantial clinical improvement over existing devices by using a panel of Federal clinical and other experts, supplemented if appropriate by individual consultation with outside experts. These decisions will, in general, be based on information submitted by the requester about the clinical benefit of the devices as described in the above criteria, including, where available, evidence from clinical trials or other clinical investigations.

We believe that almost all substantial clinical improvements in technology that are appropriately paid for under the transitional pass-through provisions result in measurable improvements in care from the perspective of the beneficiary. Nevertheless, there may be some improvements in the medical technology itself that are so significant that we may wish to recognize them for separate payment even though they do not directly result in substantial clinical improvements. For example, improvements in such factors as the strength of materials, increased battery life, miniaturization, might so improve convenience, durability, ease of operation, etc., that such an improvement in medical technology might be considered as a separate factor from "substantial clinical improvement" in beneficiary care. We invite public comment on this issue and are particularly interested in learning of examples of medical technologies for which pass through payments might be appropriate even though they would not also pass a test based on substantial improvement in beneficiary outcomes.

We note that we welcome comments on all aspects of these criteria for substantial clinical improvement, and we will consider timely comments in developing a final rule. (Comments on all parts of this interim final rule with comment will be considered if they are received within 30 days after the publication of this rule.) We will continue to evaluate these criteria as we gain experience in applying them, and we will consider revisions and refinements to them over time as appropriate.

- *Cost.* We determine that the estimated cost to hospitals of the devices in a new category (including any candidate devices and the other devices that we believe will be included in the category) is "not insignificant" relative to the payment rate for the applicable procedures. The estimated cost of devices in a category will be considered "not insignificant" if they meet the following criteria found in regulations at new § 419.66(d):
  - The estimated average reasonable cost of devices in the category exceeds 25 percent of the applicable APC payment amount for the service associated with the category of devices.
  - The estimated average reasonable cost of devices in the category exceeds the cost of the device-related portion of the APC payment amount for the service associated with the category of devices by at least 25 percent.
  - The difference between the estimated average reasonable cost of the devices in the category and the portion of the APC payment amount determined to be associated with the device in the associated APC exceeds 10 percent of the total APC payment.

Of these three cost criteria, the latter two are unchanged from our current thresholds for individual devices (however, as discussed below, their effective date is revised). The first criterion, however, represents a change from the current threshold.

In the April 7, 2000 final rule, we provided that a device's expected reasonable cost must exceed 25 percent of the applicable APC payment for the associated service as the criterion for determining when the cost of a specific device is "not insignificant" in relation to the APC payment (65 FR 18480). In the August 3, 2000 interim final rule, we lowered the threshold to 10 percent because we believed the 25 percent limit was too restrictive based on the brand specific approach at the time (65 FR 47673; § 419.43(e)(1)(iv)(C)). However, given our payment experience over the past year using the 10 percent threshold, including our current information on the likely amount of pass-through payments in CY 2002, we believe a higher threshold is warranted. We believe that setting a higher cost threshold will ensure that new categories are created only in those instances where they are most valuable to beneficiaries and hospitals, given the overall limits on pass-through payments. That is, pass-through payments will be targeted only to those devices where cost considerations might be most likely to interfere with patient access.

We found that once we lowered the threshold to 10 percent, a very small minority (less than 10 percent) of devices that met all other criteria for the pass-through payment were rejected on the basis of this criterion. Partly as a result, the list of devices qualified for pass-through payments increased to well over 1000 devices by the end of 2000. Although the extensive number of qualified devices allowed hospitals to receive additional payment for many devices, we have estimated that the overall pass-through payment amount for calendar year 2002 exceeds the 2.5 percent cap. Therefore, for that year, a substantial reduction in the amount of each pass-through payment as required by section 1833(t)(6)(E)(iii) of the Act, will be necessary. Thus, allowing a large number of marginally costly devices to qualify for the pass-through payment would reduce the amount of additional payment a hospital would receive for any one device. We believe raising the threshold for this criterion will benefit hospitals by focusing the pass-through payments on those devices that represent a substantial loss to the hospital. We believe this change will also preserve beneficiary access to especially expensive devices.

In addition, once a category is established, devices included in the category will be eligible for pass-through payments regardless of the cost of the device. Therefore, we believe that it is reasonable to set a higher threshold than 10 percent to establish the category. While the cost of most devices described by a category may equal or exceed the threshold we use in establishing a category, the cost of individual devices could easily fall below the threshold. Therefore, we believe that it is reasonable to use a higher threshold in establishing a category than in qualifying individual devices.

The latter two criteria for determining that the estimated cost of a category of devices is not insignificant are unchanged from those currently included in § 419.66 (as related to individual devices). As we provided in the August 3, 2000 interim final rule, we intended to apply these criteria to devices for which a pass-through payment is first made on or after January 1, 2003 (65 FR 47673). We stated that the delay would allow us sufficient time to gather and analyze data needed to determine the current portion of the APC payment associated with the devices.

Based on the outpatient claims data we are currently using for analysis, we believe that we are able, in many cases, to begin using these criteria at this time. Although the 1996 data did not provide a level of information that allowed us to determine the portion of the APC payment that was related to the device

(except in a very few cases such as pacemakers), the newer data often does provide this level of detail. Therefore we will begin using the second and third criteria for the purpose of creating categories, as described in regulations at §§ 419.66(d)(2) and 419.66(d)(3), as soon after the implementation of this final rule as we have data to do so rather than on January 1, 2003. Although in some instances the lack of specific data will prevent the application of these criteria, we do not believe that should delay our use of these criteria in those situations in which the data are available.

C. Application Process for Creation of a New Device Category

Device manufacturers, hospitals, or other interested parties may apply for a new device category for transitional pass-through payments. The application process is very similar to the process that was previously used for item-specific review of devices and that is currently used for drugs and biologicals. Details regarding deadlines and other aspects of the application process will be available on our web site, *www.hcfa.gov*.

We will accept applications at any time. However, we will establish new categories only at the beginning of a calendar quarter, in deference to our computer systems needs and those of our contractors and hospitals. We must receive applications in sufficient time before the beginning of the calendar quarter in which a category would be established to allow for decision-making and programming. For now, we will require that applications be received at least 4 months before the beginning of the quarter.

We may change the details of this application process in the future to reflect experience and programmatic needs. If we revise these instructions in any way, we will submit the revisions to the Office of Management and Budget pursuant to the Paperwork Reduction Act. We will also post the revisions on our web site.

D. Announcing a New Device Category

If we determine a new category is warranted, we will issue a Program Memorandum specifying a new Healthcare Common Procedure Coding System (HCPCS, formerly known as HCFA Common Procedure Coding System) code and short and long descriptors for the category. We may also include additional clarifying or definitional information to help distinguish the new category from other existing or previously existing categories. It may be necessary to redefine, or make other changes to, existing categories to accommodate a new category and ensure that no medical device is described by more than one category, though we will attempt to keep these changes to a minimum. We will post these Program Memoranda on our web site.

We may find it necessary occasionally to correct or amend the list of (and clarifying information associated with) new categories or initial categories. We do not expect this step will be needed often, but if it is necessary, we will issue any changes in a Program Memorandum.

E. Temperature-Monitored Cryoablation Devices

Section 406 of BIPA amends section 1833(t)(6)(A)(ii) of the Act to extend transitional pass-through payments to a device of temperature-monitored cryoablation. We have implemented this provision through PM No. A–01–40, which included categories for these devices. In our regulations at new § 419.66(e)(2), we have extended the transitional pass-through payments to a device of temperature-monitored cryoablation and specify that this medical device is not subject to the cost criteria described in § 419.66(d).

F. Contrast Agents as a Drug

Section 430 of BIPA revises the definition of drugs at section 1861(t)(1) of the Act to include contrast agents, therefore making them eligible for a transitional pass-through payment. We have implemented this provision effective July 1, 2001, through PM No. A–01–73, issued on June 1, 2001. This provision does not require any changes in our regulations as we are simply including contrast agents within the definition of drugs that were not paid as hospital outpatient services before 1997.

G. Redesignations

We are redesignating and revising our regulations at § 419.43(e) relating to transitional pass-through payments for drugs, biologicals, and devices to incorporate the changes in our policy that result from this interim final rule. Paragraph (e) has been removed and redesignated as a new subpart G. (Current subpart G is redesignated as subpart H.) The new subpart G consists of the following sections:

§ 419.62 Transitional pass-through payments: General rules.

§ 419.64 Transitional pass-through payments: Drugs and biologicals.

§ 419.66 Transitional pass-through payments: Medical devices.

We are redesignating § 419.43(f), Budget neutrality, as § 419.43(e) and revising that paragraph to limit its application only to outlier adjustments. The budget neutrality provision relating to pass-through payments is now found at § 419.62(b). We are also revising § 419.60(e), Limitations on administrative or judicial review, to conform to the changes made to section 1833(t)(12)(E) of the Act by section 402(b)(3) of BIPA.

In recodifying paragraph (e), we have made additional editorial changes to existing regulations text.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, when we proceed with a subsequent **Federal Register** document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a proposed rule in the **Federal Register** and invite public comment on the proposed rule. The proposed rule includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. We believe that, in this case, prior notice and comment procedures would be impracticable because the statute requires we issue the criteria by July 1, only slightly more than 6 months after passage of the underlying statute. This deadline does not permit completion of the full cycle of notice and comment rulemaking before the criteria are published. Furthermore, section 1833(t)(6)(B)(ii)(I) of the Act, as amended by section 402(a) of BIPA, gives explicit authority to use an interim final rule with comment period. Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis.

V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval.

In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comments on each of the issues for the information collection requirement discussed below.

Process and Information Required To Apply for Additional Device Categories For Transitional Pass-Through Payment Status Under the Hospital Outpatient Prospective Payment System

The application itself for additional device categories may be found at *www.hcfa.gov*. The application process is very similar to the process that was previously used for item-specific review of devices and that is currently used for drugs and biologicals. Details regarding deadlines and other aspects of the application process will be available on the above web site. (See also section II. Above.)

We estimate that approximately 100 entities will file an application yearly. We believe it will take each of these entities around 16 hours to gather the necessary information and fill out the application.

We have submitted a copy of this interim final rule with comment to OMB for its review of the information collection requirement described above. The requirement is not effective until it has been approved by OMB.

If you comment on these information collection requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, DHES, SSG, Attn: John Burke, CMS–1179–IFC, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503 Attn: Allsion Eydt, Desk Officer.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This interim final rule is not a major rule because we have determined that the economic impact will be negligible for the revisions related to the transitional pass-through payments for new or innovative medical devices. In addition, the budget impact related to the transitional pass-through provision has already been addressed in the outpatient prospective payment system implementing rule published on April 7, 2000 (65 FR 18530). As stated in that rule, the pass-through provision is implemented in a budget-neutral manner as required by section 1833(t)(2)(E) of the Act. Section 1833(t)(6)(E) of the Act, as amended by BBRA and redesignated by BIPA, caps the projected additional payments annually at 2.5 percent of the total projected payments for hospital outpatient services each year before calendar year 2004 and no more than 2.0 percent in year 2004 and subsequent years.

The RFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues ranging between $5 million and $25 million or less annually, depending on the particular health care industry (for details see the Small Business Administration's final rule size standards for health care at 65 FR 69432). Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with not more than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the prospective payment system, we classify these hospitals as urban hospitals.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This interim final rule will not have a significant economic effect on these governments or the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule will not have a substantial effect on States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 419

Health facilities, Hospitals, Medicare.

For the reasons set forth in the preamble, 42 CFR part 419 is amended as follows:

PART 419—PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1833(t), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395l(t), and 1395hh).

2. Section 419.43 is amended by—

A. Removing paragraph (e).

B. Redesignating paragraph (f) as paragraph (e) and revising it to read as follows.

§ 419.43 Adjustments to national program payment and beneficiary coinsurance amounts.

* * * * *

(e) *Budget neutrality.* CMS establishes payment under paragraph (d) of this section in a budget-neutral manner.

3. Section 419.60(e) is revised to read as follows:

§ 419.60 Limitations on administrative and judicial review.

* * * * *

(e) The determination of the fixed multiple, or a fixed dollar cutoff amount, the marginal cost of care, or applicable percentage under § 419.43(d) or the determination of insignificance of cost, the duration of the additional payments (consistent with subpart G of this part), the determination of initial and new categories under § 419.66, the portion of the Medicare hospital outpatient fee schedule amount associated with particular devices, drugs, or biologicals, and the application of any pro rata reduction under § 419.62(c).

4. Redesignate Subpart G as Subpart H.

5. New Subpart G is added to read as follows:

Subpart G Transitional Pass-through Payments

Sec.

§ 419.62 Transitional pass-through payments: general rules.
§ 419.64 Transitional pass-through payments: Drugs and biologicals.
§ 419.66 Transitional pass-through payments: Medical devices.

§ 419.62 Transitional pass-through payments: General rules.

(a) *General.* CMS provides for additional payments under §§ 419.64 and 419.66 for certain innovative medical devices, drugs, and biologicals.

(b) *Budget neutrality.* CMS establishes the additional payments under §§ 419.64 and 419.66 in a budget neutral manner.

(c) *Uniform prospective reduction of pass-through payments.* (1) If CMS estimates before the beginning of a calendar year that the total amount of pass-through payments under §§ 419.64 and 419.66 for the year would exceed the applicable percentage (as described in paragraph (c)(2) of this section) of the total amount of Medicare payments under the outpatient prospective payment system. CMS will reduce, pro rata, the amount of each of the additional payments under §§ 419.64 and 419.66 for that year to ensure that the applicable percentage is not exceeded.

(2) The applicable percentages are as follows:

(i) For a year before CY 2004, the applicable percentage is 2.5 percent.

(ii) For 2004 and subsequent years, the applicable percentage is a percentage specified by CMS up to (but not to exceed) 2.0 percent.

§ 419.64 Transitional pass-through payments: drugs and biologicals.

(a) *Eligibility for pass-through payment.* CMS makes a transitional pass-through payment for the following drugs and biologicals that are furnished as part of an outpatient hospital service:

(1) *Orphan drugs.* A drug or biological that is used for a rare disease or condition and has been designated as an orphan drug under section 526 of the Federal Food, Drug and Cosmetic Act if payment for the drug or biological as an outpatient hospital service was being made on August 1, 2000.

(2) *Cancer therapy drugs and biologicals.* A drug or biological that is used in cancer therapy, including, but not limited to, a chemotherapeutic agent, an antiemetic, a hematopoietic growth factor, a colony stimulating factor, a biological response modifier, and a bisphosphonate if payment for the drug or biological as an outpatient hospital service was being made on August 1, 2000.

(3) *Radiopharmaceutical drugs and biological products.* A radiopharmaceutical drug or biological product used in diagnostic, monitoring, and therapeutic nuclear medicine services if payment for the drug or biological as an outpatient hospital service was being made on August 1, 2000.

(4) *Other drugs and biologicals.* A drug or biological that meets the following conditions:

(i) It was first payable as an outpatient hospital service after December 31, 1996.

(ii) CMS has determined the cost of the drug or biological is not insignificant in relation to the amount payable for the applicable APC (as calculated under § 419.32(c)) as defined in paragraph (b) of this section.

(b) *Cost.* CMS determines the cost of a drug or biological to be not insignificant if it meets the following requirements:

(1) *Services furnished before January 1, 2003.* The expected reasonable cost of a drug or biological must exceed 10 percent of the applicable APC payment amount for the service related to the drug or biological.

(2) *Services furnished after December 31, 2002.* CMS considers the average cost of a new drug or biological to be not insignificant if it meets the following conditions:

(i) The estimated average reasonable cost of the drug or biological in the category exceeds 10 percent of the applicable APC payment amount for the service related to the drug or biological.

(ii) The estimated average reasonable cost of the drug or biological exceeds the cost of the drug or biological portion of the APC payment amount for the related service by at least 25 percent.

(iii) The difference between the estimated reasonable cost of the drug or biological and the estimated portion of the APC payment amount for the drug or biological exceeds 10 percent of the APC payment amount for the related service.

(c) *Limited period of payment.* CMS limits the eligibility for a pass-through payment under this section to a period of at least 2 years, but not more than 3 years, that begins as follows:

(1) For a drug or biological described in paragraphs (a)(1) through (a)(3) of this section—August 1, 2000.

(2) For a drug or biological described in paragraph (a)(4) of this section—the date that CMS makes its first pass-through payment for the drug or biological.

(d) *Amount of pass-through payment.* Subject to any reduction determined under § 419.62(b), the pass-through payment for a drug or biological is 95 percent of the average wholesale price of the drug or biological minus the portion of the APC payment amount CMS determines is associated with the drug or biological.

§ 419.66 Transitional pass-through payments: medical devices.

(a) *General rule.* CMS makes a pass-through payment for a medical device that meets the requirements in paragraph (b) of this section and that is described by a category of devices established by CMS under the criteria in paragraph (c) of this section.

(b) *Eligibility.* A medical device must meet the following requirements:

(1) If required by the FDA, the device must have received FDA approval or clearance (except for a device that has received an FDA investigational device exemption (IDE) and has been classified as a Category B device by the FDA in accordance with §§ 405.203 through 405.207 and 405.211 through 405.215 of this chapter) or another appropriate FDA exemption.

(2) The device is determined to be reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body part (as required by section 1862(a)(1)(A) of the Act).

(3) The device is an integral and subordinate part of the service furnished, is used for one patient only, comes in contact with human tissue, and is surgically implanted or inserted whether or not it remains with the patient when the patient is released from the hospital.

(4) The device is not any of the following:

(i) Equipment, an instrument, apparatus, implement, or item of this type for which depreciation and financing expenses are recovered as depreciable assets as defined in Chapter 1 of the Medicare Provider Reimbursement Manual (CMS Pub. 15–1).

(ii) A material or supply furnished incident to a service (for example, a suture, customized surgical kit, or clip, other than radiological site marker).

(iii) A material that may be used to replace human skin (for example, a biological or synthetic material).

(c) *Criteria for establishing device categories.* CMS uses the following criteria to establish a category of devices under this section:

(1) CMS determines that a device to be included in the category is not described by any of the existing categories, and was not being paid for as an outpatient service as of December 31, 1996.

(2) CMS determines that a device to be included in the category has demonstrated that it will substantially improve the diagnosis or treatment of an illness or injury or improve the functioning of a malformed body part compared to the benefits of a device or devices in a previously established category or other available treatment.

(3) Except for medical devices identified in paragraph (e) of this section, CMS determines the cost of the device is not insignificant as described in paragraph (d) of this section.

(d) *Cost criteria.* CMS considers the average cost of a category of devices to be not insignificant if it meets the following conditions:

(1) The estimated average reasonable cost of devices in the category exceeds 25 percent of the applicable APC payment amount for the service related to the category of devices.

(2) The estimated average reasonable cost of the devices in the category exceeds the cost of the device-related portion of the APC payment amount for the related service by at least 25 percent.

(3) The difference between the estimated average reasonable cost of the devices in the category and the portion of the APC payment amount for the device exceeds 10 percent of the APC payment amount for the related service.

(e) *Devices exempt from cost criteria.* The following medical devices are not subject to the cost requirements described in paragraph (d) of this section, if payment for the device was being made as an outpatient service on August 1, 2000:

(1) A device of brachytherapy.

(2) A device of temperature-monitored cryoablation.

(f) *Identifying a category for a device.* A device is described by a category, if it meets the following conditions:

(1) Matches the long descriptor of the category code established by CMS.

(2) Conforms to guidance issued by CMS relating to the definition of terms and other information in conjunction with the category descriptors and codes.

(g) *Limited period of payment for devices.* CMS limits the eligibility for a pass-through payment established under this section to a period of at least 2 years, but not more than 3 years beginning on the date that CMS establishes a category of devices.

(h) *Amount of pass-through payment.* Subject to any reduction determined under § 419.62(b), the pass-through payment for a device is the hospital's charge for the device, adjusted to the actual cost for the device, minus the amount included in the APC payment amount for the device.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 2, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 19, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–27658 Filed 10–31–01; 9:17 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 419

[CMS–1159–F1]

RIN 0938–AK54

Medicare Program; Announcement of the Calendar Year 2002 Conversion Factor for the Hospital Outpatient Prospective Payment System and a Pro Rata Reduction on Transitional Pass-Through Payments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule announces the Medicare hospital outpatient prospective payment system conversion factor for calendar year (CY) 2002. In addition, it describes the Secretary's estimate of the total amount of transitional pass-through payments for CY 2002 and the implementation of a uniform reduction in each of the pass-through payments for that year.

EFFECTIVE DATE: This final rule is effective January 1, 2002 and applies to services furnished on or after January 1, 2002. This rule is a major rule as defined in 5 U.S.C. 804(2). According to 5 U.S.C. 801(a)(1)(A), we are submitting a report to the Congress on this rule on November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Anne Tayloe, (410) 786–0600.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register.**

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online database through GPO Access, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

Section 1833(t) of the Social Security Act (the Act), as added by section 4523 of the Balanced Budget Act of 1997 (BBA), Pub. L. 105–133, provided for implementation of a prospective payment system (PPS) for hospital outpatient services furnished to Medicare beneficiaries. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), Pub. L. 106–113, amended section 1833(t) of the Act to make major changes that affected the new prospective payment system. On April 7, 2000, we published a final rule with comment period in the **Federal Register** (65 FR 18434) to implement the new PPS for hospital outpatient services. The new system established payment rates for each service paid under this system using ambulatory payment classification (APC) groups. On June 30, 2000, we published a notice in the **Federal Register** (65 FR 40535) announcing a delay in the effective date of the hospital outpatient PPS (OPPS) from July 1, 2000 (as set forth in the April 7, 2000 final rule) until August 1, 2000. Therefore, OPPS became effective on August 1, 2000. The regulations implementing the payment system appear at 42 CFR part 419.

On August 3, 2000, we published an interim final rule with comment period (65 FR 47670) that modified criteria that we use to determine which medical devices are eligible for transitional pass-through payments. On November 13, 2000, we published an interim final rule with comment period in the **Federal Register** (65 FR 67798) that provided for the annual update to the amounts and factors for OPPS payment rates effective for services furnished on or after January 1, 2001. We also responded to public comments on those portions of the April 7, 2000 final rule that implemented related provisions of the BBRA and public comments on the August 3, 2000 rule.

On August 24, 2001, we published a proposed rule in the **Federal Register** (66 FR 44672) that set forth proposed changes to the OPPS to implement applicable statutory requirements, including relevant provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), enacted on December 21, 2000, as well as changes arising from our continuing experience with the system. That document described proposed changes to the amounts and factors used to determine the payment rates for services paid under the hospital OPPS for CY 2002. These amounts and factors include the updated conversion factor, APC classifications and relative weights, wage index values, copayment amounts, and the discussion of a possible pro rata reduction to be applied to the transitional pass-through payments for certain drugs, biologicals, and medical devices.

We received approximately 400 timely items of correspondence containing multiple comments on the August 24, 2001 proposed rule. In this final rule, we will respond to those comments addressing the Secretary's estimate of the total amount of pass-through payments for CY 2002 and the need for a uniform reduction to those payments in 2002 as well as the determination of the OPPS conversion factor for CY 2002.

In a subsequent final rule to be published by December 1, 2001, we will address the remainder of the comments and include the tables necessary to calculate CY 2002 payment rates and beneficiary copayment amounts.

II. Transitional Pass-Through Payments

A. Background

Section 1833(t)(6) of the Act provides for temporary additional payments or "transitional pass-through payments" for certain innovative medical devices, drugs, and biologicals. As originally enacted by the BBRA, this provision required the Secretary to make additional payments to hospitals for current orphan drugs, as designated under section 526 of the Federal Food, Drug and Cosmetic Act; current drugs, biologicals, and brachytherapy devices used for the treatment of cancer; and current radiopharmaceutical drugs and biologicals. Transitional pass-through payments are also required for new medical devices, drugs, and biologicals that were not being paid for as a hospital outpatient service as of December 31, 1996 and whose cost is "not insignificant" in relation to the OPPS payment for the procedures or services associated with the new device, drug, or biological. Under the statute, transitional pass-through payments for any given device, drug, or biological are to be made for at least 2 years but not more than 3 years.

Section 1833(t)(6)(D)(i) of the Act sets the payment rate for drugs and biologicals eligible for a transitional pass-through payment as the amount by which the amount determined under section 1842(o) of the Act (that is, 95 percent of the applicable average wholesale price) exceeds the portion of the otherwise applicable fee schedule amount (that is, the APC payment rate) that the Secretary determines is associated with the drug or biological. Section 1833(t)(6)(D)(ii) of the Act sets the transitional pass-through payment for a medical device at the amount by which the hospital's charges, adjusted to cost, exceeds the portion of the otherwise applicable fee schedule amount (that is, the APC payment rate) that the Secretary determines is associated with the device.

B. Pro Rata Reductions

Section 1833(t)(6)(E) of the Act limits the total projected amount of transitional pass-through payments for a given year to an "applicable percentage" of projected total payments under the hospital OPPS. For a year before 2004, the applicable percentage is 2.5 percent; for 2004 and subsequent years, the applicable percentage is a percentage specified by the Secretary up to 2.0 percent. If the Secretary estimates before the beginning of the calendar year that the total amount of pass-through payments in that year would exceed the applicable percentage, section 1833(t)(6)(E)(iii) of the Act requires a uniform prospective reduction in the amount of each of the transitional pass-through payments for that year to ensure that the limit is not exceeded.

In the August 24, 2001 proposed rule setting out the proposed changes for CY 2002 in the OPPS, we described the extensive data base that we have constructed in order to prepare for making an estimate of pass-through payments for 2002. This data base includes outpatient claims data submitted by hospitals for services furnished on or after July 1, 1999 and before July 1, 2000, as well as device cost and utilization data extracted from applications for pass-through status submitted by manufacturers, hospitals, specialty societies, and other entities. In their applications for pass-through status, manufacturers have supplied information on the expected cost to hospitals of devices and the procedures with which the devices are commonly used.

In the August 24, 2001 proposed rule, we indicated that the information collected to that time suggested that a significant pro rata reduction might be required for 2002 in order to meet the statutory limit on the amount of the pass-through payments. We also announced that we were considering the appropriateness of a number of possible alternative approaches that would have the effect of minimizing the amount of any potential reduction in these payments. Finally, we presented a discussion of the methodology that we contemplate using in the development of our estimate.

We announced in the August 24, 2001 proposed rule that we were considering a number of possible approaches to different technical aspects of estimating payments. We also indicated that, as is always the case in making these types of estimates, it would be necessary to make a number of assumptions in interpreting the data. We were tentatively contemplating using the following assumptions and techniques in developing our methodology:

1. Data and Procedures for Estimation

We planned to base the estimate of 2002 pass-through expenditures on the claims we would use to set payment rates for 2002; 2001 pass-through amounts for drugs and radiopharmaceuticals; and device cost and use data from pass-through applications submitted by manufacturers, hospitals, specialty societies, and other entities. We proposed to make projections to CY 2002 on the basis of price, volume, and service-mix inflators consistent with our baseline for OPPS spending. Estimates for drugs, radiopharmaceuticals, and devices would be made separately and combined for the final projection of pass-through spending.

2. Drug Estimate

We also proposed to identify those drugs eligible for pass-through status that have been separately billed to the Medicare program on the claims that we intend to employ for the estimate. We proposed to multiply the frequency of use for each of these drugs (that is, the number of line items multiplied by the number of units billed as shown in the claims data) by its 2001 pass-through payment amount. We would determine a reasonable adjustment to account for those drugs that do not appear in the claims data. Such an adjustment might take into account the extent to which the noncoded items were classified as orphan drugs and therefore to be used infrequently.

3. Radiopharmaceutical Estimate

As in the case of the drug estimates, we proposed to identify those radiopharmaceuticals eligible for pass-through status that were separately billed to Medicare in the claims data file. We proposed to estimate expenditures for these radiopharmaceuticals directly as described above. For radiopharmaceutical drugs, we would multiply the frequency of use for each item by the 2001 pass-through amount. We would estimate expenditures for the remaining items by using the frequency counts for all nuclear medicine procedures not billed with one of these radiopharmaceuticals.

4. Device Estimate

We proposed to estimate the transitional pass-through payments attributable to devices by linking the frequencies for all device-related procedures in the claims data file with the cost and use data supplied by the manufacturers or other entities as part of their applications for pass-through status. We proposed to match each device eligible as of January 2001 with the procedures with which it would be used. We would then calculate an average cost for each device or device package associated with a procedure.

The statute requires that we calculate transitional pass-through payments for devices by adjusting the hospital's charge for the device to cost and then subtracting an amount that reflects the device costs already included in the payment for the associated APC. As we explained in the April 7, 2000 final rule (65 FR 18481), we were not able to implement these subtractions at the time of implementation of the system. For 2001, we made these deductions for pacemakers and neurostimulators. In the August 24, 2001 proposed rule, we proposed to make these subtractions for most other devices beginning in 2002. For the purpose of doing this estimation, we proposed to deduct these amounts from each device package before multiplying that cost by the procedure frequencies.

5. Projecting to 2002

We planned to project prices and quantities in the estimates determined as above to 2002 using actuarial projections of price and enrollee volume and service increase consistent with the OPPS baseline. We then proposed to add the three separate results in an estimate of total pass-through spending.

We received over 80 comments in response to our proposal, including comments from national provider associations, hospitals, device and drug manufacturers, and their representative associations.

Comment: Many commenters expressed concern about the data and the methodology that we proposed to use in developing an estimate of pass-through spending for 2002. A number of these commenters specifically cited the lack of actual claims data under the OPPS as one major concern. Commenters doubted that claims from the period before implementation of the OPPS would contain sufficiently accurate coding or adequately reflect utilization of pass-through items to allow us to make an accurate estimate.

Response: We believe that the outpatient claims data submitted by hospitals for services furnished on or after July 1, 1999 and before July 1, 2000 provide adequate information for use in projecting pass-through spending for 2002. These claims are the most recent outpatient data available to us, and we are also using these claims for the purpose of recalibrating the APC relative weights for 2002. These data provide useful information on the frequencies of the procedures in which pass-through items are used, as well as of the utilization frequencies of some of the pass-through items themselves (especially drugs). Claims data for the period after the implementation of the prospective payment system are not at present available for analysis. Under the best of circumstances, we would only expect data from the prior calendar year to be available. Thus, only data from the first 5 months under the OPPS (August to December 2000) might be available at this point in the update cycle. However, the extent to which these data, were they available, would offer any significant improvement for these purposes is unclear. Those claims data would not contain information on most of the devices approved for pass-through payment in 2002 because those items became eligible for payment after January 1, 2001. It would still be necessary to use a crosswalk that maps devices to procedures in order to project spending for pass-through devices in 2002.

Comment: Some commenters questioned the appropriateness of using data on cost, utilization, and coding derived from applications from device manufacturers for pass-through status in developing the estimate. These commenters specifically contended that these data were not collected for the purpose of establishing payment amounts. They also contended that the cost, utilization, and coding information were not requested in a specific format on the applications, and that this information was therefore not presented in an appropriately consistent manner for the requisite level of analysis.

Response: The assertions of the commenters are incorrect. We were aware that we would have to develop estimates of pass-through costs for the purposes of applying the statutory limit on these costs when we developed the applications for pass-through status. We also knew at that time that we needed cost data in order to apply the cost significance eligibility criteria for pass-

through status. We deliberately developed the applications in order to generate reliable information on the cost, coding, and use of devices.

We specifically requested that the following information be uniformly provided: "Current cost of the item or service to hospitals (*i.e.*, actual cost paid by hospitals net of all discounts, rebates, and incentives in cash or in-kind)." We also specifically asked applicants to identify the Healthcare Common Procedure Coding System (HCPCS) or American Medical Association Current Procedural Terminology (CPT) service codes associated with each device application. We certainly assume that the manufacturers would be reliable sources of this information. We did not derive information on utilization frequencies solely from the manufacturers' applications for pass-through status. Rather, we calculated our projections of utilization by analyzing the claims at our disposal using a crosswalk of pass-through items to procedure codes that our clinical staff developed from the information supplied by manufacturers. The crosswalk established the CPT codes and the APCs with which the particular devices are used, while the claims data provided the frequency of use for devices in those APCs.

Comment: Many commenters questioned the validity of matching items eligible for pass-through payment with the procedures with which they would be used, citing the complexity of the CPT coding system and the variety and number of pass-through items that could be associated with particular procedure codes. The commenters asserted that a crosswalk that matched pass-through items and codes would require external review and validation. One commenter expressed concern that this crosswalk could overstate the frequencies of device use, since devices may not actually be used in every procedure where they could have been used.

Response: Using the information from the applications, our clinical staff (including physicians, nurses, and coding specialists) developed the device-to-procedure crosswalk. The staff employed a rigorous process of analysis and verification in developing this crosswalk. All members of the staff reviewed each tentative assignment of pass-through items to procedures. In order to minimize the use of individual clinical judgement, the staff made final decisions only after reaching a consensus on the assignment of pass-through items to each procedure. We are confident that the crosswalk reflects an appropriate level of analytical rigor and independent validation.

The clinical staff also followed a conservative approach in matching devices to procedures. Specifically, they assigned pass-through items only to procedures for those pass-through items that would be typically used, even if there were other procedures in which those items might occasionally be used. Moreover, the crosswalk specifically accounts for procedures where a device or devices might be used less than 100 percent of the time. We are confident that the crosswalk procedure itself has not in any way led to an overstatement of pass-through costs.

Comment: Many commenters asserted that the method described in the August 24, 2001 proposed rule is necessarily flawed because we excluded multiple service claims from the data.

Response: We use only single service claims in calibrating the APC weights because we have no way of allocating ancillary service costs among the various procedures on multiple service claims. However, for all other facets of our annual calculation of OPPS payment amounts and factors (for example, our estimate of outlier spending and resulting thresholds), we use both single and multiple service claims. Similarly, we included both single service and multiple service claims in developing our estimate of pass-through costs and the pro rata reduction. Specifically, we used both types of claims in developing the count of the procedures associated with the use of pass-through items.

Comment: Several commenters questioned whether we had provided sufficient notice of a possible pro rata reduction to comply with the requirements of the Administrative Procedure Act. These commenters contended that the description of the proposed method for calculating a pro rata reduction was too general to allow for adequate public comment and that the data supporting the need for such a reduction should have been published to allow for public review and analysis. One commenter argued that a pro rata reduction cannot be implemented legally without specifying the size of the reduction in a proposed rule with an adequate comment period. A commenter from the drug industry stated that data on utilization should be released in time for review and analysis so that the industry could have sufficient opportunity to assess the contribution of its products to pass-through spending and to develop options and recommendations for legislative and administrative action.

Response: At the time the August 24, 2001 proposed rule was published, we had assembled a data base and developed a preliminary methodology for making an estimate of pass-through spending in 2002. Our best judgment was that further review and analysis of the data and methodology were warranted before we announced a specific estimate of 2002 pass-through spending and any requisite pro rata reduction. We therefore confined our discussion in the proposed rule to the information that was then clearly known to us, namely the general methodology that we proposed to employ, and the likely magnitude of a pro rata reduction.

We believe that our description of our data sources and methodology allowed ample opportunity for substantive comment, and we did receive numerous substantive comments on both the data sources and the methodology. Furthermore, our notice that a "significant pro rata reduction could be required for 2002" provided interested parties sufficient opportunity to assess the situation and to develop options and recommendations for both legislative and administrative action. We received many comments with proposals and recommendations for administrative action, as well as proposals for possible legislative measures that commenters have urged us to bring to the attention of the Congress. (We respond to these comments below.) Finally, we note that section 1833(t)(12) of the Act provides that there "shall be no administrative or judicial review * * * of the application of any pro rata reduction * * *."

Based on the methodology described above, we estimate that the total amount of transitional pass-through payments for 2002 would exceed the limit of 2.5 percent of total spending under the OPPS. Specifically, we estimate that total transitional pass-through payments for 2002 would be about $2.26 billion, of which about $1.89 billion is attributable to devices and about $0.37 billion is attributable to drugs and radiopharmaceuticals. (Of the latter number, radiopharmaceuticals account for about $0.17 billion, and drugs account for about $0.20 billion.) Estimated total pass-through payments would thus be approximately 13 percent of the baseline projection of $17.5 billion in total payments (including both program and beneficiary payments) to hospitals in 2002 under the OPPS, and pass-through payments for devices are approximately 11 percent total of OPPS payments in 2002. Based on this estimate, a pro rata reduction of 80.7 percent would be required by the statute.

Many commenters recommended measures to delay or mitigate the effects of any pro rata reduction. These comments and our responses are set forth below.

Comment: A number of commenters requested a 1-year delay in implementing a pro rata reduction, citing their concerns about data limitations and methodological weaknesses as reasons for such a delay. Other commenters recommended that any pro rata reduction should be phased in over a period of several years in order to allow vendors and hospitals adequate time to adjust to the reduced payment.

Response: The statute specifically requires that, if the Secretary estimates before the beginning of a year that the amount of the pass-through payments for that year will exceed the limit, "the Secretary shall reduce pro rata the amount of each of the additional payments * * * *for that year.*" (Emphasis added.) Therefore, we can legally neither delay the reduction until a later year nor spread the reduction over the payments for several years. We now have an estimate of pass-through spending for 2002, and we have explained above why we believe that our methodology for determining it was reasonable.

Comment: Several commenters recommended that we use the amount "reserved" for outlier payments (up to 2.5 percent of OPPS payments) to increase the amount of money available for pass-through payments in order to reduce the need for a pro rata reduction. (As we have explained in other contexts, outlier payments are financed through a prospective reduction to PPS rates. We do not "set aside" money in a discrete fund to pay for outliers, and the same is true for pass-through payments.) Another commenter advocated that we fold the pass-through payments into the outlier "pool," and pay for the high costs of new technology as part of our payment for high cost services of all types. Other commenters contended that the 2.5 percent limit on pass-through payments was inadequate to pay for the costs of new technologies and recommended that the limit be raised.

Response: The statute provides for both the outlier and transitional pass-through payments and establishes the 2.5 percent limits on those payments for the years before 2004 (when the limit for outliers increases to 3.0 percent and the limit for transitional pass-throughs decreases to 2.0 percent). Thus, we do not have the administrative authority to make any of the changes that these commenters have recommended. Rather, legislative action would be required to make any of these changes.

Comment: One commenter recommended that we move the procedures associated with pass-through items to the inpatient list so that they can be paid under the hospital inpatient PPS.

Response: We believe that the commenter is confused about the purpose of the inpatient list. The inpatient list identifies procedures that may not be paid under the OPPS. If medically necessary, any procedure, including those not on the inpatient list, that is performed in an inpatient setting may be paid under the hospital inpatient PPS. We decide which procedures are included on the inpatient list on the basis of clinical criteria alone. We believe that procedures should not be included on the inpatient list for payment reasons.

Comment: Several commenters asserted that a pro rata reduction will be necessary in 2002 only because we have failed to implement the transitional pass-through program as the Congress intended it. Specifically, these commenters contended that we have failed to restrict the pass-through payments to the incremental costs of new technologies by identifying the costs for predecessor technologies that are already represented in the APC payment rates and subtracting those amounts from the pass-through payments, as contemplated by the statute.

Response: Because of constraints on our data analysis before implementation of the pass-through provision, we did have difficulty initially in determining appropriate offsets for the technology costs already represented in the payment rates for many APCs. However, in the August 24, 2001 proposed rule, based on the updated claims data, we proposed appropriate offset amounts for 25 APCs that are associated with the use of pass-through devices. We will announce our final computations of the offset amounts for the affected APCs in a subsequent rule, which will be published before the beginning of the year. We will thus have substantially accounted for the technology costs that are already represented in APC payment rates, and, therefore, the magnitude of the pro rata reduction cannot be attributed to a failure to restrict pass-through payments to the incremental costs of new technology.

Comment: Many commenters expressed their concern about the prospect for a significant pro rata reduction, and the potential effect of such a reduction on access of Medicare beneficiaries to necessary treatments in the outpatient setting. These commenters therefore urged us not to implement a pro rata reduction in 2002.

Response: A significant pro rata reduction could affect the availability of improved medical technology for Medicare beneficiaries, but the possibility of such a result is inherent in the statutory scheme. The Congress has set up a scheme to limit the aggregate amount of (projected) pass-through payments in a given year, including a requirement for a pro rata reduction. The statute reflects a balance of competing considerations— providing pass-through payments for new technologies but limiting the aggregate amount of those payments so that payments for other services are not reduced significantly (if there were no limit on projected pass-through payments, then, other things being equal, we would be reducing the base payments by 13 percent rather than 2.5 percent to ensure budget neutrality). In order to promote access to new technologies, we have decided to take a significant administrative action in order to reduce the size of the reduction. That action, which incorporates a portion of the pass-through costs into the base APCs, is discussed below. We believe that there are no other feasible and prudent administrative options available to reduce the amount of a pro rata reduction.

Comment: Several commenters, including device manufacturers and the associations that represent them, recommended that we fold the costs of pass-through devices into the base APC rates. These commenters noted that such a step would limit pass-through payments to the incremental costs of new technologies, and at least reduce the size of a pro rata reduction. Some of these commenters urged us not to implement any pro rata reduction until we have revised the base rates to include these costs.

Response: The transitional pass-through payment provision was intended as an interim measure to allow for adequate payment of new, innovative technology while we collected the necessary data to incorporate the costs for these items into the base APC rates. The statute and regulations specifically limit the payment for individual pass-through items to at least 2 years but no more than 3 years, with the intention that the costs for these items should be incorporated into the APC rates for the procedures associated with these items after that period. We agree with these commenters that we have the discretion to fold some of these costs into the APC rates before the time period for

transitional payment of specific devices has expired. (We cannot fold all of the current pass-through costs into the APC rates at this time, because the statute implies that pass-through payments for devices that have been eligible for less than 2 years must continue to be made.)

We also agree with the commenters that it is reasonable and prudent to incorporate some of the pass-through costs into the APC rates now, before we are legally required to do so, in order to mitigate the effects of the significant pro rata reduction that is mandated by the statute. Prudence also dictates, however, that we take into account all the other effects of incorporating these costs into the base rates at this time in deciding how much of the costs to incorporate into the base rates for 2002.

In addition to reducing the size of the pro rata reduction, incorporating a portion of the cost of pass-through devices into the basic APC costs has an effect on the APC relative weights. This is because the costs to be incorporated are not evenly distributed among the APCs, but are rather concentrated in a relatively small number of APCs that include the procedures that use pass-through devices. The effect of incorporating pass-through costs into the APCs is thus to decrease the APC weights for services such as clinic visits, preventive care, and diagnostic tests, while the weights for the APCs into which the pass-through costs are incorporated generally increase, often by large percentages.

In addition, increases in the relative weights for some APCs can lead to increases in beneficiary copayments because, by statute, the coinsurance rate cannot be less than 20 percent of the payment rate for an APC. We note, however, that beneficiaries are protected from much of this increase on an individual APC basis because section 1833(t)(8)(C) of the Act limits the copayment for a procedure performed in a year to no more than the amount of the inpatient hospital deductible for that year. For CY 2002, that amount is $812.

Accordingly, choosing a percentage of the estimated pass-through costs for devices to fold into the APCs associated with the use of those devices requires us to balance several considerations. We must be mindful not only of the effect on transitional pass-through payments for drugs and devices, but also on the payments for other services and on beneficiary copayments. In addition, we note that, in CY 2003, almost all of the items currently receiving transitional pass-through payments will have reached the end of their eligibility for this payment status, and their costs must be folded into the APCs at that time. Changes made in CY 2002 will thus provide a transition to rates in CY 2003. After weighing these factors, and considering the potential impacts of a variety of options, we have concluded it is appropriate to incorporate 75 percent of the estimated pass-through costs for devices into the procedure APCs associated with these devices. We are incorporating 75 percent of the device pass-through payments, or approximately $1.4 billion, into the costs that are used to establish the APC relative weights for 2002.

We are not incorporating any of the current drug and biological pass-through costs into the APCs for two reasons. First, the costs for drugs and biologicals are already incorporated to a large extent into a base APC rate. As discussed more fully in the August 24, 2001 proposed rule (66 FR 44701), we assume that, for most drugs, 68 percent of the AWP is acquisition costs of the drug or biological that is already recognized in the base costs. Thus, the pass-through payment for those drugs and biologicals is 27 percent of the AWP. Second, it is generally not feasible to determine which APCs are associated with the use of drugs and biologicals from our current claims data. Unlike devices, which are used solely in the performance of certain procedures, drugs and biologicals can be provided in connection with almost any outpatient service. Thus, we are postponing the incorporation of these costs until we have data that allow us to determine the APCs with which the use of these items is associated. We note, however, that the pro rata reduction will be applied to the pass-through payment for drugs and biologicals as well as devices.

To incorporate 75 percent of the device payments, we are employing the following methodology. We use the crosswalk that we developed as part of the methodology for estimating total pass-through spending as the basis for determining the device costs that we include in setting the relative weight for each APC. As we have discussed above, this crosswalk matches devices to the typical procedures in which they are used.

In developing the total pass-through estimate, we used this crosswalk to produce a device package for each CPT code associated with device use, based on the device or devices used in each procedure included in an APC. We adjusted the costs of each package by subtracting the device costs already represented in the payment amount for the APC. (These are the costs that we deduct from each pass-through payment to ensure that the pass-through payments are limited to the incremental costs of the new technologies. The principle for making this subtraction is the same in each case: to avoid double-counting costs already represented in the APC rates.) We then add 75 percent of these adjusted costs of the package to the costs at the claim level for each device-related procedure in the APC. At this point, we determine a revised median cost for the APC. That new median cost in turn is the basis for the APC's new relative weight.

The costs folded in will affect the relative weights of the APCs. The resulting APC payment rates will not increase on a dollar-for-dollar basis with the device costs folded into the APCs. In most cases, the device costs folded into an APC will not be uniformly distributed among the procedures in that APC. This is because procedures in an APC may require different types or numbers of devices and some procedures may not require devices at all. Therefore, the increase in median cost for an affected APC is unlikely to exactly equal the amount of the cost folded in. Furthermore, the statute requires that APC recalibration and reclassification changes be made in a manner that assures that aggregate payments will be neither greater nor less than they would have been without the changes. Changes in an APC's payment rate therefore cannot be expected to vary on a dollar-for-dollar basis with changes in the costs used to determine the APC's relative weight.

Finally, we note that the initial payments under the OPPS were calculated to be budget neutral to the methodology in use before the implementation of the OPPS. The prior payment methodology paid hospitals, on average, approximately 83 percent (the actual payment-to-cost ratio under the prior system) of their costs for furnishing outpatient services. Under the pass-through payment methodology, eligible devices are paid at 100 percent of their costs. Once these costs are incorporated into the APCs, they will also be paid at rates calculated to reflect these reductions.

The increase in APC rates due to the incorporation of these pass-through costs will be offset against the estimated 2002 pass-through payments. (As discussed above, we subtract the amount of the pass-through costs represented in the rate for the associated APC from each pass-through payment.) The remaining amount of estimated pass-through spending for 2002, once we have applied these offsets, will be subject to the pro rata reduction. Because we have not completed the recalculation of the adjusted APC payments, we are unable to provide the specific amount of the pro rata reduction at this time. We will announce the exact amount of the reduction that will be required before the beginning of 2002. In the meantime, we are announcing that we expect the required reduction will be in the range of 65 to 70 percent. As can be seen from this estimate, folding in 75 percent of the device costs into the APCs does not reduce the pro rata by 75 percent. The following is a simplified illustration of the process.

Example: Assume there is only one device eligible for a pass-through and only one associated APC. That APC has a payment rate of $3,000, of which $1,000 is associated with device costs already in the APC. If a hospital bills a device with that APC whose charge adjusted to cost is $9,000, the payment for the pass-through is $9,000 minus $1,000, or $8,000. Thus, the payment for the entire service is $3,000 for the base APC and $8,000 for the device, for a total payment of $11,000. The pro rata reduction would be applied to the $8,000. If we were to implement the 80.7 percent reduction, the total payment would be $4,544 ($3,000 + $8,000 (0.193)).

For the 75 percent fold-in, we would first adjust the $9,000 device cost to account for the $1,000 in device costs already represented in the APC rate. The remaining $8,000 represents the adjusted costs for the device. We would then incorporate $6,000 of the $8,000 in adjusted costs into the APC rate. As discussed above, the increase in the APC rate is not a dollar-for-dollar match with the amount folded in. Therefore, assume that the APC rate increases by $3,500, for a total of $6,500. The $6,500 payment rate now reflects $4,500 in device costs " the original $1,000 plus the difference between the original APC payment ($3,000) and the APC payment rate after the fold-in ($6,500), or $3,500. The increase in the amount of device costs reflected in the APC is a dollar-for-dollar match with the increase in the payment rate. The total payment for the service is now $6,500 for the base APC and $4,500 for the device ($9,000 minus $4,500), for a total payment of $11,000. Even though 75 percent of the $8,000, or $6,000, has been folded into the APC rate, the pass-through payment (before any pro rata reduction) is reduced by only $4,500, to $4,500. Thus, folding in 75 percent of the device costs does not reduce the total pass-through estimate by that same 75 percent. However, any remaining pro rata reduction would be applied only to the $4,500. Based on an expected reduction of between 65 and 70 percent, total payment would be between $8,075 and $7,850, respectively.

Comment: Several commenters requested that we clarify how the incorporation of pass-through costs into the associated APCs would affect the APC payments. Specifically, some of these commenters requested that we clarify whether there would be a dollar-for-dollar match between the costs incorporated into an APC and the resulting increase in the APC's rate. Others asked whether there would be a dollar-for-dollar match between the increase in the APC's rate and the increase in the reduction in the pass-through payments to account for the device costs incorporated into the APC.

Response: As discussed in the response immediately preceding, there is not a dollar-for-dollar match between the costs incorporated into an APC and the resulting increase in the APC's payment rate. There is, however, a dollar-for-dollar match between the increase in an APC's rate and the increase in the reduction for the pass-through payment for devices associated with that APC. This is because the additional payment for a pass-through item equals the amount by which the hospital's cost for the item exceeds the portion of the applicable APC payment amount that is associated with the item. There is thus necessarily a dollar-for-dollar match between the increase in the APC's rate that is due to the new costs being incorporated into the APC, and the reduction applied to the pass-through payments.

Comment: Several commenters made specific requests for data files and other information related to any possible pro rata reduction. These requests included the following:

- The data files used to estimate pass-through spending, including claims data from the period July 1, 1999 and July 1, 2000.
- A comprehensive description of the methods used to identify gaps in the reporting of drugs, biologicals, and devices, and the assumptions used to estimate utilization of pass-through items.
- An estimate of projected pass-through payments for 2002, including breakdowns by category (orphan drugs, cancer drugs, devices, etc.).
- An estimate of the magnitude of any proposed reduction in pass-through payments to meet the 2.5 percent statutory cap.
- A detailed description of how any pro rata reduction would be implemented.

Response: It is our general practice to release the data we use in setting Medicare payment amounts to the public when we announce proposed payment amounts. Some of the data requested by these commenters, especially the relevant claims data for the period July 1, 1999 and July 1, 2000, were in fact released at the time of the August 24, 2001 proposed rule because these data were used in developing the proposed APC payment rates in that rule. We did publish a substantive description of the methodology that we were proposing to use in developing an estimate of pass-through costs, and we received numerous comments on that proposed methodology. To the degree that we did not release some of the other information requested by these commenters, such as an estimate of a proposed pro rata reduction and a breakdown of pass-through costs by category, it was because we were still reviewing our methodology and analyzing the data. We did, however, present the public with the likely magnitude of a reduction at that time.

In this final rule, in response to the comments, we are providing more information on the methodology that we have used to determine the pro rata reduction. We are also providing a detailed account of our calculation of 2002 pass-through costs. We plan to release additional information when we announce the exact percentage of the required pro rata reduction before the beginning of the year. The pro rata reduction will be implemented by our systems as a uniform reduction to every pass-through payment.

Comment: The Medicare Payment Assessment Commission commented that the transitional pass-through provision has three flaws:

- The use of categories to determine the eligibility of devices allows devices the costs of which had already been taken into account in setting the base rates to qualify for pass-through payments.
- The pass-through payments for drugs and biologicals are set at 95 percent of average wholesale cost, thus creating an incentive to increase Medicare payments by raising prices for these items.
- Pass-through payment rates are based on hospital-specific cost-to-charge ratios, allowing hospitals to increase their payments by raising the charges for eligible items.

The Commission recommended that the Congress enact three statutory changes to improve the transitional pass-through provision:

- Restrict the eligibility for pass-through payments to technologies that are new or substantially improved and that add substantially to the cost of care.
- Allow for the costs of pass-through items to be completely incorporated into the base APC rates more quickly than the current statutory eligibility period of 2 to 3 years allows.

• Replace the facility-specific payments for devices with national payments.

Response: We appreciate the Commission's comments about flaws in the transitional pass-through provision. We will be available to provide technical assistance to the appropriate congressional committees in developing measures to improve the provision. We do note, however, that although the use of categories allows devices whose costs had previously been included in the calculation of the APC payment rates to qualify for pass-through payments, those payments will be reduced by the amount that we have calculated to be reflected in that APC. However, this subtraction of the costs in the APC may not reduce the pass-through payment for those devices to zero.

III. Conversion Factor Update for CY 2002

Section 1833(t)(3)(C)(ii) of the Act requires us to update the conversion factor used to determine payment rates under the OPPS on an annual basis. Section 1833(t)(3)(C)(iv) of the Act, as redesignated by section 401 of the BIPA, provides that for 2002, the update is equal to the hospital inpatient market basket percentage increase applicable to hospital discharges under section 1886(b)(3)(B)(iii) of the Act, reduced by one percentage point. Further, section 401 of the BIPA increased the conversion factor for 2001 to reflect an update equal to the full market basket percentage increase amount.

To set the proposed OPPS conversion factor for 2002, we increased the 2001 conversion factor of $50.080, which reflects the BIPA provision of the full market basket update, by 2.3 percent, that is, the full market basket percentage increase of 3.3 percent minus 1 percentage point.

In accordance with section 1833(t)(9)(B) of the Act, we further adjusted the conversion factor for 2002 to ensure that the revisions we made to update the wage index are made on a budget-neutral basis. A proposed budget neutrality factor of 0.9924 was calculated for wage index changes by comparing total payments from our simulation model using the proposed FY 2002 hospital inpatient PPS wage index values to those payments using the current (FY 2001) wage index values.

The increase factor of 2.3 percent for 2002 and the required wage index budget neutrality adjustment of 0.9924 resulted in a proposed conversion factor for 2002 of $50.842.

Based on the 2.3 percent update factor and the final FY 2002 hospital inpatient wage index values, the final wage index budget neutrality adjustment is 0.9936, which results in a final conversion factor for 2002 of $50.904.

We received one comment on the calculation of the conversion factor.

Comment: One commenter requested clarification of the methodology used to calculate the conversion factor for CY 2002, particularly as it relates to the payment update provided by section 401 of BIPA. The commenter is concerned that we did not explain that the CY 2001 conversion factor we set forth in the August 24, 2001 proposed rule as the basis for the CY 2002 conversion factor was never used to make payment in CY 2001.

Response: Before the enactment of BIPA on December 21, 2000, section 1833(t)(3)(C)(iii) of the Act provided for a 2001 update of the market basket percentage increase reduced by 1 percentage point. This is the update that was implemented by the November 13, 2000 final rule (65 FR 67827).

Section 401(a) of BIPA amended section 1833(t)(3)(C)(iii) (redesignated by section 401(b) of BIPA as section 1833(t)(3)(C)(iv)) of the Act to provide for a full market basket percentage increase for CY 2001. However, section 401(c) of BIPA also provided a special payment rule for CY 2001 that requires the payment rate for services furnished under the OPPS on or after April 1, 2001 and before January 1, 2002 to be updated by an additional 0.32 percent to account for the timing of the implementation of the full market basket update for 2001. Thus, the conversion factor used to make payment on or after January 1 and before April 1, 2001 was based on a market basket percentage increase minus 1 percentage point, and the conversion factor used to make payment on or after April 1, 2001 was based on a full market basket percentage increase increased by 0.32 percent. Payment was never made in 2001 using a conversion factor based on a full market basket percentage increase. However, it is this last conversion factor (which is equal to $50.080) that must be used to update the conversion factor for CY 2002.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Regulatory Impact Analysis

A. General

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The statutory effects of the provisions that are implemented by this final rule result in expenditures exceeding $100 million per year. We estimate the total impact of these changes for CY 2002 payments compared to CY 2001 payments to be approximately a $400 million increase. Therefore, this final rule is an economically significant rule under Executive Order 12866, and a major rule under 5 U.S.C. 804(2).

The RFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 to $25 million or less annually (see 65 FR 69432). For purposes of the RFA, all providers of hospital outpatient services are considered small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds, or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the OPPS, we classify these hospitals as urban hospitals.

It is clear that the changes in this final rule affect both a substantial number of rural hospitals as well as other classes of hospitals, and the effects on some may be significant. The discussion below, in combination with the rest of this final rule, constitutes a regulatory impact analysis.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule does not mandate any requirements for State, local, or tribal governments.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined this final rule in accordance with Executive Order 13132, Federalism, and have determined that it will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

B. Changes in This Final Rule

This final rule implements changes to the OPPS that are required by the statute. We are required under section 1833(t)(3)(C)(ii) of the Act to update annually the conversion factor used to determine the APC payment rates. In addition, section 1833(t)(6)(E)(iii) of the Act requires a uniform reduction in the amount of each of the transitional pass-through payments made in a year if the Secretary estimates, before the beginning of that year, that the total pass-through payments will exceed an applicable percentage of total payments estimated to be made under OPPS in that year. For CY 2002, the applicable percentage is 2.5 percent.

The projected aggregate impact of updating the conversion factor is to increase total payments to hospitals by 2.3 percent. As described in the preamble, a budget neutrality adjustment is made to the conversion factor to assure that the revision in the wage index does not affect aggregate payments.

C. Estimated Impacts of This Final Rule

The 2.3 percent update in the conversion factor results, in the aggregate, in an increase in payments for hospitals under the OPPS of approximately $400 million.

As discussed above in section II of this preamble, we have estimated that the total amount of pass-through payments for CY 2002 would be $2.26 billion if we did not fold in costs of pass-through devices into the base APC rates. Of that amount, approximately $0.37 million represents payments for drugs and biologicals and $1.89 billion represents payments for medical devices. Total OPPS payments in CY 2002 are estimated to be $17.5 billion. Because the estimate of pass-through payments exceeds 2.5 percent of estimated total payments, which is approximately $437 million (2.5 percent of $17.5 billion), we must implement a uniform reduction of all pass-through payments. Absent any administrative action, the estimate of the reduction necessary to account for the full pass-through estimate would be 80.7 percent. That is, we would pay 19.3 percent of the otherwise applicable pass-through payment for drugs, biologicals, and devices.

As further discussed above in section II of this preamble, in order to mitigate the effects of this significant pro rata reduction, we are incorporating, into the base APC costs, 75 percent of the cost of the devices currently eligible for pass-through payment. In the proposed rule, we estimated for most APCs that involve devices, an amount that represents the cost of devices already included in the APC payments. Those amounts would be subtracted from any pass-through payments associated with those APCs (before the pro rata reduction). That policy reduced the total estimate of pass-through payments by approximately $450 million. Because we are now incorporating additional device costs into the base APC costs, those subtraction amounts will increase to reflect the additional amounts included in the device-related APC payments. Thus, the total amount of pass-through payments estimated to be made in CY 2002 will be reduced, which will, in turn, reduce the amount of the pro rata reduction necessary to meet the 2.5 percent limit. As noted above in this preamble, because we have not yet completed our analysis and computations related to the fold in, we cannot yet announce the exact size of the pro rata reduction. However, we estimate that the amount of the reduction will be between 65 and 70 percent. The incorporation of costs into the base APCs results in the pro rata reduction being applied only to the marginal costs of the pass-through devices not incorporated into the APCs.

We believe that the changes we have made in this final rule will lessen the impact on hospitals of the required pro rata reduction on pass-through payments.

We estimate that the implementation of the pro rata reduction on pass-through payments for devices will affect urban hospitals more than rural hospitals and, in urban areas, large urban and teaching hospitals will be affected more than other urban hospitals. This is due to the fact that the types of outpatient procedures that use the pass-through devices are more frequently performed in large urban hospitals, particularly teaching hospitals. We estimate that the effect of the reduction on pass-through payments for drugs and biologicals may be more uniform across types of hospitals. Use of these items is more widespread among hospitals, although hospitals that furnish chemotherapy may be affected to a greater degree than others.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 419

Hospitals, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR part 419 is amended as follows:

PART 419—PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1833(t), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395l(t), and 1395hh).

2. In § 419.62, paragraph (c) is republished and a new paragraph (d) is added to read as follows:

§ 419.62 Transitional pass-through payments: General rules.

* * * * *

(c) *Uniform prospective reduction of pass-through payments.* (1) If CMS estimates before the beginning of a calendar year that the total amount of pass-through payments under §§ 419.64 and 419.66 for the year would exceed the applicable percentage (as described in paragraph (c)(2) of this section) of the total amount of Medicare payments under the outpatient prospective payment system. CMS will reduce, pro rata, the amount of each of the additional payments under §§ 419.64 and 419.66 for that year to ensure that the applicable percentage is not exceeded.

(2) The applicable percentages are as follows:

(i) For a year before CY 2004, the applicable percentage is 2.5 percent.

(ii) For 2004 and subsequent years, the applicable percentage is a percentage specified by CMS up to (but not to exceed) 2.0 percent.

(d) *CY 2002 incorporated amount.* For CY 2002, CMS incorporated 75 percent of the estimated pass-through costs (before the incorporation and any pro rata reduction) for devices into the procedure APCs associated with these devices.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 30, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 26, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–27659 Filed 10–31–01; 12 pm]

BILLING CODE 4120–01–P

Federal Register

Friday,
November 2, 2001

Part VI

The President

Notice of October 31, 2001—Continuation of Sudan Emergency

Federal Register
Vol. 66, No. 213
Friday, November 2, 2001

Presidential Documents

Title 3—

The President

Notice of October 31, 2001

Continuation of Sudan Emergency

On November 3, 1997, by Executive Order 13067, the President declared a national emergency with respect to Sudan pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Sudan, including continuing concern about its record on terrorism and the prevalence of human rights violations, including slavery, restrictions on religious freedom, and restrictions on political freedom. Because the actions and policies of the Government of Sudan continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on November 3, 1997, and the measures adopted on that date to deal with that emergency must continue in effect beyond November 3, 2001. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Sudan.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
October 31, 2001.

[FR Doc. 01-27777
Filed 11-1-01; 9:18 am]
Billing code 3195-01-P

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H.J. Res. 70/P.L. 107–58
Making further continuing appropriations for the fiscal year 2002, and for other purposes. (Oct. 31, 2001; 115 Stat. 406)
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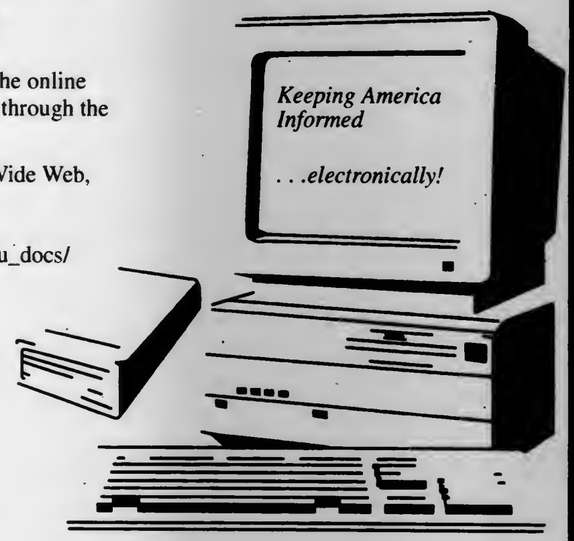
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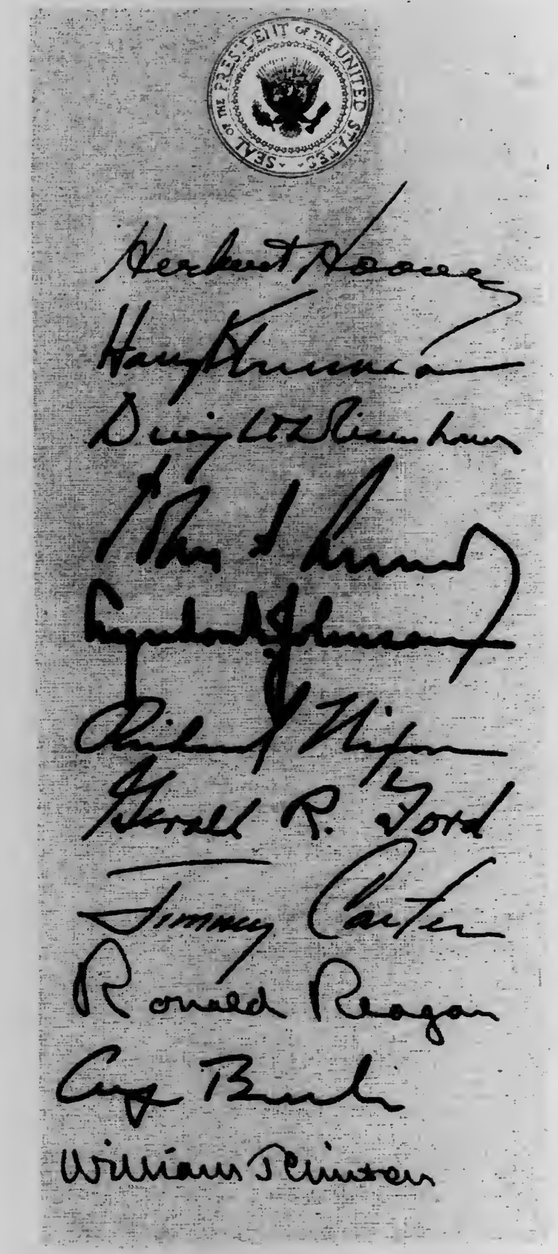
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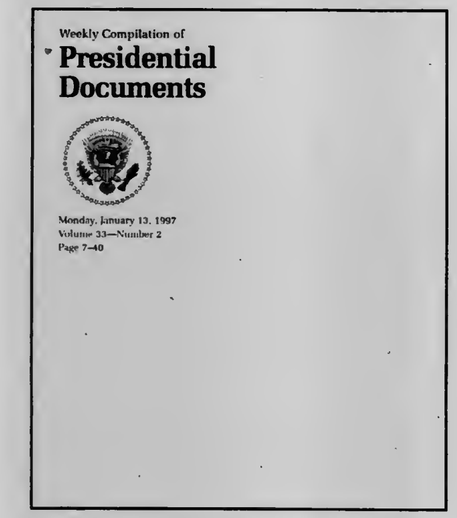
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Rules and Regulations

Federal Register
Vol. 66, No. 214
Monday, November 5, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture; Extensions of Filing Dates for Certain Confidential Financial Disclosure Report Filers

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; amendment.

SUMMARY: The Office of Government Ethics is adopting as final a procedural rule amendment relating to extensions of filing dates for certain filers of Confidential Financial Disclosure Reports. The amendment allows agencies to extend the filing date for the submission of confidential reports for active duty members of the Armed Forces, civilian employees and others who are in a combat zone or otherwise supporting the Armed Forces or other governmental entities following a Presidential declaration of national emergency.

EFFECTIVE DATE: November 5, 2001.

FOR FURTHER INFORMATION CONTACT: Norman Smith, Senior Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: On September 14, 2001, President George W. Bush declared that a national emergency has existed since September 11, 2001, by reason of the terrorist attacks at the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States. See Presidential Proclamation 7463, as published at 66 FR 48199.

Members of the Armed Forces, reservists, and civilian employees are responding to the Presidential proclamation of a national emergency. Many of these individuals who are in Federal Government service in the executive branch are required to file Confidential Financial Disclosure Reports under the disclosure system established pursuant to the Ethics in Government Act of 1978 as amended, and Executive Order 12674, as modified. The regulations governing the confidential financial disclosure reporting system are codified at subpart I of 5 CFR part 2634. The next filing date for incumbent confidential reports is October 31, 2001 (unless an extension not to exceed 90 days has been granted under agency authority).

Consequently, in order to ameliorate the filing burden on those confidential filers who are being deployed or sent to a combat zone or required to perform services away from their normal duty station in support of the Armed Forces or other governmental entities, this final rulemaking action revises paragraph (d) of § 2634.903 to provide for a discretionary extension of the filing date to last no longer than 90 days after the period of active duty service, return to the employee's normal duty station, or a resultant hospitalization.

This extension authority is intended to provide relief for persons who are in combat areas or otherwise responding to the national emergency, such as those situations where it is impractical for the confidential filer to obtain access to personal records. Our expectation is that an extension will not be granted unless the confidential filer is required to perform services outside the vicinity of her local commuting area (as defined by the agency). We note that agencies may look to existing agency policies or rules for guidance concerning what is considered to be outside the vicinity of the "local commuting area." Typically, agencies will have defined the limits of a local commuting area for such purposes as, for example, determining entitlement to transportation expenses (such as per diem) or entitlement to overtime pay for travel, or for reduction in force purposes. Finally, we note any such special extension granted is not intended to toll the running of the period of any regular extension granted by an agency under newly redesignated paragraph (d)(1) of § 2634.903.

Agencies may exercise their extension authority on a case-by-case basis or by class designation. Agencies should appropriately document in their records the duration and circumstances of any case in which the extension is utilized, including for example the last date of service in a combat zone (if known), date of return to a permanent duty station, or the dates of any resultant hospitalization.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the provisions for general notice of proposed rulemaking, opportunity for public comment, and 30-day delay in effectiveness as to this amendment. These provisions are being waived because it is in the public interest that this amendment, which is being issued to assist in a national emergency and both grants authority for an exemption for, and relief of a restriction (filing burden) on, certain confidential report filers, take effect as soon as possible.

Executive Order 12866

In promulgating this final rule amendment, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Review and Planning. The amendment has not been reviewed by the Office of Management and Budget under that Executive order since it is not a significant regulatory action within the meaning of the Executive Order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this amendatory rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and has provided a report thereon to the United States Senate, House of Representatives and General Accounting Office in accordance with that law.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation).

List of Subjects in 5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Confidential financial disclosure reports, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: October 26, 2001.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2634 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 **Note** (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart I—Confidential Financial Disclosure Reports

2. Section 2634.903 is amended by revising paragraph (d) to read as follows:

§ 2634.903 General requirements, filing dates, and extensions.

* * * * *

(d) *Extensions*—(1) *Agency extensions.* The agency reviewing official may, for good cause shown, grant to any employee or class of employees a filing extension or several extensions totaling not more than 90 days.

(2) *Certain service during period of national emergency.* In the case of an active duty military officer or enlisted member of the Armed Forces, a Reserve or National Guard member on active duty under orders issued pursuant to title 10 or title 32 of the United States Code, a commissioned officer of the Uniformed Services (as defined in 10 U.S.C. 101), or any other employee, who is deployed or sent to a combat zone or required to perform services away from his permanent duty station in support of the Armed Forces or other governmental entities following a declaration by the President of a national emergency, the agency reviewing official may grant such individual a filing extension to last no longer than 90 days after the last day of:

(i) The individual's service in the combat zone or away from his permanent duty station; or

(ii) The individual's hospitalization as a result of injury received or disease contracted while serving during the national emergency.

(3) *Agency procedures.* Each agency may prescribe procedures to provide for the implementation of the extensions provided for by this paragraph.

[FR Doc. 01–27637 Filed 11–2–01; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–031–2]

Change in Disease Status of France and Ireland With Regard to Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding France and Ireland to the list of regions considered to be free of rinderpest and foot-and-mouth disease (FMD) and to the list of regions that are subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. This final rule follows an interim rule that removed France, Ireland, and The Netherlands from those lists due to detection of FMD in those three regions. Based on the results of an evaluation of the current FMD situation in France and Ireland, we have determined that France and Ireland meet the standards of the Office International des Epizooties for being considered free of FMD. This rule relieves certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from France and Ireland. We are still evaluating the FMD situation in The Netherlands.

EFFECTIVE DATE: November 5, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Goodman, Senior Staff Microbiologist, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8083.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera (also known as classical swine fever), and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD is considered to exist in all parts of the world not listed. Section 94.11 of the regulations lists regions of the world that APHIS has determined to be free of rinderpest and FMD, but from which importation of meat and animal products into the United States is restricted because of the regions' proximity to or trading relationships with rinderpest- or FMD-affected regions.

In an interim rule effective February 19, 2001, and published in the **Federal Register** on June 1, 2001 (66 FR 29686–29689, Docket No. 01–031–1), we amended the regulations by removing France, Ireland, and The Netherlands from the list of regions considered to be free of rinderpest and FMD. This action

was necessary because FMD had been confirmed in each of those regions. The effect of the interim rule was to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from France, Ireland, and The Netherlands.

In that interim rule, we stated, "Although we are removing France, Ireland, and The Netherlands from the list of regions considered to be free of rinderpest and FMD, we recognize that the European Commission and the regions affected by this action have responded to the detection of FMD by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products from FMD-affected areas; by conducting heightened surveillance activities; and by initiating measures to eradicate the disease. We intend to reassess this situation at a future date in accordance with the standards of the OIE. As part of that reassessment process, we will consider all comments received on this interim rule, as well as any additional information or data from the European Commission or individual Member States that support changing the disease status of a given region or regions. In future reassessments, we will determine whether it is necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from France, Ireland, and The Netherlands, or whether we can restore some or all of those countries to the list of regions in which FMD is not known to exist or regionalize portions of France, Ireland, and The Netherlands as FMD-free."

We solicited comments concerning the interim rule for 60 days ending July 31, 2001. We received four comments by that date. They were from U.S. businesses and trade associations and one Member State of the European Union. We have carefully considered these comments. They are discussed below by topic.

Status of France and Ireland

Two commenters suggested that we restore the FMD-free status of France and supplied information that supported such a change in status. No commenter supplied contradictory information or opinions. We agree that France and Ireland should have their FMD status restored. Our reasons follow.

According to the OIE, when FMD occurs in an FMD-free country or zone where vaccination is not practiced before the outbreak, the following waiting periods are required to regain FMD-free status: 3 months after the last case, where stamping-out and serological surveillance are applied; or 3 months after the slaughter of the last vaccinated animal where stamping-out, serological surveillance and emergency vaccination are applied. France and Ireland did not vaccinate animals against FMD before or after the outbreaks that occurred in France on March 23, 2001, and in Ireland on March 22, 2001. Both countries immediately destroyed affected animals and conducted serological surveillance. The last case of FMD in France occurred on March 23, 2001, and the last case of FMD in Ireland occurred on March 22, 2001. We find that France as well as Ireland meet the OIE standards for regaining FMD-free status.

We have evaluated the FMD eradication efforts in France and Ireland based on information provided to us by those regions and our own site visits. Our findings and site visit reports may be viewed on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html.* You may also request paper copies of these documents by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to Docket No. 01–031–2 when requesting copies. These documents are also available in our reading room. (The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.)

Based on our findings and after reviewing comments submitted to us on the interim rule, we are amending the regulations by placing France and Ireland back on the list in § 94.1(a)(2) of regions that are declared free of both rinderpest and FMD. We are also placing France and Ireland back on the list in § 94.11(a) of regions that are declared free of rinderpest and FMD but that are subject to special restrictions on the importation of their meat and other animal products into the United States. The regions listed in § 94.11(a) are subject to these special restrictions because they: (1) Supplement their national meat supply by importing fresh (chilled or frozen) meat of ruminants or swine from regions that are designated in § 94.1(a) as regions where rinderpest or FMD exists; (2) have a common land border with regions where rinderpest or FMD exists; or (3) import ruminants or swine from regions where rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States.

This action relieves certain restrictions due to FMD and rinderpest on the importation into the United States of certain live animals and animal products from France and Ireland. However, because France and Ireland have certain trade practices regarding animals and animal products that are less restrictive than are acceptable for importation into the United States, the importation of meat and other products from ruminants and swine into the United States from France and Ireland continue to be subject to certain restrictions.

Status of The Netherlands

One commenter suggested that The Netherlands be recognized as FMD free, claiming that The Netherlands would be free of FMD by August 25, 2001. We are not making any changes based on this comment. We are continuing to monitor The Netherlands' progress with respect to FMD, and we are currently reevaluating the FMD status of that region. We will publish a separate document in the **Federal Register** with respect to the FMD status of The Netherlands when our evaluation is complete.

Notice and Comment Procedures

One commenter stated that APHIS should have followed the regulations in 9 CFR part 92 in its initial rulemaking to remove France, Ireland, and The Netherlands from the list of regions recognized as free of FMD, but not other European countries. The commenter noted that her organization had expressed the same concern in comments on previous interim rules that "regionalized" countries that had been recognized free of a disease and then experienced an outbreak (i.e., Docket 00–080–1, which established East Anglia, England, as a region affected with hog cholera, also known as classical swine fever, and continued to recognize the rest of Great Britain as free of hog cholera; Docket 00–104–1, which established KwaZulu-Natal, South Africa, as a region affected with FMD and continued to recognize the rest of the Republic of South Africa, with the exception of the already-established FMD control zone in Kruger National Park, as free of FMD; and Docket 00–111–1, which established Artigas, Uruguay, as a region affected with FMD and continued to recognize the rest of

Uruguay as free of FMD).[1] These comments, included as an attachment to the comment on this docket, also expressed concern about APHIS' statement in these interim rules that we intended to reassess the disease situations in these regions in accordance with the standards of the OIE to determine whether it is necessary to continue to prohibit or restrict the importation of animals and animal products from the regions identified in the interim rules. The commenter said that this statement suggests that APHIS intends at some future time to declare these regions free of the specified disease, again without following the process set forth in 9 CFR part 92.

The commenter identified several specific procedures set forth in 9 CFR part 92 that she believed we should be following. These are: (1) That APHIS will make information submitted in support of a request for regionalization available to the public prior to rulemaking; (2) that APHIS will publish a proposed rule for public comment; and (3) that during the comment period, the public will have access to the information upon which APHIS based its risk analysis, as well as to the methodology used to conduct the analysis.

The commenter stated that APHIS is currently applying these regulations only to countries that have had a foreign animal disease and now want the country or a region to be recognized by APHIS as free. The commenter objected to APHIS using a different process for countries that have been recognized as free by APHIS, then have an outbreak and want a region of the country to be recognized as free. The commenter noted that the procedure in these latter cases appears to be that APHIS administratively stops shipments of at-risk products, then follows with an interim rule that specifies which regions will be allowed to ship products to the United States. The commenter maintained that since at-risk shipments are immediately prohibited by administrative instruction, there appears to be no basis for issuing an emergency interim rule regionalizing a country without first providing an opportunity for public comment. In any case, the commenter also asserted that APHIS should make the information on which it bases its decisions for establishing regions via interim rules available to the public for review and comment in advance of publication.

Our response is as follows.

The regulations in 9 CFR part 92, "Importation of Animals and Animal Products; Procedures for Requesting Recognition of Regions," were issued in November 1997 in conjunction with APHIS' policy on regionalization (Docket 94–106–8, 62 FR 56027–56033, October 28, 1997). The regulations set out the process by which a foreign government may apply to have all or part of the country recognized as a region or for approval to export animals or animal products to the United States under new conditions based on the risk associated with animals or animal products from that region. Our intention was for these regulations to tell lower risk regions within countries or extending across national boundaries how to request approval for more favorable terms than adjoining or surrounding higher risk regions for exporting animals or animal products to the United States. We did not intend for these regulations to apply in circumstances where an outbreak of a disease, or an increased incidence of disease, in a foreign region makes it necessary for the United States to take interim measures to protect its livestock from the foreign animal disease. In these cases, APHIS must take immediate action to prohibit or restrict imports from the region of concern. Such action may include publishing an interim rule to provide an appropriate basis for enforcing prohibitions or restrictions that may initially be announced administratively. In these circumstances, APHIS has a responsibility to take whatever measures appear necessary to prevent the introduction of disease. We believe that publishing a proposed rule for comment would be contrary to the public interest because doing so would delay our taking protective actions. We also believe that making the information upon which we base our decisions for establishing a region via an interim rule available to the public for comment prior to publishing the interim rule would also be contrary to the public interest for the same reason. However, we will try to make the information available as soon as possible so that the public may understand the basis for our action.

We also believe it is appropriate for us, when the disease situation warrants it, to limit prohibitions or restrictions imposed by an interim rule to a portion of a country or other region previously recognized as free of a disease. This is because we will already have extensive information about the region, including information on the authority, organization, and infrastructure of the veterinary services organization of the region; the extent to which movement of animals and animal products is controlled from regions of higher risk, and the level of biosecurity for such movements; livestock demographics and marketing practices in the region; the type and extent of disease surveillance conducted in the region; diagnostic laboratory capabilities in the region; and the region's policies and infrastructure for animal disease control, *i.e.*, the region's emergency response capacity. This information would have provided the basis for our previous recognition of the region as free of the disease. Our obligations under international trade agreements compel us to take no more restrictive actions than necessary to prevent the introduction of disease. Unless we determine that this information is no longer reliable, it provides a rational basis for believing that the region can effectively control an outbreak within a smaller region.

As to our statement in these interim rules that we intend to reassess the disease situations in these regions in accordance with the standards of the OIE to determine whether it is necessary to retain the prohibitions or restrictions established by the interim rules, the commenter is correct that this means we may, at some future time, declare these regions free of the specified disease without following the process set forth in 9 CFR part 92. Part 92 was not intended to apply to the situations dealt with in these interim rules. An interim rule of the type we issued in this rulemaking was intended to be just that, an "interim" or "temporary" measure which would provide the immediate protection we needed for animal health purposes. It gives APHIS an opportunity to evaluate the effectiveness of emergency response measures taken in the subject region to deal with the outbreak and to determine whether the outbreak is indeed a temporary situation or indicates a fundamental change in the region's disease status. If a region takes immediate and effective steps to control and stamp out the disease and meets the minimum OIE standards for restoration of free status, the region should be promptly returned to its previous status.

In the interim rule regarding France, Ireland, and The Netherlands, we stated:

> Although we are removing France, Ireland, and The Netherlands from the list of regions considered to be free of rinderpest and FMD, we recognize that the European Commission and the regions affected by this action have responded to the detection of FMD by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products from FMD-affected areas; by conducting heightened surveillance activities; and by initiating measures to eradicate the disease. We intend to reassess this situation at a future date in accordance with the standards of the OIE. As part of that reassessment process, we will consider all comments received on this interim rule, as well as any additional information or data from the European Commission or individual Member States that support changing the disease status of a given region or regions. In future reassessments, we will determine whether it is necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from France, Ireland, and The Netherlands, or whether we can restore some or all of those countries to the list of regions in which FMD is not known to exist or regionalize portions of France, Ireland, and The Netherlands as FMD-free.
>
> We have now completed our reassessment of France and Ireland and find that these regions effectively controlled and stamped out FMD and now meet the standards of the OIE for regaining their former status as FMD-free regions. As noted earlier, we are assessing the status of The Netherlands separately. With respect to the other rulemakings that this commenter addressed, our reassessment of the disease situations in Artigas, Uruguay, and KwaZulu-Natal, South Africa, resulted in our removing, through subsequent interim rules, all of Uruguay and all of the rest of FMD-free region of South Africa from the list of FMD-free regions (see APHIS Dockets 00–111–2; and 00–122–1).[2] We have not yet taken further action with respect to East Anglia, England. We also have not yet taken further action with regard to the FMD situation in Great Britain and Northern Ireland, which we removed from the list of regions considered free of rinderpest and FMD in an interim rule published on March 14, 2001 (66 FR 14825–14826). For final rules such as this one for France and Ireland, we will make information regarding our reassessment available to the public as soon as possible, and not later than the date of the final rule. However, we do not believe that notice and opportunity for comment on the underlying information is required or appropriate in this context. We further believe that we have an obligation under our international trade agreements to restore a region previously recognized as free to the list of free regions as soon as practicable upon its meeting OIE standards for free status. The United States would expect the same policy to be applied in the event of an outbreak of disease, and subsequent eradication of that disease, in this country.
>
> The commenter raised one other issue, which was our statement in Docket 01–031–1 that the course of action we took with the interim rule was consistent with our obligations under the World Trade Organization in the Agreement on the Application of Sanitary and Phytosanitary Measures and the United States-European Union Veterinary Equivalency Agreement. The commenter asked whether "consistent with our obligations under [* * *] the United States-European Union Veterinary Equivalency Agreement" meant that we would allow trade to resume with European Union countries or regions that have not observed the 3-months of freedom from FMD as prescribed by the OIE. Our response is that we will not allow trade to resume with European Union countries or regions, or any other region, that does not meet the OIE standards for freedom from FMD. We will not accept less stringent measures than are provided by the OIE.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the administrative procedure provisions in 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule restores France and Ireland to the list of regions considered free of FMD. Immediate action is necessary to remove restrictions on the importation of animals, meat, and other animal products that are no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding France and Ireland to the list of regions considered to be free of rinderpest and FMD and to the list of regions that are subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. This final rule follows an interim rule that removed France, Ireland, and The Netherlands from those lists due to detection of FMD in those three regions. Based on the results of an evaluation of the current FMD situation in France and Ireland, we have determined that France and Ireland meet the standards of OIE for being considered free of FMD. This rule relieves certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from France and Ireland.

France and Ireland have not generally been major sources of U.S. imports of the products covered by the interim rule and this final rule, which include live ruminants, live swine, fresh (chilled or frozen) meat of ruminants and swine, processed ruminant and swine meat, some dairy products, animal feeds, and other ruminant and swine products such as semen, embryos, unfanned hides and skins, unwashed wool, hair, bones, blood, and some other byproducts. Also, past imports of these products from France and Ireland represent a small fraction of the total U.S. imports or total U.S. production of these products. This final rule is not expected to alter these past trade patterns.

The majority of entities potentially affected by this final rule are considered small. For example, in 1997, approximately 97 percent (2,919 of 2,992) of meat and meat product wholesalers, 99 percent (1,490 of 1,503) of livestock wholesalers,[3] 92 percent (79,155 of 86,022) of dairy farms, 99.3 percent (651,542 of 656,181) of cattle farms, 87 percent (40,185 of 46,353) of hog and pig farms, 99.5 percent (29,790 of 29,938) of sheep and goat farms,[4] 98 percent (1,272 of 1,297) of slaughtering establishments, and 95 percent (1,324 of 1,393) of meat processing establishments[5] would be considered small entities under the criteria set by the Small Business Administration. However, these entities should be little affected by this rulemaking because of the negligible effect on imports.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

[1] Docket 00–080–1 was published in the **Federal Register** on September 20, 2000, at 65 FR 56774–56775; Docket 00–104–1 was published in the **Federal Register** on November 2, 2000, at 65 FR 65728–65729; and Docket 00–111–1 was published in the **Federal Register** on December 13, 2000, at 65 FR 77771–77773.

[2] Docket 00–111–2 was published in the **Federal Register** on July 13, 2001, at 66 FR 36695–36697; and Docket 00–122–1 was published in the **Federal Register** on February 9, 2001, at 66 FR 9641–9643.

[3] 1997 Economic Census, Department of Commerce, Bureau of the Census.

[4] 1997 Census of Agriculture, USDA, National Agricultural Statistics Service.

[5] 1997 Economic Census, Department of Commerce, Bureau of the Census.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding, in alphabetical order, the words "France," and "Ireland,".

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) is amended by adding, in alphabetical order, the words "France," and "Ireland,".

Done in Washington, DC, this 30th day of October 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–27719 Filed 11–2–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg. 340–21]

Privacy Act; Implementation

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army is revising six existing exemption rules. The exemption rules are being revised to add reasons from which information may be exempt, and to update the reasons for taking the exemptions.

EFFECTIVE DATE: October 22, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The proposed rules were previously published on August 9, 2001, at 66 FR 41814, and on August 21, 2001, at 66 FR 43818. No comments were received therefore; the rules are being adopted as final.

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974. Section 202, Public Law 104–4, "Unfunded Mandates Reform Act".

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, 32 CFR part 505 is amended as follows:

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 505.5 is amended by revising paragraphs (e)(1), (e)(5), (e)(6), (e)(12), (e)(19), (e)(29) introductory text, (e)(29)(i) and (ii), (e)(31), introductory text, (e)(31)(i) and (ii), and (e) (32) to read as follows:

§ 505.5 Exemptions.

* * * * *

(e) * * *

(1) *System identifier:* A0020–1a SAIG

(i) *System name:* Inspector General Investigative Files.

(ii) *Exemptions:* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3), (d), (e)(4)(G) and (H), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(iv) *Reason:* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsection (k)(2) of the Privacy Act of 1974.

(D) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(E) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of this nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

(5) *System identifier:* A0027–10a DAJA

(i) *System name:* Prosecutorial Files.

(ii) *Exemptions:* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e) (3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(iii) *Authority:* 5 U.S.C. 552a(j)(2).

(iv) *Reason:* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsection (j)(2) of the Privacy Act of 1974.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(L) From subsection (g) because this system of records is compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(M) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation (this part 505), but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of this nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

(6) *System identifier:* A0027–10b DAJA

(i) *System name:* Courts-Martial Records and Reviews.

(ii) *Exemptions:* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsection of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(iii) *Authority:* 5 U.S.C. 552a(j)(2).

(iv) *Reason:* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsection (j)(2) of the Privacy Act of 1974.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(L) From subsection (g) because this system of records is compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(M) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation (this part 505), but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of this nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

(12) *System identifier:* A0190–45 DAMO

(i) *System name:* Offense Reporting System (ORS)

(ii) *Exemptions:* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(iii) *Authority:* 5 U.S.C. 552a(j)(2).

(iv) *Reason:* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsection (j)(2) of the Privacy Act of 1974.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(L) From subsection (g) because this system of records is compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(M) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

(19) *System identifier:* A0340–21 TAPC

(i) *System name:* Privacy Case Files.

(ii) *Exemption:* During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Army hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(iii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iv) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

* * * * *

(29) *System identifier:* A0601–141 DASG.

(i) *System name:* Applications for Appointment to Army Medical Department.

(ii) *Exemption:* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(d).

* * * * *

(31) *System identifier:* A0601–222 USMEPCOM

(i) *System name:* Armed Services Military Accession Testing

(ii) *Exemption:* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service or military service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(d).

* * * * *

(32) *System identifier:* A0608–18 DASG.

(i) *System name:* Army Family Advocacy Program (FAP) Files

(ii) *Exemptions:* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(iv) *Reason:* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (k)(2) and (k)(5) of the Privacy Act of 1974.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(G) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

October 30, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27689 Filed 11–2–01; 8:45 am]

BILLING CODE 5001–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4155; FRL–7090–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for Eight Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania (Pennsylvania). The revisions impose reasonably available control technology (RACT) on eight major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO_X) located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on November 20, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink (215) 814–2104 or by e-mail at *spink.marcia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 18, 2000, EPA published a direct final rule approving RACT determinations submitted by the Pennsylvania Department of Environmental Protection (PADEP) for twenty-six major sources of NO_X and/or volatile organic compounds (VOC) and a companion notice of proposed rulemaking (65 FR 20788). We received adverse comments on the direct final rule and a request for an extension of the comment period. We had indicated

in our April 18, 2000 direct final rulemaking that if we received adverse comments, we would withdraw the direct final rule and address all public comments in a subsequent final rule based on the proposed rule (65 FR 20788). On June 19, 2000 (65 FR 38168), EPA published a withdrawal notice in the **Federal Register** informing the public that the direct final rule did not take effect. On June 19, 2000 (65 FR 38169), we also published a notice providing an extension of the comment period and making corrections to our original proposed rule.

This final rule pertains to eight of the twenty-six sources which were included in the April 18, 2000 rulemaking. The remaining twenty-four sources have been or will be the subject of separate rulemakings.

II. Summary of the SIP Revisions

On November 4, 1997, July 24 1998, October 2, 1998, March 3, 1999, April 9, 1999, and April 20, 1999, the PADEP submitted NO_X and/or VOC RACT determinations for eight sources located in the Philadelphia area, namely Stoney Creek Technologies, LLC.; Superpac, Inc.; Transit America Inc.; American Bank Note Co.; Atlas Roofing Corporation; Beckett; Klearfold; and National Label Company. On April 18, 2000 (65 FR 20788), EPA proposed to approve these SIP revisions. Detailed descriptions of the RACT determination for these eight sources were provided in EPA's Technical Support Documents (TSDs) prepared in support of its April 18, 2000 rulemaking as well as in the SIP submissions made by PADEP, and shall not be restated here. Copies of those materials are in the administrative record for this final rule.

On April 18, 2000 EPA proposed to approve these RACT determinations (65 FR 20788) because the PADEP and the Philadelphia Air Management Services (AMS) established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The PADEP and the AMS have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

III. Summary of Public Comments Received and EPA's Responses

EPA received comments on its April 18, 2000 proposal to approve Pennsylvania's RACT SIP submittals for twenty six-six sources from Citizens for Pennsylvania's Future (PennFuture), and from a concerned citizen. Only the comments submitted by PennFuture are germane to the RACT determinations for Stoney Creek Technologies, LLC.; Superpac, Inc.; Transit America Inc.; American Bank Note Co.; Atlas Roofing Corporation; Beckett; Klearfold; and National Label Company. Those comments and EPA's responses are as follows:

Comments: PennFuture comments that EPA should require that each RACT submittal include "effective and enforceable numerical emission limits" as a condition for approval. Additionally, PennFuture requests that EPA only approve limits that are no higher than the best emission rate actually achieved after the application of RACT, adjusted only to reflect legally and technically valid averaging times and deviations. PennFuture contends that such an approach will ensure maximum environmental benefits and minimize the opportunity for sources to generate spurious emission reduction credits (ERCs) against limits that exceed emission levels actually achieved following the application of RACT. Lastly PennFuture comments that EPA should describe the RACT determinations in its rulemaking notices published in the **Federal Register** rather than simply citing to technical support documents and other materials available in docket of the rulemaking.

Response: While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (See *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

In EPA's proposed conditional limited approval of the Commonwealth's RACT regulations (62 FR 43134, August 12, 1997) and in EPA's final conditional limited approval of those regulations (63 FR 13789, March 23, 1998), EPA addressed the issue of what types of RACT provisions would be acceptable. In the proposed rule EPA noted that while it defines RACT as "the lowest emission limitation that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." the definition of emission limitation did not necessarily require the establishment of a numerical emission limitation. EPA further noted that "(s)ection 302 of the Act in turn defines 'emission limitation' 'requirement * * * which limits the quantity, rate or concentration of air pollutants on a continuous basis,* * *, and any design, equipment, work practice or operational standard promulgated under this chapter.' " Furthermore, in the March 23, 1998 final rule EPA stated that, "it is possible that RACT for certain sources and source categories could consist of requirements that do not specifically include emission limitations, but instead have other limitations."

With regard to the criteria EPA uses to determine whether to approve or disapprove RACT SIP revisions submitted by PADEP pursuant to 25 PA Code Chapter 129.91–129.95, we look to the provisions of those SIP-approved regulations and to the requirements of the Clean Air Act and relevant EPA guidance. As previously stated, on March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of* NO_X *and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include among other information (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as

practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision. The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by-case RACT determinations by the DEP. Rather, EPA stated that "* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

EPA reviews the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA first reviews a SIP submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT, respectively. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then we may add additional EPA-generated analyses to the record. Thus, EPA does not believe it would be appropriate to only approve limits that are no higher than the best emission rate actually achieved after the application of RACT, adjusted only to reflect legally and technically valid averaging times and deviations.

EPA does note that an approved RACT emission limitation alone does not constitute the baseline against which ERCs may be generated. There are many other factors that must be considered in the calculation of eligible ERCs under Pennsylvania's approved SIP regulations governing the creation ERCs. Moreover, the scenario posed in PennFuture's comment would not create eligible ERC's under the Commonwealth approved SIP regulations. Under the Commonwealth's regulations pertaining to ERCs, found at 25 PA. Code Chapter 127, sections 127.206 through 127.210 (approved by the EPA at 62 FR 64722 on December 9, 1997), sources cannot obtain ERCs if they find that their RACT controls result in lower emissions than allowed by their specified RACT limits.

EPA believes that Federal rulemaking procedures allow for the format used in April 18, 2000 rulemaking (65 FR 20788). EPA believes that anyone interested in the specific requirements of the individual RACT determinations did have the opportunity to obtain that information, as in the preamble of the April 18, 2000 **Federal Register** notice, EPA offered to send anyone, upon request, a copy of the TSDs prepared in support of the action. Copies of those TSDs are included in the administrative record of this final rule.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for Stoney Creek Technologies, LLC.; Superpac, Inc.; Transit America Inc.; American Bank Note Co.; Atlas Roofing Corporation; Beckett; Klearfold; and National Label Company. EPA is approving these RACT SIP submittals because PADEP and AMS established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The PADEP and AMS have also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for eight named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for eight sources located in the Philadelphia area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(187) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(187) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to NO_X RACT, submitted on November 4, 1997, July 24 1998, October 2, 1998, March 3, 1999, April 9, 1999, and April 20, 1999.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific NO_X RACT determinations in the form of plan approvals or operating permits on November 4, 1997, July 24, 1998, October 2, 1998, March 3, 1999, April 9, 1999, and April 20, 1999.

(B) Plan approvals (PA), and Operating permits (OP) for the following sources:

(*1*) Stoney Creek Technologies, L.L.C., PA–23–0002, effective February 24, 1999, except for the expiration date.

(*2*) Superpac, Inc., OP–09–0003, effective March 25, 1999, except for the expiration date.

(*3*) Transit America Inc., PA–1563 for PLID 1563, effective June 11, 1997, except for Condition 4 and Condition 5.

(*4*) American Bank Note Company, OP–46–0075, effective May 19, 1997, as revised August 10, 1998, except for the expiration date.

(*5*) Atlas Roofing Corporation, OP–09–0039, effective March 10, 1999, except for the expiration date.

(*6*) Beckett Corporation, OP–15–0040, effective July 8, 1997, except for the expiration date.

(*7*) Klearfold, Inc., OP–09–0012, effective April 15, 1999, except for the expiration date.

(*8*) National Label Company, OP–46–0040, effective July 28, 1997.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations submitted for the sources listed in paragraph (c)(187)(i)(B) of this section.

[FR Doc. 01–27579 Filed 11–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[FRL–7096–4]

RIN 2060–AJ04

State and Federal Operating Permits Programs: Amendments to the Compliance Certification Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule, removal of amendments.

SUMMARY: We, EPA, received adverse comment, on the direct final action published on March 1, 2001 (66 FR 12872) to amend the State Operating Permits Program and the Federal Operating Permits Program. We had stated in that direct final action that, if we received adverse comment by April 2, 2001, we would publish a timely withdrawal in the **Federal Register**. We, however, did not publish the withdrawal prior to the April 30, 2001, effective date of the direct final rule. In this action, we are removing the amendments that were published in the March 1, 2001 direct final rule. We will address the adverse comment in a subsequent final action based on the parallel proposal also published on March 1, 2001 (66 FR 12916). We have determined that there is good cause for making this rule final without notice and comment procedures because under the terms of the March 1, 2001 direct final action, no amendment to the State and Federal Operating Permits Programs should have occurred. Thus, notice and comment are contrary to the public interest and unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B) and 553(d).

DATES: This action is effective November 5, 2001.

ADDRESSES: Docket No. A–91–52, containing information relevant to the direct final action being withdrawn, is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Room 1500, Washington, DC 20460 or by phoning the Air Docket Office at (202) 260–7548. Refer to Docket No. A–91–52. The Docket Office may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Peter Westlin, Environmental Protection Agency, Office Air Quality Planning and Standards, at 919/541–1058, e-mail: westlin.peter@epa.gov, facsimile 919/541–1039.

SUPPLEMENTARY INFORMATION: On October 22, 1997 (62 FR 54900), we published the final part 64, Compliance Assurance Monitoring (CAM) rule, and revisions to parts 70 and 71, the State and Federal Operating Permits Programs. Part 64 included procedures, design specifications, and performance criteria intended to satisfy, in part, the enhanced monitoring requirements of the Clean Air Act ("the Act"). The revisions to parts 70 and 71 included language to Secs. 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B) specifying the minimum information necessary for the compliance certification required of

responsible officials. Subsequent to that publication, the Natural Resources Defense Council, Inc. (NRDC) and the Appalachian Power Company et al. (industry) filed petitions with the United States Court of Appeals for the District of Columbia Circuit (Court) challenging several aspects of the CAM rule. In particular, the NRDC argued that the parts 70 and 71 revisions were inconsistent with the Act's explicit requirement that compliance certifications indicate whether compliance is continuous or intermittent. On October 29, 1999, the Court issued its decision (see docket A–91–52, item VIII–A–1) *Natural Resources Defense Council* v. *EPA*, 194 F.3d 130 (D.C. Cir. 1999) and agreed with NRDC that EPA's removal from parts 70 and 71 of the explicit requirement that compliance certifications address whether compliance is continuous or intermittent revisions ran contrary to the statutory requirement that each source must certify "whether compliance is continuous or intermittent * * *"

On March 1, 2001, we published a direct final action (66 FR 12872) and a parallel proposal (66 FR 12916) to amend the State Operating Permits Program and the Federal Operating Permits Program to effect the direction expressed in the remand. We stated in the direct final action that if we received adverse comment by April 2, 2001, we would publish a withdrawal in the **Federal Register** informing you that this direct final rule will not take effect. We received several adverse comments and, therefore, took steps to withdraw the direct final action. The withdrawal action, however, was not published prior to April 30, 2001, the date upon which the direct final rule amending Parts 70 and 71 took effect.

Because we received several adverse comments on the amendments to the State and Federal Operating Permits Programs, the direct final rule effecting those amendments, by its terms, should not have become effective. We, therefore, are hereby removing those amendments in today's action.

This removal action is simply a ministerial correction of the prior direct final rulemaking, which by its terms should not have become effective because several parties commented adversely on the amendments to the State and Federal Operating Permits Programs. Therefore, we are invoking the good cause exception under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B) because we believe that notice-and-comment rulemaking of this removal action is contrary to the public interest and unnecessary. This removal action merely restores the regulatory text that existed prior to the direct final rule. We stated in the March 1, 2001 direct final action that should adverse comment be received, the rule would not take effect. The rule took effect because we did not publish a timely withdrawal in the **Federal Register** prior to the rule's effective date. It would be contrary to the public interest to keep that final rule in effect when it should not have taken effect since adverse comment was received. Additionally, further notice-and-comment on this action is unnecessary because we are merely restoring the regulatory text that existed prior to the final rule. For the same reasons, we believe there is good cause for this removal to become effective upon publication. We will address all public comments in a subsequent final action on the parallel proposed rule amendment.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments does not apply to this action. Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a significant regulatory action under Executive Order 12866. This notice does not have any federalism implications under Executive Order 13132. The Paper Reduction Act, the Unfunded Mandates Reform Act, and the National Technology Transfer and Advancement Act do not apply here. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of November 5, 2001. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: October 25, 2001.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, we amend title 40, chapter I, parts 70 and 71 of the Code of Federal Regulations to read as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 70.6 is amended by revising paragraph (c)(5)(iii)(C) to read as follows:

§ 70.6 Permit content.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under part 64 of this chapter occurred; and

* * * * *

PART 71—FEDERAL OPERATING PERMITS PROGRAMS

1. The authority citation for part 71 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 71.6 is amended by revising paragraph (c)(5)(iii)(C) to read as follows:

§ 71.6 Permit content.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification; and

* * * * * * *

[FR Doc. 01–27595 Filed 11–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–7096–5]

RIN–2060–AJ69

Revisions to the Requirements on Variability in the Composition of Additives Certified Under the Gasoline Deposit Control Program; Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Deposits that form in gasoline-fueled motor vehicle engines and fuel supply systems have been shown to increase emissions of harmful air pollutants. All gasoline used in the U.S. must contain additives that have been certified with EPA as effective in limiting the formation of such deposits. During certification, additive manufacturers must provide EPA with information on additive composition. To ensure that in-use additives meet EPA requirements, manufacturers are required to limit variation in the composition of additive production batches from that reported during certification.

Today's action makes revisions to the information that must be provided on additive composition by the manufacturer at the time of certification and clarifies the requirements associated with limiting variability in additive production batches. These changes address additive manufacturer concerns that compliance with the existing requirements would be burdensome and difficult, while maintaining the emissions control benefits of the gasoline deposit control program.

We are making these regulatory changes by direct final rule without prior proposal because we view these changes as noncontroversial revisions and anticipate no adverse comment. The "Proposed Rules" section of this **Federal Register**, contains a proposed rule in which we propose the regulatory changes in this direct final rule. If we receive no adverse comment, we will not take further action on the proposed rule. If we receive adverse comment, we will withdraw the portions of the direct final rule receiving such comment and those portions will not take effect. Any adverse comments received on this notice will be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. We are not planning to hold a public hearing regarding this action.

DATES: This rule is effective on February 4, 2002 without further notice, unless EPA receives adverse comment by January 4, 2002. If we receive adverse comment, we will withdraw an amendment, paragraph, or section of the direct final rule receiving such comment and those amendments, paragraphs, or sections will not take effect. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

ADDRESSES: Interested parties may submit written comments in response to this notice (in duplicate if possible) to Public Docket No. A–2001–15, at: Air Docket Section, U.S. Environmental Protection Agency, Attention: Docket No. A–2001–15, First Floor, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460 (Telephone 202–260–7548; Fax 202–260–4400). We also request that a copy of the comments be sent to Jeff Herzog by mail at, U.S. EPA, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105–2498, or by E-Mail at herzog.jeff@epa.gov

This direct final rule and the associated proposed rule are available electronically on the day of publication from the Office of the Federal Register internet Web site listed below. Electronic copies of these notices are also available from the EPA Office of Transportation and Air Quality Web site listed below. This service is free of charge, except for any cost that you already incur for internet connectivity.

Federal Register Web Site:

http://www.epa.gov/docs/fedrgstr/EPA–AIR/ (Either select desired date or use Search feature.)

Office of Transportation and Air Quality Web Site:

http://www.epa.gov/otaq/ (Look in "What's New" or under the specific rulemaking topic.)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

FOR FURTHER INFORMATION CONTACT: Jeff Herzog, U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI, 48105–2498. Telephone (734) 214–4227; Fax (734) 214–4051; e-mail herzog.jeff@epa.gov

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that manufacture gasoline deposit control (detergent) additives. Regulated categories and entities include:

Category	NAICS code	SIC code	Example of regulated entities
Industry	325998	2899	Gasoline deposit control additive manufacturers.

a. North American Industry Classification System (NAICS).
b. Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 80.161(a), the detergent certification requirements in § 80.161(b), the program controls and prohibitions in § 80.168, and other related program requirements in Subpart G, title 40, of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Overview of Action

The accumulation of deposits in the engine and fuel supply systems of gasoline motor vehicles can significantly increase emissions of nitrous oxides (NO_x), hydrocarbons (HC), and carbon monoxide (CO). Pursuant to the requirements of Section 211(l) of the Clean Air Act (CAA), EPA set forth a gasoline deposit control program which requires that all gasoline sold for use in motor vehicles in the United States (U.S.) contain additives that are effective in limiting the formation of such deposits (40 CFR Part 80). Specifically, EPA requires that deposit control additives be certified for their ability to control fuel injector and intake valve deposits in EPA-specified test procedures. The final requirements of EPA's gasoline deposit control program were published on July 5, 1996, and became effective August 1, 1997 (61 FR 35309).

Variation in the composition of gasoline deposit control additives (DC additives) from one production batch to the next could have a substantial impact on their ability to control deposits, and on the emissions benefits of EPA's deposit control program. To ensure that the in-use performance of gasoline deposit control additives matches that demonstrated in the certification testing, EPA set forth requirements limiting the variability in the composition of additive production batches (from the composition reported in the additive's certification).

The Chemical Manufacturers Association (CMA, which is now the American Chemistry Council) notified EPA that certain aspects of the requirements to limit variability in DC additive composition would be burdensome and difficult for additive manufactures to comply with. CMA also stated that other related provisions needed to be clarified. Accordingly, CMA filed a petition for review of these requirements.[1] CMA then entered into a process with EPA to evaluate alternatives to EPA's current requirements. Through this process, changes to EPA's current requirements were developed that resolve CMA's concerns while meeting EPA's goal of preserving the emissions benefits of the gasoline deposit control program by effectively limiting variability in additive composition. Today's Final Rule makes the changes which CMA and EPA agreed upon in the settlement agreement to resolve CMA's petition for review.

EPA is publishing this rule without prior proposal because we view these provisions as non-controversial amendments and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to make these regulatory revisions if adverse comments are filed. This rule will be effective on February 4, 2002 without further notice unless we receive adverse comment by January 4, 2002.

If EPA receives adverse comment on one or more distinct provisions, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions, will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule. We will address any adverse comments received on this notice in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. What Revisions Does This Rule Make to the Requirements on Deposit Control Additives?

The current requirements on DC additives that CMA requested be reviewed are contained in 40 CFR 80.162(a)(3) on DC additive composition variability, 40 CFR 80.162(d) on the test method to evaluate the composition of DC additives, and 40 CFR 80.169(c)(4) on detergent (deposit control additive) manufacturer presumptive liability affirmative defense. Following is a discussion of the requirements CMA requested be reviewed, EPA's reasons for establishing them in their current form, and the changes to these requirements made by today's notice.

A. Revisions to the Requirements on Variability in Additive Composition

Revisions to 40 CFR 80.162(a)(3)(i)(B)

The current regulatory requirements in 40 CFR 80.162(a)(3)(i)(B) state that:

(i) The composition of a detergent additive reported in a single additive registration (and the detergent additive product sold under a single additive registration) may not:

* * * * *

(B) Include a range of concentration for any detergent-active component such that, if the component were present in the detergent additive package at the lower bound of the reported range, the deposit control effectiveness of the additive package would be reduced as compared with the level of effectiveness demonstrated during certification testing.

EPA's goal in establishing this requirement in its current form was to ensure that each component of a deposit control (detergent) additive is present in additive production batches at no less the concentration needed to meet EPA's deposit control performance requirements.

CMA requested that the requirements of 40 CFR 80.162(a)(3)(i)(B) be revised by adding to the end: "Subject to the foregoing constraint, a detergent additive product sold under a particular additive registration may contain a higher concentration of a detergent-active component(s) than the concentration(s) of such component(s) reported in the registration for the additive." CMA requested these revisions to make it clear that an additive manufacturer has the flexibility to increase the concentration of a detergent-active component of a deposit control additive provided that this does not result in a decrease in the concentration of other detergent-active components in the additive package.

EPA agrees that the suggested revision would appropriately clarify that an additive manufacturer has the flexibility to increase the concentration of a detergent-active component. The suggested revision would not adversely affect the environmental benefits of the program, since the requirement would remain that each detergent-active component in the additive package must be present at least at the minimum concentration indicated in the additive's certification. Consequently, EPA is making the suggested revision to 40 CFR 80.162(a)(3)(i)(B).

Revisions to 40 CFR 80.162(a)(3)(ii):

The current requirements in 40 CFR 80.162(a)(3)(ii) state that:

(ii) The identity or concentration of non-detergent-active components of the detergent additive package may vary under a single registration, provided that the range of such variation is specified in the registration and that such variability does not reduce the deposit control effectiveness of the additive package as compared with the level of effectiveness demonstrated during certification testing.

EPA's goal in establishing this requirement in its current form was to ensure that the effectiveness of deposit control additives is not adversely affected by variability in the composition of non-detergent-active components.

CMA requested that 40 CFR 80.162(a)(3)(ii) be revised by deleting: "the range of such variation is specified in the registration and that." CMA stated that there is no need to report the range of variation in the identity or concentration of non-detergent-active components since such variation does not affect the efficacy of the deposit control additive package. CMA further stated that additive manufacturers commonly switch the nondetergent-active components they use depending on market conditions. CMA stated that restricting this flexibility would increase manufacturing costs, and potentially cause supply problems.

EPA agrees that maximizing additive manufacturer flexibility in the choice of non-detergent-active components would reduce the burden of compliance on additive manufacturers and would not jeopardize the emissions benefits of the gasoline deposit control additive program. Differences in the composition and concentration of non-detergent-additive components would have no impact on the efficacy of the deposit control additive package provided that such differences do not affect the concentration of detergent-active components in the package. There would continue to be adequate regulatory requirements to prevent such an occurrence. Thus, the change would not affect the environmental benefits of the gasoline deposit control program. Consequently, EPA is making the suggested revision to 40 CFR 80.162(a)(3)(ii).

B. Revisions to the Requirements on the Additive Composition Test Results

Revisions to 40 CFR 80.162(d):

The current requirements in 40 CFR 80.162 state that:

§ 80.162 Additive compositional data.

For a detergent additive product to be eligible for use by detergent blenders in complying with the gasoline detergency requirements of this subpart, the compositional data to be supplied to EPA by the additive manufacturer for the purpose of registering a detergent additive package under § 79.21(a) of this chapter must include* * *.

* * * * *

(d) Description of an FTIR-based method appropriate for identifying the detergent additive package and its detergent-active components (polymers, carrier oils, and others) both qualitatively and quantitatively, together with the actual infrared spectra of the detergent additive package and each detergent-active component obtained by this test method.

EPA's goal in establishing this requirement in its current form was to ensure that the test method supplied by the additive manufacturer to evaluate the composition of a deposit control additive is sufficiently detailed to enable EPA to determine whether the appropriate detergent-active components are present at a concentration no less than the minimum concentration reported in the additive's certification.

CMA requested that 40 CFR 80.162(d) be revised by adding to the end: "The FTIR infrared spectra submitted in connection with the registration of a detergent additive package must reflect the results of a test conducted on a sample of the additive containing the detergent-active component(s) at a concentration no lower than the concentration(s) (or the lower bound of a range of concentration) reported in the registration pursuant to paragraph (a)(3)(i)(B) of this section." CMA stated that this addition would help to clarify the criteria EPA would use in evaluating the validity of the additive composition test data supplied at certification by explicitly stating the focus is identifying the detergent-active components in the deposit control additive package. CMA stated that this change is consistent with the change discussed in the previous section which would eliminate reporting requirements regarding variability in the composition and concentration of non-detergent-active components in the deposit control additive package.

EPA agrees that this change would serve to clarify the regulatory requirements and is consistent with the change discussed in the previous section regarding reporting requirements related to the nondetergent-active components of the deposit control additive package. Consequently, EPA is making the suggested revision to 40 CFR 80.162(d).

C. Revisions to the Requirements on Detergent Manufacturer Presumptive Liability Affirmative Defense

Revisions to 40 CFR 80.169(c)(4)(i)(C)(*2*)

The current requirements in 40 CFR 80.169(c)(4)(i)(C)(2) state that:

(2) To establish that, when it left the manufacturer's control, the detergent component of the noncomplying product was in conformity with the chemical composition and concentration specifications reported pursuant to § 80.161(b), the FTIR test results for the detergent batch used in the noncomplying product must, in EPA's judgment, be consistent with the FTIR results submitted at the time of registration pursuant to § 80.162(d).

EPA's goal in establishing this requirement in its current form was to ensure that the in-use composition of the detergent-active components in a deposit control additive package is consistent with the composition reported in the additive's certification.

CMA requested that 40 CFR 80.169(c)(4)(i)(C)(2) be revised by deleting: "in EPA's judgment." CMA stated that this phrase inappropriately suggests that EPA's evaluation of the additive composition test data could be based on subjective criteria not open to public review. EPA agrees that the evaluation of additive composition test data must be based on objective scientific and engineering criteria that are open to public evaluation. Therefore, EPA is making the suggested revision to 40 CFR 80.169(c)(4)(i)(C)(2) to eliminate the potential misunderstanding.

III. What Are the Economic and Environmental Impacts?

The revisions made by today's notice will reduce the burden of compliance with the gasoline deposit control additive program while not impacting the environmental benefits of the program.

IV. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency

[1] Petition for review under the Clean Air Act's judicial review provisions, *Chemical Manufacturers Association* v. *U.S. EPA*, No. 96–1297, August 26, 1996.

must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility

EPA determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. Today's final rule will not have a significant impact on a substantial number of small entities. Today's rule simplifies the requirements for additive manufacturers under the gasoline deposit control program and does not impose any significant new requirements. The regulatory changes in today's rule will reduce the burden of compliance for all affected parties.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement to accompany any proposed and final rule that includes a federal mandate that may result in expenditures by state, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more for any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the regulatory provisions in this direct final rule would significantly or uniquely affect small governments. EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more in any one year for State, local, and tribal governments in the aggregate, or the private sector in any one year. The amendments contained in this final rule simplify the requirements under the gasoline deposit control program, and do not impose any significant new requirements.

D. Compliance With the Paperwork Reduction Act

Today's direct final rule does not impose any new information collection burden. No new information collection requirements would result from the implementation of the provisions which are the subject of this action.

The Office of Management and Budget (OMB) has previously approved the information collection requirements of the EPA's Gasoline Deposit Control Additive Program contained in 40 CFR Part 80 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0275 (EPA ICR No. 1655.04). Today's rule does not result in a change in the requirements contained in this ICR.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the ICR documents may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (mail code 2136); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR and/or OMB number in any correspondence.

E. Compliance With Executive Order 13045

This direct final rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

F. Consultation and Coordination With Indian Tribal Governments

On January 1, 2001, Executive Order 13084 was superseded by DO 13175. However this rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084. In the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to make these regulatory revisions if adverse comments are filed. This proposed rule was also developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084. In the event that adverse comments are received on this proposal, we will address any such comments received in a subsequent final rule based on the proposed rule. Development of such a subsequent final rule will address tribal considerations under Executive Order 13175.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments. As noted above, this direct final rule makes minor technical changes to federal regulations that will be implemented at the federal level and affects only obligations on private industry. Accordingly, the requirements of Executive Order 13084 do not apply to this rule.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or would be otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This direct final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective February 4, 2002.

I. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

J. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Section 211(d)(4)(A) of the CAA prohibits States from prescribing or attempting to enforce controls or prohibitions respecting any fuel characteristic or component if EPA has prescribed a control or prohibition applicable to such fuel characteristic or component under Section 211(c)(1) of the Act. This rule merely modifies existing EPA detergent additive standards and therefore will merely continue an existing preemption of State and local law. Thus, Executive Order 13132 does not apply to this rule.

VI. Statutory Authority

The promulgation of these regulations is authorized by sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline deposit control (detergent) additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: October 24, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is to be amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545, and 7601(a).

2. Section 80.162 is amended:

a. By revising paragraph (a)(3)(i)(B).

b. By revising paragraph (a)(3)(ii).

c. By revising paragraph (d).

The revisions to § 80.162 read as follows:

§ 80.162 Additive compositional data.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(B) Include a range of concentration for any detergent-active component such that, if the component were present in the detergent additive package at the lower bound of the reported range, the deposit control effectiveness of the additive package would be reduced as compared with the level of effectiveness demonstrated during certification testing. Subject to the foregoing constraint, a detergent additive product sold under a particular additive registration may contain a higher concentration of the detergent-active component(s) than the concentration(s) of such component(s) reported in the registration for the additive.

(ii) The identity or concentration of non-detergent-active components of the detergent additive package may vary under a single registration provided that such variability does not reduce the deposit control effectiveness of the additive package as compared with the level of effectiveness demonstrated during certification testing.

(b) * * *

(c) * * *

(d) Description of an FTIR-based method appropriate for identifying the

detergent additive package and its detergent-active components (polymers, carrier oils, and others) both qualitatively and quantitatively, together with the actual infrared spectra of the detergent additive package and each detergent-active component obtained by this test method. The FTIR infrared spectra submitted in connection with the registration of a detergent additive package must reflect the results of a test conducted on a sample of the additive containing the detergent-active component(s) at a concentration no lower than the concentration(s) (or the lower bound of a range of concentration) reported in the registration pursuant to paragraph (a)(3)(i)(B) of this section.

* * * * *

3. Section 80.169 is amended by revising paragraph (c)(4)(i)(C)(*2*) to read as follows:

§ 80.169 Liability for violations of the detergent certification program controls and prohibitions.

* * * * *

(c) * * *
(4) * * *
(i) * * *
(C) * * *

(*2*) To establish that, when it left the manufacturer's control, the detergent component of the noncomplying product was in conformity with the chemical composition and concentration specifications reported pursuant to § 80.161(b), the FTIR test results for the detergent batch used in the noncomplying product must be consistent with the FTIR results submitted at the time of registration pursuant to § 80.162(d).

* * * * *

[FR Doc. 01–27588 Filed 11–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7097–3]

National Oil and Hazardous Substances Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final notice of deletion of a portion of the Sangamo Weston/Twelve Mile Creek/Lake Hartwell (Sangamo) Superfund Site from the National Priorities List (NPL).

SUMMARY: The United States Environmental Protection Agency (US EPA), Region 4, is publishing this direct final notice of deletion of a portion of the Sangamo Superfund Site (Site), located in Pickens, South Carolina, from the National Priorities List (NPL). The proposed partial deletion is for the Dodgens remote property which is located within a few miles of the main plant property. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA, with the concurrence of the South Carolina Department of Health and Environmental Control. EPA has determined that all appropriate response actions under CERCLA have been completed for the Dodgens remote property, and therefore, further action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective January 4, 2002 unless EPA receives adverse comments by December 5, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Sheri Cresswell, Remedial Project Manager, US EPA, Region 4, 61 Forsyth St., WD–NSMB, SW., Atlanta, GA 30303.

Information Repositories: Repositories have been established to provide detailed information concerning this Site at the following addresses: U.S. EPA, Region 4 Superfund Records Center, 61 Forsyth St., SW., Atlanta, GA 30303, attn: Ms. Debbie Jourdan, (404) 562–8862; R.M. Cooper Library, Clemson University, South Palmetto Boulevard., Clemson, SC, (864) 656–5174; Pickens County Public Library, Easley Branch, 110 West First Avenue, Easley, SC, (864) 850–7077; and Hart County Library, 150 Benson Street, Hartwell, GA, (706) 376–4655.

FOR FURTHER INFORMATION CONTACT: Please contact either Sheri Cresswell (Remedial Project Manager) at 803–896–4171 or Tiki Whitfield (Community Relations Coordinator) at 1–800–435–9233 or 404–562–8530.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 4 is publishing this direct final notice of deletion of a portion of the Sangamo Site from the NPL.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. Sites on the NPL qualify for remedial responses financed by the Hazardous Substances Response Trust Fund (Fund). As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective January 4, 2002 unless EPA receives adverse comments by December 5, 2001. If adverse comments are received within the 30-day public comment period on this notice or the notice of intent to delete, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take affect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Sangamo Superfund Site and demonstrates how the portion that is being deleted meets the deletion criteria. Section V discusses EPA's actions to delete the portion of the Site from the NPL unless adverse comments are received during the comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with § 300.425(e) of the NCP, sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, considers whether the site or portion of the site has met any of the following criteria for site deletion:

(i) Responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate response actions under CERCLA have been implemented and no further response actions are deemed necessary; or

(iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment and, therefore, no remedial action is appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c), requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without the application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the portion of the Site:

(1) EPA Region 4 consulted with South Carolina on the deletion of the portion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The State concurs with the decision to delete a portion of the Sangamo Site.

(3) Concurrently with the publication of this direct final notice of deletion, the notice of intent to delete is published today in the "Proposed Rules" section of the **Federal Register** and the availability of this notice is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the notice of intent to delete a portion of the site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice of intent to delete also published in today's **Federal Register**, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Partial deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for information purposes and to assist EPA management. As mentioned earlier, § 300.425(e)(30) of the NCP states that deletion of a site from the NPL does not preclude eligibility of the site for future Fund-financed response actions, should future conditions warrant further actions.

IV. Basis for Partial Site Deletion

The following Site summary provides EPA's rationale for the partial deletion of this Site from the NPL.

The Sangamo site (Site) is located in Pickens County, South Carolina. Sangamo Weston, Inc. owned and operated a capacitor manufacturing plant in Pickens, South Carolina from 1955 to 1987. In its manufacturing processes, Sangamo used dielectric fluids which contained several varieties of polychlorinated biphenyls (PCBs). PCBs reportedly enhanced the performance and durability of the fluids. Waste disposal practices from the Sangamo Plant included land-burial of off-specification capacitors and wastewater treatment sludges on the plant site and six satellite (remote) disposal areas within a 3-mile radius of the plant. The Dodgens property proposed for deletion is one of these areas. PCBs were also discharged with the effluent directly into Town Creek, which is a tributary of Twelvemile Creek. Twelvemile Creek is a major tributary of the 56,000 acre Lake Hartwell. As part of its overall strategy in addressing the Sangamo site, EPA split the site into two Operable Units. Operable Unit One (OU1) consists of the land-based source areas including the plant site and the six satellite disposal areas. OU2 addresses the sediment and biological impacts downstream of the land-based source areas.

The specific area associated with this partial delisting includes only a portion of the soils for OU1. The area proposed for delisting, the Dodgens property, has been the subject of previous investigations, and a clean-up action which removed contaminated soils from the property. The majority of the investigatory and remedial actions taken within the area targeted for partial delisting was performed under a Consent Decree, dated April 15, 1992.

A remedial investigation/feasibility study (RI/FS) was initiated by the potentially responsible party (currently Schlumberger Resource Management Services, Inc. (Schlumberger)) in 1988, which showed soils to be primarily contaminated with PCBs, though VOCs and metals were also detected. The Record of Decision (ROD) was signed in December 1990 which stated that the contaminated soils would be treated by thermal desorption. The groundwater at the Dodgens remote property showed very low levels of contamination at the time of the remedial investigation. However, since 1993, sampling data has not shown any groundwater contamination. Therefore, the property does not pose a risk to human health or the environment and remedial action is not warranted for the groundwater.

Under a Consent Decree with Schlumberger signed in April 1992, the contaminated soils were excavated from all six of the remote properties between November 1993 and July 1994. The ROD stated that soils were to be excavated to 10 parts per million (ppm) PCBs for the remote properties (except for the ravine parts of the Nix and Welborn properties, which were to be excavated to 1 ppm), and to 25 ppm on the plant property. Sampling to confirm the effectiveness of the waste removal efforts showed that the performance standards were achieved for the Plant site. Sampling also showed that all the remote properties were actually cleaned up to less than 1 ppm. The excavated areas were then backfilled with clean soil. Treatment of all contaminated soils (from the six remote properties, including the Dodgens property, and the plant property) by thermal desorption began in December 1995, and was completed in May 1997. Approximately 60,000 tons (40,000 cubic yards) of contaminated soils were treated to 2 ppm, and used as back fill on the Plant property. The cleanup level was confirmed through sampling of treated soils.

The remedial activities associated with removing contaminated soil within the area targeted for partial delisting at the Sangamo Site is considered a permanent remedy. No additional treatment of soils within this area will be necessary. As such, no operation and maintenance activities are necessary for this area. Because no hazardous substances, pollutants, or contaminants remain in the soils within the area targeted for partial delisting, no Five Year Review will be performed on this area.

V. Deletion Action

EPA, in concurrence with the State of South Carolina Department of Health and Environmental Control, has

determined that all appropriate responses under CERCLA for the soils within the area targeted for this partial deletion have been completed and that no further activities by responsible parties are appropriate. Therefore, EPA is deleting the Dodgens portion of the site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective January 4, 2002 unless EPA receives adverse comments by December 5, 2001. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take affect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: September 28, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by revising the entry for "Sangamo Weston/Twelve-Mile/ Hartwell/PCB, Pickens, South Carolina" to read as follows:

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
SC	Sangamo Weston	Pickens	P

(a) Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be ≤ 28.50). P = Sites within partial deletion (s).

[FR Doc. 01–27463 Filed 11–2–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–166, MM Docket No. 01–166, RM–10182]

Digital Television Broadcast Service; Calumet, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Scanlan Television, Inc., licensee of station WBKP–TV, NTSC channel 5, Calumet, Michigan, substitutes DTV channel 11 for DTV channel 18 at Calumet, Michigan. *See* 66 FR 40959, August 6, 2001. DTV channel 11 can be allotted to Calumet, Michigan, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (46–26–17 N. and 88–02–58 W.) with a power of 96.2 , HAAT of 388 meters and with a DTV service population of 182 thousand. In addition, since the community of Calumet is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government has been obtained for this allotment.

With this action, this proceeding is terminated.

DATES: Effective December 13, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–166, adopted October 26, 2001, and released October 29, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Michigan, is amended by removing DTV channel 18 and adding DTV channel 11 at Calumet.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–27638 Filed 11–2–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2478, MM Docket No. 01–164, RM–10135]

Digital Television Broadcast Service; New Orleans, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of LeSEA Broadcasting Corporation, licensee of station WHNO(TV), NTSC channel 20, New Orleans, Louisiana, substitutes DTV channel 21c for DTV channel 14 at New Orleans. *See* 66 FR 40958, August 6, 2001. DTV channel 21c can be allotted to New Orleans, Louisiana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (29–55–11 N. and 90–01–29 W.) with a power of 300, HAAT of 254 meters and with a DTV service population of 1532 thousand.

With this action, this proceeding is terminated.

DATES: Effective December 13, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–164, adopted October 26, 2001, and released October 29, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Louisiana, is amended by removing DTV channel 14 and adding DTV channel 21c at New Orleans.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–27640 Filed 11–2–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2476, MM Docket No. 01–171, RM–10158]

Television Broadcast Service; Destin, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kaleidoscope Partners, six mutually-exclusive applicants for vacant NTSC channel 64, Destin, Florida, substitutes channel 48 for channel 64 at Destin. *See* 66 FR 40960, August 6, 2001. TV channel 48 can be allotted to Destin, Florida, with a zero offset in compliance with the minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission's Rules. The coordinates for channel 48 at Destin are 30–30–52 N. and 86–13–12 W.

With is action, this proceeding is terminated.

DATES: Effective December 13, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–171, adopted October 26, 2001, and released October 29, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Florida, is amended by removing TV channel 64 and adding TV channel 48 at Destin.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–27639 Filed 11–2–01; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 66, No. 214
Monday, November 5, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–03–AD]

RIN 2120–AA64

Airworthiness Directives; Eagle Aircraft Pty. Ltd. Model 150B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Eagle Aircraft Pty. Ltd. (Eagle) Model 150B airplanes. This proposed AD would require you to modify the attachment of the port and starboard throttle arms, and the starboard bushing of the throttle torque tube. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. The actions specified by this proposed AD are intended to prevent failure of the throttle control assembly caused by wrong sized rivets. Such failure could lead to reduced control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 3, 2001.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–03–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Eagle Aircraft Pty. Ltd., Lot 700 Cockburn Road, Henderson WA 6166 Australia; telephone: (08) 9410 1077; facsimile: (08) 9410 2430. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Fredrick A. Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712: telephone: (562) 627–5232; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2001–CE–03–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, notified FAA that an unsafe condition may exist on certain Eagle Model 150B airplanes. The CASA reports that Eagle manufactured certain Model 150B airplanes with wrong sized rivets on the throttle control assembly. Installed rivets that are not the right size have resulted in reduced structural integrity of the throttle control assembly.

What are the consequences if the condition is not corrected? If this condition is not corrected, failure of the throttle control assembly could result. Such failure could lead to reduced control of the airplane.

Is there service information that applies to this subject? Eagle has issued Service Bulletin 1067, Revision 1, dated October 21, 1999.

What are the provisions of this service information? The service bulletin includes procedures to:

—Replace existing 3/32-inch rivets, which attach the throttle torque tubes to the port and starboard throttle arms, with 1/8-inch solid-bead rivets; and

—Replace the 1/8-inch rivet in the starboard bushing of the throttle torque tube with a 5/32-inch screw.

What action did the CAA take? The CASA classified this service bulletin as mandatory and issued Australian AD Number X–TS/4, effective July 6, 2000, in order to ensure the continued airworthiness of these airplanes in Australia.

Was this in accordance with the bilateral airworthiness agreement? This airplane model is manufactured in Australia and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CASA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? The FAA has examined the findings of the CASA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Eagle Model 150B of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 5 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 = $120	$50	$170	$170 × 5 = $850.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Eagle Aircraft Pty. Ltd.: Docket No. 2001–CE–03–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model 150B airplanes, serial numbers 001 through 021, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the throttle control assembly. Such failure could lead to reduced control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
Replace the existing 3/32-inch rivets, which attach the throttle torque tubes to the port and starboard throttle arms, with 1/8-inch solid-head rivets, and replace the 1/8-inch rivet in the starboard bushing of the throttle torque tube with a 5/32-inch screw.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD.	In accordance with Eagle Service Bulletin 1067, Revision 1, date October 21, 1999.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Los Angeles Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Fredrick A. Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Eagle Aircraft Pty. Ltd., Lot 700 Cockburn Road, Henderson WA 6166 Australia; telephone: (08) 9410 1077; facsimile: (08) 9410 2430. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Australian AD Number X–TS/4, effective July 6, 2000.

Issued in Kansas City, Missouri, on October 26, 2001.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27654 Filed 11–2–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) this is applicable to certain Fokker Model F.28 Mark 0070 and 0100 series airplanes. This proposal would require repetitive operational tests for discrepancies of the heating system of pitot tube #1, and replacement of the pilot tube, if necessary. This proposal also would require eventual modification of the alternating current sensing circuit for pitot tube #1, which would terminate the repetitive operational test requirement. This action is necessary to prevent failure of the heating system of pitot tube #1 due to a short circuit, which may go undetected and lead to the pilot receiving erroneous airspeed indications, resulting in reduced control of the airplane. The action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–128–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–128–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services, V.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issues-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin specific reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–128–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–128–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that the captain's airspeed indicator failed during flight in icing conditions on certain Fokker Model F.28 Mark 0070 and 0100 series airplanes. Another report advises that an operator reported snow on the pitot tube while the pitot tube's heating element was switched on. Investigation has revealed that these conditions are caused by a short circuit in the pitot tube's heating element, which can remain undetected because of the placement of the alternating current (AC) sensing circuit for pitot tube #1. Undetected failure of the pitot tube heating system can lead to pitot tube #1 being blocked by ice. This condition, if not corrected, could lead to the pilot receiving erroneous airspeed indications, resulting in reduced control of the airplane.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–30–025, Revision 1, dated March 14, 2001, which describes procedures for repetitive operational tests for discrepancies of the heating system of pitot tube #1, and replacement of the pitot tube, if necessary. The operational tests are intended to ensure that the heaters of the pitot tube and mast are functioning. The service bulletin also describes procedures for modification of the AC sensing circuit for pitot tube #1. The modification involves removing the supply current wire from the AC current sensor for the pitot tube, removing the wire that grounds the heating system of pitot tube #1, installing the supply current wire to the inverter, installing the return current wire from from pitot tube #1 to the AC current sensor, and grounding the AC current sensor. Accomplishment of this modification will ensure that the flight crew will be able to detect a short circuit in the heating system of pitot tube #1, should such a short circuit occur. Therefore, such modification eliminates the need for the repetitive operational tests. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

U.S. Type Certification of the Airplane

This aiplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. The proposed AD also would require that operators report results of inspection findings to the airplane manufacturer.

Cost Impact

The FAA estimates that 129 airplanes of U.S registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed operational test, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,740, or $60 per airplane, per test cycle.

It would take approximately 34 work hours per airplane to accomplish the proposed modification, at the average labor rate of $60 per work hour. Required parts would cost approximately $350 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $308,310, or $2,390 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); an (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive.

Fokker Services B.V.: Docket 2001–NM–128–AD.

Applicability: Model F.28 Mark 0070 and 0100 series airplanes, serial numbers 11244 through 11585 inclusive, on which Fokker Service Bulletin SBF100–30–019 or SBF100–30–020 has been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the heating system of pitot tube #1 due to a short circuit, which may go undetected and lead to the pilot receiving erroneous airspeed indications, resulting in reduced control of the airplane, accomplish the following:

Operational Test

(a) Within 3 months after the effective date of this AD, do an operational test for discrepancies (i.e., correct functioning) of the heating system of pitot tube #1, according to Fokker Service Bulletin SFB100–30–025, Revision 1, dated March 14, 2001. Repeat the operational test every 12 months, until paragraph (d) of this AD has been done.

Replacement of Pitot Tube

(b) If any discrepancy is found during the operational test required by paragraph (a) of this AD: Before further flight, replace pitot tube #1 with a new pitot tube, according to Fokker Service Bulletin SBF100–30–025, Revision 1, dated March 14, 2001.

Reporting Requirement

(c) At the applicable time specified in paragraph (c)(1) or (c)(2) of this AD: Use page 38 of Fokker Service Bulletin SBF100–30–025, Revision 1, dated March 14, 2001, to submit a report of findings from each operational test (both positive and negative) to Fokker Services B.V., Attn: Manager Airline Support, P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the operational test is accomplished after the effective date of this AD: Submit the report within 5 days after performing the test required by paragraph (a) of this AD.

(2) For airplanes on which the operational test is accomplished before the effective date of this AD: Submit the report within 5 days after the effective date of this AD.

Modification

(d) Within 36 months after the effective date of this AD, modify the alternating current (AC) sensing circuit for pitot tube #1 (including removing the supply current wire from the AC current sensor for the pitot tube, removing the wire that grounds the heating system of pitot tube #1, installing the supply current wire to the inverter, installing the return current wire from pitot tube #1 to the AC current sensor, and grounding the AC current sensor), according to Fokker Service Bulletin SBF100–30–025, Revision 1, dated March 14, 2001. Such modification terminates the repetitive operational tests required by paragraph (a) of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager,

International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Dated: Issued in Renton, Washington, on October 30, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27666 Filed 11–2–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–32–AD]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins TDR–94 and TDR–94D Mode S Transponders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Rockwell Collins TDR–94 and TDR–94D Mode S transponders that derive altitude information from a Gillham (gray code) encoded pressure altitude source and are installed on airplanes. The proposed AD would require you to have the unit modified to prevent erroneous altitude reporting. The proposed AD is the result of reports that erroneous altitude resolutions could occur when the affected transponders are utilized in areas with other airplanes equipped with certain aircraft collision avoidance system (ACAS) or traffic alert and collision avoidance system (TCAS) configurations. The actions specified by the proposed AD are intended to prevent these erroneous altitude resolutions from causing a reduction in the intended ACAS or TCAS Change 7 separation margins. Such a condition could result in air traffic control or the pilot making flight decisions that put the airplane in unsafe flight conditions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on the rule on or before January 11, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–32–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may obtain service information that applies to this proposed AD from Rockwell Collins Inc., Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407; e-mail: *roger.souter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on the proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–32–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this AD? The FAA has received information that erroneous altitude resolutions could occur on certain Rockwell Collins TDR–94 and TDR–94D Mode S transponders installed in airplanes with Gillham (gray code) encoded sources. This information indicates that these transponders are utilized in areas with other airplanes equipped with certain aircraft collision avoidance system (ACAS) or traffic alert and collision avoidance system (TCAS) configurations. In these situations, the transponders could receive incorrect TCAS resolution advisories. This could result in a reduction in the intended ACAS or TCAS Change 7 minimum separation margins.

Gillham altitude sources have a 100-foot resolution. The affected transponder will set the altitude resolution status to indicate a 25-foot resolution when connected to a Gillham altitude source. For those units that have digital sources of altitude information, the altitude resolution status is set correctly.

These Rockwell Collins TDR–94 and TDR–94D Mode S transponders could be installed on, but not limited to, the following airplanes:

—Aerospatiale ATR42 series airplanes;
—deHavilland DHC–7 and DHC–8 series airplanes; and
—Short Brothers Models SD3–60 and SD3–60 SHERPA airplanes.

What are the consequences if the condition is not corrected? As described above, such erroneous altitude resolutions could cause a reduction in the intended ACAS or TCAS Change 7 separation margins and result in air traffic control or the pilot making flight decisions that put the airplane in unsafe flight conditions.

Relevant Service Information

Is there service information that applies to this subject? Rockwell Collins has issued Service Bulletin No. 17 (TDR–94/94D–34–17), dated February 8, 1999.

What are the provisions of this service bulletin? The service bulletin includes information on how to have the TDR–94 and TDR–94D Mode S transponders modified to prevent erroneous altitude reportings. This consists of:

—Converting the TDR–94 transponder from Collins part number (CPN) 622–9352–004 to CPN 622–9352–005; and
—Converting the TDR 94D transponder from CPN 622–9210–004 to CPN 622–9210–005.

Collins Product Information Letter No. 71, dated January 1999, references the service bulletin.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on type design airplanes that incorporate Rockwell Collins TDR–94 (CPN 622–9352–004) and TDR–94D (CPN 622–9210–004) Mode S transponders and derive altitude information from a Gillham (gray code) encoded pressure altitude source;
—The actions specified in the previously-referenced service information should be accomplished on these airplanes with these Mode S transponders; and
—AD action should be taken in order to correct this unsafe condition.

What would the proposed AD require? This proposed AD would require you to have the actions of Rockwell Collins Service Bulletin No. 17 (TDR–94/94D–34–17), dated February 8, 1999, incorporated on any affected Mode S transponder that is installed on a type-certificated airplane where Gillham pressure altitude encoding sources are used.

Why is the proposed compliance time presented in calendar time instead of hours time-in-service (TIS)? The compliance of the proposed AD is presented in calendar time instead of hours TIS because the condition exists regardless of airplane operation. The erroneous altitude indications could occur regardless of the number of times and hours the airplane was operated or the age of the Mode S transponder. For these reasons, FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to ensure that the unsafe condition is addressed in a reasonable time period on all airplanes that have an affected Rockwell Collins TDR–94 and TDR–94D Mode S transponder installed, and where Gillham pressure altitude encoding sources are used.

Cost Impact

How many airplanes would the proposed AD impact? We estimate that 1,400 affected Rockwell Collins TDR–94 and TDR–94D Mode S transponders could be installed on airplanes in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected airplanes? Rockwell Collins will cover all workhours and parts costs associated with this modification under warranty. The proposed AD would not impose any cost impact upon the owners/operators of any airplane incorporating one of the affected TDR–94 and TDR–94D Mode S transponders.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Rockwell Collins, Inc.: Docket No. 2000–CE–32–AD.

(a) *What products are affected by this AD?* This AD applies to TDR–94 Mode S transponders (Collins part number (CPN) 622–9352–004) and TDR–94D Mode S transponders (CPN 622–9210–004) that derive altitude information from a Gillham (gray code) encoded pressure altitude source and are installed on, but not limited to, the following airplanes that are certificated in any category:

(1) Aerospatiale ATR42 series airplanes;
(2) deHavilland DHC–7 and DHC–8 series airplanes; and
(3) Short Brothers Models SD3–60 and SD3–60 SHERPA airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate any airplane with one of the affected TDR–94 or TDR–94D Mode S Transponders units installed must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent erroneous altitude resolutions from causing a reduction in the intended aircraft collision avoidance system (ACAS) or traffic alert and collision avoidance system (TCAS) Change 7 minimum separation margins. Such a condition could result in air traffic control or the pilot making flight decisions that put the airplane in unsafe flight conditions.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Action	Compliance time	Procedures
(1) Determine whether the altitude information from any TDR–94 Mode S transponder (CPN 622–9352–004) or TDR–94D Mode S transponder (CPN 622–9210–004) is derived from a digital air data source or a Gillham (gray code) encoded source.	Within the next 3 months after the effective date of this AD.	As specified in Rockwell Collins Service Bulletin No. 17 (TDR–94/94D–34–17), dated February 8, 1999. Collins Product Information Letter No. 71, dated January 1999, references the service bulletin.

Action	Compliance time	Procedures
(2) If the altitude information is derived from a Gillham (gray code) encoded source, have the unit modified to prevent erroneous altitude reporting. The modification encompasses converting the TDR–94 transponder from Collins part number (CPN) 622–9352–004 to CPN 622–9352–005; and converting the TDR 94D transponder from CPN 622–9210–004 to CPN 622–9210–005.	At the next transponder check required by 14 CFR 91.413 that occurs 3 months after the effective date of this AD or within the next 9 months after the effective date of this AD, whichever occurs first.	In accordance with Rockwell Collins Service Bulletin No. 17 (TDR–94/94D–34–17), dated February 8, 1999. Collins Product Information Letter No. 71, dated January 1999, references the service bulletin.
(3) If the altitude information from all affected transponders is derived from a digital air data source, no modification action is required by this AD.	Not applicable	Not applicable.
(4) Do not install any TDR–94 Mode S transponder (CPN 622–9352–004) or TDR–94D Mode S transponder (CPN 622–9210–004) on any airplane if the altitude information is derived from a Gillham (gray code) encoded source, unless the modification required by paragraph (d)(2) of this AD is incorporated.	As of the effective date of this AD	Accomplish the modification in accordance with Rockwell Collins Service Bulletin No. 17 (TDR–94/94D–34–17), dated February 8, 1999. Collins Product Information Letter No. 71, dated January 1999, references the service bulletin.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The manager, Wichita Aircraft Certification Office, approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407; e-mail: roger.souter@faa.gov.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Rockwell Collins Inc., Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 30, 2001.

Brian A. Hancock,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27665 Filed 11–2–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37, 161, 250, 284, and 358

[Docket No. RM01–10–000]

Standards of Conduct for Transmission Providers; Notice of Extension of Time

October 26, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of extension of time.

SUMMARY: On September 27, 2001, the Commission issued notice of proposed rulemaking addressing new standards of conduct for transmission providers (66 FR 50919, October 5, 2001). The date for filing comments is being extended at the request of the American Gas Association, the Edison Electric Institute and the Interstate Natural Gas Association of America..

DATES: Comments should be filed on or before December 20, 2001.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: David P. Boergers, Secretary 888 First Street, NE., Washington, DC 20426, (202) 208–0400.

SUPPLEMENTARY INFORMATION: On October 24, 2001, the American Gas Association, the Edison Electric Institute, and the Interstate Natural Gas Association of America (collectively, Movants) filed a joint motion for an extension of time to file comments on the Notice of Proposed Rulemaking (NOPR) issued September 27, 2001, in the above-docketed proceeding. In their motion, Movants state that the proposed rule is broad in nature and has the potential to dramatically impact the business operations of electric and gas companies in the United States and that additional time is requested to effectively gather evidence on the costs and benefits of various proposals contained in the NOPR. The motion also states that the American Public Gas Association, the Independent Petroleum Association of America, the Natural Gas Supply Association, the Process Gas Consumers Group, the American Public Power Association, and the National Rural Electric Cooperative Association have been contacted by Movants and that none of the trade associations contacted objects to the request for additional time.[1]

Upon consideration, notice is hereby given that an extension of time for the filing of comments in response to the Commission's Notice of Proposed Rulemaking issued September 27, 2001, is granted to and including December 20, 2001.

David P. Boergers,

Secretary.

[FR Doc. 01–27674 Filed 11–2–01; 8:45 am]

BILLING CODE 6717–01–P

[1] The Natural Gas Supply Association agreed to an extension of time to file comments only through December 15, 2001.

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 104

[CIV 104P; AG Order No. 2531–2001]

RIN 1105–AA79

September 11th Victim Compensation Fund of 2001

AGENCY: Civil Division, Justice.

ACTION: Notice of inquiry and advance notice of rulemaking.

SUMMARY: Shortly after the September 11, 2001 terrorist attack, the President signed legislation authorizing compensation to any individual (or the personal representative of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes on that day. This Notice of Inquiry and Advance Notice of Rulemaking seeks public comment on a range of matters critical to implementing a program that will carry out the intent of the legislation of providing compensation to victims.

DATES: Comments in response to this document are due by November 26, 2001.

ADDRESSES: Comments should be submitted by e-mail to: victimcomp.comments@usdoj.gov, or by telefax to 301–519–5956. Telefaxes should be limited to 15 pages. Comments may also be mailed to Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue NW., Washington, DC 20530. However, in view of the short time period for comments and the current delays in the delivery of mail, it is strongly recommended that comments be submitted by e-mail or telefax. Comments received are public records. The name and address of the commenter should be included with all submissions. The text of comments, along with the name and address of the commenter, will be available on the Victim Compensation Fund web site, *www.usdoj.gov/victimcompensation*. Comments will also be available for public inspection at a reading room in Washington, DC. Arrangements to visit the reading room must be made in advance by calling 888–714–3385 (TDD: 888–560–0844).

FOR FURTHER INFORMATION CONTACT: Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue NW., Washington, DC 20530, telephone 888–714–3385 (TDD 888–560–0844).

SUPPLEMENTARY INFORMATION:

Background

The President signed the "September 11 Victim Compensation Fund of 2001" (the "Fund") into law on September 22, 2001, as Title IV of Public Law 107–42, 115 Stat. 230 ("Air Transportation Safety and System Stabilization Act") (the "Act"). The purpose of the Fund is to provide compensation to eligible individuals who were physically injured as a result of the terrorist-related aircraft crashes of September 11, 2001, and compensation through a "personal representative" for those who were killed as a result of the crashes. Generally, eligibility extends to those who suffered physical harm or death as a result of the September 11 air crashes, which would include individuals on the planes at the time of the crashes (other than the terrorists) and individuals present at the World Trade Center, the Pentagon, or the site of the crash in Pennsylvania at the time of the crashes, as well as those present in the immediate aftermath of the crashes.

The Attorney General, acting through a Special Master appointed by the Attorney General, is responsible for the administration of the Fund. By law, regulations addressing certain administrative matters must be issued within 90 days of enactment (i.e. by December 21, 2001). Section 407 of the Act provides that the Attorney General, in consultation with the Special Master, promulgate regulations on four matters by December 21, 2001:

(1) Forms to be used in submitting claims;

(2) The information to be included in such forms;

(3) Procedures for hearing and the presentation of evidence; and

(4) Procedures to assist an individual in filing and pursuing claims.

In addition, section 407 authorizes the Attorney General to issue additional rules to implement the program.

After determining whether an individual is an eligible claimant under the Act and applicable regulations, the Special Master is to determine the extent of harm to the claimant and determine the amount of compensation to be awarded based on "the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant." Section 405(b)(1)(B)(i). The law also provides that the Special Master is to make a final determination on any claim within 120 days of its receipt and, if an award is made, to authorize payment within 20 days thereafter. Sections 405(b)(3), 406(a). The determinations of the Special Master are final and are not subject to judicial review. Section 405(b)(3).

The Fund is designed to provide a no-fault alternative to tort litigation for individuals who were physically injured or killed as a result of the aircraft highjackings and crashes on September 11, 2001. Individuals who may have suffered other kinds of losses as a result of those events (e.g., those without identifiable physical injuries but who lost employment) are not included in this special program. However, the Act provides that a claimant who files for compensation must, at the time of filing, waive any right to file a civil action (or to be a party to an action) in any federal or state court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001.

Claims with the Fund must be filed within two years after the initial regulations are promulgated. Payments from the Fund are made by the United States government, which in turn obtains the right of subrogation to each award.

General Approach to Regulations That Must Be Promulgated by December 21, 2001

(a) The purpose of this notice.

As noted above, the Act requires that the Attorney General promulgate regulations in consultation with the Special Master. The Department is currently considering potential candidates for the Special Master position. In addition, the Department is in the process of seeking information from state and local agencies, as well as many other sources, that may be useful in crafting proposed regulations. In the meantime, however, the Department believes that it is very important, to the extent feasible within the time frames involved, to involve the public in the development of any rules established under the program " including, but not limited to, potential beneficiaries of the program, their employers, the legal community, and all those who have come forward to help those impacted. For this reason, the Department has decided to issue this notice to obtain as much public comment as feasible before issuing the rules that it is required to

promulgate by December 21, 2001. This notice describes the issues involved, identifies possible courses of action, and invites comment on a number of points. At various points the Department solicits views on interpretations or applications of the Act. Although the Department welcomes comments, it is ultimately the Department's responsibility to interpret and apply the Act.

(b) The Department's plan to issue implementing regulations by December 21, 2001 as "interim final" rules.

Although the Attorney General, in consultation with the Special Master, is to issue certain implementing rules by December 21, 2001, the law does not specifically define how such rules must be issued. The Department welcomes comments on these procedural issues.

The Department is considering promulgating the initial rules on December 21, 2001 as "interim final" rules. "Interim final" rules are "final" rules that can be relied upon (and challenged) under the law, but that also become the subject of a new round of immediate comment and review—essentially, asking the public for comment on whether the newly-adopted rules should be amended. The Department wishes to begin processing claims as soon as possible. This procedural methodology should permit the program to commence operations as soon as practicable.

(c) How to comment in response to this notice.

There are a number of issues presented in this notice, and 21 days are provided for comment. The Department has only a limited time to evaluate the information received in response to this notice. Accordingly, the Department would appreciate comments that are transmitted as soon as possible and in a form that is as succinct as possible. As indicated at the beginning of this notice, we encourage commenters to use e-mail and telefax for this purpose.

Although the Department will endeavor to review every submission it receives in response to this notice, from handwritten letters to copies of scholarly articles and books, it reserves the right under the circumstances to set aside any information that it lacks the time to consider before the Department must make its determination, even if that information is received before the end of the comment period. The Department urges commenters to submit materials as early within the comment period as possible.

If the Department cannot fully consider all the comments it receives before it must act, the comments will be retained by the Department for subsequent consideration as appropriate. As discussed above, the Department contemplates providing another opportunity for notice and comment after the initial rules are issued in December; any information submitted to the Department in response to this notice that cannot be reviewed before the December rules are issued will be considered during the subsequent review. Similarly, to the extent that any issues addressed in the comments are not addressed in this initial regulatory action, those comments will be retained by the Special Master for appropriate consideration as the program is implemented.

(d) Will there also be meetings and hearings to gather information before December 21, 2001?

The Department has received many requests for meetings from individuals and groups who wish to provide input on these rules. And it is likely that the Department will wish to initiate such meetings on its own as well. The Department will endeavor to accommodate any such requests as best it can be given the available time and any applicable legal requirements.

As a matter of general policy, the Department has declined to take a position prohibiting so-called "ex parte communications" in informal rulemaking proceedings. 28 CFR 50.17. Such a prohibition would inhibit the ability of the Department to obtain valuable information, and would be inconsistent with the nature of informal rulemaking under 5 U.S.C. 553 (as contrasted with so-called "formal" rulemaking under 5 U.S.C. 554, which is handled in a quasi-judicial manner). Consistent with the policy set forth in 28 CFR 50.17, the Department will endeavor to make notes on any relevant meetings or other communications part of the public record.

(e) The effective date of the rules to be promulgated on December 21, 2001.

The law generally provides that rules not go into effect for at least 30 days after promulgation absent "good cause" to waive this requirement. 5 U.S.C. 533(d). The Department is seeking comment on an appropriate effective date for these rules, including whether "good cause" exists under 5 U.S.C. 533(d) to waive the 30-day requirement. In ideal circumstances, the Department would prefer not to waive the APA's requirements for at least a 30-day delay in the effective date for rules. Given the circumstances here, however, it seems likely that there may be good cause for taking such action. The Department welcomes comments on this issue and on other alternatives. For example, a 30-day effective date delay might not significantly hinder implementation of the program and would provide time for some initial counseling and other information dissemination prior to the filing of any claims.

(f) Issues relating to the rules to be promulgated by December 21, 2001.

The Department welcomes comment on whether the rules that must be issued by December 21, 2001, should, pursuant to section 407(5), cover matters in addition to those specifically identified in section 407(1)–(4) of the Act. One reason for making the set of regulations to be published in December as comprehensive as possible is the possibility that there are some potential claimants who have already filed or will soon be filing civil actions seeking damages arising out of the September 11 incidents. Section 405(c)(3)(B)(ii) of the Act provides that, if an individual is already a party to a civil action when the regulations enumerated in section 407 are promulgated, the individual cannot submit a compensation claim under this federal program unless he or she withdraws from the legal action within 90 days from the date the rules are promulgated. Without having information about how the compensation program works, such individuals might not be able to assess whether the compensation program is a viable alternative to continuing their litigation.

The Department believes that the number of individuals who already have filed a civil claim, or who have irrevocably committed to doing so in the next few months, may well be very small. The Department would welcome information on this point. The Department also would welcome comment as to whether the statutory requirement that a claimant "withdraw[]" from such action by 90 days after the date the initial rules are promulgated was intended to preclude such a claimant from refiling or rejoining a civil action: (a) should the claimant ultimately elect not to file a compensation claim under the federal program; or (b) if the claimant is determined by the Special Master not to be eligible to file a claim.

In short, potential claimants have an interest in knowing as soon as possible how the program is likely to operate in their circumstances. Litigation to obtain damages, particularly in a mass tort context, can be a lengthy, uncertain, and complex process, filled with substantial risk and expense. The purpose of this compensation program is to offer all potential claimants a more expeditious, predictable, and less complex alternative to that process. The Department recognizes that unless and until it can provide some certainty as to how the compensation award program will work, some claimants may be reluctant to commit themselves to the Fund as an alternative to tort awards.

We now turn to a set of specific topics on which comment is solicited. The first four topics concern the Department's obligations under section 407(1)–(4) of the Act. The remainder discuss key issues that may also be the subject of regulatory action.

Topics #1 & 2: The Forms To Be Used in Submitting Claims Under This Program and the Information To Be Included on the Claims Form

Section 405(a) of the statute establishes some specific requirements with respect to the claims form and the information to be included. The law requires the Special Master to develop a claims form to use in filing claims for compensation under this program. The Special Master is to ensure that the form can be filed electronically if practicable.

The form must include a statement of the factual bases for eligibility and for the amount of compensation sought. In addition, the form is to request information from the claimant as to: (1) The physical harm suffered by a victim, or information confirming the death of the victim, of the terrorist-related aircraft crashes of September 11, 2001; (2) any possible economic and noneconomic losses that the claimant suffered as a result of the crashes; and (3) any collateral sources of compensation the claimant has received or is entitled to receive as a result of such crashes.

It would appear that these requirements, combined with the statutory time frame for the Special Master to reach a decision once a claim is filed, contemplate a detailed form and filing, including submission by the claimant of supporting documents and relevant medical records. Accordingly, the Department invites comment on whether the Special Master should determine that a claim has not been "filed" in those circumstances in which the Special Master determines that there is insufficient information submitted to permit a reasonably informed determination to be made. Along similar lines, the Department invites comments on whether there are actions the Special Master should be required to take before he or she can accept a claim, or deem a claim "filed."

The Department welcomes comment on the design and content of the claims forms in light of the statutory requirements. Specific comments on making the form and its instructions readable and readily available are welcome.

Topic #3: Procedures for Hearing and the Presentation of Evidence

Section 405(b)(4) provides that a claimant has the right, after the filing of the claim, to present evidence to the office of the Special Master. The statute specifically provides that the claimant has the right to present witness statements and documents, the right to be represented by an attorney, and such other due process rights as are determined to be appropriate by the Special Master.

The Department solicits comments on the procedures to be used in taking and evaluating such evidence. In formulating comments, commenters should keep in mind that the Act gives the Special Master a very limited time to evaluate such evidence before making a decision: Section 405(b)(3) of the statute provides that the Special Master must make final decisions on claims within 120 days of the date of filing. Comments as to whether the statute permits the Special Master to temporarily halt or toll the running of this clock, at the initiative of the claimant or otherwise, are welcomed. In addition, the Department invites comment on whether the Special Master should be permitted to dismiss a claim as not properly filed for lack of adequate supporting information and, if so, whether an individual should thereafter be permitted to refile the claim.

Among other matters, the Department welcomes comment on whether every claimant should be granted an oral hearing or whether paper hearings may be sufficient, and comments on what types of oral hearing may be practicable, consistent with the statutory deadlines. If oral hearings are provided, should the Special Master always use "hearing officers" to hear witnesses and review written evidence? What qualifications and training should those who perform such tasks have? In addition, the Department welcomes comment on whether there are other specific duties and powers that should be delegated to hearing officers (e.g., to ask questions of the claimant or witnesses, to request submissions of such further information as the hearing officer may deem valuable in reaching a decision, and/or to prepare recommended decisions for the consideration of the Special Master).

The Department welcomes comment on whether claimants should have the opportunity to appeal directly to the Special Master specific "rulings" or "working decisions" of a hearing officer on questions that arise in the course of his or her evaluation of the claim. The Department also seeks comment on whether it is authorized to enforce requests made by the hearing officer to third parties for evidence that is necessary to a proceeding—e.g., evidence that might bear on whether all aspects of the claim file on which the decision will be based are accurate and complete. The Department also welcomes comment on whether such proceedings should be recorded, whether such proceedings must be held in a location convenient to the claimant and how to deal with scheduling conflicts, and whether the opportunity for a hearing can be waived by a claimant through inaction or unwarranted delay.

The Department particularly welcomes comments that reference the practices or experience of existing compensation programs with respect to the hearing of evidence.

Topic #4: Procedures to Assist an Individual in Filing and Pursuing Claims Under This Title

The statute does not provide guidance on what actions the Special Master is to take to assist claimants in filing and pursuing claims. However, the Department believes that it is important that claimants be able to proceed without economic experts. Accordingly, the Department welcomes any and all suggestions as to how it can assist claimants, including suggestions for office locations, toll-free phone lines, outreach meetings, and newsletters.

In addition, the Department welcomes comments on whether the Special Master has the authority to limit the types and amounts of fees that can be charged by legal counsel, accountants, experts or others who are retained by claimants to assist them in filing and pursuing compensation claims, and whether such fees can and should be paid by the Special Master directly out of compensation awards. The Department welcomes information about practices in this regard with respect to other federal compensation programs, and welcomes specific suggestions on any appropriate fee schedule or policy. The Department also welcomes comments on what limitations, if any, the rules should impose on non-attorney, non-claimant representatives' participation in filing claims and in subsequent proceedings.

The Department is also interested in comments as to whether it needs to take any actions to ensure that individuals who have the option of filing a compensation claim with this program are not improperly solicited or influenced by those with an interest in having them make such an election.

Topic #5: Claimant Eligibility

Section 405(b) of the statute requires the Special Master to determine whether a claimant is an "eligible individual" under section 405(c). "Eligibility," in turn, is defined to include: (i) victims (other than the terrorists) aboard American Airlines flights 11 and 77 and United Airlines flights 93 and 175; or (ii) victims who were "present at" the World Trade Center, the Pentagon, or the site of the aircraft crash at Shanksville, Pennsylvania at the time or in the immediate aftermath of the crashes, and who suffered physical harm or death as a result of such an air crash. The Department seeks comment on whether a Departmental regulation or a statement of policy by the Special Master would be appropriate to clarify these criteria and, if so, what those criteria should be.

Public commentators have suggested differing interpretations of the statutory terms "present at," "physical harm," and "immediate aftermath." The Department invites comment on the appropriate scope of each of those terms. In particular, how should "present at" be interpreted? Should the term "physical harm" be limited to serious injuries, as it is under some other no-fault compensation schemes (*see*, e.g., N.Y. Insurance Law § 5102 (d) (McKinney 2000)), or should it be construed more broadly? Further, should "physical harm" be limited to currently identifiable injuries? Can and should the program address latent, but not yet evident, harm? What documentation or other evidence should be required by the Special Master as to the claimant's presence at the World Trade Center or physical harm resulting from the air crash? Moreover, what documentation or other evidence should the Special Master seek to verify the identity of those lost for whom claims are filed? Finally, what duration of time is intended by the statutory phrase "immediate aftermath"?

Section 405(c)(2)(C) provides that the "personal representative" of an eligible decedent is the appropriate person to file a claim on a decedent's behalf. The Department seeks comment on whether a Departmental regulation or a statement of policy by the Special Master would be appropriate to clarify questions concerning personal representatives, for example:

- Whether the Special Master should require that all those who consider themselves to be survivors of someone lost in the crashes be notified of a claim by a "personal representative";
- Whether the Special Master should require that the "personal representative" identify all those who consider themselves to be survivors of someone lost in the crashes and obtain from each a signed statement waiving the right to litigation prior to the acceptance of a claim;
- Whether the Special Master can, within the brief statutory period identified by the statute, determine who among different claimants is the appropriate "personal representative";
- Whether the Special Master should, in any matter involving a dispute as to the identity of the "personal representative," require prior adjudication and judgment by a state court of competent jurisdiction; and
- Whether the Special Master should make determinations of compensation for claimants and escrow payment until disputes regarding the identity of the "personal representative" can be resolved by a court of competent jurisdiction.

Topic #6: Nature and Amount of Compensation

Section 405(b) of the statute indicates that the Special Master shall determine the amount of compensation based on "the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant." Yet each of the perhaps thousands of determinations must be made in a very short period of time. Moreover, such determinations should be founded on consistent and clear principles that treat each claimant fairly. The Department invites comments that identify the practical means to achieve these results all within the very short time period that Congress has permitted. Among other topics, the Department would welcome comment on whether and how schedules or statistical methodologies should be developed and used in reaching a determination for each claimant within the mandated time period. In addition, comments are welcomed on whether publication of such schedules or hypothetical or presumptive awards for classes of individuals would assist potential claimants in determining whether to file.

Economic Loss: As indicated above, the Department is of the view that the Special Master should not require that any claimant employ any experts on economic or other theories of losses. It may therefore be appropriate for regulations to draw on available information from appropriate specialists in relevant fields to analyze economic losses. The Department invites comment regarding the necessary qualifications for such specialists, the data that should be utilized, the methodologies that should be employed in analyzing economic losses, the documentation that should be required for every claimant, and how state law should bear upon such determinations. In addition, the Department invites comments on how to address the economic losses of individuals whose lost future income streams would have been highly contingent, variable, or unpredictable.

Noneconomic Losses: Section 402(7) lists several types of noneconomic losses that should be considered. The Department invites comments regarding whether, and in what manner, the Special Master can or should draw meaningful distinctions between individuals who died in different locations and, similarly, whether the Special Master can or should draw meaningful distinctions between individuals who suffered similar injuries. The Department also invites comments on whether the Department should issue regulations determining the amount of noneconomic loss for classes of similarly situated individuals or whether, instead, the Special Master should determine all noneconomic loss on a detailed claim-by-claim basis. Further, what facts and circumstances should be considered in determining noneconomic losses for each individual, and what standards should be employed?

Collateral Sources: Section 405(b)(6) provides that the Special Master *shall* reduce the amount of compensation by the amount of the collateral source compensation the claimant has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001. The Department invites comments on how to determine what constitutes a "collateral source" for purposes of this provision, and other related issues. For example, the Department appreciates the strong policy reasons for excluding charitable contributions from the definition of "collateral sources" and invites comment regarding whether the Act indeed permits the Department to exclude such contributions from the definition. Similarly, the Department invites comments on whether "in kind" and/or material contributions could or should be considered collateral sources. Finally, the Department invites comments on how to determine whether potential future collateral source payments are ones that individuals are "entitled to receive" for purposes of Section 405(b)(6).

Fraud Prevention Measures

The Department is committed to preventing and prosecuting any fraudulent attempts to collect from the Fund. The Department therefore invites comments regarding any measures that the Department should take to prevent and detect fraud.

Other Topics for Comment

The Department reiterates that it welcomes public comments on any and all aspects of the administration of the fund.

Application of Various Laws and Executive Orders to This Rulemaking

There are a number of laws and Executive Orders whose provisions may have implications for this rulemaking process. Due to the preliminary nature of this notice, it does not address these requirements. Nonetheless, the Department welcomes comments that will help it address the applicability of any laws or Executive Orders to future rulemaking under the Act.

Dated: November 1, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–27821 Filed 11–1–01; 2:54 pm]

BILLING CODE 4410–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–7096–6]

RIN 2060–AJ69

Revision to the Requirements on Variability in the Composition of Additives Certified Under the Gasoline Deposit Control Program; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Deposits that form in gasoline-fueled motor vehicle engines and fuel supply systems have been shown to increase emissions of harmful air pollutants. All gasoline used in the U.S. must contain additives that have been certified with EPA as effective in limiting the formation of such deposits. During certification, additive manufacturers must provide EPA with information on additive composition. To ensure that in-use additives meet EPA requirements, manufacturers are required to limit variation in the composition of additive production batches from that reported during certification.

Today's action proposes changes to the information that must be provided on additive composition by the manufacturer at the time of certification. We are also proposing clarifications to the requirements associated with limiting variability in additive production batches. These changes would address additive manufacturer concerns that compliance with the existing requirements would be burdensome and difficult, while maintaining the emissions control benefits of the gasoline deposit control program.

In the "Rules and Regulations" section of this **Federal Register**, we are making these regulatory changes as a direct final rule without a prior proposal because we view these changes as noncontroversial revisions and anticipate no adverse comment. We have explained our reasons for these revisions in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the amendments, paragraphs, or sections of the direct final rule receiving such comment and those amendments, paragraphs, or sections will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. We are not planning to hold a public hearing regarding this action.

DATES: Written comments must be received by January 4, 2002.

ADDRESSES: Interested parties may submit written comments in response to this notice (in duplicate if possible) to Public Docket No. A–2001–15, at: Air Docket Section, U.S. Environmental Protection Agency, Attention: Docket No. A–2001–15, First Floor, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460 (Telephone 202–260–7548; Fax 202–260–4400). We also request that a copy of the comments be sent to Jeff Herzog by mail at, U.S. EPA, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105–2498, or by E–Mail at *herzog.jeff@epa.gov*

This proposed rule and the accompanying direct final rule are available electronically on the day of publication from the EPA **Federal Register** internet Web site listed below. Prepublication electronic copies of these notices are also available from the EPA Office of Transportation and Air Quality Web site listed below. This service is free of charge, except for any cost that you already incur for internet connectivity.

Federal Register Web Site: *http://www.epa.gov/docs/fedrgstr/EPA–AIR/* (Either select desired date or use Search feature.)

Office of Transportation and Air Quality Web Site: *http://www.epa.gov/otaq/* (Look in "What's New" or under the specific rulemaking topic.)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

FOR FURTHER INFORMATION CONTACT: Jeff Herzog, U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI, 48105–2498. Telephone (734) 214–4227; Fax (734) 214–4816; E-Mail herzog.jeff@epa.gov

SUPPLEMENTARY INFORMATION: This document concerns proposes changes to the requirements on variability in the composition of additives certified under the gasoline deposit control additive program. For further information, including the rationale, administrative requirements, statutory authority, and regulatory text for these technical amendments, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a "significant regulatory action"

under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility

EPA determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. Today's proposed rule would not have a significant impact on a substantial number of small entities. Today's rule would simplify the requirements for additive manufacturers under the gasoline deposit control program and would not impose any significant new requirements. The regulatory changes in today's rule would reduce the burden of compliance for all affected parties.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement to accompany any proposed and final rule that includes a federal mandate that may result in expenditures by state, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more for any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments. This proposed rule would impose no enforceable duties on any of these governmental entities. Nothing in the regulatory provisions in this proposed rule would significantly or uniquely affect small governments. EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more in any one year for State, local, and tribal governments in the aggregate, or the private sector in any one year. The amendments contained in this proposed rule would simplify the requirements under the gasoline deposit control program, and do not impose any significant new requirements.

D. Compliance With the Paperwork Reduction Act

Today's proposed rule would not impose any new information collection burden. No new information collection requirements would result from the implementation of the provisions which are the subject of this action.

The Office of Management and Budget (OMB) has previously approved the information collection requirements of the EPA's Gasoline Deposit Control Additive Program contained in 40 CFR Part 80 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0275 (EPA ICR No. 1655.04). Today's proposed rule would not result in a change in the requirements contained in this ICR.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the ICR documents may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (mail code 2136); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR and/or OMB number in any correspondence.

E. Compliance With Executive Order 13045

This proposed rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

F. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

G. Consultation and Coordination With Indian Tribal Governments

On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, this proposed rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084. In the event that adverse comments are received on this proposal, we will address any such comments received in a subsequent final rule based on the proposed rule. Development of such a subsequent final rule will address tribal considerations under Executive Order 13175.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that

significantly or uniquely affect their communities."

This proposed rule would not significantly or uniquely affect the communities of Indian tribal governments. As noted above, this proposed rule would make minor technical changes to federal regulations that would be implemented at the federal level and affects only obligations on private industry. Accordingly, the requirements of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or would be otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Section 211(d)(4)(A) of the CAA prohibits States from prescribing or attempting to enforce controls or prohibitions respecting any fuel characteristic or component if EPA has prescribed a control or prohibition applicable to such fuel characteristic or component under Section 211(c)(1) of the Act. This rule merely modifies existing EPA detergent additive standards and therefore will merely continue an existing preemption of State and local law. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline deposit control (detergent) additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: October 24, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–27589 Filed 11–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7097–2]

National Oil and Hazardous Substances Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete a portion of the Sangamo Weston/Twelve Mile Creek/Lake Hartwell (Sangamo) Superfund Site from the National Priorities List (NPL).

SUMMARY: The United States Environmental Protection Agency (US EPA), Region 4, announces its intent to partially delete a portion of the Sangamo Superfund Site, located in Pickens, South Carolina, from the National Priorities List (NPL) and is only requesting adverse public comment(s) on this notice. The proposed partial deletion is for the Dodgens remote property which is located within a few miles of the main plant property. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan. The EPA and the State of South Carolina Department of Health and Environmental Control have determined that all appropriate response actions under CERCLA have been completed for the Dodgens remote property. However, this deletion does not preclude future actions under CERCLA. In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Dodgens portion of the Sangamo Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comments. We have explained our reasons for this deletion in the preamble to the direct final notice of deletion. If we receive no adverse comment(s), we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the "Rules and Regulations" section of this **Federal Register**.

DATES: Comments concerning this notice of intent to partially delete a portion of the Sangamo Site must be received by January 4, 2002.

ADDRESSES: Written comments may be mailed to: Sheri Cresswell, US EPA, Region 4, 61 Forsyth St., WD–NSMB, SW, Atlanta, GA, 30303.

FOR FURTHER INFORMATION CONTACT: Please contact either Sheri Cresswell (Remedial Project Manager) at 803–896–4171 or Tiki Whitfield (Community Relations Coordinator) at 1–800–435–9233 or 404–562–8530.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Information Repositories

Repositories have been established to provide detailed information concerning this decision at the following addresses: U.S. EPA, Region 4 Superfund Records Center, 61 Forsyth St., SW., Atlanta, GA, 30303, attn: Ms. Debbie Jourdan, (404) 562–8862; R.M. Cooper Library, Clemson University, South Palmetto Boulevard., Clemson, SC, (864) 656–5174; Pickens County Public Library, Easley Branch, 110 West First Avenue,

Easley, SC (864) 850–7077; and Hart County Library, 150 Benson Street, Hartwell, GA (706) 376–4655.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580; 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 28, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–27464 Filed 11–2–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 100

RIN 0906–AA55

National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: This document announces a public hearing to receive information and views on the Notice of Proposed Rulemaking (NPRM) entitled "National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table."

DATES: The public hearing will be held on December 6, 2001, from 10 a.m. to 12 p.m.

ADDRESSES: The public hearing will be held in Conference Room C in the Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas E. Balbier, Jr., Director, Division of Vaccine Injury Compensation, at (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Secretary has made findings as to a condition that can reasonably be determined in some circumstances to be caused by vaccines containing live, oral, rhesus-based rotavirus. Based on these findings, the Secretary proposes to amend the Vaccine Injury Table (Table) by adding to the Table vaccines containing live, oral, rhesus-based rotavirus as a distinct category, with intussusception listed as a covered Table injury. This proposal is based upon the recommendation by the Centers for Disease Control and Prevention (CDC) that Rotashield, the only U.S.-licensed rotavirus vaccine, no longer be administered to infants in the United States based on review of data indicating a strong association between Rotashield and intussusception in the 1 to 2 weeks following vaccination.

The Secretary further proposes the following amendments: (1) Removing residual seizure disorder from the Table's Qualifications and Aids to Interpretation; (2) removing hemophilus influenzae type b polysaccharide (unconjugated) vaccines from the Table; (3) removing early onset Hib disease from the Table's Qualifications and Aids to Interpretation; and (4) adding pneumococcal conjugate vaccines to the Table with no condition specified. This latter item is based upon the CDC's recent recommendation of this vaccine for routine administration to children, as well as the enactment of the excise tax for this category of vaccines.

These proposed changes would have effect only for petitions for compensation under the National Vaccine Injury Compensation Program (VICP) filed after the amendments to the existing regulations become effective.

The NPRM was published in the **Federal Register**, July 13, 2001: Vol. 66, No. 135, Pages 36735–36739. The public comment period closes January 9, 2002.

A public hearing will be held during the 180-day public comment period. This hearing is to provide an open forum for the presentation of information and views concerning all aspects of the NPRM by interested persons.

In preparing a final regulation, the Secretary will consider the administrative record of this hearing along with all other written comments received during the comment period specified in the NPRM. Individuals or representatives of interested organizations are invited to participate in the public hearing in accord with the schedule and procedures set forth below.

The hearing will be held on December 6, 2001, beginning at 10 a.m., in Conference Room C in the Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857. Upon entering the Parklawn Building, persons who wish to attend the hearing will be required to call Ms. Emma Boyd at (301) 443–6593 to be escorted to Conference Room C.

The presiding officer representing the Secretary, HHS will be Mr. Thomas E. Balbier, Jr., Director, Division of Vaccine Injury Compensation, Office of Special Programs (OSP), Health Resources and Services Administration.

Persons who wish to participate are requested to file a notice of participation with the Department of Health and Human Services (HHS) on or before November 16, 2001. The notice should be mailed to Division of Vaccine Injury, OPS, Rm 8A–46, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857. To ensure timely handling any outer envelope should be clearly marked "NPRM Hearing." The notice of participation should contain the interested person's name, address, telephone number, any business or organizational affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation. Groups that have similar interests should consolidate their comments as part of one presentation. Time available for the hearing will be allocated among the persons who properly file notices of participation. If time permits, interested parties attending the hearing who did not submit a notice participation in advance will be allowed to make an oral presentation at the conclusion of the hearing.

Persons who find that there is insufficient time to submit the required information in writing may give oral notice of participation by calling Mr. Thomas E. Balbier, Jr., Director, Division of Vaccine Injury Compensation, at (301) 443–6593 no later than November 16, 2001. Those persons who give oral notice of participation should also submit written notice containing the information described above to HHS by the close of business November 19, 2001.

After reviewing the notices of participation and accompanying information, HHS will schedule each appearance and notify each participant by mail or telephone of the time allotted to the person(s) and the approximate time the person's oral presentation is scheduled to begin.

Written comments and transcript of the hearing will be made available for public inspection as soon as they have been prepared, on weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. at the Division of Vaccine Injury Compensation, Room 8A–46, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: October 29, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–27645 Filed 11–2–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 011011247–1247–01; I.D. 082701E]

RIN 0648–AP62

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches from the Kodiak Launch Complex, Kodiak Island, AK

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of a petition for regulations and an application for a small take exemption; request for comment and information.

SUMMARY: NMFS has received a request from the Alaska Aerospace Development Corporation (AADC) for a Letter of Authorization (LOA) to take small numbers of marine mammals incidental to rocket launches from the Kodiak Launch Complex (KLC), Kodiak Island, AK. In order to issue an LOA, regulations must first be established. As a result of that request, NMFS is considering whether to propose regulations that would authorize the incidental taking of a small number of marine mammals. In order to issue such regulations, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of marine mammal species or stocks for subsistence uses. NMFS invites comments and suggestions on the content of the regulations.

DATES: Comments and information must be received no later than December 5, 2001.

ADDRESSES: Comments should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments will not be accepted if submitted via e-mail or Internet. A copy of the application may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Simona P. Roberts, (301) 713–2322, ext 106 or Brad Smith, (907) 271–3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A)and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review and comment.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review.

Summary of Request

On July 26, 2001, NMFS received a request from AADC for an LOA to take, by harassment, small numbers of marine mammals, specifically Steller sea lions (*Eumetopias jubatus*), incidental to the launch of rockets from KLC on Kodiak Island, Alaska.

Specified Activities and Geographic Area

KLC is a commercial rocket launch complex owned and operated by the State of Alaska through AADC. It occupies 43 acres (174 kilometers, km^2) within a 3,100 acre (12,545 km^2) parcel of state-owned lands on the eastern side of Kodiak Island on the Narrow Cape peninsula. KLC was designed to accommodate a variety of small, solid rocket motors including such vehicles as the Minuteman II, Taurus, Conestoga, and Athena (Lockheed Martin Launch Vehicle). The largest vehicle that can be launched from KLC is the Athena–2 (Lockheed Martin Vehicle–2).

To date, three rockets have been launched from KLC. The first two launches (November 1998 and September 1999) were part of the U.S. Air Force (USAF) atmospheric interceptor technology (ait) program and the third (March 2001) was part of the USAF Quick Reaction Launch Vehicle (QRLV) program. All three launches were done in support of suborbital Department of Defense (DoD) missions and involved very small vehicles composed of motors from decommissioned USAF Minuteman I or II launch vehicles and a Castor IV motor.

The facility is licensed to launch up to nine rockets per year, and has two more scheduled launches in 2001. The first 2001 launch will be an orbital commercial space launch of an Athena I and the second 2001 launch will be a DoD Strategic Target System (STARS) launch under the auspices of the U.S. Army Space and Missile Defense Command. STARS vehicles will include first- and second-stage Polaris A3 boosters and a third-stage Orbus-1 booster. Three launches are anticipated in 2002, one in the USAF's QRLV program and two in the U.S. Army STARS program.

Launch operations at KLC are authorized under license from the Federal Aviation Administration, Office of Associate Administrator for Commercial Space Transportation (AST) in accordance with the facility's Environmental Assessment (EA) and stipulations in the EA's Finding of No Significant Impact (FONSI, 61 FR 32884, June 25, 1996). These stipulations included a requirement to develop a Natural Resource Management Plan to address monitoring and mitigation activities for protected species in the area. This plan was developed in coordination with NMFS utilizing comparison of anticipated sound pressure levels from rocket motors to be launched from KLC with documented marine mammal disturbance responses to such noise.

Anticipated Impacts on Marine Mammals and Their Habitat

Launch operations are a major source of noise. The operation of launch vehicle engines produces significant sound levels. Generally, four types of noise occur during a launch. They are: (1) combustion noise from launch vehicle chambers; (2) jet noise generated by the interaction of the exhaust jet and the atmosphere; (3) combustion noise from the post-burning of combustion products; and (4) sonic booms.

The Natural Resource Management Plan includes an Environmental

Monitoring Plan that requires monitoring of Steller sea lions be done at the seasonally occupied (during late June to early October only), non-breeding haul-out on Ugak Island. Specifically, the Monitoring Plan requires that AADC conduct pre- and post-launch aerial surveys, as well as real-time video monitoring and rocket motor noise measurements on the Ugak Island Steller sea lion haul-out. The Ugak haul-out is located approximately 2 miles (3.2 km) from Narrow Cape and about 3.5 miles (5.6 km) from the launch pad on a narrow sand spit on the north side of the Island facing the KLC. This is the only haul-out site within the Narrow Cape region that has the potential to be impacted by the sights and sounds of rocket launches from KLC.

Harbor seals (*Phoca vitulina*) haul out on the southeast side of Ugak Island, but this area is sheltered from direct sight of KLC by a 300 foot (9.1 meter, m) tall island cliff and receives heavy surf that creates a lot of background ambient noise. Because of the ambient noise levels at this site, the heavy surf often interferes with the ability of an animal to detect a sound even when that sound is above its absolute hearing threshold (Richardson et al., 1995). Therefore, it seems unlikely that harbor seals, because of the location of their haul-out, would hear noise associated with rocket launches from KLC.

During the September 1999 *ait* launch, Steller sea lions were observed on the Ugak Island haul-out pre-launch. Post-launch, the sea lions were observed in the water immediately offshore approximately 1 hour after the rocket was launched. Video documentation was made of the haul-out area pre-launch but failed during the launch, so no direct stimulus-response data tying sea lion behavior to rocket noise could be made. However, the pre-launch video showed a stampede off the haul-out approximately 4.5 hours before the launch that could not be correlated with any documented disturbance near the haul-out, and it is possible that the sea lions may have remained in the water until the post-launch survey.

AADC recognizes in their application that despite the lack of direct stimulus-response data tying sea lion behavior to rocket launches from KLC, the unusual, high-intensity stimuli resulting from launch-related sights and sounds means that evacuation of the Ugak haul-out site by sea lions could reasonably be expected.

Solid rocket boosters from KLC launches will fall into the ocean away from any known or potential haul-out sites and do not pose any threat to Ugak Island. Therefore, the anticipated impacts on marine mammals would be infrequent and unintentional incidental harassment resulting from the sights and sounds generated by rocket launches. Launch noises may cause a startle response and flight to water for those Steller sea lions hauled-out on northern Ugak Island. Launch noise is expected to occur over the coastal habitats of Narrow Cape and Ugak Island during every launch, while sonic booms will occur approximately 40 nautical miles (74 km) downrange, beyond the outer continental shelf over open ocean and pose no threat to hauled-out pinnipeds.

Because the sights and sounds of rocket launches have the potential to result in harassment of pinnipeds, an MMPA authorization under section 101(a)(5)(A) or (D) is required in order to exempt the applicant from the penalties of the MMPA for taking by harassment.

Regulations, if issued, would authorize NMFS to issue a LOA for the taking of small numbers of Steller sea lions incidental to rocket launches associated with the ait, QRLV, STARS, and other commercial space launch programs from Kodiak Launch Complex on Kodiak Island, Alaska.

Dated: October 26, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27734 Filed 11–2–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 101901E]

Caribbean Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement (DSEIS); request for comments; notice of public hearings.

SUMMARY: The Caribbean Fishery Management Council (Council) intends to prepare a DSEIS to assess the impacts on the natural and human environment of the management measure proposed in its draft Amendment 2 to the Fishery Management Plan for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (FMP). The purpose of this document is to solicit public comments on the scope of the issues to be addressed in the DSEIS and to provide information on the Council's intended schedule for hearings for completing the DSEIS and submitting it to NMFS for filing with the Environmental Protection Agency for publication of a notice-of-availability for public comment.

DATES: The two public hearings will be held on Monday, November 26, 2001; see **SUPPLEMENTARY INFORMATION.** Written comments on the scope of issues to be addressed in the DSEIS will be accepted through November 26, 2001.

ADDRESSES: Written comments should be sent to Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: 787–766–5926; fax: 787–766–6239; or you can send comments by e-mail to: Miguel.A.Rolon@noaa.gov or Graciela.Garcia-Moliner@noaa.gov. Copies of the draft Amendment 2 and the preliminary DSEIS may be obtained by contacting the Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577, phone: 787–766–5926. Public hearings will meet at Puerto Rico, and St. Thomas, VI; for specific locations, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-2577, phone: 787–766–5926, or Dr. Peter J. Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, phone: 727–570–5305; fax: 727–570–5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FMP was prepared by the Council and approved and implemented by NMFS under procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FMP's management measures for queen conch apply in the Exclusive Economic Zone (EEZ) in the U.S. Caribbean. For the purposes of the FMP and its implementing regulations, the U.S. Caribbean consists of the Federal waters beyond the 9 nautical mile boundary in Puerto Rico, and beyond the 3 nautical mile boundary in St. Thomas, St. John and St. Croix, U.S. Virgin Islands. The FMP currently establishes the following

management measures for queen conch: (1) A 9-inch overall minimum size limit, or a 3/8-inch shell-lip thickness limitation on the possession of queen conch; (2) a requirement that all species in the management unit be landed in the shell, and that the sale of undersized queen conch and queen conch shells be prohibited; (3) a bag limit of three queen conch/day for recreational fishers, not to exceed 12 per boat, and 150 queen conch/day for licensed commercial fishers; (4) the closure of the harvest season from July 1 through September 30 of each consecutive year; and (5) the prohibition of harvesting queen conch by HOOKAH gear in the EEZ.

The Council is preparing draft FMP Amendment 2. The objectives of Amendment 2 are to address NMFS' determination that queen conch is overfished and is undergoing overfishing. Amendment 2, in addressing these issues, proposes to prohibit the harvest and possession of queen conch in the Caribbean EEZ. The Council is preparing a DSEIS as an integrated part of Amendment 2. The DSEIS will describe the amendment's proposed management measure and reasonable alternatives and will assess the environmental impacts of the proposed and alternative measures. The Council is requesting written comments on the scope of the issues to be addressed in the DSEIS. Based on input received during eight public hearings held previously in July 2000 (see notice of these hearings at 65 FR 40600), the Council intends to revise draft Amendment 2, as appropriate, and to finalize the DSEIS. At the July 2000 hearings, the Council changed the number of the Amendment from Amendment 1 to Amendment 2. The proposed management measure has not been included in a previous FMP amendment.

The Council intends that the public hearings scheduled for November 26, 2001, supplement, for scoping purposes, the eight public hearings that the Council conducted from July 10, 2000, through July 26, 2000, on a preliminary draft of Amendment 2 and associated preliminary DSEIS. The Council also invites the public to comment on the scope of the issues to be addressed by Amendment 2 and its DSEIS and on the types of environmental impacts associated with alternative management measures, including the proposed measure discussed above.

Once the Council completes the DSEIS, it will submit it to NMFS for filing with the Environmental Protection Agency (EPA). EPA will publish in the **Federal Register** a notice of availability of the DSEIS for public comment. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA) (40 CFR parts 1500-1508) and to NOAA's Administrative Order 216-6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council intends to consider public comments received on the DSEIS before adopting final management measures for a final Amendment 2 and to prepare a final supplemental environmental impact statement (FSEIS) in support of its final Amendment 2. The Council would then submit the final Amendment 2 and supporting FSEIS to NMFS for Secretarial review, approval, and implementation under the Magnuson-Stevens Act. NMFS will announce availability of Amendment 2 for public review during the Secretarial review period though notice published in the **Federal Register**. During Secretarial review, NMFS will also file the FSEIS with EPA for a final public comment period on the FSEIS. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve Amendment 2. All public comment periods on Amendment 2, its proposed implementing regulations, and its associated FSEIS will be announced through notice published in the **Federal Register**. NMFS will consider all public comments received during the Secretarial review period for Amendment 2 (60-day period), whether they are on the amendment, the FSEIS, or the proposed regulations, prior to final agency action.

Time and Location for Public Hearings

Both hearings are scheduled on, Monday, November 26, 2001, at the following times and locations.

1. Puerto Rico, Pierre Hotel, De Diego Avenue, Condado, Puerto Rico, from 2 p.m. to 5 p.m.

2. US Virgin Islands, Windward Passage Holiday Inn Hotel, Veterans Drive, Charlotte Amalie, St. Thomas, VI, from 7 p.m. to 10 p.m.. Written comments will be accepted through November 26, 2001.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 16, 2001.

Dated: October 30, 2001.

Bruce Morehead,

Acting Director Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27723 Filed 10–31–01; 4:27 pm]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 214
Monday, November 5, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–023N]

Availability of and Request for Comment on FSIS Draft Risk Assessment for *Escherichia coli* O157:H7 in Ground Beef

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of, and requesting public comment on, its draft risk assessment for *Escherichia coli* (*E. coli*) O157:H7 in ground beef. Meanwhile, the Agency is seeking scientific peer review of the draft risk assessment from the National Academies of Science. The document will be revised with comments from that review. FSIS conducted this assessment to assist in reviewing and refining its integrated risk reduction strategy for *E. coli* O157:H7 in beef.

DATES: Comments are due January 4, 2002.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Room, Docket #00–023N, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday. As discussed below, the Centers for Disease Control and Prevention (CDC) submitted comments on the risk assessment in response to an earlier review of the document. These and other comments will also be available in the FSIS Docket Room.

FOR FURTHER INFORMATION CONTACT: For a copy of the draft risk assessment contact: Annette Reid at 202–690–6409. The report is also available on the FSIS homepage at *www.fsis.usda.gov*. For technical questions and for a copy of the model contact Dr. Eric Ebel at 970–490–7954.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1998, FSIS announced plans to conduct a farm-to-table risk assessment for *E. coli* O157:H7 in beef with a focus on ground beef (63 FR 44232). A team comprised of Federal scientists, visiting scientists, and consultants contributed to the assessment. The overall goals of the assessment were to:

- Quantitatively model, with attendant uncertainty, human illnesses caused by *E. coli* O157:H7 in ground beef in the United States
- Identify the occurrence and levels of the pathogen at points along the farm-to-table continuum
- Identify future research needs
- Document risk assessment methods and evidence for future assessments
- Effectively communicate the results to all interested parties—government, consumer groups, industry, the scientific community, and the general public.

FSIS held a public meeting on October 28, 1998, to solicit comment and input at an early stage of the project regarding the scope of the risk assessment, the analytical framework to be used in conducting the risk assessment, the scientific evidence acquired by the risk assessment team, and the existing data gaps identified. At that meeting, the Agency released a draft report "Preliminary Pathways and Data for Risk Assessment of *E. coli* O157:H7 in Beef."

The risk assessment team then evaluated comments and additional data received at the public meeting and in response to the comment period announced in the August 18, 1998 **Federal Register** notice. The risk assessment team also received peer input during the development phase of the risk assessment through presentations at the 1998 Annual Meeting of the Society for Risk Analysis (SRA) and at the 1999 Annual Meeting of the International Association of Milk Food and Environmental Sanitarians (now renamed the International Association for Food Protection). While developing the assessment, the team convened a week-long interagency workshop on microbial pathogens in food and water in April 1999 that involved microbial risk assessment practitioners from FSIS, the Food and Drug Administration, the Environmental Protection Agency, the United Kingdom, and New Zealand. In December 1999, additional peer input was received from presentations made to the SRA and the National Advisory Committee on Microbiological Criteria for Food.

FSIS presented a summary of some of the team's draft findings at a public meeting on February 29, 2000. The purpose of the public meeting was to discuss FSIS policy regarding *E. coli* O157:H7 and new information concerning the pathogen and its relation to human health.

FSIS also circulated the draft risk assessment for comment within the Federal Government, including a CDC and a select group of individuals.

The team has completed a draft of the risk assessment. FSIS is making this draft available to the public and is requesting comments. The Agency also is making the assessment available for scientific peer review from the National Academies of Science and the document will be revised with comments from that review. All comments received in response to this notice will be reviewed and considered when finalizing the risk assessment.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: October 30, 2001.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 01–27541 Filed 11–2–01; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Amendment to Bylaws

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice; correction.

Correction

In notice document 01–23502, beginning on page 48416 in the issue of Thursday, September 20, 2001, make the following correction: On page 48417, in the second column, the date the notice was approved should read "Dated: September 13, 2001".

Dated: October 30, 2001.

Blaine D. Stockton,

Acting Governor, Rural Telephone Bank.

[FR Doc. 01–27715 Filed 11–2–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Georgia Transmission Corporation; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request from Georgia Transmission Corporation for assistance from the RUS to finance the construction of a 230/115 kV electric substation in Gwinnett County, Georgia.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at *bquigel@rus.usda.gov*.

SUPPLEMENTARY INFORMATION: The substation is to be named the Bay Creek Substation. It is to be located just northeast of the intersection of Athatown Road and the Gwinnett County/Walton County line in Gwinnett County, Georgia. The project will require approximately 11 acres of clearing for the substation and transmission line access. The actual fenced area of the substation will be approximately 3.5 acres.

Copies of the FONSI are available for review at, or can be obtained from, RUS at the address provided herein or from Mr. John Lasseter, Georgia Transmission Corporation, 2100 East Exchange Place, Tucker, Georgia 30085–2088, telephone (770) 270–7710. Mr. Lasseter's e-mail address is *john.lasseter@gatrans.com*.

Dated: October 18, 2001.

Blaine D. Stockton,

Assistant Administrator, Electric Program.

[FR Doc. 01–27714 Filed 11–2–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 01–017.

Applicant: University of Connecticut, Department of Metallurgy and Materials Engineering, 97 North Eaglesville Road, Storrs, CT 06269–3136.

Instrument: Electron Microscope, Model JEM–2010.

Manufacturer: JEOL Ltd., Japan.

Intended Use: The instrument is intended to be used to study the microstructure of a wide range of materials including metals, alloys, ceramics, composites, rocks, ferroelectrics, semiconductors, high-temperature superconductors, mesoporous materials and catalysts. Experiments to be conducted are as follows:

(1) Interfacial Structure and Processes in Engineering Alloys.

(2) Mineral Reactions and Textural Evolution in Silicate Rocks.

(3) Microstructural Evolution in Tough Ceramics.

(4) EELS/ESI as a Probe of Magnetic Structure in Alloys.

(5) Synthesis and Characterization of Inorganic Helices.

In addition, the instrument will be used in the courses MMAT322 Materials Characterization and MMAT323 Transmission Electron Microscopy.

Application accepted by Commissioner of Customs: September 5, 2001.

Docket Number: 01–018.

Applicant: Federal Highway Administration, Turner-Fairbank Highway Research Center, HRDI–10, 6300 Georgetown Pike, McLean, VA 22101–2296.

Instrument: Automated Ultrasonic Inspection System, Model P-scan 4 Lite.

Manufacturer: Force Institute, Denmark.

Intended Use: The instrument is intended to be used to detect cracks, slag inclusions, porosity, and other defects in butt-welded steel girders. Field testing of the instrument on under-construction bridge girders will be conducted to determine the effect of environment and human factors on system performance.

Application accepted by Commissioner of Customs: September 5, 2001.

Docket Number: 01–019.

Applicant: University of California, Ernest Orlando Lawrence Berkeley National Laboratory, One Cyclotron Road, Mail Stop 937–200, Berkeley, CA 94720.

Instrument: Electron Microscope (used), Model CM200 FEG.

Manufacturer: FEI Company, The Netherlands.

Intended Use: The instrument is intended to be used to understand the structural architecture of biological complexes that makes them cellular units of function, and the structural bases for the regulation of such complexes. Also, application of cryo-electron microscopy and image analysis to the structural characterization of microtubules, a highly dynamic self-assembly system regulated by the nucleotide state of its structural unit, the ab-tubulin heterodimer, and their interaction with cellular factors and

antimitotic ligands. In addition, investigation of the structural bases of transcription initiation and regulation by characterizing the structures of the eukaryotic, general transcriptional machinery and its interaction with DNA, activators and large cofactor complexes. These studies are being extended to the structural characterization of the molecular machinery involved in transcription-coupled DNA repair.

Application accepted by Commissioner of Customs: September 19, 2001.

Docket Number: 01–020.

Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Room 8–309, Cambridge, MA 02139.

Instrument: Impact Module for Nano Indentor.

Manufacturer: Micro Materials Ltd., United Kingdom.

Intended Use: The instrument is intended to be used for studies of the mechanical properties such as strength and stiffness of industrial metals—aluminum, various steels, ceramics and super alloys. In addition, the instrument will be used to illustrate state of the art testing procedures of advanced materials on the undergraduate and graduate levels in the course Mechanical Behavior of Materials.

Application accepted by Commissioner of Customs: October 1, 2001.

Docket Number: 01–021.

Applicant: Baylor College of Medicine, One Baylor Plaza, Houston, TX 77030.

Instrument: Electron Microscope, Model JEM–2010F and Accessories.

Manufacturer: JEOL Ltd., Japan.

Intended Use: The instrument is intended to be used to study proteins, viruses, protein-nucleic acid complexes and membrane receptors, which are involved in a variety of biological processes in viral morphogenesis, signal transduction, ion and molecular transport and catalysis. The experiments to be conducted include direct imaging with the specimen embedded in vitreous ice and kept at a liquid-nitrogen temperature (−170C) during the microscopic observations.

Application accepted by Commissioner of Customs: October 10, 2001.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–27732 Filed 11–2–01; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

October 31, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: November 5, 2001.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that Mother's Work, Inc. has violated the requirements for participation in the Special Access Program, and has suspended Mother's Work, Inc. from participation in the Program for the one-year period November 5, 2001 through November 4, 2002.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of Mother's Work, Inc. during the period November 5, 2001 through November 4, 2002, and to prohibit entry by or on behalf of Mother's Work, Inc. under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended Mother's Work, Inc. from participation in the Special Access Program for the period November 5, 2001 through November 4, 2002. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of Mother's Work, Inc. during the period November 5, 2001 through November 4, 2002. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of Mother's Work, Inc. manufactured from fabric exported from the United States during the period November 5, 2001 through November 4, 2002.

Sincerely,

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–27690 Filed 11–2–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–04]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–04 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 30, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

23 OCT 2001
In reply refer to:
I-01/011822

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-04, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Ireland for defense articles and services estimated to cost $26 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Ireland

(ii) Total Estimated Value:

Major Defense Equipment*	$19 million
Other	$ 7 million
TOTAL	$26 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Sixty Javelin command launch units, 100 Javelin missile rounds, simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.

(iv) Military Department: Army (UCV)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 23 OCT 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Ireland - Javelin Anti-tank Missile Systems

The Government of Ireland has requested a possible sale of 60 Javelin command launch units, 100 Javelin missile rounds, simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is $26 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Ireland while enhancing weapon system standardization and interoperability with U.S. forces.

Ireland desires this missile system to fulfill their commitments for participation in peacekeeping operation throughout the world, including the United Nations Stand-by Arrangement System. An improved anti-armor capability is required for these missions. The Javelin will replace the French MILAN anti-tank missile. Ireland will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Javelin Joint Venture (Raytheon and Lockheed Martin) of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of an U.S. Government Quality Assurance Team or two U.S. Government and one contractor representative to Ireland for one week to assist in the delivery and deployment of the missiles. Two contractor representatives will be required in-country for two years to perform maintenance services.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The Javelin anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. Javelin is comprised of two major components; a reusable command launch unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in the stand-alone mode for battlefield surveillance and target detection. Javelin's key technical feature is the use of fire-and-forget technology that allows the gunner to fire and immediately take cover. Additional special features are the top attack and/or direct fire modes (for targets under cover), integrated day/night sight, advanced tandem warhead, imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. The Javelin replaces the Dragon weapon system. The Javelin weapon system hardware is unclassified. Specific data related to operation, performance, and system vulnerabilities are classified up to the Secret level.

2. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Further, the sale strengthens collective security and contributes to the standardization and interoperability in the case of peacekeeping operations and support for the United Nations Stand-by Arrangement System. The benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 01-27686 Filed 11-02-01; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02-07]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703)604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02-07 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 30, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-08-M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

25 OCT 2001
In reply refer to:
I-01/012019

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-07, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the United Arab Emirates for defense articles and services estimated to cost $40 million.

Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

Major Defense Equipment*	$36 million
Other	$ 4 million
TOTAL	$40 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Twelve RGM-84L HARPOON Block II missiles with containers, maintenance training and equipment, spare and repair parts, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (AAS)

(v) Prior Related Cases, if any: FMS case AAH - $57 million - 29Apr98

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(viii) Date Report Delivered to Congress: 25 OCT 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates - HARPOON Missiles

The Government of United Arab Emirates (UAE) has requested a possible sale of 12 RGM-84L HARPOON Block II missiles with containers, maintenance training and equipment, spare and repair parts, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $40 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of the RGM-84L HARPOON Block II missiles will provide the UAE with a more capable anti-surface warfare capability, thus providing a competent first line defense against hostile forces threatening United States interests in the region. The platform for these anti-ship missiles will be the two Kortenaer class frigates that the UAE obtained from the Netherlands. The UAE will have no difficulty absorbing these additional missiles into its inventory for use in the defense of its coastline and surrounding islands.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be The Boeing Company of St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of five to seven U.S. Government and contractor representatives to support this program for two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vi

(vi) Sensitivity of Technology:

1. The RGM-84L HARPOON Block II missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a. Radar seeker
b. Missile characteristics and performance data
c. Global Positioning System (GPS) standard positioning service improves mid-course guidance to the target area

2. The AGM-84L HARPOON missile is an ship-launched, anti-ship, 75nm range, sea skimming, "fire and forget" missile with auto-pilot navigation and multiple waypoint capability. HARPOON Block I terminal guidance is provided by a radar seeker with a selectable attack profile. The HARPOON Block II upgrade incorporates software and hardware changes that will add an improved Anti-Surface Warfare (ASUW) capability against ships in the open ocean and in the littoral. HARPOON Block II hardware improvements includes a new Guidance Control Unit (GCU) that uses GPS aided inertial navigation. This will improve the missile's overall navigation accuracy. GPS accuracy will also give HARPOON Block II an inherent secondary role against land-based targets, making Block II useful in coastal target suppression roles. HARPOON Block II software improvements include changes to the launching system that will provide the operator with the ability to superimpose a geographic coastline on the mission-planning screen. This will allow the user to shape the search pattern of the HARPOON seeker in ASUW mode, enhancing its performance in littoral areas. The information on the HARPOON is classified Confidential.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the United Arab Emirates can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 01-27687 Filed 11-2-01; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–12]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–12 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 30, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

17 October 2001

In reply refer to:
I-01/012378

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-12, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the United Kingdom for defense articles and services estimated to cost $87 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Attachments

Transmittal No. 02-12

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: United Kingdom

(ii) Total Estimated Value:

Major Defense Equipment*	$85 million
Other	$ 2 million
TOTAL	$87 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Forty-eight conventionally armed TOMAHAWK BLOCK IIIC Land Attack Missiles (TLAM), containers, engineering technical assistance, spare and repair parts, and other related elements of logistics support.

(iv) Military Department: Navy (AHF)

(v) Prior Related Cases, if any:
FMS case AHB - Cancelled - 01Dec99
FMS case AHA - $ 28 million - 26Aug99
FMS case AGS - $140 million - 16Oct95

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: October 17, 2001.

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom - TOMAHAWK BLOCK IIIC Land Attack Missiles

The Government of the United Kingdom has requested a possible sale of 48 conventionally armed TOMAHAWK BLOCK IIIC Land Attack Missiles (TLAM), containers, engineering technical assistance, spare and repair parts, and other related elements of logistics support. The estimated cost is $87 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of the United Kingdom and enhancing weapon system standardization and interoperability of this important NATO ally.

The United Kingdom needs these missiles to augment their present operational inventory and to enhance their submarine launched capability. The missiles will enhance the United Kingdom's operational effectiveness in support of NATO. The United Kingdom, which already has TOMAHAWK missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Company of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to the United Kingdom.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vi

(vi) Sensitivity of Technology:

1. The conventionally armed TOMAHAWK BLOCK IIIC Land Attack Missile (TLAM) consists of the following classified components:

a. The TOMAHAWK missile (Complete) - Guidance Set, Digital Scene Matching Area Correlator (DSMAC) Global Positioning System (GPS) when software is installed, Data Link when software/firmware is installed, Common Missile Radar Altimeter (CMRA), Operational Flight Software as well as DSMAC and GPS flight software.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness. The consequences of loss of this technology to a technologically advanced or competent adversary could result in the development of countermeasures or equivalent systems which could reduce weapons system effectiveness or be used in the development of a system with similar advanced capabilities.

3. A determination has been made that the United Kingdom can provide substantially the same degree of protection for this technology as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 01-27688 Filed 11-2-01; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Nationwide TRICARE Demonstration Project

AGENCY: Office of the Secretary, The Department of Defense

ACTION: Notice of a nationwide TRICARE demonstration project.

SUMMARY: This notice is to advise interested parties of a demonstration project in which the Department of Defense will test the Military Health System's (MHS's) ability to address unreasonable impediments to the continuity of healthcare encountered by family members of Reservists and National Guardsmen called to active duty in support of a national emergency. This TRICARE Reserve Family Demonstration Project seeks to show that the MHS, with certain flexibility in operation, can ensure timely access to healthcare during a national crisis, maintain clinically appropriate continuity of healthcare to family members of activated reservists and guardsmen, appropriately limit the out-of-pocket expenses for those family members, and remove potential barriers to healthcare access by families in order to improve the morale and retention of reservists and guardsmen. In this Project, for family members of activated reservists and guardsmen, the Department of Defense will authorize an increase in the TRICARE payment for healthcare services received from non-participating providers under TRICARE Standard up to 115 percent of the TRICARE maximum allowable charge less the appropriate patient copayment; waive the TRICARE Standard annual deductible; and, waive the requirement for nonemergency inpatient care to be provided by a facility of the uniformed services (when the facility is located within a 40-mile radius of the residence of the patient and the services are available at that facility) in order for the patient to have continuity of healthcare from a civilian healthcare provider. At the end of this Project, the Department of Defense will conduct an analysis of the benefits and costs of the program in improving the welfare of Service members and their families when called to active duty during a national emergency. Information and experience gained as part of this demonstration project will provide the foundation for longer-term solutions in the event of future national emergencies. This demonstration project is being conducted under the authority of 10 U.S.C. 1092.

EFFECTIVE DATE: This demonstration project applies to all covered health care services provided on or after September 14, 2001. In view of the declaration of a national emergency and the immediacy of the call of reservists and guardsmen to active duty in support of deployment to conduct operational missions, the Department of Defense is waiving the regulation (32 CFR 199.1(o)) requiring at least 30 days notice of a demonstration project prior to its effective date. Waiver of the notice period is deemed necessary to avoid delay in implementing program changes to address obstacles faced by family members of reservists and guardsmen from the onset of the call to active duty. In view of the fact that this demonstration project will accrue to the benefit of the participants by relieving certain restrictions on access to healthcare and will directly contribute to the effectiveness of the activated reservists and guardsmen in responding to the national emergency, failure to adhere to the normal notice period will not place any participant at a disadvantage.

FOR FURTHER INFORMATION CONTACT: LTC Pradeep G. Gidwani, Office of the Assistant Secretary of Defense for Health Affairs, TRICARE Management Activity, (703) 681-3636.

SUPPLEMENTARY INFORMATION:

A. Background

On September 14, 2001, President Bush signed Executive Order 13223 under which members of the Reserve and National Guard may be called to active duty in support of the Nation's response to the terrorist attacks of September 11, 2001. The declaration of a national emergency by the President, the immediate nature of this call to active duty in support of deployment to conduct operational missions, and the potential 24-month period of active duty impose significant challenges to family members of reservists and guardsmen. For example, an absence from civilian employment by a reservist or guardsman may result in the loss of employer-sponsored health insurance and the immediacy of the call-up limits the flexibility for alternate arrangements. Therefore, to support the families during this period of transition, the Department of Defense will exercise those authorities necessary to address the potential for lack of access to, or disruption in the continuity of, required health care services for the affected family members. A key component of the Department's efforts will be a nationwide TRICARE Demonstration Project.

Current law provides health care coverage under TRICARE Standard for family members of reservists and guardsmen who are activated for a period of more than 30 days. For those reservists and guardsmen called to active duty for a period of 179 or more days, their family members may, alternatively, elect to enroll in TRICARE Prime, which provides excellent, cost-effective coverage. However, some will opt to remain under TRICARE Standard in order to retain their current health care providers. In other cases, reservist families will have no option other than TRICARE Standard because they live far from military facilities in areas not supported by TRICARE provider networks. By regulation, 32 CFR 199.14(h), TRICARE limits payment for healthcare services furnished by professional providers to the TRICARE Maximum Allowable Charge (TMAC). If a patient obtains care from a TRICARE participating provider, that provider must accept the TMAC and the patient's copayment as payment in full. Some doctors, however, do not participate in TRICARE Standard, and by law may balance bill the patient for an additional amount up to 15 percent above TMAC. Therefore, family members of reservists and guardsmen covered by TRICARE Standard could face undue financial hardships if they use such providers.

A military family eligible for TRICARE Standard is also required by law (10 U.S.C. 1079(b)(2) and (3)), to pay up to $300 in a deductible for outpatient care each fiscal year. Therefore, if a reservist or guardsmen is called to active duty for a period of more than 30 days prior to October 1, 2001, his or her family will have an out-of-pocket expense of up to $300 for TRICARE outpatient care received during the month of September 2001 and another out-of-pocket expense up to $300 for TRICARE outpatient care received after October 1, 2001. These payments of TRICARE deductibles pose an undue financial hardship for families, including those who may have already paid an annual deductible for the same period of time under their previous health insurance. The inequity of this situation was thought to be corrected by enactment of 10 U.S.C. 1095d, in which a waiver was authorized for the annual deductible for families of reservists called to active duty for a period of less than 1 year. However, the inequity remains for those families of reservists called to active duty for 1 year or more, especially if the activation order results in the accrual of multi-fiscal year deductibles within the 1-year period.

In addition, the law (10 U.S.C. 1079(a)(7)) requires that non-emergency inpatient care be provided by a facility of the uniformed services located within a 40-mile radius of the residence of the patient. As previously noted, some family members of activated reservists or guardsmen may opt to remain under TRICARE Standard in order to retain their current health care providers. In the absence of a waiver of the requirement to obtain care from a facility of the uniformed services, continuity of healthcare by the patient's civilian healthcare provider may be disrupted even when clinically appropriate.

Accordingly, the Secretary of Defense has authorized a demonstration project under 10 U.S.C. 1092 to address these identified impediments to, and disruptions in, access to healthcare under established patient-doctor relationships by families of activated reservists and guardsmen.

B. Description of Demonstration Project

(1) Location of Project: The limited nature of the Reserve/National Guard call to active duty will only affect small numbers of families in any given geographical area. Therefore, to achieve a level of participation sufficient to test new strategies, this demonstration project will occur nationwide. Demonstration participants will be limited to families of Reserve and National Guard members ordered to active duty for periods of more than 30 days in support of operations that result from the terrorist attacks of September 11, 2001, under Executive Order 13223, 10 U.S.C. 12302, 10 U.S.C. 12301(d), or 32 U.S.C. 502(f). Such operations include for example, Operation ENDURING FREEDOM and Operation NOBLE EAGLE.

(2) Project Components: The demonstration project will consist of 3 separate components.

(a) *Waiver of TMAC under TRICARE Standard.* Title 32, Code of Federal Regulations, Section 199.14(h) shall be waived to authorize TRICARE payments up to 115 percent of the TRICARE maximum allowable charge (TMAC), less the applicable patient copayment, for care received from a provider that does not participate (accept assignment) under TRICARE to the extent necessary to ensure timely access to care and clinically appropriate continuity of care. This component of the demonstration project shall cover all healthcare received by an eligible participant prior to November 1, 2003. Because balance billing in excess of 15% above the TMAC is prohibited, the effect of increasing the TMAC for services covered by the demonstration project is to limit beneficiary out-of-pocket costs to the normally applicable per-service copayment of 20% of the TMAC.

(b) *Waiver of TRICARE Standard Annual Deductible.* Title 32 Code of Federal Regulations, Part 199.4(f)(2), as it implements 10 U.S.C. 1079(b)(2) and (3), to require an annual outpatient deductible up to $300 shall be waived for all eligible demonstration participants. This component of the demonstration project shall cover all outpatient health care received by an

eligible participant prior to November 1, 2003.

(c) *Waiver of Non-Availability Statement (NAS) Requirement for Nonemergency Inpatient Care.* Title 32, Coded of Federal Regulations, section 199.4(a)(9), as it implements 10 U.S.C. 1079(a)(7), to require the issuance of an NAS before nonemergency inpatient care can be paid under TRICARE Standard is waived for all eligible demonstration participants. This component of the demonstration project shall cover all non-emergency inpatient care received by an eligible participant prior to November 1, 2003.

Dated: October 30, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 01–27680 Filed 11–2–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Chemical Warfare Defense will meet in closed session on November 27, 2001, at SAIC, Inc., 4001 N. Fairfax Drive, Arlington, VA. The Task Force will assess the possibility of controlling the risk and consequences of a chemical warfare (CW) attack to acceptable national security levels within the next five years.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will assess current national security and military objectives with respect to CW attacks; CW threats that significantly challenge these objectives today and in the future; the basis elements (R&D, material, acquisition, personnel, training, leadership) required to control risk and consequences to acceptable levels, including counter-proliferation; intelligence, warning, disruption, tactical detection and protection (active and passive); consequence management; attribution and deterrence; and policy. The Task Force will also assess the testing and evaluation necessary to demonstrate and maintain the required capability and any significant impediments to accomplishing this goal.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: October 30, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27681 Filed 11–2–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Change in Meeting Date of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

DATES: The meeting will be held at 0900, Friday, November 16, 2001.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: October 30, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27682 Filed 11–02–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, November 27, 2001.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: October 30, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27683 Filed 11–2–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, November 14, 2001.

ADDRESSES: The meeting will be held at Night Vision & Electro-Optics Directorate, 10221 Burbeck Rd., Ft. Belvoir, VA 222060–5806.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: October 30, 2001.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27684 Filed 11–2–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, November 13, 2001.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc. 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 10(d)) it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: October 30, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27685 Filed 11–2–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–23–000]

El Paso Natural Gas Company, Complainant, v. Phelps Dodge Corporation, Respondent; Notice of Complaint

October 30, 2001.

Take notice that on October 30, 2001, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, El Paso Natural Gas Company (EPNG) filed a complaint under section 5 of the Natural Gas Act against Phelps Dodge Corporation (PDC).

EPNG alleges that PDC is responsible for but has refused to pay the cost of a facility expansion required to increase the capacity of EPNG's Silver City lateral in response to increases in the requirements of PDC. EPNG requests that the Commission order PDC to pay the cost of the facilities.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 15, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before November 15, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27676 Filed 11–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–11–000]

LG&E Power Tiger Creek LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

October 30, 2001.

Take notice that on October 24, 2001, LG&E Power Tiger Creek (Power Tiger Creek), a Delaware limited liability company with its principal place of business at 220 West Main Street, Louisville, Kentucky 40232, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Power Tiger Creek proposes to construct, own and operate four 170-megawatt combustion turbine electric generating units in Washington County, Georgia. The units are scheduled to be completed in March and June, 2003 and to be in service by June 15, 2003. All capacity and energy from the plant will be sold exclusively at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before November 20, 2001, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27672 Filed 11–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–446–000]

Northern Natural Gas Company; Great Lakes Gas Transmission; Limited Partnership; ANR Pipeline Company; Notice of Joint Application

October 30, 2001.

Take notice that on September 24, 2001, Northern Natural Gas Company (Northern), Great Lakes Gas Transmission Limited Partnership (Great Lakes), and ANR Pipeline Company (ANR) filed a joint application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and the rules and regulations of the Federal Energy Regulatory Commission (Commission), requesting permission and approval to abandon service under an individually certificated exchange agreement, all as more fully set forth in the joint application which is on file with the Commission, and open to public inspection.

Specifically, Northern, Great Lakes, and ANR propose to abandon Rate Schedules X–33, X–3, and X–32 contained in there respective FERC Gas Tariffs, Original Volumes No. 2. The parties mutually agree to the termination of the service under these Rate Schedules.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103 Street, Omaha, Nebraska 68124, or Gene Fava, Manager, Transportation Administration for Great Lakes, 5250 Corporate Drive, Troy, Michigan 48098 or Dawn McGuire, Attorney, Regulatory Law for ANR, 9 Greenway Plaza, Houston, Texas 77046.

Any person desiring to be herd or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.214 and section 385.211 of the Commission's rules and regulations. All such protests must be filed by November 20, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions ((202) 208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27670 Filed 11–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99–580–003 and CP99–582–004]

Southern LNG Inc.; Notice of Compliance Filing

October 29, 2001.

Take notice that on October 24, 2001, Southern LNG Inc. (Southern LNG) tendered for filing its FERC Gas Tariff, Original Volume No. 1, to become effective December 1, 2001, the proposed in-service date of its liquefied natural gas receiving terminal near Savannah, Georgia. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Southern LNG states that the purpose of this filing is to place its open-access tariff into effect in compliance with section 154.207 of the Commission's regulations, conform the tariff to the current Part 284 regulations, and update the initial rates for service consistent with orders issued in Docket Nos. CP99–579, CP99–580, and CP99–582 on December 22, 1999 (89 FERC ¶ 61,314); March 16, 2000 (90 FERC ¶ 61,257); February 23, 2001 (94 FERC ¶ 61,188); and July 16, 2001 (96 FERC ¶ 61,083).

Any person desiring to be heard or to make any protest with reference to said application should on or before November 8, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27669 Filed 11–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–12–000]

Sunbury Generation, LLC, Complainant v. PPL Electric Utilities Corporation, Respondent; Notice of Complaint

October 30, 2001.

Take notice that on October 25, 2001, Sunbury Generation, LLC (Sunbury) tendered for filing an original and fourteen copies of a Complaint against PPL Electric Utilities Corporation (PPL) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure. 18 CFR 385.206. Sunbury requests the Commission to (i) find that PPL's charges for station power violate the jurisdictional agreements between Sunbury and PPL and violate the Federal Power Act; (ii) find that Sunbury self-supplies its station power needs under these agreements; and (iii) require PPL to file with the Commission its PJM Interface Services Agreement with Sunbury and refund the time value of amounts collected under that Agreement prior to the Commission's acceptance date of the filing.

Sunbury has served a copy of this Complaint upon PPL.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 14, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before November 14, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27673 Filed 11–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–10–000]

Transcontinental Gas Pipe Line Corp.; Notice of Application

October 30, 2001.

Take notice that on October 22, 2001, Transcontinental Gas Pipe Line Corporation (Transco), PO Box 1396, Houston, Texas 77251–1396, filed an application in Docket No. CP02–10–000 pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157(A) of the Federal Energy Regulatory Commission's Regulations (Commission), for a certificate of public convenience and necessity authorizing Transco's construction and operation of certain facilities at Compressor Station No. 110 (Station 110) in Randolph County, Alabama to comply with the Clean Air Act Amendments of 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Transco states that the Clean Air Act Amendments of 1990 and state implementation plans require certain reductions of NO_X (oxides of nitrogen) air emissions at several of Transco's compressor stations. Accordingly, during the past few years and over the next few years Transco has installed and plans to install certain facilities at these stations to achieve the required reductions of NO_X. Transco states that it plans to install these facilities pursuant to its blanket facilities certificate (18 CFR 157.208) issued in Docket No. CP82–426 when it is authorized to do so (either under automatic or prior notice authorization, depending on the estimated dollar amount). However, at the stations where the estimated total cost of installing these facilities is more than $20.6 million, Transco states that it is not authorized to perform such work pursuant to its blanket facilities certificate and, therefore, is required to file an application for a certificate of public convenience and necessity.

Transco states that it proposes to modify several of its existing reciprocating engines at Station 110 in order to comply with the State of Alabama plan to implement the Clean Air Act Amendments of 1990. Station 110 has 16 units including 15 reciprocating/compressor units and one Solar Mars gas turbine driven centrifugal compressor unit. The facilities at Station 110 are located within a fenced area of approximately 28 acres.

Transco states that it plans to install turbochargers and associated equipment on 9 of the 15 reciprocating engines in order to reduce NO_X emissions. These engines currently do not have turbochargers on them. Transco plans to modify the existing turbochargers at the other 6 reciprocating units to increase their capacity and install associated equipment in order to reduce NO_X emissions. At all 15 engines, emissions will be reduced by achieving a true lean air-fuel ratio, injecting high pressure fuel directly into the power cylinders and making other engine adjustments. The injection of high pressure fuel directly into the power cylinders significantly improves the combustion process by producing a more homogeneous mixture of air and fuel within the power cylinder. The true lean air-fuel ratio coupled with the high pressure fuel injection works by promoting stable combustion characteristics and thus reduces the formation of NO_X.

Transco states that following installation of the turbochargers, the 9

engines will have the potential to perform above their current operating horsepower. However, since Station 110 is automated, Transco has the ability to shut down other engines or reduce their load to ensure that the station will not operate above the station's total certificated horsepower. Since Transco will install these turbochargers at Station 110 solely to achieve an environmental improvement, *i.e.*, lower NO_x emissions, Transco states that it has no intent or need to operate the station above its certificated horsepower. Therefore, Transco states that when it installs these turbochargers at Station 110 it will adjust the automation program at the station so that it will not operate above its certificated horsepower.

At the other 6 engines, Transco states that modification of the existing turbochargers to increase their capacity will not create the potential of these engines performing above their current operating horsepower because the engines are already operating at maximum horsepower and cannot operate at a higher horsepower output. Accordingly, Transco states that there will be no increase in the capacity of Transco's system in the vicinity of the station as a result of installing the 9 new turbochargers and modifying the 6 existing turbochargers.

Transco states that installation of new turbochargers and modifications to existing ones at Station 110 will require some work to be done outside of the compressor building. All of the proposed work described above will be built within 50 feet of existing station facilities and will be done within the confines of previously disturbed areas. Approximately 0.2 acre of previously disturbed ground will be affected by the proposed project. Restoration of this area will be conducted according to the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan.

Transco states that it estimates the proposed modifications will cost $26.8 million. Transco states that the installation and operation of the proposed facilities will have no significant impact on the quality of human health or the environment other than the positive impact of reducing NO_x emissions and that a state air permit will be negotiated with the Alabama Department of Environmental Management (ADEM).

Transco states that this project will serve the public convenience and necessity because it will reduce NO_x emissions at Station 110 and will enable Transco to comply with the Clean Air Act Amendments of 1990 and the requirements of the ADEM implementing regulations.

Transco states that it needs to commence the work at Station 110 in January 2002 in order to complete the work on a timely basis with respect to the requirements of the Clean Air Act Amendments of 1990 and the requirements of the ADEM, while at the same time accommodating the operational needs of its pipeline system and ensuring that Transco's gas service obligations are met.

Any questions regarding this application should be directed to Tom Messick, P.O. Box 1396, Houston, Texas 77251–1396 at (713) 215–2772.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 20, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–27671 Filed 11–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–980–005, et al.]

Bangor Hydro-Electric Company, et al.; Electric Rate and Corporate Regulation Filings

October 29, 2001.

Take notice that the following filings have been made with the Commission:

1. Bangor Hydro-Electric Company

[Docket No. ER00–980–005]

Take notice that on October 25, 2001, Bangor Hydro-Electric Company submitted a Refund Report with the Federal Energy Regulatory Commission (Commission). Bangor Hydro has made all other refunds required by the settlement agreement.

Comment date: November 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Ameren Services Company

[Docket No. ER01–1914–001]

Take notice that on October 24, 2001, Ameren Services Company (ASC), the transmission provider, tendered for filing with the Federal Energy Regulatory Commission (Commission) Amended Service Agreement for Firm Point-to-Point Transmission Services between ASC and Entergy-Koch Trading, LP, f/k/a Axia Energy, Inc. (customer). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to customer pursuant to Ameren's Open Access Tariff.

Comment date: November 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Nevada Power Company

[Docket Nos.ER01–2754–001, ER01–2755–001, ER01–2757–001, ER01–2758–001, ER01–2759–001]

Take notice that on October 25, 2001, Nevada Power Company (Nevada Power) filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, an answer to a letter from the Commission Staff regarding Transmission Service Agreements filed in the above-referenced proceedings. As directed by the Staff, the answer was filed as an amendment to the Transmission Service Agreements.

Comment date: November 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. GNE, LLC

[Docket No. ER02–159–000]

On October 24, 2001, GNE, LLC, filed with the Federal Energy Regulatory Commission (Commission) an application for market-based rate authorization to sell energy, capacity and specified ancillary services, waivers and exemptions and a request for an effective date of December 31, 2001 for its market-based rate authorization.

GNE, LLC is a Delaware limited liability company that will own and operate four hydroelectric plants located at or near Millinocket, Maine, with a total nameplate capacity of approximately 130 megawatts is seeking market-based rate authorization, waivers and exemptions, and a request for an effective date of December 31, 2001 for its market-based rate authorization in order to sell the output of the facilities to Maclaren Energy, Inc.

Comment date: November 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. The Montana Power Company

[Docket No. ER02–161–000]

Take notice that on October 24, 2001, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to 18 CFR 35.13 executed Network Integration Transmission Service Agreements with Advanced Silicon Materials LLC and Express Pipeline LLC under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon with Advanced Silicon Materials LLC and Express Pipeline LLC.

Comment date: November 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Erie Boulevard Hydropower, L.P.

[Docket No. ER02–162–000]

Take notice that on October 24, 2001, Erie Boulevard Hydropower, L.P. (Erie Boulevard) filed with the Federal Energy Regulatory Commission (Commission) the Power Purchase Agreement between Erie Boulevard and Niagara Mohawk Power Corporation dated as of March 16, 2001 (PPA). The filing is made pursuant to Erie Boulevard's authority to sell power at market-based rates under its Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1, approved by the Commission on June 17, 2001, in Docket No. ER99–1764–000.

Comment date: November 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Mid-Continent Area Power Pool

[Docket No. ER02–163–000]

Take notice that on October 24, 2001, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, filed tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Termination for Short-Term and Non-Firm Point-To-Point Transmission Service Agreements between MAPP and El Paso Merchant Energy, L.P., formerly Coastal Merchant Energy, L.P. and originally Engage Energy US, L.P.

Comment date: November 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER02–164–000]

Take notice that on October 24, 2001, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission) a unilaterally executed Interconnection and Operating Agreement with Reliant Energy Choctaw County LLC (Reliant), and a Generator Imbalance Agreement with Reliant.

Comment date: November 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER02–165–000]

Take notice that on October 25, 2001, Public Service Company of New Mexico (PNM) submitted for filing with the Federal Energy Regulatory Commission (Commission) a unilaterally executed service agreement with the City of Mesa, dated October 23, 2001, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff. PNM has requested an effective date of September 1, 2001 for the agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to the City of Mesa and to the New Mexico Public Regulation Commission.

Comment date: November 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Calpine Construction Finance Company, L.P.

[Docket No. ER02–166–000]

Take notice that on October 24, 2001, Calpine Construction Finance Company, L.P. (CCFC) filed with the Federal Energy Regulatory Commission

(Commission) an amended Direct Power Transaction Confirmation under its market-based rate schedule.

Comment date: November 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Cambridge Electric Light Company

[Docket No. ER02–167–000]

Take notice that on October 25, 2001, Cambridge Electric Light Company (Cambridge Electric) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Interconnection Agreement between Cambridge Electric and Mirant Kendall, LLC (Mirant Kendall). Cambridge Electric also tendered for filing a Notice of cancellation of Rate Schedule FERC No. 41, which is an Interconnection and Site Agreement between Cambridge Electric and Mirant Kendall f/k/a Southern Energy new England, L.L.C. that was previously accepted by the Commission in Docket No. ER98–4088–000 as part of Cambridge Electric's sale of its generation assets to Mirant Kendall (Former Interconnection Agreement). Cambridge Electric states that all rights and obligations of the parties contained in the Former Interconnection Agreement that are still relevant have been subsumed into the new Interconnection Agreement.

Cambridge Electric request an effective date of December 24, 2001 and Notice of Cancellation become effective upon the same date.

Comment date: November 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Alabama Power Company

[Docket No. ER02–168–000]

Take notice that on October 25, 2001, Alabama Power Company (APC) filed with the Federal Energy Regulatory Commission (Commission) a Service Agreement for Supply of Electric Service to Electric Membership and Electric Cooperative Corporations under Rate Schedule REA–1 of its First Revised FERC Electric Tariff Original Volume No. 1 (Tariff). Pursuant to that Service Agreement, APC will provide electric service to Tombigbee Electric Cooperative, Inc. at a new Robert E. Crow Delivery Point located in Marion County, Alabama. In addition, APC is refiling the Tariff in its entirety to comply with the Commission's electric rate schedule designation requirements contained in the Commission's Order No. 614.

Comment date: November 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27655 Filed 11–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–12–000, *et al.*]

Duke Energy Grays Harbor, LLC, *et al.*; Electric Rate and Corporate Regulation Filings

October 30, 2001.

Take notice that the following filings have been made with the Commission:

1. Duke Energy Grays Harbor, LLC

[Docket No. EG02–12–000]

Take notice that on October 26, 2001, Duke Energy Grays Harbor, LLC (Duke Grays Harbor) filed an application with the Federal Energy Regulatory Commission (Commission) for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations.

Duke Grays Harbor is a Delaware limited liability company that will be engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities to be located in Grays Harbor County, Washington. The eligible facilities will consist of an approximately 1,200 MW natural gas-fired, combined cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Progress Energy Inc. on behalf of Carolina Power & Light Company

[Docket No. ER02–160–000]

Take notice that on October 25, 2001, Carolina Power & Light Company (CP&L) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreement between CP&L and the following eligible buyer, Consumers Energy Company d/b/a Consumers Energy Traders. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5. Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

CP&L requests an effective date of September 27, 2001 for this Service Agreement.

Comment date: November 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. ER02–170–000]

Take notice that on October 26, 2001, Boston Edison Company (Boston Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Second Amendment to Agreement for the Purchase and Sales of All Requirements Service by and between Boston Edison and the Town of Wellesley Municipal Light Plant (Wellesley). Boston Edison states that it has served a copy of the filing on Wellesley and the Massachusetts Department of Telecommunications and Energy.

Boston Edison requests an effective date of January 1, 2000.

Comment date: November 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Energy New Albany, LLC

[Docket No. ER02–171–000]

Take notice that on October 26, 2001, Duke Energy New Albany, LLC (Duke New Albany) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Succession pursuant to 18 CFR 35.16 in order to reflect its name change from New Albany Power I, LLC. As a result of the name change Duke New Albany adopted and ratified all applicable rate schedules filed with the Commission by New Albany Power I, LLC effective October 15, 2001.

Comment date: November 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER02–172–000]

Take notice that on October 26, 2001, Northeast Utilities Service Company (NUSCO), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Calpine Energy Services, L.P. (Engage) under the NU System Companies' System Sale For Resale Tariff No.7. NUSCO states that a copy of this filing has been mailed to Calpine.

NUSCO requests that the Service Agreement become effective on October 1, 2001.

Comment date: November 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–173–000]

Take notice that on October 26, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed with the Federal Energy Regulatory Commission (Commission) Service Agreement No. 151 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply proposes to make service available as of October 25, 2001 to The New Power Company.

Copies of the filing have been provided to all parties of record.

Comment date: November 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Company

[Docket No. ER02–174–000]

Take notice that on October 25, 2001, New England Power Company (NEP) submitted for filing with the Federal Energy Regulatory Commission (Commission) Second Revised Service Agreement No. 14 between NEP and North Attleborough Electric Department, Second Revised Service Agreement No. 20 between NEP and Templeton Municipal Lighting Plant and Second Revised Service Agreement No. 21 between NEP and Wakefield Municipal Light Department (collectively, the Service Agreements). The Service Agreements are under NEP's open access transmission tariff—New England Power Company, FERC Electric Tariff, Second Revised Volume No. 9. These Service Agreements are fully executed versions of the First Revised Service Agreements that were filed unexecuted on August 8, 2001, in Docket No. ER01–2802–000. No other changes have been made to the Service Agreements and the terms remain the same as filed on August 8, 2001.

NEP states that a copy of this filing has been served upon the Department of Telecommunications and Energy of the Commonwealth of Massachusetts and parties to the agreements.

Comment date: November 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER02–175–000]

Take notice that on October 25, 2001, New England Power Company (NEP) tendered for filing with the Federal Energy Regulatory Commission (Commission) a First Revised Service Agreement No. 16 for service under NEP's Wholesale Market Sales Tariff, FERC Electric Tariff, Original Volume No. 10 between NEP and USGen New England, Inc.

Comment date: November 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27668 Filed 11–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000]

Electricity Market Design and Structure; Notice of Extension of Time and Opportunity To Submit Comments on Regional Transmission Organization Issues Discussed at Workshops

October 30, 2001.

As noticed on September 28, 2001 and October 5, 2001, a series of workshops was held from October 15 through October 19, 2001 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The purpose of the workshops was to discuss core issues related to the development of efficient electric markets in an era in which electric transmission systems will be operated by Regional Transmission Organizations (RTOs).

The Commission's staff has developed summaries of the key issues discussed at each workshop and is attaching those summaries to this notice, as well as posting the summaries on the Commission's website at *www.ferc.gov* under "RTO activities" to encourage further discussion on the development of RTOs.[1] These summaries reflect what the staff heard, including any points of consensus among the panelists at the workshops. The summaries are not intended to suggest that there is an industry-wide consensus. The primary purpose of releasing these summaries is to obtain alternative opinions on the issues addressed in these summaries. All interested persons are invited to submit written comments addressing these summaries or any other matter discussed at the workshops. While we are not providing a deadline for the submission of comments, and in effect are eliminating the November 5, 2001 deadline given in the October 5, 2001 notice, the comments should be submitted as soon as reasonably possible.

Comments related to this proceeding may be filed in paper format or

[1] The attachment is not being published in the **Federal Register**.

electronically. Those filing electronically do not need to make a paper filing.

For paper filings, the original and 14 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426 and should refer to Docket No. RM01–12–000.

To file the comments in an electronic format, access the Commission's website at *www.ferc.gov*, click on "e-Filing" and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filing is available at 202–208–0258 or by E-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the E-mail address.

All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by E-mail to *rimsmaster@ferc.fed.us*. The comments may also be viewed by accessing the Commission's website at *www.ferc.gov*, clicking on "RTO Activities" and then clicking on "Electricity Market Design and Structure."

David P. Boergers,

Secretary.

[FR Doc. 01–27675 Filed 11–2–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7098–1]

EPA Science Advisory Board Executive Committee; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Executive Committee (EC) of the US EPA Science Advisory Board (SAB) will meet on Wednesday, November 28, 2001 and Thursday, November 29, 2001 in Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The meeting will begin by 8:30 a.m. on November 28 and adjourn no later than 3:00 p.m. on November 29, 2001 Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting: This meeting of the SAB Executive Committee is one in a series of periodic meetings in which the EC takes action on reports generated by SAB Committees, meets with Agency leadership, and addresses a variety of issues germane to the operation of the Board. The agenda for the November 28 meeting will be posted on the SAB website (*www.epa.gov/sab*) not later than 5 days before the meeting and may include, but not be limited to the following:

1. Action on Committee reports
   a. A Framework for Reporting on Ecological Condition: An SAB Report from the Ecological Processes and Effects Committee (EPEC)
   b. The Southeastern Ecological Framework: An SAB Report from EPEC
   c. Multi-year Research Plans: Water Quality and Pollution Prevention: An SAB Report from the Research Strategies Advisory Committee (RSAC)
2. Meeting with Agency leaders, including
   a. Governor Christine Todd Whitman, USEPA Administrator
   b. Ms. Linda Fisher, Deputy USEPA Administrator
   c. Top award winners of the Agency's Scientific and Technological Achievement Awards (STAA) competition
3. Matters of Board business, including
   a. Training on conflicts-of interest
   b. Update on steps taken to respond to the General Accounting Office report on the SAB
   c. Setting the SAB agenda for FY02 and beyond.

Availability of Review Materials: Draft SAB reports will be posted on the SAB Website (*www.epa.gov/sab*) approximately two weeks before the date of the meeting. The underlying documents that are the subject of SAB reviews, however, are not available from the SAB Office but are normally available from the originating EPA office.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Dr. Donald Barnes, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at *barnes.don@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Barnes no later than noon Eastern Time on November 21, 2001.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to Dr. Barnes at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0323. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Barnes at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 30, 2001.

John R. Fowle III,

Acting Staff Director, EPA Science Advisory Board.

[FR Doc. 01–27726 Filed 11–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7097–7]

PRC Patterson Superfund Removal Site; Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, As Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comments.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Action ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Order on Consent ("AOC," Region 9 Docket No. 2001–14) pursuant to section 122(h) of CERCLA concerning the PRC PATTERSON SUPERFUND REMOVAL SITE (the "Site"), located in Patterson, California, and including an above ground storage tank in Vernalis, California. The respondents to the AOC are Chevron Corporation and Chevron U.S.A., Inc. Through the proposed AOC the respondents will complete the removal action addressing an above ground bulk storage tank at the Site. The AOC provides the respondents with a covenant not to sue and contribution protection for the removal actions at the Site. To date, EPA has incurred approximately $900,000.00 in response costs related to the Site; however, EPA's response costs incurred at the Site are less than twenty-five percent (25%) of the total costs of the response action at the Site. EPA is waiving all claims for recovery of its response costs against the respondents consistent with EPA's established policy regarding allocation of "orphan shares," which are those of potentially responsible parties that are insolvent or defunct. EPA anticipates recovery of all or a significant portion of its costs from other potentially responsible parties at the Site. For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed AOC. The Agency's response to any comments received will be available for public inspection at EPA's Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

DATES: Comments must be submitted on or before December 5, 2001.

ADDRESSES: The proposed AOC may be obtained from Danielle Carr, Hearing Clerk, telephone (415) 744–1389. Comments regarding the proposed AOC should be addressed to Danielle Carr (ORC–3) at 75 Hawthorne Street, San Francisco, California 94105, and should reference the PRC Patterson Superfund Removal Site, and Region IX Docket No. 2001–14.

FOR FURTHER INFORMATION CONTACT: J. Andrew Helmlinger, Office of Regional Counsel, (415) 744–1325, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: October 18, 2001.

Daniel A. Meer,

Acting Director, Superfund Division.

[FR Doc. 01–27725 Filed 11–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7097–8]

PRC Patterson Superfund Removal Site; Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, As Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comments.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Action ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Order on Consent ("AOC," Region 9 Docket No. 2001–08) pursuant to section 122(h) of CERCLA concerning the PRC PATTERSON SUPERFUND REMOVAL SITE (the "Site"), located in Patterson, California, and including an above ground bulk storage tank in Vernalis, California. The respondent to the AOC is the Atlantic Richfield Company ("ARCO"). Through the proposed AOC, ARCO will conduct the removal of wastes from the above ground bulk storage tank in Vernalis, California. The AOC provides ARCO with a covenant not to sue and contribution protection for the removal action at the Site. To date, EPA has incurred approximately $900,000.00 in response costs related to the Site. ARCO, as one of many generators of wastes at the Site, is reimbursing $500,001.00 of the incurred response costs to EPA. EPA anticipates recovery of all or a significant portion of the remaining costs from other potentially responsible parties at the Site. For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed AOC. The Agency's response to any comments received will be available for public inspection at EPA's Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

DATES: Comments must be submitted on or before December 5, 2001.

ADDRESSES: The proposed AOC may be obtained from Danielle Carr, Hearing Clerk, telephone (415) 744–1389. Comments regarding the proposed AOC should be addressed to Danielle Carr (ORC–3) at 75 Hawthorne Street, San Francisco, California 94105, and should reference the PRC Patterson Superfund Removal Site, and Region IX Docket No. 2001–08.

FOR FURTHER INFORMATION CONTACT: J. Andrew Helmlinger, Office of Regional Counsel, (415) 744–1325, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: October 18, 2001.

Daniel A. Meer,

Acting Director, Superfund Division.

[FR Doc. 01–27727 Filed 11–2–01; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 6, 2001, from 9 a.m. until such time as the Board concludes its business.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4009, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—October 11, 2001 (Open)

B. Report

—Corporate Approvals

Dated: October 31, 2001.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 01–27776 Filed 10–31–01; 5:10 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

October 30, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 4, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0996.

Title: AM Auction Section 307(b) Submissions.

Form Number: n/a.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 120.

Estimated time per response: 1–5 hours (time is split between contractors and respondents).

Frequency of Response: Reporting, on occasion.

Total annual burden: 210.

Total annual costs: $27,000.

Needs and Uses: The Commission must undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive AM applications proposing to serve different communities. Each applicant within a mutually exclusive group must submit an amendment containing certain supplemental information. The data submitted will be used to determine the community having the greater need for an AM radio service.

OMB Number: 3060–0180.

Title: Section 73.1610, Equipment Tests.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 500.

Estimated Hours Per Response: 0.5 hours.

Frequency of Response: Reporting, on occasion.

Cost to Respondents: None.

Estimated Total Annual Burden: 250 hours.

Needs and Uses: This information collection requires the permittee of a new broadcast station to notify the FCC of its plans to conduct equipment tests for the purpose of making adjustments and measurements as may be necessary to assure compliance with the terms of the construction permit and applicable engineering standards. The data are used by FCC staff to assure compliance with the terms of the construction permit and applicable engineering standards.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–27708 Filed 11–2–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:59 a.m. on Tuesday, October 30, 2001, the Board of Directors of the Federal Deposit Insurance corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory, and receivership activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Director John M. Reich (Appointive), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: October 30, 2001.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary, (Operations).

[FR Doc. 01–27817 Filed 11–1–01; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 19, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Omar C. Wilhelms & Janice R. Wilhelms, Shannon, Illinois; to retain voting shares of Shannon Bancorp, Inc., Shannon, Illinois, and thereby indirectly retain voting shares of First State Bank Shannon-Polo, Shannon, Illinois.

Board of Governors of the Federal Reserve System, October 30, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27662 Filed 11–2–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 28, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Independence Bancshares, Inc., Independence, Iowa; to acquire 100 percent of the voting shares of Fairbank Bancshares, Inc., Fairbank, Iowa, and thereby indirectly acquire voting shares of Fairbank State Bank, Fairbank, Iowa.

2. Malvern Bancshares, Inc., Malvern, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Malvern Trust & Savings Bank, Malvern, Iowa.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Plainville Bancshares, Inc., Plainville, Kansas; to acquire 100 percent of the voting shares of Farmers Bancshares, Inc., Lincoln, Kansas, and thereby indirectly acquire Farmers National Bank, Lincoln, Kansas, and Beverly State Bank, Beverly, Kansas.

2. West Point Bancorp, Inc., West Point, Nebraska; to acquire 100 percent of the voting shares of Town & Country Bank, Las Vegas, Nevada.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. McLaughlin Bancshares, Inc., Ralls, Texas, and McLaughlin Delaware Bancshares, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of First Hale Center, Inc., Hale Center, Texas, and thereby indirectly acquire voting shares of FNB West Texas, Plainview, Texas.

Board of Governors of the Federal Reserve System, October 30, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27660 Filed 11–2–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 01-26863) published on page 54011 of the issue for October 25, 2001.

Under the Federal Reserve Bank of San Francisco heading, the entry for Wells Fargo & Company, San Francisco, California, is revised to read as follows:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; and thereby indirectly acquire voting shares of Marquette Bank Monmouth, Monmouth, Illinois; The Bank of Santa Fe, Santa Fe, New Mexico; Delaware Financial, Inc., Wilmington, Delaware; First National Bank of Texas, Decatur, Texas; First State Bank of Texas, Denton, Texas; and to acquire Marquette Bank, N.A., Rogers, Minnesota; Marquette Capital Bank, N.A., Wayzata, Minnesota; The First National Bank and Trust Company of Baraboo, Baraboo, Wisconsin; Meridian Capital Bank, N.A., Milwaukee, Wisconsin; and Marquette Bank Morrison, Morrison, Illinois, from Marquette Bancshares, Inc., Minneapolis, Minnesota.

In connection with this application, Applicant also has applied to acquire Marquette Financial Group, Inc., Minneapolis, Minnesota, and thereby engage in securities brokerage and investment advisory activities, pursuant to § 225.28(b)(6) and (7) of Regulation Y.

Comments on this application must be received by November 19, 2001.

Board of Governors of the Federal Reserve System, October 30, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27661 Filed 11–2–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 66 FR 54527, October 29, 2001.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m. Wednesday, October 31, 2001.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Consideration of quorum and other voting requirements for Board action.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 31, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27763 Filed 10–31–01; 4:41 pm]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, November 19, 2001 from 8:30 a.m. to 5:00 p.m., in room 7C13 of the General Accounting Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. The meeting is open to the public. Any interested person who plans to attend the meeting as an observer should present a copy of this meeting notice and a form of picture identification to the GAO Security Desk on the day of the meeting to obtain access to the GAO Building. Council discussions and reviews are open to the public. Members of the public will be provided an opportunity to address the Council with a brief (five minute) presentation on Monday afternoon.

For further information or to notify the Council you plan to attend the meeting, please contact Jennifer Allison, Council Assistant, 202–512–3423. Please check the Government Auditing Standards web page (*www.gao.gov/govaud/ybk01.htm*) one week prior to the meeting for a final agenda.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 01–27664 Filed 11–2–01; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0222]

Agency Information Collection Activities; Announcement of OMB Approval; Third-Party Review Under FDAMA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Third-Party Review Under FDAMA" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 27, 2001 (66 FR 45047), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0375. The approval expires on October 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at

http://www.fda.gov/ohrms/dockets.

Dated: October 29, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–27642 Filed 11–2–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0231]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by December 5, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report—21 CFR Part 510 (OMB Control No. 0910–0012)—Extension

Section 512(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C 360b(l)) and 21 CFR 510.300, 510.301, and 510.302 require that applicants of approved new animal drug applications (NADAs) submit within 15 working days of receipt, complete records of reports of certain adverse drug reactions and unusual failure of new animal drugs. Other reporting requirements of adverse reactions to these drugs must be reported annually or semiannually in a specific format. This continuous monitoring of approved new animal drugs, affords the primary means by which FDA obtains information regarding potential problems in safety and effectiveness of marketed animal drugs and potential manufacturing problems. Data already on file with FDA is not adequate because animal drug effects can change over time and less apparent effects may take years to manifest themselves. Reports are reviewed along with those previously submitted for a particular drug to determine if any change is needed in the product or labeling, such as package insert changes, dosage changes, additional warnings or contraindications, or product reformulation.

Adverse reaction reports are required to be submitted by the drug manufacturer on FDA Forms 1932 or 1932a (voluntary reporting form), following complaints from animal owners or veterinarians. Likewise, product defects and lack of effectiveness complaints are submitted to FDA by the drug manufacturer following their own detection of a problem or complaints from product users or their veterinarians using FDA Forms 1932 and 1932a . FDA Form 2301 is available for the required transmittal of periodic reports and promotional material for new animal drugs. Respondents to this collection of information are applicants of approved NADAs.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Form FDA 2301 ...	510.302(a)	190	13.16	2,500	0.5	1,250
Form FDA 1932 ...	510.302(b)	190	94.74	18,000	1.0	18,000
Form FDA 1932a (voluntary)	510.302(b)	100	1.0	100	1.0	100
Total burden hours						19,350

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Response per Recordkeeper	Hours per Recordkeeper	Total Hours
510.300(a) and 510.301(a)	190	13.16	2,500	10.35	25,875
510.300(b) and 510.301(b)	190	94.74	18,000	0.50	9,000
Total burden hours					34,875

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the times required for record preparation and maintenance is based on agency communication with industry. Other information needed to calculate the total burden hours (i.e., adverse drug reaction, lack of effectiveness, and product defect reports) are derived from agency records and experience.

Dated: October 29, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–27641 Filed 11–2–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0489]

Draft FDA Guidance on the Establishment and Operation of Clinical Trial Data Monitoring Committees; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER), Center for Drug Evaluation and Research (CDER), and Center for Devices and Radiological Health (CDRH), is announcing the following public meeting: Draft FDA Guidance on the Establishment and Operation of Clinical Trial Data Monitoring Committees (DMCs). The topics to be discussed are addressed in the draft entitled "Guidance for Clinical Trial Sponsors On the Establishment and Operation of Data Monitoring Committee." These topics include: The history of DMCs, the types of clinical trials in which DMCs are most important, DMC membership and operations, independence of DMCs, and the regulatory requirements relevant to DMCs.

Date and Time: The meeting will be held on November 27, 2001, from 9 a.m. to 5 p.m.

Location: The meeting will be held at The Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact: Melanie Whelan, Center for Biologics Evaluation and Research (HFM–40), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3841, FAX 301–827–3843, or e-mail: Whelan@cber.fda.gov.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number), to Melanie Whelan (address above) by November 20, 2001. We encourage early registration because seating is limited. There is no registration fee.

If you need special accommodations due to a disability, please contact Melanie Whelan at least 7 days in advance.

SUPPLEMENTARY INFORMATION: This meeting will provide a forum for all members of the public to express their opinions and suggestions on the draft entitled "Guidance for Clinical Trial Sponsors On the Establishment and Operation of Data Monitoring Committees." The draft guidance is intended to address scientific, ethical, and practical issues related to the establishment and operation of DMCs for clinical trials. The meeting will be of primary interest to sponsors of clinical trials evaluating FDA-regulated products. The objectives of the meeting are to: (1) Present the material in the draft guidance document and (2) solicit

your comments and recommendations on the draft guidance document. The draft guidance will be announced in the **Federal Register** for public comment and posted on the Internet at *http://www.fda.gov/cber/guidelines.htm.*

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The public meeting transcript will also be available on the Internet at http://www.fda.gov/cber/minutes/workshop-min.htm.

Dated: October 30, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–27643 Filed 11–02–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Application of Nucleic Acid Testing to Blood Borne Pathogens and Emerging Technologies; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled "Application of Nucleic Acid Testing to Blood Borne Pathogens and Emerging Technologies." The purpose of the public workshop is to focus on issues surrounding the implementation of nucleic acid testing (NAT) to screen blood and plasma donors.

Date and Time: The 2-day public workshop will be held on December 4 and 5, 2001, from 8:30 a.m. to 5 p.m.

Location: The public workshop will be held at the Lister Hill Center, National Institutes of Health, Bldg. 38A, 8600 Rockville Pike, Bethesda, MD.

Contact: Joseph Wilczek, Center for Biologics Evaluation and Research (HFM–305), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6129, FAX 301–827–2843, e-mail: *wilczek@cber.fda.gov*.

Registration: Preregistration is not required. However, early registration is recommended because there are only 175 seats at the site. Registration at the site will be done on a space available basis on the days of the workshop, beginning at 7:30 a.m. Mail, e-mail, or fax your registration information (including name, title, firm name, address, telephone and fax number, and e-mail address) to the contact person on or before November 23, 2001. A registration form is available on the Internet at *http://www.fda.gov/cber/scireg.htm*. There is no registration fee. If you need special accommodations due to a disability, please contact Joseph Wilczek (address above) at least 7 days in advance.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15-working days after the meeting at a cost of 10 cents per page. The public workshop transcript will also be available on the Internet at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

SUPPLEMENTARY INFORMATION: FDA is sponsoring a public workshop on issues surrounding the implementation of NAT for blood borne pathogens. These issues for testing blood and plasma donors include screening for human immunodeficiency virus, hepatitis C virus, hepatitis B virus, and testing manufacturing pools for hepatitis A virus and parvovirus B–19. The goals of the public workshop are to examine: (1) International developments and regulatory issues regarding the implementation of minipool and single unit NAT; (2) standardization and quality assurance of NAT methods; (3) industry experience with minipool NAT for donor screening and in-process plasma pools; (4) potential replacement of current viral marker tests by NAT; and (5) emerging issues in nucleic acid testing, including new pathogens and new screening technologies. Another goal of the workshop is to evaluate future directions in NAT for blood borne pathogens. The public workshop agenda is posted on the Internet at *http://www.fda.gov/cber/scireg.htm*.

Dated: October 29, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–27644 Filed 11–2–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Maternal and Child Health Federal Set-Aside Program; Project Grants; Hana Health Initiative for Children and Adolescents

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grant award.

SUMMARY: The Maternal and Child Health Bureau (MCHB), Health Resources and Services Administration (HRSA), is awarding a grant for $1,000,000 in fiscal year (FY) 2001 to the Hana Community Health Center in Hana, Hawaii. The grant supports expansion of health services to children and adolescents, with a focus on addressing special needs of Native Hawaiians in the community of Hana. The award was made from funds appropriated under Public Law 106–554 (HHS Appropriation Act for FY 2001). This project is a Special Project of Regional and National Significance (SPRANS) authorized by section 501(a)(2) of the Social Security Act, the Maternal and Child Health Federal Set-Aside Program.

Purpose: HRSA determined that it was necessary to provide funds to the community of Hana for expanded emergency, health and related services to children and adolescents in Hana, with services to have a Native Hawaiian focus. The primary source of health care for Hana is the Hana Community Health Center. To seek another source of health care residents must travel two and one-half to three hours, one way, to the main town of Wailuku.

In FY 2001, community surveys indicated a continuing need for funds for the on-site health services supported through this project, which was initiated in 1999 through MCHB's Emergency Medical Services for Children program. Concerns were raised about the need for quality primary and related health care services and the maintenance of 24 hour coverage, especially emergency care. As this is an isolated community with limited health and human services there was a desire to expand the services of the Hana Community Health Center. Maternal and Child Health SPRANS funds were designated to continue to address these services. This project reflects input and participation from the State of Hawaii and the Hana-based community health center and service providers. It provides a comprehensive strategy for: (1) Addressing service delivery gaps and barriers; (2) expanding health care and related services to the children and adolescents of Hana; and (3) responding to the needs of the Native Hawaiian population in Hana.

Availability of Funds: Approximately $1,000,000 was made available to support this project for the first year of a planned three-year project/budget period, beginning in FY 2001, and extending from September 27, 2001 through September 26, 2004, subject to the availability of appropriations.

Other Award Information: This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal programs (as implemented by 45 CFR part 100). The Catalog of Federal Domestic Assistance (CFDA) number for this project is 93.110M.

FOR FURTHER INFORMATION CONTACT: Peter S. Conway, Division of Child, Adolescent and Family Health, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18A–30, Rockville, MD 20857, 301–443–2250.

Dated: October 29, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–27646 Filed 11–2–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Maternal and Child Health Federal Set-Aside Program; Welfare Reform and Women's and Children's Health Cooperative Agreement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grant award.

SUMMARY: The Maternal and Child Health Bureau (MCHB), Health Resources and Services Administration (HRSA), is awarding $224,000 in fiscal year (FY) 2001 to support a cooperative agreement with the Mailman School of Public Health, Columbia University, in New York, NY. The award was made from funds appropriated under Public Law 106–554 (Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act for FY 2001). The cooperative agreement is authorized by section 501(a)(2) of the Social Security Act, the Maternal and Child Health Federal Set-Aside Program, as a Special Project of Regional and National Significance.

Purpose: The HRSA is providing Federal financial assistance for the "Finding Common Ground" project to allow completion of a pre-existing set of tasks by Columbia University's Mailman School of Public Health. The project is designed to provide an empirical base for assessing the impact of State welfare reform policies, implemented since 1996, on women's and children's health services utilization and health outcomes. These tasks include analysis of data gathered from six national and State data sets and identification of trends in welfare and Medicaid in South Carolina, Texas, and Washington. The project was initiated in 1997 through a cooperative agreement with combined support from the Maternal and Child Health Bureau (MCHB), the Centers for Disease Control and Prevention, and the Office of Population Affairs. This funding expired in 2001.

This award for a new cooperative agreement, sponsored solely by MCHB, ensures that results of the ongoing study are available on a timely basis to provide the empirical foundation to address maternal and child health issues associated with welfare reform. Data will be used to develop training and demonstration projects to inform participants in professional deliberations regarding possible future changes in welfare law.

This "Finding Common Ground" project is the only existing analytical project dedicated to exploring the impact of welfare reform policies on the health status and service utilization of women and children. While other groups are conducting studies on welfare reform, they are primarily focused on the impact on employment, earnings, and income. The project team for this study is uniquely qualified through its combination of expertise and experience in clinical, public health, and social science research to complete the project in cooperation with MCHB.

The administrative and funding instrument used for this program is the cooperative agreement, in which substantial MCHB scientific or programmatic involvement with the awardee is anticipated during performance of the project. Under the cooperative agreement, MCHB supports or stimulates the awardee's activities by working with the awardee in a non-directive, partnership role, but not assuming direction, prime responsibility, or a dominant role in the activity.

Availability of Funds: Approximately $224,000 was made available for obligation to support this project for budget period beginning in FY 2001, extending from September 30, 2001 through August 29, 2002.

Other Award Information: This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal programs (as implemented by 45 CFR part 100). The Catalog of Federal Domestic Assistance (CFDA) Number is 93.110RA.

FOR FURTHER INFORMATION CONTACT: Russ Scarato, Office of Data and Information Management, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18–44, Rockville, MD 20857, 301–443–0701.

Dated: October 29, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–27647 Filed 11–2–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Great Lakes Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces meeting of the Aquatic Nuisance Species Task Force Great Lakes Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Great Lakes Panel will meet from 8 am to 5 pm on Thursday, November 29, 2001, and 8 am to noon on Friday, November 30, 2001.

ADDRESSES: The Great Lakes Panel will be held at the Holiday Inn, North Campus, 3600 Plymouth Road, Ann Arbor, Michigan 48105. Phone (734) 769–9800.

FOR FURTHER INFORMATION CONTACT: Kathe Glassner-Shwayder, Project Manager, Great Lakes Commission, at 734–665–9135 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: *sharon_gross@fws.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Great Lakes Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Great Lakes Panel, comprised of representatives from Federal, State, and local agencies and from private

environmental and commercial interests, provides the following:

(a) Identify priorities for the Great Lakes Region with respect to aquatic nuisance species;

(b) Make recommendations to the Task Force regarding programs to carry out zebra mussel programs;

(c) Assist the Task Force in coordinating Federal aquatic nuisance species program activities in the Great Lakes region;

(d) Coordinate, where possible, aquatic nuisance species program activities in the Great Lakes region that are not conducted pursuant to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (as amended, 1996);

(e) Provide advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and,

(f) Submit an annual report describing activities within the Great Lakes region related to aquatic nuisance species prevention, research, and control.

The focus of this meeting will be to: Review topics related to NISA reauthorization, discuss Panel activities, priorities, and membership, and discuss coordination of regional panels on a national level.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: October 19, 2001.

Everett Wilson,

Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 01–27730 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–01–1610–DQ:GP1–0136]

Notice of Availability of Proposed Southeastern Oregon Resource Management Plan and Final Environmental Impact Statement; and Proposed Area of Critical Environmental Concern Designations

AGENCY: Bureau of Land Management, Malheur and Jordan Resource Areas, Vale District.

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management Act and section 102(2)(c) of the National Environmental Policy Act, the Bureau of Land Management (BLM) has prepared a Proposed Southeastern Oregon Resource Management Plan (PSEORMP) and associated final Environmental Impact Statement (FEIS) for the Malheur and Jordan Resource Areas, Vale District, Oregon. The Final SEORMP will only provide management direction for a portion of the original planning area. The Draft SEORMP/EIS (October, 1998) addressed approximately 6.3 million acres of public land; however, due to congressional action (House Resolution 4828, Steens Mountain Cooperative Management and Protection Act of 2000), the Andrews Resource Area was withdrawn from the land use planning process and will be addressed in a separate land use planning process scheduled to begin in 2001 by the Burns BLM District. Final decisions of this SEORMP planning process will supercede the Northern and Southern Malheur Management Framework Plans, as amended, and the Ironside and Southern Malheur Rangeland Program Summaries. The Final SEORMP will provide direction for management of these public lands for approximately 20 years. The PSEORMP/FEIS addresses seven alternatives for management, including the Proposed Resource Management Plan (Proposed RMP), on approximately 4.6 million acres of BLM administered public lands in southeast Oregon. The Proposed RMP would result in designation of all public lands for the management of motorized vehicles (2,615,116 acres Open, 2,004,369 acres Limited, and 15,826 acres Closed), and would recommend 42.5 miles of streams and river segments determined to be eligible and administratively suitable for congressional designation under the Wild and Scenic Rivers Act. This notice is also issued pursuant to 43 CFR Part 1610.7–2(b) of the BLM Planning Regulations, with the Proposed RMP proposing 26 Areas of Critical Environmental Concern (ACEC) (approximately 206,257 acres) be designated.

DATES: The public has the opportunity to protest the proposed resource management plan in the Final EIS. The BLM Planning Regulations, 43 CFR 1610.5–2, state that any person who participated in the planning process and has an interest which may be adversely affected may protest. A protest may raise only those issues which were submitted for the record during the planning process. The BLM will make a decision on the SEORMP after review of protests (if any) that must be filed by December 5, 2001. Written protests may be submitted at any time during the protest period at the following address: Director, Bureau of Land Management, Attention: Ms. Brenda Williams, Protests Coordinator, WO–210/LS–1075, Department of the Interior, Washington, DC 20240. To be considered timely, your protest must be postmarked no later than the last day of the protest period. Also, although not a requirement, we suggest that you send your protest by certified mail, return receipt requested.

To be considered complete, your protest must contain, at a minimum, the following information:

- Name, mailing address, telephone number and the affected interest of the person filing the protest(s).
- A statement of the issue or issues being protested.
- A statement of the part or the parts of the proposed plan being protested. To the extent possible, reference specific pages, paragraphs and sections of the document.
- A copy of all your documents addressing the issue or issues which were discussed with BLM for the record.
- A concise statement explaining why the proposed decision is believed to be incorrect. This is a critical part of your protest. Document all relevant facts, as much as possible, referencing or citing the planning and environmental analysis documents. A protest that merely expresses disagreement with the State Director's proposed decision without any data will not provide us with the benefit of your information and insight. In this case, the Director's review will be based on the existing analysis and supporting data.

FOR FURTHER INFORMATION CONTACT: Jerry Taylor, Jordan Resource Area Field Manager; or Roy Masinton, Malheur Resource Area Field Manager, BLM, 100 Oregon Street, Vale, Oregon 97918. Telephone (541) 473–3144. Single copies of the PSEORMP/FEIS are available at the BLM Vale District Office. Copies will also be available for inspection during normal business hours at the BLM Baker Field Office, 3165 10th Street, Baker City, Oregon, the BLM Burns District Office, HC 74–12533, Highway 20 West, Hines, Oregon, and the BLM Oregon State Office, 1515 SW 5th Street, Portland, Oregon. Comments on the PSEORMP/FEIS, including names and addresses of respondents, will be available for public review at the Vale District Office during regular business hours (7:45 a.m. to 4:30 p.m. (mountain time), Monday through Friday, except holidays. Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this promptly at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. Interested persons not already on the mailing list may review the PSEORMP/FEIS via the internet at *http://www.or.blm.gov/Vale*. A hard copy or a CD ROM of the document may be requested from the Vale District Office by calling (541) 473–3144.

SUPPLEMENTARY INFORMATION: The Malheur and Jordan Resource Areas include 4,600,648 acres of BLM administered public lands in Malheur, Harney, and Grant Counties, Oregon, and encompass approximately 1,851,708 acres of other Federal, State and private lands. The land use planning effort addresses a broad spectrum of land uses and allocations. The Proposed RMP Alternative also provides for the following: the use of wild and prescribed fire to meet resource objectives; provisions for possible disposal of several parcels of potentially suitable public land totaling approximately 62,100 acres; livestock grazing on public lands except for approximately 58,900 acres not allocated; varied recreation uses and establishment of five special recreation management areas; management of special status plant and animal species and habitat; improvement of water quality and riparian habitats; management of wild horses in seven herd management areas; and mineral exploration and development, with retention of currently withdrawn public lands from locatable minerals and recommendation for withdrawal of several parcels from locatable minerals totaling approximately 116,351 acres for provisions such as ACEC's and administrative and recreation facilities. Other management actions under the Proposed RMP Alternative are as described in the PSEORMP/FEIS. The PSEORMP/FEIS is based on adaptive management, which is a continuing process of planning, implementation, monitoring, and evaluation to adjust management strategies to meet goals and objectives of ecosystem management. The concept of adaptive management uses the latest scientific information, site-specific information/data, and professional judgement to select the management strategy most likely to meet goals and objectives of the plan.

Sandra L. Guches,

Acting Vale District Manager.

[FR Doc. 01–27456 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

60 Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Yukon-Charley Rivers National Preserve.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) in conjunction with a natural resource protection council including members from the Air Force and a number of state and federal land management agencies is proposing in 2002 to conduct surveys of persons using selected Alaskan Military Operations Areas where Air Force training occurs. One of these surveys focuses on hunters who pursue big game animals. Hunters will be asked about their expectations concerning Air Force training and the impacts of reported overflights on their activities and experiences.

	Estimated numbers of	
	Responses	Burden hours
Alaskan Military Operations Areas: Big Game Hunter Survey	2604	1085

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed surveys. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting these surveys is to assess the effectiveness of current mitigation efforts in limiting impacts of Air Force training activity on human users of Alaskan Military Operations Areas.

DATES: Public comments will be accepted on or before January 4, 2001.

SEND COMMENTS TO: Darryll R. Johnson, USGS/BRD/FRESC/Cascadia Field Station, College of Forest Resources, Box 352100, University of Washington, Seattle, WA 98195–2100; or Mark E. Vande Kamp, USGS/BRD/FRESC/Cascadia Field Station, College of Forest Resources, Box 352100, University of Washington, Seattle, WA 98195–2100.

FOR FURTHER INFORMATION CONTACT: Darryll R. Johnson. Voice: 206–685–7404, Email: <*darryllj@u.washington.edu*>; Mark E. Vande Kamp. Voice: 206–543–0378, Email: <*mevk@u.washington.edu*>.

SUPPLEMENTARY INFORMATION:

Titles: Alaskan Military Operations Areas Big Game Hunter Survey.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service (in conjunction with a natural resource protection council including members from the Air Force and a number of state and federal land management agencies) needs information to assess the effectiveness of current mitigation efforts in limiting impacts of Air Force training activity on human users of Alaskan Military Operations Areas.

Automated data collection: At the present time, there is no automated way to gather this information because it includes expectations and evaluations visitors associate with their experiences while hunting in Alaskan Military Operations Areas.

Description of respondents: A sample of individuals who hunted big game in Military Operations Areas.

Estimated average number of respondents: 2604.

Estimated average number of responses: Each respondent will respond only once to a mail questionnaire.

Estimated average burden hours per response: 25 minutes.

Frequency of Response: 1 mail survey per respondent.

Estimated annual reporting burden: 1085 hours.

Dated: August 12, 2001.

Leonard E. Stowe,

Acting Information Collection Clearance Officer, WASO Administrative Program Center, National Pork Service.

[FR Doc. 01–27691 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Submission of Study Package to Office of Management and Budget; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Urban and Adjacent Parks

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) is proposing in 2000 and 2001 to conduct surveys of persons living in the metropolitan areas of Boston, MA, Los Angeles, CA, Miami, FL, and New Orleans, LA where the following urban national parks are located: Boston African-American National Historic Site, Santa Monica Mountains National Recreation Area, Biscayne National Park, and Jean Lafitte National Historical Park and Preserve. In these surveys, persons will be asked about their knowledge of the urban national park located in their metropolitan area, and their familiarity with community outreach efforts that the urban national park has instituted.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 a 5 CFR part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on the proposed information request (ICR). Comments are invited on: (1) The need for the information, including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The NPS goal in conducting this survey is to assess the community outreach programs in selected urban national parks to determine the program's contributions toward improving rates of NPS urban parks visitation by selected user groups. The information gathered will be used to help the staff at NPS evaluate and improve the outreach programs, including the educational programs they offer at the site and in the local community. The following study objectives have been identified:

- Determine the effectiveness of the parks' current outreach programs on the attitudes of people in the communities;
- Determine community awareness of visitor and ancillary services offered by the parks;
- Determine potential benefits of the park to the community;
- Determine the importance and value of the parks to community members.

There were no public comments received as a result of publishing in the **Federal Register** a 60-day notice of intention to request clearance of information collection for this survey.

DATES: Public comments will be accepted on or before December 5, 2001.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20503.

The OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments within 30 days from the date listed at the top of this page of the **Federal Register**.

FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGE SUBMITTED FOR OMB REVIEW, CONTACT: Ronald Vogel: Voice: (225) 771–3103, e-mail: *ron@idsmail.com.*

SUPPLEMENTARY INFORMATION: *Title:* NPS Urban and Adjacent Parks: Assessment and Development of Community Outreach.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration date: To be requested.

Type of Request: Request for new clearance.

Description of Need: Description of need: The National Park Service needs information to assess the effectives of community outreach programs in reaching residents who live near urban national parks.

Automated data collection: At the present time, there is no automated way to gather this information because it includes asking residents for determinations on effectiveness and awareness of select programs developed by individual parks.

Description of respondents: Persons residing in the metropolitan areas of Boston, MA, Los Angeles, CA, Miami, FL and New Orleans.

Estimated average number of respondents: 400 (100 per above metropolitan area).

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 30 minutes.

Frequency of response: 1 time per respondent.

Estimated annual reporting burden: 125 hours.

Dated: August 27, 2001.

Leonard E. Stowe,

Acting Information Collection Clearance Officer, WASO Administrative Program, Center, National Park Service.

[FR Doc. 01–27692 Filed 11–22–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Submission of Study Package to Office of Management and Budget: Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior, golden Gate National Recreation Area.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) is proposing to conduct survey interviews in year 2001 to identify the market viability and visitor trip planning interests in recreational ferry services accessing Golden Gate National Recreation Areas (GNRA) on San Francisco Bay. The results of these surveys will be used to develop alternative plans for a possible ferry service and forecast potential demand. Intercept and telephone interviews will be carried out at non-park sites (intercept interviews) and with those who possibly currently do not visit those destinations (telephone interviews).

	Estimated number of	
	Responses	Burden hours
GGNRA Water shuttle Access Plan: Telephone Interviews (10 min. each)	1200	200
GGNRA Water Shuttle Access Plan: Intercept Interviews at Park Sites (15 min. each)	1600	400
Total	2800	600

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the NPS, including whether the information will have practical utility; (b) the accuracy of the NPS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

DATES: Public comments will be accepted for 30 days from the date listed at the top of this page of the **Federal Register**.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office and Management and Budget, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT OR A COPY OF THE STUDY PACKAGE SUBMITTED FOR OMB REVIEW, CONTACT: Michael J. Savidge: Voice: (415) 561–4725, e-mail: *michael j savidge@nps.gov.*

SUPPLEMENTARY INFORMATION:

Title: Golden Gate National Recreation Area Water shuttle Access Plan Resident Surveys.

Bureau Form Number: None.

OMB Number: To be assigned.

Expiration Date of Approval: To be assigned.

Type of Request: Request for new clearance.

Description of Need: The National Park Service needs information to develop plans for alternative modes of access to GGNRA sites, including ferry service.

Automated Data Collection: At the present time, there is no automated way to gather this information, since the information gathering process involves asking visitors and/or the general public to identify characteristics, use patterns, expectations, preferences and perceptions that are relevant to a study of ferry service.

Description of respondents: A sample of individuals who visit GGNRA sites of the National park Service and individuals who do not visit GGNRA sites.

Estimated average number of respondents: up to 1200 (completed telephone interviews); up to 1600 (completed intercept interviews).

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 10 minutes (telephone); 15 minutes (intercept).

Frequency of Response: 1 time per respondent.

Estimated annual reporting burden: 600 hours.

Dated: August 27, 2001.

Leonard E. Stowe,

Acting Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 01–27693 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intention To Extend Expiring Concession Contracts for a One Year Period Within the Pacific West Region

SUMMARY: Pursuant to the National Park Service Concessions Management Improvement Act of 1998, notice is hereby given that the National Park Service intends to extend the following expiring concession contracts pursuant to 36 CFR Part 51, section 51.23. This action is a short-term extension and will be for a one-year period ending December 31, 2002.

Concessioner Identification No.	Concessioner name	Park
CABR001	Cabrillo Historical Association	Cabrillo National Monument.
DEVA004	Death Valley Natural History Association	Death Valley National Park.
GOGA007	Golden Gate National Park Association	Golden Gate National Recreation Area.
JOTR001	Joshua Tree National Park Association	Joshua Tree National Park.
LAME007	Seven Resorts, Inc	Lake Mead National Recreation Area.
MORA001	Rainier Mountaineering, Inc	Mount Rainier National Park.
LACH002	The House that Jack Built	North Cascades National Park.
LACH003	Lake Chelan Recreation, Inc. dba North Cascades—Stehekin Lodge.	North Cascades National Park.
OLYM006	Hurricane Ridge Winter Sports Club, Inc	Olympic National Park.
OLYM064	Sure Fire Wood	Olympic National Park.
OLYM093	Chester Rooney	Olympic National Park.
PORE004	Point Reyes National Seashore Association	Point Reyes National Seashore.
SEKI001	Tim & Patricia Lover dba Cedar Grove Pack Station and Grant Grove Stables.	Sequoia & Kings Canyon National Parks.
SEKI003	Wolverton Pack Station	Sequoia & Kings Canyon National Parks.
SEKI005	Mineral King Pack Station	Sequoia & Kings Canyon National Parks.
USAR002	Arizona Memorial Museum Association	USS Arizona Memorial.

SUPPLEMENTARY INFORMATION: All the listed concession authorizations will expire on or before December 31, 2001. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This 1-year extension is necessary to allow the National Park Service to develop and issue prospectuses, leading to the competitive selection of

concessioners for new longer-term concession contracts.

Information about this notice can be sought from: National Park Service, Chief, Concession Program Management Office, Pacific West Region, Attn: Mr. Tony Sisto, 1111 Jackson Street, Suite 700, Oakland, California 94607 or call (510) 817–1366.

Dated: September 25, 2001.

Martha K. Leicester,

Acting Regional Director, Pacific West Region.

[FR Doc. 01–27696 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for Proposal To Add a Boardwalk and Viewing Deck and Rehabilitate the Overlooks at Great Falls Park, VA

AGENCY: National Park Service.

ACTION: Availability of the Environmental Assessment (EA) for the proposed boardwalk and viewing deck, and rehabilitation of Overlooks One and Two of Great Falls Park, Virginia, a unit of the George Washington Memorial Parkway (GWMP).

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service (NPS) policy, the NPS announces the availability of an EA for the proposed boardwalk and viewing deck, and rehabilitation of Overlooks One and Two of Great Falls Park, Virginia, a unit of the GWMP. The EA examines several alternatives aimed to increase visitor safety, provide accessibility, and improve resource protection around and between the Overlooks and the Shade Tree-Jetty area. The record of serious visitor injuries and drownings, as well as obvious impacts on park resources, indicates a need to better manage visitor use in order to alleviate safety concerns and enhance protection of the park's resources. The NPS is soliciting comments on this EA. These comments will be considered in evaluating it and making decisions pursuant to the National Environmental Policy Act.

DATES: The EA will remain available for public comment 30 days from the date of publication in the **Federal Register**. Written comments should be received no later than this date.

ADDRESSES: Comments on this EA should be submitted in writing to: Ms. Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. The EA will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m., at GWMP Headquarters, Turkey Run Park, McLean, Virginia, on the NPS Website *www.nps.gov/gwmp*, and at several libraries in Alexandria, Fairfax, and Arlington, Virginia.

SUPPLEMENTARY INFORMATION: The NPS proposes to increase accessibility and safety for trail users while maintaining the integrity of the natural and cultural resources at the Shade Tree-Jetty area and around Overlooks One and Two. Improvements to the park's system of trails and overlooks would address critical visitor safety and resource protection issues in the most heavily used part of the park. Two existing overlooks provide scenic views below the falls. The Overlooks are in deteriorating condition, and their concrete slab construction and steel handrails are visually incompatible with the surroundings. A short trail from the visitor center leads to an undeveloped area adjacent to and above the falls. This area provides some of the park's most spectacular and exciting viewing points. Unfortunately, numerous social trails have resulted from some visitors departing the designated trail system, inadvertently damaging stonework of the Patowmack Canal, rare plants, and other vegetation. Visitors also often scramble over the rocks and cliffs to reach certain vantage points. Their rock-hopping and wading along the river's edge at times places them in dangerous situations.

The following primary needs have been identified with this project to address the existing issues. There is a need:

1. To better manage visitor traffic in areas where resources are threatened and where there is no margin for error on the visitor's part.

2. To change inaccessible scenic views into accessible overlooks.

3. To protect natural and cultural resources from the Jetty to Overlook Two.

Incidents that have occurred at these locations have been formally documented by park staff and through conversations with visitors who have reported incidents. Finally, park staff and Fairfax County's Fire and Rescue teams have had to rescue or recover victims on several occasions from these areas.

All interested individuals, agencies, and organizations are urged to provide comments on the EA. The NPS, in making a final decision regarding this matter, will consider all comments received by the closing date.

FOR FURTHER INFORMATION CONTACT: Mr. Walter McDowney (703) 285–2763 or via email at *Bonnie_Heath@nps.gov*.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 01–27694 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Preservation Technology and Training Board: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board will meet on November 6, 2001, in Natchitoches, Louisiana.

The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training, as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board will meet in the Natchitosh Room in Russell Hall on the NSU campus, Tuesday, November 6, 2001. The meeting will start at 8:30 a.m. and end at about 4:30 p.m. Matters to be discussed will include officer, committee, university, National Park Service, and Center reports including the status of the grants program, a review of past accomplishments of the Center and a look toward the future of the Center and its partners in the preservation community with a report on a university consortium. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis.

Any member of the public may file a written statement concerning the matters to be discussed with Dr. Neville Agnew, Chair, National Preservation Technology and Training Board, Group Director, Information and Communication, The Getty Conservation Institute, 1200 Getty Center Drive, Suite 700, Los Angeles, CA 90049-1684.

Persons wishing more information concerning this meeting, or who wish to submit written statements, may do so by contacting Mr. E. Blaine Cliver, Chief, HABS/HAER, National Park Service, 1849 C Street NW, Washington, DC 20240, telephone (202) 343-9606. Draft summary minutes of the meeting will be available for public inspection approximately eight weeks after the meeting at the office of the Manager, National Center for Cultural Resources, Suite 350, 800 North Capitol Street NW, Washington, DC 20002.

Dated: October 1, 2001.

E. Blaine Cliver,

Chief, HABS/HAER,Designated Federal Official, National Park Service.

[FR Doc. 01–27699 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 13, 2001. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by November 20, 2001.

Paul R. Lusignan,

Acting Keeper of the National Register.

ARKANSAS

Cleveland County

Rison Texaco Service Station, 216 Main St., Rison, 01001243

CALIFORNIA

San Luis Obispo County

Lincoln School, 9000 Chimney Rock Rd., Paso Robles, 01001244

DELAWARE

New Castle County

Ardens Historic District, Address Restricted, Arden, 01001245

FLORIDA

Martin County

Gate House, 214 S. Beach Rd., Jupiter Island, 01001246

Volusia County

Moulton—Wells House, W of Eldora Rd., Canaveral National Seashore, New Smyrna Beach, 01001247

GEORGIA

Muscogee County

Dinglewood Historic District, Bounded by 13th and 16th Ave., 13th St., and Wynnton Rd., Columbus, 01001248

KENTUCKY

Allen County

Turner, J.L. and Son, Building, Old East Main St. at 7th St., Scottsville, 01001253

Hart County

Battle of Munfordville (Boundary Increase), (Munfordville MRA) Mostly W of US 31W near Munforville, Munfordville, 01001254

Jefferson County

Allison—Barrickman House (Boundary Increase), 6909 Wolf Pen Branch Rd., Louisville, 01001250

Saint Francis in the Fields, 6710 Wolf Pen Branch Rd., Harrods Creek, 01001249

Kenton County

Covington Downtown Commercial Historic District (Boundary Increase), Approx. located along Scott, Pine, and E. 8th Sts., Covington, 01001252

McCracken County

Hotel Metropolitan, 724 Jackson St., Paducah, 01001251

LOUISIANA

Rapides Parish

Emmanuel Baptist Church, 430 Jackson St., Alexandria, 01001255

NEW JERSEY

Hudson County

Hudson and Manhattan Railroad Powerhouse, 60–84 Bay St., 344–56 Washington Blvd., Jersey City, 01001256

OHIO

Columbiana County

Hanna—Kenty House, 251 E. High St., Lisbon, 01001257

Cuyahoga County

McFarland, Duncan, House, 35069 Cannon Rd., Bentleyville, 01001258

TENNESSEE

Montgomery County

Golden Hill Cemetery, Seven Mile Ferry Rd., Clarksville, 01001261

Sevier County

Trotter—McMahan Farm (Boundary Increase), 1605 Middle Creek Rd., Sevierville, 01001262

Shelby County

Third Additon to Jackson Terrace Historic District, (Residential Resources of Memphis MPS) Henry Ave., Hardin Ave., Atlantic Ave. and Crump Ave., Memphis, 01001260

Union County

Maynardville State Bank, 1001 Main St., Maynardville, 01001259

Warren County

Spring Street Service Station, 200 N. Spring St., McMinnville, 01001263

TEXAS

Bee County

Rialto Theater, 112–114 N. Washington St., Beeville, 01001265

Garza County

Garza County Courthouse, 300 W. Main St., Post, 01001266

Hunt County

President's House, SW of Circle Dr., N of Stonewall St., bet. Campbell and Bois D'Arc Sts., Commerce, 01001264

A request for REMOVAL has been made for the following Resource:

TENNESSEE

Frentress County

Allardt Presbyterian Church, (Frentress County) MPS TN 52 Allardt, 91000818

[FR Doc. 01–27697 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 6, 2001. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by November 20, 2001.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Montgomery County

Mount Ida Cities Service Filling Station, (Arkansas Highway History and Architecture MPS), 204 Whittington, Mount Ida, 01001230

Mount Ida Esso Service Station, (Arkansas Highway History and Architecture MPS), 114 US 270, Mount Ida, 01001231

Ouachita County

Clifton and Greening Street Historic District (Boundary Increase), 411 & 417 Greening St., Camden, 01001232

Washington County

Hantz House, (Arkansas Designs of E. Fay Jones MPS AD), 855 Fairview Dr., Fayetteville, 01001233

CALIFORNIA

Sonoma County

Carriger, Nicholas, Estate, 18880 Carriger Rd., Sonoma, 01001234

LOUISIANA

Ibervill Parish

Rivet, Pierre Ernest, House, (Louisiana's French Creole Architecture MPS), 58159 Plaquemine St., Plaquemine, 01001235

MASSACHUSETTS

Franklin County

Montague Center Historic District, Center, Main, North, School & Union Sts., Montague, 01001236

VERMONT

Bennington County

Whitney, Cora B., School, (Educational Resources of Vermont MPS), 814 Gage St., Bennington, 01001237

Chittenden County

Remington—Williamson Farm, (Agricultural Resources of Vermont MPS), 4282 Main Rd., Huntington, 01001239

Saltus Grocery Store, (Burlington, Vermont MPS), 299—301 N. Winoski Ave., Burlington, 01001238

Rutland County

Chaffee—Moloney Houses, 194 & 196—98 Colombian Ave., Rutland, 01001240

Windham County

Scott Farm Historic District, (Agricultural Resources of Vermont MPS), 707 Kipling Rd., Dummerston, 01001241

WISCONSIN

Dane County

Dunlap, Adam, Farmstead, 9646 Dunlap Hollow Rd., Mazomanie, 01001242

[FR Doc. 01–27698 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the American Museum of Natural History professional staff in consultation with representatives of the Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Samish Indian Tribe, Washington; Stillaguamish Tribe of Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington.

In 1899, human remains representing a minimum of one individual were collected by Harlan I. Smith from "Lummi," in the vicinity of Marietta, Whatcom County, WA, while Mr. Smith was a member of the Jesup North Pacific Expedition, sponsored by the American Museum of Natural History. No known individual was identified. The four associated funerary objects are pieces of shell.

This individual has been identified as Native American based on the nature of the associated funerary objects and the burial location of "Lummi." Museum records suggest that this burial dates to the postcontact period. The geographic location is consistent with the traditional territory of the Lummi Tribe of the Lummi Reservation, Washington.

In 1898, human remains representing a minimum of one individual were collected from the vicinity of Point Roberts, Whatcom County, WA, by Harlan I. Smith, while a member of the Jesup North Pacific Expedition. The human remains came from a road cut through a shell heap between Point Roberts and "Alexander's house." No known individual was identified. No associated funerary objects are present.

This individual has been identified as Native American based on burial location in a shell heap. Museum records suggest that this burial dates to the postcontact period. The geographic location of the burial is consistent with the traditional territory of the Lummi Reservation, Washington.

In 1898, human remains representing a minimum of nine individuals were collected from the vicinity of Point Roberts, Whatcom County, WA, by Harlan I. Smith, while a member of the Jesup North Pacific Expedition. The human remains came from a shell heap. No known individuals were identified. No associated funerary objects are present.These individuals have been identified as Native American based on burial location. Traces of wood found in the grave suggest that the burial was relatively recent. The geographic location of the burials are consistent with the traditional territory of the Lummi Tribe of the Lummi Reservation, Washington.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 11 individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (d)(2), the four objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Lummi Tribe of the Lummi Reservation, Washington.

This notice has been sent to officials of the Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Samish Indian Tribe, Washington; Stillaguamish Tribe of Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Martha Graham, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5846, before December 5, 2001. Repatriation of the human remains and associated funerary objects to the Lummi Tribe of the Lummi Reservation, Washington may begin after that date if no additional claimants come forward.

Dated: August 28, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–27701 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the American Museum of Natural History professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa & Chippewa Indians of Michigan; Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota; Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin; St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation; Turtle Mountain Band of Chippewa Indians of North Dakota; and White Earth Band of the Minnesota Chippewa Tribe, Minnesota.

At an unknown date, human remains representing a minimum of four individuals were collected by Frances Densmore from the vicinity of Lake Superior, MN. The American Museum of Natural History purchased the remains from Miss Densmore in 1920. No known individuals were identified. No associated funerary objects are present.

These individuals have been identified as Native American based on the American Museum of Natural History's documentation and geographic information. The original catalog refers to these remains as "Ojibway." These remains were obtained from the postcontact territory of the Ojibway (also known as Chippeway, Chippewa, or Ojibwa).

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of four individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa & Chippewa Indians of Michigan; Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota; Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin; St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation; Turtle Mountain Band of Chippewa Indians of North Dakota; and White Earth Band of the Minnesota Chippewa Tribe, Minnesota.

This notice has been sent to officials of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa & Chippewa Indians of Michigan; Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota;

Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota; Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin; St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation; Turtle Mountain Band of Chippewa Indians of North Dakota; and White Earth Band of the Minnesota Chippewa Tribe, Minnesota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Martha Graham, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5846, before December 5, 2001. Repatriation of the human remains to the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa & Chippewa Indians of Michigan; Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota; Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin; St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation; Turtle Mountain Band of Chippewa Indians of North Dakota; and White Earth Band of the Minnesota Chippewa Tribe, Minnesota may begin after that date if no additional claimants come forward.

Dated: August 28, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–27702 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Brooklyn Museum of Art, Brooklyn, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Brooklyn Museum of Art, Brooklyn, NY, that meet the definition of "sacred objects" and "objects of cultural patrimony" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 93 cultural items are 22 Hopi spirit friends or Katsina masks (Wupamo, Hahea, Wawae, 3 Tasap, 2 Tacheukti, Kaletaka, Honau, Sikya Tihu, 2 Anakatsinamaana, Chakwin, Sio Humis, a headdress for Alosaka Katsina, and 6 unnamed spirit friends), 13 mask attachments, 6 Sio Humis headdress frames, 1 katsina doll, 16 Mazrau society dance items, 9 Snake society dance items, 1 Mazrau Society ceremonial water gourd from Walpi, 1 three-piece fiddle, a bow and several arrows, 8 prayer sticks, lightening sticks and lightening stick frame, 3 pipes, 4 Monkoho chief batons, 1 Hidden Ball game, and 1 fiber ring.

Between 1903 and 1905, Stewart Culin, the curator at the Brooklyn Museum of Art, purchased the katsina masks, Snake society dance items, and Hidden Ball game from Hopi individuals in Hopi villages in Arizona.

In 1904, Mr. Culin purchased the 16 Mazrau society dance items, 1 Mazrau Society ceremonial water gourd from Walpi, 1 three-piece fiddle, a bow and several arrows, 8 prayer sticks, lightening sticks and lightening stick frame, 3 pipes, 4 Monkoho chief batons, and 1 fiber ring from dealers in Chinle and Holbrook, AZ.

During consultation, representatives of the Hopi Tribe of Arizona identified these objects as sacred objects and objects of cultural patrimony. However, representatives of the Hopi Tribe of Arizona did not feel it appropriate to name the ceremonies or functions of these specific objects. Although Brooklyn Museum of Art accession records do not indicate an explicit ceremonial use of these objects, the Brooklyn Museum of Art has no evidence to the contrary. Accordingly, the Brooklyn Museum of Art accepts the determinations of the representatives of the Hopi Tribe for these objects.

Based on accession information and on consultation with Hopi representatives, these 93 cultural items are determined to be affiliated with the Hopi Tribe of Arizona. Representatives of the Hopi Tribe of Arizona, acting on behalf of the Katsinmomngwit, the Maraunomngwit, and the Lenmimngwit Society (Hopi traditional religious leaders) have stated that these 93 cultural items are needed by traditional Hopi religious leaders for the practice of traditional Native American religion by their present day adherents; and that these items have ongoing historical, traditional, and cultural importance central to the culture itself and could not be alienated by any individual.

Based on the above-mentioned information, officials of the Brooklyn Museum of Art have determined that, pursuant to 43 CFR 10.2 (d)(3), these 93 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Brooklyn Museum of Art also have determined that, pursuant to 43 CFR 10.2 (d)(4), these cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and are of such central importance that they may not be alienated, appropriated, or conveyed, by any individual. Lastly, officials of the Brooklyn Museum of Art have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these sacred objects/objects of cultural patrimony and the Hopi Tribe of Arizona.

This notice has been sent to officials of the Hopi Tribe of Arizona and the Pueblo of Zuni Representatives of any other Indian tribe that believes itself to be culturally affiliated with these sacred objects/objects of cultural patrimony should contact Kate Portada, NAGPRA Project Coordinator, Brooklyn Museum of Art, 200 Eastern Parkway, Brooklyn, NY 11238, telephone (718) 638-5000, extension 524, before December 5, 2001. Repatriation of these sacred objects/objects of cultural patrimony to the Hopi Tribe may begin after that date if no additional claimants come forward.

Dated: September 21, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–27707 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the U.S. Department of the Interior, Bureau of Land Management, New Mexico State Office, Santa Fe, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Interior, Bureau of Land Management, New Mexico State Office, Santa Fe, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Colorado Museum, Eastern New Mexico University, Maxwell Museum of Anthropology (University of New Mexico), New Mexico State University Museum, Museum of New Mexico, San Juan County Museum, and Bureau of Land Management professional staffs in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1981, human remains representing 10 individuals were recovered from site LA 31848 in New Mexico during legally authorized excavations and collections conducted by the Archeological Field School of Simon Fraser University. These human remains presently are curated by the Museum of New Mexico. No known individuals were identified. The one associated funerary object is a bone awl.

Based on material culture, architecture, and site organization, site LA 31848 has been identified as an Anasazi pueblo occupied between C.E. 1100-1300.

Continuities of ethnographic materials, technology, and architecture indicate affiliation of Anasazi sites in this area of New Mexico with historic and present-day Puebloan cultures. Oral traditions presented by representatives of the Pueblo of Acoma support cultural affiliation with Anasazi sites in this area of New Mexico.

Based on the above-mentioned information, Bureau of Land Management, New Mexico State Office officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 10 individuals of Native American ancestry. Bureau of Land Management, New Mexico State Office officials also have determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, Bureau of Land Management, New Mexico State Office officials have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary object and the Pueblo of Acoma, New Mexico.

This notice has been sent to officials of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary object should contact Stephen L. Fosberg, State Archeologist and NAGPRA Coordinator, New Mexico State Office, Bureau of Land Management, 1474 Rodeo Road, Santa Fe, NM 87502-0115, telephone (505) 438-7415, before December 5, 2001. Repatriation of the human remains and associated funerary object to the Pueblo of Acoma, New Mexico may begin after that date if no additional claimants come forward.

Dated: October 3, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–27706 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Klamath Indian Tribe of Oregon and the Quartz Valley Indian Community of the Quartz Valley Reservation of California.

In 1925, human remains representing three individuals (catalog numbers 12-11213, 12-11214, 12-11215) were recovered from a site "one mile from mouth of Williamson R. (N. side), E. side Klamath L., Oregon" by Dr. Leslie

Spier. Also in 1925, these human remains were acquired by the Phoebe A. Hearst Museum of Anthropology through university appropriation, a term used to indicate that the human remains and associated funerary objects were brought into the museum on university-sponsored projects with funds provided by the Regents of the University of California. No known individuals were identified. The 200 associated funerary objects (catalog numbers 1-26560, 2-29527) are glass beads and nonhuman bone.

Although these human remains are not clearly identifiable as to tribal origin, given the preponderance of the evidence, these human remains and associated funerary objects have been determined to be culturally affiliated with the Klamath Indian Tribe of Oregon and the Quartz Valley Indian Community of the Auartz Valley Reservation of California. This determination has been based on strong geographical evidence, linguistic evidence, regional archeological evidence indicating cultural continuity perhaps as early as C.E. 700, and the presence of historic-era funerary objects.

Based on the above-mentioned information, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 200 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Klamath Indian Tribe of Oregon and the Quartz Valley Indian Community of the Quartz Valley Reservation of California.

This notice has been sent to officials of the Klamath Indian Tribe of Oregon and the Quartz Valley Indian Community of the Quartz Valley Reservation of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, CA 94720, telephone (510) 643-7884, before December 5, 2001. Repatriation of the human remains and associated funerary objects to the Klamath Indian Tribe of Oregon and the Quartz Valley Indian Community of the Quartz Valley Reservation of California may begin after that date if no additional claimants come forward.

Dated: October 3, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–27704 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the California State Department of Transportation (CALTRANS), Sacramento, CA, and in the Possession of the Department of Anthropology, San Francisco State University, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the California State Department of Transportation (CALTRANS), Sacramento, CA, and in the possession of the Department of Anthropology, San Francisco State University, San Francisco, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by San Francisco State University Department of Anthropology and CALTRANS professional staffs in consultation with representatives of the Indians of the Graton Rancheria of California.

During 1965-1966, human remains representing a minimum of 19 individuals were recovered from site CA-MRN-***, Marin County, CA, during legally authorized salvage excavations for CALTRANS conducted by C. McNeath, T. King, and M. Moratto of San Francisco State University, San Francisco, CA. No known individuals were identified. The 104 associated funerary objects include flaked stone, groundstone, bone tools, chert scrapers, 1 glass scraper, shell ornaments, and baked clay.

Site CA-MRN-192 is located within documented Coast Miwok territory. Based on the associated funerary objects, these individuals have been identified as Native American. Based on the artifact assemblage, site CA-MRN-192 was occupied from Middle Horizon to Late Horizon Phase II (circa B.C.E. 2000-1500) to Euro-American contact. Based on archeological and linguistic research, these human remains and associated funerary objects may likely represent Penutian-speaking Coast Miwok inhabitants of Marin County, CA. Consultation with representatives of the Indians of Graton Rancheria of California confirms that these human remains and associated funerary objects are affiliated with the Coast Miwok represented by the Indians of the Graton Rancheria of California.

Based on the above-mentioned information, officials of CALTRANS have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 19 individuals of Native American ancestry. Officials of CALTRANS also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 104 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of CALTRANS have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Indians of the Graton Rancheria of California.

This notice has been sent to officials of the Indians of the Graton Rancheria of California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Tina Biorn, California State Department of Transportation, P.O. Box 942874 (M.S. 27), Sacramento, CA 94274-0001, telephone (916) 653-0013, before December 5, 2001. Repatriation of the human remains and associated funerary objects to the Indians of the Graton Rancheria of California may begin after that date if no additional claimants come forward.

Dated: September 28, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–27705 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Denver Department of Anthropology and Museum of Anthropology professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Hopi Tribe of Arizona; Pascua Yaqui Tribe of Arizona; Pueblo of Laguna, New Mexico; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; Zuni Tribe of the Zuni Reservation, New Mexico.

Around 1925, human remains representing one individual were recovered from the Hill Ruin, Maricopa County or Pinal County, AZ, by archeologist Frank Midvale. At an unknown date, the remains were transferred to Fallis F. Rees, who donated them to the University of Denver Department of Anthropology and Museum of Anthropology in 1967. No known individual was identified. The 311 associated funerary objects are 1 Sacaton Red-on-Buff bowl, 1 Sacaton Red-on-Buff bowl fragment, 284 Sacaton phase and Santa Cruz phase projectile points, and 25 shell beads.

The burial is a cremation. The Hill Ruin is located 10 miles southwest of Phoenix, AZ, and has been identified as a Hohokam settlement based on the artifacts. The funerary objects can be dated to the Santa Cruz phase (A.D. 800–1000) and the Sacaton phase (A.D. 1000–1200) of the Hohokam sequence.

At an unknown date, human remains representing a minimum of one individual were recovered from an unknown site in the Gila Plain, Maricopa County or Pinal County, AZ, by an unknown person. The remains were cremated and are in fragmentary condition, which makes an accurate determination of the number of individuals impossible. At an unknown date, the remains came into the possession of Fallis F. Rees, who donated the remains to the University of Denver Department of Anthropology and Museum of Anthropology in 1967. No known individual was identified. The 209 associated funerary objects are 1 plainware "cremation" bowl, 1 "cremation" olla, 2 buff ceramic rim sherds, 1 piece of cut and decorated mica, 1 shell fragment, 1 possible shell bracelet, and 202 nonhuman bone fragments, some of which may be bird bones.

Indian tribes occupying the Gila Plain have been identified as culturally affiliated with the Hohokam. Continuity of mortuary practices, ethnographic materials, and technology indicate an affiliation between ancient Hohokam settlements and present-day O'odham (Piman), Pee Posh (Maricopa), and Puebloan cultures. The Hopi Tribe of Arizona and the Pueblo of Zuni provided written testimony affirming cultural affiliation with Hohokam. Archeological and ethnohistorical evidence also were used to determine cultural affiliation.

Hohokam culture spans approximately 300 B.C.-A.D. 1400 in the semiarid region of what is now central and southern Arizona, largely along the Gila and Salt Rivers. The culture is customarily divided into four developmental periods: Pioneer (circa 300 B.C.-A.D. 500), Colonial (A.D. 500–900), Sedentary (A.D. 900–1100), and Classic (A.D. 1100–1400).

During the Pioneer period, the Hohokam people lived in villages composed of widely scattered, individually built structures of wood, brush, and clay, each built over a shallow pit. They depended on the cultivation of corn (maize), supplemented by the gathering of wild beans and fruits and some hunting. Although floodwater irrigation may have been practiced, it was during this period that the first irrigation canal was built, a 3-mile-long channel in the Gila River valley that directed river water to the fields. Eventually, the Hohokam people developed complex canal networks. During this early period they also developed several varieties of pottery.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 502 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Ak Chin Indian Community of the

Maricopa (Ak Chin) Indian Reservation, Arizona; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Hopi Tribe of Arizona; Pascua Yaqui Tribe of Arizona; Pueblo of Laguna, New Mexico; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator, University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S-146, Denver, CO 80208–2406, e-mail jbernste@du.edu, telephone (303) 871–2543, before December 5, 2001. Repatriation of the human remains and associated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: August 31, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–27703 Filed 11–2–01; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–451]

Certain CMOS Active Pixel Image Sensors and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") terminating the investigation in its entirety based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on March 5, 2001, based on a complaint filed by Photobit Corp. (Photobit) and the California Institute of Technology (Caltech), both of Pasadena, CA, against respondents OmniVision Technologies, Inc. of Sunnyvale, CA (OmniVision), Creative Labs, Inc. of Milpitas, CA (Creative Labs), and X10 Wireless Technology Inc. of Seattle, WA (X10). 66 FR 14421 (2001). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain CMOS active pixel image sensors and products containing same by reason of infringement of claims 1 and 2 of U.S. Letters Patent 5,841,126; claims 15–19 of U.S. Letters Patent 5,990,506; and claims 6–8 and 31 of U.S. Letters Patent 6,005,619.

On September 24, 2001, complainants Photobit and Caltech and respondents Creative Labs, OmniVision, and X10 filed a joint motion to terminate the investigation in its entirety based on settlement agreements. On October 2, 2001, the Commission investigative attorney filed a response supporting the joint motion. On October 9, 2001, the ALJ issued an ID (Order No. 10) granting the joint motion. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: October 30, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27636 Filed 11–2–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–441]

Certain Field Programmable Gate Arrays and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") terminating the investigation in its entirety based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 21, 2000, based on a complaint filed by Xilinx, Inc. of San Jose, CA. 65 FR 80454 (2000). The complaint named Altera Corp. of San Jose, CA as the only respondent. Id. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain field programmable gate arrays and products containing same by reason of infringement of claims 1–3 and 5 of U.S. Letters Patent 5,343,406; claims 1 and 3 U.S. Letters Patent 5,432,719 ("the '719 patent"); and claim 16 of U.S. Letters Patent 5,861,761. On July 11, 2001, the ALJ issued an ID (Order No. 6) amending the notice of investigation to add claim 2 of the '719 patent. 66 FR 39790 (2001). The Commission determined not to review that ID.

A tutorial was held on June 22, 2001, and an evidentiary hearing was held from June 25 through July 5, 2001.

On July 25, 2001, complainant Xilinx, Inc. and respondent Altera Corp. filed a joint motion to terminate the investigation by settlement. On July 31, 2001, the Commission investigative attorney filed a response supporting the joint motion. On October 2, 2001, the presiding ALJ issued an ID (Order No. 8) granting the joint motion. No party petitioned for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: October 30, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27635 Filed 11–2–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1339]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of Meeting.

SUMMARY: Announcement of the Coordinating Council on Juvenile Justice and Delinquency Prevention meeting.

DATES: A meeting of this advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will take place in the District of Columbia, beginning at 10 a.m. on Friday, November 30, 2001, and ending at noon, ET.

ADDRESSES: The meeting will take place at the U.S. Department of Justice, Office of Justice Programs, Main Conference Room, 3rd Floor, 810 Seventh Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Bob Altman, Program Manager, Juvenile Justice Resource Center at (301) 519–5721. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Coordinating Council, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App.2), will meet to carry out its advisory functions under section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 et seq.). The topic of this meeting is Supporting Community and Faith-based Initiatives. This meeting will be open to the public. Members of the public who wish to attend the meeting should notify the Juvenile Justice Resource Center at the number listed above by 5 p.m., ET, on Friday, November, 16, 2001. For security purposes, picture identification will be required.

Dated: October 31, 2001.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 01–27667 Filed 11–2–01; 8:45 am]

BILLING CODE 4410–18–P

MERIT SYSTEMS PROTECTION BOARD

Opportunity To File Amicus Briefs in *Gerald Michaud* v. *Department of the Army*, MSPB Docket No. BN–3443–00–0167–I–1

AGENCY: Merit Systems Protection Board.

SUMMARY: The Merit Systems Protection Board has requested an advisory opinion from the Director of the Office of Personnel Management (OPM) concerning the interpretation of regulations promulgated by OPM governing the Reemployment Priority List (RPL) at 5 CFR part 330, subpart B. The Board is providing interested parties with an opportunity to submit amicus briefs on the same questions raised in the request to OPM. The Board's request to OPM is reproduced below:

Pursuant to 5 U.S.C. 1204(e)(1)(A), the members of the Merit Systems Protection Board request that you provide an advisory opinion concerning the interpretation of regulations promulgated by the Office of Personnel Management (OPM).

SUPPLEMENTARY INFORMATION: This request for an advisory opinion is related to our previous request for an advisory opinion in *Sturdy* v. *Department of the Army*, 88 M.S.P.R. 502 (2001). There, we requested an advisory opinion on whether the Board has jurisdiction, under 5 CFR 330.209, over an alleged violation of reemployment priority rights when the employee received a Certification of Expected Separation by reduction in force (RIF) and/or a specific notice of RIF separation but was reassigned in lieu of his expected RIF separation. (For ease of reference, the term "notice of RIF separation" will be used hereinafter to refer to either type of notice.)

In response to our request in Sturdy, OPM's General Counsel provided an advisory opinion stating that separation by RIF is not a jurisdictional requirement for a "reemployment priority rights" appeal under 5 CFR 330.209 because employees are entitled to enroll in the Reemployment Priority List (RPL) as soon as they receive a notice of RIF separation. We deferred to OPM's advisory opinion and held in Sturdy, 88 M.S.P.R. 502, ¶¶ 16–19, that separation by RIF is not a jurisdictional requirement for "reemployment priority rights" appeal.

In *Michaud* v. *Department of the Army*, MSPB Docket No. BN–3443–00–0167–I–1, the appellant initially received a notice of RIF separation, but subsequently received an amended RIF

notice, informing him of his impending RIF demotion. He was then demoted by RIF pursuant to the amended RIF notice. Michaud alleged in his appeal that his nonselections for positions, including nonselections that occurred after his RIF demotion, violated his reemployment priority rights.

Question To Be Resolved

Michaud raises the question whether an employee who gains RPL eligibility based on his initial receipt of a notice of RIF separation retains his RPL eligibility after his RIF demotion (in lieu of his expected RIF separation), so that the Board has jurisdiction under 5 CFR 330.209 over any nonselections that occurred after his RIF demotion.

The members of the Board request that you provide an advisory opinion on this question and, in doing so, address the issues discussed below, as well as any other issues you deem pertinent.

Issues To Be Considered In Resolving the Question Posed

5 CFR 330.203(d)(2)(ii)

Section 330.203(d)(2)(ii) provides that "an individual is taken off the RPL before the period of eligibility expires when the individual * * * (ii) (r)eceives a career, career-conditional, or excepted appointment without time limit in any agency * * *." This section appears to broadly provide that an individual's RPL eligibility terminates upon his assignment to any permanent career, career-conditional, or excepted position in any agency, regardless of whether the assignment was by RIF or not, and regardless of whether the assignment was to a higher-, lower- or same-graded position. Thus, as explained further below, § 330.203(d)(2)(ii) could be interpreted as terminating Mr. Michaud's RPL eligibility based on his acceptance of a RIF demotion.

We note in this regard that the term "appointment" in § 330.203(d)(2)(ii) does not appear to be limited to an initial hiring or a re-hiring after a break in service; rather, it appears to be a general term referring to an assignment to a position under particular terms and conditions. See 5 CFR 2.2(a) ("career appointments shall be given to * * * (e)mployees serving under career appointments at the time of selection"), § 351.501(b)(3) ("Group III includes all employees serving under indefinite appointments, temporary appointments pending establishment of a register, status quo appointments, term appointments, and any other nonstatus nontemporary appointments which meet the definition of provisional appointments contained in §§ 316.401 and 316.403 of this chapter."); Wenk v. Office of Personnel Management, 21 M.S.P.R. 218, 221–23 (1984). Thus, the term "appointment," and hence § 330.203(d)(2)(ii), could be interpreted to cover the RIF demotion in Michaud.

5 CFR 330.203(d)(2)(iii), 330.203(d)(2)(ii), 330.206(a)(1) and 330.203(a)(4)

Section 330.203(d)(2)(iii) provides that "an individual is taken off the RPL before the period of eligibility expires when the individual * * * (iii) (d)eclines an offer of career, career-conditional, or excepted appointment without time limit * * * concerning a specific position having a representative rate at least as high, and with the same type of work schedule, as that of the position from which the person was or will be separated."

Because § 330.203(d)(2)(iii) states that declining a reassignment terminates RPL eligibility, but does not state that declining a demotion terminates RPL eligibility, one may argue based on this section that accepting a demotion does not terminate RPL eligibility. However, § 330.203(d)(2)(iii), on its face, applies to situations when an individual *declines* a placement offer, and not to situations when an individual accepts a placement offer. As discussed above, when Mr. Michaud accepted a RIF demotion, it could be argued that this constituted the acceptance of an "appointment" which terminated his RPL eligibility under § 330.203(d)(2)(ii).

Thus, when subsections (ii) and (iii) of § 330.203(d)(2) are read together, they could be interpreted to provide individuals a choice between receiving/accepting an offered appointment (at whatever grade and pay) with concurrent termination of RPL eligibility, or declining the offered appointment and taking a chance that a better appointment offer will be forthcoming while remaining on the RPL. These provisions do not appear to allow individuals to accept a placement offer and still remain on the RPL.

On the other hand, § 330.206(a)(1) ("Job consideration") provides that:

> An eligible employee under § 330.203 is entitled to consideration for positions in the commuting area for which qualified and available that are at no higher grade (or equivalent), have no greater promotion potential than the position from which the employee was or will be separated, and have the same type of work schedule. *In addition, an employee is entitled to consideration for any higher grade previously held on a nontemporary basis in the competitive service from which the employee was demoted under part 351 of this chapter.*

(Emphasis added.)

The italicized language is 5 CFR 330.206(a)(1) arguably suggests that an individual who is demoted by RIF, like Mr. Michaud, remains eligible for the RPL after the RIF demotion. However, § 330.206(a) addresses the types of positions for which an RPL eligible is entitled to be considered; it does not address RPL eligibility, which is set forth in the RPL regulations, at 5 CFR 330.203(a). Further, although § 330.203(a)(4) provides RPL eligibility for employees who have not declined certain types of RIF placements (i.e., positions at the same or higher representative salary with the same work schedule), the eligibility criteria in § 330.203 do not include employees, like Mr. Michaud, who have accepted RIF offers of lower-graded positions.

Thus, the statement in § 330.206(a)(1) that an RPL eligible is "entitled to consideration for any higher grade previously held * * * from which (he) was demoted" by RIF is ambiguous. Was this regulation intended to provide for RPL eligibility after an employee has accepted a RIF demotion?

Federal Personnel Manual (FPM)

The FPM, ch. 330, Subch. 1, Sec. 1–4.b (Feb. 22, 1991), provided that an employee "loses RPL eligibility if he or she is * * * (a)ssigned to a permanent competitive position at any grade in the same or different agency before the RIF separation takes effect" and that "employees who are demoted by RIF action are not eligible for the RPL but may be eligible for priority consideration for their former grade level through other agency programs(.)" This FPM provision, along with many others, was abolished effective December 31, 1993. FPM Sunset Document. It appears, however, that OPM has not changed its interpretation of the RPL regulations since abolishing the FPM. See 60 FR 3055 (Jan. 13, 1995) (when the RPL regulations were last revised, to incorporate some of the sunsetted FPM provisions, OPM noted that "(t)here was particular agreement not to change current policies in the sensitive area of reductions-in-force (RIF) and related reemployment priority lists (RPL)").

Policy Considerations

The facts in Michaud highlight an anomalous result stemming from the RPL regulations. When an individual (Employee A) initially receives a notice of RIF separation, but is subsequently demoted (as in Michaud) or reassigned (as in Sturdy) in lieu of his initially expected RIF separation, he nevertheless is eligible for the RPL, at least up until the time he accepts the demotion or reassignment. (Whether such employees retain RPL eligibility after they are demoted or reassigned is the central question posed by this request for an advisory opinion). However, when an individual (Employee B) is demoted or reassigned in a RIF, without initially receiving a notice of RIF *separation*, it appears that he never gains RPL eligibility because receipt of a notice of RIF separation is a requirement under the RPL regulations. See 5 CFR 330.203(a)(3). Employee A's initial receipt of a notice of RIF separation did not result in his actual RIF separation or have any deleterious effect on his employment vis-à-vis Employee B, and yet his receipt of the notice gave him important rights—RPL eligibility and concomitant Board appeal rights—not given to Employee B. It appears arbitrary to differentiate between Employee A and Employee B simply because Employee A happened to have received a notice of RIF separation. however, if the requirement for a notice of separation. However, if the requirement for a notice of separation in § 330.203(a)(3) is interpreted broadly as notice that the employee would be separated from his *current* position, it appears that employee B would be eligible for the RPL if acceptance of a RIF demotion does not disqualify the employee under the regulations discussed above. What is OPM's view on whether Employee B is eligible for the RPL under its regulations?

Instructions Regarding the Advisory Opinion

The Director is requested to submit her advisory opinion to the Clerk of the Board within 30 days of her receipt of this letter, and to serve copies of her opinion on the parties and their representatives in the above-captioned appeal. (The addresses of the parties and their representatives are set forth below in the "cc" list.)

Right of the Parties to Respond to Director's Opinion

The parties may file any comments on the Director's opinion no later than 30 days from the date of service of her opinion.

DATES: All briefs in response to this notice shall be filed with the Clerk of the Board on or before December 5, 2001.

ADDRESSES: All briefs should include the case name and docket number noted above (Gerald Michaud v. Department of the Army, MSPB Docket No. BN–3443–00–0167–I–1) and be entitled "Amicus Brief." Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, (202) 653–7200.

Dated: October 29, 2001.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 01–27657 Filed 11–2–01; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request, Evaluation of the Institute of Museum and Library Services General Operating Support Grant Program

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(2)(A)) This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of Status of Museum School Partnerships.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 4, 2002.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

ADDRESSES: Send comments to: Karen Motylewski, Research Officer, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Ms. Motylewski can be reached on Telephone: 202–606–5551. Fax; 202–606–1077 or at *kmotylewski@imls.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Pub. L. 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

Agency: Institute of Museum and Library Services.

Title: Evaluation of the Institute of Museum and Library Services General Operating Support Grant Program.

OMB Number: n/a.

Agency Number: 3137.

Frequency: 10 years.

Affected Public: Museums.

Number of Respondents: 1500.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 750.

Total Annualized capital/startup costs: $73,585.

Total Annual costs: $7,358.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director Office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW. Washington, DC 20506, telephone (202) 606–4648.

Dated: October 24, 2001.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 01–27648 Filed 11–2–01; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL COUNCIL ON THE HUMANITIES

Meeting

October 30, 2001.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given the National Council on the Humanities will meet in Washington, DC on November 15–16, 2001.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on November 15–16, 2001, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on November 15, 2001 will be as follows:

Committee Meetings

9:00–10:30 a.m.
(Open to the Public)
Policy Discussion
Education Programs—Room M–07
Preservation and Access/Challenge Grants—Room 415
Public Programs—Room 426
Research Programs—Room 315
(Closed to the Public)
Discussion of specific grant applications and programs before the Council
10:30 a.m. until Adjourned
Federal/State Partnership
Preservation and Access/Challenge Grants
Public Programs
12:30–2:00 p.m.
Research Programs
Jefferson Lecture and National Humanities Medals Committee Meeting

The morning session on November 16, 2001 will convene at 9:00 a.m., in the 1st Floor Council Room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting

Reports

A. Introductory Remarks
B. Staff Report
C. Congressional Report
D. Reports on Policy and General Matters
1. Overview
2. Research Programs
3. Education Programs
4. Preservation and Access/Challenge Grants
5. Public Programs
6. Jefferson Lecture/National Humanities Medals

The remainder of the proposed meeting will be given to the consideration of specific applications and programs before the Council and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Ms. Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Laura S. Nelson,

Advisory Committee, Management Officer.

[FR Doc. 01–27656 Filed 11–2–01; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent to Seek Approval to Reinstate with Revision an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and Request for Comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request reinstatement of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by January 4, 2002 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Application for NATO Advanced Study Institutes Travel Award and NATO Advanced Study Institutes Travel Award Report Form.

OMB Approval Number: 3145–0001.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to reinstate an information collection for three years.

Abstract: The North Atlantic Treaty Organization (NATO) initiated its Advanced Study Institutes Program in 1958 modeled after a small number of very successful summer science "courses" that were held in Europe and that sought to rebuild Europe's science strength following World War II. The goal was to bring together both students and researchers from the leading centers of research in highly targeted fields of science and engineering to promote the "American" approach to advanced learning, spirited give-and-take between students and teachers, that was clearly driving the rapid growth of U.S. research strength. Today the goal remains the same; but due to the expansion of NATO, each year an increasing number of ASIs are held in NATO Partner Countries along with those held in the original NATO Member Countries. In the spirit of cooperation with this important activity, the Foundation inaugurated in 1959 a small program of travel grants for advanced graduate students and young postdoctorals to assist with the major cost of such participation, that of transatlantic travel. It remains today a significant means for young scientists and engineers to develop contact with their peers throughout the world in their respective fields of specialization.

The Advanced Study Institutes (ASI) travel awards are offered primarily to advanced graduate students, but include recent postdoctoral students and new science faculty members, to attend one of the NATO's ASIs held in the NATO-member and partner countries of Europe. The NATO ASI program is targeted to those individuals nearing the completion of their doctoral studies in science, mathematics, and engineering who can take advantage of opportunities to become familiar with progress in their respective fields of specialization in other countries.

The following describes the procedures for the administration of the Foundation's NATO Advanced Study Institute (ASI) Travel Awards, which provide travel support for a number of U.S. graduate students and postdoctoral participants to attend the ASIs scheduled for Europe.

Advanced Study Institute Determination

Once NATO has notified us that the schedule of institutes is final, and we have received the descriptions of each institute, we determine which institutes NSF will support. The ASI travel award program supports those institutes that offer instruction in the fields of science traditionally supported by NSF as published in *Guide to Programs*. The program will not support institutes that deal with clinical topics, biomedical topics, or topics that have disease-related goals. Examples of areas of research that will not be considered are epidemiology; toxicology; the development or testing of drugs or procedures for their use; diagnosis or treatment of physical or mental disease, abnormality, or malfunction in human beings or animals; and animal models of such conditions. However, the program does support institutes that involve research in bioengineering, with diagnosis or treatment-related goals that apply engineering principles to problems in biology and medicine while advancing engineering knowledge. The program also supports bioengineering topics that aid persons with disabilities. Program officers from other Divisions in NSF will be contacted should scientific expertise beyond our own be required in the determination process.

- **Solicitation for Nominations**

Following the final determination as to which Advanced Study Institutes NSF will support, we contact each institute director to ask for a list of up to 5 nominations to be considered for NSF travel support.

- **EHR Contact With the Individuals Nominated**

Each individual who is nominated by a director will be sent the rules of eligibility, information about the amount of funding available, and the forms (NSF Form 1379, giving our Finance Office electronic banking information; NSF Form 1310 (already cleared), and NSF Form 192 (Application for International Travel Grant) necessary for our application process.

- **The Funding Process**

Once an applicant has been selected to receive NSF travel award support, his or her application is sent to our Finance office for funding. They electronically transfer the amount of $1000 into the bank or other financial institution account identified by the awardee.

Our plan is to have the $1000 directly deposited into the awardee's account prior to the purchase of their airline ticket. An electronic message to the awardee states that NSF is providing support in the amount of $1000 for transportation and miscellaneous expenses. The letter also states that the award is subject to the conditions in F.L. 27, *Attachment to International Travel Grant*, which states the U.S. flag-carrier policy.

As a follow-up, each ASI director may be asked to verify whether all NSF awardees attended the institute. If an awardee is identified as not utilizing the funds as prescribed, we contact the awardee to retrieve the funds. However, if our efforts are not successful, we will forward the awardee's name to DGA, which has procedures to deal with that situation.

We also ask the awardee to submit a final report on an NSF Form 250, which we provide as an attachment to the electronic award message.

- **Selection of Awardees**

The criteria used to select NSF Advanced Study Institute travel awardees are as follows:

1. The priority of selection is by the status level of the applicant:

(a) Advanced graduate student, or

(b) Recent post-doc (Ph.D. received no earlier than three years before the ASI).

(c) New faculty with Ph.D.'s received no earlier than three years before the ASI).

2. We shall generally follow the order of the nominations, listed by the director of the institute, within priority level.

3. Those who have not attended an ASI in the past will have a higher priority than those who have.

4. Nominees from different institutions and research groups have higher priority than those from the same institution or research group. (Typically, no more than one person is invited from a school or from a research group.)

Use of the Information: For NSF Form 192, information will be used in order to verify eligibility and qualifications for the award. For NSF Form 250, information will be used to verify attendance at Advanced Study Institute and will be included in Division annual report.

Estimate of Burden: Form 192—1.5 hours. Form 250—2 hours.

Respondents: Individuals.

Estimated Number of Responses per Award: 150 responses, broken down as follows: For NSF Form 250, 75 respondents; for NSF Form 192, 75 respondents.

Estimated Total Annual Burden on Respondents: 262.5 hours, broken down by 150 hours for NSF Form 250 (2 hours per 75 respondents); and 112.5 hours for NSF Form 192 (1.5 hours per 75 respondents).

Frequency of Responses: Annually.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 31, 2001.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 01–27677 Filed 11–2–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 29, 2000, the National Science Foundation published a notice in the **Federal Register** of a permit applications received. A permit was issued on October 17, 2001 to: Moody Gardens, Inc., Permit No. 2001–017.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 01–27678 Filed 11–2–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Energy Corporation; McGuire Nuclear Station, Unit Nos. 1 and 2; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Duke Energy Corporation (the licensee) for an amendment to Facility Operating License (FOL) Nos. NPF–9 and NPF–17 issued to the licensee for operation of the McGuire Nuclear Station, Unit Nos. 1 and 2, respectively, located in Mecklenburg County, North Carolina. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on November 1, 2001 (65 FR 65341).

The purpose of the licensee's amendment request was to revise the FOLs by (a) deleting the license conditions (LCs) that have been fulfilled by actions that have been completed or are imposed by other regulatory requirements, (b) changing the license conditions that have been superseded by the current plant status, and (c) incorporating other administrative changes.

The NRC staff has concluded that the licensee's request cannot be fully granted with regard to the following elements for Unit 1:

License Condition 2.G, Reporting of Violations

The licensee's basis for deletion of license condition 2.G which requires the reporting of violations of the requirements of license conditions 2.C(1), Maximum Power Level, 2.C(4) Fire Protection program, and 2.E, on safeguards and security, is that the primary reporting requirements for these license conditions are covered by 10 CFR 50.72 and 10 CFR 50.73. However, the staff does not find that the licensee has shown that specific issues addressed by these LCs are encompassed by the provisions of 10 CFR 50.72 and 10 CFR 50.73 and, on this basis denies the request to delete license condition 2.G as it applies to license condition 2.C(1), 2.C(4) and 2.E. The licensee's request to delete portions of license condition 2.G as it applies to other license conditions has been granted.

The NRC staff has concluded that the licensee's request cannot be fully granted with regard to the following elements for Unit 2:

License Condition 2.C(11), Protection of the Environment

The NRC staff determined that the license condition must be retained on the basis that the requirement of the license condition is an ongoing requirement and will be germane for the life of the license. Licensee compliance with some environmental regulations is, in fact, monitored by the State of North Carolina and the U.S. Environmental Protection Agency. However, in its role as a licensing agency, the NRC is responsible for monitoring compliance with other regulations. Examples include the Endangered Species Act and the Historic Preservation Act. In order to meet its responsibilities, the NRC must be made aware of planned licensee activities which may result in a significant adverse environmental impact that was not evaluated or that is significantly greater than that evaluated in the Final Environmental Statement or any other environmental impact statement (EIS) relevant to the site (e.g., an EIS associated with license renewal). Therefore, staff finds that this requirement must remain in place and that its request for deletion is denied.

License Condition 2.F, Reporting of Violations

The licensee's basis for deletion of license condition 2.F which requires the reporting of violations of the requirements of license conditions 2.C(1), Maximum Power Level, 2.C(7) Fire Protection, 2.C(11) Protection of the Environment, and 2.E, on safeguards and security, is that the primary reporting requirements for these license conditions are covered by 10 CFR 50.72 and 10 CFR 50.73. However, the staff does not find that the licensee has shown that the specific issues addressed by these LCs are encompassed by the provisions of 10 CFR 50.72 and 10 CFR 50.73 and, on this basis denies the request to delete license condition 2.G as it applies to license condition 2.C(1), 2.C(7), 2.C(11) and 2.E. The licensee's request to delete portions of license condition 2.F as it applies to other license conditions has been granted.

Accordingly, this aspect of the licensee's proposed license amendment is denied. The licensee was notified of the Commission's denial of the proposed change by a letter dated October 19, 2001.

By December 5, 2001, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 Attention: Rulemakings and Adjudications Staff, or may be delivered to the U.S. Nuclear Regulatory Commission, Public Document Room, Washington, DC 20555–0001, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006 attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated June 13, 2000, as supplemented August 30 and September 10, 2001, and (2) the Commission's letter to the licensee dated October 19, 2001.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC web site *(http://www.nrc.gov)*.

Dated at Rockville, Maryland, this 19th day of October 2001.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–27731 Filed 11–2–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Form N–8F, Form S–6—OMB Control No. 3235–0157, SEC File No. 270–136; OMB Control No. 3235–0184, SEC File No. 270–181

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") is publishing for public comment the following summary of previously approved information collection requirements. The Commission plans to submit these existing collections of information to the Officer of Management and Budget for extension and approval.

Form N–8F is the form prescribed for use by registered investment companies in certain circumstances to request orders of the Commission declaring that the registration of that investment company cease to be in effect. The form requests, from investment companies seeking a deregistration order, information about (i) the investment company's identity, (ii) the investment company's distributions, (iii) the investment company's assets and liabilities, (iv) the events leading to the request to deregister, and (v) the conclusion of business. The information is needed by the Commission to determine whether an order of deregistration is appropriate.

Form N–8F takes approximately 3 hours on average to complete. It is estimated that approximately 200 investment companies file Form N–8F annually, so that the total annual burden for the form is estimated to be 600 hours.

Form S–6 is used for registering, under the Securities Act of 1933 (1933 Act), the securities of any unit investment trust registered under the Investment Company Act of 1940 (1940 Act) on Form N–8B–2.[1] A separate registration statement under the 1933 Act must be filed for each series of units issued by the trust. Form S–6 consists of two parts. Part I contains the prospectus, and Part II consists of a list of exhibits and financial information and contains other information required in the registration statement but not required to appear in the prospectus.

Section 10(a)(3) of the 1933 Act (15 U.S.C. 77j(a)(3)) provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information therein shall be as of a date not more than sixteen months prior to such use. Unit investment trusts file post-effective amendments to their registration statements on Form S–6 in order to update their prospectus. As a result, most unit investment trusts update their registration statements on Form S–6 Act on an annual basis in order that their sponsors may continue to maintain a secondary market in the units.

The purpose of the registration statement on Form S–6 is to provide disclosure of financial and other information that investors may use to make informed decisions regarding the merits of the securities offered for sale. To that end, unit investment trusts must furnish to investors a prospectus containing pertinent information set forth in the registration statement. Without the registration requirement, this material information would not necessarily be available to investors. The Commission reviews registration statements filed on Form S–6 to ensure adequate disclosure is made to investors.

Each year investment companies file approximately 3,639 Forms S–6. It is estimated that preparing Form S–6 requires a unit investment trust to spend approximately 35 hours so that the total burden on preparing Form S–6 for all affected investment companies is 127,365 hours.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are requested on: (a) Whether the collections of information necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: October 26, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27709 Filed 11–2–01; 8:45 am]

BILLING CODE 8010–01–M

[1] Form N–8B–2 is the form used for registration statements filed by unit investment trusts under the 1940 Act. The form requires that certain material information about the trust, its sponsor, its trustees, and its operation be disclosed. The registration on Form N–8B–2 is a one-time filing that applies to the first series of the unit investment trust as well as any subsequent series that is issued by the sponsor.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:
Rule 425, Schedule TO—OMB Control No. 3235–0521, SEC File No. 270–462; OMB Control No. 3235–0515, SEC File No. 270–456

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*,) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 425 requires the filing of certain prospectuses and communications under Rule 135 in connection with business combinations. The purpose of the rule was to relax existing restrictions on oral and written communications with shareholders about tender offers, mergers and other business combination transactions by permitting the dissemination of more information on a timely basis as long as the written communications are filed on the date of first use. Approximately 5,739 issuers file communications under Rule 425 for a total of 1,435 annual burden hours.

Schedule TO must be filed by a reporting company that makes a tender

offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under section 12 of the Exchange Act (which offer, if consummated, would cause that person to own over 5 percent of that class of the securities) must file Schedule TO. The purpose Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. Approximately 3,038 issuers annually file Schedule TO and it takes 43.5 hours to prepare for a total of 132,153 annual burden hours. It is estimated that 50% of the 132,153 total burden hours (66,077 burden hours) is prepared by the company.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Pease direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW.. Wshington, DC 20549.

Dated: October 25, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27711 Filed 11–2–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 10b–18—SEC File No. 270–416, OMB Control No. 3235–0474

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 10b–18 under the Securities Exchange Act of 1934 (Exchange Act) provides that the issuer or any affiliated purchaser of the issuer will not incur liability under section 9(a)(2) of the Exchange Act or Rule 10b–5 under the Exchange Act if its purchases are effected in compliance with the manner, timing, price, and volume limitations of the safe harbor. The Rule further provides that purchases falling outside of the Rule's conditions shall not give rise to a presumption of manipulation. An issuer or an affiliated purchaser seeking to avail itself of the safe harbor, however, must collect information regarding the manner, time, price, and volume of its purchases of the issuer's common stock in order to verify compliance with the Rule's conditions and application of the safe harbor.

Each year there are approximately 1,179 share repurchase programs conducted in accordance with Rule 10b–18. For each such repurchase program, an average of approximately 8 hours are spent collecting the requisite information. If approximately 1,179 issuers engage in repurchases following a market-wide trading suspension and comply with the safe harbor then, collectively, these issuers would incur an additional 1,179 burden hours. Thus, the total compliance burden per year is approximately 10,611 burden hours.

Compliance with Rule 10b–18 does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Office for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 30, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27710 Filed 11–02–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27460]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 30, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by **November 26, 2001,** to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After **November 26, 2001,** the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Grid Group plc, et al. (70–9849)

National Grid Group plc ("National Grid"), a registered public-utility holding company, its nonutility direct subsidiary, New National Grid plc ("New National Grid"), both located at 15 Marylebone Road, London, NW15JD, United Kingdom, certain registered public-utility holding company subsidiaries of National Grid ("Intermediate Holding Companies")—namely, National Grid (US) Holdings Limited, National Grid (US) Investments, both located at 15 Marylebone Road, London, NW15JD, United Kingdom, National Grid Ireland 1 Limited, National Grid Ireland 2 Limited, both located at 6 Avenue Pasteur, L 2310, Luxembourg, National Grid General Partnership, located on the 8th Floor of the Oliver Building, 2 Oliver Street, Boston Massachusetts 02109—National Grid USA, a registered public-utility holding company and direct or indirect subsidiary of the Intermediate Holding Companies, its direct and indirect subsidiaries—namely, New England Power Company ("NEPCO"), a public-utility company and public-utility holding company exempt from registration under section 3(a)(2),[1] Massachusetts Electric Company ("Massachusetts Electric"), a public-utility company, The Narragansett Electric Company ("Narragansett"), a public-utility company, Granite State Electric Company ("Granite State"), a public-utility company, Nantucket Electric Company ("Nantucket Electric"), a public-utility company, New England Electric Transmission Corporation ("NEET"), a public-utility company, New England Hydro-Transmission Corporation ("NH Hydro"), a public-utility company, New England Hydro-Transmission Electric Co., Inc. ("MA Hydro") a public-utility company, Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), a public-utility company, Wayfinder Group, Inc., a nonutility company, Metrowest Realty LLC, a nonutility company, NEES Energy, Inc., a nonutility company, EUA Energy Investments Corp., a nonutility company, National Grid Transmission Services Corp., a nonutility company, National Grid USA Service Company Inc. (formerly known as New England Power Service Company), a service company within the meaning of rule 88 under the Act, all located at 25 Research Drive, Westborough, Massachusetts 01582, and each of their subsidiaries—together with Niagara Mohawk Holdings, Inc. ("NiMo"), a holding company exempt from regulation under section 3(a)(1) of the Act,[2] and its direct and indirect subsidiaries (collectively, "Applicants"), including Niagara Mohawk Power Company ("Niagara Mohawk"), a public-utility company, and Opinac North America, Inc. ("Opinac"), its direct nonutility subsidiary, all located at 300 Erie Boulevard West Syracuse, New York 13202, have filed an application-declaration under sections 3(a)(1), 5, 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 20, 26, 42, 43, 45, 53, 54 and 88 under the Act.

Generally, Applicants request authority to (1) reorganize the National Grid system, by organizing New National Gold as a holding company of National Grid ("Reorganization"); (2) Acquire NiMo, by effecting a merger of NiMo with Grid Delaware, Inc. ("Grid Delaware"), a wholly owned direct subsidiary of New National Grid plc ("Merger"); (3) issue and sell securities to finance the proposed acquisition and other corporate business; and (4) effect related transactions. Applicants also request that the Commission issue an order exempting NiMo from all requirements applicable to registered holding companies under the Act except for those contained in section 9(a)(2).[3]

I. Description of the Parties

A. The National Grid System

National Grid was incorporated in England and Wales on April 1, 1989. Its ordinary shares are listed on the London Stock Exchange and its American Depositary Receipts ("ADRs") are listed on the New York Stock Exchange.[4] As of March 31, 2001, National Grid owned assets worth $14.756 billion, including $7.917 billion in net utility plant assets. As of March 31, 2001, 1,484,609,664 ordinary shares and one special share of National Grid stock were outstanding.[5]

National Grid conducts its principal business, namely the transmission of electricity in England and Wales, in the United Kingdom through The National Grid Company ("NGC"), its wholly owned indirect subsidiary. NGC owns and operates a transmission system consisting of approximately 4,400 miles of overhead lines and approximately 600 miles of underground cable together with substations at some 220 sites. All ownership interests in NGC and other non-United States operations of National Grid are held by National Grid Holdings Limited ("National Grid Holdings"), a foreign utility company ("FUCO") within the meaning of section 33 of the Act.

New National Grid was incorporated in England and Wales on July 11, 2000. Currently, the company does not conduct any business activities. An executive director of National Grid hold ten ordinary shares of New National Grid, and NG Nominees Limited owns the other 499,990 issued ordinary shares.

The Intermediate Holding Companies are wholly owned, directly or indirectly, by National Grid. They are used to avoid the loss of United Kingdom tax relief for foreign taxes paid on profits repatriated to the United Kingdom, and to minimize taxes on the repatriation of profits by the United States to the United Kingdom. In an order dated March 15, 2000, the Commission held that the Intermediate Holding Companies do not unduly complicate National Grid's capital structure, and treated the Intermediate Holding Companies as a single company for purposes of section 11(b)(2) of the Act.[6]

National Grid USA, an indirect wholly owned subsidiary of National Grid, holds directly all of the issued and outstanding ownership interests of the following public-utility companies: NEPCO, Massachusetts Electric, Narragansett, Granite State, Nantucket, and NEET. Additionally, National Grid USA owns directly 53.97% of the common stock of both NH Hydro and MA Hydro, each a public-utility company. Through subsidiaries, National Grid USA is also engaged in various nonutility activities.[7]

Each of the public-utility company subsidiaries of National Grid USA is a member of the New England Power Pool ("NEPOOL"), and they have transferred control over their pool transmission facilities system to ISO–NE, which was established on the platform of an existing tight power pool.[8] ISO–NE operates the transmission systems of all of the public utility systems in New England.[9]

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[1] *See Yankee Atomic Electric Co.*, HCAR No. 13048 (November 25, 1955) (granting the section 3(a) proposal).

[2] *See Niagara Mohawk Holdings*, HCAR No. 26986 (March 4, 1999).

[3] NiMo would remain subject to the Act with respect to its status as a subsidiary of a registered holding company.

[4] In addition, Applicants state that National Grid has a small number of American Depository Shares in the United States, which account for less than one percent of National Grid's publicly issued shares, that trade as ADRs and are held principally by United States institutions.

[5] The special share, or the golden share, is a non-voting share owned by the United Kingdom government. Applicants state that the special share is a means for the United Kingdom government to assure the continued independence of National Grid as a provider of transmission services.

[6] *See National Grid Group plc*, Holding Co. Act Release No. 27154 ("Prior Order")

[7] For example, through subsidiaries, National Grid USA is engaged in the construction and leasing of fiber optic telecommunications systems and the provision of consulting services to nonaffiliated utilities in the area of electric utility restructuring and customer choice.

[8] *See Unitil Corp.*, HCAR No. 25524 (April 24, 1992).

[9] ISO–NE directs and controls the operation of certain facilities, in particular pool transmission facilities ("PTF") that are owned by ISO–NE participants and rated 69 kV or above which are required to allow energy from significant power sources to move freely on the New England transmission network. ISO–NE also directs and controls the operation of certain generating facilities that are subject to central dispatch. ISO–NE is the central dispatching agency and has responsibility

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NEPCO operates electricity transmission facilities owned by associate public-utility companies in concert with the Independent System Operator New England ("OSE–NE").[10] NEPCO also operates the non-pool transmission facilities (transmission facilities rated below 69 kV). It also holds National Grid USA's remaining ownership interests in generating units.[11] As of March 31, 2001, NEPCO owned assets worth $2.9 billion and, for the twelve months preceding that date, earned $656.3 million in operating revenues and $58.3 million in net income NEPCO is subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") for ratemaking purposes and the Nuclear Regulatory Commission ("NRC") because it owns certain nuclear facilities. The Rhode Island Division of Public Utilities and Carriers ("RIDIV"), Massachusetts Department of Telecommunications and Energy ("MDTE"), New Hampshire Public Utilities Commission ("NHPUC"), and Vermont Public Service Board have jurisdiction over the company's financing transactions and transactions with affiliates. The Maine Public Utilities Commission also has jurisdiction over NEPCO's financing transactions, but Applicants state that the agency defers to the MDTE regarding these matters. NEPCO is also a public-utility holding company exempt from registration under section 3(a)(2),[12] as it owns approximately twenty percent of the outstanding voting securities of Vermont Yankee.[13] Vermont Yankee is the licensed operator of the Vermont Yankee nuclear facility, which has a gross maximum dependable capacity of approximately 535 MW. For the year that ended March 31, 2001, Vermont Yankee earned $178,565,569 in operating revenues and $6,388,956 in net income, and owned assets worth $710,851,866.

Massachusetts Electric is engaged in the delivery of electricity to approximately 1.2 million customers in 170 cities and towns in Massachusetts. The cities and towns served by the company include the highly diversified commercial and industrial cities of Worcester, Lowell, and Quincy, the Interstate 495 high technology belt, suburban communities, and many rural, towns. Massachusetts Electric owns approximately 16,021 pole miles of electric transmission and distribution lines. As of March 31, 2001, Massachusetts Electric owned assets worth $3.0 billion and, during the twelve months preceding that date, earned $1.9 billion in operating revenues and $24 million in net income. The company is subject to rate regulation by the FERC and the MDTE. The MDTE also has jurisdiction over the company's financing transactions and transactions with affiliates.

Narragansett delivers electricity to approximately 460,000 customers in thirty-eight cites and towns in Rhode Island. Its service area covers approximately ninety-nine percent of Rhode Island, and includes suburban, rural and urban areas such as the cites of Providence, East Providence, Cranston, and Warwick. The company owns approximately 4,737 pole miles of electric transmission and distribution lines. As of March 31, 2001, Narragansett owned assets worth $1.5 billion and, during the twelve months preceding that date, earned $757.6 million in operating revenues and $16.9 million in net income. Narragansett is subject to rate regulation by the FERC and the Rhode Island Public Utilities Commission, and the RIDIV has jurisdiction over the company's financing transactions and transactions with affiliates.

Granite State provides retail electric service to approximately 36,000 customers in twenty-one communities in New Hampshire. Its service area includes the Salem area of southern New Hampshire, as well as several communities located along the Connecticut River, primarily in the Lebanon and Walpole areas. The company owns approximately 1,049 pole miles of electric transmission and distribution lines. As of March 31, 2001, Granite State owned assets worth $90.2 million and, during the twelve months preceding that date, earned $73.7 million in operating revenues and $1.8 million in net revenues. Granite State is subject to regulation by the FERC and the NHPUC. The NHPUC also has jurisdiction over the company's financing transactions and transactions with affiliates.

Nantucket provides retail electric service to approximately 10,000 customers on Nantucket Island, in Massachusetts. It owns approximately 110 pole miles of electric transmission and distribution lines. As of March 31, 2001, Nantucket owned assets worth $58 million and, during the twelve months preceding that date, earned $17.9 million in operating revenues and $100,000 in net income. Nantucket is subject to regulation by the FERC and the MDTE. The MDTE also has jurisdiction over the company's financing transactions and transactions with affiliates.

NEET owns and operates a direct current/alternating current converter terminal facility for the first phase of the Hydo-Quebec and New England interconnection ("Interconnection") and six miles of high voltage direct current transmission line in New Hampshire. As of March 31, 2001, NEET owned assets worth $24 million and, during the twelve months preceding that date, earned $8.3 million in operating revenues and $700,000 in net income. NEET is subject to rate regulation by the FERC, and the NHPUC has jurisdiction over the company's financing transactions and transactions with affiliates.

NH Hydro operates 121 miles of high-voltage direct current transmission line in New Hampshire for the second phase of the Interconnection that extends to the Massachusetts border. As of March 31, 2001, NH Hydro owned assets worth $113.8 million and, during the twelve months preceding that date, earned $28.2 million in operating revenues and $4.2 million in net income. NH Hydro is subject to rate regulation by the FERC, and the NHPUC has jurisdiction over the company' financing transactions and transactions with affiliates.

MA Hydro operates a direct current/alternating current terminal and related facilities for the second phase of the Interconnection and twelve miles of high-voltage direct current transmission line in Massachusetts. As of March 31, 2001, the company owned assets worth $139.8 million and, during the twelve months preceding that date, earned $34.4 million in operating revenues and $7.0 million in net income. MA Hydro is subject to rate regulation by the FERC, and the MDTE has jurisdiction over the company's financing transactions and transactions with affiliates.

B. The NiMo System

Through subsidiaries, NiMo is engaged in the sale, distribution and transportation of natural gas, the generation, transmission and distribution of electricity, and certain nonutility businesses. Its common stock is listed on the New York Stock Exchange and, as of March 31, 2001, there were 160,239,918 of its shares outstanding. As of March 31, 2001, on a consolidated basis, NiMo owned assets worth $12.381 billion, including $5.717 billion in net utility plant assets, earned $4.712 billion in operating revenues, and reported a net loss of $20 million.[14] The NiMo system employees approximately 7,546 full-time employees. NiMo has two direct, wholly owned subsidiaries: Niagara Mohawk and Opinac, a "holding company" within the meaning of section 2(a)(7) of the Act.

Niagara Mohawk is a combination electric and gas public-utility company. Through subsidiaries, Niagara Mohawk is also engaged in various nonutility businesses.[15] As of March 31, 2001, Niagara Mohawk owned assets worth $12,0698 billion, including $5.717 billion in net utility assets and, during the twelve months preceding that date, earned $4.004 billion in operating revenues and incurred a net loss of $39.2 million. During the twelve months prior to April 30, 2001, Niagara Mohawk provided electric service and sold, distributed and transported natural gas to approximately 1,535,135 electric and 546,835 natural gas customers in eastern, central, northern and western New York State.[16] Niagara Mohawk's electric system interconnects with the National Grid USA's system, and consists of 9,327 pole miles of transmission lines and 41,125 pole miles of distribution networks. Niagara Mohawk owns hydroelectric generation assets located in Mechanicsville, New York, that, although inoperable, has a nominal capacity of 4.5 MW. It also holds land rights under hydroelectric facilities that have a collective generation capacity of 58.5 MW.[17] Currently, Niagara Mohawk holds a 100% ownership interest in the 613 MW Nine Mile Point Nuclear Station Unit No. 1 and a forty-one percent ownership interest in the 1,143 MW Nine Mile Point Nuclear Station Unit No. 2, and operates both of these facilities. Niagara Mohawk has entered into an agreement, however, to sell its ownership interests in these nuclear plants to Constellation Nuclear LLC. Niagara Mohawk has transferred control of its transmission system to the New York Independent System Operator ("NYISO").[18] All of Niagara Mohawk's customers may choose their electricity supplier, but Niagara Mohawk distributes electricity through its transmission and distribution systems for all customers, regardless of their supplier. It also provides electricity to those customers who do not choose a new electricity supplier. Niagara Mohawk also purchases, transports and distributes natural gas in eastern, central and northern New York State in an area that generally extends from Syracuse to Albany. Gas utility service is provided largely in areas where Niagara Mohawk also provides electrical service, and the majority of the company's gas sales are for residential and commercial space and water heating. Niagara Mohawk purchases its natural gas for sale to its customers under firm and spot contracts, and transports the gas under both firm and interruptible transportation contracts. The New York State Public Service Commission ("NYPSC") regulates the following aspects of Niagara Mohawk's operations: financing with a term of one year or more, the company's capital structure, dividend payments, asset sales, affiliate transactions, and the terms and quality of services provided.

Through its subsidiaries, Opinac is currently engaged in various utility and nonutility businesses.[19] Opinac Energy Corporation ("Opinac Energy"), a wholly owned, direct subsidiary of Opinac, is a public-utility holding company exempt from registration under section 3(a)(5) of the Act.[20] It holds a fifty percent ownership interest in Canadian Niagara Power Company Limited ("CNP Limited"), a public-utility company based in Ontario, Canada.[21] CNP Limited will obtain certification as a FUCO prior to consummation of the Merger.

CNP Limited generates electricity, and supplies and markets energy and energy services in Ontario. It also sells electricity that is surplus to its Ontario needs into the New York wholesale market.[22] It owns and operates the William B. Rankine Generating Station, a 74.6 MW hydroelectric plant located on the Canadian side of the Niagara River at Niagara Falls. As of March 31, 2001, CNP Limited owned, on a consolidated basis, assets worth $20.3 million and, during the preceding twelve months, earned $13 million in operating revenues and $4.5 million in net income. CNP Limited is subject to the jurisdiction of the Ontario Energy Board ("OEB"). Additionally, CNP Limited owns all of the issued and outstanding ownership interests in Canadian Niagara Power Inc. ("CNP Inc."), a public-utility company.

CNP Inc. primarily distributes electricity to residential, commercial and industrial customers in Fort Erie, Ontario. Through an international interconnection between its facilities and those of Niagara Mohawk, CNP Inc. provides back-up power in the event of an outage at Niagara Falls. [23] CNP Inc.

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for the NEPOOL control area and the administration of the NEPOOL Open Access Transmission Tariff.

[10] Although ISO–NE directs the central dispatch of the transmission facilities, NEPCO is responsible for determining whether and the extent to which safety requires facilities to be operated at less than their rated capability.

[11] Applicants state that the company is actively seeking to divest these facilities.

[12] *See Yankee Atomic Electric Co.*, HCAR No. 13048 (November 25, 1955) (granting the section 3(a) proposal).

[13] NEPCO also holds thirty, twenty, and fifteen percent owership interest in Yankee Atomic Electric Company, Maine Yankee Atomic Power Company, and Conneclicut Yankee Atomic Power Company, respectively. Previously, each of these companies was a public-utility company, but Applicants state that they have all permanently eased operations.

[14] Niagara Mohawk comprises ninety-eight percent of NiMo's total assets and generates ninety-four percent of NiMo's total revenues.

[15] Niagara Mohawk's wholly owned direct nonutility subsidiaries are NM Uranium, Inc. ("NM Uranium"), NM Properties, Inc. ("NM Properties") NM Receivables LLC ("NM receivables") and NM Receivables Corp. II ("NM Receivables II"). NM Uranium holds a fifty percent ownership interest in certain closed uranium mines in the State of Texas. NM Properties engages in the divestiture, or in conjunction with others, the development of real property formerly owned by Niagara Mohawk. NM Receivables is a single-purpose, financing subsidiary that purchases and resells Niagara Mohawk's customer receivables, including accrued unbilled revenues. NM Receivables, LLC is over 99.99% owned by Niagara Mohawk and is also owned by NM Receivables Corp. II, a wholly owned subsidiary of Niagara Mohawk that manages NM Receivables, LLC.

NM Properties wholly owns the following real estate development subsidiaries: NM Properties, Inc. wholly owns the following subsidiary real estate development companies: Hudson Pointe, Inc., Land Management & Development, Inc., Landwest, Inc., Moreau Park, Inc., Riverview, Inc., Salmon Shores, Inc., Upper Hudson Development, Inc., Arbuckle Acres, Inc., and OproprCo., Inc.

[16] It provides electric service in the cities of Buffalo, Syracuse, Albany, Utica, Schenectady, Niagara Falls and Troy.

[17] The nonaffiliate leasees sell the generated power to Niagara Mohawk under power purchase agreements.

[18] The NYISO is an independent operator of the electric transmission systems of all of the public utility systems in New York State.

[19] Niagara Mohawk Energy, Inc. ("NM Energy"), a wholly owned direct subsidiary of Opinac, is an energy marketing and services company. Through its wholly owned direct subsidiary, Niagara Mohawk Energy Marketing, Inc., NM Energy purchases electricity and gas for resale both within and outside New York, through short-term forward contracts or spot market purchases. NM Energy also holds the following ownership interests: a twenty-five percent ownership interest in Telergy Central LLC, a company engaged in the development, deployment and operation of a fiber optic network and in telecommunications generally; a twenty-six percent ownership interest in Direct Global Power, a company engaged in the development of photovoltaic and other renewable energy products; and a 17.9% ownership interest in Northern Power System, Inc., a company engaged in providing remote power and renewable energy systems solutions.

Opinac also holds an eighteen percent and a sixteen percent ownership interest in Telergy, Inc. ("Telergy") and EVonyx, Inc. ("EVonyx"), respectively. Telergy is engaged in the development, deployment and operation of a fiber optic network and telecommunications generally; EVonyx is engaged in the research and development of fuel cell and battery technology.

[20] *See Opinac Energy Corp.*, HCAR No. 25632 (September 16, 1992).

[21] Fortis Inc. ("Fortis") holds the remaining fifty percent ownership interest in CNP Limited. Applicants state that Fortis is an unaffiliated holding company that is exempt from all requirements of the Act by rule 5 under the Act.

[22] During the twelve months preceding March 31, 2001, CNP Limited sold 355,886 MWh to various parties in the northeastern United States.

[23] CNP Inc. owns 32 km of transmission lines and 900 km of distribution lines, including one 25 hertz

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serves approximately 14,600 customers, employs forty-four people, and is subject to the jurisdiction of the OEB. As of March 31, 2001, the company owned $15.8 million in assets and, during the twelve months preceding that date, earned $6.8 million in operating income but no net income. Additionally, on July 19, 2001, CNP Limited announced that it had signed an agreement that provides for CNP Inc. to lease the electricity distribution business of Port Colborne Hydro, Inc. ("Port Colborne Hydro"), which serves approximately 9,000 customers within the City of Port Colborne. This acquisition is subject to the approval of OEB. CNP Inc. also recently acquired a ten percent interest in Westario Power Holdings Inc. ("Westario Power") and Rideau St. Lawrence Holdings Inc. ("Rideau St. Lawrence"), both nonutility holding companies.[24]

II. Merger Agreement and Restructuring

National Grid, NiMo, New National Grid, and Grid Delaware entered into an Agreement and Plan of Merger and Scheme of Arrangement dated September 4, 2000 and amended December 1, 2000 ("Merger Agreement"), which contemplates the Restructuring and provides for and governs the Merger. The Merger and Restructuring would be effected though a series of transactions involving special purpose acquisition corporations, temporary intercompany loans (including transitory upstream loans that would not survive the Merger),[25] the acquisition of securities, share repurchase or redemptions and other transactions. The Restructuring and Merger are intended to collectively qualify as a tax-free transaction within the meaning of section 351 of the Internal Revenue Code of 1986, as amended.

The Restructuring would be implemented immediately prior to the Merger, and involves exchanging National Grid's existing shares for shares of New National Grid. Specifically, New National Grid would issue one of its shares in exchange for each outstanding share of National Grid common stock.[26] After the Restructuring, National Grid would be a wholly owned subsidiary of New National Grid, and would no longer be the parent company of National Grid USA or any of the Intermediate Holding Companies. Instead, National Grid would be the direct parent company of National Grid Holdings, a FUCO. Correspondingly, National Grid would deregister as a public-utility holding company under the Act and submit a notification on Form U–57 to obtain FUCO status, and New National Grid, as the parent of the Intermediate Holding Companies and National Grid USA, would register under section 5 of the Act. The organization of New National Grid as the new top, registered holding company is designed to provide National Grid the flexibility to increase the cash portion of the Merger consideration without jeopardizing the tax free nature of the transaction for NiMo shareholders who elect to exchange their shares in NiMo for shares in National Grid, should the shareholders in aggregate elect to receive more than one-fifth of the consideration for their NiMo shares in cash.[27]

Under the Merger Agreement, Grid Delaware would merge into NiMo, with NiMo surviving as direct subsidiary of New National Grid. The Merger Agreement provides that all of the shares of common stock of Grid Delaware issued and outstanding prior to the Merger would be converted into the right to receive common stock of NiMo. Each share of NiMo common stock would be converted into the right to receive the merger consideration in the form of cash, American Depositary Shares ("ADSs") or a combination of cash and ADSs. The per-share merger consideration would be $19.00 if the Average Price [28] is between $32.50 and $51.00.[29] Based on National Grid's current share price, the value of the Merger consideration is approximately $3.1 billion.[30] NiMo shareholders may elect to receive their consideration in cash, ADSs or as a combination of both, as long as the aggregate cash consideration paid does not exceed $1.015 billion.[31] Subsequently, all equity interests in NiMo would be contributed to National Grid USA.

The Merger would be accounted for under the purchase method of accounting, in accordance with generally accepted accounting principles.[32] Applicants state that the common stock shareholders of NiMo and National Grid approved the Merger on January 19 and 29, 2001, respectively. The Merger is contingent on the completion of the sale of Niagara Mohawk's ownership interests in certain nuclear assets discussed above or entry into another arrangement covering those assets.

After the Merger, all of the common stock of NiMo would be owned by National Grid USA. The corporate structure of the current NiMo system would not otherwise change. Applicants state that, after the Merger, Niagara Mohawk would be re-branded "Niagara Mohawk, a National Grid Company."

Applicants state that the combination of NiMo and National Grid would create the ninth largest electric utility in the U.S., with an electric customer base of approximately 3.3 million. They expect that, over the ten year period from 2002 through 2011, Merger-related cost synergies and the sharing of best practices across operations would result in savings of $895 million before costs to achieve, or approximately $90 million per year.

III. Financing Transactions

Applicants also request authority to issue and/or sell certain securities to finance the New National Grid system through September 30, 2004 ("Authorization Period"). They request that the system financing parameters imposed under the Prior Order be replaced by the following ones (collectively, "Financing Parameters"):

- All long-term debt or preferred stock issued by New National Grid, National Grid USA, or any of the current public-utility company subsidiaries of National Grid USA and Niagara Mohawk (collectively, "Utility Subsidiaries") in public offerings would be rated at the investment grade level by a nationally recognized statistical rating organization.
- New National Grid would maintain common stock equity as a percentage of total capitalization, measured on a book value basis under generally accepted accounting principles in the United State ("U.S. GAAP"), of at least 28.5% or above at the time of the closing of the Merger and thereafter during the Authorization Period, and thirty percent or above by March 31, 2002.
- National Grid USA, on a consolidated basis, and each of the Utility Subsidiaries (except NEET and Vermont Yankee) on a stand-alone basis, would maintain common stock equity of at least thirty percent of total capitalization.
- The cost of money on New National Grid's debt or preferred stock financings would not exceed the cost of comparable term U.S. treasury securities or government benchmark for the currency concerned plus the margin demanded in the financial markets in a competitive offering by an issuer of such securities with New National Grid's credit rating.
- For debt securities proposed to be issued by the Utility Subsidiaries, the cost of money on debt securities issued to nonassociated would not exceed the cost of comparable term U.S. treasury securities or government benchmark for the currency concerned plus the margin demanded in the financial markets in a competitive offering by an issuer of such securities with the respective Utility Subsidiary's credit rating.
- The cost of money on proposed National Grid USA debt securities or preferred stock would not exceed the cost of comparable term U.S. treasury securities or government benchmark for the currency concerned plus the margin demanded in the financial markets in a competitive offering by an issuer of such securities with National Grid USA's credit rating.
- The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security would not exceed five percent of the principal or total amount of the security being issued.

A. New National Grid

As described above, in connection with the Merger, NiMo shareholders would receive New National Grid ordinary shares and case ("Merger Consideration"). To raise the Merger Consideration, Applicants request authority for New National Grid to issue its ordinary shares to NiMo shareholders and, issue and sell debt securities to banks under one or more credit facilities and forward underwriting commitments that would be established prior to completion of the Merger. The aggregate amount of these debt securities, when combined with the value of the ordinary shares issued in connection with the Merger, will not exceed $4 billion at any one time outstanding.[33]

Applicants request authority for New National Grid to issue to nonaffiliates up to an aggregate amount of $6 billion ("Aggregate Limit") of equity and debt securities at any one time outstanding during the Authorization Period.[34] These securities could include ordinary shares, preferred shares, options, warrants, long- and short-term debt (including commercial paper), convertible securities, subordinated debt, bank borrowings and securities with call or put options. Applicants would issue up to $4.5 billion in equity securities (including options and warrants) and $5 billion in debt securities, subject to the Aggregate Limit. The Aggregate Limit would replace the $4 billion limit authorized in the Prior Order, and does not include the Merger Consideration.[35]

New National Grid proposes to enter into, perform, purchase and sell financial instruments intended to manage the volatility of currencies and interest rates, including currency and interest rate swaps, caps, floors, collars and forward agreements, and other similar agreements ("Hedging Instruments"). Hedging Instruments may be executed on-exchange ("On-Exchange Trades") with brokers, through the opening of futures and/or options positions, or by opening over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. Off-Exchange Trades would be entered into only with associate companies or counterparties whose senior debt ratings are investment grade, as determined by Standard & Poor's, Moody's Investors Service, Inc. or Fitch IBCA, Inc. ("Approved Counterparties").[36] Hedging Instruments will qualify for hedge accounting treatment under U.S. GAAP or the United Kingdom ("U.K. GAAP"). If a transaction qualifies for hedge accounting treatment only under U.K. GAAP, New National Grid will reconcile on its financial statements the difference between U.S. GAAP, in accordance with Form 20–F. No gain or loss on a Hedging Instrument entered into by New National Grid will be allocated to National Grid USA or its subsidiaries. Applicants request authority for New National Grid to enter into Hedging Instruments to fix and/or limit the interest rate or currency exchange risk associated with anticipated debt offerings ("Anticipatory Hedges"). For the purpose of Anticipatory Hedges, Hedging Instruments may include the following: forward sales of exchange-traded Government Securities[37] futures contracts, Government Securities and/or a forward swap (each, "Forward Sales"), purchases of put options on Government Securities ("Put Options Purchases"), Put Options Purchases in

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transmission line and one 60 hertz transmission line that interconnect the grids in southern Ontario with those in northwestern New York. These utility assets were formerly owned by CNP Limited; on March 31, 1999, CNP Limited transferred its transmission and distribution assets to CNP Inc. to comply with Electricity Act of 1998 and regulation of the OEB.

[24] Through subsidiaries, Westario Power distributes electricity to 20,000 customers in the counties of Bruce, Grey and Huron, Ontario, and Rideau St. Lawrence distributes electricity to 6,000 customers in the counties of Leeds-Grenville and Stormont-Dundes, Ontario.

[25] Applicants state that upstream loans used to fund the Merger would be unsecured and limited to loans by wholly owned direct or indirect subsidiaries of National Grid and New National Grid, and would not be funded by any affiliated public-utility company subsidiaries. These loans would be used as a mechanism to convey the Merger consideration and the acquired ownership interest in NiMo to the appropriate company in the New National Grid System, and that the loans would permit New National Grid to avail itself of exemptions with respect of taxes that might otherwise arise on implementation of the structure.

[26] Applicants expect that the outstanding special share of National Grid stock would be canceled and replaced with a special share of New National Grid stock.

[27] Applicants state that National Grid cannot be eliminated as part of the Restructuring without jeopardizing the tax-free nature of the transaction.

[28] The "Average Price" is defined under the Merger Agreement as the average of the closing prices of New National Grid ordinary shares, as derived from the Daily Official List of the London Stock Exchange (converted to a United States dollar value using the exchange rate for each date for which the closing price is to be determined as reported in The Financial Times) for twenty trading days selected at random (using mutually agreed upon procedures) in the period of forty consecutive London Stock Exchange trading days ending on the close of business on the tenth London Stock Exchange trading day prior to the election deadline, multiplied by five.

[29] In the event that the Average Price is greater than $51.00, the per-share consideration received by NiMo shareholders would increase by two-thirds of the percentage of the increase in value over $51.00. In the event that the Average Price is less than $32.40, the per-share consideration received by NiMo shareholders would decrease by two-thirds of the percentage of the decrease in value below $32.50.

[30] Applicants request authority to obtain more than $3.1 billion in Merger-related financing because, as discussed above, the Merger consideration may increase if the Average Price of National Grid common stock rises above $51 per share.

[31] If cash elections received from NiMo shareholders exceed $1.015 billion, National Grid has the option, but not the obligation, to increase the cash component of the consideration. If elections for one form of consideration exceed the amount of such form of consideration to be issued in the Merger, all shareholders electing the oversubscribed form of consideration would receive, on a pro rata basis, some of the undersubscribed form of consideration.

[32] Under the purchase method of accounting, the purchase price of NiMo, including direct costs of the acquisition, would be allocated to the assets acquired and liabilities assumed based upon their estimated fair values, with the excess, i.e., the difference between the purchase price, representing fair value, and the fair value of the identified assets acquired, recorded as goodwill.

[33] As discussed above, the value of the Merger Consideration is approximately $3.1 billion based upon National Grid's current share price. That amount may increase, however, if the Average Price of New National Grid shares increases above fifty-one dollars per share.

[34] The Aggregate Limit would apply only to securities issued and outstanding during the Authorization Period. Accordingly, when a security is issued during the Authorization Period and later redeemed or retired during the Authorization Period, the aggregate amount issued and outstanding under the Aggregate Limit would be reduced and additional financing capacity under the Aggregate Limit would be made available.

[35] In addition, common shares to be issued in connection with presently outstanding convertible bonds would not count against the Aggregate Limit. See below, at footnote 40.

[36] See below, at footnote 41.

[37] "Government Securities" would include U.S. Treasury obligations, U.K. Gilts or the appropriate government benchmark security for the currency involved in the hedge.

combination with sales of call options on Government Securities ("Zero Cost Collars"), transactions involving purchases or sales (including short sales) of Government Securities, or combinations of Forward Sales, Put Options Purchases, Zero Cost Collars, and/or other derivative or cash transactions. Neither Hedging Instruments nor Anticipatory Hedges entered into by New National Grid would be subject to the Aggregate Limit.

Applicants request authority for New National Grid to enter into guaranties, obtain letters of credit, enter into guaranty-type expense agreements or otherwise provide credit support with respect to the obligations of the Subsidiaries, to enable those companies to carry on their respective businesses. These guaranties would not be counted against the Aggregate Limit but would instead be subject to a $2 billion limit, based upon the amount at risk.[38] The fee, if any, charged for any guaranty would not exceed the cost of obtaining the liquidity necessary to perform the guaranty for the period of time the guaranty remains outstanding.

B. Subsidiary Financing

Applicants request authority for the Intermediate Holding Companies and National Grid USA to issue and sell securities to (1) their direct and indirect parent companies; and (2) National Grid and its associate company subsidiaries[39] (collectively, "FUNCO Subsidiaries"), except that the FUCO Subsidiaries would not purchase equity and convertible debt securities from any of the Intermediate Holding Companies or National Grid USA. Financing between an Intermediate Holding Company and its direct or indirect parent or a FUCO Subsidiary would be on market terms. All interest rates and maturity dates of debt securities issued by National Grid USA to an associate company would be designed to parallel the lower of the effective cost of capital of National Grid USA or New National Grid. All borrowings by the Intermediate Holding Companies and National Grid USA would be unsecured. These securities would be used to finance the operations of the National Grid USA and its subsidiaries.

Applicants request authority for the Intermediate Holding Companies and National Grid USA to acquire securities from their direct or indirect subsidiary companies. Neither the Intermediate Holding Companies nor National Grid USA, however, would borrow or receive any extension of credit or indemnity from any of their respective direct or indirect subsidiaries. Debt offerings by the Intermediate Holding Companies and National Grid USA would have short, medium and long-term maturities.[40]

Applicants request authority for the Utility Subsidiaries to enter into Hedging Instruments with nonaffiliated Approved Counterparties, to the extent the issuance and sale of these securities is not exempt under rule 52(a) under the Act.[41] These securities would be entered into on the same terms generally applicable to New National Grid.[42]

Applicants request authority for Niagara Mohawk to issue to associate and nonassociate companies debt securities with maturities of less than one year, in an aggregate amount not to exceed $1 billion at any one time outstanding.

Applicants request authorization for NiMo to issue and sell securities, other than equity and convertible securities, to associate companies, but not to NiMo's direct or indirect subsidiaries other than special purpose financing subsidiaries. Proceeds from the sales of these securities would be used to finance NiMo's existing business and its respective subsidiaries and future authorized or permitted businesses. All borrowings by NiMo would be unsecured. To the extent that NiMo invests any funds in CNP Limited (its FUCO subsidiary) or its subsidiaries, those amounts would be counted against the overall EWG and FUCO investment limits applicable to New National Grid.

Applicants request authority for National Grid USA to issue up to an aggregate amount of $500 million at any one time outstanding of debt securities to third parties through public or private offerings. As mentioned above, all borrowings by National Grid USA would be unsecured and would have the short, medium and long-term maturities described above.

Applicants request authority for the Intermediate Holding Companies, National Grid USA, and NiMo to issue guaranties and other forms of credit support on behalf of their direct and indirect subsidiaries. These guaranties would be subject to a limit of $1 billion.[43] Applicants also request authority for the Nonutility Subsidiaries to enter into guaranties with each other for up to an aggregate amount of $1 billion, to the extent such transactions are not exempt under rule 45. The fee, if any, charged for any guaranty would not exceed the cost of obtaining the liquidity necessary to perform the guaranty for the period of time the guaranty remains outstanding.

Applicants request authority for Massachusetts Electric, Nantucket, Narragansett, NEPCO, and MA Hydro to continue issuing up to aggregate amounts of $275 million, $6 million, $145 million, $750 million, $25 million, respectively, in short term debt securities through the Authorization Period.[44]

C. Money Pool Expansion

Applicants request authority for the Money Pool to be operated as authorized under the Prior Order. Applicants also request authority for NiMo and its current subsidiaries, except for those companies that are exempt telecommunication carriers ("ETCs"), exempt wholesale generators ("EWGs"), and FUCOs, to participate in the Money Pool under the same terms and conditions established in the Prior Order. Further, Applicants request authority for all newly formed or acquired or currently non-participating National Grid subsidiary companies (including EWGs and FUCOs, but excluding ETCs) to participate in the Money Pool as lenders only.

[38] Guaranties previously issued by National Grid that New National Grid assumes would not count against this limit.

[39] As discussed above, after the Restructuring, National Grid would become a FUCO and a holding company over National Grid Holdings, the current FUCO holding company in the National Grid System.

[40] Short-term debt would be less than one year in maturity, medium-term debt would have maturities up to five years, and long-term debt would have maturities up to fifty years.

[41] By order dated October 22, 2001, the Commission authorized through May 31, 2003; (1) the Intermediate Holding Companies to enter into currency derivatives with National Grid and its subsidiaries that are outside of the National Grid USA ownership chain, including the FUCO Subsidiaries; (2) National Grid to increase the aggregate amount of convertible bonds that it may issue to $2 billion; and (3) the Intermediate Holding Companies to enter into currency derivatives with National Grid and the FUCO Subsidiaries. *See National Grid Group plc*, HCAR No. 27455 ("October 2001 Order"). Applicants request that the authority granted in the October 2001 Order be modified to reflect the Reorganization.

[42] Hedging Instruments entered into by the Utility Subsidiaries would differ from those entered into by New National Grid in that the former would qualify for hedge accounting treatment under U.S. GAAP and, to the extent a Utility Subsidiary incurs a gain or loss on a Hedging Instrument that it has entered into to hedge a currency or interest rate risk associated with a security that such Utility Subsidiary has issued, the gain or loss would be attributed to the Utility Subsidiary.

[43] Applicants state that certain guaranties may be in support of obligations that are not capable of exact quantification. To value these obligations for purposes of the limit, New National Grid would determine the exposure under a guarantee by an appropriate means, including estimating its subsidiary's exposure based on loss experience or projected potential payment amounts.

[44] The Commission previously granted these companies the requested authorizations. *See National Grid USA*, UCAR No. 27381 (April 19, 2001) (authorizing Massachusetts Electric, Nantucket, and Narragansett to issue up to $275 million, $6 million, and $145 million, respectively, in short-term debt securities through May 31, 2003); *New England Electric System*, HCAR No. 26881 (June 2, 1998) (authorizing NEPCO to issue up to $750 million in short-term debt securities through October 31, 2001); *New England Electric System*, HCAR No. 26768 (October 29, 1997) (authorizing MA Hydro to issue up to $25 million in short-term debt securities through October 31, 2001).

IV. Other Requests

As mentioned above, the purchase method of accounting would apply to the Merger. Consequently, the current retained earnings of NiMo and its subsidiaries, the traditional source of dividend payment, would be eliminated and the value of the goodwill would be reflected in their balance sheets as additional paid-in-capital. Applicants request authority for Niagara Mohawk to pay dividends or to acquire, retire or redeem its securities using its capital or unearned surplus as follows: Niagara Mohawk would in any calendar year, limit dividends paid on its common stock to "income available for common dividends"[45] plus a fixed amount per calendar year.[46] To the extent that Niagara Mohawk does not pay the maximum dividends allowable, the company would carry the balance forward to subsequent years. Applicants also request authority for NiMo and its nonutility subsidiaries to pay dividends or to acquire, retire or redeem their securities without restriction, to the extent permitted under applicable state and corporate law or applicable financing covenants. Accordingly, Applicants request that the Commission eliminate the restriction established by the Prior Order limiting the payment of dividends by the Utility Subsidiaries to eighty percent of their post-New England Electric System merger earnings before the amortization of goodwill, based on a rolling five-year average.

Applicants request authority to amend the National Grid USA tax allocation agreement, previously approved by the Commission,[47] to add NiMo and its subsidiaries as members, allowing National Grid General Partnership ("NGGP") to retain the value of the tax deduction associated with the debt incurred by New National Grid to finance the Merger.

Applicants request authority for NiMo and its wholly owned subsidiaries to increase the amount or change the terms of the authorized capital securities without further Commission approval.[48] The terms that may be changed include dividend rates, conversion rates and dates, and expiration dates. The changes to capital stock would affect only the manner in which financing is conducted by those companies; the terms of limits proposed by this application or prior Commission orders would not be altered.

Applicants request authorization for NiMo and its subsidiaries to acquire financing entities to facilitate financings by issuing to third parties income preferred securities or other authorized or exempt securities.[49] Amounts issued by these financing entities to third parties under the Commission's authorization would count against any applicable limits for the immediate parent of that financing entity, but the underlying intrasystem mirror debt and parent guarantee would not count against any financing or guarantee limits.

By the Prior Order, the Commission authorized National Grid to invest up to $4.406 billion in EWGs and FUCOs through May 31, 2003. Applicants request authority for New National Grid to increase its investments in EWGs and FUCOs through the Authorization Period to no more than $5.406 billion of its retained earnings.

Applicants request authority for NiMo and its subsidiaries to enter into service agreements with National Grid USA Service Company ("Service Company"), the current service company for the National Grid USA and its subsidiaries (collectively, "National Grid USA Group"), and receive the same services that current members of the National Grid Group receive from Service Company. This affiliate service relationship would follow in all material respects the authority granted in the Prior Order. Applicants state that Service Company would continue to be operated in accordance with the policies and procedures manual previously filed, and the service agreements entered into between Service Company and NiMo and its subsidiaries would be in the same form as those entered into by the current National Grid USA Group.

Applicants request authority for New National Grid to acquire, directly or indirectly, the equity securities of one or more intermediate subsidiaries ("Intermediate Subsidiaries") organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future Nonutility Subsidiaries. Intermediate Subsidiaries may also provide management, administrative, project development, and operating services to such entities.[50] To the extent their provision of those services is not authorized or permitted by rule, regulation, or order of the Commission, applicants request authority for the Intermediate Subsidiaries to contract to provide them.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[45] To calculate "income available for dividends," Applicants would add back amounts attributable to the write down of goodwill so that income available for dividends would reflect Niagara Mohawk's income before the deduction for goodwill impairment.

[46] Applicants propose the following fixed amounts: $100 million during 2001; $100 million during 2002; $80 million during 2003; and $60 million during 2004.

[47] *See* Prior Order.

[48] By the Prior Order, the Commission authorized National Grid USA, its subsidiaries and the Intermediate Holding Companies, to increase the amount or change the terms of their authorized capital securities without additional Commission approval.

[49] By the Prior Order, the Commission authorized National Grid, the Intermediate Holding Companies, National Grid USA, and its subsidiaries to organize these types of financing entities.

[50] "Development Activities" would be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "hosts," fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interests in new businesses. "Administrative Activities" would include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage New National Grid's investments in Nonutility Subsidiaries.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25247; File No. 812–12584]

Golden American Life Insurance Company, et al.

October 30, 2001.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an Order Pursuant to section 6(c) of the Investment. Company Act of 1940 (the "Act") granting exemptions from sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

Applicants: Golden American Life Insurance Company ("Golden American"), Separate Account B of Golden American Life Insurance Company (the "Account"), and Directed Services, Inc. ("DSI")(together, the "Applicants").

SUMMARY OF THE APPLICATION: Applicants seek an order of the Commission, pursuant to Section 6(c) of the Act to the extent necessary to permit the recapture of certain credits applied to premium payments made in consideration of deferred variable annuity contracts which Golden American intends to issue (the "Contracts") and substantially similar variable annuity contracts that Golden American may issue in the future ("Future Contracts"), as well as any other separate accounts of Golden American and its successors in interest ("Future Accounts") that support in the future variable annuity contracts that are similar in all material respects to the Contracts and principal underwriters of such contracts ("Future Underwriters").

FILING DATE: The application was filed on July 19, 2001, and amended and restated on October 11, 2001, and October 29, 2001.

Hearing or Notificotion of Hearing: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 23, 2001, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Applicant, c/o Linda Senker, Esq., Golden American Life Insurance Company, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380. Copies to Stephen E. Roth, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Curtis A. Young, Esq., Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The Application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Golden American is a stock life insurance company originally incorporated under the laws of Minnesota on January 2, 1973, and later redomiciled in Delaware. Golden American is engaged in the business of writing annuities, both individual and group, in all states (except New York) and the District of Columbia. Golden American is a subsidiary of Equitable of Iowa Companies, Inc. ("Equitable of Iowa"). Golden American is ultimately controlled by ING Groep N.V., a global financial services holding company.

2. Golden American established the Account as a segregated investment account under Delaware law. The assets of the Account attributable to the Contracts and any other variable annuity contracts through which interests in the Account are issued are owned by Golden American but are held separately from all other assets of Golden American, for the benefit of the owners of, and the persons entitled to payment under, Contracts issued through the Account. Consequently, such assets are not chargeable with liabilities arising out of any other business that Golden American may conduct. Income, gains and losses, realized or unrealized, from each subaccount of the Account, are credited to or charged against that subaccount without regard to any other income, gains or losses of Golden American. The Account is a "separate account" as defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust.

3. The Account currently is divided into a number of subaccounts. Each subaccounts invests exclusively in shares representing an interest in a separate corresponding investment portfolio of one of several series-type open-end management investment companies. The assets of the Account support one or more varieties of variable annuity contracts, including the Contracts.

4. Golden American established the Account on July 14, 1988. The Account is registered with the Commission as a unit investment trust and interests in the Account offered through the Contracts have been registered under the Securities Act of 1933 on Form N–4.

5. DSI is a wholly-owned subsidiary of Equitable of Iowa. It serves as the principal underwriter of Golden American separate accounts registered as unit investment trusts under the Act, including the Account, and is the distributor of the variable life insurance contracts and variable annuity contracts issued through such separate accounts, including the Contracts. DSI is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (the "NASD").

6. The Contracts make available a number of subaccounts of the Account to which owners may allocate net premium payments and associated bonus credits (described below) and to which owners may transfer contract value. The Contracts also offer fixed-interest allocation options under which Golden American credits guaranteed rates of interest for various periods (including interest crediting mechanisms which entail the imposition of "market value" adjustments under certain circumstances). Transfers of contracts value among and between the subaccounts and, subject to certain restrictions, among and between the subaccounts and the fixed-interest options, may be made at any time from the end of the free look period until the annuity start date. The Contracts offer a variety of fixed and variable annuity payment options to owners. In the event of an owner's death prior to the annuity commencement date, beneficiaries may elect to receive death benefits in the form of one of the annuity payment options instead of a lump sum.

7. Upon application to purchase the Contract, a purchaser would select from among three option packages, Option Package I, II, or III. Each option package determines the minimum initial premium payment required to purchase the Contract, the maximum age at which a purchaser would be able to purchase the Contract, the free withdrawal amount, and the death benefit options available under the Contract. The minimum initial premium of the Contract is $15,000 ($1,500 for certain employee benefit plans) under Option Package I and $5,000 ($1,500 for certain employee benefit plans) under Option Packages II and III. The Contracts provide for an annual administrative charge of $30 that Golden American deducts on each Contracts Anniversary and upon a full surrender of a Contract, a daily asset-based administrative charge deducted at an annual rate of 0.15%, along with a daily mortality and expense risk charge deducted from the assets of the Account at annual rates of 1.45% for Option Package I, 1.65% for Option Package II, and 1.80% for Option Package III, of the Account's average daily net assets. The charge for the death benefit is included in the mortality and expense risk charge. The Contract also includes an optional death benefit rider, the earnings multiplier benefit rider for which a charge will be assessed quarterly at an annual rate of 0.25% of Account value not to exceed a guaranteed maximum annual rate of 0.50%. The Contracts also provide for a charge of $25 for each transfer of contract value in excess of 12 transfers per contract year. An optional bonus credit is available at a cost equivalent to an annual rate of 0.60% of the contract value allocated to the subaccounts for three years following the addition of a bonus credit. The premium credit option charge is also deducted from amounts allocated to the fixed-interest options resulting in a 0.60% reduction in the interest that would otherwise have been credited to those amounts in the fixed-interest options for the three contract years following the addition of a credit. Lastly, the Contracts also have a surrender charge in the form of a contingent deferred sales charge ("CDSC"), which is equal to the percentage of each premium payment surrender or withdrawn and declines from 6% during the first year of the premium payment to 0% after 3 full years. No CDSC applies to contract value representing a free withdrawal amount and or to contract value in excess of aggregate premium payments (less prior withdrawals of premiums).

8. Owners have the options of investing in a series of the GET Fund. During the five year guarantee period, which represents the duration of a series, an owner who invests in a series of the GET Fund would be assessed an annual charge equal to 0.50% of the average daily net assets allocated to the series.

9. If an owner dies before the annuity start date, the Contracts provide, under most circumstances, for a death benefit payable to a beneficiary, computed as of the date Golden American receives written notice and due proof of death. The death benefit payable to the beneficiary depends on whether the owner selected Option Package I, II, or III. Each option package provides a death benefit upon the death of the owner which death benefit is based upon the highest amount payable under the separate death benefit options available under that option package. The death benefit options available under the option packages include: (1) The Standard Death Benefit; (2) the contract value on the claim date, less credits applied since or within 12 months prior to death; (3) the Annual Ratchet death benefit; and (4) the 5% Roll-Up death benefit.

10. Golden American offers a bonus credit provision under the Contracts with a recurring bonus credit feature pursuant to which Golden American credits contract value in the subaccounts and the fixed-interest allocations with an amount that is a percentage of contract value. An owner may elect the bonus provision at the time of application. The initial bonus credit applies upon issuance of the contract and is based upon contract value at the time of issuance. On the third contract anniversary and every three contract-years thereafter until the annuitization of the Contract, the owner may elect to renew the bonus credit. At the third contract anniversary and every three contract-years thereafter Golden American would apply a new bonus credit to the Contract. Notice of this election will be sent to applicable owners up to sixty days before the third contract anniversary (and separately, before every third contract anniversary thereafter until annuitization of the Contract). Each new bonus credit would be allocated among an owner's subaccount allocations in proportion to the contract value in each subaccount on such contract anniversary. The initial bonus credit equals 2% of the initial contract value and each subsequent bonus credit, if elected, would equal 2% of the contract value on the applicable contract anniversary. Golden American reserves the right to increase or decrease the amount of the bonus credit or discontinue the bonus credit provision in the future. Applicants also reserve the right to modify the charge for the bonus credit consistent with any increase or decrease in the bonus credit. Golden American will provide owners who elect the bonus credit provision with at least 60 days notice of such change. Such a change will only apply to bonuses credited after the 60-day notice period.

11. Under the bonus credit provision, Golden American recaptures or retains the credited amount in the event that the owner exercises his or her cancellation right during the "free look" period. Also, in computing death benefits, Golden American may recapture credits applied since or within twelve months prior to the date of death. Finally, in the event of a surrender, Golden American will recapture all credits applied during the three years prior to surrender.

12. Under the bonus credit provision, Golden American credits amounts to an owner's contract value either by "purchasing" accumulation units of an appropriate subaccount or adding to the owner's fixed-interest allocation option values. The initial credit is allocated in proportion to the owner's contract value in the subaccounts and fixed-interest allocations at the time of application of the credit. For bonus credits added after the initial credit, credits are allocated in proportion to the owner's contract value in the subaccounts, but not to any fixed-interest allocations. A designated subaccount will be used if there is no contract value in the subaccounts. The designated subaccount will be identified in the Contract prospectus, and the Owner will receive, along with the Contract prospectus, the prospectus for the underlying fund in which the designated subaccount invests.

13. With regard to variable contract value, several consequences flow from the foregoing. First, increases in the value of accumulation units representing bonus credits accrue to the owner immediately, but the initial value of such units only belongs to the owner when, or to the extent that, each vests. Second, decreases in the value of accumulation units representing bonus credits do not diminish the dollar amount of contract value subject to recapture. Therefore, additional accumulation units must become subject to recapture as their value decreases. Stated differently, the proportionate share of any owner's variable contract value (or the owner's interest in an Account) that Golden American can recapture increases as variable contract under (or the owner's interest in the Account) decreases. This dilutes somewhat the owner's interest in the Account vis-a-vis Golden American and other owners, and in his or her variable contract value vis-a-vis Golden American.

14. Lastly, because it is not administratively feasible to track the unvested value of bonus credits in the Account, Golden American deducts the daily mortality and expense risk charge and the daily administrative charge from the entire net asset value of the Account. As a result, the daily mortality and expense risk charge and the daily administrative charge paid by any owner is greater than that which he or she would pay without the bonus credit.

15. Applicants request that the Commission issue an order pursuant to Section 6(c) of the Act, exempting them as well as Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 37(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of certain credits applied to premium

payments made in consideration of the Contracts.

Applicant's Conditions

Applicants Agree to the Following Conditions

1. *Election letter.* In those states where it is available, sixty days prior to every third contract anniversary, Golden American will send a letter (the "Letter") to each applicable Owner informing him or her that he or she is eligible to elect to renew the bonus credit under the Contract. The Letter will prominently disclose in concise plain English that (a) the credit is most suitable for Owners who expect to continue their Contracts for three or more years, and (b) if the Contract is surrendered while the bonus remains subject to recapture, then the Owner may be worse off in certain circumstances that if he or she had not elected to renew the bonus credit provision. The letter will disclose exactly how an Owner who surrenders a Contract while the bonus credit remains subject to recapture could be worse off as a result of negative separate account investment performance than if he or she had not elected to receive the bonus credit.

2. *Election.* Golden American will send the Letter and an election form directly to Owners eligible to elect the bonus credit provision. If the Letter is more than two pages in length, Golden American will provide the election form as a separate document that also will prominently disclose in concise plain English the statements required in condition 1 above. Elections to receive bonus credits will be effective only upon receipt by Golden American of an election from Owner. The election may be provided in writing, including via facsimile or other electronic media, or provided through telephonic means evidenced by a tape recording. A Letter will precede any election of the bonus credit, including any election via telephonic means. When receiving by telephone an Owner's election to receive a recurring bonus credit, Golden American telephone representatives will recite to the Owner each of the disclosures set forth in condition 1 above, and will request that the Owner separately acknowledge each such disclosure. Golden American will forward to Owners written confirmation of the recurring bonus credit, including confirmation of recurring bonus credits elected via telephonic means.

3. *Records.* Golden American will maintain the following separately identifiable records in an easily accessible place for review by the Commission staff: (1) Copies of the form of Letter, the election form, any tape recordings, any written confirmations evidencing a recurring bonus—including a recurring bonus elected by telephone, and any written materials or scripts for presentations by representatives regarding the bonus credit, including the dates used; (2) records showing the number and percentage (on a calendar quarter basis) of eligible Owners that elect the bonus credit; (3) records showing—the name and Contract number of each Owner who elects a bonus credit, that Owner's contract value at the time the bonus credit is elected, the amount of the credit, the Owner's name, address, telephone number and date of birth, the date that the owner signed the election form, the signed election form, and, to the extent Golden American pays a commission (or other compensation) to registered representatives in connection with an Owner's election of a bonus credit, the amount of such commission (or other compensation), and the name of any sales representative involved with the solicitation of the election of the credit who receives any compensation in connection with the Contract after the date of the election of the credit and his or her CRD number, firm affiliation, telephone number, and branch office address; (4) records of persistency information for Contracts whose Owners have elected the bonus credit provisions, including the date(s) of any subsequent surrender or withdrawal of contract value and the amount of any recaptured bonus credit; and (5) logs recording any Owner complaints about the recurring bonus credit provisions, state insurance department inquiries about the same, or litigation, arbitration or other proceedings regarding the bonus credit provisions. The logs will include the date of the complaint (or of commencement of any proceedings), the name and address of the person making the complaint or commencing the proceeding, the nature of the complaint or proceeding and the persons involved in the complaint or proceeding. The foregoing records will be retained for the longer of: (1) Six years after the later of their creation or last use, or (2) two years after the recapture period ends.

Legal Analysis

Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act and/or any rule under it if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the Act.

1. Subsection (i) of section 27 provides that section 27 does not apply to any registered separate account variable annuity contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of subsection (i). Paragraph (2) provides that it shall be unlawful for a registered separate account or sponsoring insurance company to sell a variable annuity contract supported by the separate account unless such contract is a redeemable security. Section 2(a)(32) defines a "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

2. Applicants submit that the recapture of bonus credits does not, at any time, deprive an owner of his or her proportionate share of the current net assets of the Account. Until the appropriate recapture period expires, Golden American retains the right to and interest in each owner's contract value representing the dollar amount of any unvested bonus credits. Therefore, Applicants argue, if Golden American recaptures any bonus credit in the circumstances described in the Application, it would merely be retrieving its own assets. Applicants state that Golden American would grant bonus credits out of its general account assets and the amount of the credits (although not the earnings on such amounts) remain Golden American's until such amounts vest with the owner. Thus, Applicants argue that to the extent that Golden American may grant and recapture bonus credits in connection with variable contract value, it does not, at either time, deprive any owner of his or her then proportionate share of an Account's assets.

3. Applicants state that the bonus credit recapture provisions are necessary for Golden American to offer the bonus credits. Applicants argue that it would be unfair to Golden American to permit owners to keep their bonus credits upon their exercise of the Contracts' "free look" provision. Because no CDSC applies to the exercise of the "free look" provision. Applicants state that the owner could obtain a quick profit in the amount of the bonus credit at Golden American's expense by exercising that right. Similarly, the owner could take advantage of the bonus credit by surrendering the Contract within the recapture period because some of the cost of providing the bonus credit is recouped through charges imposed over a period of years. Likewise, because no additional CDSC applies upon death of an owner, such a death shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at Golden American's expense.

4. Applicants assert that the dynamics of Golden American's bonus credit provisions do not violate sections 2(a)(32) or 27(i)(2)(A) of the Act. Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek exemptions from these two sections.

5. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in the redeemable securities of any registered investment company. Rule 22c–1 thereunder imposes requirements with respect to both the amount payable on redemption of a redeemable security and the time such among is calculated. Specifically, Rule 22c–1, in pertinent part prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security from selling, redeeming or repurchasing any such security, except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption, or of an order to purchase or sell such security.

6. Golden American's recapture of any bonus credit could be viewed as the redemption of such an interest at a price above net asset value. Applicants contend however, that the bonus credits do not violate Rule 22c–1 under the Act. Applicants argue that bonus credit provisions do not give rise to either of the evils that Rule 22c–1 was designed to address. The Rule was intended to eliminate or reduce, as far as was reasonably practicable, the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption at a price above net asset value, or other unfair results, including speculative trading practices.

7. Applicants argue that the evils prompting the adoption of Rule 22c–1 were primarily the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing permitted certain investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding shares.

8. Applicants argue that the proposed bonus credit provisions pose no such threat of dilution. Applicants contend that an owner's interest in his or her contract value or in the Account would always be offered under the Contracts at a price determined on the basis of net asset value. Applicants assert recaptures of bonus credits result in a redemption of Golden American's interest in an owner's contract value or in the Account at a price determined on the basis of the Account's current net asset value and not at an inflated price. Moreover, the amount recaptured will always equal the amount that Golden American paid from its general account for the credits. Similarly, although owners are entitled to retain any investment gains attributable to the bonus credits, the amount of such gains would always be computed at a price determined on the basis of net asset value.

9. Applicants contend that the Rule 22c–1 should have no application to the bonus credit because neither of the harms that it was intended to address arise in connection with the proposed bonus credit provisions. Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek an exemption from Rule 22c–1.

10. Applicants argue that even if the proposed bonus credit provisions would conflict with sections 2(a)(32) or 27(i)(2)(A) of the Act or Rule 22c–1 thereunder, the Commission should grant the exemptions that they request because the bonus credit provisions are generally very favorable and very beneficial for owners. The recapture provisions of the Contracts temper this benefit somewhat, but owners, unless they die, retain the ability to avoid the recapture. Although, there is a downside in declining markets to bonus credits if the owner dies or if the owner exercises his or her cancellation right during the "free look" period or if the owner surrenders the Contract, the bonus credit provisions (including their dynamic elements) are fully disclosed in the prospectus for the Contracts. The recapture provisions do not, on balance, diminish the overall value of the bonus credit provisions.

11. Applicants state that the Commission's authority under section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, Golden American's successors in interest, Future Accounts and Future Underwriters from the provisions of sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. Applicants submit that the exemption of these classes of persons is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. The requested exemptions would only extend to persons that in all material respects are the same as the Applicants. The Commission has previously granted exemptions to classes of similarly situated persons in various contexts and in a wide variety of circumstances, including class exemptions for recapturing bonus credits under variable annuity contracts.

12. Applicants represent that Future Contracts will be substantially similar in all material respects to the Contracts and that each factual statement and representation about the bonus credit provisions of the Contracts will be equally true of Future Contracts. Applicants also represent that each material representation made by them about the Account and DSI will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in this Application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be a NASD member.

Conclusion

Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27713 Filed 11–2–01; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During Week Ending October 19, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–10843.
Date Filed: October 15, 2001.
Parties: Members of the International Air Transport Association.
Subject: CTC Comp 0369 data 16 October 2001, Mail Vote 168—Resolution 010tt, Special ECAA Amending/Rescission Resolution, Intended effective date: 1 November 2001 for implementation, 1 February 2002.

Docket Number: OST–2001–10849.
Date Filed: October 15, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0514 dated 16 October 2001, Mail Vote 154—Resolution 010s, TC3 Special Passenger Amending Resolution between China and Korea, Intended effective date: 30 October 2001.

Docket Number: OST–2001–10863.
Date Filed: October 17, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC123 0155/0156 dated 24 September 2001, Mail Votes 148/149 (Summary attached), TC123 Mid/South Atlantic Resolutions, PTC123 0162/0163 dated 19 October 2001 (Adoption), Report: PTC123 0160 dated 16 October 2001. Intended effective dates: 1 November 2001, 1 March 2002.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 01–27737 Filed 11–2–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 19, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1996–2016.
Date Filed: October 15, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 5, 2001.
Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting renewal of its Route 739 certificate, authorizing Continental to provide scheduled air transportation of persons, property, and, mail between New York/Newark and the coterminal points Sao Paulo and Rio de Janeiro.

Docket Number: OST–1996–1648.
Date Filed: October 18, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 8, 2001.
Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, for renewal of its Route 733 certificate authorizing Continental to provide scheduled foreign air transportation of persons, property, and mail between a point or points in the United States and a point or points in the United Kingdom, excluding London's Heathrow and Gatwick airports.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 01–27738 Filed 11–2–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–01–9718]

Application of Sum Air Services, Inc. d/b/a Paradise Air for Issuance of Commuter Air Carrier Authority

AGENCY: Department of Transportation.
ACTION: Notice of order to show cause (Order 2001–10–16)

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Sum Air Services, Inc. d/b/a Paradise Air is fit, willing, and able, to provide commuter air carrier service using small aircraft under 49 U.S.C. 41738.

DATES: Persons wishing to file objections should do so no later than November 16, 2001.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–01–9718 and addressed to Department of Transportation Dockets (SVC–124, Room PL–401), 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: October 30, 2001.
Read C. Van De Water,
Assistant Secretary for Aviation and International Affairs.
[FR Doc. 01–27739 Filed 11–2–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary, Federal Aviation Administration

[Docket No. OST–20001–9849]

Notice of Market-based Actions To Relieve Airport Congestion and Delay; Indefinite Suspension of the Closing Date of the Comment Period

AGENCY: Office of the Secretary, DOT, Federal Aviation Administration, DOT.
ACTION: Notice to suspend until further notice the closing date of the comment period on market-based actions to relieve airport congestion and delay.

SUMMARY: In a notice published on August 21, 2001, the DOT requested comments on the possible role, feasibility, and effectiveness of using market-based approaches to relieve airline flight delays and congestion at busy airports. The comment period is scheduled to close on November 19, 2001. This notice suspends the closing date of the comment period until further notice.

FOR FURTHER INFORMATION CONTACT: Larry Phillips, Senior Economic Policy Advisor, 202–366–4868 or Nancy Kessler, Senior Attorney-Advisor, 202–366–9301.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 2001, the DOT issued a "Notice of Market-based Actions to Relieve Airport Congestion and Delay" (66 FR 43947, August 21, 2001). In that notice, respondents were asked to provide comments, information, and/or data to address questions illustrative of the types of considerations the Department was seeking to evaluate, regarding how market-based approaches, as well as administrative actions, could work to relieve congestion at busy airports, including the design, implementation, and impacts of these approaches or actions.

Suspension of the Closing Date of the Comment Period

The terrorist attacks of September 11, 2001 on the World Trade Center and the Pentagon caused the FAA to temporarily cease all non-military flights in the United States and required airports and airlines to adopt certain security measures prior to the resumption of commercial service. In response to the new security requirements and lowered passenger demand, several airlines have reduced the number of aircraft operations below previously planned levels throughout the national airport system. These factors, at least in the short-run, have contributed to a significant decrease in airport congestion at formerly busy airports.

In these circumstances, the Department has determined that it would be reasonable and in the public interest to suspend until further notice the closing date of the comment period for the notice 66 FR 43947, August 21, 2001. At the appropriate time, the Department will publish an advance notice giving the new closing date for comments.

Issued on October 31, 2001 in Washington, DC.

Susan McDermott,
Deputy Assistant Secretary for Aviation and International Affairs, Department of Transportation.
Louise Maillett,
Acting Assistant Administrator for Policy, Planning, and International Aviation, Federal Aviation Administration.
[FR Doc. 01–27740 Filed 11–2–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2001–10866]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Request for comment on collections of information.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the National Highway Traffic Safety Administration (NHTSA) is planning to submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB): Exemption from the Make Inoperative Prohibition, Modifier Identification and Consumer Notification, OMB Control Number 2127-New. Before submitting the ICR to OMB for review and approval, NHTSA is soliciting comments on specific aspects of the information collection contained in the final rule of February 27, 2001 (66 FR 12638), "Exemption from the Make Inoperative Prohibition."

DATES: Comments must be received on or before January 4, 2002.

ADDRESSES: Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted to U.S. Department of Transportation Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the collection of information for which a comment is provided, by referencing its OMB Control Number. It is requested, but not required, that one original plus two copies of the comments be provided. The Docket Section is open on weekdays from 10:00 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gayle Dalrymple, Telephone: (202) 366–5559. Fax: (202) 493–2739.

SUPPLEMENTARY INFORMATION:

Affected Entities: Businesses that modify vehicles so that the vehicles may be used by persons with disabilities.

Title: Exemption for the Make Inoperative Prohibition.

I. Background

On February 27, 2001 NHTSA published a final rule (66 FR 12638) to facilitate the modification of motor vehicles so that persons with disabilities can drive or ride in them as passengers. In that final rule, the agency issued a limited exemption from a statutory provision that prohibits specified types of commercial entities from either removing safety equipment or features installed on motor vehicles pursuant to the Federal motor vehicle safety standards or altering the equipment or features so as to adversely affect their performance. The exemption is limited in that it allows repair businesses to modify only certain types of Federally-required safety equipment and features, under specified circumstances. The regulation is found at 49 CFR part 595 Subpart C—Vehicle Modifications to Accommodate People with Disabilities.

This final rule included two new "collections of information," as that term is defined in 5 CFR part 1320 *Controlling Paperwork Burdens on the Public:* modifier identification and a document to be provided to the owner of the modified vehicle stating the exemptions used for that vehicle and any reduction in load carrying capacity of the vehicle of more than 100 kg (220 lbs).

II. Modifier Identification

Modifiers who take advantage of the exemption created by this rule are required to furnish NHTSA with a written document providing the modifier's name, address, and telephone number, and a statement that the modifier is availing itself of the exemption. The rule requires:

S595.6 Modifier Identification

(a) Any motor vehicle repair business that modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle and intends to avail itself of the exemption provided in 49 CFR 595.7 shall furnish the information specified in paragraphs (a)(1) through (3) of this section to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(1) Full individual, partnership, or corporate name of the motor vehicle repair business.

(2) Residence address of the motor vehicle repair business and State of incorporation if applicable.

(3) A statement that the motor vehicle repair business modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle and intends to avail itself of the exemption provided in 49 CFR 595.7.

(b) Each motor vehicle repair business required to submit information under paragraph (a) of this section shall submit the information not later than August 27, 2001. After that date, each motor vehicle repair business that modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle and intends to avail itself of the exemption provided in 49 CFR 595.7 shall submit the information required under paragraph (a) not later than 30 days after it first modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle. Each motor vehicle repair business who has submitted required information shall keep its entry current, accurate and compete by submitting revised information not later than 30 days after the relevant changes in the business occur."

This requirement is a one-time submission unless changes are made to the business as described in paragraph (b). NHTSA estimates that there are currently 400 businesses making modifications to motor vehicles to accommodate persons with disabilities. Of those 400, we estimate 85 percent

will need to use the exemptions provided by 49 CFR 595.7 (340 businesses). We estimate that the burden hours to meet the requirement of paragraph (a) will be a one-time expenditure of 56.8 hours nationwide in 2001:

340 businesses × 10 minutes/business = 56.8 hours.

We estimate the material cost associated with this one-time submission to be 44 cents per responding business, or $149.60 nationwide. After the initial submission there will be an annual burden for businesses that begin using the exemptions, or make changes to the information required in paragraph (a). We estimate that five percent of the 340 businesses using the exemptions (85% of 400) will experience these changes annually. This will cause an annual burden of 2.8 hours and $7.48 in each year after 2001.

Burden means the total time, effort, or financial resources expended by person to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instruction; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

We seek comment on:

1. Is our estimate of 400 businesses engaged in vehicle modification to accommodate people with disabilities correct?

2. Are we correct in assuming that a maximum of 85 percent of those 400 businesses, or 340 businesses, will need to use the exemptions provided by 49 CFR 595.7?

3. Are our estimates of the burden hours and material cost of compliance with 49 CFR 595.6 reasonable?

III. Identification of Which Portions of the Exemption Are Being Used

Modifiers who avail themselves of the exemptions in 49 CFR 595.7 are required to keep a record, for each applicable vehicle, listing which standards, or portions thereof, no longer comply with the Federal motor vehicle safety standards and to provide a copy to the owner of the vehicle modified (see 49 CFR 595.7 (b) and (e) as published in the final rule).

We estimate that:

1. There are approximately 2,300 vehicles modified for persons with disabilities per year by 400 businesses,

2. If 85 percent of the 400 businesses use the exemptions provided by 49 CFR 595.7, those 340 businesses will modify 1955 vehicles annually, and

3. The burden for producing the record required by 49 CFR 595.7 in accordance with paragraph (e) for those vehicles will be 652 hours per year nationwide.

In the final rule we anticipated that the least costly way for a repair business to comply with this portion of the new rule would be to annotate the vehicle modification invoice as to the exemption, if any, involved with each item on the invoice. The cost of preparing the invoice is not a portion of our burden calculation, as that preparation would be done in the normal course of business. The time needed to annotate the invoice, we estimate, is 20 minutes. Therefore, the burden hours for a full year are calculated as:

1,955 vehicles × 20 minutes/vehicle = 651.7 hours.

For 2001 the burden will be reduced because the rule did not become effective until April 30. Therefore, the annual burden will be reduced by 4/12 to 217.2 hours for 2001.

This burden includes the calculation required by 49 CFR 595.7(e)5, but not the gathering of the information required for the calculation. That information would be gathered in the normal course of the vehicle modification. The only extra burden required by the new rule is the calculation of the reduction in loading carrying capacity and conveying this information to the vehicle owner. Again we are assuming that annotation on the invoice is the least burdensome way to accomplish this customer notification.

There will be no additional material cost associated with compliance with this requirement since no additional materials need be used above those used to prepare the invoice in the normal course of business. We are assuming it is normal and customary in the course of vehicle modification business to prepare an invoice, to provide a copy of the invoice to the vehicle owner, and to keep a copy of the invoice for five years after the vehicle is delivered to the owner in finished form.

We seek comment on whether our assumptions about the following are reasonable:

1. The document required by 49 CFR 595.7(b) and specified in paragraph (e) will need to be prepared for approximately 1,955 vehicles modified nationwide per year,

2. Annotation of each vehicle modification invoice as to which exemptions were used will take an average of 20 minutes, and

3. It is normal in the course of vehicle modification business to prepare an invoice, to provide a copy of the invoice to the vehicle owner, and to keep a copy of the invoice for five years after the vehicle is delivered to the owner in finished form.

IV. Summary

The estimated burden for modifiers wishing to use the new make inoperative exemptions allowed by 49 CFR 595.7 to identify themselves to NHTSA according to 49 CFR 595.6 was calculated as follows:

2001

Respondents 340.0
Responses × 1.0
Hrs/response × 0.167
2001 burden = 56.8 hours
and
$/response × 0.44 = $149.60

Years after 2001

Respondents 17.0
Responses × 1.0
Hrs/response × 0.167
2001 burden = 2.8 hours
and
$/response × 0.44 = $7.48

The estimated burden for preparing the document required by 49 CFR 595.7(b) and specified in paragraph (e) was calculated as follows:

2001

Respondents 340.0
Av. # Responses × 1.92
Hrs/response × 0.333
2001 burden = 217.2 hours

Years after 2001

Respondents 340.0
Av. # Responses × 5.75
Hrs/response × 0.167
Annual burden = 2.8 hours

Total reporting burden for 2001 is: 57 + 217 = 274 hours, and $149.60.

Total reporting burden for years after 2001 is: 3 + 652 = 655 hours, and $7.48.

Issued on: October 31, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–27735 Filed 11–2–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34109]

Oakdale Traction Corporation—Acquisition and Operation Exemption—Union Pacific Railroad Company

Oakdale Traction Corporation (OTC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company (UP) and operate a 1.12-mile line of railroad that extends between milepost 123.35 and milepost 124.47, at Oakdale, Stanislaus County, CA (Oakdale line).[1]

While Mr. and Mrs. Brichetto, now OTC, may have acquired the Oakdale line on June 27, 2001, the exemption that provides the regulatory approval for this transaction did not become effective until October 23, 2001, 7 days after the filing of the verified notice of exemption by OTC. OTC states that it will commence operating the Oakdale line upon receiving its first request for rail service but not sooner than October 23, 2001.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34109 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Esq., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1194.

[1] According to the verified notice of exemption, John Brichetto and Jacqueline Brichetto (Mr. and Mrs. Brichetto) acquired the Oakdale line for rail use from UP by a quitclaim deed on June 27, 2001. OTC states that Mr. and Mrs. Brichetto evidently were unaware of the requirement that they needed Board approval under 49 U.S.C. 10901, or an exemption therefrom under 49 CFR 1150.31, to acquire the Oakdale line. OTC maintains that, upon learning of that requirement, Mr. and Mrs. Brichetto incorporated OTC and conveyed the Oakdale line to it. OTC notes that the Oakdale line is the remaining segment of a 53-mile line of railroad formerly owned by UP's predecessor, the Southern Pacific Transportation Company, that extended between Stockton, CA, and Montpelier, CA (Stockton-Montpelier line). OTC states that its assessment of railroad map information indicates that, except for the Oakdale line, the Stockton-Montpelier line was abandoned sometime between 1975 and 1982.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: October 29, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–27733 Filed 11–2–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket BTS–2001–10909]

Notice of Request To Renew the Approval of Information Collections: OMB No. 2139–0002 and 2139–0004 (Financial and Operating Statistics for Motor Carriers of Property)

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice and request for comments.

OMB Control Numbers: 2139–0002 (Form QFR) and 2139–0004 (Form M).

SUMMARY: This notice announces that the Bureau of Transportation Statistics (BTS) intends to request the Office of Management and Budget (OMB) to renew approval for two information collections, the Quarterly Report of Class I Motor Carriers of Property (Form QFR) and Annual Report of Class I and Class II Motor Carriers of Property, (Form M). The information collections are necessary to ensure that motor carriers comply with financial and operating statistics requirements as prescribed in the BTS regulations(49 CFR 1420). This notice is required by the Paperwork Reduction Act.

DATES: January 4, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket No. BTS–2001–10909, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL-401, Washington, DC 20590–0001. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays.

If you wish to file comments using the Internet, you may use the DOT DMS website at *http://dmses.dot.gov*. Please follow the online instructions for submitting an electronic comment. Comments should identify the docket number and be submitted in duplicate. If you would like the Department to acknowledge receipt of your comment, you must submit a self-addressed stamped postcard on which the following statement is made: Comments on Docket BTS–2001–10909. The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail.

FOR FURTHER INFORMATION CONTACT: Paula R. Robinson, Compliance Program Manager, K–27, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–2984; Fax: (202) 366–3364; e-mail: *paula.robinson@bts.gov*.

SUPPLEMENTARY INFORMATION:

I. The Data Collection

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; as amended) and 5 CFR part 1320 require each Federal agency to obtain an OMB approval to continue an information collection activity for which the agency received prior approval. BTS is seeking OMB approval for the following two BTS information collection activities whose prior OMB approvals are near the expiration date:

(1) *Title:* Quarterly Report of Class I Motor Carriers of Property. OMB Control No. 2139–0002.

Form No.: BTS Form QFR.

Type of Review: Extension of a currently approved collection.

Respondents: Class I Motor Carriers of Property.

Number of Respondents: 1,000 (per quarter).

Estimated Time Per Response: 1.8 hours (27 minutes per quarter).

Expiration Date: March 31, 2002.

Frequency: Quarterly.

Total Annual Burden: 1,800 hours.

(2) *Title:* Annual Report of Class I and Class II Motor Carriers of Property. OMB Control No. 2139–0004.

Form No.: BTS Form M.

Type of Review: Extension of a currently approved collection.

Respondents: Class I and Class II Motor Carriers of Property.

Number of Respondents: 3,000 (per year).

Estimated Time Per Response: 9 hours.

Expiration Date: March 31, 2002.

Frequency: Annually.

Total Annual Burden: 27,000 hours.

Background

The Quarterly Report of Class I Motor Carriers of Property (Form QFR) and Annual Report of Class I and Class II Motor Carriers of Property (Form M) are mandated reporting requirements for for-hire motor carriers. Motor carriers required to comply with the BTS

regulations are classified on the basis of their annual gross carrier operating revenues (including interstate and intrastate). Under the financial and operating statistics (F&OS) program the BTS collects balance sheet and income statement data along with information on tonnage, mileage, employees, transportation equipment, and other related data. The data and information collected is made publicly available and used by the BTS to determine a motor carrier's compliance with the F&OS program requirements prescribed in the BTS regulations (49 CFR 1420). The regulations were formerly administered by Interstate Commerce Commission (ICC) and later transferred to the U.S. Department of Transportation on January 1, 1996, by the ICC Termination Act of 1995 (the Act), Public Law 104–88, 109 Stat. 803 (1995) (codified at 49 U.S.C. 14123).

II. Request for Comments

BTS requests comments on any aspects of these information collections, including (1) The accuracy of the estimated burden; (2) ways to enhance the quality, usefulness, and clarity of the collected information; and (3) ways to minimize the collection burden without reducing the quality of the information collected including additional use of automated collection techniques or other forms of information technology.

Electronic Access and Filing

You may submit or retrieve comments online through the Docket Management System (DMS) at *http://dmses.dot.gov.* Please include the docket number appearing in the heading of this document. Acceptable formats include: MS Word (Versions 95 to 97), MS Word for Mac (Versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (Versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site. You may also download an electronic copy of this document from the DOT Docket Management System on the Internet at *http://dmses.dot.gov.*

Issued in Washington, DC.

Russell B. Capelle, Jr.,

Assistant BTS Director for Motor Carrier Information, Department of Transportation.

[FR Doc. 01–27736 Filed 11–2–01; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 25, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 5, 2001 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0009.

Form Number: TD F 90–22.1.

Type of Review: Extension.

Title: Financial Recordkeeping and Reporting of Currency and Foreign Financial Accounts.

Description: The Bank Secrecy Act, Public Law 90–508, authorizes the Secretary of the Treasury to require financial institutions and individuals to keep records and file reports that the Secretary determines to have a high degree of usefulness in criminal, tax, and regulatory matters.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institution.

Estimated Number of Recordkeepers: 13,000,000.

Estimated Burden Hours Per Recordkeeping:

Form and/or CFR part	Title	Response time
IRS Form 4789; 31 CFR 103.22(b)(1), 103.27(a), 103.27(d), and 103.28.	Reports of Transactions in Currency	5 minutes.
IRS Form 8362; 31 CFR 103.22(b)(2), 103.27(a), 103.27(d), and 103.28.	Reports of Transactions in Currency	19 minutes (per respondent), 5 minutes (per recordkeeper).
TD 90–22.53; 31 CFR 103.22(d), 103.27(a), and 103.27(d).	Transactions of Exempt Person	1 hour, 22 minutes.
Customs Form 4790; 31 CFR 103.23 and 103.27.	Reports of Transportation of Currency or Monetary Instruments.	11 minutes.
TD F 90–22.1; 31 CFR 103.24, 103.27(d), 103.32.	Report of Foreign Bank and Financial Accounts; and Reports of Foreign Financial Accounts.	10 minutes (per respondent), 5 minutes (per recordkeeper).
31 CFR 103.25	Reports of Transactions with Foreign Agencies.	1 hour.
31 CFR 103.26 and 103.33(d)	Reports of Certain Domestic Coin and Currency Transactions.	19 minutes (per respondent), 5 minutes (per recordkeeper).
31 CFR 103.29 and 103.38	Purchases of Bank Checks and Drafts, Cashier's Checks, Money Orders and Traveler's Checks.	7 hours, 30 minutes.
31 CFR 103.33: 103.33(a)–(c)	Records to be Made and Retained by Financial Institutions.	50 hours.
103.33(e)–(f)		16 hours.
103.33(g), 103.38		12 hours.
31 CFR 103.34 and 103.38	Additional Records to be Made and Retained by Banks.	100 hours.
31 CFR 103.35 and 103.38	Additional Records to be Made and Retained by Brokers or Dealers in Securities.	100 hours.
31 CFR 103.36: 103.36(a)&(b)(1)–(8)	Additional Records to be Made and Retained by Casinos.	100 hours.
103.36(b)(9), 103.36(b)(11)		7 hours, 30 minutes.

Form and/or CFR part	Title	Response time
103.36(c), 103.38		4 hours.
31 CFR 103.37 and 103.38	Additional Records to be Made and Retained by Currency Dealers and Exchangers.	16 hours.
31 CFR 103.38	Nature of Records and Retention Period	
31 CFR 103.64, 103.36(b)(10), and 103.38	Special Rules or Casinos	100 hours.
31 CFR 103.81–87	Administrative Rulings	1 hour.

Frequency of Response: Annually.

Estimated Total Recordkeeping Burden: 10,942,392 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–27649 Filed 11–2–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 25, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 5, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1612.

Regulation Project Number: REG–209830–96 Final.

Type of Review: Extension.

Title: Estate and Gift Tax Marital Deduction.

Description: The information requested in regulation section 20.2056(b)–7(d)(3)(ii) is necessary to provide a method of estates of decedents whose estate tax returns were due on or before February 18, 1997, to obtain an extension of time to make the qualified terminable interest property (QTIP) election under section 2056(b)(7)(B)(v).

Respondents: Individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–27650 Filed 11–2–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 98–52

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 98-52, Cash or Deferred Arrangements; Nondiscrimination.

DATES: Written comments should be received on or before January 4, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Cash or Deferred Arrangements; Nondiscrimination.

OMB Number: 1545–1624.

Notice Number: Notice 98–52.

Abstract: This notice provides guidance to plan administrators, plan sponsors, etc., regarding nondiscriminatory safe harbors with respect to Internal Revenue Code sections 401(k)(12) and 401(m)(11), as amended by the Small Business Job Protection Act of 1996. The safe harbor provisions pertain to the actual deferral percentage test and the actual contribution percentage test for cash or deferred arrangements and for defined contribution plans. To take advantage of the safe harbor provisions, plan sponsors must amend their plans to reflect the new law and must provide plan participants with an annual notice describing the benefits available under the plan.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 60,000.

Estimated Time Per Respondent: 1 hour, 20 minutes.

Estimated Total Annual Burden Hours: 80,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 29, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–27741 Filed 11–2–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
November 5, 2001

Part II

Environmental Protection Agency

Office of Environmental Justice Small Grants Program—Application Guidance FY 2002; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7097–5]

Office of Environmental Justice Small Grants Program—Application Guidance FY 2002

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This guidance outlines the purpose, goals, and general procedures for application and award under the Fiscal Year (FY) 2002 (October 1, 2001–September 30, 2002) Environmental Justice Small Grants Program. For FY 2002, the EPA will make available approximately $1,500,000 in grant funds to eligible organizations (pending availability of funds); $500,000 of this amount is available for Superfund projects only.

DATES: The application must be delivered by close of business Friday, February 21, 2002 to your appropriate EPA regional office (listed in section III) or postmarked by midnight Friday, February 21, 2002.

ADDRESSES: For specific application delivery please contact the appropriate EPA regional office listed in section III.

FOR FURTHER INFORMATION CONTACT: Sheila Lewis, Senior Program Analyst, EPA Office of Environmental Justice, (202) 564–0152.

SUPPLEMENTARY INFORMATION:

This Guidance Includes the Following

I. Scope and Purpose of the Environmental Justice Small Grants Program
II. Eligible Applicants and Activities
III. Application Requirements
IV. Process for Awarding Grants
V. Expected Time-frame for Reviewing and Awarding Grants
VI. Project Period and Final Reports
VII. Fiscal Year 2003 Environmental Justice Small Grants Program
Appendix A: Standard Forms 424 and 424A and Completed Sample Forms
Appendix B: Copy of 40 CFR 30.27 "Allowable Costs'
Appendix C: Guidance on Lobbying Restrictions
Appendix D: Tips on Preparing an Application
Appendix E: State Single Points of Contact
Appendix F: Additional Government Application Forms

Translations Available

The Spanish translation of this application is found at the back of this document. Please note the forms are translated into Spanish but MUST be completed in English.

I. Scope and Purpose of the OEJ Small Grants Program

The purpose of this grant program is to provide financial assistance to eligible community groups (i.e., community-based/grassroots organizations, churches, or other nonprofit organizations with a focus on community-based issues) and federally recognized tribal governments that are working on or plan to carry out projects to address environmental justice issues. Preference for awards will be given to community-based/grassroots organizations that are working on local solutions to local environmental problems. Funds can be used to develop a new activity or substantially improve the quality of existing programs that have a direct impact on affected communities. All awards will be made in the form of a grant not to exceed one year.

Background

In its 1992 report, "Environmental Equity: Reducing Risk for All Communities," the EPA found that minority and/or low-income populations may experience higher than average exposure to toxic pollutants than the general population. The EPA established the Office of Environmental Justice (OEJ) in 1992 to help these communities identify and assess pollution sources, to implement environmental awareness and training programs for affected residents, and to work with community stakeholders to devise strategies for environmental improvements.

In June of 1993, OEJ was delegated granting authority to solicit, select, supervise, and evaluate environmental justice-related projects, and to disseminate information on the projects' content and effectiveness. Fiscal year (FY) 1994 marked the first year of the OEJ Small Grants Program. The chart below shows how the grant monies have been distributed since FY 1994.

Fiscal Year	Amount ($)	Number of Awards
1994	500,000	71
1995	3,000,000	175
1996	2,800,000	152
1997	2,700,000	139
1998	2,500,000	123
1999	1,455,000	95
2000	899,000	61
2001	1,300,000	79

How Does EPA Define Environmental Justice Under the Environmental Justice Small Grants Program?

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no one group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal environmental programs and policies. Meaningful involvement means that: (1) Potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected.

II. Eligible Applicants and Activities

A. Who May Submit Applications and May Applicants Submit More Than One?

Any affected, non-profit community organization[1] or federally recognized tribal government may submit an application upon publication of this solicitation. Applicants must be non-profit to receive these federal funds. State-recognized tribes or indigenous peoples' organizations can apply for grant assistance if they meet the definition of a nonprofit organization. "Non-profit organization" means any corporation, trust, association, cooperative, or other organization that: (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. Non-profit status may be demonstrated through designation by the Internal Revenue Service as a 501(c) organization or evidence that a state recognizes the organization's non-profit status. While state and local governments and academic institutions are eligible to receive grants, preference will be given to non-profit, community-based/grassroots organizations and federally recognized tribal governments. Preference may be given to those organizations that have not received previous grants under the Environmental Justice Small Grants Program. Individuals are not eligible to receive grants.

The Environmental Justice Small Grants Program is a competitive process. To prevent preferential treatment to any single potential applicant, the Agency will offer training and/or conference calls on grant application guidelines. We encourage you to participate so that you can have your questions answered in a public forum. Call your Regional office to inquire about the scheduled dates of the special training and conference calls.

The EPA will consider only one application per applicant for a given project. Applicants may submit more than one application if the applications are for separate and distinct projects or activities. Applicants that previously received small grant funds may submit an application for FY 2002. Every application for FY 2002 is evaluated based on the merit of the proposed project in comparison to other FY 2002 applications. Past performance may be considered during the ranking and evaluation process for those applicants who have received previous grants.

[1] As a result of the Lobbying Disclosure Act of 1995, EPA (and other federal agencies) may not award grants to non-profit, 501(c)(4) organizations that engage in lobbying activities.

B. What Types of Projects Are Eligible for Funding?

While there are many applications submitted from community groups for equally worthwhile projects, the EPA is emphasizing the need for two types of projects, multimedia and research. Multimedia projects address pollution in more than one environmental medium (e.g., air, water, etc.). Projects which are research-oriented and specific to hazardous substances are considered for funding available under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This Act is often referred to as "Superfund." With the exception of grants awarded with Superfund appropriations, the Office of Environment Justice Small Grants Program awards grants on a multi-media basis.

Focus Area for Bonus Points

The Office of Environmental Justice which manages the Agency's national grants program would like to elicit grant applications in two specific areas. The Office has asked the National Environmental Justice Advisory Council to hold two public meetings focusing on: (a) Fish consumption, water quality, and environmental justice; and (b) innovative technologies for pollution prevention. Thus, as a result, we are encouraging applicants to focus their projects on one of these two topics and will add up to ten (10) bonus points for applications concerning one of these two topics.

To be considered for funding, the application must meet the criteria under *either* Item 1 *or* Item 2 below:

1. Multi-Media Requirements (use two)

Recipients of these funds must implement projects that address pollution in more than one environmental medium (e.g., air, water). To show evidence of the breadth of the project's scope, the application must identify at least two environmental statutes that the project will address. To be eligible for funding, your project must include activities outlined in the following environmental statutes:

A. Statutes

(1) Clean Water Act, section 104(b) (3): conduct and promote the coordination of research, investigations, experiments, training, demonstration, surveys, and studies relating to the causes, extent, prevention, reduction, and elimination of water pollution.

(2) Safe Drinking Water Act, section 1442(b) (3): develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

(3) Solid Waste Disposal Act, section 8001(a): conduct and promote the coordination of research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to solid waste (e.g., health and welfare effects of exposure to materials present in solid waste and methods to eliminate such effects).

(4) Clean Air Act, section 103(b) (3): conduct research, investigations, experiments, demonstrations, surveys, and studies related to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

(5) Toxic Substances Control Act, section 10(a): conduct research, development, monitoring, public education, training, demonstrations, and studies on toxic substances.

(6) Federal Insecticide, Fungicide, and Rodenticide Act, section 20(a): conduct research, development, monitoring, public education, training, demonstrations, and studies on pesticides.

(7) Marine Protection, Research, and Sanctuaries Act, section 203: conduct research, investigations, experiments, training, demonstrations, surveys, and studies relating to the minimizing or ending of ocean dumping of hazardous materials and the development of alternatives to ocean dumping.

B. Goals for Multi-Media Projects

In addition to the requirements outlined above, the application must also include a description of how an applicant plans to meet at least two of the three program goals listed below. See section III "Application Requirements" for more details.

(1) Identify necessary improvements in communication and coordination among all stakeholders, including existing community-based/grassroots organizations and local, state, tribal, and federal environmental programs. Facilitate communication and information exchange, and create partnerships among stakeholders to address disproportionate, high and adverse environmental exposure (e.g., workshops, awareness conferences, establishment of community stakeholder committees);

(2) Build community capacity to identify local environmental justice problems and involve the community in the design and implementation of activities to address these concerns. Enhance critical thinking, problem-solving, and active participation of affected communities. (E.g., train-the-trainer programs).

(3) Enhance community understanding of environmental and public health information systems and generate information on pollution in the community. If appropriate, seek technical experts to demonstrate how to access and interpret public environmental data (e.g., Geographic Information Systems (GIS), Toxic Release Inventories (TRI) and other databases).

2. Requirements for Research Grants Funded Under CERCLA

Recipients of these funds must implement projects that are specifically research oriented and specific to hazardous substances. The EPA's grant regulations define "research" as "systematic study directed toward fuller scientific knowledge or understanding of the subject studied," 40 CFR 30.2(dd). The EPA has interpreted "research" to include studies that extend to socioeconomic, institutional, and public policy issues as well as the "natural" sciences. Your research project *MUST* meet the following criteria:

A. Eligibility

(1) CERCLA, section 311(c) authorizes EPA to fund research grants. Therefore, Superfund grants can only be awarded when the project is of a research nature. Research must relate to the detection, assessment, and evaluation of the effects on and risks to human health from hazardous substances and the detection of hazardous substances in the environment.

(2) Applicants must demonstrate that the research project relates to "hazardous substances" as that term is defined by CERCLA 101 (14). There is a list of hazardous substances at 40 CFR 302.4 which, while not exclusive, does provide useful guidance.

(3) Research funded under CERCLA 311(c) cannot relate to petroleum products excluded from the definition of hazardous substances found at CERCLA 101(14).

(4) The project must be of a research nature only, i.e., survey, research, collecting and analyzing data which will be used to expand scientific knowledge or understanding of the subject studied. Research projects, however, need not be limited to academic studies. Projects which expand the scientific knowledge or understanding, of a community, about hazardous substances issues, that effect their community, can be funded as EJ Superfund grants.

(5) The project cannot carry out training activities, other than training in research techniques. In other words CERCLA 311(c) research projects cannot be designed as outreach, technical assistance, or public education activities.

(6) The project can include conferences only if the purpose of the conference is to present research results or to gather research data.

B. Goal for Research Projects

In addition to the special research requirements for Superfund grants under CERCLA outlined above, the application must include a description of how the research projects can serve as models for other communities when confronted with similar problems. See section III "Application Requirements" for more details.

Please Note

(1) If your project includes scientific research and/or data collection, you must be prepared to submit a Quality Assurance Plan (QAP) to your EPA Project Officer prior to the beginning of the research. Multi media projects may also require a Quality Assurance Plan.

(2) CERCLA grants are financed with Superfund appropriations and must be limited to research grants under CERCLA 311(c). *Do not propose projects which include activities under the "multi-media" authorities described in section 1, above, to carry out a Superfund research project.*

The issues discussed above may be defined differently among applicants from various geographic regions, including areas outside the continental U.S. (Alaska, American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands). Each application should define its issues as they relate to the specific project. The narrative/work plan must include a succinct explanation of how the project may serve as a model in other settings

and how it addresses a high-priority environmental justice issue. The degree to which a project addresses a high-priority environmental justice issue will vary and is defined by applicants according to their local environmental justice concerns.

C. How Much Money May Be Requested, and Are Matching Funds Required?

The ceiling in federal funds for an individual grant is $20,000. Applicants are *not* required to provide matching funds.

D. Are There Any Restrictions on the Use of the Federal Funds?

Yes. EPA grant funds can only be used for the purposes set forth in the grant agreement, and be consistent with the statutory authority for the award. Grant funds from this program cannot be used for matching funds for other federal grants, lobbying, or intervention in federal regulatory or adjudicatory proceedings. In addition, the recipient may not use these federal assistance funds to sue the federal government or any other government entity. Refer to 40 CFR 30.27, entitled "Allowable Costs" (see Appendix B). The scope of environmental justice grants may not include construction, promotional items (e.g., T-shirts, buttons, hats), and furniture purchases.

III. Application Requirements

A. What Is Required for Applications?

Proposals from eligible organizations *must* have the following:

1. Application for Federal Assistance (SF 424) the official form is required for all federal grants that requests basic information about the grantee and the proposed project. The applicant must submit the original application, and one copy, signed by a person duly authorized by the governing board of the applicant. Please complete part 10 of the SF 424 form, "Catalog of Federal Domestic Assistance Number" with the following information: 66.604—Environmental Justice Small Grants Program. See Appendix A for a copy of this form and a completed sample.

2. The Federal Standard Form (SF 424A) and budget detail, which provides information on your budget. For the purposes of this grant program, complete only the non shaded areas of SF 424A. See Appendix A for a copy and completed sample of a budget detail. Budget figures/projections should support your work plan/narrative. The EPA portion of each grant will not exceed $20,000. Therefore, your budget should reflect this limit on federal funds.

3. A narrative/work plan of the proposal is not to exceed five pages. Applications may not be considered if they exceed five single pages. A narrative/work plan describes the applicant's proposed project. The pages of the work plan must be letter size (8½ x 11 inches), with normal type size (12 characters per inch), and at least 1" margins.

The narrative/work plan is one of the most important aspects of your application and (assuming that all other required materials are submitted) will be used as the primary basis for selection. Work plans must be submitted as follows:

a. A one page summary that:

- Identifies the environmental justice issue(s) to be addressed by the project;
- Identifies the Environmental Justice community/target audience;
- Identifies the environmental Statutes/Acts addressed by the project; and
- Identifies the program goal that the project will meet and how it will meet them.

b. A concise introduction that states the nature of the organization (i.e., how long it has been in existence, if it is incorporated, if it is a network, etc.), how the organization has been successful in the past, purposes of the project, the environmental justice community/target audience, projects completion plans/time frames, and expected results.

c. A concise project description that describes how the applicant is community-based and/or plans to involve the target audience in the project and how the applicant plans to meet at least two of the three program goals outlined in Section IIB: "Environmental Justice Small Grants Program Goals." Additional credit will not be given for projects that fulfill more than two goals.

d. A conclusion discussing how the applicant will evaluate and measure the success of the project, including the anticipated benefits and challenges in implementing the project.

e. An appendix with resumes of up to three key personnel who will be significantly involved in the project.

4. Letter(s) of commitment. If your proposed project includes the significant involvement of other community organizations, your application must include letters of commitment from these organizations.

Applications that do not include the information listed above in items 1–3 and item 4, if applicable, will not be considered for an award.

Please note: Your application to this EPA program may be subject to your state's intergovernmental review process and/or the consultation requirements of section 204, Demonstration Cities and Metropolitan Development Act. Check with your state's Single Point of Contact to determine your requirements. Some states do not require this review. Applicants from American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands should also check with their Single Point of Contact. A list of the states Single Point of Contact is provided in Appendix E and you may also call your EPA regional contact (listed below) or EPA Headquarters Grants Policy, Information and Training Branch at (202) 564–5325 for additional information. Federally recognized tribal governments are not required to comply with this procedure.

B. When and Where Must Applications be Submitted?

The applicant must submit/mail one signed original application with required attachments and one copy to the primary contact at the EPA regional office listed below. The application must be delivered by close of business Friday, February 21, 2002 to your appropriate EPA regional office (listed below) or postmarked by midnight Friday, February 21, 2002. Contact your regional office for a copy of the application guidance.

Regional Contact Names and Addresses

Region 1 Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Primary Contact: Ronnie Harrington (617) 918–1703, *harrington.veronica@epa.gov*, USEPA Region 1 (SAA), 1 Congress Street—11th Floor, Boston, MA 02203–0001

Secondary Contact: Pat O'Leary (617) 565–3834, *oleary.pat@epa.gov*

Region 2 New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Primary Contact: Natalie Loney (212) 637–3639, *loney.natalie@epa.gov*, USEPA Region 2, 290 Broadway, 26th Floor, New York, NY 10007

Secondary: Terry Wesley (212) 637–3576, *wesley.terry@epa.gov*

Region 3 Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Primary Contact: Reginald Harris (215) 814–2988, *harris.reginald@epa.gov*, USEPA Region 3 (3DA00), 1650 Arch Street, Philadelphia, PA 19103–2029

Region 4 Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Primary Contact: Gloria Love (404) 562–9672, *love.gloria@epa.gov* USEPA Region 4, 61 Forsyth Street, Atlanta, GA 30303–8960

Secondary: Cynthia Peurifoy (404) 562–9649, *peurifoy.cynthia@epa.gov*

Region 5 Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Primary Contact: Margaret Millard (312) 353–1440, *millard.margaret@epa.gov*, USEPA Region 5 (T–165), 77 West Jackson Boulevard, Chicago, IL 60604–3507

Secondary: Karla Owens (312) 886–5993, *owens.karla@epa.gov*

Region 6 Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Primary Contact: Nelda Perez (214) 665–2209, *perez.nelda@epa.gov*, USEPA Region 6, Fountain Place, 12th Floor, 1445 Ross Avenue (RA–D), Dallas, Texas 75202–2733

Secondary Contact: Olivia Balandran (214) 665–7257, *balandran.olivia-r@epa.gov*

Region 7 Iowa, Kansas, Missouri, Nebraska

Primary Contact: March Runner (913) 551–7898 or 1–800–223–0425, *runner.march@epa.gov*, USEPA Region 7, 901 North 5th Street (ECORA), Kansas City, KS 66101

Secondary Contact: Althea Moses (913) 551–7649 or 1–800–223–0425, *moses.althea@epa.gov*

Region 8 Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Primary Contact: Nancy Reish (303) 312–6040, *reish.nancy@epa.gov*, USEPA Region 8 (8ENF–EJ), 999 18th Street, Suite 500, Denver, CO 80202–2466

Secondary: Jean Belille (303) 312–6556, *belille.jean@epa.gov*

Region 9 Arizona, California, Hawaii, Nevada, American Samoa, Guam

Primary Contact: Willard Chin (415) 744–1204, *chin.willard@epa.gov*, USEPA Region 9 (A–2–2), 75 Hawthorne Street, San Francisco, CA 94105

Secondary: EJ Information Line (415) 744–1565

Region 10 Alaska, Idaho, Oregon, Washington

Primary Contact: Victoria Plata (206) 553–8580, *plata.victorio@epa.gov*, USEPA Region 10 (CEJ–163), 1200 Sixth Avenue, Seattle, WA 98101

Secondary: Mike Letourneau (206) 553–1687, *letourneau.mike@epa.gov*

IV. Process For Awarding Grants

A. How Will Applications be Reviewed?

The EPA regional offices will review, evaluate, and select grant recipients. Applications will be screened to ensure that they meet all eligible activities and requirements described in Sections II and III. Applications will be disqualified if they do not meet these eligibility standards. Applications will also be evaluated by regional review panels based on the criteria outlined below.

1. Threshold Criteria. Applications that propose projects that are inconsistent with the EPA's statutory authority or the goals for the program are ineligible for funding and will not be evaluated and ranked. Regional offices will contact applicants whose proposals do not meet the threshold requirements to determine whether the proposal can be revised to meet the threshold requirements.

2. Evaluation Criteria. Proposals will be ranked using the following criteria:

a. Responsiveness of the Work plan to Environmental Justice issues affecting the community to be served.

b. Effectiveness of the project design.

c. Clarity of the Measures of Success.

d. Qualifications of Project Staff.

e. Bonus points for projects from focus area topics.

B. How Will the Final Selections be Mode?

After the individual projects are reviewed and ranked, the EPA regional officials will compare the best applications and make final selections. Additional factors that the EPA will take into account include geographic and socioeconomic balance, diverse nature of the projects, cost, and projects whose benefits can be sustained after the grant is completed. Regional Administrators will select the final grants.

Please note that this is a very competitive grant's program. Limited funding is available and many grant applications are expected to be received. Therefore, the Agency cannot fund all applications. If your project is not funded, a listing of other EPA grant programs may be found in the Catalog of Federal Domestic Assistance. This publication is available on the internet at *www.cdfa.gov* and at local libraries, colleges, or universities.

C. How Will Applicants be Notified?

After all applications are received, the regional EPA offices will mail acknowledgments to applicants in their regions. Once applications have been recommended for funding, the EPA Regions will notify the finalists and request any additional information necessary to complete the award process. The finalists will be required to complete additional government application forms prior to receiving a grant, such as the EPA Form SF–424B (Assurances—Non-Construction Programs) and EPA Form 5700–48, the Certification Regarding Debarment, Suspension, and Other Responsibility Matters. The federal government requires all grantees to certify and assure that they will comply with all applicable federal laws, regulations, and requirements. The EPA Regional Environmental Justice Coordinators or their designees will notify those applicants whose projects are not selected for funding.

V. Expected Time-Frame For Reviewing and Awarding Grants

October 30, 2001 FY 2002 OEJ Small Grants Program Application Guidance is available and published in the **Federal Register**.

November 5, 2001 to February 15, 2002 Eligible grant recipients develop and complete their applications.

February 21, 2002 Applications must be delivered by close of business Friday, February 21, 2002 to your appropriate EPA regional office (listed in section III) or postmarked by midnight Friday, February 21, 2002.

February 22, 2002 to April 29, 2002 EPA regional program officials review and evaluate applications and select grant finalists

April 30, 2002 to July 26, 2002 Applicants will be contacted by the Region if their July 26, 2002 application is being considered for funding. Additional information may be required from the finalists, as indicated in section IV. The EPA regional grant offices process grants and make awards.

September 26, 2002 EPA expects to release the national announcement of the FY 2002 Environmental Justice Small Grant Recipients.

VI. Project Period and Final Reports

Activities must be completed and funds spent within the time frame specified in the grant award, usually one year. Project start dates will depend on the grant award date (most projects begin in August or September). The recipient organization is responsible for the successful completion of the project. The recipient's project manager is subject to approval by the EPA project officer. However, the EPA may not identify any particular person as the project manager.

All recipients must submit final reports for EPA approval within ninety (90) days of the end of the project period. Specific report requirements (e.g., Final Technical Report and Financial Status Report) will be described in the award agreement. The EPA will collect, review, and disseminate grantees' final reports to serve as model programs.

For further information about this program, please visit the EPA's web site at *www.epa.gov/oeca/ej/* or call our hotline at 1–800–962–6215 (available in Spanish).

VII. Fiscal Year 2003 Environmental Justice Small Grants Program

A. How Can I Receive Information on the Fiscal Year 2003 (October 1, 2002 to September 30, 2003) Environmental Justice Small Grants Program?

If you wish to be placed on the national mailing list to receive information on the FY 2003 Environmental Justice Small Grants Program, email your request along with your name, organization, address, and phone number to *lewis.sheila@epa.gov* or mail your request along with your name, organization, address, and phone number to: U.S. Environmental Protection Agency, Environmental Justice Small Grants Program (2201A), FY 2003 Grants Mailing List, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, 1 (800) 962–6215.

If you wish to receive information on local Environmental Justice programs, you may mail or email your request along with your name, organization, address, and phone number to the appropriate regional office listed in this application.

Thank you for your interest in our Small Grants Program and we wish you luck in the application process.

Barry E. Hill,

Director, Office of Environmental Justice.

Appendix A—Standard Forms 424 and 424A

Grant Application Packages are available on *http://www.epa.gov/ogd/hqgrant/* in Adobe pdf format or WordPerfect format. To view the pdf file, you'll need the Adobe Acrobat plug-in for your browser.

BILLING CODE 6560–50–P

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION

Application ☐ Construction ☐ Non-Construction

Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter here) ____

A. State H. Independent School District
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify):

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐☐

A. Increase Award B. Decrease Award
C. Increase Duration D. Decrease Duration
Other Specify:

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date | End Date

14. CONGRESSIONAL DISTRICT OF:

a. Applicant | b. Project

15. Estimated Funding:

a. Federal	$
b. Applicant	$
c. State	$
d. Local	$
e. Other	$
f. Program Income	$
g. TOTAL	$

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESSES FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ YES If "Yes" attach an explanation. ☐ NO

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number

d. Signature of Authorized Representative	e. Date Signed

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Standard Form 424 (REV 7-97)

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BUDGET INFORMATION - Non-Construction Programs OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. OBJECT CLASS CATEGORIES	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a-h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: "New" means a new assistance award. "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State counties, cities).
13.	Self explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which required Federal authorization in annual or other funding period increments. In the latter case, Section A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories show in Lines a - k of Section B.

Section A. Budget Summary Lines 1 - 4, Columns (a) and (b)

For applications pertaining to a *single* federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1 - 4, Columns (c) through (g).

For *new* applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For *continuing grant program* applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes to existing grants*, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1 - 4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function, or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i - Show the totals of Lines 6 a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agency should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION Application ☐ Construction ☐ Non-Construction Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED 2/20/01	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name: G.W. Doe Community Center	Organizational Unit:
Address (give city, county, state, and zip code): 111 Anystreet Town, Ohio 00000	Name and telephone number of the person to be contacted on matters involving this application (give area code) G.W. Doe (111) 000-0000
6. EMPLOYER IDENTIFICATION (EIN): 1 2 - 3 4 5 6 7 8 9	7. TYPE OF APPLICANT: (enter appropriate letter here) _____ A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) box(es): A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other Specify: _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 6 6 — 6 0 4 TITLE: Environmental Justice Small Grants Program	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Town Water Quality Project
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): City of Town, Ohio	

13. PROPOSED PROJECT: 06/01/01		14. CONGRESSIONAL DISTRICT OF:	
Start Date 06/01/01	End Date 05/31/02	a. Applicant: 02	b. Project 01, 02, 03

15. Estimated Funding:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ 14,958	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESSES FOR REVIEW ON: DATE 12/20/95
b. Applicant	$	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$	
d. Local	$	
e. Other	$	
f. Program Income	$	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ YES If "Yes" attach an explanation. ☐ NO
g. TOTAL	$ 14,958	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative: G. W. Doe	b. Title: Executive Director	c. Telephone Number (111) 000-0000
d. Signature of Authorized Representative G. W. Doe		e. Date Signed 2/15/01

Sample

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION Application ☐ Construction ☐ Non-Construction Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED 2/20/01	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name: G.W. Doe Community Center	Organizational Unit:
Address (give city, county, state, and zip code): 111 Anystreet Town, Ohio 00000	Name and telephone number of the person to be contacted on matters involving this application (give area code) G.W. Doe (111) 000-0000

6. EMPLOYER IDENTIFICATION (EIN):

1 2 - 3 4 5 6 7 8 9

7. TYPE OF APPLICANT: (enter appropriate letter here) _____

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School District
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award
C. Increase Duration D. Decrease Duration
Other Specify: _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

6 6 --- 6 0 4

TITLE: Environmental Justice Small Grants Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

Town Water Quality Project

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

City of Town, Ohio

13. PROPOSED PROJECT: 06/01/01		14. CONGRESSIONAL DISTRICT OF:	
Start Date	End Date	a. Applicant: 02	b. Project
06/01/01	05/31/02		01, 02, 03

15. Estimated Funding:	
a. Federal	$ 14,958
b. Applicant	$
c. State	$
d. Local	$
e. Other	$
f. Program Income	$
g. TOTAL	$ 14,958

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESSES FOR REVIEW ON:
DATE 12/20/95

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ YES If "Yes" attach an explanation. ☐ NO

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative.	b. Title:	c. Telephone Number
G. W. Doe	Executive Director	(111) 000-0000
d. Signature of Authorized Representative G. W. Doe		e. Date Signed 2/15/01

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Sample

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

6. OBJECT CLASS CATEGORIES	(1)	(2)	(3)	(4)	Total (5)
a. Personnel	0.00	0.00	0.00	$	$5,800.00
b. Fringe Benefits	986.00				986.00
c. Travel	600.00				600.00
d. Equipment	2,223.00				2,223.00
e. Supplies	500.00				500.00
f. Contractual	3,149.00				3,149.00
g. Construction					
h. Other	1,700.00				1,700.00
i. Total Direct Charges (sum of 6a-h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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BUDGET INFORMATION - Non-Construction Programs OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. OBJECT CLASS CATEGORIES	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$5,800.00	$	$	$	$5,800.00
b. Fringe Benefits	986.00				986.00
c. Travel	600.00				600.00
d. Equipment	2,223.00				2,223.00
e. Supplies	500.00				500.00
f. Contractual	3,149.00				3,149.00
g. Construction					
h. Other	1,700.00				1,700.00
i. Total Direct Charges (sum of 6a-h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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BUDGET DETAIL	
I. Personnel:	
0.5 FTE Community Outreach Worker @$10.00/hour	$3,400.00
0.2 FTE Project Coordinator @$12.00/hour	1,400.00
0.2 FTE Office Manager @$7.00/hour	1,000.00
Total	5,800.00
II. Fringe Benefits at 17%:	
0.5 FTE Community Outreach Worker	578.00
0.2 FTE Project Coordinator	238.00
0.2 FTE Office Manager	170.00
Total	986.00
III. Travel: Local Travel @$0.26/mile	600.00
IV. Equipment: Audio Visual and Projector Rental Typewriter/PC	2,223.00
V. Supplies:	
Paper	250.00
Pencils/Pens	100.00
Folders	150.00
Total	500.00
VI. Other: Printing, Postage, Telephone	1,700.00
VII. Contractual: XYZ Engineering Company	3,149.00
Grand total	14,958.00

Appendix B—40 CFR 30.27 "Allowable Costs"

[Code of Federal Regulations] [Title 40, Volume 1, Part 1 to 49]
[Revised as of July 1, 2000]

From the U.S. Government Printing Office via GPO Access

[CITE: 40CFR30.27] [Page 311]

TITLE 40—PROTECTION OF ENVIRONMENT
CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 30—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS—Table of Contents

Subpart C—Post-Award Requirements

§ 30.27 Allowable costs.

(a) For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of appendix E of 45 CFR part 74, "Principles for determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31. In addition, EPA's annual Appropriations Acts may contain restrictions on the use of assistance funds. For example, the Acts may prohibit the use of funds to support intervention in Federal regulatory or adjudicatory proceedings.

(b) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors to the maximum daily rate for level 4 of the Executive Schedule unless a greater amount is authorized by law. (Recipient's may, however, pay consultants more than this amount.) This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices. Contracts with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

Appendix C—Guidance on Lobbying Restrictions

The purpose of this guidance is to remind nonprofit organizations, universities, and other non-government recipients of EPA grants [2] that, with very limited exceptions, you may not use Federal grant funds or your cost-sharing funds to conduct lobbying activities. The restrictions on lobbying are explained in Office of Management and Budget (OMB) Circular No. A–21, "Cost Principles for Educational Institutions," 61 F.R. 20880 (May 8, 1996),[3] and OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations; 'Lobbying' Revision," 49 F.R. 18260 (April 27, 1984). As a recipient of EPA funds, you must be aware of and comply with these restrictions.[4]

The general objective of the restrictions is to prohibit the use of appropriated funds for lobbying, publicity, or propaganda purposes designed to support or defeat legislation. The restrictions do not affect the normal sharing of information or lobbying activities conducted with your own funds (so long as they are not used to match the grant funds).

Unallowable Lobbying Activities

Under Circulars A–21 and A–122, the costs of the following activities are unallowable:

(1) Contributions, endorsements, publicity or similar activities intended to influence Federal, State or local elections, referenda, initiatives or similar processes.

(2) Direct and indirect financial or administrative support of political parties, campaigns, political action committees, or other organizations created to influence elections. Recipients may help collect and interpret information. These efforts must be for educational purposes only, however, and cannot involve political party activity or steps to influence an election.

(3) Attempts to influence the introducing, passing, or changing of Federal or State legislation through contacts with members or employees of Congress or State legislatures, including attempts to use State and local officials to lobby Congress or State legislatures. For example, you may not charge a grant for your costs of sending information to Members of Congress to encourage them to take a particular action. Also prohibited are contacts with any government official or employee to influence a decision to sign or veto Federal or State legislation. The restriction does not address lobbying at the local level.

(4) Attempts to influence the introducing, passing, or changing of Federal or State legislation by preparing, using, or distributing publicity or propaganda, i.e., grass roots lobbying efforts to obtain group action by members of the public, including attempts to affect public opinion and encourage group action. For example, the costs of printing and distributing to members of the public or the media a report produced under a grant, if intended to influence legislation, are unallowable.[5]

(5) Attending legislative sessions or committee hearings, gathering information about legislation, and similar activities, when intended to support or prepare for unallowable lobbying.

Exceptions

There are three exceptions to this list of unallowable lobbying activities in Circulars A–21 and A–122. These exceptions do not necessarily make the cost of these activities allowable; they make the costs potentially allowable. Allowability will be determined based on whether the costs in a particular case are reasonable, necessary, and allocable to the grant.

The first exception is for technical and factual (not advocacy) presentation to Congress, a State legislature, member, or staff, on a topic directly related to performance of the grant, in response to a request (not necessarily in writing) from the legislative body or individual. For requests that are not made in writing, recipients should make a note for their files documenting the requests. The information presented must be readily available and deliverable. Costs for travel, hotels, and meals related to the presentation are generally unallowable unless related to testimony at a regularly scheduled Congressional hearing at the written request of the chairperson or ranking minority member of the congressional committee.

The second exception is for actions intended to influence State legislation in order to directly reduce the actual cost of performing the Federal grant project or to protect the recipient's authority to perform the project. The exception does not apply to actions intended merely to shift costs from one source to another. For example, in response to Federal funding cutbacks, a Federally-funded recipient lobbies for *State* funds to replace or reduce the Federal share of project costs for next year. The cost of that lobbying activity would not be allowable because its purpose is not to directly reduce the actual cost of performing the work but merely to shift from Federal funding to State funding.

Finally, Circulars A–21 and A–122 allow lobbying costs if they are specifically authorized by law.

Indirect Cost Rate

When you seek reimbursement for indirect costs (overhead), you must identify your total lobbying costs in your indirect cost rate proposal so that the Government can avoid subsidizing lobbying. This is consistent with the circulars' requirement of disclosure of the costs spent on all unallowable activities. This requirement is necessary so that when the Government calculates the amount of an organization's indirect costs that it will pay. It does not include the costs of unallowable activities that the organization happens to count as indirect costs

Enforcement

In cases of improper lobbying with grant funds, EPA may recover the misspent money, suspend or terminate the grant, and take action to prevent the recipient from receiving any Federal grants for a certain period. Your project officer is available to handle any questions or concerns.

Appendix D—Tips on preparing an Environmental Justice Grant Application

This information is intended to help you put together a competitive proposal for the Environmental Protection Agency's (EPA) Environmental Justice Small Grants Program. Please read the Application Guidance carefully—this document is intended to enhance *not replace* the official FY 02 Guidance.

• Target your audience carefully

Identify a specific group or community to work with to develop a program that will give the highest return for your dollars invested.

• Build partnerships and alliances

You are strongly encouraged to enlist project involvement from community groups with similar or related goals and secure their commitment of services and/or dollars. Be sure to document this by obtaining letter(s) of commitment for your application. Initiate the partnerships early in your planning, since building alliances can take time and effort.

• Do some homework

Allow time to review the literature on environmental justice issues both within EPA and the community you work in or with. Find out what materials exist on the subject and the procedures you are planning to include in your work plan. Use this information to back up your project plans or to explain how your group activities are unique and/or creative.

• Develop a project evaluation technique

Define as carefully and precisely as possible what you want to achieve with this project and how you will test its success. Ask yourself: "what do you expect to be different once the project is complete?" Outline a plan you will use to measure the success of your activities/project.

• Develop a timeline or project accomplishment schedule

List the major tasks that you will complete to meet the goals of the project. Break these broad goals into smaller tasks and lay them out in a schedule over the twelve months of the grant period. Determine and identify in the proposal the total estimated cost for each task. You may estimate this cost by the number of personnel, materials, and other resources you will need to carry out the tasks.

• Develop a project budget with the federal portion up to $15,000 for non-Superfund or $20,000 for Superfund projects

The EPA portion of this grant should not exceed $15,000 for non-Superfund or $20,000 for Superfund projects. Divide your budget into categories such as personnel salaries/fringe benefits, travel, equipment, supplies, contract costs, other.

• Stay within the format

This makes it easier for the reviewer to read and therefore, understand your work plan. Please refer to the application requirements (pages 7–9).

• Communicate the nature of your project accurately, precisely, and concisely.

Describe exactly what you propose to do, how you are going to do it, when you are going to do it, who will benefit, and how you will know you are successful. Indicate not only what you propose but what expertise your group has for completing the project (include resumes).

Evaluation of Your Proposal

Your proposal will be evaluated by a committee of EPA Headquarters and Regional environmental justice personnel of diverse personal and professional backgrounds. Final selection is based on a variety of factors, including geographic and socioeconomic balance, diversity, cost of the project and how well the partnership benefits can be sustained after the grant is completed. Below are some common strengths and weaknesses we see in proposals.

Common Strengths

• Project proposal developed solidly from within the community.

• Broad based community support for a project that has the potential to positively affect local people.

• Project identifies established community advisory board or community group who will be involved in the project.

• Good partnership with industry, community, and environmental groups. Good coordination with a variety of community groups.

• Proposal does a good job of outlining a complex problem and approach to solving it—does not overlook any major issues or key players.

• Clear identification and background description of population to be served.

• Proposal identifies specific outputs, target accomplishments, and estimated budgets for each goal, and target dates for completion.

• Proposed project builds on existing projects or programs.

• The scope of the project can be completed in a funding year.

• Proposal clearly describes how the project will achieve the program goal(s) outlined on pages 5 and 6 of the application guidance.

• Proposal includes innovative ideas and creative thinking about how to motivate and involve youth in the communities where they live.

• Proposal includes honest discussion of challenges involved.

If applying for a Superfund project, the proposal discusses why their project is for "research" to assure it meets statutory requirements.

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[2] The term "grant" as used in this guidance refers to grants and cooperative agreements.

[3] Grants awarded before May 8, 1996, are subject to the previous version of Circular No. A–21, but the provisions on lobbying have remained essentially unchanged.

[4] This guidance does not address the restrictions on lobbying contained in 40 CFR Part 34, the EPA regulations implementing section 319 of Pub.L. No. 101–121, known as "the Byrd Amendment," generally prohibit recipients of Federal grants, contracts, and loans from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific grant, contract, or loan. Part 34 includes detailed certification and disclosure requirements. This guidance also does not address section 18 of the Lobbying Disclosure Act of 1995, Pub. L. No. 104–65, which provides that organizations described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are not eligible for Federal grants or loans.

[5] Circular A–122 addresses public information service costs that do not relate to lobbying. Attachment B to the Circular, at paragraph 36, makes allowable, with prior approval of the Federal agency, costs associated with pamphlets, news releases and other forms of information services if their purpose is: to inform or instruct individuals, groups or the general public; to interest individuals or groups in participating in a service program of the recipient; or to disseminate the results of sponsored and non-sponsored activities.

Common Weaknesses

- Application did not include information specifically requested in the application guidance.
- Community members do not appear to be an integral part of the project planning process.
- Not specific enough about what EPA funds will be used for. If the proposal is for a project that has a budget of more than $20,000, proposal must indicate whether other funding has been secured.
- Applicant is not a non-profit organization (see application guidance page 3).
- Program may be too ambitious for one year.
- Project funds conferences or dialogues to discuss EJ issues but does not fund activities that make direct changes in a community.
- Immediacy of need is not established.
- Methods of evaluating the success of the project unclear.
- Failure to mention other groups that applicant will work with or to secure letters of commitment.
- Proposal seeks support for developing general environmental program with little mention of environmental justice issues. The link between goals of EPA's environmental justice program and the project is not clearly stated.
- Discussion of overall mission and goals of the organization but not enough detail on how the specific project and activities will help achieve the goals.

If you are seeking other sources of funding for your project, or should your EPA application not receive funding, the document below could prove useful:

Grant Funding For Your Environmental Education Program: Strategies and Options

Prepared by The North American Association for Environmental Education in cooperation with U.S.EPA. Available for $5.00 from NAAEE, Publications Office, P.O. Box 400, Troy, OH 45373

Appendix E—State Single Points of Contact

Your application to this EPA program may be subject to your state's inter-governmental review process and/or consultation requirements under section 204, Demonstration Cities and Metropolitan Development Act. Listed below are the Single Point-of-Contacts for the states and U.S. territories with a designated Single Point-of-Contact. Please check the list to see if such review is required in your state or territory. Those stated and U.S. territories that are not listed do not have an established single point-of-contact. For further information regarding Single Points-of-Contact, please call EPA at 202–564–5362. Please also note that federally recognized tribal organizations are not required to comply with this procedure.

ARIZONA

Ms. Joni Saad, Arizona State Clearinghouse, 3800 North Central Avenue, Fourteenth Floor, Phoenix, AZ 85012, Phone: 602.280.1315, Fax: 602.280.8144

ARKANSAS

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 West Seventh Street, Room 412, Little Rock, AR 72203, Phone: 501.682.1074, Fax: 501.682.5206, *tlcopeland@dfa.state.or.us*

CALIFORNIA

Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Room 121, Sacramento, CA 95814, Phone: 916.323.7480, Fax: 916.323.3018

DELAWARE

Charles H. Hopkins, Executive Department, Office of Budget, 540 S. Dupont Highway, 3rd Floor, Dover, DE 19901, Phone: 302.739.3323, Fax: 302.739.5661, *chopkins@state.de.us*

DISTRICT OF COLUMBIA

Luisa Montero-Diaz, Office of Partnerships and Grants Development, Executive Office of the Mayor, District of Columbia Government, 441 4th Street, NW, Suite 530 South, Washington, D.C. 20001, Phone: 202.727.8900, Fax: 202.727.1652, *opgd.eom@dc.gov*

FLORIDA

Jasmine Raffington, Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, FL 32399–2100, Phone: 850.922.5438, Fax: 850.414.0479, *clearinghouse@dca.state.fl.us*

GEORGIA

Mr. Tom Reid, III, Coordinator, Georgia State Clearinghouse, 270 Washington Street, SW, Eighth Floor, Atlanta, GA 30334, Phone: 404.656.3855, Fax: 404.656.7901, *gach@mail.opb.state.ga.us*

ILLINOIS

Ms. Virginia Bova, Single Point of Contact, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, IL 60601, Phone: 312.814.6028, Fax: 312.814.8485, *vbova@commerce.state.il.us*

INDIANA

Ms. Frances E. Williams, State Budget Analyst, 212 State House, Indianapolis, IN 46204, Phone: 317.232.5619, Fax: 317.233.3323

IOWA

Mr. Steven R. McCann, Division for Community and Rural Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, IA 50309, Phone: 515.242.4719, Fax: 515.242.4809, *steve.mccann@ided.state.ia.us*

KENTUCKY

Mr. Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, KY 40601–8204, Phone: 502.573.2382, Fax: 502.573.2512, *ron.cook@mail.state.ky.us*

LOUISIANA

Ms. Theresa Stevens, Executive Management Officer, Louisiana Department of Environmental Quality, P.O. Box 82231, Baton Rouge, LA 70884–2231, Phone: 225.7655.0733

MAINE

Ms. Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, ME 04333, Phone: 207.284.3261, Fax: 207.284.6489, *joyce.benson@state.me.us*

MARYLAND

Linda Janey, Manager, Clearinghouse and Plan Review Unit, Maryland Office of Planning, 301 West Preston Street, Room 1104, Baltimore, MD 21201–2305, Phone: 410.767.4490 Fax: 410.767.4480, *linda@mail.op.state.md.us*

MICHIGAN

Mr. Richard Pfaff, Southeast Michigan Council of Governments, 535 Griswold, Suite 300, Detroit, MI 48226, Phone: 313.961.4266, Fax: 313.961.4869, *pfoff@semocog.org*

MISSISSIPPI

Ms. Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 1301 Woolfolk Building, Suite E 501, North West Street, Jackson, MS 39201, Phone: 601.359.6762, Fax: 601.359.6758

MISSOURI

Ewell Lawson, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Truman Building, Room 840, Jefferson City, MO 65102, Phone: 573.751.4834, Fax: 573.522.4395, *igr@mail.oa.state.mo.us*

NEVADA

Heather Elliott, Department of Administration, State Clearinghouse 209, E. Musser Street, Room 200, Carson City, NV 89701, Phone: 775.684.0209, Fax: 775.684.0260, *helliott@govmail.state.nv.us*

NEW HAMPSHIRE

Mr. Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, 2 ½ Beacon Street, Concord, NH 03301, Phone: 603.271.2155, Fax: 603.271.1728, *jtoylor@oosp.state.nh.us*

NEW MEXICO

Mr. Ken Hughes, Local Government Division, Bataan Memorial Building, Room 201, Santa Fe, NM 87503, Phone: 505.827.4370, Fax: 505.827.4948, *khughes@dfo.state.nm.us*

NEW YORK

New York State Clearinghouse, Division of the Budget, State Capital, Albany, NY 12224, Phone: 518.474.1605, Fax: 518.486.5617

NORTH CAROLINA

Jeanette Furney, Department of Administration, 1302 Mail Service Center, Raleigh, NC 27699–1302, Phone: 919.807.2323, Fax: 919.733.9571, *jeanette.furney@ncmail.net*

RHODE ISLAND

Kevin Nelson, Department of Administration, Statewide Planning Program, One Capitol Hill, Providence, RI 02908–5870, Phone: 401.222.2093, Fax: 401.222.2083, *knelson@doa.state.ri.us*

SOUTH CAROLINA

Omegia Burgess, Budget and Control Board, Office of State Budget, 1122 Ladies Street, 12th Floor, Columbia, SC 29201, Phone: 803.734.0494, Fax: 803.734.0645, *aburgess@budget.state.s.us*

TEXAS,

Denise S. Francis, Director, State Grants Team, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, TX 78711, Phone: 512.305.9415, Fax: 512.936.2681, *dfrancis@governor.state.tx.us*

UTAH

Carolyn Wright, Utah State Clearinghouse, Governor's Office of Planning and Budget, State Capitol, Room 114, Salt Lake City, UT 84114, Phone: 801.538.1535, Fax: 801.538.1547, *cwright@gov.state.ut.us*

WEST VIRGINIA

Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, WVA 25305, Phone: 304.558.4010, Fax: 304.552.3248, *fcutlip@wvdo.org*

WISCONSIN

Jeff Smith, Section Chief, Federal/State Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, WI 53707, Phone: 608.266.0267, Fax: 608.267.6931, *jeffrey.smith@doa.state.wi.us*

AMERICAN SAMOA

Pat M. Galea'i, Federal Grants/Programs Coordinator, Office of Federal Programs, Office of the Governor/Department of Commerce, American Samoa Government, Pago Pago, American Samoa 96799, Phone: 684.633.5155, Fax: 684.633.4195, *pmgaleoi@samoatelco.com*

GUAM

Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Phone: 011.671.472.2285, Fax: 011.472.2825, *jer@ns.gov.gu*

PUERTO RICO

Jose Caballero/Myra Silva, Puerto Rico Planning Board, Federal Proposal Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Phone: 787.723.6190, Fax: 787.722.6783

NORTH MARIANA ISLANDS

Ms. Jacoba T. Seman, Federal Programs Coordinator, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Phone: 670.664.2289, Fax: 670.664.2272, *omb.jseman@saipan.com*

VIRGIN ISLANDS

Ira Mills, Director, Office of Management and Budget, #41 Norre Gade Emancipation Garden Station, Second Floor, Saint Thomas, VI 00802, Phone: 340.774.0750, Fax: 340.776.0069, *Irmills@usvi.org*

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Appendix F—Additional Government Application Forms

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of the project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statues relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 795), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination of the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provision of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a-7), the Copeland Act (40 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuance to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplain in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S. C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.)
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev 7-97) Back

U.S. Environmental Protection Agency

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining. attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement. theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal. State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to $10,000 or imprisonment for up to 5 years, or both.

_____

Typed Name & Title of Authorized Representative

_____

Signature of Authorized Representative Date

___ I am unable to certify to the above statements. My explanation is attached.

[FR Doc. 01–27591 Filed 11–2–01; 8:45 am],
BILLING CODE 6560–50–C

Federal Register

Monday,
November 5, 2001

Part III

Department of Commerce

Bureau of the Census

Report of the Executive Steering Committee for Accuracy and Coverage Evaluation Policy and Statement of the Acting Director of the U.S. Census Bureau on Adjustment for Non-Redistricting Uses; Notice

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 011026262–1262–01]

RIN Number 0607–XX66

Report of the Executive Steering Committee for Accuracy and Coverage Evaluation Policy and Statement of the Acting Director of the U.S. Census Bureau on Adjustment for Non-Redistricting Uses

AGENCY: Bureau of the Census.

ACTION: Notice of report and statement of Acting Director of the Census Bureau regarding adjustment decision.

SUMMARY: This notice provides the Executive Steering Committee on Accuracy and Coverage Evaluation Policy (ESCAP) report and the statement of the Acting Director of the Census Bureau regarding the potential application of statistically adjusted data from Census 2000 for the following uses: (1) As controls to produce estimates from the Census 2000 long form (sample) data, (2) as demographic survey controls, and (3) as the base for producing post-censal estimates. The ESCAP report and statement of the Acting Director are attached as exhibits to the **SUPPLEMENTARY INFORMATION** section of this notice. In addition to publication in the **Federal Register**, the report is posted on the Census Bureau Web site at *<http://www.census.gov/dmd/www/EscapRep2.html>*, and the Acting Director's statement is available electronically at *<http://www.census.gov/Press-Release/www/2001/cooper.pdf>*.

FOR FURTHER INFORMATION CONTACT: John H. Thompson, Principal Associate Director for Programs, U.S. Census Bureau, FB–3, Room 2037, Washington, DC 20233. Telephone: 301 (457)–3946; fax: 301 (457)–3024.

SUPPLEMENTARY INFORMATION:

Background Information

The decennial census is mandated by the United States Constitution (Article I, Section 2, Clause 3) to provide the population counts needed to apportion the seats in the U.S. House of Representatives among the states. By December 28, 2000, the Census Bureau fulfilled its constitutional duty by delivering to the Secretary of Commerce the state population totals used for congressional apportionment. In accordance with the January 25, 1999, Supreme Court ruling, *Department of Commerce* v. *House of Representatives*, 119 S.Ct. 765 (1999), the Census Bureau did not use statistical sampling to produce the state population totals used for congressional apportionment.

However, the Census Bureau has examined the use of statistical sampling to produce statistically adjusted Census 2000 data for nonapportionment purposes. Pursuant to Title 15, Code of Federal Regulations, Part 101, issued by the Secretary of Commerce (66 FR 11232, February 23, 2001), the Acting Director of the Census Bureau submitted his recommendation, based upon the ESCAP's March 1, 2001 report, regarding the methodology to be used in producing the tabulations of population reported to states and localities pursuant to 13 U.S.C., Section 141(c) (data used for congressional and state and local legislative redistricting), to the Secretary of Commerce (66 FR 14003, March 8, 2001). The Secretary then made the final determination regarding statistical adjustment of the redistricting data (66 FR 14520, March 13, 2001).

After the issuance of the March 1, 2001, ESCAP report ("Recommendation Concerning the Methodology to be Used in Producing the Tabulations of Population Reported to States and Localities Pursuant to 13 U.S.C., Section 141(c)"), the Committee reconvened to examine the potential use of the statistically adjusted data for nonredistricting purposes—namely, as controls to produce estimates from the Census 2000 long form (sample) data, as demographic survey controls, and as the base for producing post-censal estimates. The ESCAP used analysis from reports on topics chosen for their usefulness in informing its recommendation regarding the suitability of using the statistically adjusted data for these nonredistricting purposes. The Committee also drew upon work from other Census Bureau staff, as appropriate. This notice provides the Committee's report and the Acting Director's statement regarding his determination of the appropriateness of statistical adjustment of the Census 2000 data for these purposes.

Dated: October 30, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

October 16, 2001.

Memorandum for Kathleen B. Cooper, Under Secretary for Economic Affairs

From: William G. Barron, Jr., Acting Director

Subject: Notification of Decision

I am attaching the recommendation of the Executive Steering Committee for A.C.E. Policy (ESCAP) on whether the Accuracy and Coverage Evaluation Survey should be used to adjust Census 2000 data for non-redistricting purposes. As in March, I asked ESCAP to provide a recommendation because I rely on the knowledge, experience, and technical expertise of the Committee and Census Bureau staff who have worked extremely hard with tremendous dedication and expertise through every phase of Census 2000.

After assessing considerable new evidence, ESCAP now recommends that unadjusted Census 2000 data be used for non-redistricting purposes. The effect of this new evidence is that the A.C.E. overstated the net undercount by at least 3 million persons. The cause of this error was that the A.C.E. failed to measure a significant number of census erroneous enumerations, many of which were duplicates. This level of error in the A.C.E. measurement of net coverage is such that the A.C.E. results cannot be used in their current form. This finding of substantial error, in conjunction with remaining uncertainties, necessitates that revisions, based on additional review and analysis, be made to the A.C.E. estimates before any potential uses of these data can be considered.

As a member of ESCAP and as Acting Director, I concur with and approve the Committee's recommendation that unadjusted data be used for non-redistricting purposes and have decided that the Census Bureau will release the remaining Census 2000 data products, post-censal estimates, and survey controls using unadjusted data. It is possible that further research and analysis could yield revised A.C.E. estimates, and that these revised estimates could be used to improve estimates developed as part of the Census Bureau's annual population adjustments for survey controls and other purposes.

Report of the Executive Steering Committee for Accuracy and Coverage Evaluation Policy on Adjustment for Non-Redistricting Uses

October 17, 2001

Recommendation

The Executive Steering Committee for A.C.E. Policy (ESCAP) recommended on March 1, 2001 that unadjusted census data be used for redistricting. After assessing considerable new evidence, ESCAP now recommends that unadjusted Census 2000 data also be used for non-redistricting purposes. The effect of this new evidence is that the Accuracy and Coverage Evaluation (A.C.E.) overstated the net undercount by at least 3 million persons. The cause of this error was that the A.C.E. failed to measure a significant number of census erroneous enumerations, many of which were duplicates. This level of error in the A.C.E. measurement of net coverage is such that the A.C.E. results cannot be used in their current form. This finding of substantial error, in conjunction with remaining uncertainties, necessitates that revisions, based on additional review and analysis, be made to the A.C.E. estimates before any potential uses of these data can be considered. The Census Bureau will release the remaining Census 2000 data products, post-censal estimates, and survey controls using unadjusted data. It is, however, reasonable to expect that further research and analysis may lead to revised A.C.E. estimates that can be used to improve future post-censal estimates.

The ESCAP review confirmed the finding in the first ESCAP Report that most Census 2000 and A.C.E. operations were of high quality. The evaluations continue to demonstrate that improvements were achieved over both the 1990 census and the 1990 coverage measurement survey. Important new information and methods are now available for assessing the A.C.E. and Census 2000. As will be discussed in more detail below, final analysis of this new information is still in progress. However, the Census Bureau believes that this analysis will confirm that Census 2000 made substantial gains in reducing the total net undercount, as well as reducing net differential undercount. Most of the A.C.E. operations were also seen to be well conducted, producing valuable information that, when combined with the other evaluation findings, provides important new research data. The ESCAP feels confident that its research program will enhance the evaluations of Census 2000, contribute to planning for the 2010 census, and, with further analysis, potentially improve future the post-censal estimates.

The ESCAP's primary concern in its March decision was that fundamental differences between the Demographic Analysis (DA) estimates and the A.C.E. estimates could not be explained. The estimates differed widely, both for the total national population and for important population groups. The Committee investigated this inconsistency extensively but could not adequately explain it in the time available for the March decision. The Committee concluded in March that the inconsistency must have resulted from one or more of three possible scenarios. The first scenario was that all available 1990 census data, including the census results, the coverage measurement survey, and the demographic analysis estimates, significantly understated the Nation's population, but that Census 2000 found this previously un-enumerated population. The second scenario was that demographic analysis underestimated population growth between 1990 and 2000. The third scenario was that the A.C.E. overestimated the Nation's population, raising the possibility of an undiscovered problem in the A.C.E. or census methodology.

The Census Bureau's extensive research over the past eight months has been directed at examining demographic analysis, the A.C.E., and Census 2000. Demographic analysis research examined historic levels of the components of population change to address the possibility that the 1990 demographic analysis estimates understated the national population (the first scenario). This analysis did not reveal any significant problems. The Census Bureau investigated the second scenario by revising the preliminary estimates of international migration, and hence the foreign-born population, using actual Census 2000 long form data. The Census Bureau also consulted with outside experts on this work. These studies resulted in revisions to the "Base DA" that was initially examined as part of the March 2001 decision. The revisions reflected a larger growth in the foreign-born population during the last decade. The current revised demographic analysis estimates are much closer to the Alternative DA considered during the March deliberations. The A.C.E. and demographic analysis evaluations, when analyzed together, explain many of the inconsistencies.

With regard to the third scenario, the ESCAP's review of the accuracy of the A.C.E. and Census 2000 was based on a number of evaluation studies, including reinterview studies, re-processing studies, and computer searches for duplicate enumerations. This research found that the A.C.E. did not account for a large number of Census 2000 duplicates, leading to an overstatement of the Census 2000 net undercount. As described previously, this finding, in conjunction with the revisions to demographic analysis, explains to a large degree the discrepancies between the A.C.E. and demographic analysis. The significance of the error in the A.C.E. treatment of duplicates compels the recommendation that the current A.C.E. estimates cannot be used to adjust the Census 2000 data.

The ESCAP notes that its extensive evaluation program has provided information that was unavailable for previous decennial censuses. This important new information was the result of outstanding and innovative work on the part of many Census Bureau employees. Additionally, the Committee notes that some of the information resulted from new methodologies not available in prior censuses. Census 2000 was the first census to capture name information in a way that permits nationwide computer matching. The evaluation results, including the new tool of name matching, will be extremely valuable for evaluating the accuracy of Census 2000, planning for the 2010 census, and potentially for improving future post-censal estimates. Both census taking and coverage measurement are processes that evolve and improve with each census. The Census 2000 experience will help refine both census and coverage measurement processes for future censuses.

While the ESCAP has recommended against use of the adjusted data, the A.C.E.'s original objective of addressing the differential undercount must still be pursued. The totality of the evidence considered by the Committee leads it to believe that while Census 2000 successfully lowered the historical pattern of the differential undercount, it did not eliminate it. The Census Bureau believes that the net undercount remains disproportionately disributed among renters and minority populations. With further research, it is reasonable to expect that new information can be used to produce revised A.C.E. estimates. These revised estimates may then be employed to improve post-censal population estimates by reducing remaining differential coverage error. It is also expected that planning for the 2010 census will greatly benefit from these findings, with improved operations to identify and remove duplicates and refined methods to improve the accuracy of all census operations. The Census Bureau will continue research to design improved operations, including coverage measurement studies, for future censuses and surveys.

Executive Summary

After assessing considerable new evidence, the second ESCAP Committee (ESCAP II) has recommended that unadjusted Census 2000 data also be used for non-redistricting purposes. New evidence indicates that the Accuracy and Coverage Evaluation (A.C.E.) overstated the net undercount by at least 3 million persons, and that the cause of this error was the A.C.E.'s failure to measure a significant number of census erroneous enumerations, many of which were duplicates. This level of error in the A.C.E. measurement of net coverage is such that the A.C.E. results cannot be used in their current form. This finding of substantial error, in conjunction with remaining uncertainties, necessitates that revisions, based on additional review and analysis, be made to the A.C.E. estimates before any potential uses of these data can be considered. The Census Bureau will release the remaining Census 2000 data products, post-censal estimates, and survey controls using unadjusted data. It is, however, reasonable to expect that further research and analysis may lead to revised A.C.E. estimates that can be used to improve future post-censal estimates.

ESCAP II has also confirmed the finding in the first ESCAP Report that most Census 2000 and A.C.E. operations were of high quality. More recent evaluations continue to demonstrate that improvements were achieved over both the 1990 census and the 1990 coverage measurement survey. Important new information and methods are now available for assessing the A.C.E. and Census 2000. As will be discussed in more detail below, final analysis of the effects of this new information is still in progress. However, the Census Bureau believes that this analysis will confirm that Census 2000 made substantial gains in reducing the total net undercount, as well as the net differential undercount. Most of the A.C.E. operations were also seen to be well conducted, producing valuable information that, when combined with the other evaluation findings, provides important new research data. The ESCAP feels confident that the Census Bureau's continuing research program will enhance the evaluations of Census 2000, contribute to planning for the 2010 census, and, with further analysis, potentially improve the post-censal estimates.

The ESCAP's primary concern in its March decision was that demographic analysis and the A.C.E. estimates differed widely, both for the total national population and for important population groups. The Committee concluded in March that the inconsistency must have derived from one or more of three possible scenarios. The first scenario was that all available 1990 census data, including the 1990 census, the 1990 coverage measurement survey, and the 1990 demographic analysis estimates significantly understated the Nation's population, while Census 2000 included portions of this previously un-enumerated population. The second scenario was that demographic analysis estimates underestimated population growth between 1990 and 2000. The third scenario was that the A.C.E. overestimated the Nation's population, raising the possibility of an undiscovered problem with the A.C.E. or

census methodology. The ESCAP also identified additional technical concerns that are documented in the previous report.

Areas of Research

In the months since the ESCAP I Report, the Committee embarked on a second round of deliberations to address the concerns identified in the report and to enable the Census Bureau to recommend whether Census 2000 data should be adjusted for future uses. The future uses in consideration included the post-censal population estimates, demographic survey controls, and the production of Census 2000 long form data products. The ESCAP I Committee did not have current results for certain measures of A.C.E. accuracy, and was forced to use 1990 data on potential A.C.E. errors. The ESCAP therefore directed and documented that a number of evaluations be conducted to inform the deliberations. Some of the evaluations were designed to provide current measures of accuracy for the various components of error. These evaluations involved additional technical research, field work, and data processing, as well as new computer matching and simulation research. The evaluations include:

Demographic Analysis (DA) Research

The DA research program examined historical levels of the components of population change to address the possibility that the 1990 DA estimates understated the Nation's population and that demographic analysis did not capture the full population growth in the last decade. The Census Bureau consulted with outside demographic experts to plan and conduct its research program, focusing on the methodologies and underlying estimates of the components of population change. The research activities concentrated on two major areas—international migration and the robustness of the DA estimates.

Measurement of Erroneous Enumerations, Including Duplication

Erroneous enumerations refer to individuals who should not be included in the census counts because they are duplicated, fictitious, or live someplace other than where they were enumerated. While the ESCAP I Report did not identify erroneous enumerations as an area of concern, Census Bureau researchers quickly noted that Census 2000 erroneous enumerations differed substantially from 1990 measures in ways that were not readily understood. Studies included the Measurement Error Reinterview/Evaluation Followup (hereinafter called the EFU) and the Person Duplication Studies. EFU results were used to determine how well the A.C.E. identified erroneous enumerations. The EFU was based on a reinterview of a sample drawn from the A.C.E. clusters. The Person Duplication Studies used computer matching techniques to identify Census 2000 duplicate enumerations throughout the United States, and to determine whether the A.C.E. estimates had correctly accounted for these duplications. These studies used computer matching methods not available in earlier censuses.

Measurement of Census Omissions

Census omissions refer to individuals who should have been counted in the census but were not. The A.C.E. methodology must accurately account for both erroneous enumerations, as described above, and census omissions. The A.C.E. identifies omissions by matching an independent sample to the census. The accuracy of this measurement of omissions thus depends on the accuracy of the matching, as well as the accuracy of the information collected by the independent sample. Census omissions were evaluated in the Matching Error Study, in which expert matchers re-matched a sample of the A.C.E. to determine the accuracy of the A.C.E. matching process. Omissions were also evaluated in the EFU described above to measure the accuracy of the A.C.E. information on Census Day residence, including whether persons had moved since Census Day.

Missing Data Studies

Missing data occurs in the A.C.E. if, after all attempts, there remain persons for whom complete data are not available, including demographic characteristics such as age or race. Missing data also includes the status of whether a person matched, was a resident on Census Day, or was correctly enumerated. The latter types of missing data can seriously affect the accuracy of coverage measurement surveys such as the A.C.E. The A.C.E. used a statistical model to account for the effects of missing data. The ESCAP directed the development of alternative missing data models to assess the effect on the estimates of using different assumptions to predict the effects of missing data.

Balancing Error

The previous ESCAP report indicated concerns with balancing error. Balancing error occurs when the method used to determine the number of omissions is different from the method used to determine which records are correctly included in the census. The specific concern was that the area for matching to find omissions was different from the area used to determine erroneous enumerations. The ESCAP posited various scenarios that could explain the concerns with balancing error, ranging from small to very serious effects on the A.C.E. estimates. In order to investigate these concerns, additional field operations were conducted.

Synthetic Error Study

The A.C.E. estimation methodology produced estimated coverage correction factors which were carried down within the post-strata in a process referred to as synthetic estimation. The key assumption underlying synthetic estimation is that net census coverage is relatively uniform within the post-strata. Failure of this assumption leads to synthetic error. The Census Bureau is concerned with synthetic error since it may affect the accuracy of small area estimates and cannot be directly estimated. ESCAP I examined the effects of synthetic error by studying "artificial populations," populations created with surrogate variables that are known for the entire population, and are developed to reflect the distribution of net coverage error. ESCAP II directed the preparation of additional artificial populations.

Evaluation Results

Demographic analysis research examined historical levels of the components of population change to address the possibility that the 1990 demographic analysis estimates understated the national population (the first scenario). This analysis did not reveal any significant problems. The Census Bureau investigated the second scenario by revising the estimates of international migration using preliminary Census 2000 long form data, and estimates of the numbers of births, using more current assumptions about birth registration. The Census Bureau also consulted with outside experts on this work. This analysis resulted in revisions to the Base DA that was initially examined as part of the ESCAP I decision. The revisions reflected a larger growth in the foreign-born population during the last decade. The current Revised DA estimates considered by ESCAP II are much closer to the Alternative DA considered during the ESCAP I deliberations. Many of the inconsistencies previously noted are removed when the Revised DA estimates are viewed in light of the A.C.E. evaluations. The Revised DA national estimate of 281.8 million for the U.S. resident population is 2.2 million higher than the Base DA and about 0.6 million lower than the Alternative DA. The Revised DA net undercount rate of 0.12 percent compares to a net overcount of 0.65 percent implied by the Base DA, and a net undercount of 0.32 percent using the Alternative DA.

Erroneous Enumerations

The studies examining the accuracy of the measurement of erroneous enumerations initially found serious errors that would have resulted in a large overstatement of the population by the A.C.E. The seriousness of these findings prompted the Committee to direct further work to make sure that the findings were correct. This additional review indicated that a significant problem existed with the measurement of erroneous enumerations, but also indicated that the study findings were subject to uncertainties resulting from a large number of cases left unresolved or conflicting. The Person Duplication Studies added additional information underscoring the seriousness of the errors in measuring erroneous enumerations. These duplication studies found that the A.C.E. had seriously understated the level of erroneous enumerations because of incompletely measuring census duplications, and that the EFU had not accounted for a significant part of this understatement. They also helped to explain some of the uncertainty that arose from the rework of the EFU. The net effect of these studies was the conclusion that the A.C.E. overstated the level of undercount by at least 3 million persons. The level of this error is such that the ESCAP determined that the unadjusted data should be used.

Census Omissions

With regard to studies of census omissions, the Matching Error Study indicated that the A.C.E. overstated the net undercount due to P-sample matching error by about 385,000. The EFU indicated that a substantial number of movers were changed to nonmovers and vice versa. The net effect of these mover status changes suggests an overestimate of the match rate and therefore an understatement in the A.C.E. estimates of about 450,000. At the national level there is therefore a small net effect of about 65,000 on the accuracy of the measurement of census omissions. However, more research must be conducted to further study these effects.

Missing Data

The Committee examined a variety of alternative models to account for the effects of missing data. These models gave a wide range of results, implying widely varying effects on the A.C.E. estimates. The data examined by the Committee make clear that alternative missing data models both understated and overstated the effects of missing data on the A.C.E. estimates, depending on the choice of model. The Committee ultimately viewed the choice of model as an increase in the uncertainty associated with the A.C.E. results, but did not find evidence of bias resulting from this choice of model. This uncertainty should be considered in further analysis of the A.C.E. estimates.

Balancing Error

ESCAP I's concern with balancing error has for the most part been resolved, as further research indicated that the previously observed discrepancy did not appreciably influence the A.C.E. estimates.

Total Error Model

ESCAP I used a total error model to consolidate its research and to produce an overall assessment of A.C.E. accuracy. ESCAP II directed that an updated model be prepared to account for information from the new evaluation studies. The timing of some of the new evaluations, along with the complexities of both the studies and the A.C.E. design, did not allow preparation of an updated model that would incorporate all errors that impact the A.C.E. estimates. As discussed more fully in the body of the report, the ESCAP could not develop or verify a new total error model that would take into account all of the errors discovered in the EFU, Matching Error Study, and Person Duplication Studies. Even without the information from an updated total error model, however, it was clear to the Committee that the magnitude of the discovered errors precluded a recommendation in favor of the adjusted data.

Synthetic Error

Consideration of the synthetic error studies requires the completion of the total error model and will be included in the continued research.

Other Concerns

Additional studies allayed other concerns about the A.C.E. and the census. Studies revealed no evidence of significant contamination bias. The Committee concluded that the effect of excluding reinstated census people from the A.C.E. was minimal. The Committee further concluded that the kind, level and pattern of whole person imputation in Census 2000 did not call the A.C.E. results into question.

Next Steps

While the ESCAP has recommended against use of the adjusted data, the A.C.E.'s original objective of addressing the differential undercount must still be pursued. The totality of the evidence considered by the Committee leads it to believe that while Census 2000 successfully lowered the historical pattern of the differential undercount, it did not eliminate it. The net undercount remains disproportionately distributed among renters and minority populations. With further research, it is reasonable to expect that new information can be used to produce revised A.C.E. estimates. The evaluation results, including the new measurement tool of name matching, will be extremely valuable for evaluating the accuracy of Census 2000, planning for the 2010 census, and potentially for improving the post-censal estimates. Both census taking and coverage measurement are processes that evolve and improve with each census. The Census 2000 experience will help refine both census and coverage measurement processes for future censuses.

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ESCAP II Report

Introduction

Background

On March 1, 2001, the Acting Director of the Census Bureau recommended to the Secretary of Commerce that unadjusted census data be used as the Census Bureau's official redistricting data. This recommendation was in accord with the recommendation of the Executive Steering Committee for A.C.E. Policy (ESCAP). The ESCAP [1] was unable to conclude, based on information available at the time, that adjusted Census 2000 data were more accurate for redistricting. The ESCAP I Report is available on the Census Bureau's website, along with a voluminous Administrative Record supporting this recommendation.

The primary issue that precluded ESCAP I from recommending use of the adjusted data was the unexplained difference between the A.C.E. and Demographic Analysis estimates of the population. Demographic analysis (DA) initially estimated the national total population to be below the census count, while the A.C.E. estimated the population to be above the census count. This discrepancy raised the significant possibility of an undetected problem with the A.C.E. or the census. ESCAP I also identified concerns with balancing and synthetic estimation error as potential problems in the adjusted data. The Committee directed the preparation of an extensive evaluation program to inform its deliberations relating to the proposed use of adjusted data for nonredistricting purposes.

ESCAP II Proceedings

In the months since the ESCAP I Report, the Committee has embarked on a second round of deliberations to address the concerns identified in the report and to enable the Census Bureau to recommend whether the adjusted Census 2000 data should be used for nonredistricting purposes. These evaluations, the ESCAP II report series, set forth the underlying data that support the Committee's findings. The future uses in consideration include post-censal population estimates, demographic survey controls, and the census long form data products. Some of the required evaluations involved additional research, including additional field work and matching work.

ESCAP II considered a wide variety of research and analyses, and heard presentations of the reports on the attached list (Attachment 1). Some of these presentations provided background information to help the Committee interpret the results of other studies, while others bore directly on the adjustment recommendation. While the Committee considered and deliberated on all of the listed reports, this discussion will focus on those most directly relevant to the comparative accuracy of the adjusted and unadjusted data. This research was conducted over many months and represents diligent and thorough statistical and demographic analysis.[2]

[1] For clarity, the Committee that produced the March 1, 2001, ESCAP Report is sometimes referred to herein as "ESCAP I" and the March 1 report as the "ESCAP I Report." The Committee that has been meeting since March 1, 2001, is referred to as "ESCAP II."

[2] The ESCAP II Report Series does not represent the entirety of the Census Bureau's evaluation of Census 2000. The Census Bureau's formal Census

Continued

The Associate Director for Decennial Census originally chartered the ESCAP on November 26, 1999, and charged the Committee to "advise the Director in determining policy for the A.C.E. and the integration of the A.C.E. results into the census for all purposes except Congressional reapportionment." Although there was a change in the Associate Director for the Decennial Census position in June 2001, ESCAP II continued to be chaired by John Thompson to maintain continuity. The ESCAP resumed meeting on March 7, 2001, and met a total of 32 times, sometimes with more than one meeting per day. The ESCAP represents a body of senior career Census Bureau professionals, with advanced degrees in relevant technical fields and/or decades of experience in the federal statistical system. All are highly competent to evaluate the relative merits of the A.C.E. data versus the census data and are recognized for their extensive contributions to the professional community.

As in the ESCAP I process, the early sessions were primarily educational, designed to inform Committee members of the research operations and to present general information about non-redistricting uses of the data. The second phase involved presentation by knowledgeable employees of the new data and analyses as they became available. The Committee reviewed the data and analyses, sometimes asking staff to provide additional and new information. The third phase was deliberation, where the Committee members met privately. The final and briefest stage was review, where Committee members commented on the draft report. Again, as in the ESCAP I process, minutes were prepared for all sessions, except for the final ones, which were private deliberations.

During the education and evidence presentation phases, the Chair generally arranged presentations on major issues, issues that he identified on his own initiative or on the suggestion of Committee members. During the evidence presentation stage, authors of the analysis reports presented their data and conclusions to the Committee. The deliberation and review phases were less structured with various members raising topics for discussion and asking for evidence. No formal vote was held; this Report reflects a consensus of the ESCAP.

Non-Redistricting Uses of the Data

The ESCAP's recommendation covers the three non-redistricting uses of census data: post-censal estimates, demographic survey controls, and Census 2000 long form products. Certain Census Bureau data products have already been issued using only the unadjusted data, including the Census 2000 Redistricting Data Summary File, Demographic Profiles, Congressional District Demographic Profiles, Summary File 1 Data, and reports in the Census 2000 Brief Series.[3]

Post-censal estimates are made by updating the most recent census base with estimates of population change (births, deaths, and net migration). As directed by the Census Act, the Census Bureau prepares post-censal estimates at the national, state, and county level every year, and at the functioning governmental unit level every other year.[4] These estimates have a variety of uses, most notably in funding allocations, as the basis for sample survey controls, and as denominators for many important statistics.

The accuracy of the post-censal estimates for funding allocations is critical, as about $200 billion are allocated based on these data each year. Medicaid (Title XIX) is the largest program to distribute federal funding based on population estimates, distributing over $100 billion each year based on the post-censal estimates. Community Development Block Grants from the Department of Housing and Urban Development, and Title I Basic, Concentration, and Targeted Grants from the Department of Education are two additional federal programs that use post-censal estimates as factors in their funding formulas to distribute federal monies. The individual states also have within-state fund allocation programs, many of which use post-censal estimates to allocate funds to sub-state areas.

Many federal agencies use post-censal estimates as denominators to produce per capita statistics. Examples are per capita income, crime statistics, incidence of certain health conditions, birth rates, and mortality rates. The numerators of these statistics can be obtained at various points in time throughout the decade. In the absence of updated information, calculating these kinds of statistics on a static 2000 denominator would be misleading; therefore, many federal agencies use post-censal estimates of population.

Demographic survey controls are used by many national sample surveys to transform the data they collect into nationally representative estimates. The most notable is the Current Population Survey, or CPS, which is used to calculate the monthly unemployment rate. Sample surveys generally have poorer coverage than a census; therefore, in order to improve the accuracy of estimates from a sample survey, the survey estimates are controlled to independent measures of the number of people in certain age, sex, race, and Hispanic origin groups, such as the post-censal estimates.

The ESCAP Committee also considered whether adjusted or unadjusted Census 2000 data should be used for the controls for estimates based on data from the Census 2000 long form. The long form collects more extensive characteristic data from a sample of about seventeen percent of the population. Long form data are used to provide local communities with data on education, employment, housing, and various other social and demographic characteristics essential to efficient planning. Additionally, the long form provides the detailed local demographic and social characteristics used in some federal formula allocation programs. In order to produce estimates for the country as a whole from this sample, Census 2000 data from the short form items are used as controls.

ESCAP II Research

In the months since the ESCAP I Report, the Committee embarked on a second round of deliberations to address the concerns identified in the report and to enable the Census Bureau to recommend whether adjusted Census 2000 data should be applied for non-redistricting uses. ESCAP II, therefore, directed the preparation of a number of evaluation studies, as described in detail in Attachment 2. Research centered around four areas, demographic analysis, the A.C.E., Census 2000, and synthetic error. The results of this research are set forth below.

Demographic Analysis

ESCAP I's primary concern was that DA estimates were inconsistent with A.C.E. estimates. The Census Bureau expected, based on past experience, that demographic analysis would posit a higher estimate of the total population than the A.C.E. because of the presence of correlation bias, and that the two estimates would agree generally on the coverage of certain populations. Instead, the Base DA estimates were lower than both the Census 2000 population counts and the A.C.E. estimates. In response, the Census Bureau developed its Alternative DA estimates by doubling the unauthorized immigration assumed to have occurred during the 1990's. Doing so yielded a number of foreign born for 2000 that was roughly consistent with that reported by the March 2000 Current Population Survey.[5] The Alternative DA estimates were, however, still significantly lower than the A.C.E. estimates. The Alternative DA indicated that Census 2000 undercounted the population by 0.32 percent, while the A.C.E. produced a net undercount estimate of 1.15 percent.[6]

ESCAP I concluded that the inconsistency in the estimates of the total national population must have derived from one or more of three possible explanations. The first explanation was that all available 1990 census data, including the census results, the 1990 coverage measurement survey, and the 1990 DA estimates, significantly understated the Nation's population, but that Census 2000 found this previously un-enumerated population. The second explanation was that DA underestimated population growth between 1990 and 2000. The third explanation was that the A.C.E. overestimated the Nation's population. ESCAP II directed that further research on demographic analysis be conducted. It focused on two main topics: international migration and measurement of vital events like births and deaths.

International Migration

Assumptions regarding international migration were the most uncertain component in the demographic analysis estimates completed by March 1, 2001.

2000 Evaluation Program provides a comprehensive evaluation of all Census operations and programs. The reports in the ESCAP II series are only those necessary to inform the ESCAP's recommendation.

[3] These models can be found at http://factfinder.census.gov.

[4] 13 U.S.C. 181.

[5] The March Current Population Survey was reweighted using the Census 2000 counts by age, race, sex, and Hispanic origin for this comparison.

[6] This figure differs from the 1.18 percent usually quoted for the A.C.E. because the A.C.E. and DA estimate different populations. DA estimates the total population, while the A.C.E. estimates the household population, which excludes group quarters.

Although the research agenda for the March through October period focused primarily on those components of international migration that are less well measured (e.g., emigration, temporary migration, and unauthorized migration), the work also included research into legal immigration and the demographic characteristics of migrants used in the March 2001 DA estimates.

Part of the analysis involved discussions with independent experts on demographic analysis and international migration. The purpose of a March 20, 2001, was to explain how the DA estimates differed from the A.C.E. estimates, and to discuss how to prioritize short-term and long-term research activities. Attendees included experts from the statistical community, academia, state agencies, the Census Bureau's advisory committees, professional organizations, and international organizations. A nearly unanimous recommendation from these experts was to focus on assumptions and estimates of the components of international migration, as these numbers were subject to the most uncertainty. Because of scheduling conflicts, two smaller meetings with other migration experts were held at the annual meeting of the Population Association of America on March 29–30, 2001.

Expert advice was sought again, on September 24, 2001, after completion of the original research activities (validation of the 1990 estimates and updated 2000 estimates) that produced the revised DA estimates. Although these experts generally agreed with the methodology used to calculate components of international migration, they had concerns about the assumptions regarding the undercount of international migrants. Specifically, they believed the undercount assumption of 15 percent for unauthorized migrants, which was incorporated in the Revised DA, was probably too high, especially given the A.C.E. undercounts for other hard-to-enumerate groups. In addition, they urged renaming the residual migrant category as the residual foreign-born, or separating the residual foreign born into known components ("quasi-legal" migrants) and the implied unauthorized migrant population. Both of these suggestions were incorporated into a subsequent sensitivity analysis.

The sensitivity analysis of assumptions about coverage of various components of the foreign-born population showed that the total number of foreign born did not vary enough to have much effect on the DA estimate of the total population. For example, the lower bound assumption of 3.3 percent net undercount of the foreign-born equated to a population of 281.3 million, or more than 3 million people lower than the A.C.E. total population. The upper bound assumption of 6.7 percent was consistent with a population of 282.5 million—still more than 2 million lower than the A.C.E. total population. These results led the Census Bureau to conclude that the Revised DA was an appropriate benchmark for assessing Census 2000 and the A.C.E. estimates.

Measurement of Vital Events

Other research examined the remaining assumptions underlying the DA components of change, including the birth, death, and Medicare components. Although estimates of deaths and the size of the elderly population did not change much, the estimates of historical births changed because of this research. The principal outcome was a revision in the assumptions about registration completeness of births since 1968. The previous DA estimates assumed that all births in years since 1968 (the last year of testing birth registration completeness) were registered at the same percent (99.2 percent). For the Revised DA estimates, registration completeness gradually reached 100 percent by 1985 (the first year natality statistics were reported electronically from all the States), and remained at 100 percent through 2000. This revision lowered the estimated number of births for 1968–2000 by 715,000 (which lowered the Revised DA estimate of the total population in 2000 by the same amount).[7]

Results of Revised DA

The research undertaken between March and October allayed two fundamental concerns: first, the possibility that the Alternative DA did not capture the full growth of the population between 1990 and 2000, and second, the possibility that the 1990 DA was lower than the true population. In fact, the cumulative effect of the research on immigration, births, and deaths led to Revised DA estimates that were only slightly different from the Alternative DA. In other words, the inconsistency between the Alternative DA and the A.C.E. estimates was not the result of unexplained problems in DA. These results, in combination with other evidence, led the ESCAP to conclude that the A.C.E. overestimated the Nation's total population.

More specifically, the Revised DA lowered the net undercount rates from 1.85 to 1.65 percent in 1990, and from 0.32 to 0.12 percent in 2000, but did not alter the DA finding that the net undercount rate in 2000 was substantially lower than in 1990.[8] The Revised DA continued to measure a lower net undercount than the A.C.E., and in fact was very close to the Alternative DA estimate used by ESCAP I in March. The Revised DA estimated a net undercount of 0.3 million, or 0.12 percent, compared with the A.C.E. estimate of a net undercount of 3.3 million, or 1.15 percent. Population totals from the Base DA, Alternative DA, and Revised DA, along with the Census 2000 counts and the A.C.E. estimates, are shown in Table A. The corresponding numerical and percentage undercounts are shown in Figure 1.

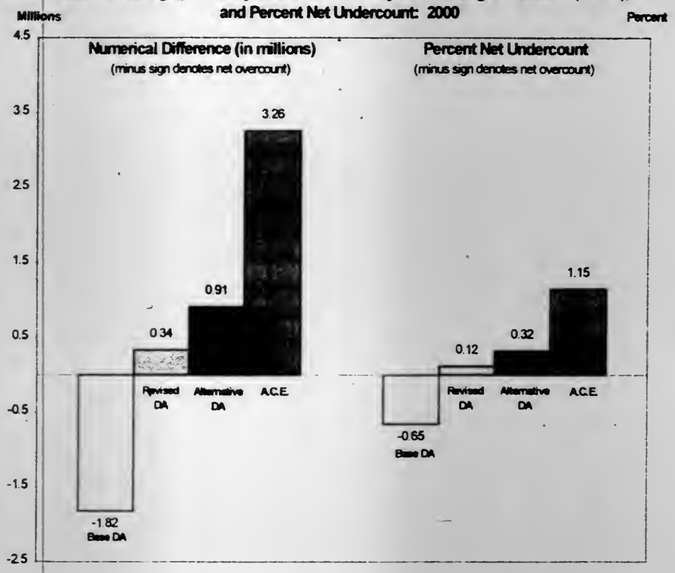
TABLE A.—RESIDENT POPULATION TOTALS FROM CENSUS 2000, DEMOGRAPHIC ANALYSIS, AND THE A.C.E.: APRIL 1, 2000

Source	Total population
Base DA (March)	279,598,121
Census 2000	281,421,906
Revised DA (September)	281,759,858
Alternative DA (March)	282,335,711
A.C.E.	284,683,782

[7] ESCAP II Report No. 1, "Demographic Analysis Results."

[8] ESCAP II Report No. 1, "Demographic Analysis Results."

Figure 1. - Numerical Difference Between Census 2000 and Census Bureau Estimates Based on Demographic Analysis and the Accuracy and Coverage Evaluation (A.C.E.), and Percent Net Undercount: 2000



As shown in Table B below, the Revised DA implied a greater reduction than the A.C.E. in net undercount in Census 2000 compared with the 1990 census. Under the revised DA, the net undercount rate was reduced by 1.53 percentage points, from 1.65 percent in 1990 to 0.12 percent in 2000. In contrast, the A.C.E. estimate of 1.15 percent net undercount in 2000 was 0.43 percentage points lower than the 1.58 percent in 1990. Additionally, both DA and the A.C.E. measured a reduction in the net undercount rates of Black and nonBlack children compared with 1990. Both methods also measured a reduction in the net undercount rates of adult Black men and women.

The revised DA and A.C.E. estimates continued to disagree in that DA found a reduction in the net undercount rates of nonBlack men and women in Census 2000 compared with the rates of previous censuses. The A.C.E. indicated no change or a slight increase in undercount rates for nonBlack adults as a group.

Demographic analysis also provided evidence that correlation bias was not reduced between 1990 and 2000. Comparisons of the DA and A.C.E. sex ratios (men per 100 women) showed that correlation bias in the survey estimates was not reduced for Black men between 1990 and 2000. The A.C.E. sex ratios for Black adults were much lower than the expected sex ratios based on DA, implying that the A.C.E. did not capture the high undercount rate of Black men relative to Black women. The size of this bias was about the same as in the 1990 coverage measurement survey.

TABLE B.—ESTIMATES OF PERCENT NET UNDERCOUNT, BY RACE, SEX, AND AGE: 1990 AND 2000

[a minus sign denotes a net overcount]

Category	Revised demographic analysis		PES/A.C.E.	
	1990	2000	PES 1990	A.C.E. 2000
Total	1.65	0.12	1.58	1.15
Black	5.52	2.78	4.43	2.07
0–17	5.27	1.30	7.05	2.92
Male, 18+	9.57	7.67	3.76	2.10
Female, 18+	2.05	0.75	2.64	1.28
NonBlack	1.08	−0.29	1.18	1.01
0–17	1.12	0.54	2.46	1.27
Male, 18+	1.74	0.29	1.19	1.43
Female, 18+	0.44	−1.02	0.34	0.44

Source: U.S. Census Bureau.

Note: Estimates by race shown for 2000 are based on the "average" of Model 1 and Model 2, as described in ESCAP II Report No. 1, "Demographic Analysis Results."

Research to Evaluate the A.C.E. and Census 2000

A number of the studies described more fully in Attachment 2 evaluate the accuracy of the A.C.E. and Census 2000. The A.C.E. is composed of two samples, the E-sample, which measures erroneous enumerations, and the P-sample, which measures census omissions. The E-sample is also used to estimate the number of census persons who do not have sufficient information to be used in A.C.E. matching and followup operations. The Dual System Estimates (DSEs) are computed by combining E-sample estimates of erroneous enumerations and insufficient information with P-sample estimates of omission. Therefore it is critical that the E-sample correctly account for erroneous enumerations and that the P-Sample correctly account for omissions. The evaluations were designed to measure the accuracy of both the P- and E-Samples.

Three studies in particular produced substantial new information for ESCAP II: the Matching Error Study, the Evaluation Followup (EFU), and the Person Duplication Studies.

Matching Error Study[9]

The Matching Error Study provided the P-sample matching error rate and the E-sample processing error rate. Expert matchers clerically rematched all of the people in a one-fifth subsample of the A.C.E. clusters to determine the best match code. This information was compared to match codes assigned in production of the actual A.C.E. estimates.

Evaluation Followup[10]

The EFU consisted of a reinterview of households in the same one-fifth subsample of A.C.E. clusters used in the Matching Error Study, with additional subsampling. EFU results helped determine the accuracy of the production data processed and collected in the P- and E-Samples. The EFU interview results were used to measure the accuracy of the classification of correct and erroneous census enumerations as determined by the E-Sample. The results were also used to measure the accuracy of the P-Sample data regarding mover status and Census Day residence.

Person Duplication Studies[11]

The Person Duplication Studies took advantage of the fact that Census 2000 was the first census to record name information in the data capture system in a way that permits computer matching. This new methodology permitted the Census Bureau to direct a nationwide computer matching operation to measure the level of duplication in the census. These studies also examined how well the A.C.E. accounted for these duplicates. While the A.C.E. matched respondents in the same block and surrounding blocks, this new tool permitted the Census Bureau to search for duplicates throughout the country. The Person Duplication Studies involved only computer matching, as the Census Bureau lacked the resources and time to match to the entire country using both computer and clerical matching. The computer matching thus understated the actual level of duplication. These studies also compared the results of the EFU with the Person Duplication Studies to determine whether the EFU correctly measured these duplications.

Some of the error components produced in these studies suggest that the A.C.E. overestimated the net undercount while others suggest the net undercount was underestimated. The results of these studies are discussed below, and are the basis for the recommendation that the adjusted data not be used due to a significant problem in the measurement of erroneous enumerations resulting in an overstatement of the net undercount by at least 3 million people.

Measurement of Erroneous Enumerations, Including Duplicates

The evaluations of the accuracy of the A.C.E. indicated that the A.C.E. did not measure a significant portion of the Census 2000 erroneous enumerations. The measurement of erroneous enumerations is critical to both the national net undercount and to sub-national estimates. The effect of this error resulted in the A.C.E. significantly overstating the net Census 2000 undercount by at least 3 million people, with an approximate range of 3 to 4 million. The significance of this error was such that the ESCAP recommended that the unadjusted data be used for Census 2000 non-redistricting purposes.

The EFU and the Person Duplication Studies described above provided the most significant information regarding the measurement of erroneous enumerations. The initial EFU results gave evidence of a significant understatement in the A.C.E. measurement of erroneous enumerations. Because of the significance of the understatement, the EFU was extensively reviewed. The revised EFU again also indicated a significant problem with understating the level of erroneous enumerations, and resulted in a high level of cases left unresolved or conflicting. The Person Duplication Studies found that a significant number of duplicate enumerations were not measured by the A.C.E., and that the EFU did not pick up significant portions of this error. The Person Duplication Studies also resolved a portion of the cases left unresolved or conflicting by the EFU Review.

The EFU initially found a 3.5 percent change in enumeration status from that measured by A.C.E. production. A total of about 2,800,000 production "correct enumerations" (SE 223,000) were re-coded as "erroneous enumerations," while about 900,000 production "erroneous enumerations," (SE 99,000) were re-coded as "correct enumerations."[12] The net difference found by the EFU was 1,900,000. The EFU also included about 4,500,000 cases (SE 353,000) that could not be resolved. This study indicted that, at a minimum, the A.C.E. overstated the level of net undercount by about 2 million people.

Because of the EFU's potentially significant implications for the A.C.E. estimates, ESCAP decided that further EFU analysis was needed. Accordingly, more highly trained matching analysts from the National Processing Center (NPC) directly reviewed a subsample of the EFU and production cases. Matching analysts are employees at NPC with many years of training in matching, some with over 20 years of experience, who supervise and perform quality assurance for all the A.C.E. matching operations.

This additional review confirmed that there were errors in the A.C.E.'s identification of erroneous enumerations. A total of about 1,800,000 enumerations (SE 189,000) that were coded as correct in production were subsequently coded erroneous in the evaluation, while the number of enumerations coded as erroneous in production that were then coded as correct in the review was about 361,000 (SE 46,000).[13] Consequently, the net difference in the "correct enumeration" to "erroneous enumeration" and "erroneous enumeration" to "correct enumeration" cells was estimated at 1,450,000, rather than the initial level of 1,900,000. However, the review identified over 15 million cases which could not be resolved or for which conflicting results were observed. Depending on assumptions that could be made regarding the enumeration status of these cases, the overstatement of the net undercount could range from about 1.45 million to up to 5.9 million people.[14]

The Person Duplication Studies found that a significant number of duplicate enumerations were not correctly measured by the A.C.E. or by the EFU. Furthermore, when the Person Duplication Studies results are combined with the EFU results, some of the unresolved and conflicting cases can be explained. Based on this work, more refined ranges for the level of the A.C.E. overstatement were developed. Direct estimates were produced from the Person Duplication Studies that indicated that the level of A.C.E. error not measured was about 3 million persons. In addition, it is also expected that further refinements to the treatment of the unresolved and conflicting cases would lead to about an additional 800,000 errors. Thus, the approximate range of the potential overstatement of the net undercount was reduced to between 3 and 4 million persons.

[9] ESCAP II Report No. 7, "Accuracy and Coverage Evaluation Matching Error."

[10] ESCAP II Report No. 3, "Evaluation Results for Changes in A.C.E. Enumeration Status," ESCAP II Report No. 4, "A.C.E. Erroneous Enumeration Errors: Analysis of Census Discrepant Persons," ESCAP II Report No. 16, "Evaluation Results for Changes in Mover and Residence Status in the A.C.E.," and ESCAP II Report No. 24, "Results of the Person Followup and Evaluation Follow-up Forms Review."

[11] ESCAP II Report No. 6, "Census Person Duplication and the Corresponding A.C.E. Enumeration Status," ESCAP II Report No. 9, "Evidence of Additional Erroneous Enumerations from the Person Duplication Study," and ESCAP II Report No. 20, "Person Duplication in Census 2000."

[12] ESCAP II Report No. 3, "Evaluation Results for Changes in A.C.E. Enumeration Status."

[13] ESCAP II Report No. 24, "Results of the Person Followup and Evaluation Followup Forms Review."

[14] ESCAP II Report No. 24, "Results of the Person Followup and Evaluation Followup Forms Review."

Finally, the EFU provided information regarding whether the A.C.E. accurately measured Census 2000 discrepant enumerations.[15] This study showed that the net effect of erroneously identifying discrepant persons as correct enumerations in production and vice versa is an overstatement of about 6,000 correct enumerations in production, with a standard error of about 30,000.[16] This difference is statistically insignificant.

Measurement of Census Omissions

Measurement of census omissions is based on the P-Sample. Therefore, accurate matching of the P-sample to the census, and the correct classification of mover status and Census Day residence, are important components of the P-Sample. Information about the accuracy of the matching was produced by the Matching Error Study. Information about the accuracy of the classification of movers and Census Day residence was derived from the EFU.

The Matching Error Study indicated that the level of matching error from the P-Sample would result in about a 385,000 overstatement of the net undercount.[17]

The EFU demonstrated that misclassification of movers in the A.C.E. may have resulted in an understatement of about 450,000 in the net undercount.[18] It should be noted that this final effect was the result of significant changes in mover status. These changes involved a large number of movers becoming nonmovers and vice versa. The EFU indicated that about 4.5 million people classified as "movers" in production became "nonmovers," and that about 2.4 million people classified as "nonmovers" in production became "movers." At the national level there is therefore a small net effect of about 65,000 on the accuracy of the measurement of census omissions. However, more research must be conducted to further study these effects.

The ESCAP was concerned about the EFU measurement of movers who became nonmovers, specifically about whether the EFU measured too few movers, due to its questionnaire design. To be classified a nonmover, the EFU required less detailed information than needed to be classified a mover. An examination of the bias caused by mover status changes indicates that the effect of mover-to-nonmover changes was greater in absolute value then the effect of nonmover-to-mover changes. Therefore, if there was an over reporting of nonmovers in the EFU, the effect would be to lower the measured net bias described above. Additional work must clearly be conducted to clarify this information. Furthermore, even though the net effects of these errors cancel at the national level, assessment of the subnational effects also requires further research.

Correlation Bias

Correlation bias refers to the tendency for people enumerated in the census to be more likely to be included in the A.C.E. than those missed in the census. Correlation bias usually results in a downward bias in the DSE. This type of bias can result from causal dependence, that is, the tendency of some people to be more likely to be included in the A.C.E. because they had been included in the census, or vice versa, or from heterogeneity. Heterogeneity bias can arise because different people within poststrata both have different chances of being counted in the census and different chances of being included in the A.C.E. To cause a bias, these chances must be correlated, for example, those likely to be missed by the census are also most likely to be missed by the A.C.E. ESCAP I assessed possible correlation bias in the A.C.E. estimates by comparing the A.C.E. and DA results. Correlation bias estimates available for the March ESCAP recommendation used DA estimates as of February 26, 2001. ESCAP II directed that the correlation bias estimates be recomputed to use the Revised DA estimates and other newly available data. Revised correlation bias estimates were computed and discussed by the Committee.

Like ESCAP I, ESCAP II was faced with the fact that while correlation bias exists, it is difficult to quantify. Correlation bias is an important component of assessing the A.C.E.'s accuracy because assumptions regarding correlation bias have a large effect. ESCAP II considered several models of correlation bias, including whether correlation bias should be assumed only for the Black population, whether the Hispanic population should be assumed to have the same degree of correlation bias as the Black population, and whether correlation bias should be assumed to be the same for owners and renters. Correlation bias would mean that the A.C.E. estimates of total population were too low by about 750,000 to 1.3 million, depending on which model for correlation bias is assumed.[19] Currently the Census Bureau has no means of incorporating these net biases in the production DSEs.

A.C.E. Missing Data

Missing data occurs in the A.C.E. if, after all followup attempts, there remain households that were not interviewed, or households with some portions of the person data missing, such as age or race. Sometimes the missing item involves the status of whether a person matched, was a resident on Census Day, or was correctly enumerated. Statistical models are used to account for missing data. ESCAP I viewed the rates of occurrence of unresolved A.C.E. cases for match status, correct enumeration status, and mover status as low enough to preclude serious biases in the A.C.E. results. ESCAP II directed development of additional missing data models to assess the effect on the estimates of using alternative models.

The treatment of missing data can have a large effect on the A.C.E. estimates under certain assumptions. ESCAP II examined a variety of models to predict the effects of missing data. Seven basic methods for addressing the components of missing data in the A.C.E. estimates were considered in various combinations. Each resulting alternative model was used to compute new DSE. The alternatives considered indicated that the choice of missing data model can have a significant effect on the resulting estimates of coverage error, causing the DSEs to be over- or under-stated. The Census Bureau chose to represent the effects of these alternative models in the form of increased uncertainty in the A.C.E. estimates.

The DSEs that resulted from the alternative models were used to calculate a measure of variation similar to a sampling error. This research found that non-sampling variability from the use of alternative missing data models was considerable. At the national level, the overall magnitude of the variation resulting from all combinations of the alternative missing data models (about 530,000) was higher than the DSE sampling error (about 380,000).[20] When some alternative models were excluded, the standard deviation was of approximately the same magnitude as the DSE sampling error, but there is no evidence to suggest that the measure of variation based on all methods is unreasonable. In fact, arguments could be made that this measure understates the actual levels of variation due to missing data because it assumes that the alternatives considered were randomly distributed around an average, that is, each alternative was equally likely.

ESCAP II also examined information describing the level and distribution of A.C.E. missing data compared to the 1990 coverage measurement survey. The purpose of this review was to put the levels of missing data in context with 1990, and to add to the understanding of the alternative missing data model analysis previously described. The 2000 unresolved rates were slightly higher than those in 1990, but were not initially viewed as high enough to cause major concern. The alternative model analysis indicated that missing data had a more significant effect than anticipated, possibly due to changes in the methods for incorporating movers into the DSE, or to a more diverse set of alternative models.

Balancing Error

The ESCAP I Report had identified balancing error as a potential problem, noting that the A.C.E. found 3 million more matches in surrounding blocks than correct enumerations, a result which could have affected the accuracy of the estimates. The A.C.E. matching is carried out in a defined search area consisting of the A.C.E. sample blocks (clusters) and a targeted area of blocks surrounding or bordering the A.C.E. blocks. Significant differences were discovered between the number of matches and correct enumerations found in the surrounding blocks. Various scenarios were identified that could explain the difference, and ESCAP II directed that evaluations be conducted to investigate the source of this difference, identify the scale of any error, and assess whether its magnitude could significantly affect the accuracy of the adjusted data. This analysis necessitated additional field work.

The evaluations indicated that the causes of the discrepancies were for the most part related to a scenario that does not significantly affect the resulting DSEs. That is, most of the 3 million difference was attributable to the A.C.E. listing housing units in the blocks surrounding the sample blocks, which had little, if any, effect on the DSE. The evaluations did, however, detect about 246,000 A.C.E. people (SE 82,000) located out of the surrounding blocks.[21] The evaluations also estimated that an additional 195,000 people (SE 56,000) were incorrectly identified as having been correctly enumerated, but although they were found to have been out of the search area. The effect of these errors is an approximate overstatement of the net undercount by about 450,000 persons. It appeared that a portion of these errors were also included in the results of the EFU and Matching Error Study. While some additional work is required to completely resolve the potential effects of balancing error, the ESCAP believes that most of the previous concerns regarding balancing error have been addressed.

Conditioning

Conditioning, or contamination bias, refers to the situation where the A.C.E. influenced the census. ESCAP I assumed in its deliberations that any effects of conditioning or contamination bias were minimal, and could be ignored. This assumption was based on previous experiences in the 1990 census. Evidence presented to ESCAP II confirmed that contamination bias was not a problem in Census 2000, as research did not identify any evidence of its presence.[22]

Reinstated Late Additions

While ESCAP I did not identify Census 2000 late additions as a source of error, levels of these additions were significantly higher than in the 1990 census. Late additions refer to persons included in the final census count who were excluded from A.C.E. matching and dual system estimation because of their late inclusion. For Census 2000, the late additions consisted exclusively of housing units that were temporarily removed from the census because they were suspected to duplicate other housing units, but which were later (after the A.C.E. matching process started) reinstated into the final census after further research. ESCAP I determined that if the reinstated people were a small percentage of the correct enumerations in the census, or if their A.C.E. coverage rate was similar to the A.C.E. coverage rate for census people included in A.C.E., then there would be a minimal effect on the DSEs.[23] To validate this assumption, additional research was conducted.

Based on this additional work, ESCAP II concluded that the effect of excluding reinstated census people from the A.C.E. was minimal. The A.C.E. coverage rate may have been overestimated by 0.034 to 0.082 percentage points.[24] This result confirmed the assumption, previously made in the ESCAP I Report, that the effect of the reinstated people on the DSEs would be small.

Census 2000 Imputations

Census 2000 experienced a higher rate of whole person imputations than in the 1990 census. Whole person imputations were excluded from A.C.E. matching activities, but reflected in the census coverage error as measured by the A.C.E. ESCAP I was concerned that information was not available at the time to validate that the whole person imputations were explainable by Census 2000 design features (and thus should have no discernible impact on the A.C.E.). ESCAP II concluded that the kind, level, and pattern of whole person imputations in Census 2000 raised no additional issues relative to the accuracy of the A.C.E. adjustment.

Approximately 5.77 million persons had all their characteristics (short form data items) imputed in Census 2000, compared to 1.97 million persons in the 1990 census. Approximately 1.2 million of these persons were added to the census count through a count imputation process. The remaining 4.6 million persons were counted directly through the census enumeration process, but had all their person characteristics imputed because information about them was substantially missing from the census records.[25] Research into the sources of the whole person imputations identified that changes in the census design contributed to the level of housing units requiring imputation. Furthermore, the count imputation rate was comparable to the rate experienced in the 1970 and 1980 censuses.

Characteristics of the imputed persons were also examined. The age, race and sex characteristics of the population requiring some form of imputation was similar to the data-defined population with the exception of the age category under 18. The relatively higher percent of the population under age 18 in the imputed population was due to the high proportion of younger people in the "within household" category and reflected the fact that large households (greater than 6) were likely to have children not able to be accommodated by the 6-person mail-return form, and thus require imputation.[26]

Total Error Model and Loss Function Analysis

The total error model is designed to incorporate the results of the evaluations to produce a composite estimate of the bias and variability (both sampling and non-sampling) in the A.C.E. These measures are used to correct the A.C.E., thus producing measures of the "true" population that can be used to assess the accuracy of the adjusted and unadjusted census data. The total error model produces measures of this "true" population in the form of target populations which are based on various assumptions because the truth is not known.[27] The total error model used by ESCAP I relied in part on 1990 data, as complete Census 2000 evaluations of the A.C.E were not then available. This preliminary model adapted the 1990 total error model to the Census 2000 environment. For the current deliberations, the ESCAP II wanted to base recommendations on current data. Therefore, development of a new total error model was undertaken to incorporate the results of the Census 2000 evaluations. The complexities of the revised EFU study and the A.C.E. design did not allow for the development and validation of a new total error model. Therefore, the ESCAP has had to rely on the individual evaluations described above. It is also apparent that a significant amount of additional research and development will be necessary before a complete total error model is available. ESCAP II believes that the information currently available is strong enough to preclude the use of adjusted data for any further Census 2000 purposes, but that future research may lead to improved A.C.E. estimates, that could, in turn, be used to improve the post-censal estimates.

Synthetic Estimation

The A.C.E. estimation methodology produces estimated coverage correction factors for each post-stratum. These factors were carried down within the post-strata in a process referred to as synthetic estimation. The key assumption underlying synthetic estimation is that net census coverage is relatively uniform within the post-strata. Failure of this assumption leads to synthetic error. Synthetic error affects both the adjusted and unadjusted census results. ESCAP I analyzed the effects of synthetic error by using artificial populations, which are populations created with surrogate variables to reflect the distribution of net coverage error. Additional synthetic estimation analysis for ESCAP II focused on expanding the scope of the earlier artificial population work.

ESCAP II continues to be concerned with synthetic error because it is not included directly in the total error model. However, as the synthetic error analysis must be considered in conjunction with loss function analysis based on the total error model, there is no need to consider the effects of synthetic error at this point.

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[15] Discrepant results include falsification (the amount is uncertain), but do not include honest mistakes made by the interviewers or respondents. A person is classified as discrepant during the matching operation if three knowledgeable respondents indicate not knowing him or her in either the EFU or production interview.

[16] ESCAP II Report No. 4, "A.C.E. Erroneous Enumerations Errors: Analysis of Census Discrepant Persons."

[17] ESCAP II Report No. 7, "Accuracy and Coverage Evaluation Matching Error."

[18] ESCAP II Report No. 16, "Evaluation Results for changes in Mover and Residence Status in the A.C.E."

[19] ESCAP II Report No. 10, "Estimation of Correlation Bias in 2000 A.C.E. Estimates Using Revised Demographic Analysis Results."

[20] ESCAP II Report No. 12, "Analysis of Missing Data Alternatives."

[21] ESCAP II Report No. 2, "Evaluation of Lack of Balance and Geographic Errors Affecting Person Estimates."

[22] ESCAP II Report No. 14, "Conditioning of Census 2000 Data Collected in Accuracy and Coverage Evaluation Block Clusters."

[23] Howard Hogan (March 2001). "Accuracy and Coverage Evaluation Survey: Effect of Excluding 'Late Census Adds,'" DSSD Census 2000 Procedures and Operations Memorandum Series No. Q–43.

[24] ESCAP II Report No. 21, "Analysis of Census Imputations."

[25] ESCAP II Report No. 21, "Analysis of Census Imputations."

[26] ESCAP II Report No. 22, "Characteristics of Census Imputations."

[27] Mulry, Mary H. and Spencer, Bruce D. (March 2001). ESCAP II Report No. B–19*, "Overview of Total Error Modeling and Loss Function Analysis," DSSD Census 2000 Procedures and Memorandum Series No. B–19*.

Conclusion

ESCAP II recommends that unadjusted Census 2000 data be used for non-redistricting purposes. The Committee was persuaded by new evidence indicating that the A.C.E. overstated the net undercount by at least 3 million individuals as a result of the survey's failure to measure a significant number of census erroneous enumerations. However, the Committee believes that, while Census 2000 successfully lowered the differential undercount, it did not eliminate it. Therefore, the Census Bureau will conduct further research and analyses to attempt to produce revised A.C.E. estimates that can be used to improve future post-censal estimates.

The ESCAP II recommendation, if accepted, means that Census 2000 long form results will be weighted with unadjusted population counts, and that post-censal population estimates and survey controls will also rely on unadjusted data. The Census Bureau will continue research on the issues discovered with the A.C.E., particularly the issue of census duplicates and their estimation or detection. It is quite possible that this research will develop methods to improve future population estimates by combining information from the census, A.C.E., and the A.C.E. evaluations, including the Person Duplication Studies. Post-censal estimates and survey controls are updated annually, offering the opportunity to incorporate improvements. Even if the research does not lead to improved post-censal estimates, it will still further our understanding of the nature of census duplications and other erroneous enumerations, and the problems with their estimation by the A.C.E. This knowledge will be vitally important to the planning of the 2010 census and to the improvement of future coverage surveys.

Both census taking and coverage measurement are processes that evolve and improve with each census. The Census 2000 experience will help refine both census and coverage measurement processes for future censuses.

Attachments

1. List of ESCAP II Reports
2. Analysis Plan for Further ESCAP Deliberations Regarding the Adjustment of Census 2000 Data for Future Uses
3. Field Operations to Answer the Concerns about Lack of Balance

ATTACHMENT 1.—ESCAP II REPORTS

Report No.	Title	Author/Presenter
1	ESCAP II: Revised Demographic Analysis Results	J. Gregory Robinson.
2	ESCAP II: Evaluation of Lack of Balance and Geographic Errors Affecting Person Estimates.	Tamara Adams, Xijian Liu.
3	ESCAP II: Evaluation Results for Changes in A.C.E. Enumeration Status	David A. Raglin, Elizabeth A. Krejsa.
4	ESCAP II: A.C.E. Eerroneous Enumerations errors: Analysis of Census Discrepant Persons.	Elizabeth A. Krejsa.
5	ESCAP II: E-Sample Erroneous Enumerations	Roxanne Feldpausch.
6	Census Person Duplication and the Corresponding A.C.E. Enumeration Status	Roxanne Feldpausch.
7	ESCAP II: Accuracy and Coverage Evaluation Matching Error	Susanne L. Bean.
8	Accuracy of the 2000 Census and A.C.E. Estimates Based on Updated Error Components—Total Error Model.	Rita J. Petroni.
9	Evidence of Additional Erroneous Enumerations from the Person Duplication Study.	Robert E. Fay.
10	ESCAP II: Estimation of correlation Bias in 2000 A.C.E. Estimates Using Revised Demographic Analysis Results.	William R. Bell.
11	ESCAP II: Analysis of Unresolved Codes in Person Matching	Xijian Jim Liu, John A. Jones, Roxanne Feldpausch.
12	ESCAP II: Analysis of Missing Data Alternatives for the Accuracy and Coverage Evaluation.	Don Keathley, Anne Kearney, William R. Bell.
13	ESCAP II: Effect of Excluding Reinstated Census People from the A.C.E. Person Process.	David A. Raglin.
14	Conditioning of Census 2000 Data Collected in Accuracy and Coverage Evaluation Block Clusters.	Katie Bench.
15	ESCAP II: Analysis of Movers	Xijian J. Liu, Rosemary L. Byrne, Lynn M. Imel.
16	ESCAP II: Evaluation Results for Changes in Mover and Residents Status in the A.C.E.	David A. Raglin, Elizabeth A. Krejsa.
17	ESCAP II: Census 2000 Housing Unit Coverage Study	Diane F. Barrett, Michael Beaghen, Damon Smith, Joseph Burcham.
18	ESCAP II: P-sample Nonmatch Analysis	Glenn Wolfgang, Tamara Adams, Peter Davis, Xijian Liu, Phawn Stallone.
19	ESCAP II: Analysis of Non-Matches and Erroneous Enumerations Using Logistic Regression.	Michael Beaghen, Roxanne Feldpausch, Rosemary Byrne.
20	ESCAP II: Person Duplication in Census 2000	Thomas Mule.
21	ESCAP II: Analysis of Census Imputations	Fay F. Nash.
22	ESCAP II: Characteristics of Census Imputations	Signe I. Wetrogan, Arthur R. Cresce.
23	ESCAP II: Sensitivity Analysis for the Assessment of the A.C.E. Synthetic Assumption.	Richard Griffin, Donald Malee.
24	ESCAP II: Results of the Person Followup and Evaluation Followup Forms Review.	Elizabeth A. Krejsa, Tamara Adams.

July 26, 2001..

Attachment 2—Analysis Plan for Further ESCAP Deliberations Regarding the Adjustment of Census 2000 Data for Future Uses

Background

On March 1, 2001, The Census Bureau issued the Executive Steering Committee for A.C.E. Policy (ESCAP) recommendation that the Census 2000 Redistricting Data not be adjusted based on the Accuracy and Coverage Evaluation (A.C.E.) program data. The ESCAP was unable to conclude, based on information available at the time, that the adjusted Census 2000 data were more accurate for redistricting.

By mid-October, the Census Bureau will recommend whether Census 2000 data should be adjusted for future uses, such as the census long form data products, post-censal population estimates and Census Bureau demographic survey controls. In order to inform this decision, further research will be conducted generating data for ESCAP's review. The analyses will focus on resolving the concerns that ESCAP identified during its deliberations for the redistricting adjustment decision. This document describes the research agenda and is organized by the topic areas of concern.

The broad, overarching concern was that the Demographic Analysis and the A.C.E. estimates of the population were inconsistent. Even though alternative demographic estimates were produced by varying the assumptions underlying the Demographic Analysis, the highest reasonable estimate indicated that Census 2000 undercounted the population by 0.32 percent, while the A.C.E. produced a net undercount estimate of 1.15 percent.[28] In previous censuses since 1960, the Demographic Analysis estimates were used to evaluate decennial census coverage. The estimate derived through the 1990 coverage measurement survey was reasonably consistent with the 1990 Demographic Analysis estimate of the total population. When the corresponding estimates for Census 2000 were found to reflect substantial differences in the population estimates, this concerned the ESCAP. Four scenarios were identified that could explain this result:

- The 1990 census coverage measurement survey (Post Enumeration Survey), 1990 Demographic Analysis estimates, and the 1990 census may have understated the Nation's population, while Census 2000 included portions of this previously unidentified population.
- Demographic Analysis estimates might not have captured the full growth between 1990 and 2000, specifically due to static assumptions about critical components of international migration such as unauthorized migration, temporary migration, and emigration.
- Census 2000, as adjusted by the A.C.E., might overestimate the Nation's population. This situation raises the possibility of an undiscovered problem with the A.C.E. or Census 2000 methodology.
- A combination of these explanations.

To address these possibilities, further research is required into the quality of the three independent measures of the population—the Demographic Analysis estimate, the A.C.E. estimate and the census count itself. Specifically, research will address whether the Demographic Analysis estimate was too low and/or whether the adjusted estimate was too high. The latter situation could have occurred if either the A.C.E. did not measure the coverage error accurately or the census count had coverage error reflected by components not measured by the A.C.E.

In addition, the ESCAP was concerned about two other issues related to the A.C.E. estimates—balancing error and synthetic error. Balancing error occurs in the A.C.E. when cases are handled differently in the two independent samples (the P- and E-samples) when identifying gross omissions and erroneous enumerations. This is explained more fully under section B.1.a below. Synthetic error reflects the extent that net census coverage within a post-stratum is not relatively uniform. Uniformity of coverage is the underlying assumption of the synthetic estimation process of carrying coverage correction factors down to the block level. The concerns regarding synthetic error are described more fully in section D below.

The analysis agenda is organized around four basic areas of research: 1) recalculation of Demographic Analysis estimates using new migration assumptions as well as new birth and death data, 2) A.C.E. issues, including balancing error, 3) Census 2000 issues and 4) synthetic error.

A. Demographic Analysis (DA) Research

This area of research addresses the discrepancy of the demographic analysis data and the A.C.E. adjusted estimates of population. Specifically, this area of research will reexamine the historic levels of the components of population change to address the scenarios dealing with the possibility that the 1990 Demographic Analysis estimates understated the Nation's population and that demographic analysis did not capture the full growth between 1990 and 2000. Consultation with demographic experts inside and outside the Census Bureau has led to a research program consisting of a variety of research projects focused on the methodologies and underlying estimates of the components of population change. The research activities are concentrated in two areas:

1. International Migration

Assumptions regarding international migration are the most uncertain component of the demographic analysis estimates. The international migration component represents a combination of several components. Some of these components, e.g. legal immigration, are measured through continuous administrative data. For other components, e.g. temporary migration, emigration, and unauthorized migration, we do not have administrative data to provide continuous and current measurements. In the past, we have relied upon the most recent decennial data to develop a once a decade measure of these components. Thus, for the 1990 to 2000 decade, we would have relied upon the measurement from the 1990 census to develop an estimate for the 1990 to 2000 decade.

This work will involve examining preliminary data from the Census 2000 long form and the Census 2000 Supplementary Survey (C2SS) to provide information to update the measurement of the international migration components. Although the research will focus primarily on those components less well measured, e.g. emigration, temporary migration, and unauthorized immigration, the work will also include research into all of the current assumptions relating to the components of international migration The first goal is to validate for the 1990 to 2000 period, the calculation of the components of international migration used in previous estimates. Then, using the preliminary data from the Census 2000 long form and possibly the C2SS, we will develop some updated measures of the components of international migration. The second goal is to assess if the documented calculation of the 1990 to 2000 migration components affect the DA estimate for 2000 and thus account for some of the discrepancy with the A.C.E. results. Research to be conducted includes the following:

- We will examine the assumptions about international migration flows, specifically for unauthorized migration, legal immigration, emigration, temporary migration, and migration from Puerto Rico. Utilizing preliminary long form data from Census 2000 and other information sources (including C2SS), we can prepare the first set of documentation for our current international migration assumptions and we can assess the accuracy of assuming a continuation of the estimates developed from the 1990 Census data. Specifically, we will estimate migration using available long-form data on place of birth, citizenship, and year of entry and compare this estimate to the estimates previously used that were developed from the 1990 Census long form data. Thus we will evaluate differences in size and characteristics of previously implied flows based on current data sets. If appropriate, we will recalculate the demographic analysis estimates for 2000 employing any revised levels of international migration.
- We will assess the quality of the foreign-born and Hispanic population data (important because these data are major inputs to the setting of assumptions noted above). We will review edit and allocation procedures for foreign-born and Hispanic populations in the 1990 and 2000 censuses and attempt to quantify the effect (or at least address the direction of the effect) of any differences. We also will review the impact of any change in the edits and allocation procedures on the size and characteristics of these population groups.

2. Robustness of Demographic Analysis

In addition to the research aimed at examining the components of international migration used in the demographic analysis estimates, we will examine the remaining assumptions underlying the Demographic Analysis components of change. These components include the birth, death, and Medicare components. This work will entail the following:

- We will examine the consistency of the components by cohort and age/sex groups across time (1935 to 2000), including the historical international migration components. We will construct DA undercount rates for the 1940 to 2000 decennial censuses and examine them for consistency. We will examine the consistency of sex ratios across cohorts and age/sex groups. Inconsistent or anomalous results will be noted, and possible reasons identified.
- We will review the assumptions about the completeness of vital statistics registration. Specifically, we will review the historic levels of births and deaths used to

[28] The 1.15 percent and 0.32 percent of the undercount rates are based on census counts that include both the housing unit and group quarters populations.

develop existing DA estimates and the assumptions about the underregistration of births and registration of infant deaths. We will evaluate both the procedures for adjusting births for underregistration and the level of historical deaths (both total and by age). If appropriate, we will redevelop the historical annual levels of births and deaths to 1990 and 2000.

• We will examine the assumptions about the variation and coverage of Medicare data. This work will include documenting the differences in the sources of Medicare data used in the 1990 and 2000 DA estimates, evaluating the adjustment rates used for underenrollment in the 1990 and 2000 DA estimates, and reconciling the differences in the Medicare files for 1990 and 2000.

• If appropriate, we will recalculate the demographic analysis estimates for 1990, compare them to the original 1990 Demographic Analysis estimates, and assess their impact on the DA estimates for 2000.

• We will analyze the consistency of DA estimates of the population, by race, ethnicity, and nativity, with Census 2000 and A.C.E. This work will entail (1) developing DA benchmarks of the population, by selected race, ethnicity, and nativity groups, (2) obtaining census tabulations of the native and foreign-born populations from preliminary Census 2000 and the 1990 Census long forms, and (3) comparing to the DA benchmarks to derive coverage estimates by selected age, sex, and race groups.

B. A.C.E. Issues and Planned Research

1. Major Areas of Research

a. Balancing Error

The A.C.E. was conducted using a defined area of search, the sample blocks and surrounding blocks for clusters selected for targeted extended search. There were concerns, since there was a change in the 1990 procedure of expanding the search area to surrounding blocks for all sample blocks. We found 3 million more matches in surrounding blocks than correct enumerations after expanding the search area. This difference must be explained in terms of its impact on subsequent estimates of total population. There are two scenarios:

• The unit is located in the surrounding block with no effect on estimates of coverage, but would explain the three million difference.

• The unit is outside the search area and the corresponding people should have been coded erroneous enumerations. This would result in an overestimate of the net undercount.

This may have been compounded by the targeting used in the A.C.E. to match in an area of search around the sample blocks, i.e., the search area. This targeting to make searching effective may have introduced limitations and/or biases into our measurement of coverage. There were three specific concerns in our review of the 2000 A.C.E.

• There were a number of census people that might have been coded as correctly enumerated although the housing unit was not actually located in the sample block. If we didn't estimate the correct number of erroneously enumerated cases, the result would be an overestimate of the net undercount.

• The P-sample may have incorrectly included some housing units in a neighboring block, then in the extended search, the people would have been recorded as matching to the census in the surrounding blocks. Hence, these cases would appear to be balancing error when, in fact, the extended search was compensating for the original listing error. If the P sample had more geocoding error than expected, the Targeted Extended Search (TES) would have compensated for the error and the impact would be trivial and would have little or no impact on final coverage estimates. This would help explain some of the differences of the apparent lack of balance of 3 million.[29]

• Problems in identifying census geocoding errors may have affected the sampling used to select people for extended search outside the sample blocks. That is, the TES sample could have excluded cases it should have included and thus, not matched or followed up on them correctly. The effect of their exclusion would be an overestimate of the net undercount.

It is likely that all of these errors occurred to some extent. What is not yet known is the scale of the error and whether the magnitude of the error was such as to significantly affect the relative accuracy of the A.C.E. adjusted numbers. The additional geographic field work is described in more detail in the attachment.

b. Erroneous Enumerations

Subsequent to the March 1st decision, a new area of concern was identified. In comparing the A.C.E. measures to the comparable measures from the 1990 Census, the Census 2000 erroneous enumerations were found to differ substantially from the 1990 measures. These differences indicate concerns that the level of erroneous enumerations may be understated for Census 2000. Therefore, these differences must be explained because an understatement of erroneous enumerations results in an overstatement of net undercount. Research described below will quantify the accuracy of the A.C.E. measures of erroneous enumeration.

• The Analysis of Measurement Error Study will determine how well the A.C.E. identified erroneous enumerations and correct enumerations. This study is based on a reinterview of a sample of E-sample records. This is described more fully in section B.1.c below.

• Another evaluation based on results from the "E-sample Erroneous Enumeration Study" will analyze the erroneous enumerations for various characteristics. This evaluation will compare the rates of the different types of erroneous enumerations for Census 2000 with corresponding 1990 rates. This evaluation will also recategorize people with unresolved status into the appropriate erroneous enumeration categories by using data from the followup forms. The goal of this work will identify explanations for differences between 1990 and 2000 coding of erroneous enumerations.

• The duplication study discussed in Section C1 will also provide information regarding the differences between 1990 and 2000. This study will validate whether the A.C.E. process is correctly coding census 2000 duplicate enumerations as erroneous.

c. Total Error Model and Loss Functions

Loss function analyses, reviewed by the ESCAP during its deliberations on whether to adjust the census redistricting data, were based on a total error model that corrected the A.C.E. for biases, thus producing measures of the "true" population that could be used as standards for comparing the adjusted and unadjusted census results. The 1990 total error model was adapted to the extent possible to "fit" the 1990 coverage measurement survey error components into the 2000 survey design. This model was updated with available Census 2000 data, but retained several error component measures obtained from the 1990 coverage measurement survey and 1990 evaluations, because the 2000 A.C.E. evaluation data were not yet available. Thus, the error model assumed that the actual A.C.E. error rates for these components were similar to those reflected by the 1990 coverage measurement survey results. This was viewed as conservative because it was expected that the A.C.E. was of higher quality than the 1990 coverage measurement survey. Work is underway to validate that the assumption above is correct.

We are conducting studies to revise the 1990 total error model to reflect actual A.C.E. error components, as measured by 2000 evaluations. Because of methodological changes between 1990 and 2000, there are issues that influence the comparability of this updated analysis to the March 2001 analysis. The analysis will include a discussion of the comparability.

The A.C.E. error components that were previously based on 1990 data will now be measured and input into the revised total error model are:

—P-sample matching error
—P-sample data collection error
—P-sample discrepancy error
—E-sample processing and data collection errors

Synthetic error is not included in the total error model—this component of error is discussed later. A.C.E. error rates for these total error model components will be obtained from the following evaluation studies.

• The Matching Error Study will provide the A.C.E. P-sample matching error rate and E-sample processing error rates. The methodology consists of the clerical rematching of all of the people in a one-fifth subsample of the A.C.E. clusters by expert matchers to determine the best match code possible. We will compare that match and residence information to the production codes.

[29] Assume 2.6 million of the P-sample are listed in the surrounding blocks. If 95% of them are in the search area (a plausible percentage), and if 90% match (about the overall match rate), then we have accounted for 2.2 million matches to the surrounding blocks. When we divide this 2.2 million by the P-sample coverage of 0.94, we have accounted for about 2.36 million of the 3 million lack of balance.

• The Analysis of Measurement Error Study uses the results of the Evaluation Followup Interview to provide the error components for E-sample and P-sample data collection error relating to person coverage, and P-sample discrepancy error. The methodology consists of revisiting some of the households in a one-fifth subsample of the A.C.E. clusters and using that information to rematch the Census and A.C.E. people in those households. The results of this study will determine the accuracy of the data going into the person matching process, such as the results from Census and A.C.E. questionnaires. This can involve reclassification of correct and erroneous enumerations. We will determine the accuracy of the residence status of A.C.E. people and how well the A.C.E. process identified Census erroneous enumerations (EEs) and correct enumerations (CEs).

Once the total error model is updated with current data, new loss function analyses will be conducted. The loss function analyses will be expanded to analyze the accuracy of governmental units, in addition to states and counties. No loss function analyses will be run for congressional districts.

d. Correlation Bias

Correlation bias in Dual System Estimates (DSEs) results from a failure of the general independence assumption underlying DSEs due either to causal dependence or heterogeneity. Causal dependence occurs when the act of being included in the census makes someone more likely or less likely to be included in the A.C.E. Heterogeneity occurs when the census and A.C.E. inclusion probabilities vary over persons within post-strata. When heterogeneity within post-strata exists it is generally suspected to be of the form where persons more likely to be missed in the Census are also more likely to be missed in the coverage survey (A.C.E.). This will lead to underestimation of true population by the DSEs. The direction of the effect of causal dependence, if it exists, is less certain.

Correlation bias in the A.C.E. estimates, whether due to heterogeneity or causal dependence, was assessed by comparing A.C.E. and DA results. Correlation bias estimates available for the March 1, 2001 ESCAP recommendation used DA estimates as of February 26, 2001. If further DA research results in revisions to the DA estimates, then the correlation bias estimates will be recomputed. The revised correlation bias estimates will then be used as inputs for revisions of the total error model and loss function analyses.

2. Auxiliary Areas of Research

This section describes other areas that did not preclude ESCAP from recommending that Census 2000 data should be adjusted for redistricting purposes, but for which ESCAP would have preferred additional data. Further research in these areas will be conducted in order to confirm the ESCAP's conclusions.

a. Missing Data

Missing data occurs in the A.C.E. if after all followup attempts there remain households that were not interviewed or households with some portions of the person data missing such as age or race. Sometimes the missing item involves the status of whether a person matched, was a resident on Census day or was correctly enumerated.

For a small number of people in the P-Sample, there was not enough information available to determine the match status (whether or not the person matched to someone in the census in the appropriate search area) or the resident status (whether or not the person was living in the block cluster on Census Day). Determining residence status was important for the P-Sample because Census Day residents of the block clusters in the sample were used to estimate the proportion of the population who were not counted in the census. Similarly, some people in the E-Sample lacked information to determine whether the person was correctly enumerated. Generally for cases with missing status a probability of resident, match, or correct enumeration was assigned based on information available about the specific case and about cases with similar characteristics.

The rates of occurrence of unresolved A.C.E. cases for match status, correct enumeration status, and mover status were viewed as low enough to preclude serious biases in the A.C.E. results. We are now doing analysis of the missing data model to determine if the assumptions are correct.

We will develop and apply alternative models for the treatment of missing data. These alternative models will be carried through A.C.E. estimation process so that the effect on DSEs can be assessed.

b. Late Census 2000 Additions

The levels of late Census 2000 additions were significantly higher than in the 1990 census. Late additions are those persons included in the final census counts, but which due to their late inclusion were excluded from in the A.C.E. matching and dual system estimation processes. For Census 2000, the late additions consisted exclusively of housing units that were temporarily removed from the census because they were suspected to duplicate other housing units, but which were later (after the A.C.E. matching process started) reinstated into the final census after further research was conducted. This differs from the 1990 Census in which the late additions were persons who were enumerated too late in the census cycle to be included in the matching and dual system estimation processes and were not factored into the coverage ratios. The A.C.E. design treated the late census data appropriately in measuring the census undercount. Two areas of concern require further investigation—whether calculating DSEs without these additions resulted in a bias in the estimates and whether these impacted the assumptions underlying the synthetic estimation model.

There is no expectation of a bias in the dual system estimate caused by excluding late additions. The dual system estimate can be expressed as a product of the (1) number of A.C.E. people and (2) the ratio of census complete and correct enumerations to the number of people in both systems. Consequently, any effect must come from one of these two sources. Excluding the late additions does not impact the estimate of the number of A.C.E. people, which come solely from the A.C.E. enumerated sample. Excluding the late additions also will not affect the dual system estimate of the true population if the number of matches is reduced proportionately to the number of census correct enumerations. Given the traditional dual system independence assumption, one would expect this result. Consequently, there is no expectation of a bias in the dual system estimate caused by excluding late additions. Data were not available at the time to validate this assumption.

We will now attempt to validate this assumption by performing a rematch of the P- and E-samples, with the late additions included in the E-sample, to attempt to measure the impact on the rates for correct enumerations and duplicates. This rematch will be conducted in a one-fifth subsample of A.C.E. clusters. This study has limitations because only computer and clerical matching can now be performed; that is, no field work will be conducted. Consequently, a high rate of unresolved cases is expected.

The concerns regarding synthetic error are addressed in Section D. "Synthetic Error".

c. Conditioning

Conditioning error occurs under two scenarios:

1. Census data collection affects the A.C.E. This will be measured in the correlation bias.

2. A.C.E data collection affects the census. This will be examined in the evaluation described below.

The effect of potential conditioning of Census 2000 respondents by the A.C.E. operations was assumed to be minimal, similar to the 1990 findings. The research is necessary to confirm this assumption.

An evaluation will examine whether census and A.C.E. operations were kept operationally independent. The analysis will be based on comparing Census 2000 results in A.C.E. and non-A.C.E. blocks.

• *Mover Status Analysis*

The match rate portion of the DSE formula (M/P) uses persons with all types of mover status (nonmovers, outmovers, and inmovers), differentiating between the different types of mover status. Therefore, misclassification of mover status could cause the DSEs to be overstated, understated, or both, depending on the post-strata.

The Measurement Error Reinterview Analysis will measure the extent of mover misclassification by using the results from the Evaluation Followup Interview.

• *Housing Unit Coverage*

The coverage of housing units will be available in the late summer of 2001. These data will be examined in relation to person coverage estimates for 2000. These data from 2000 will be compared to the 1990 estimates of person and housing unit coverage.

In addition, another study will assess the impact of housing unit coverage on person coverage. This study looks at the P-sample to analyze the effect of housing unit nonmatches on the person nonmatches. The E-sample is also examined to help understand the relationship of housing unit status to person status. The correctly enumerated people in erroneously

enumerated housing units are of particular interest.

• *P-sample Nonmatch Analysis*

The P-sample nonmatches are examined for variables such as race domain and age/sex group to see if the nonmatches are different for various types of people. This aids in the understanding of the components of A.C.E. and also helps explain the differences between A.C.E. and DA. In addition, the nonmatches from 2000 are compared to the nonmatches from 1990. In conjunction with the analysis of the E-sample, it helps explain the differences between 1990 and 2000.

C. Census 2000 Issues and Planned Research

Research will be conducted into two components of the census—duplication issues and imputation of persons. A high level of duplication not measured by the A.C.E. design could cause the adjusted census estimate to be too high. The effect of imputed persons records are also not measured by the A.C.E. The number of person records that were imputed in Census 2000 was significantly higher than in the 1990 census. The assumption is that the imputed persons are no different than the persons included in the A.C.E. process and therefore match rates are not impacted.

1. Duplication Not Measured in A.C.E.

The A.C.E. methodology by design did not measure duplication between components of the population living in group quarters and in housing units because group quarters were outside the A.C.E. universe. The A.C.E. also did not measure duplication within the group quarters population. Significant duplication of these types could explain some of the differences between demographic analysis and the adjusted Census 2000 data.

The A.C.E. E-sample will be computer matched to the entire census to determine the extent of duplicate enumerations that were not in scope for the A.C.E. This analysis will potentially explain some of the differences between demographic analysis and the A.C.E.

We also plan an extended computer search within the A.C.E. E-sample for duplicate census enumerations among housing units and also between housing units and group quarters persons (which were out-of-scope for A.C.E.) This will help to explain differences between the A.C.E. and the 1990 coverage measurement survey.

2. Census Person Imputations

Census 2000 imputed a higher number of cases than in the 1990 census that came through the process with little or no information as to the occupancy status, or with an occupied status, but with no definitive population count. In addition, Census 2000 imputed more whole person records in cases with known household sizes, but with all the person data missing for some or all of the household members. Although the A.C.E. handled imputed persons appropriately in the estimation process, there was concern about not having information as to what census design processes contributed to the number of imputed persons when compared to the 1990 census.

Given the potential impact that this level of imputations may have on Census 2000 data, it is essential to understand the demographic characteristics of the imputed people and how this may help explain the difference between the census and demographic analysis, as well as, how the imputations affect differences between the E-sample in 1990 and the E-sample in 2000.

There were concerns expressed regarding the effect of whole household imputations on the heterogeneity assumption but these concerns are studied under the synthetic error analysis in Section D.

D. Synthetic Error

The synthetic assumption states that census net coverage does not vary within post-strata. For example, the synthetic assumption implies that census counts in Florida in a particular Hispanic post-stratum have the same net coverage as the census counts in the same Hispanic post-stratum but in New York. The synthetic assumption within post-strata will permit the Census Bureau to draw conclusions from the A.C.E. sample about the population as a whole and then apply them to individuals living in geographic areas smaller than post-strata. The synthetic assumption is necessary to permit correction for small geographic areas based on a sample. This adjustment is only correcting for systematic biases and not local census errors. The error that is introduced when the synthetic assumption does not hold is called synthetic error.

Synthetic estimation methodology is directed at correcting for a systematic under- or overcount in the census. The synthetic estimates will not result in the correction of random counting errors that occur for any entity (blocks tracts, counties, etc). Therefore, the synthetic estimate will not result in extreme changes in small geographic entities, nor will it correct for extreme errors. It is designed to remove the effects of systematic errors so that when small entities are aggregated, systematic and differential coverage errors are corrected.

In the assessment of accuracy, the Census Bureau is concerned with synthetic error since it is not included directly in the total error model. The analysis of the effects of synthetic error were based on the construction of "artificial populations." These are populations that are created with surrogate variables that are known for the entire population, and are developed to reflect the distribution of net coverage error. This analysis of synthetic error and its effect on the loss functions was limited.

Our additional analysis will expand the scope of the earlier artificial population work and add an approach using direct estimates of coverage at lower geographic levels.

1. Using Artificial Populations

We will do a sensitivity analysis on the results from B–14. B–14 gave results for weighted and unweighted loss functions using one of two methods for distributing targets to post-strata and one of 8 models for correlation bias and percent of 1990 processing bias. This work will concentrate on the weighted loss functions and analyze the sensitivity of the B–14 results over both the methods for distributing targets to post-strata and all 8 models. Once again this analysis will be conducted for states and congressional districts.

2. Using Direct Estimates

We will calculate direct DSEs for census divisions and for states having sufficient sample size to produce direct estimates with reasonably low variance. Assuming the resulting direct DSE population estimates are unbiased, the mean square error of the production synthetic estimate of total population will be estimated.

E. Schedule

Some of the A.C.E. evaluation work being undertaken involves field work and/or additional computer or clerical matching work. The Evaluation Followup Interview was conducted in the field during the winter of 2001. The Matching Error Study matching work was completed in the spring. Results from these studies are being processed, with initial data being available for review in early summer. Field and clerical work for the TES2 and TES3 (described in the attachment) studies began in the winter and will continue into July. Results from these studies won't be available for ESCAP review until later in the summer. Matching for the late census adds evaluation is scheduled for late-July, with data available for review in August. Other research is being conducted on a flow basis as data become available and analyses are conducted.

The ESCAP began holding weekly (or more frequent) meetings to review analyses of data related to the topics of concern beginning on June 18. It is expected that all of the research and analyses described will be completed by the end of September. The ESCAP will then discuss how the results impact their concerns and will make a recommendation by mid-October as to whether adjusted or non-adjusted census data should be used for subsequent purposes.

During the September through October time frame, analysts will document the results of their research in evaluation reports, finalizing them in time for release to the public concurrently with the ESCAP recommendation.

Attachment 3—Field Operations to Answer the Concerns About Lack of Balance

In order to answer these concerns and explain the lack of balance present due to Targeted Extended Search (TES) and to explain the lack of balance that may be introduced due to TES, we will be examining the results of Targeted Extended Search 2 (TES2) and Targeted Extended Search 3 (TES3). TES2 followed up E-sample housing units that were coded as erroneous enumerations in the initial housing unit phase to determine if the unit was inside or outside the block cluster and surrounding rings. TES3 will followup other types of units, both P-sample and E-sample, that may contribute to a lack of balance.

In TES2 we are evaluating the housing units coded during the housing unit matching as not existing as housing units within the cluster. The block containing the housing unit selected for additional geographic work and the surrounding blocks were identified on a map. The field representative identified the block where the housing unit existed and the housing unit was classified as:

- Existing in the surrounding blocks
- Existing outside the surrounding blocks
- Existing within the block cluster
- Not a housing unit
- Unresolved

So, a housing unit may be coded as in surrounding blocks or outside the search area when it was part of the block cluster.

In TES3 we are also sending to the field a sample of census housing units classified as correctly enumerated in the block cluster. If a housing unit was classified as correctly enumerated in the block cluster in error, the housing unit was not eligible for targeted extended search in person matching. This could explain more of the lack of balance identified in the person matching.

In addition, we are sending additional types of P-sample cases for more geographic field work and a sample of matches in the sample block as a control. These types of cases are:

- P-sample people matched in surrounding blocks
- Not matched P-sample housing units
- P-sample people matched in the sample block cluster

[FR Doc. 01–27663 Filed 10–31–01; 12:05 am]

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Federal Register

Monday,
November 5, 2001

Part IV

The President

Executive Order 13233—Further Implementation of the Presidential Records Act

Federal Register
Vol. 66, No. 214
Monday, November 5, 2001

Presidential Documents

Title 3—

The President

Executive Order 13233 of November 1, 2001

Further Implementation of the Presidential Records Act

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish policies and procedures implementing section 2204 of title 44 of the United States Code with respect to constitutionally based privileges, including those that apply to Presidential records reflecting military, diplomatic, or national security secrets, Presidential communications, legal advice, legal work, or the deliberative processes of the President and the President's advisors, and to do so in a manner consistent with the Supreme Court's decisions in *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), and other cases, it is hereby ordered as follows:

Section 1. *Definitions.*

For purposes of this order:

(a) "Archivist" refers to the Archivist of the United States or his designee.

(b) "Presidential records" refers to those documentary materials maintained by the National Archives and Records Administration pursuant to the Presidential Records Act, 44 U.S.C. 2201-2207.

(c) "Former President" refers to the former President during whose term or terms of office particular Presidential records were created.

Sec. 2. *Constitutional and Legal Background.*

(a) For a period not to exceed 12 years after the conclusion of a Presidency, the Archivist administers records in accordance with the limitations on access imposed by section 2204 of title 44. After expiration of that period, section 2204(c) of title 44 directs that the Archivist administer Presidential records in accordance with section 552 of title 5, the Freedom of Information Act, including by withholding, as appropriate, records subject to exemptions (b)(1), (b)(2), (b)(3), (b)(4), (b)(6), (b)(7), (b)(8), and (b)(9) of section 552. Section 2204(c)(1) of title 44 provides that exemption (b)(5) of section 552 is not available to the Archivist as a basis for withholding records, but section 2204(c)(2) recognizes that the former President or the incumbent President may assert any constitutionally based privileges, including those ordinarily encompassed within exemption (b)(5) of section 552. The President's constitutionally based privileges subsume privileges for records that reflect: military, diplomatic, or national security secrets (the state secrets privilege); communications of the President or his advisors (the presidential communications privilege); legal advice or legal work (the attorney-client or attorney work product privileges); and the deliberative processes of the President or his advisors (the deliberative process privilege).

(b) In *Nixon v. Administrator of General Services*, the Supreme Court set forth the constitutional basis for the President's privileges for confidential communications: "Unless [the President] can give his advisers some assurance of confidentiality, a President could not expect to receive the full and frank submissions of facts and opinions upon which effective discharge of his duties depends." 433 U.S. at 448-49. The Court cited the precedent of the Constitutional Convention, the records of which were "sealed for more than 30 years after the Convention." *Id.* at 447 n.11. Based on those precedents and principles, the Court ruled that constitutionally based privileges available to a President "survive[] the individual President's tenure." *Id.* at 449. The Court also held that a former President, although no longer

a Government official, may assert constitutionally based privileges with respect to his Administration's Presidential records, and expressly rejected the argument that "only an incumbent President can assert the privilege of the Presidency." *Id.* at 448.

(c) The Supreme Court has held that a party seeking to overcome the constitutionally based privileges that apply to Presidential records must establish at least a "demonstrated, specific need" for particular records, a standard that turns on the nature of the proceeding and the importance of the information to that proceeding. See *United States v. Nixon*, 418 U.S. 683, 713 (1974). Notwithstanding the constitutionally based privileges that apply to Presidential records, many former Presidents have authorized access, after what they considered an appropriate period of repose, to those records or categories of records (including otherwise privileged records) to which the former Presidents or their representatives in their discretion decided to authorize access. See *Nixon v. Administrator of General Services*, 433 U.S. at 450-51.

Sec. 3. *Procedure for Administering Privileged Presidential Records.*

Consistent with the requirements of the Constitution and the Presidential Records Act, the Archivist shall administer Presidential records under section 2204(c) of title 44 in the following manner:

(a) At an appropriate time after the Archivist receives a request for access to Presidential records under section 2204(c)(1), the Archivist shall provide notice to the former President and the incumbent President and, as soon as practicable, shall provide the former President and the incumbent President copies of any records that the former President and the incumbent President request to review.

(b) After receiving the records he requests, the former President shall review those records as expeditiously as possible, and for no longer than 90 days for requests that are not unduly burdensome. The Archivist shall not permit access to the records by a requester during this period of review or when requested by the former President to extend the time for review.

(c) After review of the records in question, or of any other potentially privileged records reviewed by the former President, the former President shall indicate to the Archivist whether the former President requests withholding of or authorizes access to any privileged records.

(d) Concurrent with or after the former President's review of the records, the incumbent President or his designee may also review the records in question, or may utilize whatever other procedures the incumbent President deems appropriate to decide whether to concur in the former President's decision to request withholding of or authorize access to the records.

(1) When the former President has requested withholding of the records:

(i) If under the standard set forth in section 4 below, the incumbent President concurs in the former President's decision to request withholding of records as privileged, the incumbent President shall so inform the former President and the Archivist. The Archivist shall not permit access to those records by a requester unless and until the incumbent President advises the Archivist that the former President and the incumbent President agree to authorize access to the records or until so ordered by a final and nonappealable court order.

(ii) If under the standard set forth in section 4 below, the incumbent President does not concur in the former President's decision to request withholding of the records as privileged, the incumbent President shall so inform the former President and the Archivist. Because the former President independently retains the right to assert constitutionally based privileges, the Archivist shall not permit access to the records by a requester unless and until the incumbent President advises the Archivist that the former President and the incumbent President agree to authorize access to the records or until so ordered by a final and nonappealable court order.

(2) When the former President has authorized access to the records:

(i) If under the standard set forth in section 4 below, the incumbent President concurs in the former President's decision to authorize access to the records, the Archivist shall permit access to the records by the requester.

(ii) If under the standard set forth in section 4 below, the incumbent President does not concur in the former President's decision to authorize access to the records, the incumbent President may independently order the Archivist to withhold privileged records. In that instance, the Archivist shall not permit access to the records by a requester unless and until the incumbent President advises the Archivist that the former President and the incumbent President agree to authorize access to the records or until so ordered by a final and nonappealable court order.

Sec. 4. *Concurrence by Incumbent President.*

Absent compelling circumstances, the incumbent President will concur in the privilege decision of the former President in response to a request for access under section 2204(c)(1). When the incumbent President concurs in the decision of the former President to request withholding of records within the scope of a constitutionally based privilege, the incumbent President will support that privilege claim in any forum in which the privilege claim is challenged.

Sec. 5. *Incumbent President's Right to Obtain Access.*

This order does not expand or limit the incumbent President's right to obtain access to the records of a former President pursuant to section 2205(2)(B).

Sec. 6. *Right of Congress and Courts to Obtain Access.*

This order does not expand or limit the rights of a court, House of Congress, or authorized committee or subcommittee of Congress to obtain access to the records of a former President pursuant to section 2205(2)(A) or section 2205(2)(C). With respect to such requests, the former President shall review the records in question and, within 21 days of receiving notice from the Archivist, indicate to the Archivist his decision with respect to any privilege. The incumbent President shall indicate his decision with respect to any privilege within 21 days after the former President has indicated his decision. Those periods may be extended by the former President or the incumbent President for requests that are burdensome. The Archivist shall not permit access to the records unless and until the incumbent President advises the Archivist that the former President and the incumbent President agree to authorize access to the records or until so ordered by a final and nonappealable court order.

Sec. 7. *No Effect on Right to Withhold Records.*

This order does not limit the former President's or the incumbent President's right to withhold records on any ground supplied by the Constitution, statute, or regulation.

Sec. 8. *Withholding of Privileged Records During 12-Year Period.*

In the period not to exceed 12 years after the conclusion of a Presidency during which section 2204(a) and section 2204(b) of title 44 apply, a former President or the incumbent President may request withholding of any privileged records not already protected from disclosure under section 2204. If the former President or the incumbent President so requests, the Archivist shall not permit access to any such privileged records unless and until the incumbent President advises the Archivist that the former President and the incumbent President agree to authorize access to the records or until so ordered by a final and nonappealable court order.

Sec. 9. *Establishment of Procedures.*

This order is not intended to indicate whether and under what circumstances a former President should assert or waive any privilege. The order is intended to establish procedures for former and incumbent Presidents to make privilege determinations.

Sec. 10. *Designation of Representative.*

The former President may designate a representative (or series or group of alternative representatives, as the former President in his discretion may determine) to act on his behalf for purposes of the Presidential Records Act and this order. Upon the death or disability of a former President, the former President's designated representative shall act on his behalf for purposes of the Act and this order, including with respect to the assertion of constitutionally based privileges. In the absence of any designated representative after the former President's death or disability, the family of the former President may designate a representative (or series or group of alternative representatives, as they in their discre tion may determine) to act on the former President's behalf for purposes of the Act and this order, including with respect to the assertion of constitutionally based privileges.

Sec. 11. *Vice Presidential Records.*

(a) Pursuant to section 2207 of title 44 of the United States Code, the Presidential Records Act applies to the executive records of the Vice President. Subject to subsections (b) and (c), this order shall also apply with respect to any such records that are subject to any constitutionally based privilege that the former Vice President may be entitled to invoke, but in the administration of this order with respect to such records, references in this order to a former President shall be deemed also to be references to the relevant former Vice President.

(b) Subsection (a) shall not be deemed to authorize a Vice President or former Vice President to invoke any constitutional privilege of a President or former President except as authorized by that President or former President.

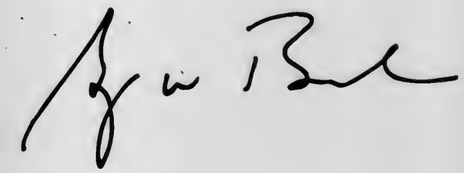
(c) Nothing in this section shall be construed to grant, limit, or otherwise affect any privilege of a President, Vice President, former President, or former Vice President.

Sec. 12. *Judicial Review.*

This order is intended to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party, other than a former President or his designated representative, against the United States, its agencies, its officers, or any person.

Sec. 13. *Revocation.*

Executive Order 12667 of January 18, 1989, is revoked.



THE WHITE HOUSE,
November 1, 2001.

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Non-profit organization participation in certain FHA single family activities; placement and removal procedures; comments due by 11-16-01; published 9-17-01 [FR 01-23049]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal Housing Enterprise Oversight Office

Practice and procedure:

Federal National Mortgage Association and Federal Home Loan Mortgage Corporation—

Corporate governance; comments due by 11-13-01; published 9-12-01 [FR 01-22925]

INTERIOR DEPARTMENT
Fish and Wildlife Service

Migratory birds; revised list; comments due by 11-13-01; published 10-12-01 [FR 01-25525]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Wyoming; comments due by 11-13-01; published 10-11-01 [FR 01-25542]

JUSTICE DEPARTMENT
Drug Enforcement Administration

Records, reports, and exports of listed chemicals:

Red phosphorous, white phosphorus, and hypophosphorous acid and its salts; comments due by 11-16-01; published 10-17-01 [FR 01-26013]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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Micrographic records management; comments due by 11-13-01; published 9-11-01 [FR 01-22669]

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Nuclear power plants; early site permits, standard design certifications, and combined licenses:

Draft rule wording; comments due by 11-13-01; published 9-27-01 [FR 01-24177]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 11-15-01; published 10-16-01 [FR 01-25890]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 11-15-01; published 10-16-01 [FR 01-25891]

POSTAL SERVICE

International Mail Manual:

Postal rates; changes; comments due by 11-15-01; published 10-16-01 [FR 01-25987]

TRANSPORTATION DEPARTMENT
Coast Guard

Drawbridge operations:

Maine; comments due by 11-13-01; published 9-11-01 [FR 01-22777]

New York; comments due by 11-13-01; published 9-13-01 [FR 01-22988]

TRANSPORTATION DEPARTMENT

Procedural regulations:

Air Transportation Safety and System Stabilization Act; air carriers compensation procedures; comments due by 11-13-01; published 10-29-01 [FR 01-27177]

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Federal Aviation Administration

Air carrier certification and operations:

Fractional aircraft ownership programs and on-demand operations; comments due by 11-16-01; published 10-18-01 [FR 01-26226]

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Bell; comments due by 11-13-01; published 9-13-01 [FR 01-22947]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Airworthiness directives:

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TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Airworthiness directives:

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 11-13-01; published 10-12-01 [FR 01-25395]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

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McDonnell Douglas; comments due by 11-13-01; published 9-14-01 [FR 01-22996]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Airworthiness directives:

Univair Aircraft Corp.; comments due by 11-16-01; published 10-4-01 [FR 01-24782]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Airworthiness standards:

Special conditions—

Boeing Model 777 series airplanes; comments due by 11-13-01; published 10-12-01 [FR 01-25753]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Class E airspace; comments due by 11-13-01; published 10-12-01 [FR 01-25755]

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Research and Special Programs Administration

Hazardous materials:

Hazardous materials transportation—

Shipping papers; retention; comments due by 11-13-01; published 9-12-01 [FR 01-22851]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

H.J. Res. 70/P.L. 107–58
Making further continuing appropriations for the fiscal year 2002, and for other purposes. (Oct. 31, 2001; 115 Stat. 406)
Last List October 31, 2001

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-044-00001-6)	6.50	[4]Jan. 1, 2001
3 (1997 Compilation and Parts 100 and 101)	(869-044-00002-4)	36.00	[1]Jan. 1, 2001
4	(869-044-00003-2)	9.00	Jan. 1, 2001
5 Parts:			
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7 Parts:			
1-26	(869-044-00007-5)	40.00	[4]Jan. 1, 2001
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210-299	(869-044-00010-5)	56.00	Jan. 1, 2001
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400-699	(869-044-00012-1)	53.00	Jan. 1, 2001
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900-999	(869-044-00014-8)	54.00	Jan. 1, 2001
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51-199	(869-044-00026-1)	52.00	Jan. 1, 2001
200-499	(869-044-00027-0)	53.00	Jan. 1, 2001
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11	(869-044-00029-6)	31.00	Jan. 1, 2001
12 Parts:			
1-199	(869-044-00030-0)	27.00	Jan. 1, 2001
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220-299	(869-044-00032-6)	54.00	Jan. 1, 2001
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600-End	(869-044-00035-1)	57.00	Jan. 1, 2001
13	(869-044-00036-9)	45.00	Jan. 1, 2001
14 Parts:			
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140-199	(869-044-00039-3)	26.00	Jan. 1, 2001
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15 Parts:			
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16 Parts:			
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18 Parts:			
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400-End	(869-044-00052-1)	23.00	Apr. 1, 2001
19 Parts:			
1-140	(869-044-00053-9)	54.00	Apr. 1, 2001
141-199	(869-044-00054-7)	53.00	Apr. 1, 2001
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20 Parts:			
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400-499	(869-044-00057-1)	57.00	Apr. 1, 2001
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24 Parts:			
0-199	(869-044-00071-7)	53.00	Apr. 1, 2001
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27 Parts:			
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28 Parts:			
0-42	(869-044-00098-9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
0-99	(869-042-00100-1)	33.00	July 1, 2000
100-499	(869-044-00101-2)	14.00	[6]July 1, 2001
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1927-End	(869-044-00108-0)	55.00	July 1, 2001
30 Parts:			
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*630-699	(869-044-00117-9)	34.00	July 1, 2001
700-799	(869-044-00118-7)	42.00	July 1, 2001
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34 Parts:			
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300-399	(869-044-00124-1)	40.00	July 1, 2001
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35	(869-044-00126-8)	10.00	[6]July 1, 2001
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40 Parts:			
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63 (63.600-63.1199)	(869-044-00143-8)	44.00	July 1, 2001
*63 (63.1200-End)	(869-044-00144-6)	56.00	July 1, 2001
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42 Parts:			
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46 Parts:			
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166-199	(869-042-00178-8)	42.00	Oct. 1, 2000
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*500-End	(869-044-00184-5)	23.00	Oct. 1, 2001
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1200-End	(869-042-00199-1)	21.00	Oct. 1, 2000
50 Parts:			
1-199	(869-042-00200-8)	55.00	Oct. 1, 2000
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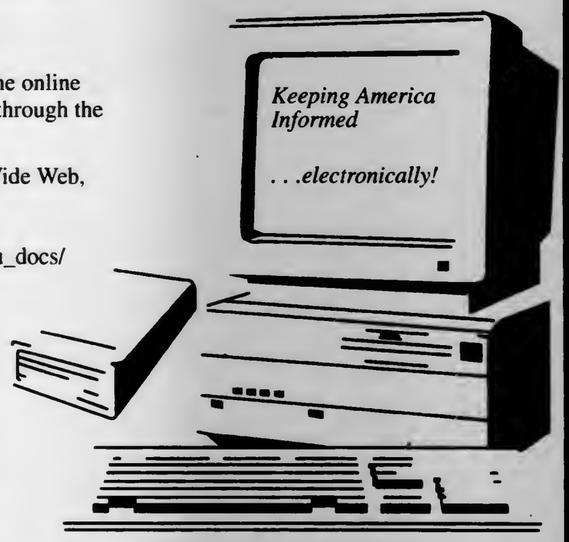
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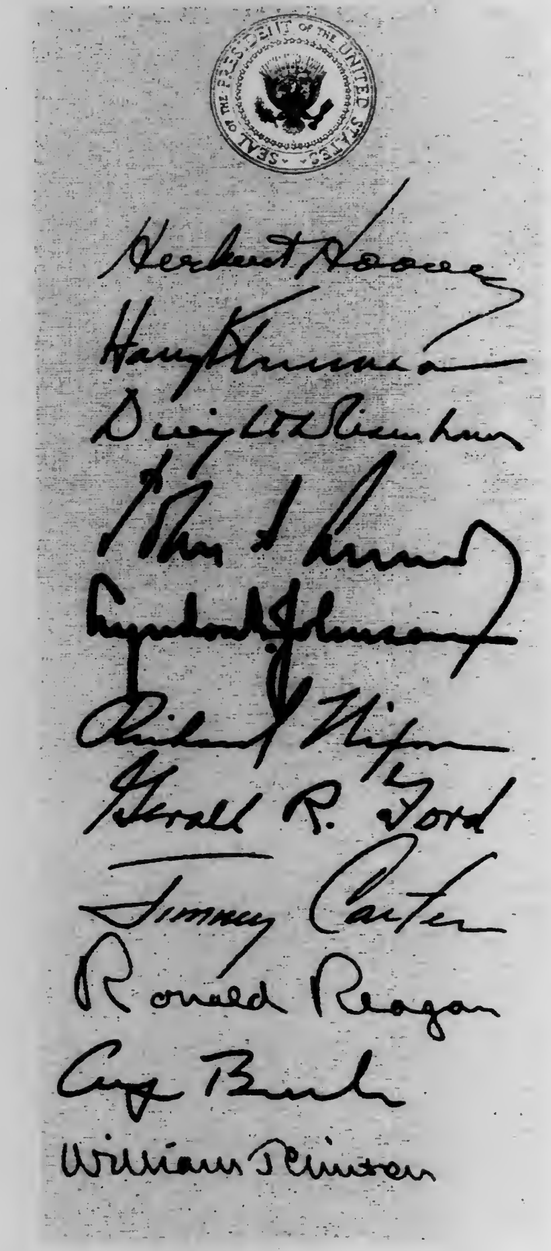
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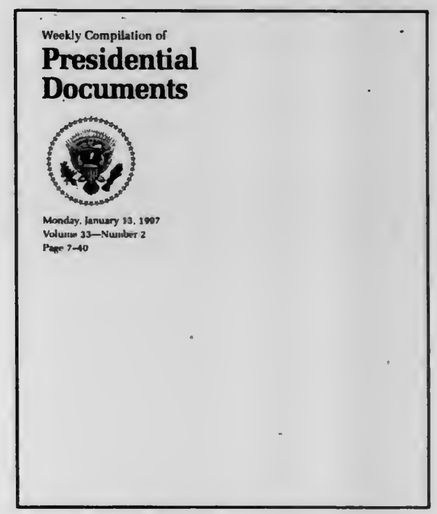
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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Federal Register
Vol. 66, No. 215
Tuesday, November 6, 2001

Presidential Documents

Title 3—

The President

Proclamation 7492 of November 1, 2001

National Prostate Cancer Awareness Month, 2001

By the President of the United States of America

A Proclamation

By observing National Prostate Cancer Awareness Month, we recognize the often devastating effects prostate cancer has on the lives of the more than 1 million American men currently suffering from it; and we commit ourselves to finding a cure for this disease. Prostate cancer is the most commonly diagnosed form of cancer in America, excepting skin cancer. And it is the second leading cause of cancer-related deaths among men in the United States. This year, almost 200,000 men will be diagnosed with prostate cancer, and over 31,000 will die from this disease.

Although the survival rate for those diagnosed with prostate cancer continues to rise, this disease nevertheless remains a serious threat to the health and well-being of all American men. Research shows that one out of every six men will be diagnosed with prostate cancer sometime during their lifetime.

By increasing awareness about the causes and signs of prostate cancer and by expanding research into preventative, remedial, and curative therapies, we can save more lives, improve the lives of those suffering from this cancer, and reduce its incidence in America. All men of middle age, and particularly those above the age of 50, should learn the risk factors, symptoms, and diagnostic tools that can help with the early recognition of prostate cancer, when treatment is most successful. It is important to consult a physician about available screening for prostate cancer, including digital examinations and prostate specific antigen blood tests. These techniques aid doctors in the early diagnosis of prostate cancer, and they are essential to continuing the reduction of prostate cancer death rates.

As with most other forms of cancer, modern medical research has produced promising new treatment options for prostate cancer that have greatly increased the likelihood of survival after diagnosis. However, much still remains to be learned about the causes and cures of prostate cancer, and I applaud the work of the Centers for Disease Control and Prevention in this area. My Administration also supports increasing Federal funding for programs that promote awareness, improve prevention, and expand research by the National Institutes of Health, the Department of Defense Congressionally Directed Medical Research Program, and the Department of Veterans Affairs.

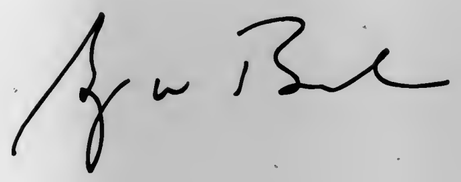
These research programs obtain important epidemiological data, develop prostate cancer awareness among the public and throughout the health care community, and serve as proving grounds for new prostate cancer treatments. Charitable organizations and the private sector also play important roles in advancing public awareness about the need for prostate cancer screening and research, and in serving as a therapeutic resource for those suffering from prostate cancer.

On this occasion, I commend the scientists, physicians, and other health professionals who are committed to achieving success in our struggle against prostate cancer. I call on all those potentially vulnerable to this disease to support this effort by taking preventative measures such as observing

a healthy lifestyle, talking to your doctor about regular screenings, and building awareness of prostate cancer. By working together, we will find new therapies to aid those living with prostate cancer, increase awareness about its causes and symptoms, and, I hope, eventually find a cure for this deadly disease.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2001 as National Prostate Cancer Awareness Month. I call upon government officials, businesses, communities, health care professionals, educators, volunteers, and all the people of the United States to publicly reaffirm our Nation's strong and continuing commitment to control and cure prostate cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–27989
Filed 11–5–01; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 66, No. 215
Tuesday, November 6, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AJ51

Absence and Leave; Use of Restored Annual Leave

AGENCY: Office of Personnel Management.

ACTION: Interim rule; correction.

SUMMARY: This document corrects the effective date of the interim regulations that were originally published in the **Federal Register** on Friday, November 2, 2001 (66 FR 55557). The interim regulations provide that employees who would forfeit excess annual leave because of their work to support the Nation during the current national emergency will be deemed to have scheduled their excess annual leave in advance. The correct effective date of the interim regulations is November 2, 2001.

EFFECTIVE DATE: The effective date of the interim rule published on November 2, 2001 at 66 FR 55557 is corrected to read "November 2, 2001."

FOR FURTHER INFORMATION CONTACT: Sharon A. Herzberg at (202) 606–2858, FAX (202) 606–0824, or email *payleave@opm.gov*.

SUPPLEMENTARY INFORMATION: On November 2, 2001, the Office of Personnel Management (OPM) issued interim regulations to aid agencies and employees responding to the "National Emergency by Reason of Certain Terrorist Attacks" on the World Trade Center and the Pentagon. The interim regulations provide that employees who would forfeit excess annual leave because of their work to support the Nation during the current national emergency will be deemed to have scheduled their excess annual leave in advance. These employees will be entitled to restoration of their annual leave under these regulations.

The effective date of the interim regulations were incorrect. The effective date of the interim regulations is November 2, 2001, the date of publication in the **Federal Register**. In its "Waiver of Notice of Proposed Rule Making and Delay in Effective Date," OPM stated that there was good cause for making this rule effective in less than 30 days. The delay in the effective date is being waived to give affected employees the benefit of these new provisions as quickly as possible.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects 5 in CFR Part 630

Government employees.

Office of Personnel Management.

Jacquline D. Carter,

Federal Register Liaison Officer.

[FR Doc. 01–27959 Filed 11–2–01; 2:29 pm]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–010–2]

Horses From Iceland; Quarantine Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the importation of horses to exempt horses imported from Iceland from testing for dourine, glanders, equine piroplasmosis, and equine infectious anemia during the quarantine period. Given that Iceland has never had a reported case of dourine, glanders, equine piroplasmosis, or equine infectious anemia, we have determined that horses imported from Iceland pose a negligible risk of introducing those diseases into the United States. This action relieves certain testing requirements for horses imported from Iceland while continuing to protect against the introduction of communicable diseases of horses into the United States.

EFFECTIVE DATE: November 6, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Glen I. Garris, Supervisory Staff Officer, Regionalization and Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 2001, we published in the **Federal Register** (66 FR 19898–19899, Docket No. 00–010–1), a proposal to amend the animal importation regulations in 9 CFR part 93 to exempt horses imported from Iceland from testing for dourine, glanders, equine piroplasmosis and equine infectious anemia (EIA) during the quarantine period. Iceland has never had a reported case of dourine, glanders, equine piroplasmosis, or EIA. The Government of Iceland requested that the U.S. Department of Agriculture exempt horses imported from Iceland from testing for dourine, glanders, equine prioplasmosis, and EIA during the quarantine period.

We solicited comments concerning our proposal for 60 days ending June 18, 2001. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provision of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule exempts horses imported from Iceland from the requirement for testing for dourine, glanders, equine piroplasmosis, and EIA during the quarantine period based on our determination that horses from Iceland present a negligible risk of introducing those diseases into the United States. Therefore, the Administrator of the Animal and Plant Health Inspection Service (APHIS) has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule exempts horses imported into the United States from Iceland from the requirement for testing for dourine, glanders, equine piroplasmosis, and EIA during the quarantine period. As explained previously in this document, we have determined that there is a negligible risk of horses imported from Iceland introducing dourine, glanders, equine piroplasmosis, and EIA into the United States.

As a result of this rule, U.S. importers of horses from Iceland will no longer be required to have those horses tested for dourine, glanders, equine piroplasmosis, and EIA during the quarantine period. The test for EIA costs $5; the tests for equine piroplasmosis cost $9 for each strain for a total of $18; the test for dourine costs $9; and the test for glanders costs $9. Therefore, importers will save a total of $41 on each horse imported from Iceland. Horses imported from Iceland will still be required to undergo a 3-day quarantine after arrival in the United States and undergo any other tests and procedures that may be required by APHIS to determine their freedom from communicable diseases.

According to the 1997 Census of Agriculture, the United States had a total population of at least 2,427,277 horses in that year. In 1999, the United States exported 78,702 horses valued at $293 million, and imported 30,398 horses valued at $326 million. However, only 166 (less than 1 percent) of those horses were imported from Iceland. The total number of horses imported from Iceland is small due in part to the prices of these horses, which averaged $4,367. All of the horses imported from Iceland in 1999 were nonpurebred horses. As a comparison, nonpurebred horses imported from Canada into the United States had an average value of $1,450 in 1999.

The overall economic impact of this rule will be minimal. Importers will save on the importation of horses, but the overall savings will be small. Had this rule been in place in 1999 and applied to the 166 horses imported from Iceland in that year, importers would have saved a total of $6,806.

APHIS does not expect that the number of horses imported from Iceland into the United States will increase significantly as a result of this rule. The cost reduction associated with this rule is less than 1 percent of the average price of horses imported from Iceland into the United States in 1999. Therefore, this rule is expected to have only minimal economic effects on U.S. importers of horses from Iceland, regardless of their size.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 93.308, paragraph (a)(3) is revised to read as follows:

§ 93.308 Quarantine requirements.

(a) * * *

(3) To qualify for release from quarantine, all horses, except horses from Iceland, must test negative to official tests for dourine, glanders, equine piroplasmosis, and equine infectious anemia.[14] However, horses imported from Australia and New Zealand are exempt from testing for dourine and glanders. In addition, all horses must undergo any other tests, inspections, disinfections, and precautionary treatments that may be required by the Administrator to determine their freedom from communicable diseases.

* * * * *

Done in Washington, DC, this 31st day of October 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–27816 Filed 11–5–01; 8:45 am]

BILLING CODE 3410–34–U

[14] Because the official tests for dourine and glanders are performed only at the National Veterinary Services Laboratories in Ames, IA, the protocols for those tests have not been published and are, therefore, not available; however, copies of "Protocol for the Complement-Fixation Test for Equine Piroplasmosis" and "Protocol for the Immunno-Diffusion (Coggins) Test For Equine Infectious Anemia" may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

Change of Address; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the address for the Center for Food Safety and Applied Nutrition (CFSAN). This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

EFFECTIVE DATE: December 14, 2001.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in 21 CFR parts 1, 5, 10, 70, 71, 73, 80, 100, 101, 102, 106, 107, 108, 109, 110, 130, 161, 165, 170, 172, 173, 175, 176, 177, 178, 180, 181, 184, 189, 190, 211, 701, 1240, and 1250 to reflect a change in the address for CFSAN. The current address listed in the above regulations is 200 C Street, SW., Washington, DC 20204. The new address is 5100 Paint Branch Pkwy., College Park, MD 20740.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

1. Parts 1, 5, 10, 70, 71, 73, 80, 100, 101, 102, 106, 107, 108, 109, 110, 130, 161, 165, 170, 172, 173, 175, 176, 177, 178, 180, 181, 184, 189, 190, 211, 701, 1240, and 1250 are amended by removing "200 C Street, SW., Washington, DC 20204" or "200 C St. SW., Washington, DC 20204" wherever they appear and by adding in their place "5100 Paint Branch Pkwy., College Park, MD 20740."

Dated: October 31, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–27811 Filed 11–5–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Marsam Pharmaceuticals, Inc., to Marsam Pharmaceuticals, LLC.

DATES: This rule is effective November 6, 2001.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Marsam Pharmaceuticals, Inc., Bldg. 31, 24 Olney Ave., Cherry Hill, NJ 08034, has informed FDA of a change of sponsor's name to Marsam Pharmaceuticals, LLC. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor's name.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Marsam Pharmaceuticals, Inc." and in the table in paragraph (c)(2) in the entry for "000209" by removing "Inc." and by adding in its place "LLC".

Dated: October 26, 2001.

Claire M. Lathers,

Director, Office of New Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 01–27813 Filed 11–5–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Elanco Animal Health, A Division of Eli Lilly & Co., to Ivy Laboratories, Div. of Ivy Animal Health, Inc.

DATES: This rule is effective November 6, 2001.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, has informed FDA that it has transferred to Ivy Laboratories, Div. of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, ownership of, and all rights and interests in NADA 118–123 for COMPUDOSE 200 (estradiol) and COMPUDOSE 400 implants for cattle. Accordingly, the agency is amending the regulations in 21 CFR 522.840 to reflect the transfer of ownership.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.840 [Amended]

2. Section 522.840 *Estradiol* is amended in paragraph (b) by removing "000986" and by adding in its place "No. 021641".

Dated: October 26, 2001.

Claire M. Lathers,

Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 01–27812 Filed 11–5–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[USCG–2001–10936]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between April 1, 2001 and June 30, 2001 which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between April 1, 2001 and June 30, 2001. This notice also lists regulations that were effective and terminated between January 1, 2001, and March 31, 2001.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Christena Green, Office of Regulations and Administrative Law, telephone (202) 267–0133. For questions on viewing, or on submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, (202) 366–5149.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these special local regulations, security zones, or safety zones by Coast Guard officials on-scene prior to enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations and security zones listed in this notice have been exempted from review under Executive Order 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period April 1, 2001 and June 30, 2001, unless otherwise indicated. This notice also includes regulations that were not received in time to be included on the quarterly notice for the first quarter of 2001.

Dated: November 1, 2001.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

DISTRICT QUARTERLY REPORT

District docket	Location	Type	Effective date
01–01–033	Portland, ME	Safety Zone	04/07/2001.
01–01–050	Bath Iron Works, Portland, ME	Safety Zone	04/11/2001.
01–01–072	Port of New York/New Jersey Fleet Week	Security Zone	05/23/2001.
01–01–073	Fireworks Display, Newport, RI	Safety Zone	06/29/2001.
01–01–080	Boston, MA	Safety Zone	04/09/2001.
01–01–086	Kennebec River, Bath, ME	Safety Zone	06/23/2001.
01–01–091	Fireworks Display, Orleans, MA	Safety Zone	06/30/2001.
01–01–094	USS Monterey Port Visit, Boston, MA	Safety Zone	06/08/2001.
01–01–097	Mayflower II Port Visit, Boston, MA	Safety Zone	06/24/2001.
01–01–106	USS Klakring Port Visit, Gloucester, MA	Safety Zone	06/28/2001.
01–01–109	USS Wasp Port Visit, Boston, MA	Safety Zone	06/29/2001.
05–01–010	Mantoloking, NJ	Special Local	05/20/2001.
05–01–012	Patuxent River, Solomons, MD	Special Local	05/27/2001.
05–01–014	James River, VA	Safety Zone	05/21/2001.
05–01–015	Presidential Visit, Annapolis, MD	Security Zone	05/25/2001.
05–01–016	Ocean City, MD	Safety Zone	06/18/2001.
05–01–017	Hampton Roads, VA	Safety Zone	06/14/2001.
05–01–024	Delaware City, Delaware	Special Local	06/16/2001.
05–01–025	Delaware River, Camden, NJ	Special Local	06/30/2001.
07–01–020	San Juan Harbor, Puerto Rico	Special Local	04/01/2001.
07–01–028	Charleston Harbor, Charleston, SC	Special Local	04/21/2001.
07–01–029	Savannah River, Savannah, GA	Special Local	05/21/2001.
07–01–032	Miami Beach, FL	Special Local	04/22/2001.
07–01–041	Myrtle Beach, SC	Special Local	06/01/2001.
07–01–044	Hardeeville, SC	Special Local	06/06/2001.
09–01–028	Muskegon, Michigan	Safety Zone	05/05/2001.
09–01–031	Algoma Harbor, Algoma, WI	Safety Zone	06/23/2001.
09–01–043	Milwaukee, WI	Safety Zone	06/02/2001.
09–01–056	Pridefest 2001, Milwaukee Harbor, WI	Safety Zone	06/08/2001.

DISTRICT QUARTERLY REPORT—Continued

District docket	Location	Type	Effective date
09–01–061	Niagara River, Tonawanda, NY	Safety Zone	06/23/2001.
09–01–068	USS Silversides Filming, Lake Michigan	Safety Zone	06/25/2001.
09–01–077	Milwaukee Harbor, Milwaukee, WI	Safety Zone	06/28/2001.
13–01–009	Sub Ex-Narwhal, Puget Sound, WA	Safety Zone	05/27/2001.
13–01–014	Nana Provider, Swinomish Channel, WA	Safety Zone	06/21/2001.
13–01–016	Nana Provider, Swinomish Channel, WA	Safety Zone	06/24/2001.

COTP QUARTERLY REPORT

COTP Docket	Location	Type	Effective date
Charleston 01–126	Charleston, SC	Safety Zone	04/02/2001.
Guam 01–005	Agat Bay, Guam	Safety Zone	05/06/2001.
Guam 01–006	North of Glass Breakwater, Guam	Safety Zone	05/06/2001.
Guam 01–007	Agat Bay, Guam	Safety Zone	05/08/2001.
Guam 01–008	North of Glass Breakwater, Guam	Safety Zone	05/08/2001.
Guam 01–009	Cocos Lagoon, Guam	Safety Zone	05/27/2001.
Guam 01–011	North of Glass Breakwater, Guam	Safety Zone	06/08/2001.
Houston/Galveston 01–007	Gulf Intracoastal Waterway, M. 343	Safety Zone	06/04/2001.
Jacksonville 01–038	Fernandina Beach, FL	Safety Zone	05/04/2001.
Jacksonville 01–047	Fernandina Beach, FL	Safety Zone	05/28/2001.
LA/LB 01–002	Angels Gate, Los Angeles, CA	Safety Zone	04/19/2001.
LA/Long Beach 01–003	Long Beach, CA	Safety Zone	06/17/2001.
Louisville 01–002	Ohio River, M. 629 to 632	Safety Zone	05/23/2001.
Louisville 01–003	Riverbats Fireworks, Louisville, KY	Safety Zone	05/27/2001.
Louisville 01–007	Aurora, Indiana	Safety Zone	06/30/2001.
Memphis 01–005	Mississippi River, M. 532 to 528	Safety Zone	04/10/2001.
Memphis 01–006	Mississippi River, M. 7265.5 to 728.5	Safety Zone	04/14/2001.
New Orleans 01–009	Lwr Mississippi River	Safety Zone	04/19/2001.
New Orleans 01–019	Ouachita River, M. 166 to 168	Safety Zone	06/30/2001.
Paducah 01–001	Upr Mississippi River, M. 0 to 1	Safety Zone	05/18/2001.
Philadelphia 01–003	Port of Wilmington, Wilmington, DE	Security Zone	05/25/2001.
Port Arthur 01–004	Neches River, Beaumont, TX	Safety Zone	04/01/2001.
Port Arthur 01–005	Port of Orange, Beaumont, TX	Safety Zone	04/11/2001.
Port Arthur 01–006	Port of Orange/Port Arthur, TX	Safety Zone	06/23/2001.
Port Arthur 01–007	Gulf Intracoastal Waterway, M. 290	Safety Zone	06/15/2001.
San Diego 01–006	San Clemente Island, CA	Security Zone	04/18/2001.
San Diego 01–011	Colorado River	Safety Zone	05/01/2001.
San Diego 01–015	Bio-Tech 2001 Conference	Safety Zone	06/22/2001.
San Francisco Bay 01–001	San Francisco Bay, San Francisco, CA	Safety Zone	04/02/2001.
San Francisco Bay 01–002	Suisun Bay, CA	Safety Zone	04/21/2001.
San Juan 01–025	Guayanilla, Puerto Rico	Safety Zone	04/05/2001.
Savannah 01–051	Beaufort, SC	Safety Zone	06/04/2001.
St. Louis 01–001	Upper Mississippi River, M. 55.3 to 860	Safety Zone	04/14/2001.
Tampa 01–030	Tampa Bay, FL	Safety Zone	04/19/2001.
Tampa 01–031	Tampa Bay, FL	Security Zone	04/16/2001.
Tampa 01–036	Tampa Bay, FL	Security Zone	04/27/2001.

REGULATIONS NOT ON PREVIOUS 1ST QUARTERLY REPORT

District/COTP	Location	Type	Effective date
COTP Regulations			
Guam 01–003	Outer Apra Harbor, Guam	Safety Zone	03/13/01.
Houston/Galveston 01–004	Houston, TX	Safety Zone	03/21/01.
New Orleans 01–008	Lwr Mississippi River, M 108 to 110	Safety Zone	03/31/01.
Port Arthur 01–003	Port or Port Arthur/Orange, TX	Safety Zone	02/18/01.

[FR Doc. 01–27870 Filed 11–5–01; 8:45 am]
BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 01–241, MM Docket No. 97–107, RM–9023]

FM Broadcasting Services; Pottsville and Saltillo, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule; application for review, denied.

SUMMARY: In MM Docket No. 97–107, the Commission denied an application for review filed by Olvie E. Sisk, licensee of Station WCNA(FM), Channel 240C3 (95.9 MHz), Potts Camp, Mississippi. Sisk had requested review of the Report and Order, 64 FR 38,592, published July 19, 1999, which the Commission denied because it found that the staff had properly denied in the Report and Order Sisk's petition for rulemaking (RM–9023) seeking the reallotment of Channel 240C3 from Potts Camp to Saltillo, Mississippi. The staff relied upon strong Commission policy against removal of a community's sole aural broadcast transmission service absent a compelling showing that a waiver of this prohibition is warranted. Sisk's allegations of his station's financial peril fell well short of justifying such a waiver. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Order, MM Docket 97–107, adopted August 23, 2001, and released August 29, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center (room CY–A257), 445 12th Street, SW, Washington, DC 20554. The complete text of this decision may be also purchased from the Commission's copy contractor, Qualex International Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–27781 Filed 11–5–01; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 011005243–1243–01; I.D. 102401B]

International Fisheries Regulations; Pacific Tuna Fisheries; Establishment of Incidental Catch Limit for Yellowfin Tuna Taken by the U.S. Purse Seine Fishery in the Eastern Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces that the 2001 yellowfin tuna quota has been reached and a 15-percent incidental catch limit is now in effect for yellowfin tuna taken in the U.S. purse seine fishery in the Commission's Yellowfin Regulatory Area (CYRA) of the Inter-American Tropical Tuna Commission (IATTC) through the remainder of 2001. This action is taken in accordance with a resolution adopted by the IATTC and approved by the Department of State (DOS).

DATES: Effective 12:01 a.m., October 28, 2001, through 11:59 p.m., December 31, 2001. Comments will be accepted through November 21, 2001.

ADDRESSES: Submit comments to Rodney R. McInnis, Acting Regional Administrator, Southwest Region (Regional Administrator), NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Svein Fougner at 562–980–4040.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of the regulations at 50 CFR part 300, subpart C, which implement the Tuna Conventions Act (16 U.S.C. 955). The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of tunas and tuna-like fishes in the Convention Area. The IATTC maintains a scientific research and fishery monitoring program and annually assesses the status of stocks of tuna and tuna fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. The Convention Area is all waters of the eastern Pacific Ocean between 40° N. lat. and 40° S. lat. and east of 150° W. long. The boundary of the CYRA is described at 50 CFR 300.21.

At its annual meeting in June 2001, the IATTC adopted a resolution (which was subsequently agreed to by the DOS) recommending that action be taken by member nations and other fishing nations to limit the catch of yellowfin tuna in 2001 to 250,000 metric tons (mt), with the potential to increase the quota by up to three increments of 20,000 mt each (or a total quota of 310,000 mt) if the Director of IATTC concluded, based on catch and effort data, that the higher level of harvest would not pose a substantial danger of overfishing to the stocks.

Under regulations at 50 CFR 300.29(a), the Regional Administrator is authorized to notify tuna purse seine vessel owners and agents directly of any quotas and associated regulatory measures that have been recommended by the IATTC and approved by the DOS. On September 12, 2001, the Regional Administrator notified the vessel owners and agents of the 2001 yellowfin tuna quota and the incidental catch limit that would go into effect when the quota was reached. NMFS also announced the 2001 yellowfin tuna quota and incidental catch limit to the public in the **Federal Register** at 66 FR 53735, October 24, 2001.

Under regulations at 50 CFR 300.29(b), when advised by the Director of Investigations of the IATTC that a quota has been or is projected to be reached, the Regional Administrator may close the fishery and establish incidental catch allowances by direct notification to the owners or agents of U.S. vessels who are fishing in or are eligible to fish in the Convention Area. As soon as practicable after being advised of the closure, NMFS will publish the announcement in the **Federal Register**. The Director of Investigations of the IATTC advised the Regional Administrator on October 11, 2001, that the 2001 quota, including all 3 incremental increases, was projected to be reached on October 27, 2001, and that incidental catch limits would be in effect for the rest of the year. Accordingly, the incidental catch limit for yellowfin tuna taken in purse seine gear will go into effect on October 28, 2001, and last through calendar year 2001. That is, from October 28, 2001, through December 31, 2001, any individual purse seiner when fishing for other species of tuna may retain a **maximum of 15–percent of yellowfin** tuna relative to its total catch of all species of fish in that period.

For the reasons stated here and in accordance with the regulations at 50 CFR 300.29, NMFS announces that, after 12:01 a.m., October 28, 2001, through 1159 p.m., December 31, 2001, no U.S. vessel may use a purse seine fish to fish for tunas within the CYRA unless in compliance with the previously described measures.

Classification

This action is authorized by the regulations implementing the Tuna Conventions Act. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Acting Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR part 300, subpart C, and is exempt from review under Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C., 601 *et seq.*, are not applicable.

The Assistant Administrator for Fisheries, NOAA (AA) finds for good cause under 5 U.S.C. 553 (b)(B) that providing prior notice and an opportunity for public comment on this action is unnecessary because the rule authorizing this action specifies that the Regional Director may close the fishery by direct notification to the owners or agents of U.S. vessels who are fishing in or are eligible to fish in the Convention Area. The AA finds for good cause under 5 U.S.C. 553 (d)(3) that a 30–day delay in effectiveness for this 2001 quota would be contrary to the public interest. Such a delay could allow the quota to taken and the quota exceeded before yellowfin tuna becomes an incidental catch fishery.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: October 31, 2001.

Bruce C. Morehead

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27850 Filed 11–5–01; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010220043–1132–02; I.D. 102501A]

RIN 0648–AN78

Fisheries of the Northeastern United States; Atlantic Herring Fisheries; 2001 Specifications; Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment of the 2001 Atlantic herring specifications.

SUMMARY: NMFS adjusts the 2001 specifications for the Atlantic herring fishery by transferring 10,000 mt of U.S. at-sea processing (USAP) to joint venture processing (JVP). The intent is to reapportion allowable catches of herring within the fishery sectors to allow for the achievement of the objectives of the Fishery Management Plan for Atlantic Herring (FMP).

DATES: Effective November 6, 2001 through December 6, 2001. Comments must be received by December 6, 2001.

ADDRESSES: Comments on the inseason adjustment should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Inseason Adjustment of 2001 Atlantic herring specifications." Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978–281–9288, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION: Joint Venture Processing (JVP) is the amount of herring purchased over the side from U.S. vessels and processed by foreign vessels in the Exclusive Economic Zone (EEZ); IWP is the amount of herring purchased over the side from U.S. vessels and processed by foreign vessels at anchor in state waters; the total amount allocated to processing by foreign ships (JVPt) is the sum of JVP and IWP; and USAP is the amount of herring purchased over the side from U.S. vessels and processed in the EEZ by vessels of the United States that are larger than 165 ft (50.29 m) in length or 750 gross registered tons. JVP operations are restricted to Areas 2 and 3.

The regulations found at 50 CFR 648.200(e) allow NMFS, after consulting with the New England Fishery Management Council (Council), to adjust annual Atlantic herring specifications and TACs during any fishing by publishing notification in the **Federal Register** stating the reasons for such action and providing an opportunity for prior public comment. Any adjustments must be consistent with the FMP objectives and other FMP provisions.

JVP and JVPt

For the 2001 herring fishery, NMFS specified 10,000 mt of JVP. As of October 6, 2001, six U.S. vessels had delivered 5658.8 mt of herring or 56.6 percent of the allocation to 3 vessels of the Russian Federation. Recently, NMFS has received several letters from boat owners, processors, and JVP domestic partners requesting an increase of 10,000 mt to the JVP specification. These requests are based on the success of ongoing JVP operations in allowing additional markets for herring harvested by U.S. vessels.

The New England Fishery Management Council (Council), through its Herring Oversight Committee (Committee), recommended not to increase the 2001 JVP specification. The Committee felt that herring acquired by foreign processing vessels could compete directly with herring sold by shoreside processors, thus, inhibiting those processors from increasing their supply to existing markets or entering new markets. Most of the opponents of the JVP increase expressed concern it could affect future prospects for the new herring plant that opened in Gloucester this year. Other Committee members disagreed and noted that one plant cannot process the amount of herring currently being harvested. The Council, in a tie vote, concurred with the Committee's recommendation. The Mid-Atlantic Fishery Management Council (MAFMC) voted unanimously on October 11, 2001, to recommend an increase in JVP. They believe that an increase in JVP will benefit U.S. vessels from Mid-Atlantic ports currently involved in JVP operations. Several of these vessels hope to continue to work with foreign operators.

The public was notified in meeting notices that it would have prior opportunity to comment on the subject action at the Committee meeting on June 6, 2001, and at the September, 2001, Council meeting. Several concerned citizens, addressing impacts of an increase in JVP, presented verbal testimony at those meetings.

After careful consideration of public comments and prior analyses regarding biological, economic, and social impacts of an increased JVP, NMFS has determined that there is no basis to conclude that an increase in JVP will have a substantially negative impact on shoreside processors. Furthermore, sufficient evidence exists to conclude that increasing JVP will have a substantially positive economic impact on the domestic harvesting sector and those entities that service vessels participating in the JVP. Descriptions of the economic and social impacts of this action are provided below.

USAP

The FMP requires a USAP specification to allow a specific amount of herring to be allocated to large U.S. processing vessels. The Council specified 20,000 mt of USAP, since specifying USAP at zero would have precluded large U.S. vessels from taking fish over the side while large foreign vessels are allowed to do so. Since the USAP specification has not been utilized, NMFS has determined that it is appropriate to transfer 10,000 mt from the USAP specification. This would leave 10,000 mt available for USAP.

Biological Impacts

Since the optimum yield (OY) of 250,000 mt is not affected by this inseason action, there would be no biological impacts to herring stocks that were not already contemplated in the environmental assessment accompanying the 2001 herring specifications. The only distinction between JVP and USAP, which does not alter the environmental assessment of the herring fishery in any significant way, is that JVP operations are restricted to Areas 2 and 3, while USAP operations could take place in any area.

Economic and Social Impacts

As of October 6, 2001, six U.S. vessels had delivered 5,658.8 mt of herring or 56.6 percent of the allocation to 3 vessels of the Russian Federation. Based on an estimated price of $110 per mt, this results in $622,468 in gross revenue earned collectively by the 6 vessels or, on the average, $103,745 per vessel. Using an average of gross revenue earned over the last 4 weeks to project the amount that could be harvested in the future, NMFS estimates that the full allocation of 10,000 mt, valued at around $1,100,000, could be harvested by early November. This additional 10,000 mt could potentially double gross revenues earned by domestic vessels.

As discussed in the economic analyses accompanying the 2001 submission for herring specifications, profits to U.S. vessels would be calculated by deducting the costs of participating in the JVP from revenues earned by selling over-the-side to foreign vessels. The calculation of economic value of the JVP to U.S. vessels requires a comparison of JVP and shoreside processing profitability. If there is limited shoreside processing demand, it is likely that vessels would derive substantial economic benefits from participating in joint venture operations. A positive impact of increased JVP is increased employment opportunities in affected communities. The JVP would benefit fuel and food providers and vessel servicing facilities as measured by economic multiplier effects.

If harvesting capacity was less than shoreside processing demand, and vessels that are participating in JVP operations would alternatively have landed herring in communities with processing facilities, negative economic and social impacts from reduced supply could result in reduced profits to shoreside processors, and reduced employment in processing plants, vessel servicing facilities, including stevedoring, and fuel and food vendors. However, as noted in the analyses accompanying the 2001 specifications, there is no evidence that shoreside processing demand is sufficient to meet harvesting capacity such that substantially negative economic and social impacts to processors or communities would ensue. Shoreside processing demand appears to be limited to the extent that the harvesting sector can easily participate in both an ongoing JVP and meet the demand of shoreside processors with limited economic impact on shoreside processing facilities and communities. In the future, this could change if shoreside facilities are able to increased the demand for their fish by developing export markets.

The 2001 Atlantic Herring Specifications adjusted for this inseason action are presented in the table below.

TABLE 1. 2001 ATLANTIC HERRING SPECIFICATIONS (ADJUSTED)

Specification	Amount (mt)
ABC	300,000
OY	250,000
DAH	245,000
TALFF	5,000
DAP	221,000
USAP	10,000
BT	4,000
JVPt	30,000
JVP–Area 2 and Area 3	20,000
IWP	10,000
Reserve	0
TAC–Area 1A	60,000
TAC–Area 1B	10,000
TAC–Area 2	50,000 (80,000 TAC reserve)
TAC–Area 3	50,000

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under E.O. 12866.

Because this action received prior public comment at Council meetings and any further delay would likely jeopardize the ability of U.S. and foreign vessels to access this increased herring allocation, there is good cause to waive additional opportunity for prior public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be contrary to the public interest. Similarly, because the inseason adjustment only provides for a transfer of the herring allocation from USAP to JVP and does not establish any requirements for which a regulated entity must come into compliance, it is unnecessary to delay for 30 days the effective date of this action. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the inseason adjustment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 31, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27849 Filed 11–5–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010313064–1064–01; I.D. 103101B]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Commercial Haddock Harvest

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Removal of haddock daily trip limit.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has projected that less than 75 percent of the 6,252 mt haddock target total allowable catch (TAC) will be harvested for the 2001 fishing year under the present landing limit, so the daily landing limit is being suspended until March 1, 2002. Therefore, between November 6, 2001, and February 28, 2002, vessels fishing under a multispecies day-at-sea (DAS) may possess no more than 50,000 lb (22,680 kg) per trip, but are not restricted to a limit of haddock per DAS. Unless subsequent projections indicate some other measure is required to ensure that the haddock target TAC is harvested but not exceeded, the existing daily trip limit of 5,000 lb (2,268 kg) per DAS will go back into effect on March 1, 2002.

DATES: Effective November 6, 2001, through February 28, 2002.

FOR FURTHER INFORMATION CONTACT: Rick A. Pearson, Fishery Policy Analyst, 978–281–9279.

SUPPLEMENTARY INFORMATION: Regulations implementing the haddock trip limit in Framework Adjustment 33 (65 FR 21658, April 24, 2000) became effective May 1, 2000, and were maintained for the current fishing year. To ensure that haddock landings remain within the target TAC of 6,252 mt established for the 2001 fishing year (66 FR 15812, March 21, 2001), Framework 33 established an initial landing limit of 3,000 lb (1,360.8 kg) per DAS fished and 30,000 lb (13,608 kg) per trip maximum, followed by an increased landing limit of 5,000 lb (2,268 kg) per DAS and 50,000 lb (22,680 kg) per trip from October 1 through April 30. Framework 33 also provided a mechanism to adjust the haddock trip limit based upon the percentage of TAC which is projected to be harvested.

Section 648.86 (a)(1)(iii)(B) specifies that if the Regional Administrator has projected that less than 75 percent (4,689 mt) of the haddock target TAC will be harvested in the fishing year, the landing limit may be adjusted. Further, this section stipulates that NMFS will publish a notification in the **Federal Register** informing the public of the date of any changes to the landing limit. Based on the available information, the Regional Administrator has projected that 4,689 mt will not be harvested by April 30, 2002, under the existing landing limit. The Regional Administrator has determined that removal of the daily landing limit of 5,000 lb (2,268 kg) per DAS through February 28, 2002, while retaining the 50,000 lb (22,680 kg) per trip possession limit, provides the industry with the opportunity to harvest at least 75 percent of the target TAC for the 2001 fishing year. However, because of difficulties inherent in collecting real-time haddock landings information, the Regional Administrator has determined that the daily trip limit will be reimposed on March 1, 2002, unless she can project that the haddock target TAC for fishing year 2001 will be harvested but not exceeded before the end of the fishing year. Therefore, pursuant to § 648.86(a)(1)(iii)(B), the haddock daily landing limit is suspended, while the 50,000 lb (22,680 kg) per trip maximum possession limit is retained, from November 6, 2001, until February 28, 2001. The Regional Administrator may adjust this possession limit again through publication of a notification in the **Federal Register**, pursuant to § 648.86(a)(1)(iii).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to remove the haddock daily trip limit in order to provide industry with the opportunity to harvest at least 75 percent of the target TAC for the 2001 fishing year constitutes good cause to waive the requirement to provide prior notice or opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement the measure that relieves a restriction (removal of the trip limit) in a timely fashion to allow for the additional harvest of haddock constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553 (d)(1), a delay in the effective date is hereby waived.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 31, 2001.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27823 Filed 11–1–01; 3:13 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010220043–1132–1132; I.D. 103101A]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 1A

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of directed fishery for Management Area 1A.

SUMMARY: NMFS announces that 95 percent of the Atlantic herring total allowable catch (TAC) allocated to Management Area 1A (Area 1A) for the fishing year 2001 has been harvested. Therefore, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring harvested from Area 1A per trip or calendar day for the remainder of the 2001 fishery (through December 31, 2001). Regulations governing the Atlantic herring fishery require publication of this notification when 95 percent of the Atlantic herring TAC allocated to Area 1A has been harvested to advise vessel and dealer permit holders that no TAC is available for the directed fishery for Atlantic herring harvested from Area 1A.

DATES: Effective 0001 hrs local time, November 10, 2001, through 2400 hrs local time, December 31, 2001.

FOR FURTHER INFORMATION CONTACT: David M. Gouveia, Fishery Policy Analyst, at (978) 281–9280.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. The specifications are allocated on an annual basis from January through December. The TAC allocated to Area 1A for the Atlantic herring fishery for the 2001 fishing year was 60,000 mt (66 FR 28846, May 25, 2001).

The regulations at 50 CFR 648.202 require the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the Atlantic herring fishery in each of the four management areas designated in the FMP and, based upon dealer reports, state data, and other

available information, to determine when the harvest of Atlantic herring is projected to reach 95 percent of the TAC allocated to that area. When such a determination is made, NMFS is required to publish notification in the **Federal Register** advising and notifying vessel and dealer permit holders that, effective upon a specific date, vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of herring per trip or calendar day from the specified management area for the remainder of the fishing year.

The Regional Administrator has determined, based upon dealer reports and other available information, that 95 percent of the Atlantic herring TAC allocated to Area 1A for the fishing year 2001 has been harvested. Therefore, effective 0001 hrs local time, November 10, 2001, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring harvested from Area 1A per trip or calendar day for the remainder of the 2001 fishery, through December 31, 2001, 2400 hrs local time. The fishing year 2002 TAC for the directed Atlantic herring fishery will open on January 1, 2002. Vessels may transit an area that is limited to the 2,000–lb (907.2–kg) limit with greater than 2,000 lb (907.2 kg) of herring on board, providing all fishing gear is stowed and not available for immediate use as required by § 648.23 (b). A vessel may land in an area that is limited to the 2,000–lb (907.2–kg) limit specified in § 648.202(a) with greater than 2,000 lb (907.2 kg) of herring on board, providing such herring were caught in an area or areas not subject to the 2,000–lb (907.2–kg) limit and providing all fishing gear is stowed and not available for immediate use as required by § 648.23 (b). Effective November 10, 2001, federally permitted dealers are also advised that they may not purchase Atlantic herring from federally permitted Atlantic herring vessels that harvest more than 2,000 lb (907.2 kg) of Atlantic herring from Area 1A through December 31, 2001, 2400 hrs local time.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 31, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27822 Filed 11–1–01; 3:13 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 215
Tuesday, November 6, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1953

[Docket No. T–035]

RIN 1218–AB 91

Changes to State Plans: Revision of Process for Submission, Review and Approval of State Plan Changes

AGENCY: Occupational Safety and Health Administration (OSHA), Labor

ACTION: Proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to revise its regulation concerning changes to approved State plans. The proposed rule streamlines the process for submission, review and approval of plan supplements, including changes to occupational safety and health standards, and reorganizes Part 1953 to eliminate repetitive language.

DATES: Comments and requests for hearings must be received no later than January 7, 2002.

ADDRESSES: Written comments or requests for an informal hearing should be submitted to Docket T–035, Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3700, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room, N–3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–1999.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards relating to any occupational safety or health issues with respect to which a Federal standard has been promulgated may do so by submitting and obtaining Federal approval of a State plan. State plans may be "complete" plans covering both the private sector and State and local government employees (see 29 CFR part 1902) or State plans limited in scope to State and local government employees only (see 29 CFR part 1956). A State plan consists of the laws, standards and other regulations, and procedures under which the State operates its occupational safety and health program. From time to time after initial plan approval, States may, and in many cases are required to, make changes to their plans as a result of State and Federal legislative, regulatory or administrative actions. State plans and their subsequent modifications are required to be "at least as effective as" the Federal program. (See section 18(c) of the Act, and §§ 1902.2 and 1956.2.) The current regulation requires that if the State makes a change to its plan, either on its own initiative or in response to a change in the Federal program or as a result of program monitoring, the State must notify OSHA of the change, within an established time frame, provide a copy of the implementing documents, and submit a written description of the change, including the identification of and rationale for any differences from the Federal program (referred to as a plan supplement). This is currently required whether the change is identical to the Federal regulation, policy or procedure or if it differs. OSHA then reviews the change; if it meets the approval criteria, OSHA publishes a notice announcing the approval of the change; if it does not meet the criteria OSHA initiates procedures to reject the change. OSHA is proposing to amend its regulations regarding State plan changes to streamline the submission, review and approval process.

B. Proposed Changes

The current regulation requires the submission of a formal written plan supplement even if the State's change to its program is identical to the Federal program component. OSHA is proposing to amend this regulation to provide that States must submit written supplements only when the State change is different from the Federal program. State adoption of a standard, regulation, policy or procedure that is identical to the parallel Federal component, an "identical change," would per se be at least as effective as the Federal program and could not "pose a burden on interstate commerce" or otherwise not meet the criteria for approval. (A state submission is considered "identical" if the State adopts the same program provisions and documentation as the Federal program with the only differences being those modifications necessary to reflect a State's unique structure (e.g., organizational responsibility within a State and corresponding titles or internal State numbering system).) Therefore, State submission and OSHA review of these changes has been superfluous as there is no issue as to approvability. Under the proposed revisions, States will be required to submit documentation of adoption of the identical Federal change, such as the cover page of an implementing State directive or a notice of State promulgation for inclusion in the State Plan documentation and maintain all other implementing documentation available for review within the State. No formal approval process will be undertaken for such "identical change." However, if a State makes a change to its program which differs from (i.e., is not identical to) the Federal program, the State must notify OSHA of the change, within an established time frame, provide a copy of the implementing documents, and submit a written description of the change, including the identification of and rationale for the differences from the Federal program. OSHA will then review and either approve or reject the plan change.

The proposed amended regulation also streamlines procedures for the review of supplements to State plans and the issuance of advisory opinions. The new procedures were developed through a "process improvement initiative" with input from all State and Federal parties involved in the submission, review and approval of plan changes.

The revised regulation would expressly set forth OSHA's longstanding interpretation of the OSH Act to the

effect that states which have submitted and obtained Federal approval of a state plan under 18(b) may adopt modifications to their state plan (such new standards, amendments to state OSHA legislation, or revised enforcement procedures) and may implement these modifications under state law, without prior approval of each particular modification by OSHA. Since the inception of the state plans approval program, OSHA has understood that the Federal approval of a state plan under section 18(b) lifts the barrier of Federal preemption and allows the state to "adopt and enforce standards" under state law. Accordingly, OSHA has always viewed its enabling statute as not requiring pre-enforcement Federal approval of new regulations or other requirements issued by states with Federally-approved plans. Instead, OSHA reviews these state standards and regulations after they are enacted, and, if there is reason to believe a particular plan modification fails in some way to meet OSH Act requirements, OSHA regulations provide that OSHA will initiate an adjudicative rejection proceeding, in similar manner to that prescribed by section 18(d) for Federal rejection of a state plan. 29 CFR 1953.23(d)(2). Upon completion of such a rejection proceeding and any judicial review resulting therefrom, the state plan modification would be excluded from the plan and thus subject to preemption, but until the prescribed process for rejection is completed the state's health or safety regulation or other state plan modification would remain enforceable. OSHA's longstanding interpretation that section 18 of its enabling statute does not require pre-enforcement Federal approval for each new safety or health requirement adopted by a state with an approved state plan, is consistent with the wording of that statutory provision (which envisions that states with approved plans will "adopt and enforce" their own standards) as well as the Congressional objective set forth in section 2(b)(11) of the Act of "encouraging the states to assume the fullest responsibility for the administration and enforcement of their own occupational safety and health laws." This interpretation has routinely been incorporated in OSHA **Federal Register** notices approving or requesting comment on various state plan modifications (see, e.g, Approval of California State Standard on Hazard Communication Incorporating Proposition 65, (62 FR 31159)), and has been judicially upheld in *Florida Citrus Packers* v. *California*, 549 F. Supp. 213 (N.D. Cal. 1982).

The current regulation provides that the OSHA Regional Administrators, by authority delegated from the Assistant Secretary, review and approve State change supplements involving occupational safety and health standards. The Assistant Secretary retained sole authority for review and approval of change supplements not involving standards. The proposed amended regulation simply states that OSHA will review and approve State plan supplements. Following final promulgation, OSHA will issue appropriate written, publicly available, procedures assigning organizational responsibility for Federal review and approval of State plan supplements. This change will provide the Assistant Secretary with the flexibility to modify the strictly internal review procedures without the need for formal rulemaking. It is OSHA's current intent to assign approval authority for all plan changes, including standards, to Regional Administrators.

The current regulation provides for an opportunity for public comment whenever a plan change differs significantly from the Federal program and the publication of a **Federal Register** notice approving all State plan changes, even those which are identical to a corresponding Federal program component. This proposed rule provides that generally, OSHA will seek public comment if a State plan change differs significantly from the comparable Federal program component and OSHA needs additional information on its compliance with the criteria in section 18(c) of the Act, including whether it is at least as effective as the Federal program and, in the case of a standard applicable to products used or distributed in interstate commerce, whether it is required by compelling local conditions or unduly burdens interstate commerce. After public comments are reviewed, a **Federal Register** notice will be published either approving the state plan modification or announcing OSHA's intention to initiate proceedings to reject it.

The current regulation discusses four types of plan changes (developmental, in response to Federal program changes, as a result of program evaluation, or at the State's initiative), with the submission and review process for each type addressed separately. Because all plan supplements will be subject to the same review and approval process, OSHA reorganized the proposed regulation to first address the submission of each of the four types of plan supplements, followed by one section on the review and approval of all types of supplements.

The current regulation requires States to submit six copies of all plan supplements. This proposal requires states to submit only one copy and provides for the electronic notification and submission of all required documentation.

Conforming technical amendments will also be made to sections in parts 1952, 1954 and 1955 which include references to particular sections in part 1953, to reflect the revisions.

C. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to this proposed revision. These comments must be submitted on or before January 7, 2002, in duplicate to Docket T–035, Docket Office, Room N–2625, U.S. Department of Labor, OSHA, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–2350. Comments under 10 pages long may be sent by telefax to the Docket Office at (202) 693–1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter. Electronic comments may be submitted on the Internet at: ecomments.osha.gov but must be followed by a mailed submission in duplicate. Written submissions must clearly identify the issues which are addressed and the position taken with respect to each issue.

D. Paperwork Reduction Act

On September 4, 2001, OSHA published notice in the **Federal Register** (66 FR 46291) providing a 60 day opportunity for public comment on the information collection requirements associated with Federal regulations governing OSHA-approved State plans (29 CFR parts 1902, 1952, 1953, 1954, 1955, 1954). This is part of a pre-clearance process under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), prior to review by the Office of Management and Budget (OMB). The burden associated with the current 1953 regulation was estimated to be 2,360 hours. This reflects the information that the States must provide to OSHA to keep their State plans up-to-date, but not the usual and customary activity associated with program operation, such as promulgation of standards, adoption of regulations, and development of policies. Final action on the proposed regulatory revision covered by today's notice will likely result in a reduction in that burden estimate. At that time, approval of appropriate adjustments to the related information collection burden hours will be sought.

E. Regulatory Review

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) that the proposed revisions will not have a significant economic impact on a substantial number of small entities. These proposed regulations apply only to certain state agencies and would not place small units of government under any new or different requirements, nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

Unfunded Mandates Reform Act

The procedures in 29 CFR part 1953 for submission and approval of plan changes apply only to states which have voluntarily submitted a state plan for OSHA approval under the OSH Act, and accordingly these procedures do not meet the definition of a "Federal intergovernmental mandate" under section 421(5) of UMRA (2 U.S.C. 658(5)).

List of Subjects in 29 CFR Part 1953

Intergovernmental relations, Law enforcement, Occupational safety and health, Reporting and recordkeeping requirements.

Authority

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under section 18 of the OSH Act (29 U.S.C. 667), and Secretary of Labor's Order No. 3–2000 (65 FR 50017, August 16, 2000).

Signed at Washington, DC this 26th day of October, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

29 CFR Part 1953 would be revised as set forth below:

PART 1953—CHANGES TO STATE PLANS

Sec.

1953.1 Purpose and scope.
1953.2 Definitions.
1953.3 General policies and procedures.
1953.4 Submission of plan supplements.
1953.5 Special provisions for standards changes.
1953.6 Review and approval of plan supplements.

Authority: Sec. 18, 84, Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 3–2000 (65 FR 50017, August 16, 2000).

§ 1953.1 Purpose and scope.

(a) This part implements the provisions of section 18 of the Occupational Safety and Health Act of 1970 ("OSH Act" or the "Act") which provides for State plans for the development and enforcement of State occupational safety and health standards. These plans must meet the criteria in section 18(c) of the Act, and part 1902 of this chapter (for plans covering both private sector and State and local government employers) or part 1956 of this chapter (for plans covering only State and local government employers), either at the time of submission or—where the plan is developmental—within the three year period immediately following commencement of the plan's operation. Approval of a State plan is based on a finding that the State has, or will have, a program, pursuant to appropriate State law, for the adoption and enforcement of State standards that is "at least as effective" as the Federal program.

(b) When submitting plans, the States provide assurances that they will continue to meet the requirements in section 18(c) of the Act and part 1902 or part 1956 of this chapter for a program that is "at least as effective" as the Federal. Such assurances are a fundamental basis for approval of plans. (See § 1902.3 and § 1956.2 of this chapter.) From time to time after initial plan approval, States will need to make changes to their plans. This part establishes procedures for submission and review of State plan supplements documenting those changes that are necessary to fulfill the State's assurances, the requirements of the Act, and part 1902 or part 1956 of this chapter.

(c) Changes to a plan may be initiated in several ways. In the case of a developmental plan, changes are required to document establishment of those necessary structural program components that were not in place at the time of plan approval. These commitments are included in a developmental schedule approved as part of the initial plan. These "developmental changes" must be completed within the three year period immediately following the commencement of operations under the plan. Another circumstance requiring subsequent changes to a State plan would be the need to keep pace with changes to the Federal program, or "Federal Program Changes." A third situation would be changes required as a result of the continuing evaluation of the State program—"evaluation changes." Finally, changes to a State program's safety and health requirements or procedures initiated by the State without a Federal parallel could have an impact on the effectiveness of the State program—"State-initiated changes." While requirements for submission of a plan supplement to OSHA differ depending on the type of change, all supplements are processed in accordance with the procedures in § 1953.6.

§ 1953.2 Definitions.

(a) *OSHA* means the Assistant Secretary of Labor for Occupational Safety and Health, or any representative authorized to perform any of the functions discussed in this part, as set out in implementing Instructions.

(b) *State* means an authorized representative of the agency designated to administer a State plan under § 1902.3(b) of this chapter.

(c) *Plan change* means any modification made by a State to its approved occupational safety and health State plan which has an impact on the plan's effectiveness.

(d) *Plan supplement* means all documents necessary to accomplish, implement, describe and evaluate the effectiveness of a change to a State plan which differs from the parallel Federal legislation, regulation, policy or procedure. (This would include a copy of the complete legislation, regulation, policy or procedure adopted; an identification of each of the differences; and an explanation of how each provision is at least as effective as the comparable Federal provision.)

(e) *Identical* plan change means one in which the State adopts the same program provisions and documentation as the Federal program with the only differences being those modifications necessary to reflect a State's unique structure (e.g., organizational responsibility within a State and corresponding titles or internal State numbering system). *Different plan change* means one in which the State adopts program provisions and documentation that are not identical as defined in this paragraph.

(g) *Developmental change* is a change made to a State plan which documents the completion of a program component which was not fully developed at the time of initial plan approval.

(h) *Federal program change* is a change made to a State plan when OSHA determines that an alteration in the Federal program could render a State program less effective than OSHA's if it is not similarly modified.

(i) *Evaluation change* is a change made to a State plan when evaluations of a State program show that some substantive aspect of a State plan has an adverse impact on the implementation of the State's program and needs revision.

(j) *State-initiated change* is a change made to a State plan which is undertaken at a State's option and is not necessitated by Federal requirements.

§ 1953.3 General policies and procedures.

(a) *Effectiveness of State plan changes under State law.* Federal OSHA approval of a State plan under section 18(b) of the OSH Act in effect removes the barrier of Federal preemption, and permits the state to adopt and enforce state standards and other requirements regarding occupational safety or health issues regulated by OSHA. A State with an approved plan may modify or supplement the requirements contained in its plan, and may implement such requirements under State law, without prior approval of the plan change by Federal OSHA. Changes to approved state plans are subject to subsequent OSHA review. If OSHA finds reason to reject a State plan change, and this determination is upheld after an adjudicatory proceeding, the plan change would then be excluded from the State's Federally-approved plan.

(b) *Required State plan notifications and supplements.* Whenever a State makes a change to its legislation, regulations, standards, or major changes to policies or procedures, which affect the operation of the State plan, the State shall provide written notification to OSHA. When the change differs from a corresponding Federal program component, the State shall submit a formal, written plan supplement. When the State adopts a provision which is identical to a corresponding Federal provision, written notification, but no formal plan supplement, is required. However, the State is expected to maintain the necessary underlying State document (e.g., legislation or standard) and to make it available for review upon request. Submission of all notifications and supplements may be in electronic format.

(c) *Plan supplement availability.* Copies of all principal documents comprising the State plan, whether approved or pending approval, shall be available for inspection and copying at the Federal and State locations specified in the subpart of part 1952 of this chapter relating to each State plan. The underlying documentation for identical plan changes shall be maintained by the State and shall similarly be available for inspection and copying at the State locations. Annually, States shall submit updated copies of the principal documents comprising the plan, or appropriate page changes, to the extent that these documents have been revised. To the extent possible, plan documents will be maintained and submitted by the State in electronic format and also made available in such manner.

(d) *Advisory opinions.* Upon State request, OSHA may issue an advisory opinion on the approvability of a proposed change which differs from the Federal program prior to promulgation or adoption by the State and submission as a formal supplement.

(e) *Alternative procedures.* Upon reasonable notice to interested persons, the Assistant Secretary may prescribe additional or alternative procedures in order to expedite the review process or for any other good cause which may be consistent with the applicable laws.

§ 1953.4 Submission of plan supplements.

(a) *Developmental changes.*

(1) Sections 1902.2(b) and 1956.2(b) of this chapter require that each State with a developmental plan must set forth in its plan, as developmental steps, those changes which must be made to its initially-approved plan for its program to be at least as effective as the Federal program and a timetable for making these changes. The State must notify OSHA of a developmental change when it completes a developmental step or fails to meet any developmental step.

(2) If the completion of a developmental step is the adoption of a program component which is identical to the Federal program component, the State need only submit documentation, such as the cover page of an implementing directive or a notice of promulgation, that it has adopted the program component, but must make the underlying documentation available for Federal and public review upon request.

(3) If the completion of a developmental step involves the adoption of policies or procedures which differ from the Federal program, the State must submit one copy of the required plan supplement.

(4) When a developmental step is missed, the State must submit a supplement which documents the impact on the program of the failure to complete the developmental step, an explanation of why the step was not completed on time and a revised timetable with a new completion date (generally not to exceed 90 days) and any other actions necessary to ensure completion. Where the State has an operational status agreement with OSHA under § 1954.3 of this chapter, the State must provide an assurance that the missed step will not affect the effectiveness of State enforcement in any issues for which the State program has been deemed to be operational.

(5) If the State fails to submit the required documentation or supplement, as provided in § 1953.4(a)(2), (3) or (4) above, when the developmental step is scheduled for completion, OSHA shall notify the State that documentation or a supplement is required and set a timetable for submission of any required documentation or supplement, generally not to exceed 90 days.

(b) *Federal Program changes.*

(1) When a significant change in the Federal program would have an adverse impact on the "at least as effective" status of the State program if a parallel state program modification were not made, State adoption of a change in response to the Federal program change shall be required. A Federal program change that would not result in any diminution of the effectiveness of a State plan compared to Federal OSHA generally would not require adoption by the State.

(2) Examples of significant changes to the Federal program that would normally require a State response would include a change in the Act, promulgation or revision of OSHA standards or regulations, or changes in policy or procedure of national importance. A Federal program change that only establishes procedures necessary to implement a new or established policy, standard or regulation does not require a State response, although the State would be expected to establish policies and procedures which are "at least as effective," which must be available for review on request.

(3) When there is a change in the Federal program which requires State action, OSHA shall advise the States. This notification shall also contain a date by which States must submit either a supplement if they adopt a change which differs from the Federal change, or documentation of adoption of a program component identical to the Federal program component, or, as explained in paragraph (b)(5) of this section, a statement why a program change is not necessary. This date will generally be six months from the date of notification, except where the Assistant Secretary determines that the nature or scope of the change requires a different time frame, for example, a change requiring legislative action where a State has a biennial legislature or a policy of major national implications requiring a shorter implementing time frame. State notification of intent may

be required prior to the plan supplement submission.

(4) If the State change is different from the Federal program change, the State shall submit one copy of the required supplement. The supplement shall contain a copy of the relevant legislation, regulation, policy or procedure and documentation on how the change maintains the "at least as effective as" status of the plan.

(5) If the State adopts a change identical to the Federal program change, the State is not required to submit a supplement. However, the State shall provide documentation, such as the cover page of an implementing directive or a notice of promulgation, that it has adopted the change.

(6) The State may demonstrate why a program change is not necessary because the State program is already the same as or at least as effective as the Federal program change. Such submissions will require review and approval as set forth in § 1953.6.

(7) Where there is a change in the Federal program which does not require State action but is of sufficient national interest to warrant indication of State intent, the State may be required to provide such notification within a specified time frame.

(c) *Evaluation changes.*

(1) Special and periodic evaluations of a State program by OSHA in cooperation with the State may show that some portion of a State plan has an adverse impact on the effectiveness of the State program and accordingly requires modification to the State's underlying legislation, regulations, policy or procedures as an evaluation change. For example, OSHA could find that additional legislative or regulatory authority may be necessary to effectively pursue the State's right of entry into workplaces, or to assure various employee or employer rights.

(2) OSHA shall advise the State of any evaluation findings that require a change to the State plan and the reasons supporting this decision. This notification shall also contain a date by which the State must accomplish this change and submit either the change supplement or a timetable for its accomplishment and interim steps to assure continued program effectiveness, documentation of adoption of a program component identical to the Federal program component, or, as explained in paragraph (c)(5) of this section, a statement demonstrating why a program change is not necessary.

(3) If the State adopts a program component which differs from a corresponding Federal program component, the State shall submit one copy of a required supplement. The supplement shall contain a copy of the relevant legislation, regulation, policy or procedure and documentation on how the change maintains the "at least as effective as" status of the plan.

(4) If the State adopts a program component identical to a Federal program component, submission of a supplement is not required. However, the State shall provide documentation, such as the cover page of an implementing directive or a notice of promulgation, that it has adopted the change and shall retain all other documentation within the State available for review upon request.

(5) The State may demonstrate why a program change is not necessary because the State program is meeting the requirements for an "at least as effective" program. Such submission will require review and approval as set forth in § 1953.6.

(d) *State-initiated changes.*

(1) A State-initiated change is any change to the State plan which is undertaken at a State's option and is not necessitated by Federal requirements. State-initiated changes may include legislative, regulatory administrative, policy or procedural changes which impact on the effectiveness of the State program.

(2) A State-initiated change supplement is required whenever the State takes an action not otherwise covered by this part that would impact on the effectiveness of the State program. The State shall notify OSHA as soon as it becomes aware of any change which could affect the State's ability to meet the approval criteria in parts 1902 and 1956 of this chapter and submit a supplement within 60 days. Other State initiated supplements may be submitted at any time generally not to exceed 6 months after the change occurred. The State supplement shall contain a copy of the relevant legislation, regulation, policy or procedure and documentation on how the change maintains the "at least as effective as" status of the plan. If the State fails to notify OSHA of the change or fails to submit the required supplement within the specified time period, OSHA shall notify the State that a supplement is required and set a time period for submission of the supplement, generally not to exceed 30 days.

§ 1953.5 Special provisions for standards changes.

(a) *Permanent standards.*

(1) Where a Federal program change is a new permanent standard, or a more stringent amendment to an existing permanent standard, the State shall promulgate a State standard adopting such new Federal standard, or more stringent amendment to an existing Federal standard, or an at least as effective equivalent thereof, within six months of the date of promulgation of the new Federal standard or more stringent amendment. The State may demonstrate that a standard change is not necessary because the State standard is already the same as or at least as effective as the Federal standard change. In order to avoid delays in worker protection, the effective date of the State standard and any of its delayed provisions must be the date of State promulgation or the Federal effective date whichever is later. The Assistant Secretary may permit a longer time period if the State makes a timely demonstration that good cause exists for extending the time limitation. State permanent standards adopted in response to a new or revised Federal standard shall be submitted as a State plan supplement in accordance with § 1953.4(b), Federal Program changes.

(2) Because a State may include standards and standards provisions in addition to Federal standards within an issue covered by an approved plan, it would generally be unnecessary for a State to revoke a standard when the comparable Federal standard is revoked or made less stringent. If the State does not adopt the Federal action, it need only provide notification of its intent to retain the existing State standard to OSHA within 6 months of the Federal promulgation date. If the State adopts a change to its standard parallel to the Federal action, it shall submit the appropriate documentation as provided in § 1953.4(b)(3) or (4)—Federal program changes. However, in the case of standards applicable to products used or distributed in interstate commerce where section 18(c)(2) of the Act imposes certain restrictions on State plan authority, the modification, revision, or revocation of the Federal standard may necessitate the modification, revision, or revocation of the comparable State standard unless the State standard is required by compelling local conditions and does not unduly burden interstate commerce.

(3) Where a State on its own initiative adopts a permanent State standard for which there is no Federal parallel, the State shall submit it in accordance with § 1953.4(d)—State-initiated changes.

(b) Emergency temporary standards.

(1) Immediately upon publication of an emergency temporary standard in the **Federal Register**, OSHA shall advise the States of the standard and that a Federal program change supplement shall be required. This notification must also

provide that the State has 30 days after the date of promulgation of the Federal standard to adopt a State emergency temporary standard if the State plan covers that issue. The State may demonstrate that promulgation of an emergency temporary standard is not necessary because the State standard is already the same as or at least as effective as the Federal standard change. The State standard must remain in effect for the duration of the Federal emergency temporary standard which may not exceed six (6) months.

(2) Within 15 days after receipt of the notice of a Federal emergency temporary standard, the State shall advise OSHA of the action it will take. State standards shall be submitted in accordance with the applicable procedures in § 1953.4(b)—Federal Program Changes, except that the required documentation or plan supplement must be submitted within 5 days of State promulgation.

(3) If for any reason, a State on its own initiative adopts a State emergency temporary standard, it shall be submitted as a plan supplement in accordance with § 1953.4(c), but within 10 days of promulgation.

§ 1953.6 Review and approval of plan supplements.

(a) OSHA shall review a supplement to determine whether it is at least as effective as the Federal program and meets the criteria in the Act and implementing regulations and the assurances in the State plan. If the review reveals any defect in the supplement, or if more information is needed, OSHA shall offer assistance to the State and shall provide the State an opportunity to clarify or correct the change.

(b) If upon review, OSHA determines that the differences from a corresponding Federal component are purely editorial and do not change the substance of the policy or requirements on employers, it shall deem the change identical. This includes "plain language" rewrites of new Federal standards or previously approved State standards which do not change the meaning or requirements of the standard. OSHA will inform the State of this determination. No further review or **Federal Register** publication is required.

(c) Federal OSHA may seek public comment during its review of plan supplements. Generally, OSHA will seek public comment if a State program component differs significantly from the comparable Federal program component and OSHA needs additional information on its compliance with the criteria in section 18(c) of the Act, including whether it is at least as effective as the Federal program and in the case of a standard applicable to products used or distributed in interstate commerce, whether it is required by compelling local conditions or unduly burdens interstate commerce under section 18(c)(2) of the Act.

(d) If the plan change meets the approval criteria, OSHA shall approve it and shall thereafter publish a **Federal Register** notice announcing the approval. OSHA reserves the right to reconsider its decision should subsequent information be brought to its attention.

(e) If a State fails to submit a required supplement or if examination discloses cause for rejecting a submitted supplement, OSHA shall provide the State a reasonable time, generally not to exceed 30 days, to submit a revised supplement or to show cause why a proceeding should not be commenced either for rejection of the supplement or for failure to adopt the change in accordance with the procedures in § 1902.17 or part 1955 of this chapter.

[FR Doc. 01–27728 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–26–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket Nos. 00–258 and 95–18, IB Docket No. 99–81; DA 01–2533]

Introduction of New Advanced Mobile and Fixed Terrestrial Wireless Services; Use of Frequencies Below 3 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: In this document, the Commission extends the period for reply comment in the proceeding that was initiated to explore the possible use of frequency bands below 3 GHz to support the introduction of new advanced mobile and fixed terrestrial wireless services (advanced wireless services) including third generation (3G) and future generations of wireless systems. The Commission extends the period for reply comment at the request of the Cellular Telecommunications & Internet Association (CTIA) in order to allow sufficient time to establish the most complete and well-delivered record possible on which to base an ultimate decision.

DATES: Reply Comments are due on or before November 8, 2001.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Spencer, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Order Extending Reply Comment Period in ET Docket Nos. 00–258 and 95–18, and IB Docket No. 99–81, DA 01–2533, adopted October 30, 2001, and released October 30, 2001. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

1. The Commission extends the reply comment period established in the Order Extending Comment Period, in this proceeding (*See* Further Notice of Proposed Rulemaking at 66 FR 47618, September 13, 2001, and Order Extending Comment Period at 66 FR 51905, October 11, 2001) from November 5, 2001, to November 8, 2001.

Ordering Clause

2. Pursuant to section 1.46 of the Commission's Rules, 47 CFR 1.46, the October 26, 2001, request of CTIA to extend the deadline for filing reply comment in this proceeding is granted.

3. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

Thomas J. Navin,

Deputy Chief, Policy Division, Wireless Telecommunicotions Bureau.

[FR Doc. 01–27783 Filed 11–5–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–2001–10053–Notice 2]

RIN 2127–AI65

Consumer Information; Safety Rating Program for Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Section 14(g) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act requires that, by November 2001, a notice of proposed rulemaking be issued to establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraint systems (CRS). In response to this mandate, NHTSA is proposing to establish such a program. The program would not impose any binding legal obligations on any child restraint manufacturer regarding the generation or distribution of information.

The details of the new program are set forth in a companion request for comments being published today in the **Federal Register**. In developing the program, NHTSA reviewed existing rating systems that other countries and organizations have developed, and conducted its own performance testing to explore a possible rating system for child restraints. In the request for comments, the agency has tentatively concluded that the most effective consumer information system is one that gives the consumer a combination of information about child restraints' ease of use and dynamic performance, with the dynamic performance obtained through higher-speed sled testing and/or in-vehicle NCAP testing. The agency is also giving consideration to conducting *both* higher-speed sled tests and in-vehicle NCAP testing in conjunction with the ease of use rating. That document provides a review of the information and reasoning used by the agency to reach that conclusion, describes the rating systems planned to meet the TREAD requirements, and seeks comment on this program.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 7, 2002.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For issues related to a performance rating, you may call Brian Park of the New Car Assessment Program (NPS–10) at 202–366–6012.

For issues related to a compatibility/ease of use rating, you may call Lori Miller of the Office of Traffic Safety Programs (NTS–12) at 202–366–9835.

You may send mail to both officials at National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: Congress has directed the National Highway Traffic Safety Administration (NHTSA) to develop a child restraint safety rating system that is practicable and understandable (Section 14 (g) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, November 1, 2000, Pub. L. 106–414, 114 Stat. 1800) and that will help consumers to make informed decisions when purchasing child restraints. Section 14(g) reads as follows:

> (g) Child restraint safety rating program. No later than 12 months after the date of the enactment of this Act, the Secretary of Transportation shall issue a notice of proposed rulemaking to establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraints. No later than 24 months after the date of the enactment of this Act the Secretary shall issue a final rule establishing a child restraint safety rating program and providing other consumer information which the Secretary determines would be useful (to) consumers who purchase child restraint systems.

NHTSA notes that issuing requests for comments is the procedure that the agency has consistently used over the last several decades to provide for public participation in the development and selection of the performance criteria and test protocols to be used by the agency in generating consumer information. The agency selected this procedure, instead of the more formal step of issuing an NPRM, because establishing the various aspects of its consumer information program did not involve imposing any binding legal obligations on any party to generate or distribute any of the information. Since the performance criteria and test protocols are not binding, NHTSA does not place them in the Code of Federal Regulations when they are adopted. The most recent example of the agency's use of a request for comments in connection with a consumer information program is the one that the agency published to obtain comments on a draft test protocol to expand the New Car Assessment Program (NCAP) to provide brake performance information (July 17, 2001; 66 FR 37253). Several weeks earlier, the agency published a request for comments on developing a dynamic test on rollover pursuant to section 12 of the TREAD Act (July 3, 2001; 66 FR 37179). Unlike section 14(g), section 12 does not require the issuance of an NPRM to obtain public comment.

Nevertheless, to comply with the specific language of the TREAD Act, NHTSA is issuing this NPRM and a companion request for comments. In this NPRM, the agency proposes to establish a child restraint rating program. In the request for comments, the agency solicits comments on the details of that program. In developing the program, NHTSA reviewed existing rating systems that other countries and organizations have developed, and conducted its own performance testing to explore a possible rating system for child restraints. In the request for comments, the agency has tentatively concluded that the most effective consumer information system is one that gives the consumer a combination of information about child restraints' ease of use and dynamic performance, with the dynamic performance obtained through higher-speed sled testing and/or in-vehicle NCAP testing. The agency is also giving consideration to conducting *both* higher-speed sled tests and in-vehicle NCAP testing in conjunction with the ease of use rating. That document provides a review of the information and reasoning used by the agency to reach that conclusion, describes the rating systems planned to meet the TREAD requirements, and seeks comment on this program.

Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed,

stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

I. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

II. On that page, click on "search."

III. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1999–1234," you would type "1234." After typing the docket number, click on "search."

IV. On the next page, which contains docket summary information for the docket you selected, click on the desired comments.

You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

IX. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This document was not reviewed under Executive Order 12866. Since this NPRM would not establish a rule imposing binding legal obligations on any party, it does not involve a significant rule within the meaning of that Executive Order or the Department of Transportation's Regulatory Policies and Procedures. Further, preparation of a full regulatory evaluation is not required under these circumstances. As noted above, NHTSA is issuing this NPRM and a companion request for comments, instead of a request for comments alone, because section 14(g) of the TREAD Act expressly requires the issuance of an NPRM.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this NPRM under the Regulatory Flexibility Act. For the reasons noted above in the section on Executive Order 12866 and DOT Regulatory Policies and Procedures, I certify that this NPRM does not involve a rule that would have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this NPRM does not involve a rule that would have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the regulation.

The agency has analyzed this NPRM in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it does not involve a rule that would have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The NPRM would not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Civil Justice Reform

This NPRM does not involve a rule that would have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This NPRM does not involve a rule that would require any collection of information.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

The NTTAA does not apply to this NPRM since it does not involve regulatory activities. The NPRM would not impose binding legal obligations on any party.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This NPRM would not require any expenditures by State, local, or tribal governments, or by private parties.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 575

Consumer information, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 575 would be amended as follows:

PART 575—CONSUMER INFORMATION

1. The heading for part 575 would be revised to read as set forth above.

2. The authority citation for part 575 would be revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166 and Pub.L. 106–414, 114 Stat. 1800; delegation of authority at 49 CFR 1.50.

3. The heading for subpart A would be revised to read as follows:

Subpart A—Regulations; General

4. The heading for subpart B would be revised to read as follows:

Subpart B—Regulations; Consumer Information Items

5. Subpart C would be added to read as follows:

Subpart C—Transportation Recall Enhancement, Accountability, and Documentation Act; Consumer Information

§ 575.201 Child restraint performance.

The National Highway Traffic Safety Administration has established a program for rating the performance of child restraints. The agency makes the information developed under this rating program available through a variety of means, including postings on its Web site, *www.nhtsa.dot.gov.*

Dated: October 29, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–27546 Filed 10–31–01; 9:54 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005245–1245–01; I.D. 092401C]

RIN 0648–AP37

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2002 specifications for the Atlantic herring fishery; correction.

SUMMARY: This document corrects the information provided in the proposed specifications for the 2002 Atlantic herring fishery published in the **Federal Register** on October 29, 2001. This action is necessary because comments on the proposed specifications should be submitted to the Administrator, Northeast Region, NMFS (Regional Administrator), in a timely manner.

DATES: Comments must be received no later than 5 p.m., Eastern Standard Time, on November 28, 2001.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, (978) 281–9104.

SUPPLEMENTARY INFORMATION: NMFS published proposed specifications for the 2002 Atlantic herring fishery on October 29, 2001 (66 FR 54498). The **ADDRESSES** section of the proposed specifications indicated that comments on the proposed specifications should be sent to the Regional Administrator "at the above address". However, the address for the Regional Administrator was not provided. Therefore, this document corrects the **ADDRESSES** section of the proposed specifications by providing the mailing address for the Regional Administrator.

Correction

Accordingly, the publication on October 29, 2001, of the proposed 2002 specifications for the Atlantic herring fishery (I.D. 092401C), which was the subject of FR Doc. 01–27168, is corrected as follows:

On page 54498, in the third column, first full paragraph, third and fourth lines down remove, "Regional Administrator at the above address.", and in its place add, "Pat Kurkul, Regional Administrator, NMFS, One Blackburn Drive, Gloucester, MA 01930."

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 1, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27851 Filed 11–5–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 215

Tuesday, November 6, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Gotchen Risk Reduction and Late-Successional Health Restoration, Gifford Pinchot National Forest, Skamania and Yakima Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to determine appropriate actions to reduce the risk of losing late-successional habitat to fire, and insect and disease-related mortality; and to maintain or restore late-successional vigor, function and resiliency within the Gotchen landscape. The analysis will determine the best combination and placement of a variety of actions including silvicultural, limited aerial application of Btk spray (an insecticide), prescribed fire, road closures, and road decommissioning. These actions are to accomplish the following needs in the Gotchen planning area: reduce the risk of high intensity fires; reduce the risk-level of spruce budworm activity in late successional habitat; reduce the risk of remnant tree mortality; restore late-successional vigor, function, and resiliency; thinning live trees from overstocked stands less than 80 years old; salvage dead trees in stands greater than 10 acres in the Late Successional Reserve (LSR); regenerate dead and dying stands within the Matrix. The Gotchen landscape is comprised of the lands designated as the LSR and to its immediate south, Matrix. Both are interspersed with Riparian Reserves. These land allocations are described in the *Gifford Pinchot National Forest Land and Resource Management Plan* (1990) as amended by the *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* (1994)—"Northwest Forest Plan". Due to the extensive presence of insect and disease-susceptible tree species such as grand fir, the forests within the Gotchen landscape are in poor health and at risk of being consumed by high intensity, stand-replacing fires. The insect problems are from an ongoing epidemic infestation of the western spruce budworm, a well-known forest pest that has defoliated extensive areas of coniferous forest throughout the Gotchen planning area and adjacent National Forest System and non-federal lands. These defoliated and dead trees contribute to an increasing fire hazard throughout the Gotchen landscape and threaten the vigor, function, and resiliency of the late-successional habitat. Northern spotted owl habitat within the LSR is currently being lost due to insect and disease-related tree mortality.

DATES: Comments concerning issues and scope of this analysis should be received by November 30, 2001.

ADDRESSES: Send comments via post mail to the Gotchen Planning Team, Mount Adams Ranger District, 2455 Highway 141, Trout Lake, Washington 98650 or send comments via e-mail to *r6_gp_forest@fs.fed.us* Subject: Gotchen EIS.

FOR FURTHER INFORMATION CONTACT: Call Julie Knutson at (509) 395–3378, or e-mail: *jcknutson@fs.fed.us.*

SUPPLEMENTARY INFORMATION: A primary purpose of the LSR is to provide habitat for late-successional forest habitat dependant species such as the northern spotted owl. The northern spotted owl is listed as a "threatened" species under the Endangered Species Act. The Matrix is the portion of the National Forest that the Northwest Forest Plan allows to be managed for early successional habitat and commodity production, as well as provided connectivity and structural elements important to late-successional species. The Gotchen planning area is to the east of the Cascades in an area that had a mosaic of pine savannah and closed forest, at the time of European settlement. Today, the area is more uniformly forested and has supported up to six nesting pair of spotted owls. Although a century of fire suppression and selective harvest has led to the conditions that are now attractive to spotted owls, these practices contributed to development of an unstable landscape that is vulnerable to defoliation and mortality from insects, diseases, and high intensity fires. The attributes that make the area good late successional habitat are the same attributes that make the area vulnerable to budworm, root diseases, and ultimately, stand replacement fires.

Several issues associated the potential treatments have been identified to date: (1) *Mardon skipper butterfly:* which is currently listed by the State of Washington as an endangered species, and is a candidate species for federal listing under the Endangered Species Act. Aerial application of the pesticide Btk to suppress spruce budworm would kill all lepidopteron (moths and butterflies) that came in contact with the insecticide, including the mardon skipper. (2) *Smoke management:* The Gotchen area is on the south slope of Mt. Adams, immediately adjacent to the Mt. Adams Wilderness Area. This area is a Class I Airshed where, under the Clean Air Act, there is a need to keep the air clean and pristine. Prescribed burning would generate smoke and has the potential to drift into the Wilderness area and degrade the air quality. (3) *Gotchen Roadless Area:* Portions of the Gotchen Roadless Area lie within the planning area. It is possible that Silvicultural treatment could be proposed within the Roadless Area.

Several scoping notices have been sent out locally over the past year indicating the District's intent to plan and implement actions in the Gotchen landscape to address the forest health and risk concerns. Continued scoping and public participation efforts will be used by the interdisciplinary planning team to identify new issues, develop alternatives in response to the issues, and determine the level of analysis needed to disclose potential biological, physical, economic and social impacts associated with the project. The specific need and format for meetings and workshops will be determined by the comments received from this notice. and responses by individuals and organizations. This Notice and subsequent scoping notices will satisfy the requirements under 36 CFR 800.2(d) for seeking the views of the public on the potential effects of an undertaking on historic properties. A web site will be established in the near future on the Gifford Pinchot National Forest World Wide Web to enable interested parties to

access project information directly. The Forest Service is seeking information, comments, and assistance from other agencies, organizations or individuals who may be interested in or affected by the proposed project.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 4 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in February 2002. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is anticipated to be completed by July, 2002. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period on the draft EIS. Gregory L. Cox, Mount Adams District Ranger, is the Responsible Official. He will decide, which, if any, of the proposed project alternatives will be implemented. His decision and reasons for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: October 30, 2001.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 01–27778 Filed 11–5–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Grain Inspection Advisory Committee.

Date: December 4–5, 2001.

Place: Hilton Chicago Hotel, 720 South Michigan Avenue, Chicago, Illinois 60605.

Time: 7:30 a.m.–5 p.m. on December 4 and 7:30 a.m.–11:30 a.m. on December 5, 2001.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda includes an overview of GIPSA's financial status, a panel discussion on the evolving bulk and value-enhanced commodity markets, and updates on biotechnology, policies, and procedures, and other related issues concerning the delivery of grain inspection and weighing services to American agriculture.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

The meeting will be open to the public. Persons with disabilities who require alternative means of communication of program information or related accommodation should contact Marianne Plaus, telephone (202) 690–3460 or FAX (202) 205–9237.

Dated: October 31, 2001.

David R. Shipman,

Acting Administrator.

[FR Doc. 01–27718 Filed 11–5–01; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–852]

Creatine Monohydrate From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is currently conducting an administrative review of the antidumping duty order on creatine monohydrate from the People's Republic of China. The period of review is July 30, 1999 through January 31, 2001. This review covers imports of subject merchandise from one producer/exporter.

We have preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in our final results of review, we will instruct the Customs Service to assess antidumping duties based on the difference between the U.S. price and normal value.

We invite interested parties to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: November 6, 2001.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Annika O'Hara, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4207, (202) 482–3798, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are 19 CFR part 351 (April 2001).

Background

On February 4, 2000, the Department published an antidumping order on creatine monohydrate from the People's Republic of China ("PRC"). *See Notice of Antidumping Duty Order: Creatine Monohydrate from the People's Republic of China*, 65 FR 5583 (February 4, 2000). On February 14, 2001, the Department published in the **Federal Register** an *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 10269 (February 14, 2001).

On February 23, 2001, in accordance with 19 CFR 351.213(b), a manufacturer/exporter of the subject merchandise, Blue Science International Trading (Shanghai) Co., Ltd. ("Blue Science"), requested that the Department conduct an administrative review of this order. On March 22, 2001, we published a notice of initiation of this review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 66 FR 16037 (March 22, 2001). The period of this review ("POR") is July 30, 1999 through January 31, 2001.

On March 27, 2001, we issued a questionnaire to Blue Science. We issued a supplemental questionnaire on July 19, 2001. We received responses to the original and supplemental questionnaires on May 24 and August 24, 2001, respectively.

Scope of the Review

Imports covered by this review are creatine monohydrate, which is commonly referred to as "creatine." The chemical name for creatine monohydrate is N-(aminoiminomethyl)-N-methylglycine monohydrate. The Chemical Abstracts Service ("CAS") registry number for this product is 6020–87–7. Creatine monohydrate in its pure form is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue. Creatine monohydrate is provided for in subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading and the CAS registry number are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Separate Rates

It is the Department's standard policy to assign all exporters of the merchandise subject to review in nonmarket economy ("NME") countries a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*"Sparklers"*), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1944) (*"Silicon Carbide"*).

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

A *de facto* analysis of absence of government control over exports is based on four factors—whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see also Sparklers*, 56 FR at 20589.

In the *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China* 64 FR 71104 (December 20, 1999) (*"LTFV Investigation"*), we determined that there was *de jure* and *de facto* absence of government control of each company's export activities and determined that each company warranted a company-specific dumping margin. For the POR, Blue Science responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final determination in the *LTFV Investigation* and Blue Science continues to demonstrate an absence of government control, both in law and in fact, with respect to its exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

Export Price

For U.S. sales made by Blue Science, we calculated an export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and the facts did not otherwise warrant use of constructed value export price.

For these sales, we calculated export price based on the price to unaffiliated purchasers.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value ("NV") using a factors-of-production methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value ("CV") under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or CV under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. The party in this proceeding has not contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a surrogate country.

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market

economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of overall economic development (*see* Memorandum from Jeff May, Director, Office of Policy, to Susan Kuhbach, Senior Director, AD/CVD Enforcement, Office 1, July 30, 2001). According to the available information on the record, we have determined that India is a significant producer of comparable merchandise. Although we have no information to indicate that India produces creatine, it does produce other products within the same customs heading, and it produces other fine chemicals with nutritional characteristics. Accordingly, we have calculated NV using Indian values for the PRC producer's factors of production. We have obtained and relied upon publicly available information wherever possible.

Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC which produced creatine for Blue Science during the POR. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For the distances reported, we added to Indian CIF surrogate values a surrogate freight cost using the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the United States Court of Appeals for the Federal Circuit's ("CAFC") decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1807–1908 (Fed. Cir. 1997). For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*.

Many of the inputs in the production of creatine are considered business proprietary data by the respondent. Due to the proprietary nature of this data, we are unable to discuss many of the inputs in this preliminary results notice. For a complete analysis of surrogate values, see the memorandum from the Team to the file ("Factors of Production Memorandum"), dated October 31, 2001.

We valued labor using the method described in 19 CFR 351.408(c)(3).

Consistent with our approach in *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 66 FR 15076 (March 15, 2001) ("*Manganese Metal*"), we calculated our surrogate value for electricity based on electricity rate data from the *Energy Data Directory & Yearbook*, (1999/2000) published by Tata Energy Research Institute. We based the value of diesel on prices reported by the International Energy Agency ("IEA"), 1st quarter 2000.

We based our calculation of factory overhead, SG&A, and profit on the financial statements of Sanderson Industries, Ltd. ("Sanderson"), an Indian chemical producer. The products produced by Sanderson appear to be manufactured using bulk chemical processes, similar to the processes used by the PRC creatine producers. These were the same values used in the *LTFV Investigation*.

To value truck freight rates, we used a 2000 rate from a quote from an Indian trucking company.

For packing materials we used import values from the *Monthly Foreign Trade Statistics of India; Volume II Imports*.

Preliminary Results of the Review

We preliminarily find the weighted average dumping margin for Blue Science for the period July 30, 1999, through January 31, 2001 to be 8.13 percent.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). Any hearing, if requested, will be held approximately 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. The Department will issue a notice of final results of this administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to the Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

Cash Deposit Requirements

To calculate the cash-deposit rate for the company included in this administrative review, we divided the total dumping margins for the company by the total net value of the company's sales during the review period.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of creatine entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Blue Science will be the rate established in the final results of this administrative review; (2) for a company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) the cash deposit rate for all other PRC exporters will be 153.70 percent, the PRC-wide rate established in the *LTFV investigation*; and (4) the cash deposit rate for a non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These cash requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 31, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–27857 Filed 11–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Cut-to-Length Carbon Steel Plate From Romania; Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of the Antidumping Duty Administrative Review.

SUMMARY: On October 1, 2001, in response to a request made by Sidex S.A. (Sidex), the Department of Commerce (the Department) published a notice of initiation of antidumping duty administrative review of cut-to-length carbon steel plate from Romania, for the period August 1, 2000 through July 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 49924 (October 1, 2001). Because Sidex has timely withdrawn the only request for review, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: November 6, 2001.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2924 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On August 19, 1993 the Department published the antidumping duty order on cut-to-length carbon steel plate from Romania. *See Antidumping Duty Order: Certain Cut-to-Length Carbon Steel Plate from Romania*, 58 FR 44167 (August 19, 1993). On August 1, 2001, the Department published a notice of "Opportunity to Request Administrative Review" of the antidumping duty order for the period August 1, 2000 through July 31, 2001. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 39729 (August 1, 2001). On August 31, 2001, Sidex, a producer of the subject merchandise, requested that the Department conduct an administrative review for the period August 1, 2000 through July 31, 2001. There were no other requests for review. On October 1, 2001, the Department published a notice of initiation of antidumping duty administrative review of cut-to-length carbon steel plate from Romania, in accordance with 19 CFR 351.221(c)(1)(i). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 49924 (October 1, 2001). On October 10, 2001, Sidex withdrew its request for review.

Rescission of Review

The Department's regulations provide that the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). Sidex's withdrawal of their request for review was within the 90-day time limit. As a result of the withdrawal of the request for review and because the Department received no other requests for review, the Department is rescinding the administrative review for the period August 1, 2000 through July 31, 2001, and will issue appropriate assessment instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with 19 CFR 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: October 30, 2001.

Edward C. Yang,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 01–27858 Filed 11–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by the petitioner, the Department of Commerce is conducting an administrative review of the antidumping duty order on extruded rubber thread from Malaysia. This review covers three manufacturers/exporters of the subject merchandise to the United States (Filati Lastex Sdn. Bhd., Heveafil Sdn. Bhd./Filmax Sdn. Bhd., Inc., and Rubberflex Sdn. Bhd.). This is the eighth period of review, covering October 1, 1999, through September 30, 2000.

We have preliminarily determined that sales have been made below the normal value by each of the three companies subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments in this proceeding are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: November 6, 2001.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0656 or (202) 482–3874, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2000, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on extruded rubber thread from Malaysia (65 FR 63057).

In accordance with 19 CFR 351.213(b)(1), on October 27, 2000, the petitioner, North American Rubber Thread, requested an administrative review of the antidumping order covering the period October 1, 1999, through September 30, 2000, for the following producers and exporters of extruded rubber thread: Filati Lastex Sdn. Bhd. (Filati), Heveafil Sdn. Bhd./ Filmax Sdn. Bhd. (Heveafil), and Rubberflex Sdn. Bhd. (Rubberflex).

On November 22, 2000, the Department initiated an administrative review for Filati, Heveafil, and Rubberflex (65 FR 71299). The Department also issued questionnaires to each of these companies in November.

In March 2001, we received responses from Filati, Heveafil, and Rubberflex.

In May and June 2001, we issued supplemental questionnaires to Filati, Heveafil, and Rubberflex. We received responses to these supplemental questionnaires in July and August 2001.

In August 2001, we conducted verification of Filati's U.S. branch, Filati Lastex Elastofibre (Filati USA).

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this review is dispositive.

Period of Review

The period of review (POR) is October 1, 1999, through September 30, 2000.

Normal Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than normal value (NV), we compared the constructed export price (CEP) to the NV for all three respondents, as specified in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. We also compared the export price (EP) to the NV for Rubberflex, as specified in those sections.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Review" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade (*i.e.*, sales within the contemporaneous window which passed the cost test), we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in sections B and C of our antidumping questionnaire, or constructed value (CV), as appropriate.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as EP or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

Filati, Heveafil, and Rubberflex claimed that they made home market sales at only one level of trade (*i.e.*, sales to original equipment manufacturers). Because each of these respondents performed the same selling activities for sales to all customers in the home market, we determined that all home market sales by each of these companies were at the same level of trade.

The respondents made CEP sales during the POR. In order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP for these companies, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States. We found that all of the respondents performed essentially the same selling functions in their sales offices in Malaysia for both home market and U.S. sales. Therefore, the respondents' sales in Malaysia were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents a F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to Filati, Heveafil, or Rubberflex.

In addition, Rubberflex made EP sales during the POR. We compared the selling functions performed for its home market and EP transactions in order to determine whether a level of trade adjustment is warranted. We found that Rubberflex performed essentially the same selling functions for its U.S. and home market sales and that, therefore, no level of trade adjustment is warranted for it.

For further discussion, see the *Concurrence Memorandum* dated October 31, 2001.

Export Price and Constructed Export Price

For Filati and Heveafil, we based the U.S. price on CEP where sales to the unaffiliated purchaser took place after importation into the United States, in accordance with section 772(b) of the Act. We also based U.S. price on CEP for Filati and Heveafil where the merchandise was shipped directly to certain unaffiliated customers because we found that title passed from the U.S. affiliates of the respondents to the first unaffiliated U.S. customer after importation by the U.S. affiliate into the United States.

For Rubberflex, we based the U.S. price on EP, in accordance with section 772(a) of the Act, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation, and we based the U.S. price on CEP where sales to the unaffiliated purchaser took place after importation into the United States, in accordance with section 772(b) of the Act.

A. Filati

We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for discounts.[1] In addition, where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses, and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. For those U.S. sales for which Filati did not report a date of payment, we have used the signature date of these preliminary results (*i.e.*, October 31, 2001) as the date of payment and calculated credit expenses accordingly.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Filati and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

B. Heveafil

We calculated CEP based on the starting price to the first unaffiliated customer in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act. We disallowed the revenue earned on the sale of a building as an offset to warehousing expenses and recalculated warehousing expenses accordingly.

We made additional deductions to CEP, where appropriate, for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We disallowed the full amount of revenue earned on the sale of a building as an offset to indirect selling expenses. Rather, we recalculated these expenses to allow an offset only in the amount of the gain on the building.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Heveafil and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

C. Rubberflex

We based EP or CEP, as appropriate, on the starting price to the first unaffiliated customer in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, and U.S. inland freight in accordance with section 772(c)(2)(A) of the Act. In addition, we made deductions from the starting price for Malaysian export taxes in accordance with section 772(c)(2)(B) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs and U.S. warehousing expenses related to returned merchandise, in accordance with section 772(d)(1) of the Act. For those U.S. sales for which Rubberflex did not report a date of payment, we have used the signature date of these preliminary results (*i.e.*, October 31, 2001) as the date of payment and calculated credit expenses accordingly.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Rubberflex and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home market during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Filati, Heveafil, and Rubberflex had made home market sales at prices below their costs of production (COPs) in this review because the Department had disregarded sales below the COP for these companies in the most recent administrative review. *See Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review*, 65 FR 6140, 6143 (Feb. 8, 2000). As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A

[1] We reclassified credits related to quality problems from rebates to discounts because the customer paid Filati the invoice value less the credit amount.

and packing costs, in accordance with section 773(b)(3) of the Act.

We compared the COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, discounts, rebates, and packing costs.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of extruded rubber thread, more than 20 percent of each respondent's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of extruded rubber thread for which there were no comparable home market sales in the ordinary course of trade, we compared EP or CEP, as appropriate, to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

Company-specific calculations are discussed below.

A. Filati

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. For all price-to-price comparisons, we made deductions from the starting price for rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses and bank charges. For those home market sales for which Filati did not report a date of payment, we have used the signature date of these preliminary results (*i.e.*, October 31, 2001) as the date of payment and calculated credit expenses accordingly. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

For CV-to-CEP comparisons, we made an adjustment, where appropriate, for differences in credit expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses, up to the amount of the U.S. commission.

B. Heveafil

In all instances, NV for Heveafil was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. We made deductions for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

C. Rubberflex

In all instances, NV for Rubberflex was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. For all price-to-price comparisons, we made deductions from the starting price for discounts,[2] where appropriate. We also made deductions from the starting price for foreign inland freight expenses, pursuant to section 773(a)(6)(B) of the Act. Rubberflex failed to report foreign inland freight expenses on certain sales delivered using its own trucks. Because Rubberflex failed to provide the requested information, pursuant to section 776(a)(2)(B) of the Act, as facts available, we have used the lowest third party inland freight expense reported in the home market for the freight expense on these transactions.

Pursuant to section 773(a)(6)(C)(iii) of the Act, we made circumstance-of-sale adjustments for differences in credit expenses.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark for the daily rate, in accordance with established practice.

[2] We reclassified credits related to quality problems from rebates to discounts because the customer paid Rubberflex the invoice value less the credit amount.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period October 1, 1999, through September 30, 2000:

Manufacturer/exporter	Percent margin
Filati Lastex Sdn. Bhd.	18.66
Heveafil Sdn. Bhd./Filmax Sdn. Bhd.	0.83
Rubberflex Sdn. Bhd.	0.00

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held seven days after the date rebuttal briefs are filed. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs, within 120 days of the publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We calculate importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales, where available. Where the entered value is not available, we calculate a quantity-based assessment rate. These rates will be assessed uniformly on all entries of particular importers made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent of entered value). The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for Filati, Heveafil, and Rubberflex will be the rates established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.16 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This administrative review and notice are in accordance with section 751(a)(1) of the Act and 777(i)(1) of the Act.

Dated: October 31, 2001.

Faryar Shirzad,

Assistant Secretary, for Import Administration.

[FR Doc. 01–27856 Filed 11–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Notice of Extension of Time Limit for Preliminary Results of Antidumping New Shipper Review: Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China

EFFECTIVE DATE: November 6, 2001.

FOR FURTHER INFORMATION CONTACT: Sally Gannon Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0162.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (2000).

Background

In accordance with 19 CFR 351.213(b)(2), the Department received a timely request from petitioner, Paint Applicator Division of the American Brush Manufacturers Association (Paint Applicator Division), that we conduct an administrative review of the sales of Hebei Founder Import & Export Company (Founder) and Hunan Provincial Native Products Import & Export Corp. (Hunan). On March 22, 2001, the Department initiated an administrative review of the antidumping duty order on natural bristle paintbrushes and paintbrush heads for the period of review (POR) of February 1, 2000 through January 31, 2001 for Founder and Hunan. On September 6, 2001, the Department rescinded the administrative review with respect to Founder because it did not sell, ship, or enter the subject merchandise during the POR. *See Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China: Notice of Rescission in Part of Antidumping Duty Administrative Review*, 66 FR 47450 (September 12, 2001).

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. The Department has determined that it is not practicable to complete the preliminary results of this review for Hunan within the time limits mandated by section 751(a)(3)(A) of the

Act and section 351.213(h)(1) of the Department's regulations because certain complex issues need to be examined, including the terms of Hunan's business relationship with its supplier and whether Hunan's single sale during the POR was a sample sale.

Therefore, in accordance with these sections, the Department is extending the time limits for the preliminary results by 120 days, until no later than February 28, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: October 25, 2001.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–27853 Filed 11–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–122–838]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 6, 2001.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Constance Handley, Office 5, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0650 or (202) 482–0631, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain softwood lumber products from Canada are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on April 23, 2001. *See Notice of Initiation of Antidumping Duty Investigation: Certain Softwood Lumber Products From Canada*, 66 FR 21328, April 30, 2001 (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred:

On May 18, 2001, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Canada of softwood lumber.

From the outset of this investigation, the Department has recognized that there is a large number of softwood lumber producers in Canada, who sell a myriad of different products through hundreds of thousands of individual transactions. The Department has sought to work with interested parties to appropriately limit the data reporting requirements, so as to make the proceeding more manageable for all concerned.

Accordingly, on April 25, 2001, in advance of issuing antidumping questionnaires, the Department issued a letter to interested parties, including the petitioners [1] and the 15 largest known producers/exporters of softwood lumber from Canada, soliciting comments on issues of respondent selection, fair value comparison methodology, and possible limitation of reporting of sales and cost data. We received comments from the interested parties on May 2, 2001, and rebuttal comments on May 8, 2001.

Upon consideration of the comments received with respect to respondent selection, on May 25, 2001, the Department selected as mandatory respondents the six largest producers/exporters of subject merchandise: Abitibi-Consolidated Inc. (Abitibi); Canfor Corporation (Canfor); Slocan Forest Products Ltd. (Slocan); Tembec Inc. (Tembec); West Fraser Timber Co. Ltd. (West Fraser), and Weyerhaeuser Company (Weyerhaeuser). The Department concluded also that, due to the vast workload entailed by the investigation of these six companies, it would not be able to examine voluntary respondents. *See Selection of Respondents*, below.

[1] The petitioners are the coalition for Fair Lumber Imports Executive Committee; the United Brotherhood of Carpenters and Joiners; and the Paper, Allied-Industrial, Chemical and Energy Workers International Union.

On May 25, 2001, the Department issued an antidumping questionnaire to the selected respondents.[2] In view of the large number of transactions involved, the Department instructed respondents to limit the reporting of U.S. and home market sales to identical products sold in both markets, provided that such products accounted for at least 33 percent of all merchandise sold to the United States during the period of investigation.

On June 7, 2001, the Department was contacted by Abitibi, who inquired whether the Department would consider further limiting the reporting requirements to certain major product groups. The Department agreed to consider such a proposal, provided that there was unanimous agreement among the interested parties. On June 19, 2001, the six mandatory respondents agreed to limit the reporting of sales and costs to specific products. On June 20, 2001, the petitioners submitted a letter proposing that the Department adopt the proposal set forth by the mandatory respondents. *See Product Comparisons*, below. The Department agreed to this proposal.

Throughout June and July 2001, several meetings were held with counsel for the six mandatory respondents and the petitioners, to discuss a number of company-specific reporting issues, which resulted in the Department agreeing to exclude certain additional sales from the reporting requirements. These meetings are described in memoranda placed in the official file. *See, e.g.*, Memorandum from the Team to the File (June 15, 2001) and Memorandum from the Team to the File (July 10, 2001).

The respondents submitted their initial responses to the antidumping questionnaire in late June 2001. After analyzing these responses, we issued supplemental questionnaires to the respondents to clarify or correct the initial questionnaire responses. We received timely responses to these questionnaires.

On August 9, 2001, we requested that interested parties submit comments on the appropriateness and feasibility of matching sales of U.S. merchandise to home market sales of similar merchandise, in the event that all home market sales of the identical comparison merchandise were found to be sold at below the cost of production and disregarded. Each of the mandatory respondents stated that the Department must attempt to compare U.S. sales to home market sales of similar products before resorting to constructed value. *See Product Comparisons*, below. The petitioners argued that the Department should only make identical comparisons.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received requests to postpone the final determination from Canfor, Slocan, Tembec, West Fraser, and Weyerhaeuser. In their requests, the respondents consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, the request for postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondents' request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

Period of Investigation

The period of investigation (POI) is April 1, 2000, through March 31, 2001. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (*i.e.*, April 2, 2001).

Scope of Investigation

The products covered by this investigation are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood mouldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Issues

In the *Initiation Notice*, we invited all interested parties to raise issues and comment regarding the product coverage under the scope of this investigation. We received numerous comments, including scope clarification requests, scope exclusion requests, and requests for determinations of separate classes or kinds. The requests covered approximately 50 products, ranging from species, like Western Red Cedar and Douglas Fir, to fencing products, bed frame components, pallet stock, and joinery and carpentry products. We published a preliminary list of scope exclusions in the *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186–43188 (August 17, 2001) (*CVD Preliminary*).

In our review of the comments received since the first list of product exclusions was issued in the *CVD Preliminary*, we found that some of the excluded product definitions required further clarification. Based on our analysis of the comments received, we have amended the list of excluded products that was originally presented in the *CVD Preliminary*. The amended list of scope exclusions is divided into two groups:

A. Softwood lumber products excluded from the scope:

1. Trusses and truss kits, properly classified under HTSUS 4418.90
2. I-Joist beams
3. Assembled box spring frames
4. Pallets and pallet kits, properly classified under HTSUS 4415.20
5. Garage doors
6. Edge-glued wood, properly classified under HTSUS 4421.90.98.40
7. Properly classified complete door frames.
8. Properly classified complete window frames
9. Properly classified furniture

B. Softwood lumber products excluded from the scope only if they meet certain requirements:

1. *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

2. *Box-spring frame kits:* if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.

3. *Radius-cut box-spring-frame components*, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

4. *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.

We have preliminarily determined that the products listed in groups (A) and (B) above are outside the scope of

this investigation. (These findings will also apply to the companion CVD investigation.) *See Memorandum to Bernard T. Carreau from Maria MacKay, Gayle Longest, David Layton on Scope Clarificotion in the Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada* (October 30, 2001), which is on public file in the CRU, room B–099 of the main Commerce building. The Department will issue its preliminary findings on requests for separate class or kind treatment for certain softwood lumber products prior to the briefing period, to allow parties the opportunity to comment on these findings prior to the final determination.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in this proceeding (including the complex corporate structures of many lumber manufacturers, the potential for collapse of respondents with affiliated producers/exporters, the large number of transactions involved, and issues of product matching), as well as the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. We found that given our resources, we would be able to investigate the six producers/exporters with the greatest export volume, as identified above. For a more detailed discussion of respondent selection in this investigation, *see* Memorandum from the Team to Bernard Carreau (May 25, 2001). In that memorandum, we indicated that the Department would not be able to investigate voluntary respondents, unless one of the mandatory respondents failed to answer the antidumping questionnaire or additional resources became available.

The Department received responses to the antidumping questionnaire from three producers/exporters of the subject merchandise, Weldwood of Canada Limited, Beaubois Coaticook Inc., and Saguenay Inc., each requesting that it be investigated as a voluntary respondent. On July 18, 2001, the Department issued a memorandum stating, and notified the parties, that, as indicated in the May 25, 2001, memorandum, because none of the mandatory respondents failed to respond, the Department would not be able to examine any voluntary respondents.

Collapsing Determinations

The Department's regulations provide for the treatment of affiliated producers as a single entity where: (1) Those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) the Department concludes that there is a significant potential for the manipulation of price or production.[3] In identifying a significant potential for the manipulation of price or production, the Department may consider such factors as: (i) The level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[4] These factors are illustrative, and not exhaustive.

In this investigation, we have preliminarily determined to collapse Abitibi with affiliate Scieries Saguenay Ltee. (Saguenay). *See* Memorandum from the Team to Bernard Carreau (July 18, 2001).[5] We have also determined to collapse Canfor with affiliates Howe Sound Pulp and Paper Limited Partnership (Howe Sound), Lakeland Mills Ltd. (Lakeland), and The Pas Lumber Company Ltd. (The Pas). *See* Memorandum from the Team to Bernard Carreau (August 23, 2001).[6]

In addition to the companies collapsed by the Department, certain respondents determined that they should be collapsed with their affiliates. Specifically, in its questionnaire response, Abitibi collapsed the sales of its affiliates Produits Forestiers Petit Paris, Inc., Produits Forestiers La Tuque, Inc., and Societe en Commandite Scierie Opticiwan. Tembec collapsed the sales of its affiliates Marks Lumber Ltd. (Marks) and Excel Forest Products (Excel)[7] in its questionnaire response. West Fraser collapsed the sales of its affiliates West Fraser Forest Products Inc. (WFFP) and Seehta Forest Products Ltd. in its questionnaire response. Weyerhaeuser collapsed the sales of its affiliate Weyerhaeuser Saskatchewan Ltd. in its questionnaire response. In addition, the Department excused Weyerhaeuser from reporting sales of its subsidiary, Monterra Lumber Mills Ltd., due to the fact that these sales were a small portion of its total sales.[8]

Product Comparisons

Pursuant to section 771(16) of the Act, all products produced by the respondents that meet the definition of the scope of the investigation and were sold in the comparison market during the POI fall within the definition of the foreign like product.

All parties to this proceeding have agreed, from the outset of the investigation, that the sheer number of different products sold by the respondents would significantly complicate the investigation. With a view to easing this administrative burden, the Department's questionnaire initially instructed respondents to limit the reporting of U.S. and home market sales to identical products sold in both markets, provided that such products accounted for at least 33 percent of all merchandise sold to the United States during the period of investigation. In defining identical products, the Department instructed respondents to consider the following physical characteristics, which were identified after consideration of comments from interested parties: (1) Product category (*e.g.*, dimensional lumber, timbers, boards); (2) species (*e.g.*, Western SPF, Western Red Cedar), (3) grade, (4) moisture content, (5) thickness, (6) width, (7) length, (8) surface finish, (9) end trimming, (10) further processing (*e.g.*, edged, drilled, notched).

As noted above, on June 7, 2001, Abitibi contacted the Department, inquiring as to whether the Department would consider further limiting the reporting requirements to certain major product groups. The Department agreed to consider such a proposal, provided that (1) all of the respondents and the petitioners indicated, on the record, their agreement, (2) the submission provided a clear definition of each product for which the parties requested exclusion, and (3) to the extent that a product was excluded from the reporting requirements, it would be excluded for all respondents. *See* Memorandum from the Team to the File (June 7, 2001).

On June 19, 2001, the six mandatory respondents jointly submitted a letter proposing further narrowing of product reporting requirements. Specifically, the proposal was to limit reporting to dimension lumber of certain species (Western SPF, Eastern SPF, Douglas Fir/Western Larch, Western Hemlock/Amabilis Fir, and Western Red Cedar); the sole exception to this rule was that decking and timber would be reported for Western Red Cedar products. On June 20, 2001, the petitioners submitted a letter in which they encouraged the Department to adopt the joint proposal set forth by the mandatory respondents. The Department agreed to this proposal by letters to the parties on June 26, 2001.

The petitioners argued that the Department should proceed immediately from identical matches to constructed value when identical comparisons are below cost. *See* the petitioners' August 21, 2001 submission. All six of the mandatory respondents stated that the Department must attempt to compare U.S. sales to home market sales of similar products before resorting to constructed value. Upon consideration of those comments, the Department requested that each respondent submit a complete home market sales listing, subject to the reporting limitations outlined in the Department's June 26, 2001 letter.[9] The Department received timely responses to these requests. *See* letters from the Department of Commerce to Abitibi, Canfor, Slocan, Tembec, West Fraser, and Weyerhaeuser (September 14, 2001).

In limiting the reporting requirements in this manner, it was our initial intention to compare U.S. sales to home market sales of identical products only. However, during the course of this investigation, it became apparent that a very large number of home market sales might have been made at below the cost of production (*see Cost of Production*, below), raising the issue of whether we should compare the U.S. products to similar merchandise sold in Canada or to a normal value based on constructed value. Although we have established limited reporting requirements for this investigation, this does not preclude our attempting to compare U.S. sales to similar home market sales where possible, before relying on CV as the basis for normal value. This is consistent with the practice implemented under Policy Bulletin 98.1, *Basis for Normal Value When Foreign Market Sales Are Below Cost* (February 23, 1998), where the Department stated that it "will use constructed value as the basis for normal value only when there are no above-cost sales that are otherwise suitable for comparison." (Pursuant to the decision by the Court of Appeals of the Federal Circuit in *Cemex* v. *United States*, 133 F.3d 897,904 (Fed. Cir.1998), the Department does not automatically resort to constructed value, in lieu of comparison market sales, as the basis for normal value, where sales of merchandise identical to that sold in the United States are disregarded as below cost.) Accordingly, the Department considered whether it was feasible and appropriate in this investigation to make comparisons of similar products, where identical comparisons are below cost. On August 9, 2001, we requested that interested parties comment on this issue.

In accordance with the Department's established practice, we have determined that, where possible, it is appropriate to make comparisons of similar products. To this end, the Department has developed a product hierarchy which takes into account the expressed views of the interested parties.

To the extent that the grades reported by the respondents did not follow the grading system established by the National Lumber Grading Association (NLGA), the Department requested that all respondents assign the NLGA equivalent grade for all sales, along with supporting documentation describing the physical characteristics of any non-NLGA grade. Certain of Slocan's proprietary grades have specifications above existing NLGA grade categories. For these grades, we assigned a new code representing a non-NLGA, premium grade product. For certain other grades, the grade codes and descriptions did not match each other. We have recoded these grades. *See* October 30, 2001 memorandum to Gary Taverman: Treatment of Slocan Forest Products Ltd.s Proprietary Lumber Grades.

Further, we note that spruce-pine-fir is designated as a species combination by the NLGA. Otherwise, Eastern and Western Spruce-Pine-Fir are identical from the viewpoints of the markets and with respect to end-use. The "eastern" and "western" designations are simply a regional distinction which is irrelevant for purposes of product comparison in this investigation. Therefore, we have combined Eastern Spruce-Pine-Fir and Western Spruce-Pine-Fir into a single species. *See* October 30, 2001, memorandum to Gary Taverman: Comparability of Eastern and Western Spruce-Pine-Fir, which is on file in the CRU.

Section 773(a)(6)(C)(ii) of the Act provides for an adjustment to normal value for differences in physical characteristics of the products being compared (*i.e.*, a difference in merchandise (difmer) adjustment). Where we do not have home market sales within the ordinary course of trade on which to base normal value for comparison with sales of the identical products sold to the United States, we have attempted to base normal value on sales of the most similar product for which we have adequate information to perform a difmer adjustment.

As noted above, where we determine that the merchandise sold to the United States does not have the same physical characteristics as the merchandise sold

[3] *See* 19 CFR 351.401(f)(1).

[4] *See* 19 CFR 351.401(f)(2).

[5] While the collapse of Abitibi and Saguenay was appropriate given the relationship of the two companies, the Department found that Saguenay made only a small volume of sales during the POI relative to the volume of sales made by Abitibi. We therefore instructed Abitibi not to report those sales. *See* Memorandum from the Team to Bernard Carreau (August 24, 2001). Nonetheless, consistent with the Department's decision to collapse Abitibi with Saguenay, the dumping margin calculated using Abitibi's data will extend to Saguenay.

[6] While the collapse of Canfor with Lakeland, The Pas, and Howe Sound was appropriate given the relationship of these companies, the Department found that Howe Sound made only a small volume of sales during the POI. We therefore instructed Canfor not to report sales by Howe Sound. *See* Memorandum from the Team to Bernard Carreau (September 6, 2001). Nonetheless, consistent with the Department's decision to collapse Canfor with Howe Sound, the dumping margin calculated using Canfor's data (including the data of Lakeland and The Pas) will extend to Howe Sound.

[7] While the collapse of Tembec with Marks and Excel was appropriate given the relationship of the companies, the Department found that Marks made only a small volume of sales during the POI relative to the volume of sales made by Tembec. We therefore instructed Tembec not to report those sales. *See* Memorandum from the Team to Gary Taverman (July 11, 2001). Additionally, Tembec stated in its section A questionnaire response that it would not report sales or costs for Excel unless otherwise instructed by the Department. In a letter submitted to the Department on June 15, 2001, the petitioners stated they would not object to the exclusion of sales made by Excel from the reporting requirements. The Department did not request that Tembec submit sales and cost information for Excel. Therefore, the dumping margin calculated using Tembec's data will extend to both Marks and Excel.

[8] *See* Memorandum from the Team to Gary Taverman (July 16, 2001).

[9] Certain respondents had already submitted databases containing data for similar merchandise, while others had not. Among those respondents that had submitted data for similar merchandise, some had reported all similar sales, while others had reported only selected similar sales. In order to ensure consistency across all respondents, the Department instructed all companies to submit home market sales on a uniform basis.

in the foreign market, and where those differences have an effect on prices, the statute provides for a reasonable allowance for such differences in the Department's calculation of normal value. As explained in Policy Bulletin 92.2, *Differences in Merchandise; 20% Rule*, (July 29, 1992), the Department has "rarely been able to determine the direct price effect of a difference in merchandise." As a result, difmer "adjustments are based almost exclusively on the cost of the physical difference." Nevertheless, in addressing comments to its proposed regulations in 1997, the Department specifically retained language preserving, as an option, the use of market value in measuring a difmer.[10]

In applying our normal methodology for calculating a difmer adjustment, we first attempted to adjust normal value by the net difference in the variable manufacturing costs associated with the differences in the physical characteristics of the two products. For purposes of the preliminary determination, the Department is relying on the cost databases submitted by the respondents, which allocate costs by quantity. *See Cost of Production Analysis, Value-Based* vs. *Quantity-Based Allocation* section, below. While the companies reported their variable manufacturing costs for each unique product, there were a number of actual physical differences between products for which the respondents were unable to identify a cost difference. For instance, Abitibi stated that "cost differences were provided so as to permit the calculation of cost-based difmers, for example, between Eastern SPF and Western SPF, between green and dried products, and between rough and dressed products. There are certain other product characteristics for which it will not be possible in this case to calculate a difference in production costs."[11] Likewise, none of the other respondents was able to report differences in production costs for certain differences in physical characteristics, including, *e.g.*, thickness, width, and length. As a result, for most situations where we attempted to compare U.S. sales to home market sales of similar products, we were unable to make a cost-based difmer adjustment.

Therefore, for this preliminary determination, we have concluded that it is not appropriate to match products that do not have the following identical physical characteristics: grade, thickness, width and length. These are significant physical characteristics that cannot be accounted for by means of a cost-based difference-in-merchandise adjustment. The respondents in this investigation have reported that their methods of tracking costs and the nature of producing lumber do not allow them to distinguish costs by grade or size. Specifically, the respondents have reported that they cannot report costs that distinguish between factors other than moisture, surface finish, end trim and further manufacturing. Our analysis confirms that most lumber produced within a given species has the same production cost. *See Cost of Production Analysis, Value-Based* vs. *Quantity-Based Allocation* section, below.

The respondents have cited to *UHFC Company* v. *United States*, 916 F.2d 689 (Fed. Cir. 1990), where the Court of Appeals for the Federal Circuit (CAFC), in that specific case, instructed the Department on remand to match across different strengths/grades, despite the fact that differences in costs could not be calculated. In that case, the product involved was animal glue, where different strengths/grades were produced at the same time, using the same production process. The respondents claim that in accordance with the Court's decision in that case, "the Department must calculate a value-based difference-in-merchandise in this case in those instances where similar products are compared and there is no variable cost data available to permit the calculation of a cost-based difmer." *See* August 16, 2001, letter from Abitibi (at 8). Among the suggested bases for a value-based difmer adjustment were data published in Random Lengths, respondents' own reported sales data covering the POI, or historical pricing data.

We disagree that the *UHFC* decision requires the calculation of a value-based difmer adjustment in this case. First, this investigation is distinguishable from the circumstances of the *UHFC* case, where there was only a single difference, *i.e.* glue strength, between the products. In the instant investigation, there are several significant differences in physical characteristics which affect price. As a result, we have determined that we have no comparable basis on which to adjust for physical differences between similar products based upon market value, as has been suggested by the respondents. By Abitibi's own admission, Random Lengths data are not comprehensive enough to identify all of the differences among the entire range of products. *See* Abitibi's submission of August 16, 2001, at page 8, footnote 4.

Second, even if the Department had the pricing data needed to make a value-based difmer adjustment, it would not be appropriate to base the adjustment on sales outside the ordinary course of trade. As there were no home market sales in the ordinary course of trade during the POI of many of the products involved here, no value-based difmer adjustment could be calculated for many of the comparisons based on POI sales. With respect to sales outside the POI, we have no basis on which to determine that those sales were in the ordinary course of trade, particularly regarding products for which all sales during the POI were outside the ordinary course of trade.

Furthermore, using the prices of U.S. sales as the basis for a value-based difmer adjustment is also not appropriate, as the fairness of these prices is the focus of this investigation. The fact that these sales are the basis of an allegation of dumping renders them inappropriate for any consideration in the calculation of normal value. While value-based difmer adjustments involving U.S. sales may be attributable to differences in physical characteristics between two products, they may also be attributable to dumping. For these reasons, we find no basis for comparing sales of similar products using a value-based difmer adjustment.

As a result, we have matched sales of subject merchandise to comparison market sales of similar products only where we were able to quantify a cost-based difmer adjustment for differences in end trim, surface finish and further processing. While the respondents did report costs for the moisture content characteristic, we were unable to consider those costs for purposes of the difmer adjustment because to do so would have resulted in bypassing other physical characteristics (*i.e.*, width, length and thickness) for which we could not quantify a difmer adjustment.

This methodology is consistent with other antidumping proceedings that involved foreign like product with significant differences in physical characteristics that cannot be accounted for by means of a cost-based difmer adjustment. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Fresh Tomatoes from Mexico*, 61 FR 56608, 56610 (November 1, 1996), and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Fresh Atlantic Salmon from Chile*, 63 FR 2664, 2666 (January 16, 1998), accord, *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411 (June 9, 1998) (*Atlantic Salmon*). *See*, also, *Notice of Preliminary Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 66 FR 51010, 51012 (October 5, 2001), where the Department stated: "Since the respondents have reported that they cannot report costs that distinguish between factors other than type, we have matched sales of subject merchandise to home-market sales of identical type, color, size, and grade, but not to home-market sales of similar merchandise."

[10] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27370 (May 19, 1997) and section 351.411(b) of the Department's regulations.

[11] *See* Abitibi's August 16, 2001 letter to the Secretary (at 5–6).

Fair Value Comparisons

To determine whether sales of softwood lumber from Canada were made in the United States at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the *Export Price and Constructed Export Price and Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs and compared these prices to weighted-average normal values or CVs, as appropriate.

Export Price and Constructed Export Price

In accordance with section 772 of the Act, we calculated either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on prices charged to the first unaffiliated customer in the United States. We found that all of the respondents made a number of EP sales during the POI. These sales are properly classified as EP sales because they were made outside the United States by the exporter or producer to unaffiliated customers in the United States prior to the date of importation.

We also found that each respondent made CEP sales during the POI. Some of these sales involved softwood lumber sold through vendor-managed inventory (VMI). Because such sales were made by the respondent after the date of importation, the sales are properly classified as CEP sales. In addition, both West Fraser and Weyerhaeuser made sales to the United States through U.S. subsidiaries.

We generally relied on the date of invoice as the date of sale. Consistent with the Department's practice, where the invoice was issued after the date of shipment, we relied on the date of shipment as the date of sale.

The POI overlaps with the last year of the Softwood Lumber Agreement (SLA). Under the SLA, Canadian exporters paid fees for exports over certain quantities. We allocated the SLA fees of each respondent across all transactions in its U.S. sales file and treated them as an export tax in making adjustments to U.S. prices.

We made company-specific adjustments as follows:

(A) Abitibi

Abitibi made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Abitibi to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made by Abitibi to the U.S. customer through VMI or reload centers after importation into the United States. EP and CEP sales were based on the packed, delivered, ex-mill, FOB reload center, and CIF U.S. port (ocean freight paid) prices, as applicable.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include internal freight incurred in transporting merchandise to reload and VMI centers, ocean freight and associated expenses for shipments by ocean vessel, as well as freight to the U.S. customer, warehousing, U.S. and Canadian brokerage, inland insurance, and, when applicable, marine insurance. We also deducted any discounts, rebates and export taxes.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (credit and advertising expenses) and imputed inventory carrying costs. Abitibi did not report any other indirect selling expenses incurred in the United States. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act.

(B) Canfor

We based EP on delivered and FOB prices to unaffiliated customers in the United States. We adjusted the starting price by the amount of billing adjustments, early payment discounts, and rebates. We reduced the starting price, where appropriate, for movement expenses including foreign inland freight, U.S. customs duty, U.S. freight, warehousing, and miscellaneous movement charges. We offset the amount of freight expenses by the amount of reported rebates from the freight carriers. We also deducted export taxes from the starting price.

In addition to these adjustments, for CEP sales, in accordance with section 772(d)(1) of the Act, we adjusted the starting price by the amount of direct selling expenses and revenues (*i.e.*, credit expenses and interest revenue). We further reduced the starting price by the amount of indirect selling expenses incurred in the United States. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act.

(C) Slocan

Slocan made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Slocan to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made by Slocan to the U.S. customer through VMI or reload centers after importation into the United States. EP and CEP sales were based on the packed, delivered, ex-mill, and FOB reload center prices, as applicable.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include domestic freight incurred in transporting merchandise to reload centers and to VMI customers, as well as freight to U.S. customer, warehousing, U.S. and Canadian brokerage. We also deducted from the starting price any discounts, rebates and export taxes.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*i.e.*, credit and inventory carrying costs)

and imputed inventory carrying costs. Slocan did not report any other indirect selling expenses incurred in the United States. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act.

(D) Tembec

Tembec made both EP and CEP transactions during the POI. We calculated an EP for sales where the merchandise was sold directly by Tembec to the first unaffiliated purchaser in the United States prior to importation. We calculated a CEP for sales made by Tembec to the U.S. customer through U.S. reload facilities and through VMI facilities. EP and CEP sales were based on the packed, delivered prices.

Tembec did not report making CEP sales during the POI. However, because the date of sale is the date the products are shipped from the reload centers and the invoice date is either the date of shipment or the following business day, the Department is treating sales made through U.S. reload centers as CEP sales. For these same reasons, the Department has determined that all sales made to Tembec's VMI customer are properly classified as CEP sales.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight incurred in transporting merchandise to Canadian reload centers and warehousing expenses, as well as freight to the U.S. customer or reload facility, warehousing expenses, and U.S. brokerage. We also deducted from the starting price any discounts, rebates and export taxes.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including indirect selling expenses and direct selling expenses (credit expenses). Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act.

(E) West Fraser

West Fraser made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by West Fraser to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made by West Fraser to the U.S. customer through VMI or reload centers after importation into the United States. EP and CEP sales were based on the packed, delivered, ex-mill, and FOB reload center prices, as applicable.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include internal freight incurred in transporting merchandise to reload centers, to VMI customers, and freight to the U.S. customer, warehousing, U.S. and Canadian brokerage and inland insurance. We also deducted any discounts, rebates and export taxes from the starting price.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses, (*e.g.*, credit and advertising expenses) and imputed inventory carrying costs. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act.

(F) Weyerhaeuser

Weyerhaeuser made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Weyerhaeuser to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made by Weyerhaeuser to the U.S. customer through reload centers, VMI and its affiliated reseller Weyerhaeuser Building Materials (WBM–US) after importation into the United States. EP and CEP sales were based on the packed, delivered or FOB prices.

From its customer service centers in the United States and Canada, Weyerhaeuser made sales of merchandise which had been commingled with that of other producers. Weyerhaeuser provided a weighting factor to determine the quantity of Weyerhaeuser-produced Canadian merchandise for these sales. We are using the weighting factors to estimate the volume of Weyerhaeuser-produced merchandise sold from customer service centers. Where a manufacturer other than Weyerhaeuser was identified, we removed those sales from the database.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include freight to U.S. and Canadian warehouses or reload centers, warehousing expense in Canada and the United States, brokerage and handling, and freight to the final customer. For the purposes of this preliminary determination, we also deducted remanufacturing costs incurred at the warehouse with movement expenses, as Weyerhaeuser was unable to separate these costs from warehousing costs for all of its warehouses. We also deducted from the starting price any discounts, rebates and export taxes.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including indirect selling expenses and direct selling expenses (*e.g.*, credit expenses). Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than 5 percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. We found that all six mandatory respondents had viable home markets for lumber.

To derive NV, we made the adjustments detailed in the *Calculation of Normal Value Based on Home Market Prices* and *Calculation of Normal Value Based on Constructed Value*, sections below.

B. Cost of Production Analysis

Based on allegations contained in the petition, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that softwood lumber sales were made in Canada at prices below the cost of production (COP). *See Initiation Notice*, 66 FR at 21331. As a result, the Department has conducted investigations to determine whether the respondents made home market sales at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses, selling expenses, packing expenses and interest expenses.

2. Value-Based vs. Quantity-Based Allocation

For purposes of our cost analysis, for each respondent, we have used the submitted cost files which were based on costs allocated by volume, measured in MBF ("thousand board feet"), and not the alternative costs files based on various value allocation methods submitted by four of the six respondents.

We find the reliance on the volume-based method reasonable because 1) it is the method followed in the industry and, more importantly, in the books and records of the six respondents; 2) it reasonably reflects the actual cost incurred to produce each individual product; and 3) it is consistent with the Department's practice, which was upheld in *IPSCO Inc., v. United States*, 965 F. 2d, 1056, 1059–1060 (Fed. Cir. 1992). (*IPSCO*).

We issued the antidumping duty questionnaire in this case on May 25, 2001. In the questionnaire, we directed the respondents to report their per-unit costs based on their normal books and records. Section 773(f)(1)(A) states that, (i)n general—costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise." In their filings to the Department, the respondents reported either that they do not have a cost accounting system, and that they calculate one average cost within a given saw mill, or they calculate costs by process, using an average cost per MBF. Abitibi reported that it "uses an average cost system that assigns the same cost to every item processed." *See* Abitibi's section D questionnaire response, page D–22 (July 23, 2001). In addition, Abitibi noted "We record the cost of all products on an average foot board measure basis * * * all products are assigned the same average cost based on the nominal dimensions of the finished product." *See* Abitibi's section D questionnaire response, page D–23 (July 23, 2001). Canfor stated that, "like other lumber producers, Canfor in the normal course of business uses an average cost system that assigns the identical cost to each item processed at a cost center." *See* Canfor's submission requesting limited reporting requirements (June 8, 2001). Likewise, West Fraser reported that it "does not value production costs differently for cost accounting and financial accounting purposes. In its monthly financial reports, West Fraser averages the costs reported in its financial accounts over the production of each of its mills. The result is an average cost per mfbm." *See* West Fraser's section D questionnaire response, page D–22 (July 23, 2001). Weyerhaeuser reported that (i)n the ordinary course of business, Weyerhaeuser mills do not maintain production or financial data that would permit a reliable allocation of processing costs to specific products." *See* Weyerhaeuser's submission requesting limited reporting requirements (June 8, 2001). However, we note that Weyerhaeuser further explained that (t)he mills can distinguish between certain operations (*e.g.*, kiln-dried or green, planed or not planed), but for the most part, mills merely track total sawmill costs and quantities of wood products (throughput) in MBF." *See* Weyerhaeuser's submission requesting limited reporting requirements (June 8, 2001). Tembec reported that it "does not calculate product specific costs in its normal books and records, nor does it track all of the physical characteristics identified by the Department." *See* Tembec's submission requesting limited reporting requirements (June 8, 2001). Slocan stated that "a process costing system is employed at each division, under which product costs are obtained by accumulating costs by process cost center and then determining an average cost per unit of production (for lumber, the average cost per mfbm, thousand board measure of lumber)." *See* Slocan's section D questionnaire response, page D–30 (July 23, 2001). Based on the representations of each of the six respondents, none uses a value-based cost allocation method in its normal books and records. Instead, the industry practice appears to be to calculate costs based on broad simple average cost per MBF for all products or a more detailed process specific cost per MBF. As such, the per MBF cost files are consistent with the records of the exporters or producers of the merchandise.

As to the reasonableness of a volume based allocation, while different sawmills may specialize in specific products, within a sawmill we find that there are virtually no differences in cost per MBF due to grade, length, width, and thickness of lumber produced from a given species. As noted above, the same material inputs, processing and overhead costs are incurred. Lumber products of different sizes are typically cut from the same log, at times literally from opposite sides of the same saw blade. Nothing in the production process imparts the characteristic of grade, *e.g.*, grain, color, or markings in the wood. As the same processes, material inputs, labor and overhead are used by the respondents in producing the various grades and dimensions of lumber produced within a given species, and as the lumber of differing grades and dimensions are in composition substantially the same product, it is reasonable to assign the same cost per MBF for each grade and dimension.[12]

In analyzing the respondents' value-based methodologies, we reviewed the lumber production process described by each respondent and considered the appropriate allocation factors for the various input costs. In short, the lumber production process is as follows: (1) A stand of trees is cut and sorted by species; (2) logs are moved to a sawmill and debarked; (3) logs are input into the sawmill, where lumber of differing grades and dimensions are cut from the same log; (4) rough cut lumber is either sold directly or sold after specific further processing operations (*e.g.*, lumber can be planed or dried or both); and (5) lumber is graded at the end of the production process. All processing costs can be directly identified with the end products. For example, the cost of planing operations can reasonably be identified and allocated to planed products based on the volume of planed lumber produced. Therefore, it would not be appropriate to allocate these processing costs by value. The only cost that could arguably be allocated by value is the material cost, in this case, the log costs.[13] However, for the reasons

[12] We note that most of the respondents do track, and have broken out costs for species, moisture content (*i.e.*, dried or non-dried), surface finishing (*i.e.*, planed or non-planed), precision end-trimming, and further processing (*i.e.*, drilled, notched, etc.). Similarly, in *Atlantic Salmon*, the Department determined that there were no cost differences between grades of salmon or between weight bands. The Department stated that "Our examination of the voluminous record evidence concerning this issue, including verification findings, confirms that the costs as reported reasonably reflect the actual costs of producing each matching group (*i.e.*, each combination of form, grade, and weight band), and that the costs of certain of these matching groups are the same."

[13] We note that some respondents inappropriately allocated all of their costs, including sawmill, planing and drying costs, based on the relative

Continued

described above, we conclude that even the cost of the log is more appropriately allocated on a volume basis.

Lastly, we note that allocating the same cost per MBF for each grade and dimension of lumber produced is consistent with past Court decisions and Department practice. For example, in *IPSCO*, the Federal Circuit Court overturned the CIT's decision where the CIT instructed Commerce not to allocate costs equally between prime and limited service pipe, but instead to allocate costs based on the relative sales values of the merchandise. The Federal Circuit Court agreed with the Department's position that since the respondent expended the same materials, capital, labor, and overhead for both grades of pipe, both should be assigned the same cost. Specifically, the Federal Circuit Court stated that, "(i)n light of the language of (the Statute), ITA's original methodology for calculating constructed value was a consistent and reasonable interpretation of section (773(c) of the Act)".

3. Individual Company Adjustments

We relied on the COP data submitted by each respondent in its cost questionnaire response, except in specific instances where the submitted costs were not appropriately quantified or valued, or otherwise required adjustment, as discussed below:

(A) Abitibi

1. We adjusted Abitibi's reported G&A expenses to include the total amount of goodwill amortized by Abitibi in fiscal year 2000.

2. We adjusted Abitibi's reported G&A to include the redemption of stock options, which the Department considers to be a form of employee compensation.

3. We revised Abitibi's net financial expenses to reflect company-wide net financial expenses rather than the net financial expenses of the lumber division that were reported.

See Memorandum from Lavonne Jackson to Neal Halper for Abitibi's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination, (October 30, 2001).

(B) Canfor

1. We adjusted Canfor and Lakeland's byproduct revenue offset to reflect a market price for transactions with affiliates.

2. We revised Canfor's G&A expenses based on the unconsolidated financial statements for the year ended December 29, 2000, including an amount for administrative services performed on the company's behalf by its parent company. Canfor's reported G&A expenses were based on the consolidated financial statements of the parent company.

3. We revised Lakeland's G&A expense rate calculation by using the G&A expenses presented in the October 31, 2000 audited financial statements. The reported G&A expense rate was calculated based on Lakeland's internal financial statements and not on its audited financial statements. We also disallowed the interest income and other income used as an offset to the total G&A expenses.

4. We revised The Pas' G&A expense rate calculation by using the G&A expenses presented in the October 31, 2000 audited financial statements. The reported G&A expense rate was calculated based on The Pas' internal financial statements and not on its audited financial statements. We included amortization expenses in the calculation. Additionally, we disallowed the interest income and the share of earnings of a partly owned company used as an offset to the total G&A expenses.

5. We revised The Pas' net financial expense calculation by using the net financial expense presented in the October 31, 2000 audited financial statements. The reported net financial expense rate was calculated based on The Pas' internal financial statements and not on its audited financial statements. We included exchange losses on debt in the financial expenses.

6. We calculated a weighted-average byproduct revenue adjustment and the revised G&A and financial expense rates based on the production volumes of Canfor, Lakeland and The Pas since we consider the three companies combined to be one cost respondent.

See Memorandum from Taija Slaughter to Neal Halper for Canfor's, Lakeland's and The Pas' Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination (October 30, 2001).

(C) Slocan

We did not include Slocan's proposed startup period adjustment for improvements to the Mackenzie planer mill. Section 773(f)(1)(C)(ii) of the Act states that the Department will make an adjustment for startup costs where: (1) A producer is using a new facility or producing a new product that requires substantial additional investment, and (2) production levels are limited by technical factors associated with the initial phase of commercial production. Based on the information submitted, it does not appear that Slocan's Mackenzie mill qualifies as a new facility, nor does the lumber produced at the Mackenzie mill qualify as a new product under the definitions listed in the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, Vol. 1 (1994) (SAA) at 836. The Mackenzie mill has not "undergone a substantially complete retooling of an existing plant" which requires the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery. *See* SAA at 836. Furthermore, the SAA at 836 states: "Mere improvements to existing products or ongoing improvements to existing facilities will not qualify for a start-up adjustment."

See Memorandum from Michael Harrison to Neal Halper for Slocan's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination, (October 30, 2001).

(D) Tembec

1. We adjusted Tembec's byproduct revenue offset to reflect a market price for transactions with affiliates. In addition, we have adjusted the BC byproduct revenue offset for the apparent computational error.

2. We also adjusted the reported amounts for movement expenses for certain sales categorized as "delivered to customer," certain sales made through U.S. reload centers and certain sales without a reported amount for freight to the reload center, where applicable.

See Memorandum from Peter Scholl to Neal Halper for Tembec's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination, (October 30, 2001). *See also*, Calculation Memorandum from Christopher Riker to the File for Tembec's Preliminary Determination in the Antidumping Duty Investigation (October 30, 2001).

(E) West Fraser

1. We adjusted West Fraser's byproduct revenue offset to reflect a market price for transactions with affiliates.

2. We recalculated West Fraser's G&A expense rate to be based on the company-wide figures instead of the reported divisional figures. We also included the write-down of capital assets and excluded indirect selling expenses.

See Memorandum from Gina Lee to Neal Halper for West Fraser's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination, (October 30, 2001).

(F) Weyerhaeuser

1. For B.C. Coastal Group, we have revised the wood, rough-cut lumber and byproduct revenue cost database fields to reflect a thousand board feet-based allocation of costs.

2. We adjusted Weyerhaeuser's byproduct revenue offset to reflect a market price for transactions with affiliates.

3. We recalculated Weyerhaeuser's G&A expense rate to be based on the company-wide figures instead of the reported divisional figures.

See Memorandum from Michael Martin to Neal Halper for Weyerhaeuser's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination, (October 30, 2001).

4. Test of Home Market Sales Prices

We compared the adjusted weighted-average COP for each respondent to its home market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time *(i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, export taxes, discounts and rebates.

5. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to the POI average COP, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

For all respondents, we found that more than 20 percent of the home market sales of certain softwood lumber products within an extended period of time were made at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining normal value, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of softwood lumber for which there were no useable home market sales in the ordinary course of trade, we compared EPs or CEPs to the constructed value in accordance with section 773(a)(4) of the Act. *See Calculation of Normal Value Based on Constructed Value* section, below.

C. Calculation of Normal Value Based on Home Market Prices

The respondents reported home market sales data for purposes of the calculation of NV. We determined price-based NVs for responding companies as follows. For all the respondents, we made adjustments for any differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses pursuant to section 773(a)(6)(B)(ii) of the Act.

(1) Abitibi

We based home market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for foreign inland freight, warehousing expenses, insurance, discounts, rebates, and billing adjustments. For comparisons made to EP sales, we made circumstance-of-sale (COS) adjustments by deducting direct selling expenses incurred for home market sales (credit and advertising expenses) and adding U.S. direct selling expenses (*e.g.*, credit and advertising expenses). For comparisons made to CEP sales, we deducted home market direct selling expenses but did not add U.S. direct selling expenses. No other adjustments to NV were claimed or allowed.

(2) Canfor

We based home market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price by the amount of billing adjustments, early payment discounts, and rebates, and movement expenses including inland freight, warehousing, and miscellaneous movement charges. We offset the amount of freight expenses by the amount of reported rebates from the freight carriers. For comparisons made to EP sales, we made COS adjustments for direct expenses and revenues, including credit expenses and interest revenue and warranty expenses. For comparisons made to CEP sales, we deducted home market direct selling expenses but did not add U.S. direct selling expenses. No other adjustments to NV were claimed or allowed.

(3) Slocan

We based home market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for billing adjustments, early payment discounts, rebates, inland freight to warehouse, inland freight to customer, and freight rebates.

For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home market sales and adding U.S. direct selling expenses (*e.g.*, credit). For comparisons made to CEP sales, we deducted home market direct selling expenses but did not add U.S. direct selling expenses. No other adjustments to NV were claimed or allowed.

(4) Tembec

We based home market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for billing adjustments, early payment discounts, rebates, foreign inland freight, warehousing expenses and shipping costs. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses and revenues for home market sales (credit and interest revenue) and adding U.S. direct selling expenses (*e.g.*, credit expenses). For comparisons made to CEP sales, we deducted home market direct selling expenses but did not add U.S. direct selling expenses. No other adjustments to NV were performed.

(5) West Fraser

During the period of investigation, West Fraser sold the foreign like product to an affiliated chain of retail home improvement centers in Canada. These sales, which constituted a significant portion of West Fraser's home market sales, failed the

values of all end products produced, even though such costs should be allocated only to products that underwent such processing and in a manner which accurately reflects the costs of those operations. Likewise, some respondents inappropriately allocated all log costs, without regard to species, based on the relative values of end products, even though the species-specific wood costs could be separately identified.

Department's arm's length test.[14] Although West Fraser has recently provided information concerning downstream sales by the affiliate, we have been unable to analyze this information for this preliminary determination. The issue facing the Department for the preliminary determination is whether adverse facts available should be applied with respect to these sales. For the reasons detailed below, we have preliminarily determined that adverse facts available is *not* warranted. We will, however, re-evaluate this decision in our final determination.

In the questionnaire issued to West Fraser on May 25, 2001, we requested that it report home market downstream sales if such sales were made by an affiliated reseller. *See* question 11 on page G–6 of the Department's antidumping questionnaire. In response, West Fraser asked that it be excused from reporting the downstream sales as it no longer owned the home improvement chain and no longer had access to the necessary sales records. Further, as late as August 16, 2001, West Fraser continued to assert that the reporting of the downstream sales was unnecessary as its sales to the affiliated customer would pass the arm's length test. Based on these representations, the Department allowed West Fraser not to report the downstream sales.

On October 2, 2001, the petitioners, claiming that their analysis showed that West Fraser's sales to the affiliate failed the arm's length test, argued that the Department should assign adverse facts available to those transactions. They claimed that the Department had requested the downstream sales on several occasions and that West Fraser had provided materially inaccurate information.

In response, West Fraser reiterated its earlier arguments regarding the sales. West Fraser also asserted that because the affiliated customer sold lumber produced by a number of Canadian mills, and because the members of the chain had numerous and often incompatible computer systems, it would be virtually impossible to report all the information requested for the downstream sales. Further, it argued that because the downstream sales were at the retail level, it was unlikely that they would be considered as normal value because of differences in level of trade with the U.S. sales. (These points were subsequently expressed in an October 23, 2001, letter from the Government of Canada to Under Secretary for International Trade Grant Aldonas and in ex parte meetings with DAS Bernard Carreau and Assistant Secretary for Import Administration Faryar Shirzad.)

Nevertheless, because our analysis indicated that the West Fraser affiliated sales had indeed failed the arm's length test, on October 12, 2001, we wrote West Fraser requiring that it report, by October 26, 2001, all the downstream sales. If it were unable to do so, we asked that it suggest an alternative methodology to calculate normal value for the sales in question. A timely response to our October 12 letter was received. Given that we were unable to analyze this submission prior to this preliminary determination, and based on the representations made by West Fraser with respect to the likelihood that these sales would not be included in our analysis, we have preliminarily decided to not assign adverse facts available to these sales.[15] We will examine this issue thoroughly at verification and if we conclude that West Fraser failed to act to the best of its ability in responding to our questionnaire, we will reconsider the adverse facts available decision.

We based home market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for billing adjustments, early payment discounts, inland freight to the warehouse, warehousing expenses, special handling charges, inland freight to customers, freight rebates, tarping expenses and fuel surcharges.

For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home market sales and adding U.S. direct selling expenses (*e.g.*, credit). For comparisons made to CEP sales, we deducted home market direct selling expenses but did not add U.S. direct selling expenses. No other adjustments to NV were claimed or allowed.

(6) Weyerhaeuser

We based home market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for freight to the warehouse/reload center, warehousing expenses, freight to the final customer, remanufacturing done at the warehouse, discounts, rebates, and billing adjustments. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home market sales (credit and warranty/quality claims expenses) and adding U.S. direct selling expenses (*e.g.*, credit and warranty/quality claims expenses). For comparisons made to CEP sales, we deducted home market direct selling expenses but did not add U.S. direct selling expenses. No other adjustments to NV were claimed or allowed.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those models of softwood lumber products for which we could not determine the NV based on comparison-market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on the CV.

Section 773(e)(1) of the Act provides that the constructed value shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general, and administrative expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the *Calculation of COP* section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act. We used U.S. packing costs as described in the *Export Price section*, above.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales from, and adding U.S. direct selling expenses to, constructed value. For comparisons to CEP, we made COS adjustments by deducting from CV direct selling expenses incurred on home market sales.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The NV level of trade is that of the starting-price sale in the comparison market or, when normal value is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV is at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability with U.S. sales, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731(November 19, 1997).

In implementing these principles in this investigation, we obtained information from each respondent about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each of their channels of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit pursuant to section 772(d) of the Act. Generally, if the reported levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities may be dissimilar.

In this investigation, we found that the respondents, with the exception of Weyerhaeuser, perform minimal selling functions in the United States and home markets. With respect to the other respondents' EP sales, we found a single level of trade in the United States and a single, identical, level of trade in the home market. Accordingly, it was unnecessary to make any level-of-trade adjustment for comparison of EP and home market prices. All six respondents also made CEP sales. For each of these respondents, except Weyerhaeuser, we found that the adjusted CEP level of trade was essentially the same as that of the single home market level of trade, such that no level-of-trade adjustment or CEP offset was necessary.

(A) Abitibi

Abitibi reported three channels of distribution in the home market. The first channel of distribution (channel 1) included direct sales from Canadian mills or reload centers to customers. The second channel of distribution (channel 3) consisted of sales made to large retailers, distributors, building materials manufacturers and other large lumber producers and are a form of VMI. The third channel of distribution (channel 4) consisted of e-commerce sales. We compared selling functions in each of these three channels of distribution and found that the sales process, freight services and inventory maintenance activities were similar. Accordingly, we preliminarily determine that home market sales in these three channels of distribution constitute a single level of trade.

In the U.S. market, Abitibi had both EP and CEP sales. Abitibi reported EP sales to end-users and distributors through three channels of distribution. These three EP channels of distribution do not differ from the three channels of distribution in the home market. Because the sales process, freight services and inventory maintenance were similar, we preliminarily determine that EP sales in these three channels of distribution constitute a single level of trade which is identical to the home market level of trade.

With respect to CEP sales, Abitibi reported these sales through two channels of distribution. The first (channel 2) included direct sales from U.S. reload centers to customers. The second (channel 3) consisted of sales made to large retailers, distributors, building materials manufacturers and other large lumber producers and are a form of VMI. The selling functions related to freight arrangements and inventory maintenance for these two channels of distribution were not significantly different and, therefore, we determined there is only one CEP level of trade.

In determining whether separate levels of trade exist between U.S. CEP sales and home market sales, we examined the selling functions in the distribution chains and customer categories reported in both markets. In our analysis of levels of trade for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

Abitibi's sales to end-users and distributors in the home market and in the U.S. market do not involve significantly different selling functions. Abitibi's Canadian-based services for CEP sales were similar to the single home market level of trade with respect to sales process and warehouse/inventory maintenance. Abitibi did not report indirect selling expenses other than imputed inventory carrying costs in the U.S. for any of its sales channels. Because we found the level of trade for CEP sales to be similar to the home market level of trade, we made no level-of-trade adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(B) Canfor

Canfor reported four channels of distribution in the home market, with six customer categories. The first channel of distribution (channel 1) included sales where merchandise was shipped directly from one of Canfor's sawmills to a Canadian customer. The second channel of distribution (channel 2) consists of sales made through remanufacturing operations, where merchandise was shipped from the primary mill through one or more secondary manufacturing facilities before delivery to the end customer. The third channel of distribution (channel 3) consisted of sales made through reloads, where merchandise is shipped from the primary mill though one or more lumber-handling and inventory yards before delivery to the final customer. The fourth channel of distribution (channel 4) consisted of sales made pursuant to VMI programs.

We compared the selling functions in these four channels of distribution and found that they differed only slightly in that certain services were provided for VMI programs that were not provided to other channels including: product brochures, inventory management, education on environmental issues, and in-store training. Also, office wholesalers (wholesalers that do not hold inventory), one of Canfor's customer categories, only purchased through channel 1 and home centers requested custom packing, wrapping, and bar coding. With respect to the sales process, freight and delivery services,

[14] To test whether sales are made at arm's length, we compare the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated parties are on average 99.5 percent or more of the price to the unaffiliated party, we determine that those sales made to the related party are at arm's length and review these sales in our determination of normal value. Otherwise, the sales to the affiliated party are excluded from the calculation of normal value.

[15] In order to use adverse facts available, the Department must make a finding, supported by substantial evidence, that the "interested party...failed to cooperate by not acting to the best of its ability to comply with a request for information." See section 777(b) of the Act.

warranty services, custom-packing services, providing technical information, inspecting quality claims, and participating in trade shows, the sales to all customer categories in all channels were similar in all respects. Accordingly, we preliminarily determine that home market sales in these four channels of distribution constitute a single level of trade.

In the U.S. market, Canfor had both EP and CEP sales. Canfor reported EP sales to end-users and distributors through all four channels of distribution, including mill direct sales (channel 1), sales made from remanufacturing facilities (channel 2), sales made from Canadian reload facilities (channel 3), and sales made through VMI programs (channel 4). These four EP channels of distribution do not significantly differ from the channels of distribution in the home market. Accordingly, we preliminarily determine that EP sales in these four channels of distribution constitute a single level of trade which is identical to the home market level of trade.

With respect to CEP sales, Canfor reported these sales through channel 3, sales made from U.S. reload facilities. In addition, the Department has determined that Canfor's VMI sales are properly classified as CEP sales. The selling functions performed for these two channels of distribution were not significantly different in terms of freight arrangements, inventory management and warranty services, and therefore we determined there is only one CEP level of trade.

In determining whether separate levels of trade exist between U.S. CEP sales and home market sales, we examine selling functions, distribution chains, and customer categories. In our analysis of level of trade for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

Canfor's sales to end-users and distributors in the home market and in the U.S. market do not involve significantly different selling functions. Canfor's Canadian-based services for its CEP sales were similar to the single home market level of trade with respect to sales process and inventory management. Canfor reported minimal indirect selling expenses in the U.S. Because we found the level of trade for CEP sales to be similar to the home market level of trade, we made no level-of-trade adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(C) Slocan

Slocan reported three channels of distribution in the home market: (1) Direct sales to customers; (2) local sales made directly from mills; and (3) sales through reload operations. The first channel, coded in its submissions as channel 1, is comprised of direct sales and shipments to customers, and are the large majority of sales. The second, coded as channel 2, consist of "local" sales from mills to local customers, who received their merchandise at the mills. The third, coded as channel 3, consisted of sales through reload centers. We compared the selling functions in the three channels of distribution and found that Slocan's sales process was identical across all of them. In addition, freight services and inventory maintenance activities were similar. Although channel 3 sales involve reload centers not owned by Slocan, the company maintained control of the merchandise until it is sold to the customer in all three channels. Accordingly, we preliminarily determine that home market sales in these three channels of distribution constitute a single level of trade.

In the U.S. market, Slocan had both EP and CEP sales. Slocan reported EP sales through two channels of distribution: (1) Direct sales to customers; and (2) settlements of futures contracts. The first, coded channel 1, covered direct sales and shipments to customers. All other EP sales were ex-pit settlements of SPF lumber futures positions on the Chicago Mercantile Exchange (CME), *i.e.*, sales settled outside the pit of the CME. Slocan treats the CME like a customer. These sales, coded as channel 4, effectively use the same channel of distribution as channel 1 once the sale is arranged. Although the sales process for channel 4 differs somewhat from that of other EP sales and home market sales, the selling functions and channels of distribution for both channel 1 and channel 4 are similar with respect to delivery and freight services. Therefore, we preliminarily determine that EP sales in the U.S. market constitute a single level of trade.

On this basis, it appears that the level of trade of Slocan's home market sales do not involve significantly different selling functions than the level of trade of the company's EP sales, and that the distinctions do not constitute a difference in level of trade between the two markets.

Slocan's CEP sales were reported in two channels of distribution: (1) Sales through reload operations; and (2) sales through VMI programs. The first, coded as channel 2, consist of sales shipped from reload centers, operated by unaffiliated parties. Unlike home market and EP sales, the shipment instruction would go to the reload center rather than the mill. All channel 2 sales were reported as CEP sales. Slocan also reported some VMI sales, coded as channel 3, in which inventory was stored by the customer, although Slocan held title to the merchandise until it was sold. Slocan's Canada-based services for its CEP sales include order taking, issuing invoices to purchasers, and shipment instructions and inventory management for channel 2 sales. With respect to channel 3 sales, Slocan's involvement included the collection of weekly invoices of withdrawals from inventory and keeping track of inventory levels. Slocan did not report any indirect selling expenses other than imputed inventory carrying costs in the United States for either of these channels. Given the similarity of selling functions between these two channels of distribution, we concluded, preliminarily, that they constituted a single level of trade.

In determining whether separate levels of trade existed between U.S. CEP sales and home market sales, we examined the selling functions for the chains of distribution and customer categories reported in the home market and the United States. In determining levels of trade for CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

This CEP level of trade was also similar to the single home market level of trade with respect to sales process and warehouse/inventory maintenance. We found this CEP level of trade to be similar to home market level of trade. Therefore, where possible, we matched CEP sales to normal value based on home market sales and made no level-of-trade adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(D) Tembec

Tembec reported two channels of distribution in the home market. The first channel of distribution (channel 1) included sales made to wholesalers who take title to—but not physical possession of—the lumber and resell it to end-users. The second channel of distribution (channel 2) consisted of sales made to the same customers but these shipments go through a reload center en route to the customer. We compared the selling functions in these two channels of distribution and found that, while they differed slightly with respect to the subject merchandise being shipped to an origin reload center (a reload center located close to the sawmill), they were similar with respect to both the sales process and freight services. Accordingly, we preliminarily determine that home market sales in these two channels of distribution constitute a single level of trade.

In the U.S. market, Tembec had both EP and CEP sales. Tembec reported EP sales to end-users and distributors through the same two channels of distribution reported for home market sales. These two EP channels of distribution do not differ from the two channels of distribution in the home market. Because the sales process, freight services and inventory maintenance were similar, we preliminarily determine that EP sales in these two channels of distribution constitute a single level of trade which is identical to the home market level of trade.

With respect to CEP sales, the Department has determined that Tembec made these sales through one channel of distribution, which consisted of U.S. sales that travel through a U.S. reload center en route to the customer, as well as VMI sales. Because Tembec made CEP sales through one channel of distribution, we have determined there is only one CEP level of trade.

In determining whether separate levels of trade exist between U.S. CEP sales and home market sales, we examined the selling functions reported for different distribution chains and customer categories in the home market and the United States. In determining levels of trade for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

Tembec's sales to end-users and distributors in the home market and in the U.S. market do not involve significantly different selling functions. Tembec's Canadian-based services for CEP sales were similar to the single home market level of trade with respect to sales process and freight arrangements. Tembec normally provides transportation to the customer. For VMI sales, Tembec provides the same services, but invoices the customer based on the customer's need to maintain inventory levels. Because we found the level of trade for CEP sales to be similar to the home market level of trade, we made no level-of-trade adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(E) West Fraser

West Fraser reported three channels of distribution in the home market, with nine customer categories. The first channel of distribution (channel 1) included sales made directly to end-users and distributors. The second channel of distribution (channel 2) consisted of sales made to end-users and distributors through unaffiliated origin reload centers. The third channel of distribution (channel 3) consisted of sales made to end-users and distributors through VMI programs. We compared these three channels of distribution and found that, while selling functions differed slightly with respect to the merchandise shipped to an origin reload center and inventory maintenance service for VMI customers, they were similar with respect to sales process, freight services, inventory services and warranty services. Accordingly, we preliminarily determine that home market sales in these three channels of distribution constitute a single level of trade.

In the U.S. market, West Fraser had both EP and CEP sales. West Fraser reported EP sales to end-users and distributors through four channels of distribution and nine customer categories. The first three EP channels of distribution differed from the three channels of distribution within the home market only with respect to paper processing services in connection with West Fraser's export quota under the SLA. The fourth EP channel of distribution (channel 4) consisted of sales made to end-users and distributors through Canadian customers with quota transfer. This fourth EP channel is similar to channel 1. Inasmuch as these different channels were similar with respect to sales process, freight services and warranty service, we preliminarily determine that EP sales in these four channels of distribution constitute a single level of trade which is identical to the home market level of trade.

With respect to CEP sales, West Fraser's channel of distribution (channel 5) included sales to end-users and distributors through West Fraser's subsidiary, WFFP. The company WFFP is a Canadian entity created to act as the importer of record and hold title to lumber sold in the United States. These sales were made via unaffiliated destination reload centers in the United States. In determining whether separate levels of trade actually existed between CEP sales and home market sales, we examined the selling functions in the different distribution chains and customer categories reported in the home market and the United States. In determining levels of trade for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. West Fraser's Canadian-based services for its CEP sales include order-taking, invoicing and inventory management. West Fraser's Canadian sales agents occasionally arrange for reload center excess storage and freight from U.S. destination reload centers to unaffiliated end users.

West Fraser did not report any indirect selling expenses in the United States except imputed inventory carrying costs. Any services occurring in the United States are provided by the unaffiliated reload centers, which are paid a fee by West Fraser. These expenses have been deducted from the CEP starting price as movement expenses.

West Fraser's sales to end-users and distributors in the home market and the importers in the U.S. market do not involve significantly different selling functions. The CEP level of trade was similar to the single home market level of trade with respect to sales process, and inventory maintenance. We found the level of trade for CEP sales similar to the home market level of trade. Therefore, we made no level-of-trade adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(F) Weyerhaeuser

Weyerhaeuser reported four channels of distribution in the home market, with seven customer categories. The channels of distribution are (1) mill-direct sales; (2) VMI sales; (3) Mill-direct sales made through Weyerhaeuser Building Materials (WBM); and (4) sales made out of inventory by WBM. To determine whether separate levels of trade exist in the home market, we examined the selling functions, the chain of distribution, and the customer categories reported in the home market.

For each of its channels of distribution, Weyerhaeuser's selling functions included invoicing, freight arrangement, warranty/quality claims, marketing and promotional activities, technical service, sales and product training, market information, advanced shipping notices, online order status information, and toll-free customer service lines. For each channel, except WBM sales from inventory, Weyerhaeuser offered certification of adherence to sustainable forestry initiatives. Weyerhaeuser's sales made out of inventory by WBM appear to involve substantially more selling functions, and to be made at a different point in the chain of distribution than mill-direct sales. WBM functions as a distributor for the B.C. Coastal Group (BCC) and Canadian Lumber Business (CLB) and, although not a separate legal

entity, operated as a reseller. WBM operates a number of customer service centers (CSC) throughout Canada where it provides local sales offices and just-in-time inventory locations for customers. All sales made through WBM must be "sold" internally to WBM by BCC or CLB, and then sold to the final customer by WBM's local sales force. Freight must be arranged to the WBM inventory location and then to the final customer. CSCs will also engage in minor further manufacturing to fill a customer order, if the desired product is not in inventory. WBM also sells from inventory through its trading group (TG). The TG maintains some sales offices of its own, and also has sales personnel at some CSCs. The TG maintains its inventory at public reloads.

WBM also sells on a mill-direct basis. Although double-invoicing (*i.e.*, mill invoices WBM, which invoices the final customer) is involved, there is no need to maintain local just-in-time inventory or arrange freight twice. Therefore, we do not consider mill-direct sales made through WBM to be at a separate level of trade from mill-direct sales made by CLB and BCC.

Sales made through VMI arrangements also appear to involve significantly more selling activities than mill-direct sales. CLB has a designated sales team responsible for VMI sales which works with the customers to develop a sales volume plan, manages the flow of products and replenishing process, and aligns the sales volume plan with Weyerhaeuser's production plans. It also offers extra services such as bar coding, cut-in-two, half packing and precision end trimming. BCC's VMI sales are partially managed by WBM, which assists in determining the timing of shipments. BCC invoices WBM when the merchandise is shipped to the VMI warehouse and WBM invoices the customer as the product is shipped from the VMI warehouse.

Of the seven customer categories, industrial users, retail dealers and home improvement warehouses (HIW) made purchases through all four channels of distribution. Wholesalers and buying groups made purchases through all channels except VMI. Manufactured-home builders made all purchases through WBM, either directly from the mill or from inventory.

We find there are no significant differences in customer categories among the various channels of distribution. However, because both VMI and WBM inventory sales involve significantly more selling functions than the mill-direct sales, we consider them at a more advanced level of trade for purposes of this preliminary determination. While the selling activities for VMI and WBM inventory sales are not identical, the principal selling activity for both is just-in-time inventory maintenance. Thus, we consider them to be at the same level of trade. Accordingly, we find that there are two levels of trade in the home market, mill-direct (HM1) and VMI and WBM sales out of inventory (HM2).

Weyerhaeuser reported seven channels of distribution in the U.S. market, with seven customer categories. The channels of distribution are (1) mill-direct sales; (2) VMI sales; (3) CLB sales through U.S. reloads; (4) TG quota sales (5) CLB/WBM–CA transfer sales; (6) WBM–U.S. direct sales and (7) WBM–U.S. inventory sales. The EP channels are mill-direct sales, TG quota sales and WBM-CA transfer sales. The other channels are CEP channels. In determining whether separate levels of trade existed between U.S. and home market sales, we examined the selling functions, the chain of distribution, and customer categories reported in the U.S. market.

With regard to the mill-direct sales, Weyerhaeuser has the same selling activities as it does for mill-direct sales in Canada. With regard to TG quota sales, until October 2000, the TG maintained border reloads where it engaged in resorting and grading and minor further manufacturing such as end-cutting. It is unclear from Weyerhaeuser's response if any of these services were performed for lumber sold through the TG in the Canadian market. All other selling activities engaged in by the TG were the same in the U.S. and Canadian markets.

The WBM–CA transfer sales are made through one CSC and appear to have the same selling functions as other Canadian CSCs. Therefore, where possible, we matched the U.S. mill-direct sales (U.S.1) to the Canadian mill-direct sales (HM1) and the U.S. TG and WBM–CA transfer sales (U.S.2) to Canadian TG sales and CSC sales (HM2).

In examining levels of trade for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. Weyerhaeuser's Canadian selling functions for VMI sales to the United States include the same selling functions performed for home market VMI sales, as described above. Although the VMI warehouses are located in the United States, most, if not all, of the associated selling functions appear to be performed in Canada. Therefore, even after the deduction of U.S. expenses and profit we find that the U.S. VMI sales (U.S.2) are made at the same level of trade as home market VMI sales (HM2).

CLB sales through U.S. reloads also appear to have most of their selling functions occurring in Canada. While Weyerhaeuser states that it maintains just-in-time inventory for its U.S. customers at these reloads, it does not maintain local sales offices, and the sales do not involve a reseller. Therefore, these sales do not appear to be at a different point in the chain of distribution than mill-direct sales in Canada. In addition, CLB does not appear to offer the same services from its U.S. reloads that it offers its VMI customers. Therefore, for purposes of this preliminary determination, we are considering CLB's sales through U.S. reloads to be at the same level of trade as its mill-direct sales (U.S.1 and HM1).

With regard to WBM's U.S. sales made through CSCs, significant selling activities occur in the United States, such as maintaining local sales offices and just-in-time inventory, and arranging freight to the final customer. The selling functions occurring in Canada are the same selling functions performed for mill-direct sales. Therefore, after the deduction of U.S. expenses and profit, we find that WBM's U.S. sales made through CSCs are at the same level of trade as mill-direct sales (U.S.1 and HM1).

Of the seven customer categories, wholesalers, HIWs, and retail dealers all buy through all channels of distribution. The remaining categories, industrial users, truss manufacturers, buying groups, and manufactured-home builders, all buy through multiple channels of distribution. Therefore, we do not find customer category to be a useful indicator of level of trade for these customer types.

Because we found a pattern of consistent price differences between levels of trade, where we matched across levels of trade, we made a level of trade adjustment under section 773(a)(7)(A) of the Act.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act based on daily exchange rates as certified by the Federal Reserve Bank.

Critical Circumstances

In their April 2, 2001, petition, the petitioners requested that the Department monitor import data of the subject merchandise to determine whether imports have been massive since the expiration of the SLA. In the April 30, 2001, notice of initiation, the Department agreed to monitor these imports and stated that if the relevant criteria are established, we would issue a critical circumstances finding at the earliest possible date. Throughout the course of this investigation, the petitioners have submitted additional comments concerning this issue and recommended that the Department make an affirmative determination of critical circumstances.

Inasmuch as the petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, section 351.206(c)(2)(i) of the Department's regulations provides that we must issue our preliminary critical circumstances determinations not later than the date of the preliminary determination.

If critical circumstances are alleged, section 733(e)(1) of the Act directs the Department to examine whether there is a reasonable basis to believe or suspect that: (A)(i) (t)here is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether imports of the subject merchandise have been "massive," the Department normally will examine (i) the volume and value of the imports, (ii) seasonal trends, and (iii) the share of domestic consumption accounted for by the imports. Section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent or more during a "relatively short period" may be considered "massive." In addition, section 351.206(i) of the Department's regulations defines "relatively short period" as generally the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. As a consequence, the Department compares import levels during at least the three-months period immediately after initiation with at least the three-month period immediately preceding initiation to determine whether there has been at least a 15-percent increase in imports of subject merchandise. Where information is available for longer periods, the Department will compare such data. *See, e.g., Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696, 70697 (November 27, 2000).

In this case, because data were available for additional months, the Department compared import and shipment data during the five-month period immediately after initiation with the five-month period immediately preceding initiation to determine whether there has been at least a 15-percent increase in imports of subject merchandise. Based on this comparison, the Department preliminarily found that there were no massive imports with respect to the mandatory respondents and the companies in the "all others" category. For further details, *see* the Department's *Preliminary Determination of Critical Circumstances* memorandum from Bernard T. Carreau to Faryar Shirzad, (October 30, 2001). As discussed in the above-referenced memorandum, the Department's finding that massive imports did not exist for these companies is based on seasonal adjustments of the relevant shipment and import data. Because the second prong of the statute regarding critical circumstances has not been met for afore-mentioned companies, the Department preliminarily determined that critical circumstances do not exist for these companies.

Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain softwood lumber products from Canada, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margin are as follows:

Exporter/producer	Weighted-average margin percentage
Abitibi (and its affiliates Produits Forestiers Petit Paris Inc., Produits Forestiers La Tuque Inc., Scieries Saguenay Ltee., Societe En Commandite Scierie Opticwan)	13.64
Canfor (and its affiliates Lakeland Mills Ltd., The Pas Lumber Company Ltd., Howe Sound Pulp and Paper Limited Partnership)	12.98
Slocan	19.24
Tembec (and its affiliates Marks Lumber Ltd., Excel Forest Products)	10.76
West Fraser (and its affiliates West Fraser Forest Products Inc., Seehta Forest Products Ltd.)	5.94
Weyerhaeuser (and its affiliates Monterra Lumber Mills Ltd., Weyerhaeuser Saskatchewan Ltd.)	11.93
All Others	12.58

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

All parties will be notified of the specific schedule for submission of case and rebuttal briefs. In general, case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will issue our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: October 30, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–27854 Filed 11–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–869, A–428–831, A–475–831, A–423–810, A–821–814, A–791–811, A–469–811, A–583–838]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Structural Steel Beams From the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: We are postponing the preliminary determinations in the antidumping duty investigations of structural steel beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan.

EFFECTIVE DATE: November 6, 2001.

FOR FURTHER INFORMATION CONTACT: David Goldberger (Luxembourg) at (202) 482–4136; Katherine Johnson (Taiwan) at (202) 482–4929; Lyn Johnson (People's Republic of China) at (202) 482–5287; Thomas Schauer (Germany) at (202) 482–0410; Alysia Wilson (Italy) at (202) 482–0108; Hermes Pinilla (Russia) at (202) 482–3477; David Dirstine (South Africa) at (202) 482–4033; and Jennifer Gehr (Spain) at (202) 482–1779; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2001).

Postponement of Preliminary Determinations

On June 12, 2001, the Department published the initiation of the antidumping duty investigations of imports of structural steel beams from People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan. The notice of initiation stated that we would make our preliminary determinations for these antidumping duty investigations no later than 140 days after the date of issuance of the initiation (*i.e.*, October 30, 2001). *See Notice of Initiation of Antidumping Duty Investigations: Structural Steel Beams From the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan*, 66 FR 33048 (June 12, 2001).

On September 25, 2001, the petitioners [1] made a timely request pursuant to 19 CFR 351.205(e) for a 31-day postponement of the preliminary determinations. On October 2, 2001, we postponed the preliminary determinations under section 733(c)(1) of the Act until November 30, 2001.

On October 30, 2001, the petitioners made a timely request pursuant to 19 CFR 351.205(e) for an additional 19-day postponement of the preliminary determinations, or until December 19, 2001. The petitioners requested this extension in order to allow the Department sufficient time to gather information necessary for its preliminary determinations.

For the reasons identified by the petitioners, and because there are no compelling reasons to deny the request, we are postponing the preliminary determinations under section 733(c)(1) of the Act. We will make our preliminary determinations no later than December 19, 2001.

[1] The petitioners are Committee for Fair Beam Imports ("CFBI") and its individual members, Northwestern Steel and Wire Company, Nucor Corporation, Nucor-Yamato Steel Company, and TXI-Chaparral Steel Company.

This notice is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: October 31, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–27855 Filed 11–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions: 2002 Trade Missions; Services Matchmaker Trade Delegation (Mexico, Chile and Venezuela et al.)

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated for each mission below. Recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

Services Matchmaker Trade Delegation
Mexico City, Mexico; Santiago, Chile; Caracas, Venezuela
April 8–16, 2002
Recruitment closes on March 1, 2002.

For further information contact: Ms. Yvonne Jackson, U.S. Department of Commerce. Telephone 202–482–2675; or e-Mail: Yvonne.Jackson@mail.doc.gov

Medical Devices Trade Mission to Central Europe
Budapest, Hungary; Prague, Czech Republic; Warsaw, Poland
May 12–21, 2002
Recruitment closes on March 29, 2002.

For further information contact: Ms. Valerie Barth, U.S. Department of Commerce. Telephone 202–482–3360; or e-Mail: Valerie_Barth@ita.doc.gov

ACE-Infrastructure Matchmaker Trade Delegation
Madrid, Spain; Casablanca and Tangiers, Morocco
June 3–7, 2002
Recruitment closes on April 12, 2002.

For further information contact: Mr. Sam Dhir, U.S. Department of Commerce. Telephone 202–482–4756; or e-Mail: Sam.Dhir@mail.doc.gov

Electric Power Mission to Vietnam and Thailand
Hanoi and Ho Chi Minh City, Vietnam; Bangkok, Thailand
September 30–October 4, 2002
Recruitment closes on June 30, 2002.

For further information contact: Ms. Rachel Halpern, U.S. Department of Commerce. Telephone 202–482–4423; or e-Mail: Rache_Halpern@ita.doc.gov

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Nisbet, U.S. Department of Commerce. Telephone 202–482–5657, or e-Mail Tom_Nisbet@ita.doc.gov.

Dated: October 26, 2001.

Thomas H. Nisbet,

Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.

[FR Doc. 01–27846 Filed 11–5–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102901D]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Ecosystems Planning Committee will hold a public meeting.

DATES: The meeting will be held on Tuesday, November 20, 2001, from 10 a.m. until 5 p.m.

ADDRESSES: This meeting will be held at the Renaissance Philadelphia Hotel Airport, 500 Stevens Drive, Philadelphia, PA 19113; telephone: 610–521–5900.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the Ecosystems Planning Committee (formerly three committees: the Ecosystems Management Committee, the Comprehensive Management Committee, and the Habitat Committee). The purpose of this meeting is to review the committee's work plan for the coming year and initiate discussions on 2003 priorities for the Council's Quota Set-aside Program.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 31, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27847 Filed 11–5–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102901C]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Whiting Oversight and Advisory Panel for November, 2001. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Tuesday, November 27, 2001, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Oversight Committee and Advisory Panel will discuss the 2001 Small Mesh Multispecies Stock Assessment and Fishery Evaluation (SAFE) Report. They will also discuss Whiting Monitoring Committee Recommendations. They will identify issues and develop a scoping document for Amendment 14 (whiting) to the Multispecies Fishery Management Plan (FMP). The agenda will also include discussion of a timeline, a schedule for scoping and future Committee meetings, as well as a timeline for the development of Amendment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 31, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27848 Filed 11–5–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Romania

October 31, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: November 6, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 444 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 77594, published on December 12, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 6, 2001, you are directed to increase the current limit for Category 444 to 15,637 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27844 Filed 11–5–01; 8:45 am]

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2000.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

October 31, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: November 6, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 351/651 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66974, published on November 8, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 2, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 6, 2001, you are directed to increase the current limit for Categories 351/651 to 272,606 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27845 Filed 11–5–01; 8:45 am]

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2000.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before December 6, 2001.

FOR FURTHER INFORMATION CONTACT: Gary J. Martinaitis, Division of Economic Analysis, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5209; FAX: (202) 418–5527; email: *gmartinaitis@cftc.gov* and refer to OMB Control No. 3038–0012.

SUPPLEMENTARY INFORMATION:

Title: Futures Volume, Open Interest, Price, Deliveries and Exchange of Futures for Physicals (OMB Control No. 3038–0012). This is a request for extension of a currently approved information collection.

Abstract: Commission Regulation 16.01 requires the U.S. futures exchanges to publish daily information on the items listed in the title of the collection. The information required by this rule is in the public interest and is necessary for market surveillance. This rule is promulgated pursuant to the Commission's rulemaking authority contained in sections 5 and 5a of the Commodity Exchange Act, 7 USC 7 and 7a(2000).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on September 27, 2001 (66 FR 49355).

Burden statement: The respondent burden for this collection is estimated to average .5 hours per response. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 12.

Estimated number of responses: 2,640.

Estimated total annual burden on respondents: 1,320 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0012 in any correspondence.

Gary J. Martinaitis, Division of Economic Analysis, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: October 31, 2001.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–27774 Filed 11–5–01; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before December 6, 2001.

FOR FURTHER INFORMATION OR A COPY CONTACT: Lawrence B. Patent, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5439; FAX: (202) 418–5528; email: *lpatent@cftc.gov* and refer to OMB Control No. 3038–0026.

SUPPLEMENTARY INFORMATION:

Title: Gross Margining of Omnibus Accounts (OMB Control No. 3038–0026). This is a request for extension of a currently approved information collection.

Abstract: Commission Regulation 1.58 requires futures commission merchants to carry omnibus accounts on a gross, rather than a net, basis. This rule is promulgated pursuant to the Commission's rulemaking authority contained in Sections 5 and 5a of the Commodity Exchange Act, 7 U.S.C. 7 and 7a (2000).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981, See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on October 5, 2001 (66 FR 51025).

Burden statement: The respondent burden for this collection is estimated to average .08 hours per response. These estimates include the time needed to review instructions; develop, acquire install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 225.

Estimated number of responses: 3,900.

Estimated total annual burden on respondents: 300 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0026 in any correspondence.

Lawrence B. Patent, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: October 31, 2001.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–27775 Filed 11–5–01; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Request of the Coffee, Sugar & Cocoa Exchange (CSCE) for Approval of its Commercial Markets Index Futures and Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of commodity futures and option contracts.

SUMMARY: The Coffee, Sugar & Cocoa Exchange (CSCE or Exchange) has requested that the Commission approve its commercial markets index futures and options contract, pursuant to the provisions of section 5c(c)(2)(A) of the Commodity Exchange Act as amended. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by the Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before November 21, 2001.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to the CSCE commercial markets index futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC (202) 418–5273. Facsimile number (202) 418–5527. Electronic mail: *flinse@cftc.gov*.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CSCE in support of the request for approval may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 2000)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CSCE should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 115 21st Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on October 29, 2001.

Richard A. Shilts,

Acting Director.

[FR Doc. 01–27773 Filed 11–5–01; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–2]

Daisy Manufacturing Co; Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a complaint under the Federal Hazardous Substances Act and the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceeding (16 CFR part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaints which it issues. Published below is a Complaint in the matter of Daisy Manufacturing Company.

SUPPLEMENTARY INFORMATION: The text of the Complaint appears below.

Dated: October 31, 2001.

Todd A. Stevenson,

Acting Secretary.

In the matter of; Daisy Manufacturing Company, Inc., doing business as Daisy Outdoor Products CPSC Docket No.: 02–2; 400 West Stribling Drive, Rogers, Arkansas 72756, Respondent.

Complaint

Nature of Proceedings

1. This is an administrative proceeding pursuant to section 15 of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1274, and section 15 of the Consumer Product Safety Act ("CPSA"). 15 U.S.C. 2064, for public notification and remedial action to protect the public from substantial risks of injury and substantial product hazards created by Respondent Daisy Manufacturing Company, Inc.'s Powerline Airguns.

2. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission, 16 CFR part 1025.

Jurisdiction

3. This proceeding is instituted pursuant to the authority contained in sections 15(c), (d) and (f) of the CPSA, 15 U.S.C. 2064(c), (d) and (f), and sections 15(c)(1), (2) and (e) of the FHSA, 15 U.S.C. 1274(c)(1), (2) and (e).

Parties

4. Complaint Counsel is the staff of the Legal Division of the Office of Compliance (hereinafter referred to as "Complaint Counsel") of the United States Consumer Product Safety Commission (hereinafter referred to as "The Commission"), an independent regulatory commission established by section 4 of the CPSA. 15 U.S.C. 2053.

5. Respondent Daisy Manufacturing Company, Inc. (hereinafter referred to as "Daisy") is a Delaware Corporation, with its principal place of business located at 400 West Stribling Drive, Rogers, Arkansas.

6. Daisy "manufactures" Powerline Airguns and is, therefore, a "manufacturer" of consumer products as that term is defined in the CPSA, 15 U.S.C. 2052(a)(4).

The Consumer Product

7. The Daisy Powerline Airgun is a pneumatic powered or carbon dioxide ("CO_2") charged gun designed to shoot BBs or pellets at a rate over 350 feet per second (fps). From September, 1972 to January, 2001, Daisy manufactured approximately 4,925,353 model 880 Powerline Airguns including the following models and product numbers: 880, 881, 882, 1880, 1881, 9072, 9082, 9083, 9093, 9393, 9382, 3305, 3480, 3933, 1455, and 5150. Daisy continues to manufacture the model 880 Powerline Airgun.

8. From 1984 through January, 2001, Daisy manufactured approximately 2,353,798 model 856 Powerline Airguns including the following models and product numbers: 860, 856, 2856, 7856 and 990. Daisy continues to manufacture the model 856 Powerline Airgun. (All models recited in paragraphs 7 and 8 above are hereinafter referred to as "Daisy Powerline Airguns.")

9. The retail cost of the Daisy Powerline Airgun currently being sold varies from approximately $39.95 to $67.95.

10. Daisy has and continues to produce and distribute the Powerline Airguns in United States commerce for sale to a consumer for use in or around a permanent or temporary household or residence, in recreation or otherwise or for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, in recreation or otherwise. These airguns are, therefore, "consumer products" that are "distributed in commerce." 15 U.S.C. 2052(a)(1) and (11).

Count 1

The Daisy Powerline Airguns Contain Defects Which Creates a Substantial Product Hazard Defect

11. Paragraphs 1 through 10 are hereby realleged, and incorporated by reference as though fully set forth herein.

12. A user can load 50 to 100 BBs through a loading door on the Daisy Powerline Airguns, and into the magazine reservoir. The consumer may then pull a bolt handle toward the rear to cock the gun, and close a pump valve. When the muzzle is raised, at least 45° above the horizon, and the gun is not titled towards either side, BBs move from the magazine, via gravity, onto a feed ramp, and to a loading port. This allows a magnetic bolt tip to pick up a BB from the feed ramp. The user can then close the bolt by pushing the handle forward, and chamber the BB into the rifle.

On the pneumatic versions of these airguns, the user provides power to the Daisy Powerline Airguns by pumping the forearm lever on the gun. This pumping process builds air pressure and determines the speed and power with which the projectile is ultimately expelled from the airgun. On the CO_2 cartridge versions of the gun, the consumer can insert a replaceable CO_2 cartridge which provides all the power needed to expel the projectile.

13. The Daisy Powerline Airguns have a rifle barrel, which is concentrically supported and surrounded by an outer barrel casing. These airguns have a "virtual magazine", whose borders consist of the receiver halves, a casing surrounding the cylindrical pump that holds the projectile propellant, the outer barrel casing, and the inner rifle barrel's forward support tab. The Daisy design permits BBs to move freely around the inside of the magazine area.

14. During normal use of the Daisy Powerline Airguns, BBs may become lodged within the "virtual magazine" of the gun. A consumer using the gun may fire the gun repeatedly or shake the gun and receive no visual or audible indication that the airgun is still loaded.

15. Although Daisy made some changes to the Powerline Airguns to try to lessen the likelihood that BBs will lodge in the gun, BBs can still lodge inside of them. The Daisy Powerline Airguns design, and manufacturing variances, prevent BBs from loading into the firing chamber and lead consumers to believe the airgun is empty, are, therefore, defective within the meaning of section 15 of the CPSA, 15 U.S.C. 2064, and section 15 of FHSA, 15 U.S.C. 1274.

16. Because these Daisy airguns can lodge BBs or fail to feed BBs into the firing chamber under normal conditions of use, consumers may be unaware when a BB loads unless they look into the loading port. Daisy made design decisions that impair the ability of the user to ascertain whether a BB is loaded. Daisy manufactures BBs that are silver in color. The Powerline Airgun's feed ramp is made of a zinc material. Due to the color similarity, a user operating the airgun rapidly may not be able to discern the presence of a BB even if he is looking directly into the loading port. Further, Daisy designed the airgun so a user can install an optional riflescope on top of the receiver halves and over the loading port. The placement of the riflescope can obscure the user's ability to see a BB in the loading port.

17. Daisy's design relies unduly on consumers to see a BB in the loading port and then interferes with that ability in reasonably foreseeable circumstances. This design constitutes a defect under section 15 of the CPSA, 15 U.S.C. 2064, and section 15 of the FHSA, 15 U.S.C. 1274.

18. Daisy's Powerline Airguns use a safety mechanism that does not automatically engage when the airgun is loaded and ready to fire. An automatic safety design would prevent against accidental discharge.

19. The failure to incorporate an automatic safety into the Daisy Powerline Airgun constitutes a design defect under section 15 of the CPSA, 15 U.S.C. 2064, and section 15 of the FHSA, 15 U.S.C. 1274.

Substantial Risk of Injury

20. All of the approximately 7,279,151 Daisy Powerline Airguns, and the Powerline Airguns currently being sold, contain the defects alleged in paragraphs 11 through 19 above.

21. Most of the consumers using these airguns will be children or young adults. It is likely that these consumers will operate the gun rapidly and not continue to check the loading port to determine whether any BBs are feeding into the chamber when they believe the airgun is no longer loaded. It is also reasonably foreseeable consumers, during use, will be less careful with a gun they believe is not loaded. A BB that had previously been lodged and misfed can then be loaded, and fired from the airgun. Under these circumstances, BBs are likely to be fired at and strike the consumer or another person in the vicinity.

22. It is likely consumers will carry and handle the Daisy Powerline Airguns when they are cocked and loaded. Since these airguns do not have an automatic safety, it is likely the gun will be discharged during handling in the direction of the user or anther person in the vicinity.

23. At close range, BBs fired from these airguns can penetrate tissue and bone, damaging internal organs, such as the brain, heart, liver, spleen, stomach, bowel and colon. The Commission has learned of at least 15 death and 171 serious injuries, including brain damage and permanent paralysis, caused by the defects in the Daisy Powerline Airguns. Most of these injuries were to children under the age of 18.

24. The defects in the Daisy Powerline Airgun create a substantial risk of injury, and the airguns create a substantial product hazard within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

Counts

The Daisy Powerline Airguns Create a Substantial Risk of Injury to Children

25. Paragraphs 1 through 24 are hereby realleged, and incorporated by reference as though fully set forth herein.

26. The Daisy Powerline Airguns were marketed for, and intended for the use of, children. Although Daisy marketed the airguns initially with no age recommendation, it later labeled them for users 14 and older and eventually 16 and older. A substantial number of the airguns are intended for use by children.

27. Given the pattern of the defects alleged above, the number of Powerline Airguns distributed in commerce, and the likelihood of further serious injury and death, especially to children, these airguns present a substantial risk of injury to children. Sections 15(c)(1) and (c)(2) of the FHSA, 15 U.S.C. 1274(c)(1) and (c)(2).

Relief Sought

Wherefore, in the public interest, Complaint counsel requests that the Commission:

A. Determine that Respondent Daisy's Powerline Airgun presents a "substantial product hazard" within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

B. Determine that Respondent Daisy's Powerline Airgun presents a "substantial risk of injury to children" within the meaning of sections 15(c)(1) and (c)((2) of the FHSA, 15 U.S.C. 1274(c)(1) and (c)(2).

C. Determine that public notification under section 15(c) of the CPSA, 15 U.S.C. 2064(c), and section 15(c)(1) is required to protect the public adequately from the substantial product hazard and substantial risk of injury to children presented by the Powerline Airgun. We also want to prevent future distribution and order that the Respondents:

(1) Give prompt public notice that the Daisy Powerline Airgun presents a serious injury and death hazard to consumers and of the remedies available to remove the risk of injury and death;

(2) Mail such notice to each person who is or has been a distributor or retailer of the Daisy Powerline Airgun;

(3) Mail such notice to every person to whom Respondents know the Daisy Powerline Airgun were delivered or sold; and

(4) Include in the notice required by (1), (2) and (3) above a complete description of the hazard presented, a warning to stop using the Daisy Powerline Airgun immediately; and clear instructions to inform consumers how to avail themselves of any remedy ordered by the Commission.

D. Determine that action under section 15(d) of the CPSA, 15 U.S.C. 2064(d), and section 15(c)(2) of the FHSA, 15 U.S.C. 1274(c)(2) is in the public interest and order Respondents:

(1) To cease distribution of all Daisy Powerline Airguns until such time as all defects in the airguns are eliminated and the risk of injury reduced in a manner satisfactory to the Commission.

(2) With respect to Daisy Powerline Airguns already manufactured and distributed in commerce, Daisy must

(a) Elect to repair all the Powerline Airguns so they will not create a serious injury and death hazard; replace all the Powerline Airguns with a like or equivalent product which will not create a serious injury or death hazard; or refund to consumers the purchase price of the Powerline Airgun;

(3) Make no charge to consumers and reimburse them for any foreseeable expenses incurred in availing themselves of any remedy provided under any order issued in this matter;

(4) Reimburse distributors and dealers for expenses in connection with carrying out any Commission Order issued in this matter;

(5) Submit a plan satisfactory to the Commission, within ten calendar (10) days of service of the final Order, directing that actions specified in paragraphs D(2) through D(4) above be taken in a timely manner;

(6) Submit monthly reports documenting progress of the corrective action program;

(7) For a period of five (5) years after entry of a Final Order in this matter, keep records of its actions taken to comply with paragraphs D(2) through D(4) above, and supply these records upon request to the Commission for the purpose of monitoring compliance with the Final Order.

e. Daisy shall notify the Commission at least 60 days prior to any change in their business (such as incorporation, dissolution, assignment, sale or petition for bankruptcy) that results in, or is intended to result in, the emergence of successor ownership, the creation or dissolution of subsidiaries, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission.

F. Daisy shall take such other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA and FHSA.

Issued by order of the Commission.

Dated this 30th day of October 2001.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission (301) 504–0621.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Jimmie L. Williams, Jr.,

Complaint Counsel, Office of Compliance, 4330 East West Highway, Bethesda, Maryland 20814–4408, (301) 504–0626, ext. 1376.

[FR Doc. 01–27872 Filed 11–05–01; 8:45 am]

BILLING CODE 6350–01–M

DEPARTMENT OF DEFENSE

Department of the Army

MTMC Pam 55–4 "How to do Business in the DOD Personal Property Program". Defense Transportation Regulation Part IV, DOD Personal Property Program; Tender of Service

AGENCY: Military Traffic Management Command (MTMC), DoD.

ACTION: Notice; Moratorium.

SUMMARY: Moratorium on accepting application in the DOD Personal Property Program. MTMC, as Program Manager of the Department of Defense (DOD) Personal Property Shipment and Storage Program (the Program), proposes to streamline and strengthen the carrier qualification process. Due to the administrative workload to requalify current DOD participants we must impose a moratorium. See item in this **Federal Register** from MTMC, notice on new procedures, MTMC Pam 55–4 "How to do Business in the DOD Personal Property Program"; Defense Transportation Regulation Part IV; Tender of Service (request for comments), which addresses the streamlining and strengthening of carrier qualification procedures. A moratorium has been established on accepting new applications in the Department of Defense (DOD) Personal Property Program for a period of time to allow smooth transition to the new electronic carrier qualification process. This period of time will not exceed one year and will end when all participants are re-qualified.

DATES: The moratorium will be effective November 16, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Walker, Headquarters, Military Traffic Management Command, Attn: MTPP–HQ, Room 10N67–51, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–5000; Telephone (703) 428–2982; Telfax (703) 428–3388/3389.

SUPPLEMENTARY INFORMATION:

I. Moratorium

Current: MTMC has no moratorium.

Proposed: MTMC will impose a temporary moratorium on accepting new applications for qualification beginning 10 days from the date of publication of this notice in the **Federal Register**. MTMC may reduce the moratorium to a lesser period based on the time it takes to complete transition from the manual to the electronic applicaiton process. Once the moratorium is lifted future applicants must qualify under the new qualification procedures.

II. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because no information requirements or records keeping responsibilities are imposed on offerors, contractors, or members of the public.

III. Regulatory Flexibility Act

This change is related to public contracts and is designed to streamline and strengthen the DOD personal property carrier qualification program. This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5, U.S.C. 601–612.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–27862 Filed 11–5–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

MTMC Pam 55–4 "How to do Business in the DOD Personal Property Program". Defense Transportation Regulation Part IV; Tender of Service

AGENCY: Military Traffic Management Command (MTMC), DoD.

ACTION: Notice; Request for comments

SUMMARY: New Procedures to participate in the Department of Defense Personal Property Program. MTMC, as Program Manager of the Department of Defense (DOD) Personal Property Shipment and Storage Program (the Program), proposes to streamline and strengthen the carrier qualification process. The proposal requires all present and future participants (commercial carriers) in the Domestic and International Personal Property Programs to use our streamlined qualification process via the web, email, fax, and met more stringent financial requirements. These changes in procedures will:

a. Simplify and streamline the carriers qualification process by reducing paperwork and expediting approval processing time.

b. Meet MTMC's legal obligation to only do business with responsible commercial carriers.

c. Improve Program performance and quality assurance.

d. Incorporate suggestions made by our industry partners.

For streamlining MTMC is proposing the following procedures.

a. Present participants will be required to re-quality using the new procedures.

b. Future applicants will be required to use the new procedures.

c. Reducing from 13 previously required manual forms to 4 electronic forms.

These 4 forms include the electronic submission of the Tender of Service Signature Sheet, the list of countries and codes of service form, the performance bond (electronic or fax), and the certificate of cargo liability (electronic or fax).

For strengthening MTMC is proposing the following changes.

a. Current participants must comply with the new re-qualification procedures/standards.

b. Financial requirements will be increased.

c. Carriers must provide, upon request, financial statements, audit report or review memorandum, and income tax returns.

d. Cargo liability insurance minimums will be increased.

e. Performance bonds will be required in both the international and domestic programs.

f. Five years government and/or commercial experience will be required, using the date on the operating authority or if the state is deregulated, the articles of incorporation date.

g. MTMC will use carriers's safety rating obtained from SAFER system, Department of Transportation (DOT) for verification of authority and any reported safety infractions, which may be used in Carrier Review Boards.

h. Change in company ownership applications will go through a novation process.

DATES: Comments on these proposed procedural changes and standards must be submitted to the address given below on or before January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Walker Headquarters, Military Traffic Management Command, ATTN: MTPP–HQ, Room 10N67–51, Hoffman Building II, 200 Stovall Street, Alexandria, Virginia 22332–5000; Telephone (703) 428–2982; Telefax (703) 428–3388/3389.

SUPPLEMENTARY INFORMATION:

MTMC's proposal to incorporate common commercial business practices and take advantage of efficiencies gained from the use of technology will streamline and strengthen the carrier qualification process for the first time in 10 years. Once changes have been adopted, the new requirements will supersede the current *How To Do Business Book*. The updated "book" will be available for your use on the internet on the MTMC home page at *www.mtmc.army.mil*.

Streamlining Initiatives

1. Qualification procedures.

Current: Manual and time consuming submission of documentation to MTMC.

Proposed: All current Program participants and those who have applied for qualification prior to the publication of this notice in the **Federal Register** must apply or re-apply for qualification approval (also known as re-qualification) under the new streamlined requirements and submit their application electronically for two forms and electronic/fax for two specific forms.

2. New procedures for future applicants.

Current: Utilizes "How to do Business Book"

Proposed: Once published, carriers must comply with the new procedures in the revised "How to do Business Book".

3. Submission of Forms.

Current: Submission of a qualification package is a manual process with a minimum of 13 forms.

Proposed: MTMC will require only 2 electronic forms and 2 forms that either contain electronic signatures or are faxed facsimile signatures. All forms will be available on the MTMC web site. These forms include the Electronic Tender of Service Signature Sheet, the List of Countries and Codes of Service form, performance bond, and certificate of cargo liability insurance as part of the approval process. The performance bond and certificate of cargo liability require signatures and must be sent electronically or faxed.

Note: Requirements for accessing the Personal Property Qualification website are: Carrier must have access to the Internet via a Web Browser, Microsoft Internet Explorer version 5.5 or greater, or Netscape version 4.75 or greater. The minimum Personal Computer requirements recommended: Intel Pentium processor (or other IBM compatible), 400 MHz or greater speed, at least 128 MB of RAM and Windows 98/Windows NT 4.0/windows 2000.

Strengthening Initiative

1. Application for re-qualification.

Current: Manual applications are reviewed on a first come first served basis.

Proposed: Required electronic re-qualification applications must be submitted during the period 1 Feb.–1 Mar. 02. The submission date is determined by the electronic date on the electronic tender of service signature sheet received in MTMC's database. After completing the electronic tender of service signature sheet and the List of countries and codes of service the computer will send back a response that we have received the documentation. It will be the carrier's responsibility to ensure any faxed documentation has been submitted to MTMC by the required deadline. Late submissions will not be accepted. Electronic applications will be reviewed on a first come first served basis. During the transition period while applications for re-qualification are being processed, previously approved carrier applicants may continue to do business with DOD pending completion of the re-qualification process. Before filing rates for the IS02/DS02 cycles, carriers should review the final Federal Register notice in Jan 02 to make sure they meet the new qualification requirements. Upon MTMC's review of applicant's submission, if carriers do not meet the qualification requirements, their rates will be administratively removed from the system. Carriers failing to successfully complete the required re-qualification process during the submission period will be allowed to continue to participate in the current winter cycle but will be ineligible for traffic in succeeding cycles. Future applicants must qualify under the new qualification procedures.

2. Financial Ratios.

Current: Carriers must certify financial statements meets a 1:1 quick ratio or better.

Proposed: All participants must meet and maintain a 1:1 Quick ratio or better, a 1:1 Current ratio or better, and a 2:1 Debt to Equity ratio or less. The following definitions are provided for clarification purposes only. If there are further questions, carriers should consult with their own accountants for

clarification and how to best present financial data.

The quick ratio measures the ability of a business to meet their current bills. Quick ratio is cash plus receivable/current liabilities. This is similar to current ratio with the exception that inventory and prepaids are subtracted from the total current assets prior to making the computation. These items are deleted prior to computing the ratio because inventory and prepaids are not easily converted to cash to pay debts. Future if a company needs to liquidate inventory or prepaids to pay bills, they are in liquidation process and not really a going concern.

Current ratio is company's current assets/current liabilities. Current assets are defined as cash, receivables, inventories, and prepaid items (insurance, deposits, etc). Current liabilities are what you owe within the coming 12 month period. Included as current liabilities are normal accounts payable and next 12 months of payments on company loans/note payable.

Debt to equity is total liabilities divided by company's equity. Another way of stating this is that equity is the company's worth and debt to equity measures debt to worth. For example if your car costs $15,000 but your loan is $10,000 your equity in the car is $5,000 and your debt to equity ratio is 2 to 1. Thus for every dollar of equity you owe two dollars. (2 × 5,000 equals your debt of $10,000).

3. Financial documentation.

Current: Submit hard copy of financial statements at time of application.

Proposed: Upon request, carriers will provide MTMC financial statements accompanied by either an audit report or review memorandum prepared by their auditors. Financial statements must be prepared according to generally accepted accounting principles using the accrual basis, including balance sheets and profit/loss statements. Financial statements must include all documents referenced in any footnotes or in any audit or review memorandums. No pro forma statements will be accepted in lieu of actual financial statements. We may also elect to request copies of your company income tax returns for the past three years. MTMC reserves the right to obtain services from an independent third party source to conduct financial risk analysis of carrier's financials. This analysis will compare the company analyzed with appropriate industry norms. This information may be used in a carrier review board action to assist in the determination of financial risk to the government. The financial statements must document the business operations of the single business entity or organization that seeks to qualify to do business with the DOD. Combined or consolidated statements that include the finances of other companies will not be accepted. Letters of guarantee from a parent company will not be accepted.

4. Cargo Liability Insurance Minimum.

Current: Minimums are $10,800 per shipment and $150,000 amount per aggregate at any one place and time (per incident).

Proposed: Cargo liability insurance will be equal to $22,500 per shipment and $315,000 per incident. Carriers must have their insurance company provide directly to MTMC current cargo liability insurance certificates by electronic means or fax. These levels must be maintained throughout DOD approval.

5. Performance Bond.

Current: International carriers must provide a performance bond in the face amount of either $100,000 or 2.5% of their DOD international revenue for the previous year, whichever, is greater. There is no current bond requirement in the Domestic program.

Proposed: Carriers must have their surety company provide a signed copy of their performance bond directly to MTMC electronically or by fax. A performance bond will be required in both the international and domestic program. However, there are differences in the requirements. The value of each cycle's International Program continuous performance bond must be equal to $100,000 or 2.5% percent of the projected international revenue based on previous year cycle data, whichever is greater. The International bond requirement will change from an annual submission to a semi-annual submission, upon request from MTMC. Note: For the purpose of re-qualification, all current International participants will be notified individually, if an increase in their performance bond is required.

The value of the continuous Domestic bond will be equal to $50,000 or 2.5% percent of the value of revenue received from DOD personal property domestic traffic in the previous complete calendar year, whichever is greater.

Note: Because no bond was previously required for the purpose of re-qualification, all domestic carriers must submit a performance bond in the minimum amount of $50,000. MTMC will then contact each individual Domestic carrier at a later time to request an increased bond (if applicable).

The purpose of this performance bond requirement is to ensure that the DOD is compensated for reprocurement costs caused by the carrier's failure to perform agreed services.

6. Carrier experience requirement.

Current: There is no minimum.

Proposed: Both International and Domestic carriers must have a minimum of 5 years commercial and/or government experience to be considered for DOD approval, using the date on your operating authority, or if deregulated the date on your Articles of Incorporation.

7. Safety Rating.

Current: Carrier's Safety Rating is not reviewed.

Proposed: MTMC will reserve the right to obtain and use a carrier's Department of Transportation Safety Rating for verification of authority and any reported safety infractions, which may be used in Carrier Review Boards.

8. Change of Ownership.

Current: Carrier submits new qualification package.

Proposed: MTMC approval of changes in ownership of previously approved carriers is required. MTMC approval will be based on a review of the sales agreement and other items similar to that set out in the Federal Acquisition Regulation subpart 42.12. The new asset owner (transferee) must assume ALL obligations under the agreement as if they were the original party. The transferor guarantees performance by the transferee. All three parties (Government, transferor, and transferee) will sign a novation agreement.

Additional Information

1. For all Domestic Program applicants and participants, MTMC proposes to continue to require all affiliates of other Domestic and International Program applicants and participants to declare (common financial and/or administrative control) their affiliations. Affiliates means associated business concerns or individuals if directly or indirectly, (a) either one controls or can control the other or (b) a third party controls or can control both. For all International Program applicants and participants, MTMC proposes to continue to require all affiliates of the other Domestic and International Program applicants and participants to both declare their affiliations to MTMC, and to refrain from competing in the same personal property code of service/channel (code/channel) combinations served by any of their affiliates. If MTMC adjusts the codes of service and/or channels at any time in the future, this rule will continue for the new or altered codes and/or channels without further notice, and Program participants will be required to adjust their service and update their documentation with MTMC.

2. MTMC intends to enforce these enhanced qualification requirements by reviewing information about commercial participant performance and finances obtained from a variety of sources including information provided directly to MTMC, public databases, and commercial sources. The latter may include commercial performance databases, members of the personal property industry, and members of the general public. If a Program participant violates Program requirements, it will be administratively placed in a nonuse status pending resolution of the violation using the procedures contained in MTMC Regulations 15–1. When carrier declarations do not appear to be consistent with known factors or circumstances, they will be identified for further investigation and possible referral to the U.S. Justice Department for action.

3. MTMC proposes to require that all Program applicants and participants accept the cost of complying with these more stringent requirements as part of their cost of doing business. We further anticipate that adoption of the new qualification procedures and standards will result in many offsetting tangible and intangible benefits to military service members and their families, the personal property industry, to DOD, the military services, U.S. Transportation Command, and MTMC as organizations. Military service members will benefit from having their personal property moved in an efficient manner by carriers that possess the necessary means of doing business and that do not go out of business and/or hold shipments hostage. Personal property agents will benefit from knowing that a DOD approved carrier is financially stable and has the means to pay its bills in a timely manner. DOD organizations will benefit from dealing with healthy carriers that do not suffer catastrophic business failures that require extensive and expensive transportation reprocurement efforts.

MTMC envisions the adoption of more stringent qualification requirements as part of a continuing process in which MTMC moves from price-based procurement of transportation services to a best value, or quality plus price, approach.

The revised qualification process, procedures, regulations and *How To Do Business Book* will be superseded by the new streamlined requirements. MTMC will publish all Program requirements in its Website "How to Do Business with the DOD", and the **Federal Register** as appropriate.

MTMC has previously received many informal comments, primarily from commercial personal property transportation providers supporting the idea of eliminating financially and operationally risky carriers from the Program. We agree in general terms with these comments for both legal and operational reasons. We now propose to change carrier qualification requirement in the DOD Personal Property Program to implement this military/industry consensus.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because no information requirements or records keeping responsibilities are imposed on offerors, contractors, or members of the public.

Regulatory Flexibility Act

This change is related to public contracts and is designed to streamline and strengthen the DOD personal property carrier qualification program. This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5, U.S.C. 601–612.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–27863 Filed 11–5–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Antileishmanial Composition for Topical Application

AGENCY: Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 6,284,739 entitled "Antileishmanial Composition for Topical Application" issued Sept. 4, 2001. Foreign rights are also available (PCT/US98/08979). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For issuing issues, Dr. Paul Mele, Office of Research & Technology Assessment (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The instant invention provides compositions containing as active agents paromomycin in combination with gentamicin. When given in combination, the compositions appear much more effective than when given alone. Furthermore, the compositions of the invention were found to be effective against several species of Leishmania that were not effectively inhibited by the prior art compositions.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–27867 Filed 11–5–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method and Compositions for Treating and Preventing Retinal Damage

AGENCY: Army Medical Research and Material Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S Patent Application No. 09/590,174 entitled "Method and Compositions for Treating and Preventing Retinal Damage" filed June 9, 2000. Foreign rights are also available (PCT/USOO/15812). This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates to the use of dihydrolipoic acid and alpha-lipoic acid to treat and prevent retinal damage

arising from physical forces such as laser beams and to compositions containing phenyl nitrones and dihydrolipoic acids or alpha-lipoic acid as neuroprotective agents. The protective effect is believed to be due to the metabolites ability to protect neurons by a direct antioxidant effect, recycling of antioxidant vitamins E and C by redox, enhancement of glutathione, creation of at least 8 species of free radicals, and enhancement of intracellular ATP. Such may be useful in glaucoma, temporal arteritis, macular degeneration, diabetic retinopathy, proliferative retinopathy, retinitis pigmentosa, and as an adjunctive prophylactic therapy prior to or following cataract surgery.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 01–27865 Filed 11–5–01; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Pharmaceutical Composition Containing pGLU–GLU–PRO–NH2 and Method for Treating Diseases and Injuries to the Brain, Spinal Cord and Retina Using Same

AGENCY: Army Medical Research and Materiel Command, DOD.
ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/692,938 entitled "Pharmaceutical Composition Containing pGLU–GLU–PRO–NH2 and Method for Treating Diseases and Injuries to the Brain, Spinal Cord and Retina Using Same" and filed October 20, 2000. Foreign rights are also available (PCT/US00/29278). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A neuroprotectant composition wherein the active ingredient is pGLU–GLU–PRO–NH2 or a combination of pGLU_GLU–PRO–NH2 (EEP) and N-tert-Butyl-α-(2sulfophenyl)nitrone (SPBN) or other nitrone. A method of treating and preventing diseases and injuries of the brain, spinal cord and retina is also presented by administering the endogenous tripeptide EEP to a subject as a neuroprotectant or by administering EEP in combination with SPBN or other nitrone.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 01–27864 Filed 11–5–01; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Treatment of and/or Prophylaxis Against Brain and Spinal Cord Injury

AGENCY: Army Medical Research and Materiel Command, DOD.
ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/556,954 entitled "Treatment of and/or Prophylaxis Against Brain and Spinal Cord Injury" and filed April 21, 2000. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The administration of α-lipoic acid (α-LA) and dihydrolipoic acid (DHL) both as a preventive measure before exposure to conditions which may cause damage, such as rapid changes in atmospheric pressure, and as a means of preventing or ameliorating damage arising from such injury provides benefits not currently available. The active agents may be administered systematically or to the injured tissue. For example, when there is spinal cord injury, the active agents may be administered intrathecally.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 01–27866 Filed 11–5–01; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.
ACTION: Notice.

SUMMARY: Notice is give of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: December 11, 2001.

FOR FURTHER INFORMATION CONTACT: David Stokes, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. MG Hans Van Winkle (chair).
2. Dr. Lewis Link (alternative chair).
3. BG Carl Strock.
4. BG Peter Madsen.
5. Mr. Fred Caver.
6. Ms. Linda Garvin.
7. Mr. Joe Tyler.
8. Mr. Rob Vining.
9. Mr. Steve Browning.
10. Mr. Louis Carr.

Luz D. Ortiz,
Army Federal Register, Liaison Officer.
[FR Doc. 01–27868 Filed 11–5–01; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10 (a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than November 9, 2001. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: November 16–17, 2001.

Time: November 16—Full Board 8:30 a.m.–10:00 a.m.; Assessment Development Committee 10:00 a.m.–12:15 p.m.; Committee on Standards, Design and Methodology, 10:00 a.m.–12:15 p.m.; Reporting and Dissemination Committee, 10:00 a.m.–12:15p.m.; Full Board, 12:30 p.m.–5:00 p.m.; November 17—Full Board 8:30 a.m.–12:00 p.m.

Location: The Westin Fairfax, 2100 Massachusetts Avenue NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On November 16, 2001 the full Board will convene in open session from 8:30 a.m.–10:00 a.m. The Board will approve the agenda; hear a report from the Executive Director of the National Assessment Governing Board; receive updates on the NAEP Program and on reauthorization; and on the "No Child Left Behind" initiative. From 10:00 a.m. to 12:15 p.m., the Board's standing committees will meet in open session.

The Assessment Development Committee (ADC) will meet in open session on Friday, November 16, 2001 from 10:00 a.m.–12:15 p.m. The Committee will review final recommendations on the Mathematics Framework and Specifications for the 2004 NAEP Math Assessment; review the draft NAEP Reading Framework; and receive a briefing on the Economics Framework and Specifications project for the NAEP 2005 Economics Assessment.

The Committee on Standards, Design, and Methodology will meet on Friday, November 16, 2001 from 10 a.m.–12:15 p.m. to discuss technical issues in potential changes to Long Term Trend Assessments; receive a summary analyses of combined state and national NAEP data; discuss proposed statistical standards for inference and comparisons; receive a summary analyses of the grade 12 score decline in NAEP; and receive a status report on the 2001 geography achievement level anchoring study.

The Reporting and Dissemination Committee will meet on Friday, November 16, 2001 from 10 a.m.–12:15 p.m. to discuss the NAEP 2000 Science Release; the schedule for release of future NAEP reports; and annual reporting of reading and mathematics.

The Committee will receive an update on racial/ethnic categories in NAEP data collection and reporting, and discuss the Board's role in the review of background questions and criteria for review. The Committee will review background questions for the NAEP 2002 reading and writing assessments; the NAEP 2002 field test; and the long term trend assessments.

The full Board will reconvene on November 16, 2001 from 12:30 p.m.–5 p.m. to discuss measuring achievement gaps, to receive an update and discuss the NAEP 2002 Reading Revisit; hear a status report from the Ad Hoc Committee on Confirming State Results; hear recommendations and discuss the NAEP 2004 Mathematics Framework; and receive ethics training upon which the November 16, 2001 session of the Board meeting will adjourn.

On November 17, 2001, the Board will meet from 8:30 a.m. to 9:30 a.m. to receive a demonstration of the Interactive NAEP Data Tool. The Board will then hear and take action on Committee reports from 9:30 a.m. to 12 p.m., whereupon the meeting will adjourn.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m. Eastern Standard Time.

Dated: November 1, 2001.

Roy Truby,
Executive Director, National Assessment Governing Board.
[FR Doc. 01–27786 Filed 11–5–01; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council

AGENCY: Department of Energy.
ACTION: Notice of Charter Renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. No. 92–463) and in accordance with title 41 of the Code of Federal Regulations, section 102–3.65, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Coal Council has been renewed for a two-year period ending November 1, 2003. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on a continuing basis, regarding general policy matters relating to coal issues.

SUPPLEMENTARY INFORMATION:

Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the coal industry, including large and small companies, and commercial and residential consumers. The Council also has diverse members who represent interests outside the coal industry, including environmental interests, labor, research, and academia. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, and implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business and in the

public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act and implementing regulations.

FOR FURTHER INFORMATION CONTACT: Rachel M. Samuel at 202/586–3279.

Issued at Washington, DC on November 1, 2001.

James N. Solit,

Advisory Committee, Management Officer.

[FR Doc. 01–27843 Filed 11–5–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Petroleum Council

AGENCY: Department of Energy.

ACTION: Notice of Charter Renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. No. 92–463) and in accordance with title 41 of the Code of Federal Regulations, section 102–3.65, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Petroleum Council has been renewed for a two-year period ending November 1, 2003. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

SUPPLEMENTARY INFORMATION: Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the petroleum industry, and from large and small companies. The Council also has diverse members who represent interest outside the petroleum industry, including representatives from environmental, labor, research, academia, and State utility regulatory commissions. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, and implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will operate in accordance with the Federal Advisory Act and implementing regulations.

FOR FURTHER INFORMATION CONTACT: Rachel M. Samuel at (202) 586–3279.

Issued at Washington, DC on November 1, 2001.

James N. Solit,

Advisory Committee, Management Officer.

[FR Doc. 01–27842 Filed 11–5–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Advance Notice of Intent to Prepare an Environmental Impact Statement To Evaluate Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center

AGENCY: Department of Energy.

ACTION: Advance notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) is announcing in advance its intent to prepare an Environmental Impact Statement (EIS) for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project (WVDP) and Western New York Nuclear Service Center (the Center). DOE has prepared this advance notice in accordance with the Department's regulations for implementing the National Environmental Policy Act (NEPA) [10 CFR 1021.311(b)], which state that DOE may publish an Advance Notice of Intent to provide an early opportunity to inform interested parties of a pending EIS or to solicit early public comments. DOE anticipates that the New York State Energy Research and Development Authority (NYSERDA) will participate in the preparation of the Decommissioning and/or Long-Term Stewardship EIS as a joint lead agency, that the U.S. Nuclear Regulatory Commission (NRC) will participate as a cooperating agency, and that the New York State Department of Environmental Conservation (NYSDEC) will participate as an involved agency under the New York State Environmental Quality Review Act (SEQRA).

DOE and NYSERDA plan to evaluate the range of reasonable alternatives in this EIS to address their respective responsibilities at the Center, including those under the West Valley Demonstration Project Act (Public Law 96–368) and other applicable requirements, including decommissioning criteria that may be prescribed by NRC in accordance with the Act.

DOE invites early public comment on the range of environmental issues and alternatives to be analyzed. DOE and NYSERDA will consider the comments received and other relevant information in developing a preliminary scope of the EIS for publication in a subsequent Notice of Intent, which would initiate a public scoping process in accordance with DOE's NEPA implementing regulations and those of SEQRA.

This Advance Notice of Intent is consistent with DOE's March 26, 2001, Notice of Intent (66 FR 16447) to revise the strategy for completing the *Draft Environmental Impact Statement for Completion of the West Valley Demonstration Project and Closure or Long-Term Management of Facilities at the Western New York Nuclear Service Center* (DOE/EIS–0226-D, March 1996, also referred to as the 1996 Cleanup and Closure Draft EIS), which was issued jointly by DOE and NYSERDA. The March 2001 Notice of Intent announced that DOE intends to prepare a separate EIS on its decontamination of WVDP facilities and related waste management activities.

ADDRESSES: Address early comments on the preliminary scope of the Decommissioning and/or Long-Term Stewardship EIS to the DOE Document Manager: Mr. Daniel W. Sullivan, West Valley Demonstration Project, U.S. Department of Energy, 10282 Rock Springs Road, West Valley, New York 14171, Telephone: (716) 942–4016, facsimile: (716) 942–4703, e-mail: *daniel.w.sullivan@wv.doe.gov.*

The "Public Reading Rooms" section under **SUPPLEMENTARY INFORMATION** lists the addresses of the reading rooms where documents referenced herein are available.

FOR FURTHER INFORMATION, CONTACT: For information regarding the WVDP or the EIS, contact Mr. Daniel Sullivan as described above. Those seeking general information on DOE's NEPA process should contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone: (202) 586–4600, Facsimile: (202) 586–7031, or leave a message at 1–800–472–2756, toll-free.

Questions for NYSERDA should be directed to: Mr. Paul J. Bembia, New York State Energy Research and Development Authority, 10282 Rock Springs Road, West Valley, New York 14171, Telephone: (716) 942–4900, Facsimile: (716) 942–2148, email: *pjb@nyserda.org.*

Those seeking general information on the SEQRA process should contact: Mr. Hal Brodie, Deputy Counsel, New York State Energy Research and Development Authority, Corporate Plaza West, 286 Washington Avenue Extension, Albany, New York 12203–6399, Telephone: (518) 862–1090, ext. 3280, Facsimile: (518) 862–1091, email: *hb1@nyserda.org.*

This Advance Notice of Intent will be available on the internet at *http://tis.eh.doe.gov/nepa*, under "NEPA Announcements". Additional information about the WVDP is also available on the internet at *http://www.wv.doe.gov/LinkingPages/insidewestvalley.htm.*

SUPPLEMENTARY INFORMATION: DOE announces its Advance Notice of Intent to prepare an EIS for Decommissioning and/or Long-Term Stewardship at the WVDP and the Center. DOE has prepared this Advance Notice of Intent in accordance with the Department's regulations for implementing NEPA [10 CFR 1021.311(b)], which state that DOE may publish an Advance Notice of Intent to provide an early opportunity to inform interested parties of a pending EIS or to solicit early public comments.

DOE intends to prepare this EIS jointly with NYSERDA, although either agency may, at any point, determine the need to proceed independently in support of their independent missions. In preparing this Advance Notice of Intent, DOE anticipates that the Department would be the lead Federal agency for purposes of compliance with NEPA, while NYSERDA would be the lead State agency for purposes of compliance with SEQRA. DOE also anticipates that NRC would participate as a cooperating agency under NEPA and that NYSDEC would be an involved agency under SEQRA.

Invitation to Comment

DOE invites the public to provide early assistance in identifying significant environmental issues and alternatives to be analyzed in the forthcoming Decommissioning and/or Long-Term Stewardship EIS. DOE and NYSERDA will consider public comments and other relevant information as the agencies jointly develop a Notice of Intent for publication in the **Federal Register** and a notice for publication in the New York State *Environmental Notice Bulletin.* DOE and NYSERDA expect the Notice of Intent to contain a preliminary range of reasonable alternatives proposed for analysis as agreed to by DOE and NYSERDA. Further, DOE and NYSERDA expect to publish the Notice of Intent within approximately a year of publishing this advance notice. Although a public scoping meeting will not be held until the public scoping process required by NEPA has been initiated, DOE and NYSERDA would give equal weight to written comments submitted in response to this Advance Notice of Intent and comments received during the public scoping process.

Background

The Center consists of a 3,345-acre reservation in rural western New York that is the location of the only NRC-licensed commercial spent nuclear fuel reprocessing facilities to have ever operated in the United States. NYSERDA holds title to the Center on behalf of the people of the State of New York. Pursuant to the WVDP Act, DOE and NYSERDA entered into a Cooperative Agreement effective October 1, 1980, that specifies the responsibilities and conditions agreed upon by each for the purpose of carrying out the WVDP. Under the agreement, NYSERDA has made available to DOE, without transfer of title, an approximately 200-acre portion of the Center, known as the "Project Premises," which includes a formerly operated spent nuclear fuel reprocessing plant, spent nuclear fuel receiving and storage area, liquid high-level waste (HLW) storage tanks, a liquid low-level waste treatment facility with associated lagoons, and a radioactive waste disposal area licensed by the NRC. Adjacent to and in the vicinity of the Project Premises is an area referred to as the State Licensed Disposal Area, for which NYSERDA has responsibility.

The WVDP Act authorizes NRC to prescribe decommissioning criteria for the WVDP. At this time, DOE anticipates that the NRC would resume regulatory oversight of the Center, with the exception of the State Licensed Disposal Area, following DOE's completion of the WVDP.

Section 2(a)(1–5) of the WVDP Act articulates the five actions required of DOE. Actions 1 and 2 address HLW solidification and development of appropriate containers for the solidified wastes. Action 3 requires DOE to transport the solidified HLW to a Federal geologic repository for permanent disposal. Action 4 requires DOE to dispose of low-level and transuranic wastes generated by HLW solidification and in connection with the WVDP. Action 5 requires DOE to decontaminate and decommission the tanks, facilities, material, and hardware used in the solidification of HLW and in connection with the WVDP.

Actions 1 and 2 were the focus of a 1982 Final EIS (DOE/EIS–0081) and Record of Decision (47 FR 40705, September 15, 1982) on HLW solidification. The 1996 Cleanup and Closure Draft EIS examined the remaining actions, 3, 4, and 5. Considering the comments received on the 1996 Cleanup and Closure Draft EIS, ongoing discussions between the joint lead agencies (DOE and NYSERDA), and discussions with NRC, DOE now intends to conduct the NEPA process for actions 3, 4, and 5 in two separate EISs. Accordingly, DOE announced its intent to prepare a Decontamination and Waste Management EIS on March 26, 2001 (66 FR 16447), which will only address DOE's decision-making with respect to managing Project wastes and decontaminating Project facilities as stipulated in actions 3 and 4 and decontamination activities for Project facilities stipulated in action 5. DOE will need to conduct these activities regardless of future decommissioning and/or long-term stewardship decisions.

DOE expects the Decommissioning and/or Long-Term Stewardship EIS announced herein to address DOE's remaining activities under the WVDP Act as stipulated in action 5, any waste management activities under action 4 that could arise as a result of decommissioning activities, and NYSERDA's activities relative to decommissioning or long-term stewardship of land and facilities under its purview. DOE believes that the activities identified for the Decontamination and Waste Management EIS and for the Decommissioning and/or Long-Term Stewardship EIS are separate and distinct and are thus appropriate for analysis in two EISs, consistent with NEPA and its implementing regulations.

Purpose and Need for Action

DOE needs to determine the manner that facilities for which the Department is responsible under the WVDP Act are decommissioned, in accordance with the criteria yet to be prescribed by the NRC. NYSERDA needs to develop a strategy for decommissioning or long-term stewardship for land and facilities under its purview. To this end, DOE and NYSERDA would determine what, if any, material or structures would remain on the site and what, if any, institutional controls would be required, in accordance with their respective agency responsibilities.

Potential Range of Alternatives

DOE anticipates, at this time, that its alternatives to be proposed for analysis in the Decommissioning and/or Long-Term Stewardship EIS would range from complete removal of Project waste and facilities to in-place closure of Project facilities, including a No Action Alternative as required by NEPA, and that NYSERDA would propose a similar range of decommissioning and/or long-

term stewardship alternatives to those proposed by DOE, for the facilities and areas for which NYSERDA is responsible. Additional alternatives may also be presented after consultation with NRC, NYSERDA and the public. However, DOE and NYSERDA expect the potential alternatives to be sufficiently consistent in concept with those identified in the1996 Draft Cleanup and Closure EIS to allow the use of technical information presented therein, supplemented as needed.

New Information To Be Evaluated

NRC has indicated that it intends to publish a draft policy statement on prescribing decommissioning criteria for the WVDP for public comment and subsequently issue a final statement that would include its response to comments. Based upon ongoing discussions with the Commission, DOE and NYSERDA intend at this time to apply the NRC's License Termination Rule (10 CFR 20.1401 *et seq.*) as draft decommissioning criteria in assessing the health and environmental impacts of decommissioning the WVDP facilities, pending NRC issuance of its final Policy Statement on decommissioning criteria for the WVDP. If the final decommissioning criteria are issued before completion of the EIS, the results in the EIS will reflect any changes in criteria.

In 1997, the NRC published the *Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities* (NUREG–1496) to support its decision-making on establishing explicit radiological criteria for decommissioning various types of facilities, including nuclear power plants, non-power reactors, fuel fabrication plants, uranium hexaflouride production plants, and independent spent fuel storage installations. This EIS analyzed courses of action that NRC would take in establishing radiological criteria for decommissioning and the cost and environmental impacts associated with those alternatives. Based on this analysis, the NRC promulgated its Final License Termination Rule (62 FR 39086, July 21, 1997). Although this EIS did not evaluate a reference spent fuel reprocessing facility, DOE and NYSERDA intend to use those aspects of NRC's EIS that may have specific relevance to the West Valley site.

Further, DOE and NYSERDA also intend to evaluate other available NRC NEPA documents to identify elements that would be applicable to decommissioning activities at the WVDP and the Center. NRC issued the *Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities* (NUREG–0586) in 1988 to assist it in reevaluating its regulatory requirements for decommissioning of nuclear facilities. In this EIS, the NRC evaluated the areas of decommissioning alternatives, financial assurance, planning, and residual radioactivity levels. This EIS was prepared to support the *General Requirements for Decommissioning of Nuclear Facilities*, Final Rule (53 FR 24018, June 27, 1988) and analyzed a number of reference licensed facilities, including the Barnwell spent fuel reprocessing design, which was never demonstrated. The Barnwell facility, unlike the West Valley reprocessing facility, was designed for short-term liquid HLW storage and subsequent near-term HLW vitrification. The NRC is currently supplementing this EIS (65 FR 25395, May 1, 2000) to evaluate certain decommissioning alternatives for power reactor facilities in more detail.

For the 1996 Draft WVDP Cleanup and Closure EIS, DOE developed or modified a variety of analytical tools specifically for that document. DOE has continued to refine many of these analytical tools as a result of public comments received on the 1996 Draft Cleanup and Closure EIS and ongoing interactions with stakeholders and regulatory agencies such as the NRC. DOE intends to apply these improved analytical tools to the preparation of the Decommissioning and/or Long-Term Stewardship EIS. To address significant issues such as erosion, for example, DOE has continued to develop a site-specific erosion model, with ongoing advice from NRC, and integrated that model into a revised performance assessment methodology, incorporating the use of sensitivity and uncertainty analyses.

There are also some additional areas where new information will be obtained specifically for the Decommissioning and/or Long-Term Stewardship EIS. This work includes updated site characterization and census data and the performance of a seismic reflection survey in the vicinity of the WVDP. This seismic reflection survey, to be performed in consultation with academic, government, and industry participants, will contribute to knowledge about the regional structural geology as it may relate to the WVDP and the Center.

Additional information that has become available since publication of the 1996 Draft Cleanup and Closure EIS includes DOE's *Waste Management Programmatic Environmental Impact Statement* (WM PEIS, DOE/EIS–0200–F) and its associated Records of Decision. The WM PEIS analyzed on a national scale the centralization, regionalization, or decentralization of managing HLW, transuranic waste, low-level radioactive waste, mixed radioactive low-level waste (containing hazardous constituents), and non-wastewater hazardous waste. The Decommissioning and/or Long-Term EIS will incorporate, as appropriate, analyses from the WM PEIS so as to analyze site-specific activities necessary to implement the pertinent parts of the Records of Decision that apply to West Valley. The Decommissioning and/or Long-Term Stewardship EIS will also incorporate, as needed, information made available as a result of the Decontamination and Waste Management EIS.

Potential Environmental Issues for Analysis

DOE has tentatively identified the following issues for analysis in the Decommissioning and/or Long-Term Stewardship EIS. The list is presented to facilitate early comment on the scope of the EIS. It is not intended to be all-inclusive nor to predetermine the alternatives to be analyzed or their potential impacts.

- Potential impacts to the general population and on-site workers from radiological and non-radiological releases from decommissioning and/or long-term stewardship activities.
- Potential environmental impacts, including air and water quality impacts, caused by decommissioning and/or long-term stewardship activities.
- Potential transportation impacts from shipments of radioactive, hazardous, or mixed waste generated during decommissioning activities.
- Potential impacts from postulated accidents.
- Potential disproportionately high and adverse effects on low-income and minority populations (environmental justice).
- Potential Native American concerns.
- Irretrievable and irreversible commitment of resources.
- Short-term and long-term land use impacts.
- Decommissioning criteria for the WVDP.
- Compliance with Federal, State, and local requirements.
- The influence of, and potential interactions of, any wastes remaining at the Center after decommissioning.
- Unavoidable adverse impacts.
- Issues associated with decommissioning and long-term site stewardship, including regulatory and engineering considerations.
- Long-term site stability, including erosion and seismicity.

Other Agency Involvement

NYSDEC and the U.S. Environmental Protection Agency entered into an Administrative Order on Consent with DOE and NYSERDA in March 1992, pursuant to section 3008(h) of the Hazardous and Solid Waste Amendments of 1984 under the Resource Conservation and Recovery Act. The purpose of the Order is to protect human health and the environment from releases of hazardous waste and/or hazardous constituents. DOE and NYSERDA expect to continue ongoing work with NYSDEC and the U.S. Environmental Protection Agency to integrate the requirements of the Order with the EIS process. DOE anticipates that NYSDEC therefore would participate in the Decommissioning and/or Long-Term Stewardship EIS to the extent required to address its regulatory responsibilities for the WVDP and the Center, including the State Licensed Disposal Area, as an involved agency under SEQRA.

Future Public Involvement

This Advance Notice of Intent does not serve as a substitute for the Notice of Intent that would initiate the public scoping process for the Decommissioning and/or Long-Term Stewardship EIS. After that Notice of Intent is published, DOE and NYSERDA expect to conduct the public scoping process in accordance with NEPA, the Council on Environmental Quality NEPA implementing regulations (40 CFR 1500—1508), the DOE's implementing regulations (10 CFR part 1021), and with New York's SEQRA and its implementing regulations (6 NYCRR 617). The scoping process will include a public meeting and a public comment period on the scope of the EIS.

Public Reading Rooms

Documents referenced in this Advance Notice of Intent and related information are available at the following locations.

Central Buffalo Public Library Science and Technology Department, Lafayette Square, Buffalo, New York 14203, (716) 858–7098

The Olean Public Library, 134 North 2nd Street, Olean, New York 14760, (716) 372–0200

The Hulbert Library of the Town of Concord, 18 Chapel Street, Springville, New York 14141, (716) 592–7742

West Valley Central School Library, 5359 School Street, West Valley, New York 14141, (716) 942–3261

Ashford Office Complex, 9030 Route 219, West Valley, New York 14171, (716) 942–4555

Issued in Washington, DC, on October 31, 2001.

Steven V. Cary,

Acting Assistant Secretary, Office of Environment, Safety and Health.

[FR Doc. 01–27841 Filed 11–5–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–1047–001, ER01–1074–001, ER01–1090–001, ER01–1144–001, and EL02–11–000]

Central Maine Power Company; Notice of Initiation of Proceeding and Refund Effective Date

October 31, 2001.

Take notice that on October 26, 2001, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL02–11–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL02–11–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Secretary.

[FR Doc. 01–27770 Filed 11–5–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–391–001]

Clear Creek Storage Company, L.L.C.; Notice of Amendment

October 31, 2001.

Take notice that on October 26, 2001, Clear Creek Storage Company, L.L.C. (Clear Creek), 180 East 100 South, Salt Lake City, Utah 84111, filed an amendment to its pending application filed on June 22, 2001, in Docket No. CP01–391–000, pursuant to section 7(c) of the Natural Gas Act (NGA), to reflect that it no longer requests authorization to (1) Construct 1,000 feet of 4-inch diameter, buried pipeline to connect observation Well No. 22–9B to the existing injection/withdrawal lateral extending from the authorized injection/withdrawal Well No. 44–4B to the central processing facilities; (2) convert Well No. 22–9B from an observation well to a withdrawal well and utilize this well for withdrawal of natural gas from the storage reservoir; and, (3) operate the proposed facilities and Well No. 22–9B to meet storage service commitments to customers, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Clear Creek states that recent storage reservoir analyses of the past year's performance indicate that withdrawals from the reservoir necessary to meet authorized storage service commitments to customers can be accomplished by the use of the existing Well No. 44–4B and the proposed withdrawal Well No. 35–4B.

Clear Creek, by this amendment, reiterates its original request that the Commission issue a certificate of public convenience and necessity authorizing Clear Creek to (1) Construct 336 feet of 4-inch diameter, buried pipeline to connect observation Well No. 35–4B to the existing injection/withdrawal lateral extending from the authorized injection/withdrawal Well No. 44–4B to the central processing facilities; (2) convert Well No. 35–4B from an observation well to a withdrawal well and utilize this well for withdrawal of natural gas from the storage reservoir; and, (3) operate the above pipeline facilities and withdrawal well to meet authorized storage service commitments to customers. Clear Creek states that the revised cost of the proposed project is estimated to be $52,700.

Any questions regarding the amendment should be directed to Michael B. McGinley, Vice President, Clear Creek Storage Company, L.L.C., 180 East 100 South, P.O. Box 45601, Salt Lake City, Utah 84111, at (804) 324–2527.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 12, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be

placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the amendment for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

All persons who have heretofore filed need not file again.

David P. Boergers,

Secretary.

[FR Doc. 01–27765 Filed 11–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3112–002]

New York Independent System Operator, Inc.; Notice of Filing

October 31, 2001.

Take notice that on October 26, 2001, the New York Independent System Operator, Inc. (NYISO) filed with the Federal Energy Regulatory Commission (Commission) a correction to revisions to its Open-Access Transmission Tariff (OATT) to make permanent two temporary market rules pertaining to External Transactions that were initially implemented as "Extraordinary Corrective Actions," and to introduce several new enhancements to its external transaction scheduling processes. The NYISO has requested a waiver of the usual sixty day notice period so that this filing can become effective on October 30, 2001.

The NYISO has served a copy of the filing on all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, to the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 7, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–27767 Filed 11–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–24–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 31, 2001.

Take notice that on October 25, 2001, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective December 1, 2001:

Third Revised Volume No. 1
Fourteenth Revised Sheet No. 14
Original Volume No. 2
Thirty-First Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to propose an increase from 1.49% to 1.74% in the fuel reimbursement factor (Factor) applicable to Northwest's transportation rate schedules. This Factor allows Northwest to be reimbursed in-kind for the fuel used during the transmission of gas and for the volumes of gas lost and unaccounted-for that occur as a normal part of operating its transmission system.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27769 Filed 11–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–11–000, CP02–12–000 and CP02–13–000]

Western Frontier Pipeline Company, L.L.C.; Notice of Application

October 31, 2001.

On October 24, 2001, Western Frontier Pipeline Company, L.L.C. (Western Frontier), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Dockets No. CP02–11–000, CP02–12–000, and CP02–13–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing Western Frontier to construct and operate a new interstate natural gas pipeline having a capacity of 540,000 Dth/d per day, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Specifically, Western Frontier proposes to construct:

(a) Approximately 398.45 miles of new 30-inch diameter pipeline beginning at the existing Cheyenne Hub in Weld County, Colorado and traversing eastern Colorado and western Kansas before terminating in Beaver County, Oklahoma;

(b) Approximately 9.67 miles of 16-inch diameter lateral pipeline extending west from the proposed 30-inch mainline in Adams County, Colorado;

(c) A 10,000 horsepower compressor station at the northern terminus of the 30-inch mainline in Weld County, Colorado;

(d) A 20,000 horsepower compressor station in Adams County, Colorado;

(e) Nine measurement facilities with interconnecting pipeline; and

(f) Auxiliary support facilities such as block valves and pig traps.

Western Frontier also requests that the Commission (1) approve Western Frontier's proposed recourse rates for transportation service, and approve its Pro Forma Tariff, including the authority to enter into negotiated rate agreements; (2) issue Western Frontier a blanket certificate of public convenience and necessity pursuant to part 284, Subpart G, of the Commission's regulations, authorizing it to provide open access transportation service to others; and (3) issue Western Frontier a blanket certificate of public convenience and necessity pursuant to part 157, Subpart F, of the commission's regulations, authorizing certain construction, operation, and abandonment activities.

Western Frontier states that it has thus far signed transportation precedent agreements with Marathon Oil Company (Marathon), Williams Energy Marketing and Trading and Trading Company (WEM&T), Utilicorp United, Inc. (Utilicorp), and Entergy Power Generation Corporation (Entergy) for a total of 365,000 Dth/d (approximately 67.6%) of the 540,000 Dth/d design capacity of the project. The initial term for all these agreements is ten years, except for Marathon, who has committed to a five-year term with an option to extend an additional two years. Western Frontier states that active negotiations are underway with additional shippers for use of the remaining capacity.

Western Frontier states that the purpose of the proposed project is to connect the mid-continent interstate pipeline grid and associated markets to prolific supply basins in the cental Rockies. Their intention is to provide the region with a reliable and competitive alternative gas supply that could support both existing and future energy demands.

Western Frontier states that the estimated cost of the proposed facilities is approximately $365,700,000. Western Frontier requests a preliminary determination on the non-environmental aspects of the project by March 6, 2002, and a final certificate order no later than December 11, 2002, so that the project can be completed by the proposed in-service date of November 1, 2003.

Any questions regarding this application should be directed to David N. Roberts, Manager, Certificates & Tariffs, Western Frontier Pipeline Company, L.L.C., P.O. Box 20006, Owensboro, Kentucky 42304 (Phone No. 270–688–6712).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November November 21, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–27766 Filed 11–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4421–002, *et al.*]

Consumers Energy Company, *et al.*; Electric Rate and Corporate Regulation Filings

October 31, 2001.

Take notice that the following filings have been made with the Commission:

1. Consumers Energy Company

[Docket No. ER98–4421–002]

Take notice that on October 26, 2001, Consumers Energy Company (Consumers) submitted to the Federal Energy Regulatory Commission (Commission) its triennial market analysis and status update as required in connection with the market-based sales authority granted to it in "Consumers" 85 FERC 61,121 (1998). A copy of the filing was served upon the Michigan Public Service Commission and those on the official service list in that proceeding, Docket No. ER98–4221–000.

Comment date: November 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Energy Atlantic, LLC

[Docket No. ER98–4381–006]

Take notice that on September 24, 2001, Energy Atlantic, LLC (Energy Atlantic) submitted an updated market analysis to the Federal Energy Regulatory Commission (Commission) in support of its market-based rate authority. Energy Atlantic reports that there are no changes in its status since Energy Atlantic obtained its market-based rate authority.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Central Maine Power Company

[Docket No. ER01–2493–001]

Take notice that on October 23, 2001, Central Maine Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission) a settlement package, which includes Uncontested Settlement Agreement, Supplemental Informational Filing, Explanatory Statement In Support of Uncontested Settlement Agreement, Draft Order and a Certificate of Service.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company; Connecticut—Long Island Cable

[Docket No. ER01–2584–001]

Take notice that on October 26, 2001, Northeast Utilities Service Company (NUSCO) submitted a compliance filing to the Federal Energy Regulatory Commission (Commission) in response to the October 11, 2001 order of the Federal Energy Regulatory Commission, Northeast Utilities Service Co., 97 FERC 61,026 (2001). NUSCO states that its compliance filing informs the Commission about the status of the proposed Connecticut—Long Island Cable (the CLIC) and submits the information requested by the Commission.

A copy of this filing was served upon all persons on the official service list in the captioned proceeding.

Comment date: November 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Energy Retail Trading and Marketing, Inc.

[Docket No. ER02–1–001]

Take notice that on October 26, 2001, Southern Energy Retail Trading and Marketing, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its October 1, 2001 Notice of Cancellation in the captioned docket, containing a revised tariff sheet.

Comment date: November 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Gilroy Energy Center, LLC; King City Energy Center, LLC

[Docket No. ER02–156–000 and ER02–169–000]

Take notice that on October 23, 2001, Gilroy Energy Center, LLC (Gilroy) and King City Energy Center, LLC (King City) filed with the Federal Energy Regulatory Commission (Commission) umbrella service agreements with Calpine Energy Services, L.P. for short-term transactions at market-based rates under Gilroy's and King City's respective rate schedules.

King City requests a waiver of the Commission's 60-day prior notice requirement to accept its attached umbrella service agreement with an effective date of December 13, 2001 to coincide with the commencement of service from King City to CES.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Power Investments, Inc.

[Docket No. EG02–13–000]

Take notice that on October 29, 2001, Cinergy Power Investments, Inc., 139 East Fourth Street Cincinnati, Ohio 45202, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended. The applicant will be engaged directly or indirectly and exclusively in the business of owning and/or operating generating plants megawatt and selling electric energy at wholesale.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Golden Spread Electric Cooperative, Inc.

[Docket No. ES02–5–000]

Take notice that on October 23, 2001, Golden Spread Electric Cooperative submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term and intermediate term debt in amounts such that the aggregate principal amount does not exceed $160 million at any one time.

Comment date: November 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27771 Filed 11–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meeting and Soliciting Scoping Comments for an Applicant Prepared Environmental Assessment Using the Alternative Licensing Process

October 31, 2001.

a. *Type of Application:* Alternative Licensing Process.

b. *Project No.:* P–2586–023.

c. *Applicant:* Alabama Electric Cooperative, Inc.

d. *Name of Project:* Conecuh River Hydroelectric Project.

e. *Location:* On the Conecuh River near the towns of Gantt and River Falls, in Covington County, Alabama.

f. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)—825(r).

g. *Applicant Contact:* Mike Noel, Environmental Engineer, Alabama Electric Cooperative, Inc., Post Office Box 550, Andalusia, AL 36420, (334) 427–3248.

h. *FERC Contact:* Ron McKitrick at (770) 452–3378 or *ronald.mckitrick@ferc.fed.us.*

j. *Deadline for filing scoping comments:* January 10, 2002.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Scoping comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. *The Conecuh River Project consists of two developments:* The existing Point "A" development consists of a 2,800-foot-long earthen dam, 700-acre reservoir, three generating units with an installed capacity of 5,200kW, and a 0.39-mile-long transmission line. The existing Gantt development consists of a 1,562-foot-long earthen dam, a 2,767-acre reservoir, and two generating units with an installed capacity of 3,050 kW.

l. Scoping Process

Alabama Electric Cooperative, Inc., (AEC) intends to utilize the Federal Energy Regulatory Commission's (Commission) alternative licensing process (ALP). Under the ALP, AEC will prepare an Applicant Prepared Environmental Assessment (APEA) and license application for the Conecuh River Hydroelectric Project.

AEC expects to file with the Commission, the APEA and the license application for the Conecuh Hydroelectric Project by April 2003.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings identified below, and to solicit your scoping comments.

Scoping Meetings

AEC and the Commission staff will hold two scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the APEA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the environmental issues that should be analyzed in the APEA. The times and locations of these meetings are as follows:

Daytime Meeting

Monday, December 10, 2001, 1:30 pm to 3:00 pm

Alabama Electric Cooperative, Inc., Headquarter's Board Room, 2027 East Three Notch Street, P.O. Box 550, Andalusia, AL 36420–0550

Site Visit

Monday, December 10, 2001 from 3:30 pm to 5:00 pm, depart from and returning to AEC Headquarters Building

Evening Meeting

Monday, December 10, 2001, 7 pm to 9:00 pm

Alabama Electric Cooperative, Inc., Headquarter's Board Room, 2027 East Three Notch Street, P.O. Box 550, Andalusia, AL 36420–0550

To help focus discussions, Scoping Document 1 was mailed in November 2001, outlining the subject areas to be addressed in the APEA to the parties on the mailing list. Copies of the SD1 also will be available at the scoping meetings. SD1 may also be viewed on the web at http://www.ferc.gov using the "RIMS" link—select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Based on all written comments received, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised list of issues, based on the scoping sessions.

Objectives.

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the APEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the APEA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist AEC in defining and clarifying the issues to be addressed in the APEA.

David P. Boergers,

Secretary.

[FR Doc. 01-27768 Filed 11-5-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

October 31, 2001.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 7, 2001, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda

*NOTE—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION SECRETARY: David P. Boergers, Telephone (202) 208-0400, for a recording listing items stricken from or added to the meeting, Call (202) 208-1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items of the agenda; however, all public documents may be examined in the reference and information center.

778th—Meeting November 7, 2001; Regular Meeting 10 a.m.

Administrative Agenda

A-1.
DOCKET# AD02-1, 000, Agency Administrative Matters

A-2.
DOCKET# AD02-4, 000, Reliability, Security and Market Operations

Miscellaneous Agenda

M-1.
RESERVED

Markets, Tariffs and Rates—Electric

E-1.
DOCKET# EX02-6, 000, FERC/State Partnerships

E-2.
DOCKET# RM01-12, 000, Electricity Market Design and Structure

E-3.
OMITTED

E-4.
OMITTED

E-5.
OMITTED

E-6.
DOCKET# ER01-2702, 000, Michigan Electric Transmission Company

E-7.
DOCKET# ER01-3047, 000, California Independent System Operator Corporation

E-8.
DOCKET# ER01-3053, 000, Midwest Independent Transmission System Operator, Inc.

E-9.
DOCKET# ER01-3084, 000, Nine Mile Point Nuclear Station, LLC
OTHER#S ER01-3083, 000, Niagara Mohawk Power Corporation

E-10.
OMITTED

E-11.
DOCKET# ER01-2609, 000, Southern California Edison Company

E-12.
DOCKET# ER00-1520, 003, CP&L Holdings, Inc.
OTHER#S ER01-2966, 000, Progress Energy, Inc.
ER01-2966, 001, Progress Energy, Inc.

E-13.
DOCKET# ER01-677, 000, American Transmission Company LLC
OTHER#S ER01-677, 001, American Transmission Company LLC
ER01-1577, 000, American Transmission Company LLC
ER01-1577, 001, American Transmission Company LLC
ER01-1577, 002, American Transmission Company LLC

E-14.
DOCKET# ER01-1616, 000, Duke Energy Corporation
OTHER#S ER01-1616, 001, Duke Energy Corporation
ER01-1616, 002, Duke Energy Corporation

E-15.
OMITTED

E-16.
DOCKET# ER01-3075, 000, Michigan Electric Transmission Company

E-17.
DOCKET# ER01-463, 005, Arizona Public Service Company

E-18.
OMITTED

E-19.
DOCKET# ER00-3668, 002, Commonwealth Edison Company

E-20.
DOCKET# EL00-73, 001, Mansfield Municipal Electric Department and North Attleborough Electric Department v. New England Power Company

E-21.
DOCKET# SC97-4, 001, City of Alma, Michigan

E-22.
DOCKET# ER01-2390, 002, Huntington Beach Development, L.L.C.

E-23.
DOCKET# ER01-2126, 002, Michigan Electric Transmission Company
OTHER#S ER01-2375, 001, Michigan Electric Transmission Company

E-24.
DOCKET# ER01-2435, 001, American Transmission Company LLC

E-25.
DOCKET# TX96-2, 001, City of College Station, Texas

E-26.
DOCKET# ER98-1438, 004, Midwest Independent Transmission System Operator, Inc.
OTHER#S EC98-24, 003, The Cincinnati Gas & Electric Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Illinois Power Company, PSI Energy, Inc., Wisconsin Electric Power Company, Union Electric Company, Central Illinois Public Service Company, Louisville Gas & Electric Company and Kentucky Utilities Company

E-27.
DOCKET# ER99-4392, 001, Southwest Power Pool, Inc.

E-28.
DOCKET# ER00-1969, 002, New York Independent System Operator, Inc.
OTHER#S EL00-57, 001, Niagara Mohawk Power Corporation v. New York Independent System Operator, Inc.

EL00-57, 002, Niagara Mohawk Power Corporation v. New York Independent System Operator, Inc.
EL00-60, 002, Orion Power New York GP, Inc. v. New York Independent System Operator, Inc.
EL00-60, 001, Orion Power New York GP, Inc. v. New York State Electric & Gas Corporation
EL00-63, 000, New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.
EL00-63, 002, New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.
EL00-64, 002, Rochester Gas and Electric Corporation v. New York Independent System Operator, Inc.
EL00-64, 000, Rochester Gas and Electric Corporation v. New York Independent System Operator, Inc.
ER00-1969, 003, New York Independent System Operator, Inc.

E-29.
DOCKET# ER00-3038, 001, New York Independent System Operator, Inc.
OTHER#S EL00-70, 002, New York State Electric & Gas Gorporation v. New York Independent System Operator, Inc.

E-30.
OMITTED

E-31.
DOCKET# ER01-2076, 001, New York Independent System Operator, Inc.

E-32.
OMITTED

E-33.
OMITTED

E-34.
OMITTED

E-35.
OMITTED

E-36.
OMITTED

E-37.
DOCKET# EL01-101, 000, Duke Energy Corporation, Duke Energy Fossile-Hydro, LLC and Duke Energy Nuclear, LLC

E-38.
DOCKET# EL01-120, 000, Cinergy Services, Inc.

E-39.
DOCKET# EL01-119, 000, MEP Pleasant Hill, LLC, MEP Pleasant Hill Operating, LLC and CPN Pleasant Hill Operating, LLC

OTHER#S EC01-155, 000, MEP Pleasant Hill, LLC, MEP Pleasant Hill Operating, LLC and CPN Pleasant Hill Operating, LLC

E-40.
DOCKET# EL01-96, 000, Rumford Power Associates, L.P., Tiverton Power Associates, L.P., Androscoggin Energy, LLC, Calpine Construction Finance, L.P. and Calpine Eastern Corporation

E-41.
OMITTED

E-42.
DOCKET# EL01-19, 000, H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc.

E-43.
DOCKET# EL01-81, 000, Alternate Power Source, Inc. v. ISO New England, Inc.

E-44.
DOCKET# EL01-92, 000, Bangor Hydro-Electric Company v. ISO New England Inc.

E-45.
DOCKET# EL01-98, 000, American Ref-Fuel Company of Niagara, L.P. v. Niagara Mohawk Power Corporation

E-46.
DOCKET# EL01-94, 000, Rumford Power Associates, LP v. Central Maine Power Company

E-47.
OMITTED

E-48.
DOCKET# OA97-24, 005, Central Power and Light Company, West Texas Utilities Company, Southwestern Electric Power Company and Public Service Company of Oklahoma
OTHER#S ER97-881, 001, Central Power and Light Company, West Texas Utilities Company, Southwestern Electric Power Company and Public Service Company of Oklahoma
ER98-4609, 002, Central Power and Light Company, West Texas Utilities Company, Southwestern Electric Power Company and Public Service Company of Oklahoma
ER98-4611, 003, Central Power and Light Company, West Texas Utilities Company, Southwestern Electric Power Company and Public Service Company of Oklahoma

E-49.
DOCKET# ER01-889, 008, California Independent System Operator Corporation
OTHER#S ER01-3013, 000, California Independent System Operator Corporation

Markets, Tariffs and Rates—Gas

G-1.
RESERVED

G-2.
RESERVED

G-3.
DOCKET# RP00-157, 005, Kern River Gas Transmission Company

G-4.
OMITTED

G-5.
DOCKET# RP00-407, 000, High Island Offshore System, L.L.C.
OTHER#S RP00-619, 001, High Island Offshore System, L.L.C.
RP00-619, 000, High Island Offshore System, L.L.C.

G-6.
OMITTED

G-7.
DOCKET# RP00-411, 000, Iroquois Gas Transmission System, Inc.
OTHER#S RP01-44, 000, Iroquois Gas Transmission System, Inc.
RP01-44, 001, Iroquois Gas Transmission System, Inc.

G-8.
DOCKET# RP01-267, 001, Northern Border Pipeline Company

G-9.
DOCKET# OR92-8, 012, SFPP, L.P.
OTHER#S OR93-5, 009, SFPP, L.P.
OR94-3, 008, SFPP, L.P.
OR94-4, 009, SFPP, L.P.
OR94-5, 007, Mobil Oil Corporation v. SFPP, L.P.
OR94-34, 006, Tosco Corporation v. SFPP, L.P.
IS99-144, 004, SFPP, L.P.
IS00-379, 001, SFPP, L.P.

G-10.
DOCKET# RP01-496, 001, El Paso Natural Gas Company

G-11.
DOCKET# RP01-420, 000, City of Dunlap v. East Tennessee Natural Gas Company

G-12.
OMITTED

G-13.
DOCKET# OR89-2, et al., 000, Trans Alaska Pipeline System, et al.
OTHER#S OR96-14, 000, Exxon Company, U.S.A. v. Amerada Hess Pipeline Corporation, et al.
OR98-24, 000, Tesoro Alaska Petroleum Company v. Amerada Hess Pipeline Corporation, et al.

G-14.
DOCKET# MG01-31, 000, Transcontinental Gas Pipe Line Corporation

G-15.
DOCKET# MG01-30, 000, Midwestern Gas Transmission Company

Energy Projects—Hydro

H-1.
DOCKET# UL97-11, 001, PacifiCorp

H-2.
DOCKET# AD02-5, 000, Hydro Licensing Status Workshop

H-3.
DOCKET# P-1951, 079, Lester C. Reed v. Georgia Power Company

H-4.
DOCKET# P-2114, 096, Public Utility District No. 2 of Grant County,

Washington
OTHER#S P–2114, 097, Public Utility District No. 2 of Grant County, Washington
H–5.
DOCKET# UL00–3, 001, Homestake Mining Company
OTHER#S UL00–4, 001, Homestake Mining Company
H–6.
DOCKET# P–2114, 101, Public Utility District No. 2 of Grant County, Washington

Energy Projects—Certificates

C–1.
DOCKET# CP00–412, 000, Cross Bay Pipeline Company, L.L.C. and Transcontinental Gas Pipe Line Corporation
OTHER#S CP00–413, 000, Cross Bay Pipeline Company, L.L.C.
CP00–414, 000, Cross Bay Pipeline Company, L.L.C.
C–2.
DOCKET# CP01–361, 000, Northwest Pipeline Corporation
C–3.
DOCKET# CP01–403, 000, Northern Natural Gas Company
C–4.
OMITTED
C–5.
DOCKET# CP97–83, 001, Trunkline Gas Company
OTHER#S CP97–84, 001, Trunkline Field Services, Inc.
C–6.
DOCKET# CP96–152, 028, Kansas Pipeline Company

David P. Boergers,
Secretary.
[FR Doc. 01–27890 Filed 11–1–01; 4:45 pm]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7099–4]

Agency Information Collection Request Activities: Proposed Collection and Comment Request for the Outer Continental Shelf Air Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Outer Continental Shelf Air Regulations, ICR number 1601.04, and OMB Control Number 2060.0250, expiration date: March 31, 2001. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 7, 2002.

ADDRESSES: A copy of the supporting statement may be obtained from the Ozone Policy and Strategies Group, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, MD–15, Research Triangle Park NC 27711 or is available electronically at *http://www.epa.gov/ttn/oarpg* under "Search OAR P&G," type in Outer Continental Shelf Air Regulations.

Comments must be mailed to David Sanders, Ozone Policy and Strategies Group, Air Quality Strategies and Standards Division, C539–02, Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: David Sanders, telephone: (919) 541–3356, Facsimile: (919) 541–0824; E-Mail: *sanders.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are all outer continental shelf sources except those located in the Gulf of Mexico west of 87.5 degrees longitude (near the border of Florida and Alabama). For sources located within 25 miles of States' seaward boundaries, the requirements are the same as those that would be applicable if the source were located in the corresponding onshore area (COA). In States affected by this rule, State boundaries extend three miles from the coastline, except off the coast of the Florida Panhandle, where that State's boundary extends three leagues (about nine miles) from the coastline.

Title: Outer Continental Shelf Air Regulations, EPA ICR Number 1601.04 and OMB Control Number 2060.0250, expiration date: September 30, 2001.

Abstract: Sources located beyond 25 miles of States' boundaries are subject to Federal requirements (implemented and enforced solely by EPA) for Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants Standards (NESHAPS), the Federal operating permit program, and the enhanced compliance and monitoring regulations. Before any agency, department, or instrumentality of the Federal government engages in, supports in any way, provides financial assistance for, licenses, permits, approves any activity, that agency has the affirmative responsibility to ensure that such action conforms to the State implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. Section 176(c) of the Clean Air Act (42 U.S.C. 7401 *et seq.*) requires that all Federal actions conform with the SIPs to attain and maintain the NAAQS. Depending on the type of action, the Federal entities either collect the information themselves, hire consultants to collect the information or require applicants/sponsors of the Federal action to provide the information.

The type and quantity of information required will depend on the circumstances surrounding the action. First, the entity must make an applicability determination. If the source is located within 25 miles of the States' seaward boundaries as established in the regulations, the requirements are the same as those that would be applicable if the source were located in the COA. State and local air pollution control agencies are usually requested to provide information concerning regulation of offshore sources and are provided opportunities to comment on the proposed determinations. The public is also provided an opportunity to comment on the proposed determinations.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement

Total Industry Respondent Burden and Costs

The estimated industry respondent burden for total labor hours and costs associated with one-time/periodic activities are estimated to be 50,227 hours and $2,344,786, respectively. Total labor hours and costs associated with annual activities are estimated to be 48,924 hours and $2,256,547, respectively. Total industry respondent costs annualized over the 3-year time period are estimated to be $1,864,428 per year.

Total State and Local Agency Burden and Costs

The estimated State and local agency burden for total labor hours and costs associated with one-time/periodic activities are estimated to be 1,868 hours and $66,704, respectively. Total labor hours and costs associated with annual activities for that time period are estimated to be 10,458 hours and $373,376, respectively. Total costs annualized over the 3-year time period are estimated to be $166,400 per year.

Total EPA Burden and Costs

The estimated EPA burden for total labor hours and costs associated with one-time-only activities are estimated to be 9,038 hours and $322,657, respectively. Total labor hours and costs associated with annual activities are estimated to be 3,304 hours and $117,953, respectively. Total costs annualized over the 3-year time period are estimated to be $185,954 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 25, 2001.

Lydia Wegman,
Acting Director, Office of Air Quality Planning and Standards.
[FR Doc. 01–27819 Filed 11–5–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7098–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; General Conformity of Federal Actions to State Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: General Conformity of Federal Actions to State Implementation Plans, ICR number 1637.05, and OMB Control Number 2060–0279, expiration date December 31, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 6, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1637.05 and OMB Control No. 2060–0279, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by E-mail at *auby.susan@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1637.05. For technical questions about the ICR contact: Annie Nikbakht, Ozone Policy and Strategies Group, Air Quality Strategies and Standards Division, MD–15, Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5246.

SUPPLEMENTARY INFORMATION:

Title: General Conformity of Federal Actions to State Implementation Plans, OMB Control Number 2060–0279, EPA ICR Number 1637.05, expiration date December 31, 2001. This is a request for extension of a currently approved collection.

Abstract

Before any agency, department, or instrumentality of the Federal government engages in, supports in any way, provides financial assistance for, licenses, permits, approves any activity, that agency has the affirmative responsibility to ensure that such action conforms to the State implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). The EPA's implementing regulations require Federal entities to make a conformity determination for all actions which impact areas designated as nonattainment or maintenance for the NAAQS and which will result in total direct and indirect emissions in excess of de minimis levels. The Federal entities must collect information on the SIP requirements and the pollution sources to make the conformity determination. Depending on the type of action, the Federal entities either collect the information themselves, hire consultants to collect the information or require applicants/sponsors of the Federal action to provide the information.

The type and quantity of information required will depend on the circumstances surrounding the action. First, the entity must make an applicability determination. If the net total direct and indirect emissions do not exceed de minimis levels established in the regulations or if the action meets certain criteria for an exemption, a conformity determination is not required. Actions requiring conformity determinations vary from straightforward, requiring minimal information, to complex, requiring significant amounts of information. The Federal entity must determine the type and quantity of information on a case-by-case basis. State and local air pollution control agencies are usually requested to provide information to the Federal entities making a conformity determination and are provided opportunities to comment on the proposed determinations. The public is also provided an opportunity to comment on the proposed determinations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Section 176(c) of the Clean Air Act (42 U.S.C. 7401 *et seq.*) requires that all Federal actions conform with the SIPs to attain and maintain the NAAQS. The

Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 27, 2001 (66 FR 21136); Two comment letters were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 15–20 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Non-Federal-(Private Industry, State and Local Government).

Estimated Number of Respondents: Estimate 733 Total Actions/ Determinations.

Frequency of Response: Estimate Non-Federal perform approximately 733 straightforward & complex determinations per year (Note: only number of annual hours were given in comment letter, number and type of determinations not indicated; therefore, this number is subject to change if other detailed information becomes available).

Estimated Total Annual Hour Burden: 10,246.

Estimated Total Annualized Capital, O&M Cost Burden: None.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1637.05 and OMB Control No. 2060–0279 in any correspondence.

Dated: October 29, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–27838 Filed 11–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7098–4]

Request for Applications for Essential Use Exemptions to the Production and Import Phaseout of Ozone Depleting Substances under the Montreal Protocol for the years 2003 and 2004

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Through this notice, the Environmental Protection Agency (EPA) is requesting applications for essential use allowances for calendar years 2003 and 2004. Essential-use allowances provide exemptions to the production and import phaseout of ozone-depleting substances and must be authorized by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol). The U.S. government will use the applications received in response to this notice as the basis for its nomination of essential use allowances at the Fourteenth Meeting of the Parties to the Protocol to be held in 2002.

DATES: Applications for essential use exemptions must be submitted to EPA no later than December 6, 2001 in order for the United States (U.S.) government to complete its review and to submit nominations to the United Nations Environment Programme (UNEP) and the Protocol Parties in a timely manner.

ADDRESSES: Send two copies of application materials to: Erin Birgfeld, Global Programs Division (6205J), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. For applications sent via courier service, use the direct mailing address at 501 3rd Street, NW., Washington, DC 20001. Send one copy of the non-confidential application materials to: Air Docket A–93–39, 401 M Street, SW. (6102), Room M1500, Washington, DC 20460.

Confidentiality: Applications that are sent to the Air Docket should not contain confidential or proprietary information. Such confidential information should be submitted under separate cover and be clearly identified as "trade secret," "proprietary," or "company confidential." Information covered by a claim of business confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth at 40 CFR part 2, subpart B (41 FR 36902). If no claim of confidentiality accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the company (40 CFR 2.203).

FOR FURTHER INFORMATION CONTACT: Erin Birgfeld at the above address or at (202) 564–9079 telephone, (202) 565–2095 fax, or *birgfeld.erin@epa.gov*. General information may be obtained from the stratospheric protection website at *www.epa.gov/ozone*.

SUPPLEMENTARY INFORMATION:

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I. Background—The Essential Use Nomination Process
II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2003 and 2004

I. Background—The Essential Use Nomination Process

As described in previous **Federal Register** (FR) notices,[1] the Parties to the Protocol agreed during the Fourth Meeting in Copenhagen in 1992 on the criteria to be used for allowing "essential use" exemptions from the phaseout of production and importation of controlled substances. Decision IV/25 of the Fourth Meeting of the Parties details the specific criteria and review process for granting essential use exemptions.

Paragraph 1(a) of Decision IV/25 states that " * * * a use of a controlled substance should qualify as "essential" only if: (i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and (ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health". In addition, the Parties agreed "that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: (i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and (ii) the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances * * *" Decision XII/2 taken at the twelfth meeting of the Parties states that any CFC MDI product approved after December 31, 2000 is non-essential unless the product meets the criteria in Decision IV/25 paragraph 1(a).

The first step in obtaining essential use allowances is for the user to consider whether the use of the controlled substance meets the criteria of Decisions IV/25 and XII/2. The user should then notify EPA of the candidate use and provide information for U.S. government agencies and the Protocol Parties to evaluate that use according to the criteria under the Protocol. Upon receipt of the essential use exemption application, EPA reviews the information provided and works with other interested Federal agencies to determine whether it meets the essential use criteria and warrants being nominated by the United States for an exemption. In the case of multiple exemption requests for a single use such as for MDIs, EPA aggregates exemption requests received from individual entities into a single U.S. request. An important part of the EPA review of requests for CFCs for MDIs is to determine that the aggregate request for a particular future year adequately reflects the total market need for CFC MDIs and expected availability of CFC substitutes by that point in time. If the sum of individual requests does not account for such factors, the U.S. government may adjust the aggregate request to better reflect true market needs.

Nominations submitted to the Ozone Secretariat by the U.S. and other Parties are forwarded to the UNEP Technical and Economic Assessment Panel (TEAP) and its Technical Options Committees (TOCs), which review the submissions and make recommendations to the Parties for essential use exemptions. Those recommendations are then considered by the Parties at their annual meeting for final decision. If the Parties declare a specified use of a controlled substance as essential, and issue the necessary exemption from the production and consumption phaseout, EPA may propose regulatory changes to reflect the decisions by the Parties, but only to the extent such action is consistent with the Clean Air Act (CAA or Act). Applicants should be aware that essential use exemptions granted to the U.S. for the year 2002 under the Protocol were limited to chlorofluorocarbons (CFCs) for metered dose inhalers (MDIs) to treat asthma and chronic obstructive pulmonary disease, and methyl chloroform for use in manufacturing solid rocket motors.

The timing of this process is such that in any given year the Parties review nominations for essential use exemptions from the production and consumption phaseout intended for the following year and subsequent years. This means that, if nominated, applications submitted in response to today's notice for an exemption in 2003 and 2004 will be considered by the Parties in 2002 for final action.

The quantities of controlled ODSs that are requested in response to this notice, if approved by the Parties to the Montreal Protocol in 2002, will then be allocated as essential-use allowances (EUAs) to the specific U.S. companies through notice and comment rulemaking. EUAs for the year 2003 will be allocated to U.S. companies at the end of 2002, and EUAs for the year 2004 will be allocated at the end of 2003.

With Decision X/19 the Parties approved an unlimited, global essential use exemption for the production and consumption of high purity class I ODSs for essential laboratory and analytical uses through the year 2005. More recently, with Decision XI/15, the Parties eliminated three laboratory methods from the global exemption by declaring them to be non-essential beginning January 1, 2002. These methods are: testing of oil and grease and total petroleum hydrocarbons in water, testing of road-paving materials, and forensic finger printing. EPA will be proposing a regulation to implement Decision XI/15 in the near future.

II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2003 and 2004

Through this notice, EPA requests applications for essential use exemptions for all class I substances, except methyl bromide, for calendar years 2003 and 2004. This is the last opportunity to submit new or revised applications for 2003. Companies will have an opportunity to submit supplemental or amended applications for 2004 next year. All requests for exemptions submitted to EPA must present information as prescribed in the updated version of the TEAP "Handbook on Essential Use Nominations" (Handbook) published in June 2001. The handbook is available electronically on the web at *www.teap.org*, or at *www.epa.gov/ozone*.

In brief, the TEAP Handbook states that applicants must present information on:

- role of use in society;
- alternatives to use;
- steps to minimize use;
- steps to minimize emissions;
- recycling and stockpiling;
- quantity of controlled substances requested; and
- approval date and indications (for MDIs)

In submitting request for EUAs, EPA requires that applicants requesting EUAs for multiple pharmaceutical companies (e.g., International Pharmaceutical Aerosol Consortium), make clear the amount of CFCs requested for each member company. Also, all essential use applications for CFCs must provide a breakdown of the quantity of CFCs necessary for each MDI product to be produced. This detailed information will allow EPA and FDA to make informed decisions on the amount of CFC to be nominated by the U.S. government for the years 2003 and 2004.

There are some companies that hold New Drug Applications for CFC MDIs but whose MDI products are manufactured by another company (the contract filler). Beginning with this application cycle, all NDA holders for CFC MDI products produced in the U.S. must submit a complete application for essential use allowances either on their own or in conjunction with their contract filler. In the case where a contract filler produces a portion of an NDA holder's CFC MDIs, the contract filler and the NDA holder must determine the total amount of CFCs necessary to produce the NDA holder's entire product line of CFC MDIs. The NDA holder should provide an estimate of how the CFCs would be split between the contract filler and the NDA holder in the allocation year. This estimate will be used only as a basis for determining the nomination amount, and may be adjusted prior to allocation of EUAs. Since the U.S. government cannot forward incomplete or inadequate nominations to the Ozone Secretariat, it is important for applicants to provide all information requested in the Handbook, including the information specified in the supplemental research and development form (page 45).

The accounting framework matrix in the Handbook titled "Table IV: Reporting Accounting Framework for Essential Uses Other Than Laboratory and Analytical" requests data for the year 2001 on the amount of ODS exempted for an essential use, the amount acquired by production, the amount acquired by import, the amount on hand at the start of the year, the amount available for use in 2001, the amount used for the essential use, the quantity contained in exported products, the amount destroyed, and the amount on hand at the end of 2001. Because the data necessary to complete Table IV will not be available until after January 1, 2002, companies should not include this chart with their EUA applications in response to this notice. EPA plans to send letters to each essential use applicant requesting the information in Table IV in the first 2 weeks of January 2002. Companies will have only fourteen days in which to respond since EPA must compile

[1] 58 *FR* 29410, May 20, 1993; 59 *FR* 52544, October 18, 1994; 60 *FR* 54349, October 23, 1995; 61 *FR* 51110, 0 30, 1996, 62 *FR* 51655, October 2, 1997; 63 *FR* 42629, August 10, 1998; 64 *FR* 50083, September 15, 1999; and 65 *FR* 65377, November 1, 2000.

companies' responses to complete the U.S. CFC Accounting Framework for submission to the Parties to the Montreal Protocol by the end of January.

EPA anticipates that the 2002 review by the Parties of MDI essential use requests will focus extensively on research efforts underway to develop alternatives to CFC MDIs, on education programs to inform patients and health care providers of the CFC phaseout and the transition to alternatives, and on steps taken to minimize CFC use and emissions including efforts to recapture or reprocess the controlled substance. Accordingly, applicants are strongly advised to present detailed information on these points, including the scope and cost of such efforts and the medical and patient organizations involved in the work.

Applicants should submit their exemption requests to EPA as noted in the Addresses section at the beginning of today's notice.

Dated: October 29, 2001.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 01–27839 Filed 11–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7099–6]

Request for Nominations of Members and Consultants, and Notice of Establishment; EPA National Advisory Committee for Environmental Policy and Technology (NACEPT) Superfund Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency announces the establishment of the Superfund Subcommittee to be formed under the auspices of the EPA National Advisory Committee for Environmental Policy and Technology (NACEPT). EPA invites nominations for qualified candidates to be considered for appointment to the Subcommittee that will engage the public in an open dialogue about the future direction of the Superfund program. A critical aspect of the dialogue will be consideration of Superfund's relationship to other federal and state waste programs with an eye toward finding ways for all waste programs to work together in a more unified fashion.

DATES: EPA expects to make appointments by the end of the calendar year and will accept nomination submissions until close of business on December 6, 2001.

ADDRESSES: Nominations must be submitted in writing by mail, electronically or in person, and must include a resume describing the professional, educational and/or experiential qualifications of the nominee. Nominations should also include the nominee's current business or residential address, daytime telephone number, fax, and E-mail address. Send nominations to: Lois Gartner, Designated Federal Officer, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency (5103), 1200 Pennsylvania Avenue NW., Washington, DC 20460, fax 202–260–8929, E-mail *gartner.lois@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Lois Gartner, Designated Federal Officer, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency (5103), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone 202–260–0714, E-mail *gartner.lois@epa.gov.*

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Pub. L. 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues.

Under the NACEPT framework, EPA is undertaking an examination of fundamental issues related to the future of the Superfund program. These issues cover a broad spectrum of topics important to Superfund including, but not limited to: the role and scope of the National Priorities List (NPL); how to address contaminated sediment, mining, and other "mega" sites; the role of states in Superfund; non-NPL cleanups; and measuring program progress. An important piece of the Subcommittee's dialogue will entail looking at Superfund in the context of other federal and state waste programs. This component of the group's deliberations will focus on how the Nation's waste programs can work together in a more effective and unified fashion, so that citizens can be assured that federal, state, and local governments are working cooperatively to make sites safe for their intended uses. The Superfund Subcommittee will deliberate on these and other Superfund-related issues and make policy recommendations to the EPA Administrator and other EPA officials.

EPA is soliciting qualified candidates who want to be considered for appointment to the Superfund Subcommittee. Any interested person or organization may nominate qualified persons for membership to the Subcommittee. Nominees should be qualified by education, training, or experience to participate in and contribute to a dialogue about the future direction of the Superfund program.

To ensure the Subcommittee represents a full spectrum of stakeholder views regarding Superfund policies, EPA seeks representation of the following groups: public policy analysts, academia, community groups, environmental justice groups, environmental and public interest organizations, state government, local government, tribal governments, industry, and scientists/engineers (e.g., toxicologists, ecologists, risk assessors, etc.). The EPA Administrator determines the Subcommittee's composition. Members will serve approximately an eighteen-month term.

Dated: October 31, 2001.

Marianne Lamont Horinko,

Assistant Administrator for the Office of Solid Waste and Emergency Response.

[FR Doc. 01–27818 Filed 11–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7099–5]

Request for Statement of Qualifications (RFQ) and Preliminary Proposals for Training and Outreach Coordination Support to the Chesapeake Bay Program

The U.S. Environmental Protection Agency (EPA) is issuing a request for qualifications for organizations interested in assisting the Chesapeake Bay Program in its efforts to develop, coordinate and support a training and event planning component of the Chesapeake Bay Program partnership. Applicants must be a nonprofit organization, interstate agency, college or university. Note, this is a request for qualifications for the benefit of the Chesapeake Bay Program partnership and not for direct benefit to EPA. Funding will be provided to an organization under the authority of the Clean Water Act, section 117.

The RFQ is available at the following web-site: *http://www.epa.gov/r3chespk/.* You may also request a copy by calling Robert Shewack at 410–267–9856 or by E-mail at: *shewack.robert@epa.gov.* Statement of qualifications (an original and five (5) copies) must be postmarked no later than December 7, 2001. Any late, incomplete or fax proposals will not be considered.

Diana Esher,

Acting Director, Chesapeake Bay Program Office.

[FR Doc. 01–27834 Filed 11–5–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–211046A; FRL–6808–7]

TSCA Section 21 Petition; Response to Citizen's Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 2, 2001, EPA received a petition under section 21 of the Toxic Substances Control Act (TSCA) from the Cystic Fibrosis Foundation. The petition requests that EPA initiate a rulemaking under TSCA section 6(a)(1)(A) to prohibit the manufacture processing, distribution in commerce, use, and improper disposal of *Burkholderia Cepacia* Complex (Bcc), a group of naturally occurring microorganisms in order to "address the significant threat that these microorganisms pose to individuals with cystic fibrosis (CF) and other diseases that compromise the immune system." For the reasons set forth in this notice, EPA has denied the petition to initiate rulemaking. However, based on EPA's review of Bcc's commercial status, and in light of the seriousness of the potential hazard presented to CF patients, EPA intends to initiate a rulemaking to issue a Significant New Use Rule (SNUR) under TSCA section 5(a)(2).

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8974; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to manufacturers (including importers), processors, and users of products that contain living microorganisms subject to jurisdiction under TSCA, especially if that entity knows that its products contain or may contain Bcc. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–211046A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Background

A. What is a TSCA Section 21 Petition?

Section 21 of TSCA allows citizens to petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 5(a)(2), or 6, or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth facts which the petitioner believes establish the need for the action requested. EPA is required to grant or deny the petition within 90 days of its receipt. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. Within 60 days of denial or no action, petitioners may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking. When reviewing a petition for a new rule, as in this case, the court must provide an opportunity for de novo review of the petition. Pursuant to TSCA section 21(b)(4)(B)(ii), "if the petitioner demonstrates to the satisfaction of the court by a preponderance of evidence that ... there is a reasonable basis to conclude that the issuance of such [TSCA section 6(a)(1)(A) rule] is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment" the court can order EPA to initiate the requested action.

B. What Action is Requested Under this TSCA Section 21 Petition?

On August 2, 2001, EPA received a petition under TSCA section 21 from the Cystic Fibrosis Foundation. The petition requests that EPA initiate rulemaking under TSCA section 6(a)(1)(A) to prohibit the manufacture, processing, distribution in commerce, use, and improper disposal of Bcc, a group of naturally occurring microorganisms in order to "address the significant threat that these microorganisms pose to individuals with CF and other diseases that compromise the immune system."

III. Disposition of Petition

The petitioners submitted extensive information on the potential hazard Bcc microorganisms may present to CF patients. EPA agrees that Bcc microorganisms, when encountered in sufficient numbers through an appropriate route of exposure by a member of a sensitive population, such as a CF patient, have the potential to cause a severe infection, resulting in significantly increased rates of mortality. The petition claims that Bcc is likely used in products and services

that involve drain cleaning, bioremediation, biomonitoring of hazardous wastes, biomass conversion, production of specialty chemicals, oil recovery, wastewater treatment, biomining, and desulfurization of oil and coal. The petition claims to document these potential uses. However, the petition contains no evidence that Bcc is currently used in existing commercial industrial products to which a sensitive individual might be exposed.

In order to gauge the scope of commercial use of Bcc, EPA conducted a survey of over 100 firms, associations, and researchers. In sum, EPA was able to discover no evidence that Bcc is contained in a commercial product currently available for use in the United States. The only potential TSCA uses of Bcc for which information is available are field demonstration studies of Bcc in the biodegradation of chlorinated solvents in groundwater. (See Commercial Uses of *Burkholderia Cepacia* Complex, USEPA, October 2001.) Specifically, one company has injected a strain of Bcc into aquifers in New Jersey to demonstrate its ability to degrade trichloroethylene and a consulting firm carried out a pilot study in Wichita, KS, to verify the effectiveness and overall feasibility of using *Burkholderia Cepacia* $PR1_{301}$ to degrade chlorinated aliphatic hydrocarbons. However, none of these strains is currently available in an existing commercial industrial product.

No companies indicated that Bcc was currently used for the degradation of grease (typically in drain cleaners) or for turf management (typically in thatch reduction), although researchers and firms cautioned that even the companies that produce such products may be unaware of the specific presence of Bcc.

One respondent indicated that lipases harvested from Bcc are used in the production of specialty chemicals. One company's web site, lists seven lipases derived from Bcc species available for sale under their brand names. However, when this company was contacted, it indicated that it purchases the lipases from an overseas firm, and does not work with Bcc microorganisms; no more information was available.

Many respondents indicated a knowledge of Bcc and its possible applications, but very few had any knowledge that it was actually being used. Some contacts indicated that Bcc's known potential for opportunistic pathogenicity had led them to discount it for use in their products. Thus, the information available to EPA indicates that there is no current commercial use of Bcc in the United States, although demonstration studies of its effectiveness in degrading chlorinated solvents in groundwater have been reported.

At this time EPA is unable to identify any existing commercial use of products containing Bcc, other than demonstration studies. Based on this information, EPA finds that issuing a ban of Bcc under TSCA 6(a)(1)(A) is not the appropriate mechanism under TSCA to prevent an unreasonable risk of injury to health. However, based on EPA's review of Bcc's commercial status, and in light of the seriousness of the potential hazard presented to CF patients, EPA intends to initiate a rulemaking to issue a Significant New Use Rule (SNUR) under TSCA section 5(a)(2). As the only identified commercial uses of Bcc are demonstration studies, the SNUR when issued, would require manufacturers, importers, and processors of Bcc to notify EPA at least 90 days before any use of Bcc, other than such demonstration studies, occurs. The notice would provide EPA with an opportunity to evaluate the intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

IV. Comments Received

EPA received no comments in response to the **Federal Register** notice published September 5, 2001 (66 FR 46459) (FRL–6800–5) announcing EPA's receipt of this TSCA section 21 petition.

List of Subjects

Environmental protection, *Burkholderia Cepacia* Complex (Bcc), Cystic fibrosis, Hazardous substances.

Dated: October 30, 2001.

Stephen L. Johnson,

Assistant Administrator, Office of Pesticides, Prevention and Toxic Substances.

[FR Doc. 01–27840 Filed 11–5–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7099–3]

Notice of Availability of National Management Measures to Protect and Restore Wetlands and Riparian Areas for the Abatement of Nonpoint Source Pollution and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comment.

SUMMARY: EPA has developed and is requesting comment on draft technical guidance for protecting and restoring wetlands and riparian areas from sources of nonpoint pollution and using vegetated treatment systems (vegetative filter strips and constructed wetlands) for controlling nonpoint source pollution. This guidance is intended to provide technical assistance to state program managers and others on the best available, economically achievable means of protecting and restoring wetlands and riparian areas from nonpoint source pollution. Additionally, this guidance provides technical assistance for state program managers on the use of vegetated treatment systems to control nonpoint source pollution. The guidance provides background information about nonpoint source pollution, including where it comes from and how it enters the Nation's waters. It also presents many examples of how to protect and restore the many functions of wetlands and riparian areas from the impacts of nonpoint source pollution. The guidance concludes with a variety of illustrations for using vegetated treatment systems to control sources of nonpoint pollution.

Reviewers should note that the draft technical guidance is entirely consistent with the Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Water (EPA 840–B–92–002), which EPA published in January 1993 under the authority of section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). The draft document does not supplant or replace the requirements of the 1993 document. It enhances the technical information contained in the 1993 coastal guidance to include inland as well as coastal context and to provide updated technical information based on current understanding and implementation of best management practices (BMP) controls. It does not set new or additional standards for either CZARA section 6217 or Clean Water Act section 319 programs.

EPA will consider comments on this draft guidance and will then issue final guidance.

DATES: Written comments should be addressed to the person listed directly below by February 4, 2002.

ADDRESSES: Comments should be sent to Chris Solloway, Assessment and Watershed Protection Division (4503–F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Non-US Postal Service comments should be sent to Chris Solloway, Assessment and Watershed Protection Division, U.S. Environmental Protection Agency, Room 200, 499 S. Capitol Street, SW., Washington, DC 20003. Faxes should be sent to (202) 260–7024. Comments via E-mail may be sent to *Solloway.Chris@epa.gov.*

The complete text of the draft guidance is available on EPA's Internet site on the Nonpoint Source Control Branch's homepage at *http://www.epa.gov/owow/nps*>. Copies of the complete draft can also be obtained in electronic or hard copy format by request from Chris Solloway at the above address, by E-mail at Solloway.*Chris@epa.gov*>, or by calling (202) 260–3008.

FOR FURTHER INFORMATION: Contact Chris Solloway at (202) 260–3008.

SUPPLEMENTARY INFORMATION:

I. Background

In 1993, under the authority of section 6217(g) of the Coastal Zone Act Reauthorization Amendments, EPA issued Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters. That guidance document details management measures appropriate for the control of five categories of nonpoint sources of pollution in the coastal zone: agriculture, forestry, urban areas, marinas and recreational boating, and hydromodification. The document also includes management measures for wetlands, riparian areas, and vegetated treatment systems because they are important to the abatement of nonpoint source pollution in coastal waters. States and territories were required to adopt measures "in conformity" with the coastal management measures guidance for their Coastal Nonpoint Pollution Control Programs.

State, territory, and tribal water quality assessments continue to identify nonpoint source pollution as a major cause of degradation in surveyed waters nationwide. In 1987 Congress enacted section 319 of the Clean Water Act to establish a national program to control nonpoint sources of water pollution. Under section 319, States, territories, and tribes address nonpoint source pollution by assessing the nonpoint source pollution problems within the State, territory, or tribal lands; identifying the sources of pollution; and implementing management programs to control the pollution. Section 319 also authorizes EPA to award grants to States, territories, and tribes to assist them in implementing management programs that EPA has approved. Program implementation includes nonregulatory and regulatory programs, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects. In fiscal year 2001, Congress appropriated approximately $237 million for nonpoint source management program grants. EPA has awarded a total of approximately $1.3 billion to States, territories, and Indian tribes since 1990.

The 1993 management measures guidance, developed under the authority of CZARA, focused on conditions and examples of management measure implementation within the coastal zone. To date, technical guidance on the best available, economically achievable measures for controlling nonpoint sources with a national focus has not been released. The draft national management measures guidance for wetlands is intended to partially address this gap. Although the practices detailed in the 1993 coastal guidance apply generally to inland areas, EPA has recognized the utility of developing and publishing technical guidance that explicitly addresses nonpoint source pollution on a nationwide basis. Moreover, additional information and examples from research and experience to date with implementation of the management measures are available to enrich the national guidance. These changes have helped to prompt the revision and expansion of the wetlands chapter of the 1993 guidance.

II. Scope of the Draft Wetlands Guidance—Sources of Nonpoint Source Pollution Addressed

The draft technical guidance continues to focus on the protection and restoration of wetlands and riparian areas and the use of vegetated treatment systems to control nonpoint sources of pollution identified for the 1993 coastal guidance by EPA in consultation with a number of other Federal agencies and other leading national experts. Specifically, the guidance identifies management measures for the following:

i. The protection of wetlands and riparian areas.

ii. The restoration of wetlands and riparian areas.

iii. Vegetated treatment systems.

III. Approach Used To Develop Guidance

The draft national management measures guidance is based in large part on the 1993 coastal guidance. The coastal guidance was developed using a workgroup approach to draw upon technical expertise within other federal agencies as well as state water quality and coastal zone management agencies. The 1993 text has been expanded to include information on the cost and effectiveness of wetlands and riparian areas and vegetative treatment systems for removing nonpoint source pollution, descriptions of ways to protect wetlands and riparian areas, resources for planning and implementing wetlands and riparian area restoration projects, a discussion on mitigation banking, and examples of projects that used vegetated treatment systems to control nonpoint source pollution.

IV. Request for Comments

EPA is soliciting comments on the draft guidance on management measures to protect and restore wetlands and riparian area for the abatement of nonpoint source pollution and for the use of vegetated treatment systems. The Agency is soliciting additional information and supporting data on the measures specified in this guidance and on additional measures that may be as effective or more effective to protect and restore wetlands and riparian areas for the abatement of nonpoint source pollution and the use of vegetated treatment systems. EPA requests that commenters focus their comments on the technical soundness of the draft management measures guidance.

Dated: October 22, 2001.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 01–27837 Filed 11–5–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Thursday, November 8, 2001

November 1, 2001.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 8, 2001, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireless Telecommunications	Title: 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services (WT Docket No. 01–14). Summary: The Commission will consider a Report and Order concerning its reexamination of the need for the Commercial Mobile Radio Services spectrum aggregation limits and the cellular cross-interest rule.
2	Mass Media	Title: Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; and Definition of Radio Markets (MM Docket No. 00–244). Summary: The Commission will consider a Notice of Proposed Rule Making concerning whether to undertake a comprehensive examination of its rules and policies of local radio ownership.
3	Mass Media	Title: Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television (MM Docket No. 00–39). Summary: The Commission will consider a Memorandum Opinion and Order on Reconsideration concerning its periodic review of the progress of the conversion to digital television.
4	Common Carrier	Title: Performance Measurements and Standards for Unbundled Network Elements and Interconnection; Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance (CC Docket No. 98–56); Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147); and Petition of Association for Local Telecommunications Services for Declaratory Ruling (CC Docket Nos. 98–147, 96–98, 98–141). Summary: The Commission will consider a Notice of Proposed Rule Making concerning the establishment of national performance measurements and standards for unbundled network elements and interconnection.
5	International	Title: Review of Commission Consideration of Applications under the Cable Landing License Act (IB Docket No. 00–106). Summary: The Commission will consider a Report and Order concerning its policies, rules and requirements for Cable Landing Licenses.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International at (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at qualexint@aol.com.

This meeting can be viewed over George Mason University's Capital Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–28008 Filed 11–2–01; 2:58 pm]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; A Closed Commission Meeting, Thursday, November 8, 2001

November 1, 2001.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Thursday, November 8, 2001, following the Open Meeting, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	General Counsel	Title: Commission Internal Processes. Summary: The Commission will discuss possible changes to its internal processes.

This item is closed to the public because it concerns internal practices. (See 47 CFR Sec. 0.603(b)).

The following persons are expected to attend:

Commissioners and their Assistants

The Secretary

General Counsel and members of her staff

Action by the Commission November 1, 2001. Commissioners, Powell Chairman; Abernathy, Copps and Martin voting to consider these matters in Closed Session.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–28009 Filed 11–2–01; 2:58 pm]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Performance Review Board

As required by the Civil Service Reform Act of 1978 (Pub. L. 95–454), Chairman Michael K. Powell appointed the following executives to the Performance Review Board: Renee Licht, Jane Mago, Mary Beth Richards, and David Solomon.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–27782 Filed 11–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 30, 2001.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Tri-State Financial Services, Inc., Memphis, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Tri-State Bank of Memphis, Memphis, Tennessee.

Board of Governors of the Federal Reserve System, October 31, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27772 Filed 11–5–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0432]

Draft Guidance for Industry on the Evaluation of the Effects of Orally Inhaled and Intranasal Corticosteroids on Growth in Children; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Evaluation of the Effects of Orally Inhaled and Intranasal Corticosteroids on Growth in Children." The Division of Pulmonary and Allergy Drug Products is providing guidance to industry regarding the design, conduct, and evaluation of clinical trials to evaluate the effects of orally inhaled and intranasal corticosteroids on growth in children. This action is important because of recently implemented class labeling of these products with regard to their impact on growth in children. An assessment of the available data supporting the class labeling action has led to recommendations that all drug products of this class be tested by means of a "growth study." The recommendations in this document can provide adequate and well-controlled data that is consistent among drug products and can be included in product labeling.

DATES: Submit written or electronic comments on the draft guidance by February 4, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sandy Barnes, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1050.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Evaluation of the Effects of Orally Inhaled and Intranasal Corticosteroids on Growth in Children." This draft guidance has been developed by the Division of Pulmonary and Allergy Drug Products, in consultation with the Division of Metabolic and Endocrine Drug Products, to provide guidance in the design, conduct, and evaluation of clinical studies to assess the effects of orally inhaled and intranasal corticosteroids on linear growth.

On July 30 and 31, 1998, the Pulmonary and Allergy Drugs Advisory Committee and the Metabolic and Endocrine Drugs Advisory Committee were jointly convened to discuss the implications of findings in previous clinical studies that indicated that inhaled corticosteroids may, as a class of compounds, affect linear growth in pediatric patients. The joint committees agreed that data were sufficient to justify inclusion of a precautionary statement in the labeling for this class of compounds, but the data were inadequate to precisely determine the decrement in growth velocity resulting from the use of these drug products. Members of the joint committees recommended that companies filing new drug applications for all newly approved corticosteroid products conduct further studies, as post-apptoval phase 4 commitments, to assess the effects of nasally and orally inhaled corticosteroids on growth velocity in prepubertal children.

The draft guidance provides general recommendations for the design and conduct of a "growth study." The Division of Pulmonary and Allergy Drug Products endorses these recommendations to encourage the collection of other evidence that will consistently and accurately describe the effects of intranasal and orally inhaled corticosteroids on growth velocity in children.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115).

The draft guidance, when finalized, will represent the agency's current thinking on evaluating the effects of orally inhaled and intranasal corticosteroids on growth in children. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet can obtain the document at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: October 26, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–27756 Filed 11–5–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Dale D. Berkley, Ph.D., J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7735 ext. 223; fax: 301/402–0220; e-mail: *berkleyd@od.nih.gov*. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Side Exit Guiding Catheter for Percutaneous Endomyocardial Injection

Robert Lederman (NHLBI)

DHHS Reference No. E–108–01/0 filed 10 Aug 2001

The invention is a device for delivering a therapeutic or diagnostic agent to the heart using a flexible catheter having a non-concentric guide wire to facilitate percutaneous delivery of the catheter across the aortic valve into the left ventricular cavity. The catheter has a side port through which the therapeutic or diagnostic can be delivered and, in particular, by which septal ablation for the treatment of conditions such as hypertrophic cardiomyopathy can be accomplished. This catheter is able to "turn around" on itself to treat areas of the myocardium immediately underneath the aortic valve through which the catheter enters. The side port can be used to introduce a needle, laser or radiofrequency probe to perform an endomyocardial ablation procedure.

Methods and Devices for Isolation and Analysis of Cellular Protein Content

Lance A. Liotta, Emmanuel P. Petricoin, Nicole Simone, Michael Emmert-Buck (NCI)

U.S. Patent Application No. 60/120,288 filed February 16, 1999; PCT Application No. PCT/US00/04023 filed February 16, 2000; U.S. Patent Application No. 09/913,667 filed August 16, 2001

The invention is a comprehensive Laser Capture Microdissection (LCM) method for determining protein characteristics of a sample tissue cell to quantitatively discern and compare the protein content of healthy cells versus diseased cells. The tissue source of a tumor metastasis is available from the acquisition of this information. The focus in molecular biology is moving from genomics to proteomics, the study of variations in the protein levels of cells, caused by the state of the cell itself, whether healthy or unhealthy. The invention provides a method for using new and innovative methods for cell analysis. Previous methods, such as UV-laser ablation of unwanted tissue regions and oil well isolation of tissue cells, were complex, labor intensive, and did not utilize protein stabilizers. Direct comparisons between healthy cells and tumor cells were not made due to limitations of the methods. The new method consists of first using the new LCM method to obtain pure cell populations. Next, the sample is placed in a device so that the proteins are solubilized. Then the immunological and biochemical methods and subsequent analyses are performed. These techniques include (but are not limited to) immunoassays, 1D and 2D gel electrophoresis characterization, Western blotting, Matrix Assisted Laser Desorption Ionization/Time of Flight (MALDI/TOF) and Surface Enhanced Laser Desorption Ionization Spectroscopy (SELDI), Protein Arrays and Phosphoprotein Fingerprinting. The methods listed above allow for the direct comparison of both qualitative and quantitative tissue content of healthy and diseased cells, from the same sample. The sequential method of using LCM, protein isolation, analysis and comparison is superior to existing methods because the location of the tumor can be found simply using immunohistochemistry, and protein characteristics, such as amino acid sequence and binding ability can also be discerned. In addition, by using protein fingerprinting, the source of the tumor metastasis is found effectively. The invention has been tested extensively with the different methods listed above. This technology can be used in hospitals and research pathology labs for quantitative measure of protein characteristics of cells.

Isolation of Cellular Material Under Microscopic Visualization

Liotta et al. (NCI)

U.S. Patent 5,843,644 issued December 1, 1998; U.S. Patent 5,843,657 issued December 1, 1998; U.S. Patent 6,010,888 issued January 4, 2000; U.S. Patent 6,204,030 issued March 20, 2001; Serial No. 09/765,937 filed January 18, 2001

This Laser Capture Microdissection (LCM) invention is a method for directly extracting cellular material from a tissue sample using a laser beam to focally activate a special transfer film that bonds specifically to cells identified and targeted by microscopy within the tissue section. The transfer film with the bonded cells is then lifted off the thin tissue section, leaving all unwanted cells (which would contaminate the molecular purity of subsequent analysis) behind. The transparent transfer film is applied to the surface of the tissue section. Under the microscope, the diagnostic pathologist or researcher views the thin tissue section through the glass slide on which it is mounted and chooses microscopic clusters of cells to study. When the cells of choice are in the center of the field of view, the operator pushes a button, which activates a near IR laser diode integral with the microscope optics. The pulsed laser beam activates a precise spot on the transfer film immediately above the cells of interest. At this precise location the film melts and fuses with the underlying cells of choice. When the film is removed, the chosen cell(s) are tightly held within the focally expanded polymer, while the rest of the tissue is left behind. This allows multiple homogeneous samples within the tissue section or cytological preparation to be targeted and pooled for extraction of molecules and analysis. This technology is available for licensing on a non-exclusive basis.

Dated: October 29, 2001.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–27750 Filed 11–5–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Recombinant Proteins of the Swine Hepatitis E Virus and Their Uses as a Vaccine and Diagnostic Reagents for Medical and Veterinary Applications

Xiang-Jin Meng, Robert H. Purcell, Suzanne U. Emerson (NIAID)

DHHS Reference No. E–304–98/0 filed May 7, 2001

Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: *salatac@od.nih.gov*

This invention is based on the discovery of the swine hepatitis E virus (swine HEV), the first animal strain of HEV identified and characterized, and its ability to infect across species. The inventors have found that the swine HEV is widespread in the general pig population in the United States and other countries and that swine HEV can infect non-human primates. The inventors have amplified and sequenced the complete genome of swine HEV. The capsid gene (ORF2) of swine HEV has been cloned and expressed in a baculovirus expression system.

The possibility that swine HEV may infect humans raises a potential public health concern for zoonosis or xenozoonosis in the United States and perhaps other countries. Therefore, it is likely that a vaccine based on the recombinant capsid protein of swine HEV will protect humans against zoonotic, as well as other, HEV infections and pigs against infection with the swine HEV. Also, diagnostic reagents based on these recombinant proteins of swine HEV will be very useful in screening donor pigs used in xenotransplantation and in detecting swine HEV or similar virus infection in humans. The diagnostic reagents may also be useful for veterinary studies and monitoring pig herds in general.

Polymorphic Human $GABA_A$ Receptorα-6 Subunit

David Goldman, Nakao Iwata, Mark Shuckit (NIAAA)

DHHS Reference No. E–061–98/0 filed February 19, 1999 and DHHS Reference No. E–061–98/1 filed February 18, 2000

Licensing Contact: Pradeep Ghosh; 301/496–7736 ext. 211; e-mail: *ghoshp@od.nih.gov*

Gamma-aminobutyric acid (GABA) is a key inhibitory neurotransmitter in the mammalian central nervous system. Evidence indicates that GABA receptors are associated with various neuropsychiatric disorders. Currently, there are no reliable and sensitive markers on the market for the molecular diagnosis of alcoholism or anxiety disorders, although both groups of disorders are thought to involve GABA function. Alcohol modulates GABA function and shows cross-tolerance with benzodiazepines. Anxiety disorders are treated with benzodiazepines. Also, there are no molecular predictors of interindividual variation in response to the commonly used benzodiazepine drugs (such as valium) which act through $GABA_A$ receptors. The α-6 subunit of $GABA_A$ receptors is sensitive to alcohol and in a rat genetic model a genetic variant of the α-6 subunit had been directly related to sensitivity to alcohol and benzodiazepine drugs. This invention pertains to a particular polymorphism in the human α-6 subunit gene. This relatively common human sequence variant predicts sensitivity to both benzodiazepine drugs and ethanol. In children of alcoholics this substitution also correlates with susceptibility to alcoholism. Thus, this invention presents commercial opportunities both as a diagnostic screening tool in alcoholism, anxiety disorders and other neuropsychiatric diseases, and as a predictive tool for therapeutic and pathological responses to commonly administered benzodiazepine drugs.

Dated: October 29, 2001.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–27751 Filed 11–5–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Interagency Autism Coordinating Committee; Notice of Meeting

The Children's Health Act of 2000 (Pub. L. 106–310), Title I, section 104, mandated the establishment of an Interagency Autism Coordinating Committee (IACC) to coordinate autism research and other efforts within the Department of Health and Human Services (DHHS). In April 2001, Secretary Tommy Thompson delegated the authority to establish the IACC to the National Institutes of Health (NIH). The National Institute of Mental Health (NIMH) at the NIH has been designated the lead for this activity.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other

reasonable accommodations, should notify the contact person listed below in advance of the meeting.

Name of Committee: Interagency Autism Coordinating Committee.
Date: November 19, 2001.
Time: 9 a.m. to 4:30 p.m.
Agenda: Discussion of autism activities across Federal agencies.
Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10 (6th floor), Bethesda, Maryland 20892,
Contact Person: Kimberly Hoagwood, Ph.D., Associate Director for Child and Adolescent Research, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 7167, MSC 9630, Bethesda, Maryland 20892, Email: *kh32p@nih.gov* Telephone: (301) 443–4627.

Any member of the public interested in presenting oral comments to the committee may notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Presentations may be limited to 5 minutes; both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding his/her statement to the contact person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the NIMH homepage at <*http://www.nimh/nih/gov/events/interagencyautism.cfm*>.

Dated: October 30, 2001.

Yvonne Maddox,

Acting Deputy Director, National Institutes of Health.

[FR Doc. 01–27752 Filed 11–5–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is herby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel.
Date: November 4–5, 2001.
Time: 5 p.m. to 8 a.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select At University Center, 100 Lytton Avenue, Pittsburgh, PA 15213.
Contact Person: William A. Kachadorian, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel.
Date: November 5–6, 2001.
Time: 7 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20692.
Contact Person: Ramesh Vemuri, Health Scientific Adminstrator, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel.
Date: November 27–28, 2001.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Empress Hotel, 7766 Fay Avenue, Lajolla, CA 92037.
Contact Person: James P. Harwood, Deputy Chief, Scientific Review Office, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel; Reactive Oxygen Species; Stress and Damage in Old Muscle.
Date: November 28–29, 2001.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott, 3205 Boardwalk St., Ann Arbor, MI 48109–2007.
Contact Person: Alicja L. Markowska, Scientific Review Office, Gateway Building/Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20817.

Name of Committee: National Institute on Aging Special Emphasis Panel.
Date: December 3–4, 2001.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Inntowner the Best Western, 2424 University Ave., Madison, WI 53705.
Contact Person: Louise L. Hsu, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.
Date: December 3, 2001.
Time: 12:15 p.m. to 4:15 p.m.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jeffrey M. Chernak, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27745 Filed 11–5–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.
Date: November 19, 2001.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: 6100 Executive Blvd. 5th Floor, Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Jon M. Ranhand, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27746 Filed 11–5–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.
Date: November 28, 2001.
Time: 10 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Jon M. Ranhand, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS).

Dated: October 29, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27747 Filed 11–05–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasions of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MARC/MBRS Special Emphasis Panel.
Date: November 13, 2001.
Time: 10 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, NIGMS, Office of Scientific Review, Natcher Building, Room 1AS19, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Rebecca H. Johnson, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS19], Bethesda, MD 20892, (301) 594–2771, *johnsonrh@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27748 Filed 11–5–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.
Date: November 27, 2001.
Time: 2 p.m. to 3:30 p.m.
Agendo: To review and evaluate grant applications.
Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Jon M. Ranhand, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistant Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27749 Filed 11–5–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4654–N–01]

Notice of Proposed Information Evaluation Study of Rounds 6–8 of HUD's Lead Hazard Control Grant Program

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 7, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Gail N. Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Dr. Peter Ashley, (202) 755–1785 ext. 115 (this is not a toll-free number) for available documents regarding this proposal.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the pubic and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Notice also lists the following information:

Title of Proposal: Evaluation Study of Rounds 6–8 of HUD's Lead Hazard Control Grant Program.

OMB Control Number: To be assigned.

Need for the Information and Proposed Use: In order to assist in fulfilling its mission of eliminating lead-based paint hazards and other housing-related threats to children's health and safety in low-income privately-owned homes, HUD's Office of Healthy Homes and Lead Hazard Control operates a grant program for State and local governments to develop and implement cost-effective methods for the inspection and reduction of lead-based paint hazards in private owner-occupied and rental housing for low and moderate income families. In Rounds 6–8 (a "Round" refers to consecutively numbered annual grant awards, starting in fiscal year 1992) of this Lead Hazard Control Grant Program, HUD has awarded grants to sixty-five different States and localities. The purpose of this information collection is to study the effectiveness of the grant programs and the lead hazard control treatments conducted with these grants. To do this, HUD will study selected housing units within approximately ten grants programs that received Round 6–8 grants. Researchers will collect environmental samples and household information before and after lead hazard control treatments are applied to housing units that agree to participate in the study. The data collected during this project should provide HUD with a comprehensive assessment of whether program policies and procedures, treatment methods, and outcomes have changed, evolved, or improved significantly following the rounds 1–2 grant programs.

This information collection will involve conducting brief on-site interviews of property owners and tenants; brief interior and exterior visual inspections of housing units; collection of paint, soil, and dust-wipe samples for lead analysis; and collection of vacuum dust samples for future study on the effectiveness of lead hazard control treatments to reduce the presence of allergens and mold spores. Approximately five information collection visits will be made to participating housing units over a three to four year period. If appropriate, the results of this information collection will be used to improve existing HUD guidance for conducting safe and cost-effective lead hazard control treatments.

Agency For Numbers: None.

Members of Affected Public: Selected property owners and residents of housing units that agree to participate in the study representing approximately 10 state, county, or city level lead hazard control grant programs across the United States.

Total Burden Estimate (First Year):

Number of respondents	Average response time (hrs.)	Total hours
600	6	3600

TABLE 1.—CALCULATION OF RESPONDENT BURDEN OVER THE FULL STUDY PERIOD

Burden-causing task	Resident property owners	Non-resident property owners	Tenants
Complete informed consent form	15 minutes	15 minutes	15 minutes.
Complete pre-treatment interview	15 minutes	15 minutes	15 minutes.
Conduct risk assessment data collection	30 minutes		30 minutes.
Conduct clearance data collection	30 minutes		30 minutes.
Conduct post-clearance data collection	60 minutes x 3		60 minutes x 3.
Complete post-treatment interviews	10 minutes x 3	10 minutes x 3	10 minutes x 3.
Complete Maintenance and Turnover logs	15 minutes	30 minutes	15 minutes.
Total	5.25 hours	1.5 hours.	5.25 hours.

Average Response Time: 6 hours (assuming 50 percent owner-occupied housing units at 5.25 hrs. per unit; rental housing will require time of both owner and tenant for total of 6.75 hrs. per unit).

Total Burden for 600 units: 3,600 hours.

Status of the Proposed Information Collection: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 29, 2001.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 01–27755 Filed 11–5–01; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Draft General Management Plan/Draft Environmental Impact Statement for the Little Rock Central High School National Historic Site, Arkansas

AGENCY: National Park Service.

Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the draft general management plan/draft environmental impact statement (DGMP/DEIS) for the Little Rock Central High School National Historic Site (hereafter "the Historic Site"). This notice also announces public open houses for the purpose of receiving public comments on the DGMP/DEIS.

DATES: There will be a 60 day public review period for comments on this document. Comments on the DGMP/DEIS must be received by December 26, 2001, or 60 days after the Environmental Protection Agency publishes its notice of availability in the **Federal Register**, whichever date is later. Public open houses for information about, or to make comment on the DGMP/DEIS will be held on November 13, 2001, in Little Rock, Arkansas. Information about time and place will be available by contacting the park's visitor center at 501–374–1957.

ADDRESSES: Copies of the DCMP/DEIS are available by request by writing to Little Rock Central High School National Historic Site, 2125 Daisy L. Gatson Bates Drive, Little Rock, AR 72202, by phone 501–374–1957, or by e-mail *CHSC_Visitor_Center@nps.gov*. The document can be picked-up in person at the Historic Site's visitor center, 2125 Daisy L. Gatson Bates Drive, Little Rock, AR.

FOR FURTHER INFORMATION CONTACT: Superintendent, Little Rock Central High School National Historic Site, Federal Building, Box 3527, 700 West Capitol Ave., Little Rock, AR 72201 or at telephone number 501–324–5683.

SUPPLEMENTARY INFORMATION: As established, the Historic Site consists of lands and interests therein comprising the Central High School campus and adjacent properties in Little Rock, Arkansas. Congress established the Historic Site to preserve, protect, and interpret for the benefit, education, and inspiration of present and future generations, Central High School and its role in the integration of public schools and the development of the Civil Rights movement in the United States.

The purpose of the general management plan is to set forth the basic management philosophy for the Historic Site and to provide the strategies for addressing issues and achieving identified management objectives. The DGMP/DEIS describes and analyzes the environmental impacts of a proposed action and three action alternatives for the future management direction of the Historic Site. A no action alternative is also evaluated.

Persons wishing to comment may do so by any one of several methods. They may attend the open houses noted above. They may mail comments to Superintendent, Little Rock Central High School National Historic Site, Federal Building, Box 3527, 700 West Capitol Ave., Little Rock, AR 72201. They also may comment via e-mail to *dave_forney@nps.gov* (include name and return address in the e-mail message). Finally, they may hand-deliver comments to the Little Rock Central High School National Historic Site visitor center at 2125 Daisy L. Gatson Bates Drive, Little Rock, AR 72201. The NPS' practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

The responsible official is Mr. William Schenk, Midwest Regional Director, National Park Service.

Dated: August 7, 2001.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 01–27760 Filed 11–5–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability; Record of Decision, New Bedford Whaling National Historic Park

AGENCY: National Park Service, Interior.

ACTION: The National Park Service announces the availability of the Record of Decision of the final impact statement for the New Bedford Whaling National Historical Park General Management Plan.

SUMMARY: The National Park Service has prepared the Record of Decision of the Final Environmental Impact Statement for the New Bedford Whaling National Historical Park General Management Plan pursuant to the National Environmental Policy Act of 1969 and the regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2. A Record of Decision is a concise statement of the decision made, the basis for the decision, and the background of the project, including the decision making process, other alternatives considered, and public involvement. Concurrent with adopting this Record of Decision on the Final Environmental Impact Statement, New Bedford Whaling National Historical Park General Management Plan is approved.

The National Park Service began planning for the management of New Bedford Whaling National Historical Park in 1997. The National Park Service presented and evaluated three management scenarios (the Proposed Management Option and 2 Alternatives) in a Draft General Management Plan/ Draft Environmental Impact Statement. The draft plan underwent sixty days of public and interagency review. After considering public and agency comment, the National Park Service produced the Final Environmental Impact Statement, which was available to the public for thirty days beginning on July 2, 2001. The National Park Service took no action for the thirty-day period of public availability, after which time the Park Service prepared the Record of Decision, selecting the Proposed Management Option as the final plan. In the selected option the National Park Service would share responsibility with its partners for protecting the park's historic resources and offering effective programming to the visiting public. The National Park Service would bring the story of New Bedford and American whaling to a national audience. Public education, interpretation, research, and technical

training aimed at generating understanding and fostering greater resource stewardship would be emphasized through National Park Service activities. Under this management option, the National Park Service's role and responsibilities would be expanded with regards to historic preservation and universal access. The Record of Decision is now approved and available to the public.

Availability: Copies of the Record of Decision are available at New Bedford Whaling National Historical Park, 33 William Street, New Bedford, Massachusetts. For further information, please contact the Superintendent, New Bedford Whaling National Historical Park, 33 William Street, New Bedford, Massachusetts 02740; voice at (508) 996–4469; fax at (508) 994–8922.

Dated: September 14, 2001.

Chrysandra Walter,

Deputy Director, Northeast Region.

[FR Doc. 01–27758 Filed 11–5–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plans, Draft Environmental Impact Statements, Sunset Crater Volcano, Walnut Canyon, and Wupatki National Monuments, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of draft environmental impact statements and general management plans for Sunset Crater Volcano, Walnut Canyon, and Wupatki National Monuments.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of draft Environmental Impact Statements and General Management Plans (DEIS/GMP) for Sunset Crater Volcano, Walnut Canyon, and Wupatki National Monuments, Arizona.

DATES: The DEIS/GMPs will remain available for public review on or after January 7, 2002. No public meetings are scheduled at this time.

COMMENTS: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Flagstaff Area National Monuments, 6400 N. Hwy 89, Flagstaff, Arizona 80004. You may also comment via the Internet to *FLAG_GMPS@nps.gov*. Please submit Internet comments either as an ASCII file avoiding the use of special characters and any form of encryption, as a Microsoft Word file, or as a Word Perfect file. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling Christine Maylath at 303–969–2851. Finally, you may hand-deliver comments to Intermountain Support Office-Denver, 12795 W. Alameda Parkway, Lakewood, CO (room 20) or to the park address above. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

ADDRESSES: Copies of the DEIS/GMP are available from the Superintendent, Flagstaff Area National Monuments, 6400 N. Highway 89, Flagstaff, Arizona. Public reading copies of the DEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Flagstaff Area National Monuments, 6400 N. Hwy 89, Flagstaff, Arizona 80004, Telephone: 928–526–1157

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 969–2851

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843

SUPPLEMENTARY INFORMATION: These general management plans will guide the management of the Sunset Crater Volcano, Walnut Canyon, and Wupatki National Monuments for the next 10 to 15 years. The Sunset Crater Volcano DEIS/GMP considers four alternatives—a no-action and three action alternatives, including the NPS preferred alternative. The preferred alternative would provide increased educational opportunities and diverse experiences both within and outside of park boundaries. The park would be viewed as a destination for education and learning. Partnerships with the U.S. Forest Service, affiliated tribes, and educational institutions would provide interpretation and more consistent management of sites and features outside the park that are primary to the park's purpose. Boundaries would be adjusted for ease of management and to better protect geologic features. Most existing uses would continue. The park would remain day-use only, with 24-hour access on FR545, and visitor use would be spread throughout more resources. A new multiagency visitor center would be built near US89 to serve as the primary location to orient and serve visitors, and the existing visitor center would be adapted for use as an education center.

Three alternatives were considered in the Walnut Canyon DEIS/GMP—a no-action and two action alternatives, including the NPS preferred alternative. The preferred alternative would preserve untrailed expanses, unfragmented natural systems, and relatively pristine conditions throughout much of the park. It would protect Walnut Canyon as a critical wildlife corridor. Visitation would be managed with the goal of providing quality learning opportunities in an intimate atmosphere while maintaining the health of the canyon ecosystem. The natural soundscape and tranquil setting of the canyon would be enhanced through strategic placement of facilities. The park would remain day-use only, with recreational uses of the western and prohibited. Efforts would be made to provide a broader range of educational offerings, and a greater number of archeological sites would be available for visitation.

The Wupatki DEIS/GMP considers five alternatives—a no-action and four action alternatives, including the NPS preferred alternative. The preferred alternative would include significant resources and landscapes north of the park within park boundaries, retain existing motorized sightseeing, focus on existing major visitor use areas, provide visitor orientation at the existing visitor center and at a new contact station at the north entrance, and diversify visitor experiences via new trails, new interpretive media and activities, and guided hikes to some cultural sites.

All three environmental impact statements assess impacts to archeological resources; historic character of the built environment; long-term integrity of ethnographic resources, natural systems and processes, and geological resources; threatened, endangered, and sensitive species; visitors' ability to experience park resources; park neighbors, local, state, and tribal land management plans and land/resource managing agencies; and operational efficiency.

FOR FURTHER INFORMATION: Contact Superintendent, Flagstaff Area National Monuments at the above address and telephone number.

Dated: August 30, 2001.

Michael Sunder,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 01–27761 Filed 11–5–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Washita Battlefield National Historic Site, OK

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of final environmental impact statement and General Management Plan for Washita Battlefield National Historic Site.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a final Environmental Impact Statement and General Management Plan (FEIS/GMP) for Washita Battlefield National Historic Site, Oklahoma.

DATES: The FEIS/GMP was on public review from February 15, 2001 through April 20, 2001. Responses to public comment are addressed in the FEIS/GMP. A 30-day no-action period will follow the Environmental Protection Agency's Notice of Availability of the FEIS/GMP.

ADDRESSES: Copies of the FEIS/GMP are available from the Superintendent, Washita Battlefield National Historic Site, Oklahoma, 426 E. Broadway, Cheyenne, OK 73628. Public reading copies of the FEIS/GMP will be available for review at the following locations:

Office of the Superintendent, 426 E. Broadway, Cheyenne, OK 73628, Telephone: 580–497–2742

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 969–2851

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, PO Box 25287, Denver, CO 80225–0287

SUPPLEMENTARY INFORMATION: The FEIS/GMP analyzes three alternatives to manage the park and balance visitor use and resource protection. Under the preferred alternative visitors would have opportunities to participate in a variety of activities. The major action of the alternative would be to locate the visitor/administrative facility offsite at the U.S. Forest Service site. Alternative A would provide visitors with offsite learning opportunities, while preserving the reflective mood at the site. Under Alternative B visitors would be provided with onsite learning opportunities through integration of the visitor facilities with the historic scene.

The FEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on cultural resources, natural resources, visitor use, and the socioeconomic environment.

FOR FURTHER INFORMATION: Contact Superintendent, Washita Battlefield National Historic Site, at the above address and telephone number.

Dated: August 29, 2001.

Michael D. Synder,

Director, Intermountain Region, National Park Service.

[FR Doc. 01–27759 Filed 11–5–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore South Wellfleet, MA; Cape Cod National Seashore Advisory Commission Two Hundred Thirty Fifth Meeting; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, December 7, 2001.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of minutes of previous meeting (June 8, 2001)
3. Reports of Officers
4. Reports of Subcommittees
   - Dune Shacks
   - Nickerson Fellowship
5. Superintendent's Report
   - Highlands Center
   - Summer Shuttles
   - Beach Closings
   - PWC Issue
   - Zoning Standards
   - 40th Anniversary
   - USGS Water Study
   - Fire Science and Prescribed Burning
   - News from Washington
6. Old Business
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: October 10, 2001.

Maria Burks,

Superintendent.

[FR Doc. 01–27744 Filed 11–5–01; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–01–039]

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 7, 2001 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. TA–201–73 (Steel)(Remedy Phase)—briefing and vote. (The

Commission is currently scheduled to transmit its recommendations to the President on December 19, 2001.)

5. Outstanding action jackets:
   (1.) Document No. EC–01–016: Approval of final report in Inv. No. 332–415 (U.S. Trade and Investment with Sub-Saharan Africa).
   (2.) Document No. GC–01–137: Concerning Inv. Nos. 731–TA–828 (Final) (Bulk Acetylsalicylic Acid (Aspirin) from China); 731–TA–851 (Final) (Synthetic Indigo from the People's Republic of China); and 731–TA–703 and 705 (Review) (Furfuryl Alcohol from China and Thailand).
   (3.) Document No. GC–01–141: Concerning Inv. No. 337–TA–431 (Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same).
   (4.) Document No. GC–01–144: Concerning Inv. No. 337–TA–447 (Certain Aerospace Rivets and Products Containing Same).
   (5.) Document No. ID–01–034: Approval of monitoring reports in Inv. Nos. 332–350 (Monitoring of U.S. Imports of Tomatoes) and 332–351 (Monitoring of U.S. Imports of Peppers).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.
Issued: November 1, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27784 Filed 11–2–01; 3:17 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; comment request

October 24, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, 725 17th Street, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Internal Fraud Activities.

OMB Number: 1205–0187.

Affected Public: State, Local, or Tribal Government.

Frequency: Annually.

Type of Response: Reporting.

Number of Respondents: 53.

Number of Annual Responses: 53.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 159.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The form ETA–9000 is the data collection instrument used for identifying activities involving fraud and assessing fraud prevention effectiveness of State Employment Security Agencies (SESA). Resulting analysis is communicated to the SESA to enhance management efforts in controlling fraud.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–27807 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; Comment Request

October 30, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or E-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, OMB Desk Officer for OSHA, Office of Management and Budget, 725 17th Street, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Underground Construction Standard.

OMB Number: 1218–0067.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Type of Response: Recordkeeping and Third-party disclosure.

Number of Respondents: 323.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $117,000.

Requirement	Number of annual responses	Average response time [hours]	Estimated burden hours
Posting Warning Signs and Notices	1,132	.08	91
Certifying Inspection Records for Hoists	323	1	323
Recordkeeping for Air-Quality Tests—Big-Bore Projects			
Continuous-Monitor Records	15,000	.008	120
Simultaneous-Monitor Records	37,500	.017	638
Serial-Monitor Records	37,500	.05	1,875
Recordkeeping for Air-Quality Tests—Small- and Medium-Bore Projects, Projects with Conventionally-Bored Tunnels			
Continuous-Monitor Records	43,250	.008	346
Simultaneous-Monitor Records	108,125	.017	1,838
Serial-Monitor Records	108,125	.05	5,406
Recordkeeping for Air-Quality Tests—Small- and Medium-Bore Projects, Projects That Bore with Microtunneling Equipment			
Continuous-Monitor Records	21,750	.008	174
Simultaneous-Monitor Records	21,750	.017	369
Serial-Monitor Records	21,750	.05	1,088
Recordkeeping for Air-Quality Tests—Gassy Projects			
Continuous-Monitor Records	27,000	.008	216
Recordkeeping for Air-Quality Tests—Monitor Calibration			
Continuous-Monitor Measurements	107,000	.17	18,190
Serial- or simultaneous-Monitor Measurements	334,750	.08	26,780
Maintaining Check—In/Check-Out Procedures	323	.03	10
Total:	885,278		57,464

Description: 29 CFR 1926.800 requires underground construction employers to certify hoist inspections; post various warning signs; and keep a record of air test results to identify decreasing oxygen levels or potentially hazardous concentrations of air contaminants in order to take corrective action prior to attaining hazardous conditions.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Revision of a currently approved collection.

Title: Steel Erection—Subpart R, 29 CFR part 1926.750 through 1926.761.

OMB Number: 1218–0241.

Affected Public: Business or other for-profit; Federal Government; and State, Local or Tribal Government.

Frequency: On occasion.

Type of Response: Recordkeeping and Third-party disclosure.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Requirement	Number of projects	Frequency per project	Responses	Average response time [hours]	Estimated burden hours
1926.752(a)(1)	14,551	3	43,653	.083333	3,638
1926.752.(a)(2)	6,860	1	6,860	.083333	572
1926.755(b)(1)	3,534	1	3,534	3	10,602
1926.753(c)(5)	17,129	10	171,290	.083333	14,274
1926.753(e)(2)	2,061	2	4,122	.083333	343
1926.754(c)(3)	0	0	0	0	0
1926.757(a)(4)	856	1	856	.083333	71
1926.757(a)(7)	856	1	856	.083333	71
1926.757(a)(9) & 1926.758 (g)	1,713	1	1,713	0.5	857
1926.757(e)(4)(I)	343	1	343	.083333	29
1926.760(e) & (e)(1)	19,748	1	19,748	.016666	329
1926.761	0	0	0	0	0
Paragraph (c)(4)(iii) of Appendix G	0	0	0	0	0
Total:	67,651		252,975		30,786

Description: Subpart R, 29 CFR Part 1926.750 through 1926.761, requires notification to designated parties, especially steel erectors, that building materials components, steel structures and fall-protection equipments are safe for specific uses and ensure that employees exposed to fall hazards receive specific training in the recognition and control of fall hazards.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–27808 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 16, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 16, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Dated: Signed at Washington, DC this 9th day of October, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 10/09/2001

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,155	Burle Industries (Co.)	Lancaster, PA	09/28/2001	Specialized Electron Tubes.
40,156	Jem Sportwear (Wkrs)	San Fernando, CA	09/17/2001	Children's and Adult Apparel.
40,157	Steel (The) Company (Wkrs)	Chicago, IL	07/10/2001	Pickled Coils and Cold Roll Steel.
40,158	Temple Inland Forest (Co.)	Shippenville, PA	09/10/2001	Wood.
40,159	Mirelle Manufacturing (Co.)	Carterville, GA	09/18/2001	English Riding Apparel.
40,160	Crystal Manufacturing (UNITE)	Fall River, MA	09/17/2001	Dresses, Suits and Blouses.
40,161	JVC Digital Image Tech. (Wkrs)	Carlsbad, CA	09/18/2001	Cinema Screen Large Projections.
40,162	Coraza (Computer Cabinet) (Wkrs)	San Jose, CA	09/18/2001	NC Machines, Hardware, Welders.
40,163	Acu Crimp, Inc. (Co.)	El Paso, TX	09/21/2001	Tooling for Applicator Dies.
40,164	Rayovac Corporation (Wkrs)	Portage, WI	09/14/2001	Lithium Batteries.
40,165	Fujikura Composite (Wkrs)	Vista, CA	09/26/2001	Graphite Golf Club Shafts.
40,166	Security Chain Mfg. (Wkrs)	Clackamas, OR	09/12/2001	Cable Chain Products.
40,167	American Magnetics (Wkrs)	Cypress, CA	09/20/2001	Card Readers for Printers.
40,168	Stitches, Inc. (Co.)	El Paso, TX	09/18/2001	Industrial Clohing.
40,169	Curtain and Drapery (Wkrs)	Gastonia, NC	09/20/2001	Home Furnishings.
40,170	Amerex Mens Group (Wkrs)	New York, NY	09/08/2001	Men's Outerwear.
40,171	Herman Schwabe, Inc. (Wkrs)	W. Hazleton, PA	09/18/2001	Die Cutting Machinery.
40,172	SGL Carbon Corp (IUE)	St. Marys, PA	09/20/2001	Graphite.
40,173	Benson Corp. (Wkrs)	Weyauwega, WI	09/19/2001	Metal Juvenile Crib Springs.
40,174	Diamond Tool and Die (Co.)	Townville, PA	09/18/2001	Machine Parts and Spare Tooling.
40,175	Bethlehem Steel Corp (Co.)	Chesterton, IN	09/12/2001	Steel Plate, Hot, Cold Rolled Sheets.
40,176	OWT Industries (Wkrs)	Pickens, SC	09/20/2001	Electric Power Tools.
40,177	Autoforge, Inc. (Wkrs)	Harmonsburg, PA	09/27/2001	Forgings.
40,178	Corning Cable Systems (Wkrs)	Hickory, NC	09/20/2001	Fiber Cable.
40,179	Ruppe Hosiery, Inc. (Co.)	Kings Mountain, NC	09/17/2001	Socks.
40,180	Skinner Engine Co. (Co.)	Erie, PA	09/27/2001	Rubber Batch Mixers.
40,181	BASF Corporation (Co.)	Rensselaer, NY	09/25/2001	Dyestuffs.
40,182	Aquatech, Inc. (Co.)	Cookeville, TN	09/18/2001	Commercial Laundry.
40,183	Optical Coating (Wkrs)	Rochester, NY	09/27/2001	Coated Lenses.
40,184	Parker Hannifin Corp. (Wkrs)	Belleville, NJ	09/26/2001	Gas Valves.
40,185	Northrop Grumman (Co.)	Watertown, CT	09/26/2001	Electronic Connectors.
40,186	B.G. Sulzle, Inc. (Wkrs)	Syracuse, NY	09/26/2001	Surgical Needles.
40,187	Advanced Wood Resources (Wkrs)	Brownsville, OR	09/22/2001	Composite Sub-Flooring.
40,188	GFC Foam LLC (USWA)	West Hazleton, PA	09/28/2001	Foam.
40,189	Philadelphia Glass (Wkrs)	Philadelphia, PA	09/01/2001	Decorative Bent Glass.
40,190	EM Solutions (Wkrs)	Gretna, VA	09/24/2001	Metal Chassis Enclosures.
40,191	Speedline Technologies (Wkrs)	Corndenton, MO	08/08/2001	Soldering and Cleaning Machines.
40,192	Campolast Acurlab (Wkrs)	Chillicothe, OH	09/26/2001	Fiberglass Truck Parts.
40,193	Wilson Sporting Goods (Wkrs)	Fountain Inn, SC	09/24/2001	Tennis Balls—Tournaments.
40,194	Tyco Electronics (Wkrs)	Carlisle, PA	09/24/2001	Plating Electrical Connectors.
40,195	Warwood Tool Co. (Wkrs)	Wheeling, WV	09/26/2001	Forged Hand Tools.

APPENDIX.—PETITIONS INSTITUTED ON 10/09/2001—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,196	Motorola (Co.)	Suwanee, GA	08/13/2001	Radios.

[FR Doc. 01–27803 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,908]

Electronic Circuits and Design Co., Sebring, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Electronic Circuits and Design Co., Sebring, Ohio. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–38, 908; Electronic Circuits and Design Co., Sebring, OH (*October 26, 2001*)

Signed at Washington, DC this 30th day of October, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27806 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,049]

Emerson Electric Co., Daniel Measurement and Control, Inc., Statesboro, Georgia; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 17, 2001, in response to a petition filed by a company official on behalf of workers at Emerson Electric Company, Daniel Measurement and Control, Inc., Statesboro, Georgia.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27797 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,814]

Hager Hinge Companies, Consumer Division, Oxford, AL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Hager Hinge Companies, Consumer Division, Oxford, Alabama. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–38,814; Hager Hinge Companies, Consumer Division, Oxford, AL (*October 26, 2001*)

Signed at Washington, DC this 30th day of October, 2001.

Edward E. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27805 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 16, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 16, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 28th day of September, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 09/28/2001

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,106	Haskell—Senator Int'l (Wrks)	Verona, PA	09/07/2001	Chairs.
40,107	Continental Accessories (Wrks)	Sturgis, MI	09/07/2001	Running Boards, Tool Boxes.
40,108	American and Efird, Inc. (Co.)	Mt. Holly, NC	09/11/2001	Sewing Thread.
40,109	Innovex, Inc (Wrks)	Litchfield, MN	09/11/2001	Flexible Circuits.
40,110	Delta Woodside Industries (Co.)	Fountain Inn, SC	09/14/2001	Cotton Twill Fabric.
40,111	CMS Hartzell (Wrks)	Richmond, KY	09/17/2001	Metal Stamping and Assembly.
40,112	Loparex, Inc (Co.)	West Chicago, IL	09/18/2001	Pressure Sensitive Postage Stamps.
40,113	Kings Mountain Hosiery (Co.)	Kings Mountain, NC	09/17/2001	Socks.
40,114	Phoenix Apparel Resources (Co.)	Sanford, NC	09/19/2001	Sportswear.
40,115	Sunrise Apparel, Inc. (Co.)	Concord, NC	09/19/2001	Ladies' and Men's Knit Shirts.
40,116	Metro Fabrics, Inc. (Wrks)	New York, NY	09/10/2001	Women's Wear Apparel Fabric.
40,117	Drake Extrusion (Wrks)	Spartanburg, SC	09/05/2001	Fibers—Clothes, Other Textiles.
40,118	Displaytech, Inc. (Wrks)	Longmount, CO	09/06/2001	Liquid Crystal Micro Display.
40,119	Tennford Weaving (Wrks)	Sanford, ME	09/17/2001	Woven Lables.
40,120	Guardian Life Insurance (Wrks)	New York, NY	09/17/2001	Software Development.
40,121	Connolly North America (Co.)	El Paso, TX	09/12/2001	Finished Hides.
40,122	Texfi Industries (Co.)	Haw River, NC	09/17/2001	Dyed and Finished Knit Fabric.
40,123	Crown Pacific Limited (Wrks)	Coeur d'Alene, ID	09/15/2001	Sawmill.
40,124	Krones, Inc. (Wrks)	Milwaukee, WI	09/17/2001	Labelling Machines.
40,125	Arrow/SI (Wrks)	Winsted, CT	09/13/2001	Replacement Parts—Textile Industry.
40,126	Miller Bag Co (Co.)	Freeman, SD	09/17/2001	Grass Catcher Bags.
40,127	Peak Oilfield Service Co (Co.)	Anchorage, AK	09/14/2001	Oilfield Services.
40,128	TNS Mills, Inc. (Wrks)	Eufaula, AL	09/14/2001	Ring Spun Yarn.
40,129	Partek Forest, LLC (Co)	Gladstone, MI	09/17/2001	Forestry Equipment.
40,130	Greenway Manufacturing Co (Co.)	Spartanburg, SC	09/11/2001	Girl's Slips and Sleepwear.
40,131	Levcor International (Wrks)	New York, NY	09/14/2001	Fabrics for Apparel.
40,132	Satilla Manufacturing (Wrks)	Blackshear, GA	09/14/2001	Outerwear Jackets.
40,133	Eagle Knitting Mills, Inc. (UNITE)	Shawano, WI	08/24/2001	Sportswear.
40,134	Commodore Hat Co., Inc. (Wrks)	New York, NY	09/05/2001	Designers and Sales—Hats.
40,135	GKN Aerospace North Amer. (Wrks)	Carson, CA	08/28/2001	Aerospace Equipment.
40,136	Emesson Process Management (Wrks)	McKinney, TX	09/11/2001	Regulators and Valves.
40,137	American Trouser, Inc. (Co.)	Columbus, MS	09/12/2001	Men's Dress and Casual Slacks.
40,138	Cross Creek Apparel (Co.)	Mount Airy, NC	09/13/2001	Knit Shirts.
40,139	Volvo Construction Equip (Co.)	Skyland, NC	09/13/2001	Heavy Construction Equipment.
40,140	Wormser Knitting Mills (Co.)	Charlotte, NC	09/10/2001	Children's Sleepwear.
40,141	Findlay Industries (Wrks)	Ohio City, OH	09/05/2001	Seat Covers.
40,142	Brunswick Corp—Mercury (IAMAW)	Fond du Lac, WI	09/10/2001	Outboard Engines and Parts.
40,142	Quality Apparel, Inc. (Co.)	Dillon, SC	09/10/2001	Ladies' Pants.
40,144	Pea Ridge Iron Ore Co (Wrks)	Sullivan, MO	09/14/2001	Iron Ore Fines, Pellet Feed.
40,145	West Point Stevens (Wrks)	Whitemire, SC	09/14/2001	Yarn.
40,146	Scottsboro Aluminum LLC (USWA)	Scottsboro, AL	09/11/2001	Sheet Aluminum—Welded Tube.
40,147	Guilford Mills, Inc. (Co.)	Cableskill, NY	09/21/2001	Fabric and Apparel.
40,148	PPG Industries Fiberglass (Co.)	Shelby, NC	09/04/2001	Fiberglass Fabric.
40,149	Alphabet Engineer Design (Wrks)	Cortland, OH	09/01/2001	Mechanical Components.
40,150	Tyco Electronics (Wrks)	Mt. Sidney, VA	08/27/2001	Mod-Plug Tooling.
40,151	Sara Lee Hosiery (Co.)	Yadkinville, NC	09/12/2001	Pantyhose.
40,152	Butech, Inc. (Co.)	Salem, OH	09/18/2001	Metal Cutting and Handling Equipment.
40,153	Burkart Foam, Inc. (IAMAW)	Cairo, IL	09/20/2001	Foam Products, Carpet Underlay.
40,154	E–H Baare (IAMAW)	Robinson, IL	09/09/2001	Fan Guards.

[FR Doc. 01–27802 Filed 11–5–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,498]

Ingersoll Rand Company, Mayfield, Kentucky; Notice of Negative Determination Regarding Application for Reconsideration

By application dated April 4, 2001, the International Association of Machinists and Aerospace Workers, AFL–CIO, District Lodge 154 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 23, 2001, and published in the **Federal Register** on April 5, 2001 (66 FR 18117).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Ingersoll Rand Company, Mayfield, Kentucky was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The denial was based on a layoff of workers resulting from a shift in production to a foreign location not yet occurring. Production did not decline. Minor sales declines did not contribute importantly to employment reductions at the Mayfield, Kentucky facility. Company imports from facilities abroad did not yet occur during the relevant period.

The petitioner requests reconsideration based on the information provided with their application. The information supplied depicts a shift in plant production to a foreign source and future imports of the products produced at the subject plant.

The Department of Labor was aware during the initial investigation that a shift in plant production to a foreign source was scheduled later in the year and that the shift would also lead to company imports later in the year. Since the company did not import during the relevant time period of the investigation, the "contributed importantly" factor was not met.

If conditions have changed since the initial investigation the workers are encouraged to reapply for eligibility under TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 16th day of October 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27793 Filed 11–5–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,624]

Johnstown America Corp. Franklin and Shell Plants Johnstown, Pennsylvania; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Johnstown America Corp., Franklin and Shell Plants, Johnstown, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–38,624; Johnstown America Corp. Franklin and Shell Plants, Johnstown, Pennsylvania (October 23, 2001)

Signed at Washington, DC, this 26th day of October 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27791 Filed 11–5–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,045]

Longview Aluminum LLC Longview, Washington; Notice of Revised Determination on Reconsideration

By letter of July 25, 2001, the Longview Federated Aluminum Council, requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on June 25, 2001, based on the finding that imports of aluminum did not contribute importantly to worker separations at the Longview plant. The primary internal customer of the products of the subject facility turned to imported aluminum only after the closure of the subject plant. The decision further indicated that the on-going West Coast energy crisis was a factor impacting the subject plant closing. The denial notice was published in the **Federal Register** on July 11, 2001 (66 FR 36329).

To support the request for reconsideration, the Longview Federated Aluminum Council provided additional information showing the affiliation between the primary customer and the subject plant, both of which were owned by Michigan Avenue Partners.

Michigan Avenue Partners acquired the subject plant and made a decision to close the facility down. The decision created a corresponding increase in the reliance on imported aluminum by the primary affiliated customer.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Longview Aluminum LLC, Longview, Washington, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Longview Aluminum LLC, Longview, Washington, who became totally or partially separated from employment on or after March 30, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 17th day of October 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27792 Filed 11–5–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,148]

PPG Industries Fiberglass Products Shelby, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 28, 2001 in response to a petition filed on behalf of workers at PPG Industries Fiberglass Products, Shelby, North Carolina.

The petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of October, 2001.

Linda G. Poole,

Certifying Officer, Division Trade Adjustment Assistance.

[FR Doc. 01–27796 Filed 11–5–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,976 976A, 976B]

VF Imagewear (West), Inc. Harriman, Tennessee, et.al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a

Certification of Eligibility to Apply for Worker Adjustment Assistance on October 1, 2001, applicable to workers of VF Imagewear (West), Inc., Harriman, Tennessee. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations have occurred at the Wilmington, North Carolina and Wartburg, Tennessee locations of VF Imagewear (West), Inc. These locations are engaged in the production of industrial work shirts and dress shirts.

Accordingly, the Department is amending the certification to cover the workers of VF Imagewear (West), Inc., Wilmington, North Carolina and Wartburg, Tennessee.

The intent of the Departments's certification is to include all workers of VF Imagewear (West), Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,976 is hereby issued as follows:

All workers of VF Imagewear (West), Inc., Harriman, Tennessee (TA–W–39,976), Wilmington, North Carolina (TA–W–39,976A) and Wartburg, Tennessee (TA–W–39,976B) who became totally or partially separated from Employment on or after August 22, 2000, through October 1, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 22nd day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27794 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications for 2001 Under the Federal Unemployment Tax Act

On October 31, 2001, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to state unemployment funds to obtain certain credits against their liability for the federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Dated: November 1, 2001.

Emily Stover DeRocco,

Assistant Secretary.

Secretary of Labor

Washington

October 31, 2001.

The Honorable Paul H. O'Neill
Secretary of the Treasury, Washington, D.C. 20220

Dear Secretary O'Neill: Transmitted herewith are an original and one copy of the certifications of the states and their unemployment compensation laws for the 12-month period ending on October 31, 2001. One is required with respect to the normal federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986 (IRC), and the other is required with respect to the additional tax credit by Section 3303 of the IRC. Both certifications list all 53 jurisdictions.

Sincerely,

Elaine L. Chao,
Enclosures.

United States Department of Labor, Office of the Secretary, Washington, DC

Certification of States to the Secretary of the Treasury Pursuant to Section 3304(c) of the Internal Revenue Code of 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named states to the Secretary of the Treasury for the 12-month period ending on October 31, 2001, in regard to the unemployment compensation laws of those states which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Maryland
Massachusetts
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Oregon
Pennsylvania
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 2001.

Elaine L. Chao,

Secretary of Labor.

United States Department of Labor Office of the Secretary Washington, DC

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named states, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 2001:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisidana
Maine
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 2001.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 01–27809 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,932; Rexam Beverage Can Co., Houston Can Plant, Houston, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,679; Kazoo, Inc., San Antonio, TX
TA–W–39,941; Finet Technologies, Dunmore, PA
TA–W–38,884; Freightliner LLC, Portland Truck Manufacturing Plant, Portland, OR

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–40,120; Guardian Life Insurance, New York, NY

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–39,076; Republic Technologies International, Lackawanna Plant, Blasdell, NY

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,519 FCI USA, Inc., Electronics Div., Mount Union, PA: June 14, 2000.
TA–W–39,386; Bennett Pump Co., Spring Lake, MI: May 17, 2000.
TA–W–39,479; Spectrum Control, Inc., Fairview, PA: June 1, 2000.
TA–W–39,944; Hilton Corporate Casuals, Div. Of K–2, Inc., Thomasville, AL: August 13, 2000.
TA–W–39,259; Techneglas, Inc., Columbus, OH: April 25, 2000.
TA–W–39,259A; Techneglas, Inc., Pittston, PA: July 9, 2001.
TA–W–40,068; Damy Industries, Sewing and Catalog Departments, Athens, TN: July 19, 2000.
TA–W–39,853; Altec, Inc., Tool Room, Liberty Lake, WA: August 2, 2000.
TA–W–39,639; American Steel and Wire, Cuyahoga Heights, OH: June 27, 2000.
TA–W–40,066; Stewart Connector Systems, Insilco Technologies, Group, Glen Rock, PA: October 23, 2001.
TA–W–39,741; The Stuckey Co., Norman, OK: July 18, 2000.
TA–W–40,232; Exide Technologies, Transportation Global Business Unit, Burlington, IA: October 8, 2000.
TA–W–39,914 & A; Reed Manufacturing Co., Nettleton, MS and Tupelo, MS: August 8, 2000.
TA–W–39,973; Interroll Corp., Wilmington, NC: July 12, 2000.
TA–W–39,905; Simonds Industries, Newcomerstown, OH: July 28, 2000.
TA–W–39,797; Centennial Tool and Manufacturing, Meadville, PA: July 30, 2000.
TA–W–39,106 & A, & B; Manpower, Ottumwa, IA, The Sedona Group, Moline, IL and RIH, Des Moines, IA: April 9, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate

subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05014A; Thomaston Mills, Inc., Finishing Div., Finishing Apparel Dept., Thomaston, GA
NAFTA–TAA–05268; Summit Circuits, Inc., Fort Wayne, IN
NAFTA–TAA–05062; M&S Manufacturing Co., Plant #7, Hudson, MI
NAFTA–TAA–05226; Finet Technologies, Dunmore, PA
NAFTA–TAA–05242; Rexam Beverage Can Co., Houston Can Plant, Houston, TX
NAFTA–TAA–05157; Centennial Tool and Manufacturing, Meadville, PA
NAFTA–TAA–04355; Fishman and Tobin, Inc., Cutting Dept., Medley, FL

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

NAFTA–TAA–05285; Sykes Enterprises, Irvine, CA
NAFTA–TAA–05345; Pinnacle Logistics, Inc., El Paso, TX
NAFTA–TAA–04915; Equitable Resources, div. Of Kentucky West Virginia Gas Co. LLC, Prestonburg, KY

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment.

NAFTA–TAA–05241; The Gillette Co., Oral-B Laboratories, Iowa City, IA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05216; Bard Access Systems, Div. Of C.R. Bard, Salt Lake City, UT: August 14, 2001
NAFTA–TAA–05284; Hilton Corporate Casuals, Div. Of K–2, Inc., Thomasville, AL: August 13, 2000.
NAFTA–TAA–04922; G.E. Marquette Medical Systems, d/b/a/ Corometrics, Wallingford, CT: May 15, 2000.
NAFTA–TAA–05103; PEC of America Corp., San Diego, CA: July 12, 2000.
NAFTA–TAA–05014, A,B,C, & D; Thomaston Mills, Inc., Peerless, Div., Thomaston, GA. Finishing Div., Finishing Consumer Dept., Thomaston, GA, Lakeside Div., Thomaston, GA, Corporate Office, Thomaston, GA and New York Office, New York, NY: June 16, 2000.
NAFTA–TAA–05042; Exide Technologies, Transportation Global Business Unit, Burlington, IA: June 26, 2000.
NAFTA–TAA–05078; Bourns, Inc., Sensors and Controls Div., Ogden, UT: July 16, 2000.
NAFTA–TAA–05027; Lear Corp., Romulus Plant #2, Seating Systems Div., Romulus, MI: June 28, 2000.
NAFTA–TAA–05328; Stewart Connector Systems, Insilco Technologies Group, Glen Rock, PA: September 10, 2000.
NAFTA–TAA–05142; Agrium U.S., Inc., Kennewick Fertilizer Operation, The Finley Plant, Kennewick, WA: July 16, 2000.
NAFTA–TAA–04844; Spectrum Control, Inc., Fairview, PA: April 2, 2000.
NAFTA–TAA–05003; FCI USA, Inc., Electronics Div., Mount Union, PA: June 14, 2000.
NAFTA–TAA–04836; Honeywell, Engines & Systems, Environmental Control Div., Torrance, CA: May 1, 2000.

I hereby certify that the aforementioned determinations were issued during the month of October, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 29, 2001.

Edward A. Tomchick,

Director, Division of Traded Adjustment Assistance.

[FR Doc. 01–27804 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04721]

Atofina Chemicals, Inc. Including Contract Workers of Washore Mechanical and Blessing Electric Portland, Oregon; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 250(A), subchapter D, Chapter 2, Title II of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance on June 20, 2001, applicable to workers of Atofina Chemicals, Inc., Portland, Oregon. The notice was published in the **Federal Register** on July 5, 2001 (66 FR 35463).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State and the company shows that employees of Washore Mechanical and Blessing Electric were employed by Atofina Chemicals, Inc. to repair chlorine and chlorate cells, perform pipe maintenance and installation duties and maintain and install high voltage electric systems necessary to produce chloralkali chemicals at the Portland, Oregon location of the subject firm.

Worker separations occurred at Washore Mechanical and Blessing Electric as a result of worker separations at Atofina Chemicals, Inc., Portland, Oregon.

Based on these findings, the Department is amending the certification to include workers of Washore Mechanical and Blessing Electric employed at Atofina Chemicals, Inc., Portland, Oregon.

The intent of the Department's certification is to include all workers of Atofina Chemicals, Inc., Portland, Oregon adversely affected by increased company imports from Canada and Mexico.

The amended notice applicable to NAFTA—4721 is hereby issued as follows:

All workers of Atofina Chemicals, Inc., Portland Oregon and all workers of Washore Mechanicals and Blessing Electric, Portland, Oregon engaged in activities related to the production of chloralkali chemicals at Atofina Chemicals, Inc., Portland, Oregon, who became totally or partially separated from employment on or after April 4, 2000, through June 20, 2003, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC this 22nd day of October, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27795 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05314]

Emerson Electric Co. Daniel Measurement and Control, Inc. Statesboro, Georgia; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 11, 2001, in response to a petition filed by a company official on behalf of workers at Emerson Electric Company, Daniel Measurement and Control, Inc., Statesboro, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27799 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purposes of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request if filed in writing with the Director of DTAA not later than November 16, 2001.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the director of DTAA at the address shown below not later than November 16, 2001.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 23rd October, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
Joplin Mfg.—Orica USA (Co.)	Joplin, MO	09/26/2001	NAFTA–5,380	Packaged explosives products.
Juki Union Special (Co.)	Santa Fe Spring, CA	09/28/2001	NAFTA–5,381	Industrial sewing machines.
Wilson Sporting Goods (Wkrs)	Fountain Inn, SC	10/01/2001	NAFTA–5,382	Sporting goods.
Hamrick's (Co.)	St. Matthews, SC	10/01/2001	NAFTA–5,383	Ladies apparel.
Sara Lee Hosiery—Hanes Hosiery (Wkrs).	Yadkinville, NC	10/01/2001	NAFTA–5,384	Pantyhose.
Lexington Fabrics (Co.)	Geraldine, AL	09/06/2001	NAFTA–5,385	T-shirts.
GFC Foam—PMC, Inc. (USWA)	West Hazleton, PA	10/02/2001	NAFTA–5,386	Flexible polyurethane foam.
Classic Knitting Mills (Co.)	Greensboro, NC	09/21/2001	NAFTA–5,387	Fabric for golf shirts.
Mexican Industry (UAW)	Detroit, MI	10/04/2001	NAFTA–5,388	DC motors.
Stephens Pipe (Co.)	Russell Springs, KY	10/03/2001	NAFTA–5,389	Mechanical square tubing.
GE Capital/Card Services (Wkrs)	Bloomington, MN	10/03/2001	NAFTA–5,390	Card services.
J and L Structural (USWA)	Ambridge, PA	10/04/2001	NAFTA–5,391	Crossmember beams.
International Wire Group (Co.)	Pine Bluff, AR	10/04/2001	NAFTA–5,392	Bare copper wire.
Liebert Corporation (Wkrs)	Irvine, CA	10/03/2001	NAFTA–5,393	Subassemblies for power supplies.
Bond Technologies (Wkrs)	Huntington Beach, CA	10/03/2001	NAFTA–5,394	Molded cables, harnesses & sheet metal.
Eudora Garment (Wkrs)	Gudora, AR	10/04/2001	NAFTA–5,395	Work pants, dresses, coveralls.
Intermetro Industries (Wkrs)	Wilkes Barre, PA	10/03/2001	NAFTA–5,396	Shelving and transport products.
Connolly North America (Wkrs)	El Paso, TX	10/05/2001	NAFTA–5,397	Leather parts.
IFF, Inc. (Wkrs)	Salem, OR	10/04/2001	NAFTA–5,398	Concentrated fruit juice.
Shirts Plus II (Wkrs)	Loretto, TN	10/05/2001	NAFTA–5,399	Blank t-shirts.
Incoe Corporation (Wkrs)	Frankfort, MI	10/09/2001	NAFTA–5,400	Plastic injection molds.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
SBF, Inc.—Formfit Apparel (Co.)	Lafayette, TN	10/09/2001	NAFTA–5,401	Intimate apparel.
3M Solutions (Wkrs)	Gretha, VA	10/04/2001	NAFTA–5,402	Metal chassis.
Garan Manufacturing (Wkrs)	Adamsville, TX	10/09/2001	NAFTA–5,403	Knit shirts.
Glad Rags (Wkrs)	Roanoke, VA	09/04/2001	NAFTA–5,404	Women apparel.
W.G. Benjey (Wkrs)	Alpena, MI	10/12/2001	NAFTA–5,405	Screws.
H.R. Jones Veneer (Co.)	Grand Ronde, OR	10/02/2001	NAFTA–5,406	Veneer.
VF Imagewear (West)	Wilington, NC	10/10/2001	NAFTA–5,407	Men and boys clothing.
VF Imagewear (West) (Co.)	Wartburg, TN	10/09/2001	NAFTA–5,408	Work shirts.
Jen Sportwear (Wkrs)	San Fernando, CA	10/02/2001	NAFTA–5,409	T-shirts and shorts etc.
Cosco (Wkrs)	Ft. Smith, AR	10/12/2001	NAFTA–5,410	Wooden baby cribs.
Schmalbach Lubeca—Plastic Containers (Wkrs).	Erie, PA	10/12/2001	NAFTA–5,411	Steel mold components.
Laser Tool (Co.)	Saegertown, PA	10/12/2001	NAFTA–5,412	Plastic injection molds.
Cascades Tissue Group (Co.)	Pittston Township, PA	10/11/2001	NAFTA–55,413	Paper products.
Bobs Candies (Co.)	Albany, GA	10/11/2001	NAFTA–5,414	Hard candy.
Santee Company (The) (Wkrs)	Eden, NC	10/11/2001	NAFTA–5,415	Knit, dye finish fabric.
Gilbert Paper—Mead Corp. (PACE)	Menasha, WI	10/11/2001	NAFTA–5,416	Paper.
FCI USA (Co.)	Fremont, CA	10/11/2001	NAFTA–5,417	Electronic connectors.
CTI Audio (Co.)	Conneaut, OH	10/11/2001	NAFTA–5,418	Accessories for mobile communications.
Thermatex Corporation (PACE)	Newton Falls, OH	10/05/2001	NAFTA–5,419	Ceramic fiber.
Communications and Power Industries (Co.).	Palo Alto, CA	10/11/2001	NAFTA–5,420	Amplifers.
Stitches, Inc. (Co.)	El Paso, TX	10/11/2001	NAFTA–5,421	Industrial apparel.
TNS Mills (Co.)	Spartanburg, SC	10/11/2001	NAFTA–5,422	Woven fabric.
Wabash National (Wkrs)	Huntsville, TN	10/09/2001	NAFTA–5,423	Steel.
Paulsen Wire Rope (Co.)	Sunbury, PA	10/10/2001	NAFTA–5,424	Wire Rope.
Solectron Corp. (Wkrs)	Research Triangle Park, NC.	10/15/2001	NAFTA–5,425	Electronic devices.
Eastwood Industrial (Wkrs)	Albermarle, NC	10/12/2001	NAFTA–5,426	Ladies shirts.
Richmond Technology & Illinois Tools (Wkrs).	Redlands, CA	10/12/2001	NAFTA–5,427	Flexible packaging for electronics.
Controls, Inc. (Co.)	Logansport, IN	10/12/2001	NAFTA–5,428	Printed circuit boards.
Harsco Corporation (Wkrs)	Lansing, OH	10/15/2001	NAFTA–5,429	Steel pipe couplings.
Tect, Inc. (Co.)	Topton, PA	10/15/2001	NAFTA–5,430	Sewing t-shirts.
Tect, Inc.	Allentown, PA	10/15/2001	NAFTA–5,431	Cutting t-shirts.
Tect, Inc. (Co.)	Allentown, PA	10/15/2001	NAFTA–5,432	Knitting cotton fabric.
Tect, Inc. (Co.)	Temple, PA	10/15/2001	NAFTA–5,433	Sewing t-shirts.
Tect, Inc. (Co.)	Allentown, PA	10/15/2001	NAFTA–5,434	Sew, embroider, screen, package t-shirts.
Case New Hollard (UAW)	Burlington, IA	10/15/2001	NAFTA–5,435	Cylinder operation machining.
Purethane (Co.)	West Branch, IA	10/15/2001	NAFTA–5,436	Automotive armrests.
ADC (Wkrs)	Minneapolis, MN	10/16/2001	NAFTA–5,437	Tele-communication equipment.
United for Excellence (UFE) (Wkrs)	River Falls, WI	10/17/2001	NAFTA–5,438	Electronics.
Midwest Garment (Co.)	Chesterfield, MO	10/17/2001	NAFTA–5,439	Adult bibs, blankets, hospital gowns.
Monro and Co.—Clarendon Footwear (Co.).	Clarendon, AR	10/15/2001	NAFTA–5,440	Men's casual & safety toe footwear.
Monro and Co.—Dewitt Footwear (Co.)	Dewitt, AR	10/15/2001	NAFTA–5,441	Men's casual & safety toe footwear.
Weiser Lock (Co.)	Tucson, AZ	10/17/2001	NAFTA–5,442	Door hardware and security.
Barranco Apparel Group Ruth of Carolina (Wkrs).	Hendersonville, NC	10/17/2001	NAFTA–5,443	Children's dresses.
American Furniture (Wkrs)	Cincinnati, OH	10/17/2001	NAFTA–5,444	Hotel and motel furniture.
Graphic Packaging (AWPPW)	Portland, OR	10/16/2001	NAFTA–5,445	Cartons for frozen berries.
Wheeling Corragating (Wkrs)	Klamath Falls, OR	10/12/2001	NAFTA–5,446	Metal roofing and siding.
VF Imagewear (West) (Co.)	Mathiston, MS	10/17/2001	NAFTA–5,447	Work shirts.
Kings Mountain Hosiery Mill (Co.)	Kings Mountain, NC	10/19/2001	NAFTA–5,448	Casual & dress socks.
Ruppe Hosiery (Co.)	Kings Mountain, NC	10/19/2001	NAFTA–5,449	Casual & dress socks.
Pictsweet Mushroom Farm (Wkrs)	Salem, OR	09/21/2001	NAFTA–5,450	Mushrooms.
Mauney Hosiery Mills (Co.)	Kings Mountain, NC	10/22/2001	NAFTA–5,451	Socks.
Quality Mold (Wkrs)	Erie, PA	10/22/2001	NAFTA–5,452	Molds.

[FR Doc. 01–27798 Filed 11–5–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—05280]

PPG Industries Fiberglass Products Shelby, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 7, 2001 in response to a petition filed on behalf of workers at PPG Industries Fiberglass Products, Shelby, North Carolina.

The petitioners requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27801 Filed 11–5–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05297]

Wackenhut Security, Agrium Security, Kennewick, WA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on September 4, 2001, in response to a worker petition which was filed on behalf of workers at Wakenhut Security, Agrium Security, Kennewick, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC., this 23rd day of October 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27800 Filed 11–5–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Notice of Meetings and Agenda

The Fall meetings of committees of the Labor Research Advisory Council will be held on November 26, 27 and 28, 2001. All of the meetings will be held in the Conference Center, of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Monday, November 26, 2001

1:30 p.m.—Committee on Prices and Living Conditions—Meeting Room 9

1. Update on program developments
   a. Consumer Price Index
   b. International Price Indexes
   c. Producer Price Indexes
2. Topics for the next meeting

Tuesday, November 27, 2001

9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9

1. Report on the evaluation of Current Population Survey (CPS) union membership/contract coverage questions
2. American Time Use Survey update
3. Large scale layoffs, employment dynamics, and firm survival: report on BLS research using data from the Mass Layoff Statistics (MLS) program
4. Topics for the next meeting

1:30 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 9

1. Changes to the Survey of Occupational Injuries and Illnesses in response to the new Occupational Safety and Health Administration recordkeeping requirements
2. Report on the 2000 Census of Fatal Occupational Injuries
3. Demonstration of the Census of Fatal Occupational Injuries Profiles system
4. Status report on the Survey of Respirator Use and Practices
5. Report on the Workplace Surveillance Conference sponsored by the National Institute for Occupational Safety and Health
6. Topics for the next meeting

Wednesday, November 28, 2001

9:30 a.m.—Committee on Productivity, Technology and Growth—Meeting Room 9

1. Reorganization of the Employment Projections program
2. Status of the 2000–2010 Projections
3. North American Industry Classification System (NAICS) issues
4. Project plans for Fiscal Year 2002
5. Discussion of employment projections agenda items for the Spring 2002 meeting
6. Service sector expansion plans
7. Capital measurement project for residential housing
8. Topics for the next meeting

Committee on Foreign Labor Statistics—Meeting Room 9

1. International trends in hourly compensation
2. Topics for the next meeting

1:30 p.m.—Committee on Compensation and Working Conditions—Meeting Room 9

1. Wage query system with regressions
2. Equity-based compensation
3. Topics for the next meeting

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on 202–691–5970.

Signed at Washington, DC this 30th day of October, 2001.

Lois L. Orr,

Acting Commissioner.

[FR Doc. 01–27810 Filed 11–5–01; 8:45 am]
BILLING CODE 4510–24–M

PENSION AND WELFARE BENEFITS ADMINISTRATION

[Prohibited Transaction Exemption (PTE) 2001–45; Exemption Application No. D–10946]

Grant of Individual Exemption To Amend PTE 99–45, Involving Donaldson, Lufkin & Jenrette Securities Corporation (DLJ), Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption to modify PTE 99–45.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) that amends PTE 99–45 (64 FR 61138, November 9, 1999), an exemption issued to DLJ. PTE 99–45, which is effective as of September 24, 1999, permits the (1) purchase or sale of a security between certain affiliates of DLJ which are foreign broker-dealers (the Foreign Affiliates) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, DLJ or the Foreign Affiliates; (2) the extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions that are effected on either an agency or a principal basis, or in connection with the writing of options contracts; and (3) the lending of securities to the Foreign Affiliates by the Plans. These transactions are described in a notice of pendency that was published by the Department on September 7, 2001 at 66 FR 46826 and clarified on September 17, 2001 by a Notice of Technical Correction (66 FR 48067), also issued by the Department.

The final exemption expands the scope of PTE 99–45 in order that it will apply to both current and future Foreign Affiliates of DLJ and Credit Suisse First Boston Corporation (CSFB) that are located in the United Kingdom and Australia and subject to the securities regulatory entities within these jurisdictions. In addition, the final exemption incorporates, by reference, many of the facts, representations and conditions contained in PTE 99–45, as well as certain revisions made in the Notice of Technical Correction.

EFFECTIVE DATE: This exemption is effective as of November 3, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 7, 2001, the Department published a notice of proposed exemption in the **Federal Register** at 66 FR 46826, that would amend PTE 99–45. PTE 99–45 provides an exemption form certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application filed on behalf of DLJ and CSFB pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32826, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before October 22, 2001. All comments were to be made a part of the record. During the comment period, the Department received no comments or hearing requests from interested persons.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the itnerest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the act, section 4975(c)(2), of the Code, and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The exemption is supplemental to, and not in derogation of, any other provision of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the facts and representations set forth in the notice of proposed exemption, the Notice of Technical Correction, and the proposed and final exemptions relating to PTE 99–45, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department hereby amends PTE 99–45 as follow:

Section I. Covered Transactions

A. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 3, 2000, to any purchase or sale of a security between certain affiliates of Donaldson, Lufkin & Jenrette Securities Corporation (DLJ) or Credit Suisse First Boston Corporation (CSFB) which are foreign broker-dealers (the Foreign Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, DLJ, CSFB, or a Foreign Affiliate, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer;

(2) The terms of any transaction are at least as favorable to the Plan as those which the Plan could obtain in a comparable arm's length transaction with an unrelated party; and

(3) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, and the Foreign Affiliate is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the Foreign Affiliate shall not be deemed to be a fiduciary with respect to Plan assets solely by reason of providing securities custodial services for a Plan.

B. The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 3, 2000, to any extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) The Foreign Affiliate is not a fiduciary with respect to any Plan assets involved in the transaction, unless no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with such extension of credit; and

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder if such Act, rules or regulations were applicable.

C. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 3, 2000, to the lending of securities to the Foreign Affiliates by the Plans, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(2) The Plan receives from the Foreign Affiliate (by physical delivery or by book entry in a securities depository, wire transfer, or similar means) by the close of business on the day on which the loaned securities are delivered to the Foreign Affiliate, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral shall be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and shall be held in the United States;

(3) The collateral has, as of the close of business on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same);

(4) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains items at least as favorable to the Plan as those the Plan could obtain in an arm's length transaction with an unrelated party;

(5) In return for lending securities, the Plan either (a) receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than the Plan would pay an unrelated party in a comparable arm's length transaction with an unrelated party;

(6) The Plan receives at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities that the Plan would have received (net of tax withholdings)[1] had it remained the record owner of such securities.

(7) If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate delivers additional collateral, by the close of the Plan's business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent;

(8) Before entering into a Loan Agreement, the Foreign Affiliate furnishes to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change;

(9) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or, alternatively such period as permitted by Prohibited Transaction Class Exemption (PTCE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded.[2]

[1] The Department notes the Applicants' representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not lent the securities.

[2] PTCE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of

Continued

(10) In the event that the loan is terminated and the Foreign Affiliate fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (9), the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Foreign Affiliate is obligated to pay, under the terms of the Loan Agreement, and does not pay, to the Plan, the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

(11) The independent Plan fiduciary maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404b–1. However, in the event that the independent Plan fiduciary does not maintain the situs of the Loan Agreement in accordance with the indica of ownership requirements of section 404(b) of the Act, the Foreign Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code.

If the Foreign Affiliate fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the Plan fiduciary which caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Foreign Affiliate's failure to comply with the conditions of the exemption.

Section II. General Conditions

A. The Foreign Affiliate is a registered broker-dealer subject to regulation by a governmental agency, as described in Section III. C., and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption;

B. The Foreign Affiliate, in connection with any transactions covered by this exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements.

C. Prior to the transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions.

D. The Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction such records as are necessary to enable the persons described in paragraph E. to determine whether the conditions of this exemption have been met except that—

(1) A party in interest with respect to a Plan, other than the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination, as required by paragraph E.; and

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the control of the Foreign Affiliate, such records are lost or destroyed prior to the end of such six year period;

E. Notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the Foreign Affiliate makes the records referred to above in paragraph D., unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(1) The Department, the Internal Revenue Service or the SEC;

(2) Any fiduciary of a Plan;

(3) Any contributing employer to a Plan;

(4) Any employee organization any of whose members are covered by a Plan; and

(5) Any participant or beneficiary of a Plan. However, none of the persons described above in paragraphs (2)–(5) of this paragraph E. shall be authorized to examine trade secrets of the Foreign Affiliate, or any commercial or financial information which is privileged or confidential.

F. Prior to any Plan's approval of any transaction with a Foreign Affiliate, the Plan is provided copies of the proposed and final exemption with respect to the exemptive relief granted herein.

Section III. Definitions

For purposes of this exemption,

A. The terms "DLJ" or "CSFB" as referred to in Section I., mean Donaldson, Lufkin & Jenrette Securities Corporation or Credit Suisse First Boston Corporation.

B. The term "affiliate" of another person shall include:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner. (For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

C. The term "Foreign Affiliate," shall mean a current or future affiliate of DLJ or CSFB that is subject to regulation as a broker-dealer by—

(1) The Securities and Futures Authority, in the United Kingdom; or

(2) The Australian Securities & Investments Commission in Australia.

D. The term "security" shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term "security" does not include swap agreements or other national principal contracts.

Section IV. Effective Date

This exemption is effective as of November 3, 2000.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

the Act and the corresponding provisions of section 4975 (c) of the Code for the lending of securities that are assets of an employee benefits plan to a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein).

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 99–45 and this final exemption, refer to the proposed exemptions and the grant notices which are cited above.

Signed at Washington, DC, this 31st day of October, 2001.

Ivan L. Strasfeld,

Director of Exemption, Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 01–27754 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2001–43; [Exemption Application No. D–10916 and D–10917, et al.]

Grant of Individual Exemptions; The FHP International Corporation 401(k) Savings Plan; and The FHP International Corporation PAYSOP (Together, the Plans) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the code and the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The FHP International Corporation 401(k) Savings Plan; and The FHP International Corporation PAYSOP (together, the Plans)

Located in Santa Ana, California

[Prohibited Transaction Exemption 2001–43; Exemption Application Nos. D–10916 and D–10917]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, from April 21, 1997 through May 20, 1997, to: (1) The past receipt by the Plans of certain rights (the Talbert Rights) to purchase shares of common stock, par value $.01 per share, of Talbert Medical Management Holding Corporation (Talbert); (2) the past holding of the Talbert rights by the Plans; and (3) the disposition or exercise of the Talbert Rights by the Plans; provided that the following conditions are satisfied:

(A) The Plans' acquisition and holding of the Talbert Rights resulted from independent acts of FHP International Corporation (FHP) and Talbert as corporate entities, and all holders of common stock of FHP (FHP Common Stock) were treated in a like manner, including the Plans;

(B) With respect to Talbert Rights allocated to the Plans, the Talbert Rights were acquired solely for the accounts of participants who had directed investment of all or a portion of their account balances in FHP Common Stock pursuant to Plan provisions for individually-directed investment of participant accounts; and

(C) With respect to Talbert Rights allocated to the Plan, all decisions regarding the holding, disposition or exercise of the Talbert Rights were made, in accordance with Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plans received Talbert Rights, including all determinations regarding the exercise or sale of the Talbert Rights, except for those participants who failed to file timely and valid instructions concerning the exercise of the Talbert Rights (in which event the Talbert Rights were sold).

EFFECTIVE DATE: This exemption is effective from April 21, 1997 through May 20, 1997.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 7, 2001 at 66 FR 46840.

Written Comments and Hearing Requests: The Department received one letter from a commentator which did not address any issues relating to the proposed exemption, but sought more information concerning the transaction. The Department provided the additional information to the person via telephone. In addition, the Department received a number of telephone calls from other Plan participants requesting further information. Each of these inquiries was responded to by telephone and no additional questions were raised. The Department received no requests for a hearing with respect to the proposed exemption.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, Telephone (202) 219–8881. (This is not a toll-free number.)

Anthem Insurance Companies, Inc. (Anthem)

Located in Indianapolis, IN

[Prohibited Transaction Exemption 2001–44; Exemption Application No. D–10979]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective October 24, 2001, to the receipt, by an employee benefit plan (the Plan) or by a Plan participant (the Plan Participant) that is an eligible

member (the Eligible Member), by reason of the ownership of an insurance policy or contract issued by Anthem, of common stock (Common Stock) issued by Anthem, Inc. (the Parent Company), a newly-formed holding company or cash (Cash), in exchange for such Plan's or Plan Participant's mutual membership interest in Anthem, in accordance with a plan of conversion (the Plan of Conversion) adopted by Anthem and implemented under Indiana law.

This exemption is subject to the following conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Conversion is subject to approval, review and supervision by the Commissioner of Insurance of the Indiana Department of Insurance (the Commissioner) and is implemented in accordance with procedural and substantive safeguards imposed under Indiana law.

(b) The Commissioner reviews the terms and options that are provided to Eligible Members as part of such Commissioner's review of the Plan of Conversion, and the Commissioner approves the Plan of Conversion following a determination that such Plan is fair, reasonable and equitable to Eligible Members.

(c) Each Eligible Member has an opportunity to vote to approve the Plan of Conversion after full written disclosure is given to the Eligible Member by Anthem.

(d) Any determination to receive Common Stock or Cash by an Eligible Member which is a Plan, pursuant to the terms of the Plan of Conversion, is made by one or more Plan fiduciaries which are independent of Anthem and its affiliates and neither Anthem nor any of its affiliates exercises any discretion or provides "investment advice" within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(e) Any determination to receive Common Stock or Cash by an Eligible Member which is a Plan Participant, pursuant to the terms of the Plan of Conversion, is made by such participant and neither Anthem nor any of its affiliates exercises any discretion or provides "investment advice" within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(f) After each Eligible Member entitled to receive shares of Common Stock is allocated at least 21 shares, additional consideration may be allocated to Eligible Members based on actuarial formulas that take into account each Eligible Member's contribution to Anthem's statutory surplus, which formulas are subject to review and approval by the Commissioner.

(g) All Eligible Members that are Plans or Plan Participants participate in the transactions on the same basis and within their class groupings as all Eligible Members that are not Plans or Plan Participants.

(h) No Eligible Member pays any brokerage commissions or fees in connection with their receipt of Common Stock or in connection with the implementation of the commission-free purchase and sale program.

(i) All of Anthem's policyholder obligations remain force and are not affected by the Plan of Conversion.

Section III. Definitions.

For purposes of this exemption,

(a) The term "Anthem" means Anthem Insurance Companies, Inc.

(b) An "affiliate" of Anthem includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Anthem; (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.) and

(2) Any officer, director or partner in such person.

(c) A "policy" is defined as (1) Any individual insurance policy or health care benefits contract that has been issued by Anthem and under which the holder thereof has membership interests in Anthem; (2) any certificate issued by Anthem under a group insurance policy or health care benefits contract under which certificate the holder thereof has membership interests in Anthem; or (3) certificates of membership issued by Anthem in or under guaranty policies under which certificate the holder thereof is a member of Anthem with membership interests.

(d) The term "membership interests" means (1) voting rights of Anthem's members as provided by law and Anthem's Articles of Incorporation and Bylaws, and (2) the rights of members to receive cash, stock, or other consideration in the event of conversion to a stock insurance company under Indiana Demutualization Law or a dissolution of Anthem as provided by Indiana insurance law and Anthem;s Articles of Incorporation and Bylaws.

(e) The term "Eligible Member" or "Eligible Statutory Member" means a person or entity (1) whose name appears on Anthem's records as the holder of one or more in force policies issued by Anthem as of both and the date the Board of Directors adopts the Plan of Conversion and the effective date of the Plan of Conversion, and (2) who has had continuous health care benefits coverage with the same insuring company during the period between those two dates under any policy without a break of more than one day.

(f) The term "Parent Company" refers to a corporation organized and existing under the Indiana Business Corporation Law. Prior to the conversion, the Parent Company will be a wholly owned subsidiary of Anthem. Upon the conversion of Anthem to a stock company, the Parent Company will serve as the "Indiana parent corporation" of Anthem for purposes of Indiana law. Upon the effective date of the Plan of Conversion, the Parent Company will complete an initial public offering (the IPO) of shares of Parent Company Common Stock for cash.

Effective Date: This exemption is effective as of October 24, 2001.

For a more complete statement of the facts and representations supporting the Department;s decision to grant this exemption, refer to the notice of proposed exemption published on August 3, 2001 at 66 FR 40743.

Written Comments

The Department received two written comments with respect to the proposed exemption. The first comment, which was submitted on behalf of the UFCW Unions and Employers Health and Welfare Plan of Central Ohio, a Plan policyholder of Anthem, by legal representatives for the Plan's board of trustees (the Trustees), requests that the Department revise the final exemption and require that Anthem distribute the demutualization proceeds solely to the Plan, instead of to Plan Participants. Due to the substantive nature of the issue presented, the comment was forwarded to Anthem for response. The second comment, which was submitted by Anthem, clarifies and updates the proposed exemption in a number of areas.

Following is a discussion of the comments received, including the responses made by Anthem and/or the Department.

Plan Policyholder Comment

As noted above, the commenter states that it represents the Trustees of a multiemployer health and welfare plan which is funded exclusively through employer contributions. The Plan has offered participants the choice of either a self-insured option or a fully-insured option through an Anthem affiliate.

The commenter notes that Anthem's Plan of Conversion generally proposes to distribute the demutualization consideration to individual certificate holders as opposed to group policyholders. The commenter asserts that group policyholders which contracted with certain companies prior to their merger with Anthem are deemed entitled to the proceeds of the demutualization. However, due to the timing of the Plan's contracting with the Anthem affiliate, the commenter explains that Anthem intends to distribute the demutualization proceeds to Plan Participants and not to the Plan. This, according to the commenter, creates an inequitable result because the premiums are paid entirely out of the Plan's assets and only those Plan Participants who have selected the fully insured option will be entitled to receive the proceeds from the demutualization.

In addition, the commenter indicates that the Trustees believe that the proceeds of the demutualization should be distributed to the Plan to be held in trust and utilized for the benefit of all Plan Participants and beneficiaries because it would be consistent with the Department's position on whether a Plan policyholder is entitled to keep the proceeds of a demutualization. Assuming the proceeds are "plan assets," the commenter questions on what basis Anthem can distribute the proceeds to any party but the Plan.

Finally, the commenter notes that neither Anthem's Plan of Conversion nor the proposed exemption appear to contemplate the Plan as a policyholder but instead focus on the terms "employer" or "association" when describing a group policyholder or a plan sponsor. The unique nature of the Plan, according to the commenter, justifies different policyholder treatment and distribution of demutualization consideration to the Plan as opposed to a limited percentage of Plan Participants. Therefore, the commenter requests that the Department revise the final exemption and require Anthem to distribute the demutualization consideration to the Plan.

In response to the commenter, Anthem states that it is an Indiana-domiciled mutual insurance company owned by its Statutory Members, which are certain Anthem customers who have both voting and other ownership rights in the insurer. As an Indiana-domiciled mutual company, Anthem explains that Indiana Demutualization Law exclusively governs its conversion to a stock company and requires the fair market value its conversion to a stock company and requires the fair market value of the company to be paid to Eligible Statutory Members upon the demutualizaiton.[1]

In addition, Anthem explains that Indian Demutualization Law requires that the question of who qualifies as a Statutory Member be determined by reference to the mutual company's articles of incorporation, by-laws and records. Anthem points out that its membership rules are found primarily in its By-Laws. With respect to group health benefits contracts, Anthem notes that its By-Laws provide that Statutory Members are those persons who have been granted membership rights under insurance agreements between Anthem and the employer (or other person, including an employer association or employee organization) acting for and on the persons' behalf. Anthem further explains that is By-Laws have provided for deceased that a certificate holder with health benefits coverage from the insurer is granted membership rights rather than the holder of the group contract, regardless of who pays the premiums for health benefits coverage.

With respect to the commenter, Anthem confirms that the Plan received its group health benefits contract from an Anthem affiliate and that the Plan Participants were issue certificates of membership from Anthem. In addition, Anthem indicates that the Plan was issued a "guaranty policy" under which it would not be considered a Statutory Member. Instead, the certificate holders (i.e., the Plan Participants who elected the Plan's insured option) were granted membership rights. As Statutory Members, Anthem asserts that the Plan Participants were given the right to vote in the election of Anthem's Board of Directors and to vote on any proposition that the Board submits to a vote of the Statutory Members in accordance with Indiana law. Furthermore, Anthem explains that Indiana law requires that these Plan Participants (as Statutory Members) also have the right to receive consideration in the event of Anthem's demutualization.

[1] Under its Plan of Conversion, Anthem indicates that "Eligible Statutory Members" will be those persons (or entities) who were Statutory Members on June 18, 2001 (the date Anthem's Board of Directors adopted the Plan of Conversion), who continue to be Statutory Members on the effective date of the conversion and who have had continuous health care benefits coverage with the same company (either Anthem or its Blue Cross and Blue Shield subsidiaries in Kentucky, Ohio or Connecticut) during the period between those two dates without a break in coverage of more than one day. As used herein "Eligible Statutory Members" refer also to "Eligible Members."

In addition, Anthem's Plan of Conversion states that a Statutory Member is, as of any specified date, any person, who in accordance with the records, Articles of Incorporation or By-Laws of Anthem, is the holder of an "in force" policy.

The Department has considered the comment and has determined not to adopt the commenter's recommendation that the exemption be revised to require that Anthem distribute the demutualization consideration to the Plan. In this regard, the Department notes that Indiana Demutualization Law mandates that Anthem's Articles of Incorporation and By-Laws govern who is accorded membership interests in the company and to whom the demutualization consideration is to be paid. The Department also notes that Anthem's By-Laws predate the Plan's contractual arrangement with the company. Lastly, the Trustees, as fiduciaries of the Plan, determined to enter into, and be subject to the terms of, a group health benefits contract with an Anthem affiliate which conferred certain ownership and voting rights on Plan Participants that are Eligible Members of Anthem. Although the demutualization may not have been contemplated at contract execution by the Trustees, nevertheless, one of these ownership rights is the right to receive consideration in the event of Anthem's demutualization.

Anthem's Comment

1. *Operative Language Changes and Effective Date.* In Section I of the proposed exemption, in the operative language, the first sentence of the initial paragraph states, in part, that if the exemption is granted the restrictions and sanctions imposed under the Act and the Code will not apply to the receipt of certain demutalization consideration, by a Plan, or a Plan Participant, both of which are Eligible Members by reason of their ownership of an insurance policy or contract issued by Anthem. Anthem requests that this sentence be revised to delete the definition of "Eligible Member" because it believes the definition conflicts with the correct definition of Eligible Member, as set forth in Section III of the proposal.

In addition, Anthem requests that the final exemption be made effective as of October 24, 2001, and that this effective date be referenced in the grant notice. On October 29, 2001, Anthem represents that it anticipates entering into binding agreements to sell the Common Stock to underwriters on November 2, 2001. Because the granting of the exemption is a condition to the closing of the sale, Anthem states that it will not be able to deliver the Common Stock on November 2, 2001, pursuant to the agreements unless the exemption is signed and effective.

Therefore, Anthem suggests that the initial paragraph of the operative

language be revised to read as follows in the final exemption:

> The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(a)(1)(A) through (D) of the Code, shall not apply, effective October 24, 2001, to the receipt, by an employee benefit plan (the Plan) or by a Plan participant (the Plan Participant) that is an eligible member (the Eligible Member), by reason of the ownership of an insurance policy or contract * * *

In addition, Anthem requests that the final exemption reflect an effective date.

In response to these comments, the Department has made the requested changes to the operative language and has also added a new section to the final exemption captioned "Effective Date."

2. *Allocation of Common Stock to Eligible Members.* Section II(f) of the proposed exemption provides, in relevant part, that after each Eligible Member entitled to receive shares of Common Stock is allocated at least 21 shares, additional consideration will be allocated to Eligible Members who own participating policies based on actuarial formulas that take into account each participating policy's contribution to Anthem's statutory surplus and are subject to review and approval by the Commissioner. Anthem requests that Section II(f) be revised as follows to reflect more accurately how additional consideration will be allocated to Eligible Members:

> After each Eligible Member entitled to receive shares of Common Stock is allocated at least 21 shares, additional consideration may be allocated to Eligible Members based on actuarial formulas that take into account each Eligible Member's contribution to Anthem's statutory surplus, which formulas are subject to review and approval by the Commissioner.

Anthem represents that its policies are generally issued and renewed for a term of one year. In order to compensate Eligible Members fairly for their membership interests, Anthem explains that the actuarial formulas used to allocate consideration take into account an Eligible Member's total contribution to the insurer's statutory surplus based on all of the policies and certificates under which the Eligible Member has had continuous coverage, rather than the actuarial contribution of a single policy or certificate held on the date used to calculate each Eligible Member's contribution to surplus. In addition, Anthem states that it decided to delete references to "participating" policies because it does not have any policies that require the payment of dividends or as to which any person has any reasonable expectation for the payment of dividends.

In response to this comment, the Department has revised Section II(f) of the final exemption, accordingly.

3. *Definition of Anthem.* Section III(a) of the proposed exemption defines the term "Anthem" to include any affiliate of Anthem, as defined in paragraph (b) of Section III. Anthem requests that the reference to the phrase "any affiliate of Anthem, as defined in paragraph (b) of this Section III" be deleted from the definition because Anthem and its affiliates are defined separately in the exemption application and many of the provisions from the exemption application have been incorporated into the proposal. Anthem notes that by treating it and its affiliates as the same entity changes the meaning of many of those provisions, as defined in the proposal. In this regard, Anthem points out that the clearest example of this is in the definition of "Eligible Member" in Section III(e). Without distinguishing between it and its affiliates, Anthem notes that the definition would incorrectly denote persons with policies issued by affiliates of Anthem as members of Anthem. Anthem further points out that policyholders of its affiliates are not Anthem members and, thus, will not have voting rights or receive compensation.

4. *Notice to Interested Persons.* In the Section of the proposal captioned "Notice to Interested Persons," the first sentence of the third paragraph states, at 40748, that Anthem will provide a copy of the proposed exemption to interested persons within 15 days of the publication of the proposal in the **Federal Register**. Anthem states that this paragraph should be revised to reflect that the comment period for the proposed exemption was extended because "The Member Information Statement" (the MIS), which contained the "Notice of Application for Prohibited Transaction" (the Notice) was mailed over a period of several days, rather than on a single date. Anthem states that it began mailing the MIS on August 17, which was within 15 days of the date that the proposed exemption was published in the **Federal Register**. However, Anthem explains that it recognized that the mailing would take several days to complete, so the comment period was extended from September 17, 2001, to October 1, 2001, to allow members enough time from the date of the final mailing to file comments with the Department. Anthem further explains that its Notice informed members of the extended comment period.

In response, the Department notes this revision to the proposal.

5. *Transaction Change.* Finally, Anthem states that it wishes to update the Department concerning a change in the demutualization process. In this regard, Anthem notes that the six month lock-up period (referred to in Representation 12) during which all Eligible Members are prohibited from selling their shares of Common Stock has been eliminated for many Eligible Members. Anthem explains that Eligible Members will generally be free to sell their shares of Common Stock in the open market after they receive their notification of share ownership. However, Anthem indicates that a small number of Eligible Members (i.e., certain large group customers) who receive and continue to hold 30,000 or more shares of Common Stock in exchange for their membership interests will still be restricted from selling, transferring, pledging, hypothecating or otherwise assigning their shares for 180 days following the effective date of the Plan of Conversion, except where the transfer (a) Is in accordance with a Large Holder Sale program.[2] (b) occurs by operation of law,[3] or (c) occurs with the written consent of Anthem. After the expiration of the 180 day period, Anthem states that the large group Eligible Members will be free to sell their Common Stock in the open market.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10979) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

[2] The Large Holder Sale Program is designed to help ensure that the public trading market for the Common Stock is not adversely affected by the sale of large blocks before the trading market has time to achieve mature trading characteristics. The program applies only during the first 180 days following the effective date of the Plan of Conversion, and it applies only to "Large Holders," a relatively small number of large group customers who will receive 30,000 or more shares of Common Stock in the demutualization. If Large Holders want to sell their shares of Common Stock during that 180 day period, they have to follow special procedures designed to limit the total number of shares sold by Large holder in the open market on any one trading day during that period. The Large Sale Holder Program cannot be changed without the consent of the Commissioner.

[3] A "transfer by operation of law" refers to a transfer of stock that occurs, not because of a voluntary sale or contractual assignment of the stock, but as the legal consequence of some other event. For example, if one corporation merges into another corporation in a statutory merger transaction, the assets of the merging corporation are deemed by the state corporate law merger statute to be transferred to the surviving corporation.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of Section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 31st day of October, 2001.

Ivan Strasfield,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 01–27753 Filed 11–5–01; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Emergency Clearance; Public Information Collection Requirements Submitted to the Office of Management and Budget; Notice

AGENCY: National Science Foundation.

ACTION: Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB).

SUMMARY: The National Science Foundation (NSF) is announcing plans to request approval of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted below, comments on these information collection and record keeping requirements must be received by the designees referenced below by November 13, 2001.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn: Lauren Wittenberg, NSF Desk Officer.

Comments: Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Request For Emergency Clearance for Data Collection in Support of a Cross-Site Evaluation of National Science Foundation's Directorate For Education and Human Resources The Urban Systemic Program

OMB Approval Number: OMB 3145-(new).

Expiration Date: Not applicable.

Abstract: The National Science Foundation (NSF) requests a six-month (180 days) emergency clearance for the Evaluation of the Urban Systemic Program (USP), a study that has been on-going since October 1999 under OMB 3145–0136. Due to a change in OMB terms of clearance for OMB 3145–0136, NSF is seeking to establish an independent clearance for the USP study. A four-month delay (for standard OMB clearance) would negatively impact the baseline data collection by placing the resumption of scheduling of data collection at the end of the 2001–2002 school year. Participating school districts (respondents) work on a nine-month schedule. Scheduling evaluator's visits at the height of end-of-year events and on the eve of summer vacation is inconvenient for the respondents. Furthermore, when the school year ends key interviewees including teachers are unavailable.

As part of the study, four site visits have been scheduled for fall of 2001. The inconvenience to these districts

represented by a delay or suspension of data collection activities would harm the overall evaluation effort. Finally, given the turnover in leadership in urban school districts, a time lapse in data collection will result in an increased risk of the departure of key USP staff, further delaying timely and reliable data collection. As part of multiple data collection activities over time, opportunities to supplement baseline data through observations of normal USP operations will be compromised, possibly leading to inconsistent data across sites.

USP began in 1999 when NSF made competitive awards of up to $3 million, for each of 5 years, to five urban school districts. The USP represents NSF's major current investment in improving science and mathematics education in urban school systems across the country, and having a third-party evaluative documentation will be important in interpreting the worthiness of the investment.

NSF uses the data to: (1) Determine whether to modify or extend the USP concepts and (2) share best practices and lessons learned about systemic reform with school, district, and state educators.

Specifically, during the first two years of the USP Cross-Site Evaluation First, the third-party has produced reports for others at NSF (e.g., the National Science Board). Though there are other sources of such documentation, the information provided by the Cross-Site team is valued because the team is conducting an evaluation and is not associated in any other way with the program sites. Second, the Division of Educational System Reform uses the information to supplement its annual program monitoring. Third, NSF will use the information as a program evaluation, both assessing its investment in the USP program and potentially helping to guide the design of future programs.

Respondents: State, local or tribal governments.

Number of Respondents: 378.

Burden on the Public: 270 hours.

Dated: November 1, 2001.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 01–27852 Filed 11–6–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 5, 2001, the National Science Foundation published a notice in the **Federal Register** of a Waste Management permit application received. A Waste Management permit was issued on November 1, 2001 to the following applicant:

Rennie S. Holt, Southwest Fisheries Science Center—Permit No.: 2002 WM–002.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 01–27785 Filed 11–5–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–8]

Notice of Issuance of Amendment to Materials License SNM–2505, Calvert Cliffs Nuclear Power Plant Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment No. 5 to Materials License No. SNM–2505 held by Calvert Cliffs Nuclear Power Plant (CCNPP) for the receipt, possession, storage, and transfer of spent fuel at the Calvert Cliffs independent spent fuel storage installation (ISFSI), located in Calvert County, Maryland. The amendment is effective as of the date of issuance.

By application dated July 26, 2001, CCNPP requested an amendment to its ISFSI license to revise Technical Specifications 2.3 to remove the transfer cask drop height limit and Technical Specification 6.3 to revise the semi-annual environmental reporting period to be consistent with the annual reporting requirements of 10 CFR 50.36a(2). This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that, pursuant to the categorical exclusion provisions of 10 CFR 51.22(c)(10), an environmental assessment need not be prepared in connection with issuance of the amendment.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/nrc/adams/index.html*. If you do not have access to ADAMS or if there are problems in accessing documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 25th day of October 2001.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–27860 Filed 11–5–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

Entergy Operations, Inc.; Notice of Issuance of Amendment to Renewed Facility Operating License No. DPR–51

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 215 to Renewed Facility Operating License No. DPR–51 issued to Entergy Operations, Inc., (the licensee), which revised the Technical Specifications (TSs) for operation of Arkansas Nuclear One, Unit 1 (ANO–1), located in Pope County, Arkansas. The amendment is effective as of the date of issuance and shall be implemented within one year of the date of issuance.

The amendment converts the current TSs for ANO–1 to a set of improved TSs based on NUREG–1430, "Standard Technical Specifications, Babcock and Wilcox Plants."

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on June 28, 2001 (66 FR 34486). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (66 FR 46038 published on August 31, 2001).

For further details with respect to the action see (1) the application for amendment dated January 28, 2000, as supplemented by letters dated August 9 and September 28, 2000, and February 6, March 19, May 1, August 23, September 14, and September 19, 2001, (2) Amendment No. 215 to Renewed Facility Operating License No. DPR–51, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 30th day of October, 2001.

For the Nuclear Regulatory Commission.

William D. Reckley,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–27861 Filed 11–5–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy, Thermal-Hydraulic Phenomena, and Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy, Thermal-Hydraulic Phenomena, and Reliability and Probabilistic Risk Assessment will hold a joint meeting on November 15, 2001, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, November 15, 2001—8:30 a.m. until 12:00 Noon

The Subcommittees will discuss the status of NRC staff and industry initiatives to risk-inform 10 CFR 50.46 for emergency core cooling systems for light-water nuclear power reactors. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 31, 2001.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 01–27859 Filed 11–5–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 5, 12, 19, 26, December 3, 10, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 5, 2001

There are no meetings scheduled for the Week of November 5, 2001.

Week of November 12, 2001—Tentative

Wednesday, November 14, 2001

9 a.m.—Discussion of Intragovernmental and Security Issues (Closed-Ex. 1 & 9)

Thursday, November 15, 2001

2 p.m.—Discussion of Intragovernmental Issues (Closed-Ex. 1)

Week of November 19, 2001—Tentative

There are no meeting scheduled for the Week of November 19, 2001.

Week of November 26, 2001—Tentative

There are no meetings scheduled for the Week of November 26, 2001.

Week of December 3, 2001—Tentative

Monday, December 3, 2001

2 p.m.—Briefing on Status of Steam Generator Action Plan (Public Meeting) (Contact: Maitri Banerjee, 301–415–2277)

Wednesday, December 5, 2001

1:25 p.m.—Affirmation Session (Public Meeting) (if needed)

1:30 p.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)

Week of December 10, 2001—Tentative

There are no meetings scheduled for the Week of December 10, 2001.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving the Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: November 1, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–27954 Filed 11–2–01; 2:02 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–9641]

October 31, 2001.

Identix Incorporated, a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Issuer has stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it was incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. the Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

On May 18, 2001, the Board of Directors of the Issuer approved resolutions to withdraw the Issuer's Security from listing on the Amex and to trade it on the Nasdaq/NMS. The Issuer stated in its application that trading in the Security on the Amex will cease on October 29, 2001, and trading in the Security is expected to being on the Nasdaq/NMS at the opening of business on Monday, October 29, 2001. In making the decision to withdraw, the Issuer states that the Nasdaq/NMS has emerged as the predominate market for technology companies and believes the interest of the shareholders will benefit by trading on the Nasdaq/NMS.

Any interested person may, on or before November 26, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–27789 Filed 11–5–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] 17 CFR 200.30–3(a)(7).

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–25249; 812–12646]

Russian Telecommunications Development Corporation; Notice of Application

October 31, 2001.

AGENCY: Securities and Exchange Commission ("Commission")

ACTION: Notice of application under section 3(b)(2) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Russian Telecommunications Development Corporation ("RTDC") seeks an order under section 3(b)(2) of the Act declaring it to be primary engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. RTDC is in the business of acquiring, developing, owning and operating a telecommunications business in Russia. Applicant also seeks an order under section 45(a) of the Act granting confidential treatment with respect to certain asset valuation information.

FILING DATES: The application was filed on September 27, 2001, and amended on October 31, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 23, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609., Applicant, c/o MCT Corp., 555 King Street, Alexandria, VA, 22314.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. RTDC, a Delaware corporation, was formed in 1993 to acquire, develop, own and operate a telecommunications business in Russia.[1] RTDC states that it is a holding company that conducts its telecommunications business through its wholly-owned subsidiaries, and its direct and indirect interests in eight wireless telecommunications ventures and an international gateway switching venture (the "RTDC Ventures"). The RTDC Ventures include three entities in which RTDC, directly or through a wholly-owned subsidiary, has at least a majority interest, and five entities that RTDC controls within the meaning of section 2(a)(9) of the Act (the eight entities are referred to collectively as the "Controlled Companies").[2] RTDC also owns a minority 22% interest in Moscow Cellular Communications ("MCC"), another RTDC Venture. Each of the RTDC Ventures is an operating company directly engaged in the telecommunications business.

2. RTDC historically has sought, and intends in the future to pursue acquisitions in operating companies in connection with RTDC's telecommuications business in Russia that will result in majority ownership of an acquired company or venture. However, RTDC has not and probably will not always be able to obtain more than 50% or more of a telecommunications venture due to the participation of local partners. RTDC states that relationships with local partners can be advantageous in facilitating the licensing procedure and ongoing compliance, for the local partner's experience in different regional markets and knowledge of local preferences and business practices, and for the existing relationships such partners have with suppliers, contractors, government agencies or potential customers.

3. RTDC states that negotiations are actively ongoing for the purchase of interests that would increase RTDC's position in four of the non-majority owned Controlled Companies, with a view to obtaining majority ownership. RTDC further states that it has obtained strong stockholder rights that ensure its ability to remain actively involved in the operations of the RTDC Ventures in which it does not have a majority interest. These rights, as provided for in the charters of the RTDC Ventures, shareholder agreements and under the laws of the Russian Federation, enable RTDC to block transactions, the election or dismissal of the "general director" of any RTDC Venture, and to exercise influence over matters of significant importance to the business affairs of the RTDC Ventures. RTDC, through its wholly-owned subsidiaries, also provides the Controlled Companies with: financing services; managerial, technical, finance, accounting, legal, administrative and support services and staff; assistance with construction of distribution networks and hiring staff; planning and implementation of budgets; and the design, acquisition, operation and monitoring of subscriber management and information systems.

Applicant's Legal Analysis

A. Section 3(b)(2) of the Act

1. RTDC requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

2. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40% of the value of the issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. Under section 3(a)(2) of the Act, investment securities include all securities except Government securities, securities issued by employees securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies, and (b) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

3. RTDC states that more than 40% of its total unconsolidated assets consists of investment securities as defined in section 3(a)(2). Accordingly, RTDC may be deemed an investment company within the meaning of section 3(a)(1)(C) of the Act. RTDC states that as of June 30, 2001, its interests in majority-owned Controlled Companies and less than majority-owned Controlled Companies were approximately 37% and 49% of its total assets, respectively, consolidated with its wholly-owned subsidiaries.

4. Rule 3a–1 provides an exemption from the definition of investment company if no more than 45% of a company's total assets consist of, and not more than 45% of its net income over the last four quarters is derived from, securities other than Government securities and securities of majority-owned subsidiaries and companies primarily controlled by it. RTDC states that it may not be able to rely on rule 3a–1 because it does not primarily control some of the Controlled Companies and because historically it has not had net income, but rather experienced net losses. RTDC further states that it will be unable to rely on rule 3a–1 because the nature of its business and the markets in which it functions makes it likely that there will be substantial fluctuations in and uncertainty with respect to future income.

5. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C), the Commission may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. RTDC submits that it meets the requirements of section 3(b)(2) because it is in the business of acquiring, developing, owning and operating a telecommunications business through wholly-owned subsidiaries and the Controlled Companies.

6. In determining whether an issuer is "primarily engaged" in a non-investment company business under section 3(b)(2), the Commission considers the following factors: (a) the company's historical development, (b) its public representation of policy, (c) the activities of its officers and directors, (d) the nature of its present assets, and (e) the sources of its present income.[3]

a. *Historical Development.* RTDC states that it was formed in 1993 as a holding company for certain wireless telecommunications operations in Russia by MediaOne International Holdings, Inc. ("MediaOne"). RTDC was developed and expanded as a telecommunications holding company over the time that MediaOne owned the company. Since RTDC's acquisition by MCT Corp. through RTDCH in September 2000. RTDC has continued to operate as a telecommunications

[1] RTDC is a wholly-owned subsidiary of RTDCH Holdings, Inc. ("RTDCH").
[2] Section 2(a)(9) defines "control" as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that an owner of more than 25% of the outstanding voting securities of a company controls the company.
[3] *Tonopah Mining Company of Nevada*, 26 SEC 426, 427 (1947).

holding company. Neither RTDC, nor any of the Controlled Companies, has any history of disposing of securities it owns or otherwise treating those securities as investment assets, rather than as the means through which RTDC operates and controls its telecommunications business. RTDC further states that it is not holding any of its current interests in the RTDC Ventures with a view of future sale.

b. *Public Representations of Policy.* RTDC states that it has never held itself out as an investment company within the meaning of the Act, and has not made any public representations that would indicate that RTDC is in any business other than that of acquiring, owning, developing, owning and operating a telecommunications business in selected markets outside the United States. RTDC asserts that it and its parent companies have consistently stated in press releases, private placement memoranda and periodic reports filed with the Commission that it is a telecommunications company that provides wireless telecommunications services in Russia.

c. *Activities of Officers and Directors.* RTDC states that its principal officers and directors have significant experience in pioneering the development of, acquiring interests in and managing telecommunications companies both domestically and in markets outside the United States. RTDC's other officers, who are responsible for various technical, operational, finance, legal and related matters, each have in-depth experiences in their respective areas. RTDC states that its officers and directors are primarily involved in, and responsible for, planning, development, engineering, operations, marketing, finance and administrative matters for RTDC and the RTDC Ventures. None of RTDC's principal officers or directors, with the exception of the Chief Financial Officer, Controller and Treasurer of RTDC, spends any time on securities investment activities. This person, who is primarily occupied with managing and supporting the budget, accounting, financing and administrative efforts of RTDC's telecommunications business, spends less than 1% of his time on cash management and performs no other activities that involve securities investment matters.

d. *Nature of Assets.* RTDC states that, as of June 30, 2000, the Controlled Companies represented approximately 86%, and MCC approximately 6%, of its total assets, consolidated with its wholly-owned subsidiaries. Less than 1% of RTDC's total assets, consolidated with its wholly-owned subsidiaries, consisted of cash and cash management investments. Approximately 6.5% of RTDC's total assets consisted of accounts receivable, prepaid expenses, property and equipment.

e. *Sources of Income.* RTDC states that the Controlled Companies typically generate little or no income for RTDC in the form of dividends and have not achieved consistent profitability that fairly reflects their relative importance to RTDC's overall business. RTDC asserts that it is more appropriate to analyze RTDC's business by evaluating its proportionate share of the revenues of the Controlled Companies and MCC in light of RTDC's total revenues. RTDC states that, for the past year ended on December 21, 2000, its wholly-owned subsidiaries and the Controlled Companies represented approximately 73%, and MCC represented approximately 27% of RTDC's total revenues. For the six months ending June 30, 2001, its wholly-owned subsidiaries and the Controlled Companies represented approximately 79%, and MCC represented approximately 21% of RTDC's total revenues.[4]

7. RTDC thus asserts that it qualifies for an order under section 3(b)(2) of the Act.

B. Section 45(a) of the Act

1. Section 45(a) provides that information contained in any application filed with the Commission under the Act shall be made available to the public, unless the Commission finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. RTDC requests an order under section 45(a) of the Act granting confidential treatment to information submitted in Exhibit G to the application pertaining to the value of RTDC's interests in individual RTDC Ventures.

2. RTDC submits that the data disclosed in the application is sufficient to fully apprise any interested member of the public of the basis for the relief requested under section 3(b)(2) of the Act. RTDC states that the application discloses the actual dollar values of RTDC's total assets, receivables, cash, cash equivalents, Controlled Companies and MCC (on an aggregate basis), and other assets. RTDC's interests in the Controlled Companies and MCC are also disclosed as an approximate percentage of RTDC's total assets within categories that correspond to the relevant categories set out in section 3(b)(2) of the Act. RTDC submits that given the ranges of the values within the categories presented and the nature of the analysis upon which section 3(b)(2) determinations are based, more specific values are not likely to be relevant.

3. RTDC also believes that public disclosure of the value of its interests in the Controlled Companies and MCC could result in harm to RTDC and its direct and indirect shareholders because it could undermine RTDC's negotiating position in the event RTDC were to find it necessary or desirable to negotiate a sale of all or part of its interests in a RTDC Venture. RTDC is also seeking to negotiate purchases of additional shares in RTDC Ventures in which it does not already own a majority interest. For these reasons, RTDC believes that public disclosure of the information in Exhibit G is neither necessary nor appropriate in the public interest or for the protection of investors.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27788 Filed 11–5–01; 8:45 am]

BILLING CODE 8010–01–M

[4] For purposes of this analysis, revenues of the wholly-owned subsidiaries, the Controlled Companies and MCC were attributed to RTDC in proportion to RTDC's interests in these entities. RTDC consolidates its wholly-owned subsidiaries and AKOS, a Controlled Company in which RTDC holds a 92% interest, when preparing financial statements in accordance with Generally Accepted Accounting Principles ("GAAP"). RTDC uses the equity method of accounting for MCC and the Controlled Companies, except for AKOS. Under GAAP, the equity method of accounting means that each entity's income or losses, but not revenues, are attributed to RTDC based on RTDC's ownership interest in that entity.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45003; File No. SR–NYSE–31]

Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amendment Exchange Rule 387 To Apply to Member or Member Organizations

October 30, 2001.

On August 21, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 387 ("COD Orders") in order to clarify the Rule's application to all "member[s]" and "member organization[s]."

The proposed rule change was published for comment in the **Federal Register** on September 25, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[6] because, in clarifying the application of Exchange Rule 387 to both "member[s]" and "member organization[s]," it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling and facilitating transactions in securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–NYSE–2001–31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27762 Filed 11–5–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 44811 (September 18, 2001), 66 FR 49054 (September 25, 2001).

[4] In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45004; File No. SR–NYSE–2001–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 72

October 31, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 3, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 72(b) to (i) permit clean crosses of 100,000 shares or more when a member organization is facilitating a customer order; and (ii) provide that a specialist may not effect a proprietary transaction to break up a cross being effected under the Rule. The text of the proposed rule change is below. Proposed new language is in italics.

Priority and Precedence of Bids and Offers

Rule 72I. Bids.—Where bids are made at the same price, the priority and precedence shall be determined as follows:

Priority of First Bid

(a) Except as provided in paragraph (b) below, when a bid is clearly established as the first made at a particular price, the maker shall be entitled to priority and shall have precedence on the next sale at that price, up to the number of shares of stock or principal amount of bonds specified in the bid, irrespective of the number of shares of stock or principal amount of bonds specified in such bid.

Priority of Agency Cross Transactions

(b) When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are of 25,000 shares or more and are for the accounts of persons who are not members or member organizations, *or both orders are of 100,000 shares or more, and one side of the proposed transaction is, in whole or any part thereof, for the account of a member or member organization that is facilitating a customer,* the member may "cross" those orders at a price at or within the prevailing quotation. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The member shall follow the crossing procedures of Rule 76, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction. No member may break up the proposed cross transaction, in whole or in part, at the cross price. *No specialist may effect a proprietary transaction to provide price improvement to one side or the other of a cross transaction effected pursuant to this paragraph.* A transaction effected at the cross price is reliance on this paragraph shall be printed as "stopped stock".

When a member effects a transaction under the provisions of this paragraph, the member shall, as soon as practicable after the trade is completed, complete such documentation of the trade as the Exchange may from time to time require.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A member who has an order to buy and an order to sell an equivalent amount of the same security generally executes the orders against each other in what is commonly referred to as a "cross" transaction. In executing the cross, the member must make a public bid and offer on behalf of both sides of the cross in accordance with the provisions of Exchange Rule 76. A member who tries to execute a cross transaction in this manner may run the risk that other members may "break up" the proposed cross by trading with either the bid or offer side of the transaction as permitted under auction market procedures as codified in Exchange Rule 72.

In 1992, the Commission approved an amendment to Exchange Rule 72 to permit a member to execute certain types of cross transactions that are not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

subject to "break up" at the cross price.[3] Rule (b) currently provides priority to agency crosses of 25,000 shares or more, at or within the prevailing quotation, where neither side of the cross is an order for the account of a member or member organization. Such crosses may, however, be broken up at a price that is better than the proposal cross price for one side or the other.

In certain circumstances where a customer of a member organization has a large size order, a member organization may look to facilitate the execution of the transaction at a single price by participating in whole or in part on the other side of the trade. To address these situations, the Exchange believes it is appropriate to amend Rule 72(b) to provide that a cross of 100,000 shares or more may be executed "clean" at the cross price if the member or member organization is facilitating a customer order in whole or in part. This will make it easier for member organizations and their customers to execute large size trades at a single price on the Exchange, where it is the desire of the trading parties to have these executions "clean" at the cross price. Such trades would not be subject to being broken up at the cross price, but would still be eligible for price improvement as currently provided for under Rule 72(b). The Exchange believes that this proposal addresses perceptions that because of decimal trading large cross transactions are at risk of being broken up at the cross price with the result that such transactions may not be brought to the Exchange in the first instance and exposed for possible price improvement. The Exchange believes that the 100,000-share minimum size requirement addresses the need for member organizations and their customers to execute large cross transactions promptly and efficiently, while ensuring that pre-existing market interest at the cross price would be displaced only where the transaction is of a very significant size. The Exchange proposes to operate this amendment as a pilot to run six months after approval by the Commission in order to ascertain what impact it may have on the Exchange's market.

The Exchange also believes it is appropriate, particularly in a decimal environment, to amend Rule 72(b) to provide that a specialist may not effect a proprietary transaction to provide price improvement to one side of a clean cross or the other. The Exchange understands that there may be a perception that specialists can break up a proposed cross transaction by trading for their own account at a minimally improved price, and, thereby, step ahead of a public customer on the other side of the cross. The proposed amendment will preserve the auction market principle of price improvement since non-proprietary interest of specialists and particular Floor brokers in the market may offer price improvement at any minimum variation. This amendment would not be a pilot but is filed for permanent effectiveness.

2. Statutory Basis

The Exchange believes the proposal is consistent with the requirement under Section 6(b)(5)[4] of the Act that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change strikes a reasonable balance between the ability of members and member organizations to execute cross transactions and the ability of other public market participants to offer price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filled with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2001–18 and should be submitted by November 27, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27790 Filed 11–5–01; 8:45 am]

BILLING CODE 8010–01–M

[3] See Securities Exchange Act Release No. 31343 (October 21, 1992) 57 FR 48645 (October 27, 1992)(SR–NYSE–90–39).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30.–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America: Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Thursday, November 29, 2001. The meeting begins at 2 p.m. The letter designations that follow each item mean the following: (I) Is an information item; (A) is an action item; (D) is a discussion item. The session includes the following items: (1) Welcome & Introductions (I); (2) Antitrust Statements (I);(3) Approval of 10-year National ITS Program Plan as Program Advice to the U.S. Department of Transportation; (4) Adjournment.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Thursday, November 29, 2001 at 2 p.m. at the ITS America Offices.

ADDRESSES: 400 Virginia Avenue, SW., Suite 800, Washington, DC 20024–2730. Phone: (202) 484–4847, Fax (202) 484–3483.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, DC 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: October 31, 2001.

Jeffrey Paniati,

Program Manager, ITS Joint Program Office, Department of Transportation.

[FR Doc. 01–27871 Filed 11–5–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP00–008

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency commence an investigation into an alleged defect in the water pump in model year (MY) 1994–1998 Saab 900S motor vehicles.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Russert, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–1869.

SUPPLEMENTARY INFORMATION: On September 18, 2000, Mr. Avery B. Goodman submitted a petition requesting NHTSA to open an investigation into an alleged defect in MY 1994–1998 Saab 900S vehicles. In April 1997, Saab Automotive AB (Saab) had issued Customer Satisfaction Campaign 10445, which referred to the replacement of the water pumps in MY 1994–1996 Saab 900 vehicles with four-cylinder engines. Saab stated that load variations in the belt circuit could cause the water pump pulley to crack at the hub center, subsequently causing the drive belt to jump off the pulley. In the event of a failure, there would be a loss of belt tension, causing loss of power steering, as well as other belt driven functions. The petitioner alleged a safety-related defect in his MY 1994 Saab 900, stating that the water pump pulley broke off at the weld to the pulley shaft. The petitioner was concerned that the water pump pulley failure resulted in the loss of power steering, air conditioning, and engine cooling systems.

The MY 1994 Saab 900 was a new vehicle design (with the exception of the convertible, which carried over the previous generation design until the 1995 model year). Engine positioning was changed, and a new accessory drive design was implemented. The new drive design featured a water pump with the drive belt pulley welded onto the pump shaft. In December 1994, Saab became aware of problems with cracking of the water pump pulley and subsequent loss of drive power to the air conditioning compressor, alternator, and power steering pump through warranty claim data.

Upon analysis, Saab discovered weld fatigue cracks at the water pump/pulley junction. Saab determined that the root cause was the center of the drive belt not being aligned with the center of the water pump pulley attachment. This induced rotational bending of the pulley at the weld joint to the water pump shaft, in line with applied drive belt load. Continual bending as the pulley rotated under normal engine drive conditions subsequently caused fatigue cracks in the weld.

Cracking of the water pump pulley center hub can result in the pulley separating from the water pump shaft, causing the drive belt to jump off of the pulley, and subsequently cause loss of drive belt tension. Loss of belt tension would cause a loss of power drive to the following components: Air conditioning compressor, engine water coolant pump, alternator, and power steering pump

Testing of a bolted pulley demonstrated the added strength of the bolted pulley design and no signs or potential for fatigue cracking. The bolted pulley design was implemented into vehicle production early in MY 1996 and Saab subsequently decided to implement Customer Satisfaction Campaign 10445 worldwide. Under that campaign, dealers were to inspect the water pump belt pulley. If there was no yellow identification mark, indicating that a newly designed water pump had been installed, and the pulley was not attached to the pump by bolts, dealers were to replace the pump.

There have been 4 complaints (including that of the petitioner) to NHTSA of problems with the power steering assist, water pump, water pump pulley, or similar concerns on MY 1994–1996 Saab 900 vehicles. One occurred on a new MY 1995 vehicle, the other three, including the petitioner's, occurred on MY 1994 vehicles in 1999. Saab reported an additional 5 complaints (Saab had a total of 8 complaints, but 3 duplicated ODI complaints) of similar water pump pulley failures on MY 1994–1996 vehicles since the initiation of Campaign 10445. There have been no reports of problems with the power steering assist, water pump, water pump pulley, or similar concerns on MY 1996, 1997 and 1998 Saab 900 vehicles.

If the pulley fails, engine cooling, power steering assist, generator charging ability, and the air conditioning would all fail. The petitioner expressed concern with the loss of power steering and alleged he had difficulty controlling his vehicle on the freeway. Although he did not mention his speed, he said he was slowing and attempting to exit the freeway. In a study conducted by Saab in October 1993, unrelated to this petition, loss of power steering assistance was analyzed to determine what effect it could have on a driver's ability to maintain steering control. Saab concluded that without the variable power assist, subject vehicles could be controlled safely at highway speeds. The agency's experience supports Saab's conclusion that vehicles can be controlled at highway speeds despite a loss of power steering. With a loss of power steering at low speeds, it is still possible to complete a turn or a parking maneuver, although it typically takes more effort on the part of the driver to turn the steering wheel. While slowly

turning a corner, or parking, loss of power steering does not pose a significant risk to traffic safety. The loss of drive to the generator prevents the vehicle's battery from being charged, but is a progressive loss of battery power and does not represent a safety concern. Loss of engine cooling could cause the vehicle to overheat, typically resulting in coolant overflow at the radiator or a burst cooling system hose, however, there have been no reports of such incidences. Air conditioning is an auxiliary function, the loss of which does not affect the safe operation of the vehicle.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of the alleged safety-related defect as defined by the petitioner in the subject vehicles at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: November 1, 2001.

Kathleen C. DeMeter,

Director, Office of Defects Investigation, Safety Assurance.

[FR Doc. 01–27869 Filed 11–5–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–10053–Notice 1]

Safety Rating Program for Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice, request for comments.

SUMMARY: Section 14(g) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act requires that, by November 2001, a notice be issued to establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraint systems (CRS).

In response to this mandate, NHTSA has reviewed existing rating systems that other countries and organizations have developed, and conducted its own performance testing to explore a possible rating system for child restraints. The agency has tentatively concluded that the most effective consumer information system is one that gives the consumer a combination of information about child restraints' ease of use and dynamic performance, with the dynamic performance obtained through higher-speed sled testing and/or in-vehicle NCAP testing. The agency is also giving consideration to conducting *both* higher-speed sled tests and in-vehicle NCAP testing in conjunction with the Ease of use rating. This document provides a review of the information and reasoning used by the agency to reach that conclusion, describes the rating systems planned to meet the TREAD requirements, and seeks comment on this plan.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than Janaury 7, 2002.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For issues related to a performance rating, you may call Brian Park of the New Car Assessment Program (NPS–10) at 202–366–6012.

For issues related to a compatibility/ease of use rating, you may call Lori Miller of the Office of Traffic Safety Programs (NTS–12) at 202–366–9835.

You may send mail to both officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

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I. Overview

Congress has directed the National Highway Traffic Safety Administration (NHTSA) to develop a child restraint safety rating system that is practicable and understandable (Section 14 (g) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, November 1, 2000, Pub.L. 106–414, 114 Stat. 1800) and that will help consumers to make informed decisions when purchasing child restraints. Section 14(g) reads as follows:

(g) Child restraint safety rating program. No later than 12 months after the date of the enactment of this Act, the Secretary of Transportation shall issue a notice of proposed rulemaking to establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraints. No later than 24 months after the date of the enactment of this Act the Secretary shall issue a final rule establishing a child restraint safety rating program and providing other consumer information which the Secretary determines would be useful (to) consumers who purchase child restraint systems.

In response to this mandate, the agency reviewed presentations given at a public meeting in February 2000, and comments submitted in response to a notice announcing a draft Child Restraint Systems Safety Plan. The agency also examined other existing and proposed child restraint programs. Four options that emerged were: (1) A rating based on Federal Motor Vehicle Safety Standard (FMVSS) No. 213 compliance tests (sled tests), (2) a rating based on higher-speed sled testing, (3) a rating based on in-vehicle testing, and (4) a rating based on ease of use. The agency then further explored each option to determine if it would generate information that is practicable, repeatable, and appropriate.

After considering the various options, NHTSA has tentatively concluded that the most effective consumer information system is one that gives the consumer a combination of information about child restraints' ease of use and dynamic performance, with the dynamic performance obtained through higher-speed sled testing and/or in-vehicle NCAP testing. The agency is also giving consideration to conducting *both* higher-speed sled tests and in-vehicle NCAP testing in conjunction with the ease of use rating.

This notice is arranged as follows. First, the notice will discuss the February 2000 public meeting and the draft Child Restraint Systems Safety Plan, and the comments received from the public. Second, the notice will discuss other existing and proposed performance ratings, the research NHTSA has done, and NHTSA's current plan for rating child restraint performance. Third, the notice will discuss other existing and proposed ratings based on compatibility and/or ease of use, and NHTSA's current plan for rating child restraint ease of use. Fourth, the notice will discuss why NHTSA is not planning a summary rating for child restraints. Last, the notice will briefly discuss how NHTSA plans to distribute child restraint ratings to the public.

II. 2000 Public Meeting and Draft Child Restraint Systems Safety Plan

A. 2000 Public Meeting

On February 9, 2000, NHTSA conducted a public meeting in Washington, DC, to discuss the safety performance of child restraint systems and options for giving consumers information on the safety performance of different child restraints (65 FR 1224, January 7, 2000, Docket No. NHTSA–2000–6628). The announced topics were voluntary standards, strategies for enhancing compliance margins, improved labeling, and possible ways of rating child restraint performance.

B. 2000 Child Restraint Systems Safety Plan

On November 27, 2000, NHTSA published a notice requesting comments on a draft Child Restraint System Safety Plan (65 FR 70687, Docket No. NHTSA–2000–7938). The overall goal of NHTSA's Child Restraint Systems Safety Plan was to reduce fatalities and reduce injuries to U.S. children aged 0–10 years who are involved in crashes. To realize this goal, the plan employed three key strategies: encourage correct use of child restraints for all children, ensure that child restraints provide optimal protection, and give consumers useful information about restraining their child.

C. Public Comments About Child Restraint Ratings

Several presenters at the public meeting and commenters to the plan addressed the idea of a performance rating based on compliance margins. The concept of compliance margins is based on Federal Motor Vehicle Safety Standard (FMVSS) No. 213, Child Restraint Systems (49 CFR 571.213). Under this concept, child restraints would be ranked according to how large a margin they passed the standard's performance criteria. The larger the margin that the child restraint passed the standard by, the higher the child restraint would be ranked. A Maryland Child Safety Technician suggested the use of compliance tests to develop ratings, citing sufficient differences in crash test results. However, he voiced concerns whether such a rating system could address the issue of vehicle compatibility.

Other commenters opposed the development of a CRS rating based on the compliance margin. Juvenile Products Manufacturers Association, Inc. (JPMA) stated that, "while the current FMVSS No. 213 standard provides an exceptional rating system (essentially an easily-understood pass-fail), the industry would certainly consider some other type of performance rating system." However, JPMA noted that with so many variables, it is likely that a rating system may have a potentially negative effect rather than a positive one. JPMA thought it appropriate also to mention that "the current dynamic standard, FMVSS No. 213, is more severe than about 95 percent of all crashes, and the historical performance of PROPERLY USED car seats both in testing and in the field is exceptional, better even than seat belts." [1] Ford Motor Company and other child safety experts suggested that the agency consider having a rating system only after revising FMVSS No. 213. They stated that the current standard sled pulse is too severe and the test protocol is outdated. These commenters recommended that the revised standard should reflect the current child passenger environment.[2]

Commenters addressed the idea of including child restraints in frontal New Car Assessment Program (NCAP) tests. Evenflo supports the addition of child restraints to NCAP tests. The company believes that because the performance requirements of FMVSS No. 213 are so demanding, all child restraints passing such a standard deserve a high rating. Evenflo believes that distinguishing safety performance between child restraints that pass FMVSS No. 213 is difficult. The company also feels that the addition of child restraints to NCAP tests will allow for an evaluation of how well the child restraint system works with the vehicles.[3] ARCCA, Inc., favors the incorporation of child restraints into NCAP tests. ARCCA stated that, NCAP tests more closely replicate real world conditions than the FMVSS No. 213 compliance tests. In addition, the incorporation of child restraints into the program would maximize its benefits.

Both Partners for Child Passenger Safety [4] and Graco Children's Products [5] oppose adding child restraint systems to NCAP crash tests. These organizations believe that the performance of child restraints in NCAP tests may be characteristic of the child restraint, the vehicle, or the restraint/vehicle interaction. This poses questions as to the significance of the results of such tests. Ford agrees with these comments, adding that vehicle/CRS interface factors and various vehicle crash pulses obscure the results of child restraint performance in NCAP tests.[6]

Consumers and consumer advocates almost universally expressed the opinion that any child restraint rating

[1] Robert Waller, Jr., Juvenile Products Manufacturers Association, Inc., Docket 6628.

[2] Comments on Child Restraint System Ratings, Ford Motor Company, Docket 7938.

[3] Evenflo Company, Inc., Randy Kiser, Docket 7938.

[4] Partners for Child Passenger Safety, Flaura K. Winston, MD, PhD, Dennis R. Durbin, MD, MSCE, Kristy Arbogast, PhD, Shannon D. Morris, Docket 7938.

[5] Graco Children's Products, Steve Gerhart, David E. Campbell, Docket 7938.

[6] Comments on Child Restraint System Ratings, Ford Motor Company, Docket 7938.

should include factors for compatibility with various vehicles and ease of use. These commenters noted that a good performance rating would be meaningless if the child restraint was not compatible with the consumer's vehicle or was difficult to use properly.

The Insurance Corporation of British Columbia (ICBC) claimed that high misuse rates of child restraints are a common finding. Children aged 3 years and older are restrained, most often, only in adult seat belts. To compensate for misuse, ICBC recommended that the NHTSA establish an ease of use rating.[7] Evenflo also feels that the most problematic area, the area in which improvement would have the greatest positive impact, is in the nonuse and misuse of child restraints.[8] The Automotive Coalition for Traffic Safety (ACTS) agreed, and stated that the dynamic performance of child restraints should not be a big issue. ACTS further suggested, however, that the recent addition of the top tether should reduce misuse. The University of North Carolina (UNC) Highway Safety Research was also a proponent of an ease of use rating. They stated that the crash test performance of child restraints is only part of the information that should be incorporated into a rating system. Safety Belt Safe concurred, mentioning that even top-rated systems are difficult to use. They stated that child restraint ratings should be based on real-world conditions and behavior, not solely on crash tests. Graco Children's Products, Inc. also asked that a rating system be based on more than simply crash performance. They suggested that other factors such as labeling and instruction clarity, ease of installation and vehicle compatibility, fit of child, and ease of use, be included.

One manufacturer expressed concern about starting an ease of use rating system. The manufacturer asked what type of person would do the evaluating. This manufacturer believed that it would be a good idea to have inexperienced people conduct the evaluation of child restraint systems. The manufacturer suggested using the same people gives consistency in test methodology. This commenter thought the agency might have difficulty getting the same people always. The child restraint manufacturers also believed that a rating system would drive the child restraint manufacturers to improve their products and provide more ease of use features.

NHTSA met with two manufacturers of child restraints, Britax and Evenflo. These two manufacturers both stated that the seats with higher cost are the restraints with more advanced features which are likely to be ease of use features. Both manufacturers described how a child restraint rating system might affect the retail market. They believed that the retail buyers would limit their purchases of child restraints to those with high ratings. Consequently, the agency might drive the retail market to the seats with the higher prices.

III. CRS Dynamic Performance Rating Programs

A. Existing Programs for Rating Dynamic Performance of CRS

1. Consumer's Union

The July 2001 issue of Consumer Reports was the Consumer's Union's most recent report on child restraints.[9] They gave a rating for the dynamic performance of each child restraint, which is part of the overall rating given to child restraints. This overall rating is the averaged score of dynamic performance, ease of use, installation, and stroller use. The installation score is determined by how securely a child restraint can be installed in three different cars with different seats and safety-belt types. Ease of use evaluates how difficult it is to adjust the straps and the harness. A stroller score is also given to applicable child restraints. This score is based on the safety, convenience, and the durability of the child restraint and stroller. The dynamic score was determined from a sled test representing a 30 mph (48 km/h) frontal crash. The seats were tested using dummies that approximate an infant, 3-year-old toddler, and 6-year-old child. Head Injury Criterion (HIC), chest G, head excursion, and knee excursion were compared with the injury criteria established by NHTSA to determine the dynamic performance rating.[10] A six-category range was used to rate child restraints based on the dummy measurements. The six categories were: Not Acceptable, Poor, Fair, Good, Very Good, and Excellent.

The child restraints of the 2001 survey were tested both with and without the top tether. The results from this study showed that all but one child restraint provided better protection while using the top tether in frontal crashes.

2. Japanese NCAP

The Ministry of Land, Infrastructure, and Transport (MLIT) in Japan recently announced a proposal to rate child restraint systems. MLIT is asking for comments at this time. Japanese NCAP proposes to evaluate baby seats (rear-facing) and infant seats (forward-facing or convertible). They do not plan to test bed-type-seats or booster seats. Nine-month-old and three-year-old child dummies will be used for the evaluation.

Child restraints will be tested in frontal sled tests. Child restraints will be tested using the ECE Reg. 44 crash pulse at 35 mph (56 km/h) in a Toyota Estima (similar to the Sienna in the U.S.) sled buck. A rating system will comprise the dummy readings, the level of physical damage, release of CRS anchorage, and dummy kinematics. A four-tier rating system will be used: Excellent, Good, Acceptable, and Not Recommended.

3. Australian CREP

The Child Restraint Evaluation Program (CREP) is a joint program run by many of the same groups as Australian New Car Assessment Program (ANCAP). CREP tests child restraints in dynamic sled tests with a top tether, which is required in Australia. Two frontal crashes are simulated at 49 and 56 km/h (30 and 35 mph). Side and rear crashes are simulated at 32 km/h (20 mph). CREP conducts another test at the same speed, but with the CRS positioned at a 45° angle relative to the sled. One additional dynamic test is done to rear-facing and convertible child restraints only. This is an inverted test conducted at 16 km/h (10 mph) to simulate a rollover.

CREP gives a rating, incorporating both the dynamic test results and ease of correct use results. They report these ratings as either preferred buy or standards approved. The preferred buy seats did well in the dynamic tests and the ease of correct use tests. The standards approved rating is given to seats that passed the 49 km/h (30 mph) test, but had excessive head movement or broke a load-bearing component during the 56 km/h (35 mph) test.[11]

[7] Identification and Publication of Relative Performance of Different Child Restraint Systems, Insurance Corporation British Columbia, Betty Brown, Docket 6628.

[8] Evenflo Company Inc., Randy Kiser, Docket Number: 7938.

[9] Consumer Reports, Traveling With Kids, July 2001.

[10] Pittle, Greenberg, Galeotafiore, Champion, Comments of Consumer Union to the National Highway Traffic Safety Administration on the Child Restraint System Plan, Docket Number: NHTSA–7938, 2001.

[11] www.nrma.com.au, July 23, 2001.

B. Existing Programs for Rating Dynamic Performance of Vehicles Equipped With CRS

1. Euro NCAP

The European New Car Assessment Program evaluates the safety of children in vehicle crash testing. The subject vehicle's manufacturer provides a recommendation for which child restraints are to be used during the tests. The Europeans install child restraints in vehicles and subject them to offset frontal and side impact tests. In the offset frontal testing, two child crash dummies are placed in the back of the test vehicle. The two types of child dummies used in the test are a 3-year-old P dummy and an 18-month-old infant P dummy. Both dummies are placed in the appropriate CRS, either forward-facing or rear-facing, designated for their ages. For the side impact test, the dummies are secured in the same model child restraint used for the offset frontal crash test.

Euro NCAP evaluates dummy kinematics. In addition, technicians evaluate ease of use, ease of installation in the vehicle, and how securely they can install the CRS. Currently, Euro NCAP does vehicle tests for child restraints without using a top tether. Euro NCAP gives points based on the dynamic performance of the child dummies during the full-scale crash tests. These points are subject to modifiers that will reduce the points earned. Such modifiers include penalties for ejection, poor seat labeling, and vehicle incompatibilities. A total of four points is possible for the child scores. These points are added to the overall total, which is used to determine the vehicle's star rating. However, if any anomaly leads to a dangerous event (e.g., if the child seat breaks or if a belt becomes unlatched), Euro NCAP notes the event to consumers in their publications and web site.[12]

2. Australia

The Australian New Car Assessment Program (ANCAP) harmonized its testing procedures with Euro NCAP in 1999. Therefore, in accordance with the Euro NCAP procedures, ANCAP does both an offset frontal crash at 64 km/h (40 mph) and a side impact test at 50 km/h (31 mph). Two child restraints are placed in the rear seat of each vehicle. TNO P1.5 (18-month) and P3 (3-year-old) dummies are used to assess injury. ANCAP plans to rate the dynamic performance of child restraints in vehicle tests, however, the rating protocol will likely be different from that published by Euro NCAP.

C. CRS Dynamic Testing by IIHS

The Insurance Institute for Highway Safety (IIHS) currently does not rate child restraints. However, IIHS recently did several vehicle frontal crash tests that included child restraints. Vehicle velocities in these car-to-car tests were 48 km/h (30 mph), and vehicle frontal engagement ranged from 49% to 89%. Dummies used in the testing were the 6-month-old Infant CRABI, the 12-month-old CRABI, and the 3-year-old Hybrid III.

IIHS evaluated the dummy results for the 6-month-old CRABI, the 12-month-old Infant CRABI, and the 3-year-old Hybrid III. They used the corresponding reference values specified in the May 12th, 2000 **Federal Register** notice for FMVSS No. 208.[13] The results for the 6-month-old CRABI and the 12-month-old CRABI were all well below the allowable limits. The results for the 3-year-old Hybrid III dummy showed all injury readings were less than the reference values except for neck tension. IIHS suggested that these results mean the current neck tension criterion overestimates the possibility of an AIS [14] ≥ 3 injury.[15]

D. NHTSA CRS Dynamic Testing

In response to the TREAD Act, NHTSA examined three dynamic test methods for rating child restraint systems. The first dynamic option was a sled test at 30 mph (48 km/h). This option would use the results of the FMVSS No. 213 compliance testing to determine a rating. Two possible rating schemes could be used to rate or rank the child restraint dynamic performance. One possible rating scheme would be based on the compliance margins with which a dummy met the limits of the standard on HIC, chest acceleration, head excursion, and knee excursion. A second rating scheme would use the injury risk curves that NCAP uses to rate adult occupant protection in a frontal crash. Scaling these curves to represent a 3-year-old child would produce a five-star classification system. The probability of injury for the 3-year-old child is as follows:

$P_{head} = [1+\exp(5.02 - 0.00431*HIC)]^{-1}$

$P_{chest} = [1+\exp(5.55 - 0.0756*ChestG)]^{-1}$

A second dynamic testing option examined was a high-speed sled test at 35 mph (56 km/h). This test method would be similar to the current FMVSS No. 213 compliance test; however, the sled acceleration pulse would have a greater magnitude to increase the speed to 35 mph (56 km/h). A third dynamic testing option considered was a full-scale crash test. This approach would add a child restraint in the rear seat of a vehicle when it is tested for frontal NCAP, and rate the vehicle on how well the CRS and vehicle work together to protect the child. These last two options would also use the scaled injury risk curves for a rating.

Each of the next three sections describes the testing conducted by the agency to assess each of the proposed options. The summaries review the trends of child restraint system (CRS) responses in the Federal Motor Vehicle Safety Standard (FMVSS) No. 213 sled testing, higher-speed sled testing, and frontal NCAP in-vehicle testing.

1. CRS Performance in FMVSS No. 213 Sled Testing.

As specified in Standard No. 213, 49 CFR § 571.213, the agency does compliance testing of child restraints on a sled buck at a nominal speed of 30 mph (48 km/h). Currently, a Hybrid II dummy is used in testing to represent a 3-year-old child.

In model year 2000, the agency tested 50 upright, forward-facing child restraints according to FMVSS No. 213. Twenty-four seats were tested without a top tether, and 26 seats were tested with a top tether. We restrained all seats with only a lap belt (no lower anchorage or shoulder belt). The pertinent test results are tabulated in the Appendix, Table A2.

Currently, to pass the FMVSS No. 213 compliance test, a child restraint must achieve dummy injury numbers of a Head Injury Criterion (HIC) less than 1,000 and a resultant chest acceleration of less than 60 G's. For the compliance tests, HIC is calculated using an unlimited period and chest acceleration uses a 3 ms clip. As shown in Figure 1, regardless of whether we equipped the child restraints with a top tether, all child restraints achieved dummy injury readings below the maximum allowable values. Figures 2 & 3 illustrate the margin of compliance for HIC and chest acceleration, respectively. The margin of compliance is one minus the measured injury reading divided by the injury assessment reference value (IARV) times 100. Higher percentages are better, having less probability of injury. Regarding the HIC, all model year 2000

[12] *http://www.euroncap.com/results.htm*, August 23, 2001.

[13] Notice for FMVSS No. 208, Federal Register, Vol. 65, No. 93, page 30680, May 12, 2000.

[14] Association for the Advancement of Automotive Medicine, *The Abbreviated Injury Scale*, Des Plaines, 1990.

[15] Susan Meyerson & Adrian Lund, Insurance Institute for Highway Safety, "Child Restraint Durability in High-Speed Crashes," 2001 SAE conference, SAE2001–01–0123.

child restraints tested easily fall within the limits specified by the FMVSS No. 213 compliance tests. Most had a compliance margin of more than 50%. Although the margin is not as large for chest acceleration, all tested child restraints passed this compliance requirement as well.

FMVSS. No. 213 also has a requirement for head and knee excursion. Head excursion is limited to 720 mm (28 in) when a top tether is used, and 813 mm (32 in) without use of a top tether. Knee excursion is limited to 915 mm (36 in). Figures 4 & 5 illustrate the margin of compliance for head excursion and knee excursion, respectively. Head and knee excursion limits are compliance limits imposed to reduce the chances of a child striking the vehicle interior or submarining (sliding under the belt feet first) in an automotive crash. Head and knee excursions are much closer to the compliance limits than HIC and chest acceleration. (This may reflect attention to occupant protection, since increases in distance traveled by the occupant reduces the forces experienced by the occupant.)

To further investigate the possibility of using FMVSS No. 213 compliance testing to rate child restraints, NHTSA performed additional sled tests to gather child restraint protection data. These sled tests were performed in accordance with the specifications outlined in FMVSS No. 213 compliance tests, with two exceptions. The three-year-old Hybrid III dummy was used to assess injury rather than the Hybrid II dummy. Also, the current compliance test secures child seats in two configurations, lap belt only and lap belt with top tether. These additional sled tests secured the child seat with the lap/shoulder belt and tether. One child restraint tested was secured with LATCH.[16]

Nine child restraints were tested. Figure 6 shows the individual plots of chest acceleration versus HIC. Injury risk curves are also plotted, and illustrate that eight of the nine child restraints would receive a 5 star rating, while the other one would be borderline 5 star/4 star.

[16] "LATCH" is a term used by industry and retail groups referring to the child restraint anchorage system required by Federal Motor Vehicle Safety Standard No. 225. LATCH stands for "Lower Anchorages and Tethers for Children." The term is used to refer to vehicles equipped with the anchorage system (e.g., "LATCH vehicles") and to child restraints equipped with attachments that connect to the anchorage system (e.g., "restrained with LATCH," or "LATCH child restraints"). For convenience, we will use the term in this notice.

Advantages and Disadvantages of a Rating System Based on FMVSS No. 213 Compliance Testing

a. Advantages

—Ratings for most child restraint systems could be implemented quickly and inexpensively using Hybrid II results now obtained in Standard No. 213 compliance testing.
—The compliance testing is a simple pass and fail rating system. Carrying out a rating based on the margin of compliance is straightforward. The performances of child restraints could be used as a rating system.
—The rating system based on sled testing subjects all child restraints to the same impulse loading, so child restraint performance is assessed with little or no influence of outside variables.

b. Disadvantages

—FMVSS No. 213 is currently under revision. Ford Motor Company and others suggest that the agency consider delaying the child restraint safety rating until after the revision of FMVSS No. 213.
—A rating based on dynamic sled testing does not take into account the compatibility between child restraints and vehicles. Many people believe that a child restraint and a subject vehicle must be evaluated as a system to effectively assess child safety protection.
—To the extent that current child restraints all exceed the standard by a wide margin, as in the case for HIC, the compliance margin may not meaningfully distinguish among child restraints. For example, if we use the star rating system, nearly every child restraint would get 5 stars. If we use the percentage of compliance margin, should we tell the public a child restraint with a 60% margin is safer than one with a 55% margin? Also, it would be difficult to explain to the public which compliance margin (i.e., HIC, chest acceleration, excursions) is more important to safety.

2. CRS Performance in Higher-speed Sled Testing

Some commenters suggested that the agency should consider having a child restraint rating based on sled tests at a higher speed (35 mph) than the compliance testing (30 mph). As NCAP currently tests motor vehicles at 5 mph (8km/h) above the compliance tests, the same reasoning could be applied to the sled testing of child restraints. (It was also recommended that the rating system use a realistic vehicle pulse and a vehicle seat as part of the test condition.) To determine the viability of developing an effective rating system as a consumer program for child restraint testing, the agency has conducted higher-speed sled testing.

NHTSA conducted higher-speed sled tests using the same nine child restraints as in the previous section. The same FMVSS No. 213 test procedure was used with Hybrid III three-year-old dummies. To attain the higher speed, a sled pulse with a similar shape and duration length as that of the 213 pulse was used, except that the change-of-velocity was elevated from 30 mph (48km/h) to 35 mph (56km/h).

All of the child restraints tested produced dummy injury measurements well below the FMVSS No. 208 criteria of 570 HIC and 55g chest acceleration. Figure 7 shows the results plotted with the NCAP injury risk curves. Although the injury assessment values are slightly greater for the 35 MPH (56 km/h) sled tests than the 30 mph (48 km/h) sled test (shown in Figure 6), eight of the nine child seats fell within the 5 star range, and one fell just below in the 4 star range.

Advantages and Disadvantages of a Rating System Based on Higher-speed Sled Tests

a. Advantages

—Running tests at higher speeds is the same approach we have used for front and side crashworthiness ratings in NCAP, and would be expected to magnify performance differences among child restraint systems beyond that obtained in compliance testing.
—A rating based on sled performance would be consistent because all child restraints would be subjected to the same impulse loading and would be placed on the same simulated seat.

b. Disadvantages

—A rating based on a higher sled test speed would again not take into account compatibility between child restraints and vehicles. Many people believe that a child restraint and a subject vehicle must be evaluated as a system to effectively assess child safety protection.
—A higher test speed with the Standard No. 213 crash pulse may be so severe that the information would not be a helpful indicator of expected CRS performance in the majority of real-world crashes.
—Based on tests with nine child seats, the higher test speed may not sufficiently "spread out" the performance differences to allow NHTSA to provide meaningful information to the public.

3. CRS Performance in NCAP Frontal Vehicle Testing

The agency evaluates vehicle crashworthiness in frontal and side impact under the New Car Assessment Program (NCAP). Under this program, the agency conducts approximately 40 frontal and 40 side crash tests each year. For the frontal crash, the agency does these tests with two 50th percentile adult male dummies in the front seat. Historically, NCAP does not put any occupants in the rear seats of the vehicles. However, because there is room in the rear seats of most vehicles, it has been suggested that NHTSA add child restraints to the rear of NCAP frontal crash tests.

NHTSA has evaluated child restraints in frontal crash tests conducted under the New Car Assessment Program. In model year (MY) 2001 testing, NCAP used various child restraints in the rear seats of vehicles undergoing frontal NCAP crash tests. Child restraints were placed in a total of twenty NCAP vehicles, varying in type and size. The agency evaluated performances of six different five-point-harness forward-facing child restraints. The evaluation assessed (1) the variability of CRS performance in various vehicle types and sizes, (2) CRS/vehicle interaction, and (3) performance among different child restraints. CRS performance in the NCAP vehicle tests is shown in Table A1 in the Appendix.

In each vehicle tested, the subject child restraint was secured tightly, and as prescribed by the child restraint manufacturer's instructions. In addition, all child restraints, whether secured with LATCH or secured with a lap/shoulder belt, used a top tether. A Hybrid III three-year-old dummy was used to assess performance. All testing used the full instrumentation package available for the child dummy. The injury assessment reference values for FMVSS No. 208 were used to evaluate the results.

Figure 8 shows the overall child dummy performance concerning the Head Injury Criterion (HIC 15) and resultant chest acceleration, plotted with the NCAP injury probability curves scaled for the three-year-old. The performance is shown for child restraints with LATCH or with a belt restrained CRS with a top tether. As shown, many (38.7%) dummy readings exceeded the allowable injury criterion for HIC 15 (570) or the allowable chest G criterion (55 G's). Using the star rating system, most vehicles would be rated with 3 or 4 stars for rear seat child occupancy protection. Five samples had injury readings low enough for a five-star rating; only one vehicle was rated with two stars. This is in contrast to driver and right passenger frontal NCAP test results which result in about 88% 4 and 5 star ratings.

All seats tested in the NCAP vehicle crash tests used five-point harnesses, while the FMVSS No. 213 tests use all types of harnesses. Figure 9 shows the model year 2000 compliance tests results for only seats with a five-point harness and lap belt only. This graph shows that the tethered seats produced lower HIC responses than those seats without a top tether. The HIC responses for both the tethered and the non-tethered seats are clustered among their respective seat types. In comparing the data in Figures 8 and 9, we may infer that the full-scale crashes produce a greater range of values for the Head Injury Criterion. One could further infer that the greater range of HIC response shown in the NCAP data of Figure 8 is due not only to the child restraint, but also due to crash variations, such as crash pulse, belt geometry (important for child restraints that use a lap/shoulder belt), seat contour, and seat cushion stiffness.

The influence of these additional factors for crash testing is shown more clearly in Figure 10. Figure 10 shows seven vehicles that underwent NCAP crashes with the Cosco Triad child restraint. As shown, the Cosco Triad did not give the same performance in these seven NCAP vehicles. HIC injury values varied from approximately 300 to 650. The performances of the Evenflo Horizon V and the Fisher Price Safe Embrace II show like trends in vehicle testing. This is shown in Figure A1 in the Appendix.

The agency has conducted this testing to address whether a specific child restraint would do the same in various NCAP vehicles. We determined that the answer is no. The agency next examined whether various child restraints would do equally well in a specific vehicle.

Figure 11 shows the relative performance of four different CRSs crashed in two different minivans. Two crash tests were conducted with each minivan, and there were two child restraints placed in the rear seat for each test. The first Grand Caravan was tested with the Century STE and Horizon V. The second time, it was crashed with the Safe Embrace II and the Horizon V. For the Ford Windstar, the first test had two Safe Embrace II child restraints in the rear seat; in the second test, Cosco Triad child restraints were used. All child restraints in each comparison were restrained with either LATCH (which includes a top tether) or a lap/shoulder belt and a top tether. Although the data are extremely limited, and there was only one CRS (Safe Embrace II) that was used in both vehicles, CRS performance appeared to be better when tested in the Ford Windstar, and may be an indication that the vehicle has an influence on child safety protection.

Figures 12 & 13 show vehicle crash pulse duration and acceleration peak versus chest acceleration. Although there is considerable scatter in the data, there appear to be slight trends, which would indicate that the vehicle's structural response could have an influence on the child restraint performance. Figure 12 suggests that, as the time duration of the crash increases, there is a reduction in chest acceleration. Figure 13 shows that, as the peak acceleration of the vehicle increases, there is a trend toward higher chest acceleration. (The agency did not find similar trends for the Head Injury Criterion.)

Based upon this limited amount of data, it appears that a child restraint tested in a vehicle with good crash pulse characteristics (i.e., longer time duration, lower peak acceleration) could perform better than the same child restraint tested in a vehicle that does not.

Further, good performance does not depend upon cost of the CRS. The agency examined the cost of child restraints (MY 2000) versus the relative performance of forward-facing child restraints tested with the three-year-old dummy in FMVSS No. 213 sled tests. Figure 14 shows no correlation between the cost of child restraints and their performance in dynamic sled testing. For the low IARV's, (HIC < 400 and chest G <40), there are CRS from all price ranges. In addition, the two CRS with the highest HIC and chest G responses were in the $100–$150 cost range (i.e., a high cost range). Therefore, the limited available data show that a CRS need not be expensive to provide good child protection.

Advantages and Disadvantages of Rating a Vehicle Equipped With a Child Restraint

Unlike the rating systems proposed for the sled tests at 30 mph (48 km/h) and 35 mph (56 km/h) which rate only the child restraint, this option would rate the vehicle equipped with a CRS as a system in protecting the child.

The following discusses the pros and cons of basing a rating system on in-vehicle testing of child restraints.

a. Advantages

—In-vehicle testing would address the interaction of the vehicle and the child restraint in overall safety

performance, since it would encourage vehicle manufacturers to take into account child restraint performance in designing vehicles.
—Using in-vehicle testing to evaluate a child restraint in the vehicle would enhance world harmonization with Euro NCAP and ANCAP.
—CRS testing can be easily incorporated into the New Car Assessment Program. The NCAP program conducts about 40 frontal crashes annually; adding child restraints to these tests could be done at a relatively low cost.

b. Disadvantages

—Such a system would provide a rating for the vehicle rather than the child restraint. Also, the consumer may mistakenly think that some child restraints may appear to have poor performance if the agency only tests them in certain vehicles, when in actuality they may perform well in other vehicles.
—To the extent that the agency only tests a child restraint in vehicles that perform well, that information may mislead the public about the protection offered by that child restraint in lesser-performing vehicles.
—This rating system would not help consumers choose a child restraint suitable for an older vehicle model.
—Adding the CRS and dummy to the NCAP vehicle would require the removal of fluids and/or vehicle components to attain the test weight, and thereby potentially influence assessment of other NCAP crash results such as fuel leakage.

IV. Child Restraint Ease of Use Rating

A. Child Passenger Safety Selection, Use, and Installation Website

In addition to implementing a child restraint rating program, NHTSA has also been mandated by Congress to consider how to provide consumer information on the physical compatibility of child restraints and vehicle seats on a model-by-model basis (Section 14(b)(4) of the TREAD Act).

In May 1995, the Blue Ribbon Panel on Child Restraint and Vehicle Compatibility made a series of recommendations including a suggestion that vehicle manufacturers create a chart illustrating which hardware and what procedures of installation were necessary to ensure proper installation of child restraints in vehicles. In the Fall of 1995, NHTSA considered this recommendation and at the time, determined that the agency would try to develop a child restraint and vehicle compatibility database and make it available on a CD–ROM to child passenger safety advocates and others who assist the public with child safety education and proper installation. It was believed that the program would allow the cross-referencing of data regarding specific child restraints considering the weight and age of the child, vehicle make, model and year choices indicating available seating locations, resulting in a list of compatible child restraints and vehicle seating and installation information. The original plan was to have a database containing child restraint installation information for 100 different 1993–1996 model year vehicles, using 35 child restraints.

Over the course of developing this database, it became apparent that collecting data on several child restraints in hundreds of vehicles, resulting in the combination of thousands of child positioning possibilities was inherently subjective, prohibitively expensive, and very labor intensive. In addition, the information that would be available to assist consumers was limited to a certain type vehicle and a certain type child restraint, which would serve only a small number of consumers. Further, the LATCH rulemaking will greatly enhance the compatibility of child restraints and vehicles, which reduces the need for a CD–ROM database. Realizing these limitations, NHTSA began to explore ways in which we could develop a service that would provide accurate and up-to-date information to consumers on how to properly select the appropriate restraint for their child, and use and install it properly. In addition, NHTSA wanted to utilize the infrastructure of trained and certified child passenger safety technicians (over 19,000 to date) throughout the country.

In March 2001, NHTSA developed and made available an internet-based service on its website, providing recommendations for the correct use of each type of child restraint to help consumers select the most appropriate child restraint system (http://www.nhtsa.dot.gov/people/injury/childps/csr2001/csrhtml/safetyFeatures.html). It provides a current listing, along with pictures, of all new child restraints available along with a list of various features available on the child restraints that may make them easier to use and install. It provides a list of model year 2001 vehicles with child restraint features, as well as vehicle owner's manual instructions for child restraint installation. In addition, this website application includes pictures of proper use and step-by-step instruction on installation. It also describes and shows common compatibility problems between vehicles and child restraints and offers solutions to obtain the best fit. This website application allows for the continual addition of current and accurate information, at minimum cost, and significantly expands public access. The site has received thousands of visits per week since its placement in March.

This application is not specific to child restraints and vehicles on a model-by-model basis, as originally intended. However, it provides guidelines for the selection of the appropriate restraint, tips for proper use and installation, and points consumers in the proper direction for installation assistance, by linking to a listing of thousands of inspection stations located throughout the country where consumers can go and have their child restraint inspected by a certified child passenger safety technician. For these reasons, and because providing the information on a model-by-model basis has proven to be limited, impracticable, and prohibitively costly, we have decided that the web-based approach is the appropriate method of providing the consumer information to the public.

B. Summary of Existing Ratings for Ease of Use

1. Australia

The New South Wales Roads and Traffic Authority (RTA) joined with the National Roads and Motorists Association (NRMA) and the Royal Automobile Club of Victoria (RACV) to conduct a joint program to assess the relative performance of child restraints available in Australia. In addition to crash testing, the program covers installation, use and compatibility with a range of vehicles. The child restraints that performed the best were given a "preferred buy rating." To be awarded a "preferred buy rating," a child restraint must perform well in crash tests that are more severe than the Australian Standard and perform well for ease of correct installation and ease of use.

Child restraint/vehicle compatibility is evaluated by fitting each restraint in both the rear center and rear left seats of test vehicles. The vehicles used to evaluate compatibility are the top-selling models in each of the following categories: large sedan, large station wagon, small hatchback, medium hatchback, multipurpose vehicle, and large four-wheel drive. In addition to the determination that the restraint and vehicle are compatible, the NRMA also evaluates restraints on how easy they

were to install in vehicles and how easily children could be secured in them.

2. Consumer's Union

Consumers Union (CU), a nonprofit membership organization, has been evaluating child restraints for more than 25 years. Their child restraint ratings can be found on their web site and in their publication, Consumer Reports magazine.

Consumers Union tests child restraints for crash protection, ease of use, and the ability to install properly the restraint with different seatbelts.[17] In making its judgment about ease of use the following attributes are considered:
—Threading vehicle belt through restraint,
—Adjusting harness strap position for different size children,
—Adjusting harness strap tension,
—Adjusting "belt positioner" on boosters,
—Placing child in the restraint and arranging the harness,
—Engaging/disengaging the harness locking mechanism,
—Ease of installation in a vehicle with and without the detachable base,
—Ease of disengaging the restraint from a detachable base,
—Carry handle comfort with a 20 pound dummy, and
—Presence of recline angle gauges or indicators and ease of using recline level adjustment.

All of the items are evaluated subjectively on a five-point scale (Excellent, Very Good, Good, Fair, and Poor). The crash protection, ease of use, and installation ratings are also combined into an overall rating.

3. Euro NCAP

In the European New Car Assessment Program, vehicle manufacturers recommend the make/model of a child restraint suitable for a 3-year-old child and a second restraint suitable for an 18-month-old infant. These restraints are then installed in the rear seat of the vehicle during the crash tests. Technicians then provide an evaluation of the ease of installation in the vehicle when setting up the test. NHTSA is not aware of any defined criteria for this evaluation. The evaluation provides information about the compatibility of some child restraint make/models with tested vehicles. In addition, if a vehicle does not have a device for deactivating a frontal protection air bag, a notation is made about the quality of the vehicle's warning about the hazards of air bags with child restraints.

[17] If an infant restraint is sold with a stroller the stroller is also evaluated.

4. ICBC

The Insurance Corporation of British Columbia (ICBC) is a public agency in Canada that was established in 1973 to provide universal auto insurance to motorists in British Columbia, Canada. In July 1999, ICBC invited members of the child restraint usability task force of ISO/TC22/SC12/WG1 (Child Restraints) to meet in Victoria, BC. The purpose of the two-day meeting was to prepare a draft document of usability criteria and objective tests for child restraint manufacturers. Consumer and insurance representatives who evaluated the "usability" of child restraints sold in BC subsequently used the draft document. The findings were subsequently published in an ICBC brochure called "Buying a Better Child Restraint."

Depending on features and type of restraint, the ICBC strategy rates some or all of the following features:
—Ready to use
—Instructions for use,
—Ease of conversion,
—Labeling on the child restraint,
—Securing the child in the restraint,
—Installation of the child restraint, and
—Tether straps

Several factors are evaluated within each feature category by the evaluators. The participants in the initial meeting rated each of these factors A, B or C according to risk and severity of misuse. The factors with the higher risks of injury if misused were rated "A," while the factors with the lower risks of injury were rated "C." The evaluators then rate each factor, based on agreed upon standards, either "good," "acceptable," or "poor." This rating is then combined with the A, B, or C weighting for that factor. All of the ratings for all of the factors for a feature are combined and an overall rating for that feature is determined. The ICBC does not combine the ratings for each feature to develop an overall rating.

5. Japan

The Japanese Ministry of Land, Infrastructure and Transport, in cooperation with the National Organization for Automotive Safety & Victims' Aid, tests and evaluates the safety of automobiles currently on the market in Japan. The results of these tests are publicly released under the title New Car Assessment Japan. Japan has proposed rating child restraints as part of its New Car Assessment program in 2002.

In addition to dynamic testing, Japan has proposed rating child restraints on ease of use. Specialists would rate the restraint in five categories. These categories are the user manual and other information (i.e., ease of understanding and accuracy), illustrations and instructions on the child restraint (i.e., ease of understanding and accuracy), the safety features of the child restraint (i.e., recline device, cover, and attachment storage), ease of installation (i.e., ease of threading belts and ability to tightly install), and how well the child restraint fits into the vehicle (i.e., ease of adjustment and buckle release mechanism).

Japan proposes to rate each item within the five categories using a 5-level rating system. NHTSA was provided with a summary of the proposal translated into English, which did not indicate what criteria would be used for each category. The category rating would then be the average level of each item within that category. A graphical representation of the ratings would be presented on a "radar chart" with a spoke for each of the five categories.

C. Planned Child Restraint Ease of Use Rating System

1. Assessment of Existing Ease of Use Rating Systems

After analyzing all the comments and gathered information, NHTSA has tentatively decided that it appears possible to have a fair and repeatable rating for ease of use. The agency has modeled its planned approach on that used by ICBC, because ICBC uses objective criteria for what is "good," "acceptable," and "poor" for each factor rated. NHTSA is also proposing to use a weighting system for the relative importance of each feature within each ease of use category. The agency is planning to rate ease of use features in four categories as A, B, or C, with A being the highest rating and C the lowest. In addition, NHTSA is also considering taking the ICBC rating system one step further by combining these four ratings into an overall rating for ease of use using the same scale.

Almost all of the features evaluated by the other programs NHTSA examined are included in NHTSA's planned program. The difference between ICBC and the other ease of use rating systems (Australian, CU, Euro NCAP, and Japanese) was the known objective criteria for each feature in the ICBC program and the known weighting of the features within each category in the ICBC program. To the extent that a feature evaluated by another program is not included in our program, NHTSA has tentatively determined that it is not a feature related to safety when using

the child restraint in a vehicle.[18] The additional difference between our planned approach and Euro NCAP is that Euro NCAP only evaluates those seats that have been selected by vehicle manufacturers for inclusion in the crash test. NHTSA hopes to be able to evaluate all or almost all the child restraints available in the US market at the time of the evaluation.

NHTSA personnel spent a day conducting a hands-on evaluation of the ICBC rating program to determine the repeatability of the program. With the assistance of a representative of the ICBC rating program, those present were divided into two teams. Both teams evaluated the same six seats. Their scores were put in a computer program that incorporates the weighting. The personnel compared the evaluation scores. While the teams had some minor differences in ratings for features within each category, the agency task force team evaluation resulted in 100 percent repeatability for each category.

While NHTSA agrees that overall, the features selected and rated in the ICBC program are those that are most subject to misuse, analysis of each component and review of the evaluation criteria has led NHTSA to modify slightly the ICBC program. One of the reasons why changes were made was an effort to simplify the information provided to consumers. Other changes were made to reflect child restraint standards of the United States to the extent that they are different from those in Canada. Last, some modifications were also made based on information learned from the repeatability exercise. All of the changes are explained in greater detail below.[19]

2. Four Rating Categories

Depending on features and type of restraint, the ICBC strategy rates up to seven categories:

—Ready to use,
—Instructions for use,
—Ease of conversion,
—Labeling on the child restraint,
—Securing the child in the restraint,
—Installation of the child restraint, and
—Tether straps

Based upon its assessment, NHTSA is planning to rate four categories for each restraint:

—Assembly,
—Evaluation of Labels/Instructions,
—Securing the Child,
—Installation in Vehicle,

NHTSA combined labeling and instructions into one category. In NHTSA's experience, most labels and instructions are stylistically similar, and therefore any restraint is likely to have the same rating in each of these categories. In addition, ICBC has indicated and our experience also showed, that these categories are the least objective. NHTSA believes that combining them into a single category would reduce the influence they would have on a combined rating for ease of use and/or the importance a consumer would place on the individual rating. NHTSA also moved the criteria for "Ease of Conversion" to a "Securing the Child" category, since the ease of adjusting a child restraint for different size children is directly related to the ease of securing a child in the restraint. Finally, NHTSA moved "Tether Straps" to the "Installation in Vehicle" category, because there is only one criterion related to tether straps, and because this category also relates to ease of installation in a vehicle.

a. Assembly

NHTSA has decided to include the following features in the "Assembly" category:

—All functional parts including seat pad or cover attached and ready to use
—Tether attached to child restraint
—Owner's manual easy to find
—Obvious storage pocket for manual

NHTSA chose not to include the ICBC feature, "any other add-ons in box" because it is believed that such add-ons, for example extra pads, cup holders; sun canopy, were not related to ease of use or the safety function of the child restraint. Any add-on that is to be used and is a functional part of the restraint or related to correct use of the restraint is to be included under the "all functional parts including seat pad or cover attached and ready to use" category.

NHTSA has chosen to modify the criteria used to evaluate the feature, "obvious storage pocket for manual." ICBC defines "good" as "easy access when CRS installed in all modes," an "acceptable" as "easy access not accessible when CRS installed in all modes," and "poor" as "none found or not easy access/storage (incl. Plastic tabs)." During NHTSA's evaluation of the ICBC criteria using several child restraints, we found that in some cases the storage pocket for the instructions manual was easily accessible in all modes, however it was difficult to use. In other words, it was difficult to take the instructions out of the storage pocket and difficult to put them back in. With this difficulty, it is believed that if consumers take the instructions out of the storage pocket they will not put them back. Therefore, NHTSA's planned criteria are:

—A = Easily accessible when installed in all modes and manual can be removed and replaced easily
—B = Easily accessible when installed in all modes but manual cannot be removed and replaced easily (any use of plastic clips as the sole means of storing the instructions will not be higher than "B")
—C = Not accessible when installed in all modes.

NHTSA has also modified the criteria used to evaluate the feature "owner's manual easy to find." ICBC defines a "good" as "yes, attached to CRS," an "acceptable" as "in box," and a "poor" as "no." NHTSA regulations also require written instructions; therefore no child restraint manufactured for sale in the United States should receive a "poor" under the ICBC program. However, when evaluating the ICBC system, both infant restraints we evaluated had the written instructions attached between the restraint and the detachable base. This forces the consumer to learn how to release the base from the infant restraint without the assistance of instructions. NHTSA felt that a rating should distinguish between written instructions attached so that they were clearly visible as the restraint was removed from the box (many had them in a plastic bag attached to the harness) and those where you had to search for the written instructions. NHTSA also believes that any form of attachment is preferable to having the instructions loose in the box, and therefore has moved the "in box" criteria to "C."[20] While NHTSA did not find any restraints that would have received a "C," NHTSA is concerned that if the instructions were loose they could be lost before purchase if the box were damaged or opened for inspection. NHTSA's planned criteria are:

—A = attached to child restraint in a clearly visible location
—B = attached to child restraint but not clearly visible
—C = in box, not attached

[18] NHTSA requests comments on whether we should delete any of the features we have proposed to include, or whether we should include features that we have not included in today's proposal. For example, should rear-facing restraints be rated according to the leg room they provide, which may be a feature that would make the restraint easier to use by infants with long legs?

[19] A copy of the planned evaluation form is included in the appendices to this notice. Details of the program are discussed only to the extent that they differ from ICBC's program.

[20] The agency is mindful that Standard No. 213 requires an owner registration card to be attached to the child restraint, and that too many materials attached to the restraint could dilute the consumer's attention to the registration card. Comments are requested on whether attaching the owner's manual to the restraint will overwhelm the card.

b. Evaluation of Labels/Instructions

NHTSA has decided to evaluate the following features in the "Evaluation of Labels/Instructions" category:

—Clear indication of child's size range
—All mode/s of use clearly indicated e.g., rear-facing only or forward- and rear-facing if convertible
—Air bag warning in written instructions
—Shows harness slots okay to use for occupant size
—Instructions for routing for both lap belt and lap/shoulder belt in all modes
—Visibility of seat belt routing
—Visibility of tether use
—Information in written instructions and on labels match
—Durability of labels

Beyond combining two of ICBC's categories, NHTSA has deleted the feature "is airbag warning visible no matter where CRS is installed." NHTSA requires an air bag warning label on rear-facing child restraints in a location that would receive a "good" under the ICBC program. Therefore, NHTSA feels this feature can be deleted. NHTSA is retaining the feature "air bag warning in written instructions" as NHTSA found a great variety in written instructions with regard to the visibility of this important information.

NHTSA has added "information on written instructions and on labels match" as a separate feature. While NHTSA did not encounter any child restraint during its exercise that had different information on the labels than in the written instructions, the representative from ICBC indicated that they find this commonly. For example, the height or weight ranges may be different between the two sources of information. While NHTSA suspects this results because written instructions are printed in a large quantity and therefore not updated as frequently as labels, it could be very confusing to consumers. Therefore, NHTSA felt it deserved a separate category.

NHTSA has also added a feature "durability of labels." NHTSA has received complaints about labels fading and peeling. When evaluating the ICBC program, NHTSA found two child restraints with one or more labels already beginning to peel as they were removed from the box. In a recently published Notice for Proposed Rule Making (NPRM) on child restraint labels, NHTSA did not propose a durability requirement.[21] However, we believe that adding this feature to the ratings will encourage manufacturers to improve label durability. To achieve an "A" rating, all of the labels would have to use a technology such as molding or heat embossing. Sticky labels would receive a "B" rating unless any of the labels had already started to peel when the restraint was removed from the box. In the later case, the restraint will receive a "C" rating.

Under ICBC's program, almost all labels receive a poor for many of the features unless the label is on both sides of the restraint. NHTSA has received comments on labeling upgrades requesting us to keep in mind the limited space on child restraints. Providing a rating on whether restraints have labels on both sides will encourage manufacturers to place labels on both sides, resulting in using the limited space on the restraint for additional labels. NHTSA is considering modifying the ratings to allow for an "A" rating if the label meets the specified criteria and is on one side of the restraint. To this end, child restraints would not receive a "C" rating if the label was only on one side of the restraint. Encouraging manufacturers to make instructions more accessible, easier to use, and clearer, should provide a justifiable solution instead of encouraging labels on both sides of the child restraint.

c. Securing the Child

NHTSA has tentatively decided to evaluate the following features found in the ICBC "Securing the Child" category:

—Buckle can be secured in reverse (harness strap buckle)
—Harness adjustment easy to tighten and loosen when child restraint installed
—Number of harness slots/usable slots
—Ease of attaching/removing base
—Ease of conversion rear-facing to forward-facing or forward-facing to booster and back again
—Visibility of harness slots
—Ease of changing harness slot position
—Ease of reassembly if pad/cover removed for cleaning
—Ease of adjusting/removing shield

In addition to combining the two categories, the agency will slightly modify the rating criteria for two of the features. First, under "buckle can be secured in reverse," (referring to the harness strap crotch buckle which on most child restraints has a red square buckle release) a "good" rating by ICBC is a "no," an "acceptable" rating is "yes, but usual release works," and a "poor" rating is "yes & difficult to release/access." NHTSA has modified the rating to the following: an "A" rating is "no, or yes but usual release works with same degree of effort," a "B" rating is "yes, but usual release requires more effort," a "C" rating is "yes, but can't use release mechanism." The safety concern with being able to reverse a buckle is that during an emergency a parent may be unable to release the mechanism and remove the child from the seat. NHTSA has tentatively chosen to modify this rating based on our opinion that if reversing the buckle did not make the release more difficult to use, there is not a safety concern. Further, NHTSA thought that reversing the buckle might provide a benefit for children who may have learned to unbuckle the release mechanism. With the buckle reversed, the child would be less likely to unbuckle him or herself.

The other modification is the rating criteria for the feature "ease of changing harness slot position." Under the ICBC program a "good" rating is "easy to attach/remove; clear slots easy to thread; easy to attach to hardware," an "acceptable" rating is "possible for one person to do; slots may be misaligned/pad in way/in slots; hardware slot shared," and a "poor" rating is "other, slot size too small for easy threading; loose mandatory pieces; could misroute through buckle." Under the NHTSA program an "A" rating is "no need to rethread; possible for one person to do," a "B" rating is "possible for one person to do, easy to attach/remove; large slots easy to thread," and a "C" rating is the same as that used by ICBC. The reason NHTSA is proposing to make a change to the evaluation criteria is that we've observed that no matter how easy it seems to rethread, some people will rethread the harness wrong.

d. Installation in Vehicle

NHTSA has decided to evaluate the following features in the "Installation in Vehicle" category:

—Separation of vehicle belt path
—Ease of vehicle belt routing (hand clearance)
—Ease of seat belt routing (boosters)
—Ease of use of any belt-positioning hardware on CRS including lock-off
—Tether easy to tighten and release
—Belt-positioning device allowing slack to occur

NHTSA is considering adding a feature, "Ease of tightening belt around CRS." Based on experience with installing child restraints we have found some features on child restraints, specifically on infant seat bases, that made tightening of the vehicle belt system difficult, or that resulted in the tilting of the infant seat base to one side upon tightening of the vehicle's lap and shoulder belt through the infant seat base, resulting in an improperly secured

[21] Docket Number: NHTSA–2001–10916.

child restraint. Therefore, we feel there is a need to consider this aspect of installation. NHTSA would need to develop evaluation criteria on what features of a child restraint would receive an "A," "B," or "C" rating under this category. NHTSA is soliciting views and comments on this consideration.

3. Weighting the Features

The ICBC program ranks each feature within each category based upon the level of importance. These rankings were determined by the child restraint usability task force of ISO/TC22/SC12/WG1 (Child Restraints) [22] at a meeting in British Columbia. Each ease of use feature is rated as an A, B, or C according to risk of injury and severity of misuse. Component features that could be associated with a high risk of injury if misused are to be rated "A". Each ranking is assigned a numerical scale where A = 3 points, B = 2 points, and C = 1 point. The ratings are similarly assigned a numerical scale where good = 3 points, acceptable = 2 points, and poor = 1 point. To determine the rating for a category, the numerical value of the rating for each feature is multiplied by the numerical value of that feature's ranking. The maximum possible score is then divided into thirds to determine the point ranges for the category rating.

This notice is proposing a slightly modified version of this scheme. Whereas we agree with the ICBC relative ratings for the component elements, we do not believe that enough is known to assign weights to the four categories in terms of importance. The discussion on the overall summary rating in Section 8 elaborates on this choice. The NHTSA proposed approach is as follows:

Each component feature is assigned a numerical scale of 1–3 points, with features having the highest relationship to safety receiving 3 points. The ratings are similarly assigned a numerical scale where A = 3 points, B = 2 points, and C = 1 point. To determine the rating for a category, the numerical value of the rating for each feature is multiplied by the numerical value of that feature's ranking. Point ranges for A, B, and C are determined through a 3-part split of the range of possible points for that factor, from the minimum (if all scores were coded "C") to the maximum (if all scores were coded "A") number of points. Appendix B and Appendix C displays this scheme, with a hypothetical example seat rated.

NHTSA proposes to keep the same ranking as ICBC uses for the component features it has retained. For the four new features that we have added, we have assigned them a 2-point ranking. While we believe these features are important enough to add them to the rating system, their proposed lower ranking reflects the fact that ICBC chose not to include them.

4. Ease of Use Rating Protocol

ICBC uses two 2-person teams to evaluate each child restraint. Prior to the evaluation, the teams have a day of training. ICBC has found that, while the rating for some features may vary between the teams, the overall rating for the category tends to be the same. To the extent that the teams end up with a different rating for a category, they jointly reexamine the child restraint before a rating is determined. Child restraints are installed in a bench seat of a generic minivan for purposes of the evaluation.

NHTSA found that the ratings of the two teams we used in our evaluation also matched. Therefore, we are planning to use the same protocol for rating child restraints for ease of use.

During the evaluation, the teams would install the child restraint in the current FMVSS No. 213 bench. If and when the FMVSS No. 213 bench is updated, the team will use the updated test bench. No dummy will be used during this process.

5. Overall Ease of Use Rating

Market research in recent years has shown that most consumers prefer summary ratings or information because they find it quicker and easier to read and understand. At the same time, a certain significant percentage of consumers also like detailed information that is presented in hierarchical fashion, with the more general information presented initially. NHTSA is planning to combine the planned child restraint ease of use ratings into a summary ease of use rating. While NHTSA notes that it does not have clear information about how organizations that currently provide a summary rating determine that rating, study of the ICBC model has led to the conclusion that it is reasonable to apply a modified version of their model. The notable exception is that NHTSA does not believe it is possible to weight the importance of the four overall categories. As a result, a straight combination numerical rating is not proposed. If all of the individual scores were added to one overall numerical score, the factors containing more component elements would carry more weight. Therefore, the proposal for the combined rating is majority rule for the four categories, with two qualifiers. The two qualifiers are that a seat cannot receive a B rating if more than 1 out of 4 categories is a C and, correspondingly, a seat cannot receive an A rating if more that 1 out of 4 categories is rated other than A. In the example in Appendix C, the seat received a high number of C ratings in important components, thereby resulting in 2 out of 4 categories being rated C. Application of the qualifier gives it a C rating.

V. Discussion and CRS Rating System Proposal

The agency has not made a final determination on which of the four rating systems (three dynamic plus ease of use), or combination of those rating systems, would be most appropriate and responsive to the Congressional mandate of TREAD. However, we have tentatively concluded that the most effective consumer information system is one that gives the consumer a combination of information about child restraints' ease of use and dynamic performance, with the dynamic performance obtained through higher-speed sled testing and/or in-vehicle NCAP testing.

Section 14(g) of TREAD set forth the requirement to establish a CRS rating consumer information program. Other sections of TREAD mention providing "consumer information on the physical compatibility of child restraints and vehicle seats on a model-by-model basis" [14(b)(4)] and "whether to include child restraints in each vehicle crash tested under the New Car Assessment Program" [14(b)(9)]. From this, the agency has tentatively concluded that a rating program that rates the CRS and/or the vehicle would satisfy the Congressional mandate.

Table 1 shows six factors that were felt to be of primary importance in determining an appropriate CRS rating system. From this table, it is clear that a single rating alternative does not achieve all of the six objectives. Ease of use is the only option that potentially addresses misuse, and thus the agency feels that such a rating option could have a substantial impact on proper CRS use. However, an Ease of Use rating would not provide information on dynamic performance. Given the advantages and disadvantages regarding the various dynamic performance rating options described in the preceding sections, the agency has tentatively concluded that higher-speed sled tests and/or in-vehicle NCAP testing would be preferable methods for providing dynamic performance information. Comments on which dynamic rating option, individually or in conjunction with the Ease of use rating, would provide the most useful information to the consumer as well as improve overall child safety are requested. Comments are also requested on whether or not the agency should consider conducting *both* higher-speed sled tests and in-vehicle NCAP testing in conjunction with the Ease of use rating. If, in addition to the Ease of use rating, the agency were to provide both a higher-speed sled test rating for the child seat, and an in-vehicle NCAP rating of child occupant protection for the vehicle, would such information be meaningful for the consumer and worth the costs of administering the tests given the relative advantages and disadvantages of each? Also, if the agency were to implement an in-vehicle NCAP rating system, what child seat(s) should be used? Should the agency select child seat(s) from those specified in FMVSS No. 208? If so, should a procedure be based upon only one of these seats to standardize the child seat for all vehicles? If only one child seat is selected, what criteria should the agency use in selecting that seat? If not, is the protocol provided below preferable?

Possible Assessment Protocol for Higher-speed Sled Tests

The following assessment protocol for testing and rating a child restraint in a higher-speed sled test is proposed if this dynamic procedure is selected.

—The agency would select child restraints for higher-speed sled tests so that most of the forward-facing child restraint models sold in the United States would undergo the higher-speed sled test for the evaluation of child restraints.
—Forward-facing child restraints would be placed on the same seat used for the compliance test. The restraint would be secured to the using the LATCH system. Installation instructions prescribed by the manufacturer of the child restraint would be followed.
—Hybrid III three-year-old and/or 12 month CRABI dummies would be placed in the child restraint for assessing injury. Dummy selection would depend upon the weight rating of the CRS. Child restraints designed for weight classifications covering both dummies would be tested with both and provided two rating. Head and chest accelerations would be recorded. The injury assessment reference values developed for child dummies in FMVSS No. 208 would be calculated.
—A five star rating would be applied to the dynamic performance using the HIC and chest acceleration to compute probability of injury as was illustrated in Figure 7.
—Child restraints would also be examined for structural integrity after the test. The physical structural integrity evaluation specified in the FMVSS No. 213 procedure would be applied.
—A rating for the CRS would be made available to the public in a manner similar to that now employed for other NCAP vehicle results.

Possible Assessment Protocol for NCAP Frontal Vehicle Testing

The following assessment protocol for testing and rating vehicles with child restraints for in-vehicle NCAP is proposed if this dynamic procedure is selected.

—After the agency has selected the vehicles for frontal NCAP testing, each vehicle manufacturer would be asked for a recommendation of at least three forward-facing child restraints for children up to a weight of 50 pounds for each vehicle to be tested. At least one of the vehicle manufacturer-recommended child restraints must have a retail price of less than $60. A different CRS manufacturer must make each of the three restraints. An integrated child restraint may be one of the recommended child restraints. Each of the three recommended child restraints must be currently available in the market. If the vehicle manufacturer chose not to make a recommendation, then the agency would choose from any child restraint available in the market.
—One of the three vehicle manufacturer-recommended child restraints would be selected for use in the crash test. A procedure that uses the child restraint in the LATCH configuration would be followed. The agency would follow both the vehicle and child restraint manufacturers' recommendations for installing the child restraint in the passenger vehicle. Our expectation is that the vehicle manufacturer's set-up instructions would be consistent with the installation instructions for the child restraint.
—A forward-facing child restraint would be placed in the seat directly behind the right front passenger, i.e., on the right-hand side of the second row of seats. A 3-year-old Hybrid III dummy would be placed in the child restraint system. Head and chest accelerations would be recorded. The injury assessment reference values developed for child dummies in FMVSS No. 208 would be calculated. If the vehicle is equipped with a built in child seat, testing could be conducted with either or both the built in and add on child restraints.
—A five star rating would be applied to the dynamic performance using the HIC and chest acceleration to compute probability of injury as was illustrated in Figure 7.
—Child restraints would also be examined for structural integrity after the test. The physical structural integrity evaluation specified in the FMVSS No. 213 procedure would be applied.
—A rating for child protection would be added to the vehicle frontal NCAP ratings. In the process of developing the proposed rating system, the agency made several decisions.

These decisions and our rationale for making them are the following:

1. For in-vehicle testing, only frontal NCAP tests are being proposed. Child restraints are not currently compliance-tested under lateral loading conditions. Although lateral test requirements for CRS are being proposed in an upgrade to FMVSS No. 213 under a separate TREAD rulemaking action, the agency felt that the issue of a possible lateral rating should be considered following completion of the FMVSS No. 213 upgrade.

2. The in-vehicle proposed protocol rates only one CRS in the rear seat. Due to the very tight schedule available for conducting and assessing potential CRS NCAP protocol, the agency elected to concentrate on forward-facing child restraints rather than attempt to also include rear-facing child restraints and/or booster seats. The decision to concentrate on the forward-facing CRS was based on the belief that the forward-facing CRS would provide the most meaningful information to the consumer, given that development of procedures for all three systems could not be accomplished in the short time frame. Following incorporation of the forward-facing CRS, the feasibility of incorporating a rating which included rear-facing CRS and/or booster seats would subsequently be considered.

3. The in-vehicle proposed rating uses only the three-year-old dummy. Again, due to the very tight schedule, the agency felt it necessary to collect as much data as possible for one dummy and that the three-year-old would provide the most meaningful information for the consumer. Upon

[22] Working group TC22/SC12/WG1, "Child Restraint Systems," to the International Organization for Standardization (ISO), a worldwide voluntary federation of ISO member bodies, is considering developing an ease of use usability rating system for child restraint systems. The group has based its preliminary work on the rating system of ICBC, which is similar to NHTSA's work thus far.

incorporation of a child restraint system rating with the three-year-old dummy, consideration would subsequently be given to dummies of other sizes.

4. Higher-speed testing which was conducted by the agency used only Hybrid III three-year-old dummies. However, if the higher-speed dynamic performance is selected, utilization of both twelve month CRABI and Hybrid III three year old dummies would be proposed.

Comments on these decisions and the agency's rationale for them are requested. Also, comments regarding possible future extension of the CRS NCAP rating to side impact, other types of CRS, and dummy size are also sought.

VI. Combined Child Restraint Rating

NHTSA is not currently planning to do an overall summary rating combining ease of use and dynamic performance. To date, we have not been able to develop an acceptable methodology for a summary rating. However, we request comments and suggestions on this issue.

VII. Distribution

NHTSA currently produces a print brochure titled Buying a Safer Car that provides NCAP ratings and safety feature information for new vehicles. Because new motor vehicles are commonly introduced in the fall, NHTSA produces the first printing for each model year in the fall. Because NCAP testing cannot begin until the vehicles are available from dealers, this printing only has test results for vehicles which were tested in previous model years and which have not changed significantly. A second printing is produced in the spring after the completion of the NCAP testing program.

NHTSA also publishes an annual brochure titled Buying a Safer Car for Child Passengers. This brochure provides new vehicle safety features and other information relevant to children. The brochure identifies vehicles that have built-in child seats, manual air bag cut-off switches, rear center rear seat lap/shoulder belts, rear-seat adjustable upper belts, and interior trunk releases.

If NHTSA were to elect to have a rating based solely on a vehicle equipped with a child restraint, the existing brochures would be an appropriate venue for the distribution of the ratings. If NHTSA chooses another rating system, we believe new printed information about child restraint ratings will be needed. The current brochures are a helpful model for new print information about child restraint ratings. However, unlike vehicles, child restraint models do not tend to change on an annual cycle. Therefore, NHTSA would have to pick a date and only include in a print brochure child restraints that are available in the marketplace at that time. Representatives from ICBC have indicated that the largest concentration of new child restraint introductions seems to occur in Canada in the months of May and June. To assist us in timing a print brochure, NHTSA requests comments on whether this timing is also accurate for the United States.

NHTSA notes that a print brochure could be used in addition to our web site. Unlike printing, this site can be updated on a continuous basis. Therefore, NHTSA could test child restraints as they became available and add new models to the web site when testing was complete.

VIII. Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

I. Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

II. On that page, click on "search."

III. On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1999–1234," you would type "1234." After typing the docket number, click on "search."

IV. On the next page, which contains docket summary information for the docket you selected, click on the desired comments.

You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, and Pub.L. 106–414, 114 Stat. 1800; delegation of authority at 49 CFR 1.50.

Issued on: October 29, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

BILLING CODE: 4910–59–P

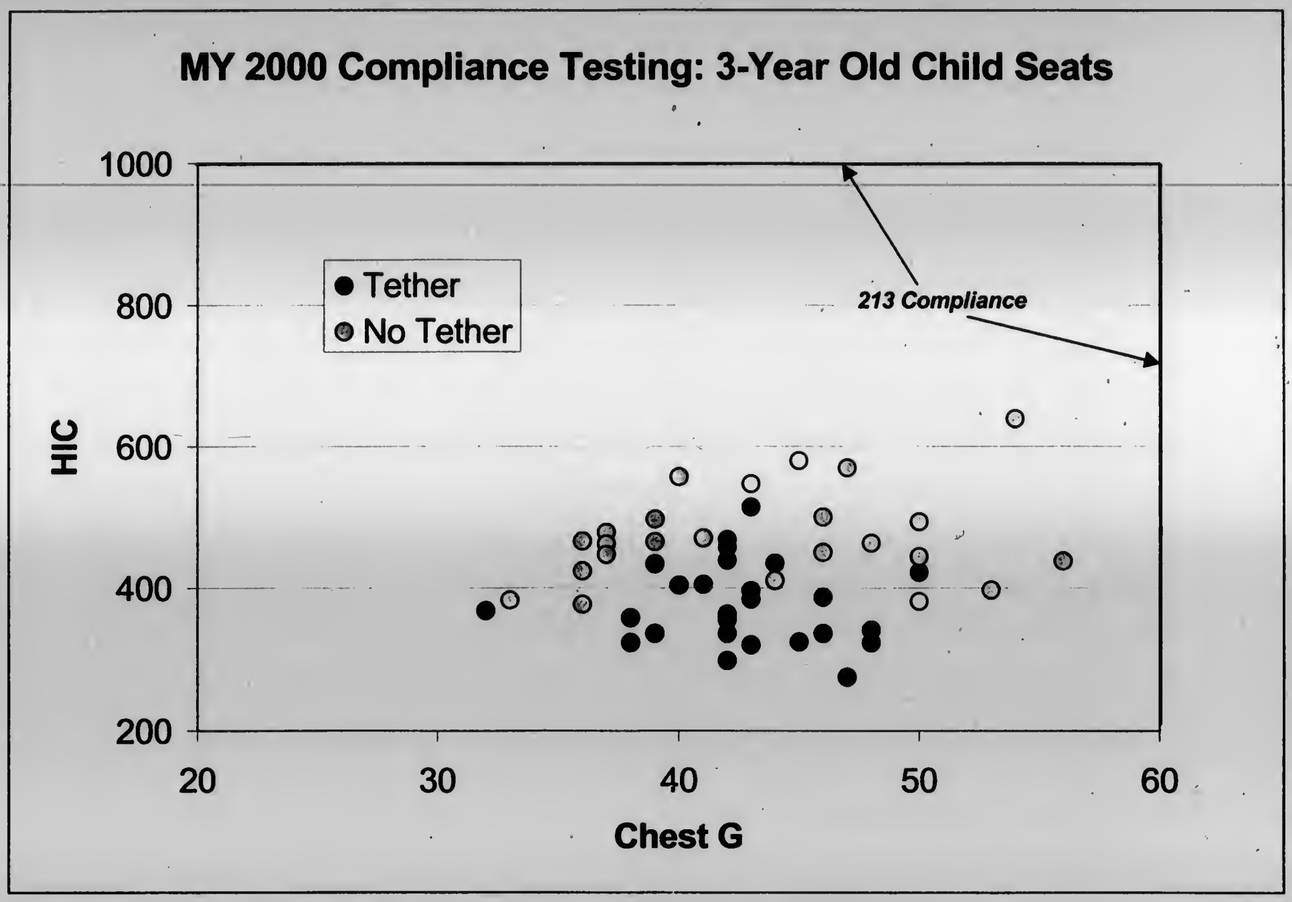


Figure 1: MY 2000 FMVSS No. 213 Sled Test Results (3-Year-Old Hybrid II Child Dummy)

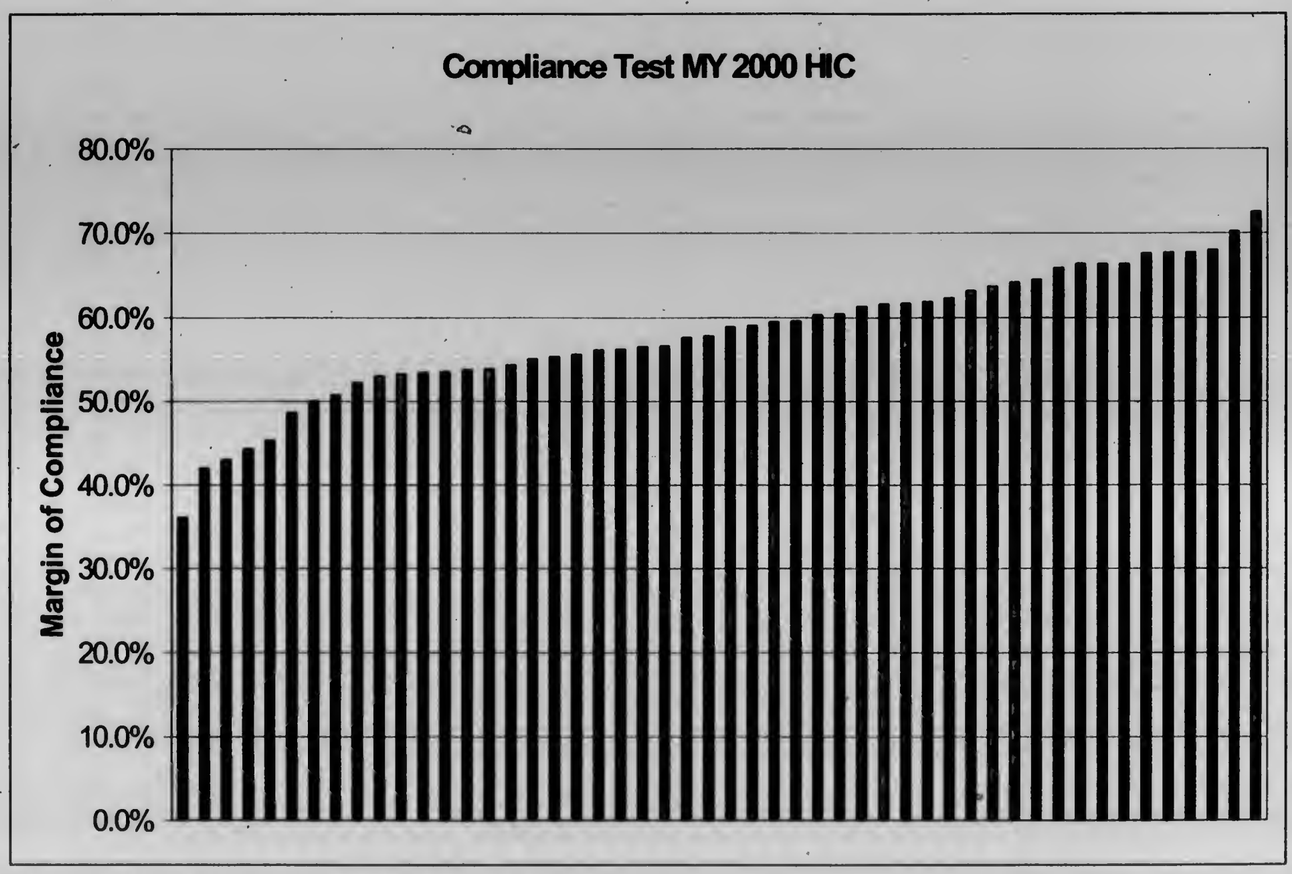


Figure 2: Margin of Compliance for Head Injury Criteria

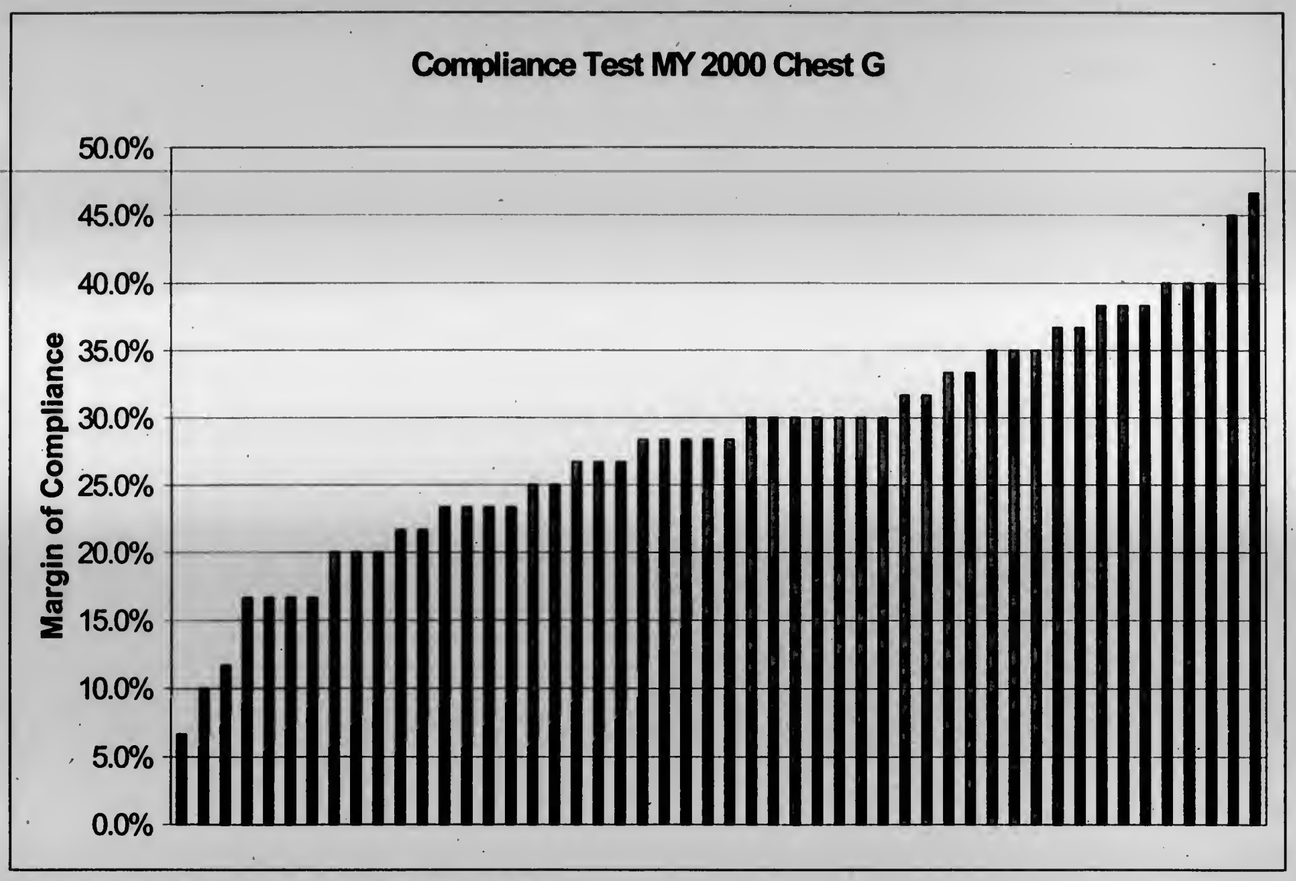


Figure 3: Margin of Compliance for Chest Acceleration

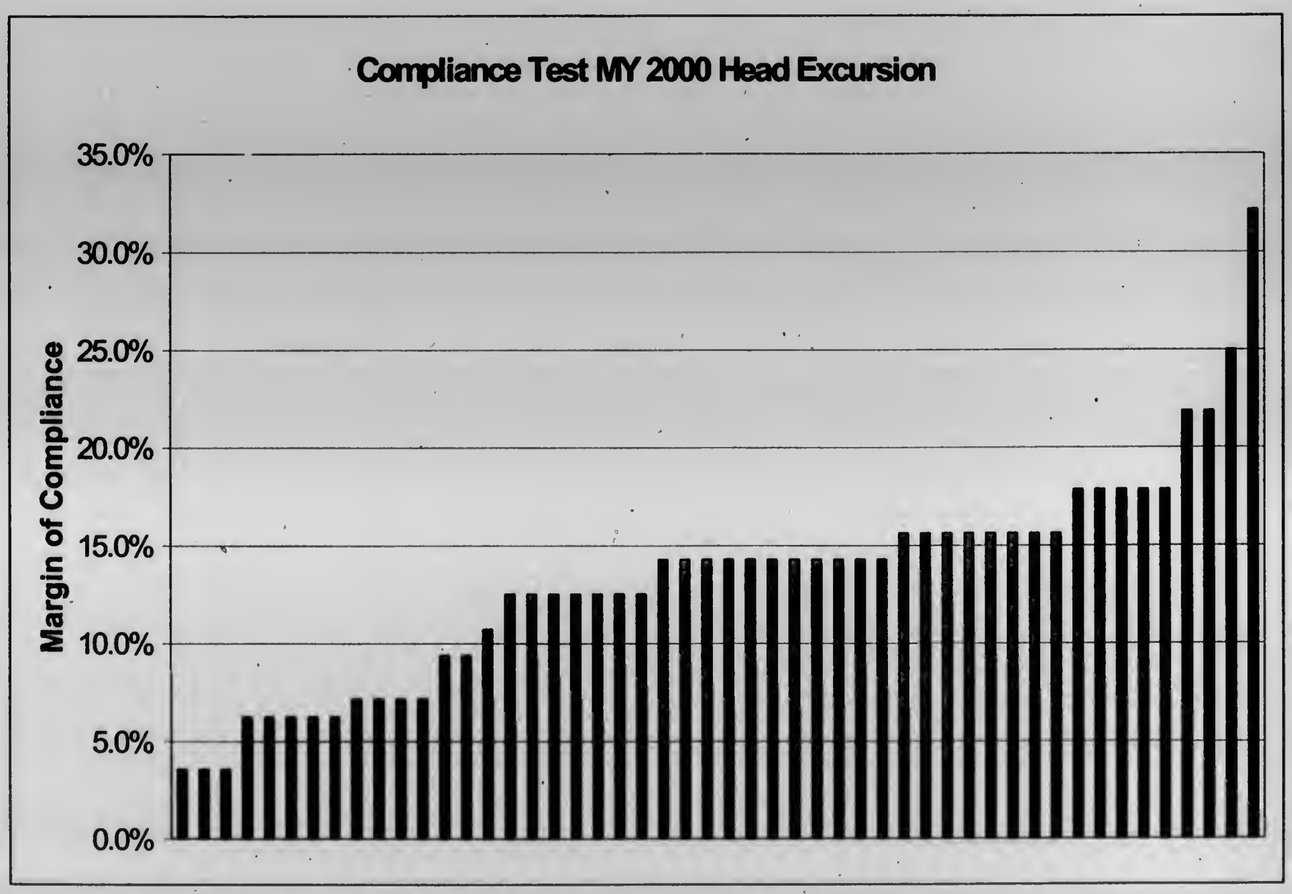


Figure 4: Margin of Compliance for Head Excursion

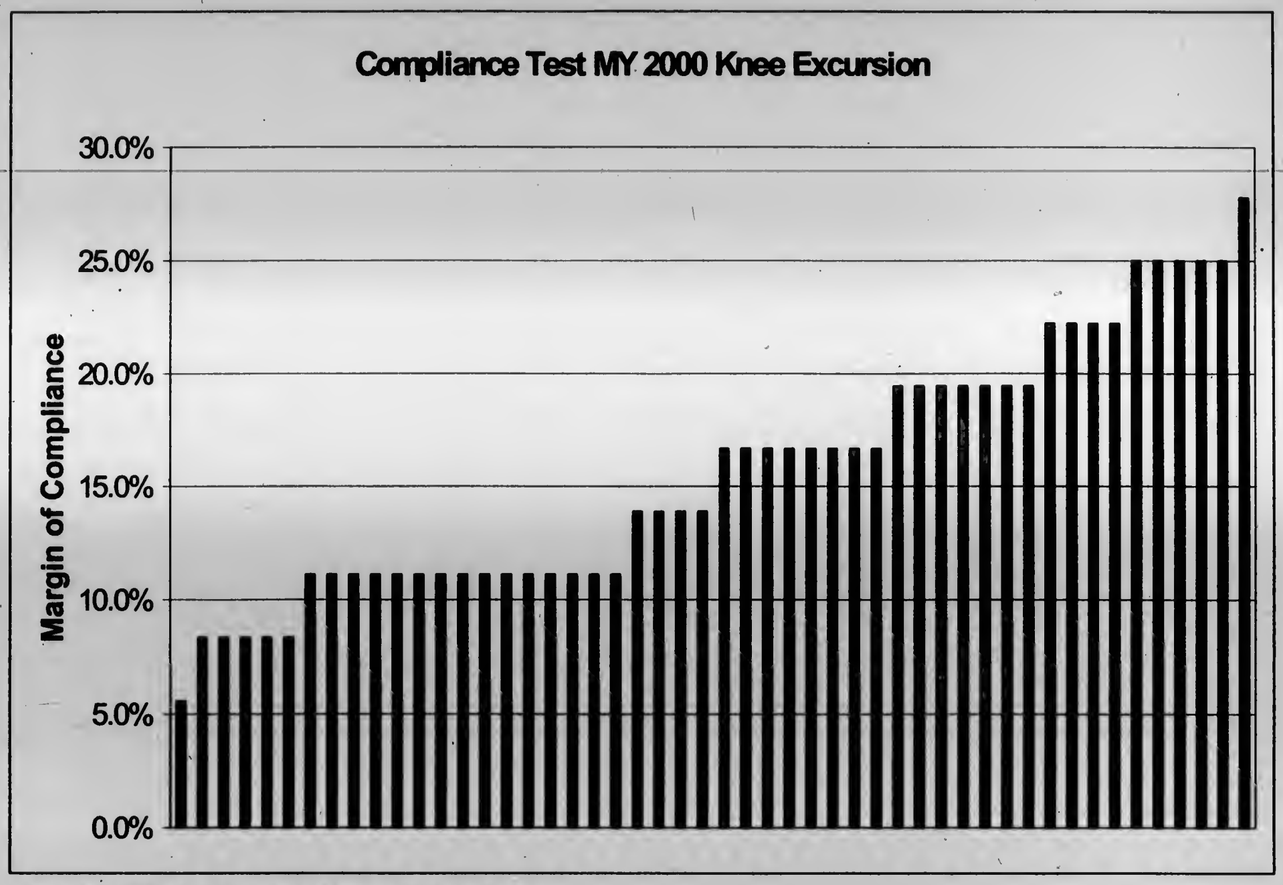


Figure 5: Margin of Compliance for Knee Excursion

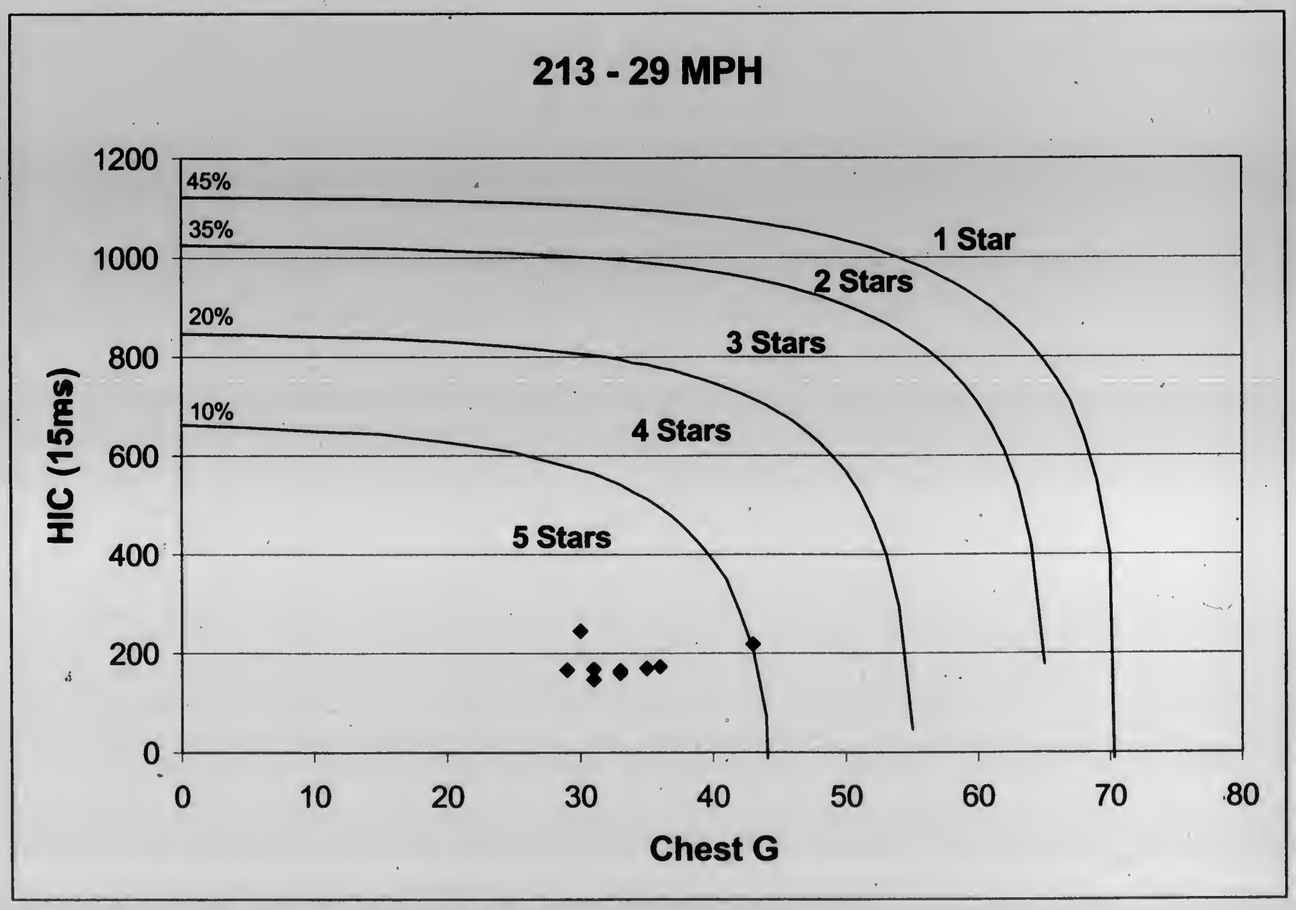


Figure 6: Compliance Test with Scaled NCAP Curves

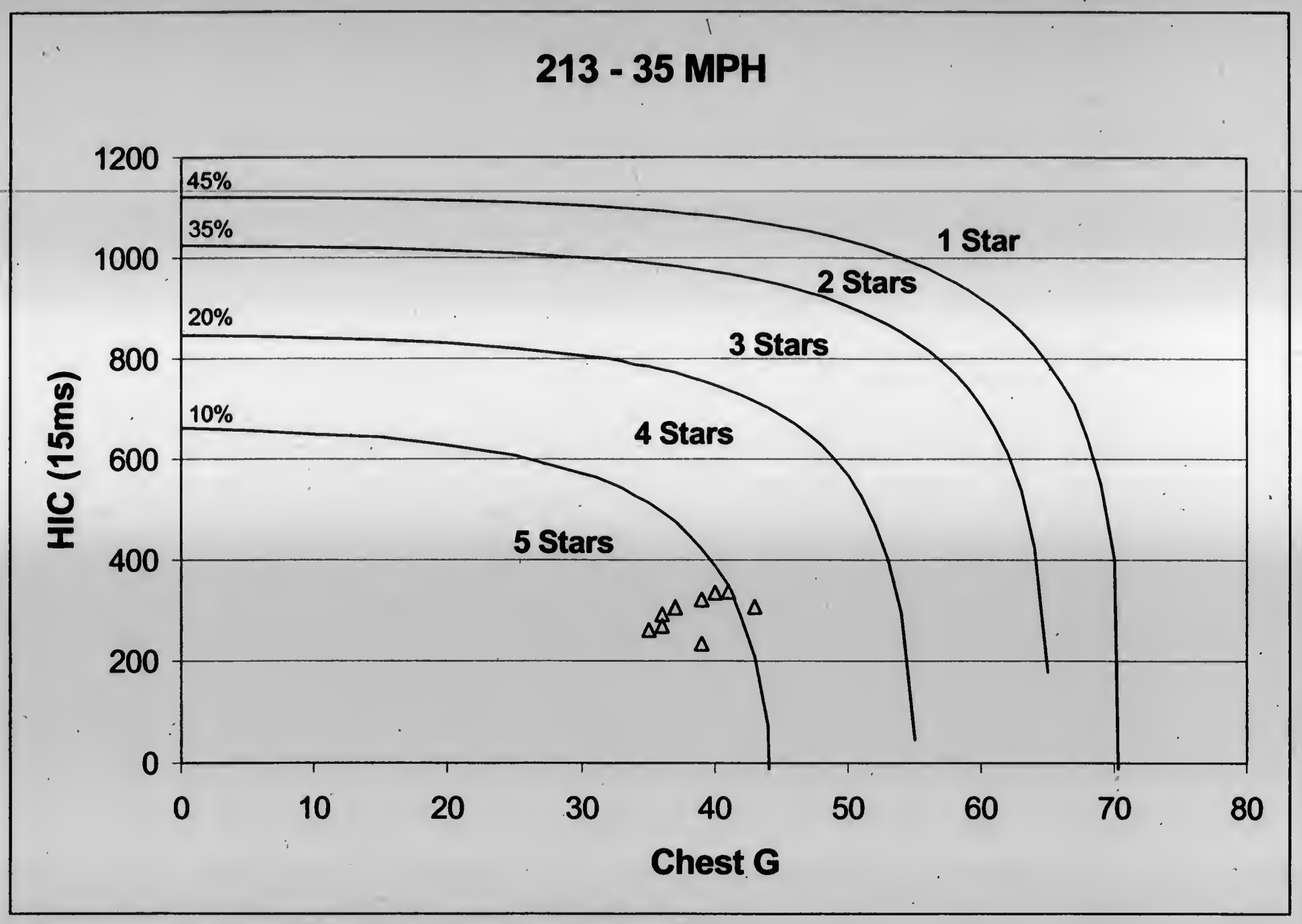


Figure 7: Higher Speed Sled Tests with Scaled NCAP Curves

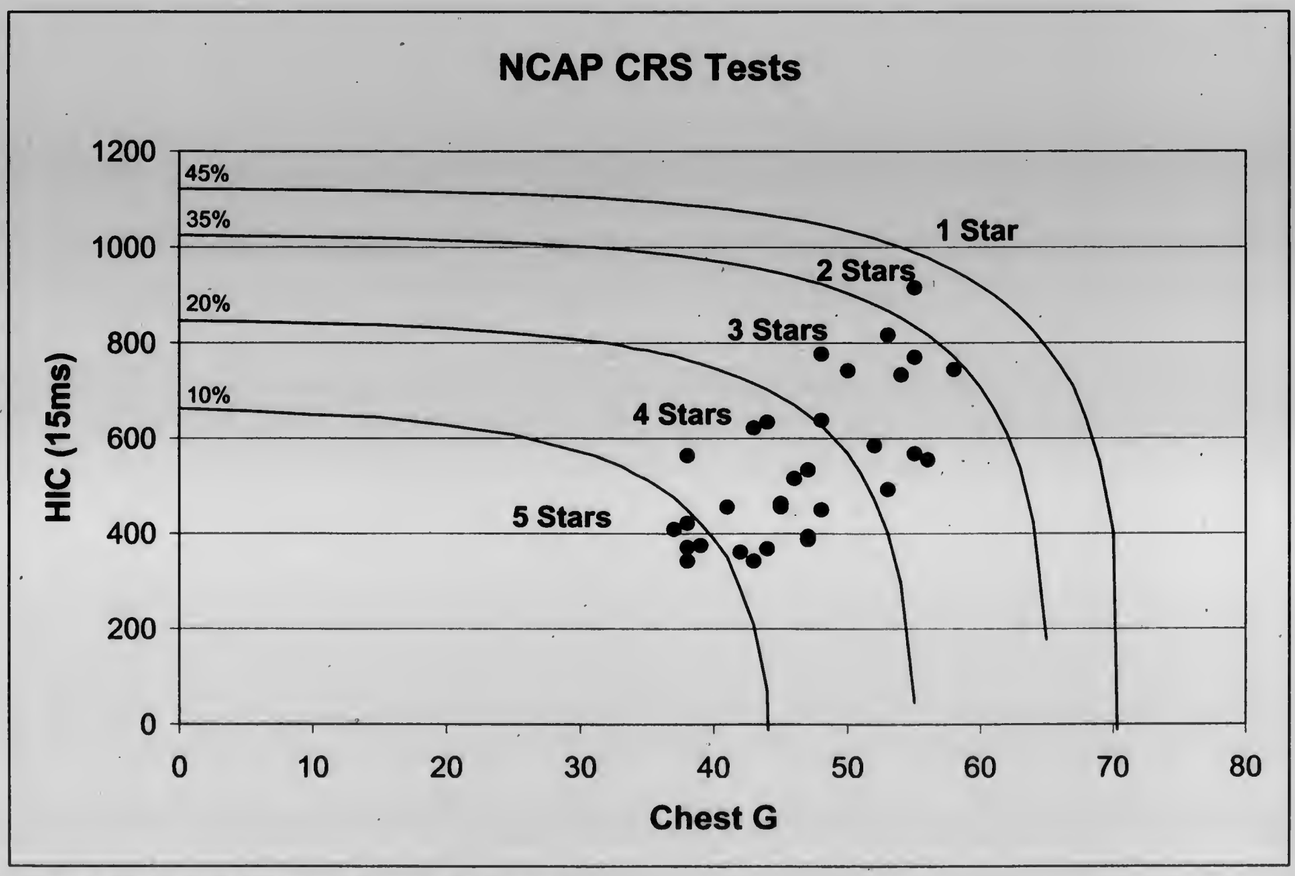


Figure 8: Vehicle NCAP Tests with Scaled NCAP Curves

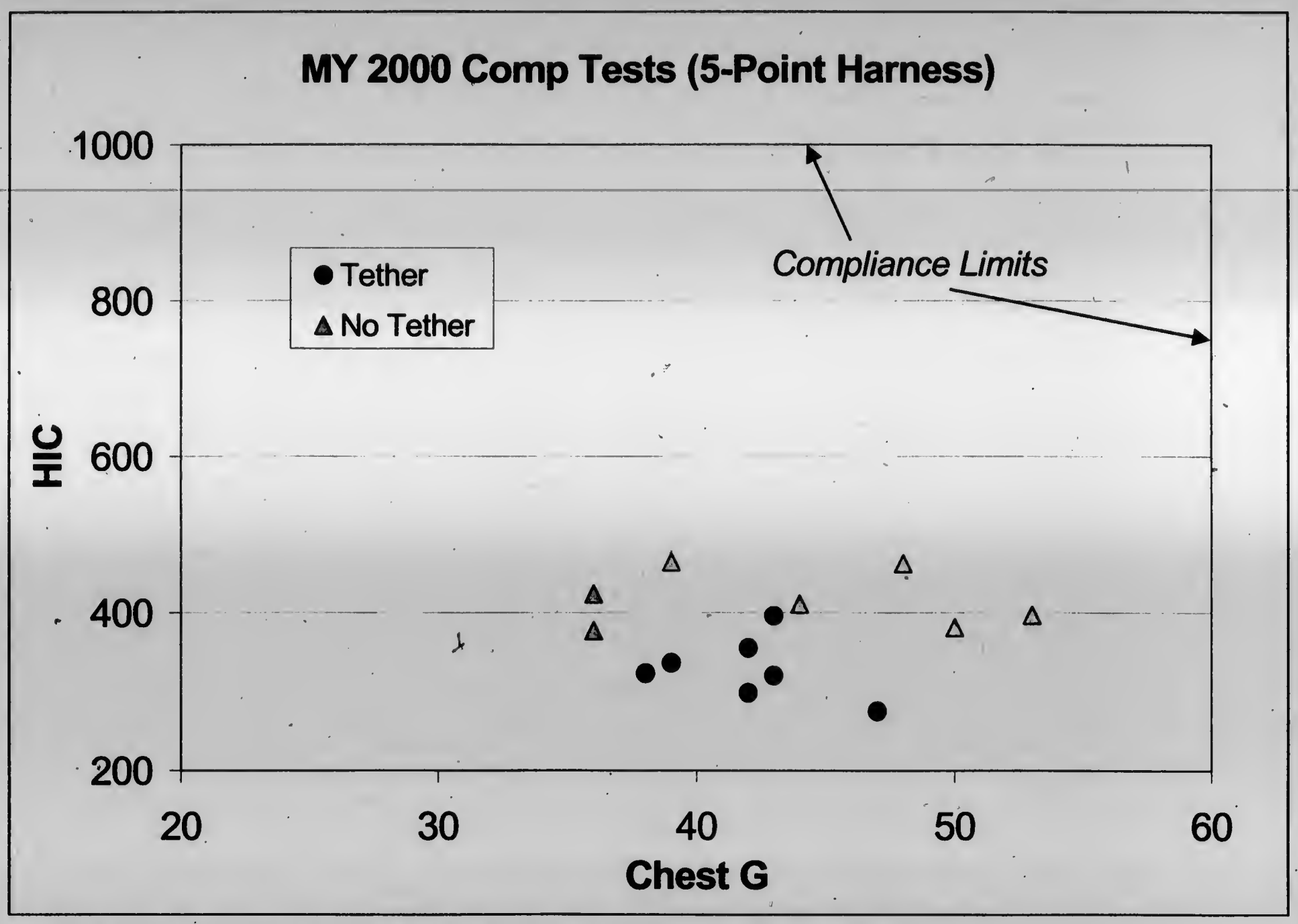


Figure 9: MY 2000 Compliance Tests, 5-Point Harness (3-Year-Old Hybrid II Child Dummy)

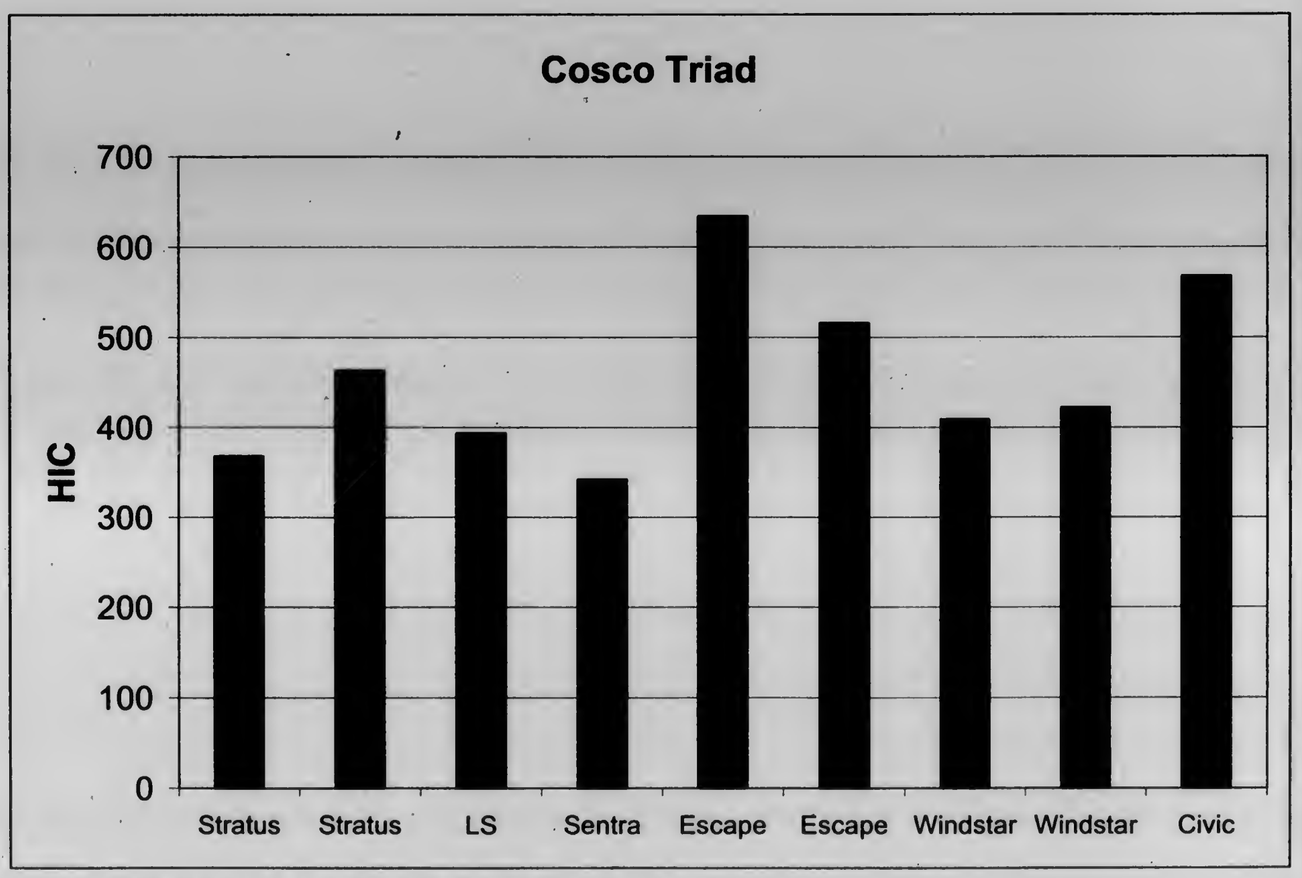


Figure 10: Performance of the Triad Child Restraint in Various Vehicles

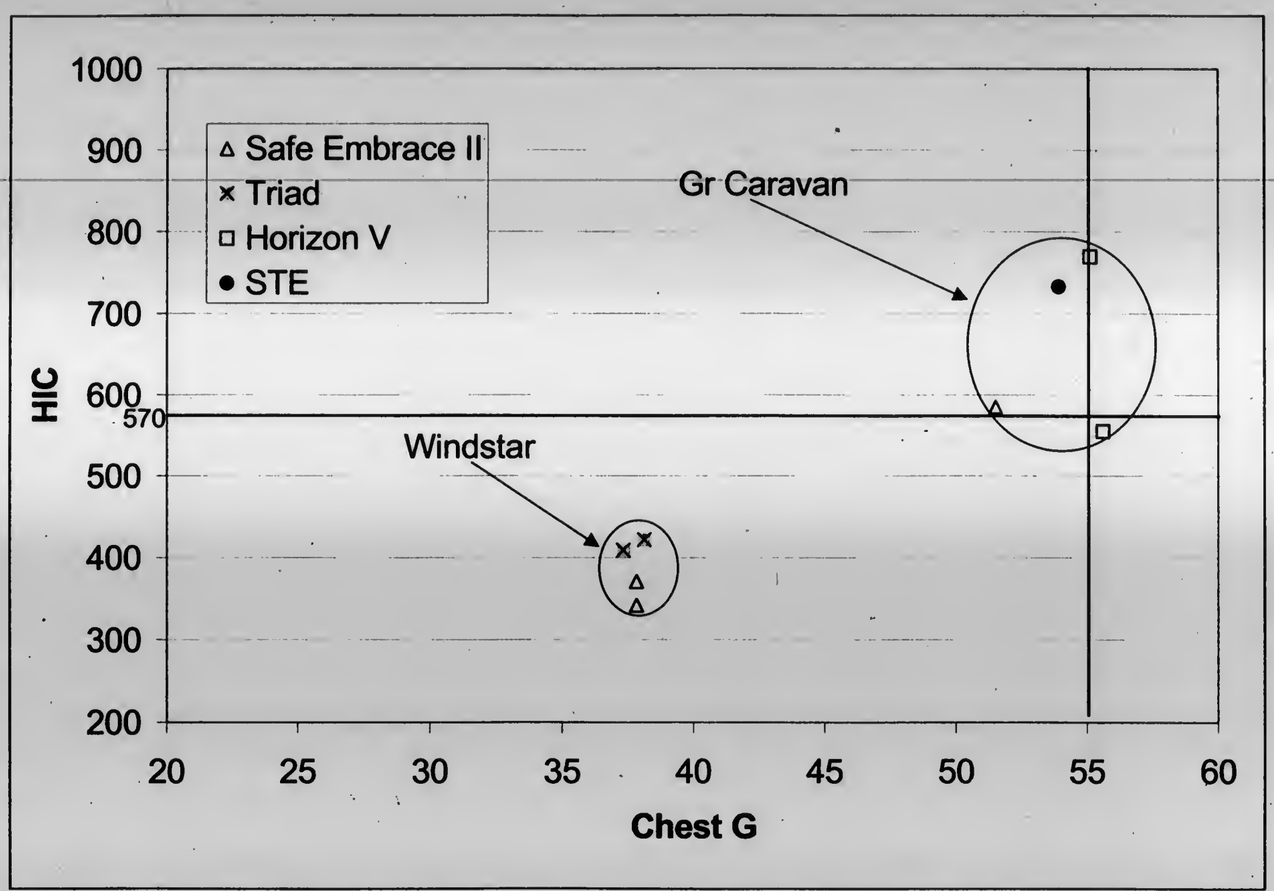


Figure 11: Example Comparison of Performance of Child Restraint Types in Same Vehicle Class (3-Year-Old Hybrid III Child Dummy)

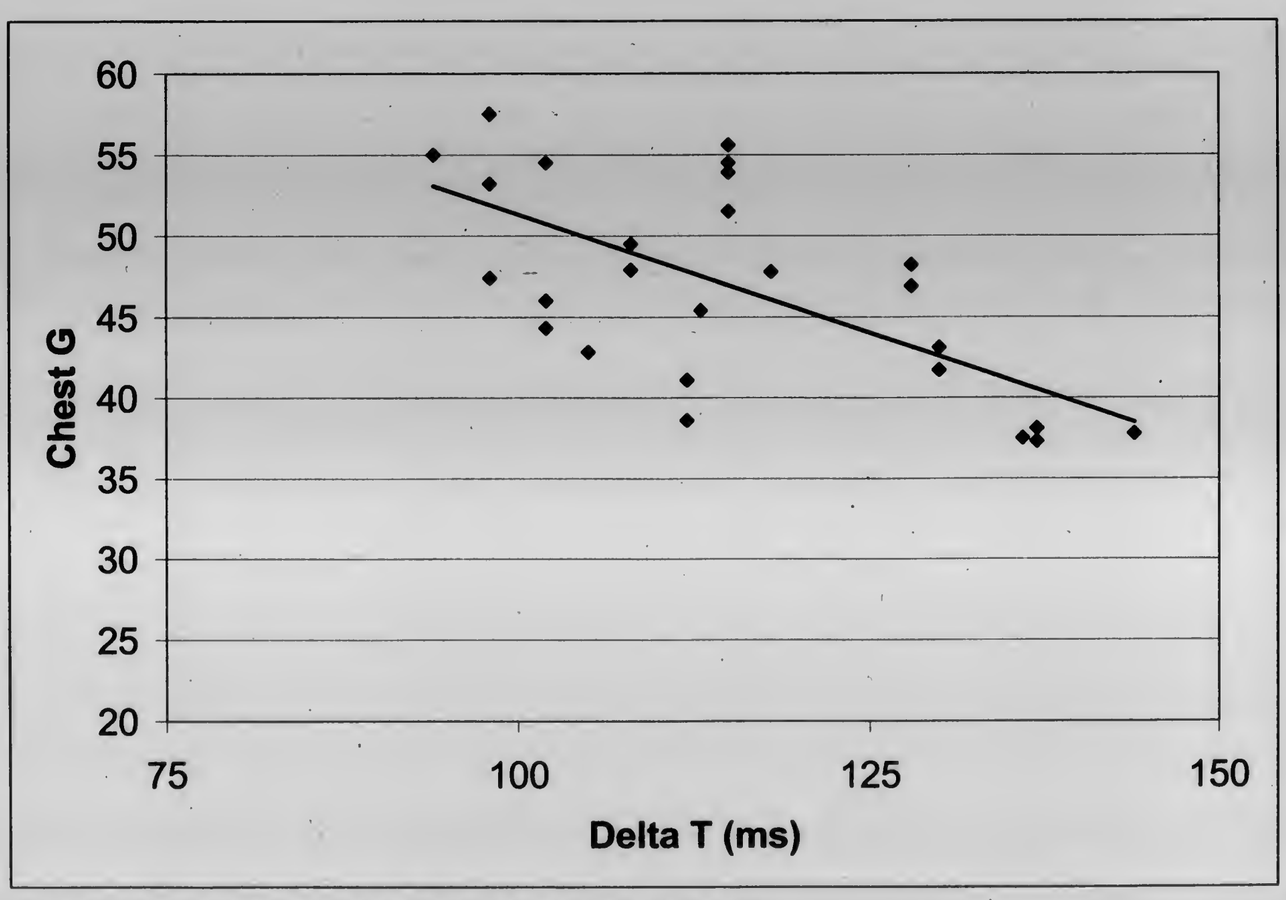


Figure 12: Child Dummy Chest G versus Time Duration of the Crash (Delta T)

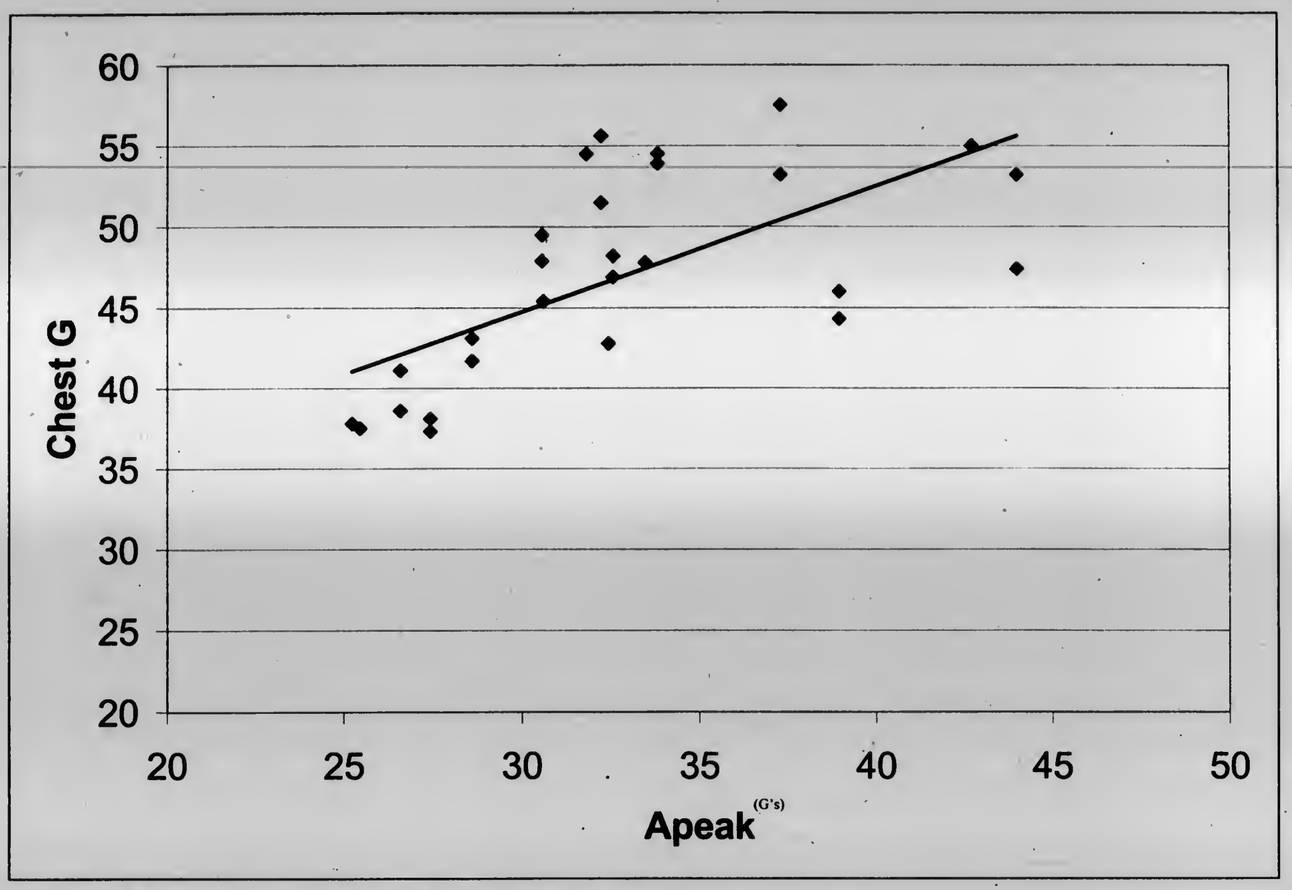


Figure 13: Child Dummy Chest G versus Peak Acceleration of the Vehicle

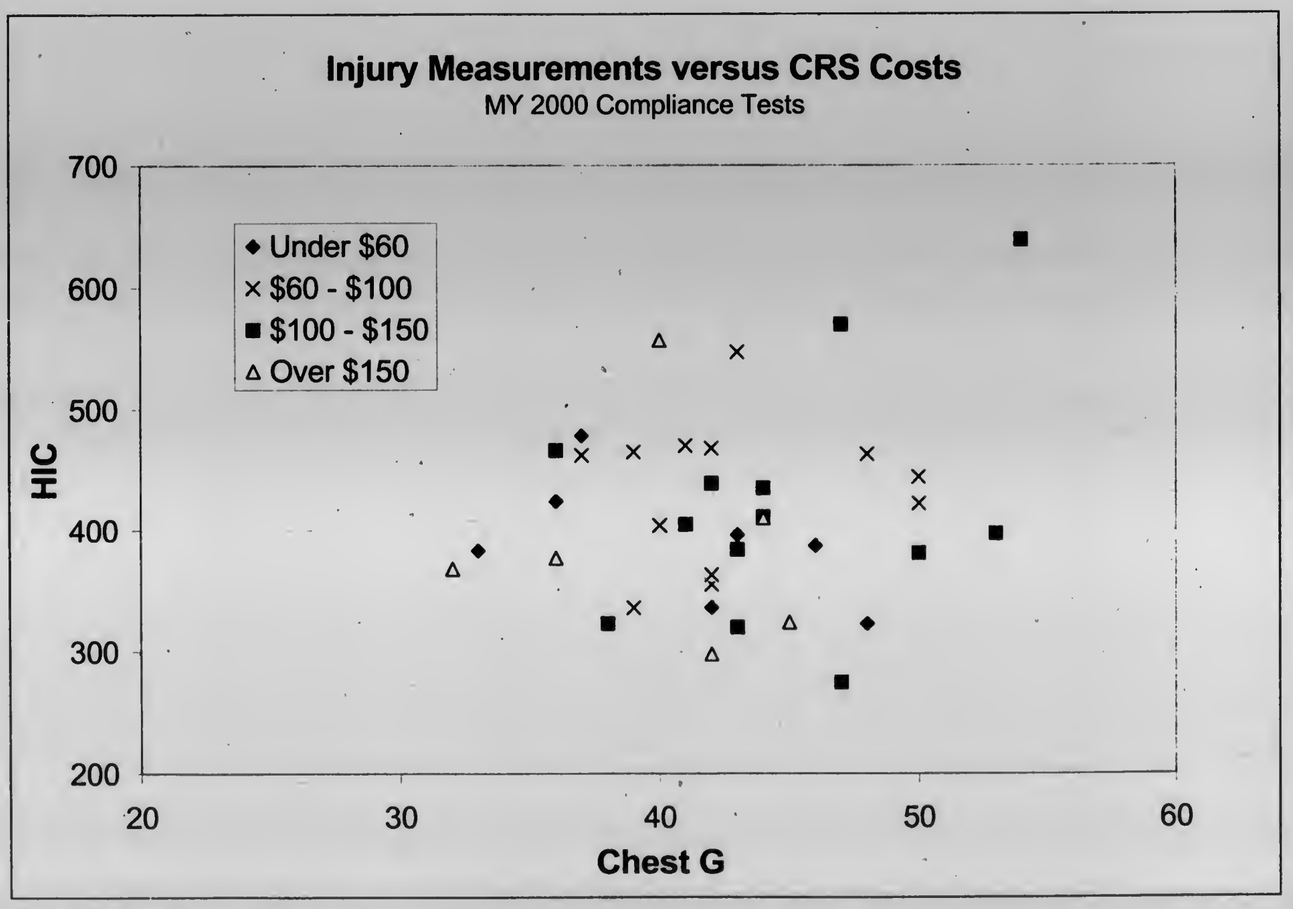


Figure 14: IARV versus CRS Cost

Table 1: Chief Factors for Child Restraint Systems Notice

Chief Factors Influencing the CRS Notice Decision	Alternative #1 - compliance margin	Alternative #2 - sled test at higher speed	Alternative #3 - CRS in-vehicle testing	Alternative #4 - Ease of Use
Gives timely information to the consumer	X	X		X
Gives meaningful information to the consumer		?	X	X
Improves safety for the population at risk		?	X	X
Ensures we evaluate many child seats	X	X		X
Considers the overall system and addresses vehicle compatibility			X	
Decreases CRS misuse				X

Appendix A — Dynamic Testing

Table A1. MY2000 Frontal In-Vehicle Testing of Child Restraints @ 35 MPH

						Head	Chest		Upper Neck Peak Values					Upper Neck Nij			
Makes	Models	CRS Makes	CRS models	LATCH	Rear posit	HIC(15 msec)	CH disp mm	CH 3 ms g	Shear N	Ext Nm	Flex Nm	Comp N	Tension N	Ten-ext	Ten-flex	Com-ext	Com-flex
Chevrolet	Suburban	Britax	Roundabout	Non-LATCH	Right Rear	564	16	38	817.7	6.2	8.2	65.6	1870.2	0.27	0.00	0.94	0.89
Chevrolet	Impala	Britax	Roundabout	Non-LATCH	Right Rear	361	20	42	690.0	10.1	3.8	163.4	1699.1	0.83	0.80	0.42	0.04
Dodge	Durango	Century	STE	Non-LATCH	Left Rear	638	16	48	870.0	16.1	19.8	74.5	1713.9	1.08	1.01	0.07	0.02
Dodge	Gr Caravan	Century	STE	Non-LATCH	Left Rear	771	15	54	52.3	17.7	10.9	619.6	2235.6	0.96	1.08	0.05	0.36
Chevrolet	Impala	Century	STE	Non-LATCH	Left Rear	622	14	43	680.9	12.5	16.9	110.3	1938.5	1.08	0.76	0.20	0.09
Volvo	S60	Century	STE	Non-LATCH	Left Rear	744	12	58	767.6	14.3	18.4	271.5	2073.8	0.55	0.13	1.98	1.11
Honda	Civic	Cosco	Triad	LATCH	Right Rear	568	16	55	588.1	12.9	4.8	452.9	1884.1	0.75	0.95	0.50	0.10
Toyota	Echo	Cosco	Triad	LATCH	Right Rear	302	12	54	714.5	14.1	12.4	218.8	1390.0	0.84	0.73	0.50	0.02
Ford	Escape	Cosco	Triad	Non-LATCH	Left Rear	516	13	46	71.9	6.5	15.2	394.6	1773.2	1.00	0.80	0.20	0.19
Ford	Escape	Cosco	Triad	LATCH	Right Rear	634	N/A	44	770.0	15.7	7.4	383.7	1865.8	1.07	0.89	0.42	0.10
Lincoln	LS	Cosco	Triad	Non-LATCH	Left Rear	1029	14	53	845.0	23.3	13.8	397.3	2227.5	1.50	0.96	0.96	0.09
Lincoln	LS	Cosco	Triad	LATCH	Right Rear	394	13	47	775.4	17.3	16.3	265.2	1803.4	0.99	0.91	0.58	0.01
Nissan	Sentra	Cosco	Triad	LATCH	Right Rear	342	10	43	628.7	11.0	4.5	443.1	1617.7	0.88	0.80	0.36	0.00
Dodge	Stratus	Cosco	Triad	LATCH	Left Rear	463	18	45	56.6	11.7	7.6	202.1	1794.3	0.80	0.93	0.40	0.00
Dodge	Stratus	Cosco	Triad	LATCH	Right Rear	368	17	44	609.4	9.8	6.5	270.4	1778.4	0.85	0.89	0.32	0.00
Ford	Windstar	Cosco	Triad	Non-LATCH	Left Rear	422	12	38	632.5	11.9	8.2	260.9	1834.7	0.75	0.96	0.33	0.02
Ford	Windstar	Cosco	Triad	LATCH	Right Rear	409	13	37	619.4	13.6	7.5	211.3	1592.7	0.78	0.85	0.30	0.01
Honda	Accord	Even Flo	Horizon V	LATCH	Left Rear	456	14	41	723.3	12.1	8.8	160.2	1944.6	0.56	1.03	0.43	0.03
Dodge	Durango	Even Flo	Horizon V	Non-LATCH	Right Rear	534	21	47	1385.3	17.6	7.9	86.9	2139.1	1.03	1.09	0.69	0.01
Toyota*	Echo	Even Flo	Horizon V	LATCH	Right Rear	916	18	55	886.2	12.2	13.4	116.3	2167.5	0.92	1.12	0.32	0.02
Dodge	Gr Caravan	Even Flo	Horizon V	LATCH	Right Rear	585	18	52	604.5	15.3	9.7	414.6	1896.9	0.77	1.00	0.59	0.02
Dodge	Gr Caravan	Even Flo	Horizon V	LATCH	Right Rear	734	14	54	N/A	15.2	12.8	453.2	2052.5	N/A	N/A	N/A	N/A
Nissan	Maxima	Even Flo	Horizon V	Non-LATCH	Left Rear	742	18	49	718.5	17.0	17.5	180.8	2078.6	1.00	1.14	0.65	0.03
Nissan	Maxima	Even Flo	Horizon V	LATCH	Right Rear	777	21	48	967.9	28.8	14.3	388.1	2119.9	1.02	1.16	1.24	0.00
Volvo	S60	Even Flo	Horizon V	Non-LATCH	Right Rear	817	20	53	675.9	13.1	13.9	298.7	2148.7	0.28	0.09	1.05	1.03
Nissan	Sentra	Fisher Price	Safe Embrace II	LATCH	Right Rear	456	22	45	996.3	9.9	5.1	293.5	2182.3	1.10	0.98	0.43	0.02
Honda	Accord	Fisher Price	Safe Embrace II	LATCH	Right Rear	375	19	39	949.2	12.6	7.0	250.5	1943.0	1.10	0.93	0.50	0.02
Hyundai	Elantra	Fisher Price	Safe Embrace II	LATCH	Right Rear	450	20	48	1109.2	9.0	5.8	258.1	2351.6	1.15	1.11	0.32	0.00
Ford	Escape	Fisher Price	Safe Embrace II	Non-LATCH	Left Rear	493	15	53	104.6	10.2	18.3	329.0	2331.7	1.38	1.01	0.09	0.17
Ford	Escape	Fisher Price	Safe Embrace II	LATCH	Right Rear	387	16	47	993.4	11.7	6.8	246.1	2085.0	1.06	1.04	0.38	0.01
Dodge	Gr Caravan	Fisher Price	Safe Embrace II	LATCH	Left Rear	556	17	56	780.2	10.6	7.3	790.2	2271.0	0.75	1.14	0.53	0.01
Ford	Windstar	Fisher Price	Safe Embrace II	Non-LATCH	Left Rear	342	15	38	83.4	7.8	14.1	159.4	1889.0	0.77	0.67	0.01	0.10
Ford	Windstar	Fisher Price	Safe Embrace II	LATCH	Right Rear	371	18	38	705.8	9.7	5.7	N/A	N/A	N/A	N/A	N/A	N/A

* The top tether vehicle anchorage broke in this test.

Appendix A — **Dynamic Testing**

Table A2: MY 2000 Compliance Testing Results: 3-Year-Old Forward-Facing (Upright) Child Seats @ 30 MPH

Test No	Child Restraint Make/Model	Tether Used	HIC	HIC Comp-%	Chest G	Chest G Comp-%	Head Excursion (inches)	Head Excursion Comp-%	Knee Excursion (inches)	Knee Excursion Comp-%
35	Britax Freeway Plus	N	410	59.0%	44	26.7%	30	6.3%	32	11.1%
36	Britax Freeway Plus	Y	324	67.6%	45	25.0%	24	14.3%	28	22.2%
41	Britax Roundabout	N	377	62.3%	36	40.0%	30	6.3%	32	11.1%
42	Britax Roundabout	Y	298	70.2%	42	30.0%	21	25.0%	27	25.0%
55	Century Bravo 5 Pt.	N	381	61.9%	50	16.7%	27	15.6%	30	16.7%
56	Century Bravo 5 Pt.	Y	323	67.7%	38	36.7%	24	14.3%	27	25.0%
61	Century Bravo Overhead Shield	N	493	50.7%	50	16.7%	28	12.5%	30	16.7%
62	Century Bravo Overhead Shield	Y	358	64.2%	38	36.7%	24	14.3%	27	25.0%
67	Century Encore 5 Pt.	N	463	53.7%	48	20.0%	28	12.5%	30	16.7%
68	Century Encore 5 Pt.	Y	336	66.4%	39	35.0%	26	7.1%	28	22.2%
73	Century Encore Overhead Shield	N	547	45.3%	43	28.3%	27	15.6%	33	8.3%
74	Century Encore Overhead Shield	Y	468	53.2%	42	30.0%	26	7.1%	28	22.2%
84	Century Room to Grow	Y	457	54.3%	42	30.0%	27	3.6%	31	13.9%
83	Century Room to Grow	N	580	42.0%	45	25.0%	27	15.6%	31	13.9%
89	Century Smart Move 5 Pt.	N	397	60.3%	53	11.7%	30	6.3%	33	8.3%
90	Century Smart Move 5 Pt.	Y	275	72.5%	47	21.7%	23	17.9%	27	25.0%
93	Cosco Alpha Omega (02331)	N	639	36.1%	54	10.0%	30	6.3%	32	11.1%
94	Cosco Alpha Omega (02331)	Y	439	56.1%	42	30.0%	24	14.3%	27	25.0%
99	Cosco Alpha Omega (02332)	N	570	43.0%	47	21.7%	30	6.3%	34	5.6%
101	Cosco Alpha Omega (02332)	Y	435	56.5%	44	26.7%	25	10.7%	29	19.4%
100	Cosco Alpha Omega (02332)	Y	384	61.6%	43	28.3%	24	14.3%	29	19.4%
107	Cosco Olympian Overhead Shield	N	470	53.0%	41	31.7%	29	9.4%	32	11.1%
108	Cosco Olympian Overhead Shield	Y	422	57.8%	50	16.7%	23	17.9%	29	19.4%
113	Cosco Touriva 5 Pt.	N	424	57.6%	36	40.0%	28	12.5%	32	11.1%
114	Cosco Touriva 5 Pt.	Y	396	60.4%	43	28.3%	23	17.9%	32	11.1%
119	Cosco Touriva Overhead Shield	N	478	52.2%	37	38.3%	28	12.5%	32	11.1%
120	Cosco Touriva Overhead Shield	Y	387	61.3%	46	23.3%	23	17.9%	28	22.2%
126	Evenflo Champion Overhead Shield	N	438	56.2%	56	6.7%	27	15.6%	32	11.1%
127	Evenflo Champion Overhead Shield	Y	341	65.9%	48	20.0%	27	3.6%	30	16.7%
133	Evenflo Conquest I	Y	323	67.7%	48	20.0%	24	14.3%	30	16.7%
138	Evenflo Conquest V	N	383	61.7%	33	45.0%	27	15.6%	32	11.1%
139	Evenflo Conquest V	Y	336	66.4%	42	30.0%	23	17.9%	30	16.7%

Appendix A — **Dynamic Testing**

144	Evenflo Horizon I	N	462	53.8%	37	38.3%	27	15.6%	32	11.1%
145	Evenflo Horizon I	Y	404	59.6%	40	33.3%	24	14.3%	29	19.4%
150	Evenflo Horizon V	N	465	53.5%	39	35.0%	29	9.4%	32	11.1%
151	Evenflo Horizon V	Y	355	64.5%	42	30.0%	24	14.3%	29	19.4%
156	Evenflo Medallion V	N	466	53.4%	36	40.0%	27	15.6%	32	11.1%
157	Evenflo Medallion V	Y	405	59.5%	41	31.7%	26	7.1%	31	13.9%
162	Evenflo Secure Advantage	N	444	55.6%	50	16.7%	28	12.5%	32	11.1%
163	Evenflo Secure Advantage	Y	363	63.7%	42	30.0%	24	14.3%	29	19.4%
168	Evenflo Secure Choice	N	450	55.0%	46	23.3%	25	21.9%	33	8.3%
169	Evenflo Secure Choice	Y	434	56.6%	39	35.0%	26	7.1%	30	16.7%
174	Evenflo Ultara I	N	500	50.0%	46	23.3%	28	12.5%	32	11.1%
175	Evenflo Ultara I	Y	336	66.4%	46	23.3%	24	14.3%	30	16.7%
183	Fisher-Price Safe Embrace	N	411	58.9%	44	26.7%	25	21.9%	31	13.9%
184	Fisher-Price Safe Embrace	Y	320	68.0%	43	28.3%	19	32.1%	26	27.8%
189	Kolcraft Performa	N	447	55.3%	37	38.3%	27	15.6%	33	8.3%
190	Kolcraft Performa	Y	514	48.6%	43	28.3%	24	14.3%	29	19.4%
194	Safeline Sit'n'Stroll	N	557	44.3%	40	33.3%	28	12.5%	33	8.3%
195	Safeline Sit'n'Stroll	Y	368	63.2%	32	46.7%	27	3.6%	32	11.1%
		MEAN	421.1	57.9%	43	28.2%	26	13.2%	30	15.6%
		StDev	77.8	7.8%	5.2	8.7%	2.5	5.6%	2.0	5.6%
		Min	275	36.1%	32	6.7%	19	3.6%	26	5.6%
		Max	639	72.5%	56	46.7%	30	32.1%	34	27.8%
		Range	364	36.4%	24	40.0%	11	28.6%	8	22.2%

Appendix A Dynamic Testing

Table A3: Summary of Recommended Injury Criteria for the Final Rule

Recommended Criteria	6YO Child	3YO Child	1YO Infant
Head Criteria: HIC (15 msec)	700	570	390
Neck Criteria: Nij	N/A	N/A	N/A
In-Position Critical Intercept Values			
Tension (N)			
Compression (N)			
Flexion (Nm)			
Extension (Nm)			
Peak Tension (N)			
Peak Compression (N)			
Neck Criteria: Nij	1	1	1
Out-of-Position			
Critical Intercept Values			
Tension (N)	2800	2120	1460
Compression (N)	2800	2120	1460
Flexion (Nm)	93	68	43
Extension (Nm)	37	27	17
Peak Tension (N)	1490	1130	780
Peak Compression (N)	1820	1380	960
Thoracic Criteria			
1. Chest Acceleration (g)	60	55	50
2. Chest Deflection (mm)	40	34	30
	(1.6 in)	(1.4 in)	(1.2 in)
Lower Ext. Criteria:			
Femur Load (kN)	N/A	N/A	N/A

Appendix A Dynamic Testing

Table A4: CRS Performance Test Matrix

Test Matrix for Evaluating CRS Performance in Frontal Vehicle Testing

		Type of Child Seat	
Vehicle Size	**Model**	**Left Rear**	**Right Rear**
Light	Sentra	No CRS	Triad-LAT
	Sentra	No CRS	Emb II-LAT
	Civic 4 dr	No CRS	Horizon V-NOLAT
Compact	Echo	No CRS	Triad-LAT*
	Echo	No CRS	Hoizon V-LAT
	Elantra	No CRS	Emb II-LAT
Medium	Stratus 4dr	Triad-LAT	Triad-LAT
	Volvo S60	STE	Horizon V
	Maxima	Horizon V-NOLAT	Horizon V-LAT
	Accord	HoizonV-LAT	Emb II-LAT
	Impala	STE	Roundabout
Heavy	Lincoln LS	Triad-NOLAT	Triad-LAT
SUV	Escape	Emb II-NOLAT	Emb II-LAT
	Escape	Triad-NOLAT	Triad-LAT
	Durango	STE	Horizon V
	Suburban	Emb II-NOLAT	Roundabout-NOLAT
Minivan	Grand Caravan	STE	Horizon V-LAT
	Grand Caravan	Emb II-LAT	Horizon V-LAT
	Windstar	Emb II-NOLAT	Emb II-LAT
	Windstar	Triad-NOLAT	Triad-LAT

Note:

	Frontal NCAP test
	Frontal test with with small stature dummies
Triad-LAT	Cosco Triad with LATCH configuration
Emb II-LAT	Safe Embrace II with LATCH configuration
Triad-NOLAT	Cosco Triad with no LATCH setup
Emb II-NOLAT	Safe Embrace II with no LATCH setup
Horizon V-LAT	EvenFlo Horizon V with LATCH
Roundabout-NOLAT	Britax Roundabout with no LATCH
Horizon V	Even Flo Horizon V with no LATCH configuration
STE	Century 1000 STE with no LATCH
No CRS	No child seat

* The top tether vehicle anchorage broke in this test.

Appendix A Dynamic Testing

Table A5: CRS Sled Tests, 29 MPH

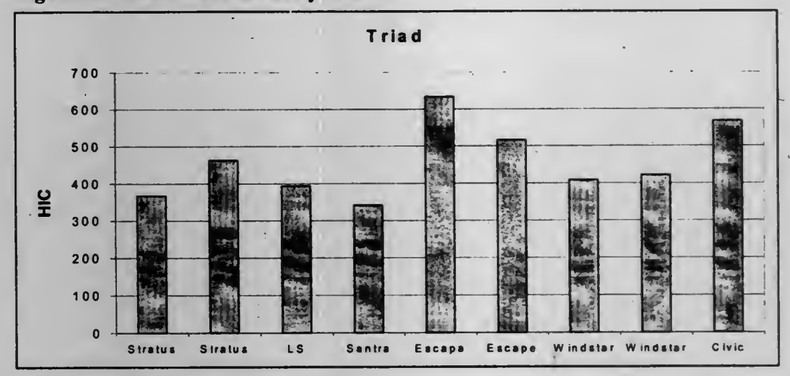
Child Restraint	HIC (15ms)	Chest G (3ms)
Britax Roundabout	160	33
Century Room-to-Grow OS	218	43
Century Smart Move	147	31
Century STE 1000	245	30
Cosco Olympian OS	170	35
Cosco Touriva	167	29
Evenflo Horizon V	168	31
Evenflo Medallion	173	36
Cosco Triad (LATCH)	165	33

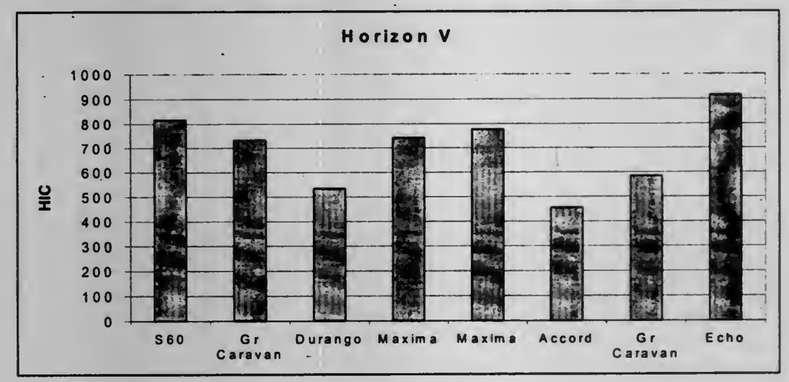
Table A6: CRS Sled Tests, 35 MPH

Child Restraint	HIC (15ms)	Chest G (3ms)
Britax Roundabout	307	43
Century Room-to-Grow OS	337	41
Century Smart Move	234	39
Century STE 1000	305	37
Cosco Olympian OS	321	39
Cosco Touriva	292	36
Evenflo Horizon V	261	35
Evenflo Medallion	335	40
Cosco Triad (LATCH)	269	36

Appendix A Dynamic Testing

Figure A1: Child Seat Results by Vehicle







Appendix B NHTSA Ease of Use Rating Form

NHTSA Child Restraint Usability Rating Form – 2001

Date _____ Evaluated by _____ Seat # (on tag)_____

Manufacturer_____ DOM_____

Make & Model_____ Model # (on CRS)_____

If optional base, model # on base_____ DOM on base_____

Style: ❑ Infant (RF) ❑ Convertible (RF/FF) ❑ Combination (FF harness/booster) ❑ Booster ❑ Other

Harness: ❑ 5-point ❑ "V" or 3-point ❑ T-shield ❑ OH shield ❑ Shield booster ❑ No shield booster

Measurements (imperial units for North American consumer guide) – *take out slack in seat cover*

Total number of crotch strap positions ❑ 1 ❑ 2 ❑ n/a (booster only)

Distance crotch strap opening on base to seat bight Position 1_____ Position 2_____ ❑ n/a

Lower harness slot height (bottom center slot to seat bight)_____ Upper harness slot height _____ ❑ n/a

Seat height (from seat bight) ❑ n/a (no back-booster)

Size range given in owner's manual: _____ **Date on manual:**_____

	WEIGHT (kg and lb)		HEIGHT (cm and inches)	
	Minimum	Maximum	Minimum	Maximum
RF				
FF				
Booster				

❑ Yes ❑ No, note any differences_____

Infant restraint has optional base ❑ Yes ❑ No ❑ n/a (e.g. convertible)

Type: ❑ Booster Only
❑ Combination (harness/booster)

Style: ❑ No-back with non-removable shield
❑ No-back with removable shield
❑ No-back NO shield
❑ High back with soft back
❑ High back with hard back

Booster recommended for use with: Lap/torso ❑ Yes ❑ No ❑ not shown on seat

Lap belt ❑ Yes ❑ No ❑ not shown on seat

If shield booster, recommended t/belt position: ❑ front of child ❑ behind child ❑ not shown on seat ❑ n/a

Appendix B NHTSA Ease of Use Rating Form

NHTSA CHILD RESTRAINT USABILITY RATING FORM – 2001

Assembly *(When first out of box)*

	A	B	C	Notes
All functional parts including seat pad or cover attached and ready to use	Yes*		No	*parent may still need to adjust system to fit child
Tether attached to child restraint	Yes		No	n/a
Owner's manual easy to find	Attached to child restraint in a clearly location visible	Attached to child restraint but not clearly visible	In box, not attached	
Obvious storage (pocket) for manual	Easily accessible when installed in all modes and manual can be removed and replaced easily	Easily accessible When installed in all modes but manual cannot be removed and replaced easily (any use of plastic clips as the sole means of storing the instructions will not be higher than "acceptable")	Not accessible when installed in all modes	

Evaluation of Labels/Instructions

	A	B	C	Notes
Clear indication of child's size range	Separate clear text with illustrations of child in upper range	Separate clear text Independent paragraph	Size range buried in other text	
All mode/s of use clearly indicated e.g., rear-facing only or forward-and rear-facing if convertible	CRS illustration in complete vehicle seat (not FSP) Mode/s clear, no need to read text	CRS illustration in outline vehicle seat (could be front seat) Need to read text	No illustration, text only May be illustrated, but not all modes shown	*Infant restraint = RF* *Convertible = RH and FF (+tether could be separate illustration)* *Combination = FF (+harness/tether and booster)*
Air bag warning in written instructions	Separate, highlighted & illustrated	Separate &highlighted	Buried in other text or no warning	
Show harness slots okay to use for occupant size	Clear illustration or markings –no need to read text	Markings of top slot – need to read text	Other, includes text only or in manual only	n/a, all harness slots can be used
Instructions for routing for both lap belt and lap/shoulder belt in all modes	All modes illustrated clearly with CR in seat S/belt (tether) in illustration with s/b ***No need to read***	All modes illustrated with CR in seat (tether may have own illustration of s/belted CRS in seat) ***Need*** to read text	Not all illustrated (e.g. tether not shown)	*All modes = RF/FF & lap, lap/torso and for **infant restraint** if torso belt shown behind CRS, alternative if torso belt not long enough* *and for **FF harness systems** + tether* and for **booster** – whether or not okay for both lap and lap/torso seat belt

Appendix B NHTSA Ease of Use Rating Form

NHTSA CHILD RESTRAINT USABILITY RATING FORM – 2001

Evaluation of Labels/Instructions *(Continued)*

		A	B	C	Notes
Visibility of seat belt routing (for lap belt and lap/torso) when CRS in position in vehicle	Without base	Clear routing illustration or clear contrast belt path marking ***both*** sides No need to read text	Markings or some form of routing illustration ***both*** sides Need to read text	Other incl illustration only ***one*** side or illustrations do not match CRS or belt direction or hidden by seat cover	
i.e. is seat belt routing obvious	Installing add-on base (alone) or n/a	Clear routing illustration or clear contrast belt path marking ***both*** sides No need to read text	Markings or some form of routing illustration ***both*** sides Need to read text	Other incl illustration only ***one*** side or illustrations do not match CRS or belt direction or hidden by seat cover	
Visibility of tether use		Yes	[illegible]	No	
Information in written instructions and on labels match		Yes	[illegible]	No	
Durability of labels		All labels molded or embossed	Sticky label	Sticky label if one or more are already peeling when restraint removed from box	

Securing the Child

	A	B	C	Notes
Buckle can be secured in reverse	No, or yes but usual release works with same degree of effort	Yes, but usual release requires more effort	Yes, but can't use release mechanism	
Harness adjustment easy to tighten or loosen when child restraint installed	One had to tighten Max 2 to loosen	Two hands to tighten, but easy No re-threading	Other	*Do not count one hand to support CRS*
Number of harness slots/ usable slots	3	2*	Top only	*2nd slot okay to 30 lb then top only
Ease of attaching/removing base (infant restraint systems only)	One had to attach Max two to release –handle easy to access	One hand to attach Max two to release –handle not easy access	Other includes need to tilt or tip to release	n/a, not an infant restraint n/a, no base offered with this infant restraint
Ease of conversion rear-facing to forward-facing or forward-facing to booster and back again	One had to change Easy to access	1-2 hands to change – not easy access or binds	Other	n/a, single mode
Visibility of harness slots	Clear view of both slots (slots aligned)	Clear view cloth slots, not aligned with plastic slots	Something in way when sold, e.g. pad, head hugger	n/a, no harness slots (booster only)

Appendix B NHTSA Ease of Use Rating Form

NHTSA CHILD RESTRAINT USABILITY RATING FORM – 2001

Securing the Child *(Continued)*

	A	B	C	Notes
Ease of changing harness slot position	No need to rethread Possible for one person to do	Possible for one person to do, easy to attach/remove Large slots easy to thread	Other, slot size too small for easy threading Loose mandatory pieces Could misroute through buckle	
Ease of reassembly if pad/cover removed for cleaning	No loose parts Easy to attach/remove – clear slots No realignment necessary	No loose parts Slots maybe misaligned	Loose parts, need hand tool Slot size too small for easy threading Could misroute through buckle	
Ease of adjusting/removing shield	Clear illustration simple action shield marked	Need to read text, simple action, shield not marked	Other tool/s required	n/a, no shield n/a, shield not adjustable

Installing in Vehicle

		A	B	C	Notes
Separation of vehicle belt path	Without base	No contact possible	Cover to avoid contact	Possible contact including crotch strap	
	Installing add-on base (alone) or n/a	No contact possible	Cover	Possible contact	
Ease of vehicle belt routing (hand clearance)	**Without base**	Male hand can route s/b through including flap in seat, nothing in way	Male hand fit but need to move CRS (no x-tilt), or move padding	Hand does not fit	
	Installing add-on base (alone) or n/a	Male hand can route s/b through including flap in seat	Male hand fit but need to move CRS (no x-tilt)	Hand does not fit	
Ease of seat belt routing (boosters)		Single action (could be done by child in seat)	Includes2 hands to operate belt positioning hardware	Detachable or multiple steps	
Ease of use of any belt-positioning hardware on CRS including lock-off		One hand to use	Two hands to use	Detachable or multiple steps	n/a, no belt positioning hardware
Tether easy to tighten (& release)		One hand to tighten	Two hands but easy	Other	
Does belt-positioning device allow excessive slack to occur including lock off		Guides only	[illegible]	Slack could be introduced	n/a, no belt positioning hardware
Ease of tightening belt around CRS		???	???	???	

Appendix C NHTSA Ease of Use Rating Sample

Evaluation Category	Feature	Possible Points for Feature	Example Rating	Example Rating: Points for Each Feature	Feature Weight	Example Rating: Weighted Points for Each Feature	Category Point Range for C Rating	Category Point Range for B Rating	Category Point Range for A Rating	Example Rating: Result for this Category
Assembly										
	All functional parts including seat pad or cover attached and ready to use	1, 3	C	1	2	2				
	Tether attached to child restraint	1, 3	C	1	2	2				
	Owner's manual easy to find	1, 2, 3	A	3	1	3				
	Obvious storage (pocket) for manual	1, 2, 3	C	1	2	2				
	Total					9	7 to 11	12 to 16	17 to 21	C
Labels/ Instructions										
	Clear indication of child's size range	1, 2, 3	A	3	2	6				
	All mode/s of use clearly indicated e.g., rear-facing only or forward- and rear-facing if convertible	1, 2, 3	A	3	2	6				
	Air bag warning in written instructions	1, 2, 3	A	3	2	6				
	Show harness slots okay to use for occupant size	1, 2, 3	C	1	3	3				
	Instructions for routing for both lap belt and lap/shoulder belt in all modes	1, 2, 3	A	3	2	6				
	Visibility of seat belt routing (for lap belt and lap/torso) when CRS in position in vehicle i.e., is seat belt routing obvious	1, 2, 3	C	1	3	3				
	Visibility of tether use	1, 3	A	3	2	6				
	Information in written instructions and on labels match	1, 3	A	3	2	6				
	Durability of labels	1, 2, 3	B	2	2	4				
	Total					46	20 to 33	34 to 47	48 to 60	B
Securing the Child										
	Buckle can be secured in reverse	1, 2, 3	C	1	3	3				
	Harness adjustment easy to tighten or loosen when child restraint installed	1, 2, 3	B	2	3	6				
	Number of harness slots/usable slots	1, 2, 3	B	2	1	2				
	Ease of attaching/removing base (infant restraint systems only)	1, 2, 3	C	1	3	3				
	Ease of conversion rear-facing to forward-facing or forward-facing to booster and back again	1, 2, 3	A	3	3	9				
	Visibility of harness slots	1, 2, 3	A	3	2	6				
	Ease of changing harness slot positions	1, 2, 3	A	3	2	6				
	Ease of reassembly if pad/cover removed for cleaning	1, 2, 3	C	1	3	3				
	Ease of adjusting/removing shield	1, 2, 3	A	3	1	3				
	Total					41	21 to 35	36 to 49	50 to 63	B
Installing in Vehicle										
	Separation of vehicle belt path	1, 2, 3	B	2	3	6				
	Ease of vehicle belt routing (hand clearance)	1, 2, 3	B	2	2	4				
	Ease of seat belt routing (boosters)	1, 2, 3	B	2	2	4				
	Ease of use of any belt-positioning hardware on CRS, including lock-off	1, 2, 3	A	3	1	3				
	Tether easy to tighten (& release)	1, 2, 3	C	1	3	3				
	Does belt-positioning device allow slack to occur	1, 3	C	1	3	3				
	Ease of tightening belt around CRS	1, 2, 3	A	3	2	6				
	Total					29	16 to 26	27 to 37	38 to 48	B
Overall Rating										B
Qualifiers:										
To be rated B, no more than one out of four categories can be rated C										
To be rated A, no more than one out of four categories can be rated less than A										

Appendix D ICBC Ease of Use Rating System

Date _____ Evaluated by _____ Seat # (on tag) _____

Manufacturer _____ DOM _____

Make & model _____ Model # (on CRS) _____

If optional base, model # on base _____ DOM on base _____

Style: ❑ Infant (RF) ❑ Convertible (RF/FF) ❑ Combination (FF harness/booster) ❑ Booster ❑ Other

Harness: ❑ 5-point ❑ "V" or 3-point ❑ T-shield ❑ OH shield ❑ Shield booster ❑ No-shield booster

Ready to use (i.e. when first out of box)

	Good	Acceptable	Poor	Notes
All functional parts incl. seat pad or cover attached and ready to use	yes*	[redacted]	no	*parent may still need to adjust system to fit child
Any other add-ons in box (not installed at point of sale)	no add-ons	independent canopy (not on carrying handle) optional booster shield, cup holder, head pad (can see slots)	belt positioning guide, canopy on handle, head-hugger/pad could/does cover harness slots	❑ n/a seat not assembled
Total time taken to assemble CRS				❑ n/a CRS already assembled
Tether attached to CRS	yes	[redacted]	no	❑ n/a
Owner's manual easy to find	yes attached to CRS	in box	no	
Obvious storage (pocket) for manual	easy access when CRS installed in all modes	easy access not accessible when CRS installed in all modes	none found or not easy access/storage (incl. plastic tabs)	

Measurements (imperial units for N. American consumer guide) – *take out slack in seat cover*

Total no. of crotch strap positions ❑ 1 ❑ 2 ❑ n/a (booster only)

Distance crotch strap opening on base to seat bight Position 1 _____ Position 2 _____ ❑ n/a

Lower harness slot hgt (bottom centre slot to seat bight) _____ Upper harness slot hgt _____ _____ ❑ n/a

Seat height (from seat bight) _____ ❑ n/a (no-back booster)

Size range given in owner's manual: **Date on manual:**

	Weight (kg and lb)		Height (cm and inches)	
	Minimum	Maximum	Minimum	Maximum
RF				
FF				
Booster				

Is size range in owner's manual same as labels on CRS itself ❑ Yes ❑ No, note any differences

Appendix D ICBC Ease of Use Rating System

Instructions for use (owner's manual)

	Good	Acceptable	Poor	Notes
Clear indication of child's size range in owner's manual	separate clear text with illus. in manual of child in upper range	separate clear text independent paragraph	size range buried in other text or different to CRS labels	
All mode/s of use clearly indicated e.g. RF only or if convertible RF & FF	CRS illus. in complete vehicle seat (not FSP) mode/s clear, no need to read text	CRS illus. in outline vehicle seat (could be front seat) need to read text	no illus, text only may be illus, but not all modes shown	*infant restraint = RF* *Convertible =RF and FF (+tether could be separate illustration)* *Combination=FF (+harness/tether) and booster)*
Airbag warning	separate, highlighted & illustrated	separate & highlighted	buried in other text or no warning	
Instructions for routing for both lap belt and lap/torso – all modes	all modes illustrated clearly with CR in seat s/belt (tether) in illus with s/b no need to read	all modes illus. with CR in seat (tether may have own illus. of s/belted CRS in seat) need to read text	not all illustrated (eg tether not shown)	*All modes = RF/FF & lap, lap/torso* *and for infant restraint if torso belt shown behind CRS, alternative if torso belt not long enough* *and for FF harness systems + tether* *and for booster – whether or not OK for both lap and lap/torso seat belt*

Ease of Conversion

	Good	Acceptable	Poor	Notes
Ease of attaching/removing base (infant restraint systems only)	one hand to attach max. two to release –handle easy to access	one hand to attach max two to release handle not easy access	other includes need to tilt or tip to release	❑ n/a not an infant restraint ❑ n/a no base offered with this infant restraint
Ease of conversion RF to FF or FF to booster	one hand to change easy to access	1-2 hands to change - not easy access or binds	other	❑ n/a, single mode
Ease of converting back FF to RF or booster to FF	one hand to change easy to access	1-2 hands to change - not easy access or binds	other	❑ n/a, single mode
Visibility of harness slots	clear view of both slots (slots aligned)	clear view cloth slots, not aligned with plastic slots	something in way when sold, e.g. pad, head hugger	❑ n/a, no harness slots (booster only)
Ease of changing harness slot position	easy to attach/remove clear slots, easy to thread easy to attach to hardware	possible for one person to do slots may be misaligned/pad in way/in slots hardware slot shared	other, slot size too small for easy threading loose mandatory pieces could misroute through buckle	❑ n/a, no harness slots (booster only) ❑ n/a, only one set of slots
Ease of re-assembly if pad removed for cleaning	no loose parts easy to attach/remove - clear slots no realignment necessary	no loose parts slots may be misaligned	loose parts, need hand tool slot size too small for easy threading could misroute through buckle	
Ease of adjusting/removing shield	clear illus. simple action shield marked	need to read text, simple action, shield not marked	other, tool/s required	❑ n/a, no shield ❑ n/a, shield not adjustable

Appendix D ICBC Ease of Use Rating System

COMPLETE IF INFANT RESTRAINT or CONVERTIBLE RF MODE Seat # (on tag) _____

Make & model _____

Infant restraint has optional base ❑ yes ❑ no ❑ n/a (eg convertible)

Evaluation of labelling on CRS without base (labels may or may not be visible when CRS in vehicle)

	Good	Acceptable	Poor	Notes
Clear indication of child's size range	separate clear text with illus. of child in upper range/s	separate clear text independent paragraph	size range buried in other text	

Securing the child

	Good	Acceptable	Poor	Notes
Number of steps to secure child	No. of steps =			*Assume harness open/loose, child in CRS, harness tightens OK 1st attempt*
Can buckle be secured in reverse	no	yes, but usual release works	yes & difficult to release/access	
Harness adjustment easy to tighten and loosen	one hand to tighten max 2 to loosen	two hands to tighten, but easy no re-threading	other	*Do not count one hand to support CRS*
No. of harness slots in pad	3	2	1	*❑same # slots & reasonably aligned*
No. of harness slots in plastic	3	2	1	

Visibility of labels when installing CRS in vehicle

	Without base			*Installing add-on base (alone) or ❑n/a*		
	Good	Acceptable	Poor	*Good*	*Acceptable*	*Poor*
Mode of use clearly indicated i.e. shows RF only or if convertible RF (v FF) and not in FSP or by airbag	CRS illus. in vehicle seat (not FSP) BOTH sides no need to read text	illus. or arrow BOTH sides need to read text (eg to know not with airbag/FSP)	no illus, text only or illus ONE side only	*CRS illus. in vehicle seat (not FSP)* *BOTH sides* *no need to read text*	*illus. or arrow* *BOTH sides* *need to read text (eg to know not with airbag/FSP)*	*no illus, text only or illus* *ONE side only*
Visibility of seat belt routing (for lap belt and lap/torso) when CRS in position in vehicle i.e. is seat belt routing obvious	clear routing illus. or clear contrast belt path markings BOTH sides no need to read text	markings or some form of routing illus. BOTH sides need to read text	other incl illus. only ONE side or illus. do not match CRS or belt direction or hidden by seat cover	*clear routing illus. or clear contrast belt path markings* *BOTH sides* *no need to read text*	*markings or some form of routing illus.* *BOTH sides* *need to read text*	*other incl illus. only ONE side or illus. do not match CRS or belt direction or hidden by seat cover*
Is airbag warning visible no matter where CRS being installed	clear illus. with interaction & warning in contrast BOTH sides or on seat pad		other, includes text only, poor illustration, ONE side only	*clear illus. with interaction and warning in contrast* *BOTH sides* *or on top*		*other, includes text only, poor illustration, ONE side only*

Installation in vehicle

	Without base			*Installing add-on base (alone) or ❑n/a*		
	Good	Acceptable	Poor	*Good*	*Acceptable*	*Poor*
Separation of vehicle belt path from harness	no contact possible	cover to avoid contact	possible contact incl. crotch strap	*no contact possible*	*cover*	*possible contact*
Ease of vehicle belt routing Check hand clearance	male hand can route s/b through incl. flap in seat, nothing in way	male hand fit but need to move CRS (no x-tilt), or move padding	hand does not fit	*male hand can route s/b through incl. flap in seat*	*male hand fit but need to move CRS (no x-tilt)*	*hand does not fit*

Appendix D ICBC Ease of Use Rating System

COMPLETE IF CONVERTIBLE FF MODE or COMBINATION IN CR MODE Seat # (on tag) _____

Make & model _____

Evaluation of labelling on CRS outside vehicle (labels may or may not be visible when CRS in vehicle)

	Good	Acceptable	Poor	Notes
Clear indication of child's size range	separate, clear text + illus. child in upper range/s	separate clear text independent paragraph	size range buried in other text	*If CRS has more than one mode, evaluate mode which applies to this data sheet*
Mode of use clearly indicated i.e. shows FF plus tether	CRS illus. in vehicle rear seat no need to read text	illus/arrows but need to read text	other includes no illus. or text only and no tether info'	*If CRS has more than one mode, evaluate mode which applies to this data sheet*
Shows harness slots OK to use	clear illus. or markings – no need to read text	markings of top slot -need to read text	other, includes text only or in manual only	❑ *n/a, all harness slots can be used*

Visibility of labels when CRS IN POSITION IN VEHICLE

	Good	*Acceptable*	*Poor*	*Notes*
Visibility of seat belt routing (for lap belt and lap/torso) plus tether need when CRS is in position in vehicle i.e. is s/b routing + tether obvious	clear routing illus. or contrast belt path markings BOTH sides - no need to read text	markings or some form of routing illus. BOTH sides - need to read text	other includes illus. only ONE side or illus. do not match CRS or belt direction or hidden by seat cover	
Is airbag warning visible no matter where CRS being installed	clear illus. with interaction and contrast warning - BOTH sides or ON seat cover	[redacted]	other, includes text only, poor illustration, ONE side only	

Installation in vehicle

	Good	Acceptable	Poor	Notes
Separation of vehicle belt path from harness	no contact possible	cover to avoid contact	possible contact	Note if cover could give s/b slack
Ease of vehicle belt routing Check hand clearance	male hand can route s/ b (incl. flap in seat), nothing in way	male hand fit but need to move CRS (no x-tilt) or move padding	hand does not fit	
Ease of use of any belt-positioning hardware on CRS including lock-off	one hand to use	two hands to use	detachable or multiple steps	❑ n/a no belt positioning hardware
Does belt-positioning device allow excessive slack to occur incl. lock off	guides only	[redacted]	slack could be introduced	❑ n/a no belt positioning hardware
Tether easy to tighten (& release)	one hand to tighten	two hands but easy	other	

Securing the child

	Good	Acceptable	Poor	Notes
Number of steps to secure child	No. of steps =			*Assume harness open/loose and child in CRS and assume harness tightens OK 1st attempt*
Can buckle be secured in reverse	no	yes, but usual release works	yes, other or difficult release	
Harness easy to tighten & loosen when CRS installed	one hand to tighten max 2 to loosen	two hands to tighten, but easy no re-threading	other	*Do not count one hand to support CRS*
No. of usable harness slots-FF mode	3	2*	top only	* ❑ *2nd slot OK to 30 lb then top only*

Appendix D ICBC Ease of Use Rating System

COMPLETE IF BOOSTER or COMBINATION IN BOOSTER MODE Seat # (on tag) _____

Make & model _____

Type: ❑ Booster only ❑ Combination (harness/booster)

Style: ❑ No-back with non-removable shield ❑ No-back with removable shield ❑ No-back NO shield
❑ High back with soft back ❑ High back with hard back

Evaluation of labelling on CRS outside vehicle (labels may or may not be visible when CRS in vehicle)

	Good	Acceptable	Poor	Notes
Clear indication of child's size range	separate, clear text with illus. of child in upper range/s	separate clear text independent paragraph	size range buried in other text	*If CRS has more than one mode, evaluate mode which applies to this data sheet*
Mode of use clearly indicated i.e. with lap belt or lap/torso belt, and if combination seat, booster (v FF with harness)	CRS illus. in vehicle seat no need to read text	illus. but mode not clear need to read text	no illus. text only	*If CRS has more than one mode, evaluate mode which applies to this data sheet*

Booster recommended for use with: Lap/torso ❑ yes ❑ no ❑ not shown on seat
Lap belt ❑ yes ❑ no ❑ not shown on seat

If shield booster, recommended t/belt position: ❑ front of child ❑ behind child ❑ not shown on seat ❑ n/a

Visibility of labels when CRS IN POSITION IN VEHICLE

	Good	Acceptable	Poor	Notes
Visibility of seat belt routing (for lap belt and lap/torso) when CRS is in position in vehicle i.e. is seat belt routing obvious	clear routing illus. or clear contrast belt path markings BOTH sides no need to read text	markings or some form of routing illus. BOTH sides need to read text	other includes illus. only ONE side or illus. do not match CRS or belt direction	*To rate good or acceptable must include what to do with lap belt AND lap/torso belt*
Is airbag warning visible no matter where CRS being installed	clear illus. with interaction and warning in contrast BOTH sides OR ON seat cover	[redacted]	other, includes text only, poor illustration, ONE side only	

Installation in vehicle

	Good	Acceptable	Poor	Notes
Ease of seat belt routing	single action (could be done by child in seat)	includes 2 hands to operate belt positioning hardware	detachable or multiple steps	
Does belt-positioning hardware allow excessive slack to occur	guides only	[redacted]	slack could be introduced	❑ n/a no belt positioning hardware

Belt-positioning hardware: ❑ integral (non-removable) ❑ add-on/removable

Number of separate positions: _____

[FR Doc. 01–27547 Filed 10–31–01; 9:55 am]
BILLING CODE 4910–59–C

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Departmental Offices, Office of Procurement within the Department of the Treasury is soliciting comments concerning the OMB Control Number 1505–0107, Regulation on Agency Protests.

DATES: Written comments should be received on or before January 7, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of the Treasury, Departmental Offices, Angelie Jackson, Office of Procurement, 1500 Pennsylvania Avenue, NW., c/o 1310 G Street, NW., Suite 4W101, Washington, DC 20220 (202) 622–0245; *angelie.jackson@do.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Department of the Treasury, Departmental Offices, Angelie Jackson, Office of Procurement, 1500 Pennsylvania Avenue, NW., c/o 1310 G Street, NW., Suite 4W101, Washington, DC 20220 (202) 622–0245; *angelie.jackson@do.treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: Regulation on Agency Protests.

OMB Number: 1505–0107.

Abstract: This notice provides a request to continue including the designated OMB Control Number on information requested from contractors. The information is requested from contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file agency level protests.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and individuals seeking and who are currently contracting with the Department of the Treasury.

Estimated Number of Respondents: 17.

Estimated Total Annual Burden Hours: 34.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 23, 2001.

Angelie Jackson,

Procurement Analyst.

[FR Doc. 01–27268 Filed 11–5–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Departmental Offices, Office of Procurement within the Department of the Treasury is soliciting comments concerning the OMB Control Number 1505–0080, Post-Contract Award Information.

DATES: Written comments should be received on or before January 7, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of the Treasury, Departmental Offices, Angelie Jackson, Office of Procurement, 1500 Pennsylvania Avenue, NW., c/o 1310 G Street, NW., Suite 4W101, Washington, DC 20220 (202) 622–0245; *angelie.jackson@do.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed Department of the Treasury, Departmental Offices, Angelie Jackson, Office of Procurement, 1500 Pennsylvania Avenue, NW., c/o 1310 G Street, NW., Suite 4W101, Washington, DC 20220 (202) 622–0245; *angelie.jackson@do.treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: Post-Contract Award Information.

OMB Number: 1505–0080.

Abstract: This notice provides a request to continue including the designated OMB Control Number on information requested from contractors. The information requested is specific to each contract, and is required for Treasury to evaluate properly the progress made and/or management controls used by contractors providing supplies or services to the Government and to determine contractors' compliance with the contracts, in order to protect the Government's interest.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and individuals contracting with the Department of the Treasury.

Estimated Number of Respondents: 5,023.

Estimated Time Per Respondent: 14 hours, 46 minutes.

Estimated Total Annual Burden Hours: 70,493.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 23, 2001.

Angelie Jackson,

Procurement Analyst.

[FR Doc. 01–27266 Filed 11–5–01; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Departmental Offices, Office of Procurement within the Department of the Treasury is soliciting comments concerning the OMB Control Number 1505–0081, Solicitation of Proposal Information for Award of Public Contracts.

DATES: Written comments should be received on or before January 7, 2002 to be assured of consideration.

ADDRESS: Direct all written comments to Department of the Treasury, Departmental Offices, Angelie Jackson, Office of Procurement, 1500 Pennsylvania Avenue, NW., c/o 1310 G Street, NW., Suite 4W101, Washington, DC 20220 (202) 622–0245; *angelie.jackson@do.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed Department of the Treasury, Departmental Offices, Angelie Jackson, Office of Procurement, 1500 Pennsylvania Avenue, NW., c/o 1310 G Street, NW., Suite 4W101, Washington, DC 20220 (202) 622–0245; *angelie.jackson@do.treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: Solicitation of Proposal Information for Award of Public Contracts.

OMB Number: 1505–0081.

Abstract: This notice provides a request to continue including the designated OMB Control Number on information requested from prospective contractors. The information requested is specific to each acquisition solicitation, and is required for Treasury to evaluate properly the capabilities and experiences of potential contractors who desire to provide the supplies and/or services to be acquired. Evaluation will be used to determine which proposals most benefit the Government.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and individuals seeking contracting opportunities with the Department of the Treasury.

Estimated Number of Respondents: 26,338.

Estimated Time Per Respondent: 31 hours, 2 minutes.

Estimated Total Annual Burden Hours: 176,561.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 23, 2001.

Angelie Jackson,

Procurement Analyst.

[FR Doc. 01–27267 Filed 11–5–01; 8:45 am]

BILLING CODE 4810–31–M

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

AGENCY: United States Institute of Peace.

DATE/TIME: Thursday, November 15, 2001, 9:30 a.m–5:30 p.m.

LOCATION: 1200 17th Street, NW., Suite 200—Conference Room, Washington, DC 20036.

STATUS: Open Session—Portions may be closed pursuant to Subseciton (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: November 2001 Board Meeting; Approval of Minutes of the One Hundred First Meeting (September 20, 2001) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: October 30, 2001.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 01–27929 Filed 11–2–01; 11:36 a.m.]

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H.J. Res. 70/P.L. 107–58
Making further continuing appropriations for the fiscal year 2002, and for other purposes. (Oct. 31, 2001; 115 Stat. 406)

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM201; Special Conditions No. 25–190–SC]

Special Conditions: Gulfstream Aerospace Corporation Model G–1159B; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Gulfstream Aerospace Corporation Model G–1159B airplanes modified by ElectroSonics. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a Honeywell Dual Airdata Computer System that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 24, 2001. Comments must be received on or before December 7, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM201, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM201.* Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM201." The postcard will be date stamped and returned to the commenter.

Background

On April 4, 2001, ElectroSonics, 4391 International Gateway, Columbus, Ohio, applied for a Supplemental Type Certificate (STC) to modify Gulfstream Aerospace Corporation Model G–1159B airplanes. The Gulfstream Aerospace Corporation Model G–1159B is a small transport category airplane. These airplanes are powered by two Rolls Royce Spey RB (163–25) 511–8 engines, with a maximum takeoff weight of 69,700 pounds. This airplane operates with a 2-pilot crew and can hold up to 19 passengers. The modification incorporates the installation of a Honeywell Dual Airdata Computer System. The Honeywell Dual Airdata Computer System is a replacement for the existing Analog Flight Instrumentation, while also providing additional functional capability and redundancy in the system. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, ElectroSonics must show that the Gulfstream Aerospace Corporation Model G–1159B airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EA, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations in the certification basis for the Gulfstream Aerospace Corporation G–1159B airplanes include:

- Civil Air Regulations (CAR) 4b, dated December 31, 1953, including Amendments 4b–1 thru 4b–14.
- Special Regulation SR450A.
- Special Conditions in "Attachment A" of FAA letter to Grumman dated September 27, 1965.
- 14 CFR (Code of Federal Regulations) 25.1325 (effective February 1, 1965).
- Section 25.175 (effective March 1, 1965), in lieu of CAR 4b.155(b).
- Section 36.7(d)(3)(ii).
- CAR 4b.450, cooling systems.
- Part 25, dated February 1, 1965, as amended by Amendments No. 25–2 through 25–8, 25–10, 25–12, 25–16 thru 25–22, 25–24, and 25–26.

If the Administrator finds that the applicable airworthiness regulations (part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream Aerospace Corporation Model G–1159B airplanes modified by ElectroSonics, because of a novel or unusual design feature, special

conditions are prescribed under the provisions of 21.16.

In addition to the applicable airworthiness regulations and special conditions, these Gulfstream Aerospace Corporation Model G–1159B airplanes must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the airplane's type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should ElectroSonics apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the Gulfstream Aerospace Corporation Model G–1159B airplanes modified by ElectroSonics will incorporate the Honeywell Dual Airdata Computer System that will perform critical functions. This system may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Gulfstream Aerospace Corporation Model G–1159B airplanes modified by ElectroSonics. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Gulfstream Aerospace Corporation Model G–1159B airplanes modified by ElectroSonics. Should ElectroSonics apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Gulfstream Aerospace Corporation Model G–1159B airplanes modified by ElectroSonics. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Gulfstream Aerospace Corporation Model G–1159B airplanes modified by ElectroSonics.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 24, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27987 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM199; Special Conditions No. 25–188–SC]

Special Conditions: Boeing 747–200/–300 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 747–200/–300 series airplanes modified by Hollingsead International, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of new Liquid Crystal Flight Instruments as Attitude Directional Indicators (ADI), the Horizontal Situation Indicators (HSI) and Engine Display Interface System (EDIS). The liquid crystal flight instruments will utilize electrical and electronic systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 25, 2001. Comments must be received on or before December 24, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM199, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM199. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. The Administrator will consider all communications received on or before the closing date for comments. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM199." The postcard will be date stamped and returned to the commenter.

Background

On October 13, 1997, Hollingsead International, Inc., 7416 Hollister Avenue, Goleta, California 93117–2538, applied for a Supplemental Type Certificate (STC) for the Boeing Model 747–200/–300 series airplanes. The Boeing Model 747–200/–300 series airplanes are equipped with four CF650E2 turbofan engines. The aircraft have a crew of three with additional seating for one, consisting of a jump seat in the cockpit. The aircraft are operated by KLM Royal Dutch airlines in "freighter," "combi," and "full

passenger" configurations. The Boeing 747–200/–300 airplanes will incorporate Smiths Industries 5–ATI liquid crystal flight instruments. The modified airplanes are scheduled for certification in November 2001.

The functions of the liquid crystal flight instruments can be susceptible to disruption of both command and response signals as a result of electrical and magnetic interference caused by HIRF external to the airplane. This disruption of signals could result in loss of critical flight displays and annunciations, or could present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Hollingsead International, Inc, must show that the Boeing 747–200/–300 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A20WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations included in the certification basis for the Boeing Model 747–200/–300 series airplanes include 14 CFR part 25, as amended by Amendment 25–1 through Amendment 25–91.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 747–200/300 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747–200/–300 series airplanes must comply with the fuel vent and exhaust emission requirement of 14 CFR part 34 and the noise certification requirement of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the airplane's type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design features, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Model 747–200/–300 series airplanes will incorporate the Smiths Industries 5-ATI liquid crystal flight instruments as ADI, HSI and EDIS, which perform critical functions. The liquid crystal flight instruments contain electronic equipment for which the current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. These instruments may be vulnerable to HIRF external to the airplane. Accordingly, these instruments are considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 747–200/–300 airplanes modified to include the Smiths Industries 5–ATI liquid crystal flight instruments as ADI, HSI and EDIS. These special conditions will require that these instruments, which perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200

Frequency	Field strength (volts per meter)	
	Peak	Average
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 747–200/–300 series airplanes modified by Hollingsead International, Inc. to include the Smiths Industries 5–ATI liquid crystal flight instruments, as ADI, HSI and EDIS. Should Hollingsead International apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A20WE to incorporate the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 747–200/–300 series airplanes modified by Hollingsead International, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 747–200/–300 series airplanes modified by Hollingsead International, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions*: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 25, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27986 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–04–AD; Amendment 39–12495; AD 2001–22–16]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 1900, 1900C (C–12J), and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 95–02–18, which applies to certain Raytheon Aircraft Company (Raytheon) Beech Models 1900, 1900C (C–12J), and 1900D airplanes. AD 95–02–18 requires you to repetitively inspect the engine truss assemblies for cracks, repair or replace any cracked engine truss assembly, and install reinforcement doublers. This AD requires engine truss assembly replacement, periodic inspections and replacements, and the eventual incorporation of a cowling support installation kit as terminating action. The repetitive inspections of AD 95–02–18 will be retained until mandatory engine truss assembly replacement. This AD is the result of continued reports of fatigue cracks found on engine trusses on airplanes in compliance with AD 95–02–18. The actions specified by this AD are intended to detect and correct cracked engine truss assemblies, which could result in failure of the engine truss assembly and consequent loss of airplane control.

DATES: This AD becomes effective on December 17, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 17, 2001.

ADDRESSES: You may obtain the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–04–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Ostrodka, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4129; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action on the engine truss assemblies of Raytheon Beech Models 1900, 1900C (C–12J), and 1900D airplanes to this point? Continued problems with fatigue cracking of the engine truss assemblies on Raytheon Beech Models 1900, 1900C (C–12J), and 1900D airplanes caused FAA to issue AD 95–02–18, Amendment 39–9136 (60 FR 6652, February 3, 1995). This AD currently requires the following:

—Repetitive inspections of the engine truss assemblies for cracks;
—Repair or replacement of any cracked engine truss assembly; and
—Installation of reinforcement doublers.

What has happened since AD 95–02–18 to initiate this action? The FAA continues to receive reports of engine truss fatigue cracks on Raytheon Beech Models 1900, 1900C (C–12J), and 1900D airplanes. The reports reference airplanes that are in compliance with AD 95–02–18.

The fatigue cracks are developing as a result of operational stresses in joints, welded bracketry, and linoil holes sealed by drive screws.

Has FAA taken any action to this point? The FAA issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models 1900, 1900C (C–12J), and 1900D airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 11, 2001 (66 FR 36215). The NPRM proposed to supersede AD 95–02–18. The NPRM also proposed to require engine truss assembly replacement, periodic inspections and replacements, and the eventual incorporation of a cowling support installation kit as terminating action. The repetitive inspections of AD 95–02–18 would be retained until mandatory engine truss assembly replacement.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 236 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the following actions:

	Engine truss replacement	Drive screw inspection and replacement	Cowling support kit installation	Placard Installation
Number of airplanes affected.	12	236	210	234
Cost per airplane: Workhours + parts costs.	34 workhours × $60 per hour + $6,000 (average) for parts = $8,040 per airplane.	4 workhours × $60 per hour + $12 for parts = $252 per airplane.	6 workhours × $60 per hour + $35 for parts = $395 per airpalne.	1 workhour × $60 per hour + $5 for parts = $65 per airplane.
Fleet cost: Cost per airplane × number of airplanes.	$8,040 × 12 airplanes = $96,480.	$252 × 236 airplanes = $59,472.	$395 × 210 airplanes = $82,950.	$65 × 234 airplanes = $15,210.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) AD 95–02–18, Amendment 39–9136 (60 FR 6652, February 3, 1995), and by adding a new AD to read as follows:

2001–22–16 Raytheon Aircraft Company (Beech Aircraft Corporation formerly held Type Certificate (TC) No. A–24CE): Amendment 39–12495; Docket No. 2001–CE–04–AD; Supersedes AD 95–02–18, Amendment 39–9136.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial No.
Beech Model 1900	UA–2 and UA–3.
Beech Model 1900C	UB–1 through UB–74 and UC–1 through UC–174.
Beech Model 1900C (C–12J)	UD–1 through UD–6.
Beech Model 1900D	UE–1 through UE–302.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracked engine truss assemblies, which could result in failure of the engine truss assembly and consequent loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) if you do not have a part number (P/N) 129–910047–1 129–910047–13, or 129–910047–17 engine truss assembly (or FAA-approved equivalent P/N), installed, accomplish the following: (i) Inspect the engine truss assembly for cracks and replace any cracked truss with a P/N truss specified in paragraph (d)(1)(ii) of this AD; and (ii) Replace the engine truss assembly with a P/N 129–910047–1, 129–910047–13, or 129–910047–17 assembly (or FAA-approved equivalent P/N)	Inspect in accordance with the schedule outlined in the Appendix to this AD (taken from AD 95–02–18, as specified in Raytheon Aircraft Mandatory Service Bulletin No. 2255, Revision 10, Revised, June, 1999). Replace within the next 100 hours time-in-service (TIS) after December 17, 2001 (the effective date of this AD) if the truss is not cracked and prior to further flight if the truss is cracked.	Inspect and replace in accordance with the instructions in Raytheon Aircraft Mandatory Service Bulletin No. 2255. Revision 10, Revised, June, 1999. Accomplishing the inspection (only) using a previous revision to this service bulletin is acceptable.
(2) For airplanes equipped with a P/N 129–910047–1 or 129–910047–13 engine truss assembly (or FAA-approved equivalent P/N), inspect for linoil hole mislocation and cracks in Area A as depicted in the referenced service information and replace the engine truss assembly if any mislocated hole or crack is found during any inspection	Inspect upon accumulating 100 hours TIS on the engine truss assembly (or within 25 hours TIS after December 17, 2001 (the effective date of this AD), whichever occurs later, unless already done, and thereafter at intervals not to exceed 100 hours TIS. Accomplish any necessary engine truss assembly replacement prior to further flight where any mislocated hole or crack is found.	Accomplish inspections and replacements in accordance with Part I of the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Mandatory Service Bulletin SB 71–3144, Revision 1, Revised: April, 1999.
(3) For airplanes equipped with a P/N 129–910047–1 or 129–910047–13 engine truss assembly (or FAA-approved equivalent P/N), accomplish the following: (i) Inspect the engine cowling support bracket for cracks and rework any cracked engine crowling support bracket; and (ii) Install Kit No. 129–9017–1 reinforcements on the engine cowling support bracket. The inspections required by paragraph (d)(3)(i) of this AD are no longer necessary when Kit No. 129–9017–1 is incorporated	Inspect upon accumulating 200 hours TIS on the engine truss assembly or within 25 hours TIS after December 17, 2001 (the effective date of this AD), whichever occurs later, unless already done, and thereafter at intervals not to exceed 200 hours TIS. Accomplish any necessary engine cowling support rework prior to further flight where any cracked bracket is found. Install the engine cowling support bracket reinforcements upon accumulating 1,200 hours TIS on the engine truss assembly or within the next 100 hours TIS after December 17, 2001 (the effective date of this AD), whichever occurs later.	Accomplish inspections, repairs, and installations in accordance with Part III of the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Mandatory Service Bulletin SB 71–3144, Revision 1, Revised: April, 1999.
(4) For airplanes equipped with a P/N 129–910047–1 or 129–910047–13 engine truss assembly (or FAA-approved equivalent P/N), replace all remaining linoil drive screws (those not in Area A). The inspections required by paragraph (d)(2) of this AD are no longer required when these screws are replaced	Upon accumulating 8,000 hours TIS on the engine truss assembly or at the next engine truss assembly removal, whichever occurs later.	Accomplish these replacements in accordance with Part II of the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Mandatory Service Bulletin SB 71–3144, Revision 1, Revised: April, 1999.
(5) For airplanes equipped with a P/N 129–910047–1 or 129–910047–13 engine truss assembly (or FAA-approved equivalent P/N), install a P/N 129–910047–15 truss identification placard on the engine truss assembly	Within 12 months after December 17, 2001 (the effective date of this AD) or upon installation of a P/N 129–910047–1 or 129–910047–13 engine truss assembly, whichever occurs later.	Accomplish this installation in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB.71–3024, Issued: September, 1997.
(6) Do not install, on any affected airplane, an engine truss assembly that is not P/N 129–910047–1, 129–910047–13, or 129–910047–17 (or FAA-approved equivalent P/N)	As of December 17, 2001 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office(ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 95–02–18, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact David L. Ostrodka, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4129; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Aircraft Mandatory Service Bulletin No. 2255. Revision 10, Revised, June, 1999, Raytheon Aircraft Mandatory Service Bulletin SB 71–3144, Revision 1, Revised: April, 1999, and Raytheon Aircraft Service Bulletin SB.71–3024, Issued: September, 1997. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 95–02–18, Amendment 39–9136.

(j) *When does this amendment become effective?* This amendment becomes effective on December 17, 2001.

Appendix to Docket No. 2001–CE–04–AD

The following is the compliance schedules for the inspections required in this AD. These are duplicated from AD 95–02–18, Amendment 39–9136:

1. For all affected airplanes having engine truss P/N 129–910032–79 installed, initially and repetitively inspect the engine truss for cracks at the weld joints in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB 2255, Revision VI, dated August 1994, at the times specified in the following chart:

Models	Area specified in figure 1 of Beech SB No. 2255, Rev. VI	Initial inspection	Repetitive inspections
1900 and 1900C	A	Upon accumulating 1,400 hours TIS*	Every 100 hours TIS.
1900 and 1900C	B and C	Upon accumulating 3,200 hours TIS*	Every 100 hours TIS.
1900D	A	Upon accumulating 3,200 hours TIS*	Every 450 hours TIS.
1900D	B and C	Upon accumulating 3,200 hours TIS*	Every 3,000 hours TIS.

*Or within the next 100 hours TIS after March 25, 1995 (the effective date of AD 95–02–18), whichever occurs later.

2. For all Models 1900 and 1900C airplanes having engine truss P/N 118–9100–25–37, P/N 118–910025–121, P/N 114–910025–1 or P/N 118–910025–1, initially and repetitively inspect the engine truss for cracks at the weld joints in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin (SB) 2255, Revision VI, dated August 1994, at the times specified in the following chart:

Area specified in Figure 1 of Beech SB N. 2255, Rev. VI	Initial inspection	Repetitive inspections
A	Upon accumulating 1,400 hours TIS*	Every 100 hours TIS.
B	Upon accumulating 1,400 hours TIS*	Every 600 hours TIS.
C	Upon accumulating 1,400 hours TIS*	Every 3,000 hours TIS.

*Or within the next 100 hours TIS after March 25, 1995 (the effective date of AD 95–02–18), whichever occurs later.

Issued in Kansas City, Missouri, on October 26, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27651 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–24–AD; Amendment 39–12494; AD 2001–22–15]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to inspect the cargo doors to identify front and rear end frames with plain lightening holes and install reinforcing plates on any frame with plain lightening holes. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent cracking at the edges of the unflanged lightening holes, which could result in major structural damage to the airplane. Such damage could result in possible loss of control of the airplane.

DATES: This AD becomes effective on December 26, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 26, 2001.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: 41 41 619 63 19; facsimile: 41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–24–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on all Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that, during production, some PC–12 and PC–12/45 airplanes were equipped with cargo doors that do not have reinforcing flanges on the lightening holes in the front and rear end of the cargo door frames.

What is the potential impact if FAA took no action? If not detected and corrected, cracking at the edges of the unflanged lightening holes could result in major structural damage to the airplane. Such damage could result in possible loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 22, 2001 (66 FR 44093). The NPRM proposed to require you to inspect the cargo doors to identify front and rear end frames with plain lightening holes; and install reinforcing plates on any frame with plain lightening holes.

The Swiss AD and the manufacturer's service information applies to manufacturer serial numbers (MSN) 301 through 370 and all part-number (P/N) 552.30.12.051 and P/N 552.30.12.052, held as spares. We are expanding the applicability of this AD to all serial numbered airplanes. We are expanding the inspection and installation actions to cover MSN 101 through MSN 370, instead of MSN 301 through MSN 370, because these cargo doors may have been installed on MSN 101 through MSN 370 through field approval or other methods. Since cargo doors, part-number P/N 552.30.12.051 and P/N 552.30.12.052, held as spares, may be installed on airplanes not covered by the applicability of the service information, the cargo doors on all serial numbered airplanes will have to be inspected and modified if necessary, prior to installation.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 230 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	No parts required for the inspection	$60	$13,800.

We estimate the following costs to accomplish any necessary modifications that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 per hour = $120	Provided by the manufacturer free of charge	$120.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy

of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2001–22–15 Pilatus Aircraft Ltd.: Amendment 39–12494; Docket No. 2001–CE–24–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent cracking at the edges of the unflanged lightening holes, which could result in major structural damage to the airplane. Such damage could result in possible loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For manufacturer serial numbers (MSN) 101 through 370, inspect the front and rear frames of the cargo door for lightening holes with plain rims.	Within the next 50 hours time-in-service (TIS) after December 26, 2001 (the effective date of this AD).	In accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 52–004, dated April 20, 2001.
(2) If, during the inspection required in paragraph (d)(1) of this AD, a plain rim is found, install a reinforcing plate.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 52–004, dated April 20, 2001.
(3) For all serial numbered airplanes, do not install any cargo door, part-number (P/N) 552.30.12.051 or P/N 552.30.12.052 (or FAA-approved equivalent part number), unless it has been inspected as required in paragraph (d)(1) of this AD and modified as required in paragraph (d)(2) of this AD.	As of December 26, 2001 (the effective date of this AD).	In accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 52–004, dated April 20, 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance? Contact Doug* Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus Service Bulletin No. 52–004, dated April 20, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on December 26, 2001.

Note 2: The subject of this AD is addressed in Swiss AD HB 2001–389, dated June 25, 2001.

Issued in Kansas City, Missouri, on October 26, 2001.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27652 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30278; Amdt. No. 432]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace.

In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on November 1, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, December 27, 2001.

PART 95—[Amended]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 432 effective date: December 27, 2001]

From	To	MEA
§ 95.6001 Victor Routes—U.S.		
§ 95.6003 VOR Federal Airway 3 is Amended to Read in Part		
Brunswick, GA VORTAC *11,000–MRA **1,500–MOCA	*Broun, GA FIX	**2,000
Broun, GA FIX *3,000–MRA	*Harps, GA FIX	2,200
Harps, GA FIX *1,500–MOCA	Savannah, GA VORTAC	*2,000
§ 95.6037 VOR Federal Airway 37 is Amended to Read in Part		
Brunswick, GA VORTAC *11,000–MRA **1,500–MOCA	*Broun, GA FIX	**2,000
Broun, GA FIX *3,800–MRA	*Harps, GA FIX	2,200
Harps, GA FIX *1,500–MOCA	Savannah, GA VORTAC	*2,000
§ 95.6078 VOR Federal Airway 78 is Amended to Read in Part		
Zable, MI FIX *2,900–MOCA	Banjo, MI FIX	*5,000
§ 95.6133 VOR Federal Airway 133 is Amended to Read in Part		
Whipp, MI FIX *5,000–MRA **2,800–MOCA	*Ladin, MI FIX	**5,000
Ladin, MI FIX *2,700–MOCA	Borin, MI FIX	*5,000
Borin, MI FIX	Traverse City, MI VORTAC	*5,000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 432 effective date: December 27, 2001]

From	To	MEA
*2,500–MOCA Traverse City, MI VORTAC *2,700–MOCA	Escanaba, MI VORTAC	*5,000
§ 95.6184 VOR Federal Airway 184 is Amended to Read in Part		
Delro, PA FIX *3,900–MOCA	Modena, PA VORTAC	*10,000
§ 95.6198 VOR Federal Airway 198 is Amended to Read in Part		
Seeds, TX FIX *1,800–MOCA	Wemar, TX FIX	*2,500
§ 95.6212 VOR Federal Airway 212 is Amended to Read in Part		
Seeds, TX FIX *1,800–MOCA	Wemar, TX FIX	*2,500
§ 95.6213 VOR Federal Airway 213 is Amended to Read in Part		
Sparta, NJ VORTAC *3,200–MOCA	Flosi, NY FIX	*4,000
Flosi, NY FIX *4,000–MOCA	Weets, NY FIX	*5,500
§ 95.6215 VOR Federal Airway 215 is Amended to Read in Part		
White Cloud, MI VORTAC *5,000–MRA	*Ladin, MI FIX	4,000
Ladin, MI FIX *5,000–MRA	*Carga, MI FIX	4,000
§ 95.6222 VOR Federal Airway 222 is Amended to Read in Part		
Stonewall, TX VORTAC *4,000–MOCA	Marcs, TX FIX	*4,500
§ 95.6233 VOR Federal Airway 233 is Amended to Read in Part		
Mount Pleasant, MI VOR/DME *5,000–MRA	*Carga, MI FIX	5,500
Carga, MI FIX	Gaylord, MI VOR/DME	3,000
§ 95.6249 VOR Federal Airway 249 is Amended to Read in Part		
Sparta, NJ VORTAC *3,200–MOCA	Flosi, NY FIX	*4,000
Flosi, NY FIX *4,000–MOCA	Weets, NY FIX	*5,500
§ 95.6289 VOR Federal Airway 289 is Amended to Read in Part		
Honee, TX FIX *1,900–MOCA	Lufkin, TX VORTAC	*3,000
§ 95.6297 VOR Federal Airway 297 is Amended to Read in Part		
Banjo, MI FIX *2,900–MOCA	Zable, MI FIX	*5,000
§ 95.6358 VOR Federal Airway 358 is Amended to Read in Part		
San Antonio, TX VORTAC *2,800–MOCA	Guada, TX FIX	*4,000
Guada, TX FIX	Stonewall, TX VORTAC	4,000
Stonewall, TX VORTAC *3,200–MOCA	Lampasas, TX VORTAC	*3,800
§ 95.6474 VOR Federal Airway 474 is Amended to Read in Part		
Delro, PA FIX	Modena, PA VORTAC	*10,000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 432 effective date: December 27, 2001]

From	To	MEA
*3,900–MOCA		
§ 95.6556 VOR Federal Airway 556 is Amended to Read in Part		
Junction, TX VORTAC	Stonewall, TX VORTAC	4,000
Stonewall, TX VORTAC *4,000–MOCA	Marcs, TX FIX	*4,500
Marcs, TX FIX *1,900–MOCA	Seeds, TX FIX	*7,500
Seeds, TX FIX *1,800–MOCA	Wemar, TX FIX	*2,500
§ 95.6568 VOR Federal Airway 568 is Amended to Read in Part		
San Antonio, TX VORTAC *2,800–MOCA	Guada, TX FIX	*4,000
§ 95.6579 VOR Federal Airway 579 is Amended to Read in Part		
Cross City, FL VORTAC	Valdosta, GA VOR/DME	2,000
Tift Myers, GA VOR	Vienna, GA VORTAC	2,100

[FR Doc. 01–28002 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–022]

RIN 2115–AE47

Drawbridge Operation Regulation; Lake Pontchartrain, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulation for the draw of the Greater New Orleans Expressway Commission Causeway across Lake Pontchartrain between Metairie, Jefferson Parish and Mandeville, St. Tammany Parish, Louisiana. The rule allows the dual bridges to remain closed to navigation during the morning and afternoon rush hours while still requiring three hours notification to open on signal at all other times.

DATES: This rule is effective December 7, 2001.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket and are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at the address given above or telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 16, 2001, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation, Lake Pontchartrain, LA in the **Federal Register** (66 FR 15373). We received three letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The bascule span of the dual bridges of the Greater New Orleans Expressway Commission Causeway across Lake Pontchartrain presently opens on signal if at least three hours notice is given. The Greater New Orleans Expressway Commission has requested a change in the operating schedule of the dual bridges to allow the draw to remain closed during peak vehicular traffic periods. Approximately 15,000 vehicles cross the dual bridges in each direction daily. Of the nearly 15,000 vehicles that cross the southbound bridge from St. Tammany Parish to Jefferson Parish, approximately 50% of these vehicles cross this bridge between the hours of 5:30 a.m. and 9:30 a.m. Of the nearly 15,000 vehicles that cross the northbound bridge from Jefferson Parish to St. Tammany Parish, approximately 50% of these vehicles cross this bridge between the hours of 3 p.m. and 7 p.m. During these peak traffic periods, an opening of the draw can cause traffic to back up approximately four to five miles.

Tender logs for the past year indicate that only six vessels have required the draw to open during these times.

Discussion of Comments and Changes

Three letters were received in response to the NPRM. National Mariner Fisheries Service offered no objections to the proposed change. Pontchartrain Materials offered no objections to the proposed project; however, they did offer comments regarding delays to vessels in distress. The Coast Guard explained that the drawbridge is required to open for vessels in distress. The U. S. Fish and Wildlife Service officer no objections to the proposed changes.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This rule allows vessels ample opportunity to transit this waterway with proper notification before and after the peak vehicular traffic periods. According to the vehicle traffic surveys provided by the applicant, these periods occur between 5:30 a.m. and 9:30 a.m. and between 3 p.m. and 7 p.m.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule would not have implications for federalism under that Order. No comments were received with regards to federalism during the NPRM comment period.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule does not impose an unfunded mandate. No comments were received with regards to unfunded mandates during the NPRM comment period.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. No comments were received with regards to private property during the NPRM comment period.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. No comments were received with regards to civil justice reform during the NPRM comment period.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(e), of Commandant Instruction M16475.lD, this rule be categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In 117.467, paragraph (b) is revised to read as follows:

117.467 Lake Pontchartrain.

* * * * *

(b) The draw of the Greater New Orleans Expressway Commission Causeway shall open on signal if at least three hours notice is given; except that, the draw need not be opened for the passage of vessels Monday through Friday except Federal holidays from 5:30 a.m. to 9:30 a.m. and from 3 p.m. until 7 p.m. The draw will open on signal for any vessel in distress or vessel waiting immediately following the closures listed above.

Dated: October 25, 2001.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 01–27875 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 01–005]

RIN 2115–AA97

Security Zones; Prince William Sound Captain of the Port Zone, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones of 200 yards around all tank vessels greater than 20,000 deadweight tons (DWT) in the Captain of the Port Zone, Prince William Sound, Alaska. These vessel-centered security zones are needed to protect tank vessels from damage or injury from sabotage, destruction or other subversive acts. Entry into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska, however, tank vessel escort, line handling, and pilot vessels are authorized to enter these moving security zones to carryout their functions associated with the movement of tank vessels to and from the Trans-Alaska Pipeline Valdez Terminal Complex.

DATES: This regulation is effective from 6 p.m. September 15, 2001 through June 1, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Prince William Sound 01–005] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, PO Box 486, Valdez, Alaska 99686, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT V. J. Kammer, U.S. Coast Guard Marine Safety Office, PO Box 486, Valdez, Alaska 99686, (907) 835–7229.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In accordance with 5 U.S.C. 553 (b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. The Coast Guard is taking this action for the immediate protection of the national security interests in light of the terrorist acts perpetrated on September 11, 2001. Also, in accordance with 5 U.S.C. 553 (d)(3), the Coast Guard finds good cause to exist for making this regulation effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to provide for the safety of tank vessels calling at the Trans-Alaska Pipeline Valdez Terminal complex in Valdez, Alaska.

Discussion of the Regulation

The Coast Guard is establishing temporary security zones around all tank vessels greater than 20,000 deadweight tons (DWT) while transiting, mooring, unmooring, or loading within the Prince William Sound Captain of the Port (COTP) Zone, defined in 33 CFR 3.85–20 (b) as encompassing waters within the boundary that starts at Cape Puget at 148°26′ W, 59°56.06′ N; and proceeds northerly to 61°30′ N; thence easterly to the United States-Canadian boundary; thence southerly along the United States-Canadian boundary to 60°18.7′ N; thence southwesterly to the sea at 60°01.3′ N, 142°00′ W; thence southerly along 142°00′ W to the outermost boundary of the Exclusive Economic Zone (EEZ); thence along the outermost boundary of the EEZ to 148°26′ N; thence northerly along 148°26′ W to the place of origin at Cape Puget. These 200-yard security zones are activated when the subject vessels enter the Prince William Sound COTP Zone. These security zones are necessary to protect the subject tank vessels transiting the Prince William Sound COTP Zone from damage or injury from sabotage, destruction or other subversive acts.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Because of the transitory nature of the zones, the Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by this rule is expected to be minimal because of the short duration of this rule and the transitory nature of these moving security zones.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this temporary final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not

an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16745.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Vessels, Waterways.

For the reasons set forth in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T17–005 is added to read as follows:

§ 165.T17–005 Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

(a) *Location.* The following are security zones: all waters within 200 yards of any tank vessel greater than 20,000 deadweight tons (DWT) while in the Prince William Sound Captain of the Port (COTP) Zone. The Prince William Sound COTP Zone encompasses all waters area within the boundary which starts at Cape Puget at 148°26′ W. longitude, 59°56.06′ N. latitude, and proceeds northerly to 61°30′ N. latitude; thence easterly to the United States-Canadian boundary; thence southerly along the United States-Canadian boundary to 60°18.7′ N, latitude; thence southwesterly to the sea at 60°01.3′ N, latitude, 142°00′ W, longitude; thence southerly along 142°00′ W, longitude to the outermost boundary of the Exclusive Economic Zone (EEZ) (as defined in § 2.05–35 of this chapter); thence along the outermost boundary of the EEZ to 148°26′ N, longitude; thence northerly along 148°26′ W, longitude, to the place of origin at Cape Puget at 59°56.06′ N, latitude. These security zones are necessary to protect tank vessels transiting within the Prince William Sound COTP Zone from damage or injury from sabotage, destruction or other subversive acts.

(b) *Effective dates.* This section is effective from 6 p.m. September 15, 2001 through June 1, 2002.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

(d) *Regulations.*

(1) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(2) Tank vessel escort tugs, line handling tugs, and pilot vessels are authorized entry into the moving security zone to carryout their functions associated with the movement of tank vessels to and from the Trans-Alaska Pipeline Valdez Terminal complex.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

Dated: September 23, 2001.

P.M. Coleman,

Commander, U.S. Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 01–27876 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 01–004]

RIN 2115–AA97

Security Zone; Port Valdez, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for Port Valdez, Alaska. The security zone encompasses the waters of Port Valdez north and east of Middle Rock, excluding the waters within the Alyeska Marine Terminal security zone. This security zone is necessary to protect the facilities and vessels transiting within Port Valdez from damage or injury from sabotage, destruction or other subversive acts. Vessels may not anchor, lay to or otherwise loiter in this security zone unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: This regulation is effective from 6 p.m. September 15, 2001 through June 1, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Prince William Sound 01–004] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, PO Box 486, Valdez, Alaska 99686, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT V.J. Kammer, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7229.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In accordance with 5 U.S.C. 553 (b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. The Coast Guard is taking this action for the protection of the national security interests in light of the terrorist acts perpetrated on September 11, 2001. Also, in accordance with 5 U.S.C. 553 (d)(3), the Coast Guard finds good cause

to exist for making this regulation effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to provide for the safety of the Port of Valdez.

Discussion of the Regulation

The Coast Guard is establishing a temporary security zone for Port Valdez, Alaska. This security zone is necessary to protect the facilities and vessels transiting within Port Valdez from damage or injury from sabotage, destruction or other subversive acts. The geographic area covered by this regulation is within the area defined in 33 CFR 165.1704(a) and encompasses the waters of Port Valdez north and east of a line drawn 307 degrees True and 127 degrees True from Middle Rock (61°04.7′ N, 146°39.3′ W), excluding the waters within the Alyeska Marine Terminal security zone defined in § 165.T17–003 of this part published in this same issue of the **Federal Register**.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Economic impact is expected to be minimal because of the short duration this rule is in effect, the season in which it is effect, and vessels are permitted in the zone by the COTP on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by this rule is expected to be minimal because of the short duration that this rule is in effect. Moreover, the Captain of the Port will consider on a case-by-case basis whether an entity can enter this zone; therefore, it is likely that very few, if any, small entities will be impacted by this rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this temporary final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16745.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Vessels, Waterways.

For the reasons set forth in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T17–004 is added to read as follows:

§ 165.T17–004 Security zone; Port Valdez.

(a) *Location.* The following is a security zone: All waters of Port Valdez, Alaska north and east of a line drawn 307 degrees True and 127 degrees True from Middle Rock (61°04.7′ N, 146°39.3′ W), excluding the waters within the Alyeska Marine Terminal security zone defined in § 165.T17–003 of this part. This security zone is necessary to protect the facilities and vessels transiting within Port Valdez from damage or injury from sabotage, destruction or other subversive acts.

(b) *Effective dates.* This section is effective from 6 p.m. September 15, 2001 through June 1, 2002.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

(d) *Regulations.* (1) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(2) Tank vessels directly transiting to the Alyeska Marine Terminal (terminal) engaged in the movement of oil from the terminal or fuel to the terminal and vessels used to provide assistance or support to the tank vessels directly transiting to the terminal, or to the terminal itself, and that have reported their movements to the Vessel Traffic Service may operate as necessary to ensure safe passage of tank vessels to and from the terminal.

(3) Other Vessels may transit to and from Valdez Narrows directly to and from the port facilities of the city of Valdez, Alaska. These Vessels are required to transit using the waters of Port Valdez north of 61°06.8′ N latitude when east of 146°32′ W longitude.

(4) No person or vessel may anchor, lay to or otherwise loiter in this Security Zone without the permission of the Captain of the Port, Prince William Sound, Alaska.

(5) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

Dated: September 15, 2001.

P.M. Coleman,

Commander, U.S. Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 01–27873 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 01–003]

RIN 2115–AA97

Security Zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone around the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex in Valdez, Alaska. The boundaries of the zone encompass all waters approximately one mile north and east and two miles west of all terminal berths. This security zone is necessary to protect the TAPS terminal and TAPS tank vessels from damage or injury from sabotage, destruction or other subversive acts. Entry into this security zone is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: This regulation is effective from 6 p.m. September 15, 2001 through June 1, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Prince William Sound 01–003] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, PO Box 486, Valdez, Alaska 99686, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT V.J. Kammer, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7229.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In accordance with 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. The Coast Guard is taking this action for the immediate protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001. Also, in accordance with 5 U.S.C. 553(d)(3), the Coast Guard finds good cause to exist for making this regulation effective less than 30 days after publication in the **Federal Register.** Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to provide for the safety of the TAPS terminal and TAPS tank vessels.

Discussion of the Regulation

The Coast Guard is establishing a temporary security zone around the TAPS terminal, Port Valdez, Valdez, Alaska. This security zone is necessary to protect the TAPS terminal and TAPS tank vessels transiting to, from and within Port Valdez from damage or injury from sabotage, destruction or other subversive acts. The security zone encompasses all waters approximately one mile north and east and two miles west of all terminal berths. The specific boundaries are enclose waters within a line beginning on the southern shoreline of Port Valdez at 61°04.8′ N, 146°29.4′ W; thence northerly to 61°06.5′ N, 146°29.4′ W; thence west to 61°06.5′ N, 146°19.7′ W; thence south to 61°05.0′ N, 146°19.7′ W; thence east along the shoreline and including the area 2000 yards inland along the shoreline to the starting point at 61°04.8′ N, 146°29.4′ W. This security zone includes the current 200-yard safety zone as set forth in 33 CFR 165.1701.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Economic impact is expected to be minimal because of the short duration of this rule and the season in which it is in effect.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by this rule is expected to be minimal because of the short duration of the rule. The entities most likely affected are commercial and native subsistence fishermen. The time frame this rule is in effect does not cover any commercial harvests of fish in the area delineated by this rule; therefore, it is likely that very few, if any, small entities will be impacted by this rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this temporary final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16745.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Vessels, Waterways.

For the reasons set forth in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T17–003 is added to read as follows:

§ 165.T17–003 Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska.

(a) *Location.* The following is a security zone: all waters encompassed by a line beginning on the southern shoreline of Port Valdez at 61°04.8′ N, 146°29.4′ W; thence northerly to 61°06.5′ N, 146°29.4′ W; thence west to 61°06.5′ N, 146°19.7′ W; thence south to 61°05.0′ N, 146°19.7′ W; thence east along the shoreline and including the area 2000 yards inland along the shoreline to the starting point at 61°04.8′ N, 146°29.4′ W. These boundaries encompass approximately one mile north and east and two miles west of all terminal berths. This security zone is necessary to protect the TAPS terminal and TAPS vessels from damage or injury from sabotage, destruction or other subversive acts.

(b) *Effective dates.* This section is effective from 6 p.m. September 15, 2001 through June 1, 2002.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

(d) *Regulations.* (1) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(2) Tank vessels transiting directly to the TAPS terminal complex, engaged in the movement of oil from the terminal

or fuel to the terminal, and vessels used to provide assistance or support to the tank vessels directly transiting to the terminal, or to the terminal itself, and that have reported their movements to the Vessel Traffic Service may operate as necessary to ensure safe passage of tank vessels to and from the terminal.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

Dated: September 11, 2001.

P.M. Coleman,

Commander, U.S. Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 01–27874 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–197]

RIN 2115–AA97

Safety Zone; Route 1 Bascule Bridge, Mystic River, Mystic, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone on all waters of the Mystic River within 100 feet of both the north and south side of the Mystic River Route 1 Bascule Bridge in Mystic, CT. This safety zone will prevent marine traffic from transiting beneath the bridge while it is being renovated. The safety zone is needed to enable the placement of construction barges in close proximity of the bridge, thus blocking the waterway, and to protect marine traffic from the hazards associated with this operation.

DATES: This rule is effective from 7 a.m. (EST) on December 1, 2001 to 7 a.m. (EST) on April 15, 2002. Comments and related material must reach the Coast Guard Group/Marine Safety Office Long Island Sound, Waterways Management Branch, on or before December 7, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of docket CGD01–01–197 and will be available for inspection or copying at Coast Guard Group/Marine Safety Office Long Island Sound, Waterways Management Branch, 120 Woodward Avenue, New Haven, CT between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Pamela P. Garcia, Waterways Management Branch, Group/MSO Long Island Sound, telephone (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number (CGD01–01–197), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail or hand delivery to Coast Guard Group/Marine Safety Office Long Island Sound, Waterways Management Branch, at the address under **ADDRESSES** in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you would like to confirm receipt of your comments or material, please enclose a stamped, self-addressed postcard or envelope. We will consider all material received during the comment period. We may change this rule in view of them.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The safety zone is being established to enable the continued renovation of the Mystic River Route 1 Bascule Bridge. This operation is the final phase of a multi-year bridge renovation project. The project was divided into two phases to help alleviate the burden upon local mariners. The renovation takes place during the winter months when recreational boating traffic is minimal.

At the outset of the project, the State of Connecticut Department of Transportation held two public information meetings to discuss the need for and timing of a safety zone that effectively closes the navigable channel beneath the bridge. No opposition to the proposed dates was received. In addition, Connecticut DOT corresponded with a number of known waterway users for the same purpose. No objections to the proposed dates were registered.

The first phase of the project requiring channel closure began December 1, 2000 and ended April 15, 2001. The closure period during the winter months had minimal impact on the needs of navigation. No complaint or objection was registered by any waterway users. Similarly, the effective dates of the present safety zone should have minimal impact on navigation. Accordingly, we determined that it was unnecessary to engage in the NPRM process for the waterway closure during the effective period of this rule. The public is invited to submit comments during the prescribed period. We may change this rule after consideration of any comments we receive.

Under 5 U.S.C. 553(d), we have determined that good cause exists for making this rule effective less than 30 days following its publication in the **Federal Register**. Construction crews will begin rehabilitation work on the bridge December 1, 2001. Any delay in the effective date of the safety zone beyond the start of construction would be contrary to the public interest insofar as that work may pose hazards to mariners who would otherwise pass beneath the bridge.

Background and Purpose

The Coast Guard is establishing a temporary safety zone on all waters of the Mystic River within 100 feet of both the north and south side of the Mystic River Route 1 Bascule Bridge, located in approximate position 41°21′3″ N, 071°58′1″ W. This safety zone is effective from 7 a.m. (EST) on December 1, 2001 to 7 a.m. (EST) on April 15, 2002. The safety zone will enable the state of Connecticut to complete the second phase of a two-year bridge renovation project that began in December 2000. A large construction barge will be placed near the bridge during renovation work thus blocking the waterway and preventing mariners from transiting through this portion of the Mystic River. The safety zone is also necessary to prevent mariners from the hazards associated with renovation and rehabilitation work on the bridge.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Although this regulation prevents traffic from transiting a portion of the Mystic River, the effect of this regulation will not be significant for the following reasons: The bridge will not open to traffic during the construction period, therefore potential traffic will be limited to those vessels that could fit under the closed bridge; commercial traffic on the Mystic River north of the Route 1 Bascule Bridge is very limited; recreational traffic is minimal during the time of year the construction will occur; extensive advance notifications will be made to the maritime community via the Local Notice to Mariners, and marine information broadcasts; and prior to commencement of phase-one of this construction project the Mystic River Chamber of Commerce Task Group conducted several open meetings and communicated with local mariners regarding the closure periods.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit the boundaries of the safety zone during its effective dates. This rule will not have a substantial affect on small entities for the following reasons. There is very little commercial traffic north of the Route 1 Bascule Bridge. Recreational traffic needing to transit through the boundaries of the safety zone is minimal during the time of year the construction will occur. The Mystic River Chamber of Commerce Task Group has conducted several public meetings and corresponded with local mariners regarding the need for and timing of the waterway closure. Any entities that might be affected by the closure have had sufficient advance notice to make alternate arrangements. In addition, extensive advance notifications will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule would economically affect it.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.051(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From December 1, 2001 to April 15, 2002, add § 165.T01–197 to read as follows:

§ 165.T01–197 Safety Zone: Route 1 Bascule Bridge, Mystic River, Mystic, CT

(a) *Location.* The following area is designated as a safety zone: all waters of the Mystic River within 100 feet of both the north and south sides of the Route 1 Bascule Bridge located in approximate position 41°21′3″ N, 071°58′1″ W.

(b) *Enforcement period.* This section is effective from 7 a.m. (EST) December 1, 2001 to 7 a.m. (EST) April 15, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: October 23, 2001.

Joseph J. Coccia,

Captain, U.S. Coast Guard, Captain of the Port, Group/MSO Long Island Sound.

[FR Doc. 01–28006 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska–01–008]

RIN 2115–AA97

Safety Zone; Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. The zone is needed to protect the safety of persons and vessels operating in the vicinity of the safety zone during a rocket launch from the Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island facility. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Commander, Seventeenth Coast Guard District, and the Coast Guard Captain of the Port, Western Alaska, or his on-scene representative. The intended effect of the proposed safety zone is to ensure the safety of human life and property during the rocket launch.

DATES: This temporary final rule is effective from 6:30 a.m. to 10:30 a.m. each day starting November 9, 2001 through November 14, 2001, and then from 5 a.m. to 9:15 a.m. each day starting November 15, 2001 through November 21, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP Western Alaska–01–008 and are available for inspection or copying at Coast Guard Marine Safety Office Anchorage, 510 "L" Street, Suite 100, Anchorage, AK 99501 between 7:30 a.m. to 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Diane Kalina, Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after publication in the **Federal Register**. The parameters of the zone will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners. Because the hazardous condition is expected to last for approximately 4 hours of each day for 13 days, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal. Therefore, notice and comment is unnecessary. Additionally, the process of scheduling a rocket launch is uncertain due to unforeseen delays that can cause cancellation of the launch. The Coast Guard attempts to publish a Final Rule, with a 30-day window, as close to the expected launch date as possible, when it is conveyed to them in time. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to protect human life and property from possible fallout from the rocket launch. This safety zone should have minimal impact on vessel transits and announcements via Broadcast Notice to Mariners will give vessels advanced notice of the launch.

Background and Purpose

The Alaska Aerospace Development Corporation (AADC) will attempt to launch an unmanned rocket from their facility at Narrow Cape, Kodiak Island, Alaska sometime between 8:24 a.m. and 10:10 a.m. each day from November 9, 2001 through November 14, 2001 and between 7:02 a.m. and 8:54 a.m. each day from November 15, 2001 through November 21, 2001. The safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners. Because the hazardous condition is expected to last for approximately 4 hours of each day for 13 days, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal.

Discussion of Regulation

From the latest information received from the Alaska Aerospace Development Corporation, the launch window is scheduled for 4 hours each day from November 9, 2001 through November 21, 2001. The size of the safety zone has been set based upon the trajectory information in order to provide a greater safety buffer in the event that the launch is aborted shortly after take-off. The proposed safety zone includes an area in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area by a line drawn from a point located at 57°26′53″ North, 152°22′14″ West, then south to a point located at 57°24′42″.North, 152°23′18″ West, then southeast to a point located at 57°11′32″ North, 152°05′35″ West, then northeast to a point located at 57°18′45″ North, 151°53′47″ West, then west northwest to the point located at 57°27′45″ North, 152°18′31″ West, then back to the first point. All coordinates reference Datum: NAD 1983.

This safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch of the rocket. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Because the hazardous condition is expected to last for only approximately 4 hours of each day for 13 days, and because general permission to enter the safety zone will be given during non-hazardous times, the economic impact of this rule on commercial traffic should be minimal. In addition, before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska. We believe there will be minimal economic impact on commercial traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit, anchor, or fish in a portion of the Gulf of Alaska off Ugak Island and Narrow Cape from 6:30 a.m. to 10:30 a.m. each day starting November 9, 2001 through November 14, 2001, and then from 5 a.m. to 9:15 a.m. each day starting November 15, 2001 through November 21, 2001. Because the hazardous condition is expected to last for approximately 4 hours of each day for 13 days, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic should be minimal. Before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska. We believe there will be minimal impact to small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Consultation and Coordination with Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct affect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule is excluded under paragraph (34)(g) because it is a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T17–008 to read as follows:

§ 165.T17–008 Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island, AK: Safety Zones.

(a) *Description.* This safety zone includes an area in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area bounded by a line drawn from a point located at 57°26′53″ North, 152°22′14″ West, then south to a point located at 57°24′42″ North, 152°23′18″ West, then southeast to a point located at 57°11′32″ North, 152°05′35″ West, then northeast to a point located at 57°18′45″ North, 151°53′47″ West, then west northwest to the point located at 57°27′45″ North, 152°18′31″ West, then back to the first point. All coordinates reference Datum: NAD 1983.

(b) *Effective dates.* This section is effective from 6:30 a.m. to 10:30 a.m. each day starting November 9, 2001 through November 14, 2001, and then from 5 a.m. to 9:15 a.m. each day starting November 15, 2001 through November 21, 2001.

(c) *Regulations.* (1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in § 165.23 of this part apply. No person or vessel may enter or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port or his on-scene representative. In the vicinity of Narrow Cape, the Captain of the Port, Western Alaska's on-scene representative may be contacted at the Kodiak Launch Complex via VHF marine channel 16.

Dated: October 26, 2001.

W. J. Hutmacher,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 01–28005 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–056–2–200205; FRL–7098–6]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Alabama: Control of Gasoline Sulfur and Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a SIP revision submitted by the State of Alabama establishing low-sulfur and low-Reid Vapor Pressure (RVP) requirements for gasoline distributed in the Birmingham nonattainment area (Shelby and Jefferson counties in Alabama). Alabama developed these fuel requirements to reduce emissions of nitrogen oxides and volatile organic compounds as part of the State's strategy to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the Birmingham nonattainment area. EPA is approving Alabama's fuel requirement into the SIP because these fuel requirements are in accordance with the requirements of the Clean Air Act (the Act), and are necessary for the Birmingham nonattainment area to achieve the 1-hour ozone NAAQS in a timely manner.

EFFECTIVE DATE: This final rule is effective on December 7, 2001.

ADDRESSES: Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Lynorae Benjamin, (404) 562–9040.

Alabama Department of Environmental Management (ADEM), 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059.

FOR FURTHER INFORMATION CONTACT: Lynorae Benjamin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9040. Ms. Benjamin can also be reached via electronic mail at *benjamin.lynorae@epa.gov.*

SUPPLEMENTARY INFORMATION: On November 1, 2000, the State of Alabama submitted an attainment demonstration for the 1-hour ozone NAAQS for the Birmingham nonattainment area for inclusion into the Alabama SIP. The rule for the fuel program (the subject of this final rulemaking) is included in this submittal in Appendix I; the request for a waiver from Federal preemption pursuant to 211(c)(4)(C) of the Act (also the subject of this final rulemaking) is included as Appendix II of this submittal. Specifically, Appendix II of the Alabama submittal contains data and analyses to support a finding under section 211(c)(4)(C) that the State's low-sulfur and low-RVP requirements are necessary for the Birmingham nonattainment area to achieve the ozone NAAQS. On September 11, 2001, (66 FR 47142) EPA published a notice of proposed rulemaking (NPR) to approve the fuel waiver request and fuel rule. That NPR provides a detailed description of this action and EPA's rationale for proposed approval. The public comment period for this action ended on October 11, 2001. No comments, adverse or otherwise, were received on EPA's proposal.

Final Action

EPA is approving Alabama's low-sulfur/low-RVP fuel program into the federally enforceable SIP because the fuel requirements are in accordance with the Act, are necessary for the Birmingham nonattainment area to achieve the 1 hour ozone NAAQS in a timely manner, and will supply some or all of the reductions needed to achieve the ozone NAAQS.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2001). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of prior existing requirements for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1195 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Action of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: October 24, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

2. Section 52.50 is amended:

A. In paragraph (c) add a new chapter heading No. 335–3–20–Control Fuels, and entries for Sections 335–3–20–.01, 335–3–20–.02, and 335–3–20–.03; and

B. In paragraph (e) add a new entry for "Alabama Fuel Waiver Request—Appendix II of the Attainment Demonstration of the 1-hour NAAQS for Ozone for the Birmingham Nonattainment Area," at the end of the table to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title subject	Adoption date	EPA approval date	Federal Register notice
	• • • • • • •			
Chapter No. 335–3–20—Control of Fuels				
335–3–20–.01	Definitions	October 24, 2000	November 7, 2001	66 FR 56219.
335–3–20–.02	Control of Fuels	October 24, 2000	November 7, 2001	66 FR 56219.
335–3–20–.03	Recordkeeping, Reporting, and Testing.	October 24, 2000	November 7, 2001	66 FR 56219.

* * * * *

(e) * * *

Provision	State effective date	EPA approval date	Federal Register notice	Comments
Alabama Fuel Waiver Request-Appendix II of the Attainment Demonstration of the 1-hour NAAQS for Ozone for the Birmingham Non-attainment Area.	December 1, 2000	November 7, 2001	66 FR 56220.	

[FR Doc. 01–27828 Filed 11–6–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD124–3084; FRL–7085–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions from Distilled Spirits Facilities, Aerospace Coating Operations and Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions establish reasonably available control technology (RACT) requirements to reduce emissions of volatile organic compounds (VOCs) from distilled spirits facilities, aerospace coating operations, and kraft pulp mills. The intended effect of this action is to approve three regulations that reduce VOC emissions from distilled spirits facilities, aerospace coating operations, and kraft pulp mills. This action is being taken under the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on December 7, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182 and Kristeen Gaffney, (215) 814–2092, or via e-mail at *quinto.rose@epamail.epa.gov* and *gaffney.kristeen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 2, 2001, the Maryland Department of Environment (MDE) requested that EPA parallel-process its approval of three proposed state regulations as revisions to the Maryland SIP. These regulations control VOC emissions from (1) distilled spirits facilities, COMAR 26.11.19.29, (2) aerospace coating operations, COMAR 26.11.19.13–1, and (3) kraft pulp mills, COMAR 26.11.14.01, 26.11.14.02 and 26.11.14.06. These regulations impose RACT requirements for the control of VOC emissions at affected facilities in Maryland. EPA published its notices of proposed rulemaking (NPRs) to approve the aerospace coating and kraft pulp mills regulations on August 24, 2001 (66 FR 44574), and the distilled spirits facilities regulation on August 27, 2001 (66 FR 44995), as revisions to the Maryland SIP.

EPA proposed approval of Maryland's proposed regulations under a procedure called parallel-processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending and/or adopting its regulations. These regulations have now been fully adopted by Maryland and were formally submitted to EPA for approval into the Maryland SIP on October 5, 2001. The adopted regulations were not changed from the proposed versions submitted for parallel-processing. The specific requirements of Maryland's regulations to control VOC emissions from distilled spirits facilities, aerospace coating operations, and kraft pulp mills; and the rationale for EPA's proposed actions are explained in the NPRs and will not be restated here. No public comments were received on the NPR pertaining to aerospace coating operations. EPA did receive comments on the NPRs pertaining to kraft pulp mills and distilled spirits facilities. They are not adverse comments which oppose EPA's approval of Maryland's regulations, but rather comments that request to make certain clarifications in its final rulemaking.

II. Comments and Responses

Comment: EPA should make it clear that the terms and provisions of the kraft pulp mills and the distilled spirits facilities, for this rulemaking, only apply to the affected facilities in Maryland.

Response: The terms and provisions of the Maryland's RACT regulations to control VOC emissions from kraft pulp mills and distilled spirits facilities, only apply to the affected facilities located in Maryland, namely Westvaco's Luke Mill (for kraft pulp mills) and Seagram Americas (for the distilled spirits facilities), respectively.

Comment: It is not possible to control emissions of VOCs from aging houses from distilled spirits facilities.

Response: Neither the proposed nor adopted version of Maryland's RACT to control VOC emissions from distilled spirits facilities requires that VOCs be controlled from the aging warehouses. The Maryland regulation is not to be construed to mean that the required good operating practices manual extends to the aging process at the affected facility in Maryland. There are, however, other emission sources at the affected facility in Maryland where fugitive VOC emissions can be minimized. The requirements of Maryland's distilled spirits facilities regulation to minimize VOC emissions by implementing good operating practices at fugitive emission sources, other than the aging warehouses, is unique to the affected facility in Maryland.

III. Final Action

EPA is approving revisions submitted by the State of Maryland on October 5, 2001 pertaining to RACT requirements to reduce VOC from distilled spirits facilities, COMAR 26.11.19.29; aerospace coating operations, COMAR 26.11.19.13–1; and kraft pulp mills, COMAR 26.11.14.01, 26.11.14.02 and 26.11.14.06.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **NOTE**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Maryland's RACT regulations to control VOCs from distilled spirits facilities, aerospace coating operations, and kraft pulp mills, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: October 9, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(160), (c)(169) and (c)(170) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(160) Revisions to the Maryland Regulation, COMAR 26.11.19, *Volatile Organic Compounds from Specific Processes*, submitted on October 5, 2001 by the Maryland Department of the Environment.

(i) Incorporation by reference.

(A) Letter of October 5, 2001 from the Maryland Department of the Environment transmitting Maryland Regulation, COMAR 26.11.19.29, *Control of Volatile Organic Compounds From Distilled Spirits Facilities.*

(B) Additions of COMAR 26.11.19.29, *Control of Volatile Organic Compounds From Distilled Spirits Facilities*, adopted by the State of Maryland on September 11, 2000 and effective October 2, 2000.

(C) Revisions to COMAR 26.11.19.29, *Control of Volatile Organic Compounds From Distilled Spirits Facilities*, adopted by the State of Maryland on September 25, 2001 and effective October 15, 2001.

(ii) Additional Materials—Remainder of the State submittals pertaining to the revisions listed in paragraphs (c)(160)(i)(B) and (C) of this section.

* * * * *

(169) Revisions to the Maryland Regulation, COMAR 26.11.19, *Volatile Organic Compounds from Specific Processes*, submitted on October 5, 2001 by the Maryland Department of the Environment.

(i) Incorporation by reference.

(A) Letter of October 5, 2001 from the Maryland Department of the Environment transmitting Maryland Regulation, COMAR 26.11.19.13–1, *Aerospace Coating Operations.*

(B) Addition of COMAR 26.11.19.13–1, *Aerospace Coating Operations*, adopted by the State of Maryland on September 11, 2000 and effective October 2, 2000.

(C) Revisions to COMAR 26.11.19.13–1, *Aerospace Coating Operations*, adopted by the State of Maryland on September 25, 2001 and effective October 15, 2001.

(ii) Additional Materials—Remainder of the State submittals pertaining to the regulations listed in paragraphs (c)(169)(i)(B) and (C) of this section.

(170) Revisions to the Maryland Regulation, COMAR 26.11.14, *Control of Emissions from Kraft Pulp Mills*, submitted on October 5, 2001 by the Maryland Department of the Environment.

(i) Incorporation by reference.

(A) Letter of October 5, 2001 from the Maryland Department of the Environment transmitting Maryland Regulations COMAR 26.11.14.01, 26.11.14.02 and 26.11.14.06, *Control of Emissions from Kraft Pulp Mills*.

(B) Additions of COMAR 26.11.14.01, COMAR 26.11.14.02 and COMAR 26.11.14.06, *Control of Emissions from Kraft Pulp Mills*, adopted by the State of Maryland on December 13, 2000 and effective January 8, 2001.

(C) Revisions to COMAR 26.11.14.01 and COMAR 26.11.14.06, *Control of Emissions from Kraft Pulp Mills*, adopted by the State of Maryland on September 25, 2001 and effective October 15, 2001.

(ii) Additional Materials—Remainder of the State submittals pertaining to the revisions listed in paragraphs (c)(170)(i)(B) and (C) of this section.

[FR Doc. 01–27826 Filed 11–6–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD117–3081; FRL–7083–7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; RACT for the Control of VOC Emissions From Iron and Steel Production Installations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes reasonably available control technology (RACT) for the control of emissions of volatile organic compounds (VOCs) from iron and steel production installations in Maryland. EPA is approving this revision in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on December 7, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, or by e-mail at *magliocchetti.catherine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 31, 2001 (66 FR 39471), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of a SIP revision, which establishes reasonably available control technology (RACT) for the control of emissions of volatile organic compounds (VOCs) from iron and steel production installations in Maryland. The formal SIP revision was submitted by the State of Maryland on January 8, 2001. Other specific requirements of the SIP revision pertaining to VOC RACT from iron and steel production installations in Maryland, and the rationale for EPA's proposed action are explained in the NPR, and will not be restated here. No comments were received on the NPR.

II. Final Action

EPA is approving reasonably available control technology (RACT) for the control of emissions of volatile organic compounds (VOCs) from iron and steel production installations in Maryland as a revision to the Maryland SIP.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this final rule must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Maryland VOC RACT regulation for iron and steel production facilities may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: October 5, 2001.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(163) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(163) Revisions to the Maryland Regulations submitted on January 8, 2001 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter dated January 8, 2001 from the Maryland Department of the Environment transmitting regulations that establish reasonably available control technology (RACT) requirements for those sources at integrated steel mills that cause emissions of volatile organic compounds (VOCs).

(B) The following revisions to COMAR 26.11.10, effective December 25, 2000:

(*1*) Addition of COMAR 26.11.10.01B(1) through .0B(5) inclusive, and .01B(8.) [existing provisions .01B(1) and .01B(2) are renumbered as .01B(6) and .01B(7) respectively].

(*2*) New COMAR 26.11.10.06 (Control of Volatile Organic Compounds from Iron and Steel Production Installations).

(*3*) Revisions to COMAR 26.11.10.07 (Testing and Observation Procedures).

(C) Letter dated May 29, 2001 from the Maryland Department of the Environment, noting the correction of a typographical error made in the Maryland Register publication of the Iron and Steel VOC RACT rule.

(ii) Additional Materials—Remainder of the state submittal pertaining to the regulations listed in paragraph (c)(163)(i)(B) of this section.

[FR Doc. 01–27930 Filed 11–6–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–056–200204; FRL–7098–7]

Approval and Promulgation of Implementation Plans: Alabama: Attainment Demonstration of the Birmingham 1-hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving additions to Alabama's Air Quality Regulations and the ground-level 1-hour ozone attainment demonstration State Implementation Plan (SIP) for the Birmingham nonattainment area submitted by the Alabama Department of Environmental Management (ADEM) on November 1, 2000. This rule is based on the requirements of the Clean Air Act as amended in 1990 (CAA), related to 1-hour ozone attainment demonstrations. EPA will be approving the fuel control measure in a separate **Federal Register** action.

EFFECTIVE DATE: This final rule is effective on December 7, 2001.

ADDRESSES: Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION: On November 1, 2000, the Alabama Department of Environmental Management (ADEM) submitted a revision to its ground-level 1-hour ozone attainment SIP to meet the requirements of the CAA as amended in 1990, related to 1-hour ozone attainment demonstrations. The revision consists of the adoption of the regulatory section, chapter 335–3–8 Control of Nitrogen Oxide Emissions: (.03) NO_X Emissions from Electric Utility Generating Units, and the adoption of the non-regulatory ground-level 1-hour ozone attainment demonstration. On September 11, 2001, (66 FR 47145) EPA published a notice proposing to approve the November 1, 2000, ground-level 1-hour ozone attainment demonstration and the associated regulations. That notice provided for a public comment period ending on October 11, 2001. A detailed description of this attainment demonstration and EPA's rationale for approving it was provided in the proposal notice and will not be restated here. No adverse comments were received on EPA's proposal.

I. Final Action

EPA is approving the ground-level 1-hour ozone attainment demonstration for Birmingham and the associated regulations, which were submitted to EPA on November 1, 2000. EPA finds that Alabama's submittal is fully approvable.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May

22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 24, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

2. Section 52.50 is amended by:

A. Adding in paragraph (c) a new entry in Chapter No. 335–3–8—Nitrogen Oxides Emissions for Section 335–3–8–.03; and

B. Adding a new entry at the end of the table in paragraph (e) for "Attainment Demonstration of the 1-hour NAAQS for Ozone for the Birmingham Nonattainment Area" to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title subject	Adoption date	EPA approval date	Federal Register notice
Chapter No. 335–3–8 Nitrogen Oxides Emissions				
Section 335–3–8–.03	NO_x Emissions from Electric Utility Generating Units.	October 24, 2000	November 7, 2001	[Insert citation of publication].

* * * * *

(d) * * *

(e) * * *

Provision	State effective date	EPA approval date	Federal Register notice	Comments
Attainment Demonstration of the 1-hour NAAQS for Ozone for the Birmingham Nonattainment Area.	December 1, 2000	November 7, 2001	[Insert citation of publication].	

[FR Doc. 01–27827 Filed 11–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301187; FRL–6806–9]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for the combined residues of imidacloprid in or on almond nutmeat, almond hulls, and cranberries and modifies the existing time limited tolerances for stone fruit and prunes. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on almonds, stone fruit, and cranberries. This regulation establishes maximum permissible levels for residues of imidacloprid in these food commodities. The tolerances will expire and are revoked on December 31, 2003.

DATES: This regulation is effective November 7, 2001. Objections and requests for hearings, identified by docket control number OPP–301187, must be received by EPA on or before January 7, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301187 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9367; and e-mail address: ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180._00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301187. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the insecticide imidacloprid, [(1-[6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on almond nutmeat at 0.05 part per million (ppm), almond hulls at 4.0 ppm, cranberries at 0.5 ppm and modifying the existing time limited tolerances for stone fruit from 1.0 ppm to 3.0 ppm and prunes from 3.5 ppm to 10.0 ppm. These tolerances will expire and are revoked on December 31, 2003. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the

requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Imidacloprid on Stone Fruit and Almonds and FFDCA Tolerances

The glassy-winged sharpshooter (GWSS) poses a significant threat to viticulture throughout California. Native to Southeast United States, this large leafhopper was inadvertently introduced into Southern California about 10 years ago. It went unrecognized for several years due to its similarity to the smoke tree sharpshooter, a native insect. It is of particular concern to grape growers due to its ability to transmit Xylella fastidiosa, the bacterium that causes Pierce's Disease. EPA has authorized under FIFRA section 18 the use of imidacloprid on stone fruit and almonds for control of the glassy- winged sharpshooter in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

EPA has also authorized under FIFRA section 18 the use of imidacloprid on cranberries for control of cranberry weevils in Massachusetts. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of imidacloprid in or on stone fruit, almonds and cranberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on stone fruit, prunes, almond nutmeat, almond hulls and cranberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether imidacloprid meets EPA's registration requirements for use on stone fruit, almonds, and/or cranberries or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of imidacloprid by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any States other than California to use this pesticide on stone fruit and almond or Massachusetts on cranberries under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for imidacloprid, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of imidacloprid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerance for the combined residues of imidacloprid in or on almond nutmeat at 0.05 ppm, almond hulls at 4.0 ppm, stone fruit at 3.0 ppm, prunes at 10.0 ppm, and cranberries at 0.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF).

Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for imidacloprid used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IMIDACLOPRID FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13-50 years of age	NOAEL = Not Determined LOAEL = 42 mg/kg/day UF = 100 Acute RfD = 0.42 mg/kg/day	FQPA SF = 3 aPAD = acute RfD/FQPA SF = 0.14 mg/kg/day	Acute Neurotoxicity - Rats LOAEL = 42 mg/kg/day based on decreased motor activity in female rats.
Acute Dietary general population including infants and children	NOAEL = Not Determined LOAEL = 42 mg/kg/day UF = 100 Acute RfD = 0.42 mg/kg/day	FQPA SF = 3 aPAD = acute RfD/FQPA SF = 0.14 mg/kg/day	Acute Neurotoxicity - Rats LOAEL = 42 mg/kg/day based on decreased motor activity in female rats.
Chronic Dietary all populations	NOAEL= 5.7 mg/kg/day UF = 100 Chronic RfD = 0.057 mg/kg/day	FQPA SF = 3 cPAD = chronic RfD/FQPA SF = 0.019 mg/kg/day	Combined Chronic Toxicity/Carcinogenicity - Rats LOAEL = 16.9 (males) 24.9 (females) mg/kg bwt/day based on increased number of thyroid lesions.
Short-Term Dermal (1 to 7 days) (Residential)	N/A	N/A	No dermal or systemic toxicity was seen in a 21-day dermal toxicity study in rabbits following repeated dermal applications of imidacloprid at 1,000 mg/kg bwt/day (Limit-Dose) for 3 weeks. Therefore, this risk assessment is not required.
Intermediate-Term Dermal (1 week to several months) (Residential)	N/A	N/A	No dermal or systemic toxicity was seen in a 21-day dermal toxicity study in rabbits following repeated dermal applications of imidacloprid at 1,000 mg/kg bwt/day (Limit-Dose) for 3 weeks. Therefore, this risk assessment is not required.
Long-Term Dermal (several months to lifetime) (Residential)	N/A	N/A	No dermal or systemic toxicity was seen in a 21-day dermal toxicity study in rabbits following repeated dermal applications of imidacloprid at 1,000 mg/kg bwt/day (Limit-Dose) for 3 weeks. Therefore, this risk assessment is not required.
Short-Term Inhalation (1 to 7 days) (Residential)	N/A	N/A	A short-term inhalation endpoint was not identified due to the demonstrated absence of toxicity.
Intermediate-Term Inhalation (1 week to several months) (Residential)	N/A	N/A	Based on the LC_{50} of >5.33 mg/L (Limit-Dose), imidacloprid is placed in Toxicity Category IV. Additionally, the vapor pressure for imidacloprid is relatively low (6.9×10^{-9} torr). Therefore, a separate risk assessment via this route is not required.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IMIDACLOPRID FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Long-Term Inhalation (several months to lifetime) (Residential)	N/A	N/A	Based on the LC_{50} of >5.33 mg/L (Limit-Dose), imidacloprid is placed in Toxicity Category IV. Additionally, the vapor pressure for imidacloprid is relatively low (6.9×10^{-9} torr). Therefore, a separate risk assessment via this route is not required.
Cancer (oral, dermal, inhalation)	N/A	N/A	Imidacloprid has been classified by the Agency as a Group E chemical, no evidence of carcinogenicity for humans, thus, a cancer risk assessment is not required.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances, some time-limited, are currently established (40 CFR 180.472) for the combined residues of the insecticide imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on a variety of raw agricultural and animal commodities at levels ranging from 0.02 ppm in eggs to 15 ppm in raisins, waste. Risk assessments were conducted by EPA to assess dietary exposures from [imidacloprid] in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992–nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: 100% crop treated and tolerance level residues.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992– nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues and some percent crop treated data used of selected commodities.

iii. *Cancer.* Imidacloprid has been classified by the Agency as a Group E chemical, no evidence of carcinogenicity for humans, thus, a cancer risk assessment is not required.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used tolerance level residues and some percent crop treated data on selected commodities. The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which imidacloprid may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for imidacloprid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of imidacloprid.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentrations in Ground Water (SCI-GROW), which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to imidacloprid they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of imidacloprid for acute exposures are estimated to be 4.1 parts per billion (ppb) for surface water and 1.1 ppb for ground water. The EECs for chronic exposures are estimated to be 0.1 ppb for surface water and 1.1 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Imidacloprid is currently registered for use on the following residential non-dietary sites: Ornamentals (e.g., flowering and foliage plants, ground covers, turf, and lawns), tobacco, golf courses, walkways, recreational areas, household or domestic dwellings (indoor/outdoor), and cats/dogs. The risk assessment was conducted using the following exposure assumptions: Short- and intermediate-term oral exposure are not expected for adult population subgroups. However, since imidacloprid is registered for use on turf, home gardens and pets, the Agency has identified potential short-term oral exposures to children for these uses. Thus, a residential short-term risk assessment via the oral route is required.

The DWLOC for short-term exposure to imidacloprid was calculated relative to the aPAD which was utilized for estimating risk for short-term oral exposure to imidacloprid. To calculate the DWLOC for short-term exposure relative to an acute toxicity endpoint, the sum of average dietary food exposure and the oral exposure from imidacloprid home garden, turf, and pet uses was subtracted from the aPAD to obtain the maximum allowable short-term exposure to imidacloprid in drinking water (Chronic food exposure = 0.011 mg/kg/day. Oral exposure from home garden and turf uses = 0.0059 mg/kg bwt/day, oral exposure from pet uses = 0.10 mg/kg bwt/day). DWLOCs were then calculated using default body weights and drinking water consumption figures, and then compared to the chronic water number.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether imidacloprid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imidacloprid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies.* In a developmental toxicity study with Sprague-Dawley rats, groups of pregnant animals (25/group) received oral administration of imidacloprid (94.2%) at 0, 10, 30, or 100 mg/kg bwt/day during gestation days 6 through 16. Maternal toxicity was manifested as decreased body weight gain at all dose levels and reduced food consumption at 100 mg/kg bwt/day. No treatment-related effects were seen in any of the reproductive parameters (i.e., Caesarean section evaluation). At 100 mg/kg bwt/day, developmental toxicity manifested as wavy ribs (fetus =7/149 in treated vs. 2/158 in controls and litters, 4/25 vs. 1/25). For maternal toxicity, the LOAEL was 10 mg/kg bwt/day (LDT) based on decreased body weight gain; a NOAEL was not established. For developmental toxicity, the NOAEL was 30 mg/kg bwt/day and the LOAEL was 100 mg/kg bwt/day based on increased wavy ribs.

In a developmental toxicity study with Chinchilla rabbits, groups of 16 pregnant does were given oral doses of imidacloprid (94.2%) at 0, 8, 24 or 72 mg/kg bwt/day during gestation days 6 through 18. For maternal toxicity, the NOAEL was 24 mg/kg bwt/day and the LOAEL was 72 mg/kg bwt/day based on mortality, decreased body weight gain, increased resorptions, and increased abortions. For developmental toxicity, the NOAEL was 24 mg/kg bwt/day and the LOAEL was 72 mg/kg bwt/day based

on decreased fetal body weight, increased resorptions, and increased skeletal abnormalities.

3. *Reproductive toxicity study.* In a 2-generation reproductive toxicity study, imidacloprid (95.3%) was administered to Wistar/Han rats at dietary levels of 0, 100, 250, or 700 ppm (0, 7.3, 18.3, or 52.0 mg/kg bwt/day for males and 0, 8.0, 20.5, or 57.4 mg/kg bwt/day for females). For parental/systemic/reproductive toxicity, the NOAEL was 250 ppm (18.3 mg/kg bwt/day) and the LOAEL was 750 ppm (52 mg/kg bwt/day), based on decreases in body weight in both sexes in both generations. Based on these factors, the Agency determined that the review be revised to indicate the parental/systemic/reproductive NOAEL and LOAEL to be 250 and 700 ppm, respectively, based upon the body weight decrements observed in both sexes in both generations.

4. *Prenatal and postnatal sensitivity.* The developmental toxicity data demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study data did not identify any increased sensitivity of rats to *in utero* or postnatal exposure. Parental NOAELs were lower or equivalent to developmental or offspring NOAELs.

5. *Conclusion.* There is a need for a developmental neurotoxicity study for assessment of potential alterations of functional development. However, the Agency has determined that this data gap does not preclude the establishment/continuance of tolerances. The 10X safety factor to account for enhanced sensitivity of infants and children (as required by FQPA) was reduced to 3x and the factor applies to all population subgroups.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to imidacloprid in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of imidacloprid on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to imidacloprid will occupy 24% of the aPAD for the U.S. population, 18% of the aPAD for females 13 years and older, 47% of the aPAD for non-nursing infants less than 1 year old and 47% of the aPAD for children 1-6 years old. In addition, despite the potential for acute dietary exposure to imidacloprid in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of imidacloprid in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO IMIDACLOPRID

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.14	24%	4.1	1.1	3,900
Children 1-6	0.14	47%	4.1	1.1	740

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to imidacloprid from food will utilize 26% of the cPAD for the U.S. population, 68% of the cPAD for non-nursing infants and 58% of the cPAD for children 1-6 years old. Based on the use pattern, chronic residential exposure to residues of imidacloprid is not expected. In addition, despite the potential for chronic dietary exposure to imidacloprid in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of imidacloprid in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO IMIDACLOPRID

Population Subgroup	cPAD (mg/kg/day)	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.019	26	0.1	1.1	490
Non-nursing Infants	0.019	68	0.1	1.1	60
Children 1-6 years old	0.019	58	0.1	1.1	90

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Imidacloprid is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for imidacloprid.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 350 for children 1-6 years old (the population sub-group of concern. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of imidacloprid in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO IMIDACLOPRID

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Children 1-6 years old	350	300	0.1	1.1	200

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Though residential exposure could occur with the use of imidacloprid, no toxicological effects have been identified for intermediate-term toxicity. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Imidacloprid has been classified by the Agency as a Group E chemical, no evidence of carcinogenicity for humans, thus, a cancer risk assessment is not required.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to imidacloprid residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example - gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits for imidacloprid on stone fruit, almonds or cranberries.

VI. Conclusion

Therefore, the tolerance is established for the combined residues of imidacloprid, (1-[6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on almond nutmeat at 0.05 ppm, almond hulls at 4.0 ppm, cranberries at 0.5 ppm, and the exisiting time limited tolerance for stone fruit is modified from 1.0 ppm to 3.0 ppm and for prunes is modified from 3.5 ppm to 10.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301187 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 7, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR

178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301187, to: Public Information and Records Integrity Branch, Information Resources and Services Division(7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.472 is amended by revising the entries for "cranberries," "stone fruit, crop group 12," and "prunes" and adding commodities to the table in paragraph (b) to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/ Revocation Date
Almond, hulls	4.0	12/31/03
Almond, nutmeat	0.05	12/31/03
Cranberries	0.5	12/31/03
Prunes	10.0	12/31/03
Stone fruit	3.0	12/31/03

* * * * *

[FR Doc. 01–27601 Filed 11–6–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301188; FRL–6807–1]

RIN 2070–AB78

Chlorothalonil; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for combined residues of chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on ginseng. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on ginseng. This regulation re-establishes a maximum permissible level for residues of chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile (SDS-3701) in this food commodity. The tolerance will expire and is revoked on December 31, 2003.

DATES: This regulation is effective November 7, 2001. Objections and requests for hearings, identified by docket control number OPP–301188, must be received by EPA on or before January 7, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301188 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dan Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number:(703) 308–9375; and e-mail address: rosenblatt.dan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180._00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301188. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is re-establishing a tolerance for combined residues of the fungicide chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile, in or on ginseng at 0.10 part per million (ppm). This tolerance will expire and is revoked on December 31, 2003. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Chlorothalonil on Ginseng and FFDCA Tolerances

Ginseng is a valuable root crop that is used as a health supplement in a variety of foods such as teas, wine, herbal medicines and gum. Ginseng is grown over multiple growing seasons, so disease control is necessary to ensure that the harvested roots and seeds are not damaged by intensifying disease pressure over successive seasons. Roots are not harvested until the plants are four years old. Growers are concerned about the damage that the fungal disease *Alternaria panax* causes to ginseng gardens. The fungus can produce leaf and stem blight which defoliates and diminishes the overall vigor of effected ginseng. These blights can result in high or complete yield loss of the harvested ginseng root.

Growers have typically relied upon mancozeb treatments to protect gardens against *Alternaria panax*. However, during the 2001 growing season, Wisconsin experienced significant precipitation and also hot humid conditions. This weather cycle further heightened the probability of significant disease pressure. At the same time, the rain events negated the effectiveness of the traditional control means, mancozeb. If applied prior to rain events, mancozeb will wash off of the ginseng plants. The Applicant identified a weather-stick formulation of chlorothalonil that has the characteristic of adhering strongly to the ginseng plants. Thus, on June 15, 2001, the Wisconsin Department of Agriculture, Trade, and Consumer Protection availed itself of its authority to declare a crisis situation under section 18, thereby permitting growers to immediately use a weather-stick formulation of chlorothalonil on ginseng.

EPA acknowledges that there are not sufficient registered alternatives and concurred on the crisis declaration by the State to control leaf and stem blight in ginseng.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of chlorothalonil in or on ginseng. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on ginseng after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether chlorothalonil meets EPA's registration requirements for use on ginseng or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of chlorothalonil by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Wisconsin to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for chlorothalonil, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of chlorothalonil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on ginseng at 0.10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10x to account for interspecies differences and 10x for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10x to account for interspecies differences and 10x for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances. MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for chlorothalonil used for human risk assessment is shown in the following Table 1.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CHLOROTHALONIL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary general population including infants and children	LOAEL = 175 mg/kg/day UF = 300 Acute RfD =0.58 mg/kg/day	FQPA SF = 1X aPAD = acute RfD/FQPA SF= 0.58 mg/kg/day	Subchronic Dietary - Rats LOAEL = 175 mg/kg/day based on increased cell proliferation correlated with histopathological lesions of degeneration of the proximal convoluted tubules and epithelial hyperplasia.
Chronic dietary all populations	NOAEL = 2 mg/kg/day UF = 100 Chronic RfD = 0.02 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD/FQPA SF= 0.02 mg/kg/day	Chronic Toxicity/Carcinogenicity Study - Rats LOAEL = 4 mg/kg/day based on increased kidney weights and hyperplasia of the proximal convoluted tubules in the kidneys as well asulcers and forestomach hyperplasia.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CHLOROTHALONIL FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short-term dermal (1 to 7 days) (Residential)	dermal (or oral) study NOAEL= 600 mg/kg/day (dermal absorption rate = 0.15%)	LOC for MOE = 100 (Residential)	21-Day Dermal Toxicity Study - Rats LOAEL = 600 mg/kg/day based on no treatment-related systemic toxicity in the highest dose tested.
Intermediate-termdermal (1 week to several months) (Residential)	dermal (or oral) study NOAEL = 600 mg/kg/day (dermal absorption rate = 0.15%	LOC for MOE = 100 (Residential)	21-Day Dermal Toxicity Study - Rats LOAEL = 600 mg/kg/day based on no treatment-related systemic toxicity in the highest dose tested.
Cancer (oral, dermal,inhalation)	$Q^* = 7.66 \times 10^{-3}$ (mg/kg/day)$^{-1}$		Chronic toxicity/carcinogenicity study in rats. Findings based on evidence of increased incidence of renal adenomas, carcinomas and adenomas/carcinomas combined in rats and mice following chronic dosing at 15 and 175 milligram/kilograms/day (mg/kg/day), as well as increased incidence of forestomach carcinomas in CD-1 mice and papillomas and/or carcinomas combined in Fisher 344 rats. A 3/4 scaling factor was applied to the Q*.
Cancer (oral, dermal, inhalation)	NOAEL = 1.5 mg/kg/day	LOC for MOE = 9,500	Cell proliferation study in rats; LOAEL = 15 mg/kg/day based on toxic response of the kidney and forestomach.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

1. *Mechanistic data.* In a cell proliferation study, 28 male Fischer 344 rats received technical chlorothalonil (97.9%) in the diet at 175 mg/kg/day for up to 91 days. Mean labeling index was statistically increased in the kidneys of male rats treated with 175 mg/kg/day chlorothalonil at all scheduled sacrifice times. From Day 7 to Day 28, the increase in labeling index was relatively stable (approximately 10-fold over control), with a decrease to approximately 3.5-fold over control on Day 91. Increased cell proliferation correlated with histopathological lesions of degeneration of the proximal convoluted tubules and epithelial hyperplasia. The results of this study demonstrate a sustained cell proliferative response as a result of dietary administration of technical chlorothalonil at a dose of 175 mg/kg/day.

In another study, 96 male SPR rats were divided into test groups of 6 animals per group. Rats received technical chlorothalonil (98.98% a.i.) in the diet at dose levels of 0, 1.5, 15, or 175 mg/kg/day for either 7, 14, 21, or 28 days (total of 24 rats per time point). Histological examination of kidney and stomach tissue was performed for each group after the appropriate exposure. In addition, kidneys were subjected to PCNA staining and stomachs to BrdU staining, and the labeling index and labeling count of cell nuclei were performed. Duodenum was used as a negative control for PCNA and BrdU staining. Increased absolute and relative weight of the kidneys was observed at 175 mg/kg/day at all time points, and, in one animal, at 15 mg/kg/day on Day 28. Increased incidence of vacuolization of the epithelium of the proximal convoluted tubules was observed at all time points at 175 mg/kg/day on Days 7, 14, and 21 at 15 mg/kg/day. PCNA immunostaining of the proximal convoluted tubule epithelial cells showed increased labeling of cells at the 175 mg/kg/day dose level at all time points, and increased labeling at 15 mg/kg/day on Days 7, 14 and 21. BrdU labeling of the rat forestomach showed marked labeling at 175 mg/kg/day at all time points, and increased labeling on Day 28 at 15 mg/kg/day. The results of this study demonstrate a toxic response of the kidney and forestomach to repeated dietary administration of chlorothalonil at doses of 15 and 175 mg/kg/day.

2. *Summary of toxicological dose and levels of concern for SDS-3701 for use in human risk assessment.* There is no evidence of carcinogenicity for the SDS-3701 metabolite in either rats or mice. For the acute and chronic non-cancer exposure assessments, residues of SDS-3701 were combined with residues of chlorothalonil and the sum compared to chlorothalonil levels of concern (the LOAEL for acute dietary risk and the RfD for chronic non-dietary risk).

3. *Summary of toxicological dose and levels of concern for HCB for use in human risk assessment.* A summary of the toxicological endpoints for HCB used for human risk assessment is shown in the following Table 2.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR HCB FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Chronic dietary all populations	NOAEL = 0.08 mg/kg/day UF = 100	Chronic RfD = 0.0008 mg/kg/day	130-week study in rats. Effects observed were hepatic centrilobular basophilic chromogenesis.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR HCB FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Cancer (oral, dermal, inhalation)	$Q^* = 1.02$ (mg/kg/day)$^{-1}$		Carcinogenicity study in rodents. Based on increased tumor incidences in hamsters and rats. A 3/4 scaling factor was applied to the Q*.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.275) for the combined residues of chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile, in or on a variety of raw agricultural commodities. Because it is a low consumption specialty crop, ginseng is not uniquely identified in the dietary exposure system the Agency uses to estimate food consumption behaviors in the U.S. Thus, there is not likely to be a measurable difference in the exposures and risks from chlorothalonil when ginseng is added into the exposure scenario. Also, there are not likely to be implications for livestock as ginseng is not a feed item. However, in connection with another registration action involving chlorothalonil, EPA recently completed a comprehensive risk assessment for chlorothalonil. These risk assessments were conducted by EPA to assess dietary exposures from chlorothalonil and its metabolite in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1977–1978–nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Each analysis assumes uniform distribution of chlorothalonil in the commodity supply. Acute dietary exposure was estimated based on the theoretical maximum residue contribution (TMRC) or anticipated residues for combined residues of chlorothalonil and SDS-3701. Percent crop treated and anticipated residue refinements were used.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Risk Evaluation System (DRES) was used. The following assumptions were made for the chronic exposure assessments: Tolerance level residues and percent of crop treated information were used in the analysis for chlorothalonil and SDS-3701. Anticipated residues were used in the chronic dietary exposure analysis from food for HCB.

iii. *Cancer.* In this analysis, dietary exposure from chlorothalonil was estimated based on anticipated residues (excluding meat and milk, eggs and poultry). Meat and milk, eggs and poultry were not included in this analysis since chlorothalonil residues are not expected in these commodities. SDS-3701 was not included in this analysis since it is not carcinogenic. The dietary exposure from food from HCB was estimated based on anticipated residues (includes meat and milk, eggs, and poultry). Since HCB is a contaminant in several other pesticides, an aggregate exposure assessment for HCB was conducted with food uses of chlorothalonil, pentachlorobenzene, picloram, and dacthal. HCB is present in five other food-use pesticides but at low levels which do not significantly add to the aggregate dietary exposure. Pentachlorobenzene (PCB) is also present in PCNB, and the Agency has concluded that the carcinogenic potential of PCB is comparable to HCB. In estimating dietary carcinogenic risk from HCB in these four pesticides, the Q* for PCB is assumed to be equal to that for HCB. The assumption was made that the impurities would occur on food commodities at the same ratio to the active ingredient as was present in the formulation applied to these crops. It is also assumed that the impurity would dissipate from the food commodity at an equal or greater rate than the active ingredient. The Agency believes these are reasonable assumptions because there are data from studies with chlorothalonil, picloram, and dacthal which support this approach.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used percent crop treated (PCT) information as shown in the following Table 3.

TABLE 3.—ESTIMATION OF PERCENTAGE OF CROPS TREATED WITH CHLOROTHALONIL

Commodity	Processing Factors	Anticipated Residues (ppm)		% Crop Treated
		Chlorothalonil	HCB	
Apricots	None	0.0078	3.9×10^{-6}	35
Banana pulp	None	0.0005	0.3×10^{-6}	10
Beans, dry	None	0.0087	4.4×10^{-6}	2
Beans, snap	0.05 for all cooked canned or frozen beans	0.0133	6.7×10^{-6}	40
Broccoli	None	0.0015	0.8×10^{-6}	15
Brussels sprouts	None	0.0135	6.8×10^{-6}	42
Cabbage	0.2 for all food forms	0.0137	6.9×10^{-6}	50
Cabbage, Chinese	0.2 for all food forms	0.0116	5.8×10^{-6}	100
Cattle fat	None	0	1.65×10^{-4}	None
Cattle meat	None	0	1.24×10^{-5}	None
Cattle liver	None	0	8×10^{-6}	None
Cattle kidney	None	0	8×10^{-6}	None
Cocoa	0.1 for all food forms	0.05	2.5×10^{-6}	100
Cantaloupe	None	0.0191	9.6×10^{-6}	30
Carrots	0.005 for all cooked or processed food forms	0.0036	1.8×10^{-6}	35
Cauliflower	None	0.0115	5.8×10^{-6}	20
Celery	None	0.0874	43.7×10^{-6}	85
Cherries	0.05 for all processed food forms	0.002	1×10^{-6}	40
Cranberries	None	0.4125	206×10^{-6}	60
Coffee	0.1 for all food forms	0.20	1×10^{-4}	100
Corn, sweet	None	0.0002	0.1×10^{-6}	5
Cucumber	0.2 for cold-canned pickles; 0.04 for hot-canned pickles	0.0062	3.1×10^{-6}	35
Garlic	None	0.0005	0.3×10^{-6}	10
Honeydew	None	0.0033	1.7×10^{-6}	20
Nectarines	None	0.00175	0.9×10^{-6}	35
Onions, bulb	None	0.0033	1.7×10^{-6}	65

TABLE 3.—ESTIMATION OF PERCENTAGE OF CROPS TREATED WITH CHLOROTHALONIL—Continued

Commodity	Processing Factors	Anticipated Residues (ppm)		% Crop Treated
		Chlorothalonil	HCB	
Onions, green and leeks	None	0.0262	13.1×10^{-6}	65
Papayas	None	0.005	2.5×10^{-6}	100
Parsnips	None	0.0052	2.6×10^{-6}	10
Passion fruit	None	3	1.5×10^{-3}	100
Peaches	0.02 for all cooked or canned food forms	0.0018	0.9×10^{-6}	35
Peanuts	0.5 for peanut oil	0.0045	2.3×10^{-6}	90
Plums	0.33 for dried prunes	0.0005	0.3×10^{-6}	10
Potatoes	None	0.0030	1.5×10^{-6}	30
Poultry fat	None	0	2.2×10^{-6}	None
Pumpkins	0.002 for raw pumpkin	0.0065	3.3×10^{-6}	30
Soybeans	0.5 for soybean oil	0.00005	2.5×10^{-8}	1
Squash	None for summer squash; 0.002 for raw winter squash; 0.001 for cooked winter squash	0.0058	2.9×10^{-6}	15
Tomatoes	0.25 for juice; 0.02 for paste, puree and catsup	0.0716	35.8×10^{-6}	70
Watermelons	None	0.0228	11.4×10^{-6}	55

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those

estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which chlorothalonil may be applied in a particular area.

2. *Dietary exposure from drinking water*—i. *Ground water exposure - chlorothalonil and SDS-3701.* Exposure to chlorothalonil in drinking water is derived from the monitoring data. The metabolites (SDS-46851, SDS-47525, SDS-3701, and SDS-19221) were measured at a combined concentration of approximately 16 parts per billion (ppb) in Suffolk County, Long Island in 1981. Chlorothalonil itself has been detected in the Sates of California, Florida, Massachusetts, and Maine at levels typically below 1 ppb. These observations are predictable based on laboratory mobility studies and evidence of metabolite persistence. It is expected that the levels of chlorothalonil metabolites detected in the ground water in New York are relatively high compared to the country as a whole, because (a) they were the highest values reported in the data base, (b) potatoes are a major crop on Long Island, and (c) Long Island ground water is generally shallow and vulnerable. The Long Island values were used to represent a high-end potential exposure. In the absence of data demonstrating otherwise, this assessment is based on the conservative assumption that the detected metabolites of chlorothalonil have the same toxicity as the parent. As indicated above, this assessment relies on other conservative factors.

ii. *Surface water exposure chlorothalonil and SDS-3701.* Chlorothalonil can contaminate surface water at application via spray drift or after application through runoff and erosion. The intermediate soil/water partitioning of chlorothalonil indicates that its concentration is suspended and bottom sediment will be substantially greater than its concentration in water. The major degradate of chlorothalonil in the soil under aerobic conditions is SDS-3701. SDS-3701 appears to be more persistent and mobile than chlorothalonil, based on ground water detections. Substantial amounts of SDS-3701 could be available for runoff for longer periods than chlorothalonil, and SDS-3701 may be more persistent in water/sediment systems than chlorothalonil. The apparent greater mobility of SDS-3701 suggests that it exhibits lower soil/water partitioning than chlorothalonil. Therefore, the ratio of SDS-3701 runoff loss via dissolution in runoff to runoff loss via adsorption to eroding soil for SDS-3701 may be greater than for chlorothalonil. In addition, the ratios of concentrations dissolved in the water column to concentrations adsorbed to suspended and bottom sediment may be higher for SDS-3701 than for chlorothalonil. The Agency has be unable to calculate drinking water risk for SDS-3701 in surface water because no monitoring data were available.

The South Florida Water Management District (SFWMD) summarized chlorothalonil detections in samples collected every 2 to 3 months from surface water sites within the SFWMD from November 1988 through November 1993. Approximately 810 samples (30 sampling intervals x 27 sites sampled/interval) were collected during that time. Chlorothalonil was detected in 25 samples at concentrations ranging from 0.003 ppb to 0.35 ppb. Six of the samples had concentrations greater than 0.01 ppb.

iii. *Ground and surface water exposure HCB and PCB.* HCB and pentachlorobenzene are present in ground water and surface water from sources other than current usage of contaminated pesticides, including manufacturer of solvents and tires, incineration of wastes, and coal combustion. HCB and PCB are persistent and relatively immobile in the environment; the major route of dissipation is through sorption to soil, sediment, and suspended particulates in water. HCB and PCB contamination of ground water sources is relatively unlikely due to the high binding potential of both compounds. Detections of HCB in ground water generally have ranged between 0.0002 to 0.100 ppb. Based on monitoring data and fate properties, it seems unlikely that long-term HBC and PCB concentration in surface water would exceed 10 parts per trillion (ppt) (0.01 ppb).

Surface water detection shows much more variability than concentrations in ground water and have been measured at up to 750 ppb. These values appear to include sorbed HCB. The HCB concentration which actually appear to be dissolved in the water are generally less than 0.001 ppb. Great Lakes region concentrations generally ranged from 0.00002 to 0.0001 ppb. When concentrations exceeded this range, they appeared to be related to industrial areas or areas of historic contamination (more than 20 years ago). Concentrations of PCB in surface water have ranged between 0.00002 and 0.0001 ppb. Concentrations of HCB and PCB in drinking water can be greatly reduced through treatment with activated granular charcoal.

Higher concentrations of HCB and PCB have been reported in surface and ground water, but tend to be related to hazardous waste, landfill sites, and suspended sediment. The U.S. Department of Health and Human Services in 1996 estimated that the average exposure in the United States from drinking HCB contaminated water is 0.00085 µg/kg/year (-0.000082 ppb). Since potential exposures are generally so low, and because pesticides are just one source of HCB and PCB in drinking water, the Agency concluded that there are insufficient data to quantify risk and that drinking water risk estimates from HCB in pesticides do not exceed the Agency's level of concern.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Chlorothalonil is currently registered for use on the following residential non-dietary sites: Home vegetable gardens, ornamentals, paint, stain, and wood preservatives. The risk assessment was conducted using the following exposure assumptions: The Agency completed an exposure assessment for uses of chlorothalonil as an additive contained 40.4% active ingredient for use in caulks, sealants, polymer lattices, grouts, joint compounds, and paper coatings. All relevant occupational and residential exposures were considered. Data were not available to estimate application and post application exposure and risk for primary and secondary homeowner exposure. Primary homeowner exposure occurs in individuals who use or install chlorothalonil-containing material; secondary residential exposure occurs when other individuals live and work in places where chlorothalonil-containing materials have been used. For these exposures, no risk assessment could be conducted, but the Agency believes that secondary and homeowner exposures to these products by themselves are generally lower than primary occupational application exposures.

Since other residential risks could not be quantified, risk concerns and uncertainties about exposure resulted in the following agreements with the registrants. To mitigate potential residential exposure concerns and uncertainties about the packaging and concentration of chlorothalonil additives for paint, the registrants have agreed that chlorothalonil mildewicidal additives must be labeled to prohibit sale over-the-counter in retail outlets. The registrants have committed to working with the Agency to develop measures for the protection of employees of paint sales outlets who mix mildewicidal additives into paint for sale. To mitigate potential residential exposure concerns and uncertainties about the in-container preservative use of chlorothalonil, particularly because the chlorothalonil content of products in which the preservative is used may not be known to the purchaser, and because such preservatives may be used in paints intended for use by children, the registrants have agreed that the in-container preservative use of chlorothalonil is prohibited.

The contact rate for activities with ornamentals (5,800 cm²/hr) is based on a study by Brouwer et al., in which chlorothalonil was applied to carnation sprays and carnations grown for cut flowers. Rates for dermal contact with treated turf by adults (1,000 cm²/hr)and toddlers (8,700 cm²/hr) are based on EPA estimates for low exposure activities. Contact rates for hand-to-mouth transfer by toddlers (1.56 events/hour), ingestion of treated grass by toddlers (25 cm²/day, and ingestion of soil from treated areas by children (100 mg/day) are default values which originate with high-end exposure scenarios. For the cancer risk estimates, the Agency assumed that activities with ornamentals occur 4 days per year for 50 years, and that an application is made once a year, for adults in dermal contact with treated turf, that contact occurred 40 days per year for 50 years, and that three applications were made each year. The Agency also assumed that reentry occurred on the day of treatment.

For residential post-application exposures related to the use of chlorothalonil on turf and ornamentals, short- and intermediate-term MOEs ranged from 14 to 26,000. Only the MOEs for toddlers exposed to treated turf were at a risk level of concern at which the EPA typically takes regulatory action. To address this risk, the registrants have agreed to delete the home lawn use from their manufacturing-use and end-use products registered solely for this use. When considering the elimination of the home lawn use of chlorothalonil, EPA had determined that residential post-application exposures to toddlers exposed to treated turf do not exceed EPA's level of concern.

A summary of the residential post-application scenarios and cancer risks from chlorothalonil is shown in the following table 4.

TABLE 4.—SURROGATE RESIDENTIAL POST-APPLICATION SCENARIOS AND CANCER RISKS FROM CHLOROTHALONIL

Exposure Activity/Crop or Target	Application Rate (lb ai/acre)	DFR (µg/cm²)	LADD* (mg/kg/day)	Cancer Risk (Based on Q*)
Ornamentals (Transplanting/Pruning/Bundling Flowers)	0.183	0.41	2.5E-6	2.0E-9
	8.7	20	1.3E-5	9.6E-8
	15.7	35	2.3E-5	1.8E-7
Vegetables (Harvesting)	0.183	0.41	4.6E-7	3.5E-9
	0.74	1.7	1.9E-6	1.4E-8
	8.7	20	2.2E-5	1.7E-7
Adult Dermal Contact with Turf	8.7	20	3.3E-5	2.5E-7
	11.8	26	4.4E-5	3.4E-7
	15.7	35	5.5E-5	4.2E-7

* Lifetime average daily dose.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether chlorothalonil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, chlorothalonil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that chlorothalonil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The developmental and reproductive data for chlorothalonil indicate that there is no evidence of increased sensitivity to chlorothalonil from prenatal and postnatal exposures. In the rat developmental toxicity study, the developmental NOAEL and LOAEL were based on an increase in total resoprtions per dam with a related increase in post-implantation loss. These observations occurred at a dose (400 mg/kg/day) which produced increased mortality and reduced body weight gain in maternal animals. No developmental toxicity was observed in

the rabbit developmental toxicity study, and no maternal toxicity was observed at the highest dose tested (20 mg/kg/day).

iii. *Conclusion.* There is a complete toxicity data base for chlorothalonil and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because no reproductive effects were observed in any study and developmental effects occurred only in the presence of significant maternal toxicity. HCB was not considered in this evaluation of the special sensitivity of infants and children. HCB will be considered at a future date when the Agency is better equipped to understand the implications of FQPA for HCB, which is a common contaminant of at lest nine other pesticides and which also enters the environment from non-pesticidal sources.

D. Aggregate Risks and Determination of Safety

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the estimated MOEs from exposure to chlorothalonil and SDS-3701 residues from food and water do not exceed the Agency's LOC. A summary of the aggregate risk assessment for acute exposure to chlorothalonil is shown in the following Table 5.

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO CHLOROTHALONIL AND SDS-3701

Population Subgroup	LOC for MOE	MOE
Food - U.S. Population	300	1,166
Food - Infants <1 year old	300	875
Food - Children (1-6 years)	300	875
Food - Females (13+ years)	300	1,750
Food - Males (13+ years)	300	1,750
Drinking water (ground water) - Children	300	110,000
Drinking water (ground water) - Adults	300	380,000
Drinking water (surface water) - Children	300	50,000,000
Drinking water (surface water) - Adults	300	175,000,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to chlorothalonil and SDS-3701 from food will utilize 34% of the cPAD for the U.S. population and 68% of the cPAD for children. Based on the use pattern, chronic residential exposure to residues of chlorothalonil is not expected. EPA does not have chronic non-cancer concerns for HCB in chlorothalonil. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). The estimated MOEs from residential uses ranged from 310 for adults transplanting, pruning or bundling flowers to 110,000 for infants ingesting paint chips. Though residential exposure could occur with the use of chlorothalonil, the potential short- and intermediate-term exposure were not aggregated with chronic food and water exposures because the toxic effects are different. Therefore, based on the best available data and current policies, potential risks do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population.* HCB and pentachlorobenzene are present in ground water and surface water from sources other than current usage of contaminated pesticides, including manufacturing of solvents and tires, incineration of wastes, and coal combustion. Both are persistent and relatively immobile in the environment; the major route of dissipation is through sorption to soil, sediment, and suspended particulates in water.

HCB and PCB contamination of ground water sources is relatively unlikely due to the high binding potential of both compounds. Detections of HCB in ground water generally have ranged between 0.0002 to 0.100 µg/L. PCB levels in ground water at a hazardous waste site ranged from 0.001 to 62 µg/L.

Based on monitoring data and fate properties, it seems unlikely that long-term HCB and PCB concentrations in surface water would exceed 10 ppt (0.01 µg/L). As discussed previously, surface water detections show much more variability than concentrations in ground water but concentrations which actually appear to be dissolved in the water are generally less than 0.001 µg/L.

The upper bound carcinogenic risk from food uses of HCB for the general U.S. population was calculated using the following equation: HCB Upper Bound Cancer Risk = Dietary Exposure (ARC) x Q*, where the Q* of 1.02 mg/kg/day)$^{-1}$, the upper bound cancer risk was calculated to be 2.4 x 10^{-7}, contributed through all the published, pending and new uses for chlorothalonil.

The upper bound risk for HCB in chlorothalonil is in the range the Agency generally considers negligible for excess lifetime cancer risk. The exposure assessment for carcinogenic risk from HCB in chlorothalonil includes many a assumptions and uncertainties which impact the Agency's confidence in the calculated risk.

HCB is also a contaminant in several other pesticides, and an aggregate risk assessment for HCB from chlorothalonil and these other sources has been conducted. The exposure assessment for aggregate risk is subject to the same kinds of uncertainties and assumptions as the risk assessment for HCB in chlorothalonil. For some of the individual pesticide contributors, these limitations impact the assessment to an even greater extent.

Four pesticides that are used on food/feed crops have been assessed for cancer risk due to contamination with HCB -- chlorothalonil, dacthal, picloram, and pentachlornitrobenzene (PCNB). Pentachlorobenzene (PCB) is also present in PCNB, and the Agency has concluded that the carcinogenic potential of PCB is comparable to HCB, based on the similarities of the chemical structures and toxicities of HCB and PCB. In estimated dietary risk from HCB in these four pesticides, the Q* for PCB is assumed to be equal to that for HCB.

HCB is also present in pentachlorophenol, but pentachlorophenol is not a food use pesticide and so that contaminant in pentachlorophenol does not contribute to aggregate dietary risk (the contribution to drinking water risk is discussed below). HCB and/or PCB is present in five other food-use pesticides, but at low levels which do not significantly add to the aggregate dietary exposure.

The estimated aggregate dietary cancer risk from HCB from all known pesticide sources is 1.34 x 10^{-6}. An additional 0.46 x 10^{-6} may be attributed to PCB for a total of 1.8 x 10^{-6}.

A summary of the cancer risks for chlorothalonil, HCB, and PCB are shown in the following Table 6.

Chemical	Q*	Upperbound Cancer Risk (Food)	Cancer MOE for food	Upper Bound Cancer Risk (Water)	Cancer MOE for Water
Chlorothalonil	0.00766	1.2 x 10^{-6}	9,500	8 x 10^{-9}	<1.5 million
HCB from Chlorothalonil	2.4 x 10^{-7}	Not applicable	5 x 10^{-9}	Not applicable	
HCB and PCB - all pesticide sources		1.8 x 10^{-6}	Not applicable	Does not exceed Agency's level of concern	Not applicable

EPA has estimated cancer risk using both the Q* and MOE approaches. Under the MOE approach, cancer risk is estimated at MOE = 9,500. At this time, EPA is not able to conclusively determine that chlorothalonil is a non-linear carcinogen nor to apply approved policy determinations on non-linear carcinogens to chlorothalonil, and so cannot determine whether the MOE of 9,500 represents an excess lifetime risk. Under the Q* approach, cancer risk is estimated at 1.2 x 10^{-6}. This figure is at a level which the EPA considers negligible for excess lifetime cancer risk estimates.

Cancer risk for HCB is estimated at 2.4 x 10^{-7}, and EPA does not have cancer risk concerns for chlorothalonil alone. Although subject to considerable uncertainty, cancer risk from HCB from chlorothalonil and other pesticides, combined with cancer risk from the related contaminate PCB present in other pesticides, is estimated at 1.8 x 10^{-6}. a level at which the EPA typically takes regulatory action. To address this risk, the registrants of chlorothalonil have agreed that the level of HCB in all chlorothalonil products must be reduced to no greater than 0.004% (40 ppm). This is the lowest level that has been shown to be technologically feasible for chlorothalonil. All registrations are conditional on achieving this level, and failure to achieve this level will result in a suspension of manufacture or import of the subject products. In addition, registrants of chlorothalonil products will maintain approximately historic levels of production and import of chlorothalonil manufacturing use product to assure that chlorothalonil with higher levels of HCB will not be stockpiled and formulated. When this decrease in the amount of HCB is considered, EPA has determined that the cancer risk estimates do not exceed the level for regulatory action.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to combined residues of chlorothalonil and SDS-3701 or from residues of the contaminant HCB.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology using gas chromotography is available to enforce the established tolerance expressions. The Pesticide Analytical Manual (PAM) vol. II lists Method I, a gas chromatography method with electron capture detection (ECD), for enforcement of tolerances for plant commodities. An acceptable enforcement method for residues of SDS-3701, a modification of the method for chlorothalonil, is also available.

B. International Residue Limits

There are no Canadian, Mexican, or Codex tolerances for chlorothalonil on ginseng.

VI. Conclusion

Therefore, the tolerance is re-established for combined residues of chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile, in or on ginseng at 0.10 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need To Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301188 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 7, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in

the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301188, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501*et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 20, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.275 is amended by revising the entry for the commodity in the table in paragraph (b) to read as follows:

§ 180.275 Chlorothalonil; tolerances for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/Revocation Date
Ginseng	0.10	12/31/03

* * * * *

[FR Doc. 01–27602 Filed 11–6–01; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1201

[STB Ex Parte No. 634]

Consolidated Reporting By Commonly Controlled Railroads

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Board has concluded that consolidated financial reports should be filed for each group of railroads or railroad-related affiliates that operate as a single, integrated United States rail system whose cumulative annual operating revenues meet the Class I threshold of $250 million (in 1991 dollars).

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Paul A. Aguiar, (202) 565–1527. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On September 25, 2000, the Board proposed that commonly controlled railroads (and their railroad-related affiliates) whose combined annual operating revenues meet the $250 million threshold be required to file consolidated financial reports. *See* 65 FR 57650 (2000). The Board's objective was to gather more meaningful and accurate information on the large rail systems operating in the United States by conforming its regulatory reporting requirements as closely as practical to Financial Accounting Standards Board Statement No. 94, *Consolidation of All Majority-Owned Subsidiaries.* After evaluating the comments filed by interested parties, the Board has concluded that consolidated reports should be required for commonly controlled railroads that operate as a single, integrated United States rail system and whose cumulative operating revenues meet the Class I threshold. Accordingly, the Board will amend its regulations at 49 CFR part 1201 to reflect this change. A printed copy of the full Board decision served November 7, 2001 in this proceeding is available for a fee by contacting Da 2 Da Legal, Room 405, 1925 K Street, NW., Washington, DC 20006, telephone (202) 293–7776. The decision also is available for viewing and downloading via the Board's website at *www.stb.dot.gov.*

List of Subjects in 49 CFR Part 1201

Freight, Railroads, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 49, part 1201 of the Code of Federal Regulations will be amended as follows:

PART 1201—[AMENDED]

1. The authority citation for Title 49, Part 1201 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 11142 and 11164.

2. Section 1–1 is amended by revising paragraph (b)(1) to read as follows:

1–1 Classification of Carriers. * * *

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues after the railroad revenue deflator adjustment. Families of railroads operating within the United States as a single, integrated rail system will be treated as a single carrier for classification purposes. Upward and downward reclassification will be effected as of January 1 in the year immediately following the third consecutive year of revenue qualification.

* * * * *

Decided: October 31, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–27950 Filed 11–6–01; 8:45 am]

BILLING CODE 4915–00–P

Proposed Rules

Federal Register

Vol. 66, No. 216

Wednesday, November 7, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3

Debt Collection

AGENCY: Office of the Secretary, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document gives notice that the Department of Agriculture (USDA) plans to amend and make changes to its existing debt collection procedures at 7 CFR part 3 to reflect changes made by the revised Federal Claims Collection Standards (FCCS) published by the Department of Treasury (Treasury) and the Department of Justice (DOJ) on November 22, 2000, in the **Federal Register**. The Treasury and DOJ revised the FCCS to make clear and reduce in scope Federal debt collection standards and incorporate changes mandated by the Debt Collection Improvement Act of 1996 (DCIA) and the General Accounting Office Act of 1996 (GAOA).

DATES: Submit comments on or before December 7, 2001.

ADDRESSES: Comments should be sent to Dale Theurer, Credit, Travel and Accounting Policy Division, Office of the Chief Financial Officer, Department of Agriculture, Room 4628 South, 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Joyce Baumgartner on 202–720–4958, FAX 202–690–1529, email to *jbaumgartner@cfo.usda.gov.*

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (DCA), Pub. L. No. 97–365, was implemented on a government-wide basis by the Federal Claims Collection Standards (FCCS), set forth at 4 CFR part 101 *et seq* issued by DOJ and the General Accounting Office on March 9, 1984. *See* 49 FR 8889 (1984). USDA implemented the FCCS in 7 CFR part 3. As mandated by the DCIA, Pub. L. No. 104–134, on November 22, 2000, the Treasury and DOJ jointly promulgated the revised FCCS which appears in the Code of Federal Regulations at 31 CFR parts 901–904 to reflect the legislative changes to Federal debt collection procedures enacted under the DCIA. *See* 65 FR 70390 (2000). The revised FCCS supersedes the current FCCS codified at 4 CFR parts 101–105, and removes the Comptroller General as a promulgator of the FCCS in accordance with the GAOA, Pub. L. No. 104–316. USDA has reviewed the administrative offset provisions of the revised FCCS and finds the protections and procedures provided to debtors by the current USDA debt collection procedures for administrative offset at 7 CFR part 3, subpart B consistent with those provided by the newly revised FCCS.

At a later date, USDA will move to amend 7 CFR part 3 to reflect the promulgation of the revised FCCS and to incorporate other changes that are USDA specific on collecting debt by administrative offset. USDA requests comments from the public regarding what changes to 7 CFR part 3 should be included as part of any future notice of proposed rules.

Done at Washington, DC, this 29th day of October 2001.

Ann M. Veneman,

Secretary.

[FR Doc. 01–27887 Filed 11–6–01; 8:45 am]

BILLING CODE 3410–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 106

[NOTICE 2001–15]

Request for Comment on Draft Statement of Policy Regarding Party Committee Transfers of Nonfederal Funds for Payment of Allocable Expenses

AGENCY: Federal Election Commission.

ACTION: Draft statement of policy with request for comments.

SUMMARY: In light of the suspension of fundraising activities by some party committees after the terrorist attacks of September 11, 2001, the Commission is considering exercising its discretion by not pursuing *prima facie* violations of the 60 day time limit for party committee transfers of nonfederal funds to pay for the nonfederal share of allocable expenses. The limitations on the scope and duration of the policy under consideration will be discussed in detail below. The Commission seeks comments on the policy under consideration, and on any other circumstances arising out of the events of September 11 that need to be addressed.

DATES: Comments must be submitted on or before November 14, 2001.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to insure legibility. Electronic mail comments should be sent to transfers@fec.gov. Commenters sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The Commission will make every effort to have public comments posted on its web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Rosemary C. Smith, Assistant General Counsel, or Richard Ewell, Staff Attorney, 999 E Street, NW, Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Sections 106.1 and 106.5 of the Commission's regulations (11 CFR 106.1 and 106.5) allow party committees to defray the costs of activities that relate to both federal and nonfederal elections by allocating the costs between their federal and nonfederal accounts, so long as they pay an amount equal to or greater than the federal portion of these expenses with funds that are permissible under the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.* ["FECA" or "the Act"].

Party committees allocate these expenses by paying the entire amount of the expense from a federal account or allocation account, and transferring funds from a nonfederal account to

cover the nonfederal portion of the allocable expense. 11 CFR 106.5(g)(1)(i) and (ii). The regulations establish a time period, or "window," during which these nonfederal transfers may be made. "[S]uch funds may not be transferred more than 10 days before or more than 60 days after the payments for which they are designated are made." 11 CFR 106.5(g)(2)(ii)(B). Any transfer made more than 60 days after payment of the related allocable expense "shall be presumed to be a loan or contribution from the non-federal account to a federal account, in violation of the Act." 11 CFR 106.5(g)(2)(iii).

In many instances, party committees plan and execute allocable activities based, in part, on the expectation that they will subsequently receive nonfederal funds that can be transferred to their federal or allocation accounts before the expiration of the 60 day time limit in section 106.5(g)(2)(ii)(B). In most instances, committees' expectations are realized.

However, some party committees voluntarily suspended their fundraising activities in the immediate aftermath of the September 11, 2001 terrorist attacks. *See e.g.*, FEC Advisory Opinion Request 2001–16; Rachel Van Dongen, *Shoptalk*, Roll Call, October 11, 2001 *http://www.rollcall.com/pages/politics/shoptalk/*. As a result, some party committees may not have sufficient funds in their nonfederal accounts to make transfers to their federal accounts or allocation accounts in a timely manner, *i.e.*, within 60 days of when the committee pays the allocable expense for which those funds would be transferred.[1]

The Commission recognizes that this situation is the result of the unprecedented events of September 11, 2001, which have had a significant impact on many aspects of American life, and could not have been anticipated.

In light of these circumstances, the Commission is considering exercising its discretion by not pursuing *prima facie* violations of the 60 day time limit in certain limited situations. Under the policy being considered, the Commission would not pursue an untimely party committee transfer made to cover the nonfederal share of an allocable expense paid between August 27, 2001 and November 1, 2001, if the transfer is made no later than December 31, 2001, and is fully disclosed on the party committee's year end report. Alternatively, the Commission would not pursue an untimely party committee transfer made to cover the nonfederal share of an allocable expense paid between August 27, 2001 and December 31, 2001, if the transfer is made no later than March 1, 2002, and is fully disclosed on the party committee's applicable report.

The Commission invites comments on the policy that is under consideration. Comments may be submitted on any aspect of the policy being considered, including its scope and duration, or on any other circumstance arising out of the attacks of September 11 that should be addressed. After reviewing the comments received, the Commission will issue a final Statement of Policy.

The Commission is taking this action in response to the unique circumstances described above. Consequently, this action should not be viewed as a precedent for any similar action in the future.

Dated: November 2, 2001.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 01–27944 Filed 11–6–01; 8:45 am]

BILLING CODE 6715–01–U

[1] The Commission notes that the rules permit but do not require party committees to transfer nonfederal funds to cover the nonfederal portion of an allocable expense, since the effect of not making such a transfer would be that federal funds are used to defray the full amount of the allocable expense, a result that is permissible under the Act and regulations. *See Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting*, 55 FR 26058, 26063 (June 26, 1990) (explaining that "allocating a portion of certain costs to a committee's non-federal account is a permissive rather than a mandated procedure").

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, BN-2T, BN–2T–4, and BN2A MK. III series airplanes. This proposed AD would require you to repetitively inspect the throttle friction-shaft; and replace the shaft if damaged. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to detect and correct loosening of the throttle friction adjustment beyond its normal limits. Such a condition could lead to damage to the throttle friction-adjuster or the retaining washer and split pin. This could allow the throttle quadrant shaft to laterally shift and impede the operation of the engine controls.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 10, 2001.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–47–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–47–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Pilatus Britten-Norman BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III series airplanes. The CAA reports an incident where the throttle friction adjuster loosened too far, causing the split pin and the washer on the shaft to break.

What Are the Consequences if the Condition is Not Corrected?

The loosening of the throttle friction adjustment beyond its normal limits could lead to damage to the throttle friction-adjuster or the retaining washer and split pin. This could allow the throttle quadrant shaft to laterally shift and impede the operation of the engine controls.

Is There Service Information That Applies to This Subject?

Pilatus Britten-Norman has issued Service Bulletin No. BN2/SB.272, Issue 1, dated July 1, 2000.

What Are the Provisions of This Service Bulletin?

The service bulletin includes procedures for:

—repetitively inspecting the throttle friction-shaft; and

—replacing the shaft if damaged.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory and issued British AD Number 003–07–2000, dated August 22, 2000, in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop on other Pilatus Britten-Norman BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III series airplanes of the same type design;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously referenced service bulletin.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 118 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $60 per hour = $60.	$1	$61	$61 × 118 = $7,198.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
16 work hour × $60 per hour = $960	$230	$1,190

Is There a Modification I Can Incorporate Instead of Repetitively Inspecting the Throttle Friction-Shaft?

The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by repetitive inspections or other special procedures. With this in mind, we will continue to work with Pilatus Britten-Norman in collecting information and in performing fatigue analysis to determine whether a future design change may be necessary.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve o Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

PILATUS BRITTEN-NORMAN LTD.: Docket No. 2000–CE–47–AD

(a) *What airplanes are affected by this AD?* This AD affects the following Model BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct loosening of the throttle friction adjustment beyond its normal limits. Such a condition could lead to damage to the throttle friction-adjuster or the retaining washer and split pin. This could allow the throttle quadrant shaft to laterally shift and impede the operation of the engine controls.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the throttle friction-shaft for damage. Replace the split pin and washer.	Inspect within 100 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS. Accomplish the replacements prior to further flight after each inspection.	In accordance with the PROCEDURES section of BN Service Bulletin BN2/SB.272, dated July 2000.
(2) If damage is found on the throttle friction-shaft, replace the shaft.	Before further flight after each inspection where damage is found.	In accordance with the PROCEDURES section of BN Service Bulletin BN2/SB.272, dated July 2000.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in British AD 003–07–2000, dated August 22, 2000.

Issued in Kansas City, Missouri, on October 26, 2001.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27653 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2001–10666; Airspace Docket No. ASD 01–ASW–12]

Proposed Revision of Jet Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise that segment of Jet Route 180 (J–180) between the Daisetta, TX, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Little Rock, AR, VORTAC by moving the route to the east over the new Sawmill, LA, VORTAC. The FAA is proposing this action to enhance aviation safety and the management of the aircraft operations in the Texas area.

DATES: Comments must be received on or before December 24, 2001.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket numbers FAA–2001–10666/Airspace Docket No. ASD 01–ASW–12 at the beginning of your comments.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd, Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Nos. FAA 2001–10666/Airspace Docket No. ASD 01–ASW–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The FAA is redesigning the nation's airspace to reduce the volume of air traffic operations in certain congested areas commonly referred to as "choke-points." As part of this effort, the FAA believes that revising the affected segment of J–180 to reroute it over the new Sawmill, LA, VORTAC will alleviate air traffic congestion in specific "choke-point" areas. The FAA is therefore proposing this action to enhance air safety and the expeditious movement of aircraft through the area.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revise a segment of J–180 between the Daisetta, TX, VORTAC and the Little Rock, AR, VORTAC by moving the route eastward over the new Sawmill, LA, VORTAC. This action is necessary to support the national airspace redesign project to reduce air traffic congestion in identified choke-point" areas.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document would be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–180 [Revised]

From Humble, TX; Daisetta, TX; Sawmill, LA; Little Rock, AR.

* * * * *

Issued in Washington, DC, on November 1, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–28001 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–9813; Airspace Docket No. 00–AWA–7]

RIN 2120–AA66

Proposed Modification of the Memphis Class B Airspace Area; TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Memphis, TN, Class B airspace area. Specifically, this action proposes to reconfigure the sub-area boundaries, add one new sub-area, and lower the altitude floor in certain segments of the Memphis Class B airspace area. In addition, the FAA is proposing to describe the boundaries of the Memphis Class B airspace area using the Memphis Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC) facility as the reference point. The FAA is proposing this action to more efficiently align the Memphis Class B airspace area to better accommodate simultaneous parallel instrument landing system (ILS) approach procedures and simultaneous intersecting runway operations. This change would improve the management of air traffic operations and enhance safety in the Memphis Class B airspace area while accommodating the concerns of airspace users.

DATES: Comments must be received on or before January 7, 2002.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify both docket numbers, FAA–2001–9813/ Airspace Docket No. 00-AWA–7, at the beginning of your comments.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division; ASO–500, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Nos. FAA–2001–9813/Airspace Docket No. 00–AWA–7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the internet at http://dms.dot.gov.

Internet users may reach the FAA's web page at *http://www.faa.gov* or the **Federal Register**'s web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may also obtain a copy of this NPRM by submitting a request to the FAA, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace (TCA) areas (now known as Class B airspace areas).

On June 21, 1988, the FAA published the Transponder With Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated TCA (now known as Class B airspace areas) primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders.

On October 14, 1988, the FAA published the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule (56 FR 65638). This rule discontinued the use of the term "Terminal Control Area" and replaced it with the designation "Class B airspace area." This change in terminology is reflected in the remainder of this NPRM.

Background

The TCA (now Class B airspace) program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts as the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of these airspace areas afford the greatest protection for the greatest number of people by giving air traffic control increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of these airspace areas contains three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles (NM), respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet mean sea level (MSL), with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

On August 19, 1998, the FAA published the revision of the legal description of the Memphis Class B airspace area, TN, Final Rule (63 FR 44374). The FAA took this action due to the relocation of the Memphis VORTAC to a new position 2.85 NM south of the site it had occupied. The Memphis VORTAC was relocated to accommodate airport expansion. This rule revised the Memphis Class B airspace area by changing the reference point for the description of the areas from the Memphis VORTAC to a point-in-space established at the Memphis VORTAC's former geographical coordinates. The intent of that action was to facilitate the relocation of the Memphis VORTAC without changing the actual dimensions, configuration, operating requirements, or charted depiction of the Memphis Class B airspace area.

Memphis International Airport has recorded a continuing increase in daily scheduled air carrier and air taxi operations. Between January 1998 and December 1999, Memphis has experienced a 7.81% growth in scheduled flights with an expected increase of 2.5% annually. Satellite airport operations traffic count is up 57% since 1997. The GA traffic count is up 5% since 1996.

User feedback and operational experience, since the August 19, 1998, revision of the Memphis Class B airspace area, has revealed that the use of a point-in-space reference, for describing the area, places pilots without global positioning system (GPS) navigation equipment in a difficult situation requiring them to remain clear of an area they could not readily identify. Additionally, the current airspace configuration has proven to be inefficient when conducting simultaneous ILS approaches due to the incompatibility with the instrument approach procedures. The current Class B configuration does not allow for the most efficient use of simultaneous parallel instrument approaches and simultaneous intersecting runway operations at Memphis International Airport.

Pre-NPRM Public Input

As announced in the **Federal Register** on March 14, 2000 (65 FR 13818), two pre-NPRM informal airspace meetings were held on April 27 and May 4, 2000, in Collierville and Memphis, TN, to allow local interested airspace users an opportunity to present input on the design of the planned alteration of the Memphis Class B airspace area. The response to the planned Class B airspace area modification from all participants was favorable. No written adverse comments were received during the 60-day comment period.

The Proposal

The FAA proposes to amend 14 CFR part 71 by modifying the Memphis, TN, Class B airspace area. Specifically, this action (depicted on the attached chart) proposes to expand the lateral limits of Areas A, B, and C, and establish a new Area E in order to improve the containment of turbo-jet aircraft within Class B airspace. In addition, the FAA proposes to redescribe the Memphis Class B airspace area using radials and mileages from the Memphis VORTAC instead of the current point-in-space latitude/longitude position. This change would simplify navigation in the Memphis terminal area for aircraft that are not GPS equipped.

Area A. The FAA proposes to reconfigure Area A (that area beginning at the surface up to 10,000 feet MSL), by slightly expanding the lateral dimensions of the surface area to provide the additional Class B airspace needed for simultaneous parallel ILS approach procedures and to accommodate secondary airport operations. With the exception of Bob White and Freeman Farm Airports, all secondary airports have been excluded from this surface area. Bob White Airport is a privately owned, uncharted airport located approximately 7 miles south southeast of Memphis and 2 miles east of Runway 36R final approach course. Freeman Farm is a privately owned, uncharted airport located approximately 7 miles southeast of Memphis and 5 miles east of Runway 36R final approach course. The FAA has concluded Letters of Agreement with the operators of these private airports to accommodate users and ensure the integrity of Class B airspace operations.

Area B. The FAA proposes to expand the lateral dimensions of Area B (that area beginning at 1,800 feet MSL up to 10,000 feet MSL). This change would ensure the containment of instrument procedures using a 300-foot-per-mile gradient and provide the additional airspace necessary to maximize the use of simultaneous parallel ILS approaches, as well as simultaneous intersecting runway operations using Runway 27. On the east side, the proposed expanded boundary of Area B (between the MEM 090° and 111° radials) has been adjusted to exclude the Olive Branch Airport (OLV) from Area B.

Area C. The FAA proposes to extend the boundaries of Area C (that area beginning at 3,000 feet MSL up to 10,000 feet MSL), outward to the MEM 30-mile arc in the segments to the north and south of the Memphis International Airport. This change would lower the floor of Class B airspace to 3,000 feet MSL in the Area C extensions to ensure the efficient use of simultaneous parallel approach procedures.

Area D. The FAA proposes to reconfigure Area D (that area beginning at 5,000 feet MSL up to 10,000 feet MSL) by reducing the size of the area. The revised Area D would consist of that airspace generally between the 20- and 30-mile arcs of the Memphis VORTAC, and bounded by the 199° radial clockwise to the 332° radial. The remaining portion of the current Area D airspace would be incorporated into the amended Area C, and the proposed new Area E.

Area E. The FAA proposes to establish a new Area E (that area beginning at 4,000 feet MSL up to 10,000 feet MSL) on the east side of the airport in airspace that is currently part of Area D. Area E would consist of that airspace generally between the 20-mile and 30-mile arcs of the MEM VORTAC and bounded by the MEM 019° radial, clockwise to the 151° radial. This change would lower the floor of Class B airspace from the current 5,000 feet MSL to 4,000 feet MSL. The lower floor of Class B airspace is required to contain Runway 27 approach procedures.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that justify its minimal costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental

or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

This NPRM would modify the Memphis, TN, Class B airspace area. The proposed rule would reconfigure the sub-area boundaries, add one new sub-area and lower the altitude floor in certain segments of that airspace. In addition, the FAA is proposing to describe the boundaries of the Memphis Class B airspace area using the Memphis VORTAC facility as the reference point.

The NPRM would generate benefits for system users and the FAA in the form of enhanced operational efficiency and simplified navigation in the Memphis terminal area for aircraft that are not GPS equipped. Since Class B airspace is already in place at Memphis, and the modifications proposed are not a major expansion of Class B airspace, minimal costs would result. Thus, the FAA has determined that this proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it would, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule may impose some minimal circumnavigation costs on some individuals operating in the Memphis area; but the proposed rule would not impose any costs on small business entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

The proposed rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Conclusion

In view of the minimal or zero cost of compliance of the proposed rule and the enhancements to operational efficiency that do not reduce aviation safety, the FAA has determined that the proposed rule would be cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated September 1, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 3000—Subpart B-Class B Airspace

* * * * *

ASO TN B Memphis, TN [Revised]

Memphis International Airport (Primary Airport)
(lat. 35°02′33″N., long. 89°58′36″ W.)
Memphis VORTAC (MEM)
(lat. 35°00′54″ N., long. 89°59′00″W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 090° radial and the MEM 5-mile arc; thence clockwise along the 5-mile arc to the MEM 270° radial; thence west along the 270° radial to the 8-mile arc; thence clockwise along the 8-mile arc to the MEM 090° radial; thence west along the 090° radial to the point of beginning.

Area B. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 090° radial and the MEM 12-mile arc; thence west along the 090° radial to the MEM 9-mile arc; thence clockwise along the 9-mile arc to the MEM 111° radial; thence southeast along the 111° radial to the MEM 12-mile arc; thence clockwise along the 12-mile arc to the MEM 134° radial; thence southeast along the 134° radial to the MEM 16-mile arc; thence clockwise along the 16-mile arc to the MEM 217° radial; thence northeast along the 217° radial to the MEM 12-mile arc thence clockwise along the 12-mile arc to the MEM 313° radial; thence northwest along the 313° radial to the MEM 16-mile arc; thence clockwise along the 16-mile arc to the MEM 038° radial; thence southwest along the 038§ radial to the MEM 12-mile arc; thence clockwise along the 12-mile arc to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 019° radial and the MEM 30-mile arc; thence southwest along the 019° radial to the MEM 20-mile arc; thence clockwise along the 20-mile arc to the MEM 151° radial; thence southeast along the 151° radial to the 151° radial at 27-miles; thence via a line drawn southwestward to the intersection of the MEM 163° radial and the MEM 30-mile arc; thence clockwise along the 30-mile arc to the MEM 199° radial; thence northeast along the 199° radial to the MEM 20-mile arc; thence clockwise along the 20-mile arc to the MEM 332° radial; thence northwest along the 332° radial to the 332° radial at 29-miles; thence via a line drawn northeastward to the intersection of the MEM 338° radial and the MEM 30-mile arc; thence clockwise along the 30-mile arc to the point of beginning.

Area D. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 199° radial and the MEM 20-mile arc; thence southwest along the 199° radial to the MEM 30-mile arc; thence clockwise along the 30-mile arc to the MEM 302° radial; thence via a line drawn northeastward to the MEM 332° radial at 29-miles; thence southeast along the MEM 332° radial to the MEM 20-mile arc; thence counterclockwise along the 20-mile arc to the point of beginning.

Area E. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 019° radial and the MEM 30-mile arc; thence clockwise along the 30-mile arc to the MEM 103° radial; thence via a line drawn southwestward to the MEM 151° radial at 27-miles; thence northwest along the 151° radial to the MEM 20-mile arc; thence counterclockwise along the 20-mile arc to the MEM 019° radial; thence northeast along the 019° radial to the point of beginning.

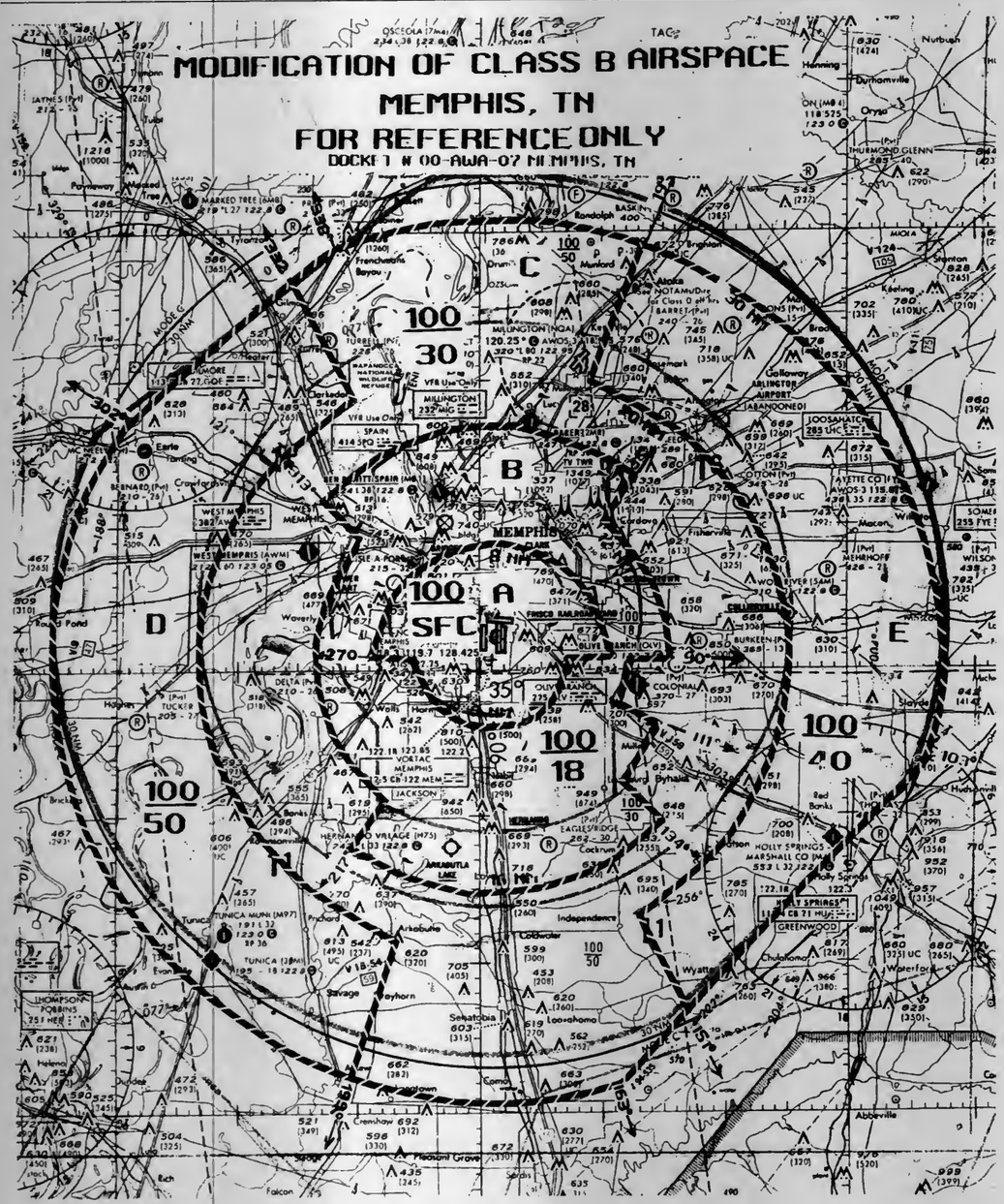
* * * * *

Issued in Washington, DC, on October 29, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

BILLING CODE 4910–13–P



[FR Doc. 01-27999 Filed 11-6-01; 8:45 am]

BILLING CODE 4910-13-C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AAL-1]

Proposed Revocation of Class E Airspace; Umiat, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposed to revoke Class E airspace at Umiat, AK. The Umiat airport no longer meets the requirements for Class E airspace to protect Instrument Flight Rules (IFR) operations at Umiat, AK. Adoption of this proposal would result in the removal of controlled airspace at Umiat, AK.

DATES: Comments must be received on or before December 24, 2001.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Operations Branch, AAL-530, Docket No. 01-AAL-1, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, AAL-535, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587; telephone number (907) 271-5863; fax: (907) 271-2850; email: Robert.van-Haastert@faa.gov. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01-AAL-1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202-512-1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL-530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revoking Class E airspace at Umiat, AK. The intended effect of this proposal is the removal of the Class E controlled airspace for IFR operations at Umiat, AK.

The Umiat airport does not have a standard instrument approach procedure, it is unattended, and does not meet the requirements to be used as an IFR alternate. The Colored Federal Airway Amber 4 (A-4) was realigned and Colored Federal Airway Amber 6 (A-6) was revoked on December 3, 1998 [63 FR 53279 5 Oct 1998 Airspace Docket 98-AAL-6] in conjunction with the removal of the Umiat Nondirectional Radio Beacon (NDB). The Umiat NDB was decommissioned in October 1999 resulting in the loss of the instrument approach procedure. With the subsequent cancellation of the A-Paid weather observer contract, there are now no aviation weather sources at Umiat, AK. Thus, the Umiat airport does not qualify for Class E airspace.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9J, *Airspace Designations and Reporting Points*, dated September 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated September 1, 2001, and effective September 16, 2001, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Umiat, AK [Revoked]

* * * * *

Issued in Anchorage, AK, on October 30, 2001.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 01–27990 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AWP–26]

Proposed Establishment of Class E Airspace; Kayenta, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Kayenta, AZ. The establishment of a Special Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) RNAV (GPS) Runway (RWY) 02, RNAV (GPS) RWY 20 SIAP, and Non-Directional Radio Beacon (NDB) SIAP to Bedard Field, Kayenta, AZ has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 02, RNAV (GPS) RWY 20, and NDB SIAP to Bedard Field. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Bedard Field, Kayenta, AZ.

DATES: Comments must be received on or before December 15, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 01–AWP–26, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AWP–26." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Kayenta, AZ. The establishment of a Special RNAV (GPS) RWY 02 SIAP, RNAV (GPS) RWY 20 SIAP, and a NBD SIAP at Bedard Field has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the Special RNAV (GPS) RWY 02 SIAP, RNAV (GPS) RWY 20 SIAP, and NBD SIAP to Bedard Field. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the Special RNAV (GPS) RWY 02 SIAP, RNAV (GPS) 20 SIAP, and NDB SIAP to Bedard Field, Kayenta, AZ. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9J dated September 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated September 1, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Kayenta, AZ [NEW]

Bedard Field

(Lat. 36°28'18"N, long. 110°25'05"W)

That airspace extending upward from 700 feet above the surface within a 6.6 mile radius of Bedard Field, and that airspace within 2.0 miles each side of the 219° bearing from the airport extending from the 6.6 mile radius to 10 miles southwest of Bedard Field, and that airspace with 1.0 mile each side of the 034° bearing from the airport extending from the 6.6 mile radius to 11 miles northeast of Bedard Field.

* * * * *

Issued in Los Angeles, California, on October 23, 2001.

Stephen J. Loyd,

Acting Assistant Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 01–27991 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Proposed Revisions of the Air Traffic Control (ATC) Airspace and Procedures, Anchorage Terminal Area, Anchorage, Alaska; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA will hold a public meeting on ATC airspace and procedures affecting the Anchorage Terminal Area, Anchorage, AK. The objective of this meeting is to provide interested persons a final opportunity to review specific proposed procedures formulated in the Anchorage Terminal Area Airspace and Procedures Revision Project prior to their implementation. The goal of this project is to maximize efficiency and improve safety for aircraft routes and ATC procedures used in the airspace surrounding Anchorage, Alaska. The project relates to operations by aircraft operating under Instrument Flight Rules (IFR) and Visual Flight Rules (VFR). This meeting will outline proposals affecting VFR operations within the Anchorage Terminal Area. Alternatives developed as a result of this and other meetings may involve changes to existing regulatory airspace.

DATES: The meeting will be on Friday, December 7, 2001, from 6:00 PM to 9:00 PM.

ADDRESSES: Multi-Purpose Room at the Spenard Community Recreation Center, 2020 West 48th Avenue, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: John Craft, Anchorage Airport Traffic Control Tower (ATCT), 5200 West International Airport Road, Anchorage, AK 99502; telephone: (907) 271–2702; fax: (907) 271–2960; email: john.craft@faa.gov. The Spenard Community Recreation Center telephone number is (907) 343–4160.

SUPPLEMENTARY INFORMATION:

History and Background

Historical increases and projections for air traffic activity in the Anchorage Terminal Area indicate that revision to air traffic routes and air traffic control procedures used in the Anchorage area are necessary in order to continue to provide safe and efficient air traffic control service to airspace users. Aircraft operations in the Anchorage area have increased 21% for the period from January 1, 1996, to December 31, 2000, and are projected to increase at an approximate rate of 5% annually through the year 2020.

An initial public workshop for this project was held on April 17, 2001, at the Spenard Community Recreation Center. Proposed new procedures were displayed and comments on the proposals were solicited from the public. Changes based on public comments and suggestions have been made and these changes will be presented at this meeting. Electronic copies of the original proposals as well as the latest changes are available at the project web site, http://www.alaska.faa.gov/ame under the "Route Graphics" menu item. Paper copies may be obtained by contacting Curt Faulk at the Anchorage ATCT, telephone: 271–2701.

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by representatives of the FAA Alaskan Region Terminal Focus Leadership Team (FLT).

(b) The meeting will be open to all persons on a space-available basis. Every effort was made to provide a meeting site with sufficient capacity for expected participation. There will be no admission fee nor other charge to attend and participate.

(c) Representatives of Anchorage ATCT, Merrill Field ATCT, and Anchorage Terminal Radar Approach Control will be presenting specific procedural changes concerning VFR operations in the Anchorage area. A FAA Air Traffic Division representative will be present to discuss environmental concerns.

(d) Any person who wishes to present a position paper to FAA representatives pertinent to the revision of ATC airspace or procedures may do so. In order to be included in the administrative record for the project, all submissions must contain the name and address of the author.

(e) Persons wishing to hand out pertinent position papers to attendees should present two copies to the presiding officer and have sufficient additional copies available for all attendees.

(f) The meeting will not be formally recorded. However, informal tape recordings may be made of presentations to ensure that each respondent's comments are noted accurately.

(g) An official verbatim transcript or minutes of the informal airspace meeting will not be made. However, a list of the attendees, written statements received from attendees during and after the meeting and a digest of discussions

during the meeting will be included in the administrative record for the project.

(h) Every reasonable effort will be made to hear all concerns of interested persons consistent with a reasonable closing time for the meeting. Written materials may also be submitted to the team for up to thirty (30) days after the close of the meeting.

Agenda

(a) Opening remarks and discussion of meeting procedures
(b) Presentation of changes to proposed procedures by ATC facility representatives
(c) Question and answer period
(d) Closing comments.

* * * * *

Issued in Anchorage, AK, on October 30, 2001.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 01–27988 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Chapter VII

[Docket No. 011024258–1258–01]

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BXA is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by November 30, 2001.

ADDRESSES: Written comments (three copies) should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Bureau of Export Administration, Telephone: (202) 482–5400. Copies of the current Annual Foreign Policy Report to the Congress are available at *www.bxa.doc.gov/press/2001/ForeignPolicyReport/Default.htm* and copies may also be requested by calling the Office of Strategic Trade and Foreign Policy Controls.

SUPPLEMENTARY INFORMATION: The current foreign policy controls maintained by the Bureau of Export Administration (BXA) are set forth in the Export Administration Regulations (EAR), parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Special Country Controls). These controls apply to: high performance computers (§ 742.12); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§ 742.15 and § 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of missiles (§ 742.5 and § 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§ 742.2 and § 744.4); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 744.6); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 746.2, 746.3, and 746.7); and, Libya (§§ 744.8 and 746.4). Attention is also given in this context to the controls on nuclear-related commodities and technology (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. Although the Export Administration Act (EAA) expired on August 20, 2001, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA, in Executive Order of August 17, 2001 (66 FR 44025, August 22, 2001). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting a report to Congress.

In January 2001, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;
2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;
3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;
4. Whether reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;
5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and
6. The ability of the United States to enforce the controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in industry information relating to the following:

1. Information on the effect of foreign policy controls on sales of U.S. products to third countries (i.e., those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy controls.
2. Information on controls maintained by U.S. trade partners (i.e., to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations)?
3. Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy controls, including license review criteria, use of conditions, requirements for pre and post shipment verifications (preferably supported by examples of approvals, denials and foreign regulations).
4. Suggestions for revisions to foreign policy controls that would (if there are any differences) bring them more into line with multilateral practice.
5. Comments or suggestions as to actions that would make multilateral controls more effective.
6. Information that illustrates the effect of foreign policy controls on the trade or acquisitions by intended targets of the controls.
7. Data or other information as to the effect of foreign policy controls on overall trade, either for individual firms or for individual industrial sectors.
8. Suggestions as to how to measure the effect of foreign policy controls on trade.
9. Information on the use of foreign policy controls on targeted countries, entities, or individuals.

BXA is also interested in comments relating generally to the extension or revision of existing foreign policy controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

Copies of the public record concerning these regulations may be requested from: Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BXA's website (which can be reached through *http://www.bxa.doc.gov*). If requesters cannot access BXA's website, please call the number above for assistance.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 01–27878 Filed 11–6–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1331

[Docket No. NHTSA–2001–10917]

RIN 2127–AG–91

Withdrawal of Proposed Rule on State-Issued Driver's Licenses and Comparable Identification Documents

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule that was intended to implement the requirements contained in section 656(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Section 656(b) of the Act, entitled State-Issued Driver's Licenses and Comparable Identification Documents, provided that a Federal agency could only accept as proof of identity a driver's license or identification document that conformed to specific requirements, in accordance with regulations issued by the Secretary of Transportation. Congress subsequently repealed section 656(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

DATES: The proposed rule is withdrawn as of November 7, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Holdsworth, Acting Chief, Driver Register and Traffic Records Division, NTS–32, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590; telephone (202) 366–4800, or Ms. Heidi L. Coleman, Assistant Chief Counsel for General Law, NCC–30, NHTSA, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: The Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. 104–208, was signed into law on September 30, 1996. The Omnibus Act included, as Title VI of Division C, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter, the "Immigration Reform Act"). The purpose of the Immigration Reform Act was to improve deterrence of illegal immigration into the United States.

Section 656(b) of the Act, entitled State-Issued Driver's Licenses and Comparable Identification Documents, provided that, after October 1, 2000, Federal agencies could not accept driver's licenses, or other comparable identification documents issued by a State, as proof of identity unless the driver's license or identification document conformed to certain requirements.

A. Statutory Requirements

Section 656(b) established three requirements that State-issued driver's licenses or other comparable identification documents had to meet, to be acceptable as proof of identity:

1. *Application Process*—The application process for the driver's license or identification document was to include the presentation of such evidence of identity as required by regulations promulgated by the Secretary of Transportation, after consultation with the American Association of Motor Vehicle Administrators (AAMVA).
2. *Form*—The driver's license or identification document was to be in a form consistent with requirements set forth in regulations promulgated by the Secretary of Transportation, after consultation with AAMVA. The form was to contain security features designed to limit tampering, counterfeiting, photocopying, or otherwise duplicating, the driver's license or identification document for fraudulent purposes and to limit the use of the driver's license or identification document by imposters.
3. *Social Security Number*—The driver's license or identification document was required to contain a social security number that could be read visually or by electronic means, unless the State issuing such driver's license or identification document met certain conditions.

To meet the conditions, the State that did not require the driver's license or identification document to contain a social security number would have had to require every applicant for a driver's license or identification documents to submit his or her social security number. The State would also have had to verify the validity of the social security number with the Social Security Administration (SSA).

B. Proposed Regulations

The Immigration Reform Act required that the Secretary of Transportation issue regulations governing State-issued driver's licenses and comparable

identification documents after consulting with the American Association of Motor Vehicle Administrators (AAMVA).

NHTSA consulted with AAMVA, and with interested Federal agencies before issuing a notice of proposed rulemaking (NPRM) on June 17, 1998, 63 FR33220, to implement Section 656(b). The proposed requirements related to such matters as evidence of identity, form and security features, use of the social security number, certification of compliance, and the availability of grants to assist States in meeting these requirements.

The agency received a total of 2,591 comments, the vast majority of which strongly opposed the agency's proposal. The most frequent objections were based on privacy and civil liberty concerns.

Congress also received an overwhelming number of negative comments regarding section 656(b) and the agency's proposal to implement that section. On October 9, 1999, Congress repealed section 656(b) Pub. L. 106–69, 113 Stat. 1027. Accordingly, the proposed rule to implement the requirements contained in section 656(b), published on June 17, 1998, at 63 FR 33220, entitled State-Issued Driver's Licenses and Comparable Identification Documents, is hereby withdrawn.

Issued on: November 1, 2001.

Jeffrey W. Runge,

Administrator.

[FR Doc. 01–28007 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125161–01]

RIN 1545–BA05

Conforming Amendments to Section 446

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: On July 18, 1995, the Treasury and the IRS published final regulations governing the intercompany transaction system of the consolidated return regulations. Those regulations state that the timing rules of the intercompany transaction system are a method of accounting. At the time of the publication of those regulations, no amendment was made to the regulations promulgated under section 446 to coordinate with that statement. This document contains proposed regulations confirming that the timing rules of the intercompany transaction regulations are a method of accounting.

DATES: Written or electronic comments and requests for a public hearing must be received by January 7, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU, room 5226 (REG–125161–01), Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU, room 5226 (REG–125161–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, Marie C. Milnes-Vasquez or Frances Kelly, (202) 622–7770, or Jeffery G. Mitchell (202) 622–4930; concerning submissions and/or requests for a public hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation

On July 18, 1995, the Treasury and the IRS published in the **Federal Register** (60 FR 36671 [1995–2 C.B. 147]) final regulations under § 1.1502–13 governing the intercompany transaction system of the consolidated return regulations. Included in such regulations was an express statement that "[t]he timing rules of [the intercompany transaction regulations] are a method of accounting for intercompany transactions, to be applied by each member in addition to the member's other methods of accounting." § 1.1502–13(a)(3)(i). At the time of the publication of those final regulations, no amendment was made to the regulations promulgated under section 446 to coordinate with the statement in § 1.1502–13(a)(3)(i) that the timing rules of § 1.1502–13 are a method of accounting.

In *General Motors* v. *Commissioner*, 112 T.C. 270 (1999), the Tax Court determined that the timing rule of former § 1.1502–13(b)(2) was not a method of accounting for purposes of section 446(e). The proposed regulations included in this document amend § 1.446–1 to confirm the IRS's position that the timing rules of current § 1.1502–13 are a method of accounting.

Proposed Effective Date

The regulations in this section are proposed to apply to consolidated return years beginning on or after November 7, 2001.

Special Analyses

It has been determined that this notice of proposed rule making is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, because the proposed rule does not impose a collection of information on small entities, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. All comments will be made available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Marie C. Milnes-Vasquez, Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.446–1 is amended by adding paragraph (c)(2)(iii) to read as follows:

§ 1.446–1 General rule for methods of accounting.

* * * * *

(c) * * *

(2) * * *

(iii) The timing rules of § 1.1502–13 are a method of accounting for intercompany transactions (as defined in § 1.1502–13(b)(1)(i)), to be applied by each member of a consolidated group in addition to the member's other methods of accounting. See § 1.1502–13(a)(3)(i). This paragraph is applicable to consolidated return years beginning on or after November 7, 2001.

* * * * *

Par. 3. In § 1.1502–13, the second sentence of paragraph (a)(3)(i) is revised to read as follows:

§ 1.1502–13 Intercompany transactions.

(a) * * *

(3) * * *

(i) * * * See § 1.1502–17 and, with regard to consolidated return years beginning on or after November 7, 2001, § 1.446–1(c)(2)(iii). * * *

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–27970 Filed 11–6–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–247–FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Ohio regulatory program (hereinafter, the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio proposes revisions to its rule defining "inactive coal mining and reclamation operation" to include permits containing restored prime farmland when certain requirements have been met. Ohio intends to revise its program to improve operational efficiency.

DATES: We will accept written comments on this amendment until 4:00 p.m., e.s.t. on December 7, 2001. If requested, we will hold a public hearing on the amendment on December 3, 2001. We will accept requests to speak until 4:00 p.m., e.s.t. on November 23, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Mr. George Rieger at the address listed below.

You may review copies of the Ohio program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Appalachian Regional Coordinating Center.

Mr. George Rieger, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, (412) 937–2153.

Mr. Michael Sponsler, Chief, Ohio Department of Natural Resources, Division of Mineral Resources Management, 1855 Fountain Square Court, Columbus, OH 43224, (614) 265–6893.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (412) 937–2153. Internet: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Ohio Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 10, 1982, **Federal Register** (47 FR 34717). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.15 and 935.25.

II. Description of the Proposed Amendment

By letter dated September 13, 2001, Ohio sent us a proposed amendment to its program (Administrative Record No. OH–2181–00) under SMCRA (30 U.S.C. 1201 *et seq.*). Ohio sent the amendment to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

The provision of the Ohio Administrative Code (O.A.C.) that Ohio proposes to revise is: O.A.C 1501:13–14–01, Inspections.

Specifically, Ohio proposes to revise the definition of "inactive coal mining and reclamation operation" with respect to prime farmland. Under the current rule, "inactive coal mining and reclamation operation" means an operation:

(a) For which the chief has secured from the permittee the written notice required under paragraph (A) of rule 1501:13–9–16 of the Administrative Code;

(b) Conducted under a D-permit, for which reclamation phase II as defined in (B)(1)(b)(I, II, AND IV) of rule 1501:13–7–05 of the Administrative Code has been completed.

The proposed amendment would add the following language to the end of part (b) of the current rule:

With respect to prime farmland, soil replacement has been carried out in accordance with the requirements of Rule 1501:13–13–03 of the Administrative Code and Division (A)(7) of Section 1513.16 of the Revised Code and sufficient Ground Cover has been established to prevent erosion or, where row crops are the approved reference crop, the initial planting has occurred.

Because the required frequency of inspections is lower for inactive mine sites than active mine sites, Ohio asserted in its September 13, 2001 letter that this proposed rule revision would help it to effectively and efficiently manage its inspection resources in the future.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain

only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Appalachian Regional Coordinating Center may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. OH–247–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Appalachian Regional Coordinating Center at (412) 937–2153.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on November 23, 2001. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard. If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A(2)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C.804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 19, 2001.

Roger Calhoun,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 01–27982 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF75

Endangered and Threatened Wildlife and Plants; Re-opening of Comment Period for the Proposal to List *Hackelia venusta* (Showy Stickseed)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; re-opening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the re-opening of the comment period for the proposed listing as endangered for *Hackelia venusta* (showy stickseed) under the Endangered Species Act of 1973, as amended (Act). We are re-opening the comment period to accommodate the public notice requirement of the Act. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in the final rule.

DATES: We will accept public comments until December 7, 2001.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Drive SE., Suite 102, Lacey, Washington 98503–1263. For the electronic mail address, and further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information, contact Ted Thomas or James Michaels, at the above address (telephone 360/753–9440; facsimile 360/753–9518).

SUPPLEMENTARY INFORMATION:

Background

Hackelia venusta (showy stickseed) is a showy perennial herb of the Borage family (Boraginaceae). It is a short, moderately stout species, 20 to 40 centimeters (cm) (8 to 16 inches (in.)) tall, often with numerous, erect to ascending stems from a slender taproot, and has large, white, five-lobed flowers (Barrett *et al.* 1985). *Hackelia venusta* grows in openings within the ponderosa pine (*Pinus ponderosa*) and Douglas-fir (*Pseudotsuga menziesii*) forest types in one location in Tumwater Canyon, Chelan County, Washington. This population contains approximately 140 plants. Threats to this species include competition and shading from native trees and shrubs, encroachment by nonnative plant species, wildfire and fire suppression, and low seedling establishment. Reproductive vigor may be depressed because of the plant's small population size and limited gene pool.

Pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), *Hackelia venusta* was proposed for listing as an endangered species on February 14, 2000 (65 FR 7339). The original comment period closed on April 14, 2000. We intend to re-open the comment period for an additional 30 days to allow all interested parties to comment on the proposed rule.

Public Comments Solicited

We will accept written comments and information during this re-opened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Drive SE., Suite 102, Lacey, Washington 98503–1263.

(2) You may send comments by electronic mail (e-mail) to: *fw1wwo_showystickseed@r1.fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018-AF75" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Western Washington Fish and Wildlife Office at telephone number 360/753–9440.

(3) You may hand-deliver comments to our Western Washington Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the proposed rule is available on the Internet at our website "*www.fws.gov*" or by writing to the Field Supervisor at the address under (1) above.

Authors

The primary authors of this notice is Barb Behan, U.S. Fish and Wildlife

Service, Regional Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4181, and Ted Thomas (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 28, 2001.

Donald V. Friberg,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 01–27892 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–A107

Migratory Bird Hunting and Permits; Regulations for Managing Harvest of Light Goose Populations; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: On October 12, 2001 the U.S. Fish and Wildlife Service published a proposal to authorize new regulations to increase harvest of overabundant light goose populations (greater and lesser snow geese and Ross' geese). Such regulations are proposed for States in the Atlantic, Mississippi, and Central Flyways. This correction adds New Jersey to the list of Atlantic Flyway States being proposed for eligibility for such regulations.

DATES: Comments on this proposed rule must be received by December 14, 2001.

ADDRESSES: 1. Comments should be mailed to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Alternatively, comments may be submitted electronically to the following address: white_goose_eis@fws.gov.

2. The public may inspect comments during normal business hours in Room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

3. You may obtain copies of the draft environmental impact statement from the above address, or by downloading it from our web site at http://migratorybirds.fws.gov/issues/snowgse/tblcont.html.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, (703) 358–1714; or James Kelley (612) 713–5409.

SUPPLEMENTARY INFORMATION: On October 5, 2001 (66 FR 51274) we notified the public of the availability of a Draft Environmental Impact Statement (DEIS) on light goose management. The DEIS analyzes several alternatives for addressing habitat degradation associated with overabundant light goose populations. On October 12, 2001 (66 FR 52077) we published a proposed rule to authorize new regulations that would increase harvest of certain light goose populations in the Atlantic, Mississippi, and Central Flyways. The proposal corresponds to our preferred alternative identified in the DEIS. We inadvertently omitted New Jersey from the list of States that are proposed as being eligible to implement special light goose regulations. This correction adds New Jersey to the list of eligible States.

Correction

Accordingly, making the following corrections to FR Doc. 01–25612 published at 66 FR 52077 on October 12, 2001:

1. On page 52088 in columns two and three, correct paragraphs § 20.21 (b) and (g) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells. This restriction does not apply during a light-goose-only season (greater and lesser snow geese and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

* * * * *

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. This restriction does not apply during a light-goose-only season (greater and lesser snow geese and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

* * * * *

2. On page 52089 in column one, correct paragraph § 21.60(c)(1) to read as follows:

§ 21.60 Conservation order for light geese.

* * * * *

(c) * * *

(1) The following States, or portions of States, that are contained within the boundaries of the Atlantic, Mississippi, and Central Flyways: Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

* * * * *

Dated: October 31, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–27940 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 66, No. 216

Wednesday, November 7, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–076–1]

Notice of Request for Reinstatement of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a reinstatement of an information collection in support of the Foreign Animal Disease Surveillance Program.

DATES: We invite you to comment on this docket. We will consider all comments we receive that are postmarked by January 7, 2002.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–076–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–076–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding the Foreign Animal Disease Surveillance Program, contact Dr. Aida Boghossian, Senior Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737; (301) 734–8073. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Foreign Animal Disease/Emerging Disease Investigation (FAD/EDI) Database.

OMB Number: 0579–0071.

Type of Request: Reinstatement of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) is responsible for administering regulations intended to prevent foreign diseases of livestock or poultry from being introduced into the United States, for conducting a surveillance program for the early detection of such foreign animal diseases, and for eradicating such foreign animal diseases if they are detected.

Through our Foreign Animal Disease Surveillance Program, the Emergency Programs division of Veterinary Services, APHIS, compiles essential epidemiological and diagnostic data that are used to define foreign animal diseases and their risk factors. When a potential foreign animal disease incident is reported, APHIS dispatches a foreign animal disease veterinary diagnostician to the site to conduct an investigation.

The diagnostician obtains vital epidemiologic data by conducting field investigations, including sample collection, and by interviewing the owner or manager of the premises being investigated.

These important data include such items as the number of sick or dead animals on the premises, the results of necropsy examinations, vaccination information on the animals in the flock or herd, the level of biosecurity practices at the site, whether any animals were recently moved out of the herd or flock, whether any new animals were recently introduced into the herd or flock, and detailed geographic data concerning premises location.

The diagnostician records this information on VS Form 12–27. Information from this form is then entered into our Foreign Animal Disease/Emerging Disease Investigation database.

VS Form 12–27 is used for both task force emergency disease investigations and all suspect foreign animal disease investigations. After laboratory confirmation of a specific foreign animal disease, the information collected on the form ensures prompt attention and followup by a disease eradication specialist.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collective activity for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Owners and operators of livestock and poultry producing operations, State personnel who assist with information collection.

Estimated number of respondents: 535.

Estimated number of responses per respondent: 2.

Estimated annual number of responses: 1,070.

Estimated total annual burden on respondents: 1,070 hours. (Due to

averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of November 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–27934 Filed 11–6–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–087–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the swine health protection program.

DATES: We invite you to comment on this docket. We will consider all comments we receive that are postmarked by January 7, 2002.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–087–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–087–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on the swine health protection program, contact Dr. Arnold Taft, Senior Staff Veterinarian, National Animal Health Programs Staff, VS, APHIS, 4700 River Road Unit 43, Riverdale MD 20737, (301) 734–7708. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles,APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION: *Title:* Swine Health Protection.

OMB Number: 0579–0065.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for preventing the spread of contagious, infectious, or communicable diseases of livestock or poultry from one State to another and for eradicating such diseases from the United States when feasible.

The Swine Health Protection Act prohibits the feeding of garbage to swine unless the garbage has been treated to kill disease organisms. Untreated garbage is one of the primary media through which numerous infectious and communicable diseases are transmitted to swine. Therefore, APHIS' regulations promulgated under the Swine Health Protection Act, which are located at 9 CFR part 166, require that before garbage may be fed to swine, it must be treated at a facility holding a valid permit to treat the garbage and must be treated according to the regulations.

APHIS requires certain information in order to license (issue a permit to) a facility to operate and in order to monitor the facility for compliance with the regulations. This information is collected from applications for a license to operate a garbage treatment facility, records of the destination and date of removal of all food waste or garbage from the treatment facility, and food waste reports. With this information, we are able to carefully monitor garbage treatment facilities to ensure that they are meeting our requirements. The information provided by these information collection activities is critical in preventing the interstate spread of various swine diseases and, therefore, plays a vital role in our swine health protection program.

We are asking the Office of Management and Budget (OMB) to approve the continued use of these information collection activities.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning these information collection activities. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.6790697 hour per response.

Respondents: Owners/operators (licensees) of garbage treatment facilities and State animal health authorities.

Estimated annual number of respondents: 383.

Estimated annual number of responses per respondent: 2.245.

Estimated annual number of responses: 860.

Estimated total annual burden on respondents: 584 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of November 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–27935 Filed 11–6–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection: comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and the Farm Service Agency's (FSA) intention to request an extension for a currently approved information collection in support of compliance with Civil Rights laws.

DATES: Comments on this notice must be received by January 7, 2002 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Jacqueline Micheli, Equal Opportunity Specialist, Rural Development, U.S. Department of Agriculture, STOP 0703, 1400 Independence Ave., SW., Washington, DC 20250–0703, Telephone (202) 692–0099 (voice) or 692–0305 (TDD).

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1901–E, Civil Rights Compliance Requirements.

OMB Number: 0575–0018.

Expiration Date: February 28, 2002.

Type of Request: Extension of an information collection.

Abstract: The information collection under OMB Number 0575–0018 enables the RHS, RBS, RUS, and FSA to effectively monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis.

The RBS, RHS, RUS, and FSA, formerly the Farmers Home Administration, are required to provide Federal financial assistance through its farmer, housing, and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR part 1901, subpart E ("1901–E"), require the recipients of RBS, RHS, RUS, and FSA's Federal financial assistance to collect various types of information, including information on participants in certain of these agencies' programs, by race, color, and national origin. While these agencies realize that the provisions of 1901–E are outdated as the result of statutory amendment and other processes of law, the information needed to be collected under this implementing regulation is not affected by the obsolete nature of the regulation. The RBS, RHS, RUS, and FSA use the information to monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. The agencies are in the process of revising 1901–E, and expect to publish for comment a **Federal Register** document proposing these revisions in 2002. The following laws are implemented in 7 CFR 1901–E:

a. *Title VI of the Civil Rights Act of 1964 ("Title VI").* The implementing regulations for this Act issued by the Department of Justice and the Department of Agriculture requires recipients of RBS', RHS' RUS' and FSA's program assistance to collect information on the race/national origin of the beneficiaries of their specific programs. This information is used by the RBS, RHS, RUS, and FSA for compliance review and monitoring purposes for Title VI.

b. *Title VIII of the Civil Rights Act of 1968 (as amended) ("Title VIII).* Section 808a of Title VIII (42 U.S.C. 3608a (1988)), in pertinent part, requires the Secretary of Agriculture to collect racial and ethnic data on beneficiaries and recipients of USDA housing programs. Furthermore, the implementing regulations issued by the Department of Housing and Urban Development ("HUD") and adopted by the RBS, RHS, RUS, and FSA, requires recipients and other participants in RHS's housing programs affirmatively to further fair housing by providing housing and the opportunity to acquire housing in a non-discriminatory fashion. One way to demonstrate compliance with Title VIII is to prepare affirmative fair housing marketing plans, and to collect and maintain data to reflect compliance with the requirements of that plan. Furthermore, under the Memorandum of Understanding between HUD and USDA, many complaints of fair housing violation by USDA recipients will be processed by HUD. The collection and maintenance of these data will assist in this enforcement effort.

c. *Executive Order 11246.* The implementing regulations issued by the Department of Labor (DOL) and adopted by the RBS, RHS, RUS, and FSA, require recipients of Federally assisted construction contracts of $10,000 or more to maintain goals for hiring minorities and females, and to submit employment utilization reports to the DOL's Office of Federal Contract Compliance Programs.

The information collected and maintained by the recipients of certain programs from RBS, RHS, RUS, and FSA is used internally by these agencies for monitoring compliance with the civil rights laws and regulations. This information is made available to USDA officials, officials of other Federal agencies, and to Congress for reporting purposes. Without the required information, RBS, RHS, RUS, FSA and its recipients will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner and in full compliance with the civil rights laws. In addition, the RBS, RHS, RUS, and FSA, and their recipients would be vulnerable in lawsuits alleging discrimination in the affected programs of these agencies and would be without appropriate data and documentation to defend themselves by demonstrating that services and benefits are being provided to beneficiaries on an equal opportunity basis.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 5.57 hours per response.

Respondents: Recipients of RBS, RHS, RUS, and FSA's Federal financial assistance, loan, and loan guarantee programs.

Estimated Number of Respondents: 19,565.

Estimated Number of Responses per Respondent: 4.50.

Estimated Number of Responses: 88,165.

Estimated Total Annual Burden on Respondents: 491,517.

Copies of this information collection can be obtained from Richard Gartman, Regulations and Paperwork Management Branch, Support Services Division, at (202) 692–0038.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Development, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the

information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Richard Gartman, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, Ag Box 0742, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 10, 2001.

Michael E. Neruda,

Acting Deputy Under Secretary, Rural Development.

Dated: September 21, 2001.

J.B. Penn,

Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 01–27877 Filed 11–7–01; 8:45 am]

BILLING CODE 3410–XT–U

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee (RAC)

AGENCY: Forest Service. USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet on November 26, 2001, in Yreka, California. The purpose of the meeting is organizational and will serve as an orientation to RAC committee members regarding the Secure Rural School and Community Self-Determination Act of 2000.

DATES: The meeting will be held November 26, 2001 from 1 p.m. to 8 p.m.

ADDRESSES: The meeting will be held at the Miners Inn and Convention Center, 122 E. Miner Street, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Amy Gowan, Meeting Coordinator, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California, 96097, (530) 841–4485; EMAIL *agowan@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Federal Advisory Committee Act (FACA) overview; (2) Roles and Responsibilities for Advisory Committees; (3) Rules and Operational Guides and Bylaws; (4) Project Process; (5) Election of RAC Chairperson; (6) Public Comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: October 30, 2001.

Ray Haupt,

Acting Deputy Forest Supervisor.

[FR Doc. 01–27891 Filed 11–6–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Wednesday, November 14, 2001, at the Gifford Pinchot National Forest Headquarters, located at 10600 NE 51st Circle, Vancouver, Washington. The meeting will begin at 10 a.m. and continue until 4 p.m. The purpose of the meeting is to: (1) Discuss the future of Mount St. Helens National Volcanic Monument, (2) Discuss means of communicating with diverse audiences, and (3) Provides for a Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (3) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891–5195, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Claire LaVendel,

Forest Supervisor.

[FR Doc. 01–27904 Filed 11–6–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: November 13, 2001; 11:00 a.m.–5:00 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW, Washington, D.C. 20237.

The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: November 5, 2001.

Carol Booker,

Legal Counsel.

[FR Doc. 01–28083 Filed 11–5–01; 2:26 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Membership of the Departmental Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of membership of Departmental Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4313(c)(4), Department of Commerce (DOC) announces the appointment of persons to serve as members of the Departmental Performance Review Board (DPRB). The DPRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and serves as the higher level review for executives who report to an appointing authority. Such reviews are conducted only at the executive's request. The appointment of these members to the DPRB will be for periods of 24 months.

EFFECTIVE DATE: The effective date of service appointees to the Departmental Performance Review Board is upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Joan Jorgenson, Director, Office of Executive Resources, Office of Human Resources Management, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–4233.

SUPPLEMENTARY INFORMATION: The names, position titles, and type of appointment of the members of the DPRB are set forth below by organization:

2001–2003 DPRB MEMBERSHIP

Organization/Member/Type of Appointment

Office of the Secretary

Nuala O'Connor, Deputy Director, Office of Policy and Strategic Planning
Tracy B. McKibbon, Director, Executive Secretariat

Office of the Assistant Secretary for Administration

Barbara A. Retzlaff, Director, Office of Budget

General Counsel

Barbara S. Fredericks, Assistant General Counsel for Administration
Margaret A. Wilson, Deputy General Counsel

Economics and Statistics Administration

James L. Price, Deputy Under Secretary for Economic Affairs
James K. White, Associate Under Secretary for Management
William G. Barron Jr., Deputy Director, Bureau of the Census
Marvin D. Raines, Associate Director for Field Operations, Bureau of the Census
J. Steven Landefeld, Director, Bureau of Economic Analysis

National Telecommunications and Information Administration

Bernadette McGuire-Rivera, Associate Administrator for Telecommunications and Information Applications

International Trade Administration

Jonathan C. Menes, Director, Office of Trade and Economic Analysis, Trade Development
Susan H. Kuhbach, Senior Director, Import Administration
Stephen P. Jacobs, Deputy Assistant Secretary for Agreements Compliance, Market Access and Compliance
Linda Moye-Cheatham, Chief Financial Officer and Director of Administration
Nealton J. Burnham, Deputy Assistant Secretary for Export Promotion Services

Economic Development Administration

David M. Bearden, Deputy Assistant Secretary

National Oceanic and Atmospheric Administration

Rear Admiral Evelyn J. Fields, Director, Office of Marine and Aviation Operations; Director, NOAA Commissioned Corps
John E. Jones Jr., Deputy Assistant Administrator for Weather Services, National Weather Service
Stewart S. Remer, Deputy Chief Administrative Officer, Office of Finance and Administration
Mary M. Glackin, Deputy Assistant Administrator, National Environmental Satellite, Data and Information Service
Jamison S. Hawkins, Deputy Assistant Administrator for Ocean Services and Coastal Zone Management

Bureau of Export Administration

Eileen M. Albanese, Director, Office of Exporter Services
Steven Goldman, Director, Office of Chemical and Biological Controls and Treaty Compliance
Dexter M. Price, Director, Office of Antiboycott Compliance

Dated: October 31, 2001.

Joan Jorgenson,

Executive Secretary, Departmental Performance Review Board.

[FR Doc. 01–27885 Filed 11–6–01; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Performance Review Board; Membership

The following individuals are eligible to serve on the Performance Review Board in accordance with the Senior Executive Service Performance Appraisal System of the Office of the Secretary.

Kathleen J. Taylor
Travis G. Thomas
John J. Phelan, III
Linda Moye-Cheatham
Michael E. Meece
Thomas N. Pyke, Jr.
James L. Taylor
Miriam Cohen

Joan Jorgenson,

Executive Secretary, Office of the Secretary, Performance Review Board.

[FR Doc. 01–27886 Filed 11–6–01; 8:45 am]

BILLING CODE 3510–55–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43–2001]

Foreign-Trade Zone 146—Lawrence County, IL; Application for Subzone Expansion-Subzone 146A, North American Lighting, Inc., Facilities, Flora and Salem, Illinois (Automotive Lighting Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Bi-State Authority, grantee of FTZ 146, requesting authority on behalf of North American Lighting, Inc. (NAL), operator of FTZ 146A, at the NAL automotive lighting products manufacturing facilities in Flora and Salem, Illinois, to expand FTZ Subzone 146A to include a new site in Paris, Illinois, and requesting authority to expand the scope of FTZ authority to include new manufacturing capacity under FTZ procedures. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 31, 2001.

Subzone 146A was approved by the Board in 1988 with authority granted for the manufacture of automotive lighting components and other related auto parts at NAL's manufacturing facilities (355,000 sq.ft./14 acres) in Flora, Illinois (*Site 1*) (Board Order 371, 53 FR 5436, 2–24–88). The subzone was subsequently reorganized and expanded to include NAL's second manufacturing facility (380,000 sq.ft./22 acres) in the Salem Industrial Park, Salem, Illinois (*Site 2*) (Board Order 718, 60 FR 2375, 1–9–95). In January 2001, the Board approved an expansion of the scope of FTZ manufacturing authority up to 56 million units annually, with a concurrent expansion of the boundaries of Subzone 146A (Board Order 1142, 66 FR 8195, 1–30–01).

The applicant is now requesting authority to expand the subzone to include a new site, currently under construction, located at 2277 South Main in Paris (Edgar County), Illinois. Proposed *Site 3* would include a 41-acre parcel within the Paris Industrial Park containing a 179,000 square foot

automotive lighting product manufacturing facility (250 employees). Under the current expansion plan, the NAL facilities' production capacity will be almost doubled (to 100 million units per year) with the addition of up to 1.2 million square feet of production area within proposed *Site 3*. Activity at the new facility would be similar to existing production at the Salem and Flora sites, involving design, injection molding, plating and assembly of motor vehicle headlamps, rear combination lamps, high mount stop lamps, turn signals, dome and trunk lamps, fog lamps, side marker and license plate lamps using domestic and foreign-origin components. Foreign-sourced components and materials (about 19 percent of total purchases) include (with scope increase): various polymers and resins in primary form (HTSUS Ch. 39), articles of rubber and plastic, parts of lighting equipment, wiring harnesses, bulbs, gaskets/seals, fasteners, optical elements of glass, certain electrical apparatus (including motors, switches), springs, articles of copper, printed circuits, lamps and lenses, optical fiber and cable/bundles (duty rates: free −12.5%, 1.1¢/kg+2.9%).

FTZ procedures exempt NAL from Customs duty payments on the foreign components used in export production (16% of shipments). On its domestic sales (including NAFTA markets), the company is able to choose the duty rates that apply to finished automotive lighting equipment and parts (duty free, 2.5%) for the foreign components possessing higher duty rates. The auto duty rate (2.5%) applies if the finished lighting products are shipped via zone-to-zone transfer to U.S. motor vehicle assembly plants with subzone status. The request indicates that the savings from FTZ procedures will continue to help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is January 7, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 22, 2002).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above and at the U.S. Department of Commerce Export Assistance Center, Suite 2440, 55 West Monroe Street, Chicago, IL 60603.

Dated: October 31, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–27978 Filed 11–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–2001]

Foreign-Trade Zone 49—Newark/Elizabeth, NJ, Application for Subzone, Movado Group, Inc., (Watches; Certain Consumer Goods), Moonachie, NJ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of New York and New Jersey, grantee of FTZ 49, requesting special-purpose subzone status for the watch and consumer goods warehousing/distribution/repair facility of the Movado Group, Inc., (Movado), in Moonachie, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 31, 2001.

The Movado Group, Inc. (100,000 sq. ft. on 4.5 acres) is located at 105 State Street in Moonachie, New Jersey. The facilities (285 employees) are used primarily for storage, inspection, repair, packaging and distribution of wristwatches and clocks and watch parts. The company also distributes a variety of other consumer goods, including the following: writing instruments, sunglasses, steel and silver gifting items, silverware, jewelry, glassware, apparel and clothing accessories, tableware and other household articles, shaving preparations and other toiletries, and perfumes and toilet waters. Almost all of the products are sourced from abroad and some 5 percent are currently exported.

Zone procedures would exempt Movado from Customs duty payments on foreign products that are reexported. On domestic sales, the company would be able to defer payments until merchandise is shipped from the facility. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. *Submissions Via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is January 7, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 22, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, One Gateway Center, 9th Floor, Newark, NJ 07102.

Dated: October 31, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–27979 Filed 11–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–423–808]

Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On February 26, 2001, the Department of Commerce (the Department) published the preliminary affirmative results of the antidumping duty administrative review on stainless steel plate in coils (SSPC) from Belgium (66 FR 11559) (*Preliminary Results*). The review covers exports of this merchandise to the United States for the period November 4, 1998 through April 30, 2000, by ALZ, N.V. (ALZ), a manufacturer and exporter of subject merchandise.

Based on our analysis of the comments received, we have made changes in the margin calculations. The final dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: November 7, 2001.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Abdelali Elouaradia, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230 at (202) 482–0197 or (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

Background

In its *Preliminary Results*, the Department assigned to ALZ, as adverse facts available (AFA), the highest calculated rate from the petition; 16 percent, given that the company withdrew from the review and requested that its questionnaire responses be removed from the record. The Department also invited parties to submit additional information if they considered such information more appropriate or relevant for use as AFA. On February 23, 2001, Allegheny Ludlum, AK Steel Corporation, J&L Specialty Steel Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC (petitioners) submitted comments proposing that the Department calculate ALZ's dumping margin using, as AFA, ALZ's public summary of its proprietary questionnaire responses. On March 5, 2001, ALZ submitted a response to petitioners' proposed margin calculations. On March 28, 2001, petitioners filed their case briefs. On April 2, 2001, ALZ filed a rebuttal brief. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Reviews

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to these orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the orders is dispositive.

Period of Review

This is the first administrative review. The period of review (POR) is November 4, 1998 through April 30, 2000.

Facts Available

Consistent with our *Preliminary Results*, we have applied AFA with respect to ALZ for purposes of the final results of this review. For a detailed discussion of our application, selection, and corroboration of facts available, *see Preliminary Results*, 66 FR at 11561. However, since the *Preliminary Results*, we have re-examined the information on which the preliminary margin, calculated on the basis of the price-to-constructed value (CV) comparison, was based. We found that the CV has increased in the POR. To the extent that POR information was reasonably available to us, we recalculated this margin. Specifically, we recalculated the factory overhead, selling and general expenses and profit ratios, using ALZ's 1998, 1999 and 2000 publicly-available financial statements. We applied the weighted-average of these ratios to the original base cost to get the total CV. Finally, we compared the CV to the net U.S. price in the original petition, which resulted in a margin of 24.43 percent. *See Memorandum to Barbara E. Tillman through Sally Gannon from Abdelali Elouaradia: Total Adverse Facts Available Calculation Memorandum*, October 24, 2001 (*Calculation Memorandum*).

Corroboration

For the *Preliminary Results*, in accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price and normal value calculations on which the margins in the petition were based. As stated above, we have recalculated the margin using information from ALZ's most recent financial statements. *See Calculation Memorandum*. Because this is ALZ's own information from its audited financial statements, which are publicly available, it needs no further corroboration. Accordingly, we find the margin used in these final results to be corroborated to the extent practicable. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 84 (January 4, 1999).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary,

AD/CVD Enforcement Group III, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 24, 2001, which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, located in room B–099 of the main Department of Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

As a result of our review covering the period of November 4, 1998 through April 30, 2000, we determine that the dumping margin for ALZ, based on total AFA, is as follows:

Manufacturer/exporter	Margin (percent)
ALZ, N.V	24.43

Liquidation

The Department shall determine, and U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. These final results of review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review. For ALZ, we based the assessment rate on the facts available margin percentage. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of ALZ's entries under the relevant order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of SSPC from Belgium entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 9.86 percent. This rate is the "All Others" rate from the LTFV investigation (*see Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Belgium*, 64 FR 15476 (March 31, 1999)). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 24, 2001.

Richard W. Moreland,

Acting Assistont Secretory for Import Administration.

Appendix

List of Issues

Selection of the Appropriate Adverse Facts Available Margin.

[FR Doc. 01–27976 Filed 11–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–489–807]

Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 4, 2001, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey (66 FR 22525). This review covers four manufacturers/exporters of the subject merchandise to the United States. The period of review is April 1, 1999, through March 31, 2000.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: November 7, 2001.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2000).

Background

This review covers four manufacturers/exporters (*i.e.*, Colakoglu Metalurji A.S. (Colakoglu), Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S. (collectively "Diler"), Ekinciler Holding A.S. and Ekinciler Demir Celik A.S. (collectively "Ekinciler"), and ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. (ICDAS)).

On May 4, 2001, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey. *See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 22525 (May 4, 2001) (*Preliminary Results*).

We invited parties to comment on our preliminary results of review. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The product covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Period of Review

The period of review (POR) is April 1, 1999, through March 31, 2000.

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether the respondents participating in the review made home market sales of the foreign like product during the POR at prices below their costs of production (COPs) within the meaning of section 773(b)(1) of the Act. We calculated the COP for these final results following the same methodology as in the *Preliminary Results*, except as discussed in the accompanying "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 31, 2001.

As noted above, we determined that the Turkish economy experienced significant inflation during the POR. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that each respondent submit the product-specific cost of manufacturing (COM) incurred during each month of the reporting period. We calculated a period-average COM for each product after indexing the reported monthly costs during the reporting period to an equivalent currency level using the Turkish Wholesale Price Index from the International Financial Statistics published by the International Monetary Fund. We then restated the period-average COMs in the currency values of each respective month.

We compared the weighted-average COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and selling expenses.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below cost sales were made in "substantial quantities" within an extended period of time and, for Colakoglu only, at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B), (C), and (D) of the Act. Regarding Diler, Ekinciler, and ICDAS, as discussed in the preliminary results, we granted these respondents six-month limited reporting periods, and we advised them that if they elected to limit their reporting of home market data to a six-month period, in the sales-below-cost investigation they would forgo the application of the "recovery of cost" test pursuant to section 773(b)(2)(D) of the Act. Diler, Ekinciler, and ICDAS agreed to accept this limitation. Consequently, without the application of the "recovery of cost" test, we determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Therefore, for purposes of these final results, we disregarded the below-cost sales for all respondents and used the remaining sales as the basis for determining normal value, pursuant to section 773(b)(1) of the Act. While we disregarded some below-cost sales, sufficient sales remained that passed the cost test in the current review. Therefore, it was unnecessary to calculate constructed value in this case.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the Decision Memo, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period April 1, 1999, through March 31, 2000:

Manufacturer/exporter	Percent margin
Colakoglu Metalurji A.S.	9.51
Ekinciler Holding A.S./Ekinciler Demir Celik A.S.	6.83
Diler Demir Celik Endustrisi ve Ticaret A.S./Yazici Demir Celik Sanayi ve Ticaret A.S./Diler Dis Ticaret A.S.	0.00
ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S.	0.00

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), for Diler, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Regarding Colakoglu, Ekinciler, and ICDAS, for assessment purposes, we do not have the information to calculate entered value because these companies are not the importers of record for the subject merchandise. Accordingly, we have calculated importer-specific duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to

each importer and dividing this amount by the total quantity of those sales. The assessment rate will be assessed uniformly on all entries of that particular importer made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of rebar from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: 1) The cash deposit rates for the reviewed companies will be the rates indicated above; 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.06 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 31, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix.—Issues in Decision Memo

Comments

1. Use of Facts Available.
2. Exchange Rates used for Currency Conversions.
3. Cost Recovery Test.
4. Home Market Sales Priced in U.S. Dollars.
5. Kur Farki Adjustment.
6. Colakoglu's Home Market Credit Expenses.
7. Colakoglu's Home Market Indirect Selling Expenses.
8. Different Costs for the Same Products Produced by Colakoglu.
9. Unreported Costs for Colakoglu.
10. Colakoglu's Production Quantities.
11. Colakoglu's Depreciation Expenses.
12. Colakoglu's G&A Expenses.
13. Colakoglu's Financing Expenses.
14. Costs for Different Grades of Rebar Produced by Diler.
15. Unreported Material Costs for Diler.
16. Diler's Depreciation Expenses.
17. Diler's G&A Expenses.
18. Diler's Financing Expenses.
19. Selling Expenses for Constructed Export Price.
20. Ekinciler's Home Market Freight Expenses.
21. Ekinciler's U.S. Freight Expenses.
22. Ekinciler's Home Market Credit Expenses.
23. Ekinciler's Scrap Costs.
24. Ekinciler's Depreciation Expenses.
25. Ekinciler's G&A Expenses.
26. Use of Consolidated Financing Expenses for Ekinciler.
27. Calculation of Ekinciler's Financing Expenses.
28. New Factual Information.
29. ICDAS's Scrap and Labor Costs.
30. ICDAS's Secondary Materials.
31. ICDAS's Packing Costs.
32. Treatment of ICDAS's Foreign Exchange Gains and Losses and Interest.

[FR Doc. 01–27975 Filed 11–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–535–001]

Cotton Shop Towels From Pakistan: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of preliminary results of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the countervailing duty order on cotton shop towels from Pakistan. This review covers the period January 1, 2000, to December 31, 2000.

EFFECTIVE DATE: November 7, 2001.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Geoffrey Craig, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3338 or (202) 482–4161, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930 (the Act), as amended, requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and for the final determination to extend the 120-day time limit to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary results.

Background

On April 30, 2001, the Department published a notice of initiation of administrative review of the countervailing duty on cotton shop towels from Pakistan, covering the period January 1, 2000 through December 31, 2000. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Review*, 66 FR 21310 (April 30, 2001). The preliminary results are currently due no later than December 3, 2001.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit of 245 days. Therefore, the Department is extending the 245-day time limit for completion of the preliminary results until no later than March 31, 2002. *See* Decision Memorandum from Melissa G. Skinner, Office Director for AD/CVD Office VI, to Bernard T. Carreau, Deputy Assistant Secretary, dated concurrently with this notice, which is on public file in the Central Records Unit, Room B–099 of the Department of Commerce. We intend to issue the final results no later than 120 days after the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: October 31, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–27977 Filed 11–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–501]

Certain In-Shell Pistachios From Iran: Notice of Initiation of New Shipper Countervailing Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has received a request for a new shipper review of the countervailing duty order on certain in-shell (*i.e.*, raw) pistachios from Iran. In accordance with our regulations, we are initiating this new shipper review.

EFFECTIVE DATE: November 7, 2001.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Darla Brown at (202) 482–2786; AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request from Tehran Negah Nima Trading Company, Inc. ("Nima") to conduct a new shipper review of the countervailing duty order on certain in-shell pistachios, issued March 11, 1986 (51 FR 8344). This request was made pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b).

Initiation of Review

Pursuant to 19 CFR 351.214(b), in its request of September 18, 2001, Nima certified that it did not export the subject merchandise to the United States during the period of investigation ("POI") and that it is not now and never has been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI. Nima submitted documentation establishing the date on which its merchandise was first entered for consumption in the United States, the volume of that first shipment and the date of its first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and section 351.214(d) of the Department's regulations, we are initiating a new shipper review of the countervailing duty order on certain in-shell pistachios from Iran. In accordance with 19 CFR 351.214(h)(i), we intend to issue the preliminary results of this review not later than 180 days from the date of publication of this notice. The Department's regulations state, in 19 CFR 351.214(g)(2), that the period of review for a CVD new shipper review will be the same period as that specified in 19 CFR 351.213(e)(2), which states that the Department normally will cover entries of subject merchandise during the most recently completed calendar year. However, the Department noted in the Preamble to its Final Regulations that the regulations continue to "provide the Department with sufficient flexibility to resolve any problems that may arise by modifying the standard review period." *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27320 (May 19, 1997). The Department's regulations permit a party to file a request for a new shipper review during the 6 month period preceding the anniversary month and the 6 month period preceding the semiannual anniversary month. If a calendar year standard is utilized, as noted in the Department's regulations, entries may enter during the current year, and be lost from the Department's analysis as a result. Because the Department believes that such a situation would arise in this instance, the POR will begin with the last fiscal quarter of the year 2000 and end with the third fiscal quarter of 2001.

Countervailing duty processing	Period to be reviewed
Iran: Certain In-shell Pistachios, C–507–501:Tehran Negah Nima Trading Company	10/01/00–09/30/01

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, until the completion of the review.

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305.

This initiation notice is in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: October 31, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 01–27974 Filed 11–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Mississippi Coastal Management Program, and the Ashepoo-Combahee-Edisto (ACE) Basin National Estuarine Research Reserve, South Carolina.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 923, subpart L. The National Estuarine Research Reserve evaluation will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 921, subpart E and part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program and research reserve program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document or Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

The Mississippi Coastal Management Program evaluation site visit will be held January 7–11, 2002. One public meeting will be held during the week. The public meeting will be on Tuesday, January 8, 2002, at 5:30 p.m., in the Bolton State Office Building, 1141 Bayview Avenue, Biloxi, Mississippi.

The Ashepoo-Combahee-Edisto (ACE) Basin National Estuarine Research Reserve site visit will be from January 14–18, 2002. One public meeting will be held during the week. The public meeting will be held on Wednesday, January 16, 2002, at 7:00 p.m., at the Edisto Beach State Park Office, Edisto, South Carolina. This ACE Basin Reserve site visit replaces a site visit originally scheduled for December 10–14, 2001. Likewise, the public meeting scheduled above replaces a public meeting originally set for Wednesday, December 12, 2001. Notice of the earlier site visit and public meeting was published in the **Federal Register**, September 20, 2001 (see 66 FR 48425).

Copies of states' most recent performance reports, as well as OCRM's notifications and supplemental request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Douglas Brown, Acting Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th floor, Silver Spring, Maryland 20910. When the evaluations are completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Douglas Brown, Acting Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155, Extension 215.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: October 31, 2001.

Jamison S. Hawkins,

Deputy Assistance Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–27880 Filed 11–6–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: Notice correction.

SUMMARY: The National Oceanic and Atmospheric Administration published a notice in the **Federal Register** on Friday, October 12, 2001, announcing a public meeting scheduled for Thursday, November 8, 2001 from 8:30 a.m.–5:40 p.m. and Friday, November 9, 2001 from 8:30 a.m.–12:30 p.m. The meetings are to be held at the National Oceanic and Atmospheric Administration, Silver Spring, Metro Center III, 1315 East-West Highway, Room 4527, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald C. Baird, Director, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11716, Silver Spring, Maryland 20910, (301) 713–2448.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** issue of October 12, 2001, 66 FR 52113, on page 52114, in the first column, insert the following information in parentheses immediately following, "The agenda for the meeting is as follows":

The Sea Grant Review Panel may, at its discretion, move the Thursday, November 8 session in its entirety from 8:30 a.m.–5:40 p.m. to 12 noon–10 p.m. The order of events will remain the same. The Sea Grant Review Panel will reconvene on Friday, November 9, 2001 at 8:30 a.m. and adjourn at 12:30 p.m. according to the previously Federal Register listing.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 01–27879 Filed 11–6–01; 8:45 am]

BILLING CODE 3510–KA–M

COMMISSION ON THE FUTURE OF THE UNITED STATES AEROSPACE INDUSTRY

Public Meeting

AGENCY: Commission on the Future of the United States Aerospace Industry.

ACTION: Notice.

SUMMARY: The purpose of the meeting is to hear testimony from the Congressional sponsors of the Commission and Administration and Federal Agency officials regarding their priorities for the Commission and views on the future of aerospace. The Commissioners will then deliberate based on the testimony and extensive information previously received from the public and industry. They will decide on the scope and priorities of the Commission's year-long effort and identify initial studies, products and contents.

Section 1092 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398) established the Commission on the Future of the United States Aerospace Industry to study the issues associated with the future of the United States national security; and assess the future importance of the domestic aerospace industry for the economic and national security of the United States. The Commission is governed by the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation of advisory committees and implementing regulations (41 CFR subpart 101–6.10).

All interested parties are welcome to submit written comments at any time.

TIME AND DATE: Tuesday, November 27, 2001; 8:30 a.m. to 5:30 p.m.

ADDRESS: Department of Commerce Auditorium, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Cindy Waters, 1235 Jefferson Davis Highway, Suite 940; Arlington, Virginia 22202; phone 703–602–1515; e-mail *watersc@osd.pentagon.mil.*

Dated: November 1, 2001.

Charles H. Huettner,

Executive Director, Commission on the Future of the United States Aerospace Industry.

[FR Doc. 01–27955 Filed 11–6–01; 8:45 am]

BILLING CODE 6820–WP–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

November 2, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 7, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 647/648 is being increased for special shift from Categories 347/348, reducing the limit for Categories 347/348 to account for the special shift being applied to Categories 647/648.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69742, published on November 20, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 7, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
347/348	3,248,538 dozen.
647/648	1,943,329 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27961 Filed 11–06–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

November 2, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 7, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift, carryover, carryforward, and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66728, published on November 7, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 27, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 7, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
301–O [2]	1,355,111 kilograms.

Category	Adjusted twelve-month limit [1]
363	27,551,417 numbers.
369–D [3]	317,578 kilograms.
369–S [4]	386,572 kilograms.
619	9,470,653 square meters.
620	9,705,508 square meters.
Group II	
237, 331–348, 350–352, 359–H [5], 359pt. [6], 431, 433–438, 440, 442–448, 459pt. [7], 631, 633–652, 659–H [8], 659pt. [9], 831, 833–838, 840–858 and 859pt. [10].	384,230,736 square meters equivalent.
Sublevels in Group II	
338/339	2,786,011 dozen.
340	378,107 dozen.
341/641	925,279 dozen.
342/642	805,538 dozen.
345	407,239 dozen.
347/348/847	1,125,443 dozen.
351/651	326,568 dozen.
434	13,049 dozen.
435	62,684 dozen.
442	24,028 dozen.
638/639	2,558,950 dozen.
647/648	1,598,203 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[6] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.20.2060 (Category 359–H); and 6406.99.1550.

[7] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540.

[10] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27962 Filed 11–6–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–09]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–09 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: November 1, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–P

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 OCT 2001
In reply refer to:
I-01/012096

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-09 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and services estimated to cost $115 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-09

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Republic of Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$ 90 million
Other	$ 25 million
TOTAL	$ 115 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Forty-five AGM-84-H Standoff Land Attack Missiles-Expanded Response (SLAM-ER) missile systems, one ATM-84-H Exercise Missile, training missiles, containers, support equipment, spares and repair parts, missile support and test equipment, provisioning, program management, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support.

(iv) Military Department: Navy (AIU)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 26 OCT 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea - Standoff Land Attack Missile-Expanded Response Missile Systems

The Republic of Korea Government (ROKG) has requested a possible sale of 45 AGM-84-H Standoff Land Attack Missiles-Expanded Response (SLAM-ER) missile systems, one ATM-84-H Exercise Missile, training missiles, containers, support equipment, spares and repair parts, missile support and test equipment, provisioning, program management, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support. The estimated cost is $115 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

The Republic of Korea Air Force intends to use the SLAM-ER missiles on the F-15K aircraft. The Korean Armed Forces have significant previous and current experience with modern weapon systems and will have no difficulty absorbing these missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Boeing Company of St. Louis, Missouri. One or more proposed offset agreements may be related to this proposed sale.

No U.S. Government or contractor representatives are required to be stationed for any length of time in-country. However, Contractor Engineering Technical Services (CETS) will be required on an interim basis for installation.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vi

(vi) Sensitivity of Technology:

1. The Standoff Land Attack Missile - Expanded Response (SLAM-ER) is an evolutionary upgrade to the combat-proven SLAM, is a day/night, adverse weather, over-the-horizon, precision strike missile. SLAM-ER provides an effective, long range, precision strike option for both pre-planned and Target of Opportunity attack missions against land and ship targets. Most significant among these enhancements are: a highly accurate, Globe Positioning System-aided guidance system; improved missile aerodynamic performance characteristics that allow both greater range and more effective terminal attack profiles; a redesigned ordnance section for increased penetrating power and lethality; and a more user-friendly for Man-in-the-Loop control and mission planning. SLAM-ER will be the first weapon to feature Automatic Target Acquisition, a revolutionary technological breakthrough which will automate and improve target acquisition in cluttered scenes, and overcome most countermeasures and environmentally degraded conditions. SLAM-ER is a follow-on to the SLAM missile that is no longer in production. It is a variant of the HARPOON missile that utilizes the Maverick Imaging Infrared (IIR) seeker, GPS for improved navigation, planar wings, and a new warhead. The system uses the AWW-13 data link system to support man in the loop operation. SLAM-ER is effective against a wide range of land-based targets and has a secondary role of anti-ship. These missiles are classified as Confidential. The support items are classified unclassified.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

BILLING CODE 5001-08-C
[FR Doc. 01-27942 Filed 11-6-01; 8:45 am]
BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02-11]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104-164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02-11 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: November 1, 2001.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-08-P

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 OCT 2001
In reply refer to:
I-01/012097

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-11, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $51 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-11

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States

(ii) Total Estimated Value:

Major Defense Equipment*	$40 million
Other	$11 million
TOTAL	$51 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Forty JAVELIN anti-tank missile systems (consisting of 40 JAVELIN command launch units, 360 JAVELIN missile rounds, and four lot acceptance missiles), simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.

(iv) Military Department: Army (YWG)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 26 OCT 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - JAVELIN Anti-tank Missile Systems

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 40 JAVELIN anti-tank missile systems (consisting of 40 JAVELIN command launch units, 360 JAVELIN missile rounds, and four lot acceptance missiles), simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is $51 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

The proposed sale of these JAVELIN anti-tank missile systems will enhance the recipient's medium anti-tank capability for the infantry, scouts, and combat engineers. This system will provide the recipient a strong anti-landing capability and will increase interoperability with U.S. forces. The recipient will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be JAVELIN Joint Venture (Raytheon and Lockheed Martin) of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two U.S. Government and one contractor representatives to the recipient for one week to assist in the delivery and deployment of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-11

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major tactical components; a reusable Command Launch Unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in the stand-alone mode for battlefield surveillance and target detection. JAVELIN's key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately take cover. Additional special features are the top attack and/or direct fire modes (for targets under cover), integrated day/night sight, advanced tandem warhead, imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. Reverse engineering of the software would require a substantial effort. The JAVELIN weapon system is Unclassified. Specific data related to operation, performance, and system vulnerabilities are classified up to the Secret level.

2. A determination has been made that the recipient can provide substantially the same degree of protection for the technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification portion of the notification. Further, the sale strengthens collective security and contributes to the standardization and interoperability in the case of coalition warfare. The benefits to be derived from the sale outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

BILLING CODE 5001-08-C
[FR Doc. 01-27943 Filed 11-6-01; 8:45 am]
BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: November 12 & 13, 2001.

ADDRESSES: RAND, 1200 South Hayes Street, Arlington, VA 22202-5050.

Proposed Schedule and Agenda: Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet from 12 p.m. until 5 p.m. on November 12, 2001 and from 8:30 a.m. until 3 p.m. on November 13, 2001. Time will be allocated for public comments by individuals or organizations.

FOR FURTHER INFORMATION: RAND provides information about this Panel on its web site at *http://www.rand.org/organization/nsrd/terrpanel;* it can also be reached at (703) 413-1100 extension 5282. Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Priscilla Schlegel, RAND, 1200 South Hayes Street, Arlington, VA 22202-5050. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: October 31, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-27883 Filed 11-6-01; 8:45 am]
BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Chemical Warfare Defense will meet in closed session on November 27, 2001, at SAIC, Inc., 4001 N. Fairfax Drive, Arlington, VA. The Task Force will assess the possibility of controlling the risk and consequences of a chemical warfare (CW) attack to acceptable national security levels within the next five years.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will assess current national security and military objectives with respect to CW attacks; CW threats that significantly challenge these objectives today and in the future; the basis elements (R&D, materiel, acquisition, personnel, training, leadership) required to control risk and consequences to acceptable levels, including counter-proliferation; intelligence, warning, disruption; tactical detection and protection (active and passive); consequence management; attribution and deterrence; and policy. The Task Force will also assess the testing and evaluation necessary to demonstrate and maintain the required capability and any significant impediments to accomplishing this goal.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: November 1, 2001.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-27882 Filed 11-6-01; 8:45 am]
BILLING CODE 5001-08-M

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA), Public Law 92-463, and section 102-3.65, Title 41 Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Fusion Energy Sciences Advisory Committee has been renewed for a two-year period beginning November 2001. The Committee will provide advice to the Department on long-range plans, priorities, and strategies for demonstrating the scientific and technological feasibility of fusion energy.

The renewal of the Fusion Energy Sciences Advisory Committee has been determined to be essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the FACA, the GSA regulation on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Ms. Rachel Samuel at (202) 586-3279.

Issued in Washington, D.C. on November 1, 2001.

James N. Solit,

Advisory Committee, Management Officer.

[FR Doc. 01-27968 Filed 11-6-01; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, December 1, 2001 8:00 a.m.-12:15 p.m.

ADDRESSES: Public Environmental Information Center, 10995 Hamilton-Cleves Highway, Harrison, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971-0030 or (513) 648-6478, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

8:00 a.m.—Continental Breakfast8:30 a.m.—Call to Order8:30-8:45 a.m.—Introduction of New Members8:45-9:00 a.m.—Chair's Remarks and Ex Officio Announcements 9:00-10:00 a.m.—Current Remediation Issues, Efficiency Efforts10:00-10:15 a.m.—Break10:15-11:00 a.m.—Tour of Public Environmental Information Center, Q and As11:00-12:00 noon—Review Plan for Public Records Feasibility Studies 12:00-12:15 p.m.—Public Comments12:15 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the FernaldCitizens' Advisory Board, % Phoenix Environmental Corporation, MS-76, Post Office Box 538704, Cincinnati, OH 43253-8704, or by calling the Advisory Board at (513) 648-6478.

Issued at Washington, DC on November 2, 2001.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01-27969 Filed 11-6-01; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: U. S. Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

EFFECTIVE DATE: These appointments are effective as of September 30, 2001.

Acharya, Sarbeswar NMN
Allison, Jeffrey M

Anderson, Charles E
Anderson, James L
Anderson, Margot H
Aoki, Steven
Arkin, Richard W
Armstrong, M Brent
Arthur III, William John
Ascanio, Xavier
Baca, Frank A
Baca, Mark C
Bailey JR, Lawrence O
Bajura, Rita A
Baker, Kenneth E
Ballard, William W
Barker JR, William L
Barrett, Lake H
Bauer, Carl O
Bauer, Linda K
Beckett, Thomas H
Beecy, David J
Bergholz JR, Warren E
Bernard, Peter A
Berube, Raymond P
Bielan, Douglas J
Bilson, Helen E
Black, Richard L
Black, Steven K
Blackwood, Edward B
Bladow, Joel K
Boardman, Karen L
Borchardt, Charles A
Borgstrom, Carol M
Borgstrom, Howard G
Bornhoft JR, Budd B
Boston, Harry L
Bowman, Gerald C
Boyd, Gerald G
Braden JR, Robert C
Bradley JR, Theron M
Bradley, Samuel M
Brechbill, Susan R
Brewer, Robert H
Breznay, George B
Brice, James F
Brocoum, Stephan J
Brodman, John R
Bronstein, Eli B
Brown III, Robert J
Brown, Frederick R
Brumley, William J
Bubar, Patrice M
Burns, Allen L
Burrows, Charles W
Butler, Jerome M
Campbell, Elizabeth E
Campbell, James Thomas
Carabetta, Ralph A
Caravelli, John M
Cardinali, Henry A
Carlson, John T
Carlson, Kathleen Ann
Cary, Steven V
Cavanagh, James J
Chacey, Kenneth A
Chaney, Kimberly A Hayes
Christensen, William J
Christopher, Robert K
Chun, Sun W
Clark, John R
Clausen, Max Jon
Coburn, Leonard L
Combs, Marshall O
Cook, Beverly Ann
Cook, John S
Corey, Ray J
Costlow, Brian D
Cowan, Gwendolyn S
Craig JR, Jack R
Crandall, David H
Crawford, David W
Cross, Claudia A
Crowe, Richard C
Cumesty, Edward G
Cureton, Linda Y
Curtis, James H
Cygelman, Andre I
D'agostino, Thomas
Dalton, Henry F
Darugh, David G
Davies, Nelia A
Davis, James T
De Lorenzo, Ralph H
Decker, James F
Dedik, Patricia
Degrasse Jr, Robert W
Dehmer, Patricia M
Dehoratiis Jr, Guido
Deihl, Michael A
Delwiche, Gregory K
Dempsey, Robert D
Dennison, William J
Der, Victor K
Desmond Jr, William J
Dever, Gertrude L
Difiglio, Carmen NMN
Dirks, Timothy M
Dixon, Robert K
Doherty, Donald P
Domagala, Martin J
Dooley III, George J
Durnan, Denis D
Dyer, J Russell
Eberwein, Catherine D
Edmondson, John J
Edwards, Christina J
Egger, Mary H
Elwood, Jerry W
Erickson, Leif
Erickson, Ralph E
Esvelt, Terence G
Faulkner, Douglas L
Fiore, James J
Fitzgerald, Cheryl P
Folker, Robert D
Fowler, Jennifer Johnson
Franklin, Charles Anson
Frazier, Marvin E
Frei, Mark W
Fryberger, Teresa
Furiga, Richard D
Fygi, Eric J
Gale, Barry G
Garcia, Marvin L
Garland, Robert W
Garson, Henry K
Gebus, George R
Geidl, John C
Gibson Jr, William C
Gilbertson, Mark A
Ginsberg, Mark B
Glass, Richard E
Glenn, Daniel E
Glotfelty, James W
Golan, Paul M
Goldenberg, Neal NMN
Goldenberg, Ralph D
Goldsmith, Robert NMN
Gollomp, Lawrence A
Goodrum, William S
Gottlieb, Paul A
Greenwood, Johnnie D
Gross, Thomas J
Guidice, Carl W
Gunn Jr, Marvin E
Gurule, David A
Haberman, Norton NMN
Hacskaylo, Michael S
Hafner, Steven C
Hamer Jr, David L
Hansen, Charles A
Hardin, Michael G
Hardwick Jr, Raymond J
Hartman, James K
Harvey, John R
Haspel, Abraham E
Hawkins, Francis C
Headley, Larry C
Heenan, Thomas F
Henderson, Lynwood H
Hensley Jr, Willie F
Hickok, Steven G
Hirahara, James S
Hoffman, Allan R
Holland, Michael D
Hollowell, Betty L N
Hooper, Michael K
Hopf, Richard H
Horton, Donald G
Huizenga, David G
Hunemuller, Maureen A
Hutzler, Mary Jean
Izell, Kathy D
Jaffe, Harold
Jenkins, Robert G
Johnson, Frederick M
Johnson, Milton D
Johnson, Owen B
Johnson, Robert Shane
Johnson, Sandra L
Johnston, Marc
Jones, C Rick
Jones, Marcus E
Joseph, Antionette Grayso
Juarez, Liova D
Juckett, Donald A
Judge, Geoffrey J
Kane, Michael C
Kelliher, Joseph T
Kennedy, John P
Kight, Gene H
Kilgore, Webster C
Kilpatrick, Michael A
Kirkman, Larry D
Kirk, Robert S
Klein, Keith A
Klein, Susan Elaine
Knipp, Robert M
Knollmeyer, Peter M
Knutson, Karen Y
Konopnicki, Thad T
Kovar, Dennis G
Kripowicz, Robert S
Kruger, Paul W
Kuckuck, Robert W
Landers, James C
Lane, Anthony R
Lange, Robert G
Lawrence, Andrew C
Lee, Steven NMN
Lehman, Daniel R
Levin Jr, William B
Lewis Jr, William A
Lewis, Roger A
Lien, Stephen CT
Lightner, Ralph G
Longsworth, Paul M
Lopatto, Jeanne T
Lowe, Owen W

Lundquist, Andrew D
Lyle, Jerry L
Maguire, Joseph J
Magwood IV, William D
Mahaley, Joseph S
Maher, Mark W
Male, Barbara D
Malosh, George J
Mangeno, James J
Mann, Thomas O
Marcus, Gail H
Marianelli, Robert S
Markel Jr, Kenneth E
Marks Jr, David L
Marlay, Robert C
Marmolejos, Poli A
Masterson, Mary A
Mazurowski, Barbara A
McBroom, John M
McCloud, Floyd R
McCracken, Stephen H
McCutcheon II, John H
McKee, Barbara N
McMonigle, Joseph P
McRae, James Bennett
McSlarrow, Kyle E
Meeks, Timothy J
Mellington, Suzanne P
Michelsen, Stephen J
Miller, Clarence L
Miller, Deborah C
Millhone, John P
Millman, William S
Milner, Ronald A
Miotla, Dennis M
Monette, Deborah D
Monhart, Jane L
Moorer, Richard F
Morgan, Jean M
Morris, Marcia L
Morrow, Margaret K
Mosquera, James P
Mournighan, Stephen D
Murphie, William E
Murphy, Alice Q
Murphy, Robert E
Nealy, Carson L
Neilsen, Finn K
Nelson, Rodney R
Nichols, Clayton R
Nolan, Elizabeth A
Norman, Paul E
Nulton, John D
O'Brien, Betsy K
O'Fallon, John R
Olinger, Shirley J
Oliver, Lawrence R
Oliver, Stephen R
Oosterman, Carl H
Ott, Merrie Christine
Owendoff, James M
Owen, Michael W
Owens, Karen A
Parks Jr, William P
Patrinos, Aristides A
Pearson, Orin F
Pease, Harrison G
Penry, Judith M
Perin, Stephen G
Pettengill, Harry J
Piper II, Lloyd L
Podonsky, Glenn S
Poe, Robert W
Powers, James G
Powers, Kenneth W
Price Jr, Robert S
Provencher, Richard B
Prudom, Gerald H
Przybylek, Charles S
Pumphrey, David L
Rabben, Robert G
Rapuano, Kenneth P
Reed, Craig R
Rhoderick, Jay E
Roberts, Michael NMN
Robison, Sally A
Rodebeaver, Thomas N
Rodekohr, Mark E
Rodgers, Stephen J
Rollow, Thomas A
Rooney, John M
Rosen, Simon Peter
Rosselli, Robert M
Rudins, George NMN
Rudy, Gregory P
Rudzinski, Suzanne M
Ryder, Thomas S
Salmon, Jeffrey T
Salm, Philip E
Sato, Walter N
Scalingi, Paula L
Schepens, Roy J
Schmitt, Eugene C
Schmitt, William A
Schnapp, Robert M
Schoenbauer, Martin J
Schwier, Jean F
Scott, Randal S
Sellers, Elizabeth D
Shearer, Elizabeth L
Sherman, Helen O
Siebert Jr, Arlie B
Silbergleid, Steven A
Singer, Marvin I
Siskin, Edward J
Sitzer, Scott B
Skubel, Stephen C
Smith, Alan C
Smith, Alexandra B
Smith, Barry Alan
Smith, Stephen M
Sohinki, Stephen M
Solich, Donald J
Stadler, Silas D
Staffin, Robin NMN
Stallman, Robert M
Stark, Richard M
Stewart Jr, Jake W
Stewart Jr, Frank M
Stone, Barbara R
Strakey Jr, Joseph P
Strauss, Neal J
Sullivan, John R
Sweeney II, James R
Swift, Justin R
Swink, Denise F
Sye, Linda G
Sylvester, William G
Taboas, Anibal L
Tavares, Antonio F
Taylor, William J
Tedrow, Richard T
Thomas, Iran L
Todd, John C
Torkos, Thomas M
Trautman, Stephen J
Triay, Ines R
Tryon, Arthur E
Tseng, John C
Turi, James A
Turner, James M
Underwood, William R
Vagts, Kenneth A
Valdez, William J
Van Fleet, James L
Vanzandt, Vickie A
Wagner, M Patrice
Wahlquist, Earl J
Waisley, Sandra L
Waldron, Robert E
Walsh, Robert J
Warnick, Walter L
Wegner, Gerald C
Weis, Michael J
Whatley, Michael D
Whitaker Jr, Mark B
White, James K
Whiteman, Albert E
Wieker, Thomas L
Wilcher, Larry D
Wilken, Daniel H
Williams, Alice C
Williams, Mark H
Willingham Jr, Frank M
Willis, John W
Wilmot, Edwin L
Worthington, Patricia R
Wright, Stephen J
Wu, Jeremy S
Wunderlich, Robert C
Yuan-Soo Hoo, Camille C
Zamorski, Michael J
Ziesing, Rolf F

Issued in Washington, DC, November 1, 2001.

Christina J. Edwards,

Principal Deputy Director, Office of Management, Budget and Evaluation.

[FR Doc. 01–27966 Filed 11–6–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: U. S. Department of Energy.

ACTION: Designation of Performance Review Board Chair.

SUMMARY: This notice designates the Performance Review Board Chair for the Department of Energy.

EFFECTIVE DATE: The appointment is effective as of September 30, 2001.

Performance Review Board Chair

David L. Hamer, Department of Energy

Issued in Washington, DC November 1, 2001.

Christina J. Edwards,

Principal Deputy Director, Office of Management, Budget and Evaluation.

[FR Doc. 01–27967 Filed 11–6–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMBReview; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed on or before December 7, 2001. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to the OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland, Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712, FAX at (202) 287–1705, or e-mail at Grace.Sutherland@eia.doe.gov.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form RW–859, "Nuclear Fuel Data Form".
2. Office of Civilian Radioactive Waste.
3. OMB Number 1901–0287.
4. Three-year extension.
5. Mandatory.
6. Form RW–859 collects data to be used by the Office of Civilian Radioactive Waste to define, develop, and operate its storage that requires information on spent nuclear fuel inventories, generation rates, and storage capacities. Respondents are all owners of nuclear power plants and owners of spent nuclear fuel.
7. Business or other for-profit.
8. 1,237 per year (over 4 years) (52 respondents x 2.44 responses per year x 39 hours per response).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13)(44 U.S.C. 3501 et seq).

Issued in Washington, D.C., October 30, 2001.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 01–27965 Filed 11–6–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–442–000]

Black Marlin Pipeline Co., MCNIC Black Marlin Offshore Co. and WBI Offshore Pipeline, Inc.; Notice of Application

November 1, 2001.

Take notice that on September 17, 2001, Black Marlin Pipeline Company (Black Marlin), MCNIC Black Marlin Offshore Company (MCNIC), and WBI Offshore Pipeline, Inc. (WBI) (Applicants) filed an application pursuant to sections 7(b) and (c) of the Natural Gas Act for a certificate of public convenience and necessity and for authorization to abandon and transfer ownership in offshore natural gas pipeline facilities referred to as the Black Marlin pipeline system, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Applicants state that the Black Marlin pipeline system is a certificated natural gas pipeline that is owned in undivided interests by Black Marlin, MCNIC, and WBI. Applicants further state that Williams Field Service Group recently purchased 100 percent of the capital stock of Black Marlin, MCNIC, and WBI. Applicants indicate that they are requesting the authorizations in order to merge the entire ownership and certificate authority for the Black Marlin pipeline system into a single corporate entity, which will be Black Marlin. Applicants state that the requested authorization will have no affect on the rates, services, or operation of the Black Marlin pipeline system.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 23, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under "e-Filing" link. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room of the Commission's offices.

David P. Boergers,

Secretary.

[FR Doc. 01–27893 Filed 11–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–14–000]

Columbia Gas Transmission Corporation; Notice of Application

November 1, 2001.

Take notice that on October 25, 2001, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP02–14–000 pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon by sale to Somerset Gas Transmission Company, L.L.C. (Somerset) natural gas facilities located in Indiana and Clearfield Counties, Pennsylvania, and the service provided through such facilities. In addition, Columbia requests that the Commission find the abandoned facilities to be gathering and therefore exempt from the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Columbia states that as a result of Order Nos. 436 and 636, it has experienced a shift from primarily a merchant function to that of transporter. As a result, Columbia states that it is taking steps to redefine its pipeline system. Columbia further states that the facilities to be sold to Somerset are not an integral part of its transmission system and that the long-term needs of its customers are best served through a divestiture of the non-core facilities.

Columbia states that on June 10, 2001, Columbia and Somerset signed a letter of intent and acceptance of proposal to purchase. Columbia further states that such letter provides for, i. e., the sale of two systems to Somerset; the Cookport system which consists of 6.44 miles of 4-, 6-, and 8-nch pipelines with a MAOP and a MOP of 720 psig and the Cookport compressor station which consists of 1–360 hp compressor unit and 2–540 hp compressor units and appurtenances, and the Harmony system which consists of 3.76 miles of 6-inch pipeline with a MAOP and MOP of 720 psig. It is stated that the price of the facilities to be sold to Somerset is $825,630.

Columbia states that it does not propose the abandonment of service to customers other than those currently served directly from the facilities. Also, Columbia states that Somerset has agreed to assume Columbia's service obligations to those customers. Columbia further states that although the Commission requires pipeline companies to make a tariff filing, pursuant to NGA section 4, within 30 days prior to the effective date of the transfer of gathering facilities to another party, Columbia requests waiver of this requirement. Instead, in the interest of efficiency and expediency, Columbia requests that the Commission accept the information provided within the application and in Exhibit Z–2 (List of Contracts to be Terminated) as its notice to terminate service pursuant to section 4 of the NGA.

Any questions regarding the application should be directed to Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 127, Charleston, Vest Virginia 22030–0146 at (304) 357–2359.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 23, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–27894 Filed 11–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–11–000]

Orion Power Holdings, Inc., Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Orion Power MidWest, L.P., Twelvepole Creek, LLC, Liberty Electric Power, LLC, Reliant Resources, Inc., and Reliant Energy Power Generation Merger Sub, Inc.; Orion Power Holdings, Inc., et al; Notice of Filing

October 30, 2001.

Take notice that on October 22, 2001, Orion Power Holdings, Inc. (Orion Power Holdings), Astoria Generating Company, L.P. (Astoria), Carr Street Generating Station, L.P. (Carr Street), Erie Boulevard Hydropower, L.P. (Erie Boulevard), Orion Power MidWest, L.P. (Orion Power MidWest), Twelvepole Creek, LLC (Twelvepole Creek), Liberty Electric Power, LLC (Liberty Electric), Reliant Resources, Inc. (Reliant Resources), and Reliant Energy Power Generation Merger Sub, Inc. (Merger Sub) (collectively, Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of the disposition of the jurisdictional facilities of Astoria, Carr Street, Erie Boulevard, Orion Power MidWest, Twelvepole Creek, and Liberty Electric, subsidiaries of Orion Power Holdings, that will occur as a result of the merger

of Merger Sub, a wholly-owned subsidiary of Reliant Resources, into Orion Power Holdings (the Transaction). After the Transaction, each share of stock in the Merger Sub will convert into stock of Orion Power Holdings, and each share of Orion Power Holdings' current outstanding common stock will be converted into the right to receive cash. Orion Power Holdings will be the surviving entity, and will become a wholly-owned subsidiary of Reliant . Resources. Thus, the Transaction will result in Reliant Resources' indirect acquisition of Orion Power Holdings, its subsidiaries, and its subsidiaries' jurisdictional facilities.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 21, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27896 Filed 11–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–10–000]

Reliant Energy Aurora, LP, Reliant Energy Coolwater, LLC, Reliant Energy Desert Basin, LLC, Reliant Energy Ellwood, LLC, Reliant Energy Etiwanda, LLC, Reliant Energy Indian River, LLC, Reliant Energy Mandalay, LLC, Reliant Energy Maryland Holdings, LLC, Reliant Energy Mid-Atlantic Power Holdings, LLC, Reliant Energy New Jersey Holdings, LLC, Reliant Energy Ormond Beach, LLC, Reliant Energy Osceola, LLC, Reliant Energy Services, Inc., Reliant Energy Shelby County, LP, El Dorado Energy, LLC, Reliant Energy Aurora, L.P., et al.; Notice of Filing

October 30, 2001.

Take notice that on October 22, 2001, Reliant Energy Aurora, LP, Reliant Energy Coolwater, LLC, Reliant Energy Desert Basin, LLC, Reliant Energy Ellwood, LLC, Reliant Energy Etiwanda, LLC, Reliant Energy Indian River, LLC, Reliant Energy Mandalay, LLC, Reliant Energy Maryland Holdings, LLC, Reliant Energy Mid-Atlantic Power Holdings, LLC, Reliant Energy New Jersey Holdings, LLC, Reliant Energy Ormond Beach, LLC, Reliant Energy Osceola, LLC, Reliant Energy Services, Inc., Reliant Energy Shelby County and El Dorado Energy, LLC (collectively, the Applicants), submitted an application pursuant to section 203 of the Federal Power Act, seeking authorization for a proposed corporate reorganization that would result in the transfer of indirect control of Applicants and their jurisdictional facilities.

The Applicants state that, as a result of a proposed corporate restructuring of certain of Applicants' parent companies, there will be a transfer of indirect control of Applicants' jurisdictional facilities. The Applicants further state that the proposed transaction will have no effect on competition, rates or regulation and is in the public interest.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 12, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–27895 Filed 11–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–833–000, *et al.*]

Pacific Gas and Electric Company, *et al.*; Electric Rate and Corporate Regulation Filings

November 1, 2001.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER01–833–000]

Take notice that on October 29, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Further Request for Deferral of Consideration of the unexecuted Wholesale Distribution Tariff (WDT) Service Agreement and Interconnection Agreement between Pacific Gas and Electric Company and Modesto Irrigation District (MID) filed in FERC Docket No. ER01–833–000 on December 29, 2000. PG&E and Modesto are finalizing the WDT Service Agreement and a letter agreement for review and signature, and PG&E therefore is notifying the Commission that executed agreements will not be filed by October 29, 2001, the requested deferral date. PG&E requests that the Commission defer consideration of the proceedings filed in ER01–833–000 to November 30, 2001, 31 days beyond the last request for Deferral in order that the parties may finalize and execute the Agreements.

Copies of this filing have been served upon MID, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Cinergy Services, Inc.; The Cincinnati Gas & Electric Company; PSI Energy, Inc.; and Cinergy Power Investments, Inc.

[Docket No. ER02–177–000]

Take notice that on October 29, 2001, Cinergy Services, Inc., The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Power Investments, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission) an Application For Various Approvals Under Section 205 of the FPA. Copies of this filing have been served on the Public Utilities Commission of Ohio, the Kentucky Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. The Cincinnati Gas & Electric Company

[Docket No. ER02–178–000]

Take notice that on October 29, 2001, The Cincinnati Gas & Electric Company (CG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation, pursuant to 18 CFR 35.15 (2001), in order to reflect the termination of the Electric Service Agreement, dated October 3, 1991, between CG&E and The Union Light, Heat and Power Company (ULH&P), filed under the CG&E FPC Electric Tariff, Rate WS–P. Copies of this filing have been served on the only affected purchaser, ULH&P.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. The Cincinnati Gas & Electric Company

[Docket No. ER02–179–000]

Take notice that on October 29, 2001, The Cincinnati Gas & Electric Company (CG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Power Sales Agreement between CG&E and The Union Light, Heat and Power Company (ULH&P). Copies of this filing have been served on ULH&P.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Southwest Power Pool, Inc.

[Docket No. ER02–180–000]

Take notice that on October 29, 2001, Southwest Power Pool, Inc. (SPP) submitted for filing with the Federal Energy Regulatory Commission (Commission) two executed service agreements for Firm Point-to-Point Transmission Service with Sempra Energy Trading Corporation and with Tex-La Electric Cooperative (collectively, Transmission Customers). SPP requests an effective date of January 1, 2002 for these service agreements.

Copies of this filing have been served on the Transmission Customers.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Avista Corporation

[Docket No. ER02–182–000]

Take notice that Avista Corporation, on October 29, 2001, tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to section 35.12 of the Commissions, 18 CFR part 35.12, an executed Mutual Netting Agreement with IDACORP Energy L. P. effective 10/01/2001 under Rate Schedule FERC No. 289.

Notice of the filing has been served to the IDACORP Energy L.P. in Boise, Idaho and their credit manager.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER02–183–000]

Take notice that on October 29, 2001, the New England Power Pool (NEPOOL) Participants Committee submitted the Eightieth Agreement Amending New England Power Pool Agreement (Eightieth Agreement), which proposes changes to the Restated NEPOOL Agreement and the New England Power Pool Billing Policy in connection with a generation information system certificate and database system to be implemented for the NEPOOL Control Area.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Delmarva Power & Light Company

[Docket No. ER02–184–000]

Take notice that Delmarva Power & Light Company, on October 29, 2001, tendered for filing with the Federal Energy Regulatory Commission (Commission) First Revised Rate Schedule FERC No. 99 (Revised Rate Schedule) between Delmarva and the City of Seaford, Delaware. Delmarva requests that the Commission waive its notice of filing requirements to allow the Revised Rate Schedule to become effective retroactively as of January 1, 2000 because the revisions provide for a reduction in rates.

Copies of the filing were served upon the City of Seaford, Delaware and the Delaware Public Service Commission.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket No. ER02–185–000]

Take notice that on October 29, 2001, the New England Power Pool (NEPOOL) Participants Committee submitted a filing with the Federal Energy Regulatory Commission (Commission) requesting the approval of proposed changes to section 5.3.2(d) of Market Rule & Procedure 5 that amend the formula used to calculate whether a Generator is operating at its Desired Dispatch Point.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Xcel Energy Services Inc.

[Docket No. ER02–186–000]

Take notice that on October 29, 2001, Xcel Energy Services Inc. (XES), on behalf of Southwestern Public Service (SPS), submitted for filing with the Federal Energy Regulatory Commission (Commission) an Interconnection Agreement between SPS and Sunflower Electric Power Corporation.

SPS requests that the Commission accept the agreement effective October 1, 2001, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Progress Energy on Behalf of Florida Power Corporation

[Docket No. ER02–187–000]

Take notice that on October 29, 2001, Florida Power Corporation (FPC) filed an Amendment to the Service Agreement with The City of Homestead under FPC's Cost-Based Rates Tariff (CR–1), FERC Electric Tariff No. 9. A copy of this filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

FPC is requesting an effective date of October 2, 2001 for this Amendment.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Geysers Power Company, LLC

[Docket No. ER02–188–000]

Take notice that on October 30, 2001, Geysers Power Company, LLC, tendered for filing with the Federal Energy Regulatory Commission (Commission) an information package in compliance with Schedule F of each of the Must-Run Service Agreements, dated June 1, 1999, with the California Independent System Operator Corporation, for Geysers Main and Geysers Units 13 and 16.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Fresno Cogeneration Partners, L.P.

[Docket No. ER02–189–000]

Take notice that on October 30, 2001, Fresno Cogeneration Partners, L.P. (Applicant), tendered for filing with the Federal Energy Regulatory Commission (Commission) under its market-based rate tariff a long-term service agreement with the California Department of Water Resources.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. American Transmission Company LLC

[Docket No. ER02–190–000]

Take notice that on October 30, 2001, American Transmission Company LLC (ATCLLC) tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Network Operating Agreement and an unexecuted Revised Network Integration Service Agreement for Dairyland Power Cooperative. ATCLLC requests an effective date of October 1, 2001.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Southwest Power Pool, Inc.

[Docket No. ER02–191–000]

Take notice that on October 30, 2001, Southwest Power Pool, Inc. (SPP) submitted for filing one executed service agreement for Firm Point-to-Point Transmission Service with Reliant Energy Services, Inc., and four executed service agreements for Firm Point-to-Point Transmission Service with Tenaska Power Services Company (collectively, Transmission Customers).

SPP requests an effective date of October 1, 2001 for these service agreements.

Copies of these filings were served on the Transmission Customers.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Northern Iowa Windpower LLC

[Docket No. ER02–192–000]

Take notice that on October 30, 2001, Northern Iowa Windpower LLC (Northern Iowa), 1001 McKinney, Suite 1740 Houston, Texas 77002, filed with the Federal Energy Regulatory Commission (Commission) the Top of Iowa Wind Project Renewable Energy Power Purchase Agreement by and between Northern Iowa and Wisconsin Power and Light Company (Wisconsin P&L), as assignee, dated as of February 23, 2001, as amended by the First Amendment to the Top of Iowa Wind Project Renewable Energy Power Purchase Agreement, dated as of July 17, 2001 (PPA). The filing is made pursuant to Northern Iowa's authority to sell power at market-based rates under its Market-Based Rate Tariff, Rate Schedule No. 1, Original Volume No. 1, approved by the Commission on May 3, 2001 in Docket No. ER01–1570–000.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Central Maine Power Company

[Docket No. ER02–193–000]

Take notice that on October 26, 2001, Central Maine Power Company (CMP) filed tariff sheets for its open access transmission tariff revised to comply with the order of the Federal Energy Regulatory Commission, issued on September 26, 2001, in Docket No. EC01–97–000.

Comment date: November 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. New York Independent System Operator, Inc.

[Docket No. ER02–194–000]

Take notice that on October 26, 2001, the New York Independent System Operator, Inc. (NYISO) submitted proposed tariff amendments to implement Interregional Transmission Pilot Program for generation redispatch in emergency conditions between the NYISO and the PJM Interconnection, L.L.C..

Comment date: November 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. New York Independent System Operator, Inc.

[Docket No. ER02–195–000]

Take notice that on October 29, 2001, the New York Independent System Operator, Inc. (NYISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), revisions to its Market Administration and Control Area Services Tariff (Services Tariff) to revise the tariff's definition of "Load Shedding."

The NYISO has requested an effective date of December 28, 2001 for the filing.

The NYISO has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff and Services Tariff.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Ameren Services Company

[Docket No. ER02–196–000]

Take notice that on October 30, 2001, Ameren Services Company (Ameren Services), as agent for Central Illinois Public Service Company (d/b/a AmerenCIPS) and Union Electric Company (d/b/a AmerenUE), submitted an on an unexecuted basis an amended service agreement for Network Integrated Transmission Service and an amended Network Operating with the Illinois Municipal Energy Agency (IMEA), the transmission customer under the amended agreements.

Ameren Services requests an effective date of October 1, 2001 for these amended agreements. Ameren Services is filing these agreements on an unexecuted basis because it and IMEA have not yet executed the agreements, but seek to allow the service to commence on a timely basis as set forth in the agreements.

Copies of this filing were served upon IMEA and the Illinois Commerce Commission.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Tampa Electric Company

[Docket Nos. ER01–1895–003 and ER01–2485–002]

Take notice that on October 29, 2001, Tampa Electric Company (Tampa Electric) amended its September 27, 2001 compliance filing with the Federal Energy Regulatory Commission (Commission) in these dockets by submitting Original Sheet Nos. 6 and 7 for inclusion in Tampa Electric's Rate Schedule FERC No. 79. Tampa Electric states that the sheets contain a list of the existing Tampa Electric interchange rate schedules formerly supplemented by the Addendum Concerning Sulfur Dioxide Emissions Allowances that now comprises the independent Rate Schedule FERC No. 79.

A copy of the compliance filing has been served on each person designated on the official service lists in these dockets, each party to an affected interchange contract, and the Florida Public Service Commission.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E, Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretory.

[FR Doc. 01–27946 Filed 11–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3494–058 Pennsylvania]

Allegheny No. 6 Hydro Partners; Notice of Availability of Draft Environmental Assessment and Soliciting Comments, Protests, and Motions to Intervene

November 1, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application to install 12-inch-high flashboards at the Allegheny Lock and Dam No. 6 Hydroelectric Project and has prepared a Draft Environmental Assessment (DEA). The hydroelectric project is located at a U.S. Army Corps of Engineers dam (Lock and Dam No. 6) on the Allegheny River, near the town of Ford City, in Armstrong County, Pennsylvania. No other federal or tribal lands are occupied by the hydroelectric project.

The Commission has begun a proceeding to determine if reserved authority in article 17 of the license should be used to require 12-inch-high flashboards at Lock and Dam No. 6. Flashboards can be used to increase water levels in Pool No. 6 to more closely resemble pre-hydroelectric conditions. The proceeding is in response to concerns raised by the Pennsylvania Fish and Boat Commission and private citizens about the impacts of project-induced lower water levels on recreational boating in Pool No. 6. The DEA contains Commission staff's preliminary analysis of the potential environmental impacts of installing 12-inch-high flashboards and concludes that flashboards should not be installed at Lock and Dam No. 6 because of adverse impacts to wetlands.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" (P–3494) and follow the instructions (call 202–208–2222 for assistance).

Any comments, protests, and motions to intervene should be filed within 60 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. P–3494–058 to all comments, protests, and motions to intervene.

Comments, protests, and motions to intervene may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the licensee's representatives. For further information contact the licensee's representative: Robert Hanna, Sithe Energies, Inc., 1400 Fourth Avenue, Ford City, PA 16226 at (724) 763–2026 or the Commission's contact person: Steve Hocking at (202) 219–2656.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–27897 Filed 11–6–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30503A; FRL–6806–2]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency EPA.

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to

register the pesticide product Bedoukian Z-11-Hexadecenyl Acetate Technical Pheromone containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6928; and e-mail address bryceland.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System NAICS codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select "fact sheet."

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30503A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch PIRIB, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office A–101, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The request should identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service NTIS, 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of Z-11-hexadecenyl acetate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of Z-11-hexadecenyl acetate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

EPA issued a notice, published in the **Federal Register** of December 13, 2000 (65 FR 77874) (FRL–6749–2), which announced that Bedoukian Research, Inc., 21 Finance Drive, Danbury, CT 06810–4192, had submitted an application to register the pesticide product, Bedoukian Z-11-Hexadecenyl Acetate Technical Pheromone, a lepidopteran pheromone fungicide, containing the active ingredient Z-11-hexadecenyl acetate. This product was not previously registered.

The application (EPA Registration Number 52991–15) was approved on August 31, 2001, for use in the incorporation into end-use products intended for agricultural application. This product is not for direct treatment of pests.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 24, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 01–27596 Filed 11–6–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–917A; FRL–6808–5]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–917A, must be received on or before December 7, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–917A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6100; e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–917A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–917A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–917A. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 27, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Aventis CropScience

PP 0F 6080

EPA published an initial filing of the pesticide petition (PP 0F 6080) in the **Federal Register** of February 17, 2000 (65 FR 8143) (FRL–6490–2). This notice announces the filing of the revised pesticide petition proposing the establishment of regulations for residues of deltamethrin, a pesticide chemical, in or on various food commodities. The revised petition is for changes made for the proposed tolerances for deltamethrin in/on almond hull, three crop subgroups and rapeseed and to include the proposed import tolerances for two tropical fruits as petitioned through the Minor Crop Pest Management program (IR-4).

EPA has received a pesticide petition (PP 0F 6080) from Aventis CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, N.C. 27709 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of deltamethrin in or on the raw agricultural commodities bulb vegetables, cucurbit vegetables, fruiting vegetables, head and brassica vegetables and mustard greens, leafy vegetables, root vegetables (except sugarbeet), tuberous and corm vegetables, carambola and litchi fruits (import only), pome fruits, stone fruits, tree nuts, ruminant and poultry commodities, milk, milkfat, eggs, canola and rapeseed, field corn, sorghum, soybeans, sunflowers and wheat grain and grain dust (post harvest). Based on the fact that tralomethrin, another synthetic pyrethroid insecticide, is rapidly metabolized in plants and animals to deltamethrin, and the toxicological profile of the two compounds is similar, it is appropriate to consider a combined exposure assessment for tralomethrin and deltamethrin. The proposed tolerances range from 0.02 to 7.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Deltamethrin metabolism studies in tomatoes, corn, apples, and cotton demonstrate the same metabolic pathway. Furthermore, plant metabolism studies have been conducted following application of tralomethrin in cotton, corn, cabbage, and tomatoes. These studies have demonstrated that the metabolism of tralomethrin involves debromination to deltamethrin and its isomers. Thus, a similar metabolic pathway has been shown to occur in a variety of crops following either direct application of deltamethrin (cotton, corn, apples, and tomatoes) or in-plant formation of deltamethrin via debromination of applied tralomethrin (tomatoes, cotton, corn, and cabbage). As a result of this substantial information base, it is concluded that the residues of toxicological concern in/on growing crops following application of tralomethrin or deltamethrin are tralomethrin, cis-deltamethrin, and its isomers, trans-deltamethrin and alpha-*R*-deltamethrin.

2. *Analytical method.* Analytical methods for determining residues of tralomethrin and deltamethrin in various commodities for which registrations have been approved, or are being sought, have been submitted to the Agency. These methods, are based on gas chromatography (GLC) equipped with an electron capture detector (ECD) and a DB-1 (or equivalent) capillary column, and are used for the determination of tralomethrin, *cis*-deltamethrin, *trans*-deltamethrin, and alpha-*R*-deltamethrin in various raw agricultural, animal-derived, and processed commodities. These methods were independently validated and are appropriate for the determination of residues of tralomethrin and deltamethrin in various food and feed commodities after application of these ingredients to target growing crops, and after use in food/feed handling establishments.

3. *Magnitude of residues.* Residues of tralomethrin, deltamethrin, and its metabolites are not expected to exceed the established and/or proposed tolerance levels as a result of the use of these active ingredients on target crops, or at target sites.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral LD_{50} values of deltamethrin in the rat were 66.7 milligrams/kilogram (mg/kg) for males and 86 mg/kg for females, and for tralomethrin 99 mg/kg for males and 157 mg/kg for females when administered in sesame oil. The oral LD_{50} for deltamethrin when administered in aqueous methyl cellulose was greater than 5,000 mg/kg for both sexes. The dermal LD_{50} in rabbits was greater than 2,000 mg/kg for both materials. Inhalation 4–hour LC_{50} values in the rat were 2.2 mg/L for deltamethrin and greater than 0.286 mg/L for tralomethrin.

2. *Genotoxicity.* No indication of genotoxicity was noted in a battery of *in vivo* and *in vitro* studies conducted with either deltamethrin or tralomethrin.

3. *Reproductive and developmental toxicity*—i. *Deltamethrin.* A rat development toxicity study conducted with deltamethrin indicated a maternal no observed adverse effect level (NOAEL) of 3.3 mg/kg/day based on clinical observations, decreased weight gain and mortality. The developmental NOAEL was 11 mg/kg/day highest dose tested (HDT). In a rabbit development toxicity study with deltamethrin, the maternal NOAEL was considered to be 10 mg/kg/day based on decreased defecation at 25 and 100 mg/kg/day, and mortality at 100 mg/kg/day. The developmental NOAEL was considered to be 25 mg/kg/day based on retarded ossification of the public and tail bones at 100 mg/kg (HDT).

A 3–generation rat reproduction study and a more recent, 2–generation rat reproduction study with deltamethrin indicated the NOAEL for both parents and offspring was 80 ppm (4–12 mg/kg/day for adults and 18–44 mg/kg/day for offspring) based on clinical signs of toxicity, reduced weight gain and mortality at 320 ppm (HDT).

ii. *Tralomethrin.* In a rat developmental toxicity study with tralomethrin, the NOAEL for maternal and developmental toxicity was judged to be greater than or equal to 18 mg/kg/day (HDT).

No evidence of developmental toxicity was observed in either of two rabbit developmental toxicity studies conducted with tralomethrin. In one study, the maternal NOAEL was 12.5 mg/kg/day based on mortality, while the developmental NOAEL was judged to be greater than or equal to 25 mg/kg/day (HDT). In the second study, the maternal NOAEL was 8 mg/kg/day based on body weight effects while the developmental NOAEL was 32 mg/kg/day (HDT).

In a 2–generation reproduction study with tralomethrin in rats, the parental NOAEL was 0.75 mg/kg/day based on body weight deficits while the NOAEL for offspring was 3.0 mg/kg/day, also based on body weight deficits.

4. *Subchronic toxicity*—i. *Deltamethrin.* A 90–day rat oral toxicity study was conducted with deltamethrin which was administered by gavage. The NOAEL was judged to be 1.0 mg/kg/day based on reduced body weight gain and slight hypersensitivity. In more recent 90–day rat dietary study with deltamethrin, the NOAEL was judged to be 300 ppm (23.9 mg/kg/day for males, 30.5 mg/kg/day for females) based on uncoordinated movement, unsteady gait, tremors, increased sensitivity to sound, shakes and spasmodic convulsions. The difference in the NOAELs between the two studies is attributed to the different routes of exposure (gavage in oil vs. administered in diet).

A 12–week study was conducted with deltamethrin in mice. The NOAEL was 300 ppm (61.5 mg/kg/day in males and 77.0 mg/kg/day in females) based on chronic contractions, convulsions, poor condition, decreased weight gain and mortality.

Two 13–week dog studies were conducted with deltamethrin. In the first study, beagle dogs were administered deltamethrin by capsule using PEG 200 as a vehicle. The NOAEL for this study was 1 mg/kg/day based on tremors, unsteadiness, jerking movements, salivation, vomiting, liquid feces and/or dilation of the pupils. In the second study, deltamethrin was administered by capsule without a vehicle to beagle dogs. The NOAEL for this study was 10 mg/kg/day based on unsteady gait, tremors, head shaking, vomiting and salivation. The difference in toxicity between the two studies is attributed to the enhanced absorption resulting from the use of PEG 200 as a vehicle in the first study.

A 21–day dermal toxicity study was conducted with deltamethrin in rats. The NOAEL for systemic toxicity was determined to be 1,000 mg/kg/day.

In a subchronic inhalation study, rats were exposed to aerosolized deltamethrin for 6 hours per day, 5 days per week, for a total of 14 days over 3 weeks. Based on slightly decreased body weights and neurological effects at higher dose levels, it was concluded that 3 g/L was the no observable effect concentration for systemic effects in this study.

ii. *Tralomethrin.* Tralomethrin was administered by gavage in corn oil to rats for 13 weeks. Based on mortality, decreased activity and motor control, soft stools, labored breathing and significantly lower absolute and relative mean liver weights, the NOAEL was considered to be 1 mg/kg/day.

Tralomethrin was administered by capsule to beagle dogs for 13 weeks. The NOAEL for this study was 1.0 mg/kg/day based on refusal of milk supplement, tremors, exaggerated patellar response, unsteadiness and uncoordinated movement.

A 21–day dermal toxicity study was conducted with tralomethrin on rats. No systemic effects were observed; therefore, the systemic NOAEL for this study was 1,000 mg/kg/day.

5. *Chronic toxicity*—i. *Deltamethrin.* Deltamethrin was administered in the diet to beagle dogs for 2 years. No treatment-related effects were observed and the NOAEL was judged to be 40 ppm (1.1 mg/kg/day). In a more recent study, deltamethrin was administered by capsule (without a vehicle) to beagle dogs for 1–year. The NOAEL in this study was considered to be 1 mg/kg/day based on clinical signs, decreased food consumption and changes in several hematology and blood chemistry parameters.

Two rat chronic toxicity/oncogenicity studies were conducted with deltamethrin. In the first study, the test substance was administered via the diet to rats for 2 years. The NOAEL for this study was 20 ppm (1 mg/kg/day) based on slightly decreased weight gain. In a more recent study, deltamethrin was administered to rats in the diet for 2 years. The NOAEL for this study was considered to be 25 ppm (1.1 and 1.5 mg/kg/day for males and females, respectively) based on neurological signs, weight gain effects and increased incidence and severity of eosinophilic hepatocytes and/or ballon cells. No evidence of carcinogenicity was noted in either study.

Two mouse oncogenicity studies were conducted with deltamethrin. In the first study, deltamethrin was administered in the diet for 2 years. No adverse effects were observed and the NOAEL was judged to be 100 ppm (12 and 15 mg/kg/day, respectively, for males and females). In a more recent study, deltamethrin was administered in the diet to mice for 97 weeks. The NOAEL was considered to be 1,000 ppm (15.7 and 19.6 mg/kg/day) based on a higher incidence of poor physical condition and a slight transient weight reduction. There was no evidence of oncogenicity in either study.

ii. *Tralomethrin.* Tralomethrin was administered to beagle dogs by capsule for 1–year at initial dosages of 0, 0.75, 3.0 and 10.0 mg/kg/day. Due to trembling, ataxia, prostration and convulsions, the high dosage was lowered to 8 mg/kg/day at study week 4 and lowered again to 6 mg/kg/day on study week 14. On the fourteenth week of study, the 0.75 mg/kg/day dosage was raised to 1.0 mg/kg/day. Based on body weight changes, convulsions, tremors, ataxia and salivation, the NOAEL for this study was considered to be 1 mg/kg/day.

Tralomethrin was administered by gavage to rats for 24 months. The NOAEL for this study was 0.75 mg/kg/day based on salivation, uncoordinated movement, inability to support weight on limbs and decreased body weight parameters. No evidence of carcinogenicity was observed.

A 2–year mouse oncogenicity study was conducted with tralomethrin administered by gavage. The NOAEL was judged to be 0.75 mg/kg/day based on higher incidences of dermatitis and mortality, salivation, uncoordinated involuntary movements and aggressiveness. No evidence of oncogenicity was observed.

6. *Animal metabolism*—i. *Deltamethrin.* The absorption of deltamethrin appears to be highly dependent upon the route and vehicle of administration. Once absorbed, deltamethrin is rapidly and extensively metabolized and excreted, primarily within the first 48 hours.

ii. *Tralomethrin.* Tralomethrin is rapidly metabolized to deltamethrin after debromination. The metabolic

pattern of the *in vivo* debrominated tralomethrin is exactly the same as that of the metabolic pattern of deltamethrin.

7. *Endocrine disruption.* No special studies have been conducted to investigate the potential of deltamethrin or tralomethrin to induce estrogenic or other endocrine effects. However, the standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects, yet no such effects were detected. Thus, the potential for deltamethrin or tralomethrin to produce any significant endocrine effects is considered to be minimal.

8. *Neurotoxicity.* Acute delayed neurotoxicity studies in hens were conducted for both deltamethrin and tralomethrin. In both cases, the study results were negative indicating that neither material causes delayed neurotoxicity.

In an acute neurotoxicity study with deltamethrin in rats, mortality and numerous clinical signs of neurotoxicity (including altered gait, salivation, tremors, convulsions, writhing, and reduced grip strength) were noted after a single oral administration of a dose of 50 mg/kg. In addition, potential effects (limited to a single male and female) were observed at a dose level of 15 mg/kg. Therefore, the NOAEL for this study was 5 mg/kg.

In a subchronic neurotoxicity study with deltamethrin in rats, mortality, decreased weight gain and numerous clinical signs of neurotoxicity (including writhing, hind limb splay, convulsions, lurching, and reduced grip strength) were noted after daily dietary administration for 13 consecutive weeks at 800 ppm. The NOAEL for systemic toxicity and neurotoxicity in this study was found to be 200 ppm (14 and 16 mg/kg/day for males and females, respectively).

C. Aggregate Exposure

Based on the fact that tralomethrin is rapidly metabolized in plants and animals to deltamethrin, and the toxicological profile of the two compounds is similar, it is appropriate to consider combined exposure assessments for tralomethrin and deltamethrin. Deltamethrin and tralomethrin are broad spectrum insecticides used to control pests of crops, ornamental plants and turf, and domestic indoor and outdoor (including dog collars and direct application to livestock), commercial, and industrial food use areas. Thus, aggregate non-occupational exposure could include exposures resulting from non-food uses in addition to consumption of potential residues in food and water. Exposure via drinking water is expected to be negligible since deltamethrin binds tightly to soil and rapidly degrades in water.

1. *Dietary exposure*—i. *Food.* Food tolerances have been established for residues of tralomethrin and/or deltamethrin and its metabolites in or on a variety of raw agricultural commodities. These tolerances, in support of registrations, currently exist for residues of tralomethrin on broccoli, cottonseed, head lettuce, leaf lettuce, soybeans, sunflower seed, and cottonseed oil. Also, tolerances in support of registrations currently exist for deltamethrin on cottonseed and cottonseed oil. Additionally, tolerances have been established for tralomethrin to support its use in food/feed handling establishments, and for deltamethrin on tomatoes and concentrated tomato products to support the importation of tomato commodities treated with deltamethrin. Further, a food/feed handling establishment tolerance has recently been established for deltamethrin. Additional tolerances are being proposed for deltamethrin in the subject pesticide tolerance petition. Potential acute exposures from these relevant food commodities were estimated using a Tier 3 acute dietary risk assessment (Monte Carlo Analysis) following EPA guidance. Potential chronic exposures from food commodities under the established food and feed additive tolerances for deltamethrin and tralomethrin, plus the tolerances for deltamethrin associated with use in food/feed handling areas, and the tolerances proposed in this petition for deltamethrin, were estimated using NOVIGEN's DEEM (Dietary Exposure Evaluation Model). This chronic risk assessment was conducted using anticipated residues based on field trial or monitoring data, percent crop treated, and percent food handling establishments treated.

ii. *Drinking water.* USEPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was used to perform the drinking water analysis for deltamethrin. The SOP compares a calculated drinking water level of comparison (DWLOC) value to the drinking water estimated concentration (DWEC) value. The DWEC value results from either the monitoring data residues and modeled water residues. If the DWLOC value exceeds the DWEC value then there is reasonable certainty that no harm will result from aggregate exposure.

The calculated drinking water levels of comparison (DWLOC) for short-term exposure for all adults, children 1-6 and infants were estimated to be 1,784 parts per billion (ppb), 926 ppb and 555 ppb, respectively. All of these DWLOC values exceed the short-term modeled deltamethrin water residue of 0.063 ppb. The calculated DWLOC for chronic exposure for all adults, children 1-6 and infants were estimated to be 355 ppb, 185 ppb and 112 ppb, respectively. All of these DWLOC values exceed the chronic modeled deltamethrin water residue of 0.004 ppb. Therefore, there is reasonable certainty that no harm will result from water exposure to deltamethrin residues.

2. *Non-dietary exposure.* As noted above, deltamethrin and tralomethrin are broad spectrum insecticides registered for use on a variety of food and feed commodities. Additionally, registrations are held for non-agricultural applications including turf and lawn care treatments, broadcast carpet treatments (professional use only), indoor fogger, spot, crack and crevice treatments, dog collars, insect baits, lawn and garden sprays and indoor and outdoor residential, industrial and institutional sites including those for food/feed handling establishments.

To evaluate non-dietary exposure, the "flea infestation control" scenario was chosen to represent a plausible but worst case non-dietary (indoor and outdoor) non-occupational exposure. This scenario provides a situation where deltamethrin and/or tralomethrin are commonly used and can be used concurrently for a multitude of uses, e.g., spot and/or broadcast treatment of infested indoor surfaces such as carpets and rugs, treatment of pets and treatment of the lawn. This hypothetical situation provides a very conservative, upper bound estimate of potential non-dietary exposures. Consequently, if health risks are acceptable under these conditions, the potential risks associated with other more likely scenarios would also be acceptable.

Because tralomethrin is rapidly metabolized to deltamethrin, and the toxicology profiles of deltamethrin and tralomethrin are virtually identical, an aggregate (non-dietary + chronic dietary) exposure/risk assessment was conducted for the combination of both active ingredients. The total exposure to both materials was expressed as "deltamethrin equivalents" and this was compared to the toxicology endpoints identified for deltamethrin.

D. Cumulative Effects

When considering a tolerance, the Agency must consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Aventis CropScience believes that "available information" in this context includes not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments.

Further, Aventis does not have, at this time, available data to determine whether tralomethrin and deltamethrin have a common mechanism of toxicity with other substances. For the purposes of this tolerance action, therefore, no assumption has been made that tralomethrin and deltamethrin have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* The toxicity and residue data base for deltamethrin and tralomethrin is considered to be valid, reliable and essentially complete according to existing regulatory requirements. No evidence of oncogenicity has been observed for either compound. In accordance with EPA's "Toxicology Endpoint Selection Process" Guidance Document for acute exposures, the toxicology endpoint from the deltamethrin rat acute neurotoxicity study, 5.0 mg/kg/day, was used. For chronic exposures to deltamethrin and tralomethrin, the Reference Dose (RfD) of 0.01 mg/kg body weight/day established for deltamethrin based on the NOAEL from the 2–year rat feeding study and a 100-fold safety factor to account for interspecies extrapolation and intraspecies variation was used.

For the overall U.S. population, acute dietary exposure at the 99.9th percentile results in utilization of 5.3% of the acute RfD that is equivalent to a Margin of Exposure (MOE) of 1,901. For the overall U.S. population, chronic dietary exposure results in a utilization of 1.0% of the RfD. Using an upper bound estimate of potential non-dietary exposures for a worst case scenario (flea treatment) results in a MOE of at least 59,229 for adults. Utilizing the scenario of chronic dietary exposure plus an upper bound estimate of potential non-dietary exposure from a worst case scenario (flea treatment), it is shown that for aggregate exposure to deltamethrin and tralomethrin there is an MOE of 15,559 for adults. For acute and short-term exposures there is generally no concern for MOEs greater than 100. For chronic exposure, there is generally no concern for exposure below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

In conclusion, there is reasonable certainty that no harm will result to the U.S. population, in general, from dietary or aggregate exposure to deltamethrin and/or tralomethrin.

2. *Infants and children.* Data from developmental toxicity studies in rats and rabbits, and multi-generation reproduction studies in rats, are generally used to assess the potential for increased sensitivity of infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from prenatal and postnatal exposure to the pesticide. None of these studies conducted with deltamethrin or tralomethrin indicated developmental or reproductive effects as a result of exposure to these materials.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base relative to prenatal and postnatal effects in children is complete. Although no indication of increased susceptibility to younger animals was noted in any of the above studies, or in the majority of studies with other pyrethroids, several publications have reported that deltamethrin is more toxic to neonate and weanling animals than to adults. However, a joint industry group was unable to reproduce these findings. Furthermore, the RfD (0.01 mg/kg/day) that has been established for deltamethrin is already more than 1,000-fold lower than the lowest NOAEL from the developmental and reproduction studies. Therefore, the RfD of 0.01 mg/kg/day is appropriate for assessing chronic aggregate risk to infants and children and an additional uncertainty factor is not warranted. Also, the NOAEL of 5.0 mg/kg/day from the rat acute neurotoxicity study is appropriate to use in acute dietary, short-term non-dietary, and aggregate exposure assessments.

For the population subgroup described as infants, less than 1 year old, the acute dietary exposure at the 99.9th percentile utilizes 7.2% of the acute RfD that is equivalent to a MOE of 1,382. For the population subgroup described as children 1-6 years old, the acute dietary exposure at the 99.9th percentile utilizes 6.7% of the acute RfD that is equivalent to a MOE of 1,504. For infants less than 1 year old, chronic dietary exposure results in a utilization of 0.9% of the RfD, and for children 1-6 years old 2.3% of the RfD is utilized. Using an upper bound estimate of potential non-dietary exposures for a worst case scenario (flea treatment) results in an MOE of at least 15,015 for infants less than 1 year old, and an MOE of at least 15,974 for children 1-6 years old. Utilizing the scenario of chronic dietary exposure plus an upper bound estimate of potential non-dietary exposure from a worst case scenario (flea treatment) it is shown that for aggregate exposure to deltamethrin and tralomethrin, there is an MOE of at least 4,900 for infants less than 1 year old, and an MOE of 4,250 for children 1-6 years old. For acute and short-term exposures there is generally no concern for MOEs greater than 100. For chronic exposure, there is generally no concern for exposure below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

In summary, there is reasonable certainty that no harm will result to infants and children from aggregate exposure to either deltamethrin or tralomethrin.

F. International Tolerances

Deltamethrin is a broad spectrum insecticide used throughout the world to control pests of livestock, crops, ornamentals plants and turf, and household, commercial, and industrial food use areas. A reevaluation of the maximum residue limits (MRLs) was conducted in 1994, in accordance with the EC Directive (91/414/EEC) Registration Requirements for Plant Protection Products. A comparison of the proposed/current CODEX MRLs and proposed/established tolerances for deltamethrin is presented below:

Commodity	Proposed Tolerance (USEPA) (PPM)	Proposed/Current MRL (CODEX) (PPM)
Almond hulls	1.2	--
Apples, wet pomace	1.2	--
Artichokes	0.5	0.05
Brassica, head and stem crop subgroup 5A, excluding cabbage	0.50	0.2 (brassica vegetables)
Bulb vegetables	1.5	0.1 (bulb vegetables, except fennel, bulb)
Cabbage (w/wrapper leaves)	1.5	--
Cabbage (w/o wrapper leaves)	0.15	0.2 (brassica vegetables)
Carambola (star fruit)	0.2	--
Corn, field grain	0.06	1.0 (cereal grains)
Corn, forage (field)	0.7	--
Corn, fodder/stover (field)	7.0	0.5 (straw and fodder, cereal grains)
Corn, refined oil	0.6	--
Corn, flour	0.18	--
Corn, meal	0.12	--
Corn, milled by products	0.18	--
Cucurbit vegetables	0.06	0.2
Eggs	0.02	--
Fruiting vegetables	0.25	0.2
Leafy vegetables	4.5	0.5
Lichi fruit	0.2	--
Milk, fat (reflecting 0.02 ppm in whole milk)	0.1	0.02 (milks); and 0.03 cattle milk
Mustard greens	4.5	0.2 (brassica vegetables)
Pome fruit	0.2	0.1
Poultry, fat	0.05	0.5 (chicken fat)
Poultry, mbyp	0.02	--
Poultry; meat	0.02	0.01 (poultry meat); and 0.03 (chicken muscle)
Prunes	2.4	--
Rapeseed (including canola and crambe)	0.12	0.1 (oilseed)
Root vegetable, except sugarbeet (subgroup 1B): roots	0.15	0.01 (root and tuber vegetables)
Ruminant fat	0.04	0.5
Ruminant mbyp	0.02	0.05 (edible offal, mammalian)
Ruminant meat	0.02	0.5
Sorghum, forage	0.5	--
Sorghum, fodder/stover	2.0	0.5 (straw and fodder, cereal grains)
Sorghum, grain	0.5	1.0 (cereal grains)

Commodity	Proposed Tolerance (USEPA) (PPM)	Proposed/Current MRL (CODEX) (PPM)
Soybeans	0.05	0.5 (legume animal feeds, dry weight)
Stone fruit	0.6	0.05
Sunflower seeds	0.05	0.1 (oilseed)
Tops	4.0	--
Tree nuts	0.1	--
Tuberous and corm vegetables subgroup 1C, excluding artichokes	0.04	0.01 (root and tuber vegetables)
Wheat gluten (post harvest)	1.4	--
Wheat, grain (post harvest)	2.0	1.0
Wheat, grain dust (post harvest)	2.7	--

[FR Doc. 01-27598 Filed 11-06-01; 8:45 am]
BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[PF-1050; FRL-6807-9]

Notice of Filing a Pesticide Petition to Establish a Tolerance fora Certain Pesticide Chemical In or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF-1050, must be received on or before December 7, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-1050 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF-1050. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-1050 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1050. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides - and pests, Reporting and recordkeeping requirements.

Dated: October 27, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Huntsman Corporation

1E6350

EPA has received a pesticide petition (1E6350) from Huntsman Corporation, 3040 Post Oak Blvd., Houston, TX 77056 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend the tolerance exemption listed under 40 CFR 180. 1,001 (c) for 1,2-ethanediamine, polymer with methyl oxirane and oxirane to include a number average molecular weight of 1,100. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Analytical method. Huntsman is petitioning that 1,2-ethanediamine, polymer with methyl oxirane and oxirane be exempt from the requirement of a tolerance based upon the definition of a low risk polymer under 40 CFR 723.250(e). Therefore, an analytical method to determine residues of 1,2-ethanediamine, polymer with methyl oxirane and oxirane in raw agricultural commodities (RACs) is not required.

B. Toxicological Profile

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identifies categories of polymers that present low risk. These criteria, described in 40 CFR 723.250(e), identify polymers that are typically not readily absorbed, and are relatively unreactive and stable compounds in comparison to other chemical substances. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers.

1. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane is not a cationic polymer, nor is it capable of becoming a cationic polymer in the natural aquatic environment.

2. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane contains as an integral part of its composition, the atomic elements carbon, hydrogen, nitrogen, and oxygen.

3. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(iii).

4. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane is not designed, nor is it reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane is manufactured using monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or covered under an applicable TSCA section 5 exemption.

6. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000 daltons.

7. The number average molecular weight of 1,2-ethanediamine, polymer with methyl oxirane and oxirane is 1,100. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

8. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane contains less than 10% oligomeric material below molecular weight 500 and less than 25% oligomeric material less than molecular weight 1,000.

9. 1,2-Ethanediamine, polymer with methyl oxirane and oxirane does not contain reactive functional groups.

Endocrine disruption. There is no evidence that 1,2-ethanediamine, polymer with methyl oxirane and oxirane is an endocrine disrupter, where as substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the GI tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* 1,2-Ethanediamine, polymer with methyl oxirane and oxirane is not absorbed through the intact GI tract and is considered to be incapable of eliciting a toxic response.

ii. *Drinking water.* Based upon the aqueous insolubility of 1,2-ethanediamine, polymer with methyl oxirane and oxirane, there is no reason to expect human exposure to residues in drinking water.

2. *Non-dietary exposure.* Although there may be exposures to 1,2-ethanediamine, polymer with methyl oxirane and oxirane through dietary and or non-occupational sources, the chemical characteristics of this compound are such that there is reasonable certainty of no harm from aggregate exposure.

D. Cumulative Effects

There is not a reasonable expectation of any increased risk due to cumulative expsoures to 1,2-ethanediamine, polymer with methyl oxirane and oxirane, since polymers with molecular weights greater than 400 generally are not absorbed through the skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

E. Safety Determination

1. *U.S. population.* 1,2-Ethanediamine, polymer with methyl oxirane and oxirane causes no safety concerns because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and, as such, is considered to be incapable of eliciting a toxic response.

2. *Infants and children.* 1,2-Ethanediamine, polymer with methyl oxirane and oxirane causes no additional concern to infants and children because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and, as such, in considered to be incapable of eliciting a toxic response.

F. International Tolerances

Huntsman is not aware of any country requiring a tolerance for 1,2-ethanediamine, polymer with methyl oxirane and oxirane, nor have there been any codex maximum residue levels established for any food crops at this time.

[FR Doc. 01–27599 Filed 11–06–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7099–8]

Proposed CERCLA Administrative Cost Recovery Settlement: Former Diller Battery Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Former Diller Battery site in Des Moines, Iowa with the following settling parties: City of Des Moines, Iowa, Union Pacific Railroad Company, Polk County, Iowa, Richard A. Bartolomei and Dennis L. Eppard. The settlement requires the settling parties to pay $75,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Des Moines North Side Public Library, 3516 5th Avenue, Des Moines, Iowa 50313, and at the U.S. Environmental Protection Agency, Region 7, Regional Records Center, 901 North 5th Street, Kansas City, Kansas 66101.

DATES: Comments must be submitted on or before December 7, 2001.

ADDRESSES: Copies of the documents relevant to this proposed settlement may be obtained from Mike Gieryic, Office of Regional Counsel, 901 North 5th Street, Kansas City, Kansas 66101. (913) 551–7822. Comments should reference the Former Diller Battery site, Des Moines, Iowa, and should be addressed to Kathy Robinson, Regional Hearing Clerk, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Mike Gieryic, Office of Regional

Counsel, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7822.

Dated: October 18, 2001.

James B. Gulliford,

Regional Administrator, Region VII.

[FR Doc. 01–27948 Filed 11–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7099–7]

Proposed Past Cost Administrative Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response Compensation and Liability Act; In the Matter of Westmoor Drive Site, Kokomo, IN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Westmoor Drive site in Kokomo, Indiana. The settlement requires Helen Schifferi ("Settling Party") to pay $2,000.00 to the Hazardous Substance Superfund, which represents the amount of U.S. EPA's documented past costs Settling Party is able to pay.

Under the terms of the settlement, Settling Party agrees to pay the settlement amount. In exchange for Settling Party's payment, the United States covenants not to sue or take administrative action pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), relating to the Site. In addition, Ms. Schifferli is entitled to protection from contribution actions or claims as provided by sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613 (f)(2) and 9622(h)(4), for all response costs incurred and to be incurred by any person at the Site.

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Kokomo Howard County Public Library in Kokomo, Indiana.

DATES: Comments must be submitted on or before December 7, 2001.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Tamara Carnovsky, Assistant Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 886–2250. Comments should reference the Westmoor Drive Site, Kokomo, Indiana, and EPA Docket No. V–W–01–C–664, and should be addressed to Tamara Carnovsky, Assistant Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Tamara Carnovsky, Assistant Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–2250.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et. seq.*

Dated: October 15, 2001.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 01–27949 Filed 11–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7099–9]

Notice of Proposed Agreement for Recovery of Past Response Costs Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Meramec Drum Site, Arnold, Missouri, Docket No. CERCLA 07–2001–0084

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Agreement for Recovery of Past Response Costs, Meramec Drum Site, Arnold, Missouri.

SUMMARY: Notice is hereby given of a proposed agreement for recovery of past response costs concerning the Meramec Drum Site, Arnold, Missouri, with the following parties: Meramec Marine Shipyard, Inc., Thomas E. Dlubac and Edward Theodore Dlubac (Settling Parties). This proposed settlement was signed by the United States Environmental Protection Agency (EPA) on October 17, 2001.

DATES: EPA will receive written comments relating to the proposed agreement for recovery of past response costs by December 7, 2001.

ADDRESSES: Comments should be addressed to Cheryle Micinski, Associate Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to the Meramec Drum Site Proposed Agreement for Recovery of Past Response Costs, Docket No. CERCLA–07–2001–0084.

The proposed settlement may be examined or obtained in person or by mail from Kathy Robinson, Regional Hearing Clerk, at the office of the United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7567.

SUPPLEMENTARY INFORMATION: This Proposed Agreement concerns the Meramec Drum Site, located in Arnold, Missouri, and is made and entered into by EPA and the Meramec Marine Shipyard, Inc., Thomas E. Dlubac, and Edward Theodore Dlubac (Settling Parties).

In response to the release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to section 104 of CERCLA, 42 U.S.C. 9604. In addition, EPA provided oversite of response actions undertaken by the Settling Parties. In performing this response action, EPA incurred response costs at or in connection with the Site.

Pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), the Settling Parties are responsible parties and are jointly and severally liable for response costs incurred at or in connection with the Site. The Regional Administrator EPA, Region VII, or his designee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed $500,000, excluding interest.

This Agreement requires the Settling Parties to pay to the EPA Hazardous Substance Superfund the principal sum of $50,812 in reimbursement of Past Response Costs, plus an additional sum for interest and will resolve the Settling Parties' alleged civil liability for these costs. The proposed Agreement also includes a covenant not to sue the Settling Parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a).

Dated: October 23, 2001.

James B. Gulliford,

Regional Administrator, Region VII.

[FR Doc. 01–27947 Filed 11–6–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Issuance of Statement of Federal Financial Accounting Standards (SFFAS) No. 22

ACTION: Notice of Issuance of Statement of Federal Financial Accounting Standards (SFFAS) No. 22.

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standards (SFFAS) No. 22, *Change in Certain Requirements for Reconciling Obligations and Net Cost of Operations Amendments to SFFAS No. 7,* Accounting for Revenue and Other Financing Sources.

The Board approved the Statement in July 2001, and submitted it to FASAB principals for a 90-day review. The review period closed on October 22, 2001.

SFFAS No. 22 Paragraph 80, SFFAS 7, requires, among other things, increases and decreases in receivables from the public related to exchange revenue to be reported as nonbudgetary resources. The Board is deleting, by means of this amendment, the sentence in paragraph 80 that requires such reporting, and making other conformity changes. The effect of this change is that the location of this reconciling item in the statement of financing is no longer specified by the standard.

The standards prescribed in SFFAS No. 22 are effective for periods beginning after September 30, 2000. Hard copies of the statement will be mailed to the FASAB mailing list. It is also available on the FASAB web site at *www.financenet.gov/fasab.htm* or by calling 202–512–7350.

FOR FURTHER INFORMATION, CONTACT: Wendy Comes, Executive Director, 441 G. St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: October 30, 2001.

Wendy M. Comes,

Executive Director.

[FR Doc. 01–27884 Filed 11–6–01; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 10714–034.

Title: Trans-Atlantic American Flag Liner Operators.

Parties: A.P. Moller-Maersk Sealand, American President Lines, Ltd., American Roll-On, Roll-Off Carrier, LLC, Farrell Lines Incorporated, Lykes Lines Limited, LLC, P&O Nedlloyd Limited.

Synopsis: The proposed agreement modification adds Alaska to the geographic scope and limits space chartering among the parties to ad hoc, sporadic, or emergency situations.

Agreement No.: 011375–058.

Title: Trans-Atlantic Conference Agreement.

Parties: Atlantic Container Line, A.P. Moller-Maersk Sealand, Hapag-Lloyd Container Line GmbH, Mediterranean Shipping Company S.A., Nippon Yusen Kaisha, Orient Overseas Container Line Limited, P&O Nedlloyd Limited.

Synopsis: The proposed amendment would authorize the parties to temporarily withdraw up to two vessels per week in the trade between the United States and Europe from late December 2001 to late January or early February 2002 and to redeploy such withdrawn vessels around the first week of March 2002.

By order of the Federal Maritime Commission.

Dated: November 2, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–27956 Filed 11–6–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicant: A.S.L. Shipping Lines Inc. dba American Shipping Line, 2 East Valley Blvd., Suite 200 B, Alhambra, CA 91801; Officer: Michael Duong, President (Qualifying Individual).

Dated: November 2, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–27957 Filed 11–6–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also

includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 3, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Riverside Central Florida Banking Company, Winter Park, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Riverside Bank of Central Florida, Winter Park, Florida (in organization).

Board of Governors of the Federal Reserve System, November 2, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27973 Filed 11–6–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. R–1115]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved the fee schedules for Federal Reserve priced services and electronic connections and a private-sector adjustment factor (PSAF) for 2002 of $150.1 million. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF.

DATES: The new fee schedules become effective January 2, 2002.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: Cynthia Yablon, Financial Services Analyst, Wholesale Payments, (202/452–2046); Joseph Baressi, Financial Services Analyst, ACH Payments, (202/452–3959); Gina Sellitto, Senior Financial Services Analyst, Funds Transfer, Book-Entry Securities, Noncash Collection Services, (202/728–5848); Marybeth Butkus, Senior Financial Services Analyst, Special Cash Services, (202/452–3917); or Wes Horn, Information Technology Project Leader (electronic connections), (202/452–2756), Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF: Brenda Richards, Senior Financial Analyst, (202/452–2753) or Gregory Evans, Manager, Financial Accounting, (202/452–3945), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) *only*, please contact 202/263–4869. Copies of the 2002 fee schedules for the check service are available from the Board, the Reserve Banks, or the Federal Reserve Banks' financial services web site at *www.frbservices.org*.

SUPPLEMENTARY INFORMATION:

I. Priced Services

A. *Discussion*—Over the period 1991 through 2000, the Reserve Banks recovered 100.8 percent of their total costs for providing priced services, including imputed expenses, special project costs budgeted for recovery, and targeted after-tax profits or return on equity (ROE).[1]

Table 1 summarizes the actual, estimated, and budgeted cost and revenue performance and cost recovery rates for priced services for 2000, 2001, and 2002 respectively. For 2001, the cost recovery rate is currently estimated to be 94.0 percent and for 2002, the cost recovery rate is targeted to be 96.2 percent. The aggregate cost recovery rates are heavily influenced by the performance of the check service, which accounts for approximately 83 percent of the total cost of priced services. The electronic services (FedACH, Fedwire funds transfer and net settlement, and Fedwire book-entry securities transfer) account for approximately 17 percent of costs, while the noncash collection and special cash services represent a de minimis percentage.

TABLE 1.—PRO FORMA COST AND REVENUE PERFORMANCE [a]

[In millions of dollars]

Year	Revenue 1 [b]	Total expense 2 [c,f]	Net income ROE [1–2] 3	Target ROE 4 [d]	Recovery rate after target ROE [1/(2+4)] 5
2000	922.8	818.2	104.6	98.4	100.7%
2001 (Estimate)	951.6	902.6	48.9	109.3	94.0%
2002 (Budget) [e]	955.9	900.9	55.1	92.5	96.2%

[a] Calculations on this table and subsequent pro forma cost and revenue tables may be affected by rounding.

[b] Includes net income on clearing balances (NICB).

[c] The calculation of total expense on this and subsequent pro forma cost and revenue tables includes operating expenses and imputed costs plus special project costs recovered during the year. Imputed costs include interest on debt, taxes, FDIC insurance, Board of Governors priced services expenses, and the cost of float. Credits for prepaid pension costs under FAS 87 are also included. In 2001, the check service estimates that it will incur $13.1 million in special project costs related to the ongoing check modernization initiative. In 2002, the check service projects that it will incur $11.4 million in special project costs related to check modernization.

[d] Targeted ROE is the pre-tax ROE included in the PSAF, adjusted for taxes. The taxes are included in column 2.

[1] These imputed costs, such as taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm, are referred to as the PSAF. The PSAF is based on consolidated financial data for the nation's fifty largest bank and financial holding companies for each of the last five years. The targeted ROE is the budgeted profit that the Federal Reserve would have earned had it been a private business firm. The ten-year recovery rate is based upon the pro forma income statement for Federal Reserve priced services published in the Board's Annual Report. Beginning in 2000, the PSAF included additional financing costs associated with pension assets attributable to priced services. This ten-year cost recovery amount has been retroactively computed as if these costs were not historically included in the PSAF calculations. If such costs were included in the calculations, the ten-year recovery rate would have been 99.5 percent.

[e] Changes in the PSAF and NICB methodology for 2002 reduce both revenue and expenses. As a result, 2002 budgeted revenue is reduced by a loss on NICB of $18.1 million as compared to an NICB related revenue increase of $20.5 million included in the 2001 estimate. Total expenses include PSAF of $150.1 million in the 2002 budget as compared with $206.9 million in the 2001 estimate.

[f] Corporate overhead costs are allocated to Reserve Bank activities on a dollar-ratio basis (based on their proportion of total Reserve Bank costs). Because corporate overhead costs are not closely related to any particular priced service, the priced-services portion of these costs is assigned among the individual services to facilitate the funding of significant multiyear strategic investments that would otherwise result in short-term price fluctuations, subject to established minimum and maximum amounts. In 2000, the assignment of corporate overhead costs to individual priced services supported the Reserve Banks' strategic check modernization project. In 2001 and 2002 the corporate overhead allocation among priced services is on a dollar-ratio basis. Table 1a below shows the assignment of corporate overhead costs for the years 2000–2002.

TABLE 1A.—CORPORATE OVERHEAD ALLOCATIONS TO PRICED SERVICES

[In millions of dollars]

Year	Check	ACH	Funds transfer	Book-entry	Noncash collection	Special cash	Total
2000 Actual	36.0	8.0	4.3	1.1	0.1	0.1	49.7
2001 (Estimate)	43.4	3.4	2.7	1.1	0.1	0.1	50.8
2002 (Budget)	44.6	4.0	3.3	1.2	0.1	0.1	53.4

Table 2 presents an overview of the budgeted 2001, estimated 2001, and projected 2002 cost recovery performance by category of priced service.

TABLE 2.—PRICED SERVICES COST RECOVERY

[In percent]

Priced service	2001 Budget	2001 Estimate	2002 Budget
All services	98.1	94.0 [4]	96.2
Check	97.6	93.3	95.4
ACH	101.3	100.3	101.0
Funds transfer	101.2	98.3	100.8
Book-entry	95.6	87.1	100.2
Noncash collection	102.5	106.7	92.6
Special cash	100.5	104.4	103.8

1. *2001 Estimated Performance*—In 2001, the Reserve Banks estimate that they will recover 94.0 percent of the costs of providing priced services, including imputed expenses, check modernization special project costs, and targeted ROE, compared with a targeted recovery rate of 98.1 percent.[2] Through August 2001, the Reserve Banks recovered 95.6 percent of total priced services expenses, including imputed expenses, check modernization special project costs, and targeted ROE. Although the estimated 2001 recovery rate is below 100 percent, the Reserve Banks estimate that they will fully recover actual and imputed expenses and earn net income of $48.9 million, $60.4 million less than the targeted ROE of $109.3 million. The 2001 shortfall from the 2001 budget target is largely driven by three factors:.

- Lower-than-expected performance in the check service is due to both lower revenue and higher expenses than budgeted. Check service revenues will be $9.8 million lower than budgeted due to lower volume growth than budgeted, customers shifting to the use of lower-priced products, and implementation delays of two quality improvement products. Local check costs will be $10.5 million more than budgeted and national support costs allocated to check (excluding check modernization costs) will be $6.9 million more than budgeted; these increased expenses will be partly offset by lower-than-budgeted check modernization costs of $6.0 million.[3] The Reserve Banks also incurred unbudgeted expenses associated with the September 11 terrorist attacks; these totaled approximately $19 million and are primarily float costs resulting from a policy decision to grant funds availability according to published schedules despite the delays in presenting checks due to the shutdown of air traffic. Other costs associated with the September 11 event included expenses related to arrangements for ground transportation and overtime and related expenses.[4]
- The 2001 estimated net income on clearing balances (NICB), an imputed income, is significantly lower than the budgeted amount.[5] For the year, it was originally projected to be $40.7 million, but the estimate has been revised downward to $20.5 million. The decline is the result of a larger difference between the rate at which earnings credits are paid to depository institutions and the imputed earnings rate on clearing balances in 2001 than budgeted.
- The 2001 estimated pension credit, an offset to expenses, is lower than budgeted. It was budgeted at $117.1 million, but the estimate is $101.0 million. The decrease in the estimate is generally due to lower-than-anticipated return on pension plan assets in 2000.

2. *2002 Projected Performance*—For 2002, the Reserve Banks project that they will recover 96.2 percent of total priced services' expense, including imputed expenses and targeted ROE. The 2002 fees for priced services are projected to result in a net income of $55.1 million, compared with a targeted ROE of $92.5 million. Factors affecting

[2] Includes float costs, but excludes higher net income on clearing balances, associated with the events of September 11.

[3] Check modernization is a multi-year initiative to standardize the processing of checks at all Reserve Banks, adopt a common platform for processing and researching check-adjustment cases, create a national system for archiving and retrieving check images, and deliver check services to depository institutions using web technology.

[4] Expenses associated with September 11 may be offset by increased NICB resulting from large excess clearing balances held during the September 11—21 period.

[5] NICB consists of imputed net income on clearing balances, assuming investment of clearing balances in three-month Treasury bills, minus the cost of earnings credits granted to clearing balance holders at the federal funds rate.

2002 cost recovery include the following:

- Net costs of $86.0 million associated with the check modernization project.
- Methodology changes reduce imputed income in NICB and reduce imputed expenses in PSAF.[6]
- In the 2002 budget, the pension credit is about $22 million lower than in 2001 primarily due to the full amortization in 2001 of the initial pension asset as required by generally accepted accounting principles. The amortization of the initial pension asset contributed $15 million a year to the pension credit from 1987 through 2001.

The primary risks to the 2002 projection are the check volume and revenue growth projections, the potential for cost overruns or delays in the check modernization projects, and potential further reductions to NICB and priced pension credits.[7] Additional risks include possible volume declines in the ACH and Fedwire funds transfer services due to increased competition.[8]

Although the check service will not achieve full cost recovery in 2001 or 2002, the Reserve Banks believe that they will achieve full cost recovery of the check service over the long run by aggressively managing local and national costs, taking advantage of efficiencies gained from check modernization, and increasing value-added product revenue.

3. *2002 Pricing*—The following summarizes the Reserve Banks' changes in fee structures and levels for priced services:

Check

- Fees for all check products are increasing 3.7 percent compared with current prices or 4.0 percent compared with January 2001 fees. Per-item and cash-letter fees for forward-collection check products are also increasing at this rate.
- Overall prices for electronic products overall are increasing faster than prices for paper check processing because margins for electronic products are currently lower than for paper check products. The increases reflect a Reserve Bank strategy to price these products to more fully reflect their value to customers. Transaction fees for payor bank services, which include electronic check products, will increase 4.5 percent relative to both current prices and January 2001 fees.
- Aggregate check service fee increases in 2002 are expected to cost depository institution customers approximately $30 million, assuming no changes to current customer processing choices.
- Since 1996, the price index for check has increased more than 35 percent.

FedACH

- The Reserve Banks will retain current prices for customers of the FedACH service.[9] The Reserve Banks anticipate a reduction in fees mid-year 2002 as a part of the overall strategy to meet competitive challenges.
- Since 1996, the price index for the ACH service has decreased almost 55 percent.

Fedwire Funds Transfer and Net Settlement

- The Reserve Banks will institute fee reductions to funds transfer customers in all tiers: tier 1—two cent decrease to $0.31 (6.1 percent decrease); tier 2—two cent decrease to $0.22 (8.3 percent decrease); and tier 3—one-cent decrease to $0.15 (6.3 percent decrease).[10]
- Funds transfer fee decreases in 2002 are expected to save depository institution customers approximately $3 million.
- A realignment of net settlement service prices is planned to more accurately reflect costs. The Reserve Banks will institute the following: decrease the settlement entry fee 15.8 percent to $0.80; increase the settlement file fee 16.7 percent to $14.00; increase the off-line settlement statement subject to surcharge 66.7 percent to $25; eliminate the fee for telephone notification; and decrease the daily settlement fee for large-dollar Fedwire-based settlement arrangements 42.9 percent to $100, the same as the fee for small-dollar Fedwire-based settlement arrangements.
- The price index for Fedwire funds transfers and net settlement has declined almost 55 percent since 1996.

Fedwire Book-Entry Securities

- The Reserve Banks will lower the following fees as a result of projected increases in volumes due to the addition of Ginnie Mae securities: decrease the on-line origination and receipt fees by $0.04 to $0.66 (5.7 percent decrease) and decrease the monthly account maintenance fee per issue per account by $0.04 to $0.41 (8.9 percent decrease).
- In the second half of 2002, the Reserve Banks plan to introduce a fee for a new feature of the service—automated claims adjustments related to failed securities transactions, interim accounting for securities with an accrual date different from the record date, and repurchase agreement tracking. The Reserve Banks will introduce a fee for the new product and will determine this fee once volume projections can be confirmed by actual experience. Initially, the Reserve Banks plan to establish a uniform fee for all claims adjustments.
- Book-entry fee decreases in 2002 are expected to save depository institution customers approximately $1.4 million.

[6] The methodology for computing PSAF was modified in October 2001 to include the following changes beginning with the 2002 calculation: clearing balances were made available to finance long-term priced-service assets; equity was imputed to meet the FDIC definition of a well-capitalized institution; target return on equity was determined using the results of three economic models; and the peer group of the fifty largest bank and financial holding companies was selected based on total deposits, rather than assets.

[7] If forward-processed volume were unchanged from the 2001 level, revenue would decline $9.9 million from the budgeted level; if forward-processed volume declined one percent below the 2001 level, revenue would decline $15.5 million. Similarly, payor bank service revenues would decline by $1.7 million and $2.6 million, respectively. If returned check volume were unchanged from the 2001 level, revenue would decline $0.8 million from the budgeted level; if return volume were one percent below the 2001 level, revenue would decline $2.2 million. Savings in operational costs and variable PSAF would partially offset such revenue losses.

[8] In July 2001, pursuant to previously negotiated agreements, the Reserve Banks and private-sector operators (PSOs) implemented new deposit deadlines for ACH transactions that they exchange with each other. On October 1, the Reserve Banks and the PSOs implemented a new fee structure for these interoperator transactions. The new deposit deadlines and interoperator fee structure were intended to enhance competition in the provision of ACH services, which is likely to result in volume shifts from the Reserve Banks to other ACH operators in 2002. Staff believes that the Reserve Banks' ability to successfully recover their ACH costs in 2002 as a result of such volume shifts may be challenging; however, the Reserve Banks believe that they will be able to recover costs over the long run. The competitor to the Fedwire funds transfer service, Clearing House Interbank Payments System (CHIPS), implemented an intraday finality mechanism for its service in January 2001. While there has been little movement of funds transfer volume from Fedwire to CHIPS to date, we understand that some high-volume funds transfer customers have decided to begin shifting substantial funds transfer volume to CHIPS. Fedwire funds transfer volume is expected to decline as customers that are also CHIPS participants move volume from Fedwire to CHIPS.

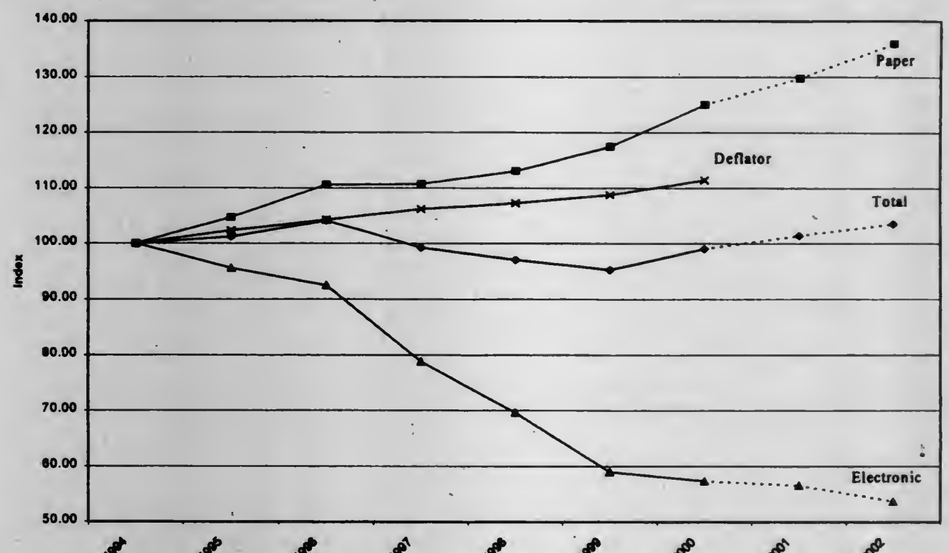
[9] The Reserve Banks modified their fee structure for transactions exchanged with PSOs October 1, 2001. Under the new fee structure, the Reserve Banks and PSOs will charge each other fees for interoperator transactions. Other price changes effective October 1 were a $0.0005 decrease in the per item origination fee for items deposited in large files; a $0.0020 decrease in the per item receipt fee for all items; a single, standard input file processing fee of $5.00 which represents a decrease of $1.75 for large-volume files and an increase of $3.25 for small-volume files; and a new $20.00 per month fee for FedACH settlement.

[10] The Reserve Banks reduced the per transfer fee for tier 3 customers by one-cent to $0.16 on August 1, 2001.

- Including the fee change for 2002, the price index for the book-entry securities service has declined about 30 percent since 1996.

4. *2002 Price Index*—In their 2002 fee schedules, the Reserve Banks include changes that continue to provide an economic incentive for depository institution customers to make greater use of electronic payment services. The price index for electronic payment services (ACH, funds transfer and net settlement, book-entry securities, and electronic check) and electronic connections is projected to decline approximately 5 percent in 2002.[11] In contrast, the index for paper-based payment services (check, special cash, and noncash collection) is expected to increase almost 5 percent in 2002. The overall 2002 price index for all Federal Reserve priced services is projected to increase slightly over 2 percent. Since 1996, the overall price index has increased approximately 3.5 percent.[12] Figure 1 compares the Federal Reserve's price index for priced services with the gross domestic product price deflator, which shows that Federal Reserve priced services have historically increased more slowly than the deflator.

FIGURE 1
FEDERAL RESERVE PAYMENT SERVICES PRICE INDEX
Chained Fisher Ideal Index Compared With GDP Price Deflator



B. *Check*—Table 3 shows the actual 2000, estimated 2001, and projected 2002 cost recovery performance for the check service.

TABLE 3.—CHECK PRO FORMA COST AND REVENUE PERFORMANCE
[In millions of dollars]

Year	Revenue	Total expense	Net income (ROE) [1–2]	Target ROE	Recovery rate after target ROE [1/(2+4)]
	1	2	3	4	5
2000	763.3	680.1	83.2	80.8	100.3%

[11] The decline in the price index for electronic payment services since 1996 has reflected, in large part, the ability of the Reserve Banks to capitalize on the operational efficiencies and scale economies inherent in providing payment services through centralized electronic payment processing applications.

[12] These estimates are based on a chained Fisher ideal price index. This index provides customers with a representation of the total price or cost of Reserve Bank services, offering a more complete picture than is possible solely from comparing changes in individual service fees over time. This index is not adjusted for quality changes in Federal Reserve priced services. Data elements used in calculating the index include explicit fee revenue from priced services products and services and electronic connections to the Reserve Banks and volumes associated with those products and services. The price index is calculated using the actual, estimated, or projected full-year revenues and volumes. For 2002, the year-over-year percentage change in the index results from a comparison of the 2002 projections to the 2001 estimates for priced services revenues and volumes. The changes in the price index since 1996 are calculated with 1996–2000 actual, 2001 estimated, and 2002 projected revenues and volumes.

TABLE 3.—CHECK PRO FORMA COST AND REVENUE PERFORMANCE—Continued

[In millions of dollars]

Year	Revenue	Total expense	Net income (ROE) [1–2]	Target ROE	Recovery rate after target ROE [1/(2+4)]
	1	2	3	4	5
2001 (Estimate)	788.9	755.4	33.5	90.3	93.3%
2001 (Adjusted Estimate)[a]	788.9	737.0	51.9	90.3	95.4%
2002 (Budget)	807.0	772.1	34.9	73.7	95.4%

[a] Includes float costs, but excludes higher NICB, associated with the events of September 11.

1. *2000 Performance*—The check service recovered 100.3 percent of total costs in 2000, including imputed expenses and targeted ROE, exceeding the targeted recovery rate of 98.7 percent. The volume of checks collected decreased 0.5 percent from 1999 levels, partly because of price increases on the lowest-priced products and stabilization of market volumes as banks that had merged in previous years completed back office operational consolidation and participated in more direct clearing relationships. Revenue grew from 1999 levels because of price increases and increases in forward-processed and payor bank service volumes, but revenue did not meet the budgeted amount. Despite lower-than-expected revenues, full cost recovery was achieved through an even greater level of cost savings, which were primarily the result of local cost reductions and postponed check modernization project costs.

2. *2001 Performance*—Through August 2001, the check service has recovered 94.9 percent of total costs, including imputed expenses and targeted ROE.[13] The Reserve Banks estimate that the check service will recover 93.3 percent of its costs for the full year compared with the budgeted 2001 recovery rate of 97.6 percent, a $36.4 million shortfall, relative to the budget, in after-tax net income. The Reserve Banks expect to recover all direct and indirect costs of providing check services and part of the targeted return on equity. The lower-than-budgeted recovery rate is explained by several factors. First, service revenue and NICB are estimated to be lower than budgeted. The service revenue shortfall results from delayed implementation of explicit quality-related fees for return items, lower-than-expected volume in forward-collection and electronic check products, and customers' use of lower-priced products. Second, costs are estimated to be higher than budgeted because of lower pension credits, somewhat offset by lower-than-budgeted check modernization costs. Third, cost recovery will be lower than budgeted because of expenses associated with the September 11 terrorist attacks. These expenses are primarily float costs resulting from a policy decision to grant funds availability according to published schedules despite the delays in presenting checks to paying banks due to the shutdown of air traffic. Other costs included supplemental ground transportation and overtime.[14]

The volume of checks handled by the Reserve Banks appears to be stabilizing. The volume received from the larger banks has decreased as these banks expand clearinghouse use and as merged banks have consolidated back office operations. Previous years' temporary volume increases following bank mergers, which shifted work to Reserve Banks while check-processing operations were streamlined, are now less of a factor because of fewer bank mergers. These volume declines have been offset by product improvements, which have continued to attract increased forward-collection volume.

Forward-collection check product volume through August 2001 grew 0.7 percent (including a 1.6 percent increase in processed volume and a 9.5 percent decline in fine-sort volume), following the 0.5 percent decline in 2000. For the full-year 2001, the Reserve Banks estimate that forward-processed volume will grow 2.2 percent, which is below the budgeted 4.0 percent growth rate. Because the full-year growth rate exceeds the growth to date, the estimate may be optimistic. Return-item volume has been higher than anticipated and is expected to remain so for the rest of the year. Table 4 summarizes the year-to-date and full-year estimated growth rates for paper check products.

TABLE 4.— PAPER CHECK PRODUCT VOLUME GROWTH RATES

[percent]

	Budgeted 2001 growth	Growth through August 2001	Estimated 2001 growth
Total forward-collection	3.7	0.7	1.6
Forward-processed	4.0	1.6	2.2
Fine-sort[a]	0.6	−9.5	−5.5
Returns	−6.0	1.6	0.9

[a] These rates exclude electronic fine-sort volume. Electronic fine-sort is a service offered by one Reserve Bank that allows depository institutions to exchange fine-sort information electronically among themselves with paper checks to follow. Including the electronic fine-sort product, fine-sort volume growth was budgeted to increase 0.5 percent in 2001 and is now estimated to decrease 5.0 percent.

[13] Total costs include check standardization special project costs of $13.1 million. None of these costs are deferred.

[14] Normally the Reserve Banks recover the cost of float, including float generated when airports close due to inclement weather, through product fees or by adjusting when they grant credit for deposits to reflect their experience collecting funds from paying banks. The expenses associated with September 11 may be offset by increased NICB resulting from large excess clearing balances held during the September 11–21 period. The expenses and imputed NICB associated with the September 11 attack, however, will not be taken into consideration in setting prices for 2002 or future years.

Continuing a trend over the last few years, demand for electronic check products has steadily increased. Reserve Banks provide payor banks with electronic check data or images for about 37 percent of the checks they collect. Year-to-date 2001 demand for image products has grown 19.6 percent to approximately 948 million check images, which represents a penetration rate of 6.2 percent of all checks collected by the Reserve Banks. Growth and penetration rates for electronic check products are summarized in table 5.

TABLE 5.—ELECTRONIC CHECK PRODUCT PENETRATION AND GROWTH RATES

	Penetration rate through August 2001 (percent of checks collected)[a]	Volume growth through August 2001 (percent)	Estimated growth 2001 (percent)
Electronic check presentment	22.4	7.3	6.2
Truncation	5.6	1.5	1.4
Non-truncation	16.8	9.4	7.9
Electronic check information	7.1	−6.9	−8.4
Images	6.2	19.6	19.8

[a] These percentages exclude electronic fine-sort volumes from the number of checks collected.

3. *2002 Pricing*—For the coming year, the Reserve Banks will continue to focus on the check modernization initiatives to standardize check processing across all Reserve Bank offices.[15] The Reserve Banks will incur significant transition costs associated with these initiatives over the next several years. These initiatives are expected to reduce costs and improve service over the long term.

In 2002, fees for all check products are increasing 4.0 percent on a volume-weighted basis compared with fees introduced in January 2001 and 3.7 percent compared with current fees.[16] Per-item and cash-letter fees for forward-collection check products are also increasing at this rate. The average volume-weighted fees for payor bank services will increase 4.5 percent compared with both January 2001 and current fees. The Reserve Banks will increase fees for electronic check information products at a faster rate than for electronic check presentment products (ECP), thereby encouraging depository institutions to increase their use of ECP products. Overall prices for electronic check products are increasing faster than prices for paper check processing because margins for electronic products are currently lower than for paper check products, and the prices of electronic products do not yet reflect their full value to payor banks. Table 6 summarizes the Reserve Banks' 2002 price changes.

TABLE 6.—2002 PRICE CHANGES

[In percent]

Products	2002 vs. January 2001 fees	2002 vs. current fees
Total check service	4.0	3.7
Forward-collection	4.1	3.7
Forward-processed	3.9	3.5
Returns	3.9	3.9
Payor bank services	4.5	4.5
Electronic check presentment	4.5	4.5
Electronic check information	8.9	8.9
Image services	−3.0	−3.0

Table 7 summarizes ranges of key check fees for 2001 and 2002.

TABLE 7.—SELECTED CHECK FEES

Items:	2001 Current price ranges (per item)	2002 price ranges (per item)
Forward-processed		
City	$0.001 to 0.079	$0.001 to 0.079
RCPC	$0.003 to 0.200	$0.003 to **0.300**
Forward fine-sort		
City	$0.003 to 0.021	$0.003 to 0.021
RCPC	$0.003 to 0.036	**$0.004** to 0.036
Qualified returned checks		

[15] Check modernization is a multi-year initiative to standardize the processing and researching check-adjustment cases, create a national system for archiving and retrieving check images, and deliver check services to depository institutions using web technology. Check modernization should improve the operational efficiency and cost-effectiveness of the Reserve Banks' check services over the long run. It will also improve the consistency, quality, and uniformity of the check services that Reserve Banks deliver to their customers and allow new services to be developed and deployed more quickly.

[16] This discussion evaluates volume-weighted changes in the direct fees for check products. The price index, discussed in the cover memorandum, evaluates the average change in costs that would be incurred by a customer purchasing an average market basket of Federal Reserve check products, taking into account explicit fees and product substitution.

TABLE 7.—SELECTED CHECK FEES—Continued

	2001 Current price ranges	2002 price ranges
City	$0.08 to 0.85	$0.08 to 0.85
RCPC	$0.10 to 1.15	$0.10 to 1.15
Raw returned checks		
City	$1.05 to 5.00	$1.05 to 5.00
RCPC	$1.05 to 5.00	$1.05 to 5.00
Cash letters:	(per cash letter)	(per cash letter)
Forward-processed[a]	$2.00 to 32.00	**$2.25 to 36.00**
Forward fine-sort	$3.00 to 14.00	**$3.50 to 14.00**
Returned checks: raw/qualified	$2.00 to 14.00	$2.00 to **14.50**
Payor bank services:	(Fixed) (per item)	(Fixed) (per item)
MICR information	$2–15 $0.0020–0.0070	$2–15 **$0.0030–0.0110**
Electronic presentment	$1–11 $0.0005–0.0100	$1–**12** $0.0005–0.0100
Truncation	$2–7 $0.0020–0.0180	$2–7 **$0.0040**–0.0180
Image capture	$2–15 $0.0020–0.02	$2–15 $0.002–0.02
Image delivery	Varies[b] $0.001–0.008	Varies[b] **$0.002**–0.008
Image archive	N/A $0.001–0.01	N/A $0.001–0.01
Image retrieval	N/A $0.3–5	N/A $0.3–5

Note: Bold indicates change from 2001 prices.

[a] Cash letter fees for forward-processed items transported on Check Relay for 2001 and 2002 include a fifty-cent surcharge due to higher fuel costs.

[b] Fixed fee varies by media type.

4. *2002 Projected Cost Recovery*—For 2002, the Reserve Banks project that the check service will recover 95.4 percent of total costs, including imputed expenses, costs associated with the check modernization project, and targeted ROE. In total, the Reserve Banks expect to recover all direct and indirect costs of providing check services, but only a portion of targeted return on equity; thus net income is expected to fall short of the targeted ROE.

Total expenses are projected to increase approximately $17.0 million, or 2.3 percent, from estimated 2001 expenses. Total expenses for 2002 include approximately $86 million in costs for the four check modernization projects (including special project costs), representing an increase of $17.6 million over the 2001 estimate.

Check service revenue is projected to increase $50.2 million, or 6.5 percent, from the 2001 estimate, as a result of fee and volume increases, including a budgeted 1.5 percent increase in forward-collection volume from the estimated 2001 level. In 2002, revenues from forward-collection and return-item processing, payor bank services and other operating and imputed revenues are expected to represent 87.6 percent, 11.6 percent, and 0.8 percent, respectively, of the check services' budgeted $821.7 million in product related service revenue. Total revenue also reflects the decline in NICB, discussed previously.

In 2002, forward-processed volume is projected to be 15.6 billion, an increase of 1.8 percent compared with the 2001 estimate, with the growth coming from additional weekend and off-peak Other Fed volume. Fine-sort volumes are expected to continue to decline 16 million, or 1.3 percent, from the 2001 estimate. Total returns are projected to be 179.8 million, an increase of 0.6 percent compared with the 2001 estimate.

The Reserve Banks anticipate further growth in payor bank services. The Reserve Banks project electronic presentment volume to be 3.2 billion, reflecting growth of 16.7 percent in 2002, and truncation volume to be 978 million, an increase of 6.8 percent—significant increases in growth targets compared with 2001 growth. The Reserve Banks expect to meet these targets as a result of price changes that will raise electronic information fees compared with electronic presentment fees and through the launching of a national image service, which will provide additional tools for banks accepting electronic check presentments. Image services volume is projected to be 1.8 billion, a projected growth of 19.7 percent in 2002, which is in line with 2001 growth and which may be driven by the increased functionality of the Image Services System (for example, electronic access to archived check images using web technology). MICR information is projected to decrease by 0.3 billion items or about 25 percent in 2002, which is in line with the 2001 decline.

The Board believes that the greatest risks to achieving the projected cost recovery rate for the check service of 95.4 percent are (1) challenges in meeting Systemwide volume projections and related revenue projections, (2) potential changes in NICB and priced pension credits, and (3) potential check modernization cost overruns. The results of changes to elements of NICB and delays in the timing of the check modernization project could also improve the 2002 cost recovery.

C. *Automated Clearinghouse (ACH)*—Table 8 presents the actual 2000, estimated 2001, and projected 2002 cost recovery performance for the commercial ACH service.

TABLE 8.—ACH PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	Revenue	Total expense	Net income (ROE) [1–2]	Target ROE	Recovery rate after target ROE [1/(2+4)]
	1	2	3	4	5
2000	71.7	61.6	10.1	8.0	103.1%

TABLE 8.—ACH PRO FORMA COST AND REVENUE PERFORMANCE—Continued

[In millions of dollars]

Year	Revenue	Total expense	Net income (ROE) [1–2]	Target ROE	Recovery rate after target ROE [1/(2+4)]
	1	2	3	4	5
2001 (Estimate)	76.4	67.3	9.1	8.9	100.3%
2002 (Budget)	66.4	59.3	7.1	6.5	101.0%

1. *2000 Performance*—In 2000, the ACH service recovered 103.1 percent of total expenses, including imputed costs and targeted ROE, versus a targeted recovery rate of 100.0 percent. Commercial ACH volume was 13.6 percent higher than 1999 volume, compared with the 11.6 percent increase originally projected for 2000. The Reserve Banks' prices did not change over the course of the year.

2. *2001 Performance*—Through August 2001, the ACH service recovered 101.6 percent of total expenses. The Reserve Banks estimate that the ACH service will recover 100.3 percent of total expenses in 2001, compared with the targeted recovery rate of 101.3 percent. The variance from targeted recovery is partially due to lower-than-expected NICB and pension credits. The year-over-year increase in expense from $61.6 million in 2000 to $67.3 million in 2001 is attributable to higher national support costs, and to transition costs associated with consolidating the twelve Districts' ACH operations into two offices, Minneapolis and Atlanta.

The Reserve Banks estimate that their 2001 commercial ACH volume will be 11.1 percent higher than in 2000, compared with the budgeted 10.0 percent increase. Through August 2001, by contrast, the Reserve Banks' commercial ACH volume had increased 17.2 percent from the same period in 2000. The difference between the volume growth through August and the volume growth for all of 2001 is due to the Reserve Banks' expectation that some large-volume customers will begin to originate their ACH transactions through a private-sector ACH operator. The Reserve Banks also expect that other large-volume customers may split their transactions between the Federal Reserve and other ACH operators.

On October 1, 2001, the Reserve Banks implemented a modified ACH fee structure with decreased per-item fees for large-volume files and increased monthly fixed fees that will likely result in lower overall fees to large and medium-sized customers. These fee-structure modifications are the first phase of an overall strategy to meet competitive challenges facing the Reserve Banks' ACH service. The modified fee structure is designed to better reflect the ACH service's cost structure, which is characterized by high fixed and low variable costs.

Also on October 1, the Reserve Banks implemented pricing agreements with other operators for interoperator ACH transactions. Under the new interoperator agreements, the Reserve Banks will no longer charge per-item fees to depository institutions for ACH transactions that the depository institutions originate or receive through another operator. Instead, the Reserve Banks and the other operators will charge each other fees for the interoperator transactions. Thus, for ACH items originated by a Reserve Bank customer and destined for the customer of a private-sector operator, the Reserve Banks will pay a fee to the private-sector operator and will no longer receive fees from the receiving depository institution.

3. *2002 Pricing*—The Reserve Banks project that the ACH service will recover 101.0 percent of its costs in 2002, including imputed expenses and targeted ROE. Expenses are projected to decrease $8.0 million, or 11.9 percent, from the 2001 estimate. The decrease in expense results primarily from consolidating ACH operations, which should be completed in February 2002, and from the Reserve Banks' reduction of ACH business development costs.

The Reserve Banks project that 2002 ACH revenue will decrease $10.0 million, or 13.1 percent, from the 2001 estimate due to decreases in fees and expected transaction volume. In addition to the October 1, 2001 pricing structure changes, the Reserve Banks expect to further reduce fees in mid-year 2002. Although the Reserve Banks have not finalized the details of the mid-year 2002 fee changes, the Reserve Banks expect to offer volume-based discounts to their ACH transaction fees.

The Reserve Banks project that ACH volume will be 5.1 percent lower in 2002 than in 2001. While the Reserve Banks expect total ACH volume to grow substantially, the projected 5.1 percent decline in Federal Reserve ACH volume assumes many of the Reserve Banks' largest customers' shifting at least a portion of their volume to another operator. The Board believes there is some risk that transaction volume will decline more than projected.

D. *Funds Transfer and Net Settlement*—Table 9 presents the actual 2000, estimated 2001, and projected 2002 cost recovery performance for the funds transfer and net settlement services.

TABLE 9.—FUNDS TRANSFER AND NET SETTLEMENT PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	Revenue	Total expense	Net income (ROE) [1–2]	Targe ROE	Recovery rate after target ROE [1/(2+4)]
	1	2	3	4	5
2000	64.6	56.4	8.2	7.5	101.1%
2001 (Estimate)	63.0	56.7	6.3	7.5	98.3%
2002 (Budget)	56.1	50.2	5.9	5.5	100.8%

1. *2000 Performance*—The funds transfer and net settlement service recovered 101.1 percent of total costs in 2000, including imputed expenses and targeted ROE, and exceeding the targeted recovery rate of 100.4 percent. Although expenses for 2000 were $1.7 million (2.5 percent) less-than-original budget projections, service revenue was $1.4 million (2.2 percent) less-than-original budget projections. The shortfall in service revenue was attributed to $0.8 million (8.7 percent) less-than-expected electronic connection revenue and 1.2 percent lower-than-expected funds transfer volume.

2. *2001 Performance*—Through August 2001, the funds transfer and net settlement services recovered 99.5 percent of total costs, including imputed expenses and targeted ROE. For full-year 2001, the Reserve Banks estimate that the funds transfer and net settlement services will recover 98.3 percent of total expenses, compared with a targeted recovery rate of 101.2 percent. The underrecovery is attributed to several factors, including lower-than-expected NICB and pension credit, and higher-than-budgeted operating costs, which were primarily due to higher-than-anticipated automation costs.

Funds transfer volume through August 2001 has increased 4.5 percent relative to the same period in 2000. For the full-year, the Reserve Banks estimate a 3.0 percent volume increase over 2000 compared to a budgeted decline of 1.2 percent. The Reserve Banks anticipated a decline in funds volume in 2001 because of potential shifts in volume from Fedwire to CHIPS.[17] These shifts, however, have not been realized fully to date, but the Reserve Banks expect some shifts in volume to CHIPS during the remaining months of the year.

3. *2002 Fedwire Funds Transfer Pricing*—The Reserve Banks will maintain the thresholds for volume-based discounts but reducing the per-transfer fees for each threshold. Specifically, the Reserve Banks will lower the transfer fee for the first volume tier (≤2,500 transfers per month) by two cents from $0.33 to $0.31 (6.1 percent), lower the transfer fee for the second volume tier (2,501–80,000 transfers per month) by two cents from $0.24 to $0.22 (8.3 percent), and lower the transfer fee for the third volume tier (> 80,000 transfers per month) by one cent from $0.16 to $0.15 (6.3 percent).[18] The average (volume-weighted) per-transfer price would decline from its current level of $0.216 to $0.201 (6.8 percent). In addition, the Reserve Banks will retain the off-line surcharge at its current level.

Reserve Banks project that the Fedwire funds transfer service will recover 100.8 percent of total costs in 2002, including imputed expenses and targeted ROE. Total costs are expected to decline $8.5 million (13.2 percent) from the 2001 estimate, primarily due to operating cost reductions of $4.9 million (8.5 percent). The reduction in operating costs is due to cost savings associated with the consolidation of the majority of funds transfer activities to the Federal Reserve Banks of Boston, New York, Richmond, and Kansas City.[19]

Funds transfer volume is expected to decline 1.1 percent from the 2001 estimate as customers that are also CHIPS participants move volume from Fedwire to CHIPS. Since the implementation of volume-based pricing, volume growth in the high-volume pricing tier (tier 3) has outpaced growth in the other two tiers. In 2002, however, the Reserve Banks project that any trend growth in tier 3 volume will be offset by the migration of transfers to CHIPS. The Reserve Banks also expect that the loss of volume in tier 3 will be somewhat offset by movement of volume from the mid-volume pricing tier (tier 2) to tier 3 due to merger activity and the consolidation of master/sub-account relationships. Therefore, the Reserve Banks project that in 2002 tier 3 volume will remain relatively stable at 48.8 percent of total volume and tier 2 volume will decline by 0.7 percent to 33.9 percent of total volume. The Reserve Banks also project that volume in the low-volume pricing tier (tier 1) will increase 0.5 percent to 17.3 percent of total volume.

The Reserve Banks project total funds transfer revenue to decline by $6.9 million (11.0 percent) in 2002 from the 2001 estimate primarily because of the full-year effect of the August 2001 and proposed 2002 price reductions.

4. *2002 Net Settlement Pricing*—By year-end 2001, all local net settlement arrangements will have been converted to the enhanced net settlement service. The Reserve Banks will increase the per settlement file fee by $2.00 from $12.00 to $14.00 (16.7 percent) and reduce the per-settlement entry fee by $0.15 from $0.95 to $0.80 (15.8 percent); these changes will lower the costs for the larger arrangements while only marginally increasing the costs for a few of the smaller arrangements. The revenue loss is minimal—a net of $10,000 or 1.4 percent of the previous fee level. The Reserve Banks will eliminate the off-line notification service and associated surcharge in 2002. In addition, the Reserve Banks will raise the off-line origination surcharge by $10.00 from $15.00 to $25.00 (66.7 percent) to better reflect the work involved in providing this service; budgeted revenue, however, will not be affected because this service is only offered as a contingency to the arrangements.[20] Further, the Reserve Banks will standardize the fee for all Fedwire-based settlements at $100. Previously, small arrangements were charged $100 and large arrangements were charged $175. There will be no effect on revenue because the only arrangement that was being charged $175 made changes early in 2001 to its file structure to fit the criteria for the $100 fee. Finally, the Reserve Banks will retain the $60 minimum account maintenance fee per arrangement.[21] The Reserve Banks expect settlement entry and file volumes to remain stable in 2002 compared with the 2001 estimate.

E. *Book-Entry Securities*—Book-entry securities includes purchase and sale activity. Table 10 presents the actual 2000, estimated 2001, and projected 2002 cost recovery performance for the book-entry securities service.[22]

[17] The New York Clearing House implemented an intraday finality mechanism for its CHIPS service in January 2001. While there has been little movement of funds transfer volume from Fedwire to CHIPS to date, the New York Clearing House has increased its marketing efforts and we understand that some high-volume funds transfer customers have decided to begin shifting substantial funds transfer volume to CHIPS. Fedwire funds transfer volume is expected to decline as customers that are also CHIPS participants move volume from Fedwire to CHIPS.

[18] The Reserve Banks reduced the per transfer fee for the highest-volume tier (tier 3) from $0.17 to $0.16 on August 1, 2001.

[19] Specifically, the Reserve Banks will consolidate on-line funds operations to the Federal Reserve Banks of Boston and Kansas City, and fund computer interface testing to the Central Business Administration Function at the Federal Reserve Banks of New York and Richmond. The consolidation began in September 2001 and will be completed in August 2002.

[20] While the Reserve Banks encourage net settlement arrangements to maintain their own contingency procedures, they will provide off-line contingency services in the event of the failure of an arrangement's primary contingency backup arrangement.

[21] The monthly account maintenance fee will only be assessed if total settlement charges during a calendar month are less than $60.00. In addition, the fee will be reduced by the total amount of any per entry and per settlement charges incurred during the month.

[22] The Reserve Banks provide securities transfer services for securities issued by the U.S. Treasury Department, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the Treasury Department assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the money settlement component of a Treasury securities transfer; this component is not treated as a priced service.

[23] 23 Initially, the new functionality will be available only for mortgage-backed securities, while functionality for Treasury securities and other agency debt may be incorporated later.

[24] Specifically, the Reserve Banks will consolidate on-line securities operations at the Federal Reserve Banks of Boston and Kansas City, joint custody collateral processing at the Federal Reserve Bank of Boston, and securities computer interface testing at the Central Business Administration Function at the Federal Reserve Bank of New York. The consolidation began in September 2001 and will be completed in August 2002.

TABLE 10.—BOOK-ENTRY SECURITIES TRANSFER PRO FORMA COST AND REVENUE PERFORMANCE

In millions of dollars

Year	Revenue	Total expense	Net income (ROE) [1–2]	Target ROE	Recovery rate after target ROE [1/(2+4)]
	1	2	3	4	5
2000	18.5	16.0	2.6	1.9	103.9%
2001 (Estimate)	19.0	19.5	-0.5	2.3	87.1%
2002 (Budget)	22.6	20.3	2.3	2.2	100.2%

1. *2000 Performance*—The book-entry securities service recovered 103.9 percent of total costs in 2000, including imputed expenses and targeted ROE, exceeding the target recovery rate of 101.3 percent. Total costs for 2000 were $1.1 million (6.6 percent) higher than budgeted, and service revenue was approximately $1.5 million (9.0 percent) more than budgeted. The additional revenue was due to higher-than-expected on-line volume and account and issue maintenance volume. Total book-entry transfer volume increased 15.2 percent from the 1999 level.

2. *2001 Performance*—Through August 2001, the book-entry securities service recovered 90.0 percent of total costs, including imputed expenses and targeted ROE. For full-year 2001, the Reserve Banks estimate that the book-entry securities service will recover 87.1 percent of total costs, compared with a targeted recovery rate of 95.6 percent. The underrecovery is attributed to several factors, including higher-than-budgeted operating costs, mostly due to higher-than-anticipated automation costs and higher-than-anticipated volume, and a less-than-expected pension credit. In addition, NICB is lower than budgeted and the book-entry service is projected to take in less revenue due to the delay of the conversion of Government National Mortgage Association (Ginnie Mae) securities to the National Book-Entry System (NBES), which was planned for the fourth quarter 2001, but, because of the events of September 11, will be delayed until the first quarter 2002.

Through August 2001, total book-entry securities transfer volume has increased 19.6 percent compared with the same period in 2000. For the full year, the Reserve Banks estimate that total book-entry volume will increase 15.4 percent from the 2000 level, compared with a budgeted 8.7 percent increase. The increased volume is primarily due to higher-than-anticipated mortgage refinancing activity, but the Reserve Banks expect this activity to slow down in the remaining months of the year.

3. *2002 Pricing*—The Reserve Banks will reduce the on-line transfer origination and receipt fee by four cents from $0.70 to $0.66 (5.7 percent), and lower the per-issue per-account maintenance fee by four cents from $0.45 to $0.41 (8.9 percent). The Reserve Banks will retain the off-line surcharge and account maintenance fee at their current levels. The Reserve Banks will implement new functionality to support automated claim adjustments related to failed securities transactions, interim accounting for securities with an accrual date different than the record date, and repurchase agreement tracking.[23] The Reserve Banks will implement fail tracking in December 2001, but have not yet announced the implementation dates for interim-accounting adjustment processing and repurchase agreement tracking. The Reserve Banks will determine a fee for the new functionality once volume projections can be confirmed by actual experience, and plan to implement this fee in the second half of 2002. Initially, the Reserve Banks plan to establish a uniform fee for all claims adjustments.

The purchase and sale activity represents less than 0.5 percent of the costs and revenues of the book-entry securities service line. Provision of this activity, which facilitates the purchase and sale of Treasury and government agency securities by depository institutions on the secondary market, is consolidated at the Federal Reserve Bank of Chicago. Steadily declining volume over the past six years strongly suggests there is no longer a need for the Federal Reserve Banks to provide this activity and private-sector alternatives exist. The Reserve Banks' Wholesale Payments Product Office (WPPO) will develop an exit strategy for the product by year-end 2001. In the interim, the Reserve Banks will maintain the $40 transaction fee for securities purchases and sales.

The Reserve Banks project that the book-entry securities service will recover 100.2 percent of costs in 2002, including imputed expenses and targeted ROE. The Reserve Banks project that total costs for the service will increase 3.1 percent—a $0.4 million decrease in the pension credit combined with a $0.9 million increase in costs associated with the agency portion of the service will be partially offset by $0.9 million costs savings associated with the consolidation of the majority of securities activities to the Federal Reserve Banks of Boston, New York, and Kansas City.[24]

The Reserve Banks project the volume of agency securities transfers in 2002 will increase 19.8 percent from the 2001 estimate and total revenue will increase 18.7 percent from the 2001 estimate. The volume increase is due to the scheduled move of Ginnie Mae securities to NBES by March 2002. The influx of more than 325,000 Ginnie Mae securities also will dramatically increase the number of securities issues held in customers' securities accounts; the number of issues maintained is projected to nearly double. Additional securities issues from the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Veterans Administration will also move to the service in 2002, albeit in much smaller numbers, as the securities processing system of the former Participants Trust Company is retired.

F. Noncash Collection—Table 11 lists the actual 2000, estimated 2001, and projected 2002 cost recovery performance for the noncash collection service.

TABLE 11.—NONCASH COLLECTION PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	Revenue	Total expense	Net income (ROE) [1–2]	Target ROE	Recovery rate after target ROE [1/(2+4)]
	1	2	3	4	5
2000	2.4	2.1	0.4	0.2	108.6%
2001 (Estimate)	2.0	1.7	0.3	0.2	106.7%
2002 (Budget)	1.5	1.4	0.0	0.1	92.6%

1. *2000 Performance*—The noncash collection service recovered 108.6 percent of total expenses in 2000, including imputed expenses and targeted ROE, slightly exceeding the targeted recovery rate of 108.1 percent. Volume for 2000 declined 15.3 percent from 1999 levels, compared with a budgeted decline of 29.3 percent, and revenue declined 20.1 percent from 1999 levels, compared with a budgeted decline of 31.6 percent. Total costs for 2000 increased 3.6 percent over 1999 levels, compared with an 11.3 percent budgeted decline. The increase was primarily due to additional costs associated with the purchase of computer equipment.

2. *2001 Performance*—Through August 2001, the noncash collection service recovered 118.1 percent of its costs. For full-year 2001, the Reserve Banks estimate that the noncash collection service will recover 106.7 percent of costs, including imputed expenses and targeted ROE, compared with the targeted recovery rate of 102.5 percent. Through August, volume declined 20.2 percent compared with the same period in 2000. The Reserve Banks estimate that full-year 2001 volume and revenue will decrease 20.8 percent and 18.6 percent, respectively, from the 2000 levels; these estimates are consistent with the budgeted decline. In addition, the Reserve Banks anticipate that full-year total costs will decrease 17.3 percent from 2000 levels, compared with a 12.4 percent budgeted decline.

3. *2002 Pricing*—The Reserve Banks will retain all fees in 2002 at their current levels. The Reserve Banks project that the noncash collection service will recover 92.6 percent of total costs, including imputed expenses and targeted ROE, in 2002. The underrecovery is the result of continuing volume decline within the service. The Reserve Banks project a volume decline of 22.8 percent in 2002, from the 2001 estimate, resulting in a revenue decline of $0.5 million (25.6 percent). The Reserve Banks project that total costs will decline $0.3 million (14.3 percent) in 2002 compared with the 2001 estimate.

New issues of bearer municipal securities effectively ceased in 1983 when the Tax Equity and Fiscal Responsibility Act of 1982 removed the tax advantage for investors. Volume decline will continue as the number of outstanding physical securities diminishes and other service providers compete for the remaining coupon redemption and bond-collection activity.

G. *Special Cash*—Priced special cash services represent a very small portion (less than one percent) of overall cash services provided by the Reserve Banks to depository institutions. Special cash services include providing wrapped coin, packaging nonstandard currency orders and deposits, and making registered mail shipments of currency and coin. Table 12 presents the actual 2000, estimated 2001, and projected 2002 cost recovery performance for special cash services.

TABLE 12.—SPECIAL CASH PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	Revenue	Total expense	Net income (ROE) (1–2)	Target ROE	Recovery rate after target ROE [1/(2+4)]
	1	2	3	4	5
2000	2.2	2.2	0.1	0.1	98.8
2001 (Estimate)	2.2	2.1	0.2	0.1	104.4
2002 (Budget)	2.3	2.2	0.2	0.1	103.8

1. *2000 Performance*—In 2000, special cash services recovered 98.8 percent of total expenses, including imputed expenses and targeted ROE, compared with a targeted recovery rate of 101.7 percent. This underrecovery was due primarily to the increase in the costs associated with the registered mail service in Kansas City.

2. *2001 Performance*—Through August 2001, special cash services recovered 103.7 percent of total expenses, including imputed expenses and targeted ROE. For full-year 2001, the Reserve Banks estimate that special cash services will recover 104.4 percent of total expenses compared with a targeted recovery rate of 100.5 percent. The overrecovery is primarily due to higher-than-anticipated volumes of nonstandard packages in Chicago along with mid-year price increases for coin wrapping and registered-mail services in Helena. The additional revenue is offset slightly by the discontinuation of nonstandard packaging in El Paso and registered mail services in Boston.

3. *2002 Pricing*—For 2002, the Reserve Banks project that special cash services will recover 103.8 percent of costs, including imputed expenses and targeted ROE. Total costs are projected to increase $0.1 million or 6.2 percent from the 2001 level, and revenue is expected to increase $0.1 million or 5.5 percent from the 2001 level. The anticipated cost increase is due to an increase in direct and support costs associated with the Kansas City registered mail service; the anticipated revenue increase is due to the full-year effect of the mid-year repricing for coin wrapping and registered mail in Helena and the increase in the registered mail surcharge in the Tenth District.

Beginning in January 2002, the Tenth District will increase the insurance fee from $0.32 to $0.45 and increase the surcharge for registered mail from $16 to $24. The increase in the insurance fees will offset an increase in registered mail insurance costs, and the increase in the registered mail surcharge reflects higher projected costs to manage insurance issues for this service. The Tenth District expects registered mail volume to decrease approximately 12 percent because of an active campaign to encourage the use of armored-carrier service.

II. Private-Sector Adjustment Factor

A. *Background*—Each year, as required by the Monetary Control Act of 1980, the Reserve Banks set fees for priced services provided to depository institutions. These fees are set to recover all direct and indirect costs and imputed costs, including financing costs, return on equity (profit), taxes, and certain other expenses that would have been incurred if a private business firm provided the services. These imputed costs are based on data developed in part from a model comprising consolidated financial data for the nation's fifty largest bank holding companies (BHCs). The imputed costs and imputed profit are collectively referred to as the PSAF. In a comparable fashion, investment income is imputed and netted with related direct costs associated with clearing balances to estimate net income on clearing balances (NICB).

The Board approved the following method changes, which are incorporated in the 2002 PSAF and NICB calculations:

- A portion of clearing balances is used as a funding source for priced services assets. Long-term assets are partially funded from an initial core amount of $4 billion clearing balances.[25] The new method requires an analysis of interest rate risk sensitivity, which compares rate-sensitive assets with rate-sensitive liabilities and measures the effect on cost recovery of a change in interest rates of up to 200 basis points.
- Equity is imputed at 5 percent of total assets in order to meet the FDIC definition of a well-capitalized institution in its classification for assessing insurance premiums.
- The pre-tax return on equity (ROE) is determined using the results of the comparable accounting earnings model (CAE), the discounted cash-flow model (DCF), and the capital asset pricing model (CAPM). Within the CAPM and DCF models, the ROE is weighted based on market capitalization, and within the CAE model, the ROE calculation is equally weighted. The results of the three models are averaged to impute the PSAF pre-tax ROE.
- The peer group of the fifty largest bank holding companies is selected based on total deposits.

The new method reduces both the amount of imputed debt and its associated costs included in the PSAF and the imputed investments and related income included in the NICB. Following is a description of the PSAF and NICB calculations:

1. *Private Sector Adjustment Factor*—The method for calculating the financing and equity costs in the PSAF requires determining the appropriate levels of debt and equity to impute and applying the applicable financing rates. This requires developing a pro forma priced services balance sheet using actual Reserve Bank assets and liabilities associated with priced services and imputing the remaining elements that would exist if the Reserve Banks' priced services were provided by a private sector business firm.

The amount of the Reserve Banks' assets that will be used to provide priced services during the coming year is determined using Reserve Bank information on actual assets and projected disposals and acquisitions. The priced portion of mixed-use assets is determined based on the allocation of the related depreciation expense. The priced portion of actual Reserve Bank liabilities consists of balances held by Reserve Banks for clearing priced services transactions (clearing balances), estimated based on historical data, and other liabilities such as accounts payable and accrued expenses.

Short-term debt is imputed only when non-core clearing balances and short-term liabilities are not sufficient to fund short-term assets. Long-term debt is imputed only when core clearing balances and long-term liabilities are not sufficient to fund long-term assets or if the interest rate risk sensitivity analysis indicates that estimated risk will exceed a change in cost recovery of more than two percentage points. Equity is imputed to meet regulatory requirements for a well-capitalized institution, which is currently 5 percent of total assets and 10 percent of risk-weighted assets.

a. *Financing rates*—When needed to impute short- and long-term debt, the debt rates are derived based on these elements in the BHC model. Equity financing rates are based on the average of the return on equity (ROE) results of three economic models using data from the BHC model.

For simplicity, given that federal corporate tax rates are graduated, state tax rates vary, and various credits and deductions can apply, a specific tax rate is not calculated for Reserve Bank priced services. Instead, the use of a pre-tax ROE captures imputed taxes. The resulting ROE influences the dollar level of the PSAF and Federal Reserve price levels because this is the return a shareholder would expect in order to invest in a private business firm. The use of the pre-tax return on equity assumes 100 percent recovery of expenses, including the targeted return on equity. The recommended PSAF is, therefore, based on a precise matching of revenues and actual and imputed costs. Should the pre-tax earnings be greater or less than the targeted ROE, the PSAF is adjusted for the tax expense or savings associated with the adjusted recovery. The imputed tax rate is the median of the rates paid by the BHCs over the past five years adjusted to the extent that BHCs are invested in municipal bonds.

b. *Other Costs*—The PSAF also includes the estimated priced services expenses of the Board of Governors and imputed sales taxes based on Reserve Bank expenses. An assessment for FDIC insurance, when required, is imputed based on current FDIC rates and projected clearing balances held with the Federal Reserve.

2. *Net Income on Clearing Balances*—The NICB calculation is made each year along with the PSAF calculation and is based on the assumption that Reserve Banks invest clearing balances net of balances used to finance priced-services assets and imputed reserves. Based on

[25] Core clearing balances are considered the portion of the balances that have remained stable over time without regard to the magnitude of actual clearing balances. The remainder of the balances is considered non-core clearing balances and shore term in duration.

these net clearing balance levels, Reserve Banks impute an equal investment in three-month Treasury bills. The calculation also involves determining the actual priced services cost of earnings credits (amounts available to offset future service fees) on contracted clearing balances held, net of expired earnings credits, based on the federal funds rate. The rates and clearing balance levels used in the NICB estimate are based on the actual rates and balances from the six months before the calculation date. Because clearing balances are held for clearing priced services transactions, they are directly related to priced services. Therefore, the net earnings or expense attributed to the imputed Treasury-bill investments and the cost associated with holding clearing balances are considered income for priced services activities.

B. *Discussion*—The decrease in the 2002 PSAF is primarily due to the recent method changes. Because core clearing balances, rather than imputed debt, are funding long-term priced services assets, there is a decline in PSAF expenses associated with debt financing. In addition, a reduction in required imputed equity results in a reduction of equity costs. The decline in debt financing expenses and equity costs in the PSAF is offset by a reduction in imputed Treasury-bill investment earnings in the NICB.

1. *Asset Base*—The total estimated cost of Federal Reserve assets to be used in providing priced services is reflected in table 13. While total priced services assets have decreased, the pension asset and other assets financed through the PSAF including premises, receivables, and prepaid expenses have increased. Table 14 shows that the short-term assets funded with short-term payables and non-core clearing balances total $113.3 million. This amount represents an increase of $9 million, or 8.6 percent, from the short-term assets funded in 2001. Long-term assets funded with long-term liabilities, core clearing balances, and equity are projected to total $1,479.3 million. This amount represents an increase of $83.9 million, or 6 percent, from the long-term assets funded in 2001. Growth of $81.6 million in the pension asset explains the majority of the increase, while increases in Board and Reserve Bank building assets explain an additional $13.6 million. These increases are offset by a decrease of $11.3 million in other Reserve Bank fixed assets.

2. *Debt and Equity Costs and Taxes*—As previously mentioned, core clearing balances from the NICB calculation are available as a funding source for priced services assets. Table 14 shows that $633.0 million in clearing balances are used to fund priced services assets in 2002. The interest rate sensitivity analysis in table 15 indicates that potential T-bill and federal funds rate decreases of 200 basis points produce a decrease in cost recovery of 0.2 percentage points. The established threshold for change to cost recovery is two percentage points; therefore, interest rate risk associated with using these balances is within acceptable levels and no long-term debt is imputed.

Table 16 shows the imputed PSAF elements, the pre-tax return on equity, and other required PSAF recoveries proposed for 2002 along with the financing and tax rates used for developing the 2002 PSAF. The elimination of imputed short- and long-term debt results in a decline in expenses associated with debt financing of $32.0 million. The pre-tax return on equity rate decreased from 24.0 percent for 2001 to 22.1 percent for 2002. As a result of this rate decrease and reduced imputed equity, the pre-tax return on equity declined $28.6 million. As indicated previously, the 2002 pre-tax return on equity was calculated using the combined results of three models, while 2001 PSAF pre-tax return on equity was calculated using the single CAE method. The effective tax rate used in 2002 also decreased to 29.3 percent from 31.5 percent in 2001.

3. *Capital Adequacy and FDIC Assessment*—As shown in table 17, the amount of equity imputed for the proposed 2002 PSAF is $592.3 million, a decrease of $72.1 million from imputed equity of $664.4 in 2001. As noted above, the 2002 equity is based on 5 percent of total assets, as required by the FDIC for a well-capitalized institution in its definition for purposes of assessing insurance premiums. In both 2002 and 2001, the capital to risk-weighted asset ratio and the capital to total assets ratio both exceed regulatory guidelines. As a result, no FDIC assessment is imputed for either year.

4. *Peer Group*—Using total deposits instead of total assets as the basis of selection of the peer group marginally changed the peer group composition. Three new holding companies are represented for 2000 data, the last year for which audited data are available.

III. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy statement "The Federal Reserve in the Payments System." [26] Under this policy, the Board assesses whether the change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position of the Federal Reserve deriving from such legal differences. If the fees or fee structures create such an effect, staff must further evaluate the changes to assess whether their benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while reducing the hindrances to competition.

The Board does not believe that these fees or fee structures will have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. Assuming the Reserve Banks' volume and cost projections are accurate, these fees are set to provide the Federal Reserve a return on equity similar to that earned by the large BHCs and provide for full cost recovery over the long run.

[26] FRRS 7–145.2.

TABLE 13.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars—average for year]

	2002	2001
Short-term assets:		
Imputed reserve requirement on clearing balances[27]	$ 678.5	$ 742.4
Investment in marketable securities[27]	5,473.0	6,681.9
Receivables	81.7	77.3
Materials and supplies	3.8	3.6
Prepaid expenses	27.8	23.4
Items in process of collection[28]	4,102.8	3,606.7
Total short-term assets	10,367.6	11,135.3
Long-term assets:		
Premises[29]	431.1	417.5
Furniture and equipment	177.7	185.5
Leasehold improvements and long-term prepayments	70.4	73.9
Prepaid pension costs	800.1	718.5
Total long-term assets	1,479.3	1,395.4
Total assets	$11,846.9	$12,530.7
Short-term liabilities:		
Clearing balances and balances arising from early credit of uncollected items	$ 7,377.5	$ 7,424.3
Deferred credit items[28]	3,509.8	3,606.7
Short-term debt[30]	0.0	18.9
Short-term payables	103.9	85.4
Total short-term liabilities	10,991.2	11,135.3
Long-term liabilities:		
Postemployment/retirement benefits	263.4	251.9
Long-term debt[30]	0.0	479.1
Total long-term liabilities	263.4	731.0
Total liabilities	11,254.6	11,866.3
Equity	592.3	664.4
Total liabilities and equity	$11,846.9	$12,530.7

[27] Funded with clearing balances.
[28] Represents float costs that are directly estimated at the service level.
[29] Includes allocations of Board of Governors' assets to priced services of $1.1 million for 2002 and $0.7 million for 2001.
[30] No debt is imputed in 2002 because clearing balances are used as an available funding source.

TABLE 14.—PORTION OF CLEARING BALANCES USED TO FUND PRICED SERVICES ASSETS IN 2002

[Dollar amounts in millions]

A. Short-term asset funding:	
Short-term assets to be funded:	
Receivables	$81.7
Materials and supplies	3.8
Prepaid expenses	27.8
Total short-term assets to be funded	113.3
Short-term funding sources: Short-term payables	103.9
Portion of short-term assets funded with imputed short-term debt or non-core clearing balances [31]	9.4
B. Long-term asset funding:	
Long-term assets to be funded:	
Premises	$431.1
Furniture and equipment	177.7
Leasehold improvements and long-term prepayments	70.4
Prepaid pension cost	800.1
Total long-term assets to be funded.	
Long-term funding sources:	
Postemployment/retirement benefits liability	263.4
Imputed equity [32]	592.3
	855.7
Portion of long-term assets funded with imputed long-term debt or core clearing balances [31]	623.6

C. Total clearing balances used for funding priced-services assets.

[31] Clearing balances shown on table 13 are available for funding priced-services assets. Using these balances reduces the amount available for investment in Treasury bills for the net income on clearing balances calculation. Short-term assets are funded with non-core clearing balances. Long-term assets are funded with core clearing balances; a total of $4 billion in balances is available for this purpose. No short-or long-term debt is imputed.

[32] See table 16 for calculation of required imputed equity amount.

TABLE 15.—2002 INTEREST RATE SENSITIVITY ANALYSIS

[Dollar amounts in millions]

	Rate sensitive	Rate insensitive	Total
Assets:			
Imputed reserve requirement on clearing balances		$678.5	$78.5
Investment in marketable securities	$5,473.0		5,473.0
Receivables		81.7	81.7
Materials and supplies		3.8	3.8
Prepaid expenses		27.8	27.8
Items in process of collection [33]	593.0	3,509.8	4,102.8
Long-term assets		1,479.3	1,479.3
Total assets	$6,066.0	$5,780.9	$11,846.9
Liabilities:			
Clearing balances and balances arising from early credit of uncollected items [34]	$5,892.2	$1,485.3	$7,377.5
Deferred credit items		3,509.8	3,509.8
Short-term payables		103.9	103.9
Long-term liabilities		263.4	263.4
Total liabilities	$5,892.2	$5,362.4	$11,254.6
Rate change results:		200 basis point decrease in both rates	
Asset yield ($6,066.0x − .02)		$(121.3)	
Liability cost ($5,892.2x − .02)		(117.8)	
Effect of 200 basis point decrease		$(3.5)	
2002 budgeted revenue	$955.9		
Effect of decrease	(3.5)		
Revenue adjusted for effect of interest rate decrease	$952.4		
2002 budgeted total expenses	$900.9		
2002 budgeted target ROE	92.5		
Tax effect of interest rate decrease ($ − 3.5 × 29.3%)	(1.0)		
Total recovery amounts	$992.4		
Recovery rate before interest rate decrease	96.2%		
Recovery rate after interest rate decrease	96.0%		
Effect of interest rate decrease on cost recovery [35]	.2%		

[33] The amount designated rate sensitive represents the amount of cash items in process of collection that are invested in three-month Treasury bills.

[34] The amount designated rate insensitive represents clearing balances on which earnings credits are not paid.

[35] Effect of a potential change in rates is less than a 2 percentage point change in cost recovery, therefore, no long-term debt is imputed for 2002.

TABLE 16.—DERIVATION OF THE 2002 AND 2001 PSAF [DOLLAR AMOUNTS IN MILLIONS]

	2002	2001
A. Imputed elements:		
Short-term debt [36]	$0.0	$18.9
Long-term debt [37]	$0.0	$479.1
Equity:		
Total assets from table 13	$11,846.9	
Required capital ratio [38]	5%	
Total equity	$592.3	$664.4
B. Cost of Capital:		
1. Financing rates/costs:		
Short-term debt	N/A	4.7%
Long-term debt	N/A	6.5%
Pre-tax return on equity [39]	22.1%	24.0%
2. Elements of capital costs: [40]		
Short-term debt	$0.0	$18.9×4.7% = $.9
Long-term debt	0.0	479.1×6.5% = 31.1
Equity	$592.3×22.1% = 130.9	664.4×24.0% = 159.5

TABLE 16.—DERIVATION OF THE 2002 AND 2001 PSAF [DOLLAR AMOUNTS IN MILLIONS]—Continued

	2002	2001
Total equity	$130.9	$191.5
C. Other required PSAF recoveries:		
Sales taxes	$14.1	$10.5
Federal deposit insurance assessment	0.0	0.0
Board of Governors expenses	5.1	4.9
	19.2	15.4
D. Total PSAF recoveries	$150.1	$206.9
As a percent of assets	1.3%	1.7%
As a percent of expenses [41]	19.0%	28.5%
E. Tax rates	29.3%	31.5%

[36] No short-term debt is imputed in 2002 because clearing balances are used as a funding source. For 2001, short-term debt is imputed to finance only those assets that are not funded with short-term payables.
[37] No long-term debt is imputed in 2002 because clearing balances are used as a funding source. For 2001, long-term debt consists of total priced long-term assets less postretirement/postemployment benefit liabilities.
[38] Based on the Federal Deposit Insurance Corporation's definition of a well-capitalized institution for purposes of assessing insurance premiums.
[39] For 2001, the pre-tax rate of return on equity is based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pre-tax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pre-tax return on equity for use in the PSAF. For 2002, the pre-tax rate of return on equity is determined averaging the result from the method used for 2001 (23.5%), along with results from a capital asset pricing model (21.4%), and a discounted cash flow model (21.4%).
[40] The division of financing between debt and equity for 2001 was determined using the debt-to-equity ratio from the bank holding company model.
[41] System 2002 budgeted priced services expenses less shipping are $791.9 million.

TABLE 17.—COMPUTATION OF 2002 PROPOSED CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars]

	Assets	Risk weight	Weighted assets
Imputed reserve requirement on clearing balances	$678.5	0.0	0.0
Investment in marketable securities	5,473.0	0.0	0.0
Receivables	81.7	.2	16.3
Materials and supplies	3.8	1.0	3.8
Prepaid expenses	27.8	1.0	27.8
Items in process of collection	4,102.8	.2	820.6
Premises	431.1	1.0	431.1
Furniture and equipment	177.7	1.0	177.7
Leases, leasehold improvements & long-term prepayments	70.4	1.0	70.4
Prepaid pension costs	800.1	1.0	800.1
Total	$11,846.9		$2,347.8

Imputed equity for 2002: $592.3
Capital to risk-weighted assets: 25.2%
Capital to total assets: 5.0%

AUTOMATED CLEARING HOUSE FEE SCHEDULE [42]

	Fees
Origination (per item or record): [43]	
Items in small files	$0.0055
Items in large files	0.0040
Addenda record	0.0020
Receipt (per item or record):	
Item	0.005
Addenda record	0.002
Input file-processing fees (per file)	5.00
Monthly fees (per routing number):	
Account servicing fee [44]	25.00
FedACH settlement [45]	20.00
Information extract file	10.00
Voice response return item/notification of change (NOC) fees [46]	2.00
Nonelectronic input/output fees: [47]	
Tape input/output	25.00
Paper output	15.00
Diskette output	15.00

AUTOMATED CLEARING HOUSE FEE SCHEDULE [42]—Continued

	Fees
Facsimile return/NOC [48]	15.00
Cross-border fees:	
Cross-border item surcharge [49]	0.039
Same-day recall of item at receiving gateway operator	3.50
Same-day recall of item not at receiving gateway operator	5.00
Item trace	5.00
Microfiche	3.00
Delivery by courier	10.00

[42] This fee schedule does not include the Reserve Banks' charges to private-sector operators for interoperator transactions.
[43] Small files contain fewer than 2,500 items and large files contain 2,500 or more items.
[44] The account servicing fee applies only to routing numbers that have received or originated transactions that are processed by the Federal Reserve. Institutions that have a "government only" receiver status or that elect to use a PSO exclusively are not assessed the account servicing fee.
[45] The fee for FedACH settlement is applied to any routing number with activity during a month. This fee does not apply to routing numbers that use the Federal Reserve for government transactions only.
[46] The fee includes the transaction fee in addition to the voice-response fee. The Reserve Banks also assess a $15 fee for every government paper return/NOC they process. This service is not considered a priced service. The fee includes the transaction fee in addition to the conversion fee.
[47] These services are offered in contingency situations only.
[48] The fee includes the transaction fee in addition to the conversion fee.
[49] The cross-border item surcharge is a per-item surcharge in addition to the standard item, addenda, and input processing fees.

FUNDS TRANSFER AND NET SETTLEMENT FEE SCHEDULE

	Fees
Funds transfer:	
Volume-based pricing fees (originations and receipts):	
Per transfer for the first 2,500 transfers per month	$0.31
Per transfer for additional transfers up to 80,000 per month	0.22
Per transfer for every transfer over 80,000 per month	0.15
Surcharge:	
Off-line transfer originated	15.00
Telephone notification	15.00
Net settlement:	
Basic fee:	
Settlement charge per entry	0.80
Settlement file charge	14.00
Surcharge: Off-line origination per file	25.00
Monthly account maintenance [50]	60.00
Fedwire-based net settlement: [51] Settlement charge per day	100.00

[50] The monthly account maintenance fee will only be assessed if total settlement charges during a calendar month are less than $60. The fee will be reduced by the total amount of any per entry and per settlement charges incurred during the month.
[51] Participants in arrangements and settlement agents are also charged the applicable Fedwire funds transfer fee for each transfer into and out of the settlement account.

BOOK-ENTRY SECURITIES FEE SCHEDULE

[Agency Securities]

	Fees
Book-entry securities transfer:	
Basic transfer fee: Transfer or reversal originated or received	$0.66
Surcharge: Off-line transfer or reversal originated or received	25.00
Monthly maintenance fees:	
Account maintenance (per account)	15.00
Issues maintained (per issue/per account)	0.41
Purchase & sale: Transaction fee	40.00

NONCASH COLLECTION FEE SCHEDULE

	Fees
Coupon collection:	
Cash letters:	
With five or fewer coupon envelopes	$7.50
With six to fifty coupon envelopes	15.00
Coupon envelopes:	
With five or fewer coupon envelopes	4.75
With six to fifty coupon envelopes	2.50
Return items	20.00

NONCASH COLLECTION FEE SCHEDULE—Continued

	Fees
Bond collection (per bond)	[52]40.00

[52] Plus actual shipping costs.

SPECIAL CASH SERVICES FEE SCHEDULE

	Fees
Wrapped coin (per box[53])	
Helena	$3.25
Nonstandard packaging	
Seventh District offices (per currency order or deposit)	$12.00[54]
Helena (per coin bag deposited)	Will be discontinued December 2001
El Paso (Express Cash orders)	Discontinued October 2001

[53] There are 50 rolls of coin in each box.
[54] This service only applies to the $1 through $20 denominations.

	Surcharge	Insurance Fee[56]
Registered Mail Fees[55]		
First District	Discontinued April 2001	
Helena[57]	$30.00	
Tenth District Offices	$24.00	$0.45

[55] Depository institutions also pay any postage fees incurred for registered mail. Postage fees are billed separately from Federal Reserve Bank surcharges and insurance fees.
[56] Insurance fees are based on every $1,000 shipped via the registered mail service in excess of the first $25,000, which is covered by the U.S. Postal Service.
[57] The Helena Office only ships registered mail packages valued up to $25,000, so no additional insurance is needed in excess of the $25,000 covered by the U.S. Postal Service.

ELECTRONIC CONNECTION FEE SCHEDULE[58]

[The Reserve Banks charge fees for the electronic connections that depository institutions use to access priced services; Banks allocate cost and revenue associated with electronic access to the various priced services.]

Current Fednet network:	
Dial—receive and send (FedLine®)	$75.00 per month
Link encrypted dial	$200.00 per month
High-speed dial @ 56 kbps	$350.00 per month
Multi-drop leased line	$500.00 per month
Dedicated leased line (to 9.6 kbps)	$750.00 per month
High-speed leased line @ 19.2 kbps	$850.00 per month
High-speed leased line @ 56 kbps	$1,000.00 per month
High-speed leased line @ 128 kbps	$1,800.00 per month
High-speed leased line @ 256 kbps	$2,000.00 per month
Premium dedicated dial test connection	$500.00 per month
Basic dedicated dial test connection	$250.00 per month
Shared dial test connection	$150.00 per month
Third party contingency site dial test connection	$45.00 per month
Additional backup modem/DSU	$25.00 per month
Additional backup link encryptor	$20.00 per month
Cross-district	Actual cost[59]
Frame relay network:	
Frame Relay-FedLine @ up to 19.2 kbps[60]	$500.00 per month
Frame Relay-Computer Interface (CI) @ 56 kbps	$1,000.00 per month
Frame Relay-CI @ 256 kbps	$2,000.00 per month
Frame Relay-CI T1	$2,500.00 per month

[58] Installation, training, contingency hardware, and software certification are not considered priced services, and the fees for these services are not listed here. For a copy of the full electronic access fee schedule, contact the local Federal Reserve Bank.
[59] The customer will pay the actual costs of the circuit and a monthly surcharge to cover an equitable share of expenses associated with customer support, depreciation of hardware (that is, link encryption units), and other overhead expenses. This fee must be, at a minimum, equivalent to the standard fee for the particular type of leased line connection.
[60] The frame relay FedLine 19.2 kbps connection is identical to the frame relay 56 kbps connection except for the following: (a) Redundant equipment is not included with the 19.2 kbps option; and (b) the speed limitation of 19.2 kbps is imposed by FedLine. This connection is otherwise capable of operating at 56 kbps.

Test adn Contingency Options[63]

Connection type	Logical split	Full circuit backup	Frame connection only	Redundant component set
FedLine @ up to 19.2 kbps	No charge	$500	$420	$155
CI @ 56 kbps	No charge	845	765	N/A
CI @ 256 kbps	No charge	1,750	1,585	N/A
CI T1	No charge	2,230	2,010	N/A

[61] Test and contingency options, including redundant parts, are only available to customers with a primary connection. The exception is a third party vendor.

Logical split: Applies to production and test systems that are located together at the same facility. The institution could use the production equipment with a logical split (different port) in its router as a test or contingency facility. There is no additional cost for this option.

Full-circuit backup: Applies to production and test systems, or production and contingency systems, that are located at separate facilities, including another bank office or a third-party contingency site.[62] This option replicates full production technology and costs; only one set of equipment components is provided.

Frame connection only: Applies to production and test systems, or production and contingency systems, that are located at separate facilities. The institution uses a frame relay link connection with no ISDN dial-up backup. Only one set of equipment components is provided.[63]

Redundant components: Includes a Cisco router, a DSU and a link encryptor.

By order of the Board of Governors of the Federal Reserve System, October 31, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–27779 Filed 11–6–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 001 0040]

Airgas, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 26, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christina Perez, FTC/S–2308, 600 Pennsylvania Ave., NW., Washington, DC (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 26, 2001), on the World Wide Web, at *"http://www.ftc.gov/os/2001/10/index.htm."* A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania. Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Airgas, Inc. ("Airgas"), which is designed to remedy the anticompetitive effects resulting from an acquisition by certain wholly-owned subsidiaries of Airgas of the Puritan Bennett Medical Gas Business ("Puritan Bennett"). Under the terms of the Consent Agreement, Airgas will be required to divest a nitrous oxide business to Air Liquide America Corporation ("Air Liquide") within ten days of the date the Commission issues the Decision and Order in this matter.

The Consent Agreement has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the Decision and Order.

On January 21, 2000, Airgas acquired Puritan Bennett from Mallinckrodt, Inc., for approximately $90 million. The

[62] Prices shown are for full-circuit backup only located at the customer site. Multiple customers sharing a single disaster-recovery connection at a third-party provider will result in custom implementations. Districts will bill the vendor's bank for the contingency circuit

[63] Prices shown are for frame connection only located at the customer site. Multiple customers sharing a single disaster recovery connection at a third-party provider will result in custom implementations. Districts will bill the vendor's bank for the contingency circuit.

Commission's Complaint alleges that the acquisition violated section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the market for the production and sale of nitrous oxide in the United States and Canada ("North America").

Nitrous oxide is a clear, odorless gas that is mainly used in dental and surgical procedures as an analgesic or a weak anesthetic. Because nitrous oxide elevates the patient's pain threshold and relieves patient anxiety, it is predominantly used by dentists when a patient is undergoing extensive dental work or by anesthesiologists during many surgical procedures as a supplement to other anesthetics. According to customers of nitrous oxide, other anesthetics and analgesics are far more expensive or have other detriments when compared to nitrous oxide, and thus are not viable substitutes for nitrous oxide.

Currently, Airgas is the only producer of nitrous oxide in North America. However, prior to its purchase by Airgas, Puritan Bennett was also a producer and seller of nitrous oxide in North America. As a result, before the acquisition, Puritan Bennett and Airgas competed against each other for a wide variety of nitrous oxide customers across the country. Therefore, Airgas's acquisition of Puritan Bennett effectively elimated any competition in the North American market for the production and sale of nitrous oxide.

There are substantial barriers to new entry into the nitrous oxide market. Effective new entry would require a company to build multiple production facilities, which would take well in excess of two years. In addition, a new entrant would have to incur substantial investments, including the acquisition of a source of red material and the development of an appropriate infrastructure to deliver bulk nitrous oxide to end-users and to distributors for resale. In light of the fact that the nitrous oxide market is relatively small compared to the costs that a new entrant would have to incur, new entry is not likely to occur. Because of the cost and difficulty of accomplishing these tasks, no new entry into the nitrous oxide market is likely to occur within the next two years to deter or counteract the anticompetive effects resulting from the transaction.

The proposed order effectively remedies the acquisition's anticompetitive effects in the North American nitrous oxide market by requiring Airgas to divest a nitrous oxide business, which consists of two nitrous oxide production plants, customers contracts, and all related assets necessary for distribution and storage to Air Liquide. The order also requires Airgas to supply Air Liquide with a specified amount of bulk liquid nitrous oxide from its Florida nitrous oxide production plant in order to ensure that Air Liquide has the same volume of nitrous oxide as Airgas did before its acquisition of Puritan Bennett.

Air Liquide has all of the necessary attributes to restore competition to the relevant market. Not only does it produce other medical gases, such as medical grade oxygen and nitrogen, but it also already has extensive contracts with gas distributors, which are the major customers of nitrous oxide. Indeed, many distributors already buy a wide variety of other gases from Air Liquide. Furthermore, Air Liquide has the financial resources to purchase the assets and operate the business in a competitive manner.

Pursuant to the proposed order, Airgas is required to divest these assets to Air Liquide within ten days of the date the Commission issues the Decision and Order in this matter. If the divestiture to Air Liquide is not accomplished by then, Airgas must divest these nitrous oxide assets to a Commission-approved acquirer within six months. Should Airgas fail to do so, the Commission may appoint a trustee to divest the business.

In order to ensure that the Commission remains informed about the status of the Airgas nitrous oxide business pending divestiture, and about efforts being made to accomplish the divestiture, the Consent Agreement requires Airgas to report to the Commission within 30 days, and every 60 days thereafter until the divestiture is accomplished. In addition, Airgas is required to report to the Commission every 60 days regarding its obligations to provide transitional services and facilities management.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute on official interpretation of the Consent Agreement or to modify in any way its terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–27960 Filed 11–6–01; 8:45 am]

BILLING CODE 6750–1–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Agency Information Collection Activities Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. Survey of Research Integrity Measures Utilized in Biomedical Research Laboratories—NEW—The Office of Research Integrity (ORI) in performing its responsibilities, expanded its education program to promote research integrity and discourage research misconduct. As part of this education program the proposed survey will identify the measures that are being utilized by the institutions to prevent misconduct and promote research integrity in biomedical research laboratories, and establish a database on biomedical research laboratories that may be used for secondary analysis by other researchers interested in research integrity. Respondents: Business or other for-profit, Non-profit institutions; Burden Information—Number of Respondents: 5000; Frequency of Response: one time; Average Burden per Response: 15 minutes; Burden: 1,250 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov*, or mail to OS Reports Clearance Office, Room 503H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Comments should be received within 60 days of this notice.

Dated: October 30, 2001.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 01–27981 Filed 11–6–01; 8:45 am]

BILLING CODE 4150–31–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, has been renewed for a 2-year period, extending through October 31, 2003.

For further information, contact Julie Gerberding, M.D., Acting Executive Secretary, Board of Scientific Counselors, National Center for Infectious Diseases, Centers for Disease Control and Prevention, of the Department of Health and Human Services, 1600 Clifton Road, NE, M/S C–12, Atlanta, Georgia 30333, telephone 404–639–3967 or fax 404–639–3039.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–27906 Filed 11–6–01; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Location Change

ACTION: Notice.

CDC announces the following change to the notice of meeting published October 2, 2001, 66 FR 50201.

Nome: Healthcare Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., November 13, 2001. 8:30 a.m.–4 p.m., November 14, 2001.

Old Place: CDC, Auditorium A, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

NEW PLACE: Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345. Telephone: 404–325–0000.

Status: Open to the public, limited only by the space available.

Summary: Notice is given that meeting place for Healthcare Infection Control Practices Advisory Committee has changed. The meeting status, and purpose, announced in the original notice remain the unchanged.

Contact Person for More Informotion: Michele L. Pearson, M.D., Executive Secretary, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE., M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for ToxicSubstances and Disease Registry.

Dated: November 1, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–27905 Filed 11–6–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: TANF Time Limits Questionnaire.

OMB No.: New Collection.

Description: The imposition of federally imposed time limits on the receipt of cash assistance under the Temporary Assistance to Needy Families (TANF) program was a central and major part of welfare reform. The earliest that TANF recipients could be affected by the 60-month Federal limit will be in the last quarter of 2001. The purpose of the TANF Time Limits project is to document what is known about this important element of welfare reform as the period for TANF re-authorization approaches. The proposed survey instrument is intended to obtain " real-time" information from those States in which TANF recipients could have reached the 60 month limit on receipt of federally funded assistance in the last quarter of calendar year 2001 or terminated earlier under a State specific time limit. The instrument is designed to gather preliminary information about the number of families accumulating 60 months of benefits, the outcomes for such families (*e.g.*, cases closed, benefits extended with Federal funds, benefits extended with State funds), and the policies and practices of states to work with families approaching or reaching the Federal and State time limit.

Respondents: The primary respondents for the questionnaire are those States that implemented TANF before February 1997. States that implemented TANF later might also be surveyed.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Time Limits Questionnaire. State where:				
No one could have reached a time limit				
First call	18	1	.25	4.5
Written survey	18	1	10	180
Second call	18	1	.5	9
Only state time limit is binding				
First call	16	1	.25	4
Written survey	16	1	14	224
Second call	16	1	1	16

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Only federal time limit is binding				
First call	13	1	.25	3.25
Written survey	13	1	21	273
Second call	13	1	1	13
Federal and state time limits are binding.				
First call	4	1	.25	1
Written survey	4	1	23	92
Second call	4	1	1.5	6
Estimated Total Annual Hours:				825.75

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, *Attn:* Desk Officer for ACF.

Dated: November 1, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–27980 Filed 11–6–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D–0139]

International Conference on Harmonisation; Guidance on Q1A Stability Testing of New Drug Substances and Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance entitled "Q1A(R) Stability Testing of New Drug Substances and Products." The revised guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance sets forth recommendations on the information to be submitted in the stability data package for a new drug substance or drug product for a registration application within the three regions of the European Union (EU), Japan, and the United States. The purpose of the revision is to add information to certain sections and to provide clarification to other sections of the guidance.

DATES: This guidance is effective November 7, 2001. Submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Chi-wan Chen, Center for Drug Evaluation and Research (HFD–830), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2001, or Andrew Shrake, Center for Biologics Evaluation and Research (HFM–345), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–402–4635.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The EU, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labor and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency has changed its procedures for publishing ICH guidances. As of April 2000, FDA no longer include the text of ICH guidances in the **Federal Register**. Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance is placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). Draft ICH guidances are left in the original ICH format. Final guidances are reformatted to conform to the GGP style before publication.

In the **Federal Register** of April 21, 2000 (65 FR 21446), FDA published a draft revised tripartite guidance entitled "Q1A(R) Stability Testing of New Drug Substances and Products." The notice gave interested persons an opportunity to submit comments by June 5, 2000. The draft revised guidance was a revision of an ICH guidance on the same topic published in the **Federal Register** of September 22, 1994 (59 FR 48754).

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on November 9, 2000.

ICH Q1A provides guidance on the information to be submitted in the stability data package for a new drug substance or drug product for a registration application within the three regions: The EU, Japan, and the United States. The purpose of the ICH Q1A revision is to add information to certain sections and to provide clarification to other sections of the guidance. The following sections are the most important sections that have been revised:

- The section on stress testing of the active substance has been moved from the glossary to the main text.
- The text on test procedures has been brought in line with the ICH Q6A guidance. Relevant cross-references to other ICH guidances have been introduced.
- The text on testing frequency has been amended for accelerated testing conditions.
- Storage conditions have been described in more detail. Testing at low temperature and testing of aqueous liquids in semipermeable containers have been specifically addressed.
- The postapproval commitment is now clearly described.

The guidance has also been revised to remove several editorial inconsistencies, including some revision of the glossary.

This guidance represents the agency's current thinking on stability testing of new drug substances and products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the guidance at any time. Two copies of any comments are to be submitted, except that individuals can submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at eitherhttp://www.fda.gov/ohrms/dockets/default.htm, http://www.fda.gov/cder/guidance/index.htm, or http://www.fda.gov/cber/publications.htm.

Dated: October 30, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–27958 Filed 11–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995 as last amended at 66 FR 52421–29, dated October 15, 2001).

This notice announces the title change only for the Division of Health Careers Development (RPD) in the Bureau of Health Professions (BHPr), the functions remain the same. Make the following change in the title:

Division of Health Careers Diversity and Development (RPD)

Serves as the focal point for the Health Professions and Nursing Student Loan and Scholarship Programs, the Exceptional Financial Need Scholarship Program, the Federal Assistance to Disadvantaged Health Professions Scholarship Program, the Health Educational Assistance Loan Program, the Health Professions and Nursing Educational Loan Repayment and Loan Cancellation Programs by providing leadership to assure equity in access to health resources and health careers for diverse and disadvantaged populations. Specifically: (1) Provides technical assistance to groups that represent and seek to improve the health status of diverse and disadvantaged populations, and facilitates the access of such groups to Bureau and other Federal programs and resources; (2) provides leadership and direction for the development and implementation of Bureau objectives as they relate to diverse and disadvantaged populations; (3) develops and recommends health resources and health career opportunities for diverse and disadvantaged populations; (4) initiates, stimulates, supports, coordinates, and evaluates Bureau programs for improving the availability and accessibility of health careers for diverse and disadvantaged populations; (5) initiates, stimulates, supports, coordinates, and evaluates in conjunction with other Bureau units, comprehensive data systems and analyses on requirements, resources, accessibility, and accountability of the health delivery system for diverse and disadvantaged populations; (6) conducts special studies and collects baseline data to identify specific factors contributing to the health and health-related problems of diverse and disadvantaged populations, and to develop strategies for improving health services and career opportunities for diverse and disadvantaged populations; (7) conducts extramural programs, including the use of grants and contracts, specifically designed to promote equity in access to health careers; (8) assures contract compliance and implementation of the Policy Statement on Civil Rights in the Bureau; (9) in coordination with the Bureau's

divisions and in collaboration with other HRSA entities, provides leadership for and assures implementation of Presidential, Departmental, and other special initiatives addressing the needs of diverse and disadvantaged populations; (10) conducts and coordinates Bureau programs in health careers for women; (11) provides leadership to develop and coordinate Bureau program support to student health organizations; (12) provides advice and consultation on policy and other matters related to assuring equity in access to health resources and health careers for diverse and disadvantaged populations; (13) plans, develops, implements and promotes special initiatives and projects; (14) coordinates all necessary Federal, state and/or private sector involvement to insure the success of the initiative; (15) takes appropriate steps to institutionalize initiatives which successfully promote the mission of the Bureau; (16) directs and administers the Health Professions and Nursing Student Loan and Scholarship Programs, the Exceptional Financial Need Scholarship Program, the Federal Assistance to Disadvantaged Health Professions Scholarship Program, the Health Educational Assistance Loan Program, the Health Professions and Nursing Educational Loan Repayment and Loan Cancellation Programs including the awarding of loan and scholarship funds; (17) develops and implements program plans and policies and operating and evaluation plans and procedures in coordination with the Office of Policy and Planning; (18) monitors and assesses educational and financial institutions with respect to capabilities and management of Federal support for students; (19) develops and conducts training activities for staff of educational and financial institutions; (20) maintains liaison with and provides assistance to program-related public and private professional organizations and institutions; (21) maintains liaison with the Office of the General Counsel, and the Office of the Inspector General, DHHS, components of the Department of Education and the Department of Defense, and State agencies concerning student assistance; (22) coordinates financial aspects of programs with educational institutions; and (23) develops program data needs, formats, and reporting requirements, including collection, collation, analysis and dissemination of data.

Section RA–30 Delegation of Authority

All delegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation. I hereby ratify and affirm all actions taken by any DHHS official which involved the exercise of these authorities prior to the effective date of this delegation.

This reorganization is effective upon the date of signature.

Dated: October 30, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–27899 Filed 11–6–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4407–N–02]

The Performance Review Board

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of Appointments.

SUMMARY: The Department of Housing and Urban Development announces the appointments of Alphonso Jackson, Frank L. Davis, Marcella E. Belt, Paula O. Blunt, Nelson R. Bregon, Kathleen D. Koch, Floyd O. May, Michael J. Najjum Jr., Lawrence L. Thompson, Margaret E. White, and Margaret Young as members; and Sam E. Hutchinson and Pamela H. Patenaude as alternate members to the Departmental Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Earnestine Pruitt, Director, Executive Personnel Management Division, Department of Housing and Urban Development, Washington, DC 20410, telephone (202) 708–1381. (This is not a toll-free number.)

Dated: October 25, 2001.

Alphonso Jackson,

Deputy Secretary, Department of Housing and Urban Development.

[FR Doc. 01–27902 Filed 11–6–01; 8:45 am]

BILLING CODE 4201–32–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meeting of the Exxon Valdez Oil Spill Public Advisory Group

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: December 10, 2001, at 9:00 a.m.

ADDRESSES: Fifth floor conference room, 441 West 5th Avenue, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America v. State of Alaska*, Civil Action No. A91–081 CV. The meeting agenda will feature discussions about the fiscal year 2002 restoration work plan, the habitat program, the 2002 annual workshop, and the proposed Gulf of Alaska Ecosystem Monitoring and Research program.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 01–27937 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permit for Marine Mammals

On April 18, 2001, a notice was published in the **Federal Register** (66 FR 19979), that an application had been filed with the Fish and Wildlife Service by National Biological Services, Alaska Biological Science Center, Anchorage, Alaska, for renewal of a permit (PRT–801652). The applicant requested renewal of their permit to capture, immobilize, tag, implant transmitters, collect blood, tissue and whisker samples, biopsy, and release walrus from the wild to continue scientific research to develop reliable methods for anesthetizing and holding walrus, develop methods for attaching transmitters and testing these devises in determining walrus movements, diving and haulout patterns, and collect data on physiological status and life history parameters of walrus. The applicant also intends to import biological samples collected from walrus outside of the United States.

Notice is hereby given that on October 10, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 15, 2001, a notice was published in the **Federal Register** (66 FR 32636), that an application had been filed with the Fish and Wildlife Service by California Department of Fish and Game, Santa Cruz, California, for a permit (PRT–039953) to take and hold Southern sea otters (*Enhydra lutris nereis*) for rehabilitation purposes.

Notice is hereby given that on October 10, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested activities under a Letter of Authorization subject to certain conditions set forth therein.

On August 29, 2001, a notice was published in the **Federal Register** (66 FR 45689), that an application had been filed with the Fish and Wildlife Service by Thomas Edward Ferry for a permit (PRT–043735) to import one polar bear (*Ursus maritimus*), taken from the Viscount Melville population, Canada for personal use.

Notice is hereby given that on October 9, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 15, 2001, a notice was published in the **Federal Register** (66 FR 32636), that an application had been filed with the Fish and Wildlife Service by Bruce DeShano for a permit (PRT–043824) to import one polar bear (*Ursus maritimus*), taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on October 4, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

Dated: October 19, 2001.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–27941 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Mr. Stuart E. Rossell of Toms River, New Jersey. The applicant wishes to establish a cooperative breeding program for black sparrowhawk (*Accipiter melanoleucus*), European sparrowhawk (*Accipiter nisus*), African hawk-eagle (*Heiraaetus spilogaster*), lanner falcon (*Falco biarmicus*), saker falcon (*Falco cherrug*), and red headed falcon (*Falco chicquera*). The applicant wishes to be an active participant in this program along with three other individuals. The California Hawking Club, Inc. has assumed the responsibility of oversight of this program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); Fax: (703/358–2281).

Dated: October 26, 2001.

Andrea Gaski,

Chief, Branch of CITES Operations, Division of Management Authority.

[FR Doc. 01–27936 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID090–01–2822–JL–F199]

Emergency Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Emergency Closure.

SUMMARY: This notice closes roads, trails, and all cross country travel to mechanized vehicles (motorized vehicles and mountain bikes) on BLM administered lands within the perimeter of the Frozen Dog Fire in Gem County, Idaho.

EFFECTIVE DATE: This Emergency Closure Order is effective immediately through September 30, 2003.

ADDRESSES: Bureau of Land Management, Four Rivers Field Office, 3948 Development Ave., Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Daryl Albiston, Four Rivers Field Manager, (208) 384–3300.

SUPPLEMENTARY INFORMATION: The Frozen Dog fire burned portions of public lands in sections 2, 3, 10 and 11 of Township 6 North, Range 1 West, Boise Meridian, Idaho. The emergency closure is intended to protect soil and watershed values. The closure will be in effect immediately and will expire September 30, 2003. Exceptions to this closure include vehicle use for administrative and emergency purposes. Under special circumstances, the authorized officer may issue a permit allowing vehicle access into the area for specific purposes. Definitions: (a) "Public lands" means any lands or interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management; (b) "Authorized Officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this order; (c) "Emergency vehicles" means any fire, law enforcement or military vehicles used for emergency purposes; (d) "Administrative vehicles" refers to any vehicles used by an employee, agent or designated representative of the federal government, or one of it's contractors, in the course of their employment, agency or representation. This closure is being established and administered by the Bureau of Land Management Authority for this action is found in CFR Title 43, subpart 8360.0–3 and complies with CFR Title 43, subpart 8364.1 Closure and Restriction Orders. Violation of this

closure order is in accordance with CFR Title 43, subpart 8360.0–7.

Dated: October 1, 2001.

Daryl Albiston,

Four Rivers Field Manager.

[FR Doc. 01–27918 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–78562]

Notice of Coal Lease Offering by Sealed Bid Whitmore Canyon Tract

U.S. Department of the Interior, Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155. Notice is hereby given that at 1:00 p.m., December 12, 2001, certain coal resources in lands hereinafter described in Carbon County, Utah will be offered for competitive lease by sealed bid of $100.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437). *However, no bid will be accepted for less than fair market value as determined by the authorized officer.* A company or individual is limited to *one sealed bid.* If a company or individual submits two or more sealed bids for this tract, all of the company's or individual's bids will be rejected.

This lease is being offered for sale under the provisions set forth in the regulations for Leasing on Application at 43 CFR 3425.

The lease sale will be held in the Bureau of Land Management Conference Room, Utah State Office, 324 South State Street, Suite 302, Salt Lake City, Utah at 1 p.m. on December 12, 2001. At that time, the sealed bids will be opened and read. No bids received after 10 a.m., December 12, 2001, will be considered.

Coal Offered: The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Carbon County, Utah, approximately 4 miles north of East Carbon City, Utah:

T. 13 S., R. 13 E., SLM, Utah
Sec. 35, S2SW, SE.
T. 14 S., R. 13 E., SLM, Utah
Sec. 1, lots 2–7, SWNE,S2NW,SW,W2SE;
Sec. 12, lots 1–4, S2N2,NESW,SE;
Sec. 13, NENE.
T. 14 S., R. 14 E., SLM, Utah
Sec. 6, lot 6;
Sec. 7, lots 3 and 4;
Sec. 18, lot 1, E2NW.
Containing 1,646.34 acres

The tract has one potentially minable coal seam, the Upper Sunnyside. The minable portions of the seam in this area are from 6 to 9 feet in thickness and average 8 feet. This tract contains an estimated 14.8 million tons of recoverable coal.

The estimated coal quality using weighted averages of samples on an as-received basis is:

13,256 BTU/lb.;
4.70 Percent moisture;
1.26 Percent sulphur;
5.60 Percent ash;
45.98 Percent fixed carbon;
36.87 Percent volatile matter
(Totals do not equal 100% due to rounding)

Rental and Royalty: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre or fraction thereof and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods, and 8 percent of the value of coal mined by underground methods. The value of coal shall be determined in accordance with BLM Manual 3070.

Notice of Availability: Bidding instructions are included in the Detailed Statement of Lease Sale. A copy of the detailed statement and the proposed coal lease are available by mail at the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155 or in the Public Room (Room 400), 324 South State Street, Salt Lake City, Utah 84111. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection in the Public Room (Room 400) of the Bureau of Land Management.

Dated: October 24, 2001.

Joseph J. Incardine,

Acting Deputy State Director, Lands and Minerals.

[FR Doc. 01–27927 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–09–1320–01, WYW154839]

Coal Lease Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Jacobs Ranch Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 41 N., R. 71 W., 6th P.M., Wyoming, Sec. 26: Lots 3–6 and 11–14. Containing 323.69 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Coal Leasing Area. The purpose of the exploration program is to obtain coal quality data.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the BLM. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW154839): BLM, Wyoming State Office (WSO), 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, BLM, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in "The News-Record" of Gillette, WY, once each week for two consecutive weeks beginning the week of November 5, 2001, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the BLM and Jacobs Ranch Coal Company no later than 30 days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Jacobs Ranch Coal Company, Attn: Darryl Maunder, Caller Box 3013, Gillette, WY 82717–3013, and the BLM, WSO, Branch of Solid Minerals, Attn: Julie Weaver, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: October 17, 2001.

Phillip C. Perlewitz,

Chief, Branch of Solid Minerals.

[FR Doc. 01–27914 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ER]

Notice of Intent; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended notice of intent to prepare an environmental impact statement (EIS) to consider the Toquop Energy Project/Lincoln County well field, water pipeline, power plant site, and access road rights-of-way in southeastern Lincoln County, Nevada and related exchange of public land in Lincoln County, Nevada for private land in Washoe County, Nevada and to amend the Caliente Management Framework Plan to address the proposed exchange of public land in Lincoln County, Nevada (to be used in part as the site of the Toquop Energy Project) for private land in Washoe County, Nevada.

SUMMARY: On July 27, 2001, notice was published in the **Federal Register** (Volume 66, Number 145, Page 39193) announcing the intent of the Bureau of Land Management to prepare an EIS to consider the Toquop Energy Project/ Lincoln County well field, water pipeline, and access road rights-of-way in southeastern Lincoln County, Nevada. The public comment period on the scope of the EIS closed on September 10, 2001. As a result of public comments received during the scoping period, the Bureau of Land Management intends to incorporate a proposed exchange of public land in Lincoln County, Nevada (to be used in part as the site of the Toquop Energy Project) for private land in Washoe County, Nevada within the scope of the EIS. Previously, the land exchange was being considered in a separate environmental assessment. In addition, the Bureau of Land Management will prepare an amendment to the Caliente Management Framework to address the proposed land exchange.

ADDRESSES: Written comments should be addressed to Bureau of Land Management, Gene A. Kolkman, Ely Field Manager, HC 33, Box 33500, Ely, Nevada 89301–9408.

FOR FURTHER INFORMATION: Daniel R. Netcher, Team Leader for Lands and Minerals, at the above address or telephone (775) 289–1872.

SUPPLEMENTARY INFORMATION: Toquop Energy has proposed an 1100 megawatt electrical generation facility fueled by natural gas from the Kern River gas pipeline. The facility is proposed to be located at T. 11 S., R. 69 E., Section 36, Mount Diablo Meridian. The facility would be located on lands which are currently public lands and would be the subject of a land exchange. Nevada Land and Resource Company has proposed to exchange private land in Washoe County, Nevada for public land in Lincoln County, Nevada, a portion of which will be used as the site for the power plant. Toquop Energy has submitted an application for a Federal Land Policy and Management Act right-of-way for the power plant site, road access, well field, and water pipeline access to the facility. The Bureau of Land Management will prepare a proposed amendment to the Caliente Management Framework Plan to address the land exchange. This EIS will evaluate the proposed Management Framework Plan amendment, the proposed land exchange and the proposed right-of-way action. The EIS will consider a No Action alternative and other alternatives including alternate locations and alignment of the well field, water pipelines, power plant site, and access road.

Public Involvement: Public informational meetings for the Toquop Energy Project EIS were held July 11, 2001, in Caliente, Nevada and July 12, 2001, in Mesquite, Nevada. A scoping meeting for the Toquop Energy Project EIS was held August 15, 2001, in Las Vegas, Nevada. Public scoping meetings for the Pah Rah/Toquop Land Exchange were held July 11, 2001, in Mesquite, Nevada and July 12, 2001, in Reno, Nevada. The public is encouraged to provide additional written comments on the Bureau of Land Management's intent to prepare a proposed amendment to the Caliente Management Framework plan and to address the proposed amendment and related land exchange in the EIS for the Toquop Energy Project. The comment period for the scoping of the EIS will commence with the publication of the Notice. Those who have comments on the EIS should respond in writing within 30 days from the date of publication of the Notice. The Notice will be distributed by mail on or about the date of publication of the Notice in the Notice publication. Release of the draft amendment to the Caliente Management Framework Plan and the draft EIS regarding the amendment, the related land exchange and the Toquop Energy Project will be announced in the local news media, as these dates are established.

Dated: October 4, 2001.

Eric K. Luse,

Associate Field Manager.

[FR Doc. 01–27926 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–00–1040–PG–241A]

Southwest Colorado and Northwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given that the next meeting of the Southwest Colorado Resource Advisory Council (RAC) will be held December 6, 2001, at the Bureau of Land Management (BLM) Office located at 2465 South Townsend in Montrose, Colorado. Notice is also given that the next meeting of the Northwest Colorado RAC will be held on December 13, 2001, at the Bureau of Land Management (BLM) Office located at 2815 H Road in Grand Junction, Colorado.

DATES: Southwest RAC meeting: December 6, 2001; Northwest RAC meeting: December 13, 2001.

FOR FURTHER INFORMATION CONTACT: Larry J. Porter, Bureau of LandManagement, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3012.

SUPPLEMENTARY INFORMATION: The Southwest Colorado RAC will meet on Thursday, December 6, 2001, in the main conference room of the Montrose BLM Office located at 2465 South Townsend in Montrose, Colorado. The meeting will begin at 9 a.m., and will adjourn upon completion of the agenda, approximately 4 p.m. The purpose of the meeting is to provide orientation to newly-appointed council members and to consider several resource management topics including travel management, oil and gas program, weed management , and coordination with other advisory councils.

The Northwest Colorado RAC will meet on Thursday, December 13, 2001, in the main conference room of the Grand Junction BLM Office located at 2815 H Road in Grand Junction, Colorado. The meeting will begin at 9 a.m., and will adjourn upon completion of the agenda, approximately 4 p.m.. The purpose of the meeting is to provide orientation to newly-appointed council members, to receive updates on recent

land use planning activities, and to receive RAC subcommittee updates.

These meetings are open to the public. Interested members of the public may present written or oral comments to either of the RACs at 9:30 a.m, on their respective meeting dates. Per-person time limits for oral statements may be set to allow all interested individuals an opportunity to speak. Subject to the time available, individuals may also be allowed to provide input to the councils during the discussion of specific agenda topics.

Summary minutes of RAC meetings are maintained in the BLM Western Slope Center Office located at 2815 H Road, Grand Junction, CO 81506, phone (970) 244–3000. Minutes are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: October 17, 2001.

Mark W. Stiles,

Western Slope Center Manager.

[FR Doc. 01–27910 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1020–PG]

Upper Snake River District Resource Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Upper Snake River District Resource Advisory Council Meeting: Locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) meeting of the Upper Snake River District Resource Advisory Council (RAC) will be held as indicated below. The agenda for this two-day meeting will largely cover planning issues in the Upper Snake River District, principally the Pocatello Resource Management Plan and the Craters of the Moon National Monument Plan. The agenda may change as issues warrant between publication of this notice and the meeting.

All meetings are open to the public. The public may present written or oral comments to the council. Each formal council meeting will have a time allocated for hearing public comments. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations should contact David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, or telephone (208) 524–7559.

DATES AND TIMES: The meeting will be held November 28–29, 2001 at the BLM office, 1405 Hollipark Drive, in Idaho Falls. An executive session of the RAC will begin at 1 p.m., and the full RAC meeting will begin at 2 p.m. The meeting will conclude no later than 3 p.m. the following day. Public comments, if any, will be scheduled from 8:30 a.m. to 9 a.m. on November 29.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the of the public lands.

FOR FURTHER INFORMATION CONTACT: David Howell, Upper Snake River District, 1405 Hollipark Dr., Idaho Falls, ID 83401, (208) 524–7559.

Dated: October 4, 2001.

Joe Kraayenbrink,

Idaho Falls Field Manager.

[FR Doc. 01–27912 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Lower Snake River District Resource Advisory Council; Meeting

AGENCY: Lower Snake River District, Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Lower Snake River District Resource Advisory Council will meet in Boise. Agenda topics include subgroup reports on the OHV initiative, sage grouse and river recreation, as well as an update on the two new Resource Management Plans and other land management issues.

DATES: December 6, 2001. The meeting will begin at 11:30 a.m. Public comment periods will be held after each topic. The meeting is expected to adjourn at 4:30 p.m.

ADDRESSES: The meeting will be held at the Lower Snake River District Office, located at 3948 Development Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Mary Jones, Lower Snake River District Office (208–384–3305).

Dated: September 21, 2001.

Katherine Kitchell,

District Manager.

[FR Doc. 01–27913 Filed 11–6–01; 8:45 am]

BILLING CODE 1020–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–1310–PB–252Z]

Front Range Resource Advisory Council (Colorado); Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on January 10, 2002 in Canon City, Colorado.

The meeting is scheduled to begin at 9:15 a.m. at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. Topics will include an update on current public land issues and an update on the Bureau of Land Management minerals program.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The Center Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Thursday, January 10, 2002 from 9:15 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Front Range Center Office, 3170 East Main Street, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: For further information contact Ken Smith at (719)269–8500.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: October 4, 2001.

Roy L. Masinton,

Royal Gorge Field Manager.

[FR Doc. 01–27925 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–120–9260PD–241A; 01–0344]

Intent To Conduct Restoration Planning: *M/V New Carissa* Natural Resource Damage Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Natural Resource Trustees for the *M/V New Carissa* oil spill have chosen to enter into the restoration planning phase of a Natural Resource Damage Assessment. The purpose of this phase is to prepare a plan for the restoration, rehabilitation, replacement or the acquisition of the natural resources injured, destroyed or lost, or the uses of which were lost, as a result of this spill.

FOR FURTHER INFORMATION CONTACT: Larry Mangan, Bureau of Land Management, Coos Bay District, 1300 Airport Lane, North Bend, OR 97459. He may be reached by telephone at 541–751–4231.

SUPPLEMENTARY INFORMATION:

Public Notice

U.S. Department of Interior; U.S. Department of Agriculture; State of Oregon, Departments of Environmental Quality and Fish and Wildlife; Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians; and the Confederated Tribes of the Siletz, Oregon.

Notice of Intent To Conduct Restoration Planning

M/V New Carissa Oil Spill

On February 4, 1999, the *M/V New Carissa*, a 194-meter bulk cargo ship in ballast, went aground approximately 5 kilometers north of the north jetty of the entrance to Coos Bay, Oregon. On or about February 8, 1999, the stranded vessel began leaking oil, an *in situ* burn was conducted, the vessel split in two, and additional oil was released. The bow section was refloated and towed offshore, only to break its tow, release some oil and re-ground approximately 110 km to the north at Waldport, Oregon, where additional oil was released. The bow section was again refloated, towed to sea, and sunk. The stern section remains stranded near the entrance to Coos Bay. In all, an estimated 25,000 to 70,000 gallons or more of oil were released into the waters off the coast of Oregon. The oil spill is referred to in this Notice of Intent to Conduct Restoration Planning ("Notice"), issued pursuant to 15 CFR 990.44, as the "Incident."

Pursuant to section 1006(b) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. 2706(b), the following officials have been designated trustees of natural resources for this Incident (Trustees): the Secretary of the U.S. Department of the Interior, represented by the State Director for Oregon/Washington of the Bureau of Land Management, and the Secretary of the U.S. Department of Agriculture, represented by the Regional Director of Recreation, Lands and Minerals, Forest Service Region 6; the Directors of the State of Oregon Departments of Environmental Quality and Fish and Wildlife; and the Tribal Chairmen of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians and of the Confederated Tribes of the Siletz, Oregon. The Trustees are responsible for assessing the damages to natural resources under their trusteeship that have resulted from the Incident, developing a plan for the restoration of these resources, and pursuing funding from responsible parties for implementation of this plan or implementation of the plan by the responsible parties themselves. The Trustees are proceeding in accordance with the regulations for natural Resource Damage Assessments at 15 CFR part 990.

One of the goals of OPA is to make the environment and the public whole for injuries to natural resources and services resulting from an incident involving a discharge or substantial threat of a discharge of oil from a vessel into or upon the navigable waters or adjoining shorelines. This goal is achieved through the return of the injured natural resources and services to baseline and the provision of compensation for interim losses of such natural resources and the services they provide, to other natural resources and/or the public, from the date of the incident until recovery.

Among the parties responsible for the Incident ("Responsible Parties" or "RPs") are Green Atlas Shipping, S.A., the owner of the *M/V New Carissa;* TMM Co., Ltd., its operator; and Benjamin Morgado, the master of the *M/V New Carissa* at the time of the Incident. Green Atlas Shipping, S.A., and TMM Co., Ltd., through their agent, Polaris Applied Sciences, have participated with the Trustees in the performance and/or partial funding of the following emergency restoration and preassessment data collection activities: emergency restoration measures for the western snowy plover, a study by a mutually approved contractor (The Nature Conservancy) to ascertain injuries to the western snowy plover; an analysis by a mutually approved contractor (R. G. Ford Consulting Company) to determine injuries to seabirds and shorebirds; a study to determine lost recreational use; and collection of a variety of natural resource data relevant to the Incident. These RPs, through their agent, Polaris Applied Sciences, also have provided comments to the Trustees on the conduct of and the reports resulting from these activities. The Trustees have invited the Responsible Parties, Green Atlas Shipping, S.A., and TMM Col, Ltd., to participate in the restoration planning phase of the Natural Resource Damage Assessment.

Trustees' Determinations

1. Determinotion of Jurisdiction

The Trustees have made the following findings pursuant to 15 CFR 990.41:

(a) The Trustees have jurisdiction to pursue restoration pursuant to the Oil Pollution Act, 33 U.S.C. 2702 and 2706(c). The spill of 25,000 to 70,000 or more gallons of oil from the M/V New Carissa beginning on or about February 8, 1999, into the waters of the Pacific Ocean, off the Oregon Coast, approximately 5 kilometers north of the entrance to Coos Bay, was an "incident" as defined at 15 CFR 990.30.

(1) The *M/V New Carissa*, a "vessel" as defined at 33 U.S.C. 2701(37), spilled the entire quantity of oil involved in this Incident.

(2) The *M/V New Carissa* discharged oil into or upon the navigable waters and the adjoining shorelines, including the waters of the United States adjacent to the Oregon coast and within several Oregon estuaries, including Coos Bay.

(b) The Trustees have determined that:

(1) This Incident was not permitted under federal, state or local law;

(2) The *M/V New Carissa* is not a public vessel, as defined at 15 CFR 990.30; and

(3) The discharge of oil did not occur from an onshore facility subject to the Trans-Alaska Pipeline Authority.

(c) Based upon information gathered during the removal phase of the Incident and the preassessment phase of their Natural Resource Damage Assessment, the Trustees have determined that, due to the amount and type of oil spilled, the location of the spill, and the living and non-living natural resources, and uses in the area at the time of the spill (including but not limited to birds, fish, marine biota, sand sediments, water, and public use of those resources), natural resources under their trusteeship have been

injured, destroyed or lost and use of those natural resources has been lost as a result of the Incident.

2. Determination To Conduct Restoration Planning

The Trustees have determined, pursuant to 15 CFR 990.42 (a), that:

(a) Data collected and analyzed pursuant to 15 CFR 990.43 demonstrate that injuries to natural resources have resulted from the Incident, including but not limited to the following:

(1) Injury to a wide variety and number of seabirds and shorebirds, among them marbled murrelets and western snowy plovers (species listed as threatened under the Endangered Species Act, 16 U.S.C. 1531–1544), and loss or impairment of reproduction potential for these species. The report entitled "Seabird Mortality Resulting from the *M/V New Carissa* Oil Spill Incident February and March 1999," included in the preassessment data report and jointly funded by the Trustees and Green Atlas Shipping, S.A., and TMM Co., Ltd., estimates that more than 2,300 seabirds and gulls were killed by the Incident, among them 262 marbled murrelets. In addition, that same report estimated that 460 to 809 shorebirds were oiled as a result of the Incident.

(2) Lost public recreation use, including lost or diminished opportunities for public camping, wildlife viewing; shellfish harvesting, fishing, off-highway vehicle use, and hiking. The Trustees estimate that between 27,974 and 29,204 public trips were affected by the Incident.

(b) Response actions during cleanup and emergency restoration measures implemented during early stages of the Incident have not adequately addressed the injuries resulting from the Incident. Response efforts included burning a significant portion of the oil on board the ship and cleaning up oil stranded along the beaches. Nevertheless, a substantial amount of oil was released onto the beaches and into the open ocean, resulting in injury to natural resources. Although response measures included collecting and cleaning oiled birds, only a small percentage of the birds affected by the oil were treated; and many birds perished as a result of the Incident. Emergency restoration measures were designed and implemented for the western snowy plover, a threatened species, but such emergency measures for other injured shorebirds and seabirds were not feasible at the time.

(c) Potential assessment procedures to be used to evaluate injuries and to design and implement the appropriate type and scale of restoration for these injured natural resources and services consist of, but are not limited to:

(1) Field studies to ascertain restoration suitability of various tracts of land;

(2) Compiling of demographic data for key species;

(3) Computer modeling of population and mortality data;

(4) Analysis of habitat information to properly scale restoration needs.

(d) Feasible primary and compensatory restoration actions exist to address injuries from the Incident. Restoration activities are expected to focus on seabirds, shorebirds, and lost recreation uses. Restoration could include actions to protect and enhance habitat for seabirds and shorebirds. Specific efforts for wildlife could include acquisition and protection of shorebirds and seabird habitats. To address lost public recreation use, restoration could include development of projects to enhance public access and use of resources not accessible during the Incident. Feasible restoration actions relevant to the injuries may include, but are not necessarily limited to:

(1) Acquisition of seabird and shorebird habitat from willing landowners;

(2) Enhancement/protection of nesting locations of seabirds along the Oregon Coast;

(3) Recreation projects on the North Spit of Coos Bay, in the Dunes National Recreation Area and in the Waldport area, to facilitate visitor use.

Data supporting these determinations are contained in the Record including the Preassessment Report.

Based upon the foregoing determinations, the Trustees have chosen to proceed with restoration planning for this Incident.

Opportunity to Comment

Pursuant to 15 CFR 990.14(d), the Trustees will seek public involvement in restoration planning for this spill through public review of, and comment on, the Draft Restoration Plan. When the Draft Restoration Plan is prepared, the public will be notified of the opportunity to comment. Questions regarding this Notice may be directed to Larry Mangan, Case Manager, *M/V New Carissa* Natural Resource Damage Assessment, Bureau of Land Management at 1300 Airport Lane, North Bend, OR 97459, or by telephone at 541–751–4231 or by telefax transmission at 541–751–4303.

Administrative Record

The Trustees have opened an Administrative Record ("Record") in compliance with 15 CFR 990.45. The Record will include documents relied upon by the Trustees during the assessment of natural resource damages being performed in connection with the Incident. The Record is on file at the Coos Bay District Office of the Bureau of Land Management, 1300 Airport Lane, North Bend, Oregon. Arrangements can be made to review the Record by contacting Larry Mangan at this address or by calling him at 541–751–4231.

Dated: October 12, 2001.

Elaine Y. Zielinski,

State Director, Oregon/Washington, United States Department of the Interior, Bureau of Land Management, Lead Administrative Trustee, M/V New Carissa, Natural Resource Damage Assessment.

[FR Doc. 01–27911 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–EU; MTM 87193]

Order Providing for Opening of Public Land; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This notice terminates the temporary segregative effect as to 320 acres of public land originally included as part of the proposed Two Crow Exchange.

EFFECTIVE DATE: November 7, 2001.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM MontanaState Office, P. O. Box 36800, Billings, Montana 59101, 406–896–5052.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2201.1–2(c)(2), the segregation imposed by notation to the records of the lands described below is hereby terminated and the land is made available, subject to other withdrawals and segregations of record, under the public land and mineral laws of the United States:

Principal Meridian, Montana

T. 22 N., R. 21 E.,
Sec. 4, NE¼SW¼ and S½SW¼;
Sec. 5, S½SE¼;
Sec. 9, N½NW¼ and SE¼SE¼.

The areas described aggregate 320 acres in Fergus County.

2. At 9 a.m. on November 7, 2001, the lands shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals,

other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on November 7, 2001, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on November 7, 2001, the lands will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempting adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 2, 2001.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 01–27919 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–02–1420–BJ]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of the amended protraction diagram acceptedSeptember 27, 2001, of the following described lands are scheduled to be officially filed in the Montana State Office, Billings Montana, thirty (30) days from the date of this publication.

Tps. 6, 7, 8, and 9 S., Rs. 28, 29, 30, 31, and 32 E.

The plat, representing the Amended Protraction Diagram 10 Index of unsurveyed Townships 6, 7, 8, and 9 South, Ranges 28, 29, 30, 31, and 32 East, Principal Meridian, Montana, was accepted September 27, 2001.

T. 6 S., R. 30 E.

The plat, representing Amended Protraction Diagram 10 of unsurveyedTownship 6 South, Range 30 East, Principal Meridian, Montana, was acceptedSeptember 27, 2001.

T. 7 S., R. 29 E.

The plat, representing Amended Protraction Diagram 10 of unsurveyedTownship 7 South, Range 29 East, Principal Meridian, Montana, was acceptedSeptember 27, 2001.

T. 7 S., R. 30 E.

The plat, representing Amended Protraction Diagram 10 of unsurveyedTownship 7 South, Range 30 East, Principal Meridian, Montana, was acceptedSeptember 27, 2001.

T. 7 S., R. 31 E.

The plat, representing Amended Protraction Diagram 10 of unsurveyedTownship 7 South, Range 31 East, Principal Meridian, Montana, was acceptedSeptember 27, 2001.

T. 8 S., R. 29 E.

The plat, representing Amended Protraction Diagram 10 of unsurveyedTownship 8 South, Range 29 East, Principal Meridian, Montana, was acceptedSeptember 27, 2001.

T. 8 S., R. 30 E.

The plat, representing Amended Protraction Diagram 10 of unsurveyedTownship 8 South, Range 30 East, Principal Meridian, Montana, was acceptedSeptember 27, 2001.

T. 8 S., R. 31 E.

The plat, representing Amended Protraction Diagram 10 of unsurveyedTownship 8 South, Range 31 East, Principal Meridian, Montana, was acceptedSeptember 27, 2001.

T. 8 S., R. 32 E.

The plat, representing Amended Protraction Diagram 10 of unsurveyedTownship 8 South, Range 32 East, Principal Meridian, Montana, was acceptedSeptember 27, 2001.

T. 9 S., R. 28 E.

The plat, representing Amended Protraction Diagram 10 of unsurveyedTownship 9 South, Range 28 East, Principal Meridian, Montana, was acceptedSeptember 27, 2001.

T. 9 S., R. 29 E.

The plat, representing Amended Protraction Diagram 10 of unsurveyedTownship 9 South, Range 29 East, Principal Meridian, Montana, was acceptedSeptember 27, 2001.

T. 9 S., R. 30 E.

The plat, representing Amended Protraction Diagram 10 of unsurveyedTownship 9 South, Range 30 East, Principal Meridian, Montana, was acceptedSeptember 27, 2001.

T. 9 S., R. 31 E.

The plat, representing Amended Protraction Diagram 10 of unsurveyedTownship 9 South, Range 31 East, Principal Meridian, Montana, was acceptedSeptember 27, 2001.

T. 9 S., R. 32 E.

The plat, representing Amended Protraction Diagram 10 of unsurveyedTownship 9 South, Range 32 East, Principal Meridian, Montana, was acceptedSeptember 27, 2001.

A copy of the preceding described plats of the amended protraction diagram accepted September 27, 2001, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this amended protraction diagram, accepted September 27, 2001, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats of the amended protraction diagram will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: October 5, 2001.

Steven G. Schey,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 01–27920 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–02–1420–BJ]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of the amended protraction diagrams acceptedSeptember 14 and 17, 2001, of the following described lands are scheduled to be officially filed in the Montana State Office, Billings Montana, thirty (30) days from the date of this publication.

Tps. 21, 22, 23, and 24 N., Rs. 18 and 29 W.

The plat, representing the Amended Protraction Diagram 33 Index of unsurveyed Townships 21, 22, 23, and 24 North, Ranges 18 and 19 West, Principal Meridian, Montana, was September 14, 2001.

T. 21 N., R. 18 W.

The plat, representing Amended Protraction Diagram 33 of unsurveyed Township 21 North, Range 18 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 22 N., R. 18 W.

The plat, representing Amended Protraction Diagram 33 of unsurveyed

Township 22 North, Range 18 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 23 N., R. 18 W.

The plat, representing Amended Protraction Diagram 33 of unsurveyed Township 23 North, Range 18 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 24 N., R. 18 W.

The plat, representing Amended Protraction Diagram 33 of unsurveyed Township 24 North, Range 18 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 21 N., R. 19 W.

The plat, representing Amended Protraction Diagram 33 of unsurveyed Township 21 North, Range 19 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 22 N., R. 19 W.

The plat, representing Amended Protraction Diagram 33 of unsurveyed Township 22 North, Range 19 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 23 N., R. 19 W.

The plat, representing Amended Protraction Diagram 33 of unsurveyed Township 23 North, Range 19 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 24 N., R. 19 W.

The plat, representing Amended Protraction Diagram 33 of unsurveyed Township 24 North, Range 19 West, Principal Meridian, Montana, was accepted September 14, 2001.

Tps. 3 S., Rs. 3, 4, and 5 W.

The plat, representing the Amended Protraction Diagram 50 Index of unsurveyed Townships 3 South, Ranges 3, 4, and 5 West, Principal Meridian, Montana, was September 17, 2001.

T. 3 S., R. 3 W.

The plat, representing Amended Protraction Diagram 50 of unsurveyed Township 3 South, Range 3 West, Principal Meridian, Montana, was accepted September 17, 2001.

T. 3 S., R. 4 W.

The plat, representing Amended Protraction Diagram 50 of unsurveyed Township 3 South, Range 4 West, Principal Meridian, Montana, was accepted September 17, 2001.

T. 3 S., R. 5 W.

The plat, representing Amended Protraction Diagram 50 of unsurveyed Township 3 South, Range 5 West, Principal Meridian, Montana, was accepted September 17, 2001.

Tps. 1, 2, 3, 4, and 5 S., Rs. 10, 11, 12, 13, and 14 W.

The plat, representing the Amended Protraction Diagram 51 Index of unsurveyed Townships 1, 2, 3, 4, and 5 North, Ranges 10, 11, 12, 13, and 14 West, Principal Meridian, Montana, was September 14, 2001.

T. 1 S., R. 10 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 1 South, Range 11 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 1 S., R. 12 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 1 South, Range 12 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 1 S., R. 13 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 1 South, Range 13 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 1 S., R. 14 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 1 South, Range 14 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 2 S., R. 11 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 2 South, Range 11 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 2 S., R. 13 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 2 South, Range 13 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 3 S., R. 11 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 3 South, Range 11 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 3 S., R. 12 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 3 South, Range 12 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 3 S., R. 13 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 3 South, Range 13 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 4 S., R. 11 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 4 South, Range 11 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 4 S., R. 13 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 4 South, Range 13 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 4 S., R. 14 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 4 South, Range 14 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 5 S., R. 11 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 5 South, Range 11 West, Principal Meridian, Montana, was accepted September 14, 2001.

T. 5 S., R. 14 W.

The plat, representing Amended Protraction Diagram 51 of unsurveyed Township 5 South, Range 14 West, Principal Meridian, Montana, was accepted September 14, 2001.

A copy of the preceding described plats of the amended protraction diagrams accepted September 14 and 17, 2001, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted September 14 and 17, 2001, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: October 5, 2001.

Steven G. Schey,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 01–27921 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–61880]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following described public lands in Esmeralda County, Nevada have been examined and found suitable for classification for lease or conveyance to Esmeralda County under the provision of the Recreation and Public Purposes Act of June 14, 1926, as amended (43U.S.C. 869 *et seq.*).

Mount Diablo Meridian

T. 2 S., R. 39 E.,
Sec. 22, SW¼SW¼SW¼;
Sec. 27, NW¼NW¼NW¼;
Containing 20 acres more or less.

This action will make lands which are not needed for Federal purposes and are identified for disposal in the Tonopah Resource Management Plan, available to support community expansion. Lease or conveyance of the lands for recreational or public purpose use would be in the public interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Tonopah, Nevada. Lease or conveyance of the lands will be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documents on the official public land records at time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the above described lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands to the Acting Assistant Field StationManager, Tonopah Field Station, P.O. Box 911, Tonopah, NV 89049.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a ballfield and related facilities. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a ballfield and related facilities.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be conveyed until after the classification becomes effective.

Dated: October 1, 2001.

William S. Fisher,

Acting Assistant Field Manager, Tonopah.

[FR Doc. 01–27924 Filed 11–6–01; 8:45 am]

BILLING CODE 4320–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–070–1610–DO]

Notice of Intent to Prepare a Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for the Price Field Office

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Price Field Office, Utah, is initiating a planning effort to prepare the Price Field Office Resource Management Plan (RMP). This planning effort involves preparation of an Environmental Impact Statement (EIS). Upon completion, the Price Field Office RMP will replace the existing Price River Management Framework Plan (MFP) and San Rafael RMP. The Price Field Office RMP will establish land use management policy for multiple resource uses on approximately 2.5 million acres of public land and 2.8 million acres of federal mineral resources in the planning area. Sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1711), the National Environmental Policy Act (NEPA) and the regulations in 43 CFR 1600 direct this planning effort. The new RMP is being prepared through coordination with other federal, state, and local agencies, and affected public land users.

DATES: The BLM can best utilize public input if comments are submitted pertaining to land use issues and values within 30 days of this notice. Public meetings are tentatively scheduled for late 2001 or early 2002 in Price, Castle Dale, and Green River, Utah. Specific dates and locations of all scoping meetings will be published in the local newspapers at least 15 days before the meetings.

ADDRESSES: If you wish to comment on potential issues or planning criteria, need additional information, or request to be put on our mailing list, you may do so by notifying the Price Field Office, Bureau of Land Management, Attn: Richard Manus, 125 South, 600 West, Price, Utah 84501.

Comments, including names and addresses of respondents, will be available for public review at the BLM office listed above during regular business hours. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Richard Manus, Field Office Manager or Floyd Johnson, Supervisory Planning Coordinator, Price Field Office, Price Utah, (435) 636–3600.

SUPPLEMENTARY INFORMATION: The planning area will include all of the public land and federal mineral ownership managed by the Price Field Office in Carbon and Emery Counties in eastern Utah. The planning area will encompass the public lands currently managed under the Price River MFP and the San Rafael RMP. This area includes approximately 2.5 million acres of BLM administered surface and 2.8 million acres of federal minerals under federal, state, and private surface in the two county area. The BLM will also include the recently acquired lands west of the Green River that were previously part of the Naval Oil Shale Reserve #2 (NOSR2) including a 1/4 mile scenic easement on the east side of the Green River (approximately 6,500 acres.)

Preliminary issues that could be addressed during development of the Price Field Office RMP include, but are not limited to, the following: (1) Identification and management of summer and winter ranges for mule deer and elk; (2) forage competition between wildlife, wild horses and burros, and livestock; (3) the cumulative effect of land uses and human activities on threatened, endangered or sensitive species and their habitats; (4) management of Off Highway Vehicles (OHVs); (5) revision of Reasonable Foreseeable Development (RFD) scenarios for oil and gas development; (6) concerns about water and air quality; (7) management of cultural and pale ontological resources including the Cleveland-Lloyd Dinosaur Quarry; (8)

fire management opportunities and potential effects on vegetative communities; (9) potential establishment of new Areas of Critical Environmental Concern (ACECs); (10) determinations of wild and scenic river eligibility, suitability, and tentative classifications (wild, scenic, or recreational); and (11) potential establishment of Wilderness Study Areas (WSAs). These preliminary issues are not final and may be added to and refined through the public participation process. As part of the land use planning process, the FLPMA mandates that BLM give priority to the designation and protection of ACECs when developing and revising land use plans. As part of the Price Field Office RMP planning effort, BLM will determine what areas, if any, should be designated as ACECs. As a result of a previous planning effort for the San Rafael RMP, 13 nominations have already been recorded, evaluated, and designated as ACECs. It is proposed that these areas be brought forward into the Price Field Office RMP. In addition, BLM is requesting additional nominations for areas that the public may see as being appropriately managed as ACECs.

Public nominations are also being sought for those rivers which may be eligible for inclusion into the National Wild and Scenic River System. In order to be considered, the body of water must be free flowing and contain at least one outstandingly remarkable value. The river can be any size and must be existing or flowing in a natural condition without major modification. All nominations should be accompanied by detailed maps, descriptions of the river segment, and rivers related values. Rivers will also be tentatively classified as wild, scenic, or recreational. An interdisciplinary team in coordination with planning partners will make preliminary determinations as to eligibility and classification of river segments. These preliminary determinations will be made available for public review prior to issuance of the Draft RMP/Draft EIS.

Preliminary Planning Criteria that have been identified to guide resolution of the issues that will be considered in the RMP are as follows: (1) The plan will recognize the existence of valid existing rights, (2) Lands covered in the RMP will be public lands, which include split estate lands, managed by BLM. Decisions in the RMP will be made only on lands managed by BLM, (3) The BLM will use a collaborative and multi-jurisdictional approach, where possible, to jointly determine the desired future condition of public lands, (4) The BLM will make all possible attempts to ensure that its management prescriptions and planning actions are as complimentary as possible to other planning jurisdictions, within the boundaries described by law and policy, (5) The BLM will consider the management prescriptions on adjoining lands to minimize inconsistent management. To the extent possible, BLM will coordinate inventories, planning, and management programs with other federal, state, tribal, and local governments and agencies, (6) Management prescriptions will focus on the relative values of resources and not necessarily the combination of uses that will give the greatest economic return or economic output, and (7) To the extent possible, the BLM will use current scientific information, research, new technologies and the results of resource assessments, monitoring and coordination to determine appropriate local, and regional management strategies that will enhance or restore impaired ecosystems.

Complete records of all phases of the planning process will be available for public review at the Price Field Office throughout this planning effort.

This notice announces the beginning of scoping. The Price Field Office is seeking public involvement in the earliest possible stages of this planning endeavor to enhance collaboration. If you have information or concerns you would like to share, including ideas or opportunities that could enhance data collection, inventories, or formulation of issues that could be addressed in the plan, please submit them to the above address.

Alternatives will be developed and analyzed to resolve the issues that are identified during the scoping process. A Draft RMP/Draft EIS will be published and made available for public review.

Dated: September 6, 2001.

Robert A. Bennett,

Acting State Director.

[FR Doc. 01–27922 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4377; ES–51228, Group 156, Wisconsin]

Notice of Filing of Plat of Survey; Wisconsin

The plat of the dependent resurvey of a portion of the south and east boundaries, a portion of the subdivisional lines, and the subdivision of sections 24, 25, and 36, Township 39 North, Range 9 West, 4th Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on November 28, 2001.

The survey was requested by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., November 28, 2001.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: September 27, 2001.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 01–27916 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ; ES–51229, Group 164, Wisconsin]

Notice of Filing of Plat of Survey; Wisconsin

The plat of the dependent resurvey of the Eagle Bluff Light Station in the fractional NE ¼ of section 17, Township 31 North, Range 27 East, 4th Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on December 17, 2001.

The survey was requested by the Bureau of Land Management, Milwaukee Field Office.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., December 17, 2001.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: October 19, 2001.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 01–27915 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–1420–BJ–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

The plats of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., October 1, 2001.

The plat representing the dependent resurvey of the west boundary and the subdivisional lines, T. 52 N., R. 74 W., Sixth Principal Meridian, Wyoming, Group No. 653, was accepted August 20, 2001.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of sections 28 and 33, T. 55 N., R. 91 W., Sixth Principal Meridian, Wyoming, Group No. 654, was accepted September 28, 2001.

The plat representing the dependent resurvey of the west boundary and portions of the south and north boundaries and subdivisional lines, and the subdivision of certain sections, T. 54 N., R. 91 W., Sixth Principal Meridian, Wyoming, Group No. 654, was accepted September 28, 2001.

The plat representing the dependent resurvey of portions of the south and west boundaries and the subdivisional lines, T. 52 N., R. 75 W., Sixth Principal Meridian, Wyoming, Group No. 671, was accepted September 28, 2001.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of sections 19 and 20, T. 52 N., R. 91 W., Sixth Principal Meridian, Wyoming, Group No. 672, was accepted September 28, 2001.

Dated: October 1, 2001.

John P. Lee,

Chief Cadastral Survey Group.

[FR Doc. 01–27909 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 79422]

Notice of Proposed Withdrawal; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy has filed an application to withdraw approximately 20,808 acres of public land for a period of 20 years, for a disposal cell for uranium mill tailings in Grand County, Utah. This notice segregates the lands for up to 2 years from location and entry under the United States mining laws subject to valid existing rights.

DATES: Comments must be received on or before February 5, 2002.

ADDRESSES: Comments should be sent to the Moab Field Office Manager, 82 East Dogwood Avenue, Moab, Utah, 84532.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, Realty Specialist, Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, (435) 259–2128.

SUPPLEMENTARY INFORMATION: On August 30, 2001, an application was received from the Department of Energy to withdraw the following described public lands from location and entry under the United States mining laws, subject to valid existing rights:

Salt Lake Meridian

Crescent Area:

T. 21 S., R. 19 E.,
Secs. 20 and 21;
Sec. 22, those lands south of the Bookcliffs;
Sec. 23, those lands south of the Bookcliffs;
Sec. 24, lots 1 to 4, inclusive, W½E½, those lands in the NW¼ south of the Bookcliffs, and SW¼;
Secs. 25 to 29, inclusive.

The area described contains approximately 5,934 acres in Grand County.

Klondike Area:

T. 23 S., R. 19 E.,
Sec. 13, those lands in the NW¼ and S½ lying west of US Highway 191;
Sec. 14, NE¼, N½NW¼, and S½;
Secs. 20 to 23, inclusive;
Sec. 24, those lands in the NE¼ lying west of US Highway 191, W½, and SE¼;
Secs. 25 to 29, inclusive;
Secs. 33, 34, and 35.

T. 24 S., R. 19 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, SW¼, NW¼SE¼, and S½S½SE¼SE¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 10, N½;
Sec. 11, N½;
Sec. 12.

T. 23 S., R. 20 E.,
Sec. 30, lots 2, 3, and 4, and those lands in lots 7, 8, and 15 lying west of US Highway 191;
Sec. 31, lots 1 to 4, inclusive.

T. 24 S., R. 20 E.,
Sec. 6, lots 3 and 6, W½SE¼, and SE¼SE¼;
Sec. 7, lots 1 to 4, inclusive, and E½;
Sec. 8, those lands in the NE¼NW¼ and the SE¼ lying west of US Highwey 191, NW¼NW¼, S½NW¼, and SW¼.

The area described contains approximately 14,874 acres in Grand County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Moab Field Office Manager.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is canceled or the withdrawal is approved prior to that date.

Public meetings will be held in connection with the proposed withdrawal during the preparation of the environmental impact statement that will analyze options for disposal of the uranium tailings. A notice of the time and place will be published by the U.S. Department of Energy in the **Federal Register** at least 30 days before the scheduled date of the meetings.

Dated: October 10, 2001.

Margaret Wyatt,

Moab Field Office Manager.

[FR Doc. 01–27923 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[Arizona, INT–DES 01–38]

Reach 11 Recreation Master Plan, Central Arizona Project, Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of and public hearing for a draft environmental impact statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation), in conjunction with the City of Phoenix (City), has prepared a draft EIS for a Recreation Master Plan for the Reach 11 Recreation Area (Reach 11), located in the northeast portion of the City, Maricopa County, Arizona. The draft EIS describes the anticipated environmental effects associated with the proposed approval and implementation of a recreation master plan for a 1,500-acre area adjacent to the Central Arizona Project (CAP) canal, between Cave Creek and Scottsdale

roads. The land is owned by Reclamation and is managed for recreational purposes by the City's Recreation and Library Department (PRLD) under a 1986 land use agreement. The draft EIS describes in detail a proposed recreation master plan and two action alternative master plans that could be approved and implemented. A No Action Alternative is also described, which provides a baseline for comparing the impacts of the three action alternatives. A public hearing will be held to receive comments from interested individuals and organizations regarding the adequacy of the draft EIS in describing the anticipated environmental impacts from the proposed project.

DATES: A public hearing is scheduled for December 11, 2001, from 6:30 to 9:30 p.m. A 60-day public review and comment period begins with the filing of the draft EIS with the Environmental Protection Agency. Written comments must be received no later than January 18, 2002.

ADDRESSES: The public hearing will be held at Paradise Valley Community Center, 17402 North 40th Street, Phoenix, Arizona.

Send written comments to Mr. Bruce Ellis, Chief, Environmental Resource Management Division, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169,Phoenix, AZ 85069–1169; fax number (602) 216–4006.

The draft EIS document is available on the Internet at *http://www.apo.lc.usbr.gov*. A copy of the draft EIS is also available upon request from Ms. Janice Kjesbo, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169, telephone (602) 216–3864, faxogram (602) 216–4006. A copy of the draft EIS is also available for public inspection and review at the libraries listed under Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: Questions regarding the draft EIS should be directed to Ms. Sandra Eto, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169, telephone (602) 216–3857.

SUPPLEMENTARY INFORMATION: Reclamation is proposing to approve a new Recreation Master Plan for Reach 11, managed for recreational purposes by the PRLD. The current master plan was approved in 1987. The City and Reclamation determined a comprehensive planning effort for a new master plan should be carried out, due to the major population growth that has occurred and future growth anticipated for the area. This effort included conducting a recreation needs assessment to inventory existing facilities in the vicinity of Reach 11, and evaluating needs based upon established park standards, existing capacity, and public interest in or opposition to various recreation uses. The purpose and need for a new Recreation Master Plan is to optimize recreational use of Reach 11 based upon the needs of the City and community, while ensuring compatibility with the primary flood control function of Reach 11. A master plan would accommodate and respect the full range of current and future recreation demands of this growing area of Phoenix, Arizona. The draft EIS considers three alternative master plan scenarios. All three provide a level of development established for a City district park. Under the Proposed Action, high-demand recreation needs would be balanced with passive recreation uses and maintenance of quality habitat areas. Two other alternative action alternatives are considered: one that would provide less active recreation-oriented development, and that emphasizes passive recreation-oriented activities (Alternative 1), and one that would maximize development of active-recreation oriented recreation facilities (Alternative 2). The No Action Alternative assumes the existing 1987 master plan, (which does not meet current PRLD district park standards), would continue to be implemented. The alternative ultimately selected and implemented is expected to be developed in phases by PRLD, as funding becomes available.

Copies of the draft EIS are available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C Street, NW., Washington, DC 20240
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225
- Arizona Department of Library Archives and Public Records, 1700 W. Washington St., Phoenix, AZ 85007
- North Central Regional County Library, 17811 N. 32nd St., Phoenix, AZ 85032
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., Phoenix, AZ 85004
- Government Document Service, Arizona State University, Tempe, AZ 85287
- Arizona State University—West Library, 4701 W. Thunderbird Rd., Glendale, AZ 85306

Written comments received by Reclamation become part of the public record associated with this action. Accordingly, Reclamation makes these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: October 24, 2001.

V. LeGrand Neilsen,

Deputy Regional Director.

[FR Doc. 01–27881 Filed 11–6–01; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: New Collection, Tribal Resource Grant Program Application.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 66, Number 147, pages 39537 on July 31, 2001, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 7, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Tribal Resources Grant Program Application.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form:* None. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federally Recognized Tribal Governments.

Other: None. The information collected will be used by the COPS Office to determine whether Federally recognized Tribal Governments are eligible for three year grants specifically targeted to meet the most serious needs of law enforcement in Indian communities. The grants are meant to enhance law enforcement infrastructures and community policing efforts in these communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 200 respondents at 9 hours per response. The information will be collected annually from each respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 1,800 annual burden hours associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: November 1, 2001.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 01–27964 Filed 11–6–01; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF LABOR

Employment and Training Administration

Disability Employment Grant Program Funded Under the Workforce Investment Act Title I

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

This Notice Contains All of the Necessary Information and Forms Needed to Apply for Grant Funding.

SUMMARY: The U.S. Department of Labor, Employment and Training Administration (DOL/ETA), announces the availability of approximately $6 million in competitive grant funds for multi-state employment and training projects serving people with disabilities. This skill training grant program is funded using Workforce Investment Act Title I, section 171 funds and targets projects providing multi-site training and other employment services to individuals with disabilities that result in long-term, unsubsidized employment.

DATES: The closing date for receipt of applications under this announcement is December 21, 2001 at 4 p.m. Eastern Standard Time (EST) at the address below:

ADDRESSES: Applications must be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Jacquelyn Carter, SGA/DFA 02–100. 200 Constitution Avenue, NW, Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Jacquelyn Carter at 202–693–2879 (this is not a toll-free number). All inquiries should include the SGA number DFA–02–100, and a contact name, fax, and telephone numbers. This solicitation is also being published on the Internet at ETA's home page at *http://www.doleta.gov* and at ETA's disAbility Online website at *http://wdsc.doleta.gov/disability/* (click on "Grantee Communication" to access these forms). Award notifications will also be published on both the ETA home page and the disAbility Online website.

SUPPLEMENTARY INFORMATION:

A. Authority

Funds made available for this Solicitation for Grant Applications are authorized under the Workforce Investment Act of 1998, section 171 (b), (c) and (d). Approximately $6 million of the total funds available for this grant award are dislocated worker demonstration and pilot project funds.

This announcement consists of five parts:

Part I—Application Process
Part II—Background and Purpose
Part III—Review Process, Evaluation Criteria and Statement of Work
Part IV—Government Requirements, and
Part V—Definitions

Part I—Application Process

A. Eligible Applicants

Private non-profit entities, including faith-based organizations, are eligible to receive grant funds under this award. Non-profit disability organizations with national scope and the capacity to administer multi-state training and employment programs are encouraged to apply. Entities described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this SGA. The Lobbying Disclosure Act of 1995 as amended, 2 U.S.C. 1611 prohibits the award of federal funds to 501(c)(4) entities engaged in lobbying activities. Applicants are encouraged to include partnerships with community-based and faith-based organizations at the local level. Such partnerships should be clearly identified in the application.

Applicants must operate or propose to operate in two or more states. Applicants should provide documentation of knowledge and/or experience in the following areas:

—Overcoming barriers to employment experienced by individuals with disabilities;

—ability to conduct training, placement, and follow-up services; and

—management and accountability structure necessary to ensure the integrity of the funds requested (by meeting the standards for financial management and participant data systems as specified in 29 CFR part 95). Only one proposal per applicant/organization(s) is permitted. If an applicant/organization submits two separate proposals, both proposals will be rejected.

B. Submission of Proposals

Applicants must submit three (3) copies with original signatures. A proposal shall consist of two (2) separate and distinct sections: Section I—Financial Proposal and Budget Information Form; and Section II—Technical Proposal.

Section I, the Financial Proposal shall contain the SF–424, "Application for Federal Assistance,"(Appendix A), and Budget Information Form (Appendix B). In addition, the budget shall include on a separate page a detailed cost analysis of each line item. Administrative costs cannot exceed 15 percent of total proposed costs. Administrative costs are those identified in 20 CFR 667.220. Approval of a budget by DOL is not the same as approval of actual costs. The Catalog of Federal Domestic Assistance number is 17.261. Applicants shall indicate on the SF–424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995 as amended, 2 U.S.C. 1611, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant or loan. The individual signing the SF–424 on behalf of the applicant must represent the responsible financial and administrative entity for a grant should that application result in an award. The budget must include, on a separate page, a detailed breakout of each line item.

Section II, the Technical Proposal, will demonstrate the applicant's capabilities in accordance with the Statement of Work in Part III of this solicitation. This must be organized to follow the evaluation criteria. No cost data or reference to costs shall be included in the Technical Proposal.

In addition, the Technical Proposal shall be limited to 20 doubled-spaced, single-side, 8.5 inch x 11 inch pages with 1 inch margins. Appendices shall not exceed 20 pages, and may include charts, graphs, staff resumes, composition of advisory boards, and other supporting documents. Text type shall be 12 point or larger. Applications not meeting these requirements will not be considered. The Technical Proposal must also contain participant, activity and outcome information, and must include the process the applicant will use for implementing the project and a timeline outlining the project activities.

C. Hand Delivered Proposals

It is preferred that applications be mailed at least five days before the closing date (see "Late Proposals" section below). To be considered for funding, hand delivered proposals must be received at the address identified above by 4 p.m. (Eastern Standard Time) December 21, 2001. All overnight express mail will be considered to be hand delivered and must be received at the designated place by the specified time on the closing date. Grant applications transmitted by electronic mail, telegraph or facsimile will not be considered. Failure to adhere to the above instructions will be a basis for a determination of non responsiveness.

D. Late Proposals

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or was sent by the U.S. Postal Service Express Mail Next Day Service, Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the deadline date specified for receipt of applications in this SGA. The term "working days" excludes weekends and Federal holidays.

The "post mark" only acceptable evidence to establish the date of mailing of an application received after the deadline date for the receipt of proposals sent by the U.S. Postal Service and on the original receipt from the U.S. Postal Service. The term "post marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

E. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

F. Scope of Award

DOL/ETA anticipates making awards that range from $300,000 to $500,000. Proposals with costs exceeding $500,000 will not be considered. WIA Title I Dislocated Worker funds are included in the total funds available. Therefore, some awards will be funded in whole, or in part, with WIA Title I Dislocated Worker funds based on the extent to which the proposal is targeted to disabled individuals who also qualify as a dislocated worker under Title I (see Definitions). Awards will be made on a competitive basis.

G. Period of Performance

The initial period of performance will be twelve (12) months from the date of execution by the Government. The Department may elect to exercise its option to extend these grants for up to two additional option years for a total not to exceed 36 months based on (1) the availability of funds, (2) grantee performance including achieving a 50% placement rate during the grant period, and (3) project needs. The Department reserves the right to impose additional requirements or refinements in program design if the project is extended for a second and/or third year grant period.

Part II. Background and Purpose

A. Background

DOL/ETA has provided grant awards to non-profit organizations that provide employment and training services to persons with disabilities for the past twenty-five years. Disability Employment Grants totaling $6.8 million were awarded in 1998 to fifteen organizations for a three year grant period using Job Training Partnership Act (JTPA) Title III and IV funds. During the FY 1999 grant period, Disability Employment Grants served more than 3,500 individuals with disabilities and placed 1,500 in unsubsidized, competitive employment. The Disability Employment Grant program is now authorized under WIA at section 171 (b), (c) and (d), 29 USC 2801(31).

This initiative builds upon other ETA initiatives, including the Work Incentive Grants, which are designed to enhance service delivery throughout the National One-Stop delivery system for people with disabilities, and the Disability Information Technology (IT) Initiative, which focuses on expanding opportunities for information technology training and improving access to employment in the information technology industry for people with disabilities. It is also supportive of President Bush's New Freedom Initiative by increasing workforce, employment, and educational opportunities for people with disabilities, as well as increasing access to assistive and universally designed technologies. This includes support of Executive Order 13217: Community-Based Alternatives for Individuals with Disabilities.

For more information on ETA funded grants and other ETA initiatives addressing the employment of people with disabilities, visit ETA's disAbility Online web site at: *http://wdsc.doleta.gov/disability/*.

Several other grant initiatives totaling $10.3 million have been awarded from the Department of Labor's Office of Disability Employment Policy (ODEP). These include Customized Employment Grants, Innovative Demonstration Programs for WIA-assisted Youth, High-School/High Tech Start-up and Realignment Grants, a WIA Disability Technical Assistance Consortia Grant and Disability Youth Consortia Grant. The Customized Employment Grants are distinct from ETA's Disability Employment Grants in that their focus centers on getting local Workforce Investment Boards to develop comprehensive, strategic, and cutting-edge models of service delivery for individuals with disabilities who have never been employed, whose experience is limited to subsidized employment, or who have traditionally been considered unemployable. Please go to: *http://www.dol.gov/dol/odep/* for more information on the ODEP grants and other programs administered by ODEP.

While the unemployment rate remains at less than 5 percent; the unemployment rate for working-age adults with disabilities has remained at approximately 70 percent for at least the past 12 years. Only 26 percent of working age adults with significant disabilities have a job or a business compared to 82 percent of those without disabilities (U.S. Bureau of the Census, Survey of Income and Program Participation, 1997), and among workers with college degrees only 52 percent of those with severe disabilities reported labor market activity compared to 90 percent of those with no disability—a gap of 38 percentage points.

Title IV of the Workforce Investment Act, which amends the Rehabilitation Act, included several findings relating to ethnic and racial minorities as traditionally under-served populations in the vocational rehabilitation system (29 U.S.C. 718). Ethnic and racial minorities tend to have disabling conditions at a disproportionately high rate. The rate of work-related disability for Native Americans is about one and one-half times that of the general population. African-Americans are also one and one-half times more likely to be disabled than whites and twice as likely to be significantly disabled. According to the U.S. Census Bureau's 1994–1995 data, approximately 85.5 percent of African-Americans with severe disabilities and 75.4 percent of Hispanics with severe disabilities are not working. Among the reasons for the disproportionately high rate of unemployment are disparities in the services provided to minorities with disabilities, fewer educational opportunities, poor outreach to minority communities, and inadequate transportation and housing.

B. Purpose

The primary purpose of this multi-state Disability Employment Grant award is to implement strategies to improve long term quality employment outcomes, and skills attainment that address the needs of people with disabilities, particularly those with severe disabilities. In this program, the quality of employment outcomes is more important than the number of placements. At the same time, grant entities will be held accountable for achieving minimum placement goals identified in this SGA.

Of particular importance are skills and employment training that enable individuals to move to unsubsidized employment. Innovation, coordination, and partnerships, non-duplication of existing services, and leveraging of scarce resources are also important factors. In addition, DOL is interested in identifying successful project designs that can be shared and replicated as state workforce system changes proceed. Therefore, applications should represent strong linkages with adult, dislocated worker and youth programs operating under the WIA such as Job Corps, Youth Opportunity Grants, Migrant and Seasonal Farm Worker programs and Indian and Native American programs.

DOL has identified the following priorities for the purposes of this SGA:

- Strategies for high quality, long term employment of racial and ethnic minorities with significant disabilities;
- Strategies for employment of SSI and SSDI beneficiaries;
- Strategies for community-based alternatives for individuals with disabilities that support Executive Order 13217;
- Innovative approaches utilizing technology, including assistive technology, innovative training and workplace strategies or other approaches (e.g., distance learning, telecommuting, and self employment and small business ownership) which result in significant employment outcomes;
- Program designs which incorporate integrated service delivery for people with disabilities in One-Stop Center WIA Title I programs;
- Strategies involving strong ties to, and commitment from, corporate and business entities; and
- Service delivery which emphasizes on-the-job training and internship approaches in corporate and business environments.

Other areas that may be addressed in the application include: linkages with other public (national, state and local) and/or private delivery systems; linkages with disability consumer organizations (e.g., independent living centers), and with other entities that address significant employment barriers, and linkages with existing service strategies that build on and facilitate other systemic changes impacting individuals with disabilities (e.g., DOL Work Incentive Grant programs, Welfare-to-Work implementation, Medicaid Infrastructure Grants).

Part III. Review Process, Evaluation Criteria and Statement of Work

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the established criteria listed in this SGA. The panel results are advisory in nature and are not binding on the Grant Officer. The Grant Officer may consider any information that comes to his or her attention, and will make final award decisions based upon what is most advantageous to the Federal Government in terms of geographic mix, technical quality, justification and evidence of the ability to perform activities included in the management and design of the projects, and the applicant's past performance. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the applicant's signature on the SF–424, which constitutes a binding offer.

Proposals will be evaluated against the following criteria:

A. Project Design—Activities and Outcomes

(40 points)
B. Coordination and Linkages (20 points)
C. Disability Employment Grant Participants (20 points)
D. Management and Administration (20 points)

A. Project Design—Activities and Outcomes (40 points)

1. Purpose and Scope of the Project

Describe the specific purpose or purposes of the proposed project. Explain how the proposed project will be applicable to disability issues of national scope. Describe the potential for replication in adult, dislocated worker, and WIA national programs under the WIA Title I. Explain the impact of the project on the One-Stop Center system.

Describe how faith-based organizations will be included as partners in outreach and service delivery or whether there will be sub-grants or contracts with local faith-based entities.

Project designs should include local community demonstration sites in two or more states and identification of successful employment and career strategies for specific or multiple types of disabling conditions. Projects should be designed to: test the effectiveness of project strategy in diverse state systems and potential for replication; build on a variety of National efforts involving individual state workforce development systems; and allow for analysis of different state/local service structures. Minimum cost per site shall be $75,000.

2. Training and Supportive Services

The program design should describe core, intensive and training services to be provided from the time of participant selection through placement in unsubsidized employment and follow-up. The design should describe in detail the kinds of training that will be offered, the method by which the training will be provided, and whether training will culminate in certification.

Design description should include a rationale for additional activities and services in terms of overall project design, overcoming employment barriers of planned participants, and achieving quality employment outcomes. Narratives should provide a clear understanding of services and supports needed for successful placement and job retention.

The program design must provide information on planned activities, placement, and services to participants, including the number of planned participants to be served. Identify what types of core, intensive and training services will be provided to participants. Identify what other sources of funds will be leveraged for training or supportive services to participants as part of the overall project design but will not be funded by the ETA Disability Employment Grant (e.g. Individual Training Accounts, Youth Opportunity, Vocational Rehabilitation, or Adult Literacy funds) must also be identified.

Project designs must include on-the-job training and internship or self-employment strategies. Project design must describe why these are effective strategies for the client group being served and how many participants are expected to receive specific services (e.g., how many will be in on-the-job training). Private sector employer commitment to on-the-job positions should be identified.

The design description must also include strategies related to training in the information technology skills sector, such as software design, network applications, and service repair technicians. The description provided should be clear on the complexity of the training and expectations for higher salaried employment outcomes with longer range career potential. Please note, training on Microsoft WORD, Word Perfect, Lotus or other basic computer familiarity training is not sufficient to meet this criterion.

3. Employment Outcomes

Available Jobs. Based on labor market information, project design should describe the types of jobs that are expected to be available to participants upon completion of training and placement services, including prevailing wage levels, career potential, and opportunities for advancement. Information on the number and type of jobs and the availability of qualified workers must also be included. The project design should also identify how and why job placement and retention for participant group will more likely occur as a result of the proposed project. Sources of labor market information should be identified, and may include the Bureau of Labor Statistics, O*NET, America's Career Kit, State Occupational Information Coordinating Committees. Other sources of information may include business and trade associations, employers, and other representatives of the local business community.

Planned Placements. The project design must indicate how many placements in unsubsidized, competitive employment are expected to result from activities at each site. The quality of job placements in terms of entry wage or salary levels, long-term career potential, and the long-term growth of the occupations under consideration in the local area, must also be described. Information on participant flow from intake to assessment, to placement should be provided indicating clearly when placement will occur. Program design should also include a plan for post-placement follow-up at 90 days, 180 days, and 12 months.

Planned outcome information should be provided, including site specific information on: (1) Number of terminees completing program; (2) number of placements in unsubsidized employment; (3) number of placements in full time employment (35 hours per week or more); and (4) the average hourly wage, and placements with durations of 180 days or more. This information should include planned employment outcomes for SSI/SSDI beneficiaries and the impact of the employment on their ability to leave SSI/SSDI benefit rolls.

Applicants are requested to describe methods of ongoing assessment of "customer satisfaction" and how results will be used in project operation. The Department of Labor expects that applicants will achieve an entered employment rate of 50 percent. Continued project funding will take achievement of this goal into account. Grantees will be required to submit quarterly Activity and Placement Reports (APR) on the number of participants being served, activities and services provided, and placement outcomes (see Part IV. Government Requirements). Disability Employment Grant reporting requirements are provided under the "Grantee Communications" section of the disAbility Online web site at: *http://wdsc.doleta.gov/disability/*

Special Wage Waivers Under Fair Labor Standards Act. Employment in jobs, and/or related training, approved for Special Minimum Wage Certificates under section 14(c) of the Fair Labor Standards Act (FLSA), as amended (29 U.S.C. 214) and its implementing regulations at 29 CFR part 525 will not be considered as an allowable activity or outcome. Organizations receiving FLSA special wage certifications must provide assurances and verification that FLSA special wage training and placement are not incorporated within proposed project design. Employment outcomes should be at the prevailing wage and under no circumstances, below the applicable Federal or State minimum wage, whichever is higher.

Because the information technology industry currently represents close to 50 percent of the nation's economic growth, applicants should consider how they might initiate the development of new collaborative processes at the regional and local levels, thereby leveraging private sector, school, and local government resources in order to expand workplace opportunities for individuals with disabilities.

B. Coordination and Linkages (20 points)

Descriptions must detail any linkages with State and Local Workforce Investment Boards, State/local One-Stop Career Center systems, Adult, Dislocated Worker and Youth programs authorized under the Workforce Investment Act, Job Corps Centers, Welfare-to-Work programs, Department of Education programs such as Vocational Rehabilitation, and training programs authorized under the U.S. Department of Housing and Urban Development and under the Department of Agriculture. Proposals must demonstrate a significant integration of services to people with disabilities in the One-Stop system, such as using Individual Training Accounts to support training objectives, joint funding of on-the-job training by One-Stop partner programs, including Vocational Rehabilitation, or other significant collaborative activities which leads to integrated services for people with disabilities in One-Stop Centers.

Applicants should indicate the impact of the proposed project on system changes underway and how non-grant funds are being leveraged. Funds or resources to be contributed to the project by the applicant and/or partnership entities should also be identified. Applications should provide information on how the project adds value to the workforce system from a national perspective (e.g., fills a gap in policy or service delivery approach), and the potential for replication and dissemination to the workforce system at large.

The design description should address the role of apprenticeship programs under the U.S. Department of Labor's Apprenticeship Training, Employment and Labor Services (ATELS), if applicable. It should also describe the role of the business community, including business advisory councils, State or Local Business Leadership Networks (BLNs) and labor organizations to the project if applicable, the extent to which they may provide internships or possible employment for successful participants, the extent to which they may serve as mentors, and their input into decisions on training and identification of trends and skill shortages. Applications demonstrate a strong commitment by the corporate and business sector to provide on-the-job training, internships, mentoring or other substantive contributions to the grant project.

Other coordination efforts should address major employment obstacles such as insufficient medical coverage and/or other barriers to employment (e.g., transportation, personal assistance needs, and housing). Evidence should be presented demonstrating the cooperation of coordinating entities and the program design should include a reasonable method of assessing and reporting on the impact of that coordination. Consultation with and/or review by appropriate labor organizations is encouraged and should be documented.

Applicants should describe linkages to DOL's Work Incentive Grant programs, new programs available through DOL's Office on Disability Employment Policy if applicable, and other work incentive programs (e.g., programs under Social Security's Ticket to Work and Work Incentives Improvement Act, and Medicaid Infrastructure Grants).

C. Disability Employment Program Participants (20 points)

1. Target Population

Participants for the proposed project must be individuals with disabilities (i.e., physical, sensory, emotional, or mental functional impairments) as defined in section 3 of the Americans with Disabilities Act at 42 U.S.C. 12102. The characteristics of the client population to which the proposal is targeted should be described as applicable in terms of: (1) Specific type(s) of disability, (e.g., psychiatric disorders, neurologic disorders); (2) specific subgroup of disabled population, (e.g., minority, youth, older workers); (3) why the project design will result in quality career and/or employment outcomes; and (4) what innovative and coordinated approaches will be used to serve the target population. It is anticipated that a significant percentage of the population will require the use of assistive technology in both training and in the workplace.

National attention has been made in recent years to the lack of services available to ethnic and racial minorities and the fact they experience disability in disproportionately greater numbers. Therefore, applicants are encouraged to design proposals to provide 50 percent or more of grant services to this group of people. Likewise, it is also known that less than 1 percent of SSI and SSDI beneficiaries are able to get off benefits and achieve self-sustaining employment in the workplace. Reliance on public supports is devastating personally to those limited to public resources for their livelihood and is also detrimental from a public fiscal policy perspective. Applicants are encouraged to include strategies that direct grant resources to training and employment services for SSI and/or SSDI participants.

Proposals must also provide the following planning information on the participants to be served in project design, in total and by project site:

- The number of participants,
- The age range of participants (e.g., under 22, 23–50, 51–65),
- The number of participants who receive Supplemental Security Income and/or Social Security Disability Income (SSI/SSDI),
- The number and percent of participants that will be qualified as dislocated workers.

Describe any innovations in the proposed project, including (but not limited to) innovations relating to the target population, delivery of services, training methods, job development, or job retention strategies. Describe new directions or approaches to address significant unemployment levels of people with disabilities. Explain how the proposed project:

(1) Will be applicable to disability issues of national scope;

(2) Is similar to or differs from the applicant's prior and current activities; and

(3) Does not duplicate existing employment and training programs.

Applicants may also provide other information about participants considered important such as educational level, and number of people of minority or ethnic diversity.

2. Outreach and Recruitment

Describe how outreach and recruitment addresses the overall design of the project. Outreach and recruitment may address public service announcements, use of media, use of community-based organizations, and other service groups. Identify how workforce development systems, disability consumer organizations, and the business community will be used in the recruitment process. Describe how the target population will be recruited for participation at each site.

3. Eligibility

Describe the eligibility process for project participants, including the process for determining whether a participant is an individual with a

disability and those with a significant disability (see Definitions).

4. Assessment

Describe the process for evaluating participants' skills and education levels, career interests, accommodation requirements, training and services, and other barriers and needs. Narrative should identify whether assessment will be conducted by the awardee or another service provider. (Applicants should indicate whether and how the Test of Adult Basic Education (TABE) or an alternative assessment tool will be used to assess reading, mathematical skills, and other employment readiness skills to participate in this project, as applicable. Applicants should include how the project will address the remedial or preparatory training needs of the participants and how the project will address possible learning disabilities. Please note, the implementation of these assessments may require reasonable accommodation and use of Assistive Technology).

D. Management and Administration (20 points)

1. Management Structure

Describe the management structure for the proposed project. Applicants must provide a staffing plan showing each position and the percentage of time assigned to the project. Provide an organizational chart showing the relationship between the management and operational components of the project and the overall organization. Include staff and operations projected for the project. Include resumes of current key staff. For each of the key staff not identified at the time of application, provide a job description or the qualifications sought for the position. Specific information on staff and organizational structure may be provided in the Appendix.

2. Program Integrity and Public Accountability

Describe the mechanisms to be used to ensure financial and program accountability in record keeping and reporting. The design must demonstrate oversight of project implementation and progress benchmarks. Describe how the project will keep records of activities and satisfy the administrative requirements set out under 29 CFR parts 95—99, as applicable.

The design must include a comprehensive discussion describing in detail the types of information to be collected, methods and frequency of collections, and ways information will be used to implement and manage the program. The following must be covered:

(1) Program data collection and reporting systems to determine the achievement of project outcomes;

(2) Financial management systems to ensure fiscal accountability in accordance with statutory, regulatory, and contractual requirements;

(3) Communication processes and technology that will be utilized; and

(4) Administrative process for each project site.

3. Project Management

Awardee will be responsible for management and oversight of all activities under the grant. Identify the information on project performance and financial management to be collected on a short-term basis by project staff. Describe the process of on-site monitoring of each project site, including employer site visits, if applicable. Describe the processes and procedures to be used to obtain feedback from participants, employers, and any other appropriate parties on the responsiveness and effectiveness of the services provided.

4. Grievance Procedures

Describe the procedure to be used for grievances and complaints from participants, contractors, and other interested parties, consistent with requirements at 20 CFR part 667, subpart F.

5. Previous Project Management Experience

Provide objective evidence of the grant applicant's ability to manage this project, ensure the integrity of the grant funds, and deliver the proposed performance. Indicate the grant applicant's past management experience, particularly regarding oversight and operating functions including financial management and relevant audit or grant reviews of the organization. Provide references and/or contact persons of former or current funding organizations.

If applicant was a grantee of the U.S. Department of Labor's Disability Employment Grant program in prior years, then the applicant must include its participant outcomes and program performance from the previous period(s).

Part IV. Government Requirements

A. Reporting Requirements

Applicants receiving awards under this solicitation will be required to submit financial, program, and participant reports on a quarterly and annual basis. Grantees will be required to submit: (1) Activity and Placement Report (APR) on the number of participants being served, activities and services provided, and placement outcomes; and (2) Participant Characteristics Report (PCR) on age, race, type of disability, etc., of participants enrolled in the grantee's program. Narrative information on the grant program should be submitted quarterly with the APR. The narrative may include information on the status of project implementation, participant success stories during the reporting period, conferences or job fairs planned or held, meetings with employers related to placements, or other information of interest about the grant project. In addition to the APR and PCR, grantees are required to submit a Financial Status Report (FSR), SF 269. Report submissions to the ETA are quarterly for the APR and FSR, and annually for the PCR following the end of the Fiscal Year. The APR, PCR and FSR forms and related instructions can be downloaded from ETA's disAbility Online website at: *http://wdsc.doleta.gov/disability* (click on "Grantee Communication" to access these forms). Reports are due to ETA no later than 30 days after the last day of the report period.

B. Use of Federal Funds

Federal funds cannot be used to support activities that would be provided in the absence of these funds. Grant funds may cover only those costs that are appropriate and reasonable. Federal grant funds may only be used to acquire equipment that is necessary for the operation of the grant. Except as specifically provided, DOL/ETA acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require, and an entity's procurement procedures must require that all procurement transactions shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

Grantees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, OMB Circular A–122, which applies to nonprofit organizations, requires prior approval for certain capital expenditures to be allowable as direct costs.

Part V. Definitions

For the purpose of this demonstration project, WIA Title I definitions apply. The following definitions are provided for information or clarification of specified terms used in this SGA:

Assistive Technology—The term "assistive technology" means technology designed to be utilized in an assistive technology device or assistive technology service. (29 USCA 3002(a)(2), the Assistive Technology Act of 1998).

Assistive Technology Device—The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

Assistive Technology Service—The term "assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

(A) The evaluation of the assistive technology needs of an individual with a disability, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the individual in the customary environment of the individual;

(B) Services consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(C) Services consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(D) Coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with education and rehabilitation plans and programs;

(E) Training or technical assistance for an individual with disabilities, or, where appropriate, the family members, guardians, advocates, or authorized representatives of such an individual; and

(F) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

Disability—See definition in section 3 of the Americans with Disabilities Act, (42 U.S.C. 12102(2)), and the requirements at 28 CFR 35.104.

Dislocated Worker—See definition in the Workforce Investment Act of 1998 section 101(9) which states that the term "dislocated worker" means any individual who—

(A)(i) Has been terminated or laid off, or who has received a notice of termination or layoff, from an employment;

(ii)(I) Is eligible for or has exhausted entitlement to unemployment compensation; or

(II) Has been employed for a duration sufficient to demonstrate, to the appropriate entity at a one-stop center referred to in section 134(c), attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a State unemployment compensation law; and

(iii) Is unlikely to return to a previous industry or occupation;

(B)(i) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff of, a plan, facility, or enterprise;

(ii) Is employed at a facility at which the employer has made a general announcement that such a facility will close within 180 days; or

(iii) For purposes of eligibility to receive services other than training services described in section 134(d)(4), intensive services described in section 134(d)(3), or supportive services, is employed at a facility at which the employer has made a general announcement that such a facility will close;

(C) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disaster; or

(D) Is a displaced homemaker.

Displaced homemaker—The term "displaced homemaker" means an individual who has been providing unpaid services to family member in the home and who (A) has been dependent on the income of a family member but is no longer supported by that income; (B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Individual with a Disability—See definition in the Workforce Investment Act section 101(17) (29 U.S.C. 2801(17)) which states: (A) In general.—The term "individual with a disability" means an individual with any disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)). (B) Individuals with disabilities.—The term "individuals with disabilities" means more than one individual with a disability.

Individual with a Significant Disability—See definition pursuant to WIA Title IV, section 403, which amends section 6(21) of the Rehabilitation Act, 29 U.S.C. 705(21).

On-the-Job Training (OJT)—Training provided by an employer that is provided to a paid participant while engaged in productive work in a job that—

(A) Provides knowledge or skills essential to the full and adequate performance of the job;

(B) Provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training; and

(C) Is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate (WIA section 101(31), 29 U.S.C. 2801(31)).

Unsubsidized/Competitive Employment—Non-grant or unsupported employment that includes, entry into the Armed Forces (including entry onto active duty from Reserve and National Guard units), entry into employment in a registered apprenticeship program, self-employment, etc. Employment performed on a full-time or part-time basis in an integrated setting in which wages/salaries are at or above the minimum wage. Employment with special wage provisions authorized under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214 and its implementing regulations at 29 CFR part 525) are not considered unsubsidized nor competitive for the purpose of this grant.

Work Experience (WE)—A planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience workplace may be in the private for-profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience where an employee/employer relationship as defined by the Fair Labor Standards Act, exists (See 20 CFR 663.200(b)).

Signed at Washington, DC, this 2nd day of November 2001.

Lorraine H. Saunders,

Grant Officer, Office of Grants and Contract Management, Division of Federal Assistance.

Attachments

1. Appendix A—"Application for Federal Assistance" (Standard Form 424)

2. Appendix B—Budget Information Form

BILLING CODE 4510-30-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.
2. **Fringe Benefits**: Indicate the rate and amount of fringe benefits.
3. **Travel**: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.
4. **Equipment**: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.
5. **Supplies**: Include the cost of consumable supplies and materials to be used during the project period.
6. **Contractual**: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.
7. **Other**: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.
8. **Total, Direct Costs**: Add lines 1 through 7.
9. **Indirect Costs**: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.
10. **Training /Stipend Cost:** (If allowable)
11. **Total Federal funds Requested**: Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 01–27963 Filed 11–6–01; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–139)]

NASA Advisory Council, Biological and Physical Research Advisory Committee Audio Teleconference

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee.

DATES: Thursday, November 29, 2001, from 11 am until 2 pm.

ADDRESSES: This meeting will be conducted via teleconference; hence participation will require contacting Dr. Bradley Carpenter (202/358–0826) before 4:30 pm Eastern, November 28, 2001, and leaving your name, affiliation, and phone number.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capability of the teleconferencing system. The agenda for the meeting is as follows:

—International Space Station Status.
—GPRA Performance Review.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Beth M. McCormick,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–27908 Filed 11–6–01; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Libraries Meeting

Notice is hereby given that the Advisory Committee on Presidential Libraries will meet on November 28, 2001, in the afternoon at the Houston I meeting room on the second floor of the Double Tree Guest Suites, 303 W. 15th Street in Austin, Texas.

The agenda for the meeting will be the Presidential library programs and a discussion of several critical issues including dialogue concerning the symposium on the "Future of Presidential Libraries" and a report by the Archivist on recent developments at NARA.

The meeting will be open to the public. For further information, contact Richard L. Claypoole at 301–713–6050.

Dated: November 1, 2001.

Mary Ann Hadyka,
Committee Management Officer.

[FR Doc. 01–27928 Filed 11–6–01; 8:45 am]
BILLING CODE 7515–01–U

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: November 14, 2001: 12:00 Noon.–12:30 p.m.—Closed Session; November 15, 2001: 12:30 p.m.–1:00 p.m.—Closed Session; November 15, 2001: 1:00 p.m.–3:30 p.m.—Closed Session.

PLACE: The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230, www.nsf.gov/nsb.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, November 14, 2001

Closed Session (12:00 Noon–12:30 p.m.)

—Closed Session Minutes, October, 2001
—NSB Public Service Award

Thursday, November 15, 2001

Closed Session (12:30 p.m.–1:00 p.m.)

—Awards and Agreements
—NSF Budget, FY 2002, 2003

Open Session (1:00 p.m.–3:30 p.m.)

—Open Session Minutes, October, 2001
—Closed Session Items for March, 2001
—Chairman's Report
—Director's Report
—NSB Guidelines on MRE Priorities
—International Report—Approval
—Committee Reports
—Other Business

Marta Cehelsky,
Executive Officer.

[FR Doc. 01–28077 Filed 11–5–01; 11:54 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket 70–7005]

Waste Control Specialists, LLC; Issuance of Environmental Assessment and Finding of No Significant Impact for Exemption From Certain NRC Licensing Requirements for Special Nuclear Material for Waste Control Specialists, LLC

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an Order pursuant to section 274f of the Atomic Energy Act that would exempt Waste Control Specialists LLC (WCS) from certain NRC regulations. The exemption would allow WCS, under specified conditions, to possess waste containing special nuclear material (SNM), in greater quantities than specified in 10 CFR part 150, at WCS's facility located in Andrews County, Texas, without obtaining an NRC license pursuant to 10 CFR part 70. A description of the operations at the facility and staff's safety analysis for the exemption are discussed in the companion Safety Evaluation Report (SER).

Environmental Assessment (EA)

Identification of Proposed Action: Staff proposes to exempt WCS from the licensing requirements in 10 CFR part 70. The exemption would permit WCS to possess SNM without regard for mass. Rather than relying on mass to ensure criticality safety, concentration-based limits are being applied, such that accumulations of SNM at or below these concentration limits would not pose a criticality safety concern. The methodology used to establish these limits is discussed in the SER. The exemption is contingent on WCS complying with specific conditions in the exemption. These conditions are as follows:

1. Concentrations of SNM in individual waste containers and/or during processing must not exceed the following values:

SNM isotope	Operational limit (gram SNM/gram waste)	Measurement uncertainty (gram SNM/gram waste)
U–233	4.7E–04	7.1E–05
U–235 (10 percent enriched)	9.9E–04	1.5E–04
U–235 (100 percent enriched)	6.2E–04	9.3E–05
Pu–239	2.8E–04	4.2E–05
Pu–241	2.2E–04	3.2E–05

The measurement uncertainty values in column 3 above represent the maximum one-sigma uncertainty associated with the measurement of the concentration of the particular radionuclide. When mixtures of these SNM isotopes are present in the waste, the sum-of-the-fractions rule, as illustrated below, should be used.

$$\frac{\text{U-233 conc}}{\text{U-233 limit}}+\frac{\text{100wt\%U-235 conc}}{\text{100wt\%U-235 limit}}+\frac{\text{10wt\%U-235 conc}}{\text{10wt\%U-235 limit}}+\frac{\text{Pu-239 conc}}{\text{Pu-239 limit}}+\frac{\text{Pu-241 conc}}{\text{Pu-241 limit}}\leq 1$$

The SNM must be homogeneously distributed throughout the waste. If the SNM is not homogeneously distributed, then the limiting concentrations must not be exceeded on average in any contiguous mass of 600 kilograms.

2. Waste must not contain "pure forms" of chemicals containing carbon, fluorine, magnesium, or bismuth in bulk quantities (e.g., a pallet of drums, a B–25 box). By "pure forms," it is meant that mixtures of the above elements such as magnesium oxide, magnesium carbonate, magnesium fluoride, bismuth oxide, etc. do not contain other elements. The presence of the above materials will be determined and documented by the generator, based on process knowledge or testing.

3. Waste accepted must not contain total quantities of beryllium, hydrogenous material enriched in deuterium, or graphite above one tenth of one percent of the total weight of the waste. The presence of the above materials will be determined and documented by the generator, based on process knowledge, or testing.

4. Waste packages must not contain highly water soluble forms of SNM greater than 350 grams of U–235 or 200 grams of U–233 or 200 grams of Pu. The sum of the fractions rule will apply for mixtures of U–233, U–235, and Pu. When multiple containers are processed in a larger container, the total quantity of soluble SNM shall not exceed these mass limits. Highly soluble forms of SNM include, but are not limited to: uranium sulfate, uranyl acetate, uranyl chloride, uranyl formate, uranyl fluoride, uranyl nitrate, uranyl potassium carbonate, uranyl sulfate, plutonium chloride, plutonium fluoride, and plutonium nitrate. The presence of the above materials will be determined and documented by the generator, based on process knowledge or testing.

5. Processing of mixed waste containing SNM will be limited to chemical stabilization using the following chemicals: Ferrous sulfate, ferrous sulfide, portland cement, sodium hypochlorite, sodium tripoly-phosphate, Metaplex II (attapulgite-type clay), hexaderyl mescaptan, lime, sodium hydroxide, Metaplex III, hydrogen peroxide, sodium metabisulfate, sodium sulfide, and sodium hydrosulfide.

6. Prior to shipment of waste, WCS shall require generators to provide a written certification containing the following information for each waste stream:

a. Waste Description. The description must detail how the waste was generated, list the physical forms in the waste, and identify uranium chemical composition.

b. Waste Characterization Summary. The data must include a general description of how the waste was characterized (including the volumetric extent of the waste, and the number, location, type, and results of any analytical testing), the range of SNM concentrations, and the analytical results with error values used to develop the concentration ranges.

c. Uniformity Description. A description of the process by which the waste was generated showing that the spatial distribution of SNM must be uniform, or other information supporting spatial distribution.

d. Manifest Concentration. The generator must describe the methods to be used to determine the concentrations on the manifests. These methods could include direct measurement and the use of scaling factors. The generator must describe the uncertainty associated with sampling and testing used to obtain the manifest concentrations.

WCS shall review the above information and, if adequate, approve in writing this pre-shipment waste characterization and assurance plan before permitting the shipment of a waste stream. This will include statements that WCS has a written copy of all the information required above, that the characterization information is adequate and consistent with the waste description, and that the information is sufficient to demonstrate compliance with Conditions 1 through 4. Where generator process knowledge is used to demonstrate compliance with Conditions 1, 2, 3, or 4, WCS shall review this information and determine when testing is required to provide additional information in assuring compliance with the Conditions. WCS shall retain this information as required by the State of Texas to permit independent review.

At the time waste is received, WCS shall require generators of SNM waste to provide a written certification with each waste manifest that states that the SNM concentrations reported on the manifest do not exceed the limits in Condition 1, that the measurement uncertainty does not exceed the uncertainty value in Condition 1, and that the waste meets Conditions 2 through 4.

WCS shall require generators to sample and determine the SNM concentration for each waste stream at the following frequency: (a) If the concentrations are above one tenth the SNM limits (Condition 1), once per 600 kg, (b) if the concentrations are below one tenth and greater than one hundredth of the SNM limits, once per 6,000 kg, and (c) if the concentrations are below one hundredth of the SNM limits, once per 60,000 kg.

If the waste is determined to be not homogeneous (i.e., maximum, which cannot exceed the limits in Condition 1,

and minimum testing values performed by the generator are greater than five times the average value), the generator shall sample and determine the SNM concentration once per 600 kg thereafter, regardless of SNM concentration. In this case, samples shall be a composite consisting of four uniformly sampled aliquots.

The certification required under these conditions shall be made in writing and include the statement that the signer of the certification understands that this information is required to meet the requirements of the U.S. Nuclear Regulatory Commission and must be complete and accurate in all material respects.

7. WCS shall sample and determine the SNM concentration for each waste stream at the following frequency: (a) If the concentrations are above one tenth the SNM limits (Condition 1), once per 1,500 kg for the first shipment and every 6,000 kg thereafter, (b) if the concentrations are below one tenth and greater than one hundredth of the SNM limits, once per 20,000 kg for the first shipment and every 60,000 kg thereafter, and (c) if the concentrations are below one hundredth of the SNM limits, once per 600,000 kg. This confirmatory testing is not required for waste to be disposed of at DOE's WIPP facility.

If the waste is determined to be not homogeneous (i.e., maximum and minimum testing values performed by the generator are greater than five times the average value), WCS shall sample and determine the SNM concentration once per 1,500 kg for the first shipment and every 6,000 kg thereafter, regardless of SNM concentration. In this case, samples shall be a composite consisting of four uniformly sampled aliquots.

8. WCS shall notify the NRC, Region IV office within 24 hours if any of the above Conditions are violated. A written notification of the event must be provided within 7 days.

9. WCS shall obtain NRC approval prior to changing any activities associated with the above Conditions.

Need for the Proposed Action: WCS requested an exemption in a letter dated February 22, 2000. WCS noted that Envirocare of Utah, Inc. was granted a similar exemption. As a basis for the request, WCS noted that it was receiving higher quantities of waste containing SNM for treatment. They further note that they have not exceeded the current SNM mass limits in its State of Texas license, but expected that the current SNM mass limits could severely impact their ability to compete in future mixed waste treatment markets.

Environmental Impacts of the Proposed Action: WCS is licensed by the State of Texas, an NRC Agreement State, under a 10 CFR part 30 equivalent license for the treatment and storage of mixed waste and low level radioactive waste. WCS is also licensed by Texas to dispose of hazardous wastes. The State of Texas, in support of its licensing activities, has conducted safety reviews of radiological activities at the site. The proposed actions now under consideration would allow for more SNM to be stored on site, but should not substantially change environmental impacts from current operations. Effluent releases and potential doses to the public are regulated by the State of Texas and are not anticipated to change as a result of the increased storage of SNM on site. It is anticipated that the exemption will result in an increase (up to 20 percent) in truck shipments to the WCS facility. However, in the absence of the exemption, these shipments would likely go to other facilities. In addition, the increased traffic in the area surrounding WCS will not appreciably change the overall traffic in the area. Therefore, the net transportation impact will not be significant.

The regulations regarding SNM possession in 10 CFR part 150 set mass limits whereby a licensee is exempted from the licensing requirements of 10 CFR part 70 and can be regulated by an Agreement State. The licensing requirements in 10 CFR part 70 apply to persons possessing greater than critical mass quantities (as defined in 10 CFR 150.11). The principal emphasis of 10 CFR part 70 is criticality safety and safeguarding SNM against diversion or sabotage. The NRC staff considers that criticality safety can be maintained by relying on concentration limits, under the specified conditions. These concentration limits are considered an alternative definition of quantities not sufficient to form a critical mass to the weight limits in 10 CFR 150.11, thereby assuring the same level of protection. While there could be impacts if the exemption conditions are not met, such potential impacts are no different than if current requirements are not met. Safeguarding of SNM in waste is not considered a significant issue because of the diffuse form of the SNM in the waste.

A condition of the proposed action (condition 7) would require WCS to conduct periodic confirmatory concentration verification on waste containing SNM. WCS currently conducts activities where waste is handled, but the additional sampling and testing would be in addition to current site activities already conducted under WCS's radiation protection program. The additional sampling and testing would also be conducted under this radiation protection program with an emphasis on maintaining doses as low as reasonably achievable. The sampling and testing required will result in an increase in dose to workers. However, the increase in occupational exposure will be within regulatory limits and is considered justified in order to provide additional assurance that the SNM concentrations in waste do not exceed the specified limits.

Based on the above, the NRC concludes that this proposed exemption will have no significant radiological or nonradiological environmental impacts.

Alternatives to the Proposed Action: The NRC staff considered two alternatives to the proposed action. One alternative to the proposed action would be to not grant the exemption (no-action alternative). Under this alternative, WCS would continue to be restricted to possess limited quantities of SNM. As discussed above, the environmental impacts from allowing a greater quantity of SNM, subject to concentration and other conditions, are essentially equivalent to the no-action alternative. As discussed above, an increase in occupational exposure would result from the sampling and testing of SNM waste.

Another alternative would be to grant the exemption without conditions. This option would not provide the same level of protection against an inadvertent criticality as the current mass limits in 10 CFR part 150 and would not provide sufficient protection of health, safety, and the environment. A third alternative would be to grant the exemption without imposing the condition in the Order to perform confirmatory testing. This option would not increase the occupational dose; however, as discussed above and in the SER, this confirmatory testing is considered necessary to provide additional assurance that the SNM concentrations reported on the manifest are accurate. Grossly exceeding the SNM concentration limits could result in an inadvertent criticality. In this event, it is likely that nearby workers would receive doses in excess of the annual occupational limits. The limits defined under the preferred alternative would insure that this event would not occur or would be remote.

Agencies and Persons Consulted: Officials from the State of Texas, Department of Health were contacted about this EA for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the NRC finds that the proposed action of granting an exemption from NRC licensing requirements in 10 CFR Part 70 under the conditions specified will not significantly impact the quality of the human environment. The staff further finds that none of the criteria contained in 10 CFR 51.20 which would require the preparation of an Environmental Impact Statement (EIS) has been met.

Accordingly, the NRC is not required to prepare an EIS for the proposed exemption.

Dated at Rockville, Maryland this 18th day of October 2001.

For The Nuclear Regulatory Commission.

Thomas H. Essig,

Chief, Environmental & Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–27953 Filed 11–6–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 2001.

Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of September 1, 2001, of two deferrals contained in one special message for FY 2001. The message was transmitted to Congress on January 18, 2001.

Deferrals (Attachments A and B)

As of September 1, 2001, $872 million in budget authority was being deferred from obligation. Attachment B shows the status of each deferral reported during FY 2001.

Information from Special Message

The special message containing information on the deferrals that are covered by this cumulative report is printed in the edition of the **Federal Register** cited below:66 FR 8985, Monday, February 5, 2001

Mitchell E. Daniels, jr.,

Director.

ATTACHMENT A.—STATUS OF FY 2001 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	1,946.7
Routine Executive releases through September 1, 2001	−1,075.1
Overturned by the Congress.	
Currently before the Congress	871.6

ATTACHMENT B

Status of FY 2001 Deferrals - As of September 1, 2001

(In thousands of dollars)

Deferral Number	Agency/Bureau/Account	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Special Message	Releases (-): Cumulative OMB/ Agency	Releases (-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9/1/01
	DEPARTMENT OF STATE								
	Other								
D01-1	United States Emergency Refugee and Migration Assistance Fund	145,310		1/18/01	67,033				78,277
	INTERNATIONAL ASSISTANCE PROGRAMS								
	International Security Assistance								
D01-2	Economic Support Fund	1,801,382		1/18/01	1,008,047				793,335
	TOTAL, DEFERRALS	1,946,692			1,075,080				871,612

Note: Detail may not add to totals due to rounding.

BILLING CODE 3110-01-C

[FR Doc. 01-27898 Filed 11-6-01; 8:45 am]
BILLING CODE 3110-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-1993; File No. 803-160]

Sterling Johnston Capital Management, L.P.; et al.; Notice of Application

November 1, 2001.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Advisers Act of 1940 ("Advisers Act").

Applicants: Sterling Johnston Capital Management, L.P. "SJCM" and Hirtle Callaghan Trust ("Trust").

Relevant Advisers Act Sections: Exemption requested under section 206A of the Advisers Act from section 205 of the Advisers Act and Advisers Act rule 205-1.

Summary of Application: Applicants request an order permitting SJCM and its affiliates to charge a performance fee based on the performance of that portion of a Trust portfolio managed by SJCM ("SJCM Account"). Applicants further request that the order permit them to compute the performance-related portion of the fee using changes in the SJCM Account's gross asset value rather than net asset value.

Filing Dates: The application was filed on June 4, 2001, and amended on October 31, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with copies of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 26, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549-0609. Applicants, Sterling Johnston Capital Management, L.P., One Sansome Street, Suite 1800, San Francisco, CA 94104; Hirtle Callaghan Trust, 575 Swedesford Road, Wayne, Pennsylvania 19087.

FOR FURTHER INFORMATION CONTACT: Sarah B. Ackerson, Senior Special Counsel at (202) 942-4780 or Jennifer L. Sawin, Assistant Director, at (202) 942-0719 (Division of Investment Management, Office of Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. SJCM is an investment adviser registered under the Advisers Act. The Trust is an open-end management investment company registered under the Investment Company Act of 1940. The Trust was organized by Hirtle, Callaghan & Co. ("Hirtle Callaghan"), an investment adviser registered under the Advisers Act. The Trust is a series company that currently consists of several separate investment portfolios. Shares of the Trust are available only to clients of Hirtle Callaghan or clients of financial intermediaries, such as investment advisers, that are acting in a fiduciary capacity with investment discretion and that have established relationships with Hirtle Callaghan.

2. Hirtle Callaghan serves as a "manager of managers" for the Trust. Pursuant to its agreement with the Trust, Hirtle Callaghan is not authorized to exercise investment discretion with respect to the Trust's assets. Hirtle Callaghan is responsible for monitoring the overall investment performance of the Trust's portfolios and the performance of the portfolio managers that manage the Trust's portfolios. Hirtle Callaghan may also from time to time recommend that the Trust's Board of Trustees (the "Board") retain additional portfolio managers or terminate existing portfolio managers. Authority to select new portfolio managers and reallocate assets among the portfolio managers, however, resides with the Trust's Board.

3. SJCM, Frontier Capital Management ("Frontier"), and Geewax, Terker & Co. ("Geewax") provide portfolio management services to the Small Capitalization Equity Portfolio ("Portfolio"), one of several separate investment portfolios that comprise the Trust. Pursuant to a portfolio management agreement, SJCM provides portfolio management services for a portion of the Portfolio's assets that the Trust's Board allocates to SJCM ("SJCM Account"). SJCM, Frontier, and Geewax are assigned responsibility to manage a separate portion of the Portfolio and each acts as though it were advising a separate investment company. Percentage limitations on investments are applied to each portion of the Portfolio without regard to the investments in the other advisers' portions of the Portfolio. When each adviser receives information about portfolio positions from the Trust or its custodian, the adviser generally receives only information about the portion of the Portfolio assigned to it, and not information about the positions held by the Portfolio as a whole. Each adviser generally is responsible for preparing reports to the Trust and the Board only with respect to its discrete portion of the Portfolio.

4. SJCM is not affiliated with Hirtle Callaghan, the Trust or any other investment advisory organization that provides portfolio management and services to the Trust.[1] Services provided to the Trust by SJCM are limited to investment selection for the SJCM Account, placement of transactions for execution and certain compliance functions directly related to such services. SJCM and its affiliates do not act as a distributor or sponsor for the Trust or Portfolio. No member of the Trust's Board is affiliated with SJCM.

5. SJCM currently receives a fee at the annual rate of 0.40 percent of the average daily net assets of the SJCM Account, payable monthly. On October 18, 2000 the Trust's Board and the Trust's disinterested trustees approved an amendment to the portfolio management agreement between SJCM and the Trust under which the existing fee structure would be replaced with a fee structure that includes a performance component. On December 1, 2000 the shareholders of the Portfolio approved the amendment to the agreement.[2] The proposed amendment would become effective on the first day of the month following receipt of an order from the SEC approving the proposed fee schedule. SJCM's fee would be adjusted to reflect the performance of the SJCM Account only after the proposed amendment has been in effect for 12 months (the "Initial Period").

6. Under the proposed fee arrangement, at the end of each of the first three quarters of the Initial Period, SJCM would receive a base fee of 0.10

[1] SJCM does not have any affiliates at this time. Future affiliates, if any, will comply with the terms of any order issued by the Commission in connection with this application.

[2] The proxy statement associated with this shareholder meeting specifically informed shareholders that, if approved by the shareholders, the proposed fee would not become effective until receipt of assurances from the SEC that calculating the fee as proposed would not be viewed as inconsistent with the Advisers Act, and that there could be no guarantee that the SEC would give such assurances.

percent of the average daily net assets of the SJCM Account during the quarter ("Base Fee").[3] At the end of the fourth quarter of the Initial Period, SJCM would receive the Base Fee, plus or minus a performance component multiplied by the average net assets of the SJCM Account during the Initial Period. The performance component ("Performance Component") would be equal to 25 percent of the difference between (i) the total return of the SJCM Account calculated without regard to expenses incurred in the operation of the SJCM Account ("Gross Total Return") and (ii) the sum of the total return of the Russell 2000 Growth Index ("Index Return") plus a performance hurdle of 40 basis points.

7. None of the expenses of the Portfolio, including SJCM's advisory fee, would be deducted from the performance of the SJCM Account for purposes of calculating Gross Total Return. However, Gross Total Return would reflect the effect (*i.e.*, reducing performance) of all applicable brokerage and transaction costs.

8. For each quarter following the fourth quarter of the Initial Period, SJCM would receive the Base Fee, plus or minus 25% of the Performance Component multiplied by the average net assets of the SJCM Account for the immediately proceeding 12-month period, on a "rolling basis." The maximum annual fee payable for any 12-month period would not exceed 80 basis points, or 20 basis points with respect to any quarter (except the fourth quarter of the Initial Period). The minimum fee payable would be zero with respect to any 12-month period or quarter. The maximum and minimum fees were set by the portfolio management agreement between the Trust and SJCM and are not necessary mathematical outcomes of the fee formula.[4] .

[3] Applicants may seek in the future to amend the terms of the proposed fee arrangement to provide for a base fee that is calculated at the annual rate of 0.40% of the SJCM Account's average daily net assets. Calculating the base fee at an annual rate would result in the payment to SJCM of a base fee (before any performance adjustment) that is approximately the same as the quarterly base fee payable under the proposed fee arrangement. It is Applicant's position that any such amendment to the proposed fee arrangement would not constitute a material change in the nature of the proposed fee arrangement, or a change in any material fact set forth in this Application and upon which Applicants rely in their analysis of those provisions of the Advisers Act from which relief is hereby requested. Accordingly, it is Applicant's position that any such amendment would not alter Applicant's ability to rely upon any order issued by the Commission pursuant to this Application.

[4] If the aggregate payments made to SJCM with respect to the first 12 month period exceed the performance-adjusted fee to which SJCM would be entitled, the amount of any excess fee would be credited to the Portfolio in subsequent quarters before additional fee amounts would be payable to SJCM. If the portfolio management agreement between the Trust and SJCM is terminated, the Trust would not recoup any outstanding excess fees that had been paid in previous quarters.

Applicants' Legal Analysis

1. Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into any investment advisory agreement that provides for compensation to the adviser on the basis of a share of capital gains or capital appreciation of a client's account.

2. Section 205(b) of the Advisers Act provides a limited exception to this prohibition, permitting an adviser to charge a registered investment company and certain other entities a fee that increases and decreases "proportionately with the investment performance of the investment company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the [SEC] by rule, regulation or order may specify."

3. Rule 205–1 under the Advisers Act requires that the investment performance of an investment company be computed based on the change in the net (of all expenses and fees) asset value per share of the investment company.

4. Applicants request exemptive relief from section 205 and rule 205–1 of the Advisers Act to permit them to charge the proposed fee (i) applying the proposed fee only to the SJCM Account and not to the Portfolio as a whole, and (ii) computing the Performance Component measured by the change in the SJCM Account's gross asset value, rather than the change in the net asset value of the SJCM Account.

5. Applicants state that Congress, in adopting and amending section 205 of the Advisers Act, and the SEC, in adopting rule 205–1, put into place safeguards designed to ensure that investment advisers would not take advantage of advisory clients.

6. Applicants assert that the SEC required that performance fees be calculated based on the net asset value of the investment company's shares to prevent a situation where an adviser could earn a performance fee even though investment company shareholders did not derive any benefit from the adviser's performance after the deduction of fees and expenses.

7. Applicants state that, unlike traditional performance fee arrangements, SJCM would not receive the Performance Component of its fee unless its management of the SJCM Account has resulted in performance in excess of the Index Return plus a "performance hurdle" equal to 40 basis points. Applicants assert that increasing the performance of the Index Return by the 40 basis point hurdle would have an effect similar to deducting SJCM's fees. In the event the Base Fee changes, the performance hurdle also would be changed to match the Base Fee. Applicants state that because the fee structure contains a performance hurdle, the Portfolio's shareholders will have protections similar to those contemplated by the net asset value requirement of rule 205–1.

8. Applicants state that Congress' concern, in enacting the safeguards of section 205, came about because the vast majority of investment advisers exercised a high level of control over the structuring of the advisory relationship. Applicants state that the proposed fee, however, was negotiated actively at arm's length between the parties. Applicants state that SJCM has little, if any, influence over the overall management of the Trust or the Portfolio beyond stock selection. Management functions of the Trust and the Portfolio reside in the Trust's Board. The Trust is directly and fully responsible for supervising the Trust's service providers and monitoring expenses of each of the Trust's portfolios. The Trust's Board is responsible for allocating the assets of the several portfolios among the portfolio managers. SJCM did not sponsor or organize the Trust, or serve as a distributor or principal underwriter of the Trust. SJCM does not own any shares issued by the Trust. No officer, director or employee of SJCM serves as an executive officer or director of the Trust. SJCM is not an affiliated person of Hirtle Callaghan or any other person who provides investment advice with respect to the Trust's advisory relationships (except to the extent that such affiliation may exist by reason of SJCM serving as investment adviser to the Trust).

9. Applicants argue that the proposed fee arrangement satisfies the purpose of rule 205–1 because it was negotiated at arms-length and the Trust does not need the protections afforded by calculating a performance fee based on net assets. Applicants argue that the proposed fee arrangement therefore is consistent with the underlying policies of section 205 and rule 205–1 and that the exemption would be consistent with the protection of investors.

Applicants' Conditions

1. If the base fee changes, the performance hurdle will be changed to match the base fee.

2. To the extent SJCM relies on the requested order with respect to advisory arrangements with other investment companies that it advises, these arrangements will meet the following requirements: (i) The investment advisory fee will be negotiated between SJCM, or the applicable affiliate of SJCM, and the investment company or its primary investment adviser; (ii) the fee structure will contain a performance hurdle that is, at all times, no lower than the base fee; (iii) neither SJCM nor any of its affiliates will serve as distributor or sponsor of the investment company; (iv) no member of the board of the investment company will be affiliated with SJCM or SJCM's affiliates; (v) neither SJCM nor any of its affiliates will organize the investment company; and (vi) neither SJCM nor any of its affiliates will be an affiliated person or any primary adviser to the investment company or of any other person who consults or provides advice with respect to the investment company's advisory relationships (except to the extent that SJCM or its affiliates may be affiliated with another portfolio manager by virtue of the fact that SJCM or the affiliate serves as a portfolio manager to the investment company or to another investment company).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27945 Filed 11–6–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45009; File No. SR–CBOE–2001–55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Establish Connectivity Fees for Use of Its New Screen-Based Trading System

October 31, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on October 12, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 29, 2001, CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is proposing to establish connectivity fees in connection with the establishment of the Exchange's screen-based trading system, known as CBOE*direct*. The text of the proposed rule change is available at the principal office of the Exchange and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE is proposing to establish connectivity fees applicable to the Exchange's new screen-based trading system, CBOE*direct*.[4] These charges relate to the hardware, software, and network costs associated with connecting to the new screen-based trading platform and would be applicable only to members desiring certain types of connectivity to CBOE*direct*. Order-sending firms would be able to route orders to CBOE*direct* via the new connectivity or via existing connections to CBOE's Order Routing System (which serves orders routed to the floor of the Exchange). Members, such as liquidity providers, desiring to connect to CBOE*direct* via the new connectivity would incur set-up charges based on the nature of the connection and the hardware selected. Such members would first choose from two available Application Programming Interfaces ("APIs"): (1) A "CMI" API, or (2) a "FIX" API. For members that desire a CMI API, additional hardware would be required. There would be three different hardware options available to these users involving different CBOE software and server combinations. Prices for each type are detailed in CBOE's fee schedule. A FIX API connection would involve a $500 charge if the user does not already have appropriate FIX connectivity. All of these set-up charges would be one-time charges.

Connectivity charges also would involve a monthly circuit charge. For members using a CBOE managed network, charges would be based on the bandwidth selected by the user as well as the user's distance from a network POP server. For a member using its own network, a lesser monthly charge would be applicable based on API/hardware configuration.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with section 6(b) of the Act[5] in general and section 6(b)(4)[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

CBOE represents that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become

[3] *See* Letter from Angelo Evangelou, CBOE, to Michael Gaw, Division of Market Regulation, Commission, dated October 25, 2001 ("Amendment No. 1"). The original filing set forth proposed fees for connectivity charges and excessive requests for quote ("RFQs"). In Amendment No. 1, CBOE withdrew the portion of the filing relating to RFQ fees and stated its intention to resubmit this portion in a separate filing.

[4] The Exchange anticipates that, initially, trading on CBOE*direct* will occur only during extended trading hours for a limited range of products. Separately, CBOE has filed a proposed rule change to adopt certain rules governing trading on CBOE*direct*. *See* File No. SR–CBOE–00–55.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

effective pursuant to section 19(B)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NE., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submission should refer to File No. SR–CBOE–2001–55 and should be submitted by November 28, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27888 Filed 11–6–01; 8:45 am]

BILLING CODE 8010–01–M

U.S. SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3371]

State of Oklahoma

As a result of the President's major disaster declaration on October 25, 2001, and a notice received from the Federal Emergency Management Agency on October 31, 2001, I find that Washita County in the State of Oklahoma constitutes a disaster area due to damages caused by severe storms, flooding and tornadoes occurring on October 9 and 10, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 30, 2001 and for economic injury until the close of business on July 31, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Oklahoma may be filed until the specified date at the above location: Beckham, Caddo, Custer, Greer and Kiowa.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.500
Homeowners without credit available elsewhere	3.250
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 337111. For economic injury the number is 9M9700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 1, 2001.

Herbert L. Mitchell,

Associate Administrator, For Disaster Assistance.

[FR Doc. 01–27907 Filed 11–6–01; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Draft Environmental Review of the Proposed U.S.-Chile Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and Comment on the Draft Environmental Review of the proposed U.S.-Chile Free Trade Agreement.

SUMMARY: The Office of the U.S. Trade Representative, through the Trade Policy Staff Committee, seeks comment on the draft environmental review of the proposed U.S.-Chile Free Trade Agreement. The draft environmental review is available at *http://www.ustr.gov/environment/environmental.shtml.*

DATES: Comments related to the draft environmental review are requested by Tuesday, November 20, 2001. Receipt of comments by such date will ensure timely input into the negotiations, which are scheduled to conclude in the month of December 2001. Please note that comments at the present time may only be sent by fax to (202) 395–5141 or by e-mail to *FR002@ustr.gov.*

FOR FURTHER INFORMATION CONTACT: Darci Vetter, Office of the U.S. Trade Representative, Environment and Natural Resources Section, telephone 202–395–7320.

SUPPLEMENTARY INFORMATION: The draft environmental review for the U.S.-Chile Free Trade Agreement was conducted pursuant to Executive Order 13141 on Environmental Review of Trade Agreements (64 FR 63169, Nov. 18, 1999) and its accompanying guidelines (65 FR 79442, Dec. 19, 2000), both of which are available at *http://www.ustr.gov/environment/environmental.shtml.* On December 14 of 2000, the Office of the U.S. Trade Representative requested public comments regarding the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for environmental laws and regulations (65 FR 78077, Dec. 14, 2000). A final environmental review will be made publicly available following the conclusion of the U.S.-Chile Free Trade Agreement negotiations.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 01–28098 Filed 11–5–01; 2:51 pm]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).
[8] 17 CFR 240.19b–4(f)(2).
[9] 17 CFR 200.30–3(a)(12).

SUMMARY: The FAA assigned the Aviation Rulemaking Advisory Committee a new task to review and evaluate the current standards for § 33.14 and corresponding JAR–E 515 as they pertain to the current "safe life" process. This notice is to inform the public of this ARAC activity.

FOR FURTHER INFORMATION CONTACT: Timoleon Mouzakis, Federal Aviation Administration, New England Region Headquarters, Engine and Propeller Standards Staff, 12 New England Executive Park, Burlington, MA 01803, phone (781) 238–7114, facsimile: (781) 238–7199, *timoleon.mouzakis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA established the Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitments to harmonize Title 14 of the Code of Federal Regulations (14 CFR) with its partners in Europe and Canada.

The Task

1. Review and evaluate the current standards for § 33.14 and corresponding JAR–E–515 as they pertain to the current "safe life" process. As the existing standards do not explicitly account for the potential degrading effects of anomalous materials and manufacturing or usage induced anomalies, determine if the FAA can expand the current requirement to include damage tolerance philosophies. Also, establish the process to achieve a closed loop system which links the assumptions made in design (by engineering) to how the part is manufactured and maintained in service.

2. Develop a report based on the review, which may include revisions to the rules. If revisions to the rules are recommended, the report should include recommended regulatory language to the appropriate FAR section, the corresponding JAR paragraphs, any related advisory material, and ARAC's response to the economic questions attached to this tasking record.

3. If, as a result of the recommendations, the FAA publishes an NPRM and/or notice of proposed availability of draft advisory circular for public comment, the FAA may ask ARAC to review all comments and provide the agency a recommendation for the disposition of those comments.

Schedule: Required completion is no later than September 2003.

ARAC Acceptance of Task

ARAC accepted the task and assigned the task to the Engine Harmonization Working Group, Transport Airplane and Engine Issues. The working group serves as staff to ARAC and assists in the analysis of assigned tasks. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA.

Working Group Activity

The Engine Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan for consideration at the next meeting of the ARAC on transport airplane and engine issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in item 3 below.

3. Draft the appropriate documents and required analyses and/or any other related materials or documents.

4. Provide a status report at each meeting of the ARAC held to consider transport airplane and engine issues.

Participation in the Working Group

The Engine Harmonization Working Group is composed of technical experts having an interest in the assigned task. A working group member need not be a representative or a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than December 7, 2001. The requests will be reviewed by the assistant chair, the assistant executive director, and the working group co-chairs. Individuals will be advised whether or not their request can be accommodated.

Individuals chosen for membership on the working group must represent their aviation community segment and actively participate in the working group (e.g., attend all meetings, provide written comments when requested to do so, etc.). They must devote the resources necessary to support the working group in meeting any assigned deadlines. Members must keep their management chain and those they may represent advised of working group activities and decisions to ensure that the proposed technical solutions do not conflict with their sponsoring organization's position when the subject being negotiated is presented to ARAC for approval.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group co-chairs.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC will be open to the public. Meetings of the Engine Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on October 30, 2001.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–27998 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA assigned the Aviation Rulemaking Advisory Committee a new task to review the adequacy of the standards and advisory materials regarding bird ingestion requirements and determine whether they establish a minimum standard of safety. This notice is to inform the public of this ARAC activity.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Federal Aviation Administration, New England Region Headquarters, Engine and Propeller Standards Staff, ANE–110, 12 New

England Executive Park, Burlington, MA 01803, (781) 238–7120, facsimile: (781) 238–7199, *marc.bouthillier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA established the Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitments to harmonize Title 14 of the Code of Federal Regulations (14 CFR) with its partners in Europe and Canada.

The Task

- Review and assess the adequacy of the standards and advisory material for § 33.76 bird ingestion requirements to determine whether they establish an appropriate minimum standard of safety as required by the Federal Aviation Act. The assessment should define the current bird threat, include an evaluation of trends, and consider any reasonable predictable changes to the current threat. ARAC should take into account any changes in the threat resulting from increased population of a particular bird species, actions intended to control populations around airports, and flight-crew training for flocking-bird recognition and avoidance.
- Develop a report on the review and, depending upon the results of the review, recommend regulatory language to § 33.76, corresponding JAR–E540/800, and related advisory material to address any inadequacies identified in the rule or related advisory material. Reconsider whether the basic design of the recent rule is adequate relative to its stated safety objective, reconsider flocking birds greater than 2.5 pounds, and reconsider high-speed aircraft operations at low altitudes relative to the identified bird ingestion threats.
- If appropriate, recommend changes to the recent rules and related advisory material. The recommendation should include ARAC's response to the economic questions attached to this tasking record.
- Identify and provide recommendations to the FAA and JAA for areas of study, other than engine certification requirements, where potential exists to significantly mitigate risks associated with engine bird ingestion.
- If as a result of the recommendations, the FAA publishes an NPRM and/or notice of availability of draft advisory circular for public comment, the FAA may ask ARAC to review selected comments or all comments, as specified at that time by the FAA, and provide the agency with a recommendation for the disposition of those comments.
- Consider defining an industry-level management plan for periodic update and review of the bird ingestion database so as to maintain an awareness of the bird threat in service.

Schedule: Required completion date is August 2002.

ARAC Acceptance of Task

ARAC accepted the task and assigned the task to the Engine Harmonization Working Group, Transport Airplane and Engine Issues. The working group serves as staff to ARAC and assists in the analysis of assigned tasks. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA.

Working Group Activity

The Engine Harmonization Working Group must comply with the procedures adopted by ARAC. As part of the procedures, the working group must:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan for consideration at the next meeting of the ARAC on transport airplane and engine issues held following publication of this notice.
2. Give a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in item 3 below.
3. Draft the appropriate documents and required analyses and/or any other related materials or documents.
4. Provide a status report at each meeting of the ARAC held to consider transport airplane and engine issues.

Participation in the Working Group

The Engine Harmonization Working Group will be composed of technical experts having an interest in the assigned task. A working group member need not be a representative or a member of the full committee.

Any individual who has expertise in the subject area and wants to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. We must receive all requests by December 7, 2001. The requests will be reviewed by the assistant chair, the assistant executive director, and the working group co-chairs. Individuals will be advised whether or not their request can be accommodated.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and actively participate on the working group (e.g., attend all meetings, provide written comments when requested to do so, etc.). They also will be expected to devote the resources necessary to support the working group in meeting any assigned deadlines. Members must keep their management chain and those they may represent advised of working group activities and decisions to ensure that the proposed technical solutions do not conflict with their sponsoring organization's position when the subject being negotiated is presented to ARAC for approval.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group co-chairs. The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC are open to the public. Meetings of the Engine Harmonization Working Group will not be open to the public, except to the extent those individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on October 30, 2001.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–27997 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare a Supplemental Draft Environmental Impact Statement; Ft. Lauderdale-Hollywood International Airport; Ft. Lauderdale, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advertise to the public that a Supplemental Draft Environmental Impact Statement (Supplemental DEIS) will be prepared and considered for the proposed extension of Runway 9R–27L to 9,000 feet and widening to 150 feet at Ft. Lauderdale-Hollywood International Airport.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Lane, Federal Aviation Administration (FAA), Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024, 407/812–6331, extension 29.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with Broward County, Florida, prepared and issued in February 2001, a Draft Environmental Impact Statement (DEIS) for a proposed project to lengthen and widen Runway 9R–27L at the Ft. Lauderdale-Hollywood International Airport (FLL) to 9,000 feet × 150 feet for air carrier aircraft use. The existing runway (5,276 feet × 100 feet) accommodates general aviation and commuter aircraft, but the Airport Master Plan (AMP), accepted on April 19, 1995, indicated that significant future airfield congestion and aircraft delay could be anticipated without some modification to the existing airfield facilities. The extension of the existing runway is planned as a precision instrument runway (PIR) with a CAT I approach to both Runway 27L and Runway 9R. The runway will have approach slopes of 50:1 to runway 27L and 50:1 to Runway 9R with a primary surface width of 1,000 feet.

A public hearing on the DEIS was held on March 21, 2001.

The FAA's decision to prepare a Supplemental DEIS is based on recent increases in airport operations and updated FAA forecasts for FLL. Revised forecasts used for the Supplemental DEIS will be FAA's 2001 Terminal Area Forecast for FLL. The revised forecasts are higher than the DEIS forecasts, and consequently the analysis in some of the environmental impact categories will change, specifically noise, environmental justice, and air quality. Revised analysis in the Supplemental DEIS will be based on a baseline year of 2000, the first year of operations with the proposed project of 2008, and an out year of 2015.

Because of the anticipated changes in the DEIS analysis, the FAA plans to circulate the Supplemental DEIS for review and comment by the various governmental agencies and public, and hold a second public hearing to disclose the changes. The FAA anticipates preparing and distributing the Supplemental DEIS and holding a second public hearing in early 2002.

The Supplemental DEIS will be a stand-alone document that will not require the use of the DEIS for interpretation or reference. The Supplemental DEIS will be prefaced with a summary section discussing principal changes from the DEIS. Public and agency comments on the DEIS will be addressed through changes in the Supplemental DEIS and there will not be any formal FAA responses to individual or grouped comments in the Supplemental DEIS. The Final EIS, however, will include comments and FAA responses to both the DEIS and Supplemental DEIS.

The DEIS included detailed evaluation of the No Action Alternative, Alternative A—Build New North Runways Elevated, Alternative B—Build New North Runways At-Grade, and the Proposed Project—Extension of Runway 9R–27L. The alternatives selected for detailed evaluation in the DEIS will not change in the Supplemental DEIS.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, October 29, 2001.

W. Dean Stringer,

Manager, Orlando Airports Districts Office.

[FR Doc. 01–27994 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Environmental Scoping for Improvements to the Gary/Chicago Airport in Gary, IN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to prepare an Environmental Impact Statement and to hold a public scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement or other appropriate environmental documentation will be prepared to assess certain improvements to the Gary/Chicago Airport. The environmental review will assess improvements associated with the existing air carrier Runway 12–30, including railroad relocation and improved runway safety areas; an extension of the existing air carrier Runway 12–30; expansion of the existing terminal site; and analysis of sites for new passenger terminal and air cargo areas. A public scoping process will be held in order that all significant issues related to the proposed actions are identified.

FOR FURTHER INFORMATION CONTACT: Michael W. MacMullen, Airports Environmental Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Mr. MacMullen can be contacted at (847) 294–7522 (voice), (847) 294–7046 (facsimile).

SUPPLEMENTARY INFORMATION: At the request of the Gary/Chicago Airport Authority, the FAA is preparing an Environmental Impact Statement or other appropriate environmental documentation. The review will address specific improvements of Gary/Chicago Airport as identified during the 2001 Airport Master Plan process and shown on the 2001 Airport Layout Plan. The following improvements have been grouped in four categories and are identified as ripe for review and decision: Improvements associated with Existing Runway 12–30, the primary air carrier runway at the airport, relocate E.J. & E Railroad, acquire land northwest of airport to allow for modifications to runway safety area, relocate airside perimeter roadway, relocate Runway 12–30 navaids, improve Runway Safety Area for Runway 12, relocate Runway 12 threshold to remove prior displacement, and acquire land southeast of airport, located within or immediately adjacent to runway protection zone; Extension of Runway 12–30, including acquire land or rights northwest of existing runway, relocate/bury power lines, relocate airside perimeter roadway, extend Runway 12–30 (1,900 feet by 150 feet), relocate Runway 12–30 navaids, displace Runway 30 threshold using declared distance standards, extend parallel taxiway A to new end of Runway 12, construct deicing hold pads on Taxiway A at Runway 12 and Runway 30, and develop two high-speed exit taxiways; Expansion of existing passenger terminal to accommodate projected demands; taxiways; Expansion of existing passenger terminal to accommodate projected demands; and analysis of sites adjacent to extended runway for aviation related development, including new passenger terminal and air cargo areas.

The purpose and need for these improvements will be reviewed in the environmental documentation. All reasonable alternatives will be considered including the no-action alternative.

Copies of a scoping document with additional detail can be obtained by contacting the FAA informational contact person identified above. Federal, State, and local agencies and

other interested parties are invited to make comments and suggestions to ensure that the full range of issues related to these proposed actions are addressed and all significant issues identified. The FAA informational contact person identified above should receive these comments and suggestions by December 19, 2001.

Public Scoping Meeting: To facilitate receipt of comments, two public scoping meetings will be held on December 5, 2001 at the Gary/Chicago Airport, 6001 Industrial Highway, Gary, Indiana. The first meeting will be held between 10 a.m. and 2 p.m. for Federal, State, and local agencies in the administrative offices. The second meeting will be held from 3 p.m. to 7 p.m. for other interested parties in the passenger terminal facility.

Issued in Des Plaines, Illinois on October 30, 2001.

Philip M. Smithmeyer,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 01–28003 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Environmental Assessment and Notice of a Public Hearing for the City of Chicago's Proposed World Gateway Program and Other Capital Improvement Projects at Chicago O'Hare International Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a Draft Environmental Assessment (EA) has been prepared by the City of Chicago Department of Aviation for the proposed World Gateway Program at Chicago O'Hare International Airport, and that copies of the Draft EA are available for public review and comment. This Notice has been issued to provide for wide distribution of this information to the public, and to local, state, and federal agencies. Comments are being solicited by the City of Chicago on the environmental consequences of the proposed actions. In addition, FAA is advising that the City of Chicago will hold a public hearing on December 13, 2001, regarding the EA for the purpose of considering the economic, social, and environmental effects of the development and its consistency with applicable plans.

SUMMARY: The World Gateway Program would include terminal development and improvements, taxiway development, terminal access road improvements, utility system modification, cargo facility relocation, and other capital improvement projects. An environmental assessment has been prepared by the City of Chicago Department of Aviation to evaluate the proposed projects. The EA also evaluates other independent airport development projects that would occur in the same time frame as the World Gateway Program. The subsequent environment documentation will be used by the FAA to determine the appropriate level of environmental review necessary pursuant to the National Environmental Policy Act.

Public Hearing: A public hearing and informational workshop will be held on Thursday, December 13, 2001 from 4 p.m.–8 p.m. at the Foundation Blue Banquets, 2300 S. Mannheim Road, Des Plaines, Illinois 60018. The purpose of this hearing is to consider the environmental effects of the proposed World Gateway Program and afford the public the opportunity to present oral and/or written comments. A transcript of the hearing will be made. Written comments will be accepted through the close of business on Tuesday, January 15, 2002. The first half-hour of each hour of the public hearing will be allocated to pre-reserved testimony. The second half of each hour will be allocated to walk-in testimony. All individuals will have five minutes to testify. Individuals may call Ms. Carol Wilinski at 773–894–6900 to reserve a time slot to testify at the public hearing.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Wilinski, Chicago O'Hare International Airport, P.O. Box 66412, Chicago, IL 60666; 773–686–3541 (voice); 773–894–6900 (facsimile); or by email: *wgp__environment@ohare.com.* Please submit comments prior to close of business Tuesday, January 15, 2002.

SUPPLEMENTARY INFORMATION: The proposed World Gateway Program includes the development of two new passenger terminals, Terminals 4 and 6, the redevelopment of Terminal 2, and Terminal 3 Concourse K extension. As a result of these projects, several facilities must be relocated. These relocations are referred to as Enabling Projects. The EA also evaluates other projects unrelated to the World Gateway Program but which are proposed for development during the same period of time and are referred to as Independent Utility Projects. Together, the World Gateway Program, the Enabling Projects, and the Independent Utility Projects are referred to as the Proposed Projects in the EA. The Proposed Projects include the following:

The World Gateway Program

Terminal 2 Redevelopment

Reconfiguration of terminal interior; Widening passenger corridor linking Terminals 1 and 2; Demolition and reconstruction of Concourses E and F; Installation of Federal Inspection Service (FIS) facilities; and Reconfiguration of aircraft parking apron.

Terminal 3, Concourse K Extension

Extensions of Concourse K and Relocation of Taxiway A/B; Construction of new apron.

Terminal 4 Development

Construction of Terminal 4; Installation of FIS facilities; Enlargement and reconfiguration of apron.

Terminal 5 Reconfiguration

Modified to integrate with the proposed Terminal 6.

Terminal 6 Development

Construction of Terminal 6; Reconfiguration of apron; Extension of taxiway; Development of access road for Terminals 5 and 6; Construction of Terminal 6 parking garage; Realignment of Airport Transit System (ATS) line and construction of ATS station in Terminal 6.

Enabling Projects

- Delta Cargo Facility Relocation
- Lynxs Cargo Facility Relocation
- Sky Chefs Flight Kitchen Relocation
- Heating and Refrigeration (H&R) Plant Support Facility Relocations
- Commonwealth Edison Switchyard D179 Relocation

Independent Utility Projects

- Public Parking Improvements
- Development of Consolidated Rental Car Facility/ATS Station
- Development of Rental Car Storage and Maintenance Lot
- ATS Storage and Maintenance Facility Relocation/Track Extension
- Development of Long-Term Parking ATS Station and Intermodal Connection
- Additional Fuel Tank Farm Development in Northwest Airfield
- Development of City Warehouse and Trades Building
- Eastside Collateral Development
- O'Hare Roadway Improvements

Copies of the World Gateway Program Draft EA are available at the following locations:

Arlington Heights Memorial Library, 500 N. Dunton Ave., Arlington Heights, IL 60004
Bensenville Public Library, 200 S. Church Rd., Bensenville, IL 60106
College of DuPage Library, 425 Fawell, Glen Ellyn, IL 60137
Des Plaines Public Library, 1501 Ellinwood St., Des Plaines, IL 60016
Eisenhower Public Library, 4652 N. Olcott Ave., Harwood Heights, IL 60706
Elk Grove Village Public Library, 1001 Wellington Ave., Elk Grove Village, IL 60007
Elmhurst Public Library, 211 Prospect Ave., Elmhurst, IL 60126
Franklin Park Public Library, 10311 Grand Ave., Franklin Park, IL 60131
Harold Washington Library, 400 South State St., 5th Floor, Chicago, IL 60605
Itasca Community Library, 500 W. Irving Park Rd., Itasca, IL 60143
Melrose Park Public Library, 801 Broadway St., Melrose Park, IL 60160
Mount Prospect Public Library, 10 S. Emerson St., Mount Prospect, IL 60056
Northlake Public Library, 231 N. Wolf Rd., Northlake, IL 60164
Oakton Community College Library, Des Plaines, IL 60016
Park Ridge Public Library, 20 S. Prospect Ave., Park Ridge, IL 60068
River Grove Public Library, 8638 Grand Ave., River Grove, IL 60171
Roselle Public Library, 40 S. Park St., Roselle, IL 60172
Schiller Park Public Library, 4200 Old River Rd., Schiller Park, IL 60176
Wood Dale Public Library, 520 N. Wood Dale Rd., Wood Dale, IL 60191

Issued in Des Plaines, Illinois on October 31, 2001.

Philip M. Smithmeyer,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 01–28004 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Assessment; Panama City-Bay County International Airport; Panama City, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advertise to the public that an Environmental Assessment (EA) will be prepared to consider alternatives to meet forecast growth in aviation demand in the Panama City-Bay County region.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Lane, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024, 407/812–6331, Extension 29.

SUPPLEMENTARY INFORMATION: The FAA intends to prepare an Environmental Assessment (EA) to address environmental and related impacts expected to be associated with meeting forecast growth in aviation demand in the Panama City-Bay County region.

The EA will be developed, prepared, and processed such that it can be converted to an Environmental Impact Statement (EIS) in a timely fashion, should the EA indicate that the project will likely result in significant environmental impacts and that a Finding of No Significant Impact (FONSI) is not appropriate.

The Panama City-Bay County International Airport (PFN), owned and operated by the Panama City-Bay County Airport and Industrial District, is located approximately five miles northwest of he central business district of Panama City, Florida. PFN has two 150-foot wide runways, Runway 5–23 and Runway 14–32. Runway 5–23 measures 4,888 feet in length and is primarily used by general aviation aircraft. Runway 14–32, with a length of 6,304 feet, serves as the primary runway for commercial airline service at PFN.

During the 1990's, an Environmental Assessment was initiated to consider alternatives to provide an 8,000-foot runway at PFN. This study recommended an extension of Runway 14–32 to the northwest into Goose Bayou to provide additional runway length. However, the proposed runway extension would have environmental impacts to Class II waters that are protected under state law. Due to opposition to the runway extension, the Environmental Assessment was deferred in 1998.

With support from the Federal Aviation Administration (FAA) and the Florida Department of Transportation (FDOT)), the Panama City-Bay County International Airport Authority initiated an effort to study the feasibility of relocating or expanding the airport facilities in 1999. The Airport Feasibility Study resulted in a determination that relocation of the airport was technically feasible.

This Environmental Assessment (EA) will include evaluation of a no action alternative and other reasonable alternatives that may be identified during the agency and public scoping meetings.

Public Scoping: Although formal scoping is not required for an EA, public and agency scoping sessions will be conducted at the initiation of the EA. This action is being conducted to help to identify the scope of issues to be addressed, assist in the identification of alternatives, and aid in the identification of any potentially significant issues related to the proposed action.

The FAA will hold a scoping meeting to solicit input from Federal, State, and local agencies which have jurisdiction by law or have a specific expertise with respect to any environmental impacts associated with the project. In addition, a public scoping meeting will be held and the public may submit written comments on the scope of the environmental study to the address identified in the **FOR FURTHER INFORMATION CONTACT** paragraph. A separate Public Notice will be issued to provide the date, time and place of the scoping meetings and the period for written comments.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, October 30, 2001.

John W. Reynolds,

Acting Manager, Orlando Airports Districts Office.

[FR Doc. 01–27992 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (01–03–C–00–LYH) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lynchburg Regional Airport, Lynchburg, Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lynchburg Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 7, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Arthur Winder, Project Manager, WASHINGTON AIRPORTS DISTRICT OFFICE, 93723 Air Freight Lane, Suite 210, Dulles, Va. 22016.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mark F. Courtney, Airport Manager, of Lynchburg Regional Airport at the following address: Lynchburg Regional Airport, 4308 Wards Road, Suite 100, Lynchburg, Virginia 24502–3532.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Lynchburg under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Project Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Va. 22016, (703) 661–1363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lynchburg Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 12, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by Lynchburg Regional Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 10, 2002.

The following is a brief overview of the application.

PFC Application No.: 01–03–C–00–LYH.

Level of the proposed PFC: $4.50.

Proposed charge effective date: March 1, 2002.

Proposed charge expiration date: March 1, 2006.

Total estimated PFC revenue: $1,235,568.

Brief description of proposed project(s):

—Develop PFC Program/Application
—Construct Snow Equipment/Maintenance Building
—Acquire Passenger Lift Service
—Acquire Friction Measuring Equipment
—Acquire Airport Security Equipment
—Update Airport Layout Plan
—Acquire Snow Removal Equipment
—Design Obstruction Removal Runway 3/21
—Design Rehabilitate Runway 3/21
—Acquire Land Runway 21 RPZ
—Acquire Land for Airport Development
—Acquire Land for Obstruction Removal Runway 3/21
—Design Rehabilitate Runway 17/35
—Remove Obstructions Runway 17/35
—Rehabilitate HIRL's Runway 3–21
—Rehabilitate MITL's Taxiway B
—Install Airfield Security Access Control System
—Rehabilitate General Aviation Apron
—Construct Expansion of General Aviation Apron
—Rehabilitate and Light Access Roadway
—Install Airfield Guidance Signs
—Acquire Land for Obstruction Removal Runway 17/35
—Install PAPI Runway 3
—Acquire ARFF Vehicle

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air taxi/Air Carrier operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports Office located at: Federal Aviation Administration, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, NY 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lynchburg Regional Airport.

Issued in Dulles, VA 22016, October 18, 2001.

Terry J. Page,

Manager, Washington Airports District Office.

[FR Doc. 01–27993 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Mobile Regional Airport, Mobile, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Mobile Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 7, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, Jackson International Airport, 100 West Cross Street, suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas G. Hughes, Acting Airport Manager of the Mobile Airport Authority at the following address: Mr. Thomas G. Hughes, Acting Airport Manager, Mobile Airport Authority, P.O. Box 88004, Mobile, AL 36608–0004.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Mobile Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: William Schuller, Program Manager, Jackson Airports District Office, Jackson International Airport, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9883. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Mobile Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 22, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by Mobile Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 10, 2002.

The following is a brief overview of the application.

PFC Application No.: 02–04–C–00–MOB.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 2002.

Proposed charge expiration date: July 31, 2005.

Total estimated net PFC revenue: $3,998,879.

Brief description of proposed project(s): Flight Information Display System; two Jet Bridges; Escalator; Public Address System; Bag Belt System; Terminal Roof Replacement; Terminal Cooling System Replacement; Land Acquisition; Security Fence; Airfield Signage; Airfield Marking; Airfield Generator; Terminal Signs; ARFF Vehicle; part 150 Noise Study Update.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators (ATCO) that file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In application, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Mobile Regional Airport.

Issued in Jackson, MS on October 24, 2001.

David Shumate,

Acting Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 01–27995 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In September 2001, there were four applications approved. Additionally, 19 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: County of Sheridan, Wyoming.

Application Number: 01–02–C–00–SHR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $186,427.

Earliest Charge Effective Date: December 1, 2001.

Estimated Charge Expiration Date: March 1, 2005.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use

Installation of edge drains for runway 14/32 and taxiway B.

Terminal building Americans with Disabilities Act improvements.

Design of runway rehabilitation and deicing containment facility.

Construction of deicing containment facility.

Runway 5/23 rehabilitation.

Decision Date: September 5, 2001.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Municipal Airport Authority, Fargo, North Dakota.

Application Number: 01–05–C–00–FAR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,942,080.

Earliest Charge Effective Date: September 1, 2002.

Estimated Charge Expiration Date: January 1, 2004.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Hector International Airport.

Brief Description of Projects Approved for Collection and Use

Emergency electrical generator for the passenger terminal.

Purchase and install jet bridge conversion equipment.

Purchase and install ultra high frequency radio system.

Purchase and install security announcement system.

Purchase and install passenger boarding bridge and rehabilitate boarding area.

Rehabilitate passenger terminal exterior and upgrade heating, ventilation, and air conditioning.

Electrical generator for snow removal equipment facility.

Install signage around perimeter of airport.

PFC development costs.

Truck mounted snow plow.

Security system modification.

Purchase passenger lift and stairs.

Truck mounted runway sanding unit.

Reimbursement for PFC audit and administrative fees.

Purchase and install automated passenger boarding bridge.

Purchase and install a flight information and display system.

Purchase forward looking infrared system.

Rehabilitate existing runway 17 threshold lights.

Acquire friction measuring device.

Terminal apron rehabilitation.

Taxiway B3 reconstruction.

Eastside general aviation apron improvements (phase I).

Eastside general aviation storm sewer rehabilitation (phase I).

Eastside commercial apron improvements (phase I).

Year 2000 upgrade of security access control system.

Upgrade runway surface sensor system for Year 2000.

Eastside general aviation apron improvements (phase II).

Eastside commercial apron improvements (phase II).

Eastside general aviation storm sewer rehabilitation (phase II).

Rehabilitate runway 13/31.

Improve surface drainage along taxiway A.

Install runway threshold lights on runway 8/26.

Construct county drain 10.

Construct airport perimeter road.

Plans and specifications for runway 8/26 extension and perimeter roads.

Conduct airport master plan update.

Decision Date: September 12, 2001.

FOR FURTHER INFORMATION CONTACT: Tom Schauer, Bismarck Airports District Office, (701) 323–7380.

Public Agency: County of Clinton, Plattsburgh, New York.

Application Number: 01–05–C–00–PLB.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $56,500.

Earliest Charge Effective Date: December 1, 2002.

Estimated Charge Expiration Date: April 1, 2005.

Classes of Air Carriers not Required to Collect PFC's: Non-scheduled/on demand operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has

determined that the approved class accounts for less than 1 percent of the total annual enplanements at Clinton County Airport.

Brief Description of Projects Approved for Collection and Use

Purchase runway sweeper.

Runways 1/19 and 14/32 crack repair.

Brief Description of Projects Approved for Use

On-airport obstruction removal.

Transient apron rehabilitation.

Decision Date: September 26, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Levine, New York Airports District Office, (516) 227–3807.

Public Agency: Gillette-Campbell County Airport Board, Gillette, Wyoming.

Application Number: 01–03–C–00–GCC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $163,944.

Earliest Charge Effective Date: December 1, 2001.

Estimated Charge Expiration Date: June 1, 2004.

Classes of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use

Design project (rehabilitate runway 16/34 shoulders, groove runway 3/21, relocate taxiway C, and extend taxiway C).

Rehabilitate runway 16/34 shoulders and construct blast pads.

Groove runway 3/21.

Relocate taxiway C.

Extended taxiway C to the runway 21 threshold.

Brief Description of Projects Approved for Collection:

Construct new electrical vault.

Construct combined aircraft rescue and firefighting/snow removal equipment building.

Decision Date: September 28, 2001.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
95–03–C–03–GPT Gulfport, MS	05/07/01	$4,608,400	$4,763,478	02/01/02	08/01/01
98–02–C–01–CRP Corpus Christi, TX	06/25/01	32,863,948	41,083,878	12/01/17	04/01/23
99–06–C–01–CLE Cleveland, OH	08/31/01	182,207,915	100,101,915	03/01/08	10/01/04
01–12–C–02–ORD Chicago, IL	09/05/01	1,594,827,790	1,315,327,790	10/01/18	10/01/16
98–04–C–02–CRW Charleston, WV	08/31/01	1,253,835	700,795	02/01/01	05/01/00
93–01–C–03–MSN Madison, WI	09/13/01	9,560,000	4,736,271	05/01/00	05/01/98
96–02–C–01–MSN Madison, WI	09/13/01	NA	NA	05/01/00	05/01/98
99–04–C–01–MSN Madison, WI	09/13/01	9,716,667	5,396,747	12/01/06	11/01/01
*95–01–C–01–EAU Eau Claire, WI	09/14/01	755,028	757,028	09/01/05	01/01/06
98–02–C–01–RDM Redmond, OR	09/17/01	571,248	726,735	02/01/03	02/01/03
98–01–C–01–ROA Roanoke, VA	09/18/01	7,237,454	6,548,454	03/01/06	06/01/05
*98–01–C–02–ROA Roanoke, VA	09/20/01	6,548,454	6,463,183	06/01/05	05/01/04
00–10–C–01–BDL Windsor Locks, CT	09/21/01	4,358,000	1,869,103	01/01/01	01/01/01
*98–04–I–03–STL St. Louis, MO	09/21/01	178,756,391	200,257,958	09/01/01	05/01/02
99–05–U–02–STL St. Louis, MO	09/21/01	NA	NA	09/01/01	05/01/02
*93–01–C–02–CAE Columbia, SC	09/25/01	32,892,904	70,528,884	09/01/01	12/01/10
*92–01–C–04–HPN White Plains, NY	09/27/01	19,383,000	17,932,607	10/01/13	05/01/04
*98–05–C–01–MEI Meridian, MS	09/28/01	121,650	121,650	09/01/02	09/01/02
*99–06–C–01–MEI Meridian, MS	09/28/01	148,000	148,000	05/01/04	05/01/04

Note: The amendments denoted by an asterisk (*) include a change to the PFS level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Meridian, MS, St. Louis, MO, White Plains, NY, Columbia, SC, Roanoke, VA, and Eau Claire, WI, this change is effective on December 1, 2001.

Issued in Washington, DC. on October 31, 2001.

Eric Gabler,

Manager, passenger Facility Charge Branch.

[FR Doc. 01–27996 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number ACE–01–23.1093(b)]

Issuance of Policy Statement, Compliance with Induction System Icing Protection for Part 23 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement.

SUMMARY: This document announces an FAA general statement of policy applicable to turbine powered, normal, utility, acrobatic, and commuter category airplanes. This document advises the public, in particular small airplane owners and modifiers, of information related to compliance with the engine induction system icing protection requirements applicable to turbine powered, part 23, normal, utility, acrobatic, and commuter category airplanes. This notice is necessary to tell the public of FAA policy.

FOR FURTHER INFORMATION CONTACT: Paul Pellicano, Federal Aviation Administration, Small Airplane Directorate, Regulations and Policy Branch, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (770) 703–6064; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Background

This notice announces the following policy statement, ACE–01–23.1093(b). The purpose of this statement is to address compliance with the engine induction system icing protection requirements applicable to turbine powered, part 23, normal, utility, acrobatic, and commuter category airplanes.

What is the general effect of this policy?

The FAA is presenting this information as a set of guidelines suitable for use. However, we do not intend that this policy set up a binding norm; it does not form a new regulation,

and the FAA would not apply or rely on it as a regulation.

The FAA Aircraft Certification Offices (ACO's) and Flight Standards District Offices (FSDO's) that certify changes in type design and approve alterations in normal, utility, acrobatic, and commuter category airplanes should try to follow this policy when appropriate. Applicants should expect the certificating officials would consider this information when making findings of compliance relevant to compliance with the engine induction system icing protection requirements applicable to turbine powered, part 23, normal, utility, acrobatic, and commuter category airplanes.

As with all advisory material, this statement of policy identifies one way, but not the only way, of compliance.

General Discussion of Comments

Has FAA taken any action to this point?

We issued a notice of policy statement, request for comments. This proposed policy appeared in the **Federal Register** on August 1, 2001 (66 FR 39815) and the public comment period closed August 31, 2001.

Was the public invited to comment?

The FAA encouraged interested people to join in making this proposed policy. We received comments from two airplane manufacturers.

The comments were related to similarity of part 25 guidance, the severity and subjectivity of the falling and blowing snow criteria, applicability of auxiliary power units (APU), policy differences between inlet styles, an ice shedding example in the policy which contradicts operational regulations, and making the policy into an Advisory Circular. The comments on the subjectivity of the falling and blowing snow criteria and the ice shedding example resulted in revisions to the policy.

The proposed policy was coordinated with the appropriate technical specialists at the Transport Airplane Directorate and the Engine and Propeller Directorate and it does not contradict any part 25 policy.

The ¼ mile visibility criteria for falling and blowing snow comes from the definition of heavy snow in the FAA Aeronautical Information Manual (AIM) and agrees with transport and rotorcraft directorate policy. The policy states that other criteria may be applicable, such as that provided in Advisory Circular 29–2C. Another resource is FAA Report DOT/FAA/AR–97/66, "Snow and Ice Particle Sizes and Mass Concentrations at Altitudes Up to 9 km (30,000 ft.)" and this is added to the policy.

The proposed policy states that all turbine installations, regardless of inlet type, should have a design analysis performed and if no accumulation sites of concern exist, then the analysis may be sufficient. A typical part 23 turbopropeller installation has accumulation sites of concern that may not exist for a typical turbojet or turbofan installation with a pitot style inlet. Also, the policy does not distinguish between inlet styles in the applicability of service history.

The policy will be incorporated into the next revision to Advisory Circular 23–16 and in the interim will be posted on the Internet to provide a wide circulation.

The Policy

The purpose of this policy statement is to provide compliance guidance for the engine induction system ice protection requirements contained in 14 CFR, part 23, § 23.1093(b), which is applicable to part 23 turbine powered airplanes. Except for the information contained in Advisory Circulars (AC's) 20–73 and 23.1419–2A, this guidance cancels and supersedes previous guidance on § 23.1093(b) compliance for part 23 normal, utility, acrobatic, and commuter category airplanes.

The guidance contained in AC 20–73 and AC 23.1419–2A, relevant to § 23.1093(b) compliance, is still applicable.

Applicants and FAA Aircraft Certification Offices (ACO's) involved with certification of small airplanes should generally follow this policy. Applicants should expect that the ACO would consider this information when making findings of compliance. However, in determining compliance with certification standards, each ACO has the discretion to deviate from these guidelines when the applicant demonstrates a suitable need. To ensure standardization, the ACO should coordinate deviation from this policy with the Small Airplane Directorate.

References

FAA Aeronautical Information Manual (AIM).

FAA Report DOT/FAA/AR–97/66, Snow and Ice Particle Sizes and Mass Concentrations at Altitudes Up to 9 km (30,000 ft.).

AC 23.1419–2A, Certification of Part 23 Airplanes for Flight in Icing Conditions.

AC 20–73, Aircraft Ice Protection.

AC 29–2C, Certification of Transport Category Rotorcraft.

Considerations Regarding Approval for Flight in Known Icing

It is important to know that compliance with § 23.1093(b) for induction system icing protection, the initial requirement being incorporated by Amendment 23–7, is independent of approval for flight into icing conditions (§ 23.1419 compliance). Propulsion system items that were intended to be certificated for approval for flight into icing conditions are addressed under § 23.929, initially adopted by Amendment 23–14. Service experience has shown that airplanes encounter icing conditions even if the airplane is not approved for flight into icing conditions. This is particularly true with turbine powered airplanes, which typically have an expanded operating flight envelope as compared to reciprocating engine powered airplanes. To provide a minimum level of ice protection for all for part 23 normal, utility, acrobatic, and commuter category airplanes, compliance with all the requirements contained in § 23.1093 must be demonstrated even if the aircraft is not approved for flight into icing conditions. Therefore, for turbine powered airplanes, compliance with § 23.1093(b) is required even if approval for flight into icing conditions is not sought.

Use of Similarity and Service Experience

The use of similarity and service experience is appropriate to lessen the design risk associated with an installation. Once an applicant has developed data on an installation, then the applicant may use this data, when suitable, for substantiation on later projects with similar installations. It is common and proper for an applicant to base analytical methods and test point definitions on experience and testing of previous, similar certification programs performed by the applicant. However, since certification data helps define the type design of an airplane, for one applicant to use data from another applicant's certification program as substantiation, access to the specific design and test considerations used by the second applicant would be required. Therefore, the proper use of similarity data by an applicant to support analytical methods and testing requirements would be difficult if the data was not based on the applicant's past projects or if the project is not being performed in cooperation with another applicant.

Even if previous experience and data are used, each inlet/engine installation and the associated operating

characteristics can be different and should be considered individually. Therefore, it is not appropriate to use similarity or service experience by itself for the purpose of demonstrating compliance to the § 23.1093(b) requirement. Rather, such means as similarity or service experience should be supplemented with either analysis, even if only basic design analysis to substantiate similarity, or testing, or a combination of both.

Use of Tunnel Test Data

An area where there has been much discussion has been the use of tunnel test data instead of full-scale, airplane flight test data for showing compliance with § 23.1093(b). The use of tunnel test data is a common, appropriate, and often efficient means to reduce the amount of testing required by the applicant for showing compliance. However, the extent that this data can be used for compliance is dependent upon how representative the test article and test conditions are to the installation and airplane operating conditions.

It is not uncommon for tunnel testing to be performed on a prototype or test inlet that often has design differences from the production inlet used by an installer. When using tunnel test data, or any test data for that matter, as a basis for testing or certification, the applicant must address the differences and the impact of the differences. Three areas of difference usually addressed are:

(1) Heated versus non-heated inlets;

(2) inlets with movable or variable internal devices (for example, movable vanes used to select bypass modes on a number of turbopropeller inlets) versus fixed inlets; and

(3) differences in geometry even if the inlet type (fixed versus variable) is the same.

As an example, if tunnel testing is performed with a heated inlet and an applicant incorporates a non-heated inlet, ice runback/refreeze may be reduced, but items such as ice accretion characteristics will be different.

Also, it must be ensured that the tunnel tests were performed at the critical points. Advisory Circular 20–73, Aircraft Ice Protection, provides guidance on critical points determination.

14 CFR Part 33 Engine Certification

An applicant seeking airplane certification should coordinate the installation of an engine with the engine manufacturer. The engine manufacturer should be able to identify critical points, conditions, and operational requirements that may need to be addressed when showing compliance with the installation requirements. However, it is inappropriate to assume that any part 33 engine certification program would fully address all the part 23 engine installation requirements.

It should be emphasized that it is the responsibility of the airplane applicant and not the engine manufacturer to show compliance with the part 23 induction system ice protection requirements. Items such as use of an inlet system recommended by the engine manufacturer would still require installation substantiation to show compliance with part 23 requirements.

It is appropriate to use engine type certification data as the basis for reducing design risk, analysis, testing, and so forth; however, when showing compliance with § 23.1093(b) it is still the responsibility of the installer to evaluate this data and demonstrate how the data is applicable to the particular application. Therefore, close coordination of the engine and airplane applicant can ease certification burdens and enhance the safety of a particular engine installation.

Falling and Blowing Snow Requirement

The requirement contained in § 23.1093(b)(1)(ii), incorporated initially by Amendment 23–15, is to evaluate the installed powerplant system to ensure no hazardous effects are encountered when operating in falling and blowing snow. A hazardous effect could be in the form of unacceptable engine operating characteristics (for example, adverse power loss, surges, and so forth) due to inlet blockage or engine damage resulting from conditions such as snow, which may accumulate, melt, refreeze, shed, and then be ingested by the engine. The requirement was incorporated separately from icing and water ingestion requirements due to the unique characteristics of snow. Therefore, it is inappropriate to assume that compliance with engine induction system icing requirements means that compliance with snow requirements have been met.

Service experience has demonstrated that engine damage can occur as a result of prolonged ground operations in falling and blowing snow. Also, in-flight service experience has shown that snow, which has melted and refrozen, can shed from engine, inlet, or airplane accumulation sites, resulting in adverse engine operability or engine damage. Therefore, the effect of ingesting snow during ground operations and critical in-flight operations should be evaluated. The snow environment that has been seen to be critical is a "wet, sticky snow," which accumulates on unheated exterior and interior surfaces subject to impingement.

When showing compliance with § 23.1093(b)(1)(ii), review of the installation should be performed to identify potential inlet, engine, and airframe sites where snow accumulation and shedding is possible. Also, review of the airplane operation should be performed to determine critical conditions that should be addressed.

Although all turbine engine installations should be evaluated, turbopropeller installations generally have different areas of concern than turbofan/jet installations. Typical turbopropeller installations have inlets that incorporate complex geometry with features such as particle separators, plenum chambers, screens, oil coolers, and so forth, where hazardous snow accumulations may occur. Typical turbofan/jet installations, using simple pitot (straight duct) inlets, have minimal, if any, areas for snow accumulation. For these inlets, in-flight icing tests have been generally been found to be more critical than snow tests. Therefore, a turbofan/jet installation may be found acceptable by inlet design and airplane operation analysis, while turbopropeller installations will normally require testing in operationally representative conditions.

However, it needs to be reemphasized that the installation should be evaluated to decide on the required level of substantiation. For example, aft mounted turbofan/jet installations may have concerns with accumulation and in-flight snow shed from wing surfaces after take-off. Also, there are turbofan installations with S-type inlet ducts that would have many of the same concerns as turbopropeller installations.. Additionally, part 33 engine certification does not address snow ingestion and some turbofan/jet engines, in addition to turbopropeller engines, may have internal accumulation sites that may allow snow to melt, refreeze, and shed causing internal engine damage. Therefore, all turbine engines should be evaluated with close coordination with the engine manufacturers.

When evaluating the conditions for showing compliance, the following airplane operations should be considered:

1. Static operation with the engine at idle for 30 minutes, with the ability to attain take-off power. This condition is considered critical due to the operational consideration of idling an engine on the ground with minimal ability for de-ice/anti-ice. The primary concern is the loss of power at take-off roll.

If found acceptable, the engine may be able to be run up at higher power settings during the 30 minute period for the purposes of ice/snow shed. If run-ups are performed during compliance demonstration, these procedures should be incorporated as limitations in the Flight Manual.

Before run-ups are accepted, the practicality of the procedures should be evaluated. For example, if an engine must be run at a high power setting that may allow the airplane to slide or create hazards to other airplanes, then the procedures may not be acceptable.

2. Higher power settings, which could result in increased snow ingestion, associated with taxi/hold ground operations.

3. For airplanes with identified sites of possible hazardous snow accumulation and all inlets with bypass ducts (for example, typical turbopropeller inlets), a take-off run to take-off speed. This condition is considered critical since

(a) accumulated snow may liberate at this dynamic condition; and

(b) the static, idle point will not provide the ram effects that create bypass flow for bypass ducts.

4. For airplanes with identified sites of possible hazardous snow accumulation, take-off climb. This condition is considered critical since accumulated snow may liberate at this dynamic condition.

5. Extended in-flight operations such as hold patterns.

6. Operation when engine rotor speeds are low, such as during descent from high altitudes. An engine is highly susceptible to snow/ice accretion during this condition.

It should be noted that the preceding conditions are operational considerations and not meant to require flight test at all the conditions. As mentioned earlier, each installation may have different critical operational considerations and only the critical conditions may need further substantiation than just analysis.

Also, when appropriately substantiated by the applicant, some of the conditions can be, and have been, simulated and accepted by the FAA. For example, for a turbopropeller engine that incorporates an inlet screen that precludes the ingestion of hazardous quantities of materials, the critical concern to be addressed may only be the effect of snow accumulation and release from the inlet and screen. In this case, the inlet, bypass duct, inlet screen, and so forth, could be blocked to simulate snow accumulation on an identified area of concern. Since accumulation during dynamic operation would be simulated, the effects of snow ingestion could be determined through ground tests (for example, effects of operability on items such as reverse flow). Such methodologies need to be substantiated by means such as design analysis, operational review, tunnel tests, icing tests, and so forth, and coordinated early with the FAA.

When testing in "falling and blowing snow" the actual snow amount is often difficult to quantify. The FAA Aeronautical Information Manual (AIM), an official FAA guide to basic flight information and air traffic control procedures, may be used as guidance for what constitutes falling and blowing snow. Per the AIM, paragraph 7–1–18, heavy snow, which is representative of what may be expected in operation, is defined as visibility of ¼ mile or less as limited by snow (not snow and fog). These conditions are usually indicative of the wet snow environment desired for test. When using the ¼ mile or less visibility for test, including flight tests, this value can be determined using ground conditions. Useful information on snow characterization can also be found in FAA Report DOT/FAA/AR–97/66, Snow and Ice Particle Sizes and Mass Concentrations at Altitudes Up to 9 km (30,000 ft.). Advisory Circular 29–2C (Certification of Transport Category Rotorcraft), section AC 29–1093, paragraph c(4)(iv) also provides information on snow quantification which is acceptable for use on part 23 airplanes. However, whatever method is used to characterize the snow, as mentioned earlier, the design consideration that has been found to be critical is snow that accumulates on surfaces subject impingement. Therefore, the applicant should address this consideration when choosing the appropriate snow environment.

The primary consideration is to demonstrate operability in a snow environment that is critical as far as snow accumulation on exterior and interior areas of impingement (for example, wet, sticky snow). However, for a snow environment indicative of a representative concentration expected for the airplane, temperature is also an important consideration. The applicant is responsible for defining the critical ambient temperatures for snow tests.

Typically, in natural conditions, a temperature range between 25 and 34 degrees Fahrenheit has been found conducive to the heavy snow environment. However, colder temperatures may be critical to some configurations. For example, in some installations, colder exterior surfaces may be bypassed, with snow crystals sticking to partially heated interior inlet surfaces, leading to melting and refreeze. In all cases, the applicant must identify and evaluate the critical temperature for the configuration proposed. Company developmental tests or experience with similar induction systems may be used to determine critical conditions.

It should be emphasized that the purpose of the requirement is to evaluate the engine's induction system ice protection capability in snow environments that can be expected during the operational life of the airplane. Addressing the snow environment, detailed in resource materials such as the AIM, at critical operational conditions for a particular airplane, provides a good gauge to evaluate the system's capability. Most configurations will not require flight test in all operational conditions.

Snow concentration corresponding to the visibility prescribed is often extremely difficult to locate naturally. Furthermore, it is often difficult to maintain the desired concentrations for the duration of testing. Because of these testing realities, it is very likely that exact target test conditions will not be achieved for all possible test conditions. Therefore, those involved in certification must exercise reasonable engineering judgement in accepting critical test conditions and alternate approaches, with early coordination between the applicant and the FAA addressing these realities.

Artificially produced snow is an excellent developmental tool and has been used successfully to show potential problem areas and critical test points. When the desired natural snow concentration is not found, artificial means may be used to supplement the snow amount. However, when snow testing is required, the use of simulated snow is normally not used as the sole means of compliance. The desired heavy snow environment produces "wet, sticky snow," which accumulates on unheated exterior and interior surfaces subject to impingement. Most artificial means (for example snow blowers) produce snow pellets that are dissimilar to the snowflakes associated with "wet, sticky snow." Also, simulated snow produced indoors does not accumulate moisture from snow fall as seen in naturally created snow, with critical temperatures for simulated snow varying significantly from natural snow. Therefore, quantification of artificially produced snow for critical conditions can be very difficult and subjective. If artificial means is proposed as a means

of compliance, the applicant should provide data and substantiation on how the artificial means will effectively simulate the critical, desired operational consideration.

The concentration of snow entering the inlet in blowing snow will normally exceed the amount in falling snow; hence, the need to address "blowing snow." Therefore, the location of the inlets should be considered to determine critical directions of blowing snow in relation to snow accumulation on impingement surfaces. Snow blowing in excess of 15 knots is the desired compliance condition. Means such as use of another airplane's propeller, taxiing the airplane in excess of 15 knots, and so forth, may be used to simulate blowing.

An additional area of emphasis for § 23.1093(b)(1)(ii) compliance is the words in the regulation ". . .within the limitations established for the airplane for such operation." As with all environmental considerations, such as rain, ice, hail, lightning, and so forth, operation in snow is considered an unavoidable, meteorological hazard that must be addressed. The only plausible Flight Manual limitation that may be acceptable would be prohibitions for ground operations such as taxi, take-off, engine runs, and so forth. However, the case of flying into snow after deployment must be considered.

Ice Fog

The basic requirement contained in § 23.1093(b)(2), also incorporated by Amendment 23–15, addresses the condition of idling the engine on the ground to ensure no adverse ice build-up (for example, no surges, adverse power loss, and so forth), commonly referred to as "ice fog." A way to view the § 23.1093(b)(2) requirement is as an extension upon the 14 CFR part 25, Appendix C icing envelope addressed in § § 23.1093(b)(1)(i) and 23.1419. Therefore, the methodologies and analysis used for compliance with § 23.1093(b)(1)(i) can be extended for § 23.1093(b)(2) compliance.

It is often difficult to encounter all the ambient conditions required by § 23.1093(b)(2); therefore, when testing, one or more of the conditions is typically simulated. For example, a common and acceptable method of compliance is using water spray devices to simulate the water conditions required, while testing at the required ambient temperature conditions. Other manufacturers have used thermal analysis combined with dry air tests using ice shapes/simulated blockage to demonstrate compliance, which is also acceptable if properly substantiated.

The rule allows an engine run-up periodically to higher power settings to shed ice. As with snow testing, if run-ups are performed during compliance demonstration, then these procedures should be incorporated as limitations in the Flight Manual. Also, before run-ups are accepted, the practicality of the procedures should be evaluated.

Issued in Kansas City, Missouri, on October 23, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28000 Filed 11–6–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34116]

Union Pacific Railroad Company—Trackage Rights Exemption—Chicago, Central & Pacific Railroad Company

Union Pacific Railroad Company (UP) and Chicago, Central & Pacific Railroad Company (CCP) have agreed to modify the compensation terms of an existing trackage rights agreement, dated July 6, 1887, as supplemented and amended, covering trackage rights CCP previously granted to UP over its rail line between CCP milepost 484.9 near LeMars, IA, and CCP milepost 509.0 near Sioux City, IA.

The transaction was scheduled to become effective on October 30, 2001.

As a condition to this exemption, any employees affected by the transaction will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34116, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert T. Opal, General Commerce Counsel, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our website at *"WWW.STB.DOT.GOV."*

Decided: October 31, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–27824 Filed 11–6–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 27590 (Sub–No. 2)]

TTX Company, *et al.*—Application for Approval of the Pooling of Car Service With Respect to Flat Cars

AGENCY: Surface Transportation Board.

ACTION: Decision.

SUMMARY: In 1994, the Interstate Commerce Commission (ICC), the predecessor to the Surface Transportation Board (Board), granted TTX Company (TTX) a 10-year extension of its authority to pool rail cars, subject to the ICC's continuing monitoring during the term of TTX's extension. In July 2001, the Board invited comments from interested parties on whether any of TTX's activities require oversight action by the Board. Because no comments were filed, the Board is taking no further action and is discontinuing its monitoring during the remainder of TTX's 10-year term.

EFFECTIVE DATE: This decision will be effective on its date of service.

FOR FURTHER INFORMATION CONTACT: Melvin F. Clemens, Jr., (202) 565–1573. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In 1989, after reviewing anticompetitive concerns by the United States Department of Justice and other parties, the ICC granted the request by TTX for an extension of its pooling authority, but for only a 5-year term.[1] In its decision, the ICC also subjected TTX to a number of new operating restrictions and imposed a monitoring and annual reporting requirement on the pool. In 1994, prior to the expiration of the 5-year term, the ICC granted TTX a 10-year extension of its pooling authority, approved TTX's request for limited authority to assign rail cars, and continued monitoring by requiring the ICC's Office of Compliance and Enforcement (OCE) to report on any operational concerns at the end of the third and seventh years of the 10-year term.[2]

Pursuant to the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995) (ICCTA), effective January 1, 1996, the ICC was abolished; a number of its functions were eliminated; and its remaining rail and certain non-rail functions were transferred to the Board, newly established under the ICCTA. Because authority over TTX's pooling arrangement has been transferred to the Board, it is responsible for monitoring TTX's activities. To carry out that responsibility, during the third year of TTX's 10-year extension of pooling authority, in March 1997, the Board requested comments on whether any of TTX's activities required action or particular oversight by the Board. Because no party filed comments expressing concerns about TTX's activities, the Board took no action at that time.[3] During the seventh year of the extension, on July 31, 2001, the Board again requested comments on whether any action by the Board was necessary. Because again no comments were filed expressing any concerns about TTX's activities, the Board is taking no further action and is discontinuing further monitoring during the remainder of the 10-year extension of TTX's pooling authority.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Further action by the Board to monitor TTX's activities is not required. Monitoring during the remainder of the 10-year term of the pooling authority is discontinued.

2. This decision is being served on all parties appearing on the service list in Finance Docket No. 27590 (Sub-No. 2).

3. This decision is effective on the service date.

Decided: October 31, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–27825 Filed 11–6–01; 8:45 am]

BILLING CODE 4915–00–P

[1] This extension of pooling authority was approved in *Trailer Train Co., Et Al.—Pooling—Car Service*, 5 I.C.C.2d 552 (1989).

[2] *See TTX Company, Et Al.—Application For Approval of the Pooling of Car Service With Respect to Flat Cars*, Finance Docket No. 27590 (Sub-No. 2) (ICC served Aug. 31, 1994).

[3] *See TTX Company, Et Al.—Application For Approval of the Pooling of Car Service With Respect to Flat Cars*, Finance Docket No. 27590 (Sub-No. 2) (STB served Aug. 7, 1997).

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Acuity, A Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 8 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001 at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6915.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35025, July 2, 2001.

With respect to any bonds, including continuous bonds, currently in force with the above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: October 26, 2001.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 01–27985 Filed 11–6–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Indemnity Insurance Company of North America

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 7 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001 at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective September 30, 2001.

The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35043, July 2, 2001.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: October 26, 2001.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 01–27984 Filed 11–6–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Pacific Employers Insurance Company

AGENCY: Financial Managment Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 6 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001 at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at 9202) 874–6507.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective September 30, 2001.

The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35050, July 2, 2001.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: October 26, 2001.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 01–27983 Filed 11–6–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing a new fee schedule for the transfer of book-entry securities maintained on the National Book-Entry System (NBES). This fee schedule will take effect on January 2, 2002. The basic fee for the transfer of a Treasury book-entry security will be $.49, a 22 percent fee reduction from CY 2001. Concurrent with Treasury's fee reduction, the Federal Reserve will be decreasing the fee for the movement of funds by $.01. These changes will result in a combined fee of $.55 for a Treasury security transfer. This represents a $.15 fee reduction from CY 2001.

In addition to the basic fee, off-line transfers have a surcharge. The surcharge for an off-line Treasury book-entry transfer in CY 2002 will continue to be $25.00, unchanged from CY 2001.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT:

Edward C. Leithead, Director, Primary & Secondary Market Fixed Income Securities (Financing), Bureau of the Public Debt, Suite 3014, 26 Federal Plaza, New York, NY 10278, telephone (212) 264–6358.

Diane M. Polowczuk, Associate Director (Financing), Bureau of the Public Debt, Room 510, 999 E Street NW., Washington, DC 20239–0001, telephone (202) 691–3550.

SUPPLEMENTARY INFORMATION. On October 1, 1985, the Department of the Treasury established a fee structure for the transfer of Treasury book-entry securities maintained on NBES.

Based on the latest review of book-entry costs and volumes, Treasury will decrease its basic fee from the levels currently in effect. Effective January 2, 2002, the basic fee will be $.49 for each Treasury securities transfer and reversal sent and received, a 22 percent fee reduction from CY 2001. The current off-line surcharge will remain $25.00, unchanged from CY 2001.

The basic transfer fee assessed to both sends and receives is reflective of costs associated with the processing of a security transfer. The off-line surcharge reflects the additional processing costs associated with off-line securities transfers.

The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, or for wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

The fees described in this notice apply only to the transfer of Treasury book-entry securities held on NBES. The Federal Reserve System assesses a fee to recover the costs associated with the processing of the funds component of Treasury book-entry transfer messages, as well as the costs of providing book-entry services for government agencies on NBES. Information concerning book-entry transfers of government Agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published by the Board of Governors of the Federal Reserve System on November 7, 2001 (Docket No. R–1115).

The following is the Treasury fee schedule that will take effect on January 2, 2002, for the book-entry transfers on NBES:

TREASURY-NBES FEE SCHEDULE[1]

[Effective January 2, 2002 (In Dollars)]

Transfer type	Basic fee	Off-line surcharge	Funds[2] movement fee	Total fee
On-line transfer originated	.49	.00	.06	.55
On-line transfer received	.49	.00	.06	.55
On-line reversal transfer originated	.49	.00	.06	.55
On-line reversal transfer received	.49	.00	.06	.55
Off-line transfer originated	.49	25.00	.06	25.55
Off-line transfer received	.49	25.00	.06	25.55
Off-line account switch received	.49	.00	.06	.55
Off-line reversal transfer originated	.49	25.00	.06	25.55

TREASURY-NBES FEE SCHEDULE[1]—Continued

[Effective January 2, 2002 (In Dollars)]

Transfer type	Basic fee	Off-line surcharge	Funds[2] movement fee	Total fee
Off-line reversal transfer received	.49	25.00	.06	25.55

[1] The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, or the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

[2] The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

Authority: 31 CFR 357.45

Dated: October 30, 2001.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 01–27780 Filed 11–6–01; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–9–95]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–9–95 (TD 8702), Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations (§ 1.367(a)–3).

DATES: Written comments should be received on or before January 7, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations.

OMB Number: 1545–1478.

Regulation Project Number: INTL–9–95.

Abstract: This regulation relates to certain transfers of stock or securities of domestic corporations pursuant to the corporate organization, reorganization, or liquidation provisions of the Internal Revenue Code. Transfers of stock or securities by U.S. persons in tax-free transactions are treated as taxable transactions when the acquirer is a foreign corporation, unless an exception applies under Code section 367(a). This regulation provides that no U.S. person will qualify for an exception unless the U.S. target company complies with certain reporting requirements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 100.

Estimated Time Per Response: 10 hours.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 1, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–27971 Filed 11–6–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–118662–98]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation. REG–118662–98 (TD 8873), New Technologies in Retirement Plans (§§ 1.402(f)–1 and 1.411(a)–11).

DATES: Written comments should be received on or before January 7, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: New Technologies in Retirement Plans.

OMB Number: 1545–1632.

Regulation Project Number: REG–118662–98.

Abstract: These regulations provide that certain notices and consents required in connection with distributions from retirement plans may be transmitted through electronic media. The regulations also modify the timing requirements for provision of certain distribution-related notices.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, businesses or other for-profit organizations, not-for-profit institutions, and state, local, or tribal governments.

Estimated Number of Respondents: 375,000.

Estimated Time Per Respondent: 1 hr., 16 min.

Estimated Total Annual Hours: 477,563.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 31, 2001.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 01–27972 Filed 11–6–01; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 66, No. 216

Wednesday, November 7, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

Correction

In rule document 01–26642 beginning on page 53528 in the issue of Tuesday, October 23, 2001, make the following corrections:

(1)On page 53528 in the second column the **EFFECTIVE DATE:** is corrected to read November 28, 2000.

(2)On page 53529, the date of the signature is corrected to read;

Dated: November 28, 2001.

[FR Doc. C1–26642 Filed 11–6–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

45 CFR CH. V

Commission's Structures, Functions, Rules of Procedure, and Responsibilities

Correction

In the issue of Thursday, October 25, 2001, on page 54061, in the first column, in the correction of rule document C1-24399, make the following corrections:

1. In the last line of the second paragraph, "appeard" should read, "appeared".

2. The section heading,

§506:18 Entitlement of survivors to award in case of death of prisoner of war. [Corrected]

should read,

§506.18 Entitlement of survivors to award in case of death of prisoner of war.

[FR Doc. C1–24399 Filed 11–6–01; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44960; File No. SR–NSCC–2001–14]

Self–Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Data Services Only Members

Correction

In notice document 01–26896 beginning on page 54045 in the issue of Thursday, October 25, 2001 make the following correction:

On page 54045, in the first column, the docket line is corrected to read as set forth above.

[FR Doc. C1–26896 Filed 11–6–01; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44962; File No. SR–NYSE–2001–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Establishing the Fees for NYSE OpenBook™

October 19, 2001.

Correction

In notice document 01–27131 beginning on page 54562 in the issue of Monday, October 29, 2001, make the following correction:

On page 54562, the heading is corrected to include the date as set forth above.

[FR Doc. C1–27131 Filed 11–6–01; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE

17 CFR Part 204

[Release No. 34–44965]

RIN 3235–A134

Debt Collection—Amendments to Collection Rules and Adoption of Wage Garnishment Rules

Correction

In rule document 01–26960 beginning on page 54125 in the issue of Friday, October 26, 2001, make the following corrections:

§204.52 [Corrected]

1. On page 54132, in the second column, in §204.52(c) in the first line, paragraph "(C)" should read "(c)".

§204.53 [Corrected]

2. On the same page, in the same column, in §204.53, in amendatory instruction 27 "Section 24.53" should read "Section 204.53".

[FR Doc. C1–26960 Filed 11–6–01; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Wednesday,
November 7, 2001

Part II

Department of Agriculture

Agricultural Marketing Services

7 CFR Part 1210

Watermelon Research and Promotion Plan; Referendum Procedures; Final Rule and Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[FV–01–701 FR]

Watermelon Research and Promotion Plan; Subpart D—Referendum Procedures

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Final rule.

SUMMARY: This rule establishes procedures which the U.S. Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the Watermelon Research and Promotion Plan (Plan) and the regulations issued under the Plan should be amended to cover all handlers. The Plan will be amended if the amendments are approved by a simple majority of the eligible watermelon producers, handlers, and importers voting in the referendum. These procedures will also be used for any subsequent referenda under the Plan.

EFFECTIVE DATE: December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel R. Manzoni, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915; facsimile (202) 205–2800; or *daniel.manzoni@usda.gov*.

SUPPLEMENTARY INFORMATION: *Prior documents.* USDA published proposed referendum procedures in the **Federal Register** on April 30, 2001 [66 FR 21596] with a 60-day comment period. On the same date, USDA published a proposed rule on amending the Plan in the **Federal Register** on April 30, 2001 [66 FR 21602] with a 60-day comment period.

A referendum will be conducted among eligible watermelons producers, handlers, and importers to determine whether to the Plan and the regulations issued under the Plan should be amended to cover all handlers of watermelons. The amendments to the Plan will be implemented if they are approved by a simple majority of the eligible watermelon producers, handlers, and importers voting in the referendum.

The National Watermelon Promotion Board (Board) administers the Plan under the supervision of the USDA. The Plan was issued under the Watermelon Research and Promotion Act (Act) in 1989.

The Board conducts promotion, consumer information, industry information, and research programs. To fund these activities, producers and first handlers pay 2 cents per hundredweight (cwt.) on the watermelons that they produce or handle, respectively, and importers pay 4 cents per cwt. on the foreign watermelons they import into the United States. First handlers collect the assessments from producers of 10 or more acres of watermelons and send the producer assessment to the Board along with their handler assessments. The assessments on imported watermelons are collected by the U.S. Customs Service (Customs) at the time the watermelons enter the United States. Customs remits the assessments to the Board. Importers of less than 150,000 pounds of watermelons annually may request reimbursement of their assessments.

The Board has recommended amending the Plan to cover all handlers of domestic watermelons-not just first handlers- and that these handlers pay assessments on all watermelons they handle, including any watermelons handled after their importation into the United States. The additional handlers would be wholesalers, persons who arrange the sale or transfer of watermelons (such as brokers), and fresh-cut processors. Watermelon producers, handlers, and importers will vote in a referendum on whether the amendment will be adopted.

Question and Answer Overview

Why Are These Referendum Procedures Being Published?

USDA will conduct a national referendum on amending the Plan in the near future. In order to conduct the referendum, procedures need to be established. The proposed amendments would require all handlers (not just first handlers) to pay assessments to the Board for the first time. These procedures are being made final in advance of the referendum and will help ensure that members of the watermelon industry know the eligibility criteria for voting and other pertinent information.

When Is the Referendum?

The voting period for the referendum will be from December 3, 2001 through January 11, 2002. The Agricultural Marketing Service (AMS) will mail all known eligible voters a ballot, details on the proposed amendments, and voting instructions on or about November 19, 2001.

Who Is Eligible to Vote in the Referendum?

If the following persons produced, handled, or imported watermelons in calendar year 2000, they may vote in the referendum: Current producers of 10 or more acres of watermelons; watermelon handlers (including first handlers, wholesalers, fresh-cut processors, and anyone who arranges the sale or transfer of watermelons); watermelon importers of 150,000 or more pounds of watermelons annually; and importers who import less than 150,000 pounds of watermelons annually and did not apply for and receive reimbursement of assessments.

How Can I Vote in the Referendum?

Voting will take place by mail. All known eligible watermelon producers, handlers, and importers will receive a ballot and voting instructions in the mail from USDA. Producers, handlers, and importers who believe they are eligible to vote and who do not receive a ballot in the mail may request a ballot by calling a toll-free telephone number. The ballot must be received by USDA by close of business on January 11, 2002.

How Will USDA Make Certain That Only Eligible Persons Vote in the Referendum?

USDA will use Board records to verify voter eligibility and may request evidence of eligibility from persons unknown to the Board.

How Will USDA Make Certain That Every Eligible Person Has The Opportunity to Vote?

Persons may call 1–888–729–9917 (toll-free) to request a ballot if they do not receive a ballot and they believe they are eligible to vote. These persons will be required to provide documentation of their eligibility to vote.

How Will the Vote in the Referendum Be Tabulated?

Each eligible producer, handler, and importer will be allowed one vote in the referendum. In order to be implemented, the amendment must be approved by a simple majority of the eligible watermelon producers, handlers, and importers voting in the referendum.

Executive Orders 12866 and 12988

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Under Section 1650 of the Act, non-exempt producers, handlers, and importers of watermelons may file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with law. In the petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's decision, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

Final Regulatory Flexibility Analysis. In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) is required to examine the impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

In 13 CFR 121.201, the Small Business Administration defines small agricultural service firms (handlers and importers) as those having annual receipts of less than $5 million and small agricultural producers as those having annual receipts of not more than $750,000.

Approximately 2,220 domestic watermelon producers, 1,170 domestic watermelon handlers, and 280 importers of foreign watermelons will be eligible to vote under these referendum procedures. Currently, there are approximately 620 first handlers who are subject to the provisions of the Plan. An additional estimated 480 wholesalers and persons who arrange the sale or transfer of watermelons (such as brokers) and 70 fresh-cut processors will also be subject to the Plan if the amendment is approved in the referendum. A majority of these producers, handlers, and importers may be classified as small entities.

This final rule creates a new Subpart D-Referendum Procedures [7 CFR 1210.600–1210.607] under the Plan. The procedures will be used in conducting referenda under the Act and the Plan. Initially, the procedures will be used for a referendum during which eligible watermelon producers, handlers, and importers will vote on proposed amendments to the Plan. The amendments would revise the Plan and the regulations under the Plan to include all handlers. A proposed rule on the amendments is published separately in this issue of the **Federal Register**.

USDA will keep the watermelon industry informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will also publicize information regarding the referendum process, so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers, handlers, and importers choose to vote, the burden of casting a ballot will be offset by the benefits of having the opportunity to vote on whether the Plan should be amended.

The information collection requirements contained in this rule are designed to minimize the burden on producers, handlers, and importers voting in referenda. The estimated additional annual cost of providing the information by the estimated 3,670 persons eligible to vote in referenda is $2,290 or $0.62 per voter.

USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting but noted the use of computers is not universal. USDA will continue to monitor the technology, reliability, and security in this area, and, if it becomes feasible to use electronic voting in the future, USDA will advise the industry at that time. However, conducting the referendum from one central location will be more cost-effective and reliable. The Department will provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

AMS has performed this final Regulatory Flexibility Analysis regarding the impact of this rule on small entities.

Paperwork Reduction Act. In accordance with OMB regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot represents the information collection imposed by this rule.

Approximately 2,220 watermelon producers, 1,170 domestic watermelon handlers, and 280 importers of foreign watermelons will be eligible to vote in the referendum.

The ballot was previously approved for use under OMB Number 0581–0093. However, the number of producers, handlers, and importers eligible to vote in referenda has changed. The new burden was submitted to OMB and has been approved by OMB.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: July 31, 2004.

Type of Request: Revision of a currently approved information collection for advisory committees and boards and for research and promotion programs.

Abstract: The information collection requirements in this rule are essential to carry out the intent of the Act. The new burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Eligible producers, handlers, and importers.

Estimated Number of Respondents: 3,670.

Estimated Number of Responses per Respondent: 1 every 8 years (0.125).

Estimated Total Annual Burden on Respondents: 229 hours.

The estimated additional annual cost of providing the information by the estimated 3,670 persons eligible to vote in referenda is $2,290 or $0.62 per voter. The currently approved burden for the ballot is 183.5. Therefore, the new burden estimate represents an increase of 46 hours which has been added under OMB No. 0581–0093.

In the proposed rule published on April 30, 2001, comments were invited on:(a) Whether the proposed additional collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed increase in the collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology.

One comment was received by the June 29, 2001, deadline. The commenter stated that the estimate of the burden associated with the ballot is accurate, but the burden could be reduced if USDA allowed electronic voting in addition to the mail ballot. USDA is exploring the feasibility of electronic voting and will notify voters if this option is implemented in the future. USDA will continue to monitor the technology, reliability, and security in this area, and, if it becomes feasible to use electronic voting in the future, USDA will advise the industry at that time.

Background

The Board conducts promotional, consumer information, industry information, and research programs. To fund these activities, producers and handlers pay 2 cents per hundredweight (cwt.) on the watermelon that they produce or handle, respectively, and importers pay 4 cents per cwt. on the foreign watermelons they import into the United States. Handlers collect the assessments from producers of 10 acres or more of watermelons and send the producer assessment to the Board along with their handler assessments. The assessments on imported watermelons are collected by the U.S. Customs Service (Customs) at the time the watermelons enter the United States. Customs remits the assessments to the Board. Importers of less than 150,000 pounds of watermelons annually may request reimbursement of their assessments.

The Board has recommended that the Plan and its rules and regulations be amended to cover all handlers of watermelons. A proposed rule on the amendment is published separately in this issue of the **Federal Register**.

Section 1655(a) of the Act requires that amendments to the Plan must be approved by the industry in a referendum. Section 1653(b) provides that amendments will not take effect unless they are approved by a majority of eligible voters who vote. Therefore, a referendum is required for the proposed amendment.

The referendum procedures provide that the following persons are eligible to vote in referenda: Producers of 10 or more acres of watermelons; all handlers; importers of 150,000 pounds or more annually; and importers who imported less than 150,000 pounds of watermelons annually and did not apply for and receive reimbursement of assessments. In the referendum to determine whether the industry favors expanding coverage of the Plan to all handlers (not just first handlers), the additional handlers will be allowed to vote as if this amendment were in place during the representative period and at the time of the referendum. The additional handlers include wholesalers, anyone who arranges the sale or transfer of watermelons (such as brokers), and fresh-cut processors. If the proposed amendment is approved in the referendum, the additional handlers would vote in subsequent referenda. If the proposed amendment is not approved in the referendum, the additional handlers would not vote in future referenda.

This rule adds a new Subpart D—Referendum Procedures [7 CFR 1210.600–1210.607] to 7 CFR part 1210. The procedures cover definitions, voting, instructions, subagents, ballots, referendum report, and confidential information.

In addition, this rule: (1) Redesignates Subpart—Watermelon Research and Promotion Plan [7 CFR 1210.301–1210.367] as Subpart A; (2) redesignates and renames Subpart—Procedures for Nominating Members to the National Watermelon Promotion Board [7 CFR 1210.400–1210.405] as Subpart B—Nomination Procedures; and redesignates Subpart—Rules and Regulations [7 CFR 1210.500–1210.540] as Subpart C.

A proposed rule on these actions was published on April 30, 2001, in the **Federal Register** [66 FR 21596]. By the June 29, 2001, deadline for comments, we received two comments. One commenter suggested conducting the referendum by mail and electronic voting. USDA is exploring the possibility of providing watermelon producers, handlers, and importers the opportunity to vote electronically in future referenda. USDA will continue to monitor the technology, reliability, and security in this area, and, if it becomes feasible to use electronic voting in the future, USDA will advise the industry at that time. Another comment was received. However, this commenter essentially asserted that the program is a large burden and expense for his company and that he is opposed to the Plan. The comment did not specifically address the proposed referendum rules. Accordingly, the proposed rule is made final without change.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

For the reasons set forth in the preamble, Title 7, chapter XI of the Code of Federal Regulations, is amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4912.

2. Revise the subpart heading for "Subpart—Watermelon Research and Promotion Plan" to read as follows:

Subpart A—Watermelon Research and Promotion Plan

3. Revise the subpart heading for "Subpart—Procedures for Nominating Members to the National Watermelon Promotion Board" to read as follows:

Subpart B—Nominating Procedures

4. Revise the subpart heading for "Subpart—Rules and Regulations" to read as follows:

Subpart C—Rules and Regulations

5. Add a new Subpart D–Referendum Procedures to read as follows:

Subpart D—Referendum Procedures

Sec.

1210.600 General.
1240.601 Definitions.
1240.602 Voting.
1240.603 Instructions.
1240.604 Subagents.
1240.605 Ballots.
1240.606 Referendum report.
1240.607 Confidential information.

Subpart D—Referendum Procedures

§ 1240.600 General.

Referenda to determine whether eligible producers, handlers, and importers favor the continuation, suspension, termination, or amendment of the Watermelon Research and Promotion Plan shall be conducted in accordance with this subpart.

§ 1240.601 Definitions.

Unless otherwise defined in this section, the definition of terms used in these procedures shall have the same meaning as the definitions in the Plan.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the United States Department of Agriculture.

(c) *Eligible handler* means any person (except a common contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production, subject to the provisions of § 1210.602(a) of this chapter, who handles watermelons as a person performing a handling function and either:

(1) Takes title or possession of watermelons from a producer and directs the grading, packing, transporting, and selling of the watermelons in the current of commerce;

(2) Purchases watermelons from producers;

(3) Purchases watermelons from handlers;

(4) Purchases watermelons from importers; or

(5) Arranges the sale or transfer of watermelons from one party to another and takes title or possesssion of the watermelons: *Provided*, That harvest crews and common carriers who collect and transport watermelons from the field to a handler are not handlers and that retailers, wholesale retailers, foodservice distributors, and foodservice operators are not handlers.

(d) *Eligible importer* means any person who imports 150,000 pounds or more watermelons annually into the United States as principal or as an agent, broker, or consignee for any person who produces watermelons outside the United States for sale in the United States. An importer who imports less than 150,000 pounds of watermelons annually and did not apply for and receive reimbursement of assessments is also an eligible importer.

(e) *Eligible producer* means any person who is engaged in the growing of 10 or more acres of watermelons, including any person who owns or shares the ownership and risk of loss of such watermelon crop. A person who shares the ownership and risk of loss includes a person who:

(1) Owns and farms land, resulting in ownership, by said producer, of the watermelons produced thereon;

(2) Rents and farms land, resulting in ownership, by said producer, of all or a portion of the watermelons produced thereon; or

(3) Owns land which said producer does not farm and, as rental for such land, obtains the ownership of a portion of the watermelons produced thereon. Ownership of, or leasehold interest in land, and the acquisition, in any manner other than set forth in this subpart, of legal title to the watermelons grown on said land, shall not be deemed to result in such owners or lessees becoming producers. Persons who produce watermelons for non-food uses are not producers for the purposes of this subpart.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity. For the purpose of this definition, the term partnership includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called *joint ventures* wherein one or more parties to the agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, handling, or importation of watermelons for market and the authority to transfer title to the watermelons so produced, handled, or imported.

(g) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(h) *Representative period* means the period designated by the Secretary pursuant to the Act.

§ 1240.602 Voting.

(a) Each person who is an eligible producer, handler, or importer as defined in this subpart, at the time of the referendum and who also was a producer, handler, or importer during the representative period, shall be entitled to one vote in the referendum: *Provided*, That each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce watermelons in which more than one of the parties is a producer, shall be entitled to one vote in the referendum covering only that producer's share of the ownership: *Provided further*, That the vote of a person who both produces and handles watermelons will be counted as a handler vote if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchased from other producer's production is more than 50 percent of the producer's own production: *Provided further*, That the vote of a person who both imports and handles watermelons will be counted as an importer vote if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer, handler, or importer, or an administrator, executor, or trustee of a producing, handling, or importing entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that the individual is an officer, employee of the producer, handler, or importer, or an administrator, executor, or trustee of a producing, handling, or importing entity and that the individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) *Casting of ballots.* All ballots are to be cast as instructed by the Secretary.

§ 1240.603 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this section, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions in this section, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the voting period; method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as said agent may deem advisable.

(d) Mail to eligible producers; importers; and in the case of an order assessing handlers, handlers whose names and addresses are known to the referendum agent; the instructions on voting; a ballot; and a summary of the terms and conditions to be voted upon. No person who claims to be eligible to vote shall be refused a ballot. However, such persons may be required to submit evidence of their eligibility.

(e) At the end of the voting period, collect, open, number, and review the

ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1240.604 Subagents.

The referendum agent may appoint any individual or individuals necessary to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1240.605 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be questioned for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was questioned, by whom questioned, why the ballot was questioned, the results of any investigation made with respect to the questionable ballot, and the disposition of the questionable ballot. Ballots invalid under this subpart shall not be counted.

§ 1240.606 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1240.607 Confidential information.

All ballots cast and their contents and all other information or reports furnished to, compiled by, or in possession of, the referendum agent or subagents that reveal, or tend to reveal, the identity or vote of any producer, handler, or importer of watermelons shall be held strictly confidential and shall not be disclosed.

Dated: October 30, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 01–27814 Filed 11–6–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[FV–01–702 PR2]

Watermelon Research and Promotion Plan; Amendment To Cover all Handlers and Referendum Order

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Watermelon Research and Promotion Plan (Plan) and the regulations issued under the Plan to cover all handlers of watermelons—including wholesalers, persons who arrange the sale or transfer of watermelons, and fresh-cut processors in addition to the first handlers who are currently covered. Under this rule, all handlers would pay assessments and file reports on all watermelons they handle, including any watermelons handled domestically after their importation. All handlers would also be eligible to seek nomination to the National Watermelon Promotion Board and vote in referenda. The amendment would increase assessment income under the watermelon program. In order to become effective, the amendment must be approved by a majority of the eligible watermelon producers, handlers, and importers voting in a referendum.

DATES: The voting period for the referendum will be from December 3, 2001 through January 11, 2002. If the following persons produced, handled, or imported watermelons in calendar year 2000, they may vote in the referendum: Current producers of 10 or more acres of watermelons; watermelon handlers (including first handlers, wholesalers, fresh-cut processors, and anyone who arranges the sale or transfer of watermelons); watermelon importers of 150,000 or more pounds of watermelons annually; and watermelon importers who import less than 150,000 pounds of watermelons annually and did not apply for and receive reimbursement of assessments.

FOR FURTHER INFORMATION CONTACT: Daniel R. Manzoni, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915; facsimile (202) 205–2800; or e-mail daniel.manzoni@usda.gov.

SUPPLEMENTARY INFORMATION: *Prior documents.* USDA published a proposed rule on amending the Plan in the **Federal Register** on April 30, 2001 [66 FR 21602] with a 60-day comment period. On the same date, USDA published proposed referendum procedures in the **Federal Register** [66 FR 21596] with a 60-day comment period.

The National Watermelon Promotion Board (Board) administers the Watermelon Research and Promotion Plan [7 CFR part 1210] under the supervision of the U.S. Department of Agriculture (USDA or the Department). The Plan was implemented in June 1989 under the Watermelon Research and Promotion Act (Act), as amended [Pub. L. 99–198; enacted January 1, 1986; 7 U.S.C. 4901–4916].

Under the Plan, the National Watermelon Promotion Board (Board) conducts promotion, consumer information, industry information, and research programs. To fund these activities, producers and handlers pay 2 cents per hundredweight (cwt.) on the domestic watermelons that they produce or handle, respectively, and importers pay 4 cents per cwt. on the foreign watermelons they import into the United States. Handlers collect the assessments from producers of 10 or more acres of watermelons and send the producer assessment to the Board along with their handler assessments. The assessments on imported watermelons are collected by the U.S. Customs Service (Customs) at the time the watermelons enter the United States. Customs remits the assessments to the Board. Importers of less than 150,000 pounds of watermelons annually may request the Board to reimburse them for the assessments collected by Customs and remitted to the Board.

Question and Answer Overview

Why Should all Handlers of Watermelons pay Assessments Under the Plan?

Between the farm and retail markets, watermelons are handled several times. The Plan currently only covers first handlers of watermelons—those who first put watermelons into the marketing chain. However, wholesalers, fresh-cut processors, and other persons who arrange the sale or transfer of watermelons perform similar functions and benefit from the Board's promotion of watermelons. Therefore, the Board recommended that these additional handlers also be covered by the Plan. Including all handlers would simplify the assessment process because all—not just some—handlers would be required to pay assessments.

What Would Be the Overall Impact of This Rule?

Currently, there are approximately 619 first handlers required to pay assessments to the Board on the domestic watermelons they handle. If this amendment is approved, first handlers would be required by pay assessments on all watermelons they handle, including any watermelons handled domestically after their importation.

Also, an additional estimated 550 handlers—wholesalers, fresh-cut processors, and persons who arrange the sale or transfer of watermelons (such as brokers)—would be required to pay assessments for the first time. The additional handlers would not include retailers, wholesale retailers, foodservice distributors, or foodservice operators. The additional estimated 550 handlers would be expected to pay an assessment to the Board of 2 cents per cwt. on the watermelons they handle, including any watermelons handled domestically after their importation into the United States. The assessment would be due not later than 30 days after the end of the month in which the watermelons were handled. These handlers would also be required to submit to the Board with their assessments a report containing their name, address, and telephone number, the period covered by the report, and the total quantity of watermelons handled during the reporting period. If assessments are not paid on time, late payment charges and interest would be applied to the amount due, and they might be subject to civil penalties.

These handlers would be eligible to be nominated and to serve as a handler member of the Board for the district in which they reside. This provides the opportunity to participate in the development and implementation of marketing and research projects which can impact all aspects of the industry, from field to store. These handlers would also be eligible to vote in referenda relating to the Plan—including the referendum on this amendment.

How Will This Change Affect Board Operations?

The main impact on the Board would be the availability of an additional estimated $900,000 in assessment income which would be used to benefit the watermelon industry as a whole through more marketing, public relations, education, and research activities, with specific emphasis on

post harvest research and category management. This has the potential to increase demand for watermelons.

Why Is There Going to Be a National Referendum on the Amendment?

The Act requires USDA to conduct a referendum on amendments to the Plan. Conducting a referendum allows the persons affected or potentially affected by the amendments the opportunity to vote on whether it should be adopted.

When Will the Vote Be Taken?

The voting period will be from December 3, 2001 through January 11, 2002.

How Can I Vote in the Referendum?

Voting will take place by mail. All known eligible producers, handlers, and importers will receive a ballot and voting instructions in the mail from USDA. Producers, handlers, and importers who believe they are eligible to vote and who do not receive a ballot in the mail may request a ballot by calling a toll-free telephone number. The ballot must be received by USDA by close of business on January 11, 2002.

What Criteria Will USDA Use To Decide Whether the Industry Wants the Amendment or not?

The amendment must be approved by a simple majority of the voters in the referendum.

If the Watermelon Industry Approves This Amendment, When Will it Become Effective?

The amendment would likely become effective for the 2002 marketing year which begins on April 1, 2002.

Executive Orders 12866 and 12988

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Section 1645 of the Act allows producers, handlers, and importers of watermelons who are subject to the Plan to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with law. In the petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's decision, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

Initial Regulatory Flexibility Analysis. In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) is required to examine the impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

In 13 CFR 121.201, the Small Business Administration defines small agricultural service firms (handlers and importers) as those having annual receipts of less than $5 million and small agricultural producers as those having annual receipts of not more than $750,000.

Currently, there are approximately 2,220 producers of 10 or more acres of watermelons, 620 handlers, and 280 importers of more than 150,000 pounds of watermelons annually. If this rule is implemented, there would be an additional 550 handlers subject to the Plan: 480 wholesalers and persons who arrange the sale or transfer of watermelons and 70 fresh-cut processors. A majority of the producers, handlers, and importers may be classified as small entities.

This proposed rule would amend the Plan to cover all handlers of watermelons. If it is adopted, wholesalers, persons who arrange the sale or transfer of watermelons, and fresh-cut processors of watermelons—in addition to first handlers—would pay an assessment of 2 cents per cwt. on all watermelons they handle (including any watermelons handled domestically after their importation), file reports with the Board, keep records on their handling transactions, and be subject to penalties for noncompliance with the Plan. These additional handlers will also be eligible to be nominated to serve as handler members on the Board and to vote in referenda.

The watermelon industry as a whole could benefit from this rule. Covering all handlers under the Plan would simplify the assessment process and provide more income to the Board. The assessment process would be simplified because all handlers would be treated equally. No longer would the first handler be the only person paying the handler assessment. Covering all handlers is more workable in an actual business setting. Also, an additional estimated 550 handlers paying assessments is likely to increase the income of the Board from $1.3 million to $2.2 million annually. As a result, there would be more funds available to the Board to increase the demand for watermelons, which would benefit producers, handlers, and importers alike, without increasing the rate of assessment.

The Board would use the estimated $900,000 in assessment income to benefit the watermelon industry as a whole through more marketing, public relations, education, and research activities, with specific emphasis on post harvest research and category management.

Category management is a new system used by major supermarket chains to manage supplies of the various products they sell. Each section of a supermarket is considered a category, and some sections—such as the produce section—contain several categories. With category management, the supermarket chains are less flexible in how much of a given product they want within a given time frame. In order to maintain or increase market share, the suppliers to the retail chains need to develop their own category management plans. It is much more difficult for producers and suppliers of perishable items to fit into this system than producers and suppliers of non-perishable goods. This means that an effective category management program may be essential for a perishable agricultural commodity group. However, developing an effective category management program is expensive. The Board began developing its category management program in 2000. The Board's goal is to position watermelons as the leader in the melon category of the produce section. In order to maintain its category management program, the Board needs to purchase additional sales data and conduct additional consumer research. An effective category management plan has the potential to increase demand for watermelons. This would benefit producers, handlers, and importers.

The Board considered raising the assessment rate for producers, handlers, and importers by 50 percent in order to generate additional funds to grow demand for watermelons. However, watermelon producers are not in the position to increase their burden under the program, given the state of the industry. Therefore, this alternative was not considered viable. In the watermelon industry, just as in other fruit and vegetable industries, there are handlers that cover the assessment cost as a business expense, handlers that pass the cost back to producers, and handlers that pass the cost along to retailers and, hence, consumers. Therefore, it is likely that some of the additional assessments collected from the newly covered handlers would be passed back to first handlers, who may pass it back to producers. However, it is not anticipated that this will represent a majority of the additional assessments that would be collected. Any increased cost for producers is expected to be less than an overall increase in the producer assessment. In addition, any increased cost for producers or handlers is likely to be offset by the benefit of increased demand for watermelons.

The information collection requirements contained in this proposed rule are designed to minimize the burden on handlers covered by the watermelon research and promotion program. The estimated additional annual cost of providing the information by an estimated 550 new handlers would be $2,750 or $5 per new handler as discussed below.

There are no federal rules that duplicate, overlap, or conflict with this rule.

AMS has performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. In order to have additional data that may be helpful in evaluating the effects of this rule on small entities, we invited comments concerning its potential effects. However, no comments were received on this aspect of the April 30, 2001, proposed rule.

Paperwork Reduction Act. In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that would be imposed by this rule were submitted to OMB and approved by OMB under OMB Number 0581–0093.

This proposed rule would add an information collection burden on the additional 550 handlers who would be subject to the Plan. The information collection burden includes filing reports and maintaining books and records under the Plan. Handlers are required to maintain such records for two fiscal years beyond the fiscal period of their applicability. The additional handlers would also be eligible to vote in referenda under the Plan, but the voting burden is associated with the ballot which is included in the final referendum procedures which are being published separately in this issue of the **Federal Register**.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: July 31, 2004.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this rule are essential to carry out the intent of the Act.

The increase in burden associated with this rule is as follows:

1. Handler's Report.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .75 hours per response.

New Respondents: Handlers.

Estimated Number of New Respondents: 550.

Estimated Number of Responses per New Respondent: 4 times a year.

Estimated Total Annual Burden on New Respondents: 1,650 hours.

2. A Requirement To Maintain Records Sufficient To Verify Reports Submitted Under the Plan.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours per response.

New Respondents: Handlers.

Estimated Number of New Respondents: 550.

Estimated Total Annual Burden on New Respondents: 275 hours.

The estimated additional annual cost of providing the information by an estimated 550 new handlers would be $2,750 or $5 per new handler. The increase of 275 total burden hours has been added to the previous burden total of 314.5 hours under OMB No. 0581–0093.

In the proposed rule published on April 30, 2001, comments were invited on:

(a) Whether the proposed additional collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed increase in the collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

One comment was received by the June 29, 2001, deadline. The commenter asserted that the estimate of the burden associated with the handler's report (0.75 hours) and recordkeeping (0.5 hours) was overstated. AMS believes that the burden estimate is accurate, and, therefore, no changes are made in response to this comment.

Background

The National Watermelon Promotion Board (Board) has recommended that the Watermelon Research and Promotion Plan (Plan) be amended to include all handlers of domestic watermelons due to an increased need to promote watermelons. In 1999, domestic production of watermelons totaled 4.1 billion pounds. This was a 12-percent increase over 1998. At the same time, the season average price of watermelons fell from $7.71 per hundredweight (cwt.) in 1998 to $6.49 per cwt. in 1999. This indicates that additional promotion of watermelons is needed.

The proposed amendment would increase the Board's assessment income by approximately $900,000 to approximately $2.2 million annually. It would also streamline the assessment payment and collection processes because all handlers would be covered—not just the first handler—because they perform similar functions in the marketing chain.

Section 1210.305 of the Plan currently defines a handler as any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. This means the first person who performs the handling function. Under § 1210.307 of the Plan, to handle means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause watermelons to which one has title or possession to be placed in the current of commerce. The handling function does not include the transportation or delivery of field run watermelons by a producer to a handler for grading, sizing, or processing.

Currently, 691 first handlers pay an assessment of 4 cents per cwt. on the watermelons that they handle, file

reports with the Board for the months in which they handle watermelons, and maintain records of their handling transactions for a period of two years after the year in which they occurred. In 1999, the average handler assessment was $1,640.

Assessment payments and a report must be postmarked not later than 30 days after the end of the month in which the watermelons are handled. If a handler does not remit the assessments to the Board on time, the Board imposes a one-time late payment charge of 10 percent. In addition, handlers are charged 1.5 percent per month interest on the outstanding balance. The failure to pay assessments is considered a violation of the Act and the Plan. If a handler does not pay the assessments which are due, the Board may audit the handler's records and request USDA to take legal action against the handler. If USDA takes legal action, the handler may be subject to civil penalties from $550 to $5,500 per violation.

The Board has identified additional estimated 550 handlers who would be required to pay the same assessment, file the same reports, and maintain the same records as first handlers on all they handle, including any watermelons handled domestically after their importation, if this amendment is adopted. The additional handlers are wholesalers, fresh-cut processors, and other persons who arrange the sale or transfer of watermelons. These handlers would also be subject to the same penalties for non-payment of assessments.

The additional handlers would also be eligible to serve as handler members on the Board and vote in referenda. Serving on the Board provides the opportunity to participate in the development and implementation of marketing and research projects which can impact all aspects of the industry, from the field to the consumer's table. Voting in referenda provides the right to vote on changes in the program—including the current proposed amendment—and on whether the program should continue or be terminated.

To include all handlers under the Plan, this proposed rule would revise § 1210.305 by eliminating the reference to the first person who performs the handling function and by adding a statement that handler does not mean a retailer, wholesale retailer, foodservice distributor, or foodservice operator.

In addition, this rule would amend §§ 1210.308 and 1210.341(a) of the Plan, §§ 1210.402(b) and 1210.404(d) of the nominating procedures issued under the Plan, and §§ 1210.515(a) and 1210.518(a) and (b) of the rules and regulations issued under the Plan in order to remove references to first handlers. It is also necessary to amend §§ 1210.341(c) and 1210.350(a) of the Plan to clarify the assessment and reporting requirements for all handlers. Since § 1210.517 (which concerns determining first handlers) would no longer be necessary if all handlers are covered by the Plan, that section would be removed and reserved. In addition, this rule would add a new § 1210.518(b)(3) to state that the handling party is responsible for the payment of assessments on any handling of watermelons.

This rule would also redesignate §§ 1210.301 through 1210.314 of the Plan as necessary to arrange the definitions in alphabetical order.

A final rule establishing procedures for the referendum on these amendments to the Plan and for future referenda is published separately in this issue of the **Federal Register**.

The final rule on referendum procedures also adds letter designations to the various subparts of the watermelon research and promotion program as follows: the Plan [§§ 1210.301 through 1210.367] will become Subpart A; the Procedures for Nominating Members to the National Watermelon Promotion Board [§§ 1210.400 through 1210.405] will become Subpart B; the Rules and Regulations [§§ 1210.500 through 1210.540) will become Subpart C; and the Referendum Procedures [§§ 1210.600 through 1210.607] will become Subpart D.

The Act requires a referendum for all amendments to the Plan (Subpart A) except a change in the rate of assessment, which may be made after notice-and-comment rulemaking. The Act does not require a referendum for changes to Subparts B, C, and D. Therefore, the proposed amendments to the Plan which are contained in this rule would be the subject of the upcoming referendum. The proposed amendments to Subpart B (nominating procedures) and Subpart C (rules and regulations) which are contained in this rule can be made without a referendum. However, since they are needed only if the amendments to the Plan are approved in the referendum, they will be adopted only if the amendments to the Plan are approved in the referendum.

USDA published a proposed rule on amending the Plan in the **Federal Register** on April 30, 2001 [66 FR 21602]. Comments on the proposed rule were due on June 29, 2001.

AMS received 23 comments regarding the proposed amendments to the Plan. Of the 23 comments, 15 supported the proposed amendments, and eight comments did not support the proposed amendments.

In summary, the 14 comments supporting the amendments cited what they believed were the benefits of the current program and how the revenue from the proposed amendments would improve it by enhancing the industry's ability to compete in a very competitive global marketplace.

The fifteenth comment that supported the proposed amendments expressed concern regarding Board representation of the additional handlers who would be covered by the program if the amendments are adopted. The commenter is opposed to increasing the size of the Board. As explained in the April 30, 2001, proposed rule, the additional handlers would be eligible to serve in the existing handler positions on the Board. There are two handlers for each of seven districts established under the Plan, and this would not change. Therefore, there would be no increase in the size of the Board.

One commenter opposed the proposed amendments because he believed that he would have to pay an additional 2 cents per cwt. However, the commenter may have misunderstood the proposal. Any current producer-handler would not be considered an additional handler required to pay an additional 2 cents per cwt. if the amendments are adopted. A producer-handler's assessment obligation would remain the same, i.e., to pay the 2 cents per cwt. as a producer and the 2 cents per cwt. as a handler.

Three commenters asserted that the current program is unworkable and does not benefit the watermelon industry. They want the Department to conduct a referendum on whether the current watermelon program should be terminated. The Department would conduct a referendum on the entire program if requested by the Board or by 10 percent of the industry.

Two commenters stated that the watermelon program is working well and does not need to be amended. The Department is conducting public rulemaking and a national referendum to determine the level of industry support for the amendments. Therefore, these comments are denied.

One commenter expressed the opinion that the proposed amendments would not treat wholesalers fairly. However, the purpose of the amendments is to treat all watermelon handlers in the same manner. Currently, only first handlers are assessed under the program. The proposed amendments would also assess other handlers, such as wholesalers, in the watermelon marketing chain. Therefore, this comment is denied.

The last comment opposed to the amendments stated that the proposed amendments are unfair because a majority of the people who would be affected by the proposed amendments will not have a chance to vote on them and national supermarkets would be exempt. The Department and the Board are compiling a list of the additional handlers who would be covered by the amendments so that they will have the opportunity to vote on whether the amendments become effective. In addition, USDA will have a toll-free telephone number for these handlers to call if they do not receive a ballot so that USDA can provide them with a ballot. Also, national supermarkets would not be covered by the amendment because they are in the retail segment of the marketing chain. The purpose of the proposed amendments is to cover all handlers between the grower and the retail segment. Therefore, this comment is denied.

Referendum Order

It is hereby directed that a referendum be conducted among eligible watermelon producers, handlers, and importers to determine whether the Plan and the regulations issued under the Plan should be amended to cover all handlers of watermelons. The amendments to the Plan will be implemented if they are approved by a simple majority of the eligible watermelon producers, handlers, and importers voting in the referendum.

The referendum shall be conducted from December 3, 2001 through January 11, 2002. Ballots will be mailed to all known watermelon producers, handlers and importers on or before November 19, 2001. Eligible voters who do not receive a ballot may call 1–888–720–9917 to request a ballot. All ballots will be subject to verification. Ballots must be received by the referendum agents no later than 4:30 p.m. Eastern Standard Time on January 11, 2002 to be counted.

Daniel R. Manzoni, Margaret B. Irby, and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535–S, Stop 0244, Washington, DC 20250–0244, are designated as the referendum agents of the Secretary of Agriculture to conduct the referendum. Subpart D—Referendum Procedures [7 CFR 1210.600–1210.607], which is being published separately in this issue of the **Federal Register**, shall be used to conduct the referendum.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

For the reasons set forth in the preamble, it is proposed that Part 1210 of Title 7, Chapter XI of the Code of Federal Regulations, be amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION

1. The authority citation for 7 CFR Part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

2. Redesignate §§ 1210.301 through 1210.314 as follows:

Old section	New section
1210.301	1210.313
1201.302	1210.301
1210.303	1210.308
1210.304	1210.302
1210.305	1210.314
1210.306	1210.309
1210.307	1210.304
1210.308	1210.305
1210.309	1210.307
1210.310	1210.303
1210.311	1210.310
1210.312	1210.311
1210.313	1210.312
1210.314	1210.306

3. Revise newly designated § 1210.305 to read as follows:

§ 1210.305 Handler.

Handler means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. *Handler* shall not mean a retailer, wholesale retailer, foodservice distributor, or foodservice operator.

4. Amend § 1210.341 by revising paragraphs (a) and (c) to read as follows:

§ 1210.341 Assessments.

(a) Assessments shall be levied on all watermelons produced and handled in and imported into the United States for consumption as human food. Producers shall be assessed 2 cents per hundredweight on the watermelons that they produce. Handlers shall be assessed 2 cents per hundredweight on all watermelons that they handle, including any watermelons handled after their importation into the United States. If a person performs both a producing and a handling function on any lot of domestic watermelons, the person shall pay both the producer assessment and the handler assessment on those watermelons. Importers shall be assessed 4 cents per hundredweight on the watermelons they import at the time of entry of the watermelons into the United States.

* * * * *

(c) Each handler is responsible for payment of the handler assessment to the Board, and each handler who purchases watermelons from a producer is responsible for the collection and payment to the Board of both the producer assessment and the handler's own assessment. A handler who purchases watermelons from a producer may collect the producer assessment from the producer or deduct the assessment from the proceeds paid to the producer on whose watermelons the assessments are made. A handler who purchases from a producer shall maintain separate records for each producer's watermelons handled, including watermelons produced by the handler. In addition, all handlers shall maintain records that indicate the total quantity of watermelons handled by the handler, including those that are exempt under this Plan, and such other information as may be prescribed by the Board.

* * * * *

5. Amend § 1210.350 by revising paragraph (a) introductory text to read as follows:

§ 1210.350 Reports.

(a) Handlers shall report to the Board at such times and in such manner as the Board may prescribe by regulations whatever information may be necessary in order for the Board to perform its duties. In addition, each handler who purchases watermelons from a producer shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. Such reports may include, but shall not be limited to, the following information:

* * * * *

6. Amend § 1210.402 by revising paragraph (b) to read as follows:

§ 1210.402 Voter and board member nominee eligibility.

* * * * *

(b) Any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity which is engaged in the production or handling of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as

provides in § 1210.403 and § 1210.404 of this subpart.

* * * * *

7. Amend § 1210.404 by revising paragraph (d) to read as follows:

§ 1210.404 Importer member nomination and selection.

* * * * *

(d) Any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity which is engaged in the importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in paragraph (e)(1) of this section.

* * * * *

8. Amend § 1210.515 by revising paragraph (a) to read as follows:

§ 1210.515 Levy of assessments.

(a) An assessment of 2 cents per hundredweight shall be levied on all watermelons produced in the United States for ultimate consumption as human food. An assessment of 2 cents per hundredweight shall be levied on all watermelons handled for ultimate consumption as human food. An assessment of 4 cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry into the United States.

* * * * *

9. Remove and reserve § 1210.517.

10. Amend § 1210.518 by revising paragraphs (a) and (b)(1) and by adding a new paragraph (b)(3) to read as follows:

§ 1210.518 Payment of assessments.

(a) *Time of payment.* The assessment of domestically produced watermelons shall become due at the time of each handling of the watermelons for non-exempt purposes. The assessment on imported watermelons shall become due at the time of entry, or withdrawal, into the United States and at the time of each subsequent handling.

(b) *Responsibility of payment.* (1) A handler who purchases watermelons from a producer is responsible for collection and payment of both the producer's and the handler's assessment. A handler may collect the producer's assessment from the producer or deduct the producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than the time when the handler handles the watermelons.

* * * * *

(3) The payment of assessments on any handling of watermelons is the responsibility of the handling party.

* * * * *

Dated: October 30, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 01–27815 Filed 11–6–01; 8:45 am]

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Federal Register

Wednesday,
November 7, 2001

Part III

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2001; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4682–N–02]

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2001

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of the granting of regulatory waivers from April 1, 2001, through June 30, 2001.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice must cover the quarterly period since the most recent **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the quarter beginning on April 1, 2001 and ending on June 30, 2001.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10282, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This notice covers HUD's waiver-grant activity from April 1, 2001 through June 30, 2001. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the section of title 24 being waived. For example, a waiver grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. For example, a waiver of both 58.73 and 58.74 would appear sequentially in the listing under 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred between July 1, 2001 through September 30, 2001.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: October 29, 2001.

Alphonso Jackson,

Deputy Secretary.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2001 Through June 30, 2001

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.
II. Regulatory waivers granted by the Office of Fair Housing and Equal Opportunity.
III. Regulatory waivers granted by the Office of Housing.
IV. Regulatory waivers granted by the Office of Multifamily Housing Assistance Restructuring.
V. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 91.520(a).
Project/Activity: The City of Moline, Illinois, requested a waiver of the submission deadline for the City's 2000 program year CAPER.
Nature of Requirement: 24 CFR 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.
Granted By: Donna M. Abbenante, Acting General Deputy Assistant Secretary for Community Planning and Development.
Date Granted: June 22, 2001.
Reasons Waived: The extension was needed because the key person responsible for the report was replaced. The new staff person is unfamiliar with the CAPER requirements and needs additional time to complete the report. The Department determined that there was good cause to grant the waiver. While submission of a timely report is important, it is also important to ensure that the report submitted is accurate. The City received an extension to August 31, 2001 to submit its CAPER.
Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; Room 7152 (202) 708–2565, ext.4556.

• *Regulation:* 24 CFR 92.212(b).
Project/Activity: Wharton County, Texas requested a waiver of the HOME pre-award costs requirements. The County must prepare a Consolidated Plan and does not have funds to pay the administrative costs associated with the development of a Consolidated Plan.
Nature of Requirement: 24 CFR 92.12(b) limits pre-award costs for administrative and planning expenses to costs incurred after the beginning of a participating jurisdiction's (PJ) consolidated program year.
Granted By: Donna M. Abbenante, Acting General Deputy Assistant Secretary for Community Planning and Development.
Date Granted: June 15, 2001.
Reasons Waived: HUD determined that there was good cause for the waiver and failure to grant the waiver would create a significant hardship for the County. The PJ is not a CDBG entitlement community and does not receive any CDBG funds. The preparation of a Consolidated Plan is a new undertaking.
Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, 20410, Room 7152, telephone: (202) 708–2565, ext.4556.

II. Regulatory Waivers Granted by the Office of Fair Housing and Equal Opportunity

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 115.207(d)(1).
Project/Activity: Rockland County Commission on Human Rights, Rockland County, New York " Certification of Substantially Equivalent Agencies and the Fair Housing Assistance Program.
Nature of Requirement: The regulation at § 115.207(d)(1), restricts the term of the Agreement for the Interim Referral of Compleints and Other Utilization of Services (interim agreement) to no more than three years.
Granted By: Floyd O. May, Deputy Assistant Secretary for Operations and Management.
Date Granted: March 1, 2001.
Reason Waived: During the second year of the interim agreement, Rockland County Commission on Human Rights (RCCHR) developed unexpected problems. During the third year, the Department provided RCCHR with a Performance Improvement Plan. RCCHR is now performing in a satisfactory manner and has the ability to fulfill its programmatic obligations. This waiver extended the interim agreement of RCCHR and authorized RCCHR to continue receiving capacity building funds for a fourth year.
Contact: Kenneth J. Carroll, Office of Fair Housing and Equal Opportunity, Office of Programs, FHIP/FHAP Support Division, Department of Housing and Urban Development, Room 5222, 451 Seventh Street, SW, Washington, DC 20410; telephone: (202) 708–0883, extension 7407.

III. Regulatory Waivers Granted by the Office of Housing

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 200.85(b).
Project/Activity: Lambert House North, South and East Project Numbers 012–55125, 012–55240, 012–55250, New York, New York.
Nature of Requirement: Section 200.85(b) prohibits an inferior lien from being placed on a property with a HUD-insured mortgage, which will be repaid from mortgage proceeds other than surplus cash or residual receipts, except in the case of the inferior lien created by an operating loss insured pursuant to section 223(d) of the National Housing Act (12 U.S.C. 1701 *et seq.*), or a supplemental loan insured pursuant to section 241 of the National Housing Act.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: April 9, 2001.
Reason Waived: This waiver was granted after the New York Multifamily Hub's review of the owner's budget submission and determination that the projects are generating sufficient funds to support the pay back of the new uninsured loans. Allowing this loan to be serviced from operating cash will enable these projects to be repaired and continue to serve as an affordable housing resource for the public.
Contact: Ronald W. Wallace, Field Asset Management Division, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6176, Washington, DC 20410; telephone: (202) 708–0614, extension 2590.

• *Regulation:* 24 CFR 202.3(c)(2)(iii).
Project/Activity: Credit Watch/Termination Threshold, Washington, D.C.
Nature of Requirement: To raise the threshold for placing a HUD/FHA approved lender on Credit Watch status when its default and claim rate exceeds the field office default and claim rate.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 27, 2001.
Reason Waived: Waiving the regulation permits HUD/FHA to initially focus on those lenders originating the worst performing loans. The waiver will adjust the Credit Watch threshold from being between 150% and 200.9% of the HUD field office default and claim rate to being between 200% and 300.9% of that rate. This waiver is limited to Credit Watch reviews conducted in the second quarter of FY 2001.
Contact: Joy L. Hadley, Director, Quality Assurance Division, Department of Housing and Urban Development, 451 Seventh Street SW, Room B133-P3214, Washington, DC 20410; telephone: (202) 708–2830.

• *Regulation:* 24 CFR 203.357(c), 203.370(c)(1) & (4), 203.673(c), 203.674(b)(1)–(4), 203.675, 203.676, 203.677, 203.678.
Project/Activity: United Pathways Foundation, Pembroke Pines, Florida.
Nature of Requirement: Section 203.673(c) precludes reimbursement for relocation expenses during repairs; 24 CFR 203.674(b)(1), (2), (3) and (4) states some of the required conditions for continued occupancy for an occupant who does not meet the illness or injury criteria; 24 CFR 203.675 sets out the requirements for adequate notice to occupants of pending acquisition; 24 CFR 203.676 states that an occupant must request continued occupancy within 20 days after notice of pending acquisition; 24 CFR 203.677 details the Department's procedures in its decision to approve or deny a request for occupied conveyance; 24 CFR 203.678 requires that a property be conveyed to HUD vacant; 24 CFR 203.370(c)(1) and (4) requires that in order to be considered for the pre-foreclosure sale procedure, one must be an owner-occupant in a single family residence that is security for an FHA-insured mortgage, and one must have received homeownership counseling; 24 CFR 203.357(c) requires a mortgagee to obtain prior written consent from the Commissioner in order to accept a deed in lieu of foreclosure from an individual who owns more than one FHA-insured property.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.
Date Granted: April 25, 2001.
Reason Waived: Regulations were waived in order to allow the Department to use loss mitigation approaches to dispose of 111 properties securing FHA-insured mortgages in various states of default and foreclosure, while protecting the tenants. The properties' owner, United Pathways Foundation, had filed for Chapter 11 bankruptcy.
Contact: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh SW, Washington, DC 20410; telephone: (202) 708–1672.

• *Regulation.* 24 CFR 203.370(c)(1) & (4).
Project/Activity: Non-profit mortgagors in New York City area.
Nature of Requirement: Sections 203.370(c)(1) and (4) require that, in order to be considered for the pre-foreclosure sales procedure, one must be an owner-occupant in a one-to-four family dwelling that is security for an FHA-insured mortgage, and one must have received homeownership counseling.
Granted By: Sean G. Cassidy, Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: May 8, 2001.
Reason Waived: In aggregate, these non-profit mortgagors own approximately 719 properties located in and around New York City. Fraudulent activities of some sellers, originating mortgagees, appraisers, title companies, and others, resulted in under-funding the rehabilitation, incomplete rehabilitation, insufficient rental income to service the debt, and mortgage default. Many of the non-profit mortgagors were misled by assurances that consultants would oversee the rehabilitation of the properties and that the rehabilitated properties would generate sufficient cash flow. Many of the non-profit mortgagors lacked the financial capacity and experience to rehabilitate the properties.
Regulations were waived in order to allow the Department to consider pre-foreclosure purchase offers for less than the full indebtedness on these properties. The regulation provides that the mortgagor must be an owner-occupant in order to be eligible for the pre-foreclosure sale program. Non-profit mortgagors are not owner-occupant mortgagors. The regulation also provides that

the owner must receive housing counseling about loss mitigation alternatives before a pre-foreclosure sale would be considered. Housing counseling is geared towards owner-occupant mortgagors. The non-profit mortgagors receive(d) similar information through means other than counseling. Pre-foreclosure sales reduce the losses incurred by the insurance funds because HUD does not have to include the expense of foreclosure proceedings in the payments for insurance claims.

Contact: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–1672.

• *Regulation:* 24 CFR 203.670(b), 203.673(b), 203.674(a)(1), and 203.675(b).

Project/Activity: St. Ambrose Housing Aid Center, Baltimore, Maryland.

Nature of Requirement: These regulations prohibit the Secretary from accepting properties which are conveyed occupied.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 17, 2001.

Reason Waived: These waivers are appropriate because the occupant is a victim of predatory lending activities in the Baltimore pilot project. The occupant was also the subject of a "Fleecing of America" segment on NBC News. The occupant's mortgage was determined to be based on a grossly inflated property value. Unfortunately, the originating lender, American Skycorp, Inc., is no longer in business. Therefore, no restitution can be obtained from her former lender. Her mortgage is currently in foreclosure and her credit history is such that the occupant cannot qualify for another loan.

St. Ambrose Housing Aid Center, a HUD approved housing counseling agency and housing provider, has agreed to purchase the property following acquisition by the Department through a deed in lieu of foreclosure. The occupant will remain in the property and become a tenant of St. Ambrose Housing Aid Center. After the property is conveyed to HUD, the M&M contractor will make certain repairs to the property as well as replace the furnace and water heater. Unless the actions are taken, the property may fail to meet HUD's Habitability Standards. During the time the occupant is a tenant, she will receive counseling and help to repair her credit status. When the occupant is eligible for a mortgage loan, St. Ambrose will sell the property to the occupant.

Contact: Trudy Dotson, Asset and Property Disposition Division, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–1672.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Bethel Church Homes I and II, FHA Project Numbers 061–35006 and 061–55035, Athens, Georgia.

Nature of Requirement: Section 219.220(b) governs the repayment of assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996. This provision requires repayment of the flexible subsidy loan at time of prepayment.

Granted By: Sean G. Cassidy, General Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 2, 2001.

Reason Waived: This waiver was granted in order to allow the owner of Bethel Church Homes I and II to repay the existing mortgage, obtain one new FHA-insured mortgage and perform substantial rehabilitation of the properties. This will allow the flexible subsidy loans to remain as soft second and third mortgages. If the waiver had not been granted, the owner would not have had the available funds to repay the flexible subsidy loans and he would not be able to obtain the FHA-insured financing of the new mortgage, thereby losing the opportunity to improve this much needed housing for low-income citizens of Athens, Georgia.

Contact: Cindy W. Bridges, Field Asset Management Division, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6160, Washington, DC 20410; telephone: (202) 708–0614, extension 2603.

• *Regulation:* 24 CFR 234.26(b).

Project/Activity: Temporary establishment of approval process for condominium projects and FHA mortgage insurance on condominium units located in the Commonwealth of Puerto Rico.

Nature of Requirement: Section 234.26(b) requires that a condominium project be committed to a plan of condominium ownership by a deed, or other recorded instrument that is acceptable to the Department.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 11, 2001.

Reason Waived: The regulation was waived to permit the approval of condominium projects and insurance of individual units in condominiums whose plans for ownership have been presented to the Commonwealth of Puerto Rico Registry for recordation but not yet recorded, provided that title insurance is obtained on each unit insured. Under Puerto Rico's inscription process, legal documents creating a condominium regime are first "presented" to the Commonwealth of Puerto Rico Registry for review. Acceptable documents are then recorded. Due to current backlog, this process can take several years. At presentment a condominium is established and during the review process a purchaser acquires a fee interest in the unit together with a common, undivided interest in the common areas. This waiver is effective for one year from the date it was granted and shall not involve more than 3,064 dwelling units.

Contact: Vance T. Morris, Director Office of Single Family Production, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–2121 extension 2204.

• *Regulation:* 24 CFR 234.26(e)(3).

Project/Activity: Insurance for a mortgage on an individual unit in Mt. Vernon Lake Condominium, Alexandria, Virginia.

Nature of Requirement: Section 234.26(e)(3) requires that at least 51% of all family units in a condominium project be occupied by the owners as a principal or secondary residence, or have been sold to owners who intend to meet this occupancy requirement.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 27, 2001.

Reason Waived: The regulation was waived to insure a HUD-owned condominium in a condominium project that had an owner-occupancy rate of 43%. The Department has an interest in the continued viability of the condominium project because there are other HUD-insured properties in the project. The individual unit benefited by this waiver was in good condition and being sold at 105% of the list price to an owner-occupant. Sale of the unit would eliminate further marketing costs to the Department.

Contact: Vance T. Morris, Director, Office of Single Family Production, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–2121 extension 2204.

• *Regulation:* 24 CFR 291.100(a)(2).

Project/Activity: Granting a former mortgagor a right of first refusal on a property in Lake Worth, Florida.

Nature of Requirement: Section 291.100(a)(2) prohibits HUD from allowing a former mortgagor in occupancy, who has defaulted on the mortgage, the right of first refusal to repurchase the same property.

Granted By: Sean Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 31, 2001.

Reason Waived: The waiver is appropriate since the occupant is 100% disabled as a result of an accident. At the present time she has received a monetary settlement, which includes a monthly allocation for life. The occupant has spent approximately $40,000 of her money modifying the residence to handicapped accessible standards. An interior and exterior inspection of the property revealed that the occupant has maintained it in a highly satisfactory manner. The property has been appraised at $100,000 and the occupant has obtained her own financing. In light of the occupant's medical condition, financial capacity and ability to maintain the property this waiver was granted.

Contact: Trudy Dotson, Asset Management and Disposition Division, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–1672.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Charles O. Miles Manor, Ecorse, Michigan, Project Number: 044–EE064/MI28–S991–005.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 2, 2001.

Reason Waived: The State of Michigan had experienced a large increase in the cost of developing new projects and many contractors used a "take it or leave it" pricing approach, and the Sponsor had secured funds from Wayne County's City Home funds and the Weinberg Foundation.

Contact: Faye Norman, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410; telephone: (202) 708–0614 extension 2482.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Liberty Apartments, Fulton, Missouri, Project Number: 085–HD028/MO36–Q991–004.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 2, 2001.

Reason Waived: The shape and topography of the site required additional grading and construction of a retaining wall to achieve proper drainage away from the building, bids for the electrical and plumbing contracts came in at a much higher rate than anticipated, the high cost factor of 156 percent was not sufficient for the Fulton area, the project was economically designed and was comparable to other similar projects developed in the area.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 2696.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Jordan Bay Place, Raymond, Maine, Project Number: 024–EE050/ME26–S991–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 2, 2001.

Reason Waived: The project was economically designed, comparable to similar projects in the area, and the Sponsor/Owner had exhausted all efforts to obtain additional funds from outside sources.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 3821.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Mt. Olive Elderly Coop, Randallstown, Maryland, Project Number: 052–EE032/MD06–S991–004.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 2, 2001.

Reason Waived: Material costs had risen, there was a shortage of skilled laborers, which has caused the overall cost of construction to rise, and the project was economically designed and comparable to other similar projects constructed in the area.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410; telephone: (202) 708–0614 extension 2696.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Roxbury Senior Housing, Roxbury, Connecticut, Project Number: 017–EE039.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 2, 2001.

Reason Waived: The project was economically designed, comparable in cost to similar projects, and the Sponsor could not contribute any additional funds.

Contact: Monique Love, Office of Housing Assistance Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 2475.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Kirkland Union Plaza, Vancouver, Washington, Project Number: 126–EE028/OR16–S981–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 2, 2001.

Reason Waived: The project was economically designed, comparable to similar projects in the area and the Owner had secured funds from the City of Vancouver and the Vancouver Housing Authority.

Contact: Faye Norman, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 2482.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Diamond Springs Phase II, Diamond Springs, California, Project Number: 136–EE053/CA30–S991–004.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 2, 2001.

Reason Waived: The project was economically designed, comparable to similar projects in the area, and the Sponsor/Owner had exhausted all efforts to obtain additional funds from outside sources.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 3821.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: West Hamlin Unity Apartments, West Hamlin, West Virginia, Project Number: 045–HD026/WV15–Q971–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 6, 2001.

Reason Waived: The project was economically designed, comparable to similar project in the area, and the Sponsor/Owner had exhausted all efforts to obtain additional funds from outside sources.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 3821.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Immaculate Manor Homes, Liberty, Missouri, Project Number: 084–HD031/MO16–Q991–004.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 6, 2001.

Reason Waived: The project was economically designed, comparable to similar projects in the area, and the Sponsor/Owner had exhausted all efforts to obtain additional funds from outside sources.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 3821.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Woodbury Senior Housing, Woodbury, Connecticut, Project Number: 017–EE044/CT26–S981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 10, 2001.

Reason Waived: The project was economically designed, comparable to other similar projects in the jurisdiction, and all efforts to lower the cost of the project had been exhausted.

Contact: Dianna Plaugher, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 6791.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Mill Pond Village, Montrose, Virginia, Project Number: 051–EE072/VA36–S991–003.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 16, 2001.
Reason Waived: The project was modest in design and the development team had taken all reasonable steps to assure a cost effective project.
Contact: Dianna Plaugher, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 6791.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Twin Elm Project, Nassau County, New York, Project Number: 012–HD080/NY36–Q981–001.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 6, 2001.
Reason Waived: The Owner had exhausted all efforts to find additional funds from other sources. Also, a delay of over one year was encountered due to issues associated with incorporation.
Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 2475.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Washington Court, Red Bluff, California, Project Number: 136–EE046/CA30–S981–004.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 6, 2001.
Reason Waived: There were 2530 flags placed on both the Owner and management agent, and the project was economically designed and comparable to other similar projects developed in the area. Also, the project experienced delays while the 2530 process was being resolved.
Contact: Dianna Plaugher, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 6791.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: St. Peter's Place II Elderly Housing, Borough of Phoenixville, Chester County, Pennsylvania, Project Number: 034–EE070/PA26–S971–002.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 9, 2001.
Reason Waived: Delays were caused due to problems the Owner had in identifying a qualified general contractor. Also, the project was economically designed, comparable to other similar projects developed in the jurisdiction, and the Sponsor had exhausted all efforts to obtain additional funding from other sources.
Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 6788.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Gibbstown VOA Elderly Housing, Township of Greenwich, Gloucester County, New Jersey, Project Number: 035–EE030/NJ39–S971–007.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 10, 2001.
Reason Waived: The project was economically designed, comparable to similar projects in the area and the Sponsor/Owner had exhausted all efforts to obtain additional funds from outside sources. Also, the project had been delayed due to unanticipated changes in fees charged by the Town of Greenwich, increased contractor fees, easement negotiations, and title policy changes.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 3821.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Accessible Space, Inc., Universal City, Texas, Project Number: 115–HD025/TX59–Q971–003.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 16, 2001.
Reason Waived: Additional funds were needed to make the facility 100 percent accessible to persons with severe mobility impairments. Also, delays occurred while the Sponsor/Owner sought funds to make the project fully accessible and while their project was being redesigned to meet new City requirements.
Contact: Dianna Plaugher, Office of Housing Assistance and Grant Administration, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614, extension 6791.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Mountain View Housing, Westfield, Massachusetts, Project Number: 023–EE101/MA06–S981–006.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 16, 2001.
Reason Waived: The project was economically designed, comparable to other projects developed in the area, and the Sponsor/Owner had exhausted all efforts to obtain additional funds from outside sources. Also, additional time was needed to resolve a leasehold issue with the Commonwealth of Massachusetts in order to sell State-owned property designated for the project, resolve the issue involving the boiler and heating plant, and secure a waiver of the prohibition against leasehold payment capitalization.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Reno Supportive Housing Development, Reno, Nevada, Project Number: 125–HD066/NV39–Q981–001.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 18, 2001.
Reason Waived: The project was delayed due to the switching of architectural firms and the resolution of a dispute with the State of Nevada Architectural Board. Also, the project was economically designed, comparable to other similar projects developed in the jurisdiction, and the Sponsor had exhausted all efforts to obtain additional funding from other sources.
Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614, extension 6788.

• *Regulation:* 24 CFR 891.130(a).
Project/Activity: Christopher Housing, Scattered Sites, Washington, Project Number: 127–HD018/WA19–Q961–001.
Nature of Requirement: Prohibited Relationships.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: The waiver was to permit Mr. Stephen Norman, who serves as a member of the board of Aids Housing of Washington, one of the co-Sponsors of the project, to also serve as the Executive Director for the Housing Authority of King County, which was the Management Agent for the project. Since Mr. Norman was the Executive Director of the Housing Authority of King County before he became a board member of Aids Housing of Washington, that he received no compensation for the latter position, and it was difficult to obtain a Management Agent that would accept a small number of units over such a widespread area, the waiver was granted.
Contact: Gail Williamson, Office of Housing Assistance and Grant Administration, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2473.

• *Regulation* 24 CFR 891.165.
Project/Activity: Howard Street Senior Apartments, San Francisco, California, Project Number: 121–EE121/CA39–S981–014.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: The project had to be conveyed from the San Francisco Housing Authority and required approval from several levels of State and local government.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Steamboat Trails, New Richmond, Ohio, Project Number: 046–EE045/OH10–S981–001.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: The original site was withdrawn by the seller and the development team had to locate a new site which would allow them to utilize the original building design and site plan.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Old Oak Arch, Virginia Beach, Virginia, Project Number: 051–HD079/VA36–Q991–002.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: Delays were caused by the Sponsor trying to resolve cost problems in order to keep project development costs within the fund reservation amount.
Contact: Brenda Butler, Office of Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614, extension 6788.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Vermont Seniors, Los Angeles, California, Project Number: 122–EE148/CA16–S981–007.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: The project had been delayed due to demolition of commercial and residential structures, additional funding for land acquisition and predevelopment costs and the resolution of a legal dispute involving the site.
Contact: Eloise May, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614 extension, 2651.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Three Bridges, Newark, New Jersey, Project Number: 031–EE042/NJ39–S961–008.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: The Owner was obtaining bids from various contractors and would be submitting a revised application for Firm Commitment.
Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614 extension, 2475.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Holy Rosary Senior Housing, Union City, New Jersey, Project Number: 031–EE049/NJ39–S981–006.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: The project experienced delays while the Sponsors sought secondary financing from other sources for demolition and remediation of the site in addition to development expenses.
Contact: Monique Love, Office of Housing Assistance and Grant Administration, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2475.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Oscar House, Northridge, California, Project Number: 122–HD112/CA36–Q981–012.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: The delay in beginning construction was due primarily to efforts to bring the project in at a reasonable cost.
Contact: Carissa Janis, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2487.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Cedar Street Senior Apartments, Garberville, California, Project Number: 121–EE118/CA39–S981–011.
Nature Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: The project had been delayed due to complications with site formation, adverse market conditions for obtaining suitable comparables and resolution of title issues involving the legal formation of the site.
Contact: Eloise May, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614 extension, 2651.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Ryder Assisted Care II, Humacao, Puerto Rico, Project Number: 056–HD014/RQ46–Q971–001.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: The geo-technical engineer, architect and contractor were very active trying to find a cure to the site subsurface contingency.
Contact: Monique Love, Office of Housing and Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2475.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Ryder Village II, Humacao, Puerto Rico, Project Number: 056–EE031/RQ46–S971–001.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: The geo-technical engineer, architect and contractor were very active trying to find a cure to the site subsurface contingency.
Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202)708–0614, extension 2475.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Friendship Plaza, Lincoln Heights, Ohio, Project Number: 046–EE047/OH10–S981–003.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: The original contractor's construction costs were significantly higher than the Capital Advance fund reservation and the co-Sponsors had to solicit bids from other contractors.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Access House I, Parsippany-Troy Hills, New Jersey, Project Number: 031–HD078/NJ39–Q971–001.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: The Building Department for the Township of Parsippany-Troy Hills could not issue building permits for the project because they were waiting for a Letter of Interpretation from the New Jersey Department of Environmental Protection.
Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202)708–0614, extension 2475.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Ridgeview Terrace I, Ashtabula, Ohio, Project Number: 042–EE106/OH12–S981–009.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: Obstacles concerning road access had to be addressed prior to receiving building permits and the Department of Highways requested that storm water run-off be redirected which necessitated reengineering of the site plan.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410; telephone: (202)708–0614, extension 3821.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Ziegler Homes, Toledo, Ohio, Project Number: 042–HD058/OH12–Q961–005.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 2, 2001.
Reason Waived: Bids had to be solicited from other contractors to address budget overruns and additional funds from outside sources would not be available until March 2001 to cover the cost of development in excess of the Capital Advance.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614 extension, 3821.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Cold Spring House, Forestburgh, New York, Project Number: 012–HD075/NY36–Q971–004.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 5, 2001.
Reason Waived: The project had been delayed due to unresolved legal issues for initial closing.
Contact: Eloise May, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614 extension, 2651.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Orange Senior Housing, Orange Essex County, New Jersey, Project Number: 031–EE048/NJ39–S981–005.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 9, 2001.
Reason Waived: There was a delay due to the change in architect and revisions that needed to be made in the project designs and plans.
Contact: Eloise May, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614, extension 2651.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Cottonwood Manor V, Cottonwood, Arizona, Project Number: 123–EE066/AZ20–S981–003.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 9, 2001.
Reason Waived: Delays were caused by the excessive amount of time taken to design the project and to locate a qualified general contractor to build the project within the budget.
Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–0614 extension, 6788.

• *Regulation:* 24 CFR 891.165.
Project/Activity: La Playa Apartments, San Francisco, California, Project Number: 121–HD065/CA39–Q981–002.
Nature Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 9, 2001.
Reason Waived: The site, which was one block from the Pacific Ocean and subject to California coastal controls, had to undergo time consuming investigations and certifications by the City of San Francisco.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension, 3821.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Ottawa River Estates, Toledo, Ohio, Project Number: 042–HD072/OH12–Q971–004.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 10, 2001.
Reason Waived: The Sponsor was tied up in litigation concerning the sale of the land designated for the project.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614, extension 3821.

• *Regulation:* 24 CFR 891.165.
Project/Activity: North Pine Street Senior Housing, Ukiah, Mendocino County, California, Project Number: 121–EE119/CA39–S981–012.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 10, 2001.
Reason Waived: The project experienced significant delays while the Department reviewed and approved the partial release of a portion of an existing Section 202 project upon which the project was to be located.
Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614, extension 6788.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Abraham Lincoln Center, Chicago, Illinois, Project Number: 071–HD095/IL06–Q961–010.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 12, 2001.
Reason Waived: The field office was awaiting a revised Firm Commitment application.
Contact: Alicia Anderson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614, extension 5787.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Project Live VIII, Glen Ridge, New Jersey, Project Number: 031-HD092/NJ39-Q981–007.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 12, 2001.
Reason Waived: The field office was processing the Firm Commitment.
Contact: Alicia Anderson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614, extension 5787.

• *Regulation:* 24 CFR 891.165.
Project/Activity: West Street Commons, Wilmington, Delaware, Project Number: 032–HD018/DE26–Q961–004.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 12, 2001.
Reason Waived: Major revisions/design changes were made to the project, the site changed three times, new core development team members were hired, and it was required that the new development team members entirely redo the application exhibits.
Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, D.C. 20410, telephone: (202) 708–0614 extension 2696.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Rudolph Mercy Douglass Home for the Blind, Philadelphia, Pennsylvania, Project Number: 034-HD052/PA26-Q971–004.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
Date Granted: April 16, 2001.
Reason Waived: The Sponsor had a commitment toward secondary funding from the Philadelphia Redevelopment Authority and the documents for the transaction were being finalized.
Contact: Rita Ross, Office of Housing-Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 2696.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Volunteers of America, Thomaston, Maine, Project Number: 024–EE038/ME36–S971–003.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration

of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Waived: April 18, 2001.

Reason Waived: The Owner incurred significant delays due to a need to change sites.

Contact: Alicia Anderson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 5787.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Northwest Behavioral Health Services, Inc., Jacksonville, Duval County, Florida, Project Number: 063–HD013/FL29–Q981–010.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 18, 2001.

Reason Waived: The project experienced delays due to outstanding design issues related to Fair Housing requirements and comments were pending from a geo-technical engineer.

Contact: Monique Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone: (202) 708–0614 extension 2475.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pine Street Inn, Dorchester, Massachusetts, Project Number: 023–EE098/MA06–S981–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 18, 2001.

Reason Waived: The Sponsor had to locate an alternate site.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone: (202) 708–0614 extension 2696.

• *Regulation:* 24 CFR 891.410.

Project/Activity: Joseph J. Vinopal Villa, FHA Project Number 075–EE041–NP/WAH/L8, Almena, Wisconsin.

Nature of Requirement: HUD regulations at 24 CFR 891 limit occupancy to Very Low Income elderly persons, i.e., households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 12, 2001.

Reason Waived: This waiver has been approved due to the project's severe problems in maintaining project occupancy. The owner has been actively marketing the project; however, the demand for its units is not as strong as anticipated; therefore, the age and income requirements are waived in order to allow management to rent to persons between the ages of 55 and 62 and also persons above the very low income limit but at or below the low income limit. The granting of this waiver will provide additional flexibility for short-term marketing and attempt to rent up vacant units.

Contact: Gloria Burton, Field Asset Management Division, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6176, Washington, DC 20410; telephone: (202) 708–0614, extension 2611.

• *Regulation:* 24 CFR 891.575 and 891.610(c).

Project/Activity: Parker Heights Apartments, FHA Project Number 033–EE019, Parker, Pennsylvania. The Philadelphia Multifamily Hub has requested waiver of this regulation due to chronic vacancy problems.

Nature of Requirement: HUD regulations at 24 CFR Part 891 limit occupancy to Very Low Income elderly persons, i.e., households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted By: Sean G. Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Waived: April 2, 2001.

Reason Waived: The General Deputy Assistant Secretary has approved this waiver because the subject project has been unable to maintain full occupancy when turnover occurred due to its location in an impoverished area. A waiver of the income requirements was requested to alleviate the problem. A waiver was granted in the past to permit low income elderly applicants which enabled the property to rent up. This outreach effort would allow management to extend occupancy to those of low income; thereby providing additional flexibility in attempting to rent up vacant units.

Contact: Cindy W. Bridges, Field Asset Management Division, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6160, Washington, DC 20410; telephone: (202) 708–0614, extension 2603.

• *Regulation:* 24 CFR 891.575 and 891.610(c).

Project/Activity: Pioneer Place, IV, Project No. 075–EE021/NO/WAH, Poynette, Wisconsin.

Nature of Requirement: HUD regulations at 24 CFR 891 limit occupancy to Very Low Income (VLI) elderly persons, i.e., households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 27, 2001.

Reason Waived: This waiver was granted to allow the project to market vacant units to low income persons between 51–80 percent of median income and ages 62 and older. This waiver is an attempt to allow management to market vacant units to this group; and thereby maintain the viability of this project.

Contact: Gloria Burton, Field Asset Management Division, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6176, Washington, DC 20410; telephone: (202) 708–0614, extension 2611.

IV. Regulatory Waivers Granted by the Office of Multifamily Housing Assistance Restructuring (OMHAR)

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
01235280	1041 Bushwick Avenue Apts.	NY
08444114	Avon Apartments	MO
08444114	Avon Apartments	MO
08444114	Avon Apartments	MO
01257058	Roosevelt Gardens	NY
01257100	Sebco VI	NY
03435081	Whitehall Acres Apartments.	PA

Nature of Requirement: 24 CFR 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after 1/1/98. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: April 12, 2001.

Reasons Waived: The attached list of projects were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

• *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
08444156	Bainbridge Apts	MO
08444156	Bainbridge Apts	MO
03535063	Barclay Arms	NJ

FHA No.	Project name	State
01257049	Eastern Parkway	NY
09335071	Fraser Tower	MT
08335268	Golden Harvest Village	KY
08735012	Greeneville Manor Apartments.	TN
08135087	Gunn Garden Apartments.	TN
09135060	Lakeview Terrace Apartments.	SD
04535087	Lewis Terrace/Tabor Tower.	WV
01257107	MBD I	NY
01257054	President Arms	NY
12735298	South Bayview Apartments.	WA
12135634	Sunnyside Glen Apartments.	CA
01635054	The Colony	RI
01410009	Towne Gardens Housing Dev.	NY
08435142	Victoria Arms Apartments.	MO

Nature of Requirement: 24 CFR 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after 1/1/98. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: May 1, 2001.

Reasons Waived: The attached list of projects were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

• *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
01257138	Academy Gardens	NY
08335257	Carter Court	KY
04235088	Delaware Acres	OH
10235148	Newton Plaza Apartments.	KS
04644088	SEM Villa I	OH
01235277	Seward Manor	NY
08335232	The Bedford House	KY

Nature of Requirement: 24 CFR 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after 1/1/98. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: June 11, 2001.

Reasons Waived: The attached list of projects were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

V. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 982.51 (a) and (b).

Project/Activity: New Hampshire Housing Finance Authority (NHHFA), New Hampshire; project-based assistance. NHHFA requested a waiver to permit it to select owner proposals for project-based assistance (PBA) as part of its recent advertisement for proposals for new development of affordable housing under its multifamily housing production initiative rather than separately seeking owner proposals for project-based assistance. NHHFA would provide project-based assistance for up to 300 units to the highest-ranking proposals selected under its multifamily housing production initiative.

Nature of Requirement: The regulation requires HUD review and approval of a written selection policy and advertisement for the competitive selection of units to receive project-based assistance.

Granted By: Gloria J., Cousar, Acting General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 20, 2001.

Reason Waived: Approval of the waivers will provide for new development of affordable rental housing units for very low and extremely low-income families. Fewer than 15 percent of New Hampshire rental units are affordable to very low-income renters. The approval also supports the NHHFA's multifamily housing production initiative. The NHHFA program requires that 50 percent of the units in a development be rented to very low-income families or at rents affordable for very low-income families.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; Room 4210, telephone: (202) 708–0970.

• *Regulation:* 24 CFR 982.352(c)(6) and (8).

Project/Activity: Santa Barbara Housing Authority (SBHA), Santa Barbara, CA, housing choice voucher program. SBHA requested a waiver to permit it to combine other housing subsidies including HOME subsidies, with voucher assistance. Several non-profit organizations that serve the disabled community wanted to provide additional subsidies for voucher participants to enable them to rent units above the payment standard. The non-profit community organizations and SBHA were concerned that the voucher subsidy alone is inadequate for many vouchers holders to secure housing because the Santa Barbara County rental market is extremely tight, gross rents typically exceed payment standards.

Nature of Requirement: The regulation prohibits a family from receiving tenant-based assistance while receiving tenant-based assistance under the HOME program, any local or State rent subsidy, or any other duplicative Federal, State or local housing subsidy as determined by HUD.

Granted By: Gloria J., Cousar, Acting General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 18, 2001.

Reason Waived: Approval of the waivers will increase the probability that voucher holders in the SBHA voucher program can secure housing in Santa Barbara County, and permit voucher holders who require housing in Santa Barbara County to avoid undue hardship.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; Room 4210, telephone: (202) 708–0970.

• *Regulation:* 24 CFR 982.503(c)(2)(ii)

Project/Activity: Arlington Housing Authority, Massachusetts, Housing Choice Voucher Program.

Nature of Requirement: The regulation provides that the HUD field office may approve an exception payment standard between 110 and 120 percent of the published Fair Market Rent if required as a reasonable accommodation for a family that includes a person with disabilities.

Granted By: Paula O. Blunt, Acting General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 27, 2001.

Reason Waived: Approval of the waiver to allow the field office to approve an exception payment in excess of 120 percent made it possible for a family that includes a person with disabilities to remain in their current unit for one year until the family is able to obtain assistance to search for suitable alternative housing.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; Room 4210, telephone: (202) 708–0477.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Duluth Housing Authority, MN.

A request was made to permit the Authority to benefit from energy performance contracting for developments that have tenant-paid utilities. The PHA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Nature of Requirement: Under 24 CFR part 990, Performance Funding System (PFS) energy conservation incentive that relates to

energy performance contracting currently applies to only PHA-paid utilities. The Duluth Housing Authority has both PHA-paid and tenant-paid utilities.

Granted By: Gloria J. Cousar, Acting General Deputy Assistant Secretary.

Date Granted: April 24, 2001.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Duluth Housing Authority requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Regina McGill, Director, Funding and Financial Management Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, Washington, DC 20410; Room 4216; telephone: (202) 708–1872.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Flint Area Consolidated Housing Authority, GA.

A request was made to permit the Authority to benefit from energy performance contracting for developments, which have tenant-paid utilities. The PHA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Nature of Requirement: Under 24 CFR part 990, Performance Funding System (PFS) energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Flint Area Consolidated Housing Authority has both PHA-paid and tenant-paid utilities.

Granted By: Gloria J. Cousar, Acting General Deputy Assistant Secretary.

Date Granted: April 24, 2001.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Flint Area Consolidated Housing Authority requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Regina McGill, Director, Funding and Financial Management Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, Washington, DC 20410; Room 4216; telephone: (202) 708–1872.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Dublin Housing Authority, GA.

A request was made to permit the Authority to benefit from energy performance contracting for developments, which have tenant-paid utilities. The PHA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Nature of Requirement: Under 24 CFR Part 990, Performance Funding System (PFS) energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Dublin Housing Authority has both PHA-paid and tenant-paid utilities.

Granted By: Gloria J. Cousar, Acting General Deputy Assistant Secretary.

Date Granted: May 16, 2001.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Dublin Housing Authority requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Regina McGill, Director, Funding and Financial Management Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, Washington, DC 20410; Room 4216; telephone: (202) 708–1872.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Rock Island Housing Authority, IL.

A request was made to permit the Authority to benefit from energy performance contracting for developments, which have tenant-paid utilities. The PHA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Nature of Requirement: Under 24 CFR part 990, Performance Funding System (PFS) energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Dublin Housing Authority has both PHA-paid and tenant-paid utilities.

Granted By: Gloria J. Cousar, Acting General Deputy Assistant Secretary.

Date Granted: May 14, 2001.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Rock Island Housing Authority requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Regina McGill, Director, Funding and Financial Management Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, Washington, DC 20410; Room 4216, telephone: (202) 708–1872.

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Part IV

Department of Housing and Urban Development

24 CFR Parts 201 and 202

Strengthening the Title I Property Improvement and Manufactured Home Loan Insurance Programs and Title I Lender/Title II Mortgagee Approval Requirements; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 201 and 202

[Docket No. FR–4246–F–02]

RIN 2502–AG95

Strengthening the Title I Property Improvement and Manufactured Home Loan Insurance Programs and Title I Lender/Title II Mortgagee Approval Requirements

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for the Title I Property Improvement and Manufactured Housing Loan Insurance programs. The final rule also increases the net worth requirements applicable to both the Title I and Title II Single Family Mortgage Insurance programs. The changes are designed to enhance program controls and strengthen the financial viability of the programs. This final rule follows publication of a March 30, 2000 proposed rule, and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* The amendments to §§ 201.27 and 202.8 are effective on May 7, 2002. All other provisions of this final rule are effective on December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—HUD's March 30, 2000 Proposed Rule

On March 30, 2000 (65 FR 17120), HUD published for public comment a proposed rule to amend HUD's regulations for the Title I Property Improvement and Manufactured Housing Loan Insurance program. While HUD believes that Title I property improvement and manufactured home loans fill an important role otherwise unserved by either public or private lending products, HUD has determined that the program can be strengthened by implementing new financial and program controls. Accordingly, HUD issued the March 30, 2000 proposed rule, which proposed to make several changes to the Title I and lender approval program regulations at 24 CFR parts 201 and 202, respectively. The proposed amendments were designed to protect the financial interests of the Federal Housing Administration (FHA), taxpayers, and the vast majority of borrowers and lenders who comply fully with the requirements of the Title I program.

Among other proposed amendments, the March 30, 2000 proposed rule would:

1. Require that a lender disburse Title I dealer property improvement loan proceeds either solely to the borrower, or jointly to the borrower and dealer or other parties to the transaction;

2. Require that a lien securing a property improvement loan in excess of $7,500 must occupy no less than a second lien position;

3. Require that lenders disburse the proceeds of a direct property improvement loan in excess of $7,500 using a draw system similar to that used in construction lending;

4. Require that the lender conduct a telephone interview with the borrower before the disbursement of dealer property improvement loan proceeds;

5. Conform the liquidity requirements applicable to the Title I program to those currently applicable to the Title II Single Family Mortgage Insurance program;

6. Clarify that required loan reports must be submitted on the form prescribed by the Secretary, and must contain the data prescribed by HUD;

7. Increase the insurance charge for Title I property improvement and manufactured housing loan insurance; and

8. Expand and strengthen the on-site inspection requirements applicable to dealer and direct property improvement loans.

HUD also proposed to increase the net worth requirements for both Title I and Title II loan correspondents. Specifically, the March 30, 2000 proposed rule would raise the minimum net worth requirement for Title II loan correspondent mortgagees and Title I loan correspondent lenders from $50,000 to $75,000. The proposed rule would also raise the current minimum net worth requirements for Title I property improvement loan and manufactured home dealers from $25,000 and $50,000, respectively, to $75,000.

The preamble to the March 30, 2000 proposed rule provides additional details regarding the proposed amendments to 24 CFR parts 201 and 202.

II. Significant Differences Between the March 30, 2000 Proposed Rule and This Final Rule

This rule follows publication of the March 30, 2000 proposed rule, and takes into consideration the public comments received on the proposed rule. The most significant differences between this final rule and the March 30, 2000 proposed rule are as follows. These changes are discussed in greater detail in Section III of this preamble, which presents a summary of the significant issues raised by the public commenters and HUD's responses to these issues.

1. *Exemptions to Lien Position Requirements.* This final rule provides that the lien position requirements do not apply where: (1) the first and second mortgage were made at the same time (as usually occurs to accommodate a 20 percent downpayment on a conventional purchase mortgage); or (2) the second mortgage was provided by a state or local government agency in conjunction with a downpayment assistance program.

2. *Use of "draw" system not required.* The final rule no longer provides for the use of a draw system in the disbursement of direct property improvement loan proceeds in excess of $7,500.

3. *Effective date for two-party disbursement requirements.* This final rule clarifies that the two-party disbursement requirements are applicable only to dealer loans made on or after the effective date of this final rule.

4. *Title I Program liquidity requirements not revised.* This final rule does not adopt the proposed changes to the liquidity requirements for the Title I program.

5. *No new inspection requirements.* The final rule does not adopt the proposed revisions to the inspection requirements for dealer and direct property improvement loans.

6. *Revised Net Worth Requirements.* HUD has revised the proposed rule to more closely link the net worth adjustments to increases in inflation. Specifically, this final rule establishes an increased net worth requirement computed by adjusting the current requirements for inflation since 1991 using the Consumer Price Index published by the U.S. Bureau of Labor Statistics. The increased net worth requirements are based on Consumer Price Index adjustments commencing in 1991, since the Title I net worth requirements were last increased by HUD in that year.

7. *Exemption of dealers from branch office requirements.* The final rule no longer requires Title I dealers to maintain additional net worth for each branch office.

III. Discussion of the Public Comments Received on the March 30, 2000 Proposed Rule

The public comment period for the proposed rule closed on May 30, 2000. HUD received 502 public comments on the March 30, 2000 proposed rule. Several of the commenters submitted multiple comments. Numerous commenters submitted "form letters," identical in substance to one another. The majority of comments were submitted by lenders participating in the Title I and II programs. Comments were also submitted by national and state organizations representing mortgage brokers, home improvement lenders, and mortgage bankers; state and local housing agencies; a state employees credit union; a state manufactured housing association; private individuals; and other commenters.

This section of the preamble presents a summary of the significant issues raised by the public commenters and HUD's responses to these comments.

A. Comments Regarding Two-Party Disbursements of Dealer Property Improvement Loan Proceeds

The March 30, 2000 rule proposed to amend the definition of "dealer loan" in § 201.2 to prohibit lenders from disbursing property improvement loan proceeds solely to a dealer. HUD proposed to require that a lender disburse the proceeds either solely to the borrower or jointly to the borrower and dealer or other parties to the transaction. The March 30, 2000 rule also proposed to make a conforming change to § 201.26, which describes the conditions for disbursement of property improvement loan proceeds.

Comment: Two-party disbursements will leave dealers vulnerable to unscrupulous borrowers. Several commenters were concerned that the proposed two-party disbursement requirement would leave contractors without guarantee of payment upon completion of their work. The commenters wrote that lenders would have no way to prevent an unscrupulous borrower from cashing the check and retaining the funds.

HUD Response. The proposed dual disbursement requirements will not deprive contractors of their right to payment. Contractors have various options to secure payment upon completion of their work. For example, the contractor might request a three-party closing or escrow whereby the contractor would assign the contract to the lender only upon the borrower's simultaneous endorsement of the lender's check to the contractor. Accordingly, HUD does not believe that a change to the proposed rule is necessary.

Comment: Rather than two-party disbursements, the final rule should require pre-disbursement inspections for dealer loans. One commenter suggested that, as an alternative to dual disbursements, HUD should require pre-disbursement inspections for dealer loans. According to the commenter, such inspections would assure that all work has been properly performed before payment of the dealer, while protecting the dealer against unscrupulous borrowers. The commenter suggested that the pre-disbursement inspection should include photographs. The commenter also recommended that, following the inspection, the homeowner should sign a completion certificate and release form authorizing payment of the dealer.s

HUD Response. HUD has not adopted the change suggested by the commenter. HUD agrees that inspections play an important role in ensuring the satisfactory completion of the property improvement work. However, HUD also believes that two-party disbursements are required to protect the financial integrity of the Title I program. The dual disbursement requirement will provide additional protections not afforded by inspections. The two-party disbursement requirement will ensure that loan proceeds are not released against the wishes of the borrower. Further, two-party disbursements will help to alert the lender to disputes between the borrower and the dealer.

The commenter emphasizes the role of the completion certificate signed by the homeowner upon the completion of the property improvement work. HUD agrees that such certificates are useful in preventing the misuse of loan funds. However, HUD has occasionally experienced problems regarding the improper signing of completion certificates prior to completion of the work. Accordingly, HUD does not believe that reliance on a completion certificate is a viable alternative to the two-part disbursement procedures established by this final rule.

Comment: Two-party disbursements may conflict with state law. Several commenters wrote that Title I dealer loans are retail sales installment transactions governed by state law. The commenters wrote that, under a retail sales installment contract, the dealer assigns all of its right, title and interest in the contract to the lender, and the lender pays the dealer for the assignment when the conditions of the contract have been satisfied. The commenters questioned HUD's legal authority to require that the seller of the retail installment contract (the dealer) be bypassed and the money be handed over to the borrower (who is not a party to the retail installment transaction).

HUD Response. HUD is not aware of any specific conflict between the proposed rule and any state or local law. However, HUD is cognizant that such conflicts may potentially arise in the future. Should such an issue arise, HUD will determine how best to resolve the conflict.

Comment: Two-party disbursements are unnecessary. Several commenters wrote that two-party disbursements are unnecessary. According to the commenters, other regulatory requirements ensure that all required work has been performed properly before payment of the dealer—such as the requirement that lenders not release funds to pay the dealer until the homeowner signs a completion certificate, the post-completion inspection requirement, and the proposed requirement for a telephone conversation with the borrower before the release of funds.

HUD Response. HUD does not agree that other regulatory requirements make the two-party disbursement procedures unnecessary. HUD believes that the two-party disbursement procedures will provide additional protections not afforded by these other requirements. For example, two-party disbursements will ensure that loan proceeds are not released against the borrower's wishes, and will help to promptly alert the lender to disagreements between the borrower and the dealer. Accordingly, HUD has decided to adopt the proposed dual disbursement requirements without change.

Comment: Support for two-party disbursements. Two commenters supported the proposed dual disbursement requirements. The commenters wrote that the proposal was reasonable and should prevent the disbursal of loan proceeds against the borrower's wishes. The commenters also wrote that two-party disbursements would help to ensure that property improvement work is completed satisfactorily, and that disagreements between the borrower and the dealer are brought to the lender's attention.

HUD Response. HUD agrees with the commenters. As noted, this rule makes

final the proposed dual disbursement requirements without change.

B. Comments Regarding Lien Position for Property Improvement Loans in Excess of $7,500

The March 30, 2000 rule proposed to amend § 201.24 (which describes security requirements) to require that a lien securing a property improvement loan in excess of $7,500 must occupy no less than a second lien position. The current regulation does not specify the position that such a lien must occupy, other than to state that the Title I property improvement loan must have priority over any lien securing an uninsured loan made at the same time.

Comment: Proposed lien position requirement will prevent many homeowners from participating in the Title I program. Several commenters wrote that the proposed lien position requirement would prevent homeowners who already have home equity loans, lines of credit, or received downpayment assistance, from participating in the Title I program. The commenters wrote that many home loans originated today are made in the form of a first and second lien transaction, in order to secure lower private mortgage insurance costs. Also, many state and local government agencies use second mortgages ("soft seconds") to secure loans under their downpayment assistance programs. According to one of the commenters, the lien requirements would also be unworkable when borrowers use city, county, or state bond loan programs, which often prevent the consolidation of additional borrowing with the initial loan received under the bond program.

HUD Response. HUD agrees that the proposed lien position requirements may interfere with the ability of certain homeowners to obtain Title I financing. Accordingly, HUD has revised the proposed rule to accommodate the concerns raised by the commenters. This final rule provides that the lien position requirements do not apply where: (1) The first and second mortgage were made at the same time (as usually occurs to accommodate a 20 percent downpayment on a conventional purchase mortgage); or (2) the second mortgage was provided by a state or local government agency in conjunction with a downpayment assistance program.

Comment: Rather than prohibiting Title I loans from holding a third lien position, the final rule should require that a Title I loan take precedence over other liens issued at the same time. Several of the commenters recommended an alternative to the proposed lien position requirements. Specifically, these commenters recommended that rather than prohibiting Title I loans from holding a third lien position, HUD should require that a Title I loan take precedence over other liens issued at the same time. The commenters wrote that the final rule should prohibit a lender from processing a Title I application on a property for which the same lender has made a conventional subordinate-lien loan within the last 60 days. One of the commenters suggested a 90-day period, rather than the 60-days recommended by the other commenters. Another commenter suggested that the prohibition should apply whether the uninsured loan was made by the same lender or a different lender.

HUD Response. HUD agrees that the flexibility requested by the commenters is necessary to accommodate certain types of frequently used real estate financing. As noted above, HUD has revised the proposed rule to provide that the lien position requirement does not apply where the first and second mortgage were made at the same time.

Comment: Proposed lien position requirement will force many Title I lenders out of business. Two commenters wrote that many Title I loans occupy a third lien position. Therefore, the proposed requirements would prevent lenders from offering Title I loans, and drive the lenders out of business.

HUD Response. The requirement is necessary to assure the financial integrity and continuing viability of the program. As discussed above, HUD has revised the lien position requirements to accommodate certain types of real estate financing. HUD believes that the revised requirements strike the appropriate balance between the need for flexibility, and ensuring that the program operates in a sound fiscal manner.

C. Comments Regarding Disbursement of Direct Property Improvement Loan Proceeds in Excess of $7,500

The March 30, 2000 rule proposed to amend § 201.26 (which describes the conditions for loan disbursement) to modify the disbursement procedures for direct property improvement loans in excess of $7,500. HUD proposed to require that such disbursements be made using a "draw" system, similar to that used in construction lending. Lenders would have been required to deposit all of the loan proceeds in an interest bearing escrow account until they are disbursed. The draws would have been made in accordance with criteria established by the Secretary. The loan proceeds would have been disbursed in three draws—an initial disbursement of 40 percent of the loan proceeds, a subsequent 40 percent disbursement, and a final 20 percent disbursement.

Comment: Objections to proposed draw system. Several commenters wrote in opposition to the proposed draw system. The objections raised by the commenters varied, but all agreed that the final rule should not require the use of draw disbursement procedures. For example, several commenters wrote that the proposed draw system would be costly and difficult to administer for those Title I loans used to conduct simple home improvements that are completed in a few days or weeks (such as the replacement of siding or roofing, the installation of new windows, or the insulation of the home). Other commenters wrote that the maximum $25,000 Title I loan is a relatively small loan by banking industry standards. These commenters were concerned that the imposition of the additional draw requirements would make these small loans even less attractive to lenders. One commenter wrote that the proposed draw system would create a significant risk of litigation for lenders and/or housing authorities acting as the lender's rehabilitation agent. Several commenters wrote that the use of draws is unnecessary because required inspections will suffice to address HUD's stated goal of preventing opportunities for the misuse of funds. One commenter questioned whether the proposed draws system might conflict with State requirements governing the use of draw disbursements in the construction industry.

HUD Response. Upon reconsideration, HUD has decided not to require the use of a draw disbursement system for direct property improvement loans in excess of $7,500. HUD agrees with the commenters that the use of such a system might present administrative difficulties for lenders and may hinder participation in the Title I Program. HUD has concluded that the implementation of a draw system requires further review, including whether less burdensome alternatives exist to protect against the misuse of funds. Should HUD decide at a later date to implement a draw disbursement system, it will do so through a proposed rule and provide the public with an additional opportunity to comment.

Comment: Suggested revisions or alternatives to proposed draw system. To address some of the concerns summarized above, several commenters suggested modifications or alternatives to the proposed draw system. For example, some commenters wrote that draws should only apply to "larger projects" involving direct loans in excess of $15,000 (or some other specified amount). Other commenters advocated that HUD revise the proposed rule to provide lenders and borrowers with greater flexibility in determining the appropriateness of using a draw system, and in establishing the number of required draws. Two commenters wrote that, instead of multiple draws, the final rule should require an initial "holdback" of 10 percent of the loan amount. One commenter wrote that the issuance of three joint checks would achieve the same results as the proposed draw system, with far less costs to the homeowner.

HUD Response. As noted above, HUD has decided not to adopt the proposed draw system requirements at this final rule stage. HUD will consider the suggestions made by the commenters should it decide to implement a draw system for Title I loans at a future date.

Comment: Concerns about escrow account requirements. Several commenters expressed concerns about the escrow account requirements of the proposed draw system. For example, some commenters wrote that lenders would most likely pass the costs of establishing the interest-bearing escrow account to borrowers.

One commenter suggested that, rather than requiring the establishment of an escrow account, the final rule should permit the lender to charge interest at the note rate on any fees included in the loan amount and on those loan proceeds actually disbursed to the borrower, beginning with the initial draw.

HUD Response. As discussed above, this final rule does not adopt the draw disbursement requirements of the March 30, 2000 proposed rule. HUD will take the concerns expressed by the commenters into consideration should it decide, at a later time, to implement a draw system for the Title I Program.

D. Comments Regarding Telephone Interviews for Dealer Property Improvement Loan Disbursements

The March 30, 2000 rule proposed to amend § 201.26 to require that the lender must conduct a telephone interview with the borrower before the disbursement of dealer property improvement loan proceeds. The lender, at a minimum, would be required to obtain an oral affirmation from the borrower to release funds to the dealer.

Comment: Support for telephone interview requirement. Several public commenters wrote in support of the proposed telephone interview requirement. Many of these commenters noted that this practice is already followed by most reputable lenders in the Title I dealer loan program.

HUD Response. HUD agrees that the telephone interview requirements will help to ensure the continued effectiveness of the Title I program. This final rule adopts the proposed requirement without change.

Comment: Telephone interview requirement is duplicative and will slow down the dealer loan process. Two commenters opposed the proposed telephone interview requirement as unnecessary. According to the commenters, the proposed dual disbursement requirement, and the current certificate of completion requirement, will ensure that all work is properly performed before the disbursement of the dealer loan proceeds. The commenters also wrote that, in today's increasingly automated lending environment, the proposed requirement would be costly to administer and unnecessarily delay dealer loan transactions.

HUD Response. Telephone interviews are a well established industry procedure already practiced by the majority of Title I lenders. Further, the majority of commenters submitting comments on this proposal recognized the effectiveness of telephone interviews and supported the requirement. Accordingly, requiring the use of telephone interviews will not pose an unfamiliar or unduly burdensome administrative requirement.

E. Comments Regarding Liquidity Requirements

The March 30, 2000 rule proposed to amend the regulations at 24 CFR parts 201 and 202 to make the liquidity requirements applicable to the Title I and Title II programs consistent with one another. The proposed liquidity requirement would have applied to Title I supervised lenders (§ 202.6), Title I unsupervised lenders (§ 202.7), Title I loan correspondent lenders (§ 202.8), and Title I dealers (§ 201.27). Under the proposed rule, these Title I participants would have been required to have liquid assets consisting of cash (or its equivalent acceptable to the Secretary) in the amount of 20 percent of their net worth, up to a maximum liquidity requirement of $100,000. For purposes of the proposed rule, HUD would not have considered lines of credit to be liquid assets, nor loans or mortgages held for resale by the mortgagee.

Comment: Concerns regarding the proposed liquidity requirements. Two commenters supported the proposed liquidity requirements, writing that many Title I lenders and loan correspondents are also approved as Title II mortgagees and therefore already satisfy the proposed liquidity increases. However, other commenters wrote that the proposed liquidity requirements would impose an economic hardship on Title I participants. For example, several commenters wrote that most Title I dealers are two or three person operations whose business assets are limited and, therefore, would find it very difficult to meet the proposed liquidity requirements.

Several commenters wrote that HUD, by proposing to conform the Title and Title II liquidity requirements, but disregarding other program differences, would place Title I lenders at a marketplace disadvantage. The commenters wrote that Title II mortgagees are not subject to the Title I "bricks and mortar" and minimum staffing requirements for HUD branch office approval. The commenters recommended that, should HUD decide to finalize the proposed liquidity requirements, it should also conform these other Title I and Title II program requirements.

One commenter wrote that the liquidity requirements would not necessarily assure dealer integrity or reliability. Some commenters noted that the misuse of restricted funds is not a significant concern for Title I loan correspondents, since they do not service HUD loans and never hold insurance or escrow monies. These commenters suggested that the required liquidity for loan correspondents be capped at 20 percent of the minimum net worth.

HUD Response. Upon reconsideration, HUD has decided not to proceed with the proposed changes to the Title I liquidity requirements. HUD agrees with the commenters that the proposed liquidity increases might pose an economic hardship for some Title I lenders, correspondents and dealers. Accordingly, HUD has decided to defer any changes to the Title I liquidity requirements in order to further consider the impacts of such increases. Should HUD decide to increase the liquidity requirements at a future date, it will implement these changes through proposed rulemaking and provide the public with an additional opportunity to comment.

F. Comments Regarding the Reporting of Loans for Insurance

The March 30, 2000 rule proposed to amend § 201.30 to clarify that required loan reports must be submitted on the form prescribed by the Secretary, and

must contain the data prescribed by HUD.

Comment: Support for proposed reporting requirements. Several commenters supported this proposed requirement. The commenters wrote that the proposal would allow HUD to better monitor and track participant performance.

HUD Response. HUD agrees that the reporting requirements will facilitate its review of Title I participant performance.

Comment: The reporting requirements should be "phased-in". One commenter, while supporting the proposed reporting requirements, noted that "requirements of this sort often involve the modification of automated systems, which are sometimes maintained by others." The commenter suggested that the new reporting requirements be "phased-in," in order to provide participants adequate time to make needed adjustments.

HUD Response. HUD agrees that lenders may require time to modify existing procedures in order to comply with any new HUD reporting requirements. HUD notes that the final rule does not establish new or revised reporting requirements at this time. Rather, the language of the proposed and final rules clarifies that the required reports must be submitted in the format, and contain the data, prescribed by HUD. In evaluating lender compliance with any new reporting requirements, HUD will take into consideration the need of lenders to update their current systems and procedures.

G. Comments Regarding Increased Insurance Charge for Property Improvement and Manufactured Home Loans

The March 30, 2000 rule proposed to revise § 201.31(a) to increase the insurance charge for Title I property improvement and manufactured home loan insurance. Currently, Title I property improvement lenders are required to pay an insurance charge of 0.50 percent of the loan amount, multiplied by the number of years of the loan term. HUD proposed to increase the applicable percentage to 1.00 percent of the loan amount. HUD also proposed to amend § 201.31(b) to conform the procedures governing the payment of the insurance charge for manufactured home loans with the insurance charge payment procedures for property improvement loans. The current regulations establish an accelerated payment schedule for manufactured home loans with a maturity in excess of 25 months. Under the proposed rule, the payment schedule for manufactured homes loans with a maturity in excess of 25 months would be identical to that applicable to comparable property improvement loans.

1. General Comments Regarding the Increased Insurance Charge

Comment: Support for increased insurance charge. Several commenters supported the proposed increase. The commenters wrote that the proposal was necessary for the Title I program to be self-supporting.

HUD Response. HUD agrees with these commenters. The final rule adopts the proposed revisions without change.

Comment: Cost of increased insurance charge will be passed on to the borrower. Several commenters wrote that the costs of the increased insurance charge would be passed on to the borrower. Some of the commenters wrote that lenders sometimes absorb the cost of the insurance premium as a "goodwill" gesture. However, the commenters wrote that if HUD proceeds with the proposed increase, lenders may be forced to pass the cost to the borrower. According to the commenters, this will mean charging substantial up-front fees that most borrowers cannot afford.

HUD Response. HUD does not agree with these commenters. Market costs will determine whether the increased insurance charge will be passed on to borrowers, or absorbed by lenders as a necessary expense of maintaining their competitiveness in the market.

Comment: The proposed increase is excessive. Two commenters, although supporting an increase to the insurance charge, wrote that the proposed increase was excessive. One of the commenters suggested that HUD should reduce the proposed increase to 0.75 percent of the loan amount. The second commenter wrote that an 0.88 percent insurance charge would be sufficient.

HUD Response. HUD has not adopted the changes requested by these commenters. The increase to the insurance charge is based upon the conclusions reached by a comprehensive HUD analysis of the Title I program. This analysis evaluated various premium models, and concluded that the increase is necessary to cover the costs of insurance claims paid by HUD under the program. In addition, to simplify the product for the industry, both the Title I property improvement and manufactured home programs will use the same method of premium collection.

Comment: There is no basis for modifying the front-loaded collection system for manufactured home loans. One commenter wrote that "[i]n spite of a declining loan volume beginning in the early 1990's, the manufactured home loan program has shown positive cash flow in each year since 1989, and has generated a surplus of $120 million over this eleven year period" (emphasis in original). Therefore, according to the commenter, there is no basis for changing the total loan insurance charge or the "front-loaded" collection system for manufactured home loans.

HUD Response. HUD has not revised the proposed rule in response to this comment. The Title I Manufactured Home Program has not generated a positive cash flow in recent years.

2. Suggested Revisions to Increased Insurance Charge

Comment: Insurance charge should be based upon a performance based standard. Several commenters suggested that HUD develop performance standards for use in establishing the insurance charge for each lender. The commenters wrote that participating financial institutions should not be forced to bear the costs of program losses attributable to a minority of poor-performing lenders. According to the commenters, the use of a performance-based insurance charge would reward lenders with strong underwriting standards, while maintaining the financial stability of the program.

HUD Response. HUD has not adopted the suggestions made by these commenters. Title I property improvement loans fill an important role otherwise unserved by either public or private lending products. Accordingly, HUD believes it is appropriate to use a single premium rate applicable to all lenders. A performance-based premium standard might make Title I loans unaffordable in certain communities.

Comment: Title I loans that are financed by municipal housing bonds should be exempt from the proposed insurance charge increase. Two commenters were concerned that the proposed increase to the insurance charge might jeopardize the ability of state and local housing agencies to provide low-interest Title I loans to low-income households. The commenters wrote that bond-financed Title I loans have a lower rate of default than other Title I loans and provide lower interest rates on home improvement loans for low-income households. Accordingly, the commenters recommended that HUD exempt bond-financed Title I loans from any increases to the insurance charge.

HUD Response. HUD has not adopted the change suggested by the commenters. As noted, the premium increase is based on recent credit subsidy estimates used for budget purposes. HUD's credit subsidy analysis evaluated the performance of the entire Title I portfolio, and did not exclude Title I loans financed by municipal housing bonds. Accordingly, the conclusions reached by HUD regarding the need for an increased insurance charge are equally applicable to these types of Title I loans.

Comment: Increased insurance charge should only apply to loans made after the effective date of the final rule. One commenter, while supporting an increase to the insurance charge, wrote that the increase should only apply to loans made after the effective date of the final rule.

HUD Response. The increased insurance charge applies only to Title I loans made on or after the effective date of this final rule.

Comment: HUD should consider "sunsetting" the increased insurance charge. One commenter wrote that, if the increased insurance charge is necessary to cover past program losses, HUD should provide a "sunset provision" for the premium increase. Once the past losses have been recovered in a few years, the insurance charge would be reduced to its current level.

HUD Response. HUD has not adopted the change suggested by the commenter. The increase to the insurance charge is necessary not only to recoup past losses in the Title I program, but also to cover the projected costs of future insurance claims paid by HUD under the program.

Comment: Final rule should establish "front loaded" collection system for property improvement loans. One commenter wrote that a level annual premium penalizes those lenders who make good Title I loans and hold them in their portfolio for servicing. According to the commenter, many of these lenders do not pass the premium cost to borrowers, and must, therefore, pay the annual premium from the ever-declining interest payments they receive. "Increasing the annual premium from 0.50 percent to 1.00 percent will exacerbate this problem* * *" The commenter suggested that HUD adopt a "front-loaded collection system similar to the one that has been successful for the manufactured home loan program." According to the commenter, such a system would conform to the recommendations made by HUD staff in 1995, and subsequently "confirmed by Price Waterhouse in its 1997 study of the program, and reaffirmed by KPMG Peat Marwick in its 1998 front-end risk assessment on the program."

HUD Response. HUD has not adopted the suggestion made by the commenter. The current premium structure was developed by HUD based on data provided from several sources, including various financial contractors. Based on this information, HUD has determined that the current structure meets the financial needs of FHA and participants in the Title I program. Moreover, the regulatory change suggested by the commenter could not appropriately be implemented at the final rule stage, but would require additional notice and opportunity for public comment.

H. Comments Regarding Inspection Requirements for Dealer and Direct Property Improvement Loans

The March 30, 2000 rule proposed to expand the current on-site inspection requirements for dealer and direct property improvement loans at § 201.40. Specifically, HUD proposed to require that on-site inspections be conducted for all dealer and direct property improvement loans (not just for loans where the principal obligation is $7,500 or more, or where the borrower fails to submit a completion certificate). In the case of dealer and direct property improvement loans of $7,500 or less, the lender would have been required to conduct two inspections—a pre-construction inspection and a post-construction inspection. For dealer and direct loans in excess of $7,500 the lender would also have been required to conduct a third inspection. Additionally, HUD proposed to require that photographs of the site be taken as part of all required inspections.

Comment: Concerns regarding proposed inspections. Several commenters expressed concern about the proposed inspection requirements. For example, various commenters wrote that the proposed increase in the number of required inspections would be administratively burdensome, costly and impracticable. The commenters wrote that it would serve no worthwhile purpose to require multiple inspections within the few days it takes to complete most Title I projects. Several commenters requested that HUD raise the current inspection fees, or otherwise provide additional funding to cover the costs of conducting the additional inspection. Other commenters objected to the time periods for conducting the proposed inspections. One of these commenters suggested extending the 60-day deadline for completing the required inspections to 90-days. Two commenters recommended shortening the existing period for completion of direct loan improvements from six months to 90 days (with a one-time 90-day extension).

HUD Response. This final rule does not adopt the proposed changes to the Title I inspection requirements. HUD has decided to defer any changes to the inspection procedures to allow for further review of the potential impacts of such revisions. Should HUD decide to revise the Title I inspection requirements at a future date, it will implement these changes through proposed rulemaking and provide the public with an additional opportunity to comment.

I. Comments Regarding Net Worth Requirements for Title I and Title II Programs

The March 30, 2000 rule proposed to increase the net worth requirements for both Title I and Title II loan correspondents. Specifically, HUD proposed to amend § 202.8 to raise the minimum net worth requirement for Title II loan correspondent mortgagees and Title I loan correspondent lenders from $50,000 to $75,000. HUD also proposed to amend § 201.27 to raise the current minimum net worth requirements for Title I property improvement loan dealers and manufactured home dealers from $25,000 and $50,000, respectively, to $75,000.

1. Support for Proposed Net Worth Requirements

Comment: Support for increased net worth requirements.

A minority of commenters supported the proposed net worth requirements. The commenters wrote that fraudulently originated loans and loans to unqualified borrowers are more likely to occur if the lender is thinly capitalized and desperate to close and sell more loans to stay solvent. Accordingly, the higher worth requirements should ensure greater integrity and accountability..

Response. HUD agrees that increased net worth requirements are necessary to help ensure greater accountability in the Title I and Title II programs.

Comment: Net worth requirements should be increased further. Three commenters wrote that the proposed net worth increases are not sufficient. The commenters suggested that the net worth requirements should be increased even further—to $100,000 or some other amount.

HUD Response. As discussed in greater detail below, HUD has revised the proposed rule to more closely link the net worth adjustments to increases

in inflation. HUD believes that increasing the net worth requirements to reflect inflationary pressures is equitable and will not pose an undue financial burden on program participants.

2. Objections to Proposed Net Worth Requirements

Comment: Increased net worth requirements will eliminate competition and make borrowers vulnerable to abusive lending practices. Many commenters wrote that lenders would find it extremely costly to maintain the required cash reserves. The commenters wrote that the proposed net worth requirements would drive many of these lenders out of business, or force them to cease offering Title I loans. Accordingly, the proposed net worth requirements would decrease competition and allow mortgage lenders to charge higher fees and offer services that are inferior and more profitable. The commenters wrote that the increased net worth requirements would ultimately result in borrowers either being directed to sub-prime products at much higher interest rates or being required to pay the higher bank prices.

Many of these commenters questioned why HUD would propose to increase the net worth requirements at a time when it has specifically requested the National Association of Mortgage Brokers (NAMB) to assist in expanding the use of FHA programs by mortgage brokers. According to the commenters, the increased net worth requirements would have the opposite effect by preventing many lenders from participating in the Title I programs.

HUD Response. HUD does not agree that the increased net worth requirements will decrease market competition and hurt consumers. HUD last increased the Title I net worth requirements in 1991. Fiscal Year 1999 set an all time high for new approved lenders with Fiscal Year 2000 being the second highest. The rate of new lender approvals has continued at these historic high levels through the first half of Fiscal Year 2001. Moreover, 82 percent of new lenders approved thus far in Fiscal Year 2001 have been loan correspondents. If anything, market competition in the Title I program is increasing and not decreasing.

Comment: Increased net worth requirements will limit availability of Title I loans to underserved communities. Many commenters wrote that small lenders are often more willing to provide necessary services to minority and rural communities. According to these commenters, these lenders will often provide educational seminars in English, Spanish, and a variety of other languages, or visit families to explain home loan financing and take a loan application. The increased net worth requirements would prevent these lenders from participating in the Title I programs, and, therefore, limit the availability of Title I loans to underserved minority and rural communities.

HUD Response. As discussed above, HUD does not agree that the new net worth requirements will decrease the number of participating lenders. Rather, HUD believes that the financial reforms implemented by this final rule will make participation in the Title I program an even more attractive option for lenders. Moreover, the final rule will strengthen the financial soundness of participating lenders. Accordingly, rather than restrict the availability of Title I loans, the final rule will make the program available to many new borrowers—including those located in traditionally underserved rural and minority communities.

Comment: Increased net worth requirements unfairly penalize loan correspondents, who are not responsible for servicing Title I loans. Many commenters wrote that the majority of loan correspondents are small businesses, who immediately deliver FHA loan packages to a lender (sponsor). The servicing lenders are the entities in complete control of the restricted funds for all customer insurance premiums and escrows. The commenters objected to the establishment of increased net worth requirements for loan correspondents, since the correspondents do not underwrite, approve, fund and/or service FHA loans. The commenters wrote that the increased net worth requirements would force loan correspondents to tie up excessive business capital in cash reserves, that might be more productively used to run the company's operations. Several of the commenters suggested that HUD make the sponsoring lender accountable for the actions of the correspondent. The commenters wrote that such a practice would conform to the existing procedures used by Fannie Mae, Freddie Mac, and the Department of Veterans Affairs.

HUD Response. HUD has not revised the proposed rule in response to these public comments. While loan correspondents are not authorized to service FHA insured loans, they do collect some up-front fees and/or premiums from borrowers as part of the origination process. Loan correspondents are also required to fund the Title I loans they originate. With respect to the commenters suggesting that HUD make sponsors responsible for the actions of loan correspondents in lieu of increasing the net worth requirement, HUD notes that the FHA lender approval regulations already provide for such accountability (see 24 CFR 202.8(b)(7)).

Comment: There is no correlation between net worth and default ratios. Many commenters wrote that the net worth of lenders has no bearing on default ratios. The commenters wrote that some of the most well-capitalized lenders have been suspended from FHA participation due to high default rates and fraud.

HUD Response. HUD has not revised the proposed rule in response to these comments. While it is true that some well-capitalized lenders have been suspended from FHA participation because of high claim rates or fraud, it is also true that some under-capitalized lenders have also been subjected to similar sanctions. In HUD's experience, there is less stress on well capitalized lenders to misuse restricted funds such as insurance premiums or escrows for operating expenses. The net worth increases will help to ensure that only well-capitalized and financially strong lenders are eligible to participate in the Title I and Title II programs.

Comment: Increased net worth requirements are unnecessary; existing requirements are sufficient to protect against misuse of FHA funds. Several commenters wrote that existing HUD regulations adequately protect the public and FHA against fraud and the misuse of funds. The commenters recommended that HUD should educate lenders on existing program procedures and enforce compliance with these requirements, rather than increasing the net worth requirements. One of the commenters wrote that "HUD now has the tools, like the Credit Watch program, to accurately assess the performance of any lender." The commenter questioned the need to raise the net worth levels, given that objective measures of real performance are now in place.

HUD Response. HUD agrees that lender education and compliance enforcement are important tools in protecting against the misuse of FHA loan funds. However, enforcement actions occur only after the violation of FHA requirements. Further, the performance measures mentioned by the commenters (such as the Credit Watch Program) come into play after HUD has assumed the risk of insuring the loans originated by participating lenders. Therefore, HUD believes that preventative risk management measures are necessary to help reduce the risk to FHA insurance funds. HUD's goal in issuing this final rule is to help to reduce the number of necessary FHA enforcement actions, as well as the incidence of poor performance ratings under Credit Watch and other similar measurement systems.

3. Comments Regarding HUD's Justification for Proposed Net Worth Increases

Comment: Loss rates do not justify proposed net worth requirements. Several commenters questioned HUD's explanation that the proposed net worth increase is necessary due to increases in the loss rates for the Title I and Title II programs (see 65 FR 17122, middle column). The commenters noted that, based on the figures provided in the preamble, the average loss has more than doubled for the Title I program ($13,783 to date versus $6,318 in FY 1991), while the increase for the Title II program has been just under one-third ($31,800 today versus $24,140 for FY 1991). According to the commenters, the proposed net worth increase would be greater than the increase in losses for the Title II program, but insufficient to cover Title I program losses.

As one of the commenters wrote:

> [B]ased on the proposed increase, a Title I correspondent would go from being able to indemnify 7.9 average losses in 1991 to being able to indemnify 5.4 average losses today. At the same time, a Title II correspondent would go from a capability of indemnifying 2.1 average losses in 1991 to 2.4 today. Thus, while the ability to indemnify would increase slightly for Title II correspondents under the Proposal (12%), the ability to indemnify for Title I correspondents would decrease substantially (46%). The Proposal would increase net worth requirements to much for Title II and too little for Title I, based on the trends in average losses for the two programs. * * * We see no reason why Title II participants should cross-subsidize the Title I program.

HUD Response. HUD does not agree with the commenter. HUD's goal in establishing minimum net worth requirements is not to ensure that lenders will have the capability to indemnify HUD against losses resulting from improper or fraudulent loans. Rather, the objective is to ensure that lenders have the financial capacity to operate their companies in a sound and professional manner, thereby reducing the risk to FHA insurance funds. The data provided in the proposed rule was designed to highlight the fact that HUD's losses per claim have increased significantly, while the net worth requirement has remained the same. Further, there can be no cross-subsidization of the two programs since FHA insurance under the Title I and Title II programs is provided through separate appropriations.

Comment: Inflation does not justify proposed net worth increases. Several commenters disagreed with HUD's explanation that the net worth requirements need adjustment due to inflation (see 65 FR 17123, middle column). The commenters wrote that the past seven years have seen uncommonly low levels of inflation. According to the commenters, inflation has not approached the level of 50% over the past seven years since the last increase in net worth requirements. Accordingly, the commenters believe that the proposed increase "vastly overreaches the degree of increase in net worth that inflation alone can justify."

HUD Response. HUD agrees that the increases to the net worth requirements should be more closely linked to actual increases in inflation. Accordingly, this final rule establishes an increased net worth requirement computed by adjusting the current requirements for inflation from 1991 to 2000 using the Consumer Price Index published by the U.S. Bureau of Labor Statistics. The increased net worth requirements are based on Consumer Price Index adjustments commencing in 1991, since the Title I net worth requirements were last increased by HUD in that year. The numbers are rounded to the nearest $1,000. Specifically, the final rule raises the net worth requirements for Title II loan correspondent mortgagees and Title I loan correspondent lenders from $50,000 to $63,000. The final rule also amends § 201.27 to raise the current minimum net worth requirements for Title I property improvement loan dealers and manufactured home dealers from $25,000 and $50,000 to $32,000 and $63,000, respectively.

4. Suggested Revisions to Proposed Net Worth Requirements

Comment: The final rule should provide lenders with additional time to meet the net worth requirements. Several commenters wrote that six months would not be sufficient time for lenders to meet the new net worth requirements. Two of the commenters suggested that one year would be a more equitable time period.

HUD Response. HUD has not adopted the suggestion made by the commenter. This rule continues to grant lenders six months from the effective date of the final rule (seven months following the date of publication) to comply with the new requirements. HUD believes the final rule provides sufficient time for lenders to take any actions necessary to comply with the increased net worth requirements.

Comment: Bonding requirement is a more appropriate alternative to increasing the net worth requirements. Several commenters suggested that, in lieu of increasing the net worth, HUD should impose a surety bond requirement. This might involve the bonding of the loan broker/correspondent, as well as the individual bonding of originators employed by the correspondent. According to the commenters, a surety bond requirement would be less costly for lenders to meet, while securing financial responsibility and providing a recourse for all parties involved. The commenters wrote that a surety bond requirement would also benefit HUD by affording relief from the burden of reviewing annual audited financial statements.

HUD Response. HUD has not adopted the recommendations made by the commenter. In 1999, HUD conducted extensive research into the possibility of accepting surety bonds and concluded that it would increase the risk to HUD and impair its ability to monitor and sanction Title I lenders. Although underwriting standards may vary among bonding companies, most financial guaranty bonds provide for full recourse to the principals of a company in the form of a personal guarantee. Most small Title I lenders would not be able (or willing) to provide such a guarantee in order to obtain a surety bond.

Comment: Increased net worth requirements should not apply to currently approved loan correspondents. Two commenters suggested that HUD exempt currently approved loan correspondents from the increased net worth requirements.

HUD Response. HUD has not revised the proposed rule in response to these comments. In the interests of fairness, the final rule establishes a uniform net worth requirement applicable to all loan correspondents, regardless of when they were approved by FHA. The commenter's suggestion would put newly approved Title I correspondents at a distinct market disadvantage.

Comment: Increased net worth requirements should apply to loan correspondents, but not to Title I dealers. Several commenters supported increased net worth requirements for loan correspondents. According to the commenters, correspondents should be required to have sufficient net worth to indemnify HUD for more than a few loans. The commenters, however, unanimously advocated that loan dealers be exempted from the net worth increases. The commenters wrote that most Title I loan dealers are small businesses who would be unable to meet the proposed increases. Further,

the commenters wrote that loan dealers do not underwrite Title I loans, but merely originate the loans.

HUD Response. As noted, HUD has revised the proposed rule to more closely link the net worth adjustments to increases in inflation. HUD believes that increasing the net worth requirements to reflect inflationary pressures is equitable and will not pose an undue financial burden on program participants. In addition, as stated elsewhere in this preamble, HUD has exempted Title I dealers from the new branch office requirements.

J. Comments Regarding Performance Based Standards

The preamble to the March 30, 2000 proposed rule explained that HUD is planning to develop performance-based standards for determining the continued eligibility of lenders, correspondents and dealers in the Title I program. These would identify objective criteria for loan performance and would ensure management quality. The preamble advised that while HUD was still developing data collection and measurement systems for this purpose and was not proposing any requirements in this area under this proposed rule, it was interested in the public's views on using this tool. (See 65 FR 17122, middle and third columns.)

Comment: Support for performance based standards. Several commenters supported the development of performance based standards for the Title I program. The commenters wrote that such standards have been used effectively in a number of mortgage purchase and participation programs, and can be used effectively to assure loan quality and compliance with Title I program requirements. The commenters also urged that any such standards be objective and equitable. The commenters offered to work with HUD in the development of the performance based standards.

HUD Response. At this time, HUD has decided not to implement performance based standards for the Title I program. HUD continues to believe that such standards can be an effective risk management tool, and may develop performance standards in the future. HUD thanks the commenters for their suggestions, and appreciates their offer to work with HUD on the development of such standards. HUD will take the comments under consideration should it determine to develop performance based standards for use in the Title I program.

K. Comments Regarding Small Business Impacts

Two commenters questioned HUD's preamble certification that the proposed rule would not have a significant economic impact on a substantial number of small entities (see 65 FR 17123, first column).

Comment: The proposed rule inadequately addressed small business concerns. Two commenters disagreed with the preamble statement indicating that "[t]he majority of financial institutions participating in the Title I program are large depository institutions." One of the commenters wrote that its "experience is quite the opposite." The second commenter noted that the regulations defining what constitutes a small business are issued by the Small Business Administration (SBA). According to the commenter, under the SBA regulations at 13 CFR 121.201, many of the lending institutions and loan dealers participating in the Title I program are small business entities.

Two commenters wrote that the proposed rule inadequately addressed the adverse economic impacts of the proposed rule on small entities. According to the commenters, if the proposed net worth and liquidity requirements were to be implemented, many property improvement and manufactured home dealers could not afford to participate in the Title I program. The commenters reminded HUD of its obligation, under the Regulatory Flexibility Act (5 U.S.C. 605(b)) to consider alternatives that would accomplish HUD's goals without severe economic losses to small businesses.

HUD Response. HUD does not agree with these commenters. Small business concerns were carefully considered by HUD in the development of the proposed and final rules. Where this final rule imposes an economic burden, HUD has attempted to minimize the costs to small lenders and other small entities participating in the Title I and Title II programs. The commenters are also incorrect in writing that HUD has not considered less costly alternatives to the regulatory changes. The preamble to the proposed rule specifically invited comments from the public (including small businesses) on possible less burdensome alternatives to the proposed regulatory amendments (see 65 FR 17123, third column). HUD received over 500 public comments on the March 30, 2000 proposed rule, many of them suggesting changes to the proposed regulatory language. HUD carefully reviewed each of these comments and, where it determined appropriate, revised the proposed rule to adopt the recommended changes.

In response to public comment, HUD has decided not to adopt several provisions of the proposed rule that had the potential to impose economic hardship on small participants in the Title I Program. As discussed above in this preamble, the final rule no longer increases the liquidity requirements, requires the use of a draw system for disbursement of direct loans in excess of $7,500, or establishes new inspection requirements. In addition, Title I dealers will not be required to maintain additional net worth for each branch office. The final rule also "phases-in" the increases to the net worth requirements. Also in response to public comment, HUD has revised the proposed rule to more closely link the net worth adjustments to increases in inflation.

As noted elsewhere in this preamble, HUD also disagrees with the commenters that the net worth increases will decrease the number of participating lenders. HUD last increased the net worth requirements for the Title I program in 1991. Lender participation in the Title I program has significantly increased each year since 1991. In Fiscal Years 1999 and 2000, FHA approved a record number of new lenders for participation in the program. In addition, an analysis of a sampling of four years worth of the annual recertification audits submitted by loan correspondents in the Title I program indicates that the impact of the increase of the net worth is minimal as 74% of the lenders already meet the new standard.

For the above reasons, HUD has determined that the final rule will not have a significant economic impact on a substantial number of small entities, in accordance with the requirements of the Regulatory Flexibility Act.

IV. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in § 201.26(a)(7) (the new telephone interview requirement for dealer property loan disbursements) has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0328. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule, and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule would not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

The final rule makes several amendments to HUD's Title I program regulations. The final rule also increases the net worth requirements applicable to both the Title I and Title II Single Family Mortgage Insurance programs. The changes are designed to enhance program controls and strengthen the financial viability of the programs. This final rule follows publication of a March 30, 2000 proposed rule, and takes into consideration the public comments received on the proposed rule. The preamble to the March 30, 2000 proposed rule specifically solicited comment from the public (including small businesses) on possible less burdensome alternatives to the proposed regulatory amendments (see 65 FR 17123, third column).

Many of the new requirements (such as two-party disbursements for dealer loan proceeds, and ensuring at least a second lien position for certain loans) will pose minimal, or no, economic costs. Where the final rule imposes an economic burden (such as the increased net worth), HUD has attempted to minimize the costs to small lenders and other small entities participating in the Title I and Title II programs. In addition, HUD has adopted several changes suggested by the commenters to alleviate economic burden on small entities.

Among other provisions designed to address small business concerns, the final rule no longer increases the liquidity requirements for participation in the Title I Program. In addition, Title I dealers will not be required to maintain additional net worth for each branch office. The final rule also "phases-in" the increases to the net worth. HUD has also revised the proposed rule to more closely link the net worth adjustments to increases in inflation. HUD has revised the proposed lien position requirements to accommodate certain types of frequently used real estate financing. In addition, the final rule no longer requires the use of a draw system for disbursement of direct loan proceeds in excess of $7,500, nor mandates new inspection procedures for Title I loans.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers applicable to the 24 CFR parts 201 and 202 are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 201 and 201 to read as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 1703 and 3535(d).

2. In § 201.2, revise the definition of "Dealer loan" to read as follows:

§ 201.2 Definitions.

* * * * * *

Dealer loan means a loan where a dealer, having a direct or indirect financial interest in the transaction between the borrower and the lender, assists the borrower in preparing the credit application or otherwise assists the borrower in obtaining the loan from the lender. In the case of a property improvement loan, the lender may disburse the loan proceeds solely to the borrower, or jointly to the borrower and the dealer or other parties to the transaction. In the case of a manufactured home loan, the lender may disburse the loan proceeds solely to the dealer or the borrower, or jointly to the borrower and the dealer or other parties to the transaction.

* * * * *

3. Revise § 201.24(a) to read as follows:

§ 201.24 Security requirements.

(a) *Property improvement loans*—(1) *Property improvement loans in excess of $7,500.* (i) Any property improvement loan in excess of $7,500 shall be secured by a recorded lien on the improved property. The lien shall be evidenced by a mortgage or deed of trust, executed by the borrower and all other owners in fee simple.

(ii) If the borrower is a lessee, the borrower and all owners in fee simple must execute the mortgage or deed of trust. If the borrower is purchasing the property under a land installment contract, the borrower, all owners in fee simple, and all intervening contract sellers must execute the mortgage or deed of trust.

(iii) The lien need not be a first lien on the property; however, the lien securing the Title I loan must hold no less than the second lien position. This requirement shall not apply where the first and second mortgages were made at the same time or the second mortgage was provided by a state or local government agency in conjunction with a downpayment assistance program.

(2) *Property improvement loans of $7,500 or less.* Any property improvement loan for $7,500 or less (other than a manufactured home improvement loan) shall be similarly secured if, including any such additional loans, the total amount of all Title I loans on the improved property is more than $7,500.

(3) *Manufactured home improvement loans.* Manufactured home improvement loans need not be secured.

* * * * *

4. Amend § 201.26 as follows:

a. Redesignate paragraphs (a)(6) and (a)(7) as paragraphs (a)(8) and (a)(9), respectively; and

b. Add new paragraphs (a)(6) and (a)(7).

§ 201.26 Conditions for loan disbursement.

(a) * * *

(6) In the case of a dealer loan made on or after December 7, 2001, the lender may disburse the loan proceeds solely to the borrower, or jointly to the borrower and the dealer or other parties to the transaction.

(7) In the case of a dealer loan, the lender must conduct a telephone interview with the borrower before the disbursement of the loan proceeds. The lender, at minimum, must obtain an oral affirmation from the borrower to release funds to the dealer. The lender shall document the borrower's oral affirmation.

* * * * *

5. Revise § 201.27(a)(1) to read as follows:

§ 201.27 Requirements for dealer loans.

(a) *Dealer approval and supervision.* (1) The lender shall approve only those dealers which, on the basis of experience and information, the lender considers to be reliable, financially responsible, and qualified to satisfactorily perform their contractual obligations to borrowers and to comply with the requirements of this part. However, in no case shall the lender approve a dealer that is unable to meet the following minimum qualifications:

(i) *Net worth.* All property improvement and manufactured home dealers shall have and maintain a net worth of not less than $32,000 and $63,000, respectively. The required net worth must be maintained in assets acceptable to the Secretary.

(ii) *Business experience.* All property improvement loan and manufactured home dealers must have demonstrated business experience as a property improvement contractor or supplier, or in manufactured home retail sales, as applicable.

* * * * *

6. Revise § 201.30(a) to read as follows:

§ 201.30 Reporting of loans for insurance.

(a) *Date of reports.* The lender shall transmit a loan report on each loan reported for insurance within 31 days from the date of the loan's origination or purchase from a dealer or another lender. The loan report must be submitted on the form prescribed by the Secretary, and must contain the data prescribed by HUD. Any loan refinanced under this part shall similarly be reported on the prescribed form within 31 days from the date of refinancing. When a loan insured under this part is transferred to another lender without recourse, guaranty, guarantee, or repurchase agreement, a report on the prescribed form shall be transmitted to the Secretary within 31 days from the date of the transfer. No transfer of loan report is required when a loan insured under this part is transferred with recourse or under a guaranty, guarantee, or repurchase agreement.

* * * * *

7. Amend § 201.31 as follows:

a. Revise the first sentence of paragraph (a); and

b. Revise paragraph (b)(2).

§ 201.31 Insurance charge.

(a) *Insurance charge.* For each eligible property improvement loan and manufactured home loan reported and acknowledged for insurance, the lender shall pay to the Secretary an insurance charge equal to 1.00 percent of the loan amount, multiplied by the number of years of the loan term. * * *

* * * * *

(b) * * *

(2)(i) For any loan having a maturity in excess of 25 months, payment of the insurance charge shall be made in annual installments, with the first installment due on the 25th calendar day after the date the Secretary acknowledges the loan report, and the second and successive installments due on the 25th calendar day after the date of billing by the Secretary.

(ii) For any loan having a maturity in excess of 25 months, payment shall be made in annual installments of 1.00 percent of the loan amount until the insurance charge is paid.

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

8. The authority citation for part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709 and 1715b; 42 U.S.C. 3535(d).

9. Revise § 202.8(b)(1) to read as follows:

§ 202.8 Loan correspondent lenders and mortgagees.

* * * * *

(b) * * *

(1) *Net worth.* A loan correspondent lender or mortgagee shall have a net worth of not less than $63,000 in assets acceptable to the Secretary, plus an additional $25,000 for each branch office authorized by the Secretary, up to a maximum requirement of $250,000, except that a multifamily mortgagee shall have a net worth of not less than $250,000 in assets acceptable to the Secretary.

* * * * *

Dated: August 27, 2001.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 01–27900 Filed 11–6–01; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Wednesday,
November 7, 2001

Part V

Department of Education

Rehabilitation Short-Term Training; Notices

DEPARTMENT OF EDUCATION

Rehabilitation Short-Term Training

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces a priority under the Rehabilitation Short-Term Training program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2002 and in later years. We take this action to focus on training in areas of national need. We intend the priority to improve the leadership among top-level managers and administrators of the State Vocational Rehabilitation Services Program.

EFFECTIVE DATE: This priority is effective December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Christine Marschall, U.S. Department of Education, 400 Maryland Avenue, SW., room 3325, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–2779 or via Internet: *Christine.Marschall@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8133.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The State Vocational Rehabilitation Services Program continues to undergo significant change. Vocational rehabilitation (VR) programs are serving increased numbers of individuals with significant disabilities, are seeking to reach unserved and underserved populations, and increasingly are recognizing that their success in promoting the employment of their consumers depends in part on the strength of their linkages with employers and with generic employment and training programs. In their efforts to improve the employment outcomes of the individuals they serve, State VR agencies must remain alert to this ever-changing environment.

The changed environment of State VR agencies demands a different set of skills from leaders and managers than has traditionally been required. Managers and leaders in the VR system need to develop new skills to respond effectively to the changing demands. We have determined that it is in the best interest of the State VR Services Program to develop a leadership training program that focuses on leadership skills as applied to the unique issues facing the VR agencies in a peer setting. Progressive levels of training are needed to meet the varying needs of administrators and directors. One institute would ensure consistency in training and provide for better quality control. State agencies would be required to provide some degree of support to the program.

We published a notice of proposed priority for this program in the **Federal Register** on August 6, 2001 (66 FR 41126). The notice of proposed priority included a discussion of the significant issues and analysis used in the determination of this priority.

There are no differences between the notice of proposed priority and this notice of final priority.

Analysis Of Comments and Changes

In response to our invitation in the notice of proposed priority, three parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

Comments: One commenter recommended that we require the project to be based on academic credit and lead to a formal certificate or degree.

Discussion: While in Rehabilitation Long-Term Training grants there is a statutory requirement that training be based on academic credit and lead to a formal certificate or degree, there is no authority to include this requirement in the Rehabilitation Short-Term Training priority. However, programs that provide academic credit and lead to a formal certificate or degree are not prohibited under the priority.

Changes: None.

Comments: One commenter recommended a requirement that the training be linked directly to the Comprehensive System of Personnel Development requirements.

Discussion: We agree that there is a logical link between the proposed priority and the requirements of the Comprehensive System of Personnel Development. However, we do not agree that addressing such a link should be a requirement that an applicant must address.

Changes: None.

Comments: One commenter recommended that State agencies sending participants to the leadership program not be required to contribute to the cost of the program.

Discussion: The notice of proposed priority indicated the benefits associated with requiring financial support to be provided by the State agency of participants. We do not agree that elimination of the financial contributions of State agencies would contribute to the overall goals of the program.

Changes: None.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.** When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

National Rehabilitation Leadership Institute

We will fund one project to establish a National Rehabilitation Leadership Institute that will focus on developing the leadership skills of top-level managers and administrators in State VR agencies. The project must have plans for addressing the leadership needs in all VR agencies funded under the Act and programs funded under section 121 of the Act.

The project must employ a curriculum that focuses on the development of leadership skills and on the application of those skills to current challenges and issues in the VR program. The project must be capable of structuring leadership curricula around current VR issues of national significance, such as using VR evaluation standards and performance indicators to assess and improve agency performance, coordinating effectively with generic employment and training programs, and increasing client choice. The advisory committee (described later in this notice) and the Assistant Secretary will determine actual issues.

The project must employ a curriculum that includes several levels of training to meet the needs of audiences ranging from new State administrators and directors to seasoned administrators and directors. The project's curriculum must include sequential courses that allow for repeated practice of newly learned skills over time, with performance feedback. The project must provide training in a peer setting.

The project must coordinate its training activities with activities conducted under the State Vocational Rehabilitation Unit In-Service Training program, the Rehabilitation Continuing Education Program, and the National Technical Assistance Centers funded by the Rehabilitation Services Administration (RSA). These programs are also charged with improving the leadership skills of State agency personnel. Therefore, collaboration and coordination are necessary.

The project must establish an advisory committee that includes RSA central and regional office representatives, representatives of State VR agency administrators and trainers, rehabilitation counselors, VR clients, Regional Continuing Education Centers, other educators and trainers of VR personnel, tribes and tribal agencies, and others as determined to be appropriate by the grantee and RSA. This committee must provide substantial input on and direction to the training curriculum, including the specific VR issues to be incorporated.

The project must include an evaluation component based upon clear, specific performance and outcome measures. The results must be reported in its annual progress report.

The project must be designed to ensure that State agencies will contribute to the costs of the participant's training.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This priority is intended to address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 385 and 390.

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(Catalog of Federal Domestic Assistance Number 84.246D Rehabilitation Short-Term Training).

Program Authority: 29 U.S.C. 772.

Dated: November 2, 2001.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 01–27938 Filed 10–6–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.246D]

Rehabilitation Short-Term Training—National Rehabilitation Leadership Institute; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The Short-Term Training program supports special seminars, institutes, workshops, and other short-term courses in technical matters relating to the vocational, medical, social, and psychological rehabilitation programs, independent living services programs, and client assistance programs. This competition provides for the development of a leadership training program that focuses on leadership skills as applied to the unique issues facing the vocational rehabilitation agencies in a peer setting.

For FY 2002 the competition for new awards focuses on projects designed to meet the priority we reference in the PRIORITY section of this application notice.

Eligible Applicants: Public or nonprofit private agencies, institutions, and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Short-Term Training program.

Applications Available: November 8, 2001.

Deadline for Tansmittal of Applications: January 9, 2002.

Deadline for Intergovernmental Review: March 10, 2002.

Estimated Available Funds: $250,000.

The Administration has requested $250,000 for this program for FY 2002. The actual level of funding, if any, depends on final congressional action. However we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Award: $225,000 to $250,000.

Estimated Average Size of Award: $250,000.

Maximum Award: We will reject any application that proposes a budget exceeding $250,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all

text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 390.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: This competition focuses on projects designed to meet the priority in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

For FY 2002 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet the priority.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*.

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.246D.

FOR FURTHER INFORMATION CONTACT: Christine Marschall, U.S. Department of Education, 400 Maryland Avenue, SW., room 3325, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–2779 or via Internet: *Christine.Marschall@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 29 U.S.C. 772.

Dated: November 2, 2001.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 01–27939 Filed 11–6–01; 8:45 am]

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H.J. Res. 70/P.L. 107–58

Making further continuing appropriations for the fiscal year 2002, and for other purposes. (Oct. 31, 2001; 115 Stat. 406)

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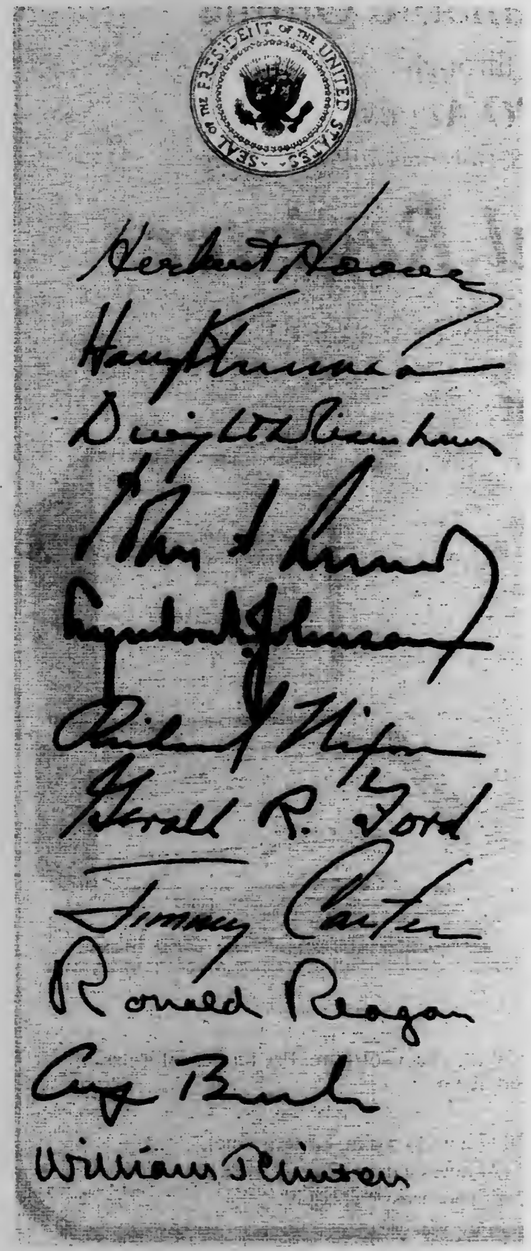
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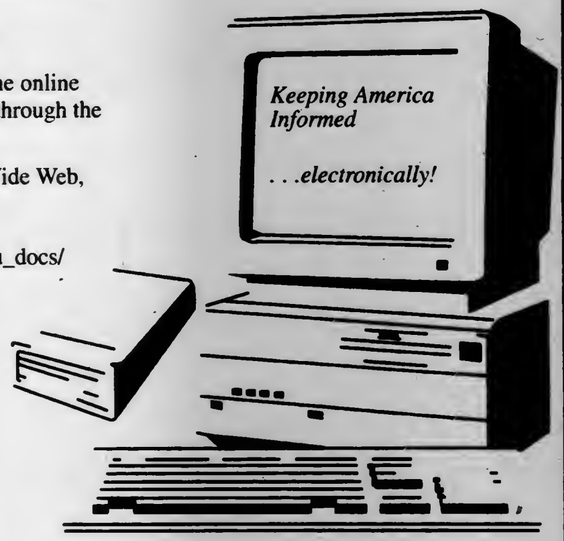
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